START

Title: FEDERAL REGISTER.

Volume: 60 Issues: 56 - 69
PAGES: 15,229 - 18,538

Date: MARCH 23 - APRIL 11, 1995

UMI Number: 2575.00

Note: REEL NO: 5 OF 10
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3–23–95
Vol. 60 No. 56

federal register

Thursday
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UMI

VOL
60

ISS
56

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23

1995

UMI

3–23–95
Vol. 60 No. 56
Pages 15229–15456

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VOL
60

ISS
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23

1995

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94–ASW–21]

Change in Using Agency for Restricted Areas R–5107C, D, E, F, G, H; R–5109A, B; and R–5111A, B, C; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–5107C, D, E, F, G, H; R–5109A, B; White Sands Missile Range, NM, and R–5111A, B, C; Elephant Butte, NM, from "Deputy for Air Force, White Sands Missile Range, NM 88002" to "Commanding General, White Sands Missile Range, NM." This is an administrative change initiated by the U.S. Air Force to reflect its reorganization of responsibilities at White Sands Missile Range. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Pete Magarelli, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–5107C, D, E, F, G, H; R–5109A, B; White Sands Missile Range, NM, and R–5111A, B, C; Elephant Butte, NM, from "Deputy for Air Force, White Sands Missile Range, NM 88002" to "Commanding General, White Sands Missile Range, NM." This is an administrative change initiated by the U.S. Air Force to reflect its reorganization of responsibilities at White Sands Missile Range. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts" and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.51 [Amended]

2. Section 73.51 is amended as follows:

R–5107C, D, E, F, G and H; White Sands Missile Range, NM [Amended]

By removing "Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002." and substituting the following: "Using agency. Commanding General, White Sands Missile Range, NM."

R–5109A and B; White Sands Missile Range, NM [Amended]

By removing "Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002." and substituting the following: "Using agency. Commanding General, White Sands Missile Range, NM."

R–5111A, B and C; Elephant Butte, NM [Amended]

By removing "Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002." and substituting the following: "Using agency. Commanding General, White Sands Missile Range, NM."

Issued in Washington, DC, on March 15, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7192 Filed 3–22–95; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2012

Implementation of Tariff-Rate Quota for Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides for export certificates to accompany imports of beef under the tariff-rata quota for beef established as a result of the Uruguay Round Agreements.

DATES: Interim rule effective on March 23, 1995. Comments must be received on or before May 22, 1995.

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ADDRESSES: Comments may be sent to Len Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Len Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506; telephone: (202) 395–6127.

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreement Act (URAA) Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, has established a tariff-rate quota for beef. (Under a tariff-rate quota, the United States applies one tariff rate, known as the "in-quota tariff rate," to imports of a product up to a particular amount, known as the "in-quota quantity," and a different, higher tariff rate, known as the "over-quota tariff rate," to imports of the product in excess of that amount.) The United States has also agreed to assign Australia, Japan, and New Zealand particular shares of the in-quota quantity.

Additional U.S. note 3 to chapter 2 of the Harmonized Tariff Schedule of the United States, as added by the Annex to Proclamation No. 6763, provides that imports under the tariff-rate quota for beef "are subject to regulations issued by the United States Trade Representative."

As part of the implementation of this tariff-rate quota, the United States is offering exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their beef exports to the United States. Using export certificates assures an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, and in this instance ensures that imports do not disrupt the orderly marketing of beef in the United States. However, a country does not need to participate in the export certificate program to receive the in-quota tariff rate for its share of the in-quota quantity.

The government of New Zealand has specifically requested that the opportunity to use export certificates be made available to it and had requested that this opportunity be available as of January 1, 1995. It was not possible to promulgate the necessary regulations by January 1, 1995, but the United States government is responding to the request of the government of New Zealand as promptly as possible.

Under the interim rule, a country wishing to avail itself of export certificates must notify USTR, provide the necessary supporting information, and otherwise satisfy USTR that the country is a participating country. (USTR intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country.) The United States Customs Service will then be responsible for ensuring that no imports of beef from that country are counted against the country's in-quota allocation unless there is a proper export certificate for that beef.

The Customs Service will separately issue regulations governing Customs implementation of this rule. Accordingly, no export certificates will be required for imports from a country until the Customs Service regulations are in effect and USTR determines that the country is a participating country.

Review

This rule has been determined to be a "significant regulatory action" under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

The information collection requirements referred to in this rule will be submitted to the Office of Management and Budget by the Customs Service in accordance with 44 U.S.C. Chapter 35 for approval under OMB Number 1515–0065.

No regulatory flexibility analysis is required for this rule since neither 5 U.S.C. 553 nor any other provision of law requires publication of a general notice of proposed rulemaking with respect to this rule. However, the United States Trade Representative has also determined that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 2012

Beef, Export certificates, Imports, Meat, Tariff-rate quotas.

For the reasons set out in the preamble, 15 CFR is amended by adding the following new part 2012 to read as follows:

PART 2012—IMPLEMENTATION OF TARIFF-RATE QUOTAS FOR BEEF

Sec.
2012.1 Purpose.
2012.2 Definitions.
2012.3 Export certificates.

Authority: Proclamation No. 6763; sec. 404, Pub. L. 103–465, 108 Stat. 4809.

§ 2012.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for beef established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465). In particular, this part provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under the tariff-rate quota has chosen to use export certificates.

§ 2012.2 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Beef* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 3 to chapter 2 of the HTS.

(b) *Allocated country* means a country to which an allocation of a particular quantity of beef has been assigned under additional U.S. note 3 to chapter 2 of the HTS.

(c) *Enter* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating country* means any allocated country that USTR has determined is, and notified the U.S. Customs Service as being eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

§ 2012.3 Export certificates.

(a) Beef may only be entered as a product of a participating country if the importer makes a declaration to the Customs Service, in the form and manner determined by the Customs Service, that a valid export certificate is in effect with respect to the beef.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the exporter, the product description and quantity, and the calendar year for which the export certificate is in effect;

(3) Be distinct and uniquely identifiable; and

(4) Be used in the calendar year for which it is in effect.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–7125 Filed 3–22–95; 8:45 am]

BILLING CODE 3190–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1203

Interim Rule: Safety Standards for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Interim rule.

SUMMARY: The Commission announces that certain voluntary standards for bicycle helmets will become interim mandatory standards pursuant to the Children's Bicycle Helmet Safety Act of 1994. These interim mandatory standards shall remain in effect until replaced by a final standard to be issued by the Commission. These statutory interim standards are the American National Standards Institute ("ANSI") standard Z90.4–1984, the Snell Memorial Foundation standard B–90, and ASTM standard F 1447–1993.

The Commission also announces its determination, pursuant to the Bicycle Helmet Safety Act, that five additional voluntary safety standards for bicycle helmets are appropriate as interim mandatory standards. These standards are ASTM F 1447–1994, Snell B–90S, N–94, and B–95, and the Canadian voluntary standard CAN/CSA–D113.2–M89.

Failure of a bicycle helmet manufactured after the effective date of the interim mandatory standards to comply with at least one of the interim standards shall be considered a violation of a consumer product safety standard promulgated under the Consumer Product Safety Act.

DATES: The interim mandatory standards for bicycle helmets will become effective March 15, 1995, and shall apply to all bicycle helmets manufactured after that date.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Heh, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504–0494 ext. 1308.

SUPPLEMENTARY INFORMATION: On June 16, 1994, the Children's Bicycle Helmet Safety Act of 1994 (the "Act") was enacted. Secs. 201–207, Pub. L. 103–267, 108 Stat. 726–729; 15 U.S.C. 6001–6006. This Act provides that bicycle helmets manufactured 9 months or more from that date (i.e., on or after March 16, 1995) shall conform to one of the following interim safety standards: (1) The American National Standards Institute (ANSI) standard designated as Z90.4–1984, (2) the Snell Memorial Foundation standard designated as B–90, (3) the ASTM, formerly the American Society for Testing and Materials, standard designated as F 1447, or (4) any other standard that the Commission determines is appropriate. In this notice, the Commission codifies these interim mandatory standards as 16 CFR part 1203 and clarifies that ASTM standard F 1447 means the 1993 version of that standard. This is the version of the F 1447 standard that was in effect at the time the Act was enacted. The Act provides that failure to conform to an interim standard shall be considered a violation of a consumer product safety standard issued under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084.

The Act also directs the Consumer Product Safety Commission to begin a proceeding under 5 U.S.C. 553 to:

1. Review the requirements of the interim standards described above and establish a final standard based on such requirements,

2. Include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders,

3. Include in the final standard provisions that address the risk of injury to children, and

4. Include additional provisions as appropriate.

The Act provides that the final standard shall take effect 1 year from the date it is issued and that the standard shall be considered to be a consumer product safety standard issued under the CPSA. However, the Act also provides that the provisions of the CPSA regarding rulemaking procedures, statutory findings, and judicial review (15 U.S.C. 2056, 2058, 2060, and 2079(d)) shall not apply to this proceeding or to the final standard. When the final standard becomes effective, it will replace the interim standards.

The Commission reviewed the bicycle helmet standards identified in the Act (ANSI, ASTM, and Snell B–90), as well as international bicycle helmet standards and draft revisions of the ANSI, ASTM, and Snell standards that were under consideration. Based on this review, the Commission developed a proposed mandatory safety standard for bicycle helmets. 59 FR 41719 (August 15, 1994). The proposed final safety standard contains requirements for general construction, labeling, peripheral vision, impact attenuation, and dynamic strength of the retention system of bicycle helmets. In addition to requirements derived from one or more of the voluntary standards applicable to this product, the proposed standard includes requirements specifically applicable to children's helmets and requirements to prevent helmets from coming off during an accident. The Commission also proposed testing and recordkeeping requirements so it can ensure that helmets subject to the standard meet its requirements.

The August 15, 1994, proposal also described the statutory interim standards, explained that the Commission could determine that additional interim standards were appropriate, and stated that the Commission had not yet done so. Two comments received by the Commission on that notice requested that the Commission designate certain other voluntary standards for bicycle helmets as interim mandatory standards. The Snell Memorial Foundation requested that, in addition to the Snell B–90 standard specified by the Act, three other Snell standards be determined appropriate as interim mandatory bicycle helmet standards. These additional Snell standards are: (1) B–90S (a supplemental revision of the Snell B–90 standard), (2) N–94 (a multi-purpose helmet standard), and B–95 (the latest revision of the Snell bicycle helmet standard, which will take effect in 1995). Snell states that helmets certified to any of these three standards will also conform to the Snell B–90 standard specified in the Act.

The Health Protection Branch of Health Canada recommended that the Canadian voluntary standard (Cycling Helmets–CAN/CSA–D113.1–M89) be determined as an appropriate interim mandatory standard. Health Canada stated that such action would comport with Article 906 of the North American Free Trade Agreement ("NAFTA"), which states that "the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures * * *."

In addition to reviewing the provision and test methods of the requested Snell and Canadian interim standards, the Commission also evaluated the 1994 revision to ASTM F 1447. The Commission concluded that these standards are comparable to, and in some cases exceed, the safety performance criteria of the interim standards identified in the Act. Accordingly, the Commission determines that these additional voluntary standards are appropriate as interim mandatory safety standards for bicycle helmets.

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List of Subjects in 16 CFR Part 1203

Consumer protection, Bicycles, Incorporation by reference, Infants and children, Safety.

For the reasons given above, the Commission adds a new part 1203 of Title 16 of the Code of Federal Regulations, to read as follows:

PART 1203—SAFETY STANDARD FOR BICYCLE HELMETS

Sec.
1203.1 Purpose and basis.
1203.2 Scope and effective date.
1203.3 Interim safety standards.

Authority: Secs. 201–207, Pub. L. 103–267, 108 Stat. 726–729, 15 U.S.C. 6001–6006.

§ 1203.1 Purpose and basis.

The purpose and basis of this rule is to protect bicyclists from head injuries by ensuring that bicycle helmets comply with the requirements of appropriate existing voluntary standards, as provided in 15 U.S.C. 6004(a).

§ 1203.2 Scope and effective date.

(a) Bicycle helmets manufactured after March 15, 1995, shall comply with the requirements of one of the standards specified in § 1203.3. This requirement shall be considered a consumer product safety standard issued under the Consumer Product Safety Act.

(b) A bicycle helmet is any headgear marketed as suitable for providing protection from head injuries associated with bicycle use.

(c) These interim mandatory safety standards will not apply to bicycle helmets manufactured after the effective date of a final bicycle helmet standard to be issued in the future by the Commission.

§ 1203.3 Interim safety standards.

(a) Bicycle helmets must comply with one or more of the following standards, which are incorporated herein by reference:

(1) American National Standards Institute (ANSI) standard Z90.4–1984, Protective Headgear for Bicyclists,

(2) ASTM standards F 1447–93 or F 1447–94, Standard Specification for Protective Headgear Used in Bicycling, incorporating the relevant provisions of ASTM F 1446–93 or ASTM F 1446–94, Standard Test Methods for Equipment and Procedures Used in Evaluating the Performance Characteristics of Protective Headgear, respectively,

(3) Canadian Standards Association standard, Cycling Helmets CAN/CSA–D113.2–M89,

(4) Snell Memorial Foundation (Snell) 1990 Standard for Protective Headgear for Use in Bicycling (designation B–90),

(5) Snell 1990 Standard for Protective Headgear for Use in Bicycling, including March 9, 1994 Supplement (designation B–90S),

(6) Snell 1994 Standard for Protective Headgear for Use in Non-Motorized Sports (designation N–94), or

(7) Snell 1995 Standard for Protective Headgear for Use with Bicycles B–95.

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards may be obtained as follows. Copies of the ANSI Z90.4 standard are available from: American National Standards Institute, 11 W. 42nd Street, 13th Floor, New York, NY 10036. Copies of the ASTM standards are available from: ASTM, 1916 Race Street, Philadelphia, PA 19103. Copies of the Canadian Standards Association CAN/CSA–D113.2–M89 standard are available from: CSA, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario, Canada, M9W 1R3. Copies of the Snell standards are available from: Snell Memorial Foundation, Inc., P.O. Box 493, 7 Flowerfield, Suite 28, St. James, New York 11780. Copies may be inspected at the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814, or at the Office of the Federal Register, 800 N. Capitol Street NW, Room 700, Washington, DC.

Dated: March 16, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–7082 Filed 3–22–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations

CFR Correction

In title 29 of the Code of Federal Regulations, parts 500 to 899, revised as of July 1, 1994, § 500.268 appearing on page 50 should be removed and the following § 500.268 inserted:

§ 500.268 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the notice of intent granting the petition, and served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations in 33 CFR Part 334 to add a clause that alerts mariners that potential navigation and charting errors may occur in the boundaries of some danger zones and restricted areas as a result of the updating and replacement of the North American Datum of 1927 with the North American Datum of 1983. The promulgation of these regulations will notify mariners that geographic coordinates establishing danger zone and restricted area boundaries, promulgated in 33 CFR Part 334 are not to be used for plotting on maps and charts where NAD 83 is referenced unless the geographic coordinates in the regulations are expressly labeled "NAD 83". Geographic coordinates without the NAD 83 reference may be plotted on charts or maps which are referenced to NAD 83 only after applying the correct formula that is published on the map or chart being used.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: A datum is a reference point, line or surface used as a reference in surveying and mapping. Through the use of satellites and other modern surveying techniques, it is now possible to establish global reference systems. The North American Datum of 1983 (NAD 83), a new adjustment of the U.S. network of horizontal control, has been adopted as a standard reference datum by the United States and Canada. In March 1988, the National Ocean Service, National Oceanic and Atmospheric Administration, commenced publishing charts in NAD 83. The parameters of the Ellipsoid of reference used with NAD 83 are very close to those used for the World Geodetic System of 1984 (WGS 84). The ellipsoid used for NAD 83, Geodetic Reference System 1980 (GRS 80), is earth-centered or geocentric as opposed to the nongeocentric ellipsoids previously employed. This means that the center of the ellipsoid coincides with the center of the mass of the earth. Any inquiries and requests for further information regarding NAD 83 and National Ocean Service nautical charts should be addressed to: Director, Coast Survey (NCG2), National Ocean Service, NOAA, 1315 East-West Highway, Station 6147, Silver Spring, Maryland 20910–3282.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations in 33 CFR 334 by inserting the following clause that alerts mariners to the potential for navigation and charting errors in consequence of the NAD 83.

"Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used". On January 24 1995, the Corps published this change in the Notice of Proposed Rulemaking section of the **Federal Register** (60 FR 4582–4583) with the comment period ending on February 23, 1995. We received no comments.

Notes

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12866 and is in accordance with the exemption provided military functions.

2. This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. We do not believe that the establishment of these rules will have any negative impacts on small entities because the procedures codified here will only serve to eliminate errors and confusion about the applicability of the 1983 North American Datum. Finally, no reporting or record-keeping requirements are imposed on any small entity as the result of this amendment to the danger zone/restricted area regulations. Therefore, we have determined that this rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we are amending Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.6 *Datum* is added as follows:

§ 334.6 Datum.

(a) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

(b) For further information on NAD 83 and National Service nautical charts please contact: Director, Coast Survey (N/CG2), National Ocean Service, NOAA, 1315 East-West Highway, Station 6147, Silver Spring, MD 20910–3282.

Dated: March 15, 1995.

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 95–7208 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL115–1–6791a; FRL–5166–1]

Approval and Promulgation of Implementation Plans; Revision to the Illinois State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the State Implementation Plan (SIP) revision request submitted by the State of Illinois on October 25, 1994, for the purpose of lowering the Reid Vapor Pressure (RVP) of gasoline from 9.0 pounds per square inch (psi) to 7.2 psi for the Metro-East St. Louis (Metro-East) ozone nonattainment area which includes Madison, Monroe, and St. Clair Counties. The rationale for the approval is set forth in this direct final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective on May 22, 1995, unless notice is received by April 24, 1995, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the USEPA's technical analysis (TSD) are available for inspection at the following address: (It is recommended that you telephone Francisco Acevedo at (312) 886–6061 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77

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West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the RVP SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Background

The USEPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). Reid vapor pressure is a measure of a fuel's volatility; the higher the RVP the faster a fuel evaporates. Emissions of Volatile Organic Compounds (VOC) react with other pollutants, such as oxides of nitrogen, to form ozone. Ozone formation is most active during the summer months because the chemical reactions involved rely on direct sunlight and high ambient temperatures. Thus, regulations limiting fuel RVP are designed to protect human health by reducing ozone formation and human exposure.

USEPA's gasoline RVP proposal resulted in a two-phased final regulation which Congress incorporated into the Clean Air Act (Act) in section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. The second phase of the regulation became effective in 1992 (55 FR 23658). The rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B States are the warmer southern and western states, such as Missouri; and Class C States are the cooler northern states, such as Illinois. The Phase II regulation limits the volatility of high ozone season gasoline to 9.0 psi RVP for Class C areas and limits Class B ozone nonattainment areas to 7.8 psi RVP. Therefore, the Missouri counties within the St. Louis ozone nonattainment area are required to meet the 7.8 psi RVP standard while the Illinois counties have a 9.0 psi RVP limit.

State governments are generally preempted under section 211(c)(4)(A) of the Act from requiring that any or all areas in a State meet a volatility standard more stringent than the federal standard.[1] However, under 211(c)(4)(C) a State can require a more stringent standard in its SIP if the more stringent standard is necessary to achieve the National Ambient Air Quality Standard (NAAQS) that the SIP implements in a particular nonattainment area. The State can make this necessity showing by providing evidence that no other measures exist that would bring about timely attainment, or that such measures exist and are technically possible to implement, but are unreasonable or impracticable. If a State makes this showing, it can lower the volatility to whatever standard is necessary in the nonattainment area(s).

II. State Submittal

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic material by 1996. The Metro-East area is classified as "Moderate" nonattainment for ozone, and as such is subject to the 15 percent Rate of Progress (ROP) requirement.

The Illinois Environmental Protection Agency (IEPA) developed and submitted a plan to USEPA on November 22, 1994, outlining the VOC emission control measures that the State will implement in order to satisfy the 15 percent ROP requirements. USEPA is currently reviewing the plan. One of the measures identified in the Metro-East plan was an RVP limit of 7.8 psi. The Metro-East ozone nonattainment area includes Madison, Monroe, and St. Clair Counties. The 7.8 psi RVP level was originally chosen to coincide with the gasoline volatility requirement for the adjacent St. Louis, Missouri area. However, in December 1993, the Missouri Department of Natural Resources (DNR) proposed lowering the St. Louis area gasoline RVP to 7.2 psi. Therefore, in order to maintain consistency within the area, IEPA proposed a similar 7.2 psi RVP limit. On April 22, 1994, IEPA filed the proposed 7.2 psi RVP rules with the Illinois Pollution Control Board (Board). A public hearing on the rules was held on June 17, 1994, in Chicago, Illinois, and on September 5, 1994, the Board adopted a Final Opinion and Order for the proposed amendments. The rules became effective on September 21, 1994, and they were published in the Illinois State Register on October 7, 1994. The IEPA formally submitted the RVP rule to USEPA on October 25, 1994, as a revision to the Illinois ozone SIP.

Illinois has reviewed all reasonable control measures and calculated the total reductions that it could achieve through these measures. The 15 percent ROP modeling has shown that limiting the RVP of gasoline to 7.2 psi reduces emissions in the Metro-East area by approximately 8.5 tons per day or 26 percent of the total reduction needed in the area to meet the 15 percent ROP requirement and to attain the NAAQS for ozone. Evaluation of the ROP modeling has shown that the Metro-East area will not be able to demonstrate attainment without controls that achieve this quantity of emission reduction. Illinois has selected the RVP control because there are no other reasonable and practicable emission control options available for the area capable of achieving this level of emission reduction. In determining whether other control measures were unreasonable or impracticable, Illinois considered such factors as cost-effectiveness, unpopularity with the public, need for consistent RVP standards across the greater metropolitan area, and the time frame in which such reductions can be achieved. (See February 9, 1995 TSD for a more detailed discussion of this analysis).

III. Analysis of Rule

The Illinois RVP rule amends 35 Ill. Adm. Code Part 219 Subpart A and Subpart Y. The RVP rule limits the volatility of gasoline sold in Madison, Monroe, and St. Clair Counties to 7.2 psi RVP during the control period beginning in 1995. The adopted control period included in the rule is June 1 to September 15 for retail outlets and wholesale consumers, and May 1 to September 15 for all others. The rule grants a 1 psi waiver for ethanol-blended gasolines that have an ethanol content between 9 and 10 percent by volume. In addition the Illinois RVP rule requires all parties involved with the marketing of gasoline to maintain records indicating that the volatility of each gasoline shipment is in compliance with the 7.2 psi RVP standard. The control period, ethanol blend waiver, and recordkeeping requirements are all consistent with the Act and USEPA's final RVP rule (CAA § 211(h); 40 CFR 80.27).

Gasoline sampling and testing to assure compliance with the regulation will be performed by the Illinois Department of Agriculture. Sampling will be performed in accordance with the procedures described by USEPA in its gasoline volatility regulations in 40 CFR 80 appendix D. Gasoline volatility and ethanol content tests will be performed following procedures described by USEPA in 40 CFR 80 appendix E and appendix F, respectively. Gasoline analysis results will be forwarded to the IEPA for compliance assurance and the preparation of enforcement actions. The Illinois Environmental Protection Act (Illinois Act), section 42(a), states that any person that violates any provision of this Illinois Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any determination or order of the Board pursuant to this Act, shall be liable to a civil penalty not to exceed $50,000 for the violation and an additional $10,000 for each day for which the violation continues. In that this submittal is a regulation adopted by the Board, a violation of which subjects the violator to penalties under section 42(a), the submittal contains sufficient enforcement penalties for approval.

IV. Final Rulemaking Action

The USEPA approves the SIP revision submitted by the State of Illinois. The State of Illinois has submitted a SIP revision that includes enforceable state regulations which are consistent with Federal requirements. The State has also committed to perform enforcement inspections on at least 20 percent of the regulated stations during the first year of enforcement. Substantial penalties that will provide an adequate incentive for the regulated industry to comply and are no less than the expected cost of compliance are included in current Pollution Control Board Regulation. USEPA is, therefore, approving this submittal.

Procedural Background

Because USEPA considers this action noncontroversial and routine, the Agency is approving it without prior proposal. The action will become effective on May 22, 1995. However, if the USEPA receives adverse comments by April 24, 1995, then the USEPA will publish a notice that withdraws the action, and will address the comments received in response to this direct final rule in the final rule on the requested SIP revision, which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. Environmental Protection Agency*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbon, Incorporation by reference, Ozone.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(109) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(109) On October 25, 1994, Illinois submitted a regulation that reduced the maximum allowable volatility for gasoline sold in the Metro-East St. Louis ozone nonattainment area, which includes Madison, Monroe, and St. Clair Counties, to 7.2 psi during the summer control period. The summer control period is June 1 to September 15 for retail outlets and wholesale consumers, and May 1 to September 15 for all others.

(i) Incorporation by reference. Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219 Organic Material Emission Standards and Limitations for Metro East Area,

(A) Section 219.112 Incorporation by Reference. Amended at 18 Ill. Reg. 14987. Effective September 21, 1994.

(B) Section 219.585 Gasoline Volatility Standards. Amended at 18 Ill. Reg. 14987. Effective September 21, 1994.

[FR Doc. 95–7108 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH45–1–5974a; FRL–5169–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving revisions to the Ohio State Implementation Plan (SIP) adopted by the Ohio Environmental Protection Agency (OEPA) on March 15, 1993, and December 30, 1994. The OEPA submitted these revisions to the USEPA on June 7, 1993, and February 17, 1995. The revisions concern Ohio Administrative Code (OAC) Chapter 3745–21, "Carbon Monoxide, Photochemically Reactive Materials,

[1] USEPA promulgated the RVP regulations under both section 211(c) and section 211(h). States are generally preempted under section 211(c)(4)(A) from requiring fuel standards nonidentical to Federal standards promulgated under section 211(c)(1).

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Hydrocarbons, and Related Materials Standards." The USEPA has evaluated the revisions to Rules 01, 04, 09, and 10 and is approving the requested revisions. The USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: This final rule is effective May 22, 1995 unless adverse or critical comments are received by April 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for public inspection during normal business hours at the following addresses: (It is recommended that you telephone Bonnie Bush at (312) 353–6684, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604; Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bonnie Bush, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6684.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, amendments to the 1977 Clean Air Act (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under the pre-amended CAA, ozone nonattainment areas were required to adopt reasonably available control technology (RACT) rules for sources of volatile organic compound (VOC) emissions. VOC's contribute to the production of ground level ozone and smog. These rules were required as part of an effort to achieve the National Ambient Air Quality Standard for ozone.

RACT, as defined in 40 CFR 51.100(o), means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social, environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. The USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I, issued before January 1978 (15 CTGs); (2) Group II, issued in 1978 (9 CTGs); and (3) Group III, issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. The USEPA determined that a given nonattainment area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under pre-amended section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that projected attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG, i.e., a CTG issued prior to the enactment of the Clean Air Act Amendments of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (note: this includes unregulated emission units within a source if they total more than 100 tons per year in the aggregate). Section 182(b)(2) requires nonattainment areas that previously were exempt from RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Under the pre-amended Act, the USEPA designated the Dayton-Springfield, Cincinnati, Youngstown-Warren, Canton, Toledo, Cleveland, and Akron areas and Ashtabula County as nonattainment. The Dayton-Springfield area included Clark, Greene, Miami, and Montgomery Counties; the Cincinnati area included Clermont, Hamilton, Warren, and Butler Counties; the Youngstown-Warren area included Mahoning and Trumbull Counties; the Canton area included Stark County; the Toledo area included Lucas County; and the Cleveland and Akron areas included Portage, Summit, Cuyahoga, Geauga, Lake, and Lorain Counties. Ohio established a pre-enactment attainment date of December 31, 1982, for the Dayton-Springfield, Youngstown-Warren, Canton, Toledo and Akron nonattainment areas and December 31, 1987, for the Cleveland and Cincinnati nonattainment areas. Therefore, Dayton-Springfield, Youngstown-Warren, Canton, Toledo, and Akron were required to adopt RACT for Groups I and II sources, and the Cincinnati and Cleveland areas were required to adopt RACT for Groups I, II, III, and major non-CTG sources. Ashtabula County was designated rural nonattainment and was required to adopt RACT for Groups I and II sources.

However, none of the above areas attained the ozone standard by their respective approved attainment dates. On May 26, 1988, and November 8, 1989, the USEPA notified the Governor of Ohio that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected. These notifications are referred to as USEPA's SIP Calls). In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. The Dayton-Springfield, Cincinnati, Cleveland-Akron-Lorain and Toledo areas and Ashtabula County retained their designation of nonattainment and were classified as moderate; the Youngstown-Warren and Canton areas retained their designation of nonattainment and were classified as marginal. 56 FR 56694 (Nov. 6, 1991). The State submitted revisions to meet the RACT fix-up requirement for all the above areas, and the USEPA has taken a final action of partial approval, partial disapproval, and partial limited approval/limited disapproval of that submittal. 59 FR 23796 (May 9, 1994).

In addition to the pre-enactment nonattainment areas retaining their nonattainment designations, the USEPA also extended the boundaries of the Toledo and Cleveland-Akron-Lorain nonattainment areas to include Wood County in the Toledo area and Ashtabula and Medina Counties in the Cleveland-Akron-Lorain area. 56 FR 56694 and 57 FR 56762 (November 30, 1992). Wood and Medina Counties were previously not subject to CAA RACT requirements. Ashtabula County was previously subject to Groups I and II RACT and to the section 182(a)(2)(A) RACT fix-up requirement. Therefore, these portions of the extended nonattainment area also are subject to the RACT requirements of section 182(b)(2), which requires the State, for these extended portions of the Cleveland-Akron-Lorain and Toledo nonattainment areas, to submit RACT rules covering all pre-enactment CTGs, to identify all sources the State anticipates will be covered by a post-enactment CTG, and to submit non-CTG rules for all remaining major sources (100 tons per year) of VOC emissions (Appendix E to the General Preamble, 57 FR 18077, April 28, 1992).

The following is the USEPA's evaluation and rulemaking action for the submitted revisions to Ohio Administrative Code (OAC) Chapter 3745–21 "Carbon Monoxide Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards," including the following amendments: 3745–21–01, Definitions; 3745–21–04, Attainment Dates and Compliance Time Schedules; 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources; and 3745–21–10, Compliance Test Methods and Procedures.

II. USEPA Evaluation and Action

In determining the approvability of a VOC rule, the USEPA must evaluate the rule for consistency with the requirements of the Act and USEPA regulations, as found in section 110 and Part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The USEPA interpretation of these requirements, which forms the basis for this action, appears in various USEPA policy guidance documents discussed in this Notice.

For the purpose of assisting State and local agencies in developing RACT rules, the USEPA prepared a series of CTG documents. The CTG's are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. The USEPA has not yet developed CTG's to cover all sources of VOC emissions. Further interpretations of USEPA policy are found in those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT (52 FR 45044, November 24, 1987) and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987, **Federal Register** Notice" (Blue Book). Notice of availability of the Blue Book was published in the **Federal Register** on May 25, 1988. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen the SIP. A detailed analysis of the submittals and discussion of the USEPA's basis for this action is contained in a February 21, 1995, USEPA Technical Support Document (TSD).

This Notice addresses VOC regulations applying to CTG source categories contained in Ohio's June 7, 1993, and February 17, 1995, submittals and one site-specific non-CTG rule applying to the British Petroleum Company, Toledo Refinery (BP Oil). Because of the size of this submittal, a single rulemaking action on the entire submittal would further delay Federal enforceability of any part of it. Therefore, this Notice evaluates and takes action on only that portion of the submittal applying to sources belonging to the following CTG source categories:

Automobiles and Light-Duty Truck Coating
Can Coating
Coil Coating
Paper Coating
Fabric Coating
Vinyl Coating
Metal Furniture Coating
Magnet Wire Coating
Large Appliance Coating
Bulk Gasoline Plants
Bulk Gasoline Terminals
Gasoline Tank Trucks
Storage of Petroleum Liquids in Fixed Roof Tanks
Petroleum Refinery Sources
Cutback and Emulsified Asphalts in Road Construction and Maintenance
Solvent Metal Cleaning
Gasoline Dispensing Facilities
Leaks from Petroleum Refinery Equipment
Miscellaneous Metal Parts Coating
Synthesized Pharmaceutical Manufacturing
Rubber Tire Manufacturing Facilities
Printing
Petroleum Liquid Storage in External Floating Roof Tanks
Petroleum Solvent Dry Cleaning Facilities
Leaks from Process Units that Produce Organic Chemicals
Air Oxidation Processes in Organic Chemical Manufacture

The rules in the submittal that apply to non-CTG sources other than BP Oil are addressed in a separate rulemaking action.

No deficiencies have been identified in the rules subject to this rulemaking action. The February 1995 USEPA TSD discusses the bases for approval of the portions of the submittals subject to this action and lists the references, guidance documents, and correspondence used in the evaluation of the submittals.

Alternative Applicability Cutoff in OAC Rule 3745–21–09(U)

OAC 3745–21–09(U) is Ohio's rule for miscellaneous metals coating facilities. Rule (U), paragraph (2)(e)(i) exempts sources in the Dayton nonattainment area which use eight or less gallons of coating per day per line (gpd/line), and paragraph (2)(e)(ii) exempts sources in the Canton, Toledo, Cleveland, Cincinnati, and Youngstown nonattainment areas which use 10 or less gpd/line. The USEPA CTG document for miscellaneous metal coaters does not define an applicability cutoff specific to the source category, so the general RACT cutoff of 15 lb VOC per day actual emissions before control for all sources in the source category at a given facility, as described in the Blue Book, applies to these facilities. While Rule (U), paragraph (2)(h), includes the USEPA RACT cutoff, the exemptions in (2)(e) make possible the exemption of sources with emissions above the RACT cutoff. The Blue Book provides for approval of alternative applicability cutoffs if the State demonstrates that the allowable emissions under the alternative cutoff are within five percent of the allowable emissions under the USEPA RACT cutoff—a "five percent equivalency demonstration."

The OEPA submitted complete five percent demonstrations (summary calculations and supporting documentation) for the Canton, Dayton, Toledo, and Youngstown areas. Review of the complete five percent demonstrations shows that the alternative cutoffs for the Canton, Dayton, Toledo and Youngstown, nonattainment areas are approvable. Based on emissions data for 1990 or earlier, the allowable VOC emissions using the alternative cutoffs are, in each case, within five percent of the allowable VOC emissions using the USEPA RACT cutoff. The calculation of the demonstrations was consistent with USEPA policy, and the calculations were adequately supported by documentation of VOC coating content. The results of the demonstrations are summarized in the following table:

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Nonattainment area	Allowable VOC, lb/day, RACT cutoff	Allowable VOC, lb/day, Ohio cutoff	Percent Difference
Canton	2,950.54	3,062.26	+3.79
Dayton	18,751.82	19,615.44	+4.61
Toledo	5,385.85	5,599.37	+3.96
Youngstown	10,158.50	10,490.85	+3.27

The OEPA also submitted summary calculations, without supporting documentation, showing that a three or less gpd/line cutoff for the Cincinnati and Cleveland nonattainment areas results in emissions that are within five percent of the emissions allowed by the RACT cutoff. A three or less gpd/line cutoff has not been adopted by Ohio, and the OEPA has requested that the 10 or less gpd/line cutoff in Rule (U)(2)(e)(ii), contained in the February 1995 submittal, not be made part of the ozone SIP for the Counties of Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren, which constitute the Cincinnati and Cleveland nonattainment areas. The OEPA has requested that USEPA delay action on the rule as it applies in Cincinnati and Cleveland because the OEPA intends to adopt a three or less gpd/line cutoff for the Cincinnati and Cleveland nonattainment areas, and submit this cutoff, accompanied by supporting documentation, to the USEPA as a SIP revision request. Therefore, the USEPA is approving this rule only as it applies to Canton, Dayton, Toledo, and Youngstown. The USEPA will take further action on this rule as it applies to Cincinnati and Cleveland when the OEPA submits the revised rule.

The revised Rule (U) also corrects a deficient emission limit, removes vague and unenforceable language, and adds clarifying language necessary for consistency with RACT, thereby strengthening the SIP.

Rubber Tire Manufacturing Exemptions and Technical Support

The June 1993 submittal contains a version of OAC 3745–21–09(X), Ohio's rule for rubber tire manufacturing facilities, which includes new exemptions for two facilities: the Goodyear Tire and Rubber Company facility at 200 S. Martha Avenue, Akron, Ohio, and the Denman Tire Corporation facility in Leavittsburg, Ohio. There are two ways to exempt a facility from applicable RACT requirements: (1) The State can demonstrate that the exemption meets existing USEPA exemption policy for the specific source category, or (2) the State can demonstrate that RACT as defined by the USEPA is infeasible or unreasonable for the facility being exempted. The USEPA exemption policy for rubber tire manufacturing (the Blue Book) states that RACT "does not apply to the production of specialty tires for antique or other vehicles when produced on an irregular basis or with short production runs only if these tires are produced on equipment separate from normal production lines for passenger type tires."

While the OEPA included technical documentation for these exemptions in the June 1993 submittal, it did not sufficiently support either of the above demonstrations. The inadequacy of the technical support was communicated to the OEPA in a June 1994 comment letter, and draft paragraphs from the USEPA TSD were sent to the OEPA via facsimile to facilitate subsequent discussions of unresolved issues. During these discussions, the USEPA asked the OEPA to consider the USEPA's draft model VOC rule language pertaining to applicability for rubber tire manufacturing facilities. The OEPA has eliminated the exemptions for Denman and Goodyear and incorporated the model rule applicability language in the February 1995 submittal. The USEPA now finds OAC Rule 3745–21–09(X) to be fully approvable.

Reconsideration of Previously Noted Deficiencies

Pursuant to discussions between the OEPA and the USEPA, the USEPA has reconsidered its position on some of the deficiencies cited in the Notice of Final Rulemaking (NFR) on two earlier VOC rules submittals from Ohio (May 9, 1994, 59 FR 23796). All but two of the retractions are described in a July 22, 1994, USEPA memorandum to the files; the remaining two reconsiderations warrant more detailed explanations, as follows:

1. Rule 3745–21–09(B), General provisions, paragraph (3)(f): The deficiency originally cited was that the rule must provide for daily, not monthly, recordkeeping to be consistent with RACT as defined by the USEPA and must be fully enforceable. The OEPA stated that an Ohio VOC source, Champion International, contacted USEPA Headquarters (HQ) on this issue, and HQ agreed that monthly recordkeeping is acceptable in this situation. This was not documented in the OEPA's June 1993 technical support, and Region 5 staff were not aware of this policy. The OEPA subsequently submitted a November 24, 1992, letter from John Calcagni, Director of the Air Quality Management Division, USEPA, to Robert A. Meyer, Jr., of a Columbus, Ohio, law firm, which supports the monthly recordkeeping requirement.

2. Rule 3745–21–09(EE), Air oxidation processes that produce organic chemicals: The deficiency originally cited was that the phrase "good engineering practices" in the exemption in paragraph (2)(a) is vague and unenforceable. The OEPA stated that the exemption language in paragraph (2)(a) was taken from the USEPA Control Techniques Guideline document on air oxidation processes. This was confirmed by USEPA staff, and we informed the OEPA that the final disapproval of this paragraph in the May 9, 1994, NFR (59 FR 23796) was an error, which is corrected by this action.

All of the other regulations cited as deficient in the May 9, 1994, NFR (59 FR 23796), have either been revised by the OEPA to correct the deficiency or reconsidered by the USEPA as discussed above, and all such regulations are now fully approvable.

Non-CTG Regulation for BP Oil

BP Oil, Toledo Refinery, is located in Lucas County, which is designated as moderate nonattainment for ozone. Prior to enactment of the CAA amendments, Lucas County was part of an area that had projected attainment by December 31, 1982, and therefore was subject to Group I and II CTG's only. Under section 182(b)(2), Lucas County is now subject to Group III CTG's and non-CTG RACT for major sources. BP Oil was identified by the OEPA as a major source, already subject to OAC 3745–21–09(L), (M), (T), and (Z), which regulate the source categories Fixed Roof Petroleum Tanks, Miscellaneous Refinery Sources, Leaks from Petroleum Refineries, and External Floating Roof Petroleum Tanks. On January 10, 1991, the OEPA sent BP a letter requesting submittal by August 22, 1991, of a RACT study of all VOC sources not regulated by OAC 3745–21–09. BP hired ENSR Consulting and Engineering (ENSR) to perform this RACT study, which has been included in the technical support submitted by the OEPA for Rule 09(UU), the non-CTG rule for BP Oil.

A detailed description of the RACT study, a discussion of issues and their resolution, and the verbatim non-CTG rule language can be found in the February 1995 USEPA TSD. The control requirements established by OAC Rule 3745–21–09(UU) are acceptable and found to constitute RACT for the sources they control. The compliance deadlines for these controls as specified in OAC Rule 3745–21–04(C)(55) meet the section 182(b)(2) requirement; the latest compliance deadline is May 1, 1995. The RACT study and other technical support was reviewed in great detail by USEPA staff, and during the review process, many issues arose. These issues were resolved through discussions with OEPA staff and submittal of further technical support by the OEPA.

In an attempt to clarify the emissions picture at BP Oil, USEPA staff performed a detailed comparison between Ohio's 1990 base year inventory (currently under USEPA review) and the "de minimis," "negligible," and "minor" sources described in the RACT study. This comparison resulted in the identification of a number of sources in the inventory which appeared to require RACT evaluation. These sources were discussed one by one with OEPA staff, who, in summary, stated that most of the sources were subject to CTG regulations in Chapter 09. The USEPA accepts the State's assessment of these sources regarding their being subject to CTG regulations, and, therefore, USEPA staff did no further investigation of these sources. Ultimately, only the sources discussed in the USEPA's November 7, 1994, comments for the public record remained unresolved. On November 8, 1994, the USEPA received a letter from the OEPA stating that the 1990 base year inventory is in error in that the sources in question are not really VOC sources; therefore, no RACT evaluation is necessary. USEPA staff reviewing the inventory were notified of the errors and given a copy of the OEPA letter.

The USEPA finds Rule 09(UU) to be approvable.

RACT Studies

In response to the non-CTG RACT requirements of sections 182(a)(2)(A) and 182(b)(2) of the amended CAA, Ohio submitted RACT studies for ten facilities for which no rule development was performed. The OEPA concluded that the existing controls at these facilities constitute RACT and are federally enforceable. Two of the ten RACT studies were evaluated for the current rulemaking action: (1) the Sun Refining and Marketing Company in the Toledo nonattainment area, and (2) the General Motors Company (GMC) Delco Chassis Division in the Dayton nonattainment area. The evaluations and recommendations for these studies can be found in two USEPA TSDs, dated August 23, 1994 (Sun), and September 7, 1994 (GMC Delco). In summary, for Sun Oil, the USEPA believes that the existing controls at Sun Oil are federally enforceable and that they constitute RACT for this facility. For GMC Delco, the USEPA believes that the existing controls constitute RACT; however, at the time of the June 1993 submittal, they were not federally enforceable. The OEPA was made aware of this deficiency through several letters cited in the list of references in the February 1995 USEPA TSD. The February 1995 submittal includes a modified permit-to-install, which upon approval by the USEPA into the Ohio ozone SIP, fulfils the requirements of section 182(b)(2) of the amended CAA. The USEPA is approving the modified permit-to-install into the Dayton area ozone SIP as RACT.

General Preamble Issues

The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13497, April 16, 1992) gives guidance for implementation of Title I. For section 182(b)(2), the General Preamble states that States must submit negative declarations for those source categories for which they are not adopting CTG-based regulations, even if such negative declarations have been made for an earlier SIP (57 FR 13512). A negative declaration is a statement that, for a given source category, there are no facilities with sources in that source category in any of the Counties subject to the requirement. Ohio's June 7, 1993, submittal contains negative declarations for the source categories of polypropylene or high density polyethylene resin manufacturing, natural gas/gasoline processing plants, and surface coating of flat wood paneling. Ohio previously submitted negative declarations for the resin manufacturing and gas processing categories in 1986. The OEPA has resubmitted those declarations and reconfirmed that there are no facilities in Ohio subject to RACT in these categories. There is one plant in Ohio with a hardboard paneling finishing line, which was constructed after the issuance of the CTG for surface coating of flat wood paneling. The source, Abitibi-Price Corporation, is subject to a federally enforceable permit-to-install with requirements that are equivalent to the CTG requirements. The USEPA is approving that permit-to-install into the ozone SIP as RACT.

States must include in the section 182(b)(2) submittal a list of major sources that the State has identified as being potentially subject to post-enactment CTG documents to be issued for the source categories listed in Appendix E to the General Preamble. Supplement to the General Preamble (57 FR 18070, 18077, April 28, 1992). The State was again notified of this necessity in a January 15, 1993, letter from Valdas Adamkus, Regional Administrator, to Governor George Voinovich. This source list was not included in the June 7, 1993, submittal to the USEPA. The omission of the list from the June 1993 submittal was communicated to Ohio in an August 26, 1993, letter. On July 27, 1994, the USEPA Region 5 office received by facsimile a list of facilities, the source categories to which they belong, with the year of any RACT study that has been done. On February 21, 1995, the State submitted an updated list. The USEPA considers this list to satisfy the Appendix E guidelines pertaining to the list of sources due November 15, 1992.

Stage II

On October 20, 1994, a direct final rulemaking notice was published (59 FR 52911) partially approving the Stage II rule submitted on June 7, 1993. That rulemaking codified OAC 3745–21–09(DDD), the emissions standards portion of the rule. While the October 1994 notice discussed the compliance schedule and the test methods for Stage II, codification of these portions of the rule was inadvertently omitted. The USEPA is now approving OAC 3745–21–04(C)(64), the Stage II compliance schedule, and OAC 3745–21–10 (Q), (R), (S), and Appendices A, B, and C, the Stage II test methods, as submitted on June 7, 1993, into the Ohio ozone SIP.

III. Rulemaking Action

The USEPA has evaluated the State's submittal for consistency with the Act, USEPA regulations, and USEPA policy.

The USEPA has determined that the submitted CTG rules meet the Act's

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requirements, and with this action approves, under section 110(k)(3), the following rules:

OAC 3745–21–01: (D)(6), (D)(8), (D)(45), (M)(8).

OAC 3745–21–04: (B); (C)(3)(c), (C)(4)(b), (C)(5)(b), (C)(6)(b), (C)(8) (b) and (c), (C)(9)(b), (C)(10)(b), (C)(19) (b), (c) and (d), (C)(28)(b), (C)(38), (C)(39), (C)(42), (C)(43), (C)(44), (C)(45), (C)(47), (C)(55), (C)(64) as submitted on June 7, 1993, (C)(65).

OAC 3745–21–09: (A), (C) through (L), (N) through (T), (X), (Y), (Z), (BB), (CC), (DD), (UU), Appendix A; (B) with the exception of (B)(3) (d) and (e) for the Cincinnati and Cleveland nonattainment areas; (U) with the exception of (U)(1)(h) statewide and (U)(2)(e)(ii) for the Cincinnati and Cleveland nonattainment areas.

OAC 3745–21–10: (A), (B), (C), (E), (O), as submitted in February 1995, and (Q), (R), (S), and Appendices A, B, and C as submitted in June 1993.

The Cincinnati and Cleveland nonattainment areas include the Ohio Counties of Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren.

OAC 3745–21–01 (H), (Q), and (T); 3745–21–04(C) (38), (39), (42), (44), (45), (47), (49), (51) through (63), and (66), and (64) as submitted in June 1993; 3745–21–09 (FF) through (TT) and (VV) through (DDD); and 3745–21–10 (Q), (R), (S), and Appendices A and B as submitted in February 1995 are being addressed in separate rulemaking actions. Ohio requested that the USEPA not consider certain paragraphs for approval into the ozone SIP, including OAC 3745–21–09(B)(3) (d) and (e) and 09(U)(2)(e)(ii) for the Cleveland and Cincinnati nonattainment areas and 09(U)(1)(h) statewide. For these paragraphs, the appropriate previously approved rules stand as the federally approved SIP. The State included non-revised existing rules in the submittal, and such rules remain part of the current federally approved Ohio ozone SIP as they stand; therefore, no Federal rulemaking action is necessary.

The submitted permit-to-install for GMC Delco is approved into the Ohio ozone SIP.

The negative declarations made by Ohio for the source categories of high density polyethylene or polypropylene resin manufacturing, natural gas/gasoline processing plants, and surface coating of flat wood paneling are approved into the Ohio ozone SIP. The submitted permit-to-install for the Abitibi-Price Corporation is approved into the Ohio ozone SIP.

Submittal of a list of major stationary sources which will be subject to post-enactment CTG's for the source categories listed in Appendix E to the General Preamble are a necessary part of any submittal intended to satisfy section 182(b)(2) of the CAA. The USEPA is approving into the Ohio ozone SIP the list of facilities submitted on February 21, 1995.

IV. Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because the USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on May 22, 1995, unless the USEPA receives adverse or critical comments by April 24, 1995.

If the USEPA receives comments adverse to or critical of the approval discussed above, the USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Please be aware that the USEPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on the comments received.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the USEPA hereby advises the public that this action will be effective on May 22, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(103) and revising paragraph (c)(104) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(103) On June 7, 1993, and February 17, 1995, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the State Implementation Plan (SIP) for ozone. The revisions include one new non-Control Technique Guideline volatile organic compound (VOC) rule, corrections to existing VOC rules, and two permits-to-install.

(i) Incorporation by reference.

(A) OEPA Ohio Administrative Code (OAC) Rule 3745–21–01, Definitions, Paragraphs (B)(1), (B)(2), (B)(6), (D)(6), (D)(8), (D)(22), (D)(45), (D)(48), (D)(58), (M)(8); effective January 17, 1995.

(B) OEPA OAC Rule 3745–21–04, Attainment Dates and Compliance Time Schedules, Paragraphs (B), (C)(3)(c), (C)(4)(b), (C)(5)(b), (C)(6)(b), (C)(8) (b) and (c), (C)(9)(b), (C)(10)(b), (C)(19) (b), (c), and (d), (C)(28)(b), (C)(38), (C)(39), (C)(42), (C)(43), (C)(44), (C)(45), (C)(47), (C)(55), (C)(65); effective January 17, 1995.

(C) OEPA OAC Rule 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources, Paragraphs (A), (C) through (L), (N) through (T), (X), (Y), (Z), (BB), (CC), (DD), (UU), Appendix A; effective January 17, 1995.

(D) OEPA OAC Rule 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources, Paragraph (B) except (B)(3)(d) and (e) for the Ohio Counties of Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren; effective January 17, 1995.

(E) OEPA OAC Rule 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources, Paragraph (U) except (U)(1)(h) statewide and (U)(2)(e)(ii) for the Ohio Counties of Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren; effective January 17, 1995.

(F) OEPA OAC Rule 3745–21–10, Compliance Test Methods and Procedures, Paragraphs (A), (B), (C), (E), (O); effective January 17, 1995.

(G) Permit to Install, Application Number 04–204, for Abitibi-Price Corporation, APS Premise Number 0448011192. The date of issuance is July 7, 1983.

(H) Permit to Install, Application Number 08–3273, for General Motors Corporation Delco Chassis Division, APS Premise Number 0857040935. The date of issuance is February 13, 1995.

(ii) Additional material.

(A) On June 7, 1993, the OEPA submitted negative declarations for the source categories of polypropylene or high density polyethylene resin manufacturing, natural gas/gasoline processing plants, and surface coating of flat wood paneling. These negative declarations are approved into the Ohio ozone SIP.

(B) On February 21, 1995, the OEPA submitted a list of facilities subject to the post-enactment source categories listed in Appendix E to the General Preamble. 57 FR 18070, 18077 (April 28, 1992). This list is approved into the Ohio ozone SIP.

(104) On June 7, 1993, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's ozone SIP for approval of the State's Stage II vapor recovery program. The Stage II program requirements apply to sources in the following areas: Cincinnati-Hamilton; Cleveland-Akron-Lorain; and Dayton-Springfield.

(i) Incorporation by reference.

(A) OEPA Ohio Administrative Code (OAC) Rule 3745–21–04, Attainment Dates and Compliance Time Schedules, Paragraph (C)(64); effective date March 31, 1993.

(B) OEPA OAC Rule 3745–21–10, Compliance Test Methods and Procedures, Paragraphs (Q), (R), (S), Appendices A, B, C; effective date March 31, 1993.

§ 52.1885 [Amended]

3. Section 52.1885 is amended by removing and reserving paragraph (b).

[FR Doc. 95–7100 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 102–3–6902; FRL–5173–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on January 10, 1995. The revisions concern rules from the Placer County Air Pollution Control District (PCAPCD) and the San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from metal can and coil coating operations and establish recordkeeping requirements for sources emitting VOCs. Thus, EPA is finalizing the approval of these revisions to the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on April 24, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1995 in 60 FR 2563, EPA proposed to approve the following rules into the California SIP: PCAPCD's Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. Rules 223 and 410 were adopted by PCAPCD on October 6, 1994 and November 3, 1994, respectively. Rule 67.4 was adopted by SDCAPCD on September 27, 1994. The rules were submitted by the State of California to EPA on November 30,

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1994, December 19, 1994, and October 19, 1994, respectively. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 60 FR 2563 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated December 27, 1994, PCAPCD Rule 223; December 27, 1994, PCAPCD Rule 410; and December 27, 1994, SDCAPCD Rule 67.4).

Response to Public Comments

A 30-day public comment period was provided in 60 FR 2563. EPA received one comment letter from NAPP Systems, Inc. supporting EPA's proposed approval of SDCAPCD Rule 67.4.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 8, 1995.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding and reserving paragraphs (c)(201), (c)(202) introductory text, (c)(202)(i) introductory text, (c)(202)(i)(A) and (B), (c)(203), (c)(204), (c)(205) and (c)(206) and by adding paragraphs (c)(202)(i)(C), (c)(207) and (c)(208) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(201) [Reserved].

(202)(i)(A) [Reserved]

(B) [Reserved]

(C) San Diego County Air Pollution Control District (*1*) Rule 67.4, adopted on September 27, 1994.

(203)–(206) [Reserved]

(207) New and amended regulations for the following APCDs were submitted on November 30, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District.

(*1*) Rule 223, adopted on October 6, 1994.

(208) New and amended regulations for the following APCDs were submitted on December 19, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District.

(*1*) Rule 410, adopted on November 3, 1994.

[FR Doc. 95–7008 Filed 3–22–95; 8:45 am]

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40 CFR Part 86

[AMS–FRL–5170–6]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic (OBD) Systems—Acceptance of Revised California OBD II Requirements; OBD Relief for Alternative Fueled Vehicles; and Revisions for Consistency Between Federal OBD and California OBD II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking revises requirements associated with on-board diagnostic (OBD) systems. The federal OBD rulemaking, published February 19, 1993, allowed for compliance with California OBD II requirements as satisfying federal OBD requirements through the 1998 model year, an allowance of which most original equipment automobile manufacturers intend to take advantage. The California Air Resources Board has recently revised their OBD II requirements. The federal OBD regulations require appropriate revisions such that compliance with the recently revised OBD II requirements will satisfy federal OBD. Additionally, aspects of the federal OBD requirements will be revised and updated, in some cases to maintain consistency with the OBD II provisions, including providing OBD relief for alternative fueled vehicles, and in some cases to clarify federal OBD provisions. Finally, consistent with an order from the Court of Appeals for the District of Columbia, the federal regulations are being revised to delete a requirement that manufacturers include certain features to deter tampering on affected vehicles.

DATES: This final action will become effective on May 22, 1995 unless notice is received by April 24, 1995 that any person wishes to submit adverse comments. Should EPA receive such notice, EPA will publish subsequent action in the **Federal Register** withdrawing all or part of this final action.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M–1500 (Mail Code 6102), Waterside Mall, Attention: Docket No. A–90–35, 401 M Street SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in Docket No. A–90–35, and may be viewed from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Todd Sherwood, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, (313) 668–4405.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking [1] requiring manufacturers of light-duty vehicles (LDV) and light-duty trucks (LDT) to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedances of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the mechanic in diagnosis and repair.

Additionally, that rulemaking makes an allowance for manufacturers to satisfy the Federal OBD requirements through the 1998 model year by installing systems satisfying the California OBD II requirements pertaining to those model years. This allowance means that manufacturers could concentrate on designing one system to meet the California OBD II requirements and installing that system nationwide during allowable model years. As EPA regulations cannot be revised except through EPA rulemaking, the OBD II requirements allowed under this provision were, and have continued to be, those existing on the date of publication of the federal OBD final rulemaking. This means that subsequent changes made to the OBD II requirements by the California Air Resources Board (ARB) may be inconsistent and potentially unacceptable for federal OBD compliance. The provisions of this direct final rulemaking will allow manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations, specifically those contained in ARB Mail Out #95–03, made publicly available January 19, 1995.

Also included in the February 1993 federal OBD final rulemaking was a requirement that all LDVs and LDTs for which emission standards were in place comply with the OBD requirements. A separate Agency rulemaking [2] subsequently promulgated emission standards for gaseous alternative fuels, and specified that these vehicles comply with federal OBD requirements beginning in the 1997 and 1998 model years for liquified petroleum gas and natural gas, respectively. The provisions of this direct final rulemaking will provide some regulatory relief through the 1998 model year for alternative fueled vehicles by requiring implementation of diagnostic strategies only to the extent feasible, or where the unique effects of alternative fuels on those diagnostic strategies are not of concern.

In § 86.094–18 of the February 1993 rulemaking was a requirement that vehicle manufacturers install on affected vehicles features to deter modification except as authorized by the manufacturer. Several associations representing aftermarket parts manufacturers, rebuilders, distributors, retailers and service and repair providers ("petitioners") petitioned for review of this provision of the United States Court of Appeals for the District of Columbia Circuit (Docket No. 93–1277). On May 9, 1994, the Agency and the petitioners filed with the Court a Joint Motion to Remand the Administrative Record to the Agency "in order for EPA to reconsider the anti-tampering provisions, to address any tensions between these provisions and the access and information availability requirements [of sections 202(m)(4) and 202(m)(5) of the Act], and, if necessary, to promulgate new regulations addressing EPA's concerns about tampering." The parties further requested the Court to order that the anti-tampering provisions (and the incorporation of California's anti-tampering regulations) be vacated. On May 19, 1994, the Court ordered that the joint motion be granted and that the anti-tampering regulation be vacated. The Court also ordered that 40 CFR 86.094–17(j) be vacated to the extent it requires compliance with California's anti-tampering regulations for those vehicles optionally certified to the California OBD II requirements. On October 7, 1994, EPA published a notice [3] informing the public of the decision of the court and announcing its intention to issue a final rulemaking officially withdrawing these provisions. Today's action withdraws these provisions.

II. Requirements of This Direct Final Rulemaking

A. Acceptance of Revised California OBD II

This direct final rulemaking allows manufacturers to comply with federal OBD requirements by optionally complying with the revised and recently adopted California OBD II regulations. This allowance is not new. The allowance for optional compliance with California OBD II was made in the federal OBD final rulemaking in February, 1993. However, since that time, the ARB has made several revisions to the OBD II regulations.

Because the Agency cannot simply accept the revised OBD II without undergoing the federal regulatory process, any optional compliance with California OBD II under the current federal regulations must be done against the OBD II regulations as they existed in February, 1993 (ARB Mail Out #92–56, November, 1992). However, the ARB has determined that several manufacturers would have difficulty complying with the OBD II regulations as they existed in February, 1993. The most notable requirements that currently pose difficulties are those for engine misfire detection under all positive torque engine speeds and conditions and full OBD II implementation on alternative fueled vehicles. Additionally, most manufacturers have indicated difficulty meeting other aspects of the OBD II regulations due to, for example, the complexity of the computer software requirements, and unpredictable driver actions such as resting a foot on the gas pedal while stopped at a traffic light. It is these additional difficulties that have prompted ARB to provide a "deficiency" allowance in their revised OBD II regulations whereby manufacturers can certify as OBD II compliant despite some reasonably acceptable and unplanned deficiency in the OBD system.

As a result of the ARB revisions to OBD II, and to remain consistent with the original intent of providing for optional compliance with OBD II for federal OBD purposes, this direct final rulemaking will provide the same

[1] 58 FR 9468, February 19, 1993.

[2] 59 FR 48472, September 21, 1994.

[3] 59 FR 51114.

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option but will require that manufacturers choosing this option comply with the more recent OBD II regulations contained in ARB Mail Out #95–03. This means that any federal vehicles complying with federal OBD by optionally complying with California OBD II are allowed the same deficiencies as allowed under the OBD II provisions. Note, however, that a manufacturer requesting certification of a deficient OBD II system must receive EPA acceptance of any deficiency independently of an acceptance made by ARB. The Agency will use the same criteria specified by the ARB, those criteria being the extent to which the requirements are satisfied overall on the vehicle applications in question, the extent to which the resultant diagnostic system design will be more effective than earlier OBD systems, and a demonstrated good-faith effort to meet the requirements in full by evaluating and considering the best available monitoring technology. The Agency will make every effort to make determinations of OBD II deficiency acceptance in concert with ARB staff to avoid the potential for conflicting determinations. However, the extent to which the agencies can make concurrent and coordinated findings will rely heavily on the manufacturer, who will be expected to provide any necessary information to both agencies in parallel rather than pursuing deficiency determinations on a separate basis.

B. Allowance of OBD Deficiencies for Federal OBD Vehicles

Consistent with ARB, the Agency has determined that a similar provision must also be provided for those vehicles certifying to the federal OBD requirements of § 86.094–17. This is necessary for the same reasons it was necessary for ARB to make the change. Despite the best efforts of manufacturers, many have needed to certify vehicles with some sort of deficiency when unanticipated problems arose that could not be remedied in time to meet production schedules. Given the newness and considerable complexity of designing, producing, and installing the components and systems that make up the OBD system, manufacturers have expressed and demonstrated difficulty in complying with every aspect of the OBD requirements, and such difficulty appears likely to continue into the 1996 and 1997 model years. The Agency believes that 100 percent compliance can be achieved, but during the initial years of OBD implementation, EPA believes that some sort of relief must be provided to allow for certification of vehicles that, despite the best efforts of the manufacturers, have deficient OBD systems.

The EPA "deficiency" allowance should not be seen as a waiver of any kind. EPA will continue to grant blanket waivers for 1994 and/or 1995 model year vehicles. However, beginning with the 1996 model year, blanket waivers will not be granted. Though EPA will accept minor deficiencies, EPA does not intend to accept any deficiency requests that include the complete lack of a required diagnostic monitor. Furthermore, EPA does not intend to certify vehicles with federal OBD systems that have more than one OBD system deficiency, and EPA will not allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware modifications that absolutely cannot be accomplished in the time available, as determined by the Administrator. These limitations should prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay OBD implementation.

C. Relief for Alternative Fueled Vehicles

The acceptance of the recent OBD II regulations also means that alternative-fueled federal vehicles optionally complying with California OBD II are provided considerable relief relative to previous versions of OBD II. This direct final rule will make the same provisions available for vehicles certified specifically to the federal OBD requirements of § 86.094–17. Previously, OBD II required that alternative fueled vehicles comply fully with all applicable requirements beginning in the 1996 model year. EPA's final rulemaking on gaseous fuels [4] required that LDVs and LDTs fueled by liquified petroleum gas (LPG) meet OBD requirements beginning with optionally certified vehicles in the 1994 model year. The gaseous fuels rulemaking also required that natural gas vehicles meet OBD requirements beginning with the 1996 model year. However, manufacturers have stated that, due to the workload associated with complying fully with the OBD requirements on gasoline vehicles, coupled with the low sales volumes projected for alternative fueled vehicles, OBD development and testing for such vehicles cannot be completed in either the OBD II or federal OBD timeframes. Manufacturers have stated that more time is needed to evaluate the effects of alternative fuels on component performance to ensure that OBD diagnostic strategies will be reliable in-use. As a result of the OBD implementation deadlines, manufacturers have considered delaying plans to sell alternative fueled vehicles.

Recognizing these manufacturer concerns, and the inherent environmental benefits of having greater numbers of alternatively fueled vehicles manufactured as soon as possible, both the ARB and EPA have decided to delay full OBD II/federal OBD implementation until the 1999 model year for alternative fueled vehicles. For federal certification beginning in the 1997 model year for LPG light-duty vehicles and light-duty trucks, and beginning in the 1998 model year for natural gas LDVs and LDTs, manufacturers will be required to implement diagnostic strategies to the extent feasible, but will not be required to include monitoring strategies for which the effects of alternative fuels are of technological concern. Specifically, manufacturers will be required to implement electrical circuit continuity and/or functional checks at a minimum, and those major system monitors unaffected by fuel type. In addition, EPA will not require that federal alternative fueled vehicles minimally comply with California OBD I [5] for those years prior to initiation of applicable emission standards. Instead, beginning with the applicability of emission standards and extending through the 1998 model year, EPA will require compliance with OBD II or federal OBD to the extent feasible. This is an important provision for manufacturers, since minimal compliance with OBD I sometimes cannot be met on alternative fueled vehicles (e.g., OBD I requires EGR monitoring while many alternative fueled vehicles have no EGR), and sometimes manufacturers would rather comply with OBD II or federal OBD than comply with OBD I because it is more accurate and effective (e.g., OBD I requires pass/fail determinations of computer input and output components, while OBD II requires rational decisions to be made concerning the functional characteristics of input and output components, i.e., the component is working, but is it working the way it should work?).

D. Revised Engine Misfire Identification Criteria

Another change being made in this direct final rulemaking is a revision to the misfire identification requirement. Currently, the federal OBD regulation requires that a fault code identify the specific cylinder in which a misfire condition has been detected for those cases where just one cylinder is misfiring. However, in working toward meeting the expanded misfire monitoring requirements of OBD II for the 1997 model year (detection under all positive torque engine conditions), some manufacturers have found that specific cylinder identification can be unreliable at higher engine speeds. The current federal OBD requirement does not specifically require misfire detection at such engine speeds, but the Agency does not want to provide any incentive for manufacturers to disable misfire monitoring under conditions where misfire can occur and can be reliably detected, even where those conditions are outside the range of Federal Test Procedure (FTP) operation. Consequently, the new provision will allow a manufacturer to disable algorithms employed to identify the misfiring cylinder under certain operating conditions if it can be demonstrated that the algorithm would not operate reliably when such conditions exist. This change will have no impact on the operating conditions under which misfire is to be detected, and it is consistent with changes recently made to the OBD II regulations.

E. Delay of the Signal Access Requirements of SAE J1979 Test Modes 6 and 7

Also being changed in this direct final rulemaking is a delay to the 1997 model year for full implementation of the signal access requirements specified in §§ 86.094–17(f)(3) and 86.094–17(h). Test modes 6 and 7 have only recently been added to Society of Automotive Engineers (SAE) Recommended Practice J1979 to standardize the format for making available numerical test results and limits for monitored components and systems, and the one-trip trouble codes for continuously monitored components. This information is helpful in diagnosis and repair of emission-related malfunctions.

F. Extension of Limited Waiver Provisions Into the 1995 Model Year

EPA is providing an extension through the 1995 model year of a limited waiver provision found in § 86.094–17(i). Previously, this limited waiver provision was provided for 1994 model year vehicles only. As decided in the February, 1993, OBD final rulemaking, there may be some engine families with very low sales volumes that have never been equipped with an OBD I or similar OBD system. In such cases, EPA may make special considerations by granting waivers as done in the 1994 model year for the 1995 model year to a system less than OBD I. EPA will consider such factors as manufacturer projections of very low sales volume for an engine family (e.g., 5000 or less), scheduled phase-out of significant engine technology with the 1994 or 1995 model years for that engine family, and whether or not the engine, or any similar engine within the manufacturer's product line, has ever been equipped with an OBD I or similar OBD system in making waiver decisions to a system less than OBD I. As stated, this provision was previously available only for 1994 model year vehicles and is now being provided for 1995 model year vehicles. Note that the Agency has no intention of providing this limited waiver provision for the 1996 model year.

G. Revised Electrical Continuity/ Functionality Check Provisions

Also being changed in this direct final rulemaking is the electrical circuit continuity monitoring provision of § 86.094–17(b)(1). This change is being made to clarify the Agency's stance that component functionality checks (i.e., a check of the functional characteristics of a component/system) are an acceptable and perhaps more effective diagnostic tool than an electrical continuity check alone. The current requirement specifies that, "* * * all emission-related powertrain components connected to a computer shall, at a minimum, be monitored for circuit continuity." The new requirement specifies that a functional system check may be performed provided the manufacturer can demonstrate that the functional check is equivalent or superior to the circuit continuity monitor.

Correspondingly, the certification provisions of § 86.094–30 and § 86.095–30 are being changed to reflect the monitoring requirement change being made to § 86.094–17(b)(1). The new certification provisions specify that the MIL must illuminate upon electrical disconnection of the evaporative purge control (if equipped), or the operation of any emission-related powertrain component which results in emission increases equal to any one of the 0.2/1.7/0.5 g/mi HC/CO/NO_x emission thresholds.

These changes are similar to a change recently made to the OBD II regulations which requires that the MIL be illuminated for any emission-related powertrain component malfunction causing emissions to increase by 15 percent of the applicable emission standard. Section 86.094–17(b) currently requires that the OBD system, at a minimum, detect loss of circuit continuity in any emission-related powertrain component connected to a computer. This requirement will still apply as the minimum acceptable monitoring approach. However, because the Agency believes that a functional check can be a more effective diagnostic tool than an electrical continuity check alone, the Agency will accept a functional check. The Agency will minimally accept an electrical continuity check provided the manufacturer can demonstrate the adequacy of such a check.

H. Deletion of Anti-Tampering Regulations

Also being changed in this direct final rulemaking is the deletion of § 86.094–18 and the revision of § 86.094–17(j) for reasons specified above and in **Federal Register** notice of court decisions regarding Agency regulations.[6] EPA is continuing to review its policy concerns regarding tampering. EPA may in the future determine that it is appropriate to promulgate new regulations to address these concerns. If the Agency determines that new regulations are appropriate, EPA will at that time publish a notice of proposed rulemaking addressing these concerns.

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views the changes contained herein as noncontroversial and anticipates no adverse or critical comments. This direct final rulemaking alters an existing provision by aligning federal OBD requirements with the most recent California OBD II requirements. Auto manufacturers should not take issue since they favor the requirements intended under this rule as they will save costs without impacting OBD system effectiveness, and they are provided more leadtime for development of OBD systems for alternative fueled vehicles. Aftermarket manufacturers and the independent service industry should not take issue since the rule will not affect the serviceability of vehicles or the design of replacement parts. Aftermarket fuel conversion kit manufacturers should not take issue since they favor additional leadtime for development of OBD systems. Environmental groups should not take issue since the rule will not significantly affect the emission reductions associated with OBD, and the rule will provide regulatory relief for alternative fueled vehicles allowing these vehicles to be more readily introduced into the vehicle fleet.

[4] 59 FR 48472, September 21, 1994.

[5] Title 13 California Code § 1968, p. 614.16.1.

[6] 59 FR 51114, October 7, 1994.

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In addition, the Agency's deletion of the anti-tampering regulations is required by court order.

This action will be effective on May 22, 1995 unless EPA is notified by April 24, 1995 that adverse or critical comments will be submitted. EPA requests that, should any adverse or critical comments be submitted, they be submitted according to the specific issues as identified below:

(a) Acceptance of Revised California OBD II

(b) Allowance of OBD Deficiencies for Federal OBD Vehicles

(c) Relief for Alternative Fueled Vehicles

(d) Revised Engine Misfire Identification Criteria

(e) Delay of the Signal Access Requirements of SAE J1979 Test Modes 6 and 7

(f) Extension of Limited Waiver Provisions into the 1995 Model Year

(g) Revised Electrical Continuity/ Functionality Check Provisions

(h) Deletion of Anti-Tampering Regulations

Should EPA receive such notice of adverse or critical comments on the specific issues as identified above, EPA will publish one action withdrawing the provisions of this final action corresponding to that specific issue. A subsequent action will then be published proposing those provisions and requesting comments.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866[7], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

[7] 58 FR 51735 (October 4, 1993).

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This direct final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994).

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of federal regulations upon small entities. This direct final rulemaking will provide regulatory relief to both large and small volume automobile manufacturers by maintaining consistency with California OBD II requirements, by providing the limited 1995 model year waiver, by allowing deficiencies for federal OBD compliance, and by providing regulatory relief for alternative fueled vehicles. This direct final rulemaking will have no impact on businesses which manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(B), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

E. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this direct final rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919) 541–5742 and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)

(M) OMS

(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. File information can be obtained from the "READ.ME" file. To download a file, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 Eastern Time, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours Eastern Time.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 2, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraphs (b)(1), (e)(2), (f)(3), (i), and (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(b) (1) The electronic evaporative emission purge control, if equipped, and all emission-related powertrain components connected to a computer shall, at a minimum, be monitored for circuit continuity. In lieu of monitoring circuit continuity, a functional system check may be performed provided the manufacturer can demonstrate that the functional check is equivalent or superior to the circuit continuity monitor. All components required by these regulations to be monitored shall be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in appendix I, paragraph (a), of this part, or similar trip.

* * * * *

(e) * * *

(2) For a single misfiring cylinder, the fault code(s) shall identify the cylinder, unless the manufacturer submits data and/or an engineering evaluation which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions; multiple misfiring cylinders need not be uniquely identified if a distinct multiple misfire fault code is stored.

* * * * *

(f) * * *

(3) For all emission control components and systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared shall be available through the data link per SAE J1979 specifications as referenced in paragraph (h) of this section beginning no later than the 1997 model year. The Administrator may allow a pass/fail indication for the most recent test results for those monitored components and systems for which such an indication is more appropriate (e.g., misfire detection, fuel system monitoring, etc.).

* * * * *

(i) Upon application by the manufacturer, the Administrator may either waive the requirements of this section for specific components of any class or category of light-duty vehicles or light-duty trucks for model years 1994 or 1995 (or both), or, through the 1998 model year, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such waivers or compliances without meeting specific requirements will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware modifications would be necessary to correct the noncompliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. For alternative fueled vehicles (i.e., natural gas, liquified petroleum gas, or methanol), beginning with the model year for which emission standards are applicable and extending through the 1998 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternative fuel. At a minimum, all vehicles covered by this section, including those receiving a waiver as described in this paragraph, shall be equipped with an OBD system meeting either the California OBD I requirements, or some acceptable portion of the California OBD II or federal OBD requirements as specified in this section, except that for the 1994 and 1995 model years EPA may grant a waiver to a system less than OBD I giving consideration to such factors as manufacturer projections of very low sales volume for an engine family (e.g., 5000 or less), scheduled phase-out of significant engine technology with the 1994 or 1995 model years for that engine family, and whether or not the engine, or any similar engine within the manufacturer's product line, has ever been equipped with an OBD I or similar OBD system.

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code 1968.1), as modified pursuant to California Mail Out #95–03 (January 19, 1995), shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

§ 86.094–18 [Removed].

3. Section 86.094–18 is removed.

4. Section 86.094–30 is amended by revising paragraph (f)(4) to read as follows:

§ 86.094–30 Certification.

* * * * *

(f) * * *

(4) The electronic evaporative purge control device (if equipped) is disconnected or the operation of any emission-related powertrain component connected to a computer results in an increase in emissions of 0.2 g/mi HC or 1.7 g/mi CO or 0.5 g/mi NO_x on a normal temperature (20 to 30 °C) emission certification test.

5. Section 86.095–30 is amended by revising paragraph (f)(4) to read as follows:

§ 86.095–30 Certification.

* * * * *

(f) * * *

(4) The electronic evaporative purge control device (if equipped) is disconnected or the operation of any emission-related powertrain component connected to a computer results in an increase in emissions of 0.2 g/mi HC or 1.7 g/mi CO or 0.5 g/mi NO_x on a normal temperature (20 to 30 °C) emission certification test.

[FR Doc. 95–6272 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5176–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Crystal City Airport Superfund Site (Site) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Site in Crystal City, Texas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Texas have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager, US EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

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SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is the "Crystal City Airport Superfund Site," Crystal City, Texas. A Notice of Intent to Delete for this Site was published on January 4, 1995 (60 FR 422). The closing date for public comment was February 3, 1995. EPA received no comments during the comment period.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substance Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP, provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: March 6, 1995.

William B. Hathaway,

Acting Regional Administrator, Environmental Protection Agency, Region 6.

For the reasons setout in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580; 52 FR 2923; E.O. 12777, 56 FR 54757.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing Crystal City Airport Superfund Site, Crystal City, Texas.

[FR Doc. 95–7197 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order—7125

[AK–932–1430–01; AA–2793, J–010160]

Partial Revocation of Public Land Order No. 829 and Public Land Order No. 1731; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two public land orders insofar as they affect approximately 468.81 acres of National Forest System lands withdrawn for use by the Forest Service, Department of Agriculture, for the Herbert River Public Service Site and the Mill Creek Industrial Area. The lands are no longer needed for the purposes for which they were withdrawn. This action also allows the conveyance of the lands to the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State are opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 829 and Public Land Order No. 1731, which withdrew lands for use by the Forest Service as administrative sites, recreation areas, or for other public purposes, are hereby revoked insofar as they affect the following described lands:

Copper River Meridian

Tongass National Forest

(a) Public Land Order No. 829 (AA–2793).
T. 38 S., R. 64 E.,
Sec. 35, lots 5, 7, and 8;
Sec. 36, lot 6.
The area described contains 132.81 acres.

(b) Public Land Order No. 1731 (J–010160).
A parcel of land located within sec. 25 of T. 62 S., R. 84 E., and secs. 30 and 31 of T. 62 S., R. 85 E., more particularly described as:
Beginning at U S C & G Station "Virgin" located at Mill Creek on the east shore of Eastern Passage, thence;
East, ¼ mile;
North, 1½ miles;
West, 1 mile to U S C & G Station "Mill";
Southerly, along line of mean high tide of Eastern Passage to point of beginning.
The area described contains approximately 336 acres.
The areas describes aggregate approximately 468.81 acres.

2. The State of Alaska applications for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Lands not conveyed to the State are opened and will be subject to the terms and conditions of the Tongass National Forest reservation and any other withdrawal of record.

Dated: March 13, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7153 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 93–61; FCC 95–41]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule making proceeding adopts rules for the future licensing and continued development of a number of services and equipment using the 902–928 MHz band. In recent years, Automatic Vehicle Monitoring (AVM) systems and unlicensed Part 15 devices have developed and proliferated in this band and are providing services that are valuable and in the public interest. These services range from licensed vehicle location and automatic toll collection systems to unlicensed devices used for utility meter reading and inventory control. The adopted allocation plan for the 902–928 MHz band includes 8 MHz of additional spectrum for AVM services and establishes new provisions for governing the interference obligations of Part 15 and amateur operations in this band. This plan balances the differing operational needs of these varied types of uses so that most AVM systems and Part 15 devices will be able to achieve their service objectives without impeding each other's use of the spectrum. The adopted rules also

modify and eliminate outdated regulations that have not kept pace with the technological evolution of AVM and establish a new service, the Location and Monitoring Service (LMS), that both encompasses the old AVM service and future advanced transportation-related services.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas S. Dombrowsky, Martin D. Liebman or John J. Borkowski in the Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 93–61, adopted February 3, 1995 and released February 6, 1995. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (ITS), Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Summary of the Report and Order

1. The Commission initiated the AVM service in 1974, when it adopted its *Report and Order* in Docket No. 18302. 30 RR 2d 1665 (1974) (*1974 Order*). In the *1974 Order*, we found that AVM had the potential to accommodate a number of important functions, such as tracking and monitoring large fleets of vehicles and providing information to allow more efficient use of vehicles through better dispatch and routing information. We also noted that AVM systems had already been operating for several years on an experimental and developmental basis, allowing us to gain valuable information regarding advances in AVM technology. [The Commission first licensed AVM on a developmental basis in 1968. In 1972, the Commission sought additional information on the development of AVM since its original inquiry and proposed to adopt rules for permanent licensing. *See Further Notice of Inquiry and Notice of Proposed Rule Making*, Docket No. 18302, 35 FCC 2d 692 (1972). While recognizing the technological progress made by AVM, we concluded that development of new vehicle monitoring technologies was also likely in the future, making it inadvisable to adopt permanent rules until more information was available regarding the viability of such new technologies. Accordingly, we decided to provide for the licensing of AVM systems on both a permanent and a developmental basis under "interim" rules. *1974 Order* at para. 5. These rules have remained in effect until now.

2. Our 1974 AVM rules provide for licensing of AVM systems in the 903–912 and 918–927 MHz bands, as well as in several bands below 512 MHz. While little licensing of AVM has occurred below 512 MHz, there has been significant AVM use of the 900 MHz bands in recent years. Existing AVM systems in these bands generally fall into one of two broad technological categories: multilateration systems and non-multilateration systems. Multilateration systems use spread-spectrum technology to locate vehicles (and other moving objects) with great accuracy throughout a wide geographic area. This technology is used, for example, by trucking companies to locate and track their vehicle fleets, by municipal governments to pinpoint the location of their buses, and by entrepreneurs who are developing subscriber-based, stolen vehicle recovery systems. Non-multilateration systems use narrowband technology to transmit data to and from vehicles passing through a particular location. This technology is now providing valuable services to state and local governments operating various types of automated toll collection systems—with an estimated 500,000 cars currently served by such systems—and by the railroad industry in the monitoring of their systems' railway cars.

3. It is expected that in the coming years both types of LMS systems will play an integral role in the development and implementation of the variety of radio advanced transportation-related services, known as "Intelligent Vehicle Highway Systems" (IVHS) or "Intelligent Transportation Systems" (ITS). The ITS is a collection of advanced radio technologies that promise to improve the efficiency and safety of our nation's highways, reduce harmful automobile emissions, promote more efficient energy use, and increase national productivity.

4. To recognize the expected growth of ITS, this *Report and Order* creates a new subpart in Part 90 for Transportation Infrastructure Radio Services (TIRS). The Location and Monitoring Service (LMS), which uses the 902–928 MHz band, constitutes the first service contained within the TIRS category. As we allocate additional spectrum or create new services intended to further the efficiency of the nation's transportation infrastructure, these new services will likely be regulated under the TIRS. The TIRS will thus further Congress's goal of encouraging ITS by providing an organized and unified approach towards regulating spectrum for ITS-related services.

5. LMS systems will share their portion of the 902–928 MHz band with other users. The band is allocated on a primary basis for use by Government radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment, with Government fixed and mobile operations secondary to these users. Amateur Radio Service licensees operate in the entire band, but on a secondary basis to the ISM, Government and AVM users. Part 15 uses are permitted in this band, but are secondary to all other uses, including AVM and amateur operations.

6. In 1989 and 1990, we also modified our rules to permit enhanced operation of spread spectrum-based radio devices throughout the 902–928 MHz band on an unlicensed basis, pursuant to Part 15 of our Rules. Since modifying our rules to provide for enhanced Part 15 operations, *see Report and Order*, Gen. Docket No. 87–389, 4 FCC Rcd 3493 (1989), 54 FR 17710 (April 25, 1989), and *Report and Order*, Gen. Docket No. 89–354, 5 FCC Rcd 4125 (1990), 55 FR 28760 (July 13, 1990), a large number of equipment manufacturers and entrepreneurial companies have developed radio devices and implemented radio systems employing spread-spectrum technology in the 902–928 MHz band. It is estimated that several million Part 15 devices have been sold and are being used every day to provide a wide variety of valuable services to the American public.

7. On May 28, 1992, North American Teletrac and Location Technologies (Teletrac) filed a Petition for Rule Making (RM–8013) requesting that we adopt permanent rules for licensing AVM systems. On March 11, 1993, in response to Teletrac's petition, we adopted the *Notice of Proposed Rule Making* (*Notice*) in this proceeding to examine the future licensing and continued development of AVM systems, PR Docket No. 93–61, 8 FCC Rcd. 2502 (1993), 58 FR 21276 (April 20, 1993). In the *Notice*, we propose to replace the existing interim rules for AVM with permanent rules. We also proposed to expand the technical

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parameters of the service to permit locating and monitoring of people and objects, as well as vehicles, and therefore proposed to rename the service as the Location and Monitoring Service (LMS). Additionally, we proposed to allocate the entire 902–928 MHz band for LMS, with separate allocations for multilateration LMS systems and non-multilateration LMS systems. We proposed that all LMS systems operate on a shared basis.

8. In response to our *Notice*, we received numerous comments and reply comments from LMS service providers, LMS licensees that use LMS systems to meet their own internal needs (such as railroad companies and local government entities), LMS users, manufacturers and users of Part 15 equipment, and Amateur operators. We solicited further comments and reply comments in response to *ex parte* communications we received. *See* Public Notice, DA 94–129, PR Docket No. 93–61, 59 Fed.Reg. 7239 (February 15, 1994). Comments offered a wide array of suggestions on the many complex issues raised in the *Notice*. Although we are adopting many of the proposals set forth in our *Notice*, the comprehensive record developed in this proceeding has led us to modify some of our proposals, especially as they concern the spectrum available for the different types of LMS systems, the licensing procedures for the band, and the general obligations of various users of the band.

9. Multilateration and non-multilateration LMS systems, amateur operations, and Part 15 devices will all play an important role in providing valuable services to the American public in the coming years. We believe that our decisions in this proceeding recognize this importance and will enable all of these services to make continued use of this spectrum. We have therefore developed a spectrum plan that attempts to accommodate all of these users' requirements. The plan: (1) continues to permit secondary operations by unlicensed Part 15 and amateurs across the entire band, but affords users in these services a greater degree of protection to their operations; (2) enables non-multilaterations LMS systems to operate on spectrum separate from multilateration systems; and (3) allocates spectrum on an exclusive basis for multilateration LMS licenses.

10. In this *Report and Order* we have therefore made the following decisions:

- Change the name of this service from the Automatic Vehicle Monitoring (AVM) to the Location and Monitoring Service (LMS).
- Change the terminology used to refer to the two general categories of LMS technologies from "wideband" and "narrowband" to "multilateration" and "non-multilateration," respectively.
- Permit multilateration LMS systems to locate any object—animate or inanimate—ancillary to their primary vehicular location and monitoring services.
- Permit LMS systems to transmit and receive status and instructional information, both non-voice and voice, related to the location and monitoring of a mobile unit and permit LMS systems to interconnect with the Public Switched Network (PSN) on a restricted basis.
- Expand LMS license eligibility to all entities to be licensed under Part 90 of our Rules and allow service in the 902–928 MHz band to be provided by LMS licensees to both individuals and the Federal Government on a commercial basis to paying subscribers.
- Clarify what constitutes harmful interference to multilateration licensees by unlicensed Part 15 devices and amateur operations.
- Allocate an additional 8 MHz of spectrum in the 902–928 MHz band for LMS use, permitting the entire band to be used for this purpose. Adopt a spectrum allocation scheme for the 902–928 MHz band that assigns separate sub-bands for multilateration and non-multilateration operations as follows:

Band (MHz)	System license
902.000–904.000	Non-multilateration.
904.000–909.750	Multilateration.
909.750–919.750	Non-multilateration.
919.750–921.750	Multilateration and non-multilateration.
921.750–927.250	Multilateration.
927.250–928.000	Multilateration[1].

[1] This is not considered a separate sub-band. Each licensee in the 904.000–909.75 MHz, 919.750–921.750 MHz and 921.750–927.250 MHz sub-bands will obtain a narrowband assignment at the top of the 902–928 MHz band for forward link operations, as follows: 927.250–927.500 MHz for the 921.750–927.250 MHz band; 927.500–927.750 MHz for the 919.750–921.750 band; and 927.750–928.000 MHz for the 904.000–909.750 band.

- License exclusive multilateration LMS systems within each Mayor Trading Area (MTA)[1] and four additional MTA-like service areas[2] in the three sub-bands designated above, and resolve mutually exclusive applications through competitive bidding.
- Grandfather base stations of multilateration system licensees authorized as of February 3, 1995 and constructed and in operation by April 1, 1996.
- License non-multilateration systems on a shared basis in the three sub-bands designated above.
- Allow multilateration licensees to commence operations only after demonstrating interference with Part 15 operations is minimized.

Ordering Clauses

11. Accordingly, *It is Ordered* that, pursuant to the authority of Sections 4(i), 302, 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(r), and 332(a), Parts 2 and 90 of the Commission's Rules, 47 CFR Parts 2 and 90, *Are Amended* as set forth below, effective on April 24, 1995.

12. The Petition for Rule Making filed on January 13, 1994 by the American Radio Relay League *Is Denied*.

13. For further information concerning this *Report and Order*, contact Thomas S. Dombrowsky, Martin D. Liebman or John J. Borkowski of the Wireless Telecommunications Bureau at (202) 418–0620.

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of Title 5, United States Code, 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making in PR Docket No. 93–61. Written comments on the proposals in the Notice, including the Initial Regulatory Flexibility Analysis, were requested.

Pursuant to Section 604 of Title 5, United States Code, 5 U.S.C. 604, a Final Regulatory Flexibility Analysis was incorporated in the Report and Order in PR Docket No. 93–61 and is presented below.

A. Need and Purpose of the Action

The rules adopted herein will enhance use of the 902–928 MHz band for location and monitoring systems. These rules replace the existing interim rules that govern automatic vehicle monitoring systems. The new rules create a more stable environment for LMS system licensees and provide much needed flexibility for operators of such systems.

B. Issues Raised in Response to the Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered and Rejected

All significant alternatives are discussed in this *Report and Order*.

[1] Rand-McNally organizes the 50 states and the District of Columbia into 47 MTAs. *See* Rand-McNally Commercial Atlas and Marketing Guide, 36–39, (123d ed. 1992). PCIA and Rand-McNally have recently entered into an agreement regarding the use of Rand-McNally's market area designations (i.e., Basic Trading Areas (BTAs) and Major Trading Areas (MTAs)) for the licensing of various mobile radio services. LMS is not covered by this agreement. The listings of the Major Trading Areas, including the counties, parishes and census divisions that comprise each MTA, are available for public inspection in the Office of Engineering and Technology's Technical Information Center, 2nd Floor, 2000 M Street NW., Washington, D.C.

[2] The four additional regions are: (1) Guam and the Northern Mariana Islands; (2) the Commonwealth of Puerto Rico and the U.S. Virgin Islands; (3) American Samoa; and (4) Alaska will be treated as a single area separate from the Seattle MTA. This is consistent with our MTA-based service area definitions for broadband PCS (see 47 CFR 24.102) and for the Commercial Mobile Radio Services.

List of Subjects

47 CFR Part 2

Allocations, Radio.

47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 2 and 90 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising the entries for 902–928 MHz in the United States table (Cols. 4 through 7) and by revising United States footnotes US218 and US275 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
. . . .	. . .	. . .	902–928 RADIOLOCATION. 707 US215 US218 US267 US275 G11 G59.	902–928 ..... 707 US215 US218 US267 US275.	Private Land Mobile (90). Amateur (97).	915±13 MHz: Industrial, scientific and medical frequency.

United States (US) Footnotes

* * * * *

US218 The band 902–928 MHz is available for Location and Monitoring Service (LMS) systems subject to not causing harmful interference to the operation of all Government stations authorized in these bands. These systems must tolerate interference from the operation of industrial, scientific, and medical (ISM) devices and the operation of Government stations authorized in these bands.

* * * * *

US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Location and Monitoring Service (LMS) systems. Stations in the Amateur service must tolerate any interference from the operations of industrial, scientific, and medical (ISM) devices, LMS systems, and the operations of Government stations authorized in this band. Further, the Amateur Service is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31°41′ North, on the east by longitude 104°11′ West, and on the north by latitude 34°30′ North, and on the west by longitude 107°30′ West; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range the service is restricted to a maximum transmitter peak envelope power output of 50 watts.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted:

2. Section 90.7 is amended by removing the entry for *Automatic Vehicle Monitoring* and adding new definitions for *Basic trading areas, Forward links, Location and Monitoring Service (LMS), Major trading areas, Multilateration LMS System,* and *Non-multilateration LMS System* in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

Basic trading areas. Service areas that are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide,* 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam, Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

* * * * *

Forward links. Transmissions in the frequency bands specified in § 90.357(a) and used to control and interrogate the mobile units to be located by multilateration LMS systems.

* * * * *

Location and Monitoring Service (LMS). The use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and nonvoice status

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and instructional information related to such units.

* * * * *

Major trading areas. Service areas based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following exceptions and additions:

(a) Alaska is separated from the Seattle MTA and is licensed separately.

(b) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(c) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(d) American Samoa is licensed as a single MTA-like area.

* * * * *

Multilateration LMS System. A system that is designed to locate vehicles or other objects by measuring the difference of time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points or from a number of fixed points to the unit to be located.

* * * * *

Non-multilateration LMS System. A system that employs any of a number of non-multilateration technologies to transmit information to and/or from vehicular units.

* * * * *

3. Section 90.101 is revised to read as follows:

§ 90.101 Scope.

The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation. Rules as to eligibility for licensing, permissible communications, frequency available, and any special requirements are set forth in § 90.103. Provisions for the Location and Monitoring Service (LMS) are contained in subpart M of this part.

§ 90.103 [Amended]

4. Section 90.103 is amended by removing paragraph (d) and by redesignating existing paragraph (e) as paragraph (d).

5. Section 90.155 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraphs (b) and (d) of this section and in §§ 90.629 and 90.631(f), must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

* * * * *

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (*see* paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

6. Section 90.179 is amended by revising paragraph (f) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(f) Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR, Private Carrier Paging, and LMS licensees. See subparts M, P, and S of this part.

* * * * *

7. Section 90.203 is amended by adding new paragraph (b)(7) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(b) * * *

(7) Transmitters imported and marketed prior to April 1, 1996 for use by LMS systems.

* * * * *

8. Section 90.205(b) is amended by revising the second column heading, by adding entries for 902 to 927.25 and 927.25 to 928 MHz bands to the table in numerical order, and by adding footnote 13 to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

Frequency range (megahertz)	Maximum output power (watts)	Maximum effective radiated power (watts)
• • •	•	•
902 to 927.25		[13]30
927.25 to 928		300
• • •	•	•

[13] Effective radiated power shall be measured as peak envelope power.

* * * * *

§ 90.207 [Amended]

9. Paragraph (g) of Section 90.207 is removed and reserved.

10. Section 90.209 is amended by adding new paragraphs (b)(10) and (m) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(10) The maximum authorized bandwidth shall be 12 MHz for non-multilateration LMS operations in the band 909.75–921.75 MHz and 2 MHz in the band 902.00–904.00 MHz. The maximum authorized bandwidth for multilateration LMS operations shall be 5.75 MHz in the 904.00–909.75 MHz band; 2 MHz in the 919.75–921.75 MHz band; 5.75 MHz in the 921.75–927.25 MHz band and its associated 927.25–927.50 MHz narrowband forward link; and 8.00 MHz if the 919.75–921.75 MHz and 921.75–927.25 MHz bands and their associated 927.25–927.50 MHz and 927.50–927.75 MHz narrowband forward links are aggregated.

* * * * *

(m) For transmitters authorized under Subpart M of this part that operate in the 902–928 MHz bank, the peak power of any emission shall be attenuated below the power of the highest emission contained within the licensee's LMS sub-band in accordance with the following schedule:

(1) On any frequency within the authorized bandwidth: Zero dB.

(2) On any frequency outside the licensee's LMS sub-band edges (as identified in paragraph (m)(5) of this section): 55 + 10 log(P) dB where (P) is the highest emission (watts) of the transmitter inside the licensee's LMS sub-band.

(3) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 kHz. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth.

(4) Emission power (P) shall be measured in peak values.

(5) The LMS sub-band edges for multilateration systems for which emissions must be attenuated are 904.00, 909.75, 919.75, 921.75, 927.50, 927.75 and 928.00 MHz. If the 919.75–921.75 and 921.75–972.25 MHz sub-bands are aggregated by a single licensee, the emission mask limitations at the band edges at 921.75 and 927.50 MHz may be ignored. The LMS sub-bank edges for non-multilateration systems for which emissions must be attenuated are 902.00,904.00, 909.75 and 921.75 MHz.

11. Section 90.213(a) is amended by adding an entry for the 902 to 928 MHz band to the table in numerical order to read as follows:

§ 90.213 Frequency tolerance.

(a) * * *

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Frequency range	Fixed and base stations: Over 200W output power	Fixed and base stations: 200W or less output power	Mobile stations: Over 2W output power	Mobile stations: 2W or less output power
•	•	•	•	•
902 to 928 ..	.00025	.00025	.00025	.00025
•	•	•	•	•

* * * * *

§ 90.239 [Removed and Reserved].

12. Section 90.239 is removed and reserved.

13. Subpart M is added to Part 90 to read as follows:

Subpart M—Transportation Infrastructure Radio Service

Sec.

90.350 Scope.
90.351 Location and Monitoring Service.
90.353 LMS operations in the 902–928 MHz band.
90.355 LMS operations below 512 MHz.
90.357 Frequencies for LMS systems in the 902–928 MHz band.
90.359 Field strength limits for MTA-licensed LMS systems.
90.361 Interference from part 15 and Amateur operations.
90.363 Grandfathering provisions for existing AVM Licensees.

Subpart M—Transportation Infrastructure Radio Service

§ 90.350 Scope.

The Transportation Infrastructure Radio Service is for the purpose of integrating radio-based technologies into the nation's transportation infrastructure and to develop and implement the nation's intelligent transportation systems. It includes the Location and Monitoring Service (LMS). Rules as to eligibility for licensing, frequencies available, and any special requirements for services in the Transportation Infrastructure Radio Service are set forth in this Subpart.

§ 90.351 Location and Monitoring Service.

These provisions authorize the licensing of systems in the Location and Monitoring Service (LMS). LMS systems utilize non-voice radio techniques to determine the location and status of mobile radio units. LMS licensees authorized to operate a system in the 902–928 MHz band may serve individuals, federal government agencies, and entities eligible for licensing in this part 90.

(a) Each application to license an LMS system shall include the following supplemental information:

(1) A detailed description of the manner in which the system will operate, including a map or diagram.

(2) The necessary or occupied bandwidth of emission, whichever is greater.

(3) The data transmission characteristics as follows:

(i) The vehicle location update rates;

(ii) Specific transmitter modulation techniques used;

(iii) For codes and timing scheme: A table of bit sequences and their alphanumeric or indicator equivalents, and a statement of bit rise time, bit transmission rates, bit duration, and interval between bits;

(iv) A statement of amplitude-versus-time of the interrogation and reply formats, and an example of a typical message transmission and any synchronizing pulses utilized.

(4) A plan to show the implementation schedule during the initial license term.

(b) LMS stations are exempted from the identification requirements of § 90.425; however, the Commission may impose automatic station identification requirements when determined to be necessary for monitoring and enforcement purposes.

§ 90.353 LMS operations in the 902–928 MHz band.

LMS systems may be authorized within the 902–928 MHz band, subject to the conditions in this section. LMS licensees are required to maintain whatever records are necessary to demonstrate compliance with these provisions and must make these records available to the Commission upon request:

(a) LMS operations will not cause interference to and must tolerate interference from industrial, scientific, and medical (ISM) devices and radiolocation Government stations that operate in the 902–928 MHz band.

(b) LMS systems are authorized to transmit status and instructional messages, either voice or non-voice, so long as they are related to the location or monitoring functions of the system.

(c) LMS systems may utilize store and forward interconnection, where either transmissions from a vehicle or object being monitored are stored by the LMS provider for later transmission over the public switched network (PSN), or transmissions received by the LMS provider from the PSN are stored for later transmission to the vehicle or object being monitored. Real-time interconnection between vehicles or objects being monitored and the PSN will only be permitted to enable emergency communications related to a vehicle or a passenger in a vehicle. Such real-time, interconnected communications may only be sent to or received from a system dispatch point or entities eligible in the Public Safety or Special Emergency Radio Services. *See* subparts B and C of this part.

(d) Multilateration LMS systems will be authorized on a primary basis within the bands 904–909.75 MHz and 921.75–927.25 MHz. Additionally, multilateration and non-multilateration systems will share the 919.75–921.75 MHz band on a co-equal basis. Licensing will be on the basis of Major Trading Area (MTA) service areas for multilateration systems, with one exclusive MTA license being issued for each of these three sub-bands. Except as provided in paragraph (f) of this section, multilateration MTA licensees may be authorized to operate on only one of the three multilateration bands within a given MTA. Additionally, MTA multilateration LMS licenses will be conditioned upon the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR part 15 devices.

(e) Multilateration MTA-licensed systems and grandfathered AVM systems (*see* § 90.363) are authorized on a shared basis and must cooperate in the selection and use of frequencies in accordance with § 90.173(b).

(f) Multilateration MTA licensees may be authorized to operate on both the 919.75–921.75 MHz and 921.75–927.25 MHz bands within a given MTA (*see* § 90.209(b)(10)).

(g) Multilateration LMS systems whose primary operations involve the provision of vehicle location services, may provide non-vehicular location services.

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(h) Non-multilateration stations are authorized to operate on a shared, non-exclusive basis in the 902–904 MHz and 909.75–921.75 MHz sub-bands. Non-multilateration systems and multilateration systems will share the 919.75–921.75 MHz band on a co-equal basis. Non-multilateration LMS systems may not provide non-vehicular location services. The maximum antenna height above ground for non-multilateration LMS systems is 15 meters.

§ 90.355 LMS operations below 512 MHz.

Applications requiring not more than 25 kHz bandwidth per frequency in the 25–50 MHz, 150–170 MHz, and 450–512 MHz bands may use either base-mobile frequencies currently assigned the applicant, or be assigned base-mobile frequencies available in the service in which eligibility has been established, provided that:

(a) For transmission between vehicles and base stations, each frequency in a single-frequency mode of operation will provide location data for approximately 200 vehicles, or both frequencies in a two-frequency mode of operation will provide location data for approximately 400 vehicles, except that for frequencies in the 450–512 MHz band that are assigned in pairs in accordance with the allocation plan for the band, the requirement is that location data be provided for approximately 200 vehicles for each frequency pair; and a showing is made that 50 percent of the vehicles will be in operation within the system by the end of the second year of the initial license term, and 70 percent will be in operation within the system by the end of the initial license term; except that if these vehicle loading standards will not be met, frequencies will be assigned only on a secondary non-interference basis to any authorized radiotelephony operation.

(b) The minimum separation between a proposed LMS station and the nearest co-channel base station of another licensee operating a voice system is 75 miles (120 km) for a single frequency mode of operation or 35 miles (56 km) for a two-frequency mode of operation. Where the minimum mileage separation cannot be achieved, agreement to the use of F1D, F2D, G1D, G2D or P0N emission must be received from all existing co-channel licensees using voice emissions within the applicable mileage limits. If there is interference with voice operations and required agreement was not received, or operation was authorized on a secondary non-interference basis, the licensee of the LMS system is responsible for eliminating the interference.

(c) Frequencies additional to any assigned under paragraph (a) of this section will not be assigned to the same licensee at any stations located within 64 km (40 miles) of any station in which the licensee holds an interest until each of such licensee's frequencies for LMS operation is shown to accommodate not less than 90 percent of the frequency loading requirements specified in paragraph (a) of this section.

§ 90.357 Frequencies for LMS systems in the 902–928 MHz band.

(a) Multilateration LMS systems will be authorized on the following LMS sub-bands:

LMS Sub-band	Forward Link [1]
904.000–909.750 MHz.	927.750–928.000 MHz.
919.750–921.750 MHz [2].	927.500–927.750 MHz.
921.750–927.250 MHz.	927.250–927.500 MHz.

[1] Forward links for LMS systems may also be contained within the LMS sub-band. However, the maximum allowable power in these sub-bands is 30 watts ERP in accordance with Section 90.205(b).

[2] The frequency band 919.750–921.750 MHz is shared co-equally between multilateration and non-multilateration LMS systems.

(b) Non-multilateration LMS systems will be authorized on the following frequency bands:

LMS Sub-band [1]

902.000–904.000 MHz
909.750–921.750 MHz

[1] Applicants for non-multilateration LMS systems should request only the minimum amount of bandwidth necessary to meet their operational needs.

§ 90.359 Field strength limits for MTA-licensed LMS systems.

MTA-licensed multilateration systems shall limit the field strength of signals transmitted from their base stations to 47 dBuV/m at their MTA boundary.

§ 90.361 Interference from part 15 and Amateur operations.

Operations authorized under parts 15 and 97 of this chapter may not cause harmful interference to LMS systems in the 902–928 MHz band. These operations will not be considered to be causing harmful interference to a multilateration LMS system operating in one of the three MTA sub-bands (*see* § 90.357(a)) if they operate in accordance with the provisions of parts 15 or 97 of this chapter and at least one of the following conditions are met:

(a) It is a field disturbance sensor operating under § 15.245 of this chapter and it is not operating in the 904–909.750 or 919.750–928.000 MHz sub-bands; or

(b) It does not employ an outdoor antenna; or

(c) If it does employ an outdoor antenna, then if:

(1) The directional gain of the antenna does not exceed 6 dBi, or if the directional gain of the antenna exceeds 6 dBi, it reduces its transmitter output power below 1 watt by the proportional amount that the directional gain of the antenna exceeds 6 dBi; and

(2) Either:

(i) The antenna is 5 meters or less in height above ground; or

(ii) The antenna is more than 5 meters in height above ground but less than or equal to 15 meters in height above ground and either:

(A) Adjusts its transmitter output power below 1 watt by 20 log (h/5) dB, where h is the height above ground of the antenna in meters; or

(B) Is providing the final link for communications of entities eligible under subpart B or C of this part 90.

§ 90.363 Grandfathering provisions for existing AVM Licensees.

(a) These provisions authorize grandfathered operation by automatic vehicle monitoring (AVM) systems licensed on or before February 3, 1995. To attain grandfathered status for their stations, existing multilateration AVM licensees must file, on or before May 22, 1995, applications to modify their station licenses to comply with the band plan shown in § 90.357(a). These applications to modify must identify the multilateration sub-band or sub-bands in which the applicants intend to operate their LMS system stations, once their applications to modify have been authorized. The application to modify a license to comply with the band plan shown in § 90.357(a) may also include a modification to specify an alternate site, so long as the alternate site is 2 kilometers or less from the site specified in the original license.

(b) When existing multilateration AVM licensees file applications to modify, as specified in paragraph (a) of this section, they *must* certify that either:

(1) The stations that compose their AVM system were constructed and placed in operation in accordance with § 90.155(e) on or before February 3, 1995; or

(2) The stations were not constructed and placed in operation in accordance with § 90.155(e) on or before February 3, 1995.

(c) Multilateration AVM systems that were constructed and placed in operation on or before February 3, 1995 will be given until April 1, 1998 to convert to the spectrum identified in their LMS system license. Such licensees may continue to operate their systems during this period. Licensees of multilateration AVM constructed and operational systems that do not file applications to modify on or before May 22, 1995, will be permitted to continue operations under the provisions of former Section 90.239 until April 1, 1998 or the end of their original license term, whichever occurs first, at which time such licenses will cancel automatically and will not be renewed.

(d) Multilateration AVM licensees for stations that were not constructed and placed in operation on or before February 3, 1995 must construct their LMS systems and place them in operation on the spectrum identified in their LMS system license on or before April 1, 1996, or their licenses will cancel automatically (see § 90.155(e)). Also, these licenses will cancel automatically on May 22, 1995 unless timely modification applications are filed on or before this date (see paragraph (a) of this section).

(e) Non-multilateration systems licensed in spectrum other than the 902.00–904.00 and 909.75–921.75 MHz bands must modify their licenses by April 1, 1998 to specify operation solely in the bands provided in § 90.357(b) for non-multilateration systems and to operate their systems consistently with the provisions of § 90.353.

[FR Doc. 95–5785 Filed 3–22–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–44; RM–7123 and RM–7367]

Radio Broadcasting Services; East Los Angeles, Long Beach, and Frazier Park, California

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the rule making petition (RM–7123) of Spanish Broadcasting System of Florida, Inc., licensee of Station KLAX-FM, Channel 250B, Long Beach, California, requesting a reallotment of its Class B channel in Long Beach to the community of East Los Angeles, California. *See Notice of Proposed Rule Making*, 55 FR 6808, published February 27, 1990. The Commission dismisses the counterproposal (RM–7367) of Richard A. Cramer, to allot Channel 251A to Frazier Park, California as its first local service.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The Commission ordered modification of the license of Station KLAX-FM, Long Beach, to specify East Los Angeles as the new community of license. Channel 250B can be allotted to East Los Angeles in compliance with the Commission's requirements for minimum interstation distance separations with a site restricted to 18.9 kilometers (11.7 miles) east of East Los Angeles, located at coordinates North Latitude 34–02–45 and West Longitude 118–21–20. Because East Los Angeles is within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government in this proposal was obtained. With this action, the proceeding is terminated.

This is a summary of the Commission's *Report and Order*, MM Docket No. 90–44, adopted March 7, 1995 and released March 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 reads as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 250B at Long Beach and adding Channel 250B at East Los Angeles.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7124 Filed 3–22–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 90–522; RM–7493, RM–7499]

Radio Broadcasting Services; LaCrosse, Florida and Douglas, Georgia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258A to LaCrosse, Florida, as that community's first local aural transmission service, at the request of Robert E. Wideman (RM–7499), and denies the substitution of Channel 258C for Channel 258C1 at Douglas, Georgia at the request of WDMG, Inc., (RM–7493). In doing so, this document sets aside the *Report and Order* in this proceeding, upgrading Station WDMG(FM), Douglas, Georgia to Channel 258C. *See* 58 FR 7194, February 5, 1993. Channel 258A can be allotted to LaCrosse in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) southeast, in order to avoid a short-spacing to Station WDMG(FM), Channel 258C1, Douglas, Georgia, and Station WQIK(FM), Channel 256C, Jacksonville, Florida, at coordinates North Latitude 29–44–38 and West Longitude 82–19–52. This document also reopens the filing window for Channel 258A at LaCrosse, Florida, which was stayed by a previous *Order*. *See* 58 FR 16780, March 31, 1993. With this action, this proceeding is terminated.

DATES: Effective May 1, 1995. The window period for filing applications for Channel 258A at LaCrosse, Florida, will be open on May 1, 1995, and close on June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90–522, adopted March 9, 1995, and released March 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D. C. 20037.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding LaCrosse, Channel 258A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7123 Filed 3–22–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 56
Thursday, March 23, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93–126–2]

Imported Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to expand the list of noxious weed seeds contained in Federal Seed Act regulations to include seeds of all of the weeds listed in the Federal Noxious Weed Act regulations. This rule would allow APHIS to prohibit the entry into the United States of any imported agricultural or vegetable seed shipments containing seeds of noxious weeds listed in the Federal Noxious Weed Act regulations. We believe this action is necessary to prevent the introduction of noxious weeds into the United States.

DATES: Consideration will be given only to comments received on or before April 24, 1995. We also will consider comments made at a public hearing to be held on April 4, 1995, from 9 a.m. until 12 noon.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–126–2, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 93–126–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held on April 4, 1995, in room 3A01, 4700 River Road, Riverdale, MD 20737–1228.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Biological Assessments And Taxonomic Support, 4700 River Road Unit 133, Riverdale, MD 20737–1228, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

In 1939, Congress enacted the Federal Seed Act (FSA), directing the U.S. Department of Agriculture (USDA), among other things, to regulate foreign commerce in seeds in cooperation with the U.S. Department of Treasury. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of certain noxious weeds as a condition of entry into the United States. On October 1, 1982, the Agricultural Marketing Service (AMS) of the USDA transferred authority for issuing and enforcing regulations under Title III of the FSA (7 CFR 201.39 through 201.47b, 201.66, and 201.101 through 201.230) to the Animal and Plant Health Inspection Service (APHIS).

On September 15, 1994, we published an advance notice of proposed rulemaking in the **Federal Register** (59 FR 47286–47287, Docket No. 93–126–1) announcing our plans to revise the FSA regulations to reflect amendments to the FSA, developments in the seed industry, and the transfer of regulatory authority for Title III of the FSA from AMS to APHIS. We also noted our intention to revise the list of noxious weed seeds contained in the regulations promulgated under the FSA to include seeds of all the noxious weeds listed in the regulations promulgated under the Federal Noxious Weed Act.

We have decided to proceed separately with this proposal to revise the list of noxious weeds contained in the regulations, for reasons explained below. We are still reviewing comments concerning the other issues raised in the advance notice, and plan to publish another proposed rule at a later date. We also will hold a public hearing in connection with that proposed rule.

We solicited comments on the advance notice of proposed rulemaking for 45 days ending October 31, 1994. By that date we received 13 comments from seed companies and importers, State governments, and universities. Four of those comments remarked on our plan to revise the list of noxious weed seeds contained in the FSA regulations to include seeds of all the noxious weeds listed in the Federal Noxious Weed Act regulations. Two of these comments supported our actions and two raised relevant questions. These questions are addressed below.

Under § 201.108 of the FSA regulations, seeds of 11 types of weeds are considered to be noxious when found in shipments of imported agricultural or vegetable seeds. If seeds of these weeds are found in a shipment of imported agricultural or vegetable seeds in amounts greater than the tolerances listed in § 201.66, APHIS prohibits the entry of that shipment into the United States (except possibly for supervised cleaning or repackaging for re-export). However, if seeds of noxious weeds listed in the Federal Noxious Weed Act regulations are found in a shipment of imported agricultural or vegetable seeds subject to the FSA regulations, APHIS currently may not prohibit the entry of that shipment into the United States based on such contamination. The Federal Noxious Weed Act (7 U.S.C. 2801–2813) specifically provides that it does not apply to shipments of seed subject to the FSA. Shipments of agricultural and vegetable seeds are subject to the FSA.

This prohibition increases the chances that noxious weeds listed in the Federal Noxious Weed Act regulations, but not in the FSA regulations, may be introduced into the United States from contaminated shipments of agricultural or vegetable seeds. In fact, since 1988, APHIS has found noxious weeds listed in the Federal Noxious Weed Act regulations in two shipments of imported agricultural and vegetable seed. In 1988, APHIS discovered seed of the noxious weed serrated tussock (*Nassella trichotoma* (Nees) Hackel ex Arechavaleta) in a shipment of lawn grass seed imported from Argentina. More recently, in September of 1994, APHIS discovered seed of the noxious weed goatsrue (*Galega officinalis* L.) in a shipment of carrot seed imported from Chile.

We are proposing, therefore, to expand the list of noxious weed seeds contained in the FSA regulations to

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include seeds of all of the noxious weeds listed in the Federal Noxious Weed Act regulations. As a result of this action, APHIS would have the authority to prohibit the entry of shipments of imported agricultural and vegetable seed containing seed of the noxious weeds currently listed in the Federal Noxious Weed Act regulations. We have decided to proceed with this proposal separately from other issues identified in the advance notice of proposed rulemaking mentioned above due to the urgent need to expand APHIS authority in this matter, as underscored by the recent detection of seed of the noxious weed goatsrue in imported carrot seed.

Tolerances

Under § 201.66 of the FSA regulations, agricultural or vegetable seed imports may enter the United States if they contain only small amounts, or "tolerances," of the noxious weed seeds specified in § 201.108. We propose to preserve these tolerances for the weed seeds currently listed in § 201.108, except for species of *Cuscuta*. Currently, all species of *Cuscuta* are listed in § 201.108 (with tolerances) and several are also listed in the Federal Noxious Weed Act regulations (without tolerances). Since many seeds of *Cuscuta* species plants are indistinguishable from each other, we are proposing to retain tolerances for none. Thus, we would reduce the risk that *Cuscuta* species classified as noxious weeds under the Federal Noxious Weed Act regulations would enter the United States in agricultural or vegetable seeds. Also, we are proposing to establish no tolerances for the other noxious weed seeds that are to be added to the FSA regulations from the Federal Noxious Weed Act regulations. There are no tolerances for these weeds under the Federal Noxious Weed Act regulations.

Also, we are proposing to add a new § 201.108(b). This paragraph would state that the allowable tolerance for certain noxious weed seeds in import shipments of agricultural and vegetable seeds would be two weed seeds in the minimum amount of seed required to be examined. Shipments containing three or more noxious weed seeds may not be imported into the United States. If two noxious weed seeds are found during the initial examination, a second sample will be taken and examined. If two or fewer noxious weed seeds are found in the second examination, the shipment may not be imported into the United States.

Miscellaneous

We are proposing to revise the list of noxious weed seeds in the FSA regulations by updating the taxonomical names of several of the weeds listed. Specifically, concerning the three species of whitetop or hoary cress currently listed in the regulations, *Lepidium draba* (L.) and *Lepidium repens* (Schrenk) Boiss. would be redesignated as *Cardaria draba* (L.) Desv., and *Hymenophysa pubescens* C. A. Mey. would be redesignated as *Cardaria pubescens* (C. A. Mey.) Jarmol. These changes will bring the list of noxious weed seeds under the FSA regulations into accord with current botanical nomenclature. These changes would not affect the Federal Noxious Weed Act regulations, as these seeds are not listed under those regulations.

Comments on the Advance Notice of Proposed Rulemaking

As stated above, of the 13 comments we received on the advance notice of proposed rulemaking, four remarked on our plan to revise the list of noxious weeds in the FSA regulations. Two of the comments supported our plan. The other two raised the following questions.

One comment, from a State government, inquired as to whether APHIS would consider adding seeds of weeds appearing on State noxious weed lists to the list of noxious weeds in the FSA regulations. We would consider adding a weed to the noxious weed list in the FSA regulations (as well as the noxious weed list in the Federal Noxious Weed Act regulations) upon receipt and review of information regarding that weed.

The other comment, from a trade association, encouraged APHIS to undertake a thorough scientific review of the list of noxious weeds in the FSA regulations to confirm its scientific basis and applicability to today's trade. We welcome for review any information indicating a need to revise the list of noxious weeds in the FSA regulations (or the Federal Noxious Weed Act regulations).

Public Hearing

As required by 7 U.S.C. 1592(c), APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. At this public hearing, we will also consider comments on a proposed rule to amend the Federal Noxious Weed Act regulations. (See APHIS Docket No. 94–050–1, published in the Proposed Rules Section of this issue of the **Federal Register**). The hearing will be held on April 4, 1995, in room 3A01, 4700 River Road, Riverdale, MD 20737–1228.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 9 a.m. local time and is scheduled to end at 12 noon local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to expand the list of noxious weed seeds contained in FSA regulations by including the seeds of all weeds listed in Federal Noxious Weed Act regulations. Currently APHIS can prohibit the entry of shipments of imported agricultural or vegetable seeds contaminated with noxious weed seeds listed in the FSA regulations, but not shipments which contain weed seeds listed only in the Federal Noxious Weed Act regulations. The change would authorize APHIS to prohibit the entry of any agricultural or vegetable seed shipments containing noxious weed seeds listed in the Federal Noxious Weed Act regulations.

The weeds already established in the United States pose serious threats to the U.S. supplies of food and fiber, causing losses in both yield and quality of crops. As a result of increased weed competition, yields decline, production decreases, exports decrease, and prices of commodities increase. Weed management has a major influence on the production decisions made by agricultural producers. The use of additional land, livestock, labor, equipment and fuel, herbicides, insecticides and fungicides, fertilizers, and irrigation water may all be required in order to maintain economical commodity production when weeds are present.

Between 1989 and 1991, weeds in crops and forage cost producers using herbicides about $4.1 billion annually and cost producers unable to use herbicides about $19.6 billion annually. (These estimates represent the upper limits of costs related to weeds.) Although such losses varied between crops and regions, we estimate yield reduction to have been between 10 and 20 percent. Furthermore, certain weeds in pasture lands not only reduce production and availability but also poison livestock. Livestock losses related to weeds are estimated at about 3 to 5 percent annually.

Many of the nonindigenous weed species listed in the Federal Noxious Weed Act regulations attack important farm crops in their native lands. Among farm products attacked by such weeds are corn, wheat, sorghum, tobacco, tomatoes, sugarcane, potatoes, grapes, sunflowers, rice, carrots, and pasture grasses. These crops generate an annual income of approximately $50 billion in the United States. Additionally, these agricultural commodities account for about an estimated $19 billion in U.S. exports. Therefore, even if yield losses related to new weeds were much less than the average loss related to established weeds (10 to 20 percent), the economic impact related to their introduction would be substantial.

Very few agricultural and vegetable seed shipments have been found to be contaminated with seeds of weeds listed in the Federal Noxious Weed Act regulations. The recent interception of goatsrue seeds in a carrot seed shipment from Chile was the first case of a noxious weed listed in the Federal Noxious Weed Act regulations, but not under the FSA regulations, being found in an agricultural or vegetable seed shipment since serrated tussock seed was found in a lawn grass seed shipment 6 years ago.

Goatsrue is a perennial weed that competes with and reduces yields of forage plants in moist or irrigated pastures, grassland, marshy areas, river banks, and along roadsides. The cost of eradicating goatsrue already introduced has been substantial to the agency. Since the eradication program began in 1981, the agency has appropriated about $1.7 million to the ongoing effort.

Although we could not prohibit the entry of the imported carrot seed based on its contamination with goatsrue seed, the importer agreed not to distribute the seed in the United States. However, had we had the authority to prohibit the entry of the shipment based on its contamination with goatsrue, and had the importer subsequently destroyed the contaminated seed, we estimate he would have incurred a loss of about $24,000. This sort of loss is insubstantial compared with the potential agricultural costs and production losses that could result from the introduction of a noxious weed.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

Accordingly, 7 CFR part 201 would be amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 would continue to read as follows:

Authority: 7 U.S.C. 1592.

§ 201.66 [Removed and reserved]

2. Section 201.66 would be removed and reserved.

3. Section 201.108 would be revised to read as follows:

§ 201.108 Noxious weed seeds.

(a) Seeds of the following plants shall be considered noxious weed seeds.

[1] *Acroptilon repens* (L.) DC. (=*Centaurea repens* L.) (=*Centaurea picris*)
Aeginetia spp.
Ageratina adenophora (Sprengel) King & Robinson
Alectra spp.
Alternanthera sessilis (L.) R. Brown ex de Candolle
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Durieu)
Azolla pinnata R. Brown
Borreria alata (Aublet) de Candolle
[1] *Cardaria draba* (L.) Desv.
[1] *Cardaria pubescens* (C. A. Mey.) Jarmol.
Carthamus oxycantha M. Bieberstein
[1] *Convolvulus arvensis* L.
Chrysopogon aciculatus (Retzius) Trinius
[1] *Cirsium arvense* (L.) Scop.
Commelina benghalensis L.
Crupina vulgaris Cassini
Cuscuta spp.
Digitaria abyssinica (=D. scalarum)
Digitaria velutina (Forsskal) Palisot de Beauvois
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes
Eichhornia azurea (Swartz) Kunth
[1] *Elytrigia repens* (L.) Desv. (=*Agropyron repens* (L.) Beauv.)
Emex australis Steinheil
Emex spinosa (L.) Campdera
[1] *Euphorbia esula* L.
Galega officinalis L.
Heracleum mantegazzianum Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Raeuschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.
Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burman f.) B. L. Robinson
Mikania micrantha Humboldt, Bonpland, & Kunth
Mimosa invisa Martius
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Nassella trichotoma (Nees) Hackel ex Arechavaleta
Opuntia aurantiaca Lindley
Orobanche spp.
Oryza longistaminata A. Chevalier & Roehrich
Oryza punctata Kotschy ex Steudel
Oryza rufipogon Griffith
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Hochstetter ex Chiovenda
Pennisetum macrourum Trinius
Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
Prosopis alapataco R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart

Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prospis castellanosii Burkart
Prosopis denudans Bentham
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth
Prosopis palmeri S. Watson
Prosopis reptans Bentham var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott
Prosopis strombulifera (Lamarck) Bentham
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) Clayon (=*R. exaltata* (L.) L. f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aublet
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumacher) Stapf & Hubbard
Solanum torvum Swartz
Solanum viarum Dunal
[1] *Sonchus arvensis* L.
[1] *Sorghum halepense* (L.) Pers.
Sparganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauvois

[1] Seeds with tolerances applicable to their prohibition.

(b) The tolerance applicable to the prohibition of the noxious weed seeds marked above with (1) shall be two seeds in the minimum amount required to be examined as shown in Table 1, § 201.46. If fewer than two seeds are found in an initial examination, the shipment from which the sample was drawn may be imported. If two seeds are found in an initial examination, a second sample must be examined. If two or fewer seeds are found in the second examination, the shipment from which the samples were drawn may be imported. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be imported. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be imported.

Done in Washington, DC, this 15th day of March 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7133 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 360

[Docket No. 94–050–1]

Noxious Weeds; Deletions and Additions to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weed regulations by removing *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. We are also proposing to amend the noxious weed regulations by adding *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action appears to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, and to remove unnecessary restrictions.

DATES: Consideration will be given only to comments received on or before April 24, 1995. We also will consider comments made at a public hearing to be held on April 4, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–050–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20727–1238. Please state that your comments refer to Docket No. 94–050–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held in room 3A01, 4700 River Road, Riverdale, MD 20737–1228.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lethonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 113, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations (referred to below as the regulations) were promulgated under authority of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq., referred to below as the Act) and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide that APHIS will issue a written permit only after determining that the importation and movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

Section 360.200 of the regulations lists these categories of noxious weeds: aquatic (§ 360.200(a)), parasitic (§ 360.200(b)), and terrestrial (§ 360.200(c)). This document proposes to delete *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. This document also proposes to add *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds.

The Act (7 U.S.C. 2802(c)) defines a noxious weed as "any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

First reported in Florida in 1988, *Solanum viarum* Dunal (tropical soda apple) has spread rapidly in Florida and appears to be a noxious weed, as defined in the Act. It is of foreign origin, not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or other interests of agriculture. Tropical soda apple poses a significant threat to the cattle industry, agricultural areas, and natural ecosystems of the southern United States. The Weed Science Society of America and the National Association of Exotic Plant Pest Councils support the listing of tropical soda apple under the Federal Noxious Weed Act, as does the pest risk assesment completed by the Animal and Plant Health Inspection Service in April, 1994.[1] Listing this species will help avert further introductions and prevent the artificial spread of the weed into noninfested areas of the United States. Therefore, we are proposing to amend § 360.200(c) by adding Solanum viarum Dunal (tropical soda apple) to the list of terrestrial weeds under the noxious weed regulations.

The regulations also list *Stratiotes aloides* Linnaeus (water-aloe) as an aquatic noxious weed. This is an error. That species is not considered a noxious weed anywhere in its range. The correct listing should have been *Stratiotes alismoides* L. (duck-lettuce), which has been renamed as *Ottelia alismoides* (L.) Pers. We consider *Ottelia alismoides* (L.) Pers. to be a noxious weed because it is of foreign origin, is new to or not widely prevalent in the United States, and is directly or indirectly injurious to agricultural interests because it forms dense colonies along ditchbanks and irrigation canals that impede water flow. It is also a potentially serious weed of rice fields and slow moving or still bodies of water. Therefore, we are proposing to amend 7 CFR 360.200(a) by removing *Stratiotes aloides* Linnaeus (water-aloe) and adding *Ottelia alismoides (L.) Pers. to the list of aquatic weeds.*

Euphorbia prunifolia Jacquin (painted euphorbia), now listed in the regulations as a terrestrial weed, is considered to be synonymous with *Euphorbia heterophylla*,[2] a species native to North America, and widespread in the United States. Consequently, *Euphorbia prunifolia* Jacquin (painted euphorbia) no longer appears to meet the definition of a noxious weed under the Act. Therefore, we are proposing to amend § 360.200(c) by removing *Euphorbia prunifolia* Jacquin (painted euphorbia).

Public Hearing

APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. At this public hearing, we will also consider comments on a proposed rule to amend the Federal Seed Act regulations. (See APHIS Docket No. 93–126–2, published in the Proposed Rule section of this issue of the **Federal Register**.) The hearing will be held on April 4, 1995, in room 3A01, 4700 River Road, Riverdale, MD 20737–1228.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 9 a.m. local time and is scheduled to end at 12 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

This proposed rule would add *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial noxious weeds. The reduction in usable acreage caused by the spread of tropical soda apple poses a significant threat to the cattle industry and to other agricultural entities. Tropical soda apple also poses a threat to natural ecosystems. The weed is spreading into citrus groves, vegetable farms, sugarcane production areas, and dairy farms. Preventing further introductions and curtailing spread would have a positive economic impact on ranchers and growers not yet affected.

If this proposed rule is adopted, commodities offered for import found to be contaminated with propagules of tropical soda apple will have to be cleaned, treated, or reexported. This could have a negative economic impact on various importers. However, information regarding importations of commodities contaminated with tropical soda apple is not available, nor is the number of importers of such material. We expect that the economic impact on importers would be minimal as a result of this proposed rule change.

This proposed rule would also remove *Euphorbia prunifolia* Jacquin (painted Euphorbia) from the list of terrestrial noxious weeds, and would therefore remove restrictions on its importation and interstate movement. From 1985 through 1993, 207 shipments of articles intended for entry into the United States were found to contain *Euphorbia*, possibly *prunifolia*.

This proposed rule would also add *Ottelia alismoides* (L.) Pers. to the list of aquatic noxious weeds, and would remove *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic noxious weeds. Data on the amount of *Ottelia alismoides* (L.) Pers., if any, currently being imported into the United States is unavailable. From 1985 through 1993, one shipment of articles intended for entry into the United States was found to contain water-aloe.

This proposed rule contains paperwork and recordkeeping requirements. A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide that APHIS will issue a written permit only after determining that the importation and movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

[1] A copy of the pest risk assessment is available for inspection in the comment reading room (see **ADDRESSES**) or may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

[2] The Agriculture Research Service Germplasm Resource Information Network (GRIN) database, and other sources. For additional information, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

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Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Transportation, Weeds.

Accordingly, 7 CFR part 360 would be amended as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.17, 2.51, and 371.2(c).

§ 360.200 [Amended]

2. Section 360.200 would be amended as follows:

a. In paragraph (a), by removing "*Stratiotes aloides* Linnaeus (water-aloe)".

b. In paragraph (a), by adding "*Ottelia alismoides* (L.) Pers." immediately after "*Monochoria vaginalis* (Burman f.) C. Presl".

c. In paragraph (c), by removing "*Euphorbia prunifolia* Jacquin (painted euphorbia)".

d. In paragraph (c), by adding "*Solanum viarum* Dunal (tropical soda apple)" immediately after "*Solanum torvum* Swartz (turkeyberry)".

Done in Washington, DC, this 15th day of March 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7135 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1050

[DA–95–14]

Milk in the Central Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the producer milk definition of the Central Illinois Federal milk marketing order (Order 50) for an indefinite period commencing April 1, 1995. The proposed suspension was requested by Prairie Farms Dairy, Inc., which contends the action is necessary to prevent uneconomic and inefficient movements of milk and to ensure that producer milk historically associated with Order 50 will continue to be pooled under the order.

DATES: Comments are due no later than March 30, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Illinois marketing area is being considered for an indefinite period, beginning April 1, 1995:

In § 1050.13(d)(2), the words "not" and "it" where they first appear.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the producer milk definition under the Central Illinois order for an indefinite period of time, beginning April 1, 1995. The proposed suspension would suspend the diversion limits applicable to individual producers for a pool distributing plant regulated under the order. The aggregate limit of 35 percent contained in the proviso of § 1050.13(d)(2) were suspended for an indefinite period on January 1, 1995.

The Central Illinois order currently allows an operator of a distributing plant to divert to a nonpool plant up to 50 percent of a producer's milk that is physically received at the pool plant during the months of August through April. The proposed suspension would allow a distributing plant to divert an unlimited amount of a producer's milk to a nonpool plant during each of these months, provided that at least one day's production is physically received at a pool plant.

Prairie Farms, which operates the only distributing plant regulated under Order 50, states that it represents over 90 percent of the producer milk pooled under Order 50. According to Prairie Farms, approximately 60 percent of its producer milk pooled under Order 50 was supplied to Beatrice Cheese, Inc., effective December 1, 1994. It contends the proposed suspension is necessary to permit it to keep its producers pooled under the order without the necessity of costly and inefficient movements of milk. It maintains that its proposal would not jeopardize the integrity of the order because at least one day's production would have to be physically received at a pool plant during each of the months of August through April to qualify the milk for diversion to a nonpool plant. Prairie Farms requests that the proposed action be handled on an emergency basis to allow the continuous pooling of producer milk historically associated with Order 50.

Accordingly, it may be appropriate to suspend the aforesaid provision for an indefinite period beginning April 1, 1995.

List of Subjects in 7 CFR Part 1050

Milk marketing orders.

The authority citation for 7 CFR part 1050 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

Dated: March 17, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–7105 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–049]

RIN 1218–0099

Respiratory Protection; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of date for filing of testimony and evidence before the public hearing.

SUMMARY: By this document the Occupational Safety and Health Administration (OSHA) is extending the date for submitting the text of testimony and documentary evidence for those who intend to testify at the public hearings from April 14, 1995 to May 15, 1995, in order to provide additional time for the preparation of testimony for the hearings.

DATES: Testimony and evidence to be submitted at the hearings must be postmarked on or before May 15, 1995. Comments must be postmarked on or before April 14, 1995. The hearing will begin at 9:30 a.m., Tuesday, June 6, 1995 in Washington, DC.

ADDRESSES: Testimony and documentary evidence are to be submitted in quadruplicate to: Mr. Thomas Hall, OSHA Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3649, Washington, D.C. 20210; (202) 219–8615. Testimony and documentary evidence will be available for inspection and copying in the Docket Office, Room N2625 at the above address.

Written comments should be submitted in quadruplicate or 1 original (hardcopy) and 1 disk (5¼ or 3 ½) in WordPerfect 5.0, 5.1, 6.0 or ASCII to: Docket Office, Docket H–49, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W. Washington, D.C. 20210; (202) 219–7894. Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate.

The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Proposal: Mr. Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3647, Washington, D.C. 20210; (202) 219–8151.

Hearings: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3649, Washington, D.C. 20210; (202) 219–8615.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1994, OSHA published a notice of proposed rulemaking on its respiratory protection standard (59 FR 58884 *et seq.*). The proposal is intended to update the current respirator standard to reflect changes in methodology, technology, and approach related to respiratory protection that have occurred since the existing respiratory protection standard was adopted in 1971.

A notice of the extension of the comment period and the rescheduling of the public hearing was published on January 20, 1995 (60 FR 4132 *et seq.*). This notice extended the public comment period for the proposal to April 14, 1995. The date for submitting a notice of intention to appear at the hearing to testify was extended to March 31, 1995. The public hearings were rescheduled to start on June 6, 1995.

Extension of Date for Submitting Testimony and Evidence Before the Hearing

Pursuant to section 6(b)(3) of the OSH Act, an opportunity to submit oral testimony concerning all issues raised by the proposed standard will be provided at an informal public hearing to be held in Washington, DC from June 6, 1995 and continuing until Friday, June 23. The hearing will commence at 9:30 a.m. on June 6, 1995, in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, DC 20210.

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before March 31, 1995.

In addition to a notice of intention to appear, any party requesting more than ten (10) minutes for a presentation, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the

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address above. By this document OSHA is extending the date for submitting the text of testimony and documentary evidence for those who intend to testify at the public hearings from April 14, 1995 to May 15, 1995, in order to provide additional time for the preparation of testimony for the hearings.

Any party who has not substantially complied with this requirement may be limited to a ten-minute presentation, and may be requested to return for questioning at a later time during the hearing.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Authority and Signature: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

Signed at Washington, DC., this 20th day of March, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–7200 Filed 3–22–95; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[AD–FRL–5177–3]

RIN 2060–AE24

Consumer and Commercial Products: Schedule for Regulation

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of the consumer and commercial product category list and schedule for regulation.

SUMMARY: This notice publishes a list of consumer and commercial products identified for possible regulation and a schedule for the promulgation of such regulations. Under section 183(e) of the Clean Air Act (CAA), the EPA is required to conduct a study of volatile organic compounds (VOC) emissions from the use of consumer and commercial products to assess their potential to contribute to violations of the national ambient air quality standard (NAAQS) for ozone, and to establish criteria for products subject to regulation under that section. Upon completion of the study, the EPA is required to submit a Report to Congress documenting the results of the study. Under section 183(e), the EPA is required to list and schedule for regulation those categories of products that the Administrator determines account for at least 80 percent of the total VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas classified as nonattainment for ozone. The consumer and commercial product list and schedule for regulation published in today's notice meets this obligation.

Although today's notice identifies consumer and commercial products that potentially could be regulated, this list and schedule may be amended as further information becomes available or is submitted to the EPA. The public will have an opportunity to comment on the listing and possible regulation of a particular product at the time the EPA proposes to regulate that particular product. Thus, today's action does not represent final agency action. Final agency action occurs upon publication of a final regulation for each product.

ADDRESSES: *Docket.* Docket No. A–94–65 contains information considered by the EPA in development of the consumer and commercial products study and subsequent schedule for regulation. In addition, the public may submit to the docket information or comments regarding today's notice and the Report to Congress. The docket is available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday at the EPA's Air and Radiation Docket and Information Center (6102), room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged for copying docket materials.

Report to Congress. The Consumer and Commercial Product Report to Congress is available from Docket No. A–94–65 at the above address or from the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) which is a network of electronic bulletin boards operated by the EPA. The service is free, except for the cost of the telephone call. The modem telephone number is (919) 541–5742. The modem provides up to a 14,400 baud connection. If more information on the TTN is needed, call the HELP line at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning the Report to Congress and schedule for regulation, contact Mr. Bruce Moore, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5460.

SUPPLEMENTARY INFORMATION:

I. Background

This notice describes the EPA's initial efforts to respond to requirements of Section 183(e) of the CAA and to a court order. These efforts also respond to concerns expressed by representatives of State and local air pollution control agencies and by consumer products industry representatives. The persistence of the ground-level ozone problem has caused State and local air pollution agencies to seek emission reductions beyond those which have been obtained through regulation of the conventional mobile and stationary sources of emissions. As a result, several agencies are adopting rules to regulate various household consumer products. Representatives of the consumer products industry have expressed concern that differences in State and local requirements for consumer products could disrupt the national distribution network for consumer products and has urged the EPA to issue rules for consumer products to provide consistency across the country. States who need emission reductions are also supportive of an EPA rulemaking which will assist them in their efforts toward achievement of ozone attainment.

In response to these concerns, the EPA consulted with consumer product manufacturers and other interested parties to determine which products would be the most amenable to an expedited regulation that could achieve significant VOC emission reductions without significant effects on consumer satisfaction or price of the products. Industry representatives identified a group of consumer products that meet these criteria and proposed to EPA emission requirements for them that have already been achieved in California (see Section III.C). High quality products meeting these standards are being sold in California with no significant effect on consumer prices. The EPA plans to propose the rule covering these products as part of the first group of categories listed for regulation.

The relevant statutory provision is contained in Section 183(e) of the CAA. Through this provision, Congress required the EPA to conduct a study of emissions of VOC into the ambient air from consumer and commercial products. The term "consumer and commercial products" is defined to mean:

> * * * any substance, product (including paints, coatings, and solvents), or article (including any containers or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds * * *

The statutory definition of consumer and commercial products includes a much broader array of products than those usually considered to be consumer products (e.g., personal care products, household cleaning products, or household pesticides). The statutory definition of consumer and commercial products encompasses all VOC-emitting products used in the home, by businesses, by institutions, and in a wide range of industrial manufacturing operations.

The stated objectives of the study are (1) to determine the potential of VOC emissions into the ambient air from consumer and commercial products to contribute to ozone levels which violate the NAAQS for ozone; and (2) to establish criteria for regulating consumer and commercial products.

Upon completion of the study, the EPA is required to submit a Report to Congress that documents the results of the study. The study and Report to Congress required under Section 183(e) are described in section II of this notice.

In establishing criteria for regulating products, the Administrator is directed to consider the following: the uses, benefits, and commercial demand of products; the health or safety functions served by such products; whether products emit highly reactive VOC into the ambient air; the cost-effectiveness of controls; and the availability of alternatives which are of comparable costs, considering health, safety, and environmental impacts. The development and application of criteria, and the resultant ranking of products based on these and other considerations, are described in sections III.B and III.C of this notice.

Upon completion of the study and submission of the Report to Congress, the EPA is required to list those categories of products that are determined, based on the study, to account for at least 80 percent of the total VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone. The EPA is required to divide the list into four groups establishing priority for regulation. Every 2 years following publication of the list, the EPA is required to regulate one group until all four groups are regulated. The consumer and commercial product list and schedule for regulation is presented in section III.C of this notice.

As noted earlier, the EPA is presenting this list and schedule at this time as required by the CAA and court order. However, the EPA may amend the schedule and the products listed in particular groups as further information becomes available. For example, as one of the considerations specifically noted by Congress in section 183(e)(2)(B)(iv), cost-effectiveness of control is an important factor, and one for which the EPA had relatively limited information. In moving forward to develop specific regulations, the EPA will evaluate new information on cost-effectiveness as well as the other criteria and may, in the process, reassess the product listing and schedule.

II. Study and Report to Congress

A. Intent and Structure

The primary intent of the study and Report to Congress is to meet the objectives of section 183(e) of the CAA which requires EPA to inform members of Congress, and other interested parties, of relevant issues surrounding VOC emissions from the use, consumption, storage, disposal, destruction, or decomposition of consumer and commercial products. The study examines the potential of VOC emissions from consumer and commercial products to contribute to ozone nonattainment; documents the development of a reliable and comprehensive emissions inventory; identifies and evaluates opportunities for achieving emission reductions; examines the fate of consumer and commercial product-related VOC in wastewater and in landfills; evaluates the use of various systems of regulation, including economic incentives; and provides supporting rationale for the establishment of criteria for prioritizing products for regulation.

The study is composed of six volumes, including:

(1) Report to Congress (EPA–453/R–94–066–a)

(2) Comprehensive Emissions Inventory (EPA–453/R–94–066–b)

(3) Fate of Consumer Product VOC in Landfills (EPA–453/R–94–066–c)

(4) Fate of Consumer Product VOC in Wastewater (EPA–453/R–94–066–d)

(5) Economic Incentives to Reduce VOC Emissions from Consumer and Commercial Products (EPA–453/R–94–066–e)

(6) Aerosol Products and Packaging Systems (EPA–453/R–94–066–f)

B. Findings of the Consumer and Commercial Products Study

The Report to Congress highlights the following key findings of the study:

1. The scope of consumer and commercial products subject to section 183(e) is very broad and includes not only household consumer products but many products used commercially and in industrial manufacturing operations. This vast universe of products ranges from underarm antiperspirants and deodorants to coatings used in the manufacture of automobiles.

2. Consumer and commercial products, while individually small sources of VOC emissions, contribute significantly to the ozone nonattainment problem. In 1990, consumer and commercial products emitted approximately 6 million tons of VOC nationwide, or about 28 percent of all man-made VOC.

3. Opportunities exist for VOC emission reductions from consumer and commercial products through product reformulation, substitution, repackaging, and other control measures. With regard to consumer products, California and other States have issued regulations which limit the VOC content of approximately two dozen categories of products. These regulations were developed over several years with extensive interaction with the consumer products industry. The EPA has estimated that the VOC content limitations imposed by the State regulations, if applied nationwide, may result in an overall VOC reduction of approximately 25 percent from the 1990 baseline for those categories.

4. In developing control measures for consumer products, emission reductions must be balanced with product efficacy, consumer acceptance, and economic impacts.

5. A number of systems can be employed to implement the various control measures available under Section 183(e). These include product registration, labeling, self-monitoring, reporting, prohibitions, limitations, and economic incentives.

6. Under section 183(e)(3)(C), the EPA may issue control techniques guidelines (CTG) in lieu of regulations where the Administrator determines that the CTG will be substantially as effective in reducing VOC emissions in nonattainment areas. In many cases, CTG can be effective regulatory approaches to reduce emissions of VOC in nonattainment areas—with the advantage of not imposing control costs on attainment areas. For example, in the case of small volume consumer products that are widely used (e.g.,

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personal care products), a CTG might not be effective at reducing VOC emissions because of difficulties in enforcement. However, for other cases (and for a potentially large share of nonattainment area VOC emission sources), enforcement and compliance may be effectively focused at the source of the VOC emissions, be it the point of manufacture, the point of end-use, or both. For example, VOC emissions from commercial products used in industrial settings could be controlled effectively with a CTG that targeted emissions at the point of end-use, as the population of end-users is likely to be readily identifiable.

7. Economic incentive programs appear to be viable alternatives to traditional strategies to reduce VOC emissions from consumer and commercial products. Certainty of emission reductions, minimization of control and/or implementation costs, technological innovation, and flexibility afforded by the program are all objectives which should be considered in selecting a strategy. The best regulatory approach for consumer and commercial products depends upon the particular universe of products being regulated and the priority of objectives.

8. Ideally, ozone control strategies should be based not only on mass VOC and NO_x emissions but also on the relative photochemical reactivity of individual species, the VOC-to-NO_x ratios prevalent in specific airsheds, and other factors which could work together to minimize the formation of ozone with minimum adverse impacts. However, reactivity data on VOC, especially those compounds used to formulate consumer and commercial products, are extremely limited. Better data, which can be obtained only at great expense, are needed if the EPA is to consider relative photochemical reactivity in development of regulations. In the meantime, a practical approach is to make regulatory determinations on the basis of mass VOC emissions.

The EPA considered reactivity to a limited extent, however, in prioritizing consumer and commercial product categories for regulation. In an effort to meet the requirements of section 183(e), and being aware of the limitations and uncertainties surrounding the reactivity issue, the EPA employed available information on reactivity to (1) consider those products which emit "highly-reactive" compounds; and (2) adjust mass VOC emission estimates to account for relative reactivity of product ingredients. The EPA's methodology for this limited application of reactivity is discussed in detail in the Report to Congress.

9. A widely held misconception is that most aerosol products employ chlorofluorocarbons (CFC) as propellants and contribute to stratospheric ozone depletion. In 1978, the EPA banned the use of CFC in virtually all aerosol products, the exceptions being medical products, military specification products, and aviation products. Hydrocarbons (propane, butane, and isobutane), which are VOC, are currently the predominant propellant compounds. Aerosol products function as systems composed of the product, the propellant, the valve, and the container. Hydrocarbon propellants not only expel the product from the container but serve as diluents in the product formulation.

III. Consumer and Commercial Product Schedule for Regulation

A. Criteria for Regulating Products Under Section 183(e)

Although the EPA has discretion to determine which products are considered to account for 80 percent of VOC emissions, as a preliminary step, the EPA relied on numerical rankings to ensure that the highest priority products would be regulated. Section 183(e)(2)(B) of the CAA instructs the EPA to develop criteria for prioritizing consumer and commercial products for regulation. In establishing these criteria, the EPA is required to consider the following factors:

(1) Uses, benefits, and commercial demand,
(2) Health and safety functions,
(3) Products which emit highly reactive VOC,
(4) Cost-effectiveness of control, and
(5) Availability of alternatives.

The following eight criteria for ranking consumer and commercial products were developed:

(1) Utility,
(2) Commercial demand,
(3) Health and safety functions,
(4) Emissions of highly reactive VOC,
(5) Availability of alternatives,
(6) Cost-effectiveness of controls,
(7) Magnitude of annual VOC emissions, and
(8) Regulatory efficiency and program considerations.

Criterion 1 (Utility) considers uses and benefits, and commercial demand is addressed by Criterion 2. The remaining four factors are addressed individually by Criteria 3 through 6. Criteria 7 and 8 (magnitude of emissions and regulatory efficiency) reflect additional considerations not specifically prescribed in the CAA. The EPA has exercised its discretion to include these criteria, as the EPA believes they are important in prioritizing product categories for regulation. The EPA's interpretation of each of the five factors and the rationale and intent of each of the eight criteria are discussed in detail in the Report to Congress.

B. Preliminary Ranking of Product Categories

Criteria 1 through 7 were developed such that each product category could be evaluated numerically by assigning a score of 1 to 5 for each of the criteria, with a higher score indicating a higher priority for regulation.

The preliminary ranking was based on numerical scoring of criteria 1 through 7 for each product category. This process involved objective and subjective considerations. Criteria 2, 4, 6, and 7 are objective in nature and could be scored quantitatively based on annual sales, VOC emissions, and cost of control. Exercise of Criteria 1, 3, and 5 may include some subjective considerations. Scoring of these criteria could be affected by one's background, knowledge of the category, or other factors. In order to ensure consistency and fairness, an independent panel was convened to assist the EPA in application of these criteria.

The National Air Pollution Control Techniques Advisory Committee (NAPCTAC), established in 1968 by the Surgeon General, is an advisory group which has provided, and continues to provide, the EPA with independent views on EPA actions related to the air program. The NAPCTAC consists of the Director, Office of Air Quality Planning and Standards, or his designee, as chairperson and 11 members appointed by the EPA's Deputy Administrator. Members are selected from industry, State and local agencies, public interest groups, and academia.

Because of the balance afforded by the diversity of such a group, the NAPCTAC was considered a convenient choice for the panel. Accordingly, the panel was convened in July 1994 in Durham, North Carolina, for the purpose of assigning preliminary scores for Criteria 1 through 7 to each of the product categories. Results of the preliminary scoring exercise are available in the docket.

C. Application of Criterion Eight: Regulatory Efficiency and Program Considerations

Once the initial ranking of products based on exercise of Criteria 1 through 7 was completed, the EPA exercised Criterion 8, regulatory efficiency and program considerations, to identify which products should be considered to account for 80 percent of VOC

emissions and prioritized in the schedule for regulation.

As required by section 183(e), the EPA grouped the listed categories of consumer and commercial products into four groups, one of which will be regulated every 2 years. Although the statute does not require that the 80 percent be divided into four equal groups, the EPA placed product categories into the four groups listed in Table 1 as equally as possible for purposes of workload management. The EPA also attempted to reduce emissions as early as possible, given these workload considerations. Nearly two-thirds of the emissions from consumer and commercial products are addressed by the first two groups of categories.

TABLE 1.—CONSUMER AND COMMERCIAL PRODUCTS SCHEDULE FOR REGULATIONS

	Schedule for regulation	Emissions Mg/yr
Group I:		
Consumer products (24 categories)[a]	1997	301,347
Shipbuilding and repair coatings	1997	23,302
Aerospace coatings	1997	165,892
Architectural coatings	1997	362,454
Autobody refinishing coatings	1997	85,509
Aerosol spray paints	1997	58,521
Wood furniture coatings	1997	88,109
		1,085,134
Group II:		
Lithographic printing materials	1999	545,454
Industrial cleaning solvents	1999	232,890
Flexible package printing materials	1999	136,364
Flat wood paneling coatings	1999	19,618
		934,326
Group III:		
Miscellaneous metal products coatings	2001	198,545
Large appliance coatings	2001	22,994
Fiberglass boat manufacturing materials	2001	11,000
Miscellaneous industrial adhesives	2001	185,175
		417,714
Group IV:		
Paper, film, and foil coatings	2003	92,064
Letterpress printing materials	2003	25,636
Plastic parts coatings	2003	20,000
Metal furniture coatings	2003	97,220
Auto and light truck assembly coatings	2003	68,182
Petroleum drycleaning solvents	2003	49,091
		352,193
Emissions addressed by schedule		2,789,367
Percentage of total (3,481,804 Mg/yr)		80.1

[a] Product categories included in "Consumer products (24 categories)" grouping:
Aerosol cooking sprays
Air fresheners
Auto windshield washer fluids
Bathroom and tile cleaners
Carburetor and choke cleaners
Charcoal lighter materials
Dusting aids
Engine degreasers
Fabric protectants
Floor waxes and polishes
Furniture maintenance products
General purpose cleaners
Glass cleaners
Hair sprays
Hair mousses
Hair styling gels
Household adhesives
Nonagricultural insecticides
Laundry prewash treatments
Laundry starch products
Nail polish removers
Oven cleaners
Shaving creams
Underarm antiperspirants and deodorants

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Group I includes product categories some of which have regulatory activities (rules or guidelines) already underway. The remaining categories are divided among Groups II, III, and IV according to numerical rank. "Consumer products (24 categories)" represent an aggregation of two dozen individual household, personal care, and automotive products which are currently regulated in one or more States. They are products used in home, office, institutional, or similar settings. In order to achieve VOC reductions required under their State Implementation Plan (SIP), many States have declared intentions to develop rules to reduce VOC emissions from these particular categories as part of their attainment plans. The EPA has scheduled these categories for regulation as part of Group I.

With one exception, all the other categories in Group I received relatively high numerical scores in the preliminary ranking. The one exception is shipbuilding and repair coatings, which are included in Group I despite a lower numerical score because a CTG for this category is currently under development pursuant to section 183(a) of the CAA. Under section 183(e)(3)(C), the Administrator may issue CTG in lieu of regulations if it is determined that a CTG will be substantially as effective in reducing VOC emissions. As a CTG is developed, the EPA will assess the projected emission reductions to make this determination. The EPA believes that the issuance of a CTG for shipbuilding and repair coatings to satisfy the requirements of both sections 183(a) and 183(e) would promote regulatory efficiency. Two other categories in Group I for which CTG are being developed are aerospace coatings and wood furniture coatings. As with the shipbuilding and repair coatings CTG, determinations will be made as to whether these CTG satisfy the requirements of section 183(e)(3)(c).

While the regulatory schedule presented in today's notice includes product categories that account for 80 percent of VOC emissions in nonattainment areas, as directed in the CAA, the EPA recognizes that the list of product categories included may need to be amended as regulatory development proceeds or as new information becomes available.

As individual products and categories are further assessed and comments are submitted during the rulemaking process, the EPA's evaluation of the criteria as applied to each category may change. For example, Criterion 6, cost-effectiveness of controls, reflects the emphasis Congress placed on identifying "(t)hose consumer and commercial products which are subject to the most cost-effective controls." (Section 183(e)(2)(B)(iv)). However, the EPA had relatively limited data on the cost-effectiveness of control for most products. As the EPA moves forward in implementing the emission limitations required by section 183(e), it will reevaluate and reassess the ranking and schedule for regulation based on additional information developed on cost-effectiveness.

As a result, categories may be removed from the list, and remaining unlisted categories may be considered for listing. Table 2 shows significant categories within the scope of section 183(e) which are not being listed at this time for regulation. Any changes made to the consumer and commercial products regulatory schedule will be published in the **Federal Register**.

TABLE 2.—SIGNIFICANT CATEGORIES OUTSIDE 80 PERCENT

	Baseline emissions (Mg/yr)
Agricultural pesticides	25,050
Rotogravure publication printing materials	18,182
Nonautomotive paint thinners	9,055
Cutback asphalt paving materials	116,727
Synthetic fiber spinning solvents	42,000
Metal cleaning (degreasing) solvents	32,727
Fabric printing, coating, and dyeing materials	42,000
Metal can coatings	40,909
Tire manufacturing cements	24,000
Magnetic tape coatings	5,000
Metal coil coatings	19,636
Roofing materials	16,840
Magnet wire coatings	7,407
Mold release agents	68,545
Remaining consumer products	154,714

IV. Administrative Requirements

A. Docket

The docket is an organized file of information considered by the EPA in the development of an action. Although this action is not a rulemaking, a docket has been established for the consumer and commercial product study and subsequent product category list and schedule for regulation. The docket number is A–94–65. The purpose of this docket is to allow interested parties a means to access relevant documents not otherwise available. In addition, the public may submit to the docket information or comments regarding today's notice and the Report to Congress. The docket may be inspected at the EPA's Air and Radiation Docket and Information Center, listed in the **ADDRESSES** section of this notice.

B. Regulatory Requirements

1. General

Because today's notice is not a rulemaking, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to section 317, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980). Also, this notice is not subject to the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 *et seq.*

2. Executive Order and Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether regulatory actions are significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order because it is likely to lead to rules which may meet one or more of the criteria. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Dated: March 15, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–7198 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5175–4]

Transportation Conformity; Proposed Approval of Petition for Exemption From Nitrogen Oxides Provisions, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a petition that was submitted pursuant to section 182(f) of the Clean Air Act (as amended in 1990) (CAA) by the Denver Regional Council of Governments (DRCOG) requesting that the Denver metropolitan area, an ozone nonattainment area classified as transitional, be exempted from the requirements regarding the control of oxides of nitrogen (NO_X) imposed by the Federal conformity rules. These rules waive certain NO_X requirements if an exemption under section 182(f) is granted by EPA. The EPA has indicated in relevant guidance that areas (including transitional areas, like the Denver Metropolitan area) demonstrating attainment based on ambient air quality monitoring data without additional NO_X reductions satisfy the exemption test.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Quality Branch (8ART-AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the DRCOG petition and other information relevant to this action are available for inspection between 8 a.m. and 4 p.m. Monday through Friday at the following locations: United States Environmental Protection Agency, Region VIII, Air Quality Branch (8ART-AP), 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Air and Radiation Docket and Information Center, United States Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460

Anyone wishing to review this petition at the Denver EPA Regional office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Aundrey C. Wilkins, SIP Section (8ART-AP), Air Programs Branch, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, telephone (303) 294–1379.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(f) of the Clean Air Act contains requirements for major stationary NO_X sources in marginal and above ozone nonattainment areas and in an ozone transport region. Section 182(f) also specifies circumstances under which the NO_X requirements would be limited or would not apply.

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of NO_X would not contribute to attainment" of the ozone NAAQS in those areas. EPA has indicated that in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data, without having implemented the section 182(f) NO_X provisions, it is clear that this test is met since "additional reductions of NO_X would not contribute to attainment" of the NAAQS in that area.

EPA's general and transportation conformity rules reference the section 182(f) exemption process as a means for exempting affected areas from certain NO_X conformity requirements. See 58 FR 62197, November 24, 1993, Transportation Conformity, and 58 FR 63240, November 30, 1993, General Conformity.

This interpretation is discussed in a May 27, 1994 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), entitled "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria." This memorandum revised relevant portions of previously-issued OAQPS guidance dated December, 1993, entitled "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)." Both documents address EPA's policy regarding NO_X exemptions for areas outside an ozone transport region that have air quality monitoring data showing attainment. The section 182(f) NO_X provisions and the guidance cited above apply to marginal and above ozone nonattainment areas, but not nonclassifiable ozone nonattainment areas (i.e., submarginal, transitional, and incomplete/no data). However, on June 17, 1994, EPA published a document entitled "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions" (59 FR 31238) ("General Preamble"). This document provides guidance on the exemption of nonclassifiable ozone nonattainment areas, outside an ozone transport region, from the conformity rule's NO_X provisions based on air quality monitoring data showing attainment. As a transitional ozone nonattainment area, the Denver metropolitan area falls within the "nonclassifiable" category.

Pursuant to section 182(f), a person or State may petition EPA to grant an exemption which would relieve the relevant nonattainment area from certain requirements of the general and transportation conformity rule. DRCOG submitted a NO_X exemption petition on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. Ambient air quality data provided with the DRCOG petition showed no violations of the ozone NAAQS during the three-year period from 1991 through 1993. Further, the Colorado Air Pollution Control Division (APCD) provided additional air quality data for the same time period supporting DRCOG's position that there were no violations.

II. Analysis of the DRCOG Petition for a NO_X Exemption

EPA believes that DRCOG has demonstrated that the Denver metropolitan area qualifies for an exemption from the NO_X conformity requirements based on the ambient data provided by DRCOG and APCD for 1991, 1992, and 1993. The AIRS data show no violations of ozone NAAQS during these three years.

The APCD has endorsed the DRCOG petition in a letter dated December 15, 1994, from Tom Getz, Director, APCD, to Mr. William Yellowtail, the EPA Region VIII Regional Administrator.

III. Analysis of Other Ozone Network Issues

EPA considered the condition of the ozone ambient air monitoring network as part of evaluating the DRCOG NO_X exemption request. In 1989, EPA called attention to suspected deficiencies in the ozone ambient air monitoring network. EPA and the APCD have continued to address these concerns over the years. The APCD conducted studies of the ozone network in 1991 and 1992. A 1993 study report noted that the network was not measuring at maximum concentrations. The APCD found that the maximum concentration area covered the northwest and southwest parts of the ozone nonattainment area. The state is required to designate at least one site, but should include as many as are necessary, to adequately monitor the maximum concentration area. (40 CFR Part 58).

In 1993, it was determined that higher values appeared in the northwest part of

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the maximum concentration area rather than in the southwest. Priority was given to placing new sites in the northwest.

In 1993, APCD added two new sites in the northwest—Enrel and South Boulder Creek. No violations were recorded at these two sites in 1993. However, data in AIRS show one exceedance at the South Boulder Creek site in 1993. Three exceedances must occur for there to be a violation.

These two new sites were retained and studied in 1994. The APCD has reported that no violations or exceedances occurred at either of these sites in 1994.

There are nine sites currently on the Denver ozone ambient air monitoring network, including the two new sites. The Enrel and South Boulder Creek sites continue to record higher values than other sites on the network. The one exceedance at the South Boulder Creek site in 1993 and the continued higher value readings at the same site and at the Enrel site confirm study findings that these sites are within the maximum concentration area and should remain in place.

Modifying the network to ensure monitoring of maximum concentrations is an EPA priority and is required by 40 CFR part 58. The EPA is working with APCD to ensure that at least one monitoring site is established in the southwest area in 1995. In addition, the APCD plans to conduct further study in this southwest area during the 1995 summer ozone season to more accurately identify where sites should be placed.

Although there have been concerns with the monitoring network, EPA believes that many of the concerns have been corrected and that any remaining concerns are not significant enough to deny the NO_X waiver. As indicated above, no violations have been recorded by the network, even since installation of the Enrel and South Boulder Creek sites in 1993. In addition, the NO_X waiver policy published in the General Preamble provides further protection by providing for granting a NO_X exemption on a contingent basis as described in section IV of this **Federal Register** document. This allows EPA to revoke the exemption if violations are recorded at any monitoring sites.

IV. Approval of the NO_X Exemption on a Contingent Basis

According to the General Preamble, approval of an exemption based solely on ambient air quality monitoring data shall be granted on a contingent basis, i.e., the exemptions will last for only as long as the area's monitoring data continue to demonstrate attainment. If EPA subsequently determines that the area has violated the ozone standard, the exemption, as of the date of the determination, will no longer apply. If a violation of the ozone NAAQS is monitored in the Denver Metropolitan Area, EPA will provide notice in the **Federal Register**. Existing transportation plans and TIPs and past conformity determinations will not be affected by a determination that the NO_X exemption no longer applies, but new conformity determinations would have to observe the NO_X requirements of the conformity rule. The State must continue to operate an appropriate ambient air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied on for the above determination must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance, and recorded in EPA's AIRS national database.

The EPA NO_X exemption guidelines, published in the General Preamble, do not require that a redesignation request be submitted with a request for a NO_X transportation conformity exemption. Conditional exemptions from the transportation conformity NO_X requirements do not substitute for the redesignation process.

The General Preamble stated that for areas which are relying on monitoring data for the exemption request, the notice proposing approval of the exemption request should provide opportunity for comment on the preliminary interpretations contained in the General Preamble. It should also offer opportunity for comment on the appropriateness of using monitoring data which are consistent with the requirements in 40 CFR part 58 and are recorded in AIRS as the basis of EPA's approval and rescission of the contingent NO_X exemption. Accordingly, EPA requests comments regarding these matters.

V. Impacts of Granting a NO_X Waiver for Denver Metropolitan Area

In ozone nonattainment areas classified as transitional, such as the Denver metropolitan area, the effect of a NO_X exemption is limited solely to the issue of whether such areas may be exempted from meeting the applicable NO_X requirements of the transportation and general conformity rule.

EPA also stated in the General Preamble that it plans to amend the transportation conformity rule to require that once an area's maintenance plan is approved, any previously approved NO_X conformity exemption no longer applies. The area must then demonstrate as part of its conformity determinations that the transportation plan and TIP are consistent with the motor vehicle emissions budgets for NO_X where such a budget is established by the maintenance plan. As currently written, none of the transportation conformity rule's NO_X requirements would ever apply to an area once such an area had received a NO_X transportation conformity exemption.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposal does not create any new requirements. Therefore, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The OMB has exempted these actions from review under Executive Order 12866.

Interested parties are invited to comment on all aspects of this proposed action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 10, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–6926 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OH45–1–5974b; FRL 5169–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Ohio for the purpose of satisfying Clean Air Act requirements. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision request as a direct final rule without prior proposal, because the USEPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the USEPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and the USEPA's analysis of it are available for public inspection during normal business hours at: (It is recommended that you telephone Bonnie Bush at (312) 353–6684, before visiting the Region 5 office.)

Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Bush, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, 60604. (312) 353–6684.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671(q).

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–7102 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL115–6791b; FRL–5166–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on October 25, 1994, for the purpose of lowering the Reid Vapor Pressure (RVP) of gasoline from 9.0 pounds per square inch (psi) to 7.2 psi for the Metro-East St. Louis (Metro-East) ozone nonattainment area which includes Madison, Monroe, and St. Clair Counties. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before April 24, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–7101 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 32–3–6502; FRL–5177–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_X) from stationary gas turbines. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before April 24, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

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California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

This document addresses EPA's proposed action for South Coast Air Quality Management District (SCAQMD) Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines. This rule was submitted by the California Air Resources Board (CARB) on December 31, 1990.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The November 25, 1992 notice should be referred to for further information on the NO_X requirements and is incorporated into this proposal by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme; [1] therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for SCAQMD Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines. The SCAQMD adopted Rule 1134 on August 4, 1989 and the rule was submitted by the CARB on December 31, 1990. This submitted rule was found to be complete on February 28, 1991 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V [2] and is being proposed for limited approval and limited disapproval.

Rule 1134 controls emissions of NO_X from the operation of gas turbines of 0.3 megawatt and larger. NO_X emissions contribute to the production of ground level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 1134 is a new rule which was adopted to control emissions from stationary gas turbines. For this source category, CARB has made a determination on the emission levels that constitute both RACT and best available retrofit control technology (BARCT). BARCT emission levels are generally more stringent than RACT levels, and CARB has published a guidance document concerning their determination for this source category. Sources subject to Rule 1134 [4] are required to meet BARCT emission limits and to use continuous emissions monitoring systems (CEMS). EPA agrees that the limits incorporated in Rule 1134 meet Federal RACT levels, and are consistent with the Agency's guidance and policy for making RACT determinations in terms of general cost-effectiveness, emission reductions, and environmental impacts.

Although SCAQMD Rule 1134 will strengthen the SIP, the rule contains deficiencies related primarily to the lack of Federal enforceability. These deficiencies include Executive Officer discretion in approving CEMS, lack of test methods, and lack of monitoring requirements to demonstrate exemption eligibility. A more detailed discussion of the sources controlled, the controls required, justification for why these controls represent RACT, and the rule deficiencies can be found in the Technical Support Document (TSD), which is available from the U.S. EPA, Region IX office. Because of the rule deficiencies, Rule 1134 is not approvable pursuant to section 182(a)(2), section 182(b)(2), section 182(f) and part D of the CAA, because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD's submitted Rule 1134 under sections 110(k)(3), 301(a), and 182(f) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of section 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent SCAQMD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under section 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has waived this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 8, 1995.

John Wise,

Acting Regional Administrator.

[FR Doc. 95–7210 Filed 3–22–95; 8:45 am]
BILLING CODE 6560–50–P

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[1] The Los Angeles-South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

[4] Rule 1134 will apply to sources which are not covered in the SCAQMD NO_X RECLAIM program.

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40 CFR Part 300

[FRL–5177–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Koch Refining Company from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Koch Refining Company Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Minnesota, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 24, 1995.

ADDRESSES: Comments may be mailed to Gladys Beard (HSRM–J) Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Minnesota Pollution Agency Public Library, 520 Lafayette RD. St. Paul, MN 55155–194. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan

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Pfundheller (H–J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (HSRM–J) Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–253 or Cheryl Allen (P–9J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–6196.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Koch refining Company Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Koch Refining Company is located at the Junction of Highway 52 and 54 in Rosemount, Dakota County, Minnesota. In 1984, the staff from the Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Health (MDH) sampled and analyzed two residential wells downgradient of the Koch Refining Company (Koch) Site. The analysis of the samples indicated the residential wells were contaminated with VOCs. The Koch Refining Company had been supplying bottled water to these two residents as well as a third since the early 1970's in response to analytical results showing high specific conductance, phenols and elevated concentrations of several major ions. Potential sources of contamination at the Site included leaks, spills and discharges from active and inactive watewater lagoons, process areas, internal pipelines and waste treatment areas.

On October 15, 1984, the Site was placed on the Permanent List Priorities (PLP) and the National Priorities List (NPL), **Federal Register** 49 page 40320.

In January 1985, a Request for Response Action (RFRA) was issued to Koch requesting Koch to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the Site. The Site investigations, reported in the 1986 and 1988 RI, identified the source of contamination in the residential wells to be from a petroleum release originating from the on-site barge dock pipeline. The RI reports also identified several areas of concern including solid waste management units that the MPCA is currently addressing under the authority contained in the Resource Conservation Recovery Act (RCRA). In addition, the petroleum releases are being addressed by the Underground Storage Tank (UST) regulations of RCRA. However, because the barge dock pipeline release was being addressed under Superfund authority, it was not included in the areas addressed by the UST regulation of RCRA. Therefore, the MPCA pursued the completion of the RI/FS and developed and implemented a Record of Decision (ROD) for the barge dock pipeline release.

The ROD identified three operable units to be addressed as a part of the remediation of the barge dock release: the Product Recovery System for removal and treatment of free floating hydrocarbon and contaminated ground water; the Ground Water Gradient Control System for containment and treatment of contaminated ground water; and the Soil Gas Extraction System for treatment of contaminated soil. Koch has implemented the product system and is working on a pilot study for the Soil Gas Extraction System. The pilot study is part of the Tank 12 release soil gas extraction system currently being addressed under the authority contained in the UST regulations of RCRA. The Tank 12 release is a petroleum spill from a storage tank number twelve.

The Underground Storage Tank Program, established in Subtitle I of the Resource Conservation Act (RCRA), as amended by the Hazardous and Solid Waste Amendments for 1984 (HSWA) is the regulatory authority with jurisdiction over cleanup of petroleum releases. Therefore, it is recommended that clean-up activities for the barge dock pipeline be implemented under the authorities contained in the UST provisions of RCRA. The MPCA is in agreement with this approach.

The transfer of Site clean-up activities from CERCLA to RCRA authority is completed once the NPL and PLP delisting has taken place.

EPA, with concurrence from the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Koch Company Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: March 9, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 95–7195 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 95–31; FCC 95–79]

Reexamination of the Comparative Standards for New Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rulemaking*, the Commission seeks additional comments relating to possible modification of the criteria currently used to select among competing applicants for new noncommercial educational broadcast facilities.

DATES: Comments are due April 24, 1995; reply comments are due May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Wagner, Mass Media Bureau, (202) 418–2720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in MM Docket No. 95–31, adopted February 28, 1995 and released March 17, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of Notice of Proposed Rulemaking

1. In its *Notice of Proposed Rulemaking In the matter of Reexamination of the Policy Statement on Comparative Broadcast Hearings*, GC Docket No. 92–52, 7 FCC Rcd 2664, 2669 [57 Fed. Reg. 14683] (1992) ("*1992 NPRM*"), the Commission initiated a general proceeding to reform the criteria used to select among mutually exclusive applicants for new broadcast facilities. While primarily concerned with the *1965 Policy Statement* on commercial broadcast hearings [1 FCC 2d 393 (1965)], the Commission noted in Paragraph 39 of the *1992 NPRM* that the standard used in noncommercial educational ("NCE") proceedings was "vague" and difficult to apply. The Commission "tentatively concluded" that the standard should be eliminated, and invited comments on: (1) whether a modified version of the "point system" proposed for commercial applicants in the *1992 NPRM* should be adopted for NCE applicants; (2) whether the criteria used to select commercial applicants are relevant in NCE proceedings; and (3) whether a different comparative approach should be followed for state-owned public broadcasters as opposed to other NCE applicants.

2. Six commenters responded to the *1992 NPRM*. Examination of the comments leads the Commission to conclude that the comments received may not be representative of the full range of actual and potential NCE station operators. Furthermore, while most commenters agree on several points, only two commenters described detailed alternatives to the current criteria, and those proposals are widely divergent.

3. For these reasons, the Commission believes it appropriate to seek additional comments regarding both the existing NCE comparative criteria and the two alternatives already submitted. In order to focus the comments and encourage beneficial input, the Commission lists eight specific questions upon which input is sought.

4. Finally, the Commission has imposed a partial freeze on the processing of mutually exclusive NCE applications until it has adopted new or revised NCE comparative criteria: as of the release date of this *Notice*, the Commission will not designate mutually exclusive NCE applications for comparative hearing. Additionally, presiding Administrative Law Judges, the Review Board, and the Commission will no longer issue decisions in pending hearing proceedings involving competing NCE applicants where those decisions would rely upon the existing NCE comparative criteria. The Judges, Board, and Commission will, however, continue to encourage and, where appropriate, approve settlements among NCE applicants now involved in hearing proceedings provided such settlements comply with current Commission policies governing those agreements.

5. The Commission is sensitive to the need to resolve the issues presented in this proceeding as quickly as possible. It has therefore established a short comment and reply period and will act expeditiously once the comment cycle is completed.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7121 Filed 3–22–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–32, RM–8545]

Radio Broadcasting Services; Parker and Port St. Joe, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Southern Broadcasting Companies, Inc., licensee of Station WPBH, Channel 233C, Port St. Joe, Florida, requesting the reallotment of Channel 233C from Port St. Joe, Florida, to Parker, Florida, and the modification of its license to specify Parker as its community of license, in accordance with Section 1.420(i) of the Commission's rules. The coordinates for Channel 233C at Parker are North Latitude 29–49–09 and West Longitude 85–15–34.

DATES: Comments must be filed on or before May 11, 1995,and reply comments on or before May 26, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Shaun A. Maher, Smithwick & Belendiuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Attorneys for Petitioner).

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FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–32, adopted March 20, 1995, and released March 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7122 Filed 3–22–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Supplementary notice of proposed rulemaking with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to cover control of Munitions List items (MLI) and Strategic List items (SLI) and demilitarization of excess property.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before May 22, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Directorate, ATTN: IMD 3D139, PDUSD (A&T), 3062 Defense Pentagon, Washington, D.C. 20301–3062. FAX (703) 602–0350. Please cite DFARS Case 92–D024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: LTC Ed King; (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on March 16, 1994 (59 FR 12223). The rule proposed amendments to the DFARS by adding a subsection at 245.604–70 and a clause at 252.245–7XXX, and by revising 245.601, 245.604, 245.610–4, and 245.7310–1 to improve control of Munitions List items (MLI) and Strategic List items (SLI) and demilitarization of excess contractor inventory. Twenty comments from four respondents were received during the public comment period. After evaluating the public comments, the DAR Council agreed to publish another proposed rule incorporating the following changes:

—The term "Security Trade Controls" is changed to read "Trade Security Controls."

—DFARS 245.604–70(a) and 252.245–7XXX(b) are rewritten for clarity.

—Subparagraph (b)(4) to DFARS 252.245–7XXX is added to cover those situations where contractor acquired property is transferred to another Government contract and is treated as Government-Furnished Property.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of property to be demilitarized, including MLI and SLI, is in the custody of large contractors. An initial Regulatory Flexibility Analysis (IRFA) has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite DAR Case 92–D024 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the proposed rule imposes additional reporting requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* On May 10, 1994, OMB approved OMB Clearance 0704–0363 for 17,500 hours. That clearance covered the reporting requirements associated with the proposed rule published on March 16, 1994 (59 FR 12223). This supplemental proposed rule imposes an additional reporting requirement at 252.245–7XXX(b)(4). As a result, a request for revision to the previously approved clearance has been submitted to OMB reflecting an increase of 2500 hours.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

Therefore it is proposed that 48 CFR Parts 245 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 245 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 245.601 is amended by revising paragraph (2) to read as follows:

§ 245.601 Definitions

* * * * *

(2) *Demilitarization* is defined in the clause at 252.245–7XXX, Demilitarization and Trade Security Controls.

* * * * *

§ 245.604 [Amended]

3. Section 245.604 is amended by removing paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

4. Section 245.604–70 is added to read as follows:

§ 245.604–70 Demilitarization and security trade controls.

(a) Contracting officers shall ensure that solicitations and contracts include a demilitarization code for each item of Government-furnished property in accordance with DoD 4160.21–M–1, Defense Demilitarization Manual.

(b) *Contract clause.*

Use the clause at 252.245–7XXX, Demilitarization and Trade Security Controls, in solicitations and contracts whenever Government property is either furnished to contractors, or whenever the contractor is authorized to acquire/manufacture items for the Government's account for use in performance of the contract.

5. Section 245.7310–1 is amended by revising paragraph (a) to read as follows:

§ 245.7310–1 Demilitarization.

* * * * *

(a) *Demilitarization.*

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth in the Defense Demilitarization Manual, DoD 4160.21–M–1.

* * * * *

6. Section 252.245–7XXX is added to read as follows:

§ 252.245–7XXX Demilitarization and Trade Security Controls.

As prescribed in 245.604–70(b), use the following clause:

Demilitarization and Trade Security Controls (XXX 1995)

(a) *Definitions.*

Demilitarization means the act of destroying the military offensive or defensive advantage inherent in certain types of equipment or material. The term includes mutilation, dumping at sea, cutting, crushing, scrapping, melting, burning or alteration designed to prevent the further use of this equipment and material for its originally intended military or lethal purpose and applies equally to material in unserviceable or serviceable condition, that has been screened through the Inventory Control Point (ICP) and declared surplus or foreign excess.

Munitions List item means any item contained in the U.S. Munitions list (22 CFR Part 121).

Trade Security Controls means control procedures designed to preclude the sale or shipment of Munitions List of Strategic List property to any entity whose interests are inimical to those of the United States. These controls are also applicable to such other selected property as may be designated by the Deputy Under Secretary of Defense (Trade Security Policy).

Strategic List item means an item assigned a code letter "A" or "B" following the export control classification number (ECCN) on the Commerce Control List, Supplement No. 1 to Section 799.1 of the Export Administration Regulations Department of Commerce.

(b) When Government property becomes excess to the needs of the Contractor in performing this contract, the Contractor shall—

(1) Ensure the appropriate demilitarization code is included in the item description on inventory schedules generated to report the excess Government property, utilizing the guidelines provided in the Defense Demilitarization Manual, DoD 4160.21–M–1;

(2) Ensure demilitarization of the items, if required; and

(3) Apply trade security controls as required by the Arms Export Control Act and 22 CFR Parts 120–130, the International Traffic in Arms Regulations; the Export Administration Act of 1979 and 15 CFR parts 700–799, the Export Administration Regulations; and DoD 4160.21–M–1, Defense Demilitarization Manual.

(4) Ensure a demilitarization code is included in the item description on all transfer documents when Contractor-acquired property is transferred to a follow on contract, utilizing the guidelines provided in the Defense Demilitarization Manual, DoD 4160.21–M–1.

(c) The Contractor also shall include this clause, including this paragraph (c) in any subcontract issued under this contract.

(End of clause)

[FR Doc. 95–7014 Filed 3–22–95; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB49

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is proposing additional changes to its regulations providing for uniform rules and procedures for the importation, exportation, and transportation of wildlife. The Service is proposing to allow the importation and exportation of dead, preserved, dried, or embedded scientific wildlife specimens by accredited scientists or accredited scientific institutions at any U.S. Customs port, or by way of the international mail. This proposed rule is a supplement to the Service's previous proposal published on September 14, 1994.

DATES: Comments must be submitted on or before May 22, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Shoemaker, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, telephone (703) 358–1949.

SUPPLEMENTARY INFORMATION: On Wednesday, September 14, 1994, the Service published in the **Federal Register** (59 FR 47212) a proposed rule amending 50 CFR parts 13 and 14. Since the date of the publication of this prior proposed rule, the Service has received numerous inquiries from the scientific community concerned about the effects of the Service's regulations upon the ordinary scientific exchange of dead, preserved, dried, or embedded taxonomic or systematic collection specimens, or parts thereof, being imported or exported through the international mail or by way of ports other than Service designated ports of entry. The Service's proposed rule of September 14, 1994, made no substantive changes to the prior requirements of the existing regulations related to such matters and only touched upon such requirements tangentially. The Service has become aware, however, in responding to the numerous public inquiries regarding the scope of the proposed rule that some reasonable concerns exist with respect to its present requirements governing the importation or exportation of taxonomic or systematic collection specimens, or parts thereof, and acknowledges that some substantive changes to those requirements are necessarily in order. The Service, therefore, is making supplementary proposals at this time, in addition to those already published in the proposed rule of September 14, 1994. The Service makes these proposals in an effort to facilitate the importation and exportation of dead, preserved, dried, or embedded scientific specimens or parts thereof, encompassed within the definition of wildlife, and thereby alleviate any unnecessary impediments to scientific exchange its existing regulations may have imposed.

The Service is proposing to facilitate the importation or exportation of dead, preserved, dried, or embedded scientific taxonomic or systematic collection specimens, or parts thereof, by accredited scientists or accredited institutions by making several changes in its current regulations. The Service, in order to clarify its requirements, will define the terms "Accredited scientific institutions" and "Accredited scientist" in the definition section provided in § 14.4. The term "Accredited scientific institutions" is defined to include any public museum, public zoological park, accredited institution of higher education, accredited member of the American Zoological Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research. The term "Accredited scientist" is defined to include any individual associated with, employed by, or under contract to and accredited

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by an accredited scientific institution for the purposes of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

The Service will also add a new section at § 14.24, to be entitled Scientific Specimens. This new section will provide for dead, preserved, dried, or embedded taxonomic or systematic collection specimens to be imported or exported by accredited scientists and/or scientific institutions by way of any U.S. Customs port or to be shipped through the international mail. This exception, however, will not apply in situations where the wildlife being imported or exported requires a permit under any of the Service regulations established in 50 CFR parts 16, 17, 18, 21, 22, and 23 that set forth the Service regulations implementing: the Lacey Act, (18 U.S.C. 42); the Endangered Species Act (ESA), (16 U.S.C. 1531–1543); the Marine Mammal Protection Act (MMPA), (16 U.S.C. 1361–1407); the Migratory Bird Treaty Act (MBTA), (16 U.S.C. 703–712); the Bald and Golden Eagle Protection Act (Eagle Act), (16 U.S.C. 668); and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), respectively. In addition this exception will not apply to any specimen or part of any specimen taken as a result of sport hunting. The term "sport hunting" will be given its common and ordinary meaning.

In general all wildlife imported into the United States must be cleared in accordance with § 14.52 by a Service officer prior to its release from detention by Customs officers. Clearance by a Service officer may be obtained only at designated ports, border ports, special ports, or any port where importation is authorized by permit, unless the wildlife is otherwise exempted from such requirement. The Service's existing exceptions to clearance requirements for certain wildlife are set forth in § 14.55. The Service is proposing to amend § 14.55 by adding a new paragraph at § 14.55(d) providing an additional exception to the Service clearance requirements for dead, preserved, dried, or embedded specimens or parts thereof, imported or exported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes.

The provisions of § 14.61 require that a completed Declaration for Importation and Exportation of Fish and Wildlife (Form 3–177) be filed with the Service when clearance is requested. A Declaration for Importation and Exportation of Wildlife does not have to be filed, however, for certain categories of wildlife provided an exception under § 14.62, entitled Exceptions to Import Declaration Requirements. The Service is amending § 14.62 by revising § § 14.62(c) and adding a new paragraph at § 14.62(d) to provide an additional exception to the import declaration requirements. This provision will provide that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of importation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, imported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. This exception, however, will not apply in situations where the wildlife being imported requires a permit under any of the Service regulations established in Title 50 CFR Parts 16, 17, 18, 21, 22, and 23.

Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 and 23 of this subchapter, the new § 14.62(d) will provide that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of importation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, imported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. A Form 3–177 must be filed within 180 days of importation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the importation occurs. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. This exception to the import declaration requirements will be limited to only exchanges made by accredited scientists or accredited scientific institutions and shall not apply to any specimens or parts thereof, taken as a result of sport hunting.

Section 14.63 set forth the requirement that a completed Declaration of Importation and Exportation of Fish or Wildlife (Form 3-177) must be filed with the Service prior to the export of any wildlife. Certain exceptions to this export declaration requirement are provided in § 14.64. The Service is amending § 14.64, by adding a new paragraph at § 14.64(b)(3) to provide an additional exception to the Service's export declaration requirements. This exception will provide that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of exportation for shipments of dead, preserved dried, or embedded scientific specimens or parts thereof, exported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. This exception, however, will not apply in situations where the wildlife being exported requires a permit under any of the Service regulations established in Title 50 CFR parts 16, 17, 18, 21, 22, and 23.

Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 and 23 of this subchapter, the new § 14.63(b)(3) will provide that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of exportation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, exported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. A Form 3–177 must be filed within 180 days of exportation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the exportation occurs. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. This exception to the export declaration requirements will be limited to only exchanges made by accredited scientists or accredited scientific institutions and will not apply to any specimens or parts thereof, taken as result of sport hunting.

The Service is currently deliberating upon the comments received to its earlier proposed rule. The Service invites public comments to these new proposals and will respond to all comments to its proposals in the final rule.

Required Determination

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Act (5 U.S.C. 601 *et seq.*). This action is not expected to have significant taking implications, as per Executive Order 12630.

This proposed rule does not contain any additional information collection requirements, beyond those already approved under OMB Approval Number 1018–0012, that would require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not contain any federalism impacts as described in Executive Order 12612.

These proposed changes in the regulations in parts 13 and 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Department Manual and an Environmental Action Memorandum is on file at the Service's office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that the proposed revision of part 14 will not effect federally listed species. The Department has certified to OMB that these regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778.

Authorship. The originators of this proposed rule are Special Agents Frank Shoemaker and Marty Hernandez, and Law Enforcement Specialist Paul McGowan, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 14—[AMENDED]

1. The authority citation for part 14 is revised to read as follows:

Authority: 16 U.S.C. 704, 712, 1382, 1538(d)-(f), 1539, 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 483(a).

2. Section 14.4, as proposed to be added at 59 FR 47217, September 14, 1994, is amended by adding paragraphs (e) and (f) to read as follows:

§ 14.4 Definitions.

* * * * *

(e) Accredited scientific institutions include any public museum, public zoological park, accredited institution of higher education, accredited member of the American Zoological Association, accredited member of the American Zoological Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research.

(f) Accredited scientist includes any individual associated with, employed by, or under contract to and accredited by an accredited scientific institution for the purposes of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

3. A new § 14.24 is added to read as follows:

§ 14.24 Scientific specimens.

Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 and 23 of this subchapter, dead, preserved, dried, or embedded scientific specimens or parts thereof, imported or exported by accredited scientists and/or accredited scientific institutions may be imported or exported through any U.S. Customs port, or may be shipped through the international mail system. *Provided:* That this exception will not apply to any specimens or parts thereof, taken as a result of sport hunting.

4. Section 14.55 is amended by adding paragraph (d) to read as follows:

§ 14.55 Exceptions to clearance requirements.

* * * * *

(d) Dead, preserved, dried, or embedded scientific specimens or parts thereof, imported or exported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. *Provided:* That this exception will not apply to any specimens or parts thereof, taken as a result of sport hunting.

5. Section 14.62 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 14.62 Exceptions to import declaration requirements.

* * * * *

(c) *General declarations for certain specimens.* Notwithstanding the provisions of § 14.61 and except for wildlife included in paragraph (d) of this section, scientific specimens imported for scientific institutions for taxonomic, systematic research, or faunal survey purposes may be described in general terms on a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177). An amended Form 3–177 must be filed within 180 days after filing of the general declaration with the Service. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information. Extensions of the 180 day period may be granted by the Director.

(d) Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 and 23 of this subchapter, a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of importation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, imported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. A Form 3–177 must be filed within 180 days of importation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the importation occurs. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. *Provided:* That this exception will not apply to any specimens or parts thereof, taken as a result of sport hunting.

6. Section 14.64 is amended by adding paragraph (b)(3) to read as follows:

§ 14.64 Exceptions to export declaration requirements.

* * * * *

(b) * * *

(3) Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 and 23 of this subchapter, a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed at the time of exportation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, exported by accredited scientists and/or accredited scientific institutions for taxonomic or systematic research purposes. A Form 3–177 must be filed within 180 days of exportation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the exportation occurs. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. *Provided:* That this exception shall not apply to any specimens or parts thereof, taken as a result of sport hunting.

Dated: February 10, 1995.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–7085 Filed 3–22–95; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition to Emergency List the Amargosa Toad (Bufo nelsoni) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Amargosa toad (*Bufo nelsoni*) under the Endangered Species Act of 1973, as amended (Act). The petition was found to present substantial information indicating the requested action may be warranted. The Service therefore initiates a status review and will prepare a 12 month finding at a later date.

DATES: The finding announced in this document was made on March 17, 1995. Comments and information concerning this petition finding must be submitted within 30 days of the publication of the finding in the **Federal Register** to be considered in the 12-month finding for this petition.

ADDRESSES: Data, information, comments, or questions concerning this finding should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C Room 125, Reno, Nevada 89502. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sheryl Barrett, Fish and Wildlife Biologist, see **ADDRESSES** section above or telephone 702–784–5227.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. This finding is to be based on information contained in the petition and otherwise available to the Service at the time the finding is made. If the finding is that substantial information was presented, the Service also is required to review the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

On September 21, 1994, the Service received a petition dated September 19, 1994, from Mr. D.C. "Jasper" Carlton, Director of the Biodiversity Legal Foundation, to emergency list the Amargosa toad (*Bufo nelsoni*) as endangered under the Endangered Species Act of 1973, as amended (Act).

The petitioner states that the Amargosa toad qualifies for emergency listing as endangered under the Act due to present and threatened destruction, modification, or curtailment of habitat or range; overuse of habitat for commercial, recreational, scientific, or educational purposes; other natural or man-made factors affecting its continued existence; severely restricted range; and inadequacy of existing regulatory mechanisms. The Amargosa toad is endemic to the Oasis Valley, Nye County, Nevada, in an approximately 9-mile stretch of the Amargosa River and nearby springs from Springdale to the Narrows south of Beatty. The petition noted that Hoff (1994) asserts that off-road vehicles, water diversions, grazing, and non-native predators have caused this species to decline from the thousands reported in 1958 to only 30 adult and juvenile toads observed in 1994 in Oasis Valley.

The Service included the Amargosa toad as a category 2 species in the August 2, 1977, Animal Notice of Review (42 FR 39121). It was subsequently categorized as a category 1 species in the December 30, 1982, Notice of Review (47 FR 58454) and again as a category 2 species in the September 18, 1985, Notice of Review (50 FR 37960). On November 14, 1994, the Service changed its classification back to category 1, with a listing priority of 2 (59 FR 58982). Assignment of the Amargosa toad to category 1 means that this is a taxa for which the Service has on file sufficient information on biological vulnerability and threats to support a proposal to list the taxa as an endangered or threatened species.

The Service finds that substantial information has been presented indicating that listing of the Amargosa toad may be warranted. However, emergency listing is not warranted at this time because an immediate threat of extinction does not exist. Several actions (e.g., fencing and removing introduced crayfish from Lower Indian springs, and removing catfish from Harlan/Keel Spring, etc.) aimed at conserving this species are ongoing. This decision is based on scientific and commercial information contained in the petition, provided as attachments to the petition, and otherwise available to the Service. The Service requests any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Amargosa toad. Of particular interest is information on the Amargosa toad regarding—(1) The existence and status of additional populations, (2) environmental factors determining its distribution, (3) life history information, and (4) existing conservation efforts.

References Cited

A complete list of all references cited herein is available upon request from the Reno Field Office (see **ADDRESSES** section).

Authors

The primary authors of this document are Dr. Patricia G. Zenone and Sheryl L. Barrett of the Reno Field Office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S. C. 1531 *et seq.*).

Dated: March 17, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–7204 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Rule to Reclassify the Bald Eagle From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reopening the comment period on the bald eagle reclassification proposal for thirty days. On July 12, 1994, the Service proposed reclassifying the bald eagles of the lower 48 States as threatened, except those already listed as threatened and those of the Southwestern Recovery Region and Mexico. The bald eagles of the Southwestern Recovery Region were proposed to remain listed as endangered. The Service also proposed classifying bald eagles in Mexico as endangered; they are not currently listed as endangered or threatened. Specific public comment was solicited on the status of bald eagles in the Southwest and Mexico and the distinctness of those eagles as a separate population. New information indicates that the Southwestern and Mexican bald eagles may not warrant a classification as endangered. The Service is making available for public review and comment information recently received about bald eagles of the Southwestern Recovery Region.

DATES: The comment period on the proposal is reopened, effective immediately, and will close on April 24, 1995.

ADDRESSES: Interested parties may obtain copies of the comments and other information listed below from the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612/725–3536; fax 612/725–3526). Copies may also be obtained from the State Supervisor, Arizona Ecological Services State Office, 2321 W. Royal Palm Road, Phoenix, Arizona 85021 (602/640–2720; fax 602/640–2730).

Send written comments and other materials to the above Ft. Snelling, Minnesota, Regional Office address. Comments and materials received will be available for public inspection during normal business hours, by appointment, at that address.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201 (309/793–5800; fax 309/793–5804).

SUPPLEMENTARY INFORMATION:

Background

The bald eagle (*Haliaeetus leucocephalus*) is listed as endangered under the Endangered Species Act of 1973, as amended (Act), in the lower 48 States except Washington, Oregon, Minnesota, Wisconsin, and Michigan, where it is listed as threatened. The bald eagle also occurs in Alaska and Canada, where it is not at risk and is not protected under the Act; and in small numbers in northern Mexico. The Service proposed in the July 12, 1994, **Federal Register** notice (59 FR 35584) to reclassify the bald eagle from endangered to threatened in the lower 48 States except in certain portions of the American Southwest and to classify bald eagles in Mexico as endangered. That notice also stated that comments and other information received by the Service may lead to a final regulation that differs from the original proposal, including the possible complete reclassification to threatened status for all bald eagles south of Canada..

The Service has received significant new information regarding Southwestern bald eagles and has re-examined other information. Existing information at the time of the proposed rule fails to identify any unique genetic characteristics possessed by the Southwestern bald eagles. New information indicates that the bald eagles of the Southwestern Recovery Region and Mexico are not likely to be reproductively isolated. Evidence of recruitment has recently been found from the Southeastern Recovery Region into the Southwestern Recovery Region and Mexico. Unique threats to Southwestern bald eagles remain, but their significance is diminished in light of immigration into the population segment.

The Service is now considering reclassifying the eagles of the Southwestern Recovery Region as threatened, and classifying the bald eagles of Mexico as threatened. The bald eagle would remain threatened in the five States where it is currently listed as threatened. This modified action, if finalized, would not alter those conservation measures already in force to protect the species and its habitats.

The **Federal Register** notice announcing the proposed rule opened a public comment period that ended on October 11, 1994; the deadline for receipt of public hearing requests was August 26, 1994. Public hearings were subsequently held, and the comment period was extended in a September 30, 1994 notice (59 FR 49908) to accommodate them. The extended comment period closed November 9, 1994. This notice reopens the comment period for 30 days to allow interested parties to obtain copies of the following documents and to submit additional comments on the proposed rule.

References

Driscoll, D.E., R.I. Mesta and J.T. Driscoll. 1993. Population ecology and demography of bald eagles in Arizona: 1991–1993. American Eagle Research Institute, Mesa, Arizona 74pp.

Driscoll, Dan (American Eagle Research Institute) 1995. Letter to U.S. Fish and Wildlife Service, Phoenix, Arizona.

Driscoll, Dan (American Eagle Research Institute) 1995. Letter to U.S. Fish and Wildlife Service, Rock Island, Illinois.

Mabie, D.W., M.T. Merendino and D.H Reid. 1994. Dispersal of bald eagles fledged in Texas. Journal of Raptor Research 28(4):213–219.

Montoya, Bill (Director, New Mexico Department of Game & Fish). 1994. Letter to U.S. Fish and Wildlife Service.

Shroufe, Duane. (Director, Arizona Game & Fish Department). 1994. Letter to U.S. Fish and Wildlife Service.

Spiller, Sam. (State Supervisor, U.S. Fish and Wildlife Service, Phoenix, Arizona). 1994. Memo to U.S. Fish and Wildlife Service, Twin Cities, Minnesota.

Author

The primary author of this notice is Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 15, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–7205 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Southern Rocky Mountain Population of the Boreal Toad as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the southern Rocky Mountain population of the boreal toad (*Bufo boreas boreas*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants.

DATES: The finding announced in this document was made on March 15, 1995. Comments, questions, or information regarding status and threats to the boreal toad may be submitted until further notice.

ADDRESSES: Comments, questions, or information concerning this finding may be submitted to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506–3946. The petition, finding, and supporting documents are available for public inspection, by appointment,

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during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Ireland (see **ADDRESSES** above) at telephone (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Fish and Wildlife Service (Service) make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Notice of such 12-month findings are to be published promptly in the **Federal Register**. This notice meets the latter requirement for the Service's 12-month administrative finding regarding the petition discussed below. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision document.

On September 30, 1993, the Service received a petition dated September 27, 1993, from the Biodiversity Legal Foundation located in Boulder, Colorado, and Dr. Peter Hovingh, a professor at the University of Utah. The petition requested that the southern Rocky Mountain population of the "western boreal toad" (*Bufo boreas boreas*) be listed as endangered and that critical habitat be designated. A 90-day finding announced in the **Federal Register** on July 22, 1994 (59 FR 37439), indicated that the petition presented substantial information indicating that the requested action may be warranted.

The finding also announced a public comment period extending to September 20, 1994. Forty-three comment letters were received. Two commenters provided scientific information on status, threats, and genetics of the boreal toad and concluded that listing was warranted. A third commenter provided a hypothesis for boreal toad declines. The other 40 letters opposed Federal listing and 9 provided information on status or regulatory protection afforded to the southern Rocky Mountain population of the boreal toad. Several residents of the Laramie, Wyoming, area were concerned about restriction of mosquito spraying. The Service does not believe that mosquito spraying in Laramie contributed to declines of the boreal toad because Laramie lies below 2,300 meters (7,500 feet) which is the lower elevational range inhabited by the boreal toad.

Boreal toads were once common throughout much of the high elevations in Colorado (Burger and Bragg 1946, Smith et al. 1965, Hammerson 1989) and in the Sierra Madre, Medicine Bow, and southern Laramie Mountains of southeast Wyoming (Baxter and Stone 1985). Boreal toads were found at only three localities at the southern periphery of their range in the San Juan Mountains of New Mexico: Lagunitas, Canjilon and Trout Lakes (Campbell and Degenhardt 1971, Jones 1978, New Mexico Department of Game and Fish 1988). Altitudinal distribution ranges from 2,300 meters (7,500 feet) Baxter 1952) to approximately 3,700 meters (12,000 feet) (C. Pague, Colorado Natural Heritage Program, *in litt.* 1994).

Declines in boreal toad demes (a small group or population of organisms that interbreed) were first documented in New Mexico in 1984 (Woodward and Mitchell 1985), in Colorado in 1974 (Carey 1993), and in southern Wyoming in 1986 (Corn et al. 1989). Boreal toads are now extirpated from the three known historic sites in New Mexico (Stuart and Painter 1994). Corn et al. (1989) found that boreal toads were absent from 83 percent of locations in Colorado and Wyoming previously known to contain toads. Recent surveys revealed several previously unknown locations and extant historical locations of nonbreeding individuals and several breeding sites; but survey data indicated that boreal toads are absent from approximately 96 percent of localities that contained known historical records of suitable habitat.

Physical and climatic conditions separate the southern Rocky Mountain population of the boreal toad from populations in western Wyoming and northeastern Utah. Because of this geographic isolation, the Service believes that the southern Rocky Mountain population of the boreal toad can be listed as a distinct vertebrate population segment under the Act.

Summary of Factors Affecting the Species

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the southern Rocky Mountain population of the boreal toad.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The southern Rocky Mountain population of the boreal toad is found primarily on public land within State forests, national forests, and lands administered by the Bureau of Reclamation, Bureau of Land Management, and National Park Service. The use of these lands ranges from recreational to intensive timber and grazing management and watershed alteration activities. Activities that destroy, modify, or curtail habitat are likely to contribute to the continued decline in toad numbers; however, the Service does not believe that recreational or habitat management activities brought about rangewide decline of the southern Rocky Mountain population of the boreal toad.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The boreal toad has no commercial value and any recreational values are low and nonconsumptive. Scientific and educational collecting is not thought to have been widespread over the past decade. Overutilization is not currently thought to contribute to declines in the southern Rocky Mountain population of the boreal toad.

C. *Diseases or predation.* Carey (1987, 1993) indicated that the proximate cause of the widespread decline of boreal toads in northern New Mexico and west-central Colorado was a result of infection by *Aeromonas hydrophila* bacteria (red-leg disease). However, *A. hydrophila* is common in the microfauna carried by amphibians, and it does not cause infection or death in healthy individuals. As a result, toads likely were stressed by adverse environmental factors, such as acid rain, pollution, or increased ultraviolet radiation, and later succumbed to *A. hydrophila* infection (Carey 1987). Competition and predation by native and nonnative species occurs but is probably a minor impact.

D. *The inadequacy of existing regulatory mechanisms.* The boreal toad is listed as endangered by Colorado and New Mexico and is a nongame animal in Wyoming. The Colorado Division of Wildlife has formed a recovery team and is in the final stages of preparing a State recovery plan (Tom Nesler, Colorado Division of Wildlife, pers. comm. 1994). In 1993 the Colorado Division of Wildlife entered into a cooperative agreement with the Service for research on the boreal toad and has also initiated a conservation agreement with a private mining company whose land contains boreal toad breeding sites.

A conservation agreement will be developed for the southern Rocky Mountain population of the boreal toad between the Service, Forest Service, National Park Service, Bureau of Land Management, National Biological Survey, Colorado Division of Wildlife, and perhaps other agencies. The agreement will serve as a commitment by the various agencies to work toward recovery of the southern Rocky Mountain population of the boreal toad. A cooperatively formulated conservation strategy that complements the Colorado Division of Wildlife's recovery plan and that implements the conservation agreement has been recommended by the Forest Service (Elizabeth Estill, U.S. Forest Service, *in litt.* 1994).

A sensitive species policy has been developed under the National Forest Management Act (16 U.S.C. 1600 *et seq.*) which directs the U.S. Forest Service to manage for sensitive or candidate species such as the boreal toad. In 1988, policies were developed by both the National Park Service and the Bureau of Land Management to conserve federally listed or rare species, thus ensuring that their actions do not impact boreal toads. Other Federal resource laws that may provide protection for the boreal toad are the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), Clean Water Act (33 U.S.C. 1344 *et seq.*) and Clean Air Act (42 U.S.C. 1857 *et seq.*).

E. *Other natural or manmade factors affecting its continued existence.* Factors, such as acid rain, pollution, and increased ultraviolet radiation, may be causing declines of the southern Rocky Mountain population of the boreal toad. The extent of natural population fluctuation remains unknown and may be working synergistically with other environmental or anthropogenic factors to cause declines in toad populations. Fishery management activities also may cause decline or extirpation in localized areas.

Finding

The service has reviewed the petition, the literature cited in the petition, other available literature and information, comments received following the 90-day finding, and consulted with biologists and researchers familiar with the boreal toad. On the basis of the best scientific and commercial information available, which is discussed above under the five listing factors, the Service finds the petitioned action is warranted but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(B)(iii) of the Act states that the Service may make a warranted but precluded finding if it can demonstrate that (1) an immediate proposed rule is precluded by other pending proposals, and that (2) expeditious progress is being made on other listing actions. Expeditious progress in listing endangered and threatened species is being made and is reported annually in the **Federal Register**. Furthermore, on September 21, 1983 (48 FR 43098), the Service published in the **Federal Register** its system for prioritizing species for listing. The system considers magnitude of threat, immediacy of threat, and taxonomic distinctiveness in assigning species numerical listing priorities on a scale of 1 to 12. The southern Rocky Mountain population of the boreal toad is assigned a listing priority of 3 because noted declines exist throughout its range (magnitude is high), as far as can be determined the threat(s) still exists (it is imminent), and for taxonomic purposes populations are treated as subspecies.

Although a priority 3 is a relatively high listing priority, there are three candidate species in Colorado that appear to be more in need of listing, thus precluding the listing of the southern Rocky Mountain population of the boreal toad at this time. One candidate is the mountain plover (*Charadrius montanus*) for which the Service is preparing a proposed rule. The Service regards the magnitude and immediacy of threat to the mountain plover to be at the same level as they are for the boreal toad; however, the mountain plover is a full species and is being considered for listing throughout its range, resulting in a higher listing priority of 2. The Service has been petitioned to list the Preble's meadow jumping mouse (*Zapus hudsonius preblei*). If a warranted finding is made, the listing priority for the mouse will likely be 3, the same as the boreal toad; however, the mouse's entire range is being considered for listing, not just a portion, and there are fewer individual mice than boreal toads. A plant, *Phacelia submutica* (DeBeque phacelia), also has a higher listing priority (2) than the boreal toad. Consequently, listing of the boreal toad will follow listing of the other three species unless it is determined that listing one or more of those species is not warranted or that listing the boreal toad is not warranted.

The petitioners requested that critical habitat be designated for the southern Rocky Mountain population of the boreal toad. Designation of critical habitat is not petitionable under the Act; however, critical habitat will be proposed at the time the population is proposed for listing unless it is not determinable or not prudent.

As required by section 4(b)(3)(C)(i) of the Act, the Service will reassess the warranted but precluded finding after 1 year.

The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the Western Colorado Office (see **ADDRESSES** section).

Reference Cited

A complete list of all references cited is available upon request from the Western Colorado Office (see **ADDRESSES** section).

Author: The primary author of this document is Terry Ireland, Western Colorado Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: March 15, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–7203 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–55–M

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UMI

Notices

Federal Register

Vol. 60, No. 56

Thursday, March 23, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–015–1]

Determination of Nonregulated Status for Additional Calgene, Inc., Genetically Engineered FLAVR SAVR™ Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service is announcing that it has added 20 additional genetically engineered tomato lines to those subject to its October 19, 1992, interpretive ruling that the subject FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that 20 additional delayed softening tomato lines, which have been modified by the incorporation of genetic material described by Calgene, Inc., in its initial request for an interpretive ruling, will no longer be subject to regulation under 7 CFR part 340.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Reding, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612.

SUPPLEMENTARY INFORMATION: On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that the Calgene, Inc., FLAVR SAVR™ tomato does not present a plant pest risk and is not a regulated article under the regulations contained in 7 CFR part 340. This action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article, based on an absence of plant pest risk. The effect of the action was that previously field tested lines of the FLAVR SAVR™ tomato and their progeny would no longer be regulated under these regulations.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomatoes using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to the Agency were representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without a permit. One additional FLAVR SAVR™ tomato line was added to the original determination on October 3, 1994 (59 FR 50220, Docket No. 94–096–1), and nine additional FLAVR SAVR™ tomato lines were added to the original determination on November 18, 1994 (59 FR 59746, Docket No. 94–125–1).

Seventeen of the 20 additional FLAVR SAVR™—tomato lines that are the subject of this notice were constructed using the plasmid vector pCGN4109, and the remaining three lines were constructed using the plasmid vector pCGN1436. These two vectors were among the seven included in Calgene's initial petition to APHIS. In our determination of October 19, 1992, the lines using these vectors were not deregulated because they had not been field tested. These lines have since been field tested in accordance with APHIS regulations at 7 CFR part 340, and data provided to APHIS indicate that the new transformants, produced in a manner identical to the earlier transformant lines, behave similarly to those earlier FLAVR SAVR™ tomato lines to which the determination initially applied. Reports from field trials and other data indicate that the new tomato lines grow normally, exhibit the expected morphological, reproductive, and physiological properties, and do not have unexpected pest or disease susceptibility or symptoms. Therefore, the APHIS determination of nonregulated status of October 19, 1992, applies as well to the new transformed lines.

Done in Washington, DC, this 16th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7132 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on April 20, 1995 at the Medford Bureau of Land Management Office, 3040 Biddle Road, Medford, Oregon. The meeting will begin at 9:30 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) Context of the Advisory Committee; including background on the President's Forest Plan; (2) Introduction of members and orientation; (3) Meeting operating guidelines; (4) Mission and purpose of the Province Advisory Committee and its relationship to the PIEC; (5) Brief presentation by Advisory Committee members on who they represent; and (6) Open public forum. All Southwest Oregon Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Rogue River National Forest, P.O. Box 520, Medford, Oregon 97501, 503–858–2322.

Dated: March 17, 1995.

James T. Gladen,

Forest Supervisor.

[FR Doc. 95–7211 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–11–M

Forms Under Review by Office of Management and Budget

March 17, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Rural Utilities Service

RUS Electric Loan Application and Related Reporting Burdens
RUS forms 740C, 740G, 7, 12, 325a–k, 341, 345, 726, 7a
Individuals or households; Business or other for-profit; Not-for-profit institutions; 3,447 responses; 120,268 hours
Sue Arnold, (202) 690–1078

- National Agricultural Statistics Service

Agricultural Prices
Business or other for-profit; Farms; 81,170 responses; 13,918 hours
Larry Gambrell, (202) 720–5778

Extension

- Food and Consumer Service

7 CFR Part 235–State Administrative Expense Funds
FNS–74, FNS–525
State, Local or Tribal Government; 100,036 responses; 34,461 hours
Angella Love, (703) 305–2607

New Collection

- Food and Consumer Service

Evaluation of Retailer Compliance Management Demonstrations In EBT–Ready States and Related Initiatives/ Evaluation of Agreements With State Law Enforcement Bureaus (SLEB)
State, Local or Tribal Government; 31 responses; 104 hours
Ken Offerman, (703) 305–2124.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–7104 Filed 3–22–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Joseph Jeno Nandory

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Joseph Jeno Nandory (Nandory) of its intention to initiate an administrative proceeding against him pursuant to Part 788 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] based on allegations that, Nandory, on or about December 6, 1989, in violation of Section 787.3(a) of the Regulations, attempted to export U.S.-origin computer-related equipment from the United States to Hungary, without obtaining from the Department the validated export license required by Section 772.1(b) of the Regulations;

The Department and Nandory having entered into a Consent Agreement whereby the Department and Nandory have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, that Joseph Jeno Nandory, shall, for a period of five years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations.

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

A. All outstanding individual validated export licenses in which Nandory appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Nandory's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Nandory by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported

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or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the **Federal Register**.

Entered this 14th day of March 1995.

This Order is effective immediately.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 95–7091 Filed 3–22–95; 8:45 am]

BILLING CODE 3510–PT–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent to Grant a Limited Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Advanced Optical Equipment & Systems Corporations, a corporation of the State of New Mexico, a limited exclusive license under: United States Patent No. 5,008,593 filed in the name of L.A. Schlie for "Coaxial Liquid Cooling of High Power Microwave Excited Plasma UV Lamps"; United States Patent No. 5,055,741 filed in the name of L.A. Schlie for "Liquid Coolant for High Power Microwave Excited Plasma Tubes"; United States Patent No. 5,301,203 filed in the names of L.A. Schlie and R.D. Rathge for a "Scalable and Stable, CW Photolytic Atomic Iodine Laser"; United States Patent No. 5,235,251 filed in the name of L.A. Schlie for "Hydraulic Fluid Cooling of High Power Microwave Plasma Tubes"; U.S. Patent Application Serial No. 08/157,848 filed in the names of L.A. Schlie and R.D. Rathge for "Turbo-Molecular Blower"; U.S. Patent Application Serial No. 07/949,615 filed in the names of L.A. Schlie and R.D. Rathge for a "Repetitively Pulsed, Closed Cycle Photolytic Atomic Iodine Laser"; and U.S. Patent Application Serial No. 08/282,842 filed in the names of L.A. Schlie and R.D. Rathge for a "Compact, Burst Mode, Pulsed, High Energy Blowdown Flow Photolytic Atomic Iodine Laser.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patents and patent applications may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–7092 Filed 3–22–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 & 28 April 1995.

Time of Meeting: 0900–1600, 27 April 1995. 0900–1500, 28 April 1995.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study on "Technical Architecture C4I" will meet for discussions on ASB business. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administration Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–7089 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 April 1995.

Time of Meeting: 0800–1200.

Place: Fort Huachuca, AZ.

Agenda: The Army Science Board's (ASB) Battle Lab Issue Group and the Summer Study on "Technology Transfer from the Technology Base to the Customer" will visit three Training and Doctrine Command (TRADOC) Battle Labs. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–7140 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 5 May 1995.

Time of Meeting: 0800–1200.

Place: Fort Benning, GA.

Agenda: The Army Science Board's (ASB) Battle Lab Issue Group and the Summer Study on "Technology Transfer from the Technology Base to the Customer" will visit three Training and Doctrine Command (TRADOC) Battle Labs. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–7141 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4 May 1995.

Time of Meeting: 0800–1200.

Place: Fort Gordon, GA.

Agenda: The Army Science Board's (ASB) Battle Lab Issue Group and the Summer Study on "Technology Transfer from the Technology Base to the Customer" will visit three Training and Doctrine Command (TRADOC) Battle Labs. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–7142 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 14 April. 1995.

Time of Meeting: 0800–1200.

Place: Fort Leavenworth, KS.

Agenda: The Army Science Board's (ASB) Battle Lab Issue Group and the Summer Study on "Technology Transfer from the Technology base to the Customer" will visit three Training and Doctrine Command (TRADOC) Battle Labs. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–7143 Filed 3–22–95; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on April 4, 1995; April 11, 1995; April 18, 1995; and April 25, 1995, at 10:00 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provisions of 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: March 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7083 Filed 3–22–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DOD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are criteria for assessing successful partnerships and partnership successes within DOD.

DATES: The meeting is to be held Wednesday April 5, 1995, in room 1E801, Conference Room 4 the Pentagon from 1 p.m. until 3 p.m. Comments should be received by March 29, 1995, in order to be considered at the April 5 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Civilian Personnel Management Service, 2461 Eisenhower Ave., Hoffman Building #1, Suite 152, Alexandria, VA 22331–0900, (703) 325–1380.

Dated: March 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 95–7084 Filed 3–22–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on April 10–14, 1995. The meeting will be held at the Commander in Chief, U.S. Pacific Fleet Headquarters, Pearl Harbor, Oahu, HI; Pacific Missile Range Facility, Kauai, HI; and Maui High Performance Computer Center and Haleakala Observatory, Maui, HI. The meeting will commence at 9 a.m. and terminate at 5 p.m. on April 10; commence at 8 a.m. and terminate at 5 p.m. on April 11; commence at 12 Noon and terminate at 5 p.m. on April 12; commence at 12:30 p.m. and terminate at 8 p.m. on April 13; and commence at 9 a.m. and terminate at 2:30 p.m. on April 14, 1995. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to expose the Committee members to fleet operations and complexities in the Pacific Theater. The agenda will consist of briefings, discussions and demonstrations related to joint interoperability, forward presence, C4I, quality of life, logistics, maintenance, training and tactics, theater air defense, cooperative engagement, reduced ship manning, system life cycle cost reduction, and relevant technology issues. These briefings, discussions, and demonstrations will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–6769.

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Dated: March 17, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–7114 Filed 3–22–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Deviation from the Department of Energy Assistance Regulations

AGENCY: Department of Energy.

ACTION: Notice of class deviation.

SUMMARY: The Department of Energy (DOE) hereby announces a class deviation from its Financial Assistance Regulations. This deviation removes, on a pilot basis for noncompetitive financial assistance awards of $1 million or less, the requirements to publish a **Federal Register** announcement prior to award and, then, to delay 14 calendar days before making the award. This deviation will save public funds and reduce paperwork by allowing smaller financial assistance actions to be awarded in a more timely fashion involving fewer DOE offices and employees.

EFFECTIVE DATE: April 7, 1995.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Energy announces that, pursuant to 10 CFR 600.4, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for a class deviation to the Department's Financial Assistance Rules. A deviation to 10 CFR 600.7 has been approved which provides that, on a Department-wide two year pilot basis, noncompetitive financial assistance awards under $1 million are not required to be published in the **Federal Register** 14 calendar days prior to making an award. This deviation was approved to avoid the time consuming and labor intensive efforts involved in preparation and review of the announcements, and the 14 days of publication before award could be made for relatively low dollar value actions. Publication of these pending noncompetitive award announcements have not resulted in their intended purpose which was to make potentially qualified recipients aware of pending noncompetitive financial assistance awards so they might make their qualifications known to the awarding office, and possibly compete for the award. During the many years that the Department has published these announcements, only a very few responses have been received, and, of those, most had nothing to do with the noncompetitive nature of the awards. This deviation will result in streamlining the process of awarding noncompetitive financial assistance actions, thereby saving the Government resources of time and money. It is anticipated that, by the time the deviation expires, DOE will have completed a rulemaking to remove the publication requirement on a permanent basis.

FOR FURTHER INFORMATION CONTACT: Stephen D. Mournighan, Office of Management Review and Analysis, [HR–523], U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC.

Issued in Washington, DC, on September 30, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

Editorial note: This document was received at the Office of the Federal Register on March 20, 1995.

[FR Doc. 95–7201 Filed 3–22–95; 8:45 am]

BILLING CODE 6450–01–P

Seattle Regional Support Office

Notice of Pacific Northwest and Alaska Regional Bioenergy Program

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Applications Number DE–PS51–95R020563.

SUMMARY: The U.S. Department of Energy (DOE) Seattle Regional Support Office (SRSO) announces its intention to issue a competitive solicitation and make financial assistance awards for bioenergy-related demonstration, development and commercialization projects in support of the Pacific Northwest and Alaska Regional Bioenergy Program. This action is subject to the DOE Financial Assistance Rules (10 CFR Part 600).

DATES: The solicitation is anticipated to be released on or about March 17, 1995.

ADDRESSES: To obtain a copy of the solicitation, forward your request to the U.S. Department of Energy's Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104, Attn: Ms. Carol A. Curtis, Grants/Contracts Specialist. Only written requests for this solicitation will be honored. For convenience, requests for the solicitation may be faxed to Ms. Curtis at (206) 553–2200. Please reference solicitation DE–PS51–95R020563.

FOR FURTHER INFORMATION CONTACT: Carol Curtis, phone number 206–553–2166.

SUPPLEMENTARY INFORMATION:

The DOE established regional bioenergy programs to promote the development of effective uses of biomass for energy. The legislative authority (Senate Appropriation Bill) directs DOE to "carry out activities related to technology transfer, industry support, resource assessment, and matching local resources to conversion technologies." The solicitation will be one approach used to carry out this directive. The DOE is seeking applications for projects that demonstrate bioenergy technologies which produce energy savings through displacement of non-renewable resources, or that produce energy through the direct combustion of renewable resources. Projects will also be evaluated on the ability of the proposed project to minimize environmental impacts and improve the economic viability of a specific bioenergy industry or technology. Projects shall be located in the region consisting of the states of: Washington, Oregon, Idaho, Alaska, and Montana. All project sponsors will be required to provide a minimum cost sharing of 1:1. Acceptable demonstration technologies will use one or more of the following biomass fuels: landfill debris and landfill gas; logging residues; agricultural crops and wastes; biomass farming; urban, forest, and forest products wood wastes; municipal solid waste; animal wastes; and food processing wastes. Bioenergy projects can produce electricity, mechanical power, space heat, and industrial process heat. The DOE plans to award multiple grants valued at approximately $100,000 for each project. The DOE funding for this program in FY 1995 is about $500,000.

This solicitation will be issued on or about March 17, 1995, and will contain detailed information on funding, cost-sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due May 10, 1995. Awards will be announced prior to September 30, 1995.

All responsible sources are encouraged to submit an application. All projects must comply with the requirements of the National Energy Policy Act (NEPA).

Issued in Seattle, Washington on March 2, 1995.

Carol Curtis,

Grants/Contract Specialist.

[FR Doc. 95–7202 Filed 3–22–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–72–000]

Northern Natural Gas Company; Notice of Cancellation of Technical Conference

March 17, 1995.

Take notice that the technical conference originally scheduled to be held on Friday, March 24, 1995, at 10 a.m., has been canceled until further notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–7094 Filed 3–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–259–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

March 17, 1995.

Take notice that on March 13, 1995, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP95–259–000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate a delivery tap, authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to operate an existing delivery tap, which would be available as a delivery point for any shipper receiving transportation service from National Fuel. The delivery tap is located between National Fuel's Line N and the Three River Pipeline, in Independence Township, Beaver County, Pennsylvania. National Fuel states that the proposed quantities of natural gas to be delivered to each of the affected delivery points and end-use of the gas would be up to 60,000 Dth per day. National Fuel also states that the gas would serve various commercial, industrial and residential end-users downstream of the Three Rivers Pipeline.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–7095 Filed 3–22–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5178–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 24, 1995.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 1189.05.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Identification, Listing, and Rulemaking Petitions (ICR No. 1189.05). This is a renewal and amendment of an approved collection (OMB No. 2050–0053). This renewal includes Part 260 and 261 requirements pertaining to wood-preserving waste (ICR No. 1579) previously approved under OMB No. 2050–0115.

Abstract: This ICR is a comprehensive presentation of the information requirements to apply for petitions, variances, exclusions, and exemptions from various RCRA requirements, as provided in Subpart C of 40 CFR Part 260 and 261.

For rulemaking petitions, all petitioners must submit certain basic information, including name and address, and interest in, description of, and need and justification for the proposed action. In addition, petitioners for equivalent testing or analytical methods must also demonstrate that the proposed method is equal to or superior to the specified method and provide additional information such as a description of proposed method and comparative results of proposed and specified methods. Petitioners seeking to delist a waste produced at a particular facility must demonstrate that the waste does not exhibit the characteristics for which it was listed or any additional factors which may cause the waste to be hazardous. Facilities requesting variances from classification as a solid waste for specified recycled materials must address the relevant criteria contained in § 260.31. EPA uses this information to substantiate that these materials actually are being recycled and are not being accumulated to evade hazardous waste regulation. Owners/operators of enclosed flame combustion devices requesting variances for classification as a boiler must demonstrate the compatibility of the proposed device with classification as a boiler and address the relevant criteria detailed in §§ 260.32 and 260.33 in their demonstrations.

For hazardous waste exclusions, §§ 261.3 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must either submit supporting information or keep detailed records. Facility requirements for treatability study exemptions for samples of hazardous waste not subject to DOT or USPS shipping requirements must comply with the information requirements of § 261.4(d)(2). Information requests include initial notification, recordkeeping, reporting, and final disposition notification. Facilities generating and collecting treatability study samples may also petition to increase sample quantity limits in excess of the specified limits. EPA uses this information to track the treatability study sample wastes, to confirm the proper management of these wastes, and to ensure that only legitimate treatability study activities are conducted.

For hazardous waste listing exemptions, 40 CFR 261.31(b)(2)(ii) details informational requirements for generators and treatment, storage and disposal facilities proving their sludges are exempt from listing as F037 and F038 wastes. Section 261.35(b) and (c) sets out the requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents.

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Burden Statement: The estimated average public reporting burden for this collection varies from 4 hours per response (e.g., nonwastewater exemption) to 1,618 hours per response (e.g., delisting petition) depending on the type of petition or demonstration. This estimate includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden varies from 11 to 73 hours per recordkeeper, depending on the type of petition or demonstration.

Respondents: Facilities generating hazardous and solid waste, generators and collectors of treatability study samples, and laboratories and other facilities conducting treatability studies.

Estimated Number of Respondents: 250.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 39,937 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR # 1189.05 and OMB # 2050–0053) to:

Sandy Farmer, EPA ICR # 1189.05, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, S.W., Washington, D.C. 20460
and
Jonathan Gledhill, OMB # 2050–0053, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., N.W., Washington, D.C. 20503

Dated: March 16, 1995.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 95–7194 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5178–1]

Public Water System Supervision Program Revision for the Government of the Virgin Islands

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Government of the Virgin Islands is revising its approved Public Water System Supervision Primacy Program. The Government of the Virgin Islands has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the Synthetic Organic Chemicals and Inorganic Chemicals; Monitoring for Unregulated Contaminants rule (Phase 2) Monitoring for Volatile Organic Chemicals rule (Phase 2B), and the Synthetic Organic Chemicals and Inorganic Chemicals rule (Phase 5). These regulations were promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) with May 27, 1992 correction (57 FR 22178); and July 17, 1992 (57 FR 31776), respectively.

The USEPA has determined that the Virgin Islands' Phase 2, 2B and 5 regulations are no less stringent than the corresponding Federal regulations and that the Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion,this determination shall become final and effective thirty (30) days after publication of this **Federal Register** notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Carl-Axel P. Soderberg—Director, U.S. Environmental Protection Agency, Caribbean Field Office, Centrol Europa Building, 1492 Ponce De Leon Avenue, Suite—417, Santurce, Puerto Rico 00907.

All documents relating to this determination are available for inspection between the hours of 9 am and 4:30 pm, Monday through Friday, at the following offices:

Department of Planning and Natural Resources, Public Water Supply Supervision Program, Government of the Virgin Islands, Nisky Center, Suite 231, Nisky 45A, St. Thomas, Virgin Islands 00802

U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite—417, Santurce, Puerto Rico 00907

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Victor Trinidad, Chief, Water Management Staff, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite–417, Santurce, Puerto Rico 00907, (809) 729–6951.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: February 28, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–7193 Filed 3–22–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Availability of Documents for "Contamination Monitoring Standard for a Portal Monitor Used for Radiological Emergency Response"

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA announces the availability of three documents: "Contamination Monitoring Standard for a Portal Monitor Used for Emergency Response" (the Standard); "Background Information for the Contamination Monitoring Standard for a Portal Monitor Used for Emergency Response" (background information), and "Statements of Consideration for the Contamination Monitoring Standard for a Portal Monitor Used for Emergency Response" (resolution of comments).

ADDRESSES: Copies of the documents may be obtained by contacting Ralph A. Myers, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202)646–3084, (facsimile) (202)646–3486.

FOR FURTHER INFORMATION CONTACT: Ralph A. Myers, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202)646–3084, (facsimile) (202)646–3486.

SUPPLEMENTARY INFORMATION: In the event of an accident at a commercial nuclear power plant, the public may be exposed to airborne or deposited radioactive material if significant amounts of radioactive particulate materials are released to the atmosphere. The Standard sets the level for detection by a portal monitor of radioactive contamination that, if detected, would warrant decontamination measures. The objective is to minimize the risk of health effects to an individual from external radioactive contamination on the skin and clothing. The background document provides a detailed discussion of the scientific basis and rationale supporting selection of the numerical value of this Standard.

The portal monitor must have the capability to detect at least one microcurie (μCi) of radionuclides that emit beta and gamma radiation, in the form of surface contamination with a widespread nonuniform distribution over an individual. One or more cesium–137 (Cs–137) sealed source(s) with a total activity not exceeding one microcurie (μCi) shall be used for determining compliance with the Standard. Detectability of this amount of radioactivity shall be demonstrated by the manufacturer to cognizant State or local government officials with the Cs–137 source(s) located at several points along a vertical line centered between the two side columns of the unit between 0.5 feet and 5.5 feet above the base upon which the individual stands when being monitored. It is the responsibility of cognizant State or local government officials (not FEMA or other Federal agencies) to determine and assure that portal monitors intended for use for commercial nuclear power plant accidents meet this Standard. Such officials should document the intended use of portal monitors in their emergency plans. State and local governments that use or intend to use portal monitors should assure compliance with this Standard by April 30, 1996.

Since the issuance of this Standard constitutes guidance for State and local governments, alternative approaches for meeting the intent of this Standard may be proposed by State and local governments for review, evaluation, and approval by FEMA. Such alternative approaches should be submitted to the applicable FEMA Regional Director for review, recommendation, and forwarding to FEMA Headquarters for disposition.

This Standard will be incorporated in the "Radiological Emergency Preparedness (REP) Exercise Manual" (FEMA–REP–14).

Kay C. Goss,

Associate Director, Preparedness, Training, and Exercises Directorate.

[FR Doc. 95–7187 Filed 3–22–95; 8:45 am]

BILLING CODE 6718–20–P

FEDERAL LABOR RELATIONS AUTHORITY

Federal Service Labor-Management Relations Statute; Collective Bargaining; Comment Solicitation for Policy Statement

AGENCY: Federal Labor Relations Authority.

ACTION: Clarification of response deadline.

SUMMARY: The Federal Labor Relations Authority (Authority) published a Notice on March 16, 1995, 60 FR 14285, soliciting comments concerning the issuance of a policy statement. The Authority indicated in the section entitled "DATES" that comments must be received by the Authority by close of business on April 17, 1995, to be considered. However, the body of the Notice indicated that comments must be received by close of business on April 14, 1995, to be considered. This Notice clarifies that the deadline for submitting comments is April 17, 1995.

Dated: March 20, 1995.

Federal Labor Relations Authority.

Solly Thomas,

Executive Director.

[FR Doc. 95–7207 Filed 3–22–95; 8:45 am]

BILLING CODE 6267–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Superior Shipping, Inc., 13910 S.W. 28th Street, North Miami, FL 33175, Officers: Elena Dieppa, President/Sole Officer

Blue Pacific Services, 100 Oceangate, Suite 788, Long Beach, CA 90802, Officers: Alex Yang, President, Chuck Yang, Secretary/Vice President

World Cargo Corporation, 4408 N.W. 74th Avenue, Miami, FL 33166, Officers: Diana Obregon-Bader, President, Liliana Haynes, Vice President

All Points Export Incorporated d/b/a Appex, Inc., 3512 N.E. 140th Street, Seattle, WA 98125, Officers: Eliza Y. Chan, President, Solomon M. Chan, Vice President

Worldwide Cargo Express, Inc. d/b/a Wessco International, 1551 NW 93rd Avenue, Miami, FL 33172, Officers: Carlos A. Henao, President, Astrid Henao, Vice President, Betty Hernandez, Vice President Marketing, Astrid Escalona, Treasurer, Carlos F. Henao, Operation's Director

LR International, Inc., 801–H Chase Avenue, Elk Grove Village, IL 60007, Officers: Linda L. Frantz, Frederick G. Frantz, Jr.

Dated: March 20, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7126 Filed 3–22–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following form, which is being handled under this

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delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before April 24, 1995.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD) Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Finance Company Questionnaire
Agency form number: FR 3033p
OMB Docket number: 7100–0277
Frequency: One-time
Reporters: Domestic finance companies
Annual reporting hours: 775
Estimated average hours per response: 0.25
Number of respondents: 3,100
Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. §§225(a), 263, and 353-359] and is given confidential treatment [5 U.S.C. Y552(b)(4)].

Abstract: Since 1995 the Federal Reserve has conducted surveys of domestic finance companies every five years on consumer and business credit and on major assets and liabilities of finance companies. The FR 3033p is a one-page questionnaire that determines which finance companies are in existence and for those that are, information is requested about the company's total receivables, areas of specialization, and other characteristics.

Board of Governors of the Federal Reserve System, March 17, 1995
Jennifer J. Johnson,
Deputy Secretary of the Board
[FR Doc. 95–7119 Filed 3–22–95; 8:45 am]
BILLING CODE 6210–01–F

Community Bancshares, Inc. Employee Stock Ownership Plan; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 6, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancshares, Inc. Employee Stock Ownership Plan, Neosho, Missouri; to engage *de novo* through Community Bancshares, Inc., Neosho, Missouri, in operating Community Bank, Fayetteville, Arkansas, a *de novo* savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–7116 Filed 3–22–95; 8:45 am]
BILLING CODE 6210–01–F

First Southern Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 17, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Southern Bancshares, Inc., Lithonia, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Southern Bank, Lithonia, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Illinois Company Employee Stock Ownership Trust, Swansea, Illinois; to become a bank holding company by acquiring 28.21 percent of the voting shares of Union Illinois Company, Swansea, Illinois, and thereby indirectly acquire Union Bank of Illinois, Swansea, Illinois, and The State Bank of Jerseyville, Jerseyville, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Snow Bankcorp, Inc., Dillion, Colorado, and thereby indirectly acquire Snow Bank, N.A., Dillon, Colorado.

Board of Governors of the Federal Reserve System, March 17, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–7117 Filed 3–22–95; 8:45 am]
BILLING CODE 6210–01–F

Kari Torgerhagen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kari Torgerhagen, Milan, Minnesota; to retain an additional 8.96 percent, for a total of 29.04 percent, of the voting shares of Milan Agency, Inc., Milan, Minnesota, and thereby indirectly acquire Prairie State Bank, Milan, Minnesota.

2. Erik Thompson, Milan, Minnesota; to retain an additional 8.22 percent, for a total of 26.66 percent, of the voting shares of Milan Agency, Inc., Milan, Minnesota, and thereby indirectly acquire Prairie State Bank, Milan, Minnesota.

Board of Governors of the Federal Reserve System, March 17, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–7118 Filed 3–22–95; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Organ Transplant Act; Grants to Increase Organ Donation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of the availability of grant funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year (FY) 1995 funds are available for grants for assistance to organ procurement organizations and other private nonprofit entities to develop and implement a plan to increase the number of organ donors from non-donor hospitals that have characteristics similar to donor hospitals. The grants are authorized by Sections 371 and 374 of the Public Health Service (PHS) Act, as amended. Funds are appropriated under Pub. L. 103–333.

DATES: To receive consideration, grant applications must be received by the close of business May 22, 1995.

Applications will be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered applications must be received by 5:00 p.m. May 22, 1995. Applications received after the deadline will be returned to the applicant.

ADDRESSES: Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Glenna Wilcom, Grants Management Officer (BHRD), Parklawn Building, Room 7–15, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2280. Applicants for grants will use Form PHS 5161–1 (revised 7/92), approved under OMB Control Number 0937–0189. Completed applications must be mailed to the office of the Grants Management Officer (BHRD).

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical or program issues may be obtained from Mr. Remy Aronoff, Chief, Operations and Analysis Branch, Division of Organ Transplantation, Parklawn Building, Room 7–18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–7577.

SUPPLEMENTARY INFORMATION:

Background and Objective

Section 371 of the Public Health Service (PHS) Act authorizes a program of grants and special projects for the purpose of increasing the number of organ donors.

The principal purpose of this grant program is to increase the availability of donor organs in this country. In past years, the program has attempted to further this objective primarily through support of public and professional education projects. This year, the grant program will focus on increasing the number of organ donors from non-donor hospitals that have characteristics similar to donor hospitals. Research conducted by Johns Hopkins School of Hygiene and Public Health, under contract to HRSA's Division of Organ Transplantation, indicates that approximately 850 hospitals with organ donor capability did not have a solid organ donor from their hospital in any of the years 1991, 1992, or 1993. A hospital was considered to have donor capability if it had a staff neurologist, an anesthesiologist, an operating room, and an intensive care unit. These services were considered essential for the identification and determination of brain death, and the maintenance and procurement of organs. An additional criterion was bed capacity of 50 beds or more.

In 1992, 29,499 patients were on the transplant waiting list. That same year,

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a total of 14,068 organs were recovered for transplant from 4,277 cadaveric donors. Also during that year 2,564 patients died while waiting for an organ. In the last 2 years the cadaveric donor rate has increased slightly from approximately 4,500 to 4,800 donors per year. Currently there are over 37,000 people registered on the Organ Procurement and Transplantation Network's transplant waiting list.

In an effort to improve the procurement process and the organ donor rate at the 850 hospitals mentioned above, two (2) grants will be awarded for projects which focus on increasing donation at these hospitals; in particular, hospitals with 150 beds or more. The grantee will be required to develop and implement a methodology with the objective of producing at least one solid organ donor at no fewer than 50 percent of the identified hospitals located in the designated organ procurement organization (OPO) service area.

Availability of Funds

Pending the availability of funds, up to $100,000 is available for the grant program in fiscal year (FY) 1995. Two (2) grants for $50,000 each will be awarded. Applicants are requested to propose a two-year plan specifying the work to be done each year. Funding for the second year (an additional $50,000) will be contingent on the availability of funds and progress toward objectives. Based on the applications received, the program may decide to award just one grant in this fiscal year for an amount not to exceed $100,000. See the **Application Evaluation Criteria** section for additional information on funding.

Eligible Applicants

The grant program is open to organ procurement organizations (OPOs) and other private nonprofit entities involved with organ donation and transplantation.

Joint applications of two or more *eligible* entities may be submitted, e.g., an OPO and a non-OPO, or two OPOs. In such instances, one entity must be designated as the grantee institution on the application. If a non-OPO wishes to apply for a grant under this grant program, it must have a written cooperative agreement with the designated OPO for the non-donor hospitals identified in the project. Preference will be given to those proposals involving a large number of hospitals that have the greatest potential of generating at least one solid organ donor.

Additional Information

A listing of non-donor hospitals having characteristics similar to donor hospitals within individual OPO service areas is available upon request. Copies of the study by Anne Klassen of the Johns Hopkins School of Hygiene and Public Health are also available. Requests should be directed to Mr. Remy Aronoff or Ms. Philomena Green at (301) 443–7577.

Application Evaluation Criteria

Grant applications will be evaluated by a review committee according to the following criteria:

- Consistency with the program objective and the extent to which the program objective will be met through the proposed project;
- Appropriateness and adequacy of the proposed method(s);
- Appropriateness of the work plan and schedule for organizing and completing the project;
- Capability of the organization to complete the project as proposed;
- Adequacy of supporting documentation justifying the proposal;
- Reasonableness of the budget; and
- Qualifications of the project director and staff.

Final funding decisions for these grants are the responsibility of the Director, BHRD. Preference will be given to those proposals involving a large number of non-donor hospitals that have the greatest potential of generating at least one solid organ donor. This means approved applications involving a large number or percentage of the non-donor hospitals in an individual OPO service area may be considered for funding ahead of approved applications involving a smaller number or percentage of non-donor hospitals in an individual OPO service area.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q. The three separate sets of cost principles prescribed for recipients of grants for OPOs and other private nonprofit entities are: OMB Circular A–21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Other Award Information

Grants awarded under this Notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their State for assistance under certain Federal programs. The application packages made available by HRSA will contain a listing of States that have chosen to set up such a review system and will provide a point of contact in the State for the review. Applicants (other than federally recognized Indian tribes) should contact their State Single Point of Contact (SPOC) and follow the SPOC's instructions prior to the submission of an application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The SPOC has 60 days after the application deadline date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.134.

Dated: March 20, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–7210 Filed 3–22–95; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1995 Funding Opportunities for Grants and Cooperative Agreements From the Center for Substance Abuse Prevention; Correction

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on February 10, 1995, Volume 60, No. 28, pages 7980–7984, of the funding opportunities for grants and cooperative agreements from the Center for Substance Abuse Prevention (CSAP) during FY 1995. On page 7980 under Summary and on page 7983 under 4.1.4 Faculty Development Grants for Preventing Alcohol, Tobacco, and Other Drug Abuse, the receipt date for applications for Faculty Development Grants for Preventing Alcohol, Tobacco, and Other Drug Abuse was listed as May 10, 1995. The receipt date for Faculty Development Grants for Preventing Alcohol, Tobacco, and Other Drug Abuse has subsequently been changed to May 24, 1995. The receipt dates for the other FY 1995 grant and cooperative agreement programs referenced in this notice are unchanged.

FOR FURTHER INFORMATION CONTACT: Dr. Lucille Perez, Associate Director for Medical and Clinical Affairs, Center for Substance Abuse Prevention, Rockwall II, Suite 9D10, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–9351.

Dated: March 19, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–7209 Filed 3–22–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–95–3885; FR–3884–N–02]

Assistant Secretary for Public and Indian Housing; Submission of Proposed Information Collection OMB for Public Housing Apprenticeship Demonstration Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES:

Comments due date: April 7, 1995.

ADDRESSES: Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; or Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Room 10276, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Room 4178, Washington, D.C. 20410. (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The information collection requirements for this notice are published elsewhere in today's **Federal Register**.

This Notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to information required for the Public Housing Apprenticeship Demonstration Program in the Construction Trades. It also is requested that OMB complete its review within 15 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Public Housing Apprenticeship Demonstration Program in the Construction Trades: Proposal and Reporting.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* The data that will be collected in the proposal are necessary for HUD to approve eligible applicants grant funding under this Program. Grantees will report information to HUD annually regarding the implementation of this Program and the effectiveness of the Program in meeting its purpose.

(4) *Agency form numbers:* None.

(5) *Members of the public who will be affected by the proposal:* Public housing agencies.

(6) *How frequently information submissions will be required:* One-time proposal; reporting annually.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response and hours of response:* See attached chart with a total of 2,520 burden hours.

(8) *Type of request:* New.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Pat Lehrer, Office of Public and Indian Housing, (202) 619–8201.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C.; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 14, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Apprenticeship Demonstration Program in the Construction Trades: Proposal and Reporting.

Office: Office of Consumer Relations and Involvement.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with Public Housing Apprenticeship Demonstration Program in the Construction Trades. The information will allow HUD to approve proposals for eligible applicants for funding under this Program. Grantees will report annually on the implementation of this Program and the effectiveness of the Construction Trades and Public Housing Operations Demonstration Program in meeting its purpose.

Form Number: None.

Respondents: Public Housing Agencies.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Total Annual Burden	63		1		Varies		5,544

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Status: New Collection.

Contact: Pat Lehrer, (202) 619–8201.

Supporting Statement For Construction Trades Apprenticeship Grant Program

A. Justification.

1. This Grant Program is authorized under subtitle D of Title IV of the Cranston-Gonzales National Affordable Housing Act (P.L. 101–625, approved 11/28/90). The $8.5 million for the Grant Program is funded from the $10 million appropriated under the heading "Severely Distressed Public Housing Projects," as contained in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (P.L. 103–124, approved 10/28/93). The Demonstration Program will provide job training and ensure bonafide apprenticeship employment opportunities in the construction trades that will lead to self-sufficiency for public housing residents.

2. Eligible applicants (Public Housing Agencies) will submit to HUD a proposal in response to an announcement in the **Federal Register** which requests a one-time submission of information describing its program. HUD needs this information to rate and rank eligible applicants against specific requirements to approve/disapprove them for funding under this Program.

3. Information technology was not considered for collection of this information because eligible applicants are the only means for obtaining the information.

4. This information cannot be duplicated and is not available in the Department.

5. The collection of this information does not impact on a substantial number of small businesses or small entities.

6. The information is collected one-time as funding availability is announced in the **Federal Register**.

7. There are no special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6.

8. There was no consultation with persons outside the agency. The Notice will allow for interested persons to submit comments.

9. There are no assurances of confidentiality provided to applicants.

10. There are not questions of a sensitive nature.

11. There will be no additional costs to the Federal Government or the applicants. Applicants (PHAs) prepare proposals/applications frequently to compete for grant funds and preparation of this proposal would not create any additional burden which would result in added costs. HUD Field staff will review the proposals as part of their normal workload at no additional costs.

12. The reporting burden associated with this information collection is as follows:

Requirement	No. of respondents	Freq. of responses	Est. avg. response time (hours)	Estimated annual burden (hours)
Threshold Criteria	63	1	36	2,268
Proposal	63	1	48	3,024
Reporting	63	1	4	252
Total Reporting Burden	.....	.....	.....	5,544

13. This is a new collection which will implement a Grant Program.

14. There are no plans to publish this information for statistical purposes.

[FR Doc. 95–7107 Filed 3–22–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–95–1320–01; COC 54608]

Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 54608; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Cyprus Western Coal Company requesting the Bureau of Land Management offer for competitive lease 2,560 acres of federal coal in Routt County, Colorado.

DATES: The public hearing will be held at 7 p.m., April 12, 1995. Written comments should be received no later than April 26, 1995.

ADDRESSES: The public hearing will be held in the Yampa Valley Electric Building, 32 Tenth Street, Steamboat Springs, Colorado. Written comments should be addressed to the Bureau of Land Management, Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625.

FOR FURTHER INFORMATION CONTACT: John Husband, Area Manager, Little Snake Resource Area Office at the address above, or by telephone at (303) 824–4441.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on April 12, 1995, at 7 p.m., in the Yampa Valley Electric Association Building, 32 Tenth Street, Steamboat Springs, Colorado.

An application for coal lease was filed by Cyprus Western Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 5 N., R. 86 W., 6th P.M.
sec. 21, N½, and SE¼;
sec. 22, E½E½, and W½;
sec. 23, all;
sec. 26, N½, and N½SW¼;
sec. 27, W½;
sec. 28, NE¼, and E½NW¼;
sec. 33, NE¼NE¼.

containing 2,560 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal;

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the April 12, 1995, public hearing should be received at the Little Snake Resource Area Office prior to the close of business April 12, 1995. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.
2. The price that the mined coal would bring in the market place.
3. The cost of producing the coal.
4. The interest rate at which anticipated income streams would be discounted.
5. Depreciation and other accounting factors.
6. The mining method or methods which would achieve maximum economic recovery of the coal.
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Little Snake Resource Area Office at the above address prior to close of business on April 26, 1995.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Little Snake Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

Dated: March 17, 1995.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–7110 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–41–5700; WYW134693]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134693 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134693 effective December 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–7154 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW102759]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW102759 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW102759 effective December 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–7155 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW102690]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW1027690 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW102690 effective December 1, 1994, subject to the original terms and conditions of the lease and increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–7156 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW102710]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW102710 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of

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termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW102710 effective December 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–7157 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–9020–41–5700; 121982]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121982 for lands in Laramie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121982 effective November 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–7158 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–22–M

[MT–060–05–1430–01; M82474]

Notice of Realty Action: Plan Amendment for the Exchange of Public and Private Lands in Fergus County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands in Fergus County, Montana, for transfer out of Federal ownership in exchange for lands owned by CR Kendall. The Bureau of Land Management (BLM) is also providing notice of a plan amendment to the Judith-Valley-Phillips Resource Management Plan for the public lands.

SUMMARY: The public will gain private lands with wildlife habitat and recreation potential in addition to public access to the North Moccasin Mountains. Disposal of public lands with relatively low public values will help meet the management goals for the area where the public will gain private land with high resource values and public access. Therefore, this exchange is in the public interest. The Bureau of Land Management has advised State and local officials regarding the proposed exchange.

The following described public lands are suitable for disposal by exchange under Section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian Montana

T. 18 N., R. 18 E.,
Section 29, Lots 1, 2, 5, 7, 8, 13, 14;
Section 31, Lots 8, 9, 16, 18, 19, 23, 25;
Section 32, Lots 2, 3, 4;
Containing 150.51 acres

The United States will exchange this public land to acquire the following described private land:

Principal Meridian Montana

T. 18 N., R. 17 & 18 E.,
MS 6366—Abbey Lode
MS 6727—Extension Lode
MS 6728—Keno Lode
MS 8470—Arizona Lode
MS 8471—Fox Lode
MS 8472—Mason Lode
MS 8473—Placer Lode
MS 8474—Legal Tender Lode
Containing 129.24 acres

DATES: The effective date of this plan amendment decision and proposed exchange notice is March 23, 1995.

Any person who participated in the Judith-Valley-Phillips Resource Management Plan Amendment for the CR Kendall exchange having an interest or adversely affected by the amendment may protest such amendment as stated in 43 CFR 1610.5–2. The protest shall be in writing and filed on or before April 24, 1995. Send protests to: Director (480), Bureau of Land Management, Resource Planning Team, P. O. Box 65755, Washington, D.C. 20036. The protest must contain:

1. The name, mailing address, telephone number and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the amendment being protested.
4. A copy of all documents addressing the issue or issues submitted during the planning process by the protesting party or an indication of the discussion date of the issues(s) for the record.
5. A concise statement explaining why the State Director's decision may be wrong.

From March 23, 1995 through May 8, 1995, interested parties may submit written comments to Chuck Otto, Resource Area Manager, Bureau of Land Management, Box 1160, Lewistown MT, 59457. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the Exchange, including the Plan Amendment and Environmental Assessment, is available for review at the Lewistown District Office, P. O. Box 1160, Lewistown MT 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 for a period of two years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. A 60 foot wide right-of-way reservation, 30 feet on either side of the centerline, to the United States on a road, approximately one-half mile in length, crossing those Federal lands to be conveyed to CR Kendall, specifically Lots 1 and 5, section 29, T18N R18E, and a 60 foot wide permanent, exclusive easement, 30 feet on either side of the centerline, from CR Kendall to the United States on that same road, which crosses sections 29, 31 and 32, T18N R18E.
3. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated intended time of the exchange is March 1995. The public interest will be served by completion of this exchange since it will enable the Bureau of Land Management to acquire lands with high public values, public access, and will increase management efficiency of public lands in the area.

Dated: March 13. 1995.

Dave Mari,

District Manager, Lewistown.

[FR Doc. 95–7088 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–DN–P

[CO–050–1610–00]

Availability Notice; Royal Gorge Resource Area Proposed Resource Management Plan and Final Environmental Impact Statement; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Royal Gorge Proposed Resource Management Plan and Final Environmental Impact Statement. This document is now available to the public for a 30 day protest period.

SUMMARY: The Bureau of Land Management, Canon City District, Royal Gorge Resource Area office has prepared a proposed resource management plan (PRMP) and final environmental impact statement (FEIS) for the Royal Gorge Resource Area (RGRA) in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600. A draft resource management plan (DRMP) and environmental impact statement (DEIS) for the RGRA was made available to the public in September of 1993 for a 90 day review and comment period Substantial public comment was received through three public hearings and 180+ written letters. More than nine hundred specific comments were received with the largest concern related to and disagreeing with the recommendation not to designate the 126 miles of the Upper Arkansas River and the 20 miles of Beaver Creek as Wild & Scenic River. These comments have been responded to within the PRMP/FEIS. This final plan replaces and supersedes all existing land use plans and other related environmental documents. This final plan establishes ten ecological subregions upon which all the decisions within the plan are focused. This final plan establishes resource conditions for, provides for managing and allocating of BLM administered land and mineral resources in the RGRA for the next 15 to 20 years. Located in eastern Colorado, the RGRA encompasses 653,000 acres of Federal surface estate and 2,566,000 acres of Federal subsurface mineral estate within Baca, Brent, Chaffee, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Otero, Park, Prowers, Pueblo, and Teller counties.

Only those parties who made substantial comments to BLM on the RGRA/DEIS during the 90 day review and comment period would be considered to have standing for protest of the decisions within this plan.

DATES: The PRMP/FEIS protest period will begin on March 27, 1995, and will run through close of business on April 26, 1995.

ADDRESSES: Interested parties may obtain a copy of the PRMP/FEIS from the Bureau of Land Management, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Dave Taliaferro, RMP Project Manager, at (719) 539–7560 or Paul Trentzsch, Royal Gorge Area Manager, at (719) 275–0631.

SUPPLEMENTARY INFORMATION: Some of the highlights of the PRMP/FEIS are:

1. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. The plan directs future resource condition objectives, land use allocations, and management actions.
2. The plan designates nine areas of critical environmental concern (ACEC's) these being a. Mosquito Pass (4,036 acres), b. Browns Canyon (11,697 acres), c. Droney Gulch (705 acres), d. Arkansas Canyonlands (23,921 acres), e. Grape Creek (15,978 acres), f. Garden Park (2,728 acres), g. Phantom Canyon (6,096 acres), h. Beaver Creek (12,081 acres), and i. Cucharas Canyon (1,314 acres).
3. The plan serves as the final environmental impact statement required for the Wild and Scenic River Act. Twenty miles of Beaver Creek and 126 miles of the Arkansas River were analyzed and found to be eligible and suitable for potential designation under the Wild and Scenic River Act. BLM management directs within the final plan and all 146 stream miles not be recommended to Congress as a potential addition to the National Wild and Scenic River System. These streams would be managed under a protective interim management prescription for a period of three years after the Approved Resource Management Plan (ARMP)/ Record of Decision (ROD) is signed.
4. The plan did carry out an analysis and does recommend that 197,000 acres in the Arkansas River Corridor be recommended to Congress to be designated as a National Recreation Area. This would include the segments of the Arkansas River that were determined to be eligible and suitable for Wild and Scenic River designation.

Upon the closing of the protest period the ARMP/ROD will be prepared and would be tentatively scheduled to be completed by September of 1995.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 95–7159 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[ES–960–1420–00; ES–047165, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 25, Township 10 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7144 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047168, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 28, Township 12 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

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The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7145 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047170, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of two islands in the Milwaukee River, in section 12, Township 8 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7146 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047169, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 18, Township 9 North, Range 22 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7147 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047167, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 24, Township 11 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7148 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047166, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 14, Township 11 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7149 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047164, Group 152, Wisconsin]

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 13, Township 10 North, Range 21 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7150 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

ES–960–1420–00; ES–047172, Group 152, Wisconsin

Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in the Milwaukee River, in section 12, Township 11 North, Range 20 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7151 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00; ES–047171, Group 152, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the survey of two islands in the Milwaukee River, in section 5, Township 7 North, Range 22 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 1, 1995.

The survey was requested by the District Manager, Milwaukee District Office, Milwaukee, Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. May 1, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–7152 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–GJ–M

[NM–932–1430–01; NMNM 46826]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 197.50-acre withdrawal for the Luna Administrative Site (formerly Luna Ranger Station Administrative Site) in the Gila National Forest continue for an additional 20 years. The land will remain closed to mining, but has been and will remain open to mineral leasing.

DATES: Comments should be received by June 21, 1995.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 505–438–7597.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Secretarial Orders dated November 26, 1906 and November 25, 1907, and correction Public Land Order No. 7114 dated January 31, 1995, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, U.S.C. 1714 (1988). The land is described as follows:

New Mexico Principal Meridian

Gila National Forest

T. 5 S., R. 20 W.,
Sec. 32, S½NE¼, E¼SE¼,
N½NW¼SE¼, SE¼NW¼SE¼,
E½SW¼NW¼SE¼, and
E½W½SW¼NW¼SE¼.

The area described contains 197.50 acres in Cibola County.

The purpose of the withdrawal is to protect the Luna Administrative Site (formerly Luna Ranger Station Administrative Site) in the Gila National Forest. The withdrawal segregates the land from the mining laws, but not the mineral leasing laws. No change is proposed in the purpose of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long.

The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 15, 1995.

Richard A. Whitley,

Acting State Director.

[FR Doc. 95–7161 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–FB–P

[CA–930–1430–00; CAS 050013, CACA 7858, CAS 730, CAS 059261, CAS 072061]

Notice of Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on approximately 3,348.38 acres for 20 years within the Eldorado, Sierra and Plumas National Forests. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before June 21, 1995.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, (916) 979–2858.

SUPPLEMENTARY INFORMATION:

1. CAS 050013

Slate Mountain

The land is described as follows:

Mount Diablo Meridian, T.11 N., R. 12 E., sec. 6, E½ Lot 7, W½ SE¼SW¼.

The area described contains approximatley 39.21 acres in Eldorado County. The purpose of this withdrawal is to protect the Slate Mountain Lookout Site.

Grizzly Flat

The land is described as follows:

Mount Diablo Meridian, T.9 N., R. 13 E., sec. 15, NE½NW¼. The area described contains 40.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Grizzly Flat Guard Station.

Sly Park

The land is described as follows:

Mount Diablo Meridian, T.10 N., R. 13 E., sec. 19, NW¼ of Lot 1.

The area described contains approximately 12.54 acres in Eldorado County. The purpose of this withdrawal is to protect the Sly Park Environmental Education Center.

Pacific Ranger Station

The land is described as follows:

Mount Diablo Meridian, T.11 N., R. 13 E., sec. 34, Lots 3 and 4.

The area described contains 75.20 acres in Eldorado County. The purpose of this withdrawal is to protect the Pacific Ranger Station.

Plummer Ridge Guard Station

The land is described as follows:

Mount Diablo Meridian, T.9 N., R. 14 E., sec. 20, NE¼SW¼SE¼.

The area described contains 10.00 acres in Eldorado County. The purpose of this

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withdrawal is to protect the Plummer Ridge Guard Station.

29 Mile Guard Station

The land is described as follows:

Mount Diablo Meridian, T.11 N., R. 14 E., sec. 25, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼.

The area described contains 40.00 acres in Eldorado County. The purpose of this withdrawal is to protect the 29 Mile Guard Station.

Big Meadows Campground

The land is described as follows:

Mount Diablo Meridian, T.14 N., R. 14 E., sec. 8, S½NE¼SE¼, E½SW¼SE¼, SE¼SE¼.

The area described contains 80.00 acres in Placer County. The purpose of this withdrawal is to protect the Big Meadows Campground.

Lumberyard Ranger Station and Campground

The land is described as follows:

Mount Diablo Meridian, T.8 N., R. 15 E., sec. 15, W½SW¼NE¼, SE¼SW¼NE¼NW¼, SW¼SE¼NE¼NW¼, SE¼NW¼.

The area described contains 65.00 acres in Eldorado and Amador Counties. The purpose of this withdrawal is to protect the Lumberyard Ranger Station and Campground.

Baldwin Public Service Site

The land is described as follows:

Mount Diablo Meridian, T.12 N., R. 17 E., sec. 1, SE¼NE¼. The area described contains 40.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Baldwin Public Service Site.

Bear Creek Recreation Area

The land is described as follows:

Mount Diablo Meridian, T.12 N., R. 11 E., sec. 32, NW¼NE¼SW¼. The area described contains 10.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Bear Creek Recreation Area.

Airport Recreation Area

The land is described as follows:

Mount Diablo Meridian, T.13 N., R. 14 E., sec. 10, E½NE¼SE¼; sec. 11, NW¼SW¼; sec. 15, E½ lot 6, lot 7.

The area described contains approximately 120.28 acres in Eldorado County. The purpose of this withdrawal is to protect the Airport Recreation Area.

South Fork Recreation Area

The land is described as follows:

Mount Diablo Meridian, T.13 N., R. 14 E., sec. 27, W½NW¼NW¼; sec. 28, E½NE¼NE¼.

The area described contains 40.00 acres in Eldorado County. The purpose of this withdrawal is to protect the South Fork Recreation Area.

Lower Bear River Reservoir

The land is described as follows:

Mount Diablo Meridian, T.8 N., R. 16 E., sec. 17, SW¼NW¼, NE¼SE¼, NE¼SW¼SE¼.

The area described contains 90.00 acres in Amador County. The purpose of this withdrawal is to protect the Lower Bear River Reservoir.

Wright's Lake Recreation Area

The land is described as follows:

Mount Diablo Meridian, T.12 N., R. 16 E., sec. 29, SE¼SW¼SE¼, S½N½SE¼SE¼, S½SE¼SE¼; sec. 32, NE¼ except portion covered by Wright's Lake, N½SE¼, SW¼SE¼, NW¼SE¼SE¼; sec.33, NW¼NW¼ except portion covered by Wright's Lake, SW¼NW¼.

The area described contains approximately 347.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Wrights Lake Recreation Area.

Bay View Campground and Picnic Area

Mount Diablo Meridian, T.13 N., R. 17 E., sec. 28, Lots 10 and 19.

The area described contains approximately 39.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Bay View Campground and Picnic Area.

Alder Creek Recreation Area

Mount Diablo Meridian, T.11 N., R. 14 E., sec. 26, S½SW¼SE¼.

The area described contains approximately 20.00 acres in Eldorado County. The purpose of this withdrawal is to protect the Alder Creek Recreation Area.

Woods Lake Recreation Area

Mount Diablo Meridian, T.10 N., R. 18 E., sec. 28, E½NW¼, NE¼SW¼.

The area described contains approximately 120.00 acres in Alpine County. The purpose of this withdrawal is to protect the Woods Lake Recreation Area.

Highway 50 Roadside Zone

A strip of land 200 feet wide on either side of the centerline of the existing U.S. Highway No. 50 through the following legal subdivisions:

Mount Diablo Meridian, T.11 N., R. 13 E., sec. 25, Lots 1, 2, 5 to 7, inclusive; sec. 26, Lots 2 to 4, inclusive; sec. 33, NE¼NE¼, N½NW¼NE¼, W½SW¼NW¼NE¼, N½NE¼NW¼, N½SW¼NE¼NW¼, SE¼NE¼NW¼; sec. 34, Lots 3 to 5, inclusive; sec. 35, Lot 1, NE¼NW¼. T. 11 N., R. 14 E., sec. 25, S½SW¼, SE¼; sec. 26, NE¼SE¼, S½SE¼; sec. 27, NW¼NE¼, SE¼NE¼, NE¼NW¼; sec. 28, N½; sec. 29, NE¼, W½NE¼NW¼NE¼SW¼, W½NW¼NE¼SW¼, SE¼NW¼NE¼SW¼, N½NW¼SW¼NE¼SW¼, N½NW¼NW¼SW¼, N½N½SW¼NW¼SW¼, N½NW¼SE¼NW¼SW¼, NE¼SE¼NW¼SW¼, NW¼SE¼; sec. 30, Lots 1 and 2, SE¼SE¼.

The area described contains approximately 458.00 acres in Alpine County. The purpose of this withdrawal is to protect the Highway 50 Roadside Zone.

2. CACA 7858

Mount Diablo Meridian, T.24 N., R. 14 E., sec. 33, NE¼SW¼NW¼.

The area described contains 10.00 acres in Plumas County. The purpose of this withdrawal is to protect the Crocker Guard Station.

3. CAS 730

Mount Diablo Meridian, T.23 N., R. 16 E., sec. 3, SE¼SE¼; sec. 10, NE¼NE¼. T. 24 N., R. 16 E., sec. 32, N½S½, S½NW¼, SW¼NE¼; sec. 33, N½SW¼, NW¼SE¼.

The area described contains 480.00 acres in Plumas County. The purpose of this withdrawal is to protect the Lost Creek Recreation Area.

4. CAS 059261

Mount Diablo Meridian, T. 22 N., R. 11 E., Fractional portion of Lot 1; sec. 13, Lot 1, SE¼SW¼; sec. 14, Lots 1 and 2; sec. 23, Lots 5 through 11, inclusive; sec. 24, Lots 11, 16, 18, 20, 22, 23, 35, 38, 50, 51, 54 and 55; sec. 25, Lots 2 through 4, inclusive, and 7 through 10, inclusive, SW¼SE¼; sec. 26, Lots 1 through 7, inclusive.

Mount Diablo Meridian, T. 22 N., R. 12 E., sec. 7, S½SW¼NE¼, S½SE¼NW¼; sec. 19, W½ of Lot 1.

The area described contains approximately 1,122.15 acres in Plumas County.

5. CAS 072061

Mount Diablo Meridian, T. 6 S., R. 21 E., sec. 12, SE¼NW¼NW¼, E½SW¼NW¼, S½E½W½SW¼; sec. 14, NE¼NE¼.

The area described contains 90.00 acres in Madera County.

The purpose of this withdrawal is to protect the Lewis Creek Recreation Area.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: March 15, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–7162 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–40–P

[CA–940–1430–01; CACA 34475]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 5,117 acres of public land in Imperial County to facilitate the All-American Canal Lining Project. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by June 21, 1995.

ADDRESSES: State Director, BLM (CA–931.13), Federal Building, Room E–2845, 2800 Cottage Way, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–979–2858.

SUPPLEMENTARY INFORMATION: On March 13, 1995, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 16 S., R. 20 E.,
Sec. 21, SE¼;
Sec. 22, SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½;
Secs. 28 to 29, inclusive;
Sec. 33;
Secs. 44 to 45, inclusive;
Secs. 49 to 51, inclusive.

The area described contains approximately 5,117 acres in Imperial County.

The purpose of the proposed withdrawal is to facilitate the All-American Canal Lining Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Since the proposed withdrawal involves more that 5,000 acres in the aggregate, at least one public meeting will be held as required by 43 CFR 2310.3–1(b)(2)(v). A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land by Bureau of Reclamation.

Dated: March 17, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–7199 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Waterside Down, Phase I, a Mixed-Use Project, in Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Waterside Down Development Corporation (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The permit would authorize the take of four families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 5 years. The proposed taking is incidental to construction of 211 single family homes, plus as yet unspecified number of condominium units and commercial buildings, including the necessary infrastructure, on approximately 76.5 acres (Project). The entire site is considered occupied by Florida scrub jays and will be permanently altered. The Project is called Waterside Down, and it is located on the barrier island of Brevard County, adjacent to a Wal Mart/Albertson strip mall and Britanny Apartments to the north, S.R. A1A to the east, Holy Name of Jesus Church and a residential development to the south, and vacant land scheduled to be Waterside Down Phase II on the west.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before April 24, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–800150 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION:

Aphelocoma coerulescens coerulescens is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss

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of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. A second alternative is the proposed Project that is designed with a different mitigation strategy focusing on management of existing lands surrounding the project area. The third alternative, the proposed action alternative, is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and donation of additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: March 16, 1995.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 95–7111 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public law 92–463, the Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation Systems (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include status of 1995 Land Processes DAAC development activities; a preliminary list of 1996 activities; DAAC user services status; EOS Core System (ECS) development status; various Land Processes DAAC-related ECS topics; and others.

DATES: April 11–13, 1995, commencing at 8:30 a.m. on April 11 and adjourning by 3:30 p.m. on April 13.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Bailey, Land Processes DAAC Project Scientist, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: March 14, 1995.

Gordon P. Eaton,

Director, U.S. Geological Survey.

[FR Doc. 95–7167 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Houstonian Hotel in Houston, Texas on May 3–4, 1995.

The agenda will cover the following principal subjects:

—Regional Stakeholders Task Force Presentation
—Government Role in Low Oil Price/Marginal Development Scenario: United Kingdom
—Subcommittee on the Oil Pollution Act of 1990 Presentation
—Point-Counter Point: Imports, Is A High Rate A National Security Risk?
—Scientific Committee Update

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than April 14, 1995, to the Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Wednesday, May 3 and Thursday, May 4, 1995.

ADDRESSES: The Houstonian Hotel, 111 North Post Oak Lane, Houston, Texas 77024—(713) 680–2626.

FOR FURTHER INFORMATION CONTACT: Terry Holman at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: March 15, 1995.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–7168 Filed 3–22–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (95–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a second quarter 1995 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter RCAF (Unadjusted) is 1.070. The second quarter RCAF (Adjusted) is 0.820, a decrease of 0.2% from the first quarter 1995 RCAF (Adjusted). Maximum second quarter 1995 RCAF rate levels may not exceed 99.8% of maximum first quarter 1995 rate levels.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 16, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7128 Filed 3–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32671]

Springfield Terminal Railway Company, Trackage Rights Exemption; Eastern Maine Railway Company

Eastern Maine Railway Company (EMR) has agreed to grant overhead trackage rights to Springfield Terminal Railway Company (ST) over approximately 56.39 miles of rail line from milepost 5.61 at the Maine/New Brunswick, Canada border near Vanceboro, ME to milepost 62.00 at Mattawamkeag, ME.[1] The trackage rights were to become effective on March 10, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John R. Nadolny, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7127 Filed 3–22–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Unixware Technology Group Inc.

Notice is hereby given that, on July 19, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), UnixWare Technology Group Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of the antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: AT&T/GIS, West Columbia, SC; Amdahl Corporation, Sunnyvale, CA; Chorus Systems, Beaverton, OR; Fujitsu Limited, Kawasaki, JAPAN; Hewlett-Packard, Ft. Collins, CO; ICL, Berks, Bracknell, GREAT BRITAIN; Locus Computing, Inglewood, CA; Microport, Scotts Valley, CA; MITSUBISHI/apricot, Kamakura, JAPAN; NEC Systems Laboratory, Inc., Princeton, NJ; Novell, Inc., San Jose, CA; Olivetti S.p.A., Ivera, ITALY; Sony Corporation, Kanaqwa, JAPAN; Stratus Computer, Inc., San Jose, GREAT BRITAIN; and Unisys Corporation, Blue Bell, PA.

The nature and objectives of UTG are to engage in research and development related to the improvement of the UNIX operating system, and to promote and encourage the availability of a variety of "open" and compatible UNIX based products and systems which meet the many and varied needs of the end users of those systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7171 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petrotechnical Open Software Corporation

Notice is hereby given that, on January 17, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: US Geological Survey, Denver, CO; Geographix Incorporated, Denver, CO; Convex Computer Corporation, Houston, TX; and System Development Inc., Houston, TX.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on October 17, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 1995 (60 FR 7584).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7172 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Spray Drift Task Force

Notice is hereby given that, on January 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force (SDTF) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Akvo Chemicals bv, Chicago, IL and Merck & Company, Whitehouse Station, NJ have become members to SDTF.

No other changes have been made in either the membership or planned activities of the venture. Membership remains open and the Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(a) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on October 5, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 1, 1994 (59 FR 61639).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7173 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

[1] EMR, the owner of the line, has granted ST the right to operate its own trains with its own crews between Mattawamkeag and the Maine/New Brunswick border to enable ST to exchange traffic with the New Brunswick Southern Railroad.

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Notice Pursuant to the National Cooperative Research and Production Act of 1993; Corporation for Open Systems International

Notice is hereby given that, on September 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Electric Power Research Institute ceased membership in COS effective July 24, 1994; (2) The BONDING Consortium, Portsmouth, RI, has entered into an Agreement with COS under which COS will develop an interoperability testing program for communications equipment implementing Bandwidth on Demand ("BONDING") specifications; (3) the following organizations became Associates of COS's SONET Interoperability Forum (the "Forum") on the dates indicated: Alcatel Network Systems, Richardson, TX, on June 30, 1994; Pacific Bell, San Ramon, CA, on August 1, 1994; Reliance Electric, Phoenix, AZ, on June 30, 1994; and Retix, Santa Monica, CA, on August 1, 1994; (4) Wind River Systems, Inc., Alameda, CA, became an Auditing Member of the Forum on June 30, 1994; (5) The following organizations became Patrons of the ISDN Solutions '94 project of COS's ISDN Executive Council, on the dates indicated; diehl isdn GmbH, Leonberg, GERMANY, on July 8, 1994; Intel Corporation, Schaumburg, IL, on July 5, 1994; and Pacific Bell, San Ramon, CA, on June 30, 1994; (6) Shure Brothers Incorporated, Evanston, IL became an Observer of COS's Video Teleconferencing Executive Interest Group on July 15, 1994.

No other changes have been made in either the membership or planned activities of COS. Membership in COS remains open, and COS intends to file additional written notifications disclosing all changes in membership.

On May 14, 1986, COS filed its original notification pursuant to Section 6(b) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 11, 1986, (51 FR 21260).

The last notification was filed by the Department on June 13, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 27, 1994 (59 FR 54011).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7174 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Information Infrastructure Testbed

Noticeis hereby given that, on August 9, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Information Infrastructure Testbed ("NIIT") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the additional members of NIIT are: California Institute of Technology, Jet Propulsion Laboratory, Pasadena, CA; Center for the New West, Denver, CO; Concurrent Technologies, Johnstown, PA; Entergy Services, Inc., New Orleans, LA; Hitachi Telecom, Inc., Norcross, GA; Hughes Aircraft Corporation, Los Angeles, CA; Intel Corporation, Hillsboro, OR; MCNC, Research Triangle Park, NC; Methodist Health Network of Iowa, Des Moines, IA; Microelectronics & Computer Technology Corporation, Austin, TX; PeerLogic, Inc., San Francisco, CA; Polaroid Corporation, Cambridge, MA; University of Michigan Medical Center, Ann Arbor, MI; and University of Southern California, Los Angeles, CA.

No other changes have been made in the membership, nature and objectives of the consortium. Membership in NIIT remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, NIIT filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 1994 (59 Fed. Reg. 25960).

The last notification was filed with the Department on April 26, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32463).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7175 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 HDP User Group International, Inc.

Notice is hereby given that, on September 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ruben Bergman, Alvsjo, Sweden; Advanced Micro Devices, Sunnyvale, CA; Alcatel, Aventom, Belgium; Digital Equipment Corp., Maynard, MA; Ericsson Telecom AB, Stockholm, Sweden; International Business Machines, Hopewell Junction, NY; Nokia, Espoo, Finland; and Northern Telecom, Ltd., Kanata, Ottawa, Canada.

The HDP User Group International, Inc. Began in August, 1990, as an informal group of companies from Europe and North America whose goal was to influence the development of standard component assembly, and interconnect technologies required for dense electronic and opt-electronic systems, or High Density Packaging. HDP began operating under the VMEbus International Trade Association in 1993, operating as a user group with representatives from within the industry. Subsequently, HDP separated from VMEbus and on June 15, 1994, HDP incorporated as a nonprofit corporation under the laws of the State of Arizona. HDP supports, in concept, open packaging technologies as opposed to proprietary packaging technologies.

The general areas of planned activity are as follows: (a) Collecting the requirements for End Users and the Industry; (b) collecting the requirements of Users for pre-defined application profiles, based upon supplier opportunities; (c) defining preferred concepts of packaging with Suppliers and their organizations; and (d) working with Suppliers and their organizations aimed at promoting preferred concepts to develop industry standards.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7176 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Corporation for Open Systems International

Notice is hereby given that, on December 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: 1) Anritsu Wiltron, Morgan Hill, CA, and Hitachi Telecom, Norcross, GA, became Associates of COS's SONET Interoperability Forum (the "Forum") on November 30, 1994, and September 27, 1994, respectively; (2) DSET Corporation, Bridgewater, NJ, and Open Networks Engineering, Inc., Ann Arbor, MI, became Auditing Members of the Forum on October 20, 1994, and September 30, 1994, respectively; (3) Vivo Software, Inc., Waltham, MA, became an Associate of COS's Video Teleconferencing Executive Interest Group on November 11, 1994.

No other changes have been made in either the membership or planned activities of COS. Membership in COS remains open, and COS intends to file additional written notifications disclosing all changes in membership.

On May 14, 1986, COS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 11, 1986 (51 Fed. Reg. 21260).

The last notification was filed with the Department on September 28, 1994. This notice has not yet been published in the **Federal Register**.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7177 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; EHC Technologies Consortium—Electrical Energy—Source Alternatives

Notice is hereby given that, on January 27, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the "EHC Technologies Consortium—Electrical Energy-Source Alternatives". The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, General Motors Corporation, Delco-Remy Division, Anderson, IN; Nissan Research & Development, Inc., Farmington Hills, MI; and Volvo Car Corporation, Goteborg, SWEDEN have become new members of the project.

No other changes have been made in either the membership or planned activities of the venture. Membership in the group research project remains open, and SwRI intends to file additional written notifications disclosing all changes in membership.

On October 18, 1993, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 14, 1994 (59 FR 2438–2439).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7178 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Bell Communications Research, Inc.

Notice is hereby given that, on December 12, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and PenWare, Inc. ("PenWare") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and PenWare, Palo Alto, CA. Bellcore and PenWare entered into an agreement effective as of November 9, 1994, to engage in cooperative research to investigate and understand the technologies for wireless data applications and to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7179 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on December 7, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies are no longer members of CableLabs: Apollo Cablevision, Inc.; Bluffton Cablevision, Ltd.; and C–TEC Cable Systems.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notification disclosing all changes in membership.

On September 26, 1994 CableLabs filed its original notification pursuant to section 6(b) of the Act. This notification has not yet been published.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–7180 Filed 3–22–95; 8:45 am]
BILLING CODE 4410–01–M

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Notice Pursuant to the National Cooperative Research and Production Act of 1993, Technology Joint Venture

Notice is hereby given that, on January 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Technology Joint Venture has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: New Venture Gear, Troy, MI; Premix Incorporated, North Kingsville, OH; Hercules Incorporated, Wilmington, DE; and Quantum Consultants Inc., East Lansing, MI.

The general area of planned activity is to develop, demonstrate and commercialize the use of high performance composite based materials for power transmission systems. The activities of this Technology Joint Venture will be partially funded by an award for the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7181 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The ATM Forum

Notice is hereby given that, on November 10, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: Silicon Design Experts, Inc., Morganville, NJ; Summa Four, Inc., Manchester, NH; and Telogy Networks, Inc., Gaithersburg, MD.

No other changes have been made in either the membership or planned activities of ATM Forum. Membership remains open, and the ATM Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on August 16, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1995 (60 FR 11114).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7182 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree and Settlement in *United States v. Minnesota Mining and Manufacturing Co.*, Civil Action No. 95–CV–70860–DT (E.D. Mich.), entered into by the United States, and Minnesota Mining and Manufacturing Co. ("3M"), was lodged on March 8, 1995, with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree and Settlement resolves certain claims of the United States under Sections 104 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § § 9604 and 9607, with respect to the Montie Drums Site in Belleville, Michigan. Under the Consent Decree, 3M will pay the United States $1,100,000, representing one hundred percent of the government's claims for past response costs. In addition, 3M will pay the United States $50,000 to settle civil penalty claims arising from its alleged failure to fully and accurately respond to information requests from the United States Environmental Protection Agency.

The Department of Justice will receive comments relating to the proposed Consent Decree and Settlement for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Minnesota Mining and Manufacturing Co.*, D.J. Ref. No. 90–11–2–834. The proposed Consent Decree and Settlement may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 211 West Fort Street, Suite 2300 Detroit, MI 48226, the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–7169 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR § 50.7, notice is hereby given that on March 15, 1995, a proposed Consent Decree in *United States v. California Almond Growers Exchange d/b/a Blue Diamond Growers*, Civil Action No. CIV–S–95–475–LKK–GGH, was lodged with the United States District Court for the Eastern District of California. That action was brought pursuant to the Clean Air Act for Blue Diamond's failure to obtain a new source review permit and a Prevention of Significant Deterioration permit prior to construction of a facility in Sacramento, California, and operation of that facility without the permits and in non-compliance with the Clean Air Act. Pursuant to the Consent Decree, Blue Diamond must either obtain permits for its facility and comply with emissions limits in the consent decree and any permit that is issued, replace the facility in its entirety and comply with the Clean Air Act, or shut the facility down. In addition, Blue Diamond will pay an initial civil penalty of $437,000, and an additional $238,000 penalty if it does not shut down the facility.

As provided in 28 CFR 50.7, the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States v. California Almond Growers Exchange d/b/a Blue Diamond Growers*, D.J. Ref. 90–5–2–1–1679.

The proposed Consent Decree may be examined at the office of the United States Attorney, 650 Capital Mall, Sacramento, California; the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $6.50 for a copy of the consent decree (25 cents per page reproduction costs) payable to "Consent Decree Library."

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–7170 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Request for Proposals

The National Institute of Corrections, U.S. Department of Justice, is seeking applications from organizations and individuals able to develop and distribute a quarterly newsletter on jail mental health services. A grant of up to $20,000 will be awarded for a 12-month period beginning June 1, 1995. Applications must be received by April 28, 1995. For more information and application procedures, contact Linda Wood, National Institute of Corrections, Jails Division, 1960 Industrial Circle, Suite A, Longmont CO 80501; 1–800–995–6429, ext. 134; or fax 1–303–682–0469.

Morris L. Thigpen,

Director.

[FR Doc. 95–7103 Filed 3–22–95; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 660–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

Date: April 20–21, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications for Special Projects program for the March 1995 deadline, submitted to the Division of Public Programs, for projects beginning after July 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–7131 Filed 3–22–95; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Opportunity for Public Comment on the Fourth Biennial Revision of the U.S. Arctic Research Plan

In accordance with the Arctic Research and Policy Act of 1984, Pub. L. 98–373, the National Science Foundation announces an Opportunity for Public Comment on the Fourth Biennial Revision of the U.S. Arctic Research Plan.

PURPOSE: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the U.S. Arctic Research Plan (due in July 1995). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations:

Arlington, Virginia: Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia;
Anchorage, Alaska: The Alaska Resource Library, Federal Building, 222 W. 7th St., 1st Floor;
Juneau, Alaska: The Alaska State Library, State Office Building, 333 Willoughby Avenue, Circulation Desk, 8th Floor;
Fairbanks, Alaska: The Rasmuson Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review. The biennial revision to the Arctic Research Plan is organized to address research needs in the following area:

1. Arctic Oceans and Marginal Seas;
2. Atmosphere and Climate;
3. Land and Offshore Resources;
4. Land-Atmosphere Interactions;
5. Engineering and Technology;
6. Social Science; and
7. Health.

Coordinated interagency efforts and supporting programs are also discussed. These include research in the Arctic ocean, cultural and natural characteristics of the Bering region, environmental monitoring, arctic contamination studies, data and information, logistics, and international activities.

PUBLIC PARTICIPATION: Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments should be submitted to the address below by April 25, 1995.

FOR FURTHER INFORMATION CONTACT: If you would like to review a copy of the draft biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Staff, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, or call (703) 306–1031, or FAX to (703) 306–0139. Information will be available after March 24, 1995.

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COSTS: None.

Charles E. Myers,

Head, Arctic Staff, National Science Foundation.

[FR Doc. 95–7096 Filed 3–22–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corp.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69 issued to Niagara Mohawk Power Corporation (the licensee) for operation of the Nine Mile Point Nuclear Station, located in Oswego County, New York.

The proposed amendment would revise the Nine Mile Point Nuclear Station, Unit 2, Technical Specifications (TSs). Specifically, TS 4.6.1.2. a would be modified to allow the second Primary Containment Integrated Leakage Rate Test (Type A) to be performed at the fifth refueling outage (RF–05) or 72 months after the first Type A test instead of the fourth refueling outage (RF–04) as currently scheduled.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change for performance of the second Type A test until RF–05 does not increase the probability of a previously analyzed accident occurring. Primary containment leakage is not the precursor to any analyzed event. Type A testing is done to confirm the ability of the primary containment to limit leakage consistent with the safety analysis assumptions. Therefore, a change in the test interval will not result in an increase in the probability of an accident previously analyzed. This has also been confirmed by the risk assessment described above [in amendment proposal].

Extension of the second Type A test will not affect the containment's ability to maintain leakage below that assumed in the safety analysis. The previous Type A test was completed successfully, and there have been no plant modifications (other than those that required Type B or C testing) since the last test which could directly affect the test results. Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications. There have been no pressure or temperature excursions in the containment which could have adversely affected containment integrity. Hence, the ability of the containment to maintain leakage within the Type A test limits will be maintained. This testing provides assurance that the consequences of radioactive leakage area within 10CFR100 and GDC–19 limits. Therefore, the proposed change will not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change for performance of the second Type A test until RF–05 will not affect the test methodology or acceptance criteria nor does it alter the physical containment structure or boundary in any way. There will be no addition or removal of plant hardware. No new plant operating modes are being introduced. The primary containment will continue to perform its accident mitigation function of minimizing leakage of radioactivity to the secondary containment. Results of the previous Type A tests are well below allowable limits, and there have been no plant modifications since the last test nor are any planned that could directly impact the previous Type A test results. The primary containment performs a mitigation function and is not an initiator of any analyzed event. A risk assessment was performed which indicates that deferral of the Type A ILRT will not result in any new accident scenarios.

Therefore, the proposed change will not create the possibility of a new or different accident from any previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Safety margins are established through the Nine Mile Point Unit 2 safety analyses as reflected in the Technical Specification Limiting Conditions for Operation. Containment leak rates assumed in the safety analyses are not increased by the proposed change to the surveillance interval. The acceptance criteria which must be met to verify that leak rates remain within assumed values will also not be changed.

Although the interval between the first and second Type A tests is 72 months, no plant modifications have been made nor are planned which would invalidate past leak test results which confirm acceptable containment integrity. Furthermore, Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications to assure that containment integrity is maintained.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. To 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 24, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which , if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register**. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 9, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 17th day of March 1995.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate 1–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7185 Filed 3–22–95; 8:45 am]

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Atomic Safety and Licensing Board Panel; Advanced Medical Systems, Inc., Cleveland, Ohio; Correction

[Docket No. 30–16055–ML–Ren; ASLBP No. 95–707–02–ML–Ren (Source Material License No. 34–19089–01)]

March 17, 1995.

In the Notice of Hearing, issued March 13, 1995, published at 60 FR 14467, March 17, 1995, a reference is made on page 14467 to a Memorandum and Order, dated March 10, 1995. That date should be March 13, 1995.

Dated: March 17, 1995.

Marshall E. Miller,

Presiding Officer, Administrative Judge.

[FR Doc. 95–7184 Filed 3–22–95; 8:45 am]

BILLING CODE 7590–01–M

Draft NUREG; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has developed a draft guideline document for the review of advanced control room designs and advanced human-system interfaces that may be located within conventional control rooms. This is being issued as Draft Revision 1 to NUREG–0700, "Human System Interface Design Review Guideline," which is the successor to, and integrates relevant sections of, the current guidance used by the staff, NUREG–0700 (1981), "Guidelines for Control Room Design Reviews."

Draft Revision 1 to NUREG–0700 is not a backfit and does not impose new requirements on current plants. It is not a generic communication that proposes a new staff position or seeks additional licensee commitments. This document would not apply to licensees under 10 CFR Part 50 for the review of human-system interfaces unless the licensee initiated a voluntary upgrade.

Draft Revision 1 to NUREG–0700 has been developed to apply primarily to advanced reactors. New plant designs, submitted to the NRC for review and approval under 10 CFR 52.47(a)(1)(ii), must meet 10 CFR 50.34(f)(2)(iii), which requires a "control room design that reflects state-of-the-art human factors principles." Revision 1 to NUREG–0700 will be used by the staff as part of the comprehensive human factors engineering review process for advanced reactors described in the "Human Factors Engineering Program Review Model," NUREG–0711 (July 1994).

Draft Revision 1 to NUREG–0700 is consistent with a previously established Commission position in that it does not include generic design certification communications or generic decisions for future plants (see SECY–92–224, June 22, 1992). The NUREG itself is not mandatory. Rather, the guidelines contained within it represent good human factors engineering practice based upon state-of-the-art research and validated review criteria developed in the nuclear industry as well as in other fields, primarily military and aerospace. The draft guidelines have been subjected to extensive independent peer review by subject matter experts as part of their development.

The Commission encourages comment from all interested parties, and specifically from facilities licensed under 10 CFR Part 50, with regard to the staff's contention that no backfitting is intended for current licensees with the issuance of this guidance document unless a licensee initiates a voluntary upgrade to its human-system interface.

The comment period expires May 15, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received before this date.

Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Comments may be submitted electronically, in either ASCII text or Workperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–8020, or by using Telnet via Internet, fedworld.gov. If using 703–321–8020 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At the point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FEDWORLD using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

NUREGs are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of NUREGs (which may be reproduced) should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Jerry Wachtel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6498; e-mail jxw4@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Franklin D. Coffman, Jr.,

Chief, Control, Instrumentation & Human Factors Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–7186 Filed 3–22–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–20961; No. 812–9302]

Jackson National Life Insurance Company, et al.

March 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Jackson National Life Insurance Company ("Jackson National"), Jackson National Separate Account–I ("Separate Account") and Jackson National Financial Services, Inc. ("Services").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by Jackson National to support certain flexible premium individual deferred variable annuity contracts ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts").

FILING DATE: The application was filed on October 21, 1994, and was amended and restated on December 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Applicants, Thomas J. Meyer, Esq., 5901 Executive Drive, Lansing, Michigan 48911.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, or Wendy F. Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Jackson National, a stock life insurance company, is organized in Mic[1] 'gan and licensed to do business in the District of Columbia and all states except Maine and New York. Jackson National is an indirect wholly-owned subsidiary of Prudential Corporation plc, London, England.

2. The Separate Account is a separate account established by Jackson National to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act and the Contracts are registered as securities under the Securities Act of 1933.

3. Jackson National will establish for each investment option offered under the Contract a Separate Account subaccount or portfolio ("Subaccount"), which will invest solely in a specific corresponding series of the JNL Series Trust or of some other designated investment company ("Funds"). The Funds will be registered under the 1940 Act as open-end management investment companies. Each Fund series will have separate investment objectives and policies.

4. Services will serve as the distributor and principal underwriter of the Contracts. Services, a wholly owned subsidiary of Jackson National, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are flexible premium individual deferred variable annuity contracts. They may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or they may be purchased and used in connection with retirement plans that qualify for favorable federal income tax treatment ("Qualified Contracts"). The Non-Qualified Contracts may be purchased with an initial premium of $5,000 and the Qualified Contracts may be purchased with an initial premium of $2,000. The minimum subsequent premium for both the Unqualified and Qualified Contracts is $500 (or $50 if made in connection with an automatic payment plan).[1] Premiums may be allocated to one or more of the Separate Account Subaccounts that have been established to support the Contracts. The Contracts also provide for the allocation of premiums to the general account of Jackson National, where such premiums are credited with a predetermined fixed rate of interest.

6. The Contracts provide for a series of annuity payments beginning on the annuity date. Several annuity forms are available under the Contracts.

7. The Contracts provide for a death benefit if the annuitant dies during the accumulation period. The standard death benefit is the greater of: (1) The Contract value at the end of the valuation period; [2] or (2) the total dollar amount of premiums made prior to the annuitant's death, minus the sum of any partial withdrawals and premium taxes incurred. Where permitted by state law, Jackson National will provide an enhanced death benefit. This benefit is determined by recomputing the total dollar amounts under (2) above annually at 5% (4% if the annuitant was age 70 or older on the issue date) to the date of death, and paying the greater of the amount so determined and the following amount, which is deemed to be $0 if the annuitant dies prior to the seventh Contract year: the Contract value at the seventh Contract year, plus any premiums made since that time and before the death of the annuitant, minus the sum of the total amount of partial withdrawals since the seventh year and premium taxes incurred since the seventh year, all accumulated annually at 5% (4% if the annuitant was age 70 or older on the issue date) to the date of death. However, the enhanced death benefit shall not exceed 250% of all premiums paid under a Contract,

[1] Jackson National may waive the minimum premiums at any time.

[2] Applicants define the valuation period as the period commencing at the close of normal trading on each day the New York Stock Exchange ("NYSE") is open for business. ("Valuation Date") and ending at the close of the NYSE on the next succeeding Valuation Date.

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reduced by the amount of any partial withdrawals.

8. Certain charges and fees are assessed under the Contracts. During the accumulation and annuity periods, amounts allocated to the Separate Accounts may be transferred among Subaccounts. Prior to the annuity date, transfers from the Separate Account to the fixed account and, to a limited extent, from the fixed account to the Separate Account, also are permitted. There is no transfer fee charged for the first 15 transactions effecting transfers in any Contract year. Subsequent transfers within a Contract year, however, will be assessed a fee of $25 per transfer. This fee will be deducted from Contract values that remain in the Subaccount from which the transfer was made. If these Contract values are insufficient to pay the transfer fee, the fee will be deducted from transferred Contract values. The transfer fee is at cost with no anticipation of profit.

9. A contingent deferred sales charge ("CDSC") may be imposed on certain withdrawals. The amount of the CDSC decreases annually from 7% to 0% over 8 Contract years. The CDSC is deducted from the remaining Contract value. For the purposes of determining the CDSC withdrawals will be allocated first to investment income, if any (which may generally be withdrawn free of the CDSC), and then to premiums on a first-in, first-out basis so that all withdrawals are allocated to premiums to which the lowest (if any) CDSC applies. In addition, there may be a free withdrawal amount for the first withdrawal during a Contract year. This withdrawal amount is equal to 10% of premiums that remain subject to the CDSC, less earnings in the owner's account.[3]

10. During the valuation period, Jackson National will deduct an administration charge from each Subaccount of the Separate Account. The charge is equal, on an annual basis, to .15% of the net asset value of each Subaccount. The administration charge is designed to compensate Jackson National for assuming administrative expenses related to the Separate Account and the issuance and maintenance of the Contracts.

11. An annual contract maintenance charge of $35 will be charged against each Contract. The contract maintenance charge will be assessed each anniversary of the Contract date that occurs on or prior to the annuity date. In the event that a total surrender of the Contract value is made other than on such anniversary, the charge will be assessed as of the date of surrender without assert that this charge reimburses Jackson National for the expenses incurred in establishing and maintaining records relating to the Contracts.

12. Applicants represent that the administration charge and the contract maintenance charge will not increase regardless of the actual cost incurred. In addition, Applicants represent that these charges are at cost with no anticipation of profit. Applicants rely on Rule 26(a)(1) of the Act to deduct the transfer fee, the CDSC, the administration charge and the contract maintenance charge.[4]

13. Jackson National proposes to deduct a mortality and expense risk charge from each Subaccount during each valuation period. Jackson National represents that the aggregate mortality and expense risk charge is equal, on an annual basis, to 1.25% of the net asset value on each Subaccount. Of this amount, approximately 1.02% is for mortality risks (of which .90% is for the standard death benefit and .12% is assessed for the enhanced death benefit) and .23% is for expense risks.

14. Jackson National assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring Jackson National to pay out more in annuity income than it had planned. Additional mortality risks assumed by Jackson National are that it will waive the CDSC in the event of the death of the owner and Jackson National's contractual obligation to provide a standard and an enhanced death benefit prior to the annuity date. Thus, Jackson National assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by Jackson National is that the contract administration charge will be insufficient to cover the cost of administering the Contracts.

15. In the event the mortality and expense risk charges are more than sufficient to cover Jackson National's costs and expenses, any excess will be a profit to Jackson National. Any profit realized by these charges may be used by Jackson National to, among other things, offset losses experienced when the mortality and expense risk charges are insufficient. These charges may not be increased under the Contracts.

16. Should the owner live in a jurisdiction that levies a premium tax, Jackson National will pay the taxes when due. Jackson National represents that state premium taxes may range up to 3.5% to purchase payments and are subject to change. Jackson National reserves the right to deduct the amount of the tax either from the premiums as they are received or deduct the tax at a later date as permitted or required by applicable law.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.25% charge for the assumption of mortality and expense risks. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.[5]

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons.

Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Jackson National will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

5. Jackson National has concluded that there is a reasonable likelihood that the Separate Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. Jackson National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

6. The Separate Accounts will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7139 Filed 3–22–95; 8:45 am]

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[3] Jackson National states that it may waive the CDSC under certain circumstances.

[4] Applicants represent that, during the notice period, the application will be amended to reflect this representation.

[5] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[Release No. 34–35502; File No. SR–PSE–94–27]

Self-Regulatory Organizations; The Pacific Stock Exchange Incorporated; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 16, 1995.

On December 19, 1994, The Pacific Stock Exchange Incorporated ("PSE") filed a proposed rule change (File No. SR–PSE–94–27) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 12, 1995 to solicit comments from interested persons.[2] The Commission received one written comment.[3] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act[4] which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.[5] Several of the PSE's rules are interrelated with the standard settlement time frame. The purpose of the proposed rule change is to amend PSE's rules to be consistent with a T+3 settlement standard for securities transactions.

Under PSE Rule 5.7, transactions in stocks traded "regular" will be "ex-dividend" or "ex-rights," as the case may be, on the second business day preceding the record date fixed by the company or the date of the closing of transfer books, except when PSE's board of directors rules otherwise. Rule 5.7 also provides that should such record date or such closing of transfer books occur upon a day other than a business day, this rule applies for the third preceding business day.

Under Rule 5.9(a)(2), transactions in securities admitted to dealings on an "issued" basis settling "regular way" will be for delivery on the third business day following the day of the contract. Rule 5.9(a)(3) provides that transactions on a "seller's option" basis will be made for delivery at the option of the seller within the time specified in the option, which time may not be less than four business days following the date of the contract. Rule 5.9(a)(4) provides that transactions in rights and warrants may be made on a "next day" basis only during the three business days preceding the final day for trading therein.

Rule 9.12(a)(4) requires that no member organization may grant delivery versus payment ("DVP") or receipt versus payment ("RVP") privileges to a customer without obtaining an agreement from the customer to provide instructions to its agent no later than the second day after the trade date for RVP trades or no later than the first business day after trade date for DVP trades.

PSE has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 will become effective on June 7, 1995.[6]

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3

[1] 15 U.S.C. § 78s(b) (1988).

[2] Securities Exchange Act Release No. 35193 (January 4, 1995), 60 FR 3015.

[3] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (February 1, 1995).

[4] 17 CFR 240.15c6–1 (1994).

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1 and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

[6] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

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settlement.[7] Thomas believes that the PSE should amend Rule 9.12(a)(5) which requires the use of the facilities of a registered securities depository for confirmation and acknowledgement of all transaction in depository-eligible securities.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[8] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. The PSE rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15cb–1. As a result, the PSE's current rule providing for a T+5 settlement cycle will be inconsistent with the Commission rule. This proposal will amend the PSE's rules to harmonize them with the Commission's Rule 15cb–1 and a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing risks to clearing corporations, their members, and public investors which are inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[9]

While Thomson's letter supports the PSE's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the PSE should amend Rule 9.12(a)(5), which requires the use of the facilities of a registered securities depository for the confirmation and acknowledgement of all transactions in depository-eligible securities where payment for securities purchased or delivery of securities sold is to be made by or to an agent of the customer. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.[10] The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the PSE's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of Rule 15c6–1, the PSE rules will conflict with the Commission's Rule 15c6–1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rule 9.12(a)(5) raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing PSE rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that PSE's proposal is consistent with Section 6 of the Act.[11]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PSE–94–27) be and hereby is approved and will become effective on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7138 Filed 3–22–95; 8:45 am]

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[7] *Supra* note 3.

[8] 15 U.S.C. § 78f (1988).

[9] The Commission release adopting Rule 15c6–1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[10] Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102 (notice of proposed rule filing).

[11] 15 U.S.C. § 78f (1988).

[12] 15 U.S.C. § 78s(b)(2) (1988)

[13] 17 CFR 200.30(a) (12) (1994).

[Release No. 34–35511; File No. SR–Amex–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the Morgan Stanley REIT Index.

March 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on February 16, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Exchange filed Amendment No. 1 to the proposed rule change on March 9, 1995.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade options on the Morgan Stanley REIT Index ("REIT Index"), a new index developed by Morgan Stanley & Co. Incorporated ("Morgan Stanley") comprised of real estate investment trusts ("REITs")[3] which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or through the facilities of the Nasdaq system and are reported Nasdaq national market ("NM") securities. In addition, the Amex proposes to amend Rule 902C(d) to include the REIT Index in the disclaimer provisions of the rule.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Amendment No. 1 provides additional information regarding the Index components, and states that the Exchange will file with the Commission pursuant to Section 19(b)(1) of the Act should the number of component securities in the Index exceed 116. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivatives Securities, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated March 9, 1995 ("Amendment No. 1").

[3] All components of the Index will be REITs as that term is defined in Sections 856 through 860 of the Internal Revenue Code, 26 U.S.C. §§ 856–60 (1988 & Supp. 1993). *Id.* A REIT is a financial vehicle that allows investors to pool funds for participation in real estate ownership or financing. REITs are subject to special tax treatment and are exempt from corporate level tax if they meet certain qualifications. These qualifications include, but are not limited to, the distribution of 95% of taxable income; that five or fewer individuals cannot own more than 50% of the shares; that over 10% of total assets cannot be sold in one year; and that at least 75% of taxable income be derived from real estate in the form of, for example, rents, mortgages, or gains from the sale of real estate. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivatives Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated March 6, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The Exchange is proposing to trade standardized options on the REIT Index, a capitalization weighted index developed by Morgan Stanley, representing a portfolio of the largest and most actively traded REITs, and designated to provide a broad measure of real estate equity performance. The Index does not include healthcare REITs, real estate operating companies or partnerships, or REITs that invest primarily in real estate mortgages or debt securities.

2. Eligibility Standards for Index Components

The REIT Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in an index on which standardized options will be traded. In addition, Morgan Stanley has included in the Index only those REITs that meet the following standards: (1) A minimum market capitalization of $100 million; (2) a market price of at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the component security traded on each of the subject days; (3) trading volume in the component security of at least 1.2 million shares during the preceding six months; (4) each component security must be traded on the Amex, NYSE or must be a Nasdaq NM security; and (5) no component security will represent more than 25% of the weight of the Index, nor will the five highest weighted component securities in the Index, in the aggregate, account for more than 50% of the weight of the Index. The criteria set forth above are the same as or exceed many of the criteria established for the expedited listing of options on stock industry indexes pursuant to Exchange rule 901C, Commentary .02.

3. Maintenance of the Index

In creating the Index, Morgan Stanley identified approximately 87 REITs that meet or exceed the above criteria. In maintaining the Index, the Exchange will review the component securities on a quarterly basis to ensure that the Index continues to represent only the largest and most actively traded REITs. After the close of trading on the last business day of December, March, June, and September, all publicly traded equity REITs (except healthcare stocks and REITs that invest primarily in real estate mortgage or debt securities) will be reviewed to see if they meet the criteria outlined above. After the close of trading on the third Friday of January, April, July, and October, and Exchange will add to the Index all those REITs that meet the criteria and are not currently in the Index.

Those REITs already in the Index that no longer meet the following maintenance criteria will be removed from the Index at the same time. The maintenance criteria for the component securities are: (1) A minimum market capitalization of $75 million; (2) a market price of at least $5.00 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the component security traded on each of the subject days; and (3) trading volume in the component security of at least 900,000 shares during the preceding six months.

It is anticipated that the number of components in the REIT Index will increase as more real estate investment companies enter the public market, and those currently in the public market grow in size and trading volume. However, if the number of component securities in the Index shall increase to more than 116 or decrease to fewer than 58, the Exchange will file with the Commission pursuant to Section 19(b)(1) of the Act to obtain additional approval for such Index.[4]

The number of component stocks in the Index shall remain fixed between quarterly reviews except in the event of certain types of corporate actions such as a merger or takeover which warrants the removal of a component security from the Index prior to its quarterly review. In such case, the divisor shall be recalculated to ensure continuity of the Index's value.

4. Index Calculation

The REIT Index is market capitalization weighted, where the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums and dividing by the current index divisor. The REIT Index is a total return index, in that the regular cash dividends of its component securities are reinvested into the Index portfolio. Therefore, at the close of trading each day, the prices of component securities which will trade "ex-dividend" the next day will be adjusted (downward) by the value of the dividend amount to reflect the price impact on the stock as it trades without ("ex") the dividend on the following day. The divisor is then adjusted to ensure continuity of the Index value. The Index divisor was initially determined to yield a benchmark value of 200 on December 31, 1994. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

5. Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The options on the REIT Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, longer term option series having up to 36 months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list

[4] See Amendment No. 1, *supra* note 2.

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long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value.

In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise. Position limits on reduced value long-term REIT Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 10,500 contracts on the same side of the market, then the position limit for the reduced value options will be 105,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

6. Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules address surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the REIT Index. The Exchange has designated the Index a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c)[5] will result in a position limit of 10,500 contracts with respect to options on the Index.

[5] Rule 904C(c) relates to position limits for stock index industry groups.

7. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, and in general to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public and accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex-95–06 and should be submitted by April 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 95–7136 Filed 3–22–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35503; File No. SR–Phlx–94–55]

Self-Regulatory Organizations; the Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 16, 1995.

On November 14, 1994, the Philadelphia Stock Exchange, Inc., ("Phlx") filed a proposed rule change (File No. SR–Phlx–94–55) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 9, 1995 to solicit comments from interested persons.[2] The Commission received one comment letter.[3] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act [4] which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.[5] Several of the Phlx's rules are interrelated with the T+5 settlement time frame. The

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35176 (December 29, 1994), 60 FR 2417.

[3] Letter from Dr. Keith B. Jarrett, President, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

[4] 17 CFR 240.15c6–1 (1994).

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

purpose of the proposed rule change is to amend Phlx's rules to be consistent with a T+3 settlement standard for securities transactions.

Rule 113(b), 114(b), and 115(b) specify the delivery date for regular way transactions in stocks, bonds, and convertible bonds, respectively. The time frames contained in each rule is being shortened to reflect a T+3 settlement environment. Similarly, Rules 113(c), 114(c), and 115(b) are being amended to provide that a seller's option cannot require delivery in less than four days. Rule 114(b) also is being amended to provide that bonds sold for delayed delivery must be delivered on T+5. Under the amendments to rule 117 (a) and (b), a seller's notice of next day delivery of securities sold pursuant to a seller's option or regular way delayed delivery may not be given until the third day following the date of the contract.

As amended, Rule 291 requires, unless otherwise agreed, securities loaned to be delivered on the third business day following the day of the loan. As amended, Rule 294 requires the return of securities loaned on the third full business day following the date the notice for the return is given.

Under Rule 362, the contract price of bonds dealt in "and interest" and made regular way delayed delivery will include interest computed on up to but not including T+3. As amended, Rule 371 (a) and (b) provides that there will be a cash adjustment for coupons paid during the pendency of delayed delivery contracts and seller's option contracts in bonds dealt in "and interest" made prior to the third business day preceding the interest payment date and delivered on or after the interest payment date.

Rule 431 is being amended to require transactions in stock to be ex-dividend or ex-rights on the second business day preceding the record date. With regard to a record date on other than a business day, the transaction will be ex-dividend or ex-right on the third preceding business day. Under Rule 432, the ex-warrant period will begin on the second business day preceding the date of expiration of warrants. When warrant expiration occurs on a day other than a business day, the ex-warrant period will begin on the third business day preceding expiration date.

Rule 823 is being amended to require all transactions effected on Phlx to be settled pursuant to the three day delivery plan which will require regular way transactions to settle on the third business day after the transaction. Rule 825(b) is being amended to state that the ex-dividend period for transactions in stock for which there exists a transfer facility in Philadelphia begins on the second business day preceding the record date. In the event the record date is not a business day, the ex-dividend date will be the third preceding business day. Under Rule 825(c), regular way transactions for stocks with transfer facilities only outside Philadelphia will be ex-dividend on the second business day preceding the equivalent Philadelphia record date.

The Phlx has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 will become effective on June 7, 1995.[6]

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional rule changes may be necessary to implement T+3 settlement.[7] Thomson believes that the Phlx should amend Rule 274(b) which requires the use of the facilities of a registered securities depository for confirmation and acknowledgement of all payment on delivery transactions in depository-eligible securities when the member organization, its agent, the customer, and its agent are participants in a securities depository.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[8] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. The Phlx rules and other self-regulatory organizations' rules provide a standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6–1. As a result, the Phlx's current rules providing for a T+5 settlement cycle will be inconsistent with the Commission's rule. This proposal will amend the Phlx's rules to harmonize them with the Commission's Rule 15c6–1 and a T+3 settlement cycle.

[6] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[7] *Supra* note 3.

[8] 15 U.S.C. 78f (1988).

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing risks to clearing corporations, their members, and public investors which are inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[9]

While the Thomson letter supports the Phlx's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the Phlx should amend Rule 274(b), which requires the use of the facilities of a registered securities depository for the confirmation and acknowledgement of all payment on delivery transactions in depository-eligible securities when the member organization, its agent, the customer, and its agent are participants in a securities depository. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.[10] The Commission intends to consider whether a self-regulatory organization rule should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the Phlx's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of Rule 15c6–1, the Phlx rules will conflict with Commission Rule 15c6–1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rule 274(b) raises competitive concerns. Under the Act, the Commission's responsibility is

[9] The Commission release adopting Rule 15c6–1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[10] Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102 (notice of filing of proposed rule change)

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to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing Phlx rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that Phlx's proposal is consistent with Section 6 of the Act.[11]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–Phlx–94–55) be and hereby is approved and will become effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7137 Filed 3–22–95; 8:45 am]

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[11] 15 U.S.C. 78f (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2181]

United States International Telecommunications Advisory Committee Radiocommunication Sector Joint Ad Hoc Working Party 7B and 9D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Joint Ad Hoc Working Party 7B and 9D will meet on 13 April 1995 at 1:30 to 4:30 p.m., in the conference room at the facilities of Stanford Telecom, Inc., 7501 Forbes Blvd., Suite 105, Seabrook, MD.

Joint Ad Hoc Working Party 7B and 9D has been established to develop recommendations that lead to a stable, long term sharing environment for the fixed service and the space research, space operation and Earth exploration-satellite services in the 2025–2110 MHz and 2200–2290 MHz bands; and also to develop a recommendation on the e.i.r.p. spectral density of fixed service emissions in the 25.25–27.5 GHz band that are directed towards the geostationary orbit.

This April Meeting will review the results of the Joint Ad Hoc WP 7B and 9D meeting, 3–4 November 1994 and begin preparations for the 21–24 July international meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairman, John E. Miller. Those persons who wish to attend, please call (301) 464–8900 or fax (301) 262–2642 and leave your name, address, phone and fax numbers.

Dated: March 13, 1995.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 95–7163 Filed 3–22–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare Supplemental Environmental Impact Statement; Cal Black Memorial Airport, Halls Crossing, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the FAA announces: its intent to prepare Draft and Final Supplemental Environmental Impact Statements (SEIS) for further study of potential noise impacts associated with operation of Cal Black Memorial Airport at Halls Crossing, Utah and that the Federal SEIS scoping process will consist of a time period for interested agencies and persons to submit written comments as to their concerns regarding potential noise impacts upon areas surrounding the airport and how those impacts could be addressed in the Draft SEIS.

DATES: In order to be considered, written comments must be received by Mr. Dennis G. Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave. S.W., Renton, WA 98055–4056, Telephone: (206) 277–2611 on or before June 30, 1995.

Questions concerning the draft SEIS or the process being applied by the FAA in connection with this study should also be directed to Mr. Ossenkop.

SUPPLEMENTARY INFORMATION: This SEIS is being prepared in response to the court's decision in *National Parks and Conservation Association* v. *F.A.A.*, 988 F.2d 1523 (10th Cir., 1993), which reserved the agency's determination of no significant impact from airport operations on visitors to surrounding recreational areas, and remanded the matter back to the agency for further analysis. Information, data, views and comments obtained in the course of the SEIS scoping process may be used in the preparation of the draft SEIS. The purpose of this notice is to inform the public and state, local and Federal governmental agencies of the fact that a draft SEIS will be prepared and to provide those interested in doing so with an opportunity to present their views, comments, information, data, or other relevant observations concerning the potential noise impacts on surrounding recreational areas, related to the operation of Cal Black Memorial Airport. It is not the intent of FAA to revisit any other environmental issue evaluated in the 1990 EIS, in this SEIS.

The May 1990 Final EIS and August 1990 FAA Record of Decision related to the construction of the airport can be reviewed at the following locations:

San Juan County Courthouse, Monticello, Utah 84535.

Federal Aviation Administration, Airports Division, 1601 Lind Ave. S.W., Renton, WA 98056–4056.

Denver Airports District Office, 5440 Roslyn Suite 300, Denver, CO 80216–6026.

Issued in Renton, Washington on March 9, 1995.

David A. Field,

Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 95–7190 Filed 3–22–95; 8:45 am]

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[Summary Notice No. PE–95–13]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 12, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 17, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28096.
Petitioner: Boeing.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought: To permit Boeing to test the hydraulic system of the model 737–700 airplane by a combination of a range-of-motion test of the complete hydraulic system at 3400 psig and component testing at 1.5 times design operating pressure, in lieu of the static test of the complete hydraulic system at 1.5 times the design operating pressure (4500 psi) as required by the FAR.

Docket No.: 28106.
Petitioner: Southwest Airlines Co.
Sections of the FAR Affected: 14 CFR 25.853(a) and 121.310(a)(2).
Description of Relief Sought: To allow relief from the peak heat release rate requirement of 65 kilowatts per square meter for sculptured ceiling panels with sound dampening tape on the back side installed on several Boeing 737–300 aircraft operated by Southwest Airlines.

Docket No.: 28112.
Petitioner: IPECO Europe.
Sections of the FAR Affected: 14 CFR 25.562(b)(2).
Description of Relief Sought: To allow IPECO Europe, for the Dornier 328 aircraft, a permanent grant of exemption from the floor track misalignment test requirements of § 25.562(b)(2) for the captain and first officer.

Docket No.: 28113.
Petitioner: International Aeronautical Systems, Inc.
Sections of the FAR Affected: 14 CFR 25.807(d) (1) and (7), 25.815 (a) and (e), and 121.310(m).
Description of Relief Sought: To permit a cargo/passenger combination configuration in a partial side-by-side arrangement with two separated passenger compartments and more than 60 feet between adjacent exits, for the DC–10–30F aircraft.

Dispositions of Petitions

Docket No.: 23771.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).
Description of Relief Sought/Disposition: To extend Exemption No. 4050, as amended, which permits single pilot operations of Cessna Citation Models 550, S550, 552, and 560, provided the pilot meets certain experience and training requirements and qualifications. *GRANT, March 9, 1995, Exemption No. 4050H.*

Docket No.: 26223.
Petitioner: Airbus Service Company, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63 (c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A, part 121.
Description of Relief Sought/Disposition: To permit Airbus to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR. GRANT, March 3, 1995, Exemption No. 6032.

Docket No.: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).
Description of Relief Sought/Disposition: To extend Exemption No. 5517, as amended, which permits single pilot operations of certain Cessna Citation models (for Serial Nos. 0001 through 0349, only) that are equipped with Sierra's STC No. SA8176SW and wither STC Nos. SA2172NM or SA645NW, to be operated by one pilot without a second in command provided the pilot meets certain experience and training requirements and qualifications. This exemption is being reissued also to ensure that the conditions and limitations of this exemption conform to those recently approved for another exemption holder. *GRANT, March 9, 1995, Exemption No. 5517B.*

Docket No.: 26897.
Petitioner: Northwest Aerospace Training Corporation.
Sections of the FAR Affected: 14 CFR 124.411(a)(2), (a)(3), and (b)(2); 121.413 (b), (c), and (d); and appendix H. part 121.
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5538, as amended, which allows certain Northwest Aerospace Training Corporation (NATCO) instructors listed in its FAA-approved curriculum to serve as instructors or check airmen in simulators when under contract with part 121 certificate holders who contract with NATCO, without those persons having received ground and flight training in accordance with a training program approved under subpart N of part 121. This exemption also permits NATCO instructors, who serve in advanced simulators without being employed by the certificate holder for 1 year, to receive applicable training in accordance with the provisions of this exemption. The amendment clarifies and revises certain conditions explicit within the previous exemption, as amended. *GRANT, March 13, 1995, Exemption No. 5538B.*

Docket No.: 27089.
Petitioner: F.I.T. Aviation, Inc.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/Disposition: To extend Exemption 5624, which permits F.I.T. Aviation, Inc., to recommend graduates of its flight instructor certification courses for flight instructor certificates (with associated ratings), without having to take the FAA practical test. *GRANT, March 10, 1995, Exemption No. 5624A.*

Docket No.: 27658.
Petitioner: Qualiflight Training.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/Disposition: To allow Qualiflight Training to hold examining authority for the flight instructor and the airline transport pilot written tests. *DENIAL, February 28, 1995, Exemption No. 6035.*

Docket No.: 27946.
Petitioner: Business Air, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 135.99(a).

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Description of Relief Sought/ Disposition: To permit the operation of an Embraer EMB–110 aircraft by a single pilot under instrument flight rules or night visual flight rules without an autopilot, provided no passengers are carried for hire. *DENIAL, February 27, 1995, Exemption No. 6033*

Docket No.: 27984.
Petitioner: Epps Air Service.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Epps Air Service to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *GRANT, March 1, 1995, Exemption No. 6037.*

Docket No.: 28025.
Petitioner: Jet Tech International, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3), and (b)(2); 121.413 (b), (c), and (d); and appendix H, part 121.
Description of Relief Sought/ Disposition: To permit certain Jet Tech International, Inc. (JTI), listed in a part 121 certificate holder's approved training program to act as simulator instructors for a particular certificate holder under part 121 without those persons having received all the required ground and flight training for each individual contracting part 121 certificate holder. JTI instructors must have completed all the approved ground and flight training required under subpart N for at least on part 121 certificate holder. This exemption permits JTI simulator instructors to serve in advance simulators without being employed by the certificate holder for 1 year, provided they receive applicable training in accordance with the provisions of this exemption. *PARTIAL GRANT, March 3, 1995. Exemption No. 6036.*

[FR Doc. 95–7188 Filed 3–22–95; 8:45 am]
BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Subcommittee on Human Factors

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Human Factors of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Thursday, April 6, 1995, 9 am to 5 pm and continuing on Friday, April 7, 1995, 9 am to 1 pm. The meeting will take place at the Capital Gallery Building, 600 Maryland Avenue, SW., Washington, DC, in suite 500.

The agenda for this meeting will include discussion on certification and regulation as well as discussion on FAA research in human factors.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Dr Mark Hofmann, AAR–100, 800 Independence Avenue, SW., Washington, DC, at (202) 267–7125, the FAA Designated Federal Official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on March 15, 1995.

Andres Zellweger,
Director, Office of Aviation Research.

[FR Doc. 95–7079 Filed 3–22–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Southwest Georgia Regional Airport, Albany, GA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport, Albany, Georgia under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C.M. Armour, Airport Director, Southwest Georgia Regional Airport of the Albany-Dougherty Aviation Commission at the following address: Mr. C.M. Armour, Director, Southwest Georgia Regional Airport, 3905 Newton Road, Albany, Georgia 37707–3460.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Albany-Dougherty Aviation Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr Walter Bauer, Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, Atlanta, Georgia, 30337–2747, telephone number (404) 305–7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 14, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Albany-Dougherty Aviation Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 27, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: September 1, 1995.
Proposed charge expiration date: October 29, 1999.
Total estimated PFC revenue: $473,801.00.
Brief description of proposed projects
1 Preparation of PFC Application.
2. Acquire passenger facility lift device.
3. Prepare storm water pollution prevention plan.
4. Install in terminal building signs for disabled.
5. Acquire bunker gear proximity suits.
6. Acquire airport interactive aircraft rescue fire fighting video program and equipment.
7 Acquire airport/aircraft rescue fire fighting communication equipment.
8. Airport Master Plan update.
9. Terminal entrance and exit road rehabilitation.
10. Replace two security gates.
11. General aviation apron rehabilitation.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at: Southwest Georgia Regional Airport, 3905 Newton Road, Albany, Georgia.

Issued in Atlanta, Georgia on March 14, 1995.

Howard M. Robinson,
Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 95–7191 Filed 3–22–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Municipal Airport, Submitted by the City of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Colorado Springs Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary W. Green, A.A.E., at the following address: City of Colorado Springs, 7770 Drennan Road, Colorado Springs, CO 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Colorado Springs Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Colorado Springs Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Colorado Springs Municipal Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 21, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: August 1, 1996.
Proposed charge expiration date: February 28, 2000.
Total estimated PFC revenues: $7,445,625.00.
Brief description of proposed project: Airport service road improvement project and taxiway improvement project.
Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Municipal Airport.

Issued in Renton, Washington on March 16, 1995.

David A. Field,
Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–7189 Filed 3–22–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Grant and Lafayette Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 151 between Belmont and Dickeyville in Grant and Lafayette Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to improve US Highway 151 (USH 151) from west of the Village of Belmont to south of the Village of Dickeyville, a distance of about 29 km (18 mi).

The improvement of USH 151, which is primarily a two-lane rural highway, is being considered to improve traffic operation and safety while enhancing economic development potential for the USH 151 corridor from Dubuque, Iowa to Madison, Wisconsin. The Wisconsin Department of Transportation's Corridors 2020 Program, which provides a network of multi-lane highways serving statewide and regional transportation needs, includes this segment of USH 151 on the backbone network. Service expectation for the backbone network is for improvement to a 4-lane divided highway built to expressway standards, with full access control on relocation portions of the route.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the environmental impacts of alternatives including (1) No-build; (2) improvements along the existing rural corridor, with possible relocated alignments along portions of the route; (3) bypass corridors around the Village of Dickeyville; and (4) bypass corridors around the City of Platteville.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

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To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued: March 15, 1995.

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–7164 Filed 3–22–95; 8:45 am]

BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

Burmese Refugee Program

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 501 (c) (3) may apply to develop an educational program for approximately 5–7 Burmese students and professionals who left Burma after August 1988 and have since been living outside of Burma as refugees to receive undergraduate and/or graduate training in a variety of fields in the humanities and sciences in American colleges and universities.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number *E/AEF–95–05.*

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, April 28, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 28, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; East Asian Programs Branch—E/AEF, Room 208, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (202) 619–5402 (phone), (202) 401–1728 (fax), to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Wayne Peterson or Carol Elford on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the East Asian Programs Branch or submitting their proposals. Once the RFP deadline has passed, the East Asian Programs Branch officers may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AEF–95–05, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The goal of the program is to support the economic and democratic development of Burma by helping to educate potential leaders of Burma who could assist that country in future transition to a democratic government. It is USIA's intent to provide grantees with programs of the highest quality that meet their academic and personal needs and to further the Agency's mission to promote mutual understanding.

Guidelines

Project Description

A. The applicant shall design a proposal to recruit, nominate, select, place and monitor the Burmese students in accredited U.S. academic institutions for academic programs lasting a minimum of one year.

Note: Funding for the entire period of the student program should be projected in the proposal.

B. Students should be selected for either an undergraduate program or a graduate level program as appropriate. Programs shall include such enhancements as pre-departure and arrival orientations and interim workshops focusing on assessment of skills development and transition into the workplace and related adjustments.

C. Given the language difficulties experienced by most of the previous Burmese Refugee grantees, the programs may include an intensive English language study component.

D. The organization must work with USIA, INS and the American Embassy in Bangkok to coordinate public interest parole status for the grantees since they are not eligible for J–1 visas.

E. Since it is unlikely that the grantees will be able to return to Burma at the conclusion of the program, the organization must provide relocation assistance to them at the time their studies are terminated.

F. Program participants must carry the requisite level of health and accident insurance.

Proposed Budget

USIA anticipates awarding one grant not to exceed $300,000 for this program.

Organizations must submit a comprehensive line item budget, including a budget summary page, based on the specific guidance in the Application Package.

Please note that it is required that requested administrative funds, including indirect costs and

administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

A. Program costs

(1) One-way economy fare international travel from their overseas location (on an American flag carrier for as much of the route as possible);

(2) Domestic travel;

(3) Tuition, room and board, incidental expenses, maintenance for university vacation periods;

(4) Educational materials;

(5) Costs of standardized test fees;

(6) Per diem for orientation, professional, academic and cultural enrichment.

B. Administrative costs (not to exceed 20% of the budget)

(1) Staff salaries and benefits;

(2) Staff travel;

(3) Communications (including telephone, fax, postage, etc.);

(4) Office supplies;

(5) Other direct costs.

Please refer to the Solicitation Package for complete budget guidances and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of East Asian and Pacific Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applicants will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and USIS Bangkok officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may be not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 16, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 15, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–6780 Filed 3–22–95; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at 10 a.m. on Friday, March 24, 1995, at the Doral Hotel and Resort, 4400 NW. 87th Avenue, Miami, Florida. The intended agenda is listed below.

Presidential Advisory Board Meeting, March 24, 1995

Agenda

I. Continuation of the Discussion on the Feasibility Study on Radio and T.V. Martí Relocation

II. Old Business

III. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Due to the limited availability of Advisory Board members and other scheduling problems and the need to move the project forward, this announcement will appear for less than 15 days.

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Dated: March 17, 1995.

Yvonne F. Soler,

Executive Director, Presidential Advisory Board for Cuba Broadcasting.

[FR Doc. 95-7098 Filed 3-22-95; 8:45 a

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 56
Thursday, March 23, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, March 23, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bunk Beds

The staff will brief the Commission on options for Commission action to address fatal entrapment and other incidents associated with bunk beds.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: March 17, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-7270 Filed 3-21-95; 9:20 am]

BILLING CODE 6355-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95-6695.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 23, 1995, at 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Proposed Regulations Schedule.

DATE AND TIME: Thursday, March 28, 1995 at 2:00 p.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, March 30, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995-06: Gregory Damico on behalf of Red Lion Inns Limited Partnership
Regulations:
MCFL revised draft final rules: Qualified Nonprofit Corporations (11 CFR 114.10). Continued from meeting of March 23, 1995.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95-7387 Filed 3-21-95; 3:26 pm]

BILLING CODE 6715-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

Public Law 94-409)

[5 U.S.C. Section 552b]

DATE AND TIME: Tuesday, March 28, 1995, 9:00 a.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately five cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492-5962.

Dated: March 17, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95-7271 Filed 3-21-95; 9:20 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94-409)

[5 U.S.C. Section 552b]

TIME AND DATE: 1:00 p.m., Tuesday, March 28, 1995.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Addition to the Rules and Procedures Manual requiring staff to telephone witnesses whom the Parole Commission subpoenas to its revocation hearings.
4. Revising the Salient Factor Score to account for our aging population.
5. Discussion on decisions outside the guidelines for unusually large fraud cases.
6. Discussion on centralizing transfer treaty decision-making authority.
7. Discussion on the transfer of states from the North Central Region to the Eastern Region.
8. Discussion on the required number of votes on original jurisdiction and administrative review cases.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492-5962.

Dated: March 17, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95-7272 Filed 3-21-95; 9:20 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, April 3, 1995.

PLACE: Francis Perkins Hearing Room, Ninth Floor, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Establishment of task force to recommend changes in the structure of the Board that will allow the Board to meet budgetary requirements of

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National Performance Review II through fiscal year 2000.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: March 21, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–7386 Filed 3–21–95; 3:05 pm]

BILLING CODE 7400–01–M

NATION COUNCIL ON DISABILITY (NCD)

Type: 50-State ADA Town Meeting Tour

SUMMARY: This notice sets forth the announcement of additional dates, locations, and contacts for NCD's 50-state town meeting tour on the implementation of the Americans with Disabilities Act (ADA). Notice of these meetings is required under Section 522b (e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

BACKGROUND: As an independent Federal agency making recommendations to the President and the Congress on issues affecting 49 million Americans with disabilities and their families, NCD has congressional authority and responsibility to monitor ADA implementation. In fact, it was the NCD that first proposed the ADA in 1986. In 1991, NCD established ADA Watch.

These town meetings are being conducted as part of NCD's ADA Watch initiative. NCD is interested in hearing personal stories from consumers as to the law's impact. NCD is particularly interested in hearing about varying types of successes and the methods used to achieve those successes. The stories could be about personal experiences, or something related to changes in the community.

1995 Dates, Locations, and Contact Numbers

February 1—Miami, Florida ..... (305) 547–5444
February 2—Jackson, Mississippi ..... (601) 969–0601
February 4—Atlanta, Georgia ..... (404) 451–2340
February 7—Frankfort, Kentucky ..... (502) 564–2918
February 9—Columbia, South Carolina ..... (803) 782–0639
February 14—Birmingham, Alabama ..... (205) 251–2223
February 15—Topeka, Kansas ..... (913) 296–6527
February 16—New Orleans, Louisiana ..... (504) 286–6939
February 17—Albuquerque, New Mexico ..... (505) 827–6465
February 21—Little Rock, Arkansas ..... (501) 661–2953
February 21—Oklahoma City, Oklahoma ..... (405) 949–1962
February 22—Arlington, Texas ..... (512) 463–5741
February 28—Honolulu, Hawaii ..... (808) 537–1941
March 1—Los Angeles, California ..... (310) 390–3611
March 2—Dover, Delaware ..... (302) 577–2850
March 7—Norfolk, Virginia ..... (804) 461–8007
March 9—Sutton, West Virginia ..... (304) 525–3324
March 10—Harrisburg, Pennsylvania ..... (610) 378–4372
March 15—Wanamassa, New Jersey ..... (609) 292–3745
March 16—Portland, Maine ..... (207) 624–5307
March 17—Concord, New Hampshire ..... (603) 228–9680
March 21—Cranston, Rhode Island ..... (401) 277–2833
March 22—Boston, Massachusetts ..... (617) 338–6665
March 24—Albany, New York ..... (518) 473–4129
March 29—Cromwell, Connecticut ..... (203) 257–3221
March 31—Detroit, Michigan ..... (313) 832–3371
April 4—Columbus, Ohio ..... (614) 466–5205
April 6—Nashville, Tennessee ..... (615) 428–6266
April 11—Des Moines, Iowa ..... (515) 281–5969
April 12—Jefferson City, Missouri ..... (314) 751–2600
April 13—Missoula, Montana ..... (406) 243–2636
April 13—Madison, Wisconsin ..... (608) 266–5378
April 14—Montpelier, Vermont ..... (802) 456–8908
April 21—Salem, Oregon ..... (800) 358–3117
April 28—Winston-Salem, North Carolina ..... (704) 375–3977
May 3—Salt Lake City, Utah ..... (801) 797–3886
May 3—Las Vegas, Nevada ..... (702) 687–4452

Additional dates, locations, and contacts will be published when available.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: NCD is an independent Federal agency comprised of 15 members who are appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD prior to each town meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend these meetings. In order to reduce such exposure, we ask that you not wear perfumes or scents at the town meetings. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting rooms and surrounding area.

OPEN MEETING: These town meetings of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Opening Statements
Success Stories from Consumers
Discussion
Announcements
Adjournment

Records shall be kept of all NCD proceeding and shall be available after the meetings for public inspection at NCD.

Signed in Washington, D.C., on March 20, 1995.

Speed Davis,

Acting Executive Director.

[FR Doc. 95–7301 Filed 3–21–95; 10:32 am]

BILLING CODE 6820–BS–M

Federal Register

Thursday
March 23, 1995

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Test Procedures for Water Heaters; Kitchen Ranges, Ovens, and Microwave Ovens; and Clothes Washers; and Reporting Requirements for Clothes Washers, Clothes Dryers and Dishwashers; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM-94-230]

Energy Conservation Program for Consumer Products: Test Procedures for Water Heaters; Kitchen Ranges, Ovens, and Microwave Ovens; and Clothes Washers; and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed Rule and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, requires the Department of Energy (DOE or the Department) to administer an energy conservation program for certain major household appliances and commercial equipment. Among other program elements, the Act requires that standard methods of testing be prescribed for each covered product. The purposes of this Proposed Rulemaking are to: propose amendments to clarify the water heater; kitchen range, oven, and microwave; and clothes washer test procedures, announce the Department's intentions to incorporate by reference test procedures adopted by the International Electrotechnical Commission (IEC), and request data, comments, and information regarding their applicability and workability. Today's amendments of the test procedures are not expected to alter the minimum energy conservation standards currently in effect, or those being proposed in the Eight Products Notice of Proposed Rulemaking, published March 4, 1994 (59 FR 10464).

DATES: Written comments in response to this notice must be received by August 31, 1995.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, beginning at 9:30 a.m. on July 12, 1995. Requests to speak at the hearing must be received by the Department no later than 4 p.m., June 28, 1995. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., July 5, 1995.

ADDRESSES: Written comments, and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Test Procedures for Water Heaters; Kitchen Ranges, Ovens, and Microwave Ovens; and Clothes Washers; and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers," Docket No. EE–RM–94–230, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC.

Requests may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled, "Test Procedures for Water Heaters; Kitchen Ranges, Ovens, and Microwave Ovens; and Clothes Washers; and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers," (Docket No. EE–RM–94–230), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Department will incorporate by reference test standards from the International Electrotechnical Commission upon publication of this rule as final. These standards are listed below:

International Electrotechnical Commission Publication 705, and Amendment 2–1993, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Paragraph 12 "Microwave Power Output Measurement," Paragraph 13 "Electrical Power Output Measurement," and Paragraph 14 "Efficiency."

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room at the address stated above. Copies of the International Electrotechnical Commission Publication can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936.

For more information concerning public participation in this rulemaking proceeding, see Section XI, "Public Comment Procedures," of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

William W. Hui—Water Heaters (202) 586–9145
Ingrid M. Watson—Ranges, Ovens and Microwaves (202) 586–8119
Marc LaFrance—Clothes Washers and Dryers, and Dishwashers (202) 586–8423
U.S. Department of Energy, Energy Efficiency and Renewable Energy,Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The products currently subject to this Program (often referred to hereafter as "covered products") include water heaters; kitchen ranges, ovens, and microwaves; and clothes washers, the subjects of today's notice.

Under the Act, the Program consists essentially of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. EPCA, section 323. The purpose of the test procedures is to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. EPCA, section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. EPCA, section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may make representations with respect to energy use, energy efficiency or water use of such product, or the cost of energy consumed by such product, except as reflected in tests conducted according to the DOE procedure. EPCA, section 323(c)(2). Test procedures appear at 10 CFR part 430, subpart B.

However, the 180-day period referred to in section 323(c)(2) may be extended for a period of up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. EPCA, section 323(c)(3).

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency, measured energy use or measured water use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured use of a covered product, DOE is required to amend the applicable energy conservation standard accordingly. In determining the amended energy conservation standard, DOE is required to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. EPCA, section 323(e)(2).

[1] Part B of Title III of Energy Policy and Conservation Act, as amended, is referred to in this final rule as "EPCA" or the "Act." Part B of Title III is codified at 42 U.S.C. 6291–6309.

B. Background

Today's notice proposes to modify the test procedures for water heaters; kitchen ranges, ovens, and microwave ovens; and clothes washers as follows:

(1) Water heaters.

(a) Revision of subpart B, appendix E.

1. Modify the test procedures to address electric and oil-fired instantaneous water heaters.

2. Include testing of storage-type water heaters having rated storage capacities less than 20 gallons (76 liters).

3. Revise the method used to calculate the first hour rating of storage-type water heaters.

4. Amend the extant definition for heat pump water heater, and add new definitions for heat pump water heater storage tank, add-on heat pump water heater, integral heat pump water heater, and solar water heater.

(2) Kitchen ranges, ovens, and microwaves.

(a) Revision of subpart B, section 430.22 to include test procedure changes.

(b) Revision of subpart B, appendix I.

1. Revise the annual useful energy output to reflect changes in the annual usage of ranges, ovens, cooktops, and microwave ovens.

2. Add definition for "IEC 705."

3. Eliminate the requirement to use a standard continuous flow calorimeter.

4. Incorporate by reference the International Electrotechnical Commission Publication 705 Amendment 2–1993, section 4, Paragraphs 12–14.

5. Include the clock energy in the calculation of annual energy consumption for microwave ovens.

6. Revise section 2.8 "Test Beakers" replace with new section 2.8 "Microwave Oven Test Load."

7. Revise section 2.9.3.4 "Microwave Oven and Test Load Temperature," replace with new section 2.9.3.4 "Test Load Temperature."

8. Eliminate section 4.3 "Conventional Range," and section 4.5 "Microwave/Conventional Range." These two sections have been replaced with a new section 4.3 "Combined Components" in this proposed rule.

(3) Clothes washers.

(a) Revision of subpart B, § 430.22 to include test procedure changes and to revise the number of representative average-use cycles per year.

(b) Revision of subpart B, appendix J.

1. General test procedure clarification which includes the following:

- Add new definitions for the following terms: thermostatically controlled valves, agitator, top-loader-vertical-axis clothes washer, and top-loader-horizontal-axis clothes washer.
- Delete the requirement to disconnect all lighting systems which consume more than 10 watts during the clothes washer test cycle.
- Introduce a new section, section 2.11 "Agitation and Spin Speed Settings."
- Delete reference to AHAM and AHAM procedures.
- Clarify the procedure for capacity testing.
- Clarify the requirements for "maximum fill" testing.

2. Incorporation of test procedure changes from approved Waivers to address the following issues:

- Add new definitions for the following terms: nonwater-heating clothes washers and water-heating clothes washers.
- Extend coverage for washers that operate at 120/208Y and 120/240 volts.
- Extend testing and performance coverage to water-heating clothes washers.
- Extend coverage for clothes washers that have infinite/variable temperature selection capability.

3. Addition of optional water consumption and extraction procedures which include the following:

- Add new definitions for the following terms: modified energy factor, moisture removal energy and water consumption factor.
- Add optional test procedures to determine the above values.

(4) Addition to subpart F, § 430.62, to add reporting requirements for energy factors for clothes washers, clothes dryers, and dishwashers.

In addition, metric units of measurements have been included in the three test procedures (English values are given followed by their appropriate International System of Units in parentheses).

II. Discussion

A. Water Heater Test Procedure

Today's proposed amendments to the water heater test procedure include: Revisions to make the water heater test procedure applicable to electric and oil-fired instantaneous water heaters; coverage for testing storage-type water heaters with rated storage capacities less than 20 gallons (76 liters); revision of the first hour rating for storage-type water heaters; amendment to the extant definition for heat pump water heater; and addition of new definitions for heat pump water heater storage tank, add-on heat pump water heater, integral heat pump water heater, and solar water heater.

The Department does not believe any of these changes would alter the energy conservation standards for water heaters currently in place, and requests comments on the impact of these changes, if any. In addition, DOE requests comments on the adequateness of the test procedure for heat pump water heaters regarding the use of backup electric resistance element(s). To the Department's knowledge, most heat pump water heaters are capable of meeting the current test draw requirements, and therefore, the backup electric resistance element(s) are often unnecessary, and are seldom activated. However, the current test setup and parameters may not represent operating conditions requiring backup electric resistance elements to activate. This is dependent on a number of factors, i.e., temperature settings, draw volume and rate, etc. Therefore, DOE is interested in receiving comments on the test

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procedure for heat pump water heaters regarding the use of backup electric resistance element(s).

Concurrently, the Department is conducting a rulemaking, independent of today's notice, to propose revised minimum energy conservation standards for eight consumer products, including water heaters. (59 FR 10464, March 4, 1994).

1. Electric and Oil-Fired Instantaneous Water Heaters

The current test procedure does not address testing of electric and oil-fired instantaneous water heaters in that they are not defined in the test procedure. The Department, therefore, proposes to include definitions for these two types of instantaneous water heaters, and to amend the existing language to include the testing of them. Definitions for storage-type water heaters are also modified to differentiate these types from the instantaneous-type water heaters. As a result, oil-fired and electric instantaneous water heaters will be subject to the applicable minimum energy conservation standards of 0.59-(0.0019 × rated storage volume in gallons) for oil-fired water heaters and 0.93-(0.00132 × rated storage volume in gallons) for electric water heaters, respectively. For electric and oil fired instantaneous water heaters, the rated storage volume may be zero. In today's proposed notice, the Department requests comments and data regarding the appropriateness of adding electric and oil-fired instantaneous water heaters to the test procedure and subjecting them to the respective energy conservation standards. See appendix E to subpart B of Title 10 CFR part 430, sections 1.8 and 5.2.

2. Storage-type Water Heaters Having Rated Storage Capacities Less Than 20 Gallons (76 liters)

In a letter to the Department, dated July 17, 1991, the Gas Appliance Manufacturer Association (GAMA) stated that storage-type water heaters having capacities less than 20 gallons (76 liters) are covered by the National Appliance Energy Conservation Act of 1987. The current test procedure does not cover storage-type water heaters having rated storage capacities less than 20 gallons (76 liters) and, therefore, those water heaters are not subject to the minimum efficiency standards. In order to correct this, GAMA requested that the test procedure be revised. DOE proposes to provide coverage for storage-type water heaters of less than 20 gallons (76 liters).

With regard to conducting the 24-hour simulated use test on water heaters having rated storage capacities less than 20 gallons (76 liters), the Department proposes to include the applicable draw schedule accepted by the water heater industry. (See American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 118.2–1993: Method of Testing for Rated Residential Water Heaters.) The total volume withdrawn shall be 24 gallons (91 liters) for units having rated storage capacities greater than or equal to 10 gallons (38 liters), but less than 20 gallons (76 liters). The total volume withdrawn shall be 9 gallons (34 liters) for units having rated storage capacities less than 10 gallons (38 liters). The draw rate shall be 1.0±0.25 gallons per minute (3.8±0.95 liters per minute) for all units having rated storage capacities less than 20 gallons (76 liters). The Department requests comments and data regarding any impact on a manufacturer(s) as a result of extending coverage of the existing minimum energy efficiency standards to storage-type water heaters of less than 20 gallons (76 liters). See appendix E to subpart B of Title 10 CFR part 430, sections 1.11, 5.1.4.1, and 5.1.5.

3. First Hour Rating for Storage-type Water Heaters

Water heaters have historically been selected based on rated storage volume. The rate at which the water heater produces hot water, and whether the water heater uses a lone or multiple heat source, however, is also important when selecting a water heater. For example, a smaller electric water heater having two 4.5-kilowatt elements may provide more hot water over a given time interval than a larger electric water heater having a single 3.8-kilowatt element. The first hour rating seeks to account for the effect of storage capacity, heating rate, and the number of heat sources on the water heater's ability to provide hot water. Ideally, the consumer will use first hour rating to initially identify water heaters that will meet their hot water supply needs. Once the field has been narrowed based on this need, the consumer will then use energy factor, annual operating cost, first cost, warranty information, reputation of manufacturer, etc., in determining which water heater to select.

The first hour rating is not used in computing the efficiency (i.e., energy factor) of water heaters, but is used by the Federal Trade Commission for presenting size ranges in the labeling program for water heaters. It was hoped that this measure would gain recognition as a sizing criterion for consumers in selecting water heaters. As a result, the Department has been conducting a continuous effort to improve the first hour rating method in rulemakings for water heaters. However, the concept of what the first hour rating should represent (i.e., a balance between storage capacity, recovery rate, and mixing characteristics) and how to measure it accurately has proven to be a difficult task. Each attempt at establishing a first hour rating test has led to difficulties (repeatability problem with the 1989 proposal (54 FR 1890, January 17, 1989), and a low estimate of hot water availability for certain water heaters by the 1990 final rule. (55 FR 42162, October 17, 1990).) For example, in a October 15, 1991, letter from GAMA to DOE, GAMA stated that "Gas Appliance Manufacturers Association members have results establishing first hour ratings in the range of 70 to 75 gallons for 120 gallon models. The calculated first hour rating is significantly less than the amount of water drawn during the first draw." This problem with the October 17, 1990, current test method is most evident for large tanks with one heating element because of the greater weighing given by the test procedure to recovery rate relative to storage volume.

To correct the problem of understating hot water production cited by GAMA, the Department requested NIST to evaluate a proposal recommended by GAMA in its October 15, 1991, letter to DOE. GAMA's recommendation would prorate the final draw of the 1990 first hour rating test with respect to a ratio of elapsed times. NIST summarized the advantages and disadvantages of GAMA's recommendation. The major advantages are: The first hour rating would always be greater than or equal to the first draw volume and retesting for FTC labeling may be unnecessary if the needed additional data was collected. The major disadvantages are: The rating would represent a volume of hot water that is greater than or equal to the maximum volume of hot water that can be delivered in an hour (overstating), and it may not differentiate single-element from two-element electric water heaters (recovery capabilities unrecognized). The Department, therefore, concludes that the disadvantages of GAMA's recommendation outweigh the advantages and rejects this proposal.

The Department requested NIST to conduct a second study to correct the problem of understating hot water production. NIST recommended that a revised version of the 1989 test method be proposed. NIST stated its recommendation will correct the understating problem cited by GAMA in the October 15, 1991, letter, and in addition, will minimize the aforementioned repeatability problem. The Department concurs and today proposes a revised first hour rating method for storage tank-type (including heat pump) water heaters. Section 5.1.4. Included in the proposed first hour rating are: Revisions to the test method for storage tank-type water heaters, hot and cold water mixing characteristics, and the criterion for initiating successive draws when conducting a first hour rating test on heat pump water heaters that use supplemental resistive heating.

In regard to storage tank-type water heaters, for draws initiated prior to one hour (as a result of a thermostat cut-out), the maximum outlet temperature shall be determined for each draw and used for determining when to terminate that draw, i.e., at $T^*_{max,i} - 25°F$, where i corresponds to the draw number. If a recovery is still in progress at one hour, the draw imposed to remove any stored "hot" water shall be terminated based on the cut-off temperature used for the previous draw ($T^*_{max,n-1} - 25°F$). In addition, for draws imposed at one hour, the first hour rating shall be the sum of: All the withdrawn volumes and the final withdrawn volume, where the final withdrawn volume is multiplied by the following temperature ratio: $(T^*_{del,n} - T^*_{min,n-1}) / (T^*_{del,n-1} - T^*_{min,n-1})$. The subscripts n and n–1 are used to indicate the final draw and the next-to-last draw, respectively, while $T^*_{min,n-1}$ designates the water temperature at which the next-to-last draw was terminated ($T^*_{min,n-1} = T^*_{max,n-1} - 25°F$). For all other draw volumes, no temperature ratio adjustment factor shall be used.

The Department notes that a temperature ratio can and has been used in the past to compensate for the amount of mixing that occurs between the stored hot water and the entering make-up water during a draw. The greater the volume of make-up water mixed into the outlet stream (while still maintaining an outlet temperature above the criterion of "hot" water), the greater the first hour rating. The amount of mixing is typically small and repeatable for designs that introduce make-up water near the bottom of the tank. However, if a water heater uses a thermally compensating dip tube (first discussed in the February 8, 1984, Proposed Rulemaking, 49 FR 4870), or an internal mixing valve, substantial mixing, and thus, a higher and unrealistic first hour rating could occur. At present, DOE is not aware of any currently manufactured water heaters which contain these features. Therefore, DOE is not employing a temperature ratio correction to handle mixing effects. The Department requests comments and data concerning the appropriateness of today's proposal relative to thermally compensating dip tubes, internal mixing valves, or any other mechanism used to increase the amount of mixing of stored hot water and make-up water during a draw.

The Department also notes that with a multiple draw first hour rating test, like the one proposed today, a temperature ratio can be used to compensate for the effect of the test tolerances allowed for the thermostat setting(s) [±5°F (±2.8°C)], and for the make-up water temperature [±2°F (±1.1°C)]. These test tolerances affect the time required for the water heater to recover from a hot water draw. For example, recovery time is quickest if the tank thermostat(s) is set to 130°F (54.4°C), and the make-up water is set at 60°F (15.6°C). Recovery time is slowest for settings at 140°F (60°C) and 56°F (13.3°C). To avoid the potential complication and confusion that would result from an additional temperature ratio correction, however, a test tolerance correction is not included in today's proposal. The Department recognizes that an incentive exists to conduct the first hour rating test with the tank thermostat set at or near 130°F (54.4°C), and with the make-up water at or near 60°F (15.6°C).

Preliminary studies conducted by NIST estimate today's proposed test method is successful in minimizing the repeatability problem to within ± 5 percent relative to the 1989 proposal. The Department today requests comments and data concerning this repeatability issue.

In addition, the Department proposes to modify the existing first hour rating definition so that it differentiates between storage and instantaneous water heaters. Section 1.5.

In regard to heat pump water heaters that use supplemental resistive heating, a draw is currently initiated only after all power to the water heater has been reduced, which corresponds to the case where the compressor has cycled off and any resistive heating has ceased. The Department today proposes a revision to the criterion used to initiate successive draws so that credit is given if this type of water heater provides a partial recovery. The proposed revision would require a draw to be initiated after the thermostat controlling the upper or lone resistive element, or the compressor is satisfied, whichever occurs first. However, this criterion shall be applicable only if the water located vertically above the resistive element thermostat or compressor thermostat is heated to 135 ± 5°F (57.2 ± 2.8°C) when cut-off occurs. The Department requests comments and data on the appropriateness and workability of the proposed changes to the test method for heat pump water heaters that use supplemental resistive heating. See appendix E to subpart B of Title 10 CFR part 430, section 5.1.4.2.

4. Definitions for Heat Pump Water Heaters, Add-on Heat Pump Water Heaters, Integral Heat Pump Water Heaters, Solar Water Heaters, and Heat Pump Water Heater Storage Tanks

The Department proposes to amend the extant definition for heat pump water heaters (section 1.11.3); add definitions of integral heat pump water heater (section 1.11.3.a), add-on heat pump water heaters (section 1.11.3.b), and solar water heaters (section 1.11.5) to differentiate these types of water heaters; and add definition of a heat pump water heater storage tank, i.e., the tank to be used with an add-on heat pump water heater (section 1.6).

B. Kitchen Ranges, Ovens and Microwave Ovens Test Procedures

The test procedures for kitchen ranges, ovens and microwave ovens have remained substantially unchanged since the final rule was published in the **Federal Register** on May 10, 1978 (43 FR 20120). It was amended on April 13, 1979, by prescribing that natural gas or propane would be the test gas used with gas ranges and ovens (44 FR 22418).

Today's proposed amendment will change the annual useful cooking energy output for kitchen ranges, ovens and microwave ovens to make it representative of current United States cooking product usage. In addition, the proposed test procedure will no longer contain annual energy consumption calculations for ranges (cooktop and oven combined), or other combined appliances (multiple conventional ovens, microwave and conventional range combined). The Department is proposing to calculate the annual energy consumption of combined appliances as the sum of the annual energy consumption of each individual component of the unit. Section 4.3. The Department is proposing to incorporate by reference the International Electrotechnical Commission (IEC), Publication 705, and Amendment 2–1993, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Paragraph 12 "Microwave Power Output Measurement," Paragraph 13 "Electrical Power Output Measurement," and Paragraph 14

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"Efficiency." DOE has not proposed test procedures for grill and griddle cook tops; the Department would consider adding test procedures for these products if such exist.

1. Ovens

Today's proposed revision to the oven test procedures lowers the constant for annual useful cooking energy [2] to make it representative of current United States cooking trends. This quantity is being changed for electric to 35.5 kWh (105.5 MJ) per year from 47.09 kWh (169.5 MJ) per year; for gas, to 124,200 BTU (131,038 kJ) per year from 160,700 BTU (169,547 kJ) per year. Sections 4.1.2.1.1, 4.1.2.1.2, and 4.1.4. Lawrence Berkeley Laboratory of Berkeley, California calculated this constant from several utility studies. These results are presented in the Technical Support Document: Energy Efficiency Standards for Consumer Products, Volume 2, November 1993, DOE/EE–0009, Vol. 2 of 3.

In addition, the Department proposes to eliminate the requirement to use a standard continuous flow calorimeter for gas cooking products because of the difficulty of locating this product. The instrument to be substituted for the standard continuous flow calorimeter is left to the discretion of the manufacturer; although, it is required that the heating value of natural or propane gas shall be measured with an instrument and associated indicator readout device of a maximum error no greater than ±.5 percent of the measured value and a resolution of ±.2 percent or less of the full scale reading of the indictor instrument. Section 2.9.4.

2. Cook Tops

The proposed revision to the cook top test procedures changes the constant for annual useful cooking energy [3] to make it representative of current United States cooking trends. This quantity is being lowered for electric to 209 kWh (752.4 MJ) per year from 277.7 kWh (1000 MJ) per year; for gas, to 732,500 BTU (772,800 kJ) per year from 947,500 BTU (999,600 kJ) per year. Lawrence Berkeley Laboratory of Berkeley, California calculated this constant from several utility studies. These results are presented in the Technical Support Document: Energy Efficiency Standards for Consumer Products, Volume 2, November 1993, DOE/EE–0009, Vol. 2 of 3.

3. Microwave Ovens

The proposed changes to the microwave oven test procedures are in response to a petition for rulemaking from the Association of Home Appliance Manufacturers (AHAM) to use the International Electrotechnical Commission standard as the DOE test procedure. The current DOE test procedure is based on a 1975 version of the International Electrotechnical Commission standard. The Association of Home Appliance Manufacturers cited the following deficiencies with the DOE test procedure:

(1) Errors caused by evaporative cooling of the water and heat absorption of the water containers during the heating period, and

(2) Errors caused by the constantly changing sodium chloride concentration due to sodium chloride precipitating out of solution.

The International Electrotechnical Commission issued Publication 705, and Amendment 2–1993 entitled "Method for Measuring the Performance of Microwave Ovens for Household and Similar Purposes" in 1993. The Department asked the National Institute of Standards and Technology to perform tests using the 1993 International Electrotechnical Commission test procedure. The National Institute of Standards and Technology found the test procedure to be acceptable for determining power output and efficiency, and recommended that the Department of Energy incorporate by reference the International Electrotechnical Commission 705 Amendment 2–1993 test procedure for these purposes. In computing energy consumption, the International Electrotechnical Commission 705 Amendment 2–1993 uses a watt meter and timer, ignoring transients, to obtain measurements from which energy consumption can be calculated. The Department believes that because of start-up transients, the use of a watt-hour meter is more accurate; therefore, today's notice includes the use of a watt-hour meter, which is not found in the IEC 1993 test procedure, to obtain energy consumption.

The annual useful cooking energy in the extant test procedure is 34.2 kWh (123 MJ) per year based on 1976 data. In the Eight Product rulemaking (59 FR 10464, March 4, 1994), DOE used an annual useful cooking energy of 145.8 kWh per year in its analysis. Technical Support Document: Energy Efficiency Standards for Consumer Products, Volume 2, November 1993, DOE/EE–0009, Vol. 2 of 3, pp. 1–49. After reviewing several utility studies and comments, DOE is proposing to change the annual useful cooking energy [4] from 34.2 kWh (123 MJ) per year to 77.3 kWh (278.3 MJ) per year. This revision to the annual useful cooking energy reflects current U.S. microwave cooking usage. This will change the value of O_m in the test procedure to 77.3 kWh/yr [143.2 kWh/yr × 0.54 = 77.3 kWh/yr] (278.3 MJ/yr). (See appendix I to subpart B of title 10 CFR part 430, "Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens," sections 4.4.3 and 4.4.5). Lawrence Berkeley Laboratory of Berkeley, California calculated this constant from an average of six utility studies. These studies include: Lawrence Berkeley Laboratory, "Baseline Data for the Residential and Development of a Residential Forecasting Database," LBL 33717, May 1994; American Electric Power, "Utility Estimates of Household Appliance Electricity Consumption," 1992; Southern California Edison, "Residential Appliance End-Use Survey," 1990 and 1991; Electric Power Research Institute, "Residential End-Use Energy Consumption: A Survey of Conditional Demand Estimates," CU–6487, October 1989; and the Sierra Pacific Power Company, "Integrating EIP and HES5 Information for Estimating End-Use Energies," March 1988. The microwave oven annual energy consumption proposed in today's notice also includes the energy used by the clock thus, eliminating the necessity to disable the clock during test setup.

C. Clothes Washer Test Procedure

The Department published the clothes washer test procedure on September 28, 1977, (42 FR 49802) and subsequently on June 29, 1979, (44 FR 37938) editorial changes were made. On December 22, 1993, (58 FR 67710) the Department published a proposed amendment to the clothes washer test procedure to address washers which offer a warm rinse lock-out feature. Today's proposed amendments to the clothes washer test procedure will address issues that are independent from the temperature selection lock-out feature.

Today's proposed amendments to the clothes washer test procedure do not alter the energy factor of any existing clothes washer that minimally complies with the existing efficiency standard.

In the Advance Notice of Proposed Rulemaking for energy conservation standards for clothes washers (59 FR 56423, November 14, 1994), the Department said it would consider an energy conservation standard that includes water extraction. The Department believes that mechanical water extraction in a clothes washer is much more cost effective and efficient than thermal extraction in a clothes dryer. The Department proposes today's procedures and calculations for water extraction in clothes washers that would be used in the standards rulemaking for consideration of water extraction. Any analysis for clothes dryer efficiency standards would account for the impact of moisture retention of clothes entering the clothes dryer.

The Department of Energy today proposes to modify the clothes washer test procedure as follows:

1. Title 10 CFR part 430, subpart B, section 430.22(j).

The number of representative average-use cycles per year is presently 416, based on Proctor and Gamble survey data from 1974–75. New Proctor and Gamble survey data has indicated the number of cycles consumers use on a yearly basis has decreased. Thus, the Department is proposing to revise the representative average-use cycles to 392 per year.[5] This change lowers annual energy use and annual energy cost.

2. Title 10 CFR part 430, subpart B, appendix J.

a. General test procedure clarification.

The Department is proposing to add a definition for "agitator" (section 1.1). The existing test procedure mentions "agitator" but, does not provide a definition.

The Department is proposing to add a definition for "thermostatically controlled valves" (section 1.19). The existing test procedure mentions "thermostatically controlled valves" but, does not provide a definition.

The Department is proposing to replace the definition for a "top-loader" clothes washer with "top-loader-horizontal-axis clothes washer" (section 1.21) and "top-loader-vertical-axis clothes washer" (section 1.22). The Department has become aware of top-loading-horizontal-axis clothes washers which are readily available in other countries. These clothes washers have not yet become available in the U.S. market; however, the Department wants to provide nomenclature for this type of clothes washer.

The Department is proposing to delete the following definitions: "AHAM" (section 1.1), "HWL–1" (section 1.7) and "HLW–2EC" (section 1.8). The revised test procedure proposed in today's notice does not use these terms.

The Department is proposing to delete the requirement specified in existing test procedure section 2.2: "Disconnect all console lights or other lighting systems on the clothes washer, which do not consume more than 10 watts during the clothes washer test cycle." The Department believes that this requirement is burdensome.

The Department is proposing to add a new requirement for "Agitation and spin speed settings" (section 2.11). The existing test procedure does not specify agitation or spin speed settings. The Department is aware of clothes washers which allow selective agitation and spin speed settings independent of the normal cycle. Therefore, the proposed test procedure specifies requirements for clothes washers with these features.

The Department is proposing to change the symbol for density from "d" to "ρ." The requirement to use the density of water at 140°F was deleted, so that the density of water at the measured temperature will be used.

The Department is proposing to clarify the requirement for "maximum fill" testing. The Department wants to ensure that testing of a clothes washer's energy consumption accounts for the clothes washer's maximum fill capability. The Department is proposing to revise the test procedure to add "available on the clothes washer" after the test procedure requirement for "maximum fill" (sections 3.2.1.2 and 3.2.2.1).

The Department is aware that some clothes washers may have similarly labeled wash/rinse temperature selections, i.e., "automatic warm/cold" and "warm/cold," on the same machine, which actually provide different wash/rinse water temperatures. Under this scenario, the "automatic warm/cold" temperature selection has wash/rinse water temperature adjusted through the use of thermostatically controlled valves, whereas the "warm/cold" temperature selection is "traditional," in that control of temperature is based on preset orifices. The Department believes that these machines are offering additional temperature selections. Therefore, instead of developing additional Temperature Utilization Factors, the Department is proposing to require the use of the temperature selection which results in the largest amount of hot water consumption for the energy consumption calculations (section 4.1.1.1). The Department believes the use of the temperature selection which results in the largest amount of hot water consumption is specified in the existing test procedure ("hottest setting available" in section 3.2.2.2). The Department's proposal is intended to remove any ambiguity regarding the testing of clothes washers equipped with this type of temperature selection. The Department welcomes comments regarding this issue.

b. Test procedure revisions to include changes from approved Waivers.

The Department has granted two Petitions for Waivers to the clothes washer test procedure. Both Waivers were for water-heating clothes washers. New Harmony Systems Corporation (New Harmony) was issued a Waiver (Case No. CW–001) by Decision and Order, published on April 4, 1994. (59 FR 15710). Asko Incorporated (Asko) was issued a Waiver (Case No. CW–002) by Decision and Order, published on April 4, 1994. (59 FR 15719).

The Department is proposing definitions for "nonwater-heating clothes washer" (section 1.11) and "water-heating clothes washer" (section 1.24) to differentiate different types of clothes washers.

The Department is proposing to revise the requirements for "electrical energy supply" (section 2.2) to allow for higher voltage clothes washers. Furthermore, voltage tolerance has been increased from approximately 1.6 percent to 2 percent to reduce testing burden. This increase in tolerance will not reduce the accuracy of energy consumption testing/reporting.

The Department is proposing to add procedures for testing water-heating clothes washers which have variable temperature controls (sections 3.2.3 through 3.2.2.4). The Department is proposing to test water-heating clothes washers at the coldest and hottest setting available on the clothes washer in addition to the existing test procedure temperature settings for warm (nominally 100°F) and hot (nominally 140°F).

The proposed temperature use factors for water-heating clothes washers are based on revised temperature use factors for a three temperature selection nonwater-heating clothes washer. The Department believes that the existing TUFs for a three temperature selection nonwater-heating clothes washer are

[2] The annual useful cooking energy is energy input to an oven which is transferred to the product being cooked and is a constant used to find the annual energy consumption and the energy factor. The annual energy consumption is calculated by multiplying the constant by the ratio of test energy consumption to the energy used to heat the test block. The energy factor is the ratio of the constant to the total annual energy consumption.

[3] See footnote 2, supra.

[4] The annual useful cooking energy is energy input to an oven which is transferred to the product being cooked and is a constant used to find the annual energy consumption and the energy factor. The annual energy consumption is calculated by multiplying the constant by the ratio of test energy consumption to the energy used to heat the test water load. The energy factor is the ratio of the constant to the total annual energy consumption.

[5] 392 represents the average number of cycles per year from 1986 through 1994, obtained by P & G survey data and provided to the Department via letter dated September 2, 1994.

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appropriate for a water-heating clothes washer, except that some consumers will occasionally choose to use a temperature setting higher than the "hot" setting since it is available to them. The existing temperature use factors for "cold/cold" (15 percent), "warm/warm or warm/cold" (55 percent) and "hot/warm or hot/cold" (30 percent) have been split into four TUFs, one of 15 percent for the "coldest" setting, one of 55 percent for the "warm" setting, one of 25 percent for "hot" and one of 5 percent for the "hottest" setting. The Department does not have data regarding the 5 percent value, but is proposing to use it as originally proposed by New Harmony. The Department welcomes comments on this proposal.

The Department is proposing tighter tolerances for the supply water temperature, and the "warm" and "hot" settings for water-heating clothes washers as compared to nonwater-heating clothes washers. The Department is proposing that the supply water temperature be set at "a minimum of 55°F (12.8°C) and a maximum of 60°F (15.6°C)." The "warm" temperature shall be set at "a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C)" and the "hot" temperature shall be set at "a minimum of 140°F (60°C) and a maximum of 145°F (62.8°C)." These tighter tolerances are required for water-heating clothes washers to reduce variability in energy consumption testing/reporting and to ensure that a minimum temperature rise is tested. The temperature tolerance and minimum temperature rise issues are unique to a water-heating clothes washer because the energy to raise the water temperature is measured from electrical consumption versus being calculated as it is for nonwater-heating clothes washers.

Since the issue of machine-controlled water fill capability has been raised by the Asko Waiver, the Department wants to provide a provision for the possibility of any type of clothes washer having this feature. Thus, the Department is proposing to add the definition of "machine-controlled water fill capability" (section 1.7) to the test procedure. In addition, the Department is proposing a revision to the "top-loader-vertical-axis clothes washer" section (section 2.8.1) to require the use of a test load for clothes washers with a machine-controlled water fill capability feature. Therefore, a clothes washer equipped with machined-controlled water fill capability will be tested for maximum fill energy consumption using a 7 pound (3.18 kg) test load and for minimum fill energy consumption using a 3 pound (1.36 kg) test load. The Department believes that consumers will occasionally wash loads which are larger than 7 pounds (3.18 kg) and will also wash loads which are smaller than 3 pounds (1.36 kg). This provision will allow for testing of clothes washers that may have this feature. The Department welcomes comments on this proposed provision.

c. Water consumption and extraction testing.

The Department is concerned about water conservation and wishes to provide for a procedure to determine the water consumption of clothes washers. The Department believes, consistent with the Energy Policy Act of 1992, Pub. L. 102–486, that water conservation is important, and a need may exist to determine actual water use.

Therefore, the Department is proposing to add definitions, testing procedures, and calculations regarding water use. Additionally, for those water or sewage utilities wishing to include particular clothes washers in rebate programs, the DOE test procedure would provide a standardized means of testing for water consumption.

The Department is proposing to add a definition for a "Water consumption factor" (section 1.23). Calculations for the water consumption factor are provided in section 4.3. The water consumption factor is the ratio of the clothes washer capacity divided by the weighted per-cycle water consumption. The weighted per-cycle water consumption is the actual weighted volume of water that a particular clothes washer consumes. This measurement could be used to estimate water consumption on an annual basis. The Department welcomes comments on this proposal.

The Department is concerned about water extraction in the clothes washers' final spin. The Department believes that mechanical extraction in a clothes washer is more efficient than thermal extraction in a clothes dryer. Therefore, the Department wishes to provide for a procedure measuring the water extraction in clothes washers. The Department is proposing to add a definition for "moisture removal energy" (section 1.10). Moisture removal energy equals the weight of the residual water in the test load at the completion of the clothes washer cycle multiplied by the nominal energy needed to remove moisture using a representative clothes dryer efficiency. The calculations for moisture removal energy are provided in the proposed test procedure section 4.2. In today's notice, the Department requests comments, data, and other relevant information regarding the definition and calculation of the moisture removal energy. The Department is proposing a value of 0.5 Kwh/lb as the energy efficiency of a representative clothes dryer to remove moisture. The Department also is interested in comments as to the validity and usage of this value.

The Department is interested in developing a new energy descriptor, called a modified energy factor, which will include moisture removal energy, for possible future standard use. This new descriptor will provide a means of determining and comparing the entire energy consumption of clothes washers. Therefore, the Department is proposing to add a definition for "modified energy factor" (section 1.9). The modified energy factor equals the ratio of the capacity of the clothes washer divided by the total energy, which consists of the mechanical, hot water and moisture removal energy. The calculations for the modified energy factor are provided in the proposed test procedure section 4.4. The Department requests comments, data, and other relevant information regarding the definition and calculation of this new energy descriptor.

D. Reporting Requirements

The Department is proposing to revise the reporting requirements for clothes washers, dishwashers and clothes dryers. The present regulations do not require the reporting of the energy factors for these products. Prior to the May 14, 1991 final rule for clothes washers, dishwashers and clothes dryers, there were no performance standards for these products. Now, since there are performance standards for these products, the Department is proposing to include certification reporting. Section 430.62(a)(2).

III. Environmental Review

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 766(a)), a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for the Administrator's comments concerning the impacts of this proposal on the quality of the environment.

DOE has concluded that this proposed rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–35, 4341–47 (1976)). Therefore, this proposed rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Regulatory Review

Today's regulatory proposal has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Regulatory Flexibility Review

The proposed rule has been reviewed under the Regulatory Flexibility Act, Pub. L. 96–354 (42 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. The proposed rule affects manufacturers of water heaters; kitchen ranges, ovens, and microwave ovens; and clothes washers. The test procedures would not have significant economic impact, but rather, would provide common testing methods. DOE accordingly certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

VI. "Takings" Assessment Review

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this proposed regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

The Department believes that test procedures implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a "taking" of private property. Thus, testing under the appliance standards program does not invoke the provisions of E.O. 12630.

VII. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, the Executive Order 12612 requires the preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

DOE has identified a substantial direct effect that today's proposed rule would have on State governments. It would initially preempt inconsistent State regulations. However, DOE has concluded that such effect is not sufficient to warrant preparation of a federalism assessment for the following reason: the Act provided for subsequent State petitions for exemption. Thus, a determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will then be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

VIII. Review Under Section 32 of the Federal Energy Administration Authorization Act

The test procedure amendments proposed today incorporate the International Electrotechnical Commission Publication 705, and Amendment 2–1993, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," section 4, Paragraph 12 "Microwave Power Output Measurement," Paragraph 13 "Electrical Power Output Measurement," and Paragraph 14 "Efficiency" to determine the output power and efficiency for microwave ovens.

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE is required to comply with section 32 of the Federal Energy Authorization Act of 1974 (15 U.S.C. 788), which imposes certain requirements where a proposed rule contains commercial standards or authorizes or requires the use of such standards.

The findings required of DOE by section 32 of the Act serve to alert the public and DOE regarding the use and background of commercial standards in a proposal and through the rulemaking process. They allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a proposed rulemaking.

DOE has evaluated the promulgation of International Electrotechnical Commission Publication 705, and Amendment 2–1993, in light of the public participation criteria of section 32(b). The Department is unable to conclude whether development of these standards fully complied with section 32(b) regarding the manner of public participation.

As required by section 32(c), DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to prescribing final test procedures.

IX. Paperwork Reduction Act Review

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's proposed rule meets the requirements of sections 2(a) and (b)(2) of Executive Order 12778.

XI. Public Comment Procedures

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the proposed test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Water Heaters; Kitchen Ranges, Ovens, and Microwave Ovens; and Clothes Washers Test Procedures, Docket No. EE–RM–94–230." Ten (10) copies are requested to be submitted. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfectTM 5.1 be provided. All submittal received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the proposed amendments.

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Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department of Energy invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed test procedures, to make a written request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Test Procedure for Water Heaters, Kitchen Ranges, Ovens and Microwave Ovens; and Clothes Washers; and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers, Docket No. EE–RM–94–230," both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that have such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of their statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to twenty (20) minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Public Comment

The Department of Energy is interested in receiving comments and data concerning the accuracy and workability of these test procedures. Also, the Department welcomes discussion on improvements or alternatives to these approaches. In particular, DOE is interested in gathering comments on the following:

- The appropriateness of including test procedures for electric and oil instantaneous water heaters.
- The impacts on manufacturer(s) as a result of extending coverage of the existing minimum energy efficiency standards for electric and oil-fired instantaneous water heaters.
- The appropriateness of including the draw schedule and draw rate of the American National Standards Institute/ American Society of Heating, Refrigerating and Air Conditioning Engineers Standard 118.2–1993 for storage water heaters with rated storage capacities less than 20 gallons (76 liters).
- The impacts on manufacturer(s) as a result of extending coverage of the existing minimum energy efficiency standards for storage-type water heaters of less than 20 gallons (76 liters).
- The appropriateness of the proposed definition, first hour rating, for instantaneous and storage water heaters.
- The appropriateness of the proposed first hour rating test method for storage tank-type water heaters.
- The appropriateness of a first hour rating which might give unrealistic results for water heaters containing thermal compensating dip tubes or internal mixing valves.
- The appropriateness of the proposed definitions: heat pump water heater, add-on heat pump water heater, integral heat pump water heater, solar water heater, and heat pump water heater storage tank.
- The adequateness of the test provisions for heat pump water heaters regarding the usage of backup electric resistance element(s).
- The appropriateness of the proposed test energy method to determine the output energy for microwave ovens.
- The appropriateness to incorporate by reference the International Electrotechnical Commission Publication 705, and Amendment 2–1993, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," section 4, Paragraph 12 "Microwave Power Output Measurement," Paragraph 13 "Electrical Power Output Measurement," and Paragraph 14 "Efficiency" as a test method for microwave ovens.
- The appropriateness of the proposed definitions: Agitator, machine-controlled water fill capability, modified energy factor, moisture removal factor, nonwater-heating clothes washer, thermostatically controlled valves, top-loader-horizontal-axis clothes washer, top- loader-vertical-axis clothes washer, water consumption factor and water-heating clothes washer.
- The appropriateness of the proposed test and performance measurement methods for water-heating clothes washers.
- The appropriateness of using 5 percent and 25 percent to prorate the "hottest" available setting and the "hot" setting, respectively, for water-heating clothes washers.
- The appropriateness of a new descriptor (moisture removal energy) to determine the efficiency of moisture removal from the test load.
- The appropriateness of a new descriptor (water consumption factor) to determine the water consumption of clothes washers.
- The appropriateness of a new efficiency descriptor (modified energy factor) for possible future use in establishing energy conservation standards for clothes washers.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, February 8, 1995.

Christine Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of title 10, of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.22 is amended by revising paragraph (a)(2)(ii) and adding paragraph (a)(3)(iv) and adding item number 13 to paragraph (a)(4) to read as follows:

§ 430.22 Reference sources.

(a) * * *

(2) * *

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(3) * * *

(iv) Copies of the International Electrotechnical Commission Publication can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936.

(4) * * *

13. International Electrotechnical Commission Publication 705, and Amendment 2–1993, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Paragraph 12 "Microwave Power Output Measurement," Paragraph 13 "Electrical Power Output Measurement," and Paragraph 14 "Efficiency."

§ 430.23 [Amended]

3. Section 430.23, Test procedures for measures of energy consumption, is amended to read as follows:

A. In § 430.23(i)(1)(iii) (second sentence) replace "4.3.1, 4.2.2, 4.1.2.5, or 4.1.2.6, 4.4.3, and 4.5.1.3" with "4.3, 4.2.2, 4.1.2, and 4.4.3."

B. In § 430.23(i)(2) (first sentence) replace "4.2.1.3, 4.1.3 and 4.4.2" with "4.2.1, 4.1.3, and 4.4.4."

C. In § 430.23(i)(3) (first sentence) replace "4.3.2, and 4.5.2" with "4.3" and replace the comma following "subpart" with a period and remove the remainder of the sentence.

D. In § 430.23(i)(4) (first sentence) replace "4.3.3, 4.2.3, 4.1.4, 4.4.4 and 4.5.3" with "4.3, 4.2.3, 4.1.4, 4.4.5."

E. In § 430.23(j)(1)(i)(A) replace "416" with "392".

F. In § 430.23(j)(1)(i)(B) replace "determined according to 4.6" with "determined according to section 4.1.1.6 (nonwater-heating) or 4.1.2.2 (water-heating)".

G. In § 430.23(j)(1)(ii) (introductory text) replace "When gas-heated or oil-heated water is used, the product of: the representative average-use cycle of 416 cycles per year" with "When gas-heated or oil-heated water is used, the product of: the representative average-use cycle of 392 cycles per year (for nonwater-heating clothes washers)".

H. In § 430.23(j)(1)(ii)(A) replace "4.4" with "4.1.1.4".

I. In § 430.23(j)(1)(ii)(B) replace "in Btu per cycle, determined according to 4.5" with "in Btu per cycle (MJ per kwh), determined according to section 4.1.1.5".

J. In § 430.23, paragraph (j)(2) is revised to read as follows:

§ 430.23 Test procedures for methods of energy consumption.

* * * * *

(j) * * *

(2)(i) The energy factor for automatic and semi-automatic clothes washers shall be the quotient of the cubic foot (liter) capacity of the clothes container as determined in 3.1 of appendix J to this subpart divided by the clothes washer energy consumption per cycle, expressed as: (for nonwater-heating clothes washers) the sum of the machine electrical energy consumption and the hot water energy consumption as determined in 4.1.1.4 and 4.1.1.3, respectively, of appendix J to this subpart; (or for water-heating clothes washers) the energy consumption as determined in 4.1.2.2, of appendix J to this subpart. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hour per cycle (0.01 liter per kilowatt-hour per cycle).

(ii) The modified energy factor for automatic and semi-automatic clothes washers is determined in accordance with section 4.4.1 (nonwater-heating clothes washers) or 4.4.2 (water-heating clothes washers), of appendix J to this subpart. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hour per cycle (0.01 liter per kilowatt-hour per cycle).

(iii) The water consumption factor for automatic and semi-automatic clothes washers is determined in accordance with section 4.3.3, of appendix J to this subpart. The result shall be rounded off to the nearest 0.001 cubic foot per gallon per cycle (0.001 liter per liter per cycle).

* * * * *

4. Appendix E to subpart B of part 430 is revised to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. Definitions

1.1 *Cut-in* means the time or water temperature when a water heater thermostat has acted to increase the energy or fuel input to the heating elements, compressor, or burner.

1.2 *Cut-out* means the time or water temperature when a water heater thermostat has acted to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burner.

1.3 *Design Power Rating* means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu (KJ) per hour as appropriate.

1.4 *Energy Factor* means a measure of water heater overall efficiency.

1.5 *First Hour Rating* is an estimate of the maximum volume of "hot" water that a storage-type water heater can supply within an hour that begins with the water heater

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fully heated (i.e., all thermostats satisfied). For instantaneous water heaters, first hour rating designates the maximum volume of hot water that can be supplied during any hour.

1.6 *Heat Pump Water Heater Storage Tank* is an insulated tank designed, wired and labeled for use exclusively with an add-on heat pump water heater or solar water heater and being unable to operate without an add-on heat pump water heater or solar water heater. The heat pump water heater storage tank may contain one or two thermostats and up to two electric resistance heating elements, and has a manufacturer's rated capacity of 120 gallons (450 liters) or less. When tested with the add-on heat pump water heater or solar water heater inoperative, the heat pump water heater storage tank shall have an energy factor that is determined in accordance with the test procedure for water heaters.

1.7 *Heat Trap* means a device which can be integrally connected or independently attached to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.8 *Instantaneous-Type Water Heaters.*

1.8.1 *Electric Instantaneous Water Heater* means a water heater that uses electricity as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180°F (82°C), has a maximum input of 12 kilowatts or less, and has a manufacturer's specified storage capacity of less than 2 gallons (8 liters). The unit may use a fixed or variable power input.

1.8.2 *Gas Instantaneous Wates Heater* means a water heater that uses gas as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180°F (82°C), has an input greater than 50,000 Btu per hour (53 MJ per hour) but less than 200,000 Btu per hour (210 MJ per hour), and has a manufacturer's specified storage capacity of less than 2 gallons (8 liters). The unit may use a fixed or variable burner input.

1.8.3 *Oil Instantaneous Water Heater* means a water heater that uses oil as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180°F (82°C), has an input greater than 50,000 Btu per hour (53 MJ per hour) but less than 200,000 Btu per hour (210 MJ per hour), and has a manufacturer's specified storage capacity of less than 2 gallons (8 liters). The unit may use a fixed or variable burner input.

1.9 *Recovery Efficiency* means the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.

1.10 *Standby* means the time during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure: $t_{standby,1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and subsequent recovery and the end of the 24-hour test; $t_{standby,2}$ represents the total time during the 24-hour simulated use test when water was not being withdrawn from the water heater.

1.11 *Storage-Type Water Heaters.*

1.11.1 *Electric storage water heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 12 kilowatts or less, and has a manufacturer's rated storage capacity of 120 gallons (450 liters) or less.

1.11.2 *Gas Storage Water Heater* means a water heater that uses gas as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 75,000 Btu per hour (79 Mj per hour) or less, and has a manufacturer's rated storage capacity of 100 gallons (380 liters) or less.

1.11.3 *Heat Pump Water Heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a maximum current rating of 24 amperes (includes the compressor and all auxiliary equipment such as fans, pumps, and controls, and if on the same circuit, any resistive elements) for an input voltage of 250 volts or less, and, if the tank is supplied, has a manufacturer's rated storage capacity of 120 gallons (450 liters) or less. Resistive elements used to provide supplemental heating may use the same circuit as the compressor if (1) An interlocking mechanism prevents concurrent compressor operation and resistive heating, or (2) concurrent operation does not result in the maximum current rating of 24 amperes being exceeded. Otherwise, separate circuits shall be used by the resistive elements and the heat pump components. A heat pump water heater may be an integral type or an add-on type.

a. Integral heat pump water heater—An air-to-water heat pump integral with an insulated storage tank.

b. Add-on heat pump water heater—An air-to-water heat pump designed for use with a heat pump water heater storage tank.

1.11.4 *Oil Storage Water Heater* means a water heater that uses oil as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal energy input of 105,000 Btu/hr (110 MJ/hr) or less, and has a manufacturer's rated storage capacity of 50 gallons (190 liters) or less.

1.11.5 *Solar Water Heater* means a water heater that is designed to obtain at least half of the annual energy for heating water from the sun.

1.12 *ASHRAE Standard 41.1–86* means the standard published in 1986 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. and titled Standard Measurement Guide: Section on Temperature Measurements.

1.13 *ASTM–D–2156–80* means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

1.14 *Rated Storage Volume* means the water storage capacity of a water heater, in gallons (liters), as specified by the manufacturer.

2. Test Conditions

2.1 *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with Section 4 of this appendix.

2.2 *Ambient Air Temperature.* The ambient air temperature shall be controlled to a value between 65.0°F and 70.0°F (18.3°C and 21.1°C) on a continuous basis. For heat pump water heaters, the dry bulb temperature shall be maintained at 67.5°F ± 1°F (19.7°C ± 0.6°C) and, in addition, the relative humidity shall be maintained between 49 and 51 percent.

2.3 *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58°F± 2°F (14.4°C±1.1°C) throughout the test.

2.4 *Storage Tank Temperature.* The average temperature of the water within the storage tank shall be set to 135°F±5°F (57.2°C±2.8°C).

2.5 *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig (275 kPa) and the maximum allowable pressure specified by the water heater manufacturer.

2.6 *Electrical and/or Fossil Fuel Supply.*

2.6.1 *Electrical.* Maintain the electrical supply voltage to within ±1 percent of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.6.2 *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7 to 10 inches of water column (1.7 Kpa to 2.5 Kpa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ±10% of the manufacturer's specified manifold pressure. Use natural gas having a higher heating value of approximately 1,025 Btu per standard cubic foot (38190 K] per standard cubic meter).

2.6.3 *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11 to 13 inches of water column (2.7 kPa to 3.2 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ±10% of the manufacturer's specified manifold pressure. Use propane gas with a higher heating value of approximately 2,500 Btu per standard cubic foot (93 k] per standard cubic meter).

2.6.4 *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil having a heating value of approximately 138,700 Btu per gallon (38,660 k] per liter).

3. Instrumentation

3.1 *Pressure Measurements.* Pressure measuring instruments shall have no errors no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	± 0.1 inch of water column (± 0.025 kPa)	± 0.05 inch of water column (± 0.012 kPa).
Atmospheric pressure	± 0.1 inch of mercury column (± 0.34 kPa)	± 0.05 inch of mercury column (± 0.17 kPa).
Water pressure	± 1.0 pounds per square inch (± 6.9 kPa)	± 0.50 pounds per square inch (± 3.45 kPa).

3.2 *Temperature Measurement.*

3.2.1 *Measurement.* Temperature measurements shall be made in accordance with the Standard Measurement Guide: Section on Temperature Measurements, ASHRAE Standard 41.1–86.

3.2.2 *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the limits as follows:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	± 0.2 °F (± 0.1 °C)	± 0.1 °F (± 0.06 °C).
Air wet bulb temperature	± 0.2 °F (± 0.1 °C)	± 0.1 °F (± 0.06 °C).
Inlet and outlet water temperatures	± 0.2 °F (± 0.1 °C)	± 0.1 °F (± 0.06 °C).
Storage tank temperatures	± 0.5 °F (± 0.3 °C)	± 0.25 °F (± 0.14 °C).

3.2.3 *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4 *Temperature Difference* Temperature difference between the entering and leaving water may be measured with any of the following:

a. A thermopile
b. Calibrated resistance thermometers
c. Precision thermometers
d. Calibrated thermistors
e. Calibrated thermocouple
f. Quartz thermometers

3.2.5 *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6 *Time Constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 5 seconds.

3.3 *Liquid Flow Measurements.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than ± 1% of the measured value in mass units per unit time.

3.4 *Electric Energy.* The electrical energy used shall be measured with an instrument and associated readout device that are accurate within ±1% of the reading.

3.5 *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading.

3.6 *Mass Measurements.* For mass measurements greater than or equal to 10 pounds (4.5 kg), a scale that is accurate within ±1.0% of the reading shall be used to make the measurement. For mass measurements less than 10 pounds (4.5 kg), the scale shall provide a measurement that is accurate within ±0.1 pound (±0.045 kg).

3.7 *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading. The heating value of natural gas and propane must be corrected for local temperature and pressure conditions.

3.8 *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ±0.5 seconds per hour.

4. Installation

4.1 *Water Heater Mounting.* A water heater designed to be free standing shall be installed according to the manufacturer's directions on a ¾ inch (2 cm) thick plywood platform supported by three 2×4 inch (5 cm×10 cm) runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between it and the platform. For heat pump water heaters without a storage tank supplied by the manufacturer, connections shall be made with a storage tank as described in section 4.10 and in accordance with manufacturer-published installation instructions. The storage tank and heat pump section shall be placed on platform(s) constructed as previously described. If installation materials are not provided by the heat pump manufacturer, use uninsulated 8 foot (2.4 m) long connecting hoses, having an inside diameter of ⅝ inch (1.6 cm). Wall mounted water heaters shall be installed in accordance with manufacturer-published installation instructions on a simulated wall section made from ¾ inch (2 centimeter) plywood and 2×4 inch (5×10 centimeter) studs. Placement in the test room shall be in an area protected from drafts.

4.2 *Water Supply.* The water supply shall be capable of delivering water at conditions as specified in sections 2.3 and 2.5.

4.3 *Water Inlet and Outlet Configuration.* Inlet and outlet piping connections shall be configured as illustrated in Figures 1, 2, or 3. For water heaters that are 36 inches (91 centimeters) or less in height and intended for installation either beneath, adjacent to, or in conjunction with a counter (commonly referred to as an under-the-counter or table-top model), the inlet and outlet connections shall be configured as illustrated in Figures 4a and 4b. Type "L" hard copper tubing, the same size as the connections on the water heater, shall be connected to the tank and extend 24 inches (61 centimeters) in length. If an under-the-counter type water heater is not factory equipped with pipe to extend the field connection point of the water heater lines to outside of the jacket or cabinet, type "L" hard copper tubing shall be used to extend the water line horizontally to the exterior of the jacket or cabinet. Unions may be used to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the 24-inch (61 centimeters) cold water inlet pipe. An appropriately rated pressure and temperature relief valve shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be non-metallic. If heat traps and/or piping insulation and/or pressure relief valve insulation are supplied with the water heater, they shall be installed for testing. Clearance shall be provided such that none of the piping contacts other surfaces in the test room.

4.4 *Fuel and/or Electrical Power and Energy Consumption.* Install one or more instruments which measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with Section 3. For heat pump water heaters that use supplemental resistive heating, the electrical energy supplied to the resistive element(s) shall be metered separately from the electrical energy supplied to the entire appliance or to the remaining components (i.e., compressor, fans, pumps, controls, etc.).

4.5 *Internal Storage Tank Temperature Measurements.* Install six temperature measurement sensors inside the water heater tank with a vertical distance of at least 4 inches (10 centimeters) between successive sensors. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes within the tank. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through (1) the anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If

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installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, shall be installed as close as possible to its original location. If the relief valve temperature sensor is relocated, and it no longer extends into the top of the tank, a substitute relief valve that has a sensing element that can reach into the tank shall be installed. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value between 4 and 8 hr·ft²·°F/Btu (0.7 and 1.4 m²·°C/W).

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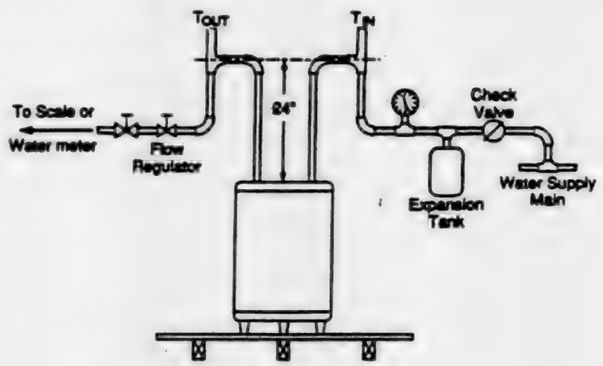


Figure 1

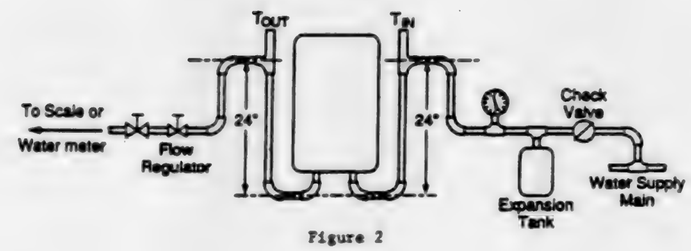


Figure 2

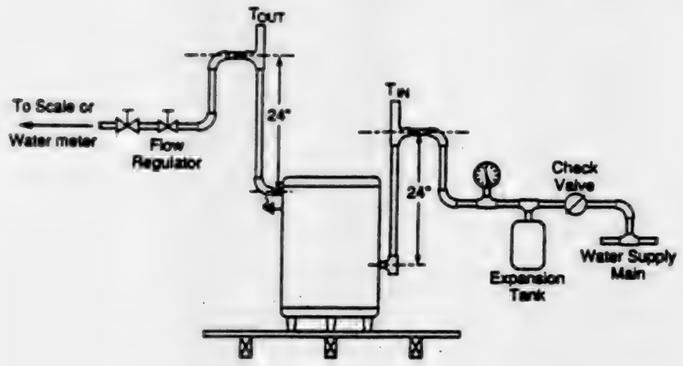


Figure 3

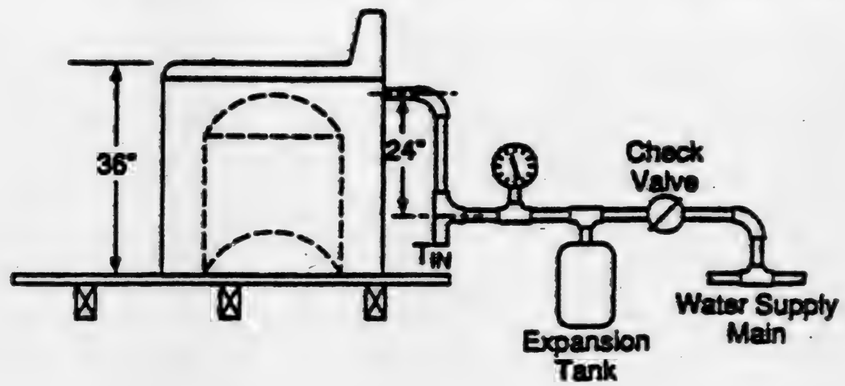


Figure 4a.

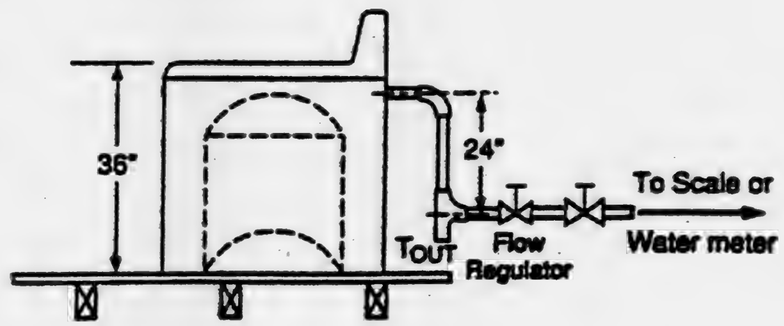


Figure 4b.

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4.6 *Ambient Temperature.* The ambient air temperature shall be measured approximately at the vertical mid-point of the water heater and approximately 2 feet (60 centimeters) from the surface of the water heater. The sensor shall be shielded against radiation.

4.7 *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figures 1, 2, 3, or 4a and 4b, as applicable.

4.8 *Flow Control.* A flow control valve shall be installed to provide flow as specified in Section 5.

4.9 *Flue Requirements.*

4.9.1 *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters having a vertically discharging draft hood outlet, a 5-foot (1.5 meter) vertical vent pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters having a horizontally discharging draft hood outlet, a 90-degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5-foot (1.5 meter) length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward. Direct vent gas-fired water heaters shall be installed with venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2 *Oil-Fired Water Heaters.* Establish a draft at the flue collar as specified in the manufacturer's literature. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet and directed vertically upward. For an oil-fired water heater having a horizontally discharging draft hood outlet, a 90-degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.10 *Heat Pump Water Heater Storage Tank.* The heat pump water heater storage tank to be used for testing a heat pump water heater without a tank supplied by the manufacturer shall have a volume of 47.0 gallons ±1.0 gallon C 180±4 liters with an Energy Factor of 0.87±.01 as determined in accordance with Section 6.1.7 with two 4.5 kW heating elements controlled in such a manner as to prevent both elements from operating simultaneously.

5. Test Procedures

5.1 *Storage-Type Water Heaters, Including Heat Pump Water Heaters.*

5.1.1 *Determination of Storage Tank Volume.* Determine the storage capacity, Vst, of the water heater under test, in gallons (liters), by subtracting the tare weight—measured while the tank is empty—from the gross weight of the storage tank when completely filled with water (with all air eliminated and line pressure applied as described in section 2.5) and dividing the resulting net weight by the density of water. Density shall be evaluated based on the temperature of the stored water.

5.1.2 *Setting the Thermostat for a Thermostatically Operated Water Heater.* Starting with a tank of supply water, initiate normal operation of the water heater. After cutout, determine the mean tank temperature (based on all of the in-tank sensors) every minute until the maximum value is observed. Determine whether this maximum value for the mean tank temperature is within the range of 135°F±5°F (57.2°C±2.8°C). If not, turn off the water heater, adjust the thermostat, and refill the tank with supply water. Then, initiate normal operation of the water heater, and once again determine the maximum mean tank temperature after cut-out. Repeat this sequence until the maximum mean tank temperature after cut-out is within the range of 135°F±5°F (57.2°C±2.8°C).

If an electric water heater has two or more thermostats, the thermostat that controls the upper-most heating element shall be set first to yield a maximum water temperature of 135°F±5°F (57.2°C±2.8°C), as measured by the in-tank sensors that are positioned above the upper-most heating element. The thermostat that controls the heating element positioned next highest in the tank shall then be set to yield a maximum water temperature of 135°F±5°F (57.2°C±2.8°C). This process shall be repeated until the thermostat controlling the lowest element is correctly adjusted. When adjusting the thermostat that controls the lowest element, the maximum mean tank temperature after cut-out, as determined using all the in-tank sensors, shall be within 135°F±5°F (57.2°C±2.8°C). When adjusting all other thermostats, use only the in-tank temperature sensors positioned above the heating element in question to evaluate the maximum water temperature after cut-out.

For heat pump water heaters, which control an auxiliary resistance element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.1.3 *Power Input Determination.* For all water heaters except electric types having immersed heating elements, initiate normal operation and determine the power input, P, to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be set within ±10% of that recommended by the manufacturer. For oil-fired water heaters the fuel pump pressure shall be within ±10% of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu (k)) rating that is within ±2% of the value specified by the manufacturer. For an oil-fired water heater, adjust the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu (k]) rating that is within ±2% of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80.

5.1.4 *First Hour Rating Test.*

5.1.4.1 *General.* During hot water draws, remove water at a rate of 3.00±0.25 gallons per minute (11.4±0.95 liters per minute) for units with rated storage capacities of 20 gallons (76 liters) or more and 1.0±0.25 gallons per minute (3.8±0.95 liters per minute) for units with rated storage capacities less than 20 gallons (76 liters). Collect the water in a container that is large enough to hold the volume removed during an individual draw and suitable for weighing at the termination of each draw. Alternatively, a water meter may be used to directly measure the water volume(s) withdrawn.

5.1.4.2 *Draw Initiation Criterion.* Begin the first hour rating test by imposing a draw on the storage-type water heater. After completion of this first draw, initiate successive draws based on the following criteria. For gas- and oil-fired water heaters, initiate successive draws when the thermostat acts to reduce the supply of fuel to the main burner. For electric water heaters having a single element or multiple elements that all operate simultaneously, initiate successive draws when the thermostat acts to reduce the electrical input supplied to the element(s). For electric water heaters having two or more elements that do not operate simultaneously, initiate successive draws when the applicable thermostat acts to reduce the electrical input to the element located vertically highest in the storage tank For heat pump water heaters that do not use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor is reduced by the action of the water heater's thermostat. For heat pump water heaters that do use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor or the uppermost resistive element is reduced by the action of the applicable water heater thermostat. This draw initiation criterion for heat pump water heaters that use supplemental resistive heating, however, shall only apply when the water located above the thermostat at cut-out is heated to 135°F ±5°F (57.2°C±2.8°C).

5.1.4.3 *Test Sequence.* Establish normal water heater operation. If the water heater is not presently operating, initiate a draw. The draw may be terminated anytime after cut-in occurs. Once cut-out occurs (e.g., all thermostats satisfied), monitor the internal storage tank temperature sensors described in section 4.5 every minute. For each set of measurements, calculate the mean tank temperature. If any of these mean values are outside the range specified in section 2.4, adjust the thermostat(s) as specified in section 5.1.2 and reevaluate the mean tank temperature after all thermostats are again satisfied.

Initiate a draw after a maximum mean tank temperature has been observed following cut-out. Record the time when the draw is initiated and designate it as an elapsed time of zero. ($\tau = 0$). The superscript * is used to denote variables pertaining to the first hour rating test. Record the outlet water temperature beginning 15 seconds after the draw is initiated and at 5 second intervals thereafter, until the draw is terminated. Determine the maximum outlet temperature that occurs during this first draw and record it as $T^*_{max,1}$. For the duration of this first draw and all successive draws, in addition, monitor the inlet temperature to the water heater to assure that the required 58°F±2°F (14.4°C ± 1.1°C) test condition is met. Terminate the hot water draw when the outlet temperature decreases to $T^*_{max,1} - 25°F$ ($T^*_{max,1} - 13.9°C$). Record this temperature as $T^*_{min,1}$. Following draw termination, determine the average outlet water temperature and the mass or volume removed during this first draw and record them as $\bar{T}^*_{del,1}$ and M^*_1 or V^*_1, respectively.

Initiate a second and, if applicable, successive draws each time the applicable draw initiation criterion described in section 5.1.4.2 is satisfied. As required for the first draw, record the outlet water temperature beginning 15 seconds after initiating each draw and at 5 second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during each draw and record it as $T^*_{max,i}$, where $_i$ refers to the draw number. Terminate each hot water draw when the outlet temperature decreases to $T^*_{max,i} - 25°F$ ($T^*_{max,i} - 13.9°C$). Record this temperature as $T^*_{min,i}$. Calculate and record the average outlet temperature and the mass or volume removed during each draw ($\bar{T}^*_{del,i}$ and M^*_i or V^*_i). Continue this sequence of draw and recovery until one hour has elapsed, at which time the electrical power and/or the fuel supplied to the water heater shall be disconnected and/or terminated.

If a draw is occurring at an elapsed time of one hour, continue this draw until the outlet temperature decreases to $T^*_{max,n} - 25°F$ ($T^*_{max,n} - 13.9°C$), at which time the draw shall be immediately terminated. The subscript $_n$ shall be used to denote quantities associated with the final draw. If a draw is not occurring at an elapsed time of one hour, a final draw shall be imposed at one hour. This draw shall be immediately terminated when the outlet temperature first indicates a value less than or equal to the cut-off temperature used for the previous draw ($T^*_{min,n-1}$). For cases where the outlet temperature is close to $T^*_{min,n-1}$, the final draw shall proceed for a minimum of 30 seconds. If an outlet temperature greater than $T^*_{min,n-1}$ is not measured within 30 seconds, the draw shall be immediately terminated and zero additional credit shall be given towards first hour rating (i.e., $M^*_n = 0$ or $V^*_n = 0$). Once the final draw is terminated, calculate and record the average outlet temperature and the mass or volume removed during the draw ($\bar{T}^*_{del,n}$ and M^*_n or V^*_n).

5.1.5 *24-Hour Simulated Use Test.* During the simulated use test, a total of 64.3 ±1 gallon (243±4 liters) shall be removed if the rated storage tank volume is 20 gallons (76 liters) or greater. If the rated storage tank volume is less than 20 gallons (76 liters) but greater than or equal to 10 gallons (38 liters), a total of 24±0.5 gallon (91±1.9 liters) shall be removed; and if the rated storage tank volume is less than 10 gallons (38 liters), a total of 9±0.5 gallon (34±1.9 liters) shall be removed. These values are referred to as the daily hot water usage in the following text.

With the water heater turned off, fill the water heater with supply water and apply pressure as described in section 2.5. Turn on the water heater and associated heat pump unit, if present. After the cutout occurs, measure the mean tank temperature using the temperature sensors described in section 4.5 every minute until the maximum mean storage tank temperature is achieved. If this maximum mean temperature is outside the range specified in section 2.4, adjust the thermostat(s) as specified in section 5.1.2 and reevaluate the mean tank temperature after all thermostats are again satisfied. After thermostat adjustments are completed, the water heater may be operated for up to three cycles of drawing until cut-in and then operating until cut-out, prior to the start of the test.

At this time, record the mean tank temperature ($\bar{T}_s$), and the electrical and/or fuel measurement readings, as appropriate. Begin the 24-hour simulated use test by withdrawing a volume from the water heater that equals one-sixth of the daily hot water usage. Record the time when this first draw is initiated and assign it as the test elapsed time (τ) of zero. Record the average storage tank and ambient temperature every 15 minutes throughout the 24-hour simulated use test unless a recovery or a draw is occurring. At elapsed time intervals of one, two, three, four, and five hours from $\tau = 0$, initiate additional draws removing an amount of water equivalent to one-sixth of the daily hot water usage with the maximum allowable deviation for any single draw being ±0.5 gallons (±1.9 liters) for units having rated storage capacities of 20 gallons (76 liters) or greater, and ±0.1 gallons (0.4 liters) for units having rated storage capacities less than 20 gallons (76 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals: 64.3±1.0 gallons (243.4±3.8 liters) for water heaters having rated storage capacities of 20 gallons (76 liters) or more, 24±0.5 gallons (90.8±1.9 liters) for water heaters having rated storage capacities less than 20 gallons (76 liters) but greater than or equal to 10 gallons (38 liters), and 9.0±0.5 gallons (34.1±1.9 liters) for water heaters having rated storage capacities less than 10 gallons (38 liters).

All draws during the simulated use test shall be made at flow rates of 3.0±0.25 gallons per minute (11.4±0.95 liters per minute) when testing water heaters having rated storage capacities of 20 gallons (76 liters) or more. For water heaters having rated storage capacities less than 20 gallons (76 liters), flow rates of 1.0±0.25 gallons per minute (3.8±0.95 liters per minutes) shall be achieved. Measurements of the inlet and outlet temperatures shall be made beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of each draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw ($\bar{T}_{del,i}$ and $\bar{T}_{in,i}$). Determine and record the net mass or volume removed (M_i or V_i), as appropriate, after each draw.

At the end of the recovery period following the first draw, record the maximum mean tank temperature observed after cut-out, $\bar{T}_{max,1}$, and the energy consumed by a gas or oil water heater, Q_s. For heat pump water heaters, the total electrical energy consumed by the heat pump (including compressor, fan, controls, pump, etc.) and, if applicable, by the resistive element(s) during the first recovery shall be recorded as Q_r. In addition, the total operating time of the compressor during the first recovery shall be determined and recorded as $\tau_{cmp,1}$. Finally, for heat pump water heaters that use resistive heating during the first recovery, the electrical energy consumed by the resistive element(s) shall be separately metered and recorded, $Q_{res,1}$.

At the end of the recovery period that follows the sixth draw, determine and record the total electrical energy and/or fossil-fuel consumed since the beginning of the test, Q_{su}. In preparation for determining the energy consumed during stand-by, record the reading given on the electrical energy (watt-hour) meter, the gas meter, and/or the scale used to determine oil consumption, as appropriate. Record the maximum value of the mean tank temperature after cutout as $\bar{T}_{su}$. Except as noted below, allow the water heater to remain in the standby mode until 24-hours have elapsed from the start of the test, i.e., since $\tau = 0$. Prevent the water heater from beginning a recovery cycle during the last hour of the test by turning off the electric power to the electrical heating elements and heat pump, if present, or by turning down the fuel supply to the main burner at an elapsed time of 23 hours. If a recovery is taking place at an elapsed time of 23 hours, wait until the recovery is complete before reducing the electrical and/or fuel supply to the water heater. At 24 hours, record the mean tank temperature, $\bar{T}_{24}$, and the electric and/or fuel instrument readings. Determine the total fossil fuel or electrical energy consumption, as appropriate, for the entire 24-hour simulated use test, Q. Record the time interval between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test as $\tau_{stby,1}$. Record the time during which water was not being withdrawn from the water heater during the entire 24-hour period as $\tau_{stby,2}$.

5.2 *Instantaneous Water Heaters.*

5.2.1 *Setting the Outlet Discharge Temperature.* Initiate normal operation of the water heater at the full input rating. Monitor the discharge water temperature and set to a value of 135°F±5°F (57.2°C±2.8°C) in accordance with the manufacturer's instructions. If the water heater is not capable of providing this discharge temperature when the flow rate is 3.00±0.25 gallons per minute (11.4±0.95 liters per minute), then adjust the flow rate as necessary to achieve the specified discharge water temperature. Record the corresponding flow rate as V_{max}.

If the instantaneous water heater incorporates a controller that permits continuous burner or electric heating element operation at a reduced input rate, adjust the flow rate as necessary to achieve a discharge water temperature of 135°F±5°F (57.2°C±2.8°C) while maintaining the minimum input rate. Record the corresponding flow rate as V_{min}. If an outlet temperature of 135°±5°F (57.2°C±2 8°C) cannot be achieved at the minimum flow rate

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permitted by the instantaneous water heater, record the flow rate as V_{max} and the corresponding outlet temperature as T_{min}.

25.2.2 *Power input Determination.* Gas-fired and oil-fired instantaneous water heaters shall have the burners adjusted to the maximum firing rate specified by the manufacturer.

5.2.3 *First Hour Rating Test for Instantaneous Water Heaters.* Establish normal water heater operation at the maximum input rate with the discharge water temperature set in accordance with section 5.2.1. During the test, do not interrupt the electrical energy or fossil fuel supplied to the water heater. During the one hour test, either collect the withdrawn water for later measuring the total mass removed, or alternatively, use a water meter to directly measure the water volume removed.

Begin with the water flow rate temporarily discontinued. Record the scale or water meter reading as appropriate. Initiate a draw and record the corresponding time. Record the inlet and outlet water temperatures beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of the draw. At the end of one hour terminate the draw. Determine the mass of water withdrawn, M_{Prim}, in pounds (kilograms), or the volume of water withdrawn, V_{Prim}, in gallons (liters) with an error no greater than 2 percent.

5.2.4 *24-Hour Simulated Use Test*

5.2.4.1 *Fixed Input Instantaneous Water Heaters.* Establish normal operation with the discharge water temperature and flow rate set to values of 135°F±5°F (57.2°C±2.8°C) and V_{max}, respectively. With no draw occurring, record the reading given by the gas meter, the scale used for determining oil consumption, and/or the electrical energy meter as appropriate. Begin the 24-hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage, 64.3 gallons (243 liters). Record the time when this first draw is initiated and designated it as an elapsed time, τ, of 0. At elapsed time intervals of one, two, three, four, and five hours from $\tau = 0$, initiate additional draws removing an amount of water equivalent to one-sixth of 64.3 gallons (243 liters), with the maximum allowable deviation for any single draw being ±0.5 gallons (±2 liters). The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals 64.3±1.0 gallons (243±4 liters).

Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after the draw is initiated and at every 5 second interval throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel or electrical energy consumed, Q_r. Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test, i.e., since $\tau = 0$. At 24 hours, record the reading given by the gas meter, the scale used for determining oil consumption, and/or the electrical energy meter as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q.

5.2.4.2 *Variable Input Instantaneous Water Heaters.* If the instantaneous water heater incorporates a controller that permits continuous operation at a reduced input rate, the first three draws shall be conducted using the maximum flow rate, V_{max}, while removing an amount of water equivalent to one-sixth of 64.3 gallons (243 liters), with the maximum allowable deviation for any one of the three draws being ±0.5 gallons (2 liters). The second three draws shall be conducted at V_{max}. If an outlet temperature of 135°F±5°F (57.2°C±2.8°C) could not be achieved at the minimum flow rate permitted by the instantaneous water heater, the last three draws should be lengthened such that the volume removed is:

$$V_{4.5.6} = \frac{64.3\ gal}{6} \times \left[\frac{77°F}{(T_{min} - 58°F)}\right]$$

or

$$V_{4.5.6} = \frac{243L}{6} \times \left[\frac{42.8°C}{(T_{min} - 14.4°C)}\right]$$

where the maximum-allowable variation for any one of the three draws is ± 0.5 gallons (2 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals $(32.15+3\times V_{4.5.6})$±1.0 gallons $((121.7+3\times V_{4.5.6})$±3.8 liters).

Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after a draw is initiated and at every 5 second interval throughout the duration of the draw. Determine the arithmetic mean of the hot water discharge temperature and the cold water inlet temperature for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel or electrical energy consumed, $Q_{r,max}$. Likewise, record the reading of the meter or scale used to measure fossil fuel or electrical energy consumption prior to the fourth draw and at the end of the recovery period following the fourth draw, and designate the difference as $Q_{r,min}$. Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test, i.e., since $\tau = 0$. At 24 hours, record the reading given by the gas meter, the scale used for determining oil consumption, and/or the electrical energy meter, as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q.

6. Computations

6.1 *Storage Tank and Heat Pump Water Heaters.*

6.1.1 *Storage Tank Capacity.* The storage tank capacity is computed using the following:

$$V_{st} = \frac{(W_f - W_t)}{\rho}$$

Where:

V_{st}=the storage capacity of the water heater, gal (L).

W_f=the weight of the storage tank when completely filled with water, lb_m (kg).

W_t=the (tare) weight of the storage tank when completely empty, lb_m (kg)

ρ=the density of water use to fill the tank: evaluated based on the temperature of the water, lb_m/gal (kg/L).

6.1.2 *First Hour Rating Computation.* For water heaters where the final draw was initiated at or prior to an elapsed time of one hour, the first hour rating shall be computed using,

$$F_{hr} = \sum_{i=1}^{n} V_i^*$$

Where:

n=the number of draws that are completed during the first hour rating test.

V^*_i=the volume of water removed during the ith draw of the first hour rating test, gal (L).

$$V_i^* = \frac{M_i^*}{\rho}$$

Where:

M^*_i=the mass of water removed during the ith draw of the first hour rating test, lb_m (kg).

ρ=the water density corresponding to the average outlet temperature measured during the ith draw ($\bar{T}^*_{del,i}$), lb_m/gal (kg/L).

For water heaters where a draw was not in progress at the elapsed time of one hour and a final draw was imposed at the elapsed time of one hour, the first hour rating shall be calculated using,

$$F_{hr} = \sum_{i=1}^{n-1} V_i^* + V_n^* \left(\frac{\bar{T}^*_{del,n} - T^*_{min,n-1}}{\bar{T}^*_{del,n-1} - T^*_{min,n-1}}\right)$$

where n and V^*, are the same quantities as defined above and,

$\bar{T}^*_{del,n-1}$=the average water outlet temperature measured during the (n − 1)th draw of the first hour rating test, °F (°C).

$\bar{T}^*_{del,n}$=the average water outlet temperature measured during the nth (final) draw of the first hour rating test, °F (°C).

$T^*_{min,n-1}$=the minimum water outlet temperature measured during the (n − 1)th draw of the first hour rating test, °F (°C).

6.1.3 *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage type water heaters is computed as:

$$\eta_r = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r} + \frac{V_{st}\rho_2 C_{p2}(\bar{T}_{max,1} - \bar{T}_o)}{Q_r}$$

Where:

M_1=total mass removed during the first draw of the 24-hour simulated use test, lb_m (kg).
$=V_1 \times \rho_1$

V_1=total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ_1=density of the water as evaluated at the water temperature at the point where the flow volume is measured, lb_m/gal (kg/L).

$C\rho_1$=specific heat of the withdrawn water as evaluated at $(\bar{T}_{del,1} + \bar{T}_{in,1})/2$ Btu/lb_m·°F (kJ/kg·K).

$\bar{T}_{del,1}$=average water outlet temperature measured during the first draw of the 24-hour simulated use test,°F (°C).

$\bar{T}_{in,1}$=average water inlet temperature measured during the first draw of the 24-hour simulated use test,°F (°C).

V_{st}=measured volume of the storage tank, as determined in section 6.1.1, gal (L).

ρ_2=density of stored hot water evaluated at $(\bar{T}_{max,1}+\bar{T}_o)/2$, lb_m/gal (kg/L).

$C\rho_2$=specific heat of stored hot water evaluated at $(\bar{T}_{max,1}+\bar{T}_o)/2$, Btu/$lb_m$·°F (kJ/kg·K).

$\bar{T}_{max,1}$=maximum mean tank temperature recorded after cut-out following the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$=maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated use test, °F (°C).

$Q_{rcs,1}$=electrical energy used by the supplemental resistive elements of a heat pump water heater during the first recovery of the 24-hour simulated use test, Wh.

$\tau_{cmp,1}$=the total operating time of the compressor of a heat pump water heater during the first recovery of the 24-hour simulated use test, hr.

Q_r=the total energy used by the water heater between cut-out prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (MJ). (electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 Kwh=3412 Btu).

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98 percent.

6.1.4 *Hourly Standby Losses.* The hourly standby losses are computed as

Where:

$$Q_{hr} = \frac{Q_{stby} - \frac{V_{st}\rho C_p(\bar{T}_{24} - \bar{T}_{su})}{\eta_r}}{\tau_{stby,1}}$$

Q_{hr}=the hourly standby energy losses of the water heater, Btu/hr (kJ/hr).

Q_{stby}=the total energy consumed by the water heater between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test period, Btu (kJ).

V_{st}=measured volume of the storage tank, as determined in section 6.1.1, gal (L).

ρ=density of stored hot water as evaluated at, $(\bar{T}_{24}+\bar{T}_{su})/2$, lb_m/gal (kg/L).

C_p=specific heat of the stored water as evaluated at $(\bar{T}_{24}+\bar{T}_{su})/2$, Btu/$lb_m$·°F (kJ/kg·°C).

$\bar{T}_{24}$=the mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_{su}$=maximum mean tank temperature observed after the sixth draw, °F (°C).

$\tau_{stby,1}$=elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, hr.

The standby heat loss coefficient for the tank is computed as:

$$UA = \frac{Q_{hr}}{\bar{T}_{t,stby} - \bar{T}_{a,stby}}$$

Where:

Q_{hr}=defined in section 6.1.4.

$\bar{T}_{t,stby}$=overall average storage tank temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_{a,stby}$=overall average ambient temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

UA=standby heat loss coefficient of the storage tank, Btu/hr·°F (kJ/hr·°C).

6.1.5 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d is computed as:

$$Q_d = Q - \frac{V_{st}\rho C_p(\bar{T}_{24} - \bar{T}_o)}{\eta_r}$$

Where:

Q=total energy used by the water heater during the 24-hour simulated use test including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ) (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3412 Btu).

V_{st}=measured volume of the storage tank, as determined in section 6.1.1, gal (L).

ρ=density of the stored hot water as evaluated at $(\bar{T}_{24}+\bar{T}_o)/2$, lb_m/gal (kg/L).

$C\rho$=specific heat of the stored water as evaluated at $(\bar{T}_{24}+\bar{T}_o)/2$, Btu/$lb_m$·°F (kJ/kg·°C).

$\bar{T}_{24}$=mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$=mean tank temperature at the beginning of the 24-hour simulated use test, recorded one minute before the first draw is initiated, °F (°C).

η_r=recovery efficiency of the hot water heater, dimensionless.

6.1.6 *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{da} takes into account that the temperature difference between the storage tank and surrounding ambient temperature may not be the nominal value of 67.5°F (135°F–67.5°F) or 37.5°C (57.2°C–19.7°C) due to the 10°F (5.6°C) allowable variation in storage tank temperature, 135±5°F (57.2±2.8°C), and the 5°F (2.8°C) allowable variation in surrounding ambient temperature 65°F (18.3°C) to 70°F (21.1°C). The adjusted daily water heating energy consumption is computed as:

$$Q_{da} = Q_d - [(\bar{T}_{stby} - \bar{T}_{a,stby}) - (135\ °F - 67.5\ °F)]UA\tau_{stby,2}$$

or

$$Q_{da} = Q_d - [(\bar{T}_{stby} - \bar{T}_{a,stby}) - (57.2\ °C - 19.7\ °C)]UA\tau_{stby,2}$$

Where:

Q_{da}=the adjusted daily water heating energy consumption, in Btu (kJ).

$\bar{T}_{stby}$=the mean tank temperature during the total standby portion, $T_{stby,2}$, of the 24-hour test, in °F (°C).

$\bar{T}_{a,stby}$=the average ambient temperature during the total standby portion, $T_{stby,2}$, of the 24-hour test, in °F (°C).

UA=the standby heat loss coefficient for the storage tank, in Btu/hr·°F (kJ/hr·°C).

$\tau_{stby,2}$=the number of hours during the 24-hour simulated test when water was not being withdrawn from the water heater.

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F (135°F − 58°F) or 42.8°C (57.2°C − 14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water, Btu/day (kJ/day) may be computed as:

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{p,i}(\bar{T}_{del,\,i} - \bar{T}_{in,\,i})}{\eta_r}$$

Where:

M_i=the mass withdrawn for the ith draw (i=1 to 6), in lb_m (kg).

$C\rho_i$=the specific heat of water, in Btu/lb_m°F (kJ/kg·°C).

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$\dot{T}_{del,i}$=the average water outlet temperature measured during the *i*th draw (i=1 to 6), °F(°C).
$\dot{T}_{in,i}$=the average water inlet temperature measured during the *i*th draw (i=1 to 6), °F(°C).
η_t=as defined in section 6.1.3.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise, Btu/day (kJ/day), is:

$$Q_{HW,\,77°F} = \sum_{i=1}^{6} \frac{M_i C_{p_i}(135°F - 58°F)}{\eta_t}$$

or $Q_{HW,\,42.8°C} =$

$$\sum_{i=1}^{6} \frac{M_i C_{p_i}(57.2°C - 14.4°C)}{\eta_t}$$

The difference between these two values is.

$$Q_{HWD} = Q_{HW,77°F} - Q_{HW}$$

or

$$Q_{HWD} = Q_{HW,42.8°C} - Q_{HW}$$

which must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 67.5°F (37.5°C) and the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$$Q_{dm} = Q_{da} + Q_{HWD}$$

6.1.7 *Energy Factor.* The energy factor, E_f, is computed as:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p_i}(135°F - 58°F)}{Q_{dm}}$$

or

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p_i}(57.2°C - 14.4°C)}{Q_{dm}}$$

Where:
Q_{dm}=the modified daily water heating energy consumption as computed in accordance with section 6.1.6, in Btu (kJ).
M_i=as defined in section 6.1.6.
C_{p_i}=as defined in section 6.1.6.

6.1.8 *Annual Energy Consumption.* The annual energy consumption for storage type and heat pump water heaters is computed as:

$$E_{annual} = 365 \times Q_{dm}$$

Where:
Q_{dm}=the modified daily energy consumption value, Btu/day (kJ/day), and 365 is the number of days in a year.

6.2 *Instantaneous Hot Water Heaters.*

6.2.1 *First Hour Rating Computation.* Compute the first hour rating as:

$$F_{hr} = \frac{M_{FHR}(\bar{T}_{del} - \bar{T}_{in})}{\rho(135°F - 58°F)}$$

or $F_{hr} = \dfrac{M_{FHR}(\bar{T}_{del} - \bar{T}_{in})}{\rho(57.2°C - 14.4°C)}$

which may be expressed as:

$$F_{hr} = \frac{M_{FHR}(\bar{T}_{del} - \bar{T}_{in})}{\rho(77°F)}$$

or $F_{hr} = \dfrac{M_{FHR}(\bar{T}_{del} - \bar{T}_{in})}{\rho(42.8°C)}$

Where:
M_{FHR}=the mass removed during the one hour continuous draw, in lb_m (kg).
$\dot{T}_{del}$=the average delivery temperature, in °F (°C).
$\dot{T}_{in}$=the average inlet temperature, in °F (°C).
ρ=the density of water at the average delivery temperature, in lb_m/gal (kg/L).

If a water meter is used in lieu of a scale the first hour rating is computed as:

$$F_{hr} = \frac{V(\bar{T}_{del} - \bar{T}_{in})}{77°F}$$

or $F_{hr} = \dfrac{V(\bar{T}_{del} - \bar{T}_{in})}{42.8°C}$

Where:
V=the volume of water removed during the one hour continuous draw, in gallons (liters).
$\dot{T}_{del}$=defined in section 6.2.1.
$\dot{T}_{in}$=defined in section 6.2.1.

6.2.2 *Recovery Efficiency*

6.2.2.1 *Fixed Input Instantaneous Water Heaters.* The recovery efficiency is computed as:

$$\eta_r = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r}$$

Where:
M_1=the mass withdrawn during the first draw of the 24-hour simulated use test, lb_m (kg).
C_{p_1}=the specific heat of water at the average temperature $(\dot{T}_{del,1}+\dot{T}_{in,1})/2$, Btu/$lb_m$·°F (kJ/kg·°C).
$\dot{T}_{del,1}$=the average temperature for the first draw, °F (°C).
$\dot{T}_{in,1}$=the average inlet temperature for the first draw, °F (°C).
Q_r=the total energy used by the water heater between cutout prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ).

6.2.2.2. *Variable Input Instantaneous Water Heaters.* For instantaneous water heaters which have a variable firing rate, two recovery efficiency values are computed, one at the maximum input rate and one at the minimum input rate. The recovery efficiency used in subsequent computations is taken as the average of these two values. The maximum recovery efficiency is computed as:

$$\eta_{r,max} = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_{r,max}}$$

Where:
M_1=defined in section 6.2.2.1.
C_{p_1}=defined in section 6.2.2.1.
$\dot{T}_{del,1}$=defined in section 6.2.2.1.
$\dot{T}_{in,1}$=defined in section 6.2.2.1.
$Q_{r,max}$=the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, Btu (kJ).

The minimum recovery efficiency is computed as:

$$\eta_{r,min} = \frac{M_4 C_{p4}(\bar{T}_{del,4} - \bar{T}_{in,4})}{Q_{r,min}}$$

Where:
M_4=the mass withdrawn during the fourth draw, in lb_m (kg).
C_{p_4}=the specific heat of water, in Btu/lb_m·°F (kJ/kg·°C).
$\dot{T}_{del,4}$=the average delivery temperature for the fourth draw, in °F (°C).
$\dot{T}_{in,4}$=the average inlet temperature for the fourth draw, in °F (°C).
$Q_{r,min}$=the total energy consumed immediately prior to the fourth draw and cut-out following the fourth draw, including auxiliary energy such as pilot lights, in Btu (kJ).

The recovery efficiency is computed as:

$$\eta_r = \frac{\eta_{r,max} + \eta_{r,min}}{2}$$

Where:
$\eta_{r,max}$=defined in section 6.2.2.2.
$\eta_{r,min}$=defined in section 6.2.2.2.

6.2.3 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d is computed as:

Q_d=Q

Where:
Q=the energy used by the flow actuated water heater during the 24-hour simulated use test.

A modification is needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F (135°F−58°F) or 42.8°C (57.2°C−14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water may be computed as:

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{p_i}(\bar{T}_{del,i} - \bar{T}_{in,i})}{\eta_r}$$

Where:

M_i=the mass withdrawn during the *i*th draw, in lb_m (kg).
C_{p_i}=the specific heat of water of the ith draw, in Btu/lb_m·°F(kJ/kg·°C).
$\dot{T}_{del,i}$=the average delivery temperature of the ith draw, in °F(°C).
$\dot{T}_{in,i}$=the average inlet temperature of the ith draw, in °F(°C).
η_t=defined in section 6.2.2.2.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise is:

$$Q_{HW,77°F} = \sum_{i=1}^{6} \frac{M_i C_{p_i}(135°F - 58°F)}{\eta_t}$$

or $Q_{HW,42.8°C} =$

$$\sum_{i=1}^{6} \frac{M_i C_{p_i}(57.2°C - 14.4°C)}{\eta_t}$$

Where:
M_i=defined above.
C_{p_i}=defined above.
η_t=defined in above.

The difference between these two values is:

$$Q_{HWD} = Q_{HW,77°F} - Q_{HW}$$

or $Q_{HWD} = Q_{HW,42.8°C} - Q_{HW}$

which must be added to the daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$$Q_{dm} = Q_d + Q_{HWD}$$

6.2.4 *Energy Factor.* The energy factor, E_f, is computed as:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p_i}(135°F - 58°F)}{Q_{dm}}$$

or $E_f = \sum_{i=1}^{6} \dfrac{M_i C_{p_i}(57.2°C - 14.4°C)}{Q_{dm}}$

Where:
Q_{dm}=the daily water heating energy consumption as computed in accordance with Section 6.2.3, in Btu (kJ).
M_i=the mass associated with the ith draw, in lb_m (kg).
C_{p_i}=the specific heat of water computed at a temperature of (58°F+135°F)/2, Btu/lb_m·°F ((14.4°C+57.2°C)/2, kJ/kg·°C).
$\dot{T}_{del,i}$=the average delivery temperature of the ith draw, in °F(°C).
$\dot{T}_{in,i}$=the average inlet temperature of the ith draw, in °F(°C).

6.2.5 *Annual Energy Consumption.* The annual energy consumption for instantaneous type water heaters is computed as:

$$E_{annual} = 365 \times Q_{dm}$$

Where:
Q_{dm}=the modified daily energy consumption, in Btu/day (kJ/day) and 365 is the number of days within a year.

7. Ratings for Untested Models

In order to relieve the test burden to manufacturers who offer water heaters which differ only in fuel type or power input, ratings for untested models may be established in accordance with the following procedures. In lieu of the following procedures a manufacturer may elect to test the unit for which a rating is sought.

7.1 *Gas Water Heaters.* Ratings obtained for gas water heaters using natural gas can be used for an identical water heater which utilizes propane gas if the input ratings are within 10 percent.

7.2 *Electric Water Heaters*

7.2.1 *First Hour Rating.* If an electric storage type water heater is available with more than one input rating, the manufacturer shall designate the standard input rating and the water heater need only be tested with heating elements at the designated standard input ratings. The first hour ratings for units having power input rating less than the designated standard input rating shall be assigned a first hour rating equivalent to the first draw of the first hour rating for the electric water heater with the standard input rating. For units having power inputs greater than the designated standard input rating, the first hour rating shall be equivalent to that measured for the water heater with the standard input rating.

7.2.2 *Energy Factor.* The energy factor for identical electric storage type water heaters, with the exception of heating element wattage, may use the energy factor obtained during testing of the water heater with the designated standard input rating.

5. Appendix I to subpart B of part 430 is revised to read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

1. Definitions

1.1 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.2 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.3 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.4 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.5 *IEC 705* refers to the test standard published by the International Electrotechnical Commission, entitled "Method for Measuring the Performance of Microwaves Ovens for Household and Similar Purposes," Publication 705, Amendment 2–1993.

1.6 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested that is within 5 degrees (2.8°C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed and with any gas pilot lights on and adjusted in accordance with manufacturer's instructions.

1.7 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.8 *Secondary energy consumption* means any electrical energy consumption, other than clock energy consumption, of a conventional gas oven.

1.9 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60°F (15.6°C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.10 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

2. Test Conditions

2.1 *Installation.* A free standing appliance shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

Disconnect any electrical clock which uses energy continuously, except for the microwave oven. Do not disconnect or modify the circuit to any other electrical devices or features, except as indicated in section 2.1.3.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2. Conventional gas ranges, ovens and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to

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an electrical supply circuit with voltage as specified in section 2.2.1. A watt meter and watt-hour meter shall be installed in the circuit and shall be as described in section 2.9.1.1. and 2.9.1.2. If trial runs are needed to set the "on" time for the test, the test measurements are to be separated according to section 4, Paragraph 12.6 of IEC 705.

2.2 *Energy supply.*

2.2.1 *Electrical supply.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages, except for the microwave oven testing. Maintain the electrical supply to a microwave oven at 120 volts ± 1 volt and at 60 hertz.

2.2.2 *Gas supply.*

2.2.2.1 *Gas burner adjustments.* Conventional gas ranges, ovens, and cooking tops shall be tested with all of the gas burners adjusted in accordance with the installation or operation instructions provided by the manufacturer. In every case, the burner must be adjusted with sufficient air flow to prevent a yellow flame or a flame with yellow tips.

2.2.2.2 *Natural gas.* For testing convertible cooking appliances or appliances which are designed to operate using only natural gas, maintain the natural gas pressure immediately ahead of all controls of the unit under test at 7 to 10 inches of water column (1743.6 to 2490.8 Pa). The regulator outlet pressure shall equal the manufacturer's recommendation. The natural gas supplied should have a heating value of approximately 1,025 Btu's per standard cubic foot (38.2 kJ/L). The actual gross heating value, Hn, in Btu's per standard cubic foot (kJ/L), for the natural gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using equipment that meet the requirements described in section 2.9.4 or by the use of bottled natural gas whose gross heating value is certified to be at least as accurate a value that meet the requirements in section 2.9.4.

2.2.2.3 *Propane.* For testing convertible cooking appliances with propane or for testing appliances which are designed to operate using only LP-gas, maintain the propane pressure immediately ahead of all controls of the unit under test at 11 to 13 inches of water column (2740 to 3238 Pa). The regulator outlet pressure shall equal the manufacturer's recommendation. The propane supplied should have a heating value of approximately 2,500 Btu's per standard cubic foot (93.15 kJ/L). The actual gross heating value, H_p, in Btu's per standard cubic foot (kJ/L), for the propane to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using equipment that meet the requirements described in section 2.9.4 or by the use of bottled propane whose gross heating value is certified to be at least as accurate a value that meet the requirements described in section 2.9.4.

2.2.2.4 *Test gas.* A basic model of a convertible cooking appliance shall be tested with natural gas, but may also be tested with propane. Any basic model of a conventional range, conventional cooking top, or conventional oven which is designed to operate using only natural gas as the energy source must be tested with natural gas. Any basic model of a conventional range, conventional cooking top, or conventional oven which is designed to operate using only LP gas as the gas energy source must be tested with propane gas.

2.3 *Air circulation.* Maintain air circulation in the room sufficient to secure a reasonably uniform temperature distribution, but do not cause a direct draft on the unit under test.

2.4 *Setting the conventional oven thermostat.*

2.4.1 *Conventional electric oven.* Install a thermocouple approximately in the center of the usable baking space. Provide a temperature indicator system for measuring the oven's temperature with an accuracy as indicated in section 2.9.3.2. If the oven thermostat does not cycle on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8°±2.8°C) higher than the room ambient air temperature. If the oven thermostat operates by cycling on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8°±2.8°C) higher than the room ambient air temperature. This shall be done by measuring the maximum and minimum temperatures in any three consecutive cut-off/cut-on actions of the electric resistance heaters, excluding the initial cuf-off/cut-on action, by the thermostat after the temperature rise of 325°±5°F (162.8°±2.8°C) has been attained by the conventional electric oven. Remove the thermocouple after the thermostat has been set.

2.4.2 *Conventional gas oven.* Install five parallel-connected weighted thermocouples, one located at the center of the conventional gas oven's usable baking space and the other four equally spaced between the center and the corners of the conventional gas oven on the diagonals of a horizontal plane through the center of the conventional gas oven. Each weighted thermocouple shall be constructed of a copper disc that is 1-inch (25.4 mm) in diameter and ⅛-inch (3.2 mm) thick. The two thermocouple wires shall be located in two holes in the disc spaced ½-inch (12.7 mm) apart, with each hole being located ¼-inch (6.4 mm) from the center of the disc. Both thermocouple wires shall be silver-soldered to the copper disc. Provide a temperature indicator system for measuring the oven's temperature with an accuracy as indicated in section 2.9.3.2. If the oven thermostat does not cycle on or off, adjust or determine the conventional gas oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8°±2.8°C) higher than the room ambient air temperature. If the oven thermostat operates by cycling on and off, adjust or determine the conventional gas oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8±2.8°C) higher than the room ambient air temperature. This shall be done by measuring the maximum and minimum temperatures in any three consecutive cut-off/cut-on actions of the gas burners, excluding the initial cut-off/cut-on action, by the thermostat after the temperature rise of 325°±5°F (162.8°±2.8°C) has been attained by the conventional gas oven. Remove the thermocouple after the thermostat has been set.

2.5 *Ambient room air temperature.* During the test, maintain an ambient room air temperature, T_R, of 77°±9°F (25°±5°C) for conventional ovens and cooking tops, or as indicated in section 4, Paragraph 12.4 of IEC 705 for microwave ovens as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as indicated in section 2.9.3.1.

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.6, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.4, and 2.9.3.5, as applicable.

2.7 *Test blocks for conventional oven and cooking top.* The test blocks shall be made of aluminum alloy No. 6061, with a specific heat of 0.23 Btu/lb-°F (0.96 kJ/[kg°C]) and with any temper that will give a coefficient of thermal conductivity of 2.6 to 2.8 BTU-in/in-ft²-°F (154.8 to 171.5 W/[m°C]). Each block shall have a hole at its top. The hole shall be 0.08 inch (2.03 mm) in diameter and 0.80 inch (20.3 mm) deep. The manufacturer conducting the test may provide other means which will ensure that the thermocouple junction is installed at this same position and depth.

The bottom of each block shall be flat to within 0.002 inch (0.051 mm) TIR (total indicator reading). Determine the actual weight of each test block with a scale with an accuracy as indicated in section 2.9.5.

2.7.1 *Conventional oven test block.* The test block for the conventional oven, W_1, shall be 6.25±0.05 inch (158.8±1.3 mm) in diameter, approximately 2.8 inches (71 mm) high and shall weigh 8.5±0.1 lbs (3.86±0.05 kg). The block shall be finished with an anodic black coating which has a minimum thickness of 0.001 inch (0.025 mm) or with a finish having the equivalent absorptivity.

2.7.2 *Small test block for conventional cooking top.* The small test block, W_2, shall be 6.25±0.05 inches (158.8±1.3 mm) in diameter, approximately 2.8 inches (71 mm) high and shall weigh 8.5±0.1lbs (3.86±0.05 kg).

2.7.3 *Large test block for conventional cooking top.* The large test block for the conventional cooking top, W_3, shall be 9±0.05 inches (228.6±1.3 mm) in diameter, approximately 3.0 inches (76 mm) high and shall weigh 19±0.1 lbs (8.62±0.05 kg).

2.7.4 *Thermocouple installation.* Install the thermocouple such that the thermocouple junction (where the thermocouple contacts the test block) is at the bottom of the hole provided in the test block and that the thermocouple junction makes good thermal contact with the aluminum block. If the test blocks are to be water cooled between tests the thermocouple hole should be sealed, or other steps taken, to insure that the thermocouple hole is completely dry at the start of the next test. Provide a temperature indicator system for measuring the test block temperature with an accuracy as indicated in section 2.9.3.3.

2.7.5 *Initial test block temperature.* Maintain the initial temperature of the test blocks, T_I, within ±4°F (±2.2°C) of the ambient room air temperature as specified in section 2.5. If the test block has been cooled (or heated) to bring it to room temperature, allow the block to stabilize for at least 2 minutes after removal from the cooling (or heating) source, before measuring its initial temperature.

2.8 *Microwave oven test load.*

2.8.1 *Test container.* The test container shall be as specified in section 4, Paragraph 12.2 of IEC 705.

2.8.2 *Test water load.* The test water load shall be as specified in section 4, Paragraph 12.1 of IEC 705.

2.8.2.1 *Test water load and test container temperature.* Before the start of the test, the oven and the test container shall be at ambient temperature as specified in section 4, Paragraph 12.4 of IEC 705. The test water load shall be contained in a chiller (not the test container) and maintained at 18°±1.8°F (10°±1°C) below the ambient room temperature.

2.9 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.9.1 *Electrical Measurements.*

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of at least 1 watt-hour (3.6 kJ) and a maximum error no greater than 1.5 percent of the measured value. The watt-hour meter for measuring the energy consumption of microwave ovens shall have a resolution of at least 0.1 watt-hour (.36 kJ) and a maximum error no greater than 1.5 percent of the measured value.

2.9.1.2 *Wattmeter.* The wattmeter used to measure the conventional oven, conventional range, microwave/conventional range clock power or the power input of the microwave shall have a resolution of at least 0.2 watt (0.2 J/s) and a maximum error no greater than 5 percent of the measured value.

2.9.2 *Gas Measurements.*

2.9.2.1 *Positive displacement meters.* The gas meter to be used for measuring the gas consumed by the gas burners of the oven or cooking top shall have a resolution of at least 0.01 cubic foot (0.28 L) and a maximum error no greater than 1 percent of the measured value. If a positive displacement gas meter is used for measuring the gas consumed by the pilot lights, it shall have a resolution of at least 0.01 cubic foot (0.28 L) and have a maximum error no greater than 2 percent of the measured value.

2.9.2.2 *Flow meter.* If a gas flow meter is used for measuring the gas consumed by the pilot lights, it shall be calibrated to have a maximum error no greater than 1.5 percent of the measured value and a resolution of at least 1 percent of the measured value.

2.9.3 *Temperature measurement equipment.*

2.9.3.1 *Room temperature indicating system.* The room temperature indicating system shall be as specified in section 4, Paragraph 12.3 of IEC 705.

2.9.3.2 *Temperature indicator system for measuring conventional oven temperature.* The equipment for measuring the conventional oven temperature shall have an error no greater than ±4°F (±2.2°C) over the range of 65° to 500°F (18°C to 260°C).

2.9.3.3 *Temperature indicator system for measuring test block temperature.* The system shall have an error no greater than ±2°F (±1.1°C) when measuring specific temperatures over the range of 65° to 330°F (18.3°C to 165.6°C). It shall also have an error no greater than ±2°F (±1.1°C) when measuring any temperature difference up to 240°F (115.6°C) within the above range.

2.9.3.4 *Test load temperatures.* The thermometer or other temperature measuring instrument used to measure the test water load temperature shall be as specified in section 4, Paragraph 12.3 of IEC 705. Use only one thermometer or other temperature measuring device throughout the entire test procedure.

2.9.3.5 *Temperature indicator system for measuring surface temperatures.* The temperatures of an external surface of an appliance shall be measured by means of a thermocouple in firm contact with the surface. The temperature indicating system shall have an error no greater than ±.45°F (±0.25°C) over the range 65° to 90°F (18°C to 32°C).

2.9.4 *Heating Value.* The heating value of the natural gas or propane shall be measured with an instrument and associated readout device that has a maximum error no greater than .5% of the measured value and a resolution of .2% or less of the full scale reading of the indicator instrument. The heating value of natural gas or propane must be corrected for local temperature and pressure conditions.

2.9.5 *Scale.* The scale used for weighing the test blocks shall have a maximum error no greater than 1 ounce (28.4 g). The scale used for weighing the microwave oven test water load shall be as specified in section four, paragraph 12.3 of IEC 705.

3. Test Methods and Measurements

3.1 *Test methods.*

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, "TEST CONDITIONS," of this appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top, if so equipped.

Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.6 and described in section 2.6. Set the conventional oven test block W1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. If the oven thermostat does not cycle on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8°±2.8°C) air temperature. If the oven thermostat operates by cycling on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (162.8°±2.8°C) higher than the room ambient air temperature. The oven shall remain on for at least one complete thermostat "cut-off/cut-on" of the electrical resistance heaters or gas burners after the test block temperature has increased 234°F (112.2°C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.6 and described in section 2.6. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Continuously burning pilot lights of a conventional gas oven.* Establish the test conditions set forth in section 2, "TEST CONDITIONS," of this appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. If a positive displacement gas meter is used the, test duration shall be sufficient to measure a gas consumption which is at least 200 times the resolution of the gas meter.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, "TEST CONDITIONS," of this appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.6 and described in section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting (100 percent). When the test block reaches 144°F (62.2°C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Continuously burning pilot lights of a conventional gas cooking top.* Establish the test conditions set forth in section 2, "TEST CONDITIONS," of this appendix.

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Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s). If a positive displacement gas meter is used, the test duration shall be sufficient to measure a gas consumption which is at least 200 times the resolution of the gas meter.

3.1.3 *Microwave oven.*

3.1.3.1 *Microwave oven test energy or power output.* Establish the testing conditions set forth in section 2, "TEST CONDITIONS," of this appendix. Follow the test procedure as specified in section 4, Paragraph 12.4 of IEC 705.

3.2 *Test measurements.*

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234°F (112.2°C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C and E_D should be expressed in watt-hours for conventional electric ovens or standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234°F (112.2°C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C and E_D should be expressed in watt-hours for conventional electric ovens or standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours of electricity or in standard cubic feet (L) of gas consumed during the self-cleaning test set forth in section 3.1.1.1. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

3.2.1.3 *Gas consumption of continuously burning pilot lights.* Measure the gas consumption of the pilot lights, P_O, in standard cubic feet (L) of gas and the test duration, L_O, in hours for the test set forth in Section 3.1.1.2. If a gas flow rate meter is used, measure the flow rate, P_R, in standard cubic feet per hour (L/s).

3.2.1.4 *Clock power.* If the conventional oven, conventional range, or microwave/conventional range includes an electric clock which is on continuously, and the power rating in watts (J/s) of this feature is not known, measure the clock power, P_{CL}, in watts (J/s.)

3.2.2 *Conventional surface unit test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in standard cubic feet (L) of gas or watt-hours of electricity, and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 and the total time, T_T, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element in watt-hours.

3.2.2.1 *Gas consumption of continuously burning pilot lights.* If the conventional gas cooking top under test has one or more continuously burning pilot lights, measure the gas consumed during the test by the pilot lights, P_C, in standard cubic feet (L) of gas, and the test duration, L_C, in hours as specified in section 3.1.2.1. If a gas flow rate meter is used, measure the flow rate, P, in standard cubic feet per hour (L/s).

3.2.3 *Microwave oven test energy consumption and power input.* Measurements are to be made as specified in section 4, Paragraphs 12.4 and 13 of IEC 705. Measure the electrical input energy, E_M, in watt-hours consumed by the microwave oven during the test. Repeat all tests three times.

3.3 *Recorded values.*

3.3.1 Record the test room temperature, T_R, at the start and end of each test, as determined in section 2.5.

3.3.2 Record measured test block weights W_1, W_2, and W_3 in pounds (kg).

3.3.3 Record the initial temperature, T_I, of the test block under test.

3.3.4 For a conventional oven with a thermostat which operates by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, and E_D. If the thermostat controls the oven temperature without cycling on and off, record E_O. For a gas oven which also uses electrical energy for the ignition or operation of the oven, also record E_{IO}.

3.3.5 For a conventional oven that can be operated with or without forced convection and the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$. If the conventional oven operates with or without forced convection and the thermostat controls the oven temperature by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, and E_D. For a gas oven that can be operated with or without forced convection, measure any electrical energy consumed by an ignition device or other electrical components used during the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.3.6 Record the measured energy consumption, E_S, and for a gas oven, any electrical energy, E_{IS}, for the test of the self-cleaning operation of a conventional oven.

3.3.7 Record the gas flow rate, P_R; or the gas consumption, P_O, and the elapsed time, L_O, that any continuously burning pilot lights of a conventional oven are under test.

3.3.8 Record the clock power measurement or rating, P_{CL}, in watts.

3.3.9 For the surface unit under test, record the energy consumption, E_{CT}, the final test block temperature, T_{CT}, the total test time, T_T. For a gas cooking top which uses electrical energy for ignition of the burners, also record E_{IC}.

3.3.10 Record the gas flow rate, P; or the gas consumption, P_C, and the elapsed time, L_C, that any continuously burning pilot lights of a conventional gas cooking top are under test.

3.3.11 Record the heating value, H_n, as determined in section 2.2.2.2 for the natural gas supply.

3.3.12 Record the heating value, H_p, as determined in section 2.2.2.3 for the propane supply.

3.3.13 Record the electrical input energy and power input E_M and P_M for the microwave oven test; the initial and final temperature, T_1 and T_2, of the test water load; the mass of the test container before filling with the test water load and the mass of the test water load, M_C and M_W respectively; and the measured room temperature, T_O, as determined in section 3.2.3.

4. Calculation of Derived Results From Test Measurements

4.1 *Conventional oven.*

4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, corresponding to T_O with the aid of the figure in section 5 of this appendix, expressed in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times (E_{CD} - E_{AB})\right]$$

for electric ovens,

and, $$E_O = (E_{AB} \times H) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times (E_{CD} - E_{AB}) \times H\right]$$

for gas ovens

Where:

H=either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L).

T_O=234°F (112.2°C) plus the initial test block temperature.

and,

$$T_{AB} = \frac{(T_A + T_B)}{2}$$

$$T_{CD} = \frac{(T_C + T_D)}{2}$$

$$E_{AB} = \frac{(E_A + E_B)}{2}$$

$$E_{CD} = \frac{(E_C + E_D)}{2}$$

Where:

T_A=block temperature in °F (°C) at the end of the last "ON" period of the conventional oven before the test block reaches T_O.

T_B=block temperature in °F (°C) at the beginning of the "ON" period following the measurement of T_A.

T_C=block temperature in °F (°C) at the end of the "ON" period which starts with T_B.

T_D=block temperature in °F (°C) at the beginning of the "ON" period which follows the measurement of T_C.

E_A=volume of gas consumed in standard cubic feet (L) at the end of the last "ON" period before the test block reaches T_O.

E_B=volume of gas consumed in standard cubic feet (L) of gas at the beginning of the "ON" period following the measurement T_A.

E_C=volume of gas consumed in standard cubic feet (L) of gas at the end of the "ON" period which starts with T_B.

E_D=volume of gas consumed in standard cubic feet (L) of gas at the beginning of the "ON" period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and E_{IO}, in watt-hours (kJ) for electric ovens and Btu's (kJ) for gas ovens using the following equations:

$$E_O = \frac{(E_O)_1 + (E_O)_2}{2}$$

$$E_{IO} = \frac{(E_{IO})_1 + (E_{IO})_2}{2}$$

Where:

$(E_O)_1$=test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in section 3.2.1.1.

$(E_O)_2$=test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in section 3.2.1.1.

$(E_{IO})_1$=electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in section 3.2.1.1.

$(E_{IO})_2$=electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1.

4.1.2 *Conventional oven annual energy consumption.*

4.1.2.1 *Annual cooking energy consumption.*

4.1.2.1.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for cooking, E_{CO}, expressed in kilowatt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$$E_{CO} = \frac{E_O \times H_e \times O_O}{W_I \times C_p \times T} \quad \text{for electric ovens,}$$

Where:

E_O=test energy consumption as measured in section 3.2.1 or as calculated in section 4.1.1 or section 4.1.1.1.

H_e=3.412 Btu/Wh (3.6 kJ/Wh,) conversion factor of watt-hours to Btu's.

O_O=35.5 kWh per year, annual useful cooking energy output of conventional electric oven.

W_I=measured weight of test block in pounds (kg).

C_p=0.23 Btu/lb-°F (0.96 kJ/kg-°C), specific heat of test block.

T=234°F (112.2°C), temperature rise of test block.

or,

$$E_{CO} = \frac{E_O \times O_O}{W_I \times C_p \times T} \quad \text{for gas ovens,}$$

Where:

E_O=test energy consumption as measured in section 3.2.1. or as calculated in section 4.1.1 or section 4.1.1.1.

O_O=124,200 Btu (131,038 kJ) per year, annual useful cooking energy output of conventional gas oven.

W_I, C_p and T are the same as defined above.

4.1.2.1.2 *Annual secondary energy consumption for cooking of gas ovens.* Calculate the annual secondary energy consumption for cooking, E_{SO}, expressed in kilowatt-hours and defined as:

$$E_{SO} = \frac{E_{IO} \times H_e \times O_O}{W_I \times C_p \times T},$$

Where:

E_{IO}=electrical test energy consumption as measured in section 3.2.1 or as calculated in section 4.1.1.1.

O_O=35.5 kWh per year, annual useful cooking energy output.

H_e, W_I, C_p, and T are as defined in section 4.1.2.1.1.

4.1.2.2 *Annual energy consumption of any continuously burning pilot lights.* Calculate the annual energy consumption of any continuously burning pilot lights, E_{PO}, expressed in Btu's (kJ) and defined as:

$$E_{PO} = P_R \times H \times (A - B),$$

or,

$$E_{PO} = \frac{P_O}{L_O} \times H \times (A - B)$$

Where:

P_R=pilot gas flow rate in standard cubic feet per hour (L/s), as measured in section 3.2.1.2.

P_O=standard cubic feet (L) of gas consumed by any continuously burning pilot lights, as measured in section 3.2.1.2.

L_O=elapsed test time in hours for any continuously burning pilot lights tested, as measured in section 3.2.1.2.

H=H_n or H_p,the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 in Btu's per standard cubic foot (kJ/L).

*A=8,760, number of hours in a year.

B=300, number of hours any continuously burning pilot lights contribute to the heating of an oven for cooking food.

4.1.2.3 *Annual conventional oven self-cleaning energy.*

4.1.2.3.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, E_{SC}, expressed in kilowatt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$$E_{SC} = E_S \times S_e \times C, \quad \text{for electric ovens,}$$

Where:

E_S=energy consumption in watt-hours, as measured in section 3.2.1.2.

S_e=11, average number of times a self-cleaning operation of a conventional electric oven is used per year.

C=.001 kW/W conversion factor for watts to kilowatts.

or,

$$E_{SC} = E_S \times H \times S_g, \text{ for gas ovens,}$$

Where:

E_S=gas consumption in standard cubic feet (L), as measured in section 3.2.1.2.

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$H = H_u$ or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 in Btu's per standard cubic foot (kJ/L).

S_g=7, average number of times a self-cleaning operation of a conventional gas oven is used per year.

4.1.2.3.2 *Annual secondary energy consumption for self-cleaning operation of gas ovens.* Calculate the annual secondary energy consumption for self-cleaning operations of a gas oven, E_{SS}, expressed in kilowatt-hours and defined as:

$$E_{SS} = E_{IS} \times S_g \times C,$$

Where:

E_{SS} = electrical energy consumed during the self-cleaning operation of a conventional gas oven, as measured in section 3.2.1.2.

S_g = 7, average number of times a self-cleaning operation of a conventional gas oven is used per year.

C = .001 kW/W conversion factor for watts to kilowatts.

4.1.2.4 *Annual clock energy consumption.* Calculate the annual energy consumption of any constantly operating electric clock, E_{CL}, expressed in kilowatt-hours and defined as:

$$E_{CL} = P_{CL} \times H_K \times C,$$

Where:

P_{CL} = power rating of clock which is on continuously, in watts, as measured in section 3.2.1.3.

H_k = 8,760, number of hours in a year.

C = .001 kW/W conversion factor for watts to kilowatts.

4.1.2.5 *Total annual energy consumption of a single conventional oven.*

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours and defined as:

$$E_{AO} = E_{CO} + E_{SC} + E_{CL},$$

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1.

E_{CL} = annual clock energy consumption as determined in section 4.1.2.4.

4.1.2.5.2 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, E_{AOG}, expressed in Btu's (kJ) and defined as:

$$E_{AOG} = E_{CO} + E_{PO} + E_{SC},$$

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1.

E_{PO} = annual pilot light energy consumption as determined in section 4.1.2.2.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours and defined as:

$$E_{AOE} = E_{SO} + E_{SS} + E_{CL},$$

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.3.2.

E_{CL} = annual clock energy consumption as determined in section 4.1.2.4.

4.1.2.6 *Total annual energy consumption of multiple conventional ovens.* If the cooking appliance includes more than one conventional oven calculate the total annual energy consumption of the conventional ovens using the following equations:

4.1.2.6.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, E_{TO}, in kilowatt-hours and define as:

$$E_{TO} = E_{ACO} + E_{ASC} + E_{CL},$$

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i,$$

average annual primary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1.

E_{CL} = clock energy consumption as determined according to section 4.1.2.4.

4.1.2.6.2 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btu's (kJ) and define as:

$$E_{TOG} = E_{ACO} + E_{ASC} + E_{TPO},$$

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btu's (kJ) as defined in section 4.1.2.6.1.

E_{ASC} = average annual self-cleaning energy consumption in Btu's (kJ) as defined in section 4.1.2.6.1.

$$E_{TPO} = \sum_{i=1}^{n}(E_{PO})_i,$$

total annual energy consumption of any pilot lights.

Where:

E_{PO} = annual energy consumption of any continuously burning pilot lights determined according to section 4.1.2.2.

n = number of pilot lights in the basic model.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours and define as:

$$E_{TOE} = E_{ASO} + E_{AAS} + E_{CL},$$

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}(E_{SO})_i,$$

average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}(E_{SS})_i,$$

average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.3.2.

E_{CL} = annual clock energy consumption as determined in section 4.1.2.4.

4.1.3 *Conventional oven cooking efficiency.*

4.1.3.1 *Single conventional oven.* Calculate the conventional oven cooking efficiency, Eff_{AO}, using the following equations:

For electric ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T}{E_O \times H_e},$$

and,

For gas ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T}{E_O + (E_{IO} \times H_e)},$$

Where:

W_1 = measured weight of test block in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.98 kJ/kg-°C), specific heat of test block.

T = 234°F (112.2°C), temperature rise of test block.

E_O = test energy consumption as measured in section 3.2.1 or calculated in section 4.1.1 or section 4.1.1.1.

H_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor for watt-hours to Btu's.

E_{IO} = electrical test energy consumption according to section 3.2.1 or as calculated in section 4.1.1.1.

4.1.3.2 *Multiple conventional ovens.* If the cooking appliance includes more than one conventional oven, calculate the cooking efficiency for all of the conventional ovens in the appliance, Eff_{TO}, using the following equation:

$$Eff_{TO} = \frac{n}{\sum_{i=1}^{n}\left(\frac{1}{Eff_{AO}}\right)_i},$$

Where:

n = number of conventional ovens in the cooking appliance.

Eff_{AO} = cooking efficiency of each oven determined according to section 4.1.3.1.

4.1.4 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

For electric ovens,

$$R_O = \frac{O_O}{E_{AO}},$$

Where:

O_O = 35.5 kWh per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.5.1.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times H_e)},$$

Where:

O_O = 124,200 Btu (131,038 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.5.2.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.5.2.

H_e = 3,412 Btu/kWh (3.6 kJ/Wh), conversion factor for kilowatt-hours to Btu's.

4.2 *Conventional cooking top.*

4.2.1 *Conventional cooking top cooking efficiency.*

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_p \times \left(\frac{T_{SU}}{H_e \times E_{CT}}\right),$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg-°C), specific heat of test block.

T_{SU} = temperature rise of the test block: Final test block temperature, T_{CT}, as determined in section 3.2.2, minus the initial test block temperature, T_I, expressed in °F (°C).

H_e = 3.412 Btu/Wh (3.6 kJ/Wh,) conversion factor of watt-hours to Btu's.

E_{CT} = measured energy consumption, as determined according to section 3.2.2, expressed in watt-hours.

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the gas surface unit under test, defined as:

$$Eff_{SU} = \frac{W_3 \times C_p \times T_{SU}}{E},$$

Where:

W_3 = measured weight of test block as measured in section 3.3.2, expressed in pounds (kg).

C_p and T_{SU} are the same as defined in section 4.2.1.1.

and,

$$E = \left[(E_{CT} - E_{CP}) \times H\right] + (E_{IC} \times H_e),$$

Where:

E_{CT} = total gas consumption for the gas surface unit test as measured in section 3.2.2.

E_{IC} = electrical energy consumed by an ignition device of a gas surface unit as measured in section 3.2.2.

H_e = 3.412 Btu/Wh, conversion factor of watt-hours to Btu's.

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L) of gas.

E_{CP} = P x T_T, (pilot consumption, in standard cubic feet (L), during unit test), where:

$$P = \frac{P_c}{L_c}, \quad \text{(pilot flow in standard cubic feet per hour)}$$

Where:

P_C = any pilot lights gas consumption defined in section 3.2.2.1.

L_C = elapsed time of the cooking top pilot lights test as defined in section 3.1.2.1.

T_T = the elapsed test time as defined in section 3.2.2.

4.2.1.3 *Conventional cooking top cooking efficiency.* Calculate the conventional cooking top cooking efficiency, Eff_{CT}, using the following equation:

$$Eff_{CT} = \frac{1}{n}\sum_{i=1}^{n}(Eff_{SU})_i,$$

Where:

n = number of surface units in the cooking top.

Eff_{SU} = the efficiency of each of the surface units, as determined according to section 4.2.1.1 or section 4.2.1.2.

4.2.2 *Conventional cooking top annual energy consumption.*

4.2.2.1 *Conventional electric cooking top energy consumption.* Calculate the annual energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}},$$

Where:

O_{CT} = 209.4 kWh per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3.

4.2.2.2 *Conventional gas cooking top.*

4.2.2.2.1 *Annual cooking energy consumption.* Calculate the annual energy consumption for cooking, E_{CC}, in Btu's (kJ) per year for a gas cooking top defined as:

$$E_{CC} = \frac{O_{CT}}{Eff_{CT}},$$

Where:

O_{CT} = 732,500 Btu (772,828 kJ) per year, annual useful cooking energy output.

Eff_{CT} = the gas cooking top efficiency as defined in section 4.2.1.3.

4.2.2.2.2 *Annual energy consumption of any continuously burning gas pilots.* Calculate the annual energy consumption of any continuously burning gas pilot lights of the cooking top, E_{PC}, in Btu's (kJ) per year, defined as:

$$E_{PC} = P \times A \times H,$$

Where:

P = pilot light gas flow rate as defined in section 4.2.1.2, or as measured in section 3.2.2.1.

A = 8,760 hours, the total number of hours in a year.

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2, and section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L) of gas.

4.2.2.2.3 *Total annual energy consumption of a conventional gas cooking top.* Calculate the total annual energy consumption of a conventional gas cooking top, E_{CA}, in Btu's (kJ) per year, defined as:

$$E_{CA} = E_{CC} + E_{PC},$$

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1.

E_{PC} = annual energy consumption of the pilot lights as determined in section 4.2.2.2.2.

4.2.3 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CA}},$$

Where:

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O_{CT} = 732,500 Btu (772,828 kJ) per year, annual useful cooking energy output of cooking top.

E_{CT} = total annual energy consumption of cooking top determined according to section 4.2.2.2.3.

4.3 *Combined Components.* The annual energy consumption and cooking efficiency of a kitchen range, e.g. a cooktop and oven combined, shall be the sum of the annual energy consumption and cooking efficiency of each of its components. The annual energy consumption and cooking efficiency for other combinations of ovens, cooktops and microwaves will also be treated as the sum of the annual energy consumption and cooking efficiency of each of its components. The energy factor of a combined component is the sum of the ratio of the annual useful cooking energy output to the total annual energy consumption of each component.

4.4 *Microwave oven.*

4.4.1 *Microwave oven test energy.* Calculate the microwave oven test energy output, E_T, in watt-hour's (kJ). The calculation is repeated three times as required in section 3.2.3. The average of the three E_T's is used for calculations in 4.4.3 and 4.4.5. For calculations specified in units of energy (watt-hours), use the equation below:

$$E_T = \frac{4.187M_W(T_2 - T_1) + 0.88M_C(T_2 - T_0)}{H_E}$$

Where:

M_W = the measured mass of the test water load, in grams.

M_C = the measured mass of the test container before filling with test water load, in grams.

T_1 = the initial test water load temperature, in °C (°F).

T_2 = the final test water load temperature, in °C (°F).

T_O = the measured ambient room temperature, in °F (°C).

C = 0.88 kJ/kg-°C, (0.210 Btu/lb-°F) specific heat of test container.

C_P = 4.187 kJ/kg-°C, (1.0 Btu/lb-°F) specific heat of water.

H_e = 3.6 kJ/Wh (3.412 Btu/Wh,) conversion factor for Btu's to Watt-hours.

4.4.2 *Microwave oven test power output.* Calculate the microwave oven test power output, P_T, in watts as specified in Section four, paragraph 12.5 of IEC 705. The calculation is repeated for each of the three tests as required in section 3.2.3. The average of the three P_T's is used for calculations in section 4.4.4.

4.4.3 *Microwave oven annual energy consumption.* Calculate the microwave oven annual energy consumption, E_{MO}, in kWh's per year, defined as:

$$E_{MO} = \frac{E_M \times O_M}{E_T}$$

Where:

E_M = the energy consumption as defined in section 3.2.3.

O_M = 77.3 kWh's per year, the microwave oven annual useful cooking energy output.

E_T = the test energy as calculated in section 4.4.1.

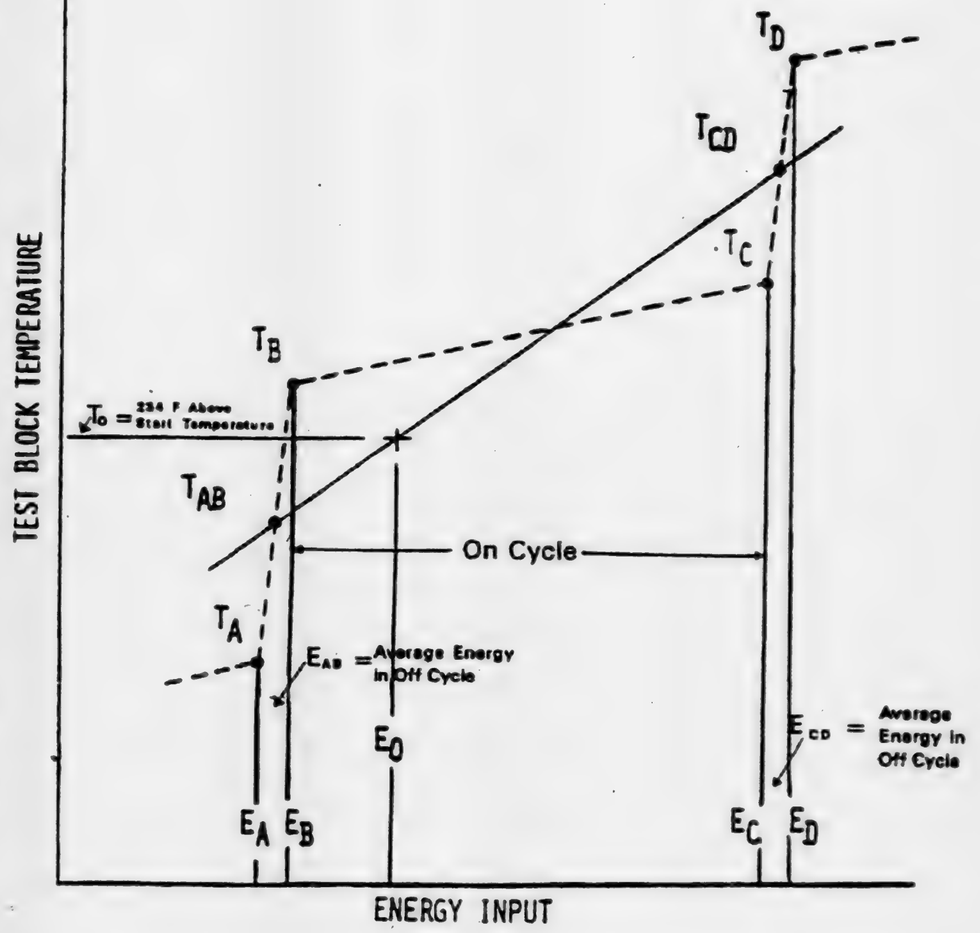
4.4.4 *Microwave oven cooking efficiency.* Calculate the microwave oven cooking efficiency, Eff_{MO}, as specified in section four, paragraph 14 of IEC 705.

4.4.5 *Microwave oven energy factor.* Calculate the energy factor or the ratio of the useful cooking energy output to total energy input on a yearly basis, R_{MO}, defined as:

$$R_{MO} = \frac{O_M}{E_{MO}}.$$

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5. ILLUSTRATION OF CONVENTIONAL OVEN TEST DATA



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Where:

O_M = 77.3 kWh, annual useful cooking energy output.

E_{MO} = annual total energy consumption as determined in section 4.4.3.

6. Appendix J to subpart B of part 430 is revised to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

1. Definitions

1.1 *Agitator* means the device that provides the shaking or stirring motion to the clothes for washing. The device shall include all fixtures and other essential assemblies needed for clothes washing in the normal cycle.

1.2 *Bone-dry* means a condition or a load of test cloth which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less.

1.3 *Clothes container* means the compartment within the clothes washer that holds the clothes during operation of the machine.

1.4 *Compact* refers to a clothes washer which has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.5 *Deep rinse cycle* refers to a rinse cycle in which the clothes container is filled with water to a selected level and the clothes load is rinsed by agitating it or tumbling it through the water.

1.6 *Front-loader* means a clothes washer which sequentially rotates or tumbles portions of the clothes load above the water level allowing the clothes load to fall freely back into the water. The principal axis of the clothes container is in a horizontal plane and the access to the clothes container is through the front of the machine.

1.7 *Machine-controlled water fill capability* means a clothes washer which has the capability of automatically controlling the level of the water in the tub dependent upon the size of the test load, without operator intervention.

1.8 *Make-up water* means the amount of fresh water needed to supplement the amount of stored water pumped from the external laundry tub back into the clothes washer when the suds-return feature is activated in order to achieve the required water fill level in the clothes washer.

1.9 *Modified energy factor* means the quotient of the cubic foot (liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of remaining moisture of the test load for nonwater-heating clothes washers and expressed as the sum of the machine electrical energy consumption and the energy required for removal of moisture of the test load for water-heating clothes washers.

1.10 *Moisture removal energy* means the nominal energy required for a clothes dryer to remove moisture from clothes multiplied by the difference between weighted test load after the normal cycles and the weighted reference (bone-dry) weight of the test load.

1.11 *Nonwater-heating clothes washer* refers to a clothes washer that has both hot and cold water supply pipe connections. This type of clothes washer does not have an internal hot water heater device to generate the energy needed to heat inlet water.

1.12 *Normal cycle* means the cycle recommended by the manufacturer for washing cotton and/or linen clothes.

1.13 *Sensor filled* refers to a type of water fill control which automatically terminates the fill when the water reaches an appropriate level in the tub.

1.14 *Spray rinse cycle* refers to a rinse cycle in which water is sprayed onto the clothes load for a definite period of time without maintaining any specific water level in the clothes container.

1. *Standard* refers to a clothes washer which has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.16 *Suds-return* means a feature or option on a clothes washer which causes the stored wash water obtained by utilizing the suds-saver feature to be pumped from the external laundry tub back into the clothes washer.

1.17 *Suds-saver* means a feature or option on a clothes washer which allows the user to store used wash water in an external laundry tub for use with subsequent wash loads.

1.18 *Temperature use factor* means the percentage of the total number of washes a user would wash with a particular wash/rinse temperature setting.

1.19 *Thermostatically controlled valves* refer to clothes washer valves which sense water temperature and adjust valve orifices appropriately to maintain a desired mixed water temperature.

1.20 *Time filled* refers to a type of water fill control which uses a combination of water flow controls in conjunction with time to terminate the water fill cycle.

1.21 *Top-loader-horizontal-axis clothes washer* means a clothes washer which sequentially rotates or tumbles portions of the clothes load above the water level allowing the clothes load to fall freely back into the water. The principal axis of the clothes container is in a horizontal plane and the access to the clothes container is through the top of the clothes washer.

1.22 *Top-loader-vertical-axis clothes washer* means a clothes washer that flexes and oscillates the submerged clothes load through the water by means of mechanical agitation or other movement. The principal axis of the clothes container is in a vertical plane and the access to the clothes container is through the top of the clothes washer.

1.23 *Water consumption factor* means the quotient of the cubic foot (liter) capacity of the clothes washer divided by the total weighted per-cycle water consumption.

1.24 *Water-heating clothes washer* refers to a clothes washer which does not have a supply pipe connection for hot water. This type of clothes washer does have an internal electrical water heating device to generate the energy needed to heat inlet water.

2. Testing Conditions

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120/240 or 120/208Y as applicable to the particular terminal block wiring system as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct the test at the highest voltage specified by the manufacturer.

2.3 *Water temperature.* For nonwater-heating clothes washers not equipped with thermostatically controlled inlet water valves, the temperature of the hot and cold water supply shall be maintained at 100°F ±10°F (37.8°C±5.5°C). For nonwater-heating clothes washers equipped with thermostatic controlled inlet valves, the temperature of the hot water supply shall be maintained at 140°F±5°F (60.0°C±2.8°C) and the cold water supply shall be maintained at 60°F±5°F (15.6°C±2.8°C). For water-heating clothes washers that have infinite or various temperature selection feature, the temperature of the water supply shall be maintained at a minimum of 55°F (12.8°C) and a maximum of 60°F (15.6°C). Water meters shall be installed in both the hot and cold water lines to measure water consumption.

2.4 *Water pressure.* The static water pressure at the hot and cold water inlet connections of the machine shall be maintained during the test at 35 pounds per square inch gauge (psig)±2.5 psig (241.3 kPa±17.2 Kpa). The static water pressure for a single water inlet connection shall be maintained during the test at 35 psig±2.5 psig (241.3 Kpa±17.2 kPa). Water pressure gauges shall be installed in both the hot and cold water lines to measure water pressure.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5. *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale shall have a range of 0 lbs (0 kg) to a maximum of 30 lbs (13.6 kg) with a resolution of at least 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of any measured value within the range of 3 lbs (1.4 kg) to 15 lbs (6.8 kg).

2.5.1.2 *Weighing scale for clothes container capacity measurements.* The scale should have a range of 0 lbs (0 kg) to a maximum of 500 lbs (226.8 kg) with a resolution of 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter shall have a resolution of at least 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Temperature sensing device.* The temperature sensing device shall have an error no greater than ±1°F (±0.6°C) over the range of 32°F (0°C) to 200°F (93.3°C).

2.5.4 *Water meter.* The water meter shall have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for all water flow rates from 1 gal/min (3.8 L/min) to 5 gal/min (18.9 L/min).

2.5.5 *Water pressure gauge.* The water pressure gauge shall have a resolution of 1 psig (6.9 kPa) and shall have an error no greater than 5 percent of any measured value over the range of 32.5 psig (224.1 kPa) to 37.5 psig (258.6 kPa).

2.6 *Test cloths.*

2.6.1 *Energy test cloth.* The energy test cloth shall be clean and consist of the following:

2.6.1.2 *Pure finished bleached cloth.* Pure finished bleached cloth, made with a momie or granite weave, which is 50 percent cotton and 50 percent polyester and weighs 5.75 oz/yd^2 (195.0 g/m^2) and has 65 ends on the warp and 57 picks on the fill.

2.6.1.3 *Cloth material.* Cloth material that is 24 in by 36 in (61.0 cm by 91.4 cm) and has been hemmed to 22 in by 34 in (55.9 cm by 86.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width.

2.6.1.4 *Number of tests.* The number of test runs on the same energy test cloth shall not exceed 25 runs.

2.6.2 *Energy stuffier cloths.* The energy stuffier cloths shall be made from energy test cloth material and shall consist of pieces of material that are 12 in by 12 in (30.5 cm by 30.5 cm) and have been hemmed to 10 in by 10 in (25.4 cm by 25.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width. The number of test runs on the same energy stuffier cloth shall not exceed 25 runs.

2.7 *Composition of test loads.*

2.7.1 *Seven pound test load.* The seven pound test load shall consist of bone-dry energy test cloths which weigh 7±0.07 lbs (3.18±0.03 kg). Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffier cloths.

2.7.2 *Three pound test load.* The three pound test load shall consist of bone-dry energy test cloths which weigh 3±0.03 lbs (1.36±0.014 kg). Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffier cloths.

2.8 *Use of test loads.*

2.8.1 *Top-loader-vertical-axis clothes washers for calculating energy factor.* The top-loader clothes washer shall be tested without a test load, except for clothes washers equipped with machine controlled water fill capability. Machine controlled water fill capable clothes washers shall use a test load per section 2.8.2.

2.8.2 *Front-loader, top-loader-horizontal-axis, top-loader-vertical-axis with machine-controlled water fill capable and top-loader-vertical-axis for calculating modified energy factor, clothes washers.*

2.8.2.1 *Standard size clothes washer.* When the maximum water fill level is being tested, the test load shall be seven pounds as described in section 2.7.1. When the minimum water fill level is being tested, the test load shall be three pounds as described in section 2.7.2.

2.8.2.2 *Compact size clothes washer.* When either the maximum or minimum water fill levels are being tested, the test load shall be as described in section 2.7.2.

2.8.3 *Method of loading.* Load the energy test clothes by grasping them in the center, shaking them to hang loosely and then dropping them into the clothes container prior to activating the clothes washer.

2.9 *Preconditioning.* If the clothes washer has not previously been tested nor filled with water in the preceding 96 hours, precondition it by running it through a cold rinse cycle and then draining it to insure that the hose, pump, and sump are filled with water.

2.10 *Wash time setting.* The actual wash time (period of agitation) shall be not less than 9.75 minutes.

2.11 *Agitator and spin speed settings.* Where controls are provided for agitation and spin speed selections, set them at the normal cycle settings. If settings at the normal cycle are not offered, set the control settings to the maximum levels permitted on the clothes washer.

3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume which a dry clothes load could occupy within the clothes container, according to sections 3.1.1 and 3.1.2.

3.1.1 *Top-loader-vertical-axis clothes washer.* Line the clothes container and agitator with 2 mil (0.051 mm) plastic sheet or use some other method to prevent the water from entering the outer tub container and into the agitator. The agitator shall be in place. Fill the clothes container with water to its uppermost edge. (This filling procedure may require overriding of the fill level control, or manually completing the fill to the top of the container after the fill sensor terminates the fill at maximum level.) Record the weight of the machine before filling it with water and then after filling it with water. The clothes container capacity is calculated as follows:

$$C = \frac{W}{\rho}$$

Where:

C = capacity in cubic feet (liters).

W = mass of water in pounds (kilograms).

ρ = density of water at the measured temperature in pounds per cubic foot (kilograms per liter).

3.1.2 *Front-loader and top-loader-horizontal-axis clothes washer.* For front-loader-horizontal-axis clothes washers, position the tub and shaft axis vertically with the tub facing up. For top-loader-horizontal-axis clothes washers, position the washer in its upright position and the centerline of the inner-door at the top position. Line the clothes container with 2 mil (0.051 mm) plastic sheet or use some other method to prevent the water from entering the outer tub container. Fill the clothes container with water to its uppermost edge. (This filling procedure may require overriding of the fill level control, or manually completing the fill to the top of the container after the fill sensor terminates the fill at maximum level.) Record the weight of the machine before filling it with water and then after filling it with water. The clothes container capacity is calculated as follows:

$$C = \frac{W}{\rho}$$

Where:

C = capacity in cubic feet (liters).

W = mass of water in pounds (kilograms).

ρ = density of water at the measured temperature in pounds per cubic foot (kilograms per liter).

3.2 *Test cycle.* Establish the test conditions set forth in section 2 of this appendix. Automatic and semi-automatic clothes washers that have infinite or various temperature selection features that do not conform to the wash/rinse temperature combination settings of sections 5 or 6 shall be tested at the following temperature settings: Hottest setting available on the machine, hot (a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C)), warm (a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C)), and coldest setting available on the machine.

3.2.1 *Nonwater-heating clothes washers.*

3.2.1.1 *Per-cycle electrical energy consumption.* Set the water level selector at maximum fill available on the clothes washer and insert the appropriate test load, if applicable. Activate the normal cycle of the clothes washer and also any suds-saver switch.

3.2.1.1.1 Measure the electrical energy consumption of the clothes washer for the complete normal cycle.

3.2.1.2 *Hot and cold water consumption with the water level selector at maximum fill available on the clothes washer, if manually controlled.*

3.2.1.2.1 Set the water level selector at maximum fill available on the clothes washer and insert the appropriate test load. Activate the normal cycle of the clothes washer and also any suds-saver switch.

3.2.1.2.2 For automatic clothes washers, set the wash/rinse temperature selector to the hottest TUF combination setting. For semi-automatic clothes washers, open the hot water faucet valve completely and close the cold water faucet valve completely to achieve the hottest TUF combination setting.

3.2.1.2.3 Measure the respective number of gallons (liters) of hot and cold water used to fill the tub for the wash cycle.

3.2.1.2.4 Measure the respective number of gallons (liters) of hot and cold water used for all deep rinse cycles.

3.2 1.2.5 Measure the respective gallons (liters) of hot and cold water used for all spray rinse cycles.

3.2.1.2.6 For automatic clothes washers repeat sections 3.2.1.2.3, 3.2.1.2.4, and 3.2.1.2.5 for each of the other wash/rinse temperature selections available that use hot water. For semi-automatic clothes washers repeat sections 3.2.1.2.3, 3.2.1.2.4, and 3.2.1.2.5 for the TUFs in section 6 with the following water faucet valve adjustments:

	Faucet position	
	Hot valve	Cold valve
Hot	Completely open.	Closed.

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ISS
56
MR
23
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	Faucet position	
	Hot valve	Cold valve
Warm	Completely open.	Completely open.
Cold	Closed	Completely open.

3.2.1.2.7 Set the suds-saver switch to activate the suds-return. Repeat sections 3.2.1.2.3 to 3.2.1.2.5 for a Warm/Cold temperature setting.

3.2.1.3 *Hot and cold water consumption with the water level selector at minimum fill.* Set the water level selector at minimum fill and insert the appropriate test load. Activate the normal cycle of the clothes washer and also any suds-saver switch. Repeat sections 3.2.1.2.2 through 3.2.1.2.7.

3.2.1.4 *Hot and cold water consumption for clothes washers that incorporate a partial fill during the rinse cycle.* When sections 3.2.1.2 and 3.2.1.3 cannot be used for clothes washers that incorporate a partial fill during the rinse cycle, activate any suds-saver switch and operate the clothes washer for the complete normal cycle at both the maximum water fill level and the minimum water fill level for each of the wash/rinse temperature selections available. Measure the respective hot and cold water consumed during the complete normal cycle.

3.2.2 *Water-heating clothes washers.* For water-heating clothes washers the following temperature settings will be tested: hottest setting available on the machine, hot (a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C)), warm (a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C)), and coldest setting available on the machine. These temperature must be confirmed by measurement using a temperature sensing device.

3.2.2.1 *Per-cycle electrical energy consumption at maximum fill.* Set the water level selector at maximum fill available on the clothes washer, if manually controlled.

3.2.2.1.1 *Hottest wash at maximum fill.* Activate the machine and insert the appropriate test load, if applicable. Select the normal or its equivalent wash cycle. Where spin speed selection is available, set the control to its maximum setting. Set the water temperature selector to the hottest setting and activate the wash cycle. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{ht,max}$.

3.2.2.1.2 *Hot wash at maximum fill.* Insert a water temperature sensing device inside the inner drum prior to testing. Activate the machine and insert the appropriate test load, if applicable. Select the normal or its equivalent wash cycle. Where spin speed selection is available, set the control to its maximum setting. Set the water temperature selector to the hot setting (a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C)) and activate the wash cycle. Verify the wash water temperature, which must be at a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C). If the measured water temperature is not within the specified range, stop testing, adjust the temperature selector accordingly and repeat the procedure. Otherwise, proceed and complete testing. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,max}$.

3.2.2.1.3 *Warm wash at maximum fill.* Repeat section 3.2.2.1.2 for a warm wash setting at a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,max}$.

3.2.2.1.4 *Cold wash at maximum fill.* Repeat section 3.2.2.1.1 for the coldest water setting. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,max}$. Ensure that the inlet water temperature is maintained per section 2.3.

3.2.2.2 *Per-cycle water consumption at maximum fill.* Measure the total number of gallons (liters) of water used in sections 3.2.2.1.1, 3.2.2.1.2, 3.2.2.1.3, and 3.2.2.1.4, including all wash, deep rinse, and spray rinse cycles as $V_{ht,max}$, $V_{h,max}$, $V_{w,max}$, and $V_{c,max}$.

3.2.2.3 *Per-cycle electrical energy consumption at minimum fill.* Set the water level selector to the minimum fill position, if manually controlled.

3.2.2.3.1 *Hottest wash at minimum fill.* Repeat section 3.2.2.1.1. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{ht,min}$.

3.2.2.3.2 *Hot wash at minimum fill.* Repeat section 3.2.2.1.2. The hot wash setting shall be at a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,min}$.

3.2.2.3.3 *Warm wash at minimum fill.* Repeat section 3.2.2.1.2 for warm wash setting at a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,min}$.

3.2.2.3.4 *Cold wash at minimum fill.* Repeat section 3.2.2.1.1 for the coldest wash setting. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,min}$. Ensure that the inlet water temperature is maintained per section 2.3.

3.2.2.4 *Per-cycle water consumption at minimum fill.* Measure the total number of gallons (liters) of water used in sections 3.2.2.3.1, 3.2.2.3.2, 3.2.2.3.3, and 3.2.2.3.4, including all wash, deep rinse, and spray rinse cycles.

3.3 *Moisture content of test load.* Weigh the test loads after completion of test cycles in warm wash/cold rinse or cold wash/cold rinse temperature setting for both maximum and minimum water fills.

3.4 *Data recording.* Record for each test cycle in sections 3.2.1 through 3.3.

3.4.1 *Nonwater-heating clothes washers.*

3.4.1.1 Record the kilowatt-hours of electrical energy, M_E, consumed during the test to operate the clothes washer in section 3.2.1.1.

3.4.1.2 Record the individual gallons (liters) of hot and cold water consumption, Vh_i and Vc_i, measured at maximum fill level for each wash/rinse TUF combination setting in section 3.2.1.2, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

3.4.1.3 Record the individual gallons (liters) of hot and cold water consumption, Vh_j and Vc_j, measured at minimum fill level for each wash/rinse TUF combination setting in section 3.2.1.3, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

3.4.1.4 Record the individual gallons (liters) of hot and cold water, Sh_H and Sc_H, measured at maximum fill for the suds-return cycle.

3.4.1.5 Record the individual gallons (liters) of hot and cold water, Sh_L and Sc_L, measured at minimum fill for the suds-return cycle.

3.4.2 *Water-heating clothes washers.*

3.4.2.1 Record the kilowatt-hours of electrical energy $E_{ht,max}$, $E_{h,max}$, $E_{w,max}$, and $E_{c,max}$ consumed at maximum fill level for each wash/rinse TUF combination setting in sections 3.2.2.1.1, 3.2.2.1.2, 3.2.2.1.3, and 3.2.2.1.4, respectively.

3.4.2.2 Record the total gallons (liters) of water consumption, V_{htmax}, $V_{h,max}$, $V_{w,max}$, and $V_{c,max}$, measured at maximum fill level for each wash/rinse TUF combination setting in section 3.2.2.2.

3.4.2.3 Record the kilowatt-hours of electrical energy, E_{htmin}, $E_{h,min}$, $E_{w,min}$, and $E_{c,min}$ consumed at minimum fill level for each wash/rinse TUF combination setting in section 3.2.2.3.1, 3.2.2.3.2, 3.2.2.3.3, and 3.2.2.3.4, respectively.

3.4.2.4 Record the total gallons (liters) of water consumption, V_{htmin}, $V_{h,min}$, $V_{w,min}$, and $V_{c,min}$, measured at minimum fill level for each wash/rinse TUF combination setting in section 3.2.2.4.

3.4.3 Record the weight of the test loads, W_{max} and W_{min}, after completion of test cycles in section 3.3.

4. Calculation of Derived Results From Test Measurements

4.1 *Energy consumption.*

4.1.1 *Nonwater-heating clothes washers.*

4.1.1.1 *Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, Vh_{max}, and for the minimum water fill level, Vh_{min}, expressed in gallons per cycle (liters per cycle) and defined as:

$$Vh_{max} = X_1 \sum_{i=1}^{n} \left[Vh_i \times TUF_i \right] + X_2 \left[TUF_W \times Sh_H \right]$$

Where:

Vh_i = reported hot water consumption in gallons per cycle (liters per cycle) at maximum fill for each wash/cycle TUF combination setting, as provided in section 3.4.1.2. (If a clothes washer is equipped with two different wash/rinse temperature selections that have the same basic TUF label (one of them has its water temperature controlled by thermostatically controlled valves and the other one does not), then the higher of the two V_i's shall be used for the calculation.)

TUF_i = applicable temperature use factor in section 5 or 6.

n = number of wash/rinse TUF combination setting available to the user for the clothes washer under test.

TUF_w = temperature use factor for warm wash setting.

For clothes washers equipped with the suds-saver feature:

X_1 = frequency of use without the suds-saver feature = 0.86.

X_2 = frequency of use with the suds-saver feature = 0.14.

Sh_H = fresh make-up water measured during suds-return cycle at maximum water fill level.

For clothes washers not equipped with the suds-saver feature:

$$X_1 = 1.0$$

$$X_2 = 0.0$$

and

$$Vh_{min} = X_1 \sum_{j=1}^{n} \left[Vh_j \times TUF_j \right] + X_2 \left[TUF_W \times Sh_L \right]$$

Where:

Vh_j = reported hot water consumption in gallons per cycle (liters per cycle) at minimum fill for each wash/rinse TUF combination setting, as provided in section 3.4.1.3. (If a clothes washer is equipped with two different wash/rinse temperature selections that have the same basic TUF label (one of them has its water temperature controlled by thermostatically controlled valves and the other one does not), then the higher of the two V_j's shall be used for the calculation.)

TUF_j = applicable temperature use factor in section 5 or 6.

Sh_L = fresh hot make-up water measured during suds-return cycle at minimum water fill level.

n = as defined above.

TUF_w = as defined above.

X_1 = as defined above.

X_2 = as defined above.

4.1.1.2 *Total per-cycle hot water energy consumption for maximum and minimum water fill levels.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, E_{max} and for the minimum water level, E_{mm}, expressed in kilowatt-hours per cycle and defined as:

$$E_{max} = \left[Vh_{max} \times T \times K \times MF \right]$$

Where:

T = temperature rise = 90°F (50°C).

K = water specific heat = 0.00240 kWh/(gal-°F) [0.00114 kWh/(L-°C)].

Vh_{max} = as defined in section 4.1.1.1.

MF = multiplying factor to account for absence of test load=0.94 for top-loader vertical axis clothes washers that are sensor filled, 1.0 for all other clothes washers

and:

$$E_{min} = \left[Vh_{min} \times T \times K \times MF \right]$$

Where:

T = as defined above.

K = as defined above.

Vh_{mm} = as defined in section 4.1.1.1.

MF = as defined in section 4.1.1.2.

4.1.1.3 *Total weighted per-cycle hot water energy consumption expressed in kilowatt-hours.* Calculate the total weighted per cycle hot water energy consumption, E_T, expressed in kilowatt-hours per cycle and defined as:

$$E_T = \left[E_{max} \times F_{max} \right] + \left[E_{min} \times F_{min} \right]$$

Where:

F_{max}=usage fill factor=0.72

F_{min}=usage fill factor=0.28

E_{max}=as defined in section 4.1.1.2.

E_{mm}=as defined in section 4.1.1.2.

4.1.1.4 *Per-cycle machine electrical energy consumption.* The value recorded in section 3.4.1.1 is the per-cycle machine electrical energy consumption, M_E, expressed in kilowatt-hours per cycle.

4.1.1.5 *Per-cycle water energy consumption using gas-heated or oil-heated water.* Calculate for the normal cycle the per-cycle water consumption, E_{TG}, using gas heated or oil-heated water, expressed in BTU per cycle (megajoules per cycle) and defined as:

$$E_{TG} = E_T \times \frac{1}{e} \times \left[\frac{3412 \text{ BTU}}{\text{kWh}} \right]$$

$$\text{or } E_{TG} = E_T \times \frac{1}{e} \times \left[\frac{3.6 \text{ MJ}}{\text{kWh}} \right]$$

Where:

e = nominal gas or oil water heater efficiency=0.75.

E_T = as defined in section 4.1.1.3.

4.1.1.6 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the normal cycle the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE}=E_T+M_E$

Where:

E_T = as defined in section 4.1.1.3

M_E = as defined in section 4.1.1.4.

4.1.2 *Water-heating clothes washers.*

4.1.2.1 *Per-cycle temperature-weighted energy consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature weighted energy consumption for the maximum water fill level, E_{max}, and for the minimum water fill level, E_{mm}, expressed in kilowatt-hours per cycle and defined as:

$$E_{max} = \left(0.05 \times E_{ht,max}\right) + \left(0.25 \times E_{h,max}\right) + \left(0.55 \times E_{w,max}\right) + \left(0.15 \times E_{c,max}\right)$$

and,

$$E_{min} = \left(0.05 \times E_{ht,min}\right) + \left(0.25 \times E_{h,min}\right) + \left(0.55 \times E_{w,min}\right) + \left(0.15 \times E_{c,min}\right)$$

Where:

$E_{ht,max}$ = as defined in section 3.2.2.1.1

$E_{h,max}$ = as defined in section 3.2.2.1.2

$E_{w,max}$ = as defined in section 3.2.2.1.3

$E_{c,max}$ = as defined in section 3.2.2.1.4

$E_{ht,min}$ = as defined in section 3.2.2.3.1

$E_{h,min}$ = as defined in section 3.2.2.3.2

$E_{w,min}$ = as defined in section 3.2.2.3.3

$E_{c,min}$ = as defined in section 3.2.2.3.4

4.1.2.2 *Total weighted per-cycle energy consumption expressed in kilowatt-hours.* Calculate the total weighted per cycle energy consumption, E_T, expressed in kilowatt-hours per cycle and defined as:

$$E_T = \left[E_{max} \times F_{max} \right] + \left[E_{min} \times F_{min} \right]$$

Where:

F_{max} = as defined in section 4.1.1.3.

F_{mm} = as defined in section 4.1.1.3.

E_{max} = as defined in section 4.1.2.1.

E_{min} = as defined in section 4.1.2.1

4.2 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the moisture of the test load, moisture removal energy, H_V, expressed in kilowatt-hours per cycle and defined as:

$$H_V = \left(W_2 - W_1\right) \times D_{EF}$$

Where:

W_2 = Weighted test load after normal cycles, in lbs (kg).
= $[(W_{max} \times F_{max}) + (W_{mm} \times F_{mm})]$.

W_{max} = as defined in section 3.4.3.

W_{min} = as defined in section 3.4.3.

F_{max} = as defined in section 4.1.1.3.

F_{mm} = as defined in section 4.1.1.3.

W_1 = weighted reference weight (bone dry) of test load.
= 5.88 lbs (2.42 kg) for standard size clothes washers.
= 3 lbs (1.36 kg) for compact size clothes washers.

D_{EF} = nominal energy required for a clothes dryer to remove moisture from clothes, 0.5 kWh/lbs (1.1 kWh/kg).

4.3 *Water consumption.*

4.3.1 *Nonwater-heating clothes washers.*

4.3.1.1 *Per-cycle temperature-weighted water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature-weighted total water consumption for the maximum water fill level, Q_{max}, and for the minimum water fill level, Q_{mm}, expressed in gallons per cycle (liters per cycle) and defined as:

$$Q_{max} = X_1 \sum_{i=1}^{n} \left[\left(Vh_i + Vc_i \right) \times TUF_i \right] + X_2 \left[TUF_W \times \left(Sh_H + Sc_H \right) \right]$$

Where:

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Vh_i = hot water consumption in gallons per cycle at maximum fill for each wash/rinse TUF combination setting, as provided in section 3.4.1.2.
Vc_i = cold water consumption in gallons per cycle at maximum fill for each wash/rinse TUF combination setting, as provided in section 3.4.1.2.
TUF_i = applicable temperature use factor in section 5 or 6.
n = number of wash/rinse TUF combination settings available to the user for the clothes washer under test.
TUF_w = temperature use factor for warm wash setting.

For clothes washers equipped with suds-saver feature:

X_1 = frequency of use without suds-saver feature=0.86
X_2 = frequency of use with suds-saver feature=0.14
Sh_H = fresh hot water make-up measured during suds-return cycle at maximum water fill level.
Sc_H = fresh cold water make-up measured during suds-return cycle at maximum water fill level.

For clothes washers not equipped with suds-saver feature:

$$X_1 = 1.0$$
$$X_2 = 0.0$$

and

$$Q_{min} = X_1 \sum_{j=1}^{n} \left[\left(Vh_j + Vc_j \right) \times TUF_j \right]$$

$$+ X_2 \left[TUF_w \times \left(Sh_L + SC_L \right) \right]$$

Where:
Vh_j = hot water consumption in gallons per cycle (liters per cycle) at minimum fill for each wash/rinse TUF combination setting, as provided in section 3.4.1.3.
Vc_j = cold water consumption in gallons per cycle (liters per cycle) at minimum fill for each wash/rinse TUF combination setting, as provided in section 3.4.1.3.
TUF_j = applicable temperature use factor in section 5 or 6.
Sh_L = fresh hot and cold make-up water measured during suds-return cycle at minimum water fill level.
Sc_L = fresh hot and cold make-up water measured during suds-return cycle at minimum water fill level.
n = as defined in section 4.3.1.1.
TUF_w = as defined in section 4.3.1.1.
X_1 = as defined in section 4.3.1.1.
X_2 = as defined in section 4.3.1.1.

4.3.1.2 *Total weighted per-cycle water consumption.* Calculate the total weighted per cycle water consumption, Q_T, expressed in gallons per cycle (liters per cycle) and defined as:

$$Q_T = \left[Q_{max} \times F_{max} \right] + \left[Q_{min} \times F_{min} \right]$$

Where:
F_{max} = as defined in section 4.1.1.3.
F_{min} = as defined in section 4.1.1.3.
Q_{max} = as defined in section 4.3.1.1.
Q_{min} = as defined in section 4.3.1.1.

4.3.2 *Water-heating clothes washers.*

4.3.2.1 *Per-cycle temperature-weighted water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature weighted total water consumption for the maximum water fill level, Q_{max}, and for the minimum water fill level, Q_{min}, expressed in gallons per cycle (liters per cycle) and defined as:

$$Q_{max} = \left(0.05 \times V_{ht,max} \right) + \left(0.25 \times V_{h,max} \right) + \left(0.55 \times V_{w,max} \right) + \left(0.15 \times V_{c,max} \right)$$

and,

$$Q_{min} = \left(0.05 \times V_{ht,min} \right) + \left(0.25 \times V_{h,min} \right) + \left(0.55 \times V_{w,min} \right) + \left(0.15 \times V_{c,min} \right)$$

Where:
$V_{ht,max}$ = as defined in section 3.2.2.2.
$V_{h,max}$ = as defined in section 3.2.2.2.
$V_{w,max}$ = as defined in section 3.2.2.2.
$V_{c,max}$ = as defined in section 3.2.2.2.
$V_{ht,min}$ = as defined in section 3.2.2.4.
$V_{h,min}$ = as defined in section 3.2.2.4.
$V_{w,min}$ = as defined in section 3.2.2.4.
$V_{c,min}$ = as defined in section 3.2.2.4.

4.3.2.2 *Total weighted per-cycle water consumption.* Calculate the total weighted per cycle water consumption, Q_T, expressed in gallons per cycle (liters per cycle) and defined as:

$$Q_T = \left[Q_{max} \times F_{max} \right] + \left[Q_{min} \times F_{min} \right]$$

Where:
F_{max} = as defined in section 4.1.1.3.
F_{min} = as defined in section 4.1.1.3.
Q_{max} = as defined in section 4.3.2.1.
Q_{min} = as defined in section 4.3.2.1.

4.3.3 *Water consumption factor.* Calculate the water consumption factor, WCF, expressed in cubic feet per gallon per cycle (liter per liter per cycle), as:

$$WCF = \frac{C}{Q_T}$$

Where:
C = as defined in section 3.1.1 or 3.1.2.
Q_T = as defined in section 4.3.1.2 for nonwater-heating clothes washers.

4.4 *Modified energy factor.*

4.4.1 *Nonwater-heating clothes washers.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hours per cycle (liters per kilowatt-hours per cycle), as:

$$MEF = \frac{C}{\left(M_E + E_T + H_V \right)}$$

Where:
C = as defined in section 3.1.1 or 3.1.2.
M_E = as defined in section 4.1.1.4.
E_T = as defined in section 4.1.1.3.
H_V = as defined in section 4.2.

4.4.2 *Water-heating clothes washers.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hours per cycle (liters per kilowatt-hours per cycle) as:

$$MEF = \frac{C}{\left(E_T + H_V \right)}$$

Where:
C = as defined in section 3.1.1 or 3.1.2.
E_T = as defined in section 4.1.2.2.
H_V = as defined in section 4.2.

5. Applicable Temperature Use Factors for Determining Hot Water Usage for Various Wash/Rinse Temperature Selections for All Automatic Clothes Washers

5.1 *Five-temperature selection (n=5).*

Wash/rinse temperature setting	Temperature use factor (TUF)
Hot/Warm	0.18
Hot/Cold	.12
Warm/Warm	.30
Warm/Cold	.25
Cold/Cold	.15

5.2 *Four-temperature selection (n=4).*

Wash/rinse temperature setting	Temperature use factor (TUF)
Alternate I:	
Hot/Warm	0.18
Hot/Cold	.12
Warm/Cold	.55
Cold/Cold	.15
Alternate II:	
Hot/Warm	0.18
Hot/Cold	.12
Warm/Warm	.30
Warm/Cold	.40
Alternate III:	
Hot/Cold	0.12
Warm/Warm	.18
Warm/Cold	.55
Cold/Cold	.15

5.3 *Three-temperature selection (n=3).*

Wash/rinse temperature setting	Temperature use factor (TUF)
Alternate I:	
Hot/Warm	0.30
Warm/Cold	.55
Cold/Cold	.15
Alternate II:	
Hot/Cold	0.30
Warm/Cold	.55
Cold/Cold	.15
Alternate III:	
Hot/Cold	0.30
Warm/Warm	.55
Cold/Cold	.15

6. Applicable Temperature Use Factors for Determining Hot Water Usage for Various Wash/Rinse Temperature Settings for All Semi-Automatic Clothes Washers

6.1 *Six-temperature settings (n=6).*

Wash/rinse temperature setting	Temperature use factor (TUF)
Hot/Hot	.15
Hot/Warm	.09
Hot/Cold	.06
Warm/Warm	.42
Warm/Cold	.13
Cold/Cold	.15

§ 430.62 [Amended]

7. Section 430.62 (a)(2) is amended by adding "energy factor (for clothes washers, clothes dryers, and dishwashers)" after "(for pool heaters)," and before "and annual fuel utilization efficiency".

[FR Doc. 95–4048 Filed 3–22–95: 8:45 am
BILLING CODE 6450–01–P

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federal register

Thursday
March 23, 1995

Part III

Environmental Protection Agency

40 CFR 9, 122, 123, 131, and 132
Final Water Quality Guidance for the Great Lakes System; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 131, and 132

[FRL–5173–7]

RIN 2040–AC08

Final Water Quality Guidance for the Great Lakes System

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is publishing Final Water Quality Guidance for the Great Lakes System. Great Lakes States and Tribes will use the water quality criteria, methodologies, policies, and procedures in the Guidance to establish consistent, enforceable, long-term protection for fish and shellfish in the Great Lakes and their tributaries, as well as for the people and wildlife who consume them.

The Guidance was initially developed by the Great Lakes States, EPA, and other Federal agencies in open dialogue with citizens, local governments, and industries in the Great Lakes ecosystem. It will affect all types of pollutants, but will target especially the types of long-lasting pollutants that accumulate in the food web of large lakes.

The Guidance consists of water quality criteria for 29 pollutants to protect aquatic life, wildlife, and human health, and detailed methodologies to develop criteria for additional pollutants; implementation procedures to develop more consistent, enforceable water quality-based effluent limits in discharge permits, as well as total maximum daily loads of pollutants that can be allowed to reach the Lakes and their tributaries from all sources; and antidegradation policies and procedures.

Under the Clean Water Act, the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin must adopt provisions into their water quality standards and NPDES permit programs within two years (by March 23, 1997) that are consistent with the Guidance, or EPA will promulgate the provisions for them. The Guidance for the Great Lakes System will help establish consistent, enforceable, long-term protection from all types of pollutants, but will place short-term emphasis on the types of long-lasting pollutants that accumulate in the food web and pose a threat to the Great Lakes System. The Guidance includes minimum water quality criteria, antidegradation policies, and implementation procedures that provide a coordinated ecosystem approach for addressing existing and possible pollutant problems and improves consistency in water quality standards and permitting procedures in the Great Lakes System. In addition, the Guidance provisions help establish consistent goals or minimum requirements for Remedial Action Plans (RAPs) and Lakewide Management Plans (LaMPs) that are critical to the success of international multi-media efforts to protect and restore the Great Lakes ecosystem.

EFFECTIVE DATE: April 24, 1995.

ADDRESSES: The public docket for this rulemaking, including applicable **Federal Register** documents, public comments in response to these documents, the Final Water Quality Guidance for the Great Lakes System, Response to Comments Document, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Wendy Schumacher (telephone 312–886–0142).

Information concerning the Great Lakes Initiative (GLI) Clearinghouse is available from Ken Fenner, Water Quality Branch Chief, (WQS–16J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 (312–353–2079).

Copies of the Information Collection Request for the Guidance are available by writing or calling Sandy Farmer, Information Policy Branch, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460 (202–260–2740).

Selected documents supporting the Guidance are available for viewing by the public at locations listed in section XI of the preamble.

Selected documents supporting the Guidance are available by mail upon request for a fee. Selected documents are also available in electronic format at no incremental cost to users of the Internet. See section XI of the preamble for additional information.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fenner, Water Quality Branch Chief (WQS–16J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 (312–353–2079).

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I. Introduction

Section 118(c)(2) of the Clean Water Act (CWA) (Pub. L. 92–500 as amended by the Great Lakes Critical Programs Act of 1990 (CPA), Pub. L. 101–596, November 16, 1990) required EPA to publish proposed and final water quality guidance on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System. In response to these requirements, EPA published the Proposed Water Quality Guidance for the Great Lakes System (proposed Guidance) in the **Federal Register** on April 16, 1993 (58 FR 20802). EPA also published four subsequent documents in the **Federal Register** identifying corrections and requesting comments on additional related materials (April 16, 1993, 58 FR 21046; August 9, 1993, 58 FR 42266; September 13, 1993, 58 FR 47845; and August 30, 1994, 59 FR 44678). EPA received over 26,500 pages of comments, data, and information from over 6,000 commenters in response to these documents and from meetings with members of the public.

After reviewing and analyzing the information in the proposal and these comments, EPA has developed the Final Water Quality Guidance for the Great Lakes System (final Guidance), published in this document and codified in 40 CFR part 132, which includes six appendixes of detailed methodologies, policies, and procedures. This preamble describes the background and purpose of the final Guidance, and briefly summarizes the major provisions. Detailed discussion of EPA's reasons for issuing the final Guidance, analysis of comments and issues, description of specific changes made to the proposed Guidance, and further description of the final Guidance, are provided in "Final Water Quality Guidance for the Great Lakes System: Supplementary Information Document" (SID), (EPA, 1995, 820–B–95–001) and in additional technical and supporting documents which are available in the docket for this rulemaking. Copies of the SID and other supporting documents are also available from EPA in electronic format, or in printed form for a fee upon request; see section XI of this preamble.

II. Background

The Great Lakes are one of the outstanding natural resources of the world. They have played a vital role in the history and development of the United States and Canada, and have physical, chemical, and biological characteristics that make them a unique ecosystem. The Great Lakes themselves—Lakes Superior, Huron, Michigan, Erie and Ontario and their connecting channels—plus all of the streams, rivers, lakes and other bodies of water that are within the drainage basin of the Lakes collectively comprise the Great Lakes System.

The System spans over 750 miles across eight States—New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin and Minnesota—and the Province of Ontario. The Lakes contain approximately 18 percent of the world's and 95 percent of the United States' fresh surface water supply. The Great Lakes are a source of drinking water and energy, and are used for recreational, transportation, agricultural and industrial purposes by the more than 46 million Americans and Canadians who inhabit the Great Lakes region, including 29 Native American tribes. Over 1,000 industries and millions of jobs are dependent upon water from the Great Lakes. The Great Lakes System also supports hundreds of species of aquatic life, wildlife and plants along more than 4,500 miles of coastline which boast six National Parks and Lakeshores, six National Forests, seven National Wildlife Refuges, and hundreds of State parks, forests and sanctuaries.

Because of their unique features, the Great Lakes are viewed as important to the residents of the region, and to the Nation as a whole. The natural resources of the region have contributed to the development of its economy. The Lakes' natural beauty and aquatic resources form the basis for heavy recreational activity. The Great Lakes Basin Ecosystem—the interacting components of air, land, water and living organisms, including humans, that live within the Great Lakes drainage basin—is a remarkably diverse and unique ecosystem important in the global ecology.

In the past few decades, the presence of environmental contaminants in the Great Lakes has been of significant concern. In spite of the fact that the Great Lakes contain 5,500 cubic miles of water that cover a total surface area of 94,000 square miles, they have proved to be sensitive to the effects of pollutants that accumulate in them. The internal responses and processes that operate in the Great Lakes because of their depth and long hydraulic residence times cause pollutants to recycle between biota, sediments and the water column.

The first major basin-wide environmental problem in the Great Lakes emerged in the late 1960s, when increased nutrients had dramatically stimulated the growth of green plants and algae, reduced dissolved oxygen levels, and accelerated the process of eutrophication. As oxygen levels continued to drop, certain species of insects and fish were displaced from affected areas of the Great Lakes Basin Ecosystem. Environmental managers determined that a lakewide approach was necessary to adequately control accelerated eutrophication. From the late 1960s through the late 1970s, United States and Canadian regulatory agencies agreed on measures to limit the loadings of phosphorus, including effluent limits on all major municipal sewage treatment facilities, limitations on the phosphorus content in household detergents, and reductions in nonpoint source runoff loadings. As a result of all of these efforts, open lake phosphorus concentrations have declined, and phosphorus loadings from municipal sewage treatment facilities have been reduced by an estimated 80 to 90 percent. These reductions have resulted in dramatic improvements in nearshore water quality and measurable improvements in open lake conditions.

More recently, scientists and public leaders have reached a general consensus that the presence of environmentally persistent, bioaccumulative contaminants is a serious environmental threat to the Great Lakes Basin Ecosystem. Beginning in 1963, adverse environmental impacts in the form of poor reproductive success and high levels of the pesticide DDT were observed in herring gulls in Lake Michigan. Through ongoing research, scientists have detected 362 contaminants in the Great Lakes System. Of these, approximately one third have toxicological data showing that they can have acute or chronic toxic effects on aquatic life, wildlife and/or human health. Chemicals that have been found to bioaccumulate at levels of concern in the Great Lakes include, but are not limited to, polychlorinated biphenyls (PCBs), mercury, DDT, dioxin, chlordane, and mirex. The main route of exposure to these chemicals for humans is through the consumption of Great Lakes fish.

Potential adverse human health effects by these pollutants resulting from the consumption of fish include both the increased risk of cancer and the potential for systemic or noncancer risks such as kidney damage. EPA has calculated health risks to populations in the Great Lakes basin from consumption of contaminated fish based on exposure to eight bioaccumulative pollutants: chlordane, DDT, dieldrin, hexachlorobenzene, mercury, PCBs, 2,3,7,8–TCDD, and toxaphene. These chemicals were chosen based on their potential to cause adverse human health effects (i.e., cancer or disease) and the availability of information on fish tissue contaminant concentrations from the Great Lakes.

Based on these data, EPA estimates that the lifetime cancer risks for Native Americans in the Great Lakes System due to ingestion of contaminated fish at current concentrations range from 1.8×10^{-3} (Lake Superior) (1.8 in one thousand) to 3.7×10^{-2} (Lake Michigan) (3.7 in 100). Estimated risks to low income minority sport anglers range from 2.5×10^{-3} (2.5 in one thousand) (Lake Superior) to 1.2×10^{-2} (1.2 in 100) (Lake Michigan). Estimated risks for other sport anglers range from 9.7×10^{-4} (9.7 in ten thousand) (Lake Superior) to 4.5×10^{-3} (4.5 in one thousand) (Lake Michigan). (See section I.B.2.a of the SID.) In comparison, EPA has long maintained that 1×10^{-4} (one in ten thousand) to 1×10^{-6} (one in 1 million) is an appropriate range of risk to protect human health.

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EPA also estimates a high potential risk of systemic (noncancer) injury to populations in the Great Lakes basin due to ingestion of fish contaminated with these pollutants at current concentrations. The systemic adverse health effects associated with the assessed contaminants are described in section I.B of the SID.

Although the Great Lakes States and EPA have moved forward to deal with these problems, control of persistent, bioaccumulative pollutants proved to be more complex and difficult than dealing with nutrients. As a result, inconsistencies began to be apparent in the ways various States developed and implemented controls for the pollutants. By the mid-1980s, such inconsistencies became of increasing concern to EPA and State environmental managers.

EPA began the Great Lakes Water Quality Initiative ("Initiative") in cooperation with the Great Lakes States to establish a consistent level of environmental protection for the Great Lakes ecosystem, particularly in the area of State water quality standards and the National Pollutant Discharge Elimination System (NPDES) programs. In the spring of 1989, the Council of Great Lakes Governors unanimously agreed to participate in the Initiative with EPA, because the Initiative supported the principles and goals of the Great Lakes Toxic Substances Control Agreement (Governors' Agreement). Signed in 1986 by the Governors of all eight Great Lakes States, the Governors' Agreement affirmed the Governors' intention to manage and protect the resources of the Great Lakes basin through the joint pursuit of unified and cooperative principles, policies and programs enacted and adhered to by each Great Lakes State.

The Initiative provided a forum for a regional dialogue to establish minimum requirements that would reduce disparities between State water quality controls in the Great Lakes basin. The scope of the Initiative included development of proposed Great Lakes water quality guidance—Great Lakes-specific water quality criteria and methodologies to protect aquatic life, wildlife and human health, procedures to implement water quality criteria, and an antidegradation policy.

Three committees were formed to oversee the Initiative. A Steering Committee (composed of directors of water programs from the Great Lakes States' environmental agencies and EPA's National and Regional Offices) discussed policy, scientific, and technical issues, directed the work of the Technical Work Group and ratified final proposals. The Technical Work Group (consisting of technical staff from the Great Lakes States' environmental agencies, EPA, the U.S. Fish and Wildlife Service, and the National Park Service) prepared proposals on elements of the Guidance for consideration by the Steering Committee. The Public Participation Group (consisting of representatives from environmental groups, municipalities, industry and academia) observed the deliberations of the other two committees, advised them of the public's concerns, and kept its various constituencies apprised of ongoing activities and issues. These three groups were collectively known as the Initiative Committees. From the start, one goal of the Initiative Committees was to develop the Guidance elements in an open public forum, drawing upon the extensive expertise and interest of individuals and groups within the Great Lakes community.

The Initiative efforts were well underway when Congress amended section 118 of the CWA in 1990 through the CPA. The general purpose of these amendments was to improve the effectiveness of EPA's existing programs in the Great Lakes by identifying key treaty provisions agreed to by the United States and Canada in the Great Lakes Water Quality Agreement (GLWQA), imposing statutory deadlines for the implementation of these key activities, and increasing Federal resources for program operations in the Great Lakes System.

Section 118(c)(2) requires EPA to publish proposed and final water quality guidance for the Great Lakes System. This Guidance must conform with the objectives and provisions of the GLWQA (a binational agreement establishing common water quality objectives for the Great Lakes) and be no less restrictive than provisions of the CWA and National water quality criteria and guidance. The Guidance must specify minimum requirements for the waters in the Great Lakes System in three areas: (1) water quality standards (including numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life and wildlife); (2) antidegradation policies; and (3) implementation procedures.

The Great Lakes States must adopt water quality standards, antidegradation policies and implementation procedures for waters within the Great Lakes System which are consistent with the final Guidance within two years of EPA's publication. In the absence of such action, EPA is required to promulgate any necessary requirements within that two-year period. In addition, when an Indian Tribe is authorized to administer the NPDES or water quality standards program in the Great Lakes basin, it will also need to adopt provisions consistent with the final Guidance into their water programs.

On December 6, 1991, the Initiative Steering Committee unanimously recommended that EPA publish the draft Guidance ratified by that group in the **Federal Register** for public review and comment. The agreement that the draft Great Lakes Guidance was ready for public notice did not represent an endorsement by every State of all of the specific proposals. Rather, all parties agreed on the importance of proceeding to publish the draft Great Lakes Guidance in order to further solicit public comment. State Steering Committee members indicated their intent to develop and submit specific comments on the proposed Guidance during the public comment period. EPA worked to convert the agreements reached in principle by the Steering Committee into a formal package suitable for publication in the **Federal Register** as proposed Guidance. EPA generally used the draft proposal ratified by the Steering Committee as the basis for preparing the **Federal Register** proposal package. Modifications were necessary, however, to reflect statutory and regulatory requirements and EPA policy considerations, to propose procedures for State and Tribal adoption of the final Guidance, to provide suitable discussion of various alternative options, and to accommodate necessary format changes. Where modifications were made, the preamble to the proposal described both the modification and the original Steering Committee-approved guidelines, and invited public comment on both. All elements approved by the Steering Committee were either incorporated in the proposed rule or discussed in the preamble to the proposal.

III. Purpose of the Guidance

The final Guidance represents a milestone in the 30 years of effort described above on the part of the Great Lakes stakeholders to define and apply innovative, comprehensive environmental programs in protecting and restoring the Great Lakes. In particular, this publication of the final Guidance culminates six years of intensive, cooperative effort that included participation by the eight Great Lakes States, the environmental community, academia, industry, municipalities and EPA Regional and National offices.

The final Guidance will help establish consistent, enforceable, long-term protection with respect to all types of pollutants, but will place short-term emphasis on the types of long-lasting pollutants that accumulate in the food web and pose a threat to the Great Lakes System. The final Guidance will establish goals and minimum requirements that will further the next phase of Great Lakes programs, including the Great Lakes Toxic Reduction Effort's integrated, multi-media ecosystem approach.

EPA and State development of the Guidance—from drafting through proposal and now final publication—was guided by several general principles that are discussed below.

A. Use the Best Available Science to Protect Human Health, Aquatic Life, and Wildlife

EPA and the Initiative Committees have been committed throughout the Initiative to using the best available science to develop programs to protect the Great Lakes System. In the 1986 Governors' Agreement, the Governors of the Great Lakes States recognized that the problem of persistent toxic substances was the foremost environmental issue confronting the Great Lakes. They also recognized that the regulation of toxic contaminants was scientifically complex because the pollutants are numerous, their pathways into the Lakes are varied, and their effects on the environment, aquatic life and human health are not completely understood. Based on the importance of the Great Lakes Basin Ecosystem and the documented adverse effects from toxic contamination, however, the Governors directed their environmental administrators to jointly develop an agreement and procedure for coordinating the control of toxic releases and achieving greater uniformity of regulations governing such releases within the Great Lakes basin.

As discussed further above, the Initiative was subsequently created to begin work on these goals. EPA and the Great Lakes States, with input from interested parties in the basin, began collecting and analyzing data, comparing regulatory requirements and technical guidance in their various jurisdictions, and drafting specific methodologies and procedures to control the discharge of toxic contaminants. The provisions of the final Guidance were based in large part on these prior efforts of the Initiative Committees, and incorporate the best available science to protect human health, wildlife and aquatic life in the Great Lakes System. For example, the final Guidance includes new criteria and a methodology developed by the Initiative Committees to specifically protect wildlife; incorporates recent data on the bioavailability of metals into the aquatic life criteria and methodologies; incorporates Great Lakes-specific data on fish consumption rates and fish lipid contents into the human health criteria; and provides a methodology to determine the bioaccumulation properties of individual pollutants. Additionally, EPA understands that the science of risk assessment is rapidly improving. Therefore, in order to ensure that the scientific basis for the criteria methodologies is always current and peer reviewed, EPA will review the methodologies and revise them as appropriate every three years.

B. Recognize the Unique Nature of the Great Lakes Basin Ecosystem

The final Guidance also reflects the unique nature of the Great Lakes Basin Ecosystem by establishing special provisions for chemicals of concern. EPA and the Great Lakes States believe it is reasonable and appropriate to establish special provisions for the chemicals of most concern because of the physical, chemical and biological characteristics of the Great Lakes System, and the documented environmental harm to the ecosystem from the past and continuing presence of these types of pollutants. The Initiative Committees devoted considerable effort to identifying the chemicals of most concern to the Great Lakes System—persistent, bioaccumulative pollutants termed "bioaccumulative chemicals of concern (BCCs)"—and developing the most appropriate criteria, methodologies, policies, and procedures to address them. The special provisions for BCCs, initially developed by the Initiative Committees and incorporated into the final Guidance, include antidegradation procedures, to ensure that future problems are minimized; general phase-out and elimination of mixing zones for BCCs, except in limited circumstances, to reduce their overall loadings to the Lakes; more extensive data generation requirements to ensure that they are not under-regulated for lack of data; and development of water quality criteria that will protect wildlife that feed on aquatic prey.

The final Guidance is designed not only to begin to address existing problems, but also to prevent emerging and potential problems posed by additional chemicals in the future which may damage the overall health of the Great Lakes. The experience with such pollutants as DDT and PCBs indicates that it takes many decades to overcome the damage to the ecosystem caused by even short-term discharges, and that prevention would have been dramatically less costly than clean-up. Issuance of the final Guidance alone will not solve the existing long-term problems in the Great Lakes System from these contaminants. Full implementation of provisions consistent with the final Guidance will, however, provide a coordinated ecosystem approach for addressing possible pollutant problems before they produce adverse and long-lasting basin-wide impacts, rather than waiting to see what the future impacts of the pollutants might be before acting to control them. The comprehensive approach used in the development of the final Guidance provides regulatory authorities with both remedial and preventive ways of gauging the actions and potential effects of chemical stressors upon the Great Lakes Basin Ecosystem. The methodologies, policies and procedures contained in the final Guidance provide mechanisms for appropriately addressing both pollutants that have been or may in the future be documented as chemicals of concern.

C. Promote Consistency in Standards and Implementation Procedures While Allowing Appropriate Flexibility to States and Tribes

Promoting consistency in standards and implementation procedures while providing for appropriate State flexibility was the third principle in State and EPA development of the final Guidance. The underlying rationale for the Governors' Agreement, the Initiative, and the requirements set forth in the CPA was a recognition of the need to promote consistency through adoption of minimum water quality standards, antidegradation policies, and implementation procedures by Great Lakes States and Tribes to protect human health, aquatic life and wildlife. Although provisions in the CWA provide for the adoption of and periodic revisions to State water quality criteria, such provisions do not necessarily ensure that water quality criteria of adjoining States are consistent within a shared water body. For example, ambient water quality criteria in place in six of the eight Great Lakes States to protect aquatic life from acute effects range from 1.79 µg/L to 15.0 µg/L for cadmium, and from 0.21 µg/L to 1.33 µg/L for dieldrin. Other examples of variations in acute aquatic life criteria include nickel, which ranges from 290.30 µg/L to 852.669 µg/L; lindane,

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with a range of no criteria in place to 1.32 µg/L; and mercury, ranging from 0.5 µg/L to 2.4 µg/L. Similar ranges and disparities exist for chronic aquatic life criteria, and for water quality criteria to protect human health.

Disparities also exist among State procedures to translate water quality criteria into individual discharge permits. Wide variations exist, for example, in procedures for the granting of mixing zones, interpretation of background levels of pollutants, consideration of pollutants present in intake waters, controls for pollutants present in concentrations below the level of detection, and determination of appropriate levels for pollutants discharged in mixtures with other pollutants. Additionally, when addressing the accumulation of chemicals by fish that will be consumed by humans and wildlife, some States consider accumulation through multiple steps in the food chain (bioaccumulation) while others consider only the single step of concentration from the water column (bioconcentration). Further disparities exist in different translator methodologies in deriving numeric values for implementing narrative water quality criteria; different assumptions when calculating total maximum daily loads (TMDLs) and wasteload allocations (WLAs), including different assumptions about background concentrations, mixing zones, receiving water flows, or environmental fate; and different practices in deciding what pollutants need to be regulated in a discharge, what effect detection limits have on compliance determinations, and how to develop whole effluent toxicity limitations.

These inconsistencies in State standards and implementation procedures have resulted in the disparate regulation of point source discharges. In the Governors' Agreement, the Governors recognized that the water resources of the basin transcend political boundaries and committed to taking steps to manage the Great Lakes as an integrated ecosystem. The Great Lakes States, as participants in the Initiative Committees, recommended provisions, based on their extensive experience in administering State water programs and knowledge of the significant differences in these programs within the basin, that were ultimately included in the proposed Guidance. The final Guidance incorporates the work begun by the Initiative Committees to identify these disparities and improve consistency in water quality standards and permit procedures in the Great Lakes System.

Although improved consistency in State water programs is a primary goal of the final Guidance, it is also necessary to provide appropriate flexibility to States and Tribes in the development and implementation of water programs. In overseeing States' implementation of the CWA, EPA has found that reasonable flexibility is not only necessary to accommodate site-specific situations and unforeseen circumstances, but is also appropriate to enable innovation and progress as new approaches and information become available. Many commenters, including the Great Lakes States, urged EPA to evaluate the appropriate level of flexibility provided to States and Tribes in the proposed Guidance provisions. EPA reviewed all sections of the proposed Guidance and all comments received to determine the appropriate level of flexibility needed to address these concerns while still providing a minimum level of consistency between the State and Tribal programs. Based on this review, the final Guidance provides flexibility for State and Tribal adoption and implementation of provisions consistent with the final Guidance in many areas, including the following:

—Antidegradation: Great Lakes States and Tribes may develop their own approaches for implementing the prohibition against deliberate actions of dischargers that increase the mass loading of BCCs without an approved antidegradation demonstration. Furthermore, States and Tribes have flexibility in adopting antidegradation provisions regarding non-BCCs.

—TMDLs: Great Lakes States and Tribes may use assessment and remediation plans for the purposes of appendix F to part 132 if the State or Tribe certifies that the assessment and remediation plan meets certain TMDL-related provisions in the final Guidance and public participation requirements applicable to TMDLs, and if EPA approves such plan. Thus, States have the flexibility in many cases to use LAMPs, RAPs and State Water Quality Management Plans in lieu of TMDLs.

—Intake Credits: Great Lakes States and Tribes may consider the presence of intake water pollutants in establishing water quality-based effluent limits (WQBELs) in accordance with procedure 5 of appendix F.

—Site-Specific Modifications: Great Lakes States and Tribes may adopt either more or less stringent modifications to human health, wildlife, and aquatic life criteria and bioaccumulation factors (BAFs) based on site-specific circumstances specified in procedure 1 of appendix F. All criteria, however, must be sufficient not to cause jeopardy to threatened or endangered species listed or proposed to be listed under the Federal Endangered Species Act.

—Variances: Great Lakes States and Tribes may grant variances from water quality standards based on the factors identified in procedure 2 of appendix F.

—Compliance Schedules: Great Lakes States and Tribes may allow existing Great Lakes dischargers additional time to comply with permit limits in order to collect data to derive new or revised Tier I criteria and Tier II values in accordance with procedure 9 of appendix F.

—Mixing Zones: Great Lakes States and Tribes may authorize mixing zones for existing discharges of BCCs after the 10-year phase-out period in accordance with procedure 3.B of appendix F, if the permitting authority determines, among other things, that the discharger has reduced its discharge of the BCC for which a mixing zone is sought to the maximum extent possible. Water conservation efforts that result in overall reductions of BCCs are also allowed even if they result in higher effluent concentrations.

—Scientific Defensibility Exclusion: Great Lakes States and Tribes may apply alternate procedures consistent with Federal, State, and Tribal requirements upon demonstration that a provision in the final Guidance would not be scientifically defensible if applied to a particular pollutant in one or more sites. This provision is in § 132.4(h) of the final Guidance.

—Reduced Detail: In many instances, EPA has revised the proposed Guidance to reduce the amount of detail in the provisions without sacrificing the objectives of the provisions. Examples of such revisions include simplification of procedures for developing TMDLs in procedure 3 of appendix F, and simplification of procedures for determining reasonable potential to exceed water quality standards in procedure 5.B of appendix F.

—Other Provisions: Flexibility is also present in provisions for the exercise of best professional judgment by the Great Lakes States and Tribes when implementing many individual provisions in the final Guidance including: determining the appropriate uncertainty factors in the human health and wildlife criteria methodologies; selection of data sets for establishing water quality criteria; identifying reasonable and prudent measures in antidegradation provisions; and specifying appropriate margins of safety when developing TMDLs. In all cases, of course, State and Tribal provisions would need to be scientifically defensible and consistent with all applicable regulatory requirements.

D. Establish Equitable Strategies to Control Pollution Sources

Many commenters argued that the proposed Guidance unfairly focused on point source discharges. They asserted that nonpoint sources or diffuse sources of pollution, such as air emissions, are responsible for most of the loadings of some pollutants of concern in the Great Lakes, that increased regulation of point sources will be inequitable and expensive, and that the final Guidance will not result in any environmental improvement given the large, continuing contribution of toxic pollutants by nonpoint sources.

EPA recognizes that regulation of point source discharges alone cannot address all existing or future environmental problems from toxic pollutants in the Great Lakes. In addition to discharges from point sources, toxic pollutants are also contributed to the Great Lakes from industrial and municipal emissions to the air, resuspension of pollutants from contaminated sediments, urban and agricultural runoff, hazardous waste and Superfund sites, and spills. Restoration and maintenance of a healthy ecosystem will require significant efforts in all of these areas. EPA, Canada and the Great Lakes States and Tribes are currently implementing or developing many voluntary and regulatory programs to address these and other nonpoint sources of environmental contaminants in the Great Lakes.

Additionally, EPA intends to use the scientific data developed in the final Guidance and new or revised water quality criteria subsequently adopted by Great Lakes States and Tribes in evaluating and determining appropriate levels of control in other environmental programs. For example, EPA's future biennial reports under section 112(m) of the Clean Air Act will consider the extent to which air discharges cause or contribute to exceedances of water quality criteria in assessing whether additional air emission standards or control measures are necessary to prevent serious adverse effects. Similarly, once provisions consistent with the final Guidance are adopted by the Great Lakes States or Tribes, they will serve as applicable or relevant and appropriate requirements (ARARs) for on-site responses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA will also consider the data and criteria developed for the final Guidance, including the information on BCCs, in developing or evaluating LaMPs and RAPs under section 118 of the CWA and Article VI, Annex 2 of the GLWQA; determination of corrective action requirements under sections 3004(u), 3008(h), or 7003 of the Solid Waste Disposal Act; new or existing chemical reviews under the Toxic Substances Control Act (TSCA); pesticide reviews under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and reporting requirements for toxic releases under the Emergency Planning and Community Right-to-Know Act (EPCRA).

The final Guidance also includes provisions to address the contribution of pollutants by nonpoint sources. First, the water quality criteria to protect human health, wildlife and aquatic life, and the antidegradation provisions apply to the waters in the Great Lakes System regardless of whether discharges to the water are from point or nonpoint sources. Accordingly, any regulatory programs for nonpoint sources that require compliance with water quality standards would also be subject to the criteria and antidegradation provisions of the final Guidance once they are adopted into State or Tribal standards.

Second, several elements of the final Guidance would, after State, Tribal or Federal promulgation, require or allow permitting authorities to consider the presence of pollutants in ambient waters—including pollutants from nonpoint source dischargers—in establishing WQBELs for point sources. For example, permit authorities may consider the presence of other point or nonpoint source discharges when evaluating whether to grant a variance from water quality criteria. Additionally, the provisions for TMDLs address nonpoint sources by specifying that the loading capacity of a receiving water that does not meet water quality standards for a particular pollutant be allocated, where appropriate, among nonpoint as well as point sources of the pollutant, including, at a minimum, a margin of safety to account for technical uncertainties in establishing the TMDL. The development of TMDLs is the preferred mechanism for addressing equitable division of the loading capacities of these nonattained waters. Because TMDLs have not been completed for most nonattained waters, however, the final Guidance promotes the development of TMDLs through a phased approach, where appropriate, and provides for short-term regulatory relief to point source dischargers in the absence of TMDLs through intake credits, variances, and other water quality permitting procedures.

EPA received numerous comments on the problem posed in controlling mercury in particular. Many commenters stated that since the primary source of mercury is now atmospheric deposition, point sources contribute only a minor portion of the total loading of mercury to the Great Lakes System and further restriction of point source discharges would have no apparent effect in improving water quality. Although EPA believes that there is sufficient flexibility in the Guidance to handle the unique problems posed by mercury (e.g., water quality variances, phased TMDLs, intake credits), EPA is committed to developing a mercury permitting strategy to provide a holistic, comprehensive approach for dealing with this pollutant. EPA will publish this strategy no later than two years following publication of this Guidance.

There are also many ongoing voluntary and regulatory activities that address nonpoint sources of toxic pollutants to the Great Lakes System, including activities taken under the Clean Air Act Amendments of 1990 (CAAA), the CWA, and State regulatory and voluntary programs. Some of these activities are summarized in the preamble to the proposed Guidance (58 FR 20826–32) and section I.D of the SID.

In addition to the many ongoing activities, EPA and the Great Lakes States, Tribes, and other federal agencies are pursuing a multi-media program to prevent and to further reduce toxic loadings from all sources of pollution to the Great Lakes System, with an emphasis on nonpoint sources. This second phase of the Great Lakes Water Quality Initiative, called the Great Lakes Toxic Reduction Effort (GLTRE), will build on the open, participative public dialogue established during the development of the final Guidance. Through the GLTRE, the Federal, State, and Tribal agencies intend to coordinate and enhance the effectiveness of ongoing actions and existing tools to prevent and reduce nonpoint source and wet-weather point source contributions of toxic pollutants in the Great Lakes System. A special emphasis will be placed on BCCs identified in the final Guidance.

A partial list of ongoing actions that are being or could be focused on BCCs includes: implementation of the CAAA to reduce atmospheric deposition of toxics; Resource Conservation and Recovery Act and CERCLA remedial actions to reduce loadings of toxics from

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hazardous waste sites; increased focus (through the GLTRE) on toxic pollutants emanating from combined sewer overflows and stormwater outfalls; application in the Great Lakes basin of the National Contaminated Sediment Management Strategy; implementation of spill prevention planning practices to minimize this potential source of loadings to the Great Lakes; improved reporting of toxic pollutants under the Toxic Release Inventory; public education on the dangers of mercury and other BCCs; pesticide registration and re-registration processes; development of a "mass balance" model for fate and transport of pollutants in the Great Lakes; and, development of a "virtual elimination strategy." These programs will prevent and further reduce mass loadings of pollutants and facilitate equitable division of the costs of any necessary control measures between point and nonpoint sources.

In addition to the GLTRE, which is basin-wide in scope, a primary vehicle for coordinating Federal and State programs at the local level for meeting water quality standards and restoring beneficial uses for the open waters of the Great Lakes are LaMPS. LaMPs will define media specific program actions to further reduce loadings of toxic substances, assess whether these programs will ensure restoration and attainment of water quality standards and designated beneficial uses, and recommend any media-specific program enhancements as necessary. Additionally, LaMPs will be periodically updated and revised to assess progress in implementing media-specific programs, assess the reductions in toxic loadings to the Great Lakes System through these programs, incorporate advances in the understanding of the System based on new data and information, and recommend specific adjustments to media programs as appropriate.

E. Promote Pollution Prevention Practices

The final Guidance also promotes pollution prevention practices consistent with EPA's National Pollution Prevention Strategy and the Pollution Prevention Action Plan for the Great Lakes. The Pollution Prevention Act of 1990 declares as National policy that reducing the sources of pollution is the preferred approach to environmental protection. When source reductions are not possible, however, recycling, treating and properly disposing of pollutants in an environmentally safe manner complete the hierarchy of management options designed to prevent pollution from entering the environment.

Consistent with the goals of the Pollution Prevention Act, EPA developed the Great Lakes Pollution Prevention Action Plan (April, 1991). The Great Lakes Pollution Prevention Action Plan highlights how EPA, in partnership with the States, will incorporate pollution prevention into actions designed to reduce the use and release of toxic substances in the Great Lakes basin.

The final Guidance builds upon these two components of the Great Lakes program by promoting the development of pollution prevention analysis and activities in the level of detection, mixing zone, and antidegradation sections of the final Guidance. Also, the decision to provide special provisions for BCCs implements EPA's commitment to pollution prevention by reducing the discharge of these pollutants in the future. This preventive step not only makes good environmental management sense, but is appropriate based on the documented adverse effects that the past and present discharge of these pollutants has produced in the Great Lakes basin.

F. Provide Accurate Assessment of Costs and Benefits

In developing the final Guidance, EPA identified and carefully evaluated the anticipated costs and benefits from implementation of the major provisions. EPA received many comments on the draft cost and benefit studies conducted as part of the proposed Regulatory Impact Analysis (RIA) required by Executive Order 12291, and its successor, Executive Order 12866. Based upon consideration of those comments and further analysis, EPA has revised the RIA. The results of this analysis are summarized in section V of this preamble.

IV. Summary of the Final Guidance

The final Guidance will establish minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin, including waters within the jurisdiction of Indian Tribes. Specifically, the final Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The final Guidance also contains minimum procedures to translate the proposed ambient water quality criteria into enforceable controls on discharges of pollutants, and a final antidegradation policy.

The provisions of the final Guidance are not enforceable requirements until adopted by States or Tribes, or promulgated by EPA for a particular State or Tribe. The Great Lakes States and Tribes must adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the (as protective as) final Guidance or be subject to EPA promulgation. Great Lakes Tribes include any Tribe within the Great Lakes basin for which EPA has approved water quality standards under section 303 or has authorized to administer a NPDES program under section 402 of the CWA. No Indian Tribe has been authorized to administer these water programs in the Great Lakes basin as of this time. If a Great Lakes State fails to adopt provisions consistent with the final Guidance within two years of this publication in the **Federal Register** (that is, by March 23, 1997), EPA will publish a final rule at the end of that time period identifying the provisions of the final Guidance that will apply to waters and discharges within that jurisdiction. Additionally, when an Indian Tribe is authorized to administer the NPDES or water quality standards program in the Great Lakes basin, it will also need to adopt provisions consistent with the final Guidance into their water programs.

The following sections provide a brief summary of the provisions of the final Guidance. A more complete discussion of the final Guidance, including EPA's analysis of major comments, issues, and a description of specific changes made to the proposed Guidance, are contained in the SID.

The parenthetical note at the beginning of each section provides references to the primary provisions in the final Guidance being discussed in the section, and to discussions in the SID. The final Guidance is codified as 40 CFR 132, including appendixes A through F. Note that appendix F consists of procedures 1 through 9. For ease of reference, sections in appendix F may be referred to by appending the section designation to the procedure number. For example, section A.1 of procedure 1 may be referred to as procedure 1.A.1 of appendix F.

A. Water Quality Criteria and Methodologies

1. Protection of Aquatic Life

(§§ 132.3(a), 132.3(b), 132.4(a)(2); Tables 1 and 2 to part 132; appendix A to part 132; section III, SID)

The final Guidance contains numeric criteria to protect aquatic life for 15 pollutants, and a two-tiered methodology to derive criteria (Tier I) or values (Tier II) for additional pollutants discharged to the Great Lakes System. Aquatic life criteria are derived to establish ambient concentrations for pollutants, which, if not exceeded in the Great Lakes System, will protect fish, invertebrates, and other aquatic life from adverse effects due to that pollutant. The final Guidance includes both acute and chronic criteria to protect aquatic life from acute and chronic exposures to pollutants.

Tier I aquatic life criteria for each chemical are based on laboratory toxicity data for a variety of aquatic species (e.g., fish and invertebrates) which are representative of species in the freshwater aquatic environment as a whole. The Guidance also includes a Tier II methodology to be used in the absence of the full set of data needed to meet Tier I data requirements. For pollutants for which Tier I criteria have not been adopted into State or Tribal water quality standards, States must use methodologies consistent with either the Tier I or Tier II methodologies, depending on the data available, in conjunction with whole effluent toxicity requirements in the final Guidance (see section IV.B.5 of this preamble), to implement their existing narrative water quality criteria that prohibit toxic pollutants in toxic amounts in all waters. The Great Lakes States and Tribes are not required to use the Tier II methodology to adopt numeric criteria into their water quality standards.

Use of the two-tiered final Guidance methodologies in these situations will enable regulatory authorities to translate narrative criteria to derive TMDLs and individual NPDES permit limits on a more uniform basis. EPA and the States determined that there is a need to regulate pollutants more consistently in the Great Lakes System when faced with limited numbers of criteria. Many of the Great Lakes States are already employing procedures similar to the approach in the final Guidance to implement narrative criteria. EPA determined the Tier II approach improves upon existing mechanisms by utilizing all available data.

The two-tiered methodology allows the application of the final Guidance to all pollutants, except those listed in Table 5 of part 132 (see section IV.E of this preamble). The Tier I aquatic life methodology includes data requirements very similar to those used in current guidelines for developing National water quality criteria guidance under section 304(a) of the CWA. For example, both require that acceptable toxicity data for aquatic species in at least eight different families representing differing habitats and taxonomic groups must exist before a Tier I numeric criterion can be derived. The Tier II aquatic life methodology is used to derive Tier II values which can be calculated with fewer toxicity data than Tier I. Tier II values can, in certain instances, be based on toxicity data from a single taxonomic family, provided the data are acceptable. The Tier II methodology generally produces more stringent values than the Tier I methodology, to reflect greater uncertainty in the absence of additional toxicity data. As more data become available, the derived Tier II values tend to become less conservative. That is, they more closely approximate Tier I numeric criteria. EPA and the States believe it is desirable to continue to supplement toxicity data to ultimately derive Tier I numeric criteria.

One difference from the existing National water quality criteria guidelines is that the final Guidance methodology for aquatic life deletes the provision in the National guidelines to use a Final Residue Value (FRV) in deriving a criterion. The FRV is intended to prevent concentrations of pollutants in commercially or recreationally important aquatic species from affecting the marketability of those species or affecting wildlife that consume them by preventing the exceedance of applicable Food and Drug Administration action levels and concentrations that affect wildlife. The final Guidance provides specific, separate methodologies to protect wildlife and human health (discussed below) which EPA believes will provide more accurate and appropriate levels of protection than the FRVs.

For pollutants without Tier I criteria but with enough data to derive Tier II values for aquatic life, the proposal would have required permittees to meet permit limits based on both Tier II values and whole effluent toxicity (WET) testing. In response to comments, the final Guidance clarifies that States and Tribes may adopt provisions allowing use of indicator parameter limits consistent with 40 CFR 122.44(d)(1)(vi)(C). When deriving limits to meet narrative criteria, States and Tribes have the option of using an indicator parameter limit, including use of a WET limit under appropriate conditions, in lieu of a Tier II-based limit. If use of an indicator parameter is allowed, the State or Tribe must ensure that the indicator parameter will attain the "applicable water quality standard" (as described in 40 CFR 122.44(d)(1)(vi)(C). The "applicable water quality standard" in this instance would be the State's or Tribe's narrative water quality standard that protects aquatic life.

Finally, the aquatic criteria for metals in the proposed Guidance were expressed as total recoverable concentrations. The final Guidance expresses the criteria for metals in dissolved form because the dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does the total recoverable metal. The dissolved criteria are obtained by multiplying the chronic and/or acute criterion by appropriate conversion factors in Table 1 or 2. This is consistent with many comments on the issue and with the policy on metals detailed in "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria" (October 1, 1993). A document describing the methodology to convert total recoverable metals criteria to dissolved metals criteria was published in the **Federal Register** on August 30, 1994 (59 FR 44678). If a State or Tribe fails to adopt approvable aquatic life criteria for metals, EPA will promulgate criteria expressed as dissolved concentrations.

EPA Region 5, in cooperation with EPA Regions 2 and 3 and Headquarters offices, and the Great Lakes States and Tribes, will establish a Great Lakes Initiative (GLI) Clearinghouse to assist States and Tribes in developing numeric Tier I water quality criteria for aquatic life, human health and wildlife and Tier II water quality values for aquatic life and human health. As additional toxicological data and exposure data become available or additional Tier I numeric criteria and Tier II values are calculated by EPA, States, or Tribes, Region 5 will ensure that this information is disseminated to the Great Lakes States and Tribes. EPA believes operation of the GLI Clearinghouse will help ensure consistency during implementation of the final Guidance.

2. Protection of Human Health

(§§ 132.3(c), 132.4(a)(4); Table 3 to part 132; appendix C to part 132; section V of the SID)

The final Guidance contains numeric human health criteria for 18 pollutants, and includes Tier I and Tier II methodologies to derive cancer and

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non-cancer human health criteria for additional pollutants. The proposed Guidance contained numeric criteria for 20 pollutants, but two pollutants were deleted because they do not meet the more restrictive minimum data requirements for BAFs used in the final Guidance.

Tier I human health criteria are derived to establish ambient concentrations of chemicals which, if not exceeded in the Great Lakes System, will protect individuals from adverse health impacts from that chemical due to consumption of aquatic organisms and water, including incidental water consumption related to recreational activities in the Great Lakes System. For each chemical, chronic criteria are derived to reflect long-term consumption of food and water from the Great Lakes System. Tier II values are intended to provide a conservative, interim level of protection in the establishment of a permit limit, and are distinguished from the Tier I approach by the amount and quality of data used for derivation.

The final Guidance differs from current National water quality criteria guidelines when calculating the assumed human exposure through consumption of aquatic organisms. The final Guidance uses BAFs predicted from biota-sediment accumulation factors (BSAFs) in addition to field-measured BAFs, and uses a food chain multiplier (FCM) to account for biomagnification when using measured or predicted bioconcentration factors (BCFs). BAFs are discussed further in section IV.A.4. of this preamble.

Human health water quality criteria for carcinogens are typically expressed in concentrations associated with a plausible upper bound of increased risk of developing cancer. In practice, the level of cancer risk generally accepted by EPA and the States typically ranges between 10^{-4} (one in one thousand) and 10^{-6} (one in one million). In contrast, as discussed in section II above, the cancer risk from ingestion of contaminated fish at current concentrations in the Great Lakes System are as high as 1.2×10^{-2} (1.2 in 100). The proposed and final Guidance establishes 10^{-5} (one in one hundred thousand) as the risk level used for deriving criteria and values for individual carcinogens. This is within the range historically used in EPA actions, and approved for State actions, designed to protect human health. The majority of the Great Lakes States use 10^{-5} as a baseline risk level in establishing their water quality standards.

The methodology is designed to protect humans who drink water or consume fish from the Great Lakes System. The portion of the methodology addressing fish consumption includes a factor describing how much fish humans consume per day. The final Guidance includes a Great Lakes-specific fish consumption rate of 15 grams per day, based upon several fish consumption surveys from the Great Lakes, including a recent study by West *et al.* that was discussed in a **Federal Register** document on August 30, 1994 (59 FR 44678). This rate differs from the 6.5 grams per day rate which is used in the National water quality criteria guidelines as a National average consumption value. The 15 grams per day represents the mean consumption rate of regional fish caught and consumed by the Great Lakes sport fishing population.

Commenters argued that a 15 gram per day assumption in the methodology would not adequately protect populations that consume greater than this amount (e.g., low-income minority anglers and Native Americans), and that such an approach therefore would be inconsistent with Executive Order 12898 regarding environmental justice (February 16, 1994, 59 FR 7629). EPA believes that the human health criteria methodology, including the fish consumption rate, will provide adequate health protection for the public, including more highly exposed sub-populations. In carrying out regulatory actions under a variety of statutory authorities, including the CWA, EPA has generally viewed an upper bound incremental cancer risk in the range of 10^{-4} to 10^{-6} as adequately protective of public health. As discussed above, the human health criteria methodology is based on a risk level of 10^{-5}. Therefore, if fish are contaminated at the level permitted by criteria derived under the final Guidance, individuals eating up to 10 times (i.e., 150 grams per day) the assumed fish consumption rate would still be protected at the 10^{-4} risk level. Available data indicate that, even among low-income minorities who as a group consume more fish than the population on average, the overwhelming majority (approximately 95 percent) consume less than 150 grams per day. The final Guidance requires, moreover, that States and Tribes modify the human health criteria on a site-specific basis to provide additional protection appropriate for highly exposed sub-populations. Thus, where a State or Tribe finds that a population of high-end consumers would not be adequately protected by criteria derived using the 15 gram per day assumption (e.g., where the risk was greater than 10^{-4}), the State or Tribe would be required to modify the criteria to provide appropriate additional protection. The final Guidance also requires States and Tribes to adopt provisions to protect human health from the potential adverse effects of mixtures of pollutants in effluents, specifically including mixtures of carcinogens. Understood in the larger context of the human health methodology and the final Guidance as a whole, therefore, EPA believes that the 15 gram per day fish consumption rate provides adequate health protection for the public, including highly exposed populations, and that the final Guidance is therefore consistent with Executive Order 12898.

In developing bioaccumulation factors, the proposed Guidance used a 5.0 percent lipid value for fish consumed by humans, based on Great Lakes-specific data. The current National methodology uses a 3.0 percent lipid value. The final Guidance uses a 3.10 percent lipid value for trophic level 4 fish and 1.82 for trophic level 3 fish. These percent lipid values are based on an analysis of the West *et al.* study cited above and data from State fish contaminant monitoring programs.

The final Guidance contains specific technical guidelines concerning the range of uncertainty factors that may be applied by the State and Tribal agencies on the basis of their best professional judgment. The final Guidance places a cap of 30,000 on the combined product of uncertainty factors that may be applied in the derivation of non-cancer Tier II values and a combined uncertainty factor of 10,000 for Tier I criteria. The likely maximum combined uncertainty factor for Tier I criteria in most cases is 3,000. The SID discusses further the use of the uncertainty factors in the derivation of human health criteria and values.

The proposed Guidance used an 80 percent relative source contribution (RSC) from surface water pathways for BCCs, and a 100 percent RSC for all other pollutants, in deriving noncancer criteria. The RSC concept is applied in the National drinking water regulations and is intended to account, at least in part, for exposures from other sources for those bioaccumulative pollutants for which surface water pathways are likely to be major contributors to human exposure. The final Guidance uses the more protective 80 percent RSC for all pollutants in deriving noncancer criteria. This change was made because of concern that for non-BCCs as well as BCCs, there may be other sources of exposures for noncarcinogens.

3. Protection of Wildlife

(§§ 132.3(d), 132.4(a)(5); Table 4 to part 132; appendix D to part 132; section VI of the SID)

The final Guidance contains numeric criteria to protect wildlife for four pollutants and a methodology to derive Tier I criteria for additional BCCs. Wildlife criteria are derived to establish ambient concentrations of chemicals which, if not exceeded, will protect mammals and birds from adverse impacts from that chemical due to consumption of food and/or water from the Great Lakes System.

These are EPA's first water quality criteria specifically for the protection of wildlife. The methodology is based largely on the noncancer human health paradigm. It focuses, however, on endpoints related to reproduction and population survival rather than the survival of individual members of a species. The methodology incorporates pollutant-specific effect data for a variety of mammals and birds and species-specific exposure parameters for two mammals and three birds representative of mammals and birds resident in the Great Lakes basin which are likely to experience significant exposure to bioaccumulative contaminants through the aquatic food web.

In the proposal, EPA included a two-tiered approach similar to that for aquatic life and human health. In response to comments, the final Guidance requires States and Tribes to adopt provisions consistent with only the Tier I wildlife methodology, and only to apply this methodology for BCCs (see section IV.A.4 below). The TSD provides discretionary guidelines for the use of Tier I and Tier II methodologies for other pollutants. The wildlife methodology was limited to the BCCs because these are the chemicals of greatest concern to the higher trophic level wildlife species feeding from the aquatic food web in the Great Lakes basin. This decision is consistent with comments made by the EPA Science Advisory Board (SAB) who agreed that the initial focus for wildlife criteria development should be on persistent, bioaccumulative organic contaminants (USEPA, 1994, EPA-SAB-EPEC-ADV-94-001).

Numerous commenters were concerned that the mercury criterion for wildlife was not scientifically appropriate. After review of all comments and a reevaluation of all the data, the mercury criterion for wildlife has been increased from 180 pg/L to 1300 pg/L. EPA believes the 1300 pg/L is protective of wildlife in the Great Lakes System.

In developing bioaccumulation factors, the proposed Guidance used a 7.9 percent lipid value for fish consumed by wildlife. The final Guidance uses a 10.31 percent lipid value for trophic level 4 fish and 6.46 for trophic level 3 fish. These percent lipid values are based on the actual prey species consumed by the representative wildlife species specified in the methodology, and are used to estimate the BAFs for the trophic levels which those species consume. The percent lipid is based on the preferential consumption patterns of wildlife and cross-referenced with fish weight and size and appropriate percent lipid. This approach is a more accurate reflection of the lipid content of the fish consumed by wildlife species than the approach used in the proposal.

4. Bioaccumulation Methodology

(§ 132.4(a)(3); appendix B to part 132; section IV of the SID)

The proposed Guidance incorporated BAFs in the derivation of criteria and values to protect human health and wildlife. Bioaccumulation refers to the uptake and retention of a substance by an aquatic organism from its surrounding medium and from food. For certain chemicals, uptake through the aquatic food chain is the most important route of exposure for wildlife and humans. The wildlife criteria and the human health criteria and values incorporate appropriate BAFs in order to more accurately account for the total exposure to a chemical. Current EPA guidelines for the derivation of human health water quality criteria use BCFs, which measure only uptake from water, when field-measured BAFs are not available. EPA believes, however, that the BAF is a better predictor of the concentration of a chemical within fish tissues in the Great Lakes System because it includes consideration of the uptake of contaminants from all routes of exposure.

The proposed Guidance included a hierarchy of three methods for deriving BAFs for non-polar organic chemicals: field-measured BAFs; predicted BAFs derived by multiplying a laboratory-measured BCF by a food-chain multiplier; and BAFs predicted by multiplying a BCF calculated from the log K_{ow} by a food-chain multiplier. For inorganic chemicals, the proposal would have required either a field-measured BAF or laboratory-measured BCF. On August 30, 1994, EPA published a document in the Federal Register (59 FR 44678) requesting comments on revising the hierarchy of methods for deriving BAFs for organic chemicals, and issues pertaining to the model used to assist in predicting BAFs when a field-measured BAF is not available. Based on the comments received, the final Guidance modifies the proposed hierarchy by adding a predicted BAF based on a BSAF as the second method in the hierarchy. BSAFs may be used for predicting BAFs from concentrations of chemicals in surface sediments. In addition, the final Guidance uses a model to assist in predicting BAFs that includes both benthic and pelagic food chains thereby incorporating exposures of organisms to chemicals from both the sediment and the water column. The model used in the proposal only included the pelagic food chain, and therefore, did not account for exposure to aquatic organisms from sediment.

The proposed Guidance used the total concentration of a chemical in the ambient water when deriving BAFs for organic chemicals. In the preamble to the proposed Guidance and in the **Federal Register** document cited above, EPA requested comments on deriving BAFs in terms of the freely dissolved concentration of the chemical in the ambient water. Based on comments received from the proposal and the document, the final Guidance uses the freely dissolved concentration of a chemical instead of the total concentration in the derivation of BAFs for organic chemicals. Use of the freely dissolved concentration will improve the accuracy of extrapolations between water bodies.

Finally, as discussed in section II of this preamble, bioaccumulation of persistent pollutants is a serious environmental threat to the Great Lakes Basin Ecosystem. Because of these concerns, the proposed Guidance would have required that pollutants with human health BAFs greater than 1000 receive increased attention and more stringent controls within the Great Lakes System. These pollutants are termed BCCs. EPA identified 28 BCCs in the proposed Guidance. The additional controls for BCCs are specified in certain of the implementation procedures and the antidegradation procedures, and are discussed further in the SID. The final Guidance continues to include increased attention on and more stringent controls for BCCs within the Great Lakes System. The final Guidance identifies 22 BCCs that are targeted for special controls instead of the 28 in the proposed Guidance. Six BCCs were deleted from the proposed list because of concern that the methods used to estimate the BAFs may not

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account for the metabolism or degradation of the pollutants in the environment. States and Tribes may identify more BCCs as additional BAF data become available. The final Guidance designates as BCCs only those chemicals with human health BAFs greater than 1000 that were derived from either a field-measured BAF or a predicted BAF based on a field-measured BSAF (for non-metals) or from a field-measured BAF or a laboratory-measured BCF (for metals). Field-measured BAFs and BSAFs, unlike BAFs based only on laboratory analyses or calculations, account for the effects of metabolism.

B. Implementation Procedures

(§§ 132.4(a)(7), 132.4(e); appendix F to part 132; section VIII of the SID)

This section of the preamble discusses nine specific procedures contained in the final Guidance for implementing water quality standards and developing NPDES permits to attain the standards.

1. Site-Specific Modifications

(Procedure 1 of appendix F to part 132; section VIII.A of the SID)

The proposed Guidance would have allowed States and Tribes to adopt site-specific modifications to water quality criteria and values under certain circumstances. States and Tribes could modify aquatic life criteria to be either more stringent or less stringent when local water quality characteristics altered the biological availability or toxicity of a pollutant, or where local species' sensitivities differed from tested species. Less stringent modifications to chronic aquatic life criteria could also be made to reflect local physical and hydrological conditions. States and Tribes could also modify BAFs and human health and wildlife criteria to be more stringent, but not less stringent than the final Guidance.

The final Guidance retains most of the above provisions, but in addition allows less stringent modifications to acute aquatic life criteria and values to reflect local physical and hydrological conditions, less stringent modifications to BAFs in developing human health and wildlife criteria, and the use of fish consumption rates lower than 15 grams per day if justified. The final Guidance also specifies that site-specific modifications must be made to prevent water quality that would cause jeopardy to endangered or threatened species that are listed or proposed under the ESA, and prohibits any less-stringent site-specific modifications that would cause such jeopardy. Other issues related to the ESA are discussed in section IX of this preamble.

2. Variances from Water Quality Standards for Point Sources

(Procedure 2 of appendix F to part 132; section VIII.B of the SID)

The final Guidance allows Great Lakes States and Tribes to adopt variances from water quality standards, applicable to individual existing Great Lakes dischargers for up to five years, where specified conditions exist. For example, a variance may be granted when compliance with a criterion would result in substantial and widespread social and economic impacts or where certain stream conditions prevent the attainment of the criterion. No significant changes were made in this section from the proposed Guidance.

3. TMDLs and Mixing Zones

(Procedure 3 of appendix F to part 132; section VIII.C of the SID)

Section 303(d) of the CWA and implementing regulations at 40 CFR 130.7 require the establishment of TMDLs for waters not attaining water quality standards after implementation of existing or planned pollution controls. The TMDL quantifies the maximum allowable loading of a pollutant to a water body and allocates the loading capacity to contributing point and nonpoint sources (including natural background) such that water quality standards for that pollutant will be attained. A TMDL must incorporate a margin of safety (MOS) that accounts for uncertainty about the relationship between pollutant loads and water quality. TMDLs may involve single point sources or multiple sources (e.g., point sources and nonpoint sources) and may be established for geographic areas that range in size from large watersheds to relatively small water body segments.

The proposal attempted to develop a single, consistent approach for developing TMDLs to be used by all States and Tribes in the Great Lakes System. Current practice in the eight Great Lakes States includes distinct technical procedures and program approaches that differ in scale, emphasis, scope and level of detail. Two options for TMDL development were proposed. One, Option A, focused on first evaluating the basin as a whole and then conducting individual site-by-site adjustments as necessary to ensure attainment of water quality standards at each location in the basin. The other, Option B, focused on evaluating limits needed for individual point sources with supplemental emphasis on basin-wide considerations as necessary. Both approaches are consistent with the CWA, but result in different methodologies for TMDL development.

Both options proposed that within 10 years of the effective date of the final Guidance (i.e., two five-year NPDES permit terms), mixing zones would be prohibited for BCCs for existing point source discharges to the Great Lakes System. Further, both proposed that mixing zones be denied for new point source discharges of BCCs as of the effective date of the final Guidance. Both options also specified procedures for determining background levels of pollutants present in ambient waters. In addition, the proposal would have tightened the relationship between TMDL development and NPDES permit issuance by providing that TMDLs be established for each pollutant causing an impairment in a water body prior to the issuance or reissuance of any NPDES permits for that pollutant.

The final Guidance merges both Options A and B into one single set of minimum regulatory requirements for TMDL development. In general, the final TMDL procedures are less detailed than the proposal, and offer more flexibility for States and Tribes in establishing TMDLs. The final TMDL procedures contain elements from both Options A and B that were deemed critical for a minimum level of consistency among the Great Lakes States and Tribes. These critical elements include: mixing zone specifications, design flows, and procedures for determining background concentrations.

The final Guidance also includes a prohibition on mixing zones for BCCs after 12 years in most circumstances. Maintaining these restrictions on the availability of mixing zones is consistent with both the Steering Committee's policy views and the bi-national GLWQA goal of virtual elimination of persistent, bioaccumulative toxics. Because of the unique nature of the Great Lakes ecosystem, documented ecological impacts, and the need for consistency, EPA believes that the general prohibition on mixing zones for BCCs is reasonable and appropriate. However, a new exception is allowed if a facility with an existing BCC discharge can demonstrate that it is reducing that discharge to the maximum extent feasible (considering technical and economic factors) but cannot meet WQBELs for that discharge without a mixing zone. EPA, in conjunction with stakeholders within the Great Lakes Basin, will develop guidance for use by

States and Tribes in exercising the exception provision with special focus on the technical and economic feasibility criteria. This guidance will also consider the notice, public hearing, monitoring and pollution prevention demonstration elements of the exception criteria.

The final Guidance also retains many of the proposed provisions for calculating background concentrations used in TMDLs and WLAs established in the absence of TMDLs. The procedure addressing data points below the level of detection, however, has been modified so that it no longer specifies the use of default values (i.e., half of the level of detection).

The final TMDL procedures do not require that TMDLs be established for point sources prior to the issuance/reissuance of NPDES permits. The final Guidance defers to the existing National program for determining when a TMDL is required. Lastly, the final Guidance allows assessment and remediation plans that are approved by EPA under 40 CFR 130.6 to be used in lieu of a TMDL for purposes of appendix F as long as they meet the general conditions of a TMDL as outlined by procedure 3 of appendix F, and the public participation requirements applicable to TMDLs.

4. Additivity

(Procedure 4 of appendix F to part 132; section VIII.D of the SID)

EPA has traditionally developed numeric water quality criteria on a single pollutant basis. While some potential environmental hazards involve significant exposure to only a single compound, most instances of contamination in surface waters involve mixtures of two or more pollutants. The individual pollutants in such mixtures can act or interact in various ways which may affect the magnitude and nature of risks or effects on human health, aquatic life and wildlife. WET tests are available to generally address interactive effects of mixtures on aquatic organisms. EPA's 1986 "Guidelines for the Health Risk Assessment of Chemical Mixtures" set forth principles and procedures for human health risk assessment of chemical mixtures. There are currently no technical guidelines on how to assess effects on wildlife from chemical mixtures.

The preamble for the proposed Guidance discussed several possible approaches to address additive effects from multiple pollutants. Proposed regulatory language was provided for two specific options, each with separate provisions related to aquatic life, wildlife and human health. One approach was developed by the Initiative Committees, modified to delete the application of toxicity equivalency factors (TEFs) for PCBs to wildlife. The other approach was developed by EPA. Neither approach addressed the possible toxicologic interactions between pollutants in a mixture (e.g., synergism or antagonism) because of the limited data available on these interactive effects. In the absence of contrary data, both approaches recommended that the risk to human health from individual carcinogens in a mixture be considered additive, and that a 10^{-5} risk level be adopted as a cap for the cancer risk associated with mixtures. Both approaches also proposed using TEFs to assess the risk to humans and wildlife from certain chemical classes. The TEF approach converts the concentration of individual components in a mixture of chemicals to an "equivalent" concentration expressed in terms of a reference chemical. Both approaches used the 17 TEFs for dioxins and furans identified in the 1989 EPA document, "Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans," and the 1989 update.

The final Guidance includes a general requirement for States and Tribes to adopt an additivity provision consistent with procedure 4 of appendix F to protect human health from the potential additive adverse effects from both the noncarcinogenic and carcinogenic components of chemical mixtures in effluents. The final Guidance also requires the use of the 17 TEFs included in the proposed Guidance to protect human health from the potential additive adverse effects in effluents.

5. Determining the Need for WQBELs (Reasonable Potential)

(Procedure 5 of appendix F to part 132; section VIII.E of the SID)

EPA's existing regulations require NPDES permits to include WQBELs to control all pollutants or pollutant parameters which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause or contribute to an excursion of any applicable water quality standard. If the permitting authority determines that a discharge has the reasonable potential to cause or contribute to an excursion of an applicable numeric water quality criterion, it must include a WQBEL for the individual pollutant in the permit. In the absence of an adopted numeric water quality criterion for an individual pollutant, the permitting authority must derive appropriate WQBELs from the State or Tribal narrative water quality criterion by either calculating a numeric criterion for the pollutant; applying EPA's water quality criteria developed under section 304(a) of the CWA, supplemented with other information where necessary; or establishing effluent limitations on an indicator pollutant. See 40 CFR 122.44(d)(1).

The final Guidance implements these National requirements by specifying procedures for determining whether a discharge has the reasonable potential to cause or contribute to an exceedance of Tier I criteria or Tier II values based on facility-specific effluent data. The final Guidance also specifies procedures for determining whether permitting authorities must generate or require permittees to generate data sufficient to calculate Tier II values when specified pollutants of concern in the Great Lakes System are known or suspected of being discharged, but neither Tier I criteria nor Tier II values have been derived due to a lack of toxicological data. EPA believes that the data necessary to calculate Tier II values for aquatic life, wildlife and human health currently exists for most of the specified pollutants of concern.

The final Guidance maintains all the basic requirements from the proposed procedure. Some minor changes are that the procedure no longer includes a special provision for effluent dominated streams, and the procedure allows a broader range of statistical approaches to be used when evaluating effluent data, which provides added simplicity and flexibility to States and Tribes.

Another change from the proposal is the relationship in the final Guidance between the reasonable potential and TMDL procedures. Numerous commenters pointed out that the proposed Guidance indicated that TMDLs would be required for any water receiving effluent from a discharger found to exhibit reasonable potential. Given the fact that there are many waterbodies in the Great Lakes basin for which TMDLs have not been developed, and the obvious need for permitting to proceed in the interim until TMDLs are completed, the final Guidance provides that the permitting authority can establish waste load allocations and WQBELs in the absence of a TMDL or an assessment and remediation plan developed and approved in accordance with procedure 3.A of appendix F. A more detailed discussion of the assessment and remediation plan and its relationship to a TMDL can be found in section VIII.C.2 of the SID. Procedures for establishing such WLAs are therefore addressed in the final Guidance.

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6. Intake Pollutants

(Procedures 5.D and 5.E of appendix F to part 132; section VIII.E of the SID)

The proposed Guidance allowed a permitting authority to determine that the return of an identified intake water pollutant to the same body of water under specified circumstances does not cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards, and therefore, that a WQBEL would not be required for that pollutant. Under the proposal, this "pass through" of intake water pollutants would be allowed if the facility returns the intake water containing the pollutant of concern to the same waterbody; does not contribute additional mass of pollutant; does not increase the concentration of the intake water pollutant; and does not discharge at a time or location, or alter the pollutant in a manner which would cause adverse impacts to occur that would not occur if the pollutant were left in-stream.

EPA received numerous comments on the proposal. Some commenters argued that the proposed provision was too narrow because relief would not be available if the facility added any amount of the pollutant to the discharge, even where the facility was not contributing any additional mass or concentration to the waterbody than was contained in the intake water. After consideration of public comments, EPA decided to expand the intake pollutant provisions to include not only a reasonable potential procedure like the one contained in the proposal, but also a provision that allows the permitting authority to take into account the presence of pollutants in intake water in deriving WQBELs. Specifically, the final Guidance authorizes the permitting authority to establish limits based on a principle of "no net addition" (i.e., the limit would allow the mass and concentration of the pollutant in the discharge up to the mass and concentration of the pollutant in the intake water). This provision would be available where the facility's discharge is to the same body of water as the intake water, and could be applied for up to 12 years after publication of the final Guidance. After that time, if a TMDL or comparable plan that meets the requirements of procedure 3 of appendix F has not been completed, the facility's WQBEL must be established in accordance with the "baseline" provisions in procedure 5.F.2 of appendix F. This time limit provides a period of relief for dischargers that are not causing increased impacts on the waterbody by virtue of their discharge that would not have occurred had the pollutant remained in-stream, while maintaining the incentive for development of a comprehensive assessment and remediation plan for achieving attainment of water quality standards, which EPA believes is a critical element of the final Guidance for addressing pollutants for which a large contributor to non-attainment is nonpoint source pollution.

The final Guidance allows States and Tribes to address intake pollutants in a manner consistent with assessment and remediation plans that have been developed through mechanisms other than TMDLs in order to provide flexibility where such plans comprehensively address the point and non-point sources of non-attainment in a waterbody and the means for attaining compliance with standards.

EPA believes that 12 years provides sufficient time for States to develop and complete the water quality assessments that would serve as the basis for establishing effluent limits (including "no net addition" limits, where appropriate) under procedure 3.A of appendix F. However, EPA also recognizes that unforeseen events could delay State completion of these assessments, and therefore will, at 7 years following promulgation, in consultation with the States, evaluate the progress of the assessments. If this evaluation shows that completion of the assessments may not be accomplished by the 12 year date, EPA will revisit these provisions, and consider proposing extensions if appropriate.

Under the final Guidance, the permitting authority can permit the discharge of intake pollutants to a different body of water that is in non-attainment provided limitations require the discharge to meet a WQBEL for the pollutant equal to the pollutant's water quality criterion. Because inter-waterbody transfers of pollutants introduce pollutants to the receiving water that would not be present in that waterbody in the absence of the facility's discharge, EPA does not believe that relief for such pollutants comparable to the "no net addition" approach would be appropriate. However, to address the concern raised by commenters about facilities with multiple sources of intake water, the permitting authority may use a flow-weighted combination of these approaches when the facility has co-mingled sources of intake water from the same and different bodies of water.

EPA maintains that the preferred approach to deal with non-attainment waters, particularly when multiple sources contribute a pollutant for which the receiving water exceeds the applicable criterion, is development of a TMDL or comparable assessment and remediation plan. The above "no net addition" permitting approach provides additional flexibility in situations where a TMDL or comparable plan has not yet been developed. Other existing relief mechanisms include variances to water quality standards, removal of non-existing uses, and site-specific criteria.

7. WET

(Procedure 6 of appendix F to part 132; section VIII.F of the SID)

Existing EPA regulations define WET as "the aggregate toxic effect of an effluent measured directly by a toxicity test." These regulations require WET limits to be included in permits in most circumstances in which the WET of a discharge has the reasonable potential to cause or contribute to an in-stream excursion above either a State's numeric criteria for toxicity or narrative criteria for water quality (40 CFR 122.2, 122.44(d)(1)). The regulations allow States and Tribes the flexibility to control for WET with either numeric or narrative criteria. Current technical guidelines recommend that no discharge should exceed 0.3 acute toxic units (TUa = 100/LC50) at the edge of an acute mixing zone and 1.0 chronic toxic units (TUc = 100/NOEC, the No Observed Effect Concentration) at the edge of a chronic mixing zone.

The proposed Guidance would have continued to allow States and Tribes the flexibility to choose to control WET with either numeric or narrative criteria, but specified that no discharge could exceed 1.0 TU_a at the point of discharge (i.e., no acute mixing zones) and 1.0 TU_c at the edge of a chronic mixing zone (with some exceptions). In addition, the proposal contained minimum requirements for appropriate test methods to measure WET and for permit conditions, and procedures for determining whether or not limits for WET are necessary.

The final Guidance differs principally from the proposal in requiring States and Tribes to adopt 0.3 TU_a and 1.0 TU_c either as numeric criteria or as an equivalent numeric interpretation of narrative criteria. The final Guidance also allows the use of acute mixing zones for the application of the acute criterion. This approach will promote consistency among States and Tribes in controlling WET, while still permitting considerable flexibility regarding implementation measures, consistent with current National policies and guidelines.

8. Loading Limits

(Procedure 9 of appendix F to part 132; section VIII.G of the SID)

The final Guidance provides that WQBELs be expressed in terms of both concentration and mass loading rate, except for those pollutants that cannot appropriately be expressed in terms of mass. These provisions clarify the application of existing Federal regulations at 40 CFR 122.45(f), and are consistent with current EPA guidance which requires the inclusion of any limits determined necessary based on best professional judgment to meet water quality standards, including, where appropriate, mass loading rate limits. They are also consistent with the antidegradation policy for the Great Lakes System in appendix E of the final Guidance.

9. Levels of Quantification

(Procedure 8 of appendix F to part 132; section VIII.H of the SID)

Many of the pollutants of concern in the Great Lakes System cause unacceptable toxic effects at very low concentrations. This results in instances where WQBELs are below levels of reliable quantification. When this occurs, the permitting authority may not be able to determine whether the pollutant concentration is above or below the WQBEL. The final Guidance requires adoption of pollutant minimization programs (PMPs) for such permits to increase the likelihood that the concentration of the pollutant is as close to the effluent limit as possible. The PMP is an ongoing, iterative process that requires, among other things, internal wastestream monitoring and submission of status reports. The use of PMPs for facilities with pollutants below the level of quantification is consistent with existing EPA guidance.

Unlike the proposal, however, the final Guidance eliminates additional minimum requirements for BCCs. For example, the final Guidance recommends but does not require bio-uptake studies that had been proposed to assess impacts to the receiving water and evaluate the effectiveness of the PMP.

10. Compliance Schedules

(Procedure 9 of appendix F to part 132; section VIII.I of the SID)

The final Guidance includes a procedure that allows Great Lakes States and Tribes to include schedules of compliance in permits for existing Great Lakes dischargers for effluent limitations based on new water quality criteria and certain other requirements. Generally, compliance schedules may provide for up to five years to comply with the effluent limitation in question and may, in specified cases, allow the compliance schedule to go beyond the term of the permit. Existing Great Lakes dischargers are those whose construction commenced before March 23, 1997. Thus the term, existing Great Lakes discharges, covers expanding dischargers who were ineligible for compliance schedules under the proposal. The final Guidance also provides the opportunity for States and Tribes to allow dischargers additional time to comply with effluent limitations based on Tier II values while conducting studies to justify modifications of those limitations.

C. Antidegradation Provisions

(§ 132.4(a)(6); appendix E to part 132; section VII of the SID)

EPA's existing regulations, at 40 CFR 131.6, establish an antidegradation policy as one of the minimum requirements of an acceptable water quality standards submittal. Section 131.12 describes the required elements of an antidegradation policy. These are: protection of water quality necessary to maintain existing uses, protection of high quality waters (those where water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the waters) and protection of water quality in those water bodies identified as outstanding National resources.

The proposed Guidance provided detailed procedures for implementing antidegradation that were not part of the existing regulations. The detailed implementation procedures were intended to result in greater consistency in how antidegradation was applied throughout the Great Lakes System. The proposed Guidance specified, among other things, how high quality waters should be identified, what activities should and should not require review under antidegradation, and the information necessary to support a request to lower water quality and the procedures to be followed by a Tribe or State in making a decision whether or not to allow a lowering of water quality.

The final Guidance maintains the overall structure of the proposed Guidance while allowing Tribes and States greater flexibility in how antidegradation is implemented. As in the proposal, the final Guidance is composed of an antidegradation standard, antidegradation implementation procedures, antidegradation demonstration and antidegradation decision. However, many of the detailed requirements found in the proposed Guidance appear in the SID accompanying the final Guidance as nonbinding guidelines, including provisions specific to non-BCCs.

Key elements of the proposed Guidance that are retained in the final Guidance for BCCs include: identification of high quality waters on a pollutant-by-pollutant basis; requirements for States and Tribes to adopt an antidegradation standard consistent with the final Guidance for BCCs; minimum requirements for conducting an antidegradation review of any activity expected to result in a significant lowering of water quality due to BCCs, minimum requirements for notifying permitting authorities of increases in discharges of BCCs; and, minimum requirements for an antidegradation demonstration consisting of a pollution prevention analysis, an alternative treatment analysis and a showing that the significant lowering of water quality will allow for important social and economic development. Significant changes from the proposed Guidance include: encouraging, but not requiring, States and Tribes to adopt provisions consistent with the antidegradation standard and implementation procedures for non-BCCs; replacement of numeric existing effluent quality-based (EEQ) limits as a means of implementing antidegradation for BCCs with a narrative description of the types of activities that will trigger an antidegradation review; and greater flexibility in the implementation, demonstration and decision components. A detailed discussion of the basis for each of the changes is provided in Section VII the SID.

D. Regulatory Requirements

(Part 132; Tables 5 and 6 to part 132; section II of the SID)

The Great Lakes States must adopt water quality standards, anti-degradation policies, and implementation procedures for waters within the Great Lakes System which are consistent with the final Guidance within two years of this publication. If a Great Lakes State fails to adopt such standards, policies, and procedures, section 118(c)(2)(C) of the CWA requires EPA to promulgate them not later than the end of that two-year period. Additionally, when an Indian Tribe is authorized to administer the NPDES or water quality standards program in the Great Lakes basin, it will also need to adopt provisions consistent with the final Guidance into its water program.

Part 132 establishes requirements and procedures to implement section 118(c)(2)(C). Sections 132.3 and 132.4

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require Great Lakes States and Tribes to adopt criteria, methodologies, policies, and procedures consistent with the criteria, methodologies, policies, and procedures contained in part 132—that is, the definitions in § 132.2, the numeric criteria in Tables 1 through 4, the criteria development methodologies in appendixes A through D, the antidegradation policy in appendix E, and the implementation procedures in appendix F. Section 132.5 specifies the procedures for States and Tribes to make their submissions to EPA, and for EPA to approve or disapprove the submissions. The section specifies that in reviewing submissions, EPA will consider provisions of State and Tribal submissions to be "consistent with" the final Guidance if each provision is as protective as the corresponding provision of the final Guidance. If a State or Tribe fails to make a submission, or if provisions of the submission are not consistent with the final Guidance, § 132.5 provides that EPA will publish a final rule in the Federal Register identifying the final Guidance provisions that will apply to discharges within the particular State or Federal Indian Reservation.

Section 132.4 specifies that water quality criteria adopted by States and Tribes consistent with the final Guidance will apply to all waters of the Great Lakes System, regardless of designated uses of the waters in most cases, with some variations in human health criteria depending on whether the waters are designated for drinking water use. Section 132.4 also contains certain exceptions in applying the final Guidance methodologies and procedures. First, States and Tribes do not have to adopt and apply the final Guidance methodologies and procedures for the 14 pollutants listed in Table 5 of part 132. EPA believes that some or all of the methodologies and procedures are not scientifically appropriate for these pollutants. Second, if a State or Tribe demonstrates that the final Guidance methodologies or procedures are not scientifically defensible for a particular pollutant, the State or Tribe may use alternate methodologies or procedures so long as they meet all applicable Federal, State, and Tribal laws. Third, § 132.4 specifies that for wet-weather point sources, States and Tribes generally do not have to adopt and apply the final Guidance implementation procedures. The exception is the TMDL general condition for wet weather events. Fourth, pursuant to section 510 of the CWA, part 132 specifies that nothing in the final Guidance prohibits States or Tribes from adopting provisions more stringent than the final Guidance.

As discussed further in section IX of this preamble, § 132.4 also provides that State and Tribal submissions will need to include any provisions that EPA determines, based on EPA's authorities under the CWA and the results of consultation with the U.S. Fish and Wildlife Service (FWS) under section 7 of the ESA, are necessary to ensure that water quality is not likely to cause jeopardy to any endangered or threatened species listed under the ESA.

Part 132 extends the requirements of section 118(c)(2)(C) to Indian Tribes within the Great Lakes basin for which EPA has approved water quality standards under section 303 of the CWA or which EPA has authorized to administer an NPDES program under section 402 of the CWA. EPA believes that inclusion of Great Lakes Tribes in this way is necessary and appropriate to be consistent with section 518 of the CWA. The reasons for EPA's proposal are discussed further in the preamble to the proposed Guidance (58 FR 20834), and section II.D.3 of the SID. As a practical matter, no Great Lakes Tribes currently have approved water quality standards or authorized NPDES programs, so the submission requirements of part 132 do not apply to any Great Lakes Tribes. Tribes that are approved or authorized in the future, however, will need to adopt provisions consistent with the final Guidance in their water programs.

V. Costs, Cost-Effectiveness and Benefits

(Section IX of the SID)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues arising out of the development of a comprehensive ecosystem-based approach for a large geographic area involving several States, Tribal governments, local governments, and a large number of regulated dischargers. This approach, including the Great Lakes Water Quality Initiative which developed the core concepts of the final Guidance, is a unique and precedential approach to the implementation of environmental programs. As such, this action was submitted to OMB for review pursuant to Executive Order 12866. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The following is a summary of major elements of the "Regulatory Impact Analysis of the Final Great Lakes Water Quality Guidance" (RIA) (EPA 820–B–95–011) that has been prepared in compliance with Executive Order 12866. Further discussion is included in section IX of the SID, and in the full RIA, which is available in the docket for this rulemaking.

The provisions of the final Guidance are not enforceable requirements until adopted by States or Tribes, or promulgated by EPA for a particular State or Tribe. Therefore, this publication of the final Guidance does not have an immediate effect on dischargers. Until actions are taken to promulgate and implement these provisions (or equally protective provisions consistent with the final Guidance), there will be no economic effect on any dischargers. For the purposes of the RIA, EPA's analysis of costs and benefits assumes that either State or EPA promulgations occur consistent with the final Guidance within the next two years.

Under the CWA, costs cannot be a basis for adopting water quality criteria that will not be protective of designated uses. If a range of scientifically defensible criteria that are protective can be identified, however, costs may be considered in selecting a particular criterion within that range. Costs may also be relevant under the antidegradation standard as applied to high quality waters.

EPA has assessed compliance costs for facilities that could be affected by provisions adopted by States or Tribes consistent with the final Guidance. EPA has also assessed basin-wide risk reduction benefits to sport anglers and Native American subsistence anglers in the basin, and benefits for three case study sites in the Great Lakes System.

The methodology used in each assessment and the results of these assessments are discussed below.

EPA solicited public comment and supporting data on the RIA methodology used to estimate both costs and benefits for implementation of the proposed Guidance. EPA evaluated these comments and supporting data as well as comments provided by OMB and revised the RIA methodology prior to performing these assessments for the final Guidance.

A. Costs

Based on the information provided by each State and a review of the permit files, EPA identified about 3,600 direct dischargers that could be affected by State or Tribal adoption or subsequent EPA promulgation, if necessary, of requirements consistent with the final Guidance. Of these, about 590 are major dischargers and the remaining 3,210 are minor dischargers. Of the 590 majors, about 275 are industrial facilities and 315 are publicly owned treatment works (POTWs). Out of these dischargers, EPA used a stratified random sampling procedure to select 59 facilities (50 major and nine minor) that it considered representative of all types and sizes of facilities in the basin.

EPA divided the major facilities into nine industrial categories and a category for POTWs. The nine industrial categories are: mining, food and food products, pulp and paper, inorganic chemical manufacturing, organic chemical manufacturing/petroleum refining, metals manufacturing, electroplating/metal fabrication, steam electric power plants, and miscellaneous facilities.

For each major and minor facility in the sample, EPA estimated incremental costs to comply with subsequently promulgated provisions consistent with the final Guidance, using a baseline of compliance with the requirements of section 303(c)(2)(B) of the CWA. Using a decision matrix, costs were developed for two different scenarios—a "low-end" cost scenario and a "high-end" cost scenario—to account for the range of regulatory flexibility available to States and Tribes when adopting and implementing provisions consistent with the final Guidance. In addition, the decision matrix specified assumptions used for selection of control options in the cost analysis such as optimization of existing treatment processes and operations, in-plant pollutant minimization and prevention, and "end of pipe" effluent treatment.

The annualized costs for direct and indirect dischargers to implement the final Guidance are estimated to be between $60 million (low end) and $380 million (high end) (first quarter 1994 dollars). EPA believes the costs for implementing the final Guidance, which balance pollution prevention, "end-of-pipe" treatment and regulatory flexibility, will approach the low end of the cost range. Costs are unlikely to reach the high end of the cost range because State and Tribal authorities are likely to choose implementation options that provide some degree of relief to point source dischargers, especially because in many cases the nonpoint source contributions will be significant. Furthermore, cost estimates for both scenarios, but especially for the high-end scenario, may be overstated because in cases where the final Guidance provides States and Tribes flexibility in selecting less costly approaches when implementing provisions consistent with the final Guidance, the most costly approach was used to estimate the costs. This approach was used to reduce uncertainty in the cost analysis for the final Guidance.

Under the low-end cost scenario, major industrial facilities and POTWs would account for about 65 percent of the costs, indirect dischargers about 33 percent, and minor dischargers about two percent. Among the major dischargers three categories would account for most of the costs—POTWs (39 percent), pulp and paper (14 percent), and miscellaneous (eight percent). The average per plant costs for different industry categories range from zero to $168,000. The two highest average cost categories are pulp and paper ($151,000) and miscellaneous ($168,000). Although major POTWs make up a large portion of the total cost, the average cost per plant under the low-end scenario is not among the highest at $75,000 per facility. About half of the low-end costs are associated with pollution prevention activities, and about half are for capital and operating costs for wastewater treatment.

For the high-end cost scenario, direct dischargers account for 98 percent of the total estimated cost, and indirect dischargers account for two percent. This shift in proportion of costs between direct and indirect dischargers and between the low and the high estimates are due to the assumption that more direct dischargers will need to use end-of-pipe treatment under the high-end scenario. In addition, it was assumed that a smaller proportion of indirect dischargers (10 percent) would be impacted under the high-end scenario, since municipalities are adding end-of-pipe treatment which should reduce the need for source controls (i.e., reduce the need for increased pretreatment program efforts) by indirect dischargers. Less than 10 percent of the high-end costs are associated with pollution prevention activities, and over 90 percent are for capital and operating costs for wastewater treatment.

Under the high-end scenario for the direct dischargers, municipal major dischargers are expected to incur just under 70 percent of total costs, and industrial major dischargers account for 29 percent of total costs. Minor direct dischargers are estimated to incur less than one percent of the total costs. The two major industrial categories with the largest total annualized cost are the pulp and paper (23 percent of total) and miscellaneous (three percent) categories. The food and food products and metal finishing categories are estimated to incur less than 1 percent of the total annualized cost.

Under the high-end scenario, the average annual cost per major municipal facility is just over $822,000 per facility. Average annualized costs for industrial majors vary widely across categories, with the highest average cost estimated for pulp and paper ($1,583,000 per plant) and miscellaneous ($433,700 per plant) categories. Regardless of the scenario, the average costs for minor facilities are negligible at an estimated $500 per facility.

The costs described above account for the costs of eliminating mixing zones for BCCs except in narrow circumstances, costs related to implementation of Tier II values, and specific calculated costs related to intake credits. The cost assessment also projects the potential cost savings across the different scenarios that facilities may realize if States or Tribes use existing regulatory relief mechanisms to modify or eliminate the need for a WQBEL for an identified pollutant (e.g., variances, TMDLs, site-specific modifications to criteria, and changes in designated uses).

In addition to the cost estimates described above, EPA estimated the cost to comply with requirements consistent with the antidegradation provisions of the final Guidance. This potential future cost is expressed as a "lost opportunity" cost for facilities impacted by the antidegradation requirements. This cost could result in the addition of about $22 million each year.

B. Cost-Effectiveness

EPA estimated the cost-effectiveness of the final Guidance in terms of the cost of reducing the loadings of toxic pollutants from point sources. The cost-effectiveness (cost per pound removed) is derived by dividing the annualized costs of implementing the final

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Guidance by the toxicity-weighted pounds (pound-equivalents) of pollutants removed. Pound-equivalents are calculated by multiplying pounds of each pollutant removed by the toxic weight (based on the toxicity of copper) for that pollutant.

It is estimated that implementation of provisions consistent with the final Guidance would be responsible for the reduction of about six to eight million toxic pounds per year, or 16 to 22 percent of the toxic-weighted baseline for the low- and high-end scenarios, respectively. The cost-effectiveness of the scenarios, over the baseline, is quite good, ranging from $10 to $50 per pound-equivalent.

Approximately 80 percent of the pollutant load reduction from implementation of the final Guidance, regardless of the scenario, is attributable to reducing BCCs as a result of PMPs and end-of-pipe treatment. The largest pollutant load reductions occur for chlordane, dieldrin, heptachlor, lead, and pentachlorobenzene.

In a separate analysis, EPA also investigated the cost-effectiveness of regulating point and nonpoint sources of mercury and PCBs, two contaminants associated with fish advisories in the Great Lakes basin. Although data and resource constraints limited the findings from these analyses, the preliminary results indicate that point sources may factor cost-effectively into pollutant reduction scenarios. For both contaminants, the cost-effectiveness of point and nonpoint source controls are likely to be highly site-specific.

C. Benefits

The benefits analysis is intended to provide insight into both the types and potential magnitude of the economic benefits expected to arise as a result of implementation of provisions adopted by States and Tribes consistent with the final Guidance. To the extent feasible, empirical estimates of the potential magnitude of the benefits are developed and then compared to the estimated costs of implementing provisions adopted by States and Tribes consistent with the final Guidance.

The benefits analysis is based on a case study approach, using benefits transfer applied to three case studies. The case study approach was used because it is more amenable to meaningful benefit-cost analyses than are studies of larger aggregate areas. Although the results obtained for a case study site may not apply uniformly to the entire Great Lakes basin, the case study approach does provide a pragmatic and realistic perspective of how implementation of the final Guidance can generate benefits, the types of benefits anticipated, and how these benefits compare to costs.

The case studies include: (1) the lower Fox River drainage, including Green Bay, located on Lake Michigan in northeastern Wisconsin; (2) the Saginaw River and Saginaw Bay, located on Lake Huron in northeastern Michigan; and (3) the Black River, located on Lake Erie in north-central Ohio. The case studies were selected from a list of candidate sites (i.e., designated Areas of Concern (AOCs) in the Great Lakes basin) on the basis of data availability and the relevance of the water quality problems to the final Guidance (i.e., areas in which problems were more likely to be associated with on-going point source discharges rather than historic loadings from Superfund sites and other sources). Geographic diversity was also considered in selecting the sites so that the analyses might better promote a broad perspective of the final Guidance's benefits and costs.

For each of the three case studies, EPA estimated future toxics-oriented water quality benefits, and then attributed a percentage of these benefits to implementation of the final Guidance. The attribution of benefits was based only on the estimated reduction in loadings from point sources at the case study sites and information on the relative contribution of point sources to total loadings in the basin. EPA did not attempt to calculate the longer-term benefits to human health, wildlife, and aquatic life once the final Guidance provisions are fully implemented by nonpoint sources as well as point sources and the minimum protection levels are attained in the ambient water.

In the Fox River and Green Bay case study, total annual undiscounted benefits attributable to the final Guidance range from $0.3 million to $8.5 million (first quarter 1994 dollars). Human health benefits account for between 29 percent and 72 percent of the estimated benefits, recreational fishing accounts for between eight percent and 45 percent, and nonuse/ecologic benefits account for between nine percent and 23 percent. Municipal and industrial dischargers in this case study are estimated to incur annualized costs of about $3.6 million.

In the Saginaw River/Bay case study, total annual undiscounted benefits range from $0.2 million to $7.7 million. Recreational fishing benefits account for between 36 percent and 60 percent of the estimated benefits, non-use benefits account for between 18 percent and 30 percent, and human health benefits account for between eight percent and 36 percent. Total annualized costs to municipal and industrial dischargers are estimated to be about $2.6 million.

In the Black River case study, total annual undiscounted benefits range from $0.4 million to $1.5 million. Recreational fishing benefits account for between 48 percent and 63 percent of the estimated benefits, and nonuse benefits account for between 32 percent and 44 percent. Total annualized costs to municipal and industrial dischargers are estimated to be $2.1 million.

An inherent limitation of the case study approach is the inability to extrapolate from a limited set of river-based sites to the Great Lakes basin as a whole. Accordingly, extrapolation of the case study results to the Great Lakes basin is not recommended. However, as noted above, the three case studies were selected on the basis of data availability, the relative importance of point source discharges to the watersheds' problems, and an attempt to portray spatial diversity throughout the Great Lakes basin. Thus, there is no reason to conclude that the selected sites are not reflective of the basin, even though benefits (and costs) tend to be highly site-specific. In addition, the benefits extend from the case study rivers into the larger, open-water environment of the Great Lakes.

The representativeness of the case study sites was assessed by comparing the percentage of total benefits estimated to accrue in the case study areas to the percentage of basin-wide costs incurred by the case study sites. Benefits-related measures (such as population, recreational angling days, and nonconsumptive recreation days) were used in place of total benefits for this analysis because there is no estimate of benefits for the entire Great Lakes basin. The three case studies combine to account for nearly 14 percent of the total cost of the final Guidance, nearly 17 percent of the loadings reductions, and from four percent to 10 percent of the benefits proxies (i.e., basin-wide population, recreational angling, nonconsumptive recreation, and commercial fishery harvest). Thus, the three case studies may represent a reasonably proportionate share of costs and benefits.

In addition to the case study analyses, a basin-wide risk assessment was conducted for Great Lakes anglers. EPA collected data and information on the consumption of Great Lakes basin fish to estimate baseline risk levels and reductions in risks due to implementation of the final Guidance for two populations at risk: Great Lakes sport anglers (including minority and low-income anglers) and Native Americans engaged in subsistence fishing in the basin. For sport anglers, EPA estimated that the projected reduction in loadings from point sources based on controls consistent with the final Guidance would result in a reduction of annual excess lifetime cancer cases (potential cancer cases assuming a 70-year lifetime exposure period) of 2.2 to 4.1 for low-income minorities in lakeshore counties; 0.4 to 0.8 for other minorities in lakeshore counties; and 21.9 to 41.9 for all other sport anglers. For Native American subsistence anglers, EPA estimated that reductions from point source loadings attributable to the final Guidance would result in a reduction of excess lifetime cancer cases of between 0.1 and 0.3 using a low fish ingestion scenario and 0.5 to 1.1 using a high fish ingestion scenario. Note that these estimates do not include the long-term benefits (including reduced cancer cases) that will result once the final Guidance provisions are fully implemented and the minimum protection levels are attained in the ambient water.

In total, using the most conservative consumption scenario for Native Americans, these reductions represent between 0.35 and 0.67 excess cancer cases per year, and potential basin-wide benefits of the final Guidance for this one benefits category of between $0.7 million and $6.7 million per year, based on the estimated value of a statistical life of between $2.0 million and $10.0 million. Comparison to case study results, which were based on a more comprehensive sample of facilities within case study areas than was possible for the entire basin, indicates these values likely underestimate the potential risk reduction benefits of the final Guidance at the basin level. For example, if the average percentage load reduction for PCBs for the three case studies is used to reflect reductions in PCBs for the basin, the reduction in excess cancer cases increases to between three and six cases per year, and potential benefits increase to between $6.6 and $60 million per year.

The reduction in pollutant loadings for PCBs was likely understated in the basin-wide analysis because the analysis did not count pollutant load reduction benefits when the current State-based permit limit and the final Guidance-based permit limit were both below the pollutant analytical method detection limit (MDL). Only three sample facilities in the population of 59 sample facilities used to project basin-wide costs and human health benefits had State-based permit limits for PCBs. Since the current State-based permit limit and the final Guidance-based permit limit were below the MDL in all three facilities, "zero" reduction in PCB loadings for the basin was estimated. This, of course, is an artifact of the methodology and the size of the sample population selected for the analysis, and would not occur, as demonstrated in the case study analysis, if a larger sample population had been used.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), EPA generally is required to conduct a final regulatory flexibility analysis (FRFA) describing the impact of the regulatory action on small entities as part of the final rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a FRFA.

Implementation of the final Guidance is dependent upon future promulgation of provisions consistent with it by State or Tribal agencies or, if necessary, EPA. Until actions are taken to promulgate and implement these provisions, or equally protective provisions consistent with the final Guidance, there will be no economic effect of this rule on any entities, large or small. For that reason, and pursuant to Section 605(b) of the RFA, EPA is certifying that this rule itself will not have a significant economic impact on a substantial number of small entities.

Although EPA is certifying that this rule will not have a significant economic impact on a substantial number of small entities, and therefore is not required to prepare a FRFA, it is nevertheless including for public information in the RIA a discussion of the possible economic effects to small entities that could result from State or Tribal adoption of provisions consistent with the final Guidance or subsequent EPA promulgation, if necessary. As discussed above, small facilities are projected to incur costs of only approximately $500 per facility to comply with subsequently promulgated requirements that are consistent with the final Guidance. Accordingly, EPA believes there will be no significant economic impact on a substantial number of small entities as a result of State or Tribal implementation of the final Guidance.

VII. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 (58 FR 58093, October 28, 1993), EPA has involved State, Tribal, and local governments in the development of the final Guidance.

As described in section II above, the core elements of the final Guidance were developed by the Great Lakes States, EPA, and other Federal agencies in open dialogue with citizens, local governments, and industries in the Great Lakes ecosystem over a five-year period through the Initiative. The Initiative process marks the first time that EPA has developed a major rulemaking effort in the water program through a regional public forum. The Initiative process is described further in the preamble to the proposed Guidance (58 FR 20820–23) and section II of this preamble.

In addition to the participation by State and local governments in the initial development of the proposed Guidance and in the public comment process, several activities have been carried out since the publication of the proposed Guidance. These include:

(1) On April 26, 1994, EPA held a public meeting to solicit additional information from interested parties on the proposed Guidance. As part of EPA's outreach efforts to State, Tribal and local governments, a special invitation was sent inviting elected officials and other State, Tribal and local representatives to participate in the public meeting. EPA specifically welcomed Tribal and local officials and opened the floor to them to hear and discuss their specific concerns and views on the final Guidance.

(2) A series of meetings and teleconferences were held with Great Lakes States in early 1994 to discuss their comments on several issues, including development of water quality criteria, State adoption requirements, WET, BAFs, additivity, compliance schedules, anti-backsliding, nonpoint sources, and international concerns.

(3) In October, 1994, EPA met with each individual State in the Great Lakes basin to discuss the nature, form, and scope of the proposed Guidance, and State concerns with implementation of the provisions under consideration. The following issues were discussed at each of the meetings: intake credits, antidegradation and EEQ, wildlife criteria, excluded pollutants (e.g., ammonia and chlorine), elimination of mixing zones, site-specific modifications, fish consumption, appropriate degrees of flexibility for implementation (e.g., guidance vs. regulation), and implementation procedures.

(4) In 1994 and 1995, EPA met with representatives of the National Wildlife Federation to discuss EPA's activities in developing the final Guidance in

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accordance with the terms of a consent decree governing the schedule for development of the final Guidance.

(5) In 1994, EPA also met with elected officials and other representatives from several local communities in the Great Lakes basin to discuss issues regarding the economic impact of the proposed Guidance on local communities and POTWs. Issues discussed include cost impacts associated with implementing water quality criteria, methodologies, and implementation procedures; dealing with pollution from nonpoint sources; public outreach to control pollutants such as mercury instead of costly end-of-pipe treatment; and applicability of provisions in the final Guidance to the National water quality program.

(6) EPA held an additional 18 consultations with the regulated community throughout 1994. Such meetings allowed representatives of dischargers to share additional data, which has been placed in the docket for this rulemaking, and concerns about a range of issues, including cost concerns, that the dischargers expect to arise in implementation of the final Guidance.

(7) In 1994, EPA met with State representatives to conduct initial planning for implementation of the GLI Clearinghouse. All Great Lakes States agreed to participate in this effort, which will involve the sharing of toxicological and other data to assist in the development of additional water quality criteria and values.

The results of the above efforts have assisted in the development of the final Guidance through broad communication with a full range of interested parties, sharing of additional information, and incorporation of features to improve the implementation of the final Guidance.

EPA has estimated the total annual State government burden to implement the final Guidance as approximately 5,886 hours, resulting in a State government cost of $175,992 annually. Such burden and costs were estimated based upon the burden and costs associated with developing water quality criteria, review of antidegradation policy demonstrations, review of approvable control strategies and BCC monitoring data, and review of variance requests. The total annual local government burden is estimated to be 42,296 hours with an associated cost of $2,008,624. All of the burden and costs to local governments are associated with being a regulated entity as an operator of a POTW.

VIII. Paperwork Reduction Act

The information collection requirements in this final Guidance have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2040–0180. EPA has prepared an Information Collection Request (ICR) document (ICR No. 1639.02). A copy of ICR 1639.02 may be obtained by writing to Ms. Sandy Farmer, Information Policy Branch, EPA 2136, Washington, D.C. 20460, or by calling (202) 260–2740.

The annual public reporting and record keeping burden for this regulation is estimated to be 128,787 hours for the affected 3,795 permittees, or an average of 34 hours. This includes the total annual burden to local governments as POTW operators, estimated to be 45,296 hours. The total annual burden to State governments is estimated to be 5,886 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, Mail Code 2136, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

In this rulemaking EPA is also amending the table of currently approved ICR control numbers issued by OMB for various regulations into 40 CFR 9.1. This amendment updates the table to accurately display those information requirements promulgated under the CWA. The affected regulations are codified at 40 CFR parts 122, 123, 131, and 132. EPA will continue to present OMB control numbers in a consolidated table format. The table will be codified in 40 CFR part 9 of EPA's regulations and in each 40 CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR for this rulemaking was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

IX. Endangered Species Act

Pursuant to section 7(a)(2) of the ESA, EPA consulted with the FWS concerning EPA's publication of the final Guidance. EPA and the FWS have now completed both informal and formal consultation conducted over a two-year period.

As a result of the consultation, as well as an analysis of comments, EPA modified several provisions of the final Guidance. The procedure for site-specific modifications provides that Great Lakes States and Tribes must make site-specific modifications to criteria and values where necessary to ensure the resulting water quality does not cause jeopardy to listed or proposed species. Similarly, the antidegradation policy and implementation procedures restrict certain actions States and Tribes may take to allow lowering of water quality in high quality waters, or to adopt variances or mixing zones. Additionally, the regulatory requirements were modified to require Great Lakes States and Tribes to include in their part 132 submissions any provisions that EPA determines, based on EPA's authorities under the CWA and the results of consultation under section 7 of the ESA, are necessary to ensure that water quality is not likely to cause jeopardy to listed species. EPA and the FWS also agreed on how further consultations will be conducted as the final Guidance is implemented. The two agencies also agreed that EPA will undertake a review of water quality standards and implementation of those standards for ammonia and chlorine in the Great Lakes basin as part of EPA's responsibilities under section 303(c) of the CWA.

During the consultation, two issues were identified that required formal consultation, as defined in 40 CFR part 402. These issues were: the absence of toxicological data concerning effects of contaminants on three species of freshwater mussels in the Great Lakes basin, and the adequacy of the wildlife criteria methodology to protect three endangered or threatened wildlife species in the basin. On February 21, 1995, the FWS provided EPA with a written Biological Opinion (Opinion) on these issues. The Opinion is available in the docket for this rulemaking. On both issues, the FWS concluded that the water quality resulting from implementation of the final Guidance will not cause jeopardy to the listed species. To minimize the amount or extent of any incidental take that might occur, the FWS consulted closely with EPA to develop a coordinated approach. The final Opinion specified reasonable and prudent measures that the FWS considers necessary or appropriate to minimize such impact. EPA has agreed to implement the measures, and the FWS and EPA will continue to work cooperatively during the implementation.

X. Judicial Review of Provisions Not Amended

In some situations, EPA has renumbered or included other editorial changes to regulations that have been promulgated in past rulemakings. Additionally, to provide for ease in reading changes to existing regulations, EPA has in some cases repeated entire sections, including portions not changed. The promulgation of this final rule, however, does not provide another opportunity to seek judicial review on the substance of the existing regulations.

XI. Supporting Documents

All documents that are referenced in this preamble are available for inspection and photocopying in the docket for this rulemaking at the address listed at the beginning of this preamble. A reasonable fee will be charged for photocopies.

Selected documents supporting the final Guidance are also available for viewing by the public at locations listed below:

Illinois: Illinois State Library, 300 South 2nd Street, Springfield, IL 62701 (217–785–5600)

Indiana: Indiana Department of Environmental Management, Office of Water Management, 100 North Senate Street, Indianapolis, IN 46204 (317–232–8671)

Michigan: Library of Michigan, Government Documents Service, 717 West Allegan, Lansing, MI 48909 (517–373–1300); Detroit Public Library, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, MI 48902 (313–833–1440)

Minnesota: Minnesota Pollution Control Agency, Library, 520 Lafayette, St. Paul, MN (612–296–7719)

New York: U.S. EPA Region 2 Library, Room 402, 26 Federal Plaza, New York, NY 10278 (212–264–2881); U.S. EPA Public Information Office, Carborundum Center, Suite 530, 345 Third Street, Niagara Falls, NY 14303 (716–285–8842); New York State Department of Environmental Conservation (NYSDEC), Room 310, 50 Wolf Road, Albany, NY 12333 (518–457–7463); NYSDEC, Region 6, 7th Floor, State Office Building, 317 Washington Street, Watertown, NY 13602 (315–785–2513); NYSDEC, Region 7, 615 Erie Boulevard West, Syracuse, NY 13204 (315–426–7400); NYSDEC, Region 8, 6274 East Avon-Lima Road, Avon, NY 14414 (716–226–2466); NYSDEC, Region 9, 270 Michigan Avenue, Buffalo, NY 14203 (716–851–7070)

Ohio: Ohio Environmental Protection Agency Library—Central District Office, 1800 Watermark Road, Columbus, OH 43215 (614–644–3024); U.S. EPA Eastern District Office, 25809 Central Ridge Road, Westlake, OH 44145 (216–522–7260)

Pennsylvania: Pennsylvania Department of Environmental Resources, 230 Chestnut Street, Meadville, PA 16335 (814–332–6945); U.S. EPA Region 3 Library, 8th Floor, 841 Chestnut Building, Philadelphia, PA 19107–4431 (215–597–7904)

Wisconsin: Water Resources Center, University of Wisconsin-Madison, 2nd Floor, 1975 Willow Drive, Madison, WI (608–262–3069)

EPA is also making a number of documents available in electronic format at no incremental cost to users of the Internet. These documents include the contents of this **Federal Register** document, the SID, many documents listed below, and other supporting materials.

The documents listed below are also available for a fee upon written request or telephone call to the National Technical Information Center (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone 800–553–6847 or 703–487–4650). Alternatively, copies may be obtained for a fee upon written request or telephone call to the Educational Resources Information Center/Clearinghouse for Science, Mathematics, and Environmental Education (ERIC/CSMEE), 1200 Chambers Road, Room 310, Columbus, OH 43212 (614–292–6717). When ordering, please include the NTIS or ERIC/CSMEE accession number.

A. Final Water Quality Guidance for the Great Lakes System: Supplementary Information Document (SID). NTIS Number: PB95187266. ERIC Number: D046.

B. Great Lakes Water Quality Initiative Criteria Document for the Protection of Aquatic Life in Ambient Water. NTIS Number: PB95187282. ERIC Number: D048.

C. Great Lakes Water Quality Initiative Technical Support Document for the Procedure to Determine Bioaccumulation Factors. NTIS Number: PB95187290. ERIC Number: D049.

D. Great Lakes Water Quality Initiative Criteria Document for the Protection of Human Health. NTIS Number: PB95187308. ERIC Number: D050.

E. Great Lakes Water Quality Initiative Technical Support Document for Human Health Criteria and Values. NTIS Number: PB95187316. ERIC Number: D051.

F. Great Lakes Water Quality Initiative Criteria Document for the Protection of Wildlife: DDT; Mercury; 2,3,7,8–TCDD; PCBs. NTIS Number: PB95187324. ERIC Number: D052.

G. Great Lakes Water Quality Initiative Technical Support Document for Wildlife Criteria. NTIS Number: PB95187332. ERIC Number: D053.

H. Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance. NTIS Number: PB95187340. ERIC Number: D054.

I. Regulatory Impact Analysis of the Final Great Lakes Water Quality Guidance. NTIS Number: PB95187357. ERIC Number: D055.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Great Lakes, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Great Lakes, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 131

Great Lakes, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 132

Administrative practice and procedure, Great Lakes, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 13, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 9, 122, 123, and 131 are amended, and part 132 is added as follows:

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PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended as follows:

a. By adding in numerical order the entry "122.44(r)" under the heading "EPA Administered Permit Programs: The National Pollutant Discharge Elimination System".

b. By revising the entries under the heading "State Permit Requirements";

c. By adding in numerical order the entries "131.1" and "131.5" and by revising the entries "131.20", "131.21" and "131.22" under the heading "Water Quality Standards Regulations"; and

d. By adding in numerical order a new heading and new entries for "Water Quality Guidance for the Great Lakes System" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.44(r)	2040–0180
* * * * *	
State Permit Requirements	
123.21–123.24	2040–0057, 2040–0170
123.25	2040–0004, 2040–0110, 2040–0170, 2040–0180
123.26–123.29	2040–0057, 2040–0170
123.43	2040–0057, 2040–0170
123.44	2040–0057, 2040–0170, 2040–0180
123.45	2040–0057, 2040–0170
123.62	2040–0057, 2040–0170, 2040–0180
123.63	2040–0057, 2040–0170, 2040–0180
123.64	2040–0057, 2040–0170
Water Quality Standards Regulation	
131.1	2040–0180
131.5	2040–0180
* * * * *	
131.20	2040–0049
131.21	2040–0049, 2040–0180
131.22	2040–0049
* * * * *	
Water Quality Guidance for the Great Lakes System	
132.1	2040–0180
132.2	2040–0180
132.3	2040–0180
132.4	2040–0180
132.5	2040–0180
Appendix A	2040–0180
Appendix B	2040–0180
Appendix C	2040–0180
Appendix D	2040–0180
Appendix E	2040–0180
Appendix F	2040–0180

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PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 122.44 is amended by adding a new paragraph (r) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(r) Great Lakes. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

PART 123—STATE PROGRAM REQUIREMENTS

5. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

6. Section 123.25 is amended by removing "and" at the end of paragraph (a)(36), removing the period at the end of paragraph (a)(37) and adding "; and" in its place, and adding a new paragraph (a)(38) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(38) For a Great Lakes State or Tribe (as defined in 40 CFR 132.2), 40 CFR part 132 (NPDES permitting implementation procedures only).

* * * * *

7. Section 123.44 is amended by adding a new paragraph (c)(9) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(9) For a permit issued by a Great Lakes State or Tribe (as defined in 40 CFR 132.2), the permit does not satisfy the conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

* * * * *

8. Section 123.62 is amended by adding a new paragraph (f) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(f) Revision of a State program by a Great Lakes State or Tribe (as defined in 40 CFR 132.2) to conform to section 118 of the CWA and 40 CFR part 132 shall be accomplished pursuant to 40 CFR part 132.

9. Section 123.63 is amended by adding a new paragraph (a)(6) and adding and reserving paragraph (b) to read as follows:

§ 123.63 Criteria for withdrawal of State programs.

(a) * * *

(6) Where a Great Lakes State or Tribe (as defined in 40 CFR 132.2) fails to adequately incorporate the NPDES permitting implementation procedures promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132 into individual permits.

(b) [Reserved]

PART 131—WATER QUALITY STANDARDS

10. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

11. Section 131.1 is revised to read as follows:

§ 131.1 Scope.

This part describes the requirements and procedures for developing, reviewing, revising, and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. Additional specific procedures for developing, reviewing, revising, and approving water quality standards for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Clean Water Act and 40 CFR part 132, are provided in 40 CFR part 132.

12. Section 131.5 is amended by revising paragraph (a)(5), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 131.5 EPA Authority.

(a) * * *

(5) Whether the State submission meets the requirements included in § 131.6 of this part and, for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Act, the requirements of 40 CFR part 132.

(b) If EPA determines that the State's or Tribe's water quality standards are consistent with the factors listed in paragraphs (a)(1) through (a)(5) of this section, EPA approves the standards. EPA must disapprove the State's or Tribe's water quality standards and promulgate Federal standards under section 303(c)(4), and for Great Lakes States or Great Lakes Tribes under section 118(c)(2)(C) of the Act, if State or Tribal adopted standards are not consistent with the factors listed in paragraphs (a)(1) through (a)(5) of this section. EPA may also promulgate a new or revised standard when necessary to meet the requirements of the Act.

* * * * *

13. Section 131.21 is amended by revising paragraph (b) to read as follows:

§ 131.21 EPA review and approval of water quality standards.

* * * * *

(b) The Regional Administrator's approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in §§ 131.5 and 131.6, and, with respect to Great Lakes States or Tribes (as defined in 40 CFR 132.2), 40 CFR part 132.

* * * * *

14. Part 132 is added as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

Sec.

132.1 Scope, purpose, and availability of documents.
132.2 Definitions.
132.3 Adoption of criteria.
132.4 State adoption and application of methodologies, policies and procedures.
132.5 Procedures for adoption and EPA review.
132.6 Application of part 132 requirements in Great Lakes States and Tribes.
[Reserved]

Tables to Part 132

Appendix A to Part 132—Great Lakes Water Quality Initiative Methodologies for Development of Aquatic Life Criteria and Values
Appendix B to Part 132—Great Lakes Water Quality Initiative Methodology for Development of Bioaccumulation Factors
Appendix C to Part 132—Great Lakes Water Quality Initiative Methodology for Development of Human Health Criteria and Values
Appendix D to Part 132—Great Lakes Water Quality Initiative Methodology for the Development of Wildlife Criteria
Appendix E to Part 132—Great Lakes Water Quality Initiative Antidegradation Policy
Appendix F to Part 132—Great Lakes Water Quality Initiative Implementation Procedures

Authority: 33 U.S.C. 1251 *et seq.*

§ 132.1 Scope, purpose, and availability of documents.

(a) This part constitutes the Water Quality Guidance for the Great Lakes System (Guidance) required by section 118(c)(2) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) as amended by the Great Lakes Critical Programs Act of 1990 (Pub. L. 101–596, 104 Stat. 3000 *et seq.*). The Guidance in this part identifies minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System to protect human health, aquatic life, and wildlife.

(b) The U.S. Environmental Protection Agency, Great Lakes States, and Great Lakes Tribes will use the Guidance in this part to evaluate the water quality programs of the States and Tribes to assure that they are protective of water quality. State and Tribal programs do not need to be identical to the Guidance in this part, but must contain provisions that are consistent with (as protective as) the Guidance in this part. The scientific, policy and legal basis for EPA's development of each section of the final Guidance in this part is set forth in the preamble, Supplementary Information Document, Technical Support Documents, and other supporting documents in the public docket. EPA will follow the guidance set out in these documents in reviewing the State and Tribal water quality programs in the Great Lakes for consistency with this part.

(c) The Great Lakes States and Tribes must adopt provisions consistent with the Guidance in this part applicable to waters in the Great Lakes System or be subject to EPA promulgation of its terms pursuant to this part.

(d) EPA understands that the science of risk assessment is rapidly improving. Therefore, to ensure that the scientific basis for the methodologies in appendices A through D are always current and peer reviewed, EPA will review the methodologies and revise them, as appropriate, every 3 years.

(e) Certain documents referenced in the appendixes to this part with a designation of NTIS and/or ERIC are available for a fee upon request to the National Technical Information Center (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Alternatively, copies may be obtained for a fee upon request to the Educational Resources Information Center/Clearinghouse for Science, Mathematics, and Environmental Education (ERIC/CSMEE), 1200 Chambers Road, Room 310, Columbus, Ohio 43212. When ordering, please include the NTIS or ERIC/CSMEE accession number.

§ 132.2 Definitions.

The following definitions apply in this part. Terms not defined in this section have the meaning given by the Clean Water Act and EPA implementing regulations.

Acute-chronic ratio (ACR) is a standard measure of the acute toxicity of a material divided by an appropriate measure of the chronic toxicity of the same material under comparable conditions.

Acute toxicity is concurrent and delayed adverse effect(s) that results from an acute exposure and occurs within any short observation period which begins when the exposure begins, may extend beyond the exposure period, and usually does not constitute a substantial portion of the life span of the organism.

Adverse effect is any deleterious effect to organisms due to exposure to a substance. This includes effects which are or may become debilitating, harmful or toxic to the normal functions of the organism, but does not include non-harmful effects such as tissue discoloration alone or the induction of enzymes involved in the metabolism of the substance.

Bioaccumulation is the net accumulation of a substance by an organism as a result of uptake from all environmental sources.

Bioaccumulation factor (BAF) is the ratio (in L/kg) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time.

Bioaccumulative chemical of concern (BCC) is any chemical that has the potential to cause adverse effects which, upon entering the surface waters, by itself or as its toxic transformation

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product, accumulates in aquatic organisms by a human health bioaccumulation factor greater than 1000, after considering metabolism and other physicochemical properties that might enhance or inhibit bioaccumulation, in accordance with the methodology in appendix B of this part. Chemicals with half-lives of less than eight weeks in the water column, sediment, and biota are not BCCs. The minimum BAF information needed to define an organic chemical as a BCC is either a field-measured BAF or a BAF derived using the BSAF methodology. The minimum BAF information needed to define an inorganic chemical, including an organometal, as a BCC is either a field-measured BAF or a laboratory-measured BCF. BCCs include, but are not limited to, the pollutants identified as BCCs in section A of Table 6 of this part.

Bioconcentration is the net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water through gill membranes or other external body surfaces.

Bioconcentration factor (BCF) is the ratio (in L/kg) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through the water only and the ratio does not change substantially over time.

Biota-sediment accumulation factor (BSAF) is the ratio (in kg of organic carbon/kg of lipid) of a substance's lipid-normalized concentration in tissue of an aquatic organism to its organic carbon-normalized concentration in surface sediment, in situations where the ratio does not change substantially over time, both the organism and its food are exposed, and the surface sediment is representative of average surface sediment in the vicinity of the organism.

Carcinogen is a substance which causes an increased incidence of benign or malignant neoplasms, or substantially decreases the time to develop neoplasms, in animals or humans. The classification of carcinogens is discussed in section II.A of appendix C to part 132.

Chronic toxicity is concurrent and delayed adverse effect(s) that occurs only as a result of a chronic exposure.

Connecting channels of the Great Lakes are the Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border.

Criterion continuous concentration (CCC) is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect.

Criterion maximum concentration (CMC) is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed briefly without resulting in an unacceptable effect.

EC50 is a statistically or graphically estimated concentration that is expected to cause one or more specified effects in 50 percent of a group of organisms under specified conditions.

Endangered or threatened species are those species that are listed as endangered or threatened under section 4 of the Endangered Species Act.

Existing Great Lakes discharger is any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 CFR 122.2) to the Great Lakes System, that is not a new Great Lakes discharger.

Federal Indian reservation, Indian reservation, or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final acute value (FAV) is (a) a calculated estimate of the concentration of a test material such that 95 percent of the genera (with which acceptable acute toxicity tests have been conducted on the material) have higher GMAVs, or (b) the SMAV of an important and/or critical species, if the SMAV is lower than the calculated estimate.

Final chronic value (FCV) is (a) a calculated estimate of the concentration of a test material such that 95 percent of the genera (with which acceptable chronic toxicity tests have been conducted on the material) have higher GMCVs, (b) the quotient of an FAV divided by an appropriate acute-chronic ratio, or (c) the SMCV of an important and/or critical species, if the SMCV is lower than the calculated estimate or the quotient, whichever is applicable.

Final plant value (FPV) is the lowest plant value that was obtained with an important aquatic plant species in an acceptable toxicity test for which the concentrations of the test material were measured and the adverse effect was biologically important.

Genus mean acute value (GMAV) is the geometric mean of the SMAVs for the genus.

Genus mean chronic value (GMCV) is the geometric mean of the SMCVs for the genus.

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior; and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border).

Great Lakes States and Great Lakes Tribes, or Great Lakes States and Tribes means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, and any Indian Tribe as defined in this part which is located in whole or in part within the drainage basin of the Great Lakes, and for which EPA has approved water quality standards under section 303 of the Clean Water Act or which EPA has authorized to administer an NPDES program under section 402 of the Clean Water Act.

Great Lakes System means all the streams, rivers, lakes and other bodies of water within the drainage basin of the Great Lakes within the United States.

Human cancer criterion (HCC) is a Human Cancer Value (HCV) for a pollutant that meets the minimum data requirements for Tier I specified in appendix C of this part.

Human cancer value (HCV) is the maximum ambient water concentration of a substance at which a lifetime of exposure from either: drinking the water, consuming fish from the water, and water-related recreation activities; or consuming fish from the water, and water-related recreation activities, will represent a plausible upper-bound risk of contracting cancer of one in 100,000 using the exposure assumptions specified in the Methodologies for the Development of Human Health Criteria and Values in appendix C of this part.

Human noncancer criterion (HNC) is a Human Noncancer Value (HNV) for a pollutant that meets the minimum data requirements for Tier I specified in appendix C of this part.

Human noncancer value (HNV) is the maximum ambient water concentration of a substance at which adverse noncancer effects are not likely to occur in the human population from lifetime exposure via either: drinking the water, consuming fish from the water, and water-related recreation activities; or consuming fish from the water, and water-related recreation activities using the Methodologies for the Development of Human Health Criteria and Values in appendix C of this part.

Indian Tribe or *Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

LC50 is a statistically or graphically estimated concentration that is expected to be lethal to 50 percent of a group of organisms under specified conditions.

Load allocation (LA) is the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources or to natural background sources, as more fully defined at 40 CFR 130.2(g). Nonpoint sources include: in-place contaminants, direct wet and dry depesition, groundwater inflow, and overland runoff.

Loading capacity is the greatest amount of loading that a water can receive without violating water quality standards.

Lowest observed adverse effect level (LOAEL) is the lowest tested dose or concentration of a substance which resulted in an observed adverse effect in exposed test organisms when all higher doses or concentrations resulted in the same or more severe effects.

Method detection level is the minimum concentration of an analyte (substance) that can be measured and reported with a 99 percent confidence that the analyte concentration is greater than zero as determined by the procedure set forth in appendix B of 40 CFR part 136.

Minimum Level (ML) is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.

New Great Lakes discharger is any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 CFR 122.2) to the Great Lakes System, the construction of which commenced after March 23, 1997.

No observed adverse effect level (NOAEL) is the highest tested dose or concentration of a substance which resulted in no observed adverse effect in exposed test organisms where higher doses or concentrations resulted in an adverse effect.

No observed effect concentration (NOEC) is the highest concentration of toxicant to which organisms are exposed in a full life-cycle or partial life-cycle (short-term) test, that causes no observable adverse effects on the test organisms (i.e., the highest concentration of toxicant in which the values for the observed responses are not statistically significantly different from the controls).

Open waters of the Great Lakes (OWGLs) means all of the waters within Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Ontario, and Lake Superior lakeward from a line drawn across the mouth of tributaries to the Lakes, including all waters enclosed by constructed breakwaters, but not including the connecting channels.

Quantification level is a measurement of the concentration of a contaminant obtained by using a specified laboratory procedure calibrated at a specified concentration above the method detection level. It is considered the lowest concentration at which a particular contaminant can be quantitatively measured using a specified laboratory procedure for monitoring of the contaminant.

Quantitative structure activity relationship (QSAR) or structure activity relationship (SAR) is a mathematical relationship between a property (activity) of a chemical and a number of descriptors of the chemical. These descriptors are chemical or physical characteristics obtained experimentally or predicted from the structure of the chemical.

Risk associated dose (RAD) is a dose of a known or presumed carcinogenic substance in (mg/kg)/day which, over a lifetime of exposure, is estimated to be associated with a plausible upper bound incremental cancer risk equal to one in 100,000.

Species mean acute value (SMAV) is the geometric mean of the results of all acceptable flow-through acute toxicity tests (for which the concentrations of the test material were measured) with the most sensitive tested life stage of the species. For a species for which no such result is available for the most sensitive tested life stage, the SMAV is the geometric mean of the results of all acceptable acute toxicity tests with the most sensitive tested life stage.

Species mean chronic value (SMCV) is the geometric mean of the results of all acceptable life-cycle and partial life-cycle toxicity tests with the species; for a species of fish for which no such result is available, the SMCV is the geometric mean of all acceptable early life-stage tests.

Stream design flow is the stream flow that represents critical conditions, upstream from the source, for protection of aquatic life, human health, or wildlife.

Threshold effect is an effect of a substance for which there is a theoretical or empirically established dose or concentration below which the effect does not occur.

Tier I criteria are numeric values derived by use of the Tier I methodologies in appendixes A, C and D of this part, the methodology in appendix B of this part, and the procedures in appendix F of this part, that either have been adopted as numeric criteria into a water quality standard or are used to implement narrative water quality criteria.

Tier II values are numeric values derived by use of the Tier II methodologies in appendixes A and C of this part, the methodology in appendix B of this part, and the procedures in appendix F of this part, that are used to implement narrative water quality criteria.

Total maximum daily load (TMDL) is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background, as more fully defined at 40 CFR 130.2(i). A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into a water body and still assure attainment and maintenance of water quality standards.

Tributaries of the Great Lakes System means all waters of the Great Lakes System that are not open waters of the Great Lakes, or connecting channels.

Uncertainty factor (UF) is one of several numeric factors used in operationally deriving criteria from experimental data to account for the quality or quantity of the available data.

Uptake is acquisition of a substance from the environment by an organism as a result of any active or passive process.

Wasteload allocation (WLA) is the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution, as more fully defined at 40 CFR 130.2(h). In the absence of a TMDL approved by EPA pursuant to 40 CFR 130.7 or an assessment and remediation plan developed and approved in accordance with procedure 3.A of appendix F of this part, a WLA is the allocation for an individual point source, that ensures that the level of water quality to be achieved by the point source is derived from and complies with all applicable water quality standards.

Wet weather point source means any discernible, confined and discrete conveyance from which pollutants are, or may be, discharged as the result of a wet weather event. Discharges from wet weather point sources shall include only: discharges of storm water from a municipal separate storm sewer as defined at 40 CFR 122.26(b)(8); storm water discharge associated with industrial activity as defined at 40 CFR 122.26(b)(14); discharges of storm water and sanitary wastewaters (domestic,

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commercial, and industrial) from a combined sewer overflow; or any other stormwater discharge for which a permit is required under section 402(p) of the Clean Water Act. A storm water discharge associated with industrial activity which is mixed with process wastewater shall not be considered a wet weather point source.

§ 132.3 Adoption of criteria.

The Great Lakes States and Tribes shall adopt numeric water quality criteria for the purposes of section 303(c) of the Clean Water Act applicable to waters of the Great Lakes System in accordance with § 132.4(d) that are consistent with:

(a) The acute water quality criteria for protection of aquatic life in Table 1 of this part, or a site-specific modification thereof in accordance with procedure 1 of appendix F of this part;

(b) The chronic water quality criteria for protection of aquatic life in Table 2 of this part, or a site-specific modification thereof in accordance with procedure 1 of appendix F of this part;

(c) The water quality criteria for protection of human health in Table 3 of this part, or a site-specific modification thereof in accordance with procedure 1 of appendix F of this part; and

(d) The water quality criteria for protection of wildlife in Table 4 of this part, or a site-specific modification thereof in accordance with procedure 1 of appendix F of this part.

§ 132.4 State adoption and application of methodologies, policies and procedures.

(a) The Great Lakes States and Tribes shall adopt requirements applicable to waters of the Great Lakes System for the purposes of sections 118, 301, 303, and 402 of the Clean Water Act that are consistent with:

(1) The definitions in § 132.2;

(2) The Methodologies for Development of Aquatic Life Criteria and Values in appendix A of this part;

(3) The Methodology for Development of Bioaccumulation Factors in appendix B of this part;

(4) The Methodologies for Development of Human Health Criteria and Values in appendix C of this part;

(5) The Methodology for Development of Wildlife Criteria in appendix D of this part;

(6) The Antidegradation Policy in appendix E of this part; and

(7) The Implementation Procedures in appendix F of this part.

(b) Except as provided in paragraphs (g), (h), and (i) of this section, the Great Lakes States and Tribes shall use methodologies consistent with the methodologies designated as Tier I methodologies in appendixes A, C, and D of this part, the methodology in appendix B of this part, and the procedures in appendix F of this part when adopting or revising numeric water quality criteria for the purposes of section 303(c) of the Clean Water Act for the Great Lakes System.

(c) Except as provided in paragraphs (g), (h), and (i) of this section, the Great Lakes States and Tribes shall use methodologies and procedures consistent with the methodologies designated as Tier I methodologies in appendixes A, C, and D of this part, the Tier II methodologies in appendixes A and C of this part, the methodology in appendix B of this part, and the procedures in appendix F of this part to develop numeric criteria and values when implementing narrative water quality criteria adopted for purposes of section 303(c) of the Clean Water Act.

(d) The water quality criteria and values adopted or developed pursuant to paragraphs (a) through (c) of this section shall apply as follows:

(1) The acute water quality criteria and values for the protection of aquatic life, or site-specific modifications thereof, shall apply to all waters of the Great Lakes System.

(2) The chronic water quality criteria and values for the protection of aquatic life, or site-specific modifications thereof, shall apply to all waters of the Great Lakes System.

(3) The water quality criteria and values for protection of human health, or site-specific modifications thereof, shall apply as follows:

(i) Criteria and values derived as HCV-Drinking and HNV-Drinking shall apply to the Open Waters of the Great Lakes, all connecting channels of the Great Lakes, and all other waters of the Great Lakes System that have been designated as public water supplies by any State or Tribe in accordance with 40 CFR 131.10.

(ii) Criteria and values derived as HCV-Nondrinking and HNV-Nondrinking shall apply to all waters of the Great Lakes System other than those in paragraph (d)(3)(i) of this section.

(4) Criteria for protection of wildlife, or site-specific modifications thereof, shall apply to all waters of the Great Lakes System.

(e) The Great Lakes States and Tribes shall apply implementation procedures consistent with the procedures in appendix F of this part for all applicable purposes under the Clean Water Act, including developing total maximum daily loads for the purposes of section 303(d) and water quality-based effluent limits for the purposes of section 402, in establishing controls on the discharge of any pollutant to the Great Lakes System by any point source with the following exceptions:

(1) The Great Lakes States and Tribes are not required to apply these implementation procedures in establishing controls on the discharge of any pollutant by a wet weather point source. Any adopted implementation procedures shall conform with all applicable Federal, State and Tribal requirements.

(2) The Great Lakes States and Tribes may, but are not required to, apply procedures consistent with procedures 1, 2, 3, 4, 5, 7, 8, and 9 of appendix F of this part in establishing controls on the discharge of any pollutant set forth in Table 5 of this part. Any procedures applied in lieu of these implementation procedures shall conform with all applicable Federal, State, and Tribal requirements.

(f) The Great Lakes States and Tribes shall apply an antidegradation policy consistent with the policy in appendix E for all applicable purposes under the Clean Water Act, including 40 CFR 131.12.

(g) For pollutants listed in Table 5 of this part, the Great Lakes States and Tribes shall:

(1) Apply any methodologies and procedures acceptable under 40 CFR part 131 when developing water quality criteria or implementing narrative criteria; and

(2) Apply the implementation procedures in appendix F of this part or alternative procedures consistent with all applicable Federal, State, and Tribal laws.

(h) For any pollutant other than those in Table 5 of this part for which the State or Tribe demonstrates that a methodology or procedure in this part is not scientifically defensible, the Great Lakes States and Tribes shall:

(1) Apply an alternative methodology or procedure acceptable under 40 CFR part 131 when developing water quality criteria; or

(2) Apply an alternative implementation procedure that is consistent with all applicable Federal, State, and Tribal laws.

(i) Nothing in this part shall prohibit the Great Lakes States and Tribes from adopting numeric water quality criteria, narrative criteria, or water quality values that are more stringent than criteria or values specified in § 132.3 or that would be derived from application of the methodologies set forth in appendixes A, B, C, and D of this part, or to adopt antidegradation standards and implementation procedures more

stringent than those set forth in appendixes E and F of this part.

§ 132.5 Procedures for adoption and EPA review.

(a) Except as provided in paragraph (c) of this section, the Great Lakes States and Tribes shall adopt and submit for EPA review and approval the criteria, methodologies, policies, and procedures developed pursuant to this part no later than September 23, 1996.

(b) The following elements must be included in each submission to EPA for review:

(1) The criteria, methodologies, policies, and procedures developed pursuant to this part;

(2) Certification by the Attorney General or other appropriate legal authority pursuant to 40 CFR 123.62 and 40 CFR 131.6(e) as appropriate;

(3) All other information required for submission of National Pollutant Discharge Elimination System (NPDES) program modifications under 40 CFR 123.62; and

(4) General information which will aid EPA in determining whether the criteria, methodologies, policies and procedures are consistent with the requirements of the Clean Water Act and this part, as well as information on general policies which may affect their application and implementation.

(c) The Regional Administrator may extend the deadline for the submission required in paragraph (a) of this section if the Regional Administrator believes that the submission will be consistent with the requirements of this part and can be reviewed and approved pursuant to this section no later than March 23, 1997.

(d) If a Great Lakes State or Tribe makes no submission pursuant to this part to EPA for review, the requirements of this part shall apply to discharges to waters of the Great Lakes System located within the State or Federal Indian reservation upon EPA's publication of a final rule indicating the effective date of the part 132 requirements in the identified jurisdictions.

(e) If a Great Lakes State or Tribe submits criteria, methodologies, policies, and procedures pursuant to this part to EPA for review that contain substantial modifications of the State or Tribal NPDES program, EPA shall issue public notice and provide a minimum of 30 days for public comment on such modifications. The public notice shall conform with the requirements of 40 CFR 123.62.

(f) After review of State or Tribal submissions under this section, and following the public comment period in subparagraph (e) of this section, if any, EPA shall either:

(1) Publish notice of approval of the submission in the **Federal Register** within 90 days of such submission; or

(2) Notify the State or Tribe within 90 days of such submission that EPA has determined that all or part of the submission is inconsistent with the requirements of the Clean Water Act or this part and identify any necessary changes to obtain EPA approval. If the State or Tribe fails to adopt such changes within 90 days after the notification, EPA shall publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule in the **Federal Register** identifying the provisions of part 132 that shall apply to discharges within the State or Federal Indian reservation.

(g) EPA's approval or disapproval of a State or Tribal submission shall be based on the requirements of this part and of the Clean Water Act. EPA's determination whether the criteria, methodologies, policies, and procedures in a State or Tribal submission are consistent with the requirements of this part will be based on whether:

(1) *For pollutants listed in Tables 1, 2, 3, and 4 of this part.* The Great Lakes State or Tribe has adopted numeric water quality criteria as protective as each of the numeric criteria in Tables 1, 2, 3, and 4 of this part, taking into account any site-specific criteria modifications in accordance with procedure 1 of appendix F of this part;

(2) *For pollutants other than those listed in Tables 1, 2, 3, 4, and 5 of this part.* The Great Lakes State or Tribe demonstrates that either:

(i) It has adopted numeric criteria in its water quality standards that were derived, or are as protective as or more protective than could be derived, using the methodologies in appendixes A, B, C, and D of this part, and the site-specific criteria modification procedures in accordance with procedure 1 of appendix F of this part; or

(ii) It has adopted a procedure by which water quality-based effluent limits and total maximum daily loads are developed using the more protective of:

(A) Numeric criteria adopted by the State into State water quality standards and approved by EPA prior to March 23, 1997; or

(B) Water quality criteria and values derived pursuant to § 132.4(c); and

(3) *For methodologies, policies, and procedures.* The Great Lakes State or Tribe has adopted methodologies, policies, and procedures as protective as the corresponding methodology, policy, or procedure in § 132.4. The Great Lakes State or Tribe may adopt provisions that are more protective than those contained in this part. Adoption of a more protective element in one provision may be used to offset a less protective element in the same provision as long as the adopted provision is as protective as the corresponding provision in this part; adoption of a more protective element in one provision, however, is not justification for adoption of a less protective element in another provision of this part.

(h) A submission by a Great Lakes State or Tribe will need to include any provisions that EPA determines, based on EPA's authorities under the Clean Water Act and the results of consultation under section 7 of the Endangered Species Act, are necessary to ensure that water quality is not likely to jeopardize the continued existence of any endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(i) EPA's approval of the elements of a State's or Tribe's submission will constitute approval under section 118 of the Clean Water Act, approval of the submitted water quality standards pursuant to section 303 of the Clean Water Act, and approval of the submitted modifications to the State's or Tribe's NPDES program pursuant to section 402 of the Clean Water Act.

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes. [Reserved]

Tables to Part 132

TABLE 1.—ACUTE WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE IN AMBIENT WATER

EPA recommends that metals criteria be expressed as dissolved concentrations (see appendix A, I.A.4 for more information regarding metals criteria).

(a)

Chemical	CMC (µg/L)	Conversion factor (CF)
Arsenic (III)	[a,b] 339.8	1.000
Chromium (VI)	[a,b] 16.02	0.982
Cyanide	[c] 22	n/a
Dieldrin	[d] 0.24	n/a
Endrin	[d] 0.086	n/a
Lindane	[d] 0.95	n/a
Mercury (II)	[a,b] 1.694	0.85
Parathion	[d] 0.065	n/a
Selenium	[a,b] 19.34	0.922

[a] $CMC = CMC^{Cr}$.
[b] $CMC^{d} = (CMC^{Cr})$ CF. The CMC^{d} shall be rounded to two significant digits.

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[c] CMC should be considered free cyanide as CN.
[d] CMC=CMC[t].

Notes:
The term "n/a" means not applicable.
CMC is Criterion Maximum Concentration.
CMC[w] is the CMC expressed as total recoverable.
CMC[d] is the CMC expressed as a dissolved concentration.
CMC[t] is the CMC expressed as a total concentration.

(b)

Chemical	m_A	b_A	Conversion factor (CF)
Cadmium[a,b]	1.128	−3.6867	0.85
Chromium (III)[a,b]	0.819	+3.7256	0.316
Copper[a,b]	0.9422	−1.700	0.960
Nickel[a,b]	0.846	+2.255	0.998
Pentachlorophenol[c]	1.005	−4.869	n/a
Zinc[a,b]	0.8473	+0.884	0.978

[a] $CMC^w = \exp\{m_A[\ln(\text{hardness})] + b_A\}$.
[b] $CMC^d = (CMC^w)$ CF. The CMC^d shall be rounded to two significant digits.
[c] $CMC^t = \exp m_A\{pH\} + b_A\}$. The CMC^t shall be rounded to two significant digits.

Notes:
The term "exp" represents the base e exponential function.
The term "n/a" means not applicable.
CMC is Criterion Maximum Concentration.
CMC^w is the CMC expressed as total recoverable.
CMC^d is the CMC expressed as a dissolved concentration.
CMC^t is the CMC expressed as a total concentration.

TABLE 2.—CHRONIC WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE IN AMBIENT WATER

EPA recommends that metals criteria be expressed as dissolved concentrations (see appendix A, I.A.4 for more information regarding metals criteria).

(a)

Chemical	CCC (µg/L)	Conversion factor (CF)
Arsenic (III)	[a,b] 147.9	1.000
Chromium (VI)	[a,b] 10.98	0.962
Cyanide	<5.2	n/a
Dieldrin	[d] 0.056	n/a
Endrin	[d] 0.036	n/a
Mercury (II)	[a,b] 0.9081	0.85
Parathion	[d] 0.013	n/a
Selenium	[a,b] 5	0.922

[a] $CCC = CCC^w$.
[b] $CCC^d = (CCC^w)$ CF. The CCC^d shall be rounded to two significant digits.
[c] CCC should be considered free cyanide as CN.
[d] $CCC = CCC^t$.

Notes:
The term "n/a" means not applicable.
CCC is Criterion Continuous Concentration.
CCC^w is the CCC expressed as total recoverable.
CCC^d is the CCC expressed as a dissolved concentration.
CCC^t is the CCC expressed as a total concentration.

(b)

Chemical	m_c	b_c	Conversion factor (CF)
Cadmium[a,b]	0.7852	−2.715	0.850
Chromium (III)[a,b]	0.819	+0.6848	0.860
Copper[a,b]	0.8545	−1.702	0.960
Nickel[a,b]	0.846	+0.0584	0.997
Pentachlorophenol[c]	1.005	−5.134	n/a
Zinc[a,b]	0.8473	+0.884	0.986

[a] $CCC^w = \exp\{m_c[\ln(\text{hardness})] + b_c\}$.
[b] $CCC_d = (CCC^w)$ (CF). The CCC^d shall be rounded to two significant digits.
[c] $CMC^t = \exp\{m_A[pH] + b_A\}$. The CMC^t shall be rounded to two significant digits.

Notes:
The term "exp" represents the base e exponential function.
The term "n/a" means not applicable.
CCC is Criterion Continuous Concentration.
CCC^w is the CCC expressed as total recoverable.
CCC^d is the CCC expressed as a dissolved concentration.
CCC^t is the CCC expressed as a total concentration.

TABLE 3.—WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH

Chemical	HNV (µg/L)		HCV (µg/L)	
	Drinking	Nondrinking	Drinking	Nondrinking
Benzene	1.9E1	5.1E2	1.2E1	3.1E2
Chlordane	1.4E−3	1.4E−3	2.5E−4	2.5E−4
Chlorobenzene	4.7E2	3.2E3		
Cyanides	6.0E2	4.0E4		
DDT	2.0E−3	2.0E−3	1.5E−4	1.5E−4
Dieldrin	4.1E−4	4.1E−4	6.5E−6	6.5E−6
2,4-Dimethylphenol	4.5E2	6.7E3		
2,4-Dinitrophenol	5.5E1	2.8E3		
Hexachlorobenzene	4.6E−2	4.6E−2	4.5E−4	4.5E−4
Hexachloroethane	6.0	7.6	5.3	6.7
Lindane	4.7E−1	5.0E−1		
Mercury [1]	1.8E−3	1.8E−3		
Methylene chloride	1.6E3	9.0E4	4.7E1	2.6E3
PCBs (class)			3.9E−6	3.9E−6
2,3,7,8-TCDD	6.7E−8	6.7E−8	8.6E−9	8.6E−9
Toluene	5.6E3	5.1E4		
Toxaphene			6.8E−5	6.8E−5

TABLE 3.—WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH—Continued

Chemical	HNV (µg/L)		HCV (µg/L)	
	Drinking	Nondrinking	Drinking	Nondrinking
Trichloroethylene			2.9E1	3.7E2

[1] Includes methylmercury.

TABLE 4.—WATER QUALITY CRITERIA FOR PROTECTION OF WILDLIFE

Chemical	Criteria (µg/L)
DDT and metabolites	1.1E−5
Mercury (including methylmercury).	1.3E−3
PCBs (class)	7.4E−5
2,3,7,8-TCDD	3.1E−9

TABLE 5.—POLLUTANTS SUBJECT TO FEDERAL, STATE, AND TRIBAL REQUIREMENTS

Alkalinity
Ammonia
Bacteria
Biochemical oxygen demand (BOD)
Chlorine
Color
Dissolved oxygen
Dissolved solids
pH
Phosphorus
Salinity
Temperature
Total and suspended solids
Turbidity

TABLE 6.—POLLUTANTS OF INITIAL FOCUS IN THE GREAT LAKES WATER QUALITY INITIATIVE

A. Pollutants that are bioaccumulative chemicals of concern (BCCs):
Chlordane
4,4'-DDD; p,p'-DDD; 4,4'-TDE; p,p'-TDE
4,4'-DDE; p,p'-DDE
4,4'-DDT; p,p'-DDT
Dieldrin
Hexachlorobenzene
Hexachlorobutadiene; hexachloro-1, 3-butadiene
Hexachlorocyclohexanes; BHCs
alpha-Hexachlorocyclohexane; alpha-BHC
beta-Hexachlorocyclohexane; beta-BHC
delta-Hexachlorocyclohexane; delta-BHC
Lindane; gamma-hexachlorocyclohexane; gamma-BHC
Mercury
Mirex
Octachlorostyrene
PCBs; polychlorinated biphenyls
Pentachlorobenzene
Photomirex
2,3,7,8-TCDD; dioxin
1,2,3,4-Tetrachlorobenzene
1,2,4,5-Tetrachlorobenzene Toxaphene

B. Pollutants that are not bioaccumulative chemicals of concern:
Acenaphthene
Acenaphthylene
Acrolein; 2-propenal
Acrylonitrile
Aldrin
Aluminum
Anthracene
Antimony
Arsenic
Asbestos
1,2-Benzanthracene; benz[a]anthracene
Benzene
Benzidine
Benzo[a]pyrene; 3,4-benzopyrene
3,4-Benzofluoranthene; benzo[b]fluoranthene
11,12-Benzofluoranthene; benzo[k]fluoranthene
1,12-Benzoperylene; benzo[ghi]perylene
Beryllium
Bis(2-chloroethoxy) methane
Bis(2-chloroethyl) ether
Bis(2-chloroisopropyl) ether
Bromoform; tribromomethane
4-Bromophenyl phenyl ether
Butyl benzyl phthalate
Cadmium
Carbon tetrachloride; tetrachloromethane
Chlorobenzene
p-Chloro-m-cresol; 4-chloro-3-methylphenol
Chlorodibromomethane
Chloroethane
2-Chloroethyl vinyl ether
Chloroform; trichloromethane
2-Chloronaphthalene
2-Chlorophenol
4-Chlorophenyl phenyl ether
Chlorpyrifos
Chromium
Chrysene
Copper
Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid
DEHP; di(2-ethylhexyl) phthalate
Diazinon
1,2:5,6-Dibenzanthracene; dibenz[a,h]anthracene
Dibutyl phthalate; di-n-butyl phthalate
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
3,3'-Dichlorobenzidine
Dichlorobromomethane; bromodichloromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene; vinylidene chloride
1,2-trans-Dichloroethylene
2,4-Dichlorophenol
1,2-Dichloropropane
1,3-Dichloropropene; 1,3-dichloropropylene
Diethyl phthalate
2,4-Dimethylphenol; 2,4-xylenol
Dimethyl phthalate
4,6-Dinitro-o-cresol; 2-methyl-4,6-dinitrophenol
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Dioctyl phthalate; di-n-octyl phthalate
1,2-Diphenylhydrazine
Endosulfan; thiodan
alpha-Endosulfan
beta-Endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Ethylbenzene
Fluoranthene
Fluorene; 9H-fluorene
Fluoride
Guthion
Heptachlor
Heptachlor epoxide
Hexachlorocyclopentadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene; 2,3-o-phenylene pyrene
Isophorone
Lead
Malathion
Methoxychlor
Methyl bromide; bromomethane
Methyl chloride; chloromethane
Methylene chloride; dichloromethane
Napthalene
Nickel
Nitrobenzene
2-Nitrophenol
4-Nitrophenol
N-Nitrosodimethylamine
N-Nitrosodiphenylamine
N-Nitrosodipropylamine; N-nitrosodi-n-propylamine
Parathion
Pentachlorophenol
Phenanthrene
Phenol
Iron
Pyrene
Selenium
Silver
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Thallium
Toluene; methylbenzene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene; trichloroethene
2,4,6-Trichlorophenol
Vinyl chloride; chloroethylene; chloroethene
Zinc

Appendix A to part 132—Great Lakes Water Quality Initiative Methodologies for Developments of Aquatic Life Criteria and Values

Methodology for Deriving Aquatic Life Criteria: Tier I

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this appendix.

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I. Definitions

A. *Material of Concern.* When defining the material of concern the following should be considered:

1. Each separate chemical that does not ionize substantially in most natural bodies of water should usually be considered a separate material, except possibly for structurally similar organic compounds that only exist in large quantities as commercial mixtures of the various compounds and apparently have similar biological, chemical, physical, and toxicological properties.

2. For chemicals that ionize substantially in most natural bodies of water (e.g., some phenols and organic acids, some salts of phenols and organic acids, and most inorganic salts and coordination complexes of metals and metalloid), all forms that would be in chemical equilibrium should usually be considered one material. Each different oxidation state of a metal and each different non-ionizable covalently bonded organometallic compound should usually be considered a separate material.

3. The definition of the material of concern should include an operational analytical component. Identification of a material simply as "sodium," for example, implies "total sodium," but leaves room for doubt. If "total" is meant, it must be explicitly stated. Even "total" has different operational definitions, some of which do not necessarily measure "all that is there" in all samples. Thus, it is also necessary to reference or describe the analytical method that is intended. The selection of the operational analytical component should take into account the analytical and environmental chemistry of the material and various practical considerations, such as labor and equipment requirements, and whether the method would require measurement in the field or would allow measurement after samples are transported to a laboratory.

a. The primary requirements of the operational analytical component are that it be appropriate for use on samples of receiving water, that it be compatible with the available toxicity and bioaccumulation data without making extrapolations that are too hypothetical, and that it rarely result in underprotection or overprotection of aquatic organisms and their uses. Toxicity is the property of a material, or combination of materials, to adversely affect organisms.

b. Because an ideal analytical measurement will rarely be available, an appropriate compromise measurement will usually have to be used. This compromise measurement must fit with the general approach that if an ambient concentration is lower than the criterion, unacceptable effects will probably not occur, i.e., the compromise measure must not err on the side of underprotection when measurements are made on a surface water. What is an appropriate measurement in one situation might not be appropriate for another. For example, because the chemical and physical properties of an effluent are usually quite different from those of the receiving water, an analytical method that is appropriate for analyzing an effluent might not be appropriate for expressing a criterion, and vice versa. A criterion should be based on an appropriate analytical measurement, but the criterion is not rendered useless if an ideal measurement either is not available or is not feasible.

Note: The analytical chemistry of the material might have to be taken into account when defining the material or when judging the acceptability of some toxicity tests, but a criterion must not be based on the sensitivity of an analytical method. When aquatic organisms are more sensitive than routine analytical methods, the proper solution is to develop better analytical methods.

4. It is now the policy of EPA that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column that does total recoverable metal. One reason is that a primary mechanism for water column toxicity is adsorption at the gill surface which requires metals to be in the dissolved form. Reasons for the consideration of total recoverable metals criteria include risk management considerations not covered by evaluation of water column toxicity. A risk manager may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering that metals are very persistent chemicals. This approach could include the use of total recoverable metal in water quality standards. A range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable under this program.

B. *Acute Toxicity.* Concurrent and delayed adverse effect(s) that results from an acute exposure and occurs within any short observation period which begins when the exposure begins, may extend beyond the exposure period, and usually does not constitute a substantial portion of the life span of the organism. (Concurrent toxicity is an adverse effect to an organism that results from, and occurs during, its exposure to one or more test materials.) Exposure constitutes contact with a chemical or physical agent. Acute exposure, however, is exposure of an organism for any short period which usually does not constitute a substantial portion of its life span.

C. *Chronic Toxicity.* Concurrent and delayed adverse effect(s) that occurs only as a result of a chronic exposure. Chronic exposure is exposure of an organism for any long period or for a substantial portion of its life span.

II. Collection of Data

A. Collect all data available on the material concerning toxicity to aquatic animals and plants.

B. All data that are used should be available in typed, dated, and signed hard copy (e.g., publication, manuscript, letter, memorandum, etc.) with enough supporting information to indicate that acceptable test procedures were used and that the results are reliable. In some cases, it might be appropriate to obtain written information from the investigator, if possible. Information that is not available for distribution shall not be used.

C. Questionable data, whether published or unpublished, must not be used. For example, data must be rejected if they are from tests that did not contain a control treatment, tests in which too many organisms in the control treatment died or showed signs of stress or disease, and tests in which distilled or deionized water was used as the dilution water without the addition of appropriate salts.

D. Data on technical grade materials may be used if appropriate, but data on formulated mixtures and emulsifiable concentrates of the material must not be used.

E. For some highly volatile, hydrolyzable, or degradable materials, it might be appropriate to use only results of flow-through tests in which the concentrations of test material in test solutions were measured using acceptable analytical methods. A flow-through test is a test with aquatic organisms in which test solutions flow into constant-volume test chambers either intermittently (e.g., every few minutes) or continuously, with the excess flowing out.

F. Data must be rejected if obtained using:

1. Brine shrimp, because they usually only occur naturally in water with salinity greater than 35 g/kg.

2. Species that do not have reproducing wild populations in North America.

3. Organisms that were previously exposed to substantial concentrations of the test material or other contaminants.

4. Saltwater species except for use in deriving acute-chronic ratios. An ACR is a standard measure of the acute toxicity of a material divided by an appropriate measure of the chronic toxicity of the same material under comparable conditions.

G. Questionable data, data on formulated mixtures and emulsifiable concentrates, and data obtained with species non-resident to North America or previously exposed organisms may be used to provide auxiliary information but must not be used in the derivation of criteria.

III. Required Data

A. Certain data should be available to help ensure that each of the major kinds of possible adverse effects receives adequate consideration. An adverse effect is a change in an organism that is harmful to the organism. Exposure means contact with a chemical or physical agent. Results of acute and chronic toxicity tests with representative species of aquatic animals are necessary so that data available for tested species can be considered a useful indication of the sensitivities of appropriate untested species. Fewer data concerning toxicity to aquatic plants are usually available because procedures for conducting tests with plants and interpreting the results of such tests are not as well developed.

B. To derive a Great Lakes Tier I criterion for aquatic organisms and their uses, the following must be available:

1. Results of acceptable acute (or chronic) tests (see section IV or VI of this appendix) with at least one species of freshwater animal in at least eight different families such that all of the following are included:

a. The family Salmonidae in the class Osteichthyes;

b. One other family (preferably a commercially or recreationally important, warmwater species) in the class Osteichthyes (e.g., bluegill, channel catfish);

c. A third family in the phylum Chordata (e.g., fish, amphibian);

d. A planktonic crustacean (e.g., a cladoceran, copepod);

e. A benthic crustacean (e.g., ostracod, isopod, amphipod, crayfish);

f. An insect (e.g., mayfly, dragonfly, damselfly, stonefly, caddisfly, mosquito, midge);

g. A family in a phylum other than Arthropoda or Chordata (e.g., Rotifera, Annelida, Mollusca);

h. A family in any order of insect or any phylum not already represented.

2. Acute-chronic ratios (see section VI of this appendix) with at least one species of aquatic animal in at least three different families provided that of the three species:

a. At least one is a fish;

b. At least one is an invertebrate; and

c. At least one species is an acutely sensitive freshwater species (the other two may be saltwater species).

3. Results of at least one acceptable test with a freshwater algae or vascular plant is desirable but not required for criterion derivation (see section VIII of this appendix). If plants are among the aquatic organisms most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

C. If all required data are available, a numerical criterion can usually be derived except in special cases. For example, derivation of a chronic criterion might not be possible if the available ACRs vary by more than a factor of ten with no apparent pattern. Also, if a criterion is to be related to a water quality characteristic (see sections V and VII of this appendix), more data will be required.

D. Confidence in a criterion usually increases as the amount of available pertinent information increases. Thus, additional data are usually desirable.

IV. Final Acute Value

A. Appropriate measures of the acute (short-term) toxicity of the material to a variety of species of aquatic animals are used to calculate the Final Acute Value (FAV). The calculated Final Acute Value is a calculated estimate of the concentration of a test material such that 95 percent of the genera (with which acceptable acute toxicity tests have been conducted on the material) have higher Genus Mean Acute Values (GMAVs). An acute test is a comparative study in which organisms, that are subjected to different treatments, are observed for a short period usually not constituting a substantial portion of their life span. However, in some cases, the Species Mean Acute Value (SMAV) of a commercially or recreationally important species of the Great Lakes System is lower than the calculated FAV, then the SMAV replaces the calculated FAV in order to provide protection for that important species.

B. Acute toxicity tests shall be conducted using acceptable procedures. For good examples of acceptable procedures see American Society for Testing and Materials (ASTM) Standard E 729, Guide for Conducting Acute Toxicity Tests with Fishes, Macroinvertebrates, and Amphibians.

C. Except for results with saltwater annelids and mysids, results of acute tests during which the test organisms were fed should not be used, unless data indicate that the food did not affect the toxicity of the test material. (Note: If the minimum acute-chronic ratio data requirements (as described in section III.B.2 of this appendix) are not met with freshwater data alone, saltwater data may be used.)

D. Results of acute tests conducted in unusual dilution water, e.g., dilution water in which total organic carbon or particulate matter exceeded five mg/L, should not be used, unless a relationship is developed between acute toxicity and organic carbon or particulate matter, or unless data show that organic carbon or particulate matter, etc., do not affect toxicity.

E. Acute values must be based upon endpoints which reflect the total severe adverse impact of the test material on the organisms used in the test. Therefore, only the following kinds of data on acute toxicity to aquatic animals shall be used:

1. Tests with daphnids and other cladocerans must be started with organisms less than 24 hours old and tests with midges must be started with second or third instar larvae. It is preferred that the results should be the 48-hour EC50 based on the total percentage of organisms killed and immobilized. If such an EC50 is not available for a test, the 48-hour LC50 should be used in place of the desired 48-hour EC50. An EC50 or LC50 of longer than 48 hours can be used as long as the animals were not fed and the control animals were acceptable at the end of the test. An EC50 is a statistically or graphically estimated concentration that is expected to cause one or more specified effects in 50% of a group of organisms under specified conditions. An LC50 is a statistically or graphically estimated concentration that is expected to be lethal to 50% of a group of organisms under specified conditions.

2. It is preferred that the results of a test with embryos and larvae of barnacles, bivalve molluscs (clams, mussels, oysters and scallops), sea urchins, lobsters, crabs, shrimp and abalones be the 96-hour EC50 based on the percentage of organisms with incompletely developed shells plus the percentage of organisms killed. If such an EC50 is not available from a test, of the values that are available from the test, the lowest of the following should be used in place of the desired 96-hour EC50: 48- to 96-hour EC50s based on percentage of organisms with incompletely developed shells plus percentage of organisms killed, 48- to 96-hour EC50s based upon percentage of organisms with incompletely developed shells, and 48-hour to 96-hour LC50s. (Note: If the minimum acute-chronic ratio data requirements (as described in section III.B.2 of this appendix) are not met with freshwater data alone, saltwater data may be used.)

3. It is preferred that the result of tests with all other aquatic animal species and older life stages of barnacles, bivalve molluscs (clams, mussels, oysters and scallops), sea urchins, lobsters, crabs, shrimp and abalones be the 96-hour EC50 based on percentage of organisms exhibiting loss of equilibrium plus percentage of organisms immobilized plus percentage of organisms killed. If such an EC50 is not available from a test, of the values that are available from a test the lower of the following should be used in place of the desired 96-hour EC50: the 96-hour EC50 based on percentage of organisms exhibiting loss of equilibrium plus percentage of organisms immobilized and the 96-hour LC50.

4. Tests whose results take into account the number of young produced, such as most tests with protozoans, are not considered acute tests, even if the duration was 96 hours or less.

5. If the tests were conducted properly, acute values reported as "greater than" values and those which are above the solubility of the test material should be used, because rejection of such acute values would bias the Final Acute Value by eliminating acute values for resistant species.

F. If the acute toxicity of the material to aquatic animals has been shown to be related to a water quality characteristic such as hardness or particulate matter for freshwater animals, refer to section V of this appendix.

G. The agreement of the data within and between species must be considered. Acute values that appear to be questionable in comparison with other acute and chronic data for the same species and for other species in the same genus must not be used. For example, if the acute values available for a species or genus differ by more than a factor of 10, rejection of some or all of the values would be appropriate, absent countervailing circumstances.

H. If the available data indicate that one or more life stages are at least a factor of two more resistant than one or more other life stages of the same species, the data for the more resistant life stages must not be used in the calculation of the SMAV because a species cannot be considered protected from acute toxicity if all of the life stages are not protected.

I. For each species for which at least one acute value is available, the SMAV shall be calculated as the geometric mean of the results of all acceptable flow-through acute toxicity tests in which the concentrations of test material were measured with the most sensitive tested life stage of the species. For a species for which no such result is available, the SMAV shall be calculated as the geometric mean of all acceptable acute toxicity tests with the most sensitive tested life stage, i.e., results of flow-through tests in which the concentrations were not measured and results of static and renewal tests based on initial concentrations (nominal concentrations are acceptable for most test materials if measured concentrations are not available) of test material. A renewal test is a test with aquatic organisms in which either the test solution in a test chamber is removed and replaced at least once during the test or the test organisms are transferred into a new test solution of the same composition at least once during the test. A static test is a test with aquatic organisms in which the solution

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and organisms that are in a test chamber at the beginning of the test remain in the chamber until the end of the test, except for removal of dead test organisms.

Note 1: Data reported by original investigators must not be rounded off. Results of all intermediate calculations must not be rounded off to fewer than four significant digits.

Note 2: The geometric mean of N numbers is the Nth root of the product of the N numbers. Alternatively, the geometric mean can be calculated by adding the logarithms of the N numbers, dividing the sum by N, and taking the antilog of the quotient. The geometric mean of two numbers is the square root of the product of the two numbers, and the geometric mean of one number is that number. Either natural (base e) or common (base 10) logarithms can be used to calculate geometric means as long as they are used consistently within each set of data, i.e., the antilog used must match the logarithms used.

Note 3: Geometric means, rather than arithmetic means, are used here because the distributions of sensitivities of individual organisms in toxicity tests on most materials and the distributions of sensitivities of species within a genus are more likely to be lognormal than normal. Similarly, geometric means are used for ACRs because quotients are likely to be closer to lognormal than normal distributions. In addition, division of the geometric mean of a set of numerators by the geometric mean of the set of denominators will result in the geometric mean of the set of corresponding quotients.

J. For each genus for which one or more SMAVs are available, the GMAV shall be calculated as the geometric mean of the SMAVs available for the genus.

K. Order the GMAVs from high to low.

L. Assign ranks, R, to the GMAVs from "1" for the lowest to "N" for the highest. If two or more GMAVs are identical, assign them successive ranks.

M. Calculate the cumulative probability, P, for each GMAV as R/(N+1).

N. Select the four GMAVs which have cumulative probabilities closest to 0.05 (if there are fewer than 59 GMAVs, these will always be the four lowest GMAVs).

O. Using the four selected GMAVs, and Ps, calculate

$$S^2 = \frac{\sum\left((\ln GMAV)^2\right) - \frac{\left(\sum(\ln GMAV)\right)^2}{4}}{\sum(P) - \frac{\left(\sum(\sqrt{P})\right)^2}{4}}$$

$$L = \frac{\sum(\ln GMAV) - S\left(\sum(\sqrt{P})\right)}{4}$$

$$A = S(\sqrt{0.05}) + L$$

$$FAV = e^A$$

Note: Natural logarithms (logarithms to base e, denoted as ln) are used herein merely because they are easier to use on some hand calculators and computers than common (base 10) logarithms. Consistent use of either will produce the same result.

P. If for a commercially or recreationally important species of the Great Lakes System the geometric mean of the acute values from flow-through tests in which the concentrations of test material were measured is lower than the calculated Final Acute Value (FAV), then that geometric mean must be used as the FAV instead of the calculated FAV.

Q. See section VI of this appendix.

V. Final Acute Equation

A. When enough data are available to show that acute toxicity to two or more species is similarly related to a water quality characteristic, the relationship shall be taken into account as described in sections V.B through V.G of this appendix or using analysis of covariance. The two methods are equivalent and produce identical results. The manual method described below provides an understanding of this application of covariance analysis, but computerized versions of covariance analysis are much more convenient for analyzing large data sets. If two or more factors affect toxicity, multiple regression analysis shall be used.

B. For each species for which comparable acute toxicity values are available at two or more different values of the water quality characteristic, perform a least squares regression of the acute toxicity values on the corresponding values of the water quality characteristic to obtain the slope and its 95 percent confidence limits for each species.

Note: Because the best documented relationship is that between hardness and acute toxicity of metals in fresh water and a log-log relationship fits these data, geometric means and natural logarithms of both toxicity and water quality are used in the rest of this section. For relationships based on other water quality characteristics, such as Ph, temperature, no transformation or a different transformation might fit the data better, and appropriate changes will be necessary throughout this section.

C. Decide whether the data for each species are relevant, taking into account the range and number of the tested values of the water quality characteristic and the degree of agreement within and between species. For example, a slope based on six data points might be of limited value if it is based only on data for a very narrow range of values of the water quality characteristic. A slope based on only two data points, however, might be useful if it is consistent with other information and if the two points cover a broad enough range of the water quality characteristic. In addition, acute values that appear to be questionable in comparison with other acute and chronic data available for the same species and for other species in the same genus should not be used. For example, if after adjustment for the water quality characteristic, the acute values available for a species or genus differ by more than a factor of 10, rejection of some or all of the values would be appropriate, absent countervailing justification. If useful slopes are not available for at least one fish and one invertebrate or if the available slopes are too dissimilar or if too few data are available to adequately define the relationship between acute toxicity and the water quality characteristic, return to section IV.G of this appendix, using the results of tests conducted under conditions and in waters similar to those commonly used for toxicity tests with the species.

D. For each species, calculate the geometric mean of the available acute values and then divide each of the acute values for the species by the geometric mean for the species. This normalizes the acute values so that the geometric mean of the normalized values for each species individually and for any combination of species is 1.0.

E. Similarly normalize the values of the water quality characteristic for each species individually using the same procedure as above.

F. Individually for each species perform a least squares regression of the normalized

acute values of the water quality characteristic. The resulting slopes and 95 percent confidence limits will be identical to those obtained in section V.B. of this appendix. If, however, the data are actually plotted, the line of best fit for each individual species will go through the point 1,1 in the center of the graph.

G. Treat all of the normalized data as if they were all for the same species and perform a least squares regression of all of the normalized acute values on the corresponding normalized values of the water quality characteristic to obtain the pooled acute slope, V, and its 95 percent confidence limits. If all of the normalized data are actually plotted, the line of best fit will go through the point 1,1 in the center of the graph.

H. For each species calculate the geometric mean, W, of the acute toxicity values and the geometric mean, X, of the values of the water quality characteristic. (These were calculated in sections V.D and V.E of this appendix).

I. For each species, calculate the logarithm, Y, of the SMAV at a selected value, Z, of the water quality characteristic using the equation:

$Y = \ln W - V(\ln X - \ln Z)$

J. For each species calculate the SMAV at X using the equation:

$SMAV = e^Y$

Note: Alternatively, the SMAVs at Z can be obtained by skipping step H above, using the equations in steps I and J to adjust each acute value individually to Z, and then calculating the geometric mean of the adjusted values for each species individually. This alternative procedure allows an examination of the range of the adjusted acute values for each species.

K. Obtain the FAV at Z by using the procedure described in sections IV.J through IV.O of this appendix.

L. If, for a commercially or recreationally important species of the Great Lakes System the geometric mean of the acute values at Z from flow-through tests in which the concentrations of the test material were measured is lower than the FAV at Z, then the geometric mean must be used as the FAV instead of the FAV.

M. The Final Acute Equation is written as:

$FAV = e^{(V[\ln(\text{water quality characteristic})] + A - V[\ln Z])}$,

where:

V=pooled acute slope, and A=ln(FAV at Z).

Because V, A, and Z are known, the FAV can be calculated for any selected value of the water quality characteristic.

VI. Final Chronic Value

A. Depending on the data that are available concerning chronic toxicity to aquatic animals, the Final Chronic Value (FCV) can be calculated in the same manner as the FAV or by dividing the FAV by the Final Acute-Chronic Ratio (FACR). In some cases, it might not be possible to calculate a FCV. The FCV is (a) a calculated estimate of the concentration of a test material such that 95 percent of the genera (with which acceptable chronic toxicity tests have been conducted on the material) have higher GMCVs, or (b) the quotient of an FAV divided by an appropriate ACR, or (c) the SMCV of an important and/or critical species, if the SMCV is lower than the calculated estimate or the quotient, whichever is applicable.

Note: As the name implies, the ACR is a way of relating acute and chronic toxicities.

B. Chronic values shall be based on results of flow-through (except renewal is acceptable for daphnids) chronic tests in which the concentrations of test material in the test solutions were properly measured at appropriate times during the test. A chronic test is a comparative study in which organisms, that are subjected to different treatments, are observed for a long period or a substantial portion of their life span.

C. Results of chronic tests in which survival, growth, or reproduction in the control treatment was unacceptably low shall not be used. The limits of acceptability will depend on the species.

D. Results of chronic tests conducted in unusual dilution water, e.g., dilution water in which total organic carbon or particulate matter exceeded five mg/L, should not be used, unless a relationship is developed between chronic toxicity and organic carbon or particulate matter, or unless data show that organic carbon, particulate matter, etc., do not affect toxicity.

E. Chronic values must be based on endpoints and lengths of exposure appropriate to the species. Therefore, only results of the following kinds of chronic toxicity tests shall be used:

1. Life-cycle toxicity tests consisting of exposures of each of two or more groups of individuals of a species to a different concentration of the test material throughout a life cycle. To ensure that all life stages and life processes are exposed, tests with fish should begin with embryos or newly hatched young less than 48 hours old, continue through maturation and reproduction, and should end not less than 24 days (90 days for salmonids) after the hatching of the next generation. Tests with daphnids should begin with young less than 24 hours old and last for not less than 21 days, and for ceriodaphnids not less than seven days. For good examples of acceptable procedures see American Society for Testing and Materials (ASTM) Standard E 1193 Guide for conducting renewal life-cycle toxicity tests with *Daphnia magna* and ASTM Standard E 1295 Guide for conducting three-brood, renewal toxicity tests with *Ceriodaphnia dubia*. Tests with mysids should begin with young less than 24 hours old and continue until seven days past the median time of first brood release in the controls. For fish, data should be obtained and analyzed on survival and growth of adults and young, maturation of males and females, eggs spawned per female, embryo viability (salmonids only), and hatchability. For daphnids, data should be obtained and analyzed on survival and young per female. For mysids, data should be obtained and analyzed on survival, growth, and young per female.

2. Partial life-cycle toxicity tests consist of exposures of each of two more groups of individuals of a species of fish to a different concentration of the test material through most portions of a life cycle. Partial life-cycle tests are allowed with fish species that require more than a year to reach sexual maturity, so that all major life stages can be exposed to the test material in less than 15 months. A life-cycle test is a comparative study in which organisms, that are subjected to different treatments, are observed at least from a life stage in one generation to the same life-stage in the next generation. Exposure to the test material should begin with immature juveniles at least two months prior to active gonad development, continue through maturation and reproduction, and end not less than 24 days (90 days for salmonids) after the hatching of the next generation. Data should be obtained and analyzed on survival and growth of adults and young, maturation of males and females, eggs spawned per female, embryo viability (salmonids only), and hatchability.

3. Early life-stage toxicity tests consisting of 28- to 32-day (60 days post hatch for salmonids) exposures of the early life stages of a species of fish from shortly after fertilization through embryonic, larval, and early juvenile development. Data should be obtained and analyzed on survival and growth.

Note: Results of an early life-stage test are used as predictions of results of life-cycle and partial life-cycle tests with the same species. Therefore, when results of a life-cycle or partial life-cycle test are available, results of an early life-stage test with the same species should not be used. Also, results of early life-stage tests in which the incidence of mortalities or abnormalities increased substantially near the end of the test shall not be used because the results of such tests are possibly not good predictions of comparable life-cycle or partial life-cycle tests.

F. A chronic value may be obtained by calculating the geometric mean of the lower and upper chronic limits from a chronic test or by analyzing chronic data using regression analysis.

1. A lower chronic limit is the highest tested concentration:

a. In an acceptable chronic test;

b. Which did not cause an unacceptable amount of adverse effect on any of the specified biological measurements; and

c. Below which no tested concentration caused an unacceptable effect.

2. An upper chronic limit is the lowest tested concentration:

a. In an acceptable chronic test;

b. Which did cause an unacceptable amount of adverse effect on one or more of the specified biological measurements; and,

c. Above which all tested concentrations also caused such an effect.

Note: Because various authors have used a variety of terms and definitions to interpret and report results of chronic tests, reported results should be reviewed carefully. The amount of effect that is considered unacceptable is often based on a statistical hypothesis test, but might also be defined in terms of a specified percent reduction from the controls. A small percent reduction (e.g., three percent) might be considered acceptable even if it is statistically significantly different from the control, whereas a large percent reduction (e.g., 30 percent) might be considered unacceptable even if it is not statistically significant.

G. If the chronic toxicity of the material to aquatic animals has been shown to be related

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to a water quality characteristic such as hardness or particulate matter for freshwater animals, refer to section VII of this appendix.

H. If chronic values are available for species in eight families as described in section III.B.1 of this appendix, a SMCV shall be calculated for each species for which at least one chronic value is available by calculating the geometric mean of the results of all acceptable life-cycle and partial life-cycle toxicity tests with the species; for a species of fish for which no such result is available, the SMCV is the geometric mean of all acceptable early life-stage tests. Appropriate GMCVs shall also be calculated. A GMCV is the geometric mean of the SMCVs for the genus. The FCV shall be obtained using the procedure described in sections IV.J through IV.O of this appendix, substituting SMCV and GMCV for SMAV and GMAV respectively. See section VI.M of this appendix.

Note: Section VI.I through VI.L are for use when chronic values are not available for species in eight taxonomic families as described in section III.B.1 of this appendix.

I. For each chronic value for which at least one corresponding appropriate acute value is available, calculate an ACR, using for the numerator the geometric mean of the results of all acceptable flow-through (except static is acceptable for daphnids and midges) acute tests in the same dilution water in which the concentrations are measured. For fish, the acute test(s) should be conducted with juveniles. The acute test(s) should be part of the same study as the chronic test. If acute tests were not conducted as part of the same study, but were conducted as part of a different study in the same laboratory and dilution water, then they may be used. If no such acute tests are available, results of acute tests conducted in the same dilution water in a different laboratory may be used. If no such acute tests are available, an ACR shall not be calculated.

J. For each species, calculate the SMACR as the geometric mean of all ACRs available for that species. If the minimum ACR data requirements (as described in section III.B.2 of this appendix) are not met with freshwater data alone, saltwater data may be used along with the freshwater data.

K. For some materials, the ACR seems to be the same for all species, but for other materials the ratio seems to increase or decrease as the SMAV increases. Thus the FACR can be obtained in three ways, depending on the data available:

1. If the species mean ACR seems to increase or decrease as the SMAVs increase, the FACR shall be calculated as the geometric mean of the ACRs for species whose SMAVs are close to the FAV.

2. If no major trend is apparent and the ACRs for all species are within a factor of ten, the FACR shall be calculated as the geometric mean of all of the SMACRs.

3. If the most appropriate SMACRs are less than 2.0, and especially if they are less than 1.0, acclimation has probably occurred during the chronic test. In this situation, because continuous exposure and acclimation cannot be assured to provide adequate protection in field situations, the FACR should be assumed to be two, so that the FCV is equal to the Criterion Maximum Concentration (CMC). (See section X.B of this appendix.)

If the available SMACRs do not fit one of these cases, a FACR may not be obtained and a Tier I FCV probably cannot be calculated.

L. Calculate the FCV by dividing the FAV by the FACR.

FCV=FAV÷FACR

If there is a Final Acute Equation rather than a FAV, see also section V of this appendix.

M. If the SMCV of a commercially or recreationally important species of the Great Lakes System is lower than the calculated FCV, then that SMCV must be used as the FCV instead of the calculated FCV.

N. See section VIII of this appendix.

VII. Final Chronic Equation

A. A Final Chronic Equation can be derived in two ways. The procedure described in section VII.A of this appendix will result in the chronic slope being the same as the acute slope. The procedure described in sections VII.B through N of this appendix will usually result in the chronic slope being different from the acute slope.

1. If ACRs are available for enough species at enough values of the water quality characteristic to indicate that the ACR appears to be the same for all species and appears to be independent of the water quality characteristic, calculate the FACR as the geometric mean of the available SMACRs.

2. Calculate the FCV at the selected value Z of the water quality characteristic by dividing the FAV at Z (see section V.M of this appendix) by the FACR.

3. Use V=pooled acute slope (see section V.M of this appendix), and

L=pooled chronic slope.

4. See section VII.M of this appendix.

B. When enough data are available to show that chronic toxicity to at least one species is related to a water quality characteristic, the relationship should be taken into account as described in sections C through G below or using analysis of covariance. The two methods are equivalent and produce identical results. The manual method described below provides an understanding of this application of covariance analysis, but computerized versions of covariance analysis are much more convenient for analyzing large data sets. If two or more factors affect toxicity, multiple regression analysis shall be used.

C. For each species for which comparable chronic toxicity values are available at two or more different values of the water quality characteristic, perform a least squares regression of the chronic toxicity values on the corresponding values of the water quality characteristic to obtain the slope and its 95 percent confidence limits for each species.

Note: Because the best documented relationship is that between hardness and acute toxicity of metals in fresh water and a log-log relationship fits these data, geometric means and natural logarithms of both toxicity and water quality are used in the rest of this section. For relationships based on other water quality characteristics, such as Ph, temperature, no transformation or a different transformation might fit the data better, and appropriate changes will be necessary throughout this section. It is probably preferable, but not necessary, to use the same transformation that was used with the acute values in section V of this appendix.

D. Decide whether the data for each species are relevant, taking into account the range and number of the tested values of the water quality characteristic and the degree of agreement within and between species. For example, a slope based on six data points might be of limited value if it is based only on data for a very narrow range of values of the water quality characteristic. A slope based on only two data points, however, might be more useful if it is consistent with other information and if the two points cover a broad range of the water quality characteristic. In addition, chronic values that appear to be questionable in comparison with other acute and chronic data available for the same species and for other species in the same genus in most cases should not be used. For example, if after adjustment for the water quality characteristic, the chronic values available for a species or genus differ by more than a factor of 10, rejection of some or all of the values is, in most cases, absent countervailing circumstances, appropriate. If a useful chronic slope is not available for at least one species or if the available slopes are too dissimilar or if too few data are available to adequately define the relationship between chronic toxicity and the water quality characteristic, it might be appropriate to assume that the chronic slope is the same as the acute slope, which is equivalent to assuming that the ACR is independent of the water quality characteristic. Alternatively, return to section VI.H of this appendix, using the results of tests conducted under conditions and in waters similar to those commonly used for toxicity tests with the species.

E. Individually for each species, calculate the geometric mean of the available chronic values and then divide each chronic value for a species by the mean for the species. This normalizes the chronic values so that the geometric mean of the normalized values for each species individually, and for any combination of species, is 1.0.

F. Similarly, normalize the values of the water quality characteristic for each species individually.

G. Individually for each species, perform a least squares regression of the normalized chronic toxicity values on the corresponding normalized values of the water quality characteristic. The resulting slopes and the 95 percent confidence limits will be identical to those obtained in section VII.B of this appendix. Now, however, if the data are actually plotted, the line of best fit for each individual species will go through the point 1,1 in the center of the graph.

H. Treat all of the normalized data as if they were all the same species and perform a least squares regression of all of the normalized chronic values on the corresponding normalized values of the water quality characteristic to obtain the pooled chronic slope, L, and its 95 percent confidence limits.

If all normalized data are actually plotted, the line of best fit will go through the point 1,1 in the center of the graph.

I. For each species, calculate the geometric mean, M, of the toxicity values and the geometric mean, P, of the values of the water quality characteristic. (These are calculated in sections VII.E and F of this appendix.)

J. For each species, calculate the logarithm, Q, of the SMCV at a selected value, Z, of the water quality characteristic using the equation:

$$Q=\ln M-L(\ln P-\ln Z)$$

Note: Although it is not necessary, it is recommended that the same value of the water quality characteristic be used here as was used in section V of this appendix.

K. For each species, calculate a SMCV at Z using the equation:

$$SMCV=e^{Q}$$

Note: Alternatively, the SMCV at Z can be obtained by skipping section VII.J of this appendix, using the equations in sections VII.J and K of this appendix to adjust each chronic value individually to Z, and then calculating the geometric means of the adjusted values for each species individually. This alternative procedure allows an examination of the range of the adjusted chronic values for each species.

L. Obtain the FCV at Z by using the procedure described in sections IV.J through O of this appendix.

M. If the SMCV at Z of a commercially or recreationally important species of the Great Lakes System is lower than the calculated FCV at Z, then that SMCV shall be used as the FCV at Z instead of the calculated FCV.

N. The Final Chronic Equation is written as:

$$FCV=e^{(L/V)\ln(\text{water quality characteristic})+\ln S-L(\ln Z)/V}$$

Where:

L=pooled chronic slope and S = FCV at Z.

Because L, S, and Z are known, the FCV can be calculated for any selected value of the water quality characteristic.

VIII. Final Plant Value

A. A Final Plant Value (FPV) is the lowest plant value that was obtained with an important aquatic plant species in an acceptable toxicity test for which the concentrations of the test material were measured and the adverse effect was biologically important. Appropriate measures of the toxicity of the material to aquatic plants are used to compare the relative sensitivities of aquatic plants and animals. Although procedures for conducting and interpreting the results of toxicity tests with plants are not well-developed, results of tests with plants usually indicate that criteria which adequately protect aquatic animals and their uses will, in most cases, also protect aquatic plants and their uses.

B. A plant value is the result of a 96-hour test conducted with an alga or a chronic test conducted with an aquatic vascular plant.

Note: A test of the toxicity of a metal to a plant shall not be used if the medium contained an excessive amount of a complexing agent, such as EDTA, that might affect the toxicity of the metal. Concentrations of EDTA above 200 µg/L should be considered excessive.

C. The FPV shall be obtained by selecting the lowest result from a test with an important aquatic plant species in which the concentrations of test material are measured and the endpoint is biologically important.

IX. Other Data

Pertinent information that could not be used in earlier sections might be available concerning adverse effects on aquatic organisms. The most important of these are data on cumulative and delayed toxicity, reduction in survival, growth, or reproduction, or any other adverse effect that has been shown to be biologically important. Delayed toxicity is an adverse effect to an organism that results from, and occurs after the end of, its exposure to one or more test materials. Especially important are data for species for which no other data are available. Data from behavioral, biochemical, physiological, microcosm, and field studies might also be available. Data might be available from tests conducted in unusual dilution water (see sections IV.D and VI.D of this appendix), from chronic tests in which the concentrations were not measured (see section VI.B of this appendix), from tests with previously exposed organisms (see section II.F.3 of this appendix), and from tests on formulated mixtures or emulsifiable concentrates (see section II.D of this appendix). Such data might affect a criterion if the data were obtained with an important species, the test concentrations were measured, and the endpoint was biologically important.

X. Criterion

A. A criterion consists of two concentrations: the CMC and the Criterion Continuous Concentration (CCC).

B. The CMC is equal to one-half the FAV The CMC is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed briefly without resulting in an unacceptable effect.

C. The CCC is equal to the lowest of the FCV or the FPV (if available) unless other data (see section IX of this appendix) show that a lower value should be used. The CCC is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. If toxicity is related to a water quality characteristic, the CCC is obtained from the Final Chronic Equation or FPV (if available) that results in the lowest concentrations in the usual range of the water quality characteristic, unless other data (see section IX) show that a lower value should be used.

D. Round both the CMC and the CCC to two significant digits.

E. The criterion is stated as:

The procedures described in the Tier I methodology indicate that, except possibly where a commercially or recreationally important species is very sensitive, aquatic organisms should not be affected unacceptably if the four-day average concentration of (1) does not exceed (2) µg/L more than once every three years on the average and if the one-hour average concentration does not exceed (3) µg/L more than once every three years on the average. Where:

(1) = insert name of material
(2) = insert the CCC
(3) = insert the CMC

If the CMC averaging period of one hour or the CCC averaging period of four days is inappropriate for the pollutant, or if the once-in-three-year allowable excursion frequency is inappropriate for the pollutant or for the sites to which a criterion is applied, then the State may specify alternative averaging periods or frequencies. The choice of an alternative averaging period or frequency shall be justified by a scientifically defensible analysis demonstrating that the alternative values will protect the aquatic life uses of the water. Appropriate laboratory data and/or well-designed field biological surveys shall be submitted to EPA as justification for differing averaging periods and/or frequencies of exceedance.

XI. Final Review

A. The derivation of the criterion should be carefully reviewed by rechecking each step of the Guidance in this part. Items that should be especially checked are:

1. If unpublished data are used, are they well documented?
2. Are all required data available?
3. Is the range of acute values for any species greater than a factor of 10?
4. Is the range of SMAVs for any genus greater than a factor of 10?
5. Is there more than a factor of 10 difference between the four lowest GMAVs?
6. Are any of the lowest GMAVs questionable?
7. Is the FAV reasonable in comparison with the SMAVs and GMAVs?
8. For any commercially or recreationally important species of the Great Lakes System, is the geometric mean of the acute values from flow-through tests in which the concentrations of test material were measured lower than the FAV?
9. Are any of the chronic values used questionable?
10. Are any chronic values available for acutely sensitive species?
11. Is the range of acute-chronic ratios greater than a factor of 10?
12. Is the FCV reasonable in comparison with the available acute and chronic data?
13. Is the measured or predicted chronic value for any commercially or recreationally important species of the Great Lakes System below the FCV?
14. Are any of the other data important?
15. Do any data look like they might be outliers?
16. Are there any deviations from the Guidance in this part? Are they acceptable?

B. On the basis of all available pertinent laboratory and field information, determine if the criterion is consistent with sound scientific evidence. If it is not, another criterion, either higher or lower, shall be derived consistent with the Guidance in this part.

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XII. Secondary Acute Value

If all eight minimum data requirements for calculating an FAV using Tier I are not met, a Secondary Acute Value (SAV) for the waters of the Great Lakes System shall be calculated for a chemical as follows:

To calculate a SAV, the lowest GMAV in the database is divided by the Secondary Acute Factor (SAF) (Table A–1 of this appendix) corresponding to the number of satisfied minimum data requirements listed in the Tier I methodology (section III.B.1 of this appendix). (Requirements for definitions, data collection and data review, contained in sections I, II, and IV shall be applied to calculation of a SAV.) If all eight minimum data requirements are satisfied, a Tier I criterion calculation may be possible. In order to calculate a SAV, the database must contain, at a minimum, a genus mean acute value (GMAV) for one of the following three genera in the family Daphnidae—*Ceriodaphnia sp., Daphnia sp.*, or *Simocephalus sp.*

If appropriate, the SAV shall be made a function of a water quality characteristic in a manner similar to that described in Tier I.

XIII. Secondary Acute-Chronic Ratio

If three or more experimentally determined ACRs, meeting the data collection and review requirements of Section VI of this appendix, are available for the chemical, determine the FACR using the procedure described in Section VI. If fewer than three acceptable experimentally determined ACRs are available, use enough assumed ACRs of 18 so that the total number of ACRs equals three. Calculate the Secondary Acute-Chronic Ratio (SACR) as the geometric mean of the three ACRs. Thus, if no experimentally determined ACRs are available, the SACR is 18.

XIV. Secondary Chronic Value

Calculate the Secondary Chronic Value (SCV) using one of the following:

$$\text{A. } SCV = \frac{FAV}{SACR} \text{ (use FAV from Tier I)}$$

$$\text{B. } SCV = \frac{SAV}{FACR}$$

$$\text{C. } SCV = \frac{SAV}{SACR}$$

If appropriate, the SCV will be made a function of a water quality characteristic in a manner similar to that described in Tier I.

XV. Commercially or Recreationally Important Species

If for a commercially or recreationally important species of the Great Lakes System the geometric mean of the acute values or chronic values from flow-through tests in which the concentrations of the test materials were measured is lower than the calculated SAV or SCV, then that geometric mean must be used as the SAV or SCV instead of the calculated SAV or SCV.

XVI. Tier II Value

A. A Tier II value shall consist of two concentrations: the Secondary Maximum Concentration (SMC) and the Secondary Continuous Concentration (SCC).

B. The SMC is equal to one-half of the SAV.

C. The SCC is equal to the lowest of the SCV or the Final Plant Value, if available, unless other data (see section IX of this appendix) show that a lower value should be used.

If toxicity is related to a water quality characteristic, the SCC is obtained from the Secondary Chronic Equation or FPV, if available, that results in the lowest concentrations in the usual range of the water quality characteristic, unless other data (See section IX of this appendix) show that a lower value should be used.

D. Round both the SMC and the SCC to two significant digits.

E. The Tier II value is stated as:

The procedures described in the Tier II methodology indicate that, except possibly where a locally important species is very sensitive, aquatic organisms should not be affected unacceptably if the four-day average concentration of (1) does not exceed (2) µg/L more than once every three years on the average and if the one-hour average concentration does not exceed (3) µg/L more than once every three years on the average.

Where:

(1) = insert name of material
(2) = insert the SCC
(3) = insert the SMC

As discussed above, States and Tribes have the discretion to specify alternative averaging periods or frequencies (see section X.E. of this appendix).

XVII. Appropriate Modifications

On the basis of all available pertinent laboratory and field information, determine if the Tier II value is consistent with sound scientific evidence. If it is not, another value, either higher or lower, shall be derived consistent with the Guidance in this part.

TABLE A–1.— SECONDARY ACUTE FACTORS

Number of minimum data requirements satisfied	Adjustment factor
1	21.9
2	13.0
3	8.0
4	7.0
5	6.1
6	5.2
7	4.3

Appendix B to Part 132—Great Lakes Water Quality Initiative

Methodology for Deriving Bioaccumulation Factors

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this appendix.

I. Introduction

A. The purpose of this methodology is to describe procedures for deriving bioaccumulation factors (BAFs) to be used in the calculation of Great Lakes Water Quality Guidance (Guidance) human health Tier I criteria and Tier II values and wildlife Tier I criteria. A subset of the human health BAFs are also used to identify the chemicals that are considered bioaccumulative chemicals of concern (BCCs).

B. Bioaccumulation reflects uptake of a substance by aquatic organisms exposed to the substance through all routes (i.e., ambient water and food), as would occur in nature. Bioconcentration reflects uptake of a substance by aquatic organisms exposed to the substance only through the ambient water. Both BAFs and bioconcentration factors (BCFs) are proportionality constants that describe the relationship between the concentration of a substance in aquatic organisms and its concentration in the ambient water. For the Guidance in this part, BAFs, rather than BCFs, are used to calculate Tier I criteria for human health and wildlife and Tier II values for human health because they better account for the total exposure of aquatic organisms to chemicals.

C. For organic chemicals, baseline BAFs can be derived using four methods. Measured baseline BAFs are derived from field-measured BAFs; predicted baseline BAFs are derived using biota-sediment accumulation factors (BSAFs) or are derived by multiplying a laboratory-measured or predicted BCF by a food-chain multiplier (FCM). The lipid content of the aquatic organisms is used to account for partitioning of organic chemicals within organisms so that data from different tissues and species can be integrated. In addition, the baseline BAF is based on the concentration of freely dissolved organic chemicals in the ambient water to facilitate extrapolation from one water to another.

D. For inorganic chemicals, baseline BAFs can be derived using two of the four methods. Baseline BAFs are derived using either field-measured BAFs or by multiplying laboratory-measured BCFs by a FCM. For inorganic chemicals, BAFs are assumed to equal BCFs (i.e., the FCM is 1.0), unless chemical-specific biomagnification data support using a FCM other than 1.0.

E. Because both humans and wildlife consume fish from both trophic levels 3 and 4, two baseline BAFs are needed to calculate either a human health criterion or value or a wildlife criterion for a chemical. When appropriate, ingestion through consumption of invertebrates, plants, mammals, and birds in the diet of wildlife species to be protected may be taken into account.

II. Definitions

Baseline BAF. For organic chemicals, a BAF that is based on the concentration of freely dissolved chemical in the ambient water and takes into account the partitioning of the chemical within the organism; for inorganic chemicals, a BAF that is based on the wet weight of the tissue.

Baseline BCF. For organic chemicals, a BCF that is based on the concentration of freely dissolved chemical in the ambient water and takes into account the partitioning of the chemical within the organism; for inorganic chemicals, a BCF that is based on the wet weight of the tissue.

Bioaccumulation. The net accumulation of a substance by an organism as a result of uptake from all environmental sources.

Bioaccumulation factor (BAF). The ratio (in L/kg) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed to and the ratio does not change substantially over time.

Bioconcentration. The net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water through gill membranes or other external body surfaces.

Bioconcentration factor (BCF). The ratio (in L/kg) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through the water only and the ratio does not change substantially over time.

Biota-sediment accumulation factor (BSAF). The ratio (in kg of organic carbon/kg of lipid) of a substance's lipid-normalized concentration in tissue of an aquatic organism to its organic carbon-normalized concentration in surface sediment, in situations where the ratio does not change substantially over time, both the organism and its food are exposed, and the surface sediment is representative of average surface sediment in the vicinity of the organism.

Depuration. The loss of a substance from an organism as a result of any active or passive process.

Food-chain multiplier (FCM). The ratio of a BAF to an appropriate BCF.

Octanol-water partition coefficient (K_{OW}). The ration of the concentration of a substance in the n-octanol phase to its concentration in the aqueous phase in an equilibrated two-phase octanol-water system. For log K_{OW}, the log of the octanol-water partition coefficient is a base 10 logarithm.

Uptake. Acquisition of a substance from the environment by an organism as a result of any active or passive process.

III. Review and Selection of Data

A. *Data Sources.* Measured BAFs, BSAFs and BCFs are assembled from available sources including the following:

1. EPA Ambient Water Quality Criteria documents issued after January 1, 1980.
2. Published scientific literature.
3. Reports issued by EPA or other reliable sources.
4. Unpublished data.

One useful source of references is the Aquatic Toxicity Information Retrieval (AQUIRE) database.

B. *Field-Measured BAFs.* The following procedural and quality assurance requirements shall be met for field-measured BAFs:

1. The field studies used shall be limited to those conducted in the Great Lakes System with fish at or near the top of the aquatic food chain (i.e., in trophic levels 3 and/or 4).
2. The trophic level of the fish species shall be determined.
3. The site of the field study should not be so unique that the BAF cannot be extrapolated to other locations where the criteria and values will apply.
4. For organic chemicals, the percent lipid shall be either measured or reliably estimated for the tissue used in the determination of the BAF.
5. The concentration of the chemical in the water shall be measured in a way that can be related to particulate organic carbon (POC) and/or dissolved organic carbon (DOC) and should be relatively constant during the steady-state time period.
6. For organic chemicals with log K_{ow} greater than four, the concentrations of POC and DOC in the ambient water shall be either measured or reliably estimated.
7. For inorganic and organic chemicals, BAFs shall be used only if they are expressed on a wet weight basis; BAFs reported on a dry weight basis cannot be converted to wet weight unless a conversion factor is measured or reliably estimated for the tissue used in the determination of the BAF.

C. *Field-Measured BSAFs.* The following procedural and quality assurance requirements shall be met for field-measured BSAFs:

1. The field studies used shall be limited to those conducted in the Great Lakes System with fish at or near the top of the aquatic food chain (i.e., in trophic levels 3 and/or 4).
2. Samples of surface sediments (0–1 cm is ideal) shall be from locations in which there is net deposition of fine sediment and is representative of average surface sediment in the vicinity of the organism.
3. The K_{ow}s used shall be acceptable quality as described in section III.F below.
4. The site of the field study should not be so unique that the resulting BAF cannot be extrapolated to other locations where the criteria and values will apply.
5. The tropic level of the fish species shall be determined.
6. The percent lipid shall be either measured or reliably estimated for the tissue used in the determination of the BAF.

D. *Laboratory-Measured BCFs.* The following procedural and quality assurance requirements shall be met for laboratory-measured BCFs:

1. The test organism shall not be diseased, unhealthy, or adversely affected by the concentration of the chemical.
2. The total concentration of the chemical in the water shall be measured and should be relatively constant during the steady-state time period.
3. The organisms shall be exposed to the chemical using a flow-through or renewal procedure.
4. For organic chemicals, the percent lipid shall be either measured or reliably estimated for the tissue used in the determination of the BCF.
5. For organic chemicals with log K_{ow} greater than four, the concentrations of POC and DOC in the test solution shall be either measured or reliably estimated.
6. Laboratory-measured BCFs should be determined using fish species, but BCFs determined with molluscs and other invertebrates may be used with caution. For example, because invertebrates metabolize some chemicals less efficiently than vertebrates, a baseline BCF determined for such a chemical using invertebrates is expected to be higher than a comparable baseline BCF determined using fish.
7. If laboratory-measured BCFs increase or decrease as the concentration of the chemical increases in the test solutions in a bioconcentration test, the BCF measured at the lowest test concentration that is above concentrations existing in the control water shall be used (i.e., a BCF should be calculated from a control treatment). The concentrations of an inorganic chemical in a bioconcentration test should be greater than normal background levels and greater than levels required for normal nutrition of the test species if the chemical is a micronutrient, but below levels that adversely affect the species. Bioaccummulation of an inorganic chemical might be overestimated if concentrations are at or below normal background levels due to, for example, nutritional requirements of the test organisms.
8. For inorganic and organic chemicals, BCFs shall be used only if they are expressed on a wet weight basis. BCFs reported on a dry weight basis cannot be converted to wet weight unless a conversion factor is measured or reliably estimated for the tissue used in the determination of the BAF.
9. BCFs for organic chemicals may be based on measurement or radioactivity only when the BCF is intended to include metabolites or when there is confidence that there is no interference due to metabolites.
10. The calculation of the BCF must appropriately address growth dilution.
11. Other aspects of the methodology used should be similar to those described by ASTM (1990).

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E. *Predicted BCFs.* The following procedural and quality assurance requirements shall be met for predicted BCFs:

1. The K_{ow} used shall be of acceptable quality as described in section III.F below.

2. The predicted baseline BCF shall be calculated using the equation: predicted baseline BCF = K_{ow}

where:

K_{ow} = octanol-water partition coefficient.

F. *Octanol-Water Partition Coefficient (K_{ow}).* 1. The value of K_{ow} used for an organic chemical shall be determined by giving priority to the experimental and computational techniques used as follows:

Log K_{ow} < 4:

Priority	Technique
1	Slow-stir.
1	Generator-column.
1	Shake-flask.
2	Reverse-phase liquid chromatography on C18 chromatography packing with extrapolation to zero percent solvent.
3	Reverse-phase liquid chromatography on C18 chromatography packing without extrapolation to zero percent solvent.
4	Calculated by the CLOGP program.

Log K_{ow} > 4:

Priority	Technique
1	Slow Stir.
1	Generator-column.
2	Reverse-phase liquid chromatography on C18 chromatography packing with extrapolation to zero percent solvent.
3	Reverse-phase liquid chromatography on C18 chromatography packing without extrapolation to zero percent solvent.
4	Shake-flask.
5	Calculated by the CLOGP program.

2. The CLOGP program is a computer program available from Pomona College. A value of K_{ow} that seems to be different from the others should be considered an outlier and not used. The value of K_{ow} used for an organic chemical shall be the geometric mean of the available K_{ow}s with highest priority or can be calculated from the arithmetic mean of the available log K_{ow} with the highest priority. Because it is an intermediate value in the derivation of a BAF, the value used for the K_{ow} of a chemical should not be rounded to fewer than three significant digits and a value for log K_{ow} should not be rounded to fewer than three significant digits after the decimal point.

G. This methodology provides overall guidance for the derivation of BAFs, but it cannot cover all the decisions that must be made in the review and selection of acceptable data. Professional judgment is required throughout the process. A degree of uncertainty is associated with the determination of any BAF, BSAF, BCF or K_{ow}. The amount of uncertainty in a baseline BAF depends on both the quality of data available and the method used to derive the BAF.

H. Hereinafter in this methodology, the terms BAF, BSAF, BCF and K_{ow} refer to ones that are consistent with the procedural and quality assurance requirements given above.

IV. Four Methods for Deriving Baseline BAFs

Baseline BAFs shall be derived using the following four methods, which are listed from most preferred to least preferred:

A. A measured baseline BAF for an organic or inorganic chemical derived from a field study of acceptable quality.

B. A predicted baseline BAF for an organic chemical derived using field-measured BSAFs of acceptable quality.

C. A predicted baseline BAF for an organic or inorganic chemical derived from a BCF measured in a laboratory study of acceptable quality and a FCM.

D. A predicted baseline BAF for an organic chemical derived from a K_{ow} of acceptable quality and a FCM.

For comparative purposes, baseline BAFs should be derived for each chemical by as many of the four methods as available data allow.

V. Calculation of Baseline BAFs for Organic Chemicals

A. *Lipid Normalization.* 1. It is assumed that BAFs and BCFs for organic chemicals can be extrapolated on the basis of percent lipid from one tissue to another and from one aquatic species to another in most cases.

2. Because BAFs and BCFs for organic chemicals are related to the percent lipid, it does not make any difference whether the tissue sample is whole body or edible portion, but both the BAF (or BCF) and the percent lipid must be determined for the same tissue. The percent lipid of the tissue should be measured during the BAF or BCF study, but in some cases it can be reliably estimated from measurements on tissue from other organisms. If percent lipid is not reported for the test organisms in the original study, it may be obtained from the author; or, in the case of a laboratory study, lipid data for the same or a comparable laboratory population of test organisms that were used in the original study may be used.

3. The lipid-normalized concentration, C_l, of a chemical in tissue is defined using the following equation:

$$C_l = \frac{C_B}{f_l}$$

Where:

C_B=concentration of the organic chemical in the tissue of aquatic biota (either whole organism or specified tissue) (µg/g).

f_l=fraction of the tissue that is lipid.

B. *Bioavailability.* By definition, baseline BAFs and BCFs for organic chemicals, whether measured or predicted are based on the concentration of the chemical that is freely dissolved in the ambient water in order to account for bioavailability. For the purposes of this Guidance in this part, the relationship between the total concentration of the chemical in the water (i.e., that which is freely dissolved plus that which is sorbed to particulate organic carbon or to dissolved organic carbon) to the freely dissolved concentration of the chemical in the ambient water shall be calculated using the following equation:

$$C_w^{fd} = (f_{fd})(C_w^t)$$

Where:

C^{fd}_w=freely dissolved concentration of the organic chemical in the ambient water;

C^t_w=total concentration of the organic chemical in the ambient water;

f_{fd}=fraction of the total chemical in the ambient water that is freely dissolved.

The fraction of the total chemical in the ambient water that is freely dissolved, f_{fd}, shall be calculated using the following equation:

$$f_{fd} = \frac{1}{1 + \frac{(DOC)(K_{ow})}{10} + (POC)(K_{ow})}$$

Where:

DOC=concentration of dissolved organic carbon, kg of dissolved organic carbon/L of water.

K_{ow}=octanol-water partition coefficient of the chemical.

POC=concentration of particulate organic carbon, kg of particulate organic carbon/L of water.

C. *Food-Chain Multiplier.* In the absence of a field-measured BAF or a predicted BAF derived from a BSAF, a FCM shall be used to calculate the baseline BAF for trophic levels 3 and 4 from a laboratory-measured or predicted BCF. For an organic chemical, the FCM used shall be derived from Table B–1 using the chemical's log K_{OW} and linear interpolation. A FCM greater than 1.0 applies to most organic chemicals with a log K_{OW} of four or more. The trophic level used shall take into account the age or size of the fish species consumed by the human, avian or mammalian predator because, for some species of fish, the young are in trophic level 3 whereas the adults are in trophic level 4.

D. *Calculation of a Baseline BAF from a Field-Measured BAF.* A baseline BAF shall be calculated from a field-measured BAF of acceptable quality using the following equation:

$$\text{Baseline BAF} = \left[\frac{\text{Measured BAF}_T^t}{f_{fd}} - 1\right]\left[\frac{1}{f_l}\right]$$

Where:

BAF^t_T=BAF based on total concentration in tissue and water.

f_l=fraction of the tissue that is lipid.

f_{fd}=fraction of the total chemical that is freely dissolved in the ambient water.

The trophic level to which the baseline BAF applies is the same as the trophic level of the organisms used in the determination of the field-measured BAF. For each trophic level, a species mean measured baseline BAF shall be calculated as the geometric mean if more than one measured baseline BAF is available for a given species. For each trophic level, the geometric mean of the species mean measured baseline BAFs shall be calculated. If a baseline BAF based on a measured BAF is available for either trophic level 3 or 4, but not both, a measured baseline BAF for the other trophic level shall be calculated using the ratio of the FCMs that are obtained by linear interpolation from Table B–1 for the chemical.

E. *Calculation of a Baseline BAF from a Field-Measured BSAF.* 1. A baseline BAF for organic chemical "i" shall be calculated from a field-measured BSAF of acceptable quality using the following equation:

$$(\text{Baseline BAF})_i = (\text{Baseline BAF})_r \cdot \frac{(BSAF)_i \cdot (K_{ow})_i}{(BSAF)_r \cdot (K_{ow})_r}$$

Where:

$(BSAF)_i$=BSAF for chemical "i".

$(BSAF)_r$=BSAF for the reference chemical "r".

$(K_{OW})_i$=octanol-water partition coefficient for chemical "i".

$(K_{OW})_r$=octanol-water partition coefficient for the reference chemical "r".

2. A BSAF shall be calculated using the following equation:

$$BSAF = \frac{C_l}{C_{SOC}}$$

Where:

C_l=the lipid-normalized concentration of the chemical in tissue.

C_{SOC}=the organic carbon-normalized concentration of the chemical in sediment.

3. The organic carbon-normalized concentration of a chemical in sediment, C_{SOC}, shall be calculated using the following equation:

$$C_{SOC} = \frac{C_S}{f_{OC}}$$

Where:

C_S=concentration of chemical in sediment (µg/g sediment).

f_{OC}=fraction of the sediment that is organic carbon.

4. Predicting BAFs from BSAFs requires data from a steady-state (or near steady-state) condition between sediment and ambient water for both a reference chemical "r" with a field-measured BAF_l^{fd} and other chemicals "n=i" for which BSAFs are to be determined.

5. The trophic level to which the baseline BAF applies is the same as the trophic level of the organisms used in the determination of the BSAF. For each trophic level, a species mean baseline BAF shall be calculated as the geometric mean if more than one baseline BAF is predicted from BSAFs for a given species. For each trophic level, the geometric mean of the species mean baseline BAFs derived using BSAFs shall be calculated.

6. If a baseline BAF based on a measured BSAF is available for either trophic level 3 or 4, but not both, a baseline BAF for the other trophic level shall be calculated using the ratio of the FCMs that are obtained by linear interpolation from Table B–1 for the chemical.

F. *Calculation of a Baseline BAF from a Laboratory-Measured BCF.* A baseline BAF for trophic level 3 and a baseline BAF for trophic level 4 shall be calculated from a laboratory-measured BCF of acceptable quality and a FCM using the following equation:

$$\text{Baseline BAF} = (FCM)\left[\frac{\text{Measured BCF}_T^t}{f_{fd}} - 1\right]\left[\frac{1}{f_l}\right]$$

Where:

BCF^t_T=BCF based on total concentration in tissue and water.

f_l=fraction of the tissue that is lipid.

f_{fd}=fraction of the total chemical in the test water that is freely dissolved.

FCM=the food-chain multiplier obtained from Table B–1 by linear interpolation for trophic level 3 or 4, as necessary.

For each trophic level, a species mean baseline BAF shall be calculated as the geometric mean if more than one baseline BAF is predicted from laboratory-measured BCFs for a given species. For each trophic level, the geometric mean of the species mean baseline BAFs based on laboratory-measured BCFs shall be calculated.

G. *Calculation of a Baseline BAF from an Octanol-Water Partition Coefficient.* A baseline BAF for trophic level 3 and a baseline BAF for trophic level 4 shall be calculated from a K_{OW} of acceptable quality and a FCM using the following equation:

Baseline BAF=(FCM) (predicted baseline BCF)=(FCM) (K_{OW})

Where:

FCM=the food-chain multiplier obtained from Table B–1 by linear interpolation for trophic level 3 or 4, as necessary.

K_{OW}=octanol-water partition coefficient.

VI. Human Health and Wildlife BAFs for Organic Chemicals

A. To calculate human health and wildlife BAFs for an organic chemical, the K_{OW} of the

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chemical shall be used with a POC concentration of 0.00000004 kg/L and a DOC concentration of 0.000002 kg/L to yield the fraction freely dissolved:

$$f_{fd} = \frac{1}{1 + \frac{(DOC)(K_{ow})}{10} + (POC)(K_{ow})}$$

$$= \frac{1}{1 + \frac{(0.000002\ kg/L)(K_{ow})}{10} + (0.00000004\ kg/L)(K_{ow})}$$

$$= \frac{1}{1 + (0.00000024\ kg/L)(K_{ow})}$$

B. The human health BAFs for an organic chemical shall be calculated using the following equations:

For trophic level 3:

$$\text{Human Health } BAF_{TL3}^{HH} = [(\text{baseline BAF})(0.0182) + 1](f_{fd})$$

For trophic level 4:

$$\text{Human Health } BAF_{TL4}^{HH} = [(\text{baseline BAF})(0.0310) + 1](f_{fd})$$

Where:

0.0182 and 0.0310 are the standardized fraction lipid values for trophic levels 3 and 4, respectively, that are used to derive human health criteria and values for the GLI.

C. The wildlife BAFs for an organic chemical shall be calculated using the following equations:

For trophic level 3:

$$\text{Wildlife } BAF_{TL3}^{WL} = [(\text{baseline BAF})(0.0646) + 1](f_{fd})$$

For trophic level 4:

$$\text{Wildlife } BAF_{TL4}^{WL} = [(\text{baseline BAF})(0.1031) + 1](f_{fd})$$

Where:

0.0646 and 0.1031 are the standardized fraction lipid values for trophic levels 3 and 4, respectively, that are used to derive wildlife criteria for the GLI.

VII. Human Health and Wildlife BAFs for Inorganic Chemicals

A. For inorganic chemicals, the baseline BAFs for trophic levels 3 and 4 are both assumed to equal the BCF determined for the chemical with fish, i.e., the FCM is assumed to be 1 for both trophic levels 3 and 4. However, a FCM greater than 1 might be applicable to some metals, such as mercury, if, for example, an organometallic form of the metal biomagnifies.

B. *BAFs for Human Health Criteria and Values.*

1. Measured BAFs and BCFs used to determine human health BAFs for inorganic chemicals shall be based on edible tissue (e.g., muscle) of freshwater fish unless it is demonstrated that whole-body BAFs or BCFs are similar to edible-tissue BAFs or BCFs. BCFs and BAFs based on measurements of aquatic plants and invertebrates should not be used in the derivation of human health criteria and values.

2. If one or more field-measured baseline BAFs for an inorganic chemical are available from studies conducted in the Great Lakes System with the muscle of fish:

a. For each trophic level, a species mean measured baseline BAF shall be calculated as the geometric mean if more than one measured BAF is available for a given species; and

b. For each trophic level, the geometric mean of the species mean measured baseline BAFs shall be used as the human health BAF for that chemical.

3. If an acceptable measured baseline BAF is not available for an inorganic chemical and one or more acceptable edible-portion laboratory-measured BCFs are available for the chemical, a predicted baseline BAF shall be calculated by multiplying the geometric mean of the BCFs times a FCM. The FCM will be 1.0 unless chemical-specific biomagnification data support using a multiplier other than 1.0. The predicted baseline BAF shall be used as the human health BAF for that chemical.

C. *BAFs for Wildlife Criteria.*

1. Measured BAFs and BCFs used to determine wildlife BAFs for inorganic chemicals shall be based on whole-body freshwater fish and invertebrate data unless it is demonstrated that edible-tissue BAFs or BCFs are similar to whole-body BAFs or BCFs.

2. If one or more field-measured baseline BAFs for an inorganic chemical are available from studies conducted in the Great Lakes System with whole body of fish or invertebrates:

2. For each trophic level, a species mean measured baseline BAF shall be calculated as the geometric mean if more than one measured BAF is available for a given species.

b. For each trophic level, the geometric mean of the species mean measured baseline BAFs shall be used as the wildlife BAF for that chemical.

3. If an acceptable measured baseline BAF is not available for an inorganic chemical and one or more acceptable whole-body laboratory-measured BCFs are available for the chemical, a predicted baseline BAF shall be calculated by multiplying the geometric mean of the BCFs times a FCM. The FCM will be 1.0 unless chemical-specific biomagnification data support using a multiplier other than 1.0. The predicted baseline BAF shall be used as the wildlife BAF for that chemical.

VIII. Final Review

For both organic and inorganic chemicals, human health and wildlife BAFs for both trophic levels shall be reviewed for consistency with all available data concerning the bioaccumulation, bioconcentration, and metabolism of the chemical. For example, information concerning octanol-water partitioning, molecular size, or other physicochemical properties that might enhance or inhibit bioaccumulation should be considered for organic chemicals. BAFs derived in accordance with this methodology should be modified if changes are justified by available data.

IX. Literature Cited

ASTM. 1990. Standard Practice for Conducting Bioconcentration Tests with Fishes and Saltwater Bivalve Molluscs. Standard E 1022. American Society for Testing and Materials, Philadelphia, PA.

TABLE B–1.—FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4

Log K_{ow}	Trophic level 2	Trophic[1] level 3	Trophic level 4
2.0	1.000	1.005	1.000
2.5	1.000	1.010	1.002
3.0	1.000	1.028	1.007
3.1	1.000	1.034	1.007
3.2	1.000	1.042	1.009
3.3	1.000	1.053	1.012
3.4	1.000	1.067	1.014
3.5	1.000	1.083	1.019
3.6	1.000	1.103	1.023
3.7	1.000	1.128	1.033
3.8	1.000	1.161	1.042
3.9	1.000	1.202	1.054
4.0	1.000	1.253	1.072
4.1	1.000	1.315	1.096
4.2	1.000	1.380	1.130
4.3	1.000	1.491	1.178
4.4	1.000	1.614	1.242
4.5	1.000	1.766	1.334
4.6	1.000	1.950	1.459
4.7	1.000	2.175	1.633
4.8	1.000	2.452	1.871
4.9	1.000	2.780	2.193
5.0	1.000	3.181	2.612
5.1	1.000	3.643	3.162
5.2	1.000	4.188	3.873
5.3	1.000	4.803	4.742
5.4	1.000	5.502	5.821
5.5	1.000	6.266	7.079
5.6	1.000	7.096	8.551
5.7	1.000	7.962	10.209
5.8	1.000	8.841	12.050
5.9	1.000	9.716	13.964
6.0	1.000	10.556	15.996
6.1	1.000	11.337	17.783
6.2	1.000	12.064	19.907
6.3	1.000	12.691	21.677
6.4	1.000	13.228	23.281
6.5	1.000	13.662	24.604
6.6	1.000	13.980	25.645
6.7	1.000	14.223	26.363
6.8	1.000	14.355	26.689
6.9	1.000	14.388	26.669
7.0	1.000	14.305	26.242
7.1	1.000	14.142	25.458
7.2	1.000	13.852	24.322
7.3	1.000	13.474	22.856
7.4	1.000	12.987	21.038
7.5	1.000	12.517	18.967
7.6	1.000	11.708	16.749
7.7	1.000	10.914	14.388
7.8	1.000	10.069	12.050
7.9	1.000	9.162	9.840
8.0	1.000	8.222	7.798
8.1	1.000	7.278	6.012

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TABLE B–1.—FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4—Continued

Log K_{ow}	Trophic level 2	Trophic[1] level 3	Trophic level 4
8.2	1.000	6.361	4.519
8.3	1.000	5.489	3.311
8.4	1.000	4.683	2.371
8.5	1.000	3.949	1.663
8.6	1.000	3.296	1.146
8.7	1.000	2.732	0.778
8.8	1.000	2.246	0.521
8.9	1.000	1.837	0.345
9.0	1.000	1.493	0.226

[1] The FCMs for trophic level 3 are the geometric mean of the FCMs for sculpin and alewife.

Appendix C to Part 132—Great Lakes Water Quality Initiative Methodologies for Development of Human Health Criteria and Values

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this appendix.

I. Introduction

Great Lakes States and Tribes shall adopt provisions consistent with this appendix C to ensure protection of human health.

A. *Goal.* The goal of the human health criteria for the Great Lakes System is the protection of humans from unacceptable exposure to toxicants via consumption of contaminated fish and drinking water and from ingesting water as a result of participation in water-oriented recreational activities.

B. *Definitions.*

Acceptable daily exposure (ADE). An estimate of the maximum daily dose of a substance which is not expected to result in adverse noncancer effects to the general human population, including sensitive subgroups.

Adverse effect. Any deleterious effect to organisms due to exposure to a substance. This includes effects which are or may become debilitating, harmful or toxic to the normal functions of the organism, but does not include non-harmful effects such as tissue discoloration alone or the induction of enzymes involved in the metabolism of the substance.

Carcinogen. A substance which causes an increased incidence of benign or malignant neoplasms, or substantially decreases the time to develop neoplasms, in animals or humans. The classification of carcinogens is discussed in section II.A of appendix C to part 132.

Human cancer criterion (HCC). A Human Cancer Value (HCV) for a pollutant that meets the minimum data requirements for Tier I specified in appendix C.

Human cancer value (HCV). The maximum ambient water concentration of a substance at which a lifetime of exposure from either: drinking the water, consuming fish from the water, and water-related recreation activities; or consuming fish from the water, and water-related recreation activities, will represent a plausible upper-bound risk of contracting cancer of one in 100,000 using the exposure assumptions specified in the Methodologies for the Development of Human Health Criteria and Values in appendix C of this part.

Human noncancer criterion (HNC). A Human Noncancer Value (HNV) for a pollutant that meets the minimum data requirements for Tier I specified in appendix C of this part.

Human noncancer value (HNV). The maximum ambient water concentration of a substance at which adverse noncancer effects are not likely to occur in the human population from lifetime exposure via either: drinking the water, consuming fish from the water, and water-related recreation activities; or consuming fish from the water, and water-related recreation activities using the Methodologies for the Development of Human Health criteria and Values in appendix C of this part.

Linearized multi-stage model. A conservative mathematical model for cancer risk assessment. This model fits linear dose-response curves to low doses. It is consistent with a no-threshold model of carcinogenesis, i.e., exposure to even a very small amount of the substance is assumed to produce a finite increased risk of cancer.

Lowest observed adverse effect level (LOAEL). The lowest tested dose or concentration of a substance which resulted in an observed adverse effect in exposed test organisms when all higher doses or concentrations resulted in the same or more severe effects.

No observed adverse effect level (NOAEL). The highest tested dose or concentration of a substance which resulted in no observed adverse effect in exposed test organisms where higher doses or concentrations resulted in an adverse effect.

Quantitative structure activity relationship (QSAR) or structure activity relationship (SAR). A mathematical relationship between a property (activity) of a chemical and a number of descriptors of the chemical. These descriptors are chemical or physical characteristics obtained experimentally or predicted from the structure of the chemical.

Relative source contribution (RSC). The factor (percentage) used in calculating an HNV or HNC to account for all sources of exposure to a contaminant. The RSC reflects the percent of total exposure which can be attributed to surface water through water intake and fish consumption.

Risk associated dose (RAD). A dose of a known or presumed carcinogenic substance in (mg/kg/day) which, over a lifetime of exposure, is estimated to be associated with a plausible upper bound incremental cancer risk equal to one in 100,000.

Slope factor. Also known as q_1^*, slope factor is the incremental rate of cancer development calculated through use of a linearized multistage model or other appropriate model. It is expressed in (mg/kg/day) of exposure to the chemical in question.

Threshold effect. An effect of a substance for which there is a theoretical or empirically established dose or concentration below which the effect does not occur.

Uncertainty factor (UF). One of several numeric factors used in operationally deriving criteria from experimental data to account for the quality or quantity of the available data.

C. *Level of Protection.* The criteria developed shall provide a level of protection likely to be without appreciable risk of carcinogenic and/or noncarcinogenic effects. Criteria are a function of the level of designated risk or no adverse effect estimation, selection of data and exposure assumptions. Ambient criteria for single carcinogens shall not be set at a level representing a lifetime upper-bound incremental risk greater than one in 100,000 of developing cancer using the hazard assessment techniques and exposure assumptions described herein. Criteria affording protection from noncarcinogenic effects shall be established at levels that, taking into account uncertainties, are considered likely to be without an appreciable risk of adverse human health effects (i.e., acute, subchronic and chronic toxicity including reproductive and developmental effects) during a lifetime of exposure, using the risk assessment techniques and exposure assumptions described herein.

D. *Two-tiered Classification.* Chemical concentration levels in surface water protective of human health shall be derived based on either a Tier I or Tier II classification. The two Tiers are primarily distinguished by the amount of toxicity data available for deriving the concentration levels and the quantity and quality of data on bioaccumulation.

II. Minimum Data Requirements

The best available toxicity data on the adverse health effects of a chemical and the best data on bioaccumulation factors shall be used when developing human health Tier I criteria or Tier II values. The best available toxicity data shall include data from well-conducted epidemiologic and/or animal studies which provide, in the case of carcinogens, an adequate weight of evidence of potential human carcinogenicity and, in the case of noncarcinogens, a dose-response relationship involving critical effects biologically relevant to humans. Such information should be obtained from the EPA Integrated Risk Information System (IRIS) database, the scientific literature, and other informational databases, studies and/or reports containing adverse health effects data of adequate quality for use in this procedure. Strong consideration shall be given to the most currently available guidance provided by IRIS in deriving criteria or values, supplemented with any recent data not incorporated into IRIS. When deviations from IRIS are anticipated or considered necessary, it is strongly recommended that such actions be communicated to the EPA Reference Dose (RfD) and/or the Cancer Risk Assessment Verification Endeavor (CRAVE) workgroup immediately. The best available bioaccumulation data shall include data from field studies and well-conducted laboratory studies.

A. *Carcinogens.* Tier I criteria and Tier II values shall be derived using the methodologies described in section III.A of this appendix when there is adequate evidence of potential human carcinogenic effects for a chemical. It is strongly recommended that the EPA classification system for chemical carcinogens, which is described in the 1986 EPA Guidelines for Carcinogenic Risk Assessment (U.S. EPA, 1986), or future modifications thereto, be used in determining whether adequate evidence of potential carcinogenic effects exists. Carcinogens are classified, depending on the weight of evidence, as either human carcinogens, probable human carcinogens, or possible human carcinogens. The human evidence is considered inadequate and therefore the chemical cannot be classified as a human carcinogen, if one of two conditions exists: (a) there are few pertinent data, or (b) the available studies, while showing evidence of association, do not exclude chance, bias, or confounding and therefore a casual interpretation is not credible. The animal evidence is considered inadequate, and therefore the chemical cannot be classified as a probable or possible human carcinogen, when, because of major qualitative or quantitative limitations, the evidence cannot be interpreted as showing either the presence or absence of a carcinogenic effect.

Chemicals are described as "human carcinogens" when there is sufficient evidence from epidemiological studies to support a causal association between exposure to the chemicals and cancer. Chemicals described as "probable human carcinogens" include chemicals for which the weight of evidence of human carcinogenicity based on epidemiological studies is limited. Limited human evidence is that which indicates that a causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding, cannot adequately be excluded. Probable human carcinogens are also agents for which there is sufficient evidence from animal studies and for which there is inadequate evidence or no data from epidemiologic studies. Sufficient animal evidence is data which indicates that there is an increased incidence of malignant tumors or combined malignant and benign tumors: (a) in multiple species or strains; (b) in multiple experiments (e.g., with different routes of administration or using different dose levels); or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset. Additional evidence may be provided by data on dose-response effects, as well as information from short-term tests (such as mutagenicity/genotoxicity tests which help determine whether the chemical interacts directly with DNA) or on chemical structure, metabolism or mode of action.

"Possible human carcinogens" are chemicals with limited evidence of carcinogenicity in animals in the absence of human data. Limited animal evidence is defined as data which suggests a carcinogenic effect but are limited because: (a) The studies involve a single species, strain, or experiment and do not meet criteria for sufficient evidence (see preceding paragraph); or (b) the experiments are restricted by inadequate dosage levels, inadequate duration of exposure to the agent, inadequate period of follow-up, poor survival, too few animals, or inadequate reporting; or (c) the studies indicate an increase in the incidence of benign tumors only. More specifically, this group can include a wide variety of evidence, e.g., (a) a malignant tumor response in a single well-conducted experiment that does not meet conditions for sufficient evidence, (b) tumor response of marginal statistical significance in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) response of marginal statistical significance in a tissue known to have a high or variable background rate.

1. *Tier I:* Weight of evidence of potential human carcinogenic effects sufficient to derive a Tier I HCC shall generally include human carcinogens and can include, on a case-by-case basis, possible human carcinogens if studies have been well-conducted albeit based on limited evidence, when compared to studies used in classifying human and probable human carcinogens. The decision to use data on a possible human carcinogen for deriving Tier I criteria shall be a case-by-case determination. In determining whether to derive a Tier I HCC, additional evidence that shall be considered includes but is not limited to available information on mode of action, such as mutagenicity/genotoxicity (determinations of whether the chemical interacts directly with DNA), structure activity, and metabolism.

2. *Tier II:* Weight of evidence of possible human carcinogenic effects sufficient to derive a Tier II human cancer value shall include those possible human carcinogens for which there are at a minimum, data sufficient for quantitative risk assessment, but for which data are inadequate for Tier I criterion development due to a tumor response of marginal statistical significance or inability to derive a strong dose-response relationship. In determining whether to derive Tier II human cancer values, additional evidence that shall be considered includes but is not limited to available information on mode of action such as mutagenicity/genotoxicity (determinations of whether the chemical interacts directly with DNA), structure activity and metabolism. As with the use of data on possible human carcinogens in developing Tier I criteria, the decision to use data on possible human carcinogens to derive Tier II values shall be made on a case-by-case basis.

B. *Noncarcinogens.* All available toxicity data shall be evaluated considering the full range of possible health effects of a chemical, i.e., acute/subacute, chronic/subchronic and reproductive/developmental effects, in order to best describe the dose-response relationship of the chemical, and to calculate human noncancer criteria and values which will protect against the most sensitive endpoint(s) of toxicity. Although it is desirable to have an extensive database which considers a wide range of possible adverse effects, this type of data exists for a very limited number of chemicals. For many others, there is a range in quality and quantity of data available. To assure minimum reliability of criteria and values, it is necessary to establish a minimum database with which to develop Tier I criteria or Tier II values. The following represent the minimum data sets necessary for this procedure.

1. *Tier I:* The minimum data set sufficient to derive a Tier I human HNC shall include at least one well-conducted epidemiologic study or animal study. A well-conducted epidemiologic study for a Tier I HNC must quantify exposure level(s) and demonstrate positive association between exposure to a chemical and adverse effect(s) in humans. A well-conducted study in animals must demonstrate a dose response relationship involving one or more critical effect(s) biologically relevant to humans. (For example, study results from an animal whose pharmacokinetics and toxicokinetics match those of a human would be considered most biologically relevant.) Ideally, the duration of a study should span multiple generations of exposed test species or at least a major portion of the lifespan of one generation. This type of data is currently very limited. By the use of uncertainty adjustments, shorter term studies (such as 90-day subchronic studies) with evaluation of more limited effect(s) may be used to extrapolate to longer exposures or to account for a variety of adverse effects. For Tier I criteria developed pursuant to this procedure, such a limited study must be conducted for at least 90 days in rodents or 10 percent of the lifespan of other appropriate test species and demonstrate a no observable adverse effect level (NOAEL). Chronic studies of one year or longer in rodents or 50 percent of the lifespan or greater in other appropriate test species that demonstrate a lowest observable adverse effect level (LOAEL) may be sufficient for use in Tier I criterion derivation if the effects observed at the LOAEL were relatively mild and reversible as compared to

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effects at higher doses. This does not preclude the use of a LOAEL from a study (of chronic duration) with only one or two doses if the effects observed appear minimal when compared to effect levels observed at higher doses in other studies.

2. *Tier II:* When the minimum data for deriving Tier I criteria are not available to meet the Tier I data requirements, a more limited database may be considered for deriving Tier II values. As with Tier I criteria, all available data shall be considered and ideally should address a range of adverse health effects with exposure over a substantial portion of the lifespan (or multiple generations) of the test species. When such data are lacking it may be necessary to rely on less extensive data in order to establish a Tier II value. With the use of appropriate uncertainty factors to account for a less extensive database, the minimum data sufficient to derive a Tier II value shall include a NOAEL from at least one well-conducted short-term repeated dose study. This study shall be of at least 28 days duration, in animals demonstrating a dose-response, and involving effects biologically relevant to humans. Data from studies of longer duration (greater than 28 days) and LOAELs from such studies (greater than 28 days) may be more appropriate in some cases for derivation of Tier II values. Use of a LOAEL should be based on consideration of the following information: severity of effect, quality of the study and duration of the study.

C. *Bioaccumulation factors (BAFs).*

1. *Tier I for Carcinogens and Noncarcinogens:* To be considered a Tier I cancer or noncancer human health criterion, along with satisfying the minimum toxicity data requirements of sections II.A.1 and II.B.1 of this appendix, a chemical must have the following minimum bioaccumulation data. For all organic chemicals either: (a) a field-measured BAF; (b) a BAF derived using the BSAF methodology; or (c) a chemical with a BAF less than 125 regardless of how the BAF was derived. For all inorganic chemicals, including organometals such as mercury, either: (a) a field-measured BAF or (b) a laboratory-measured BCF.

2. *Tier II for Carcinogens and Noncarcinogens:* A chemical is considered a Tier II cancer or noncancer human health value if it does not meet either the minimum toxicity data requirements of sections II.A.1 and II.B.1 of this appendix or the minimum bioaccumulation data requirements of section II.C.1 of this appendix.

III. Principles for Development of Tier I Criteria or Tier II Values

The fundamental components of the procedure to calculate Tier I criteria or Tier II values are the same. However, certain of the aspects of the procedure designed to account for short-duration studies or other limitations in data are more likely to be relevant in deriving Tier II values than Tier I criteria.

A. *Carcinogens.*

1. A non-threshold mechanism of carcinogenesis shall be assumed unless biological data adequately demonstrate the existence of a threshold on a chemical-specific basis.

2. All appropriate human epidemiologic data and animal cancer bioassay data shall be considered. Data specific to an environmentally appropriate route of exposure shall be used. Oral exposure should be used preferentially over dermal and inhalation since, in most cases, the exposure routes of greatest concern are fish consumption and drinking water/incidental ingestion. The risk associated dose shall be set at a level corresponding to an incremental cancer risk of one in 100,000. If acceptable human epidemiologic data are available for a chemical, it shall be used to derive the risk associated dose. If acceptable human epidemiologic data are not available, the risk associated dose shall be derived from available animal bioassay data. Data from a species that is considered most biologically relevant to humans (i.e., responds most like humans) is preferred where all other considerations regarding quality of data are equal. In the absence of data to distinguish the most relevant species, data from the most sensitive species tested, i.e., the species showing a carcinogenic effect at the lowest administered dose, shall generally be used.

3. When animal bioassay data are used and a non-threshold mechanism of carcinogenicity is assumed, the data are fitted to a linearized multistage computer model (e.g., Global '86 or equivalent model). Global '86 is the linearized multistage model, derived by Howe, Crump and Van Landingham (1986), which EPA uses to determine cancer potencies. The upper-bound 95 percent confidence limit on risk (or, the lower 95 percent confidence limit on dose) at the one in 100,000 risk level shall be used to calculate a risk associated dose (RAD). Other models, including modifications or variations of the linear multistage model which are more appropriate to the available data may be used where scientifically justified.

4. If the duration of the study is significantly less than the natural lifespan of the test animal, the slope may be adjusted on a case-by-case basis to compensate for latent tumors which were not expressed (e.g., U.S. EPA, 1980) In the absence of alternative approaches which compensate for study durations significantly less than lifetime, the permitting authority may use the process described in the 1980 National Guidelines (see 45 FR 79352).

5. A species scaling factor shall be used to account for differences between test species and humans. It shall be assumed that milligrams per surface area per day is an equivalent dose between species (U.S. EPA, 1986). All doses presented in mg/kg bodyweight will be converted to an equivalent surface area dose by raising the mg/kg dose to the 2/3 power. However, if adequate pharmacokinetic and metabolism studies are available, these data may be factored into the adjustment for species differences on a case-by-case basis.

6. Additional data selection and adjustment decisions must also be made in the process of quantifying risk. Consideration must be given to tumor selection for modeling, e.g., pooling estimates for multiple tumor types and identifying and combining benign and malignant tumors. All doses shall be adjusted to give an average daily dose over the study duration. Adjustments in the rate of tumor response must be made for early mortality in test species. The goodness-of-fit of the model to the data must also be assessed.

7. When a linear, non-threshold dose response relationship is assumed, the RAD shall be calculated using the following equation:

$$RAD = \frac{0.00001}{q_1^*}$$

Where:

RAD=risk associated dose in milligrams of toxicant per kilogram body weight per day (mg/kg/day).

0.00001 (1×10^{-5})=incremental risk of developing cancer equal to one in 100,000.

q_1^*=slope factor (mg/kg/day)$^{-1}$

8. If human epidemiologic data and/or other biological data (animal) indicate that a chemical causes cancer via a threshold mechanism, the risk associated dose may, on a case-by-case basis, be calculated using a method which assumes a threshold mechanism is operative.

B. *Noncarcinogens.*

1. Noncarcinogens shall generally be assumed to have a threshold dose or concentration below which no adverse effects should be observed. Therefore, the Tier I criterion or Tier II value is the maximum water concentration of a substance at or below which a lifetime exposure from drinking the water, consuming fish caught in the water, and ingesting water as a result of participating in water-related recreation activities is likely to be without appreciable risk of deleterious effects.

For some noncarcinogens, there may not be a threshold dose below which no adverse effects should be observed. Chemicals acting as genotoxic teratogens and germline mutagens are thought to possibly produce reproductive and/or developmental effects via a genetically linked mechanism which may have no threshold. Other chemicals also may not demonstrate a threshold. Criteria for these types of chemicals will be established on a case-by-case basis using appropriate assumptions reflecting the likelihood that no threshold exists.

2. All appropriate human and animal toxicologic data shall be reviewed and evaluated. To the maximum extent possible, data most specific to the environmentally relevant route of exposure shall be used. Oral exposure data should be used preferentially over dermal and inhalation since, in most cases, the exposure routes of greatest concern are fish consumption and drinking water/incidental ingestion. When acceptable human data are not available (e.g., well-conducted epidemiologic studies), animal data from species most biologically relevant to humans shall be used. In the absence of data to distinguish the most relevant species, data from the most sensitive animal species tested, i.e., the species showing a toxic effect at the lowest administered dose (given a relevant route of exposure), should generally be used.

3. Minimum data requirements are specified in section II.B of this appendix. The experimental exposure level representing the highest level tested at which no adverse effects were demonstrated (NOAEL) from studies satisfying the provisions of section II.B of this appendix shall be used for criteria calculations. In the absence of a NOAEL, the LOAEL from studies satisfying the provisions of section II.B of this appendix may be used if it is based on relatively mild and reversible effects.

4. Uncertainty factors shall be used to account for the uncertainties in predicting acceptable dose levels for the general human population based upon experimental animal data or limited human data.

a. An uncertainty factor of 10 shall generally be used when extrapolating from valid experimental results from studies on prolonged exposure to average healthy humans. This 10-fold factor is used to protect sensitive members of the human population.

b. An uncertainty factor of 100 shall generally be used when extrapolating from valid results of long-term studies on experimental animals when results of studies of human exposure are not available or are inadequate. In comparison to a, above, this represents an additional 10-fold uncertainty factor in extrapolating data from the average animal to the average human.

c. An uncertainty factor of up to 1000 shall generally be used when extrapolating from animal studies for which the exposure duration is less than chronic, but greater than subchronic (e.g., 90 days or more in length), or when other significant deficiencies in study quality are present, and when useful long-term human data are not available. In comparison to b, above, this represents an additional UF of up to 10-fold for less than chronic, but greater than subchronic, studies.

d. An UF of up to 3000 shall generally be used when extrapolating from animal studies for which the exposure duration is less than subchronic (e.g., 28 days). In comparison to b above, this represents an additional UF of up to 30-fold for less than subchronic studies (e.g., 28-day). The level of additional uncertainty applied for less than chronic exposures depends on the duration of the study used relative to the lifetime of the experimental animal.

e. An additional UF of between one and ten may be used when deriving a criterion from a LOAEL. This UF accounts for the lack of an identifiable NOAEL. The level of additional uncertainty applied may depend upon the severity and the incidence of the observed adverse effect.

f. An additional UF of between one and ten may be applied when there are limited effects data or incomplete sub-acute or chronic toxicity data (e.g., reproductive/developmental data). The level of quality and quantity of the experimental data available as well as structure-activity relationships may be used to determine the factor selected.

g. When deriving an UF in developing a Tier I criterion or Tier II value, the total uncertainty, as calculated following the guidance of sections 4.a through f, cited above, shall not exceed 10,000 for Tier I criteria and 30,000 for Tier II values.

5. All study results shall be converted, as necessary, to the standard unit for acceptable daily exposure of milligrams of toxicant per kilogram of body weight per day (mg/kg/day). Doses shall be adjusted for continuous exposure (i.e., seven days/week, 24 hours/day, etc.).

C. *Criteria and Value Derivation.*

1. *Standard Exposure Assumptions.* The following represent the standard exposure assumptions used to calculate Tier I criteria and Tier II values for carcinogens and noncarcinogens. Higher levels of exposure may be assumed by States and Tribes pursuant to Clean Water Act (CWA) section 510, or where appropriate in deriving site-specific criteria pursuant to procedure 1 in appendix F to part 132.

BW = body weight of an average human (BW = 70kg).

WC_d = per capita water consumption (both drinking and incidental exposure) for surface waters classified as public water supplies = two liters/day.

—or—

WC_r = per capita incidental daily water ingestion for surface waters not used as human drinking water sources = 0.01 liters/day.

FC = per capita daily consumption of regionally caught freshwater fish = 0.015kg/day (0.0036 kg/day for trophic level 3 and 0.0114 kg/day for trophic level 4).

BAF = bioaccumulation factor for trophic level 3 and trophic level 4, as derived using the BAF methodology in appendix B to part 132.

2. *Carcinogens.* The Tier I human cancer criteria or Tier II values shall be calculated as follows:

$$HCV = \frac{RAD \times BW}{WC + \left[\left(FC_{TL3} \times BAF^{HH}_{TL3}\right) + \left(FC_{TL4} \times BAF^{HH}_{TL4}\right)\right]}$$

Where:

HCV=Human Cancer Value in milligrams per liter (mg/L).

RAD=Risk associated dose in milligrams toxicant per kilogram body weight per day (mg/kg/day) that is associated with a lifetime incremental cancer risk equal to one in 100,000.

BW=weight of an average human (BW=70 kg).

WC_d=per capita water consumption (both drinking and incidental exposure) for surface waters classified as public water supplies=two liters/day.

or

WC_r=per capita incidental daily water ingestion for surface waters not used as human drinking water sources=0.01 liters/day.

FC_{TL3}=mean consumption of trophic level 3 of regionally caught freshwater fish=0.0036 kg/day.

FC_{TL4}=mean consumption of trophic level 4 of regionally caught freshwater fish=0.0114 kg/day.

BAF^{HH}_{TL3}=bioaccumulation factor for trophic level 3 fish, as derived using the BAF methodology in appendix B to part 132.

BAF^{HH}_{TL4}=bioaccumulation factor for trophic level 4 fish, as derived using the BAF methodology in appendix B to part 132.

3. *Noncarcinogens.* The Tier I human noncancer criteria or Tier II values shall be calculated as follows:

$$HNV = \frac{ADE \times BW \times RSC}{WC + \left[\left(FC_{TL3} \times BAF^{HH}_{TL3}\right) + \left(FC_{TL4} \times BAF^{HH}_{TL4}\right)\right]}$$

Where:

HNV=Human noncancer value in milligrams per liter (mg/L).

ADE=Acceptable daily exposure in milligrams toxicant per kilogram body weight per day (mg/kg/day).

RSC=Relative source contribution factor of 0.8. An RSC derived from actual exposure data may be developed using the methodology outlined by the 1980 National Guidelines (see 45 FR 79354).

BW=weight of an average human (BW=70 kg).

WC_d=per capita water consumption (both drinking and incidental exposure) for surface waters classified as public water supplies=two liters/day.

or

WC_r=per capita incidental daily water ingestion for surface waters not used as human drinking water sources=0.01 liters/day.

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FC_{TL3}=mean consumption of trophic level 3 fish by regional sport fishers of regionally caught freshwater fish=0.0036 kg/day.

FC_{TL4}=mean consumption of trophic level 4 fish by regional sport fishers of regionally caught freshwater fish=0.0114 kg/day.

BAF^{HH}_{TL3}=human health bioaccumulation factor for edible portion of trophic level 3 fish, as derived using the BAF methodology in appendix B to part 132.

BAF^{HH}_{TL4}=human health bioaccumulation factor for edible portion of trophic level 4 fish, as derived using the BAF methodology in appendix B to part 132.

IV. References

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B. U.S. Environmental Protection Agency. 1980. Water Quality Criteria Availability. Appendix C Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Quality Criteria Documents. Available from U.S. Environmental Protection Agency, Office of Water Resource Center (WH–550A), 401 M St., SW., Washington, DC 20460.

C. U.S. Environmental Protection Agency. 1986. Guidelines for Carcinogen Risk Assessment. Available from U.S. Environmental Protection Agency, Office of Water Resource Center (WH–550A), 401 M St., SW., Washington, DC 20460.

Appendix D to Part 132—Great Lakes Water Quality Initiative Methodology for the Development of Wildlife Criteria

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this appendix.

I. Introduction

A. A Great Lakes Water Quality Wildlife Criterion (GLWC) is the concentration of a substance which is likely to, if not exceeded, protect avian and mammalian wildlife populations inhabiting the Great Lakes basin from adverse effects resulting from the ingestion of water and aquatic prey taken from surface waters of the Great Lakes System. These criteria are based on existing toxicological studies of the substance of concern and quantitative information about the exposure of wildlife species to the substance (i.e., food and water consumption rates). Since toxicological and exposure data for individual wildlife species are limited, a GLWC is derived using a methodology similar to that used to derive noncancer human health criteria (Barnes and Dourson, 1988; NAS, 1977; NAS, 1980; U.S. EPA, 1980). Separate avian and mammalian values are developed using taxonomic class-specific toxicity data and exposure data for five representative Great Lakes basin wildlife species. The wildlife species selected are representative of avian and mammalian species resident in the Great Lakes basin which are likely to experience the highest exposures to bioaccumulative contaminants through the aquatic food web; they are the bald eagle, herring gull, belted kingfisher, mink, and river otter.

B. This appendix establishes a methodology which is required when developing Tier I wildlife criteria for bioaccumulative chemicals of concern (BCCs). The use of the equation provided in the methodology is encouraged, but not required, for the development of Tier I criteria or Tier II values for pollutants other than those identified in Table 6–A for which Tier I criteria or Tier II values are determined to be necessary for the protection of wildlife in the Great Lakes basin. A discussion of the methodology for deriving Tier II values can be found in the Great Lakes Water Quality Initiative Technical Support Document for Wildlife Criteria (Wildlife TSD).

C. In the event that this methodology is used to develop criteria for pollutants other than BCCs, or in the event that the Tier II methodology described in the Wildlife TSD is used to derive Tier II values, the methodology for deriving bioaccumulation factors under appendix B to part 132 must be used in either derivation. For chemicals which do not biomagnify to the extent of BCCs, it may be appropriate to select different representative species which are better examples of species with the highest exposures for the given chemical. The equation presented in this methodology, however, is still encouraged. In addition, procedure 1 of appendix F of this part describes the procedures for calculating site-specific wildlife criteria.

D. The term "wildlife value" (WV) is used to denote the value for each representative species which results from using the equation presented below, the value obtained from averaging species values within a class, or any value derived from application of the site-specific procedure provided in procedure 1 of appendix F of this part. The WVs calculated for the representative species are used to calculate taxonomic class-specific WVs. The WV is the concentration of a substance which, if not exceeded, should better protect the taxon in question.

E. "Tier I wildlife criterion," or "Tier I criterion" is used to denote the number derived from data meeting the Tier I minimum database requirements, and which will be protective of the two classes of wildlife. It is synonymous with the term "GLWC," and the two are used interchangeably.

II. Calculation of Wildlife Values for Tier I Criteria

Table 4 of Part 132 and Table D–1 of this appendix contain criteria calculated by EPA using the methodology provided below.

A. *Equation for Avian and Mammalian Wildlife Values.* Tier I wildlife values for the pollutants designated BCCs pursuant to part 132 are to be calculated using the equation presented below.

$$WV = \frac{\frac{TD}{UF_A \times UF_S \times UF_L} \times Wt}{W + \sum\left(F_{TLi} \times BAF^{WL}_{TLi}\right)}$$

Where:

WV=Wildlife Value in milligrams of substance per liter (mg/L).

TD=Test Dose (TD) in milligrams of substance per kilograms per day (mg/kg-d) for the test species. This shall be either a NOAEL or a LOAEL.

UF_A=Uncertainty Factor (UF) for extrapolating toxicity data across species (unitless). A species-specific UF shall be selected and applied to each representative species, consistent with the equation.

UF_S=UF for extrapolating from subchronic to chronic exposures (unitless).

UF_L=UF for LOAEL to NOAEL extrapolations (unitless).

Wt=Average weight in kilograms (kg) for the representative species.

W=Average daily volume of water consumed in liters per day (L/d) by the representative species.

F_{TLi}=Average daily amount of food consumed from trophic level i in kilograms per day (kg/d) by the representative species.

BAF^{WL}_{TLi}=Bioaccumulation factor (BAF) for wildlife food in trophic level i in liters per kilogram (L/kg), developed using the BAF methodology in appendix B to part 132, Methodology for Development of Bioaccumulation Factors. For consumption of piscivorous birds by other birds (e.g., herring gull by eagles), the BAF is derived by multiplying the trophic level 3 BAF for fish by a biomagnification factor to account for the biomagnification from fish to the consumed birds.

B. *Identification of Representative Species for Protection.* For bioaccumulative chemicals, piscivorous species are identified as the focus of concern for wildlife criteria development in the Great Lakes. An analysis of known or estimated exposure components for avian and mammalian wildlife species is presented in the Wildlife TSD. This analysis identifies three avian species (eagle, kingfisher and herring gull) and two mammalian species (mink and otter) as representative species for protection. The TD obtained from toxicity data for each taxonomic class is used to calculate WVs for each of the five representative species.

C. *Calculation of Avian and Mammalian Wildlife Values and GLWC Derivation.* The avian WV is the geometric mean of the WVs calculated for the three representative avian species. The mammalian WV is the geometric mean of the WVs calculated for the two representative mammalian species. The lower of the mammalian and avian WVs must be selected as the GLWC.

III. Parameters of the Effect Component of the Wildlife Criteria Methodology

A. *Definitions.* The following definitions provide additional specificity and guidance in the evaluation of toxicity data and the application of this methodology.

Acceptable endpoints. For the purpose of wildlife criteria derivation, acceptable subchronic and chronic endpoints are those which affect reproductive or developmental success, organismal viability or growth, or any other endpoint which is, or is directly related to, parameters that influence population dynamics.

Chronic effect. An adverse effect that is measured by assessing an acceptable endpoint, and results from continual exposure over several generations, or at least over a significant part of the test species' projected life span or life stage.

Lowest-observed-adverse-effect-level (LOAEL). The lowest tested dose or concentration of a substance which resulted in an observed adverse effect in exposed test organisms when all higher doses or concentrations resulted in the same or more severe effects.

No-observed-adverse-effect-level (NOAEL). The highest tested dose or concentration of a substance which resulted in no observed adverse effect in exposed test organisms where higher doses or concentrations resulted in an adverse effect.

Subchronic effect. An adverse effect, measured by assessing an acceptable endpoint, resulting from continual exposure for a period of time less than that deemed necessary for a chronic test.

B. *Minimum Toxicity Database for Tier I Criteria Development.* A TD value is required for criterion calculation. To derive a Tier I criterion for wildlife, the data set shall provide enough data to generate a subchronic or chronic dose-response curve for any given substance for both mammalian and avian species. In reviewing the toxicity data available which meet the minimum data requirements for each taxonomic class, the following order of preference shall be applied to select the appropriate TD to be used for calculation of individual WVs. Data from peer-reviewed field studies of wildlife species take precedence over other types of studies, where such studies are of adequate quality. An acceptable field study must be of subchronic or chronic duration, provide a defensible, chemical-specific dose-response curve in which cause and effect are clearly established, and assess acceptable endpoints as defined in this document. When acceptable wildlife field studies are not available, or determined to be of inadequate quality, the needed toxicity information may come from peer-reviewed laboratory studies. When laboratory studies are used, preference shall be given to laboratory studies with wildlife species over traditional laboratory animals to reduce uncertainties in making interspecies extrapolations. All available laboratory data and field studies shall be reviewed to corroborate the final GLWC, to assess the reasonableness of the toxicity value used, and to assess the appropriateness of any UFs which are applied. When evaluating the studies from which a test dose is derived in general, the following requirements must be met:

1. The mammalian data must come from at least one well-conducted study of 90 days or greater designed to observe subchronic or chronic effects as defined in this document.

2. The avian data must come from at least one well-conducted study of 70 days or greater designed to observe subchronic or chronic effects as defined in this document.

3. In reviewing the studies from which a TD is derived for use in calculating a WV, studies involving exposure routes other than oral may be considered only when an equivalent oral daily dose can be estimated and technically justified because the criteria calculations are based on an oral route of exposure.

4. In assessing the studies which meet the minimum data requirements, preference should be given to studies which assess effects on developmental or reproductive endpoints because, in general, these are more important endpoints in ensuring that a population's productivity is maintained. The Wildlife TSD provides additional discussion on the selection of an appropriate toxicity study.

C. *Selection of TD Data.* In selecting data to be used in the derivation of WVs, the evaluation of acceptable endpoints, as defined in Section III.A of this appendix, will be the primary selection criterion. All data not part of the selected subset may be used to assess the reasonableness of the toxicity value and the appropriateness of the Ufs which are applied.

1. If more than one TD value is available within a taxonomic class, based on different endpoints of toxicity, that TD, which is likely to reflect best potential impacts to wildlife populations through resultant changes in mortality or fecundity rates, shall be used for the calculation of WVs.

2. If more than one TD is available within a taxonomic class, based on the same endpoint of toxicity, the TD from the most sensitive species shall be used.

3. If more than one TD based on the same endpoint of toxicity is available for a given species, the TD for that species shall be calculated using the geometric mean of those TDs.

D. *Exposure Assumptions in the Determination of the TD.* 1. In those cases in which a TD is available in units other than milligrams of substance per kilograms per day (mg/kg/d), the following procedures shall be used to convert the TD to the appropriate units prior to calculating a WV.

2. If the TD is given in milligrams of toxicant per liter of water consumed by the test animals (mg/L), the TD shall be multiplied by the daily average volume of water consumed by the test animals in liters per day (L/d) and divided by the average weight of the test animals in kilograms (kg).

3. If the TD is given in milligrams of toxicant per kilogram of food consumed by the test animals (mg/kg), the TD shall be multiplied by the average amount of food in kilograms consumed daily by the test animals (kg/d) and divided by the average weight of the test animals in kilograms (kg).

E. *Drinking and Feeding Rates.* 1. When drinking and feeding rates and body weight are needed to express the TD in milligrams of substance per kilograms per day (mg/kg/d), they are obtained from the study from which the TD was derived. If not already determined, body weight, and drinking and feeding rates are to be converted to a wet weight basis.

2. If the study does not provide the needed values, the values shall be determined from appropriate scientific literature. For studies done with domestic laboratory animals, either the Registry of Toxic Effects of Chemical Substances (National Institute for Occupational Safety and Health, the latest edition, Cincinnati, OH), or Recommendations for and Documentation of Biological Values for Use in Risk Assessment (U.S. EPA, 1988) should be consulted. When these references do not contain exposure information for the species used in a given study, either the allometric equations from Calder and Braun (1983) and Nagy (1987), which are presented below, or the exposure estimation methods presented in Chapter 4 of the Wildlife Exposure Factors Handbook (U.S. EPA, 1993), should be applied to approximate the needed feeding or drinking rates. Additional discussion and recommendations are provided in the Wildlife TSD. The choice of the methods described above is at the discretion of the State or Tribe.

3. For mammalian species, the general allometric equations are:

a. $F = 0.0687 \times (Wt)^{0.82}$

Where:

F = Feeding rate of mammalian species in kilograms per day (kg/d) dry weight.

Wt = Average weight in kilograms (kg) of the test animals.

b. $W = 0.099 \times (Wt)^{0.90}$

Where:

W = Drinking rate of mammalian species in liters per day (L/d).

Wt = Average weight in kilograms (kg) of the test animals.

4. For avian species, the general allometric equations are:

a. $F = 0.0582 \ (Wt)^{0.65}$

Where:

F = Feeding rate of avian species in kilograms per day (kg/d) dry weight.

Wt = Average weight in kilograms (kg) of the test animals.

b. $W = 0.059 \times (Wt)^{0.67}$

Where:

W = Drinking rate of avian species in liters per day (L/d).

Wt = Average weight in kilograms (kg) of the test animals.

F. *LOAEL to NOAEL Extrapolations (UF_L).* In those cases in which a NOAEL is unavailable as the TD and a LOAEL is available, the LOAEL may be used to estimate the NOAEL. If used, the LOAEL shall be divided by an UF to estimate a NOAEL for use in deriving WVs. The value of the UF shall not be less than one and should not exceed 10, depending on the dose-response curve and any other available data, and is represented by UF_L in the equation expressed in Section II.A of this appendix. Guidance for selecting an appropriate UF_L, based on a review of available wildlife toxicity data, is available in the Wildlife TSD.

G. *Subchronic to Chronic Extrapolations (US_S).* In instances where only subchronic data are available, the TD may be derived from subchronic data. In such cases, the TD shall be divided by an UF to extrapolate from subchronic to chronic levels. The value of the UF shall not be less than one and should not exceed 10, and is represented by UF_S in the equation expressed in Section II.A of this appendix. This factor is to be used when assessing highly bioaccumulative substances where toxicokinetic considerations suggest that a bioassay of limited length

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underestimates chronic effects. Guidance for selecting an appropriate UF_S, based on a review of available wildlife toxicity data, is available in the Wildlife TSD.

H. *Interspecies Extrapolations (UF_A).* 1. The selection of the UF_A shall be based on the available toxicological data and on available data concerning the physicochemical, toxicokinetic, and toxicodynamic properties of the substance in question and the amount and quality of available data. This value is an UF that is intended to account for differences in toxicological sensitivity among species. Guidance for selecting an appropriate UF_A, based on a review of available wildlife toxicity data, is available in the Wildlife TSD. Additional discussion of an interspecies UF located in appendix A to the Great Lakes Water Quality Initiative Technical Support Document for Human Health Criteria may be useful in determining the appropriate value for UF_A.

2. For the derivation of Tier I criteria, a UF_A shall not be less than one and should not exceed 100, and shall be applied to each of the five representative species, based on existing data and best professional judgment. The value of UF_A may differ for each of the representative species.

3. For Tier I wildlife criteria, the UF_A shall be used only for extrapolating toxicity data across species within a taxonomic class, except as provided below. The Tier I UF_A is not intended for interclass extrapolations because of the poorly defined comparative toxicokinetic and toxicodynamic parameters between mammals and birds. However, an interclass extrapolation employing a UF_A may be used for a given chemical if it can be supported by a validated biologically-based dose-response model or by an analysis of interclass toxicological data, considering acceptable endpoints, for a chemical analog that acts under the same mode of toxic action.

IV. Parameters of the Exposure Component of the Wildlife Criteria Methodology

A. *Drinking and Feeding Rates of Representative Species.* The body weights (Wt), feeding rates (F_{Tri}), drinking rates (W), and trophic level dietary composition (as food ingestion rate and percent in diet) for each of the five representative species are presented in Table D–2 of this appendix. Guidance on incorporating the non-aquatic portion of the bald eagle and mink diets in the criteria calculations is available in the Wildlife TSD.

B. *BAFs.* The Methodology for Development of Bioaccumulation Factors is presented in appendix B to part 132. Trophic level 3 and 4 BAFs are used to derive Wvs because these are the trophic levels at which the representative species feed.

V. References

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Tables to Appendix D to Part 132

TABLE D–1.—TIER I GREAT LAKES WILDLIFE CRITERIA

Substance	Criterion (µg/L)
DDT & Metabolites	1.1E–5
Mercury	1.3E–3
PCBs (total)	7.4E–5
2,3,7,8-TCDD	3.1E–9

TABLE D–2.—EXPOSURE PARAMETERS FOR THE FIVE REPRESENTATIVE SPECIES IDENTIFIED FOR PROTECTION

Species (units)	Adult body weight (kg)	Water ingestion rate (L/day)	Food ingestion rate of prey in each trophic level (kg/day)	Trophic level of prey (percent of diet)
Mink	0.80	0.081	TL3: 0.159; Other: 0.0177	TL3: 90; Other: 10.
Otter	7.4	0.600	TL3: 0.977; TL4: 0.244	TL3: 80; TL4: 20.
Kingfisher	0.15	0.017	TL3: 0.0672	TL3: 100.
Herring gull	1.1	0.063	TL3: 0.192; TL4: 0.0480 Other: 0.0267	Fish: 90—TL3: 80; TL4: 20. Other: 10.
Bald eagle	4.6	0.160	TL3: 0.371; TL4: 0.0929 PB: 00283; Other: 0.0121	Fish: 92—TL3: 80; TL4: 20. Birds: 8—PB: 70; non-aquatic: 30.

NOTE: TL3=trophic level three fish; TL4=trophic level four fish; PB=piscivorous birds; Other=non-aquatic birds and mammals.

Appendix E to Part 132—Great Lakes Water Quality Initiative Antidegradation Policy

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) appendix E to part 132.

The State or Tribe shall adopt an antidegradation standard applicable to all waters of the Great Lakes System and identify the methods for implementing such a standard. Consistent with 40 CFR 131.12, an acceptable antidegradation standard and implementation procedure are required elements of a State's or Tribe's water quality standards program. Consistent with 40 CFR 131.6, a complete water quality standards submission needs to include both an antidegradation standard and antidegradation implementation procedures. At a minimum, States and Tribes shall adopt provisions in their antidegradation standard and implementation methods consistent with sections I, II, III and IV of this appendix, applicable to pollutants identified as bioaccumulative chemicals of concern (BCCs).

I. Antidegradation Standard

This antidegradation standard shall be applicable to any action or activity by any source, point or nonpoint, of pollutants that is anticipated to result in an increased loading of BCCs to surface waters of the Great Lakes System and for which independent regulatory authority exists requiring compliance with water quality standards. Pursuant to this standard:

A. Existing instream water uses, as defined pursuant to 40 CFR 131, and the level of water quality necessary to protect existing uses shall be maintained and protected. Where designated uses of the waterbody are impaired, there shall be no lowering of the water quality with respect to the pollutant or pollutants which are causing the impairment;

B. Where, for any parameter, the quality of the waters exceed levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the waters, that water shall be considered high quality for that parameter consistent with the definition of high quality water found at section II.A of this appendix and that quality shall be maintained and protected unless the State or Tribe finds, after full satisfaction of intergovernmental coordination and public participation provisions of the State's or Tribe's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation, the State or Tribe shall assure water quality adequate to protect existing uses fully. Further, the State or Tribe shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. The State or Tribe shall utilize the Antidegradation Implementation Procedures adopted pursuant to the requirements of this regulation in determining if any lowering of water quality will be allowed;

C. Where high quality waters constitute an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected; and

D. In those cases where the potential lowering of water quality is associated with a thermal discharge, the decision to allow such degradation shall be consistent with section 316 of the Clean Water Act (CWA).

II. Antidegradation Implementation Procedures

A. *Definitions.*

Control Document. Any authorization issued by a State, Tribal or Federal agency to any source of pollutants to waters under its jurisdiction that specifies conditions under which the source is allowed to operate.

High quality waters. High quality waters are water bodies in which, on a parameter by parameter basis, the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water

Lake Superior Basin—Outstanding International Resource Waters. Those waters designated as such by a Tribe or State consistent with the September 1991 Bi-National Program to Restore and Protect the Lake Superior Basin. The purpose of such designations shall be to ensure that any new or increased discharges of Lake Superior bioaccumulative substances of immediate concern are subject to best technology in process and treatment requirements.

Lake Superior Basin—Outstanding National Resource Waters. Those waters designated as such by a Tribe or State consistent with the September 1991 Bi-National Program to Restore and Protect the Lake Superior Basin. The purpose of such designations shall be to prohibit new or increased discharges of Lake Superior bioaccumulative substances of immediate concern from point sources in these areas.

Lake Superior bioaccumulative substances of immediate concern. A list of substances identified in the September 1991 Bi-National Program to Restore and Protect the Lake Superior Basin. They include: 2, 3, 7, 8-TCDD; octachlorostyrene; hexachlorobenzene; chlordane; DDT, DDE, and other metabolites; toxaphene; PCBs; and mercury. Other chemicals may be added to the list following States' or Tribes' assessments of environmental effects and impacts and after public review and comment.

Outstanding National Resource Waters. Those waters designated as such by a Tribe or State. The State or Tribal designation shall describe the quality of such waters to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as Outstanding National Resource Waters include, but are not limited to, water bodies that are recognized as:

Important because of protection through official action, such as Federal or State law, Presidential or secretarial action, international treaty, or interstate compact;

Having exceptional recreational significance;

Having exceptional ecological significance;

Having other special environmental, recreational, or ecological attributes; or

waters whose designation as Outstanding National Resource Waters is reasonably necessary for the protection of other waters so designated.

Significant Lowering of Water Quality. A significant lowering of water quality occurs when there is a new or increased loading of any BCC from any regulated existing or new facility, either point source or nonpoint source for which there is a control document or reviewable action, as a result of any activity including, but not limited to:

(1) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified control document is required;

(2) Modification of an existing regulated facility operating under a current control document such that the production capacity of the facility is increased;

(3) Addition of a new source of untreated or pretreated effluent containing or expected to contain any BCC to an existing wastewater treatment works, whether public or private;

(4) A request for an increased limit in an applicable control document;

(5) Other deliberate activities that, based on the information available, could be reasonably expected to result in an increased loading of any BCC to any waters of the Great Lakes System.

b. Notwithstanding the above, changes in loadings of any BCC within the existing capacity and processes, and that are covered by the existing applicable control document, are not subject to an antidegradation review These changes include, but are not limited to:

(1) Normal operational variability;

(2) Changes in intake water pollutants;

(3) Increasing the production hours of the facility, (e.g., adding a second shift); or

(4) Increasing the rate of production.

C. Also, excluded from an antidegradation review are new effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.

B. For all waters, the Director shall ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, and consistent with 40 CFR 131.10, water quality standards use designations must include all existing uses. Controls shall be established as necessary on point and nonpoint sources of pollutants to ensure that the criteria applicable to the designated use are achieved in the water and that any designated use of a downstream water is protected. Where water quality does not support the designated uses of a waterbody or ambient pollutant concentrations exceed water quality criteria applicable to that waterbody, the Director shall not allow a lowering of water quality for the pollutant or pollutants preventing the attainment of such uses or exceeding such criteria.

C. For Outstanding National Resource Waters:

1. The Director shall ensure, through the application of appropriate controls on pollutant sources, that water quality is maintained and protected.

2. Exception. A short-term, temporary (i.e., weeks or months) lowering of water quality may be permitted by the Director.

D. For high quality waters, the Director shall ensure that no action resulting in a lowering of water quality occurs unless an antidegradation demonstration has been completed pursuant to section III of this appendix and the information thus provided is determined by the Director pursuant to section IV of this appendix to adequately support the lowering of water quality.

1. The Director shall establish conditions in the control document applicable to the regulated facility that prohibit the regulated facility from undertaking any deliberate action, such that there would be an increase in the rate of mass loading of any BCC, unless an antidegradation demonstration is provided to the Director and approved pursuant to section IV of this appendix prior to commencement of the action. Imposition of limits due to improved monitoring data or new water quality criteria or values, or changes in loadings of any BCC within the existing capacity and processes, and that are covered by the existing applicable control document, are not subject to an antidegradation review.

2. For BCCs known or believed to be present in a discharge, from a point or nonpoint source, a monitoring requirement shall be included in the control document. The control document shall also include a provision requiring the source to notify the Director or any increased loadings. Upon notification, the Director shall require actions as necessary to reduce or eliminate the increased loading.

3. Fact Sheets prepared pursuant to 40 CFR 124.8 and 124.56 shall reflect any conditions developed under sections II.D.1 or II.D.2 of this appendix and included in a permit.

E. *Special Provisions for Lake Superior.* The following conditions apply in addition to those specified in section II.B through II.C of this appendix for waters of Lake Superior so designated.

1. A State or Tribe may designate certain specified areas of the Lake Superior Basin as Lake Superior Basin—Outstanding National Resource Waters for the purpose of prohibiting the new or increased discharge of

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Lake Superior bioaccumulative substances of immediate concern from point sources in these areas.

2. States and Tribes may designate all waters of the Lake Superior Basin as Outstanding International Resource Waters for the purpose of restricting the increased discharge of Lake Superior bioaccumulative substances of immediate concern from point sources consistent with the requirements of sections III.C and IV.B of this appendix.

F. *Exemptions.* Except as the Director may determine on a case-by-case basis that the application of these procedures is required to adequately protect water quality, or as the affected waterbody is an Outstanding National Resource Water as defined in section II.A of this appendix, the procedures in this part do not apply to:

1. Short-term, temporary (i.e., weeks or months) lowering of water quality;

2. Bypasses that are not prohibited at 40 CFR 122.41(m); and

3. Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar Federal, State or Tribal authorities, undertaken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose an imminent and substantial danger to public health or welfare.

III. Antidegradation Demonstration

Any entity seeking to lower water quality in a high quality water or create a new or increased discharge of Lake Superior bioaccumulative substances of immediate concern in a Lake Superior Outstanding International Resource Water must first, as required by sections II.D or II.E.2 of this appendix, submit an antidegradation demonstration for consideration by the Director. States and Tribes should tailor the level of detail and documentation in antidegradation reviews, to the specific circumstances encountered. The antidegradation demonstration shall include the following:

A. *Pollution Prevention Alternatives Analysis.* Identify any cost-effective pollution prevention alternatives and techniques that are available to the entity, that would eliminate or significantly reduce the extent to which the increased loading results in a lowering of water quality.

B. *Alternative or Enhanced Treatment Analysis.* Identify alternative or enhanced treatment techniques that are available to the entity that would eliminate the lowering of water quality and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

C. *Lake Superior.* If the States or Tribes designate the waters of Lake Superior as Outstanding International Resource Waters pursuant to section II.E.2 of this appendix, then any entity proposing a new or increased discharge of any Lake Superior bioaccumulative substance of immediate concern to the Lake Superior Basin shall identify the best technology in process and treatment to eliminate or reduce the extent of the lowering of water quality. In this case, the requirements in section III.B of this appendix do not apply.

D. *Important Social or Economic Development Analysis.* Identify the social or economic development and the benefits to the area in which the waters are located that will be foregone if the lowering of water quality is not allowed.

E. *Special Provision for Remedial Actions.* Entities proposing remedial actions pursuant to the CERCLA, as amended, corrective actions pursuant to the Resource Conservation and Recovery Act, as amended, or similar actions pursuant to other Federal or State environmental statutes may submit information to the Director that demonstrates that the action utilizes the most cost effective pollution prevention and treatment techniques available, and minimizes the necessary lowering of water quality, in lieu of the information required by sections III.B through III.D of this appendix.

IV. Antidegradation Decision

A. Once the Director determines that the information provided by the entity proposing to increase loadings is administratively complete, the Director shall use that information to determine whether or not the lowering of water quality is necessary, and, if it is necessary, whether or not the lowering of water quality will support important social and economic development in the area. If the proposed lowering of water quality is either not necessary, or will not support important social and economic development, the Director shall deny the request to lower water quality. If the lowering of water quality is necessary, and will support important social and economic development, the Director may allow all or part of the proposed lowering to occur as necessary to accommodate the important social and economic development. In no event may the decision reached under this section allow water quality to be lowered below the minimum level required to fully support existing and designated uses. The decision of the Director shall be subject to the public participation requirements of 40 CFR 25.

B. If States designate the waters of Lake Superior as Outstanding International Resource Waters pursuant to section II.E.2 of this appendix, any entity requesting to lower water quality in the Lake Superior Basin as a result of the new or increased discharge of any Lake Superior bioaccumulative substance of immediate concern shall be required to install and utilize the best technology in process and treatment as identified by the Director.

Appendix F to Part 132—Great Lakes Water Quality Initiative Implementation Procedures

Procedure 1: Site-specific Modifications to Criteria and Values

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this procedure.

A. Requirements for Site-specific Modifications to Criteria and Values. Criteria and values may be modified on a site-specific basis to reflect local environmental conditions as restricted by the following provisions. Any such modifications must be protective of designated uses and aquatic life, wildlife or human health and be submitted to EPA for approval. In addition, any site-specific modifications that result in less stringent criteria must be based on a sound scientific rationale and shall not be likely to jeopardize the continued existence of endangered or threatened species listed or proposed under section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical habitat. More stringent modifications shall be developed to protect endangered or threatened species listed or proposed under section 4 of the ESA, where such modifications are necessary to ensure that water quality is not likely to jeopardize the continued existence of such species or result in the destruction or adverse modification of such species' critical habitat. More stringent modifications may also be developed to protect candidate (C1) species being considered by the U.S. Fish and Wildlife Service (FWS) for listing under section 4 of the ESA, where such modifications are necessary to protect such species.

1. *Aquatic Life.*

a. Aquatic life criteria or values may be modified on a site-specific basis to provide an additional level of protection, pursuant to authority reserved to the States and Tribes under Clean Water Act (CWA) section 510.

Guidance on developing site-specific criteria in these instances is provided in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

b. Less stringent site-specific modifications to chronic or acute aquatic life criteria or values may be developed when:

i. The local water quality characteristics such as Ph, hardness, temperature, color, etc., alter the biological availability or toxicity of a pollutant; or

ii. The sensitivity of the aquatic organisms species that "occur at the site" differs from the species actually tested in developing the criteria. The phrase "occur at the site" includes the species, genera, families, orders, classes, and phyla that: are usually present at the site; are present at the site only seasonally due to migration; are present intermittently because they periodically return to or extend their ranges into the site; were present at the site in the past, are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve; are present in nearby bodies of water, are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. The taxa that "occur at the site" cannot be determined merely by sampling downstream and/or upstream of the site at one point in time. "Occur at the site" does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site resulting, for example, from dams, etc.

c. Less stringent modifications also may be developed to acute and chronic aquatic life criteria or values to reflect local physical and hydrological conditions.

Guidance on developing site-specific criteria is provided in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

d. Any modifications to protect threatened or endangered aquatic species required by procedure 1.A of this appendix may be accomplished using either of the two following procedures:

i. If the Species Mean Acute Value (SMAV) for a listed or proposed species, or for a surrogate of such species, is lower than the calculated Final Acute Value (FAV), such lower SMAV may be used instead of the calculated FAV in developing site-specific modified criteria; or,

ii. The site-specific criteria may be calculated using the recalculation procedure for site-specific modifications described in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

2. *Wildlife.*

a. Wildlife water quality criteria may be modified on a site-specific basis to provide an additional level of protection, pursuant to authority reserved to the States and Tribes under CWA section 510.

b. Less stringent site-specific modifications to wildlife water quality criteria may be developed when a site-specific bioaccumulation factor (BAF) is derived which is lower than the system-wide BAF derived under appendix B of this part. The modification must consider both the mobility of prey organisms and wildlife populations in defining the site for which criteria are developed. In addition, there must be a showing that:

i. Any increased uptake of the toxicant by prey species utilizing the site will not cause adverse effects in wildlife populations; and

ii. Wildlife populations utilizing the site or downstream waters will continue to be fully protected.

c. Any modification to protect endangered or threatened wildlife species required by procedure 1.A of this appendix must consider both the mobility of prey organisms and wildlife populations in defining the site for which criteria are developed, and may be accomplished by using the following recommended method.

i. The methodology presented in appendix D to part 132 is used, substituting appropriate species-specific toxicological, epidemiological, or exposure information, including changes to the BAF;

ii. An interspecies uncertainty factor of 1 should be used where epidemiological data are available for the species in question. If necessary, species-specific exposure parameters can be derived as presented in Appendix D of this part;

iii. An intraspecies uncertainty factor (to account for protection of individuals within a wildlife population) should be applied in the denominator of the effect part of the wildlife equation in appendix D of this part in a manner consistent with the other uncertainty factors described in appendix D of this part; and

iv. The resulting wildlife value for the species in question should be compared to the two class-specific wildlife values which were previously calculated, and the lowest of the three shall be selected as the site-specific modification.

Note: Further discussion on the use of this methodology may be found in the Great Lakes Water Quality Initiative Technical Support Document for Wildlife Criteria.

3. *BAFs.*

a. BAFs may be modified on a site-specific basis to larger values, pursuant to the authority reserved to the States and Tribes under CWA section 510, where reliable data show that local bioaccumulation is greater than the system-wide value.

b. BAFs may be modified on a site-specific basis to lower values, where scientifically defensible, if:

i. The fraction of the total chemical that is freely dissolved in the ambient water is different than that used to derive the system-wide BAFs (i.e., the concentrations of particulate organic carbon and the dissolved organic carbon are different than those used to derive the system-wide BAFs);

ii. Input parameters of the Gobas model, such as the structure of the aquatic food web and the disequilibrium constant, are different at the site than those used to derive the system-wide BAFs;

iii. The percent lipid of aquatic organisms that are consumed and occur at the site is different than that used to derive the system-wide BAFs; or

iv Site-specific field-measured BAFs or biota-sediment accumulation factor (BSAFs) are determined.

If site-specific BAFs are derived, they shall be derived using the methodology in appendix B of this part.

c. Any more stringent modifications to protect threatened or endangered species required by procedure 1.A of this appendix shall be derived using procedures set forth in the methodology in appendix B of this part.

4. *Human Health.*

a. Human health criteria or values may be modified on a site-specific basis to provide an additional level of protection, pursuant to authority reserved to the States and Tribes under CWA section 510. Human health criteria or values shall be modified on a site-specific basis to provide additional protection appropriate for highly exposed subpopulations.

b. Less stringent site-specific modifications to human health criteria or values may be developed when:

i. local fish consumption rates are lower than the rate used in deriving human health criteria or values under appendix C of this part; and/or

ii. a site-specific BAF is derived which is lower than that used in deriving human health criteria or values under appendix C of this part.

B. *Notification Requirements.* When a State proposes a site-specific modification to a criterion or value as allowed in section 4.A above, the State should notify the other Great Lakes States of such a proposal and, for less stringent criteria, supply appropriate justification.

C. *References.*

U.S. EPA. 1984. Water Quality Standards Handbook—Revised. Chapter 3 and Appendices. U.S. Environmental Protection Agency, Office of Water Resource Center (RC–4100), 401 M Street, SW., Washington, DC 20960.

Procedure 2: Variances from Water Quality Standards for Point Sources

The Great Lakes States or Tribes may adopt water quality standards (WQS) variance procedures and may grant WQS variances for point sources pursuant to such procedures Variance procedures shall be consistent with (as protective as) the provisions in this procedure.

A. *Applicability.* A State or Tribe may grant a variance to a WQS which is the basis of a water quality-based effluent limitation included in a National Pollutant Discharge Elimination System (NPDES) permit. A WQS variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect, or require the State or Tribe to modify, the corresponding water quality standard for the waterbody as a whole.

1. This provision shall not apply to new Great Lakes dischargers or recommencing dischargers.

2. A variance to a water quality standard shall not be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical habitat.

3. A WQS variance shall not be granted if standards will be attained by implementing effluent limits required under sections 301(b) and 306 of the Clean Water Act (CWA) and by the permittee implementing cost-effective and reasonable best management practices for nonpoint source control.

B. *Maximum Timeframe for Variances.* A WQS variance shall not exceed five years or the term of the NPDES permit, whichever is less. A State or Tribe shall review, and modify as necessary, WQS variances as part of each water quality standards review pursuant to section 303(c) of the CWA.

C. *Conditions to Grant a Variance.* A variance may be granted if:

1. The permittee demonstrates to the State or Tribe that attaining the WQS is not feasible because:

a. Naturally occurring pollutant concentrations prevent the attainment of the WQS;

b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the WQS, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable WQS to be met without violating State or Tribal water conservation requirements;

c. Human-caused conditions or sources of pollution prevent the attainment of the WQS and cannot be remedied, or would cause more environmental damage to correct than to leave in place;

d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the WQS, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the WQS;

e. Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of WQS; or

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f. Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

2. In addition to the requirements of C.1 above, the permittee shall also:

a. Show that the variance requested conforms to the requirements of the State's or Tribe's antidegradation procedures; and

b. Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with WQS absent the variance, such that the State or Tribe is able to conclude that any such increased risk is consistent with the protection of the public health, safety and welfare.

D. Submittal of Variance Application. The permittee shall submit an application for a variance to the regulatory authority issuing the permit. The application shall include:

1. All relevant information demonstrating that attaining the WQS is not feasible based on one or more of the conditions in section C.1 of this procedure; and,

2. All relevant information demonstrating compliance with the conditions in section C.2 of this procedure.

E. Public Notice of Preliminary Decision Upon receipt of a complete application for a variance, and upon making a preliminary decision regarding the variance, the State or Tribe shall public notice the request and preliminary decision for public comment pursuant to the regulatory authority's Administrative Procedures Act and shall notify the other Great Lakes States and Tribes of the preliminary decision. This public notice requirement may be satisfied by including the supporting information for the variance and the preliminary decision in the public notice of a draft NPDES permit.

F. Final Decision on Variance Request. The State or Tribe shall issue a final decision on the variance request within 90 days of the expiration of the public comment period required in section E of this procedure. If all or part of the variance is approved by the State or Tribe, the decision shall include all permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:

1. Compliance with an initial effluent limitation which, at the time the variance is granted, represents the level currently achievable by the permittee, and which is no less stringent than that achieved under the previous permit;

2. That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;

3. When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and

4. A provision that allows the permitting authority to reopen and modify the permit based on any State or Tribal triennial water quality standards revisions to the variance.

The State shall deny a variance request if the permittee fails to make the demonstrations required under section C of this procedure.

G. Incorporating Variance into Permit. The State or Tribe shall establish and incorporate into the permittee's NPDES permit all conditions needed to implement the variance as determined in section F of this procedure.

H. Renewal of Variance. A variance may be renewed, subject to the requirements of sections A through G of this procedure. As part of any renewal application, the permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of section C of this procedure. The permittee's application shall also contain information concerning its compliance with the conditions incorporated into its permit as part of the original variance pursuant to sections F and G of this procedure. Renewal of a variance may be denied if the permittee did not comply with the conditions of the original variance.

I. EPA Approval. All variances and supporting information shall be submitted by the State or Tribe to the appropriate EPA regional office and shall include:

1. Relevant permittee applications pursuant to section D of this procedure;

2. Public comments and records of any public hearings pursuant to section E of this procedure;

3. The final decision pursuant to section F of this procedure; and,

4. NPDES permits issued pursuant to section G of this procedure.

5. Items required by sections I.1 through I.3. of this procedure shall be submitted by the State within 30 days of the date of the final variance decision. The item required by section I.4 of this procedure shall be submitted in accordance with the State or Tribe Memorandum of Agreement with the Regional Administrator pursuant to 40 CFR 123.24.

6. EPA shall review the State or Tribe submittal for compliance with the CWA pursuant to 40 CFR 123.44, and 40 CFR 131.21.

J. State WQS Revisions. All variances shall be appended to the State or Tribe WQS rules.

Procedure 3: Total Maximum Daily Loads, Wasteload Allocations for Point Sources, Load Allocations for Nonpoint Sources, Wasteload Allocations in the Absence of a TMDL, and Preliminary Wasteload Allocations for Purposes of Determining the Need for Water Quality Based Effluent Limits

The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this procedure 3 for the purpose of developing Total Maximum Daily Loads (TMDLs), Wasteload Allocations (WLAs) in the Absence of TMDLs, and Preliminary Wasteload Allocations for Purposes of Determining the Need for Water Quality Based Effluent Limits (WQBELs), except as specifically provided.

A. Where a State or Tribe develops an assessment and remediation plan that the State or Tribe certifies meets the requirements of sections B through F of this procedure and public participation requirements applicable to TMDLs, and that has been approved by EPA as meeting those requirements under 40 CFR 130.6, the assessment and remediation plan may be used in lieu of a TMDL for purposes of appendix F to part 132. Assessment and remediation plans under this procedure may include, but are not limited to, Lakewide Management Plans, Remedial Action Plans, and State Water Quality Management Plans. Also, any part of an assessment and remediation plan that also satisfies one or more requirements under Clean Water Act (CWA) section 303(d) or implementing regulations may be incorporated by reference into a TMDL as appropriate. Assessment and remediation plans under this section should be tailored to the level of detail and magnitude for the watershed and pollutant being assessed.

B. General Conditions of Application Except as provided in § 132.4, the following are conditions applicable to establishing TMDLs for all pollutants and pollutant parameters in the Great Lakes System, with the exception of whole effluent toxicity, unless otherwise provided in procedure 6 of appendix F. Where specified, these conditions also apply to wasteload allocations (WLAs) calculated in the absence of TMDLs and to preliminary WLAs for purposes of determining the needs for WQBELs under procedure 5 of appendix F.

1. *TMDLs Required.* TMDLs shall, at a minimum, be established in accordance with the listing and priority setting process established in section 303(d) of the CWA and at 40 CFR 130.7. Where water quality standards cannot be attained immediately TMDLs must reflect reasonable assurances that water quality standards will be attained in a reasonable period of time. Some TMDLs may be based on attaining water quality standards over a period of time, with specific controls on individual sources being implemented in stages. Determining the reasonable period of time in which water quality standards will be met is a case-specific determination considering a number of factors including, but not limited to: receiving water characteristics; persistence, behavior and ubiquity of pollutants of concern; type of remediation activities necessary; available regulatory and non-regulatory controls; and individual State or Tribal requirements for attainment of water quality standards.

2. *Attainment of Water Quality Standards* A TMDL must ensure attainment of applicable water quality standards, including all numeric and narrative criteria, Tier I criteria, and Tier II values for each pollutant or pollutants for which a TMDL is established.

3. *TMDL Allocations.*

a. TMDLs shall include WLAs for point sources and load allocations (LAs) for nonpoint sources, including natural background, such that the sum of these allocations is not greater than the loading capacity of the water for the pollutant(s) addressed by the TMDL, minus the sum of a specified margin of safety (MOS) and any capacity reserved for future growth.

b. Nonpoint source LAs shall be based on:

i. Existing pollutant loadings if changes in loadings are not reasonably anticipated to occur;

ii. Increases in pollutant loadings that are reasonably anticipated to occur;

iii. Anticipated decreases in pollutant loadings if such decreased loadings are technically feasible and are reasonably anticipated to occur within a reasonable time period as a result of implementation of best management practices or other load reduction measures. In determining whether anticipated decreases in pollutant loadings are technically feasible and can reasonably be expected to occur within a reasonable period of time, technical and institutional factors shall be considered. These decisions are case-specific and should reflect the particular TMDL under consideration.

c. WLAs. The portion of the loading capacity not assigned to nonpoint sources including background, or to an MOS, or reserved for future growth is allocated to point sources. Upon reissuance, NPDES permits for these point sources must include effluent limitations consistent with WLAs in EPA-approved or EPA-established TMDLs.

d. Monitoring. For LAs established on the basis of subsection b.iii above, monitoring data shall be collected and analyzed in order to validate the TMDL's assumptions, to varify anticipated load reductions, to evaluate the effectiveness of controls being used to implement the TMDL, and to revise the WLAs and LAs as necessary to ensure that water quality standards will be achieved within the time-period established in the TMDL.

4. *WLA Values.* If separate EPA-approved or EPA-established TMDLs are prepared for different segments of the same watershed, and the separate TMDLs each include WLAs for the same pollutant for one or more of the same point sources, then WQBELs for that pollutant for the point source(s) shall be consistent with the most stringent of those WLAs in order to ensure attainment of all applicable water quality standards.

5. *Margin of Safety (MOS).* Each TMDL shall include a MOS sufficient to account for technical uncertainties in establishing the TMDL and shall describe the manner in which the MOS is determined and incorporated into the TMDL. The MOS may be provided by leaving a portion of the loading capacity unallocated or by using conservative modeling assumptions to establish WLAs and LAs. If a portion of the loading capacity is left unallocated to provide a MOS, the amount left unallocated shall be described. If conservative modeling assumptions are relied on to provide a MOS, the specific assumptions providing the MOS shall be identified.

6. *More Stringent Requirements.* States and Tribes may exercise authority reserved to them under section 510 of the CWA to develop more stringent TMDLs (including WLAs and LAs) than are required herein, provided that all LAs in such TMDLs reflect actual nonpoint source loads or those loads that can reasonably be expected to occur within a reasonable time-period as a result of implementing nonpoint source controls.

7. *Accumulation in Sediments.* TMDLs shall reflect, where appropriate and where sufficient data are available, contributions to the water column from sediments inside and outside of any applicable mixing zones. TMDLs shall be sufficiently stringent so as to prevent accumulation of the pollutant of concern in sediments to levels injurious to designated or existing uses, human health, wildlife and aquatic life.

8. *Wet Weather Events.* Notwithstanding the exception provided for the establishment of controls on wet weather point sources in § 132.4(e)(1), TMDLs shall reflect, where appropriate and where sufficient data are available, discharges resulting from wet weather events. This procedure does not provide specific procedures for considering discharges resulting from wet weather events. However, some of the provisions of procedure 3 may be deemed appropriate for considering wet weather events on a case-by-case basis.

9. *Background Concentration of Pollutants* The representative background concentration of pollutants shall be established in accordance with this subsection to develop TMDLs, WLAs calculated in the absence of a TMDL, or preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F. Background loadings may be accounted for in a TMDL through an allocation to a single "background" category or through individual allocations to the various background sources.

a. *Definition of Background.* "Background" represents all loadings that: (1) flow from upstream waters into the specified watershed, waterbody or waterbody segment for which a TMDL, WLA in the absence of a TMDL or preliminary WLA for the purpose of determining the need for a WQBEL is being developed; (2) enter the specified watershed, waterbody or waterbody segment through atmospheric deposition or sediment release or resuspension; or (3) occur within the watershed, waterbody or waterbody segment as a result of chemical reactions.

b. *Data considerations.* When determining what available data are acceptable for use in calculating background, the State or Tribe should use best professional judgment, including consideration of the sampling location and the reliability of the data through comparison to reported analytical detection levels and quantification levels. When data in more than one of the data sets or categories described in section B.9.c.i through B.9.c.iii below exist, best professional judgment should be used to select the one data set that most accurately reflects or estimates background concentrations. Pollutant degradation and transport information may be considered when utilizing pollutant loading data.

c. *Calculation requirements.* Except as provided below, the representative background concentration for a pollutant in the specified watershed, waterbody or waterbody segment shall be established on a case-by-case basis as the geometric mean of:

i. Acceptable available water column data; or

ii. Water column concentrations estimated through use of acceptable available caged or resident fish tissue data; or

iii. Water column concentrations estimated through use of acceptable available or projected pollutant loading data.

d. *Detection considerations.*

i. Commonly accepted statistical techniques shall be used to evaluate data sets consisting of values both above and below the detection level.

ii. When all of the acceptable available data in a data set or category, such as water column, caged or resident fish tissue or pollutant loading data, are below the level of detection for a pollutant, then all the data for that pollutant in that data set shall be assumed to be zero.

10. *Effluent Flow.* If WLAs are expressed as concentrations of pollutants, the TMDL shall also indicate the point source effluent flows assumed in the analyses. Mass loading limitations established in NPDES permits must be consistent with both the WLA and assumed effluent flows used in establishing the TMDL.

11. *Reserved Allocations.* TMDLs may include reserved allocations of loading capacity to accommodate future growth and additional sources. Where such reserved allocations are not included in a TMDL, any increased loadings of the pollutant for which the TMDL was developed that are due to a new or expanded discharge shall not be allowed unless the TMDL is revised in accordance with these proceudres to include an allocation for the new or expanded discharge.

C. *Mixing Zones for Bioaccumulative Chemicals of Concern (BCCs).* The following requirements shall be applied in establishing TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F, for BCCs.

1. Beginning on March 23, 1997, there shall be no mixing available for new discharges of BCCs to the Great Lakes System. WLAs established through TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for purposes of determining the need for WQBELs for new discharges of BCCs shall be set equal to the most stringent applicable water quality criteria or values for the BCCs in question.

2. For purposes of section C of procedure 3 of appendix F, new discharges are defined as: (1) discharges from new Great Lakes dischargers; or (2) new or expanded discharges from an existing Great Lakes discharger. All other discharges of BCCs are defined as existing discharges.

3. Up until March 23, 2007, mixing zones for BCCs may be allowed for existing discharges to the Great Lakes System pursuant to the procedures specified in sections D and E of this procedure.

4. Except as provided in sections C.5 and C.6 of this procedure, permits issued on or after March 23, 1997 shall not authorize mixing zones for existing discharges of BCCs to the Great Lakes System after March 23, 2007. After March 23, 2007, WLAs established through TMDLs, WLAs established in the absence of TMDLs and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F for existing dischrges of BCCs to the Great Lakes System shall be set equal to the most stringent applicable water quality criteria or values for the BCCs in question.

5. *Exception for Water Conservation.* States and Tribes may grant mixing zones for any existing discharge of BCCs to the Great Lakes

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System beyond the dates specified in sections C.3 and C.4 of this procedure, where it can be demonstrated, on a case-by-case basis, that failure to grant a mixing zone would preclude water conservation measures that would lead to overall load reductions in BCCs, even though higher concentrations of BCCs occur in the effluent. Such mixing zones must also be consistent with sections D and E of this procedure.

6. *Exception for Technical and Economic Considerations.* States and Tribes may grant mixing zones beyond the dates specified in sections C.3 and C.4 of this procedure for any existing discharges of a BCC to the Great Lakes System upon the request of a discharger subject to the limited circumstances specified in sections C.6.a through C.6.d below. Such mixing zones shall also be consistent with sections D and E of this procedure.

a. The permitting authority must determine that:

i. The discharger is in compliance with and will continue to implement all applicable technology-based treatment and pretreatment requirements of CWA sections 301, 302, 304, 306, 307, 401, and 402, and is in compliance with its existing NPDES water quality-based effluent limitations, including those based on a mixing zone; and

ii. The discharger has reduced and will continue to reduce the loading of the BCC for which a mixing zone is requested to the maximum extent possible.

b. In making the determination in section C.6.a above, the State or Tribal authority should consider:

i. The availability and feasibility, including cost effectiveness, of additional controls or pollution prevention measures for reducing and ultimately eliminating BCCs for that discharger, including those used by similar dischargers;

ii. Whether the discharger or affected communities will suffer unreasonable economic effects if the mixing zone is eliminated;

iii. The extent to which the discharger will implement an ambient monitoring plan to ensure compliance with water quality criteria at the edge of any authorized mixing zone or to ensure consistency with any applicable TMDL or such other strategy consistent with section A of this procedure; and,

iv. Other information the State or Tribe deems appropriate.

c. Any exceptions to the mixing zone elimination provision for existing discharges of BCCs granted pursuant to this section shall:

i. Not result in any less stringent limitations than those existing March 23, 1997;

ii. Not likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat;

iii. Be limited to one permit term unless the permitting authority makes a new determination in accordance with this section for each successive permit application in which a mixing zone for the BCC(s) is sought;

iv. Reflect all information relevant to the size of the mixing zone considered by the State or Tribe under subsection b above;

v. Protect all designated and existing uses of the receiving water;

vi. Meet all applicable aquatic life, wildlife and human health criteria and values at the edge of the mixing zone and, as appropriate, within the mixing zone or be consistent with any appropriate TMDL or such other strategy consistent with section A of this procedure;

vii. Ensure the discharger has developed and conducted a pollutant minimization program for the BCC(s) if required to do so under regulations adopted consistent with procedure 8 of appendix F; and

viii. Ensure that alternative means for reducing BCCs elsewhere in the watershed are evaluated.

d. For each draft NPDES permit that would allow a mixing zone for one or more BCCs after March 23, 2007, the fact sheet or statement of basis for the draft permit, required to be made available through public notice under 40 CFR 124.6(e), shall:

i. Specify the mixing provisions used in calculating the permit limits; and

ii. Identify each BCC for which a mixing zone is proposed.

D. *Deriving TMDLs, WLAs, and LAs for Point and Nonpoint Sources; WLAs in the Absence of a TMDL; and Preliminary WLAs for Purposes of Determining the Need for WQBELs for OWGL.* This section addresses conditions for deriving TMDLs for Open Waters of the Great Lakes (OWGL), inland lakes and other waters of the Great Lakes System with no appreciable flow relative to their volumes. State and Tribal procedures to derive TMDLs under this section must be consistent with (as protective as) the general conditions in section B of this procedure, CWA section 303(d), existing regulations (40 CFR 130.7), section C of this procedure, and sections D.1. through D.4 below. State and Tribal procedures to derive WLAs calculated in the absence of a TMDL and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F must be consistent with sections B.9, C.1, C3 through C.6, and D. 1 through D.4 of this procedure.

1. Individual point source WLAs and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F shall assume no greater dilution than one part effluent to 10 parts receiving water for implementation of numeric and narrative chronic criteria and values (including, but not limited to human cancer criteria, human cancer values, human noncancer values, human noncancer criteria, wildlife criteria, and chronic aquatic life criteria and values) unless an alternative mixing zone is demonstrated as appropriate in a mixing zone demonstration conducted pursuant to section F of this procedure. In no case shall a mixing zone be granted that exceeds the area where discharge-induced mixing occurs.

2. Appropriate mixing zone assumptions to be used in calculating load allocations for nonpoint sources shall be determined, consistent with applicable State or Tribal requirements, on a case-by-case basis.

3. WLAs and preliminary WLAs based on acute aquatic life criteria or values shall not exceed the Final Acute Value (FAV), unless a mixing zone demonstration is conducted and approved pursuant to section F of this procedure. If mixing zones from two or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where acute mixing zones overlap.

4. In no case shall a mixing zone be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat.

E. *Deriving TMDLs, WLAs, and LAs for Point and Nonpoint Sources; WLAs in the Absence of a TMDL; and Preliminary WLAs for the Purposes of Determining the Need for WQBELs for Great Lakes Systems Tributaries and Connecting Channels.* This section describes conditions for deriving TMDLs for tributaries and connecting channels of the Great Lakes System that exhibit appreciable flows relative to their volumes. State and Tribal procedures to derive TMDLs must be consistent with the general conditions listed in section B of this procedure, section C of this procedure, existing TMDL regulations (40 CFR 130.7) and specific conditions E.1 through E.5. State and Tribal procedures to derive WLAs calculated in the absence of a TMDL, and preliminary WLAs for purposes of determining reasonable potential under procedure 5 of this appendix for discharges to tributaries and connecting channels must be consistent with sections B.9, C.1, C.3 through C.6, and E.1 through E.5 of this procedure.

1. *Stream Design.* These design flows must be used unless data exist to demonstrate that an alternative stream design flow is appropriate for stream-specific and pollutant-specific conditions. For purposes of calculating a TMDL, WLAs in the absence of a TMDL, or preliminary WLAs for the purposes of determining reasonable potential under procedure 5 of this appendix, using a steady-state model, the stream design flows shall be:

a. The 7-day, 10-year stream design flow (7Q10), or the 4-day, 3-year biologically-based stream design flow for chronic aquatic life criteria or values;

b. The 1-day, 10-year stream design flow (1Q10), for acute aquatic life criteria or values;

c. The harmonic mean flow for human health criteria or values;

d. The 90-day, 10-year flow (90Q10) for wildlife criteria.

e. TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for the purpose of determining the need for WQBELs calculated using dynamic modelling do not need to incorporate the stream design flows specified in sections E.1.a through E.1.d of this procedure.

2. *Loading Capacity.* The loading capacity is the greatest amount of loading that a water can receive without violating water quality standards. The loading capacity is initially calculated at the farthest downstream location in the watershed drainage basin. The maximum allowable loading consistent with the attainment of each applicable numeric

criterion or value for a given pollutant is determined by multiplying the applicable criterion or value by the flow at the farthest downstream location in the tributary basin at the design flow condition described above. This loading is then compared to the loadings at sites within the basin to assure that applicable numeric criteria or values for a given pollutant are not exceeded at all applicable sites. The lowest load is then selected as the loading capacity.

3. *Polluant Degradation.* TMDLs, WLAs in the absence of a TMDL and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F shall be based on the assumption that a pollutant does not degrade. However, the regulatory authority may take into account degradation of the pollutant if each of the following conditions are met.

a. Scientifically valid field studies or other relevant information demonstrate that degradation of the pollutant is expected to occur under the full range of environmental conditions expected to be encountered;

b. Scientifically valid field studies or other relevant information address other factors that affect the level of pollutants in the water column including, but not limited to, resuspension of sediments, chemical speciation, and biological and chemical transformation.

4. *Acute Aquatic Life Criteria and Values.* WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs for the purpose of determining the need for WQBELs based on acute aquatic life criteria or values shall not exceed the FAV, unless a mixing zone demonstration is completed and approved pursuant to section F of this procedure. If mixing zones from two or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where any applicable acute mixing zones overlap. This acute WLA review shall include, but not be limited to, consideration of:

a. The expected dilution under all effluent flow and concentration conditions at stream design flow;

b. Maintenance of a zone of passage for aquatic organisms; and

c. Protection of critical aquatic habitat.

In no case shall a permitting authority grant a mixing zone that would likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat.

5. *Chronic Mixing Zones.* WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs for the purposes of determining the need for WQBELs for protection of aquatic life, wildlife and human health from chronic effects shall be calculated using a dilution fraction no greater than 25 percent of the stream design flow unless a mixing zone demonstration pursuant to section F of this procedure is conducted and approved. A demonstration for a larger mixing zone may be provided, if approved and implemented in accordance with section F of this procedure. In no case shall a permitting authority grant a mixing zone that would likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat.

F *Mixing Zone Demonstration Requirements.*

1. For purposes of establishing a mixing zone other than as specified in sections D and E above, a mixing zone demonstration must:

a. Describe the amount of dilution occurring at the boundaries of the proposed mixing zone and the size, shape, and location of the area of mixing, including the manner in which diffusion and dispersion occur;

b. For sources discharging to the open waters of the Great Lakes (OWGLs), define the location at which discharge-induced mixing ceases;

c. Document the substrate character and geomorphology within the mixing zone;

d. Show that the mixing zone does not interfere with or block passage of fish or aquatic life;

e. Show that the mixing zone will be allowed only to the extent that the level of the pollutant permitted in the waterbody would not likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat;

f. Show that the mixing zone does not extend to drinking water intakes;

g. Show that the mixing zone would not otherwise interfere with the designated or existing uses of the receiving water or downstream waters;

h. Document background water quality concentrations;

i. Show that the mixing zone does not promote undesirable aquatic life or result in a dominance of nuisance species; and

j. Provide that by allowing additional mixing/dilution:

i. Substances will not settle to form objectionable deposits;

ii. Floating debris, oil, scum, and other matter in concentrations that form nuisances will not be produced; and

iii. Objectionable color, odor, taste or turbidity will not be produced.

2. In addition, the mixing zone demonstration shall address the following factors:

a. Whether or not adjacent mixing zones overlap;

b. Whether organisms would be attracted to the area of mixing as a result of the effluent character; and

c. Whether the habitat supports endemic or naturally occurring species.

3. The mixing zone demonstration must be submitted to EPA for approval. Following approval of a mixing zone demonstration consistent with sections F.1 and F.2, adjustment to the dilution ratio specified in section D.1 of this procedure shall be limited to the dilution available in the area where discharger-induced mixing occurs.

4. The mixing zone demonstration shall be based on the assumption that a pollutant does not degrade within the proposed mixing zone, unless:

a. Scientifically valid field studies or other relevant information demonstrate that degradation of the pollutant is expected to occur under the full range of environmental conditions expected to be encountered; and

b. Scientifically valid field studies or other relevant information address other factors that affect the level of pollutants in the water column including, but not limited to, resuspension of sediments, chemical speciation, and biological and chemical transformation.

Procedure 4: Additivity

The Great Lakes States and Tribes shall adopt additivity provisions consistent with (as protective as) this procedure.

A. The Great Lakes States and Tribes shall adopt provisions to protect human health from the potential adverse additive effects from both the noncarcinogenic and carcinogenic components of chemical mixtures in effluents. For the chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) listed in Table 1, potential adverse additive effects in effluents shall be accounted for in accordance with section B of this procedure.

B. *Toxicity Equivalency Factors (TEFs)/ Bioaccumulation Equivalency Factors (BEFs).*

1. The TEFs in Table 1 and BEFs in Table 2 shall be used when calculating a 2,3,7,8-TCDD toxicity equivalence concentration in effluent to be used when implementing both human health noncancer and cancer criteria. The chemical concentration of each CDDs and CDFs in effluent shall be converted to a 2,3,7,8-TCDD toxicity equivalence concentration in effluent by (a) multiplying the chemical concentration of each CDDs and CDFs in the effluent by the appropriate TEF in Table 1 below, (b) multiplying each product from step (a) by the BEF for each CDDs and CDFs in Table 2 below, and (c) adding all final products from step (b). The equation for calculating the 2,3,7,8-TCDD toxicity equivalence concentration in effluent is:

$$(TEC)_{TCDD} = \sum (C)_x (TEF)_x (BEF)_x$$

where:

$(TEC)_{TCDD}$=2,3,7,8-TCDD toxicity equivalence concentration in effluent

$(C)_x$=concentration of total chemical x in effluent

$(TEF)_x$=TCDD toxicity equivalency factor for x

$(BEF)_x$=TCDD bioaccumulation equivalency factor for x

2. The 2,3,7,8-TCDD toxicity equivalence concentration in effluent shall be used when developing waste load allocations under procedure 3, preliminary waste load allocations for purposes of determining reasonable potential under procedure 5, and for purposes of establishing effluent quality limits under procedure 5

TABLE 1.—TOXICITY EQUIVALENCY FACTORS FOR CDDS AND CDFS

Congener	TEF
2,3,7,8-TCDD	1.0
1,2,3,7,8-PeCDD	0.5

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TABLE 1.—TOXICITY EQUIVALENCY FACTORS FOR CDDS AND CDFS—Continued

Congener	TEF
1,2,3,4,7,8-HxCDD	0.1
1,2,3,6,7,8-HxCDD	0.1
1,2,3,7,8,9-HxCDD	0.1
1,2,3,4,6,7,8-HpCDD	0.01
OCDD	0.001
2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDF	0.05
2,3,4,7,8-PeCDF	0.5
1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDF	0.1
2,3,4,6,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDF	0.1
1,2,3,4,6,7,8-HpCDF	0.01
1,2,3,4,7,8,9-HpCDF	0.01
OCDF	0.001

TABLE 2.—BIOACCUMULATION EQUIVALENCY FACTORS FOR CDDS AND CDFS

Congener	BEF
2,3,7,8-TCDD	1.0
1,2,3,7,8-PeCDD	0.9
1,2,3,4,7,8-HxCDD	0.3
1,2,3,6,7,8-HxCDD	0.1
1,2,3,7,8,9-HxCDD	0.1
1,2,3,4,6,7,8-HpCDD	0.05
OCDD	0.01
2,3,7,8-TCDF	0.8
1,2,3,7,8-PeCDF	0.2
2,3,4,7,8-PeCDF	1.6
1,2,3,4,7,8-HxCDF	0.08
1,2,3,6,7,8-HxCDF	0.2
2,3,4,6,7,8-HxCDF	0.7
1,2,3,7,8,9-HxCDF	0.6
1,2,3,4,6,7,8-HpCDF	0.01
1,2,3,4,7,8,9-HpCDF	0.4
OCDF	0.02

Procedure 5: Reasonable Potential To Exceed Water Quality Standards

Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this procedure. If a permitting authority determines that a pollutant is or may be discharged into the Great Lakes System at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Tier I criterion or Tier II value, the permitting authority shall incorporate a water quality-based effluent limitation (WQBEL) in an NPDES permit for the discharge of that pollutant. When facility-specific effluent monitoring data are available, the permitting authority shall make this determination by developing preliminary effluent limitations (PEL) and comparing those effluent limitations to the projected effluent quality (PEQ) of the discharge in accordance with the following procedures. In all cases, the permitting authority shall use any valid, relevant, representative information that indicates a reasonable potential to exceed any Tier I criterion or Tier II value.

A. *Developing Preliminary Effluent Limitations on the Discharge of a Pollutant From a Point Source.*

1. The permitting authority shall develop preliminary wasteload allocations (WLAs) for the discharge of the pollutant from the point source to protect human health, wildlife, acute aquatic life, and chronic aquatic life, based upon any existing Tier I criteria. Where there is no Tier I criterion nor sufficient data to calculate a Tier I criterion, the permitting authority shall calculate a Tier II value for such pollutant for the protection of human health, and aquatic life and the preliminary WLAs shall be based upon such values. Where there is insufficient data to calculate a Tier II value, the permitting authority shall apply the procedure set forth in section C of this procedure to determine whether data must be generated to calculate a Tier II value.

2. The following provisions in procedure 3 of appendix F shall be used as the basis for determining preliminary WLAs in accordance with section 1 of this procedure: procedure 3.B.9, Background Concentrations of Pollutants; procedure 3.C, Mixing Zones for Bioaccumulative Chemicals of Concern (BCCs), procedures 3.C.1, and 3.C.3 through 3.C.6; procedure 3.D, Deriving TMDLs for Discharges to Lakes (when the receiving water is an open water of the Great Lakes (OWGL), an inland lake or other water of the Great Lakes System with no appreciable flow relative to its volume); procedure 3.E, Deriving TMDLs, WLAs and Preliminary WLAs, and load allocations (LAs) for Discharges to Great Lakes System Tributaries (when the receiving water is a tributary or connecting channel of the Great Lakes that exhibits appreciable flow relative to its volume); and procedure 3.F, Mixing Zone Demonstration Requirements.

3. The permitting authority shall develop PELs consistent with the preliminary WLAs developed pursuant to sections A.1 and A.2 of this procedure, and in accordance with existing State or Tribal procedures for converting WLAs into WQBELs. At a minimum:

a. The PELs based upon criteria and values for the protection of human health and wildlife shall be expressed as monthly limitations;

b. The PELs based upon criteria and values for the protection of aquatic life from chronic effects shall be expressed as either monthly limitations or weekly limitations; and

c. The PELs based upon the criteria and values for the protection of aquatic life from acute effects shall be expressed as daily limitations.

B. *Determining Reasonable Potential Using Effluent Pollutant Concentration Data.*

If representative, facility-specific effluent monitoring data samples are available for a pollutant discharged from a point source to the waters of the Great Lakes System, the permitting authority shall apply the following procedures:

1. The permitting authority shall specify the PEQ as the 95 percent confidence level of the 95th percentile based on a log-normal distribution of the effluent concentration; or the maximum observed effluent concentration, whichever is greater. In calculating the PEQ, the permitting authority shall identify the number of effluent samples and the coefficient of variation of the effluent data, obtain the appropriate multiplying factor from Table 1 of procedure 6 of appendix F, and multiply the maximum effluent concentration by that factor. The coefficient of variation of the effluent data shall be calculated as the ratio of the standard deviation of the effluent data divided by the arithmetic average of the effluent data, except that where there are fewer than ten effluent concentration data points the coefficient of variation shall be specified as 0.6. If the PEQ exceeds any of the PELs developed in accordance with section A.3 of this procedure, the permitting authority shall establish a WQBEL in a NPDES permit for such pollutant.

2. In lieu of following the procedures under section B.1 of this procedure, the permitting authority may apply procedures consistent with the following:

a. The permitting authority shall specify the PEQ as the 95th percentile of the distribution of the projected population of daily values of the facility-specific effluent monitoring data projected using a scientifically defensible statistical method that accounts for and captures the long-term daily variability of the effluent quality, accounts for limitations associated with sparse data sets and, unless otherwise shown by the effluent data set, assumes a lognormal distribution of the facility-specific effluent data. If the PEQ exceeds the PEL based on the criteria and values for the protection of aquatic life from acute effects developed in accordance with section A.3 of this procedure, the permitting authority shall establish a WQBEL in an NPDES permit for such pollutant;

b. The permitting authority shall calculate the PEQ as the 95th percentile of the distribution of the projected population of monthly averages of the facility-specific effluent monitoring data using a scientifically defensible statistical method that accounts for and captures the long-term variability of the monthly average effluent quality, accounts for limitations associated with sparse data sets and, unless otherwise shown by the effluent data set, assumes a lognormal distribution of the facility-specific effluent data. If the PEQ exceeds the PEL based on criteria and values for the protection of aquatic life from chronic effects, human health or wildlife developed in accordance with section A.3 of this procedure, the permitting authority shall establish a WQBEL in an NPDES permit for such pollutant; and

c. The permitting authority shall calculate the PEQ as the 95th percentile of the distribution of the projected population of weekly averages of the facility-specific effluent monitoring data using a scientifically defensible statistical method that accounts for and captures the long-term variability of the weekly average effluent quality, accounts for limitations associated with sparse data sets and, unless otherwise shown by the effluent data set, assumes a lognormal distribution of the facility-specific effluent data. If the PEQ exceeds the PEL based on criteria and values to protect aquatic life from chronic effects developed in accordance with section A.3 of this procedure, the permitting

authority shall establish a WQBEL in an NPDES permit for such pollutant.

C. *Developing Necessary Data to Calculate Tier II Values Where Such Data Does Not Currently Exist.*

1. Except as provided in sections C.2, C.4, or D of this procedure, for each pollutant listed in Table 6 of part 132 that a permittee reports as known or believed to be present in its effluent, and for which pollutant data sufficient to calculate Tier II values for non-cancer human health, acute aquatic life and chronic aquatic life do not exist, the permitting authority shall take the following actions:

a. The permitting authority shall use all available, relevant information, including Quantitative Structure Activity Relationship information and other relevant toxicity information, to estimate ambient screening values for such pollutant which will protect humans from health effects other than cancer, and aquatic life from acute and chronic effects.

b. Using the procedures specified in sections A.1 and A.2 of this procedure, the permitting authority shall develop preliminary WLAs for the discharge of the pollutant from the point source to protect human health, acute aquatic life, and chronic aquatic life, based upon the estimated ambient screening values.

c. The permitting authority shall develop PELs in accordance with section A.3 of this procedure, which are consistent with the preliminary WLAs developed in accordance with section C.1.b of this procedure.

d. The permitting authority shall compare the PEQ developed according to the procedures set forth in section B of this procedure to the PELs developed in accordance with section C.1.c of this procedure. If the PEQ exceeds any of the PELs, the permitting authority shall generate or require the permittee to generate the data necessary to derive Tier II values for noncancer human health, acute aquatic life and chronic aquatic life.

e. The data generated in accordance with section C.1.d of this procedure shall be used in calculating Tier II values as required under section A.1 of this procedure. The calculated Tier II value shall be used in calculating the preliminary WLA and PEL under section A of this procedure, for purposes of determining whether a WQBEL must be included in the permit. If the permitting authority finds that the PEQ exceeds the calculated PEL, a WQBEL for the pollutant or a permit limit on an indicator parameter consistent with 40 CFR 122.44(d)(1)(vi)(C) must be included in the permit.

2. With the exception of bioaccumulative chemicals of concern (BCCs), a permitting authority is not required to apply the procedures set forth in section C.1 of this procedure or include WQBELs to protect aquatic life for any pollutant listed in Table 6 of part 132 discharged by an existing point source into the Great Lakes System, if:

a. There is insufficient data to calculate a Tier I criterion or Tier II value for aquatic life for such pollutant;

b. The permittee has demonstrated through a biological assessment that there are no acute or chronic effects on aquatic life in the receiving water; and

c. The permittee has demonstrated in accordance with procedure 6 of this appendix that the whole effluent does not exhibit acute or chronic toxicity.

3. Nothing in sections C.1 or C.2 of this procedure shall preclude or deny the right of a permitting authority to:

a. Determine, in the absence of the data necessary to derive a Tier II value, that the discharge of the pollutant will cause, have the reasonable potential to cause, or contribute to an excursion above a narrative criterion for water quality; and

b. Incorporate a WQBEL for the pollutant into an NPDES permit.

4. If the permitting authority develops a WQBEL consistent with section C.3 of this procedure, and the permitting authority demonstrates that the WQBEL developed under section C.3 of this procedure is at least as stringent as a WQBEL that would have been based upon the Tier II value or values for that pollutant, the permitting authority shall not be obligated to generate or require the permittee to generate the data necessary to derive a Tier II value or values for that pollutant.

D. *Consideration of Intake Pollutants in Determining Reasonable Potential.*

1. *General.*

a. Any procedures adopted by a State or Tribe for considering intake pollutants in water quality-based permitting shall be consistent with this section and section E.

b. The determinations under this section and section E shall be made on a pollutant-by-pollutant, outfall-by-outfall, basis.

c. This section and section E apply only in the absence of a TMDL applicable to the discharge prepared by the State or Tribe and approved by EPA, or prepared by EPA pursuant to 40 CFR 130.7(d), or in the absence of an assessment and remediation plan submitted and approved in accordance with procedure 3.A. of appendix F. This section and section E do not alter the permitting authority's obligation under 40 CFR 122.44(d)(vii)(B) to develop effluent limitations consistent with the assumptions and requirements of any available WLA for the discharge, which is part of a TMDL prepared by the State or Tribe and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d).

2. *Definition of Same Body of Water.*

a. This definition applies to this section and section E of this procedure.

b. An intake pollutant is considered to be from the same body of water as the discharge if the permitting authority finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

i. The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

ii. There is a direct hydrological connection between the intake and discharge points; and

iii. Water quality characteristics (e.g., temperature, Ph, hardness) are similar in the intake and receiving waters.

c. The permitting authority may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

d. An intake pollutant from groundwater may be considered to be from the same body of water if the permitting authority determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposed actions, or treatment processes.

e. An intake pollutant is the amount of a pollutant that is present in waters of the United States (including groundwater as provided in section D.2.d of this procedure) at the time it is withdrawn from such waters by the discharger or other facility (e.g., public water supply) supplying the discharger with intake water.

3. *Reasonable Potential Determination.*

a. The permitting authority may use the procedure described in this section of procedure 5 in lieu of procedures 5.A through C provided the conditions specified below are met.

b. The permitting authority may determine that there is no reasonable potential for the discharge of an identified intake pollutant or pollutant parameter to cause or contribute to an excursion above a narrative or numeric water quality criterion within an applicable water quality standard where a discharger demonstrates to the satisfaction of the permitting authority (based upon information provided in the permit application or other information deemed necessary by the permitting authority) that:

i. The facility withdraws 100 percent of the intake water containing the pollutant from the same body of water into which the discharge is made;

ii. The facility does not contribute any additional mass of the identified intake pollutant to its wastewater;

iii. The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

iv. The facility does not increase the identified intake pollutant concentration, as defined by the permitting authority, at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake water, unless the increased concentration does not cause or contribute to an excursion above an applicable water quality standard; and

v. The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant were left in-stream.

c. Upon a finding under section D.3 b of this procedure that a pollutant in the

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discharge does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable water quality standard, the permitting authority is not required to include a WQBEL for the identified intake pollutant in the facility's permit, provided:

i. The NPDES permit fact sheet or statement of basis includes a specific determination that there is no reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an excursion above an applicable narrative or numeric water quality criterion and references appropriate supporting documentation included in the administrative record;

ii. The permit requires all influent, effluent, and ambient monitoring necessary to demonstrate that the conditions in section D.3.b of this procedure are maintained during the permit term; and

iii. The permit contains a reopener clause authorizing modification or revocation and reissuance of the permit if new information indicates changes in the conditions in section D.3.b of this procedure.

d. Absent a finding under section D.3.b of this procedure that a pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable water quality standard, the permitting authority shall use the procedures under sections 5.A through C of this procedure to determine whether a discharge causes, has the reasonable potential to cause, or contribute to an excursion above an applicable narrative or numeric water quality criterion.

E. *Consideration of Intake Pollutants in Establishing WQBELs.*

1. *General.* This section applies only when the concentration of the pollutant of concern upstream of the discharge (as determined using the provisions in procedure 3.B.9 of appendix F) exceeds the most stringent applicable water quality criterion for that pollutant.

2. The requirements of sections D.1–D.2 of this procedure shall also apply to this section.

3. *Intake Pollutants from the Same Body of Water.*

a. In cases where a facility meets the conditions in sections D.3.b.i and D.3.b.iii through D.3.b.v of this procedure, the permitting authority may establish effluent limitations allowing the facility to discharge a mass and concentration of the pollutant that are no greater than the mass and concentration of the pollutant identified in the facility's intake water ("no net addition limitations"). The permit shall specify how compliance with mass and concentration limitations shall be assessed. No permit may authorize "no net addition limitations" which are effective after March 23, 2007. After that date, WQBELs shall be established in accordance with procedure 5.F.2 of appendix F.

b. Where proper operation and maintenance of a facility's treatment system results in removal of a pollutant, the permitting authority may establish limitations that reflect the lower mass and/or concentration of the pollutant achieved by such treatment, taking into account the feasibility of establishing such limits.

c. For pollutants contained in intake water provided by a water system, the concentration of the intake pollutant shall be determined at the point where the raw water supply is removed from the same body of water, except that it shall be the point where the water enters the water supplier's distribution system where the water treatment system removes any of the identified pollutants from the raw water supply. Mass shall be determined by multiplying the concentration of the pollutant determined in accordance with this paragraph by the volume of the facility's intake flow received from the water system.

4. *Intake Pollutants from a Different Body of Water.* Where the pollutant in a facility's discharge originates from a water of the United States that is not the same body of water as the receiving water (as determined in accordance with section D.2 of this procedure), WQBELs shall be established based upon the most stringent applicable water quality criterion for that pollutant.

5. *Multiple Sources of Intake Pollutants.* Where a facility discharges intake pollutants that originate in part from the same body of water, and in part from a different body of water, the permitting authority may apply the procedures of sections E.3 and E.4 of this procedure to derive an effluent limitation reflecting the flow-weighted average of each source of the pollutant, provided that adequate monitoring to determine compliance can be established and is included in the permit.

F. *Other Applicable Conditions.*

1. In addition to the above procedures, effluent limitations shall be established to comply with all other applicable State, Tribal and Federal laws and regulations, including technology-based requirements and antidegradation policies.

2. Once the permitting authority has determined in accordance with this procedure that a WQBEL must be included in an NPDES permit, the permitting authority shall:

a. Rely upon the WLA established for the point source either as part of any TMDL prepared under procedure 3 of this appendix and approved by EPA pursuant to 40 CFR 130.7, or as part of an assessment and remediation plan developed and approved in accordance with procedure 3.A of this appendix, or, in the absence of such TMDL or plan, calculate WLAs for the protection of acute and chronic aquatic life, wildlife and human health consistent with the provisions referenced in section A.1 of this procedure for developing preliminary wasteload allocations, and

b. Develop effluent limitations consistent with these WLAs in accordance with existing State or Tribal procedures for converting WLAs into WQBELs.

3. When determining whether WQBELs are necessary, information from chemical-specific, whole effluent toxicity and biological assessments shall be considered independently.

4. If the geometric mean of a pollutant in fish tissue samples collected from a waterbody exceeds the tissue basis of a Tier I criterion or Tier II value, after consideration of the variability of the pollutant's bioconcentration and bioaccumulation in fish, each facility that discharges detectable levels of such pollutant to that water has the reasonable potential to cause or contribute to an excursion above a Tier I criteria or a Tier II value and the permitting authority shall establish a WQBEL for such pollutant in the NPDES permit for such facility.

Procedure 6: Whole Effluent Toxicity Requirements

The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) procedure 6 of appendix F of part 132.

The following definitions apply to this part:

Acute toxic unit (TU_a). $100/LC_{50}$ where the LC_{50} is expressed as a percent effluent in the test medium of an acute whole effluent toxicity (WET) test that is statistically or graphically estimated to be lethal to 50 percent of the test organisms.

Chronic toxic unit (TU_c). 100/NOEC or $100/IC_{25}$, where the NOEC and IC_{25} are expressed as a percent effluent in the test medium.

Inhibition concentration 25 (IC_{25}). the toxicant concentration that would cause a 25 percent reduction in a non-quantal biological measurement for the test population. For example, the IC_{25} is the concentration of toxicant that would cause a 25 percent reduction in mean young per female or in growth for the test population.

No observed effect concentration (NOEC). The highest concentration of toxicant to which organisms are exposed in a full life-cycle or partial life-cycle (short-term) test, that causes no observable adverse effects on the test organisms (i.e., the highest concentration of toxicant in which the values for the observed responses are not statistically significantly different from the controls).

A. *Whole Effluent Toxicity Requirements.* The Great Lakes States and Tribes shall adopt whole effluent toxicity provisions consistent with the following:

1. A numeric acute WET criterion of 0.3 acute toxic units (TU_a) measured pursuant to test methods in 40 CFR part 136, or a numeric interpretation of a narrative criterion establishing that 0.3 TU_a measured pursuant to test methods in 40 CFR part 136 is necessary to protect aquatic life from acute effects of WET. At the discretion of the permitting authority, the foregoing requirement shall not apply in an acute mixing zone that is sized in accordance with EPA-approved State and Tribal methods.

2. A numeric chronic WET criterion of one chronic toxicity unit (TU_c) measured pursuant to test methods in 40 CFR part 136, or a numeric interpretation of a narrative criterion establishing that one TU_c measured pursuant to test methods in 40 CFR part 136 is necessary to protect aquatic life from the chronic effects of WET. At the discretion of the permitting authority, the foregoing requirements shall not apply within a chronic mixing zone consistent with: (a) procedures 3.D.1 and 3.D.4, for discharges to the open of the Great Lakes (OWGL), inland lakes and other waters of the Great Lakes System with no appreciable flow relative to their volume, or (b) procedure 3.E.5 for discharges to tributaries and connecting channels of the Great Lakes System.

B. *WET Test Methods.* All WET tests performed to implement or ascertain compliance with this procedure shall be performed in accordance with methods established in 40 CFR part 136.

C. *Permit Conditions.*

1. Where a permitting authority determines pursuant to section D of this procedure that the WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's or Tribe's water quality standards, the permitting authority:

a. Shall (except as provided in section C.1.e of this procedure) establish a water quality-based effluent limitation (WQBEL) or WQBELs for WET consistent with section C.1.b of this procedure;

b. Shall calculate WQBELs pursuant to section C.1.a. of this procedure to ensure attainment of the State's or Tribe's chronic WET criteria under receiving water flow conditions described in procedures 3.E.1.a (or where applicable, with procedure 3.E.1.e) for Great Lakes System tributaries and connecting channels, and with mixing zones no larger than allowed pursuant to section A.2. of this procedure. Shall calculate WQBELs to ensure attainment of the State's or Tribe's acute WET criteria under receiving water flow conditions described in procedure 3.E.1.b (or where applicable, with procedure 3.E.1.e) for Great Lakes System tributaries and connecting channels, with an allowance for mixing zones no greater than specified pursuant to section A.1 of this procedure.

c. May specify in the NPDES permit the conditions under which a permittee would be required to perform a toxicity reduction evaluation.

d. May allow with respect to any WQBEL established pursuant to section C.1.a of this procedure an appropriate schedule of compliance consistent with procedure 9 of appendix F; and

e. May decide on a case-by-case basis that a WQBEL for WET is not necessary if the State's or Tribe's water quality standards do not contain a numeric criterion for WET, and the permitting authority demonstrates in accordance with 40 CFR 122.44(d)(1)(v) that chemical-specific effluent limits are sufficient to ensure compliance with applicable criteria.

2. Where a permitting authority lacks sufficient information to determine pursuant to section D of this procedure whether the WET of an effluent is or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's or Tribe's water quality standards, then the permitting authority should consider including in the NPDES permit appropriate conditions to require generation of additional data and to control toxicity if found, such as:

a. WET testing requirements to generate the data needed to adequately characterize the toxicity of the effluent to aquatic life;

b. Language requiring a permit reopener clause to establish WET limits if any toxicity testing data required pursuant to section C.2.a of this procedure indicate that the WET of an effluent is or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's or Tribe's water quality standards.

3. Where sufficient data are available for a permitting authority to determine pursuant to section D of this procedure that the WET of an effluent neither is nor may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's or Tribe's water quality standards, the permitting authority may include conditions and limitations described in section C.2 of this procedure at its discretion.

D. *Reasonable Potential Determinations.* The permitting authority shall take into account the factors described in 40 CFR 122.44(d)(1)(ii) and, where representative facility-specific WET effluent data are available, apply the following requirements in determining whether the WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's or Tribe's water quality standards.

1. The permitting authority shall characterize the toxicity of the discharge by:

a. Either averaging or using the maximum of acute toxicity values collected within the same day for each species to represent one daily value. The maximum of all daily values for the most sensitive species tested is used for reasonable potential determinations;

b. Either averaging or using the maximum of chronic toxicity values collected within the same calendar month for each species to represent one monthly value. The maximum of such values, for the most sensitive species tested, is used for reasonable potential determinations;

c. Estimating the toxicity values for the missing endpoint using a default acute-chronic ratio (ACR) of 10, when data exist for either acute WET or chronic WET, but not for both endpoints.

2. The WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric acute WET criterion or numeric interpretation of a narrative criterion within a State's or Tribe's water quality standards, when effluent-specific information demonstrates that:

$(TU_a \text{ effluent}) (B) (\text{effluent flow}/(Qad+\text{effluent flow}))>AC$

Where TU_a effluent is the maximum measured acute toxicity of 100 percent effluent determined pursuant to section D.1.a. of this procedure, B is the multiplying factor taken from Table F6–1 of this procedure to convert the highest measured effluent toxicity value to the estimated 95th percentile toxicity value for the discharge, effluent flow is the same effluent flow used to calculate the preliminary wasteload allocations (WLAs) for individual pollutants to meet the acute criteria and values for those pollutants, AC is the numeric acute WET criterion or numeric interpretation of a narrative criterion established pursuant to section A.1 of this procedure and expressed in TU_a, and Qad is the amount of the receiving water available for dilution calculated using: (i) the specified design flow(s) for tributaries and connecting channels in section C.1.b of this procedure, or where appropriate procedure 3.E.1.e of appendix F, and using EPA-approved State and Tribal procedures for establishing acute mixing zones in tributaries and connecting channels, or (ii) the EPA-approved State and Tribal procedures for establishing acute mixing zones in OWGLs. Where there are less than 10 individual WET tests, the multiplying factor taken from Table F6–1 of this procedure shall be based on a coefficient of variation (CV) or 0.6. Where there are 10 or more individual WET tests, the multiplying factor taken from Table F6–1 shall be based on a CV calculated as the standard deviation of the acute toxicity values found in the WET tests divided by the arithmetic mean of those toxicity values.

3. The WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric chronic WET criterion or numeric interpretation of a narrative criterion within a State's or Tribe's water quality standards, when effluent-specific information demonstrates that:

$(TU_c \text{ effluent}) (B) (\text{effluent flow}/Qad+\text{effluent flow}))>CC$

Where TU_c effluent is the maximum measured chronic toxicity value of 100 percent effluent determined in accordance with section D.1.b. of this procedure, B is the multiplying factor taken from Table F6–1 of this procedure, effluent flow is the same effluent flow used to calculate the preliminary WLAs for individual pollutants to meet the chronic criteria and values for those pollutants, CC is the numeric chronic WET criterion or numeric interpretation of a narrative criterion established pursuant to section A.2 of this procedure and expressed in TU_c, and Qad is the amount of the receiving water available for dilution calculated using: (i) the design flow(s) for tributaries and connecting channels specified in procedure 3.E.1.a of appendix F, and where appropriate procedure 3.E.1.e of appendix F, and in accordance with the provisions of procedure 3.E.5 for chronic mixing zones, or (ii) procedures 3.D.1 and 3.D.4 for discharges to the OWGLs. Where there are less than 10 individual WET tests, the multiplying factor taken from Table F6–1 of this procedure shall be based on a CV of 0.6. Where there are 10 more individual WET tests, the multiplying factor taken from Table F6–1 of this procedure shall be based on a CV calculated as the standard deviation of the WET tests divided by the arithmetic mean of the WET tests.

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TABLE F6–1.—REASONABLE POTENTIAL MULTIPLYING FACTORS: 95% CONFIDENCE LEVEL AND 95% PROBABILITY BASIS

Number of Samples	Coefficient of variation																			
	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
1	1.4	1.9	2.6	3.6	4.7	6.2	8.0	10.1	12.6	15.5	18.7	22.3	26.4	30.8	35.6	40.7	46.2	52.1	58.4	64.9
2	1.3	1.6	2.0	2.5	3.1	3.8	4.6	5.4	6.4	7.4	8.5	9.7	10.9	12.2	13.6	15.0	16.4	17.9	19.5	21.1
3	1.2	1.5	1.8	2.1	2.5	3.0	3.5	4.0	4.6	5.2	5.8	6.5	7.2	7.9	8.6	9.3	10.0	10.8	11.5	12.3
4	1.2	1.4	1.7	1.9	2.2	2.6	2.9	3.3	3.7	4.2	4.6	5.0	5.5	6.0	6.4	6.9	7.4	7.8	8.3	8.8
5	1.2	1.4	1.6	1.8	2.1	2.3	2.6	2.9	3.2	3.6	3.9	4.2	4.5	4.9	5.2	5.6	5.9	6.2	6.6	6.9
6	1.1	1.3	1.5	1.7	1.9	2.1	2.4	2.6	2.9	3.1	3.4	3.7	3.9	4.2	4.5	4.7	5.0	5.2	5.5	5.7
7	1.1	1.3	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.3	3.5	3.7	3.9	4.1	4.3	4.5	4.7	4.9
8	1.1	1.3	1.4	1.6	1.7	1.9	2.1	2.3	2.4	2.6	2.8	3.0	3.2	3.3	3.5	3.7	3.9	4.0	4.2	4.3
9	1.1	1.2	1.4	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.8	2.9	3.1	3.2	3.4	3.5	3.6	3.8	3.9
10	1.1	1.2	1.3	1.5	1.6	1.7	1.9	2.0	2.2	2.3	2.4	2.6	2.7	2.8	3.0	3.1	3.2	3.3	3.4	3.6
11	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.5	2.7	2.8	2.9	3.0	3.1	3.2	3.3
12	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0	3.0
13	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.5	2.6	2.7	2.8	2.9
14	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.3	2.4	2.5	2.6	2.6	2.7
15	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.8	1.9	2.0	2.1	2.2	2.2	2.3	2.4	2.4	2.5	2.5
16	1.1	1.1	1.2	1.3	1.4	1.5	1.6	1.6	1.7	1.8	1.9	1.9	2.0	2.1	2.1	2.2	2.3	2.3	2.4	2.4
17	1.1	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.2	2.2	2.3	2.3
18	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.1	2.2	2.2
19	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0	2.1	2.1
20	1.1	1.1	1.2	1.2	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0
30	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.5	1.5
40	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3
50	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
60	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
70	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
80	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8
90	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
100	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7	0.7

Procedure 7: Loading Limits

The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this procedure.

Whenever a water quality-based effluent limitation (WQBEL) is developed, the WQBEL shall be expressed as both a concentration value and a corresponding mass loading rate.

A. Both mass and concentration limits shall be based on the same permit averaging periods such as daily, weekly, or monthly averages, or in other appropriate permit averaging periods.

B. The mass loading rates shall be calculated using effluent flow rates that are consistent with those used in establishing the WQBELs expressed in concentration.

Procedure 8: Water Quality-based Effluent Limitations Below the Quantification Level

The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) this procedure.

When a water quality-based effluent limitation (WQBEL) for a pollutant is calculated to be less than the quantification level:

A. *Permit Limits.* The permitting authority shall designate as the limit in the NPDES permit the WQBEL exactly as calculated.

B. *Analytical Method and Quantification Level.*

1. The permitting authority shall specify in the permit the most sensitive, applicable, analytical method, specified in or approved under 40 CFR part 136, or other appropriate method if one is not available under 40 CFR part 136, to be used to monitor for the presence and amount in an effluent of the pollutant for which the WQBEL is established; and shall specify in accordance with section B.2 of this procedure, the quantification level that can be achieved by use of the specified analytical method.

2. The quantification level shall be the minimum level (ML) specified in or approved under 40 CFR part 136 for the method for that pollutant. If no such ML exists, or if the method is not specified or approved under 40 CFR part 136, the quantification level shall be the lowest quantifiable level practicable. The permitting authority may specify a higher quantification level if the permittee demonstrates that a higher quantification level is appropriate because of effluent-specific matrix interference.

3. The permit shall state that, for the purpose of compliance assessment, the analytical method specified in the permit shall be used to monitor the amount of pollutant in an effluent down to the quantification level, provided that the analyst has complied with the specified quality assurance/quality control procedures in the relevant method.

4. The permitting authority shall use applicable State and Tribal procedures to average and account for monitoring data. The permitting authority may specify in the permit the value to be used to interpret sample values below the quantification level.

C. *Special Conditions.* The permit shall contain a reopener clause authorizing modification or revocation and reissuance of the permit if new information generated as a result of special conditions included in the permit indicates that presence of the pollutant in the discharge at levels above the WQBEL. Special conditions that may be included in the permit include, but are not limited to, fish tissue sampling, whole effluent toxicity (WET) tests, limits and/or monitoring requirements on internal waste streams, and monitoring for surrogate parameters. Data generated as a result of special conditions can be used to reopen the permit to establish more stringent effluent limits or conditions, if necessary.

D. *Pollutant Minimization Program.* The permitting authority shall include a condition in the permit requiring the permittee to develop and conduct a pollutant minimization program for each pollutant with a WQBEL below the quantification level. The goal of the pollutant minimization program shall be to reduce all potential sources of the pollutant to maintain the effluent at or below the WQBEL. In addition, States and Tribes may consider cost-effectiveness when establishing the requirements of a PMP. The pollutant minimization program shall include, but is not limited to, the following:

1. An annual review and semi-annual monitoring of potential sources of the pollutant, which may include fish tissue monitoring and other bio-uptake sampling;

2. Quarterly monitoring for the pollutant in the influent to the wastewater treatment system;

3. Submittal of a control strategy designed to proceed toward the goal of maintaining all sources of the pollutant to the wastewater collection system below the WQBEL;

4. When the sources of the pollutant are discovered, appropriate cost-effective control measures shall be implemented, consistent with the control strategy; and

5. An annual status report that shall be sent to the permitting authority including:

a. All minimization program monitoring results for the previous year;

b. A list of potential sources of the pollutant; and

c. A summary of all action taken to reduce or eliminate the identified sources of the pollutant.

6. Any information generated as a result of procedure 8.D can be used to support a request for subsequent permit modifications, including revisions to (e.g., more or less frequent monitoring), or removal of the requirements of procedure 8.D, consistent with 40 CFR 122.44, 122.62 and 122.63.

Procedure 9: Compliance Schedules

The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) procedure 9 of appendix F of part 132.

A. *Limitations for New Great Lakes Dischargers.* When a permit issued on or after March 23, 1997 to a new Great Lakes discharger (defined in Part 132.2) contains a water quality-based effluent limitation (WQBEL), the permittee shall comply with such a limitation upon the commencement of the discharge.

B. *Limitations for Existing Great Lakes Dischargers.*

1. Any existing permit that is reissued or modified on or after March 23, 1997 to contain a new or more restrictive WQBEL may allow a reasonable period of time, up to five years from the date of permit issuance or modification, for the permittee to comply with that limit, provided that the Tier I criterion or whole effluent toxicity (WET) criterion was adopted (or, in the case of a narrative criterion, Tier II value, or Tier I criterion derived pursuant to the methodology in appendix A of part 132, was newly derived) after July 1, 1977.

2. When the compliance schedule established under paragraph 1 goes beyond the term of the permit, an interim permit limit effective upon the expiration date shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect the final limit and its compliance date.

3. If a permit establishes a schedule of compliance under paragraph 1 which exceeds one year from the date of permit issuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The time between such interim dates may not exceed one year. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of any interim requirements.

C. *Delayed Effectiveness of Tier II Limitations for Existing Great Lakes Discharges.*

1. Whenever a limit (calculated in accordance with Procedure 3) based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with the Tier II limitation within a reasonable period of time, no later than five years after permit issuance or modification, and contain a reopener clause.

2. The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies, and the permittee or a third-party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less-stringent for purposes of the anti-backsliding provisions of section 402(o) of the Clean Water Act.

3. If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the permitting authority may provide a reasonable additional period of time, not to exceed five years with which to achieve compliance with the original effluent limitation.

4. Where a permit is modified to include new or more stringent limitations, on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with section B.2 of this procedure.

5. If future studies (other than those conducted under paragraphs 1, 2, or 3 above) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit the existing Tier II-based limit may be revised to be less stringent if:

(a) It complies with sections 402(o) (2) and (3) of the CWA; or,

(b) In non-attainment waters, where the existing Tier II limit was based on procedure 3, the cumulative effect of revised effluent limitation based on procedure 3 of this appendix will assure compliance with water quality standards; or,

(c) In attained waters, the revised effluent limitation complies with the State or Tribes antidegradation policy and procedures

[FR Doc. 95–6671 Filed 3–22–95; 8:45 am]

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federal register

Thursday
March 23, 1995

Part IV

Department of Education

Privacy Act of 1974; Computer Matching Program; Notice

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DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Immigration and Naturalization Service (INS), Department of Justice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Immigration and Naturalization Service (INS), Department of Justice (the source agency).

Notice of the matching program was originally published in the **Federal Register** on September 24, 1992 (57 FR 44209); the program became effective on October 26, 1992. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension will expire on April 26, 1995. The following notice represents the approval of a new agreement by the Department of Justice and Department of Education Data Integrity Boards to continue the matching program (on the effective date as indicated below).

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Final Guidance on Interpreting the Provisions of Pub. L. 100–503, Computer Matching and Privacy Act of 1988 (54 FR 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

The matching program entitled "Systematic Alien Verification for Entitlement (SAVE) INS/ED" will permit ED to confirm the immigration status of alien applicants for, or recipients of, assistance as authorized by Title IV, section 484(a)(5), of the Higher Education Act of 1965, (HEA), as amended. The Title IV programs include: The Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, State Student Incentive Grant, Federal Family Education Loan, William D. Ford Direct Loan and the Federal Perkins Loan Programs.

3. Authority for Conducting the Matching Program

The information contained in the INS data base is referred to as the Alien Status Verification Index (ASVI), and is authorized under the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603. ED seeks access to this data base under the Higher Education Act of 1965, as amended (section 484(g)). The INS is authorized to confirm immigration status under the authority of section 103 of the Immigration and Nationality Act.

4. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

Through the use of user identification codes and passwords, authorized persons from ED will transmit electronically to INS data from its Privacy Act system of records entitled, "Federal Student Aid Application File (18–40–0014)." The data will include the alien registration number and date of birth of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in an INS Privacy Act system of records entitled "Alien Status Verification Index (JUSTICE/INS–009)." Where there is a match of records, the system will provide to ED the immigration status code and employment eligibility code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), ED will verify any adverse finding (independently or through the alien applicant or recipient) and provide the alien applicant or recipient with 30 days notice and opportunity to contest such finding.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Claude Denton, Acting Chief, Student Eligibility and Verification Section, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3045, ROB–3), Washington, DC 20202, Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: March 15, 1995.

David A. Longanecker,

Asistant Secretary for Postsecondary Education.

[FR Doc. 95–7093 Filed 3–22–95 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
March 23, 1995

Part V

Department of the Treasury

Fiscal Service

31 CFR Part 351

Offering of United States Savings Bonds, Series EE; Final Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 351

[Department of the Treasury Circular, Public Debt Series No. 1–80]

Offering of United States Savings Bonds, Series EE

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This Final Rule amends the offering circular for Series EE United States Savings Bonds to reflect rate changes for Series EE savings bonds issued on or after May 1, 1995, and the repeal of the statutory minimum 4 percent investment yield guarantee. The purpose of these changes is to provide for greater flexibility in determining and calculating the interest rates and redemption values for Series EE savings bonds.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Wallace Earnest, Director, Division of Staff Services, Savings Bond Operations, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328 (304) 480–6319, or Edward Gronseth, Deputy Chief Counsel, or Bob Riffle, Paralegal Specialist, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5192.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 1976, the savings bonds statute, the Second Liberty Bond Act (31 U.S.C. 757c(b), later codified at 31 U.S.C. 3105), was amended to require that the investment yield on Series E savings bonds would not be less than 4 percent per annum, compounded semiannually, from the first day of the month after issue date to the last day of the month before the redemption date (31 U.S.C. 3105(b)(2)). The purpose of this amendment was to provide savings bond owners with a guaranteed minimum rate of return no matter when they redeemed their bonds. In 1982, the Treasury amended the offering circular for Series EE bonds held at least 5 years. The returns were linked to yields for 5-year Treasury securities. A guaranteed minimum rate was still in effect, but it declined over the years from 7.5 percent to 6 percent to the statutory 4 percent floor.

On December 8, 1994, the guaranteed minimum 4 percent was repealed (Pub.l. 103–465). This statutory change provided the opportunity for Treasury to consider a fresh approach to determining rates for new savings bonds and better achieve the goals of the Savings Bond Program.

II. Summary of Amendments

Section 351.0 is amended to change the effective date of the offering circular to May 1, 1995.

Paragraphs (e) through (i) of section 351.2, are amended to ensure that the provisions of those paragraphs do not conflict with or contradict other changes to Section 351.2, as described below.

A new paragraph (j) is added to Section 351.2 to describe changes in the terms and conditions for Series EE bonds offered for sale on and after May 1, 1995. The following paragraphs describe the terms and conditions for such bonds:

Market Yields. Treasury uses market bid yields for bills, notes, and bonds to create a yield curve based on the most actively traded Treasury securities. This curve relates the yield on a security to its time to maturity. Yields at particular points on the curve are referred to as "constant maturity yields" and are determined by the U.S. Treasury from this daily yield curve. The Board of Governors of the Federal Reserve System currently publishes daily Treasury constant maturity yields in the Statistical Release H.15, "Selected Interest Rates". The 6-month and 5-year Treasury securities rates described below are derived from these yield curves. (Note: This method of determining market rates has been used since the inception of the market-based program in 1982).

Short-Term Savings Bond Rate. No less frequently than on each May 1 and November 1, Treasury announces a short-term savings bond rate. To determine this rate, Treasury compiles 6-month Treasury securities rates as of the close of business for each day of the previous three months and calculates the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. The short-term savings bond rate is then determined by taking 85 percent of the 3-month average and rounding the result to the nearest one-hundredth of one percent. If the regularly scheduled date for the announcement (for example, May 1) is a day when the Treasury is not open for business, then the announcement is made on the next business day and is effective as of the first day of that month. For bonds entitled to interest accruals at the short-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

Long-Term Savings Bond Rate. No less frequently than on each May 1 and November 1, Treasury announces a long term-savings bond rate. To determine this rate, Treasury compiles 5-year Treasury securities rates as of the close of business for each day of the previous six months and calculates the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. The long-term savings bond rate is then determined by taking 85 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent. If the regularly scheduled date for the announcement (for example, May 1) is a day when the Treasury is not open for business, then the announcement is made on the next business day and is effective as of the first day of that month. For bonds entitled to interest accruals at the long-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

Base Denomination. All redemption value calculations are performed on a hypothetical denomination of $25, having a value at the beginning of the first earning period equal to an issue price of $12.50. Redemption values for bonds of greater denominations are in direct proportion according to the ratio of denominations. *For example,* if the value of a hypothetical $25 denomination is $26.80—*i.e.,* $12.50 issue price plus $14.30 accrued interest—the value of a $50 bond is $26.80 × (50 ÷ 25), or $53.60.

Semiannual Earning Periods and Accrual Dates. Bonds bearing May 1, 1995, and later issue dates, earn interest during each successive 6-month period from date of issue to final maturity. Interest accrues, immediately following each earning period, on each semiannual anniversary of the date of issue, including the date of final maturity.

Original Maturity. Original maturity occurs at 17 years after date of issue. The redemption value of a bond at original maturity shall not be less than the face amount (denomination) of the bond.

Final Maturity. Final maturity occurs at 30 years after the date of issue. Bonds cease to earn interest at final maturity.

Interest Rate and Redemption Values for Bonds Through Original Maturity. Short-term saving bond rates are used to determine the increase in redemption values for each semiannual accrual date occurring on or before 5 years from the date of issue. For a bond outstanding more than five years through original maturity, long-term savings bond rates are used to determine the increase in redemption values for each semiannual accrual date occurring after 5 years from the date of issue.

Interest Rate and Redemption Values for Bonds During An Extended Maturity Period. From 17 years after date of issue to the final maturity date, the bond continues to earn interest and ceases to earn interest at final maturity.

Outstanding Savings Bonds. No changes are made to the terms and conditions for outstanding bonds or to the regulations governing the offering of Series E, H and HH savings bonds in 31 CFR parts 316, 332, and 352, respectively, and savings notes in 31 CFR part 342, as a result of the repeal of paragraph (b)(2) of 31 U.S.C. 3105 and the amendment to 31 CFR part 351.

Procedural Requirements

It has been determined that this Final Rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required.

This rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Final Rule, and, therefore, no approval pursuant to the Paperwork Reduction Act, is required.

List of Subjects in 31 CFR Part 351

Bonds, Government Securities.

Dated: March 10, 1995.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, Part 351 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Section 351.0 is amended, in the second sentence, by removing "March 1, 1993", and adding in its place "May 1, 1995."

3. Section 351.2(c) is amended as follows:

A. Adding at the end of the heading "for bonds issued prior to May 1, 1995";

B. In the second sentence, after "Series EE bonds", by adding "issued prior to May 1, 1995,";

C. In the table, in the first column, last line, by revising "Mar. 1993, and thereafter" to read "Mar. 1993–Apr. 1995"; and

D. In the table, in the second column, last line, by revising "Mar. 2011, and thereafter" to read "Mar. 2011–Apr. 2013".

4. Section 351.2(e) is amended as follows:

A. In the paragraph heading, by revising the words "November 1, 1982, or thereafter" to read "November 1, 1982 through April 1, 1995.";

B. The introductory text of paragraph (e) is revised to read as follows:

* * * * *

(e)* * * The investment yield of a Series EE bond bearing issue dates of November 1, 1982, through April 1, 1995, from its issue date to each interest accrual date occurring less than 5 years after issue, will be as shown in Tables 1, 2, and 3 in the appendix to this part.

* * * * *

C. Removing "or thereafter" at the end of the first sentence of paragraph (e)(1) and adding in its place "through April 1, 1995";

D. In paragraph (e)(2)(iii), in the first sentence, after the words "May 1, 1989," by removing "or thereafter" and adding in its place "through April 1, 1995".

5. Section 351.2(f)(2) is amended by removing "November 2, 1982" and adding in its place "November 1, 1982".

6. Section 351.2(g) is amended as follows:

A. In the paragraph heading, after "Extended maturity periods," by adding "for bonds bearing issue dates prior to May 1, 1995";

B. In the first sentence, by removing "of 12 years or less";

C. In the heading of paragraph (g)(2), after "Extensions granted," adding "for bonds bearing issue dates prior to May 1, 1995"; and

D. By revising the tables in paragraph (g)(2) to read as follows:

* * * * *

Issues dates—1st day of:	Original terms	Original maturity dates-day of:	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	11 years	Jan. 1991–Oct. 1991	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	9 years	Nov. 1989–Apr. 1990	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	8 years	May 1989–Oct. 1990	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	10 years	Nov. 1992–Oct. 1996	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	12 years	Nov. 1998–Feb. 2005	Nov. 2016–Feb. 2023.
Mar. 1993–Apr. 1995	18 years	Mar. 2011–Apr. 2013	Mar. 2023–Apr. 2025

Issues dates—1st day of:	1st extended maturity dates—1st day of:*	Years to final maturity	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	Jan. 2001–Oct. 2001	9 years	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	Nov. 1999–Apr. 2000	11 years	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	May 1999–Oct. 2000	12 years	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	Nov. 2002–Oct. 2006	10 years	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	Nov. 2008–Feb. 2015	8 years	Nov. 2016–Feb. 2023.
Mar. 1993–Apr. 1995	Mar. 2021–Apr. 2023	2 years	Mar. 2023–Apr. 2025

* At 10 years after original maturity.

* * * * *

E. In the heading of paragraph (g)(3), by adding "for bonds bearing issue dates prior to May 1, 1995" after "extended maturity period".

7. Paragraph 351.2(h) is amended as follows:

A. In the heading, by adding "for bonds issued prior to May 1, 1995" after "Accrual and payment of interest";

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B. In the fifth sentence, after "For bonds with issue dates", by removing "on and after" and adding in their place the word "of"; and

C. In the fifth sentence, after "March 1, 1993,", by adding "through April 1, 1995,".

8. Paragraph 351.2(i) is amended as follows:

A. In the heading, by adding "for bonds issued prior to May 1, 1995" after "Tables of redemption values"; and

B. In the first sentence, after "November 1, 1982,", by removing "and thereafter", and adding in its place "through April 1, 1995".

9. A new paragraph (j) is added to Section 351.2 to read as follows:

* * * * *

(j) *Market-based interest rate and redemption values—bonds bearing issue dates of May 1, 1995, or thereafter.* (1) The following definitions apply for determining the interest rates and redemption values for bonds bearing issue dates of May 1, 1995, and thereafter:

(i) *Market yields.* Treasury uses market bid yields for bills, notes, and bonds to create a yield curve based on the most actively traded Treasury securities. This curve relates the yield on a security to its time to maturity. Yields at particular points on the curve are referred to as "constant maturity yields" and are determined by the Treasury from this daily yield curve. The 6-month and 5-year Treasury securities rates described below are derived from these yield curves.

(ii) *Short-term savings bond rate.* No less frequently than on each May 1 and November 1, Treasury announces a short-term savings bond rate. To determine this rate, Treasury compiles 6-month Treasury securities rates as of the close of business for each day of the previous three months and calculates the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. The short-term savings bond rate is then determined by taking 85 percent of the three-month average and rounding the result to the nearest one-hundredth of one percent. If the regularly scheduled date for the announcement (for example, May 1) is a day when the Treasury is not open for business, then the announcement is made on the next business day and is effective as of the first day of that month. For bonds entitled to interest accruals at the short-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

(iii) *Long-term savings bond rate.* No less frequently than on each May 1 and November 1, Treasury announces a long-term savings bond rate. To determine this rate, Treasury compiles 5-year Treasury securities rates as of the close of business for each day of the previous six months and calculates the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. The long-term savings bond rate is then determined by taking 85 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent. If the regularly scheduled date for the announcement (for example, May 1) is a day when the Treasury is not open for business, then the announcement is made on the next business day and is effective as of the first day of that month. For bonds entitled to interest accruals at the long-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

(iv) *Base denomination.* All redemption value calculations are performed on a hypothetical denomination of $25 having a value at the beginning of the first earning period equal to an issue price of $12.50. Redemption values for bonds of greater denominations are in direct proportion according to the ratio of denominations. *For example,* if the value of a hypothetical $25 denomination is $26.80—*i.e.*, $12.50 issue price plus $14.30 accrued interest—on the same redemption date, the value of a $50 bond bearing the same issue date is $26.80 × (50 ÷ 25) or $53.60.

(v) *Issue date.* The issue date of a Series EE bond is the first day of the month in which payment of the issue price is received by an authorized issuing agent.

(vi) *Semiannual earning periods and accrual dates.* Bonds bearing issue dates of May 1, 1995, and thereafter earn interest during each successive six month period from date of issue to final maturity. Interest accrues, immediately following each earning period, on each semiannual anniversary of the date of issue, including the date of final maturity.

(vii) *Original maturity.* Bonds reach original maturity at 17 years after date of issue.

(viii) *Final maturity.* Bonds reach final maturity at 30 years after date of issue. A bond ceases to earn interest at final maturity.

(2) *Interest rates and redemption values for bonds held 5 years or less.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, or thereafter, for semiannual earning periods during the first 5 years from date of issue, is the short-term savings bond rate determined as defined in paragraph (j)(1)(ii) of this section. Redemption values for semiannual accrual dates occurring on or before 5 years from date of issue are calculated in accordance with paragraph (j)(5) of this section.

(3) *Interest rates and redemption values for bonds held 5 years and 6 months and longer.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, or thereafter, for semiannual earning periods beginning 5 years from date of issue through original maturity, is the long-term savings bond rate determined as defined in paragraph (j)(1)(iii) of this section. Redemption values for semiannual accrual dates occurring after 5 years from date of issue, through original maturity, are calculated in accordance with paragraph (j)(5) of this section, except that the redemption value at the date of original maturity, as provided in paragraph (j)(1)(vii) of this section, shall not be less than the denomination (face amount or face value).

(4) *Interest rates and redemption values for bonds during an extended maturity period.* From 17 years after date of issue to the final maturity date (the "extended maturity period") the bond will be subject to the terms and conditions in effect when it is issued, and will continue to earn interest as described in paragraph (j)(3) of this section, unless the terms and conditions applicable to an extended maturity period are expressly amended prior to the beginning of such period.

(5) *Redemption value calculations.* Interest on a bond accrues and becomes part of the redemption value which is paid when the bond is cashed. The redemption value of a bond on the accrual date immediately following each semiannual earning period is determined as follows:

(i) The applicable long-term or short-term savings bond rate for the semiannual earning period is converted to decimal form by dividing by 100, and is adjusted to a semiannual rate by dividing by 2.

(ii) Using redemption values for the base denomination, as defined in paragraph (j)(1)(iv) of this section, this rate is then multiplied by the redemption value of the bond at the beginning of the semiannual earning period.

(iii) The resulting interest amount, rounded to the nearest cent, is added to the redemption value of the bond at the beginning of the earning period to produce the redemption value at the next semiannual accrual date. The redemption value of a bond remains constant between accrual dates.

(6) *The Secretary's determination.* The determination by the Secretary of the Treasury, or his delegate, of the market yields, and the long-term and short-term savings bond rates, shall be final and conclusive.

(7) *Tables of redemption values.* Tables of redemption value are made available by the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, prior to the periods during which the redemption values are payable.

[FR Doc. 95–7134 Filed 3–21–95; 8:45 am]
BILLING CODE 4810–39–W

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3885; FR–3884–N–01]

Notice of Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces the Department's intention to award $9 million to HOPE VI eligible housing authorities who have partnered with the Laborers International Union of North America (LIUNA); the United Brotherhood of Carpenters and the International Brotherhood of Painters; and the American Federation of State, County and Municipal Employees (AFSCME) to enhance the long-term welfare of youth living in public housing through Apprenticeship Demonstration Programs. The Department will enter into Memoranda of Agreement with the above referenced organizations for the same purpose—to enhance the long-term welfare of youth living in public hqusing.

The Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations will provide job training and ensure bonafide apprenticeship and employment opportunities in the construction trades and public housing operations that will lead to self-sufficiency for public housing youth. This notice provides guidelines for the use of these funds and invites comments on the demonstration.

DATES: Proposal Due Date: Applicant proposals will be due to the Department May 8, 1995. Proposals must be received in the Office of Community Relations and Involvement, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room 4112, Washington, DC 20410 no later than 3:00 pm, local time on the proposal due date.

Comment Due Date: April 24, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia Lehrer, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4112, Washington, DC 20410, Telephone Number (202) 619–8201. (This is not a toll free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on (202) 708–9300 or 1–800–877–8339) for information on the program.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number when assigned will be published by separate notice in the **Federal Register**.

II. Authority

The $9 million for the Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations is funded from a portion of the $20 million appropriated in the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act), under the heading "Severely Distressed Public Housing Projects", for implementation of Youthbuild programs by eligible grantees under the Urban Revitalization Demonstration Program (HOPE VI). (On September 14, 1994 (59 FR 47222), the Department announced a Youth Apprenticeship program funded with a separate $10 million portion of the $20 million, which the Appropriations Act specifically earmarked for youth apprenticeship training activities pursuant to section 3 of the Housing and Urban Development Act of 1968, as amended (Economic Opportunities for Low- and Very-Low-Income Persons).) This grant program provides funds for the implementation of Youthbuild programs authorized under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

III. Announcement of Demonstration

This notice announces the Department's intention to award $9 million to HOPE VI eligible housing authorities who have partnered with the Laborers International Union of North America (LIUNA); the United Brotherhood of Carpenters and the International Brotherhood of Painters; and the American Federation of State, County and Municipal Employees (AFSCME) to enhance the long-term welfare of youth living in public housing through Apprenticeship Demonstration Programs.

In accordance with the requirements of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), this notice describes the Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations and invites public comment. Any changes made in this demonstration as a result of the Department's consideration of public comments, and any extension of time for commitment of funds that may be necessary because of these changes, also will be published in the **Federal Register**.

The Department will not commit funds for the demonstration until after the latest of: (1) The date the Department has considered any comments received in response to this notice; (2) May 22, 1995, which is 60 days after today's publication date; and (3) the date the Department has received and approved a proposal that meets the requirements set forth in this notice and any subsequent notice announcing changes in the demonstration.

IV. Maximum Award

The maximum award for a Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations is $250,000; however, the Department reserves the right to increase the maximum individual award based on the number of applications funded.

The Memoranda of Agreement that the Department will enter with the above mentioned organizations will indicate that HUD will make up to $3.5 million available to public housing authorities to partner with the Laborers International Union of North America (LIUNA); up to $3.5 million available for housing authorities to partner with the United Brotherhood of Carpenters and the International Brotherhood of Painters; up to $2.0 million available to

housing authorities to partner with American Federation of State, County and Municipal Employees (AFSCME).

Under this demonstration, housing authorities may partner with one trade union and/or AFSCME.

V. Description of Demonstration

The Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations is part of HUD's comprehensive strategy to restore and revitalize communities in urban America, preserve and rebuild public housing stock and create ladders of economic opportunity for public housing residents. This demonstration program specifically links public housing authorities (PHAs) and their residents and the following organizations: the Laborers International Union of North America (LIUNA); the United Brotherhood of Carpenters and the International Brotherhood of Painters; and the American Federation of State, County and Municipal Employees (AFSCME).

This demonstration will bring together the skills needed to provide public housing youth with job training, apprenticeship opportunities and employment opportunities leading to self-sufficiency. Further, this demonstration will assist PHAs in meeting the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (Economic Opportunities for Low- and Very-Low-Income Persons).

Eligible Public Housing Authorities

Under this demonstration, eligible public housing authorities include:

(1) Housing authorities that are recipients of HOPE VI grants, and/or

(2) Housing authorities on the Troubled PHA List as of 2/5/95, and/or

(3) Housing authorities in the 40 most populous cities.

Eligible PHAs will create partnerships with participating construction trade organizations and/or AFSCME. All participating construction trade organizations will subsequently recruit, train, mentor and place public housing residents in Department of Labor (DOL) approved apprenticeship programs. AFSCME will recruit, train, mentor and provide work experience and employment opportunities for youth in public housing.

Eligible Program Participants

Eligible program participants must be public housing residents, and in accordance with Youthbuild:

(1) Participants must be very low-income individuals aged 16 to 24 years, who are high school dropouts. An exception allows for 25 percent of the participants to be individuals who do not meet the program's income or educational requirements but who have educational needs despite attainment of a high school diploma or its equivalency.

(2) Any eligible individual selected for full-time participation in this program may be offered full-time participation for a period of not less than 6 months and not more than 24 months unless the apprenticeship program extends beyond this timeframe.

(3) Programs must be structured so that 50 percent of the time spent by participants in the program is devoted to educational services and activities. All educational programs and activities supported with funds from the demonstration program must be consistent with applicable State and local educational standards. Standards and procedures for academic credit and certifying educational attainment must be consistent with applicable State and local educational standards.

(4) Wages and benefits, labor standards, and nondiscrimination requirements shall apply under this program as they would under the Youthbuild program. Housing authorities participating in this demonstration program may not be prevented from using funds from non-Federal sources to increase wages and benefits under the program, if appropriate.

Eligible Activities

Eligible activities, under this program, are:

(1) Work and activities associated with the acquisition, rehabilitation, or construction of the housing and related facilities to be used in the program;

(2) Relocation payments and other assistance required to comply with 24 CFR 585.308;

(3) Costs for the ongoing training and technical assistance needs of the applicant that are related to carrying out this program;

(4) Education, job training, counseling, employment and leadership development services and activities;

(5) Wages, benefits and stipends for participants prior to entering an apprenticeship program or in the case of AFSCME an employment opportunity.

Restrictions

(1) The $9 million authorized under the Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations may not be used for wages in any post-training employment provided under this program;

(2) No more than 15 percent of the total grant amount may be used for administrative costs.

Selection

Threshold Requirements

(1) The submission of an agreement that meets the requirements of the program;

(2) Certification that participants will be eligible as defined in the notice;

(3) A description of how training activities will prepare participants for apprenticeship and employment opportunities;

(4) Proof that residents are involved in the planning and implementation of the program;

(5) A description of efforts to provide job placement for successful program participants specifying the number of jobs that will be created; and

(6) The supportive services, based on projected need, that will be provided under the program. The Secretary reserves the right to award grants based on distribution among the three organizations referenced in this notice.

Method of Selection

Applications will be date and time stamped to authenticate when they were received. If the applicant meets the above mentioned threshold requirements, they will be funded in the order received (within the parameters set forth in Section IV—Maximum Awards) until the funding authorized for this program is no longer available.

The Secretary reserves the right to award grants based on distribution among the three organizations referenced in this notice. If a sufficient number of applications are not received, representing all three organizations, the Secretary reserves the right to award grants to the remaining applicants among the other organizations in accordance with the aforementioned requirements.

Reports

Each PHA receiving a grant shall submit to HUD an annual progress report (in a format to be provided by HUD) regarding the implementation of this program and the effectiveness of the Public Housing Apprenticeship Demonstration Program in the Construction Trades and Public Housing Operations in meeting its purpose.

Grantees will cooperate with researchers who will be carrying out an evaluation of this initiative for the Department.

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Proposal Requirements

In order to receive the funding proposed in this notice, each PHA must submit a proposal describing its program in detail. Proposals are not limited to but must include:

(1) A copy of the agreement between the PHA and the construction trade organization or AFSCME;

(2) A description of how eligible participants will be recruited;

(3) An accompanying implementation schedule;

(4) A description of training and placement activities under the demonstration;

(5) A description of resident involvement in the program's planning and implementation;

(6) A description of efforts to provide job placement for successful program participants;

(7) A description of how program success will be measured, describing the baseline indicators against which success will be measured; and

(8) A description of how program participants' supportive service needs will be met.

Dated: March 16, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–7106 Filed 3–22–95; 8:45 am]

BILLING CODE 4210–33–P

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March 23, 1995

Part VII

Department of Defense

Corps of Engineers, Department of the Army

Proposal to Issue a Nationwide Permit; Notice

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Proposal to Issue a Nationwide Permit

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: As a part of our effort to improve the regulatory program, the Army Corps of Engineers is proposing to issue a new nationwide general permit (NWP) under Section 404 of the Clean Water Act and Section 10 of the Rivers & Harbors Act for single-family residential development. The NWP will provide for effective protection of the aquatic environment while substantially reducing regulatory burdens on landowners.

In August 1993, the Clinton Administration announced a comprehensive package of improvements to the Federal wetlands program that identified measures to enhance the fairness, flexibility, and effectiveness of the wetlands program. A major focus of the Administration's Wetland Plan is intended to address the concerns of landowners by streamlining Section 10 and 404 permitting programs where possible while maintaining needed environmental protection.

The public is invited to provide comments on this proposal and is being given the opportunity to request a public hearing on the proposed NWP.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Comments should be submitted in writing to: Office of the Chief of Engineers, ATTN: CECW–OR, 20 Massachusetts Avenue NW, Washington, DC 20314–1000. Comments will be available for examination at the Office of the Chief of Engineers, Room 6225, Pulaski Building, 20 Massachusetts Avenue NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Kube or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–0817.

SUPPLEMENTARY INFORMATION:

Background

The White House Office on Environmental Policy announced the President's Wetlands Plan on August 24, 1993. The plan set forth a comprehensive package of improvements to the Federal wetlands protection programs. A major goal of the plan is to ensure that programs are fair, flexible, and effective. To achieve this goal, the Corps regulatory program must continue to provide effective protection of wetlands while conveying to the public a clear understanding of regulatory requirements. In its implementation, the regulatory program must be administratively efficient, flexible yet predictable, and avoid unnecessary impacts to private property and the regulated public.

We are proposing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP would authorize activities in wetlands related to the construction or expansion of a single-family home. This would allow, for example, a couple to build a retirement home on wetlands property they own without applying for an individual Section 404 permit. The NWP includes limits and conditions to minimize impacts on the aquatic environment.

There is a perception by many in the country that the regulatory process has become too burdensome on small landowners simply desiring to build a home. This nationwide general permit has been developed to reduce the regulatory burden on small landowners proposing to build or expand a single-family home while simultaneously maintaining environmental safeguards. It seeks to strike this balance by allowing a landowner to build or expand a home with minimal regulatory oversight while protecting the aquatic resource through specific limitations. If finalized, the new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Further, as the Corps realizes workload savings resulting from this NWP it should be able to improve service to other sectors of the regulated public (e.g., large developments).

Proposed NWP for Single Family Housing

In order to address the above concerns, the Corps proposes to issue the following NWP.

Discharges of dredged or fill material into non-tidal wetlands for the construction or expansion of a single-family home and attendant features, such as a garage, driveway, storage shed, and/or septic field, provided:

a. The discharge into waters of the United States does not cause the loss of more than ½ acre;

b. The permittee notifies the District Engineer in accordance with the "Notification" general condition (as modified for this NWP only);

c. The permittee has taken necessary actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project and that for any subdivision created after March 6, 1995 the permittee notifies the District Engineer of any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed ½ acre; and

e. an individual may use this nationwide permit only once.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. (Sections 10 & 404)

The above NWP is being proposed under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Discussion

We are requesting comments on the following specific issues:

MAXIMUM ACREAGE: General permits are designed to authorize categories of activities in waters of the United States that will have minimal individual and cumulative impacts. This NWP would allow discharges affecting up to ½ acre of non-tidal waters and wetlands for the construction or expansion of a single-family home and attendant features, such as the construction of a driveway, garage, and/or septic field. For purposes of this NWP, impacts include the filled area plus any wetlands adversely affected by flooding, excavation, or drainage. The actual loss of wetlands that would be authorized under the NWP would be limited to the minimum necessary for construction of the house and attendant features. (See discussion below on mitigation.) The NWP may not be used in combination with other general permits if the cumulative impacts from all activities are more than minimal.

We believe that ½ acre is sufficient for the vast majority of single-family homes. However, we are interested in receiving comments regarding the maximum acreage of impact to be allowed under this authorization. Should the maximum acreage be reduced to ⅛ or ¼ acre or should the maximum acreage of impact be increased to ¾ or 1 acre? The maximum acreage allowed under this NWP will be dependant on how the term "attendant features" is defined. We are interested in comments regarding a definition of the term "attendant features". Should the authorization be limited to fill for foundations and building pads or should fill also be allowed for any attendant amenity as currently proposed, such as a yard, tennis courts, and/or swimming pool under this NWP?

2. *PRE-CONSTRUCTION NOTIFICATION:* Individuals proposing to use the NWP will have to first notify the Corps in accordance with procedures of General Condition #13, Notification, as modified below. We propose to streamline the pre-construction notification (PCN) procedure by not requiring the Corps to coordinate with the Federal resource agencies, nor requiring the applicant to submit advance notice to the Fish & Wildlife Service or the State Historic Preservation Officer. Specifically, the Notification condition would be modified for this NWP as follows:

13. Notification. (a) The prospective permittee must notify the District Engineer with a Pre-construction Notification (PCN) as early as possible and shall not begin the activity authorized by this NWP:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) The notification must be in writing and include the following information:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(3) of this General Condition.

(d) In reviewing an activity under the notification procedure, the District Engineer will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any agreed upon special conditions and/or mitigation. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit.

(e) Wetlands Delineations: When necessary, wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the wetland. However, there may be some delay if the Corps does the delineation and the 30-day period will not start until the wetland delineation has been completed.

We are requesting comments on the PCN. Should the requirement for Corps and applicant coordination of project impacts with the resource agencies be retained? Is the PCN to the Corps needed in all cases? Should there be a size limit such as ⅒, ⅛, ¼ acre where no PCN is required?

3. *MITIGATION:* No compensatory wetland mitigation is required under this authorization. However, the landowner must take reasonable on-site measures to minimize adverse impacts to aquatic resources. For example, the location of a home may need to be adjusted on-site to avoid flooding of adjacent property. Further, on-site minimization steps must be taken to minimize the loss of waters of the United States. For example, if a landowner currently owns 20 acres of land, 15 acres of which is non-wetland, we do not believe it is unreasonable to require the use of the non-wetland portion of the property where practicable.

We are requesting comments on our proposal to require no compensatory mitigation for this NWP. Should we require mitigation for all wetland losses as a result of this permit or should we require it if the fill exceeds a certain acreage, such as ¼ acre? Alternatively, should compensatory mitigation only be required for certain attendant features such as the fill necessary for a yard?

4. *SUBDIVISIONS:* In order to ensure that only minimal individual and cumulative impacts occur, this authorization is not intended to allow individual landowners to impact more than a total of ½ acre of waters of the United States. Discharges authorized by this NWP must be part of a single and complete project and individuals may use this NWP only once for all property owned now and in the future. For any real estate subdivision legally created or subdivided before March 6, 1995, the owner of each legally plated lot site may use this NWP. Should we allow individuals to use this nationwide permit more than once (e.g. twice, for a primary residence and a second home) or should its use by individuals not be limited.

For any real estate subdivision created or subdivided after March 6, 1995, discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision. For purposes of this NWP, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

March 6, 1995 is being proposed because that is the date this NWP was announced to the public. Should the March 6, 1995 date be changed to be consistent with the NWP #26 subdivision clause of October 5, 1984, or some other date? Also, are there other options, rather than the Subdivision provision, that would prevent developers from dividing and selling building sites, in the future, to circumvent the limits of this nationwide permit?

Nationwide Permit Conditions

This proposed NWP will be subject to the conditions that apply to all nationwide permits. These conditions are found at 33 CFR Part 330 Appendix A(C). As noted above, condition #13 has been modified for purposes of this NWP only.

Regional Conditions

Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. In addition to the NWP conditions being proposed by the Chief of Engineers, the Division and District Engineers may propose regional

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conditions or propose revocation of NWP authorization for all or portions of this NWP. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. Comments on the **Federal Register** notice that address national concerns relating to the proposed NWP and its conditions should be sent to the U.S. Army Corps of Engineers, CECW–OR, 20 Massachusetts Avenue N.W., Washington, D.C 20314–1000. Comments on regional issues and regional conditions should be sent to the appropriate District Engineer as indicated below.

ALABAMA
Mobile District Engineer, ATTN: CESAM–OP–S, P.O. Box 2288, Mobile, AL 36628–0001
ALASKA
Alaska District Engineer, ATTN: CENPA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898
ARIZONA
Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 2711, Los Angeles, CA 90053–2325
ARKANSAS
Little Rock District Engineer, ATTN: CESWL–CO–P, P.O. Box 867, Little Rock, AR 72203–0867
CALIFORNIA
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, Sacramento, CA 95814–4794
COLORADO
Albuquerque District Engineer, ATTN: CESWA–CO–R, P.O. Box 1580, Albuquerque, NM 87103–1580
CONNECTICUT
New England Division Engineer, ATTN: CENED–OD-R, 424 Trapelo Road, Waltham, MA 02254–9149
DELAWARE
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square, East Philadelphia, PA 19107–3390
FLORIDA
Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019
GEORGIA
Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889
HAWAII
Honolulu District Engineer, ATTN: CEPOD–CO–O, Building 230, Fort Shafter, Honolulu, HI 96858–5440
IDAHO
Walla Walla District Engineer, ATTN: CENPW–OP–RF, Building 602, City-County Airport, Walla Walla, WA 99362–9265
ILLINOIS
Rock Island District Engineer, ATTN: CENCR–OD–S, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61201–2004
INDIANA
Louisville District Engineer, ATTN: CEORL–OR–F, P.O. Box 59, Louisville, KY 40201–0059
IOWA
Rock Island District Engineer, ATTN: CENCR–OD–S, Clock Tower Building, Rock Island, IL 61201–2004
KANSAS
Kansas City District Engineer, ATTN: CEMRK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896
KENTUCKY
Louisville District Engineer, ATTN: CEORL–OR–F, P.O. Box 59, Louisville, KY 40201–0059
LOUISIANA
New Orleans District Engineer, ATTN: CELMN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267
MAINE
New England Division Engineer, ATTN: CENED–OD–R, 424 Trapelo Road, Waltham, MA 02254–9149
MARYLAND
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
MASSACHUSETTS
New England Division Engineer, ATTN: CENED–OD–R, 424 Trapelo Road, Waltham, MA 02254–9149
MICHIGAN
Detroit District Engineer, ATTN: CENCE–CO–L, P.O. Box 1027, Detroit, MI 48231–1027
MINNESOTA
St. Paul District Engineer, ATTN: CENCS–CO–R, 190 Fifth Street, East, St. Paul, MN 55101–1638
MISSISSIPPI
Vicksburg District Engineer, ATTN: CELMV–CO–O, P.O. Box 80, Vicksburg, MS 39180–0080
MISSOURI
Kansas City District Engineer, ATTN: CEMRK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896
MONTANA
Omaha District Engineer, ATTN: CEMRO–OP–R, P.O. Box 5, Omaha, NE 68101–0005
NEBRASKA
Omaha District Engineer, ATTN: CEMRO–OP–R, 215 North 17th Street, Omaha, NE 68101–4978
NEVADA
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, Sacramento, CA 95814–2922
NEW HAMPSHIRE
New England Division Engineer, ATTN: CENED–OD–R, 424 Trapelo Road, Waltham, MA 02254–9149
NEW JERSEY
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19106–2991
NEW MEXICO
Albuquerque District Engineer, ATTN: CESWA–CO–R, P.O. Box 1580, Albuquerque, NM 87103–1580
NEW YORK
New York District Engineer, ATTN: CENAN–OP–R, Jacob K. Javits Federal Building, New York, NY 10278–0090
NORTH CAROLINA
Wilmington District Engineer, ATTN: CESAW–CO–E, P.O. Box 1890, Wilmington, NC 28402–1890
NORTH DAKOTA
Omaha District Engineer, ATTN: CEMRO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978
OHIO
Huntington District Engineer, ATTN: CEORH–OR–F, 502 8th Street, Huntington, WV 25701–2070
OKLAHOMA
Tulsa District Engineer, ATTN: CESWT–OD–RF, 1645 South 101 East Avenue, Tulsa, OK 74128–4629
OREGON
Portland District Engineer, ATTN: CENPP–PL–R, P.O. Box 2946, Portland, OR 97208–2946
PENNSYLVANIA
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
RHODE ISLAND
New England Division Engineer, ATTN: CENED–OD–R, 424 Trapelo Road, Waltham, MA 02254–9149
SOUTH CAROLINA
Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919
SOUTH DAKOTA
Omaha District Engineer, ATTN: CEMRO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978
TENNESSEE
Nashville District Engineer, ATTN: CEORN–OR–F, P.O. Box 1070, Nashville, TN 37202–1070
TEXAS
Ft. Worth District Engineer, ATTN: CESWF–OD–O, P.O. Box 17300, Ft. Worth, TX 76102–0300
UTAH
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, CA 95814–4794
VERMONT
New England Division Engineer, ATTN: CENED–OD–R, 424 Trapelo Road, Waltham, MA 02254–9149
VIRGINIA
Norfolk District Engineer, ATTN: CENAO–OP–P, 803 Front Street, Norfolk, VA 23510–1096
WASHINGTON
Seattle District Engineer, ATTN: CENPS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255
WEST VIRGINIA
Huntington District Engineer, ATTN: CEORH–OR–F, 502 8th Street, Huntington, WV 25701–2070
WISCONSIN
St. Paul District Engineer, ATTN: CENCS–CO–R, 190 Fifth Street, East, St. Paul, MN 55101–1638
WYOMING
Omaha District Engineer, ATTN: CEMRO–OP–R, 215 North 17th Street, NE 68102–4978
DISTRICT OF COLUMBIA
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
PACIFIC TERRITORIES
Honolulu District Engineer, ATTN: CEPOD–CO–O, Building 230, Fort Shafter, Honolulu, HI 96858–5440
PUERTO RICO AND VIRGIN ISLANDS
Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019

State Certification of Nationwide Permits

Section 401 of the Clean Water Act: This **Federal Register** notice of this NWP serves as the Corps application to the states or EPA, where appropriate, for 401 water quality certification of the activities authorized by this NWP. The states and EPA, where appropriate, are requested to issue, deny, or waive certification pursuant to 33 CFR 330.4(c) for this NWP.

Section 307 of the Coastal Zone Management Act: This **Federal Register** notice serves as the Corps determination that the activities authorized by this NWP are consistent with States' coastal zone management programs, where applicable. This determination is contingent upon the addition of State CZM conditions and/or regional conditions or the issuance by the state of an individual consistency concurrence, where necessary. The states are requested to agree or disagree with this consistency determination pursuant to 33 CFR 330.4(d) for this NWP.

Environmental Documentation

We have made a preliminary determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Preliminary environmental documentation has been prepared for the proposed nationwide permit. This documentation includes a preliminary environmental assessment and a preliminary Section 404(b)(1) Guidelines compliance review. Copies of these documents are available for inspection at the office of the Chief of Engineers and at each Corps District office. Based on these documents the Corps has provisionally determined that the proposed NWP complies with the requirements for issuance under general permit authority.

Dated: March 15, 1995.

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 95–7206 Filed 3–21–95; 9:25 am]
BILLING CODE 3710–92–M

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federal register

Thursday
March 23, 1995

Part VIII

Department of Education

34 CFR Part 607
Strengthening Institutions Program; Rule and Notice

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DEPARTMENT OF EDUCATION

34 CFR Part 607

RIN 1840–AC15

Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations and notice of effective date.

SUMMARY: The Secretary revises the regulations governing the Strengthening Institutions Program published in the **Federal Register** on August 15, 1994 (59 FR 41914) to conform them to statutory provisions that authorize grants to Hispanic-serving Institutions (HSIs). The regulations make technical changes in the existing regulations to incorporate the statutory amendments.

EFFECTIVE DATES: The regulations published on August 15, 1994 (59 FR 41914) became effective on September 29, 1994. The regulations in this document take effect April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry M. Whitlock, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600, Portals Building, Washington, D.C. 20202–5335. Telephone: (202) 708–9926. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

Section 316 of the Higher Education Act of 1965, as amended (HEA), authorizes the Secretary to make grants to HSIs to enable them to improve and expand their capacity to serve Hispanic and low-income students by carrying out activities described in section 316(c)(2) of the HEA and repeated in § 607.10(b)(8). To receive a grant under section 316, an institution must qualify as an eligible institution under the Strengthening Institutions program and must be determined by the Secretary to be an HSI. The Secretary determines that an eligible institution under the Strengthening Institutions program qualifies as an HSI if—(1) when it applies for a grant, at least 25 percent of its enrollment of undergraduate full-time equivalent students are Hispanic students; and (2) it assures that not less than 50 percent of its Hispanic students are low-income individuals who are first generation college students, and another 25 percent of its Hispanic students are either low-income or first generation college students.

Grants to HSIs, as part of the Strengthening Institutions program, are an important part of implementing the National Educational Goals. Specifically, the grants address the goal that calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship, by expanding educational opportunities for students who attend HSIs.

B. Explanation of Changes

The Higher Education Amendments of 1992, Pub. L. 102–325, amended section 316 of the HEA. The Secretary amends regulations in 34 CFR Part 607 to conform them to the amended statute.

The statutory amendments incorporated in the regulations:

—Authorize section 316 grants to assist HSIs to plan, develop, undertake, and carry out approved program activities.

—Define an HSI.

—Define the terms "first generation college student" and "low-income individual" in § 607.7, and add a definition of the term "Hispanic student." This definition was taken from the definition of that term in OMB Directive No. 15.

—Add activities that may be carried out under a grant authorized under section 316 of the HEA to an HSI.

—Require a 5-year plan for improving the assistance provided by the HSI to Hispanic and low-income students.

—Establish a priority funding for applications for grants under section 316 that contain satisfactory evidence that such applicants have entered into or will enter into a collaborative arrangement with at least one local educational agency to provide such agency with assistance in reducing Hispanic dropout rates, improving Hispanic rates of academic achievement, and increasing the rates at which Hispanic high school graduates enroll in higher education.

—Establish a restriction that no HSI which receives funds under section 316 may concurrently receive other funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities program, or Strengthening Historically Black Graduate Institutions program.

—Amend § 607.3(b) by removing the word "waives" in paragraph (b), and adding, in its place, the words "may waive" to clarify that the Secretary's decision to grant a waiver is discretionary.

Executive Order 12900

These final regulations support the President's goals expressed in Executive Order 12900 on "Educational Excellence for Hispanic Americans" by advancing the development of human potential, strengthening the Nation's capacity to provide high-quality education, and increasing opportunities for Hispanic Americans to participate in and benefit from Federal education programs.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: March 20, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.031A—Strengthening Institutions Program)

The Secretary amends Part 607 of Title 34 of the Code of Federal Regulations as follows:

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

1. The authority citation for Part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

2. Section 607.2 is amended by redesignating paragraph (d) as paragraph (e)(1); adding new paragraphs (d) and (e)(2); and revising the authority citation to read as follows:

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

* * * * *

(d) A Hispanic-serving institution (HSI) may receive a grant authorized under section 316 of the HEA if—

(1) It is an eligible institution under this part;

(2) It provides assurances that—

(i) When it applies for a grant, its enrollment of undergraduate full-time equivalent students is at least 25 percent Hispanic students ;

(ii) Not less than 50 percent of its Hispanic students are low-income individuals who are first generation college students; and

(iii) Another 25 percent of its Hispanic students are either low-income individuals or first generation college students.

(e) * * *

(2) An HSI that receives a grant under section 316 of the HEA may not concurrently receive grant funds under the Strengthening Institutions program, Strengthening Historically Black Colleges and Universities program, or Strengthening Historically Black Graduate Institutions program.

(Authority: 20 U.S.C. 1057 et seq.)

§ 607.3 [Amended]

3. Section 607.3 is amended by removing the word "waives" in paragraph (b), and adding, in its place, the words "may waive".

4. Section 607.7 is amended by redesignating paragraph (b) as paragraph (c); adding a new paragraph (b); adding a new definition of "Hispanic student" to redesignated paragraph (c) in alphabetical order; and revising the authority citation to read as follows:

§ 607.7 What definitions apply?

* * * * *

(b) The following terms used in this part are defined in section 316 of the HEA:

First generation college student
Hispanic-serving institution
Low-income individuals

(c) * * *

Hispanic student means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

* * * * *

(Authority: 20 U.S.C. 1051, 1057–1059 and 1066–1069f; OMB Directive No. 15)

5. Section 607.10 is amended by removing the word "or" at the end of paragraph (b)(5)(ii); removing the period at the end of paragraph (b)(6)(ii), and adding, in its place, a semicolon; removing the period at the end of paragraph (b)(7), and adding, in its place, "; or"; adding a new paragraph (b)(8); and revising the authority citation to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(b) * * *

(8) For grants authorized under section 316 of the HEA to HSIs—

(i) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(ii) Renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(iii) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in their field of instruction;

(iv) Curriculum development and academic instruction;

(v) Purchase of library books, periodicals, microfilm, and other educational materials;

(vi) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(vii) Joint use of facilities such as laboratories and libraries; and

(viii).Academic tutoring and counseling programs and student support services.

* * * * *

(Authority: 20 U.S.C. 1057 *et seq.*)

6. Section 607.11 is amended by removing the word "and" at the end of paragraph (b); removing the period at the end of paragraph (d)(3), and adding, in its place, "; and"; adding a new paragraph (e); and revising the authority citation to read as follows:

§ 607.11 What must be included in individual development applications?

* * * * *

(e) For a grant under section 316 of the HEA to an HSI, as a part of the applicant's Comprehensive Development Plan (CDP) required in § 607.8, a five-year plan for improving the assistance provided by the HSI to Hispanic and other low-income students.

(Authority: 20 U.S.C. 1057 *et seq.*)

7. Section 607.20 is amended by adding the word "individual" before the word "grantees" in paragraph (b)(1); by removing the words "a grantee" in paragraph (b)(1), and adding, in their place, the words "an individual grantee"; and by removing the words "a grantee" in paragraph (b)(2), and adding, in their place, the words "an individual grantee".

8. Section 607.23 is amended by adding a new paragraph (e) and revising the authority citation to read as follows:

§ 607.23 What special funding consideration does the Secretary provide?

* * * * *

(e) The Secretary gives priority to applications from HSIs that contain satisfactory evidence that the HSI has entered into or will enter into a collaborative arrangement with at least one local educational agency to provide that agency with assistance (from funds other than funds provided under Title III Part A of the HEA) in—

(1) Reducing the dropout rates of Hispanic students;

(2) Improving rates of academic achievement of Hispanic students; and

(3) Increasing the rates at which Hispanic high school graduates enroll in higher education.

(Authority: 20 U.S.C. 1057 *et seq.*)

[FR Doc. 95–7273 Filed 3–22–95; 8:45 am]

BILLING CODE 4000–01–P

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.031A]

Grants to Hispanic-Serving Institutions (HSI) Authorized by Section 316 of Title III of the Higher Education Act (HEA) of 1965, as Amended

Notice inviting applications for new awards for fiscal year 1995.

Purpose of Program: Provide grants to eligible institutions of higher education to assist them to improve and expand their capacity to serve Hispanic and other students.

This grant program provides applicants an opportunity to support those elements of the National Education Goals that are relevant to their unique missions.

Deadline for Transmittal of Applications: May 8, 1995.

Deadline for Intergovernmental Review: June 8, 1995.

Applications Available: The Department will mail applications by March 24, 1995, to the office of the president of all institutions that have applied to be designated as eligible for a grant under the Strengthening Institutions Program.

Available Funds: $12,000,000.

Estimated Range of Awards: $300,000 to $350,000 per year.

Estimated Average Size of Awards: $325,000 per year.

Estimated Number of Awards: 35 development grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Special Funding Considerations: A HSI that is eligible for and receives a grant under section 316 of the HEA may not concurrently receive funds under the Strengthening Institutions Program, the Strengthening Historically Black Colleges and Universities Program, or the Strengthening Historically Black Graduate Institutions Program.

In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions Program regulations, the Secretary awards additional points under 34 CFR 607.22 to an application from an institution that has an endowment fund for which the current market value, per FTE student, is less than the average per FTE student at similar type institutions; and has expenditures for library materials, per FTE student, that are less than the average, per FTE student, at similar type institutions.

For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national average for base year 1992–93.

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year public institutions	$1,222	$41
Two-year non-profit, private institutions	12,600	104
Four-year public institutions	1,862	141
Four-year non-profit	32,164	239

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the Strengthening Institutions Program regulations in 34 CFR Part 607, as amended and published elsewhere in this issue of the **Federal Register**.

Priorities: The Secretary gives an absolute preference to an application that contains satisfactory evidence that the applicant has entered into or will enter into a collaborative arrangement with at least one local educational agency to provide that agency with assistance, from funds other than grant funds, in reducing Hispanic dropout rates, improving Hispanic rates of academic achievement, and increasing the rates at which Hispanic high school graduates enroll in institutions of higher education.

SUPPLEMENTARY INFORMATION: To be eligible to receive a grant, an institution must qualify as an eligible institution under the Strengthening Institutions Program and must be determined by the Secretary to be an HSI. The Secretary determines that an eligible institution under the Strengthening Institutions Program qualifies as an HSI if—(1) when it applies for a grant, at least 25% of its enrollment of undergraduate full-time equivalent students are Hispanic students; and (2) it assures that not less than 50% of its Hispanic students are low-income individuals who are first-generation college students, and another 25% of its Hispanic students are either low-income or first-generation college students.

The Secretary will conduct for fiscal years 1995 and 1996 a biennial grant award competition for grants to HSIs under section 316 of the HEA. Under a biennial grant award competition, an institution submits a grant application that may be considered for funding under two successive fiscal year grant award competitions. Applications are evaluated and ranked by field readers for the first competition. If the institution's application is not selected for funding under the first fiscal year's award competition, it will be considered for funding under the second fiscal year's award competition for new awards, based upon the score it received in the first competition. As part of the plan, the Secretary will not invite applications for new awards for the second fiscal year. Accordingly, if an HSI wishes to apply for a new grant award for fiscal year 1995 or fiscal year 1996, the HSI must submit an application by the closing date of May 8, 1995. The applicant should identify the fiscal year (1995 and/or 1996) for which it seeks funding.

The Secretary will not make awards for planning grants under this competition.

For Applications or Information Contact: Jerry M. Whitlock, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Suite 600, Washington, D.C. 20202–5335. Telephone: (202) 708–9926. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

You may view information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057.

Dated: March 17, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–7274 Filed 3–22–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
March 23, 1995

Part IX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 32, 33 and 52
Federal Acquisition Regulation (FAR); Ratification and Protest Costs: Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 32, 33, and 52

[FAR Case 94–731]

RIN 9000–AG52

Federal Acquisition Regulation; Ratification and Protest Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) dated October 13, 1994, to implement the requirements for protests and disputes in Government procurement. The rule reflects the **Federal Register** publication at 60 FR 2630, January 10, 1995, concerning amendments made under FAR case 94–731, Ratification of Protest Costs, and should be read in conjunction with that case. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 22, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR Case 94–731 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274–8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 94–731, Ratification of Protest Costs.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of implementing the Act include the areas of protests, disputes, and appeals.

This case presents proposed FAR amendments developed under FAR Case 94–731, Ratification of Protest Costs. Sections 1016, 1403, and 1435 of the Act provide that agencies may be required to pay protest and offer preparation costs to protesters under certain circumstances. Often as the result of discovery during a protest, misrepresentations may be detected that could not have been reasonably known to the agency's evaluators. A protest may be sustained where the award has been induced by a material misrepresentation by the awardee. Such situations often involve proposed "key personnel."

The agency is without effective remedy in such cases. Theoretically, the agency could ask the Department of Justice to file a lawsuit against the offeror making the misrepresentations. However, due to the heavy workload of the Justice attorneys, this is not a practical alternative. The proposed FAR change will not adversely affect any substantive right of an offeror. Under the proposed language, the Government remedy is to offset such costs on the same or an unrelated contract. If the offeror believes that the offset is not justified, it may appeal the action to the agency, or under the Contract Disputes Act to either a Board of Contract Appeals or the Court of Federal Claims.

In view of expected benefits to Government and industry from the Act, FAR implementation was formulated under an expedited process. The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR Case 94–731) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before April 24, 1995.

The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the vast number of contracts do not involve protests where misrepresentation is detected through discovery. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR Case 94–731), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1, 32, 33, and 52

Government procurement.

Dated: March 16, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 1, 32, 33 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 32, 33 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.602–3 is amended by revising paragraph (c)(2) to read as follows:

1.602–3 Ratification of unauthorized commitments.

* * * * *

(c) * * *

(2) The ratifying official has the authority to enter into a contractual commitment.

* * * * *

PART 32—CONTRACT FINANCING

3. Section 32.602 is amended by adding paragraph (h) to read as follows:

32.602 General.

* * * * *

(h) Reimbursement of costs, as provided in 48 CFR (FAR) 33.102(b), 33.104(h)(1), and 33.105(g)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

4. Section 32.603 is revised to read as follows:

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services and debts arising from the Governments payment of costs, as provided in 48 CFR (FAR) 33.102(b), 33.104(h)(1), and 33.105(g)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

PART 33—PROTESTS, DISPUTES, AND APPEALS

5. Section 33.102 is amended by redesignating paragraphs (b) and (c) as (c) and (e), respectively, and adding new paragraphs (b) and (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

33.102 General.

* * * * *

(b) If in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that may have been taken by the Comptroller General in the event of a GAO protest; and

(2) Pay appropriate costs as stated in Section 33.104(h).

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardees intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of 48 CFR (FAR) part 32, subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

* * * * *

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that procurement.

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR chapter 61). An interested party who has filed a protest regarding an ADP procurement with GSBCA (40 U.S.C. 759(f)) may not file a protest with the GAO with respect to that procurement.

6. Section 33.104 is amended by revising paragraph (h) to read as follows:

33.104 Protests to GAO.

* * * * *

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract or a proposed award or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency conducting the procurement pay to an appropriate interested party the direct cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees, and bid and proposal preparation costs.

(2) If the GAO recommends the award of costs to an interested party, the agency, in accordance with agency procedures, shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 48 CFR (FAR) 19.001 definition, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed $150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends the agency pay costs (as defined under paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall be excluded from all proposals, billings, or claims against the Government and such exclusions should be reflected in the cost agreement.

(7) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a post award protest is sustained as the result of an awardees intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of 48 CFR (FAR) part 32, subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

7. Section 33.105 is amended by—

(a) Redesignating paragraphs (f) and (g) as (g) and (h) and adding a new paragraph (f);

(b) By adding paragraphs (g)(3), (4), and (5); and

(c) By revising the new paragraph (h).

The revised text reads as follows:

33.105 Protests to GSBCA.

* * * * *

(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the

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propriety of the award or proposed award of the contract at issue in the protest.

(g) * * *

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 48 CFR (FAR) 19.001 definition, "Small business concern"), costs under paragraph (g)(1) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed $150 per hour unless the Board determines, on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the agency of an application for cost, the agency may file an answer.

(5) If the Government pays costs, as provided in paragraph (g)(1) of this section, where a post award protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of 48 CFR (FAR) part 32, subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(h) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in the Contract Disputes Act.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233–3 is amended by revising the date of the clause; and by adding paragraph (f) to read as follows:

52.233–3 Protest after award.

* * * * *

Protest After Award (Date)

* * * * *

(f) If as the result of the awardee's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this solicitation is sustained, and the Government pays costs, as provided in 48 CFR (FAR) 33.102(b)(2), 33.104(h)(1), or 33.105(g)(1), the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of 48 CFR (FAR) part 32, subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(End of clause)

[FR Doc. 95–7097 Filed 3–22–95; 8:45 am]

BILLING CODE 6820–34–D

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Part X

The President

Proclamation 6778—To Amend the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 6788 of March 17, 1995

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate the West Bank and Gaza Strip as a beneficiary of the Generalized System of Preferences ("GSP").

2. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States ("HTS") the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those nonindependent territories whose products are eligible for benefits of the GSP, is modified by inserting "West Bank and Gaza Strip" in alphabetical order in the enumeration of nonindependent territories.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The extension of the Generalized System of Preferences program to the West Bank and Gaza Strip pursuant to this proclamation applies only to goods produced in the areas for which arrangements are being established for Palestinian Interim Self-Government, as set forth in Articles I, III, and IV of the Declaration of Principles on Interim Self-Government Arrangements.

(4) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–7398
Filed 3-21-95; 4:40 pm]
Billing code 3195–01–P

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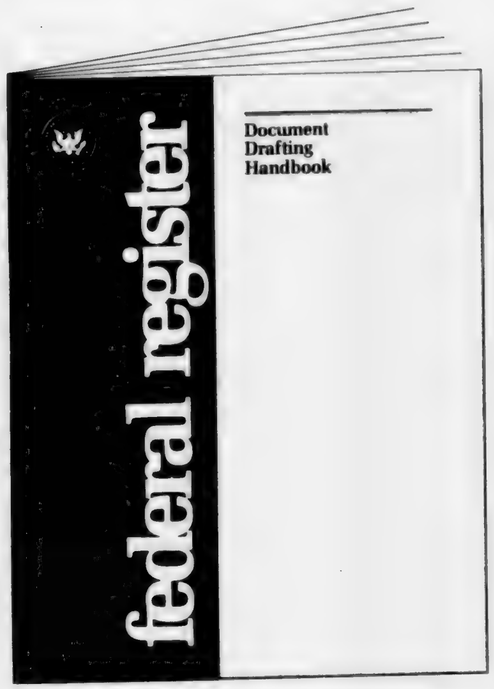
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Federal Register
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Friday, March 24, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 235

RIN 0584–AB31

State Administrative Expense Funds: National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, Food Distribution Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking incorporates in the regulations the requirements in the Child Nutrition and WIC Reauthorization Act of 1989, which concern State Administrative Expense (SAE) funds. SAE funds are Federal funds provided to State agencies to assist with the administrative costs of the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) and the administrative costs of the Food Distribution Program (FDP) in conjunction with these programs. The SAE provisions of the 1989 legislation included in this final rulemaking do the following: Establish limits on the level of SAE funds that may be retained by the State from one fiscal year to another and specify how SAE funds that are returned by the State are to be redistributed. Finally, the legislation provides that alternate State agencies which administer the CACFP receive the funds to which they are entitled. In practical effect, this provision concerns the "adult care component" of the CACFP since the Department already provides funds directly to the State agencies administering the CACFP. This final regulation reflects this statutory provision. These changes to the SAE provisions are designed to ensure that adequate funds are available for the purposes specified.

EFFECTIVE DATE: This final regulation is effective April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie, Chief, Policy and Program Development Branch or Mr. Charles Heise, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or by telephone at (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities, since the regulation pertains entirely to the funding of State agencies, and these are not small entities.

Paperwork Reduction Act

The proposed rule contained information collections. However, the provisions that contained reporting and recordkeeping burdens are not included in this final rule. Therefore, this final rule does not contain information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provision, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures for State agency appeals of State Administrative Expense funds sanctions (7 CFR 235.11(b)) are set forth in 7 CFR 235.11(f).

Executive Order 12372

The FDP, SBP, NSLP, SMP, CACFP, and SAE are listed in the Catalog of Federal Domestic Assistance under No. 10.550, No. 10.553, No. 10.555, No. 10.556, No. 10.558, and No. 10.560, respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related to notice published at 49 FR 29114, June 24, 1983.)

Background

Public Law 101–147, entitled the Child Nutrition and WIC Reauthorization Act of 1989 (103 Stat. 877), was enacted on November 10, 1989. Section 122 of this legislation included changes to some of the statutory provisions governing the use of State Administrative Expense (SAE) funds provided by the Federal government to assist States with meeting the administrative costs of many of the programs authorized under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA).

On December 6, 1991, the Department published a proposed rulemaking at 56 FR 63882 to incorporate these statutory changes into the SAE regulations and to make discretionary changes to the funding of Food Distribution Programs. This proposal included the following provisions: (1) The maximum amount of SAE which a State could carry over from one fiscal year to the next was limited to 25 per cent for Fiscal Year 1991 and 20 per cent for subsequent years; (2) a minimum of $3 million of any excess SAE funds recovered by the Department in Fiscal Year 1992 and $4 million of SAE recovered in each of the next two years must be made available to demonstration projects authorized under section 107 of Public Law 101–147 to provide food service to homeless children under the age of 6 in

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emergency shelters; (3) if a State elects to have an agency other than the agency administering the child care component of the CACFP administer the adult care component of that Program, the Department will ensure that a share of the SAE funds generated by the CACFP is made available to this other agency; (4) a portion of the nondiscretionary SAE funds made available to a State would be designated exclusively for the Food Distribution Program's administrative expenses associated with providing commodities to the NSLP, SBP, and CACFP; and (5) beginning with Fiscal Year 1993, expenditures from State sources for applicable food distribution administrative costs would have to be no less than the amount of State funds expended or obligated in Fiscal Year 1991, in order to ensure continued State support for food distribution activities. Readers are referred to the proposed rule for a more complete explanation of these provisions.

During the official comment period, the Department received 53 comments. Most of these were from State agencies which administer one or more of the child nutrition programs and/or the Food Distribution Program, but three comments were received from State or national associations and one comment was submitted by a State governor's office. Most of the commenters addressed the provisions relating to the transfer of funding to food distribution activities and the maintenance of State funding levels for these activities. The overwhelming majority opposed these provisions; in fact, only four commenters approved wholly of the proposed provisions on transfer of funds to the FDP. The major concerns of those opposed to the transfer/exclusive use provisions were as follow:

- The provision is inconsistent with either the statutory language or the intent of Congress;
- The total prohibition against transferring funds from the FDP to the other child nutrition programs is inconsistent with the statutory provision which permits a 10 per cent transfer of administrative funds among programs;
- The proposal would divert administrative funds away from the child nutrition programs at the same time that additional administrative requirements such as coordinated review and breakfast outreach are being imposed;
- The requirement that the food distribution portion of funds be used exclusively for these activities would interfere with States' flexibility to provide funding where it is most needed, especially in those States in which one agency administers both the child nutrition programs and the FDP;
- Tracking and accounting for separate funds will create a burden, especially for those agencies which administer both programs and must, therefore, document the exclusive use of funds for food distribution activities;
- The FDP already has a source of funding through assessment fees, and any additional funds should be appropriated separately rather than transferred at the expense of the child nutrition programs.

Commenters opposed to the maintenance of effort provision raised the following concerns and issues:

- This provision exceeds Congressional intent;
- This provision would penalize those States which have been providing funds voluntarily for food distribution purposes;
- Since most States do not currently track food distribution funds separately, it will be difficult to establish the exact level of funding to be maintained;
- Because of cutbacks in State funding since 1991, some States will be unable to comply with the maintenance of effort requirement.

As noted in the preamble to the December 6, 1991 proposed rulemaking, section 122(a)(1)(D) of Pub. L. 101–147 added a new paragraph (8) to section 7(a) of the CNA which directs each State to ensure (in accordance with regulations issued by the Secretary) that the State agency administering the distribution of donated food (the "distributing agency") is provided an appropriate amount of SAE for the administrative costs incurred in distributing donated commodities to the NSLP, SBP and CACFP. The law further authorized the Secretary to consider the value of commodities when developing regulations to implement this provision. Currently, the Department provides SAE funds directly to the distributing agency in the State that administers the FDP for the NSLP, SBP, and CACFP. Therefore, no change to the SAE regulation was required to implement this provision.

However, in order to further improve the administration of SAE funds in connection with the FDP, the Department proposed a number of discretionary changes to the SAE regulations regarding funding of the FDP. First, the Department proposed a methodology for distributing a portion of the nondiscretionary SAE allocation for the FDP's administrative costs. Second, clarifications to the formula for determining the level of discretionary SAE funds to be used for the FDP were proposed. Third, since the Department has always intended that SAE funds designated for food distribution purposes be so used, the proposed rule prohibited using the food distribution portion of SAE for any other purposes, even when the same agency administers the FDP and the child nutrition programs. Finally, the legislative history of section 122 makes it clear that distributing agencies were expected to reduce or eliminate current assessment fees, wherever possible, in response to their receipt of SAE funds. The "maintenance of effort" provision of the proposal was designed to promote this goal by ensuring that States would continue to provide the same level of State funds derived from sources other than assessment fees. Since the total of State and Federal funds provided for food distribution would, in many cases, increase, assessment fees could be reduced or eliminated.

Nevertheless, the Department recognizes the concerns raised by commenters and has no desire to adopt provisions that could potentially have a negative impact on operations in some States. For these reasons, the Department wishes to reconsider these discretionary issues regarding FDP funding and review available options, including possible alternatives to the proposal. Therefore, these provisions are not included in this final regulation; rather, they will be treated in a separate, future rulemaking. The Department is, however, proceeding to finalize those provisions required by Public Law 101–147. The remainder of this preamble discusses commenters' questions and concerns on these issues.

Limits on Funds Retained From the Previous Fiscal Year

The Department proposed to amend § 235.5(e) and § 235.6(a) to incorporate the mandate of section 7(a)(5)(A) of the CNA as amended by section 122(a)(1)(C) of Public Law 101–147, which limits the amount of unobligated SAE funds that may be retained and carried over into the next fiscal year to a maximum of 25 per cent for Fiscal Year 1991 and a maximum of 20 per cent for subsequent fiscal years. The proposed amendment also specified how the limit would be calculated and how the limit would be compared at the end of the first fiscal year to the amount of unobligated SAE funds. Essentially, the Department would apply the appropriate percentage to the State's initial allocation to establish the maximum amount of SAE that may be carried over. To determine the total amount of unobligated funds, the Department would subtract the amount reported by the State agency on Line k (Total Federal share of outlays and unliquidated obligations) of the fourth quarter Standard Form (SF) 269 from the total amount of SAE funds granted for the fiscal year. The Department would then recover any of these funds in excess of the maximum amount of SAE that can be carried over. For an example of how the process would work, interested parties should refer to the discussion on page 63885 of the preamble to the proposed rule.

Twenty-three commenters addressed the limitation provisions of the proposed rule, with most of them believing that such a limitation would have a negative impact on Program administration, although one State agency reported that its carryover has been well below 20 per cent, so compliance was not perceived to be a problem. One commenter, however, was concerned that the carryover limit will lead to the elimination of funds for reallocation, with the result that small States in particular will have difficulty funding their activities with only the minimum grant available to them. One commenter suggested that an arbitrary percentage is inequitable to those States with allocations below the national mean, and another stated that basing the carryover amount only on the initial allocation does not conform with the language of the statute, which allows the carryover of 20 per cent of the *funds available* for the fiscal year. Two commenters were concerned about including reallocated funds as part of the year-end balance subject to the carryover limitation, since these funds are sometimes received late in the fiscal year and returning any or all of these monies due to the carryover limit would defeat the purpose of reallocation. One commenter believed the carryover limit should apply on an agency-by-agency basis rather than being calculated using the total amount of SAE allocated to the State as a whole, and another commenter suggested that States should be allowed to use excess funds for demonstration projects in lieu of returning the monies to the Federal Government. Some commenters requested clarification on whether the carryover limit applies to the funds designated for food distribution activities, and several commenters noted that the last word in § 235.5(e)(2) should be "unobligated" rather than "unexpended."

The Department recognizes commenters' concerns about the impact of the carryover limitation on their operations. However, section 7(a)(5)(B) of the CNA specifically established carryover limits of 25 per cent for Fiscal Year 1991 and 20 per cent for succeeding fiscal years, and the Department has no authority to waive or modify this mandate. Moreover, as discussed in the preamble to the proposed rulemaking, this limitation is applied to the *initial* allocation rather than to the total administrative funds made available during the fiscal year because the Department wished to simplify the overall process of calculation and to enable State agencies to know at the beginning of the fiscal year exactly what the maximum amount of their carryover would be. To this end, the Department believes Congress' overriding intent was to reduce the amount of carryover funds available as much as possible while still allowing States flexibility in obligating and expending funds. The Department believes that the proposal to base the carryover limit on the initial allocation is consistent with this intent.

The Department does not believe this provision will adversely affect the overall reallocation process. Funds are reallocated to States on the basis of need. Consequently, States receiving reallocations should generally have few, if any, unobligated funds remaining from their initial allocations. Moreover, States will often request reallocations for specific expenses and can, therefore, obligate these funds relatively quickly. The Department recognizes that some small State agencies, particularly those receiving minimum grants, could receive reallocations which are large relative to the States' carryover limit, and in these instances a State's reallocation might be affected. These situations should not be common, however, and the Department will make every effort to provide reallocations well in advance of the end of the fiscal year in order to facilitate the States' ability to obligate a major portion of their reallocations before the funds become subject to the carryover limit.

This limitation applies to all SAE funds received by *any* State agency for the administration of any aspect of the child nutrition programs. Funding for food distribution activities, therefore, is subject to the carryover limit, regardless of whether the State education agency or another State agency performs these activities. Moreover, under the proposed regulation the limitation would be applied on an agency-by-agency basis, since the Department receives separate SF–269's from each administering agency and has no feasible means of making the necessary year-end comparison for the State as a whole. With respect to allowing States to retain excess funds for demonstration projects, the statute is specific about requiring the return of excess funds and how the recovered funds may be used, and the Department does not have the authority to authorize alternate uses. Further discussion of this issue appears later in this preamble.

Finally, proposed § 235.5(e)(2) reads as follows:

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall return any funds made available which are unexpended.

Several commenters believed that the last word of this paragraph should read "unobligated" rather than "unexpended." The Department notes, however, that this provision clearly refers to the recovery made at the end of the *second* fiscal year for which SAE has been available, not the return of funds in excess of the carryover limits. Proposed § 235.5(e)(2) merely restated the requirement that has always been in effect. Previously, this requirement for the recovery of *unexpended* funds at the end of the second fiscal year was stated in § 235.5(e).

For these reasons, this final rulemaking adopts the provisions limiting the amount of SAE that may be carried over from one fiscal year to the next as proposed. The Department emphasizes, however, that this carryover limit does not apply to funds made available to State agencies which agree to assume responsibility for programs previously administered directly by FCS, as authorized under the newly redesignated § 235.4(d). These funds are intended to assist States with costs associated with start-up operations when assuming responsibility for a program formerly administered by FCS.

As such, they are made infrequently and are intended for a specific purpose. Consequently, the Department does not consider that this funding is subject to the carryover limit and is amending § 235.5(e)(1) to specify that start-up funds are excluded from the amount subject to the retention limit. In addition, the reference in § 235.5(e) to § 235.4 (a) through (e) is revised from the proposal to § 235.4 (a) through (c) to reflect the deletion of the proposed new § 235.4 (d) and (e). These latter paragraphs provided for pro rata shares of SAE funds for FDP administrative purposes which are not included in this final regulation. This same change is made to the references in § 235.6(a).

Use of Returned SAE Funds

The Department proposed to add a new paragraph—§ 235.6(h) to incorporate the mandate of Public Law 101–147 regarding how any excess carryover funds recovered by the Department were to be used. Section 7(a)(5)(B) as amended by section

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122(a)(1)(C) of Public Law 101–147 stipulated that in Fiscal Year 1992, a minimum of $3 million of recovered monies be made available for the purpose of providing grants to private nonprofit organizations participating in demonstration projects to provide food service to homeless children under the age of 6 in emergency shelters. The law also mandated that a minimum of $4 million be made available for this purpose in each of the next two fiscal years. Any funds in excess of the amount made available to these demonstration projects would be reallocated to States which need SAE funds. The Department emphasized, however, that any disbursal of funds to homeless shelters or the States would be subject to availability of recovered monies.

Commenters did not generally discuss this provision except to recognize that the use of recovered funds for this purpose is mandated by the statute. One commenter, however, expressed concern that SAE plans might be disapproved or significantly modified to ensure that sufficient funding is available to fund these projects. The Department wishes to emphasize that there will be no change in the procedures currently in place to review and approve SAE plans. The Department acknowledges that the disallowance of outlays stated in the plan could result in additional funds being carried over and, hence, subject to the limitation and possible recovery. The Department considers, however, that the primary purpose of SAE is to ensure that States have adequate funds available to administer the child nutrition programs effectively. To this end, the Department will continue to negotiate these plans with the States to ensure that outlays are appropriate but has no intention of artificially reducing the funding available to States in order to provide funds for the homeless demonstration projects.

Since publication of the proposed rule, additional legislation was passed which impacts upon the use of recovered SAE funds. On September 30, 1992, Public Law 102–512, the Children's Nutrition Assistance Act of 1992, was enacted which further amended the provision on the use of excess carryover funds for demonstration projects for the homeless. Public Law 102–512 amended section 7(a)(5)(B)(i) of the CNA to require that a minimum of $1,000,000 in Fiscal Years 1993 and 1994 be available at the beginning of the fiscal year, based on Departmental estimates of the funds expected to be recovered as a result of the limit on funds that can be carried over. The Department is, therefore, incorporating the language of Public Law 102–512 on the use of returned funds into § 235.6(h) to comply with this most recent statutory requirement.

Alternate State Agencies for the CACFP

Section 7(a)(3) of the CNA as amended by section 122(a)(1)(A) of Public Law 101–147 requires that if an agency other than the State educational agency administers the CACFP, the State must ensure that such State agency which administers the CACFP is provided an amount equal to no less than the SAE funds due to the State for the CACFP. Since the Department already provides funds directly to State agencies administering the CACFP, the practical effect of the applicability of this provision concerns the "adult care component" of the CACFP. Accordingly, the Department proposed to add a new paragraph, to be designated as § 235.4(c), to allow a prorated portion of the State's SAE allocation for the CACFP to be made available directly to another agency in the State when that agency administers the adult care component of the CACFP. The Department further proposed to calculate the prorated share by determining what percentage of total CACFP monies expended by that State in the second preceding fiscal year was generated by the adult care component of the CACFP and applying that percentage to the State's total SAE allocation for the CACFP. To accommodate this change, the Department also proposed a number of technical amendments and proposed to delete the word "agency" where it appears in § 235.4 (b)(1) and (4) to clarify that it is the *State* which earns the total CACFP grant.

The Department received eight comments on this proposal. Three of the commenters argued that the $30,000 discretionary grant made available to assist in administering the CACFP should be redirected to help fund the monitoring requirements of the NSLP. Three commenters from one State (which has designated an alternate agency to administer the adult care component of the CACFP) maintained that the prorated share is insufficient and recommended a minimum level of $50,000 per year, while another State suggested that the provision be eliminated entirely, since redirecting of finite SAE funds would weaken overall Program administration. Finally, one commenter recommended adjusting the SAE nondiscretionary allocation for the CACFP based on growth in the Program between the second preceding year and the current year.

As noted in the preamble to the proposed rule, the Department believes this amendment to section 7(a)(3) of the CNA must be read in the context of section 17(p)(6) of the National School Lunch Act as amended by section 105(b)(3)(B) of Public Law 101–147, which authorizes governors to designate alternate agencies to administer the adult care component of the CACFP. In those instances in which a governor decides that an agency other than the CACFP agency is better able to serve the adult community, the Department believes it is consistent with the alternate State agency legislation to ensure that a portion of SAE funds is provided to that agency. However, the Department continues to stress that the total SAE allocation is earned by the *CACFP* as a whole. Moreover, the total amount of SAE available for all of the child nutrition programs is limited. Consequently, if the Department were to guarantee a minimum level of funding for the adult care component of the CACFP, the amount of funds available to administer the other child nutrition programs would be diminished. Finally, the Department notes that nationally, the adult care component accounts for only slightly more than 1 per cent of the total funding for the CACFP, and designating a large pool of administrative funding strictly for this purpose would not be justified. Therefore, it would not be reasonable to provide a minimum grant of $50,000 to an alternate agency solely to administer the adult care component of the CACFP. The Department does wish to emphasize, however, that in those States which do elect to administer the adult care component through an alternate agency, the agency administering the child care component of the CACFP may elect to transfer a portion of its SAE funds to the alternate agency in accordance with established FCS procedures. This would be in addition to the amount required by the regulations to be provided the agency administering the adult care component of the CACFP.

Secondly, the Department does not agree with those commenters who wish to redirect the CACFP discretionary grant to cover the costs of monitoring the school nutrition programs. The Department makes these grants available to CACFP agencies in recognition of the fact that this Program has heavy monitoring responsibilities, which actually exceed the requirements for monitoring of schools, as well as other administrative requirements, such as the oversight of approval when licensing or approval is not otherwise available, which are unique to the CACFP. If States could redirect the entire discretionary money from the CACFP to school programs, the overall management of the CACFP could be weakened. The Department also provides States with $4 million for the specific purpose of conducting reviews of the NSLP. For these reasons, the Department could not justify redirecting monies from the CACFP to NSLP.

The Department recognizes the concern about possible fragmentation of the SAE grant for the CACFP if funding is made available to an alternate agency to administer the adult care component. As the above discussion makes clear, the Department is anxious to maintain sufficient funding to ensure proper management of the Program. Under the proposal, a portion of the SAE grant is designated for an alternate agency *only* when the State, itself, has decided to split the administration of the CACFP. Since this action would be voluntary on the part of the State, the Department assumes that the State has determined that the advantages, both financial and administrative, of shifting the adult care component outweigh any reduction the agency administering the CACFP may experience in its SAE grant. For these reasons, the Department is adopting as proposed the provision to designate a pro rata share of the CACFP's SAE grant for an alternate agency administering the adult care component.

The final comment to address on this provision is the recommendation that the SAE nondiscretionary allocation for the CACFP be adjusted based on growth in the Program between the second preceding year and the current year. The Department is unable to adopt this recommendation because the time frame for determining the level of nondiscretionary funds for the CACFP is statutory.

Miscellaneous Provisions

In addition to the changes described above, the Department proposed a number of amendments intended to remove obsolete references, provide clarification and incorporate the provision in Public Law 101–147 mandating cooperation with studies authorized by the Secretary. In § 235.1 and § 235.2(s), the references to the Food Service Equipment Assistance Program were deleted, as were references to Fiscal Year 1986 in § 235.5(b) and Fiscal Year 1980 in § 235.7(c). Also, the definition of "State" in § 235.2(r) was revised by deleting references to the Trust Territories and American Samoa and replacing them with references to the Commonwealth of the Northern Marianas Islands and the Republic of Palau, respectively. The Department notes that separate SAE funds are no longer made available to the Commonwealth of the Northern Marianas Islands; it is not necessary, therefore, to include that entity in the definition at all. Consequently, in this final regulation, the old references are replaced by the single reference to the Republic of Palau.

To distinguish more clearly between nondiscretionary and discretionary SAE funding, the proposed rule amended § 235.4 by redesignating paragraph (a) as paragraph (a)(1), adding new introductory text to paragraph (a), redesignating paragraph (b) as paragraph (a)(2) and adding new introductory text to paragraph (b) to indicate the additional discretionary SAE funding designations. The Department also proposed to delete the second sentence of § 235.4(b)(3)(iv) and add a new paragraph (i) to § 235.4 to clarify that funds allotted to State agencies under § 235.4 are subject to the reallocation provisions in § 235.5(d).

Finally, the Department proposed changes to § 235.7(c) to comply with section 122(a)(2) of Public Law 101–147, which amended section 7(g) of CNA to require that SAE funds cannot be distributed unless the State agrees to participate fully in any studies authorized by the Secretary. The proposal deleted the phrase "studies directed by Congress and requested" (by the Secretary) and replaced it with the word "authorized" as well as deleted the reference to Fiscal Year 1980.

The Department received only one comment on these provisions, and that commenter observed that the requirement to participate in studies authorized by the Secretary should not be imposed unless there is specific authorizing legislation. As noted in the preamble to the proposed rule and in this preamble above, the change was in response to the specific mandate of Public Law 101–147: Therefore, the Department is adopting this provision and the other miscellaneous amendments as proposed. However, because of changes in the final rule in § 235.4, the proposed new § 235.4(i) is now designated as § 235.4(g).

The Department is also taking this opportunity to correct an erroneous reference which was discovered subsequent to the publication of the proposed rule. Section 235.7(b) contains a reference to § 235.4(c). In the proposed rule, § 235.4(c) was redesignated § 235.4(f) because three new paragraphs were being inserted after § 235.4(b), and the reference was changed in § 235.7(b) to accommodate this redesignation. The Department notes, however, that the original reference was incorrect, since § 235.4(c) did not address carryover. The correct reference should have been § 235.6(a), and this reference is being incorporated into § 235.7(b) of this final rule.

Changes are also made to § 235.4(b)(4) to revise references to reflect other changes made by this regulation and to correct an obsolete reference to § 235.4(f) which was renamed § 235.4(c) by an earlier regulation. This paragraph is also changed to clarify that funds provided under this paragraph are allocated on a State basis for the CACFP and the FDP, not for *each* State agency that administers these programs.

Implementation

The provisions of section 122 affecting SAE funds were effective October 1, 1989. Accordingly, the Department has already implemented these requirements, and this rule is made effective *30 days* after publication.

List of Subjects in 7 CFR Part 235

Administrative practice and procedure, Child and Adult Care Food Program, Food assistance programs, Grant administration, Intergovernmental relations, National School Lunch Program, Reporting and recordkeeping requirements, School Breakfast Program, Special Milk Program.

Accordingly, 7 CFR part 235 is amended as follows:

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

§ 235.1 [Amended]

2. In § 235.1, the second sentence is amended by removing the words "the Food Service Equipment Assistance Program (7 CFR Part 230)".

§ 235.2 [Amended]

3. In § 235.2:

a. Paragraph (r) is amended by removing the words "American Samoa, or the Trust Territory of the Pacific Islands" and adding in their place the words "or the Republic of Palau".

b. Paragraph (s)(2) is amended by removing the reference to part 230 in the first sentence.

4. In § 235.4:

a. Paragraph (a) is redesignated as paragraph (a)(1), and new paragraph (a) introductory text is added, the introductory text of paragraph (b) is redesignated as paragraph (a)(2); and

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new paragraph (b) introductory text is added.

b. The first sentence of newly redesignated paragraph (a)(1) is amended by removing the words "For each fiscal year, FNS shall allocate" and the word "agency" the first time it occurs; the first sentence is further amended by removing the words "by such agency" and adding in their place the words "by such State".

c. The first sentence of newly redesignated paragraph (a)(2) is amended by removing the words "For each fiscal year, FCS shall allocate" and by removing the words "to each State agency" and adding in their place the words "to each State".

d. Paragraph (b)(1) is amended by removing the words "For each fiscal year, FCS shall allocate" and the word "agency".

e. Paragraph (b)(2) is revised in its entirety.

f. The introductory text of paragraph (b)(3) is revised in its entirety.

g. Paragraph (b)(3)(iv) is amended by removing the second sentence.

h. Paragraph (b)(4) is revised in its entirety.

i. Paragraphs (c) through (e) are redesignated as paragraphs (d) through (f), respectively; and a new paragraph (c) is added.

j. Newly redesignated paragraphs (d) through (f) are amended by adding paragraph headings.

k. In newly redesignated paragraph (f), the references to paragraphs "(a)" and "(b)" are removed and references to paragraphs "(a)(1)" and "(a)(2)" are added in their place.

l. A new paragraph (g) is added.

The additions read as follows:

§ 235.4 Allocation of funds to States.

(a) *Nondiscretionary SAE Funds.* For each fiscal year, FCS shall allocate the following:

* * * * *

(b) *Discretionary SAE Funds.* For each fiscal year, FCS shall provide the following additional allocations:

* * * * *

(2) $30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter.

(3) Amounts derived by application of the following four-part formula to each State agency which is allocated funds under paragraph (a) of this section:

* * * * *

(4) Funds which remain after the allocations required in paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (b)(3) of this section, and after any payments provided for under paragraph (c) of this section, as determined by the Secretary, to those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.*

* * *

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* * * *

(f) *SAE Funds for ROAPs.* * * *

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

5. In § 235.5:

a. The first sentence of paragraph (b)(1) is amended by removing the semicolon following the words "upcoming fiscal year" and adding in its place a period, and by removing the remainder of the sentence.

b. Paragraph (e) is revised in its entirety.

The revision reads as follows:

§ 235.5 Payments to States.

* * * * *

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FCS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS.

6. In § 235.6:

a. Paragraph (a) is amended by revising the last sentence.

b. Paragraph (c) is revised in its entirety.

c. Paragraphs (d) and (f), previously reserved, are removed; paragraphs (e), (g), and (h) are redesignated as (d), (e), and (f), respectively, and a new paragraph (g) is added.

The revisions and addition read as follows:

§ 235.6 Use of funds.

(a) * * * Up to 25 per cent of funds allocated under § 235.4(a) through (c) for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

* * * * *

(c) The SAE funds allocated under § 235.4(b)(2), (b)(4), and (d) shall be used exclusively for Food Distribution Program administrative expenses for the programs under Parts 210, 220, and 226 of this chapter by any distributing agency which receives such funds. SAE funds allocated under § 235.4(a)(1), (a)(2), (b)(1), (b)(3) and (f), and those funds for the Child and Adult Care Food Program under (b)(4) which are not otherwise redirected for the Food Distribution Program under § 235.4(d) may be used to assist in the administration of the Food Distribution Program for such purposes. However, no funds designated for the exclusive use of the Food Distribution Program may be transferred by any State agency for other purposes. Furthermore, for each fiscal year beginning with Fiscal Year 1993, expenditures of funds from State sources for administrative costs incurred in the distribution of USDA donated foods to schools and institutions which participate in programs governed by parts 210, 220, and/or 226 of this chapter shall not be less than the amount of such funds expended in Fiscal Year 1991.

* * * * *

(g) FCS shall allocate, for the purpose of providing grants on an annual basis to public entities and private nonprofit organizations participating in projects under section 18(c) of the National School Lunch Act, not more than $4,000,000 in each of Fiscal Years 1993 and 1994. Subject to the maximum allocation for such projects for each fiscal year, at the beginning of each of Fiscal Years 1993 and 1994, FCS shall allocate, from funds available under § 235.5(d) that have not otherwise been allocated to States, an amount equal to the estimates by FCS of the funds to be returned under paragraph (a) of this section, but not less than $1,000,000 in each fiscal year. To the extent that amounts returned to FCS are less than estimated or are insufficient to meet the needs of the projects, FCS may allocate amounts to meet the needs of the projects from funds available under this section that have not been otherwise allocated to States. FCS shall reallocate any of the excess funds above the minimum level in accordance with § 235.5(d).

§ 235.7 [Amended]

7. In § 235.7,

a. The second sentence of paragraph (b) is amended by removing the reference to "§ 235.4(c) of this part" and adding in its place the reference to "§ 235.6(a)".

b. The first sentence of paragraph (c) is amended by removing the words "directed by Congress and requested" and adding in their place the word "authorized". Paragraph (c) is further amended by removing the words "FY '80" from the last sentence.

§ 235.11 [Amended]

8. In § 235.11:

a. Paragraph (b)(2) is amended by removing the reference to "§ 235.4(a)" and adding in its place the reference to "§ 235.4 (a)(1)".

b. Paragraph (b)(3) is amended by removing the reference to "§ 235.4(b)" and addding in its place the reference to "§ 235.4(a)(2)".

c. Paragraph (b)(4) is amended by removing the reference to "§ 235.4(a)" and adding in its place the reference to " § 235.4(a)(1)".

d. Paragraph (b)(7) is amended by removing the reference to "§ 235.4(e)" and adding in its place the reference to "§ 235.5(d)".

Dated: March 16, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–7310 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0858]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to Regulation Z (Truth in Lending). The amendments implement changes made to the Truth in Lending Act by the Riegle Community Development and Regulatory Improvement Act of 1994. The law imposes new disclosure requirements and substantive limitations on closed-end home equity mortgage loans bearing rates or fees above a certain percentage or amount. The amendments provide protection to consumers entering into these mortgages. The law also imposes new disclosure requirements to assist consumers in comparing the cost of reverse mortgage transactions, which provide periodic advances primarily to elderly homeowners and rely principally on the home's value for repayment.

DATES: This rule is effective March 22, 1995. Compliance is optional until October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (15 U.S.C. 1601–1666j) is to promote the informed use of consumer credit. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Community Development Act), Pub. L. 103–325, 108 Stat. 2160, amends the Truth in Lending Act (TILA). Section 152 of the HOEPA adds a new section 129 dealing with certain mortgages bearing rates or fees above a certain percentage or amount. Section 154 adds a new section 138 dealing with reverse mortgage transactions.

The HOEPA was enacted in September 1994, and directs the Board to issue final regulations within 180 days. Section 155 provides that the statutory provisions and the Board's rules shall apply on the October 1 following six months after the final regulation is issued. It also states that the final rule governs all mortgage transactions having rates or fees above a certain percentage or amount ("Section 32 mortgages," as found in § 226.32 of the regulation) consummated after the mandatory effective date. The Board has determined that the same compliance rule applies to reverse mortgage transactions consummated after October 1, 1995.

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II. Regulatory Provisions

In December 1994, the Board published a proposed rule amending Regulation Z, to implement the new law (59 FR 61832, December 2, 1994). The Board received about 100 comments on the proposal. About 85 percent were from creditors or other businesses potentially affected by the proposal (and their trade associations); the remainder were mainly from consumer groups and individuals. Commenters generally supported the Board's proposal, although some believe the act's provisions are detrimental to consumers seeking credit. In large measure, the regulatory amendments that the Board has adopted in the final rule follow the proposal; technical suggestions or concerns raised by commenters are addressed in the final rule. The section-by-section descriptions given below provide interpretive guidance to creditors until autumn 1995, when an update to the Official Staff Commentary to the regulation will be proposed.

III. Section-by-Section Analysis

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(17) Creditor

Section 226.2(a)(17) n.3 implements section 152(c) of the HOEPA and defines coverage in terms of the number of Section 32 mortgage transactions that will subject a lender to the TILA. The regulation parallels the statute. A creditor includes a person originating—during any 12-month period—two or more Section 32 mortgage loans, or one or more such mortgage loans through a mortgage broker. Thus, for example, a person that originates one Section 32 mortgage during a 12-month period is not covered. A person that originates three home-secured loans, two of which are secured by Section 32 mortgages, will be required to comply with the TILA for the latter two transactions. Persons making fewer than five home-secured loans during a calendar year—that do not meet the definition of a Section 32 mortgage—are not subject to the act.

Subpart B—Open-End Credit

Section 226.5b—Requirements for Home Equity Plans

5b(f) Limitations on Home Equity Plans

The TILA generally restricts creditors' ability to terminate open-end plans and demand repayment to narrowly drawn circumstances, such as when the consumer fails to make payments or takes actions that adversely affect the creditor's security. Section 154(c) of the HOEPA excludes reverse mortgage transactions from these restrictions. The legislative history states that the statutory amendment codifies the Board's existing interpretation regarding a creditor's ability to accelerate an open-end reverse mortgage loan in accordance with the credit contract, specifically, upon the consumer's death. The regulatory amendment reflects that legislative intent.

Subpart C—Closed-End Credit

Section 226.23—Right of Rescission

23(a) Consumer's Right to Rescind

Section 152(b) of the HOEPA provides that Section 32 mortgage disclosures and certain practices involving these loans are "material" for purposes of the TILA. The amendments to footnote 48 of the regulation implement the change. Consumers are provided with the right to rescind a Section 32 mortgage if a creditor fails to furnish the disclosures under § 226.32(c) or if the loan documents include a credit term under § 226.32(d).

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws

28(b) Equivalent Disclosure Requirements

Section 152(e) of the HOEPA provides that the procedure for substituting substantially similar state law disclosures for federal TILA requirements does not apply to state disclosure requirements for Section 32 mortgages. The amendments reflect this limitation.

Subpart E—Special Rules for Certain Home Mortgage Transactions

The amendments to the TILA (section 129 dealing with mortgages having rates or fees above a certain percentage or amount and section 138 dealing with reverse mortgage transactions) layer disclosure and timing requirements onto the requirements already imposed for these consumer credit transactions. The Board has implemented these provisions by adding a new subpart E to the regulation: § 226.31 addresses general requirements such as timing and format rules; § 226.32 contains rules relating to mortgages having rates or fees above a certain percentage or amount; and § 226.33 addresses reverse mortgages.

Section 226.31—General Rules

31(a) Relation to Other Subparts

Section 31(a) explicitly states that the requirements and limitations of Subpart E are in addition to—not in lieu of—requirements and limitations contained in other subparts of the regulation. For example, Subpart C requires creditors to provide disclosures at the time of application and prior to consummation for closed-end variable-rate loans that are secured by the consumer's principal dwelling and have a term greater than one year. If these transactions are also mortgage loans subject to § 226.32, Subpart E requires creditors to provide the special disclosures at least three business days prior to the consummation.

31(c) Timing of Disclosures

31(c)(1) Disclosures for Certain Closed-end Home Mortgage Disclosures

Implementing section 129(b) of the TILA, the regulation requires a three-day "cooling off" period between the time a consumer is furnished with special disclosures about a mortgage subject to § 226.32 (Section 32 mortgage) and the time the consumer becomes obligated under the loan. Some commenters suggested that the final rule should provide flexibility in the timing requirements to facilitate delivery by mail or the contemporaneous delivery of other required disclosures. The Board believes, however, that the act requires that consumers considering a Section 32 mortgage loan be given the special disclosures at least three business days before completing the transaction, regardless of the creditor's method of delivering these disclosures or the timing of other disclosures.

31(c)(1)(i) Change in Terms

Implementing section 129(b)(2) of the act, the regulation requires creditors to provide new Section 32 mortgage disclosures if, after giving the disclosures to the consumer and before consummation, the creditor changes any terms that make the disclosures inaccurate. New disclosures are triggered by a changed term only if it affects the APR, for example, or other disclosures set forth in § 226.32(c). Commenters requested guidance on the scope of "terms" for which such a change could trigger new disclosures. The Board believes the scope extends both to a change in the terms of the loan agreement, as well as to a change in any charge associated with closing the loan.

31(c)(1)(iii) Consumer's Waiver of Waiting Period Before Consummation

Section 129(b)(3) of the TILA authorizes the Board to permit the consumer to modify or waive the right to the three-day waiting period to meet bona fide personal financial emergencies. Sections 226.15(e) and 226.23(e) of the regulation discuss

waivers of the right to rescind to meet bona fide personal financial emergencies. Comment was solicited on whether the Board should provide a similar provision for waivers of the three-day waiting period on Section 32 mortgages.

In response to comments received and upon further analysis, the Board is adding a new paragraph providing that the consumer may modify or waive the three-day waiting period between delivery of Section 32 mortgage disclosures and consummation, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency.

Some commenters requested that the Board identify specific circumstances that are bona fide personal financial emergencies. Generally, the facts surrounding individual situations will determine whether the standard is met and the consumer may waive the three-day waiting period before consummation. The Board believes, however, that consummating a Section 32 mortgage loan to prevent the sale of the consumer's home at foreclosure is a bona fide personal financial emergency.

For example, if the consumer's home is scheduled to be sold at foreclosure within the three-day waiting period, the consumer could waive the waiting period to consummate the Section 32 mortgage loan and forestall the foreclosure. The consumer may exercise the waiver, however, only after receiving the disclosures required by paragraph (c)(1).

31(c)(2) Disclosures for Reverse Mortgages

Section 138 of the TILA requires creditors to furnish additional disclosures to consumers for a reverse mortgage transaction at least three business days prior to consummation. Under the statute, timing requirements for closed-end credit are often tied to the consummation of the transaction, and the regulation parallels the statute for closed-end reverse mortgage loans. However, reverse mortgage loans may also be structured as open-end credit plans. In that case, the regulation provides that the disclosures must be given at least three business days prior to the first transaction under the open-end credit plan or before the consumer becomes obligated on the plan. (See official staff interpretations of § 226.5(b)(1) in Supplement I of this part.)

Conforming Paragraphs

Paragraphs (d), (e), and (f) mirror provisions in subparts B and C (§ 226.5 and § 226.17).

31(g) Accuracy of Annual Percentage Rate

Creditors offering mortgages subject to § 226.32 must include the APR as part of the new Section 32 mortgage disclosures. In response to comments received, the regulation clarifies that the APR shall be calculated in accordance with § 226.22, which provides guidance for calculating an APR (and provides a tolerance for minor calculation errors) for transactions covered by Subpart C (closed-end). Commenters also suggested that the regulation should provide a tolerance for errors made in calculating payment amounts for the Section 32 mortgage loan disclosure. No tolerance exists for any such calculation errors under Subpart C, and the Board has not adopted a tolerance for payment amounts in Section 32 mortgage disclosures.

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 103(aa) of the TILA defines the mortgages covered by new section 129 based on the rates charged and fees paid. The proposal referred to those mortgages as high-rate, high-fee mortgages. Many commenters opposed the label, stating that early versions of the legislation had been revised to delete any identification of the covered mortgages with their relative cost. The final rule follows the statutory approach.

32(a)(1)(i)

The statute covers mortgages that charge rates above a specified standard. The rate-based test is tied to Treasury securities having terms comparable to the loan's maturity, and several commenters asked for more guidance on how creditors may determine if a particular transaction meets that test. The proposal cited the Board's Selected Interest Rates (statistical release H–15) as an example of a readily available source that identifies Treasury securities (bills, notes, and bonds) with maturities of 1, 2, 3, 5, 7, 10, 20, and 30 years. The same figures are published in other widely available sources, such as major financial and metropolitan newspapers.

Commenters also sought guidance for selecting the proper maturity for loan maturities that do not match those of Treasury securities. The Board believes that creditors could use rounding. For example, if a creditor must compare the APR to Treasury securities with either seven-year or ten-year maturities, the APR for an eight-year loan would be compared to securities with a seven-year maturity; a nine-year loan would be compared to securities with a ten-year maturity. If the loan maturity is exactly halfway between the maturities for two published Treasury securities, the creditor would compare the APR to the yield for the lower Treasury security.

The act and regulation require creditors to compare the APR to yields as of the fifteenth day of the month immediately preceding the month in which the application for credit is received. Commenters asked the Board to clarify when an application is deemed to be received. The Board believes an application is received when it reaches the creditor in any of the ways applications are normally transmitted, even if the consumer did not provide all the information required for the creditor to make the credit decision. (See official staff interpretations of § 226.19(a)(1) in Supplement I of this part.)

32(a)(1)(ii)

The statute covers mortgages if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board contemplates that any adjustment to the $400 dollar amount will be published with the proposed updates to Regulation Z's official staff commentary (in the autumn of each year). The adjustment will be based on the annual percentage change in the Consumer Price Index (as reported on June 1) and will be effective on January 1 of the following year.

Many commenters asked for further guidance to determine the "total loan amount." Some suggested using the face amount of the note; others suggested using the "amount financed" as calculated according to § 226.18(b). The Board believes the statute requires creditors to omit from the "total loan amount" any additional costs that may be incurred at closing—and included in the face amount of the note if financed by the creditor—when determining whether the ratio of fees to the total loan amount exceeds 8 percentage points. Thus, the "total loan amount" is the amount financed, as defined in § 226.18(b), less any items that are required to be disclosed under § 226.4(c)(7) and that are not excluded as fees under paragraph (b)(1)(iii) of this section.

32(a)(2)

Section 103(aa) of the TILA provides that the Section 32 mortgage rules do not apply to a residential mortgage transaction, a reverse mortgage transaction, or an open-end credit plan. The regulation tracks those exceptions.

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32(b) Definitions

32(b)(1) Points and Fees

Section 103(aa) of the TILA defines points and fees as all finance charges (except interest or the time-price differential), all compensation paid to mortgage brokers, and all items identified in section 106(e) (other than amounts held for future payment of taxes). A charge is excluded from the definition if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor.

The Board believes the Congress intended a broad application of the term "compensation," including, for example, amounts paid to brokers by creditors in addition to amounts paid by consumers. Many commenters considered this interpretation too expansive, and suggested that broker fees should only be considered "fees" if the broker is required by the creditor as a condition of obtaining the credit. (See official staff interpretations of § 226.4(a) in Supplement I of this part.)

RESPA requires creditors to provide consumers with estimates of closing costs—including fees paid by creditors to brokers—for certain real-estate secured loans (Regulation X, 24 CFR 3500, Appendix A, fact pattern 12). The Board believes that including in the total fee calculation all broker fees required to be disclosed under RESPA is consistent with the intent of the Congress and addresses the commenters' concerns about broker fees that are unknown to the creditor.

Section 103(aa) authorizes the Board to identify other charges that are appropriate to include in the total fee calculation. The conference report cites credit insurance premiums as an example of fees that could be included, if evidence showed that the premiums were being used to circumvent the statute. Several commenters, mostly insurance industry representatives, opposed the regulation's including premiums for credit life insurance that is purchased at the consumer's option.

Section 158 of the HOEPA requires the Board (in consultation with its Consumer Advisory Council) to conduct public hearings that examine home equity loans in the marketplace and the adequacy of federal laws (including the new rules affecting Section 32 mortgages and reverse mortgage transactions) in protecting consumers—particularly low-income consumers. The statute provides that the initial hearing must be held prior to September 1997, and the Board contemplates that the first hearing will occur sometime in 1996. The Board believes the hearings may provide an appropriate forum to explore whether any particular charges should be included in the total fee calculation. The regulation does not identify any additional fees at this time.

32(b)(2) Affiliate

Section 129(k) of the TILA defines "affiliate" for purposes of the Section 32 mortgage rules by a statutory reference to the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)). That act defines affiliate as any company that controls, is controlled by, or is under common control with another company. It also defines "company" and defines when one company is considered to "control" another (12 U.S.C. 1841(a) and (b)). The proposal defined the term by a statutory reference; to ease compliance, the final rule adds a brief narrative.

32(c) Disclosures

The regulation tracks the disclosure requirements of section 129(a). In response to comments, a new H–16—Mortgage Sample has been added to Appendix H. Creditors using it properly will be deemed to be in compliance with the regulation for those disclosures.

32(c)(3) Regular Payment

The act requires creditors to disclose the amount of the regular "monthly" payment. In response to comments received and upon further analysis, the final regulation clarifies that the disclosure contemplates monthly or other regularly scheduled periodic payments, such as monthly, bimonthly, or quarterly.

32(c)(4) Variable-rate

The law requires creditors offering variable-rate transactions to disclose a monthly payment based on an interest rate cap required for consumer contracts by a provision in the Competitive Equality Banking Act of 1987 (CEBA), which is implemented in § 226.30. The legislative history provides that in calculating the maximum payment based on the interest rate cap, creditors should assume the maximum possible increases in rates in the shortest possible timeframe. Paragraph § 226.19(b)(2)(x)—which requires a similar maximum payment disclosure for adjustable-rate mortgage transactions—provides guidance for calculating the maximum possible increases in rates in the shortest possible timeframe.

32(d) Limitations

Section 129 of the TILA prohibits mortgage creditors covered by § 226.32 from including several terms in their contracts. In large measure, the final regulation follows the proposal. In the proposal, the headings for and substantive limitations in paragraphs (d)(1) and (d)(2) were inadvertently reversed; the error has been corrected.

32(d)(1)(i) Balloon Payment

Under the act and regulation, the repayment schedule for a Section 32 mortgage loan with a term of less than five years must fully amortize the outstanding principal balance through regular periodic payments. Many commenters requested further guidance on the phrase "regular periodic" payments. Some were concerned that small interest-only payments with occasional payments of principal would be prohibited, and the lack of flexibility in designing a payment schedule would ultimately be detrimental to consumers. Others suggested defining a "regular periodic payment" as one that is not more than twice the amount of other payments. The Board has adopted this approach and believes it reflects the intent of the Congress and provides certainty in compliance.

32(d)(1)(ii) Exception

Section 129(l)(1) of the TILA authorizes the Board to create exemptions to the limitations set forth in paragraph (d) and paragraph (e) of this section, upon a finding that the exemption is in the interest of the borrowing public and will apply only to mortgage products or categories of products that maintain and strengthen home ownership and protect equity. The legislative history expresses the Congress's concern that the legislation might inappropriately apply to some government loans or short-term "bridge" construction loans. It also states that in granting the exemption authority to the Board, the Congress intended that the Board consider exemptions on a product-by-product basis.

Based on the legislative history, the comments received and upon further analysis, the Board is creating a narrowly drawn exemption from the balloon payment limitation for mortgage loans subject to § 226.32 with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling. These "bridge" loans remain subject to all other provisions of the section.

32(d)(2) Negative Amortization

The act and regulation prohibit payment schedules with regular periodic payments that may result in increases to the principal balance. Technical changes to the regulation are made for clarity. The Board believes that the prohibition does not extend to increases in the principal balance unrelated to the payment schedule, such as when a consumer fails to obtain property insurance and the creditor purchases insurance and adds the premium to the consumer's principal balance.

32(d)(4) Increased Interest Rate

The act and regulation prohibit creditors from increasing the interest rate after default. This prohibition does not prevent a creditor offering a variable-rate loan from changing the rate, if, for example, the rate is tied to an index and the index increases after the consumer has defaulted on the obligation.

32(d)(5) Rebates

Section 129(d) of the TILA restricts how creditors may calculate refunds of interest when a Section 32 mortgage loan is accelerated due to a consumer's default. The regulation clarifies that the paragraph covers limitation on refunds of interest (not other charges—points, for example—that are considered finance charges under § 226.4). The calculation would include odd-days interest, whether paid at or after consummation.

32(d)(6) Prepayment Penalties

Section 129(c) of the TILA generally bars creditors from including a prepayment penalty in a Section 32 mortgage contract. The statute includes, as a prepayment penalty, refunds of unearned interest calculated less favorably than the actuarial method defined in section 933(d) of the Housing and Community Development Act of 1992 (HCDA).

The legislative history provides that where the actuarial method, as defined by state law, provides a refund that is greater than the refund received under the HCDA definition, creditors should apply state law to determine if a refund is a prepayment penalty for a Section 32 mortgage. The legislative history states that the reference to the HCDA is not intended to be exclusive, and that penalties based on a percentage of the outstanding balance or on the number of months of interest are also prohibited.

32(d)(7) Prepayment Penalty Exception

Section 129(c)(2) of the TILA allows creditors to include a prepayment penalty clause in a Section 32 mortgage loan under narrowly drawn circumstances. To include a prepayment penalty clause in the loan documents, a creditor must verify that the consumer's monthly debt-to-income ratio is 50 percent or less. The Board believes that in calculating the consumer's monthly debts and income to determine the debt-to-income ratio, creditors may rely on widely accepted underwriting standards, such as those published by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veteran's Administration. A creditor using one of these standards and determining that the consumer's monthly debt-to-income ration is 50 percent or less will be deemed to meet the requirements of this provision. The Board believes this safe harbor provides consistency and eases compliance.

32(e) Prohibited Acts and Practices

Section 129(l)(2) of the TILA authorizes the Board to prohibit acts or practices in connection with mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the Section 32 mortgage rules. The Board also may prohibit acts or practices related to refinancing mortgage loans that the Board finds are associated with abusive lending practices or that are not in the borrower's interest. Neither the proposal nor the final regulation identifies any prohibited practices pursuant to this authority.

Section 157 of the HOEPA requires the Board to conduct a study and make recommendations to the Congress regarding, in part, the adequacy of federal laws protecting consumers with open-end credit plans secured by the consumer's principal dwelling. The study must be completed within eighteen months after the amendments are adopted. The Board believes the study and the hearing required by the HOEPA will assist the Board in determining whether certain acts or practices should be prohibited.

32(e)(1) Repayment Ability

Section 129(h) of the TILA prohibits creditors extending mortgage loans subject to § 226.32 from engaging in a pattern or practice of extending such credit to consumers based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. Commenters requested that "pattern or practice" be defined; however, the Board believes a determination whether a creditor engages in a pattern or practice will depend on individual fact situations. Thus, the final regulation—like the proposal—does not define the phrase.

Paragraph (d)(7) permits creditors to assess a prepayment penalty if, in part, the creditor verifies that the consumer's monthly debt to income ratio is 50 percent or less. In the supplementary materials accompanying the proposal, the Board stated that creditors could rely on information provided by the consumer in connection with paragraph (d)(7) when considering a consumer's ability to repay the debt. Many commenters were concerned that the Board intended to incorporate the income verification and debt-to-income ratio requirements into paragraph (e)(1). These concerns are unfounded. There is no debt-to-income ratio requirement for paragraph (e)(1). The information provided to creditors in connection with paragraph (d)(7) may be used to demonstrate that the creditor considered the consumer's income and obligations before extending the credit. Other information—for example, information about gift income, expected retirement payments, or other unverifiable income—may also be considered. The Board believes any expected income can be considered by the creditor, other than equity income obtainable by the consumer through the foreclosure of a Section 32 mortgage with the creditor.

32(e)(2) Home Improvement Contracts

Section 129(i) of the TILA restricts how creditors may disburse proceeds to contractors under a home improvement contract secured by a mortgage subject to § 226.32. The regulation reflects the statutory requirement that the creditor must disburse the proceeds by an instrument payable to the consumer or jointly to the consumer and the contractor. The Board believes that if the contractor and the consumer are joint payees, the instrument must name as payees all consumers who are primarily obligated on the note.

Alternatively, the regulation provides that at the election of the consumer, the creditor can disburse the proceeds through an escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement. The Board solicited comment on whether further guidance was needed regarding the use of a third party escrow agent, including an agent that is an affiliate of the creditor. The Board believes that RESPA adequately protects consumers dealing with an escrow agent that is an affiliate of the creditor. RESPA prohibits creditors from requiring the use of an affiliate, and

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requires disclosures to be furnished if the consumer opts to use the services of an escrow agent that is in a "controlled business arrangement" with the creditor (Regulation X, 24 CFR 3500.15).

32(e)(3) Notice to Assignee

The act and regulation require persons who sell or assign mortgages covered by § 226.32 to furnish a notice of the potential liability under the TILA. In response to comments received, the notice more directly discloses an assignee's potential liability.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition

Section 154 of the HOEPA defines a "reverse mortgage" as a nonrecourse transaction that is secured by the consumer's principal dwelling and that ties repayment (other than upon default) to the homeowner's death or permanent move from or transfer of the home. The definition in the regulation tracks the statute.

A nonrecourse transaction limits the homeowner's liability to no more than the proceeds of the sale of the home (unless a lesser amount is provided for in the credit obligation, such as by an equity reservation or an equity conservation agreement between the consumer and creditor). Neither the statute nor the regulation defines "nonrecourse transactions." Similarly, specific acts of default for purposes of the reverse mortgage rules are not defined. Neither the act nor the legislative history identifies such acts, and the Board believes that the determination of "default" is most appropriately left to the legal obligation between the parties and state or other law.

33(b) Content of Disclosures

Section 138 of the TILA establishes a new standard to measure the cost of reverse mortgage credit. The statute requires reverse mortgage creditors to disclose a good faith projection of the total cost of the credit to the consumer, by means of a table of annual interest rates. The legislative history states that the Congress contemplated a disclosure scheme modeled after the matrix disclosure currently required by section 255 of the National Housing Act and implemented by the Department of Housing and Urban Development's (HUD's) Home Equity Conversion Mortgage (HECM) program. The Board's regulation reflects that approach, except as noted below.

The regulation requires creditors to use the term "total annual loan cost rate" rather than "annual interest rate" in complying with this section. The statute uses but does not mandate the term "annual interest rate," and the Board believes that a different term will avoid possible confusion with the disclosure of the "annual percentage rate" (APR) required by other parts of the regulation. The term "total annual loan cost rate" is unlikely to be confused with the APR and is a more accurate description of the percentage cost of reverse mortgages than "annual interest rate." For example, the rate may reflect costs other than interest, such as annuity premiums, appraisal fees, and a percentage of any appreciation in the consumer's home.

Section 138(a)(1) of the TILA requires creditors to disclose total annual loan cost rates for not less than three projected appreciation rates and not less than three credit transaction periods, as determined by the Board. HUD's HECM matrix similarly discloses nine "average annual percentage rates" based on three assumed annual home appreciation rates and three assumed loan terms. As discussed below, the Board has adopted the HECM model which requires the tabular disclosure of nine total annual loan cost rates, as described below. The regulation *permits* an additional assumed loan term, as described below.

The HECM matrix is accompanied by a listing of the basic factors used in calculating the projected total cost of credit, such as the age of the borrower, the value of the consumer's home, etc., and a brief discussion of some assumptions used in calculating the rates in the matrix. The regulation requires that the matrix be accompanied by a listing of key factors used in calculating the total annual loan cost rates, along with a brief narrative that helps consumers to interpret the rates disclosed in the matrix. (See the supplementary material accompanying proposed Appendix K for further discussion of the model disclosure.)

33(c) Projected Total Cost of Credit

Section 138 (a) and (b) of the TILA identify factors creditors must consider when calculating the projected total cost of credit and the corresponding total annual loan cost rates. The regulation lists those requirements in paragraph (c) of this section. (The mathematical formula for determining the total annual loan cost rate is contained in Appendix K.)

33(c)(1) Costs to Consumer

Section 138(b)(2) of the TILA includes in the projected total cost of credit all costs and charges to the consumer, including the costs of any annuity that the consumer purchases (if any) as part of the reverse mortgage transaction. The regulation parallels the statute, except that the term "associated" has been deleted.

The Board believes the Congress intended a broad application of the terms "costs and charges." For example, the Board believes all costs and charges connected with the reverse mortgage transaction must be included in the projected total cost of credit, whether or not the charge is deemed to be a finance charge under Subpart A of the regulation.

Some creditors require or permit consumers to purchase an annuity as part of the transaction that immediately, or at some future time, supplements or replaces the creditor's payments. The law and regulation require the amount paid by the consumer for the annuity to be included as a cost to the consumer. This is the case whether the purchase is made through the creditor or a third party, or whether the purchase is mandatory or voluntary.

The HECM program does not include disposition costs as a part of the total annual loan cost rate, and the regulation follows that approach. Few commenters addressed the issue; they were about evenly split on whether to include disposition costs as part of the total annual loan cost rate. Based on these comments and upon further analysis, the Board has retained the rule as proposed.

33(c)(2) Advances to Consumer

Section 138(b)(3) of the TILA requires creditors to consider in the projected total cost of credit all advances to and for the benefit of the consumer, including annuity payments received by the consumer from an annuity purchased as part of the reverse mortgage transaction. The regulation generally tracks the statute, with slight modifications for clarity.

33(c)(3) Additional Creditor Compensation

Section 138(b)(1) of the TILA and the regulation include, in the total cost of a reverse mortgage loan, any shared appreciation or equity that the creditor is entitled to receive pursuant to the credit contract. For example, creditors sometimes offer a reduced interest rate in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold.

33(c)(4) Limitations on Consumer Liability

Section 138(b)(4) of the TILA requires creditors to consider in the projected total cost of credit any limitation on the consumer's liability under the reverse mortgage loan. This includes, for example, equity conservation agreements. These agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate.

This paragraph also applies to the nonrecourse provision that is a part of any credit contract meeting the definition of a reverse mortgage transaction. (See paragraph (a) of this section.) Some reverse mortgage transactions provide that a consumer's liability will not exceed a specific percentage of the projected home value, say 75 percent. Other reverse mortgages set the consumer's maximum liability at the "net proceeds" available from the sale of the home. That is, if a consumer sells the home for $100,000 and brokerage commissions and other incidental selling costs were $7,000, the creditor would receive no more than $93,000—the net proceeds of the sale.

The Board believes that the purposes of the reverse mortgage disclosures are enhanced if the calculations of projected total costs for "net proceeds" recourse limitations are based on uniform assumptions about the costs associated with the sale of the home. Thus, if a contract does not otherwise specify a percentage for net proceeds, creditors must assume closing costs of 7 percent, which approximates the amounts paid for typical brokerage fees and other incidental costs. The Board solicited comment on this approach. Most commenters agreed both with the approach and the use of the 7 percent figure.

33(c)(5) Assumed Annual Appreciation Rates

Section 138(a)(1) of the TILA requires each total annual loan cost rate to be based on one of (at least) three projected appreciation rates for the consumer's dwelling. The regulation tracks the appreciation rates used in HUD's HECM program. That is, the total annual loan cost rates are based on assumed annual home appreciation rates of 0 percent, 4 percent, and 8 percent. HUD's program based the 4 percent annual appreciation rate on its assessment of long-term averages of historical housing appreciation rates. The 0 percent and 8 percent rates help consumers understand the potential costs and benefits of the loan if their dwelling does not appreciate in value at all, or if its value appreciated at a rate double the 4 percent rate.

Commenters were about equally divided on the use of these assumed appreciation rates. Those that opposed the proposed figures believed that 0 percent, 3 percent, and 6 percent would be more appropriate. Based on the comments received and upon further analysis, the Board believes that the percentages used by HUD are appropriate estimates for reverse mortgage disclosures, and are required by the final rule.

33(c)(6) Assumed Loan Period

Section 138(a)(1) of the TILA also requires each total annual loan cost rate to be based on one of (at least) three credit transaction periods, as determined by the Board, including a short-term reverse mortgage, a term equaling the actuarial life expectancy of the consumer, and "such longer term as the Board deems appropriate." The proposed regulation tracked the assumed loan periods required under the HECM program: a period of two years, a period equal to the consumer's life expectancy, and a period equal to approximately 1.4 times the consumer's life expectancy (the creditor would use the life expectancy of the youngest consumer in transactions involving multiple borrowers).

The statute authorizes the Board to require total annual loan cost rates for more than three assumed loan periods. In the proposed rule, the Board noted that, depending on the age of the borrower, a significant time interval could exist between the shortest loan period (two years) and the consumer's life expectancy. Accordingly, the Board solicited comment on whether other assumed loan periods, such as an assumed loan period of one-half of the life expectancy figure, should be added to the regulation; and if so, whether calculations based on the additional assumed loan periods should be required or optional.

About 10 commenters addressed this point, and views were mixed. Some believed an additional assumed loan period equal to one-half of the life expectancy figure would assist consumers in better understanding the costs of the reverse mortgage transaction in the event that, for example, they move permanently from the dwelling either sooner or later than anticipated; commenters were split on whether the additional period should be mandatory or optional. Those commenters opposing an additional assumed loan period expressed concern about increased compliance burden and possible consumer confusion.

Based on the comments received and upon further analysis, the Board is permitting creditors to add a fourth assumed loan period equal to one-half of the life expectancy figure. Use of the additional period is permissive, to promote flexibility. The Board believes consumers will benefit by receiving information about the transaction's costs for a "midpoint" assumed loan period, given the potential of an event such as a permanent move from the home during the borrower's lifetime. The benefits to the consumer outweigh any additional compliance burden: For lenders offering reverse mortgage transactions not covered by the HECM program, the compliance burden of choosing to implement a new disclosure scheme based on four (rather than three) assumed loan periods is not significant; HECM lenders will revise their disclosures to comply with other requirements, such as the narrative required in the model form, in any event, and are not required to add the fourth loan period to their forms.

Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

The final regulation bases the calculation of total annual loan cost rates on a commonly used computation tool, an internal rate of return formula. The formula uses the estimation or "iteration" procedure required to compute APRs under Appendix J of this part. However, Appendix J is written in the context of forward (not reverse) mortgages. The formulas are similar to those in Appendix J; however, to ease compliance and avoid confusion about terminology, definitions and instructions appropriate for reverse mortgages are placed in Appendix K. The final rule tracks the proposal, except as noted below.

(b) Instructions and Equations for the Total Annual Loan Cost Rate

(b)(5) Number of Unit-Periods Between Two Given Dates

The total annual loan cost rates are based on an assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. The total annual loan cost rates are good-faith projections based on a number of assumptions. The Board believes that using the fractional unit-periods required under Appendix J for calculating APRs is unnecessary for these disclosures, and has omitted many of the definitions relating to time intervals.

(b)(8) Solution of General Equation by Iteration Process

Rather than restate the iteration process required to be used in determining total annual loan cost rates under the appendix, the regulation refers lenders to Appendix J of this

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regulation for the procedures to be followed.

(b)(9) Assumption for Discretionary Cash Advances

Some reverse mortgage transactions permit the consumer to control when advances are received. The regulation requires creditors to use a special assumption for calculating the total annual loan cost rate in this case. Creditors must assume that 50 percent of the amount of the credit line is advanced when the consumer becomes obligated under the transaction (at the interest rate then in effect) and that no further advances are made during the remaining term. The Board believes this assumption is appropriate for reverse mortgage credit lines, given that the amount and timing of advances (and, thus, the estimated interest owed) are within the consumer's control. The assumption used in the final rule also is consistent with HUD'S HECM program (and with Appendix D's requirements for an estimated interest figure when the amount and timing of construction loan advances are unknown).

Creditors should follow this approach for estimating interest on open-end reverse mortgage credit lines. Once the interest figure is determined, creditors should use the general equation in section (b)(8) of this appendix to calculate the total annual loan cost rate.

(b)(10) Assumption for Variable-Rate Reverse Mortgage Transactions

Regulation Z provides that to calculate the APR, creditors offering variable-rate transactions must base disclosures on the initial interest rate and not assume the rate will increase. The Board proposed adopting the same convention for calculating total annual loan cost rates, and solicited comment on whether the assumption used in HUD's HECM program—the "expected interest rate"—was more appropriate. The majority of commenters favored the use of the initial interest rate and the Board has adopted this approach in the final rule. Commenters also requested information on how to calculate the total annual loan cost rate when there is an initial discount rate. Creditors should apply the same rules for calculating the annual loan cost rate as are applied when calculating an APR for a loan with an initial discount rate (§ 226.17(c)).

(b)(11) Assumption for Closing Costs

The regulation requires creditors to assume all closing and other consumer costs are financed by the creditor. These costs are generally financed as a part of the transaction, and the Board believes this assumption provides uniformity.

(c) Examples of Total Annual Loan Cost Rate Computations

Three examples are provided to assist creditors in calculating the total annual loan cost rate. Some figures have been corrected, and interest rates have been added to the examples.

Reverse Mortgage Model Form and Sample Form

The regulation requires that the matrix be accompanied by a disclosure substantially similar to the model form in this paragraph. Reverse mortgages are complicated transactions, and the Board believes a uniform disclosure will enhance consumer understanding of the proposed transaction and promote informed comparison shopping.

The model form and sample form are placed in this appendix, because they apply to both open-end and closed-end reverse mortgage transactions. This avoids publishing the forms twice, in Appendix G (Open-end model forms and clauses) and Appendix H (Closed-end model forms and clauses). The sample form has technical corrections to some figures.

Appendix L—Assumed Loan Periods for Calculation of Total Annual Loan Cost Rates

The law requires the total annual loan cost rate disclosures for reverse mortgage transactions to be based on at least three assumed loan periods, as determined by the Board. The regulation tracks the assumed loan period requirements of HUD's HECM program (two years, a period equal to the youngest consumer's life expectancy, and a period 1.4 times that consumer's life expectancy), and adds an optional additional loan period equal to one-half of the youngest consumer's life expectancy.

The Board proposed using the U.S. Decennial Life Tables for the life expectancy figures. These tables are published by the Department of Health and Human Services and are widely available to the public. The Board solicited comment on other sources of such data. Most commenters agreed with the use of the U.S. Decennial Life Tables, and the requirement to use those tables has been adopted in the final rule. The figures in the appendix are based on data currently available, that is, on tables for 1979–1981, as rounded to the nearest whole year. The Board contemplates updating the figures as data are published periodically.

The regulation tracks the HECM program's use of female life expectancy figures for calculating total annual loan cost rates for all borrowers, as women are estimated to comprise the majority of borrowers under existing reverse mortgage programs.

IV. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared an economic impact statement on the amendments to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3245.

V. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the amendments were reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

Regulation Z requires creditors offering mortgages subject to § 226.32 and creditors offering reverse mortgage transactions to furnish to consumers at least three days prior to consummation a one-time notice disclosing costs of the loan and reminding consumers that signing an application or receiving disclosures does not require the consumer to complete the transaction. Model forms are adopted to ease compliance for creditors furnishing Section 32 and reverse mortgage disclosures.

The Board believes that the types of mortgage products that trigger these additional disclosures are not typically offered by state member banks; thus, the requirements have only a negligible impact on the paperwork burden for state member banks. Any estimates of paperwork burden for institutions other than state member banks that are affected by the amendments would be provided by the federal agency or agencies that supervise these lenders.

List of Subjects in 12 CFR Part 226

Advertising, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.1 is amended as follows:

a. Paragraph (b) is revised;

b. Paragraph (d)(5) is redesignated as paragraph (d)(6);

c. A new paragraph (d)(5) is added; and

d. Redesignated paragraph (d)(6) is revised.

The revisions and addition read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32.

* * * * *

(d) * * *

(5) Subpart E relates to mortgage transactions covered by § 226.32 and reverse mortgage transactions. It contains rules on disclosures, fees, and total annual loan cost rates.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total annual loan cost rates for reverse mortgage transactions.

* * * * *

3. In § 226.2, footnote 3 in paragraph (a)(17)(i) is revised to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(17) * * *

(i) * * *[3] * * *

[3] A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.

* * * * *

4. In § 226.5b, paragraph (f)(2) introductory text is revised and a new paragraph (f)(4) is added to read as follows:

§ 226.5b Requirements for home equity plans.

* * * * *

(f) * * *

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) unless:

* * * * *

(4) For reverse mortgage transactions that are subject to § 226.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

* * * * *

5. In § 226.23, footnote 48 in paragraph (a)(3) is revised to read as follows:

§ 226.23 Right of rescission.

(a) * * *

(3) * * *[48] * * *

* * * * *

6. In § 226.28, the first sentence of paragraph (b) is revised to read as follows:

§ 226.28 Effect on State laws.

* * * * *

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under § 226.32) is substantially the same in meaning as a disclosure required under the act or this regulation, creditors in that state may make the state disclosure in lieu of the federal disclosure. * * *

* * * * *

7. Part 226 is amended by adding a new Subpart E to read as follows:

[48] The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in § 226.32 (c) and (d).

Subpart E—Special Rules for Certain Home Mortgage Transactions

Sec.

226.31 General rules.

226.32 Requirements for certain closed-end home mortgages.

226.33 Requirements for reverse mortgages.

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.31 General rules.

(a) *Relation to other subparts in this part.* The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(b) *Form of disclosures.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep.

(c) *Timing of disclosure*—(1) *Disclosures for certain closed-end home mortgages.* The creditor shall furnish the disclosures required by § 226.32 at least three business days prior to consummation of a mortgage transaction covered by § 226.32.

(i) *Change in terms.* After complying with paragraph (c)(1) of this section and prior to consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

(iii) *Consumer's waiver of waiting period before consummation.* The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 226.23(e)(2).

(2) *Disclosures for reverse mortgages.* The creditor shall furnish the

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disclosures required by § 226.33 at least three business days prior to:

(i) Consummation of a closed-end credit transaction; or

(ii) The first transaction under an open-end credit plan.

(d) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(e) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.15 or § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may be required for mortgages covered by § 226.32 under paragraph (c) of this section, § 226.9(c), § 226.19, or § 226.20.

(g) *Accuracy of annual percentage rate.* For purposes of § 226.32, the annual percentage yield shall be considered accurate if it is accurate according to the requirements and within the tolerances set forth in § 226.22.

§ 226.32 Requirements for certain closed-end home mortgages.

(a) *Coverage.* (1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(ii) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(2) This section does not apply to the following:

(i) A residential mortgage transaction.

(ii) A reverse mortgage transaction subject to § 226.33.

(iii) An open-end credit plan subject to subpart B of this part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* mean:

(i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential;

(ii) All compensation paid to mortgage brokers; and

(iii) All items required to be disclosed under § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor.

(2) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) *Disclosures.* In addition to other disclosures required by this part, in a mortgage subject to this section the creditor shall disclose the following:

(1) *Notices.* The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) *Annual percentage rate.* The annual percentage rate.

(3) *Regular payment.* The amount of the regular monthly (or other periodic) payment.

(4) *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under § 226.30.

(d) *Limitations.* A mortgage transaction subject to this section may not provide for the following terms:

(1)(i) *Balloon payment.* For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(ii) *Exception.* The limitations in paragraph (d)(1)(i) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) *Negative amortization.* A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Advance payments.* A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) *Increased interest rate.* An increase in the interest rate after default.

(5) *Rebates.* A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) *Prepayment penalties.* Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(7) *Prepayment penalty exception.* A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(i) The penalty can be exercised only for the first five years following consummation;

(ii) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(iii) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(e) *Prohibited acts and practices.* A creditor extending mortgage credit subject to this section may not:

(1) *Repayment ability.* Engage in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and

employment status, the consumer will be unable to make the scheduled payments to repay the obligation.

(2) *Home improvement contracts.* Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by this section, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(3) *Notice to assignee.* Sell or otherwise assign a mortgage subject to this section without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

§ 226.33 Requirements for reverse mortgages.

(a) *Definition.* For purposes of this subpart, *reverse mortgage transaction* means a nonrecourse consumer credit obligation in which:

(1) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and

(2) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a principal dwelling.

(b) *Content of disclosures.* In addition to other disclosures required by this part, in a reverse mortgage transaction the creditor shall provide the following disclosures in a form substantially similar to the model form found in paragraph (d) of Appendix K of this part:

(1) *Notice.* A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan.

(2) *Total annual loan cost rates.* A good-faith projection of the total cost of the credit, determined in accordance with paragraph (c) of this section and expressed as a table of "total annual loan cost rates," using that term, in accordance with Appendix K of this part.

(3) *Itemization of pertinent information.* An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value.

(4) *Explanation of table.* An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of Appendix K of this part.

(c) *Projected total cost of credit.* The projected total cost of credit shall reflect the following factors, as applicable:

(1) *Costs to consumer.* All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.

(2) *Payments to consumer.* All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.

(3) *Additional creditor compensation.* Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

(i) 0 percent.

(ii) 4 percent.

(iii) 8 percent.

(6) *Assumed loan period.* (i) Each of the following assumed loan periods, as provided in Appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

9. In Part 226, Appendix H is amended by:

a. Revising the appendix heading;

b. Revising the table of contents at the beginning of the appendix; and

c. Adding a new H–16 Mortgage Sample in numerical order.

The revisions and additions read as follows:

Appendix H to Part 226—Closed-End Model Forms and Clauses

H–1—Credit Sale Model Form (§ 226.18)
H–2—Loan Model Form (§ 226.18)
H–3—Amount Financed Itemization Model Form (§ 226.18(c))
H–4(A)—Variable-Rate Model Clauses (§ 226.18(f)(1))
H–4(B)—Variable-Rate Model Clauses (§ 226.18(f)(2))
H–4(C)—Variable-Rate Model Clauses (§ 226.19(b))
H–4(D)—Variable-Rate Model Clauses (§ 226.20(c))
H–5—Demand Feature Model Clauses (§ 226.18(i))
H–6—Assumption Policy Model Clause (§ 226.18(q))
H–7—Required Deposit Model Clause (§ 226.18(r))
H–8—Rescission Model Form (General) (§ 226.23)
H–9—Rescission Model Form (Refinancing) (§ 226.23)
H–10—Credit Sale Sample
H–11—Installment Loan Sample
H–12—Refinancing Sample
H–13—Mortgage with Demand Feature Sample
H–14—Variable-Rate Mortgage Sample (§ 226.19(b))
H–15—Graduated Payment Mortgage Sample
H–16—Mortgage Sample (§ 226.32)

* * * * *

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H-16—Mortgage Sample

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

The annual percentage rate on your loan will be _____%

Your regular [frequency] payment will be $_____.

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $_____.]

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* * * * *

10. In Part 226, a new Appendix K is added to read as follows:

Appendix K to Part 226—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

(a) *Introduction.* Creditors are required to disclose a series of total annual loan cost rates for each reverse mortgage transaction. This appendix contains the equations creditors must use in computing the total annual loan cost rate for various transactions, as well as instructions, explanations, and examples for various transactions. This appendix is modeled after Appendix J of this part (Annual Percentage Rates Computations for Closed-end Credit Transactions); creditors should consult Appendix J of this part for additional guidance in using the formulas for reverse mortgages.

(b) *Instructions and equations for the total annual loan cost rate.*

(1) *General rule.* The total annual loan cost rate shall be the nominal total annual loan cost rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) *Term of the transaction.* For purposes of total annual loan cost disclosures, the term of a reverse mortgage transaction is assumed to begin on the first of the month in which consummation is expected to occur. If a loan cost or any portion of a loan cost is initially incurred beginning on a date later than consummation, the term of the transaction is assumed to begin on the first of the month in which that loan cost is incurred. For purposes of total annual loan cost disclosures, the term ends on each of the assumed loan periods specified in § 226.33(c)(6).

(3) *Definitions of time intervals.*

(i) A *period* is the interval of time between advances.

(ii) A *common period* is any period that occurs more than once in a transaction.

(iii) A *standard interval of time* is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered to have an equal number of days.

(4) *Unit-period.*

(i) In all transactions other than single-advance, single-payment transactions, the unit-period shall be that common period, not to exceed one year, that occurs most frequently in the transaction, except that:

(A) If two or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near two standard intervals of time, the lower shall be the unit-period.

(ii) In a single-advance, single-payment transaction, the unit-period shall be the term of the transaction, but shall not exceed one year.

(5) *Number of unit-periods between two given dates.*

(i) The number of days between two dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between two dates shall be the number of months. If the unit-period is a month, the number of unit-periods per year shall be 12.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between two dates shall be 30 times the number of full months. The number of full unit-periods shall be determined by dividing the number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods shall be determined by dividing the number of days between the two given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between two dates shall be the number of full years (each equal to 12 months).

(6) *Symbols.* The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this appendix are defined as follows:

A_j=The amount of each periodic or lump-sum advance to the consumer under the reverse mortgage transaction.

i=Percentage rate of the total annual loan cost per unit-period, expressed as a decimal equivalent.

j=The number of unit-periods until the jth advance.

n=The number of unit-periods between consummation and repayment of the debt.

P_n=Min (Bal_n, Val_n). This is the maximum amount that the creditor can be repaid at the specified loan term.

Bal_n=Loan balance at time of repayment, including all costs and fees incurred by the consumer (including any shared appreciation or shared equity amount) compounded to time n at the creditor's contract rate of interest.

Val_n=$Val_0 (1 + \sigma)^y$, where Val_0 is the property value at consummation, σ is the assumed annual rate of appreciation for the dwelling, and y is the number of years in the assumed term. Val_n must be reduced by the amount of any equity reserved for the consumer by agreement between the parties, or by 7 percent (or the amount or percentage specified in the credit agreement), if the amount required to be repaid is limited to the net proceeds of sale.

Σ=The summation operator.

Symbols used in the examples shown in this appendix are defined as follows:

$FV_{x,i}$ = The future value of 1 per unit period for x unit periods, first advance due immediately (at time = 0, which is consummation).

$$= \sum_{j=0}^{x-1} (1+i)^{x-j}$$

$$= (1+i)^{x} + (1+i)^{x-1} + \cdots (1+i)^{1}; \text{ or}$$

$$= \frac{(1+i)^{n}-1}{i} \times (1+i)$$

w=The number of unit-periods per year.

I=wi×100=the nominal total annual loan cost rate.

(7) *General equation.* The total annual loan cost rate for a reverse mortgage transaction must be determined by first solving the following formula, which sets forth the relationship between the advances to the consumer and the amount owed to the creditor under the terms of the reverse mortgage agreement for the loan cost rate per unit-period (the loan cost rate per unit-period is then multiplied by the number of unit-periods per year to obtain the total annual loan cost rate I; that is, I = wi):

$$\sum_{j=0}^{n-1} A_j (1+i)^{n-j} = P_n$$

(8) *Solution of general equation by iteration process.* (i) The general equation in paragraph (b)(7) of this appendix, when applied to a simple transaction for a reverse mortgage loan of equal monthly advances of $350 each, and with a total amount owed of $14,313.08 at an assumed repayment period of two years, takes the special form:

$$P_n = 350\, FV_{24\neg,\, i}, \text{ or}$$

$$P_n = 350 \times \left[\frac{(1+i)^{n}-1}{i} \times (1+i) \right]$$

Using the iteration procedures found in steps 1 through 4 of (b)(9)(i) of Appendix J of this part, the total annual loan cost rate, correct to two decimals, is 48.53%.

(ii) In using these iteration procedures, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the total annual loan cost rate obtained, when rounded to two decimals, is correct. Total annual loan cost rates in the examples below were obtained by using a 10-digit programmable calculator and the iteration procedure described in Appendix J of this part.

(9) *Assumption for discretionary cash advances.* If the consumer controls the timing of advances made after consummation (such as in a credit line arrangement), the creditor must use the general formula in paragraph (b)(7) of this appendix. The total annual loan cost rate shall be based on the assumption that 50 percent of the principal loan amount is advanced at closing, or in the case of an open-end transaction, at the time the consumer becomes obligated under the plan. Creditors shall assume the advances are made at the interest rate then in effect and that no further advances are made to, or repayments made by, the consumer during the term of the transaction or plan.

(10) *Assumption for variable-rate reverse mortgage transactions.* If the interest rate for a reverse mortgage transaction may increase during the loan term and the amount or timing is not known at consummation, creditors shall base the disclosures on the initial interest rate in effect at the time the disclosures are provided.

(11) *Assumption for closing costs.* In calculating the total annual loan cost rate, creditors shall assume all closing and other consumer costs are financed by the creditor.

(c) *Examples of total annual loan cost rate computations.*

(1) *Lump-sum advance at consummation.*

Lump-sum advance to consumer at consummation: $30,000
Total of consumer's loan costs financed at consummation: $4,500
Contract interest rate: 11.60%
Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years
Appraised value of dwelling at consummation: $100,000
Assumed annual dwelling appreciation rate: 4%

$$P_{120} = \text{Min}\,(109{,}441.32, 137{,}662.72)$$

$$30{,}000(1+i)^{120-0} + \sum_{j=0}^{119} 0(1+i)^{120-j} = 109{,}441.32$$

$$i = .010843293$$

Total annual loan cost rate (100(.010843293 x 12)) = 13.01%

(2) *Monthly advance beginning at consummation.*

Monthly advance to consumer, beginning at consummation: $492.51
Total of consumer's loan costs financed at consummation: $4,500
Contract interest rate: 9.00%
Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years
Appraised value of dwelling at consummation: $100,000
Assumed annual dwelling appreciation rate: 8%

$$P_{120} = \text{Min}\,(107{,}053.63, 200{,}780.02)$$

$$492.51 \times \left[\frac{(1+i)^{120}-1}{i} \times (1+i) \right] = 107{,}053.63$$

$$i = .009061140$$

Total annual loan cost rate (100(.009061140 x 12))=10.87%

(3) *Lump sum advance at consummation and monthly advances thereafter.*

Lump sum advance to consumer at consummation: $10,000
Monthly advance to consumer, beginning at consummation: $725
Total of consumer's loan costs financed at consummation: $4,500
Contract rate of interest: 8.5%
Estimated time of repayment (based on life expectancy of a consumer at age 75): 12 years
Appraised value of dwelling at consummation: $100,000
Assumed annual dwelling appreciation rate: 8%

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$$P_{144} = \text{Min}\,(221{,}818.30,\ 234{,}189.82)$$

$$10{,}000(1+i)^{144-0} + \sum_{j=0}^{143} 725(1+i)^{144-j} = 221{,}818.30$$

$$i = .007708844$$

Total annual loan cost rate (100(.007708844 x 12)) = 9.25%

(d) *Reverse mortgage model form and sample form.*

(1) *Model form.*

Total Annual Loan Cost Rate

Loan Terms

Age of youngest borrower:

Appraised property value:
Interest rate:
Monthly advance:
Initial draw:
Line of credit:

Initial Loan Charges

Closing costs:
Mortgage insurance premium:

Annuity cost:

Monthly Loan Charges

Servicing fee:

Other Charges:

Mortgage insurance:
Shared Appreciation:

Repayment Limits

Assumed annual appreciation	Total annual loan cost rate			
	2-year loan term	[ ]-year loan term]	[ ]-year loan term	[ ]-year loan term
0%		[ ]		
4%		[ ]		
8%		[ ]		

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%, 4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan

(2) Sample Form.

Total Annual Loan Cost Rate

Loan Terms

Age of youngest borrower: 75
Appraised property value: $100,000
Interest rate: 9%
Monthly advance: $301.80
Initial draw: $1,000
Line of credit: $4,000

Initial Loan Charges

Closing costs: $5,000
Mortgage insurance premium: None
Annuity cost: None

Monthly Loan Charges

Servicing fee: None

Other Charges

Mortgage insurance: None
Shared Appreciation: None

Repayment Limits

Net proceeds estimated at 93% of projected home sale

Assumed annual appreciation	Total annual loan cost rate			
	2-year loan term	[6-year loan term]	12-year loan term	17-year loan term
0%	39.00%	[14.94%]	9.85%	3.87%
4%	39.00%	[14.94%]	11.03%	10.14%
8%	39.00%	[14.94%]	11.03%	10.20%

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%,4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not disposition costs—costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan

11. In Part 226, a new Appendix L is added to read as follows:

Appendix L to Part 226—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates

(a) *Required tables.* In calculating the total annual loan cost rates in accordance with Appendix K of this part, creditors shall assume three loan periods, as determined by the following table.

(b) *Loan periods.*

(1) Loan Period 1 is a two-year loan period.

(2) Loan Period 2 is the life expectancy in years of the youngest borrower to become obligated on the reverse mortgage loan, as shown in the U.S. Decennial Life Tables for 1979–1981 for females, rounded to the nearest whole year.

(3) Loan Period 3 is the life expectancy figure in Loan Period 3, multiplied by 1.4 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

(4) At the creditor's option, an additional period may be included, which is the life expectancy figure in Loan Period 2, multiplied by .5 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

Age of youngest borrower	Loan period 1 (in years)	[Optional loan period (in years)]	Loan period 2 (life expectancy) (in years)	Loan period 3 (in years)
62	2	[11]	21	29
63	2	[10]	20	28
64	2	[10]	19	27
65	2	[9]	18	25
66	2	[9]	18	25
67	2	[9]	17	24
68	2	[8]	16	22
69	2	[8]	16	22
70	2	[8]	15	21
71	2	[7]	14	20
72	2	[7]	13	18
73	2	[7]	13	18
74	2	[6]	12	17
75	2	[6]	12	17
76	2	[6]	11	15
77	2	[5]	10	14
78	2	[5]	10	14
79	2	[5]	9	13
80	2	[5]	9	13
81	2	[4]	8	11
82	2	[4]	8	11
83	2	[4]	7	10
84	2	[4]	7	10
85	2	[3]	6	8
86	2	[3]	6	8
87	2	[3]	6	8
88	2	[3]	5	7
89	2	[3]	5	7
90	2	[3]	5	7
91	2	[2]	4	6
92	2	[2]	4	6
93	2	[2]	4	6
94	2	[2]	4	6
95 and over	2	[2]	3	4

By order of the Board of Governors of the Federal Reserve System, March 20, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–7231 Filed 3–23–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Handicapped Workshop Participation in Small Business Set-Aside Contracts

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its size regulations to include public or private organizations for the handicapped as eligible concerns to participate in small business set-aside contracts during fiscal year 1995, in an aggregate amount not to exceed $40,000,000. Section 305 of the Small Business Administration Reauthorization and Amendments Act of 1994 expanded the eligibility of entities which may participate in small business set-aside contracts to include public or private organizations for the handicapped during fiscal year 1995. Handicapped organizations had been eligible for set-aside contracts during fiscal years 1989 through 1993.

EFFECTIVE DATE: This rule is effective on March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6840.

121.601. The Small Business Administration Reauthorization and Amendments Act of 1994 amended Section 15(c) of the Act, 15 U.S.C. 644(c), by expanding the eligibility of entities which may participate in small business set-aside contracts to include public or private organizations for the handicapped during fiscal year 1995. *See* Public Law 103–403, Section 305. However, this statutory revision limits the extent of participation by public or private handicapped organizations in small business set-aside awards to an aggregate amount not to exceed $40,000,000. The Act further provides that Federal agencies making awards to such organizations pursuant to provisions of this Act may use multi-year contracts, if appropriate.

This statutory provision reinstates the eligibility of public or private handicapped organizations previously authorized by Public Law 100–590 for fiscal years 1989 through 1993. Sections 121.2001 through 121.2005 of the Small Business Size Regulations prescribe regulations governing the participation of public or private handicapped organization on small business set-aside contracts. The regulations include the definition of terms, procedures for protesting the status of an offeror asserting eligibility as a handicapped organization, and procedures for filing appeals of an award to a handicapped organization on the basis of severe

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economic injury to a small business concern as a result of a proposed award. Although these regulations were originally established for awards made during fiscal years 1989–93, they have remained in effect and will generally apply to awards made in fiscal year 1995.

However, Sections 121.2004 and 121.2005 are now being revised to incorporate the current title and address of the SBA official responsible for deciding protests concerning the eligibility of a handicapped organization and appeal of awards based on severe economic impact on small business. An internal reorganization of the SBA included the renaming of the "Office of Procurement Assistance" to the "Office of Government Contracting." The responsibilities of the Office of Government Contracting, however, include those of the former Office of Procurement.

The SBA is publishing this regulation as a final rule without notice and opportunity for public comment since the SBA is merely adopting the statutory language into its regulations to recognize the eligibility granted to public or private handicapped organizations to participate in small business set-aside contracts during fiscal year 1995. In addition, the change to the title of the Agency official responsible for deciding protests and appeals concerning small business set-aside awards to handicapped organizations is a matter of Agency management and personnel and is, therefore, published without notice and comment pursuant to 5 U.S.C. 553(a)(2).

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

The SBA certifies that this rule is not a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule does not impose costs upon the businesses which might be affected by it. Because the rule will have no effect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, it will not have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR), is amended as set forth below.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.2001 is revised to read as follows:

§ 121.2001 Statutory basis.

(a) The Small Business Act, as amended by Public Law 103–403, provides that public or private organizations for the handicapped shall be eligible to participate in small business set-aside contracts for fiscal year 1995 in an aggregate amount not to exceed $40,000,000. *See* 15 U.S.C. 644(c)(2)(A).

(b) Agencies awarding one or more contracts to such a handicapped organization may use multi-year contracts, if appropriate. *See* 15 U.S.C. 644(c)(7).

(c) Awards to public or private organizations for the handicapped may be appealed to SBA when a small business experiences or is likely to experience severe economic injury as a result of the proposed award to an organization for the handicapped. Any eligible concern wishing to appeal must file its appeal with the SBA within 10 days after the announcement of the proposed award to which the appeal relates. The SBA is afforded 30 days from the date the appeal is filed to consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

3. Section 121.2004 is amended by revising paragraphs (c)(1) and (c)(5) to read as follows:

§ 121.2004 Protest of eligibility.

* * * * *

(c) *Procedure for protest.* (1) Protests shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Government Contracting, Small Business Administration, 409 Third Street SW., Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of protests under this section.

* * * * *

(5) The Associate Administrator for Government Contracting shall consult with the Executive Director of the Committee for Purchases from the Blind and Other Severely Handicapped before rendering a determination.

* * * * *

4. Section 121.2005 is amended by revising paragraph (c)(1) to read as follows:

§ 121.2005 Appeal of economic impact.

* * * * *

(c) *Procedure for appeal.* (1) Appeals shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Government Contracting, Small Business Administration, 409 Third Street SW., Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of appeals under this section.

* * * * *

Dated: February 15, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–6978 Filed 3–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

General Material Requirements; Buy America Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of nationwide waiver of Buy America for pig iron and processed, pelletized, and reduced iron ore.

SUMMARY: The FHWA is hereby granting a nationwide waiver of the Buy America requirements for certain iron components used in the manufacture of steel and/or iron materials. Based on the findings of a nationwide review, and after analyzing the comments submitted in response to the waiver proposal, the FHWA believes that the supply from domestic sources of pig iron and processed, pelletized, and reduced iron ore is not adequate to permit full compliance with the Buy America requirements. This action permits the use of pig iron and processed, pelletized, and reduced iron ore manufactured outside of the United States to be used in the domestic manufacturing process for steel and/or iron materials used in Federal-aid highway construction projects.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald L. Eller, Office of Engineering, (202) 366–0392 or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In accordance with 23 CFR 635.410(c)(6), the FHWA hereby provides notice that it is granting a nationwide waiver of the requirements of 23 CFR 635.410, Buy America requirements, for pig iron and processed, pelletized, and reduced iron ore. Pig iron is made from molten iron which has been cast in the shape of "pigs" as it comes from a blast furnace. Processing, pelletizing, and reducing iron ore are methods by which raw iron ore is improved to produce enriched ore.

Section 635.410 provides, with exceptions, that no Federal-aid highway construction project using steel or iron materials is authorized to proceed unless all manufacturing processes for these materials, including the application of coatings for such materials, occur in the United States. Because the domestic supply of pig iron and processed, pelletized, and reduced iron ore is not adequate, a nationwide waiver of these requirements is being granted for these specific iron components. Items not specifically included in the waiver remain subject to the Buy America requirements.

The basis for the nationwide waiver is that pig iron and processed, pelletized, and reduced iron ore are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality. Therefore, imposing Buy America requirements on these materials is not in the public interest.

On August 23, 1994, the FHWA published a notice (59 FR 43376) and requested comments on the proposed nationwide waiver and the availability of a domestic supply of the components included in the waiver. Ten comments were received to FHWA Docket No. 94–18. All 10 commentors were supportive of the waiver, although some questioned the need for waiver.

Several commentors concluded that domestic supplies of pig iron and processed, pelletized, and reduced iron ore are either inadequate or nonexistent in their region of the United States. Supplies were believed to be inadequate now and in the future. One commentor offered analysis of the current domestic pig iron supply, performed by an outside consultant. Its analysis showed that the volume of available domestic pig iron is insufficient to supply the electric furnace steel producers in the United States. Of the 23 blast furnace sites in the United States the analysis showed that only four currently sell pig iron. No commentor stated that the domestic supply of pig iron and processed, pelletized, and reduced iron ore is adequate. The FHWA concludes that the waiver is substantiated due to the unavailability of pig iron.

Although supportive of the waiver several commentors questioned the need for a waiver, since they believed that pig iron and processed, pelletized, and reduced iron ore were already exempt from the Buy America requirements. Their belief was based on the idea that the Buy America requirements apply only to products further along in the manufacturing process of steel and iron. The FHWA has previously stated that products of a manufacturing process are not exempt from the Buy America requirements. On November 25, 1983, the FHWA published a final rule (48 FR 53099) of the Buy America requirements to implement procedures required by § 165 of the Surface Transportation Assistance Act (STAA) of 1982 (Pub. L. 97–424). The final rule's discussion of manufactured materials stated that "Raw materials used in the steel * * * product may be imported. All manufacturing processes to produce steel * * * products must occur domestically. Raw materials are materials such as iron ore * * * [and] waste products * * * which are used in the manufacturing process to produce the steel * * * products" (48 FR 53099, 53103). Consistent with this interpretation, pig iron and processed, pelletized, and reduced iron ore are products of a manufacturing process and thus subject to the Buy America requirements.

At least one commentor questioned whether the FHWA's Buy America regulation applies to certain alloys required in the production of steel and/or iron materials. Even though most of these alloys are unavailable from domestic sources, alloys were not addressed in the 1983 final rule. Similar to the treatment of raw iron ore, alloys in their raw state may be imported for use in the domestic manufacturing process of steel and/or iron materials. Furthermore, processed alloys, alone, are not considered to be steel or iron materials under the Buy America regulation. Thus, unless alloys have been processed or refined to include substantial amounts of steel and/or iron materials, they are not subject to the Buy America requirements.

(Pub. L. 97–424, § 165, 96 Stat. 2097, 2136, as amended by Pub. L. 98–229, § 10, 98 Stat. 55, 57, and Pub. L. 102–240, §§ 1041, 1048, 105 Stat. 1914, 1993, 1999; 23 U.S.C. 315; 49 CFR 1.48; 23 CFR 635.410)

Issued on: March 20, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–7362 Filed 3–21–95; 3:49 pm]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 7]

RIN 2127–AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: On August 9, 1994, (59 FR 40471) NHTSA published an interim final rule, amending the criterion in part 1313 for a supplemental grant for States that deem persons under age 21 who operate a motor vehicle with a BAC of 0.02 or greater to be driving while intoxicated. The interim final rule requested comments on the amendment. Today's notice reopens the comment period to provide States, national organizations and other interested persons an additional opportunity to comment on the amendment.

DATES: The comment period for NHTSA Docket No. 89–02; Notice 6 is reopened so that it closes May 23, 1995.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Markison, Chief, Program Support Staff, NSC–10, National Highway Traffic Safety Administration,

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400 Seventh Street SW., Washington, DC 20590; telephone (202) 366–2121 or Dr. James Hedlund, Director, Office of Alcohol and State Programs, NTS–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2753.

SUPPLEMENTARY INFORMATION: The section 410 program, established in title 23, United States Code, section 410, as amended, is an incentive grant program under which States may qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs that meet specified statutory criteria.

To qualify for basic grant funds under section 410, a State must meet five out of six basic criteria. The criteria include an expedited driver's license suspension or revocation system, a per se law (at 0.10 BAC in the first three fiscal years in which the State receives a grant and 0.08 BAC in subsequent years), a statewide program for stopping motor vehicles, a self-sustaining drunk driving prevention program, a minimum drinking age prevention program, and mandatory sentencing requirements.[1]

If a State qualifies for a basic grant, it may also seek to qualify for funds under one or more of seven supplemental grants. The supplemental grants include a per se law for persons under age 21, a program making unlawful open containers and consumption of alcohol in motor vehicles, a suspension of registration and return of license plate program, a mandatory alcohol concentration testing program, a drugged driving prevention, a per se level of 0.08 (in the first three fiscal years in which the State receives a grant), and a video equipment program.

Per se Law for Persons Under Age 21 Supplemental Grant

To qualify for the "per se law for persons under age 21" supplemental grant, Section 410 requires that the State must be "eligible for a basic grant in the fiscal year and (provide) that any person under age 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated."

In an interim final rule, dated June 30, 1992, NHTSA explained:

> In other words, States must establish a 0.02 per se law for persons under the age of 21, that makes driving with a BAC of 0.02 percent or above itself an offense for such persons. (57 FR 29007)

The interim final rule amended the regulation to provide that, to qualify for this supplemental grant, a State must "provide that any person under age 21 with an alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of administrative sanctions."

The agency interpreted this criterion to require that a State's law must provide that 0.02 BAC underage offenders must be treated the same as other (0.10) DUI offenders would be treated under the State's administrative license revocation (ALR) law, for the State to qualify for a "per se law for persons under age 21" supplemental grant.

Further, the agency determined that States that did not have an ALR law at all or did not have an ALR law that qualifies under section 410 need not provide for identical sanctions, but their laws must require a minimum 30-day license suspension as an administrative sanction for 0.02 underage offenders, and the suspension must be mandatory.

Changes to the regulation

Some States objected to the application of this portion of part 1313. In response to these objections, NHTSA published an interim final rule on August 9, 1994 (59 FR 40470), amending part 1313 to provide that any State (whether it has an ALR law that conforms to section 410 or not) need only provide for a 30-day suspension or revocation for persons under the age of 21 who operate a motor vehicle with a BAC of 0.02 or greater. The 30-day suspension or revocation period must be a mandatory hard suspension or revocation (i.e., it may not be subject to hardship, conditional or provisional driving privileges).

The interim final rule also amended the regulation to permit States to demonstrate compliance with this criterion as either "Law" or "Data" States. The amended regulation defined a "Law State" as a State that has laws, regulations, or binding policy directives which, on their face, meet each element of the criterion. It defined a "Data State" as a State that has laws, regulations, or binding policy directives which, on their face, meet each element, except that they need not specifically provide for a 30-day hard suspension.

Under the interim final rule, the regulation was amended to provide that, to demonstrate compliance, a "Law State" must submit only the law, regulation or binding policy directive itself governing its 0.02 per se law for persons under age 21. It need not submit data. To demonstrate compliance, a "Data State" must submit its law, regulation, or binding policy directive governing its 0.02 per se law for persons under age 21. It must also submit data demonstrating that the average length of hard suspensions for offenders under the State's per se law for persons under age 21 meets or exceeds 30 days.

Comments Received

NHTSA received four comments in response to the interim final rule. The commenters included the Michigan State Police Department, the Michigan Department of State, the National Association of Governors' Highway Safety Representatives (NAGHSR) and Advocates for Highway and Auto Safety (Advocates).

Both comments from the State of Michigan objected to the imposition of legislative mandates in the section 410 program. The Michigan commenters favored the use of performance-based criteria instead. Michigan has raised this comment previously regarding other aspects of the section 410 program. However, section 410 does not permit the agency to disregard the statutory criteria and qualify a State based solely on performance.

The Michigan Department of State Police and NAGHSR objected to the 30-day hard suspension requirement. These commenters were concerned that, by defining this requirement, NHTSA was making the criterion stricter, thereby making it more difficult for States to qualify for section 410 funds. NAGHSR also objected to the interim final rule's provision that States "must be a Law or Data State in order to show compliance."

NHTSA wishes to clarify that the changes that were made to the regulation in the interim final rule made it easier, not more difficult, for States to qualify for the 0.02 supplemental grant. Prior to the issuance of the interim rule, to qualify for this grant, States with ALR laws that qualified under section 410 were required to impose the same sanctions on 0.02 BAC underage offenders as were imposed on other (0.10 or, in some States, 0.08) DUI offenders. These sanctions include a 90-day suspension for first offenders (30 days of which must be hard for those who fail the test and all of which must be hard for those who refuse to submit to the test) and a one-year hard suspension for repeat offenders.

Further, prior to the issuance of the interim rule, to demonstrate compliance for this grant, States could only qualify by submitting a conforming law (i.e., as

[1] To receive a basic grant, States that qualified for section 410 funding in FY 1992 need only demonstrate compliance with four out of the five criteria in effect at that time, namely all the basic criteria listed above except for mandatory sentencing.

Law States). The interim rule provided additional flexibility by permitting States with laws that contain exemptions or some other provision that did not fully comply with the criterion, to demonstrate compliance through the use of data.

As a result of the changes made in the interim final rule, three States qualified for funding under the 0.02 supplemental criterion that were not able to qualify previously. These States included California, Ohio and Virginia.

Advocates did not oppose the amendment contained in the interim rule, but expressed some reservations. Advocates stated, "We are not convinced * * * that a 30-day period of suspension is sufficient to make an effective impression on under age 21 drivers. * * * We believe that there is a strong argument for requiring a 90-day suspension for under age 21 supplemental grants even for states that meet the basic grant criteria without an ALR law."

NHTSA adopted the 30-day hard suspension criterion for both administrative license suspension laws (for first offenders who submit to and fail a chemical test) and for 0.02 laws for youth because that is the sanction that is recommended in the Uniform Vehicle Code concerning license suspension laws (see § 6–215, Limited License) and because most States with demonstrated effective license suspension laws provide for a 30-day hard suspension period. NHTSA is not aware of any evidence that State zero tolerance laws which provide for a 90-day hard suspension are any more effective than State zero tolerance laws which provide for a 30-day hard suspension. Of course, States that provide for a hard suspension period of longer than 30 days could qualify for grant funding under this criterion.

Both NAGHSR and Advocates also objected to NHTSA's use of an interim final rule without providing for prior notice and an opportunity for public comment. As explained in that document, the changes were published as an interim final rule, because the regulation relates to a grant program, to which the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are not applicable. Moreover, the agency explained that, even if the notice and comment provisions of the APA did apply, there is good cause for finding that providing notice and comment in connection with the rulemaking action was impracticable, unnecessary and contrary to the public interest, since it would have prevented States from qualifying for grant funds in fiscal year 1994.

The agency's finding was based also on its view that the amendments made in the interim final rule rectified an inequity in the regulation, provided additional flexibility for the States and were consistent with other provisions in the section 410 implementing regulation, which was promulgated subject to notice and a full opportunity for the public to comment.

The agency stated there would be little benefit gained by following the notice and comment procedures with regard to the revisions made by the interim final rule.

NHTSA believes its assessment was correct, as demonstrated by the small number of comments received in response to the interim final rule. However, NHTSA wishes to ensure that the public has a full opportunity to be heard. Therefore, the agency has decided to reopen the comment period to provide the public with an additional opportunity to comment on the agency's action.

The regulation, as amended by the interim final rule, remains in effect and binding. Following the close of the reopened comment period, NHTSA will publish a notice responding to any additional comments it receives and, if appropriate, will amend the provisions of this rule.

Issued on: March 20, 1995.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 95–7264 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 44 and 45

[Docket No. R–95–1777; FR–3767–F–01]

RIN 2501–AB85

Non-Federal Audit Report Submission Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is amending the single audit requirements for the submission of audit reports. HUD's current regulations require recipients of Federal financial assistance from HUD to submit a copy of their audit report to HUD. This rule describes the circumstances under which a "no finding" report need not be submitted.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Bell, Office of the Inspector General, Room 8180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708–0383. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–9300 (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is amending the single audit requirements for the submission of audit reports found at 24 CFR 44.10(f) and 24 CFR 45.4.

A. 24 CFR Part 44

Part 44 implements the general audit requirements for recipient organizations in OMB Circular A–128 "Audits of State and local governments." The OMB Circular was issued under the Single Audit Act of 1984 (31 U.S.C. 7501–7507) (the Act). The Act requires State or local governments that receive $100,000 or more a year in Federal financial assistance to have an audit conducted according to the Act's standards.

State or local governments that receive between $25,000 and $100,000 a year have the option of having an audit conducted according to the Act's standards or having a grant specific financial audit performed. The requirements for conducting these grant specific audits are described in 24 CFR 44.1(c)(2). State or local governments that receive less than $25,000 a year are exempt from the audit requirements.

Section 7505 of the Act requires the Office of Management and Budget (OMB) to establish procedures and guidelines to implement the Act. It specifies that OMB shall assign an overseeing, or cognizant, Federal agency to each recipient in order to facilitate the auditing process and ensure that the audit requirements are met. The responsibilities of cognizant agencies are set forth in 24 CFR 44.8.

B. 24 CFR Part 45

Part 45 implements the audit requirements for recipient organizations in OMB Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions." Section 45.1 requires that nonprofit institutions whose receipts of Federal financial assistance and outstanding Federal direct, guaranteed, or insured loan balances total $100,000 or more a year have an audit conducted in accordance with the requirements of OMB Circular A–133.

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Nonprofit institutions which meet the $100,000 requirement but participate in only one Federal financial assistance program may elect to have an audit conducted in compliance with the OMB Circular's requirements or have a program specific audit performed. Nonprofit institutions whose total receipt of Federal financial assistance and outstanding Federal direct, guaranteed, or insured loan balances are between $25,000 and $100,000 a year are given the same choice. The requirements for conducting these program specific audits are described in 24 CFR 45.1(b)(2).

Nonprofit institutions that have annual receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totalling less than $25,000 are exempt from the audit requirements. HUD programs listed in 24 CFR 45.1(c) are also excused from the audit report requirements.

C. The Amendments

HUD's single audit requirements for the submission of audit reports are contained in 24 CFR 44.10(f) and 24 CFR 45.4. These regulations require recipients of Federal financial assistance from HUD to submit a copy of their audit reports to HUD. The audit report must be submitted regardless of whether HUD is the recipient's cognizant agency or the report is a "no finding" audit report. A "no finding" report is one which expresses an unqualified opinion on the financial statements; identifies no material instances of noncompliance; identifies no material weakness in internal controls; contains no schedule of findings and questioned costs applicable to a HUD program; identifies no potential illegal act which could result in a criminal prosecution; and contains no uncorrected significant finding from a prior audit.

HUD believes that it is not necessary in all cases for recipients to provide it with copies of "no finding" audit reports. A new paragraph (f)(2) has been added to 24 CFR 44.10 and a new paragraph (b)(1) added to 24 CFR 45.4 which permit HUD to provide by program notice that the recipient is not required to submit a copy of the audit report if HUD is not the cognizant agency for the recipient and if the report is a "no finding" report. HUD also believes that even where it is the cognizant agency that the provision of information about the content of certain reports being submitted would effect greater efficiency in their processing.

A new paragraph (f)(5) has been added to 24 CFR 44.10 and a new paragraph (b)(2) added to 24 CFR 45.4 which set forth the requirements a recipient must fulfill in lieu of submitting a copy of the audit report to HUD.

II. Justification for Final Rule Making

In general, the Department publishes rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the Department is merely alleviating an administrative burden imposed on recipients and program offices by modifying its audit report submission requirements.

III. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule involve the submission of audit reports by state and local governments that receive federal financial assistance through HUD programs. It effects no changes in the current relationships between the federal government, the states and their political subdivisions in connection with these programs.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the order. This rule applies only to the submission of audit reports from governmental entities and nonprofit institutions to HUD. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule alleviates an administrative burden imposed on governmental entities and nonprofit institutions. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

E. Regulatory Agenda

This final rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 44

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 45

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 44 and 45 are amended as follows:

PART 44—NON-FEDERAL AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT

1. The authority citation for 24 CFR part 44 continues to read as follows:

Authority: 31 U.S.C. 7501–7507; 42 U.S.C. 3535(d).

2. Section 44.10 is amended by revising paragraph (f) to read as follows:

§ 44.10 Audit reports.

* * * * *

(f) (1) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal Financial assistance funds to the recipient, except as provided in paragraph (f)(2) of this section.

(2) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition or material weakness in internal controls; the report contains no schedule of findings and questioned costs applicable to a HUD program; the report identified no potential illegal act which could result in a criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (f)(2) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(3) Subrecipients shall submit copies to recipients that provided them Federal assistance funds.

(4) The reports shall be sent within 30 days after completion of the audit, but no later than one year after the end of the audit period, unless a longer period is agreed to with the cognizant agency.

(5) If no report is required to be submitted as provided in paragraph (f)(2)(i) of this section, the recipient must notify the appropriate HUD office in writing that the report met the conditions set forth in paragraph (f)(2) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

* * * * *

PART 45—NON-FEDERAL AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

3. The authority citation for part 45 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

4. Section 45.4 is revised to read as follows:

§ 45.4 Submission of reports.

(a) Except for the organizations subject to the requirements set forth in § 45.1(c), the report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

(b)(1) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition of material weakness in internal controls; the report contains no schedule of findings and questions applicable to a HUD program; the report identified no potential illegal act which could result in criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (b)(1) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(2) If no report is required to be submitted as provided in paragraph (b)(1)(i) of this section, the recipient must notify the appropriate HUD office in writing that report met the conditions set forth in paragraph (b)(1) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

Dated: March 16, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–7331 Filed 3–23–95; 8:45 am]

BILLING CODE 4210–32–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 13–1–6552a; FRL–5177–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Disapproval of New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the District of Columbia pertaining to the regulation of major new and major modified sources in the District of Columbia. The intended effect of this action is to disapprove the District of Columbia regulations because they do not meet the requirements of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action will become effective May 23, 1995 unless adverse comments are received on or before April 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On June 21, 1985 and October 22, 1993, the District of Columbia submitted a formal revision to its State Implementation Plan (SIP). Only the portions of those submittals pertaining to the permitting of new sources is being addressed in this rulemaking. The SIP submittal being addressed consists of District of Columbia Municipal Regulations (DCMR) Title 20, Sections 199 (definitions—only those pertaining to the permitting of new sources), 200, 201, 202 and 204 (permitting), and 299 (reference to the applicability of definitions in Section 199).

The District of Columbia (the District) is part of the Washington D.C. ozone nonattainment area, which includes portions of Maryland and Virginia. Washington D.C. is a nonattainment area classified as serious for ozone and moderate for carbon monoxide and, as such, is required to implement certain requirements including those pertaining to the permitting of major new and major modified sources. The Clean Air Act required that areas such as the District submit adopted regulations applying to the permitting of these major sources by no later than November 15, 1992. In addition, section 184 of the Clean Air Act requires that

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areas located in the ozone transport region, of which the District is a part, submit a new source review program applicable to major new and major modified sources. The Act defines major sources in serious ozone nonattainment areas as those with the potential to emit greater than or equal to 50 tons per year of VOC or NOx emissions. Therefore, although section 184 requires that areas in the ozone transport region (OTR) define major sources as those with the potential to emit greater than or equal to 50 TPY VOC or 100 TPY NOx emissions, the more stringent major source threshold of 50 TPY for serious ozone nonattainment areas supersedes the OTR requirement. The Act requires that moderate carbon monoxide (CO) nonattainment areas, such as the District, control its new CO sources with potential emissions greater than or equal to 100 TPY and its major modified sources where potential emissions were increasing by greater than 40 TPY. On July 6, 1993, EPA made a finding that the District failed to submit the required new source review regulations and started the 18 month sanctions clock under section 179 of the Act. On October 22, 1993, the District submitted the required regulations, which were subsequently determined by EPA to be complete and stopped the sanctions clock.

Summary of SIP Revision

The District of Columbia submittals include more than the required construction permitting program for major new and major modified sources required under section 182 of the Act. Sections 200, 201, 202, and 204 of the DCMR regulations apply to both major and minor sources and to sources wishing to obtain construction or operating permits. Section 299 is an administrative section stating that the definitions in Section 199 apply to Chapter 2. Section 199 contains the definitions applicable to all of the District's regulations. Those definitions contained in Section 199 that apply to the permitting program, and which are the subject of this rulemaking action, are: actual emissions, allowable emissions, begin actual construction, commence, complete, emissions unit, federally enforceable, major modification, major stationary source, modification, necessary preconstruction approvals or permits, net emissions increase, new source, potential to emit, shutdown, significant, and stationary source.

The DC regulations at Sections 200, 201, 202, and 204 include a number of deficiencies that make the submittal unapprovable. The two most significant flaws are the lack of public notice and comment requirements for proposed new sources, and the existence of a provision in the regulation that would allow the Mayor to grant temporary permits on a month by month basis, allowing circumvention of the entire NSR regulation. The requirement for providing public notice and comment on all major new source and major modified source permits is contained in 40 CFR part 51. The District's regulation does not provide such required public notice and comment. These two flaws alone are so significant as to warrant disapproval of the District's 1985 and 1993 NSR SIP submittals. The other deficiencies include the lack of clarity in requiring consistency of emission offsets with the RFP baseline, the determination of the amount of emission offsets required (separate summation of VOC and NO_X emissions for offset purposes), location of emission offsets, timing of the enforceability of the emission offsets, creditability of emission offsets relative to other Clean Air Act requirements, the definition of stationary source as it pertains to nonroad engines, a provision that allows circumvention of the offset requirement (Section 204.9), and the de minimis provisions of section 182(c)(6).

The District's regulations at Section 200.11 also include an exemption for fuel-burning equipment, which has a capacity of 5 million or less BTU per hour (mmBTU/hr) of heat input and, which uses for fuel only gaseous fuels or distillate oils. This exemption is not approvable because the Act, as amended in 1990, requires that states with ozone nonattainment areas control major sources of nitrogen oxides (NO_X) as well as volatile organic compounds (VOCs). In the District, a major source of VOC or NO_X is defined as that which has the potential to emit 50 tons per year or more. Fuel burning equipment are sources of NO_X emissions and while an individual piece of equipment with a capacity of 5 mmBTU/hr heat input would likely not generate emissions greater than 50 TPY potential emissions, a group of such sources at a single facility could generate emissions over the major source size threshold. If the District wishes to exempt any group of NO_X sources that would be considered major, it must apply for and receive a waiver under section 182(f) of the Act. EPA's guidance on the criteria for approval of NO_X exemptions under section 182(f) is contained in EPA documents including, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)", December 1993 and subsequent memoranda. The District has not made a petition under section 182(f) but even if it had, EPA could not approve the exclusion of major NO_X sources from RACT requirements until approval of such petition under section 182(f) were granted.

Several citations to the Clean Air Act in Section 204 of the DCMR regulation are incorrect. Any updated references to the Act, as amended in 1990, should reflect the appropriate provisions pertaining to new source permitting program requirements in sections 172, 173, and other relevant sections of the Act.

The District regulations applicable to major new and major modified sources also do not contain the de minimis and special modification provisions of sections 182(c) (6), (7) and (8) of the Act. These provisions apply to sources locating in serious and severe ozone nonattainment areas. Section 182(c)(6) is a de minimis provision that requires that a source undergoing modifications determine whether those modifications are major by summing its net emission increases over a 5-year consecutive period, including the calendar year in which the increase occurred. If the sum of the emission increases exceeds 25 TPY over that period, the modification is considered major. Sections 182(c) (7) and (8) apply to such sources that have exceeded the 25 ton threshold but wish to avoid the otherwise applicable new source review requirements. Section 182(c)(7) would allow sources with potential emissions of less than 100 TPY to obtain 1.3 to 1 internal offsets to avoid new source review, or else to install best available control technology (BACT) instead of LAER technology. Section 182(c)(8) would allow sources with potential emissions of more than 100 TPY to obtain 1.3 to 1 internal offsets in order to avoid the installation of LAER technology. The District must adopt a regulation that reflects the requirements of section 182(c)(6) but may choose not to adopt the provisions in sections 182(c) (7) and (8). The consequence of simply adopting the de minimis provisions of section 182(c)(6) but not (c)(7) or (c)(8) is that the overall effect would be to make the District requirements more stringent than the Act. Since the Act allows for state regulations to be more stringent, this would be acceptable to EPA.

The District regulations pertaining to major new and major modified sources also do not clearly require that VOC and NO_X emissions are to be summed separately to determine applicability and the required amount of emission offsets. In addition, emission offsets are not explicitly required to be federally

enforceable prior to permit issuance. The District must, at a minimum, require that VOC and NO_X emission offsets be obtained for the same pollutant and that these emission offsets be made federally enforceable prior to permit issuance. The separate summation of VOC and NO_X emissions for offset purposes is a required clarification. If the District elects not to require the separate summation of VOC and NO_X emissions for applicability purposes and does not permit the netting of emissions in order to determine NSR applicability, this would be more stringent than the federal requirements and would be considered acceptable to EPA. If, however, the District chooses to allow netting, a separate summation of VOC and NO_X emissions for both applicability and offset purposes is required. In addition, Section 204.9 of the District's regulation appears to provide sources with the ability to circumvent the offset requirements in Section 204.4. The District must delete this provision.

The District regulation is not limited to a major new or major modified source construction permit program. The applicability of the District regulation (Chapter 2) includes major source operating permits and minor source construction and operating permits. This raises additional issues that do not pertain to the required submittal under section 182 or 184 of the Act. Submittal of a major source operating permit program or a minor source construction and operating permit program is not a requirement under section 182 or 184 of the Act. Therefore, lack or disapproval of such submittals will not result in sanctions under section 179 pertaining to failure to submit or adopt regulations required under section 182 or 184. Likewise, the District's submittal of a major source operating permit program or a minor source construction or operating permit does not fulfill the District's requirement to submit a NSR program under sections 182 and 184 of the Act. It is not and was not the District's intent to submit the Section 200–299 regulation to meet the requirements of title V of the Act pertaining to major source operating permit programs. In fact, the District has subsequently submitted a title V operating permit program for EPA approval. The submittal being acted on today is being judged as to whether it meets the requirements of sections 182 and 184 of title I of the Act, pertaining to a major new and major modified source construction permitting program, not title V requirements. The title V submittal is *not* the subject of today's rulemaking action. The effect of this rulemaking action will be to disapprove, also, the District regulation as it pertains to a major source operating permit program as the program submitted by the District does not meet the requirements of sections 182 and 184 of the Act. EPA cannot approve a title V operating permit program in lieu of a new source review (major new and major modified source construction) program. EPA, however, encourages the submittal of a minor source operating permit program, separate from the major source construction permit program, which would establish federally enforceable conditions for those sources that wish to remain minor sources.

The effect of this rulemaking action will be to disapprove, also, the District regulation as it pertains to minor source construction and operating permits because it does not meet the requirements of Part D of Subchapter I of the Act. Submittal of a minor source construction or operating permit program does not correct the deficiencies in the major source construction permit program, required under Part D of the Act. The submittal addressed in this rulemaking contains provisions pertaining to major and minor source construction permits and major and minor source operating permits that are inextricably intertwined. Since the District regulation does not meet Part D requirements, pertaining to a major source construction permitting program, EPA is proposing to disapprove the entire submittal as it pertains to permitting.

While the District may choose to modify and submit a minor source operating permit program (subject to the criteria in the June 28, 1989 **Federal Register** notice) for approval into the SIP, such a submittal is not required under section 182 or 184 of the Act and the lack of submittal or lack of corrections to this operating permit program is not considered a deficiency under section 182 or 184 of the Act. Any subsequent submittal that the District makes to correct the deficiencies in the major source construction permit program, which is a required submittal under sections 182 and 184 of the Act, must clearly delineate the program requirements applicable to major new or major modified sources applying for construction permits versus permitting requirements that may be applicable to minor sources or sources applying for operating permits.

The requirements for a new source review construction permitting program are contained in 40 CFR parts 51 and 52 and the Clean Air Act and are summarized in the accompanying technical support document. Any subsequent submittal that the District makes must meet the requirements of the Act and 40 CFR parts 51 and 52 in order to be approved into the District SIP. EPA is in the process of updating 40 CFR parts 51 and 52 to reflect the current requirements in the 1990 Clean Air Act Amendments. Any future NSR submittals from the District will be judged against the federal requirements in existence at the time of the submittal.

EPA is disapproving this SIP revision without prior proposal because the District's regulations contain such significant flaws that the Agency views this as a clear-cut decision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to disapprove the SIP revision should adverse or critical comments be filed. This action will be effective May 23, 1995 unless, by April 24, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 23, 1995.

Final Action

EPA is disapproving the District of Columbia Municipal Regulations title 20, sections 200, 201, 202, 204 and 299 and the associated definitions in section 199, pertaining to the permitting of sources. The accompanying technical support document more fully explains the rationale for EPA's action.

EPA is disapproving the District's permitting regulation because it contains deficiencies that do not meet the requirements of section 182(a)(2)(C) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides

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two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the disapproval of the District of Columbia Municipal Regulations Title 20, Sections 200, 201, 202, 204, 299 and associated definitions in Section 199, must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 17, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart J—District of Columbia

2. Section 52.472 is amended by adding paragraph (f) to read as follows:

§ 52.472 Approval status.

* * * * *

(f) Disapproval of revisions to the District of Columbia State Implementation Plan, District of Columbia Municipal Regulations (DCMR) Title 20, Sections 200, 201, 202, 204 and 299, pertaining to permitting of sources, and associated definitions in Section 199 submitted on June 21, 1985 and October 22, 1993 by the Mayor of the District of Columbia (1985 submittal) and by the Administrator of the District of Columbia Environmental Regulation Administration (1993 submittal). The disapproved regulations include those applicable to major new and major modified sources wishing to locate in the District. A new source review program for such major sources is required under sections 182 and 184 of the Clean Air Act. There are many deficiencies in the DCMR permitting regulations. Some of these deficiencies are the lack of public notice and comment procedures for new and modified sources applying for construction permits, the existence of a provision that allows the Mayor to grant indefinite 1-month temporary permits to those sources whose permits he/she determines have been delayed because of his/her office, the inclusion of a major source operating permit program, the inclusion of a minor source operating permit program that does not meet Part D requirements of the Act, the exemption of certain fuel burning (nitrogen oxide emitting) sources, incorrect citations of the Clean Air Act, a provision that allows circumvention of the offset requirement, and the lack of the de minimis special modification provisions required in serious and severe ozone nonattainment areas (section 182(c)(6) of the Clean Air Act).

[FR Doc. 95–7243 Filed 3–23–95; 8:45 am]

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40 CFR Part 180

[PP 4F4318/R2118; FRL–4943–9]

RIN 2070–AB78

Beauveria Bassiana Strain GHA; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of *Beauveria bassiana* Strain GHA in or on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, sunflower, rangeland, improved pastures, and in meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures when applied to growing crops in accordance with good agricultural practices. Mycotech Corp. requested this exemption.

EFFECTIVE DATE: March 10, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4318/R2118], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia A. Cimino, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703)–308–7035; e-mail: Cimino.Patricia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 13, 1994 (59 FR 35718), EPA issued a notice that Mycotech Corp., 630 Utah Drive, P.O. Box 4109, Butte, MT 59701, had submitted pesticide petition (PP) 4F4318 proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the microbial pest control agent *Beauvaria bassiana* Strain GHA in or on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, sunflower, rangeland, improved pastures, and in meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures when applied to growing crops in accordance with good agricultural practices. In the **Federal Register** of February 8, 1995 (60 FR 7543), EPA issued a notice of amendment to PP 4F4318 to establish a regulation to exempt from the requirement of a tolerance residues of the insecticide *Beauvaria bassiana* Strain GHA in or on all raw agricultural commodities.

There were no comments received in response to the notices of filing.

Beauveria bassiana Strain GHA is naturally occurring and was originally isolated from indigenous grasshoppers.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance for *Beauveria bassiana* Strain GHA in or on rangeland, improved pastures, meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures, alfalfa, corn, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, and sunflower include an acute oral toxicity/pathogenicity study, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, an acute intraperitoneal toxicity/pathogenicity study, and primary eye irritation studies.

The results of these studies indicated that the organism was not toxic to test animals when administered via oral, dermal, pulmonary, or intraperitoneal routes.

The active ingredient was not infective or pathogenic to the test animals in any of the studies. Ocular lesions were observed in the eye irritation study with the technical-grade active ingredient (TGAI) and resulted in a Toxicity Category I rating. Minimal ocular irritation was observed in the eye irritation studies done with oil-flowable and emulsifiable suspension end-use product formulations indicating that the lesions observed in the eye irritation test done with TGAI may have been due to physical effects of the TGAI. Slight skin irritation persisted in test animals treated with the TGAI resulting in a Toxicity Category III rating. There have been no reports of hypersensitivity related to the active ingredient. All of the toxicity studies submitted are considered acceptable.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from use of *Beauveria bassiana* Strain GHA on the requested food and feed commodities when applied during the growing season in accordance with good agricultural practices.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans by dietary exposure. No enforcement actions are expected based on a level of residues in food. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this microbial pest control agent.

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exmeption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 10, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1146, to read as follows:

§ 180.1146 Beauveria bassiana Strain GHA; exemption from the requirement of a tolerance.

Beauveria bassiana Strain GHA is exempted from the requirement of a tolerance in or on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, sunflower, rangeland, and improved pastures and in meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures when applied to growing crops according to good agricultural practices.

[FR Doc. 95–7452 Filed 3–22–95; 12:28 pm]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4427/R2118; FRL–4942–8]

RIN 2070–AB78

Chlorpyrifos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together in a mixture containing not more than 97% oats and not less than 3% barley. General Mills requested this regulation to establish the maximum permissible level for residues of the insecticide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective March 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 5F4427/R2118], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6386; e-mail: Edwards.Dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1995 (60 FR 7509), EPA issued a proposed rule that gave notice that the General Mills Co. had submitted pesticide petition (PP) 5F4427 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, amend 40 CFR 180.342 by establishing a tolerance for residues of the insecticide chlorpyrifos in or on the raw agricultural commodity oats at 15 ppm, provided that such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994; that such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed; that, notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes; and that such tolerance expires on December 31, 1996.

To ensure that the oats would be unacceptable for human food production, General Mills stated that they would be blended to include not less than 3% barley and 97% oats. Accordingly, the definition of the raw agricultural commodity in the petition was amended to "oats and barley when blended together in a mixture containing 97% oats and 3% barley."

There were two comments received in response to the proposed rule. General Mills requested that the tolerance expression be changed to specify a minimum barley content and a maximum oat content. EPA has determined that the purpose of the blending would continue to be served by this change and has no objection to the request. The definition of the raw agricultural commodity in the rule is amended to "oats and barley when blended together in a mixture containing not more than 97% oats and not less than 3% barley."

The second comment was received from Michael A. Mentuck, president of Michael A. Mentuck & Associates, Inc., as an interested party and on behalf of one of the interested insurance companies to the circumstances of the petition. He suggested that there is the possibility that the oats containing chlorpyrifos would be acceptable in some foreign countries having appropriate tolerances that would allow the oats to be used as human food, and that the potential for export should be investigated. Alternatively, he suggested that the oats could be limited to use as animal feed in this country by spraying the oats with a dye, thus eliminating the additional expense of blending them with barley.

EPA has decided not to modify the proposed tolerances as suggested by Mr. Mentuck because of enforcement concerns with his suggestions. As to his export proposal, EPA believes it would be difficult to ensure that the adulterated oats, while still in shipment in this country, would not be diverted to domestic, human food use. Blending the oats with barley is a straightforward and effective way of ensuring that the oats will not be used as human food.

EPA has further concern about the use of a dye. Dyes are required for use on seed that is treated with a pesticide, the dye being an indicator that the seed is only to be used for growing crops, not for food or feed. To allow the use of a dye in the present situation could cloud the distinction between seed use and food or feed use. EPA has no supporting information that the dyed oats would be considered acceptable for feed use only and would not be used as human food.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by adding new paragraph (f), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(f) A tolerance of 15 parts per million is established for residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together as a mixture containing not more than 97% oats and not less than 3% barley.

(1) Such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994.

(2) Such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed.

(3) Notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes.

(4) Such tolerance expires on December 31, 1996.

[FR Doc. 95–7451 Filed 3–22–95; 12:28 pm]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5172–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Radium Chemical Company site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Radium Chemical Company site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund)-financed responses under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 24, 1995.

ADDRESSES: For further information contact: Janet Cappelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007–1866, (212) 637–4270.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Radium Chemical Company site, Woodside, Queens County, New York.

The closing date for comments on the Notice of Intent to Delete was December 9, 1994. EPA received no verbal or written comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or

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impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: February 24, 1995.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Radium Chemical Company site, Woodside, New York.

[FR Doc. 95–6769 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[GN Docket No. 94–90, FCC 95–98]

Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order (*Order*), the Commission eliminates rules that prohibit wireline telephone carriers from holding licenses in the Specialized Mobile Radio (SMR) service and the commercial 220–222 MHz land mobile band. The *Order* also eliminates the prohibition on the provision of dispatch service by cellular licensees, other licensees in the Public Mobile Services, and licensees in the Personal Communications Services (PCS). After reviewing the record, the Commission finds that these restrictions no longer serve the public interest and should be eliminated.

EFFECTIVE DATES: Sections 22.577 and 22.901 rule changes will be effective April 24, 1995. Sections 90.603 and 90.703 rule changes will be effective March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Wireless Telecommunications Bureau, Commercial Radio Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in GN Docket No. 94–90, adopted March 7, 1995 and released March 7, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Washington, DC 20037.

Synopsis of the Report and Order

I. Background

1. When the Commission established the SMR service in 1974, it elected to prohibit wireline telephone common carriers from holding SMR base station licenses. The Commission has stated that the wireline prohibition was intended to ensure that the provision of SMR service would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline common carriers to engage in discriminatory interconnection practices. In 1986, the Commission proposed to eliminate the SMR restriction after receiving several requests from wireline carriers for waiver of Section 90.603(c). The Commission observed that the original rationale for establishing the restriction may no longer apply. The Commission subsequently granted several conditional waivers to wireline carriers seeking to acquire SMR stations.

2. In 1992, the Commission terminated the proceeding on grounds that the record had become stale and stated that the restriction should be retained until the Commission could more fully evaluate the competitive impact of allowing wireline providers into the SMR marketplace. The Commission terminated all waivers that had been previously granted, but gave waiver recipients an opportunity to rejustify their waiver grants. Southwestern Bell Corporation (Southwestern Bell), Bell Atlantic Enterprises International Inc. (Bell Atlantic), and US West Paging, Inc. (US West) filed requests to rejustify the waiver grants that had been terminated pursuant to the *Termination Order* (57 Fed. Reg. 32450 (July 22, 1992)). In addition, RAM Mobile Data USA Limited (RAM Mobile), Cass Cable TV, Inc. (Cass Cable), and American Paging, Inc. (API) subsequently have sought waivers of the wireline prohibition. The Commission issued a public notice requesting public comment regarding the waiver requests on April 12, 1994. In addition, BellSouth has filed an appeal of the Commission's *Termination Order*, which is pending before the D.C. Circuit.

3. In 1991, the Commission adopted an analogous restriction for the newly established commercial 220 MHz service that prevents wireline carriers from holding licenses in that service as well. The Commission's rationale for excluding wireline carriers from 220 MHz was the same as its original rationale for excluding wireline carriers from SMR licensing.

4. The Omnibus Budget Reconciliation Act of 1993 (Budget Act) amended the Communications Act and prescribed comprehensive regulatory changes for the mobile services marketplace. The legislative history of the Budget Act identified the Commission's ban against wireline carriers holding SMR licenses as a regulation that should be reviewed by the Commission. The Commission thus proposed to eliminate its restrictions that prohibit wireline telephone common carriers from holding SMR and commercial 220 MHz licenses on the grounds that the restrictions may no longer be necessary and that competition would be promoted by their elimination.

5. At the same time, the Commission also proposed to eliminate the prohibition on the provision of dispatch service by common carriers, including cellular licensees, other licensees in the Public Mobile Service, and PCS licensees. The prohibition, which was originally enacted by Congress as part of the 1982 amendments to the Communications Act, prohibited common carriers licensed after January 1, 1982, including all cellular licensees, from offering dispatch services. In the Budget Act, Congress retained the statutory ban, thus potentially applying it to all CMRS providers, but granted the Commission authority to repeal the ban by regulation in whole or in part. In the *Notice of Proposed Rule Making* (59 Fed. Reg. 42563 (Aug. 18, 1994)), the Commission tentatively concluded that the prohibition was outdated and that its repeal would promote competition. Thirty-two (32) comments and twelve (12) reply comments were filed in response to the proposals in this proceeding.

II. Discussion

A. Licensee Eligibility in SMR and Commercial 220 MHz Service

6. *Background.* In the *Notice*, we tentatively concluded that the SMR and commercial 220 MHz wireline ownership restrictions are no longer appropriate in today's competitive mobile services marketplace. As described in the *Notice*, there were several reasons for this tentative conclusion. First, we observed that the risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished in recent years. We indicated that the breakup of AT&T and the rapid introduction of new mobile service options have combined to create an environment in which wireline carrier participation in mobile services has the potential to increase competition rather than impede it.

7. In the *Notice*, we also drew comparisons to PCS, noting that we have already concluded that wireline entry into PCS will produce economies of scope for that service, which will promote its rapid development and yield a broader array of PCS services at lower costs to consumers. We indicated that similar benefits could result from allowing wireline entry into the SMR and commercial 220 MHz services.

8. We also tentatively concluded that the restrictions no longer are necessary to safeguard against competitive concerns that the LECs may (1) discriminate in the offering of interconnection to non-affiliated SMR licensees or (2) use their market power in the local exchange market to cross-subsidize SMR services and undercut their competitors. We indicated that existing statutory and regulatory safeguards probably were sufficient to prevent LECs from engaging in these discriminatory activities. In particular, the Commission has found that, pursuant to Section 201 of the Communications Act, it is in the public interest to require LECs to provide reasonable interconnection to commercial mobile radio service (CMRS) providers. We also noted that independent accounting and structural safeguards exist and would apply to wireline participants in the SMR market to prevent cross-subsidization. We did, however, seek comment on the effectiveness of applying these existing safeguards to wireline carriers entering these services.

9. We made additional observations as well. We indicated that wireline entry was unlikely to chill further development of the service since SMR spectrum has been licensed fully in most metropolitan areas. As a result, we stated that wireline entry into the SMR service would likely occur through acquisitions that are subject to Commission review. Similarly, we reasoned that wireline entry into commercial 220 MHz likely would be gradual and subject to case-by-case review by the Commission as part of the application process. We also asked whether commercial 220 MHz services were sufficiently disparate from any LEC offering to make negligible any ability these carriers might have to exert undue market power or restrain trade. This was the analysis we used to justify LEC entry into narrowband PCS. We further noted that wireline participation could promote opportunities for additional entry of small, rural telephone companies and could infuse new capital and expertise into the mobile services marketplace.

10. Also, while we generally concluded that the wireline restrictions were outmoded, we questioned whether there was any justification for continuation of the restrictions for either or both of the SMR and commercial 220 MHz services. Finally, we deferred consideration of whether there was a need to restrict cellular eligibility for SMR or commercial 220 MHz licensing pending a decision in GN Docket No. 93–252 to impose a spectrum cap on CMRS providers.

11. *Comments.* All but two commenting parties support our proposal to permit wireline telephone common carriers to hold SMR and commercial 220 MHz licenses. Many commenters maintain that eliminating the restrictions in the SMR service would facilitate competition and that increased competition would thereby benefit consumers through lower prices and expanded choices. Commenters also agree that our proposal is consistent with our efforts to achieve regulatory symmetry by providing identical eligibility requirements for all CMRS licensees. In addition, several commenters note that changes in the SMR marketplace during the time since the service was established eliminate the need for wireline eligibility restrictions. Finally, commenting parties generally agree that existing accounting and interconnection safeguards will adequately prevent cross-subsidization and discrimination. The Commission was encouraged to enforce these existing safeguards rigorously.

12. Most parties who expressly commented on commercial 220 MHz service generally support lifting the prohibition on wireline entry for the same reasons set forth in support of lifting the restrictions on wireline entry into SMR service. AMTA, however, opposes lifing the restrictions at this time. AMTA contends that the commercial 220 MHz service is still in its infancy, and that its competitive potential is largely unknown.

13. SMR WON is the only commenting party to oppose lifting the wireline prohibition for both SMR and commercial 220 MHz services. Specifically, SMR WON expresses concern that eliminating the restriction would harm traditional SMR operators that would not be able to compete against the market power of wireline common carriers. Moreover, SMR WON alleges that existing safeguards have been ineffective in preventing wireline carriers from exercising their monopoly power and financial strength to the detriment of competition in the cellular marketplace. Therefore, SMR WON urges that no changes in the wirline restriction should be made except as part of comprehensive legislation addressing the monopoly power of the LECs.

14. *Decision.* We amend our rules to permit wireline telephone common carriers to acquire SMR and commercial 220 MHz licenses without restriction and dismiss pending waiver requests as moot. Eliminating the wireline prohibition is likely to yield substantial public benefits. Commenters echoed our view that permitting wireline common carriers to acquire SMR and commercial 220 MHz licenses will allow the realization of significant economies of scope and provide a new source of capital that will yield a broader array of services at lower costs to consumers. Repealing the wireline prohibition also will stimulate competition and promote opportunities for additional entry of numerous small wireline carriers, particularly in rural areas, in addition to the large wireline carriers. Moreover, we note that the record supports our view that changes in the wireless marketplace, including our efforts to achieve regulatory symmetry among comparable mobile services, obviate the need for the wireline restrictions. Finally, we believe that existing regulatory safeguards will prevent wireline common carriers from engaging in anti-competitive conduct.

15. We expect that wireline participation in the provision of SMR and commercial 220 MHz services will benefit the consumer. Specifically, allowing LECs to participate in SMR and commercial 220 MHz services will likely produce significant economies of scope by allowing wireline carriers to combine related services so that they may be provided at less cost than providing them separately. We expect

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that because of their existing wireline infrastructure, LECs will be likely to achieve technical efficiencies in spectrum use that will result in lower costs. Such economies can promote more rapid development of technology and yield a broader range of services at lower costs to consumers.

16. We expect that wireline entry also will benefit competition by providing an additional source of capital and expertise in the mobile services marketplace. Allowing wireline entry will give SMR providers the ability to draw upon this capital and expertise as they move from stand-alone analog to wide-area networks. Despite AMTA's opposition, we reach a similar conclusion with respect to participation by wireline carriers in the commercial 220 MHz service. We observe that access to the capital and technical expertise of wireline carriers may be important to the commercial 220 MHz service at its critical stage of technological development. SNET notes, for example, that wireline carriers can "quickly allocate resources, including existing infrastructure, into wireless services that will speed the deployment of services, produce innovative service offerings, promote competition and produce competitive rates for consumers." We also note that commercial 220 MHz, like PCS, is a new, developing service, and we have elected to allow wireline carriers to participate fully in both the narrowband and broadband PCS services. Moreover, we observe that commercial 220 MHz service resembles narrowband PCS in that it is a two-way, narrowband service that is technically distinct from other service offerings provided by LECs. In the *Narrowband PCS First Report and Order* (59 FR 9100 (Feb. 25, 1994)), we concluded that the dissimilarity between narrowband PCS and LEC service offerings provided additional justification for allowing wireline entry. We conclude that the same rational supports our conclusion with respect to commercial 220 MHz service.

17. Wireline participation also could promote opportunities for additional entry of small entrepreneurs, such as rural telephone companies, in the SMR service. As the record in this proceeding suggests, small wireline carriers in rural communities are well positioned to provide SMR and commercial 200 MHz services in areas that presently are unserved or underserved. Eliminating the wireline restrictions would allow these providers to offer cost-effective services to rural customers by building on their existing infrastructure and presence in the market. We disagree with SMR WON's allegation that wireline participation would impede competition, especially in rural communities. As commenters (including rural telcos) point out, wireline entry will bring new or additional SMR services to underserved rural areas, not merely replace existing small SMR operators. Additional opportunities for small business entry into the SMR business, including participation by small LECs, are being considered as part of the commission's competitive bidding proceeding. SMR WON erroneously suggests that our reference to our efforts to help small businesses successfully compete at auctions reveals that our real motivation for permitting wireline entry is to raise more funds at auction. Rather, we repeal the wireline prohibition because the record overwhelmingly indicates that wireline participation would serve the public interest by promoting competition, lowering costs, and expanding consumer choice. Moreover, we note that Congress specifically prohibits us from exercising our auction authority for the primary purpose of raising revenues.

18. Additionally, as we tentatively concluded in our *Notice*, the wireline restrictions are outmoded in view of recent regulatory changes in the mobile services marketplace. The Budget Act mandated that similar mobile services receive comparable regulatory treatment and divided all mobile services into two categories, CMRS and private mobile radio service (PMRS). In our *CMRS Second Report and Order* (59 FR 18493 (April 19, 1994)), we concluded that certain private mobile radio services, including SMR and commercial 220 MHz licensees, would be subject to reclassification as CMRS if they provide "interconnected service." To the extent that SMR and commercial 220 MHz licensees qualify as CMRS providers, the principles of regulatory symmetry suggest that they should be subject to regulations similar to those imposed on cellular carriers, PCS licensees and other CMRS providers. Elimination of §§ 90.603(c) and 90.703(c) thereby furthers our objective to apply a symmetrical, consistent set of regulations governing CMRS by establishing identical wireline eligibility requirements for all CMRS providers.

19. As we observed in our *Notice*, the mobile services industry also has undergone substantial changes that obviate the need for the wireline restrictions. The record shows that the competitive concerns that led to the SMR eligibility restrictions are no longer applicable in the current competitive marketplace. The SMR industry has matured significantly since it was established in 1974. As AMTA points out, SMR channels already are in service in most large urban areas. Wireline carriers therefore will be largely limited to acquiring existing businesses, and all such transfers would be subject to Commission review. We will consider the competitive impact of any transfer to a wireline carrier as part of our public interest determination. In addition, we note that wireline SMR acquisitions will be subject to our CMRS spectrum cap, which restricts the amount of cellular, broadband PCS and SMR spectrum that any one entity may acquire in a geographic market. This acts as a competitive safeguard by limiting all wireline carriers from exerting undue market power in these services. Furthermore, we observe that the spectrum cap will also limit cellular licensees' ability to exercise market power and we therefore do not believe that additional restrictions on cellular participation are warranted.

20. Moreover, customer demand and the desire to offer "seamless" communications services has fostered the development of wide-area systems in both the 800 MHz and 900 MHz band. Wide-area licensees have aggregated spectrum across large regions, and are poised to offer services competitive with larger CMRS providers, such as cellular and PCS. For these reasons, we are not persuaded by SMR WON's argument that the SMR market is still relatively immature. These systems do not continue to require the same degree of regulatory nurturing that may have been appropriate during the early days of this service. In addition, we note that artificial eligibility restraints may hinder the growth of wide-area systems and their ability to compete with cellular and other CMRS licensees.

21. In addition, we conclude that existing regulatory safeguards are sufficient to prevent possible discrimination and cross-subsidization. We note that wireline telephone companies are required to provide reasonable interconnection upon request. As evidence of the infrequency of interconnection problems, we are unaware of any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular providers against wireline carriers with cellular affiliates. We emphasize, however, that we agree with AMTA and ITA/CICS that the public interest is best served by strongly enforcing our policies and statutory requirements with respect to the interconnection obligations of LECs.

22. Additionally, independent accounting and structural safeguards exist to protect against cross-subsidization of services and discriminatory pricing. In the CMRS docket, we determined that our joint cost and affiliate transaction rules would apply to all CMRS providers with LEC affiliates. These rules require LECs to maintain procedures to separate the costs of regulated activities from those of their activities that are classified as nonregulated for federal accounting purposes, and to account for their transactions with their nonregulated affiliates in accordance with specified valuation methodologies. Since most SMRs and commercial 220 MHz licensees fall inside the CMRS definition (and are not rate-regulated), these existing and applicable accounting rules should deter cross-subsidization problems. We also note that the largest LECs are subject to price caps, which provides additional assurances that no cross-subsidization will occur. Finally, we observe that the Commission adopted the same approach concerning structural separations and accounting safeguards in our PCS proceeding. We therefore decline to impose structural separation requirements in addition to those already imposed on certain dominant telephone carriers (*i.e.*, BOCs) that provide cellular service. We note, however, that we intend to enforce our existing safeguards vigorously in this area and are prepared to take additional steps, if necessary, to protect against cross-subsidization of services and discriminatory pricing.

23. In sum, the rapid growth of mobile services, regulatory changes and evolving competition in the mobile services industry justify the repeal of the restrictions on wireline telephone common carriers holding licenses in the SMR and commercial 220 MHz services. Accordingly, we eliminate these rules today. In addition, we dismiss requests for waivers filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable and API. These requests are mooted by our decision to eliminate the wireline restriction.

B. Common Carrier Dispatch Prohibition

24. *Background.* In the *Notice*, the Commission tentatively concluded that eliminating the dispatch ban would enhance competition and thereby provide consumers with greater choice, more innovative service offerings, and lower prices. Commenters were invited to address the competitive consequences of permitting all CMRS providers [1] to offer dispatch services. As an alternative, however, the Commission solicited comment on whether it should delay repeal of the rule until August 10, 1996 (3 years from the date the Budget Act amendments became law), allow CMRS licensees (other than SMRs) to provide dispatch only on a secondary basis, or impose a limit on the amount of system capacity that non-SMR CMRS licensees may devote to dispatch service. The Commission requested comment on whether these measures were needed to prevent any anti-competitive impact that may result from participation by all CMRS providers in the market, with particular focus on cellular entry into dispatch. In addition, the Commission requested comment on whether mobile common carriers that are not land-based (*i.e.*, aviation, marine, and mobile satellite licensees who provide common carrier service) should be permitted to offer dispatch service. Noting that these categories of licensees previously were not prohibited from offering dispatch service under Section 332, we tentatively concluded that Congress did not intend to extend the dispatch ban to non-land mobile licensees when it amended that section in 1993. Instead, the Commission reasoned that Congress meant simply to repeal and incorporate its old prohibition against common carrier land mobile service providers offering dispatch service without modification and to give the Commission authority to repeal the prohibition in whole or in part.

25. *Comments.* Most commenters support our view that eliminating the dispatch prohibition would promote competition in the dispatch service and thereby provide customers with expanded choices and lower prices. In addition, many commenters observe that the dispatch prohibition is inconsistent with our efforts to achieve regulatory symmetry because it allows SMRs to provide a service that other CMRS providers, such as cellular licensees, may not. Moreover, several commenting parties note that recent technological improvements obviate any concern that land mobile licensees' common carrier service obligations would be compromised by the provision of dispatch service. Noting the significant benefits that would stem from permitting all CMRS licensees to provide dispatch services, most commenters requested that the Commission eliminate the prohibition immediately and without restriction.

26. Several parties, however, urged the Commission to retain the dispatch prohibition. Many proponents of the prohibition argue that certain CMRS licensees, such as cellular providers, would chill competition by forcing small dispatch providers out of the market through below-cost pricing. To the extent that CMRS licensees seek to offer dispatch service, commenters advocate that they do so on SMR frequencies.

27. Several commenters request that if we elect to eliminate the prohibition, we phase it out on August 10, 1996 or allow non-SMR CMRS licensees to provide service only on a secondary basis. As a separate matter, several commenters request the Commission to clarify that the dispatch prohibition did not extend to non-land mobile common carrier licensees.

28. *Decision.* We amend our rules to permit all mobile service common carriers to provide dispatch service.[2] The record demonstrates that repeal of the dispatch ban will enhance competition and thereby provide consumers with expanded choice and lower prices. Moreover, we agree with commenters that retention of the ban is inconsistent with our efforts to establish a regulatory framework which provides similar services with symmetrical requirements. We also note that recent technological developments, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit all CMRS licensees to provide dispatch upon the effective date of these rule changes, and without restriction.

[1] The Budget Act provides that:

[a] common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

Budget Act at § 6002(b)(2), 47 U.S.C. 332(c)(2). Most CMRS licensees are thereby prohibited from offering dispatch service, unless the Commission determines that termination of this prohibition will serve the public interest.

[2] We note that we are not allowing cellular and other Part 22 licensees to provide stand-alone PMRS service, an issue that will be resolved on reconsideration of our *CMRS Second Report and Order*. *See CMRS Third Report and Order*, 59 Fed. Reg. 59945 (Nov. 21, 1994). Rather, by this action we will permit Part 22 licensees to provide non-interconnected dispatch service, so long as their dispatch users also have the ability to utilize interconnected service if they choose.

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29. In eliminating the dispatch prohibition, we expect to enhance competition by permitting new types of CMRS providers to enter the commercial dispatch service. We believe that increased competition in dispatch service will, in turn, yield significant public benefits. We note that there seems to be a scarcity of spectrum capacity available for dispatch service, as users below 512 MHz strongly supported the Commission's proposals to make more efficient use of the spectrum in those bands and demand exists for most licenses in the 800 and 900 MHz bands. Moreover, we agree with commenters that the introduction of new competitors has the potential to lower costs to subscribers, increase availability of choices, and improve the quality of service. Several commenters maintain that allowing CMRS providers to provide dispatch in addition to other mobile services will satisfy consumers' growing demand for integrated services that are customized to fit their individual needs. AirTouch notes, for example, that its market research reveals that consumers want service packages to include text messaging, vehicle location, alpha-numeric paging, fax, dispatch, and mobile voice. In addition, we observe that eliminating the dispatch ban may lower the cost of multifunction equipment since a greater number of CMRS licensees will be able to provide dispatch service. Moreover, as McCaw and East Otter Tail suggest, eliminating the dispatch prohibition will make service available in areas where current options are limited. In particular, we expect that the elimination of the dispatch prohibition will benefit rural communities by facilitating competition in underserved areas and will allow some rural subscribers to obtain low-cost dispatch service from a third-party service provider for the first time.

30. Commenters seeking to retain the dispatch ban argue that allowing CMRS providers, particularly cellular licensees, to offer dispatch services actually would have an anti-competitive impact on the dispatch market. Noting that cellular carriers have significant resources and spectrum, opponents claim that cellular carriers will impermissibly underprice their service (by subsidizing the dispatch service with cellular revenues) in order to drive SMR operators out of business. To prevent any anti-competitive conduct, several commenters suggest that all CMRS providers be required to provide dispatch on frequencies designated for SMR service.

31. We are unpersuaded that any dispatch providers are likely to engage in anticompetitive conduct. To sustain a predatory pricing scheme, a dispatch provider must be able to price its services below its own costs and the costs of its competitors in order to drive competition out of the market. The dispatch provider must then raise its prices above a competitive level and effectively preclude potential competitors from entering or re-entering the market. We consider this possibility highly unlikely because the entire CMRS market is expanding, with a number of competitors expected to enter the marketplace in the near term. As a result, the two cellular providers in each market are expected to compete with other CMRS service providers, including SMR and PCS licensees, in providing a host of services in addition to dispatch. These providers will also compete with private mobile radio service (PMRS) providers, including businesses that elect to operate their own systems, in the provision of dispatch service. It is therefore unlikely that cellular carriers would benefit by engaging in any anticompetitive pricing scheme for particular services in order to eliminate competitors. Rather, market share likely will be based on quality, price, and the availability of other service options to satisfy a customer's individual needs. We note, however, that we will continue to study the dispatch market carefully and can take appropriate enforcement action if licensees engage in anticompetitive conduct. Moreover, we observe that the Department of Justice also has authority to take enforcement action against carriers that engage in predatory pricing.

32. We also do not believe that limiting dispatch service to SMR frequencies would be an efficient use of spectrum. To the extent that any CMRS providers have excess spectrum, we want to encourage them to develop innovative uses for it that are responsive to consumer demand, including dispatch service. Moreover, restricting dispatch service to SMR frequencies would limit competition by creating an artificial scarcity of spectrum available to provide dispatch service.

33. Permitting all CMRS licensees to provide dispatch service also is consistent with our efforts to achieve regulatory symmetry among comparable services. As many commenters point out, the dispatch prohibition allows SMR licensees to offer services that its CMRS competitors cannot. Elimination of the dispatch prohibition will help to equalize the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and packages. This result is required by Congress' mandate that comparable mobile services receive similar regulatory treatment.

34. In addition, we note that recent technological developments undermine the original justification for the dispatch prohibition. When Congress adopted the dispatch prohibition, it sought to ensure that common carriers did not misuse frequencies by devoting them to dispatch use. The development of new technologies, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently. Moreover, the mobile services marketplace will ensure that spectrum is not used inefficiently for dispatch service if consumer demand demonstrates that alternative uses are more desirable.

35. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit CMRS licensees to provide dispatch without restriction. We agree with commenters that establishing a sunset period would delay the introduction of new competition without providing any benefit to consumers. Commenters favoring a sunset period maintain that they need an opportunity to adjust to common carrier obligations without disruption by new competitors. We note, however, that our intent in establishing the three-year transition period was to provide private carriers that will be reclassified as CMRS an opportunity to prepare for new regulatory requirements, not to shield them from new sources of competition. We are unpersuaded, therefore, that a sunset provision is needed to protect SMR licensees. Moreover, we observe that to the extent that non-SMR CMRS licensees will need to construct or modify their systems before they will be able to offer dispatch services, SMR providers will have an opportunity to adjust to new competitors. We also decline to limit non-SMR CMRS licensees' participation to providing dispatch on a secondary basis. There is no evidence in the record that restricting their participation in this manner would provide any benefit to consumers.

III. Procedural Matters

36. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*. Written comments on the IRFA were requested, although none were received. The Commission has prepared the following Final Regulatory Flexibility Analysis (FRFA) of the expected impact of the proposed rule changes on small entities.

I. *Reason for Action.* This *Report and Order* eliminates the restrictions contained in Sections 90.603(c) and 90.703(c) of the Commission's rules that prohibit wireline telephone common carriers from holding licenses in the SMR service and commercial 220 MHz band. The *Report and Order* also permits all CMRS providers to offer dispatch service in competition with SMR systems. The record in this proceeding demonstrates that these restrictions are no longer necessary and should be repealed.

II. *Objectives.* The Commission intends to promote competition, growth and innovation at a time when the mobile services marketplace is undergoing regulatory changes.

III. *Legal Basis.* The action is authorized under Sections 3(n), 4(i), 303(r), 332(c) and 332(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c) and 332(d).

IV. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

V. *Federal Rules Which Overlap, Duplicate or Conflict With Rules.* None.

VI. *Description, Potential Impact, and Number of Small Entities Involved.* Many small entities could be affected by the rule changes contained in the *Report and Order*. We expect that several small entities will benefit by eliminating the wireline restrictions and dispatch prohibition because it will provide these entities and additional opportunity to participate in the provision of these services.

VII. *Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* The *Notice* in this proceeding solicited comments on whether to eliminate the wireline eligibility restrictions and the dispatch prohibition. No significant alternatives were presented in the comments.

37. *Ordering Clauses.* Accordingly, IT IS ORDERED, that Part 22 of the Commission's Rules ARE AMENDED as set forth below and are effective April 24, 1995. It is further ordered that Part 90 of the Commission's Rules are amended as set forth below and are effective upon March 24, 1995.[3]

38. It is further ordered that the Petitions for Waiver filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable, and API are dismissed as moot.

[3] We note that the Administrative Procedure Act allows the rules to become effective immediately because we are relieving a restriction rather than imposing one. *See* 5 U.S.C. 553(d)(1). We believe that it is appropriate for these rules to take effect immediately upon publication in the **Federal Register** in light of the pending requests for waiver, discussed *infra*.

List of Subjects

47 CFR Part 22

Public mobile services; Radio.

47 CFR Part 90

Private land mobile services; Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 22 and 90 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 307, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 and 332, unless otherwise noted.

2. Section 22.577 is amended by revising the heading, the introductory text, the introductory text of paragraph (a) and paragraphs (a)(1), (a)(2), (b) and (d), to read as follows:

§ 22.577 Dispatch service.

Carriers licensed under this subpart may provide dispatch service in accordance with the rules in this section.

(a) *Installation without prior FCC approval.* A station licensee may install or remove dispatch points for subscribers without obtaining prior FCC approval. A station licensee may install or remove dispatch transmitters for subscribers without applying for specific authorization, provided that the following conditions are met.

(1) Each dispatch transmitter must be able to transmit only on the mobile channel that is paired with the channel used by the base station.

(2) The antenna of the dispatch transmitter must not exceed the criteria in § 17.7 of this chapter that determine whether the FAA must be notified of the proposed construction.

* * * * *

(b) *Notification.* Licensees must notify the FCC (FCC Form 489) whenever a dispatch transmitter is installed pursuant to paragraph (a) of this section. The notification must include the name and address of the subscriber(s) for which the dispatch transmitter was installed, the location of the dispatch transmitter, the height of antenna structure above ground and above mean sea level, the channel(s) used, and the call sign and location of the base station.

* * * * *

(d) *Dispatch transmitters requiring authorization.* A dispatch transmitter that does not meet all of the requirements of paragraph (a) of this section may be installed only upon grant of an application for authorization therefor (FCC Form 600).

* * * * *

3. Section 22.901 is amended by revising paragraph (c) to read as follows:

§ 22.901 Cellular service requirements and limitations.

* * * * *

(c) *Dispatch service.* Cellular systems may provide dispatch service.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

4. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

5. Section 90.603(c) is revised to read as follows:

§ 90.603 Eligibility.

* * * * *

(c) Any person eligible under this part and proposing to provide on a commercial basis base station and ancillary facilities as a Specialized Mobile Radio Service System operator, for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D, or E of this part.

6. 47 CFR 90.703(c) is revised to read as follows:

§ 90.703 Eligibility.

* * * * *

(c) Any person eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D, or E of this part.

[FR Doc. 95–7295 Filed 3–23–95; 8:45 am]

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47 CFR Part 64

[CC Docket No. 91–281; FCC 95–119]

Calling Party Telephone Number; Privacy

AGENCY: Federal Communications Commission.

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ACTION: Stay of effective date of Order establishing final rule.

SUMMARY: This *Order* stays the effective date of the *Report and Order and Further Notice of Proposed Rulemaking*, April 18, 1994, which adopted the Commission's rules regarding privacy and other requirements for Calling Party Telephone Numbers.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT:
Robert E. Kimball, (202) 634–7150, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 91–281, FCC 95–119, adopted March 17, 1995, released March 17, 1995. The item is available for inspection and copying during normal hours in the Commission's FCC Reference Center (room 230), 1919 M St., NW., Washington, D.C., or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M St., NW., Suite 140, Washington, D.C. 20037. The *Order* will be published in the FCC Record.

Analysis of Proceeding

In the process of reviewing petitions for reconsideration of the Commission's Rules governing passage of Calling Party Number (CPN) on interstate telephone calls, we have decided on our own motion that the public interest would best be served by temporarily staying effectiveness of 47 CFR 64.1601 and 64.1603. Interested parties have persuasively argued that no matter how the issues raised in the petition for reconsideration are resolved, and even if the Commission adheres to its original decision in every material respect, compliance will not be possible by April 12, 1995, the effective date specified in the March 29, 1994 *Report and Order Further Notice of Proposed Rulemaking*, 59 FR 18318.

Ordering Clauses

Accordingly, it is ordered, pursuant to Sections 1, 4(i) of the Communications Act, 47 U.S.C. 1 and 154(i), that effectiveness of §§ 64.1601 and 64.1603 of the Commission's Rules IS STAYED until further notice.

It is further ordered that this order is effective upon adoption.

List of Subjects in 47 CFR Part 64

Calling party number identification, Privacy, Telephone.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–7297 Filed 3–23–95; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–15; RM–8411]

Radio Broadcasting Services; Ravenswood and Elizabeth, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of MediaCom, Inc., reallots Channel 291A from Ravenswood to Elizabeth, West Virginia, as that community's first local aural transmission service, and modifies Station WRZZ(FM)'s license accordingly. *See* 59 FR 10607, March 7, 1994. Channel 291A can be allotted to Elizabeth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 291A at Elizabeth are 39–03–48 and West Longitude 81–23–43. Since Elizabeth is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT:
Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–15, adopted March 14, 1995, and released March 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 291A at Ravenswood and adding Elizabeth, Channel 291A.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 95–7299 Filed 3–23–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–143]

Television Broadcasting Services; Albion, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document allots UHF Channel 24+ to Albion, Nebraska, in order to permit Citadel Communications Co., Inc. to amend it pending application (File No. BPCT–930726KH) for Channel 18 at Albion to specify operation on Channel 24+ without loss of cut-off protection. *See* 60 FR 91, published January 3,1994. The reference coordinates for Channel 24+ at Albion, Nebraska, are 41–55–58 and 98–17–23. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT:
Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–143, adopted March 13, 1995, and released March 21, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments under Nebraska, is amended by adding Channel 24+ at Albion.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 95–7298 Filed 3–23–95; 8:45 am]
BILLING CODE 6712–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1852

RIN 2700–AB52

NASA Mentor-Protege Program Policies

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Final rule establishes NASA's policy on its Mentor-Protege Program. With respect to prime contractors, it defines eligibility for participation, allowable developmental assistance measures that will enhance the capabilities of Socially and Economically Disadvantaged Businesses to perform NASA contracts and subcontracts, and incentives for program participation. Further, it defines the transportability of subcontracting goal credit features from the Department of Defense (DOD) Mentor-Protege Program to NASA Contractors. However, the effectiveness of a mentor under the NASA Program will be evaluated by the measurable amount of developmental assistance provided under NASA contracts. Participation in the program is voluntary.

EFFECTIVE DATE: March 24, 1995.

ADDRESSES: NASA Office of Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:
Ms. Rae C. Martel, Telephone: (202) 358–2088

SUPPLEMENTARY INFORMATION:

Background

NASA published a Proposed Rule on February 9, 1994 amending the NASA FAR Supplement to implement a Mentor-Protege Program. Having reviewed the public comments on the Proposed Rule, NASA is publishing this Final Rule with certain changes to the provisions set forth in the Proposed Rule. Many of the comments represented editorial recommendations or affirmations for the program. Also, a number of comments were duplicative on subject matter. However, the underlying Mentor-Protege policy has not been significantly altered as a result of changes made in response to comments. The most suggestive comments and their disposition are discussed in the preface of this Final Rule. This Final Rule serves as the regulatory basis for the Mentor-Protege Program provisions. For the pilot phase of the program, Mentor-Protege applications and activity are limited to cost-plus-award-fee contracts. The concept for the NASA Mentor-Protege Program includes the establishment of a Prime/Subcontractor relationship between the mentor and protege firm. In the role of subcontractor, the protege will contribute to the contract efforts: however, to enhance contractual performance, the protege will receive developmental assistance, as described in section 1819.7214, from the prime contractor mentor firm.

For consistency with Section 7105 of the Federal Acquisition Streamlining Act, Public Law 103–355, the categories of eligible entities defined in section 1819.7202 of the final rule include "Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions". Throughout this final rule, these categories are collectively identified by the term "protege".

NASA received two hundred and twenty-seven comments in response to the Proposed Rule. Several commenters suggested that NASA provide a definition of "high-tech." The agency high-tech definition is provided in 1819.7202 to provide clarity regarding the Mentor-Protege Program's targeted areas of contract activity. The Mentor-Protege Program, a key element of NASA's socioeconomic program, is designed to increase the participation of the entities defined as protege in the agency's core mission. Many commenters suggested that NASA modify the rule to allow reimbursement to primes for expenses incurred in providing developmental assistance to proteges. The coverage in the final rule explains that expenses incurred by mentor firms in providing developmental assistance to their protege/subcontractors are allowable. The language in paragraph 1819.7205 states that the basic condition for Mentor-Protege requires a prime/subcontractor relationship between the mentor and protege. The costs will be recognized as part of enhancing contractor performance and are allowable consistent with the definitions and requirements in FAR Part 31. A large number of commenters requested that NASA provide clarity in the final rule regarding the fee arrangement and the earning of award fee. Future award fee plans of NASA contracts will be structured such that 15 percent of the available award fee is allocated for Small Disadvantaged Business Utilization. Mentor-Protege will be evaluated under Small Disadvantaged Utilization as a separate element and allocated a separate 5 percent of the 15 percent to evaluate the prime's performance in the Mentor-Protege Program. For purposes of earning award fee, the Mentor firm's performance will be evaluated against the measures described in the NASA FAR Supplement provisions at 1852.219–79. Many commenters recommended that while NASA explains the portability of credit features from the statute prescribing the DOD Mentor-Protege Program that are available to NASA prime contractors, no provision has been specifically made for credit against SDB goals with a multiplier similar to the DOD Mentor-Protege Program. A multiplier option is not included in Section 1819.7204 of the NASA program since no statute or legislation exists to authorize such an option. Section 1819.7204 includes only the features authorized in the statute creating the DOD program that can be extended to civilian agencies. A number of commenters commended NASA for including a provision allowing proteges to have multiple mentors. However, a number of commenters expressed concern about this provision. Some concerns centered about proteges with multiple mentors maintaining confidentiality; others were concerned with proteges receiving conflicting guidance from multiple mentors. It is recommended that Mentor-Protege agreements contain some certification regarding confidentiality and non-disclosure as is routinely utilized in business relationships. During the review of Letters of Intent and Agreements, NASA will scrutinize the intended areas of developmental assistance for duplication in certain

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areas that could lead to conflicting guidance. However, some duplication may be unavoidable but appropriate and beneficial from successful large aerospace firms. Several prime contractors expressed concern with the requirement at Section 1819.7217 for quarterly reporting. In the final rule, the reporting frequency is changed from quarterly to semi-annual to parallel the Standard Form 294 submission. Several commenters suggested that NASA delete the provision encouraging proteges to submit reports because of privity of contract; others recommended that any report from a protege should be jointly prepared and submitted through the mentor. This provision remains unchanged in the final rule. The language in 1819.7217(b) reads that "proteges are encouraged to submit quarterly reports on program progress as it pertains to the Mentor-Protege agreement." While reporting is not mandatory for protege firms, a self evaluation of their progress under the terms of the approved agreement is desired by the NASA OSDBU. Since the Mentor-Protege agreement is approved by NASA, a review of progress against that approved agreement will not violate privity of contract. Several commenters suggested that NASA modify the rule to allow for flowing down program participation to lower tier, large business subcontractors where it makes sound financial sense. Because of privity of contract issues with the mentor prime contractors, no such provision will be included in the pilot phase of the Mentor-Protege Program. Several commenters suggested that NASA expand the program to include a provision allowing that a protege may be retained, and receive noncompetitive subcontract awards, until it has grown to more than twice the size of the SIC code. Such provision cannot be included without specific legislative authorization. Several commenters asked if a mentor could make noncompetitive awards to any protege subcontractor with whom it plans to work or is the mentor limited to noncompetitive awards to only those protege firms which the mentor is currently using under its DOD Mentor-Protege Program. NASA prime contractors, who are DOD mentors, are authorized to award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD program in accordance with Public Law 101–510, Section 831(f)(2). In addition, NASA prime contractors who are also approved mentors under the NASA program may make noncompetitively awards to protege firms identified in letters of intent and approved agreements for the NASA program. Several commenters recommend that NASA include additional mentor-provided developmental assistance features that will not be required to be paid back: property; rent-free use of facilities and/or equipment; and assignment of personnel to protege. Section 1819.7214 has been modified in the final rule to include these features. Several commenters asked if it is NASA's intent that the Mentor-Protege requirement may be included as part of the evaluation factors even though a prime contractor may not sign up to participate in the program. In all NASA solicitations for full and open competition, Small Disadvantaged Business Utilization is a stand-alone evaluation factor under Mission Suitability, which includes consideration for Mentor-Protege participation. While voluntary and better-suited for certain prime contractors, participation in the Mentor-Protege program may provide many primes the opportunity to substantially increase their subcontracting activity while also achieving other agency and program objectives as delineated in 1819.7207. All things being equal, the firm that proposes in compliance with the Government's subcontracting goals and includes Mentor-Protege activity will enhance its competitive position. Several commenters asked if a NASA prime who is currently a DOD mentor has to apply and be approved for the NASA Mentor-Protege Program. Any firm that seeks to participate in the NASA Mentor-Protege Program must apply to NASA, see Section 1819.7211(a). The discussion at 1819.7204 only highlights the portability of features from the DOD Mentor-Protege Program that extends to NASA prime contractors. This section does not address approved NASA mentors, only NASA contractors who are approved DOD Mentors. Several commenters sought clarity regarding measurement or definition of "good faith," which is what NASA mentors will be held to beyond transferring credit from activity in the DOD activity to NASA subcontracting plans. "Good faith" will be measured by the amount and quality of developmental assistance provided by mentors from the measures set forth at 1819.7214 and as described in the clause at 1852.219–79. A discussion of this activity should be included in the reports submitted by the mentor and in the protege's reports, if any. Several commenters suggested that NASA modify the rule so that Mentor-Protege applications may be either contract-specific or broader for multiple-contract agreements. There is no change in the rule. Since the Mentor-Protege relationship involves a prime/subcontractor relationship, the application and activity must be contract-specific. Several commenters asked if awards to proteges on a noncompetitive basis under this program will be viewed as an adequate and acceptable justification for other than full and open competition. The requirement for full and open competition for subcontractors is a matter of regulatory policy, not statute. The Associate Administrator for Procurement is approving an exception to this policy for approved Mentor-Protege agreements. Several commenters state that with this voluntary program participation, NASA states that a 30-day notice should be provided by either party to withdraw. The commenters asked whether a decision to dissolve the relationship that occurs during a contract period would impact the amount of award fee available to the prime contractor. Notwithstanding the 30-day notice provision at 1819.7213(h), the requirement exists that agreements must contain a plan for accomplishing the work in progress should the agreement be terminated. The agreement, containing this plan, must be approved by NASA prior to implementing the developmental assistance program. Approval of the plan will ensure that the technical performance will continue satisfactorily and thereby eliminating the possibility for negative impact to the prime. The remaining major comments will be addressed individually as follows. One commenter stated that the application process indicates that the application is only for a particular contract which the contractor is currently performing. The commenter stated that this would appear to eliminate any Mentor-Protege arrangements which are part of a proposal. If a NASA prime is allowed to propose a Mentor-Protege arrangement as part of its proposal, the commenter stated that the evaluation criteria should be adjusted for scoring the protege's relevant experience and past performance for areas of work in which they are to be mentored. The prime should not be penalized for inclusion of a less-experienced protege. The application process is intended to recognize both instances—Mentor-Protege under a particular contract currently being performed and proposals including Mentor-Protege arrangements. In response to a competitive cost-plus-award-fee procurement, the contractor's proposal will be submitted in accordance with the evaluation methodology and instructions set forth in the solicitation. However, prior to proposal submission the letter of intent and the agreement should be submitted to the OSDBU for approval. The letter of intent and OSDBU approved agreement should be submitted as part of the proposal. In competitive proposals that include a Mentor-Protege arrangement, no adjustment will be made for scoring the protege's relevant experience and past performance since the protege's record should demonstrate ability to perform the subcontracting job outlined for a such a firm. The protege's performance in non-traditional areas is essentially guaranteed by the prime's commitment to successfully mentor said firm to perform. In these instances, the proposal should reflect details of the Mentor-Protege relationship as related to performance under the proposed contract to provide an understanding of the work plan relationship and to facilitate a complete evaluation and scoring. This commitment and performance by mentors form the basis for earning the associated fee dollars. One commenter requests clarity regarding the disposition of reports to be submitted by the NASA technical program manager. They also seek clarity regarding the roles and interactions of the NASA Mentor-Protege program manager, the NASA technical program manager, and the contracting officer in the award fee determination process. The NASA Mentor-Protege program manager, a senior official in the NASA Headquarters Office of Small and Disadvantaged Business Utilization, has direct authority for the program and is the designated recipient for all required reports. The NASA Mentor-Protege program manager will submit quarterly reports to the contracting officer for use in the semi-annual award fee determinations as a result of monitoring activity and work site reviews. The contracting officer is the responsible NASA official with direct authority for the contract. The NASA technical program manager, provides technical direction and as such also provides quarterly evaluations of the contractor's technical performance for the purpose of semi-annual fee determinations. Therefore, the program manager will also include in the quarterly reports an assessment of the contractor's performance in the Mentor-Protege Program as it pertains to the technical effort and protege development. One commenter stated that considering NASA's current high SDB percentage goals included in solicitations, expecting a prime to exceed these already high SDB percentages is unrealistic. Further, the contractor states that if incentive eligibility is based upon a prime exceeding the NASA 8 percent goal (irrespective of a contract's SDB goal), then a prime would consider program participation as a level of risk. Mentor-Protege is independent of establishment of SDB subcontracting goals in specific contracts. The 8 percent goal is an agency goal; each procurement includes an SDB goal that represents the maximum practical opportunity as required by public law. The Mentor-Protege program represents only one means of increasing SDB participation—with emphasis on high tech effort. Program success will be determined by the measures cited at 1819.7207. Since the Mentor-Protege relationship will be contract-specific, the contractor's performance will be measured against negotiated goals, the Mentor-Protege agreement, and the other factors cited in 1819.7206. A commenter recommended that NASA delete provisions at 1819.7213 (b) and (c), suggesting that there is no privity of contract, and substitute them with a provision allowing for after-the-fact notification. No change is made to these subsections. The NASA position is that advance notification along with a work plan for continuation of work does not affect privity of contract. One commenter recommended modification in the final rule such that annual briefings of the Mentor-Protege Program success should be presented as part of the mentor's normal program review with the NASA Center it supports. The NASA OSDBU would be invited to participation at the center; the pertinent protege could, at the mentor's discretion, be invited to make their own presentation. Rationale: Mentor-Protege reviews held as part of a center's normally-scheduled program review would significantly reduce cost to NASA and contractors thereby maintaining privity between the mentor and the portege. Section 1819.7218 of the Final Rule has been changed to include such review in program reviews. Where applicable, separate reviews will be scheduled for other contracts at the NASA work site. One commenter recommends that NASA provide the mentor (formally or informally) with information on any deficiencies noted in the application so that the deficiencies can be quickly corrected, if the Mentor so chooses. If the Mentor does not correct the deficiencies within a reasonable time unilaterally established by NASA, then the application should be denied, and the whole process would start over. A commenter suggested that NASA limit application information to two prior years and that NASA specify the minimum information for letter of intent. The final rule incorporates both recommended changes in section 1819.7211. A commenter suggested that since the proposed rule making does not take into account a prior business relationship between the mentor and protege, some restrictions should be included to prevent overlapping management (e.g. Board of Directors) and business arrangements such as partnerships in which the Mentor has a direct financial interest in the business success of the protege or can take credit for developmental assistance which would be a part of normal business development for the mentor. Proposed Mentor-Protege agreements will be disapproved where the protege firm's owner was a former employee of the proposed mentor or when the protege firm itself represents an entity in which the mentor firm holds a financial interest or ownership. However, mentor firms that hold partial ownership (up to 10%) of a proposed protege firm due to their approved participation in the DOD Mentor-Protege Program shall not negatively impact participation in the NASA program.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, Chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Mentor-Protege Program is intended to have a positive economic effect on small businesses by enhancing their ability to participate in both Government and commercial contracting entities.

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VOL 60

ISS 57

MR 24 1995

List of Subjects in 48 CFR Parts 1819 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1819 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Subpart 1819.72 is added to read as follows:

Subpart 1819.72—The NASA Mentor-Protege Program

1819.7201 Scope of subpart.
1819.7202 Definitions.
1819.7203 Non-affiliation.
1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege Program to NASA contractors.
1819.7205 General policy.
1819.7206 Incentives for prime contractor participation.
1819.7207 Measurement of program success.
1819.7208 Mentor firms.
1819.7209 Protege firms.
1819.7210 Selection of protege firms.
1819.7211 Application process for mentor firms to participate in the program.§
1819.7212 OSDBU review and approval process of agreement.
1819.7213 Agreement contents.
1819.7214 Developmental assistance.
1819.7215 Obligation.
1819.7216 Internal controls.
1819.7217 Reports.
1819.7218 Program review.
1819.7219 Solicitation provision and contract clauses.

Subpart 1819.72—The NASA Mentor-Protege Program

1819.7201 Scope of subpart.

The NASA Mentor-Protege Program is designed to incentivize NASA prime contractors to assist Small Disadvantaged Business concerns, Historically Black Colleges and Universities, and Minority Institutions in enhancing their capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

1819.7202 Definitions.

(a) *Historically Black Colleges and Universities (HBCU),* as used in this subpart, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein. HBCUs include any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

(b) *Minority Institutions (MI),* as used in this subpart, means institutions verified by the Secretary of Education to meet the criteria set forth in 34 CFR 637.4. MIs include Hispanic-serving institutions as defined by 20 U.S.C. 1059c(b)(1).

(c) *Small Disadvantaged Business concern (SDB),* as used in this subpart, means small business concerns owned and controlled by socially and economically disadvantaged individuals (as those terms are used in section 8(a) of the Small Business Act (15 U.S.C. 637(a) (5) and (6))) and small business concerns owned and controlled by women (see section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by Public Law 103–355.

(d) *High-Tech:* As used in this subpart, means research and/or development efforts that are within or advances the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

1819.7203 Non–affiliation.

For purposes of the Small Business Act, a protege firm may not be considered an affiliate of a mentor firm solely on the basis that the protege firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the program. Neither shall partial ownership, up to 10 percent of a Department of Defense (DOD) sanctioned Protege firm by its DOD mentor constitute affiliation by NASA.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege Program to NASA contractors.

(a) In accordance with the benefits authorized by the DOD Mentor-Protege program (Public Law 101–510, Section 831, as amended by Public Law 102–190, Section 814), a NASA contractor who is also an approved DOD Mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD program (Public Law 101–510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental assistance provided to proteges being assisted under the DOD program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102–190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and Minority Educational Institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor Protege Program to NASA prime contractors. NASA mentors will be held to show "good faith" by providing actual developmental assistance beyond transferring credit from activity in the DOD program to NASA subcontracting plans.

1819.7205 General policy.

(a) Eligible large business prime contractors, not included on the "Parties Excluded from Procurement Program" list, who have at least one active subcontracting plan, and who are approved as mentor firms will enter into agreements with eligible entities as defined in 1819.7202 as Proteges to provide appropriate developmental assistance to enhance the capabilities of Proteges to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the "Parties Excluded from Procurement Programs" list, and that are capable of providing developmental assistance to SDB's, may be approved as mentors. An active mentor-protege arrangement requires the protege to be a subcontractor under the mentor's prime contract with NASA.

(b) The pilot program has a duration of three years commencing from March 24, 1995. During this period, eligible mentor firms, which have received approval by NASA to participate in the program pursuant to section 1819.7212, may enter into agreements with protege firms.

(c) For the pilot phase of the program, mentor-protege activity will be limited to cost-plus-award-fee contracts.

(d) Costs incurred by a mentor to provide developmental assistance, technical or managerial assistance described in section 1819.7214, are allowable.

1819.7206 Incentives for prime contractor participation.

(a) During source selection, Mentor-Protege will be evaluated under SDB Utilization which is a stand-alone evaluation subfactor under the Mission Suitability.

(b) Under cost-plus-award fee contracts, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. The award fee plans of all NASA contracts are structured such that 15 percent of the available award fee is allocated for Small Disadvantaged Business Utilization. Mentor-Protege performance will be evaluated under Small Disadvantaged Business Utilization as a separate element and allocated a separate 5 percent of the 15 percent award fee. For purposes of earning award fee, the Mentor firm's performance shall be evaluated to determine the degree to which the participation went beyond (exceeded) the negotiated SDB goals commitment. Specifically, the Mentor firm's performance will be evaluated against the criteria described in the NASA FAR Supplement provision at 1852.219–79.

1819.7207 Measurement of program success.

The overall success of the NASA Mentor-Protege program encompassing all participating Mentors and proteges will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontracts awarded to proteges by mentor firms under NASA contracts since the date of entry into the program;

(b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protege firm by its mentor firm; and

(d) An increase in subcontracting with protege firms in industry categories where they have not traditionally participated within the mentor firm's activity

1819.7208 Mentor firms.

(a) *Eligibility.*

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by 48 CFR (FAR) 19.7; and

(3) Small Business prime contractors that can provide developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers. A small business prime contractor performing under a NASA contract that does not contain a negotiated subcontracting plan may apply.

(b) Mentors will be encouraged to identify and select:

(1) A broad base of firms including those defined as emerging firms (e.g., a protege whose size is no greater than 50 percent of the size standard applicable to the SIC code assigned to a contracting opportunity); and

(2) Proteges *in addition* to firms with whom they have established business relationships.

(3) High-Tech firms as proteges.

1819.7209 Protege firms.

(a) For selection as a protege, a firm must be:

(1) An SDB, HBCU or MI as those terms are defined in 1891.7202;

(2) Certified as small in the SIC code for the services or supplies to be provided by the protege under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) A protege firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentor may rely in good faith on written representations by potential proteges that they meet the specified eligibility requirements.

(c) Proteges may have multiple mentors. Proteges participating in mentor-protege programs in addition to the NASA program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1819.7210 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. The mentor is encouraged to identify and select the types of protege firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protege.

(c) The selection of protege firms by mentor firms may not be protested, except as in paragraph (d) of this section.

(d) Any protest regarding the size or eligibility status of an entity selected by a mentor to be a protege shall be referred solely to the Associate Administrator, Office of Small and Disadvantaged Business Utilization (OSDBU), NASA for resolution. In its discretion, NASA may seek an advisory opinion from the Small Business Administration.

1819.7211 Application process for mentor firms to participate in the program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm..

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) Certification that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of NASA field center where support is provided;

(3) The number of proposed Mentor-Protege arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar amount of subcontracts awarded under NASA prime contracts within the past 2 years and the number of dollar value of such subcontracts awarded to entities defined as proteges.

(6) Information on the proposed types of developmental assistance. For each proposed Mentor-Protege relationship include information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to

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enter into a mentor-protege agreement under the NASA program, that they intend to cooperate in the developmental of a suitable development assistance program to meet their respective needs, and that they agree to comply with the obligations in section 1819.7215 and all other provisions governing the program.

1819.7212 OSDBU review and approval process of agreement.

(a) The information specified in 1819.7211(b) is reviewed by NASA OSDBU. The review by the NASA OSDBU will be completed no later than 30 days after receipt by the OSDBU. NASA OSDBU will provide a copy of the submitted information to the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates agreement with the protege; and

(2) Submits an original and two (2) copies of the agreement to NASA OSDBU for approval by the NASA Mentor-Protege program manager, the NASA technical program manager and the contracting officer.

(c) Upon agreement approval, the mentor may implement developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

1819.7213 Agreement contents.

The contents of the agreement must contain:

(a) Names and addresses of mentor and protege firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protege firm, OSDBU and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program;

(c) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protege;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protege firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protege's developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protege firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

1819.7214 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protege include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/ planning and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its proteges who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with statute and regulation;

(f) Loans;

(g) Rent-free use of facilities and/or equipment;

(h) Property; and

(i) Temporary assignment of personnel to protege for purpose of training

1819.7215 Obligation.

(a) Mentor or protege may voluntarily withdraw from the program as mutually agreed by both mentor and protege.

(b) Mentor and protege firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the pilot program period or the conclusion of their effort, whichever comes first.

1819.7216 Internal controls.

(a) The NASA OSDBU will manage the program. Internal controls will be established by NASA OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing semi-annual progress reports submitted by mentors and proteges, if any, on protege development to measure protege progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where Mentor-Protege activity is on-going.

(b) NASA may terminate Mentor-Protege agreements if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA will terminate an agreement or exclude a particular entity by sending a written notice to the affected party specifying the action being taken and the effective date of that action. Termination of an agreement does not constitute a termination of the subcontract between the Mentor and the Protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement, as required in 1819.7213(h).

1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA mentor-protege program manager, NASA Headquarters OSDBU, to include information as outlined in 1819.7206(b).

(b) Proteges are encouraged to submit semi-annual reports, to the NASA mentor-protege program manager, on program progress as pertains to their mentor-protege agreement. However, costs associated with the preparation of these reports will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the Prime Contractor's (Mentor's) performance in the Mentor-Protege program in his quarterly 'Strengths and Weaknesses' evaluation report. A copy of these comments, as pertains to the technical effort and protege development, will be provided to NASA Headquarters OSDBU and the Contracting Officer.

(d) The NASA mentor-protege program manager will submit semi-annual reports to the cognizant contracting officer regarding participating prime contractor's performance in the program for use in the award fee determination process.

1819.7218 Program review.

At the conclusion of each year in the mentor-protege program, the prime contractor and protege, as appropriate, will formally brief the NASA mentor-protege program manager, the technical program manager and the contracting officer regarding program accomplishments as pertains to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protege Program, in all solicitations and contracts with subcontracting plans or in the case of small business set-asides exceeding $500,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the provision at 1852.219–78, Evaluation of Prime Contractor Participation in the Mentor-Protege Program, in all solicitations containing the provisions at 1852.219–77, NASA Mentor-Protege Program and FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(c) The contracting officer shall insert the clause at 1852.219–79, Mentor Responsibility and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protege Program.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

a. Sections 1852.219–77, 1852.219–78, and 1852.219–79 are added to read as follows:

1852.219–77 NASA Mentor-Protege Program.

As prescribed in 1819.7219(a), insert the following provision:

NASA Mentor Protege Program (Jan. 1994)

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA pilot mentor-protege program for the purpose of providing developmental assistance to eligible protege entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The pilot program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Protege, which are subcontracting under the prime contractor, include Small Disadvantaged Business (SDB) concerns including women-owned small businesses, Historically Black Colleges and Universities, and Minority Institutions, as those terms are defined in NASA FAR Supplement 1819.7202.

(3) Mentor-protege agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) Potential of payment of additional award fee for voluntary participation and successful performance in the mentor-protege program.

(c) Mentor participation in the program, described in 48 CFR 1819.72, means providing technical, managerial and financial assistance to aid proteges in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the pilot program are encouraged to contact the NASA OSDBU, Washington, DC 20546, (202) 358–2088, for further information. (End of clause)

1852.219–78 Evaluation of Prime Contractor Participation in the NASA Mentor Protege Program.

As prescribed in 1819.7219(b), insert the following provision:

Evaluation of Prime Contractor Participation in the NASA Mentor-Protege Program (DEC 1994)

NASA will consider (evaluate) the proposed participation and extent of developmental assistance to be provided by a prime contractor to protege firms as an approved Mentor in the NASA Mentor-Protege Program under the SDB Utilization subfactor under Mission Suitability.

1852.219–79 Mentor Requirements and evaluation.

As prescribed in 1819–7219(c), insert the following provision:

Mentor Requirements and Evaluation (DEC 1994)

(a) The purpose of the NASA Mentor-Protege Program (s) is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as proteges. Eligible proteges include Small Disadvantaged Business concerns including women-owned small businesses, Historically Black Colleges and Universities, and Minority Institutions, as those terms are defined in NASA FAR Supplement 1819.7202.

(b) NASA will evaluate the contractor's performance through the Performance Evaluation process. The evaluation will consider the following:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of proteges as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protege as defined in the agreement;

(3) To what extent the Protege has met the developmental objectives in the agreement; and

(4) To what extent the firm's participation in the Mentor-Protege Program resulted in the Protege receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the Mentor.

(c) Semi-annual reports shall be submitted by the mentor to the NASA mentor-protege program manager, NASA Headquarters OSDBU to include information as outlined in 1819.7206(b).

(d) The Mentor will notify the OSDBU and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a Protege's notice to withdraw from the Program;

(e) Mentor and protege firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the pilot program period or the conclusion of their effort which ever comes first. At the conclusion of each year in the mentor-protege program, the prime contractor and protege, as appropriate, will formally brief the NASA mentor-protege program manager, the technical program manager, and the contracting officer during a formal program review regarding program accomplishments as pertains to the approved agreement.

(f) NASA may terminate Mentor-Protege agreements and exclude Mentor or Protege firms from participating in the NASA program if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in 1819.7213(h).

(End of clause)

[FR Doc. 95–7051 Filed 3–23–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), (DOT).

ACTION: Final rule.

SUMMARY: This final rule revises the regulations on the organization of and delegations of powers and duties within

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NHTSA to reflect changes in the titles of two agency officials. The official formerly known as the Associate Administrator for Rulemaking is now the Associate Administrator for Safety Performance Standards. The NHTSA official formerly known as the Associate Administrator for Enforcement is now the Associate Administrator for Safety Assurance.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Dorothy Nakama, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW, Room 5219, Washington, DC 20590. Ms. Nakama's telephone number is: (202) 366–2992.

SUPPLEMENTARY INFORMATION: This final rule revises the regulations on the organization of and delegations of powers and duties within the National Highway Traffic Safety Administration (NHTSA) to reflect changes in the titles of two agency officials. The official formerly known as the Associate Administrator for Rulemaking is now the Associate Administrator for Safety Performance Standards. The official formerly known as the Associate Administrator for Enforcement is now the Associate Administrator for Safety Assurance. Accordingly, all references in part 501 to "Associate Administrator for Rulemaking" are revised to read "Associate Administrator for Safety Performance Standards." All references in part 501 to "Associate Administrator for Enforcement" are revised to read "Associate Administrator for Safety Assurance."

These amendments relate solely to changes in titles of NHTSA officials, and have no substantive effect. As matters relating to agency management, they are not covered by the notice and comment or the effective date requirements of the Administrative Procedure Act. In addition, they are not covered by Executive Order 12866 or the Department of Transportation's regulatory policies and procedures. Notice and the opportunity for comment are, therefore, not required, and these amendments are effective immediately upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 501

Authority, Delegations.

In consideration of the foregoing, 49 CFR 501 is amended as follows:

PART 501—[AMENDED]

1. The authority citation for Part 501 continues to read as follows:

Authority: 49 U.S.C. sections 105 and 322; delegation of authority at 49 CFR 1.50.

§§ 501.3, 501.4, 501.8 [Amended]

2. In 49 CFR part 501, remove the words "Associate Administrator for Rulemaking" and add, in their place, the words "Associate Administrator for Safety Performance Standards" in the following places:

(a) Section 501.3(c)(1) paragraph heading;
(b) Section 501.4(d);
(c) Section 501.8(f) paragraph heading; and
(d) Section 501.8(f).

3. In 49 CFR part 501, remove the words "Associate Administrator for Enforcement" and add, in their place, the words "Associate Administrator for Safety Assurance" in the following places:

(a) Section 501.3(c)(2) paragraph heading;
(b) Section 501.4(e);
(c) Section 501.8(f);
(d) Section 501.8(g) paragraph heading; and
(e) Section 501.8(g).

Issued on: March 20, 1995.

Ricardo Martinez,
Administrator.

[FR Doc. 95–7349 Filed 3–23–95; 8:45 am]
BILLING CODE 4910-59-P

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49 CFR Part 571

[Docket No. 93–78, Notice 02]

RIN No. 2127–AE96

Federal Motor Vehicle Safety Standards; Designated Seating Position

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the definition of "designated seating position" found in 49 CFR 571.3, *Definitions*, to provide that for the sole purpose of determining the vehicle type classification of a vehicle sold to transport school children, any location in the vehicle intended for securement of an occupied wheelchair during vehicle operation will be regarded as 4 designated seating positions. NHTSA is issuing this rule to ensure that smaller school buses remain classified as school buses, and thus subject to the comprehensive school bus safety standards, when seats are removed to install wheelchair securement locations. This rule will assure that students being transported in vehicles accommodating wheelchairs will be afforded the same level of occupant protection as other students transported in school buses.

DATES: The amendment promulgated by this final rule will become effective March 25, 1996.

Manufacturers may voluntarily comply with the amendment promulgated by this final rule on or after April 24, 1995.

Any petitions for reconsideration must be received by NHTSA not later than April 24, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5320, Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the definition of "designated seating position" found in 49 CFR 571.3, *Definitions*, to respond to an issue that arose in a rulemaking concerning a Federal motor vehicle safety standard (Standard) applying to school buses. The rulemaking amended Standard No. 222, School Bus Passenger Seating and Crash Protection, to require school buses designed to transport persons in wheelchairs to have wheelchair securement devices (wheelchair restraints) and wheelchair occupant restraint systems meeting specified performance requirements (58 FR 4586; January 15, 1993). School bus manufacturers typically remove seats from a vehicle to install wheelchair restraints. Removing seats can affect a vehicle's classification and the standards that apply to it.

One of the important factors used by NHTSA in classifying vehicles is seating capacity. For example, NHTSA determines whether a vehicle is a "bus" or a "multipurpose passenger vehicle" (MPV) based primarily on passenger seating capacity. The definition of a bus is found in title 49 CFR 571.3, "Definitions." In that section, a bus is defined as a passenger motor vehicle designed to carry more than 10 persons (i.e., 10 or more passengers and a driver). An MPV is designed to carry 10 or fewer persons.

The agency determines a vehicle's seating capacity by counting the number of "designated seating positions" in the vehicle. That term is defined in section 571.3 as follows:

Designated seating position means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SAE Standard J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

NHTSA has interpreted this definition to mean that each position for securing a wheelchair is one designated seating position. This interpretation has a significant impact on whether some vehicles are classified as an MPV or as a school bus.

NHTSA determines whether a vehicle is a "school bus" by first determining whether the vehicle is a bus. In 49 CFR section 571.3, a school bus is defined as a "bus" that is sold for purposes that include carrying students to and from school or related events. When seats are removed from a bus for any reason, including placing wheelchair securement devices on the vehicle, so that the seating capacity of the vehicle is reduced to 10 or fewer persons, the classification of the vehicle changes from a bus to an MPV. The vehicle would be an MPV and not a school bus even if sold for public transportation purposes, and even if the vehicle had been originally "designed" as a bus and outwardly resembled a conventional bus. Thus, as a result of the seat removal, the vehicle would be subject to the standards for MPVs, and not the standards for school buses.

In the rulemaking that set performance requirements for wheelchair restraints, both the NPRM and final rule for that rulemaking raised the issue of whether it would be desirable for a vehicle that was originally manufactured as a school bus remain a school bus, even if its seating capacity were reduced to that of an MPV. In that NPRM, NHTSA discussed the decision of the Eleventh National Conference on School Transportation (NCST) to answer that issue in the affirmative. The NCST requires any vehicle that changes classification from a school bus to an MPV due to the installation of wheelchair restraints to comply with the school bus standards. The NPRM requested comments on the issue.

The Washington Superintendent of Public Instruction (WSPI) submitted the only comment on the issue (Docket No. 90–05–N03–051). WSPI supported the idea that the determination of whether a vehicle should be classified as a school bus should be based on the vehicle's theoretical or design maximum capacity. In other words, WSPI believed that a school bus should remain a school bus even when enough seats are removed to reduce the seating capacity to 10 or fewer persons.

In the preamble to the final rule on wheelchair restraints, NHTSA again expressed concern about how removing seats from a bus can change a vehicle's classification from a school bus to an MPV. The agency decided, however, not to address the issue in that final rule but to address it in a separate rulemaking action where it could receive more focused attention.

Proposal for This Rule

On October 28, 1993, NHTSA published the NPRM (58 FR 57975) that provides the basis for today's rule on school bus classification. NHTSA proposed to amend the definition of "designated seating position" in 49 CFR 571.3 to specify that, for the sole purpose of classifying school vehicles, any vehicle location intended for securing an occupied wheelchair during vehicle operation would be counted as 4 designated seating positions. The intent of the NPRM was to ensure that if a vehicle would have been classified as a school bus had it been fully equipped with bench seats, it would still be regarded as a school bus if it were equipped with fewer bench seats so that it could transport students in wheelchairs. "By requiring [seating restricted] vehicles to comply with all school bus standards, NHTSA believes that all student users of wheelchairs transported in those vehicles would be provided the same level of occupant protection as students transported in other school buses." *Id.*

NHTSA selected the 4-to-1 ratio of designated seating positions to wheelchair positions based on the comment that the WSPI submitted to the rulemaking on wheelchair restraints. The WSPI submitted information on the number of wheelchair locations that can be installed on a bus when a specified number of bench seats have been removed to accommodate those locations. WSPI defined "bench seats" as those with two designated seating positions, and stated that the average ratio of seating positions on bench seats to wheelchairs is 4-to-1 if the wheelchair is forward-facing or 3-to-1 if the wheelchair is side-facing. In the final rule for wheelchair restraints, NHTSA mandated that wheelchair restraints be situated so as to secure a wheelchair in a forward-facing position (see S5.4.1.2(a) of Standard No. 222). Given that requirement, NHTSA proposed the 4-to-1 seats-to-wheelchair ratio for wheelchair locations.

Evaluation of Comments

Two state agencies (Delaware Department of Public Instruction, California Highway Patrol), one trade association (National School Transportation Association), one charter bus company (D.B. Fisher Inc.), and one school bus manufacturer (Mid Bus Inc.) commented on the NPRM. Except for D.B. Fisher, Inc., commenters generally supported the intent of the NPRM, although some expressed concern about how the proposal could affect the use of school vehicles. Some commenters made suggestions about issues that were outside the scope of the NPRM.

Proposed 4-to-1 Ratio

Commenters addressed NHTSA's proposal that each location intended to secure a wheelchair would be counted as four designed seating positions. Mid Bus Inc. and the National School Transportation Association (NSTA) supported that proposal. The Delaware and California state agencies expressed concern about it.

The Delaware Department of Public Instruction (DDPI) was concerned that the proposal could unnecessarily restrict the seating capacity of school buses. The commenter believed that the proposal equates a wheelchair position with too many seating positions, which would not be space efficient. "That [4 to 1] ratio is translated into fifty inches (50") per wheelchair space. Several manufacturers allow that forty-four inches (44") is adequate." DDPI said it did not want to lose more space than is necessary. "Anytime more space per pupil is required, more school buses are needed." DDPI suggested that a per-inch spacing formula would be more space-efficient than the 4-to-1 or even 3-to-1 ratios.

NHTSA does not agree that this rule unnecessarily restricts the seating capacity of school buses. The 4-to-1 ratio of designated seating positions to wheelchair positions was based on a finding that, on average, four is the number of seating positions typically removed when a single securement location is installed. However, this rule does not require four conventional designating seating positions to be removed and used for each wheelchair position. Instead, the rule simply requires four positions to be counted for

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each wheelchair position. Since the rule does not require any specific amount of space to be devoted to a wheelchair position, the substitution of a per-inch approach for this rule's approach would have no effect on the amount of space used for a wheelchair position.

The California Highway Patrol (CHP) asserted that allowing only 4 designated seating positions for each wheelchair location did not go far enough. CHP stated that the California definition of a school bus is similar to the Federal definition, but it also includes a vehicle transporting 2 or more pupils confined to wheelchair location as 4 seating positions would require California to change its law in that a vehicle with 2 wheelchair positions and a bench seat with 2 designated seating positions would, under the Federal criteria, be classified as an MPV, while, under the California definition, it would be classified as a school bus. CHP suggested, therefore, that NHTSA amend its definition of a school bus to include a vehicle designed to carry 2 or more wheelchair positions or one that would carry 6 seated passengers and 1 wheelchair passenger.

CHP is mistaken in suggesting that a school vehicle designed to carry six seated passengers and one wheelchair passenger would be classified as an MPV under today's rule. Such a vehicle would be a school bus under today's amendment, since its number of designated seating positions would be 10, plus the driver (a school bus has a carrying capacity of more than 10 persons).

In any event, CHP's suggestion that NHTSA amend the agency's school bus definition is outside of the scope of this rulemaking. NHTSA proposed to amend the "designated seating position" definition, not the school bus definition. NHTSA believes there is insufficient notice for it to adopt the suggestion to amend the school bus definition at this time, even if the agency wished to do so.

NHTSA offers the following observations about CHP's suggestion. To the extent that CHP is impliedly suggesting that each location intended to secure a wheelchair should be counted as five designated seating positions (DSP's), the commenter did not provide and NHTSA does not know of any reason for equating a wheelchair position with five DSP's. Accordingly, NHTSA declines to pursue making the suggested change.

The agency further notes that NHTSA is considering an issue related to CHP's comment about vehicles designed to carry only two students in wheelchairs. As discussed below in the "Other issues" section of this preamble, some commenters suggested that a wheelchair lift should be counted as four DSP's since a lift typically uses the space of four DSP's. NHTSA is studying this matter to decide whether an NPRM should be issued to amend the DSP definition to incorporate this idea. If the agency issued the NPRM, the agency might decide, after notice and comment on the issue, that a lift ought to be equated with four DSP's. If that were to occur, a vehicle designed to carry two wheelchair positions and a wheelchair lift as four, for a total of 12 DSP's for passengers.

The D.B. Fisher Charter Bus Company, Inc. (Fisher) opposed the 4 designated seating positions per wheelchair location proposal, since it would result in more vehicles being designated school buses than is presently the case. Fisher asserted that this would convert a "non-commercial" vehicle into a "commercial" vehicle (Fisher's terms) required to have lighting systems to control traffic. Fisher argued that the extra time it takes to stop a school bus in the roadway, which also stops traffic, in order to load and unload wheelchair passengers would cause serious traffic delays, especially in cities. The commenter believed that that would inconvenience the public and make them unwilling to stop and wait for these vehicles. As a result, Fisher argued, children would be exposed to increased risk from general traffic.

NHTSA does not believe that the amendment adopted in this final rule would be detrimental to motor vehicle safety, as Fisher believes. It is true that crediting each wheelchair location as being equal to four designated seating positions could result in a vehicle's being classified as a school bus instead of an MPV as under the current regulations. It is also true, that since more vehicles would be school buses, more vehicles would be required to have school bus lamps under NHTSA's safety standard for vehicle lighting systems (Standard No. 108, 49 CFR § 571.108). However, the requirements mandating the use of school bus lamps, and how and where a school bus operator must maneuver a vehicle in traffic to load or unload students, are state law requirements, not those of NHTSA. There is no Federal requirement regarding school buses stopping on public roadways for the pickup and discharge of children, nor is there a Federal requirement that traffic in both directions stop for the loading and unloading of school buses. Such requirements are matters of state rather than Federal authority.

While NHTSA does not have the authority to regulate the use of school buses, the agency recognizes that safe driving practices by motorists around an operating school bus are crucial to school bus safety. Accordingly, the agency has issued Highway Safety Program Guideline No. 17, "Pupil Transportation Safety" (23 CFR Part 1204), which recommends that states develop plans for minimizing highway use hazards to students, including providing loading and unloading zones off the main traveled part of highways, whenever it is practicable to do so. In addition, Guideline No. 17 recommends that states require motorists meeting or overtaking a school bus that is loading or unloading passengers and which is operating red warning lights, to stop their vehicles before reaching the school bus and not proceed until the warning signals are deactivated. Guideline No. 17 is not binding on the states. Individual states have decided to adopt some or all of the guideline, as best serves the needs of their pupil transportation program. Since Fisher's safety concerns relate to the use of the vehicles, the commenter should address those concerns to state authorities, who can best decide which transportation practices would achieve the highest level of safety possible for its pupils.

Nevertheless, NHTSA considered Fisher's comment to assess perceived safety effects of the rule. NHTSA concludes that Fisher's predictions are unsupported at this time. Further, the agency does not anticipate that those predictions will be borne out. This rule will only slightly increase the number of vehicles classified as school buses, and is thus unlikely to have a significant effect on the public's willingness to stop their vehicles for loading and unloading students. NHTSA believes the matter will be ultimately resolved through on-road experience. It will bear out whether school vehicles accommodating wheelchairs cause the inordinate traffic delays and associated problems that Fisher fears, and whether some action on NHTSA's part to address the alleged problems would be appropriate.

Costs

The October 1993 NPRM included a comprehensive discussion of estimated costs associated with this rulemaking action. The agency estimated that approximately 520 vehicles per year would be affected by this rulemaking. This estimate was based on sales data indicating that 15.2 percent of the 38,000 school buses sold annually are small buses, and that about 9 percent of these are lift equipped. The agency believes that each of those lift-equipped

buses has one or more wheelchair positions. The NPRM stated that while not all these vehicles might have their seating capacity reduced to that of an MPV, there will probably be other vehicles outside this class that will be affected, such as MPV's that are not lift-equipped. The agency does not know how many of these vehicles are currently sold as MPVs, but believes that the number is probably very small.

DDPI believed NHTSA underestimated the number of buses that would be affected by the proposed change. NHTSA believes that 520 is valid estimate of the approximate number of new school buses affected annually by this amendment. That value is based on annual sales of small school buses and the proportion of such buses that are currently equipped with wheelchair lifts. Not all these vehicles would have their seating capacities reduced to the point of becoming MPVs. NHTSA believes that DDPI may be erroneously including existing school buses in their calculations. This final rule, as with all NHTSA's rules, affects only new vehicles and is effective only prospectively. There is no requirement to retrofit existing vehicles.

The NPRM also contained a detailed analysis of the cost impacts for the affected vehicles. None of the commenters discussed those impacts. The agency is not aware of information indicating the assumptions underlying the cost estimates are incorrect. However, the estimated total cost savings was inaccurate. Instead of the $390 to $580 range in the NPRM, the total cost savings should have been estimated to be approximately $90 per vehicle. The cost impacts of this rule are discussed in detail in the "Rulemaking Analyses and Notices" section of this preamble.

Other Issues

Compatibility with compartmentalization. As noted above, DDPI believed that one wheelchair position should be equated with fewer than four seating positions. DDPI was primarily concerned about unnecessarily restricting the seating capacity of school buses. However, DDPI also believed that excessive space allowed for wheelchair locations would conflict with the principles of compartmentalization.

NHTSA emphasizes that this rule does not require any specific amount of space to be set aside for each wheelchair position. This rule only requires that 4 designated seating positions be counted for each wheelchair position in determining vehicle classification. Accordingly, NHTSA believes that the compartmentalization requirements of Standard No. 222, School bus passenger seating and crash protection, will not be affected by this rulemaking.

Wheelchair lifts. As noted above, some commenters suggested that, on a school vehicle, the DSP's removed for installation of a wheelchair lift be counted toward a determination of a vehicle's passenger capacity. Mid Bus and NSTA suggested that if wheelchair securement positions are installed in a vehicle, a lift mechanism of some type must also be present. Therefore, both suggested that the wheelchair lift also be credited with 4 designated seating positions.

The agency neither proposed nor discussed this issue in the NPRM. However, NHTSA is studying the matter. If, after due consideration, NHTSA decides to propose such an amendment, it will do so in a separate rulemaking.

Other methods of transport. CHP suggested that NHTSA study other methods of transporting disabled students, such as gurneys that could be used to transport prone or supine passengers. CHP stated that schools are receiving demands for transportation of disabled students in other than standard wheelchairs. Such devices pose hardships for bus operators, take up more space than wheelchairs, and securement/tiedown is difficult. Federal standards in this area would assist the school bus industry, increase safety, and establish uniformity.

The agency is aware that students are transported in mobility devices other than wheelchairs. The requirements of Standard No. 222 mandate forward-facing wheelchair restraints, but do not specify how the wheelchair securement devices should be used. This is an operational issue that is the responsibility of the state or local school district. However, NHTSA has a Disabilities Working Group that serves as a clearinghouse for information on the safe transportation of disabled persons. The diversity of the mobility devices available makes it impossible for a standard tiedown system to provide adequate securement of all the different types of mobility aids. There are many mobility devices that are made specifically for the individual's disability. Parties that are responsible for the safe transportation of occupants in mobility devices that are unique should consult with the restraint manufacturer, the physician, and a qualified expert in the field of transportation for the disabled prior to transporting such individuals.

Wheelchair safety. CHP stated that it is encountering a wide variety in the construction, configurations, and sizes of wheelchairs, and is concerned that "many of the wheelchairs in the California (and nationwide) marketplace may not be capable of withstanding the forces associated with anchoring an occupant restraint system to them." NHTSA believes that CHP is referring to the crashworthiness of wheelchairs. CHP suggested, therefore, that NHTSA develop minimum standards for wheelchairs.

NHTSA addressed this issue in the final rule of January 15, 1993 (58 FR 4591), in discussing comments submitted in response to the NPRM of September 24, 1991. The agency recognizes now, as then, that some wheelchairs may not perform as well as others in a crash situation. However, the agency still considers it inappropriate to specify requirements for wheelchairs and other mobile seating devices that could be utilized on school buses. NHTSA's authority extends only to issuing performance requirements for motor vehicles and items of motor vehicle equipment as defined in 49 U.S.C. 30102 (6) and (7). The agency has authority to specify performance requirements for seating devices that are designed for use in vehicles, such as child safety seats. Wheelchairs in general are not designed specifically for use in motor vehicles. Their use in motor vehicles is only incidental to their primary function of providing mobility. Accordingly, NHTSA may not regulate in this area.

Agency Decision

After carefully considering the comments submitted in response to the NPRM, NHTSA has decided to amend the definition of "designated seating position" found in 49 CFR 571.3, as proposed in the NPRM. NHTSA believes this rule is needed to ensure that the vehicles which are used to transport students in wheelchairs afford the same protection as identical vehicles which are equipped with conventional bench seats and are classified as school buses. Some commenters expressed concerns about the impacts of the rule on school bus usage by increasing transportation time, causing traffic problems, and requiring more buses to transport the same number of children. However, these comments did not controvert the safety need for this action nor establish that the results would not be cost effective.

Effective Date

49 U.S.C. 30111(d) provides that each order prescribing a Federal motor vehicle safety standard may not become effective before the 180th day or later than one year after the standard is

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prescribed unless, for good cause shown, a different effective date is in the public interest. NHTSA has concluded that one year after the date of publication of this final rule in the **Federal Register** is an appropriate effective date for this amendment in order to provide manufacturers adequate time to plan and implement any necessary design changes to their vehicles. Manufacturers may, however, at their opinion, comply with this amendment at any time after 30 days following publication of this final rule in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the DOT's regulatory policies and procedures and has determined that it is not "significant" under those policies and procedures.

The additional costs from having to comply with school bus safety standards and the cost savings from not having to comply with the MPV safety standards are estimated to result in net additional costs of a maximum of $2,198 per vehicle ($2,288 maximum additional costs, less $90 per vehicle in cost savings, as discussed below), for a total maximum of $1,142,960 ($2,198×520). The agency believes, however, that only a very small number of vehicles per year would incur the full additional cost. Accordingly, the economic effects of this rulemaking action are so minimal that a full regulatory evaluation is not required.

Costs. The primary additional costs of the rule are estimated to be a maximum of $2,288 per vehicle, for a total maximum of $1,189,760 ($2,288 × 520). Those costs result from equipping each vehicle with the following school bus features: red and amber school bus signal lamps required by Standard No. 108, Lamps, reflective devices, and associated equipment ($140); school bus mirrors required by Standard No. 111, Rearview mirrors (between $22 and $52); stop signal arms required by Standard No. 131, School bus pedestrian safety devices ($205); for vehicles over 6,000 pounds GVWR, a reinforced roof and roof pillar structure required by Standard No. 220, School bus rollover protection (from $22 to $1,549); additional rivets and glue for body panel strength in accordance with Standard No. 221, School bus body joint strength ($365); and compartmentalized passenger seats required by Standard No. 222, School bus passenger seating and crash protection ($35 per seat, or $280 for a vehicle with eight rear seating positions). NHTSA's data suggests, however, that many, if not most, vehicles used as school buses that have fewer than 11 designated seating positions, counting a wheelchair position as one designated seating position, already voluntarily comply with Federal school bus safety standards. Thus, the average additional costs for the affected vehicles would be significantly less than the theoretical maximum.

Cost savings. The potential cost savings realized from changing the classification result from differences between the occupant restraint requirements of Standard No. 208, Occupant crash protection, for MPV's and school buses. An MPV with a GVWR of 10,000 pounds or less is required to have lap/shoulder belts at all outboard seating positions and a lap/shoulder belt for the driver. In contrast, a school bus with a GVWR of 10,000 pounds or less is required to have a lap/shoulder belt at the driver's position and a lap belt at all other positions.

NHTSA believes that the maximum number of affected rear outboard seating positions is six, assuming that a vehicle with 10 seating positions has two 3-person bench seats, two single seats, a wheelchair position, and a driver's seat. These six outboard seating positions would require a lap/shoulder belt for MPV's and a lap belt for buses. The difference in cost between a lap/shoulder belt and a lap belt is about $15, or $90 per vehicle.

For vehicles with a GVWR of more than 10,000 pounds, cost savings will also result from changing a vehicle from an MPV to a school bus. If an MPV, the vehicle is required to have lap belts at all seating positions, including the driver's position. The seats on a school bus, except for the driver's position, are not required to have lap belts. Thus, the cost savings for a vehicle with eight rear seating positions will be between $69.00 and $90.00 per vehicle.

The agency does not know the GVWR distribution of the affected lift-equipped school buses. In any event, the maximum cost savings would not exceed $90 per vehicle for a total possible maximum of $46,800 (520 buses × $90 each).

Safety Impact. The agency believes that there will be no significant loss of safety benefits from requiring vehicles accommodating wheelchairs to be classified as school buses. The agency believes that the school bus accident avoidance equipment of red and amber signal lamps, rearview mirrors and stop signal arms would compensate for any potential loss of safety benefits from the difference in safety belt requirements between MPVs and school buses. Since it takes slightly longer to mount and dismount wheelchair occupants, the red and amber stop signal lamps and stop signal arms are of even greater importance for school buses. The agency recognizes that while outboard seating positions on MPVs are required to have lap/shoulder belts, those positions on small buses (under 10,000 pounds GVWR) are only required to have lap belts. NHTSA estimates the fatality effectiveness of rear seat lap belts to be 32 percent, while the effectiveness of rear seat lap/shoulder belts is estimated to be 41 percent. However, because school buses are involved in so few potentially fatal crashes due to their mostly daytime operation and scheduled routes, the potential loss of safety benefits is minimal.

For vehicles with a GVWR over 10,000 pounds, school buses are required to meet the seat compartmentalization of Standard No. 222, while MPVs must provide lap belts for the rear seat occupants. The agency believes that those two restraint concepts provide equivalent safety for the heavier vehicles.

Regulatory Flexibility Act

NHTSA has considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that the amendment promulgated by this final rule will not have a significant impact on a substantial number of small entities. As explained above, NHTSA expects only a very modest economic impact as a result of this rulemaking action because of the small number of affected vehicles (maximum of 520), and since many such vehicles already voluntarily meet the school bus standards. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria of Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act, and has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

Civil Justice Reform

This rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision of a state may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, a state may prescribe a standard for a motor vehicle or equipment obtained for its own use that imposes a higher performance requirement than the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.3 is amended by revising the definition of "designated seating position" in Section 571.3(b) to read as follows:

§ 571.3 Definitions.

* * * * *

(b) * * *

Designated seating position means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 4,536 kilograms (10,000 pounds), having greater than 127 centimeters (50 inches) of hip room (measured in accordance with SAE Standard J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating. For the sole purpose of determining the classification of any vehicle sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events, any location in such vehicle intended for securement of an occupied wheelchair during vehicle operation shall be regarded as four designated seating positions.

* * * * *

Issued on March 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–7350 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 582

[Docket No. 94–73; Notice 2]

RIN 2127–AF44

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this document, NHTSA adopts technical amendments to the insurance cost information regulations. Among the changes adopted are postponing, from January until March, the availability date of the insurance cost information booklet, and revising the term "passenger motor vehicles" to read "passenger cars, utility vehicles, light duty trucks, and vans." NHTSA also adds language making more explicit the limitations of the collision loss data, and language recommending that prospective purchasers contact insurance agents or insurance companies for more information. The amendments are adopted to make the insurance cost information more accurate.

DATES: These amendments are effective April 24, 1995, and will apply to the insurance cost information to be made available in March 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

Insurance Cost Information Regulation

49 U.S.C. 32302(c) states that the Secretary of Transportation (the Secretary) shall prescribe regulations that require passenger motor vehicle dealers to distribute to prospective purchasers, information developed by the Secretary and provided to the dealer, which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness. By delegation from the Secretary, NHTSA has been authorized to carry out the statute.

On January 31, 1975, NHTSA published 49 CFR part 582, Insurance Cost Information Regulation (40 FR 4918). Part 582, as then promulgated, required that automobile dealers "make available to prospective purchasers information reflecting differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness." Part 582, however, did not specify information that dealers must provide.

On March 5, 1993 (58 FR 12545), NHTSA published a final rule amending part 582. The rule complemented the 1975 rulemaking, and completed implementation of section 32302(c). The March 1993 final rule, which became effective April 5, 1993, requires dealers of new automobiles to make collision loss experience data available in booklets to prospective purchasers. The information to be provided in the booklet is specified in section 582.5, which requires inclusion of a complete explanatory text and updated data on auto insurance costs published annually by NHTSA.

The mandatory text specified by part 582 relates to, among other topics, the limitations of the auto insurance cost data as a predictor of differences in insurance premiums. Essentially, those limitations result from the fact that most of the factors that insurance companies use to establish premiums relate to driver characteristics and, except for the vehicle's value, are not directly related to the vehicle itself. Thus, as the text explains, the fact that a vehicle's historical claims experience is somewhat better or worse than that of other vehicles in its class may not be reflected in the premium that an insurance company establishes for that vehicle. If the claims experience is reflected, it is likely to have only a small impact on the premium.

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The mandatory text also urges consumers to contact insurance companies if they wish to obtain precise information about actual premiums for particular makes and models of vehicles. Previous studies by NHTSA have revealed that the difference between the premiums charged by different insurance companies for the same car and driver is greater than the difference between the premiums charged by a given company for comparably-valued cars that have different claims experience. NHTSA believed the mandatory text would help to minimize consumer confusion by providing customers with an understanding of the uses and limitations of the auto insurance cost data.

In specifying the yearly insurance cost data that accompanied the required text, NHTSA decided to rely on collision loss experience data collected and reported by the Highway Loss Data Institute (HLDI), as the best available indicator of the effect of damage susceptibility on insurance costs. In the March 1993 final rule, NHTSA specified HLDI's December Insurance Collision Report as the data source for part 582. NHTSA decided to specify HLDI's December Report because it contains more current data and covers more vehicle models than other HLDI publications. The HLDI data is presented in a format that ranks the vehicles in each class from best to worst (with numerical values given for each vehicle). NHTSA specified this format because it determined that the use of this ranking system should assist customers in evaluating the comparative performance of comparable vehicles.

In the March 1993 final rule, NHTSA stated its belief that the HLDI information should be made available as soon as possible after its publication date. Therefore, NHTSA stated its intent to publish the annual **Federal Register** document updating HLDI's December Insurance Collision Report data no later than January of the calendar year that follows HLDI's publication of the data.

The NPRM

In a notice of proposed rulemaking (NPRM) issued on September 13, 1994 (59 FR 46952), NHTSA proposed to amend part 582 by making certain changes in § 582.5, in which the text of the insurance cost information booklet is specified. Originally, the text specified the date "January [Year to be Inserted]." NHTSA proposed to substitute "March" for "January," in order to allow itself adequate time to publish and distribute the comparative insurance cost information booklet. In practice, HLDI does not send the December Insurance Collision Report data to NHTSA until mid-January. NHTSA then formats the data for printing, and arranges for the printing and distribution by mail of a single copy of the booklet to each of the nation's approximately 27,000 automobile dealers. NHTSA can thus reasonably expect that the booklet will be published by March of each year.

Part 582 originally specified a comparison of insurance costs for "passenger motor vehicles." In the NPRM, NHTSA proposed to revise the term "passenger motor vehicles," at appropriate places in § 582.5, to read "passenger cars, utility vehicles, light duty trucks and vans." The revisions were intended to make clear that the term "passenger motor vehicles" includes many vehicle types besides "passenger car."

NHTSA also proposed to make certain changes to the required text that would make more explicit the limitations of the collision loss data. In the final rule, the text in § 582.5 that explains the data's limitations stated that the collision loss data table does not include information about new models, models that have been substantially redesigned, and models without enough claim experience. In order to make clear that certain data should not be relied upon, NHTSA proposed to revise the third paragraph in § 582.5 to state:

> The table is not relevant for new models or models that have been substantially redesigned for [YEAR TO BE INSERTED], and it does not include information about models without enough claim experience.

Also, in the final rule, the fourth paragraph in § 582.5 stated that it is unlikely that a consumer's total premium will vary more than five percent depending upon the collision loss experience of a particular vehicle. Subsequently, a representative of the Insurance Services Organization (ISO), which recommends insurance premium rates to its members, indicated to NHTSA that the collision cost data could result in an insurance premium reduction of ten percent rather than the five percent mentioned in the booklet. Accordingly, NHTSA tentatively concluded that it would be more accurate to state that it is unlikely that a consumer's total premium will vary more than ten percent.

Finally, § 582.5 originally stated that consumers should contact insurance companies directly to determine the actual premium that a consumer will be charged for insuring a particular vehicle or for complete information about insurance premiums. NHTSA proposed to revise § 582.5 to advise the consumer to contact insurance company agents directly in order to obtain premium information. This proposal was intended to reflect the fact that the consumer's first point of contact with many insurance companies is the insurance company agent.

Summary of Comments and Agency Responses

NHTSA received comments from three entities on the issues raised in the NPRM. These included Advocates for Highway and Auto Safety (Advocates), the National Automobile Dealers Associations (NADA), and Volkswagen of America (VW). Each commenter generally supported the proposed amendment, but raised individual suggestions concerning specific portions of the proposed text.

a. *Publication date:* No commenter objected to the change of the publication date from January to March, and NADA affirmatively supported this change. NADA also suggested that NHTSA should "reconsider working towards publishing" the insurance cost data in the same booklet as DOE/EPA's comparative fuel economy data. In the March 1993 final rule, NHTSA rejected earlier proposals (by NADA and others) to publish all of the data in a single document. NHTSA continues to believe that this proposal is unworkable. The HLDI insurance cost information does not become available until late January. This time frame is too late to permit publication of the data simultaneously with DOE/EPA's "Gas Mileage Guide," which is made available at the beginning of the model year (ordinarily in the preceding October), when new models arrive at dealers' show rooms. Furthermore, the data in the Gas Mileage Guide, which are arranged according to criteria such as interior roominess, engine, and transmission, are presented differently from the HLDI data, which is arranged according to wheelbase and vehicle type.

b. *Covered Vehicles:* Both NADA and Advocates supported the agency's proposal to change the description of the vehicles covered by making it more specific. NADA suggested that the agency use the terms "station wagon/passenger van, pickup, and utility vehicle," throughout the text, to reflect the groupings into which the HLDI data is already broken out. NHTSA agrees that this suggestion has merit, and has decided to adopt it by revising the end of the first paragraph of § 582.5 to state: "COMPARISON OF DIFFERENCES IN INSURANCE COSTS FOR PASSENGER CARS, STATION WAGONS/PASSENGER VANS, PICKUPS, AND UTILITY VEHICLES ON THE BASIS OF DAMAGE SUSCEPTIBILITY."

c. *Discussion of the limitations of the data:* Two commenters addressed the agency's proposal to modify the textual discussion of the limitations of the data. NADA requested that the agency further emphasize and explain those limitations. On the other hand, Advocates expressed its concern that consumers may infer from the proposed language that the insurance cost data is of little value, and suggested that the agency emphasize the usefulness of the data. Accordingly, it proposed that, in addition to the textual changes proposed in the NPRM, the final rule adopt language that affirmatively states that the table "can be used to compare insurance premiums of most vehicle makes and models * * *." In addition, it proposed dropping the reference to "new models" in the description of vehicles to which the tables do not apply.

NHTSA has concluded that the presentation of the insurance cost information is clear and adequate. The agency disagrees with Advocates' conclusion that the fact that the proposed revision points out the limitations of the data will lead consumers to conclude that the insurance cost information is of little value. Since the issuance of the final rule in March 1993, the text of the insurance cost booklet has always contained a description of the limitations of the data; the revision merely clarifies those limitations. Therefore, NHTSA has decided against adopting Advocates' suggested affirmative statement concerning the appropriate uses of the data.

Advocates' suggestion that the reference to "new models" in the proposed revision to the third paragraph of the text should be deleted was based on its assertion that previous cost information is applicable to new models of the same vehicle make if the vehicle line has not been substantially redesigned. Although NHTSA believes that the term "new models" is ordinarily understood to mean an entirely new or substantially redesigned model, the agency has concluded that the term "new models" is superfluous in this context. Accordingly, the agency is accepting Advocates' proposal to delete the reference.

d. *Advice about contacting insurance agents:* Advocates suggested a change to the agency's proposed language advising consumers to contact insurance agents in order to obtain relevant insurance cost information. Advocates agreed that it was appropriate to advise consumers to contact insurance agents, but suggested that the regulatory text should provide consumers with the option of contacting either their insurance agent or their insurance company. NHTSA has concluded that this suggestion appropriately recognizes the fact that while in many instances, consumers contact individual agents with respect to their existing or prospective policies, there are other instances in which insurance companies do not work through individual agents and consumers instead must contact the company directly. Therefore, the agency has decided to adopt Advocates' suggestion to clarify the advice by referring both to insurance agents and insurance companies.

e. *Description of NCAP test results:* VW recommended changing the description of the New Car Assessment Program (NCAP) test results to emphasize that they are based on a single, 35 mph, barrier crash test of a new vehicle. NHTSA does not agree with VW that a change in wording is necessary. The present text is consistent with the description of the NCAP program that appears in other NHTSA publications. VW's recommended change would cause the description of the NCAP program in the insurance cost information booklet to differ from the text that already appears elsewhere. Moreover, while cost considerations limit the NCAP testing to one test per new vehicle model, the agency has access to other crash test data, both from manufacturers and from its own compliance test programs. The agency has concluded from its review of all available data that the statement that "NCAP test results demonstrate relative frontal crash protection in new vehicles" is accurate, and has decided to retain it.

f. *Variation in premiums:* No commenter addressed the agency's proposal to amend the statement as to the amount by which collision cost data could result in an insurance premium reduction. Accordingly, in order to increase the accuracy of the booklet, the agency is adopting its proposal to state that it is unlikely that a consumer's total premium will vary more than 10 percent.

Regulatory Impacts

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined the action not to be "significant" under the Department of Transportation's regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendments are minimal, so that a full regulatory evaluation is not required. This notice adopts minor amendments to the insurance cost information regulation, to increase the accuracy of the information provided to potential motor vehicle purchasers. The amount of extra text that must be included in the information booklet as a result of this amendment is minuscule.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this amendment on small entities. NHTSA estimates there are about 27,000 dealers of new passenger motor vehicles. Many of the dealers that may be affected by this amendment are considered to be small business entities. However, NHTSA believes that this amendment will not have a significant economic impact on any of these small dealers. This rulemaking adopts minor editorial changes, that result in the addition of a small amount of extra text to the insurance cost information booklet. The minimal cost increments to the dealers that may be associated with this amendment should have negligible effects on the purchase price of new passenger motor vehicles. For these reasons, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this amendment and determined that it will not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12623, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This amendment would not have any retroactive effect, and it does not preempt any State law. Chapter 323—*Consumer Information* of 49 U.S.C. does not provide for judicial review of rules issued pursuant to 49 U.S.C. 32302. The Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, provides generally for judicial review of final agency action, which in certain circumstances may include this proposed rule. The

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Administrative Procedure Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 582

Administrative practice and procedure, Insurance, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 582 as follows:

PART 582—[AMENDED]

1. The authority citation for part 582 is revised to read as follows:

Authority: 49 U.S.C. 32303; delegation of authority at 49 CFR 1.50(f).

2. Section 582.5 is revised to read as follows:

§ 582.5 Information form.

The information made available pursuant to § 582.4 shall be presented in writing in the English language and in not less than 10-point type. It shall be presented in the format set forth below, and shall include the complete explanatory text and the updated data published annually by NHTSA.

MARCH [YEAR TO BE INSERTED]

COMPARISON OF DIFFERENCES IN INSURANCE COSTS FOR PASSENGER CARS, STATION WAGONS/PASSENGER VANS, PICKUPS AND UTILITY VEHICLES ON THE BASIS OF DAMAGE SUSCEPTIBILITY

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new vehicle. The booklet compares differences in insurance costs for different makes and models of passenger cars, station wagons/passenger vans, pickups, and utility vehicles on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December [YEAR TO BE INSERTED] *Insurance Collision Report*, and reflects the collision loss experience of passenger cars, utility vehicles, light trucks, and vans sold in the United States in terms of the average loss payment per insured vehicle year for [THREE APPROPRIATE YEARS TO BE INSERTED]. NHTSA has not verified the data in this table.

The table represents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average, while a rating of 96 reflects a collision loss experience that is 4 percent lower (better) than average. The table is not relevant for models that have been substantially redesigned for [YEAR TO BE INSERTED], and it does not include information about models without enough claim experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the collision portion of their insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than ten percent depending upon the collision loss experience of a particular vehicle.

If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance companies or their agents directly to determine the actual premium that you will be charged for insuring a particular vehicle.

Please Note: In setting insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies or their agents directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as air bags and automatic seat belts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424–9393.

[Insert Table To Be Published Each March by the National Highway Traffic Safety Administration]

If you would like more details about the information in this table, or wish to obtain the complete Insurance Collision Report, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247–1600.

Issued on: March 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–7266 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 950309069–5069–01; I.D. 060694A]

RIN 0648–AG71

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities; Flotation Device Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NMFS issues this final rule to require shrimp trawlers using Turtle Excluder Devices (TEDs) in the Gulf and Atlantic Areas to attach specified flotation devices to hard TEDs or special hard TEDs with bottom escape openings. This action is necessary to improve the ability of bottom-opening, hard TEDs, and special hard TEDs to safely exclude sea turtles. In addition, NMFS is making technical amendments to the sea turtle conservation regulations to expand TED configuration options or to clarify gear descriptions, thereby reducing the chances of incidental capture and mortality of endangered and threatened sea turtles.

EFFECTIVE DATE: This rule is effective March 31, 1995, except for § 227.72(e)(4)(i)(I)(*2*)(*ii*), which contains information collection requirements that have not yet been approved by the Office of Management and Budget (OMB). Once OMB approves these requirements, a document will be published in the *Federal Register* announcing the effective date.

ADDRESSES: Requests for a copy of the environmental assessment (EA) prepared for this action, and comments on this action, should be addressed to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, Chief, Protected Species Management Branch, NMFS, Southeast Region (813/570–5312), or Barbara Schroeder, Acting National Sea Turtle Coordinator, NMFS Office of Protected Resources (301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round. The required use of TEDs has significantly reduced shrimp trawler related mortalities of sea turtles.

NMFS regulations also set forth criteria for allowable modifications to NMFS-approved TEDs including the use of flotation devices. Under 50 CFR 227.72(e)(4)(iv)(A), floats may be attached to TEDs only if they are attached to the outside of the net or inside the net behind the rear surface, at the top of the TED. They may not be attached to a flap. In previous TED certification tests, bottom-opening, single-grid TEDs were tested with flotation. However, because it was not previously evident to NMFS gear specialists that the lack of flotation on bottom-opening TEDs may prevent turtle release if used in certain ways, flotation was not required.

Interim Final Rule

NMFS issued an interim final rule, with a request for comments, requiring the use of floats on bottom-opening single-grid TEDs (59 FR 33447, June 29, 1994). NMFS issued an interim final rule because delaying issuance of a flotation requirement to provide prior notice and an opportunity for public comment would likely result in lethal takings of endangered and threatened sea turtles. As discussed in the interim rule, there is information that the lack of flotation on bottom-opening hard TEDs is likely preventing sea turtles from safely exiting the trawls. For the same reasons, the interim rule was made effective with only a 14-day delay in effective date rather than the normal 30-day delay.

Comments and Responses on the Interim Final Rule

NMFS received numerous comments on the interim final rule, both from participants in meetings with NMFS personnel and by letter. NMFS reviewed all the comments and combined them under general categories provided below.

Comment: Although the implementation of the flotation requirement alone did not appear to substantially reduce turtle mortalities in the Gulf of Mexico during the summer of 1994, the use of floats should still be required because less experienced shrimp vessel operators may drag their nets on the bottom, resulting in sea turtle capture as well as unnecessary damage to trawl nets.

Response: NMFS agrees. The combination of the flotation requirement with heightened enforcement efforts during the periods of high sea turtle strandings in the Gulf of Mexico resulted in significant reductions in sea turtle mortalities during the summer of 1994. Thus, with some alterations to the flotation specifications, NMFS is making the flotation requirement a permanent addition to the TED regulations.

Comment: The delayed implementation of the interim final rule was shortened from the normal 30-day period to 14 days. This short period did not provide shrimpers with sufficient time to comply with flotation requirement.

Response: The Administrative Procedure Act (APA) provides that the publication of a rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule (see 5 U.S.C. 553(d)). In this case, NMFS determined that good cause existed to reduce the delayed effective date from 30 days to 14 days because delayed implementation of the flotation requirement would have likely resulted in lethal takings of endangered and threatened sea turtles. In addition, NMFS gear experts noted that most shrimpers already possessed the inexpensive floats required. Finally, notice of the flotation requirement was informally given weeks before the effective date of the rule when NMFS staff met with members of the shrimping industry and media to request voluntary compliance with the flotation requirement.

Comment: Required use of floats will cause nets to twist. Twisted nets could result in lost catch and possible entanglement of sea turtles.

Response: NMFS gear experts met and traveled with members of the shrimp fishery who reported twisted nets resulting from floats on the TEDs. NMFS gear experts have noted that a net that is set with a twist in it is unlikely to untwist itself during the course of fishing, if floats are attached. Conversely, a properly set net with floats on the TED will not become twisted. In thousands of hours of TED testing, NMFS has never experienced a problem with twisting TEDs. NMFS believes that if proper care is taken when setting nets with TEDs with floats, net twisting can be prevented.

Comment: The requirement to use two polyvinyl chloride (PVC) floats on larger TEDs should not be applied to trawlers in shallow waters, as too much flotation will cause the net to fish too far off the bottom, resulting in lost catch.

Response: The interim final rule specified required flotation for a single-grid TED with a circumference of 120 inches (304.8 cm) or more to consist of a minimum of either one 9.8 inch (25.0 cm) diameter hard plastic or aluminum float or two 6.75 inches (17.2 cm) by 8.75 inches (22.2 cm) expanded PVC floats. Two PVC floats were required because PVC becomes compressed in deep water and loses buoyancy. While two PVC floats may provide excess flotation in shallow water, the same floats will provide adequate buoyancy in deeper water to ensure the TED does not drag on the bottom.

NMFS does not believe that this rule should be revised to create different requirements in different water depths because water depth requirements would be largely unenforceable. NMFS recommends that trawlers working in shallow waters switch to aluminum or hard plastic floats. In addition, the final rule provides options for shrimpers to use marked floats that would match the buoyancy of the TED, so that the problem of excessive flotation could be avoided. 50 CFR 227.72(e)(4)(i)(I)(*2*) allows shrimp fishermen to use floats of size and in any combination so that the combined buoyancy of the floats equals or exceeds that of the TED, as long as both the floats and TEDs have proper markings indicating their weight or buoyancy.

Comment: Tongue trawls (bib-type trawls) with hard TEDs should be exempt from the flotation requirement because the bib line on these nets normally would keep the TED from dragging on the bottom. The use of floats with this type of net would cause the net to fish off the bottom, reducing the catch.

Response: NMFS agrees that extra flotation might cause a tongue trawl to

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fish too high when the center bridle line is tight. However, there is no way to determine how the line is being handled in the water: A slack center bridle line would allow the TED to drag on the bottom. Enforcement officers would be unable to effectively enforce any such exemption and ensure protection for sea turtles. Consequently, NMFS does not believe that tongue trawls should be exempt for the requirement to use floats.

Comment: Aluminum TEDs should be exempt from the flotation requirement. TEDs made from hollow, welded aluminum tubing can be positively buoyant, and light-weight aluminum rod constructions would not need additional flotation.

Response: In a June 14, 1994 news release, NMFS requested that shrimpers voluntarily attach flotation to bottom-opening hard TEDs, except those constructed of aluminum tubing. NMFS made this request prior to publication of the interim final rule, and at that time believed that floats may not be necessary on aluminum TEDs. Further investigation by NMFS gear experts, however, revealed that aluminum single-grid TEDs also require supplemental flotation for proper buoyancy.

While hollow tube TEDs can retain air, all welds must be watertight. In the course of normal wear-and-tear, it is impossible to ensure that the welds will be able to exclude water under high hydrostatic pressure at fishing depths. The experience of NMFS enforcement personnel is that hollow TEDs can and do flood under actual use.

NMFS' experience with solid rod aluminum TEDs is that they, too, need flotation to achieve neutral buoyancy. NMFS divers have filmed solid aluminum single-grid TEDs dragging hard on the bottom when insufficient flotation is used. Therefore, NMFS included aluminum TEDs in the flotation requirement in both the interim final rule and this final rule.

NMFS does recognize that the interim rule may have required too much flotation on TEDs that are constructed of very light materials. Likewise, too little flotation may have been required on TEDs that are constructed of very heavy materials. To address that problem, this final rule includes a provision for matching the buoyancy of the floats to the weight of each TED.

Comment: The specifications in the interim rule, based on the physical dimensions of the floats, do not allow for the use of floats of different shapes and sizes or multiple, smaller floats whose buoyancy may be equivalent. Fishermen who attempted to use other types and combinations of floats were complying with the intent of the regulation, but were not complying with the letter of the regulation.

Response: NMFS agrees that there are many possible combinations of floats that would produce sufficient buoyancy to prevent TEDs from dragging on the bottom, and trapping sea turtles. When the buoyancy of each float can be easily determined, allowing the use of different numbers and sizes of floats would provide much greater flexibility to shrimpers in configuring their gear, based on their personal experience and preference. Therefore, provisions for the use of various combinations of floats of marked buoyancy have been incorporated in this final rule at 50 CFR 227.72(e)(4)(i)(I)(*3*).

Comment: Expanded ethylene vinyl acetate (EVA) should be considered as an alternative float material. Expanded EVA has the same characteristics as expanded PVC.

Response: NMFS agrees that floats constructed of expanded EVA could be used in place of expanded PVC. Provisions for the use of expanded EVA floats have been incorporated in this final rule.

Final Rule and Changes From the Interim Final Rule

As a result of comments and recommendations received, the final rule differs from the interim rule in several areas.

1. The interim final rule required flotation on only bottom-opening single-grid hard TEDs because these TEDs are the ones most frequently used and an need to rapidly address the emergency situation presented by the strandings last spring. Bottom-opening hooped hard TEDs and bottom-opening Jones TEDs which make up only a small portion of TEDs in use, also have the same dragging problem. Therefore, the final rule extends the flotation requirement to all bottom-opening hard and special hard TEDs, including hooped hard TEDs and a single special hard TED, the Jones TED.

2. The final rule allows for the use of floats constructed from expanded EVA as an alternative to floats constructed from expanded PVC. NMFS gear experts determined that the characteristics of expanded EVA are substantially similar to expanded PVC. Allowance of this material expands the options available to fishermen to comply with this rule.

3. The interim final rule specified required flotation solely on the basis of the size of the floats and the circumference of the TED. These measurements provide useful and enforceable approximations of the buoyancy provided by the floats and the buoyancy required by the TED. They do not, however, provide a means for exactly matching the weight of the TED to the buoyancy, nor do they provide for the use of equivalent amounts of flotation by floats that do not meet the size specifications. The final rule provides three alternatives by which shrimpers can comply with the requirement to use floats. These alternatives address many of the comments expressed above and provide for maximum flexibility for shrimp fishermen. The first alternative, 50 CFR 227.72(e)(4)(i)(I)(*1*), provides the same requirement as that of the interim rule with respect to amount of flotation for TEDs with a circumference of 120 inches or greater and for TEDs with a smaller circumference.

The second alternative, 50 CFR 227.72(e)(4)(i)(I)(*2*), provides that floats of any size and in any combination may be attached so that the combined buoyancy of the floats equals or exceeds the weight of the TED provided that the floats and TEDs are marked by the manufacturers with their buoyancy and weight as specified in the regulation. NMFS has held informal discussions with some TED and float manufacturers who indicated that, while marked floats and TEDs are currently not generally available, they could be produced without great difficulty. NMFS believes that marked floats and TEDs will become more widely available, as manufacturers respond to demand from fishermen for labeled gear that will enable them to comply with this provision. Furthermore, previously manufactured TEDs may be weight marked by returning them to a registered manufacturer. By simply adding up the flotation values of the floats used and comparing that value to the imprinted weight of the TED, both fishermen and enforcement officials can quickly and easily determine whether sufficient flotation is being used to prevent bottom-opening TEDs from entrapping turtles. At the same time, shrimpers can be assured that they are not using excess flotation, which could result in handling difficulties or decreased catches.

The third alternative, at 50 CFR 227.72(e)(4)(i)(I)(*3*), provides for the use of floats of any size and in any combination, provided that the floats are marked as required, to achieve a certain buoyancy based on the circumference of the TED. This provision is established in order to increase the flotation options available before weight-marked TEDs become widely available in the industry. By allowing shrimpers to select different sizes and combinations of floats based on their buoyancy, the final rule provides more flexibility in customizing gear for optimum handling. As an example, shrimpers may elect to use two smaller floats offset to the sides to stabilize the TED rather than one large float.

Technical Amendments to TED Gear Descriptions

A number of technical amendments are made to the sea turtle regulations to expand the options of shrimpers in configuring TEDs or to clarify previous gear descriptions.

1. The maximum allowable grid angle for hard TEDs is increased from 50° to 55°. A TED's optimum grid angle, both for turtle exclusion and shrimp retention, is 45°. Following proper installation of a single-grid hard TED or special hard TED in a new net, regular break-in and stretching of the net will cause the grid to sag, decreasing the grid angle by up to 10°. Therefore, increasing the maximum grid angle to 55° allows TEDs to be installed in new nets so that the optimum grid angle of 45° will be achieved after the net is broken in.

2. The requirements for escape openings on hard TEDs are clarified to prevent the possibility of turtle entrapment. The original requirements only specified an overall size for the escape opening. With certain TEDs, however, an escape opening could be cut that matched the regulatory specifications but that still left pockets of net webbing at the bottom edge of the TED that could entangle and trap a turtle. The technical amendment specifies the minimum amount of trawl net webbing material that must be cut along the face of the TED grid, though the existing requirements for minimum escape openings remain unchanged. This will ensure that the escape opening is not restricted at the face of the TED. The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 8 inches (20.4 cm). In other words, the width of the cut in the trawl webbing along the face of the grid must extend on either side to within 4 inches (12.2 cm) of the maximum outside width of the grid. Figure 13 illustrates the dimensions for the cut.

3. The use of chafing webbing gear with bottom-opening TEDs, previously an allowable modification for hard TEDs used only in the summer flounder trawl fishery, is made an allowable modification for hard TEDS used in all trawl fisheries in which TEDs are required. Additionally, the materials which may be used and the method of attachment of the webbing chafing gear are specified.

4. The use of door frames on the exiting openings of hooped hard TEDs is no longer allowed. Continuing evaluation of TED technology by NMFS revealed that the use of a metal frame door frame on hooped hard TEDs may interfere with the release of small turtles. This change is believed to be beneficial to sea turtles and to have a negligible impact on fishermen. Doors on existing hooped hard TEDs can be easily removed at the hinges or sawed off, and a webbing flap may be used to cover the escape opening.

5. The method of attachment of the escape opening webbing flap is clarified to state that the sides of the webbing flap may be attached to the trawl webbing no farther back than the row of meshes which lies 6 inches (15.2 cm) behind the posterior edge of the grid. This description is much clearer than the previous description, and is therefore easier to comply with and enforce.

6. The requirements for the escape opening of the Taylor soft TED are changed. The minimum width of the forward edge of the escape opening is reduced from 96 inches (244 cm) to 72 inches (183.6 cm). The initial certification testing of the Taylor TED was conducted on a TED with the 72–inch (183.6–cm) forward edge, and that TED met NMFS certification requirements. Therefore, the description of the Taylor TED is changed to reflect the originally certified gear. Provisions remain in the Taylor TED description, however, for increasing the forward edge of the escape opening of the Taylor TED to 96 inches (244 cm) in order to permit the exclusion of leatherback turtles.

7. The method of attachment of an accelerator funnel forward of a hard TED is clarified. A funnel may be inserted immediately forward of the TED if its rear edge does not extend past the bars of the TED. The leading edge of the funnel may be sewn to the trawl around its entire circumference; the trailing edge of the funnel may be attached to the TED along 1/3 of the circumference of the funnel, on the side opposite the escape opening.

8. The description of the Andrews soft TED is changed to allow more flexibility in the construction of the TED. The Andrews TED is described as a webbing funnel within the trawl, and for the purposes of the regulation, the bottom panel of the trawl net may be incorporated as the bottom panel of the funnel. This change requires the bottom edge of the side panels of the funnel to be sewn to the bottom panel of the trawl, if the bottom panel of the trawl is being used as the bottom panel of the funnel. Andrews TEDs constructed in this way should not have any deleterious effect on turtles compared to full-funnel Andrews TEDs, as the bottom panel of the trawl is a much smaller mesh size than the TED itself, and would not likely entangle turtles.

In addition, the requirement is deleted that the rear edge of the Andrews TED funnel extend to within 20 inches (50.8 cm) of the net extension. This requirement did not reflect the originally certified TED and made Andrews TEDs difficult to construct.

9. The use of roller gear with hard TEDs and special hard TEDs is allowed. Rollers, constructed of hard plastic, attached beneath the TED in a way that does not interfere with the TED escape opening, may reduce the TED's dragging on the bottom and can reduce chafing and damage to the TED and trawls. While roller gear may reduce chafing, attachment of proper flotation to a TED is the most effective means to control chafing on the TED and to ensure sea turtle escape from bottom-opening TEDs.

10. The description of construction materials approved for use in hard TEDs is clarified. If steel or aluminum tubing is used, the tubing must have a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm). The previous description specified a minimum inside diameter of 1/4 inch (0.64 cm) which would result in excessively heavy TEDs if a larger outside diameter pipe was used, which was not the intention of the original rule.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists, under authority at 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and an opportunity for public comment on those provisions of this rule described above as technical amendments to TED gear descriptions. Such procedures are unnecessary because these changes are minor, technical amendments to existing regulations.

With respect to the provisions of this final rule which implement provisions of the interim final rule without change, no delay in effective date is required. Regarding those provisions of the interim final rule that have been changed by this final rule and those new provisions of this final rule, described above as technical amendments to TED gear descriptions, which have the effect

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of relieving restrictions on shrimpers, no delay in effective date is required under 5 U.S.C. 553(d)(1). Concerning those provisions added by this final rule requiring the use of flotation on hooped hard TEDs and on the Jones TED, the AA finds for good cause, pursuant to 5 U.S.C. 553(d)(3), that it is unnecessary and contrary to the public interest to delay for 30 days the effective date of these provisions because 30-day delayed implementation of this requirement could result in unnecessary lethal takings of endangered and threatened sea turtles and most shrimpers already possess the necessary and inexpensive flotation devices required and can install them quickly. The AA has determined that 7-days delay in effective date will provide more than sufficient time to come into compliance. Further, with respect to those provisions of this rule described above as technical amendments to TED gear descriptions which impose new requirements on shrimpers, such as no longer allowing the use of door frames on hooped hard TEDs, the AA finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3) because the restrictions are very minor and can be accomplished quickly and at little or no cost and that to delay their implementation could cause unnecessary lethal takings of endangered or threatened sea turtles. The AA has determined that a 7-day delay in effective date will provide more than sufficient time to come into compliance.

In the interest of uniformity with respect to implementation of the provisions of this rule, NMFS has determined to make the entire rule effective March 30, 1995, except for § 227.72(e)(4)(i)(I)(*2*)(*ii*), which contains information collection requirements that have not yet been approved by OMB.

This rule contains a collection of information subject to the Paperwork Reduction Act (PRA). This collection has been submitted to OMB for approval. Upon approval, a notice of effectiveness will be published in the *Federal Register*.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED-use in shrimp trawls. A supplemental EA was prepared for the interim final rule and another was prepared specifically for this final rule, which concludes that this action will have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Incorporation by reference, Marine mammals, Transportation.

Dated: March 17, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(4)(iii)(A)(*2*) is removed and reserved; paragraph (e)(4)(iii)(E) is added; and paragraphs (e)(4)(i)(A)(*3*), (e)(4)(i)(C), (e)(4)(i)(G)(*1*), (e)(4)(i)(G)(*2*)(*i*), (e)(4)(i)(I), (e)(4)(ii)(A), (e)(4)(ii)(B), (e)(4)(iii)(C), (e)(4)(iii)(D), and (e)(4)(iv) are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(i) * * *

(A) * * *

(*3*) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

* * * * *

(C) *Angle of deflector bars.* The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl.

* * * * *

(G) * * *

(*1*) On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. A door frame may not be used over the escape opening; however, a webbing flap may be used as provided in paragraph (e)(4)(iv)(C) of this section.

(*2*)(*i*) On a single-grid hard TED, the cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. (Figure 13 of this part illustrates the dimensions of this cut.) The resulting escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the midpoint of the horizontal measurement.

* * * * *

(I) *Flotation.* Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (e)(4)(i)(I)(*1*) of this section, or the buoyancy requirements of paragraph (e)(4)(i)(I)(*2*) of this section, or the buoyancy-dimension requirements of paragraph (e)(4)(i)(I)(*3*) of this section. If roller gear is used pursuant to paragraph (e)(4)(iv)(E), the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(*1*) *Float dimension requirements.* (*i*) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(*ii*) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(*2*) *Float buoyancy requirements.* Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:

(*i*) *Float buoyancy markings.* Marking must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(*ii*) *TED weight markings.* The marking must be made by a registered TED manufacturer and must be permanent and clearly legible and must be accompanied by the identifying symbol of the registered manufacturer. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to a registered TED manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked. A TED manufacturer may become registered to mark TEDs by requesting registration in writing from the NMFS Southeast Regional Director. To request registration, the manufacturer should write to the Director, Southeast Region, NMFS, 9721 Executive Center Dr. North, St. Petersburg, FL 33702, and include the manufacturer's name, address, and telephone number; the sizes, styles, and anticipated number of TEDs to be produced annually; the method of marking; and a description of the manufacturer's distinctive, identifying symbol. Upon receipt of a complete request, the Director, Southeast Region, NMFS, will notify the manufacturer in writing of their registration.

(*3*) *Buoyancy-dimension requirements.* Floats of any size and in any combination, provided that they are marked pursuant to paragraph (e)(4)(i)(I)(*2*)(*i*) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(*i*) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(*ii*) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(*iii*) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(ii) * * *

(A) *Flounder TED* (Figure 10 of this part). The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. An additional vertical bar runs from the middle of the bottom bar to the middle of the horizontal bar dividing the opening at the bottom into two rectangles with an opening height of no more than 10 inches (25.4 cm) and an opening width of no more than 14 1/2 inches (36.8 cm). If, because of the width of the TED, the opening width of the bottom rectangles exceeds the maximum allowed, additional vertical bars must be added. This TED must comply with paragraphs (e)(4)(i)(B), (e)(4)(i)(C), (e)(4)(i)(F), and (e)(4)(i)(G) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, and the size of the escape opening, except that the deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED. Use of this TED is restricted to the Atlantic summer flounder bottom trawl fishery.

(B) *Jones TED* (Figure 11 of this part). The Jones TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least 1/8 inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lie in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2 1/2 inches (6.4 cm). The spacing between all other deflector bars must not exceed 3 1/2 inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3 1/2 inches (8.9 cm). This TED must comply with paragraphs (e)(4)(i)(B), (e)(4)(i)(C), (e)(4)(i)(F), (e)(4)(i)(G), (e)(4)(i)(H)(*2*), and (e)(4)(i)(I) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, the size of the escape opening, the size of the grid, and flotation.

(iii) * * *

(C) *Andrews TED* (Figures 8a and 8b of this part). The Andrews TED is a funnel constructed of 5-inch (12.7-cm) stretched mesh polyethylene or polypropylene webbing that is sewn inside a shrimp trawl. The bottom panel of the trawl may be used as the bottom panel of the funnel, so long as the bottom edges of the sides of the funnel are sewn at every mesh to the bottom panel of the trawl. The leading edge of the funnel must be sewn with heavy twine at all points to the outer trawl beginning on the row of meshes located 20 meshes behind the center of the footrope and continuing around the circumference of the trawl, following the same row of meshes. The webbing may not be laced with rope. The funnel must taper to an escape opening in the bottom of the trawl. The trailing edge on the funnel must be sewn at all points around the circumference of the escape opening. The escape opening must be at least 96 inches (243.8 cm) in circumference. A webbing flap may be used to cover the escape opening if no device holds the webbing flap closed or otherwise restricts the opening, and if such flap is constructed of webbing that has a stretched mesh size no larger than 2 inches (5.1 cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is 50 meshes wide and 15 meshes deep, does not overlap the exit opening more than 5 meshes on each side (it may be attached along the 15-mesh edge), and maintains an opening of at least 48 inches (121.9 cm) in a taut position.

(D) *Taylor TED* (Figures 9a and 9b of this part). The Taylor TED is constructed of 6-inch (15.2–cm) polyethylene or polypropylene webbing that is heat-set knotted or braided. The Taylor TED deflector panel must be not less than 228 inches (580 cm) on the leading edge and not less than 120 inches (305 cm) long. The leading edge, sides, and apex of the deflector panel

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must be sewn to the trawl body so as to form a complete barrier to large objects inside the trawl net forward of the codend or extension. The apex may be removed not more than 24 inches (61 cm) forward of the rear point. If the apex is removed, a rectangular section 24 inches (61 cm) long must be sewn evenly to the rear of the deflector panel to maintain the 120-inch (305–cm) length. The leading edge of the Taylor TED deflector panel must be sewn to the bottom body of the trawl net. The rear point of the deflector panel, or rear edge, if the apex is removed, must be sewn evenly, centered across the top body. An escape opening must be located on the top of the trawl body centered over the deflector panel. The opening must measure not less than 72 inches (183.6 cm), must be in a single row of meshes, and must be located no farther forward than the point where its entire length is above the deflector panel--the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the deflector panel on the other side. All trawl webbing above the deflector panel between the 72-inch (183.6–cm) cut and the posterior edge of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1–cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap may not exceed the length of the forward edge of the triangular opening. The flap may extend not more than 12 inches (30.5 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the body, but may not be attached farther aft than the rear point of the escape opening. One row of chain not larger than 3/16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain may not exceed 84 inches (214.2 cm).

(E) *Allowable modifications to soft TEDs.* The following modifications may be made to the Morrison and Taylor TEDs to increase the size of the escape opening to permit the exclusion of leatherback turtles. An enlarged escape opening must be created on the top of the trawl body centered over the deflector panel. The opening must measure not less than 96 inches (244 cm), must be in a single row of meshes, and must be located no farther forward than the point where its entire length is above the deflector panel--the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the deflector panel on the other side. All trawl webbing above the deflector panel between the 96–inch (244–cm) cut and the posterior edge of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2–inch (5.1–cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap may not exceed the length of the forward edge of the triangular opening. The flap may extend not more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the body, but may not be attached farther aft than the rear point of the escape opening. One row of chain not larger than 3/16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain may not exceed 96 inches (244 cm). For the Morrison TED, the apex of the excluder panel may be removed no more than 48 inches (122 cm) forward of the rear edge. A rectangular section 48 inches (122 cm) long must then be sewn evenly to the rear of the excluder panel to maintain the length prescribed in the description of the Morrison TED. For the Morrison TED, the addition of a webbing flap and the modification of the excluder panel may only be done conjointly with the enlargement of the escape opening as described in this paragraph (e)(4)(iii)(E).

(iv) *Allowable modifications to TEDs.* No modifications may be made to an approved soft TED, except for the modifications described in paragraph (e)(4)(iii)(E). Unless otherwise prohibited in paragraph (e)(4)(ii) of this section, only the following modifications may be made to an approved hard TED and an approved special hard TED:

(A) *Floats.* In addition to floats required pursuant to paragraph (e)(4)(i)(I) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(B) *Accelerator funnel.* An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1 5/8 inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than 1/3 of the circumference of the funnel is attached, and if the inside horizontal opening of at least 39 inches (99.1 cm) is maintained. In a downward shooting TED, only the top 1/3 of the circumference of the funnel may be attached to the TED. In an upward shooting TED, only the bottom 1/3 of the circumference of the funnel may be attached to the TED.

(C) *Webbing flap.* A webbing flap may be used to cover the escape opening if no device holds it closed or otherwise restricts the opening, and if it is constructed of webbing with a stretched mesh size no larger than 1 5/8 inches (4.1 cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid, and does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid.

(D) *Chafing webbing.* A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(E) *Roller gear.* Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(*1*) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than 1/2 inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(*2*) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3 1/2 inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

* * * * *

3. Figure 1 to part 227 is revised to read as follows:

BILLING CODE 3510–22–F

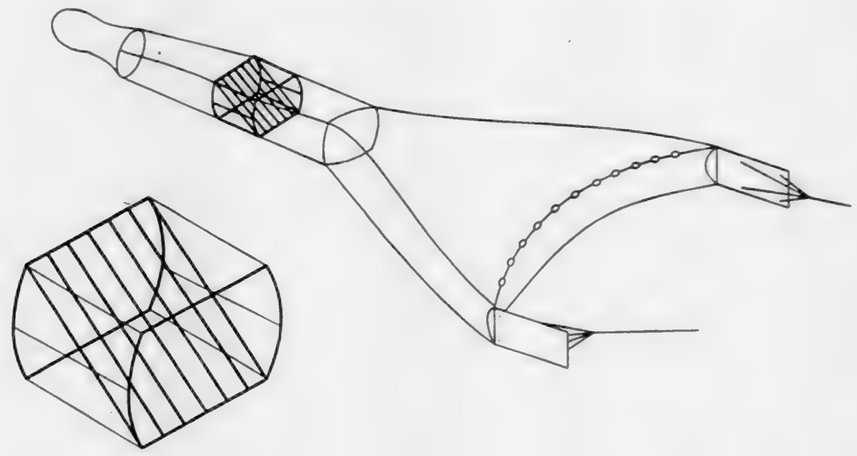


FIGURE 1 to part 227--NMFS TED

BILLING CODE 3510–22–C

4. Figure 13 to part 227 is revised to read as follows:

BILLING CODE 3510–22–F

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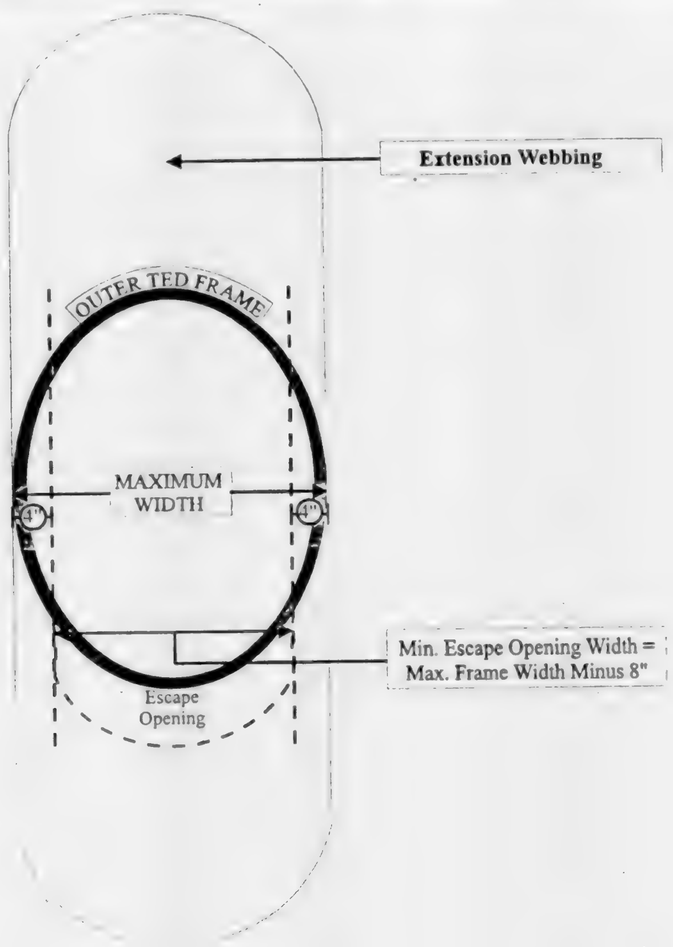


FIGURE 13 to part 227--SINGLE GRID HARD TED ESCAPE OPENING

BILLING CODE 3510-22-C

[FR Doc. 95-7235 Filed 3-21-95; 11:30 am]

BILLING CODE 3510-22-F

50 CFR Part 672

[Docket No. 950206041-5041-01; I.D. 032095A]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 22, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area was established by the final 1995 groundfish specifications (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the inshore component in the Central Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 38,085 mt, with consideration that 3,000 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-7232 Filed 3-20-95; 4:43 pm]

BILLING CODE 3510-22-F

50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 032095C]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Trawl Gear in Bycatch Limitation Zone 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species catch (PSC) allowance of *C. bairdi* Tanner crab apportioned to the trawl Pacific cod fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 20, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 PSC allowance of *C. bairdi* Tanner crab in Zone 1 for the trawl Pacific cod fishery category, which is defined at § 675.21(b)(1)(iii)(E), was established as 225,000 crabs by the 1995 final initial specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the PSC allowance of *C. bairdi* Tanner crab for the trawl Pacific cod fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in Zone 1 of the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: March 20, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-7233 Filed 3-20-95; 4:43 pm]

BILLING CODE 3510-22-F

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ISS 57

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Proposed Rules

Federal Register
Vol. 60, No. 57
Friday, March 24, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94-981-4 PR]

Almonds Grown in California; Reduction of Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on revising the expenses and assessment rate previously established under Marketing Order No. 981 for the 1994–95 crop year. This proposal would reduce the budget of expenses and rate which almond handlers may be assessed for funding expenses by the Almond Board of California (Board) that are reasonable and necessary to administer the program.

DATES: Comments received by April 24, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2536–S, Washington, DC 20090–6456, telephone 202–720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone 209–487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 981, both as amended [7 CFR part 981], regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which began July 1, 1994, and ends June 30, 1995. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

A budget of expenses and rate of assessment for the 1994–95 crop year was recommended on May 18, 1994, by the Board, the agency responsible for local administration of the program. An interim final rule was issued in the **Federal Register** on July 14, 1994, [59 FR 35847] and a final rule was issued in the September 8, 1994 **Federal Register** [59 FR 46321]. Approved expenditures total $9,435,262 with an approved assessment rate of 2.25 cents per pound. Of the 2.25 cents per pound, handlers could receive credit-back against their assessment obligation up to one cent per pound for their own promotional expenditures. Specific explanations of various expenditure categories and comparisons with a prior period are contained in the aforementioned final rule.

The Board met on September 14, 1994, and recommended, by a seven to two vote, postponing its paid advertising campaign and directly related activities until further notice. It also voted to postpone assessment billings pending evaluation of legal issues and future program activities. Generic public relations activities and other promotion-related activities to which the Board was contractually committed at that time are to be continued. This action was taken as a result of uncertainty created by legal

decisions regarding the Board's former advertising and promotion program.

Specifically, the Ninth Circuit Court of Appeals ruled in December 1993, that aspects of the Board's former advertising and promotion program in the 1980's were unconstitutional. On remand, the district court subsequently awarded plaintiff handlers refunds of assessments and other money spent under the program. This decision was issued on September 6, 1994, which led to the Board's actions to postpone advertising activities at its September 14, 1994, meeting. The district court's remand decision is currently being appealed. In addition, several handlers filed legal challenges to the Board's current credit-back advertising and promotion program, pursuant to Section 608(c)(15)(A) of the Act.

The Board again met on November 30, 1994, and recommended, by a seven to three vote, reducing the assessment rate by eliminating the portion applicable to credit-back to handlers for their own promotional activities (one cent), and by eliminating the portion of the remaining assessment applicable to generic promotion activities. The resulting assessment rate the Board recommended handlers pay was .47 cents per pound. Concurrently, the Board again postponed assessment billings pending further evaluation of the Board's financial status. These actions were taken because of the apparent lack of support by some handlers at the present time for generic promotion and credit-back programs, demonstrated by legal challenges filed by such handlers representing a significant portion of the industry volume. One Board member commented that since the handlers who have filed legal challenges are not likely to pay the advertising assessment, it is not equitable for the remainder of the industry to shoulder the expense of an advertising program.

The Board met again on February 1, 1995, and recommended, by a six to four vote, to further reduce the assessment rate. The Board recommended an assessment rate of .25 cents per pound. This action was taken after the Board further evaluated its financial position and current and future program activities.

If implemented and collected, an assessment rate of .25 cents per pound will generate income of $1,675,000 based on an estimated assessable crop of 670 million pounds. When combined with cash and cash equivalents held by the Board, this would provide the Board with sufficient income to meet its administrative expenses and those promotional expenses to which it is contractually obligated for the remainder of the current fiscal year.

To reduce the budget of expenses previously approved ($9,435,262), the Board deleted the funds budgeted for reserve replenishment ($300,000) and at its November 30, 1994, meeting, postponed a major portion ($3.9 million) of the $4.7 million funds budgeted for promotional activities. These revisions would reduce the budget to $5,235,262. The reduced budget would provide the Board with sufficient capital to carry into the next fiscal year to finance operations prior to collection of future assessments.

Concerns were raised that the reduction of the assessment rate mid-way through the crop year may generate complaints from those handlers who relied on the final rule of September 8, 1994, which established an assessment rate of 2.25 cents per pound, of which handlers could receive credit-back up to one cent per pound for their own promotional expenditures. Some handlers have incurred expenses that would be eligible for credit-back under the provisions of that rule.

If the assessment rate is reduced with no portion being creditable, there will be no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the current rate of 2.25 cents. Under the current established assessment of 2.25 cents, if handlers claimed credit-back for the entire one cent, they would still be required to pay 1.25 cents per pound to the Board. Handlers would pay significantly less even if they conducted advertising for which they believed credit-back would be obtained. In addition, benefits are derived from advertising undertaken by these handlers.

This action would reduce the assessment obligation imposed on handlers. The assessments would be uniform for all handlers. The assessment cost would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. Comments received within 30 days of publication of this proposed rule in the **Federal Register** will be considered prior to any final action being taken.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.341 is revised to read as follows:

§ 981.341 Expenses and assessment rate.

Expenses of $5,235,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at .25 cents per kernel pound of almonds. Of the .25 cents assessment rate, none is available for handler credit-back pursuant to § 981.441.

Dated: March 21, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–7336 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–02–W

7 CFR Part 1036

[Docket No. DA–95–13]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This document invites written comments on a proposal to terminate the advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania order. Termination of the provisions was requested by several associations of dairy farmers whose milk is pooled under the order. Termination would eliminate redundant expenses in administering regional advertising and promotion programs without affecting producers' participation.

DATES: Comments are due on or before April 7, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

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FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–2357.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the following provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered:

Sections 1036.105 through 1036.122, the undesignated center heading preceding them, and the reference to these provisions in § 1036.73.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 14th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures before the process to appoint a new Board is initiated in April.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination, requested by Milk Marketing Inc. (MMI), Dairylea Cooperative Inc., and Tri-County Producers Cooperative, all associations of dairy farmers whose milk is pooled on the Eastern Ohio-Western Pennsylvania Federal milk order, would eliminate the advertising and promotion provisions of that order.

The cooperatives stated that the primary purpose of these provisions, at the time of their implementation, was to increase producer participation in the advertising and promotion of milk and dairy products. However, the Dairy and Tobacco Adjustment Act of 1985 mandated that all dairy farmers contribute to such activities through a national program spanning all Federal order marketing areas (7 CFR part 1150). The cooperatives asserted that the advertising and promotion provisions of the order are redundant and create unnecessary expenses in view of the existence of qualified regional programs that are funded under the national advertising and promotion program. The efficiency and effectiveness of producer funds would be enhanced with termination of the Federal order advertising and promotion provisions. Thus, the cooperatives requested removal of the advertising and promotion provisions to eliminate administrative costs without affecting the integrity of the Federal order program.

Section 608c(16)(A) of the Act authorizing Federal milk orders provides that any order provisions may be terminated separately whenever the Secretary makes a determination that such provisions obstruct or do not tend to effectuate the declared policy of the Act.

Therefore, comments are sought to determine whether the aforementioned provisions should be terminated

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: March 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–7335 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–6]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule regarding the establishment of standards for "swim-with-the-dolphin" interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–076–2 that are received on or before March 24, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–076–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–8699.

SUPPLEMENTARY INFORMATION: On January 23, 1995, we published in the **Federal Register** (60 FR 4383–4389, Docket No. 93–076–2) a proposal to amend the Animal Welfare regulations to establish standards for "swim-with-the-dolphin" interactive programs.

Comments regarding the proposed rule were required to be received on or before February 22, 1995. On February 28, 1995, we published a notice in the **Federal Register** (60 FR 10810, Docket No. 93–076–4), reopening and extending the comment period for Docket No. 93–076–2 through March 9, 1995. On March 9, 1995, we published a notice in the **Federal Register** (60 FR 12908, Docket 93–076–5) further extending the comment period through March 13, 1995. However, several Federal agencies have indicated the need for additional time to develop and submit comments on the proposed rule.

So that we may consider comments received after March 13, we are reopening and extending the comment period for Docket No. 93–076–2 through March 24, 1995. During this period, other interested persons may also submit their comments for our consideration.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 21st day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7333 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Computer Generated Facsimiles of SBA Forms

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize qualified development companies to use computer generated facsimile exact copies of SBA application and closing forms in submitting loan applications and closing documents. This rule is being proposed in order to ease administration of the development company program.

DATES: Comments must be submitted on or before April 24, 1995.

ADDRESSES: Comments should be sent to LeAnn Oliver, Acting Director, Office of Rural Affairs & Economic Development, Small Business Administration, 409 3rd Street S.W., Suite 8300, Washington, D.C., 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn Oliver, (202) 205–6485.

SUPPLEMENTARY INFORMATION: For many years, SBA has required Certified Development Companies to use forms provided by SBA in the development company loan program. With advances in technology, forms may be reproduced as mirror image facsimiles by computers. Such reproductions may be in the best interests of the development company loan program.

Under this proposed rule, Certified Development Companies would be authorized to use SBA application and closing forms which have been computer generated by the certified development companies, attorneys retained by such companies, or by third parties with whom they have contracted. Because SBA in the past has withheld permission to computerize certain identified SBA forms, the proposed new section 108.504–1 would specifically include the following forms in the general authority to utilize computer generated facsimile copies: SBA Forms 1248 (Authorization and Debenture Guaranty), 1505 (Note), 1504 (Debenture), 1506 (Servicing Agent Agreement), 1429 (Use of Proceeds), 148 (Guaranty), 928 (Mortgage), 930 (Deed of Trust), 1059 (Security Agreement), 1243 (CDC Certificate) and 1528 (CDC Board Resolution).

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

SBA certifies that this rule will not constitute a significant regulatory action for purposes of Executive Order 12866, since the change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that this rule will not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

SBA certifies that this rule will not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of Executive Order 12778.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set forth above, SBA proposes to amend part 108 of title 13 of the Code of Federal Regulations as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.504–1 would be added to read as follows:

§ 108.504–1 Computer Generated Facsimile Copies of SBA Forms

For 504 Program loans, a 503 Company may use computer generated SBA application and closing forms which are exact facsimile reproductions of SBA forms generated by the 503 Company, attorneys retained by the 503 Company or by third parties with which the 503 Company has contracted; provided that a 503 Company which utilizes such computer generated forms shall be responsible to SBA for a substantial loss resulting from inexact reproduction of any such form and provided further that SBA reserves the right not to guarantee a debenture because an inexact computer form has been submitted to SBA in support of a request for such guarantee. All SBA loan forms, including, but not limited to the following, may be computer generated: SBA Forms 1248 (Authorization and Debenture Guaranty), 1505 (Note), 1504 (Debenture), 1506 (Servicing Agent Agreement), 1429 (Use of Proceeds), 148 (Guaranty), 928 (Mortgage), 930 (Deed of Trust), 1059 (Security Agreement), 1243 (CDC Certificate) and 1528 (CDC Board Resolution).

* * * * *

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: February 10, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–6977 Filed 3–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

14 CFR Chapter I

Federal Aviation Administration; Harmonization Initiatives

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration and the Joint Aviation Authorities will convene a meeting to

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accept input from the public on the Harmonization Work Program. The Harmonization Work Program is the means by which the Federal Aviation Administration and the Joint Aviation Authorities carry out a commitment to harmonize, to the maximum extent possible, the rules regarding the operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of this meeting is to provide an opportunity for the public to submit input to the Harmonization Work Program. This notice announces the date, time, location, and procedures for the public meeting.

DATES: The public meeting will be held on April 11, 1995, starting at 9 a.m. Written comments are also invited and must be received on or before March 31, 1995.

ADDRESSES: The public meeting will be held at the Logan Airport Hilton, Boston, Massachusetts 02128. Persons unable to attend the meeting may mail their comments in triplicate to: Ms. Nicole Romeo, Federal Aviation Administration, Engine and Propeller Directorate, ANE–110, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Ms. Nicole Romeo, Engine and Propeller Directorate Harmonization Coordinator, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 238–7111; telefax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than March 31, 1995. Such requests should be submitted to Ms. Nicole Romeo as listed in the section titled **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda.

The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible. In addition, the amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be a morning and afternoon break and a lunch break.

(3) The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(5) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(6) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number 10 calendar days before the meeting.

(7) Representatives of the FAA and JAA will preside over the meeting.

(8) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(9) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA presiding officers. The FAA requests that persons participating in the meeting provide five (5) copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(10) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA or JAA.

(11) The meeting is designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, D.C., on March 10, 1995.

David S. Potter,

Cochairman, Harmonization Management Team.

[FR Doc. 95–6554 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[EE–83–89]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of public hearing on proposed regulations under sections 6051 and 6071 of the Internal Revenue Code of 1986 concerning the time for furnishing wage statements to both employees and the Social Security Administration upon the termination of an employer's operations.

DATES: The public hearing will be held on Monday, May 8, 1995, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Monday, April 17, 1995.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, D.C. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (EE–83–89), room 5228, Washington, D.C. 20044 or hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–83–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 6051 and 6071 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** on Thursday, December 22, 1994 (59 FR 65982).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, April 17, 1995, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7338 Filed 3–23–95; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 13–1–6552b; FRL–5177–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Disapproval of New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to disapprove a State Implementation Plan (SIP) revision submitted by the District of Columbia pertaining to the regulation of major new and major modified sources locating in the District of Columbia. The intended effect of this action is to disapprove the District of Columbia regulations because they do not meet the requirements of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is disapproving the State's SIP revision as a direct final rule without prior proposal because the Agency has determined that the rationale to disapprove this SIP revision strongly supports that decision and anticipates no adverse comments. A detailed rationale for the disapproval is set forth in the direct final rule and in the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 24, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action for the District of Columbia new source review regulations which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 17, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–7244 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[IC Docket No. 94–31; DA 95–421]

Preparation for International ITU World Radiocommunication Conferences

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extending comment period.

SUMMARY: This order grants a request by COMSAT Mobile Communications Division of COMSAT Corporation to extend the time for filing reply comments in response to the Second Notice of Inquiry. The deadline for filing reply comments is extended from March 21, 1995, to April 14, 1995.

DATES: Reply comments must be filed on or before April 14, 1995.

ADDRESSES: Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Audrey L. Allison, International Bureau, (202) 739–0557 or Damon C. Ladson, International Bureau, (202) 739–0510.

SUPPLEMENTARY INFORMATION:

Order

1. COMSAT Corporation's COMSAT Mobile Communications Division (COMSAT) requests that the time for filing reply comments to the Second Notice of Inquiry [1] in this proceeding be extended from March 21, 1995, to April 14, 1995. COMSAT represents that its request is supported by American Mobile Satellite Corporation, Iridium, Inc., Loral/Qualcomm Partnership, L.P., and TRW, Inc.

2. This proceeding seeks comment on a broad range of complex and technical issues to assist the Commission in preparing draft U.S. proposals for the World Radiocommunication Conference (WRC–95) to be convened by the International Telecommunication Union

[1] Second Notice of Inquiry in IC Docket No. 94–31, 60 FR 8994 (Feb. 16, 1995).

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(ITU) in Geneva, Switzerland from October 23 to November 17, 1995. The FCC Draft U.S. proposals resulting from this proceeding will be considered by the Departments of State and Commerce in forging final U.S. proposals for WRC–95. Final U.S. proposals must be transmitted to the ITU by June 23, 1995.

3. In its request, COMSAT states that it and many other interested parties are now actively participating in preparations for two international meetings taking place later this month relating to WRC preparations; in the Commission's WRC–95 Industry Advisory Committee (IAC); and in preparing comments to the Commission's 2 GHz allocation proceeding.[2] COMSAT asserts that in view of these activities, and because of the complex nature and significance of the issues posed in the Second Notice of Inquiry, the March 21st deadline does not allow sufficient time for full development of reply comments. In particular, COMSAT notes that it and others are engaged in the U.S. preparations for the Conference Preparatory Meeting (CPM) for WRC–95 that will occur in Geneva from March 22 to April 5, 1995. The CPM will complete a Report to WRC–95 containing technical, operational, and regulatory/procedural information on the WRC–95 agenda items. COMSAT contends that postponing the reply comment deadline until after the CPM's conclusion would enable the parties to incorporate the results of that meeting into their reply comments thereby making them more informative and valuable to the Commission. Finally, COMSAT recognizes that the Commission is under extreme time constraints to draft U.S. proposals in time for negotiation with other government entities. It avers that the requested extension will not disrupt this process nor the IAC's completion of its Final Report due to the Commission on May 1, 1995.

4. Although the Bureau does not routinely grant extension requests, we find that an extension of the reply comment deadline to April 14, 1995 would be beneficial in this proceeding as it would enable the parties to include valuable and potentially critical information learned at the CPM. We ask the parties participating in the CPM to incorporate the results of the meeting into their reply comments and to include, where possible, their views on the likely success of potential U.S. proposals at WRC–95 and where known, the views of foreign delegations. The parties should note, however, that the Bureau remains committed to complete this proceeding on a timely basis and that no further extensions are contemplated.

5. Accordingly, pursuant to Section 0.261 of the Commission's rules, 47 CFR 0.261, *it is ordered* That the deadline for filing reply comments in response to the Second Notice of Inquiry is extended to April 14, 1995.

Federal Communications Commission.

Scott Blake Harris,

Chief, International Bureau.

[FR Doc. 95–7300 Filed 3–23–95; 8:45 am]

BILLING CODE 6712–01–M

[2] Notice of Proposed Rule Making in ET Docket No. 95–18, 60 Fed Reg. 11,644 (Mar. 2, 1995).

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Revisions to notice of public meeting.

SUMMARY: On March 7, 1995 a notice was published in the **Federal Register** (60 FR 12530) to reschedule the public meetings to discuss the continuing initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, for April 6, 1995, and April 7, 1995. This revision notice is to change the meeting room number and the topics scheduled for discussion at those meetings.

DATES: Public Meetings: The public meetings will be conducted at the address shown below from 12:30 p.m. to 5:00 p.m., local time, on April 6, 1995; and from 9:30 a.m. to 5:00 p.m., local time, on April 7, 1995.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the address below on or before April 3, 1995.

ADDRESSES: Draft Materials: Interested parties may obtain drafts of the materials to be discussed at the April 6 and 7 public meetings from Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

Public Meeting: The location of the public meeting is 1211 S. Fern Street, Room A–100, Arlington, VA 22202–2808. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topics scheduled for discussion, should contact Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 604–5387. FAX (703) 604–6709.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register**.

Interested parties are invited to present statements on the following topics: (1) draft legislation permitting negotiated sales of low value Government property to holding contractors, (2) revisions to FAR 52.245–17, Special Tooling, (3) establishing the value of Government property for the purpose of determining appropriate rental charges, and (4) the definition of sensitive property.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 95–7260 Filed 3–23–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Supplement (DFARS) to permit the head of the contracting activity to determine the appropriate level to delegate authority for the approval of second and subsequent rounds of best and final offers for competitive negotiated acquisitions under other than formal source selection.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 23, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D006 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. R.G. Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule was issued to allow the head of the contracting activity to determine the appropriate level to delegate authority for the approval of second and subsequent rounds of best and final offers for competitive negotiated acquisitions under other than formal source selection.

B. Regulatory Flexibility Act

The rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 because this rule only changes internal agency approval procedures.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new recordkeeping, information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is proposed to be amended as follows:

1. The authority citation for Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.611 is amended by revising paragraph (c)(i)(B) to read as follows:

§ 215.611 Best and final offers.

(c)(i) * * *

(B) The head of the contracting activity (HCA) or designee for all other competitive negotiated acquisitions.

* * * * *

[FR Doc. 95–7261 Filed 3–23–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 95–19; Notice 1]

RIN 2127–AF–64

Consumer Information Regulations; Fees for Course Monitoring Tires and for Use of Traction Skid Pads

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend NHTSA's consumer information regulations on uniform tire quality grading by establishing fees for the purchase of treadwear course monitoring tires and for the use of the traction skid pads at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo, Texas.

DATES: *Comments.* Comments must be received on or before May 23, 1995.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–2830).

SUPPLEMENTARY INFORMATION: Section 203 of the National Traffic and Motor Vehicle Safety Act of 1966 directed the Secretary of Transportation to prescribe standards establishing "a uniform quality grading system for motor vehicle tires." Those standards are found at 49 CFR 575.104. For the purpose of aiding consumers in making an informed choice in the purchase of passenger car tires, the standards require motor vehicle and tire manufacturers and tire brand owners to label such tires with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance.

The uniform tire quality grading standards require treadwear performance to be evaluated on a specific roadway course, approximately 400 miles in length, which was established by NHTSA in the vicinity of Goodfellow Air Force Base in San Angelo, Texas. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The standards require manufacturers to correct the projected mileage obtained for tested tires to account for environmental and other variations that occur during testing on the course. This is done by comparing the performance of the tested tires to that of course monitoring tires placed on a vehicle that is part of the same convoy as the vehicles on which the tires being tested are placed. The course monitoring tires are specially manufactured under controlled conditions for NHTSA so that they can be used as a standard for grading the tires being tested. Section 575.104(e)(iii) of the standards states that "the course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course."

The uniform tire quality grading standards also require that tire traction be "evaluated on skid pads that are established, and whose severity is monitored, by the NHTSA * * *." 49 CFR 575.104(f)(1). As further described in the standards, these test pads are paved with asphalt and concrete surfaces that have specified locked-wheel traction coefficients when evaluated in a manner prescribed in the standards. Two of these traction skid pads have been constructed at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo. This facility also includes an instrumented vehicle and test trailer, and maintenance support equipment. In addition to this government test facility, traction skid pads have been constructed at several commercial facilities. These include the Transportation Research Center's facility in East Liberty, Ohio, Juan Lopez in Laredo, Texas (formerly the Uniroyal Proving Grounds), Firestone's facility in Fort Stockton, Texas, General Tire's Test Track in Uvalde, Texas, and the Smithers Transportation Test Center in Pecos, Texas. For the purpose of evaluating tire traction, manufacturers are not restricted to the use of the traction skid pads at the government facility in San Angelo, and may use those at any commercial facility.

The Department of Transportation's Office of Inspector General (OIG) recently completed an audit of NHTSA's

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Uniform Tire Quality Grading Test Facility in San Angelo. As a result of this audit, the OIG concluded that NHTSA was not recovering the full cost of the course monitoring tires that it sells at San Angelo and was not charging a user fee for the use of the traction skid pads at that facility, contrary to the requirements of Office of Management and Budget (OMB) Circular A–25.

OMB Circular A–25 establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. The Circular expresses the general policy that "[a] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." For the purpose of determining the amount of user charges to assess, the Circular states that "user charges will be sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as sovereign." Full cost is defined in the Circular as "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service * * *." The Circular further provides that when the Government is not acting in its capacity as sovereign, "user charges will be based on market prices * * *."

In selling course monitoring tires to manufacturers, the government is acting in its capacity as sovereign, because the manufacturers have no practical alternative means of acquiring tires with a specific base course wear rate that must be used in grading the treadwear of the tires they are testing. Before it was audited by the OIG, NHTSA was charging $304.50 for each course monitoring tire that it sold. In its audit report, the OIG noted that this amount was not sufficient to recover the full cost incurred by the government in furnishing these tires. In order to recover this full cost, NHTSA raised the charge for each course monitoring tire to $379.00 in January, 1995. Through this notice, NHTSA is proposing to formally establish $379.00 as the fee for each course monitoring tire that it sells. This amount was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by NHTSA:

Purchase price of course monitoring tires	$175,000
General facility costs relating to tires	3,400
Warehouse storage fees	24,000
Salaries relating to tires	29,825
Testing fees to establish base course wear rate for tires	32,800
Total	265,025

Number of tires purchased= 700
$265,025/700 = $378.61 cost per tire.

Because manufacturers are not required to use the traction skid pads at NHTSA's San Angelo facility for the purpose of meeting the tire traction grading requirements of 49 CFR 575.104(d), and may use any of the several commercial facilities that are available for that purpose, the government is not acting as sovereign in making the San Angelo facility available for traction tests. Accordingly, the government may charge a market rate for the use of the traction pads. Based on an agency review of the rates charged by commercial facilities, NHTSA proposes to assess a user charge of $288 per day for the use of the traction skid pads at San Angelo. While not exceeding market rates, such a charge would be sufficient for NHTSA to recover the costs that can be allocated to industry use of its traction skid pads. Those costs are calculated as follows, based on an equivalent of 360 days of industry use in 1993:

Skid pad calibration expenses	$6,210
General facility costs relating to skid pads	7,140
Depreciable items (skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings)	65,904
Salaries relating to skid pads	24,375
Total	103,629

$103,629/360 days industry use = $287.86 cost per day.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Motor vehicle and tire manufacturers and tire brand owners typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires. However, because the user fees proposed in this amendment could be spread across a manufacturer's entire production, the amendment would have a negligible cost impact on vehicles and tires. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units that purchase motor vehicles would not be significantly affected by the proposed user fees. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend § 575.104, *Uniform tire quality grading standards*, in Title 49 of the Code of Federal Regulations at part 575 as follows:

PART 575—[AMENDED]

1. The authority citation for Part 575 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30123; delegation of authority at 49 CFR 1.50.

2. A new appendix D would be added to § 575.104, to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

Appendix D—User Fees

1. *Course monitoring tires:* A fee of $379.00 will be assessed for each course monitoring tire purchased from NHTSA at Goodfellow Air Force Base, San Angelo, Tex. This fee is based upon the direct and indirect costs attributable to: (a) The purchase of course monitoring tires by NHTSA, (b) a pro rata allocation of salaries and general facility costs associated with maintenance of the tires, (c) warehouse storage fees for the tires, and (d) testing fees paid by NHTSA to establish the base course wear rate for the tires.

2. *Use of Government traction skid pads:* A fee of $288.00 will be assessed for each day that the traction skid pads at Goodfellow Air Force Base, San Angelo, Tex. are used. This fee is based upon the direct and indirect costs attributable to: (a) Depreciation on facilities and equipment comprising or used in conjunction with the traction skid pads (i.e., skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings), (b) the calibration of the traction skid pads, and (c) a pro rata allocation of salaries and office operating expenses associated with maintenance of the traction skid pads.

3. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

4. The fees set forth in this appendix continue in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fees set forth in this appendix and, if appropriate, adjusts them by rule at least every 2 years.

Issued on: March 21, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–7351 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–59–P

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VOL 60

ISS 57

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Notices

Federal Register

Vol. 60, No. 57

Friday, March 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Meeting

ACTION: Notice of cancellation of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the cancellation of a meeting of the Committee on Adjudication of the Administrative Conference of the United States.

DATES: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The meeting of the Committee on Adjudication scheduled for April 3, 1995, at 9:30 am, has been cancelled. It will be rescheduled at a later date.

Dated: March 20, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–7341 Filed 3–23–95; 8:45 am]

BILLING CODE 6110–01–P

Committee on Rulemaking

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Rulemaking of the Administrative Conference of the United States.

DATES: April 5, 1995, at 9:30 am; April 24, 1995, at 9:30 am.

LOCATION: Administrative Conference Library, 2120 L Street, NW, Suite 500, Washington DC 20037.

FOR FURTHER INFORMATION: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will continue its discussion, begun at a meeting on March 29, 1995, of projects on (a) review of existing agency regulations, (b) interim final rulemaking, and (c) direct final rulemaking.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: March 22, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–7507 Filed 3–23–95; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–95–00–1]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: April 24, 1995 at 8 a.m. through April 28, 1995 at 5 p.m. for the NOSB. An orientation session for new NOSB members will be held from 1 p.m. to 5 p.m. on April 23, 1995.

PLACE: Ramada Hotel Resort Florida Center, 7400 International Drive, Orlando, Florida 32829. Phone (407) 351–4600 or (800) 327–1363. All meetings of the NOSB for the week will be held at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, NOSB, Room 4006 South Building, U.S. Department of Agriculture (USDA), AMS, Transportation and Marketing Division, P. O. Box 96456, Washington, DC 20090–6456. Phone (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended (7 U.S.C. Section 6501 *et seq.*), requires establishment of a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of Title XXI of the FACT Act. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has five committees to work on various aspects of the program. The committees are: Crops Standards; Processing, Labelling and Packaging; Livestock Standards; Accreditation; and International Issues. At its last meeting, the NOSB began the review of the botanical substances currently used in organic production, and determined that five botanicals (Neem, Pyrethrums, Rotenone, Ryania, and Sabadilla) should not be placed on the National List of prohibited natural substances. A recommendation on Nicotine and Strychnine was tabled for more information. The NOSB did not develop recommendations for allowed synthetic substances to be considered for inclusion on the National List except that a motion to add PBO's was defeated.

Purpose and Agenda

The main focus of this meeting is to discuss certain substances that should be considered for recommendation for inclusion on the National List as allowed synthetic substances and continue discussion of certain substances that should be considered for recommendation on the National List as prohibited natural substances in regard to the organic production and processing of organic foods. It is expected that at least 50 synthetic substances will be presented for recommendations.

Additional topics to be covered in the full NOSB meeting include: labeling for bulk agricultural products used as ingredients in organic foods, and bulk packs not intended for retail sale; mushroom and greenhouse standards; and livestock living standards, parasiticides, antibiotics, and a working draft on honey.

A final agenda will be available on April 5, 1995. Persons requesting copies should contact Faith Ashton at the above address or phone number.

Type of Meeting

All meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to comment orally on any organic issues should send the request to Dr. Harold S. Ricker at the above address or FAXED to (202) 690–0337 by April 14, 1995, in order to be scheduled. The NOSB has scheduled time for public input on Monday, April 24, 1995, beginning at 1 p.m. and continuing until 5 p.m. While people may sign up to speak at the door, advance scheduling assures an opportunity in the time allowed and helps the NOSB plan its activities. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern, and should provide copies of written material elaborating on those issues for the NOSB and USDA.

Dated: March 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–7337 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Wildcat River Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on May 3, 1995. The purpose of the meeting is to continue with the development of a Draft River Management Plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held May 3, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Saco Ranger District, (603) 447–5482.

Dated: March 16, 1995.

Charles J. Myers,

Acting Forest Supervisor.

[FR Doc. 95–7165 Filed 3–23–95; 8:45 am]

BILLING CODE 3410–11–M

Food Safety and Inspection Service

[Docket No. 95–010N]

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems; Notice of Scientific/Technical Conference and Request for Papers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a scientific/technical conference, "Role of Microbiological Testing in Verifying Food Safety," on May 1–2, 1995, at the Holiday Inn Independence Mall, 4th and Arch Streets, Philadelphia, Pennsylvania. The purpose of the conference is to explore scientific issues related to microbiological testing for verifying the safety of meat and poultry.

ADDRESSES: Papers should be to sent to: Dr. Robert L. Buchanan, Deputy Administrator, Science and Technology, FSIS, USDA, Room 402 Cotton Annex, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Jennifer Johnson, Microbiologist, Microbiology Division, Science and Technology, FSIS, USDA, Building 322, Barc-East, Beltsville, MD 20705. (301) 504–8792. To register to attend the conference, call Ms. Mary Gioglio (202) 501–7244.

For hotel reservations, call the Holiday Inn Independence Mall at (215) 923–8660.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6774). In that document, the Agency proposed a number of regulatory changes applicable to Federal- and State-inspected meat and poultry establishments. The proposed changes were designed to reduce the occurrence and numbers of pathogenic microorganisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

In the proposed rule, FSIS stated that public meetings would be held with the regulated industry and all interested parties to foster the development of beneficial new food safety technologies. FSIS is interested in improving food safety through the use of microbiological testing.

FSIS is aware that any biological characteristic is subject to natural variation. An understanding of the factors influencing variability, particularly relating to collecting samples, must be an integral part of microbiological analyses. FSIS is seeking information on different microbiological testing verification protocols that may assure safer meat and poultry products and, therefore, is hosting a scientific/technical conference.

The conference, "Role of Microbiological Testing in Verifying Food Safety" will be held on May 1–2, 1995, at the Holiday Inn Independence Mall, 4th and Arch Streets, Philadelphia, PA 19106 (215) 923–8660. The conference will begin each day at 8:30 a.m. and end at 4:30 p.m. on May 1; at 2:00 p.m. on May 2.

Conference Agenda

The conference will consist of three sessions as follows:

Session I: Invited speakers from government agencies, industry, and academia will discuss the use and limitations of microbiological testing for assuring food safety.

Session II: Presentation of papers on the role of microbiological testing in assuring food safety (see **Submission of Papers**).

Session III: The general public attending the conference, on a first-come basis, will have up to five minutes per person to comment on the conference proceedings.

Dr. Robert L. Buchanan, Deputy Administrator, Science and Technology FSIS will moderate and be joined by a panel consisting of: Dr. Ann Marie McNamara, Director, Microbiology Division, Science and Technology, FSIS; Dr. E. M. Foster, University of Wisconsin; Dr. Bruce Tompkin, Armour Swift Echrich; Dr. Myron Solberg, Rutgers University; Dr. Katherine Swanson, Pillsbury Company; and Dr. Margarite Neill, Brown University. The panel will summarize the presentations and prepare a report of the proceedings. This report will include general

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conclusions on the development of microbiological testing for verifying the safety of meat and poultry products. The panel's report, transcripts of the conference, and copies of all the papers submitted to FSIS will be available in the FSIS Docket Clerk's Office, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Submission of Papers

Interested persons may submit a paper to FSIS for Session II. Papers should present information about microbiological testing for assuring food safety with emphasis on the concepts and methods outlined in the proposed rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP)." Up to 12 papers will be selected for presentation during Session II. Presenters will be allotted 10 to 15 minutes. All papers will be included in the proceedings of the conference regardless of whether they were selected for presentation.

The papers must be received by April 14, 1995, to be considered for the conference. Two copies of each paper should be submitted (See ADDRESSES), with hard copies of any slides to be used in the presentation.

Attendance and Hotel Reservations

Please call Ms. Mary Gioglio by April 5, 1995, (see FOR FURTHER INFORMATION CONTACT) if you plan to attend the conference. FSIS has reserved a block of rooms at the hotel for $85 per night. Reservations may be made by contacting the hotel (see FOR FURTHER INFORMATION CONTACT).

Done at Washington, DC, on: March 20, 1995.

Michael R. Taylor

Acting Under Secretary for Food Safety.

[FR Doc. 95-7334 Filed 3-23-95; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/16/95–03/15/95

Firm name	Address	Date petition accepted	Product
Klein Bicycle Corporation	118 Klein Road, Chehalis, WA 98532	02/17/95	Bicycle frames.
Raycom Electronics, Inc	1 Raycom Road, Dover, PA 17315	02/28/95	Magnetic Products—Transformers and custom coils, electronic & cable assemblies.
Oakloom Clothes, Inc	1800 Johnson Street, Baltimore, MD 21230.	03/07/95	Men's suits and sportcoats.
JPB Enterprises Inc., dba Coerion Industries.	3044 Lambdin Avenue, St. Louis, MO 63115–2899.	03/13/95	Freight door systems, cart/tote and service parts.
ITS Industrial Tooling Services, Inc	1090 Second Street, Berthoud, CO 80513.	03/13/95	Computer parts.
B&K Components, Ltd	2100 Old Union Road, Buffalo, NY 14227	03/07/95	Audio frequency electric amplifiers.
Pinquist Tool & Die Co., Inc	63 Meserole Avenue, Brooklyn, NY 11222.	03/15/95	Mounting and fittings of metal and overhead door hardware.
Vogel Tool & Die Corporation	1825 North 32nd Avenue, Stone Park, IL 60165.	03/14/95	Custom metal tube fabricating machines, and arc-snug, arc-fit, arc-twin large tooling.
Chemart Company	11 New England Way, Lincoln, RI 02865-4492.	03/15/95	Christmas photo-etched ornaments.
H.L. Miller & Son, Inc	25 W. Miller Road, Iola, KS 66749	03/15/95	Ladies dresses.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 15, 1995.

Lewis R. Podolske,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95-7361 Filed 3-23-95; 8:45 am]

BILLING CODE 3510-24-M

National Oceanic and Atmospheric Administration

[I.D. 031795A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Amendment of scientific research permit no. 797 (P77#57).

SUMMARY: Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222), and the conditions hereinafter set out, scientific research permit no. 797, issued to the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115, is amended to authorize that specimen materials and other cetacean and pinniped species parts and products subject to NMFS jurisdiction and included in professionally curated NOAA-managed collection(s), also may be exported for purposes of bona fide research, including analysis by individuals or laboratories, or their loan for use in properly curated professionally accredited scientific collections, including incidental exhibit of such collections to the public. These parts and products may be re-imported for further analyses or archival by the National Marine Mammal Laboratory.

Documents pertaining to this permit and amendment are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206–526–6150);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015);

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: March 17, 1995.

Ann Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95-7234 Filed 3-23-95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Wrench Set
5120–01–176–1819
5120–01–119–0010
NPA: Babcock Center, Inc., Columbia, South Carolina

Service

Janitorial/Custodial
Veterans Administration Medical Center Outpatient Clinic
Orlando, Florida
NPA: Goodwill Industries of Central Florida, Orlando, Florida

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

Items proposed to be deleted from the Procurement List:

The following commodities have been proposed for deletion from the Procurement List:

Commodities

Handle, Step
5340–01–114–7387
Chest, Tool
7310–00–310–8544
Container, Wood
8115–L1–599–7320
8115–L1–599–7920
8115–L1–465–1020
8115–L1–599–8020

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8115–L1–599–7220
Beverly L. Milkman,
Executive Director.
[FR Doc. 95–7339 Filed 3–23–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 27 and February 3, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 5373 and 6702) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Pad, Scouring
7920–00–045–2940

Services

Grounds Maintenance
Basewide (except Quarters and Common Areas)
Fort Sam Houston, Texas
Janitorial/Custodial
Denver Federal Center
Buildings 76, 80, 93 and 94
Denver, Colorado
Mailroom Operation & Administrative Support
Department of Veterans Affairs Medical Center
718 Smyth Road
Manchester, New Hampshire

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–7340 Filed 3–23–95; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange: Proposed Amendments Pertaining to Financial Requirements for Facilities Licensed for Delivery on the Frozen Concentrated Orange Juice Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE or Exchange") has submitted proposed amendments to its frozen concentrated orange juice ("FCOJ") futures contract. The primary proposed amendments will revise the contract's financial requirements concerning the dollar value of performance bonds or letters of credit operators of CANYCE-licensed delivery facilities must obtain in support of shipping certificates and warehouse receipts issued for delivery on the futures contract.

In accordance with section 5a(a)(12) of the Commodity Exchange Act, and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that publication of the proposed amendments would be in the public interest and would assist the Commission in considering the views of interested persons. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the proposed amendments to the CANYCE's financial requirements for licensed delivery facilities.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The current provisions of the FCOJ futures contract provide that delivery may be effected by tendering to the CANYCE a shipping certificate or warehouse receipt issued by an Exchange-licensed delivery facility.[1] The existing terms of the futures contract provide that the number of shipping certificates issued by a CANYCE-licensed tank facility operator may not exceed the sum of the following two calculations: (1) The number obtained by dividing the facility operator's net worth[2] by $40,000 and (2) the number obtained by dividing the total principal amounts of all performance bonds and letters of credit[3] issued to the facility operator by $25,000. The futures contract also currently provides that a facility operator that desires to increase the number of shipping certificates it may issue for futures delivery may provide additional performance bonds or letters of credit to the Exchange equal to $1 million.

The primary proposed amendments would specify that the maximum number of shipping certificates that could be issued by a CANYCE-licensed delivery facility will be determined in accordance with a CANYCE specified schedule based on the amount of performance bonds or letters of credit posted with the Exchange. The minimum performance bond would be $1,000,000, which would permit the facility posting such a bond to issue and have outstanding up to 44 shipping certificates. The schedule specifying the maximum number of shipping certificates that may be issued for given dollar amounts of performance bonds or letters of credit is set forth below:

Amount of performamce bond or letter of credit in dollars	Maximum No. of certificates or receipts issuable
1,000,000	44
2,260,000	100
3,760,000	200
5,260,000	300
6,760,000	400
8,260,000	500
9,760,000	500
11,260,000	700

The proposed amendments would require that a licensed delivery facility operator or owner must submit to the Exchange a letter of credit or performance bond issued by a bank, insurance company or other financial institution that is acceptable to the CANYCE. The proposed amendments specify that such bonds or letters of credit must be approved by a special Exchange committee.[4] The CANYCE also is proposing amendments to certain other Exchange rules to facilitate implementation of the above-noted proposed financial requirements.

The CANYCE indicates that the purpose of the proposed amendments is to better protect the holders of shipping certificates and warehouse receipts against performance failure on the part of a CANYCE-licensed delivery facility and, therefore, increase the confidence of shipping certificate and warehouse receipt holders in the FCOJ futures market. The Exchange also indicates that the proposed amendments will simplify the contract's financial requirements for CANYCE-licensed delivery facility operators.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CANYCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on March 17, 1995.

Blake Imel,
Acting Director.
[FR Doc. 95–7262 Filed 3–23–95; 8:45 am]
BILLING CODE 6351–01–P

Applications of the Chicago Board of Trade as a Contract Market in Futures and Options on 30-Year/2-Year, 30-Year/5-Year, 30-Year/10-Year, 10-Year/2-Year, 10-Year/5-Year, and 5-Year/2-Year U.S. Treasury Yield Curve Spreads

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in six Treasury yield curve spread futures and futures option contracts. The contracts will be based on the following yield curve spreads: 30-Year/2-Year, 30-Year/5-Year, 30-Year/10-Year, 10-Year/2-Year, 10-Year/5-Year, and 5-Year/2-Year. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the CBT Treasury yield curve spread contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

[1] Under the contract's current terms, a shipping certificate issuer is required to load out FCOJ from the issuer's CANYCE-licensed tank storage facility upon the request of the certificate holder. Deliverable warehouse receipts represent FCOJ packed in drums in store at the receipt issuers' Exchange-licensed warehouses.

[2] The contract's existing terms define "net worth" as the excess of assets over liabilities.

[3] The contract's existing rules provide that performance bonds must be in a form approved by, and issued by sureties satisfactory to, the Exchange. Under the current rules, letters of credit must be in a form approved by the CANYCE, issued by a bank satisfactory to the Exchange and written in favor of the CANYCE. In addition, such letters of credit must be unconditional, irrevocable, and available to be drawn upon by the CANYCE on demand by clean sight drafts.

[4] The proposed amendments also would specify that the above-noted special committee shall consist of a minimum of seven and a maximum of ten members, with each member and the committee's chairman being appointed by the CANYCE's President. Under the proposed amendments, the special committee would have authority to decide all matters pertaining to the financial requirements of CANYCE-licensed delivery facilities.

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of the Commodity Exchange Act, and

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Issued in Washington, DC, on March 17, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–7263 Filed 3–23–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team will meet in closed session on April 4–5, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 20, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7222 Filed 3–23–95; 8:45 am]

BILLING CODE 5000–04–M

Second Meeting of the Semiconductor Technology Council

ACTION: Notice: Change of meeting location.

SUMMARY: ARPA published a notice on March 16, 1995 (60 FR 24271). There is a change of location and time of the open session. In all other respects the notice is unchanged. The open session will be held from 3:30 to 4:00 p.m.

DATES: March 28, 1995.

ADDRESSES: 1300 N. 17th Street, Suite 1450, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Lance Glassner, Director, ARPA/ESTO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: March 21, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7332 Filed 3–23–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Privacy Act of 1974; Addition and Alteration of Systems of Records

AGENCY: Department of Defense.

ACTION: Notice of an addition and alteration of systems of records.

SUMMARY: The Department of Defense is adding one system of records notice and altering another in its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: These actions will be effective April 24, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarters Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Room 5C315, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed new and alteration system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on March 13, 1995, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: March 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files *(March 24, 1994 59 FR 13941).*

CHANGES

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Personnel Security Clearance Adjudication Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995;

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 6946 Van Nuys Boulevard, Suite 124, Van Nuys, CA 91405–3935; and

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 3990 East Broad Street, Building 306, Columbus, OH 43216–5007.

Decentralized inactive segments are held at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, MD 20755. Automated Joint Adjudicative Clearance System records are maintained on a system V5–02, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD, with access by computer terminals at Defense Office of Hearings and Appeals (DOHA) locations.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete and replace entry with 'Current and former Federal Government, contractor, state and local government employees and other persons whose security clearance or trustworthiness cases are referred to the Defense Office of Hearings and Appeals.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 140; 31 U.S.C. 1535; Executive Orders 10865, as amended, 10450, as amended, 12829, and 9397.'

PURPOSE(S):

Delete entry and replace with 'These records are collected and maintained to determine whether the granting or retention of a security clearance to or affirmative trustworthiness decision for an individual is clearly consistent with the national interest; to record adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrists to compile evaluations and reports; to respond to inquiries from within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes; to monitor and control adjudicative actions and processes.

Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Case files referred by Federal Emergency Management Agency (FEMA) for adjudication by DOHA are provided to FEMA when action is completed, along with recommended clearance decisions.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Completed case files are returned to non-DoD agencies and are subject to records retention schedules of the owning agency after completion of DOHA action. Copies of case summaries and recommended adjudication decisions and ancillary documents for all cases are retained for internal reference purposes by DOHA personnel. Industrial security and trustworthiness cases are retained at DOHA for two years after annual cut-offs, then are retired for twenty years at the Washington National Records Center and then destroyed.

Inactive Department of Defense case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Ft. Meade, MD 20755. Automated case tracking records and alphabetical card index files are retained as locator for active and inactive cases and for statistical purposes.'

* * * * *

DGC 04

SYSTEM NAME:

Personnel Security Clearance Adjudication Files.

SYSTEM LOCATION:

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995;

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 6946 Van Nuys Boulevard, Suite 124, Van Nuys, CA 91405–3935; and

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 3990 East Broad Street, Building 306, Columbus, OH 43216–5007.

Decentralized inactive segments are held at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, MD 20755. Automated Joint Adjudicative Clearance System records are maintained on a system V5–02, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD, with access by computer terminals at Defense Office of Hearings and Appeals (DOHA) locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Government, contractor, state and local government employees and other persons whose security clearance or trustworthiness cases are referred to the Defense Office of Hearings and Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.

Case files include requests for investigation, clearance, and adjudication; general correspondence relating to cases; personnel security questionnaires; investigative reports prepared by various investigative agencies, which may include information obtained from interviews, court documents, law enforcement records, business records, and other sources; medical and psychiatric records and evaluations; adjudicator's case summaries; Defense Industrial Security Clearance Office (DISCO) referral recommendations; correspondence between or concerning applicants for clearance and DOHA elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements of Reasons (SIR) to applicants, with replies, pleadings or correspondence filed and served on all parties, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; exhibits admitted into evidence; decisions of Administrative Judges and Appeal Boards; and such other matter as may be included in the record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 140; 31 U.S.C. 1535; Executive Orders 10865, as amended, 10450, as amended, 12829, and 9397.

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of a security clearance to or affirmative trustworthiness decision for an individual is clearly consistent with the national interest; to record adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrists to compile evaluations and reports; to respond to inquiries from within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes; to monitor and control adjudicative actions and processes.

Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Case files referred by Federal Emergency Management Agency (FEMA) for adjudication by DOHA are provided to FEMA when action is completed, along with recommended clearance decisions.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on file cards; electronic records are stored on magnetic or optical media; certain automated records are maintained on magnetic tapes and disks at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

RETRIEVABILITY:

Filed alphabetically by name, or by case number. Access to computer data may be made by name and Social Security Number and a combination of name and other personal identifying data.

SAFEGUARDS:

Records are stored in a secure area accessible only to DOHA authorized personnel. Except for a small number of records that are classified and need to be safeguarded as classified materials, all other records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones. Automated systems are operated by DOHA and by the Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DOHA personnel are given the security level on the computer system needed to amend, add, alter, change or delete DOHA records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DOHA case status records in the system.

RETENTION AND DISPOSAL:

Completed case files are returned to non-DoD agencies and are subject to records retention schedules of the owning agency after completion of DOHA action. Copies of case summaries and recommended adjudication decisions and ancillary documents for all cases are retained for internal reference purposes by DOHA personnel. Industrial security and trustworthiness cases are retained at DOHA for two years after annual cut-offs, then are retired for twenty years at the Washington National Records Center and then destroyed.

Inactive Department of Defense case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Ft. Meade, MD 20755. Automated case tracking records and alphabetical card index files are retained as locator for active and inactive cases and for statistical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

Individual should provide their full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

Individuals should provide their full name, and any former names used, date and place of birth, Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: 'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.' (Signature).

Some records may be made available for review at DOHA Headquarters, upon appointment made with Director. Individual must present picture identification, such as a valid driver's license.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from Federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies, DoD organizations, agencies and offices; from individuals, their attorneys or authorized representatives; from witnesses at hearings or documentary evidence made part of the hearing record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

DGC 17

SYSTEM NAME:

Hearings and Appeals Case Files.

SYSTEM LOCATION:

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995;

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 6946 Van Nuys Boulevard, Suite 124, Van Nuys, CA 91405–3935; and

Defense Office of Hearings and Appeals, Defense Legal Services Agency, 3990 East Broad Street, Building 306, Columbus, OH 43216–5007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Beneficiaries and providers under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) that have unresolved disputes with the Office of CHAMPUS (OCHAMPUS);

(2) Students in the Department of Defense Dependent Schools (DoDDS) overseas and Section 6 schools and their sponsors.

CATEGORIES OF RECORDS IN THE SYSTEM:

CHAMPUS-related categories include: Appointment memoranda and transmittal correspondence; case files; petitions and answers to petitions; exhibits admitted into evidence; written transcripts or electronic records of hearings; pleadings or correspondence properly filed and served on all parties; claims and all other pertinent materials relating to a claim; billings, applications or approval forms; medical records, family history files; such other matter as the hearing officer may include in the record, rulings or orders issued by the hearing office, and the hearing officer's written decision.

Education-related categories include: Records pertaining to students attending DoD-operated dependent schools in case files pertaining to hearings and appeals conducted pursuant to appendix C to 32 CFR part 80, Special Education Children with Disabilities Within the Section 6 School Arrangements; 32 CFR part 57, Education of Handicapped Children in DoD Dependent Schools; or 32 CFR part 56, Nondiscrimination on the basis of Handicap in Programs and Activities Assisted or conducted by the Department of Defense, to afford impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and free appropriate public education provided to a disabled child; documents associated with such hearing, including: Appointment memoranda and transmittal correspondence; petitions and answers to petitions, the written transcript or the electronic record of the hearing, exhibits admitted into evidence; pleadings, written submissions or correspondence properly filed and served on all parties, such other matter as the hearing officer may include in the record, rulings or orders issued by the hearing office, the hearing officer's written decision; documents associated with administrative appeals from the hearing officer's written decision; including the administrative record on appeal, pleadings, written submissions or correspondence properly filed and served on all parties, rulings or orders issued by the appeal board, and the appeal board's written decision.

Common to both categories, automated case status records for current cases and inactive cases are used to provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor workflow and case handling actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 140 and E.O. 9397.

PURPOSE(S):

Records are collected and maintained to support claims resolution and impartial due process hearings/and or ancillary proceedings to parties requesting them and to provide decisions to those parties involved in the hearings; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to respond to inquiries from offices within the executive and legislative branches when the inquiry is made at the request of the individual, or for official purposes; to monitor and control adjudicative actions and processes.

The automated case tracking system is used to record statistics, provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor work flow and case handling actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on file cards; electronic records are stored on magnetic or optical media

RETRIEVABILITY:

Filed alphabetically by beneficiary, provider, child's or sponsor's name, Social Security Number, or by case number. Access to computer data may be made by name, Social Security Number, or a combination of other personal identifying data.

SAFEGUARDS:

Records are stored in a secure area accessible only to DOHA authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for using or servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones.

RETENTION AND DISPOSAL:

Along with decisions and other materials developed during DOHA processing of cases, the original case files, tapes, exhibit files, and associated documentation are returned to OCHAMPUS and the DoD Education Activity and are subject to records retention schedules of the owning agency after completion of DOHA action. Copies of decisions and audio tapes are destroyed when no longer needed for reference purposes but not later than 6 years after rendering a decision.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

Individual should provide full name and any former names used, date and

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place of birth, and Social Security Number.

Some records may be made available for review at DOHA Headquarters upon appointment made with the Director. Individual must be able to provide picture identification or a valid driver's license.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: 'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both. (Signature).'

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

For OCHAMPUS Cases: Case files referred by OCHAMPUS to DOHA Administrative Judges; correspondence and supplementary material from DOHA to the parties in connection with the handling of the case; correspondence, pleadings, written submissions and evidence associated with hearings from parties to such proceedings; DoD correspondence associated with receipt and transmittal of case files.

For DoD Education Activity Cases: Case files assigned to DOHA Administrative Judges for hearing and/or administrative appeals; correspondence and supplementary material from DOHA to the parties in connection with the handling of the case; correspondence, pleadings, written submissions and evidence associated with hearings or appeals from parties to such proceedings; rulings, orders, and written decisions from hearing officers or appeal board; correspondence from individuals, their attorneys, or authorized representatives; and DoD correspondence associated with receipt and transmittal of case files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–7224 Filed 3–23–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Office of the Secretary; Draft Environmental Impact Statement for Disposal and Reuse of Army Materials Technology Laboratory, Watertown, MA

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 100–526, the Defense Base Closure and Realignment Act of 1988, the Defense Base Closure and Realignment Commission recommended the closure of Army Materials Technology Laboratory and transfer of laboratory missions to Aberdeen, Maryland, and Hampton, Virginia. This recommendation became law January 5, 1989. Subject document focuses on the environmental impacts and mitigations associated with the disposal and reuse of Army Materials Technology Laboratory.

There would be no significant impacts in connection with any of the disposal alternatives or reuse scenarios. The proposed action of disposal would not contribute to significant cumulative impacts.

A scoping meeting was held in Watertown, on February 4, 1993. Public notices requesting input and comments from the public were issued in the regional area surrounding the laboratory.

DATES: Written public comments and suggestions received within 45 days of this Notice of Availability will be addressed in the Final Environmental Impact Statement.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing to the United States Army Materiel Command, Attn: Mr. James Davidson, 5001 Eisenhower Avenue, Alexandria, Virginia 22333–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wilbur, (703) 847–4000.

Dated: March 20, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–7330 Filed 3–23–95; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary; Draft Environmental Impact Statement for Disposal and Reuse of Jefferson Proving Ground, IN

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 100–526, the Defense Base Closure and Realignment Act of 1988, the Defense Base Closure and Realignment Commission recommended the closure of Jefferson Proving Ground and transfer of missions to Yuma Proving Ground, Arizona. This recommendation became law on January 5, 1989. Subject document focuses on the environmental impacts associated with the disposal and reuse of Jefferson Proving Ground.

There would be no significant impacts in connection with any of the three disposal alternatives. High intensity reuse of Study Areas 2 through 6, 8, and 10 would result in long term significant direct adverse impacts on land use. High intensity reuse of Study Areas 2 through 6, 10, and 12 would result in long term significant direct adverse impacts on utilities and solid waste and biological resources.

Medium intensity reuse of Study Areas 3 through 6, 8, and 10 would result in long term significant direct adverse impacts on utilities and solid waste. Medium intensity reuse of Study Area 7 would result in long term significant direct adverse impacts on pubic health and safety. High intensity reuse of Study Areas 3 through 6, 8, and 10 would result in long term significant indirect adverse impacts on land use. The proposed action of disposal would not contribute to significant cumulative impacts.

A scoping meeting was held in Madison, Indiana on February 11, 1993. Public notices requesting input and comments from the public were issued in the regional area surrounding Jefferson Proving Ground.

DATES: Written public comments and suggestions received within 45 days of this Notice of Availability will be addressed in the Final Environmental Impact Statement.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing to the United States Army Materiel Command, Attn: Mr. James Davidson, 5001 Eisenhower Avenue, Alexandria, Virginia 22333–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wilbur, (703) 847–4000.

Dated: March 20, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 95–7329 Filed 3–23–95; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Armed Forces Retirement Home and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Armed Forces Retirement Home (AFRH) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving public notice of a computer matching program between AFRH and DoD that certain records are being matched by computer. The record subjects are AFRH resident whose average age is 70 years, and many have physical or mental impairments; thus, it has been found that requested income information submitted by residents are not reliable, or is difficult or impossible to acquire. A computer match will provide accurate benefit information on the residents. This is a pilot project and no figures are available at this time. No cost-benefit analysis has been accomplished for this match and a waiver of the analysis was granted by the respective agency Data Integrity Boards. By actually conducting a verification of Federal payments to residents, the AFRH can accurately and fairly determine and fix the individual fees from time to time as required by law.

DATES: This proposed action will become effective April 24, 1995, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and AFRH have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for verification of Federal payments to residents. The match will yield the benefit information on the residents so that AFRH can accurately and fairly determine and fix the individual fees from time to time as required by law. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between AFRH and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Budget Officer, Management Information Systems, Armed Forces Retirement Home, 3700 North Capitol Street, NW, Washington, DC 20317–0002. Telephone (202) 722–3216.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 10, 1995, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: March 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Armed Forces Retirement Home and the Department of Defense for Verification of Federal Payments to Residents

A. *Participating agencies:* Participants in this computer matching program are the Armed Forces Retirement Home (AFRH) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The AFRH is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, the conditions will be established under which the DoD, VA and OPM agree to a computer matching program for the disclosure of military retired or retainer pay, civil service annuity, and compensation or pension from the VA for the residents of the AFRH, which includes the United States Soldiers' and Airmen's Home (USSAH) and the United States Naval Home (USNH). This disclosure will provide the AFRH with information necessary to verify the payment information currently provided by residents for the computation of their monthly fee, and identify any unreported benefit payments received by residents.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Armed Forces Retirement Home Act of 1991, Pub. L. 101–510, 24 U.S.C. 401–441. The law also incorporated the U.S. Naval Home and the U.S. Soldiers' and Airmen's Home into a single independent establishment in the Executive branch of the Federal government as the Armed Forces Retirement Home.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The AFRH will use personal data from the Privacy Act record system identified as AFRH–1, entitled 'Armed Forces Retirement Home Resident Fee Maintenance System' last published in

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the **Federal Register** at 58 FR 68629 on December 28, 1993.

DMDC will use personal data from the record system identified as S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base,' last published in the **Federal Register** at 59 FR 55462 on November 7, 1994.

Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Otherwise they must obtain the written consent of the record subjects to disclose outside the agency. Moreover, the routine use, with respect to the disclosure of a record, must be compatible with the purpose for which it was collected.

E. *Description of computer matching program:* The AFRH, as the source agency, will provide DMDC with a magnetic computer tape which contains the name, SSN and date of birth of each resident. Upon receipt of the computer tape file of residents, DMDC will perform a computer match using all nine digits of the SSN of the AFRH file against a DMDC computer database of personnel/employment/pay records of all uniformed services officers and enlisted personnel who served on active duty or retired, including individuals receiving any Federal compensation, pension or annuity from the VA or OPM. Matching records (hits) based on the SSN, will produce the member's military retired or retainer pay, civil service annuity and VA compensation and pension. The match results will be furnished to AFRH. AFRH is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with AFRH's source file and for resolving any discrepancies or inconsistencies on an individual basis. AFRH will also be responsible for making final determinations as to positive identification and the amount of Federal payment received by the resident as a result of the match.

The AFRH will provide a magnetic computer tape in a format defined by DMDC on a semiannual basis. This file will contain the name and SSN of approximately 2,700 residents whose records DMDC will verify.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard; the VA compensation and pension records on military retirees; and the OPM compensation and annuity records on military retirees.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between AFRH and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 95–7223 Filed 3–23–95; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 24, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension.
Title: Lender's Interest and Special Allowance Request.
Frequency: Quarterly.
Affected Public: Business or other for-profit; State, Local or Tribal Government.
Reporting Burden:
Responses: 10,544.
Burden Hours: 102,804.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Lender's Interest and Special Allowance Request and Report (ED Form 799) is used by approximately 9,000 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from a lender's loan portfolio for financial and budgetary projections.

[FR Doc. 95–7280 Filed 3–23–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 24, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Urban/Rural Local Reform Initiative.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 100.
Burden Hours: 5,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Secretary requests applications for local reform grants to be awarded under the National Leadership provisions of the Goals 2000: Education America Act. The Department will use the information to determine which applicants are best qualified to receive Federal funds under the law.
Additional Information: Clearance for this information collection is requested for March 24, 1995. An expedited review is requested in order to quickly distribute the application notice to potential applicants.

[FR Doc. 95–7281 Filed 3–23–95; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No. 84.116P]

Fund for Improvement of Postsecondary Education Special Focus Competition: Disseminating Proven Reforms; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: May 25, 1995.

Deadline for Intergovernmental Review: July 24, 1995.

Applications Available: March 24, 1995.

Available Funds: $1,000,000.

Estimated Range of Awards: $60,000–$90,000 for two years.

Estimated Average size of Awards: $85,000 for two years.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 630, with the exception noted in 34 CFR 630.4a(2).

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), 34 CFR 630.12 and 34 CFR 630.11(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that respond to immediate problems or issues and that seek to improve postsecondary education opportunities.

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.11(b)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Institutions with innovative postsecondary projects that became integrated into the administrative structure of the institution between 1988 and 1994 and that are expected to continue into the foreseeable future, are invited to apply for funds to disseminate their practices to other campuses.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in 34 CFR 630.11;

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(2) Address the program priorities for the particular program competition;
(3) Address an important problem or need;
(4) Represent an improvement upon, or important departure from, existing practice;
(5) Involve learner-centered improvements;
(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and
(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—
(1) The proposed project represents an appropriate response to the problem or need addressed;
(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—
(i) The applicant's understanding of the problem or need;
(ii) The quality of the project design, including objectives, approaches, and evaluation plan;
(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;
(iv) The qualifications of key personnel who would conduct the project; and
(v) The applicant's relevant prior experience;
(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidence by, for example—
(i) Contribution of resources by the applicant and by participating organizations;
(ii) Their prior work in the area; and
(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and
(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

In accordance with 630.32, the Secretary announces the methods that will be used in applying the selection criteria.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria listed above. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subscription. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

For Applications or Information Contact

Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, SW., Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, to order applications or for information. Individuals may request applications by submitting their name and postal mailing address to the e-mail address #FIPSE@ED GOV. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: March 20, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–7415 Filed 3–23–95; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement (OERI); Presolicitation Conference on Draft Statement of Work for the Regional Educational Laboratories Program

AGENCY: Department of Education.

ACTION: Notice of presolicitation conference on draft statement of work for the Regional Educational Laboratories Program.

SUMMARY: The Office of Educational Research and Improvement will conduct a pre-proposal conference to discuss a draft of the proposed statement of work to guide the activities of the regional educational laboratories during the 1995–2000 contract period. At this time the Office of Educational Research and Improvement wishes to offer both potential sources and parties interested in the work of the regional educational laboratories an opportunity to review a draft of the proposed statement of work and to attend a meeting to discuss the content of that statement of work prior to issuance of a Request for Proposal.

MEETING INFORMATION: The conference will be held on April 12, 1995, from 9 a.m. to 12 noon in the auditorium of the General Services Administration Regional Office Building, Seventh and D Streets SW., Washington DC (entrance on the D Street side). Persons unable to attend the conference who wish to provide comments on the draft statement of work may submit those comments by telefax or mail no later than April 26 to the contact listed below.

SUPPLEMENTARY INFORMATION: On March 31, 1994 President Clinton signed Pub. L. 103–227, Goals 2000: Educate America Act. Title IX of that legislation, known as the Educational Research, Development, Dissemination, and Improvement Act of 1994, includes new authorizing legislation for the Regional Educational Laboratory program which will be implemented through the recompetition of the regional educational laboratories. The laboratory competition will be announced later this fiscal year, with awards to be made in fiscal year 1996.

FOR FURTHER INFORMATION CONTACT: Laverne Reddick, U.S. Department of Education, Grants and Contracts Service, 7th and D Streets SW., GSA Building, ROB–3, Room 3660, Washington, DC 20202–4724. Telephone: (202) 708–8222. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The draft document is available on bulletin board at (202) 260–9950 which is an 8 data, 1 stop, no parity bulletin board. The document will be listed under the "OERI Regional Educational Laboratories" menu. Questions regarding only the electronic bulletin board should be telephoned to George Wagner at (202) 708–7811. Those who cannot interact electronically or telefax (202) 260–0525 for a copy of this document should write to the U.S. Department of Education, Grants and Contracts Service, 7th and D Streets, SW., GSA Building, ROB–3, Room 3660, ROB–3, Washington, DC 20202–4724, Attention: Laverne Reddick, Contract Specialist.

Dated: March 20, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–7282 Filed 3–23–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Partnerships for a Strong Economy/Renewable Energy Commercialization—Geothermal Power

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Solicitation for Financial Assistance: Energy Partnerships for a Strong Economy/Renewable Energy Commercialization—Geothermal Power.

SUMMARY: Notice is hereby given that pursuant to Public Law 93–577, Federal Non-nuclear Energy Research and Development Act of 1974; Public Law 93–410, Geothermal Energy Research, Development and Demonstration; and Section 2306 of the Energy Policy Act of 1992 (EPACT); the U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research, development and demonstration of geothermal power. A minimum 50% non-federal cost share for the project is required. This notice is solicitation document DE–PS07–95ID13349.

FOR FURTHER INFORMATION CONTACT: Linda Hallum, Contract Specialist, telephone (208) 526–5545, facsimile (208) 526–5548. The Contracting Officer is Brad Bauer, (208) 526–0090.

DATES: The effective date of this solicitation is March 24, 1995. The deadline for receipt of applications is 3 p.m. MDT, May 16, 1995. Late applications will be handled in accordance with 10 CFR 600.13.

Prospective applicants should request the application package by March 30, 1995 (which includes necessary forms, assurances and certifications), by writing to the DOE Contract Specialist. Facsimile requests are authorized. Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than April 10, 1995. Questions and answers will be issued in writing as an amendment to this solicitation. Preproposal conferences may be available if a sufficient number of applicants request one. Preproposal conference requests should be made no later than April 10, 1995.

DOE anticipates that this solicitation will result in the award of one or more cooperative agreements. Substantial involvement by DOE is anticipated. Selections for negotiations are expected to be made on or about June 28, 1995. All awards are expected to be made prior to September 30, 1995.

ADDRESSES: Applications shall be submitted to: Procurement Services Division; Attention: SOL DE–PS07–95ID13349 (Hallum/Bauer); U.S. DOE, Idaho Operations Office; 850 Energy Drive, MS 1221; Idaho Falls, Idaho 83401–1563.

CFDA Number: The Catalog of Federal Domestic Assistance Number for this program is 81.087.

SUPPLEMENTARY INFORMATION: Energy efficiency and renewable energy projects entered into by both the public and private sectors are the cornerstone of the U.S. Department of Energy's (DOE) Energy Partnerships for a Strong Economy. The purpose of various Energy Partnerships programs is to strengthen the economy and reduce greenhouse gas emissions. In support of this objective, DOE, in collaboration with the geothermal industry and the electric utilities, has developed an initiative for furthering the commercialization of geothermal power. A primary strategy of the initiative is the acceleration of geothermal development through cost-shared projects.

This solicitation requests applications from industry for one or more collaborative efforts to support the development of new geothermal power generation. These efforts are to promote the commercialization of this energy source, and result in a near-term increase in the amount of electrical power generated from geothermal energy for sale to an end user in the United States. The U.S. Department of Energy, Office of Utility Technologies will provide $800,000 in funding for one or more projects. The DOE funds may be utilized only for activities directly related to the applicant's power plant. Applications are solicited which will result in the sale in the United States of new electrical power generated from geothermal energy by the end of 1997.

Objectives

The objectives of this solicitation are to promote the commercialization of geothermal energy for the production of electrical power, and to reduce the emission of greenhouse gases in the United States. By accomplishing these objectives, it is anticipated that jobs will be created and that the nation's geothermal industry will be better positioned to compete and win in the global marketplace. The sale of the new power generated by the cost-shared project(s) and further growth of the geothermal industry will off-set the use of fossil fuels to generate electrical power, thereby reducing the nation's emissions of greenhouse gases.

Priorities

To promote the commercialization of geothermal energy, DOE's geothermal power initiative identified the utilization of previously undeveloped geothermal resources and the use of innovative technologies in power plants to convert the geothermal energy to electrical power as specific areas for emphasis in the solicitation of applications for new geothermal power capacity.

Scope

All applications that can demonstrate an existing or pending sales agreement for the power generated, and result in a net increase in geothermal power generation, will be accepted and considered. Applications that address either of the following two areas will receive a higher technical ranking than applications that utilize currently developed geothermal resources and/or conventional power plant energy conversion system technologies.

1. Installation of a plant that initiates the commercial power production from a new geothermal resource, accelerating the development of this new resource.

2. Retrofitting existing plants and/or constructing new plants to incorporate innovative improvements in power plant technology that will increase power generation from geothermal resources.

In order to differentiate from the expansion of an existing resource, for the purpose of this solicitation, a new geothermal resource is the first utilization of a geothermal reservoir for the production of electrical power.

The application(s) selected for award will be subject to the quarterly reporting requirements normally associated with DOE financial assistance awards. If the selected application uses an innovative power plant technology, the quarterly Technical Progress Report shall contain data and calculations which detail the performance of this technology during the progress reporting period. Any other use of the technology by the geothermal industry is also to be reported. If the selected application is the first production of power from a new geothermal resource, the quarterly

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Technical Progress Report should indicate whether there is any further use of this resource for the generation of electrical power. The selected application(s) will also be required to report on greenhouse gas reductions in accordance with the reporting system developed by the DOE Energy Information Administration (EIA) pursuant to EPACT 1605.b. The reporting guidelines for this program will be provided with the application package.

DOE Funding and Cost Sharing

The project(s) will be cost-shared, with participant(s) providing a minimum of 50% of the costs. Total DOE funding is $800,000, regardless of the number of applications selected. (If a single application is selected it may receive up to $800,000; if multiple applications are selected, the DOE share may total $800,000.) The DOE cost-sharing portion of this effort is limited to the following:

1. Purchase of power plant equipment,
2. Power plant construction costs, and
3. Tie-in to the existing electrical power grid system.

Although the DOE funding is available in FY–1995, these funds do not necessarily need to be used during this fiscal year. The DOE funds are intended to be used for the purchase and/or installation of the power plant components. It is not intended that the DOE contribution be used for other related activities, including "paper" feasibility, environmental, or compliance studies and/or assessments; nor is it intended that the funds for this solicitation be used for activities related to identifying and/or developing the productive capacity of the hydrothermal resource. It is intended that the federal funds be used to help mitigate a portion of the initial risk associated with the development of the new generation capacity from geothermal energy. It is not intended that the project success be based upon a continuing subsidy of federal dollars.

Qualified Applicants

Private research organizations, nonprofit institutions, or profit making entities, and other entities are eligible to submit applications in response to this solicitation. OMB A–95 clearance is not required.

Eligibility Requirements

For the application to be considered for evaluation and award, an agreement for the sale in the United States of the electrical power that will be produced by the proposed project must be demonstrated to exist, or to be pending.

Preparation of Applications

Each application shall be submitted in one volume. One original and nine copies of each application are to be submitted. The applications should observe the following format, presenting information as completely and concisely as possible.

Applications submitted in response to this solicitation must provide detailed program, management, personnel, power plant energy conversion process, site, environmental and budget information as further specified in this solicitation.

1. Cover Page: The cover page is to include the signature, title, address, telephone number, and fax number of the applicant's authorized representative. The cover page also is to contain the copy number of the volume, with the original volume identified as "Original: Copy No. 1", and subsequent copies identified as "Copy No. 2", "Copy No. 3", etc.

2. Table of Contents: The application is to include a table of contents and page numbers corresponding to the elements outlined in these preparation guidelines.

3. Technical Summary: The application is to provide a one page summary that furnishes a concise and informative description of the proposed project. This summary should contain information which is releasable to the public.

In order to expedite the evaluation process, the applications are to adhere to the following format, including use of the indicated element titles. The information presented for each element should be both complete and concise. These elements form the criteria upon which the application will be evaluated.

4. Technical Discussion. a. Geothermal Resource. The application is to contain explicit statements and documentation that demonstrate that the resource is adequate for the proposed usage, and that the resource will be available to operate the proposed facility at rated capacity for the expected life of the project, as defined in the application. The adequacy of the resource can be demonstrated by inclusion of data such as documented well flow tests, multi-well interference tests, temperature logs, brine chemistry, production data from existing production and injection wells (including documentation of their characteristics), and any other suitable data that will assist in the evaluation of the geothermal resource.

If this is the first application of the geothermal reservoir for power production, the application is to provide supporting documentation that clearly demonstrates this reservoir has not been utilized previously to produce electrical power for commercial sale.

If the application is for the expanded use of an existing reservoir, the projected impact on the reservoir's present production and/or injection capacities is to be addressed.

If electrical power and/or other ancillary utilities are required for the development of the resource for this application, their availability is to be discussed.

If the applicant does not own, or otherwise control the availability and use of the resource, documentation is required demonstrating that the resource provider will furnish the fluids required for the new capacity during the stated project life.

b. Power Plant Energy Conversion System. The application is to provide a description of the geothermal power plant's energy conversion system that will be used to produce the new power for sale. This description is to detail the power cycle and component operating parameters to allow evaluation of the adequacy of the proposed system to provide the stated power production. The assumptions used relative to the performance of the heat rejection system when determining the new generating capacity of the proposed project are to be included in the power plant description.

The description of the power plant energy conversion system is to clearly indicate whether it employs an innovative technology that improves plant efficiency and is not typically utilized commercially in the United States. If an innovative technology is to be utilized, documentation is to be provided that demonstrates the viability of the technology and establishes that it will provide the expected generation capacity. This documentation is to indicate the degree to which this technology could be utilized in geothermal plants at other locations, or whether the technology is specific to the proposed site and/or resource.

If the proposed new geothermal power generation will result from the retrofit of an existing facility, the application is to detail the retrofit, as well as the impact of the retrofit on the performance on the existing facility.

Electrical power and/or other ancillary utilities (including make-up water for heat rejection) required for the development of the proposed power plant and their availability are to be discussed, along with the tie-in of the new power generation to the existing electrical grid system.

Note: Underlying assumptions along with detailed calculations to support the claimed economic and energy efficiency benefits must be included in the application.

c. Impact on Greenhouse Gas Emissions. The application's impact on reducing greenhouse gas emissions will be evaluated by DOE from the information provided. This evaluation will consider that the application's new, "net" generation capacity off-sets the use of fossil fuels for the generation of electrical power. The extent to which fossil fuels are used to generate electrical power will be obtained from the 1995 Annual Energy Outlook (published by DOE's Energy Information Administration) projections of power generation by fuel types. By not using fossil fuels to generate this power, the greenhouse gases produced by these fuels are avoided. In reviewing the application, DOE will adjust the prediction of avoided greenhouse gas emissions to account for the emissions associated with the proposed project.

This evaluation will consider both the projected reduction of greenhouse gas emissions due to the proposed project, as well as the potential reduction that might occur from the further development of the new geothermal field, or the expanded utilization of an innovative technology in power plants by the geothermal industry. Projections of the effect of the greenhouse gas reductions will be evaluated for the years 2000 and 2010.

In order to forecast the reduction in greenhouse gases, the application is to provide:

(1) The project's new, net electrical generation capacity,
(2) The plant availability,
(3) The projected annual kW-hours produced,
(4) The date the new power generation will come on line, and
(5) The expected life of the new power generation.

The amount of new, net electrical generation capacity is the "net" electrical power generated for sale; all parasitic power requirements associated with the production of this new capacity should be identified and deducted, as well as any negative (or positive) impact on any existing generating capacity. (The parasitic power requirements include the power necessary to supply and dispose of the geothermal fluid associated with the new power capacity, as well as the power required to operate the proposed power plant or associated with the plant retrofit.)

The application is also to include information relative to the anticipated emission of gases (on a kilograms per year basis) that will result from the new geothermal power production. This information is to identify the emission of non-condensable gases during the production, utilization and disposal (injection) of the geothermal resource fluid, as well as the operation of the power plant's energy conversion system, including the heat rejection system. If the proposed energy conversion system is a binary power cycle, any fugitive gas emissions from the power cycle are to be identified. If the level of the emission of these gases is unknown or uncertain, the application is to identify the levels of emission for any of these gases reported in the project permitting process.

If the application is for the application of an innovative power plant technology or for a geothermal resource with the capacity for further development, the potential increase in power production is to be included, allowing the potential reduction of greenhouse gas emissions to be evaluated. The anticipated total additional capacity, the availability of the additional power capacity, the date when the additional power generation might be expected to come on line, and the expected period that the geothermal resource could support this added power production are to be provided.

d. Environmental. The application is to include relevant information on leasing, permitting, and/or other legal and commercial issues which may affect the resource development and/or the power plant construction/operation.

5. Management Discussion. a. Program and Management Plan, Organization, and Key Personnel. A program management plan is to be provided that includes a statement of work detailing the activities necessary to complete the project. This plan is to include a project schedule identifying major milestones associated with the proposed cost-shared portion of the project, and how these milestones are incorporated into the remaining overall project work scope. The management plan is also to include a discussion of all facilities to be constructed and/or retrofitted during the project.

The management plan is to include the name and roles of the applicant and each of the participants involved in the project, including the contractual arrangements between the applicant and participants. The capabilities and responsibilities of the applicant and each participant; experience, qualifications, and responsibilities of key personnel; and any unique facilities and/or capabilities which would assure the success of the project are to be provided, along with information regarding the applicant's (or appropriate participant's) experience in project and construction management.

The application is to discuss the composition of the organization of the applicant and participants from the standpoint of being involved in, and/or representative of the geothermal industry.

b. Financial Information. The application is to provide a description of the applicant and all other participants in the project, including the type of business, history, size, and discussion of the ownership and/or controlling interest, along with a listing of current or recent (within the past two years) government grants, cooperative agreements, and/or other work by the applicant in this or related fields. This listing is to include the names of the sponsoring agency or firm, instrument number, amount of the instrument, subject area of the instrument, and the name and telephone number of the contracting officer, or contract specialist.

Financial data on the applicant and participants, identifying the source of cost sharing and the available financial resources, are to be provided. These data are to include annual financial statements (balance sheet and income and expense statement) for the past 3 years for the applicant, as well as for the participants providing cost sharing and/or performing work. Where available, financial statements prepared by certified public accountants are to be submitted.

An estimated cost to perform the tasks as identified in the proposed statement of work for the overall project is to be provided along with the basis or rationale supporting these costs. It will be used to evaluate the reasonableness of the project cost, the probable cost to the government, as well as to provide an understanding of the magnitude of the effort required.

6. Economic Impact Discussion. The application is to forecast the economic impact of the application, including employment opportunities retained and/or created, estimated annual payroll, and construction and operation-related expenditures, as well as any other economic benefits.

If the application involves the application of an innovative, or new technology, the application is to describe how this technology could impact the growth of the nation's geothermal industry both in the United States and in other countries. If the application involves the development of

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a new resource, the economic impact of future development of the resource is to be addressed.

7. Cost/Business Discussion. a. Power Sales Agreement: The application is to identify and document any existing or pending agreement for the sale of the electrical power that will be produced by the proposed project. An existing or pending power sales agreement is an eligibility requirement, i.e., it must exist for the application to be considered.

b. Cost Sharing: The requested amount of DOE funds to be cost-shared is to be identified, along with how these funds will be used and the year in which they will be utilized. The percentage level of the DOE funds to the total project cost is to be defined. The impact of DOE's cost share to the viability of the project is to be addressed.

The application is to provide an estimate of the monetary value (basis of and the nature, e.g., equipment, labor, facilities, cash, etc.) of all contributions to the project by year and by party (DOE, applicant, and participants). If cost share is provided by someone other than the applicant, the application must include a statement by the providing entity which specifically commits the cost share for use on the project. Note that "cost sharing" is not limited to monetary investment. For purposes of this solicitation, the "cost sharing" definition is contained in 10 CFR 600.123, 600.206, 600.424. Foregone fee or profit shall not be considered cost sharing under any resulting agreement. Payment of actual costs in the final agreement will only include those costs that are allowable, incurred, costs that are allocable to the program as determined in accordance with the applicable cost principles prescribed in 10 CFR 600.127 for the respective participants and in the cost share ratios to be defined in the negotiations.

c. Budget: A budget period is an interval of time into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support, contingent upon satisfactory progress and availability of funds. The project periods may be divided into one or more budget periods. Project periods are not expected to exceed two years. Each application must contain Standard Forms 424 and 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page. The application should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down by task and by year. Every cost item should be justifiable and further details of the costs may be required if the application is selected for the award. It is essential that requested details be submitted in a timely manner for the actual award. Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The destination and purpose of budgeted travel and its relevance to the research should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

d. Cost Application: In the event there are multiple projects proposed in a submittal, a separate cost application should be included for each project proposed for funding. The cost application should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as verification of the proposed cost share can be performed.

Proprietary Application Information

Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

"The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant."

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

"Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application."

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

Evaluation of Applications

Applications submitted will be subject to a preliminary review by DOE to check for completeness and accuracy Applications that are clearly non-responsive or do not provide evidence of an existing or pending agreement for the sale of electrical power generated, will not be subject to the comprehensive evaluation or considered for award.

DOE reserves the right to support all, none, or certain parts of the applications submitted in response to this solicitation.

The information presented in each application will be evaluated to determine the degree to which the stated objectives and priorities of this solicitation are met. The following is a summary listing of the criteria which will be considered in the evaluation and each's relative importance in the ranking process: Technical and environmental, management, economic impact, and cost-sharing. The technical and environmental criteria will rank twice as much as the management criteria; economic and cost-sharing criteria will rank approximately equally and at substantially less than the management criteria. The following briefly identifies the factors to be considered in the evaluation of each of the criterion.

Criterion 1: Technical and Environmental

The geothermal resource is to be compatible/adequate with the requirements of the energy conversion system for the new geothermal power production. The resource is to be able to sustain the proposed new and, if applicable, existing generation capacity over the proposed life of the project. The development of a new geothermal resource is preferred (first power production from a geothermal reservoir), particularly resources with the potential for continued development. The applicant's control over availability of the resource is preferred.

The evidence presented on the technical viability of the energy conversion system, including the clarity and completeness of the description of the power cycle to be used to generate the additional power will be considered. The degree to which the new power generation will utilize an innovative technology(s) will be weighed along with the evidence presented of the viability of the technology(s) and the probability of its successful implementation. The potential for further utilization of the innovative technology(s) by the geothermal industry to add generation capacity, i.e., use of the technology can be replicated in geothermal power plants at other sites, will also be evaluated. The evaluation will also consider the date at which the applicant will begin to sell the power produced, with power sales by 1997 preferred.

The projected impact of the proposed project on reducing greenhouse gas emissions will be evaluated for the year 2000 as well as for the year 2010 (with the emphasis on the year 2000). The potential impact on reducing greenhouse gas emissions as a result of increased usage of an innovative technology, as well as from further development of a new geothermal resource will be considered. The annual electrical production (watt-hr/yr) will be correlated to the gas emissions based on the projected mix of fuels used to generate this level of power in the absence of the new geothermal power generation.

Issues relating to leasing, permitting, and related activities for the project development will be considered along with the environmental restrictions. The environmental evaluation will consider the impact of the proposed activities at the project site, as well as the potential environmental impact of future resource development or application of technology at other facilities. The availability of required ancillary utilities/services, as well as proximity to existing electrical grid system will also be considered.

Criterion 2: Management

The statement of objectives will be evaluated for its completeness, and the evidence presented for completing the project activities within the presented overall project schedule. The adequacy of the organizational structure, capabilities, and resources of the applicant and participants to address all aspects of the proposed project will be considered, along with the existence of unique capabilities, facilities, and/or equipment which provide additional assurance as to the success of the proposed project. Evidence of previous successes in the completion of similar projects will be considered, along with the applicant's experience in the geothermal industry.

Criterion 3: Economic Impact

The application will be evaluated for evidence presented of a positive economic impact, including the creation of additional employment opportunities. Evidence presented relative to the impact of project on the further growth of the geothermal industry within the U.S., as well as internationally, will be considered.

Criterion 4: Cost Sharing

DOE cost share is limited to the purchase of power plant equipment, power plant construction costs, and costs for tie-ins to the existing electrical power grid system. The applicant must cost share those portions of the project that are excluded from DOE cost share. The application will be evaluated on the nature and amount of cost-sharing. The applicant must demonstrate how it will meet its mandatory 50% cost share. This demonstration will occur through the adequacy (e.g., completeness, relevancy, substantiation) of the cost portion of the application. The applicant is responsible for showing how any in-kind contributions meet criteria in 10 CFR 600.123. Cash and cash-equivalent items (e.g., direct labor) are preferred. More consideration may be given to projects with a greater-than-50% cost share.

Programmatic Selection Considerations

In conjunction with the evaluation results and ranking of individual applications, the Government will make selections for negotiations and planned awards from among the highest ranking applications utilizing the following programmatic considerations:

(1) The proposed cost of the project will not be point scored. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the probable cost to the government to determine whether the technical and business approaches (excluding cost considerations) are worth the probable cost differences.

(2) It is desirable to implement each demonstration project as a collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the geothermal industry engaged in its practical, daily operations and experienced in the application of geothermal industry processes.

(3) Applications that have the potential to increase geothermal power capacity, reduce negative environmental impacts, and provide significant cost benefits are preferred.

Merit Reviews

All applications will be evaluated under the procedure for "Objective Merit Review of Discretionary Financial Assistance Applications", **Federal Register**, May 31, 1990, Vol. 55, No. 105 (copy provided upon request), and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-Government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent.

General Conditions and Notice to Applicants

a. Applicants: All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

b. False Statements: Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

c. Application Clarification: DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

d. Amendments: All amendments to this solicitation will be mailed to recipients who submit a written request for the DOE application package.

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e. Applicant's Past Performance: DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

f. Commitment of Public Funds: The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

g. Effective Period of Application: All applications should remain in effect for at least 180 days from the closing date.

h. Availability of Funds: The actual amount of funds to be obligated will be subject to availability of funds appropriated by Congress.

i. Loans under DOE Minority Economic Impact (MEI) Loan Program: Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

j. Assurances and Certifications: DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package.

k. Questions and Answers: Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than April 10, 1995. Questions and answers will be issued in writing as an amendment to this solicitation.

l. Preaward Costs: The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award.

m. Patents, Data, and Copyrights: Applicants are advised that patents, data, and copyrights will be treated in accordance with 10 CFR 600.33.

n. Environmental Impact: An applicant environmental checklist will be provided in the DOE application package. Award will not be made until the environmental checklist is completed. An environmental review of the environmental checklist and the application will be conducted by DOE as required by 10 CFR 1021.216.

o. EPACT: Applicants shall be required to comply with section 2306 of the Energy Policy Act of 1992 (EPACT) (42 U.S.C. 13525), as applicable.

p. Buy American Act: Any organization receiving award under this solicitation must comply with the Buy American Provisions of Section 307 of Pub. L. 103–332, Department of the Interior and Related Agencies Appropriations Act of 1995.

Dated: March 9, 1995.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 95–7278 Filed 3–23–95; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Federal Assistance Award to National Automotive Technicians Education Foundation

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to the National Automotive Technicians Education Foundation (NATEF), for the further development and implementation of a nationwide program for voluntary certification of training programs for alternative fuel vehicle and refueling systems technicians. This program will assist the Office of Transportation Technologies (OTT) programs at DOE, in the implementation of Section 411 of the Energy Policy Act of 1992 (EPAct). The OTT programs seek to improve transportation energy efficiency and to reduce the nation's dependence on imported fuels. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist. The telephone number is 303–275–4722.

SUPPLEMENTARY INFORMATION: The applicant organization is a nonprofit 501(c)3 corporation founded in 1982. In conjunction with the National Institute of Automotive Service Excellence (ASE), the applicant organization has implemented a national standards development and evaluation process for the certification of automotive technician training programs. This program expands the NATEF capability to include alternative fuel technician training programs. The NATEF organization is governed by its 15-member Board of Trustees which represents virtually every segment of the transportation industry as well as representatives from consumer groups, vocational and other educators, professional technicians, employers of technicians, business leaders, and other affected entities and persons.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity that will enhance the public benefit derived and for which competition and the delay resulting therefrom would have a significant adverse effect on completion of the activity. The applicant has exclusive domestic capability to perform the activity successfully, based upon its existing automotive technician training program certification process and its experience demonstrating that this process results in nationwide quality improvement of automotive service and repair. DOE knows of no organization other than NATEF which is capable and which is conducting or is planning to conduct development and implementation of certification of training programs for alternative fuel vehicle technicians and alternative fuel refueling-system technicians as proposed by the applicant.

Current Federal funding is available in the amount of $500,000. A minimum of $88,000 from non-Federal sources has been committed by NATEF to accomplish the first year of this development program. The project cost over five years is estimated to be $2,795,634 total, with the DOE share being $2,318,997 and $476,637 to be cost-shared by NATEF.

Issued in Golden, Colorado on March 14 1995.

John W. Meeker,

Chief, Procurement, GO

[FR Doc. 95–7345 Filed 3–23–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Programs Workshops

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Training Workshops.

SUMMARY: The U.S. Department of Energy (DOE) is announcing the fiscal year 1995 training schedule for Federal energy management workshops that will be conducted by the Office of Federal Energy Management Programs in support of the Executive Order 12902 dated March 8, 1994 concerning Energy Efficiency and Water Conservation at Federal facilities. Executive Order No. 12902, 501, (f) **Federal Register** 11463 (1994), of the Executive Order requires DOE to conduct appropriate training for Federal agencies to assist them in identifying and funding cost-effective projects. To the extent resources are available, DOE is required to work with utilities and the private sector to encourage the participation in Federal sector programs.

DATES AND ADDRESSES: The following are the dates, locations, and contact persons, of fiscal year 1995 training workshops. To obtain information on content of workshops and to register, please telephone the workshop contact persons listed below.

Renewable Energy Projects Workshop

Washington, DC
June 5–6, 1995

Contact: Chris DeChaine, Enterprise Advisory Services, Inc., 800–566–2877.

Water Resource Management Workshops

Chicago, IL
April 4–5, 1995
Atlanta, GA
June 12–13, 1995
Washington, DC
July 11–12, 1995
San Diego, CA
September 12–13, 1995
Kansas City, MO
September 26–27, 1995

Contact: Cindy Griswold, Pacific Northwest Laboratories, (509) 372–4368.

Federal Energy Management Workshop

New York, NY
March 27–28, 1995
Chicago, IL
May 1–2, 1995
Seattle, WA
July 31–August 1, 1995
Washington, DC
September 26–27, 1995

Contact: Lisa Frey, Camber Corporation, (202) 737–1911.

Designing Low Energy Buildings Workshop for Non-Residential Buildings

Washington, DC
April 4–5, 1995
Chicago, IL
June 26–27, 1995
San Diego, CA
September 14–15, 1995

Contact: Katie Bush, Passive Solar Industries Council, (202) 628–7400, ext. 200.

Designing Low Energy Buildings Workshop for Residential Buildings

(Workshops are scheduled at sites as requested and approved)

Contact: Katie Bush, Passive Solar Industries Council, (202) 628–7400, ext. 200

Life Cycle Costing (LCC)/ASEAM (A Simplified Energy Analysis Method) Workshop

Dallas, TX
March 20–22, 1995
Rockville, MD
May 22–24, 1995
Sacramento, CA
June 5–7, 1995
Seattle, WA
August 2–4, 1995

Contact: Loreen Linsenmeyer, National Institute of Standards and Technology, (301) 975–6132.

Federal Energy Decision Screening (FEDS) Workshop

New York, NY
March 29–30, 1995
Rockville, MD
May 15–17, 1995
Atlanta, GA
June 14–16, 1995
Washington, DC
August 14–16, 1995
Washington, DC
August 16–18, 1995

Contact: Cindy Griswold, Pacific Northwest Laboratories, (509) 372–4368.

Federal Relighting Initiative (FRI) Workshop

Los Angeles, CA
March 14–16, 1995
Kansas City, MO
April 25–27, 1995
Rockville, MD
May 17–19, 1995
Chicago, IL
June 28–30, 1995
Charlotte, NC
August 8–10, 1995
Denver, CO
September 19–21, 1995

Contact: Lisa Frey, Camber Corporation, (202) 737–1911.

Energy Savings Performance (ESP) Contracting

Kansas City, MO
March 14–17, 1995
Philadelphia, PA
March 28–31, 1995
Denver, CO
April 18–21, 1995
Washington, DC
May 3–5, 1995
Dallas, TX
June 20–23, 1995
Washington, DC
June 27–30, 1995
Seattle, WA
August 7–9, 1995

Contact: Lisa Frey, Camber Corporation, (202) 737–1911.

FOR FURTHER INFORMATION CONTACT: Ted Collins, Federal Energy Management Program (FEMP), Department of Energy, (202) 586–8017.

SUPPLEMENTARY INFORMATION: Description of training provided by the Office of Federal Energy Management Programs is as follows:

Renewable Energy Projects Workshop

This course is intended for Federal facility managers and associated architects and engineers who are interested in incorporating renewable resource technologies into new or retrofit building projects. The course includes 4 distinct modules.

- An integrated renewables/energy efficient approach to new construction/major renovation;
- Renewable measures that may be applicable for building retrofits;
- Renewable technologies that can be used for electrical generation; and,
- Procurement pitfalls and issues and financing that is applicable to all types of renewables.

(2 days. No tuition fee.)

Water Resource Management Workshop

Assists Federal resource managers in incorporating water efficiency into their project assessment, planning, and implementation programs as required by the Energy Policy Act of 1992 (EPAct) and E.O. 12902. The Course includes the following topics:

- Federal water use;
- The impacts of conservation practices;
- The legal framework for water management;
- Auditing, metering, and leak detection;
- Conservation opportunities; and,
- Water resource acquisition.

(2 days, no tuition fee.)

Federal Energy Management Workshop

The Federal Energy Management Workshop summarizes current practices in alternative financing, facility operation and maintenance, and energy auditing and provides training toward meeting the EPAct "trained energy manager" requirements. EPAct defines a "trained energy manager" as a person who has completed a course of study in the areas of:

- Fundamentals of building energy systems;
- Building energy codes and applicable professional standards;

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- Energy accounting and analysis;
- Life-cycle cost methodologies;
- Fuel supply and pricing; and,
- Instrumentation for energy surveys and audits.

(2 days. No tuition fee.)

Designing Low Energy Building Workshop for Non-Residential Buildings

Formerly known as the Passive Solar Design Strategy Workshop, the course addresses whole building design, stressing the integration of daylighting, energy efficient equipment, and passive solar design strategies. Case studies and analysis for various climates are included.

(2 days. No tuition fee.)

Designing Low Energy Building Workshop for Residential Buildings

For personnel involved in the Federal residential building design process, this course can be tailored for your installations and conducted there, as requested and approved.

(1 day. No tuition fee.)

Life Cycle Costing/A Simplified Energy Analysis Method (ASEAM) Workshop

Basic for all energy improvement projects, the first two days of this course include instruction in LCC economic evaluation methods and an introduction to LCC software use in project design, sizing, and selection. Retrofit case examples and class team problems will be explored. The third day includes hands-on instruction in the use of the ASEAM software tool for simulating the impact of energy retrofits in buildings. A working knowledge of IBM-compatible microcomputers is required.

(3 days. No tuition fee.)

Federal Energy Decision Screening (FEDS) Workshop

Designed for Federal agency-level and installation-level energy managers who want to identify cost-effective site-specific energy system revitalization projects. The workshop includes hands-on use of the FEDS level-1 analytical software for site project screening and prioritizing and FEDS level-2 software for analyzing specific improvements.

(2½ days. No tuition fee.)

Federal Relighting Initiative (FRI) Workshop

The FRI workshop is targeted at Federal personnel responsible for lighting analysis, procurement, planning, and the installation of life-cycle cost-effective technology. The objective is to provide guidance on energy-efficient lighting consistent with other facility lighting considerations, quality and cost, and whole building analysis. Topics include:

- Basic lighting concepts; a comprehensive process for Federal relighting project development and implementation;
- Application of the Federal Lighting Expert (FLEX) System and other analytical software tools; and,
- The use of professional lighting design services.

An additional half-day is for hands-on problem solving using software tools.

(2½ days. No tuition fee.)

Energy Savings Performance (ESP) Contracting

EPAct streamlined the process for awarding shared energy savings contracts through the use of ESP contracting. This course places the ESP approach in the context of other financing options and will familiarize technical facility management personnel and procurement specialists with this form of third party financing for performing energy saving retrofits on buildings. Course materials include model solicitation on diskette. Topics include: ESP concepts and statutory basis, solicitation design and preparation, proposal evaluation, and contract implementation. Students will look at case histories and discuss the selection of candidate ESP project sites and receive hands-on help for specific projects they bring to the class.

(4 days. No tuition fee.)

Issued in Washington, DC on February 21, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–7365 Filed 3–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–706–000, et al.]

Central Hudson Gas and Electric Corporation, et al., Electric Rate and Corporate Regulation Filings

March 17, 1995

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas and Electric Corporation

[Docket No. ER95–706–000]

Take notice that on March 6, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and CNG Power Services Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas and Electric Corporation

[Docket No. ER95–707–000]

Take notice that on March 6, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and Rochester Gas and Electric Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 ("Power Sales Tariff") accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas and Electric Corporation

[Docket No. ER95–708–000]

Take notice that on March 6, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and Citizens Lehman Power Sales. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER95–710–000]

Take notice that on March 7, 1995, Arizona Public Service Company (APS), tendered for filing a request for CIAC treatment of certain facilities which are required to be replaced pursuant to the terms of the Mead-Phoenix Project Westwing Substation Interconnection Agreement (Agreement). The parties to the Agreement are APS, The United States of America, Salt River Project Agricultural Improvement and Power District, Department of Water and Power of the City of Los Angeles, Nevada Power Company, M-S-R Public Power Agency, Southern California Public Power Authority, Tucson Electric Power Company, and City of Vernon.

In addition to all the Parties to this Agreement copies of this filing have been served upon El Paso Electric Company, Public Service Company of New Mexico, the Arizona Corporation Commission, the New Mexico Public Service Commission, the Public Utility Commission of Texas, and the Nevada Public Service Commission.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER95–712–000]

Take notice that on March 7, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Entergy Power, Inc. (EPI). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide EPI non-firm transmission service under Entergy Services Transmission Service Tariff.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER95–713–000]

Take notice that on March 8, 1995, the American Electric Power Service Corporation (AEPSC), tendered for filing, as initial Rate Schedules, Agreements dated December 1, 1994, and January 1, 1995, between AEPSC, as agent for the AEP System Operating Companies and the following companies: InterCoast Power Marketing Company and CNG Power Services Corporation (Marketers).

The Agreements provide the Marketers access to the AEP System for short-term transmission service. The parties request an effective date of March 9, 1995.

A copy of the filing was served upon the state regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia, and the Marketers.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER95–714–000]

Take notice that on March 8, 1995, Orange and Rockland Utilities, Inc. (O&R), tendered for filing an amendment to § 3 of the Agreement between Orange and Rockland Utilities, Inc. and Long Island Lighting Company (LILCO) dated April 27, 1976.

O&R states that a copy of this filing has been served by mail upon LILCO.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER95–715–000]

Take notice that on March 8, 1995, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing an extension dated December 1, 1994, to an agreement between Orange and Rockland and New York Power Authority (Authority) for the sale of system capacity and/or energy by Orange and Rockland to Authority.

Orange and Rockland requests waiver of the notice requirements of Part 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective December 1, 1994 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on New York Power Authority.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Gordonsville Energy, L.P. (Unit I and Unit II)

[Docket Nos. QF92–166–005, QF92–167–005 and EL95–32–000]

Take notice that on March 10, 1995, Gordonsville Energy, L.P., (Gordonsville) tendered for filing a Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Gordonsville requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogenerating facilities as set forth in Section 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its cogeneration facilities located near Gordonsville, Virginia. Specifically, Gordonsville requests waiver of the operating and efficiency standards for the calendar years of 1994 and 1995.

Comment date: April 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Birchwood Power Partners, L.P.

[Docket No. QF93–126–001]

On March 13, 1995, Birchwood Power Partners, L.P. (Applicant), of 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility will be located on Birchwood Drive, in Sealston, Virginia. The Commission previously certified the facility as a qualifying cogeneration facility in Birchwood Power Partners, L.P., 65 FERC ¶62,048 (1993). The instant request for recertification is due to a change in ownership of the facility.

Comment date: April 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7309 Filed 3–23–95; 8:45 am]

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[Project No. 2689–005]

Notice of Application

March 20, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of application:* Transfer of License and Approval of Lease.
b. *Project No.:* 2689–005.
c. *Date Filed:* March 7, 1995
d. *Applicant:* Scott Paper Company
e. *Name of Project:* Oconto Falls.
f. *Location:* Oconto River, Oconto County, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Mark Hooper, (202) 219–2680.
j. *Comment Date:* April 6, 1995.
k. *Description of Transfer and Lease:* Scott Paper Company (Scott) proposes to transfer to N.E.W. Hydro, Inc. (N.E.W.) its license. N.E.W. requests approval of the lease arrangement between N.E.W. and Scott.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comment must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7248 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2744–009]

Notice of Application

March 20, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License and Approval of Lease.
b. *Project No.:* 2744–019.
c. *Date Filed:* March 7, 1995.
d. *Applicant:* Menominee Company.
e. *Name of Project: Menominee/Park Mill.*
f. *Location:* Menominee River, Marinette County, Wisconsin, and Menominee County, Michigan.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Nancy J. Skancke Grammer, Kissel, Robbins & Skancke 1225 Eye Street, N.W., Suite 1225 Washington, DC 20005 (202) 408–5400.
i. *FERC Contact:* Mark Hooper, (202) 219–2680.
j. *Comment Date:* April 6, 1995.
k. *Description of Transfer and Lease:* Menominee Company (Menominee) proposes to transfer to N.E.W. Hydro, Inc. (N.E.W.) its license. N.E.W. requests approval of the lease arrangement between N.E.W and Menominee.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file aa motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comment—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have to comments. One copy of an agency's comment must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7249 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11291–000]

Notice of Application

March 20, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Notice of Application Tendered for Filing With the Commission

a. *Type of Application:* Minor License
b. *Project No.:* 11291–001.
c. *Date Filed:* March 6, 1995.
d. *Applicant:* Star Mill, Inc.
e. *Name of Project:* Star Milling Project.
f. *Location:* On the Fawn River in Lima Township, LaGrange County, Indiana.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. Richard K. Muntz, 109 South Detroit Street, LaGrange, Indiana 46761, (219) 463–2151.
i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.
j. *Comment Date:* Within 35 days of the date filed shown in paragraph (c).
k. *Description of Project:* The existing operating project consists of: (1) A 4-foot-high concrete and earthen dam; (2) a reservoir; (3) a powerhouse containing a 187 KVa generating unit and a 125 KVa generating unit; (4) a tailrace; and (5) appurtenant facilities.

1. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission. We are waiving the Section 4.32(b)(7) required time to respond to this notice and request that any request for studies be provided no later than 35 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7250 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Additional Environmental Training Courses

March 20, 1995.

The Office of Pipeline Regulation staff will conduct the following training during FY 95. A more detailed announcement will be made for each individual session as the locations and times are finalized.

Type of training	Date	Location
Cultural Resources.	May 3 ..... Sept. 14 or 21	Minneapolis. Denver.
Compliance . Environmental Report Preparation *and* Compliance.	May ..... August ..... September	New Orleans. Salt Lake City. Detroit.

The Cultural Resources and Compliance training will be similar to previous sessions. The Environmental Report Preparation training will be a new one-day session on how to prepare an environmental report and related information for construction projects filed with the Commission. It will be held in conjunction with a two-day Compliance session.

We would appreciate any suggestions for additional training topics and additional locations for training sessions. Please provide any questions or suggestions about these or other training sessions, to Mr. John Leiss at (202) 208–1106.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7245 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–204–000

Columbia Gas Transmission Corp.; Notice of Petition for Approval of Stipulation

March 20, 1995.

Take notice that on March 14, 1995, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving the stipulation entered into by Columbia and Overthrust Pipeline Company (Overthrust) on March 3, 1995. Columbia states that the stipulation terminates Columbia's contractual obligations under a transportation contract, Contract No. WH–28012–W, between Columbia and Overthrust through the payment of a negotiated Exit Fee by Columbia to Overthrust.

Columbia states that the stipulation is contingent upon Bankruptcy Court and Commission approving, including Commission approval of Columbia's full recovery from Columbia's customers of the Exit Fee paid to Overthrust.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before April 10, 1995. Reply comments should be filed on or before April 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7256 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–203–000]

K N Interstate Gas Transmission Co., Notice of Filing of Reconciliation Report

March 20, 1995.

Take notice that on March 13, 1995, K N Interstate Gas Transmission Co. (KNI) filed a reconciliation report in the above captioned docket. KNI states that the filing and refunds were made to comply with the Federal Energy Regulatory Commission's (Commission) Order dated March 2, 1995. KNI also states that these amounts were paid by KNI on March 8, 1995.

KNI States that the reconciliation report summarizes refund amounts for the period October 1, 1993 through September 30, 1994 related to Sections 27 and 28, Second Revised Volume No. 1–B and Section 31, First Revised Volume No. 1–D of KNI's FERC Gas Tariff. These sections relate to accounting for and refunding of excess IT and storage related revenues.

KNI notes that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to make any protest with reference to this filing should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 27, 1995. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7255 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–152–001]

NorAm Gas Transmission Co.; Notice of Filing

March 20, 1995.

Take notice that on March 14, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective March 4, 1995:

Substitute First Revised Sheet No. 168
Substitute Original Sheet No. 168A

NGT states that it is modifying the definitions of the General Terms and Conditions in compliance with the Commission's March 3, 1995 Order in this matter.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

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available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7253 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–258–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

March 20, 1995.

Take notice that on March 13, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–258–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 to abandon certain facilities and construct facilities in Louisiana, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to upgrade a meter station and regulator on Line FM–43 in Lincoln Parish, Louisiana delivering gas to Arkla, a Division of NorAm Energy Corporation (Arkla). NGT states that it proposes to abandon an above-ground 1-inch meter station and regulator and install a 2-inch L-Shape meter station and regulator at the request of Arkla to increase deliveries to Arkla's Rural Extension No. 947 in Ruston, Louisiana. NGT states that it will deliver approximately 281,200 MMBtu annually and 864 MMBtu per day on a peak day to Arkla. NGT estimates that the cost of the construction of the facilities will be $24,768. NGT states that Arkla has agreed to reimburse NGT for the cost of this project.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7247 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–5–003]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 20, 1995.

Take notice that on March 14, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 6, 1994:

Second Substitute Second Revised Sheet No. 234
Substitute First Revised Sheet No. 235
Substitute First Revised Sheet No. 237
Substitute Original Sheet No. 237–A
Second Substitute Original Sheet No. 237–B
Second Substitute Original Sheet No. 237–C

Northwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's directives in its Order Accepting Compliance Filing, Subject to Conditions, Establishing Technical Conference, and Deferring Action on Rehearing issued February 27, 1995 in Docket Nos. RP95–5–001 and RP95–5–002 (Order).

The Order requires Northwest to provide for trading of Receiving Party Imbalances with Receiving Party Imbalances, and Receiving Party Imbalances with Shipper Imbalances. Northwest states that the instant filing provides for these trading provisions and describes how Northwest will administer these new provisions. The addition of these provisions beget the need for additional clarifications of the netting/trading provisions.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP95–5–000, upon Northwest's jurisdictional customers, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7251 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–369–004 and CP95–33–001]

Tennessee Gas Pipeline Co.; Notice of Filing

March 20, 1995.

Take notice that on March 3, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to be included in its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to be effective March 3, 1995:

Tenth Revised Sheet No. 4
First Revised Sheet No. 5235
First Revised Sheet No. 5248
First Revised Sheet No. 5581

Tennessee states that the purpose of these tariff sheets is to cancel Rate Schedules X–16, X–27, and X–66 pursuant to Commission Orders.

Tennessee states that copies of the filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected parties.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7246 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–206–000]

Tennessee Gas Pipeline Co.; Notice of Tariff Filing

March 20, 1995.

Take notice that on March 15, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the following amendments to its FERC Gas Tariff, Fifth Revised Volume No. 1:

Fourth Revised Sheet No. 1
Second Revised Sheet No. 210
Second Revised Sheet No. 213
First Revised Sheet No. 225
First Revised Sheet No. 304
Second Revised Sheet No. 316
First Revised Sheet No. 350
First Revised Sheet No. 351
Original Sheet No. 351A
Third Revised Sheet No. 509
Third Revised Sheet No. 512
Original Sheet No. 228–230
Original Sheet No. 304A
Original Sheet No. 586A–586E

Tennessee is proposing these amendments in order to provide a new supply aggregation (pooling) service for its customers (SA service). Tennessee requests that the Commission accept the tariff sheets set forth above by May 1, 1995, and suspend the tariff sheets for five months. Tennessee states it will move to put the tariff sheets into effect no later than January 1, 1996, by filing a motion thirty days prior to the effective date.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7257 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–001]

Transcontinental Gas Pipe Line Corp.; Notice of Tariff Filing

March 20, 1995.

Take notice that on March 17, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 3740. The proposed effective date of the revised tariff sheet is April 1, 1995.

On March 1, 1995 Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. RP95–197–000 a change in rates pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's regulations thereunder (March 1 Filing). As indicated in Section D (a) of the Statement of Nature, Reasons and Basis, Transco proposes to revise the right of first refusal language set forth in Section 48.2 of the General Terms and Conditions of Transco's Volume No. 1 Tariff to state that Transco will solicit bids for a minimum of 5 days and a maximum of 30 days following the date that the terms and conditions for the available capacity are posted on Transco's EBB.

It has come to Transco's attention that Second Revised Sheet No. 3740 included in the March 1 Filing does not reflect such revised language. Therefore, in order to reflect this intended revision to Section 48.2 of the General Terms and Conditions, Transco is submitting in the instant filing Substitute Second Revised Sheet No. 3740 as a replacement for Second Revised Sheet No. 3740.

Transco states that copies of the instant filing are being mailed to those parties which were served with a copy of Transco's March 1 Filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7254 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ95–2–35–000]

West Texas Gas, Inc.; Notice of Filing

March 20, 1995.

Take notice that on March 15, 1995, West Texas Gas, Inc. (WTG) filed Fourteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective April 1, 1995. This tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations. Because the filing reflects a reduction in WTG's purchased gas costs, the company requested a waiver of Section 154.308 of the regulations in order to allow the proposed tariff sheet to go into effect on less than 30 days notice.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7258 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–132–001]

Williams Natural Gas Co., Notice of Refund Report

March 20, 1995.

Take notice that on March 14, 1995, Williams Natural Gas Company (WNG) tendered for filing a report of refunds made to Shippers.

WNG states that on January 20, 1995, it filed a report of net revenue received from cash-outs for the twelve-month period October 1993 through September 1994. The report proposed to make such refunds to Shippers listed on the refund report, including interest from January 14, 1995 through the date of the refund, upon Commission approval of the report of refunds. By order dated February 27, the Commission accepted WNG's filing and required WNG to make refunds to its customers as proposed. The attached refund report is being filed in compliance with the order.

WNG states that a copy of this filing was served on all Shippers receiving a refund, all participants listed on the service lists maintained by the Commission in the docket referenced above, and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E.,

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Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7252 Filed 3–23–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of January 16 Through January 20, 1995

During the Week of January 16 through January 20, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 16, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 16 through January 20, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
10/06/94	Jim Walter Corporation, Gladwyne, PA	RR272–186	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The December 11, 1990, Decision and Order, Case No. R272–10664, issued to Jim Walter Corporation would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
01/17/95	Cowles Publishing Company, Spokane, WA	VFA–0018	Appeal of an Information Request Denial. If granted: Cowles Publishing Company would receive three memoranda prepared by an attorney employed by a DOE contractor.
01/17/95	David Ramirez, Babylon, NY	VWX–0001	Supplemental (Whistleblower). If granted: David Ramirez would be awarded $38,855 in attorney's fees and other reasonable costs incurred in bringing his whistleblower complaint against Brookhaven National Laboratory.
01/17/95	Deer Trail Truckline, Memphis, TN	RR272–187	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The September 20, 1994 Dismissal Letter, Case No. RF272–90556, issued to Deer Trail Truckline would be modified regarding the firm's Application for Refund submitted in the Crude Oi refund proceeding.
01/17/95	J.O. Ramsey Trucking Co., Inc., Cordova, TN.	RR272–188	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 29, 1994 Dismissal Letter, Case No. RF272–95204, issued to J.O Ramsey Trucking Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
01/17/95	Rocky Flats Field Office, Golden, CO	VSO–0015	Request for Hearing under 10 CFR Part 710. If granted An individual employed at the Rocky Flats Environmental Technology site would receive a hearing under 10 CFR Part 710.
01/18/95	Albuquerque Operations Office, Albuquerque, NM.	VSO–0016	Request for Hearing under 10 CFR Part 710. If granted An individual employed at the Sandia National Laboratory would receive a hearing under 10 CFR Part 710.
01/18/95	Dixie Electric Co., Odessa, TX	RR272–189	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 29, 1994 Dismissal Letter, Case No. RF272–95225, issued to Dixie Electric Inc. would be modified regarding the firm's Application for Refund submitted in the Crude Oil refunc proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 16 through January 20, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
01/18/95	Lloyd Makey, Idaho Falls, ID	VFA–0019	Appeal of an Information Request Denial. If granted: The December 22, 1994 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Lloyd Makey would receive access to Office of Inspector General case files I93ZZ189 and I93ZZ190.
01/20/95	Southwest Resource Development, San Antonio, TX.	VFA–0020	Appeal of an Information Request Denial. If granted: The December 9, 1994 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Southwest Resource Development would receive access to certain Department of Energy information.

REFUND APPLICATIONS RECEIVED

[Week of January 16 through January 20, 1995]

Date	Name of Firm	Case No.
01/17/95	McLean County Service Co	RG272–15
01/17/95	O'Connor & Young Drilling Co	RG272–16
01/18/95	Arrow Lakes Dairy	RC272–278
01/18/95	Bardahl Manufacturing Corp	RA272–64
01/18/95	Newell Cooperative Elevator	RG272–17
01/18/95	Olive Springs Quarry	RG272–18

[FR Doc. 95–7346 Filed 3–23–95; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of January 9 through January 13, 1995

During the Week of January 9 through January 13, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 16, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 9 through January 13, 1995]

Date	Name and location of applicant	Case No.	Type of submission
1/10/95	Amoco, Belridge, Palo Pinto, OKC, Vickers, Amoco II/Oklahoma, Oklahoma City, OK.	RM21–282, RM8–283, RM5–284, RM13–285, RM1–286 RM251–287	Request for Modification/Rescission in the Amoco *et al.* Second Stage Refund Proceedings. If granted: The May 7, 1985 Decision and Order, Case Numbers RQ21–163, RQ8–167 and RQ5–161; and the December 18, 1987 Decision and Order, Case Numbers RQ13–404, RQ1–397 and RQ251–401, would be modified regarding Oklahoma's Applications for Refund submitted in the Amoco, Belridge, Palo Pinto, OKC, Vickers, and Amoco II second stage refund proceedings.

Date	Name of firm	Case No.
01/06/95	Glassrock Trucking Co	RF300–21817
01/06/95	Aline Manire & M E Young Gums	RF300–21818
01/06/95	Emery Investments, Inc	RF300–21819
01/09/95	Roy Anderson Paint Co	RG272–12
01/09/95	Farm Gas Cooperative Assoc	RG272–13
01/09/95	Higgins Texaco	RF321–21055
01/10/95	Deer Trail Truckline	RC272–277
01/11/95	Buckeye Country Mark Inc	RG272–14

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[FR Doc. 95–7344 Filed 3–23–95; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Supplemental Refund Checks in Special Refund Proceeding Involving Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of issuance of interim supplemental refund checks in the Crude Oil Overcharge Special Refund Proceeding [RF272 Case Nos.]

SUMMARY: The Office of Hearings and Appeals of the Department of Energy will issue interim supplemental refund checks to prior refund recipients in the crude oil overcharge refund proceeding.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Virginia Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2390 (Wieker), (202) 586–2400 (Lipton).

SUPPLEMENTARY INFORMATION: The Office of Hearings and Appeals (OHA) of the Department of Energy will soon begin issuing interim supplemental refund checks to prior crude oil overcharge refund recipients. The OHA will shortly begin sending letters announcing this process to these refund recipients, asking them to confirm their current business name, address, telephone number and name of contact person. We will include a verification form that refund recipients may use to provide this information. The recipients will also receive a copy of a Question and Answer (Q&A) sheet prepared by the OHA providing more information about the supplemental refund process.

The letters will be sent over a period of several weeks and be mailed to every applicant that has received a total refund of at least $50. (This amounts to an approved volume of at least 62,500 gallons.) Applicants that do not receive a letter because their refunds were based on lesser gallonages may still apply for and receive an interim supplemental refund. These smaller Applicants who wish to receive this supplemental refund, rather than wait for the total amount in a single final refund check at a later date, should file a request for a supplemental refund with the OHA at the address listed above. The request should include all of the elements contained on the verification form that is part of the OHA's supplementary crude oil overcharge refund packet.

As stated in the Q&A sheet, the supplemental refunds will be calculated by multiplying the approved gallonage by $0.0008. That is, for every 100,000 gallons of product, the refund will be $80. Thus, the supplemental refund will be equal to the total crude oil overcharge refund already received by a recipient. Further, as indicated in the Q&A sheet, there is no deadline by which responses for submitting the information to receive the supplemental payment must be received. However, the sooner the information is provided, the sooner the payment can be processed. We request that Applicants whose claims are greater than 62,500 gallons file the verification form that will be mailed to them. This form will also contain some identifying information that will facilitate OHA processing. A copy of the full Q&A sheet, the suggested verification form, and the cover letter are set forth below.

Applicants in the crude oil refund proceeding whose refund claims are currently in process will not be issued supplemental checks at this time. Instead, all refund claims granted after March 3, 1995, will be granted at a higher volumetric rate of $0.0016 per gallon.

Dated: March 16, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy,
Washington, DC 20585

Re: Supplemental Crude Refunds

Dear Crude Oil Refund Recipient: Our records show that you have received a refund in the Subpart V Crude Oil Refund Proceeding of the Department of Energy (DOE). This proceeding aims to compensate people overcharged by various oil companies which violated crude oil price regulations from August 1973 to January 1981.

When we granted your application, we stated that we might send you a supplemental refund check. We are now ready to issue you another check.

In order to receive your supplemental check, please verify that your name and address are correct on the mailing label on this letter. If so, simply check the "Yes" box on the back of this letter and sign the underlying statement. If your name or address has changed, check the "No" box, provide the correct information, and sign the underlying statement. If any other circumstances have changed, attach a letter explaining these changes (please print or type). We have included a short list of questions and answers that deal with some of the most common issues. If you have any other questions, please feel free to call us at (202) 586–4921 between 9:00 a.m. and 5:00 p.m. Eastern Time on regular business days. Also, please provide us with a daytime phone number so we can contact you if necessary.

In addition to your name and address, the Internal Revenue Service (IRS) requires us to report refund payments on IRS Form 1099–MISC. Therefore, we request that you provide us with your Employer Identification Number (for businesses) or Social Security Number (for individuals). You should submit this number even if you have previously provided it to our office. By law, if you are an individual, you are not required to disclose your Social Security Number. However, if you do not report it to us, we shall withhold 31% of your supplemental check and forward it to the IRS as back-up withholding.

Please return this letter with your responses in the enclosed postage-paid envelope. Once we receive your reply, we will examine it and process it. If we do not receive a reply from you, we will not send you a supplemental check at this time. We hope to hear from you.

Questions and Answers Regarding Supplemental Refunds in the Subpart V Crude Oil Refund Proceeding

The following Questions and Answers concern the supplemental refunds currently being issued by the Department of Energy (DOE) in the Subpart V crude oil refund proceeding. This crude oil refund proceeding is being conducted through the Office of Hearings and Appeals (OHA) of the DOE.

As stated in the Decision and Order that granted your refund, applicants who applied for crude oil refunds before June 30, 1988, would receive supplemental refunds as additional crude oil overcharge funds were available. We stated that we would determine at a later date whether applicants who applied for crude oil refunds after June 30, 1988, would receive supplemental refunds. We have collected additional crude oil overcharge funds; therefore, we are able to issue interim supplemental checks to all crude oil refund recipients (about 87,000 recipients) to date.

Q: What do I need to do in order to receive a supplemental refund? Do I need to file another Application?

A: No. You only need to send back the verification form confirming your name, current address, and taxpayer identification number. If there have been any changes in the status of your application (e.g., bankruptcy, death, dissolution, etc.), please see the Q&A below regarding changes.

Q: What is the deadline for submitting the verification form?

A: There is no deadline for submitting the verification form. However, we will process the supplemental refund checks in the order that we receive the verification forms. The sooner you submit your form, the sooner you will receive a supplemental refund.

Q: How much will I receive?

A: Supplemental refund checks will be calculated by multiplying your previously approved gallonage (located at the top right-hand corner of your mailing label) by $0.0008 per gallon. In other words, for every 100,000 gallons, you will receive $80. The amount that you receive will be equal to your total prior crude overcharge refund.

Q: What are the other numbers on my mailing label?

A: The top right-hand corner number is your approved gallonage. The "RF272-" number is your original refund case number.

Q: When will I receive my check?

A: In most cases, if all your information is complete, you should receive a supplemental check within 90 days of our receipt of your information.

Q: Why do you refer to this supplemental refund check as an "interim" check?

A: We may collect additional crude oil overcharge funds. If we receive additional crude oil overcharge funds, we will issue a final check to all applicants who have received refunds in the crude oil proceeding.

Q: What happens if I don't submit the verification form at this time?

A: If you choose not to submit the verification form at this time, we will not issue you an interim check. Instead, you will receive only a final check. This final check will include the amount that would have been issued in the interim check. However, we do not know when the crude oil violation collections will be completed, so we cannot estimate when we will issue the final checks.

Q: I represent an applicant who was an individual or a sole proprietor, but circumstances have now changed (e.g., death, divorce, personal bankruptcy, etc.). What should I do?

A: You should submit an explanation of the changes in circumstances with your verification form. For example, if the original applicant declared personal bankruptcy, you should state whether the bankruptcy is open or closed and the name of the trustee, if any. If the original applicant is now deceased, the survivor(s) of the decedent should state whether there is an estate and whether the estate is still open.

Q: I represent a corporation or partnership whose status has changed (e.g., dissolution, bankruptcy, sale to another company, etc.). What should I do?

A: You should submit an explanation of the changes in business status with your verification form. For example, if the applicant is a company that is no longer operating, please provide the names and percentage shares of the shareholders at the time of dissolution. If the applicant was a firm that has experienced a bankruptcy, please state whether the bankruptcy is open or closed, whether it is a Chapter 7 or 11, and the name of the trustee, if any. If the applicant was a company that has been sold to another company, please state the new owner's name and whether it was a stock or asset sale. If the applicant was a business partnership in which a partner(s) is now deceased, the surviving partner(s) should state which partners remain and the disposition of the deceased partner's share in the business.

Q: I know of another applicant who has already received a supplemental check, yet I received notice of this supplemental check only recently. Why is that?

A: In order to handle the overwhelming number of supplemental checks most effectively, we are issuing notification of the supplemental checks in stages according to the order in which the original claims were filed.

Q: I also filed an application in a refined product proceeding (e.g., Texaco, Gulf, ARCO, etc.). Will I receive a supplemental check from that refund proceeding?

A: No. Only one refund check generally is issued in refined product proceedings.

Q: Whom do I contact for more information?

A: Call (202) 586–4921 from 9 am–5 pm ET.

Send your verification form and any letters of explanation or inquiry to: Supplemental Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Verification Form

Part I: Correct Name and Address

☐ Yes, my name and current address are correct on the mailing label.

☐ No, my name and current address are different from the mailing label.

The correct information is (please print or type):

_____

_____

_____

☐ Yes, there has been a change in the business or in the ownership of the business due to death, divorce, sale, bankruptcy or dissolution. Please submit an explanation with this form.

☐ No, there has been no change in the business or in the ownership of the business due to death, divorce, sale, bankruptcy or dissolution.

Part II: IRS Form 1099 Information

1. Are you exempt from IRS 1099 reporting (if unsure, answer No? ☐ Yes ☐ No

2. Has the IRS informed you that you are subject to backup withholding? ☐ Yes ☐ No

3. Please provide your Taxpayer Identification Number:

Social Security Number (Individuals Only)

_____–_____–_____

Or

Employer Identification Number (Businesses Only)

_____–_____

Part III: Signature

I verify that all of the information above is true and correct to the best of my knowledge.

_____

Signature

_____

Date

_____

Title (if applicable)

( ) _____

Daytime Telephone Number

Return this form and any letters of explanation to: Supplemental Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

[FR Doc. 95–7437 Filed 3–23–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5178–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 24, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #0277.10.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Application for New or Amended Registration. (ICR No: 0277.10; OMB No: 2070–0060). This ICR requests renewal of an existing clearance.

Abstract: EPA is responsible under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for registering pesticide products on the basis of scientific data adequate to show that, when used according to label directions, they will not pose unreasonable risk to human health, wildlife, or the environment—including endangered species.

Burden statement: The public burden is broken into 6 components: The first is reporting the activities required in the registration of a new, never-before-registered chemical; there are approximately 200 respondents in this component and they average 80 burden hours each. The second component involves about 15,000 registrants who are required to report on previously registered or "me-too" pesticides; these are less information-intensive and require an average of 8 hours per response. The third component is comprised of applicants for "reduced-risk" new active ingredients; it involves fewer than 20 applicants at 160 hours each. The fourth component involves a quarter hour each for approximately 36,000 training sessions in the Training Verification Program, which is part of the Worker Protection Standard.

The fifth component includes the respondent burden associated with the

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labeling requirements for termiticide and flammability. We estimate that there will be approximately 300 respondents spending an average of 5 hours to meet these requirements.

The sixth component is the generic burden associated with future policy changes. Over the period of clearance we expect to modify reporting requirements to better serve the needs of the applicants; we have provided 50,000 hours for this contingency.

Respondents: Respondents includes applicants for: (1) pesticide registrations for new never-before-registered chemicals, (2) "reduced-risk" new active ingredients, and (3) monitoring and reporting on labeling activities. Respondents also include trainers (organizations and individuals) for monitoring and reporting on the Training Verification Program.

Estimated No. of Respondents: 38,000.

Estimated No. of Responses per Respondent: 1.4.

Estimated Total Annual Burden on Respondents: 199,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #0277.10 and OMB #2070–0060) to:

Sandy Farmer, EPA ICR #0277.10, U.S. Environmental Protection Agency, Information Policy Branch—2136, 401 M Street SW., Washington, D.C. 20460 and

Tim Hunt, OMB #2070–0060, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, D.C. 20503.

Dated: March 20, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–7354 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5177–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0820.06; Hazardous Waste Generator Standards; was approved 02/23/95; OMB No. 2050–0035; expires 02/28/98.

EPA ICR No. 1487.05; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; was approved 02/03/95; OMB No. 2010–0020; expires 02/28/98.

EPA ICR No. 1391.03; Information Request for State Revolving Fund Program; was approved 02/24/95; OMB No. 2040–0118; expires 02/28/98.

OMB Disapprovals

EPA ICR No. 1667.01; Public Information and Confidentiality Regulations; was disapproved 02/17/95.

EPA ICR No. 1693.01; Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; was disapproved 01/24/95.

Dated: March 17, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–7357 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4721–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 20, 1995 Through February 24, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1995 (59 FR 16807).

Draft EISs

ERP No. D–FHW–E40757–AL Rating EC2, Eastern Pleasure Island Hurricane Evacuation Route Construction, AL–182 in Orange Beach to CR–95 near CR–20 (on the mainland) and CR–95 near CR–20 to I–10, Funding and US Coast Guard Bridge and COE Section 404 Permits Issuance, Baldwin County, AL.

Summary: EPA expressed environmental concerns that the projects will impact between 66.7 and 75 acres of wetlands and that the documents do not evaluate impacts to terrestrial resources.

ERP No. D–FHW–G40140–TX Rating EC2, Grand Parkway Segment (TX–99) Improvements Project, from TX–225 to I–10, Funding, COE Section 404 Permit and Right-of-Way Grant, Harris and Chambers Counties, TX.

Summary: EPA expressed environmental concerns about the proposal and requested that the additional information needed in the final EIS primarily focus on project alternatives, cumulative impacts, a current air quality analysis, and environmental justice.

ERP No. D–FHW–K53007–CA Rating EC2, Alameda Railroad Corridor Consolidated Project, Construction from Downtown Los Angeles to the Badger Avenue Bridge/CA–91, Funding, COE Section 404 Permit and ICC Approval, Los Angeles County, CA.

Summary: EPA expressed environmental concerns primarily with the draft EIS's assessment of the project's potential air quality impacts and the mitigation measures described in the project documentation. EPA commended the inclusion of a worst-case emergency response plan for hazardous material incidents, and pollution prevention features to reuse/recycle waste material from existing rail lines.

ERP No. DS–FTA–K51035–CA Rating EC2, Bay Area Rapid Transit District (BART) Transportation Improvements, San Francisco to San Francisco International Airport Extension, Updated and Additional Information, Approval, Funding, COE Section 404 and Possible FHWA Encroachment Permits Issuance, San Mateo County, CA.

Summary: EPA expressed environmental concerns due to potential impacts to wetlands, endangered species, and groundwater that is a drinking water source for area residents. EPA asked that the final EIS provide more information on issues associated with the Clean Water Act Section 404 permit, including the least environmentally damaging practicable alternative; and potential groundwater impacts from project construction and operation including mitigation and monitoring for adverse impacts.

Final EISs

ERP No. F–AFS–L65173–OR Buzzard Project Area Timber Sale and Road Construction, Implementation, Umatilla National Forest, Walla Walla Ranger District, Union and Wallowa Counties, OR.

Summary: EPA expressed environmental concerns based on uncertain sediment output from the proposed timber harvest and potential effects on water quality and the lack of a monitoring feedback loop.

ERP No. F–FHW–D40261–WV US 19/Corridor L Improvements from Nicholas County High School to I–79, Funding and COE Section 404 Permit, Nicholas and Braxton Counties, WV.

Summary: EPA believed that the mitigative measures to offset unavoidable impacts to aquatic and terrestrial resources are insufficient and that noise and visual impact mitigation are not sufficiently described.

ERP No. F–USA–A11072–00 Theater Missile Defense (TMD) Extended Test Range, Demonstration and Operation, Missile Flight Test, Implementation, United States, Republic of the Marshall Islands and Wake Island, Pacific.

Summary: EPA expressed environmental concerns that the final EIS did not properly address alternatives analysis, noise issues, hazardous waste issues, and response to federal and state comments.

Regulations

ERP No. R–DOA–A99201–00 7 CFR Part 335, Plant Pests: Introduction of Non-Indigenous Organisms—Proposed Rule.

Summary: The proposed regulation on the importation of non-indigenous species does not indicate how the Animal and Plant Health Inspection Service (APHIS) intends to deal with the issue of the importation of genetically altered species or with the issue of overlapping authority between APHIS and the Environmental Protection Agency (EPA) with regard to the importation of species used in pesticidal activities. The proposed regulation also does not clearly define the standards which APHIS will apply when making permitting decisions and does not clearly define the information which will be required in a permit application.

Dated: March 21, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–7359 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4721–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed March 13, 1995 Through March 17, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950091, FINAL EIS, BLM, CO, Royal Gorge Resource Management Plan, Implementation, Canon City District, several counties, CO, Due: April 26, 1995, Contact: Dave Taliaferro (719) 539–7289.

EIS No. 950092, DRAFT EIS, FTA, PR, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, NPDES Permit, US Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR, Due: May 08, 1995, Contact: Roger Krahl (404) 347–7875.

EIS No. 950093, FINAL EIS, AFS, UT, Gardner Canyon Gypsum Open Pit Mine, Development and Operation, Special Use Permit and Possible COE Section 404 Permit, Mount Nebo Wilderness Area, Uinta National Forest, Juab County, UT, Due: April 24, 1995, Contact: Mark Sensibaugh (801) 798–3571.

EIS No. 950094, DRAFT EIS, AFS, WA, Thunder Mountain Fire Recovery and Salvage Project, Implementation, Okanogan National Forest, Tonasket and Methow Valley Ranger Districts, Okanogan County, UT, Due: May 08, 1995, Contact: Don Rose (509) 486–5109.

EIS No. 950095, FINAL EIS, COE, CA, Petaluma River Flood Control Improvements, Implementation, City of Petaluma, Sonoma County, CA, Due: April 24, 1995, Contact: Gary Flickinger (415) 744–3341.

EIS No. 950096, DRAFT EIS, EPA, CA, Joint Water Pollution Control Plant (JWPCP), Full Secondary Treatment Upgrade Project, Construction and Funding, City of Carson, Los Angeles County, CA, Due: May 08, 1995, Contact: Elizabeth Borowiec (415) 744–1948.

EIS No. 950097, FINAL EIS, UAF, PA, Institute for Advanced Science and Technology (IAST) Site Selection and Construction, Funding, University of Pennsylvania, Philadelphia, PA, Due: April 24, 1995, Contact: Terry Armstrong (210) 536–3869.

EIS No. 950098, DRAFT SUPPLEMENT, FTA, MA, Old Colony Railroad Rehabilitation Project, Transit Improvements, New and Updated Information, concerning construction of Greenbush Line Corridor, MA, Due: May 22, 1995, Contact: Mary Beth Mello (617) 494–2055.

EIS No. 950099, DRAFT SUPPLEMENT, FHW, CA, Benicia-Martinez Bridge Project, Transportation Improvements, Updated Information, I–680 from CA–4 in Martinez to I–80 in Fairfield, I–80 from Red Top Road to CA–12 east in Fairfield, I–780 from the I–680 Interchange in Benicia to Lemon Street in Vallejo, Funding, US Coast Guard Bridge Permit, COE Section 10 and 404 Permits, Contra Costa and Solano Counties, CA, Due: May 12, 1995, Contact: John Schultz (916) 498–5041.

EIS No. 950100, DRAFT SUPPLEMENT, COE, IN, Little Calumet River Multipurpose Project, Additional Information, Flood Control and Flood Protection, Lake and Porter Counties, IN, Due: May 08, 1995, Contact: Philip B. Moy (312) 886–0451.

Dated: March 21, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–7358 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5178–3]

Clean Water Act Section 303(d): Availability of List Submission and Proposed Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of lists submitted to EPA by California pursuant to Clean Water Act section 303(d)(2) as well as EPA's proposed approval decision, and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared. EPA is providing this opportunity for the public to review California's lists because California did not provide adequate opportunities for public participation in the development of the lists, as required by Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decision on California's lists.

DATES: Comments must be submitted to EPA on or before May 23, 1995.

ADDRESSES: Comments on the proposed decision should be sent to David Smith, Watershed Protection Branch (W–3–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2012. Copies of the California lists and report explaining the rationale for EPA's proposed decision can be obtained by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for this decision is available for public inspection at the above address.

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refer to the EPA ICR No.

75 acres of wetlands and that the

environmental concerns based on

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 744–2012.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

On January 11, 1985 EPA published the Water Quality Planning and Management regulations (50 FR 1775). These regulations included requirements related to the implementation of section 303(d) of the CWA (40 FR 130.7). The regulations did not specify dates for state compliance with the section 303(d) requirements, but reiterated the statutory provision calling for submissions from time to time. On July 24, 1992 EPA published a final rule (57 FR 143) that amended 40 CFR 130.7 to establish that, for the purposes of identifying water quality-limited waters still requiring TMDLs, "from time to time" means once every two years. The list of waters still needing TMDLs must also include a priority ranking and must identify the waters targeted for TMDL development during the next two years.

Consistent with EPA's revised regulations, California submitted to EPA for approval its listing decisions under section 303(d)(2). EPA today proposes to fully approve California's list of waters needing TMDLs, priority rankings, and list of waters targeted for TMDL development during the next two years. EPA solicits public comment on California's lists and EPA's proposed approval decision.

EPA notes that it does not normally solicit public comment on its decisions to approve state section 303(d) lists. Pursuant to the public participation requirements of 40 CFR part 25, EPA is providing this opportunity for public review and comment because California provided inadequate opportunity for public comment during development of its lists. In the future, EPA expects that states will provide adequate opportunities for public comment during development of the state lists.

Dated: March 16, 1995.

Karen Schwinn,

Acting Director, Water Management Division

[FR Doc. 95–7356 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before May 23, 1995.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472 (202) 646–2624.

Type: New collection.

Title: Standard Hazard Determination (Flood Hazards).

Abstract: The National Flood Insurance Reform Act of 1994 requires development of a form (FEMA Form 81–93, Standard Hazard Determination (Flood Hazards) by FEMA. The form will be used by the lending industry to determine whether or not a structure is located within a Special Flood Area and if flood insurance is available, in accordance with the Flood Disaster Protection Act of 1973.

Type of Respondents: Business or other for-profit.

Estimate of Total Annual Reporting and Recordkeeping Burden: 4,000, 000 hours.

Number of Respondents: 12,000,000.

Estimated Average Burden Time per Response: 20 minutes.

Frequency of Response: Other. The form is completed for any loan made, increased, extended, renewed, or purchased by regulated lending institutions, federal agency lenders, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

Dated: March 16, 1995.

Wesley C. Moore,

Director, Office of Administrative Support

[FR Doc. 95–7323 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1046–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: March 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 12, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from severe winter storms causing flooding, landslides, and mud debris flows on February 13, 1995, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Nicholas Nikas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

The counties of Amador, Butte, Colusa, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mendocino, Monterey, Napa, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Ventura, Yolo, and Yuba for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–7325 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1046–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated March 12, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 12, 1995:

The county of Solano for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–7324 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1008–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1008–DR), dated January 17, 1994, and related determinations.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William C. Tidball of the Federal Emergency Management Agency to act as the Federal Coordinating Office for this declared disaster.

This action terminates my appointment of Frank L. Kishton as Federal Coordinating Office for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director

[FR Doc. 95–7326 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1045–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1045–DR), dated March 14, 1995, and related determinations.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et. seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe winter storms on January 13, 1995, through and including February 10, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The counties of Aurora, Buffalo, Campbell, Corson, Dewey, Edmunds, Faulk, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, McPherson, Potter, Stanley, Sully, Walworth and Ziebach Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director

[FR Doc. 95–7327 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 95–05]

Great Eastern Shipping, Inc. and Nordstar Line v. Vladimir Pisarenko and Spark International Trading, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Great Eastern Shipping, Inc. and Nordstar line ("Complainants") against Vladimir Pisarenko and Spark International Trading, Inc. ("Respondents") was served March 10,

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1995. Complainants allege that Respondents, jointly and severally have violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1) by knowingly and willfully and fraudulently attempting to obtain, by means of a false classification and/or by other unjust and unfair means, ocean transportation of cargo of less than the rate and charges otherwise applicable.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 20, 1996, and the final decision of the Commission shall be issued by June 20, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95-7225 Filed 3-23-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ace Gas, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 17, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ace Gas, Inc., Deshler, Nebraska, and Gibbon Exchange Company, Gibbon, Nebraska; to indirectly acquire Nebraska National Bank (in organization), Kearney, Nebraska.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. DG Partnership, Ltd.; Muleshoe, Texas; to become a bank holding company by acquiring 32.20 percent of the voting shares of Muleshoe Bancshares, Inc., Muleshoe, Texas, and thereby indirectly acquire First Bank of Muleshoe, Muleshoe, Texas.

2. Danny Management, Inc., Muleshoe, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of DG Partnership, Ltd., Muleshoe, Texas, and thereby indirectly acquiring Muleshoe Bancshares, Inc., Muleshoe, Texas, and First Bank of Muleshoe, Muleshoe, Texas.

Board of Governors of the Federal Reserve System, March 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-7292 Filed 3-23-95; 8:45 am]

BILLING CODE 6210-01-F

C&F Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 1995

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. C&F Financial Corporation, West Point, Virginia; to engage *de novo*, through its subsidiary C&F Investment Services, Inc., West Point, Virginia, in securities brokerage services including stocks, municipal bonds, corporate bonds, government bonds, mutual funds, unit investment trusts and options; investment advisory services including financial planning, individual retirement plans, small business retirement plans, education funding programs and asset allocation programs, pursuant § 225.25(b)(15)(ii) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, March 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-7293 Filed 3-23-95; 8:45 am]

BILLING CODE 6210-01-F

Rachel Ann Solsrud; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Rachel Ann Solsrud, Augusta, Wisconsin; to acquire 100 percent of the voting shares of Baron Bancshares II, Inc., White Bear Lake, Minnesota, and thereby indirectly acquire Security State Bank of Deer Creek, Deer Creek, Minnesota.

Board of Governors of the Federal Reserve System, March 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-7294 Filed 3-23-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA 95-002]

National Institute for Occupational Safety and Health; Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop an inexpensive aerosol generator to produce a solid sodium chloride aerosol with a CMD between 0.06 and 0.11 μm and a geometric standard deviation of 1.80 as measured by a differential mobility particle sizer.

It is anticipated that all inventions which may arise from this CRADA will be jointly owned. The collaborator(s) with whom the CRADA is made will have an option to negotiate an exclusive or nonexclusive royalty-bearing license. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical

Ernest S. Moyer, Ph.D., Protective Equipment Section, Protective Technology Branch, Division of Safety Research, NIOSH, CDC, ALOSH Laboratories, 944 Chestnut Ridge Road, Mailstop P119 (Room 142), Morgantown, West Virginia 26505, telephone (304) 285-5962, FAX (304) 285-6047.

Business

Theodore F. Schoenborn, Technology Transfer Coordinator, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R2, Cincinnati, Ohio 45226, telephone, (513) 841-4305, FAX (513) 841-4500.

SUPPLEMENTARY INFORMATION: The inexpensive aerosol generator to produce solid sodium chloride aerosol of the desired size and size distribution will be used in determining filter penetration in accordance with NIOSH-proposed new respirator regulations 42 CFR Part 84. The generation system needs to be able to reproducibly produce sodium chloride aerosol of known size (0.06–0.11 μm CMD) and with a standard deviation of ≤1.80. The aerosol's concentration needs to be >10 mg/m^3 and can be as high as 200 mg/m^3. The collaborator(s) and NIOSH will jointly perform the research aimed at development of a commercially inexpensive system to achieve instrument ruggedness and lowest possible cost per unit system. NIOSH will provide technical expertise, consultation and guidance, system specifications, verification of system integrity, and product evaluation and testing. Since this CRADA involves the bringing together of diverse technologies, a consortium of collaborators will be considered. Technology derived under this CRADA will not be used for standards setting.

Applicants will be judged according to the following criteria:

1. Adequacy and technical capabilities to develop the desired technologies and product;

2. Ability to develop, produce, market, and support commercial aerosol generation systems;

3. Evidence of technical credibility; and

4. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Pub. L. 99-502.

The responses must be made to: Theodore F. Schoenborn, Technology Transfer Coordinator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Mailstop R2, Cincinnati, Ohio 45226.

Dated: March 17, 1995

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-7311 Filed 3-23-95; 8:45 am]

BILLING CODE 4163-19-P

[Announcement No. 518]

Public Health Leadership Institute

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1995 funds to support a cooperative agreement to develop and conduct a Public Health Leadership Institute. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Education and Community-Based Programs, and specifically to Objective 8.14: "Increase to at least 90 percent the proportion of people who are served by a local health department that is effectively carrying out the core functions of public health." The core functions of public health are defined as assessment, assurance and policy development. (For ordering a copy of "Healthy People 2000," see the section **Where To Botain Additional Information.**)

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Authority

This cooperative agreement is authorized under section 1704 of the Public Health Service Act, (42 U.S.C. 300 u-3), as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply. In addition, applicants must maintain the requisite certification necessary to award Continuing Education Unit (CEUs) and Continuing Medical Education (CME) units. They must also be able to demonstrate the ability to manage and administer an onsite program, demonstrate the ability to conduct and market successful short-term educational experiences for working professionals, and must be able to recruit nationally recognized faculty, including recognized leadership and public health officials from academic institutions, governmental agencies, professional and voluntary organizations and private industry. Also, they must possess knowledge and skill in public policy development and an awareness of contemporary public health issues and demonstrate the ability to systematically collect information in order to guide efforts to improve the content or administration of the Institute.

Availability of Funds

Approximately $500,000 is available in FY 1995 to fund one award. It is anticipated that the award will begin on or about July 19, 1995, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to enhance the leadership knowledge and skills of city, county, State, tribal and Indian Health Services (IHS), and international health officials, public health academicians, community leaders, and other health professionals by conducting an annual Public Health Leadership Institute. The Institute is intended to provide participants with a year-long learning experience, highlighted by an intensive onsite program. Additionally, it will provide an opportunity for public health leaders to interact and create a network of leaders who can be instrumental in influencing the future direction of public health.

Participants will be periodically evaluated during the Institute to determine the impact of the experience on their level of leadership ability and their organizations effectiveness and efficiency. The results of these evaluations, along with the participants' recommendations for improvement, will be used in planning activities for future Institutes.

The long-term objectives of the cooperative agreement are to:

1. Enhance and develop the leadership skills and abilities of participants in areas that are vital to the operation of their health agencies.

2. Provide an annual forum for discussions and the critical analysis of current public health issues.

3. Develop a network of public health leaders who can provide ongoing support to the public health infrastructure following attendance at the Institute.

4. Strengthen the relationship between public health practice and academia by providing a model for such interaction.

The core faculty of the Institute will consist of recognized leaders from academia. Leaders from the private sector, professional and voluntary organizations, government agencies and legislative staffs will also be recruited when specialized expertise is required.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and the CDC will be responsible for the activities listed under B. (CDC Activities).

The recipient must agree to conduct all planned Institute activities during established working hours.

A. Recipient Activities

The recipient, with guidance from an appropriate steering committee, will be responsible for the development and subsequent presentation of a comprehensive leadership experience. The recipient will be required to exhibit research, developmental and organizational abilities in performing the following activities:

- Review and analyze the leadership skills required by State or tribal and IHS, and local public health officials.
- Develop the Institute objectives.
- Develop the Institute curriculum.
- Identify and recruit Institute faculty.
- Identify and select participants.
- Develop and administer an evaluation plan.
- Provide a conference site and all attendant logistics for the onsite program.

1. Establish a steering committee comprised of representatives of national health organizations who have an understanding of the abilities necessary to function as a leader of a health agency or organization. The steering committee should include representation from organizations such as ASTHO, NACHO, CDC, Health Resources and Services Administration (HRSA), and the American Public Health Association (APHA). The role of the steering committee will be to provide expertise in the development of the Institute. In collaboration with the steering committee, the recipient will develop and implement the Institute plan which should include, but not be limited to, the goals and objectives of the Institute, the curriculum, the criteria for faculty selection, the instructional methodology, and the evaluation methodology selected to ascertain the effectiveness of the experience.

2. Develop a curriculum protocol for the Institute, including the proposed agenda, the method of delivering training, and the plans for producing and delivering training materials.

3. Develop a list of potential faculty for the Institute. Potential faculty should include individuals from the private sector, legislative staffs, professional and voluntary organizations, academic institutions, and Federal, State or tribal and IHS officials, local and international health agencies. The faculty selected should be available to confer with the participants for specified periods of time as the activities of the Institute occur. Applicants will be expected to confirm the availability and commitment of faculty to participate in the Institute events.

4. Collaborate with the steering committee to identify, select, and extend invitations to approximately 50–55 participants to attend the Institute. Participants shall include State, and tribal and IHS, health department directors and deputy directors and local health department directors. It is expected that each class will include a mixture of officials from State or tribal and IHS and local health departments, from rural and urban areas, from all geographic regions, and with varied types and levels of experience and education. Additionally, a small number of slots will be available for environmental health officials, representatives of international health organizations or other countries, faculty members of the schools of public health, other community and health organizations and foundation leaders.

5. Develop program objectives and an evaluation plan to determine the effectiveness of the Institute in enhancing the leadership skills of the participants as well as the operations of public health agencies. It is anticipated that the evaluation plan will contain short-and long-term objectives. The short-term evaluation component may address issues such as the quality of the instruction, the adequacy of the materials and program site, the degree to which participant's learning objectives were met, and whether the instructional objectives were achieved. The long-term evaluation component will assess the long-term impact of the experience, and will focus on issues such as: (1) Have participants' skills improved as a result of participation in the Institute? (2) How did the Institute improve the public health infrastructure? (3) Are participants better able to develop and promote public health policy? (4) Has organizational communication improved? (5) Are participants more adept at diagnosing organizational ineffectiveness or inefficiency? (6) Have participants' ability to mobilize constituencies improved? (7) Are participants more willing to entertain new ideas and create an organizational climate receptive to innovation and creativity?

6. Provide a conference facility for any onsite program activities. The selected site must meet certain requirements, including adequate housing, dining, recreation, meeting, and handicapped accessible facilities for the participants. The site chosen should enhance the interactive nature of the Institute experience.

7. Provide logistical support for conducting the Institute and provide staff support before and during the Institute for participant activities such as registration.

8. Convene the Institute. Recipient will collaborate with the steering committee in developing a timetable to convene the Institute for the entire project period. The initial Institute must be conducted within the first twelve month budget period.

9. Share information regarding program planning, curriculum development, program evaluation and other pertinent activities with personnel who are conducting CDC-sponsored leadership programs.

10. Plan and conduct activities related to the investigation of the relationship between participation in leadership enhancement programs (e.g., Public Health Leadership Institute), and changes in leadership ability and behavior. It is also anticipated that the findings derived from these activities will be disseminated through presentations at public health meetings and conferences and publications in professional journals.

B. CDC Activities

1. Assist in the identification of representatives for the development of the steering committee. Provide technical assistance to the recipient in the preparation and subsequent presentation of the Institute.

2. Collaborate in the development of curriculum for the Institute including the agenda, the method of presentation, and the training materials to be used.

3. Provide technical assistance in identifying potential faculty members to be recruited from the private sector, legislative staffs, and other health agencies.

4. Collaborate and provide assistance in the development of participant selection criteria.

5. Collaborate in the development of the goals and objectives of the Institute. Assist in the development of the short- and long-term evaluation plans.

6. Provide technical assistance and consultation in all phases of Institute planning.

7. Collaborate with other members of the Institute management team, including attendance at meetings and retreats, and participation on conference calls.

8. Assist in collaborative efforts between the Institute and other CDC-sponsored State and regional leadership programs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (maximum 100 points):

1. Demonstration of applicant's understanding of the issues described in the Program Announcement; i.e., the need to present a program using current public health issues as a backdrop for leadership training (15%);

2. Technical merit of the proposed approach to be used in accomplishing the responsibilities of the project (15%);

3. Adequacy of the plan to address the objectives of the project and the appropriateness of the schedule proposed to accomplish the project (15%);

4. Originality of proposed evaluation plan to document the accomplishments of the Institute (10%);

5. Experience and competence of the proposed project director(s) and staff. This will include those persons who will serve as core faculty of the Institute (25%);

6. Previous experience conducting training activities for working professionals and the suitability of facilities and resources to conduct the project (20%);

7. Appropriateness and justification of the requested budget relative to the activities proposed (not scored).

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.262.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Acting Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, GA 30305, on or before June 1, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a)

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or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6523, facsimile (404) 842–6513. Programmatic technical assistance may be obtained from Steve L. Frederick, Program Analyst, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–20, Atlanta, GA 30333, telephone (404) 639–1945, facsimile (404) 639–1989. Please refer to Announcement 518 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: March 17, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–7312 Filed 3–23–95; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

Medicaid Program: Notice of Compliance Hearing: State of Kansas Failure To Comply Substantially With Sections 1902(a)(14) and 1902(a)(19) of the Social Security Act by Not Fully Complying With the Cost-Sharing Provisions of the Medicaid Statute

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of compliance hearing.

SUMMARY: This notice announces a compliance hearing on April 26, 1995, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri, 64106–2808, to determine whether the State of Kansas, in the administration of its Medicaid State plan, has failed to comply with sections 1902(a)(14) and 1902(a)(19) of the Social Security Act and 42 CFR 447.54(c).

CLOSING DATE: Requests to participate in the compliance hearing as a party must be received by April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Katz, Presiding Officer, HCFA Hearing Staff, Ground Floor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces a compliance hearing to determine whether the State of Kansas, in the administration of its Medicaid State plan, has failed to comply with sections 1902(a)(14) and 1902(a)(19) of the Social Security Act (the Act) and 42 Code of Federal Regulations (CFR) 447.54(c). Section 1902(a)(14) of the Act requires a Medicaid State plan to provide that premiums, deductibles, cost sharing, or similar charges be imposed only as provided in section 1916 of the Act. Section 1902(a)(19) of the Act requires that the State plan provide such safeguards as may be necessary to assure that care and services are provided in the best interests of Medicaid recipients. Preliminary findings are that (1) the copayment currently imposed by Kansas does not conform to its approved State plan, and (2) in imposing an institutional copayment level in an amount which deters recipients from seeking needed care, Kansas has acted in a manner not in the best interests of Medicaid recipients.

Section 1904 of the Act and 42 CFR 430, subpart D, establish departmental procedures that provide a compliance hearing to determine whether a State is not in compliance with a requirement of Federal law. HCFA is required to publish a copy of the notice to the State Medicaid agency which informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish notice.) Any individual or group that wishes to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements at 42 CFR 430.76(b). Any interested person or organization that wishes to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements at 42 CFR 430.76(c). If the hearing is later rescheduled, the Hearing Officer will notify all participants.

There is one issue to be considered at this hearing: whether Kansas has failed to comply in practice with sections 1902(a)(14) and 1902(a)(19) of the Act and 42 CFR 447.54(c) in the administration of its Medicaid State plan by imposing a copayment amount that does not conform to its current State plan and is not in the best interests of Medicaid recipients. The State of Kansas submitted a State plan amendment (SPA) to increase its copayment for general hospital inpatient services and inpatient free standing psychiatric facility services from $25 to $325 per admission for Medicaid patients. The SPA did not conform to the requirements of Federal law and regulations. A letter disapproving the SPA was sent to the State on July 28, 1994. However, at this time, Kansas continues to apply the higher copayment amount.

The notice to Kansas announcing a compliance hearing to consider our decision to find the State out of compliance with sections 1902(a)(14) and 1902(a)(19) of the Act and 42 CFR 447.54(c), reads as follows:

Ms. Janet Schalansky,
Acting Secretary,
Kansas Department of Social and Rehabilitation Services, 915 S.W. Harrison Street, Topeka, Kansas 66612

Dear Ms. Schalansky: I am writing to advise you that the Health Care Financing Administration has preliminarily determined that Kansas has failed to comply in practice with sections 1902(a)(14) and 1902(a)(19) of the Social Security Act (the Act) and 42 Code of Federal Regulations (CFR) 447.54(c). By failing to comply substantially in the administration of sections 1902(a)(14) and 1902(a)(19) of the Act and 42 CFR 447.54(c), as properly reflected in its approved State plan, Kansas is substantially out of compliance with the requirements for continued Federal financial participation as explained in the letter to you dated October 6, 1994, from Joe L. Tilghman, Regional Administrator.

In accordance with the requirements of section 1904 of the Act and the implementing regulations at 42 CFR 430.60 and 430.72, I am scheduling a hearing on this determination to be held on April 26, 1995, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106–2808.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication necessary between the parties to the hearing, please notify the presiding officer of the names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013

Sincerely,
Bruce C. Vladeck,
Administrator.

[Section 1904 of the Social Security Act] [Catalog of Federal Domestic Assistance Program No. _____, Medical Assistance Program]

Dated: March 16, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–7307 Filed 3–23–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 18 and May 19, 1995, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on May 18 and from 9 a.m. to approximately 12 noon on May 19 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 496–4441 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 18, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 17, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–7226 Filed 3–23–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: April 13, 1995.
Time: 8:30 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 5333 Westbard Ave., Room 325B, Bethesda, MD 20892, (301) 594–7132.

Name of SEP: Chemistry and Related Sciences.
Date: April 19, 1995.
Time: 9:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 5333 Westbard Ave., Room 207, Bethesda, MD 20892, (301) 594–7336.

Name of SEP: Microbiological and Immunological Sciences.
Date: May 4, 1995.
Time: 3 p.m.
Place: NIH, Westwood Building, Room 238, Telephone Conference.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.884, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 17, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–7227 Filed 3–23–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.
Date: April 11, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 335, Telephone Conference.
Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 5333 Westbard Ave., Room 335, Bethesda, MD 20892, (301) 594–7302.

Name of SEP: Chemistry and Related Sciences.
Date: April 12, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 435, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594–7120.

Name of SEP: Multidisciplinary Sciences
Date: April 20–21, 1995.
Time: 9:00 a.m.
Place: Buffalo, NY.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594–7374.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

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Dated: March 16, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–7229 Filed 3–23–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Research on Women's Health; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health to be held April 24 and 25, 1995 in Conference Room D of the Natcher Conference Center (Building 45), 45 Center Drive, Bethesda, Maryland 20892. The meeting will be held from 10 am to 5 pm on April 24 and from 8:30 am to 12 pm on April 25. The meeting is open to the public, with attendance limited to space available.

The purpose of the meeting will be to familiarize the Committee members with the operations and programs of the Office of Research on Women's Health, Office of the Director, National Institutes of Health. The agenda will include: (1) A discussion of the Committee's duties and responsibilities and (2) reports on ORWH activities and programs.

Rosemary Torres, J.D., B.S.N., Special Assistant to the Director, Office of Research on Women's Health, OD, NIH, Building 1, Room 200, Bethesda, Maryland 20892, 301–402–1770, 301–402–1798 (FAX), will furnish the meeting agenda, roster of Committee members, and substantive program information upon request. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Torres in advance of the meeting.

Dated: March 17, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–7228 Filed 3–23–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–7100.

The following requests have been submitted for review since the list was last published on Friday, March 17.

1. Adverse Experience Reporting for Licensed Biological Products—21 CFR 600—New—This rule enables FDA to take actions necessary for protection of the public health in response to reports of adverse experience related to licensed biological products. *Respondents:* Business or other for-profit, not-for-profit institutions. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Title	No. of respondents	No. of responses per respondent	Average burden per response (hrs.)
Reporting: 21 CFR 600.81	91	5.09	5.96
Recordkeeping: 21 CFR 600.80 (*i*)	91	1	37

Estimated total annual burden: 8,329 hours.

2. Alcohol and Drug Services Survey (ADSS)—Pilot Study—New—The Alcohol and Drug Services Survey will gather information required in the formulation of national drug policy through three integrated phases: (I) Telephone survey of 2200 treatment facilities; (II) on-site abstraction of client-level data; (III) client follow-up to determine post-discharge substance abuse, criminal activity, employment, and other social functioning. *Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Title	No. of respondents	No. of responses per respondent	Average burden per response (hrs.)
Facilities	2040	1.037	0.222
Clients	170	1.94	1.0

Estimated total Annual burden: 800 hours.

3. American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Interim Evaluation: 1995–96 Supplement to the Current Population Survey—0925–0386—Reinstatement, no change—The "Tobacco Use" supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on smoking status and prevalence, smoking intervention dissemination, and changes in smoking norms and attitudes. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale multi-state demonstration project. *Respondents:* Individuals or households; *Number of Respondents:* 200,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .1169 hour; *Estimated Total Annual Burden:* 23,380 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: March 21, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS, Reports Clearance Officer.

[FR Doc. 95–7308 Filed 3–23–95; 8:45 am]

BILLING CODE 4160–01–M

National Toxicology Program (NTP) Public Meeting of the NTP Board of Scientific Counselors' Ad Hoc Working Group To Review the Criteria for Listing Substances in the Biennial Report on Carcinogens (BRC)

A public meeting of the NTP Board of Scientific Counselors' ad hoc Working Group to Review the Criteria for Listing Substances in the Biennial Report on Carcinogens (BRC), will be held on April 24 & 25, 1995, in Washington, DC. The meeting will be held at the Washington Hilton and Towers Hotel, 1919 Connecticut Avenue NW., beginning at 9:00 a.m.

The purpose of the meeting is to receive public comments on the criteria for listing substances in the BRC, and to review and make recommendations on the criteria. The issues to be addressed by this ad hoc group are (1) The adequacy of existing criteria for listing substances in future Reports; and (2) the incorporation of mechanistic data as part of the criteria for listing substances in future Reports which may include the consideration of sensitive sub-populations as well as procedures to upgrade or downgrade the evaluation of the results of animal bioassay or epidemiology studies.

This is the first step in the review of the criteria and the entire meeting is open to the public. The meeting will begin with a plenary session which will provide background on the BRC and a public comment session. The working group will then break into three groups, each addressing the same issues. Break out groups will meet on the afternoon of April 24 and the morning of April 25. The final session will be a plenary session at which time break-out groups will report on their deliberations.

Background—

The Biennial Report on Carcinogens (BRC) is prepared in response to Section 301(b)(4) of the PHS Act which stipulates that the Secretary of DHHS shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the U.S. are exposed. A background and discussion document for use by the ad hoc working group and for review and comment by the public, is available upon request. Copies of the document can be obtained by contacting Dr. C. W. Jameson at NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709, or by FAX to: (919)–541–2242.

Action—Request for Public Input

Public input concerning the criteria for listing a substance in the BRC is important to the review process and is encouraged. Written comments can be submitted to Dr. C. W. Jameson at NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709, or by Fax to: (919)–541–2242. To be considered by the ad hoc working group at their April 24 & 25 deliberations, written comments must be received by April 12, 1995. Oral comments during the April 24 & 25 public meeting should be as brief as possible and will be limited to five minutes to permit maximum participation. Written comments accompanying the oral statements are encouraged and should be received by COB April 12, 1995.

Registration for the Public Meeting

Although registration is not required, it would be helpful for organizing the time available to hear in advance from persons who plan to make comments or statements. Please contact Dr. C.W. Jameson at NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709, or by Fax to: (919)–541–2242.

Dated: March 20, 1995.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 95–7230 Filed 3–23–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–29]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William A. Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *Natonal Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Building and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William A. Molster at the address listed at the beginning of this Notice. Included in the request for

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review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (This is not a toll-free number).

Dated: March 16, 1995.

Mark Fabiani,

Deputy Assistant Secretary for Operations.

Title V, Federal Surplus Property Program Federal Register Report for 03/24/95

Suitable/Available Properties

Buildings (by State)

Utah

6 Housing Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Landholding Agency: COE–BC
Property Number: 329510031
Status: Surplus
Base closure
Number of Units: 6
Comment: 5310–6136 sq. ft., some may need rehab, wood/brick, concrete frame, incs. barracks—00119, 00121, 00141, 00143, 00145, 00151

12 Recreation Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00155, 00160 thru 00163, 00627, 00694, 01008, 01110, 01111, 01113, 01114
Landholding Agency: COE–BC
Property Number: 329510032
Status: Surplus
Base closure
Number of Units: 12
Comment: 51–8960 sq. ft., some may need rehab, wood/brick, concrete frame, includes bowling center, rod gun clubs, riding stable, change house w/lunchroom

14 Sheds/Shop Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00159, 00600, 00602, 00608, 00611, 00612, 00613, 00619, 00624, 0608A, 0613C, 0615C&D, 0632A, 0632
Landholding Agency: COE–BC
Property Number: 329510033
Status: Surplus
Base closure
Number of Units: 14
Comment: 80–375276 sq. ft., some may need rehab, wood/brick, concrete frame, includes storage, maintenance shops, metal & woodwork shops

2 General Storehouses
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Landholding Agency: COE–BC
Property Number: 329510034
Status: Surplus
Base closure
Number of Units: 2
Comment: 4000–28260 sq. ft., some may need rehab, wood/brick/concrete frame, includes #00638, 0602A

11 Utility Buildings
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00586, 00597, 00606, 00610, 00628, 00634, 00711, 02091, 0611A, 0637E, 02092
Landholding Agency: COE–BC
Property Number: 329510035
Status: Surplus
Base closure
Number of Units: 11
Comment: 21–13859 sq. ft., some may need rehab, wood/brick/concrete frame, includes heating plants, water pumps, cable house, generator, compressed air bldg., misc. plant bldg.

15 Miscellaneous Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00589, 00609, 00618, 00629, 00799, 00800, 02002, 02003, 02011, 02012, 02013, 02016, 02025, 02096, 0595A
Landholding Agency: COE–BC
Property Number: 329510036
Status: Surplus
Base closure
Number of Units: 15
Comment: 48–1874 sq. ft., some may need rehab, wood/brick/concrete frame, includes safe houses, sentry stations, lunchroom, gas station, salv. & sur. bldgs.

Bldg. 00622
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Landholding Agency: COE–BC
Property Number: 329510037
Status: Surplus
Base closure
Number of Units: 1
Comment: 1320 sq. ft., wood, brick or concrete frame, includes credit union

Bldg. 00103
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Landholding Agency: COE–BC
Property Number: 329510038
Status: Surplus
Base closure
Number of Units: 1
Comment: 1825 sq. ft., wood, brick or concrete frame, includes chapel

29 Administration Buildings
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Inc. 00104, 00110, 00117, 00123, 00125, 00153, 00588, 00590, 00601, 00605, 00616, 00614, 00617, 00620, 00631, 00690, 00691, 00715, 00752, 00753, 00801, 02020, 00671, 00692, 0638A, 00585, 02010, 00672
Landholding Agency: COE–BC
Property Number: 329510039
Status: Surplus
Base closure
Number of Units: 29
Comment: 150–94243 sq. ft., some may need rehab, incs. admin. gen. purpose, ship & recvg., gen. instruct. bldgs., applied inst. bldgs., admin bldgs. w/other types of uses

146 Warehouses
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Inc. 00576, 00621, 00640, 00641, 00647, 00649 thru 00651, 00659 thru 00661, 00667, 00670, 00677, 00687, 0600A&B, 00657, 00669, 00697, 00630, and 125 cont. humidity whses.
Landholding Agency: COE–BC
Property Number: 329510040
Status: Surplus
Base closure
Number of Units: 146
Comment: 1134–90336 sq. ft., some may need rehab, metal, brick or concrete frame, incs. general purpose, cont. humidity whse., vehicle storage facs.

8 Vehicle Repair Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00603, 00604, 00607, 00615, 00637, 00639, 00612, 00619
Landholding Agency: COE–BC
Property Number: 329510041
Status: Surplus
Base closure
Number of Units: 8
Comment: 6825–194950 sq. ft., some may need rehab, brick or concrete frame

Unsuitable Properties

Buildings (by State)

Utah

4 Treatment Facilities
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 00710, 00712, 00716, 0600C
Landholding Agency: COE–BC
Property Number: 329510029
Status: Surplus
Base closure
Number of Units: 4
Reason: Other
Comment: Waste & water treatment facs.

6 Buildings
Tooele Army Depot
Tooele Co: Tooele UT 84074–
Location: Include: 0631R, 0651R, 0657R, 0667R, 0677R, 0687R
Landholding Agency: COE–BC
Property Number: 329510030
Status: Surplus
Base closure
Number of Units: 6
Reason: Other
Comment: Detached latrines

[FR Doc. 95–7130 Filed 3–23–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application; Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Stephens' Kangaroo Rats, an Endangered Species, in Riverside County, CA

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration a proposal to issue a 30-year permit under Section 10(a) of the Endangered Species Act that would authorize incidental taking of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*). The applicant for this incidental take permit is the Riverside County Habitat Conservation Agency (RCHCA). The application was accompanied by a proposed Habitat Conservation Plan (HCP) for the Stephens' kangaroo rat. In response to the permit application and the accompanying proposal, the Service intends to proceed with the process of preparing a joint Federal Environmental Impact Statement/State Environmental Impact Report (EIS/EIR) pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act. The public scoping process for the EIS/EIR was formally initiated with the publication by the Service of a Notice of Intent on March 2, 1993 (58 FR 12049). To update public knowledge related to the 2-year time extension to the scoping period, the Service has prepared a Draft Scoping Report, currently available for review, summarizing the issues identified to date, and alternatives that will be addressed in the EIS/EIR. This notice describes the currently proposed action and alternatives, and solicits comments on the issues and alternatives raised in the Draft Scoping Report.

DATES: Written comments related to the Draft Scoping Report, scope and content of the EIS/EIR will be accepted by the Service at the address below until April 24, 1995.

ADDRESSES: Information, comments, or questions related to preparation of the joint EIS/EIR and the NEPA process should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Sorensen, Assistant Field Supervisor, Endangered Species, at the above Carlsbad address, telephone (619) 431–9440. Persons wishing to review background material may obtain it by contacting the RCHCA. Documents also will be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Thursday) at the Riverside County Habitat Conservation Agency, 4080 Lemon Street, 12th. Floor, Riverside, California 92501. The RCHCA may be contacted by telephone at (909) 275–1100.

SUPPLEMENTARY INFORMATION:

Background

The Stephens' kangaroo rat was listed under the Endangered Species Act of 1973, as amended, as an endangered species, effective October 31, 1988 (53 FR 38485). Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Act's prohibition against "take", that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities.

The RCHCA presently has a short-term 10(a) permit from the Service to incidentally take Stephens' kangaroo rats in connection with various proposed public and private projects in the western portion of Riverside County. Under the program established through this interim permit, Stephens' kangaroo rat habitat in public and private ownership is being acquired and managed for the long-term benefit of the species. Acquisition of private lands is funded in part from mitigation fees collected by the RCHCA as developments proceed.

As intended when the interim permit was issued in August 1990, the RCHCA is applying to the Service for a 30-year incidental take permit for the same purposes. The area covered by the proposed 30-year permit will include much of the historical range of the Stephens' kangaroo rat in Riverside County. The procedures for the RCHCA to incidentally take Stephens' kangaroo rats under the proposed 30-year permit will be evaluated in the EIS/EIR.

The RCHCA's preparation of the long-term HCP has been on-going since the short-term permit was authorized. In March 1993 the Service and the RCHCA initiated a joint scoping process for the preparation of a combined EIS/EIR in anticipation of the Service receiving a permit application for a 30-year section 10(a) permit for incidental take of Stephens' kangaroo rats. The scoping process was initiated in accordance with NEPA to solicit comments on issues and alternatives to be addressed in the EIS/EIR. Because of the extended two-year scoping process, the Draft Scoping Report was prepared to update public knowledge of the scoping process. This report summarizes the two-year scoping process, identifies the scoping issues raised by interested parties at public meetings and in written statements, and outlines the issues and alternatives that will be addressed in the EIS/EIR.

The draft scoping report identifies the following list of 10 alternatives to address the Service's underlying purpose in evaluating this permit application, including: (1) no action; (2) proposed project/action, as defined by the revised Draft HCP completed by the RCHCA in February 1995; (3) expanded protection and conservation of Stephens' kangaroo rat habitat; (4) a reserve system based upon existing public lands only; (5) an alternative defined by the July 1994 Draft HCP; (6) an alternative defined by a modified version of the July 1994 Draft HCP with an expanded plan area; (7) an alternative defined by the November 1993 Draft HCP; (8) continuation of the Short-term HCP; (9) a multiple species alternative; and (10) a "Habitat Transaction Method" alternative, establishing a market-based conservation strategy. In addition, conceptual alternatives discussed in the first phase of scoping in 1993 will be summarized.

Although the RCHCA will prepare the draft EIS, the Service will be responsible for its content and scope. In addition, the RCHCA will act as the lead agency for the preparation of the EIR.

The comment period will provide an opportunity to address the potential effects of these alternatives and to propose others. The Draft Scoping Report is available on request (See **ADDRESSES** above). Interested persons are encouraged to comment on the issues and alternatives that should be addressed in the joint EIS/EIR.

[Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Stephens' Kangaroo Rats, an Endangered Species, in Riverside County, California.]

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Dated: March 20, 1995.

H. Dale Hall,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–7513 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 22, Blue Hill Estates Subdivision, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Wayne Bell (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–799946. The requested permit, which is for a period of 2 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence at 6500 Distant View, Blue Hills Estates Subdivision, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received by no later than April 24, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office, U.S. Fish and Wildlife Service, 1077 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the Ecological Services Field Office, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to permit number PRT–799946 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Wayne Bell plans to construct a single-family residence on Lot 22, Blue Hills Estates, or addressed 6500 Distant View, Austin, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impact less than one additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–7314 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 4 or 8402 Critter Canyon, Critter Canyon Subdivision, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Rex B. Rivers (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–799945. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on 8402 Critter Canyon, Critter Canyon Subdivision, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received by no later than April 24, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnson, Ecological Services Field Office, 10711 Burnet Road, Austin, Texas 78758 (512/790–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 am to 4:30 pm) at the Ecological Services Field Office, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–799945 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Rex B. Rivers plans to construct a single-family residence on Lot 4, Critter Canyon Subdivision, or addressed 8402 Critter Canyon, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impact less than one additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling not developing the subject property with federally listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–7315 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–060–05–7122–09–6606]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) on a Proposed Gold Mining/Processing Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) will be directing the preparation of an environmental impact statement (EIS) by a third party contractor on the impacts of a proposed gold mining/processing operation known as the Imperial Project, which would be located on public lands in Imperial County in southern California. Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed, and to eliminate from detailed study those issues that are not significant. Supporting documentation should be included with comments recommending that the EIS address specific environmental issues.

DATES: For Scoping Meetings and Comments: Public scoping meetings will be held on the following dates: 7 pm PST, Monday, April 17, 1995, at the El Centro Community Center, 375 South First Street, El Centro, California 92243; 7 pm MST, Tuesday, April 18, 1995, at the Best Western Yuma Inn Suites, Palm Canyon Room, 1450 Castle Dome Avenue, Yuma, Arizona 85365. Written comments must be filed no later than Friday, April 21, 1995.

ADDRESSES: Written comments should be addressed to Area Manager, Bureau of Land Management, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, ATTN: Environmental Coordinator.

FOR FURTHER INFORMATION CONTACT: Thomas F. Zale (619) 337–4400

SUPPLEMENTARY INFORMATION: Chemgold, Inc., a wholly-owned subsidiary of Glamis Gold, Inc., submitted a Plan of Operation to the BLM's El Centro Resource Area office for the proposed Imperial Project in December, 1994. The project would be located on unpatented lode claims south of the Chocolate Mountains, approximately 45 miles northeast of El Centro, California and 20 miles northwest of Yuma, Arizona, on land administered by the BLM. The project would include mining, waste rock and heap leach facilities, miscellaneous roads and buildings, and reclamation of disturbed lands. The project would consist of up to three (3) open pits, four (4) waste rock stockpiles, one (1) heap leach facility, one (1) water well field and pipeline, one (1) power substation and power line, and one (1) processing facility, and would operate for approximately twenty (20) years. Up to 120,000 tons of ore and waste rock would be mined per day. Processing and reclamation activities would be expected to continue for up to five (5) years after cessation of mining. If approved, approximately 1,600 acres of land would be disturbed and later reclaimed as the result of this project.

A tentative project schedule is as follows:

Begin Public Comment/Scoping Period—March 1995
Hold Public Scoping Meetings—April 1995
File Draft EIS—October 1995
Hold Public Meetings on Draft EIS—November 1995
File Final EIS—January 1996
File Record of Decision—March 1996
Begin Project Construction—July 1996

Dated: March 15, 1995.

G. Ben Koski,

Area Manager.

[FR Doc. 95–6862 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–40–P

[USFS, R–6, 595053; GP5–088; OR–50345 (WASH)]

Order Providing for Opening of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 480 acres of land to surface entry, mining, mineral leasing and geothermal, subject to the laws, rules, and regulations applicable to National Forest System lands. The land has been eliminated from a Forest Service exchange proposal.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the General Exchange Act of March 20, 1922 (16 U.S.C. 485, 486), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), and the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 751), the following described Federal land has been eliminated from the initial exchange proposal between the Mt. Baker-Snoqualmie National Forest, and Weyerhaeuser Company, Tacoma, Washington:

Willamette Meridian

T. 13 N., R. 4 E.,
Sec. 10, N½ and SW¼.

The area described contains 480 acres in Lewis County.

At 8:30 a.m., on April 28, 1995, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on April 28, 1995, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on April 28, 1995, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on April 28, 1995, the land will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: March 15, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–7160 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–33–P

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[MT-940-05-4730-02]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Fifth Principal Meridian, North Dakota

T. 145 N., R. 102 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former right and left banks of the Little Missouri River, and the subdivision of section 26 and the survey of the meanders of the present right and left banks and certain median lines of the Little Missouri River and certain division of accretion lines, in Township 145 North, Range 102 West, Fifth Principal Meridian, North Dakota, was accepted February 9, 1995.

T. 146 N., R. 102 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former right bank of the Little Missouri River, and the subdivision of section 26 and the survey of the meanders of the present right and left banks and certain median lines of the Little Missouri River and certain division of accretion lines in Township 146 North, Range 102 West, Fifth Principal Meridian, North Dakota was accepted February 9, 1995.

The above-mentioned surveys were executed at the request of Conoco Inc. and Meridian Oil Inc. to fix division of accretion lines and to apportion the bed of the Little Missouri River.

The triplicate original of the preceding described plats will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these surveys, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protest. These particular plats will not be officially filed until the day after all protests have been accepted or dismissed and become final, or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800.

Dated: March 15, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95-7276 Filed 3-23-95; 8:45 am]

BILLING CODE 4310-DN-P

[NV-930-1430-01; N59351]

Realty Actions; Sales, Leases; etc.: Nevada

ACTION: FLPMA Section 302 Lease Application.

SUMMARY: Notice of Realty Action is hereby given indicating the availability of a parcel of public land for non-federal use through lease shall be issued. This lease would authorize a cemetery site on public lands administered by the Bureau of Land Management, Winnemucca District Office. An application for lease will be considered and negotiation for lease will be on a non-competitive basis. The realty action is being considered under the authority of the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976.

The parcel is located in Humboldt County approximately five miles south of McDermitt, Nevada, on the following public lands:

Mount Diablo Meridian, Nevada.

T. 47 N., R. 38 E., Section 25: S½N½SE¼NW¼NW¼, S½SE¼NW¼NW¼, N½N½NE¼SW¼NW¼, containing 10 acres.

No other disposals for lease on the subject lands will be accepted due to the lack of competitive interest in the lands.

The proposal would be authorized by a lease for a term of 20 years. The lease could be renewed for a like period at the discretion of the Authorized Officer.

The parcel has not been appraised at this time, so no rental determination is available. The rent will not be less than the appraised fair market value as determined by the Bureau of Land Management.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445. In absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

FOR FURTHER INFORMATION CONTACT: Chuck Valentine, Bureau of Land Management, 705 E. 4th Street, Winnemucca, Nevada 89445, (702) 623-1500.

Dated: March 10, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95-7277 Filed 3-23-95; 8:45 am]

BILLING CODE 4310-HC-P

[NV-030-95-1610-00]

Notice of Intent to Consider Amending the Walker Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to consider amending the Walker Resource Management Plan, prepare an environmental assessment and invite public participation.

SUMMARY: The Carson City District of the Bureau of Land Management is considering amending the Walker Resource Management Plan to address management of pinyon-juniper woodlands and off-highway vehicles (OHVs). The proposed amendment would cover public lands in the Pine Nut Mountains of Carson City, and Lyon and Douglas Counties, Nevada.

DATES AND ADDRESSES: Written comments on the proposed amendment and environmental assessment are welcomed until April 28, 1995. They should be sent to David Loomis, U.S. Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706. Please call Mr. Loomis at 702 885-6149 for further information.

SUPPLEMENTARY INFORMATION: The public is invited to participate in the identification of issues related to the management of pinyon-juniper woodlands and the management of off-highway vehicles in the Pine Nut Mountains of western Nevada. This plan amendment would address the expansion of pinyon-juniper woodlands and the rapid increase in population growth and OHV recreation in the Pine Nut Mountains.

The current patterns of vegetation in the Pine Nut Mountains have resulted from logging in the late 1800s, followed by a period of historic grazing by livestock. Then a long period of fire suppression limited the natural role of wildfires in the Pine Nut Mountains ecosystem. This reduced natural diversity in vegetation patterns and favored the spread of pinyon-juniper woodland. Fire suppression activities have contributed to an accumulation of fire hazard fuels that have caused a trend towards large, expensive, and destructive wildfires such as the Holbrook Junction fire of 1994.

Some of the pinyon-juniper management methods to be considered in the proposed plan amendment include removal of trees by opening wood cutting areas and changes in fire management strategies, including prescribed fires.

Another issue to be addressed is the management of off-highway vehicle (OHV) recreation in the Pine Nut Mountains. The region has experienced a rapid population growth and increase in OHV use. The current designations are over ten years old and have been difficult to manage. Conflicts with property owners, wildlife and watershed protection have increased.

Planning documents and other pertinent materials may be examined at the Bureau of Land Management office in Carson City between 7:30 a.m. and 5:00 p.m. Monday through Friday.

Dated this 10th day of March, 1995.

John Singlaub,

District Manager, Carson City District.

[FR Doc. 95-7220 Filed 3-23-95; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Agenda For the April 6, 1995 Meeting of the Advisory Commission For the San Francisco Maritime National Historical Park Public Meeting Fort Mason, Building F (Firehouse) 7:00 pm—10:00 pm

7:00 PM Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman, William Thomas, Superintendent
Old Business
Approval of Minutes
7:15 PM—Orientation to Park Departments
Education, John Cunnane, Supervisory Park Ranger
Revell Carr, Interpretive Specialist
Nancy Martling, Director, Environmental Living Program
Exhibits, Richard Everett, Curator of Exhibits
7:45 PM—Update—Museum Accreditation San Francisco Maritime National Historical Park
Marc Hayman—Chief, Interpretation and Resource Management
7:55 PM—Update—General Management Plan
William G. Thomas, Superintendent
8:10 PM—Advisory Commission Committee Reports Committee Chairmen
8:30 PM—BREAK
8:45 PM—Discussion—Proposal to construct a multi-use building on the Hyde Street Pier
Michael Bell, Project Manager
9:05 PM—Public question and comments
9:45 PM—Agenda Items/Date for next meeting
10:00 PM—Adjournment

Dated: March 10, 1995.

Patricia L. Newbacher,

Regional Director, Western Region.

[FR Doc. 95-7221 Filed 3-23-95; 8:45 am]

BILLING CODE 4310-70-P

Bureau of Reclamation

[INT-FES-95-8]

Operation of Glen Canyon Dam, Colorado River Storage Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact statement.

SUMMARY: In response to a July 27, 1989, directive from the Secretary of the Interior and pursuant to the National Environmental Policy Act of 1969, as amended, and in accordance with the Grand Canyon Protection Act of 1992, the Bureau of Reclamation (Reclamation) has prepared a final environmental impact statement (FEIS) on the operation of Glen Canyon Dam, Colorado River Storage Project in Arizona. The FEIS evaluates nine alternatives, including no action, and analyzes their impacts on downstream environmental and cultural resources and Native American interests in Glen and Grand Canyons.

ADDRESSES: Copies of the FEIS may be obtained from Mr. Gordon S. Lind, Colorado River Studies Office, Bureau of Reclamation, Attention: UC-1500, 125 South State Street, Room 6107, Salt Lake City UT 84138-1102; telephone: (801) 524-5479.

Copies of the FEIS are available for inspection at the address above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Room 7612, 1849 C Street, NW, Washington DC 20240
- Denver Office, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver CO 80225
- Upper Colorado Regional Office, Bureau of Reclamation, Library, Room 7101, 125 South State Street, Salt Lake City UT 84147
- Center for Environmental Studies, Arizona State University, 905 South Mill Avenue, Tempe AZ 85287-3211
- Glen Canyon Environmental Studies Group, Security Bank Building, 121 East Birch, Room 307, Flagstaff AZ 86002

Libraries:

Arizona

Arizona Department of Water Resources Library, Phoenix
Arizona State Library, Department of Library, Archives and Public Records Phoenix
Arizona State Regional Library for the Blind and Physically Handicapped, Phoenix
Arizona State University, Noble Science and Engineering Library, Tempe
Arizona State University, Hayden Library, Tempe
Flagstaff City-Coconino County Public Library, Flagstaff
Grand Canyon Community Library, Grand Canyon
Maricopa County Library, Phoenix
Mesa Public Library, Mesa
Mohave County Library/Kingman Public Library, Kingman
Northern Arizona University, Cline Library, Flagstaff
Page Public Library, Page
Phoenix City Library, Phoenix
Scottsdale Public Library, Scottsdale
Tempe Public Library, Tempe
Tucson Public Library, Tucson
University of Arizona Library, Tucson

California

California State Library, Sacramento
California State University, Hayward Library, Hayward
California State University, University Library, Los Angeles
Colorado River Board of California Library, Glendale
Environmental Protection Agency, Region IX Library, San Francisco
Los Angeles Public Library, Los Angeles
Los Angeles Public Library, Water and Power Section, Los Angeles
San Francisco Public Library, San Francisco
Stanford University Libraries, Stanford
University of California, General Library, Berkeley
University of California, University Research Library, Los Angeles
University of California, Shields Library, Davis
University of Southern California, Doheny Memorial Library, Los Angeles

Colorado

Colorado State University Libraries, Fort Collins
Denver Central Library, Denver
University of Colorado at Boulder, Norlin Library, Boulder
University of Denver, Penrose Library, Denver
U.S. Air Force Academy, Academy Library, Colorado Springs

Nevada

Boulder City Library, Boulder City

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Clark County Library District, Las Vegas
Nevada State Library, Carson City
University of Nevada, Reno Library, Reno
University of Nevada at Las Vegas, James Dickinson Library, Las Vegas

New Mexico

Albuquerque Public Library, Albuquerque
New Mexico State Library, Santa Fe
New Mexico State University, Las Cruces
University of New Mexico, Albuquerque

Utah

Brigham Young University, Harold B. Lee Library, Provo
Cedar City Public Library, Cedar City
Kanab City Library, Kanab
Moab Public Library, Moab
Salt Lake City Public Library, Salt Lake City
Salt Lake County Library System, Salt Lake City
Southern Utah State University Library, Cedar City
University of Utah, Marriott Library, Salt Lake City
Utah State University, Merrill Library, Logan
Utah State Library, Salt Lake City
Washington County Library, St. George
Weber State University, Stewart Library, Ogden

Wyoming

Laramie County Library System, Cheyenne
Rock Springs Public Library, Rock Springs
University of Wyoming, Coe Library, Laramie
Wyoming State Library, Cheyenne

Washington, DC

District of Columbia Public Library
Library of Congress
Natural Resources Library, Department of the Interior

Other States — any U.S. Government Regional Depository Library

FOR FURTHER INFORMATION CONTACT: Mr. Gordon S. Lind, Colorado River Studies Office, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City UT 84138–1102; telephone: (801) 524–5479.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior called for a reevaluation of dam operations to determine specific options that could be implemented, consistent with law, to minimize adverse impacts on the downstream environmental and cultural resources and Native American interests in Glen and Grand Canyons.

In accordance with the National Environmental Policy Act and the Grand Canyon Protection Act of 1992, Reclamation has prepared the FEIS in cooperation with other Interior agencies—Bureau of Indian Affairs, U.S Fish and Wildlife Service (FWS), and National Park Service. Other cooperating agencies are the Department of Energy's Western Area Power Administration, Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and Zuni Pueblo.

The FEIS presents analyses of the impacts of nine alternatives for operating Glen Canyon Dam. Three alternatives would provide steady flows and six, including no action, would provide various levels of fluctuating flows. Additional measures have been combined with the alternative operations, where appropriate, either to mitigate adverse impacts of the alternative or to enhance resources. The preferred alternative is the Modified Low Fluctuating Flow Alternative.

As the result of comments on both the draft EIS (DEIS) and draft biological opinion, discussions with FWS, and with the broad support of the cooperating agencies, the preferred alternative described in the DEIS was modified in the FEIS. This modification includes increasing the maximum flow from 20,000 to 25,000 cubic feet per second (cfs) and increasing the up ramp rate from 2,500 to 4,000 cfs per hour. The endangered fish research flows described in the DEIS were moved from the preferred alternative to a scientifically based position within the Adaptive Management Program. This modification was made because Reclamation believes that the potential effects of steady flows should be further studied before implementation to evaluate uncertainties concerning the interactions between native and non-native fish.

In addition, Reclamation will request, through the Federal appropriations process, accelerated implementation of selective withdrawal at Glen Canyon Dam since temperature modification has been determined to be the most critical factor affecting the recovery of endangered fish in Glen and Grand Canyons.

Dated: March 21, 1995

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–7291 Filed 3–23–95; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Mary Ann Ball, (202) 736–4743, M/AS/ISS, Room 930B, N.S., Washington, DC 20523.

Dated Submitted: March 8, 1995.

Submitting Agency: U.S. Agency for International Development.

OMB Number: OMB 0412–0011.

Form Number: USAID 1010–2

Type of Submission: Reinstatement.

Title: Application for Assistance-American Schools and Hospitals Aboard.

Purpose: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the Office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on animal grant awards. These guidelines are published in the Federal Register, Doc. 79–36221.

Annual Reporting Burden: Respondents 85; average hrs per response: 12; annual burden hours: 1,020

Reviewer: Jeffrey Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1995.

Genease E. Pettigrew,

Bureau of Management, Office of Administrative Service, Information Support Services Division.

[FR Doc. 95–7279 Filed 3–23–95; 8:45 am]

BILLING CODE 6116–01–M

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Request for Nomination to the Board of Trustees

AGENCY: Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

ACTION: Request for nomination.

SUMMARY: The Board directs the Administration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute, established under Public Law 99–498 (20 U.S.C. 4411 *et seq.*), provides scholarly study of and instruction in Indian art and culture, and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nomination to fill one appointment on the Board of Trustees.

DATES: Nominations will be accepted until April 24, 1995.

ADDRESSES: Nominations may be sent to the Chairman, Board of Trustees, Institute of American Indian Arts, Post Office Box 20007, Santa Fe, New Mexico 87504.

FOR FURTHER INFORMATION CONTACT:

Kenneth Blankenship, Chairman of the Board of Trustees, Institute of American Indian Arts, Post Office Box 20007, Santa Fe, New Mexico 87504.

SUPPLEMENTARY INFORMATION: Public Law 99–498 (20 U.S.C. 4412(a)(2)(b), requires the President to publish in the **Federal Register** an announcement regarding nominations of the Presidentially appointed members of the Board of Trustees of the Institute. On February 22, 1991 (56 FR 8099, February 26, 1991), the President delegated to the Chairman of the Board of Trustees the responsibility to publish an announcement regarding these nominations in the **Federal Register**. All nominations submitted will be forward to the President for consideration.

Dated: March 15, 1995.

Kenneth Blankenship,

Chairman, Board of Trustees, Institute of American Indian and Alaska Culture and Arts Development.

[FR Doc. 95–7328 Filed 3–23–95; 8:45 am]

BILLING CODE 4329–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–420 (Sub-No. 1X)]

Chaparral Railroad Company, Inc.—Abandonment Exemption—in Lamar, Hunt, Delta, Fannin, Collin and Dallas Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Chaparral Railroad Company, Inc. of rail common carrier operations over approximately 96.5-miles of rail line, and the discontinuance of approximately 24.1-miles of overhead trackage rights on The Atchison, Topeka and Santa Fe Railway Company, in Lamar, Hunt, Delta, Fannin, Collin and Dallas Counties, TX.

DATES: The exemption will be effective April 23, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by April 3, 1995, petitions to stay must be filed by April 10, 1995, requests for a public use condition under 49 CFR 1152.28 must be filed by April 13, 1995, and petitions to reopen must be filed by April 18, 1995.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. AB–420 (Sub-No. 1X), must be filed with: (1) The Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Mark H. Sidman, WEINER, BRODSKY, SIDMAN, & KIDER, P.C., Suite 800, 1350 New York Ave., N.W., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.]

Decided: March 10, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7305 Filed 3–23–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–429X]

Lakeside Transportation L.L.C., d/b/a Lakeside Transportation Company—Discontinuance of Service Exemption—Between Moberly and Excello, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.* the discontinuance of service by Lakeside Transportation L.L.C., d/b/a Lakeside Transportation Company (LTC), over its entire line of railroad. LTC currently provides rail service over approximately 15.3 miles of trackage under a lease agreement with the Norfolk & Western Transportation Company (NW), a wholly owned subsidiary of the Norfolk Southern Railway Company, between milepost SD–150.6 near Moberly, MO, and milepost SD–165.9 near Excello, MO. Because the transaction involves the discontinuance of LTC's entire operation, no labor protective conditions will be imposed.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on April 23, 1995. Formal expressions of intent to file financial assistance offers [1] under 49 CFR 1152.27(c)(2) must be filed by April 3, 1995. Petitions to stay must be filed by April 10, 1995. Petitions to reopen must be filed by April 18, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–429X to: (1) Office of the Secretary, Case Control Branch,

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: William L. Slover, SLOVER & LOFTUS, 1224 Seventeenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: March 10, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7306 Filed 3–23–95; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: April 17–18, 1995.

ADDRESSES: Huntington Hotel, 1401 South Oak Knoll Avenue, Pasadena, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington D.C. 20544, telephone (202) 273–1820.

Dated: March 21, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–7320 Filed 3–23–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of alteration of open meeting schedule.

SUMMARY: The Advisory Committee on Rules of Civil Procedure, originally scheduled to hold a two-day meeting, will hold a one-day meeting. The meeting will be open to public observation but not participation and will commence at 8:30 a.m.

DATES: April 20, 1995.

ADDRESSES: New York University, Faculty Club, D'Agostino Hall, 108 West Third Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: March 21, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–7321 Filed 3–23–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: May 4–6, 1995.

ADDRESSES: United States Courthouse, Room 317, 40 Foley Square, New York, New York.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: March 21, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–7322 Filed 3–23–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) National Prisoner Statistics—Prisoner Population Reports. NPS–1A. Midyear Population Counts. NPS–1B: Advance Yearend Population Counts.
(2) NPS–1A, NPS–1B. Bureau of Justice Statistics, States Department of Justice.
(3) Primary = Federal Government, State, Local, or Tribunal Government

Others = None. To provide midyear and advance yearend counts of the number of inmates in State and Federal prisons. These data will form the basis for historical trend analysis. Respondents are personnel in the correctional department of the state, the District of Columbia, and the Federal Bureau of Prisons.
(4) 104 annual respondents at 2.5 hours per response.
(5) 130 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 20, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–7268 Filed 3–23–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;
(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) who will be asked or required to respond, as well as a brief abstract;
(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:
(5) an estimate of the total public burden (in hours) associated with the collection; and,
(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) 1994 National Survey of Prosecutors.
(2) NSP–1. Bureau of Justice Statistics, States Department of Justice.
(3) Primary = State, Local, or Tribunal Government. Others = None. This biennial survey collects data on the resources, policies, and practices of local prosecutors from a nationally representative sample of 300 chief litigating prosecutors in State Court Systems.
(4) 300 annual respondents at 1.0 hours per response.
(5) 150 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 20, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–7269 Filed 3–23–95; 8:45 am]

BILLING CODE 4410–18–M

Drug Enforcement Administration

Henry M. Goshen, M.D.; Denial of Application

On February 14, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Henry M. Goshen, M.D. (Dr. Goshen), of Chicago, Illinois, proposing to deny his application for a DEA Certificate of Registration, as a practitioner, under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Goshen's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Goshen by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Goshen and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Henry M. Goshen, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Deputy Administrator finds that the Illinois State Police initiated an undercover investigation of Dr. Goshen's medical practice. On October 24, 1985, an undercover police officer met Dr. Goshen at his office to request diet pills. Notwithstanding that Dr. Goshen determined that this person was not overweight, he dispensed to the undercover officer 14 dosage unites of phentermine, a Schedule IV controlled substance, which he indicated was a two week supply.

On October 29, 1985, the undercover officer returned to Dr. Goshen's office and asked for additional diet pills, explaining that she had given some of her phentermine to a girl friend. Dr Goshen then dispensed more phentermine to the undercover officer. The undercover officer returned to Dr Goshen's office, on November 5, 1985 and, once again, Dr. Goshen dispensed phentermine tablets. The undercover officer paid Dr. Goshen $20 for each visit.

Based upon excessive purchase reports for controlled substances and complaints about Dr. Goshen's controlled substance dispensing practices, a Chicago DEA task force initiated an undercover operation in 1989. On October 5, 1989, an undercover police officer visited Dr. Goshen's office, seeking controlled substances. When she encountered Dr. Goshen, she requested phentermine using the street name for this controlled substance. Dr. Goshen, without seeking any medical information from her or performing any medical examinations, dispensed 28 dosage units of phentermine in exchange for $40.

This undercover officer returned to Dr. Goshen's office on October 17, 1989, again requesting more phentermine and using the drug's street name. On this occasion, she asked for double the amount she received on the prior visit. In response, Dr. Goshen dispensed two envelopes, each containing 28 phentermine capsules. When Dr. Goshen gave her the drugs, he asked her who would receive the pills. The officer gave him three names. She then paid Dr Goshen $80 for the phentermine.

On November 3, 1989, Dr. Goshen was arrested and charged with one count of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). At the time of his arrest, a search warrant was executed at Dr. Goshen's office and during the search approximately 42,000 dosage units of controlled substances were seized. Further investigation revealed that Dr. Goshen had no dispensing

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records for any controlled substances, as required by 21 U.S.C. 827.

DEA investigators discovered that Dr. Goshen ordered 6,250 dosage units of controlled substances on November 6, 1989, shortly after he was released following his arrest. The investigation revealed that Dr. Goshen explained to the distributor that the drug order was necessary to replenish his stock because his office had recently been burglarized.

On November 15, 1989, DEA issued an Order to Show Cause/Immediate Suspension of Dr. Goshen's previous DEA Certificate of Registration. The Order to Show Cause/Immediate Suspension was based upon the undercover buys of phentermine; the search of Dr. Goshen's office and discovery of 42,000 dosage units of controlled substances along with no dispensing records; and the order of controlled substances that Dr. Goshen made, shortly after his arrest, under the pretext that his office had been burglarized.

On February 15, 1990, in the United States District Court, Northern District of Illinois, Dr. Goshen pled guilty to one felony count of knowingly and intentionally omitting material information from reports, records and other documents required to be made, kept or filed, in violation of 21 U.S.C. 843(a)(4)(A). Specifically, Dr. Goshen failed to keep records of receipt or disposition of approximately 19,950 dosage units of phentermine. On June 5, 1990, Dr. Goshen was sentenced to five years probation, 200 hours of community service and a $10,000 fine. As a result of the conviction, on February 25, 1990, Dr. Goshen surrendered his previous DEA Certificate of Registration.

On July 11, 1990, the Illinois Department of Professional Regulation (Department of Regulation) filed a complaint, seeking to revoke Dr. Goshen's medical license based upon his felony conviction. Dr. Goshen entered into a stipulation and recommendation for settlement with the Illinois Medical Disciplinary Board and Controlled Substance Hearing Officer. Dr. Goshen agreed that: His medical license be suspended for three months and thereafter be placed on probation for five years; his state controlled substance license be suspended for five years; he complete 50 hours of continuing medical education courses on the use of controlled substances; he complete 50 additional hours of continuing medical education for each year of his five year probation; and he pay a $5,000 fine. The stipulation and recommendation was adopted by the Department of Regulation on June 3, 1991.

On March 3, 1992, the Bureau of Medical Quality Assurance of the Illinois Department of Public Aid (Department of Public Aid) served Dr. Goshen with a complaint seeking to terminate his right to participate in the Medical Assistance Program. The complaint was predicated on his felony conviction and the action taken against Dr. Goshen's medical license. During an administrative hearing regarding this complaint, Dr. Goshen testified that phentermine is non-addicting and had a street value far less than other controlled substances. During cross-examination, he admitted, however, that other medical authorities considered phentermine to be a drug that posed a substantial risk of dependency with repeated use. Dr. Goshen also admitted that he had always known that records for phentermine were required to be kept.

Following the hearing, the hearing officer recommended that Dr. Goshen's participation in the Medical Assistance Program be revoked. The Director of the Department of Public Aid adopted the recommendation and terminated Dr. Goshen's right to participate in the Medical Assistance Program, effective November 10, 1992.

Dr. Goshen then sought to have the Department of Regulation reinstate his controlled substance privileges before the five year term expired. Based upon a stipulated agreement, effective January 11, 1993, the Department of Regulation agreed to restore Dr. Goshen's Illinois controlled substance privileges, on a four year probationary status. Pursuant to the order, Dr. Goshen was limited to prescribing, but not dispensing, controlled substances.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f), the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether an applicant's registration is inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

Factor one is applicable based upon the Department of Regulation's action against Dr. Goshen's medical license which initially resulted, *inter alia*, in a five year suspension of his state controlled substances privileges in June 1991. Although the Department of Regulation lifted the five year suspension in 1993, Dr. Goshen's controlled substance privileges were still placed on probation for four years and limited to the prescribing of controlled substances only. Factor one is also applicable based upon the Illinois Department of Public Aid's action which terminated Dr. Goshen's right to participate in the Medical Assistance Program in November 1992.

Factor two is applicable based upon Dr. Goshen's dispensing of phentermine to two undercover agents on five separate occasions in 1985 and 1989. The transcripts reveal that there was not even a pretense of a medical justification for Dr. Goshen's actions. During the 1989 visit, the undercover officer requested the drugs by using street names and telling Dr. Goshen that the drugs were for herself as well as others.

Factor three is applicable based upon Dr. Goshen's conviction for knowingly and intentionally failing to keep required records for the massive amount of phentermine that he ordered.

Factor four is relevant in light of the undercover buys of phentermine as noted under factor two. The blatant sale of the phentermine in no way complies with Federal or State laws.

Factor five is relevant based upon the conduct of Dr. Goshen shortly after his arrest. Notwithstanding his arrest and the fact that large quantities of phentermine were removed from Dr. Goshen's office, Dr. Goshen almost immediately ordered large quantities of phentermine, explaining to the distributor that he needed the drugs because his office had been burglarized.

No evidence of explanation or mitigating circumstances has been offered by Dr. Goshen. Therefore, the Deputy Administrator concludes that Dr. Goshen's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application, executed by Henry M. Goshen, M.D., on February 9, 1993, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective April 24, 1995.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–7316 Filed 3–23–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–60]

James C. Graham, M.D.; Denial of Application

On June 7, 1993, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to James C. Graham, M.D. (Respondent), proposing to deny his pending application for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Fort Wayne, Indiana, on January 26, 1994.

On October 11, 1994, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law, and decision in which she recommended that the Respondent's application for registration be denied. Neither party filed exceptions to this opinion, and on November 14, 1994, the administrative law judge transmitted the record of the proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent received a medical degree from Indiana University, and practiced medicine in Fort Wayne continuously from 1958 to 1983. Respondent stated that he sometimes saw as many as one hundred patients a day, often worked up to 18 hours a day, performed multiple surgeries and delivered two to three hundred babies each year. Respondent also testified that many of his patients were on welfare or Medicaid, and that he treated about thirty percent of his patients without compensation. Respondent stated that because of a busy schedule he was unable to keep appropriate documentation on all of his patients.

Judge Bittner found that in 1982, the Allen County Police Department received information that Respondent was writing prescriptions in exchange for merchandise. Subsequently, a cooperating individual and an undercover Indiana State police officer arranged meetings with Respondent in a local restaurant.

Judge Bittner found that in October through December 1982, Respondent provided the cooperating individual several prescriptions for a Schedule IV controlled substance in exchange for liquor and meat, and on one occasion issuing the prescription to the confidential informant in another's name. Subsequently, in November and December 1982, Respondent gave the undercover officer several prescriptions for Schedule III and IV controlled substances in exchange for meat and liquor. In January and February 1983, both undercover operatives were able to continue to acquire prescriptions for controlled substances, including a Schedule II narcotic controlled substance, from Respondent in exchange for merchandise. At the hearing, the undercover officer testified that Respondent never performed any physical examination during any visit.

The administrative law judge found that on November 21, 1983, Respondent was convicted in the United States District Court for the Northern District of Indiana of fourteen felony counts of dispensing controlled substances not in the course of professional practice and not for a medical purpose. Respondent was sentenced to three years imprisonment suspended to thirty days in jail and three years probation. As a result of this conviction, the Medical Licensing Board of Indiana summarily suspended Respondent's medical license. After a hearing in April 1984, that Board reinstated Respondent's medical license upon probationary terms.

Judge Bittner found that after Respondent had submitted his current pending application for DEA registration in 1991, he told DEA investigators that he had been set up and had never written any prescriptions for controlled substances that were illegitimate.

Respondent testified that since his State medical license were restored he has never been accused of violating any rules or regulations. He stated that he has been limited to a part-time medical practice because of illness.

During his testimony, Respondent admitted meeting both undercover operatives. However, he denied that he ever gave either one a prescription in exchange for meat or liquor. Respondent testified that any prescription he may have given these individuals was for a legitimate medical purpose.

Respondent submitted documentary evidence on his behalf and several character witnesses also testified. The administrative law judge found that one psychiatrist reported that Respondent's judgment had been impaired at the time of these incidents, and another had found that an automobile accident had resulted in a brain injury to Respondent that had caused deficits in judgment. Both physicians reported this condition as now resolved. Other health professionals offered testimony that Respondent was a competent, compassionate, well qualified physician who posed no threat to the community.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest.

Section 823(f) sets forth the following factors to be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that all five factors were relevant. Judge Bittner determined that the record established that Respondent blatantly and unabashedly abused his privilege as a registrant by issuing controlled substance prescriptions in return for his own gain in the form of goods and

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merchandise. The administrative law judge considered the fact that this conduct occurred more than ten years before, but found that Respondent had not acknowledged wrongdoing or expressed any remorse for his misconduct. Judge Bittner concluded that Respondent is unable or unwilling to discharge the responsibilities inherent in a DEA registration, and recommended that his application for registration be denied.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Based on the foregoing, the Deputy Administrator concludes that Respondent's registration is inconsistent with the public interest. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application of James C. Graham, M.D., be and it hereby is, denied. This order is effective March 24, 1995.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-7317 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-09-M

Charles L. Sweet, M.D.; Revocation of Registration

On November 7, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles L. Sweet, M.D., of 219 Broadway, PO. Box 518, Fullerton, Nebraska. The Order to Show Cause proposed to revoke Dr. Sweet's DEA Certificate of Registration, BS2051061, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Sweet on November 14, 1994. More than thirty days have passed since the Order to Show Cause was received by Dr. Sweet. The Drug Enforcement Administration has received no response from Dr. Sweet or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Sweet has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Deputy Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Deputy Administrator finds that in 1975, Dr. Sweet's DEA Certificates of Registration, AS4344951 and AS4355168 were retired based on his failure to renew them. As a result of his failure to renew his DEA registrations, Dr. Sweet's Nebraska State controlled substance registration was revoked on June 5, 1989. On June 29, 1989, DEA sent Dr. Sweet a letter of admonition advising him that he could not handle controlled substances until he obtained a DEA registration.

Dr. Sweet subsequently reapplied for DEA and Nebraska controlled substance registrations, and in October 1989, Dr. Sweet was issued DEA Certificate of Registration, BS2051061, as well as a Nebraska controlled substance registration. However, an investigation by the Nebraska Department of Health, Bureau of Examining Boards revealed that between June and October 1989, Dr. Sweet wrote numerous prescriptions for controlled substances when he did not possess either a DEA registration and/or a Nebraska controlled substance registration. As a result, on November 8, 1991, Dr. Sweet's Nebraska controlled substance registration was revoked. In addition, effective October 15, 1992, Dr. Sweet's state license to practice medicine and surgery was also revoked.

The Deputy Administrator finds that as of November 8, 1991, Dr. Sweet's license to handle controlled substances in the State of Nebraska was revoked, and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Sweet's DEA Certificate of Registration must be revoked. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS2051061, previously issued to Charles L. Sweet, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 24, 1995.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-7318 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-09-M

Office of Justice Programs

[OJP No. 1044 and ZRIN 1121-ZA08]

1995-96 National Institute of Justice Research Plan

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of the availability of the *1995-96 National Institute of Justice Research Plan.*

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of its *1995-96 National Institute of Justice Research Plan.*

DATES: The deadlines for receipt of proposals are Thursday, June 15, 1995; Friday, December 15, 1995; Monday, June 17, 1996; and Monday, December 16, 1996.

ADDRESSES: Comments should be addressed to the National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Jeremy Travis, Director, National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531. To obtain copies of the *1995-96 National Institute of Justice Research Plan,* call the National Criminal Justice Reference Service (NCJRS), 1-800-851-3420, Box 6000, Rockville, MD 20850. The Plan is also available electronically via the National Criminal Justice Reference Service Bulletin Board (NCJRS*BBS). If you have Internet access; telnet to ncjrsbbs.aspensys.com or gopher to ncjrs.aspensys.com 71. Users without Internet access may direct dial to (301) 738-8895. Modems should be set at 9600 Baud and N-8-1. The NIJ Research Plan is listed under the "National Institute of Justice Information" menu.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. §§ 3721-23 (1988).

Background

The *1995-96 National Institute of Justice Research Plan* outlines the NIJ research and evaluation agenda for 1995, provides descriptions of program areas for which research and evaluation proposals will be solicited, provides application instructions and forms, outlines requirements for award recipients, and lists contact persons for program areas.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95-7360 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-18-P

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution Near Jonesville in Lee County, Virginia

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Federal Correctional Institution (FCI) is needed in its system.

The Federal Bureau of Prisons has preliminarily evaluated several sites in Lee County and determined that the Litton Site will be the focus of the DEIS.

The Bureau of Prisons proposes to build and operate a medium-security Federal correctional institution, with an adjacent minimum-security satellite camp, in Lee County, Virginia. The main medium-security facility would provide habitation for approximately 1200 inmates, and approximately 500 inmates at the minimum-security camp. The Bureau of Prisons proposes to build the facility near Jonesville, Virginia, on a portion of 288 acre site located at the junction of U.S. Route 58 and VA Route 638. The site appears to be of sufficient size to provide space for housing, programs, services and support areas as well as administration, and parking.

The Process

In the process of evaluating the site, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Scoping Meeting will be held at 7:00 p.m. on Thursday, March 30, 1995 at the Lee High School Auditorium. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, public information meetings will be held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS may be directed to: K. Bradley Wiggins, Site Selection Specialist, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, (202) 514-6470.

Dated: March 6, 1995.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 95-6076 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of the Secretary

Title of Proposed Information Collection

AGENCY: Office of the Secretary, Labor.

ACTION: To permit collection of information on the needs of enrollees of the Senior Community Service Employment Program so it is available in time for the White House Conference on Aging and for reauthorization of the Older Americans Act.

SUMMARY: The Employment and Training Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 [53 FR 16618, May 10, 1988]), is submitting a brief description of the need for the information to be collected, including the use to which it is planned to be put.

DATES: The Employment and Training Administration has requested an expedited review of this submission under the Paperwork Reduction Act; the Office of Management and Budget (OMB) review of this proposed survey has been requested to be completed by March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Senior Community Service Employment Program Needs Assessment should be directed to Mr. Kenneth A. Mills, Departmental Clearance Officer, Office of Information Resource Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210, 202 219-5095. Comments should also be sent to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, NEOB Room 10235, Washington, DC 20503, 202 395-7316. Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes per Response: 30 minutes.

Frequency of Response: One-time.

Number of Respondents: 2,000.

Total Annual Burden Hours: 1,000.

Total Annual Responses: 2,000.

Affected Public: Individuals or households.

Respondents Obligation to Reply: Voluntary.

Signed at Washington, DC this 20th day of March 1995.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Appendix—Supporting Statement for Paperwork Reduction Act Submissions

A. Justification

1. Circumstances that make the collection of information necessary. There are two events which make the collection of the information necessary. The first is the White House Conference on Aging. It would be useful to have information on individuals enrolled in the Senior Community Service Employment Program in time for recommendations/resolutions to be based on factual information.

This survey instrument would provide solid information on the needs of SCSEP enrollees. The second is the reauthorization of the Older Americans Act. The subcommittee has informally indicated they plan hearings in late May/early June. The information would provide positive hard data about the needs of the enrollees as insights to the programs success in meeting those needs.

2. How collected, by whom, how frequently, and for what purpose the information is to be used. This request is for a one-time collection. As indicated above the information will be used for two purposes—the White House Conference on Aging and the

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Reauthorization of the Older Americans Act.

The data would be collected by grantee staff taking the questionnaire to the enrollees work site for completion. The enrollee would seal the envelop after completion and it would be returned to the Department for compiling and interpreting by Defense Technologies Incorporated.

The current collection of data on the SCSEP is very limited to summary data which cannot be analyzed to provide insights to the enrollees needs for individual cohorts.

3. Information technology used to reduce burden, as well as any technical or legal obstacles to reducing burden. This is a one-time request which is to be completed by the enrollee and not the grantee. The individuals selected will be representative of the universe of enrollees in the SCSEP. Although the actual collection itself does not lend itself to automation, the questionnaire has been set up in a manner which expedites the imputing and analysis of the data.

4. Similar information already available. There is no other similar data being collected involving the SCSEP enrollees.

5. Impact on small businesses or other small entities. This ICR does not involve small businesses.

6. Consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. If the data is not collected, it will not be possible to utilize the results for analyzing the needs of the enrollees for either the White House Conference on Aging or in the Reauthorization of the Older Americans Act. In addition, if the data is not collected, it will not be possible to use it for internal discussions about how to best meet the needs of the enrollees at the community level.

7. Special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6 (e.g., payment to respondents, disclosure of proprietary information, etc.). This request is consistent with 5 CFR 1320.6.

8. Consultations with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. The Department consulted widely with all the organizations dealing with older workers, including the National Association of the State Units on Aging, the American Association of Retired Persons, Green Thumb, National Association for Hispanic Elderly, the National Caucus and Center on Black Aged, the National Council on Aging, the National Indian Council on Aging, the National Pacific/Asian Center on Aging, the National Urban League, the National Council of Senior Citizens, and the U.S. Department of Agriculture's Forest Service.

All organizations listed have been provided the opportunity to suggest modifications or revisions to questions. The development of the questionnaire grew out of an effort by one of the grantee organizations, Green Thumb, Inc., to obtain information which could be summarized and submitted to describe the needs of enrollees of the Senior Community Service Employment Program at a series of three mini-White House Conference on Aging meetings. Based upon the recommendations of other grantee organizations, it was agreed that a more thorough collection effort could provide valuable representative information for a variety of purposes. This is a one-time request which does not require multiple collections by grantees or contacts with enrollees.

9. Confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. The individual enrollee will receive a cover letter that will explain that the information is provided on a voluntary basis and the responses will be handled on a confidential basis. To ensure that this occurs, the enrollee will seal the envelop provided after completion. No one will know which responses are attributable to a specific individual.

10. Sensitive nature of questions. The proposed questionnaire does not contain questions on such topics as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

11. Estimates of cost.

a. Federal Government. The cost to the Federal Government will be as follows:

(1) Printing. 2,000 Questionnaires .03 per page × 16 pages=$960.

(2) Support Staff required for Compiling/Mailing. 10 hours × GS–7 salary of $13.46/hour=134.60.

(3) Analysis. $12,000 for Defense Technologies Inc. to input the data and determine significance of data.

b. Grantee. The costs to the grantee will be minimal since they must send some one to the individual's work site to assess the progress being made by the enrollee. This visit would coincide with the delivery of the questionnaire.

c. Enrollee. This questionnaire will be completed at the work site. There will be no cost to the enrollee.

12. Estimates of the burden of the collection of information.

a. Number of Respondents. 2,000.

b. Frequency of Response. Once.

c. Annual Burden. 30 minutes × 2,000 enrollees=1,000 hours. Time requirements were based on a pre-test of the survey instrument.

13. Amendments to existing collections. This is a new data collection for ETA that will count as a +1,000 PC hours towards ETA's Information Collection Budget (ICB).

14. Plans for publication. Not Applicable. Information collected will be used for policy recommendations and program operations.

B. Collections of Information Employing Statistical Methods

1. Sampling method. The information would be collected using accepted statistical sampling techniques. A three-part process will be employed involving three strata—States, minority national sponsors, and the remaining national sponsors. All participants would have some chance of being selected under the proposed sample design. Before beginning the process of selecting the sample, it was determined that a sample of 2,000 respondents would be required to provide sufficient data to generalize conclusions to the SCSEP population. This decision was driven somewhat by the need to obtain a sample size sufficiently large for minority populations (American Indian, Asian-Pacific Islanders and Hispanics) which formed less than 15 percent of the total number of older workers served by the program.

State Strata. An initial determination was made that ten States would provide a sufficient number of States to be representative of all States. Since the allocation of slots to States represents 22 percent of the total, a rounded figure of 20 percent was applied to the total sample to derive a State sample of 400 respondents. The number of cases was equally divided between the ten States selected or 40 respondents per State selected. Then the States were arrayed by the number of slots provide to each and the cumulative number of slots was posted throughout the list. This was followed by selecting a skip interval of 1,500. This was based on the total number of slots in all of the States (14,901 rounded to 15,000) and 10 States (15,000 slots divided by 10 States=1,500 skip interval). A random start number between 1 and 1,500 was selected to identify the first State. For example, if the random number was 200, the State with a cumulative range that included the number 200 would be selected. Subsequent selections were made by adding 200 to the random start number. The result was to select the following State clusters:

CA, NY, TX, OH, NJ, MO, HI, AL, MD & VI=400 cases National Strata. As noted above, 20 percent of the sample was assigned to the States; therefore, the remaining 80 percent of the sample was assigned to the national sponsors in line with the number of SCSEP slots allocated to them. The selection of the National Sponsors followed a two-part process. Each sponsor was treated as a stratum. Three minority grantees were designated as certainty strata to ensure that a sufficient number of hits would occur. Each of the three minority grantees was assigned a sample size of 100 respondents. The remainder of the sample was assigned to the other national sponsors on a proportional basis. This resulted in the following sample:

Certainty Strata 100 each=300 cases (minority sponsors)

Proportional sample range 437–53 cases (remaining national sponsors) depending on no. of slots per grantee=1300 total cases

Estimation procedure. The results of the survey will be reported as proportions (expressed as percentages). For example, for question one, xx.x% of the respondents were with the SCSE Program 5 years of more, yy.y% were with the program more than 2 years but less than 5 years, etc.

1. Sample Proportions. A sample proportion (p) for each survey item category is computed by:

$$P_x = 350\,FV_{2M-}\ i, \text{or}$$

$$P_x = 350 \times \left[\frac{(1+i)^n - 1}{i} \times (1+i)\right]$$

where x is a random variable that equals 1 if the ith sample respondent selects the particular category and equals 0 otherwise, and n is the sample size.

The variance is a measure of variability, that is, the different values that a sample statistic like the proportion can have, given the size of the sample and the true (population) proportion. Because the population proportion is unknown, it is estimated by the sample proportion, p. The estimated variance of p, V(p), is computed by:

$V(p)=[(p(1-p))/(n-1)]*[1-(n/N)]$ [2].

The term $[1-(n/N)]$ is the finite population correction factor, which takes into account the reduction in the sampling variance attributable to the proportion of the population that is sampled.

2. Cluster Samples. A two-stage sample was selected for the State sponsors. The primary sampling units (PSU) were selected with probabilities proportional to size (pps). A fixed number of 40 cases were selected from each of the PSU's in the second stage in order to maintain a constant overall sampling fraction. The estimated proportion for a sample selected pps is:

$$p_{pps} = (1/m) * \sum_{i=1}^{m} p_i \qquad [3],$$

where p_i is the sample proportion for cluster i, given by [1], and m is the number of clusters (PSU) selected in the first stage.

The estimated variance of p_{pps} is:

$$V(p_{pps}) = [1/(m(m-1))] * \sum_{i=1}^{m} (p_i - p_{pps})^2 \qquad [4].$$

The finite correction factor has been omitted because the overall sampling fraction of 400/15,000 has a negligible effect on the variance.

3. Stratified Samples. Survey respondents are selected from several organizations, which are treated as strata for the purposes of estimating survey statistics. Because a sample of 100 cases is selected from three minority organizations, the sample is not proportional for all national strata. The estimates are therefore weighted to reflect the contribution of each strata to the national estimate. Weights are computed by the formula:

$W_h=N_h/N$ [5],

where N_h is the size of the strata (the number of members for national sponsor h) and N is the total number of members for all of the national sponsors.

The weighted proportion is computed by:

$$p_w = \sum_{h=1}^{k} W_h p_h \qquad [6],$$

where p_h is the sample proportion for stratum h, given by [1].

The estimated variance of p_w is:

$$V(p_w) = \sum_{h}^{k} W_h^2 * (p_h)$$

Note: $V(p_h)$=is given by equation [2] or [4] as appropriate [7]. Degree of accuracy needed for the purpose described in the justification. 95 percent confidence intervals for survey estimators are constructed by $\theta \pm 1.96 * \text{sqrt}[V(\theta)]$, where θ is an estimator such as p_w and sqrt[V(θ)] is the square root of the estimated variance of θ.

2. Procedures for the collection of information.

a. Sample selection. The Department would provide instructions to the grantees involved on how to select a sample from among their records using a random numbering table.

b. How delivered. The sponsor's representative (either staff or enrollees) would hand-carry the questionnaire to the host agency community service assignment site for completion by the participant or with the assistance of the sponsor's representative.

c. How collected: The SCSEP participants would return the questionnaire to the sponsor's representative after completion or if the participant is not functionally literate, the sponsor's representative would verbally administer the questionnaire on site. This would ensure responses are obtained from the SCSEP participant in a timely manner. Note: since the questions are almost entirely objective, interview bias should not be a major concern.

d. How provided to the Department of Labor. The sponsor would insert the completed questionnaires in an envelop and return them to the Department without any attempt to analyze the individual questionnaires.

3. Methods to maximize response rates and to deal with issues of non-response. As indicated above, the questionnaires will be hand-delivered to the enrollee work site and completed while the project worker is discussing enrollee progress with the host agency. The response rate is anticipated to be 90 percent or better based on a pretest in which all respondents completed and returned the questionnaires.

4. Tests of procedures or methods to be undertaken. An informal pretest of twenty individuals was undertaken to ensure that the questionnaire could be easily understood.

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5. Individuals consulted on the design of the questionnaire and/or statistical methodology.

Lawrence Crecy	202–637–8400	National Caucus and Center for Black Aged.
Donald Davis	202–637–8400	National Council on the Aging.
Michael Flor	206–624–1221	National Asian-Pacific Center on Aging.
Dorinda Fox	202–624–9507	National Council of Senior Citizens.
Robert Mizerak	212–310–9120	National Urban League.
Glenn Northup	202–434–2277	American Association of Retired Persons.
Henry Rodriquez	213–487–1922	Association Nacional Pro Personas Mayores.
Andrea Wooten	703–522–7272	Green Thumb, Inc.
Robert Casady	202–606–7370	Bureau of Labor Statistics.
Roberta Sanster	202–606–7517	Bureau of Labor Statistics.

U.S. Department of Labor,
Employment and Training Administration,
200 Constitution Avenue, NW.,
Washington, DC 20210

Dear Enrollee: Welcome to the Department of Labor's White House Conference on Aging Needs Assessment Team!

The enclosed questionnaire has been developed to determine the employment and training, health, and housing related needs of the Senior Community Service Employment Program (SCSEP) enrollees. You play a critical role in the first comprehensive needs assessment of SCSEP enrollees. No one is *required* to complete this questionnaire. You are being asked to complete it voluntarily. However, your responses are important to us since you were selected on a statistically random basis. This means your responses represent hundreds of other enrollees' needs as well as your own. We are asking you to complete the survey so we can learn how to meet more effectively your needs and the needs of others like you.

Please answer each question by circling the number of the response which most accurately reflects your situation. There are no right or wrong answers. Just answer the question honestly. Your name will not be on the survey, so no one will know what answers you give. If you have any questions at any time during the survey, please direct them to the individual who provided this questionnaire to you.

The results of the survey will be shared with the delegates to the White House Conference on Aging in May 1995. In addition, the summary data will be provided to all of the organizations operating SCSEP programs. This will enable them to determine what local resources in the community can be brought to bear on the needs identified through this process.

We estimate that it will take an average of 30 minutes per respondent to complete this questionnaire. If you have any comments regarding this estimate or any other aspect of the questionnaire, including suggestions for reducing the time needed to respond, send them to the Division of Older Worker Programs, Department of Labor, 200 Constitution Avenue, NW., Room C4524, Washington, DC 20210 and/or the Office of IRM Policy, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210 (Paperwork Reduction Project 1225–XXXX).

Thanks for your assistance.

Sincerely,
Charles L. Atkinson,
Chief, Division of Older Worker Programs.

U.S. Department of Labor—Employment and Training Administration

White House Conference on Aging—Needs Assessment Survey

The Department of Labor needs your help in completing this survey so we can learn how to better meet your needs and the needs of others like you. Completion of the questionnaire will take approximately 30 minutes of your time. The survey is voluntary—you are not required to complete it. However, your responses to the questionnaire are valuable and your participation will be greatly appreciated. The contents of your questionnaire will be treated confidentially. When you have completed the questionnaire—please seal it in the envelope provided. Thank you very much for taking the time to fill it.

Section I. Work Profile

1. How long have you been in the Senior Community Service Employment Program/ Title V (circle the number of your answer)?
1 Less than 6 months
2 More than 6 months but less than 2 years
3 More than 2 years but less than 5 years
4 5 years or more

2. Did you work in paid employment, before enrollment in Title V (circle the number of your answer)?
1 In the last 3 months
2 More than 3 months but less than 6 months ago
3 More than 6 months but less than 1 year ago
4 More than 1 year ago
5 I have never worked for pay

If your answer was #5, → skip to question #5.

3. In your last job before enrollment in Title V, you received on-the-job training (circle the number of your answer.)
1 Yes
2 No

4. Did you leave your last paying job before enrollment in Title V because (circle the number of your answer)?
1 You retired from work
2 You were laid off/terminated
3 You resigned/quit
4 You were ill
5 You were disabled
6 other, please explain

5. In 1995, you want to (circle the number(s) of the two most important responses for your answer.)
1 Learn new skills
2 Continue your assignment with the Senior Community Service Employment Program
3 Spend time on personal interests
4 Help my community
5 Get a job off the Senior Community Service Employment Program
6 Join an employment related training program
7 Other, please explain

6. Do you currently worry about money (circle the number of your answer)?
1 Daily
2 Several times a week
3 Several times a month
4 Monthly
5 Few times a year

7. Are you currently able to pay your bills on time (circle the number of your answer)?
1 Rarely
2 Some of the time
3 Most of the time

8. Excluding the Senior Community Service Employment Program, are you currently employed (circle the number of your answer)?
1 Not at all
2 Less than 10 hours each week
3 Between 10–24 hours each week
4 More than 24 hours each week

9. Do you want to work (circle the number of your answer)?
1 Less than 10 hours each week, →skip to question #11
2 Between 10–24 hours each week →skip to question #11
3 More than 24 hours each week →skip to question #11
4 Not at all

10. At this time, the main reason you do not want to work is (circle the number of your answer.)
1 You have other obligations, such as care giving, etc.
2 You have sufficient income
3 You have other interests
4 You are ill
5 You are disabled
6 Other, please explain

11. When employers offer jobs in your community, do you feel they hire older workers (circle the number of your answer)?
1 Rarely or none of the time
2 Some of the time
3 Most of the time

12. In the past month, have you applied for a paying job in your community (circle the number of your answer)?
1 Not at all
2 1–9 times
3 10–19 times
4 20 or more times

13. How did you learn previously about job openings (circle all of the numbers that apply for your answers)?
1 The newspaper
2 Radio
3 Television
4 Local employment services
5 Friends or relatives
6 Other, please explain

14. Would you like to be employed in the following type of job (circle the number of your top two choices for your answer)
1 Clerical/office
2 Mechanical/technical
3 Public service
4 Manufacturing
5 Agriculture
6 Sales
7 Health care
8 Home care
9 Child care
10 Food service
11 Education
12 Other, please explain

15. Do you currently receive any of the following benefits? (circle all of the numbers that apply for your answer.)
1 Social Security Retirement
2 Medicare premiums, special programs paying deductibles and co-payments
3 Subsidized Housing
4 Medicaid
5 Social Security Disability
6 Supplemental Security Income (SSI)
7 Other, please explain

8 None of the above

16. If you started working outside of SCSEP, would any of the following benefits you are now receiving change? (circle the numbers(s) of the two major benefits lost for both "a." and "b." below.)
a. Work Related Benefits
1 Sick leave
2 Annual leave
3 Paid holidays
4 You do not know
b. Government Subsidized Benefits
5 Rent costs increase
6 SSI check reduced or cutoff
7 Food stamps reduced or cutoff
8 Lose Medicaid
9 You do not know
10 Not applicable

Section II. Health Profile

17. Your physical health since you began your participation in the Senior Community Service Employment Program has shown (circle the number of your answer)
1 No improvement
2 Some improvement
3 A great deal of improvement
4 None
5 Your health was good when you started the program

18. Your personal outlook since participating in the Senior Community Service Employment Program, has shown (circle the number of your answer)
1 No improvement
3 Some improvement
4 A great deal of improvement
5 None
6 Your personal outlook was good when you started the program

19. Most of the time, when you are sick or injured you (circle the number of your answer.)
1 Go to a private doctor
2 Go to the emergency room
3 Go to a clinic
4 Treat yourself
5 Do nothing
6 Other, please explain

20. Your last visit to the doctor was (circle the number of your answer.)
1 1 to 3 month(s) ago
2 4 to 6 months ago
3 7 to 12 months ago
4 More than 12 months ago
5 Rarely visit a doctor

21. The doctor you go to is (circle the number of your answer.)
1 0 to 10 miles away
2 11 to 20 miles away
3 21 to 40 miles away
4 Over 40 miles away
5 You do not go to a doctor

22. Do you go to the dentist (circle the number of your answer)?
1 Rarely
2 Only when you have a problem
3 Every six months
4 Once a year

23. Do you use (circle the number(s) of all responses that apply for your answer)?
1 Eyeglasses/contact lens
2 Hearing aids
3 Dentures
4 Cane/walker/wheelchair
5 Other, please explain

6 None

24. Do you use Doctor prescribed medication (circle the number of your answer)?
1 Daily
2 Several times a week
3 Several times a month
4 Monthly
5 A few times a year or less

25. You need new/additional (circle the number(s) of all responses that apply for your answer.)
1 Eyeglasses/contact lens
2 Hearing aids
3 Dentures
4 Cane/walker/wheelchair
5 Other, please explain

26. For 1994, your medical costs were (circle the number of your answer.)
1 All paid for by insurance or other methods
2 Partially paid for by insurance or other methods
3 Paid almost entirely by you

27. For 1994, your prescription drug costs were (circle the number of your answer.)
1 All paid for by insurance or other methods
2 Partially paid for by insurance or other methods
3 Paid almost entirely by you

28. For 1994, you had medical coverage through (circle the number(s) of all responses that apply for your answer.)
1 Private insurance
2 Medicare
3 Medicaid
4 VA medical care
5 Other, please explain

6 You do not have medical coverage

29. Are you responsible for taking care of a family member(s) (circle the number of your answer)?
1 Daily
2 Several times a week
3 Several times a month
4 Monthly
5 A few times a year or less

30. Do you take care of the following family member(s) or others (circle the number(s) of all responses that apply for your answers(s))?
1 Child(ren)
2 Adult(s)
3 Disabled/ill child(ren)
4 Disabled/ill adult(s)
5 A friend/neighbor
6 You do not take care of family member(s), → skip to question #32

31. Do you need help taking care of family members or others (circle the number of your answer)?
1 Daily
2 Once or twice a week
3 Several times a month
4 Once a month or less

32. Each night, do you go to bed hungry (circle the number of your answer.)
1 Yes
2 No

33. Do you practice physical exercise (circle the numbers for all responses that apply for your answer)?
1 Almost never (any exercise)
2 Once or twice a week (slow walking or similar exercise)
3 Three or more times a week (slow walking or similar exercise)
4 Once or twice a week (aerobic level exercise)
5 Three or more times a week (aerobic level exercise)

34. Presently, are you satisfied with your life (circle the number of your answer)?
1 Rarely
2 Some of the time
3 Most of the time

35. Do you feel lonely (circle the number of your answer)?

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1 Rarely
2 Some of the time
3 Most of the time

36. Are you sick—requiring bed rest (circle the number of your answer)?

1 Rarely
2 Some of the time
3 Most of the time

Section III. Household Profile

37. Do you live (circle the number of your answer)?

1 Alone
2 Together with your spouse/domestic partner
3 Together with your child(ren)
4 Together with your grandchild(ren)
5 Together with other relative(s)
6 Together with non-relatives
7 Group home
8 Halfway house
7 Other, please explain

38. Do you have a pet (circle the number of your answer)?

1 Yes
2 No

39. Including yourself, the number of person(s) that live in your household is

40 Do you live in a (circle the number of your answer)?

1 House
2 Apartment
3 Mobile home
4 Senior citizens housing complex
5 Condominium/town house
6 Group home
7 Halfway house
8 Assisted living facility
9 Subsidized housing
10 Other, please explain

11 You do not have a housing arrangement

41. Other than SCSEP, do you spend most of your time during the day (circle the number of your answer)?

1 Working for pay
2 Doing household chores
3 Looking for work
4 Volunteering
5 Participating in social activities
6 Watching TV
7 Reading
8 Caring for family members
9 Caring for non-family members
10 Other, please explain

42. The place where you live has the following item(s) (circle the number(s) of all responses that apply for your answer.)

	Available	Good/safe condition
a. Basics:		
Electricity/gas service	1	1
Heater	2	2
Indoor plumbing and bath	3	3
Refrigerator	4	4
Stove	5	5
Hot water	6	6
Air conditioner/cooler	7	7
Telephone	8	8
c. Appliances:		
Washer	9	9
Dryer	10	10
Radio	11	11
TV	12	12
Video Cassette Recorder (VCR)	13	13
Microwave	14	14
Computer	15	15
Dishwasher	16	16
d. Security:		
Locking doors and windows	17	17

43. Do you pay the following utility bills (circle the number(s) of all responses that apply for your answer(s))?

1 Electric
2 Gas/propane
3 Water/sewer
4 Coal/firewood
5 Heating oil
6 Telephone

44. Do you have problems with (circle the number(s) of all responses that apply for your answer(s))?

1 Mice and/or rats
2 Roaches
3 Other insects and/or pests
4 None of the above

45. The place where you live, do you (circle the number of your answer)?

1 Own, mortgaged
2 Own, not mortgaged
3 Rent
4 Do not pay for
5 Homeless

46. The place where you live is in (circle the number of your answer.)

1 Good condition
2 Fair Condition
3 Poor condition

47. When you need to go somewhere do you usually (circle the number of your answer)?

1 Walk
2 Get a ride from a senior service
3 Take public transportation
4 Drive your car
5 Pay for a ride from someone
6 Ride your bike
7 Take a taxi
8 Borrow/rent a car
9 Other, please explain_____

48. Do you have a vehicle or automobile in running condition (circle the number of your answer)?

1 Yes
2 No

49. Do you have a valid drivers' license (circle the number of your answer)?

1 Yes
2 No → Skip to question #54

50. Do you have vehicle insurance which permits you to drive on public roads (circle the number(s) of your answer)?

1 Yes
2 No

51. Your greatest desires are for (circle the number(s) of the two most critical items that apply to you for your answers.)

1 Food
2 Housing
3 Companionship
4 Health/dental care
5 Transportation
6 Paid work
7 Money
8 Skills training
9 More education
10 Clothing

52. When you have a problem, do you usually (circle the number of your answer)?

1 Talk to someone
2 Work it out yourself
3 Don't know what to do/who to call
4 Visit a family member
5 Receive religious/professional counseling
6 Call crisis intervention

Section IV. Population Profile

53 You are (circle the number of your answer.)

1 Female
2 Male

54. What is your age (circle the number of your answer.)

1 55–59
2 60–64
3 65–74
4 75–79
5 80–84
6 85–89
7 90–94
8 95–99
9 100 or over

55. You are (circle the number of your answer.)

1 Asian American/Pacific Islander
2 Black [not Hispanic]
3 Hispanic
4 Native American/Alaskan Native
5 White [not Hispanic]
6 Other, please explain_____

56. You are currently (circle the number of your answer.)

1 Single, never married
2 Widowed
3 Married
4 Separated
5 Divorced
6 Other, please explain

57. For 1994, your total annual household income is (circle the number of your answer.)

1 $3,000 or less
2 $3,001 to $6,000
3 $6,001 to $9,200
4 $9,201 to $12,300
5 $12,301 to $15,400
6 $15,401 to $18,500
7 Over $18,500

58. You participate in the following food programs (circle the number(s) of *ALL* RESPONSES THAT APPLY for your answer(s).)

1 Food stamps
2 Senior meals (nutrition site or meals-on-wheels)
3 Commodity distribution
4 Food banks
5 Soup kitchen
6 None of the above

59. Your primary source(s) of income is/are (circle the number(s) of the two major sources of income that apply for your answer(s).)

1 Senior Community Service Employment Program
2 Paid private/public employment
3 Social Security
4 Supplemental Security Income (SSI)
5 General assistance/welfare (GA)
6 Aid to families with dependent children, including grandparents (AFDC)
7 Pension
8 Military benefits
9 Money from relatives
10 Food stamps
11 Other, please explain

60. The highest education level you have completed is (circle the number of your answer.)

1 8th grade or under
2 9th–12th grade (but did not graduate)
3 High school graduate
4 GED
5 1 to 3 years of college
6 College graduate
7 Postgraduate work

61. Are you (circle the number of your answer)?

1 A citizen or national of the United States
2 An alien lawfully admitted for permanent residence
3 An alien authorized by the Immigration and Naturalization Service to work in the United States

62. Are you a registered voter (circle the number of your answer)?

1 Yes
2 No

63. Are you a U.S. military veteran circle the number of your answer)?

1 Yes
2 No

64. Do you qualify for U.S. military benefits (circle the number of your answer)?

1 Yes
2 No
3 Do not know

65. Your activities in the community (circle the number(s) of all responses that apply for your answer(s.):

	Daily	Weekly	Monthly	Rarely
You volunteer in your community	1	1	1	1
You participate in religious worship	2	2	2	2
You take part in senior activities	3	3	3	3
You visit friends and relatives	4	4	4	4
Your friends and relatives visit you	5	5	5	5

66. You volunteer at the (circle the numbers(s) of all responses that apply for your answer(s).)

	Daily	Weekly	Monthly	Rarely
1 Hospital	1	1	1	1
2 Nursing home	2	2	2	2
3 School	3	3	3	3
4 Library	4	4	4	4
5 Senior center	5	5	5	5
6 Other, please explain _____				
7 You do not volunteer				

67. a. Please indicate the State where you live. _____

b. Please indicate the county where you live. _____

c. Do you live inside the limits of a city, town, borough, or village? _____ Yes _____ No. If yes, please provide the name.

68. Please tell us the three most important things we can do to serve you.

1. _____
2. _____
3. _____

69. Did you complete the questionnaire (circle the number of your answer)?

1 Without assistance
2 With assistance

Thank you!

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the Canadian Standards Association application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Canadian Standards Association previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition of its Rexdale (Toronto) facility as a Nationally Recognized Testing Laboratory (see 57 FR 23429, 6/3/92; amended 57 FR 48804, 10/28/92), and was so recognized (see 57 FR 61452, 12/24/92); made application for expansion of the recognition of its Rexdale facility (see 58 FR 64973, 12/10/93), and was so recognized of its (see 59 FR 5447, 2/4/94); made application for inclusion of its Pointe-Claire, Richmond, Edmonton, Moncton, and Winnipeg facilities in the recognition of its Rexdale facility as an NRTL (see 59 FR 10173, 3/3/94), and was so recognized (see 59 FR 40602, 8/9/94); and subsequently made

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application for expansion of its recognition as an NRTL (see 58 FR 64973, 12/10/93, and so recognized (see 59 FR 5446, 2/4/94).

CSA applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory for 51 test standards (of which 31 were determined to be appropriate standards) pursuant to 29 CFR 1910.7, which was published in the **Federal Register** on December 8, 1994 (59 FR 63383). No comments were received concerning this request for expansion.

Notice is hereby given that CSA's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the 31 test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The addresses of the laboratories covered by this recognition are:

Canadian Standards Association, Rexdale (Toronto) Facility, 178 Rexdale Boulevard, Rexdale, Ontario M9W1R3, Canada

Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8, Canada

Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9, Canada

Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada

Canadian Standards Association, Moncton Facility, 40 Rooney Crescent, Moncton, New Brunswick E1E 4M3, Canada

Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada.

Final Decision and Order

Based upon the facts found as part of the Canadian Standards Association's original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application, amendments, and documentation submitted by the applicant, the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request, OSHA finds that the Canadian Standards Association has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the CSA's recognition is hereby expanded to include the 31 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 31 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

CSA has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/IEEE C37.20.1—Metal-Enclosed Low-Voltage Power Circuit-Breaker Switchgear
ANSI/IEEE C37.20.2—Metal-Clad and Station-Type Cubicle Switchgear
ANSI/IEEE C37.20.3—Metal-Enclosed Interrupter Switchgear
ANSI/IEEE C37.21—Control Switchboards
ANSI/IEEE C37.23—Metal Enclosed Bus and Calculating Losses in Isolated-Place Bus
ANSI/IEEE C37.41—Design Tests for High-Voltage Fuses, Distribution Enclosed Single Pole Air Switches, Fuse Disconnecting Switches and Accessories
ANSI/IEEE C37.46—Specifications for Power Fuses and Fuse Disconnecting Switches
ANSI/IEEE C37.54—Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear, Assemblies—Conformance Test Procedures
ANSI/IEEE C37.55—Metal-Clad Switchgear Assemblies—Conformance Test Procedures
ANSI/IEEE C37.57—Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
ANSI/IEEE C37.58—Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Testing Procedures
ANSI/IEEE C37.121—Unit Substations—Requirements
ANSI/IEEE C62.11—Metal Oxide Surge Arresters for AC Power Circuits
UL 13—Power-Limited Circuit Cables
ANSI/UL 508C—Power Conversion Equipment
ANSI/UL 611—Central-Station Burglar-Alarm Systems
ANSI/UL 636—Holdup Alarm Units and Systems
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1651—Optical Fiber Cable
UL 1690—Data-Processing Cable
UL 1776—High-Pressure Cleaning Machines
UL 1951—Electric Plumbing Accessories
UL 1993—Self-Ballasted Lamps and Lamp Adapters
UL 1996—Duct Heaters
UL 2044—Commercial Closed Circuit Television Equipment
UL 2083—Halon 1301 Recovery/Recycling Equipment
UL 2601–1—Medical Electrical Equipment
UL 3101–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1—Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 8730–1—Electrical Controls for Household and Similar Use; Part 1: General Requirements

The Canadian Standards Association must also abide by the following conditions of the expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any Canadian Standards Association program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date

This recognition will become effective on March 24, 1995, and will be valid until December 24, 1997, (a period of five years from the date of the original recognition, December 24, 1992), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 20th day of March, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–7366 Filed 3–23–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–09602]

Proposed Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would exempt various transactions involving employee benefit plans whose assets are managed by in-house managers (INHAMS), provided that the conditions of the proposal are met. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, INHAMS, and other persons engaging in the described transactions.

DATES: Written comments and requests for a hearing must be received by the Department on or before May 8, 1995.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: CIEBA Class Exemption Proposal. The application for exemption (Application Number D–9602), as well as all comments received from interested persons, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 219–8971 (not a toll-free number); or Paul D. Mannina, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210 (202) 219–9141 (not a toll free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from certain of the restrictions of sections 406 and 407(a) of ERISA and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application dated December 16, 1993, submitted by the Committee on Investment of Employee Benefits Assets (CIEBA)[1] pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR section 2570 subpart B (55 FR 32836, August 10, 1990).[2]

I. Background

On March 13, 1984, the Department granted Prohibited Transaction Exemption 84–14 (PTE 84–14) (49 FR 9494), a class exemption which permits various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by a "qualified professional asset manager" (QPAM), which is independent of the parties in interest and which meets specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers.

The QPAM exemption was proposed by the Department on its own motion in an effort to give institutional managers greater flexibility to engage in a variety of beneficial transactions which would otherwise have been prohibited by ERISA, without sacrificing the interests of plan participants and beneficiaries. In its proposal for the QPAM exemption, the Department noted its belief that, as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary. Thus, the relief contained in the QPAM exemption was predicated upon the existence of a professional asset manager who is solely responsible for the discretionary management of plan assets that are transferred to its control.

The QPAM exemption did not provide relief for transactions involving the assets of plans managed by in-house asset managers. Nonetheless, in granting the QPAM exemption, the Department noted that the grant of the QPAM exemption did not foreclose future consideration of additional exemptive relief for transactions involving plan assets that are not managed by "QPAMs" or for transactions which do not meet all of the conditions of PTE 84–14. The Department further stated that it would consider pursuing additional exemptive relief for transactions involving assets of plans managed by in-house managers if the requisite findings under section 408(a) could be made.

CIEBA, in its application, has requested exemptive relief for in-house managers similar to that available to outside managers under the QPAM exemption. CIEBA represents that in-house managers encounter technical problems under the prohibited transaction rules of ERISA in the course of considering arm's-length transactions that would be in the interests of their plans. The applicant believes that the narrowly focused relief requested, combined with the conditions and restrictions built into the exemption.

[1] CIEBA is a committee of the Financial Executives Institute, an organization whose membership is made up of senior financial executives in corporations engaged in, among other things, banking, manufacturing, and insurance.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

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should resolve the most common problems faced by CIEBA members while being protective of the interests of plan participants and beneficiaries.

II. Discussion of the Application

A Summary of Facts and Representations

The application contains facts and representations with regard to the requested exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

The applicant represents that many transactions that have little if any potential for abuse of the plan constitute technical prohibited transactions as a result of the breadth of the rules under section 406(a) and the definition of party in interest. The applicant states that the problem results largely from the inclusion of all persons providing services to a plan in the definition of a party in interest, under section 3(14)(B) of ERISA, as well as persons owning a 10% or more interest in such service providers, under section 3(14)(H) or (I). For example, a broker-dealer who has an ongoing relationship with a plan through its securities brokerage business may be prohibited from selling debt securities issued by itself or its parent organization to the plan, or otherwise from selling property to the plan (other than securities, which meet the requirements of PTE 75–1).[3] Similarly, CIEBA represents that a bank which provides trustee or custodial services to a plan may not be able to engage in any sale or credit transactions with that plan.

CIEBA states that INHAMs have become an established part of many large companies which manage some or all of their plan assets in-house. According to the applicant, many of the large corporations that make up its membership maintain one or more employee benefit plans holding in the aggregate assets in excess of $250 million. These large corporations have determined that they can reduce costs and maintain high quality management by developing an in-house asset management capability rather than relying exclusively on outside managers or consultants. It is represented that, in addition to providing reduced costs for comparable or better quality management, in-house managers are attractive to employers because they devote their time solely to the plan's asset management activities, while outside managers have other clients and responsibilities. The applicant also asserts that the named plan fiduciaries benefit from having access to in-house expertise and advice to assist them in carrying out their fiduciary responsibilities.

The applicant represents that the in-house management of plan assets can take several forms. The in-house manager may be a direct or indirect subsidiary of an employer with respect to a plan. Alternatively, the management of the assets may be performed by a division or group within the employer's corporate structure that reports to the employer's treasurer or senior financial officer. In some instances, the in-house manager is established as a separate membership non-profit corporation, with the majority of the members being officers or directors of the employer. According to the applicant, the in-house manager has direct management responsibility over at least part of the assets, and usually also advises a higher-level investment committee of the employer or other named fiduciary of the plan with respect to asset allocation and the selection and monitoring of outside managers.

The applicant states that the in-house manager's operations are monitored by a plan fiduciary, which may be a senior management employee, a committee made up of, or appointed by, the plan sponsor's board of directors, or a person otherwise appointed by the board or the named fiduciary of the plan. The fiduciary monitors the in-house manager's performance and sets investment guidelines and objectives for the sponsor's plans. The investment guidelines promulgated by the fiduciary generally describe the overall investment strategy and objectives for the plan, any criteria for investment in certain asset classes, and what level of approvals, if any, are required for particular investments.

CIEBA represents that, unless the Department provides broad exemptive relief for in-house asset managers, plans will be disadvantaged because of the restrictions on the types of transactions an in-house manager can engage in on behalf of a plan. The applicant explains that, with very large plans, there may be thousands of parties in interest, so that many transactions may be prohibited. The task of determining whether a particular transaction is prohibited can present a considerable burden for plan fiduciaries. According to the applicant, if the in-house manager wishes to enter into a transaction which he or she believes would be beneficial to the plan but which also involves a party in interest, that manager must either (1) seek an individual prohibited transaction exemption; (2) retain a QPAM for the transaction; or (3) forgo the transaction. The applicant argues that seeking an individual exemption involves time and legal expenses. In addition, the applicant notes that the use of a QPAM entails additional expenses for the plan despite the fact that the in-house manager has already done most of the work required for the transaction, including performing the necessary due diligence as to, for example, the creditworthiness of the other parties to the transaction.[4] Finally the applicant argues that forgoing the transaction may cause the plan to miss out on a beneficial investment opportunity. Thus, CIEBA argues that an INHAM class exemption is necessary because the existing limitations on a plan's investment choices can raise a plan's investment costs in the short run by limiting the parties with whom it may deal, and adversely affect investment performance in the long run. Accordingly, CIEBA requests relief for three general categories of transactions which are more fully described below.

B. Description of the Requested Exemption

1. The INHAM Concept

Under the requested exemption, an INHAM would be defined as either (1) a direct or indirect wholly-owned subsidiary of an employer with respect to a plan, or a direct or indirect wholly-owned subsidiary of a parent organization of the employer, or (2) a membership nonprofit corporation, a majority of whose members are officers or directors of the employer or a parent organization. In addition, the INHAM would have to be registered as an investment adviser under the Investment Advisers Act of 1940. Under the applicant's proposed definition, the employer with which the INHAM is affiliated must be a plan sponsor (or group of related plan sponsors) whose plan or plans hold in the aggregate assets of at least $250 million of which at least $50 million of such assets must be under the direct management and responsibility of the INHAM.

2. Transactions With Service Providers

The applicant requests broad relief for transactions between a plan managed by an INHAM and a person who is a party in interest with respect to the plan solely by reason of providing services to the plan or solely by reason of a relationship to such service provider. The applicant notes that the broad relief requested is similar to the general exemption in PTE 84–14, but is more restrictive in that it is only available for transactions with service providers. Among the conditions suggested by the applicant is a requirement that the party in interest not be the INHAM or a person related to the INHAM. A party in interest and an INHAM would be considered related under the requested exemption if either entity owns a 5% or more interest, directly or indirectly, in the other entity.

In addition, the terms of the transaction would have to be negotiated by the INHAM on behalf of the plan, and the INHAM would have to make the decision to enter into the transaction. Notwithstanding the foregoing, the applicant requests that the proposed exemption permit the plan sponsor to retain approval or veto power over large transactions since these types of transactions are customarily subject to increased scrutiny by the plan sponsor. The applicant explains that the higher levels of review are generally conducted by an investment committee or other named fiduciary. The applicant further represents that the requirement that the INHAM negotiate and decide upon the transaction is not affected by any such higher levels of review.

The applicant also proposes that the exemption not provide relief for transactions described in three class exemptions previously granted by the Department: PTE 81–6 (46 FR 7527, 1/23/81) (relating to securities lending arrangements); PTE 83–1 (48 FR 895, 1/7/83) (relating to acquisitions by plans of interests in mortgage pools); or PTE 88–59 (53 FR 24811, 6/30/88) (relating to certain mortgage financing arrangements).[5] Lastly, CIEBA has suggested, as an additional condition, the requirement that the INHAM undergo an annual fiduciary audit to determine whether the written procedures adopted by the INHAM are adequate to assure compliance with the terms and conditions of the exemption. The applicant represents that, by requiring a party independent of the employer to be involved in overseeing compliance with the exemption, the fiduciary audit would serve as a meaningful additional independent safeguard while not unduly interfering with the INHAM's investment decisions.

The applicant asserts that plans would be adequately protected under the proposal because the INHAMs would be independent of and unrelated to the service providers with whom they are dealing. In addition, the proposed definition of INHAM is designed to assure that the INHAM is in the business of investment management and, thus, in a position to develop experience and sophistication in dealing with investment issues. The registration of the INHAM as an investment adviser assures that the INHAM is subject to regulation under the Investment Advisers Act of 1940 and oversight by the Securities and Exchange Commission. The applicant represents that the standards proposed for the INHAM limit relief to only those employers whose managers have sufficient resources to assure knowledge and sophistication in financial and business matters.

3. Specific Exemptions for Employers

CIEBA represents that, where a plan is sponsored by a company that is a producer of goods such as appliances or equipment, the plan may not be able to purchase the appliances or equipment for its own use, even at cost, because the purchase could be a prohibited transaction. Similarly, the plan sponsor may provide services in the ordinary course of its business to consumers, such as utility services or maintenance and support services for goods or equipment sold. The applicant notes that, while section 408(b)(2) provides a statutory exemption for the provision of services to a plan by a party in interest, including an employer, that statutory exemption appears to limit the sponsor's compensation for the provision of services to its "direct costs".[6] CIEBA argues that, for many types of services, it may be difficult as a practical matter to determine what the "direct costs" of these services would be, or the particular division or subsidiary of the sponsor may not be willing to provide the services at direct cost because it would not be economical to do so. In addition, with services such as utilities, the company providing the service may not necessarily know whether the transaction involves a plan asset.

Thus, CIEBA requests an exemption which would permit the sale, leasing or servicing of goods, or the furnishing of services, to a plan by an employer or its affiliate. All covered transactions would be subject to a number of conditions, including the requirement that the transactions must take place in the ordinary course of a business engaged in by the employer or its affiliate with the general public on terms no less favorable than those available to the general public. As a further limitation, transactions engaged in under this exemption could not exceed 1% of the employer's or affiliate's annual gross receipts received from all sources for its prior taxable year.

CIEBA also requests relief for the leasing of office or commercial space to employers. The applicant represents that the statutory exemption under section 408(e) of ERISA, for the acquisition and leasing of "qualifying employer real property", may not exempt the lease of a single parcel of property to an employer or affiliate by a plan.[7] This lack of exemptive relief has resulted in inadvertent prohibited transactions where a plan not holding any other employer real property unexpectedly acquires property in which an employer or an affiliate is a tenant, such as upon foreclosure. The applicant explains that the foreclosure may be necessary to avoid the complete loss of the plan's investment, and the plan fiduciaries are unlikely to be aware of the identities of the tenants until after the foreclosure occurs. CIEBA states that the Congressional concerns underlying the requirement that a substantial number of parcels be dispersed geographically are not present where only a small portion of a single parcel is leased by a plan to its employer.

Under the requested exemption for the leasing of office or commercial space to an employer or affiliate, all the conditions otherwise applicable under ERISA section 408(e) would have to be met, including the requirements that the lease be for adequate consideration, that no commission be charged, and that the investment comply with the 10% limitation contained in section 407(a) with respect to the lease or acquisition of qualifying employer real property by plans other than eligible individual account plans.[8] As a further limitation,

[3] 40 FR 50845 (October 31, 1975)

[4] The Department is expressing no opinion as to whether the above-described transaction would come within the scope of relief provided by PTE 84–14.

[5] In this regard, see section J(b) of PTE 84–14, which contains the identical requirement.

[6] 29 CFR § 2550.408b-2(a) of the Department's regulations provides that section 408(b)(2) does not contain an exemption for an act described in section 406(b) even if such act occurs in connection with a provision of services which is exempt under section 408(b)(2). However, regulation section 29 CFR 2550.408(b)-2(e)(3) provides that if a fiduciary furnishes services to a plan without the receipt of compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services within the meaning of § 2550.408c-2(b)(3)), the provision of such services does not, in and of itself, constitute an act described in section 406(b) of the Act.

[7] The definition of "qualifying employer real property" under ERISA section 407(d)(4) requires, in part, that a substantial number of leased parcels be geographically dispersed.

[8] CIEBA also suggests that this exemption be subject to the requirement that the real property

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the amount of space covered by the lease could not exceed 15% of the rentable space of the property.

The applicant also requests relief for the leasing of residential space owned by a plan to an employee of an employer any of whose employees are covered by such plan, or to an employee of a 50% or more parent or subsidiary of the employer, provided that the amount of space covered by the lease does not exceed 10 percent of the rentable space of the residential property and the employee does not have or exercise any authority with respect to the lease transaction. The applicant represents that this type of relief is necessary because the property manager who manages the property for the plan is unlikely to be aware of any relationship between the tenants and the plan sponsor and the employees are unlikely to be aware that the property is owned by the plan.

The applicant further notes that a plan could inadvertently engage in prohibited transactions with employees of the employer through investments in portfolios of consumer receivables. For example, a plan may purchase an interest in a pool of credit card receivables or mortgages, where the receivables or mortgages may include obligations of officers, directors or employees who are parties in interest under ERISA section 3(14)(H). The applicant represents that the plan fiduciary is unlikely to be aware of the identities of the individual obligors who have some interest in the pool, and even if the fiduciary is aware of the identities, it is unlikely to be aware of the relationship, if any, that these obligors have to the investing plan. In addition, the applicant explains that obligations of parties in interest may be added to the portfolio subsequent to the plan's investment, an event over which the plan would not have any control.

Accordingly, the applicant requests a limited exemption for the acquisition, holding or disposition by the plan of an interest in a consumer receivables portfolio, where a borrower whose obligation is part of the portfolio is a party in interest solely by reason of being an employee, officer, director, or 10% or more shareholder, partner or joint venturer with respect to either the employer, an employee organization whose members are covered by the plan, or a 50% or more parent or subsidiary of the employer.

leased to the employer be suitable or adaptable, without excessive cost, for more than one use. In this regard, see section 407(d)(4), which contains a similar requirement.

4. Places of Public Accommodation

The applicant represents that, if a plan owns a hotel that is part of the property managed by an INHAM, a prohibited transaction may occur if a party in interest stays at that hotel. This would be the case even though the hotel is likely to be operated by persons who are unaware of the party in interest relationship. CIEBA notes that there is little likelihood of abuse in these types of transactions since the persons managing the hotels and motels are generally management companies that would not be aware of the party in interest relationship. In addition, the applicant notes that the Department has granted similar relief in several class and individual exemptions.[9]

Accordingly, CIEBA requests relief for the furnishing of services, facilities and incidental goods to a party in interest by a place of public accommodation, such as a hotel or motel owned by a plan managed by an INHAM if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

III. The Proposed Exemption

The proposed exemption consists of four separate parts. Part I sets forth the general exemption and enumerates certain conditions applicable to the transactions described therein. Parts II and III of the proposal set forth specific exemptions. Part IV contains definitions for certain terms used in the proposed exemption.

A. The INHAM Concept

As proposed, the class exemption would be available for various party in interest transactions that involve those assets of a plan that are managed by an INHAM. The Department has determined to adopt the definition of INHAM proposed by the applicant. Accordingly, an INHAM is defined as either (1) a wholly-owned subsidiary of an employer with respect to a plan, or a wholly- owned subsidiary of a parent organization of the employer, or (2) a membership nonprofit corporation, a majority of whose members are officers or directors of the employer or parent organization. The definition also requires the INHAM to be registered as an investment adviser under the Investment Advisers Act of 1940. Finally, the employer with which the INHAM is affiliated must be a plan sponsor (or group of related plan sponsors) whose plan or plans hold in the aggregate assets of at least $250 million, $50 million of which is under the direct management and control of the INHAM. The Department believes that these standards will help to ensure that the INHAM is an entity that has developed an appropriate level of expertise in financial and business matters.

B. General Exemption

The general exemption, set forth in Part I, would allow that portion of a plan which is managed by an INHAM to engage in all transactions described in section 406(a)(1)(A) through (D) with virtually all party in interest service providers except the INHAM or a person related to the INHAM.[10] As proposed, this exemption does not extend to transactions which would give rise to violations of section 406(b) of ERISA.

Generally, the relief for service providers proposed herein is based upon that requested by the applicant. However, the Department has modified CIEBA's request in several respects, as more fully described below.

In general, section I(a) of the proposal requires that the INHAM function as the decision maker for the plan in all covered transactions. Specifically, section I(a) requires that the terms of the transaction be negotiated by, or under the authority and general direction of, the INHAM and that the INHAM make the decision to enter into the transaction. Under the proposal, however, the exemption would not be unavailable merely because the plan sponsor retains the right to veto or approve transactions involving amounts

[9] See PTE 84-14, 49 FR 9494 (March 13, 1984) and PTE 91-38, 56 FR 31966 (July 12, 1991).

[10] The applicant notes that, with the constantly changing nature of the financial markets, managers seek to invest in new areas to (a) increase investment return, (b) diversify investment portfolios, and (c) better manage investment risk. In this regard, the Department wishes to note that ERISA's general standards of fiduciary conduct would apply to new areas of investment permitted by this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of any particular investment by the Department. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. The Department further emphasizes that it expects a manager or other plan fiduciary to fully understand the benefits and risks associated with engaging in a specific transaction, following disclosure to such fiduciary of all relevant information. In addition, such manager or plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment and the creditworthiness of the issuer or other party to the transaction. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

in excess of $5 million, which have been negotiated on behalf of the plan by the INHAM. In this regard, the Department notes that section I(a) of the proposal would allow the retention of a veto or approval power by the plan sponsor under circumstances where the INHAM negotiated an investment transaction which obligates the plan to make a number of payments which, in the aggregate, exceed $5 million. Thus, for example, section I(a) would be deemed met, despite the retention of a veto or approval power by the sponsoring employer, if a plan is required, as part of an investment in a real estate limited partnership negotiated by the INHAM, to make three capital contributions to such partnership totalling $6 million over a pre-determined period. In this regard, the Department cautions that Part I would not be available for any transaction that is negotiated by an employer which sponsors a plan, and is then subsequently presented to an INHAM for approval.

Under section I(b) of the proposal, no relief is provided for those transactions described in Prohibited Transaction Exemptions 81-6, 83-1 and 88-59.

Section I(c) of the proposed exemption excludes from relief any transaction which is part of an agreement, arrangement or understanding designed to benefit a party in interest. Section I(d) requires that the terms of each transaction must be at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties. Moreover, under section I(e), an INHAM could not enter into transactions with a party in interest who has discretionary authority or control with respect to the assets involved in the transaction or otherwise renders investment advice with respect to such assets. In addition, section I(f) provides that the general exemption would not be available if the INHAM and the party in interest dealing with the plan are related parties. Section IV(d) generally provides that a party in interest and an INHAM would be "related" if either entity owns a five percent or more interest, directly or indirectly, in the other entity

PTE 84-14 was developed and granted based on the premise that broad relief from the prohibitions of section 406(a) of ERISA could be afforded to a broad range of transactions if the investment of plan assets and the negotiations leading thereto are the sole responsibility of an independent manager. In addressing this lack of independence of the INHAM under the requested exemption, CIEBA has suggested that any exemption proposed by the Department be conditioned upon a requirement that an independent auditor conduct an annual fiduciary audit to determine whether the written procedures adopted by the INHAM are designed to assure compliance with the conditions of the exemption. The Department has adopted CIEBA's suggestion under section I(g) of the proposal. The term "fiduciary audit" is defined in section IV(f) of the proposal as including: (1) a determination by the auditor as to whether or not the plan has developed adequate internal policies and procedures to assure compliance with the terms of the exemption; (2) a test of a representative sample of the plan's transactions to determine operational compliance with such policies and procedures; and (3) a determination as to whether or not the INHAM meets the definition of INHAM set forth in the exemption.

The following examples illustrate the types of transactions which would be covered by Part I of the proposed exemption:

(1) Corporation C designates INHAM X to manage a portion of Plan P's assets. Assume that X meets the criteria for an INHAM that are proposed. X uses Plan P assets to purchase a building from Y, a wholly-owned subsidiary of a broker-dealer that provides services to the Plan. Absent this proposed exemption, the purchase of the building from Y, a party in interest described in ERISA section 3(14)(G), would violate the restrictions contained in section 406(a)(1)(A), and the transaction could not proceed until exempted by the Department. The general exemption set forth in Part I would allow such transaction if the conditions contained therein are met.

(2) INHAM X invests part of a pension fund's assets to acquire a parcel of unimproved real property from the president of the employer sponsoring the Plan. Part I does not provide an exemption for the purchase of the property since relief is limited under that Part to transactions with service providers and their affiliates. In addition, no relief would be provided under the proposal for the act of self-dealing described in section 406(b)(1) arising in connection with X's use of the fund's assets in a transaction which benefits a person in whom X has an interest which may affect the exercise of its best judgement as a fiduciary.

(3) Corporation C is the named fiduciary of Plan P. C chooses INHAM X to manage the portion of P's assets allocated for real estate investments. X, using its discretionary authority, locates and negotiates the purchase for $6 million of a commercial building in New York that is being offered for sale by Corporation Z. Z provides accounting services to Plan P. Pursuant to its arrangement with C, X is required to seek the approval of C for all real estate transactions involving amounts in excess of $5 million. On the basis of X's recommendation, C approves the transaction. Despite the retention of approval power by C, Part I of the proposal would be available for the purchase of the building provided there is no arrangement with C that requires X to buy the building from Z and the conditions of Part I are otherwise met.

(4) Corporation C allocates part of the assets of its Plan P to a master trust managed by INHAM X. X uses master trust assets to purchase an office building which is subsequently leased to M. M provides administrative services to Plan P. During the term of the lease, M becomes a wholly-owned subsidiary of Corporation C. Although M is no longer a party in interest with respect to Plan P solely by reason of providing services to such Plan, Part I will continue to be available for the entire lease term since, at the time the transaction was entered into (as defined in section in IV(e)), M was not affiliated with the plan sponsor and its relationship to Plan P was solely that of a service provider.

(5) INHAM X retains Broker-Dealer B to provide brokerage services to Plan P. In a separate transaction, X uses Plan P assets to purchase corporate bonds directly from B. The bonds were originally issued by Corporation Z, an investment manager for a portion of the Plan's assets that are not controlled by INHAM X. Since the Department expects that, as part of its fiduciary responsibilities, the INHAM would have analyzed the terms of the bonds prior to purchase, the relief provided by Part I could extend to both the acquisition of the bonds and the underlying extension of credit. Thus, Part I could cover a subsidiary transaction with a party in interest if such transaction is itself subject to relief under the proposal and the applicable conditions are otherwise met.

C. Specific Exemptions for Employers

Part II of the proposed exemption provides limited relief under both sections 406(a) and (b) of ERISA for certain transactions involving employers and their affiliates who cannot qualify for the general exemption provided by Part I.

In this regard, the Department has not proposed the broad relief requested by the applicant for transactions with employers and their affiliates. The Department does not believe that it has sufficient information at this time to

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make the broad findings necessary under section 408(a) of ERISA to propose exemptive relief with respect to transactions that may inure to the direct or indirect benefit of an employer. Nonetheless, the Department believes that it is appropriate to propose more limited relief under circumstances where the potential for the exercise of undue influence that would benefit an employer is more remote. However, the Department wishes to take the opportunity to note that its determination not to propose the broad relief requested does not foreclose future consideration of additional exemptive relief for transactions involving plan assets that are managed by INHAMS.

Part II is divided into two subparts. Section II(a) provides limited relief for the leasing of office or commercial space by a plan to an employer if the plan acquired the property subject to an outstanding lease with an employer or affiliate as a result of foreclosure on a mortgage or deed of trust. As a limitation, the exemption is effective until the expiration of the lease term and any renewal that does not require the consent of the plan. Section II(a) of the proposed exemption further requires that the decision to foreclose on the mortgage or deed of trust be made by the INHAM as part of the exercise of its discretionary authority, and that the unit of space under the lease does not exceed 15 percent of the rentable space of the office building or commercial center. The availability of relief is further conditioned upon the requirement that the transaction satisfy the conditions of sections I(c) and I(g) of the proposed exemption.

The application of section II(a) is illustrated by the following example:

(6) INHAM X is responsible for managing Plan P's assets and uses a portion of the assets to provide financing for Developer D's acquisition of an office building. Plan P's loan to D is secured by a first mortgage on the office building. Subsequently, D defaults on the loan and Plan P forecloses on its mortgage on the property. Upon assuming ownership of the office building, X discovers that a tenant in the building is Corporation Z, a wholly-owned subsidiary of the plan sponsor. Although the relief afforded by Part I of the proposed exemption would not be available to Corporation Z because it is "related" to the INHAM, Part II(a) of the proposal is available for the entire lease term if the conditions of Part II(a) are otherwise met.

Section II(b) would permit a plan to lease residential space to an employee of an employer any of whose employees are covered by such plan, or to any employee of a 50% or more parent or subsidiary of the employer. However, no relief is available under this exemption for officers, directors, and 10 percent or more shareholders of the employer or an affiliate of such employer, or for any employees who have or exercise any discretionary authority with respect to the assets involved in the lease transaction. As a further limitation, the proposal requires that the unit of space leased to an employee does not exceed 5% of the rentable space of the residential property and that the total amount of space leased to all employees of the employer, or affiliates not exceed 10% of the rentable space of the residential property. The Department believes that requiring a significant number of unrelated lessees will help to ensure that the terms of the lease(s) are no more favorable to the employee(s) than the terms available to other unrelated lessees of the residential property owned by the plan.

The availability of relief under this section is further conditioned on the requirement that the transactions satisfy the provisions of sections I(b), I(c), I(d) and I(g) of the proposed exemption.

The application of section II(b) is illustrated by the following example:

(7) Inham X is responsible for managing Plan P's assets and invests a portion of the assets in a new garden apartment complex comprised of 25 one bedroom apartments. Three employees of Corporation C, Plan P's sponsor, each rent 1 of the apartments from Plan P. Assume that none of the employees is an officer, director, or 10% or more shareholder of Corporation C or an affiliate, or has discretionary authority or renders investment advice with respect to the assets involved in the lease transactions. The proposed exemption under section II(b) would not be available for these lease transactions because, although each lease represents less than 5% of the rentable space of the residential property, the aggregate amount of space leased to employees of Corporation C exceeds 10% of the rentable space of the property.

D. Places of Public Accommodation

The Department is proposing an exemption, set forth in Part III, that would provide relief from sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of ERISA for the furnishing of services, facilities and any goods incidental thereto by a place of accommodation owned by a plan managed by an INHAM to a party in interest with respect to the plan, if the services, facilities or incidental goods are furnished on a comparable basis to the general public.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for

exemption at the address set forth above.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Part I—Basic Exemption

Effective [date of publication of final class exemption], the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by Code section 4975 (a) and (b) of the Code, by reason of 4975(c)(1) (A) through (D), shall not apply to a transaction between a party in interest with respect to a plan and such plan, provided that an in-house asset manager (INHAM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the INHAM, and either the INHAM, or (so long as the INHAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the INHAM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount in excess of $5,000,000, which has been negotiated on behalf of the plan by the INHAM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527; January 23, 1981) (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811; June 30, 1988) (relating to certain mortgage financing arrangements);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of ERISA; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the plan is neither the INHAM nor a person related to the INHAM (within the meaning of section IV(d)); and

(g) An independent auditor, who has appropriate technical training and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts a fiduciary audit (as defined in section IV(f)) on an annual basis to determine whether the written procedures adopted by the INHAM are designed to operate in a manner which assures compliance with the conditions of the exemption. Following completion of the fiduciary audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the design of such procedures and the level of compliance with the procedures.

Part II—Specific Exemptions

Effective [date of publication of final class exemption], the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of Code section 4975(c)(1) (A) through (E), shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by an INHAM to an employer any of whose employees are covered by the plan or an affiliate of such an employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with an employer, or its affiliate as a result of foreclosure on a mortgage or deed of trust;

(2) The INHAM makes the decision on behalf of the plan to foreclose on the mortgage or deed of trust as part of the exercise of its discretionary authority;

(3) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(5) The requirements of sections I(c) and I(g) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3- 21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a 10% or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision [townhouses or garden apartments], and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of sections I(a), I(c), I(d) and I(g) are satisfied with respect to the transaction.

Part III—Places of Public Accommodation

Effective [date of publication of final class exemption], the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and

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facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part IV—Definitions

For the purposes of this exemption:

(a) The term "in-house asset manager" or "INHAM" means an organization which is—

(1) either (A) a direct or indirect wholly-owned subsidiary of an employer, or a direct or indirect wholly-owned subsidiary of a parent organization of such an employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) an investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of $50 million;

Provided that plans maintained by such affiliates of the INHAM have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of section IV(a), an "affiliate" of an INHAM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the INHAM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the INHAM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) or the rules thereunder.

(c) The term "party in interest" means a person described in Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

(d) An INHAM is "related" to a party in interest for purposes of section I(f) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent or more interest in the INHAM or if the INHAM (or a person controlling, or controlled by, the INHAM) owns a five percent or more interest in the party in interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after [date of publication of final class exemption], or any renewal that requires the consent of the INHAM occurs on or after [date of publication of final class exemption], and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Fiduciary Audit. A "fiduciary audit" of a plan must include, among other things, the following:

(1) A determination as to whether the plan has developed adequate policies and procedures designed to assure compliance with the proposed exemption;

(2) A test of a representative sample of the plan's transactions to determine operational compliance with the written policies and procedures;

(3) A determination as to whether the INHAM has satisfied the definition of an INHAM under the proposal; and

(4) A written report describing the steps performed by the auditor during the course of its review and the auditor's findings and recommendations.

Signed at Washington, DC, this 20th day of March, 1995.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–7364 Filed 3–23–95; 8:45 am]

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Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department Labor, Employment Standards Administration, Wage and Hour Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume V

Oklahoma
OK950037 (Mar. 24, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts"' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
Massachusetts
MA950007 (Feb. 10, 1995)
Rhode Island
RI950002 (Feb. 10, 1995)

Volume II

None

Volume III

Florida
FL950002 (Feb. 10, 1995)
FL950014 (Feb. 10, 1995)
FL950017 (Feb. 10, 1995)
FL950069 (Feb. 10, 1995)
Georgia
GA950050 (Feb. 10, 1995)

Volume IV

Illinois
IL950001 (Feb. 10, 1995)
IL950002 (Feb. 10, 1995)
IL950015 (Feb. 10, 1995)
Michigan
MI950001 (Feb. 10, 1995)
MI950002 (Feb. 10, 1995)
MI950003 (Feb. 10, 1995)
MI950004 (Feb. 10, 1995)
MI950005 (Feb. 10, 1995)
MI950007 (Feb. 10, 1995)
MI950012 (Feb. 10, 1995)
MI950017 (Feb. 10, 1995)
MI950031 (Feb. 10, 1995)
MI950046 (Feb. 10, 1995)
MI950047 (Feb. 10, 1995)

Volume V

Kansas
KS950011 (Feb. 10, 1995)
KS950012 (Feb. 10, 1995)
KS950013 (Feb. 10, 1995)
KS950015 (Feb. 10, 1995)
KS950018 (Feb. 10, 1995)
KS950019 (Feb. 10, 1995)
KS950020 (Feb. 10, 1995)
KS950021 (Feb. 10, 1995)
KS950022 (Feb. 10, 1995)
KS950023 (Feb. 10, 1995)
KS950028 (Feb. 10, 1995)
Oklahoma
OK950013 (Feb. 10, 1995)
Texas
TX950034 (Feb. 10, 1995)
TX950063 (Feb. 10, 1995)

Volume VI

Alaska
AK950001 (Feb. 10, 1995)
Nevada
NV950002 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (MTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 17th day of March 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–7080 Filed 3–23–95; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95–3]

Registrability of Pictorial, Graphic, or Sculptural Works Where a Design Patent Has Been Issued

AGENCY: Copyright Office, Library of Congress.

ACTION: Policy decision and amendment of regulations.

SUMMARY: The Copyright Office of the Library of Congress issues this policy decision to clarify its practices and to amend the regulations regarding the registrability of claims to copyright in pictorial, graphic, and sculptural works for which a design patent has been issued. Under the current regulations, a copyright claim in a patented design, or in a scientific or technical drawing in an application of an issued patent is refused registration under the so-called "election doctrine." We believe there is no longer any legal justification for the continuation of this practice.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under the current Copyright Act, copyright is secured at the time of creation of the work without the necessity of any formalities, such as registration of an eligible unpublished work or publication with copyright notice, required under the 1909 Act. A patent, on the other hand, must be pursued through the process of examination in

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the Patent Office. The Commissioner of Patents actually determines the patentability of an invention or design and grants the patent.

The current regulations, 37 CFR 202.10(a) and (b), reflect the Copyright Office's policy of accepting the doctrine of "election of protection." For many years, the Copyright Office required claimants to elect between patent or copyright protection of useful pictorial, graphic, or sculptural expressions. The origin of this policy can be traced to a 1910 decision, *Louis de Jonge & Co. v Breuker & Kessler Co.*, 182 F. 150 (C.C.S.E.D. Pa. 1910), *aff'd*, 191 F. 35 (3d Cir. 1911), *aff'd*, 235 U.S. 33 (1914), wherein the court held that a claimant could elect to secure protection under either patent or copyright but could not secure both. Similarly, in 1927, the D.C. Court of Appeals, in *In re Blood*, 23 F.2d 772 (D.C. Cir.1927) embraced the election doctrine.

The primary basis for the existing Copyright Office policy was the Second Circuit's decision in *Korzybski v. Underwood & Underwood, Inc.*, 36 F.2d 727 (2d Cir. 1929). The court ruled that [a]n inventor who has applied for and obtained a patent cannot extend his monopoly by taking out a copyright." "The filing of the application for the patent * * * was a publication [and full disclosure of the invention] that entitled anyone to copy the drawings [representing the invention]." *Id.* at 729 (parenthetical added). However, in a landmark decision, *Mazer v. Stein*, 347 U.S. 201 (1954), the Supreme Court ruled that the same disclosure or publication might support a design patent and a copyright. "Neither the Copyright statute nor any other says that because a thing is patentable it may not be copyrighted." *Id.* at 217. The Court, however, expressly refused to entertain the issue of whether the grant of either monopoly precluded that of the other. A few years later, in *Vacheron & Constantin-LeCoultre Watches, Inc. v. Benrus Watch Co. Inc.*, 155 F. Supp. 932 (S.D.N.Y. 1957), *modified*, 260 F.2d 637 (2d Cir. 1958), the district court rejected arguments that seeking copyright protection precluded securing design patent protection. Indeed, the overlapping protection concerns two distinct statutory monopolies; and the doctrine of *Korzybski* "must rest upon the assumption that the owner of the statutory monopoly has some power to protect his 'work,' for otherwise any dedication would be without consideration." 260 F.2d at 642.

In 1968, the Copyright Office reviewed the election policy and reaffirmed its position on two grounds—public policy considerations and the publication with notice requirement. The public policy ground was based on the theory that it is an undue extension of the patent monopoly to allow, after the patent has expired, a copyright for the same design. If copyright protection were allowed to subsist, the public would be deprived from exploiting the work for the duration of the copyright. The second ground was a more practical one. The patent procedure required publication in the Official Gazette without notice of copyright. Since the 1909 Copyright Act required a notice of copyright on all published copies to secure and maintain copyright protection, this requirement foreclosed copyright protection for the patent drawings and placed the work in the public domain.

Prior to 1974, The United States Patent and Trademark Office had an election policy similar to that of the Copyright Office. The Patent Office discontinued this requirement in view of the decision in *In re Yardley*, 493 F.2d 1389 (C.C.P.A. 1974), wherein the court stated that even though there is a definite overlap, "Congress has not provided that an author inventor must elect between securing a copyright or securing a design patent." *Id.* at 1394. "[T]he mere fact", said the court "that the copyright will persist beyond the term of any design patent which may be granted does not provide a sound basis for rejecting appellant's patent application." *Id.* at 1395. Reassessing its policy, the Copyright Office chose to follow *Korzybski* instead of *Yardley*, on the rationale that the latter case was limited to an interpretation of the design patent act while *Korzybski* interpreted the Copyright Act.

The Copyright Office regulations based on the election doctrine have been criticized. In his treatise on copyright, Nimmer observes:

> Without offering the rationale of publication or any other basis, Copyright Office Regulations under the 1909 Act simply provided that once a patent has been issued, copyright registration would be denied to a work of art and to a scientific or technical drawing. There appears to be no statutory or other justification for this position. It would seem on principle that if a work otherwise meets the requirements of copyrightability, it should not be denied such simply because the claimant happens to be entitled to supplementary protection under other legislation.[1]

We agree.

In consideration of the foregoing, the Copyright Office is issuing this Policy Decision and amending 37 CFR chapter II in the manner set forth below.

[1] David Nimmer and Melville B. Nimmer, *Nimmer on Copyright* § 2.19 (1994).

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541, 17 U.S.C. 702.

2. In § 202.10, paragraphs (a) and (b) are removed, the existing paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

§ 202.10 Pictorial, graphic, and sculptural works.

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The availability of protection or grant of protection under the law for a utility or design patent will not affect the registrability of a claim in an original work of pictorial, graphic, or sculptural authorship.

Marybeth Peters,

Register of Copyrights.

Dated: March 14, 1995

Approved by:

James H. Billington,

The Librarian of Congress

[FR Doc. 95-7363 Filed 3-23-95; 8:45 am]

BILLING CODE 1410-30-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Arts in Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Plus Section) to the National Council on the Arts will be held on April 10–14, 1995. The panel will meet from 10:30 a.m. to 5:30 p.m. on April 10; from 9:00 a.m. to 6:00 p.m. on April 11; from 9:00 a.m. to 2:00 p.m. on April 12; and from 8:30 a.m. to 5:00 p.m. on April 13. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 13 from 3:15 p.m. to 5:00 p.m. for a policy discussion including a discussion of the FY 96 and 97 Arts Plus guidelines.

The remaining portions of this meeting from 10:30 a.m. to 5:30 p.m. on April 10; from 9:00 a.m. to 6:00 p.m. on April 11; from 9:00 a.m. to 2:00 p.m. on April 12; and from 8:30 a.m. to 3:15 p.m. on April 13 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-7289 Filed 3-23-95; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Challenge/Advancement Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Phase I Review Section) to the National Council on the Arts will be held on April 10–11, 1995 from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on April 10, for opening remarks and introductions and from 4:30 p.m. to 5:30 p.m. on April 11 for a policy discussion.

The remaining portions of this meeting from 10:00 a.m. to 5:30 p.m. on April 10 and from 9:00 a.m. to 4:30 p.m. on April 11 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-7288 Filed 3-23-95; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Media Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Arts on Television Section) to the National Council on the Arts will be held on April 6–7, 1995, from 10:00 a.m. to 6:00 p.m. on April 6 and from 9:00 a.m. to 4:00 p.m. on April 7. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 10:00 a.m. to 10:15 a.m. on April 6, for opening remarks and from 3:30 p.m. to 4:00 p.m. on April 7, for a policy discussion.

The remaining portions of this meeting, from 10:15 a.m. to 6:00 p.m. on April 6 and from 9:00 a.m. to 3:30 p.m. on April 7 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532. TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-7287 Filed 3-23-95; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships/Jazz Ensembles Section) to the National Council on the Arts will be held on April 4–7, 1995 from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:00 p.m. to 5:30 p.m. on April 7, 1995 for a policy discussion and guidelines review.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on April 4–6 and from 9:00 a.m. to 4:00 p.m. on April 7 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the

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National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–7385 Filed 3–23–95; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Expansion Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Arts Education Initiative Section) to the National Council on the Arts will be held on April 4–6, 1995, from 9:00 a.m. to 6:00 p.m. on April 4–5, and from 9:00 a.m. to 4:30 p.m. on April 6. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:15 a.m. to 10:30 a.m. on April 4, for opening remarks and a general overview and on April 6, from 3:00 p.m. to 4:30 p.m. for a policy discussion.

The remaining portions of this meeting, from 9:15 a.m. to 6:00 p.m. on April 4, from 9:00 a.m. to 6:00 p.m. on April 5, and from 9:00 a.m. to 3:00 p.m. on April 6, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–7286 Filed 3–23–95; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the 32nd meeting of the President's Committee on the Arts and the Humanities will be held on March 30–31, 1995, from 1:00 p.m. to 6:30 p.m. on March 30 and from 9:15 a.m. to 5:00 p.m. on March 31. On March 30, the meeting will convene at the J. Paul Getty Trust, 401 Wilshire Boulevard, Santa Monica, CA. On March 31, the meeting will convene in the Grand Hall of the Music Center of Los Angeles County, 135 N. Grand Avenue, Los Angeles, CA.

This meeting will be open to the public on a space available basis. Topics for discussion on March 30 will include America's Cultural Heritage, New Philosophy and Youth. On March 31, topics will include the state of funding for the arts and humanities in Los Angeles and southern California; fundraising for the arts; and the role of the federal government in arts and humanities funding. Public attendance is encouraged, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the committee in closed session, in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, on a space available basis, Committee discussions which are open to the public. To reserve a place and/or to obtain further information, please call the President's Committee at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Ave., NW., Suite 526, Washington, DC 20506.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–7284 Filed 3–23–95; 8:45 am]

BILLING CODE 7535–01–M

Meeting; Visual Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Other Genres Section) to the National Council on the Arts will be held on April 17–21, 1995, from 9:00 a.m. to 8:00 p.m. on April 17–20 and from 9:30 a.m. to 5:00 p.m. on April 21. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5:00 p.m. on April 21, for a policy discussion and guidelines review.

The remaining portions of this meeting from 9:00 a.m. to 8:00 p.m. on April 17–20 and from 9:30 a.m. to 3:30 p.m., on April 21 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in

confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: March 20, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–7290 Filed 3–23–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by April 7, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF Review of Undergraduate Education in Science, Mathematics, Engineering, and Technology.

Affected Public: Individuals, state or local governments, nonprofit institutions.

Respondents/Reporting Burden: 100 respondents: average two hours per response.

Abstract: The NSF Organic Act as amended requires the NSF to oversee the health of the Nation's undergraduate education in science, mathematics, engineering, and technology, and to provide leadership education in these areas. This planed up-to-date collection of information from national leaders will help us to identify important improvements and critical problems that NSF can help to address.

Dated: March 20, 1995.

Herman G. Fleming,

Reports Clearance Officer.

National Science Foundation.
4201 Wilson Boulevard, Arlington, Virginia 22230

Office of the Assistant Director for Education and Human Resources

NSF Review of Undergraduate Education

The Education and Human Resources (EHR) Directorate of the National Science Foundation (NSF) is undertaking a general review of the condition and needs of undergraduate education in the United States in the areas of science, mathematics, engineering, and technology (SMET). The project will consult widely with students, educators, and employers. It is planned to take about a year to complete the review, which will produce a set of recommendations for accelerating the process of improving undergraduate education. Acting in an advisory capacity to Luther S. Williams, Assistant Director of NSF, for EHR, are members of the EHR Advisory Committee, Subcommittee for Undergraduate Education:

Sadie Bragg, Borough of Manhattan Community College,
Federick P. Brooks, Jr., University of North Carolina, (Ex Officio)
Melvin George, University of Minnesota, (Chair)
James Rosser, California State University at Los Angeles,
David Sanchez, Texas A&M University, and
Carolyn Meyers, Georgia Institute of Technology, (Consultant)

The Foundation undertakes this review of the central enterprise of undergraduate education at a critical moment. The national efforts, including those of the NSF, to improve precollege education in SMET have been extensive and have involved efforts to create both innovative local improvement and larger systemic changes. The support of undergraduate educational improvement is more recent and has emphasized innovative improvement projects at single sites. The necessity for and possibility of larger-scale changes in undergraduate education is the primary question that the study will investigate. The Foundation recognizes that it raises this question at a time that the nation's colleges and universities are facing unprecedented financial and programmatic challenges. It is expected that the review will reveal ways of strengthening the effectiveness of these institutions in undergraduate education. The provision of excellent educational services requires a robust infrastructure whose components at all institutions include faculty, curriculum, and capabilities for teaching and scholarship. The condition of these components will be examined.

The goals of improved undergraduate education in SMET are:

- Citizens who are empowered to be full participants in a scientific and technological society;
- A technically well-prepared workforce who can both participate and lead in the high performance workplace of advanced technologies;
- Teachers who are both scientifically and pedagogically well-prepared, and scientists and engineers who are well-prepared for their occupations;
- Young people with diverse backgrounds successfully involved in SMET in numbers that reflect their representation in the population.

Consistent with its chartered responsibility to "initiate and support * * * science education programs at all levels * * *", the NSF seeks to ascertain the extent of effective innovation in undergraduate education in SMET, and what next steps, if any, should be taken to cause large-scale improvements to take place. The specific areas of inquiry listed below are designed to provide guidance on the question of how the nation should capitalize on its recent investment in the improvement of undergraduate education:

- What are the innovations and what is the evidence that a significant number of them represent superior practice of undergraduate education? The areas of inquiry regarding superior practice will involve: curriculum of all types and levels, faculty maintenance and development, pedagogy, instructional technology, instrumentation and facilities, research opportunities for students and faculty, and connections of instructional programs to the world of work.
- What are the unmet needs of those who are receiving and have received undergraduate SMET instruction?
- What are the infrastructural needs across the diverse providers of undergraduate instruction in order to implement the best instructional practice and meet the needs of students and employers?
- What are the problems in the context of an institution's entire undergraduate enterprise that need to be addressed to achieve the goals of undergraduate SMET education?

The effort through which the Foundation plans to address these questions will consist of three phases. Phase I will involve direct, systematic investigation of the considered points of view of Americans across a broad spectrum who might be considered the "customers" of the diverse educational programs and settings that deliver undergraduate education. It will also involve

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intensive study of existing reports and data on the subject, and open-ended inquiry to experienced providers of undergraduate education. Phase II of the project will rely upon a preliminary summary of the findings from Phase I prepared by NSF staff that will be presented for comment and elaboration to a large number of persons experienced in undergraduate education, particularly to those faculty and administrators attending key professional society meetings. In Phase III, the NSF will seek to publicize and encourage implementation of those practices that will achieve improved science and engineering literacy; a technically capable workforce; well-prepared teachers, scientists and engineers; and greater participation in SMET careers by women and minorities.

For further information contact the Division of Undergraduate Education (DUE) of EHR, Robert F. Watson, Division Director.

[FR Doc. 95–7275 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.

Date and Time: April 10, 1995, 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1122, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard Hirsh, Deputy Division Director, Centers Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1970.

Purpose of Meeting: To provide recommendations and advice concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate Multidisciplinary Research preproposals as part of the selection process for awards.

Reason for Closing: The preproposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7214 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Panel for Cell Biology (1136).

Date and Time: April 12–14, 1995, 6:30 am to 5:00 pm.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Zain, Dr. Larry Griffing and Dr. David Capco, Program Directors, for Cell Biology, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Room 655, Arlington, VA 22230, Telephone: (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Signal Transduction and Regulation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7213 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

Task Force on the Future of the NSF Supercomputer Centers Program

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Task Force on the Future of the NSF Supercomputer Centers Program (#1982).

Date and Time: April 6, 1995 1:00–9:00 p.m., April 7, 1995 8:00 a.m.–4:00 p.m.

Place: O'Hare Hilton, Chicago, IL (Room to be posted at meeting site).

Type of Meeting: Open.

Contact Person: Dr. Robert Borchers, Director, Division of Advanced Scientific Computing, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1970.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: The objective of the Task Force is to advise the NSF on the future of its Supercomputing Centers Program considering the changing nature of computing and information science and technology. Its scope will be limited to NSF's support for advanced computational science. This meeting is to seek advice and testimony from representatives of the supercomputer industry, academic leaders in High Performance Computing, representative users of the NSF Supercomputing Centers and some principal investigators of Grand Challenge Projects. The task force will continue its discussions on the principles to be used in evaluating the options of future programs, and hear reports on visits of members to the four existing Supercomputer Centers.

Agenda:

April 6, 1995—1:00 to 9:00 p.m.

1:00–5:00 Advice and testimony from members of the High Performance Computing Community
6:00–9:00 Working Dinner—Subcommittee Meetings

April 7, 1995—8:00 a.m. to 4:00 p.m.

8:00–9:00 Assemble, Continental Breakfast
9:00–12:00 Advice and testimony from members of the High Performance Computing Community
12:00–1:00 Working Lunch
1:00–2:00 Advice and testimony (if required)
2:00–4:00 Subcommittee Meetings, trip visit reports.

Reason for Late Notice: Difficulty in locating suitable meeting accommodations

Dated: March 20, 1995.

M. Rebecca Winker,

Committee Management Officer.

[FR Doc. 95–7216 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: April 10–11, 1995; 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alvin Thaler, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1880.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7212 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior (#1160).

Date and Time: April 12–April 13, 1995, 9:00 a.m. to 5:00 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Ronald Barfield, Acting Program Director for Animal Behavior, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1419.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 13, 1995; 2:00 p.m.—To discuss proposal guidelines and research trends in Animal Behavior.

Closed session: April 12, 1995, 9:00 a.m. to 5:00 p.m. and April 13, 9 a.m.–2 p.m.–To review and evaluate Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: March 20, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7215 Filed 3–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Co., Callaway Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–30, issued to Union Electric Company, (the licensee), for the Callaway Plant, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement of Section III.D.1.(a) of Appendix J to 10 CFR Part 50, which requires a set of three Type A tests (Containment Integrated Leakage Rate Test or CILRT) be performed, at approximately equal intervals during each 10-year service period. This licensee request for an exemption would defer the next scheduled containment integrated leak rate test for one outage, from Refuel 7 to Refuel 8.

The proposed action is in accordance with the licensee's request for exemption dated December 9, 1994, as supplemented by letter dated January 27, 1995.

The Need for the Proposed Action

The proposed action is needed because the licensee's current schedule would require the third CILRT to be performed during Refuel 7 (March 1995). Minimal safety benefit would be realized by performing the scheduled CILRT, since the majority of primary containment leakage has previously been identified through the biennial performance of the Local Leak Rate Test (LLRT). Without this exemption, the licensee would incur additional personnel radiation exposure during system reconfigurations, and instrumentation setup and restoration.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption would not significantly increase the probability or amount of expected containment leakage, and that containment integrity would thus be maintained.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Callaway Plant, Unit No. 1," dated January 1982.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Missouri State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the licensee's letters dated December 9, 1994, and January 27, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC and at the local public document room located at the

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Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 17th day of March, 1995.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7219 Filed 3–23–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 6–8, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, April 6, 1995

8:30 a.m.–8:34 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:45 a.m.: Westinghouse Test and Analysis Programs Associated with the AP 600 Passive Containment System (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation regarding the Westinghouse test and analysis programs associated with the AP 600 Passive Containment System.

Representatives of the NRC staff will participate, as appropriate.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

11:00 a.m.–12:00 Noon: Proposed Final Rulemaking to Define the Scope of Technical Specifications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule to define the scope of technical specifications.

Representatives of the industry will participate, as appropriate.

1:00 p.m.–3:00 p.m.: NRC Research Program in Support of the Westinghouse AP 600 Design Certification (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the NRC research program being conducted in support of the AP 600 design certification.

Representatives of the industry will participate, as appropriate.

3:15 p.m.–4:45 p.m.: Revised Health Effects Valuation: Dollars/Person-Rem (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to the NRC health effects valuation.

Representatives of the industry will participate, as appropriate.

4:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, April 7, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:00 a.m.: Digital Instrumentation and Control (I&C) Systems Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status/schedule for developing Standard Review Plan, Branch Technical Positions, and Regulatory Guides for the NRC staff review of digital I&C systems; and digital I&C issues identified by the staff and the associated priority rankings/bases.

Representatives of the industry will participate, as appropriate.

10:00 a.m.–12:15 p.m.: Source Term-Related Technical and Licensing Issues Pertaining to Evolutionary and Passive Plant Designs (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding source term-related technical and licensing issues pertaining to evolutionary and passive plant designs.

Representatives of the industry will participate, as appropriate.

1:15 p.m.–2:45 p.m.: Proposed Rulemaking to Obtain Equipment Reliability Data from Licensees (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed rulemaking to obtain equipment reliability data from licensees, with emphasis on the regulatory analysis which is intended to justify the need for this rulemaking.

Representatives of the industry will participate, as appropriate.

2:45 p.m.–3:30 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:45 p.m.–4:15 p.m.: Future ACRS Activities (Open)—The Committee will select topics for consideration during future ACRS meetings.

4:15 p.m.–4:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, April 8, 1995

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

11:30 a.m.–12:30 p.m.: Strategic Planning (Open)—The Committee will continue its discussion of which items that are of importance to the Commission should receive additional emphasis in the Committee's future deliberations.

12:30 p.m.–12:45 p.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4); information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by containing the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 a.m. and 4:15 p.m. EST

Dated: March 20, 1995.

Andrew L. Bates,

Advisory Committee Management Officer

[FR Doc. 95–7303 Filed 3–23–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street NW., Washington, D.C. 20549.

Proposed Rule and Form: Rule 204–4—File No. 270–398; Form ADV–B—File No. 270–398.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Rule 204–4 and Form ADV–B under the Investment Advisers Act of 1940 (the "Advisers Act")

The proposed rule would require each investment adviser, registered or required to be registered under the Adviser Act, that has the discretion to direct client brokerage transactions and receives services other than execution in exchange for that brokerage, to provide its clients with a report that would contain information about its use of client brokerage. The proposed form would set forth the information required to be included in the annual report. The proposed rule does not involve any burden separate from the requirement to prepare and file the proposed form.

It is estimated that approximately 6,000 advisers would be required to file Form ADV–B with the Commission, and that each adviser completing the form would incur 20 burden hours in its preparation. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

General comments may be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and to the OMB Clearance Officer for the SEC, Office of Information and Regulatory Affairs (Paperwork Reduction Act numbers 3235—new (for Rule 204–4), 3235—new (for Form ADV–B), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20543.

Dated: March 9, 1995

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–7236 Filed 3–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35505; File No. SR–CHX–95–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange Incorporated Relating to Order Identifiers

March 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 10, 1995, the Chicago Stock Exchange Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend Article XX, Rule 37(b) of the CHX's Rules to add an order designator on the Exchange's MAX System.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XX, Rule 37(b)(9) of the CHX's Rules requires orders sent via the MAX System to include account identifiers. When the MAX rules were codified, the "Z" designator was inadvertently excluded.[2] The "Z" designator allows

[1] "MAX" is the CHX's order routing and execution system. *See* Article XX, Rule 37(a) of the CHX's Rules for a complete description of the MAX system.

[2] The MAX Rules were codified in Securities Exchange Act Release No. 35010 (November 28, 1994), 59 FR 62767 (December 6 1994).

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order sending firms to receive automatic executions of professional market orders based on the CHX's BEST Rule.[3] Limit orders sent with the "Z" designator will be represented on the specialist's book as professional orders. The "Z" designator can only be used by a firm after it negotiates with the specialist, and the specialist agrees to accept the firm's professional orders for automatic execution on MAX.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designated to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act [4] and subparagraph (e) of Commission Rule 19b–4.[5] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–09 and should be submitted by April 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7237 Filed 3–23–95; 8:45 am]

BILLING CODE 8010–01–M

[3] See Article XX, Rule 37(a) of the CHX's Rules.

[4] 15 U.S.C. 78s(b)(3)(A) (1988).

[5] Rule 19b–4(e), 17 CFR 240.19b–4(e), provides that a proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if, among other things, it effects a change in an existing order entry or trading system.

[Release No. 34–35513; File No. SR–DTC–95–05]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking Permanent Approval of Money Market Instrument Program

March 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 7, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–05) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of DTC's expanded money market instrument ("MMI") programs to which the Commission previously granted temporary approval through April 30, 1995.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks permanent approval of DTC's settlement services for transactions in additional types of MMIs, including institutional certificates of deposit, municipal commercial paper, and bankers' acceptances. The proposed rule change also seeks to permanently expand and to improve DTC's existing MMI programs for corporate commercial paper ("CP"), medium-term notes, preferred stock in a CP-like mode, short-term bank notes, and discount notes. The Commission previously granted DTC's expanded MMI program temporary approval through April 30, 1995.[3]

The new MMI programs, along with the existing MMI programs, are an extension of DTC's Same-Day Funds Settlement ("SDFS") system.[4] The automated operating procedures for MMIs are virtually the same as those followed by SDFS participants and by Institutional Delivery system users for basic depository services in other eligible SDFS securities. The MMI issues being made SDFS-eligible will be distributed in book-entry-only form by the issuer's issuing agent that, as in the commercial paper and medium-term note MMI programs, will send MMI issuance instructions to DTC electronically. Settlement of an issue will be on the same day as the issuance or on a specified future day. The issuer's paying agent, that will also serve as DTC's custodian, will hold a master or balance MMI certificate for DTC unless the issuer and its issuing and paying agent bank choose to distribute uncertificated MMIs through DTC.[5] Because SDFS-eligible MMIs will be book-entry only, participant operating procedures for deposits and withdrawals will not apply to MMIs.

DTC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A(b)(3)(A)[6] of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions in MMIs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited comments on the proposed rule change. Discussions with DTC participants, including those on the Task Force established by the Public Securities Association's Money Market Committee to advise DTC on the operation of its MMI programs, indicate wide support for the proposed permanent expansion of the MMI program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or;

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those than may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–05 and should be submitted by April 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7239 Filed 3–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete discussion of the issues regarding DTC's expanded MMI program, refer to Securities Exchange Act Release No. 33958 (April 22, 1994), 59 FR 22878 [File No. SR–DTC–93–12] (order temporarily approving proposed rule change).

[3] *Supra* note 2.

[4] DTC's SDFC system currently includes the following issue types: corporate commercial paper, municipal notes and bonds, municipal variable-rate demand obligations, zero coupon bonds backed by U.S. Government securities, continuously offered medium-term corporate notes, short-term bank notes, auction-rate and tender-rate preferred stocks and notes, collateralized mortgage obligations and other asset-backed securities, Government trust certificates and Government agency securities not eligible for the Fed's book-entry system, retail certificates of deposit, corporate and municipal variable mode obligations, corporate bonds, discount notes, and unit trusts. For a detailed description and discussion of DTC's SDFC system, including the implementation of the commercial paper program, refer to Securities Exchange Act Release Nos. 26051 (August 31, 1988), 53 FR 34853 [File No. SR–DTC–88–06] (order permanently approving DTC's SDFS system) and 30986 (July 31, 1992), 57 FR 35856 [File No. SR–DTC–92–01] (order approving implementation of commercial paper program).

[5] Uncertificated MMIs are not evidenced by any certificate whatsoever. Bills, notes, bonds, and other securities have been issued in uncertificated form by U.S. government and federal agencies for many years.

[6] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

[Release No. 34–35514; File No. SR–MCC–94–16]

March 17, 1995.

On December 28, 1994, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR–MCC–94–16) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 27, 1995, to solicit comments from interested persons.[2] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act [3] which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.[4] Several of MCC's rules are interrelated with settlement time frames. The purpose of the proposed rule change is to amend MCC's rules to be consistent with a T+3 settlement standard for securities transactions.

The proposed rule change amends Interpretations and Policies .01 of Article II, Rule 2 of MCC's rules to shorten the time frame in which contract data or comparison data must be submitted to MCC to ensure that MCC has sufficient time to review such contracts and receive the necessary protection to guarantee the performance of such contract to the contra-broker in a T+3 environment. Under such interpretations, MCC reserves the right to cause such contract to be settled under the trade-by-trade system or to reverse the trade in the continuous net settlement system (1) if a regular way contract is not recorded by MCC in a participant's account until T+2, (2) if a regular way contract is not submitted by another clearing corporation for recordation in a participant's account until T+2, or (3) if the contract is to be settled through the participant's account at another clearing corporation and the contract is not recorded until T+1.

The proposed rule change also is amending Article III, Rule 2, Section 9 to state that a participant will be deemed to have requested delivery of a security if the participant has entered into contracts to be settled by MCC which will result in net settling sales of such security by the participant during the next two business days. The proposed rule change also amends the definition of "as-of contract" in Article I, Rule 1 to include contracts for which

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35256 (January 20, 1995), 60 FR 5444

[3] 17 CFR 240.15c6–1.

[4] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

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the intended date of settlement is one to two days after the recording of the transaction by MCC.

MCC has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 becomes effective on June 7, 1995.[5]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.[6] Specifically, Section 17A(b)(3)(F)[7] states that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the MCC's custody or control or for which MCC is responsible and must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Several of MCC rules are based on a five day time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6–1. As a result, the MCC's current rules will be inconsistent with the Commission's rule. This proposal will amend the MCC's rules to harmonize them with Commission's Rule 15c6–1 and a T+3 settlement cycle.

III. Conclusion

For the reasons stated above, the Commission finds that MCC's proposal is consistent with Section 17A of the Act.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–MCC–94–16) be and hereby is approved and will become effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority [10]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–7242 Filed 2–23–95; 8:45 am]

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[5] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30(a)(12) (1994)

[Release No. 34–35507; File No. SR–NASD–94–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial Approval of Proposed Rule Change Relating to the Three Business Day Settlement of Securities Transactions

March 17, 1995.

On October 12, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On November 9, 1994, the NASD filed with the Commission Amendment No. 1.[2] The purpose of the proposed rule change is to amend the NASD's rules to provide for three business day settlement of securities transactions. The Commission published notice of the proposed rule change in the **Federal Register** on November 18, 1994.[3] The commission granted partial, accelerated approval of the proposed rule change on November 30, 1994.[4] On December 8, 1994, the NASD filed with the Commission Amendment No. 2.[5] The amendments were techincal amendments that did not require republication of notice. One comment was received on the notice.[6] As discussed below, the Commission is approving that portion of the proposed rule change relating to the three day settlement of securities transactions.[7]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, Commission (November 8, 1994).

[3] Securities Exchange Act Release No. 34966 (November 10, 1994), 59 FR 59802.

[4] Securities Exchange Act Release No. 35031 (November 30, 1994), 59 FR 62761. The order approved that portion of the proposed rule change relating to the transfer of customer accounts between broker-dealers.

[5] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, Division of market Regulation, Commission (December 7, 1994). Amendment No. 2 eliminated the proposed amendment to Section 64(a)(3) which would have shortened the time for confirmation of a customer order from the day after trade date to the trade date. Amendment No. 2 also lengthened by one day, from the first day after trade date to the second day after trade date, the time for a buying customer to provide agent instructions under Section 64(a)(4).

[6] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Trading Services, Inc. (A Thomson Financial Services Company), to Jonathan G. Katz, Secretary, Securities and Exchange Commission (December 2, 1994).

[7] With this order, the Commission has now approved all of File No. SR–NASD–94–56.

I. Description

On June 7, 1995, the standard settlement time frame for most securities transactions will be shortened from five business days after the trade date ("T+5") to three business days after the trade date ("T+3").[8] The proposal amends certain provisions of the NASD's Uniform Practice Code ("UPC") and the rules of Fair Practice ("RFP") consistent with a T+3 settlement cycle. These amendments will become effective on the same date as Commission Rule 15c6–1, which establishes T+3 as the standard settlement time frame.[9]

The proposed rule change will shorten the time periods established under the NASD's rules for taking certain actions related to settlement. Currently, Section 12(b) of the UPC states that for a regular way transaction delivery must be made on, but not before, the fifth business day following the trade date. The proposal shortens the delivery requirement to on, but not before, the third business day following the trade date. In addition, seller's option transaction deliveries may be made by the seller on any business day after the third business day, rather than after the fifth business day, following the trade date.

Similarly, Article III, Section 26(m)(1) of the RFP is amended to require that members transmit payments received from customers for the purchase of investment company shares within three business days, rather than within five business days, after receipt of such customers' purchase orders or one business day following receipt of customer payments, whichever is later.

Section 64(a)(4) of the UPC currently requires that customers that use an agent to pay for or to deliver securities must agree to furnish instructions to the agent no later than T+4 if buying on a receipt versus payment "(RVP") basis or no later than T+3 if the customer is selling on a delivery versus payment ("DVP") basis. The proposed rule

[8] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act (17 CFR 240.15c6–1), which establishes T+3 instead of T+5 as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891. The rule becomes effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[9] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

change shortens the time period for furnishing such instructions to T+2 and T+1 for buying and selling customers, respectively.[10]

The Prompt Receipt and Delivery Interpretation of the Board of Governors, Article III, Section 1 of the RFP requires each member to make an affirmative determination that its customer owns the security and will deliver it in good deliverable form within five business days of the execution of an order in connection with a long sale. The interpretation also states that to satisfy the requests for an affirmative determination, the member must note on the order ticket at the time of the order the customer's ability to deliver the securities within five business days. The proposed rule change changes these time limits from five business days to three business days.

To accommodate a three business day settlement cycle, it will be necessary to change the ex-dates with respect to cash and stock dividends, warrants, and interest.[11] Section 5(b)(1) of the UPC currently provides that the ex-date with respect to cash dividends or distributions, stock dividends, or warrants which are less than 25% of the value of the security shall be the fourth business day preceding the record date of the fifth business day preceding the record date if the record date falls on a day designated as a non-delivery date provided that definitive information is received sufficiently in advance of the record date. Section 6(a) currently provides that all transactions, other than cash transactions, in bonds or other instruments of indebtedness which are traded flat shall be ex-interest on the forth business day preceding the record date if the record date falls on a business day, on the fifth business day preceding the record date if the record date does not fall on a business day, and on the fifth business day preceding the date on which an interest payment is to be made if no record date has been fixed. All of the time frames contained in Sections 5(b)(1) and 6(a) are being shortened by two business days. All the other time frames contained in Sections 5 and 6 of the UPC are not being changed.

[10] Section 64(a)(3) of the UPC currently requires that members accepting an order whereby payment or delivery is to be made to or by an agent of the customer must deliver a confirmation no later than T+1. The notice of the proposed rule change indicated that this time period would be shortened to trade date. The NASD has withdrawn this portion of the rule change. *Supra* note 5.

[11] The ex-date indicates the interval between the announcement and payment of a distribution during which time an investor who purchases shares is not entitled to the distribution.

Section 46 of the UPC currently requires that interest to be added to the price of interest-paying securities be calculated up to but not including the fifth business day following the date of the transaction. The proposed rule change shortens the time frame so that interest is calculated up to but not including the third business day.

II. Comments

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.[12] Thomson believes that the NASD should amend Section 64 of the UPC which requires the use of a registered clearing agency's facilities for automated confirmations and acknowledgements.

III. Discussion

The Commission believes the proposed rule change is consistent with Section 15A of the Act and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with Section 15A(b)(6)[13] of the Act which requires that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the rules of the NASD and other self-regulatory organizations control the time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6–1.

As a result, the NASD's current rules for a T+5 settlement cycle will be inconsistent with the Commission's rule. This proposal amends the NASD's rules to harmonize them with the Commission's Rule 15c6–1 and a T+3 settlement cycle.

The commission believes that the benefits of a three day settlement cycle, as outlined in the release adopting Rule 15c6–1, apply equally to the NASD's proposed rule change.[14] With a T+3 settlement cycle, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate [15] By reducing risk to the clearance and settlement system, the NASD's proposed rule change furthers Section 15A's goals of protection of investors and of the public interest. The NASD's rules will assist the transition to a T+3 cycle by providing guidelines for related matters such as ex-dates and delivery of agent instructions. Thus, the proposed rule change is consistent with Section 15A's goals of fostering cooperation and coordination with persons engaged in regulating, clearing, and settling transactions in securities and of perfecting the mechanism of a free and open market.

While Thomson's letter supports the NASD's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the NASD should amend Section 64 of the UPC, which requires the use of a registered clearing agency's facilities for automated confirmation and acknowledgement of all DVP/RVP transactions.[16] The NASD, in response to Thomson's letter, states that the NASD opposes amending Section 64 because Thomson's system is not interfaced with other providers of confirmation/acknowledgement services and because Thomson is not subject to regulatory oversight.[17] The NASD also states that Thomson's letter raises significant issues as to whether a third-party vendor of confirmation/affirmation services should be recognized to be equivalent to a registered clearing organization providing such services.[18] Thomson provided a further comment letter

[12] Letter from Thomson, *supra* note 6.

[13] 15 U.S.C. § 78o–3(b)(6) (1988).

[14] *Supra* note 7

[15] The Commission's release adopting Rule 15c6–1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures, resulting in risk to the national clearance and settlement system." *Id.*

[16] Thomson asserts that Section 64 precludes vendors such as Thomson from competing with The Depository Trust Company ("DTC"), a registered clearing agency. Letter from Thomson, *supra* note 6. The self-regulatory organization confirmation trades to the facilities of a registered securities depository. These rules, however, were designed to facilitate high levels of trading volume. Further, as in the T+5 settlement cycle, an institutional investor will be free to choose the post-trade communication service provider as long as the trade is eventually confirmed and acknowledgement through a registered securities depository.

[17] Letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Christine Sibille, Senior Counsel, Office of Securities Processing, Division of Market Regulation, Commission (December 21, 1994).

[18] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Christine Sibille, Senior Counsel, Office of Securities Processing, Division of Market Regulation Commission (January 26, 1995).

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asserting that provision of a trade confirmation was not a depository function and therefore did not require the use of a depository registered with the Commission.[19]

The Commission believes that the issues raised by the Thomson letter need not be resolved prior to the approval of the NASD's proposed rule change. Discussions regarding Thomson's concern are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.[20] The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the NASD's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of the Commission's Rule 15c6–1, the NASD rules will conflict with the Commission Rule 15c6–1.

As discussed above, Thomson's letter suggests that approval of the proposed rule change without amendments to Section 64 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing NASD rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that the portion of the proposed rule change relating to three day settlement of securities transactions is consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the rule change (File No. SR–NASD–94–56) containing the amendments to Sections 5, 6, 12, 46, and 64 of the UPC and Article III, Section 26(m)(1) and Article III, Section 1 of the RFP be and hereby is approved and will become effective on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–7241 Filed 3–23–95; 8:45 am]

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[19] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson, to Jonathan G. Katz, Secretary, Commission (February 1, 1995).

[20] Securities Exchange Act Release No. 35332 (February 3, 1995) 60 FR 8102 (notice of filing of proposed rule change).

[21] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35506; File No. SR–NYSE–94–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 17, 1995.

On November 3, 1994, the New York Stock Exchange, Inc., ("NYSE") filed a proposed rule change (File No. SR–NYSE–94–40) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 23, 1994 to solicit comments from interested persons.[2] The Commission received one comment letter.[3] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act[4] which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.[5] Several of the current NYSE's rules are interrelated with a T+5 settlement time frame. The purpose of the rule change is to amend NYSE's rules to be consistent with a T+3 settlement standard for securities transactions.

NYSE Rules 64(a)(3), 65(b), and 85(d)(3) specify the delivery date for securities sold in regular way transactions, odd lot sales, and cabinet sales, respectively. The time frames contained in each rule is being shortened to conform to a T+3 settlement cycle. Rule 64(a)(5) currently provides that on the second, third, fourth, and fifth business days preceding the final day for subscription, bids, and offers in rights to subscribe shall be made only for delivery next day. This section is being amended to eliminate references to the fourth and fifth business days. Rule 64(c) is being amended to provide that seller's option trades can settle on the third business day, rather than the fifth business day, after the trade date.

Rule 235 is being amended to provide that transactions in stocks shall be ex-dividend or ex-rights on the second business day preceding the record date rather than on the fourth business day With regard to a record date on a day other than a business day, transactions in stocks shall be ex-dividend or ex-rights on the third preceding business day rather than on the fifth preceding business day. The time frame contained in Rule 257 for delivery of dividends or rights for securities sold before the "ex" date but delivered after the record date is being shortened to three days after record date.

Rule 236 prescribes when ex-warrant trading will begin. The ex-warrant period is being changed to the second business day preceding the date of expiration of the warrants instead of the fourth business day. When warrant expiration occurs on other than a business day, the ex-warrant period will begin on the third business day preceding the expiration date instead of on the fifth business day.

Rule 387(a)(4) requires a member to obtain an agreement from its customer to deliver instructions to its agent within certain time periods with respect to receipt and delivery of securities sold delivery versus payment ("DVP") or receipt versus payment ("RVP"). All the time frames contained in Rule 387(a)(4) are being shortened by two days. Rule 123A.32 currently states that the liability of a specialist shall not extend beyond the closing price on the third business day where it is deemed that the specialist did not send out a report. This time frame is being shortened by two business days. The proposal shortens the time frames contained in Rule 123B(b)(2) (A) and (B) for correcting

[1] 17 CFR 240.19b–4.

[2] Securities Exchange Act Release No. 35110 (December 16, 1994), 59 FR 65011.

[3] Letter from Dr. Keith B. Jarrett, President, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 12, 1995).

[4] 17 CFR 240.15c6–1.

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (order changing the effective date from June 1, 1995, to June 7, 1995).

execution reports.[6] Supplementary Material .10, .12, and .13 of Rule 128B are being amended to shorten the time frames for tape corrections and other errors.[7]

The NYSE has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 becomes effective on June 7, 1995.[8]

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.[9] Thomson believes that the NYSE should amend Rule 387(a)(5) which requires the use of the facilities of a securities depository for confirmation and acknowledgement of all transactions in securities which are depository-eligible.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[10] Specifically, Section 6(b)(5) states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. NYSE rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6–1. As a result, the NYSE's current rules providing for a T+5 settlement cycle will be inconsistent with the Commission's rule. This proposal will amend the NYSE's rules to harmonize them with the Commission's rule 15c6–1 and a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing risks to clearing corporations, their members, and public investors which are inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[11]

While Thomson's letter supports the NYSE's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the NYSE should amend Rule 387, which requires the use of the facilities of a securities depository for the confirmation and acknowledgement of all DVP or RVP transactions in depository-eligible securities. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the NYSE's proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.[12] The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the NYSE's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of Rule 15c6–1, the NYSE rules will conflict with the Commission Rule 15c6–1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rules 387 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advance by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing NYSE rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that NYSE's proposal is consistent with Section 6 of the Act.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NYSE–94–40) be and hereby is approved and will become effective on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–7238 Filed 3–23–95; 8:45 am]

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[6] Rule 123B(b)(2)(A) is being amended to require that for most transaction between brokers, if a purchase or sale has been reported in error and a transaction has appeared on the tape at the price of the erroneous report, the broker who made the error will be required to render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2. Rule 123B(b)(2)(B) is being amended to require that for orders received by the specialist through the Designated Order Turnaround System or the Limit Order System, if the subscribing member organization requests a correction from the specialist prior to the opening of the second business day, rather than third business day, following the transaction, the specialist shall correct the report. Rule 123B(b)(2)(B) also is being amended to require that if the erroneous report is at a price more than one-half point away from the execution price, the specialist must render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2.

[7] Supplementary Material .10 is being amended to require that in the event that publication of a change, correction, or cancellation of a transaction which previously appeared on the tape or of a transaction omitted from the tape is not made on the tape on the day of the transaction, such change, correction, cancellation, or omission may be published in the "sales sheet" within three business days, rather than within seven calendar days, of the date of the transaction with the approval of both the buying and selling members and a floor official. Supplementary Rule .12 is being amended to require that erroneous publications made on the tape due to mechanical or system troubles or clerical errors may be corrected in the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction under the direction of an authorized NYSE employee. Supplementary Material .13 will require that any other errors in the amount of a transaction reported erroneously to a reporter by a party to the transaction may be published on the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction with the approval of a floor official.

[8] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[9] Letter from Dr. Keith B. Jarrett, *supra* note 3.

[10] 15 U.S.C. 78f (1988).

[11] The Commission release adopting Rule 15c6–1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[12] Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102 (notice of filing of proposed rule change).

[13] 15 U.S.C. 78f (1988).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30(a)(12)(1994).

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[Release No. 34–35510; File No. SR–SCCP–94–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 17, 1995.

On November 14, 1994, the Stock Clearing Corporation of Philadelphia filed a proposed rule change (File No. SR–SCCP–94–07) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On December 19, 1994, SCCP filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on January 4, 1995, to solicit comments from interested persons.[3] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act[4] which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.[5] Several of SCCP's rules are interrelated with settlement time frames. The purpose of the proposed rule change is to amend SCCP's rules to be consistent with a T+3 settlement standard for securities transactions.

The proposed rule change amends Rule 18 ("Insolvency"). Section 6 to provide that upon the insolvency of a participant, no contracts pending settlement up to and including T+1 shall be settled by SCCP. Rule 18, Section 7 is amended to provide that on or after T+2, SCCP will buy in the securities due it from an insolvent participant and will sell out the securities due to the participant from SCCP. The proposed rule change also amends Rule 40 ("Instruments with Exercise Privileges") to state that a participant is advised of potential liability based on its short value positions on its CNS projection report starting on the second business day after the trade date.

SCCP has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 becomes effective on June 7, 1995.[6]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.[7] Specifically, Section 17A(b)(3)(F)[8] states that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible and must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Several of SCCP rules are based on a five day time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6–1. As a result, SCCP's current rules will be inconsistent with the Commission's rule. This proposal will amend SCCP's rules to harmonize them with the Commission's Rule 15c6–1 and a T+3 settlement cycle. Further, the proposal amends SCCP's procedures for dealing with an insolvent participant to be consistent with a T+3 settlement cycle. Thus, the proposal enhances SCCP's ability to safeguard securities and funds in its custody and control or for which it is responsible.

III. Conclusion

For reasons stated above, the Commission finds that SCCP's proposal is consistent with Section 17A of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–SCCP–94–07) be and hereby is approved and will become effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–7240 Filed 3–23–95; 8:45 am]
BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b) (1988).

[2] Letter from Sharon S. Metzker, SCCP, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (December 12, 1994).

[3] Securities Exchange Act Release No. 35154 (December 27, 1994), 60 FR 519.

[4] 17 CFR 240.15c6–1.

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7 1995).

[6] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30(a)(12) (1994).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Kinark Corporation, Common Stock, $0.10 Par Value) File No. 1–3920

March 20, 1995.

Kinark Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Incorporated. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company ("Board"), pursuant to lawfully delegated authority, unanimously approved a resolution on September 21, 1994, to withdraw the Company's listing on the PSE and to maintain its listing and registration on the American Stock Exchange, Inc. ("Amex"). The decision of the Board followed a study of the matter, and was based upon the belief that the listing on the PSE was no longer beneficial to the Company because:

(1) The dual listing of the Security on the PSE and Amex was no longer cost-effective in light of the low annual trading volume of the Security on the PSE;

(2) The presence of a substantial national and liquid market for the Security on Amex; and

(3) The continuing need for the Company to reduce the costs of doing business in the current competitive environment in which the Company operates.

Any interested person may, on or before April 10, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 95–7319 Filed 3–23–95; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: March 17, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on March 17, 1995:

DOT No: 4043.
OMB No: 2120–0018.
Administration: Federal Aviation Administration.
Title: Certification Procedures for Products and Parts—FAR 21.
Need for Information: Title 49 USC Part 21, Certification Procedures for Products and Parts, implements the provisions of Sections 49 USC 40113(a), 44701, 44702(a), and 44702(d) of Subtitle VII, Aviation Programs.
Proposed Use of Information: The information collected will be used to determine compliance and applicant eligibility. FAA Airworthiness inspectors, designated inspectors, engineers, and designated engineers review the required data submission to determine if the products and manufacturing facilities comply with the applicable requirements, and to determine if the products have any unsafe features.
Frequency: On occasion.
Burden Estimate: 44,101 hours.
Respondents: Aircraft parts designers, manufacturers and aircraft owners.
Form(s): FAA Forms 8110–2, 8130–1, 8130–6, 8130–9, 8130–12.
Average Burden Hours Per Response: 48 minutes for FAA Form 8110–12; 12 minutes for FAA Form 8130–1; 42 minutes for FAA Form 8130–6; 42 minutes for FAA Form 8130–9; 15 minutes for FAA Form 8130–12.

DOT No: 4044.
OMB No: 2120–0573.
Administration: Federal Aviation Administration.
Title: Special Federal Aviation Regulation—Special Flight Authorization for Noise Restricted Aircraft.
Need for Information: FAR Part 91.805 prohibits any person from operating a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States. The Airport Noise and Capacity Act of 1990 (49 USC App. 2157, 2158) provides for the operation in the United States of otherwise restricted Stage 2 aircraft to obtain modifications to meet Stage 3 noise levels. In its regulation codifying this provision of the legislation, the FAA stated that it would issue a Special Federal Aviation Regulation (SFAR) to provide procedures for special flight authorizations to facilitate these operations. SFAR 64 permitted certain operations of noise-restricted aircraft without a formal grant of exemption under 14 CFR Part 11.
Proposed Use of Information: Under SFAR 64, operators would be able to apply for a special flight authorization to allow limited non-revenue operations at specific U.S. airports without going through the long process of requesting a formal grant of exemption under 14 CFR Part 11.
Frequency: On occasion.
Burden Estimate: 38 hours.
Respondents: Operators of Stage 1 or Stage 2 aircraft.
Form(s): None.
Average Burden Hours Per Response: 1 hour and 30 minutes.

DOT No: 4045.
OMB No: 2120–0085.
Administration: Federal Aviation Administration.
Title: Certifications and Operations: Airplanes having a Seating of 20 or more Passengers or a Maximum Payload Capacity of 6,000 Pounds or more.
Need for Information: Title 14 CFR Part 125 prescribes requirements for leased aircraft, aviation service firms and air travel clubs.
Proposed Use of Information: The FAA reviews the submitted information to determine compliance and applicant's eligibility.
Frequency: On occasion.
Burden Estimate: 29,445 hours.
Respondents: Those seeking certification under FAR Part 125
Form(s): None.
Average Burden Hours Per Response: 60 hours for application for operating certificate; 2 hours for amendment of operations specifications; 12 minutes for flight locating requirements; 80 hours for the manual; 2 hours and 30 minutes for the revision; 30 minutes to request to the FAA that an employee be designated as a check pilot; 1 hour and 30 minutes to report mechanical irregularities; 15 minutes for load manifest recordkeeping; 4 hours for crewmember recordkeeping; 6 minutes for flight release form recordkeeping; 12 hours per aircraft for maintenance log entries recordkeeping; 12 minutes for reports of defects or unairworthy conditions; 6 minutes for airworthiness release recordkeeping.

DOT No: 4046.
OMB No: 2120–0075.
Administration: Federal Aviation Administration.

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Title: Airport Security—Part 107 of the Federal Aviation Regulations (14 CFR Chapter I, Part 107).
Need for Information: Public Law 103–272, Sections 44901(a), 44903(b), 44903(b)(3), 44903(c), 44938(b), is implemented in FAR Part 107.
Proposed Use of Information: Airport security programs, training records, screening, bomb threat, and arrest reports are needed to ensure protection of persons and property in air transportation against acts of criminal violence, ensure passenger screening procedures are effective and that information is available to comply with Congressional reporting requirements.
Frequency: Semi-annually.
Burden Estimate: 74,814 hours.
Respondents: State and local governments, and businesses.
Form(s): FAA Forms 1650–7 and 1650–8.
Average Burden Hours Per Response: 2 hours.
DOT No: 4047.
OMB No: 2115–0110.
Administration: U.S. Coast Guard.
Title: Vessel Documentation.
Need for Information: The collection and recordkeeping of information concerning the documentation of vessels is promulgated in the Shipping Act of 1916, as amended, Section 27 of the Merchant Marine Act of 1920, as amended, and 46 USC Chapters 121, 125 and 313.
Proposed Use of Information: The information will be used to establish the eligibility of a vessel to: (a) be documented as a "vessel of the United States," (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. Also, non-maritime agencies such as the Internal Revenue Service rely on this information in determining eligibility for investment tax credits, etc.
Frequency: On occasion.
Burden Estimate: 50,442 hours.
Respondents: Vessel owners, shipbuilders.
Form(s): CG Forms 1258, 1261, 1270, 1280, 1280A, 1280B, 1340, 1356, 4593, 5542, and MA–899.
Average Burden Hours Per Response: 30 minutes for CG–1258; 30 minutes for CG–1261; 5 minutes for CG–1280; 20 minutes for CG–1340; 20 minutes for CG–1356; 10 minutes for CG–4593; 10 minutes for CG–5542; 15 minutes for MA–899.

Issued in Washington, D.C. on March 17, 1995.

Paula R. Ewen,

Manager, IRM Strategies Division.

[FR Doc. 95–7265 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended March 17, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50211.
Date filed: March 15, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Reso 024f, Local Currency Fare Changes—Zimbabwe.
Proposed Effective Date: April 1, 1995.

Docket Number: 50217.
Date filed: March 17, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C 0620 dated February 24, 1995, Expedited Composite Resos r-1 to r-15.
Proposed Effective Date: expedited April 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–7353 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 17, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50200.
Date filed: March 13, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 1995.
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity for authority to offer scheduled foreign air transportation of persons, property and mail between points in the United States and points in Canada, subject to the condition that services to Vancouver, British Columbia, and Montreal, Quebec, must be separately authorized until February 24, 1997, and services to Toronto, Ontario, must be separately authorized until February 24, 1998.

Docket Number: 50204.
Date filed: March 14, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 1995.
Description: Application of Air Canada, pursuant to 49 U.S.C. Section 413404, and Subpart Q of the Regulations, requests an amended foreign air carrier permit which would authorize it to operate scheduled and non-scheduled foreign air transportation of persons, property, and mail: Between any point or points in Canada to any point or points in the United States and beyond. Beyond authority to be operated consistent with Annex 1, Section 3 of the Air Transport Agreement. Charter authority to be operated consistent with Annex 3 of the Air Transport Agreement.

Docket Number: 50215.
Date filed: March 17, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 14, 1995.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between any point in the United States and any point in Canada. This request is subject to the condition that service at Vancouver and Montreal must be separately authorized for a period of two years, and service at Toronto must be separately authorized for a period of three years, consistent with the phase-in provisions for those three cities in the U.S. Canada Air Transport Agreement signed on February 24, 1995.

Docket Number: 50218.
Date filed: March 17, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1995.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41110(a) of the Act and Subpart Q of the Regulations, requests that the following condition be added to its certificates of public convenience and necessity for Routes 27–F, 52, 114, 152, 154, 158, 167, 178, 404, 515, 526, 562, 585, 586, 606, 616, 617, 618, 620, 622, and 630:
Certificate Condition: "( ) The holder may combine services on any segment of this certificate with (1) any other segment of this certificate,(2) authority on any other certificate it holds, and/or (3) any exemption it holds to provide foreign air transportation, provided however, that such operations are in compliance with all applicable treaties and agreements between the United States and other countries."

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–7352 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–17; Notice 2]

Notice of Receipt of Petition for Decision That Nonconforming 1985 Hobson Horse Trailers Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of receipt of petition for decision that nonconforming 1985 Hobson horse trailers are eligible for importation.

SUMMARY: This document corrects a notice published Wednesday, March 15, 1995 (60 FR 14053) announcing receipt by NHTSA of a petition for a decision that a 1985 Hobson horse trailer that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. The notice incorrectly identified the vehicle as a "Dobson" horse trailer. The vehicle should have been properly identified as a "Hobson" horse trailer.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 20, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–7267 Filed 3–23–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Assyrian Origins: Discoveries at Ashur on the Tigris; Antiquities in the Vorderasiatisches Museum, Berlin," (see list) [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Metropolitan Museum of Art, New York, New York from on or about May 2 to on or about August 13, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: March 17, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–7283 Filed 3–23–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547

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Sunshine Act Meetings

Federal Register

Vol. 60, No. 57

Friday, March 24, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, March 21, 1995, the Corporation's Board of Directors determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Tigert Helfer, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would, in implementing section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, have the effect of lowering the capital requirement for small business loans and leases on personal property that have been transferred with recourse by qualified insured depository institutions.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 21, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary

[FR Doc. 95–7464 Filed 3–22–95; 2:48 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:13 a.m. on Tuesday, March 21, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 21, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–7465 Filed 3–22–95; 2:48 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 14484, March 17, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, March 22, 1995.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals to manage Federal Reserve System foreign currency reserves.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7517 Filed 3–22–95; 3:00 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 29, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System. (This item was originally announced for a closed meeting on March 27, 1995.)
2. Proposed acquisition of computer equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

DATED: March 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7424 Filed 3–22–95; 10:05 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 1:30 p.m., Wednesday, March 29, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.

2. Request from State of Michigan for Exemption under Section 701.21(h), NCUA's Rules and Regulations, Member Business Loans.
3. Proposed Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
4. Proposed Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–7453 Filed 3–22–95; 11:41 am]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 27, 1995.

Closed meetings will be held on Monday, March 27, 1995, at 9:45 a.m. and on Wednesday, March 29, 1995, following the 9:00 a.m. open meeting. Open meetings will be held on Tuesday, March 28, 1995 at 10:00 a.m. and on Wednesday March 29, 1995, at 9:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, March 27, 1995, at 9:45 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

The subject matter for the open meeting scheduled for Tuesday, March 28, 1995, at 10:00 a.m., will be:

Consideration will be given to whether to seek public comment on how to improve the disclosure of risk by mutual funds and other management investment companies. Consideration will be given to whether to request comment on a variety of means for improving risk disclosure, including narrative descriptions, numerical measures of risk, graphs, and tables. For further information, please contact Roseanne Harford at (202) 942–0689.

The subject matter of the open meeting scheduled for Wednesday, March 29, 1995, at 9:00 a.m., will be:

The Commission will hear oral argument on an appeal by Patricia A. Johnson, former branch manager of Beverly Hills office of Paine Webber, Inc., ("Paine Webber") from an administrative law judge's initial decision. For further information, please contact Elise C. Fuchsman at (202) 942–0853.

The subject matter of the closed meeting scheduled for Wednesday, March 29, 1995, following the 9:00 a.m. open meeting will be:

Post oral argument discussion.

At times, changes in Commission priorities require alternations in the scheduling of meeting items: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 22, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–7444 Filed 3–22–95; 11:13 am]

BILLING CODE 8010–01–M

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Part II

Federal Emergency Management Agency

44 CFR Part 354
Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program; Final Rule

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 354

RIN 3067–AC10

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule establishes the policies and administrative basis for FEMA to assess fees from the Nuclear Regulatory Commission's (NRC) licensees to recover the full amount of the appropriated funds obligated by FEMA to provide services for offsite radiological emergency planning and preparedness for FY (FY) 1995.

EFFECTIVE DATE: This rule is effective March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Marie T. SuPrise, Chief, State and Local Regulatory Evaluation and Assessment Branch, Exercises Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4065.

SUPPLEMENTARY INFORMATION: On March 6, 1991, FEMA published in the **Federal Register** (56 FR 9452–9459) a final rule, 44 CFR part 353, that established a structure for assessing and collecting user fees from NRC licensees. Under 44 CFR part 353, Radiological Emergency Preparedness (REP) services provided by FEMA personnel and FEMA contractors were reimbursable only if these services were site-specific in nature and directly contributed to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended. Although FEMA is publishing a new approach for the assessment and collection of fees from licensees for FY 1995, part 353 remains in effect and will apply in any subsequent fiscal year for which FEMA is not authorized to collect user fees for generic services.

Public Law 102–389, October 6, 1992, 106 Stat. 1571–1619, expanded reimbursable REP Program activities by authorizing FEMA to charge licensees of commercial nuclear power plants fees to recover the full amount of the funds anticipated to be obligated for FEMA's REP Program for FY 1993. On July 1, 1993, FEMA published in the **Federal Register** (58 FR 35770–35775) an interim rule, 44 CFR part 354, to establish and set forth the policies and administrative basis for assessing and collecting these fees. FEMA reserved the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority was enacted. Public Law 103–124, September 23, 1993, 107 Stat. 1297, directed FEMA to continue assessing and collecting fees to recover the full amount of the funds anticipated to be obligated for FEMA's REP Program for FY 1994. In addition, the Administration proposed to assess such fees for subsequent fiscal years.

Using the methodology established by the interim rule, 44 CFR part 354, the final hourly user fee rate for FEMA personnel during FY 1993 was calculated at $122.88. On December 13, 1993, a notice to this effect was published in the **Federal Register** (58 FR 65274). The notice also explained that FEMA would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993, taking into consideration the comments received on interim rule 44 CFR part 354. The methodology established by the interim rule 44 CFR part 354 was continued in effect for FY 1994 by notice in the **Federal Register** (59 FR 26350) published May 19, 1994. Using the methodology established by the interim rule, the final hourly user fee rate for FEMA personnel during FY 1994 was calculated at $120.79. On November 28, 1994, a notice to this effect was published in the **Federal Register** (59 FR 60792–60793).

On July 27, 1994, FEMA published a proposed rule, 44 CFR part 354, in the **Federal Register** (59 FR 38306). This proposed rule, predicated upon Congress passing the authorizing legislation, would establish fees for FY 1995 assessed at a flat rate based on fiscal year budgeted funds for REP Program services performed by FEMA personnel and FEMA contractors whether or not these services directly support NRC licensing requirements. Public comments on this proposed rule were solicited.

Under FEMA's appropriation for FY 1995, Public Law 103–327, September 28, 1994, 108 Stat 2323–2325, the Congress authorized FEMA to assess and collect fees from Nuclear Regulatory Commission (NRC) licensees to recover approximately, but not less than, 100 per centum of the amounts anticipated by FEMA to be obligated for its Radiological Emergency Preparedness (REP) Program. This appropriations act further required the Director of FEMA to promulgate, through rulemaking, a fair and equitable methodology for the assessment and collection of fees applicable to persons subject to FEMA's radiological emergency preparedness regulations. Public Law 103–327 grants authority for these user fees to be assessed and collected for fiscal year 1995 services only. Although the final rule 44 CFR part 354 is restricted to FY 1995, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted.

Under final rule 44 CFR part 354, fiscal year budgeted funds for REP Program services performed by FEMA personnel and FEMA contractors will be recovered whether or not these services directly support NRC licensing requirements. Fees for FY 1995 will be assessed using a historically-based methodology in which two components, a site-specific, biennial exercise-related component and a flat fee component, are calculated for each site. Final rule 44 CFR part 354 specifies this historically-based approach to the methodology in lieu of the flat fee approach described in the proposed rule 44 CFR part 354 published in the **Federal Register** on July 27, 1994, based upon the numerous public comments received in response to the proposed flat fee methodology and supported by the results of a comparison of different user fee methodologies using actual data for FYs 1993 and 1994.

The historically-based methodology contains elements of the flat fee methodology and of the Nuclear Management and Resources Council (NUMARC), now Nuclear Energy Institute (NEI), methodology, which was described in the proposed rule 44 CFR part 354. The historically-based methodology responds to commenters who objected to the flat fee's lack of site-specific considerations and accountability by factoring in site-specific information relating to the majority of site-specific activities, i.e, plume pathway emergency planning zone (EPZ) biennial REP exercises. At the same time, the historically-based methodology preserves many of the benefits of a flat fee methodology, specifically: (1) The ability to provide each licensee with a bill early in the fiscal year, thus facilitating the licensee's planning and budgeting process by greatly increasing the predictability of the licensee's bill; (2) the ability of States and licensees to request needed technical assistance; (3) the earlier deposit of funds in the U.S. Treasury, thus benefiting the U.S. taxpayer; and (4) a reduction of the FEMA resources required to track administrative costs, thus making the accounting and billing process more efficient and cost-effective for the Government and freeing up scarce

FEMA resources for other REP Program activities. In addition, the historically-based methodology provides a compromise approach that ensures fairness and equitability in the billing.

Under section 354.4, Assessment of Fees, the determination of costs is divided into three categories: site-specific, biennial exercise-related FEMA personnel costs; site-specific, biennial exercise-related FEMA contractor costs; and remaining costs, i.e., the flat fee component.

FEMA's services primarily are provided in support of a Memorandum of Understanding (MOU) between the NRC and FEMA published on September 14, 1993 (58 FR 47996), and regulations issued by both FEMA (44 CFR parts 350, 351, and 352) and the NRC (10 CFR parts 50 and 52).

Radiological emergency response plans and exercises are evaluated using joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee may submit a licensee offsite plan to the NRC. Pursuant to the MOU, the NRC can request that FEMA review a licensee offsite plan and provide its assessments and findings on the adequacy of such plans and preparedness evaluated under Supplement 1.

All funds collected under this rule will revert to the United States Treasury to offset appropriated funds obligated by FEMA for its REP Program. The Department of the Treasury requested that the user fee rule provide for the use of electronic billing and payment mechanisms. FEMA worked with the Department of the Treasury to effect these procedures and now provides for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments. The Department of the Treasury recently revised publication I–TFM 6–8000 to require, under section 8025.30, all funds to be collected by electronic funds transfer when such collection would be cost-effective, practicable, and consistent with current statutory authority.

Discussion of Comments on Proposed Rule

In response to FEMA's request for public comments in connection with the **Federal Register** publication of the proposed final rule, 44 CFR part 354, FEMA received comments from 80 individuals representing 32 utilities, one Federal agency, one industry association, 33 members of Congress (some commenting via multi-signatory letters), two State Governors, eight State emergency management agencies, two public service commissions and one private citizen.

Comment. A number of utilities, Members of Congress, and State representatives commented that a methodology, such as NUMARC's proposed methodology, with a site-specific element is more equitable than the flat fee and should be adopted.

Discussion. FEMA considered the comments received in support of the inclusion of site-specific charges in the user fees, balanced against the many benefits of a methodology that did not require the distinction between site-specific and generic REP-related activities. FEMA also used actual FYs 1993 and 1994 data to calculate and analyze the bills that would have resulted using the current methodology, the flat fee, the NUMARC proposed methodology, and the historically-based methodology. The results support the historically-based methodology as a fair and equitable method for determining user fees. FEMA concluded that, by changing the flat fee methodology to include a site-specific, plume pathway EPZ biennial exercise-related component, the methodology contained in the final rule would be fair and equitable and yet retain many of the benefits of the flat fee while still responding to the concerns of proponents of a methodology with a site-specific element.

Response. FEMA has changed the flat fee methodology to one that includes a site-specific component that factors in plume pathway EPZ biennial REP exercise-related activities.

Comment. A number of the utilities and some public officials expressed their strong support of the flat fee methodology, reiterating the benefits cited in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. Many supporters also stated that site-specific oriented methodologies had resulted in disproportionately large fees to some utilities and that the flat fee remedied this inequity.

Discussion. FEMA considered comments submitted in support of the flat fee and concluded that the historically-based methodology contained in the final rule preserves many of the benefits cited by proponents of the flat fee while responding to the concerns expressed by commenters who opposed the flat fee.

Response. The final rule changes the methodology from a flat fee approach to a methodology that has a flat component and a historically-based, site-specific component reflecting plume pathway EPZ biennial exercise activities.

Comment. Several utilities commented that the user fee rule covers services whether or not they directly support NRC commercial nuclear power plant licensing requirements and stated that utilities should not be charged for services that fall outside the area of nuclear regulation, including Department of Defense (DOD) and Department of Energy (DOE) facilities, as well as other NRC licensed facilities.

Discussion. The FEMA/NRC Memorandum of Understanding allows the NRC to request FEMA REP Program support, as necessary, for NRC licensees other than those for commercial nuclear power plants. Since the potential exists for the NRC to request such REP Program support for other licensees, the rule is not limited to 10 CFR part 50 licensees. At this time, however, FEMA is assessing fees only for licensees of commercial nuclear power plants, since activities involving other licensees have been very limited or non-existent and are expected to remain so and the NRC has not requested FEMA assessment and findings on the adequacy of offsite planning and preparedness for these licensees. With respect to DOD and DOE facilities, 44 CFR part 354 applies only to NRC licensed facilities, not to DOE and DOD facilities.

Response. No change is necessary because current language in this rule is not limited to 10 CFR part 50 NRC commercial nuclear power plant licensees and is not intended to be so limited.

Comment. Several utilities and many Members of Congress and State officials commented that the flat fee is not fair and equitable since it does not reflect the actual costs incurred or expended on the beneficiary and because it increases some fees without an increase in service.

Discussion. The methodology specified in final rule 44 CFR part 354 contains a site-specific exercise component, which does reflect actual costs historically expended on the beneficiary. Since exercise activities constitute the majority of site-specific REP activities, if services in support of site-specific exercise activities were to increase or decrease, that change would be reflected in future user fees for that site.

Response. Changes made to the rule respond to the intent of the comment.

Comment. Many utilities, Members of Congress, and State officials commented that the flat fee is charged to all plants regardless of size, population density of the surrounding area, or number of governmental jurisdictions and that this places an unfair share of the cost of FEMA services on the customers of

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utilities in less urban areas and areas with fewer governmental jurisdictions.

Discussion. The methodology specified in the final user fee rule includes a site-specific exercises component. Since site-specific exercises reflect differences in EPZ populations and number of jurisdictions, and since exercises represent the majority of site-specific REP Program activities, the methodology specified in final rule 44 CFR part 354 does account for these factors.

Response. The change from a flat fee methodology to a methodology that includes a site-specific exercise component responds to this comment.

Comment. One utility commented that sections 354.2(a) and 354.3(d)(1) refer to a "license to decommission" a commercial nuclear power plant. Since such an NRC license does not exist, references to this license should be deleted.

Discussion. FEMA agrees with this comment.

Response. References to a "license to decommission" have been deleted from sections 354.2(a) and 354.3(d)(1).

Comment. One utility commented that sections 354.2(b) and 354.3(d)(2) should be clarified to limit the regulation's applicability to only those possession-only licensees that have neither requested nor received an exemption from NRC 10 CFR 50.54(q) requirements concerning offsite radiological emergency response planning.

Discussion. It is appropriate to exclude possession-only licensees that have received an exemption from offsite radiological emergency response planning. However, it would be inappropriate to exclude possession-only licensees that have requested, but not yet received, this exemption.

Response. The phrase "with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements" has been added to sections 354.2(b) and 354.3(d)(2).

Comment. One utility commented that section 354.4(b), now section 354.4(e), should be revised to clarify the reference to FEMA closing out the "official docket," since there is no formal mechanism for officially closing out the FEMA docket for a plant. Suggested replacement language includes the phrase "Commencing from the date of receipt, user fees will no longer be assessed for that site."

Discussion. The reference to a FEMA official docket has been deleted. The substitute language suggested by the commenter is acceptable, with the exception of the phrase "from the date of receipt." Since the user fees for a particular fiscal year will not be prorated to cover just a portion of that year, the assessment of user fees for the discontinued plant would cease at the end of the fiscal year in which the plant was exempted by the NRC.

Response. The following language was added to section 354.4(e): "Upon receipt of a copy from the NRC of the NRC-approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness is no longer required at a particular commercial nuclear power plant site, FEMA will discontinue REP Program services. Commencing at the beginning of the next fiscal year, a user fee will no longer be assessed for that site."

Comment. One utility commented that FEMA should consider future changes to the regulation that would reduce or remove generic costs associated with REP Program activities (such as program administration, policy and guidance development, research, etc.) from the fee base, since these costs are associated with the broader societal benefits of the REP Program and benefit the State and local governments as well as the licensees.

Discussion. These generic activities are carried out specifically to support the offsite activities of the NRC's licensing requirements that govern the commercial nuclear power plants. Therefore, despite a possible broader benefit, it is appropriate for the nuclear power plant utilities to be charged for REP Program generic activities.

Response. No change.

Comment. One utility commented that requiring utilities to pay the user fee in the month of December (beginning after FY 1995) places an undue hardship on most utilities. It recommended that bills be sent out in December with payment allowed in December or January.

Discussion. Inasmuch as possible, FEMA intends to send out the user fee bills in December of the applicable fiscal year for payment in either December or January, in order to provide more payment flexibility to the licensees.

Response. FEMA will, to the extent possible, send out the user fee bills in December of the applicable fiscal year.

Comment. Several utilities commented that the flat fee places an unfair burden on those utilities that have invested in and worked closely with State and local offsite radiological emergency response organizations to establish highly effective programs that require minimal FEMA interaction to monitor and assess.

Discussion. The proposed flat fee methodology has been changed to the historically-based methodology that factors in a site-specific, plume pathway EPZ biennial exercise component. This methodology does recognize State and local organizations' efficiencies in REP planning and preparedness insofar as many of these efficiencies are reflected in site-specific, plume pathway EPZ biennial exercise activities.

Response. The change from a flat fee methodology to a methodology that includes a site-specific, plume pathway EPZ biennial exercise component responds to this comment.

Comment. A number of utilities, Members of Congress, State representatives, and the industry organization commented that the recovery of budgeted funds prior to expenditure and the use of a methodology that does not take site-specific activities into consideration fails to provide accountability and the desire to maximize the efficient use of resources, e.g., evaluators.

Discussion. The addition of the site-specific exercise component allows for exercise costs, including costs for exercise evaluators, to be factored in based on historical costs. FEMA's desire to maximize the efficient use of REP Program resources is based primarily on the necessity of protecting the health and safety of FEMA's ultimate customers, i.e., the State and local governments and the people they represent, not upon accountability to the licensees.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to this comment.

Comment. Two utilities and a private citizen commented that it is unfair and inequitable for FEMA to recover *any* of the REP budget from commercial nuclear utilities; these costs should be paid from tax revenues.

Discussion. The requirement to recover the REP Program budget costs from the program's beneficiaries is not a FEMA requirement, but rather a Congressional mandate. The rule implements Title V of the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, which authorizes FEMA to recover to the fullest extent possible costs attributable to services to identifiable recipients. FEMA's appropriation acts for FYs 1993, 1994, and 1995 direct FEMA to publish the specific methodology to be employed to recover these costs.

Response. No change.

Comment. Two utilities commented that as plants are decommissioned, the flat fee would continually increase for the remaining sites with operational REP activities.

Discussion. The final rule does not contain the flat fee methodology but, instead, provides a historically-based methodology that includes charges site-specific for plume pathway EPZ biennial REP exercises. However, the historically-based methodology does contain a flat component reflecting activities not related to plume pathway EPZ biennial exercises. As plants are decommissioned, this component will increase, although not to the same extent as it would have under the flat fee. It should be noted that, regardless of the number of plants, the activities carried out under the flat component must still be maintained at the same level. This would also have been the case had the NUMARC methodology been adopted. Notwithstanding the above, allowance is made in the methodology for periodic adjustments to the fees as necessary.

Response. No change, other than the change to a historically-based methodology.

Comment. One utility commented that FEMA should be required to provide greater detail on the nature of costs categorized as generic and questioned why the ratio of generic to site-specific is so high.

Discussion. Under the historically-based methodology, generic activities are billed under the flat, or non-biennial exercise-related component. Generic costs cover a number of important REP Program activities, including policy and guidance development, research, public education, staff training, and general program administration, which must be maintained for and have equal benefit to all licensees.

Response. No change.

Comment. One utility commented that it will not be served by FEMA's one-time adjustment to the billing cycle since the utility's fiscal year runs from October 1 to September 30. The billing option should be more flexible.

Discussion. This utility's situation is unique, since it is a governmental entity and operates on the Government's fiscal year schedule. Due to the structure of the interim rule methodology, the FY 1994 final bills could not be calculated before the end of FY 1994, and, thus, this utility will experience a one-time situation where one-half of its FY 1994 bill and its entire FY 1995 bill will be due during the Government's FY 1995. Since the FY 1995 bills will be sent out in April 1995, a one-time adjustment to the billing cycle will not be necessary in order to allow the other utilities to pay their bill in their FY 1995, i.e., calendar year 1995.

Response. No change.

Comment. One utility agreed that generic costs incurred by FEMA can and should be divided equally among the NRC licensees on a per site basis. However, the utility commented, because site-specific costs vary widely by utility and in accordance with the nature of any given plant exercise, the fees cannot be accurately predicted and there is no demonstrated need to collect them in advance.

Discussion. Since the flat fee methodology has been changed to a methodology that includes a site-specific exercise component based upon historical exercise-related costs, the site-specific component is known at the beginning of the fiscal year. The remaining component is the sum of the site-specific components subtracted from the total REP budget; thus the entire user fee for each site can be known at the beginning of the fiscal year.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to this comment.

Comment. One utility commented that with regard to earlier deposit of funds in the U.S. Treasury, FEMA can adopt regulations that require NRC licensees to prepay REP fees based on historical site-specific costs and shared generic costs.

Discussion. The final rule does contain a site-specific component based upon historical biennial exercise-related costs and the remaining costs are shared equally among the licensees.

Response. The change from a flat fee methodology to a methodology that includes a historically-based, site-specific exercise component responds to this comment.

Comment. One utility commented that if FEMA wants to adopt a levelized fee structure over the two-year cycles, the following method may be used: Allow low-cost operations to pay one flat fee each year while high-cost operations would be required to pay a much higher flat fee each year. In alternating years, FEMA would undercollect based on services provided and in other years FEMA would overcollect from the same licensees, based on actual services rendered.

Discussion. The methodology contained in the final rule includes a historically-based, site-specific, exercise-related component that will result in a relatively level fee structure over the two-year cycles.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to the intent of this comment.

Comment. Several utilities commented that the ability, under the flat fee, of the States and licensees to request technical assistance without the concern of additional fee assessment is not a strong advantage since it could lead to organizations constantly requesting technical assistance when it is not needed.

Discussion. The historically-based methodology will still permit the States and licensees to request needed technical assistance without penalty. However, requests for technical assistance will not increase the total REP Program budget and, therefore, will not adversely affect States and licensees with a lesser need for technical assistance.

Response. No change.

Comment. Two utilities commented that if FEMA's administrative costs for accounting and billing purposes are reduced, FEMA should delete these costs and positions from the budget, rather than reallocating the resources since utilities are reducing their staffs and FEMA should do so too.

Discussion. The FEMA REP staff funded by the S&E portion of FEMA's REP budget has already been reduced. The remaining staff members are needed to ensure that all of FEMA's REP Program responsibilities are adequately addressed and that public health and safety is ensured.

Response. No change.

Comment. The industry association commented that a site that has received an early site permit (ESP) should not be included in the fee base because, unlike sites with plants, it does not require ongoing FEMA services but, rather, a one-time review by FEMA. The ESP holder may "bank" the site for possible future use; thus, the plant may be built in the future or may never be built.

Discussion. In the future there may be sites that have applied for and/or received ESPs. The precise extent to which such plants will require REP Program services is not known at this time, so this language must remain in the final rule in order to address any possible contingencies.

Response. No change.

Comment. The industry association commented that Combined Operating License (COL) holders should not be included in the base until such time as they require FEMA services, i.e., some years into the construction process. Also, the association recommended that the rule specifically exclude COLs for advanced plants built on current plant sites for which emergency preparedness plans already exist.

Discussion. In the future there may be sites that have applied for and/or

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received COLs. The precise extent to which such plants will require REP Program services is not known at this time, so this language must remain in the final rule in order to address any possible contingencies.

Response. No change.

Comment. Several utilities commented that, regardless of the fee collection methodology, FEMA should be required to continually evaluate the high cost of contractor labor and eliminate its use whenever possible, particularly in Medical Services drills. State and local emergency management personnel should be considered for use as exercise evaluators, especially if they hold the proper credentials.

Discussion. FEMA does evaluate the use of contractor labor in an effort to allocate the use of its contractors as efficiently as possible. However, contractor support services are critical to the successful implementation of the REP Program primarily because of the cyclical demands for qualified REP exercise evaluators. It would not be cost effective to hire FEMA employees in order to respond to cyclical, fluctuating demands. Also, with the current emphasis on the reduction of Federal employees, it is unlikely that FEMA would be authorized the additional staff necessary to replace contractor support. FEMA has explored the possibility of the use of State and local emergency management personnel as exercise evaluators; however, FEMA's General Counsel has determined that, since a REP exercise is a regulatory exercise used for credit for obtaining and maintaining a license, State and local personnel cannot be used as evaluators.

Response. No change.

Comment. Two utilities commenting in opposition to the flat fee stated that the funding mechanism should not be primarily intended to levelize budget expenses over the two-year exercise cycle, thereby increasing the predictability of a licensee's bill.

Discussion. Many licensees consider the predictability of their user fee bills to be extremely useful for planning and budgeting purposes and would argue that the levelizing of budget expenses over the two-year exercise cycle and a resulting increase in the predictability of the licensees' bills should be a goal of the user fee methodology. The historically-based methodology accommodates these licensees' need for levelizing and predictability of bills while addressing some of the other drawbacks of a flat fee expressed by its opponents.

Response. The change to a historically-based methodology with a site-specific exercise component preserves the predictability of the licensees' bill amounts while responding to the concerns of opponents of the flat fee.

Comment. One utility commented that the rule states that fees for FEMA personnel and contractors will be assessed as part of the REP budget whether or not the personnel services support NRC licensed plants. In this situation, a FEMA REP staffer or contractor could be sent to respond to a natural disaster and the REP Program budget would be charged.

Discussion. REP Program contractors would not be funded to respond to a natural disaster. FEMA did conduct a study that compared the amount of time that FEMA REP Program staff spent on non-REP activities with the amount of time spent by FEMA non-REP Program staff on REP Program activities. The results indicated that there was a "wash," i.e., the amount of time involved was approximately the same.

Response. No change.

Regulatory Flexibility Act. The Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule does not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended, 57 FR 62520, December 31, 1992, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

National Environmental Policy Act. The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, Environmental Considerations, that this final rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866, Regulatory Planning and Review. This final rule is not a significant regulatory action under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final rule does not create a serious inconsistency or interference with an action taken or planned by another agency. It does not materially alter the impact of entitlements, grants, or loan programs, nor would it raise novel legal or policy issues. To the greatest extent possible the final rule adheres to the regulatory principles set forth in Executive Order 12866. This final rule has not been reviewed by the Office of Management and Budget under the procedures of Executive Order 12866.

Paperwork Reduction Act. This final rule does not contain collection of information requirements and is not subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Executive Order 12612, Federalism. A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, address noted above.

List of Subjects in 44 CFR Part 354

Disaster assistance, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, and Technical assistance.

Accordingly, 44 CFR part 354 is revised to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.

354.1 Purpose.
354.2 Scope.
354.3 Definitions.
354.4 Assessment of fees.
354.5 Description of services.
354.6 Billing and payment of fees.
354.7 Failure to pay.

Authority: Sec. 109, Pub. L. 96–295, 94 Stat. 780; Sec. 2901, Pub. L. 98–369, 98 Stat. 494; Title III, Pub. L. 103–327, 108 Stat. 2323–2325; EO 12148, 3 CFR, 1979 Comp., p. 412 (50 U.S.C. App. 2251 note); EO 12657, 3 CFR, 1988 Comp., p. 611.

§ 354.1 Purpose.

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the amounts anticipated by FEMA to be obligated for its Radiological Emergency Preparedness (REP) Program as authorized under Title III, Public Law 103–327, 108 Stat. 2323–2325. As stipulated by Public Law 103–327, the methodology for assessment and collection of fees shall be fair and equitable, and shall reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Such fees will be assessed in a manner that reflects the use of agency resources for classes of regulated persons and the administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the general fund of the Treasury as offsetting receipts. Assessment and collection of such fees are only authorized during fiscal year (FY) 1995.

§ 354.2 Scope.

The regulation in this part applies to all persons or licensees who have applied for or have received from the NRC:

(a) A license to construct or operate a commercial nuclear power plant;

(b) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(c) An early site permit for a commercial nuclear power plant;

(d) A combined construction permit and operating license for a commercial nuclear power plant; or

(e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

§ 354.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the U. S. Nuclear Regulatory Commission.

(c) *Technical assistance* means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including but not limited to, provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning, preparedness and response, such as alert and notification and emergency public information.

(d) *Persons* or *Licensee* means the utility or organization that has applied for or has received from the NRC:

(1) A license to construct or operate a commercial nuclear power plant;

(2) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(3) An early site permit for a commercial nuclear power plant;

(4) A combined construction permit and operating license for a commercial nuclear power plant; or

(5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.

(e) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

(f) *REP* means Radiological Emergency Preparedness as in FEMA's REP Program.

(g) *Fiscal Year* means the Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(h) *Federal Radiological Preparedness Coordinating Committee (FRPCC)* means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

(i) *Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(j) *Site-specific services* mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

(k) *EPZ* means emergency planning zone.

(l) *Plume pathway EPZ* means for planning purposes, the area within approximately a 10-mile radius of a nuclear plant site.

(m) *Biennial exercise* means the joint licensee/State and local government exercise, evaluated by FEMA, conducted around a commercial nuclear power plant site once every two years in conformance with 44 CFR part 350.

(n) *Obligate or obligation* means a legal reservation of appropriated funds for expenditure.

§ 354.4 Assessment of fees.

Assessment of user fees from licensees is based on a methodology that includes charges for REP Program services provided by both FEMA personnel and FEMA contractors. Beginning with FY 1995, a four year cycle is established with predetermined user fee assessments which will be collected each year of the cycle. The assessments will initially be at the level indicated in the FY 1995 bills and, as described in paragraphs (b) and (d) of this section, for the remainder of the four year cycle, as authorized. The initial four year cycle will run from FY 1995–1998. The following four year cycle will run from FY 1999–2003. Fees will be assessed only for REP Program services provided by FEMA personnel and by FEMA contractors and not for those services provided by other Federal agencies involved in the FRPCC or the RACs.

(a) *Description of fee components.* The fee for each site consists of two distinct components:

(1) A site-specific, biennial exercise-related component to recover the portion of the REP program budget associated only with plume pathway emergency planning zone (EPZ) biennial exercise-related activities.

(2) A flat fee component that is the same for each site and recovers the remaining portion of the REP Program budgeted funding which does not include biennial exercise-related activities.

(b) *Determination of site-specific, biennial exercise-related component for FEMA personnel.* An average biennial exercise-related cost for FEMA personnel has been determined for each commercial nuclear power plant site in the REP Program. This cost, which has been annualized (dividing the average biennial exercise-related cost by two), is based on the average number of hours expended by FEMA personnel in REP exercise-related activities for each site. The average number of hours has been determined based on an analysis of site-specific exercise activity expended since the inception of FEMA's user fee program (1991). The actual user fee assessment for this component is determined by multiplying the average number of REP exercise-related hours, which has been determined and annualized for each site, by the average hourly rate for a REP Program employee in effect for the fiscal year. In FY 1995, the hourly rate has been determined to be $29.34 by the Chief Financial Officer of FEMA. The hourly rate will be revised annually to reflect actual budget and cost of living factors, but the number of site-specific exercise hours,

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as annualized, will remain constant for user fee calculations and assessments throughout the four year cycle, e.g., FY 1995–1998. Exercise activity will continue to be tracked and monitored during the initial and subsequent four year cycles. Appropriate adjustments will be made to this component for calculation of user fee assessments during subsequent four year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* An average biennial exercise-related cost for REP contractors has been determined for each commercial nuclear power plant site in the REP Program. This cost, which has been annualized (dividing the average biennial exercise-related cost by two), is based on the average costs of contract personnel in REP site-specific exercise-related activities since the inception of FEMA's user fee program (1991). Exercise activity will continue to be tracked and monitored during the initial and subsequent four year cycles. Appropriate adjustments will be made to this component for calculation of user fee assessments during subsequent four year cycles.

(d) *Determination of flat fee component.* For each year of the four year cycle, the remainder of REP Program budgeted funds is recovered as a flat fee component. Specifically, the flat fee component is determined by subtracting the total of the FEMA personnel and contractor site-specific, biennial exercise-related components, as outlined in paragraphs (b) and (c) of this section, from the total REP budget for that fiscal year. The resulting amount is equally divided among the total number of licensed commercial nuclear power plant sites as defined under § 354.2, Scope, to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of Charges.* Upon receipt of a copy from the NRC of the NRC-approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness is no longer required at a particular commercial nuclear power plant site, FEMA will discontinue REP Program services. Commencing at the beginning of the next fiscal year, a user fee will no longer be assessed for that site.

§ 354.5 Description of services.

Site-specific and other REP Program services provided by FEMA and FEMA contractors for which licensees would be assessed fees include, but are not limited to, the following:

(a) *Site-specific, plume pathway EPZ biennial exercise-related component services.* (1) Scheduling of plume pathway EPZ biennial exercises.

(2) Review of plume pathway EPZ biennial exercise objectives and scenarios.

(3) Pre-plume pathway EPZ biennial exercise logistics.

(4) Conduct of plume pathway EPZ biennial exercises, evaluations, and post exercise briefings.

(5) Preparing, reviewing and finalizing plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(6) Activities related to Medical Services and other drills conducted in support of a biennial, plume pathway exercise.

(b) *Flat fee component services.* (1) Evaluation of State and local offsite radiological emergency plans and preparedness.

(2) Scheduling of other than plume pathway EPZ biennial exercises.

(3) Development of other than plume pathway EPZ biennial exercise objectives and scenarios.

(4) Pre-other than plume pathway EPZ biennial exercise logistics.

(5) Conduct of other than plume pathway EPZ biennial exercises and evaluations.

(6) Preparing, reviewing and finalizing other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(7) Preparation of findings and determinations on the adequacy or approval of plans and preparedness.

(8) Conduct of the formal 44 CFR part 350 review process.

(9) Providing technical assistance to States and local governments.

(10) Review of licensee submissions pursuant to 44 CFR part 352.

(11) Review of NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and NUREG–0654/FEMA–REP–1, Revision 1, Supplement 1. Copies of the NUREG–0654 may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

(12) Participation in NRC adjudicatory proceedings and any other site-specific legal forums.

(13) Alert and notification system reviews.

(14) Responses to petitions filed under 10 CFR 2.206.

(15) Disaster-initiated reviews and evaluations.

(16) Congressionally-initiated reviews and evaluations.

(17) Responses to licensee's challenges to FEMA's administration of the fee program.

(18) Response to actual radiological emergencies.

(19) Development of regulations, guidance, planning standards and policy.

(20) Coordination with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(21) Coordination of REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(22) Implementation and coordination of REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(23) Participation of REP personnel as lecturers or to perform other functions at EMI, conferences and workshops.

(24) Services associated with the assessment of fees, billing, and administration of this part.

§ 354.6 Billing and payment of fees.

FEMA will forward bills to licensees based on the assessment methodology set forth in § 354.4 to recover the full amount of the funds budgeted by FEMA to provide REP Program services. Licensees with multiple sites will receive consolidated bills. FEMA will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If minor adjustments are necessary due to FEMA exceeding its original budget for the fiscal year, the adjustment will appear in the bill for the subsequent fiscal year.

§ 354.7 Failure to pay.

In any case where FEMA believes that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11, subpart C, to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 et seq.).

Dated: March 16, 1995.

James L. Witt,

Director.

[FR Doc. 95–6998 Filed 3–23–95; 8:45 am]

BILLING CODE 6718–20–P

federal register

Friday
March 24, 1995

Part III

Department of Commerce

National Telecommunications and Information Administration

National Endowment for Children's Educational Television; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration (NTIA)

[Docket No. 950313071–5071–01]

RIN 0660–ZA00

National Endowment for Children's Educational Television (NECET)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Endowment for Children's Educational Television (NECET) hereby gives notice of the availability of funds for the purpose of enhancing the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

DATES: The closing date for submission of all NECET Preliminary Applications (Pre-Applications) for the fiscal year (FY) 1995 grant cycle is Tuesday, May 2, 1995. Pre-Applications must be received at the NECET office no later than 5:00 p.m. EDT, May 2, 1995, whether mailed or hand-delivered. Fax copies will not be accepted.

Successful Pre-Applicants will be invited to submit Full Applications to NECET. Full Applications must be received at the NECET office no later than 5:00 p.m. EDT, Wednesday, July 26, 1995. Fax copies will not be accepted. NTIA intends to award FY 1995 NECET grants by September 29, 1995.

ADDRESSES: National Endowment for Children's Educational Television (NECET); Office of Telecommunications and Information Applications (OTIA); National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce; 14th Street and Constitution Avenue, N.W., Room H–4096; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Heather Birnie; Acting Director, National Endowment for Children's Educational Television (NECET); Telephone: (202) 482–5802; Fax: (202) 501–8009; E-Mail: necet@ntia.doc.gov. Information on the NECET program may also be downloaded from the NTIA Bulletin Board by contacting (202) 482–1199 via modem or ntiabbs.ntia.doc.gov via Internet.

SUPPLEMENTARY INFORMATION:

Authority

The National Telecommunications and Information Administration (NTIA), Department of Commerce, serves as the President's principal adviser on telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 (1992)(codified at 47 U.S.C. 901–904 (1993)).

The National Endowment for Children's Educational Television was established by The Children's Television Act of 1990, Pub. L. No. 101–437, 104 Stat. 996, 997 (1990) (codified at 47 U.S.C. 394 (1991)).

Catalog of Federal Domestic Assistance (CFDA)

11.551: The National Endowment for Children's Educational Television.

Program Description

NECET Background: NECET funds are intended to support the creation and production of children's television programming that is specifically directed toward the development of fundamental intellectual skills. In so doing, NECET's efforts are intended to supplement children's educational programming that is funded by other governmental entities.

Congress directed that NECET be administered by the Secretary of Commerce. The Secretary, in turn, has delegated this responsibility to the Assistant Secretary for Communications and Information, who serves as the Administrator of the National Telecommunications and Information Administration (NTIA).

The Children's Television Act of 1990 stipulates that, during the first two years following project completion, NECET-funded programming may be offered for distribution only to noncommercial public television stations. After the initial two-year period, NECET-funded programming may be made available to commercial media as well, including broadcast television networks and stations, and cable television networks and systems, as long as the programming is not interrupted by commercial advertisements.

NECET Objectives: For the FY 1995 grant round, NECET has three major objectives that applicants should consider when preparing their submissions.

- To Improve the Fundamental Intellectual Skills of Children Through the Vehicle of Television Programming. The term "fundamental intellectual skills" may be defined in a number of ways. In general, NECET interprets the term broadly, to include those competencies and abilities that enable children to effectively understand and cope with problems posed by the contemporary world. Such skills might include proficiency in traditional academic disciplines, such as mathematics, science, history or reading, or they might consist of more abstract abilities, concerns or appreciations, such as problem-solving, ethics, multiculturalism or diversity. Regardless of approach, applicants are also encouraged to incorporate basic human development skills, such as self-esteem and pro-social behavior development, into their proposals. Finally, since most effective educational television programming for children has an entertainment element woven throughout it, NECET applicants are encouraged to incorporate this element into the design of their proposals.
- To the Extent Feasible, to Support the Development of Programming for Children Aged 6 to 10. Although there is a need for high-quality educational television programming for children of all ages, NECET has identified the six-to-ten-year-old child as currently among the most underserved by educational television programming, and therefore deserving of special consideration for the FY 1995 grant round. Consistent with this emphasis, projects that meet the needs of this particular age group are more likely to be competitive and to receive funding consideration than projects focused on other age groups. NECET, however, will not automatically reject projects designed for other age groups. In future grant rounds, NECET may emphasize projects designed for different age levels.
- To Encompass a Broad Range of Subject Areas within the Overall Context of the Grant Program. NECET is imposing no limits on the scope of the proposals that may be submitted for funding consideration. In selecting the goals for their projects, applicants may choose to encompass a broad array of targeted skills. Alternatively, applicants may choose to center on a single learning need.

Funding Availability

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub.L. No. 103–317, 108 Stat. 1724, 1747 (1994), provides the Department of Commerce $2.5 million in assistance for the National Endowment for Children's Educational Television under 47 U.S.C. § 394, to be used for the creation and production of television programming specifically directed toward the development of fundamental intellectual skills. Congress has appropriated a total of $2.5 million for NECET for Fiscal Year 1995. NTIA anticipates that in FY 1995 NECET will fund up to twelve grant awards, depending on the nature of the projects and the need of the recipients, and that NECET awards will range from $100,000 to $400,000.

Matching Requirements

NECET grant recipients will be required to provide matching funds toward the total eligible costs of their project. Matching funds may be in the form of cash or in-kind contributions (see OMB Circular A–110). An applicant's matching share normally must be drawn entirely from non-Federal sources. Funds from another Federal Agency may be used as the source of an applicant's match only when those funds have been specifically authorized by that agency's enabling legislation for use as a non-Federal match for Federal grants.

The Department of Commerce will award funds up to 50 percent of the total eligible costs of a project, unless extraordinary circumstances warrant a grant of up to 75 percent. Since NECET funds are limited, applicants are encouraged to provide as much outside funding and matching support as possible, and to explore co-production and co-funding opportunities for their projects. Grant funds under this program will be released in direct proportion to non-Federal matching funds raised and/or documented.

Type of Funding Instrument

The funding instrument for awards made under this program will be a grant.

Eligibility Criteria

Any individual, partnership, association, joint stock company, trust, corporation (not-for-profit or for-profit), or state or local governmental entity is eligible to submit an application for NECET funding.

Award Period

Successful applicants will have up to twenty-four months to complete their project, although the grant award period will vary as a function of the complexity and scope of the project.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

The NECET grant program has a two-stage application process.

Preliminary Applications: All applicants are first required to submit a Preliminary Application (Pre-Application) that provides a brief narrative summary of the general nature of the proposed project. The Pre-Application consists of two parts: 1) a Standard Form 424 (SF–424) (Rev. 4–92) Application for Federal Assistance; and 2) a narrative summary of the general nature of the proposed project, not to exceed five single-spaced pages. An original and two copies of each complete Pre-Application is required for each project submission. No organization or individual is permitted to submit Pre-Applications for more than three separate projects. Videotapes, audio cassettes and other related materials are not permitted with Pre-Applications. A copy of the SF–424 and an outline of points to be included in the Pre-Application narrative summary is contained in the National Endowment for Children's Educational Television Guidelines for Preparing Applications: 1995 Grant Cycle. This booklet may be secured by contacting the NECET Office by telephone, fax, or electronic mail, as described in the "Addresses" section above.

Full Applications: The Full Application is a comprehensive document that consists of required Federal forms, four sections of additional information, and three exhibits. Detailed instructions for completing the Full Application are contained in the Guidelines for Preparing Applications: 1995 Grant Cycle cited earlier.

In addition, those applicants requesting funds for production of a series, individual program(s), or special program(s) are also strongly recommended to submit a half-inch VHS videocassette that represents the quality of work of which the applicant is capable. This tape may take the form of a pilot or other sample tape of the proposed project, or may be a tape of an unrelated nature that demonstrates the creative and technical capability of the applicant. Applicants requesting NECET funds for pre-production activities only (e.g., planning, research, development, scripting, etc.) and/or for production of a pilot program do not need to submit a videocassette with their Full Applications. Videocassettes will not be returned.

Because of the high level of public interest in projects supported by NECET, the program anticipates receiving requests for copies of applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. Applicants may identify sensitive information and label it "confidential" to assist NTIA in making disclosure determinations.

Project Funding Priorities

In general, NECET funds are available to support all of the varied tasks associated with the production of children's television, and project eligibility is not limited to any particular stage of production or type of activity as long as it is germane to the production of children's television programming that furthers the objectives of the 1990 Act.

In general, NECET expects to award funds for four categories of projects:

Series: To initiate new series productions, or to complete a series project already underway.

Individual Programs or Specials. To support production of new individual program(s) or special(s).

Pilot Programs. To support various pre-production activities (e.g., planning, research, development, scripting, etc.) up through and including the production of pilot program(s).

Pre-Production Projects. To support preliminary pre-production activities, such as planning, research, development and/or scripting, that will eventually lead to production.

Programming funded by NECET is primarily intended for general at-home viewing by children, although it may also have value and be used within a school-based instructional context.

Evaluation Criteria

Five Evaluation Criteria will be used to evaluate all NECET Pre-Application and NECET Full Application submissions received during the FY 1995 grant cycle. These criteria, and the weight accorded each criterion, are as follows:

Creativity (30 points): The proposed project must display a high degree of creativity, originality and artistic imagination and, ideally, be unique and innovative in its approach.

Clarity of Educational Objectives; Plan for Evaluating Educational Effectiveness; Indication of Developmental Appropriateness (30 points): Applicants must provide: (1) A clear statement of the educational objectives of their proposal; (2) a plan for evaluating the educational effectiveness of the proposed project, and (3) an indication that the proposed project is developmentally appropriate for the target audience specified in the proposal.

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Conformance with NECET Objectives (15 points): Applicants must satisfy NECET that their project will further the three NECET objectives discussed earlier in this Notice: (1) To Improve the Fundamental Intellectual Skills of Children through the Vehicle of Television Programming; (2) To the Extent Feasible, to Support the Development of Programming for Children Aged 6 to 10; and (3) To Encompass a Broad Range of Subject Areas within the Overall Context of the Grant Program.

Applicant Capability (15 points): Applicants must indicate why NECET may be confident that they will be able to complete the proposed project in a satisfactory manner. Applicants may demonstrate this capability in various ways, including documentation of previous experience, description of qualifications of key personnel associated with the project, and presentation of a well-developed plan.

Thoroughness of Project Plan (10 points): Applicants must provide evidence of a well-developed and sound plan for execution of their project, including a detailed and realistic budget that accurately reflects the needs of the project. Project timetables are also acceptable and may be included in an attachment to the application.

Selection Procedures

NECET grants are awarded on the basis of a competitive review process.

Pre-Applications: Upon receipt, each NECET Pre-Application will be thoroughly reviewed and evaluated by outside reviewers with demonstrated expertise in the area of children's television programming. Criteria to be used in the evaluation of each proposal are listed in the "Evaluation Criteria" section of this Notice. Reviewers will provide written comments and assign numerical points to each Pre-Application proposal, and then make a non-binding recommendation to NECET staff regarding each project. Written comments and points assigned by reviewers will not be made available to the applicant, and Pre-Application submissions will not be returned. Following reviewer evaluation, the NECET Director will prepare a proposed slate of the highest rated Pre-Applications based solely on the comments, recommendations and points assigned by outside reviewers. This proposed slate is then submitted for consideration to the NTIA Administrator, who, as the selecting official, shall make a final determination regarding successful and unsuccessful Pre-Applications. Successful and unsuccessful Pre-Applicants will be notified by letter about their proposals in early June, 1995. Those determined to be unsuccessful Pre-Applicants will be dropped from further consideration for the FY 1995 NECET grant cycle. Those determined to be successful Pre-Applicants will be invited to submit Full Applications to NECET. However, not all successful Pre-Applicants who are invited to submit Full Applications will be funded.

Full Applications: NECET Full Applications and, as may be relevant, accompanying videocassettes will be thoroughly reviewed by a panel of outside reviewers with demonstrated expertise in the area of children's television programming. The review panels will evaluate Full Applications using criteria identical to those used in the evaluation of Pre-Applications. These criteria are listed elsewhere in this Notice. Reviewers will provide written comments and assign numerical points to each Full Application proposal, and then make a non-binding recommendation to NECET staff regarding each project. Written comments and points assigned by reviewers will not be made available to the applicant, and Full Application submissions and videocassettes will not be returned. Following review panel evaluation, the NECET Director will prepare a proposed slate of the highest rated projects based solely on the comments, recommendations and points assigned by review panelists. This proposed slate is then submitted for consideration to the NTIA Administrator, who, as the selecting official, shall make a final determination regarding those Full Applications to be negotiated for a possible grant award. In making their final decisions, the NECET Director and the NTIA Administrator will consider the following selection criteria:

- The written evaluations and points assigned by the outside reviewers;
- The degree to which the slate of applications, taken as a whole, satisfies NECET Objectives and Project Funding Priorities;
- The extent to which a proposed children's television project is intended to be used within a general at-home viewing context, as opposed to a school-based instructional viewing context;
- The ability of an applicant to immediately proceed with the project, as demonstrated by the availability and amount of non-Federal matching funds, either raised or documented; and
- The availability of NECET funds.

After applications have been selected in this manner, negotiations will take place between NECET staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original funding request and what NECET proposes to fund. Not all applicants who are contacted for negotiation will necessarily receive a NECET grant. When the negotiations are completed, the NECET Director will recommend final award actions to the NTIA Administrator. Applying the same factors listed above, the Administrator will then make the final selection of grant recipients from the pool of negotiated applications.

Program Standards

Programs produced with NECET grant funding must meet broadcast-quality production and technical standards consistent with those of the Public Broadcasting Service (PBS). All programs must be closed-captioned. Programming funded by NECET may not be interrupted with commercial advertising messages for the life of the program. All NECET-funded programming must be aired with a funding (underwriting) credit for the National Endowment for Children's Educational Television (NECET), and any ancillary materials produced with this grant shall contain a similar credit. Such funding credit shall be consistent with common practice for funding announcements on public broadcasting stations.

Rights, Clearances, and Distribution

NECET grant recipients are entitled to retain continuing rights to the programming that they create with NECET funding assistance. Recipients of NECET grant funding must comply with all requirements of United States copyright law, including requirements to obtain permission from owners of copyright in works of authorship and to pay any required license fees. Accordingly, NECET requires that all completed creative works supported by NECET funding have appropriate clearances, releases, and/or other documentation demonstrating that the organization or individual producing the programming either has obtained rights for the use of all elements in the programs, or has itself originally created the work. These rights and clearances apply to all elements of such programming.

NECET Applicants should note that they will need to obtain an option on any material critical to the successful completion of their projects *before* they apply to NECET, unless all such material has already been cleared or is entirely original with the applicant.

Other Requirements

Federal Policies and Procedures: Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance: Unsatisfactory performance under prior Federal financial assistance awards may result in an application not being considered for funding.

Pre-award Activities: If applicants incur any costs prior to the awarding of funds, they do so solely at their own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce or NTIA to cover pre-award costs.

No Obligation for Future Funding: If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce. Receipt of a NECET grant, however, will not eliminate the recipient from consideration for future funding.

Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

- The delinquent account is paid in full;
- A negotiated repayment schedule is established and at least one payment is received; or
- Other arrangements satisfactory to the Department of Commerce are made.

No Funding for Sectarian Purposes: The Department of Commerce has a long-standing policy of not funding projects for purposes the essential thrust of which is sectarian. Consistent with this policy, NECET will not fund projects the essential thrust of which is sectarian. Sectarian organizations, however, are eligible applicants and may request funds for non-sectarian purposes. [Compare with NTIA Public Telecommunications Facilities Program (PTFP) regulations at 15 C.F.R. §§ 2301.1, 2301.22(d); Fordham University v. Brown, No. 93–2120 (CRR)(D.D.C. June 29, 1994), appeal docketed, No.94–5229 (D.C.Cir. Aug. 22, 1994)]

Name Check Review: All non-profit and for-profit applicants are subject to a name check review process. Officials of state and local governments and officials of accredited colleges and universities who are acting on behalf of their respective entities in applying for assistance are exempt from the name check review process. In addition, all elected officials of state and local governments who are serving in capacities other than their elected capacities when applying for assistance are also exempt. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." The following explanations are hereby provided:

- Non-procurement Debarment and Suspension. Prospective participants (as defined at 15 C.F.R. Part 26, Section 105) are subject to 15 C.F.R. Part 26, "Non-procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;
- Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants) and the related section of the certification form prescribed above applies;
- Anti-Lobbying. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater; and
- Anti-Lobbying Disclosure. Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications: Grant recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements: A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Requirement to Buy American-Made Equipment or Products: Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b).

Paperwork Reduction Act: The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Approval Nos. 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Executive Order 12866: This Notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: March 17, 1995.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–7109 Filed 3–23–95; 8:45 am]

BILLING CODE 3510–60–P

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Proposed 1995–1996 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The Service also requests proposals from Indian tribes that wish to establish special migratory bird hunting regulations. These regulations will permit the taking of the designated species during the 1995–96 season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. The Service has also employed guidelines to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. These seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and are designed to permit harvests at levels compatible with migratory bird population and habitat conditions.

DATES: Tribal proposals and related comments should be submitted by June 2, 1995. The comment period for proposed early-season frameworks will end on July 21, 1995; and for proposed late-season frameworks on September 4, 1995. The public hearing for early-season frameworks will be held on June 22, 1995, at 9 a.m. The public hearing for late-season frameworks will be held on August 3, 1995, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to testify at either hearing may be mailed to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information on tribal proposals contact Keith A. Morehouse, and for all other issues regarding annual migratory bird hunting regulations contact Ron W. Kokel. Both Dr. Morehouse and Mr. Kokel may be contacted at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual regulations-development process. The remaining proposed and final rulemaking documents will be published separately. For inquiries on tribal guidelines and proposals, please contact the following personnel.

—Region 1 - Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; (503) 231-6164.

—Region 2 - Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 766-8048.

—Region 3 - Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056; (612) 725-3313.

—Region 4 - Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679-4000.

—Region 5 - George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; (413) 253-8576.

—Region 6 - John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; (303) 236-8676.

—Region 7 - Robin West, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786-3423.

Notice of Intent To Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1995–1996 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. For the 1995–96 hunting season, regulations will be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1995–96 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1995–1996

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most migratory game birds until later in the summer.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1995–1996 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents which outline hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Tundra Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

Two public hearings pertaining to 1995–1996 migratory game bird hunting regulations are scheduled. Both hearings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 22, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. This hearing is for the purpose of reviewing the status of migratory shore and upland game birds. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 3, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings. Persons wishing to make a statement at these hearings should write to the address indicated under the caption **ADDRESSES**.

Requests for Tribal Proposals

Background

Beginning with the 1985-86 hunting season, the Service has employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to put forward a request for consultation as a result of the proposal being published in the **Federal Register**. The Service will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, the Service has reached annual agreement with tribes (for example, in Minnesota, the Mille Lacs Band of Chippewa Indians) for hunting by tribal members on their lands or on lands where they have reserved hunting rights. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

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Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1995-96 hunting season must submit a proposal that includes: (1) the requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

Pertinent details in proposals received from tribes will be published for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1995–96 hunting season should submit their proposals as soon as possible, but no later than June 2, 1995. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations. Promulgation of final migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

DATE: March 25, 1995
—National Waterfowl Council, 3:30 p.m.

DATE: March 26, 1995
—Atlantic Flyway Council, 9:00 a.m.
—Mississippi Flyway Council, 8:00 a.m.
—Central Flyway Council, 8:00 a.m.
—Pacific Flyway Council, 10:00 a.m.

The Council meetings will be held at the Minneapolis Hilton and Towers, Minneapolis, Minnesota.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1995–96 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act and the Paperwork Reduction Act

This document was reviewed under Executive Order 12866.

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, in accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1981 and revised in 1990. Although a FRIA is no longer required, the economic analysis contained in the FRIA has been reviewed and the Service has determined that it meets the requirements of Executive Order 12866. This analysis was updated for 1995. The FRIA update included waterfowl hunter and harvest information from the 1993–94 season. The summary of the 1995 update follows:

"New information which can be compared to that appearing in the 1990 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1993 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1993–94 hunting season. Decreased production in prairie Canada and increased production from the northcentral U.S. resulted in a total 1993 fall flight of ducks similar (–5 percent) to that predicted in 1992. Because the status of ducks has not yet fully recovered from the drought of the 1980's, hunting regulations were developed that maintained the reduced hunting opportunity established in the 1988–89 season. There were no significant changes in hunter activity between the 1992–93 and the 1993–94 seasons. Hunter numbers decreased by 1 percent and waterfowl hunters spent an average of 3 percent more days hunting, resulting in a 2 percent increase in the total number of hunting days. Many nonregulatory factors, however, influence hunter participation. There was essentially no change in the total duck harvest between the 1992–93 and the 1993–94 seasons."

Copies of the updated analysis are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES**.

These regulations contain no information collections subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of these regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018–0005, 1018–0006, 1018–0008, 1018–0009, 1018–0010, 1018–0015, 1018–0019, and 1018–0023.

Authorship

The primary authors of this proposed rule are Keith A. Morehouse and Ron W. Kokel, Office of Migratory Bird Management, (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1995-96 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

Dated: March 10, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1995–1996 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils; specific framework proposals (including opening and closing dates, seasons lengths, and bag limits) may be deferred. Unless otherwise specified, no change from the final 1994–95 frameworks of August 17 and September 27, 1994, (59 FR 42474 and 49304) is proposed. Specific preliminary proposals that vary from the 1994–95 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. General Harvest Strategy

Despite the large volume of information available on hunter activity, duck harvest levels, and population status, the annual process of setting duck hunting regulations has often been characterized by a lack of consensus among managers on an appropriate harvest strategy. The Service believes there are three fundamental reasons for the annual debate over setting duck hunting regulations: (1) harvest-management objectives have not always been clearly stated or agreed upon, (2) a large number of regulatory options has hindered our assessment of their effects; and (3) management of an international, migratory resource is difficult and the complex relationship between harvest and population status could be more fully understood. To address these difficulties, the Service is developing a more formal and objective decision-making process. This process requires clear identification of harvest-management objectives, a limited number of regulatory options, and alternative, yet credible, hypotheses regarding the influence of harvest on duck populations. Using these elements, a harvest strategy can be developed to help managers better understand the effects of hunting, while also providing maximum harvest opportunities consistent with long-term resource conservation goals. The Service proposes to implement some aspects of this process for the 1995–96 hunting season, with broader implementation to occur over the next few years.

This year, as part of the implementation process, the Service proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (hereinafter the Plan). Under this harvest-management objective, the relative importance of hunting opportunity increases as populations approach the goals in the Plan (e.g. 8.1 million mallards). Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while the Service believes that the Plan's population goals would tend to exert a conservative influence on overall duck harvest management, other factors, such as habitat, also need to be considered.

For the 1995–96 season, the Service proposes that three regulatory options be considered: restrictive, moderate, or liberal seasons. Each regulatory option or "package" would contain Flyway-specific season lengths, bag limits, and framework opening and closing dates, mutually agreed upon by the Service and Flyway Councils. Public comment would also be solicited. Several reasons exist for considering discrete regulatory "packages." First, the Service believes that regulatory changes should be of sufficient magnitude to cause measurable changes in duck harvest rates. Minor changes (i.e., "tinkering") in regulations that have little or no consequential overall impact on waterfowl resources and harvest can confuse both hunters and the public. Second, waterfowl managers must have adequate time to evaluate proposed regulatory options. This evaluation involves a determination of expected duck harvest rates and resource impacts. Frequently, adequate time for a thorough evaluation is not available when new regulatory options are introduced late in the regulations-setting process. Introducing prescriptive regulatory options or packages early in the regulations-setting process allows managers to carefully and thoroughly evaluate the expected resource impacts.

An equally important component of the regulatory packages is guidelines for their use. Flyway Councils and waterfowl managers must know when, and under what conditions, to use each regulatory package. These guidelines are currently being developed and will be proposed by the Service and made available for public comment. The guidelines will specify the particular regulatory package appropriate for various combinations of duck population size and wetland conditions on the breeding grounds. For example, liberal hunting regulations would be proposed when population levels were high (relative to Plan goals), breeding-habitat conditions were exceptionally good, or both. The Service believes it is important that these guidelines be consistent with the goal of maximum sustainable hunting opportunities and the desire to achieve population levels specified in the Plan.

In setting annual hunting regulations for ducks, the Service considers not only biological, but sociological, recreational, and economic impacts. The proposed process described above is intended to improve our understanding of the biological impacts of hunting by making more efficient use of harvest and population data from current waterfowl monitoring programs, while simultaneously pursuing traditional harvest and population objectives. The Service will continue to rely on the established process of public input for considering non-biological impacts.

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Specific details of this year's proposed regulatory "packages" for each Flyway, guidelines for the use of these regulatory packages, and a general description of the harvest management objective and the alternative hypotheses of duck population dynamics that were considered in this proposed process will be available for public comment on March 24, 1995, by writing to the address under the caption **ADDRESSES**. Additional information regarding specific population goals identified in the North American Waterfowl Management Plan will be available as well at the address provided above.

F. Zones and Splits

In 1990, the Service determined that the use of zones and split seasons was an acceptable means by which States could redistribute harvest opportunities and established a long-term strategy for the use of zones and split-season options for duck seasons (55 FR 38901–38902). This long-term strategy contained guidelines that limited selection of zone/split options available to States to 5-year intervals. The 1995–96 season will be the final year of the 5-year assessment period and the Service reminds those States that made changes during the last open season in 1990 that a review of pertinent data (e.g. estimates of harvest, hunter numbers and success) will be required at the end of this year's hunting season. This review does not have to be the result of a rigorous experimental design, but nonetheless should assist the Service in ascertaining whether major changes occurred as a result of zone/split regulations. As a matter of information for preparation of proposals for 1996–97, the Service does not anticipate any changes in the existing guidelines governing zone and split options for the upcoming open season.

Temporary Zone in the Southern San Joaquin Valley of California. In 1994, the Service allowed the State of California to continue this zone on a temporary basis. The Service acknowledges that the Southern San Joaquin Valley Zone appears to provide economic incentives for maintaining privately-managed wetlands, especially during recent years when season lengths have been relatively short. Accordingly, the Service will consider allowing this zone to continue on a temporary basis during the final year of the 5-year moratorium on zone changes pending review of harvest and hunter participation information.

G. Special Seasons/Species Management

i. Canvasback Management

In 1994, the Service re-opened the hunting season on canvasbacks. Based on population levels, expected production, and projected harvest estimates, the Service believed that a season in all Flyways with a 1-bird daily bag limit was warranted. The Service is aware of the high harvest potential for this species and will evaluate last season's canvasback harvest. For this year, the Service will defer a decision on canvasback hunting until the 1994–95 harvest and 1995 spring population status information are available. The Service proposes no change in the process employed for deciding on regulations governing the harvest of canvasbacks.

ii. September Teal Seasons

In 1990, the Service established a strategy for the use of shooting hours which stated that shooting hours would begin at sunrise unless States could demonstrate that the impact of presunrise shooting hours on nontarget duck species was negligible. During the 1993–94 teal seasons, several Mississippi and Central Flyway States conducted evaluations of shooting hours for teal seasons. In 1994, the Service allowed those States in the Mississippi and Central Flyways that had conducted evaluations of presunrise shooting hours for teal to begin shooting hours at one-half hour before sunrise, since the evaluations demonstrated that the attempted harvest of non-target species was no different between pre- and post-sunrise periods in those States. The Service notes, however, that final reports of the evaluations are still needed from the Mississippi and Central Flyway States and believes that comprehensive final reports are necessary for completion of the evaluations. The Service has not yet received these reports and requests that they be submitted prior to the June regulations meetings.

iii. September Teal/Wood Duck Seasons

Since these seasons were last reviewed in the early 1980s, the Service requests that Florida, Kentucky, and Tennessee provide an update of recovery and survival rates, harvest estimates, and derivations of banded birds harvested during these seasons. Preferably, these reports should be submitted prior to this summer's Flyway meetings. The Service will make a full assessment of these seasons pending the completion of the cooperative Wood Duck Initiative final report due in 1996.

4. Canada Geese

A. Special Seasons

The Service is currently reviewing the existing procedures for establishing and evaluating special Canada goose seasons in the Atlantic and Mississippi Flyways with the intent of streamlining and simplifying the process. Possible changes the Service is considering include the elimination of the experimental-status requirement for special seasons conducted between the 1st and 15th of September. However, States not participating in the Migratory Bird Harvest Information Program would continue to be responsible for monitoring hunter activity and harvest during these special seasons. For seasons held after September 15, the Service anticipates that current requirements for special Canada goose seasons will continue.

B. Regular Seasons

In the Atlantic Flyway, the Service and the Flyway Council will cooperatively conduct an assessment of the just concluded 3-year harvest-reduction program. It is likely that further adjustments to regular season harvest regulations will be proposed.

The Service also remains concerned about the status of the Southern James Bay and Dusky Canada goose populations. The Service will carefully review and consider all harvest regulations to ensure that these populations are not impacted.

5. White-fronted Geese

In 1994, the Service denied the Pacific Flyway Council's request for liberalization of seasons and limits on white-fronted geese in Washington, Oregon, and California because the population objective had not been attained and because a Flyway harvest strategy had not been completed. Given that the most recent 3-year average index of Pacific Flyway white-fronted geese is 283,600, with the 1994 fall count being 324,800, the Service now believes some liberalization is warranted, provided a suitable harvest strategy is developed beforehand.

6. Tundra Swans

In 1990 and 1991, the Service agreed to experimentally increase the number of permits available to North and South Dakota (1,000 each) for tundra swan hunting. The additional permits were also experimentally allocated for the 1992–94 hunting seasons. An assessment of these experimental seasons in the form of a final report should be submitted to the Service by these States by June 1, 1995. The final report should contain biological information collected during these experimental seasons that would address the objectives identified in the Memorandum of Understanding between the Service and each State. These objectives include: (1) to determine the fall distribution, chronology of migration, and identification of major concentration areas of tundra swans in each State; (2) to determine the number of tundra swans harvested by permittees in each State; and (3) to evaluate hunter activity and success, hunting methods and harvest locations and estimate crippling losses associated with the hunting of tundra swans. To properly address these objectives the Service encourages these States to follow the evaluation guidelines in the "Eastern Population Tundra Swan Sport Hunting Plan" that was completed in 1988, which specifies that evaluation procedures should include an annual harvest survey and a minimum of 2 years of population survey information.

In 1994, the Service restricted seasons and hunt areas in Utah and required that Montana, Utah, and Nevada measure the accidental take, if any, of trufnpeter swans by tundra swan hunters. Pending reports on the occurrence and take of trumpeter swans in the hunt areas, possible additional changes may be warranted. The Service believes tundra swan hunting in these three States is warranted but seasons may be further modified to minimize, but not preclude, the accidental take of trumpeter swans.

14. Woodcock

The Service is concerned with the gradual long-term declines in woodcock populations in both the Eastern and Central Management Regions. Although habitat changes appear to be the primary factor in the declines, adjustment of harvest opportunities may be appropriate in light of current population trends. The Service and the Flyway Councils should continue their ongoing review of the status of woodcock and cooperatively develop a harvest-management strategy.

15. Band-tailed Pigeons

The Service supports the continuation of seasons on both the Coastal and Interior populations. However, the Service remains concerned about the long-term decline in the Coastal population and continues to support restrictive harvest regulations. As in 1993 and 1994, all States having band-tailed pigeon hunting seasons must again require either participation in the nationwide Migratory Bird Harvest Information Program or require band-tailed pigeon hunters to obtain mandatory State permits to provide sampling frames for obtaining more precise estimates of band-tailed pigeon harvest. Those States not participating in the Harvest Information Program will be required to conduct a harvest survey and provide the results to the Service by June 1 of each year. The Service will continue to closely monitor population and harvest information from both populations and will evaluate this information in June prior to making any decisions regarding the 1995–96 seasons. Indian tribes also should consider this situation when proposing harvest regulations for this species.

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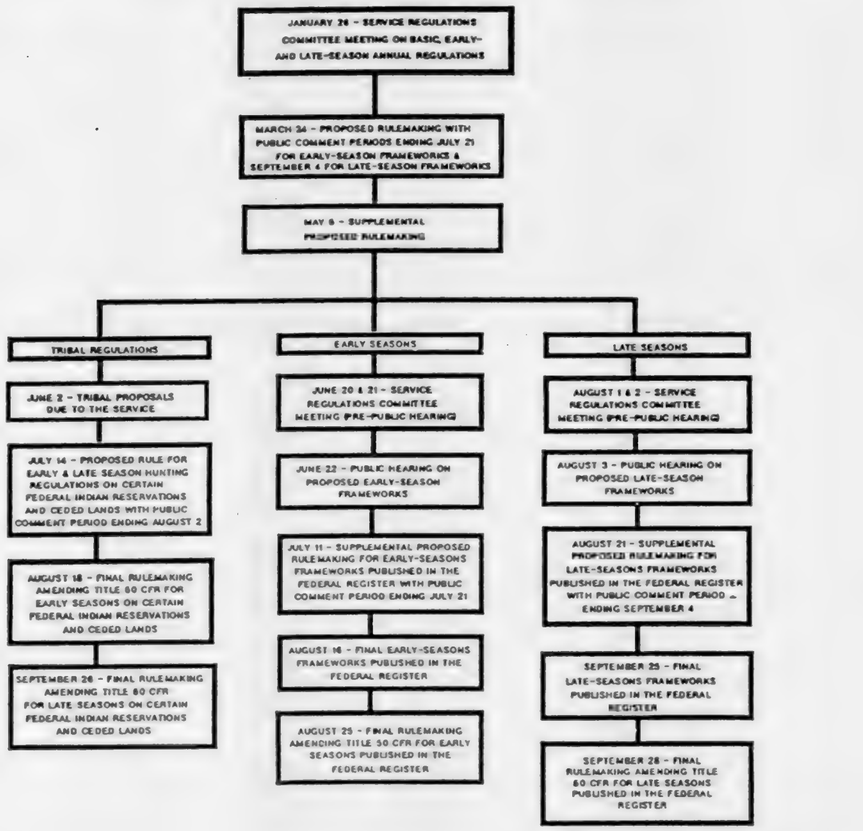
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[FR Doc. 95–7304 Filed 3–23–95; 8:45 am]
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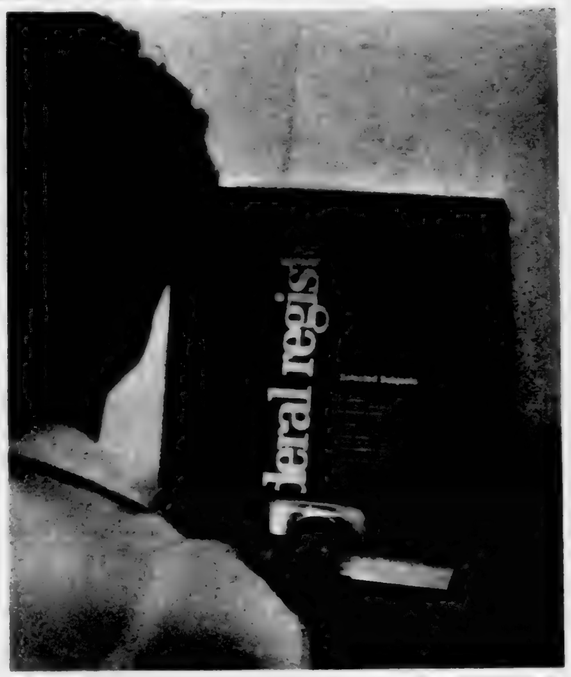
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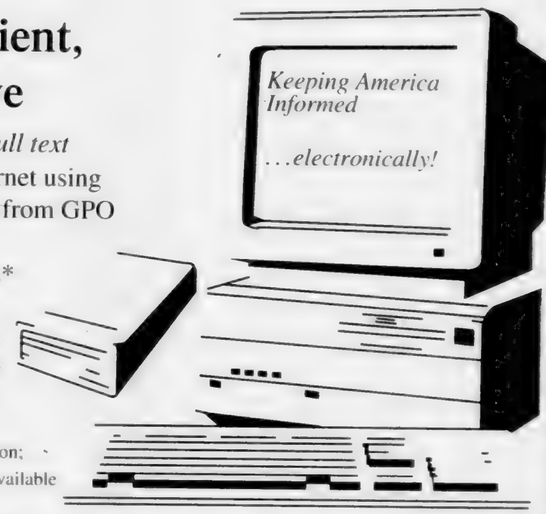
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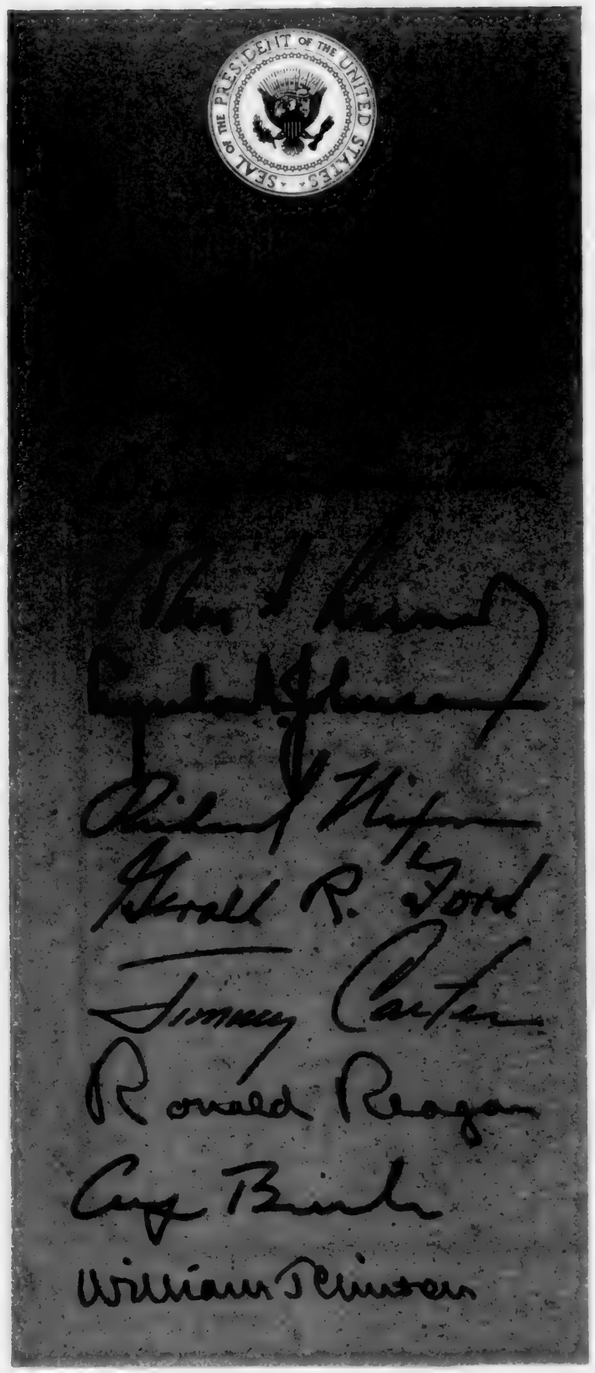
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 61

RIN 3150–AD33

Low-Level Waste Shipment Manifest Information and Reporting

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to improve low-level waste (LLW) manifest information and reporting. The amendments will: Improve the quality and uniformity of information contained in manifests that are required to control transfers of LLW that is ultimately intended for disposal at a land disposal facility; establish a set of forms that allows LLW to be tracked from its origin, and serves as a national Uniform Low-Level Radioactive Waste Manifest to meet NRC, Department of Transportation (DOT), and State and Compact information requirements; require LLW disposal site operators to electronically store container-specific manifest information; and require the disposal site operators to be capable of reporting the stored Uniform Manifest information on a computer-readable medium (e.g., magnetic disks or tapes).

EFFECTIVE DATE: This regulation becomes effective on March 1, 1998. However, licensees may implement the regulation at an earlier date, if a LLW disposal facility or its regulatory authority, to which shipped LLW is to be ultimately consigned, desires earlier implementation of these provisions.

ADDRESSES: Copies of documents relating to the proposed rule that was published on April 21, 1992 (57 FR 14500), or copies of this document may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC 20555. Copies of NRC's Uniform Low-Level Radioactive Waste Manifest forms and the general instructions can be obtained from the Information and Records Management Branch, Mail Stop T–6 F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or telephone (301) 415–7230.

FOR FURTHER INFORMATION CONTACT: William R. Lahs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6756 or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6196.

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I. Background

Purpose of the Revision

The purpose of this amendment to 10 CFR parts 20 and 61 is to modify the NRC's LLW shipment manifest information and reporting requirements to address the regulatory information needs for the transfer and disposal of LLW. The amended information defines the chemical, physical, and radiological properties of LLW that can be used to determine the expected performance of disposal facilities during operations and following closure. Thus, a principal objective of these amendments is to ensure that the information, initially reported by those generating the LLW, eventually received and recorded by the LLW disposal facility operator, and made available to the NRC or an Agreement State regulatory agency, is sufficiently comprehensive and consistent for its intended use. To enhance regulatory oversight and assist regulatory agencies and others in their assessments of normal operations or potential problems, such as questions about the adequacy of a particular disposal container, the amendment requires that the manifest information be stored electronically at the disposal facility operated under an NRC license and be capable of being conveyed by a computer-readable medium. The specific content and schedule for any reports containing the stored information will be established as a condition of the license or, if necessary, in a future rulemaking action.

The Commission recognizes that several entities have legitimate needs for LLW shipment information that should reasonably be included on a shipment manifest. In fact, Compacts,[1] unaffiliated States, and an increasing number of consignees, including disposal facility operators, have interests in waste shipment and disposal information that could be contained in a shipment manifest. To provide a degree of standardization in format and a baseline of manifest

[1] With the passage of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and the Low-Level Waste Policy Act of 1980, many States have organized into regional Compacts. These Compacts, together with unaffiliated States, are attempting to facilitate the development and operation of new disposal facilities.

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information, the amendment requires the use of an NRC-developed Uniform Low-Level Radioactive Waste Manifest. This manifest, to which additional information can be added, responds to a request from the Host State Technical Coordinating Committee (TCC)[2] and the expressed views of several other parties having an interest in the information contained in the manifest. The uniform manifest meets DOT shipping paper requirements, contains the information required by the NRC, and provides a baseline set of information to address Compact, unaffiliated State, and consignee needs.

Low-Level Waste Shipment and Disposal

LLW may be shipped to a LLW disposal facility directly from a waste generator (potentially after the waste has been sent offsite for processing and has been returned) or may be shipped from a waste collector or processor. The collector is a licensee who typically handles prepackaged waste from hospitals, laboratories, or other licensees who generate only small volumes of waste. A shipment from a collector may have been temporarily stored at the collector's facility and, when eventually transported to a disposal facility, shipped with other containers of waste obtained from several generators.

Waste may be shipped from a waste processor, who has received radioactive material or waste from other licensees (generators, collectors, or other processors), and has repackaged the waste after possibly changing the waste's chemical or physical characteristics. For example, the waste processor may have compacted or incinerated the waste or segregated contaminated waste from non-contaminated material or waste. A single container of waste shipped from a waste processor may contain wastes from a number of different generators.

Companies generating, collecting, processing, or disposing of the waste are licensed either by the NRC or by an Agreement State.[3] Any step in the waste management chain (e.g., temporary storage by a collector, processing, or disposal) may have occurred in a State different from that in which the waste was generated. Thus, from a radiological safety standpoint, several regulatory entities may have an interest in particular waste shipments and disposals.

Each shipment of LLW is currently accompanied by a multi-page manifest that describes the shipment contents. These manifests, which include specifically formatted versions developed by the disposal facility operators, are frequently large multi-copy detailed documents that contain information required by the Commission's regulations in 10 CFR part 20,[4] DOT regulations in 49 CFR part 172, and State requirements imposed as conditions on disposal facility licensees. The manifests also include information required by the consignee who receives the LLW or radioactive material shipment.

Three disposal facilities are currently in operation. The Barnwell, South Carolina, disposal facility is operated by Chem-Nuclear Systems, Inc., the Richland, Washington, facility is operated by US Ecology, Inc., (both of these facilities are only accepting waste from their respective Compacts), and the Utah facility near Clive, Utah, is operated by Envirocare of Utah, Inc. Upon receipt of a shipment of LLW at these facilities, operators perform quality control checks on the shipment and the information in the manifest. Portions of the manifest information are transferred into their computer-based recordkeeping systems. The existing disposal facility operators have developed computer systems to store and process the voluminous manifest information because the operators receive thousands of shipment manifests each year.

Rulemaking History

In 1989, the NRC initiated this rulemaking to improve the quality and consistency in reporting of information that was contained on manifest documents. In that same year, a draft of the proposed rule was provided to the Agreement States for comment. As a result of this early interaction, the Commission became aware that a significant improvement to the current manifesting system would be the development of a national Uniform Low-Level Radioactive Waste Manifest. This was described in a letter to former Chairman Carr in May 1990 from the TCC and a corresponding letter from the LLW Forum. The NRC agreed that incorporation of a uniform manifest would provide a number of advantages and agreed to consider this concept. In November 1990, the TCC provided a draft uniform manifest for the NRC's consideration.

The NRC seriously considered the recommendations of the TCC in developing a draft uniform manifest. The NRC also consulted with the DOT on those parts of the proposed rule and uniform manifest that address DOT radioactive material transportation (shipping paper) requirements. Based on these interactions, a draft of the proposed rule and uniform manifest was developed and was sent to the Agreement States in March 1991. Subsequently, the proposed rule and uniform manifest forms were sent to DOT, and in July 1991, the NRC received DOT concurrence that the applicable parts of the uniform manifest met its requirements for shipping papers in 49 CFR part 172.

The proposed rule was published in the **Federal Register** on April 21, 1992 (57 FR 14500). The NRC received 40 comment letters on its proposed rule, and referenced forms and instructions. The issues raised by these commenters are discussed in Section III of this preamble. During the comment period, the LLW Forum members also received input from parties in their respective Compacts. As a result, the LLW Forum suggested that, to produce a more effective rule, the NRC should sponsor a public meeting to further discuss concerns raised by commenters, and thereby clarify the purpose of the rule. In response to this request, the NRC noticed a public meeting in the **Federal Register** on April 27, 1993 (58 FR 25578), and held the meeting on June 15, 1993, in Bethesda, Maryland. A transcript and detailed summary are available in the NRC Public Document Room.

The two most significant issues discussed at this meeting dealt with the format of the uniform manifest and how and when the manifest will be used. The formatting issue was a source of concern because the NRC changed the "look and feel" of the manifest from the style of the manifests developed by the LLW disposal facility operators and used for shipments consigned to these facilities. Furthermore, the NRC's formatting approach would require some data to be recorded twice on the same set of manifest forms. It was noted by NRC that the proposed changes were made to meet DOT requirements.

[2] NRC staff interactions with the Compacts and unaffiliated States has occurred principally with the Low-Level Radioactive Waste Forum and the Host State Technical Coordinating Committee (TCC). The TCC requested that the Commission consider the development of a uniform manifest in this rulemaking action, and on November 9, 1990, transmitted to NRC an example manifest with supporting material.

[3] Pursuant to the Atomic Energy Act of 1954, as amended, the Commission has the authority to relinquish part of its regulatory authority to a State, contingent upon making a determination that the State's regulatory program is compatible with the Commission's. Twenty-nine States, under formal agreements with the Commission, have assumed this regulatory responsibility. Negotiations with other States are underway.

[4] The Commission's LLW manifest and tracking requirements are codified in § 20.2006 and appendix F to 10 CFR part 20.

Although unable to satisfy individual commenters who prefer the existing manifest formats, the NRC staff has worked with DOT staff and has minimized any difference in the reporting burden for completing the uniform manifest as opposed to the burden imposed by existing manifests. As discussed in Section II of this preamble, before the compliance date specified in the rule, the NRC intends to facilitate trial uses of the manifest to ensure a common understanding of information reporting requirements.

The "manifest use" issue deals with industry concerns that the uniform manifest will be used to track radioactive material in addition to radioactive waste. The NRC manifest is designed to be used for the transfer of LLW, but the NRC recognizes industry's concerns that Compacts or unaffiliated States may require the NRC's or some other manifest format to be used for all shipments to processors or decontamination facility licensees. Existing NRC regulations require the manifesting of shipments of LLW to collectors and processors before eventual disposal. Nothing in these amendments changes that requirement, nor adds new requirements for shipments of material. Compacts or unaffiliated States may require additional reporting and this reporting could be accomplished through use of the NRC manifest format.

II. Implementation

Sections 20.2006, 61.12(n), and 61.80 (f) and (l) of the amendments to 10 CFR parts 20 and 61 in this final rule require NRC licensees to use the Uniform Manifest in appendix G beginning March 1, 1998. This late date is intended to allow existing LLW disposal facility licensees (all located in Agreement States), and their respective Agreement State regulators, to consider the length of time that the existing disposal facility will continue to operate under current rules before closure, and to make revisions to existing Agreement State regulations. For example, shippers to a facility that will close before March 1, 1998 need not use the new manifest unless required to do so by a disposal facility operator or its regulatory authority.

A few of the amendments in this final rule have been incorporated into the existing 10 CFR part 20 to be applicable at the stated future date in a manner that retains existing requirements in the interim. The majority of the new requirements imposed by this final rule have been included in a new appendix G to §§ 20.1001 through 20.2402.

NRC Agreement States each have regulations compatible with the existing 10 CFR part 20. Agreement States normally amend their regulations to preserve compatibility within three years after NRC issues final rules. In the Commission's view, it is desirable to publish this rule before any new LLW disposal site is licensed and operating. Even if Agreement State regulations are not yet final, LLW facility operators will have knowledge available on NRC's future manifesting requirements.

Before the Uniform Low-Level Radioactive Waste Manifest becomes mandatory, the NRC intends to initiate trial use of the manifest to reveal any practical problems in its use.

III. Summary of Public Comments and Changes From Proposed Rule

This section presents the principal issues raised in public comments on the proposed rule, the Uniform Low-Level Radioactive Waste Manifest forms, and the instructions that support the manifest. This section also contains the NRC response to the comments and a summary of the principal changes that were made to the proposed rule or to the Uniform Low-Level Radioactive Waste Manifest and its supporting instructions. This section has been arranged so that it corresponds to the structure of the proposed rule. However, a number of comments addressed specific aspects of the manifest forms or the supporting instructions. These comments are addressed following those that relate to specific provisions of the rule. The overall format involves a listing of the applicable rule section, any minor changes to that section, principal comments and issues, NRC's response, and the effect on the final rule section.

The NRC received 40 comment letters. Fourteen were from States or their representatives (i.e., LLW Forum and Compact Commissions). Eight were from LLW generators or their representatives. Six were from utilities or their representative. Four were from service industries (processors and collectors) or their representative. Four were from Federal agencies. Two were from environmental organizations. And two were from LLW disposal facility operators.

10 CFR Part 20

Section 20.2006 Transfer for Disposal and Manifests

In addition to the changes discussed in this section of the preamble, the final rule has been clarified by specifically stating that the manifesting requirements apply to any licensee who ships LLW to a licensed LLW land disposal facility, a waste collector, or a waste processor.

Comment: Four commenters believe that it is too early to promulgate a uniform manifest rule. These commenters pointed to the fact that this rulemaking would change 10 CFR part 20 before the new 10 CFR part 20 regulations have been implemented and argued that the Compacts and States are unsure, at this time, as to what information they need. One commenter stated that the uniform manifest would not be accepted by State jurisdictions. Other commenters believe that, to facilitate development of Compact or State LLW tracking systems, the rulemaking should be finalized without delay.

Response: These comments on 10 CFR part 20 have been overtaken by the fact that all licensees were required to implement the new standards for protection against radiation in 10 CFR part 20 by January 1, 1994. The NRC sees no other reason to delay promulgation of this rule. From NRC's perspective, the schedule for this rule is, in large measure, driven by the need to gain access to the waste form, content, and disposal container information that is expected to be useful in assessing the performance of LLW disposal sites. Although a significant fraction of this information is currently collected by the current disposal facility operators, the compatibility and completeness of the existing data was of concern. The NRC concluded that these drawbacks could be accentuated if each future LLW disposal site collected, stored, and reported data in an uncoordinated manner. Thus, the timing for implementation of the rule has considered the proposed schedules under which new LLW disposal sites are being developed.

Other parties also have critical interests in manifest information. The DOT imposes regulations applying to shipping papers for hazardous materials. The Compacts and States, given the responsibility for developing LLW disposal sites under provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), are interested in tracking LLW. Publication of the rule, at this time, provides these parties the information requirements needed to effectively develop their tracking systems and allows all parties involved in LLW shipments to become familiar with the presentation of shipping paper information that has been found acceptable by DOT.

Finally, because all the existing disposal sites are located in Agreement

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States, these States must be provided sufficient time to work closely with the NRC and their licensees, especially existing LLW disposal facility operators, to implement this rule. To facilitate a smooth transition, the rule allows approximately 3 years from publication for Agreement States to implement their regulations. The rule also allows implementation prior to March 1, 1998 for any LLW disposal facilities that are operating prior to this date.

On the question of manifest acceptability by State jurisdictions, the NRC is not aware of any States that would not accept the manifest. The NRC notes that State and Compact groups have been in the forefront in suggesting the need for a uniform manifest and that the manifest has been approved by the DOT as meeting that agency's shipping paper requirements.

Final rule: § 20.2006(b) has been divided into two paragraphs. The first, (b)(1), is the existing § 20.2006(b). The second, (b)(2), reflects the new § 20.2006(b), but with added phrases reflecting the implementation provisions discussed in Section II, affecting the change from appendix F to appendix G. A clarifying paragraph, § 20.2006(a)(2), has also been added to describe implementation provisions, and a consistent clarifying phrase has been added to §§ 20.2006 (c) and (d).

Comment: Several commenters questioned whether implementation of the rule would provide any significant public health and safety benefit. These commenters stated that the rule identifies no current problems or concerns that could jeopardize the safe transportation or disposal of LLW. Two commenters supported the rule citing the need for source term and waste characteristic information. One commenter believes that the increased cost of documentation and recordkeeping is outweighed by the need to have reliable up-to-date information.

Response: The benefit of the rule is tied to: (1) Being able to develop specific data needed for assessments to demonstrate compliance with the performance objectives in 10 CFR part 61, specifically pertaining to protection of the general population from the releases of radioactivity at LLW disposal facilities, and to the understanding of potential wastes requiring special consideration, (2) the improvement in quality and uniformity of data collected and reported that could affect the aforementioned performance estimates, and (3) efficiencies in data recovery and use when addressing health and safety issues. Benefits may also occur in transportation-related emergency response situations from the use of a standard DOT shipping paper format and a reduction in the manifest paperwork needed to accompany the LLW shipments. Finally, by providing information that the States and Compacts believe necessary to carry out their responsibilities, a consistency in view of LLW is fostered that could minimize the potential creation of waste that cannot be disposed of ("orphan waste") and assist in efficient and safe LLW management nationwide.

Final rule: No change.

Comment: Three commenters questioned whether the rule explicitly or implicitly expands the authority of LLW Compacts to regulate the shipment of radioactive materials that are not LLW.

Response: The rule does not change the intent of the regulations as expressed in § 20.311 of the expired provisions of part 20 or in appendix F to part 20. In both cases, the (waste) generating licensees who transfer waste to a licensed waste processor are subject to manifesting requirements. In this context, the rule provides definitions for "waste generator," "waste collector," and "waste processor." The rule is not viewed as having any impact on the Compact or State authorities defined in the LLRWPAA. In fact, the NRC believes that the manifesting required by the rule should provide most information sought by State or Compact LLW tracking systems. See comment and response under appendix F, I. Manifest—Introduction and Definitions sections, for related discussion.

Final rule: No change.

Appendix F to Sections 20.1001 Through 20.2401 (Appendix G to Sections 20.1001 Through 20.2402 in this Final Rule)

I. Manifest—Introduction

In addition to the changes discussed in this section of the preamble, corrections have been made to the Title number referred to in citing Environmental Protection Agency (EPA) regulations and the definition of "EPA identification number." The reference to Xerox copies has been deleted because the word "photocopy" is sufficient. In response to a point made by some commenters, the first paragraph under "I. Manifest" has been amended to be consistent with the remainder of the rule in stating that the rule applies only to shipments of LLW intended for ultimate disposal at a licensed LLW land disposal facility.

Comment: Five commenters and several attendees at the June 15, 1993, public meeting questioned the need for licensees to be required to complete the uniform manifest for shipments to waste processors, especially in those cases where the processor could be making significant changes to the volume, form, activity, or radionuclide concentration. These commenters also questioned whether shipments of LLW from processors or decontamination facilities back to the original "generators" for interim storage should be manifested using Form 541. One commenter questioned whether the intent of the rule was to require manifesting of "materials" (e.g., laundry from a nuclear facility). Another commenter stated that the rule is confusing with regard to when various forms must be used.

Response: The five commenters are correct in stating that the primary interest of NRC (i.e., for performance assessment purposes) is on the characteristics of LLW that is being shipped for disposal. However, the manifesting requirement for those shipping LLW to processors originated with the 10 CFR part 61 rulemaking. One of the reasons for this requirement was to develop a representative data base unskewed by large volumes of LLW that may pass through waste processors and collectors. Moreover, for waste being shipped to a processor for compaction, the information provided by the waste generator would be the basis for completing and certifying the manifest that the processor must complete when the LLW is forwarded for eventual disposal at a land disposal facility. In considering shipments to incinerators, the NRC agrees that NRC's need for incoming manifest information is not relevant to the gathering of information useful to conduct performance assessments but is directed at waste tracking. The NRC believes, based on its interactions with the States and Compacts, that these parties are primarily interested in large volume or high activity LLW for which they are responsible under the LLRWPAA. Thus, NRC believes the shipments to an "incinerator" processor should not generally be subject to the manifesting provisions of this rule and that any resultant contaminated ash should be considered residual waste assigned to the processor. If this interpretation is agreed to by the appropriate State or Compact authorities, manifesting of material sent to incinerators is not required. The case of shipments of laundry from a nuclear facility is more clear-cut. The incoming laundry shipment is not considered waste and would not be required by NRC to be manifested.

For shipments of LLW being shipped to and subsequently returned by a processor to the original "waste generator" or "generator," the NRC believes that, under these special circumstances, completion of the uniform manifest is not necessary to meet NRC needs and this exception has been included in the rule. The potential need for NRC to track LLW in storage may result in a reexamination of this exemption. Licensees should be aware that, because the shipments in question are LLW, the States or Compacts may require completion of manifest documentation. Note also, that if the processor ships processed LLW to a licensee other than the original generator, manifesting under this rule is required.

Final rule: A sentence has been added to the introductory paragraph of appendix G which states that "Licensees are not required by NRC to comply with the manifesting requirements of this part when they ship: (a) LLW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility, (b) LLW that is being returned to the licensee who is the 'waste generator' or 'generator,' as defined in this part, or (c) radioactively contaminated material to a 'waste processor' that becomes the processor's 'residual waste'."

Comment: Two commenters noted that NRC will allow the use of substitute forms if they are equivalent in all respects (content, size, shading, color, etc.). They noted that the requirement for equivalent color and shading will create problems for computer generated forms, and suggested the following definition, "* * * Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect of form, content and location of information."

Response: The NRC agrees that the requirement that any substitute forms use the same color and shading of the NRC Forms would likely preclude the use of licensee generated forms.

Final rule: The NRC is modifying the definition in a manner consistent with the commenter's proposal. The appropriate part of the definition will read, "* * * Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information."

I. Manifest—Definitions

In addition to the changes discussed in this section of the preamble, definitions have been added for the terms: "consignee" and "computer-readable medium." The definitions for "shipper" and "decontamination facility" have been expanded to provide the basis for deleting the "Note" in the originally proposed definition of "waste generator."

Comment: Two commenters stated that the definitions of "decontamination facility," "waste generator," and "waste processor" were muddled in that a clear distinction between these terms may not be evident. One commenter suggested that, if waste is created from a service industry (e.g., decontamination facilities), the service organization should be considered the generator of the waste.

Response: The three definitions were considered necessary to allow the Compacts/States the greatest flexibility in carrying out their authorities to track low-level waste generated, processed, decontaminated or disposed of within their Compact/State. This includes the possibility that, as the commenters suggested, wastes created from certain service organizations in the treatment of contaminated material could be attributed to the service organization.

The definition of "decontamination facility" is included in the rule to ensure that these facilities complete the uniform manifest (at a minimum, Forms 540 and 541) if they were shipping waste to a licensed land disposal facility. The Compacts or States must decide whether the radioactivity resulting from the processes undertaken at these facilities must be assigned to originating generators. The rule includes a definition of "residual waste," that provides a basis for this waste to be assigned to the decontamination facility for waste tracking purposes. This approach may also apply to certain processors. The rule would allow the Compacts and States to determine what constitutes "residual waste," and as a result, if the decontamination facility or processor can be considered a "waste generator" and, therefore, need not complete Form 542 of the manifest. This rule does not require shippers of *radioactive materials* to either decontamination facilities or waste processors to comply with the rule's manifesting requirements. The rule does apply to shippers of *radioactive waste* to waste processors. In the context of the rule, decontamination facilities would not be expected to be consignees for shipments of LLW.

Final rule: A phrase has been added to the definition of "decontamination facility," which states that, "* * *, and for purposes of this Part, is not considered to be a consignee for LLW shipments."

Comment: One commenter stated that the distinction between the terms "generator" and "waste generator" was confusing and, in view of the definition of "residual waste," was not needed. Other commenters stated that the phrase, "* * * for which no further use is foreseen * * *," used in the definition of "waste generator," is inappropriate. Three commenters and attendees at the June 15, 1993, public meeting suggested that the rule focus on the entity to whom LLW or radioactive material is being shipped—suggesting one manifest for shipments to a LLW disposal site and a different manifest for shipments to material/waste processors. One commenter stated that the starting and ending points for the paper trail for material/waste shipments were unclear.

Response: All three terms, "generator," "waste generator," and "residual waste" are needed. Under the approach followed in the rule, the definition of the term "generator" is included to ensure that information is collected on Forms 541 and 542 of the manifest that will allow Compacts and States to demonstrate that the wastes disposed of at their LLW sites is that for which they are responsible under the LLRWPAA. In the rule, the term "waste generator" is used to define a category of licensees who must use the uniform manifest. The term "generator" defines the licensee to whom specific LLW must be attributed in the context of the LLRWPAA. A "waste processor" (including "decontamination facilities") must reasonably attempt to assign the waste shipped from the processor's facility to the originating "generator." The rule provides an exception to this accountability provision if the waste being shipped by the processor can be categorized as "residual waste"; that is, waste originating as a result of processing or decontamination activities performed for others, but which cannot be easily categorized into distinct batches attributable to specific "generators." Conceptually, the definition of "residual waste" would be used for small volumes of waste containing minimal levels of radioactivity. The NRC has encouraged the Compacts and States to develop a common definition of what constitutes "residual waste." The rule would not be affected if different Compacts or States impose a different definition. However, "waste processor" or "decontamination facility" licensees could be required to complete Form 542 of the uniform manifest.

The phrase "* * * for which no further use is foreseen * * *," was included in the definition of "waste generator" to provide one basis upon

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which a licensee can decide if a shipment to a waste processor is considered a LLW shipment that must be manifested under the provisions of this rule. The intent of the rule is to require manifesting if the licensee considers the entire shipment to be LLW.

The commenter's suggestion for a "two-manifest" approach, although theoretically feasible, was considered a less justifiable regulatory approach, because it would impose manifesting requirements for certain material shipments. The NRC did not consider it necessary to require manifesting of material shipments sent for decontamination or sorting, or coupled to energy recovery, because the waste processor would be manifesting the subsequent outgoing LLW shipment. In the outgoing shipment from the waste processor, the assignment of the radioactivity on the manifest, completed by the waste processor, would be to either a particular "generator" or if appropriate, to the waste processor, as "residual waste."

The starting and ending points for the paper trail may not be completely clear because different Compact/States may impose different requirements based on their authorities. The approach taken in the rule was to provide a manifesting system that could accommodate these differences.

Final rule: The phraseology of the "waste generator" definition has been changed to clarify that, under this definition, the shipping licensee, absent any regulation or guidance to the contrary, must decide if the shipment constitutes a LLW shipment.

Comment: One commenter suggested that the definition of "waste type" be expanded to cover "chemical" description.

Response: The chemical description is reported separately for each waste type and therefore, the definition of "waste type" does not need to be expanded. The major purpose of defining "waste type" in the rule is to identify the detail needed when describing the contents of containers including two or more specific waste types as further discussed in the response to comments under "Disposal Container Information."

Final rule: No change.

A. General Information

Corrections have been made in appendix G, paragraph A.2 to change "identifier" to "identifiers" and appendix G, paragraph A.3 to properly refer to the EPA identification number for the carrier transporting LLW.

Comment: Six commenters expressed views on whether the Uniform Manifest and its supporting instructions should be incorporated in the rule. Some commenters stated that because completion of the manifest forms is required by the rule, the forms should be incorporated in the rule. This action was suggested to facilitate comments on the forms and to allow Agreement States appropriate opportunity for their involvement and sufficient time to make any changes that NRC may make to the forms over time. One commenter stated that the failure to include the manifest forms in the rule could be considered arbitrary. Three commenters argued that the Manifest and its supporting instructions should not be a part of the regulation. With this approach, the NRC would retain the flexibility to make non-substantive changes to the Forms or instructions without a rulemaking action.

Response: Although the uniform manifest forms are not physically a part of the rule, their availability was noticed and they were widely distributed. The advantage of separating the forms from the rule is that minor changes to the forms, such as additions to the container description, waste descriptor, or sorption, solidification, and stabilization media codes that appear at the bottom of Form 541, can be made without the need for a rulemaking action or the replacement of the manifest forms then in use. Minor changes, or any changes in the format or instructions for the uniform manifest, would be treated as NRC currently treats regulatory guides. Regulatory guides are issued for public comment and these comments are analyzed before the guide is issued in final form. As one commenter presumed, the minor revision and changes to the manifest or instructions would be tracked (e.g., a form revision number). Any significant changes to the uniform manifest forms, such as a request for further basic information on the waste or disposal container, would be accomplished through a rulemaking.

The NRC recognizes the importance of input from those most immediately affected by the requirement to complete the uniform manifest. It was principally this reason that led to the NRC holding the public meeting on June 15, 1993. Thus, the NRC does not consider separation of the Forms and instructions from the rule arbitrary.

Final rule: No change.

Comment: One commenter suggested that the rule should require the generators to provide the "generator type" code called for in item 5 of Form 540.

Response: Because this information would be obtainable through the generator ID or user permit number, the need to complete the block in question was not sufficiently important for the NRC to require its completion. The States, Compacts, or the consignee could require this information to be completed.

Final rule: No change.

B. Shipment Information

Comment: One commenter questioned the need to report small quantities of Tc-99 on manifests while another commenter was unclear on why certain nuclides were singled out in reporting source and special nuclear material. One commenter stated that the reporting of § 20.311 radionuclide LLD values and the delisting criteria, as described in the instructions for uniform manifest completion, should be incorporated in the rule.

Response: The need to report Tc-99 represents an existing manifest requirement in § 20.2006 and appendix F to §§ 20.1001 through 20.2402 and was addressed in the 10 CFR part 61 rulemaking; that is, the nuclide's long half-life, mobility, and influence on performance assessment results. The singling out of specific nuclides for source and special nuclear material was done to emphasize that it was the weight of these nuclides that was being requested and not the weight of any compound or media with or within which these nuclides may be associated or contained. The instructions for the uniform manifest specify the minimal levels of activity that must be reported on the manifest and, without a specific reason to include this information in the rule, this information continues to be addressed in the instructions.

Final rule: No change.

C. Disposal Container [and Waste] Information

In addition to the changes discussed in this section of the preamble, the heading has been broadened to more precisely reflect the general types of information being requested and the listing of items has been reorganized and clarified to describe the variations in required information that are dependent on whether: (1) The waste is containerized or uncontainerized, and (2) the consignee for the waste is a licensed low-level waste disposal facility. Furthermore, a clarification has been made in Appendix G, paragraph I.C.4 to indicate that the gross weight of the waste and disposal container is required. The NRC requirement to report contamination levels on the surface of disposal containers has been deleted to correct a typographical error. This item still appears on the manifest as a non-Federal informational need because it is required by one of the current disposal facility operators for operational safety reasons.

Comment: One commenter suggested that the level of reporting required in the current appendix G, paragraph I.C.9 (previously appendix F, paragraph I.C.8) did not go far enough and that Class A sorbed or solidified waste should be reported in a similar manner to Class B and C wastes. Other commenters stated that shippers of Class A waste were being unduly impacted. One commenter stated that it was impractical and/or not meaningful to provide separate isotopic breakdowns for all mixtures of Class B and C wastes. Another commenter believes the requirements for nuclide reporting of Class A versus B and C wastes was unclear.

Response: The principal purpose of requiring wastes to be described by individual waste descriptors is related to the capability of performance assessment methodologies to distinguish between certain types of wastes in terms of their public health significance. The commenter who indicated that the proposed rule was too broad in its requirement to distinguish between all Class B and C waste types is correct. The data likely to have the greatest significance are those associated with waste types from which radioactivity releases could reasonably be limited. The ability to distinguish differing radioactivity release rates from Class A wastes could also be significant to site performance assessments.

Final rule: Appendix G, paragraph I.C.9 (previously appendix F, paragraph I.C.8) has been modified to delete the phrase at the end of the proposed paragraph which stated, "if the media is claimed to meet stability requirements in 10 CFR 61.56(b)"; and paragraph I.C.10 (second sentence) has been modified to read, "For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported."

Comment: One commenter asked that the need to identify each drum (disposal container) of waste be reconsidered because of the impact on small generators. Another commenter noted that the proposed disposal container for most new disposal sites is a concrete overpack and stated that, although each container of each shipment must be indicated on the manifest, tracking of the waste by overpack is more relevant. One commenter believes that accountability necessitated a drum/container number.

Response: The need for disposal container information is not only to provide data that could be useful for performance assessment purposes but is required by DOT if the disposal container and transport package are identical. Identification of each drum would provide a basis for associating a waste generator with specific waste in a shipment. The suggestion regarding tracking of waste by overpack at the disposal site is allowed under the provisions of this rule if the container description code indicates, through use of the symbol "-OP," that disposal in an approved structural overpack is required.

Final rule: No change.

D. Uncontainerized Waste Information

Final rule: The introductory language of appendix G, paragraph I.D. has been made consistent with the revised paragraph I.C, and paragraph I.D.1 has been modified to require that information on the approximate volume, as well as the weight of the uncontainerized waste, be provided on the manifest.

E. Multi-Generator Disposal Container Information

Final rule: The wording of appendix G, paragraph I.E.2 has been changed to be consistent with the change made to appendix G, paragraph I.C.10. The "note" has been clarified to state that, "The origin of the LLW resulting from a processor's activities may be attributable to one or more 'generators' (including 'waste generators') as defined in this part."

III. Control and Tracking—Appendix G, Paragraph III.A

Appendix G, paragraph III.A.2 has been modified to allow the label indicating classification of the waste (including the potential for a "greater-than-Class C classification") to be provided on the transport package (instead of the container) for those shipments for which labeling of the disposal container presents a potential radiation hazard.

Comment: Two commenters stated that Form 541 of the manifest may contain information important to emergency response teams responding to a transportation accident involving a LLW shipment and may be required by State agencies to accompany shipments. One commenter indicated that the New York State Department of Environmental Conservation requires information that is found on both Forms 540 and 541.

Response: The DOT has the Federal responsibility to determine what information must accompany a shipment to meet potential emergency response needs. The NRC has obtained DOT concurrence that the information provided on Form 540 meets their requirements for shipping papers. However, the rule does not preclude Form 541 from accompanying the shipment. Thus, if authoritative State requirements exist for information contained on Form 541, this information could accompany the shipment as Form 541 or a separate additional item of paperwork.

Final rule: No change.

Comment: One commenter stated that 60 days between a consignee's receipt of an advance manifest and a requirement to inform the NRC and the shipper that the consignee has not received the shipment seemed like a long time. Another commenter questioned what, exactly, needed to be completed within the one week window provided in the acknowledgement of shipment receipt.

Response: Advance notification can take place weeks before a shipment leaves the consignor's facility. As a result, 60 days is not considered too long a period. This period has not been changed from the current regulation. The rule states that the consignee must send the acknowledgement of receipt (a signed copy of Form 540) within one week of shipment receipt. Paragraph E of the existing rule, which has not been changed, addresses actions to be taken if acknowledgement of receipt is not received.

Final rule: No change.

Comment: One commenter asked who would be responsible for verifying and assuring the currentness of generators' QA programs.

Response: As indicated in the "Certification" section, the person signing the shipment manifest is certifying that the transported materials are properly classified, described, packaged, marked, and labeled. To the extent that a processor must rely on the information supplied by the waste generator, the processor must assure that the information received is sufficient, accurate, and current. Any QA program mandated by this rule, as adopted by Agreement States, would be subject to either NRC or Agreement State inspection and enforcement. On this subject, this rule has not instituted any substantive change.

Final rule: No change.

Comment: One commenter stated that the rule, in the current appendix F, paragraphs III.A.5, III.B.3, and III.C.6,

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requires that a manifest both precede and be delivered to the consignee at the time the LLW is transferred. This commenter also suggested that the licensing authority be informed of a shipper's failure to receive acknowledgement of receipt of shipment at the time the shipper begins the required investigation or when the shipper has reason to believe a problem exists.

Response: The NRC does not see an NRC need to transmit both manifests. However, States or Compacts could impose this requirement. Similarly, because failure to receive acknowledgement is highly likely to be an administrative problem, the NRC sees no reason to change the existing regulation that requires reporting within two weeks of completion of the shipper's investigation.

Final rule: No change.

III. Control and Tracking—Appendix G, Paragraph III.B

Comment: Two commenters questioned whether the chain of custody of wastes handled by waste collectors can be determined under the requirements of this rule if more than one entity was involved with the waste before its handling by the collector. Another commenter stated that the identification of the original generator of LLW sent through processors or collectors must be ensured.

Response: Under the final rule, all waste collectors and processors must complete NRC Manifest Forms 540, 541 and 542. The information on these forms (including previous manifest numbers of shipments in which radioactive material was received) would allow any waste the collector or processor handles to be tracked back through one or more manifests to the originating "generator" or "waste generator," as defined in the final rule.

Final rule: No change.

10 CFR Part 61

Section 61.12 Specific Technical Information (As Contained in Section 61.80)

Comment: Nine commenters discussed the concept of requiring that the storage of data be kept on electronic recordkeeping systems and reporting of data be accomplished on a machine (computer) readable medium. This requirement only applies to LLW disposal facilities. Eight of these commenters supported the requirements in the proposed rule. One commenter agreed with the NRC view that Agreement States should determine whether or not they will require their licensees to report stored information on a computer-readable medium. One commenter stated that there will be a need for quality assurance programs for both hardware and software of both the disposal facility operator and the generator of the waste. This commenter asked who would be responsible for verifying the generator's quality assurance programs. Because the disposal facility operators have different hardware and software, this commenter was concerned that information transfers may be so garbled as to be unusable.

Response: This rule does not change the existing requirement in 10 CFR Part 20 for a quality assurance program by any licensee who transfers radioactive waste to a land disposal facility. The appropriate licensing authority is, therefore, responsible for verifying that an acceptable program is in place. The disposal site operators currently verify incoming shipments as part of their quality assurance program. The NRC does not envision any change to these existing procedures. Any reporting of the information electronically stored at the LLW disposal facility would comply with the American Standard Code for Information Interchange requirements.

Final rule: No change.

Section 61.80 Maintenance of Records, Reports, and Transfers

In addition to the change discussed in this section, the proposed rule made an administrative correction to § 61.80(i)(1) regarding to whom the annual report should be submitted. This correction has been revised in the final rule to reflect the most recent NRC organizational changes. References to "Appendix F" have been changed to "Appendix G."

Comment: One commenter questioned the need to record and track discarded material (pallets, bracing, etc.), as the volume of these materials is insignificant and does not impact the performance of the facility. The commenter also believes this will be a burdensome chore.

Response: The NRC believes the commenter is correct and will make this requirement only applicable to contaminated material that is disposed of.

Final rule: The requirement will read, "* * * the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and * * *."

Uniform Manifest Forms and Instructions

General Comments

Over two thirds of the commenters specifically stated their support for the development of a Uniform Radioactive Waste Manifest. None opposed the concept, but a few saw no problem with the manifests currently being used.

Many commenters went on to identify specific areas which they believe could improve upon the NRC's proposal. The NRC has incorporated many of these suggestions into the final rule, the Uniform Manifest forms, and the supporting instructions. One of the most significant comments on the forms dealt with the format in which the material is presented. As discussed in the Rulemaking History Section of this preamble, the NRC has attempted to meet the requirements of various Federal, State, and operator needs.

Several commenters noted that the proposed forms require some duplication of reporting between what is required for the DOT and the NRC. By far the most significant element of duplication dealt with reporting radionuclides and their activity on both NRC Forms 540 and 541. This resulted from the NRC staff's understanding of DOT's views of the regulatory acceptability of manifests currently in use, and was confirmed in a DOT letter to the NRC dated January 6, 1994. The DOT requires all their information to be together and not commingled with information requirements of the NRC, States, or the operating facility. Given this requirement to separate the information, the NRC believed that, in complying with the DOT requirements, a significant amount of physical paperwork accompanying the shipment could also be reduced by the use of electronic or other transfer of non-DOT information. Only DOT-required information must physically accompany the shipment. Therefore, the concept of three forms, each with a specific purpose, was developed.

NRC Form 540 is used to meet DOT shipping paper requirements for transportation and NRC waste tracking requirements. NRC Form 541 is used for waste and container information needed for assessing and monitoring disposal of radioactive waste. NRC Form 542 is used to collect waste generator information for LLW shipped from a waste collector or processor that can be used by the Compacts to establish the "generator" of LLW in the context of the LLRWPAA.

The NRC has worked with DOT in an attempt to minimize the burden of duplicative reporting. The DOT has

made an interpretation of its regulations that the shipping paper need only include a listing of the significant nuclides in a transportation package and document the total activity information on a "package" basis. The proposed rule required activity information by radionuclide. The NRC believes that this interpretation will significantly reduce duplicative reporting initially required for each nuclide and its respective activity.

Within the Department of Energy's (DOE's) National Low-Level Waste Management Program, a software package is under development that will prompt the user to provide the information needed to complete the uniform manifest and will then be capable of producing the completed manifest forms. It is intended that this software will be provided to requesters, and, if this activity is successful, the reporting burden will be further minimized.

Comment: Six commenters noted that the NRC Forms use a combination of English and metric (International System of Units (SI)) units. These commenters wanted the NRC to standardize the use of reporting units to reduce the inherent confusion. Of the commenters stating a preference, English units is the preferred choice.

Response: The NRC agrees that the use of dual units causes confusion. The proposed forms were designed to combine proposed requirements of DOT with standard reporting currently in use. Based on the presumed final DOT requirements and NRC's policy statement on the use of units (57 FR 46202; October 7, 1992), the forms and instructions have been revised to require the use of metric units (except one column on Form 540 to comply with a unique DOT requirement). The NRC has presumed that final DOT regulations will require the use of metric units for shipping papers (NRC Form 540). Because this requirement is consistent with NRC goals, the NRC Forms 541 and 542 will also require reporting in metric units. Note that reporting in metric units with English units following would also be acceptable. The rulemaking also modifies § 20.2101 (which requires records required by 10 CFR part 20 to use the curie, rad, and rem units) to require use of SI units for the manifest forms.

Comment: Nine commenters responded to NRC's request for comments on the potential to broaden the current purpose of the manifest number to provide information other than that required for tracking. These commenters were about equally split on the advisability of broadening the use of the manifest number. The supporters generally believe that a unique number may reduce some reporting requirements and would add a degree of control. One commenter noted that, while supporting the concept of a unique manifest number, its implementation could, however, be cumbersome, confusing and difficult. Those commenters not supporting broadening the manifest number's purpose, generally did not see a clear benefit to the change.

Response: While the NRC believes a unique manifest number could provide some benefits, the difficulty in implementing the concept at this time does not appear to warrant the resources that would be necessary. Also, at this time, the NRC does not have a clear concept of what a unique manifest number would include. Therefore, for this rulemaking, the NRC will not change the manifest number's purpose. After the Uniform Manifest is in use, the NRC will evaluate all aspects of the forms to identify potential improvements. The usefulness of the manifest number will be reviewed at that time to determine if changes are warranted.

Form 540

Comment: One commenter stated that it appeared that Form 540 is intended to replace the Bill of Lading.

Response: Form 540 is not intended to replace the Bill of Lading. However, the form does provide a format for reporting information to satisfy DOT's shipping paper requirements.

Box 1—Emergency Telephone Number and Organization

Comment: Several commenters questioned what organization is to be identified with the emergency telephone number. Information in this box was stated as being insufficient in light of other information accompanying shipments.

Response: The organization to be identified may be the shipper but could also be an organization, such as Chemtel. The telephone number is all that is required on the shipping paper by DOT. Other emergency response information required by DOT (49 CFR 172.602), but not as a shipping paper requirement, would still have to accompany the shipment.

Boxes 2 and 4—Exclusive Use and Regulated Waste Checkoff Boxes

Comment: Several commenters questioned why it is necessary to check these boxes indicating whether the shipment is "Exclusive Use" or includes EPA or State-designated hazardous waste. One commenter also asked whether a negative declaration would satisfy EPA that no material is present.

Response: Box 2 is provided to comply with the proposed DOT descriptive requirements for § 172.203 of title 49. The current Chem-Nuclear manifest contains this information item. Box 4 provides a crosscheck to ensure that an EPA Uniform Hazardous Waste Manifest is attached to the Uniform Low-Level Radioactive Waste Manifest, if required. It is not necessarily intended to provide a basis to satisfy EPA.

Box 5—Shipper—Name and Facility, Identifiers

Comment: Several commenters suggested that unique generator ID numbers should be developed to allow optimal tracking and possibly reduce the information required on the manifest. One commenter supported the addition of "Fuel Cycle Industry" to the "Generator Type" codes but suggested that the "Other" Code be deleted.

Response: The development of an ID system has merit. The NRC has concluded, however, that the development of such a system would be a significant undertaking and would have a serious impact on the rulemaking schedule. The NRC may consider development of an ID system after implementation of the rule if it appears necessary or worthwhile. Although the listed codes should cover the universe of generators, the "Other" code is being retained. A review of the use of this code may lead to appropriate expansions or clarifications of the coding system.

Box 6—Carrier Name and Address

Comment: One commenter suggested that space for more than one carrier was needed to be consistent with the requirements on the uniform hazardous waste manifest.

Response: The NRC believes that the required tracking can be accomplished through identification of the original carrier.

Box 7—Listing of the Number of Manifest Form Pages

Comment: Several commenters expressed views on the flexibility implied by this box that indicates the possibility of additional information being appended to the manifest by disposal facility operators, States, or Compacts. Four commenters believed that the rule should specifically prevent the possibility of unfettered additional uniform manifest requirements. Four other commenters supported this flexibility. However, most of these

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commenters recognized that wide ranging additional reporting requirements would defeat the purpose of the Uniform Manifest. On a different point on this box, two commenters stated that the page numbering system was absurd.

Response: The NRC believes that the information being collected on the uniform manifest may not always be completely sufficient to meet a variety of legitimate needs. Because the manifest data requirements have been selected to satisfy the great majority of needs, the NRC believes the need for additional information should not present an overwhelming burden. If additional information is required on the manifest, it must be appended to the uniform manifest forms. This information, along with Forms 541 and 542, if required, may be transmitted electronically, by mail, or by some other mutually accepted method. The NRC agrees with those commenters that stated that transfer of unnecessary information would dilute a major purpose behind the development of a Uniform Manifest.

The NRC believes there may be some confusion on the page numbering system. All that is being asked for is the total number of pages comprising the manifest. The NRC believes this is a standard pagination scheme for ensuring completeness of a documentation package.

Box 8—Manifest Number

Comment: One commenter suggested that further guidance for uniquely identifying manifests is needed because LLW can move between several entities before being shipped to a disposal site. Two commenters questioned how tracking would be accomplished if the chain-of-custody involved more than one entity.

Response: As currently envisioned, all collectors or processors must complete Form 542 and, in so doing, identify a manifest number associated with the incoming shipment. Thus, LLW received at an LLW disposal site will be traceable back to the original generator, and no further guidance is needed.

Box 10—Certification

Comment: One commenter suggested further guidance on whose signature should appear in this block. One commenter stated that site-specific needs may dictate different wording. Another commenter stated that, in certain cases, certification to 10 CFR part 61 requirements is being requested for shipments not directed to a disposal facility. One commenter suggested that the certification statement should include an appropriate caveat for collectors who do not alter the form of LLW. One commenter generally addressed the responsibility issue.

Response: The NRC envisions that the person certifying the shipment will not change from existing practice. If it is necessary to change the wording of the statement, an additional certification sheet may be necessary. The words "if applicable," have been added before the reference to 10 CFR part 61. The NRC believes the wording in the rule, appendix G, Section II, provides the caveat the commenter suggests.

Column 11—U.S. Department of Transportation Description

Comment: One commenter stated that the instructions were confusing in defining whether shipment or package information was being requested. Another commenter believes it was not clear how a shipper would describe a shipment of multiple disposal containers contained within a single transportation package.

Response: All information on Form 540 is on an individual package basis in compliance with DOT shipping paper regulations. Thus, Form 540 would include total package information while the information called for on Form 541 is on a "disposal container" basis.

Columns 12 and 14—DOT Label and Physical/Chemical Form

Comment: One commenter suggested that codes be used in documenting this information.

Response: The NRC seriously considered this possibility, but decided that, given the typical "single word entries" required, the flexibility provided without the use of codes outweighed the minimal savings in reporting burden that would be achieved.

Column 13—Transport Index

Comment: One commenter postulated an accident event involving a Low Specific Activity (LSA) shipment for which the information on Form 540 would not be useful because the Transport Index (TI) is not currently required to be contained on the shipping paper documentation. For this reason, the commenter suggested that NRC eliminate the requirement to use Form 540.

Response: The information requirements on NRC Form 540 are required by DOT for transportation of hazardous materials. The principal information on this form is for use by the first-on-the-scene responder to a transportation accident. Identification of the proper shipping name and U.N. ID number provides valuable information. These identifiers correlate with proper emergency actions. The TI is information which would be more useful in controlling normal occupational exposures.

Column 15 (Now Divided Into Columns 15 and 16)—Individual Radionuclides and Activity (Now Total Package Activity)

Comment: One commenter questioned what is meant by, "* * * list all radionuclides that are present in the transport packaging," and suggested that guidance be provided on the specific SI units to be used. One commenter stated that requirements for listing of a radionuclide should be included in the rule. Two commenters stated that insufficient space is provided for both a listing of the nuclide and activity. Six commenters suggested that only a vertical listing, with one nuclide per line, should be considered. Another commenter suggested that the column be split into nuclide and activity columns.

Response: Reporting of radionuclides in the transport packaging is a DOT shipping paper requirement in which the instructions reference the appropriate DOT regulations for more information. The NRC is not providing detailed interpretive instructions of DOT regulations. The NRC has explained what is meant regarding the reporting units needed on NRC Form 541 (for NRC use). The NRC believes that the radionuclides reported on Form 541 should also be appropriate for DOT purposes. A DOT telephone number is provided if additional information or interpretation is needed. On the spacing issue, the NRC has completed several manifests from actual shipments and these examples indicate that more than enough space is provided for at least a double columnar listing of nuclides and respective activities on NRC Form 541, although the choice on the formatting in this column is left to the shipper and consignee. Because the DOT has agreed that only the total package activity needs to be reported, the spacing issue would now only involve Form 541. On the multiple columnar presentation, the NRC would note that current Transportation Shipment Package Records, that have been used when conveying radioactive material to processors, portray nuclides and their respective activities in a triple columnar field.

Column 16 (Now Column 17)—LSA/SCO Class

Comment: One commenter suggested codes for documenting this information, while two commenters questioned the regulatory basis.

Response: The information in this column is based on a requirement proposed by DOT in their "IAEA Compatibility" rulemaking. Coding is not allowed by DOT for reporting this information. The NRC has presumed that this classification system will be incorporated into DOT's final rule.

Column 17 (Now Column 18)—Total Weight or Volume

Comment: One commenter questioned the multiple number of times that this type of information was requested on the three manifest forms.

Response: Although requests for volume and weight information do occur on each of the manifest forms, the volumes or weights requested are not necessarily identical. For example, the transportation package volume may not be the same as the disposal container volume, if multiple disposal containers are contained within a shielded overpack. The total volumes requested on Form 542 would represent the sum of all generator volumes which may be contained in a number of different disposal containers. This Form 542 summary contains information very similar to that required on the Manifest Index and Regional Compact Tabulation Sheets used by a current disposal site operator. This information is used for waste tracking purposes to ensure that sites are receiving wastes for which their State or Compact is responsible for disposal.

Column 18 (Now Column 19)—Identification Number of Package

Comment: One commenter suggested that this instruction should be worded as a requirement.

Response: Although the listing of the disposal container number on Form 541 is a requirement, this does not generally carryover to the transport packaging when the packaging and the disposal container are not identical. DOT does not require a package number to be provided on shipping papers.

Form 541

Box 1—Manifest Totals

In addition to the change discussed in this section of the preamble, the headings for the shipment volume and weight totals have been changed to reflect that total net values are being requested for any low-level radioactive waste shipment to which manifesting applies.

Comment: Five commenters brought up the issue of reporting of radionuclides (specifically Tc–99 and I–129) that are reported based on lower limits of detection (LLD). Concerns were expressed that if the totals, as presented in this box, represent the sum of the LLDs, or LLD's and "real" values in all disposal containers, a very significant overestimation of these nuclides in a disposal facility could result. One commenter suggested that this block require entry of net waste volume and weight.

Response: The NRC believes these comments have merit. Because it would be important to distinguish between "real" and LLD values, the instructions have been modified to indicate that the sums of the "real" and LLD values should be separately reported in this box, with the summed LLD value in parenthesis. Although the NRC recognizes that this reporting scheme does not solve the problem, this reporting approach will "flag" the conservative nature of the appropriate fraction of the inventories of these nuclides. The commenter is correct in presuming that net waste volumes and weights are being requested. Appropriate clarifications have been made to the manifest forms and instructions.

Columns 5 through 10—Disposal Container Description

Comment: One commenter stated that repetitive listing of a generator ID number, if more than one container is attributed to a generator, is unnecessary. Another commenter pointed out that the container described may not always be the "disposal" container and that, in these cases (e.g., shipments (of LLW) to waste processors), this column may not need to be completed. One commenter suggested that Column 8 should pertain to net waste weight. One commenter asked how a shipper should respond if more than one container description code applies. Another commenter asked if it was intended to use the numeric codes or the actual verbiage.

Response: The instructions have been clarified to avoid unnecessary repetition of generator ID numbers. The "exemption" referred to by the commenter was included in the instructions. This "exemption" is now the subject of a "Note" preceding the instructions for Column 5. The possibility that some of the container information may be required by the consignee also appears *italicized* in the introductory paragraph in the instructions for Form 541. Instructions that are not "tied" to information being required to comply with Federal regulations also now appear in *italics*.

Column 8 refers to total container and waste weight (See discussion pertaining to Column 12).

The intent is to report code numbers, if applicable. If more than one container description code applies, multiple codes can be reported.

Column 9—Surface Radiation Level

Comment: Two commenters suggested that this column could be better situated on Form 540 adjacent to the Transport Index.

Response: Combining this information with the information required by DOT on shipping papers would not, based on NRC staff interactions with DOT staff, be accepted by DOT. The information in this column is also required by one of the current disposal facility operators

Column 10—Surface Contamination

Comment: Four commenters questioned the need for this information, especially in light of DOT standards.

Response. The information being requested in this column is directed at contamination levels on the surfaces of disposal containers, not transportation packagings. This information is currently requested by one of the disposal facility operators on their manifest in order to minimize contamination and control potential operational exposures. Through typographical error, this informational need was included as an NRC requirement in the proposed appendix F, paragraph I.C.10. As indicated in the response to comments on the rule, this requirement has been deleted from the rule but remains as a non-Federal information item on the manifest

Column 12—Approximate Waste Volume(s) in Container

Comment: Two commenters suggested that if the waste volume information is only intended to meet disposal site acceptance criteria, this column could be deleted because the certification statement could be used to accomplish the same purpose. One commenter questioned whether the information on the manifest allowed an accurate estimate of the mass of the waste and whether the NRC recognized that the volume of the inner container may be substantially different from the actual waste volume. One commenter suggested that adjustments be considered so that the weight of the waste would be documented. One commenter suggested that this column be completed if the container fill volume was less than 90%. One commenter asked whether, if perlite was

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used to fill void volume, this volume should be included in the total.

Response: For discrete waste items (e.g., activated metals), the volume of these items is of interest for waste classification purposes. The instructions have been expanded to make this clear and, for homogeneous type wastes, the instructions indicate that ">85%" can be entered if this fill volume is exceeded. The NRC believes that the weight of the waste can be estimated by either knowing the volume and density of the waste or subtracting container weight from the weight of the waste and container. If fill material is used, this volume may be included in the reported volume, but may not be considered for waste classification purposes. An alternative approach would be to report waste volume, but note that a "fill" has been used (e.g., to comply with disposal site acceptance criteria).

Column 14—Weight % Chelating Agent

Comment: One commenter suggested a code for "None present" and "O" be provided in this column. Another commenter asked what methods would be used to identify chelating agents.

Response: The commenter's suggestion was not taken because only an "NP" or "O" would need to be entered, and space for providing the preprinted codes is limited. NRC's intent in identifying chelating agents is described in general terms in the "Final Waste Classification and Waste Form Technical Position," dated May 11, 1983.

Column 15—Radiological Description

Comment: Two commenters questioned the desirability of reporting individual nuclide activities as a percentage of total container activity. One commenter erroneously thought that this column limited the recording of nuclides to three entries. Another commenter suggested that the NRC consider establishing reporting thresholds for H–3, C–14, Tc–99, and I–129, and stated that explicit instructions are needed on the reporting of source and special nuclear material, "daughter radionuclides," and the impact of nuclides with less than 5-year half-life on waste classification. One commenter pointed out that the passage of "Reportable Quantity" requirements should be considered in establishing the reporting thresholds defined in the instructions. A number of commenters questioned the effectiveness of allowing multiple-columnar reporting of radionuclides with their respective activities.

Response: Percentage reporting is not being mandated, but allowed. This method of reporting is allowed by a current disposal facility operator. The instructions have also been appended to clarify how the reporting of more than three significant radionuclides in a container should be achieved.

Although the concept of establishing threshold reporting quantities for the four indicated nuclides has merit, the analysis needed to support a specific threshold has not been defined. Thus, consistent with the existing regulation, no threshold for the reporting of these four nuclides is included in the instructions.

On the reporting of source material, the instructions have been expanded to clarify that the "mass" being asked for applies only to the elemental mass of uranium and thorium (including uranium and thorium contained in "unimportant quantities," as defined in 10 CFR 40.13), and not the weight of the waste containing these nuclides. The instructions now also specifically state that the activities of the nuclides specifically referred to in the "Manifest Total" Box (i.e., H–3, C–14, Tc–99, and I–129) must always be manifested. The instructions also state that daughter products must be either individually reported or, if within a factor of 2 of being in equilibrium with its (their) parent, be reported as the parent with its activity listed, but with the symbol "D" or "NAT" indicating daughter products in equilibrium (i.e., Cs–137D or ThNAT). "Significant quantities" of nuclides with half-lives less than 5 years must be included in determining the waste classification of a disposal container (note that this will only apply in determining whether the Class should be Class A or B). Finally, the instructions have been expanded to indicate that any radionuclide whose activity represents a Reportable Quantity under DOT regulations must be included on the manifest.

In response to comments on multicolumnar reporting, the NRC has reconfigured the item 15 column to indicate the possibility of using two subcolumns. The first subcolumn must include the radionuclide and its activity in metric units. The second subcolumn may be: (1) Used to include the activity in English units, if required by the State or operating facility, (2) left blank if not needed, or (3) used to report a second radionuclide and its activity. The line which splits column 15 is provided to minimize imputing and checking errors, if the third option is chosen.

Column 16—Waste Classification

Comment: One commenter suggested that boxes be provided to check a waste class. Two commenters stated that the "Class" designations do not establish whether Class B and C waste has been stabilized.

Response: The instructions have been broadened to indicate that Class B and C waste should be classified as BU or BS, or CU or CS; the U or S indicating whether the waste is in stable or unstable form. Because the combination of possibilities has been increased to six, the information to be recorded would only consist of two letters, and space on the form is limited, "checkoff" boxes have not been added to the form.

Container, Waste, and Media Codes

Comment: One commenter stated that the waste descriptor codes should be consistent with existing NRC classifications of LLW. Another commenter pointed out that the codes do not match directly with those of US Ecology. One commenter suggested that "EPA (or State) hazardous" should not be a physical descriptor for waste and questioned why "concrete" was specifically identified as an encapsulation media. One commenter suggested that the descriptor, "wooden box" be dropped and "woven polypropylene bulk bag" be added to reflect actual practices. This commenter also believed that the waste descriptors were excessive for the purposes being addressed. One commenter suggested that Zonolite grade 4 be deleted and "Vinyl Chloride" replace "Vinyl Toluene." One commenter suggested that "State hazardous" be added along with "EPA hazardous."

Response: The NRC believes the codes are somewhat more detailed than the waste streams characterized in the Environmental Impact Statement that supported the 10 CFR part 61 rulemaking. Although the codes are not identical to those used by US Ecology, the NRC staff believes that all the US Ecology codes can be related to the codes on Form 541, and the "other" code can also be used. If a rationale for a specific code, that is not included exists, it can be added to the list. The "EPA (or State) hazardous" descriptor is provided as a "tie-in" to EPA's or a State's Uniform Hazardous Waste Manifest. The specific identification of concrete as an encapsulation media has been deleted and the commenter's suggestion on container descriptions has been accepted. The NRC believes that feedback from the performance assessment process may indeed lead to a consolidation of waste descriptor codes, with time. The suggestions that Zonolite grade 4 be deleted and "Vinyl Chloride" replace "Vinyl Toluene" have been accepted. The phrase "EPA hazardous" has been modified to read "EPA or State Hazardous."

Form 542

Column 5—Generator Name, Permit Number, and Telephone Number

Comment: One commenter suggested that the "generator type" code should also be included. Two commenters questioned why "permit number" is called for, given that the generator ID number is provided in Column 4.

Response: Because the generator ID number should allow the determination of generator type, the inclusion of this information was not considered necessary. Permit number was included because, for certain generators, the generator ID number assigned by the disposal facility operator is not identical to the permit number assigned by the appropriate regulatory authority. Optimization of these identifiers could lead to elimination of this reporting need.

Column 9—Waste Code

Comment: One commenter suggested that boxes be provided to check whether the waste represents processed or collected waste.

Response: Given the single letter entry needed, and the fact that an existing manifest does not preprint these letters, the NRC did not see a need to provide individual "C" or "P" boxes to be checked.

Column 10—Originating Compact Region or State

Comment: One commenter suggested that codes be used for the Compacts or States. Another commenter stated that if the Generator ID number included the two-digit State abbreviation, there would be no need to report this information in Column 10.

Response: The NRC's intent was that codes be used. The instructions have been expanded to state this preference. Because current generator ID numbers do not uniformly include the State abbreviation, it was included in Column 10. If generator ID numbers are systematized, as the commenter suggests, and as membership in Compacts stabilizes, this column could be deleted.

National Data Base Comments

Comment: In the proposed rule, the NRC discussed possible uses of and needs for a national computer LLW data base. The NRC expressed interest in public views on the benefits in developing such a system, and if developed, who would be an appropriate operator. Eighteen commenters spanned a spectrum of responses, from support for a national data base with NRC as the operator, to the belief that a national data base is unnecessary. Comments also spanned the topic of data availability, from making sure the information is publicly accessible to the need to ensure that sensitive data is protected. One commenter noted that because disposal options have been significantly reduced, much LLW may end up in extended storage and a national data base as envisioned (data reported by the LLW disposal facilities) would not yield the quantity of data originally expected. Two commenters noted that LLW data bases already exist and that the NRC should use these existing systems and work with the DOE to make any necessary modifications to meet the informational needs of both NRC and state regulators.

Response: The NRC believes that because there will only be a few LLW facility operators in the near future, it is premature to establish a new national LLW data base. The NRC agrees with those commenters that stated that the existing systems can be the basis for a broad and uniform national system. The NRC will work with DOE and Agreement States to improve the existing data base, as necessary. Improvements may result from the use of the Uniform Manifest and the improved ability to report and compile this data.

Regulatory Analysis Comments

Comment: One commenter stated that the economic impact analysis is unclear in the "Regulatory Flexibility Certification" section. The commenter stated that according to the discussion, the proposed rule would have a negative $480,000 to a positive $100,000 impact on the regulated community. If one back calculates to the 34,000 cubic feet generated by hospitals, the range would be negative $13,600 to a positive $2,400. These figures deserve to be substantiated and justified.

Response: The costs and cost savings associated with the uniform manifest are mainly associated with additional entry costs from the uniform manifest having more fields than the currently used shipment manifest forms and from the development of computer software to generate the forms. The data entry costs are related to the amount of additional data entered per shipment, the number of shipments, and the degree of automation of data entry. It appears that data entry costs were underestimated and the final regulatory analysis contains updated estimates. Whether there is a cost or cost savings related to development of manifest generation software depends on the number of different manifest forms there would be in the absence of a uniform manifest. If each regional disposal facility would require its own manifest forms, a savings in software development costs would result from the use of a uniform manifest. If the current US Ecology and Chem-Nuclear Systems forms would still be used for all regional disposal facilities, additional software generation costs would result from use of the uniform manifest. Because costs are not related to waste volume, the impact of the proposed rule on hospitals that generate LLW is not directly related to the volume of LLW that these hospitals generate.

Comment: Two commenters questioned the incremental time and cost to generate the new uniform manifest versus current manifests in use. One commenter stated that the requirements of Form 540 could increase the time to generate a manifest to 5 hours or more for a large shipment rather than the 0.65 hours shown in the **Federal Register** notice (57 FR 14500; April 21, 1992). One commenter stated that the response time for collection of information is substantially underestimated and that the increased complexity of the forms is expected to significantly increase clerical costs well beyond the estimate of $5,000 to $15,000.

Response: The estimate of the amount of time it takes to enter data on the uniform manifest was based on the number of fields, the nature of the field (i.e., whether it contains fixed point, floating point, or alphanumeric data) and whether the data is entered manually on the forms, on a computer, or from a waste management database. An experienced data entry clerk was consulted. From this and other comments to the notice of proposed rulemaking, including the comments made at the public meeting held on June 15, 1993 and subsequent NRC experience, it appears that the effort required to complete the manifest forms was underestimated. In the final regulatory analysis, the estimated time to complete a manifest by a generator (NRC Forms 540 and 541) has been changed from 2.5 hours to 2.8 hours. The estimated time to complete the manifest for a collector/processor (NRC Forms 540, 541, and 542) has been changed from 3.1 to 9.2 hours. The significant change for the collector/processor comes from information in a January 1994, report prepared for the NRC (NUREG/CR–6147) that resulted in more than twice the estimated size (number of containers) in collector/

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processor shipments. The end result, however, is not as drastic since the total number of shipments is accordingly reduced.

Final rule: The Regulatory Analysis has been updated to reflect more accurate estimates of effort. The resulting changes have not changed the conclusion to implement the final rulemaking.

IV. Compatibility of Agreement State Regulations

The Commission is requiring that the Uniform Low-Level Radioactive Waste Manifest be used by all shippers of low-level radioactive waste; that is, by all waste generators, waste collectors, and waste processors licensed by either the Commission or Agreement States. The Commission and Agreement State licensees required to use the Uniform Manifest, therefore, would also be required to record the minimal information requirements as called for on the applicable Uniform Manifest forms.

In the development of the three sets of forms comprising the Uniform Manifest, the NRC staff has coordinated its efforts with staff at DOT and with Agreement and non-Agreement States. Most State representatives have indicated support for a base set of information needs and a uniform manifest. The Commission believes the information called for on the Uniform Manifest not only satisfies Commission requirements and DOT shipping paper requirements, but also the majority of requirements of Agreement State regulatory authorities (and land disposal facility operators).

The Commission recognizes that a particular Agreement State may require additional information for their unique regulatory purposes and that disposal site operators may require further information to satisfy operational and administrative considerations. Therefore, this regulation does not prohibit Agreement States or disposal site operators from broadening manifest usage or from imposing additional manifest requirements which may be transmitted as additional pages to the Uniform Low-Level Radioactive Waste Manifest. Serious consideration should be given to the need for specific additional information vis-a-vis the advantages in maintaining a "uniform" manifesting system. Caution must be taken, however, to ensure that any additional requirements for information are reported in a format which does not conflict with DOT regulations for shipping papers (i.e., 49 CFR part 172). Also, the NRC Forms, although requiring the use of metric units, does not preclude reporting in metric and English units.

Accordingly, the Commission designates 10 CFR 20.2006, Transfer for Disposal and Manifests (excluding appendix F)—as Division 1. This designation maintains uniformity in manifest format and content while at the same time allowing flexibility for additional information being supplied in the manifest by adding supplemental pages. 10 CFR 20.2101, which discusses units to use, is designated Division 2, since although SI units must be used, English units can also be reported.

The Commission designates 10 CFR 61.12, Specific Technical Information, including the new paragraph (n) that deals with a description of an electronic record keeping system, as Division 2 because Agreement States can satisfy the principles using alternate language.

10 CFR 61.80, Maintenance of Records, Reports and Transfers, remains designated Division 3, except for § 61.80(l)(1) which is designated Division 2 because it requires that the disposal facility licensee maintain an electronic record keeping system. This designation will help ensure that manifest information will be available in an electronic format for both NRC and Agreement State licensed sites. The new requirement to report such stored information on a computer-readable medium, however, should be the prerogative of each Agreement State, and this new requirement in § 61.80(l)(2), is designated Division 3.

V. Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22(c)(3) (ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0014, –0135, –0164, –0165, and –0166.

Public reporting burden for this collection of information is estimated to average 1.04 hours per response under 10 CFR parts 20 and 61, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The time to complete standard shipping manifests required by this rulemaking, NRC Forms 540, 541, and 542, depends upon the size and complexity of the shipment and whether the shipment is from a generator or a collector/processor. A shipment from a generator is estimated to require 2.8 hours (63 minutes to complete Form 540 and 103 minutes for Form 541—no Form 542 is needed). A shipment from a collector/processor is estimated to require 9.2 hours (161 minutes to complete Form 540, 363 minutes for Form 541, and 26 minutes for Form 542). The representative collector/processor's manifest takes longer to complete primarily because it is assumed that their shipments have more than twice as many containers as from a generator's shipment. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, Mail Stop T–6 F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0014, –0135, –0164, –0165, and –0166), Office of Management and Budget, Washington, DC 20503.

VII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from M. Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop T–9 F33.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. A significant number of hospitals and academic institutions are LLW waste generators, and most of these are non-profit organizations. During 1986–1990, about 4.6% of the 7.8 million cubic feet of disposed of LLW was generated by hospitals and academic institutions. Thus, a substantial number of small entities could be affected by the rule.

With an expected disposal fee of approximately $150/cubic foot, annual disposal costs for these small entities will be in the range of $11 million. The estimated upper limit costs to implement this rule for the small entities is approximately $65,000. Similarly, the estimated upper limit of annual operational cost for these small entities is approximately $2,000. These costs are insignificant relative to the annual disposal costs (which do not include costs such as packaging and transportation). Because the percentage increases in disposal costs that may be caused by the rule is substantially less than 1%, the rule would not have a significant economic impact on the small entities affected by the rule.

IX. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). The additional information to be placed on NRC manifest forms will not require nuclear power licensees to change existing procedures used in operation of their facilities. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20 and 61.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955 as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 20.1009 is revised to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The OMB has approved the information collection requirements contained in this part under control number 3150–0014.

(b) The approved information collection requirements contained in this part appear in §§ 20.1101, 20.1202, 20.1204, 20.1206, 20.1301, 20.1302, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2109, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2206, and appendices F and G to 10 CFR part 20.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1). In § 20.2104, NRC Form 4 is approved under control number 3150–0005.

(2). In §§ 20.2106 and 20.2206, NRC Form 5 is approved under control number 3150–0006.

(3). In § 20.2006 and appendix G to 10 CFR part 20, NRC Form 540 and 540A is approved under control number 3150–0164.

(4). In § 20.2006 and appendix G to 10 CFR part 20, NRC Form 541 and 541A is approved under control number 3150–0165.

(5). In § 20.2006 and appendix G to 10 CFR part 20, NRC Form 542 and 542A is approved under control number 3150–0166.

3. Section 20.2006 is revised to read as follows:

§ 20.2006 Transfer for disposal and manifests.

(a)(1) The requirements of this section and appendices F and G to 10 CFR part 20 are designed to

(i) Control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in this part, who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility (as defined in part 61 of this chapter);

(ii) Establish a manifest tracking system; and

(iii) Supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees must use Appendix G. Prior to March 1, 1998, a LLW disposal facility operator or its regulatory authority may require the shipper to use appendix F or appendix G. Licensees using appendix F shall comply with paragraph (b)(1) of this section. Licensees using appendix G shall comply with paragraph (b)(2) of this section.

(b)(1) Each shipment of radioactive waste intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest in accordance with section I of appendix F to 10 CFR part 20.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with appendix G to 10 CFR part 20.

(c) Each shipment manifest must include a certification by the waste generator as specified in section II of appendix F or appendix G to 10 CFR part 20, as appropriate. See paragraph (a)(2) of this section to determine the appropriate appendix.

(d) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in section III of appendix F or appendix G to 10 CFR part 20, as appropriate. See paragraph (a)(2) of this section to determine the appropriate appendix.

4. Section 20.2101 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 20.2101 General provisions.

* * * * *

(b) Not withstanding the requirements of paragraph (a) of this section, when recording information on shipment manifests, as required in § 20.2006(b), information must be recorded in the International System of Units (SI) or in SI and units as specified in paragraph (a) of this section.

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5. A new appendix G is added to 10 CFR part 20 to read as follows:

Appendix G to 10 CFR Part 20—Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests

I. Manifest

A waste generator, collector, or processor who transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a Manifest (OMB Control Numbers 3150–0164, –0165, and –0166) reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). NRC Forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, NRC Forms 541 and 541A and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by NRC to comply with the manifesting requirements of this part when they ship:

(a) LLW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the "waste generator" or "generator," as defined in this part; or

(c) Radioactively contaminated material to a "waste processor" that becomes the processor's "residual waste."

For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this appendix may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

NRC Forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the Information and Records Management Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7232.

This appendix includes information requirements of the Department of Transportation, as codified in 49 CFR part 172. Information on hazardous, medical, or other waste, required to meet Environmental Protection Agency regulations, as codified in 40 CFR parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the Uniform Low-Level Radioactive Waste Manifest required by this chapter.

As used in this appendix, the following definitions apply:

Chelating agent has the same meaning as that given in § 61.2 of this chapter.

Chemical description means a description of the principal chemical characteristics of a low-level radioactive waste.

Computer-readable medium means that the regulatory agency's computer can transfer the information from the medium into its memory.

Consignee means the designated receiver of the shipment of low-level radioactive waste.

Decontamination facility means a facility operating under a Commission or Agreement State license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this part, is not considered to be a consignee for LLW shipments.

Disposal container means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

EPA identification number means the number received by a transporter following application to the Administrator of EPA as required by 40 CFR part 263.

Generator means a licensee operating under a Commission or Agreement State license who (1) is a waste generator as defined in this part, or (2) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

High integrity container (HIC) means a container commonly designed to meet the structural stability requirements of § 61.56 of this chapter, and to meet Department of Transportation requirements for a Type A package.

Land disposal facility has the same meaning as that given in § 61.2 of this chapter.

NRC Forms 540, 540A, 541, 541A, 542, and 542A are official NRC Forms referenced in this appendix. Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

Package means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport.

Physical description means the items called for on NRC Form 541 to describe a low-level radioactive waste.

Residual waste means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

Shipper means the licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

Shipping paper means NRC Form 540 and, if required, NRC Form 540A which includes the information required by DOT in 49 CFR part 172.

Source material has the same meaning as that given in § 40.4 of this chapter.

Special nuclear material has the same meaning as that given in § 70.4 of this chapter.

Uniform Low-Level Radioactive Waste Manifest or *uniform manifest* means the combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

Waste collector means an entity, operating under a Commission or Agreement State license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

Waste description means the physical, chemical and radiological description of a low-level radioactive waste as called for on NRC Form 541.

Waste generator means an entity, operating under a Commission or Agreement State license, who (1) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use, and (2) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a "waste generator" if the transfer of low-level radioactive waste from its facility is defined as "residual waste."

Waste processor means an entity, operating under a Commission or Agreement State license, whose principal purpose is to process, repackage, or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

Waste type means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

Information Requirements

A. General Information

The shipper of the radioactive waste, shall provide the following information on the uniform manifest:

1. The name, facility address, and telephone number of the licensee shipping the waste;

2. An explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

3. The name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

B. Shipment Information

The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest:

1. The date of the waste shipment;

2. The total number of packages/disposal containers;

3. The total disposal volume and disposal weight in the shipment;

4. The total radionuclide activity in the shipment;

5. The activity of each of the radionuclides H–3, C–14, Tc-99, and I–129 contained in the shipment; and

6. The total masses of U–233, U–235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

C. Disposal Container and Waste Information

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

1. An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

2. A physical description of the disposal container, including the manufacturer and model of any high integrity container;

3. The volume displaced by the disposal container;

4. The gross weight of the disposal container, including the waste;

5. For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

6. A physical and chemical description of the waste;

7. The total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

8. The approximate volume of waste within a container;

9. The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

10. The identities and activities of individual radionuclides contained in each container, the masses of U–233, U–235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

11. The total radioactivity within each container; and

12. For wastes consigned to a disposal facility, the classification of the waste pursuant to § 61.55 of this chapter. Waste not meeting the structural stability requirements of § 61.56(b) of this chapter must be identified.

D. Uncontainerized Waste Information

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

1. The approximate volume and weight of the waste;

2. A physical and chemical description of the waste;

3. The total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

4. For waste consigned to a disposal facility, the classification of the waste pursuant to § 61.55 of this chapter. Waste not meeting the structural stability requirements of § 61.56(b) of this chapter must be identified;

5. The identities and activities of individual radionuclides contained in the waste, the masses of U–233, U–235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

6. For wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

E. Multi-Generator Disposal Container Information

This section applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLW resulting from a processor's activities may be attributable to one or more "generators" (including "waste generators") as defined in this part). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

1. For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

2. For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(a) The volume of waste within the disposal container;

(b) A physical and chemical description of the waste, including the solidification agent, if any;

(c) The total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(d) The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in 10 CFR 61.56(b); and

(e) Radionuclide identities and activities contained in the waste, the masses of U–233, U–235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

II. Certification

An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the Commission. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

III. Control and Tracking

A. Any licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in paragraphs A.1 through 9 of this section. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of paragraphs A.4 through 9 of this section. A licensee shall:

1. Prepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirements in § 61.56 of this chapter;

2. Label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater then Class C waste, in accordance with § 61.55 of this chapter;

3. Conduct a quality assurance program to assure compliance with §§ 61.55 and 61.56 of this chapter (the program must include management evaluation of audits);

4. Prepare the NRC Uniform Low-Level Radioactive Waste Manifest as required by this appendix;

5. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either (i) receipt of the manifest precedes the LLW shipment or (ii) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both (i) and (ii) is also acceptable;

6. Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in paragraph A.5 of this section;

7. Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

8. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by 10 CFR Parts 30, 40, and 70 of this chapter; and

9. For any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix.

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B. Any waste collector licensee who handles only prepackaged waste shall:

1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;

2. Prepare a new manifest to reflect consolidated shipments that meet the requirements of this appendix. The waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

3. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either: (i) Receipt of the manifest precedes the LLW shipment or (ii) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both (i) and (ii) is also acceptable;

4. Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in paragraph B.3 of this section;

5. Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

6. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by 10 CFR parts 30, 40, and 70 of this chapter;

7. For any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix; and

8. Notify the shipper and the Administrator of the nearest Commission Regional Office listed in appendix D of this part when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

C. Any licensed waste processor who treats or repackages waste shall:

1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;

2. Prepare a new manifest that meets the requirements of this appendix. Preparation of the new manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in paragraph I.E. of this appendix;

3. Prepare all wastes so that the waste is classified according to § 61.55 of this chapter and meets the waste characteristics requirements in § 61.56 of this chapter;

4. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §§ 61.55 and 61.57 of this chapter;

5. Conduct a quality assurance program to assure compliance with §§ 61.55 and 61.56 of this chapter (the program shall include management evaluation of audits);

6. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either: (i) Receipt of the manifest precedes the LLW shipment or (ii) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both (i) and (ii) is also acceptable;

7. Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in paragraph C.6 of this section;

8. Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

9. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by 10 CFR parts 30, 40, and 70 of this chapter;

10. For any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix; and

11. Notify the shipper and the Administrator of the nearest Commission Regional Office listed in appendix D of this part when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

D. The land disposal facility operator shall:

1. Acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of NRC Form 540 to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the Uniform Low-Level Radioactive Waste Manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

2. Maintain copies of all completed manifests and electronically store the information required by 10 CFR 61.80(l) until the Commission terminates the license; and

3. Notify the shipper and the Administrator of the nearest Commission Regional Office listed in appendix D of this part when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

7. Section 61.12 is amended by adding paragraph (n) to read as follows:

§ 61.12 Specific technical information.

* * * * *

(n) A description of the facility electronic recordkeeping system as required in § 61.80.

8. Section 61.80 is amended by revising paragraph (f) and (i)(1), and adding paragraph (l) to read as follows:

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(f) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the containment integrity of the waste disposal containers as received, any discrepancies between materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and any evidence of leaking or damaged disposal containers or radiation or contamination levels in excess of limits specified in Department of Transportation and Commission regulations. The licensee shall briefly describe any repackaging operations of any of the disposal containers included in the shipment, plus any other information required by the Commission as a license condition. The licensee shall retain these records until the Commission transfers or terminates the license that authorizes the activities described in this section.

* * * * *

(i)(1) Each licensee authorized to dispose of waste materials received from other persons, pursuant to this part, shall submit annual reports to the appropriate Commission regional office shown in Appendix D to 10 CFR part 20, with copies to the Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Reports must be submitted by the end of the first calendar quarter of each year for the preceding year.

* * * * *

(l) In addition to the other requirements of this section, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(1) The manifest information that must be electronically stored is—

(i) That required in 10 CFR part 20, appendix G, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) That information required in paragraph (f) of this section.

(2) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

Dated at Rockville, MD this 20th day of March 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–7302 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–35–AD; Amendment 39–9180; AD 93–15–02 R1]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 93–15–02, which requires the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a certain Simmonds-Precision pitch trim actuator: repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; immediately replacing any actuator if certain freeplay limitations are not met or rod slippage is evident; and eventually replacing the actuator regardless of the inspection results. This action maintains these requirements, but reduces the hours time-in-service (TIS) before the initial inspection is required, and shortens both the time period between repetitive inspections and the actuator replacement compliance time (unless the replacement actuator is new or if the nut tube assemblies have been replaced during overhaul). An in-flight incident where the referenced actuator on one of the affected airplanes failed after accomplishment of the 5,000-hour initial inspection (with satisfactory results) prompted this action. The actions specified by this AD are intended to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

DATES: Effective April 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 5, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421; facsimile (210) 820–8609. This information may also be examined at the FAA, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5150; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: AD 93–15–02, Amendment 39–8648 (59 FR 40734, July 30, 1993), currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5: repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; and, if certain freeplay limitations are not met or rod slippage is evident, replacing any actuator with a new actuator of the same part number or with a part of improved design, P/N 27–19008–01 or 27–19008–02. The requirements of the AD will no longer apply when an actuator of improved design is installed. Accomplishment of the freeplay measurements and inspections is in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable. Accomplishment of the pitch trim actuator replacement is in accordance with the applicable maintenance manual.

AD 93–15–02 was issued based on reports of two in-flight incidents where the above-referenced pitch trim actuator failed on Fairchild Aircraft SA226 and SA227 series airplanes. In one case, the horizontal stabilizer went full-nose down, and in the other instance, the horizontal stabilizer jammed. Fortunately, the pilots were able to safely land in both of these instances. Upon removal and inspection of each of these pitch trim actuators, fatigued barrel nuts were found and the actuator usage time was well over 5,000 hours TIS.

Since AD 93–15–02 became effective, the FAA received a report of an in-flight incident where the referenced actuator on one of the affected airplanes failed. The airplane operator had accomplished the 5,000-hour TIS initial inspection (with satisfactory results), but had not reached the 6,500-hour TIS mandatory replacement threshold.

Fairchild Aircraft has revised SA226 Series SL 226–SL–005 and SA227 Series SL 227–SL–011 to reflect the revised compliance times and a change to the inspection procedure. The revision date of this service information is March 2, 1995.

After examining the circumstances and reviewing all available information related to the incident described above, the FAA has determined that AD 93–15–02 should be revised by (1) reducing the number of hours TIS before the initial inspection is required; and (2) shortening both the time period between repetitive inspections and the actuator replacement compliance time, unless the replacement actuator is new or if the tube nut assemblies have been replaced during overhaul.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that are equipped with a Simmonds-Precision pitch trim actuator, P/N DL5040M5, this AD requires the same repetitive inspections and actuator replacement as AD 93–15–02, but revises the compliance times as previously specified. The inspections will be accomplished in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: March 2, 1995, as applicable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment

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hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be significant under Executive Order 12866. It is impracticable for the agency to follow the procedures of Executive Order 12866 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8648 (59 FR 40734, July 30, 1993), and by adding a new airworthiness directive to read as follows:

93–15–02 R1 Fairchild Aircraft: Amendment 39–9180; Docket No. 93–CE–35–AD. Revises AD 93–15–02, Amendment 39–8648.

Applicability: All SA226 and SA227 series airplanes (all models and serial numbers) that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the horizontal stabilizer from going nose down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Upon accumulating 3,000 hours time-in-service (TIS) on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, or within the next 50 hours TIS accumulated on this type pitch trim actuator after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 250 hours TIS until paragraph (b) is complied with, accomplish the following:

Note 3: If hours TIS accumulated on the pitch trim actuator are not maintained, then hours TIS accumulated on the airplane may be substituted.

(1) Measure the freeplay of the pitch trim actuator and inspect the actuator for rod slippage in accordance with the INSTRUCTIONS section of Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both issued: April 8, 1993, revised: March 2, 1995, as applicable.

(2) If certain freeplay limitations specified in the service letters are not met or rod slippage is evident, prior to further flight, accomplish the replacement specified in either paragraph (b)(1) or (b)(2) of this AD.

(b) Within 500 hours TIS after the inspection specified in paragraph (a) of this AD or upon accumulating 5,000 hours TIS on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, whichever occurs later, accomplish one of the following:

(1) Replace the pitch trim actuator with a new part of the same design and part number in accordance with the instructions in the applicable maintenance manual. Reinspect as specified in paragraph (a) of this AD at intervals not to exceed 300 hours TIS, and replace the actuator as specified in paragraph (b) of this AD at intervals not to exceed 6,500 hours TIS.

(2) Replace the pitch trim actuator with an overhauled, zero-timed part of the same design and part number. Accomplish this replacement in accordance with the instructions in the applicable maintenance manual, and reinspect and replace as specified below (paragraphs (b)(2)(i) and (b)(2)(ii) of this AD):

(i) If both nut tube assemblies, P/N AA56142, were replaced with new assemblies during overhaul, reinspect as specified in paragraph (a) of this AD at intervals not to exceed 300 hours TIS, and replace the actuator as specified in paragraph (b) of this AD at intervals not to exceed 6,500 hours TIS;

(ii) If both nut tube assemblies, P/N AA56142, were not replaced with new assemblies during overhaul, reinspect as specified in paragraph (a) of this AD at intervals not to exceed 250 hours TIS, and replace the actuator as specified in paragraph (b) of this AD at intervals not to exceed 5,000 hours TIS.

(3) Replace the pitch trim actuator with a new part of improved design, P/N 27–19008–01 or 27–19008–02, in accordance with the instructions in the applicable maintenance manual.

(i) This replacement eliminates the repetitive inspection requirement of this AD.

(ii) This replacement may be accomplished at any time to eliminate the inspection requirement of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) The inspections and modification required by this AD shall be done in accordance with Fairchild Aircraft SA226 Series Service Letter 226–SL–005, and Fairchild Aircraft SA227 Series Service Letter 227–SL–011, both Issued: April 8, 1993, Revised: March 2, 1995, as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9180) becomes effective on April 17, 1995.

Issued in Kansas City, Missouri, on March 17, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7113 Filed 3–24–95; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 94–AGL–23]

Establishment of Class D Airspace; Akron-Canton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Akron-Canton, OH Class D airspace area legal description published in a final rule on February 23, 1995, (60 FR 10014) establishing Class D airspace for Akron-Canton Regional Airport, Akron, OH.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Cibic, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–4439, published on February 23, 1995 (60 FR 10014), established Class D airspace for Akron-Canton Regional Airport, Akron, Ohio. The Class D surface and radius area indicated in the legal description were published incorrectly. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Akron, Ohio, Class D airspace, as published in the **Federal Register** on February 23, 1995, (60 FR 10014), (Federal Register Document 95–4439, page 10014, column 2), is corrected in the final rule to the incorporation by reference 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

Paragraph 5000 General

* * * * *

AGL OH D Akron-Canton, OH [Corrected]

(Lat. 40°54'59"N., long. 81°26'32"W.)

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Akron-Canton Regional Airport, OH. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–7498 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 777

[Docket No. 930653–4299]

RIN 0694–AA70

Exports of Certain California Crude Oil

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the short supply provisions of the Export Administration Regulations (EAR) by revising the restrictions on exports of crude oil produced in the lower 48 states to allow exports, under individual, validated licenses, of up to 25,000 barrels per day (MB/D) of California heavy crude oil having a gravity of 20.0 degrees API or lower.

This final rule revises the licensing requirements and procedures that apply to exports of California heavy crude oil by removing a number of significant restrictions, *e.g.*, the prohibition against transporting crude oil by pipeline over rights-of-way granted pursuant to the Mineral Leasing Act of 1920 and the requirement that any export of crude oil must be offset by importing an equal or greater volume of crude oil of equal or higher quality.

In order to minimize procedural delays in licensing exports of California heavy crude oil, BXA's Office of Chemical and Biological Controls and Treaty Compliance (CBTC) will issue licenses on a first-come, first-served, basis. Based on comments received on the March 24, 1994, proposed rule, this rule allows CBTC to issue licenses contingent upon the exporter submitting, prior to any export under a license, documentation showing that the exporter has title to the oil (or a contract to purchase the oil) and a contract to export the oil. This change in documentation requirements should provide exporters with greater flexibility in completing small cargo transactions on the spot market. Such transactions are likely to account for the bulk of California heavy crude oil exports.

EFFECTIVE DATE: March 27, 1995.

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FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Chemical and Biological Controls and Treaty Compliance (CBTC), Bureau of Export Administration, Telephone: (202) 482–0894.

SUPPLEMENTARY INFORMATION:

Background

Section 777.6(d)(1) of the Export Administration Regulations (EAR) restricts exports of crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil. This rule amends § 777.6(d)(1) to permit exports of certain California crude oil pursuant to a Presidential memorandum of October 22, 1992,[1] in which the President determined that exports of California heavy crude oil having a gravity of 20.0 degrees API or lower were in the national interest. Prior to authorizing the export of this California crude oil, the President made certain findings and determinations under the following statutes:

(1) Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212(b));

(2) Section 28(u) of the Mineral Leasing Act, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (30 U.S.C. 185(u)); and

(3) The provisions of the Export Administration Act of 1979 (EAA), as amended, to the extent permitted with law, continued in effect after its August 20, 1994, expiration through the President's invocation of the International Emergency Economic Powers Act in Executive Order 12924 of August 19, 1994.

The President made findings that exports of California heavy crude oil having a gravity of 20.0 degrees API or lower:

(1) Are in accordance with the provisions of the Export Administration Act of 1979, as amended;

(2) Are consistent with the purpose of the Energy Policy and Conservation Act; and

(3) Will not diminish the total quality or quantity of petroleum available to the United States.

Based on the above findings, the President authorized the Secretary of Commerce to modify the existing restrictions on the export of crude oil produced in the lower 48 states to allow initially the export of an average quantity of 25 MB/D of California heavy crude oil having a gravity of 20.0 degrees API or lower.

[1] The President's memorandum of October 22, 1992, was published in the **Federal Register** Vol. 57, No. 226, November 23, 1992, p. 54895.

The President also directed the Secretary of Energy, in consultation with the Secretaries of Commerce, the Interior, Transportation, and other interested agencies, to conduct periodic reviews of such exports in light of then-existing market circumstances. In addition, the President authorized the Secretary of Energy to recommend to the Secretary of Commerce, based on the results of these periodic reviews, what, if any, adjustments should be made in the quantity of California heavy crude oil that may be authorized for export (*i.e.*, adjustments to the currently authorized level of 25 MB/D).

Publication of Proposed Rule (March 24, 1994)

In response to the President's decision, the Department published a proposed rule and request for public comments in the **Federal Register** on March 24, 1994 (59 FR 13900). The proposed rule would have allowed the CBTC to authorize exports of up to 25 MB/D of California heavy crude oil having a gravity of 20.0 degrees API or lower. The March 24 rule proposed that CBTC would grant export licenses on a first-come, first-served, basis with the quantity authorized on any one license not to exceed 25 percent (2.28 million barrels) of the annual authorized volume (*i.e.*, 9.125 million barrels). The proposed rule would have allowed CBTC to approve only one application per month from each company and its affiliates, as long as applications from non-affiliated companies were still pending. In addition, the validity period for licenses would have been 90 days; and CBTC would have returned to the available authorized export quota any volumes that had been licensed but not exported during the 90-day validity period, except that no unshipped volumes would have been carried over more than 30 days into a new calendar year. Any unlicensed portion of the quota would have been carried forward by CBTC from month to month, except that no volumes would have been carried forward more than 30 days into a new calendar year. The proposed rule would have allowed exporters a 10-percent tolerance on the unshipped balance based on the number of barrels authorized on the license, as well as a 25-percent tolerance on the total dollar value of the license.

Applicants would have been subject to a number of documentation requirements under the proposed rule: (1) Documentation showing that the applicant has or will acquire title to the quantity of barrels stated in the application; (2) a contract to export the quantity of barrels stated in the application; (3) documentation showing that the crude oil has a gravity of 20.0 degrees API or lower and was produced within the state of California; and (4) an affidavit that the crude oil was not produced or derived from a U.S. Naval Petroleum Reserve and was not produced from the submerged lands of the U.S. Outer Continental Shelf.

Finally, the proposed rule solicited public comments on three possible license allocation schemes: (1) The first-come, first-served licensing scheme described in the proposed rule; (2) a prorationing scheme similar to the one used for exports of Alaskan North Slope crude oil to Canada; and (3) a licensing scheme employing pre-qualification with export nominations.

Public Comments on the Proposed Rule

The Bureau of Export Administration (BXA) received seven comments on the March 24, 1994, proposed rule. One commenter opposed allowing exports of up to 25 MB/D of California heavy crude oil, asserting that this change would provide little or no economic benefits for California crude oil producers and would likely result in price increases in the domestic fuel market. Two commenters had no objections to allowing the export of an average of 25 MB/D of California heavy crude oil, but urged the Department not to increase this level without a formal public rulemaking.

One commenter felt that the 25 MB/D average was quite small relative to the potential marketable oil and suggested that state and local governmental entities should be exempted from this limit. This commenter expressed no preference concerning the method by which licenses would be allocated and noted that the rule probably would not have a significant impact on inland producers because many of them lacked access to heated oil pipelines to transport crude oil to export terminals.

Two commenters urged BXA to drop the proposed requirement that applicants provide documentation showing the existence of a contract to export California heavy crude oil, because this requirement would make it difficult for companies to complete small cargo transactions on the spot market. One alternative that was suggested would permit applicants to submit one application per quarter, for cargoes not exceeding 500,000 barrels, to be supported by nonbinding letters of intent, instead of a signed contract.

Several alternative licensing regimes were suggested. One commenter suggested two alternative regimes. Under the first alternative, applicants would be allowed to identify potential supply sources and end-users, subject to approval by BXA, and would then be allowed to make shipments involving these approved parties, providing proof of compliance and performance to BXA after each shipment. The second alternative would involve the issuance of two types of licenses: (1) short-term (30- to 90-day) licenses not exceeding 500,000 barrels, with unused portions returned to the available quota, and (2) longer term (6- to 12-month) licenses of 1 to 2 million barrels, with up to half the amount returned to the available quota if no shipment is made within 3 months. This commenter also urged that applicants be allowed to apply for licenses several months in advance of the effective date. Finally, the commenter suggested that licensees who fail to make any shipments under their licenses be given a lower priority when filing applications for subsequent licenses.

Another commenter suggested an alternative licensing regime that would involve a prorationing mechanism with a validity period of not less than 1 year and a minimum quantity of 500,000 barrels. This commenter also favored eliminating the one application per month limitation and removing the 25 MB/D cap on exports.

Finally, one commenter urged the Commerce Department to work toward eliminating export restrictions on California heavy crude oil produced from the submerged lands of the U.S. Outer Continental Shelf and, as part of this action, increase the proposed gravity limit from 20 degrees API to 22 degrees API.

Changes Made by This Final Rule

The Department reviewed the public comments on the March 24, 1994, proposed rule and decided to retain, for the most part, the licensing regime contained in that rule (*i.e.*, first-come, first served). However, the Department recognizes that a number of concerns were raised in the public comments on the proposed rule and, where practical, has made changes in this final rule to address these concerns.

This final rule makes certain significant changes in the documentation requirements for license applications to export California heavy crude oil. These changes are based on the Department's review of the public comments on the proposed rule, its consultations with industry representatives familiar with the California heavy crude oil export market, and its review of certain in-house data on actual shipments of California heavy crude oil under validated export licenses. The documentation requirements in the proposed rule specified that each application must be accompanied by: (1) a contract or bill of sale, showing title to the crude oil, and (2) a contract to export the crude oil. Several commenters felt that this requirement would make it difficult for companies to complete small cargo transactions on the spot market, noting that the timeframe for completing small cargo transactions can be very short and that a limited window of opportunity could be missed if proof of a contract had to be obtained before an export license could be issued. These commenters also noted that the negative effects of the prior proof of contract requirement could be quite significant because the bulk of California heavy crude oil exports are spot market transactions.

Because of the unique characteristics of the California heavy crude oil export market (most sales consist of small spot market transactions), the Department decided to modify the proof of contract requirement. This final rule requires that each application be accompanied by documentary evidence of an order as described in § 772.6(a)(2), such as a letter of intent. Although this final rule does not require proof of a contract at the time an application is submitted, all licenses to export California heavy crude oil will be subject to the condition that the licensee submit to the CBTC, prior to any export under the license, documentation proving that the licensee has: (1) title to the quantity of barrels stated in the application and (2) a contract to export the quantity stated on the application. This change will provide applicants with greater flexibility to engage in spot market transactions. Applicants will be able to obtain export licenses more quickly, since they will not have to wait until they have a firm contract to submit their applications. They also will have additional time in which to obtain proof of a contract, since they are only required to submit such proof to CBTC at some point prior to the time of export.

To encourage applicants to apply for a validated license only when they have a real opportunity to make an export sale, this final rule requires CBTC to consider the following factors when determining what action should be taken on individual applications:

(1) The number of validated licenses to export California heavy crude oil that have been issued to the applicant or its affiliates during the current calendar year;

(2) The number of applications pending in CBTC that have been submitted by applicants who have not been issued validated licenses to export California heavy crude oil during the current calendar year; and,

(3) The percentage of California heavy crude oil authorized under export licenses previously issued to the applicant that has actually been exported by the applicant.

Another significant change in documentation requirements involves the affidavit requirement contained in § 777.6(d)(1)(xii) of the proposed rule. This requirement has been replaced in the final rule by a certification requirement, *i.e.*, the applicant is required to certify that: (1) the commodity has a gravity of 20.0 degrees API or lower; (2) the commodity is produced in the state of California; (3) the commodity is *not* produced or derived from a U.S. Naval Petroleum Reserve; and (4) the commodity is *not* produced from the submerged lands of the U.S. Outer Continental Shelf.

The Department decided to retain the first-come, first-served, mechanism that was proposed in the March 24, 1994, rule because it provides a greater degree of flexibility and administrative simplicity than the prorationing and pre-qualification licensing alternatives that also were described in the proposed rule. Under the first-come, first-served licensing regime adopted in this final rule, CBTC will accept only one application per month from each company and its affiliates (regardless of whether or not applications from non-affiliated companies are pending) for a total quantity not to exceed 25 percent (2.28 million barrels) of the annual (9.125 million barrels) authorized volume of California heavy crude oil. CBTC will issue licenses in the order in which it receives applications, with all licenses having the same validity period, *i.e.*, 90 calendar days. The Department considered establishing a longer validity period, but felt that the 90-day term provided the best compromise between the needs of spot market applicants and applicants anticipating larger volume transactions covering a longer term. Since licensees are permitted to wait until immediately prior to making shipments under their licenses before providing CBTC with documentation showing proof of title and a contract to export, the Department felt that the 90-day license term was necessary to ensure that no applicant would tie up large volumes of California heavy crude oil for a significant period of time (e.g., for six months to a year), without having received a firm contract offer, thereby denying commercial opportunities to other applicants.

This final rule also implements the provisions of the proposed rule concerning: (1) volumes that have not

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been licensed for export and (2) licensed volumes that have not been exported prior to the expiration date of the license. CBTC will carry forward any portion of the 25,000 barrel per day quota that has not been licensed and will return to the available authorized quota any portion that has been licensed, but not shipped, within the 90-day validity period of the license, except that these volumes will not be carried over more than 30 days into a new calendar year. This approach will ensure that the total volume available for export in any one year does not significantly exceed the annual (9.125 million barrels) authorized volume of California heavy crude oil. If market conditions dictate that an adjustment should be made in the annual authorized volume, the Secretary of Energy is authorized to recommend that the Secretary of Commerce make the necessary adjustment.

Consistent with the March 24, 1994, proposed rule, this final rule allows licensees to combine authorized quantities into one or more shipments, provided that the validity period of none of the affected licenses has expired. In addition, this rule retains the shipping tolerances set forth in the proposed rule, *i.e.*, a 10-percent tolerance on the unshipped balance (based on the number of barrels authorized on the license) and a 25-percent tolerance on the total dollar value of the license. This final rule also prohibits licensees from transferring their licenses to other parties without prior written authorization from CBTC, in accordance with § 772.13.

The Department considered the effect on the environment of exports of California heavy crude oil in its 1989 "Report to Congress on U.S. Crude Oil Exports" which recommended the liberalization of export restrictions resulting in the 1992 Presidential determination. The Department also conducted an assessment in connection with the approval of an export license application during 1991. In both cases, the Department determined that the export of California heavy crude would not have a significant impact on the environment.

The Department completed an assessment of the environmental affects of the export of California crude oil in connection with the present rulemaking. The assessment confirmed the previous findings that the export would not have a significant impact on the environment. On October 12, 1994, the National Oceanic and Atmospheric Administration (NOAA) approved the assessment, including the conclusion that exports of California heavy crude oil will not have a significant impact on the human environment in accordance with the Council on Environmental Quality's regulations implementing the National Environmental Protection Act. The environmental assessment is available for public inspection in Room H–4513.

Rulemaking Requirements

1. This rule was determined to be significant for the purposes of Executive Order 12866.

2. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The public reporting burden for this collection of information is estimated to average 12 hours per response, including the time required for reviewing instructions, searching and maintaining the necessary data, and completing and reviewing the collection of information. Send comments regarding this burden to: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Room 2096, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (ATTN: Paperwork Reduction Project—0694–0027).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. A notice of proposed rulemaking and an opportunity for public comment were not required for this rulemaking by section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993), and Pub. L. No. 103–277, July 5, 1994). Although the Export Administration Act expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions of the Export Administration Act shall be carried out under Executive Order 12924 of August 19, 1994, so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations and Act. As such, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has been or will be prepared.

List of Subjects in 15 CFR Part 777

Administrative practice and procedure, Exports, Forest and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, Part 777 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

1. The authority citation for 15 CFR Part 777 continues to read as follows:

Authority: Pub. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993), and E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994).

PART 777—[AMENDED]

2. Section 777.6 is amended by adding a new paragraph (d)(1)(xii) and a new paragraph (k) to read as follows:

§ 777.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(xii) *Exports of certain California crude oil.* California heavy crude oil may be exported under the following conditions:

(A) The applicant certifies that:

(*1*) The commodity has a gravity of 20.0 degrees API or lower;

(*2*) The commodity is produced in the state of California, including its submerged state lands;

(*3*) The commodity is *not* produced or derived from a U.S. Naval Petroleum Reserve;

(*4*) The commodity is *not* produced from the submerged lands of the U.S. Outer Continental Shelf;

(B) All aspects of the transaction comply with the provisions of paragraph (k) of this section.

* * * * *

(k) *Exports of certain California crude oil pursuant to § 777.6(d)(1)(xii).* The export of California heavy crude oil having a gravity of 20.0 degrees API or lower, at an average volume not to exceed 25 MB/D, will be authorized as follows.

(1) Applicants must submit their applications on Form BXA–622P to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(2) The quantity stated on each application must be the total number of barrels proposed to be exported under the license—not a per-day rate. This quantity must not exceed 25 percent of the annual authorized export quota. Potential applicants may inquire of BXA as to the amount of the annual authorized export quota available.

(3) Each application shall be accompanied by a certification by the applicant that the California heavy crude oil:

(i) Has a gravity of 20.0 degrees API or lower;

(ii) Was produced within the state of California, including its submerged state lands;

(iii) Was *not* produced or derived from a U.S. Naval Petroleum Reserve; *and*

(iv) Was *not* produced from submerged lands of the U.S. Outer Continental Shelf.

(4) Each license application must be based on an order, as defined by § 772.6(a) of this subchapter and must be accompanied by documentary evidence of an order as described in § 772.6(a)(2), e.g., a letter of intent.

(5) The Office of Chemical and Biological Controls and Treaty Compliance (CBTC) will adhere to the following procedures for licensing exports of California heavy crude oil:

(i) CBTC will issue individual validated licenses for approved applications in the order in which the applications are received (date-time stamped upon receipt by CBTC), with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

(ii) CBTC will approve only one application per month for each company and its affiliates.

(iii) CBTC will consider the following factors (among others) when determining what action should be taken on individual license applications:

(A) The number of validated licenses to export California heavy crude oil that have been issued to the applicant or its affiliates during the then-current calendar year;

(B) The number of applications pending in CBTC that have been submitted by applicants who have not previously been issued validated licenses under this section to export California heavy crude oil during the then-current calendar year; and,

(C) The percentage of the total amount of California heavy crude oil authorized under other export licenses previously issued to the applicant pursuant to this section that has actually been exported by the applicant.

(iv) CBTC will approve applications contingent upon the licensee providing documentation meeting the requirements of both paragraphs (k)(5)(iv) (A) and (B) of this section prior to any export under the license:

(A) Documentation showing that the applicant has or will acquire title to the quantity of barrels stated in the application. Such documentation shall be either:

(*1*) An accepted contract or bill of sale for the quantity of barrels stated in the application; *or*

(*2*) A contract to purchase the quantity of barrels stated in the application, which may be contingent upon issuance of an export license to the applicant.

(B) Documentation showing that the applicant has a contract to export the quantity of barrels stated in the application. The contract which may be contingent upon issuance of the export license to the applicant.

(v) CBTC will carry forward any portion of the 25 MB/D quota that has not been licensed, *except that* no unallocated portions will be carried forward more than 90 days into a new calendar year. Applications to export against any carry forward must be filed with CBTC by January 15 of the carry-forward year.

(vi) CBTC will return to the available authorized export quota any portion of the 25 MB/D per day quota that has been licensed, but not shipped, during the 90-day validity period of the license.

(vii) CBTC will *not* carry over to the next calendar year pending applications from the previous year.

(6) License holders:

(i) Have 90 calendar days from the date the license was issued to export the quantity of California heavy crude oil authorized on the license. Within 30 days of any export under the license, the exporter must provide CBTC with a certified statement confirming the date and quantity of California heavy crude oil exported.

(ii) Must submit to CBTC, prior to any export under the license, the documentation required by paragraph (k)(5)(iv) of this section.

(iii) May combine authorized quantities into one or more shipments, *provided that* the validity period of none of the affected licenses has expired.

(iv) Are prohibited from transferring the license to another party without prior written authorization from CBTC in accordance with § 772.13 of this subchapter.

(7) CBTC will allow, pursuant to § 786.7(c) of this subchapter, a 10-percent tolerance on the unshipped balance based upon the volume of barrels it has authorized. CBTC will allow a 25-percent shipping tolerance on the total dollar value of the license.

Dated: March 22, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–7525 Filed 3–24–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–35483A]

Organization and Program Management; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule which was published on Monday, March 20, 1995 (60 FR 14622). The rule updated the Commission's rules on organization and program management.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: David M. Goldenberg, Office of Regulatory Policy, Division of Investment Management, (202) 942–4525.

SUPPLEMENTARY INFORMATION:

Background

The Commission has undertaken a comprehensive review of the rules governing its organization and program management. The final rule that is the subject of this correction results from that review.

Need for Correction

As published, the final rule describes in the section entitled "Supplementary Information" certain amendments that, while approved by the Commission,

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were inadvertently omitted from the Text of Amendments.

Correction of Publication

Accordingly, the publication on March 20, 1995 of the final rule [Release No. 34–35483], which was the subject of FR Doc. 95–6696, is corrected as follows:

§ 200.30–5 [Amended]

1. On Page 14628, in the third column, amendatory instruction 31a is added to read as follows: "31a. Section 200.30–5 is amended by removing paragraph (f)(5) and redesignating paragraphs (f)(6), (f)(7), (f)(8) and (f)(9) as paragraphs (f)(5), (f)(6), (f)(7) and (f)(8)."

Dated: March 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–7394 Filed 3–24–95; 8:45 am]

BILLING CODE 6010–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 1958–95]

Authority of United States Attorneys To Compromise and Close Civil Claims

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule increases the United States Attorneys' settlement authority in civil matters. It also inserts appropriate references to the Associate Attorney General as an official with certain decisionmaking authority and to whom certain reports are to be made. This rule is being promulgated to increase Department efficiency.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Juliet A. Eurich, Legal Counsel, Executive Office for U.S. Attorneys, Department of Justice, Main Building, Room 1643, 10th & Pennsylvania Avenue NW., Washington, DC 20530; telephone (202) 514–4024.

SUPPLEMENTARY INFORMATION: In subpart Y of 28 CFR part 0, the Attorney General has delegated to the various Assistant Attorneys General certain of her authority to compromise and close civil claims. Section 0.168(d) authorizes the various Assistant Attorneys General to redelegate certain of that authority to United States Attorneys. They have done so in various directives reprinted as appendices to subpart Y.

This rule increases the dollar value of claims that may be settled by United States Attorneys. This change is occasioned in part by the increase in the value of the claims brought by and against the United States.

This rule also inserts appropriate references to the Associate Attorney General as an official with certain decisionmaking authority in this area and to whom certain reports are to be made.

This rule furthers the efficient operation of the Department of Justice and advances the goals of civil justice reform and alternative dispute resolution.

As a regulation related to internal Department of Justice management, this rule may become effective without provision for public comment pursuant to 5 U.S.C. 553(b)(A). This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it has not been reviewed by the Office of Management and Budget. Pursuant to 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

For the reasons set forth in the preamble, subpart Y of part 0 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart Y—Authority To Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.160 is revised to read as follows:

§ 0.160 Offers that may be accepted by Assistant Attorneys General.

(a) Subject to the limitations set forth in paragraph (c) of this section, Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $2,000,000 or 15 percent of the original claim, whichever is greater;

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $2,000,000; and

(3) Accept offers in compromise in all nonmonetary cases.

(b) Subject to the limitations set forth in paragraph (c) of this section, the Assistant Attorney General, Tax Division, is further authorized to accept offers in compromise of, or settle administratively, claims against the United States, regardless of the amount of the proposed settlement, in all cases in which the Joint Committee on Taxation has indicated that it has no adverse criticism of the proposed settlement.

(c) Any proposed settlement, regardless of amount or circumstances, must be referred to the Deputy Attorney General or the Associate Attorney General, as appropriate:

(1) When, for any reason, the compromise of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the compromise of all the claims taken together would exceed the authority delegated by paragraph (a) of this section; or

(2) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by a department or agency involved, or for any other reason, the proposed settlement should receive the personal attention of the Deputy Attorney General or the Associate Attorney General, as appropriate;

(3) When the proposed settlement converts into a mandatory duty the otherwise discretionary authority of a department or agency to promulgate, revise, or rescind regulations;

(4) When the proposed settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek particular appropriation or budget authorization; or

(5) When the proposed settlement otherwise limits the discretion of a department or agency to make policy or managerial decisions committed to the department or agency by Congress or by the Constitution.

3. Section 0.161 is revised to read as follows:

§ 0.161 Acceptance of certain offers by the Deputy Attorney General or Associate Attorney General, as appropriate.

(a) In all cases in which the acceptance of a proposed offer in compromise would exceed the authority delegated by § 0.160, the Assistant Attorney General concerned shall, when he is of the opinion that the proposed offer should be accepted, transmit his recommendation to that effect to the Deputy Attorney General or the Associate Attorney General, as appropriate.

(b) The Deputy Attorney General or the Associate Attorney General, as appropriate, is authorized to exercise the settlement authority of the Attorney General as to all claims asserted by or against the United States.

4. Section 0.164 is revised to read as follows:

§ 0.164 Civil claims that may be closed by Assistant Attorneys General.

Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to close (other than by compromise or by entry of judgment) claims asserted by the United States in all cases in which they would have authority to accept offers in compromise of such claims under § 0.160(a), except:

(a) When for any reason, the closing of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the closing of all the claims taken together would exceed the authority delegated by this section; or

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the department or agency involved, or for any other reason, the proposed closing should receive the personal attention of the Attorney General, the Deputy Attorney General or the Associate Attorney General, as appropriate.

5. Section 0.165 is revised to read as follows:

§ 0.165 Recommendations to the Deputy Attorney General or Associate Attorney General, as appropriate, that certain claims be closed.

In all cases in which the closing of a claim asserted by the United States would exceed the authority delegated by §§ 0.160(a) and 0.164, the Assistant Attorney General concerned shall, when he is of the opinion that the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General or the Associate Attorney General, as appropriate, for review and final action. Such report shall be in such form as the Deputy Attorney General or the Associate Attorney General may require.

6. Section 0.168 is revised to read as follows:

§ 0.168 Redelegation by Assistant Attorneys General.

(a) Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to redelegate to subordinate division officials and United States Attorneys any of the authority delegated by §§ 0.160 (a) and (b), 0.162, 0.164, and 0.172(b), except that any disagreement between a United States Attorney or other Department attorney and a client agency over a proposed settlement that cannot be resolved below the Assistant Attorney General level must be presented to the Assistant Attorney General for resolution.

(b) Redelegations of authority under this section shall be in writing and shall be approved by the Deputy Attorney General or the Associate Attorney General, as appropriate, before taking effect.

(c) Existing delegations and redelegations of authority to subordinate division officials and United States Attorneys to compromise or close civil claims shall continue in effect until modified or revoked by the respective Assistant Attorneys General.

(d) Subject to the limitations set forth in § 0.160(c) and paragraph (a) of this section, redelegations by the Assistant Attorneys General to United States Attorneys may include the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $5,000,000 and in which the difference between the original claim and the proposed settlement does not exceed $1,000,000; and

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $1,000,000.

Dated: March 21, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–07460 Filed 3–24–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain additional requirements, a proposed amendment to the Texas permanent regulatory program (hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of changes to Texas' existing rules pertaining to identification of interests and compliance information, review of permit applications, criteria for permit approval or denial, and Railroad Commission of Texas (Commission) review of outstanding permits. The amendment was intended to revise the Texas program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program.
II. Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program and program amendments are codified at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated May 24, 1994 (Administrative Record No. TX–576), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required amendments codified at 30 CFR 943.16

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(c) (1) and (2), (d), (f), (j) (1), (2), (3), and (4), (r), and (s) (59 FR 13200, March 21, 1994). The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) at Article 5920–11 of the Texas Revised Civil Statutes Annotated that Texas proposed to amend were: TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215 (e)(1) and (f), review of permit applications; TCMR 786.216 (i) through (o), criteria for permit approval or denial; TCMR 788.225 (f) through (i), commission review of outstanding permits; and section 21(c) of TSCMRA, reporting notices of violations in permit applications.

OSM announced receipt of the proposed amendment in the June 30, 1994, **Federal Register** (59 FR 33705), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. TX–576.07). Because no one requested a public hearing or meeting, none was held.

The public comment period ended August 1, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Texas' regulations and statute at TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215(e)(1), review of permit applications; TCMR 788.225(g), Commission review of outstanding permits; and section 21(c) of TSCMRA, reporting notices of violations in permit applications. OSM notified Texas of the concerns by letter dated August 11, 1994 (Administrative Record No. TX–576.12).

Texas responded in a letter dated October 6, 1994, by submitting a revised amendment (Administrative Record No. TX–576.13). Texas proposed further revisions to TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215(e)(1), review of permit applications; and TCMR 788.225(g), Commission review of outstanding permits. Texas also proposed to recodify previously proposed TCMR 788.225 (h) and (i), respectively, as TCMR 788.226(g)(2) and (h). Texas also stated that it was not, at this time, proposing any formal program amendment pertaining to section 21(c) of TSCMRA. Therefore, OSM considers section 21(c) of TSCMRA to be withdrawn from consideration in this amendment, and the required amendment at 30 CFR 943.16(r) remains outstanding.

Based upon the revisions to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the October 27, 1994, **Federal Register** (59 FR 53949, Administrative Record No. TX–576.20). The public comment period ended November 14, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with two additional requirements, that the proposed regulation revisions submitted by Texas on May 24, 1994, and as further revised on October 6, 1994, are consistent with the corresponding provisions of the Federal regulations. Accordingly, the Director approves the proposed regulation revisions.

In taking this action, the Director notes that, effective November 28, 1994, OSM revised the Federal regulations at 30 CFR Parts 701, 773, 778, 840, and 843 pertaining to the applicant/violator computer system (AVS) and procedures for ownership and control determinations (59 FR 54306, October 28, 1994). Also, effective November 28, 1994, the Office of Hearings and Appeals revised related Federal regulations at 43 CFR part 4, subpart L, pertaining to special rules applicable to surface coal mining hearings and appeals (59 FR 54356, October 28, 1994). By letter dated January 18, 1995, OSM notified Texas of these revisions to the Federal regulations (Administrative Record No. TX–585). The Director's action in this amendment does not relieve Texas from the need to further amend its regulations to comply with other provisions in the revised Federal regulations. When OSM determines which Texas regulation provisions pertaining to AVS and ownership and control must be amended to be no less effective than the revised Federal regulations, it will notify Texas in accordance with 30 CFR 732.17(d).

1. Nonsubstantive Revisions to Texas' Regulations

Texas proposed to recodify its previously-approved right of appeal regulation at TCMR 788.225(g) (corresponding Federal regulation at 30 CFR 773.21) as TCMR 788.225(h).

Because the proposed recodification of this previously-approved regulation is nonsubstantive in nature, the Director finds that this proposed recodification is not inconsistent with SMCRA or the Federal regulations. The Director approves this proposed recodification.

2. Substantive Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

In response to the required amendments at 30 CFR 943.16(j)(1) through (3) (finding No. 4(b), 59 FR 13200, 13205, March 21, 1994), Texas proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulation provisions (listed in parentheses).

TCMR 788.225(f) (3) and (4) (30 CFR 773.20(c)(1)(iii) and (iv)), remedial measures,

TCMR 788.225(g) and (g)(1) (i) through (iv) (30 CFR 773.21 and 773.21(a)(1) through (4)), rescission procedures, and

TCMR 788.225(g)(2) (30 CFR 773.21(b), cessation of operations.

Because these proposed revisions to Texas' regulations are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulations. The Director approves these regulation revisions and removes the required amendments at 30 CFR 943.16(j)(1) through (3).

3. TCMR 778.116(m), Identification of Interests and Compliance Information

In response to the required amendments at 30 CFR 943.16(c)(1) and (2) (finding No. 2, 59 FR 13200, 13201–13203, March 21, 1994), Texas proposed to revise TCMR 778.116(m) to require that a permit application must include,

> For any violations of a provision of the Act, Federal Act *and its implementing Federal regulations and all Federal and state programs under the Federal Act*, or of any law, rule or regulation of the United States, or of any [State] *state* law, rule or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection * * * a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application * * *.

Texas proposed to add the italicized language and to delete the bracketed language.

The corresponding Federal regulations at 30 CFR 778.14(c), through the Federal definition of "violation notice" at 30 CFR 773.5, require that a permit application must include information on violation notices received pursuant to SMCRA, SMCRA's implementing Federal regulations, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection.

At TCMR 700.003(1), Texas defines the term "Act" to mean the "Texas Surface Coal Mining Control and Reclamation Act" and at TCMR 700.003(10) defines the term "Federal Act" to mean the "Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87)." Therefore, when Texas requires, at proposed TCMR 778.116(m), that a permit application include information "for any violations of a provision of the Act, Federal Act and its implementing Federal regulations and all Federal * * * programs approved under the Federal Act," it requires a permit application to include information regarding violations of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal programs (OSM–administered Indian lands program and Federal programs for States).

Furthermore, in a previously proposed and approved amendment (Administrative Record No. TX–562), Texas stated that the word "State," when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Therefore, where Texas requires, at proposed TCMR 778.116(m), information for "violations of a provision of * * * all * * * state programs approved under the Federal Act," it requires a permit application to include information regarding violations of all SMCRA-approved State programs, not just the Texas program.

Likewise, where proposed TCMR 778.116(m) requires information on violations "of any state law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection," it requires a permit application to include information regarding violations of a law, rule or regulation of any State, including Texas, enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection. However, the corresponding Federal regulations at 30 CFR 778.14(c), through the definition of "violation notice" at 30 CFR 773.5, require information on violation notices of all State laws, rules, and regulations pertaining to air or water environmental protection, not just those enacted pursuant to Federal law, rule, or regulation.

Because proposed TCMR 778.116(m) limits the information about violation notices required in a permit applications to violations of those State laws, rules, and regulations pertaining to air or water environmental protection that are enacted pursuant to Federal law, rule, or regulation, the Director finds that proposed TCMR 778.116(m) is less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulation at 30 CFR 778.14(c). Therefore, the Director requires Texas to further revise TCMR 778.116(m) to require a permit application to include information on all violations of any State law, rule or regulation that pertains to air or water environmental protection, not just those violations that were enacted pursuant to Federal law, rule, or regulation. Otherwise, for the reasons discussed above, the Director approves the proposed addition of the phrase "and its implementing Federal regulations and all Federal and state programs under the Federal Act" and the use of the word "state," uncapitalized, in place of the word "State" capitalized, and removes the required amendments at 30 CFR 943.16(c) (1) and (2).

4. TCMR 786.215 (e)(1), and (f), and 786.216(i), Review of Permit Application

(a) *TCMR 786.215(e)(1).* In response to the required amendment at 30 CFR 943.16(d), Texas proposed to revise TCMR 786.215(e)(1) to require the Commission to consider, as a basis for permit denial, information on "state" failure-to-abate cessation orders and unabated imminent harm cessation orders (finding No. 3(a), 59 FR 13200, 13202, March 21, 1994).

Texas proposed to revise TCMR 786.215(e)(1) by inserting the word "state," uncapitalized, in place of "State," capitalized. As discussed in finding No. 3, Texas stated in a previously proposed and approved amendment (Administrative Record No. TX–562) that the word "State," when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Thus, where proposed TCMR 786.215(e)(1) requires the Commission to consider information on "state" failure-to-abate cessation orders and unabated "state" imminent harm cessation orders, it means cessation order and violation notices incurred in all States, including those incurred in Texas.

The corresponding Federal regulations at 30 CFR 773.15(b)(1), through the definition of "violation notice" at 30 CFR 773.5, require, in part, that the regulatory authority consider information on State failure-to-abate cessation orders and unabated State imminent harm cessation orders incurred in all States, not just those incurred in the State where the application is submitted.

Because revised TCMR 786.215(e)(1) requires, as does the Federal regulation at 30 CFR 773.15(b)(1), that the State regulatory authority consider, as a basis for permit denial, cessation orders incurred by a permit applicant in all States, the Director finds that the proposed revisions to TCMR 786.215(e)(1) are no less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulation at 30 CFR 773.15(b)(1). The Director approves the proposed use of the word "state," uncapitalized, in place of the word "State," capitalized, at TCMR 786.215(e)(1) and removes the required amendment at 30 CFR 943.16(d).

(b) *TCMR 786.215(f).* In response to the required amendment at 30 CFR 943.16(f) (finding No. 3(b), 59 FR 13200, 13203, March 21, 1994), Texas proposed to revise TCMR 786.215(f) to require, in part, that,

> Before any final determination by the Commission that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act *or Federal Act and its implementing Federal regulations and all Federal and state programs approved under the Federal Act or Federal or state laws as used in 30 CFR 773.15(b)* of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act *or Federal Act and its implementing Federal regulations and all Federal and state programs approved under the Federal Act or Federal or state laws as used in 30 CFR 773.15(b)*, no permit shall be issued *and* [before] a hearing *shall be held* [and a final determination that no pattern of willful violations exists]. * * * *The Commission shall deny an application after a determination has been made that a pattern of willful violations exists.*

Texas proposed to add the italicized language and to delete the bracketed language. The proposed regulation further provides that the applicant or operator shall be afforded the opportunity for an adjudicatory hearing in accordance with TCMR 787.222.

Section 510(c) of SMCRA and the Federal regulation at 30 CFR 773.15(b)(3) prohibit issuance of a permit when the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment, as to

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indicate an intent not to comply with the Act. The term "Act," as used in section 510(c) of SMCRA and 30 CFR 773.15(b)(3), includes SMCRA, its implementing Federal regulations, and all Federal and State programs approved under SMCRA (48 FR 44344, 44389, September 28, 1983). The Federal regulation also requires that the applicant or operator be given an opportunity for an adjudicatory hearing on the determination, as provided for at 30 CFR 775.11, before such a finding becomes final.

As discussed in finding No. 3, Texas defines the term "Act" to mean the "Texas Surface Coal Mining Control and Reclamation Act" and defines the term "Federal Act" to mean the "Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87)." Therefore, where proposed TCMR 786.215(f) requires the Commission to consider as a demonstrated pattern of willful violation of or as an intent not to comply with the provisions of "the Act or Federal Act and its implementing Federal regulations and all Federal * * * programs approved under the Federal Act," it refers to violations of provisions of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal programs (OSM-administered Indian lands program and Federal programs for States).

As also discussed in finding No. 3, Texas stated in a previously proposed and approved amendment (Administrative Record No. TX–562) that the word "State," when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Therefore, where proposed TCMR 786.215(f) requires the Commission to consider "state programs approved under the Federal Act" it means the SMCRA programs of any State within the United States of America, not just the Texas program. Proposed TCMR 786.215(f) also requires the Commission, when determining whether a pattern of violations exists, to consider, in part, violations of "Federal or state laws as used in 30 CFR 773.15(b)." The Federal regulations at 30 CFR 773.15(b)(1) require the regulatory authority to consider, as a basis for permit denial, information concerning, among other things, violations of SMCRA, any Federal rule or regulation promulgated pursuant to SMCRA, a State program, and any Federal or State law, rule, or regulation pertaining to air or water environmental protection. Because the State provision already specifically encompasses violations of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal and State programs, the proposed phrase "Federal or state laws as used in 30 CFR 773.15(b)" must refer only to Federal and State laws, rules, and regulations pertaining to air or water environmental protection.

However, the provision of the Federal regulations dealing with pattern of willful violation determinations, 30 CFR 773.15(b)(3), does not require the regulatory authority to consider non-SMCRA violations of Federal and State laws, rules, or regulations pertaining to air or water environmental protection. The regulatory authority is required to consider only violations of SMCRA, its implementing Federal regulations, and SMCRA-approved Federal and State programs. Thus, the proposed phrase would require the Commission to consider, when determining whether a pattern of violation exists, a larger set of violations than is required by the Federal regulations at 30 CFR 773.15(b)(3), thereby increasing the possibility that a pattern of willful violations exists.

In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), a State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations or for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) provisions dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director approves the proposed revisions at TCMR 786.215(f) and removes the required amendment at 30 CFR 943.16(f).

(c) *TCMR 786.216(i).* In response to the required amendment at 30 CFR 943.16(s) (finding No. 3(b), 59 FR 13200, 13203, March 21, 1994), Texas proposed to delete existing TCMR 786.216(i) and recodify existing paragraphs (j) through (o), respectively, as paragraphs (i) through (n). Existing TCMR 786.216 sets forth criteria for permit approval or denial, and TCMR 786.216(i) provides that the Commission shall not approve an application for a permit or permit revision unless the application affirmatively demonstrates and the Commission finds, in writing, that a pattern of willful violations of TSCMRA does not exist.

The Federal regulations at 30 CFR 773.15(c) pertain to written findings required for permit application approval. These regulations do not require the regulatory authority to make, as a condition for permit approval, a written finding that a demonstrated pattern of willful violations of the Act does not exist. However, the Federal regulation at 30 CFR 773.15(b)(3) prohibits issuance of a permit if the regulatory authority finds that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA. As discussed in finding No. 4(b), Texas has proposed at TCMR 786.215(f) requirements for patterns of willful violations of SMCRA and TSCMRA that are no less effective than the Federal regulations at 30 CFR 773.15(b)(3).

Because the Federal regulations do not require the regulatory authority to make, as a condition for permit approval, a written finding that a demonstrated pattern of willful violations of the Act does not exist and because Texas has proposed at TCMR 786.215(f) requirements concerning the existence of a pattern of willful violations of SMCRA and TSCMRA that are no less effective than the Federal regulation at 30 CFR 773.15(b)(3), the Director finds that the provisions of deleted TCMR 786.216(i) are duplicative and unnecessary. Also, because recodification does not alter the content or meaning of the recodified regulations, the Director finds that the proposed recodification of TCMR 786.216 (j) through (o) as (i) through (n) is not inconsistent with any Federal requirements. Therefore, the Director (1) approves the deletion of TCMR 786.216(i) and the recodification of the remaining paragraphs of section .216 and (2) removes the required amendment at 30 CFR 943.16(s).

5. TCMR 788.225(g)(1), Automatic Suspension and Rescission

In response to the required amendment at 30 CFR 943.16(j)(4), Texas proposed to revise TCMR 788.225(g)(1) to require that, after a specified period of time not to exceed 90 days after the Commission has served on the permittee a notice of a proposed suspension and rescission, the permit will automatically become suspended and, after a subsequent period not to exceed 90 days, the permit will automatically be rescinded, unless the permittee submits adequate proof for the Commission to find that the permit should not be suspended or rescinded.

The corresponding Federal regulation at 30 CFR 773.21(a) provides that,

> After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, consistent with the provisions of § 773.25 of this part, that * * *."

With one exception, proposed TCMR 788.225(g)(1) is substantively identical the corresponding Federal regulations at 30 CFR 773.21(a). The exception is that proposed TCMR 788.225(g)(1) does not include provisions equivalent to those provided by the Federal phrase "consistent with the provisions of § 773.25." 30 CFR 773.25 specifies standards for challenging ownership and control links and the status of violations. The Texas program does not have a direct counterpart to the Federal standards for challenging ownership and control links and the status of violations at 30 CFR 773.25 or to other requirements referred to at 30 CFR 773.25.

Therefore, the Director finds that the proposed revisions to TCMR 788.225(g)(1) are less effective than the corresponding Federal provisions at 30 CFR 773.21(a). The Director approves the proposed revisions to TCMR 788.225(g)(1) and removes the required amendment at 30 CFR 743.16(j)(4). However, the Director requires Texas to further revise TCMR 788.225(g)(1), or otherwise revise the Texas program, to require that the Commission's findings with regard to a permittee's challenge of the Commission's decision to suspend and rescind an improvidently issued permit must be consistent with the provisions of the Federal requirements at 30 CFR 773.25.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment. In response to OSM's invitation, the Texas Natural Resource Conservation Commission responded on July 5, 1994, that it supported the proposed changes and on November 7, 1994, that it had no comment on the proposed changes (Administrative Record Nos. TX–576.08 and TX–576.21).

The Texas Department of Health responded on June 16, 1994, that it supported the proposed changes to the Railroad Commission of Texas' coal mining and reclamation regulatory program (Administrative Record No. TX–576.05).

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program.

The Bureau of Land Management responded on October 31, 1994, that it had no comments on the revised submittal (Administrative Record No. TX–576.18).

The Bureau of Mines responded on June 14, 1994, and October 31, 1994, that it had no comments (Administrative Record Nos. TX–576.03 and TX–576.19).

The Forest Service responded on June 15, 1994, that it had no comments to offer and on October 20, 1994, that it had no additions or corrections to offer (Administrative Record Nos. TX–576.04 and TX–576.15).

The Soil Conservation Service responded on June 22, 1994, that the proposed amendment should have no adverse effect on the technical aspects of reconstruction or reclamation and on October 20, 1994, that it had no comments on the proposal (Administrative Record Nos. TX–576.06 and TX–576.16).

The U.S. Army Corps of Engineers responded on June 8, 1994, and October 25, 1994, that it found the amendment satisfactory to that agency (Administrative Record Nos. TX–576.02 and TX–576.17).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Texas proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA, Region VI (Administrative Record No. TX–576.14). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–576.14). Neither responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with two additional requirements, the proposed revisions as submitted by Texas on May 24, 1994, and as further revised by it on October 6, 1994.

The Director approves (1) as discussed in finding No. 1, the recodification of existing TCMR 788.225(g) as paragraph (h), concerning right of appeal and (2) as discussed in finding No. 2, the proposed revisions to TCMR 788.225(f) (3) and (4), (g), (g)(1) (i) through (iv), and (g)(2), concerning Commission review of outstanding permits; finding No. 4a, the proposed use of the word "state," uncapitalized, in place of the word "State," capitalized, at TCMR 786.215(e)(1), review of permit applications; finding No. 4b, the proposed revisions to TCMR 786.215(f) concerning patterns of willful violations; and finding No. 4c, the deletion of TCMR 786.216(i) and the recodification of existing TCMR 786.216 (j) through (o), respectively, as TCMR 786.216 (i) through (n), concerning criteria for permit approval or denial.

With the requirement that Texas further revise its rules, the Director approves, as discussed in finding No. 3, the proposed addition of the phrase "and its implementing Federal regulations and all Federal and state programs under the Federal Act" and the use of the word "state," uncapitalized, in place of the word "State" capitalized, at TCMR 778.116(m), concerning identification of interests and compliance information; and finding No. 5, the proposed revisions to TCMR 788.225(g)(1), concerning Commission review of outstanding reports.

The Director approves the revisions proposed by Texas with the provision that they be fully promulgated in identical form to the revisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into

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conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of a small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Henco, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding a new paragraph (j) as follows:

§ 943.15 Approval of amendments to the Texas regulatory program.

* * * * *

(j) The revisions to 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted on May 24, 1994, and as further revised on October 6, 1994, are approved effective March 27, 1995.

Revisions to the following regulations are approved:

TCMR 778.116(m), identification of interests and compliance information.
TCMR 786.215(e)(1), review of violations.
TCMR 786.215(f), patterns of willful violations.
TCMR 786.216(i), existing paragraph deleted.
TCMR 786.216(j) through (o), recodified as (i) through (n).
TCMR 786.225(f)(3) and (4), Commission review of outstanding permits: remedial measures.
TCMR 786.225(g), (g)(1), (g)(1) (i) through (iv), rescission procedures.
TCMR 786.225(g)(2), cessation of operations.
TCMR 786.225(h), recodification.

3. Section 943.16 is amended by removing and reserving paragraphs (c), (d), (f), (j), and (s), and adding paragraphs (t) and (u) to read as follows:

§ 943.16 Required program amendments.

* * * * *

(a)–(j) [Reserved]

* * * * *

(s) [Reserved]

(t) By September 25, 1995, Texas shall formally propose an amendment to OSM for TCMR 778.116(m) to require a permit application to include information on all violations of any State law, rule, or regulation that pertains to air or water environmental protection, not just those violations that were enacted pursuant to Federal law, rule, or regulation.

(u) By September 25, 1995, Texas shall formally propose an amendment to OSM for TCMR 788.225(g)(1) or otherwise revise the Texas program to require that the Commission's findings with regard to the permittee's challenge of the Commission's decision to suspend and rescind an improvidently issued permit must be consistent with the provisions of the Federal requirements at 30 CFR 773.25.

[FR Doc. 95–7440 Filed 3–24–95; 8:45 am]

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30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA, 30 U.S.C. 1201 *et seq.*). Utah proposed revisions to its rules pertaining to the confidentiality of coal exploration information. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Proposed Amendment

By letter dated September 9, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA and the Federal regulations at 30 CFR chapter VII (administrative record No. UT–971). Utah submitted the proposed amendment in response to the required program amendment at 30 CFR 944.16(a) (59 FR 35255, 35258–9, July 11, 1994). The provisions of the Utah Coal Mining Rules that Utah proposed to revise were at Utah Administrative Rule (Utah Admin. R.) 645–203–200 and pertain to the public availability and confidentiality of coal exploration information.

OSM announced receipt of the proposed amendment in the September 27, 1994, **Federal Register** (59 FR 49227), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. UT–976). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 27, 1994.

During its review of the amendment, OSM identified concerns relating to the proposed provisions of Utah's rule. OSM notified Utah of the concerns by letter dated November 15, 1994 (administrative record No. UT–991). Utah responded in a letter dated January 5, 1995, by submitting a revised amendment and additional explanatory information (Administrative Record No. UT–1003).

Based upon the revisions of and the additional explanatory information for the proposed amendment submitted by Utah, OSM reopened the public comment period in the January 24, 1995, **Federal Register** (60 FR 4581, Administrative Record No. UT–1009). The public comment period ended February 8, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on September 9, 1994, and as revised by it and supplemented with additional explanatory information on January 5, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

Utah Admin. R. 645–203–200, Public Availability and Confidentiality of Coal Exploration Information

In response to the required amendment at 30 CFR 944.16(a) Utah proposed to revise its coal exploration rule at Utah Admin. R. 645–203–200 concerning the obligation of the State to keep information submitted with a coal exploration permit application confidential. As proposed, the rule would provide that—

> [T]he Division [of Oil, Gas and Mining] will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed *and* the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration. (emphasis added).

Proposed Utah Admin. R. 645–203–200 includes two confidentiality criteria that are joined by the word "and." The first criteria is that the person submitting the information request that the information be kept confidential. The second criterion is that the information concern trade secrets or other privileged commercial or financial information relating to the competitive rights of the person intending to conduct coal exploration operations. Both criteria must be satisfied before Utah would keep coal exploration confidential. Proposed Utah Admin. R. 645–203–200 contains the same confidentiality requirements as are contained in the counterpart Federal regulation at 30 CFR 772.15(b).

However, the second criterion of proposed Utah Admin. R. 645–203–200, which requires that the information the applicant wishes to remain confidential must concern trade secrets or other privileged commercial information, is already present in the Utah program at existing Utah Admin. R. 645–203–210. This provision of the Utah program provides that—

> [T]he Division will keep information confidential if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

By letter dated November 15, 1994, OSM asked Utah to clarify what effect, if any, the similarity between these two provisions would have on the implementation of Utah's coal exploration rules. By letter dated January 5, 1995, Utah responded that the existing rule at Utah Admin. R. 645–203–210 would only apply in situations where the first criterion of Utah Admin. R. 645–203–200 also applied. Under this interpretation, the existing provision at Utah Admin. R. 645–203–210 is simply extra regulatory language that is redundant with the second criterion in proposed Utah Admin. R. 645–203–200. This redundant language does not render proposed Utah Admin. R. 645–203–200 less effective than the corresponding Federal regulation at 30 CFR 772.15(b).

Because proposed Utah Admin. R. 645–203–200 and existing Utah Admin. R. 645–203–210, concerning the public availability and confidentiality of coal exploration information, require the same criteria in determining whether coal exploration information is to be kept confidential and provide for the same responsibility in keeping such information confidential as does 30 CFR 772.15(b), the Director finds that proposed Utah Admin. R. 645–203–200 is no less effective than 30 CFR 772.15(b). The Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(a).

IV. Summary and Disposition of Comments

Following are summaries of all oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Army Corps of Engineers responded on October 12, 1994, and January 31, 1995, that it found the changes to be satisfactory (administrative record Nos. UT–981 and UT–1018).

By memorandum dated October 26, 1994, the U.S. Fish and Wildlife Service stated that it had reviewed the changes and had found nothing that would be detrimental to fish and wildlife resources (administrative record No. UT–986).

By letter dated January 6, 1995, the Mine Safety and Health Administration (MSHA) stated that MSHA personnel had reviewed the amendment and that there appeared to be no conflicts with the requirements of 30 CFR pertaining to coal mine safety and health (administrative record No. UT–1004).

The Bureau of Mines responded in a telephone conversation on January 18, 1995, that it had no comments on the

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proposed amendment (administrative record No. UT–1007).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. UT–972 and UT–1008). It responded on September 29, 1994, and February 1, 1995 (administrative record Nos. UT–975 and UT–1017), that it had no comments on the amendment and that it believed there would be no impacts to water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record Nos. UT–972 and UT–1008). The SHPO did not respond to OSM's requests.

V. Director's Decision

Based on the above finding, the Director approves Utah's proposed amendment as submitted on September 9, 1994, and as revised by it and supplemented with additional explanatory information on January 5, 1995.

The Director approves Utah Admin. R. 645–203–200, concerning the confidentiality of coal exploration information, and removes 30 CFR 944.16(a), which required Utah to revise this rule. The Director approves the rule as proposed by Utah with the provision that it be fully promulgated in identical form to the rule submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 20, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (cc) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(cc) Revisions to Utah Admin. R. 645–203–200, confidentiality of coal exploration information, as submitted to OSM on September 9, 1994, and as revised and supplemented with additional explanatory information on January 5, 1995, are approved effective March 27, 1995.

§ 944.16 [Amended]

3. Section 944.16 is amended by removing and reserving paragraph (a).

[FR Doc. 95–7436 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–05–M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1690

Selective Service Regulations; Post Employment Conflict of Interest

AGENCY: Selective Service System.

ACTION: Fianl rule.

SUMMARY: 32 CFR part 1690—Post Employment Conflict of Interest is being removed from the Code of Federal Regulations because it has been made obsolete by the revocation of 5 CFR part 737 and the issuance by the United States Office of Government Ethics of 5 CFR part 2641—Post-Employment Conflict of Interest Restrictions.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 1515 Wilson Blvd., Arlington, VA 22209–2425. Phone (703) 235–2050.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this rule. The notice and delayed effective date are being waived because the removal of 32 CFR part 1690 is indicated by 1 CFR part 8 because it is obsolete.

Executive Order 12866

In promulgating this rule, I have adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 32 CFR Part 1690

Conflict of interests, Government employees.

Dated: March 16, 1995.

Gil Coronado,

Director of Selective Service.

PART 1690—[REMOVED AND RESERVED]

For the reasons set out in the preamble, and under the authority of Title V, sec. 501(a), Pub. L. 95–521, as amended, 92 Stat. 1864; and secs. 1 and 2, Pub. L. 96–28, 93 Stat. 76 (18 U.S.C. 207); and 5 CFR part 737, part 1690 is removed and reserved.

[FR Doc. 95–7217 Filed 3–24–95; 8:45 am]

BILLING CODE 8015–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[PP 1F3952, PP 1F3985, PP 2F4100, and FAP 1H5607/R2120; FRL–4945–8]

RIN 2070–AB78

Lambda-Cyhalothrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the synthetic pyrethroid lambda-cyhalothrin in or on the raw agricultural commodities (RACs) tomatoes, cabbage, broccoli, head lettuce, dry bulb onion, and garlic and in or on the processed food/feed tomato pomaces. Zeneca, Inc., requested this regulation to establish maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective March 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F3952, PP 1F3985, PP 2F4100, and FAP 1H5607/R2120], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency; 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100; e-mail: LaRocca.George@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Registers** of April 3, 1991 (56 FR 13642), December 13, 1991 (56 FR 65080), and June 10, 1992 (57 FR 24644), which announced that Zeneca, Inc., (formerly ICI Americas, Inc.), 1800 Concord Pike, Wilmington, DE 19897, had submitted pesticide petitions (PPs) 1F3952, 1F3985, 2F4100 and food/feed additive petition (FAP) 1H5607 to EPA requesting that the Administrator, pursuant to sections 408(d) and 409(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), establish tolerances for residues of the insecticide lambda-cyhalothrin [1-α-(*S*),3-2-α-(*Z*)]-(±)-cyano-(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities (RACs) tomatoes at 0.06 part per million (ppm); cabbage at 0.4 ppm; broccoli at 0.4 ppm; lettuce (head) fresh, with wrapper leaves at 2.0 ppm; lettuce (head) fresh, without wrapper leaves at 0.3 ppm; dry bulb onions and garlic at 0.1 ppm; tomato pomaces (wet) at 0.6 ppm; and tomato pomaces (dry) at 4.0 ppm. EPA considers lettuce with wrapper leaves as the raw agricultural commodity not without wrapper leaves. Therefore, a proposed tolerance of 2.0 ppm for lettuce (head) is the correct commodity definition for tolerance purposes.

On June 29, 1994, Zeneca, Inc., requested that certain petitions be amended by increasing the proposed tolerances for the RAC tomatoes (PP 1F3952) to 0.1 and by deleting the proposed tolerance on wet tomato pomace (1H5607) since there is no distinction between wet and dry pomace, and increasing the proposed feed additive tolerance to 6.0 ppm for tomato pomaces. (See the **Federal Register** of August 24, 1994 (59 FR 43580).)

Currently, tolerances for lambda-cyhalothrin have been established as combined residues of parent and its epimer without expressing the chemical identification of the epimer since an analytical method to distinguish parent from epimer was not available at the time. There are now validated methods to distinguish parent from epimer, and the tolerances will now be expressed as the combined residues of lambda-cyhalothrin and its epimer. In addition, EPA has concluded that although the Chemical Abstract Services (CAS) names for lambda-cyhalothrin and its epimer are more compact, to a chemist the structures are more easily derived from the IUPAC names. Therefore, the IUPAC nomenclature will replace the CAS names in this and future regulations for lambda-cyhalothrin. The

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correct IUPAC names for lambda-cyhalothrin and its epimer are as follows: Lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3- (2-chloro-3,3,3-trifluoroprop-1-enyl) -2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. Epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α -cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A metabolism study in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration. Otherwise, rapidly metabolized and excreted.

2. A 12-month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, 3.5 milligrams(mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 0.1 mg/kg/day. The lowest-observed-effect-level (LOEL) for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity ataxia, muscle tremors, convulsions.

3. A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. Developmental NOEL is greater than 15 mg/kg/day. Maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively. Reduced body weight and food consumption were observed during the dosing period.

4. A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively (decreased body weight gain was observed during the dosing period). The developmental NOEL is 30 mg/kg/day (highest dose tested).

5. A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, highest dose tested. The maternal NOEL and LOEL for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

6. A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm. Reduced body weight gain was observed at 250 ppm in both sexes throughout the study. The animals could have tolerated higher dose levels; however, the Agency considered the high dose to be approaching an adequate dose for a negative carcinogenicity study. There were no carcinogenic effects observed under the conditions of the study.

7. A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has determined that the chemical was not tested at a sufficiently high dose level for carcinogenicity testing in female mice. In addition, due to an equivocal finding for mammary tumors in females (1/52, 0/52, 7/52, 6/52), the Agency classified the chemical as a Group D carcinogen.

8. The following genotoxicity tests were negative: a gene mutation assay (Ames), a chromosomal aberration study in rodents, an *in vitro* cytogenetics assay, and a gene mutation study in Lymphoma cells.

The acceptable Reference Dose (RfD) based on a NOEL of 0.1 mg/kg/body weight/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg/body weight/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC from established tolerances and the current and pending actions are estimated to be 0.000192 mg/kg/bwt/day and utilize 19.24 per cent of the RfD for the U.S. population. The ARC for children, aged 1 to 6 years old, and nonnursing infants (subgroups most highly exposed) utilizes 32 and 58 percent of the RfD, respectively. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

The metabolism of the chemical in plants and livestock is adequately understood for this use. Any secondary residues occurring in meat and meat by products will be covered by the existing tolerances. There is no reasonable expectation of finite residues in poultry commodities; therefore, no tolerances are necessary at this time.

An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to any one interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington VA 22202, (703)-305-5232.

The Agency issued a conditional registration for lambda-cyhalothrin for use on cotton with an expiration date of August 30, 1990 (see the **Federal Register** of May 24, 1988 (53 FR 18558)). The conditional registration was subsequently amended and extended to November 15, 1996 ((see the **Federal Register** of February 22, 1995 (60 FR 9783)). The registrations were amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of the synthetic pyrethroids on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. Due to the conditional status of the registration, tolerances have been established for lambda-cyhalothrin on a temporary basis (until November 15, 1997) on cottonseed, meat, fat and meat-byproducts of hogs, horses, cattle, goats, sheep and milk to cover residues expected to be present from use during the period of conditional registration.

To be consistent with the conditional registration status of lambda-cyhalothrin on cotton the Agency is establishing these tolerances with an expiration date of November 15, 1997.

There are currently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purposes which it is sought, and the pesticide is considered capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances for the RACs will protect the public health and are in accordance with the terms of the proposed food additive tolerance for tomato pomaces and will be safe. Therefore, tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections.

Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.438, to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

Tolerances to expire on November 15, 1997, are established for the combined residues of the pyrethroid lambda-cyhalothrin and its epimer expressed as: Lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3- phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
Broccoli	0.4
Cabbage	0.4
Cattle, fat	0.02
Cattle, meat	.01
Cattle, mbyp	.01
Cottonseed	0.05
Dry bulb onion	0.1
Garlic	0.1
Goats, fat	0.02
Goats, meat	.01
Goats, mbyp	.01
Hogs, fat	.01
Hogs, meat	.01
Hogs, mbyp	.01
Horses, fat	0.02
Horses, meat	.01
Horses, mbyp	.01
Lettuce, head	2.0
Milkfat (reflecting 0.01 ppm in whole milk)	0.25
Sheep, fat	0.02
Sheep, meat	.01
Sheep, mbyp	.01
Tomatoes	0.1

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3765, to read as follows:

§ 186.3765 Lambda-cyhalothrin.

A tolerance to expire on November 15, 1997, of 6.0 parts per million is established for residues of the insecticide lambda-cyhalothrin and its epimer expressed as: Lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3 trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and

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(*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3 trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate and its epimer, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3 trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano- 3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3 trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in tomato pomace (dry, wet) resulting from application of the insecticide to tomatoes.

[FR Doc. 95–7586 Filed 3–23–95; 11:47 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 80, and 97

[ET Docket No. 93–40; FCC 95–113]

Allocation of the 219–220 MHz Band for Use by the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Report and Order (Order), the Commission establishes regulations for amateur point-to-point fixed digital message forwarding systems, including intercity packet backbone networks. This action provides the Amateur Radio Service use of the 219–220 MHz band on a secondary basis.

EFFECTIVE DATE: April 26, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas P. Derenge, (202) 776–1621, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted March 14, 1995, and released March 17, 1995. A Summary of the Notice of Proposed Rule Making initiating this proceeding may be found at 58 FR 17180 (April 1, 1993). This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

The Order adopts rules that include a spectrum allocation on a secondary basis, safeguards to protect other services from interference, and technical standards for amateur operations in the 219–220 MHz band. This action is expected to provide spectrum to the amateur radio service for point-to-point fixed digital message forwarding systems, including intercity packet backbone networks. The spectrum is needed to alleviate frequency congestion that amateurs are experiencing in certain areas of the country in the 222–225 MHz band and to facilitate establishment of regional and nationwide backbone networks for amateur packet communications. These networks could also be used for emergency preparedness and national defense communications. Amateur may also use this spectrum to develop and experiment with new technologies to further the radio art. Additionally, the rules adopted should prevent harmful interference to the primary services on and adjacent to the 219–220 MHz band.

2. Specifically, in the Order the Commission allocated ten 100 kilohertz channels from 219 MHz to 220 MHz. Amateur operations at 219–220 MHz are authorized to operate at powers up to 50 watts (PEP) without data rate limitations. This band is restricted to amateurs holding Technician or higher class licenses.

3. The secondary status of the allocation prohibits amateur operations from causing interference to primary services. However, it does not protect secondary amateur operations from interference. The Order also protects Automated Maritime Telecommunications Service (AMTS) by requiring amateurs to notify AMTS licenses 30 days prior to initiation of operations if the amateur operation is within 640 kilometers of an AMTS base station. Additionally, amateur stations within 80 kilometers of an AMTS base station must obtain written approval from the AMTS licensee prior to operating in the 219–220 MHz band.

4. Amateurs wishing to utilize the 219–220 MHz band must notify the American Radio Relay League (ARRL) 30 days prior to institution of operation. The ARRL will maintain a database of all amateur and AMTS operations in the 219–220 MHz band. Therefore, the ARRL database would serve as a nationwide point of contact to provide coordination information and to aid in investigation of interference problems, in the unlikely event such problems occur. Amateur operators are encouraged to seek coordination assistance from a local amateur coordinator.

5. Ordering Clauses. Accordingly, it is ordered, that the American Radio Relay League, Inc. is designated as the national contact point for all amateur operations in the 219–220 MHz band and is responsible for maintaining a database of all amateur operations in the 219–220 MHz band as well as any other primary service operating in that band.

6. Further, it is ordered, that Parts 2, 80, and 97 of the Commission's rules ARE AMENDED as specified below, effective April 26, 1995. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 80

Radio, Vessels.

47 CFR Part 97

Radio, Civil defense, Reporting and recordkeeping requirements, Volunteers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 2, 80, and 97 of chapter I of title 47 of the Code of Federal Regulation are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read:

Authority: Sec.4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. In the 216–220 MHz band, columns 4 through 6 in the United States table are revised:

b. Non-Government footnote NG152 is added:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
			216–220 MARITIME MOBILE. Aeronautical-Mobile. Fixed. Land Mobile. Radiolocation.	216–220 MARITIME MOBILE. Aeronautical-Mobile. Fixed. Land Mobile.	MARITIME (80). Private Land Mobile (90). Personal Radio Service (95). Amateur (97).	
			627, US210, US229, US274, US317, G2.	627, US210, US229, US274, US317, NG152.		
•	•	•	•	•	•	•

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG152 The band 219–220 MHz is also allocated to the amateur service on a secondary basis for stations participating, as forwarding stations, in point-to-point fixed digital message forwarding systems, including intercity packet backbone networks.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.385 is amended by adding a new paragraph (a)(3) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(3) Channels in the 219–220 MHz band are also used on a secondary, non-interference basis by amateur stations participating in digital message forwarding systems. Amateur stations may not cause harmful interference to AMTS operations and must accept any harmful interference from AMTS operation. Amateur stations within 80 km (50 miles) of an AMTS coast station must obtain written approval from the AMTS licensee prior to operating in the 219–220 MHz band. Amateur stations within 640 km (398 miles) of an AMTS coast station must notify the AMTS licensee in writing at least 30 days prior to initiation of operations in the 219–220 MHz band (ARRL, 225 Main St., Newington, CT 06111–1494).

* * * * *

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.201(b) is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 219–220 MHz, 222.000–222.150 MHz, 431–433 MHz, and 435–438 MHz segments.

* * * * *

3. Section 97.301(a) is amended by revising the third entry in the VHF Wavelength band to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
•	•	•	•	•
1.25 m		219–220		(a), (e).
Do		222–225		(a).
•	•	•	•	•

* * * * *

4. Section 97.303(e) is added to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(e) In the 1.25 m band:

(1) Use of the 219–220 MHz segment is limited to amateur stations participating, as forwarding stations, in point-to-point fixed digital message forwarding systems, including intercity packet backbone networks. It is not available for other purposes.

(2) No amateur station transmitting in the 219–220 MHz segment shall cause harmful interference to, nor is protected from interference due to operation of Automated Maritime Telecommunications Systems (AMTS), television broadcasting on channels 11 and 13, Interactive Video and Data

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Service systems, Land Mobile Services systems, or any other service having a primary allocation in or adjacent to the band.

(3) No amateur station may transmit in the 219–220 MHz segment unless the licensee has given written notification of the station's specific geographic location for such transmissions in order to be incorporated into a data base that has been made available to the public. The notification must be given at least 30 days prior to making such transmissions. The notification must be given to: The American Radio Relay, Inc., 225 Main Street, Newington, CT 06111–1494.

(4) No amateur station may transmit in the 219–220 MHz segment from a location that is within 640 km of an AMTS Coast Station unless the amateur station licensee has given written notification of the station's specific geographic location for such transmissions to the AMTS licensee. The notification must be given at least 30 days prior to making such transmissions. AMTS Coast Station locations may be obtained either from:

The American Radio Relay, Inc., 225 Main Street, Newington, CT 06111–1494

or

Interactive Systems, Inc., Suite 1103, 1601 North Kent Street, Arlington, VA 22209, Fax: (703) 812–8275, Phone (703) 812–8270.

(5) No amateur station may transmit in the 219–220 MHz segment from a location that is within 80 km of an AMTS Coast Station unless the amateur station licensee holds written approval from that AMTS licensee.

* * * * *

5. The table in Section 97.305(c) is amended by revising the third entry in the VHF wavelength band to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph
. .	. .	. .	. .
1.25 m	219–220 MHz	Data	(13).
Do	222–225 MHz	MCW, phone, image, RTTY, data, test.	(2), (6), (8).
. .	. .	. .	. .

6. Section 97.307(f)(13) is added to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

(13) A data emission using an unspecified digital code under the limitations listed in § 97.309(b) also may be transmitted. The authorized bandwidth is 100 kHz.

7. Section 97.313(h) is added to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(h) No station may transmit with a transmitter power exceeding 50 W PEP on the 219–220 MHz segment of the 1.25 m band.

[FR Doc. 95–7296 Filed 3–24–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–221, FCC 95–97]

Broadcast Services; Television Station Ownership

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission eliminates two of its television network rules, the "network station ownership" rule, and the "secondary affiliation" rule. This action is taken because a review of the record in this proceeding indicates that changes in the television marketplace have rendered these rules obsolete. Thus, the action is taken to ensure that the Commission's rules are as current and effective as possible.

EFFECTIVE DATE: April 26, 1995.

FOR FURTHER INFORMATION CONTACT: Dan Bring, Mass Media Bureau, (202) 739–0770, or Roger Holberg, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order in MM Docket No. 91–221, FCC 95–97, adopted March 7, 1995, and released March 7, 1995. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Report and Order

1. The Commission eliminates two of its network rules, 47 CFR § 73.658(f), the "network station ownership" rule, and § 73.658(l), the "secondary affiliation" rule. The network station ownership rule prohibits network ownership of television broadcast stations in markets that have so few stations, or stations of such unequal desirability that "competition would be substantially restrained" by permitting network ownership. The secondary affiliation rule limits secondary network affiliations in markets where two stations have affiliated with two of the three "traditional" networks, and there is at least one independent station with comparable facilities. In these circumstances, § 73.658(l) requires a third network seeking an affiliate in the market to offer its programming first to the independent station.

2. The Notice of Inquiry in this proceeding (56 FR 40847, August 16, 1991) sought comment on the implications of the growth of competition in the video marketplace for the Commission's regulatory policies. The Notice of Proposed Rule Making in this proceeding (57 FR 28163, June 24, 1992) sought comments on several long-standing structural rules that have governed the television industry, proposed alternative means of lessening the regulatory burden on the television broadcasting industry, and proposed repeal of the dual network rule 47 CFR 73.658(g), the network station ownership rule, and the secondary affiliation rule. Based on the record in this proceeding, this Report and Order eliminated the network station ownership rule and the secondary affiliation rule.

3. The network station ownership rule was intended to increase the availability of programming to viewers, prevent domination of smaller markets by networks, and encourage the creation and growth of new networks by preventing existing networks from "bottling up" the best facilities. The rule was first applied to television in 1946 when there were only six television stations in the United States. The Commission finds that because of the growth in the number of television stations and in network programming made available by cable and satellite home dishes, the network station ownership rule is no longer necessary to increase the availability of video programming to viewers or further the creation of new networks. Therefore, the Commission eliminates § 73.658(f) of its rules.

4. The secondary affiliation rule was adopted by the Commission in 1971 (36 FR 6507, April 16, 1971) in order to promote development of UHF television stations. While commenters were divided as to the continued need for the secondary affiliation rule, the Commission is persuaded that, due to improvements to UHF reception and the increased availability of programming, this rule is no longer needed to ensure the availability of competitive programming to unaffiliated stations. The Commission thus eliminates § 73.658(l) of its rules.

Administrative Matters

Final Regulatory Flexibility Analysis

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission believes that this action will eliminate rules no longer required by the public interest in view of changes in the video marketplace since their adoption. Additionally, their elimination will make over-the-air television better able to compete in the current, and future, video environment. The complete Final Regulatory Flexibility Act Statement may be found following paragraph 26 of the full text of this Report and Order.

Ordering Clauses

6. It Is Therefore Ordered that, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303(r), Part 73 of the Commission's Rules, 47 CFR part 73, is amended as set forth below.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Revisions

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

§ 73.658 [Amended]

2. Section 73.658 is amended by removing and reserving paragraphs (f) and (l).

[FR Doc. 95–7441 Filed 3–24–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 235

Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures—Test

AGENCIES: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise its streamlined research and development contracting procedures test.

EFFECTIVE DATE: March 21, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. R.G. Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The streamlined research and development contracting procedures test is the result of a 1987 Defense Science Board summer group recommendation. The Lab Demo Contracting Subgroup of the Lab Demo project proposed a streamlined procedure for solicitation and a standard format for award of R&D contracts in support of military department laboratories.

The streamlined contracting procedures consist of a solicitation published in the Commerce Business Daily (CBD); terms and conditions incorporated by reference; a supplemental package, if necessary, which is mailed to all interested parties who provide address information. The statement of work may be published in the CBD with the solicitation summary or may be included in a supplemental package. The use of a standard contract is intended to make the contracting process easier on industry, because offerors can expect all DoD laboratories to use the same contract format.

The Department of Defense published a final rule on October 18, 1994 (59 FR 52442) after receiving public comments on the proposed rule. This final rule revises the previous final rule as a result of changes found necessary during initial implementation of the Test.

This final rule revises the list of contracting offices approved to participate in the test of 235.7002(a)(2); the data collection requirements 235.7003(d)(9); and the clauses and provisions included in the exhibit at 235.7006(d). The rule adds the clauses at *(I.168)252.223–7006, Prohibition on Disposal of Toxic and Hazardous Materials, and *(I.169)252.249.7002, Notification of Program Termination or Reduction; deletes *(K.24)252.226–7000, Notice of Historically Black College or University and Minority Institution Set Aside, to correct a duplication; and adds an asterisk (*) to (L.19)52.237–1, Site Visit, to designate that this provision is for use as prescribed in the FAR.

In addition, Test Oversight Committee members may now authorize, for their respective agencies, on a one time only basis, the use of FAR and DFARS provisions and clauses or approved nonstandard provisions and clauses that are not in the research and development streamlined contracting format at 235.7006(d).

A. Regulatory Flexibility Act

The rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for comment is not required.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping, information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 235 is amended as follows:

1. The authority citation for part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

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PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.70 Research and development streamlined contracting procedures—test.

2. Section 235.7002 is amended by revising paragraph (a) (2) to read as follows:

235.7002 Applicability.

(a) * * *

(1) * * *

(2) Navy: Naval Research Laboratory contracting office; Naval Surface Warface Center contracting offices when contracting for the Carderock, Crane, Dahlgren, Indian Head and Port Hueneme divisions; Naval Undersea Warfare Center contracting office.

* * * * *

3. Section 235.7003 is amended by adding paragraph (d) (9) to read as follows:

235.7003 Reporting requirements.

* * * * *

(d) * * *

(9) At a minimum any request for modification of the research and development streamlined contracting format or procedures, and any request for one time only use of FAR and DFARS provisions and clauses and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contracting format at 235.7006 must include the information required by 201.402(3) (i) through (ix).

235.7004–1 [Amended]

4. Section 235.7004–1 is amended by revising in paragraph (b) the reference "235.7006(c) (A.1)" to read "235.7006(d) (A.1)."

235.7004–2 [Amended]

5. Section 235.7004–2 is amended by revising in paragraph (b) the reference "235.7006(c) (A.1)" to read "235.7006(d) (A.1)."

235.7004–3 [Amended]

6. Section 235.7004–3 is amended by revising in paragraph (c) the reference "235.7006(c)" to read "235.7006(d)."

7. Section 235.7006 is amended by revising in the first sentence of paragraph (a) the reference "paragraph (c)" to read "paragraph (d)," by revising in the last sentence of paragraph (a) the reference "(See 235.7006(c) (A.1) (v))" to read "(See 235.7006(d) (A.1) (v));" by redesignating paragraph (c) as paragraph (d); and by adding a new paragraph (c) to read as follows:

235.7006 The research and development streamlined contracting format.

* * * * *

(c) Test Oversight Committee members may authorize for their respective agencies, on a one time only basis, the use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contracting format at 235.7006. Any other modification of the research and development streamlined contracting format or procedures requires approval of the Director of Defense Procurement. Each Test Oversight Committee member shall ensure that the supporting data is accurate and complete.

* * * * *

8. Section 235.7006, Exhibit-Research and Development Streamlined Contracting Format, is amended by adding two contract clauses at the end of the listing at Part II, Section I; by removing and reserving "K.24" in the listing at Part IV, Section K; by revising "(L.15)", "(L.18)" and by revising "(L.19)" in Part IV, Section L; and by revising the introductory text at Part IV, Section M to read as follows:

Exhibit-Research and Development Streamlined Contracting Format

* * * * *

Part II—Contract Clauses

Section I, Contract Clauses

(1) Federal Acquisition Regulation clauses.

* * * * *

*(I.167) * * *

*(I.168) 252.223–7006 Prohibition on Disposal of Toxic and Hazardous Materials

*(I.169) 252.249–7002 Notification of Program Termination or Reduction

* * * * *

Part IV—Representations and Instructions

Section K, Representations, Certifications and Other Statements of Offerors or Quoters

* * * * *

*(K.24) [Reserved]

* * * * *

Section L, Instructions, Conditions, and Notices to Offerors or Quoters

* * * * *

(L.15) 52.216–1 Type of Contract (See 235.7006(d)(B.1))

* * * * *

(L.18) 52.233–2 Service of Protest (See 235.7006(d)(A.1)(xvii))

[*](L.19) 52.237–1 Site Visit

* * * * *

Section M, Evaluation Factors for Award

Use of the standard evaluation factors is preferred. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from the contents of this Section M must be clearly annotated in the solicitation summary (see 235.7006(d)(A.1)(vii).)

* * * * *

[FR Doc. 95–7429 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–26; Notice 06]

RIN 2127–AF31

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA amends the safety standard on rearview mirrors to reduce the duplication of the views provided by System B mirrors, which provide a view of test cylinders in the area around the front of a school bus and near the rear wheels, and System A mirrors, which provide a view of the area beneath the System A mirrors, along both sides of the bus and to the rear of the bus. The System B mirrors must also provide a view of the ground that overlaps with the view of the ground provided by System A mirrors. As a result of this final rule, the System A mirrors will no longer be required to provide a view of the ground forward of the rear wheels.

The effect of this final rule is that manufacturers will no longer have to install either an additional convex mirror, which creates a larger blind spot for the driver, or replace the existing convex mirror with a highly curved convex mirror that produces more distorted images.

This final rule is issued in response to a petition for rulemaking from Blue Bird Body Company.

DATES: This final rule is effective April 26, 1995. Petitions for reconsideration of this final rule must be received not later than April 26, 1995.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hott's phone number is (202) 366–0247.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 111, *Rearview mirrors*, (Std. No. 111) specifies requirements for the performance and location of rearview mirrors on motor vehicles. Std. No. 111 is intended to reduce the number of deaths and injuries that would otherwise occur if the driver of a motor vehicle did not have a clear and reasonably unobstructed view of the area around the vehicle, especially to the side and rear of the vehicle. With respect to a school bus, Std. No. 111 seeks to ensure that the driver is provided with an adequate view of the area around his or her vehicle, especially when stopped. This reduces the risk of the bus striking students as they board or leave the bus.

Among other requirements, Std. No. 111 specifies that each school bus shall have two outside rearview mirror systems on each side. System A consists of two sets of mirrors mounted adjacent to the driver, one set on the left side of the bus and the other on the right side. Each set includes a flat driving mirror of unit magnification and typically a convex driving mirror. The System A mirror system (the driving mirrors) must provide, among other things, a view of the area of ground, beginning with the ground beneath the System A mirrors and extending at least 200 feet rearward. System B consists of convex cross view mirrors that are mounted ahead of the driver for spotting students when they are near the front of the bus and as they board or leave the bus. To the extent that a seated driver cannot directly see test barrels or cylinders in specified locations around the front of the bus and 12 feet outboard of the rear wheels, the System B mirrors must provide views of the tops of those cylinders. To ensure that there is no blind spot between the views provided by the two mirrors systems, the System B mirrors must also provide a view of the ground that overlaps with the view of the ground provided by the System A mirror system. As a practical matter, this requirement results in the System B mirrors at least partially duplicating the view provided by the System A mirrors of the area of ground extending from the ground beneath the System A mirrors to the ground adjacent to the rear wheels of the bus.

Blue Bird Petition for Rulemaking

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Std. No. 111 by changing the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the requirement to provide a view beneath the system A mirrors, the System A mirrors on each side of the bus must consist of a flat (unit magnification) mirror plus either a small radius of curvature convex mirror or two convex mirrors. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would make the mirror unsafe for a driver to use while driving. To avoid the problem of small and distorted images, Blue Bird stated that any convex mirror that is part of System A should have a radius of curvature of at least 35 inches. The petitioner said that adding a second convex mirror would create a larger blind spot in the direct line of sight of the driver past the location of the System A mirrors.

Blue Bird stated that the current requirement for System A mirrors was inconsistent with previous agency statements about problems associated with using highly convex (i.e., small radius) mirrors for driving. Blue Bird further stated that nothing in the NPRM that led to the final rule establishing the requirements for System A mirrors implies that there is a need for those mirrors to provide a view of the area directly below them. Blue Bird asked the agency to immediately amend S9.2(b)(1) and S9.2(b)(2) to specify that System A mirrors (on each side of the bus) need only provide views of the area of the ground that extends rearward from the test cylinders near the rear wheels to a distance not less than 200 feet measured rearward from the rear surface of the mirrors. If the requirements were so amended, the System A mirrors would no longer be required to provide a view of the area of ground that extends from the ground below the mirrors to the cylinders by the rear wheels. This would enable school bus manufacturers to comply with the requirements by providing a flat mirror and a single convex mirror whose curvature would be large enough so that it would not distort the images in the manner described by Blue Bird.

At a meeting with NHTSA personnel, Blue Bird further stated that the installation and use of a driving mirror with a small radius of curvature may result in unsafe driving practices since it distorts image size and shape. The distortions makes it difficult for a bus driver to judge the distance between his or her bus and following vehicles when the driver is attempting to change lanes. Blue Bird alleged that a small radius of curvature mirror provides images of oncoming vehicles that are initially very small and difficult to recognize but then very quickly become much larger and greatly distorted as the vehicles approach the mirror.

Notice of Proposed Rulemaking

On July 11, 1994 (59 FR 35300), NHTSA published a notice of proposed rulemaking (NPRM) to amend Std. No. 111 so that System A mirrors on school buses would no longer be required to provide a view of the area of ground extending from the ground directly beneath the System A mirrors to the test cylinders by the bus's rear wheels. The agency issued this NPRM because it was concerned about the safety effects of the additional or overly small radius of curvature convex mirrors used in System A to provide a view of the ground beneath the System A mirrors.

NHTSA expressed concern that the current requirement may compromise safety because using a small radius of curvature convex mirror would make it more difficult for the driver to use the System A mirrors as driving mirrors because the distorted image from the convex mirror could cause confusion about the actual distance of approaching vehicles. The agency tentatively concluded that using two larger radius of curvature convex mirrors would reduce the driver's direct line of sight as the result of creating a larger blind spot in the vicinity of the System A mirrors. The agency tentatively concluded further that these visual problems resulting from requiring both systems to provide a view of the ground directly beneath the system A mirrors outweigh the safety benefits of that particular overlapping view.

The agency also stated its belief that the proposed amendment would not adversely affect pedestrian safety because System B mirrors would still be required to provide a view of the ground directly below the System A mirrors, as well as the areas alongside the bus to the rear wheels. Further, the two systems would still be required to provide overlapping views of the ground, although not at a location so far forward as the area beneath the System A mirrors.

In an attempt to obtain more detailed information about the extent and significance of the potential safety problems, NHTSA posed the following questions: To what extent does adding a second convex mirror to either set of System A mirrors increase the blind spot created for a driver attempting to look past the System A mirrors? How

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significant a safety problem is caused by the increase in the blind spot? How significant a safety problem is caused by the driver's inability, while driving a bus, to use all of the mirrors in a set of System A mirrors that includes a convex mirror with a radius of curvature less than 35 inches? If a manufacturer added a second convex mirror to a System A mirror system, couldn't the driver use the preexisting high radius of curvature mirror as the driving mirror?

Blue Bird had asked NHTSA to "immediately issue" its requested change to the standard. In the NPRM, NHTSA discussed why it was required to issue a proposal before deciding to adopt the requested change.

Public Comments and NHTSA Response

In response to the NPRM, NHTSA received a total of five comments. Three comments were from school bus manufacturers; Blue Bird, Mid Bus, Inc. and Thomas Built Buses. The Florida Department of Education and the National Truck Equipment Association also submitted comments. All commenters supported the proposed changes. None of the commenters provided any detailed information about the extent or significance of the potential safety problems.

In support of the proposed changes, Mid Bus stated that when the bus is loading or unloading, the required System A view of the ground between the surface of the mirror and the rear wheels and the System B mirror view are redundant. Mid Bus noted that System B mirrors provide the driver with a view of all the blind spots around the bus and in front of the rear wheels.

Since there were no opposing comments, NHTSA adopts, without changes, the proposed regulatory text for the reasons stated in the NPRM and this notice.

Besides supporting the proposed changes to Std. No. 111, Blue Bird recommended that the standard be amended to prohibit convex mirrors with radii of curvatures less than 35 inches as System A mirrors on school buses, if use of low radii of curvature convex mirrors would compromise safety. In its petition for rulemaking, Blue Bird had argued that convex mirrors with radii of curvature less than 35 inches would provide unreasonably small and distorted images, causing problems if the school bus driver were to look at the convex mirror while the bus was in motion.

NHTSA is not adopting Blue Bird's recommendation. NHTSA believes this final rule's changes to the System A mirror system will have the practical effect that Blue Bird seeks in requesting an outright prohibition. As a result of this final rule's changes to the System A mirror requirements, it will not be necessary for school bus manufacturers to place convex mirrors with small radii of curvature on System A mirrors. However, as is presently the case for drivers of trucks, multipurpose passenger vehicles and non-school buses, the decision whether to put on or use small radii of curvature convex mirrors will be left up to school bus manufacturers and school bus drivers. The agency believes that sufficiently trained and experienced drivers, such as those that drive commercial trucks, can adjust to and safely use the more convex mirrors.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The final rule will not result in any cost savings or cost increases for manufacturers that have been complying with the requirements by providing a flat mirror and a single small radius of curvature convex mirror since that convex mirror will be replaced by a larger radius of curvature mirror. The final rule will result in slight cost savings for manufacturers that have been complying by providing a flat mirror and two convex mirrors. Under this final rule, those manufacturers will now be able to delete one of the convex mirrors.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action will be minimal since this final rule makes a minimal change that will not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S9.2 is revised to read as follows:

§ 571.111 Rearview Mirrors.

* * * * *

S9.2 System A shall be located with stable supports so that the portion of the system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on: March 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–7348 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Determination To Retain the Threatened Status for the Coastal California Gnatcatcher Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of determination.

SUMMARY: The Fish and Wildlife Service (Service), announces a determination affirming its earlier conclusion (March 30, 1993; 58 FR 16742) that the coastal California gnatcatcher (*Polioptila californica californica*), a small, insectivorous songbird, is a distinct subspecies and, thus, meets the definition of a "species" pursuant to the Endangered Species Act of 1973, as amended (Act). In addition, the Service affirms its earlier conclusion (58 FR 16742) that the southern limit of this subspecies extends to about 30° north latitude near the vicinity of El Rosario, Baja California, Mexico. Based on these determinations, the Service concludes that its March 30, 1993, decision that the coastal California gnatcatcher is a threatened species was correct. Federal protection for the coastal California gnatcatcher is thus continued.

EFFECTIVE DATE: March 23, 1995.

ADDRESSES: The complete administrative records and files for this determination and all related rule promulgations and notices are available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The coastal California gnatcatcher (*Polioptila californica californica*), a subspecies of the California gnatcatcher, is a small, long-tailed member of the thrush family Muscicapidae. The subspecies is restricted to California and Baja California, Mexico, and is an obligate resident of coastal sage scrub, which is one of the most depleted habitat types in the United States (58 FR 16742). The plumage color of the species is dark blue-gray above and grayish-white below. The tail is mostly black above and below. This subspecies is distinguished from the other subspecies by its darker body plumage, less extensive white on tail feathers (rectrices 5 and 6), and longer tail (Atwood 1991). The male has a distinctive black cap that is absent during the winter. Both sexes have a distinctive white eye-ring. Vocalizations of this species include a call consisting of a rising and falling series of three kitten-like mew notes (National Geographic Society 1983).

The California gnatcatcher was originally described as a distinct species (*Polioptila californica*) by Brewster (1881) based on specimens collected by Stephens in 1878. Later taxonomic treatments (e.g., Coues 1903 and Chapman 1903) reflected Brewster's (1881) conclusions. Grinnell (1926), however, later concluded that the species was a form of the black-tailed gnatcatcher (*Polioptila melanura*), which inhabits the Sonoran and Chihuahuan Deserts of the southwestern United States and northwestern Mexico. Subsequent scientific publications (American Ornithologists' Union 1931, Grinnell and Miller 1944, Friedmann 1957, American Ornithologists' Union 1957) adhered to the species limits as defined by Grinnell (1926). Three subspecies of the black-tailed gnatcatcher were recognized for southwestern California and western Baja California, Mexico: *P. m. californica* (ranging from Los Angeles County, California (formerly northward to Ventura County), south to about 30° north latitude in Baja California, Mexico), *P. m. pontilis* (resident in central Baja California), and *P. m. margaritae* (ranging from about 27° north latitude south to the Cape region of Baja California) (American Ornithologists' Union 1957).

Based on identified differences in ecology and behavior that were elucidated as a result of specimen study and statistical analysis, Atwood (1988) proposed that *Polioptila californica* was specifically distinct from *P. melanura*. This finding was subsequently formally adopted by the American Ornithologists' Union Committee on Classification and Nomenclature (American Ornithologists' Union 1989), thus affirming Brewster's (1881) original taxonomic placement with respect to species. The American Ornithologists' Union 1989 publication did not address subspecies other than to refer the reader to the American Ornithologists' Union 1957 checklist of North American birds.

The coastal California gnatcatcher, *Polioptila californica* (=*melanura*) *californica*, has been recognized as a distinct race or subspecies since Grinnell's (1926) publication (e.g., American Ornithologists' Union 1931, Grinnell and Miller 1944, Friedmann 1957, American Ornithologists' Union 1957, Garrett and Dunn 1981, Unitt 1984, Phillips 1991, Atwood 1991). As indicated above, this subspecies occurs from Los Angeles County (and, formerly, Ventura County) south to about 30° north latitude in Baja California, Mexico. Although Atwood (1988) proposed merging *P. californica californica* with a more southerly subspecies of *P. californica*, he later (1991) retracted this conclusion.

On March 30, 1993, the Service published a final rule determining the coastal California gnatcatcher (*Polioptila californica californica*) to be a threatened species (58 FR 16741). In making this determination, the Service relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory. As is standard practice in the scientific community, the Service did not request, nor was it offered, the data collected and utilized by Atwood in reaching his conclusions. Instead, the Service cited the conclusions presented by Atwood in a peer reviewed, published scientific article pertaining to the subspecific taxonomy of the California gnatcatcher (Atwood 1991).

The Endangered Species Committee of the Building Industry Association of Southern California and other plaintiffs subsequently filed a suit challenging the listing on several grounds. In a Memorandum Opinion and Order filed in the United States District Court for the District of Columbia on May 2, 1994, the Court vacated the listing determination, holding that the

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Secretary of Interior (Secretary) should have made available the underlying data that formed the basis of the Atwood (1988) report in light of the controversy surrounding inconsistent conclusions reached by Atwood in his 1988 and 1991 studies.

Following the Court's decision, Atwood released his data to the Service. These data were, in turn, made available to the public for review and comment on June 2, 1994 (59 FR 28508). By order of June 16, 1994, the Court reinstated threatened status for the coastal California gnatcatcher pending a determination by the Secretary whether the listing should be revised or revoked in light of his review of the subject data and public comments received during public comment periods. This notice constitutes the Service's determination in response to the Court's June 16, 1994, order.

Summary of Comments and Recommendations

A proposed rule to list the gnatcatcher as endangered was published on September 17, 1991 (56 FR 47053). Public comments were solicited and two public hearings were held on the proposed rule. Notification of the hearings was published in the **Federal Register** on February 7, 1992 (57 FR 4747). A legal notice announcing the hearings and inviting general public comment on the proposal was also published on February 7, 1992 in the *Los Angeles Daily News, Los Angeles Times, Riverside Press-Enterprise,* and the *San Diego Union-Tribune.* Public hearings were conducted in Anaheim, California, on February 25, 1992, and in San Diego, California, on February 27, 1992. A notice of extension and reopening of the comment period for 30 days to obtain additional information on gnatcatcher taxonomy was published on September 22, 1992 (57 FR 43688). On February 11, 1993, the Service published a notice announcing the reopening of the public comment period on the proposed rule for 20 days and the availability of a report prepared by Service taxonomists on the taxonomic validity of *P. c. californica* (58 FR 8032). On March 30, 1993, the Service published a final rule determining the coastal California gnatcatcher to be a threatened species (58 FR 16741). That same day, a proposed special rule pursuant to section 4(d) of the Act was published (58 FR 16758). The final special rule was published on December 10, 1993 (58 FR 65088).

Following the Court's Order of May 2, 1994, and receipt of Atwood's data, the Service announced the availability of these data and the opening of a public comment period on June 2, 1994 (58 FR 28508). Atwood's data were sent to 15 parties upon request. With the approval of the Court, the public comment period was extended to December 1, 1994 (59 FR 53628), to allow the public additional time to receive and then comment upon the raw data and methodology utilized by Atwood.

During this 6-month public comment period, Dr. William Link and Mr. Grey Pendleton of the National Biological Service, Department of the Interior (Department), conducted a new and independent analysis of Atwood's data (Link and Pendleton *in litt.* 1994). To assure that the Service utilizes the best scientific information available in the implementing the Act, it is policy (59 FR 34270) to seek independent review of the scientific basis for listing and recovery actions. Consistent with this policy, the Service solicited comments on the National Biological Service document and all other public comments received by December 1, 1994, from the general public, including scientists with an expertise in avian taxonomy. A new 30-day public comment period (59 FR 66509) was opened on December 27, 1994, to allow the public to review and comment on these documents. This final comment period closed on January 26, 1995.

A total of 31 comments pertaining to either (1) Atwood's data, methodology, or results, or (2) the taxonomy of the gnatcatcher was received during the final two comment periods. This total includes 21 comments received prior to December 1, 1994, and an additional 10 comments received during the final comment period. Included among the comments were three new, independent analyses of Atwood's data. After a review and consideration of all such comments, five relevant issues have been identified and are discussed below. The five issues encompass all substantive comments pertaining specifically to Atwood's data, analyses, and conclusions regarding the taxonomy and geographic range of the coastal California gnatcatcher.

Issue 1: Several commenters noted that Atwood's apparent discarding of raw data precludes an appropriate analysis of his conclusions. One commenter in particular was disturbed that "Atwood no longer has the raw data used in his original analyses." Another commenter noted that Atwood admitted to discarding computer programs used in the analysis of the data subsequently analyzed and reported in his 1991 publication. Some stated that differences existed between the data sets used in Atwood (1988), Atwood (1991) and that provided to the Service and the public (Atwood *in litt.* 1994a).

Service Response: Atwood (*in litt.* 1994b) has stated that the measurements provided to the general public following the May 2, 1994, Court Order "represent the total and unmodified data set that formed the basis for my 1988 and 1991 publications on gnatcatcher morphology." Atwood (*in litt.* 1994b) also indicated that only one difference existed between the computer file data set transmitted to the public and the data on the original paper forms that he discarded after entering the data into a computer file, the sex of a single specimen from sample area SI29 was corrected. Atwood (*in litt.* 1994b) further indicated that he verified (in 1985) the data on the computer by comparing it with the hand-written information on the paper forms. The Service concludes that there is no reason to doubt the veracity of Atwood in this regard.

Because data on paper forms cannot readily be subjected to statistical analysis, the data transferred to a computer or computer disk are, in essence, the raw data at issue. The Service, therefore, rejects the contention that Atwood discarded his raw data, thereby precluding reanalysis of the data.

After providing his data, Atwood realized that discrepancies in sample size existed between data reported in his dissertation, his monograph (Atwood 1988), his subspecies paper (Atwood 1991), and data provided to the Service. He noted that for site SI29 there was a discrepancy with respect to one female and one male specimen and concluded that he had corrected the sex for one individual. His dissertation revealed 14 specimens for sites PP28 and MA30, whereas the Service data includes 13 specimens for site PP28 and 15 for site MA30. Atwood believes that this discrepancy was the result of correctly placing one specimen in site MA30 rather than PP28. These two corrections resulted in apparent discrepancies. Atwood was unable to explain an additional discrepancy, in his dissertation he reported 19 female specimens for site SD24, whereas the data provided to the Service indicates 20 female specimens for site SD24; Atwood suggested that a typographical error had occurred.

Atwood discovered numerous discrepancies between the sample sizes for his monograph (Atwood 1988) and the data given to the Service (amounting to 15 more male specimens and 7 fewer female specimens reported in the Service data set). Atwood could not conclusively explain these discrepancies, but suspected that they were associated with the differing lengths of data set lines that may have caused the SAS program to skip lines or combine lines of data. He suggested that this problem may also have affected his analyses of the data presented in the 1988 monograph. He indicated that because of these potential problems, he felt that it is inappropriate to rely upon the 1988 monograph with respect to subspecific conclusions, although the conclusions with respect to species were unaffected, and are valid. However, programming errors would not have affected the original data set.

Atwood (*in litt.* 1994a,b) has acknowledged that one of the 213 samples in the data set provided to the public was not used in his 1991 study or in his previous, unpublished status review of the gnatcatcher. Atwood (*in litt.* 1994b) believes that the excluded specimen was that designated YP2717, an aberrant specimen (possibly a black-tailed gnatcatcher or interspecies hybrid) collected in 1885. In Atwood's subsequent reanalysis of the original data set, specimen YP2717 was excluded from the data set because it differed from its sample area mean by more than 3 standard deviations (Atwood *in litt.* 1994b).

The sample size discrepancies for all reports, except the 1988 monograph, are very minor, and would not have affected the overall conclusions of the authors. Atwood (1994b) has characterized the analysis of his 1988 monograph as being "seriously flawed" with respect to data processing. The sample size discrepancies between Atwood's other reports, and the 1988 monograph are likely due to these data processing problems, and not the result of changes made to the data set. The Service, therefore, concludes that the data set provided by Atwood to the Service adequately duplicates the data originally written on paper forms.

Issue 2: One commenter noted that two of Atwood's publications (1988 and 1991) were contradictory in that they proposed different geographic ranges for the taxon of California gnatcatchers occurring in the United States. This same commenter suggested that Atwood's (1991) retraction of his original (1988) conclusions pertaining to the subspecies taxonomy of the California gnatcatcher was prompted by his desire to affect the listing of the species.

Service Response: While the record indicates that Atwood believes that the listing of the coastal California gnatcatcher is warranted, the record also indicates that Dr. Atwood's revised conclusion about the subspecific geographic limits of *Polioptila californica californica* resulted from his 1991 reanalysis of the data cited in his 1988 monograph. The (1988) monograph had received peer review critical of its findings.

The Service receives dozens of petitions to list or delist species each year. The Act requires the Service to conduct an independent review of each of these petitions, and to make final decisions on the basis of the best scientific data available. The motives of the petitioners, as with commenters, are not relevant to the Service's decisions on these issues.

Issue 3: Several commenters alleged fundamental flaws in the data used by Atwood (1991) in generating his conclusions. In particular, commenters suggested or concluded that the data appeared to be incomplete, or non-random (i.e., "censored"). Several commenters were concerned that the variables were "confounded" (i.e., the effects of two or more factors on a response variable could not be separated) due to the age or condition of certain specimens. These commenters indicated that for the northern sites nearly all specimens were collected prior to 1940, and none of the specimens from the remaining sites were collected prior to 1920. One commenter noted that a potential exists for serious bias in the data due to specimen "foxing" (i.e., browning with age). Another commenter noted, citing relevant published scientific literature, that body size and plumage brilliance and iridescence can reflect variation in specimen condition. Some of these commenters suggested that differences in characters among sites may be the result of the age of the collection, and not the site from which they were collected.

Service Response: On behalf of the Service, the National Biological Service independently conducted a new analysis of Atwood's data (Link and Pendleton *in litt.* 1994). Three additional independent analyses of the data were also submitted during the comment period.

In response to one commenter's concern that the data appeared to be a non-random sample of California gnatcatchers, the National Biological Service (Newton, *in litt.* 1995) replied that although these are valid concerns, they are not proof, as acknowledged by the commenter, that Atwood's data are not representative. One commenting ornithologist who was largely critical of Atwood's (1991) analyses nevertheless concluded that "[t]he data set gathered by Atwood was quite comprehensive and included measurements from a large number of specimens throughout the range of the species." In the Memorandum Opinion and Order filed May 2, 1994, the Court declared, citing the declaration of this ornithologist, that "it is not disputed that Atwood's means of collecting data were proper."

After noting the possible problem of the age of the specimen being confounded with the collection site, the authors attempted to adjust the data for year or month the data was collected. McDonald *et al.* (*in litt.* 1994) removed specimens collected from May to September and thus avoided problems associated with feather wear. Link and Pendleton (*in litt.* 1994) adjusted several characters for month and year based on the results of regression analyses. Messer (*in litt.* 1994) conducted two of her analyses by limiting the specimens to those collected between 1920 and 1940, and 1980 to 1984. Link and Pendleton (*in litt.* 1994) were cautious and indicated that they may not have removed all of the confounding effects; however, they also indicated that they may have over adjusted the data and removed differences due to sites.

After adjusting the data for year and month of collection, Link and Pendleton (*in litt.* 1994) obtained results similar to the unadjusted data. Messer (*in litt.* 1994) was able to classify the northern birds from the southern birds using specimens collected from 1980 to 1984 correctly in 84 percent of the cases, and using birds collected from 1920 to 1940 in 94 percent of the cases. The results of McDonald *et al.* (*in litt.* 1994) also yielded weak evidence of a break at 30° north latitude, even though they had removed birds collected during certain months of the year. Atwood (*in litt.* 1994b) also had similar results before and after he excluded the variable brightness of breast plumage (a variable that would have changed as a specimen aged) from his analysis.

Given the above considerations and results, the Service finds no justification or cause for concluding that Atwood's data were incomplete, censored, or otherwise inadequate. Further, the Service concludes that the available information does not support the hypothesis that the confounding of variables is responsible for erroneous conclusions regarding perceived breaks in the morphology of the coastal California gnatcatcher. The Service concludes that the analysts took adequate care to remove the possible effects of confounding of age of specimen and collection area.

Issue 4: The Service received four significant analyses and a number of critiques of each of the analyses of Atwood's data. Each commenter

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attempted to answer a different question, and consequently, each of the analyses used somewhat different statistical techniques, and drew somewhat different conclusions. Some of the commenters concluded that the clinal nature of the data would argue against subspecies; or that a primary break occurs further south and would argue that if there are subspecies, the boundary line should be drawn further south in Baja California. Others argued that the data are clumped (consistent with a subspecific break); or that the birds north of 30° north latitude are different from the birds south of 30° north latitude. The Service analyzed these reports to draw a conclusion regarding whether the data support Atwood's 1991 conclusions.

Service Response: Several commenters produced new analyses of the data provided by Atwood. Atwood (*in litt.* 1994b) also provided an additional taxonomic analysis of the data. With the exception of Atwood (*in litt.* 1994b), all of the authors (Messer *in litt.* 1994, Link and Pendleton *in litt.* 1994, and McDonald *et al. in litt.* 1994) explicitly stated that their expertise is in statistics, and that taxonomic conclusions should be left to taxonomists. The Service has carefully reviewed each of these analyses and critiques to examine the strengths and the weaknesses of each approach. A summary of these analyses follows.

Atwood (*in litt.* 1994b) presented a reanalysis of his data using $\log_{10}$ transformations of 6 variables (bill length, tarsus length, wing length, tail length, length of white spot on a tail feather (retrix 6), and brightness of breast plumage). In one analysis, he excluded the variable "brightness of breast plumage" because Mellink and Rea (1994) found readings inconsistent, even when resampling a single specimen. Atwood used a Tukey-Kramer method to conduct pairwise comparisons of the sample area means. He also conducted a principal components analysis (a method of determining how the data are intercorrelated, and reducing intercorrelated data to a principal component score) of the data and performed a cluster analysis on the first two principal component scores as well as on the original variables. Tail length, tail spot length, and brightness of breast plumage varied significantly among sample areas (all $P<0.001$), and multiple comparison tests revealed a grouping, or "step," at 30° north latitude. The cluster analyses grouped sites north of 30° north latitude together, and variously grouped sites to the south. Atwood's methods show that regional means may be clumped, but do not show whether individual birds can be placed correctly into these groups.

Link and Pendleton (*in litt.* 1994) used regression analysis of mean latitudes of Atwood's (1991) nine sample areas against 25 characters. They determined that the data vary along a geographic gradient. Link and Pendleton (*in litt.* 1994) then conducted a series of tests to determine if the characters were representative of gradual change or of groupings. They used multivariate analysis of variance (MANOVA) to place the original 9 sites into the best groupings of 8 sites, 7 sites, 6 sites, 5 sites, 4 sites, 3 sites and 2 sites. Abbott *et al.* (1985), in their book on taxonomic analysis, recommended the use of canonical variate analysis (MANOVAs) for delineation of subspecies, where the data are continuous and the data are preclassified into postulated groups. Akaike's information criterion (AIC) was used by Link and Pendleton (*in litt.* 1994) to determine which grouping best fit the data. Link and Pendleton (*in litt.* 1994) conducted discriminant function analysis to determine if they could correctly classify birds into groups. Hotelling's t^2 test was used to test the significance of the results. Cluster analysis and discriminant coordinates were computed on the individual specimens to see how the data was clumped. Finally, they attempted to adjust the data for time effects (see issue 3 above).

Link and Pendleton (*in litt.* 1994) obtained similar results in each of these tests. They concluded that the changes in the characters are more representative of groupings than of gradual change. They determined that, at least one break occurs north of site 5 (mean latitude of site 5 is 29.5° north latitude) and at least one break occurs south of site 5. The use of MANOVA would reduce the likelihood of Type 1 error (reporting differences that do not exist) that would occur if you looked at each variable separately. The AIC is not prone to overfitting, and can be used to determine the model that best fits the data. The AIC does not have an associated statistical test for significance, and therefore, the groups identified in this manner may not represent actual groupings (Newton *in litt.* 1995). Though Newton (*in litt.* 1995) also indicated that Atwood's (*in litt.* 1994b) cluster analysis would have been more useful if he had used individual specimens rather than group means, Link and Pendleton's (*in litt.* 1994) cluster analysis did use individual specimens and yielded groups similar to their MANOVA results, creating a stronger basis for their conclusions.

Messer (*in litt.* 1994) examined whether the birds north of 30° north latitude can be distinguished from the birds south of 30° north latitude. She used multivariate discriminant analysis to classify birds into northern and southern subgroups with the boundary set at 30° north latitude. Discriminant analysis is used when one is examining a categorical dependent variable (e.g., north or south of 30° north or one of 9 sites) and metric independent variables (e.g., measurements of gnatcatcher characteristics). Discriminant analysis would test whether the means among groups are equal. Using several subsets of the data (e.g., limiting years of collection to remove time effects, or in developing a model with one set of data and another to test the model), Messer (*in litt.* 1994) concluded that one could correctly classify the birds as being from the northern or southern areas with 86 to 92 percent accuracy.

McDonald *et al.* (*in litt.* 1994) conducted their analyses using individual specimens, and estimated the latitude based upon the locality description given by Atwood in his original data set. They removed specimens collected from May through September to avoid data problems due to feather wear and molting, and attempted to adjust some data for year of collection. To examine how the data are intercorrelated, they conducted principal components analysis on size, color, and pattern variables separately. McDonald *et al.* (*in litt.* 1994) conducted Gabriel's sum of squares simultaneous test procedure on the first principal component scores and on the original variables. McDonald *et al.* (*in litt.* 1994) conducted an intervention analysis to look for steps or breaks in the trends in means. In addition, they conducted a discriminant function analysis to determine whether birds could be correctly classified at various latitudes.

The results from the Gabriel's test indicated that there were significant differences in means of the first principal component at 24° north latitude, and that for some of the size variables there was weak evidence for a trend in means at 28° north latitude or 27° north latitude. There was weak evidence for difference in the means at 30.5° north latitude for the first principal component for color variables. The intervention analysis revealed a significant rate of change for 4 of the 16 individual size variables (page 6) at 30° north latitude ($P< 0.10$). The discriminant function analysis revealed that the lowest misclassification rate was at 24° north latitude (4 percent). The misclassification rate at 30° north latitude was 13 percent (a 25 percent misclassification rate is generally acceptable for many subspecific groups).

McDonald *et al.* (*in litt.* 1994) used principal components analysis (a method to reduce intercorrelated data to a single principal component score) on size, color, and pattern variables separately. This analysis may have been done to group data by measurement type (e.g., units of length, weight, etc.), as is recommended in some statistics books (Newton *in litt.* 1995). Other statistics texts (e.g., Hair *et al.* 1995) apparently do not recommend grouping like measurements. A more exhaustive approach to principal components analysis would have been to do the analysis on all variables simultaneously, then exclude size variables, then pattern variables, and so forth (Newton pers. comm. 1995). In that manner, McDonald *et al.* may have detected additional intercorrelations among gnatcatcher characteristics.

McDonald *et al.* (*in litt.* 1994) presented a stronger case for breaks in characters south of 30° north latitude than they did for characters found at 30° north latitude. Atwood (1991, *in litt.* 1994), and Link and Pendleton (*in litt.* 1994) also found breaks south of 30° north latitude. The evidence of at least one break south of 30° north is supportive of Atwood's (1991) conclusion of an additional subspecific break. McDonald *et al.* (*in litt.* 1994) provided the strongest evidence against Atwood's (1991) conclusions. Nonetheless, they found weak statistical results supporting a break at 30° north latitude (Gabriel's SS-STP and intervention analysis). They also acknowledged that Gabriel's test may not have detected differences in the critical region, where Atwood concluded changes occur, because this test is sensitive to small sample sizes (i.e., an investigator needs a large number of individual records before the test will detect differences). Thus, in this portion of the analysis of McDonald *et al.*, the possibility of a Type 2 error or accepting the null hypothesis when it should be rejected (i.e., believing that there is no break in characters when in fact one does occur) was higher than the possibility of a Type 1 error or rejecting the null hypothesis when it should be accepted (i.e., believing that there is a break in characters, when in fact no break exists).

McDonald *et al.* (*in litt.* 1994) also used "intervention analysis", a procedure normally used when an experimenter intervenes in some way (i.e., provides medical treatment) and wants to evaluate whether changes in behavior or performance are statistically significant (Edgington 1987). McDonald *et al.* (*in litt.* 1994) apparently used this approach to see if changes at various latitudes resulted in a sharp step. McDonald *et al.* (*in litt.* 1994) provided limited details of this method, which they modified and "tested using data from the literature." Therefore, the Service was unable to fully evaluate this method, which apparently is not commonly used. Messer (*in litt.* 1995), however, indicated that the technique is a "nonparametric (and thus less powerful) version of linear regression analysis."

McDonald *et al.* (*in litt.* 1994) did find weak statistical evidence for a break in characters at 30° north latitude, and were able to distinguish the birds north and south of this line with a 13 percent error rate. In evaluating their techniques, the Service notes that McDonald *et al.* (*in litt.* 1994) used techniques that were less exhaustive, or that were less well known, or that may have been more likely to result in a Type 2 than in a Type 1 error than techniques used by the other authors. The techniques of McDonald *et al.* (*in litt.* 1994) appeared more likely to accept the null hypothesis (e.g., there is no subspecific break in gnatcatchers at about 30° north latitude). Given the selection of statistical techniques by McDonald *et al.* (*in litt.* 1994), and that Atwood (*in litt.* 1994), Link and Pendleton (*in litt* 1994), and Messer (*in litt.* 1994) found evidence for a break at 30° north latitude, the Service concludes that the weak statistical evidence of a break at 30° north latitude presented by McDonald *et al.* should be given greater credence.

In summary, the MANOVA conducted by Link and Pendleton (*in litt.* 1994) and cluster analysis conducted by Atwood (*in litt.* 1994) are supportive of groupings of birds rather than a cline. Use of cluster analysis by Link and Pendleton (*in litt.* 1994) on individual specimens provides stronger evidence that groups or "steps" exist in characters. In addition, efforts by McDonald *et al.* (*in litt.* 1994) and Messer (*in litt.* 1994) to determine correct classification rates provide further evidence that gnatcatcher variance along a geographic gradient is more indicative of groupings than of a gradual cline. The misclassification rates at 30° north latitude were well within the range acceptable for subspecies.

Each author utilized different statistical methods to analyze the data and draw conclusions. As a first step, the authors investigated whether they could separate the means among various groupings of the data. Atwood (*in litt.* 1994b) used a Tukey-Kramer multiple comparison procedure to determine if the means of individual variables among previously selected groups could be separated. Link and Pendleton (*in litt.* 1994) used Hotelling's t^2 on the groupings identified in their MANOVA analysis to determine if the means could be separated. McDonald *et al.* (*in litt.* 1994) used Gabriel's method to determine differences in means at selected latitudes. Each of these approaches was successful in separating means among groups of gnatcatchers.

The investigators next examined whether there might be steps in these changes, or whether one could correctly classify (or place) the birds within these groups. Messer (*in litt.* 1994) conducted a multivariate discriminant analysis and found that the birds could be classified into a groups north and south of 30° north latitude with an error rate of about 10 percent. Link and Pendleton (*in litt.* 1994) conducted a clustering analysis to group individual specimens into clusters and examined the overlap between the clusters and the groupings identified in the MANOVA. McDonald *et al.* (*in litt.* 1994) conducted a discriminant function analysis to identify latitudes that separate the range of the bird into 2 groups with minimal misclassification rates. Each of these approaches showed a break in the characters at 30° north latitude, and was supportive of Atwood's (1991) conclusions.

In a statistically pure sense, these methods are exploratory in nature and were useful in identifying hypotheses that could be tested with respect to the gnatcatcher. To formally test these hypotheses, an investigator would need to make similar measurements on newly gathered gnatcatcher specimens. Issue 5 below discusses the Service's response to this point. However, it is important to understand that statistics are a tool used to assist an investigator in drawing conclusions in that they can help quantify uncertainties with respect to those conclusions (Newton pers. comm. 1995). The investigator still needs to evaluate the practical significance of results, and should not focus exclusively on statistical significance (Abbott *et al.* 1985, Hair *et al.* 1995, Mayr *et al.* 1953). Statistics do not remove or supplant the need to make informed decisions with respect to any data set. Messer (*in litt* 1994), Link and Pendleton (*in litt.* 1994), and McDonald *et al.* (*in litt.* 1994) all explicitly recognized that taxonomic decisions should be made by taxonomists.

The misclassification rates identified by Messer (*in litt.* 1994) and McDonald *et al.* (*in litt.* 1994), and the overlap in many of the characters show that these

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groupings of gnatcatchers are not entirely discrete. Abbott *et al.* (1985) noted that taxonomists expect "variation within species to involve either a continuum or at least some continuity or overlapping between forms." If the groupings of California gnatcatcher were entirely discrete, avian taxonomists likely would have assigned these groupings to separate species. Mayr (1970) defined subspecies as "an aggregate of phenotypically similar populations of a species inhabiting a geographic subdivision of the range of a species and differing taxonomically from other populations of the species." Mayr (1970) concluded that the magnitude of taxonomic difference necessary to appropriately decide when subspecies should be delimited "can be determined only by agreement among working taxonomists."

Grinnell (1926), Phillips (1991), and Atwood (1991) identified 30° north latitude as a boundary between *Polioptila californica* (=*melanura*) subspecies. Recent work suggests that the southern boundary of *P. c. californica* may be further north, near the international boundary between the United States and Mexico (Mellink and Rea 1994). Mellink and Rea (1994) placed the birds between the international border and 30° north latitude in a new subspecies. Atwood identified another subspecific break south of 30° north. McDonald *et al.* (*in litt.* 1994) and Link and Pendleton (*in litt.* 1994) also noted a break south of 30° north latitude, consistent with Atwood's (1991) conclusion of an additional subspecific break. The consensus among working taxonomists supports recognition of *P. c. californica*, albeit its range may be more restricted than that proposed by Atwood (1991). Therefore, the Service concludes that a finding that 30° north latitude as the southern specific boundary of *P. c. californica* is supported by the available scientific evidence. Until additional taxonomic work is published and accepted by the ornithological community, the Service will recognize 30° north latitude as the southern subspecific boundary of *P. c. californica*.

Issue 5: Several commenters stated that analyses of a newly collected independent data sets should be done to clarify gnatcatcher taxonomy or resolve differences of opinion among the various commenters. One commenter urged the Service to "dismiss the subspecies issue for gnatcatchers (pending further study) and focus on the management of U.S. populations." Another commenter concluded that "a rigorous analysis of both morphometric, reflectance, genetic, and other chemical data are required to address the problem in the clearest possible manner." Other commenters added that the gnatcatcher should not be listed until the perceived taxonomic controversy is resolved.

Service Response: The Service fully endorses and encourages efforts to assess and refine the taxonomic status of all species, including the coastal California gnatcatcher, provided that any collection of specimens associated with such efforts does not result in unacceptable mortality or other impacts. However, in making listing determinations, section 4(b) of the Act requires the Service to make its listing decisions within set timeframes and requires the Service to base its listing decisions on the best scientific and commercial data available at the time of the decision. The Service is not authorized to delay listing decisions until all studies of arguable utility are completed, until scientific debate is exhausted, or until complete consensus occurs. The Service cannot await the "next study," which may or may not occur and which may or may not be affirmed by the scientific community through the appropriate peer review process.

Efforts to conduct further analysis on the taxonomy and subspecific limits of the California gnatcatcher would be costly and time consuming. One could seek additional museum records not analyzed by Atwood, or could collect new specimens. Collecting new specimens could result in unacceptably high mortality. Moreover, collecting new field specimens prior to making a final decision on this issue is not practical. Alternatively, investigators could capture birds in mist nets and obtain these measurements from live individuals, which would then be released. However, additional researchers would be unable to verify the results by visiting a museum and repeating the measurements. As stated above under issue 4, the Service was charged with evaluating whether Atwood's data supported his conclusions, and not with carrying out additional studies to remove any and all controversy surrounding the taxonomy of the *Polioptila californica* subspecies.

Conclusion

The Service has been charged with scrutinizing data and conclusions rendered by Atwood, and determining if his data support his conclusions. The Act provides that the Service must render its determination on the basis of the best scientific and commercial data available. The Service has made a concerted effort to obtain and accurately assess the best scientific and best commercial information available regarding the taxonomy and range of the coastal California gnatcatcher. As an integral part of this process, the Service's statutory mandates and standard scientific protocol require that we recognize and act in accordance with the concepts, conventions, and practices of the scientific method. To this end, the Service must seek and seriously consider (1) data and analysis published in peer reviewed, scientific journals, (2) the opinions of recognized experts in given scientific disciplines, and (3) the input of the interested public.

In this effort the Service has reviewed the analyses of the data used by Atwood in his 1988 and 1991 papers. The Service finds that the conclusions reached by Atwood (1991) are reasonable, and are generally supported by the additional analyses received.

Under any circumstances that pertain to the taxonomy of North American bird species, the Service actively seeks the publications, input and expert opinion of the American Ornithologists' Union (AOU) and its constituent Committee on Classification and Nomenclature (Committee). The Committee and its publication (*Check-list of North American Birds*) are recognized by the Service, scientists, and scientific organizations throughout the world as authorities on avian taxonomy in North America. Although the AOU has formally published its positions on the taxonomy of the California gnatcatcher and coastal California gnatcatcher (American Ornithologists' Union 1957, American Ornithologists' Union 1989), the Service, nonetheless, made a concerted effort to solicit and receive the recent, unequivocal, expert opinion of the Committee and its members. During a past, prescribed public comment period, the Service received responses from four members of the Committee (including the Committee chair). The Committee members were unanimous in acknowledging that *Polioptila californica californica* is currently accepted as a distinct subspecies and that its southern distributional limit occurs at 30° north latitude.

In addition to independently seeking and reviewing the best scientific information available from expert sources pertaining to the taxonomic status of coastal California gnatcatcher, the Service also repeatedly solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other party interested in gnatcatcher taxonomy and all other aspects of the listing decision. In response to these requests for comments, the Service received a wide variety of public comments and opinions, which are discussed earlier in this notice.

The Service has carefully considered all public comments received, separate and independent analyses of Atwood's data, the National Biological Service's (Link and Pendleton *in litt.* 1994) analysis of the data, subsequent review of all technical submittals from the National Biological Service (Newton *in litt.* 1995) and other interested parties, the existing scientific literature, and the information presented in the final listing rule designating the gnatcatcher as threatened (58 FR 16742). As a result, the Service concludes that the taxonomy and geographic limits of the coastal California gnatcatcher are as provided by Grinnell (1926, 1928) van Rossem (1931), American Ornithologists' Union (1931), Grinnell and Miller (1944), Friedmann (1957), American Ornithologists' Union (1957), Paynter (1964), Garrett and Dunn (1981), Atwood (1991), and Phillips (1991). All of these scientific, peer reviewed, publications present conclusions or affirmations that the gnatcatcher (*Polioptila californica californica*) is restricted to coastal southern California and northwestern Baja California, Mexico, from Los Angeles County (and formerly Ventura County) south to the vicinity of El Rosario at about 30° north latitude.

The Service determines that the coastal California gnatcatcher is a distinct taxon and that its geographic range is that described and considered in the final listing rule for the coastal California gnatcatcher (58 FR 16742). Therefore, the coastal California gnatcatcher shall remain classified as a threatened species for reasons that are stated in the final rule to list the species (58 FR 16742).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Authors

The primary authors of this notice are Loren R. Hays of the Carlsbad Field Office (see **ADDRESSES** section), and Karla J. Kramer of the U.S. Fish and Wildlife Service, Portland Regional Office, 911 Northeast 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–6131).

Dated: March 22, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–7549 Filed 3–23–95; 10:39 am]

BILLING CODE 4310–55–P

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Proposed Rules

Federal Register
Vol. 60, No. 58
Monday, March 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

POSTAL SERVICE

5 CFR Chapter LX

RIN 3209–AA04

Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule, which addresses ethical issues unique to the Postal Service, would prohibit certain outside activities and would require prior approval for employees to engage in other specified outside employment or activities.

DATES: Comments must be received on or before May 26, 1995.

ADDRESSES: Send comments to Chief Counsel, Ethics and Information Law, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1110. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6427, at the above address.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268–2967.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards), now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583, with additional grace-period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, which became effective on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

Under 5 CFR 2635.105, agencies may issue, with the concurrence of OGE, agency-specific regulations supplementing 5 CFR part 2635 as necessary to fulfill the purposes of that part in light of the agency's particular programs and operations. The Postal Service, with OGE's concurrence, has determined that the following proposed supplemental regulations, to appear in new 5 CFR chapter LX, consisting of part 7001, are necessary to the successful implementation of its ethics program.

The OGE regulations in 5 CFR part 2635 superseded many provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447, including many of its restrictions on outside employment at 39 CFR 447.23 that do not involve compensated outside employment relationships. Certain other provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1)–(7), and those provisions of 39 CFR 447.23 that involve compensated outside employment relationships, remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780 and 60 FR 6390–6391.

The supplemental regulations will include restrictions on outside employment similar to many of those that were or continue to be in effect under 39 CFR 447.23. Upon further consideration of the prohibited financial interest provisions of 39 CFR 447.22(b)(1)–(7) in light of the uniform regulations concerning conflicting interests codified in 5 CFR 2635.401–2635.403, and other provisions of part 2635, the Postal Service has concluded that these financial interest prohibitions should not be retained. These provisions will be repealed in a separate document amending 39 CFR part 447 to remove outdated provisions, which will be published concurrently with the final rule adopting supplemental regulations.

II. Analysis of the Regulations

Section 7001.101 General

Section 7001.101 explains that the regulations contained in the proposed rule apply to all employees of the Postal Service and are supplemental to the uniform executive branch standards. Postal Service employees also are subject to the Standards at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional rules of conduct published in Postal Service regulations and manuals.

Section 7001.102 Restrictions on Outside Employment and Business Activities

Under 5 CFR 2635.802(a), agencies are authorized to issue supplemental regulations prohibiting employees from engaging in outside employment or activities that conflict with their official duties. Under 5 CFR 2635.803, agencies are authorized to issue supplemental regulations requiring employees to obtain prior approval before they engage in outside employment or other outside activities.

(a) *Prohibited outside employment and business activities.*

Under 39 CFR 447.23(a)(1), the Postal Service previously has prohibited its employees from manufacturing or representing a manufacturer of any product produced for exclusive use by the Postal Service or required for use by its customers. Proposed § 7001.102(a)(1)(i) would refine and continue this prohibition, adding an express reference to working for manufacturers of postal employee uniforms. The involvement of Postal Service employees in such activities could cause members of the public to question the impartiality and objectivity with which Postal Service programs are administered, because it could create the appearance that the employees, or the persons they represent or with whom they otherwise are affiliated, are in a position to benefit from knowledge or influence gained by the employees through their official positions.

Under 39 CFR 447.23(a)(3), the Postal Service previously has prohibited employees from engaging in employment that involves the delivery of mail to the postal facility in which the employee works, or to a facility within the delivery area of the post office in which the employee works, if such employment required the employee to conduct business with other employees performing the same type of duties. In proposed § 7001.102(a)(1)(ii), the rule would be revised to prohibit any employment involving the delivery of mail for a postal contractor to the specified facilities, without regard to the nature of the employee's duties. The revision is intended to simplify the rule. Although the revision would create a somewhat broader prohibition, the Postal Service has concluded that the involvement of employees in the delivery of mail at or near their official workplace might lead reasonable persons to be concerned that the employees' outside employers are receiving preferential treatment from the Postal Service.

Under 39 CFR 447.23(a)(4), the Postal Service previously has prohibited employees from acting as "consultants" for current or potential Postal Service contractors. Such activity could lead members of the public to be concerned that the employees are using knowledge or influence gained through their official positions to benefit their outside employers. Proposed § 7001.102(a)(1)(iii) would provide a similar prohibition, but because the term "consultants" did not clearly define the activity subject to the prohibition, the new section would apply to "consultation, advice, or any subcontracting service." In addition, proposed § 7001.102(a)(1)(iii) would apply to such services only when rendered "with respect to the operations, programs, or procedures of the Postal Service." This limitation has been included to make clear that an employee would not be prohibited from consulting with a business that happens to hold a Postal Service contract when the employee's consulting work is not related to that contract and does not have any other postal connection. Under such circumstances the employee would not be expected to gain any personal benefit, or to provide any benefit for the outside business, from knowledge or influence arising from his or her official position. As explained below, another proposed provision, § 7001.102(b)(1), may require the employee to obtain prior approval before engaging in any employment, including consulting work, with a business that depends heavily on postal contracts.

Under 39 CFR 447.23(g), the Postal Service previously has prohibited employees from engaging in employment with a private business that delivers mailable matter. Proposed § 7001.102(a)(1)(iv) would continue the prohibition, and also would specify that working for a commercial mail receiving agency—an agency registered under Domestic Mail Manual D042.2.5 to receive mail from the Postal Service for delivery to others—would be included in this prohibition. Unlike most Federal agencies, the Postal Service must compete with certain private businesses. The new section would prohibit employees from working for such businesses because the outside employment might lead members of the public to question the employees' loyalty to the Postal Service, thereby undermining public confidence in the integrity of postal operations. This type of concern is not presented by postal employees having outside employment delivering daily newspapers, which is not prohibited.

Under 39 CFR 447.23(a)(5), the Postal Service previously has prohibited employees from engaging in any sales activity while on duty, in uniform, or in the office where the employee is stationed. Proposed § 7001.102(a)(2) would continue this prohibition, but would extend it to cover sales activities at any postal facility. The prohibition is intended to prevent employees from using influence derived from their official positions as an aid to sales activities, and experience has shown that employees may exert such influence at postal facilities other than their own. Under 5 CFR 2635.702, employees must not use public office for their own private gain or for the benefit of others such as any business with which they are affiliated. The Postal Service considers that a more explicit, supplemental rule is needed to deal with sales activities in the workplace or in uniform, whether or not the employee who would engage in the sales activity is on duty.

(b) *Prior approval for outside employment and business activities.*

Under 39 CFR 447.23(a)(2), the Postal Service previously has prohibited employees from engaging in employment with persons with whom they have dealings in their official capacities. Proposed § 7001.102(b)(1)(i) would instead require employees to obtain approval before engaging in such employment or business activities. Although there are situations in which outside activities involving such persons would raise issues under 5 CFR part 2635, the duties of many Postal Service employees, such as clerks and letter carriers, might bring them into limited contact with a variety of outside businesses, including large, diversified corporations. Prohibiting such employees from being employed in any phase of a business, merely because the business's mail touches their hands, would be unduly restrictive. Therefore, the Postal Service considers a prior approval requirement more appropriate than a prohibition for this type of outside employment and, under 5 CFR 2635.803, has proposed the prior approval requirement at § 7001.102(b)(1)(i). The review required by the approval process can be expected to identify those employment relationships that would present ethical conduct concerns under 5 CFR part 2635.

Under 39 CFR 447.23(a)(6), the Postal Service previously has prohibited employees from engaging in outside employment with (1) persons whose business interests are substantially dependent upon, or may be significantly affected by, postal rates, fees, or classifications; and (2) persons whose interests are substantially dependent on providing goods or services to, or for use in connection with, the Postal Service. Proposed § 7001.102(b)(1)(ii) would require employees to obtain prior approval before engaging in such employment or business activities. Definitions of the outside businesses to which the prior approval requirement would apply are provided in § 7001.102(c)(2) and (c)(3). Whether such outside employment or business activities should be approved will usually depend upon the relationship between the particular postal employee's official duties and the operations or interests of the outside business. Therefore, the Postal Service considers that a prior approval requirement is the appropriate mechanism to bring to light and address outside relationships that are likely to raise ethical conduct issues under 5 CFR part 2635.

Proposed § 7001.102(b)(2) would set forth the procedure by which employees may request approval to engage in outside employment or business activities for which prior approval is required. The standard for approval would be set forth in proposed § 7001.102(b)(3). Under this standard, approval could be granted only when it is determined that the outside employment or business activity will not involve conduct prohibited by law or Federal regulation. Because requests for prior approval might involve situations where the employee's conduct could violate the principle that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards set forth in 5 CFR part 2635, the approval standard includes a specific reference to 5 CFR 2635.101(b)(14).

Proposed § 7001.102(c)(1) would provide a definition of "outside employment or business activity." The definition would clarify that the regulations cover those who would engage in business as a principal—as proprietor, general partner, director, or holder of a franchise—as well as to

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those who would serve a business as employee, contractor, or the like. Under the proposed definition, an employee would not, simply by holding shares in a publicly held corporation, be engaged in employment or business activity with or on behalf of that corporation.

Section 7001.103 Statutory Prohibition Against Interests in Contracts To Carry Mail and Acting as Agent for Contractors

Proposed § 7001.103 would provide notice to Postal Service employees that certain interests in, and conduct in connection with, mail transportation contracts are prohibited by a criminal statute, 18 U.S.C. 440. The section is for purposes of notification only. Neither the Postal Service nor OGE has issued regulations interpreting this statutory prohibition.

III. Matters of Regulatory Procedure

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553(b), (c)), the Postal Service invites comments on this proposed rule.

List of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

Dated: March 8, 1995.

Mary S. Elcano,

General Counsel and Vice President, United States Postal Service.

Approved: March 15, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LX, consisting of part 7001, as follows:

Chapter LX—United States Postal Service

PART 7001 — SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

Sec.

7001.101 General.
7001.102 Restrictions on outside employment and business activities.
7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 401; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.802, and 2635.803.

§ 7001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635, as applied to employees of the United States Postal Service (Postal Service). Postal Service employees are subject, in addition to the standards in 5 CFR part 2635 and this part, to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to any rules of conduct issued separately by the Postal Service, including but not limited to, regulations contained in 39 CFR part 447, the Postal Service Employee and Labor Relations Manual, and the Postal Service Procurement Manual.

§ 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities with or for a person, including oneself, engaged in:

(i) The manufacture of any uniform or other product required by the Postal Service for use by its employees or customers;

(ii) The transportation of mail under Postal Service contract to or from the postal facility at which the employee works, or to or from a postal facility within the delivery area of a post office in which the employee works;

(iii) Providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract; or

(iv) The operation of a commercial mail receiving agency registered with the Postal Service, or the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(2) Engage in any sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, or at any postal facility.

(b) *Prior approval for outside employment and business activities*—(1) *Requirement for approval.* A Postal Service employee shall obtain approval, in accordance with paragraph (b)(2) of this section, prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service; or

(ii) Engaging in outside employment or business activities, with or for a person, including oneself, whose interests are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service.

(2) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which prior approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service Ethical Conduct Officer or appropriate delegate. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Ethical Conduct Officer or delegate that is needed to determine whether approval should be granted.

(3) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activity will not involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly traded shares of a corporation.

(2) *A person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at second-class rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons, through the mails;

(iii) Engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Rate Commission.

(3) *A person having interests substantially dependent upon providing goods or services to or for use in connection with the Postal Service* includes a person:

(i) Providing goods or services under contract with the Postal Service that can be expected to provide revenue exceeding $100,000 over the term of the contract and that provides five percent or more of the person's gross income for the person's current fiscal year; or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

§ 7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

Section 440 of title 18, United States Code, makes it unlawful for any Postal Service employee to become interested in any contract for carrying the mail, or to act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–7469 Filed 3–24–95; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No. 1677–94]

RIN 1115–AD84

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

RIN 1515–AB64

Customs/INS Field Organizations; Revocations and Designation of International Airport Status for Customs Services and Ports of Entry for Aliens Arriving by Aircraft

AGENCIES: Immigration and Naturalization Service, Justice; Customs Service, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs and Immigration and Naturalization Service (the Service) Regulations pertaining to their respective field organizations. Customs proposes to revoke the international airport designations for the Ranier International Seaplane Base located in Ranier, Minnesota, and the Eagle Pass Municipal Airport located in Eagle Pass, Texas. The Service proposes to remove Ranier, MN, and Eagle Pass, TX, from the port of entry lists for aliens arriving by vessel, land transportation, or by aircraft. This proposal is based on evidence that the facilities at these locations have deteriorated and/or the amount of business clearing through the airports does not justify continued maintenance of inspection equipment and personnel. The document also proposes to designate Maverick County Airport located in Maverick County, Texas, as a new international airport for Customs purposes and as a new port of entry for purposes of the Service. These changes will assist both agencies in their continuing efforts to achieve more efficient use of their personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before May 26, 1995.

ADDRESSES: Please submit written comments in triplicate to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: At Customs Service—Darlene Langum Wilder, Office of Passenger Enforcement and Facilitation, Office of Inspection and Control, (202) 927–0530; at Immigration and Naturalization Service—Andrea Sickler, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, (202) 616–7993.

SUPPLEMENTARY INFORMATION:

Background

To achieve more efficient use of their personnel, facilities, and resources, and to provide better services to carriers, importers, and the public in general, U.S. Customs and the Immigration and Naturalization Service (the Service) propose to amend their respective field organization regulations.

Customs proposes to amend § 122.13 of the Customs Regulations (19 CFR 122.13), which lists international airports, to reflect the proposed revocations of the international airport designations for (1) Ranier International Seaplane Base located in Ranier, Minnesota, in the Customs District of Duluth, Minnesota, North Central Region, and (2) Eagle Pass Municipal Airport located in Eagle Pass, Texas, in the Customs District of Laredo, Texas, Southwest Region. Customs further proposes to amend § 122.13 to reflect the proposed designation of Maverick County Airport located in Maverick County, Texas, in the Customs District of Laredo, Texas, Southwest Region, as an international airport. Revocation of the international airport designations will not result in any significant reduction in Customs services in the area, as future Minnesota transactions will be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports, and future Texas transactions will be handled at Maverick County Airport, also a landing rights airport, which, it is proposed, will be designated as an international airport.

The Service proposes to amend 8 CFR 100.4(c) (2) and (3), which pertain to ports of entry for aliens arriving by vessel, land transportation, or by aircraft, to reflect the removal of the same two ports of entry: (1) Ranier International Seaplane Base located in Ranier, Minnesota, in the Service District of St. Paul, Minnesota, and (2) Eagle Pass Municipal Airport located in Eagle Pass, Texas, in the Service District

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of San Antonio, Texas. The Service further proposes to amend its regulations by adding Maverick County Airport to the list of ports of entry authorized for the processing of aliens arriving by vessel, land transportation, or by aircraft. Withdrawal of the port of entry designations will not result in any significant reduction in Immigration services in the area, as future Minnesota transactions will be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports, and future Texas transactions will be handled at Maverick County Airport, also a landing rights airport, which, it is proposed, will be designated as a port of entry.

Customs Position

The criteria used by Customs in determining whether to withdraw the designation of an international airport from a facility previously designated as such are found at § 122.11(b) of the Customs Regulations, which provides that the designation can be withdrawn for any of the following reasons: (1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel; (2) proper facilities are not provided or maintained by the airport; (3) the rules and regulations of the Federal Government are not followed; or, (4) some other location would be more useful. In the case of Ranier International Seaplane Base, the conditions specified at § 122.11(b)(1) and (2) are present. In the case of Eagle Pass Municipal Airport, the conditions specified at § 122.11(b)(2) and (4) are present.

Regarding the proposed revocation of the international airport designation for Ranier International Seaplane Base, this action originated as a request from the owner of the seaplane base: The Camping and Education Foundation/ Camp Kooch-i-ching. The President/ Director of the Foundation requested that Ranier's designation as an international airport port of entry be changed so that the facility would no longer be used as a landing base for seaplanes. With regard to the above criteria, the President/Director stated that the facility is used only as a landbase for a boys' camp. The district director at Duluth has verified that Ranier's designation as an international airport should be withdrawn because (1) the services offered to aircraft operators has declined, (2) the number of seaplanes requesting Customs clearance is minimal—only 67 seaplanes arrived in 1993, and (3) the facilities have deteriorated and can no longer safely accommodate aircraft. The Regional Commissioner for the North Central Region agrees with the request and the district's findings.

Regarding the proposed revocation of the international airport designation for the Eagle Pass Municipal Airport and designation of Maverick County Airport as the replacement international airport, this action originated as a request from the Honorable Enriqueta D. Carpenter, Maverick County Judge, who advised that the existing airport is extremely limited and will be closed when the new airport facility is completed in the next year. Customs believes that the Maverick facility should be given the same status as the Eagle Pass facility once the latter is closed. The workload will remain the same and staffing should not be affected.

An "international airport" is defined at § 122.1(e) of the Customs Regulations (19 CFR 122.1(e)), in part, as any airport designated by (1) the Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft, (2) the Attorney General as a port of entry for aliens, and, (3) the Secretary of Health and Human Services as a place for quarantine inspection. (It is noted that the term "port of entry" in this section applies only for arrival purposes in the contexts specified and, thus, does not have the same meaning or legal effect as the broader term "port of entry" used for Customs organizational purposes in part 101.) The new international airport will be within an already established port of entry—Eagle Pass, see, T.D. 91–93 (56 FR 57487).

Description of International Airport Limits

The geographical limits of the proposed international airport called Maverick County Airport would be as follows:

In Maverick County, Texas, approximately 12 miles north of the corporate limits of the city of Eagle Pass and east of U.S. Highway 277 is a site commonly known as the "Radar Base" Airfield that encompasses a total of 640 acres; this site is designated by a sign marked "Eagle Pass Airport," which is located at the intersection of U.S. Highway 277 and an undesignated (no name or number) paved road.

Immigration and Naturalization Services's Position

The criteria used by the Service in determining whether to remove a facility previously designated as a port of entry for the processing of aliens arriving by vessel, land transportation, or by aircraft are found at 8 CFR 100.4(c) (2) and (3), which provide, in part, that the designation of ports of entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted.

In the case of Ranier International Seaplane Base and Eagle Pass Municipal Airport, the Commissioner has reviewed information presented by parties requesting termination of their port of entry designations. Ranier International Seaplane Base is owned by the Camping and Education Foundation/Camp Kooch-i-ching. The Foundation's President/Director stated that the base is used only as a landbase to transport supplies and people to a boys' camp and requested that the facility no longer be used as a landing base for seaplanes due to concern for the safety of camp visitors and personnel.

Eagle Pass Municipal Airport services and is owned by Maverick County, Texas. The County Judge of Maverick requested that Eagle Pass Municipal Airport's designation as a port of entry be revoked due to facility constraints and the fact that it will be closed upon completion of the new Maverick County Airport. The Commissioner believes that the withdrawal of the port of entry designations for both Ranier International Seaplane Base and Eagle Pass Municipal Airport is warranted, and that the designation of Maverick County Airport as a Class A port of entry is also warranted.

Concurrence of Other Federal Inspection Service Agencies

Other agencies having a presence at the Ranier and Eagle Pass facilities (the Department of Health and Human Services and the Animal and Plant Health Inspection Service of the Department of Agriculture) have been contacted regarding these matters and support the proposed actions.

Accordingly, Customs believes that there is sufficient justification for revoking the international airport designations from Ranier International Seaplane Base and Eagle Pass Municipal Airport, and for designating Maverick County Airport as an international airport; the Service believes it also has sufficient justification for amending its regulations at 8 CFR part 100 to reflect current airport listings serving as designated ports of entry.

Proposed Amendments

If the proposed revocations of international airport designations and designation of international airport are adopted, the Customs list of international airports at § 122.13 will be amended by removing Ranier International Seaplane Base and Eagle Pass Municipal Airport and adding Maverick County Airport, and the Service regulations at 8 CFR 100.4(c) (2) and (3) will be amended by removing Ranier, MN, and Eagle Pass, TX, and adding Maverick County Airport.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. (Customs will serve as the clearing house for comments received and coordinate a response with the Service.) Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 4th floor, 1099 14th St., NW, Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301, 8 U.S.C. 1103, and 19 U.S.C. 2, 66, and 1624.

Inapplicability of the Regulatory Flexibility Act and Executive Orders 12866, 12612, and 12606

Customs and the Service routinely establish, expand, and consolidate ports of entry throughout the United States to accommodate the volume of Customs- and Service-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

In accordance with the provisions of E.O. 12612, it is certified that the regulations proposed herein have been assessed in light of the principles, criteria, and requirements specified in that E.O. and that they will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the preparation of a Federalism Assessment is not warranted.

In accordance with the provisions of E.O. 12606, the Commissioners of the Customs and the Immigration and Naturalization Services certify that they have assessed these proposed amendments in light of the criteria set forth in that E.O., and determined that the regulations proposed herein will not have a significant impact on family formation, maintenance, and general well-being.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, U.S. Customs Service; however, personnel from other offices and agencies participated in its development.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 100 of Chapter I of title 8 of the Code of Federal Regulations and Part 122 of Chapter I of title 19 of the Code of Federal Regulations as set forth below:

TITLE 8—ALIENS AND NATIONALITY

PART 100—STATEMENT OF ORGANIZATION

1. The general authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4, it is proposed to amend paragraph (c)(2) by:

a. Removing "Ranier, MN" from the Class A listing under District No. 10—St. Paul, Minnesota;

b. Removing "Eagle Pass, TX" from the Class A listing under District No. 14—San Antonio, Texas; and

c. Adding, in proper alphabetical sequence, "Maverick, TX" to the Class A listing under District No. 14—San Antonio, Texas.

3. In § 100.4, it is proposed to amend paragraph (c)(3) by:

a. Removing "Ranier, MN, International Seaplane Base" from the listing under District No. 10—St. Paul, Minnesota;

b. Removing "Eagle Pass, TX, Eagle Pass Airport" from the listing under District No.14—San Antonio, Texas; and

c. Adding, in proper alphabetical sequence, "Maverick, TX, Maverick County Airport" to the Class A listing under District No.14—San Antonio, Texas.

TITLE 19—CUSTOMS DUTIES

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C.App. 1509.

2. In § 122.13, it is proposed to amend the list of international airports by removing "Eagle Pass, Tex.—Eagle Pass Municipal Airport" and "Ranier, Minn.—Ranier International Seaplane Base" and adding, in appropriate alphabetical order, "Maverick, Tex.—Maverick County Airport".

George J. Weise,

Commissioner of Customs.

Approved: February 23, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

Dated: January 30, 1995.

Doris Meissner,

Commissioner of Immigration and Naturalization Service.

[FR Doc. 95–7502 Filed 3–24–95; 8:45am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 10, 11, and 18

Office of the Secretary

31 CFR Part 1

[Docket No. 95–06]

RIN 1557–AA67

Description of Office, Availability and Release of Information, Contracting Outreach Program; Municipal Securities Dealers; Securities Exchange Act Disclosure Rules; Disclosure of Financial and Other Information by National Banks; Disclosure of Records

AGENCY: Office of the Comptroller of the Currency and Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules that describe the agency

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and its rules that govern the availability and release of information. By clarifying these rules, this proposal will help the banking industry and the public better interact with the OCC. This proposal also makes technical and clarifying amendments to the OCC's rules governing municipal securities dealers, disclosures under the Securities Exchange Act, and the disclosure of financial and other information by national banks, and, under delegated authority, to the Department of the Treasury's rules regarding disclosure of records. This proposal is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

DATES: Comments must be received by May 26, 1995.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–06. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090 (except with respect to proposed 12 CFR part 4, subpart C); Lester N. Scall, Senior Attorney, Administrative and Internal Law Division, (202) 874–4460, or Daniel L. Cooke, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090 (with respect to proposed 12 CFR part 4, subpart C).

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to amend 12 CFR parts 4, 10, 11, and 18, and, under delegated authority, 31 CFR part 1 as a component of its Regulation Review Program. One goal of the Regulation Review Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Regulation Review Program is to improve clarity and to better communicate the standards that the rules intend to convey. In the case of the current proposal, improved clarity will promote better and more efficient interaction between the OCC and the banking industry and the public at large.

Part 4

Subpart A—Description of Office

The OCC proposes to revise the description of the OCC contained in current § 4.1a and relocate that information to a new subpart A. Specifically, the proposal provides separate descriptions of the functions and responsibilities of the OCC generally in § 4.2, the Comptroller of the Currency in § 4.3, the Washington office in § 4.4, and the district and field offices in § 4.5. The proposal eliminates from current § 4.1a all detailed job descriptions of OCC positions subordinate to the Comptroller of the Currency. These changes update and clarify the regulation, and eliminate unnecessary provisions.

The OCC will continue to provide the public with current and accurate descriptions of the functions of its major departments and divisions in the OCC's annual report to Congress. The annual report, required under 12 U.S.C. 14, consists of the four issues of the *Quarterly Journal* published each year. The first issue of each year contains the Comptroller's Report of Operations, which describes in detail the functions of the major departments and divisions of the OCC. The OCC believes that the *Quarterly Journal* is a better source of current and detailed descriptions of specific departments, divisions, and officials. Additionally, persons may contact the OCC's Communications Division for further information concerning the OCC's organizational structure.

The OCC also proposes to eliminate the information contained in current § 4.11, which describes the frequency of national bank examinations and provides a partial list of required national bank reports. These changes eliminate information that merely repeats statutory provisions, or is otherwise unnecessary. For a current description of the frequency of bank examinations, persons may refer to 12 U.S.C. 1820(d), as amended by section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160. For a current listing of required national bank reports, persons may contact the OCC's Communications Division.

Subpart B—Availability of Information Under the FOIA

In General

The OCC proposes to revise its rules regarding the availability of information under the Freedom of Information Act (FOIA) (5 U.S.C. 552), currently found in §§ 4.13–4.17a, and 4.18(d), and relocate the rules to a new subpart B, consisting of §§ 4.11–4.17. This subpart updates, clarifies, reorganizes, and streamlines the rules to better communicate to the public the standards, policies, and procedures that the OCC applies in administering the FOIA. The OCC does not intend this subpart B to materially affect current OCC standards, policies, or procedures. Each section in the new subpart B is described below.

Section 4.11—Purpose and Scope

Proposed § 4.11 sets forth the purpose of subpart B—namely, to describe the standards, policies, and procedures that the OCC applies in administering the FOIA. This section also sets forth the scope of subpart B by briefly describing each section in the subpart. This section explicitly does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part 1, subpart C, and appendix J of that subpart.

Section 4.12—Information Available Under the FOIA

Proposed § 4.12 delineates the scope of information that the FOIA requires the OCC to disclose to the public. This section clarifies, reorganizes, and streamlines the OCC's rules, but does not materially affect current OCC standards, policies, or procedures. Paragraph (a), derived from current § 4.16(a), declares that, in accordance with the FOIA, all information in the OCC's possession is available to the public, except the exempt records described in paragraph (b).

Paragraph (b), derived from current § 4.16(b), describes the nine types of records that the FOIA exempts from disclosure (see 5 U.S.C. 552(b)). However, paragraph (b)(8) differs somewhat from its current counterpart, § 4.16(b)(8). Current § 4.16(b)(8), which describes the FOIA exemption concerning bank supervisory records, contains language not found in the statute. The additional language in the current regulation may confuse rather than clarify the FOIA exemption. Thus, proposed paragraph (b)(8) eliminates, as unnecessary, this language. This change is clarifying in nature, and merely amends the OCC's rule to better reflect the statute. This change does not materially affect current OCC standards, policies, or procedures.

Paragraph (c), added in accordance with 5 U.S.C. 552(c)(1), states that the OCC may deny the existence of exempt records in certain circumstances where

disclosure of the existence of the records may interfere with criminal law enforcement proceedings. This addition clarifies the OCC's rules by properly reflecting an applicable FOIA provision.

Paragraph (d), derived from current § 4.16(c), states that on a case-by-case basis, even if a record is exempt under paragraph (b), the OCC may elect not to apply the exemption to the requested record. The OCC's discretionary disclosure of an exempt record under this paragraph does not affect the applicability of an exemption to any other record.

Paragraph (e), derived from current § 4.16(d), explains that the OCC provides non-exempt portions of a requested record to the extent that those portions are reasonably segregable from exempt portions.

Section 4.13—Publication in the Federal Register

Proposed § 4.13 sets forth the first of three methods by which the OCC provides information to the public under the FOIA. This section clarifies the OCC's rules, but does not materially affect current OCC standards, policies, or procedures.

This section, derived from current § 4.14(a), lists the types of information that the OCC publishes in the **Federal Register** for the guidance of the public. Generally, the OCC publishes in the **Federal Register** proposed and final rules, and certain notices and policy statements of concern to the general public (such as notices of certain Federal preemption interpretations, in accordance with 12 U.S.C. 43).

Section 4.14—Public Inspection and Copying

Proposed § 4.14 sets forth the second method by which the OCC provides information to the public under the FOIA. This section updates, clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Information covered under this section is readily available to the public for inspection and copying. Any person seeking this information may contact the Disclosure Officer in the OCC's Communications Division at the address specified in paragraph (c) to schedule an appropriate time to inspect and copy documents.

Paragraph (a) lists the seven types of information that this section covers. These types of information are: (1) Final orders, agreements, or other enforceable documents made in the adjudication of a case (paragraph (a)(1), derived from current § 4.15(a)(1)); (2) final opinions made in the adjudication of a case (paragraph (a)(2), derived from current § 4.15(a)(2)); (3) statements of general policy or interpretations of general applicability not published in the **Federal Register** (paragraph (a)(3), derived from current § 4.15(a)(3)); (4) administrative staff manuals or instructions to staff that may affect a member of the public (paragraph (a)(4), derived from current § 4.15(a)(4)); (5) a current index identifying each document described in paragraphs (a)(1)–(4) that the OCC issued, adopted, or promulgated after July 4, 1967 (a date set under 5 U.S.C. 552(a)(2)) (paragraph (5), derived from current § 4.15(b)); (6) a list of OCC publications available (paragraph (a)(6), derived from current § 4.14(b)); and (7) a list of OCC forms available, and specific forms and instructions (paragraph (a)(7), derived from current § 4.13).

Paragraph (a) eliminates several items unnecessarily listed in current § 4.15(a). Current § 4.15(a)(6)–(9) involves securities disclosure documents already addressed in other regulations, and contains outdated references to regulations; and current § 4.15(a)(10) involves requests for staff no-objection positions and staff responses. Currently, requesters may obtain these documents upon specific request. While the new subpart B does not specifically mention these documents, they, like all OCC records not exempt from the FOIA, will remain available to the public.

Paragraph (a) also eliminates current § 4.15(a)(11), which involves transcripts of public hearings. The OCC currently contracts with a commercial service to produce these documents and provide them upon request. The OCC refers persons seeking a transcript of a public hearing to this contractor.

Paragraph (b), derived from current § 4.15(c) explains that the OCC, to the extent necessary to prevent an invasion of personal privacy, may redact identifying details from any document described in paragraph (a) before making the document available for public inspection and copying. The OCC provides a justification for any redaction if the basis of that redaction is not evident.

Section 4.15—Specific Requests for Records

Proposed § 4.15 sets forth the third method by which the OCC provides information to the public under the FOIA. This section updates, clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Paragraph (a), derived from current § 4.16(a), provides that any OCC record not exempt from disclosure is available to any person upon specific request.

Paragraph (b), derived from current § 4.17 (b), (c), and (d)(1), identifies where a person must submit a request for records or an administrative appeal of a denial of a request for records. Paragraph (b)(1) directs a person to submit a request generally to the Disclosure Officer in the OCC's Communications Division. Paragraph (b)(2) lists a few exceptions to this general rule. Unlike the current regulation, paragraph (b)(2) does not include a specific provision relating to the public sections of Community Reinvestment Act (CRA) evaluations. Current § 4.17(b)(2)(ii) indicates that these public sections are available from the CRA Contact in the OCC's Department of Compliance Management. In the proposed regulation, these public sections are available from the Disclosure Officer under the general rule in paragraph (b)(1).

Paragraph (c), derived from current §§ 4.17 (d)(2), (d)(3), and (g), and 4.17a(b), describes the required contents of a request for records, indicates that the OCC's Director of Communications or that person's designee initially determines whether to grant or deny a request for records, and explains the procedures that the OCC follows in granting or denying a request for records.

Paragraph (d), derived from current §§ 4.17(e) and 4.17a(c), describes the procedures a requester must follow to appeal a denial of a request for records, indicates that the Comptroller or the Comptroller's designee determines whether to grant or deny an appeal, and explains the procedures that the OCC follows in granting or denying an appeal.

Paragraph (e)(1), added in accordance with 5 U.S.C. 552(a)(4)(B), provides that if the OCC denies an appeal, or fails to make an initial or appellate determination within the time limits set forth in paragraph (f), the requester may commence action to compel disclosure in an appropriate United States district court. This addition clarifies the OCC's current rules by including statutory language that provides the context of paragraph (e)(2). Paragraph (e)(2), derived from current § 4.17(f), identifies the OCC's Chief Counsel as the officer on whom a litigant under paragraph (e)(1) must serve process.

Paragraph (f), derived from current § 4.17a(d), sets forth the time limits that the OCC must follow in making initial and appellate determinations under this section. In general, the OCC determines whether to grant or deny a request for

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records within ten business days after the date of receipt of the request, and determines whether to grant or deny an administrative appeal within 20 business days after the date of receipt of the appeal.

Paragraph (g), derived from current § 4.17a(a), explains how the OCC determines the date of receipt of a request or appeal for purposes of the time limits set forth in paragraph (f).

Section 4.16—Predisclosure Notice for Confidential Commercial Information

Proposed § 4.16, derived from current § 4.18(d), sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure under exemption 4 of the FOIA (5 U.S.C. 552(b)(4); proposed § 4.12(b)(4)) as confidential commercial information. This section clarifies and reorganizes the rules, but does not materially affect current OCC standards, policies, or procedures.

Section 4.17—Fees for Services

Proposed § 4.17, derived from current § 4.17(h), describes the fees that the OCC assesses for the services it renders in providing information under the FOIA. This section clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Subpart C—Release of Non-public OCC Information

In General

The OCC proposes to amend and relocate to a new subpart C, current §§ 4.18 and 4.19 to clarify the procedures that must be followed by persons who seek non-public OCC information and to clarify the restrictions on dissemination of non-public OCC information. Non-public OCC information, as that term is used in this proposal, is information, confidential or otherwise, that is not available to the public pursuant to the FOIA. FOIA specifically exempts from disclosure several categories of information including records contained in or related to examination, operating, or condition reports concerning financial institutions.

In recent years, requests for non-public OCC information, particularly requests arising from litigation, have increased substantially. These requests have caused the OCC concerns about burden and confidentiality. Persons requesting information have sought confidential OCC records, such as reports of examination and other OCC summary information, large portions of records and files about specific banks, and testimonial appearances or interviews of OCC employees or former employees. The OCC recognizes a public need in individual cases for certain information, but is concerned that a candid dialogue in the bank examination and supervision process be maintained. The OCC is aware that release of non-public OCC information may inhibit open consultation between banks and the OCC. The OCC, therefore, has attempted to balance its need to preserve appropriate confidentiality and the public interest in ensuring effective consultations between banks and the OCC, on the one hand, and the needs of parties requesting information from the OCC, on the other hand.

To this end, the proposal provides new detail in defining non-public OCC information, listing the information requesters must include in their requests for non-public OCC information, and identifying the standards the OCC uses to decide requests. The proposal also explains the OCC procedural response to service of subpoenas on the OCC and its employees and former employees, restricts the further dissemination of released information and testimony, and states the fee schedule for records search, copying, certification, and testimony.

The OCC, as other Federal agencies, has authority, pursuant to the 5 U.S.C. 301, the "housekeeping" statute, to prescribe procedures for the production of agency records, property, and testimony. This proposal is issued pursuant to 5 U.S.C. 301, which is intended to allow agencies to control the burdens associated with production of non-public information. See *Moore* v. *Armour Pharmaceutical Co.*, 927 F.2d 1194 (11th Cir. 1991). The proposal is also based on 5 U.S.C. 552 and recent judicial interpretation of the bank examination privilege. See *In Re: Subpoena Served Upon the Comptroller of the Currency, and the Secretary of the Board of Governors of the Federal Reserve System*, 967 F.2d 630, 634 (D.C. Cir. 1992); and *Schreiber* v. *Society for Savings Bancorp, Inc.*, 11 F.3d 217 (D.C. Cir. 1993) (describing the type of information that is privileged and subject to a balancing test). *In Re Subpoena* and *Schreiber* have clarified the responsibilities of Federal bank regulatory agencies in the discovery process. These cases and *Moore* have led the OCC to conclude that it should amend §§ 4.18 and 4.19.

Courts have upheld the privileged nature of certain types of information generated in the government's supervision of banks. Consistent with the *In Re Subpoena* and *Schreiber* decisions, this proposal provides for the OCC's case-by-case determination of privilege and provides an orderly mechanism for the OCC to assert or waive privilege. Also consistent with these decisions, the proposal allows the OCC to reconcile its need to preserve the confidential nature of its bank examination functions with its responsibility to provide access to information in appropriate situations. The proposal also is intended to provide an efficient mechanism for the OCC to release relevant non-privileged records.

The non-public OCC information covered by this proposal includes information about failed banks and operating banks. This is consistent with Congress's view that, even when regulatory information about a failed bank is used by the FDIC, the privileges available to the bank regulatory agencies are not intended to be waived. See H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 440–41 (1989), reprinted in 1989 U.S.C.C.A.N. 86, 479–80 (explaining section 11(o) of the Federal Deposit Insurance Act (12 U.S.C. 1821(o)) as amended by section 909 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183, 477). See also The Housing and Community Development Act of 1992, Public Law 102–550, 1544, 106 Stat. 3672, 4069.

This proposal is not intended to affect the policies and procedures the OCC follows in providing information and assistance for criminal cases and investigations. It also does not change the OCC's policies for releasing non-public OCC information to other Federal agencies that require such information in support of their civil investigations and cases. The proposal is furthermore not intended to supersede information sharing agreements that the OCC has with other Federal agencies. However, the OCC anticipates that, under the proposal, government agencies will use the OCC's procedures as guidance when seeking non-public OCC information.

Section 4.31—Purpose and Scope

Proposed § 4.31 sets out the purposes and scope of this portion of part 4. As stated in paragraph (a), the proposal seeks to achieve several purposes. First, it is intended to provide an orderly mechanism for the OCC to process requests for non-public information. Second, it is intended to provide information to requesters while preserving the confidentiality of the information. Third, it is intended to ensure that the released information is used in the public interest. Fourth, it is intended to provide a mechanism for the OCC to assert evidentiary privileges when necessary. Finally, it is intended to protect the interests of the OCC in fulfilling its mission, which includes fostering candid communication between banks and the OCC to ensure effective supervision.

Paragraph (b) describes the scope of subpart C by specifying the types of litigation to which subpart C applies and the type of information covered by the regulation.

Section 4.32—Definitions

Proposed § 4.32 adds new definitions for the following terms: "compelling need," "complete request," "non-public OCC information," "showing that the information has high relevance," and "testimony." The new definitions should make the rule easier to interpret and apply.

In particular, the definition of "non-public OCC information" clarifies the precise scope of the rule by defining the type of information to which the rule applies. The OCC intends that the definition of "non-public OCC information" include records generated by the OCC as well as certain records not generated by the OCC. "Non-public OCC information" includes interviews with OCC employees as well as employee testimony.

Section 4.33—Requirements for a Request of Records or Testimony

Proposed § 4.33 specifies the information that requesters must provide to the OCC when seeking non-public OCC information. The OCC intends this new section to ensure that it will not unnecessarily compromise the essential confidentiality, and consequently the open information exchange of the examination and supervisory process. Paragraph (a) specifies what all requests must contain, the additional showing the requester must make if a response is sought in less than 60 days, and the additional submissions a requester must make in adversarial situations.

Paragraph (b) specifies the additional information that a requester must provide when requesting records.

Paragraph (c) specifies the additional information that a requester must provide when seeking testimony.

Section 4.34—Where to Submit a Request

Proposed § 4.34(a) specifies that requests for non-public OCC information, requests for authentication of a record, and notifications regarding the issuance of subpoenas or other compulsory process must be addressed to the OCC's Litigation Division in Washington, DC.

Paragraph (b) permits a person who is requesting public OCC information along with non-public OCC information to submit a combined request for both to the Litigation Division in Washington, DC. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B (FOIA).

Section 4.35—Consideration of Requests

Proposed § 4.35 sets out the issues and factors that the OCC will consider in acting on requests. The OCC intends this new section to alert requesters to the reasons the OCC could use to deny a request and to assist requesters in determining whether and how to file a request. Paragraph (a) lists the bases for denial and states that the OCC will weigh the requirements prescribed in § 4.33. Paragraph (a) also provides that the OCC may require a requester to submit additional information, states that the OCC may independently seek information from other persons or sources, and prescribes the OCC's normal processing time.

Paragraph (b) specifies the additional considerations that apply to requests for testimony.

Paragraph (c) states that the OCC also may respond to certain requests by authorizing others in possession of the requested records to release the records.

Section 4.36—Parties With Access to OCC Information; Restriction on Dissemination

Proposed § 4.36 prohibits persons and entities from disseminating non-public OCC information without OCC approval. The OCC intends this section to preserve the confidentiality of non-public OCC information.

Paragraph (a), which embodies current § 4.18(a), prohibits current and former OCC employees from disseminating non-public OCC information. This paragraph also adds a new provision, which states the OCC's policy of objecting to subpoenas for non-public OCC information when subpoenas are used in lieu of the request procedures of this subpart.

Paragraph (b), which embodies some of current § 4.18(c), prohibits persons who are not current or former OCC employees from disseminating non-public OCC information. This paragraph applies to any person in possession of non-public OCC information, including banks and related individuals and entities. It states the OCC's policy of seeking the return of non-public OCC information from banks or related individuals and entities when necessary. This proposal does not retain the portion of current paragraph § 4.18(c) that states that examination reports are the property of the OCC. That provision will be included in revisions of part 7 (proposed § 7.4000, which addresses books and records of national banks).

Commenters are specifically asked to address whether "consultants," meaning outside professionals who perform services for a bank, should be included in the list of bank-connected persons who are eligible to receive OCC examination reports, or portions thereof, without first obtaining the express approval of the OCC or whether a bank could seek OCC approval for release to particular categories of professional advisors, for all or specified portions of the bank's examination report. Under current § 4.18(c), attorneys, auditors, and independent auditors are included in the list of persons eligible to receive reports. Commenters are also asked to address: (1) Whether release to other professional advisors, if permitted, should be limited to certain types of advisors, and/or certain portions of the examination report, and (2) the nature of the confidentiality undertaking that would be required before any material could be provided.

Paragraph (c), which embodies current § 4.16(b), preserves the OCC's current policies and procedures for sharing information with other government agencies. This proposal deletes the last sentence of current paragraph 4.18(b), which prohibits persons and other entities from disclosing OCC non-public information, because it would be redundant in light of the general prohibition on dissemination of information stated in § 4.36(b)(1).

Paragraph (d) makes clear that non-public OCC information does not lose its non-public status when released to a person or entity. The paragraph states that the possession of non-public OCC information by any entity or individual is not a waiver of the OCC's right to control further use or dissemination of information.

Section 4.37—Limitation on Dissemination of Released Information

Proposed § 4.37 permits the OCC to condition release of non-public OCC information on the issuance of a protective order and the sealing of transcripts. The OCC intends this new section to enable the OCC to prevent the further dissemination of the

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information. A model stipulation and protective order is printed at appendix A to this subpart. The section also specifies that the OCC may authorize the use of the same records or testimony in another case.

Section 4.38—Procedures for Sharing and Using OCC Records in Litigation

Proposed section 4.38(a) requires parties to a case to share released records among litigants. This requirement eliminates the need for requesters to file duplicative requests.

Paragraph (b) requires all requesters to retrieve released non-public OCC information from court files and requires all parties to destroy non-public OCC information covered by a protective order. The OCC intends these new provisions to ensure the confidentiality of the information.

Paragraph (c) informs requesting litigants that the OCC will authenticate its documents for use as evidence.

Section 4.39—Fees for Services

Proposed § 4.39 sets out the fee schedules that apply when the OCC provides records or authorizes testimony from current or former employees.

Paragraph (a) addresses fees for document searches, copying, and certifications, and adopts the standards of subpart B, § 4.17, concerning document releases under the FOIA. This paragraph also specifies that the OCC may contract with commercial copiers and requires requesters to pay the costs of that copying.

Paragraph (b) addresses testimony and adopts the standards of 28 U.S.C. 1821. This paragraph also specifies that, when current OCC employees testify, the requester must pay the witness fees to the OCC.

Subpart D—Contracting Outreach Program

The OCC proposes to relocate its rules regarding the contracting outreach program from current subpart C to a new subpart D, and to renumber them. These changes do not amend or affect in any way the substance of the rules.

Part 10

The OCC proposes to eliminate forms and instructions from its rules regarding municipal securities dealers. The Municipal Securities Rulemaking Board (MSRB) created the forms found in part 10, Forms MSD–4 and MSD–5, to provide for uniform municipal securities dealer filings among the Federal financial institution supervisory agencies. While part 10 continues to require certain persons to file Forms MSD–4 and MSD–5, the OCC considers it unnecessary to incorporate these detailed forms and instructions into OCC regulations. The OCC also is concerned that a lag between MSRB revision of a form and appearance of the revised form in OCC regulations may cause confusion for bank filers. Moreover, national banks that act as municipal securities dealers do not copy and enlarge the forms from the OCC's regulations in practice, contrary to the OCC's expectations at the time it included the forms in its regulations. Instead, the majority of national bank municipal securities dealers obtain forms directly from the OCC. Therefore, the OCC finds it unnecessary to publish the forms in its regulation. The proposal, however, adds a provision indicating that the OCC's Chief National Bank Examiner's Office will provide copies of Forms MSD–4 and MSD–5, with instructions, to any bank that requests them. The OCC also proposes to make technical amendments to the rules. These changes clarify the rules, eliminate unnecessary provisions, and help to ensure that banks are using current forms for their filings.

Part 11

The OCC proposes to make technical amendments to its rules regarding disclosure under various provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78m, 78n, 78p, and 78w). The proposal updates the reference to the name of the division that receives filings, and specifies the division that receives requests for copies of filings, among other minor changes. These changes simply update and clarify the regulation.

Part 18

The OCC proposes to amend its rules regarding annual financial disclosures by national banks to conform the OCC's rules to language adopted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub.L. 101–73, 103 Stat. 187, that describes persons subject to administrative enforcement action by the Federal banking agencies. Specifically, section 901(b) of FIRREA amended 12 U.S.C. 1811 *et seq.*, by substituting the term "institution-affiliated party" for the terms "director," "officer," "employee," "agent," and "other person participating in the conduct of the affairs of a bank." The term "institution-affiliated party" is defined at 12 U.S.C. 1813(u). The proposal makes similar amendments to the provision that indicates the parties subject to administrative action for violations of part 18. The OCC also proposes to make technical amendments to the regulation. These changes update and clarify the regulation, and conform the regulation to statutory language.

31 CFR Part 1

The OCC proposes to amend appendix J of subpart A and appendix J of subpart C. Subpart A contains the Department of the Treasury's FOIA rules, and subpart C contains the Department of the Treasury's Privacy Act rules. The various appendices to subparts A and C contain standardized information about components of the Department of the Treasury, including officials and addresses relevant to the implementation of the FOIA and the Privacy Act. Appendix J in subpart A and appendix J in subpart B, entitled "Office of the Comptroller of the Currency," contain information about the OCC.

The Department of the Treasury, at 31 CFR 1.1(d) and 1.20, has authorized the head of each of its components to substitute the officials designated and change the addresses specified in the appendices corresponding to that component. Pursuant to this grant of authority, the OCC proposes to amend the OCC administrative information in appendix J of subpart A and appendix J of subpart C. These changes update regulatory information specific to the OCC.

Derivation Table for 12 CFR Part 4

This table directs readers to the provisions of the current 12 CFR part 4, if any, on which the revised 12 CFR part 4 is based.

Revised provision	Current provision	Comments
Subpart A:		
§4.1	§4.1	Significantly modified.
§§4.2–4.5	§4.1a	Significantly modified.
Subpart B:		
§4.11	§4.1	Significantly modified.
§4.12(a)	§4.16(a)	Modified.

Revised provision	Current provision	Comments
(b)	§4.16(b)	Modified.
(c)		Added (see 5 U.S.C. 552(c)(1)).
(d)	§4.16(c)	Modified.
(e)	§4.16(d)	Modified.
§4.13	§4.14(a)	Significantly modified.
§4.14(a)(1)–(4)	§4.15(a)(1)–(4)	Modified.
(a)(5)	§4.15(b)	Modified.
(a)(6)	§4.14(b)	Modified.
(a)(7)	§4.13	Modified.
(b)	§4.15(c)	Modified.
(c)		Added.
§4.15(a)	§4.16(a)	Modified.
(b)	§4.17(b), (c), and (d)(1)	Significantly modified.
(c)	§§4.17(d)(2), (d)(3), and (g), and 4.17a(b).	Significantly modified.
(d)	§§4.17(e) and 4.17a(c)	Modified.
(e)(1)		Added (see 5 U.S.C. 552(a)(4)(B)).
(e)(2)	§4.17(f)	Modified.
(f)	§4.17a(d)	Modified.
(g)	§4.17a(a)	Modified.
§4.16	§4.18(d)	Modified.
§4.17	§4.17(h)	Modified.
Subpart C:		
§4.31		Added.
§4.32		Added.
§4.33	§4.19	Significantly modified.
§4.34		Added.
§4.35	§4.19	Significantly modified.
§4.36(a)	§§4.18(a) and 4.19	Significantly modified.
(b)	§§4.18(c) and 7.6025(c)	Significantly modified.
(c)	§4.18(b)	Modified.
(d)		Added.
§4.37		Added.
§4.38		Added.
§4.39		Added.
Subpart D:		
§§4.61–4.66	§§4.61–4.74	Renumbered.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation is primarily clarifying in nature and has no material impact on national banks, regardless of size.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–AA67), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–AA67), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collections of information in this proposed rule are found in 12 CFR 4.33 and 4.35 through 4.38. The OCC needs this information to provide a more efficient mechanism for expeditiously processing requests for non-public information and for testimony. The likely respondents are businesses and individuals. The estimated annual burden per respondent varies from two to ten burden hours, depending on individual circumstances, with an average of 2.6 hours.

Estimated number of respondents: 110

Estimated annual frequency of responses: 2.3

Estimated total annual reporting burden: 646 hours

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Confidential business information, Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 18

National banks, Reporting and recordkeeping requirements.

31 CFR Part 1

Confidential business information, Courts, Freedom of information, Government employees, Privacy.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12, and subtitle A of title 31, of the Code of Federal Regulations are proposed to be amended as follows:

Comptroller of the Currency

12 CFR Chapter I

1. Part 4 is revised to read as follows:

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PART 4—DESCRIPTION OF OFFICE, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

Subpart A—Description of Office

Sec.

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4.2 Office of the Comptroller of the Currency.
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Subpart B—Availability of Information Under the Freedom of Information Act

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4.15 Specific requests for records.
4.16 Prediscloure notice for confidential commercial information.
4.17 Fees for services.

Subpart C—Release of Non-Public OCC Information

4.31 Purpose and scope.
4.32 Definitions.
4.33 Requirements for a request of records or testimony.
4.34 Where to submit a request.
4.35 Consideration of requests.
4.36 Persons and entities with access to OCC information; restriction on dissemination.
4.37 Limitation on dissemination of released information.
4.38 Procedures for sharing and using OCC records in litigation.
4.39 Fees for services.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

Subpart D—Minority-, Women-, and Individuals With Disabilities—Owned Business Contracting Outreach Program; Contracting for Goods and Services

4.61 Purpose.
4.62 Definitions.
4.63 Policy.
4.64 Promotion.
4.65 Certification.
4.66 Oversight and monitoring.

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600. Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

Subpart A—Description of Office

§ 4.1 Purpose.

This subpart describes the general purpose and structure of the Office of the Comptroller of the Currency (OCC), and provides the OCC's principal addresses.

§ 4.2 Office of the Comptroller of the Currency.

The OCC regulates national banks and Federal branches and agencies of foreign banks generally through its power to examine banks, to approve or deny applications for new charters or for changes in corporate or banking structure, to approve or deny activities, to take supervisory actions against banks, and to issue rules and regulations.

§ 4.3 Comptroller of the Currency.

The Comptroller of the Currency (Comptroller), as head of the OCC, is responsible for all OCC programs and functions. The Comptroller is appointed by the President, by and with the advice and consent of the Senate, for a term of five years. The Comptroller serves as a member of the board of the Federal Deposit Insurance Corporation, a member of the Federal Financial Institutions Examination Council, and a member of the board of the Neighborhood Reinvestment Corporation. The Comptroller is advised and assisted by a policy group and by other OCC employees, who perform the duties and functions that the Comptroller directs.

§ 4.4 Washington office.

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks, including the largest national banks and other national banks requiring special supervision. The Washington office is located at 250 E Street, SW, Washington, DC 20219.

§ 4.5 District and field offices.

(a) *District offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal branches and agencies of foreign banks in its district, with the exception of the national banks supervised by the Washington office. The six district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

District	Office address	Geographical composition
Northeastern	Office of the Comptroller of the Currency, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands.
Southeastern	Office of the Comptroller of the Currency, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303.	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia.
Central	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin.
Midwestern	Office of the Comptroller of the Currency, 2345 Grand Ave., Suite 700, Kansas City, MO 64108.	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Southwestern	Office of the Comptroller of the Currency, 1600 Lincoln Plaza, 500 N. Akard Street, Dallas, TX 75201.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Western	Office of the Comptroller of the Currency, 50 Fremont Street, Suite 3900, San Francisco, CA 94105.	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington, Wyoming, Utah.

(b) *Field offices and duty stations.* Field offices and duty stations support bank supervisory responsibilities of the district offices.

Subpart B—Availability of Information Under the Freedom of Information Act

§ 4.11 Purpose and scope.

(a) *Purpose.* This subpart sets forth the standards, policies, and procedures that the OCC applies in administering the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(b) *Scope.* (1) This subpart delineates the range of information that the FOIA requires the OCC to disclose to the public (§ 4.12). This subpart also describes the three methods by which the OCC discloses information under the FOIA and, where applicable, sets forth the procedures that a person must follow to obtain that information. The three methods are:

(i) Publication in the **Federal Register** (§ 4.13);

(ii) Public inspection and copying (§ 4.14); and

(iii) Specific requests for records (§ 4.15).

(2) This subpart also sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p.235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure as confidential commercial information (§ 4.16). Finally, this subpart describes the fees that the OCC assesses for the services it renders in providing information under the FOIA (§ 4.17).

(3) This subpart does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part 1, subpart C and appendix J of subpart C.

§ 4.12 Information available under the FOIA.

(a) *General.* In accordance with the FOIA, OCC records are available to the public, except the exempt records described in paragraph (b) of this section.

(b) *Exemptions from availability.* The following records, or portions thereof, are exempt from disclosure under the FOIA:

(1) A record that is specifically authorized, under criteria established by an Executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that Executive order;

(2) A record relating solely to the internal personnel rules and practices of an agency;

(3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) A record that is privileged or contains trade secrets and commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person (see § 4.16 for notice requirements regarding disclosure of confidential commercial information);

(5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees;

(6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;

(v) Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;

(vi) Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or

(vii) Endanger the life or physical safety of any individual;

(8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and

(9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

(c) *Special exclusion.* Whenever a request pursuant to § 4.15 involves records described in paragraph (b)(7)(i) of this section, the OCC may treat the records as not subject to the requirements of this subpart if, but only for as long as, the following conditions exist:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) The OCC has reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records may interfere with enforcement proceedings.

(d) *Discretionary disclosure of exempt records.* Even if a record is exempt under paragraph (b) of this section, the OCC may elect, on a case-by-case basis, not to apply the exemption to the requested record. The OCC's election not to apply an exemption to a requested record under this paragraph (d) has no precedential significance as to the application or nonapplication of the exemption to any other requested record, regardless of who requests the record or when the OCC receives the request.

(e) *Segregability.* The OCC provides copies of reasonably segregable portions of a record to any person properly requesting the record pursuant to § 4.15, after redacting any portion that is exempt under paragraph (b) of this section.

§ 4.13 Publication in the Federal Register.

The OCC generally publishes in the **Federal Register** certain documents for the guidance of the public, including the following:

(a) Proposed and final rules; and

(b) Certain notices and policy statements of concern to the general public.

§ 4.14 Public inspection and copying.

(a) *Available information.* Subject to the exemptions listed in § 4.12(b), the OCC makes the following information readily available for public inspection and copying:

(1) Any final order, agreement, or other enforceable document made in the adjudication of a case, including a final order published pursuant to 12 U.S.C. 1818(u);

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(2) Any final opinion made in the adjudication of a case;
(3) Any statement of general policy or interpretation of general applicability not published in the **Federal Register**;
(4) Any administrative staff manual or instruction to staff that may affect a member of the public;
(5) A current index identifying the information referred to in paragraphs (a)(1) through (a)(4) of this section issued, adopted, or promulgated after July 4, 1967;
(6) A list of available OCC publications; and
(7) A list of available OCC forms, and specific forms and instructions.
(b) *Redaction of identifying details.* To the extent necessary to prevent an invasion of personal privacy, the OCC may redact identifying details from any information described in paragraph (a) of this section before making the information available for public inspection and copying.
(c) *Address.* The information described in paragraph (a) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

§ 4.15 Specific requests for records.

(a) *Available information.* Subject to the exemptions described in § 4.12(b), any OCC record is available to any person upon specific request in accordance with this section.
(b) *Where to submit request or appeal*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a person requesting a record or filing an administrative appeal under this section must submit the request or appeal to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
(2) *Exceptions*—(i) *District office records.* A person requesting the public portion of any filing or application described in part 5 of this chapter must submit the request to the OCC's Deputy Comptroller of the appropriate district office at the address listed in § 4.5(a).
(ii) *Records at the Federal Deposit Insurance Corporation.* A person requesting any of the following records, other than blank forms, must submit the request to the Federal Deposit Insurance Corporation, 550–17th Street, N.W., Washington, DC 20429:
(A) Consolidated Report of Condition and Income;
(B) Annual Report of Trust Assets;
(C) Uniform Bank Performance Report; and
(D) Special Report.
(iii) *Records of another agency.* When the OCC receives a request for records in its possession that another Federal agency either generated or provided to the OCC, the OCC promptly informs the requester and immediately forwards the request to that agency for processing in accordance with that agency's regulations.
(c) *Request for records*—(1) *Content of request for records.* A person requesting records under this section must state, in writing:
(i) The requester's full name, address, and telephone number;
(ii) A reasonable description of the records sought (including sufficient detail to enable OCC employees who are familiar with the subject matter of the request to locate the records with a reasonable amount of effort);
(iii) A statement agreeing to pay all fees that the OCC assesses under § 4.17;
(iv) A description of how the requester intends to use the records, if a requester seeks placement in a lower fee category (i.e., a fee category other than "commercial use requester") under § 4.17; and
(v) Whether the requester prefers the OCC to deliver a copy of the records or to allow the requester to inspect the records at the appropriate OCC office.
(2) *Initial determination.* (i) The OCC's Director of Communications or that person's designee initially determines whether to grant a request for records that are covered under paragraph (b)(1) of this section.
(ii) The Deputy Comptroller for the appropriate district office or that person's designee initially determines whether to grant a request for records that are covered under paragraph (b)(2)(i) of this section.
(3) *If request is granted.* If the OCC grants a request for records, in whole or in part, the OCC promptly discloses the records in one of two ways, depending on the requester's stated preference:
(i) The OCC may deliver a copy of the records to the requester. If the OCC delivers a copy of the records to the requester, the OCC duplicates the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections; or
(ii) The OCC may allow the requester to inspect the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections. If the OCC allows the requester to inspect the records, the OCC may place a reasonable limit on the number of records that a person may inspect during a day.
(4) *If request is denied.* If the OCC denies a request for records, in whole or in part, the OCC notifies the requester by mail. The notification is dated and contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to an administrative appeal in accordance with paragraph (d) of this section.
(d) *Administrative appeal of a denial*—(1) *Procedure.* A requester must submit an administrative appeal of denial of a request for records in writing within 35 days of the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records.
(2) *Appellate determination.* The Comptroller or the Comptroller's designee determines whether to grant an appeal of a denial of a request for OCC records.
(3) *If appeal is granted.* If the OCC grants an appeal, in whole or in part, the OCC treats the request as if it were originally granted, in whole or in part, by the OCC in accordance with paragraph (c)(3) of this section.
(4) *If appeal is denied.* If the OCC denies an appeal, in whole or in part, the OCC notifies the requester by mail. The notification contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to judicial review of the denial under 5 U.S.C. 552(a)(4)(B).
(e) *Judicial review*—(1) *General.* If the OCC denies an appeal pursuant to paragraph (d) of this section, or if the OCC fails to make a determination within the time limits specified in paragraph (f) of this section, the requester may commence an action to compel disclosure of records, pursuant to 5 U.S.C. 552(a)(4)(B), in the United States district court in:
(i) The district where the requester resides;
(ii) The district where the requester's principal place of business is located;
(iii) The district where the records are located; or
(iv) The District of Columbia.
(2) *Service of process.* In commencing an action described in paragraph (e)(1) of this section, the requester, in addition to complying with the Federal Rules of Civil Procedure for service upon the United States or agencies thereof, must serve process on the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
(f) *Time limits*—(1) *Request.* The OCC makes an initial determination to grant or deny a request for records within ten business days after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.
(2) *Appeal.* The OCC makes a determination to grant or deny an administrative appeal within 20 business days after the date of receipt of the appeal, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.
(3) *Extension of time.* The time limits set forth in paragraphs (f)(1) and (2) of this section may be extended as follows:
(i) *In unusual circumstances.* The OCC may extend the time limits in unusual circumstances for a maximum of ten business days. If the OCC extends the time limits, the OCC provides written notice to the person making the request or appeal, containing the reason for the extension and the date on which the OCC expects to make a determination. Unusual circumstances exist when the OCC requires additional time to:
(A) Search for and collect the requested records from field facilities or other buildings that are separate from the office processing the request or appeal;
(B) Search for, collect, and appropriately examine a voluminous amount of requested records;
(C) Consult with another agency that has a substantial interest in the determination of the request; or
(D) Allow two or more components of the OCC that have substantial interest in the determination of the request to consult with each other;
(ii) *By agreement.* A requester may agree to extend the time limits for any amount of time; or
(iii) *By judicial action.* If a requester commences an action pursuant to paragraph (e) of this section for failure to comply with the time limits set forth in this paragraph (f), the court with jurisdiction may, pursuant to 5 U.S.C. 552(a)(6)(C), allow the OCC additional time to complete the review of the records requested.
(g) *Date of receipt of request or appeal*—(1) *Request.* The date of receipt of a request for records is the date that the appropriate OCC office, as indicated in paragraphs (b)(1) and (b)(2)(i) of this section, receives a request that satisfies the requirements of paragraph (c)(1) of this section, except as provided in § 4.17(d).
(2) *Appeal.* The date of receipt of an appeal is the date that the OCC office, identified in paragraph (b)(1) of this section receives a request that satisfies the requirements of paragraph (d)(1) of this section, except as provided in § 4.17(d).

§ 4.16 Predisclosure notice for confidential commercial information.

(a) *Definitions.* For purposes of this section, the following definitions apply:
(1) *Confidential commercial information* means records that arguably contain material exempt from release under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4); § 4.12(b)(4)), because disclosure reasonably could cause substantial competitive harm to the submitter.
(2) *Submitter* means any person or entity that provides confidential commercial information to the OCC. This term includes, but is not limited to, corporations, State governments, foreign governments, and banks and their employees, officers, directors, and principal shareholders.
(b) *Notice to submitter*—(1) *When provided.* In accordance with Executive Order 12600 (3 CFR, 1987 Comp., p.235), when the OCC receives a request under § 4.15 for disclosure of confidential commercial information, the OCC provides a submitter with prompt written notice of the receipt of that request, except as provided in paragraph (b)(2) of this section, in the following circumstances:
(i) With respect to confidential commercial information submitted to the OCC prior to January 1, 1988, where:
(A) The records are less than ten years old and the submitter designated the information as confidential commercial information;
(B) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter; or
(C) The information is subject to a prior express OCC commitment of confidentiality; or
(ii) With respect to confidential commercial information submitted to the OCC on or after January 1, 1988, where:
(A) The submitter in good faith designated the information as confidential commercial information;
(B) The OCC designated the class of information to which the requested information belongs as confidential commercial information; or
(C) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.
(2) *Exceptions.* The OCC does not provide notice under paragraph (b)(1) of this section if the OCC determines that:
(i) It will not disclose the information;
(ii) The information already has been disclosed officially to the public;
(iii) The OCC is required by law (other than 5 U.S.C. 552) to disclose the information;
(iv) The OCC acquired the information in the course of a lawful investigation of a possible violation of criminal law;
(v) The submitter did not designate the requested information as confidential commercial information under paragraph (b)(1)(ii)(A) of this section, if the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or
(vi) The OCC determines that the submitter's designation under paragraph (b)(1)(ii)(A) of this section appears obviously frivolous; however, the OCC provides the submitter with written notice of any final administrative determination to disclose the information, at least ten business days prior to the date that the OCC intends to disclose the information.
(3) *Content of notice.* The OCC either describes in the notice the exact nature of the confidential commercial information requested or includes with the notice copies of the records or portions of records containing that information.
(4) *Expiration of notice period.* The OCC provides notice under this paragraph (b) with respect to information that the submitter designated under paragraph (b)(1)(ii)(A) of this section only for a period of ten years after the date of the submitter's designation, unless the submitter requests and justifies to the OCC's satisfaction a specific notice period of greater duration.
(5) *Certification of confidentiality.* If possible, the submitter should support the claim of confidentiality with a statement or certification (by an officer or authorized representative, for an entity), that the requested information is confidential commercial information that the submitter has not disclosed to the public.
(c) *Notice to requester.* If the OCC provides notice to a submitter under paragraph (b) of this section, the OCC notifies the person requesting confidential commercial information (requester) that it has provided notice to the submitter. The OCC also advises the requester that there is a delay in its decision of whether to grant or deny access to the information sought, that this delay may be considered a denial of access to the information, and that the requester may proceed with an administrative appeal or seek judicial review. However, the requester may agree to a voluntary extension of time to allow the OCC to review the submitter's

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objection to disclosure (see § 4.15(f)(3)(ii)).

(d) *Opportunity to object to disclosure.* Within ten days after receiving notice under paragraph (b) of this section, the submitter may provide the OCC with a detailed statement of objection to disclosure of the information. That statement must specify the grounds for withholding any of the information under any exemption of the FOIA. Any statement that the submitter provides under this paragraph (d) may be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The OCC considers carefully a submitter's objection and specific grounds for nondisclosure prior to determining whether to disclose the requested information. If the OCC decides to disclose information over the objection of the submitter, the OCC provides to the submitter, with a copy to the requester, a written notice that includes:

(1) A statement of the OCC's reasons for not sustaining the submitter's objections to disclosure;

(2) A description of the information to be disclosed;

(3) The anticipated disclosure date (specifically, ten business days after the OCC mails the written notice required under this paragraph (e)); and

(4) A statement that the submitter must notify the OCC immediately if the submitter intends to seek injunctive relief.

(f) *Notice of requester's lawsuit.* Whenever the OCC receives service of process indicating that a requester has brought suit seeking to compel the OCC to disclose information covered by paragraph (b)(1) of this section, the OCC promptly notifies the submitter.

§ 4.17 Fees for services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Actual costs* means those expenditures that the OCC incurs in providing services (including searching for, reviewing, and duplicating records) in response to a request for records under § 4.15.

(2) *Search* means the process of locating a record in response to a request, including page-by-page or line-by-line identification of material within a record. The OCC may perform a search manually or by electronic means.

(3) *Review* means the process of examining a record located in response to a request to determine which portions of that record should be released. It also includes processing a record for disclosure.

(4) *Duplication* means the process of copying a record in response to a request. A copy may take the form of a paper copy, microform, audiovisual materials, or machine readable material (e.g., magnetic tape or disk), among others.

(5) *Commercial use requester* means a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution requester* means a person who seeks records on behalf of a public or private educational institution, including a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research.

(7) *Noncommercial scientific institution requester* means a person who is not a "commercial use requester," as that term is defined in paragraph (a)(5) of this section, and who seeks records on behalf of an institution operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Requester who is a representative of the news media* means a person who seeks records for the purpose of gathering news (i.e., information about current events or of current interest to the public) on behalf of, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public.

(b) *Fees*—(1) *General.* The hourly and per page rate that the OCC generally charges requesters is set forth in the "Notice of Comptroller of the Currency Fees" (Notice) described in § 8.8 of this chapter. Any interested person may request a copy of the Notice from the OCC by mail or may obtain a copy at the location described in § 4.14(c). The OCC may contract with a commercial service to search for, duplicate, or disseminate records, provided that the OCC determines that the fee assessed upon a requester is no greater than if the OCC performed the tasks itself. In no case may the OCC contract out responsibilities that the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce a fee.

(2) *Fee categories.* The OCC assesses a fee based on the fee category in which the OCC places the requester. If the request states how the requester intends to use the requested records (see § 4.15(c)(1)(iv)), the OCC may place the requester in a lower fee category; otherwise, the OCC categorizes the requester as a "commercial use requester." If the OCC reasonably doubts the requester's stated intended use, or if that use is not clear from the request, the OCC may place the requester in the "commercial use" category or may seek additional clarification. The fee categories are as follows:

(i) *Commercial use requesters.* The OCC assesses a fee for a requester in this category for the actual cost of search, review, and duplication. A requester in this category does not receive any free search, review, or duplication services.

(ii) *Educational institution requesters, noncommercial scientific institution requesters, and requesters who are representatives of the news media.* The OCC assesses a fee for a requester in this category for the actual cost of duplication. A requester in this category receives 100 free pages.

(iii) *All other requesters.* The OCC assesses a fee for a requester who does not fit into either of the above categories for the actual cost of search and duplication. A requester in this category receives 100 free pages and two hours of free search time.

(3) *Special services.* The OCC may comply with a request for special services. The OCC may recover the actual cost of providing any special services.

(4) *Waiving or reducing a fee.* The OCC may waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(5) *Fee for unsuccessful search.* The OCC may assess a fee for time spent searching for records, even if the OCC does not locate the records requested.

(c) *Payment of fees.*—(1) *General.* The OCC generally assesses a fee when it delivers the records in response to the request, if any. A requesters must send payment within 30 calendar days of the billing date to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) *Fee likely to exceed $25.* If the OCC estimates that a fee is likely to exceed $25, the OCC notifies the requester of the estimated fee, unless the requester has indicated in advance a willingness to pay a fee as high as that anticipated. If so notified by the OCC, the requester may confer with OCC employees to revise the request to reflect a lower fee.

(3) *Fee likely to exceed $250.* If the OCC estimates that a fee is likely to exceed $250, the OCC notifies the requester of the estimated fee. In this circumstance, the OCC may require, as a condition to processing the request, that the requester:

(i) Provide satisfactory assurance of full payment, if the requester has a history of prompt payment; or

(ii) Pay the estimated fee in full, if the requester does not have a history of prompt payment.

(4) *Failure to pay a fee.* If the requester fails to pay a fee within 30 days of the date of the billing, the OCC may require, as a condition to processing any further request, that the requester pay any unpaid fee, plus interest (as provided in paragraph (c)(5) of this section), and any estimated fee in full for that further request.

(5) *Interest on unpaid fee.* The OCC may assess interest charges on an unpaid fee beginning on the 31st day following the billing date. The OCC charges interest at the rate prescribed in 31 U.S.C. 3717.

(d) *Tolling of time limits.* Under the circumstances described in paragraphs (c)(2), (3), and (4) of this section, the time limits set forth in § 4.15(f) (i.e., ten business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request (if any), under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.

Subpart C—Release of Non-Public OCC Information

§ 4.31 Purpose and scope.

(a) *Purpose.* The purposes of this subpart are to:

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information, and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

(2) Balance the public's interest in obtaining access to relevant and necessary information with the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and the confidentiality of OCC supervisory information;

(3) Ensure that the OCC's information is used in a manner that supports the public interest and the interests of the OCC;

(4) Ensure that OCC resources are used in the most efficient manner consistent with the OCC's statutory mission;

(5) Prevent undue burden on the OCC;

(6) Limit the expenditure of government resources for private purposes; and

(7) Maintain the OCC's impartiality among private litigants.

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

(2) This subpart does not apply to:

(i) A request for a record or testimony in a proceeding in which the OCC is a party;

(ii) A request for a record that is required to be disclosed under the Freedom of Information Act (FOIA) (5 U.S.C. 552), as described in § 4.12; or

(iii) A request for a record or testimony by:

(A) An agency with authority to investigate violations of criminal law; or

(B) A Federal agency for use in civil or administrative enforcement proceedings.

§ 4.32 Definitions.

(a) *Compelling need* means that the requester has demonstrated, with as much detail as is necessary under the circumstances, that the requested information could contribute substantially to the resolution of one or more specifically identified issues in the case and that the relevant material contained in the testimony is not available from any other source. Sources, without limitation, include the books and records of other persons or entities and non-public OCC records that have been, or might be, released.

(b) *Complete request* means a request containing sufficient information to allow the OCC to make an informed decision.

(c) *Showing that the information has high relevance* means demonstrating, with as much detail as is necessary under the circumstances, that the requested information could contribute substantially to the resolution of one or more specifically identified issues in the case.

(d) *Non-public OCC information* means information that the OCC is not required to release under the FOIA (5 U.S.C. 552) or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u) and includes:

(1) A record created or obtained by the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a bank holding company, or an affiliate;

(2) A record compiled by the OCC in connection with the OCC's enforcement responsibilities;

(3) A report of examination, supervisory correspondence, an investigatory file compiled by the OCC in connection with an investigation, and any internal agency memorandum, whether the information is in the possession of the OCC or some other individual or entity;

(4) Confidential OCC information obtained by a third party or otherwise incorporated in the records of a third party, including another government agency;

(5) Testimony from, or an interview with, a current or former OCC employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties or due to that person's official status; and

(6) Confidential information relating to no longer operating national banks, their subsidiaries and affiliates, as well as confidential information relating to operating national banks, their subsidiaries and affiliates.

(e) *Testimony* means an interview or sworn testimony on the record.

§ 4.33 Requirements for a request of records or testimony.

(a) *Generally.*—(1) *Form of request.* A person seeking non-public OCC information must submit a request in writing to the OCC. The requester must explain, in as detailed a description as is necessary under the circumstances, the bases for the request and how the requested non-public OCC information relates to the issues in the lawsuit or matter.

(2) *Expedited requests.* A requester seeking a response in less than 60 days must explain why the request was not submitted earlier and why the OCC should expedite the request.

(3) *Requests arising from adversarial matters.* Where the requested

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information is to be used in connection with an adversarial matter:

(i) The OCC generally will require that the lawsuit or administrative action has been filed before it will consider the request;

(ii) The request must include:

(A) A copy of the complaint or other pleading setting forth the assertions in the case;

(B) The caption and docket number of the case;

(C) The name, address, and phone number of counsel to each party in the case; and

(D) A description of any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information;

(iii) The request must address any potential privileges the OCC may assert to withhold the information by:

(A) Showing that the information has high relevance to the purpose for which it is sought;

(B) Showing that other evidence reasonably suited to the requester's needs is not available from any other source;

(C) Showing that the need for the information clearly outweighs any public interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information;

(D) Explaining how the issues in the case and the status of the case warrant that the OCC waive privilege; and

(E) Identifying any other issue that may bear on the question of waiver of privilege by the OCC.

(b) *Requests for records.* If the request is for a record, the requester must adequately describe the record or records sought by type and date.

(c) *Requests for testimony.*—(1) *Generally.* A requester seeking testimony:

(i) Must show a compelling need for the requested information; and

(ii) Should request OCC testimony with sufficient time to obtain the testimony in deposition form.

(2) *Trial or hearing testimony.* A requester seeking testimony at a trial or hearing must show that a deposition would not suffice.

§ 4.34 Where to submit a request.

(a) *A request for non-public OCC information:* A person requesting information under this subpart, requesting authentication of a record under § 4.38(c), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.36, must send the request or notification to: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Director, Litigation Division.

(b) *Combined requests for non-public and other OCC information:* A person requesting public OCC information and non-public OCC information under this subpart may submit a combined request for both to the address in paragraph (a) of this section. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B of this part (FOIA).

§ 4.35 Consideration of requests.

(a) *In general*—(1) *OCC discretion.* The OCC decides whether to release non-public OCC information based on its weighing of all appropriate factors including, but not limited to, the requestor's fulfilling of the requirements enumerated in § 4.33. Each decision is at the sole discretion of the Comptroller or the Comptroller's delegate and is a final agency decision.

(2) *Bases for denial.* The OCC may deny a request for non-public OCC information for reasons that include, but are not limited to, the following:

(i) The requester was unsuccessful in showing that the information has high relevance to the purpose for which it is sought;

(ii) The requester seeks testimony and the requestor did not show a compelling need for the information;

(iii) The request arises from an adversarial matter and other evidence reasonably suited to the requester's need is available from another source;

(iv) The request for information should not be granted based on reasons stated in the Federal Rules of Civil Procedure, including Rule 26(b) (28 U.S.C. appendix);

(v) A lawsuit or administrative action has not yet been filed and the request was made in connection with potential litigation; or

(vi) The production of the information would be contrary to the public interest or overly burdensome to the OCC.

(3) *Additional information.* A requester must submit a complete request. The OCC may require the requester to provide additional information to complete a request. Consistent with the purposes stated in § 4.31, the OCC may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.

(4) *Time required by the OCC to decide.* The OCC generally will process requests in the order in which they are received. The OCC will notify the requester in writing of the final decision. Absent exigent or unusual circumstances, the OCC will respond to a request within 60 days from the date that the OCC receives a request that it deems a complete request. Consistent with § 4.33(a)(2), the OCC weighs a request to respond to a request for information in less than 60 days against the unfairness to other requesters whose pending requests may be delayed and the burden imposed on the OCC by the expedited processing.

(b) *Testimony.* (1) The OCC generally will not authorize a current OCC employee to provide expert or opinion evidence for a private party.

(2) The OCC may restrict the scope of any authorized testimony and may act to ensure that the scope of testimony given by the OCC employee adheres to the scope authorized by the OCC.

(3) Once a request for testimony has been submitted, and before the requested testimony occurs, a party to the relevant case, who did not join in the request and who wishes to question the witness beyond the scope of testimony sought by the request, must timely submit the party's own request for OCC information pursuant to this subpart.

(4) The OCC may offer the requester the employee's written declaration in lieu of testimony.

(c) *Release of non-public OCC information by others.* In appropriate cases, the OCC may respond to a request for information by authorizing a party to the case who is in possession of non-public OCC information to release the information to the requester. An OCC authorization to release records does not preclude the party in possession from asserting its own privilege, arguing that the records are not relevant, or asserting any other argument for which it has standing to protect the records from release.

§ 4.36 Persons and entities with access to OCC information; restriction on dissemination.

(a) *OCC employees or former employees*—(1) *Generally.* Except as authorized by this subpart or otherwise by the OCC, no OCC employee or former employee may, in any manner, disclose or permit the disclosure of any non-public OCC information, whether by giving the information or a copy thereof to any person, by allowing any person to inspect, examine, or copy the information or copy thereof, or otherwise, to anyone other than an employee of the Comptroller who is entitled to the information for the performance of OCC duties.

(2) *Duty of person served.* Any OCC employee or former employee subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC's Litigation Division. The OCC will attempt to have the compulsory process withdrawn and may register appropriate objections when an employee or former employee receives a subpoena, the subpoena requires the employee or former employee to appear or produce OCC information, and no authorization pursuant to this subpart has been given by the OCC to appear or provide information. If necessary, the employee or former employee shall appear as required and respectfully decline to produce the information sought citing this subpart C and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(b) *Non-OCC employees or entities.* (1) No person or other entity may, without OCC approval, in any manner, disclose information covered by this subpart, whether by giving the information or a copy thereof to any person, by allowing any person to inspect, examine, or copy the information or a copy thereof, or otherwise.

(2) Except pursuant to a final decision rendered in accordance with § 4.35(a)(1), a national bank or holding company, or any director, officer, or employee thereof, may not, under any circumstances, make public or disclose in any manner non-public OCC information, including information contained in, or related to, OCC reports of examination, to any person or organization not officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor.

(3) Any person who discloses or uses non-public OCC information except as expressly permitted by the Comptroller of the Currency may be subject to the penalties provided in 18 U.S.C. 641.

(4) The OCC may require any person in possession of OCC records to return the records to the OCC.

(c) *Disclosure to government agencies.* When not prohibited by law, the Comptroller may make available to the Board of Governors of the Federal Reserve System, to the Federal Deposit Insurance Corporation, and, in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, a copy of a report of examination or other non-public OCC information for their use, when necessary, in the performance of their official duties. All reports, documents, and papers made available pursuant to this subpart are OCC property.

(d) *Intention of OCC not to waive rights.* The possession by any of the entities or individuals described in paragraphs (a), (b), and (c) of this section of non-public OCC information does not constitute a waiver by the OCC of its right to control, or impose limitations on, the subsequent use and dissemination of the information.

§ 4.37 Limitation on dissemination of released information.

(a) *Records.* The OCC may condition a decision to release non-public OCC information on entry of a protective order by the court or administrative tribunal presiding in the particular case or, in non-adversarial matters, on a written agreement of confidentiality. In a case in which a protective order has already been entered, the OCC may condition approval for release of non-public OCC information upon the inclusion of additional or amended provisions in the protective order. The OCC may authorize a party who obtained records for use in one case to provide them to another party in another case.

(b) *Testimony.* The OCC may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court, and the jury. Upon request or on its own initiative, the OCC may allow use of a transcript in other litigation. The OCC may require the requester, at the requester's expense, to furnish the OCC with a copy of the transcript. The OCC employee whose deposition was transcribed does not waive his or her right to review the transcript and to note errors.

§ 4.38 Procedures for sharing and using OCC records in litigation.

(a) *Responsibility of litigants to share released records.* The requester must promptly notify other parties to a case of the release of non-public OCC information obtained pursuant to this subpart, and, upon entry of a protective order, must provide copies of OCC information, including OCC information obtained pursuant to § 4.15, to the other parties.

(b) *Retrieval and destruction of released records.* At the conclusion of an action:

(1) The requester must retrieve any non-public OCC information from the court's file as soon as the court no longer requires the information;

(2) Each party must destroy the non-public OCC information covered by the protective order; and

(3) Each party must certify to the OCC that the non-public OCC information covered by the protective order has been destroyed.

(c) *Authentication for use as evidence.* Upon request, the OCC authenticates released records to facilitate their use as evidence. Requesters who require authenticated records or certificates of nonexistence of records should, as early as possible, request certificates from the OCC's Litigation Division pursuant to § 4.34(a).

§ 4.39 Fees for services.

(a) *Fees for records search, copying, and certification.* The requester must pay a fee to the OCC or to an OCC contracted commercial copier for any records search, copying, or certification in accordance with the standards specified in § 4.17. The OCC may require a requester to remit payment prior to providing the requested information.

(b) *Witness fees and mileage.* A person whose request for testimony of a current OCC employee is approved must, upon completion of the testimonial appearance, tender promptly to the OCC payment for the witness fees and mileage. The litigant must compute these amounts in accordance with 28 U.S.C. 1821. A litigant whose request for testimony of a former OCC employee is approved must tender promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

I. Model Stipulation

Case Caption

Model Stipulation for Protective Order

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter "Comptroller") pursuant to 12 C.F.R. Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 C.F.R. 4.12, and Part 4, Subpart C; and

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records as denoted in Appendix "A" to this Stipulation [records to be specified by type and date] available to the parties in this action, provided that appropriate protection of their confidentiality can be secured:

Therefore, it is hereby stipulated by and between the parties hereto, through their

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respective attorneys that they will be bound by the following protective order which may be entered by the Court without further notice.

Dated this _____ day of _____, 19_____.

_____
Attorney for Plaintiff

_____
Attorney for Defendant

II. Model Protective Order

Case Caption

Model Protective Order

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter Comptroller") pursuant to 12 C.F.R. Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 C.F.R. 4.12, and Part 4, Subpart C;

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Now, therefore, it is ordered That:

1. The records, as denoted in Appendix "A" to the Stipulation for this Protective Order, upon being furnished [or released for use] by the Comptroller, shall be disclosed only to the parties to this action, their counsel, and the court [and the jury].

2. The parties to this action and their counsel shall keep such records and any information contained in such records confidential and shall in no way divulge the same to any person or entity, save and except to such experts, consultants and non-party witnesses to whom the records and their contents shall be disclosed, solely for the purpose of properly preparing for and trying the action.

3. No person to whom information and records covered by this Order are disclosed shall make any copies or otherwise use such information or records or their contents for any purpose whatsoever, except in connection with this action.

4. Any party or other person who wishes to use the records or their contents in any other action shall make a separate application to the Comptroller pursuant to 12 C.F.R. part 4, subpart C.

5. Should any records covered by this Order be filed with the Court or utilized as exhibits at depositions in the captioned action, or should information or records or their contents covered by this Order be disclosed in the transcripts of depositions or the trial in the captioned action, such records, exhibits and transcripts shall be filed in sealed envelopes or other sealed containers marked with the title of this action, identifying each document and article therein and bearing a statement substantially in the following form:

Confidential

Pursuant to the Order of the Court dated _____ this envelope containing the above-identified papers filed by (the name of the party) is not to be opened nor the contents thereof displayed or revealed except to the parties to this action or their counsel or by further Order of the Court.

6. For Jury Trial: Any party offering any of the records into evidence shall offer only those pages, or portions thereof, that are relevant and material to the issues to be decided in the action and shall block out any portion of any page that contains information not relevant or material. Furthermore, the name of any person or entity contained on any page of the records who is not a party to this action, or whose name is not otherwise relevant or material to the action, shall be blocked out prior to the admission of such page into evidence. Any disagreement regarding what portion of any page that should be blocked out in this manner shall be resolved by the Court *in camera*, and the Court shall decide its admissibility into evidence.

7. At the conclusion of this action, all parties shall certify to the Comptroller that the records covered by this Order have been destroyed. Furthermore, counsel for _____, pursuant to 12 C.F.R. 4.38(b), shall retrieve any records covered by this Order that may have been filed with the Court.

So Ordered

_____
Judge

Dated: _____

Subpart D—Minority-, Women-, and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

§ 4.61 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Sec. 1216(c), Public Law 101–73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), this subpart establishes the OCC Minority-, Women-, and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities have the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

§ 4.62 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any African American, Native American (means American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this part, it does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job as defined by the IDOB.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements

which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

§ 4.63 Policy.

The OCC policy is to ensure that MWOBs and IDOBs have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value acquisition, and with the concept of contracting for agency needs at the lowest practicable cost. The OCC ensures that MWOBs and IDOBs have the opportunity to participate fully in all contracting activities that the OCC enters into for goods and services, whether generated by the headquarters office in Washington, DC, or any other office of the OCC. Contracting opportunities may include small purchase awards, contracts above the small purchase threshold, and delivery orders issued against other governmental agency contracts.

§ 4.64 Promotion.

(a) *Scope.* The OCC, under the direction of the Deputy Comptroller for Resource Management, engages in promotion and outreach activities designed to identify MWOBs and IDOBs capable of providing goods and services needed by the OCC, to facilitate interaction between the OCC and the MWOBs and IDOBs community, and to indicate the OCC's commitment to doing business with that community. The Outreach Program is designed to facilitate OCC's participation in business promotion events sponsored by other government agencies and attended by minorities, women and individuals with disabilities. Once the OCC has identified a prospective participant, it will assist the minority- or women-owned business or individual with disabilities-owned business in understanding the OCC's needs and contracting process.

(b) *Outreach activities.* OCC's Outreach Program includes the following:

(1) Obtaining various lists and directories of MWOBs and IDOBs maintained by government agencies;

(2) Contacting appropriate firms for participation in the OCC's Outreach Program;

(3) Participating in business promotion events comprised of or attended by MWOBs and IDOBs to explain OCC contracting opportunities and to obtain names of potential MWOBs and IDOBs;

(4) Ensuring that the OCC contracting staff understands and actively promotes this Outreach Program; and

(5) Registering MWOBs and IDOBs in the Department of the Treasury's database to facilitate their participation in the competitive procurement process for OCC contracts. This database is used by OCC procurement staff to identify firms to be solicited for OCC procurements.

§ 4.65 Certification.

(a) *Objective.* To preserve the integrity and foster the Outreach Program's objectives, each prospective MWOB or IDOB must demonstrate that it meets the ownership and control requirements for participation in the Outreach Program.

(b) *Process-MWOB.* A prospective MWOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid MWOB certification received from another government agency whose definition of MWOB is substantially similar to that specified in § 4.62(a);

(2) Self-certifying MWOB ownership status by filing with the OCC a completed and signed certification form as prescribed by the Federal Acquisition Regulation, 48 CFR 53.301–129; or

(3) Submitting a valid MWOB certification received from the Small Business Administration.

(c) *Process-IDOB.* A prospective IDOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid IDOB certification received from another government agency whose definition of IDOB is substantially similar to that specified in § 4.62(c); or

(2) Self-certifying IDOB ownership status by filing with the OCC a completed and signed certification as prescribed in the Federal Acquisition Regulation, 48 CFR 53.301–129, and adding an additional certifying statement to read as follows:

I certify that I am an individual with disabilities as defined in 12 CFR 4.62(d), and that my firm, (Name of Firm) qualifies as an individual with disabilities-owned business as defined in 12 CFR 4.62(c).

§ 4.66 Oversight and monitoring.

The Deputy Comptroller for Resource Management shall appoint an Outreach Program Manager, who shall appoint an Outreach Program Specialist. The Outreach Program Manager is primarily responsible for program advocacy, oversight and monitoring.

PART 10—MUNICIPAL SECURITIES DEALERS

2. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78o–4(c)(5), and 78q–78w.

§ 10.1 [Amended]

3. In § 10.1, the introductory text is amended by revising the term "Comptroller of the Currency" to read "Office of the Comptroller of the Currency (OCC)".

§ 10.2 [Amended]

4. In § 10.2, paragraph (b) is amended by revising the term "Rulemaking board" to read "Rulemaking Board".

5. In § 10.3, paragraph (a) is revised, paragraphs (b) and (c) are amended by revising the term "Comptroller of the Currency" to read "OCC", and a new paragraph (d) is added to read as follows:

§ 10.3 Filing of documents.

(a) All documents required to be filed with the OCC in accordance with this part are to be filed at the Chief National Bank Examiner's Office, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

* * * * *

(d) Forms MSD–4 and MSD–5, with instructions, may be obtained from the Chief National Bank Examiner's Office at the address listed in paragraph (a) of this section.

§ 10.4 [Amended]

6. In § 10.4, paragraphs (a)(1), (a)(2)(ii), (b)(2)(ii), (c)(1), and (d)(2) are amended by revising the term "Comptroller of the Currency" to read "OCC", and paragraph (b)(2)(i) is amended by revising the term "board" to read "Board".

6a. The undesignated centerheading preceding § 10.41 is removed.

§ 10.41 [Removed]

7. Section 10.41 is removed.

§ 10.42 [Removed]

8. Section 10.42 is removed.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

9. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

§ 11.1 [Amended]

10. In § 11.1, paragraph (a) is amended in the first sentence by revising the term "Comptroller" to read "Office of the Comptroller of the

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Currency (OCC)", and in the second sentence by revising the term "Comptroller" to read "OCC".

§ 11.2 [Amended]

11. In § 11.2, paragraph (a) is amended by revising the term "Comptroller" to read "OCC", and paragraph (c) is amended by revising the term "Comptroller" to read "OCC".

12. Section 11.3 is revised to read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Material may be filed by delivery to the OCC through the mail or otherwise. The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(b) Copies of registration statements, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) are available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at the address listed in paragraph (a) of this section.

13. In § 11.4, paragraph (a) is revised to read as follows:

§ 11.4 Filing fees.

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept the filing. The OCC provides an applicable fee schedule for such filings in the "Notice of Comptroller of the Currency Fees" described in § 8.8 of this chapter.

* * * * *

PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

14. The authority citation for part 18 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, and 1818.

§ 18.1 [Amended]

15. In § 18.1, paragraph (a) is amended by revising the term "Office's supervisory efforts" to read "supervisory efforts of the Office of the Comptroller of the Currency (OCC)".

16. In § 18.4, paragraph (a)(1)(ii) is amended by revising the term "Non accrual Loans and Leases" to read "Nonaccrual Loans, Leases, and Other Assets", and paragraphs (b) and (d) are amended by revising the term "Office" to read "OCC" each place it appears.

17. In § 18.5, paragraph (a) is revised to read as follows:

§ 18.5 Alternative annual disclosure statements.

* * * * *

(a) In the case of a national bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), by its annual report to security holders for meetings at which directors are to be elected;

* * * * *

18. Section 18.9 is amended by revising the term "Office of the Comptroller of the Currency" to read "OCC".

19. Section 18.10 is revised to read as follows:

§ 18.10 Prohibited conduct and penalties.

(a) No national bank or institution-affiliated party shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of material or required information in the annual disclosure statement; or

(2) Represent that the OCC, or any employee thereof, has passed upon the accuracy or completeness of the annual disclosure statement.

(b) For purposes of this part, *institution-affiliated party* means:

(1) Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a national bank;

(2) Any other person who has filed or is required to file a change-in-control notice with the OCC under 12 U.S.C. 1817(j);

(3) Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of a national bank; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:

(i) Any violation of any law or regulation;

(ii) Any breach of fiduciary duty; or

(iii) Any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the national bank.

(c) Conduct that violates paragraph (a) of this section also may constitute an unsafe or unsound banking practice or otherwise serve as a basis for enforcement action by the OCC including, but not limited to, the assessment of civil money penalties against the bank or any institution-affiliated party who violates this part.

Office of the Secretary of the Treasury

31 CFR Subtitle A

PART 1—DISCLOSURE OF RECORDS

20. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

21. Under the authority of 12 U.S.C. 93a and 31 CFR 1.1(d), appendix J of subpart A of 31 CFR part 1 is amended by revising paragraphs 2. through 5. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available for review on an ad hoc basis when necessary. Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Freedom of Information Officer or the official so designated. Requests may be mailed or delivered in person to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Officer of the Comptroller of the Currency will be made by the Comptroller or the Comptroller's designee. Appeals may be mailed or delivered in person to: Disclosure Officer, Communications Division, Officer of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

5. *Delivery of process.* Service of process will be received by the Chief Counsel and shall be delivered to such officer at the following location: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

22. Under the authority of 12 U.S.C. 93a and 31 CFR 1.20, appendix J of subpart C of 31 CFR part 1 is amended by revising paragraphs 2. through 6. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's designee. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

5. *Statements of disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Office of the Chief Counsel of the Comptroller of the Currency or the delegate of such official and shall be delivered to the following location: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

* * * * *

Dated: March 9, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–7099 Filed 3–24–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–8]

Proposed Amendment to Class E Airspace; Millington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Memphis NAS/Millington Municipal, TN. A VOR/DME RWY 18 Standard Instrument Approach Procedure (SIAP) has been developed for Charles W. Baker Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. This amendment would also make a technical correction to the location of the Memphis NAS/ Millington Municipal Airport. The correct location of the Memphis NAS/ Millington Municipal Airport is Millington, TN.

DATES: Comments must be received on or before May 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–8, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Memphis NAS/Millington Municipal, TN. A VOR/DME RWY 18 SIAP has been developed for Charles W. Baker Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport: If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. This amendment would also make a technical correction to the location of the Memphis NAS/ Millington Municipal Airport. The correct location of the Memphis NAS/ Millington Municipal Airport is Millington, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in CFR 71.1. The Class E airspace designation listed

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in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) doe not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO TN E5 Millington, TN [Revised]

Memphis NAS/Millington Municipal Airport, TN
(Lat. 35°21'20" N, long. 89°52'10" W)
Arlington Municipal Airport
(Lat. 35°16'59" N, long. 89°40'22" W)
Charles W. Baker
(Lat. 35°16'44" N, 89°55'53" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Memphis NAS/Millington Municipal Airport, within a 7-mile radius of Arlington Municipal Airport and within a 6.3-mile radius of Charles W. Baker Airport; excluding that airspace within the Memphis, TN Class E airspace area.

* * * * *

Issued in College Park, Georgia, on March 14, 1995.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–7499 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 24, 231, 247

Request for Comments Concerning Guides for the Luggage and Related Products Industry, Guides for Shoe Content Labeling and Advertising, and Guides for the Ladies' Handbag Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for the Luggage and Related Products Industry, its Guides for Shoe Content Labeling and Advertising, and its Guides for the Ladies' Handbag Industry. The Commission is also requesting comments about the overall costs and benefits of the Guides and their overall regulatory and economic impact as a part of its systematic review of all current Commission Rules and Guides.

DATES: Written comments will be accepted until May 26, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Guides for the Luggage and Related Products Industry should be identified as "16 CFR Part 24—Comment." Comments about the Guides for Shoe Content Labeling and Advertising should be identified as "16 CFR Part 231—Comment." Comments about the Guides for the Ladies' Handbag Industry should be identified as "16 CFR Part 247—Comment." Comments about more than one of the guides should be identified by including reference to all relevant parts, for example "16 CFR Parts 24, 231 and 247."

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201. (214) 767–5503.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has determined, as part of its oversight responsibilities, to review its Rules and Guides periodically. These reviews will seek information about the costs and benefits of the Commission's Rules and Guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying Rules and Guides that warrant modification or recision.

At this time the Commission solicits written public comments concerning the Commission's Guides for the Luggage and Related Products Industry ("Luggage Guides"), 16 CFR Part 24, the Commission's Guides for Shoe Content Labeling and Advertising ("Shoe Content Guides"), 16 CFR Part 231, and the Commission's Guides for the Ladies' Handbag Industry ("Handbag Guides") 16 CFR Part 247. These Guides are being reviewed together because they all pertain to goods which are frequently made of leather or of material with the appearance of leather.

These three Guides, like the other industry Guides issued by the Commission, "are administrative interpretation of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry Guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

1. Luggage Guides

The Luggage Guides concern potential deception in the sale, offering for sale, and distribution of luggage and related products, such as trunks, instrument cases, brief cases, billfolds, wallets, key cases, jewel boxes, travel kits, camera bags and similar products. These Guides list disclosures that should be made for products made of split leather, imitation leather, or processed leather, and for products which contain backing material. The Guides address representations that products are made from the skin of fictitious animals and

the use of words, terms, depictions, or devices that may indicate that a product is made of any material when it is not. According to the Guides, industry members should not represent that a product is wholly of a particular composition when it is not, or that a product is leather when it contains ground, pulverized or shredded leather. Additionally, representations should not be made that a product is colored, finished, or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner when it is not. The Guides also discuss representations about the hardware, box, or frame of covered products. Use of the terms "waterproof," "dustproof," "warpproof," "scuffproof," and "scratchproof" is also covered by the Luggage Guides.

2. Shoe Content Guides

The Shoe Content Guides contain guidance for labeling and advertising shoe content. The Guides address use of the term "leather" on labels and labeling disclosures for simulated or imitation leather, concealed innersoles, split leather, embossed or processed leather, and ground or shredded leather. With regard to advertising, the Guides state that disclosures should be made in advertisements which depict non-leather parts of shoes or slippers which appear to be made of leather. The Guides contain guidance for use of the term "leather" in advertisements and for disclosures to be used with terms suggestive of leather. The Guides state that words or terms should not be used which would convey the impression that shoes or slippers are made of a certain material when they are not.

3. Handbag Guides

The Handbag Guides concern the potential misrepresentation of any feature of ladies' handbags and similar articles. The Guides provide guidance with respect to the disclosures which should be made regarding product composition and address the use of representations that a product is colored, finished, or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner when the claims are not true. Use of the terms "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant" is also covered by the Ladies' Handbag Guides. The Guides also state that members of the industry should not make deceptive representations about the price of their products.

In addition, the Handbag Guides discuss the issues of price discrimination, and discrimination in promotional allowances and services. The Guides state that industry members should neither grant nor knowingly induce or receive terms of trade in these respects that are improperly discriminatory. The Commission is concerned, however, that these interpretive statements in large part may be needlessly duplicative of sections (a) and (f) of the Robinson-Patman Act with respect to price discrimination, and duplicative of the so-called Fred Meyer Guides, which interpret sections (d) and (e) of the Robinson-Patman Act and section 5 of the Federal Trade Commission Act, with respect to discriminatory promotional allowances and services. See Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240. Moreover, it is possible that general issues of price discrimination are best clarified through statements of general policy, such as that contained in the Fred Meyer Guides, rather than through industry-specific statements such as the Handbag Guides.

B. Questions for Comment

The Commission solicits comments on the following questions with respect to the Luggage Guides, the Shoe Content Guides, and the Handbag Guides:

(1) Is there a continuing need for the Guides?

(a) What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on firms subject to their requirements?

(b) Would it be useful to the affected industries if the Luggage Guides, the Shoe Content Guides, and the Handbag Guides were combined into one set of industry guides that address all of these products or leather products in general?

(3) What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?

(a) Have the Guides provided benefits to such firms?

(4) What changes, if any, should be made to the Guides to reduce the burdens of costs imposed on firms subject to their requirements?

(a) How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?

(7) Do members of the ladies' handbag industry require these industry-specific Guides for information about the standards applicable to price discrimination and discriminatory promotional allowances, or could equally helpful guidance be obtained from more general sources such as the Fred Meyer Guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Parts 24, 231, and 247

Advertising, Distribution, Labeling, Ladies' handbags, Luggage and related products, Price discrimination, Promotional allowances, Shoes, Trade practice.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–7468 Filed 3–24–95; 8:45 am]

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16 CFR Part 405

Request for Comments Concerning Rule on Misbranding and Deception as to Leather Content of Waist Belts

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Rule on Misbranding and Deception as to Leather Content of Waist Belts ("the Leather Belt Rule" or "the Rule"). The Commission is also requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written comments.

DATES: Written comments will be accepted until May 26, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Leather Belt Rule should be identified as "16 CFR Part 405—Comment."

FOR FURTHER INFORMATION CONTACT: Russell Deitch, Attorney, Federal Trade Commission, Los Angeles Regional Office, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, CA 90024, (310) 235–7890.

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SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission.

If the Commission elects to retain the Leather Belt Rule after conducting this review, it intends to update certain terms to reflect statutory and policy changes that have occurred since the Leather Belt Rule was originally promulgated. The term "in commerce" in 16 CFR 405.1(a) and 405.4 will be changed to "in or affecting commerce" in conformance with the amended language of section 5 of the Federal Trade Commission Act (15 U.S.C. 45). The phrase "capacity and tendency to mislead and deceive" in 16 CFR 405.2(b) will be changed to conform with the language regarding deception that is set forth in Cliffdale Associates, Inc., 103 F.T.C. 110 (1984) and subsequent cases. Finally, the language that "it constitutes an unfair method of competition and an unfair and deceptive act or practice" in 16 CFR 405.4 will also be revised to conform with the standard language for consumer protection rules.

A. Background

The Leather Belt Rule was promulgated by the Commission on June 27, 1964. It applies to the sale or offering for sale of men's and boy's belts, and women's and children's belts when not offered for sale as part of a garment. The Rule makes it an unfair method of competition and an unfair and deceptive act or practice to misrepresent a belt's leather content or the type of animal hide or skin from which the belt is made. for example, it is a violation of the Rule to label a belt as leather when it is not made from the hide or skin of an animal.

The Leather Belt Rule also prohibits the sale or distribution of belts without adequate disclosures as to their leather content or type of animal hide or skin if the appearance of the product would deceive consumers. For example, it is a violation of the Rule to sell a belt which has the appearance of leather, but which is made of synthetic materials, unless a disclosure is made on the product or on a tag or label affixed to the product which states that the belt is not leather.

B. Issues for Comment

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes effect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, it any, have changes in relevant technology or economic conditions had on the Rule?

List of Subjects in 16 CFR Part 405

Leather content of belts; Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–7467 Filed 3–24–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[IL–090]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation Enforcement (OSM), Interior.

ACTION: Proposed rule; pubic comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the merger of the Illinois Department of Mines and Minerals into the newly created Illinois Department of Natural Resources. The amendment is intended to provide formal notification to OSM of this pending reorganization.

DATES: Written comments must be received by 4:00 p.m., [C.S.T.], April 26, 1995. If requested, a public hearing on the proposed amendment will be held on April 21, 1995. Requests to speak at the hearing must be received by 4:00 p.m., [C.S.T.], on April 11, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Springfield Field Office.

James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield Illinois 62791, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated March 3, 1995 (Administrative Record No. IL–1700),

Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at it own initiative. In accordance with 30 CFR 732.17(b), Illinois notified OSM that effective July 1, 1995, the Illinois Department of Mines and Minerals will cease to exist in name only. It will be redesignated the Office of Mines and Minerals.

Specifically, the Illinois Department of Mines and Minerals will be merged into the new Illinois Department of Natural Resources by virtue of Executive Order Number 2 (1995) signed by the Governor of Illinois, on March 1, 1995. Article V, Section 11 of the Constitution of the State of Illinois authorizes the Governor to reassign functions among or reorganize executive agencies which are directly responsible to him in order to simplify the organizational structure of the Executive Branch, to improve accountability, to increase accessibility, and to achieve efficiency and effectiveness in operation.

Executive Order Number 2 (1995) contains the following applicable provisions:

Part I, paragraph C, provides that "[t]he Department of Natural Resources shall have within it an Office of Mines and Minerals which shall be responsible for the functions previously vested in the Department of Mines and Minerals. . . .;

Part II, paragraph C, transfers the Surface-Mined Land Conservation and Reclamation Act (225 ILCS 715/1 *et seq.*) [State Act for the initial program] and the Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720.1.01 *et seq.*) [State Act for the permanent program] from the Department of Mines and Minerals to the Department of Natural Resources along with the rights, powers, and duties incidental to these Acts;

In Part III, paragraph A abolishes the Department of Mines and Minerals, paragraph B abolishes the office of the Director of Mines and Minerals, and paragraph C transfer personnel previously assigned to the Department of Mines and Minerals to the Department of Natural Resources; and

Part IV, paragraph F, provides that "[t]his Executive Order shall not affect the legality of any rules in the Illinois Administrative Code that are in force on the effective date of this Executive Order that have been duly adopted by the agencies reorganized under this Order. As soon as practicable hereafter, the Department of Natural Resources * * * shall propose and adopt under the Illinois Administrative Procedure Act such rules as may be necessary to consolidate and clarify the rules of the various reorganized agencies that will now be administered by the successor agency."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the Commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [C.S.T.] on April 11, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the persons listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notice of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

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under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 16, 1995.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–7439 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Missouri regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, SMCRA). The proposed amendment consists of revisions to rules and statutes along with supporting documentation and information pertaining to its alternative bonding system. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4 p.m., c.s.t. April 26, 1995. If requested, a public hearing on the proposed amendment will be held on April 21, 1995. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on April 11, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105

Missouri Department of Natural Resources, Land Reclamation Program, P.O. Box No. 176, Jefferson City, MO 65102, Telephone: (314) 751–4041

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated March 7, 1995, Missouri submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. MO–617). Missouri submitted the proposed amendment in response to a January 30, 1986 letter (administrative record No. MO–351) that OSM sent to Missouri in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 925.16(g). The provisions of the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) that Missouri proposed to revise were: Section 444.830.1. and 3. (RSMo), Bond requirements, when a bond must be filed, the amount of a bond, and allowance for bond substitution; Section 444.950. (RSMo), Phase I reclamation bond requirements; Section 444.960.1. and 5. (RSMo), establishment, purpose, and duties of the coal mine reclamation fund; Section 444.965.1., 3., 4., 5. and 6. (RSMo), Assessment for fund; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund. In addition Missouri has submitted: (1) A narrative explaining the current and projected balances of the bond pools; (2) a discussion of how each outstanding required program amendment of the final rule **Federal Register** of May 8, 1991 (56 FR 21281) (administrative record No. MO–536) will be resolved; (3) an explanation of how the deficiencies identified in OSM's issue letter dated March 9, 1994 (administrative record No. MO–592) will be resolved; (4) a table of reclamation cost estimates for all permits except those that represent a minimal liability to the bond pools; (5) a statement from the Missouri Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeited Project; and (6) copies of the revised bond forms utilized by Missouri.

Specifically, Missouri proposes to revise its statute and regulations: (1) To remove the option to file a full cost Phase I bond; (2) to provide that the per acre bond amounts are minimums that may be adjusted annually by the commission based upon calculations conducted by the State director; (3) to provide that annual adjustments to the bond amount will not be more than $250 per acre per year with a maximum of $5,000 per acre for all areas except coal preparation areas, and $500 per year with a maximum of $15,000 per acre for coal preparation areas; (4) to require that the minimum bond will not be less than $10,000 per permit; (5) to require that all promulgated rules must be approved by the joint committee on administrative rules; (6) to allow the commission to retain up to 20 percent of the amount of the bond at Phase I liability release and retain that amount until the release of Phase III liability; (7) to require the total amount of the Phase I bond to be available for the completion of all phase of reclamation in the event of bond forfeiture; and (8) to require monies to continue to be accumulated in the CMLR Fund until they are sufficient to complete reclamation of permits revoked prior to September 1, 1988.

In addition, Missouri is revising its regulations to: (1) Provide new definitions of Phase I Bond, Phase II bond, Phase III bond, and surety bond; (2) require for incremental bonding that disturbances are prohibited prior to acceptance of the bond and that a schedule of increments be provided; (3) require that Phase I bond be retained on unreclaimed temporary structures; (4) allow the release of bond from undisturbed lands when further disturbances from surface mining have ceased; (5) require that the permit shall terminate on all areas where all bonds have been released; and (6) require at Phase III release that the operator provide evidence that an affidavit has been recorded at the county lands affected by underground mining, augering, covered slurry ponds, or other underground activities that could impact future land use for lands where Phase I reclamation was completed on or after September 1, 1992.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732,17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on April 11, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listing under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 16, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–7437 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA, 30 U.S.C. 1201 *et seq.*). The amendment consisted of revisions that Utah proposed to its liability self-insurance rule.

EFFECTIVE DATE: This withdrawal is effective March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: By letter dated October 4, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–979). Utah submitted the

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proposed amendment at its own initiative with the intention of allowing companies in the coal industry, if they so desired, to provide a certain amount of their liability insurance through self-insurance. The provision of the Utah Coal Mining Rules that Utah proposed to revise was Utah Administrative Rule (Utah Admin. R.) 645–301–890.400, Terms and Conditions for Liability Insurance.

OSM announced receipt of the proposed amendment in the October 21, 1994, **Federal Register** (59 FR 53123), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–982). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 21, 1994.

During its review of the amendment, OSM identified concerns relating to Utah's proposed rule and notified Utah of the concerns by letter dated November 30, 1994 (administrative record No. UT–992).

In response to OSM's concerns, Utah by letter dated December 16, 1994, submitted copies of the Utah Interlocal Cooperation Act and Utah Governmental Immunity Act that were intended to clarify Utah's proposed rule revisions (administrative record No. UT–999).

OSM announced receipt of the additional explanatory information in the January 10, 1995, **Federal Register** (60 FR 2520), and reopened and extended the comment period (administrative record No. UT–1005). The public comment period ended on January 25, 1995.

During its review of the amendment, OSM identified concerns relating to the additional explanatory information as it applied to Utah's proposed rule and notified Utah of the concerns by letter dated February 14, 1995 (administrative record No. UT–1020).

By letter dated February 24, 1995, Utah requested that the proposed amendment be withdrawn (administrative record No. UT–1026). Utah indicated that it intends to conduct additional research on the issues before resubmitting the amendment at a later date for approval as part of the Utah program.

Therefore, the proposed amendment announced in the October 21, 1994, and January 10, 1995, publications of the **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–7438 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

31 CFR Part 1

[No. 94–260]

Privacy Act of 1974; Implementation

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act), to the extent the system contains investigatory material pertaining to the enforcement of laws or compiled for law enforcement purposes. The OTS is also proposing to add a Privacy Act exemption to an existing exempt system.

DATES: Comments must be received no later than April 26, 1995.

ADDRESSES: Send comments to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 94–260. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7753 or (202) 906–7755. Submissions must be received by 5 p.m. on the day that they are due in order to be considered by the OTS. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Mary Ann Reinhart, Chief, Disclosure Branch, (202) 906–5896, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The OTS is proposing to exempt the Criminal Referral Database system of records from specified provisions of the Privacy Act and to add an exemption to the Confidential Individual Information System. Subsection (j)(2) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from any section of part 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), provided that the system of records is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes: "(A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." Section 552a(k) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Act, pursuant to 5 U.S.C. 552a(k)(2), if the system of records is "investigatory material compiled for the law enforcement purposes, other than material within the scope of subsection (j)(2) * * *."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Make an accounting of disclosures to the individual named in the record of their request; permit individuals access to their records; permit individuals to request amendment to their records; maintain only relevant or necessary information in its system of records; publish certain information in the **Federal Register**; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of record permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Exemptions under subsections 552a(j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of these investigative files. These systems contain information on possible criminal investigations and may indicate current administrative investigations by OTS. The disclosure of this information would significantly impair the enforcement activities and coordinated proceedings of OTS, other financial institution regulatory agencies, and the Justice Department. Disclosure form these systems would give

individuals an opportunity to learn whether they have been identified as either suspects or subjects of criminal referrals. This knowledge would undermine the agency's mission of enforcing federal law, since individuals could take steps to avoid detection; inform associates that a referral had been made; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation. Individuals could alter future wrongful acts to avoid detection by discovering the collection of facts that would form the basis for a criminal referral, by enabling them to destroy or alter evidence of unlawful conduct, and by learning that investigators had reason to believe that there was a violation of laws or regulations. Disclosure could, moreover, disclose the identity of confidential sources and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources might refuse to provide valuable referrals if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the OTS's and the Justice Department's ability to carry out their mandates. Additionally, disclosure would reveal investigative techniques and procedures, the knowledge of which could enable individuals planning to engage in misconduct or crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize established investigative tools and procedures of both OTS and the Justice Department. The imposition of certain restrictions on the manner in which information is collected, verified or retained could significantly impede the effectiveness of investigation and could preclude the apprehension and successful prosecution of persons engaged in fraud or other unlawful activity.

The OTS investigative files will contain information of the type described in the (j)(2) and (k)(2) exemptions of the Privacy Act. Authority for these systems are provided by 5 U.S.C. 301; 12 U.S.C. 1464, 1818. OTS will maintain information in these systems of records, pursuant to its law enforcement and investigative functions, in order to carry out these functions and its mission.

This rule is not a "significant regulatory action" under Executive Order 12866 and will not require the approval of the Office of Management and Budget; therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of subpart C is amended by adding the following text at the end of the section as follows:

OFFICE OF THRIFT SUPERVISION

NOTICE OF EXEMPT SYSTEMS

In accordance with 5 U.S.C. 552a (j) and (k), general notice is hereby given of rulemaking pursuant to the Privacy Act of 1974 by the Acting Director, Office of Thrift Supervision, under authority delegated to him by the Secretary of the Treasury. The Acting Director, Office of Thrift Supervision, exempts the systems of records identified in the paragraphs below from certain provisions of the Privacy Act of 1974 as set forth in such paragraphs.

a. *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to the provisions of 5 U.S.C. 552a(j)(2), the Acting Director, Office of Thrift Supervision, hereby exempts certain systems of records, maintained by the Office of Thrift Supervision, from the provisions of 5 U.S.C. 552a (c) (3) and (4)(D) (1), (2), (3) and (4), (e) (1), (2), (3), (4) (G), (H) and (I), (5) and (8), (f) and (g).

1. *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph a. above except as otherwise indicated below and in the general notice of the existence and character of systems of records which appears elsewhere in the **Federal Register**

.001—Confidential Individual Information System

.004—Criminal Referral Database

2. *Reasons for exemptions.* (a) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Office of Thrift Supervision (OTS) believes that application of these provisions to the above-listed systems of records would give individuals an opportunity to learn whether they are on record either as suspects or as suspects of an administrative investigation; this would compromise the ability of the OTS to complete investigations and to detect and apprehend violators of applicable laws in that individuals would thus be able (1) to take steps to avoid detection, (2) to inform co-conspirators of the fact that an investigation is being conducted, (3) to learn the nature of the investigation to which they are being subjected, (4) to learn the type of surveillance being utilized, (5) to learn whether they are suspects or identified law violators, (6) to continue or resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (7) to destroy evidence needed to prove a violation.

(b) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f) (2), (3) and (5) enable individuals to gain access to records pertaining to them. The OTS believes that application of these provisions to the above-listed systems of records would compromise its ability to complete or continue administrative investigations and to detect and apprehend violators of applicable laws. Permitting access to records contained in the above-listed systems of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways: (1) By discovering the collection of facts which would form the basis of an enforcement action, and (2) by enabling them to destroy evidence of wrongful conduct which would form the basis of an enforcement action. Granting access to on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning illegal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing established investigative techniques and procedures. Further, granting access to investigative files and records could disclose the identities of confidential sources and other informers and the nature of the information which they supplied, thereby exposing them to possible reprisals for having provided information related to the activities of those individuals who are subjects of the investigative files and records; confidential sources and other informers might refuse to provide investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the OTS to

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carry out its mandate to enforce the applicable laws. Additionally, providing access to records contained in the above-listed systems of records could reveal the identities of individuals who compiled information regarding illegal activities, thereby exposing them to possible reprisals.

(c) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The OTS believes that the reasons set forth in paragraph (b) above are equally applicable to this subparagraph and, accordingly, those reasons are hereby incorporated herein by reference.

(d) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The OTS believes that application of this provision to the above-listed systems of records would impair the ability of other law enforcement agencies to make effective use of information provided by the OTS in connection with the investigation, detection and apprehension of violators of the laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators would alert those individuals to the fact that another agency is conducting an investigation into their activities, and this could reveal the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or other apprehension by altering their operations, or by destroying or concealing evidence which would form the basis of an enforcement action. In addition, providing violators with accountings of disclosure would inform those individuals of general information, and alert them that the OTS has information regarding their activities; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension.

(e) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552(d) of any record that has been disclosed to the person or agency if an accounting of the record was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him, and since the above-listed systems of records are proposed to be exempted from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (c) above, the OTS believes that this provision should not be applicable to the above-listed systems of records.

(f) 5 U.S.C. 552a(e)(4)(i) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The OTS believes that application of this provision to the above-listed systems of records could compromise its ability to conduct investigations and to identify, detect and apprehend violators of the applicable laws for the reasons that revealing sources for information could (1) disclose investigative techniques and procedures, (2) result in possible reprisal directed to informers by the subject under investigation, and (3) result in the refusal of informers to give information or to be candid with investigators because of the knowledge that their identities as sources might be disclosed.

(g) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the OTS, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the OTS; in many cases information collected may not be immediately susceptible to a determination whether the information is relevant and necessary, particularly in the early stages of an investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of OTS. Further, not all violations of law discovered during an OTS administrative investigation fall within the investigative jurisdiction of OTS; in order to promote effective law enforcement, OTS is often required to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The OTS should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the OTS through the conduct of a lawful OTS investigation. The OTS therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(h) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The OTS believes that application of this provision to the above-listed systems of records would impair the ability of OTS to conduct investigations and to identify, detect and apprehend violators of applicable laws for the following reasons: (1) Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the target of the investigation as a source for information regarding his activities, (2) an attempt to obtain information from an individual regarding an investigation will often alert the individual to the existence of such an investigation, thereby affording him an opportunity to conceal his activities so as to avoid apprehension, (3) in certain instances individuals are not required to supply information to investigators as a matter of legal duty, and (4) during investigations it is often a matter of sound investigative procedures to obtain information from a variety of sources in order to verify information already obtained.

(i) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The OTS believes that the above-listed systems of records should be exempted from this provision in order to avoid adverse effects on its ability to identify, detect and apprehend violators of applicable laws. In many cases, information is obtained from confidential sources and other individuals under circumstances where it is necessary that the true purpose of their actions be kept secret so as to not let it be known by the target of the investigation or his associates that an investigation is in progress. In many cases, individuals for personal reasons would feel inhibited in talking to a person representing a law enforcement agency but would be willing to talk to a confidential source or to an individual whom them believed was not involved in enforcement activity. In addition, providing information from this system, including written evidence of the identity of the source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the target of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the target of the investigation, particularly where further investigation would result in a finding that he was not involved in unlawful activity.

(j) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed systems of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the OTS to other law enforcement agencies where an OTS investigation revealed information pertaining to a violation of law which was under the investigative jurisdiction of another agency. In collecting information during the course of an administrative investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. The OTS therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(5).

(k) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The OTS believes that the above-listed systems of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence of an on-going investigation where there is a need to keep the existence of the investigation secret.

(l) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency refusal to amend a record or to make a review of a request for amendment, for an agency refusal to grant access to a record, for an agency failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual, and for an agency failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The OTS believes that the above-listed systems of records should be exempted from this provision to the extent that the civil remedies provided therein may be related to provisions of 5 U.S.C. 552a from which the above-listed systems of records are proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraph (a) through (k) above proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the OTS believes that the application of this provision to the above-listed systems of records would adversely affect its ability to conduct investigations by exposing to civil court actions every stage of the investigative process in which information is compiled or used in order to identify, detect, apprehend and otherwise investigate persons suspected or known to be engaged in conduct in violation of applicable laws.

b. *Specific exemptions under 5 U.S.C. 552a(k)(2).* Pursuant to the provisions of 5 U.S.C. 552a(k)(2), the Office of Thrift Supervision, hereby exempts certain systems of records, maintained by the Office of Thrift Supervision, from the provisions of 5 U.S.C. 552a (c)(3), (d)(1), (2), (3) and (4), (e)(1) and (4)(G), (H), and (I) and (f).

1. *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph b. above except as otherwise indicated below and in the general notice of the existence and character of systems of records which appears elsewhere in the **Federal Register**:

.001—Confidential Individual Information System

.004—Criminal Referral Database

2. *Reasons for exemptions.* (a) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The OTS believes that application of these provisions (to those of the above-listed systems of records for which no notification procedures have been provided in the general notice of the existence and character of systems of records which appears elsewhere in the **Federal Register**) would impair the ability of the OTS to successfully complete investigations and inquiries of suspected violators of laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of laws and regulations involve complex and continuing patterns of behavior. Individuals, if informed that they have been identified as suspected violators of laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation and the type of inquiry being made, and they would be able to transmit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(b) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The OTS believes that application of these provisions to the above-listed systems of records would impair its ability to complete or continue investigations and inquiries and to detect and apprehend violators of the applicable laws. Permitting access to records contained in the above-listed systems of records would provide violators with significant information concerning the nature of the investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing investigators' established and effective investigative tools and procedures. In addition, investigatory material may contain the identity of confidential sources who would not want their identities to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom they supplied information. In some cases mere disclosure of the information provided by a source would reveal the identity of the source either through the process of elimination or by virtue of the nature of the information supplied. If sources could not be assured that their identities (as sources for information) would remain confidential, they would be very reluctant in the future to provide information pertaining to violations of laws and regulations, and this would seriously compromise the ability of the OTS to carry out its mission. Further, application of 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) to the above-listed systems of records would make available attorney's work product and other documents which contain evaluations, recommendations, and discussions of ongoing legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the OTS which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the OTS that due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(c) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in subparagraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The OTS believes that the reasons set forth in subparagraph (b) above are equally applicable to this subparagraph, and, accordingly, those reasons are hereby incorporated herein by reference.

(d) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The OTS believes that application of this provision to the

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above-listed systems of records would impair the ability of the OTS and other law enforcement agencies to conduct investigations and inquiries into violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the OTS or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and dates on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(e) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the OTS there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the OTS; in many cases information collection may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry; and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the OTS. Further, not all violations of law uncovered during an OTS investigation or inquiry fall within the jurisdiction of the OTS; in order to promote effective law enforcement it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The OTS should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the OTS through the conduct of a lawful OTS investigation or inquiry. The OTS therefore believes that it is appropriate to exempt the above-listed systems of records from provisions of 5 U.S.C. 552a(e)(1).

Dated: December 15, 1994.

Jonathan L. Fiechter,

Acting Director.

Dated: March 6, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 95–7342 Filed 3–24–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD09–95–002]

RIN 2115–AF04

Amendment to Inland Waterways Navigation Regulations Establishing Speed Limits on Connecting Waters From Lake Huron to Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the speed limits for vessels, less than 100 gross tons, operating in the nondisplacement mode on connecting waters from Lake Huron to Lake Erie. The normal speed limits in this area are determined in large part by concerns about wake damage. However, lesser wakes are created by nondisplacement vessels and it appears that the normal speed limits unnecessarily impede their passage. The Coast Guard allowed nondisplacement vessels to operate at higher speeds under similar conditions during two temporary test periods from April 1, 1993 to November 30, 1994, with satisfactory results. The Coast Guard invites public comment on this proposed regulation.

DATES: Comments must be received on or before May 26, 1995.

ADDRESSES: Comments and supporting materials should be mailed or delivered to Lieutenant Katherine E. Weathers, Assistant Chief, Port and Environmental Safety Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth street, Cleveland, Ohio, 44199–2060. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9:00 a.m. to 3:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lieutenant Katherine E. Weathers, Assistant Chief, Port and Environmental Safety Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3994.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments which may consist of data, views, arguments, or proposals for amendments to the proposed regulations. The Coast Guard does not currently plan to have a public hearing. however, consideration will be given to holding a public hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written form. If it appears that a public hearing would contribute to this rulemaking, the Coast Guard will announce such a hearing by a later notice in the **Federal Register**. The Coast Guard will consider all comments received before the closing date indicated above, and may amend or revoke this proposal in response to such comments.

Background and Purpose

Current regulations in 33 CFR 162.138 which apply to connecting waters from Lake Huron to Lake Erie set the maximum speed for vessels 20 meters or more in length at limits ranging from 4 to 12 statute miles per hour in various areas. One of the primary purposes of these speed regulations is to limit wake damage, but they were not written to account for the substantially lesser wake-generating characteristics of nondisplacement vessels. In fact, certain vessels designed for nondisplacement operation which have conducted test operations in the waterway would generate larger wakes at the lower speed now required because they would be forced to operate in a displacement mode. Also, the vessels which have conducted test operations in the waterway operate in a nondisplacement mode by means of a planing action on a catamaran hull, thus obtaining a hydrodynamic lift without use of projecting foils, and have demonstrated their suitability for safe operation in confined and relatively shallow areas. During the 1993 and 1994 navigation season, the Commander of the Ninth Coast Guard District temporarily amended 33 CFR 162.138 in order to allow trial runs of these nondisplacement vessels (33 CFR 162.T139, 58 FR 17526, April 5, 1993 and 59 FR 16563 April 7, 1994). A corresponding exemption was granted by the Central Region of the Canadian Coast Guard, which has authority over the Canadian waters in the same area. The two year trial period has proven successful and the Coast Guard has therefore determined that there should now be a permanent amendment to the regulations in order to prevent an unnecessary restriction on the operation of such vessels. The trial period allowed

nondisplacement vessels less than 100 gross tons to operate in the nondisplacement mode at speeds of not more than 40 statute miles per hour. During the 1993 trial period, one complaint was received alleging excessive wake. Upon investigation, it appeared that the vessel gave the impression of creating an excessive wake because of its relatively high rate of speed during a sharp turn. The Coast Guard was unable to determine if in fact an excessive wake was generated in that one case. There was no damage, and the operator agreed to modify similar maneuvers in the future in order to avoid any problem. No subsequent complaints of any kind were received by the Canadian Coast Guard or the U.S. Coast Guard. During the 1994 trial period, there were no complaints received by either the Canadian Coast Guard or the U.S. Coast Guard. It should be noted that this proposed amendment to the speed regulations for nondisplacement vessels does not in any way excuse the general obligation to exercise good seamanship when maneuvering in close quarters or the responsibility for damage which might be caused by a wake which is excessive in a location close to other vessels or shore structures.

Therefore, based on this successful trial period, and the concurrence from the Director General of the Canadian Coast Guard Central Region, the U.S. Coast Guard is now proposing a permanent change to the speed regulations.

The Coast Guard is setting an upper limit of 40 statute miles per hour for nondisplacement vessels 20 meters or more in length but less than 100 gross tons, and is allowing such nondisplacement vessels to overtake other vessels when otherwise safe. All other navigational regulations will remain in force, and the use of this special rule for nondisplacement vessels is subject to the prior approval of the Captain of the Port in order to insure that the special rule is only used by vessels which are of suitable design and which are in fact operated safely in this waterway.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Katherine E. Weathers, Assistant Chief of the Port and Environmental Safety Branch, and Commander M. Eric Reeves, Chief of the Port and Environmental Safety Branch.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation is not intended to preempt any state or local regulation which may also be applicable to vessels operating in the nondisplacement mode.

Regulatory Evaluation

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). The Coast Guard expects the economic impact of this rule be so minimal that a full Regulatory Evaluation under paragraph 10e is unnecessary.

Small Entities

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities. The effect of this regulation is to ease what has now been determined to be an unnecessarily restrictive regulation as applied to one business developing the use of nondisplacement vessels in the area.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 162

Inland waterways, Navigation.

Regulations

In consideration of the foregoing the Coast Guard proposes to amend Part 162 of title 33, Code of Federal Regulations as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 162.134, paragraph (f) is added to read as follows:

§ 162.134 Connecting waters from Lake Huron to Lake Erie; traffic rules.

* * * * *

(f) The prohibitions in this section on overtaking in certain areas do not apply to vessels operating in the nondisplacement mode. In this section, "nondisplacement mode" means a mode of operation in which the vessel is supported by hydrodynamic forces, rather than displacement of its weight in the water, to an extent such that the wake would otherwise be generated by the vessel is significantly reduced.

3. Section 162.138 is revised to read as follows:

§ 162.138 Connecting waters from Lake Huron to Lake Erie; speed rules.

(a) (1) *Maximum speed limit for vessels in normal displacement mode.* Except when required for the safety of the vessel or any other vessel, vessels of 20 meters or more in length operating in normal displacement mode shall proceed at a speed not greater than—

(i) 12 statute miles per hour (10.4 knots) between Fort Gratiot Light and St. Clair Flats Canal Light 2;

(ii) 12 statute miles per hour (10.4 knots) between Peche Island Light and Detroit River Light; and

(iii) 4 statute miles per hour (3.5 knots) in the River Rouge.

(2) The maximum speed limit is 5.8 statute miles per hour (5 knots) in the navigable channel south of Peche Island (under Canadian jurisdiction).

(b) *Maximum speed limit for vessels operating in nondisplacement mode.)* Except when required for the safety of the vessel or any other vessel, vessels 20 meters or more in length but under 100 gross tons operating in the nondisplacement mode and meeting the requirements set out in paragraph (c) of this section, may operate at a speed not exceeding 40 miles per hour (34.8 knots)—

(1) During daylight hours (sunrise to sunset),

(2) When conditions otherwise safely allow, and

(3) When approval has been granted by the Coast Guard Captain of the Port, Detroit or Commander of the Ninth Coast Guard District prior to each transit of the area. In this section, "nondisplacement mode" means a mode of operation in which the vessel is supported by hydrodynamic forces, rather than displacement of its weight in the water, to an extent such that the wake which would otherwise be generated by the vessel is significantly reduced.

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(c) The Captain of the Port or the District Commander may deny approval for operations under paragraph (b) of this section if it appears that the design and operating characteristics of the vessels in question are not safe for the designated waterways, or if it appears that operations under this special rule have become unsafe for any reason.

(d) *Temporary speed limits.* The District Commander may temporarily establish speed limits or temporarily amend existing speed limit regulations on the waters described in § 162.130(a).

Dated: March 1, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth District Guard District.

[FR Doc. 95–7370 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–026]

RIN 2115–AA97

Safety Zone: Brick Founder's Day Fireworks, Metedeconk River, Brick, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the Brick Founder's Day fireworks display located in the Metedeconk River, Brick, New Jersey. The safety zone would be in effect on Saturday June 3, 1995, from 8 p.m. until 10:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the Metedeconk River within a 300 yard radius from the center of the fireworks platform located on Windward Beach, Brick, New Jersey.

DATES: Comments must be received on or before April 26, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–026) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coat Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On February 23, 1995, the Brick Township Chamber of Commerce submitted an Application for Approval of Marine Event for a fireworks program on Windward Beach in the Metedeconk River. This regulation would establish a safety zone in the waters of the Metedeconk River on June 3, 1995, from 8 p.m. until 10:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting the Metedeconk River within a 300 yard radius of the fireworks platform located on a pier in the approximate position 40°03'25"N latitude 074°06'47"W longitude at Windward Beach, Brick, New Jersey. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the Metedeconk River to all vessel traffic on June 3, 1995, from 8 p.m. until 10:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; that mariners can transit to the south of this area; and the extensive, advance advisories that will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–026, is added to read as follows:

§ 165.T01–026 Safety Zone; Brick Founder's Day Fireworks, Metedeconk River, Brick, New Jersey.

(a) *Location.* All waters of the Metedeconk River within a 300 yard radius of the fireworks platform located on a pier in the approximate position 40°03'25" N latitude 074°06'47" W longitude at Windward Beach, Brick, New Jersey.

(b) *Effective period.* This safety zone is in effect on June 3, 1995, from 8 p.m. until 10:30 p.m., unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 17 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 95–7369 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee). This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: April 25 and 26, 1995 from 9 a.m. to 5 p.m.

ADDRESSES: The Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877, (301) 977–8900.

FOR FURTHER INFORMATION CONTACT: Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee is authorized by sections 432, 457, and 464 of the Higher Education Act of 1965, as amended. The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act. The Committee will negotiate regulations on borrower defenses, that is, which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins) Program and the consequences of such defenses for the institution, the Secretary, and, for FFEL Program loans, for the lender and the guaranty agency. The Committee may also negotiate issues regarding whether administrative procedures should be established to adjudicate whether a borrower has a valid defense and the effect the adjudication would have on the rights and liabilities of institutions, lenders, guaranty agencies, and the Secretary.

The meeting of the Committee is open to the public.

The proposed agenda includes:

(1) Welcoming remarks.
(2) Introduction of facilitator and participants.
(3) Discussion of procedural ground rules.
(4) General discussion of participants' perspectives on substantive issues.
(5) Development of issue agendas or drafts for subsequent meetings.

Records are kept of all Committee proceedings and are available for public inspection in Room 3053, ROB–3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Dated: March 20, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–7389 Filed 3–24–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5178–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete United States Army Fort Lewis Landfill No. 5 from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the United States Army Fort Lewis Landfill No. 5 Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated

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pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before April 26, 1995.

ADDRESSES: Comments may be mailed to: Mary Jane Nearman, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: HW–124, Seattle, Washington 98101.

Comprehensive information on this Site is available through the public docket which is available for viewing at the Fort Lewis Landfill No. 5 site information repositories at the following locations:

Tillicum Library, 14916 Washington Avenue SW., Tacoma, WA 98498.
Lakewood Library, 6300 Wildaire Road, Tacoma, WA 98499.
Fort Lewis Environmental and Natural Resources Division, Attn: Paula Wofford, Fort Lewis WA 98433–5000.

FOR FURTHER INFORMATION CONTACT: Mary Jane Nearman, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop: HW–124, Seattle, Washington 98101, (206) 553–6642.

SUPPLEMENTARY INFORMATION:

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I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV Basis of Intended Site Deletion.

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the United States Army Fort Lewis Landfill No. 5 Site at the Fort Lewis Military Reservation, Washington 98433–5000 from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as a list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Fort Lewis Landfill No. 5 Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, the selected remedy is protective of human health and the environment. Consistent with Section XIX of the Fort Lewis Federal Facility Agreement, the Department of the Army will conduct a five-year review of this final remedy. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 10 and the United States Army issued a Record of Decision which documented that no further remedial action is necessary at Fort Lewis Landfill No. 5 to ensure protection of human health and the environment; (2) Ecology concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, § 300.425(e)(3) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Fort Lewis Landfill No. 5 NPL site is a 60-acre landfill located adjacent to the Dupont-Steilacoom Highway on the west side of the Fort Lewis Military Reservation in Pierce County, Washington. It is approximately 1.5 miles north of Dupont and 3.5 miles south of Steilacoom.

B. History

The Fort Lewis Landfill No. 5 NPL site operated from 1967 through July 1990. It accepted mixed municipal solid waste (industrial, commercial, and residential) and demolition waste (concrete, asphalt, wood, steel and other building debris) from the Fort Lewis Military Reservation, VA Medical Center, and McChord Air Force Base.

As a result of iron and manganese contamination found in nearby groundwater, Landfill No. 5 was added to the NPL in 1987. In 1988, the Army, with oversight provided by EPA and the State of Washington Department of Ecology, began a Remedial Investigation (RI) to characterize the nature and extent of contamination and to assess potential risks to human health and the environment.

Based on the results of the RI and risk assessment, a Record of Decision (ROD) for the Site was signed on July 24, 1992. The ROD documented the decision that no further remedial action was necessary at Fort Lewis Landfill No. 5 because the conditions at the site pose no unacceptable risks to human health or the environment. The Army will continue to implement the operating and closure requirements of Landfill No. 5 under a permit administered by the Tacoma-Pierce County Health Department. The closure complies with State Minimum Functional Standards for Solid Waste Handling, pursuant to Washington Administrative Code (WAC) 173304.

C. Characterization of Risk

The RI included an investigation of the surface water, sediments, air, and groundwater in the vicinity of the landfill. The investigation included a wide range of analyses to detect volatile organic compounds, base/neutral and acid extractable compounds, pesticides, and polychlorinated biphenyls, and inorganic compounds (including metals). Concentrations found were below state and federal regulatory levels and risks for both current and future use were within acceptable levels as defined by the NCP.

The results of the ecological risk assessment indicate that Landfill No. 5 does not pose a threat to ecological receptors or habitats. No endangered or sensitive resident species or critical habitats were identified in the study area.

Confirmational monitoring of groundwater demonstrate that no significant risk to public health or the environment is posed by residual materials remaining at the Site. EPA and Ecology believe that conditions at the site pose no unacceptable risks to human health or the environment.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate." EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: March 17, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–7495 Filed 3–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Notice of Advisory Committee Establishment; Notice of Advisory Committee Meetings

AGENCY: Federal Communications Commission.

ACTION: Notice of meetings.

SUMMARY: The Federal Communications Commission (FCC) has established the Hearing Aid Compatibility Negotiated Rulemaking Committee (Committee), as part of proceeding the FCC's CC Docket No. 87–124. The FCC understands that approval by the Office of Management and Budget of the establishment of this ad-hoc Committee is imminent.

The Committee will provide recommendations to the Federal Communic tions Commission (FCC) to be used in the formulation of requirements for hearing aid compatible telephones in work places, hospitals, certain other health care facilities, prisons, hotels and motels. Included among the recommendations will be one on whether to lift the suspension of enforcement of Sections 68.112(b) (1), (3), and (5) of the Commission's Rules. 47 CFR §§ 68.112(b)(1), (3), (5). Those sections require that all telephones in all work places, hospitals, certain other health care facilities, prisons, hotels and motels be hearing aid compatible by May 1, 1993 for establishments with 20 or more employees and by May 1, 1994 for establishments with fewer than 20 employees. The scope of the activity of the Committee will include all steps necessary to assemble data, perform analyses, and provide advice to the FCC concerning all of the issues required to address the regulation of telephones which need to be hearing aid compatible, as discussed in the Commission's public notice of November 7, 1994, FCC 94–280. The establishment of this Committee is necessary and in the public interest.

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice also advises interested persons of the initial and proposed subsequent meetings of the Committee.

DATES:
April 13, 1995, 9:30 a.m. edt
April 20, 1995, 9:30 a.m. edt
April 27, 1995, 9:30 a.m. edt
May 11, 1995, 9:30 a.m. edt
May 18, 1995, 9:30 a.m. edt
May 25, 1995, 9:30 a.m. edt
May 30, 1995, 9:30 a.m. edt
June 13, 1995, 9:30 a.m. edt.

ADDRESSES: For the meetings of April 13, April 27, and May 18 and May 25, Federal Communications Commission, 1919 M Street NW., Room 856, Washington, DC 20554; for the meetings of April 20, May 11, May 30, and June 13, International Bureau, FCC, Eighth Floor, 2000 M Street NW., Washington, DC 20554; or as otherwise announced at the meetings.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Designated Federal Official of the Hearing Aid Compatibility Negotiated Rulemaking Committee, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Mail Stop 1600B2, 2025 M Street NW., Suite 6008, Washington, D.C. 20054; Voice (202) 634–4216; TTY (202) 632–0484; Fax (202) 634–6625; Internet address: glipscom@fcc.gov

SUPPLEMENTARY INFORMATION: The Committee was established by the Federal Communications to bring together significantly affected entities to discuss and to recommend approaches to developing recommendations to the FCC for requirements for hearing aid compatible (HAC) telephones in work places, hospitals, certain other health care facilities, prisons, hotels and motels. The FCC has solicited nominations for membership on the Committee pursuant to the Negotiated Rulemaking Act of 1990, Public Law 101–648, November 28, 1990, and will select members which are significantly affected by the proposed rules. See Public Notice in CC Docket No. 87–124, FCC 94–280, 59 FR 60343, November 23, 1994.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Committee. The comments must be submitted two business days before the meeting in which the commenter desires his/her comments to be distributed. In addition, comments at the meeting by parties or entities not represented on the Committee will be permitted to the extent time permits. Comments will be limited to five minutes in length by any one party or entity, and request to make such comments to the Committee in person must be received two business

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days before the meeting in which the commenter desires to be heard. Requests for comment opportunity, and written comments, should be sent to Greg Lipscomb at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Agenda

The planned agenda for the first meeting is as follows:

1. Introductions and Welcoming Remarks
2. Nomination of Facilitator
3. Introduction of Committee Members
4. Committee Charter and Related Matters
5. Organizational Protocols
6. Agreement on "Consensus"
7. Work Program and Documentation
8. Organization of Work and Working Groups
9. Meeting Schedule and Locations
10. Agenda for Next Meeting
11. Other Business.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7379 Filed 3–24–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 45 and 52

Federal Acquisition Regulation; Government Property Class Deviation

AGENCY: Department of Defense.

ACTION: Notice of proposed class deviation.

SUMMARY: The Department of Defense (DoD) is proposing a class deviation from the Federal Acquisition Regulation (FAR) record keeping and physical inventory requirements for Special Tooling, Special Test Equipment and Plant Equipment with an acquisition cost of $1,500 or less. The proposed class deviation will apply to defense contractors, holding them accountable for such property, but relieving them of he requirement to track it, while revisions to the FAR are being drafted.

DATES: Comments on the proposed class deviation should be submitted in writing at the address shown below on or before may 26, 1995 to be considered in the formulation of the final class deviation.

ADDRESSES: Interested parties should submit written comments to: Mrs. Linda W. Neilson, DAR Council, Attn: IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington DC 20301–3062. FAX (703) 602–0350.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 604–5385.

SUPPLEMENTARY INFORMATION:

A. Background

On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite FAR part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and the government. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register**. Interested parties were invited to provide written suggestions or comments in the notice of public hearing dated September 16, 1994 (59 FR 47583). Twenty-two commentors provided approximately 500 comments, including a recommendation that relief from the FAR tracking requirements for government property under $1,500 would reduce administrative burdens and provide cost savings.

In order to capture any savings quickly, DoD is proposing a class deviation from current FAR record keeping and physical inventory requirements for Special Tooling, Special Test Equipment and Plant Equipment with an acquisition cost of $1,500 or less. The proposed class deviation was included as a discussion topic at the public meeting held on January 24, 1995 (60 FR 2370). DoD proposes to deviate from certain FAR requirements as follows:

Part 45—Government Property

45.101 Definitions.

• Deviation authorizes the use of two additional definitions:

"Low Value Property," as used in this part, means Government property in the classes of special tooling, special test equipment, and plant equipment with an acquisition cost of $1,500 or less. Specifically excluded from this definition are agency-peculiar property, material, real property, and sensitive property.

"Sensitive Property," as used in this part, means Government property for which the theft, loss, or misplacement could be potentially dangerous to the public health or safety, or which must be subject to exceptional physical security, protection, control, maintenance, or accountability, including, but not limited to, hazardous property, precious metals, arms, ammunition, explosives, and classified property.

45.504 Contractor's liability.

• Deviation authorizes contractors to report loss, damage, or destruction of items of low value property at contract termination or completion instead of when the facts become known.

45.505 Records and reports of Government property.

• Deviation authorizes the exemption of low value property from the requirement of 45.505(g) for contractor property control systems to contain a system or technique to locate any item of Government property within a reasonable period of time. As a result, periodic physical inventories need not be performed for low value property.

45.505–1 Basic information.

• Deviation excludes low value property from the present requirement for contractors to maintain current location for each item of government property. Contractor's property control records for each item of low value property in the contractor's possession must provide the basic information listed in FAR paragraphs 45.505–1(a)(1) through (a)(7). However, contractors will not be required to update changes in location of each item of low value property which occur after establishment of the official government property record. This exemption does not apply to "sensitive property."

45.508 hysical inventories.

• With the exception of inventories conducted upon termination or completion, the deviation authorizes an exemption for low value property from the requirements of FAR 45.508 for contractors to periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in their possession or control and to cause subcontractors to do likewise. In addition, the deviation requires a contractor whose property control system is disapproved to perform a physical inventory and report all loss, damage, or destruction of Government property prior to system reapproval.

Part 52—Solicitation Provisions and Contract Clauses

52.245–2 Government Property (Fixed-Price Contracts) (DEC 1989).

• Deviation authorizes the substitution of the following paragraph (c)(2) for paragraph (c)(2) of the basic clause. The substitute paragraph (c)(2) makes it clear that title to items of

Government property lost, damaged, or destroyed and replaced under the risk of loss provisions of the clause, vests in the Government:

(c)(2) All Government-furnished property, property acquired by the Contractor, or all property replaced by the Contractor under the risk of loss provisions of this clause, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

52.245–2 Government Property (Fixed Price Contracts) (Alternate I) (APR 1984).

• Deviation authorizes substitution of "Limited risk of loss" for the title of paragraph (g), and substitution of the following subparagraph (g)(2), which requires contractors to assume the risk of, and be responsible for, any loss, damage, or destruction of low value property, with the exception of reasonable wear and tear:

(g)(2) The Contractor assumes the risk of and shall be responsible for, any loss or destruction of, or damage to low value property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear of low value property or for low value property properly consumed in performing this contract. With respect to all other Government property, the Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.

• Deviation authorizes substitution of the following subparagraph (g)(6), which allows contractors to report loss, damage, or destruction of items of low value property at contract termination or completion:

(g)(6) Upon loss or destruction of, or damage to, Government property provided under this contract, (with the exception of low value property for which loss, damage, or destruction is reported at contract termination or completion), the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer as statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

• Deviation authorizes substitution of the following subparagraph (g)(8), which makes the cost of insurance due to assumption of risk of loss for low value property an allowable cost pursuant to FAR 31.205–19:

(g)(8) The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except:

(i) to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract; or

(ii) low value property.

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).

• Deviation authorizes substitution of the following paragraphs (c)(2) and (c)(3), which clarify that title to items of government property lost, damaged, or destroyed and replaced under the risk of loss provisions of the clause vests in the government:

(c)(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract or for which the Contractor is responsible to replace under the risk of loss provisions of this clause shall pass to and vest in the Government upon the vendor's delivery of such property.

(c)(3) Title to all other property, the cost of which is reimbursable to the Contractor, or for which the Contractor is responsible to replace under the risk of loss provisions of this clause shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

• Deviation authorizes substitution of "Risk of loss" for the title of paragraph (g), and substitution of the following subparagraph (g)(1), which requires contractors to assume the risk of, and be responsible for, any loss, damage, or destruction of low value property, with the exception of reasonable wear and tear:

(g) (1) The Contractor assumes the risk of, shall be responsible for, and shall not be entitled to reimbursement as an allowable cost for any loss or destruction of, or damage to low value property upon its delivery to the contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the contractor is not responsible for reasonable wear and tear of low value property or for low value property properly consumed in performing this contract. With respect to all other Government property, the Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this Contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

• Deviation authorizes substitution of the following subparagraph (g)(5), which allows contractors to report loss, damage, or destruction of items of low value property at contract termination or completion:

(g)(5) Upon loss or destruction of, or damage to, Government property provided under this contract, with the exception of low value property for which loss, damage, or destruction is reported at contract termination or completion, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

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(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

• Deviation authorizes substitution of the following subparagraph (g)(7), which makes the cost of insurance due to DoD contractors' assumption of risk of loss for low value property an allowable cost pursuant to FAR 31.205–19:

(g)(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except:

(i) to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract; or

(ii) low value property.

52.245–7 Government Property (Consolidated Facilities) (APR 1984).

• Deviation authorizes substitution of the following subparagraphs (d)(2) and (d)(4), which clarify that title to items of Government property lost, damaged, or destroyed, and replaced under the risk of loss provisions of this clause vests in the Government:

(d)(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract or for which the Contractor is responsible to replace under the risk of loss provisions specified in the clause at FAR 52.245–8, Liability for the Facilities.

(d)(4) Title to other property, the cost of which is reimbursable to the Contractor under this contract or for which the Contractor is responsible to replace under the risk of loss provisions specified in the clause at FAR 52.245–8, Liability for the Facilities, shall pass to and vest in the Government upon——

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

52.245–8 Liability for the Facilities (APR 1984).

• Deviation authorizes substitution of the following paragraph (b), which requires contractors to assume risk of, and be responsible for, any loss, damage, or destruction of low value property, except for reasonable wear and tear:

(b) The Contractor assumes the risk of, shall be responsible for, and shall not be entitled to reimbursement as an allowable cost for any loss or destruction of, or damage to low value property upon its delivery to the contractor or upon passage of title to the Government as specified in the clause at FAR 52.245–7, Government Property (Consolidated Facilities), FAR 52.245–10, Government Property (Facilities Acquisition) or FAR 52.245–11, Government Property (Facilities Use). However, the Contractor is not responsible for reasonable wear and tear of low value property or for low value property properly consumed in performing this contract. With respect to all other Government property, the Contractor shall not be liable for any loss or destruction of, or damage to, the facilities, or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

• Deviation authorizes substitution of the following paragraph (f), which makes the cost of insurance due to assumption of risk of loss for low value property an allowable cost pursuant to FAR 31.205–19:

(f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. However, the Contractor may include the price or cost of such insurance against any form of loss, destruction, or damage to low value property. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer a certificate of insurance or a certified copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows: Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer.

• Deviation authorizes substitution of the following introductory text for paragraph (g), which allows contractors to report loss, damage, or destruction of items of low value property only at contract termination or completion:

(g) With the exception of low value property for which the loss, damage, or destruction is required to be reported at contract termination or completion, when there is any loss or destruction of, or damage to, the facilities——

52.245–11 Government Property (Facilities Use) (APR 1984).

• Deviation authorizes insertion of the following new subparagraph (c)(2), which clarifies that title to items of Government property lost, damaged, or destroyed, and replaced under the risk of loss provisions of this clause vests in the Government. The deviation also authorizes substitution of the numbering of the existing subparagraphs (c)(2), (c)(3), and (c)(4) as (c)(3), (c)(4), and (c)(5), respectively:

(c)(2) Title to facilities for which the Contractor is responsible to replace under the risk of loss provisions specified in the clause at FAR 52.245–8, Liability for the Facilities, shall pass to and vest in the Government upon the vendor's delivery of such facilities. Title to all other facilities for which the Contractor is responsible to replace under the risk of loss provisions specified in the clause at FAR 52.245–8 shall pass to an vest in the Government upon——

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–7340 Filed 3–24–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[I.D. 032095B]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils have submitted Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before May 18, 1995.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 4 and supporting documents should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX: 813–225–7015, or to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407–4699, FAX: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared amendment to a fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. NMFS will consider public comment in determining approvability of the amendment.

Amendment 4 would allow the harvest of spiny lobster year-round and establish a daily bag or possession limit of two spiny lobster per person in the exclusive economic zone off North Carolina, South Carolina, and Georgia.

Proposed regulations to implement Amendment 4 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7393 Filed 3–22–95; 10:57 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 60, No. 58
Monday, March 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM-94-00-4]

Procedure To Submit Names of Substances for Evaluation for Inclusion in the National List To Be Included in the National Organic Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act of 1990, as amended (Act) (7 U.S.C. 6501 *et. seq.*), requires the establishment of a national organic production program for producers and handlers of agricultural products that have been produced using organic methods. The Act requires the Secretary of Agriculture (Secretary) to establish a National List of approved synthetic and prohibited natural substances that shall be included in the standards for organic production and handling. The National Organic Standards Board (NOSB), established by the Secretary, is seeking applications (petitions) for substances to be considered for inclusion on the National List. Petitions for substances for the National List should be submitted by the date set forth below.

DATES: Petitions should be received by close of business, May 26, 1995.

ADDRESSES: Petitions should be sent to Michael Hankin, Senior Marketing Specialist, USDA, Agricultural Marketing Service (AMS), Transportation and Marketing Division (TMD), National Organic Program (NOP), Room 2510 South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ted Rogers, Marketing Specialist, USDA, AMS, TMD, NOP, Room 2510 South Building, P.O. Box 96456, Washington, DC 20090–6456. Phone 202/205–7804. Fax 202/205–7808.

SUPPLEMENTARY INFORMATION: Organic production and handling involves more than just the application or addition of certain acceptable substances. The Act in section 2114 (7 U.S.C. 6513) requires producers and handlers seeking certification under the Act to submit an organic plan to the certifying agent and the State organic certification program (if applicable). An organic plan is a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent that addresses all aspects of agricultural production or handling described in the Act, including crop rotation and other practices required under the Act.

The Act in section 2112 (7 U.S.C. 6511) also requires producers and handlers of certified organic operations to maintain records concerning the production or handling of agricultural products sold or labeled as organically produced under the Act. These records are to include detailed histories of substances applied to fields or agricultural products, the names and addresses of persons who applied the substances, and the date, rate and method of application of such substances. Livestock records shall include, but not be limited to, the amount and source of medications administered and all feeds and feed supplements bought and fed (section 2110 of the Act (7 U.S.C. 6509)).

Further, the Act requires the Secretary to establish a National List of approved synthetic and prohibited natural substances that shall be included in the standards established for the organic production and handling of agricultural products to be sold or labeled as organically produced. The Act in section 2103(21) (7 U.S.C. 6502(21)) defines synthetic as a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

The Secretary in accordance with section 6518 of the Act (7 U.S.C. 6518) established a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of implementing the Act.

The NOSB has initiated an evaluation of certain substances for inclusion on the National List. The NOSB's list of substances was generated from existing lists of established organic certification agencies and from input received from various people and organizations, including organic food processors and livestock producers. The substances currently being considered have been referred, in accordance with the Act, to technical advisors, selected by the NOSB, who will provide the NOSB with relevant scientific information. Also, in accordance with the Act, the NOSB will review information from the Environmental Protection Agency, the National Institute of Environmental Health Studies and other sources, as appropriate, in regards to the potential adverse human and environmental effects of a substance under consideration.

Specifically, the NOSB will be considering:

(1) The potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) The toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) The probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) The effect of the substance on human health;

(5) The effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) The alternatives to using the substance in terms of practices or other available materials; and

(7) Its compatibility with a system of sustainable agriculture.

The results of the evaluations by the technical advisors will be utilized by the NOSB in formulating its own evaluation reports. Both the NOSB evaluations and those of the technical advisors will be submitted to the Secretary along with the NOSB's recommended list of substances. The Secretary will consider the recommendations of the NOSB. The Secretary will then determine what substances should be proposed to be included in the National List and will publish the proposed list for public comment prior to establishing the National List.

Once established, the National List may be amended. Proposed additions to the National List will also be published for public comment. Substances included in the National List will be reviewed by the NOSB and the Secretary at least every 5 years.

PURPOSE: The NOSB has made an extensive effort to review existing organic certification organizations' lists of substances approved or prohibited for organic production and handling. However, it is possible that one or more substances currently appearing on these existing lists have not been included in the groups of substances being evaluated at this time by the technical advisors persons and the NOSB. In addition, there may be other substances that should be evaluated for inclusion on the National List which may be determined to be compatible with the organic management system of agricultural production and processing.

This Notice establishes the procedure by which interested parties may petition the NOSB for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion as a permitted synthetic or prohibited natural substance on the National List. Only the names of generic, single, active ingredients should be submitted; brand name products and formulations will not be evaluated or appear on the National List.

A request that a substance be evaluated, along with the following information, is specifically requested.

DETAILED INFORMATION:

Substance name (generic or common name);
Manufacturer's name, address, and phone, if different from the petitioner;
Area of intended use (crops, livestock, or handling/processing);
Specific use of the substance within the area of intended use;
Sources from which the substance is derived;
Description of the manufacturing or processing procedures; and
Summary of previous reviews by State or private organic certification programs.

REGULATORY INFORMATION (AS APPLICABLE):

EPA registration (include the registration number);
Food and Drug Administration registration;
State regulatory authority registration (include State registration number);
Chemical Abstract Service number or other product number; and
Labels of products that contain the petitioned substance.

SUPPLEMENTARY INFORMATION:

Detailed findings relevant to the substance's: detrimental chemical interactions with other materials used in organic farming; toxicity and persistence in the environment; environmental contamination resulting from its use and manufacture; effects on human health; and effects on soil organisms, crops and livestock;
Bibliographies;
Material Safety Data Sheet;
Information on the substance obtained from the National Institute of Environmental Health Studies; and
Information on whether all or part of any submission is believed to be confidential commercial information, and if so, what parts, and the basis for the belief it is confidential commercial information.

JUSTIFICATION: If petitioning for approval of a synthetic substance, state the reasons why the synthetic substance is necessary to the production, processing or handling of the organic product;

If the substance may be defined as synthetic, describe natural substances or alternative cultural methods that could be utilized in place of the synthetic substance; and summarize the beneficial effects to the environment, human health, or farm ecosystem that might support the use of the synthetic substance instead of the natural substances or alternative cultural methods.

If petitioning for prohibition of a natural substance, state the reasons why the natural substance should not be permitted in the production, processing or handling of the organic product.

The information requested for petitioning for a substance to be evaluated for inclusion on the National List should be completed as fully as possible. Persons submitting petitions may be requested to supply additional information.

Persons wishing to submit a petition should send the request and the information requested to: Michael Hankin, Senior Marketing Specialist, USDA, AMS, TMD, NOP, Room 2510 South Building, PO Box 96456, Washington, DC 20090–6456.

Authority: 7 U.S.C. 6501–6522.

Dated: March 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–7470 Filed 3–24–95; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

[Docket No. 94–119–4]

Boll Weevil Control Program; Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has confirmed its finding of no significant impact for a proposed program to eradicate the boll weevil in the Lower Rio Grande Valley of Texas. On January 30, 1995, we announced that we had prepared an environmental assessment and preliminary finding of no significant impact for the proposed eradication program. This confirmation of the finding of no significant impact follows our review of comments received regarding the proposed eradication program and the environmental assessment.

ADDRESSES: Copies of the final environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Wickheiser, Writer-Editor, Environmental Analysis and Documentation, BBEP, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1228, (301) 734–8963. Copies of the final environmental assessment and finding of no significant impact are available in both English and Spanish and may be obtained by contacting Ms. Wickheiser or by calling Plant Protection and Quarantine's Central Region Office at (210) 504–4154.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) has proposed to cooperate in a boll weevil

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eradication program in the Lower Rio Grande Valley of Texas in the counties of Brooks, Cameron, Hidalgo, Starr, and Willacy. The proposed Lower Rio Grand Valley program would relay on integrated control methods, including the use of chemicals, on cotton crops. Consistent with the National Environmental Policy Act (NEPA), Aphids had prepared an environmental assessment (EA) that analyzes the potential effects of the program's alternatives and actions on the quality of the human environment.

The EA considers the characteristics of the Lower Rio Grande Valley and focuses on the Potential effects of chemical pesticides. Because of the presence of communities in proximity to cotton fields, certain program modifications and some additional protective measures have been proposed and adopted. The potential presence of endangered and threatened species in close proximity to program activities prompted APHIS to also prepare a biological assessment of endangered and threatened species which contains special protective measures for those species. All of these protective measures are designed to reduce the potential for adverse effects.

Consistent with important policy objectives and principles of "environmental justice" as expressed in Executive Order No. 12898, APHIS held a public meeting on November 29, 1994, in Weslaco, TX (59 FR 56458, Docket No. 94–119–1), and two public hearings on February 16, 1995 (60 FR 5617–5618, Docket No. 94–119–2; 60 FR 7747–7748, Docket 94–119–3), also in Weslaco, TX. The purpose of the November 1994 public meeting was to provide a forum for community input on health and environmental issues associated with implementation of the proposed boll weevil eradication program. APHIS considered the public's perspectives in its development of the EA for the proposed program. The purpose of the February 1995 public hearings was to provide the public additional opportunities to express views or question agency officials regarding the proposed eradication program, the EA, and the preliminary finding of no significant impact.

APHIS made the EA and the preliminary finding of no significant impact available for public review for a period of 30 days. Subsequent to that period, APHIS considered the comments that it received from the public (private individuals, organizations, industry, and government) before making final revisions in the EA.

The APHISA decisionmaker has confirmed the preliminary finding that the proposed eradication program will not significantly impact the quality of the human environment, and determined that an environmental impact statement does not need to be prepared, and that the program may proceed.

We are mailing copies of the final EA and final finding of no significant impact (in English or Spanish, as applicable) to all persons who submitted comments or manifested an interest in the proposed eradication program.

Done in Washington, DC, this 22nd day of march 195.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7526 Filed 3–24–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Monday, April 17, 1995, at the Oregon Department of Transportation (ODOT) Building, 255 Capitol Street NE, Room #122, Salem, Oregon. The meeting will begin at 9:00 a.m. and continue until approximately 3:00 p.m. Agenda items to be covered include: (1) Orientation to the Advisory Committee process and the President's Forest Plan, (2) Introduction of members and expectations, (3) Operating guidelines and ground rules, (4) Status of PIEC activities and forecast of future activities, (5) Open public forum. All Willamette PIEC meetings are open to the public, and interested citizens are encouraged to attend. Written comments concerning the Advisory Committee's affairs can be submitted at the meeting. Oral comment can also be made during the public forum. Length of oral comments will be limited to the time allotted on the agenda.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Neal Forrester, Designated Federal Official, Willamette National Forest, 211 East Seventh Avenue, Eugene, Oregon; 503–465–6924.

Dated: March 21, 1995.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 95–7445 Filed 3–24–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on Thursday, May 4, 1995, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to plan and discuss civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rosalee T. Walker, 907–586–2873, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–7381 Filed 3–24–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9:00 a.m. until 6:30 p.m., on Thursday, April 20, 1995, at the Indiana Convention Center and RCA Dome, 100 South Capitol Avenue, Indianapolis, Indiana 46225. The purpose of the meeting is to gather information on "The Enforcement of Affirmative Action Compliance in Indiana under Executive Order 11246."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E.

Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–7382 Filed 3–24–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Integrated Coverage Measurement (Dual System Estimation Follow–up Questionnaire).

Form Number(s): DG–1301.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 525.

Number of Respondents: 2,100.

Avg Hours Per Response: 15 minutes.

Needs and Uses: Prompted by the need to improve estimation techniques during the decennial census, the Census Bureau has developed an Integrated Coverage Measurement (ICM) approach to be tested during the 1995 Census Test. The ICM approach will utilize a separately sampled group of blocks within the 1995 Census Test sites which will be independently listed and then interviewed. We will reconcile differences between the independent roster obtained during the ICM interviews and the census test results. This reconciliation will allow us to measure our coverage of persons in missed housing units and coverage of persons missed within housing units enumerated in the census test. Two techniques for estimating population coverage will be used in the 1995 Census Test — Census Plus and Dual System Estimation (DSE). In DSE, a sample of persons counted in the ICM enumeration will be matched to regular census test results in the ICM sample blocks. Matching will be done internally. However, follow–up will be necessary in cases where the information we have is insufficient to determine a person's residence or match status.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 21, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–7490 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Coverage Study.

Form Number(s): DG–1300.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 160 hours.

Number of Respondents: 960.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau is testing many new methods during the 1995 Census Test to enhance coverage and contain costs for the Year 2000 Decennial Census. Four of those new methods are the "Be counted" forms, refined rostering questions, the use of administrative records to improve coverage (simulated use only; administrative records will not be used to add persons to the census test count), and the use of automated matching and unduplication software. In order to evaluate these methods, the Census Bureau plans to conduct a Coverage Study in two of the three 1995 Census Test sites — Oakland, CA and Paterson, NJ. The Coverage Study is designed to measure the degree to which each method introduced or, in the case of administrative records, may introduce erroneous enumerations (EEs) into census test counts and to determine the demographic characteristics of the EEs. Enumerators will visit a sample of households to verify residency status and to collect demographic characteristics about persons that were either added or deleted from census test counts by means of one of the above methods.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 21, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–7489 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket A(32b1)–2–95; Docket A(32b1)–3–95]

Foreign-Trade Zone 124—Grammercy, Louisiana, Subzone 124C, Star Enterprise, (Crude Oil Refinery Complex); Foreign-Trade Zone 116—Port Arthur, Texas, Subzone 116A, Star Enterprise (Crude Oil Refinery Complex) Requests for Modification of Restrictions

Requests have been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, and the Foreign-Trade Zone of Southeast Texas, grantee of FTZ 116, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Orders 667 and 668 authorizing Subzones 124C and 116A at the crude oil refinery complexes of Star Enterprise in Convent, Louisiana, and in Jefferson/Hardin Counties, Texas. The requests were formally filed on March 22, 1995.

The FTZ Board approved subzone status for the Star Enterprise refineries

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in 1993 (Subzone 124C, Board Order 667, 59 FR 60, 1/3/94; and Subzone 116A, Board Order 668, 59 FR 61, 1/3/94). The approvals were subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise.

The companies are now requesting that this restriction be modified so that they would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products including the following: benzene, toluene, xylenes, hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, ethane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, and sulfuric acid.

The requests cite the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [30 days from date of publication].

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 22, 1995

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–7497 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 031695C]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on April 10–14, 1995, at the Holiday Inn Savannah-Midtown, 7100 Abercorn Expressway, Savannah, GA 31406; telephone: 1–800–255–8268 or 1–912–352–7100.

The Golden Crab Committee will meet on April 10, from 1:30 p.m. until 5:00 p.m., to discuss options for a Fishery Management Plan (FMP) and to approve FMP options for public hearings.

On April 11, from 8:30 a.m. until 5:00 p.m., the Scientific and Statistical Committee (SSC) will discuss the Wreckfish Assessment Report, the Mackerel Assessment Report and options for Amendment 8 to the Mackerel FMP. The SSC will review Golden Crab FMP options, Snapper-Grouper Amendment 8 options, Snapper-Grouper controlled access options and Shrimp Amendment 1. The SSC will discuss ways of managing fisheries in the face of declining data and research. It also will hear presentations on a definition of overfishing and a report on social impact assessments.

At 6:30 p.m., the Council will receive scoping comments on finfish bycatch in the shrimp fishery and on developing an FMP for the calico scallop fishery.

On April 12, from 8:30 a.m. until 12:00 noon, the Mackerel Committee will meet jointly with the Mackerel Advisory Panel (AP) to review the mackerel stock assessment and total allowable catch, quotas and bag limits options. It will discuss options for the next mackerel amendment (Amendment 8), including several options for trip limits, boundary allocations between the South Atlantic and the Gulf groups of king mackerel, commercial transfers of Spanish mackerel, entry regulations, net lengths, cobia management ranges and trip limits, adding African pompano to the management unit of the plan, and allowable gear regulations. The AP also will review other modifications concerning how the Councils manage the coastal pelagics fisheries, including changes to the framework procedure.

The Mackerel Committee will meet from 1:30 p.m. until 3:00 p.m., to set total allowable catch limits, quotas and bag limits. It will also choose items for Amendment 8 to go to public hearings.

The Shrimp Committee will meet from 3:00 p.m. until 5:30 p.m., for a briefing on the ad-hoc Rock Shrimp AP's progress in providing information and additional management options for consideration in Amendment 1. The Shrimp Committee will also discuss research efforts and options to address bycatch in the South Atlantic shrimp fishery.

On April 13, the AP Selection Committee will conduct a closed meeting to consider new appointments and reappointments to the Habitat and Environmental Protection AP, the Mackerel AP, the Shark AP, the Snapper-Grouper AP, the Spiny Lobster AP, the Sea Scallop AP and the Wreckfish AP. The SSC Selection Committee will also conduct a closed meeting to review the current SSC membership and to consider new appointments.

The full Council will convene on April 13, from 3:00 p.m. until 6:00 p.m., and April 14, from 8:30 a.m. until 12:00 noon, to hear Committee reports and recommendations. The Council will approve golden crab options for public hearings, mackerel total allowable catch, quota and bag limits, and Mackerel Draft Amendment 8 for public hearings. It will also make appointments to the APs and the SSC.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, South Atlantic Fishery Management Council; One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366 or (803) 769–4520.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office at the above address by March 23, 1995.

Dated: March 20, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7396 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Proposed Determination of New Expiration Dates of Certain Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The Patent and Trademark Office (PTO) intends to determine and publish the new expiration dates of patents that, (1) are in force on June 8, 1995, (2) are entitled to a term of 20 years from filing, and (3) have received a term extension under either section 155 or 156 of title 35, United States Code. The PTO seeks written comments on its intended course of action.

DATES: Written comments must be submitted on or before April 26, 1995

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: H. Dieter Hoinkes, Office of Legislative and International Affairs, Crystal Park 2, Suite 902, or by facsimile to (703) 305–8885.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes by telephone at (703) 305–9300, by facsimile at (703) 305–8885, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under section 156 of title 35, United States Code, patent term extensions are issued for eligible patents from the original expiration date of the patent. Since this provision was enacted in 1984, the PTO has issued 195 certificates of patent term extension in accordance with section 156. Under the Uruguay Round Agreements Act ("URAA"), Public Law 103–465, patents in force on June 8, 1995, are entitled to a patent term of 17 years from grant or 20 years from their earliest filing date, whichever is greater (see 35 U.S.C. 154(c)(1)). It is estimated that 94 patents whose terms were extended under section 156 are entitled to such a longer patent term.

On February 16, 1995, the PTO held a public hearing to elicit comments on what action it should take regarding patents that are entitled to a longer patent term under the URAA and that had previously been extended under section 156. (See 60 Fed. Reg. 3398 (Jan. 17, 1995)). After having considered all the comments, both written and oral, the PTO intends to publish the new expiration date of all patents that fall into the category mentioned above. The determination of the new expiration dates will be based on the following three considerations:

(1) A patent that would have expired under the original 17-year patent term before June 8, 1995, but that has received a patent term extension for a period beyond June 8, 1995, is a patent "in force" on June 8, 1995, even though the rights derived from that patent are circumscribed by section 156(b) of title 35.

(2) The "original expiration date of the patent" referred to in section 156(a) of title 35 is the date on which the patent would have expired if it had not been extended under section 156 to expire at a later date. Therefore, the "original expiration date" of the patents under consideration is the date on which the 20-year term from filing terminates.

(3) The extension already issued on the basis of the 17-year term will be added to the 20-year term, subject to the limitation imposed by section 156(c)(3) of title 35. That provision limits the period remaining in the term of an extended patent to fourteen years counted from the date on which the product under review received approval for commercial marketing by the relevant regulatory authority.

In addition, it should be noted that under the provisions of section 155 of title 35, 33 patents were extended, each for a period of five years, ten months and 17 days. Of the 32 patents in force on June 8, 1995, 20 are entitled to the longer term of 20 years from their relevant filing date. Their new expiration date, taking into account the term of extension provided by 35 U.S.C. 155, is also intended to be published.

Comments are invited on the course of action the PTO intends to undertake with respect to the new expiration dates of patents in the category discussed above. In issuing its final determination, the PTO will respond to significant comments received.

Dated: March 20, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–7388 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

March 21, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 21, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on March 28, 1995, you are directed to amend the directive dated December 16, 1994 to reduce the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
340	786,355 dozen of which not more than 405,245 dozen shall be in Category 340–Z.[2]
617	15,431,268 square meters.
634	553,806 dozen.
636	505,085 dozen.
638/639	2,272,199 dozen.
643	463,884 numbers.
670–L [3]	14,276,734 kilograms.

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Category	Adjusted twelve-month limit [1]
870	27,553,177 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–7423 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The New World Vistas Information Applications Panel of the USAF Scientific Advisory Board will meet on 25–26 April 1995 at the Air Intelligence Agency, San Antonio, TX from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to provide information applications assessments on issues relating to New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–7456 Filed 3–24–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army Corps of Engineers

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Rancho Palos Verdes Shore Protection Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intents to prepare an Environmental Impact Statement (EIS) to support a cost-shared feasibility study with the City of Rancho Palos Verdes, California for shoreline protection along the City of Rancho Palos Verdes coastline. The purpose of the feasibility study is to evaluate alternatives for reducing erosion, sedimentation, and turbidity along the Rancho Palos Verdes coastline. A Corps-recommended plan would include construction of shore-protection measures to reduce ongoing damages to the shoreline from coastal erosion by storm, wave, and tidal events, and continued deposition of eroded materials in the adjacent marine environment. The EIS will analyze potential impacts of the recommended plan and a range of alternatives on the environment.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Environmental Support Section, P.O. Box 2711, Los Angeles, CA 90053–2325

FOR FURTHER INFORMATION CONTACT: Mr. Rey Farve, Project Ecologist, (213) 894–5510, or Ms. Anna Zacher, Study Manager, (213) 894–2028.

SUPPLEMENTARY INFORMATION: The study area is located along the coastline of the Palos Verdes Peninsula in the City of Rancho Palos Verdes. The topography consists primarily of a shoreline backed by steep slopes below a pronounced sea cliff, and is also characterized by rocky headlands, and gravelly, narrow beaches.

Previous shoreline surveys indicate that the nearshore, in the recent past, has experienced significant accretion and a seaward advance of more than 150 feet. Since 1956, when a contemporary landslide began, the shoreline has been accredit and extended by earth movement into the surf zone. Thousands of tons of material have been washed away from the shoreline and deposited in the nearshore basin, offshore, or carried downcoast. As much as 30 inches of sediment have been deposited over rocky bottom areas which historically supported a rich and diverse intertidal and subtidal biological community near the toe of the landslide berm. Up to 6 inches of sediment have been measured, in certain areas, as far offshore as 300 feet.

Proposed Action and Alternatives

The Los Angeles District will investigate and evaluate all reasonable alternatives to address methods to reduce shore erosion, sedimentation, and turbidity along the Rancho Palos Verdes coastline. In addition to the NO ACTION alternative, the construction of structures such as revetments or gabions along the shoreline or breakwaters or dikes in the nearshore would be evaluated as to their feasibility as shore protection measures. It should be noted that the Corps will not analyze or address a solution to the landslide problem, and will not develop Corps position on whether the landslide is stabilizing, or is expected to stabilize, based on shore protection.

Scoping Process

The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. A public scoping meeting is scheduled at the Fred Hesse Community Park Building, 29301 Hawthorne Blvd., Rancho Palos Verdes, CA at 7:30 pm, April 26, 1995. The purpose of the meeting is to gather information from the general public or interested organizations about issues and concerns they would like to see addressed in the EIS. Comments may be delivered in writing or verbally at the meeting or sent in writing to the Los Angeles District at the address given above.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–7457 Filed 3–24–95; 8:45 am]

BILLING CODE 3710–KF–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Herndon Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Herndon Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson Real Estate Division, Southern, Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Herndon Annex, Orlando, FL, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day-to-day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407)–246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Herndon Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 54 acres of improved and unimproved fee simple land at the Naval Training Center, Herndon Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Warehouse/Administration (8 structures). Comments: Approx. 134,900 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Herndon Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: March 20, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7417 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—McCoy Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, McCoy Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which

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authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, McCoy Annex, Orlando, FL, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day-to-day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, McCoy Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 838 acres of improved and unimproved fee simple land at the Naval Training Center, McCoy Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks/Support (6 structures). Comments: Approx. 62,600 square feet.
—Family Housing/Multiplex (53 structures). Comments: Approx. 452,800 square feet.
—Medical/Community Support (34 structures). Comments: Approx. 358,350 square feet.
—Operational/Administration (10 structures). Comments: Approx. 65,200 square feet.
—Maintenance/Motor Pool (11 structures). Comments: Approx. 36,000 square feet.
—Capehart Duplex Housing (359 structures). Comments: 2,500 square feet per unit on average.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, McCoy Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: March 20, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7418 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Area C

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the reuse commission that has been established to plan the reuse of the Naval Training Center, Area C, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the commission to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Area C, Orlando, FL, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day-to-day operations of the commission are handled by Mr. Herb Smetheram, Executive Director. The address of the commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Area C, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 45 acres of improved and unimproved fee simple land at the Naval Training Center, Area C, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Administration/Support (3 structures). Comments: Approx. 58,000 square feet.

—Warehouse/Storage (18 structures). Comments: Approx. 138,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Area C, Orlando, FL, shall submit to said commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: March 20, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7419 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Main Station

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Main Station, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure

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sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Main Station, Orlando, FL, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the Commission. Day-to-day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Main Station, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 1,184 acres of improved and unimproved fee simple land at the Naval Training Center, Main Station, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks (72 structures). Comments: Approx. 2,703,400 square feet.

—Housing/Housing Support (5 structures). Comments: Approx. 11,290 square feet.

—Personnel/Community Support (75 structures). Comments: Approx. 581,000 square feet.

—Administration (22 structures). Comments: Approx. 227,700 square feet.

—Operational Training/Fuel (20 structures). Comments: Approx. 1,113,000 square feet.

—Maintenance (10 structures). Comments: Approx. 66,000 square feet.

—Storage/Medical (6 structures). Comments: Approx. 114,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Main Station, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: March 20, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7420 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–FF–P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Reserve Center, Coconut Grove, Miami, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Reserve Center, Coconut Grove, Miami, FL, the surplus property that is located at that closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact one of the above.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Reserve Center, Coconut Grove, Miami, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on June 7, 1991, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 12, 1994, the City of Miami, FL, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the Federal Register publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Reserve Center, Coconut Grove, Miami, FL, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Reserve Center, Coconut Grove, Miami, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Miami, FL. Day-to-day operations of the commission are handled by Mr. Cesar H. Odio, City Manager, P.O. Box 330708, Miami, FL 33233–0708, telephone (305) 250–5400 and facsimile (305) 285–1835.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Reserve Center, Coconut Grove, Miami, FL, that were declared surplus to the federal government on June 7, 1991.

Land

Approximately 3.27 acres of fee simple land at the Naval Reserve Center, Coconut Grove, Miami, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes. Property numbers are available on request.

—Administrative building (one structure). Comments: Approx. 12,330 square feet.

—Garage (one structure). Comments: Approx. 6,300 square feet with an attached paint storage shed of approx. 1,956 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Reserve Center, Coconut Grove, Miami, FL, shall submit to the City of Miami, FL, a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the City of Miami shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Miami, FL, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 12, 1994.

Dated: March 20, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7421 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–FF–P

Chief of Naval Operations (CNO) Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet April 19–20, 1995 from 9:00 a.m. to 4:00 p.m. on each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, intelligence community reorganization, reserve structure and mobilization, and asymmetric warfare. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

March 21, 1995.

M.D. Schetzsle,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7422 Filed 3–24–95; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 24, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement

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for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Tribal Divisions of Education School Reform Program.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 50.
Burden Hours: 2,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This program assists tribal divisions of education in coordinating school reform plans developed for schools funded by the Bureau of Indian Affairs (BIA) and those plan developed for public schools. The Department will use the information to determine which applicants are best qualified to receive Federal funds under the law.
Additional Information: Clearance for this information collection is requested for March 24, 1995. An expedited review is requested in order to quickly distribute the application notice to potential applicants.

[FR Doc. 95-7413 Filed 3-24-95; 8:45 am]

BILLING CODE 4000-01-M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) was requested by March 15, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill, (202) 708-9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type or review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (60 Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review was requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Goals 2000 Parent Information and Resource Centers.
Frequency: Annually.
Affected Public: Not for profit institutions; State, Local or Tribal Government.
Reporting Burden:
Response: 300.
Burden Hours: 14,400.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.
Abstract: Title IV of the Goals 2000: Educate America Act, public Law 103-227 authorizes the establishment of parent information and resource centers to provide training, information, and support to parents of children aged birth through five, and children enrolled in elementary and secondary schools.
Additional Information: Clearance for this information collection was requested for March 15, 1995 so that applications could be developed and submitted prior to the end of the school year.

[FR Doc. 95-7414 Filed 3-24-95; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER89-401-021, et al.]

Citizens Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

March 20, 1995.

Take notice that the following filings have been made with the Commission:

1. Citizens Power & Light Co.

[Docket No. ER89-401-021]

Take notice that on February 27, 1995, Citizens Power & Light Company (Citizens) tendered for filing a letter informing the Commission that during the fourth calendar year quarter, Citizens did not enter into any agreements pursuant to which Citizens bought or sold electric power for resale.

2. Heartland Energy Services, Inc.

[Docket No. ER94-108-002]

Take notice that on March 3, 1995, Heartland Energy Services, Inc. tendered for filing with the Federal Energy Regulatory Commission information relating to the above docket.

3. Puget Sound Power & Light Co.

[Docket No. ER94-1559-000]

Take notice that on March 14, 1995, Puget Sound Power & Light Company (Puget) tendered for filing supplemental information to its August 16, 1994 filing in the above referenced docket.

4. City of Concord, North Carolina, Town of Dallas, North Carolina, Publics Works Commission of the Town of Due West, South Carolina, Public Works Department of the Town of Forest City, North Carolina, Public Works Commissioners of Greenwood, South Carolina, City of Kings Mountain, North Carolina, City of Prosperity, South Carolina, and Seneca Light and Water Board of Seneca, South Carolina, Complainants v. Duke Power Company, Respondent

[Docket No. EL95-31-000]

Take notice that on March 10, 1995, the City of Concord, North Carolina, the Town of Dallas, North Carolina, the Public Works Commission of the Town of Due West, South Carolina, the Public Works Department of the Town of Forest City, North Carolina, City of Kings Mountain, North Carolina, the Public Works Commissioners of Greenwood, South Carolina, the Town of Prosperity, South Carolina, and the Seneca Light and Water Board of Seneca, South Carolina (collectively the Municipals), tendered for filing complaint against Duke Power Company (Duke). The Municipals request an investigation to determine whether the rates charged by Duke to its resale Schedule 10 customers are unjust, unreasonable and unduly discriminatory, and, if so, to establish just, reasonable and non-discriminatory rates. The Municipals request that the Commission establish just and reasonable rates using coincident peak demands, to be applied prospectively from the conclusion of the proceeding, and just and reasonable rates using non-coincident peak demands, for the purpose of measuring refunds to which the Municipals may be entitled. The Municipals ask the Commission to establish a refund effective date not later than sixty days following the filing of the complaint. Also, the Municipals request that a rider like Duke's Rider EC Economic Development be made available to the Municipals as a pass-through.

Comment date: April 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER95-202-000]

Take notice that on March 3, 1995, Southern California Edison Company (Edison) tendered for filing a supplement to its November 18, 1994 filing of the Short Term Power Sale Agreement (Short Term Power Sale Agreement (Short Term PSA) between the City of Anaheim and Edison. The supplement placed a limit on the total revenue Edison collects in any calendar month for Capacity and Associated Energy under the Short Term PSA.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Co.

[Docket No. ER95-251-000]

Take notice that Wisconsin Electric Power Company (WEP) tendered for filing on March 10, 1995 an amendment in the above-referenced docket.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER95-511-000]

Take notice that on March 9, 1995, Southern California Edison Company tendered for filing a Notice of Withdrawal of the filing filed on January 27, 1995 in the above-referenced docket.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Missouri Public Service Co.

[Docket No. ER95-652-000]

Take notice that on February 27, 1995, Missouri Public Service Company tendered for filing a Service Agreement under its power sales tariff with Intercoast Power Marketing Company.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Blackstone Valley Electric Co.

[Docket No. ER95-682-000]

Take notice that on March 14, 1995, Blackstone Valley Electric Company tendered for filing supplemental information to its March 2, 1995 filing in the above-referenced docket.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Louisiana Gas and Electric Co.

[Docket No. ER95-694-000]

Take notice that on March 3, 1995, Louisiana Gas and Electric Company tendered for filing a Notice of Cancellation of all service agreements executed under Rate GSS to date with NORAM Energy.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corp.

[Docket No. ER95-700-000]

Take notice that on March 6, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Citizens Power & Light Corporation (Citizens). This Service Agreement specifies that Citizens has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Citizens to enter into separately scheduled transactions under which NMPC will sell to Citizens capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of January 30, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Citizens.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corp.

[Docket No. ER95-716-000]

Take notice that on March 9, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Burlington Electric Department (Burlington) dated March 6, 1995 providing for short term firm transmission services to Burlington. Niagara Mohawk requests an effective date of March 18, 1995.

Copies of this filing were served upon Burlington and the New York State Public Service Commission.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

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13. Carolina Power & Light Co.

[Docket No. ER95–717–000]

Take notice that on March 9, 1995, Carolina Power & Light Company (Carolina) tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities, Rainbow Energy Marketing Corporation; Louis Dreyfus Electric Power Inc.; Enron Power Marketing, Inc.; LG&E Power Marketing, Inc., and Electric Clearinghouse, Inc. Service to each Eligible Entity will be in accordance with the term and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER95–718–000]

Take notice that on March 9, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination for PacifiCorp Rate Schedule FERC No. 344.

Copies of this filing were supplied to Bonneville Power Administration, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER95–719–000]

Take notice that on March 9, 1995, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Exhibit A (Revision No. 18, effective September 30, 1994) to the February 25, 1976 Transmission Agreement (PacifiCorp Rate Schedule FERC No. 123) between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Exhibit A specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and an effective date of September 30, 1994 be assigned to Exhibit A, this date being consistent with the Effective date shown on Exhibit A.

Copies of this filing were supplied to Tri-State, the Wyoming Public Service Commission, the Public Utility Commission of Oregon and the Washington Utilities and Transmission Commission.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania Power & Light Co.

[Docket No. ER95–720–000]

Take notice that on March 9, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission (the Commission) a Power Supply Agreement (Agreement) between PP&L and Allegheny Electric Cooperative, Inc. (AEC) dated February 13, 1995. The Agreement provides for the sale by PP&L to AEC of electrical energy on a firm basis at a new delivery point. PP&L states that the rates included in the Agreement are identical to the rates approved by the Commission in PP&L's last wholesale rate case in Docket No. ER94–945–000.

PP&L has requested the Agreement be effective sixty days following the filing date. PP&L has requested waiver of 18 CFR 35.12 to permit it to adopt by reference in this filing information previously submitted to the Commission in ER94–945–000.

PP&L states that a copy of its filing was provided to AEC and to the Pennsylvania Public Utility Commission.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Southern California Edison Co.

[Docket No. ER95–723–000]

Take notice that on March 10, 1995, Southern California Edison Company (Edison) tendered for filing the following environmental energy storage agreement:

Environmental Energy Storage Agreement executed by the United States of America Department of Energy acting by and through the Bonneville Power Administration and Southern California Edison

The Agreement provides the terms and conditions whereby Edison stores energy received from Bonneville during the period from April 16 through July 31 for a given calendar year and returns an equal amount of energy to Bonneville during the immediately following period of November 15 through March 31.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7403 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. QF88–292–003 and EL95–29–000]

Kamine/Besicorp Allegany L.P.; Errata Notice

March 21, 1995.

In the Notice of Amendment to Filing, issued March 13, 1995, (60 FR 14742, March 20, 1995), change the date for filing protests and interventions from March 28, 1995 to April 3, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7405 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–207–000]

Equitrans, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 21, 1995.

Take notice that on March 17, 1995 Equitrans, Inc. (Equitran), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheet, with a proposed effective date of April 15, 1994:

Original Sheet No. 9A

Equitrans states that the purpose of the filing is to flow through to its former bundled sales customers the refunds which Equitrans has received from upstream pipelines and suppliers for gas purchase and transportation activity which occurred prior to its implementation of Order No. 636. The filing proposes to flow through $4,745,056.88 of Account No. 191 refunds and billing adjustments, including carrying charges, to Equitrans' former bundled sales customers.

Equitrans states that this amount corresponds to refunds which Equitrans has received from upstream pipelines and suppliers since June 1, 1994, when Equitrans filed to to direct bill its former Rate Schedule PLS customers for the positive balance in its Account No. 191 upon termination of its PGA. The refunds relate to purchase activity which took place under Equitrans' former PGA through August 31, 1993. Upon acceptance of the tariff sheet, Equitrans states that it will flow through refunds on a lump-sum basis to its former sales customers under Rate Schedule PLS.

Any person desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7409 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA95–3–000]

Ferguson-Burleson County Gas Gathering System, J.V.; Notice of Petition for Adjustment

March 21, 1995.

Take notice that on February 1, 1995, Ferguson-Burleson County Gas Gathering System, J.V. (Ferguson-Burleson), filed pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's Regulations to permit Ferguson-Burleson to use its tariff on file with the Railroad Commission of Texas (TRC) for services performed pursuant to NGPA Section 311.

In support of its petition, Ferguson-Burleson states that it is an intrastate pipeline operating in the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. Ferguson-Burleson acquired gas pipeline facilities formerly owned by Winnie Pipeline Company. Ferguson-Burleson's gathering and transportation rates are subject to regulation by the TRC. Ferguson-Burleson anticipates providing Section 311 transportation and storage service on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for a charge not to exceed the transportation rate on file with the TRC, which is currently $0.15 per MMBtu.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7411 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–131–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 21, 1995.

Take notice that on March 16, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective February 1, 1995 and March 1, 1995:

Substitute Sixth Revised Sheet No. 60
Substitute Seventh Revised Sheet No. 60

Northern if filing to correct a typographical error on one of the MID rates. The Rate for firm transportation from Receipt District 14 to Delivery District 17 (APR–OCT) was misstated and should be reduced as follows:

—On Substitute Sixth Revised Sheet No. 60: From 5.23 to 4.88 cents per MMBtu
—On Substitute Seventh Revised Sheet No. 60: From 4.41 to 4.06 cents per MMBtu

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95-7406 Filed 3-24-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95–185–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 21, 1995

Take notice that on March 16, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 1995:

Substitute Eighth Revised Sheet No. 60

Northern states that it is filing to correct a typographical error on one of the MID rates. The Rate for firm transportation from Receipt District 14 to Delivery District 17 (APR–OCT) was misstated and should be reduced on Substitute Eighth Revised Sheet No. 60 from 5.83 cents per MMBtu to 5.22 cents per MMBtu.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on

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file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7408 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–145–001]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

March 21, 1995.

Take notice that on March 16, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 125, with a proposed effective to coincide with the same effective date ultimately given to tariff sheets previously filed in this docket.

Northwest states that the purpose of this filing is to comply with the Commission's March 1, 1995, Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference (Order). The Order was issued in response to Northwest's January 30, 1995, filing wherein Northwest proposed to implement tariff provisions that would allow Northwest to sell (i) gas that becomes the property of Northwest pursuant to the provisions of terminated transportation or storage agreements or due to tariff provisions relating to interruptible storage or shipper imbalances; and (ii) other de minimis volumes of gas as the need arises.

Northwest states that it has revised "Section 3. Rates and Charges" of Rate Schedule S–1 on Sheet No. 125 by removing the phrase "and such rates and charges shall not be subject to the jurisdiction of the Commission." Northwest states that it also responded in the instant filing to the intervenors' concerns.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers, upon all intervenors in Docket No. RP95–145–000 and upon interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7407 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–65–001]

Transwestern Pipeline Co.; Notice of Compliance Filing

March 21, 1995.

Take notice that on March 10, 1995, Transwestern Pipeline Company (Transwestern), tendered for filing as part of it FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective January 5, 1995

Seventh Revised Sheet No. 2

and as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets:

Effective January 5, 1995,

Eighteenth Revised Sheet No. 1
First Revised Sheet No. 88

On January 5, 1995, the Commission issued an order in this proceeding granting Transwestern and Natural Gas Pipeline Company of America (NGPL) abandonment authorization under Section 7(b) of the Natural Gas Act (January 5 Order). The January 5 Order authorized the abandonment of Transwestern's and NGPL's natural gas exchange service under Transwestern's Rate Schedule X–7 and NGPL's Rate Schedule X–18, subject to certain conditions including Transwestern making the instant filing. Pursuant to Ordering Paragraph (A), Transwestern herein submits the above referenced tariff sheets to reflect the abandonment of the certificated exchange service under Transwestern's Rate Schedule X–7 set forth in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2.

Transwestern respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary, specifically, but not limited to, Sections 154.22 and 154.63 of the Commission's Regulations, so as to permit the tariff sheets submitted herewith to become effective January 5, 1995, which is the effective date of the Commission's Order issued in Docket No. CP95–65–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7404 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–210–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 21, 1995.

Take notice that on March 17, 1995, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 17, 1995:

5th Revised Sheet No. 52

Transwestern states that the above-referenced tariff sheet is being filed to revise Transwestern's quality specifications regarding the percentage of carbon dioxide that will be allowable for gas delivered into its system. Transwestern requests an effective date of April 17, 1995, for this tariff sheet. Specifically, Transwestern proposes to revise § 2.1 (E) and (F) of the General Terms and Conditions of its FERC Gas Tariff that currently provide that gas delivered into its system must contain no more than three percent of carbon dioxide and no more than a combined total of four percent of carbon dioxide plus nitrogen.

Transwestern proposes to modify its tariff language to reduce the percentage of carbon dioxide from three percent to two percent and reduce the percentage of carbon dioxide plus nitrogen from four percent to three percent. Transwestern seeks these modifications in an effort to conform its quality specifications for the allowable percentage of carbon dioxide with those percentages of pipelines upstream and downstream of Transwestern's system as well as to conform with the gas quality specifications of pipelines with

which it competes in providing transportation services. Such modifications will also result in safer and more efficient pipeline operations on Transwestern's system.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7410 Filed 3–24–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5178–6]

Transfer of Confidential Business Information to EPA Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of confidential business information to agency contractors and request for comments.

SUMMARY: EPA will transfer to its contractors, A.T. Kearney, Inc., PRC, Inc., and SAIC, Inc. confidential business information (CBI) which has been submitted to EPA under RCRA statutes administered by the Agency. Also, the Agency will transfer CBI to the following subcontractors of these firms: Metcalf & Eddy, Booz Allen & Hamilton, TRC Environmental Corp., Midwest Research Institute, Cadmus Group, DPRA, Environ, META, Vigyan, Franklin Associates, Sigma Research Corporation, Becker Associates, Eastern Research Group, BAT Associates, Inc., CCJM, Hydrogeologic, Inc., ENSECO, CDM Federal Programs Corp., ICF, Resource Applications, Inc., Dynamac, Quanterra Environmental Services, C.C. Johnson, Malhotra, RAI, ISSI, Fifer Environmental and InfoPro. Also, A.T. Kearney will be a subcontractor to SAIC and SAIC will be a subcontractor to A.T. Kearney under their respective contracts.

DATES: Transfer of confidential business data will occur no sooner than (insert 10 days from date of publication).

FOR FURTHER INFORMATION CONTACT: John Fogarty, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–260–7922.

SUPPLEMENTARY INFORMATION: Under EPA Contract numbers 68–W4–0004, 68–W4–0005, 68–W4–0006, 68–W4–0007 and 68–W4–0013, A.T. Kearney, PRC, SAIC, and their subcontractors, will assist the EPA Regional Offices (I–X) by providing technical assistance and services which support EPA's RCRA enforcement and permitting activities, such as sampling, corrective action oversight, technical review of documents, and special studies.

Pursuant to EPA regulations 40 CFR, Part 2, Subpart B, EPA has determined that the above contractors require access to RCRA CBI to perform the work required under these contracts. EPA is submitting this notice to inform all submitters of CBI that EPA will transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the above contractors will return all such materials to EPA.

Prior to the transfer of any RCRA CBI, A.T. Kearney, PRC and SAIC, and their subcontractors will receive authorization for access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will review and approve the security plans of the contractors and sub-contractors. Contractor and sub-contractor personnel will sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to CBI.

Dated: March 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–7494 Filed 3–24–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5178–4]

Science Advisory Board Notification of Public Advisory Committee Meeting, Open Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that various Committees and Subcommittees of the Science Advisory Board will meet as follows:

(1) *The Science Advisory Board's (SAB's) Executive Committee*, will conduct a meeting on Tuesday and Wednesday, April 10–11, 1995. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. It will begin at 8:30 a.m. and adjourn not later than 5:00 p.m. on each day.

At this meeting the Executive Committee will receive updates from each of its 10 standing committees, as well as its special subcommittees.

The EC will also examine procedural issues. Tim Fields, Deputy Assistant Administrator for the office of Solid Waste and Emergency Response, will discuss the experience of SAB's being involved in site-specific cases. Representatives of the Agency's Management and Operations staff will report on their findings in a study of the operation of the Office of the SAB.

Additional topics on the agenda include status reports on the Agency's ecological risk assessment guidelines and on the Agency's development of new methodology for economic analysis. The Deputy Administrator will also seek the EC's views on the Presidential-initiated review of Agency's regulations. Representatives of various offices will provide background information on the emerging state of environmental protection at the state, national, and international levels.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee (1400), U.S. Environmental Protection Agency, Washington, DC 20460 at 202–260–4126; FAX 202–260–9232; and INTERNET barnes.don@epamail.epa.gov. Limited unreserved seating will be available at the meeting.

(2) *The Acid Deposition Effects Subcommittee* of the Ecological Processes and Effects Committee (EPEC) will meet on April 12–13, 1995, at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, N.W., Washington, DC 20001, telephone (202) 638–1616. The purpose of the meeting is to review the Agency's draft Acid Deposition Standard Feasibility Study Report to Congress. The Subcommittee will meet 8:30 am to 5:00 pm on April 12 and from 8:00 am to 10:00 am on April 13.

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The meeting will be open to the public, but seating will be on a first-come basis.

Background: The Report to Congress was mandated by Title IV of the Clean Air Act Amendments of 1990 and is intended to address the feasibility and effectiveness of an acid deposition standard to protect sensitive and critically sensitive aquatic and terrestrial resources. The report, which has been released by the Agency for public comment (**Federal Register**, February 10, 1995, vol. 60, no. 28, p. 7965; comment period subsequently extended to April 1), projects acid deposition and effects under varying scenarios using the Regional Acid Deposition Model (RADM) and the Model for Acidification of Groundwater in Catchments (MAGIC). Effects from both nitrogen and sulfur deposition are considered. The Charge to the Subcommittee includes the following questions: (1) Have the models been applied in a credible manner and/or within the bounds of applicability for the scientific analyses and assessments in the report? (2) Have the modeling results been appropriately integrated? In what ways might the integration be improved? (3) Are the conclusions drawn in the study consistent with the state of the science and the state of modeling? (4) What conclusions are insupportable or weak? For what reasons? How might they be improved? (5) Are there important conclusions from prior modeling reports that should be included in the report? (6) Have the scientific uncertainties associated with the conclusions drawn in the study been adequately characterized? If not, what approaches are suggested?

Additional Information: To obtain a meeting agenda, contact Ms. Constance Valentine, Science Advisory Board, 401 M Street, SW (1400F), Washington, DC 20460, telephone (202) 260–6552, FAX (202) 260–7118, or via the Internet at valentine.connie@epamail.epa.gov. To obtain a copy of the draft Acid Deposition Standard Feasibility Report to Congress, contact the Office of Air and Radiation Docket and Information Center at (202) 260–7548/7549 or at FAX (202) 260–4400 and refer to Docket AR–95–01.

Anyone wishing to make an oral presentation to the Subcommittee regarding the draft Report to Congress must notify Stephanie Sanzone, Designated Federal Officer for EPEC, at telephone (202) 260–6557, FAX (202) 260–7118, or via the INTERNET at sanzone.stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed.

(3) *The Physical Effects Review Subcommittee (CAACACPERS)* of the Clean Air Act Compliance Analysis Council (CAACAC) will conduct a brief teleconference meeting on Wednesday, April 12, 1995 from 2:00 p.m. to 3:00 p.m. eastern time. In the teleconference, the CAACACPERS will discuss its draft report resulting from a public meeting held on November 15 and 16, 1994 (See **Federal Register**, Vol. 59, No. 191, Tuesday, October 4, 1994, pp. 50599–50601, relating to review drafts of the Physical Effects Documents pertaining to section 812 of the Clean Air Act (CAA), namely (1) Ozone, (2) Sulphur Oxides, (3) Particulate Matter, (4) Carbon Monoxide, (5) Nitrogen Oxides, and (6) Lead, and a draft methodology document, which outlines the overall strategy of this effort. The proposed charge to the CAACACPERS relating to this review is listed in the October 4, 1994, **Federal Register** notice.

The CAACACPERS will also discuss with Agency staff additional supporting documentation regarding the overall Physical Effects review process; and to plan for a possible additional review for mid-May, to be held in Washington, DC, metropolitan area.

For copies of the Agency's draft section 812 CAA draft documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–3354, and FAX (202) 260–5732. Any member of the public desiring to participate in the teleconference, desiring additional information about the meeting, or desiring to obtain copies of the agenda and other information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552 or FAX at (202) 260–7118, or via the INTERNET at: pozun.diana@epamail.epa. Gov.

(4) *The Ecological Processes and Effects Committee* will meet on April 13, 1995, beginning at 10:00 a.m. and ending no later than 4:00 p.m., at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW, Washington, DC. The purpose of the meeting is to receive a briefing on the Agency's development of draft Ecological Risk Assessment Guidelines, and to engage in a consultation with Agency staff on a proposal to establish a network of ecosystem index sites as part of the Environmental Monitoring and Assessment Program (EMAP). The SAB has developed the consultation as a mechanism to advise the Agency on technical issues that should be considered in the development of regulations, guidelines or technical guidance before the Agency has taken a position.

Additional Information: To obtain a meeting agenda, contact Ms. Constance Valentine, Science Advisory Board, 401 M Street, SW (1400F), Washington, DC 20460, telephone (202) 260–6552, FAX (202) 260–7118, or via the Internet at valentine.connie@epamail.epa.gov.

Anyone wishing to make an oral presentation to the Subcommittee regarding the topic under review must notify Stephanie Sanzone, Designated Federal Officer for EPEC, at telephone (202) 260–6557, FAX (202) 260–7118, or via the INTERNET at sanzone.stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed.

(5) *The Hazardous Waste Identification Rule (HWIR) Subcommittee* of the SAB Executive Committee will meet on April 26–27, 1995, at the Governor's House Hotel, 1615 Rhode Island Ave., NW, Washington DC, 20036, telephone (202) 296–2100. The Subcommittee will meet from 8:30 am to 5:00 p.m. on April 26 and from 8:00 a.m. to 4:00 p.m. on April 27. The meeting will be open to the public, but seating will be on a first-come basis.

Background: The purpose of the meeting is to review the Agency's draft multi-media, multi-pathway risk analysis being developed to support the proposed Hazardous Waste Identification Rule (HWIR); the purpose of HWIR is to specify those conditions under which materials designated as hazardous waste may be declassified as such and therefore no longer subject to the constraints of hazardous waste management. The Executive Committee established an ad hoc subcommittee for this review in order to adequately consider the multiple routes of fate, transport, and exposure of humans, plus ecological effects of wastes. The Charge to the Subcommittee includes examination of the approaches for assessing fate and transport of waste constituents, ecological exposure and effects, and human exposure and effects. In addition, the Agency has asked the Subcommittee to consider whether the approach taken for determining high-end estimates will produce roughly comparable levels of conservatism across the different pathways and receptors being considered.

Additional Information: To obtain a copy of the review document, "Development of human health-based and ecologically-based exit criteria for the Hazardous Waste Identification Project (HWIP)," contact the RCRA Docket at (202) 260–9327. To obtain a meeting agenda, contact Ms. Constance Valentine, Science Advisory Board, 401 M Street, SW (1400F), Washington, DC 20460, telephone (202) 260–6552, FAX (202) 260–7118, or via the Internet at valentine.connie@epamail.epa.gov.

(6) *The Environmental Economics Advisory Committee (EEAC)* of the Science Advisory Board will meet on April 27, 1995 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington DC 20007. The hotel telephone number is (202) 338–4600.

Background: The meeting, which is open to the public, will start at 9:00 a.m., and adjourn no later than 5:00 p.m. Its main purpose is to review reports drafted by the Committee on the resources for economic analysis at the Environmental Protection Agency, and on methodology for collecting information on the annual investment in pollution control capital equipment and operations. The Committee may also consult with Agency Staff from the Office of Policy, Planning and Evaluation (OPPE) on methodology underlying the OPPE "Cost of Clean" report.

Additional Information: An agenda for the meeting is available from the Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202–260–6552). Members of the public desiring additional information about the conduct of the meeting should contact Dr. Edward Bender, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260–2562, via Internet to bender.edward@epamail.epa.gov, by facsimile to (202) 260–7118, or by mail to the address noted above.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. For meetings other than teleconference calls, opportunities for oral comment will be usually limited to five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

To Obtain More Information on or Participate in the SAB Meetings

These meetings are open to the public, but seating or telephone lines are limited and available on a first come basis. Any member of the public wishing further information concerning the meetings, such as a proposed agenda, or who wishes to submit oral to written comments (at least 35 copies) should contact the appropriate Designated Federal Official as listed above. Written inquiries can be sent to the following address: U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460. Phone: (202) 260–6552 or FAX (202) 260–7118.

Members of the public who wish to make a brief oral presentation at the teleconference or meetings should contact the listed Designated Federal Official no later than one week prior to the meeting of teleconference in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at a teleconference or meeting will not be repetitive of the previously submitted oral or written statements. Written comments received in the SAB Staff Office sufficiently prior to a meeting date (usally one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: March 30, 1995.

Samuel Rodberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–7496 Filed 3–24–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5178–6]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory CSIC subcommittee meeting(s); open meeting(s).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several subcommittees of the Common Sense Initiative Council (CSIC) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed with each subcommittee announcement below.

(1) Printing Sector Subcommittee—April 18 and 19, 1995

The Common Sense Initiative Council, Printing Sector Subcommittee (CSIC-PSS) is conducting a meeting on April 18 and 19, 1995. The CSIC-PSS will meet at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the hotel is (703) 418–1234 On Tuesday, April 18th, the meeting schedule is 9 a.m. to 5 p.m. On Wednesday, April 19th, the meeting is scheduled from 9 a.m. until approximately 3:30 p.m. The meeting agenda will focus on several areas: (1) Finalizing procedural matters relating to the CSIC-PSS operation; (2) discussing draft workplans prepared by workgroups; and (3) allowing time for breakout sessions of the workgroups.

Limited time will be provided for persons wishing to make oral presentations at the meeting. Anyone wishing to submit written comments must forward at least 35 copies to Ginger Gotliffe, Designated Federal Officer (DFO), U.S. EPA, Office of Compliance (2224A), 401 M Street SW., Washington, DC 20460. Comments should be received by April 14. For further meeting information contact Ginger Gotliffe, DFO on (202) 564–7072, or Nancy Cichowicz, Alternate DFO, Region III, on (215) 597–2030.

(2) Automobile Manufacturing Sector Subcommittee—April 20, 1995

The Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC-AMS) is holding an open meeting on Thursday, April 20, 1995 from 8:30 a.m. to 4:00 p.m., at the St. James Preferred Residence, 950 24th Street, NW.,

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Washington, DC 20037, phone (202) 457–0500.

Three workgroups were formed at the first meeting in January, (1) Permits; (2) Regulatory Programs; and (3) Lifecycle Management and Innovative Technology. At this meeting, reports will be presented from the three workgroups on draft workplan activities. Information presented will aid the CSIC-AMS is discussion and development of a consensus workplan.

For further information on this meeting, please call Carol Kemker, DFO, on (404) 347–3555 (ext. 4222), Keith Mason on (202) 260–1360, or Leila Yim on (202) 260–0628.

(3) Iron and Steel Sector Subcommittee—April 26, 1995

The Common Sense Initiative Council, Iron and Steel Sector Subcommittee (CSIC-ISS) is convening an open meeting on Wednesday, April 26, 1995 from 8:30 a.m. to 11:30 a.m. at the Sheraton Cleveland City Centre Hotel, 777 St. Clair Avenue, Cleveland, OH 44114, telephone number (216) 771–7600.

The four CSIC-ISS workgroups (1) Innovative Technology; (2) Compliance; (3) Permits; and (4) Brownfields will meet on Tuesday preceding the meeting at the same location. The full CSIC-ISS subcommittee will meet on the 26th to deliberate and review activities and projects recommended by the workgroups and to provide consensus decisions on developing a CSIC-ISS workplan and implementing projects.

For further information on this meeting, please call either Mary Byrne, Region V, on (312) 353–2315 or Judith Hecht, EPA Headquarters, on (202) 260–5682.

(4) Metals Finishing Sector Subcommittee—April 27 and 28, 1995

The Common Sense Initiative Council, Metals Finishing Sector Subcommittee (CSIC-MFS) will hold an open meeting on April 27 and 28, 1995 at the Holiday Inn at the Crossing, 801 Greenwich Avenue, Warwick, RI 02886, telephone number (401) 732–6000 (the hotel is located off Exit 12A of Interstate 95). Meeting times are scheduled to run from approximately 9 a.m. to 4 p.m. each day. The meeting on April 27th will begin as an open session of the subcommittee followed by various workgroup sessions later that day. The full subcommittee will be in session all day on April 28th. The agenda will focus on further definition of workplan objectives and consensus decisions relating to workplan formulation and implementation. Workgroups of the CSIC-MFS include: Regulatory and Reporting Programs; Research and Technology; Promoting Improved Performance; Environmentally Responsible Transition; and Compliance Assistance and Enforcement.

For further information regarding CSIC-MFS activities relating to this announcement contact either Bob Benson, EPA Headquarters, on (202) 260–8668 or Mark Mahoney, Region I, on (617) 565–1165.

Inspection of Subcommittee Documents

Documents relating to the above subcommittee announcements will be publicly available at the meetings. Thereafter, these documents, together with official minutes for the meetings, will be available for public inspection in room 2417M of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, phone (202) 260–7417.

Dated: March 18, 1995.

Vivian M. Daub,

Acting Designated Federal Officer.

[FR Doc. 95–7493 Filed 3–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Correction to Report No. 2063]

Petition for Reconsideration of Actions in Rulemaking Proceedings

March 22, 1995.

Report No. 2063, released March 16, 1995 (60 FR 14941, March 21, 1995) prematurely listed the below petition for reconsideration. Therefore this petition is hereby deleted.

Subject: Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems. (PR Docket No. 93–61)

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7380 Filed 3–24–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Classic Voyages Company, Two North Riverside Plaza, Suite 600, Chicago, Illinois 60606

Vessel: AMERICAN QUEEN

Dated: March 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7374 Filed 3–24–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

YachtShip CruiseLine, Inc. (d/b/a American West Steamboat Company), 520 Pike Street, Suite 1610, Seattle, Washington 98101

Vessel: QUEEN OF THE WEST

Dated: March 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7375 Filed 3–24–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Discovery Sun Partnership, Discover Sun Cruises, Inc. and Discovery Sun Tours, Inc., 1850 Eller Drive, Fort Lauderdale, Florida 33316

Vessel: DISCOVERY SUN

Dated: March 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7376 Filed 3–24–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certification (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Discovery Sun Partnership, Discovery Sun Cruises, Inc. and Discovery Sun Tours, Inc., 1850 Eller drive, Fort Lauderdale, Florida 33316

Vessel: DISCOVERY SUN

Dated: March 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7377 Filed 3–24–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Radisson Seven Seas Cruises, Inc., Seven Seas Enterprise, Inc. and Seven Seas Nassau Limited, 600 Corporate Drive, Fort Lauderdale, Florida 33334

Vessel: SONG OF FLOWER

Dated: March 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7378 Filed 3–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Allied Irish Banks, p.l.c., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, p.l.c., Dublin, Ireland; to engage *de novo* through its subsidiary First Maryland Bancorp, Baltimore, Maryland, in making investments in limited partnerships the primary purposes of which is to acquire, construct, or rehabilitate low- and moderate- income housing, which projects are intended to qualify for the Low Income Tax Credit under the Internal Revenue Code of 1986, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First State Bancorp, Inc., LaCrosse, Wisconsin; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-7425 Filed 3-24-95; 8:45 am]

BILLING CODE 6210-01-F

James River Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. James River Bankshares, Inc., Suffolk, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Suffolk, Suffolk, Virginia, and The Bank of Waverly, Waverly, Virginia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

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President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Comfort Bancshares, Inc., Comfort, Texas, and thereby indirectly acquire Comfort State Bank, Comfort, Texas.

Board of Governors of the Federal Reserve System, March 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-7426 Filed 3-24-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Administration for Children and Families

Availability of Funding for Alternative Approaches to the Provision of Cash Assistance, Medical Assistance, Social Services, and Case Management to Refugees [1]

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Request for applications under the Office of Refugee Resettlement's program to implement alternative projects to provide cash assistance, medical assistance, social services, and case management to refugees. This notice supersedes the notice published in the **Federal Register** of June 11, 1985 (50 FR 24583).

ELIGIBLE APPLICANTS: Eligible applicants for the alternative program grants include public and private non-profit organizations, such as States and public and private non-profit organizations and institutions.

SUMMARY: This is a standing announcement. It governs the competitive award of grants for the purpose of implementing alternative programs in order to improve the outcomes of the refugee resettlement program. Improvement is to be achieved by promoting employment at the earliest time possible, by increasing economic independence among refugees, and by improving delivery and coordination of assistance and services to refugees.

The intent of this announcement is to encourage Wilson/Fish alternative projects in areas where refugees have had a history of extended welfare utilization. Projects are also encouraged where there is interest in restructuring the program to become more cost effective: (a) By increasing the number of refugees who become self-sufficient, (b) by avoiding welfare dependency in the arriving refugee populations, and (c) by increasing coordination among assistance and social services agencies.

Alternative programs that provide interim cash and medical assistance to the project's refugees must be an alternative to Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA), and/or Aid To Families with Dependent Children (AFDC) and Medicaid Programs. Refugees receiving assistance through Wilson/Fish alternative projects are not eligible to receive comparable assistance from RCA/RMA and/or AFDC/Medicaid for which the Wilson/Fish projects are alternatives. However, this applies only to the assistance provided; e.g., if only cash assistance is provided under the alternative project, refugees would continue to be eligible for medical assistance (RMA or Medicaid) and the State would continue to receive reimbursement for RMA from ORR and from the Health Care Financing Administration (HCFA) for Medicaid.

ORR has no separate funding appropriated for the implementation of the alternative projects. Successful applicants will be awarded grants from existing ORR appropriations for cash and medical assistance and for social services. The grant awards must be reconciled with the level of funds the project's target population would otherwise receive during the same budget and project periods under the current program. If AFDC refugees are part of the application's target population, funds also will be awarded from the Federal share of Title IV–A (AFDC) assistance and from HCFA for Title XIX (Medicaid), if the project proposes an alternative to Medicaid. The State government will be required to contribute its share of funds for these programs as they would in the absence of an alternative project.

This announcement is soliciting applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the project and a determination that continued funding would be in the best interest of the government. In the event that changes to the previously approved project are proposed, these changes will be reviewed by the same criteria used for the original application. These criteria are: (a) Increasing refugee self-sufficiency, (b) avoiding welfare dependency, and (c) increasing coordination among the service providers and the voluntary agencies. For the first two years of the project, funds will be awarded under a cooperative agreement. Whether to continue subsequent awards under a cooperative agreement will be within the discretion of the Director.

This announcement also provides for an alternative project to be a vehicle to continue resettlement programs in States where the State government chooses not to administer RCA/RMA or equivalent programs.

The authorizing legislation permits alternative projects for refugees who have been in the U.S. less than 36 months, but it also permits projects to cover specific groups of refugees who have been in the U.S. for 36 months or longer and are determined to have been significantly and disproportionately dependent upon welfare, if the services proposed are needed for them to become self-sufficient and if including them under the project would be cost-effective.

EFFECTIVE DATE: This is a standing announcement. Review of applications will take place twice a year, or at the discretion of the Director, as indicated under "**REVIEW AND DUE DATES.**"

FOR FURTHER INFORMATION CONTACT: Allan Gall, Director, Division of Operations, Office of Refugee Resettlement, 6th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447 (202) 401–9251.

AUTHORIZATION: Projects are authorized by section 412(e)(7) of the Immigration and Nationality Act, 8 U.S.C. 1522(e)(7). The applicable text of this provision, known as the "alternative projects amendment," follows:

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. The Secretary may permit alternative projects to cover specific groups of refugees who have been in the United States 36 months or longer if the Secretary determines that refugees in this group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act.

(C)

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 414(a) of this Act, part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

Purpose and Scope: The purpose of this announcement is to provide eligible applicants an opportunity to increase effectiveness in meeting arriving refugees' needs for assistance and services in a manner that promotes the refugees' social integration, early employment, and financial self-sufficiency. It offers applicants the opportunity to test ways of meeting arriving refugees' basic needs through services that are concurrent, are culturally and linguistically compatible, emphasize employment, and address the needs of all family members when providing employment and other social services. The services should be cost-effective by promoting welfare avoidance and by enhancing refugees' prospects for earliest possible self-sufficiency and should improve coordination of refugee social services in the community of resettlement.

There are several circumstances where an alternative project may be considered. For example, it may be appropriate: (1) Where the program of refugee cash and medical assistance is not being provided in a manner that is coordinated effectively with concurrent employment and language services to promote early self-sufficiency; (2) where the existing program of services is ineffective in assisting certain groups of refugees to become self-sufficient; (3) where AFDC-eligible refugees may not be priority clients for the Job Opportunities and Basic Skills Training (JOBS) program or may not have access to refugee service agencies that have culturally and linguistically compatible staff and services; (4) where the dual systems for assistance and services for refugees receiving AFDC and those receiving RCA/RMA limit the service providers' effectiveness in delivering services in a unified, coordinated, and consistent manner which is understood by the refugee community; and, (5) where refugees have to wait before enrolling in language and employment services because the demand for these services exceeds the supply.

Applications which propose to implement programs of both assistance and social services are strongly encouraged because ORR believes that assistance-only, or services-only, projects would not effectively implement the spirit of the amendment. If the application does not propose a comprehensive system of assistance and services, ORR will expect the application to give a rationale for the program proposed, to describe the exceptional circumstances surrounding it, and to offer a justification for its limited scope.

Wilson/Fish alternative projects will not be considered by ORR where they would represent competition for alternatives for the same assistance or services. For example, where a State has a Medicaid demonstration project approved by HCFA which covers refugees who would otherwise be eligible for RMA, ORR will not consider funding alternative health care services. However, ORR will reimburse the State for its share of the costs of HCFA-approved Medicaid alternative projects which cover refugees who would otherwise be RMA eligible.

Application Procedures

Designing a well-coordinated system of assistance and services for refugees is a complex task. For that reason, ORR urges all prospective applicants to consult extensively and collaborate fully with ORR while developing the application. The following procedures are designed to assist the process:

1. Prospective applicants who have contacted ORR will be provided informal consultation on the conceptualization of the problem and on potential corrective program strategies. In the event there is more than one applicant for the same community/geographic area, ORR will encourage prospective applicants to collaborate in one application; but, if collaboration is not possible, competing applications will be considered.

2. Prospective applicants shall submit a 3–5 page concept paper which is to include: a statement of the problem with respect to the goals of the alternative project (please cite statistics, if available, to document the problem with respect to the target population and the geographic area to be covered); a brief description of the current system of assistance and services; a description of current employment outcomes for refugees by 6-month arrival intervals; the proposed strategy to remedy the problem; a statement of the applicant agency's qualifications for administering the program proposed; and any additional information which the applicant feels is relevant in considering the concept proposed.

3. An application for a one-time-only planning grant to cover the costs of developing an alternative program may be submitted. The request should describe the proposed planning activities and the time needed to complete them. If the planning activities are to continue for more than 3 months, the application should include a proposed reporting schedule for planning activities and financial reports every 3 months. A line-item budget with supporting narrative must be provided. The costs of preparing an application will not be considered in the planning grant.

4. ORR staff will review the concept paper and, if submitted, the planning grant application. ORR will respond to concept papers within 30 days. Responses to requests for planning grants may require up to 60 days. Where indicated, ORR will provide comments and guidance on how, if possible, the concept might be made more feasible. Planning grant awards will be made at the Director's discretion.

5. The applicant will conduct comprehensive planning activities coordinated with the refugee resettlement community and commences with writing the application. If there is more than one applicant for the project, ORR will provide equal access by all applicants to information and consultation. As noted in earlier sections, alternative project grants are awarded from the existing appropriations, so award levels must be met from the funds available for cash and medical assistance and for social services. Therefore, prospective applicants are urged to consult frequently with ORR throughout the development of the application.

6. The application will be submitted.

7. The application will be reviewed against the criteria herein and against applicable ACF discretionary grant review procedures.

ORR strongly urges all applicants to follow these steps to ensure a comprehensive consultation process However, the applications of agencies

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that do not follow the steps suggested above will be given equal consideration and will be reviewed by the same criteria and applicable grant review procedures.

Application Content

1. Problem Statement

Describe the problem in the current resettlement situation with respect to: (a) Voluntary agencies placing refugees in the community and their relationship to the proposed alternative project; (b) the target population (numbers, ethnicities, and characteristics that might affect achievement of economic self-sufficiency, such as social adaptation, employment patterns, etc.) and the geographic area to be covered; (c) refugees' access to, and the availability of, entry-level employment in the community; (d) whether there is concurrent provision of language and employment services; (e) refugee welfare utilization data and the reasons, if applicable, for high utilization in the targeted community; (f) barriers to, and need for, coordination among public and private refugee service providers; and (g) current employment and other program outcomes.

2. Proposed Strategy: The Program Design

A. Describe the proposed program and address the specific policies and procedures of the program designed to include the following as appropriate:

1. *Cash and medical assistance* (e.g., eligibility criteria, payment standards, administrative procedures, etc.). The level of support must be equivalent to local AFDC/RCA payment standards and be distributed to the recipients fairly and equitably; there must be provision for sanctions for non-cooperation with employment and social services plans; and there must be provision for fair hearings and appeals similar to procedures followed in the AFDC or RCA programs.

2. *Employment services, language training, case management and other social services.* The application must discuss the services proposed to be provided under the project and to discuss how these will be coordinated with services for refugees available to project participants from providers not participating in the alternative project. The application should discuss how the targeted population will access the services, how they rank in priorities for available services and what limits exist, or will exist, on the scope of services, e.g., maximum number of hours of language training.

3. *Access to other Federal programs.* The application should discuss access and eligibility of the project's participants to other programs, e.g. Food Stamps, WIC, PIC/JTPA, AFDC/SSI/JOBS, expanded medical coverage under OBRA, etc.

B. Describe how the proposed project will improve the applicant's refugee resettlement program and how it proposes to provide interim financial support, medical services, support services and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters coordination among the resettlement agencies and service providers.

C. An integrated system of assistance and services is considered an essential characteristic of an alternative project. The application should describe how this integration will be effected in the project.

D. Alternative options for medical care are encouraged, but because these can be expensive and difficult to develop, applications will not be required to include alternative medical assistance where RMA or Medicaid remain available for refugees. If the applicant for an alternative project does not propose to provide medical services, the application must describe how medical services will be provided.

Any alternative to RMA proposed under an alternative project must provide services equivalent to the approved Medicaid Plan of the State(s) in which the project will be implemented. Where HCFA approves a State Medicaid demonstration, this becomes a State's approved Medicaid Plan for the persons eligible thereunder.

Where a State expands Medicaid eligibility through a Medicaid (Title XIX) demonstration project approved by HCFA to cover refugees not previously Medicaid eligible, medical coverage for refugees in alternative projects will not be considered, and where medical coverage is in effect, it will be terminated in a reasonable and timely manner to permit refugees to enroll under the HCFA-approved demonstration. ORR will reimburse States for the State's share of medical demonstration project costs for refugees who otherwise would have been eligible for RMA. (See ORR State Letter # 95–01, January 12, 1995. Attachment.)

E. Describe also the measures to be used to assure coordination of refugee service providers, including voluntary resettlement agencies, MAAs, and the other public and private agencies that provide services to refugees.

F. Provide documentation of consultation with the State Refugee Coordinator.

G. If a manual guiding the provision of assistance and services to the refugees is to be developed, this should be described and the proposed timeline for its completion included. If a manual is completed, this should be attached to the application to support the narrative of this section.

H. Where the application for the proposed alternative is a comprehensive State-wide project, the application must describe how the proposed alternative program will address any other element of the current State program which the new project would include, replace, interrelate with, or otherwise impact. This could include funding for Mutual Assistance Associations (MAAs), coordination with the State public health program for services to refugees, resources for language training services, etc. Projects proposing alternative cash assistance will need to coordinate with the State welfare office and these applicants must include a contact point within the State welfare system with whom the project proposes to coordinate as needed.

3. Rationale for the Alternative Projects

State the rationale for using the alternative project as the means for addressing the problem. State the rationale for the proposed program strategy that encourages refugees' self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. Discuss the proposed strategy's anticipated cost effectiveness.

4. Organizational System

Describe the organization's plan for administering and managing the project. Describe the location of the project in the structure of the agency and include key personnel position descriptions and names of those who will implement the project. Describe the plans for training and on-going technical assistance.

Describe the overall data collection and analysis anticipated to document project outcomes. Describe the plan and schedule for program monitoring, evaluation, and required audits. Successful applicants will be required to report outcomes on ORR's standard Quarterly Performance Report (QPR).

If a manual is to be developed for the management and administration of the project, it should be described and the proposed timeline for its completion included. If the manual is completed this should be attached to the application to support the narrative of this section.

5. Program Outcomes

Describe proposed program outcomes. Include the plan for measuring project outcomes: e.g., welfare avoidances and numbers of refugees who achieve self-sufficiency, employment counseling and other services contacts, job placements, 90-day retention of employment, English language training participation numbers, etc.

6. Project Budget

Provide a detailed line-item budget by cost category: (a) Cash assistance, (b) medical assistance, (c) social services, to include employment services, language training, social adjustment services, and other allowable services, (d) administration (break out administrative costs by program activity). Describe how the costs for cash and medical assistance were calculated. (Sample client-loading chart and sample budget are available from ORR.) Discuss the costs of the current program using the most recent 12 month period for which data exists, including numbers of refugees served, to provide a base for comparing the estimated costs of the project. Discuss unit costs of services to the refugees for the current program and for the proposed project (e.g., include the anticipated arrival rates of refugees into the community). Provide a narrative to support the costs included in each category. Since ORR does not receive funds specific to the implementation of alternative projects and has not specified "funds available" in this notice, it is important to discuss the amount of funds requested during the planning and application process with ORR in order to assure a project design which ORR can fund. It is also important to list the anticipated funding sources with projected amounts, i.e., ORR, State government, other federal programs, and any other resources.

Application Review Criteria

1. Problem Statement

Clarity and completeness of description of: The problem; targeted population; coordination of services in the local resettlement community; opportunity for early employment for refugees; availability of concurrent employment and language services; adequacy of the statistics used to describe the problem. Points: (10)

2. Proposed Program Strategy

Clarity, completeness, and reasonableness of the proposed strategy as it relates to the target population to be served and the geographic area to be covered; adequacy of the cash and, if provided, medical assistance policies and administration; fairness and equity of the eligibility criteria for assistance; reasonableness of the sanctioning procedures and the clients' access to appeals and fair hearings procedures; coordination of assistance and services; availability of other Federal and State programs; entry-level employment opportunities; provision, availability, and coordination with existing language training; appropriateness and purpose of case management strategies; coordination with other service providers within the community of resettlement; consultation with the State Coordinator; and if the State will no longer administer the program, the adequacy of the coordination with the mainstream State-administered agencies which also provide services to refugees, i.e., public health, AFDC program (if not included in the alternative projects target population), etc. Points: (35)

3. Rationale for Proposing the Alternative Projects

Appropriateness and reasonableness of the rationale for proposing an alternative project. Probability that the project will increase refugee self-sufficiency, avoid welfare dependency among arriving refugees, and assure coordination among the service providers and voluntary agencies. Probability that the project will be cost-effective. Points: (10)

4. Organizational System

Adequacy of the organizational system for project administration. Adequacy of staff training and ongoing technical assistance activities. Adequacy of reporting design (e.g., use of ORR Quarterly Performance Report, data analysis, etc.). Adequacy of plan for program monitoring and evaluation. Points: (15)

5. Proposed Outcomes

Reasonableness of the outcomes proposed; feasibility of the methodology proposed for collecting outcome data. Points: (15)

6. Project Budget

Reasonableness, adequacy, and completeness of the budget and line-item budget narrative. Reasonableness of procedures (e.g., client-loading chart) used to estimate the budget amount requested. Adequacy of the discussion of the anticipated funding sources. Points: (15)

Application Submission Information

Application Assurances Forms

Attachments contain the standard forms necessary for the application for awards under this announcement. Copies may be obtained by writing or telephoning: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–9251.

Each application should complete and include one original and two additional copies of the following forms. The instructions and forms required for submission of applications are attached. The forms may be reproduced for use in submitting applications:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the Drug-Free Workplace Certification and the Debarment Certification.

b. "Budget Information-Non-Construction Programs" SF–424A).

c. A completed, signed and dated "Assurance-Non-Construction Programs" (SF–424B).

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: completed, sign and date form.

e. Disclosure of Lobbying Activities, SF-LLL: completed, sign and date form, if necessary.

f. A project Narrative consisting of the elements described in the Application Content section of this announcement.

Procedures for Submission

Applications must be submitted in accordance with the closing dates specified below.

a. Deadlines:

Review and Due Dates: Applications to this standing announcement will be considered on April 1 and October 1 each year. Applications received at other times will be reviewed at the discretion of the Director. Applications will be considered to have met the April 1 and October 1 review dates if they are either:

(1) Received on or before the deadline date at the address specified in this program announcement; or

(2) Mailed on or before the deadline date and received by the granting agency in time for the independent review. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier

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or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

b. Application Delivery:

By Hand: Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

By Mail: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, OFM/DDG, Washington, DC. 20447. A formal grant application sent by mail—including Express Mail and other, private "express" mail service parcels—must be addressed as indicated above and must be *postmarked* no later than midnight on the closing date in order to be considered.

c. Late applications: Applications which do not meet the criteria in paragraph a. of this section are considered late applications. ACF will notify each late applicant that its application is not being considered in the current competition.

d. Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF. An application with an original signature and two copies is required.

e. Non-profit status: Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Any of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

Intergovernmental Review (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Colorado, Connecticut, Hawaii, Alaska, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8 (a) (2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC. 20447.

A list of Single Points of Contact for each State and Territory is included as appendix A of this announcement.

Applicable Regulations

Applicable HHS regulations will be provided to grantees upon award.

Post Award Requirements for Reports and Records

Grantees are required to file Financial Status (SF–269) reports on a semi-annual basis and Program Progress Reports on a quarterly basis. Funds shall be accounted for and reported upon separately from all other grant activities.

The official receipt point for all reports and correspondence is the Division of Discretionary Grants. The original copy of each report shall be submitted to the Grants Management Specialist, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC. 20447.

The final Financial and Program Progress Reports shall be due 90 days after the project period expiration date or termination of grant support.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.583.

Dated: March 20, 1995.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 95–7506 Filed 3–24–95; 8:45 am]

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Appendix A—Executive Order 12372—State Single Points of Contact

ARIZONA

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

ARKANSAS

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

CALIFORNIA

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

DELAWARE

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

DISTRICT OF COLUMBIA

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC. 20005, Telephone (202) 727–6551

FLORIDA

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

GEORGIA

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

ILLINOIS

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

INDIANA

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

IOWA

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

KENTUCKY

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

MAINE

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

MARYLAND

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

MASSACHUSETTS

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

MICHIGAN

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

MISSISSIPPI

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Peral Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

MISSOURI

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

NEVADA

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

NEW JERSEY

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

NEW MEXICO

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

NEW YORK

New York State Clearinghouse Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

NORTH CAROLINA

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

NORTH DAKOTA

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

OHIO

Larry Weaver, State Single Point of Contract, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

RHODE ISLAND

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

TENNESSEE

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

TEXAS

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

UTAH

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

VERMONT

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

WISCONSIN

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

WYOMING

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

GUAM

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

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PUERTO RICO
Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

VIRGIN ISLANDS
Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

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APPENDIX B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): —

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State H Independent School Dist.
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: .
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a Applicant | b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous editions not usable

Standard Form 424 (REV 4-88)
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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifer number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
l. Program Income	$	$			$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$		$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the total of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

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establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation or residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184–01–M

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix E—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

_____
Date

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable* _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

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Appendix F—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Appendix G—ORR State Letter

Number 95–01

Date: January 12, 1995.

To: State Refugee Coordinators

From: Lavinia Limon, Director, Office of Refugee Resettlement

Subject: Impact of Medicaid Waivers on Refugee Medical Assistance

Several States have received Medicaid waivers to expand health insurance for needy persons. These waivers have targeted needy individuals who are not categorically eligible for Medicaid, such as single persons, childless couples, and intact families without a connection to the work force. Many refugees now receiving refugee medical assistance (RMA) may become eligible under these new waiver programs. This letter is to provide policy clarification to States regarding how to handle eligibility in such situations and what ORR's policy regarding cost reimbursement will be for such cases.

ORR's policy is that refugees who become eligible for Medicaid through waiver provisions must be served under the Medicaid program, rather than under RMA.

Currently, 45 CFR 400.94 provides that a determination of eligibility for Medicaid must precede a determination of eligibility for RMA. In addition, § 400.100 restricts RMA coverage to refugees who are ineligible for Medicaid but who meet the financial eligibility requirements under § 400.101. The Health Care Financing Administration (HCFA) has informed us that the provisions of an approved Medicaid waiver replaces the applicable sections of the Medicaid State plan. Accordingly, under § 400.94, States must first determine refugee eligibility for the Medicaid waiver program. Only those refugees not eligible under the Medicaid waiver program could be eligible for RMA. If all refugees in a State are eligible under the waiver, the RMA program would be supplanted in its entirety by the Medicaid waiver program.

Costs incurred for refugees in a waiver program will be treated in the following manner:

- ORR will reimburse States for the State share of costs for refugees who would otherwise be eligible for RMA but who become eligible for Medicaid through the approved waiver provisions. The reimbursable costs will include the State share of Medicaid costs for these refugees for the first eight months of U.S. residency (or for whatever period of eligibility is in effect for RMA), including the State share of administrative costs of providing Medicaid to these refugees.
- ORR will not reimburse States for costs incurred by refugees who would have been eligible for Medicaid without the waiver provisions, such as refugees receiving SSI and AFDC.

We wish to emphasize the following two principles which guide our policy considerations on health care reform:

(1) ORR is committed to allowing States to include refugees in health care reform programs whenever possible, whether initiated at the Federal or State level; and

(2) ORR is committed to holding States harmless by reimbursing States for the State share of costs for RMA-eligible refugees in State health care reform programs.

In the event that your State applies for a Medicaid waiver which might affect the refugee program, please contact your State liaison or the ORR Policy Division in order to assure common understanding regarding the waiver and its implications for RMA and for refugees. We want to work together to assure that there is no misunderstanding regarding the regulations or how the costs will be covered.

[FR Doc. 95–7506 Filed 3–27–95; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–95–1085; FR–3868–D–01]

Revocation in Part and Delegation of Authority for Indian Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation in part and delegation of authority.

SUMMARY: This notice revokes authority from the Assistant Secretary for Community Planning and Development (CPD), in the case of Indian Tribes and Alaska Natives only, to administer the Emergency Shelter Grants Program (ESG) under Subtitle B of Part IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.* This notice delegates this authority to administer the ESG Program pertaining to Indian Tribes and Alaska Natives to the Assistant Secretary for Public and Indian Housing (PIH).

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Dudley, Deputy Director for Headquarters Operations, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, B–133, 451 7th Street, SW, telephone (202) 755–0066 or 755–0850 (voice/TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: By statute, Indian tribes receive a set aside of 1% of funds appropriated for the ESG Program for Indian and Alaskan Natives under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.* Originally this set aside of ESG funds for Indian tribes was administered by CPD field office staff working within Indian program offices located in six regional or field offices. CPD had complete responsibility for the set aside within its ESG Program.

Pursuant to Section 902 of the Housing and Community Development Act of 1992, 42 U.S.C. 3533, the Office of Native American Programs (ONAP) was created within the Office of Public and Indian Housing (PIH) in Headquarters. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. In addition, ONAP is to direct, coordinate and assist in managing HUD field offices that administer Indian and Alaska Native programs.

In accordance with the statute, the Secretary has already delegated to the Assistant Secretary for PIH, and the Assistant Secretary for PIH has redelegated to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs, the authority for the HOME and Community Development Block Grant (CDBG) Programs, in the case of Indian Tribes and Alaska Natives. This authority previously rested with the Assistant Secretary for CPD.

In furtherance of the goal of having one office of the Department administer all programs pertaining to Indian and Alaska Natives, the Secretary is revoking from the Assistant Secretary for CPD, and delegating to the Assistant Secretary for PIH, in the case of Indian Tribes and Alaska Natives only, the authority for the Emergency Shelter Grants Program under Subtitle B of Part

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IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.* In addition, published elsewhere in today's Federal Register, the Assistant Secretary for PIH is redelegating this authority to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs, within the Office of Public and Indian Housing.

Accordingly, the Secretary revokes in part and delegates authority as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates individually to the Assistant Secretary for PIH and to the General Deputy Assistant Secretary for PIH all power and authority with respect to the Emergency Shelter Grants Program, for Indian Tribes and Alaska Natives, pursuant to Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C 11371 *et seq.*, except as provided in Section B of this delegation of authority.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Authority Revoked

The Secretary of Housing and Urban Development revokes in part the Delegation of Authority published in the **Federal Register** on September 4, 1987, at 52 FR 33793: At Section A of that delegation, the Secretary revokes the authority of the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development, in the case of Indian Tribes and Alaska Natives only, to exercise the power and authority of the Secretary with respect to the Emergency Shelter Grants Program under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11371 *et seq.*

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d).

Dated: March 15, 1995

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 95–7400 Filed 3–24–95; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–95–1086; FR–3869–D–01]

Redelegation of Authority for Indian Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for PIH redelegates the authority for the Emergency Shelter Grants Program, for Indian Tribes and Alaska Natives, pursuant to Subtitle B of Part IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C 11371 *et seq.*

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Dudley, Deputy Director for Headquarters Operations, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, B–133, 451 7th Street, SW, telephone (202) 755–0066 or 755–0850 (voice/TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: By statute, Indian tribes receive a set aside of 1% of funds appropriated for the ESG Program, for Indian and Alaskan Natives, under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.* Originally, this set aside of ESG funds for Indian tribes was administered by CPD field office staff working within Indian program offices located in six regional or field offices. CPD had complete responsibility for the set aside within its ESG program.

Pursuant to Section 902 of the Housing and Community Development Act of 1992, 42 U.S.C. 3533, the Office of Native American Programs (ONAP) was created within the Office of Public and Indian Housing (PIH) in Headquarters. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. In addition, ONAP is to direct, coordinate and assist in managing HUD field offices that administer Indian and Alaska Native programs.

Consistent with the statute, the Secretary has elsewhere in today's **Federal Register** transferred to the Assistance Secretary for PIH, in the case of Indian Tribes and Alaska Natives only, the authority for the Emergency Shelter Grants Program under Subtitle B of Part IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.* Also in accordance with Section 902, this redelegation of authority redelegates this authority pertaining to Indian Tribes and Alaska Natives to Officials in the Office of Native American Programs within PIH.

Accordingly, the Assistant Secretary for PIH redelegates authority as follows:

Section A. Authority Delegated

The Assistant Secretary for PIH redelegates individually to the Director, Office of Native American Programs, to the Deputy Director for Headquarters Operations, Office of Native American Programs, and to the Deputy Director for Field Operations, Office of Native American Programs, all power and authority with respect to the Emergency Shelter Grants Program, for Indian Tribes and Alaska Natives, pursuant to Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.*, except as provided in Section B of this delegation of authority.

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 15, 1995

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–7399 Filed 3–24–95; 8:45 am]

BILLING CODE 4210–33–M

COMMISSION ON INTERGOVERNMENTAL RELATIONS

Advisory Commission on Intergovernmental Relations

Notice of Request for Suggested Criteria and Other Information for Evaluating Existing Mandates on State, Local, and Tribal Governments

March 20, 1995.

The Advisory Commission on Intergovernmental Relations (42 U.S.C. 4271) has been directed by the Unfunded Mandates Reform Act of 1995 enacted on March 22, 1995, to make recommendations to the President and Congress regarding:

(A) allowing flexibility for state, local, and tribal governments in complying with specific federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more federal mandates which impose contradictory or inconsistent requirements;

(C) terminating federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, federal mandates which are not vital to public health and safety and which compound the fiscal difficulties for state, local, and tribal governments, including recommendations for triggering such suspensions;

(E) consolidating or simplifying federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by state, local, and tribal governments with those mandates;

(F) establishing common federal definitions or standards to be used by state, local, and tribal governments in complying with federal mandates that use different definitions or standards for the same terms or principles; and

(G) (i) the mitigation of negative impacts on the private sector that may result form relieving state, local, and tribal governments from federal mandates (if and to the extent that such negative impacts exist on the private sector); and

(ii) the feasibility of applying relief from federal mandates in the same manner and to the same extent to private sector entities as such relief is applied to state, local, and tribal governments.

These recommendations are to be based on criteria established by the ACIR. Within 60 days after enactment of the Act, proposed criteria must be issued for public comment. To assist the Commission in the development of proposed criteria, suggestions are being solicited on an informal basis from interested parties. Because time is limited for the preparation of the proposed criteria, all suggestions should be received by ACIR no later than Friday, April 28 1995.

Suggestions received will be reviewed by staff and may, or may not, be incorporated in the proposed criteria. All suggestions that are submitted will be available for inspection at ACIR offices, but no specific or general response to them will be made by ACIR staff. Those submitting suggestions will not be subsequently bound by their contents, and will have full rights to comment on the proposed criteria during the public comment period.

In addition to suggestions about criteria, ACIR also welcomes suggestions about the following topics

1. In conducting the studies under Section 302, ACIR is to give highest priority to "reviewing and making recommendations regarding Federal mandates that are the subject of judicial proceedings." Because it is likely that there are a large number of lawsuits contesting existing mandates, lists of mandates currently in federal courts will be appreciated, with identification of the court and case number, if possible.

2. Lists of other mandates that respondents feel should be given special attention in the study.

Suggestions or inquiries should be addressed as follows: Charles Griffiths, Intergovernmental Liaison, Advisory Commission on Intergovernmental Relations, 800 K St. N.W., Suite 450 South, Washington, D.C. 20575.

Charles Griffiths,

Intergovernmental Liaison

[FR Doc. 95–7392 Filed 3–24–95; 8:45 am]

BILLING CODE 5500–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–06–1220–00–P (604)]

Notice of Roads and Campground Closures at Fort Stanton Reservation, NM

AGENCY: Bureau of Land Management (BLM), Roswell District.

ACTION: Road and campground closures at Fort Stanton Reservation New Mexico.

SUMMARY: Pursuant to 43 CFR part 8364 and the Fort Stanton Management Framework Plan (MFP) of May 28, 1980, the Bureau of Land Management (BLM) will close a portion of the access road to the Rio Bonito Campground starting at the west boundary of Camp Sierra Blanca (Fort Stanton, NM) and extending about 9/10 of a mile west into public lands administered by the Roswell District, BLM. The BLM will close the Rio Bonito Campground to camping and motorized vehicle use. The road leading from the campground to the north mesa of Fort Stanton Reservation will also be closed to motor vehicle use.

DATES: The closure will become effective at the date of publication of this notice.

ADDRESSES: Information and maps showing the location of the above closures will be available at the Bureau of Land Management, Roswell District Office, 1717 West 2nd Street, Roswell, NM 88201–2019, telephone (505) 627–0272; Roswell Resource Area Office, Federal Building, 5th and Richardson, P.O. Drawer 1857, Roswell, NM 88202–1857, telephone (505) 627–1790; and the U.S. Forest Service, Lincoln National Forest, Smokey Bear Ranger District, 901 Mechem Drive, Ruidoso, NM 88345.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kreager, Area Manager, Roswell Resource Area, P.O. Drawer 1857, Roswell, NM 88202–1857; telephone (505) 624–1790.

SUPPLEMENTARY INFORMATION: A three-acre campground will be closed to camping and motor vehicle access. Approximately three miles of roads will also be closed to motor vehicles. The following describes the areas:

New Mexico Principal Meridian

Fort Stanton Reservation

One section of the road closure is located in unsurveyed and protracted portions of T.9S., R.14E., Sec. 34, SE¼SE¼, Sec. 35, SW¼NE¼.

Another section of road closure is located in unsurveyed and protracted portions of T.9S., R.14E., Sec. 32, SE¼SE¼; Sec. 33, SW¼SW¼; T. 10S., R.14E., Sec. 4, W½.

The campground is located in unsurveyed and protracted portions of T.10S., R.14E., Sec. 4, SE¼SW¼.

Camp Sierra Blanca (CSB) a minimum security prison for the State of New Mexico, Fort Stanton, NM, has requested the BLM discourage public use of a traditional access route through the prison to public lands. Traditionally, the road was used for access through CSB to the west side of the Fort Stanton Reservation and the Rio Bonito Campground. The closure of the road has become necessary for prison security and safety of visitors using public lands within this portion of the Fort Stanton reservation.

The campground will be closed due to its loss of access and need of a prolonged rest to renew the environment. The campground area has received severe damage to soils, mature trees and riparian vegetation through use by the visiting public during the past ten years. Damage includes soil compaction from vehicles, soil sterilization from uncontained fire pits, vegetation trampling and tree cutting. An access road leading from the north side of the Rio Bonito Campground to the north mesa of Fort Stanton will also be closed. The road is poorly constructed and causes severe soil erosion. The road is also a safety hazard to the public, due to steep grades and slippery conditions when wet.

Current alternatives in the Draft Resource Management Plan (RMP) for the Roswell Resource Area include proposals for additional campgrounds within the Fort Stanton Reservation Area. The alternatives for campgrounds in the RMP will be environmentally suitable, have better access and will serve the public to a greater extent. After the final RMP and Record of Decision are issued, a Special Management Area (SMA) Plan will be developed to analyze and select future campground locations within the Fort Stanton Reservation Area.

Due to the closure of traditional access routes to the campground from CSB for

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security and public safety concerns, damage caused by camping pressure and closure of the north mesa access road due to environmental damage, the Rio Bonito Campground will be closed to camping and vehicle use.

Dated: March 15, 1995.

Leslie M. Cone,

District Manager.

[FR Doc. 95-7383 Filed 3-24-95; 8:45 am]

BILLING CODE 4310-FB-M

[NM-017-1430-01; NMNM 88815]

Sale of Public Land in Bernalillo County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public land has been found suitable for sale utilizing modified competitive sale procedures under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than the appraised fair market value (FMV) of $4,200. The land will not be offered for sale for at least 60 days after publication of this notice

New Mexico Principal Meridian

T. 11 N., R. 6 E.,
Sec. 34: lot 2.
Containing 2.12 acres.

This land is isolated, difficult and uneconomical to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning efforts and the public interest will be served by offering this land for sale.

Bidders must be United States citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, and corporations authorized to own real estate in the state in which the land is located. The apparent high bidder must submit proof of these requirements within 15 days after the sale date.

The land will be offered for sale at public auction using modified bidding procedures authorized under 43 CFR 2711.3-2. Bidding for this parcel is open to the following adjacent land owners (designated bidders): George T. Glacken, Jr. and Lucille Glacken, Wayne D. Francisco, Gary D. Maple and Steven M. Jackson, Gilbert B. Libby Jr., and Charles Kennington.

The land will be offered for sale at public auction beginning at 10 a.m. on June 26, 1995, at 435 Montano Rd. NE., Albuquerque, NM 87107. The sale will be by sealed bids only. All sealed bids must be received by the BLM's Rio Puerco Resource Area Office at 435 Montano Rd. NE., Albuquerque, NM 87107, prior to 10 a.m. on the date of the sale, June 26, 1995.

Bids must be for not less than the appraised FMV specified in the notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management for not less than 10 percent of the amount bid. The sealed bid envelopes must be marked on the lower left hand corner: *Public Sale Bid NMNM 88815.*

Under modified competitive sale procedures, the written sealed bids will be opened and an apparent high bid will be declared at the sale. The apparent high bidder and the other designated bidders will be notified. In case of a tie of bids submitted by the designated bidders, the interested bidders would be given an opportunity to submit a written agreement as to the division of the lands, or an additional sealed bid, within 30 days of notification of eligibility. At that time, the high bidder would be awarded the property. The total purchase price for the land shall be paid within 180 days of the date of this sale.

The purchaser of this parcel acquires the property realizing that public access to the property is lacking.

Terms and Conditions

The patent, when and if issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

3. The patent will be issued subject to valid existing rights-of-way and easements.

DATES: Interested parties may submit comments regarding the proposed action to the Rio Puerco Area Manager by May 11, 1995. Comments must reference the specific parcel number. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Rio Puerco Resource Area Office, 435 Montano Road NE., Albuquerque, NM 87107.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land, terms and conditions of sale, and bidding instructions may be obtained from the Rio Puerco Resource Area Office at the above address. Telephone calls may be directed to Joseph Jaramillo at (505) 761-8779.

SUPPLEMENTARY INFORMATION: Upon publication in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The BLM may accept or reject any offer to purchase or withdraw this tract from sale if the Authorized Officer determines that consummation of the sale would not be fully consistent with FLPMA or another applicable law.

Dated: March 21, 1995.

Michael R. Ford,

District Manager.

[FR Doc. 95-7446 Filed 3-24-95; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-1430-01; WYW88721, WYW88724, WYW88725, WYW88728, WYW88730, WYW88731]

Amended Realty Actions, Direct and Modified Competitive Sale of Public Lands; Wyoming; Land Sale Appraisal Updates for Lands in Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notices of realty action, sale of land parcels in Platte and Goshen Counties, Wyoming; and, amended land sale appraisal update for lands in Wyoming.

SUMMARY: On July 29, 1986, Notices of Realty Action WYW88721, WYW88724, WYW88725, WYW88730, and WYW88731 were published in the **Federal Register** in 51 FR 27090-27091. On July 30, 1987, Notice of Realty Action WYW88728 was published in the **Federal Register** in 52 FR 28488-28489. On August 25, 1987, Notices of Realty Action WYW88721, WYW88724, WYW88725, WYW88730, and WYW88731 were published in the **Federal Register** in 52 FR 32064-32066. This Notice from the date it is published amends the earlier notices by deleting

the appraised values for the parcels of land.

FOR FURTHER INFORMATION CONTACT: William H. Mortimer, Area Manager, Bureau of Land Management, Platte River Resource Area, P.O. Box 2420, Mills, Wyoming 82644-2420, (307) 261-7500.

SUPPLEMENTARY INFORMATION: The appraised fair market value of the land described in 51 FR 27090-27091, 52 FR 28488-28489, and 52 FR 32064-32066 has been reevaluated. Please contact the Platte River Resource Area Office for current appraisal information

Dated: March 16, 1995

Donald D. Whyde,

Acting District Manager

[FR Doc. 95-7384 Filed 3-24-95; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Notice of availability of a Draft Recovery Plan for the Mexican Spotted Owl for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Mexican spotted owl (Strix occidentalis lucida) which the Service listed as a threatened species on March 16, 1993 (58 FR 14271). The Mexican spotted owl is one of three spotted owl subspecies recognized by the American Ornithologists' Union. This subspecies was originally described from a specimen collected at Mount Tancitaro, Michoacan, Mexico. The Mexican spotted owl is a medium-sized bird found from parts of central Colorado and Utah south through Arizona, New Mexico, and western Texas to the State of Michoacan, Mexico. This owl commonly inhabits mountains and canyons containing dense, multistoried forests with closed canopies. Its survival is threatened by destruction and modification of habitat caused by timber harvest, forest fires, and increased predation associated with habitat fragmentation. The draft recovery plan recommends management actions to be taken by Federal, State, and tribal land management agencies to remove recognized threats and recover the spotted owl. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before June 26, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Supervisor, Ecological Services State Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. Written comments and materials regarding the plan should be addressed to the Regional Director at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, U.S. Fish and Wildlife Service, (see **ADDRESSES** section) (telephone 505/761-4525; facsimile 505/761-4542).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species; establish objective, measurable criteria for the recovery levels for downlisting or delisting species; and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The recovery plan provides a basis for management actions to be undertaken by Federal, State, and tribal land management agencies to remove threats to the Mexican spotted owl's continued existence. The recovery plan contains six basic elements: 1. A recovery goal and set of delisting criteria that will allow the Mexican spotted owl to be removed from the endangered species list; 2. strategies for management that provide varying levels of habitat protection depending on the owl's needs and habitat use; 3. recommendations for population and habitat monitoring; 4. research to address critical information needs to better understand the owl's life history; 5. implementation procedures that specify oversight and coordination responsibilities for the owl's recovery; and 6. information on the approximate costs of carrying out the tasks set forth in the draft recovery plan.

The Mexican spotted owl recovery plan has been prepared by a team of experts on the owl and its habitat requirements. This recovery plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: March 7, 1995

James A. Young,

Acting Regional Director, Fish and Wildlife Service, Region 2.

[FR Doc. 95-7449 Filed 3-24-95; 8:45 am]

BILLING CODE 4310-55-P

Geological Survey

Notice

SUMMARY: Notice is hereby given that the U.S. Geological Survey is planning to enter into a Cooperative Research and Development Agreement (CRADA) with a geophysical data processing company (Paterson, Grant and Watson Limited) and mining and petroleum companies. The purpose of the CRADA is to reprocess the magnetic-anomaly data base on the United States and produce a more consistent and accurate data set in the form of a one-kilometer grid that will be made available to the general public. All magnetic survey data will be continued to a surface at 1000 feet above the ground and an appropriate reference field will be removed. Paterson, Grant and Watson Limited will be responsible for acquiring funding from petroleum and mining companies for this

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compilation and will carry out the reprocessing of over 1000 magnetic survey data sets. The USGS will provide magnetic data and will carry out collaborative research to improve the technology in preprocessing magnetic-anomaly data. Any geoscience company interested in participating in this upgrade of the U.S. magnetic-anomaly data base is encouraged to contract the USGS.

DATES: This notice is effective March 27, 1995.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, Branch of Geophysics, 345 Middlefield Road, MS 989, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Hildenbrand of the U.S. Geological Survey, Branch of Geophysics, at the address given above; telephone 414/329–5303; fax 415/329–5133; e-mail tom@laplace.wr.ugsg.gov.

John R. Filson,

Acting Chief Geologist.

[FR Doc. 95–7458 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–31–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Ashland Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of Incorporation
APAC—Alabama, Inc	Delaware.
APAC—Arkansas, Inc	Delaware.
APAC—Carolina, Inc	Delaware.
APAC—Florida, Inc	Delaware.
APAC—Georgia, Inc	Georgia.
APAC, Inc	Delaware.
APAC—Kansas, Inc	Delaware.
APAC—Mississippi, Inc	Delaware.
APAC—Oklahoma, Inc	Delaware.
APAC—Tennessee, Inc	Delaware.
APAC—Texas, Inc	Delaware.
APAC—Virginia, Inc	Delaware.
Ashland Pipe Line Company	Ohio.
Ashland Ethanol, Inc	Delaware.
Ashland Development, Inc	Delaware.
Ashland Construction Communications Company	Delaware.
Ecogard, Inc	Delaware.
Ig-Lo Transportation, Inc	Delaware.
Inland Towing Company	Delaware.
J.T. Trucklines, Inc	Texas.
Mid-Valley Supply Company	Kentucky.
Nettles, Inc	South Carolina.
Reg X Condor, Inc	Delaware.
Scurlock Permian Corporation	Kentucky.
Scurlock Permian Pipe Line Corporation	Kentucky.
Southwest Land & Development Co., Inc	Arizona.
Supermom's, Inc	Minnesota.
Tap-Co, Inc	North Carolina.
Warren Brothers Hauling, Inc	Delaware.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7442 Filed 3–24–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–330 (Sub-No. 2X)]

Otter Tail Valley Railroad Company, Inc.—Abandonment Exemption—in Otter Tail County, MN

Otter Tail Valley Railroad Company, Inc. (OTVR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.1 miles of rail line between milepost 184.0 and milepost 185.1, in Otter Tail County, MN.

OTVR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.40(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 26, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 6, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 17, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Christopher E. Kaczmarek, 1350 New York Avenue NW., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

OTVR has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 31, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 20, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. William,

Secretary.

[FR Doc. 95–7443 Filed 3–24–95; 8:45 am]

BILLING CODE 7035–01–M

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Association for Proximity X-Ray Technology Insertion

Notice is hereby given that, on December 5, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Association for Proximity X-Ray Technology Insertion (the "Association") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: International Business Machines Corporation, Armonk, NY; AT&T Corp., Basking Ridge, NJ; Motorola Inc., Schaumburg, IL; and Loral Federal Systems Company, Bethesda, MD.

The nature and objective of the Association is to collaborate on research and development of proximity X-ray technology for use in the U.S. semiconductor industry.

The scope of the Association may include " production of a product, process of service, as referred to in section 2(a)(6) (15 U.S.C. 4301(a)(6)(D))." Therefore, pursuant to Section 6(A)(3) (15 U.S.C. 4305(A)(3)) and section 7 (15 U.S.C. 4306) the notification further discloses that: (1) The principal facilities for any production of a product or process are located in the United States or its territories; and (2) each Association member, and each person who controls an Association member, is a United States person as defined in the statute.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7461 Filed 3–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on February 28, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the participants in the Water Heater Industry Joint Research and Development Consortium have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are: Bradford White Corporation, Ambler, PA; GSW Water Heater Company, Fergus, Ontario CANADA; Rheem Manufacturing Company, New York, NY; Sothcorp USA, Inc., Bala Cynwyd, PA; and State Industries, Inc., Ashland City, TN. The purpose of the cooperative arrangement is to determine whether a gas, residential, bottom fired water heater may be designed or modified to reduce or prevent the ignition of flammable vapors in a contained area without compromising the integrity of the heater, creating hazards, or violating existing safety and energy efficiency standards.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7462 Filed 3–24–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,797]

Ace Comb Company, a Division of Goody Products, Inc., Booneville, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 13, 1955 in response to a worker petition which was filed on March 13, 1995 on behalf of workers at Ace Comb Company (A Division of Goody Products, Incorporated), Booneville, Arkansas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–30,777). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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Signed in Washington, D.C. this 14th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7473 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,049]

Hartz Mountain Corporation Harrison, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 1994, applicable to all workers of the subject firm engaged in employment related to the production of aquariums and reflectors.

The certification notice was published in the **Federal Register** on December 16, 1994 (59 FR 65077).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that a few workers were laid off a few weeks before the impact date of June 16, 1993. Accordingly, the Department is amending the certification by deleting the June 16, 1993 impact date and inserting a new impact date of April 1, 1993.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,049 is hereby issued as follows:

All workers of Hartz Mountain Corporation who became totally or partially separated from employment on or after April 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7474 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,049]

Hartz Mountain Corp., Harrison, NJ, Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–30,049 which was published in the **Federal Register** on July 19, 1994 (59 FR 36791) in FR Document 94–17395.

This revises the date received and the date of petition on the fifteenth line of the third and fourth columns in the appendix table on page 36791. The date received and the date of petition should both read "April 1, 1994" in the third and fourth columns on the fifteenth line of the appendix table.

Singed in Washington, DC., this 20th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7475 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30, 680; J.M. Huber Corp., (Engineered Minerals Div), Macon, GA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,707; Tidewater, Inc., New Orleans, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–30,655; Lavelle Powder Co., Inc., Butte, MT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–30,712; U.S. Information Agency, Voice of America Bethany Relay Station, Mason, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–30,663; E-Systems, Inc., Greenville Div., Greenville, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–30,646; Enterra Oil Field Rental Co., Odessa, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,791; DLCI USA, Van Buren, ME

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,737; Native Textiles, A Division of Carisbrook Industries, Dallas, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,827; Fairchild Aircraft, Inc., San Antonio, TX

A certification was issued covering all workers of the "electrical shop" of Fairchild Aircraft, Inc., San Antonio separated on or after March 2, 1994. The foregoing determination does not apply to the other workers at the subject firm.

TA–W–30,803, TA–W–30,804; Mitel, Inc., Mitel Telecommunication Systems, Inc., Mt. Laurel, NJ and Morristown, NJ

A certification was issued covering all workers separated on or after November 6, 1993.

TA–W–30,653; Licensed Clothing Group of America, Saddle Brook, NJ

A certification was issued covering all workers separated on or after January 4, 1994.

TA–W–30,657; JPS Converter and Industrial Corp., Laurens, SC

A certification was issued covering all workers separated on or after January 6, 1993.

TA–W–30,698; Classic Fashion, Paterson, NJ

A certification was issued covering all workers separated on or after February 16, 1995.

TA–W–30,755; Philips Components, Mineral Wells Facility, Mineral Wells, TX

A certification was issued covering all workers separated on or after February 10, 1994.

TA–W–30,665; Cleaver Brooks, A Division of Aqua Chem, Inc., Lebanon, PA

A certification was issued covering all workers separated on or after February 18, 1995.

TA–W–30,624; Orbital Science Corp., Pomona, CA

A certification was issued covering all workers separated on or after December 20, 1993.

TA–W–30,678; Star Fireworks Manufacturing Co., Inc., Danville, IL

A certification was issued covering all workers separated on or after January 5, 1994.

TA–W–30,692; Eveready Battery Co., Inc., Red Oak, IA

A certification was issued covering all workers separated on or after January 17, 1994.

TA–W–30,798; Etowah Manufacturing Co., Inc., Etowah, TN

A certification was issued covering all workers separated on or after February 24, 1994.

TA–W–30,694; Leica, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after March 4, 1995.

TA–W–30,667; Oshkosh B'Gosh, Dover, TN

A certification was issued covering all workers separated on or after January 9, 1994.

TA–W–30,648; Seagull Mid-South, Inc., (Formerly Arkla Exploration Co), Shreveport, LA

A certification was issued covering all workers separated on or after January 6, 1994.

TA–W–30,771; Jantzen, Inc., Statesville, NC

A certification was issued covering all workers separated on or after March 16, 1994.

TA–W–30,709 and A; Contract Manufacturing, Monroe, LA and Monroe Manufacturing, Monroe, LA

A certification was issued covering all workers separated on or after January 23, 1994.

TA–W–30,727, A & B; Takata Fabrication Corp., Piqua, OH, Express Service, Troy, OH and Brownle Personnel Service, Piqua, OH

A certification was issued covering all workers separated on or after February 1, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

None.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00359; Contract Apparel, El Paso, TX

A certification was issued covering all workers of Contract Apparel, El Paso, TX separated on or after February 2, 1994.

NAFTA–TAA–00357; Hughes Aircraft, Microelectronics Div., Newport Beach, CA

A certification was issued covering all workers engaged in the production of hybrid microelectronic circuits and assemblies at Hughes Aircraft, Microelectronic Div., Newport Beach, CA separated on or after January 20, 1994. The foregoing determination does not apply to the other workers at the subject firm.

I hereby certify that the aforementioned determinations were issued during the months of March, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 20, 1995

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–0783 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–24,446]

Litton Industrial Automation Systems, Inc., New Britain Machine, New Britain, CT, and Operating in the Following State, TA–W–24,446A Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 1990, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on August 9, 1990 (55 FR 32504).

At the request of one of the workers, the Department reviewed the certification for workers of the subject firm. The findings show an installation and sales office in Houston, Texas which experienced a decline in demand for its services from the subject firm.

The intent of the Department's certification is to include all workers

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who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the operations in Texas.

The amended notice applicable to TA–W–24,446 is hereby issued as follows:

All workers and former workers of Litton Industrial Automation Systems, Incorporated (New Britain Machine), New Britain, Connecticut and operating in the state of Texas who became totally or partially separated from employment on or after September 10, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7476 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,154]

Sanofi Bio Industries Wapato, WA; Notice of Revised Determination on Reconsideration

On December 23, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the **Federal Register** on January 4, 1995 (60 FR 481).

Investigation findings show that the workers produced fruit juice concentrate. All production of fruit juice concentrate ceased in November, 1993 when all the workers were laid off.

New findings on reconsideration show that a major customer increased its purchases of imported fruit juice concentrate while substantially decreasing its purchases from Sanofi Bio Industries in 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at Sanofi Bio Industries in Wapato, Washington were adversely affected by increased imports of articles that are like or directly competitive with the fruit juice concentrate previously produced at Sanofi Bio Industries in Wapato, Washington. In accordance with the provisions of the Act, I make the following revised determination for workers of Sanofi Bio Industries in Wapato, Washington.

All workers of Sanofi Bio Industries in Wapato, Washington, who became totally or partially separated from employment on or after July 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7477 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,542]

Scott Paper Co., Oconto Falls, WI; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated February 21, 1995, a group of former workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The findings show that the subject plant produced paper towels.

The former workers submitted documentation that Scott Paper is a world-wide company and is increasing its capacity for paper products in Mexico and recently completed a deal to produce paper products in China.

The Department's denial was based on the fact that U.S. imports of sanitary paper products were negligible (less than one percent of U.S. shipments) in the last three years through 1994.

The findings show the worker separations at Scott Paper's Oconto Falls facility were the result of a production transfer to other domestic corporate facilities to realize freight advantages and be closer to geographic market demand.

The Department would entertain a new petition when there is evidence of increased imports of paper towels.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7478 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,169]

Sedco Forex Resources, Inc., A/K/A International Chandlers (a Subsidiary of Schlumberger Technology Corp.) North American Region, U.S. Operations Office, Dallas, Texas and TA–W–27,169A all Other Mobile Marine and Land Based Units and Offices Operating out of/in the State of Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on June 19, 1992, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on June 30, 1992 (57 FR 29101).

At the request of the workers, the Department reviewed the certification for workers of the subject firm. New findings show that the company changed its name on January 1, 1993 to International Chandlers.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,169 is hereby issued as follows:

All workers of the U.S. Operations Office of the North American Region of Sedco Forex Resources, Inc., also known as (A/K/A) International Chandlers, Dallas, Texas (TA–W–27,169) and all other mobile marine and land based units and offices operating out of/in the state of Texas (TA–W–27,169A) who became totally or partially separated from employment on or after April 7, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7479 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–29,742 and TA–W–29,742A]

Sunnyside Coal Co., Sunnyside, Utah and Sunnyside Coal Co, Boulder, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on August 26, 1994 (59 FR 44193).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show worker separations in 1994 at the subject firm's headquarters in Boulder, Colorado.

Accordingly, the Department is amending the certification to include the subject firm's workers at Boulder, Colorado.

The amended notice applicable to TA–W–29,742 is hereby issued as follows:

All workers of Sunnyside Coal Company, Sunnyside, Utah and Boulder, Colorado who became totally or partially separated from employment on or after March 24, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7480 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,378]

Texaco Exploration and Production, Inc., Tulsa, OK and Texaco Exploration Production, Inc., Operating at Various Locations in the Following States: et al., Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 1994, applicable to the workers of the subject firm. The certification was published in the **Federal Register** on December 16, 1994 (59 FR 65077). The certification was subsequently amended on December 16, 1994. The amended certification was published in the **Federal Register** on January 4, 1995 (60 FR 481).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in the State of Kansas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Texaco Exploration and Production, Inc., who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–30,378 is hereby issued as follows:

All workers of Texaco Exploration and Production, Inc., located in Tulsa, Oklahoma and at all locations in the following states listed below engaged in the exploration and production of crude oil, natural gas liquids and natural gas who became totally or partially separated from employment on or after October 3, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–30,378A Alabama
TA–W–30,378C Colorado
TA–W–30,378E Illinois
TA–W–30,378G Mississippi
TA–W–30,378I North Dakota
TA–W–30,378K Texas
TA–W–30,378M Wyoming
TA–W–30,378B California
TA–W–30,378D Idaho
TA–W–30,378F Louisiana
TA–W–30,378H New Mexico
TA–W–30,378J Oklahoma (exc Tulsa)
TA–W–30,378L Washington
TA–W–30,378N Montana
TA–W–30,378O Kansas

Signed at Washington, DC., this 16th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7481 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,361]

Wailuku Agribusiness Co., Inc., Pineapple Division, Wailuku, HI; Revised Determination on Reconsideration

On February 10, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 27, 1995 (60 FR 9409).

The findings show that the workers produce pineapples and macadamia nuts with pineapples being the preponderant portion of sales. The findings show that sales and production of pineapples declined in the first nine months of 1994 compared to the same period in 1993. Substantial worker separations occurred in 1994.

New findings on reconsideration show that all the pineapples grown and harvested are sold to an exclusive purchaser whose workers are under a trade adjustment assistance certification. By virtue of the fact that there is only one customer, the customer exercised *de facto* control over the production, sales and employment of pineapples at the subject firm. Accordingly, the workers meet the Department's standard of a reduced demand for their products from a parent or controlling firm whose workers produce an article and are currently under a certification for TAA.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers and former workers of Wailuku Agribusiness Company, Inc., Pineapple Division, Wailuku Hawaii were adversely affected by increased imports of articles like or directly competitive with pineapples.

Accordingly, in accordance with the provisions of the Act, I make the following certification:

All workers of Wailuku Agribusiness Company, Inc., in Wailuku, Hawaii who became totally or partially separated from employment on or after September 14, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7482 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00293 And NAFTA—00293A]

Wirekraft Industries, Inc. Mishawaka, IN; and Wirekraft Industries, Inc., Burcliff Industries Marion, OH; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 29, 1994, applicable to all workers of the subject firm.

The Department, on its own motion, reviewed the certification for workers of the subject firm. New findings show that Wirekraft workers in Marion, Ohio also

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produce wire harnesses and had decreased sales and production and employment declines in the relevant period.

Other findings show that a major customer of Wirekraft is importing wire harnesses from Mexico in the relevant period.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the Mishawaka, Indiana certification to include workers at Marion, Ohio.

The amended notice applicable to NAFTA—00293 is hereby issued as follows:

All workers of the Wirekraft Industries, Inc., Mishawaka, Indiana and Wirekraft Industries' Burcliff Industries in Marion, Ohio who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 95–7484 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00362]

Wirekraft Industries, Inc., Burcliff Industries, Marion, OH; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–AA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on February 9, 1995 in response to a petition filed on behalf of workers at Wirekraft Industries, Inc.—Burcliff Industries in Marion, Ohio. On March 16, 1995 an amendment was made to NAFTA–TAA–00293 to include all workers of Wirekraft Industries, Inc.—Burcliff Industries in Marion, Ohio. Because the subject workers have been included in the amendment certification of NAFTA–TAA–00293, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7485 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 17–95

Public Law 103–465, commonly known as the legislation on "GATT"—The General Agreement on Tariffs and Trade, included a provision that affects the Federal-State unemployment compensation program. Under this legislation, States will be required to deduct and withhold Federal income tax from unemployment compensation if the individual so elects. In addition, State will have the option of withholding State and local income taxes from unemployment compensation if the individual elects to have such actions taken. This UIPL explains the change in unemployment compensation law, discusses its effective date and provides model language for States to use in amending State unemployment compensation law.

Dated: March 17, 1995.

Doug Ross,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, DC 20210

Classification UI
Correspondence Symbol TEURL
Date: February 28, 1995
Directive: Unemployment Insurance Program Letter No. 17–95
To: All State Employment Security Agencies
From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: Withholding of Income Tax From Unemployment Compensation—Amendments Made by Public Law 103–465

1. *Purpose.* To advise State agencies of the provisions of Public Law (P.L.) 103–465 pertaining to the withholding of Federal, State and local income taxes from unemployment compensation (UC).

2. *References.* The Internal Revenue Code of 1986 (IRC), as amended, including the Federal Unemployment Tax Act (FUTA); Title III of the Social Security Act (SSA); Section 702 of P.L. 103–465; Section 301 of P.L. 102–318; 31 U.S.C. Section 6503 as amended by P.L. 101–453; 31 C.F.R. Part 205; and Unemployment Insurance Program Letters (UIPLs) 25–89, 45–89 and 45–92.

3. *Background.* On December 8, 1994, the President signed into law P.L. 103–465. Although the short title of this law is the "Uruguay Round Agreements Act," it is commonly known as the legislation on "GATT"—the General Agreement on Tariffs and Trade. Under this legislation, States will be required to deduct and withhold Federal income tax from UC if the individual so elects. In addition, States will have the option of withholding State and local income taxes if the individual so elects. This UIPL addresses these new provisions pertaining to income tax withholding.

Rescissions: None.

Expiration Date: February 28, 1996.

4. *Discussion.*

a. *In General.* The "withdrawal standard" of Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, limits withdrawals (with specified exceptions not relevant here) from a State's unemployment fund to payments of "compensation." The term "compensation" is defined in Section 3306(h), FUTA, as "cash benefits payable to individuals with respect to their unemployment." Due to its restrictive nature, the withdrawal standard has prohibited States from deducting and withholding any form of income tax from payments of UC. For a detailed discussion of the limitations on the use of unemployment fund moneys, refer to UIPL 25–89 (54 FR 22973 (May 30, 1989)) which transmitted the Secretary's decision in a conformity proceeding involving the deducting and withholding of State UC taxes from UC and UIPL 45–89 (55 FR 1886 (January 19, 1990)) concerning permissible deductions from UC.

P.L. 103–465 amends Federal law to provide for "voluntary withholding"—that is, withholding at the taxpayer's election—of income taxes from a variety of payments made pursuant to Federal

law as well as from UC. The joint Senate report describes the reason for this withholding:

Some taxpayers find it burdensome to make quarterly estimated tax payments. These taxpayers may find it more convenient to elect to have Federal taxes withheld at the time specified payments are made to them. [S. Rep. No. 412, 103rd Cong. 2d Sess. 137–138 (1994).]

b. *Discussion of Amendments.* Section 702(b) of P.L. 103–465 amended Federal law to require State law to provide for the voluntary withholding of Federal income tax from UC. Specifically, new paragraph (18) of Section 3304(a), FUTA, was added to require, as a condition for employers in a State to receive credit against the Federal unemployment tax, that:

Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntary requests such deduction and withholding.

Section 702(c) of P.L. 103–465 also amended the withdrawal standard of FUTA and SSA (and the definition of "unemployment fund" in Section 3306(f), FUTA) to permit "the withholding of Federal, State, or local individual income tax."[1] As amended, the withdrawal standard in Section 3304(a)(4)(C), FUTA, now reads: nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor * * *.

Section 303(a)(5), SSA, also reads similarly. These amendments to the withdrawal standard and the definition of "unemployment fund" have an effect on the new voluntary withholding requirement of Section 3304(a)(18), FUTA. Under the withdrawal standard amendments, any deducting and withholding from UC may be made only if "such deduction was made under a program approved by the Secretary of Labor." The requirements necessary for approval of a program are contained in item 4.e of this UIPL.

[1] The amendment to the definition of "unemployment fund" also contained a technical amendment concerning the exception pertaining to the withholding of health insurance premiums. This exception was already contained in the withdrawal standard. Another technical amendment renumbered old subparagraph (18) of Section 3304(a), FUTA, as (19).

c. *Withholding of Federal Income Tax.* New IRC Section 3402(p)(2), which was added by Section 702(a) of P.L. 103–465, concerns voluntary withholding of UC and affects the FUTA and SSA provisions concerning deducting and withholding income tax. This section applies to payments of UC "as defined in section 85(b)," IRC. Section 85(b) defines UC as "any amount received under a law of the United States or of a State which is in the nature of unemployment compensation." The effect of this definition is that, if the payment of UC is taxable under the IRC, then the State must provide for voluntary withholding of Federal tax from that amount.

Section 3402(p)(2), IRC, also provides that the amount of Federal income tax withheld from UC "under this chapter [Chapter 24 of the IRC, Collection of Income Tax at Source on Wages] * * * shall be an amount equal to 15 percent of such payment." As a result, the amount of Federal income tax to be withheld from UC by the States must be equal to 15 percent of the UC payment.

Since Section 3402(p)(2), IRC, is administered by the Federal Internal Revenue Service (IRS), the IRS has the authority to interpret these provisions.

d. *Withholding of State and Local Income Taxes.* States will decide whether to allow State and/or local income taxes to be deducted and withheld from UC at an individual's election. A State may decide to deduct and withhold only State income taxes, only local income taxes, both, or neither. It is left to the State to decide whether the percentage of the payment to be deducted and withheld shall be a uniform amount established by the State law or determined by the individual. The mechanisms for transferring amounts deducted and withheld from the unemployment fund to the State or locality will also be established by the State, subject to the requirements of items e.(2) and e.(3) below.

Although a State has the authority to deduct and withhold State and local income taxes from UC for other States and for localities outside the State, Federal law does not require a State to do so. A State may, therefore, restrict the taxes to be deducted and withheld to taxes subject to its laws or to individuals who plan to file a tax return against that State.

e. *Approved Program.* As noted in item 4.b, the amendments to the withdrawal standard concerning the withholding of income tax require that any deduction must be made under a program approved by the Secretary. Rather than requiring each State to submit a plan describing its program, the Department has determined that States using the draft legislative language contained in Attachment II to this UIPL may consider their withholding programs to be automatically approved. (States are free to delete optional language, such as that pertaining to State and local taxes and to make nonsubstantive modifications, including taking into account State usage and formatting.) States not using the draft language will need to submit a plan describing its program to the appropriate regional office.

The following necessary elements of the program are discussed within the context of the draft language:

(1) *Notification.* Section 301 of P.L. 102–318, the Unemployment Compensation Amendments of 1992, already requires State agencies to provide to each individual filing a claim a written explanation of Federal and State income taxation of UC and the requirements pertaining to estimated tax payments. See UIPL 45–92 (57 Fed. Reg. 47871, 47875–47876 (October 20, 1992)). To assure that the individual has the opportunity to have amounts withheld from all payments, the individual is to be advised in writing at the time of filing the initial claim that UC is subject to Federal income tax as well as (if applicable) State and local income taxes; that requirements exist pertaining to estimated tax payments; and that income tax may be withheld at the individual's option.[2] States will need to revise their initial claims processes to obtain information concerning whether the individual elects or declines to have income tax withheld.

Section (1) of the draft language addresses notification and other matters. It permits the deduction and withholding of Federal, State and local income taxes. The general reference in Section (1)(C) to the IRC assures that State law will always correspond to whatever percentage Federal law authorizes for deductions. Since the States are not required to deduct and withhold State and local income taxes from UC, the draft language pertaining to such withholding is at the State's option. The language permits specified percentages of State and local income taxes to be withheld under State law

[2] UIPL 45–92 interpreted the notice requirement of Section 301 of P.L. 102–318 to provide that the information "must be provided at the time the initial claim is filed or at the time the individual files a claim for the first week." UIPL 45–92 also provided that the notice requirement would be satisfied if the information was provided at the time of the first payment. Once Section 3304(a)(18), FUTA, becomes effective, this position becomes obsolete as the notice must be given at the time of filing the initial claim.

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since this method will likely be the easiest to administer. The State may, however, modify the draft language to allow the individual the option of electing the percentage or dollar amount to be deducted and withheld. As discussed in item 4.d. above, the State may also add language restricting the State and local withholding option.

The final issue addressed in Section (1) is the individual's option to change withholding status. The individual's anticipated tax liabilities may change due to, for example, a change in the tax year or due to work performed during the benefit year, or the individual may determine that amounts being withheld are needed to meet current living expenses. Therefore, individuals must also be notified of and provided an opportunity to change their withholding status.

Although the Department encourages States to allow the individual to change his or her withholding status several times, it will only require the States to permit this change at least once during each benefit year. States are not required to amend their continued claims forms or processes to accommodate this change in withholding. Instead, it will be sufficient for the agency to notify the individual at the time of filing the initial claim that withholding status may be changed at the individual's request.

Section (1)(G) of the draft language permits an unlimited number of changes by the claimant. The State may, however, modify the language to restrict the number of changes to any number greater than or equal to one.

(2) *Amounts to Remain in Unemployment Fund until Transferred to Taxing Authority.* Amounts deducted and withheld from unemployment compensation must remain in the State's unemployment fund until transferred to the Federal, State or local taxing authority as a payment of income tax. Such amounts will remain in the State's account in the Unemployment Trust Fund (UTF) until such time as they are drawn down to the State's benefit payment account in accordance with the State's agreement implementing 31 U.S.C. 6503, as amended by the Cash Management Improvement Act of 1990, P.L. 101–453, and the implementing regulations at 31 CFR Part 205.

The Department is currently exploring an alternative to the draw down approach with the U.S. Department of the Treasury. Under this alternative, amounts deducted and withheld would be transferred directly from the State's account in the UTF to the IRS.

(3) *Federal Procedures.* The State must follow all procedures specified by this Department and the IRS related to withholding.

The inclusion of the provision in Section (3) of the draft language assures the Department that States will comply with any IRS procedures concerning the deducting and withholding of Federal income tax. It also gives States the authority to follow any procedures concerning deducting and withholding income tax which the Department or IRS may at some future date deem necessary. States may change the reference to "commissioner" to reference the title of the appropriate State official or agency.

(4) *Priorities.* Since UC overpayments, child support obligations and food stamp overissuances may also be deducted and withheld from UC, States will need to address the priority of withholding when the claimant also elects to have income tax withheld. The Department has previously left to the States the matter of determining priorities when there are two or more deductions made from UC. The Department is currently discussing with the IRS whether the provisions of the IRC which it administers have any bearing on this issue.

Since the issue of priority of withholding has not yet been resolved, Section (4) of the draft language provides that the priority for deductions from UC shall be determined in accordance with State regulations. This will permit the State to accommodate any Federal position on this matter.

f. *Funding.* Costs incurred in withholding Federal, State or local income taxes from UC administrative grants provided under Section 302, SSA.

g. *Effective Date.* Under subsection (d) of Section 702 of P.L. 103–465, the provisions of that section relating to voluntary withholding "shall apply to payments made after December 31, 1996." This means that, as of January 1, 1997, States must have provisions of law in effect providing for the voluntary withholding of Federal income tax and must be permitting the withholding Federal income tax in accordance with this UIPL.

States should note that the effective date refers to "payments." Therefore, as of January 1, 1997, amounts are to be deducted and withheld from payments of UC for Federal income tax, if the individual so elects, even if the payment is for a week of unemployment beginning before January 1, 1997.

States may not implement the withholding of Federal, State or local income taxes prior to January 1, 1997, since the withdrawal standard's limitations remain in effect until that date. We recommend, however, that States advise individuals filing new claims in the fourth calendar quarter of 1996 that voluntary holding will become available and that the State would, if the claimant so elected, begin deducting and withholding of income taxes as for payments made on and after January 1, 1997.

5. *Action Required.* States must take appropriate action to assure legislation authorizing the voluntary withholding of Federal income tax is enacted by and implemented on January 1, 1997. As noted above in item 4.e., States not enacting legislation using the draft language attached to this UIPL will need to submit a plan to the appropriate Regional Office. To provide adequate time for review and comment, these plans are due on September 30, 1996.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

7. *Attachments.*

I. Relevant Sections of P.L. 103–465
II. Draft Language to Implement a Voluntary Withholding Program

Attachment I—Relevant Sections of P.L. 103–465

An Act to approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.

Section 1. Short Title and Table of Contents.

(a) SHORT TITLE.—This Act may be cited as the "Uruguay Round Agreements Act".

* * * * *

TITLE VII—REVENUE PROVISION

Subtitle A—Withholding Tax Provisions

* * * * *

Sec. 702 Voluntary Withholding on Certain Federal Payments and on Unemployment Compensation.

(a) IN GENERAL.—Subsection (p) of section 3402 (relating to voluntary withholding agreements) is amended to read as follows:

"(p) VOLUNTARY WITHHOLDING AGREEMENTS.—

"(1) CERTAIN FEDERAL PAYMENTS.—

"(A) IN GENERAL.—If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

"(B) AMOUNT WITHHELD.—The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7, 15, 28, or 31 percent or such other percentage as is permitted under regulations prescribed by the Secretary.

"(C) SPECIFIED FEDERAL PAYMENTS.—For purposes of this paragraph, the term 'specified Federal payment' means—

"(i) any payment of a social security benefit (as defined in section 86(d),

"(ii) any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,

"(iii) any amount which is includible in gross income under section 77(a), and

"(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph."

"(D) REQUESTS FOR WITHHOLDING.—Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

"(2) VOLUNTARY WITHHOLDING ON UNEMPLOYMENT BENEFITS.—If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 15 percent of such payment.

"(3) AUTHORITY FOR OTHER VOLUNTARY WITHHOLDING.—The Secretary is authorized by regulations to provide for withholding—

"(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

"(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulation prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect."

(b) STATE LAW MUST PERMIT VOLUNTARY WITHHOLDING OF FEDERAL INCOME TAX FROM UNEMPLOYMENT COMPENSATION.—Section 3304(a) is amended by striking "and" at the end of paragraph (17), by redesignating paragraph (18) as paragraph (19), and by inserting after paragraph (17) the following new paragraph:

"(18) Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and".

(c) WITHHOLDING FROM UNEMPLOYMENT COMPENSATION OF FEDERAL, STATE, AND LOCAL INCOME TAXES PERMITTED.—

(1) Subparagraph (C) of section 3304(a)(4) is amended by inserting after "health insurance" the following: ", or the withholding of Federal, State, or local individual income tax,".

(2) Subsection (f) of section 3306 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;".

(3) Paragraph (5) of section 303(a) of the Social Security Act is amended by inserting after "health insurance" the following: ", or the withholding of Federal, State, or local individual income tax,".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after December 31, 1996.

Attachment II—Draft Language to Implement a Voluntary Withholding Program

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to Federal, State and local income tax;

(B) Requirements exist pertaining to estimated tax payments;

(C) The individual may elect to have Federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(D) The individual may elect to have State income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ____ percent;

(E) The individual may elect to have local income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ____ percent; and

(F) The individual may elect to have State and local income taxes deducted and withheld from the individual's payment of unemployment compensation for other States and localities outside this State at the percentage established by such State or locality.

(G) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the Federal, State or local taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in regulations developed by the commissioner.

[FR Doc. 95–7487 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Job Training Partnership Act (JTPA), Title IV–D, Demonstration Program: Diversity in Apprenticeship; Correction

AGENCY: Employment and Training Administration, DOL.

ACTION: Correction.

SUMMARY: In notice document FR Doc. 95–6660 beginning on page 14454 in the issue of Friday, March 17, 1995, make the following correction:

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On page 14454, second column, **DATES:** The closing date for receipt of applications was left out inadvertently. This should read: **DATES:** Applications for grant awards will be accepted commencing March 17, 1995. The closing date for receipt of applications is May 1, 1995, 2 p.m., (Eastern Time) at the address below.

Dated: March 21, 1995.

Janice E. Perry

Grant Officer, Division of Acquisition and Assistance.

[FR Doc. 95–7486 Filed 3–24–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–025]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 9700, Notice Number 95–021, February 21, 1995.

PREVIOUSLY ANNOUNCED DATES OF MEETING: March 29, 1995, March 30, 1995, and March 31, 1995. Meeting has been canceled.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

Dated: March 20, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–7454 Filed 3–24–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information and collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission: Revision.
2. The title of the information collection: 10 CFR part 34. "Licenses for Radiography and Radiation Safety requirements for Radiographic Operations" and NRC Form 313, Application for Material License.
3. The form number, if applicable: NRC Form 313.
4. How often the collection is required. On occasion, such as upon submittal of an application for a materials license or renewal, or upon discovery of a leaking source.
5. Who will be required to report: Licensees and applicants requesting approvals in accordance with 10 CFR part 34.
6. An estimate of the number of responses: Part 34—700, NRC Form 313—700.
7. An estimate of the total number of hours needed annually to complete the requirement or request: Part 34—1,490 hours for reporting (approximately 2 hours per response) plus an additional 58,835 hours for recordkeeping (approximately 84 hours per licensee): NRC Form 313—9,100 hours for 700 licensees (approximately 13 hours per response). The total burden is 69,425 hours.
8. An indication of whether Section 3504(h). Pub. L. 96–511 applies: Applicable.
9. Abstract: NRC regulation, 10 CFR part 34, specifies the information and data to be provided by applicants and licensees using byproduct material for industrial radiography. The 10 CFR part 34 is being revised in its entirety. The revision will add to or modify the requirements to include additional training of radiographers' assistants., leak tests of "S" tubes, and specifies records to be kept at various locations. The revision will require the following additional information to be reported on NRC Form 313, Application for Materials.

License: Locations and descriptions of all field stations and permanent radiographic installations, designation of a Radiation Safety Officer, and additional information on training and testing. This information is reviewed by NRC to ensure that the safety of radiographers and the public is protected.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW (Lower Lever), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0007 and 3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395–3084. The NRC Clearance Officer is Brenda Jo Shelton. (301) 415–7230.

Dated at Rockville, Md, this 16th day of March 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–7433 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: "Proposed Rule, 10 CFR part 2: Petition for Rulemaking; Procedure for Submission."
3. The form number if applicable: Not Applicable.
4. How often is the collection required: On occasion.
5. Who will be required or asked to report: Persons who choose to submit more detailed supporting information in the petition than required in the current 10 CFR 2.802(c).
6. An estimate of the number of annual responses: Five.
7. An estimate of the number of hours needed annually to complete the requirement or request: 2,500 (an average of 500 hours per response).
8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Applicable.
9. Abstract: The proposed amendment to the regulations pertaining to petition for rulemaking would provide incentive to submit sufficient supporting information in petitions to facilitate more expeditious disposition by the NRC, and would also improve openness of the petition for rulemaking process by delineating priorities for review of the petitions.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L

Street, NW (Lower Level), Washington, DC 20555–0001.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0136), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Md., this 21st day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–7434 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. and Iowa-Illinois Gas and Electric Co., Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd, the licensee) for operation and Iowa-Illinois Gas and Electric Company (IIGEC) for possession of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the operating license to reflect the transfer of IIGEC's 25 percent ownership in Quad Cities, Units 1 and 2, through the merger of IIGEC, MidAmerican Energy Company (MidAmerican), Midwest Power Systems Inc. and Midwest Resources Inc., with MidAmerican as the surviving entity from the merger. Quad Cities is operated by ComEd on behalf of IIGEC. Commonwealth Edison Company, alone, is licensed to operate Quad Cities, Units 1 and 2. The proposed action is in accordance with ComEd's application dated February 23, 1995.

The Need for the Proposed Action

The proposed action is required to reflect the ownership change discussed above. The amendment reflecting the transfer of IIGEC's interest in the license will have minimal impact on the operation of the facility by ComEd. The transfer and amendment will not affect the facility's Technical Specifications, license conditions, or the organization and practices of ComEd.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed license amendment and concludes that there will be no changes to Quad Cities, Units 1 and 2, or the environment as a result of this action. The transfer of IIGEC's possession-only interest in the license and the associated license amendment will not affect the numbers, qualifications, or organizational affiliation of the personnel who operate the facility, as ComEd will remain the holder of the operating license and continue to be responsible for the operation of Quad Cities, Units 1 and 2.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the transfer of ownership, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the transfer of ownership would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the transfer of ownership would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the Illinois State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the licensee's submittal dated February 23, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Dated at Rockville, Md., this 21st day of March 1995.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7435 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Letter; Pressure Locking and Thermal Binding of Safety-Related Power-Operated Gate Valves

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter regarding pressure locking and thermal binding of safety-related power-operated gate valves. This proposed generic letter is intended to ensure that addressees have performed or will perform evaluations, and as appropriate, analyses and/or corrective actions to ensure that safety-related power-operated gate valves that may be susceptible to pressure locking or thermal binding are capable of performing their required safety functions. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of

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the proposed generic letter presented under the Supplementary Information heading. This generic letter and supporting documentation were discussed in meeting number 268 of the Committee to Review Generic Requirements (CRGR) on January 24, 1995. The staff incorporated the changes requested by CRGR plus information concerning two recent events and obtained CRGR endorsement. The relevant information that was sent to the CRGR to support their review of the proposed generic letter will be placed in the Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Room.

DATES: Comment period expires April 26, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas G. Scarbrough, (301) 415–2794.

SUPPLEMENTARY INFORMATION: NRC Generic Letter 95–XX: Pressure Locking and Thermal Binding of Safety-Related Power-Operated Gate Valves.

Addresses

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that addressees perform, or confirm that they already have performed, (1) evaluations of operational configurations of safety-related power-operated (including motor, air, and hydraulic-operated) gate valves for susceptibility to pressure locking and thermal binding, and (2) further analyses, and any needed corrective actions, to ensure that safety-related power-operated gate valves that are susceptible to pressure locking or thermal binding are capable of performing their required safety functions.

NRC previously provided guidance on an acceptable approach for addressing pressure locking and thermal binding of MOVs in Supplement 6 to Generic Letter (GL) 89–10, "Safety-Related Motor-Operated Valve Testing and Surveillance," but did not request specific actions by licensees to address these problems at that time. This letter confirms (as was indicated earlier in Supplement 6) that licensees are expected under existing regulations to take actions to ensure that safety-related power-operated gate valves susceptible to pressure locking or thermal binding are capable of performing their required safety functions. The guidance in Attachment 1 to this letter is derived directly from (and is intended to be the same as) the guidance provided in Enclosure 1 to GL 89–10, Supplement 6; except, in this generic letter, (1) the guidance is being issued as an approved generic NRC staff position for implementation by licensees who have not already satisfactorily addressed pressure locking and thermal binding of MOVs by implementing the guidance in Supplement 6 (or equivalent industry methods); and (2) the guidance is also intended for adaptation and implementation by all licensees, to address the pressure-locking and thermal-binding phenomena in other types of power-operated (i.e., air and hydraulic-operated) gate valves, as well as MOVs. Finally, for both MOVs and other power-operated valves, this letter requires that licensees submit for staff review summary information regarding any actions taken to ensure that valves susceptible to pressure locking or thermal binding are capable of performing their required safety functions, including (a) actions taken by licensees on their own volition to implement the guidance provided in Supplement 6 (or equivalent industry methods), as well as (b) actions taken in response to this letter. (No response was required from licensees in Supplement 6 to GL 89–10 regarding pressure locking and thermal binding.)

In this generic letter, the NRC staff is requesting a preliminary evaluation of pressure locking and thermal binding of safety-related power-operated gate valves, and, subsequently, a more detailed evaluation and resolution of the issue.

Background

The NRC staff and the nuclear industry have been aware of disc binding problems of gate valves for many years. The industry has issued several event reports describing failure of safety-related gate valves to operate due to pressure locking or thermal binding of the valve discs. Several generic industry communications have given guidance for both identifying susceptible valves and performing appropriate preventive and corrective measures. Despite industry awareness of the problem, pressure locking and thermal binding events continue to occur. In addition to events at U.S. nuclear power plants, French experience with pressure locking events was recently documented in NUREG/CP–0137 (July 1994), "Proceedings of the Third NRC/ASME Symposium on Valve and Pump Testing."

In GL 89–10 (June 28, 1989), the staff asked holders of operating licenses and construction permits to provide additional assurance of the capability of safety-related MOVs and certain other MOVs in safety-related systems to perform their safety-related functions by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design-basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. In Enclosure 1 to Supplement 6 to GL 89–10 (March 8, 1994), the NRC staff described one acceptable approach for licensees to address pressure locking and thermal binding of motor-operated gate valves.

In March 1993, the NRC issued NUREG–1275, Volume 9, "Pressure Locking and Thermal Binding of Gate Valves." This NUREG give the history of pressure locking and thermal binding events, describes the phenomena, discusses the consequences of locking or binding on valve functionality, summarizes preventive measures, and assesses the safety significance of the phenomena. Pressure locking or thermal binding can cause a power-operated valve to fail to open, resulting in an inability of the associated safety train or system to perform its safety function. Pressure locking and thermal binding represent potential common-cause failure modes that can render redundant trains of certain safety-related systems or multiple safety systems incapable of performing their safety function. Such failures may not be self-revealing through existing surveillance tests or normal operating cycles.

Description of Circumstances

After issuing Volume 9 of NUREG–1275, the NRC staff discussed pressure locking and thermal binding with several licenses (1) to gather information on the technical issues related to generic and plant-specific valve and system characteristics, and (2) to determine the implementation status of prior industry guidance for identification of susceptible valves and application of preventive and corrective measures. NRC surveys indicated that some licensees have performed multiple reviews of pressure locking and thermal binding. However, the staff found only limited instances of valves being modified to alleviate the effects of pressure locking and thermal binding.

In Enclosure 1 to Supplement 6 of GL 89–10, the NRC staff reminded licensees that they are expected under existing regulations to take actions to ensure that safety-related power-operated gate valves susceptible to pressure locking or thermal binding are capable of performing their required safety functions, and described an acceptable approach for licensees and permit holders to address pressure locking and thermal binding of motor-operated gate valves as part of their GL 89–10 programs. The information on pressure locking and thermal binding of motor-operated gate valves provided in Enclosure 1 to Supplement 6 of GL 89–10 was intended as timely notification of operating experience feedback. During inspections of GL 89–10 programs, the staff found the actions taken by licensees to address pressure locking and thermal binding of motor-operated gate valves to be varied. Although many licensees had conducted some level of review of the potential for pressure locking and thermal binding of their motor-operated gate valves, few licensees had either (1) thoroughly evaluated the capability of the motor actuators to overcome the phenomena, or (2) taken corrective action to prevent the phenomena as discussed in Supplement 6. In view of these inspection results, the NRC staff has determined that further action (i.e., this generic letter) is now warranted to ensure that safety-related power-operated gate valves susceptible to pressure locking or thermal binding are capable of performing their required safety functions.

Most licensees are nearing completion of their GL 89–10 programs. In meetings with industry representatives and licensees, the staff stated that, during its closure review, it will assess the progress being made by licensees in addressing pressure locking and thermal binding of motor-operated gate valves. The staff also stated that licensees need not complete their response to the pressure locking and thermal binding issue at the time that the verification of the design-basis capability of MOVs within the scope of GL 89–10 is completed because the staff would evaluate the acceptability of addressee resolution to pressure locking and thermal finding of all safety-related power-operated gate valves, including MOVs, in a consolidated effort (via this generic letter). Finally, the staff stated that this generic letter would address the schedule for completing the licensees' response to the pressure locking and thermal binding issue.

The NRC staff held a public workshop on February 4, 1994, to discuss pressure locking and thermal binding of gate valves, including prioritization of susceptible valves for corrective action. A summary of the public workshop is available in the NRC Public Document Room and contains information on evaluation of pressure locking and thermal binding, and actions taken in response to the identification of susceptible valves.

On February 28, 1995, NRC issued Information Notice (IN) 95–14, "Susceptibility of Containment Sump Recirculation Gate Valves to Pressure Locking." This information notice alerted licensees to a report from Northeast Nuclear Energy Company, the licensee for Millstone Nuclear Power Station, Unit 2, that both containment sump recirculation motor-operated gate valves might experience pressure locking during a design-basis loss-of-coolant accident and fail in the closed position. On March 15, 1995, NRC issued IN 95–18, "Potential Pressure-Locking of Safety-Related Power-Operated Gate Valves." This information notice alerted licensees to a report from Connecticut Yankee Atomic Power Company, the licensee for Haddam Neck Nuclear Power Plant, that seven motor-operated gate valves in the safety injection systems were susceptible to pressure-locking to the extent that the operability of the valves may have been jeopardized.

Discussion

The pressure locking and thermal binding phenomena are based on well-known concepts. The identification of susceptible valves and the determination of when the phenomena might occur requires a thorough knowledge of components, systems, and plant operations. Pressure locking occurs in flexible-wedge and double-disc gate valves when fluid becomes pressurized within the valve bonnet and the actuator is not capable of overcoming the additional thrust requirements resulting from the differential pressure created across both valve discs by the pressurized fluid in the valve bonnet. For example, the fluid may enter the valve bonnet (1) during normal open and close valve cycling, (2) when a fluid differential pressure across a disc causes the disc to move slightly away from the seat, creating a path to either increase the fluid pressure or fill the bonnet with fluid, or (3) for a steamline valve, when differential pressure exists across the disc and the valve orientation permits condensate to collect and enter the bonnet. Surveillance testing can cause a valve to experience pressure locking or thermal binding. For example, an inboard isolation MOV in the reactor core isolation cooling (RCIC) system steamline at a boiling-water reactor (BWR) plant failed in the closed position following routine surveillance testing. Pressure locking and thermal binding may occur in varying degrees but may not, in all cases, render a valve incapable of operating, though a delay in valve stroke time or valve damage may occur.

Various plant operating conditions can introduce pressure locking. Valve bonnet pressure might be higher than anticipated, causing pressure locking under certain conditions. For example, when (1) the gate valve is in a line connected to a high-pressure system and isolated only by check valves (which may transmit pressure even when passing leak-tightness criteria) and (2) bonnet volume temperature increases, pressurization results from thermal expansion of the confined fluid. Valve bonnet temperature might increase in response to heatup during plant operation, ambient air temperature rise due to leaking components or pipe breaks, or thermal conduction or convection through connected piping. Over time, bonnet pressure could decay by leakage past the seating surfaces or stem packing. However, the depressurization time may be longer than the system response time to initiate valve actuation to perform its safety function. Also, valve actuator operation at locked rotor conditions for a few seconds could degrade the motor torque capability of a motor-operated gate valve.

Thermal binding is generally associated with a wedge gate valve that is closed while the system is hot and then allowed to cool before attempting to open the valve. Mechanical interference occurs because of different expansion and contraction characteristics of the valve body and

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disc materials. Thus, reopening the valve might be prevented until the valve and disc are reheated. Solid-wedge gate valves are most susceptible to thermal binding. However, flexible-wedge gate valves with a high temperature gradient across the discs may experience thermal binding.

Pressure locking or thermal binding occurs as a result of the valve design characteristics (wedge and valve body configuration, flexibility, and material thermal coefficients) when the valve is subjected to specific pressures and temperatures during various modes of plant operation. Operating experience indicates these situations were not always considered as part of the design basis for valves in many plants.

Requested Actions

Within 60 days of the date of this generic letter, each addressee of this generic letter is requested to perform and complete the following actions:

1. Evaluate (in at least a preliminary manner) the operational configurations of all safety-related power-operated (i.e., motor-operated, air-operated, and hydraulic-operated) gate valves to identify those valves that are potentially susceptible to pressure locking or thermal binding; and

2. Document a basis for the operability of the potentially susceptible valves or, where operability cannot be supported, take action in accordance with the Technical Specifications.

Within 180 days of the date of this generic letter, each addressee of this generic letter is requested to implement and complete the guidance provided in Attachment 1 to perform the following actions:

1. Evaluate the operational configurations of safety-related power-operated (i.e., motor-operated, air-operated, and hydraulic-operated) gate valves in its plant to identify valves that are susceptible to pressure locking and thermal binding;

2. Perform further analyses as appropriate, and take needed corrective actions (or justify longer schedules), to ensure that the susceptible valves identified in 1 are capable of performing their intended safety function(s) under all modes of plant operation, including test configuration.

Note: If a licensee has already performed an evaluation of operational configurations to identify motor-operated gate valves susceptible to pressure locking and thermal binding, and has performed additional analyses and taken needed corrective actions for identified valves, in a manner that satisfactorily implements the guidance in Supplement 6 to GL 89–10 (or equivalent industry methods) so that the identified valves are capable of performing their required safety functions, the licensee need not perform any additional action under 1 and 2 above for MOVs.

50.54(f) Information Request

1. Requested Information

All addressees, including those who have already satisfactorily addressed pressure locking and thermal binding for MOVs by implementing the guidance in Supplement 6 to GL 89–10 (or equivalent industry methods), are requested to provide a summary description of the following:

a. The susceptibility evaluation of operational configurations performed in response to (or consistent with) 180-day Requested Action 1, and the further analyses performed in response to (or consistent with) 180-day Requested Action 2, including the bases or criteria for determining that valves are/are not susceptible to pressure locking or thermal binding;

b. The results of the susceptibility evaluation and the further analyses referred to in (a) above, including a listing of the susceptible valves identified;

c. The corrective actions, or other dispositioning, for the valves identified as susceptible to pressure locking or thermal binding, including: (i) Equipment or procedure modifications completed and planned (including the completion schedule for such actions); and (ii) justification for any determination that particular safety-related power-operated gate valves susceptible to pressure locking or thermal binding are acceptable as is.

The staff believes that a corrective action schedule (if corrective actions are needed) may be based on risk significance, including consideration of common cause failure of multiple valves. However, the time schedules for completing corrective action in response to pressure locking or thermal binding concerns do not supersede the requirements of the NRC regulations and individual plant Technical Specifications in the event that a safety-related valve is determined to be incapable of performing its safety function. An addressee's schedule for completing corrective action in response to this generic letter will be considered independent from GL 89–10.

2. Required Response

All addressees are required to submit the following written response to this generic letter:

a. Within 30 days from the date of this generic letter, a written response indicating whether or not the addressee will implement the action(s) requested above. If the addressee intends to implement the requested action(s), provide a schedule for completing implementation. If an addressee chooses not to take the requested action(s), provide a description of any proposed alternative course of action, the schedule for completing the alternative course of action (if applicable), and the safety basis for determining the acceptability of the planned alternative course of action;

b. Within 180 days from the date of this generic letter, a written response to the information request specified above in Requested Information Items 1.a, 1.b, and 1.c;

All addressees shall submit the required written responses and report specified in item 2 above to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, under oath or affirmation under the provisions of section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, a copy shall be submitted to the appropriate Regional Administrator.

Backfit Discussion

10 CFR part 50, appendix A, Criteria 1 and 4, and plant licensing safety analyses, require and/or commit that the addressees design and test safety-related components and systems to provide adequate assurance that those systems can perform their safety functions. Other individual criteria in appendix A to 10 CFR part 50 apply to specific systems. In accordance with those regulations and licensing commitments, and under the additional provisions of 10 CFR part 50, appendix B, Criterion XVI, licensees are expected to take actions to ensure that safety-related power-operated gate valves susceptible to pressure locking or thermal binding are capable of performing their required safety functions. Supplement 6 to GL 89–10 alerted licensees to the problems with pressure locking and thermal binding in MOVs, and described an acceptable approach for addressing these phenomena for MOVs but did not request any specific actions or response form licensees.

The actions requested in this generic letter are considered compliance backfits, under the provisions of 10 CFR 50.109 and existing NRC procedures, to ensure that safety-related power-operated gate valves that are susceptible to pressure locking and thermal binding are capable of performing their intended safety functions. In accordance with the provisions of § 50.109 regarding compliance backfits, a full backfit analysis was not performed for this proposed action; but a documented evaluation was performed, including a statement of the objectives of and reasons for the requested actions and the basis for invoking the compliance exception. A copy of this evaluation will be made available in the public document room.

Attachment 1—Guidance for Addressing Pressure Locking and Thermal Binding of Power-Operated Gate Vales

The following summarizes an acceptable approach to addressing pressure locking and thermal binding of gate valves within the scope of this generic letter:

1. Perform an evaluation of the safety-related power-operated gate valves having operational configurations that may be susceptible to pressure locking or thermal binding. Document the basis for determining whether valves (a) are susceptible to pressure locking or thermal binding or (b) can be removed from further consideration. For example, solid wedge disk gate valves might not be susceptible to pressure locking. Double disk gate valves are not likely to be susceptible to thermal binding.

The evaluation should include consideration of the potential for gate valves to undergo pressure locking or thermal binding during surveillance testing.

The evaluation also should include review of generic studies for site-specific applicability, such as in the areas of thermal effects and design-basis depressurization.

Examples of unacceptable reasons for eliminating valves from consideration of pressure locking or thermal binding are (1) leakage rate, (2) engineering judgement without justification, and (3) lack of event occurrence at the specific plant.

Several plants have experienced either pressure locking or thermal binding. These cases are discussed in NUREG–1275, Volume 9. Examples of gate valves involved in pressure locking events are:

* Low-pressure coolant injection (LPCI) and low-pressure core spray (LPCS) system injection valves;
* Residual heat removal (RHR) system hot-leg crossover isolation valves;
* RHR containment sump and suppression pool suction valves;
* High-pressure coolant injection (HPCI) steam admission valves;
* RHR heat exchange outlet valves;
* Emergency feedwater isolation valves; and
* RCIC steamline isolation valve.

Examples of gate valves involved in thermal binding events are:

* Reactor depressurization system isolation valves;
* RHR inboard suction isolation valves;
* HPCI steam admission valves;
* Power-operated relief valve (PORV) block valves;
* Reactor coolant system letdown isolation valves;
* RHR suppression pool suction valves;
* Containment isolation valves (sample line, letdown exchanger inlet header);
* Condensate discharge valves; and
* Reactor feedwater pump discharge valves.

2. Perform a further analysis of the safety-related power-operated gate valves identified (in 1 above) as susceptible to either pressure locking or thermal binding to ensure all such valves can be opened to perform their safety function under all modes of plant operation, including test configuration.

If a safety-related power-operated gate valve is found to be susceptible to pressure locking or thermal binding and the addressee relies on the capability of the actuator to overcome pressure locking or thermal binding, consideration of the uncertainties surrounding the prediction of the required thrust to overcome these phenomena should be included in the evaluation. Credit for bonnet pressure decay within the valve response time may not be acceptable unless operation of the actuator under those conditions will not degrade actuator capability.

Attachment 2 to this generic letter describes potential resolution options that may be used by licensees for power-operated gate valves found susceptible to pressure locking to thermal binding. Several preventive and corrective measures for pressure locking and thermal binding are also discussed in NUREG–1275, Volume 9, though each method has limitations with respect to applicability, safety, effectiveness, and cost.

The NRC regulations require an analysis under 10 CFR 50.59 for any valve modifications and the establishment of adequate post-modification and inservice testing of any valves installed as part of the modification. For example, addressees may need to evaluate the effects of drilling the hole in the disk if this option is used to resolve a pressure locking concern. One consideration is the fact that, with a hole in one disk and the other disk flexible allowing fluid to enter the valve bonnet, the valve will be leaktight with respect to pipe flow in only one direction.

As required through appendix B to 10 CFR part 50, the addressee may need to establish training for plant personnel to perform any necessary actions and incorporate specific procedural precautions/revisions into the existing plant operating procedures. For example, plant personnel might periodically stroke certain valves to reduce the potential for thermal binding.

Attachment 2—Description of Potential Resolution Options for Gate Valves Found Susceptible to Pressure Locking or Thermal Binding

1. Analysis Only To Justify Adequate Capability to Overcome the Thrust Requirements of Pressure Locking or Thermal Binding

The staff considers the prediction of the thrust required to overcome pressure locking or thermal binding to be very difficult. An addressee may be able to justify adequate actuator capability in response to pressure locking for small valves. The staff does not consider this alternative appropriate to resolve concerns regarding thermal binding.

2. Testing Only To Justify Adequate Capability to Overcome the Thrust Requirements of Pressure Locking or Thermal Binding

An addressee may be able to demonstrate through an in-situ or prototype test that the actuator has adequate capability to overcome pressure locking for a particular valve. The staff considers this alternative difficult to justify for thermal binding concerns because of the uncertainty in modeling actual plant and valve conditions.

3. A Combination of Testing and Analysis To Justify Adequate Capability to Overcome the Thrust Requirements of Pressure Locking or Thermal Binding

An addressee may be able to demonstrate adequate capability of the actuator to overcome pressure locking based on test information from the particular valve or similar valves from other sources together with an analysis to demonstrate applicability. As with Alternative 2, the staff considers this alternative difficult to justify for thermal binding concerns.

4. Equipment Modifications To Prevent Pressure Locking or Thermal Binding

The staff considers this to be the least difficult alternative to justify and address pressure locking of susceptible gate valves.

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Examples of possible modifications to prevent pressure locking are provided in NUREG–1275, Volume 9. Modifications to prevent thermal binding are also possible, such as replacing a wedge gate valve with a parallel-disc gate valve.

5. Procedure Modifications To Prevent Pressure Locking or Thermal Binding

The staff considers procedure modification to be a strong alternative for preventing thermal binding of gate valves. However, procedure modifications are less likely to be a justifiable alternative to prevent pressure locking of gate valves.

Dated at Rockville, MD, this 20th day of March, 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7431 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 106 to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications (TS) for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment relaxes the setpoint tolerance for the pressurizer safety valves and the main steam safety valves from ± ±1% to ± ±3%.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 12, 1994 (59 FR 51612). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 13476).

For further details with respect to the action see (1) the application for amendment dated August 4, 1994, (2) Amendment No. 106 to License No. NPF-49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Md., this 17th day of March 1995.

For the Nuclear Regulatory Commission.

Vernon L. Rooney, SR.,

Project Manager, Project Directorate I–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7432 Filed 3–24–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35518; File No. SR–AMEX–94–30]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Commodity Linked Notes

March 21, 1995.

I. Introduction

On August 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade Commodity Linked Notes ("COINs"), intermediate term notes whose value will be linked in part to changes in the levels of either the J.P. Morgan Commodity Excess Return Index ("JPMCIX") or the J.P. Morgan Commodity Return Index ("JPMCI" together with JPMCIX, "Indexes").

Notice of the proposed rule change and Amendment No. 1 (defined herein) was published for comment and appeared in the **Federal Register** on December 2, 1994.[3] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

The Amex proposes to list for trading under Section 107 of the Amex Company Guide ("Section 107") a new hybrid product called COINS. COINs are intermediate term notes whose value will be linked in part to changes in the level of a commodity index consisting of base metals, precious metals and energy related commodities. More specifically, the value of COINs are based on an index that replicates a trading strategy whereby an investor holds a futures position in each of eleven exchange-traded commodities for a one-month period and then rebalances the positions of the commodities held for the following month to maintain a constant dollar weighting scheme.

A. Description of the Indexes

COINs will be linked to either the JPMCI or the JPMCIX, both of which measure the return from an investment in the same eleven industrial futures contracts.[4] According to the Exchange, the JPMCI and JPMCIX are identical in all aspects except for the incorporation of "collateral return," as more fully described below, into the JPMCI.[5] Both Indexes are designed to replicate a trading strategy, described more fully below, that holds a futures position in each of the eleven futures for a one month period and then rebalances the volume of commodities held for the following month based upon a constant dollar weighting scheme. Amex represents that J.P. Morgan desires the flexibility to determine at the time of offering, based upon investor demand and market conditions, which if the Indexes it will utilize for valuing COINs.

COINs will conform to the Amex's listing guidelines under Section 107, which provide that such issues have: (1) A public distribution of one million trading units; (2) 400 holders; and (3) a market value of not less than $20 million. The Exchange also will require that the issuer have a minimum tangible net worth of $150 million. In addition, the Exchange will require that the total original issue price of the notes (when combined with all of the issuer's commodity linked notes which are listed on a national securities exchange or traded through the facilities of NASDAQ), shall not be greater than 25% of the issuer's tangible net worth at the time of issuance.

COINs are non-interest bearing notes with a term of one to three years and, upon maturity, holders will receive at least 75% of the original issue price plus an amount in U.S. dollars equal to a participation rate (*i.e.*, a specified percentage) multiplied by any positive difference between the level of the appropriate index at the time of the offering and the average of the closing index level on the five business days preceding maturity. COINs may not be redeemed prior to maturity, and holders of the notes have no claim to the physical commodities or futures contracts underlying the linked index.

B. Index Design and Calculation

The JPMCIX and JPMCI are designed to replicate a trading strategy that measures both "price" return and "roll" return from an investment in certain commodities. Price return is the component of return that arises from changes in commodity futures prices. Roll return is the component of return that arises from the hypothetical rolling of a long futures position through time in a sloping forward price curve environment. When nearby dated futures contracts are more expensive than longer dated contracts, roll return is positive. When the reverse applies, roll return is negative.

The relative weights of the Index components will be rebalanced at the end of trading on the fourth business day of every month to maintain the appropriate dollar weighting. In addition, due to the periodic expiration of the futures contracts used to compute the Index value, Amex states that it is necessary to "roll" out of expiring contracts and into the new nearby contracts. To minimize possible pricing volatility arising from conducting the "roll" on a single business day, the substitution of the new contract for the old is accomplished with 20% of the roll volume transacted on each of the five subsequent business days after the rebalance date. The futures contract to be used for the monthly hypothetical rebalancing and rolling of each commodity will be the nearest designated future contracts[6] to be used in the appropriate Index, with a termination of trading date not earlier than ten business days into the following month.[7]

In addition to price return and roll return, the JPMCI is comprised of "collateral return," which, according to the Amex, represents the risk free component of commodity returns afforded by full collateralization of the notional value of futures positions with Treasury bills. Essentially, it measures the return that an investor would receive if the investor were to margin fully a futures position (*i.e.*, post 100% margin) with Treasury bills. Amex represents that according to J.P. Morgan, because stocks and bonds are collateralized investments, it is useful to treat commodities on the same basis in order to compare risk-return performance, even though some investors may choose not to fully collaterlize commodity investments. Accordingly, J.P./ Morgan believes that collateralization permits meaningful comparison with traditional assets in a portfolio allocation framework.[8]

Prices utilized in the Indexes will be based on New York Mercantile Exchange ("NYMEX") prices for platinum and energy related commodities; Commodity Exchange ("Comex") prices for other precious metals (Comex is wholly-owned subsidiary of NYMEX); and London Metal Exchange ("LME") prices for base metals. These prices are widely reported by vendors of financial information and the press. Index values will be comprised of readily ascertainable and verifiable futures contract settlement and closing prices and will be calculated once each trading day by J.P. Morgan (or an affiliate) and disseminated after 4:00 p.m. (New York time) to vendors of financial information by the issuer, J.P. Morgan.[9]

The design, composition and calculation of both Indexes are expected to remain unchanged during the term of the COINs instruments; however, market developments may necessitate changes to these aspects of the product.[10] Such decisions will be determined on the basis of a "neutral" business committee, the JPMCI Policy Committee. This committee is composed of senior employees in the commodities and research areas of J.P. Morgan as well as independent industry and academic experts. Commodity Group personnel of J.P. Morgan are restricted to an advisory, non-voting membership on the JPMCI Policy Committee. J.P. Morgan will immediately notify the Exchange and vendors of financial information that report the Index values in the event that there is change in the relative weightings, calculation methodology or composition of the COINs Index.[11]

Members of the NPMCI Policy Committee and employees of the calculation agent who are involved in the calculation of, or data collection for, any of the commodity interests underlying COINs or the aggregate value of the commodity index underlying COINs will be expressly prohibited from trading COINs. Additionally, the calculation agent will adopt and maintain such reasonable and appropriate procedures as to ensure that the calculation agent, its agents, affiliates and employees, do not take advantage of or communicate to any other person any knowledge concerning changes in the value of the Indexes, or any commodity interest underlying the Indexes before such information is made publicly available.

C. Surveillance Sharing Agreements

The Amex represents that it is able to obtain market surveillance information, including customer identity information, with respect to transactions

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR § 240.19b-4 (1993).

[3] *See* Securities Exchange Act Release No. 35005 (November 23, 1994), 59 FR 61911. The Amex on November 16, 1994, submitted Amendment No. 1 ("Amendment No. 1") to the proposal to allow the underwriter to link the value of the notes to either the JPMCI or JPMCIX, depending upon market conditions and investor interest at the time of the offering. Additionally, the Amendment provides that: only options approved accounts will be permitted to trade the notes; the notes will provide for a 75% guaranteed return of principal; the index value will be calculated at least once a day; the Amex has executed the necessary surveillance sharing agreements with the relevant commodities exchanges; and COINs will comply with the CFTC's hybrid instrument exemption (58 FR 5580 (Jan. 22, 1993)). *See* Letter from Benjamin Krause, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated November 16, 1994.

[4] The commodities underlying the Indexes and their approximate weighting are: aluminum (9%), copper (8%), nickel (2%), zinc (3%), heating oil (10%), natural gas (7%), unleaded gas (5%), WTI Light Sweet Crude (33%), gold (15%), silver (5%) and platinum (3%).

[5] *See* Amendment No. 1, *supra* note 3.

[6] The designated futures contracts for each commodity are specified in the Letter from Benjamin Krause, Capital Markets Group, Amex, to Stephen M. Youhn, Derivative Products Regulation, SEC, dated Oct. 4, 1994.

[7] For energy and base metals, the new and old contracts will be different. For precious metals, the new and old contracts may be the same contract because of the absence of a designated contract for every month. In this instance, rebalancing and rolling will only involve an adjustment of the amount held of the old contracts.

[8] The return based upon the Treasury bill rate is calculated using a 13 week T-bill yield, compounded daily at the decompounded discount rate of the most recent weekly U.S. Treasury bill auction as found in the H.15 (519) report published by the Board of Governors of the Federal Reserve System, on the full (100%) value of the index. Interest accrues on an actual day basis over weekends and holidays at the previous day's rate. *See* Amendment No. 1, *supra* note 3.

[9] *See* Letter from William Floyd-Jones, Amex, to Stephen M. Youhn, SEC, dated December 16, 1994 ("December 16 Letter").

[10] Such developments could include, among other things, changing liquidity conditions or the discontinuation of existing contracts, the emergence of new contracts on relevant commodities, or major progress in substitution technology that renders obsolete industrial processes that make use of a certain commodity.

[11] *See infra* note 17.

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occurring on the NYMEX and Comex pursuant to its information sharing agreement with NYMEX.[12] The Exchange also represents that it is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on LME under information sharing arrangements with the Securities and Futures Authority ("SFA") through the Intermarket Surveillance Group ("ISG").[13]

D. Sales Practice and Trading Rules

The Exchange will require that only accounts approved for options trading under Amex Rule 921 shall be permitted to engage in the purchase and/or sale of COINs. In addition, the Amex will require that recommendations in COINs transactions be subject to the heightened suitability standards set forth in Amex Rule 923.[14] Additionally, the Exchange will distribute a circular to its membership prior to the commencement of trading in COINs to provide guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in COINs and highlighting the special risks and characteristics thereof. As with other hybrid debt instruments, COINs will be subject to the equity margin and trading rules of the Exchange.[15]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). In particular, the Commission believes that the availability of exchange-traded COINs will provide a new instrument for investors to achieve desired investment objectives (*e.g.*, inflation hedge and portfolio diversification) through the purchase of an exchange-traded securities product linked to an index of certain commodities.[16] For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to COINs are consistent with the Act.

COINs are a new version of hybrid securities debt instruments that are listed on various securities exchanges. These instruments involve publicly offered notes with interest return or a principal component linked to a particular asset or index of assets. For COINs, the interest return and part of the principal return will be derived and based upon the performance of either the JPMCI or JPMCIX, which, in turn, will be dependent upon the performance of the designated futures contracts related to the underlying physical commodities.[17] Although COINs provide investors with a 75% principal guarantee, as discussed below, the value of COINs will be affected partially by certain risks that are associated with the purchase and sale of exchange-traded futures contracts.

The Commission notes that the prices of commodities (and overlying futures contracts), including the eleven commodities utilized for the Indexes, may be subject to volatile price movements caused by numerous factors.[18] Accordingly, an investment in COINs may also be subject to volatile price movements due to price changes in the underlying commodities comprising the Index. In addition, COINs have many complex features, such as the incorporation of hypothetical roll return and collateral return. The Amex has proposed special suitability, disclosure, and compliance requirements to address the complex and risky nature of COINs. First, only accounts approved for options trading pursuant to Amex Rule 921 may engage in transactions in COINs. As a result, only those investors who have expressed an interest in options trading and are deemed qualified by a member to engage in options trading will be permitted to purchase COINs. This is important given the embedded derivative component of COINs. Second, the Amex will require that members who make recommendations in COINs must comply with the heightened suitability standards set forth in Amex Rule 923.[19] Third, COINs provide for a principal return of at least 75% of their initial offering price. While this guaranteed return of principal is subject to the issuer's credit risk, *i.e.*, the ability of J.P. Morgan to meet its repayment obligations upon maturity, this guarantee helps to reduce the likelihood that investors could sustain a substantial loss of their COINs investment due to adverse commodity price movements. Fourth, because COINs are cash-settled, holders will not receive, nor be required to liquidate, the underlying physical commodities or overlying futures contracts. The Commission notes that this provision will effectively terminate a COINs investor's exposure to commodity market risk at the note's maturity. Finally, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with COINs.[20] This will assist members in determining the customers eligible to trade COINs, formulating recommendations in COINs, and in monitoring customer and firm transactions in COINs.

The Commission also believes that several factors significantly minimize the potential for manipulation of the Indexes. First, as discussed above, the Indexes represent a diverse cross-section of exchange-traded industrial commodities. Second, each of the futures contracts overlying the commodities is relatively actively traded, and has considerable open interest. Third, the majority of futures contracts overlying the component commodities trade on exchanges that impose position limits on speculative trading activity, which are designed, and serve, to minimize potential manipulation and other market impact concerns. Fourth, as discussed below, the Amex has entered into certain surveillance sharing agreements with each of the futures exchanges upon which the underlying designated futures contracts trade. These agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making COINs less readily susceptible to manipulation.[21] Fifth, the price of COINs will be comprised of readily ascertainable and verifiable futures contract settlement and closing prices and disseminated once each trading day after 4 p.m. (New York time) to vendors of electronic financial information and on the Amex tape.[22] Sixth, adequate procedures are in place to prevent the misuse of information by members of the JPMCI Policy Committee.[23] Accordingly, for the reasons discussed above, the Commission believes the Indexes are not readily susceptible to manipulation and that in any event, the surveillance procedures in place are sufficient to detect as well as deter potential manipulation.

The Commission notes that COINs, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer, J.P. Morgan. This heightens the possibility that a purchaser of COINs may not be able to receive full principal cash payment upon maturity. To some extent this credit risk is minimized by the Exchange's listing guidelines requiring COINs issuers to possess at least $100,000,000 in assets and stockholders' equity of at least $10 million. In any event, financial information regarding J.P. Morgan will be disclosed or incorporated in the prospectus accompanying the offering of COINs.

Finally, the Commission notes that the approval granted herein is limited to the issuance of COINs whose value is derived from the JPMCI or JPMCIX, as described in this Order. Accordingly, the use of either of the Indexes as an underlying value for any other derivative product, irrespective of the issuer, raises additional legal and/or regulatory issues which would necessitate a rule filing pursuant to Rule 19b–4.

Based on the above, the Commission finds that the proposal to trade COINs is consistent with the Act, and, in particular, the requirements of Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7447 Filed 3–24–95; 8:45 am]

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[12] *See* Letter from William Floyd-Jones, Amex, to Michael Wallinskas, SEC, dated August 26, 1994.

[13] *Id.* The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. the members of the ISG are the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. The SFA is an affiliate member of ISG.

[14] Letter from William Floyd-Jones, Amex, to Stephen M. Youhn, SEC, dated November 17, 1994.

[15] *See* Letter from James McNeil, Chief Examiner, Financial Regulatory Services Department, Amex, to Sharon Lawson, Assistant Director, SEC, dated August 24, 1994, for more specific details concerning the margin treatment for COINs.

[16] Pursuant to Section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] In this respect, the Commission notes that Amex will promptly notify the Commission if there are significant changes in the weighings and composition or calculation methodology of the Indexes. Moreover, any proposed material changes to such features might require a separate rule filing pursuant to Rule 19b–4. Furthermore, a rule filing would be required in order to list any other derivative product based upon either of the Indexes or any other index comprised of commodity interests. Finally, a proposed issuer would have to ensure that its product complied with applicable CFTC exemptions or statutory interpretations regarding hybrid products before listing any such product. *See supra* note 3.

[18] Such factors include, but are not limited to, international economic, social and political conditions and levels of supply and demand for the individual commodities.

[19] Amex Rule 923 requires, among other things, that members have reasonable grounds for believing that a recommended transaction is not unsuitable on the basis of information furnished by the customer.

[20] The COINs circular will be submitted to the Commission for its review and should include, among other things, a discussion of those risks which may cause commodities to experience volatile price movements in addition to details on the composition of the Indexes and how the rates of return will be computed.

[21] The Amex has comprehensive surveillance sharing agreements with all of the exchanges upon which the futures contracts overlying COINs trade and is able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and Comex. Furthermore, under the ISG information sharing agreement, SFA will be able to provide, on request, surveillance information with respect to trades effected on the LME, including client identity information. Finally, if the composition of the applicable COINs Index changes or if a different market is utilized for purposes of calculating the value of the designated futures contracts, the Amex will ensure that it has entered into a surveillance sharing agreement with respect to the new relevant market.

[22] *See* December 16 Letter.

[23] As discussed above, members of the JPMCI Policy Committee are expressly prohibited from trading COINs and from communicating any knowledge concerning changes in the value of the Indexes to any other person. Amex will also have surveillance procedures in place to periodically review activity in the notes and/or underlying Index components.

[24] 15 U.S.C. 78s(b)(2) (1982).

[25] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–35520; International Series Release No. 793, File No. SR–Phlx–95–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Additional Expirations for the Cash/Spot German Mark Foreign Currency Options ("3D Options")

March 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 25, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On February 24, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 1012(a)(ii) to permit listing German mark cash/spot foreign currency options ("FCOs"), commonly referred to as "3D Options,"[2] with series having up to 12 months to expiration. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On March 8, 1994, the Commission approved the listing and trading of 3D Options.[3] These FCOs are issued by The Options Clearing Corporation and are European-style.[4] The options have one-week and two-week expirations to provide a hedging vehicle for: sophisticated retail customers, portfolio managers, and multi-national corporations which need to hedge their

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[1] In Amendment No. 1, the Exchange proposed to: (1) Amend the procedure for the symbols that will be used for the proposed longer term 3D Options; (2) change the name of these options in Phlx's rules from "cash/spot" to "3D" FCOs; (3) specify the strike price intervals applicable to the longer-term 3D Options; and (4) clarify that the proposal to permit spread margin treatment between the 3D Options and the regular Deutsche mark FCO will be applicable to the weekly, consecutive month, and cycle month series 3D Options. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated February 24, 1995 ("Amendment No. 1").

[2] "3D" refers to dollar denominated delivery.

[3] *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994).

[4] A European-style option may only be exercised during a specified time period immediately prior to expiration of the option.

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short term foreign currency exposure; and to banks which need to hedge the risks associated with trading in the forward and cash markets. The Exchange represents that the users of 3D Options have particularly liked the U.S. dollar settlement feature because they do not have to establish foreign bank credit lines, nor do they have to worry about the potential of exchanging currency due to exercises and assignments. The Exchange further represents that although the users find 3D Options beneficial for managing their short term foreign currency risks, they have also suggested that they would like to use a U.S. dollar settled option to hedge longer term risks. The Phlx, therefore, proposes to add longer term expirations to the 3D Option contract in order to address these requests.

The Exchange proposes to list 3D Options with expirations corresponding to the consecutive month and cycle month series for regular FCOs. Specifically, 3D Options will be listed on the March, June, September, and December cycle with two near-term months. The expiration date will be the Monday preceding the third Wednesday of each month, thus creating a mid-month U.S. dollar settled FCO. The Phlx proposes to amend Phlx Rule 1012(a)(ii)(B) and (C) to reflect these additional series of options. The Exchange will not list 3D Options with month-end expirations or with more than 12 months to expiration.[5]

The Exchange believes that 3D Options with a longer term to expiration will meet the needs of investment managers who are seeking to protect portfolios against foreign exchange fluctuations but who do not wish to receive or deliver the underlying currency to achieve that goal. Similarly, the Exchange believes that corporate treasurers seeking balance sheet protection would also prefer paying or receiving U.S. dollars rather than exchanging German marks. Both of these potential users may have either short or long-term concerns. Finally, retail traders who may have either a short or long-term market perspective, will, in the Exchange's opinion, find these options attractive because they will not have to establish foreign bank credit lines or have to deal with the delivery or receipt of the underlying foreign currency at settlement.

Currently, the weekly 3D Options are listed with the symbol XDA, SDB, XDC, XDD, or XDE depending on whether they will expire on the first, second, third, fourth, or fifth Monday of the month, respectively. Because the proposed longer term 3D Options will expire on the Monday before the third Wednesday of each month, they will always expire on either the second or third Monday of the month. Accordingly, the longer-term 3D Options will be listed with the symbol XDB or XDC and will carry that symbol until expiration.[6]

3D Options are currently listed in one-half point strike price intervals. The Exchange proposes that the proposed longer-term 3D Options listed for the three near term months will also be listed in one-half point strike price intervals, while the 3D Options listed with six, nine, or twelve months to expiration will have one point strike price intervals.[7]

The Exchange intends to allow spread margin treatment between the German mark FCO ("XDM") and the 3D Options pursuant to Exchange Rule 722(c)(2)(E).[8] This provision allows for short calls or puts to be offset against long calls or puts for margin purposes if the underlying foreign currency and number of units are the same, provided that the "long" position expires on or after the date of the "short" position.

Even though 3D Options are settled in U.S. dollars and XDM contracts are settled in German marks, the Exchange believes that it should be permissible for a broker-dealer to extend to its customers spread margin treatment for a position consisting of a 3D Option offset against an XDM under the existing Exchange rules.[9] The Exchange believes that this type of spread margin treatment is warranted for the same economic reasons that the Exchange has allowed customers to spread two XDM positions against each other. In both cases, a customer is hedging an option position on the same underlying currency—the German mark. If the market value of the underlying decreases, the customer will lose money on the long side and profit on the short side and, conversely, if the market value of the underlying increases, the customer will profit on the long side and lose on the short side. The Exchange feels that risk reducing strategies need to be recognized and spread margin treatment permitted.

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest by providing FCO users who do not necessarily need to exchange currency at settlement with an alternative U.S. dollar settled FCO with corresponding expirations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[5] The Exchange is also proposing to amend Rules 1000, 1012, 1014, 1057, and 1069 to change references in its rules from cash/spot FCOs to 3D FCOs, as these FCOs are more commonly referred to. The Exchange is also proposing non-substantive changes to Rule 1012 for ease of reading. *See* Amendment No. 1, *supra* note 1.

[6] For example, a March 1995 3D Option that would expire on Monday March 13, would be listed, for example, as an XDB March 62 call, whereas the April 1995 3D Option that would expire on Tuesday, April 18 (Monday being an Exchange holiday) would be listed as an XDC April 62 call. *See* Amendment No. 1, *supra* note 1.

[7] *Id.*

[8] Exchange Rule 722(c)(2)(E) provides: "Where a call that is listed or traded on a registered national securities exchange or association is carried 'short' for a customer's account and the account is 'long' a call listed or traded on an exchange or association, expiring on or after the date of the 'short' call and written on the same number of • • • units of the same underlying foreign currency, the minimum margin must be maintained in respect of the 'short' position shall be the lesser of (i) the required amount pursuant to subparagraph (B)(i) or (B)(ii) of the paragraph (c)(2), as the case may be, or (ii) the amount, if any, by which the exercise price of the 'long' call exceeds the exercise price of the 'short' call."

"Where a put that is listed or traded on a registered national securities exchange or association is carried 'short' for a customer's account and the account is also 'long' a put listed or traded on an exchange or association expiring on or after the expiration date of the 'short' put and written on the same number of • • • units of the same underlying foreign currency (in the case of options on a foreign currency), the minimum margin which must be maintained in respect of the 'short' put shall be the lesser of (i) the margin required pursuant to subparagraphs (B)(i) or (B)(ii) of this paragraph (c)(2) as the case may be, or (ii) the amount, if any, by which the exercise price of the 'short' put exceeds the exercise price of the 'long' put."

[9] This proposal will apply both to the existing 3D Options and to the proposed longer-term 3D Options. *See* Amendment No. 1, *supra* note 1.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–02 and should be submitted by April 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7448 Filed 3–24–95; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35512; File No. SR–Phlx–95–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Codification of Order Ticket Marking Requirements

March 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 13, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to consolidate and codify its order ticket marking requirements under Floor Procedure Advice ("Advice") F–4. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list the order ticket marking requirements in a single advice to facilitate floor compliance. By providing a sort of checklist of required marks and by placing the checklist in the Floor Procedure Advice Handbook for ease of reference, the Exchange believes that it will be easier for trading floor personnel to identify and verify in a timely fashion whether an order ticket has been properly marked.

Currently, Advice F–4 requires order tickets for spreads, straddles, combinations and synthetics that receive spread priority to be marked accordingly (e.g., "sp," "st," etc.). This existing requirements, which is now proposed to be labelled as paragraph (a), contains a fine schedule for violations, administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.[1] Proposed paragraph (b) would not contain a fine schedule, and therefore, does not require an amendment to the Exchange's minor rule plan. Instead, failure to mark the order ticket is a violation of the rule or advice, subject to the applicable fine, if any, requiring that mark, not Advice F–4(b). For example, failure to mark "SS" respecting a trade designated as "sold sale" violates Advice F–3. Proposed Advice F–4(b) does not in and of itself impose new marking requirements.

In recent years, several new order types and marking requirements have been introduced on the options floors. For example, "BD" for purposes of the Ten-up Rule, and "F" respecting facilitation orders may be required on order tickets. In each case, the Phlx believes that marking the floor ticket correctly is instrumental to ensuring to proper handling of the order in the trading crowd.

The Phlx believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for 30 days from March 13,

[1] The Phlx's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting. Violations of Advice F–4 are currently subject to a minor rule plan citation and fine.

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1995, the rule change proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a "noncontroversial filing" in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–15 and should be submitted by April 17, 1995.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7395 Filed 3–24–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12) (1994).

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Water Supply Development for the Catoosa Utility District and Upper Cumberland Plateau Region of East Tennessee

AGENCIES: Rural Utilities Service (RUS) and the Tennessee Valley Authority (TVA).

ACTION: Extension of comment period on notice of intent and announcement of public scoping meeting.

SUMMARY: RUS and TVA published a Notice of Intent to prepare an Environmental Impact Statement on alternatives for water supply development for the Catoosa Utility District and the upper Cumberland Plateau region of East Tennessee in the **Federal Register** on February 8, 1995. This original notice stated comments would be received on the scope of the EIS on or before March 10, 1995. RUS and TVA are today extending that comment period until June 5, 1995, and announcing the location of a public scoping meeting.

DATES: Comments on the scope of the EIS must be received on or before June 5, 1995. A public scoping meeting will be held on Tuesday, April 4, 1995 at 6 p.m. Central Standard Time at Glenn Martin Junior High School, 314 South Miller Avenue, Crossville, Cumberland County, Tennessee.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville Tennessee 37902, phone (615) 632–4678.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) to prepare an EIS on alternatives for establishing a water supply for the Catoosa Utility District and the Upper Cumberland Plateau area of East Tennessee was published in the **Federal Register** on February 8, 1995. The NOI stated that comments would be received until March 10, 1995. It was not possible to hold a public meeting on the scope of the EIS during that timeframe, and project schedules allows for a longer public scoping period. Therefore, RUS and TVA are extending the EIS scoping period until June 5, 1995, to allow sufficient time to hold the public meeting and allow the interested public to comment on the suggested scope of the EIS alternatives and important issues.

A public meeting will be held on Tuesday, April 4, 1995, at 6 p.m. Central Standard Time at Glenn Martin Junior High School, 314 South Miller Avenue, Crossville, Cumberland County, Tennessee. The purpose of this meeting will be to gain information regarding the scope of the EIS and the resources that may be affected by any proposed water supply activities. Written Comments on these issues should be mailed to the address noted above. Oral and additional written comments will be received at the public meeting.

Dated: March 17, 1995.

Kathryn J. Jackson,

Senior Vice President, Resource Group, Tennessee Valley Authority.

[FR Doc. 95–7459 Filed 3–24–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–95–003]

Eighth Coast Guard District Industry Day Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Eighth Coast Guard District, is sponsoring a Marine Safety Industry Day to discuss various topics of interest to the marine community. The meeting will be open to the public.

DATES: The meeting will be held on May 16, 1995, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Fairmont Hotel, 123 Baronne Street (at University Place), New Orleans, LA. The telephone number for the hotel is (504) 529–7111.

FOR FURTHER INFORMATION CONTACT: CDR S. P. Glenn, U.S. Coast Guard, c/o Commander (mep), Eighth Coast Guard District, Hale Boggs Federal Bldg., Room 1341, 501 Magazine Street, New Orleans, LA 70130–3396; telephone number (504) 589–6271; fax number (504) 589–4999.

SUPPLEMENTARY INFORMATION: The past several years, the marine industry has undergone significant change. A much more competitive marketplace, an emphasis on quality, regulatory initiatives in response to several marine casualties, and significant legislation, such as OPA 90, have influenced and changed the way virtually all segments of the industry currently conduct business. The Coast Guard also has taken a new approach as a regulatory agency and embarked on several major initiatives to improve quality and customer service.

For this year's industry day, we plan to present a series of speakers representing all segments of the industry followed by panel sessions in the afternoon. These presentations, among other topics, will include: the President's Regulatory Reinvention Initiative, New Spill Doctrine, Offshore Issues, ABS Based Alternative Compliance Program, Spill Management, Maritime Law Issues, Licensing, and Commercial Vessel Safety.

The agenda is:

May 16, 1995—Fairmont Hotel

8:30 a.m.—Registration
9:30 a.m.—Welcome and Introductions
Speaker presentations (plenary)
12:00 a.m.—Luncheon with keynote speaker
2:00 p.m.—Panel sessions
4:00 p.m.—Industry Day concludes

Attendance is open to the public. Preregistration for the program is required to assure adequate space. The conference and luncheon fee will be $30.00. Contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section to obtain registration forms and luncheon menu. Reservations must be received no later than April 17, 1995.

Dated: March 8, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–7371 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–95–004]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, electronic chart systems, and various other navigation safety matters affecting the Houston/Galveston area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 1 p.m. on Thursday, May 18, 1995.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: LTJG D. E. Rowlett, Recording Secretary, Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–6235.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The tentative agenda for the meeting will consist of the following items:

(1) "Dead zones" in the Vessel Traffic Service Houston's VHF–FM radio coverage.

(2) Various Coast Guard aids to navigation improvement initiatives and waterway analysis studies.

(3) Updates from the U.S. Army Corps on various waterway improvement projects.

(4) Discussion on deployment of NOAA real-time current meters.

(5) Discussion of Electronic Chart Display and Information Systems.

Dated: March 8, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–7372 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–026]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council will meet at the Thirteenth Coast Guard District, 915 2nd Avenue, WA on Friday, April 21, 1995, and at the Holiday Inn Crown Plaza, 1113 6th Avenue, Seattle, WA on Saturday, April 22, 1995.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council, U.S. Coast Guard (G–NSR–3), 2100 Second Street, SW, Washington, DC 20593–0001. Telephone (202) 267–0415.

SUPPLEMENTARY INFORMATION: Committees will meet on Friday, April 21 from 1 to 4 p.m. and on Saturday, April 22 from 8:30 to 11:30 a.m. Committee meetings may be held on Friday evening if additional time is needed. The discussions will include the following topics:

a. Navigation Rules

1. Rule 3—Definition of "Vessel engaged in Fishing".
2. Rule 20—Does Rule allow for additional apparatus to enhance the required lights?
3. Rule 18—Responsibilities of Vessels.

b. Human Factors

1. Manning Model Task List.
2. Navigation Safety and Watchkeeping Code.

The Council will convene in plenary session on Friday, April 21 at 8 a.m. to 12 noon and reconvene on Saturday, April 22 at 1 to 4 p.m. to hear Committee status reports and any matters properly brought before the Council.

The meeting is open to the public. Persons wishing to make oral statements should notify the Executive Director no later than Wednesday, April 19, 1995. Any person may present a written statement to the Council at any time without advance notice.

Dated: March 16, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services

[FR Doc. 95–7373 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

[FRA Emergency Order No. 17, Notice No. 3]

Owners of Railroad Tank Cars; Modification of Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars

The Federal Railroad Administration (FRA) of the United States Department of Transportation finds that Emergency Order No. 17, Notice No. 1 (57 FR 41799; September 11, 1992) and Notice No. 2 (58 FR 8647; February 16, 1993) should be modified. This notice will require owners of stub sill tank cars to comply with the Association of American Railroads' O&M Circular No. 1, Supplement No. 2 (CPC–1030) issued on August 10, 1994.

Effective Date: This amendment is effective March 27, 1995.

For Further Information Contact: Edward W. Pritchard, Chief, Hazardous Materials Division, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–9252 or Thomas A. Phemister, Tria. Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–0635.

Authority

Authority to enforce the Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has

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been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers of hazardous materials, and owners of tank cars are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20101 *et seq.*, and the Federal hazardous materials transportation safety laws, 49 U.S.C. 5101 *et seq.* FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may immediately impose "restrictions and prohibitions * * * that may be necessary to abate the situation." (*Ibid.*)

Background

On September 3, 1992, FRA issued Emergency Order No. 17, Notice No. 1 (57 FR 41799) requiring owners of stub sill tank cars to comply with the Association of American Railroads (AAR) Tank Car Stub Sill Inspection Program, and the AAR Tank Cars Stub Sill Inspection Procedure, placed in effect in the AAR's O&M Circular No. 1, issued to members and private car owners on July 17, 1992. Under EO17 and the O&M circular, owners of stub sill tank cars must inspect them and shall not return them to service until all defects have been repaired and the cars are in full compliance with Federal railroad safety regulations and the AAR Tank Car Manual. Inspection priorities were established based on characteristics discovered in other inspections and based on accumulated mileage.

FRA received numerous questions regarding the implementation of EO 17. FRA issued EO 17, Notice No. 2, on February 8, 1993, responding to those questions and clarifying its enforcement policy regarding the tank car stub sill inspection program. FRA's goal was to establish understanding and to facilitate compliance early in the program. Towards the end of the first year of the stub sill inspection program, FRA's monitoring efforts disclosed some irregularities in inspection data and a generalized lack of standardized inspection techniques and written procedures. These findings sparked investigations into shops performing the required inspections. From these investigations, it became apparent that the AAR's O&M Circular No. 1 needed to be revised to eliminate these early imperfections in the stub sill program.

FRA believed that AAR could be instrumental in influencing tank car owners to develop written procedures for inspections and could also provide assistance if necessary. Accordingly, on February 14, 1994, FRA wrote AAR and asked that certain subgroups of tank cars be placed into an 18-month priority inspection program. Further, FRA requested tank car manufacturers and owners to develop written procedures for each design of stub sill tank car for distribution to repair facilities performing the required inspections. AAR agreed and ordered several subgroups of tank cars into an 18-month priority inspection program. In addition, on August 10, 1994, AAR issued a supplement to its original O&M Circular No. 1. Supplement No. 2 (to O&M Circular No. 1), copy attached as Appendix A, requests owners to develop written procedures that encompass: (1) Identifying structurally significant components and welds; (2) a means of access to these components and welds, including removal of the jacket, insulation, or thermal coating, if required; (3) inspection techniques to ensure the detection of damage; and (4) proper identification, measurement, and reporting of cracks by line item on the required inspection report form (AAR Form SS–2). Supplement No. 2 also requests owners to forward a copy of the inspection procedures to the inspecting parties and to AAR.

This notice amends Emergency Order No. 17 by incorporating O&M Circular No. 1, Supplement No. 2, thus making tank car owners who do not respond to the request to develop design-specific inspection procedures liable for civil penalties. This notice will also add a requirement that copies of the design-specific inspection procedures must be sent to FRA as well as to AAR. For now, FRA will not review and approve these procedures but will use the copies sent to it as information for its monitoring program. Naturally, FRA reserves the authority to review and approve design-specific inspection procedures if, in the judgment of the agency, experience with their implementation warrants such action.

After spot-checking several repair facilities, FRA has discovered that, some 7 months after AAR's supplement was issued, shops and repair facilities still do not have design-specific procedures for conducting inspections under this emergency order. FRA cannot accept this lack of responsiveness to a program vital to transportation safety. Accordingly, this order will also require car owners to submit to AAR and to FRA their design-specific procedures within 60 days of the date of this order and will prohibit, as of the first anniversary of the AAR's Supplement No. 2 (August 10, 1995), any person from performing further inspections pursuant to this Emergency Order unless the owner has supplied the parties performing the inspection with an inspection procedure applicable to that specific design type.

FRA is aware of some concern within the community of tank car owners that O&M Circular Letter No. 1, Supplement No. 2 could be read to require duplicate, and potentially contradictory, effort by owners to develop inspection plans and procedures. FRA does not find anything in AAR's supplement to justify this concern. On the contrary, FRA encourages owners of stub sill tank cars to cooperate with each other, share information about the designs and the inspection techniques necessary for each, and develop inspection procedures based on the broadest spectrum of knowledge possible for each unique stub sill design. As outlined in FRA's February 1994 letter to AAR, the agency agrees that the written procedures should include the following elements:

- Identification of structurally significant components and welds;
- Access means to these components and welds, including removal of jacket, insulation, or thermal coating, if required;
- Inspection techniques to use to ensure the detection of damage; and,
- Proper identification, measurement and reporting of cracks by line item on AAR Form SS–2.

This notice makes no substantive changes in the manner of obtaining relief from Emergency Order No. 17 or in the penalties for violating it.

Finding and Order

I find that the unsafe conditions causing an emergency situation involving a hazard of death or personal injury that led to the issuance of Emergency Order No. 17 still exist and, accordingly, pursuant to the authority in 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered:

1. That, in addition to the requirements of Emergency Order No. 17, Notice No. 1, owners of stub sill tank cars shall also comply with the AAR Tank Car Stub Sill Inspection Program placed in effect in the Association of American Railroads' O&M Circular No. 1, Supplement No. 2, issued to members and private car owners on August 10, 1994, a copy of which is attached hereto as Appendix A and incorporated herein by reference;

2. That, in addition to furnishing copies of the procedures to AAR and to the inspecting parties, as required by Circular No. 1, Supplement No. 2, owners are required, within 60 days of the date this Notice was issued, to

furnish a copy of the procedures to FRA by sending it to the FRA Office of Safety Enforcement, Hazardous Materials Division, 400 Seventh Street, S.W., Washington, D.C. 20590;

3. That each owner of stub sill tank cars is responsible for distribution of the procedures to the parties performing the inspections and ensuring that the inspecting parties understand and follow the written procedures; and

4. That, effective August 10, 1995, no person may inspect a tank car pursuant to this Emergency Order unless the owner has supplied the inspection point with an inspection procedure applicable to that specific design type.

Relief

Tank car owners may obtain relief from this Emergency Order by inspecting the affected cars as required and repairing them as necessary.

Penalties

Any violation of this order shall subject the person committing the violations to a civil penalty of up to $20,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Notice to Affected Persons

This Notice No. 3 will be published in the **Federal Register** and will be sent by mail or facsimile to the Association of American Railroads, The American Short Line Railroad Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, the Chemical Manufacturers Association, and the American Petroleum Institute. These organizations are encouraged to make wide distribution of this modification of Emergency Order No. 17 within their membership and to other known interested parties.

Issued in Washington, D.C. on March 20, 1995.

Donald M. Itzkoff,

Deputy Administrator.

Appendix A—Association of American Railroads' O&M Circular No. 1, Supplement No. 2

The text of the Association of American Railroads' O&M Circular No. 1, Supplement No. 2 (CPC–1030), as issued on August 10, 1994, over the signature of Mr. J.J. Robinson, Senior Assistant Vice President, Operations and Maintenance Department, Casualty Prevention Division is as follows:

AAR O&M Circular No. 1; Supplement No. 2 Tank Car Stub Sill Inspection Program

1. Audits of the inspections being performed at several tank car facilities have revealed the need for each tank car owner to develop written inspection procedures for each unique stub sill design represented in his or her fleet, to distribute the procedures to the parties performing the inspections, and to ensure that the inspecting parties fully understand and consistently follow the written procedures. These written procedures should include the following elements:

- Identification of structurally significant components and welds;
- Access means to these components and welds, including removal of jacket, insulation or thermal coating, if required;
- Inspection techniques to use to ensure the detection of damage; and,
- Proper identification, measurement and reporting of cracks by line item on AAR Form SS–2.

In order to ensure the quality of the data and consistency of the inspection results, owners are requested to develop these procedures and to forward them to the inspecting parties as soon as possible. A copy of the procedures should also be filed with AAR, to the attention of the Manager - Freight & Tank Car Design; 50 F Street NW; Washington, DC 20001. Owners should contact the builders for assistance in the development of these procedures.

2. The SILSPEC software used to report the results of stub sill inspections has been updated to include a more comprehensive "look-up" of builders and stub sill design styles. A paper copy of the look-up table and the referenced Figures is enclosed, as is a table of Stub Sill Design Style Templates, which defines weld locations that must and must not be reported for each design. If there is a need to report cars built to any of the designs that have been added to the table, a copy of the updated software may be obtained from Paul Kinnecom at 202/639–2147 (FAX 202/639–2930).

(**Note**: Because the AAR's O&M Circular No. 1, Supplement No. 2 has been sent to all AAR members and to private car owners, FRA is not reproducing the inspection program's table and figures in the **Federal Register**.)

[FR Doc. 95–7416 Filed 3–24–95; 8:45 am]
BILLING CODE 4910–06–P

Maritime Administration

[Docket S–819]

Lykes Bros. Steamship Co., Inc.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as amended, to permit Foreign-Flag Reciprocal Space Charter, Sailing, and Cooperative Working Agreement

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated March 16, 1995, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, through the expiration of its operating-differential subsidy contract, December 31, 1997, to permit a reciprocal space charter, sailing, and cooperative working agreement with Evergreen Marine Corporation (Evergreen) in the U.S. foreign commerce.

The agreement, according to Lykes, covers the trade between the U.S. gulf and east and west coasts on the one hand and North Europe on the other. The typical itinerary for Lykes' U.S.-gulf and east coast/North Europe vessel is Galveston, New Orleans, Miami, Charleston, Norfolk, New York, Boston, Antwerp, Bremerhaven, Felixstowe, LeHavre and Boston. The Evergreen service covered by this Agreement will be provided by the vessels dedicated to its round-the-world service. Evergreen's westbound trans-Atlantic service typically calls Hamburg, Thamesport, Rotterdam, Antwerp, LeHavre, New York, Norfolk, Charleston, and Long Beach before proceeding west across the Pacific. The ordinary eastbound trans-Atlantic itinerary for Evergreen is Long Beach, Charleston, Baltimore, New York, LeHavre, Antwerp, Thamesport, and Hamburg.

Lykes notes that contingent on the Maritime Administration's approval and expiration of the Federal Maritime Commission's review period, Lykes has entered into an agreement with Evergreen for a reciprocal space charter, coordination of sailings, and cooperative working arrangement in these services. Under the agreement, the companies will negotiate and agree upon reciprocal space charters on their respective vessels in the trade and upon sailings coordination as appropriate. Lykes points out that the agreement is intended to permit Lykes to achieve better utilization of the vessels committed to North Atlantic services by establishing a course of slot chartering business with Evergreen. Through the use of slots on Evergreen's vessels the agreement will enable Lykes to offer shippers broader, more responsive service without any additional capital outlay. The opportunity to rationalize

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schedules, Lykes contends, will permit operational savings to be realized and lend flexibility to Lykes' itineraries.

Lykes states that addition of vessels to the services of Lykes or Evergreen beyond those currently operated or under contract for construction for this trade is not contemplated. Accordingly, Lykes concludes, the agreement will have no substantial impact on U.S.-flag carriers in the North Atlantic trade. This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on April 10, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: March 22, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–7427 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL RAILROAD ADMINISTRATION

National High-Speed Ground Transportation; Policy Outreach Meetings

AGENCY: Federal Railroad Administration, Office of Railroad Development.

ACTION: Notice of Public Meetings.

SUMMARY: The Federal Railroad Administration (FRA) will hold regional public outreach meetings around the United States to invite public input for developing the National High Speed Ground Transportation (HSGT) Policy, as mandated by the Intermodal Surface Transportation Efficiency Act. The public is invited to attend and/or submit written comments.

DATES: Written comments are invited at any time until May 30, 1995. Comments should be submitted by mail to the address below and will be accepted in person at each meeting. Comments received by April 7, 1995 will be considered in setting the agenda for the outreach meetings.

The sessions will take place as follows:

Dates: April 20, 1995.
Place: Knickerbocker Hotel, Grand Ballroom, 163 E. Walton Place, Chicago, Illinois 60611, (312) 751–8100.
Time: 5 p.m. to 7:30 p.m.
Local Contact: Merrill Travis, IDOT, (217) 782–2835.

Date: May 2, 1995.
Place: Shaker Ridge Club, 802 Albany Shaker Road, Loudonville, New York 12211, (518) 869–0246.
Time: 1 p.m. to 4 p.m.
Local Contact: Don Baker, New York DOT, (518) 457–5521.

Date: May 4, 1995.
Place: Virginia DOT, Main Auditorium, 1221 East Broad Street, Richmond, Virginia 23219.
Time: 5 p.m. to 7:30 p.m.
Local Contact: Leo Bevon, Virginia DOT, (804) 786–8410.

Date: May 15, 1995
Place: BPA Federal Office Building, Auditorium, 911 N.E. 11th Avenue (at Holladay St.) (Auditorium entrance on 9th St. side), Portland, Oregon 97232, (503) 326–2107.
Time: 5:30 p.m. to 8 p.m.
Local Contact: Donald Forbes, Oregon DOT, (503) 378–3373.

Date: May 17, 1995.
Place: Grand Hall, 1215 J Street, Sacramento, California 95814.
Time: 5 p.m. to 7:30 p.m.
Local Contact: Steve Zimrick, California DOT, (916) 227–9409.

Date: May 25, 1995
Place: Marriott Hotel, 7499 Augusta National Drive, Orlando, Florida 32822, (407) 851–9000.
Time: 5 p.m. to 7:30 p.m.
Local Contact: Charlie Smith, Florida DOT, (904) 487–4261.
Registration: Attendees are asked to arrive 30 minutes prior to the beginning of the meeting for registration.

In addition to the above sessions, there will be a special session in Boston, Massachusetts, during the annual convention of the High Speed Rail/Maglev Association. This is scheduled for Monday, May 8 from 5:00 to 6:30 PM at the Westin Hotel, Copley Place, Boston, MA. The public is also invited to this special session.

The addresses of the various sessions are above.

Background

These meetings will comprise a key part of the Department of Transportation's overall efforts to develop policy in support of the implementation of high-speed ground transportation as an element of an intermodal transportation system. The Department is currently working to lay the groundwork for the implementation of HSGT through state and local planning and investment and through a federal partnership for technology development.

The development of a HSGT policy is particularly relevant at this time because of the Secretary's proposal to consolidate current transportation funding programs and increase significantly the flexibility available to State and local governments to finance different types of projects with a unified allocation of funds. In addition, the Secretary has proposed developing State Infrastructure Banks, capitalized in part with Federal seed money, to leverage further investment from private capital and other sources. He has also proposed that some discretionary funding would be available for investments of regional or national significance. How HSGT investment would be treated in this context is a topic of special importance for HSGT policy.

The HSGT policy development will also consider ongoing changes at Amtrak. Since the future of HSGT, particularly options to operate at up to 150 m.p.h. on existing rights-of-way (Accelerail), is linked to the future of conventional Amtrak service in corridor markets, the recently announced restructuring of Amtrak presents new challenges as well as new opportunities, for state participation. In particular, that restructuring is designed to reduce Amtrak's cost structure by delivering service more efficiently and to improve customer service, and hence increase revenues, by reorganizing the corporation and empowering employees and managers. These changes should position Amtrak as a competitive organization to deliver HSGT services sponsored by State governments.

The HSGT policy development will consider ongoing technology development and corridor planning by states and their partners. These activities are currently authorized by the Swift Rail Development Act of 1994. The Swift Act, which was signed into law by the President in November 1994, authorizes matching grants up to a total of $184 million over three years, to assist HSGT technology development, including projects such as positive train control, non-electric high-speed locomotive development, and corridor planning, including engineering plans, commercial feasibility and environmental impact studies, and the acquisition of right-of-way for upgrading to HSGT. In FY 1995, $25 million dollars was appropriated for the Next Generation High Speed Rail Program which included five million for corridor planning. For FY 1996, the Administration requested $68 million for the Next Generation High Speed Rail Program and the High Speed Ground Transportation Research and Development.

Finally, the HSGT policy development will consider the results of a study of the potential performance and commercial feasibility of HSGT. The report, to be transmitted to Congress in 1995, will identify types of HSGT systems that would be most beneficial in various markets. It will also identify the challenges that will need to be addressed in order to implement HSGT in the U.S.

Both the High Speed Ground Transportation Commercial Feasibility Study Report to Congress (Report) and the National HSGT Policy are required by Section 1036 of the Intermodal Surface Transportation Efficiency Act (ISTEA) [49 U.S.C. 309(d) and (e)].

The Report will examine several illustrative corridors to obtain an understanding of the potential for HSGT around the nation. It will consider several types of HSGT technology systems, including Accelerail; new high speed rail (new, electric, dedicated high-speed only rail lines, 200 miles per hour); and Maglev (magnetic levitation vehicles on new lines, 300 mph). The Report is not a replacement for the more detailed analyses of individual corridors by state and local governments. It will, rather, be an assessment of HSGT potential in the U.S. as a whole, to guide national policy makers in HSGT-related decisions.

Section 1036 calls for the Policy to include "provisions to promote the design, construction, and operation of high-speed ground transportation systems in the United States."

The public will be invited to participate fully in discussions at these regional outreach meetings. The public is also invited to submit written comments on any subject relevant to the Policy before, after, or during the meetings, but public input on certain questions is of special interest to FRA. The principal questions are listed below, and FRA encourages the public to comment on these questions on the basis of each region's specific experience with transportation and HSGT issues.

Among the topics to be considered in the Policy, and at the regional outreach meetings, are:

(1) The Role of HSGT in the National Transportation System

Commenters on this topic are invited to consider:

(a) Can HSGT fill transportation needs in a cost effective manner not met by your region's current transportation system?

(b) What HSGT technologies are being considered, for what kinds of markets [short-term and long-term] in your region?

(c) How extensive a system makes good economic or financial sense in your region?

(d) How would your regional HSGT system be connected to the rest of the transportation system?

(2) Planning for HSGT

Commenters on this topic are invited to consider:

(a) Is your region using existing conventional rail service to prepare a market for HSGT? How?

(b) Does the presence of conventional rail service, including commuter rail, offer benefits to the regional HSGT system?

(c) To what extent and how are corridors suitable for future HSGT being preserved in your region?

(d) To what extent is there planning for joint public use transportation corridors in the region (e.g., highway and HSGT)? What are the obstacles and potential solutions?

(e) How will intermodal connections, such as transit lines to existing stations and right-of-way acquisitions near airports be planned for your HSGT system?

(f) What factors are key to the planning and implementation of interstate HSGT projects?

(g) What should be the roles of the Federal, state, and local governments, Metropolitan Planning Organizations, and the private sector in HSGT planning, construction, and operation in this region?

(3) Funding HSGT

Commenters on this topic are invited to consider:

(a) What non-Federal funds (local, State, private) are being used and considered for implementation in your region?

(b) What other sources of non-Federal funds (current or future) would you recommend to support HSGT for your region? (i.e., fuel tax, user fees, state/local government grants or loans, impact fees, private efforts and debt.)

(c) Federal law currently allows the issuance of tax-free bonds to finance HSGT projects for 150 miles per hour operation and above. If this were to include HSGT projects below 150 m.p.h., would this type of financing be utilized for HSGT in this region?

(d) What are the obstacles or impediments to the funding of HSGT projects under the current ISTEA legislation?

(e) How extensively would the Secretary's proposed unified allocation of funds for transportation investment be used for HSGT in your state or region?

(f) How could the Secretary's proposed program provide additional leverage for private capital to participate in funding HSGT projects?

(g) How could the new program structure be used most effectively to foster the kind of HSGT investment envisioned in your region?

(4) Implementing HSGT

Commenters on this topic are invited to consider:

(a) How should the issue of liability for host railroads be dealt with? Should insurance be purchased for HSGT operations? Should total liability or punitive damages be capped by statute? Should this be accomplished at the Federal or State level?

(b) Does the mechanism now embodied in Section 403(b) of the Rail Passenger Service Act (State-assisted service) provide an appropriate way to upgrade current corridor services to higher speeds?

(c) What should be the role of Amtrak in HSGT? Should State HSGT sponsors have the option of choosing another provider of the service and, if so, should the other provider have the same rights vis-a-vis the owning railroad that Amtrak now has?

(d) Are special arrangements needed with the private railroads to insure the future availability of excess rights-of-way and capacity for HSGT in this region?

(e) What sorts of labor issues are raised by HSGT projects, and do Federal laws related to rail labor need to be changed for HSGT service?

(f) What types of new technologies are important to the development of HSGT in this region?

(g) What should be the nature of Federal HSGT technology development and demonstration activities? What should be the State role in this region?

(h) What other actions should be taken to promote a U.S. HSGT industry? The possibilities include defense conversion projects, Buy American requirements, and tax policies.

(i) How should policies to promote a U.S. HSGT industry be gauged against the efficiency of using currently available foreign technologies?

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(j) What specific constitutional or other legal provisions in your state currently adversely affect implementation of HSGT? What changes would you suggest to overcome these barriers?

FRA invites respondents who plan to attend outreach sessions to send preliminary comments in advance of the session, identifying which session they plan to attend. Additional comments from participants following the sessions will also be welcome.

For further information contact: John F. Cikota, (202) 366–9332

Issued in Washington, D.C. on March 21, 1995

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 95–7509 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 17, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the satisfaction survey described below between April–June 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval this information collection by March 31, 1995. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below. All comments must be received by close of business March 27, 1995.

Internal Revenue Service (IRS)

OMB Number: 1545–1349
Form Number: None
Type of Review: Revision
Title: 1995 Telephone Routing Interactive System Voice Balance Due Telephone Application Customer Satisfaction Survey
Description: The Internal Revenue Service has developed the Voice Balance Due automated telephone application which allows IRS callers to request a payment extension or establish a monthly payment plan to satisfy an outstanding balance due interactively, without assistor involvement
Respondents: Individuals or households
Estimated Number of Respondents: 700
Estimated Burden Hours Per Respondent:
Automated Customer Satisfaction Survey—2 minutes
Manual Customer Satisfaction Survey—5 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 83 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–7390 Filed 3–24–95; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

March 17, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the satisfaction survey described below between April–May 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval this information collection by March 31, 1995. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below. All comments must be received by close of business March 27, 1995.

Internal Revenue Service (IRS)

OMB Number: 1545–1349
Form Number: None
Type of Review: Revision
Title: 1995 Telephone Routing Interactive System Location Telephone Application Pilot Test
Description: The Internal Revenue Service has developed the automated Location Telephone Application which provides IRS callers with the addresses and hours of operation of the IRS offices offering taxpayer assistance interactively, without assistor involvement
Respondents: Individuals or households
Estimated Number of Respondents: 2,250
Estimated Burden Hours Per Respondent: 2 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 113 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–7391 Filed 3–24–95; 8:45 am]

BILLING CODE 4830–01–M

Federal Law Enforcement Training Center

Notice of Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes the introduction of new members and special guests; opening remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; and reports on the following initiatives, Community Policing Concept, STAR series and Crime Bill, Georgia Air National Guard activities, Department of Defense Counter Drug Activities, International Training, and the Fellowship Program.

DATES: March 29, 1995.

ADDRESSES: Federal Law Enforcement Training Center, Building 94, Board Room, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524.

Hobart M. Henson,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 95–7397 Filed 3–24–95; 8:45 am]

BILLING CODE 4810–32–M

Customs Service

[T.D. 95–24]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on March 1, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.45(a) of the Customs Regulations, as amended (19 CFR 111.45(a)), ordered the revocation of the license (No. 5954) issued to George Louis-Ferdinand in the New York Customs Region.

Dated: March 21, 1995.

Philip Metzger,

Director, Trade Compliance Division.

[FR Doc. 95–7503 Filed 3–24–95; 8:45 am]

BILLING CODE 4820–02–M

Public Meetings in Houston, Texas and Charleston, South Carolina on AES Implementation Phase I

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of public meetings.

The U.S. Customs Service, Automated Export System Development Team announces the following public meetings:

DATES: Charleston, SC., Wednesday, April 5, 1995, commencing at 9:00 a.m. and Houston, TX., Wednesday, April 19, 1995, commencing at 9:00 a.m.

ADDRESS: Charleston, SC., Holiday Inn (Patriots Room), 250 Highway 17 Bypass, Mt. Pleasant, SC., 29464.

Houston, TX., Sheraton Crown Hotel and Conference Center (Airport), 15700 JFK Boulevard, Houston, TX, 77032.

FOR FURTHER INFORMATION CONTACT: Charleston Meeting: Mr. Steve Talley (803) 727–4387; Pre-registration Fax: (803) 727–4114.

Houston Meeting: Ms. Jean Bienz (713) 233–3600; Pre-registration Fax: (713) 233–3620

SUPPLEMENTARY INFORMATION: U.S. Customs Commissioner George J. Weise has announced that Phase 1 of the Automated Export System (AES) will be implemented at the ports of Baltimore; Norfolk; Houston; Charleston, South Carolina and Long Beach, California. Implementation is scheduled for July 1995.

AES is a joint venture between Customs and the Bureau of Census. The system is designed to electronically gather export-related information from both exporters and carriers prior to actual exportation.

A major goal of AES is to improve the accuracy of export trade statistics, which are used as a primary economic indicator. Eventually, AES will replace numerous paper and electronic mechanisms for filing Shipper's Export Declarations (SED's). AES will also enhance collection of the Harbor Maintenance Fee on exports, which is expected to return $60 to $80 million to the U.S. Treasury annually.

Customs, Treasury's lead agency for international trade issues, started AES development in May 1994. The AES team has been working closely with a Trade Resource Group comprised of members from export-related industries.

In this document, Customs is announcing the following public meetings on AES:

1. Charleston, SC., Wednesday, April 5, 1995, commencing at 9:00 a.m., Holiday Inn (Patriots Room), 250 Highway 17 Bypass, Mt. Pleasant, SC., 29464. Point of Contact: Mr. Steve Talley (803) 727–4387; Pre-registration Fax: (803) 727–4114.
2. Houston, TX., Wednesday, April 19, 1995, commencing at 9:00 a.m., Sheraton Crown Hotel and Conference Center (Airport), 15700 JFK Boulevard, Houston, TX, 77032. Point of Contact: Ms. Jean Bienz (713) 233–3600; Pre-registration Fax: (713) 233–3620.

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

Dated: March 22, 1995.

Sharon A. Mazur,

Director, AES Development Team.

[FR Doc. 95–7505 Filed 3–24–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–23]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on March 7, 1995, the following Customs broker licenses were revoked by operation of law due to the failure of the broker to file the triennial status report as required by 19 CFR 111.30(d). These licenses were issued in the Los Angeles Customs district.

Christopher Carle—10478
Lisa Crum—11775
Mark Dawson—7156
Troy Erickson—12605
Hadassah Foster—12628
Joel Meyer—5801
Janice Powell—11831
Kelly Reed—13210
Charlene Stecher—6210
Horace Taylor—2897
Robert Waggoner—2710
Susan Yoshinaga—10596

Hence, the subject licenses are revoked.

Dated: March 21, 1995.

Philip Metzger,

Director, Trade Compliance Division.

[FR Doc. 95–7504 Filed 3–24–95; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, P.L. 87–256. USIA is requesting approval of a revision of a currently approved collection entitled "Application Package, United States Information Agency, Bureau of Educational and Cultural Affairs", OMB Number 3116–0212 under a new title of "Proposal Submission Instructions (PSI), United States Information Agency, Bureau of Educational and Cultural Affairs." Estimated burden hours per response is 20 hours. Respondents will be required to respond only one time

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DATES: Comments are due on or before April 26, 1995.

COPIES: Copies of the Request for Clearance (OMB–83–1), supporting statement, transmittal letter and other documents submitted to OMB for approval maybe obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.c. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0212) is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Proposal Submission Instructions (PSI), United States Information, Bureau of Educational and Cultural Affairs."

Form Number: Proposal contains multiple forms

Abstract: Information collection from the pubic will enable the grant review panel and the Associate Director to ensure that each application complies with the established procedures and approving and/or disapproving of funding is properly warranted.

Proposed Frequency of Responses:

No. of Respondents—2000.

Recordkeeping Hours—0.

Total Annual Burden—40,000.

Dated: March 21, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 95–7412 Filed 3–24–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 58

Monday, March 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, March 30, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bunk Beds

The Commission will consider options for Commission action to address fatal entrapment and other incidents associated with bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 23, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–7667 Filed 3–23–95; 3:56 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, March 31, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Protocol Revisions

The staff will brief the Commission on two new issues raised on a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act. This matter arises from the Commission's decision on February 9, 1995, to reopen the proceeding and to accept oral and written comments on the newly-raised issues.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 23, 1995

Sadye E. Dunn,

Secretary.

[FR Doc. 95–7668 Filed 3–23–95; 3:56 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: March 29, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 627th Meeting—March 29, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2954–014, City of Santa Barbara, California
CAH–2.
Omitted
CAH–3.
Omitted
CAH–4.
Project No. 2306–017, Citizens Utilities Company
CAH–5.
Project No. 11521–000, Skokomish Indiana Tribe
CAH–6.
Project No. 7888–010, Comtu Falls Corporation
CAH–7.
Project Nos. 11076–000 and 2016–018, city of Tacoma, Washington

Consent Agenda—Electric

CAE–1.
Docket No. ER95–530–000, Ocean State Power II
Docket No. ER95–533–000, Ocean State Power
CAE–2.
Docket Nos. ER95–521–000 and ER95–524–000, Delmarva Power & Light Company
CAE–3.
Docket No. ER94–305–000, Nevada Power Company
CAE–4.
Docket No. ER94–1685–001, Citizens Lehman Power Sales
CAE–5.
Docket No. EL87–51–005, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company
Docket No. ER88–477–005, Gulf States Utilities Company
CAE–6.
Docket Nos. ER93–465–013, ER93–507–006, ER93–922–009, EL94–47–002, EL94–12–005, EL94–28–002, EL93–28–005 and EL93–40–005, Florida Power & Light Company
CAE–7.
Docket No. EG95–29–000, Austin Cogeneration Corporation
CAE–8.
Docket No. EG95–30–000, Austin Cogeneration Partners, L.P
CAE–9.
Docket No. EG95–28–000, Dominion Energy Services Company, Inc.
CAE–10.
Omitted

Consent Agenda—Oil and Gas

CAG–1
Docket Nos. RP95–115–001 and 002, CNG Transmission Corporation
CAG–2.
Docket No. RP95–174–000, Texas Eastern Transmission Corporation
CAG–3
Docket No. RP95–177–000, Southern Natural Gas Company
CAG–4.
Docket No. RP95–180–000, ANR Pipeline Company
CAG–5.
Docket No. RP95–181–000, ANR Pipeline Company
CAG–6.
Docket No. RP95–182–000, ANR Pipeline Company
CAG–7.
Omitted
CAG–8.
Docket Nos. RP95–194–000 and 001, Columbia Gas Transmission Corporation
CAG–9.
Docket Nos. RP95–195–000 and 001, Columbia Gulf Transmission Corporation
CAG–10.
Docket No. RP95–196–000, Columbia Gas Transmission Corporation
CAG–11.
Docket Nos. RP95–197–000 and 001, Transcontinental Gas Pipe Line Corporation
CAG–12.
Omitted
CAG–13.

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Docket No. TM95–3–22–000, CNG Transmission Corporation
CAG–14.
Omitted
CAG–15.
Omitted
CAG–16.
Docket No. RP94–343–004, NorAm Gas Transmission Company
CAG–17.
Docket No. RP95–173–000, Koch Gateway Pipeline Company
CAG–18.
Docket No. RP95–175–000, Mojave Pipeline Company
CAG–19.
Docket No. RP95–176–000, Panhandle Eastern Pipe Line Company
CAG–20.
Docket No. RP95–178–000, Northern Natural Gas Company
CAG–21.
Docket Nos. RP95–179–000 and 001, Northern Natural Gas Company
CAG–22.
Docket No. RP95–185–000, Northern Natural Gas Company
CAG–23.
Docket Nos. RP95–187–000 and TM95–2–37–000, Northwest Pipeline Corporation
CAG–24.
Docket No. RP95–188–000, NorAm Gas Transmission Company
CAG–25.
Docket No. RP95–190–000, Williams Natural Gas Company
CAG–26.
Docket No. RP95–191–000, Williston Basin Interstate Pipeline Company
CAG–27.
Docket No. RP95–192–000, Williston Basin Interstate Pipeline Company
CAG–28.
Docket No. RP95–193–000, Williston Basin Interstate Pipeline Company
CAG–29.
Docket No. RP95–199–000, NorAm Gas Transmission Company
CAG–30.
Docket No. TM95–2–5–000, Midwestern Gas Transmission Company
CAG–31.
Docket No. TM95–3–28–000, Panhandle Eastern Pipe Line Company
CAG–32.
Docket Nos. TM95–3–32–000 and TM94–4–32–000, Colorado Interstate Gas Company
CAG–33.
Docket No. TM95–3–33–000, El Paso Natural Gas Company
CAG–34.
Docket No. TM95–4–30–000, Trunkline Gas Company
CAG–35.
Docket No. PR95–1–000, Magnolia Pipeline Company
CAG–36.
Docket No. RP94–273–001, Columbia Gas Transmission Corporation
CAG–37.
Docket Nos. TM94–4–17–002, 003, 004, TM94–5–17–001, 002 and TM95–3–17–000, Texas Eastern Transmission Corporation
CAG–38.
Docket No. RP95–189–000, K N Interstate Gas Transmission Company
CAG–39.
Docket No. RP94–372–000, Southern Union Gas Company v. Northern Natural Gas Company
CAG–40.
Docket No. RP93–34–008, Transwestern Pipeline Company
CAG–41.
Docket Nos. RP94–206–000 and 001, Pacific Gas Transmission Company
CAG–42.
Omitted
CAG–43.
Omitted
CAG–44.
Docket No. RP94–367–000, National Fuel Gas Supply Corporation
CAG–45.
Docket No. RP94–318–001, Columbia Gas Transmission Corporation
CAG–46.
Docket No. RP94–343–005, NorAm Gas Transmission Company
CAG–47.
Docket No. AC94–16–001, Tennessee Gas Pipeline Company
CAG–48.
Docket No. IS94–21–001, Kenai Pipe Line Company
CAG–49.
Docket Nos. RP94–246–002 and RP94–288–002, Williams Natural Gas Company
Docket No. RP94–355–002, City Utilities of Springfield, Missouri V. Williams Natural Gas Company
CAG–50.
Docket Nos. CP92–481–001 and PR93–11–001, Northern Illinois Gas Company
Docket No. RP94–16–001, Southern California Gas Company
CAG–51.
Docket Nos. RP93–147–008, RP94–201–002, RP94–175–002, CP94–153–001, RP91–203–052 and RP92–132–043, Tennessee Gas Pipeline Company
CAG–52.
Omitted
CAG–53.
Docket Nos. RP92–229–004 and 005, Northwest Pipeline Corporation
CAG–54.
Docket Nos. CP92–182–010 and RP95–103–001, Florida Gas Transmission Company
CAG–55.
Docket Nos. RP92–226–000, 004 and RS92–65–009, Kern River Gas Transmission Company
CAG–56.
Docket Nos. RP89–34–010, RP89–257–003 and RP90–2–013, Williston Basin Interstate Pipeline Company
CAG–57.
Docket No. RP94–163–000, CNG Transmission Corporation v. Tennessee Gas Pipeline Company
CAG–58.
Docket Nos. IS95–23–000 and IS92–26–000, *et al.*, Williams Pipe Line Company
CAG–59.
Docket No. IS95–24–000, Kaneb Pipe Line Operating Partnership, L.P.
CAG–60.
Docket Nos. IS92–27–000, IS93–4–000 and IS93–33–001, Lakehead Pipe Line Company, Limited Partnership
CAG–61.
Docket No. GP94–18–000, State of Louisiana Office of Conservation—Geopressured Brine Gas Well Determinations (FERC Nos. JD94–04615, *et al.*)
CAG–62.
Docket No. GP95–3–000, Railroad Commission of Texas Tight Formation Area Determination, FERC No. JD92–02505T (Texas-15 Addition 3)
CAG–63.
Docket Nos. CP93–613–002 and CP93–673–002, Northwest Pipeline Corporation
CAG–64.
Docket No. CP94–36–006, Arkla Gathering Services Company
Docket Nos. CP94–628–003 and RP95–94–005, NorAm Gas Transmission Company
CAG–65.
Docket Nos. CP94–211–001 and –002, Transwestern Pipeline Company
CAG–66.
Docket Nos. CP94–267–000 and –001, NorAm Gas Transmission Company
CAG–67.
Docket No. CP94–781–000, East Tennessee Natural Gas Company
CAG–68.
Docket No. CP95–2–000, Texas Eastern Transmission Corporation
CAG–69.
Omitted
CAG–70.
Docket Nos. CP93–685–000 and –001, Tuscarora Gas Transmission Company
CAG–71.
Docket No. CP95–139–000, NCX Company, Inc.
Docket No. CP95–138–000, Natural Gas Pipeline Company of America

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. RM95–8–000, Open Access Non-discriminatory Transmission Services by Public Utilities
Docket No. RM94–7–001, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities. Notice of Proposed Rulemaking.
E–2.
Docket No. ER93–540–000, American Electric Power Service Corporation
Docket No. ER94–1637–000, Cinergy Services, Inc.
Docket No. ER95–371–000, Commonwealth Edison Company
Docket No. ER94–1518–000, Commonwealth Electric Company
Docket Nos. ER94–898–000 and EC94–7–000, El Paso Electric Company and Central and South West Services, Inc.
Docket No. ER95–112–000, Entergy Services, Inc.
Docket Nos. ER93–465–000, *et al.*, Florida Power & Light Company
Docket No. ER94–1045–000, Kansas City Power & Light Company

Docket No. ER94–1698–000, Kentucky Utilities Company
Docket No. ER94–1380–000, Louisville Gas & Electric Company
Docket No. ER94–1113–000, Northern States Power Company (Minnesota and Wisconsin)
Docket No. ER94–1348–000, Southern Company Services
Docket No. ER95–203–000, UtiliCorp United, Inc.
Docket No. ER95–262–000, Wisconsin Electric Power Company
Docket No. ER94–475–000, Wisconsin Power & Light Company
Docket No. ER94–1639–000, Wisconsin Public Service Corporation. Procedural order.
E–3.
Docket No. ER95–9–000, Real-Time Information Networks. Notice of Technical Conference.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. ER95–5–000, Release of Firm Capacity on Interstate Natural Gas Pipelines. Final Rule.

II. Pipeline Certificate Mattes

PC–1.
Reserved

Dated: March 22, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7587 Filed 3–23–95; 11:27 am]

BILLING CODE 6717–01–M

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Corrections

Federal Register
Vol. 60, No. 58
Monday, March 27, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Tennessee Gas Pipeline Co.; Notice of Informal Settlement Conference

Correction

In notice document 95–6839 appearing on page 14935, in the issue of Tuesday, March 21, 1995, make the following correction:

On page 14935, in the first column, in the first line, "March 16, 1995." should read "March 15, 1995.".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94E–0235]

Determination of Regulatory Review Period for Purposes of Patent Extension; Semprex™-D Capsules

Correction

In notice document 94–23276 appearing on page 48440 in the issue of Wednesday, September 21, 1994, make the following correction:

On page 48440, in the third column, in the second paragraph, in the eighth line, "March 20, 1994," should read "March 20, 1995,".

BILLING CODE 1505–01–D

federal register

Monday
March 27, 1995

Part II

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Meeting

AGENCY: National Telecommunications and Information Administration (NTIA); Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Wednesday, April 12, 1995 from 9:00 a.m. until 4:00 p.m.

ADDRESSES: The NII Advisory Council meeting will take place in the Main Ballroom of the La Fonda on the Plaza Hotel, 100 East San Francisco Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Nogales (or Ms. Tiffani Burke, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994

SUPPLEMENTARY INFORMATION:

Agenda

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Discussion of KICKSTART including reports from Mega-Project I (Vision and Goals Driven by Specific Applications), Mega Project II (Access to the NII), Mega-Project III (Privacy, Security and Intellectual Property)*
3. *KICKSTART Panel: Success Models*
4. *Outreach Presentation*
5. *Public Comment, Questions and Answers*
6. *Next Meeting Date and Agenda Items*

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Tiffani Burke at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–7385 Filed 3–24–95; 8:45 am]

BILLING CODE 3510–60–P

federal register

Monday
March 27, 1995

Part III

Department of Justice

Bureau of Prisons, Federal Prison Industries, Inc.

28 CFR Parts 345 and 545

Federal Prison Industries (FPI) Inmate Work Programs; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons, Federal Prison Industries, Inc.

28 CFR Parts 345 and 545

[BOP–1003–F]

RIN 1120–AA04

Federal Prison Industries (FPI) Inmate Work Programs

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its rule on Federal Prison Industries (FPI) Inmate Work Programs (formerly entitled UNICOR Inmate Work Programs). This amendment reorganizes into one part existing provisions on inmate hiring procedures, pay, and scholarship and incentive awards programs. It updates Bureau policy by adding provisions on position classification and recruitment, physical and medical work limitations, inmate worker standards, performance appraisal, dismissal procedures, benefit retention, and training programs. The intent of this amendment is to enable the Bureau to continue to employ and train inmates in a manner that will assist the inmate in post-release employment.

EFFECTIVE DATE: April 26, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Federal Prison Industries (FPI) Inmate Work Programs (formerly entitled UNICOR Inmate Work Programs). UNICOR is the commercial or "trade" name of Federal Prison Industries, Inc. (FPI). FPI, a component of the Bureau of Prisons, is a wholly-owned government corporation whose mission is to provide institution work assignments and training opportunities for inmates confined in Federal correctional facilities. A proposed rule on this subject was published in the **Federal Register** on December 16, 1992 (57 FR 59866). The comment period closed on February 1, 1993. The Bureau received only one response from the general public. A summary of that comment and agency response follows.

The commenter criticized the proposed rule on administrative grounds. First, the commenter stated that any major policy change in the Bureau's regulations ought to be the prerogative of the new administration. Second, the commenter stated that the proposed rule should have originated with the Board of Directors of Federal Prison Industries, Inc. The commenter then claimed that the published document did not reflect that the Board of Directors was aware of the proposed policy being enacted on its behalf. In response to these points, the Bureau notes that both the proposed rule and this final rule received appropriate clearances. With respect to the first point, clearance of the final rule is in and of itself sufficient guarantee of the final policies expressed therein. With respect to the second point, the Bureau notes that the proposed rule was signed by the Director under her titles as the Director of the Bureau of Prisons and the Commissioner of Federal Prison Industries. Furthermore, the authority citation for the proposed revision included a reference that the rule was promulgated pursuant to a resolution by the Board of Directors of Federal Prison Industries, Inc. Sufficient authority exists under 28 CFR 0.99 for the Commissioner of Federal Prison Industries, as the officer designated by the Board, to prescribe regulations governing the payment of compensation to inmates, and in order to eliminate any confusion, this final rule makes that designation explicit.

The commenter also took issue with the statement in the proposed rule that the mission of Federal Prison Industries, Inc. was to provide institution work assignments and training opportunities for inmates confined in Federal correctional facilities. The commenter alleged that FPI assignments did not qualify as job training programs. More specifically, the commenter claimed that over an eight year period he was aware of only one person who left prison and entered a job doing exactly the same thing. In response, the Bureau notes that its Post-Release Employment Project (PREP), a research study completed in January of 1992, concluded that inmates who participated in FPI work and other vocational programming during their imprisonment showed better institutional adjustment, were less likely to be returned to custody at the end of their first year back in the community, were more likely to be employed in the halfway house and community, and earned slightly more money than inmates who had similar background characteristics, but who did not participate in work and vocational training programs. Further Bureau research on mobility issues—the impact of prison work and vocational training on changes in occupations before, during, and after release from prison—is still in process. Preliminary results from these studies confirm the Bureau's belief that the commenter's anecdotal evidence is misrepresentative. In any event, the Bureau notes that FPI work assignments perform essential vocational training needs even if they only serve to instill habits of work and responsibility suitable for any occupational category.

The commenter characterized almost all of the proposed rule changes as being less favorabie for the inmates than existing rules. The commenter claimed that the proposed rule gave inmates in FPI assignments less job security and weaker longevity retention rights. More specifically, the commenter noted that under the current regulations an inmate may be removed virtually only for an FPI-related disciplinary problem. The Bureau takes issue with the characterization that almost all the rule changes are less favorable. The Bureau believes that these revisions benefit inmates by standardizing policies in such areas as position classification, physical and medical work limitations, benefit retention provisions, recruitment procedures, work standards, performance appraisal, etc.

With respect to the effects of disciplinary actions, the Bureau notes that revised provisions covering the effects of non-FPI disciplinary actions is both logical and supportive of correctional management. As noted in proposed § 345.42(c), an inmate found to have committed a prohibited act (whether or not it is FPI related) resulting in segregation or disciplinary transfer is also to be dismissed from Industries based on an unsatisfactory performance rating for failure to be at work. The Bureau believes it is not unreasonable to apply the same sanction in response to similar circumstances. As revised, § 345.42(c) serves as an additional incentive for inmates to avoid committing any prohibited act.

The commenter also objected to the proposed rule stating that it vested much more discretion in the hands of the Superintendents of Industry (SOIs) at individual facilities. In the opinion of the commenter, FPI Superintendents were not professional managers and had no training in the field of management. The Bureau notes that appropriate training is made available to FPI staff, and that the comprehensive nature of the revisions in this rulemaking help to ensure the successful operation of FPI programs.

The commenter also objected to provisions for premium pay, claiming that this served to reward informants rather than to reward productivity. The commenter also claimed that the display of leadership by inmates was in direct conflict with Bureau policy prohibiting an inmate from exercising responsibilities over another inmate. As noted in proposed § 345.52(e), premium pay is not a form of bonus or incentive pay for highly productive inmates. Other pay provisions (for example, piecework rates) serve as incentive for productivity. The proposed rule had explained that premium pay is a recognition of the value of the leadership and citizenship traits in FPI operation. Contrary to the commenter's allegation, premium pay is not intended to be a reward for informants nor does it place an inmate in a position of authority over another inmate. As a clarification of this point, paragraph (b) has been revised to specify that the selection criteria must be posted and paragraph (e) has been revised to note that premium pay is a means of recognizing the value of those traits supportive of morale and good institutional adjustment.

The commenter did approve of the proposed safeguards provided in § 345.66 provided for inmates placed in Administration Detention who are later determined not to have committed a prohibited act. As proposed, these safeguards included the retention of job and pay grade, with actual pay suspended, for up to the first thirty days in Administrative Detention, and for reimbursing the inmate if the inmate was found not to have committed a prohibited act. No provisions were made for reimbursing inmates in similar circumstances (e.g., while on writ or on medical idle). In this final rule, the Bureau has therefore removed the proposed provision for reimbursing inmates in Administrative Detention when they have been found not to have committed a prohibitive act.

In adopting the proposed rules as final, the Bureau has made various editorial or organizational changes in addition to the change discussed above. These further changes are discussed below.

The organization of the regulation into subparts has been slightly adjusted for editorial reasons. Revisions to certain subpart headings necessitated conforming revisions to pertinent section headings. In neither case, however, is there any change in the intent of the regulation.

Throughout the regulation the term "Federal Prison Industries" and its acronym "FPI" have been used more consistently in place of the trade name "UNICOR." This change is also reflected in § 345.11, where the definitions of Federal Prison Industries, Inc. and of UNICOR have been consolidated. Further changes to § 345.11 include the removal of the definition of "Federal Prison Industries Board of Directors" which was deemed to be unnecessary for inclusion in the regulations, editorial changes to the definition of "Superintendent of Industries," and the addition of definitions regarding work status which had appeared in proposed § 345.50.

The provisions in paragraph (a) of § 345.32 regarding the use of waiting lists have been revised to clarify that ordinarily these are used in the selection process.

In § 345.33, paragraph (a) has been revised to remove unnecessary gender references. Paragraph (b) has been revised to conform to separately stated provisions on the effects of disciplinary action. Paragraph (e) has been revised to broaden the scope of special needs with respect to recommendations for priority placement on the waiting list.

Section 345.35 has been reorganized and revised to clarify that the Supervisor of Industries makes the assignment with the concurrence of the unit team. In stating the Bureau's policy of nondiscrimination in paragraph (a), the phrase "physical handicap" has been replaced with the word "disability" to conform to the terminology used in current statutes.

In § 345.40, the introductory text has been amended to include provision for reasonable accommodation of inmates with disabilities. Similar reference to the use of reasonable accommodation for inmates with disabilities has also been added to the statement of purpose and scope in § 345.10.

In § 345.41, paragraph (b) has been amended to include reference to time in grade requirements.

Section 345.50 has been revised and reorganized for the sake of conciseness. As noted above, definitions relating to work status have been transferred to § 354.11. Provisions in proposed § 345.50 relating to specific benefits have been transferred to the appropriate section.

Section 345.51 has been revised to remove unnecessary references to time in grade provisions and to include summary provisions on eligibility previously contained in proposed § 345.50.

Section 345.56 has been amended to include reference to the amount of time needed to process written requests for vacation time.

Section 345.64 has been revised to more accurately describe the SOI's role in ensuring that necessary information on medical limitations are made available to line supervisory staff.

A new § 345.66 has been added containing the provisions on claim limitations previously proposed in § 345.50 (c)(1). Proposed § 345.66 on retention of benefits accordingly has been redesignated as § 345.67.

Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered, but will not receive response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 345, 545

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons, and Commissioner of Federal Prison Industries.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons and the Board of Directors, Federal Prison Industries in 28 CFR 0.96(p) and 0.99, part 345 in chapter III of 28 CFR is revised and part 545 in subchapter C of 28 CFR, chapter V is amended as set forth below.

1. 28 CFR part 345 is revised to read as follows:

PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS

Subpart A—Purpose and Scope

Sec.

345.10 Purpose and scope.

Subpart B—Definitions

345.11 Definitions.

Subpart C—Position Classification

345.20 Position classification.

Subpart D—Recruitment and Hiring Practices

345.31 Recruitment.
345.32 Hiring.
345.33 Waiting list hiring exceptions.
345.34 Refusal to employ.
345.35 Assignments to FPI.

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Subpart E—Inmate Worker Standards and Performance Appraisal

345.40 General.
345.41 Performance appraisal for inmate workers.
345.42 Inmate worker dismissal.

Subpart F—Inmate Pay and Benefits

345.50 General.
345.51 Inmate pay.
345.52 Premium pay.
345.53 Piecework rates.
345.54 Overtime compensation.
345.55 Longevity pay.
345.56 Vacation pay.
345.57 Administrative pay.
345.58 Holiday pay.
345.59 Inmate performance pay.
345.60 Training pay.
345.61 Inmate earnings statement.
345.62 Inmate accident compensation.
345.63 Funds due deceased inmates.
345.64 Referral of releasable medical data to FPI staff.
345.65 Inmate medical work limitation.
345.66 Claims limitation.
345.67 Retention of benefits.

Subpart G—Awards Program

345.70 General.
345.71 Official commendations.
345.72 Cash bonus or cash award.
345.73 Procedures for granting awards for suggestions or inventions.
345.74 Awards for special achievements for inmate workers.

Subpart H—FPI Inmate Training and Scholarship Programs

345.80 General.
345.81 Pre-industrial training.
345.82 Apprenticeship training.
345.83 Job safety training.
345.84 The FPI scholarship fund.

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

Subpart A—Purpose and Scope

§ 345.10 Purpose and scope.

It is the policy of the Bureau of Prisons to provide work to all inmates (including inmates with a disability who, with or without reasonable accommodations, can perform the essential tasks of the work assignment) confined in a federal institution. Federal Prison Industries, Inc. (FPI) was established as a program to provide meaningful work for inmates. This work is designed to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution. There is no statutory requirement that inmates be paid for work in an industrial assignment. 18 U.S.C. 4126, however, provides for discretionary compensation to inmates working in Industries. Under this authority, inmates of the same grade jobs, regardless of the basis of pay (hourly, group piece, or individual piece rates) shall receive approximately the same compensation. All pay rates under this part are established at the discretion of Federal Prison Industries, Inc. Any alteration or termination of the rates shall require the approval of the Federal Prison Industries' Board of Directors. While the Warden is responsible for the local administration of Inmate Industrial Payroll regulations, no pay system is initiated or changed without prior approval of the Assistant Director, Industries, Education and Vocational Training (Assistant Director).

Subpart B—Definitions

§ 345.11 Definitions.

(a) *Federal Prison Industries, Inc. (FPI)*—A government corporation organizationally within the Bureau of Prisons whose mission is to provide work simulation programs and training opportunities for inmates confined in Federal correctional facilities. The commercial or "trade" name of Federal Prison Industries, Inc. is UNICOR. Most factories or shops of Federal Prison Industries, Inc. are commonly referred to as "UNICOR" or as "Industries". Where these terms are used, they refer to FPI production locations and to the corporation as a whole. UNICOR, FPI, and Industries are used interchangeably in this manner. For these purposes, Federal Prison Industries, Inc. will hereinafter be referred to as FPI.

(b) *Superintendent of Industries (SOI)*—The Superintendent of Industries, also referred to as Associate Warden/Industries and Education, is responsible for the efficient management and operation of an FPI factory. Hereinafter, referred to as SOI.

(c) *FPI Work Status*—Assignment to an Industries work detail.

(1) An inmate is in FPI work status if on the job, on furlough, on vacation, for the first thirty days on writ, for the first 30 days in administrative detention, or for the first 30 days on medical idle for FPI work-related injury so long as the injury was not intentional and did not result from a violation of safety regulations. An inmate on sick call, however, is not considered to be in FPI work status.

(2) *Full-Time Work Status.* A work schedule for an inmate consisting of 90% or more of the normal FPI factory work week.

(3) *Part-Time Work Status.* A work schedule of less than 90% of the normal FPI factory work week.

(d) *Unit Team*—Bureau of Prisons staff responsible for the management of inmates and the delivery of programs and services. The Unit Team may consist of a unit manager, case manager, correctional counselor, unit secretary, unit officer, education representative, and psychologist.

(e) *Unit Discipline Committee (UDC)*—The term Unit Discipline Committee refers to one or more institution staff members delegated by the Warden with the authority and duty to hold an initial hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct (see 28 CFR 541.15). The Warden shall authorize these staff members to impose minor sanctions for violation of prohibited act(s).

(f) *Discipline Hearing Officer (DHO)*—This term refers to an independent discipline hearing officer who is responsible for conducting Institution Discipline Hearings and who imposes appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by 28 CFR 541.15 before the UDC.

Subpart C—Position Classification

§ 345.20 Position classification.

(a) Inmate worker positions must be assigned an appropriate level of pay. All inmate workers shall be informed of the objectives and principles of pay classification as a part of the routine orientation of new FPI inmate workers.

(b) The Warden and SOI have the responsibility for position classification at each location.

Subpart D—Recruitment and Hiring Practices

§ 345.31 Recruitment.

Inmate workers for FPI locations may be recruited through admission and orientation lectures or through direct recruiting.

§ 345.32 Hiring.

(a) Inmate workers are ordinarily hired through waiting lists. Except as noted in § 345.33, inmates are to be placed on the waiting lists in order of receipt of applications for work with Industries, and are to be hired in the same sequence.

(b) Waiting lists are to be maintained and kept available for scrutiny by auditors and other staff with a need to know. SOI's are encouraged to maintain a waiting list for each FPI factory.

§ 345.33 Waiting list hiring exceptions.

(a) *Needed Skills.* An inmate may be hired ahead of other inmates on the waiting list if the inmate possesses needed skills and the SOI documents the reasons for the action in the position classification files.

(b) *Prior FPI Work Assignment.* An inmate with prior FPI work experience during the inmate's current commitment and with no break in custody will ordinarily be placed within the top ten percent of the waiting lists unless the inmate was transferred for disciplinary reasons, was placed in segregation, or voluntarily left the FPI work assignment for non-program reasons (i.e. for some reason other than formal education, vocational training, drug abuse or similar formal programs). For example, an inmate transferred administratively for nondisciplinary reasons, and who has documented credit as a prior worker, is covered under the provisions of this paragraph.

(c) *Industry Closing and Relocation.* When an FPI factory closes in a location with two or more FPI factories, an inmate worker affected may be transferred to remaining FPI factories ahead of the top portion of the inmates on the waiting lists, so there is no break in active duty with FPI. Such actions are also in order where the work force of an industry is reduced to meet institution or FPI needs. An inmate transferred under the provisions of this part will have the same benefits as any intra-industry transfer.

(d) *Disciplinary Transfers.* An inmate who is a disciplinary transfer from the last institution designated and who wishes re-assignment in FPI at the receiving institution may be hired on a case-by-case basis at the discretion of the SOI, who should consider the security level and reasons for the misconduct. Such an inmate, despite prior experience, is not due special placement on the waiting list, is not given advance hiring preference, and does not receive consideration for accelerated promotion back to the grade held at time of transfer.

(e) *Special Needs.* For special needs, such as Inmate Financial Responsibility assignment to assist in paying a significant financial obligation or for release preparation, the unit team may recommend an inmate for priority placement on the waiting list. Such placement must be documented and include the reason for the exception.

§ 345.34 Refusal to employ.

(a) The SOI has authority to refuse an FPI assignment to an inmate who, in the judgment of the SOI, would constitute a serious threat to the orderly and safe operation of the FPI factory. A refusal to assign must be documented by a memorandum to the unit team listing reasons for the refusal, with a copy to the position classification files in FPI. Typically, the reasons should include other earlier (ordinarily within the past twelve months) documented violations of the FPI inmate worker standards or institution disciplinary regulations.

(b) The refusal to assign is to be rescinded when, in the judgment of the SOI, the worker no longer constitutes a serious threat to the FPI industrial operation.

§ 345.35 Assignments to FPI.

(a) Any request by an inmate for consideration must be made through the unit team. All inmates may be considered for assignment with FPI. FPI does not discriminate on the bases of race, color, religion, ethnic origin, age, or disability.

(b) The SOI ordinarily makes assignments based on the recommendation of the unit team.

(1) New workers are ordinarily assigned at pay grade five. All first-time inmate workers shall enter at pay grade five and may be required to successfully complete a course in pre-industrial training or on-the-job training (as available) before promotion to pay grade four.

(2) An inmate who has not successfully completed pre-industrial or on-the-job training remains at pay grade five for at least 30 days.

(3) An inmate hired after having resigned voluntarily from FPI may be excused from pre-industrial training and may be hired at a pay grade based on previous training and experience.

Subpart E—Inmate Worker Standards and Performance Appraisal

§ 345.40 General.

This subpart authorizes the establishment of minimum work standards for inmate workers assigned to the Industries program at all field locations. The SOI may reproduce these standards and may also develop additional local guidelines to augment these standards and to adapt them to local needs and conditions. Local Industries shall place these standards and any additional local guidelines on display at appropriate locations within the industrial sites. Inmates shall be provided with a copy of these standards and local guidelines, and shall sign receipts acknowledging they have received and understand them before beginning work in the Industries program. In the case of a disabled inmate, alternate media or means of communicating this information and indicating the inmate's receipt may be provided, if necessary as a reasonable accommodation.

(a) At a minimum, each industrial location is to have work standards for each of the following areas:

(1) Safety—ensuring the promotion of workplace safety and the avoidance of activities that could result in injury to self or others.

(2) Quality Assurance—ensuring that work is done as directed by the supervisor in an attentive manner so as to minimize the chance of error.

(3) Personal Conduct and Hygiene—ensuring the promotion of harmony and sanitary conditions in the workplace through observation of good hygiene and full cooperation with other inmate workers, work supervisors, and training staff.

(4) Punctuality and Productivity—ensuring the productive and efficient use of time while the inmate is on work assignment or in training.

(b) *Compliance With Work Standards.* Each inmate assigned to FPI shall comply with all work standards pertaining to his or her work assignment. Adherence to the standards should be considered in evaluating the inmate's work performance and documented in individual hiring, retention, and promotion/demotion situations.

§ 345.41 Performance appraisal for inmate workers.

Work supervisors should complete a performance appraisal form for each inmate semi-annually, by March 31 and September 30, or upon termination or transfer from the industrial work assignment. Copies shall be sent to the unit team. Inmate workers should discuss their appraisals with their supervisors at a mutually agreeable time in order to improve their performance. Satisfactory and unsatisfactory performance ratings shall be based on the standards in § 345.40(a).

(a) The SOI is to ensure that evaluations are done and are submitted to unit teams in a timely manner.

(b) The SOI or a designee may promote an inmate to a higher grade level if an opening exists when the inmate's skills, abilities, qualifications, and work performance are sufficiently developed to enable the inmate to carry out a more complex FPI factory assignment successfully, when the inmate has met the institution's time-in-grade (unless waived by the SOI), and when the inmate has abided by the inmate worker standards. Conversely, the SOI or SOI designee may demote an inmate worker for failing to abide by the inmate worker standards. Such demotions shall be fully documented.

§ 345.42 Inmate worker dismissal.

The SOI may remove an inmate from Industries work status in cooperation with the unit team.

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(a) The SOI may remove an inmate from FPI work status according to the conditions outlined in the pay and benefits section of this policy and in cooperation with the unit team.

(b) An inmate may be removed from FPI work status for failure to comply with any court-mandated financial responsibility. (See 28 CFR 545.11(d)).

(c) An inmate found to have committed a prohibited act (whether or not it is FPI related) resulting in segregation or disciplinary transfer is also to be dismissed from Industries based on an unsatisfactory performance rating for failure to be at work.

Subpart F—Inmate Pay and Benefits

§ 345.50 General.

Title 18 U. S. Code Section 4126 authorizes FPI to compensate inmates under rules and regulations promulgated by the Attorney General. It is the policy of FPI to provide compensation to FPI inmate workers through various conditions of pay and benefits, except as otherwise provided in these regulations.

§ 345.51 Inmate pay.

(a) *Grade levels.* Inmate workers in FPI locations receive pay at five levels ranging from 5th grade pay (lowest) to 1st grade pay (highest).

(b) *Eligibility.* (1) An inmate shall accrue vacation time, longevity service credit, and shall receive holiday pay for the period of time the inmate is officially assigned to the Industries work detail. For limitations on claims, refer to § 345.66.

(2) Inmate workers may be eligible for premium pay as specified in § 345.52. Eligibility for other pay and benefits are described separately in this subpart.

(3) FPI pay and benefits are lost in cases of disciplinary transfer and segregation.

(4) An inmate returned to the institution due to program failure at a Community Corrections Center or while on parole or escape is not entitled to credit for time spent in Industries prior to said program failure. This rule also applies to any other program failure which results in a break in confinement status.

§ 345.52 Premium pay.

Payment of premium pay to selected inmates is authorized. The total number of qualifying inmates may not exceed 15% of first grade inmates at a location.

(a) *Eligibility.* Inmates in first grade pay status may be considered for premium pay.

(b) *The Selection Process.* Candidates for premium pay must be nominated by a foreman on the FPI staff, and recommended on the basis of specific posted criteria by a selection committee assigned by the SOI.

(1) The SOI, as the chief selecting official, must sign approval for all premium pay inmate selections. This authority may not be delegated below the level of Acting SOI.

(2) The selected candidate(s) are notified by the FPI Manager or by a posted list on the FPI bulletin board. A record of the selection and who was on the selection board is kept for documentation purposes. An inmate nominated to be a premium pay inmate may refuse the appointment without prejudice.

(c) [Reserved]

(d) *Pay Rate.* Premium pay inmates receive a specified amount over and above all other pay and benefits to which they may be entitled (e.g., longevity pay, overtime, piecework rates, etc.). Premium pay is also paid for vacation, holiday, and administrative hours.

(e) *Duties of Premium Pay Inmates.* Premium pay is a means of recognizing the value of those traits supportive of morale and good institutional adjustment. It is not a form of bonus or incentive pay for highly productive inmates.

(f) *Transfer Status Of Premium Pay Inmates.* Premium pay status may not be transferred from institution to institution with the inmate worker. Premium pay status must be earned at each location.

(g) *Removals From Premium Pay Status.* Removal from premium pay status may occur for failure to demonstrate the premium pay selection traits or for failure to abide by the inmate worker standards set forth in this policy. All removals from premium pay status shall be documented on the inmate's evaluation form. The following conditions also may result in removal from premium pay status:

(1) Any premium pay inmate found to have committed any level 100 or 200 series offense by the DHO is automatically removed from premium pay status whether or not the offense was FPI-related.

(2) Inmates absent from work for more than 30 consecutive calendar days may be removed from premium pay status by the SOI.

§ 345.53 Piecework rates.

Piecework rates are incentives for workers to strive for higher pay and production benefiting both the worker and FPI. Piecework rates may be of two major types: individual piecework (in which an individual's pay goes up or down depending upon his/her own output) or Group Wage Fund (in which all members of a group strive for higher rates or production output as a unit, and all share in a pool of funds distributed among work group members equally).

§ 345.54 Overtime compensation.

An inmate worker is entitled to overtime pay at a rate of two times the hourly or unit rate for hourly, individual, and group piecework rate workers, when the total hours worked (including administrative pay) exceed the FPI factory's regularly scheduled workday. Hours worked on days other than the scheduled work week (e.g., Saturday) shall be compensated at the overtime rate.

§ 345.55 Longevity pay.

(a) Except as provided in paragraph (b) of this section, an inmate earns longevity pay raises after 18 months spent in FPI work status regardless of whether or not the work was continuous. The service may have occurred in one or more FPI factories or shops. An inmate qualifies for longevity pay raises as provided in the table below:

Length of Service With FPI

After 18 months of service and payable in the 19th month
After 30 months of service and payable in the 31st month
After 42 months of service and payable in the 43rd month
After 60 months of service and payable in the 61st month
After 84 months of service (& more) and payable in the 85th month

Longevity pay allowances shall be added after the wages for each actual hour in pay status have been properly computed.

(b) *Exceptions.*

(1) FPI work status during service of a previous sentence with a subsequent break in custody may not be considered in determining longevity pay.

(2) An inmate in segregation or who is given a disciplinary transfer loses any longevity status previously achieved.

(3) An inmate who voluntarily transfers to a non-FPI work assignment loses any longevity status previously achieved. An inmate who leaves FPI to enter education, vocational training, or drug abuse treatment programs, however, generally retains longevity and pay grade status upon return to FPI, unless the inmate withdraws from those programs without a good faith effort to complete them. The decision on whether there was a good faith effort is to be made by the SOI in concert with the staff member in charge of the program.

§ 345.56 Vacation pay.

Inmate workers are granted FPI vacation pay by the SOI when their continued good work performance justifies such pay, based on such criteria as quality of work, attendance and punctuality, attentiveness, and adherence to industry operating regulations. The inmate must submit a written request for vacation time, ordinarily two weeks in advance of the requested vacation time. The work supervisor must recommend to the SOI the vacation time to be taken or paid. Eligibility for vacation pay must be verified by the Business Office prior to approval by the SOI. The SOI may declare an inmate ineligible for vacation credit because of an inmate's unsatisfactory work performance during the month in which such credit was to occur.

(a) An inmate may take accrued vacation time for visits, participation in institution programs or for other good reasons at the discretion of the SOI. Industrial managers should make every reasonable attempt to schedule an inmate worker's vacations so as not to conflict with the workforce requirements of FPI factory production schedules and Inmate Systems Management requirements.

(b) An inmate temporarily assigned to the Industrial detail, e.g., on construction details, also earns vacation credit which he or she must take or be paid for at the end of the temporary assignment.

(c) An inmate must take and/or be paid for vacation credit within sixty days after each annual eligibility date of the inmate's most recent date of assignment to FPI. An inmate who elects not to take vacation time must indicate this in writing. That inmate shall receive pay for the annual vacation credit in a lump sum on the regular monthly payroll. This amount is ordinarily paid within sixty days after the annual eligibility date of the inmate's most recent date of assignment to FPI. An inmate whose employment is terminated by release, reassignment, transfer, or other reasons, and who has unused vacation credit shall be paid for this credit on the monthly payroll.

§ 345.57 Administrative pay.

An inmate excused from a job assignment may receive administrative pay for such circumstances as a general recall for an institution, power outages, blood donations, or other situations at the discretion of the SOI. Such pay may not exceed an aggregate of three hours per month.

§ 345.58 Holiday pay.

An inmate worker in FPI work status shall receive pay at the standard hourly rate, plus longevity where applicable, for all Federal holidays provided the inmate is in work status on the day before and the day after the holiday occurs. Full-time workers receive one full day's pay. Part-time workers receive one-half day's pay.

§ 345.59 Inmate performance pay.

Inmate workers for FPI may also receive Inmate Performance Pay for participation in programs where this award is made. However, inmate workers may not receive both Industries Pay and Performance Pay for the same program activity. For example, an inmate assigned to a pre-industrial class may not receive FPI pay as well as inmate performance pay for participation in the class.

§ 345.60 Training pay.

Inmates directed by the SOI to take a particular type of training in connection with a FPI job are to receive FPI pay if the training time occurs during routine FPI factory hours of operation. This does not include ABE/GED or pre-industrial training.

§ 345.61 Inmate earnings statement.

Each inmate worker in FPI shall be given a monthly earnings statement while actively working for FPI.

§ 345.62 Inmate accident compensation.

An inmate worker shall be paid lost-time wages while hospitalized or confined to quarters due to work-related injuries (including occupational disease or illnesses directly caused by the worker's job assignments) as specified by the Inmate Accident Compensation Program (28 CFR part 301).

§ 345.63 Funds due deceased inmates.

Funds due a deceased inmate for work performed for FPI are payable to a legal representative of the inmate's estate or in accordance with the law of descent and distribution of the state of domicile.

§ 345.64 Referral of releasable medical data to FPI staff.

The SOI is responsible for ensuring that appropriate releasable information pertaining to an inmate's medical limitation (e.g., back injury) is made available to the FPI staff member who directly supervises the assignment.

§ 345.65 Inmate medical work limitation.

In addition to any prior illnesses or injuries, medical limitations also include any illness or injury sustained by an inmate which necessitates removing the ill worker from an FPI work assignment. If an inmate worker is injured more than once in a comparatively short time, and the circumstances of the injury suggest an awkwardness or ineptitude which in turn indicates that further danger exists, the inmate may be removed to another FPI detail or to a non-FPI detail.

§ 345.66 Claims limitation.

Claims relating to pay and/or benefits must occur within one calendar year of the period of time for which the claim is made. Inmate claims submitted more than one year after the time in question require the approval of the Assistant Director before an inmate may receive such pay and/or benefit.

§ 345.67 Retention of benefits.

(a) *Job Retention.* Ordinarily, when an inmate is absent from the job for a significant period of time, the SOI will fill that position with another inmate, and the first inmate will have no entitlement to continued FPI employment.

(1) For up to the first 30 days when an inmate is in medical idle status, that inmate will retain FPI pay grade status, with suspension of actual pay, and will be able to return to FPI when medically able, provided the absence was not because of a FPI work-related injury resulting from the inmate's violation of safety standards. If the medical idle lasts longer than 30 days, was not caused by a violation of safety standards, and the unit team approves the inmate's return to FPI, the SOI shall place that inmate within the top ten percent of the FPI waiting list.

(2) Likewise, for up to the first 30 days when an inmate is in Administrative Detention, that inmate may retain FPI pay grade status, with actual pay suspended, and will be able to return to FPI, provided the inmate is not found to have committed a prohibited act. If Administrative Detention lasts longer than 30 days, and the inmate is not found to have committed a prohibited act, and the unit team approves the inmate's return to FPI, the SOI shall place that inmate within the top ten percent of the FPI waiting list.

(3) An inmate in Administrative Detention, and found to have committed a prohibited act, may return to FPI work status at the discretion of the SOI.

(4) If an inmate is injured and absent from the job because of a violation of FPI safety standards, the SOI may reassign the inmate within FPI or recommend that the unit team reassign the inmate to a non-FPI work assignment.

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(5) If an inmate is transferred from one institution to another for administrative (not disciplinary) reasons, and the unit team approves the inmate's return to FPI, the SOI shall place that inmate within the top ten percent of the FPI waiting list.

(b) *Longevity and vacation credit.* Ordinarily, when an inmate's FPI employment is interrupted, the inmate loses all accumulated longevity and vacation credit with the following exceptions:

(1) The inmate retains longevity and vacation credit when placed in medical idle status, provided the medical idle is not because of a FPI work-related injury resulting from the inmate's violation of safety standards. If the medical idle results from a FPI work-related injury where the inmate was not at fault, the inmate also continues to earn longevity and vacation credit.

(2) Likewise, the inmate retains, and continues earning for up to 30 days, longevity and vacation credit if placed in Administrative Detention, provided the inmate is not found to have committed a prohibited act.

(3) The inmate retains, but does not continue earning, longevity and vacation credit when transferring from one institution to another for administrative (not disciplinary) reasons, when absent from the institution on writ, or when placed in administrative detention and found to have committed a prohibited act.

(c) *Pay grade retention.* Ordinarily, when an inmate's FPI employment is interrupted, that inmate is not entitled to retain his or her pay grade, with the following exceptions.

(1) An inmate retains pay grade status, with actual pay suspended, for up to 30 days in Administrative Detention. However, the inmate is not reimbursed for the time spent in detention.

(2) Likewise, an inmate retains pay grade status for up to 30 days while absent from the institution on writ, with actual pay suspended. The SOI may approve pay grade retention when an inmate is on writ for longer than 30 days on a case-by-case basis.

(3) If an inmate is absent because of a FPI work-related injury where the inmate was not at fault, the inmate retains his or her pay grade, with actual pay suspended.

Subpart G—Awards Program

§ 345.70 General.

FPI provides incentive awards of various types to inmate workers for special achievements in their work, scholarship, suggestions, for inventions which improve industry processes or safety or which conserve energy or materials consumed in FPI operations, and for outstanding levels of self-development.

§ 345.71 Official commendations.

An inmate worker may receive an official written commendation for any suggestion or invention adopted by FPI, or for any special achievement, as determined by the SOI, related to the inmate's industrial work assignment. A copy of the commendation is to be placed in the inmate's central file.

§ 345.72 Cash bonus or cash award.

An inmate worker may receive a cash bonus or cash award for any suggestion or invention which is adopted by FPI and produces a net savings to FPI of at least $250.00. Cash awards shall be one percent of the net estimated savings during the first year, with the minimum award being $25.00, and the maximum award being $1,000.00.

§ 345.73 Procedures for granting awards for suggestions or inventions.

Inmate suggestions for improvements in operations or safety, or for conservation of energy or material, must be submitted in writing.

(a) The inmate's immediate supervisor shall review the suggestion and forward it with comments and award recommendation to the SOI.

(b) The SOI shall ensure that all inmate suggestions and/or inventions formally submitted are considered for incentive awards by a committee comprised of Industries personnel designated by the SOI.

(1) The committee is authorized to award a cash award of up to $100.00 or an equivalent gift not to exceed $100.00 in value to an inmate whose suggestion has been adopted. A recommendation for an award in excess of $100.00 shall be forwarded to the Assistant Director for a final decision.

(2) The committee shall forward all recommendations for awards for inventions through the SOI to the Warden. The Warden may choose to add his or her comments before forwarding to the Assistant Director for a final decision.

(3) Incentive awards are the exclusive methods for recognizing inmates for suggestions or inventions.

§ 345.74 Awards for special achievements for inmate workers.

While recognition of inmate worker special achievements may originate from any FPI staff member, the achievement ordinarily will be submitted in writing by the inmate's immediate supervisor

(a) The SOI shall appoint a local institution committee to consider inmates for special achievement awards.

(b) The committee shall forward its recommendations to the SOI, who is authorized to approve individual awards (cash or gifts) not to exceed $100 in value. A recommendation for an award in excess of $100 (cash or gifts) shall be forwarded, with the Superintendent's recommendation and the justification for it, through the Warden to the Assistant Director. The Warden may submit comments on the recommendation.

Subpart H—FPI Inmate Training and Scholarship Programs

§ 345.80 General.

As earnings permit, FPI provides appropriate training for inmates which is directly related to the inmate worker's job assignment. Additionally, FPI administers a scholarship program to provide inmates with an opportunity to begin, or to continue with business and industry courses or vocational training.

(a) An applicant for FPI-funded training programs should be evaluated to determine sufficient interest and preparation to successfully complete the course content. The evaluation may be done by the Education Department, unit team, or other qualified personnel.

(b) An inmate selected to participate in FPI-funded training programs ordinarily must have enough sentence time remaining to serve to complete the training.

§ 345.81 Pre-industrial training.

FPI encourages the development and use of pre-industrial training programs. Such training ordinarily provides benefits to the inmate and to the FPI factory. Pre-industrial training also provides an additional management tool for replacing inmate idleness with constructive activity. Accordingly, each FPI factory location may provide a pre-industrial training program.

(a) Pre-industrial program trainees shall ordinarily begin at the entry level pay grade (grade 5). Positions for pre-industrial training programs are filled in the same manner as other grade five positions.

(b) Pre-industrial training is not a prerequisite for work placement if the inmate already possesses the needed skill.

(c) If pre-industrial training is available and the worker has not completed both the skill training and orientation phases of pre-industrial training, the inmate should be put into the first available training class.

(d) When pre-industrial training is not available, new FPI assignees will receive on-the-job training in pre-industrial pay status for a period of at least 30 days before being promoted into available fourth grade jobs.

§ 345.82 Apprenticeship training.

FPI provides inmate workers with an opportunity to participate in apprenticeship training programs to the extent practicable. Such programs help prepare workers for post-release employment in a variety of trades. Apprentices are given related trades classroom instruction in addition to the skill training during work hours, where necessary.

§ 345.83 Job safety training.

FPI provides inmates with regular job safety training which is developed and scheduled in coordination with the institution Safety Manager. Participation in the training shall be documented in a safety training record signed by the inmate.

§ 345.84 The FPI scholarship fund.

FPI shall award post-secondary school scholarships to selected, qualified inmate workers. These scholarships provide an inmate with the opportunity to begin or continue with business and industry courses or vocational training as approved and deemed appropriate by the Supervisor of Education.

(a) *Eligibility Requirements.* The SOI and the Supervisor of Education at each institution shall develop application procedures to include, at a minimum, the following criteria:

(1) The inmate shall be a full-time FPI worker.

(2) The inmate has a favorable recommendation for participation from his or her work supervisor.

(3) The inmate meets all relevant institution requirements for participation (e.g. disciplinary record, custody level).

(4) The inmate is accepted by the institution of higher learning offering the course or program which is requested.

(5) The inmate must maintain a verifiable average of "C" or better to continue program eligibility.

(6) Before beginning the course of study, the inmate must sign an agreement to provide the SOI with an unaltered, original copy of his or her grades.

(b) *Scholarship Selection Procedures.* FPI scholarship awards shall be made by a three member Selection Committee comprised of the SOI, the Supervisor of Education, and one other person designated by the SOI.

(c) *Scholarship Program Operation.*

(1) Ordinarily, one scholarship may be awarded per school period for every fifty workers assigned. At least one scholarship may be awarded at each institution location, regardless of the number of inmates assigned.

(2) Individual scholarships ordinarily should not exceed the cost of tuition and books for one course. Where several courses may be taken for the same cost as one, the inmate worker may be allowed to take more than one course.

(3) Scholarship monies are to be paid only to the institution providing instruction, or to the Education Department for transfer of funds to the college, university, or technical institution providing instruction.

(4) An inmate may not receive more than one scholarship per school period.

(5) An inmate must maintain at least a "C" average to be continued as eligible for further assistance. An inmate earning less than "C" must wait one school period of eligibility before reapplying for further assistance. Where a course grade is based on a "pass/fail" system, the course must be "passed" to be eligible for further assistance.

(6) An inmate awarded a correspondence course must successfully complete the course during a school year (e.g., 2 semesters, 3 quarters).

(7) An inmate receiving scholarship aid must have approval from the SOI and the Supervisor of Education before withdrawing from classes for good reason. An inmate withdrawing or "dropping" courses without permission shall wait one school year before applying for further scholarship assistance. An inmate may withdraw from courses without penalty for medical or non-disciplinary administrative reasons such as transfer, writ, release, etc., without first securing permission, although withdrawals for medical reasons must be certified in writing by the Hospital Administrator.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

2. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart E [Removed]

Subpart F [Removed]

Subpart G [Removed]

3. In 28 CFR part 545, subpart E, consisting of §§ 545.40 through 545.43, subpart F, consisting of §§ 545.50 through 545.56, and subpart G, consisting of §§ 545.60 through 545.64, are removed.

[FR Doc. 95–7463 Filed 3–24–95; 8:45 am]
BILLING CODE 4410–05–P

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federal register

Monday
March 27, 1995

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 570

Joint Community Development Program: Institutions of Higher Education and States/Units of General Local Government; Special Purpose Grants; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 570

[Docket No. R–95–1684; FR–3415–F–03]

Joint Community Development Program: Institutions of Higher Education and States/Units of General Local Government; Special Purpose Grants

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes the requirements and procedures for awarding and administering special purpose grants under Title I of the Housing and Community Development Act of 1974, as amended by the Housing and Community Development Act of 1992, to institutions of higher education or to States and units of general local government and institutions of higher education jointly submitting applications to HUD. Institutions of higher education must demonstrate that they have the capacity to carry out eligible activities.

EFFECTIVE DATE: April 26, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708–1537. The Telecommunications Device for the Deaf (TDD) number is (202) 708–1455. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB approval number 2535–0084.

II. Background

Section 801(c)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) amended Section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) to add a new category of special purpose grants. This new program authorizes grants to institutions of higher education or to States and units of general local government and institutions of higher education that jointly submit applications to HUD. Institutions of higher education must demonstrate capacity to carry out eligible activities under Title I. This rule implements this new grant authority. For ease of reference, this new program may be called the Joint Community Development (CD) Program.

III. Summary of Final Rule

Following are the highlights of the rule that will govern the grants under the Joint CD Program:

1. A new section 570.411 is being added to Subpart E, Special Purpose Grants, of the Community Development Block Grant (CDBG) regulations to govern grants under this program. It should be noted that section 570.400, which contains general requirements for all special purpose grant programs, applies to this new program as well. Additionally, grantees must comply with the Americans with Disabilities Act of 1990.

2. Section 570.411(b) provides definitions for "demonstrated capacity" and "institutions of higher education."

3. Section 570.411(c) defines eligible applicants. It indicates that an application must be filed either by an institution of higher education or jointly by an institution of higher education and a State or unit of general local government. This subsection also states that HUD will not fund an applicant twice for the same kinds of activities.

4. Section 570.411(d) spells out the role of each participant in the joint applications.

5. Section 570.411(e) defines the eligible activities as those eligible under the basic CDBG regulations found in subpart C of part 570. It also makes clear that these activities may be designed to assist residents of colonias to improve living conditions and standards within colonias.

6. Section 570.411(f) indicates that the program will be run competitively through publication of a Notice of Funding Availability (NOFA).

7. Section 570.411(g) provides that when an institution of higher education or a State which is a joint applicant proposes to carry out an activity within the entitlement jurisdiction of one or more units of general local government, then such governments must approve the activity and certify that it is consistent with their consolidated plan (see 24 CFR part 91).

8. Section 570.411(h) provides a general description of what will be contained in each NOFA.

9. Sections 570.411 (i) and (j) detail the selection criteria that HUD will use to evaluate applications under each NOFA competition.

10. Section 570.411(l) spells out that an applicant proposing housing activities will have to submit a certification that the activities are consistent with the Consolidated Plan of the jurisdiction to be served.

11. Section 570.411(m) deals with the citizen participation requirement under the Joint CD Program. It is a modified version of the basic CDBG requirement and is similar to that used in other special purpose grant programs.

12. Section 570.411(n) provides details on environmental review responsibilities for this program.

IV. Discussion of Public Comments

A proposed rule was published in the **Federal Register** on December 29, 1993, at 58 FR 68795, and the public was given 60 days in which to submit comments. Three comments were received on the proposed rule: one from a university, one from a city and one from an association of institutions of higher education. Following are the comments made and HUD's response to each comment.

Comment. The definition of eligible institution of higher education should be broadened to include community colleges.

Response. Community colleges generally do not have the capacity to undertake the kinds of activities that will be eligible under this program. With a limited amount of funds and a very large number of qualified four-year institutions applying for these funds, it would be unfair to community colleges to have them expend time and costs to prepare applications when their chances of being successful are very limited. Therefore, the proposed definition was not changed.

Comment. The rule should spell out in greater detail the program objectives and not leave this for the Notice of Funding Availability (NOFA).

Response. The precise program objectives may change from time-to-time. Each NOFA will spell out the precise objective for that competition. Therefore, the objectives will not be included in the rule but in the NOFA.

Comment. Grants should be limited to those institutions that meet the Federal definition of "urban" universities.

Response. There is no Federal government-wide definition of urban universities. The definition cited by the commenter is not a Federal definition but restricted to a specific program in the U.S. Department of Education. The Joint CD program has no statutory provision limiting grants to urban universities, nor does HUD feel that such a restriction is appropriate, given the interest of many different kinds of institutions of higher education in addressing CDBG needs. Therefore, the comment was not accepted.

Comment. All applications from States or units of local governments must demonstrate support from an institution of higher education.

Response. Such a demonstration of support is inherent in the requirement that applications from governments must be filed jointly with an institution of higher education. HUD does not believe that any further demonstration of support is needed or desirable.

Comment. Two commenters indicated that the provision in section 570.411(c) that eligible applicants will be funded only every other funding cycle is not clear. They questioned whether grants would be for one year or two year periods.

Response. A funding cycle is determined each time HUD issues a NOFA. A decision regarding the length of the grant will be made at the time each NOFA is issued and delineated in the NOFA. Since HUD expects that each NOFA may deal with different priorities and eligible activities, it is not prudent to identify the project period in the regulations. In addition, HUD has revised the requirement that eligible applicants be funded only every other funding cycle to prohibit grantees that are institutions of higher education from receiving any subsequent grants from NOFAs with the same program objectives as those for which they received funding. State or local governments may apply in subsequent cycles in which the NOFA contains the same program objectives as long as they apply with a different institution of higher education. The need for these funds is great, as is the number of institutions and governments interested in applying. HUD believes that it would be unwise to concentrate the funds among a few institutions.

V. Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies in this rule do not have Federalism implications and, thus, are not subject to review under the Order. Nothing in the rule implies any preemption of State or local law, nor does any provision of the rule disturb the existing relationship between the Federal Government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the designated Official under Executive Order 12606, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Environmental Finding

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities inasmuch as the entities funded under this program will be relatively few in number. Consequently, HUD does not believe that a significant number of small entities will be affected by this program. The application requirements associated with funding under the program have been kept to the minimum necessary for administration of grant funds, and the Department does not believe it is necessary or appropriate to alter these requirements as they apply to small entities who may be prospective grantees.

Semiannual Agenda

This final rule was listed as item 1849 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57665) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Joint Community Development Program is listed in the Catalog of Federal Domestic Assistance under number 14.242.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.411 is added to subpart E, to read as follows:

§ 570.411 Joint Community Development Program.

(a) *General.* Grants under this section will be awarded to institutions of higher education or to States and local governments applying jointly with institutions of higher education. Institutions of higher education must demonstrate the capacity to carry out activities under Title I of the Housing and Community Development Act of 1974. For ease of reference, this program may be called the Joint CD Program.

(b) *Definitions.*

Demonstrated capacity to carry out eligible activities under Title I means recent satisfactory activity by the institution of higher education's staff designated to work on the program, including subcontractors and consultants firmly committed to work on the proposed activities, in Title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

(c) *Eligible applicants.* Institutions of higher education or States and units of general local government jointly with institutions of higher education may apply. Institutions of higher education with demonstrated capacity to carry out eligible activities under Title I may apply on their own, without the joint participation of a State or unit of general local government. States or unit of general local governments must file jointly with an institution of higher education. For these approved joint applications, the grant will be made to the State or unit of general local government and the institution of higher education jointly. If an eligible applicant is an institution of higher education, it will not be funded more

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than once for the same kinds of activities. These grantees may not receive funding under a subsequent NOFA if it has the same program objectives as the one under which the grantee previously received funding. However, a State or unit of general local government is eligible to apply if it files jointly with a different institution of higher education in each NOFA cycle. HUD may further limit the type of eligible applicant to be funded. Any such limitations will be contained in the Notice of Funding Availability described below in paragraph (h) of this section.

(d) *Role of participants in joint applications.* An institution of higher education and a State or unit of general local government may carry out eligible activities approved in joint applications. Where there are joint applicants, the grant will be made to both and both will be responsible for oversight, compliance, and performance. The application will have to clearly delineate the role of each applicant in the joint application. Any funding sanctions or other remedial actions by HUD for noncompliance or nonperformance, whether by the State or unit of general local government or by the institution of higher education, shall be taken against both grantees.

(e) *Eligible activities.* Activities that may be funded under this section are those eligible under 24 CFR Part 570—Community Development Block Grants, Subpart C—Eligible Activities. These activities may be designed to assist residents of colonias, as defined in Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), to improve living conditions and standards within colonias. HUD may limit the activities to be funded. Any such limitations will be contained in the Notice of Funding Availability described in paragraph (h) of this section.

(f) *Applications.* Applications will only be accepted from eligible applicants in response to a publication of a Notice of Funding Availability (NOFA) published by HUD in the **Federal Register**.

(g) *Local approval.* (1) Where an institution of higher education is the applicant, each unit of general local government that is an entitlement jurisdiction where an activity is to take place must approve the activity and certify that the activity is consistent with its Consolidated Plan.

(2) Where a State is the joint applicant and it proposes to carry out an activity within the jurisdiction of one or more units of general local government, then each such unit must approve the activity and state that the activity is consistent with its Consolidated Plan.

(3) These approvals and findings must accompany each application and may take the form of a letter by the chief executive officer of each unit of general local government affected or a resolution of the legislative body of each such unit of general local government.

(h) *NOFA contents.* The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, any limitations on the type of eligible applicants, and points to be awarded to each of the selection criteria and any special factors to be evaluated in assigning points under the selection criteria to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, the period of performance and the maximum and minimum amount of individual grants. The NOFA will also state which of the various possible levels of competition HUD will use: national and/or regional or entitlement areas vs. non-entitlement areas; and States or units of general local government vs. institutions of higher education vs. institutions of higher education with a demonstrated capacity. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(i) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and demonstrates how the proposed activities will have a substantial impact in achieving the objectives.

(2) The extent of the needs to be addressed by the proposed activities, particularly with respect to benefiting low- and moderate-income persons and residents of colonias, where applicable.

(3) The feasibility of the proposed activities, i.e., their technical and financial feasibility, for achieving the stated objectives.

(4) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(5) The extent of commitment to fair housing and equal opportunity, as indicated by such factors as previous HUD monitoring/compliance activity, actions to promote minority- and women-owned business enterprise, affirmatively furthering fair housing issues, and nondiscriminatory delivery of services.

(j) *Selection discretion.* HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of States and units of general local government and institutions of higher education, types of activities proposed, an equitable geographical distribution, and program balance. The NOFA will state whether HUD will use this discretion in any specific competition.

(k) *Certifications.* (1) Certifications, including those indicating that applicants have adhered to all civil rights requirements under subpart K of this part and the Americans with Disabilities Act of 1990, required to be submitted by applicants shall be as prescribed in the NOFA.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(l) *Consolidated plan.* An applicant that proposes any housing activities as part of its application will be required to submit a certification that these activities are consistent with the Consolidated Plan of the jurisdiction to be served.

(m) *Citizen participation.* The citizen participation requirements of §§ 570.301, 570.431, 570.485(c) and 570.486(a) are modified to require the following: The applicant must certify that citizens likely to be affected by the project regardless of race, color, creed, sex, national origin, familial status, or handicap, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application.

(n) *Environmental and Intergovernmental Review.* The requirements for Intergovernmental Reviews do not apply to these awards. When required, an environmental review in accordance with 24 CFR part 58 must be carried out by the State or unit of general local government when it is the applicant. HUD will conduct any required environmental review when an institution of higher education is the applicant.

(Approved by the Office of Management and Budget under control number 2535–0084)

Dated: March 17, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–7401 Filed 3–24–95; 8:45 am]

BILLING CODE 4210–62–P

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federal register

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Part V

The President

Proclamation 6779—Greek Independence Day: A Day of Celebration of Greek and American Democracy

Proclamation 6780—To Implement Certain Provisions of Trade Agreements Resulting From the Uruguay Round of Multilateral Trade Negotiations, and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 6779 of March 23, 1995

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1995

By the President of the United States of America

A Proclamation

Two thousand five hundred years ago in Athens, across the Peninsula of Attica and throughout Greece, the idea of democracy was embodied in a series of rights and laws. The resulting freedom for the citizens of that land sparked a period of unprecedented activity in philosophy and the arts. The birth of democracy in Greece signaled the beginning of a lasting cultural transformation clearly reflected in the course of Western civilization.

The United States is proud to acknowledge the debt it owes to the ancient Greeks, whose philosophy and political system guided America's founders in forming a representative democracy on this continent. Yet the common bond that unites our modern nations goes beyond our commitment to the principles of democracy; beyond, too, the close friendship that we share. Through the years, our citizens have demonstrated a willingness to fight for the right to self-determination and for the cause of human dignity. The Greek struggle for independence 174 years ago won the hearts of Americans and all those who love freedom. As we mark the anniversary of that momentous occasion, Americans and Greeks join again in celebration.

Our countries now stand at the dawn of a new era—a time of growing hope and expanding opportunity. Nations across Central Europe are striving to turn from ancient rivalries and to embrace the possibility of democratic, market-oriented change. The Greek dedication to independence can provide both an important example and a helping hand for its neighbors, and Greece's recent efforts to strengthen these ties can serve to foster stability and prosperity throughout the region.

Today, as ever, the United States supports Greece in its call for fellowship and peace. We stand together in affirming that the blessings of democracy will long survive and flourish.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 1995, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–7670
Filed 3–23–95; 5:05 pm]
Billing code 3195–01–P

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Presidential Documents

Proclamation 6780 of March 23, 1995

To Implement Certain Provisions of Trade Agreements Resulting From the Uruguay Round of Multilateral Trade Negotiations, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On April 15, 1994, I entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations ("the Uruguay Round Agreements"). In section 101(a) of the Uruguay Round Agreements Act ("the URAA") (Public Law 103–465; 108 Stat. 4814) (19 U.S.C. 3511(a)), the Congress approved the Uruguay Round Trade Agreements listed in section 101(d) of that Act.

2. Pursuant to section 101(b) of the URAA, I decided to accept the Agreement Establishing the World Trade Organization ("the WTO Agreement") on behalf of the United States, and I determined that the WTO Agreement entered into force for the United States on January 1, 1995.

3. (a) Sections 1102(a) and (e) of the Omnibus Trade and Competitiveness Act of 1988, as amended ("the 1988 Act") (19 U.S.C. 2902(a) and (e)), authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreement entered into under these sections.

(b) Section 111(a) of the URAA (19 U.S.C. 3521(a)) authorizes the President to proclaim such other modification of any duty, such other staged rate reduction, or such other additional duties beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902) as the President determines to be necessary or appropriate to carry out Schedule XX—United Statesof America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 ("Schedule XX").

(c) Section 103(a) of the URAA (19 U.S.C. 3513(a)) authorizes the President to proclaim such actions as may be necessary to ensure that any provision or amendment made by the URAA that takes effect on the date that any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date.

4. Proclamation 6763 of December 23, 1994, implemented the Uruguay Round Agreements, including Schedule XX, with respect to the United States; and incorporated in the Harmonized Tariff Schedule of the United States ("the HTS") tariff modifications necessary and appropriate to carry out the Uruguay Round Agreements and certain conforming changes in rules of origin for the North American Free Trade Agreement ("NAFTA"). Certain technical errors, including inadvertent omissions, were made in that proclamation. I have determined that it is necessary, to reflect accurately the intended tariff treatment provided for in the Uruguay Round Agreements and to ensure the continuation of the agreed NAFTA rules of origin, to modify certain provisions of the HTS, as set forth in the Annex to this proclamation.

5. (a) One of the Uruguay Round Agreements approved by the Congress in sections 101(a) and 101(d) of the URAA (19 U.S.C. 3511(a) and (d)) is the Agreement on Trade-Related Aspects of Intellectual Property Rights ("the TRIPs Agreement").

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(b) Section 104A of title 17, United States Code, as amended by section 514 of the URAA, provides for copyright protection in restored works. Section 104A(h), as amended, provides that the date of restoration of a restored copyright shall be the date on which the TRIPs Agreement enters into forcewith respect to the United States, if the source country is a nation adhering to the Berne Convention or a World Trade Organization (WTO) member on such date.

(c) Article 65, paragraph 1, of the TRIPs Agreement provides that no WTO member shall be obliged to apply the provisions of this Agreement until one year after the date of entry into force of the WTO Agreement. The date of entry into force of the WTO Agreement with respect to the United States was January 1, 1995.

(d) The statement of administrative action, approved by the Congress in section 101(a)(2) of the URAA (19 U.S.C. 3511(a)(2)), provides that, "in general, copyright will be restored on the date when the TRIPs Agreement's obligations take effect for the United States."

(e) Accordingly, I have decided that it is necessary and appropriate, in order to implement the TRIPs Agreement and to ensure that section 514 of the URAA is appropriately implemented, to proclaim that the date on which the obligations of the TRIPs Agreement will take effect for the United States is January 1, 1996.

6. (a) Section 902(a)(2) of title 17, United States Code, authorizes the President to extend protection under chapter 9 of title 17, United States Code, to mask works of owners who are nationals, domiciliaries, or sovereign authorities of, and to mask works, which are first commercially exploited in, a foreign nation that grants United States mask work owners substantially the same protection that it grants its own nationals and domiciliaries, or that grants protection to such works on substantially the same basis as does chapter 9 of title 17, United States Code.

(b) Australia, Canada, Japan, Switzerland, and the Member States of the European Community provide adequate and effective protection for mask works within the meaning of 17 U.S.C. 902(a)(2), and have been subject to interim protection under 17 U.S.C. 914. Consequently, I find that these countries satisfy the requirements of 17 U.S.C. 902(a)(2), and are to be extended full protection under chapter 9 of title 17, United States Code, effective on July 1, 1995.

(c) In addition, 17 U.S.C. 902(a)(1)(A)(ii) provides that mask work owners who are nationals, domiciliaries, or sovereign authorities of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party are eligible for protection under chapter 9 of title 17, United States Code. The TRIPs Agreement, which requires all WTO members to provide protection equivalent to that provided under chapter 9 of title 17 on the basis of national treatment, is such an agreement. Because the United States is a member of the WTO and thus of the TRIPs Agreement, and because the TRIPs Agreement will be effective for the United States on January 1, 1996, all other WTO members will become eligible for full protection under chapter 9 of title 17, United States Code, on January 1, 1996.

7. Section 491 of the Trade Agreements Act of 1979, as amended ("the 1979 Act") (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. I have decided to designate the Department of Agriculture as the agency responsible for providing the public with this information.

8. (a) The March 24, 1994, Memorandum of Understanding on the Results of the Uruguay Round Market Access Negotiations on Agriculture Between the United States of America and Argentina ("the MOU"), submitted to the Congress along with the Uruguay Round Agreements, provides for "an appropriate certificate of origin" for imports of peanuts and peanut butter and peanut paste from Argentina.

(b) Proclamation 6763 proclaimed the Schedule XX tariff rate quotas for peanuts and peanut butter and peanut paste. However, that proclamation did not specify which agency should implement the MOU.

(c) Section 404 of the URAA (19 U.S.C. 3601) requires the President to take such action as may be necessary to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

(d) Accordingly, I have decided to delegate to the United States Trade Representative ("the USTR") my authority under section 404 of the URAA to implement the MOU, through such regulations as the USTR, or, at the direction of the USTR, other appropriate agencies, may issue.

9. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) ("the 1974 Act"), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 301 of title 3, United States Code, section 902(a)(1) and (2) of title 17, United States Code, section 604 of the 1974 Act, as amended (19 U.S.C. 2483), section 491 of the 1979 Act, as amended (19 U.S.C. 2578), section 1102 of the 1988 Act, as amended (19 U.S.C. 2902), title I of the URAA (19 U.S.C. 3511–3551), and section 404 of the URAA (19 U.S.C. 3601), do hereby proclaim that:

(1) To more completely implement the tariff treatment accorded under the Uruguay Round Agreements, the HTS is modified as set forth in the Annex to this proclamation.

(2) The obligations of the TRIPs Agreement shall enter into force for the United States on January 1, 1996.

(3) Australia, Canada, Japan, Switzerland, and the Member States of the European Community shall be extended full protection under chapter 9 of title 17, United States Code, effective on July 1, 1995. In addition, as of January 1, 1996, full protection under chapter 9 of title 17, United States Code, shall be extended to all WTO Members.

(4) The Secretary of Agriculture is designated, under section 491 of the 1979 Act, as amended (19 U.S.C. 2578), as the official responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization.

(5) The USTR is authorized to exercise my authority under section 404 of the URAA (19 U.S.C. 3601) to implement the MOU with Argentina, through such regulations as the USTR, or, at the direction of the USTR, other appropriate agencies, may issue.

(6) In order to make conforming changes and technical corrections to certain HTS provisions, pursuant to actions taken in Proclamation 6763, the HTS and Proclamation 6763 are modified as set forth in the Annex to this proclamation.

(7) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(8) This proclamation shall be effective upon publication in the **Federal Register**.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

Billing code 3195-01-P

Annex

Section A. Modifications to the Harmonized Tariff Schedule of the United States ("HTS").

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively.

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1995.

(1). General note 12 is modified by:

(a). in subdivision (f)(iii)(A) deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof.

(b). in subdivision (f)(iii)(B) deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof; deleting "1901.10.15" and inserting "1901.10.05, 1901.10.15" in lieu thereof; deleting "1901.20.05" and inserting "1901.20.02, 1901.20.05" in lieu thereof; and deleting "1901.90.31, 1901.90.41 or 1901.90.81" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof.

(c). in subdivision (r)(v)(A) deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof.

(d). in subdivision (s)(i)(C) deleting "or 2106.90.46" and inserting "2106.90.42, 2106.90.44 or 2106.90.46" in lieu thereof.

(e). in subdivision (t):

(i) for chapter 4 tariff classification rule, deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

(ii) for chapter 18 tariff classification rule 2, deleting "1806.10.45" and inserting "1806.10.43, 1806.10.45" in lieu thereof;

(iii) for chapter 19:
(1) tariff classification rule 1, deleting "1901.10.15" and inserting "1901.10.05, 1901.10.15" in lieu thereof;

(2) tariff classification rule 3, deleting "1901.20.05" and inserting "1901.20.02, 1901.20.05" in lieu thereof;

(3) tariff classification rule 5, deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

(iv) for chapter 20 tariff classification rule 2, deleting "2008.11.25" and inserting "2008.11.22, 2008.11.25" in lieu thereof;

(v) for chapter 21:
(1) tariff classification rule 9, deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901 90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

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Section A. (continued)

(1). (con.):
(e). in subdivision (t) (con.):
(v) for chapter 21 (con.):
(2) tariff classification rule 10, deleting "2106.90.46" and inserting "2106.90.48" in lieu thereof;

(3) tariff classification rule 12, deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

(vi) for chapter 22:
(1) tariff classification rule 3, deleting "2106.90.46" and inserting "2106.90.48" in lieu thereof;

(2) tariff classification rule 5, deleting "2202.90.24" and inserting "2202.90.22, 2202.90.24" in lieu thereof and deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

(vii) for chapter 23 tariff classification rule 3, deleting "2309.90.24" and inserting "2309.90.22, 2309.90.24" in lieu thereof and deleting "1901.90.42 or 1901.90.44" and inserting "1901.90.32, 1901.90.33, 1901.90.34, 1901.90.36, 1901.90.38, 1901.90.42 or 1901.90.43" in lieu thereof;

(viii) for chapter 90 tariff classification rule 21, deleting "item 9009.90.40" and inserting "items 9009.90.10 and 9009.90.30" in lieu thereof.

(2). General note 13 is modified by deleting "any product (by whatever name known) classifiable in such provision (and not dutiable under column 2) shall be entered free of duty," and inserting "any product (by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty," in lieu thereof.

(3). General note 14 is modified by deleting "any product classifiable in such provision (and not dutiable under column 2) shall be entered free of duty," and inserting "any product classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty," in lieu thereof.

(4). Additional U.S. note 1 to chapter 4 is modified by deleting such note and inserting the following note in lieu thereof:

"1. For the purposes of this schedule, the term "dairy products described in additional U.S. note 1 to chapter 4" means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported."

(5). Additional U.S. note 20 to chapter 4 is modified by deleting the quota amount of "235,500" for Argentina and inserting "235,000" in lieu thereof.

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Section A. (continued)

(6). Additional U.S. note 24 to chapter 4 is modified by deleting "in the subheadings provided for in additional U.S. note 17 to this chapter and subject to the quantitative limitations of such additional U.S. note 17." and inserting "in the subheadings for blue-mold cheeses and is subject to any quantitative limitation on such cheeses." in lieu thereof.

(7). Additional U.S. note 2 to chapter 12 is modified by adding the following new subdivision (c):

"(c) Imports of peanuts under this note are subject to regulations as may be issued by the United States Trade Representative or other designated agency."

(8). Additional U.S. note 11 to chapter 17 is renumbered as additional U.S. note 10.

(9). Additional U.S. note 5 to chapter 20 is modified by adding at the end of the note the following new paragraph:

"Imports of peanut butter and paste under this note are subject to regulations as may be issued by the United States Trade Representative or other designated agency."

(10). The Rates of Duty 1-Special subcolumn for subheading 2005.70.23 is modified by inserting, in alphabetical order, the symbols "A", "E" and "J" in the parentheses following the Free rate of duty in such subcolumn.

(11). The article description for subheading 2008.99.65 is deleted and the article description "Cassava (manioc)" is inserted in lieu thereof.

(12). The Rates of Duty 1-Special subcolumn for subheading 2918.21.10 is modified by deleting the symbol "K" in the parentheses following the Free rate of duty in such subcolumn.

(13). The Rates of Duty 1-Special subcolumn for subheading 2922.50.11 is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the Free rate of duty in such subcolumn.

(14). The Rates of Duty 1-Special subcolumn for the subheadings listed in this paragraph is modified by inserting, in alphabetical order, the symbol "L" in the parentheses following the Free rate of duty in such subcolumn.

2914.70.90	2918.29.25	2922.19.70	2922.30.17
2917.19.20	2918.29.65	2922.29.29	2933.40.60
2918.29.04	2918.29.75	2922.29.60	2933.40.70

(15). The Rates of Duty 2 column for subheading 3213.90.00 is modified by deleting the rate set forth in such column and inserting "48.6¢" in lieu thereof.

(16). The article description for subheading 3402.11.20 is deleted and the article description "Linear alkylbenzene sulfonic acid and linear alkylbenzene sulfonates" is inserted in lieu thereof.

(17). Subheadings 3912.31.20 and 3912.31.60 are superseded by:

	[Cellulose and its chemical derivatives,...]			
	[Cellulose ethers:]			
"3912.31.00	Carboxymethylcellulose and its salts.....	6.4%	Free (A,CA,E,IL, J,K,MX)	66%"

(18). The article description for subheading 5112.19.20 is deleted and the article description "Tapestry fabrics and upholstery fabrics" is inserted in lieu thereof.

(19). The article description for subheading 5701.10.40 is deleted and the article description "Hand-hooked, that is, in which the tufts were inserted and knotted by hand or by means of a hand tool" is inserted in lieu thereof.

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Section A. (continued)

(20). The article description for subheading 5703.20.10 is deleted and the article description "Hand-hooked, that is, in which the tufts were inserted by hand or by means of a hand tool" is inserted in lieu thereof.

(21). The article description for subheading 8424.89.30 is deleted and the article description "Spraying appliances designed for etching, stripping or cleaning semiconductor wafers" is inserted in lieu thereof.

(22). Subheadings 8443.19.60 and 8443.19.80 and the superior text immediately preceding subheading 8443.19.60 are superseded and the following provisions are inserted in numerical sequence:

	[Printing machinery; machines for uses...:]		
	[Offset printing machinery:]		
	[Other:]		
"8443.19.90	Weighing 1,600 kg or more.....	Free	25%"

(23). The article description for subheading 8471.91.40 is modified by deleting "in an automatic data processing machines" and inserting "in automatic data processing machines" in lieu thereof.

(24). The article description for subheading 8477.10.40 is deleted and the article description "For use in the manufacture of video laser discs" is inserted in lieu thereof.

(25). The article description for subheading 8479.89.85 is deleted and the article description "Machines for processing of semiconductor materials; machines for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits; machines for the manufacturing of video laser discs" is inserted in lieu thereof.

(26). The Rates of Duty 2 column for subheading 9106.90.55 is modified by deleting the rate set forth in such column and inserting "$4.50 each + 65%" in lieu thereof.

(27). The Rates of Duty 2 column for subheading 9106.90.75 is modified by deleting the rate set forth in such column and inserting "$4.50 each + 65%" in lieu thereof.

(28). U.S. note 1 to subchapter VIII of chapter 98 is modified by deleting such note and inserting the following note in lieu thereof:

"1. With respect to subheading 9808.00.80, goods brought into the customs territory of the United Sates by the National Aeronautics and Space Administration from space or from a foreign country as part of an international program of the National Aeronautics and Space Administration shall not be considered an importation, and an entry of such materials shall not be required."

(29). Subheading 9808.00.80 and the superior text immediately preceding subheading 9808.00.80 are superseded and the following provisions are inserted in numerical sequence:

	"Articles for the National Aeronautics and Space Administration and articles imported to implement international programs between the National Aeronautics and Space Administration and foreign entities, including launch services agreements:		
9808.00.80	Goods certified by it to the Commissioner of Customs to be imported for use of the National Aeronautics and Space Administration or for implementation of an international program of the National Aeronautics and Space Administration, including articles to be launched into space and parts thereof, ground support equipment and uniquely associated equipment for use in connection with an international program of the National Aeronautics and Space Administration, including launch services agreements.....	Free	Free"

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Section A. (continued)

(30). U.S. note 1(c) to subchapter XIII of chapter 98 is modified by deleting "paid to Canada or Mexico." and inserting "paid to Canada or to Mexico on the exported article, unless such article is covered by section 203(a)(1) through 203(a)(8), inclusive, of the NAFTA Implementation Act." in lieu thereof.

(31). Subheading 9905.51.12 is deleted.

(32). The article description for subheading 9906.61.01 is modified by deleting the parenthetical phrase from such article description and inserting the parenthetical phrase "(provided for in subheading 6104.39.20)" in lieu thereof.

Section B. Modifications to Proclamation 6763.

(1). For sections A(8)(g)(xi)(C) and (E) the effective date of these modifications to general note 12 of the HTS shall be January 1, 1994.

(2). In section A(144)(a) the article description for subheading 2933.90.89 is deleted and the following article description "Hexamethyleneimine" is inserted in lieu thereof.

(3). Section B(1) is modified by deleting "Additional U.S. note 4 to chapter 18" and inserting "Additional U.S. note 2 to chapter 18" in lieu thereof.

(4). Section D(1) is modified for subheading 2401.20.30 by deleting the rate of duty in the columns for the years 2000 through 2004, inclusive, and inserting the rate of duty "40.9¢/kg" in lieu thereof.

(5). Section D(1) is modified for subheadings 6115.93.15 and 7302.30.00 by deleting the rates of duty in the columns for the years 1995 through 2004, inclusive, and inserting the following rates of duty in lieu thereof.

HTS Subheading	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
6115.93.15	4.6%	3.5%	2.3%	1.2%	Free	Free	Free	Free	Free	Free
7302.30.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free

(6). Section G(1) is modified by renumbering 0406.90.34, 0406.90.44, 7019.10.05 and 7019.10.24 as 0406.90.33, 0406.90.43, 7019.10.10 and 7019.10.28, respectively.

Billing code: 3190-01-C

[FR Doc. 95-7693
Filed 3-24-95; 11:03 am]
Billing code: 3190-01-P

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S. 377/P.L. 104–5

To amend a provision of part A of title IX of the Elementary and Secondary Education Act of 1965, relating to Indian education, to provide a technical amendment, and for other purposes. (Mar. 23, 1995; 109 Stat. 72; 1 page)

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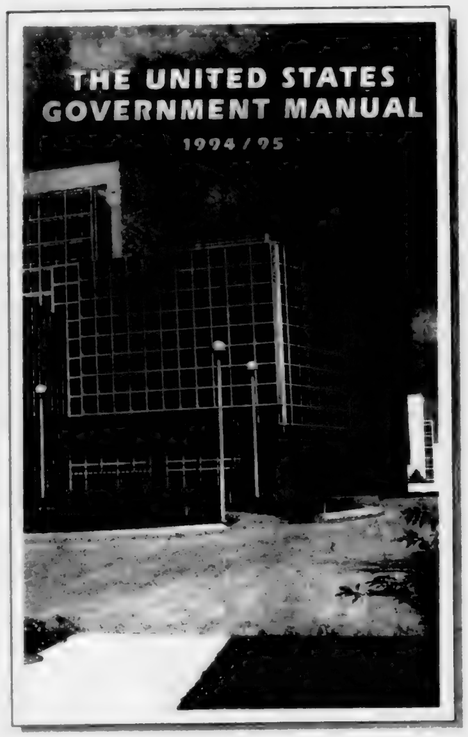
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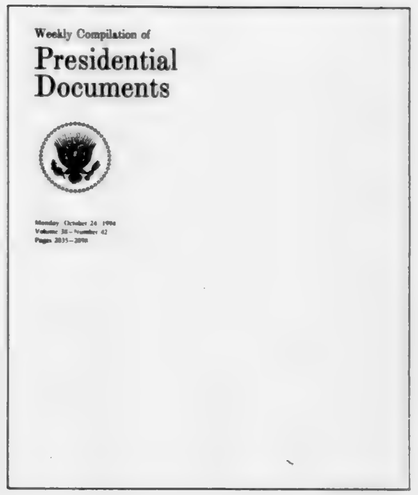
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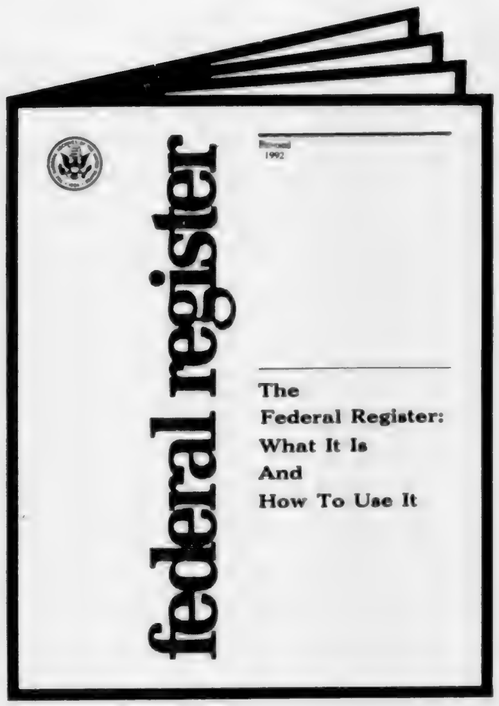
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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WHEN: March 30 at 9:00 am
WHERE: Conference Room 7A23
Earle Cabell Federal Building and Courthouse
1100 Commerce Street, Dallas, TX 75242
RESERVATIONS: 1–800–366–2998

SALT LAKE CITY, UT
WHEN: May 9 at 9:00 am
WHERE: State Office Building Auditorium
450 North Main Street
Salt Lake City, UT 84114
RESERVATIONS: 1–800–359–3997

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1685–95]

RIN 1115–AB93

Visa Waiver Pilot Program; Ireland

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (Service) amends its regulations by extending the Visa Waiver Pilot Program to permit nationals of Ireland to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This action will facilitate travel to the United States.

DATES: This interim rule is effective April 1, 1995. Written comments are invited and must be received on or before May 30, 1995.

ADDRESSES: Please submit written comments in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307. Washington, DC 20536. To ensure proper handling, please reference INS No. 1685–95 on your correspondence. Comments will be available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 7228, Washington, DC 20536, Telephone number: (202) 514–0912.

SUPPLEMENTARY INFORMATION: Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, added section 217 to the Immigration and Nationality Act (Act) which established the nonimmigrant Visa Waiver Pilot Program. The Visa Waiver Pilot Program waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Initially, the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective December 15, 1988. France, the Federal Republic of Germany, Italy, the Netherlands, Sweden, and Switzerland, having met all of the requirements for participation in the Visa Waiver Pilot Program, were added later as designated countries participating in the Pilot Program. This action was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees, in a final rule published at 54 FR 27120–27121, on June 27, 1989.

The Immigration Act of 1990, (IMMACT 90), Pub. L. 101–649, dated November 29, 1990, revised the Visa Waiver Pilot Program as set forth in section 313 of IRCA by removing the eight-country cap and extending its provisions to all countries that met the qualifying provisions of the Visa Waiver Pilot Program and were designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder. Section 201 of IMMACT 90 also extended the period of the pilot program until September 30, 1994, for the eight Pilot Program countries already designated under IRCA, as well as for any additional Pilot Program countries that were designated under the law, as amended, subject to their continued qualification.

As a result of these amendments to section 217 of the Act, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participation in the nonimmigrant Visa Waiver Pilot Program, were added, effective October 1, 1991. (56 FR 46716). Subsequently, Brunei was added, effective July 29, 1993. (58 FR 40581).

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, dated October 25, 1994, extended the expiration date of the Visa Waiver Pilot Program until September 30, 1996, and revised the program, as set forth in section 211 of that Act, by adding a probationary program category of designation. Countries designated for the probationary program are required to meet a different eligibility standard than those designated for the pilot program. Probationary program countries are required to have:

a. A nonimmigrant visitor visa refusal rate average over the preceding 2 fiscal years that is less than 3.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years;

b. A nonimmigrant visitor visa refusal rate that is less than 3.0 percent for the preceding fiscal year; and

c. Have a less than 1.5 percent violation rate which is defined as the number of those nationals of the proposed country who were admitted to the United States as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission or were excluded or withdrew their applications for admission as nonimmigrant visitors.

Unlike the pilot program, countries designated for the probationary program are designated for a specific period of time, not to exceed 3 fiscal years.

This interim rule amends 8 CFR part 217 to extend the Visa Waiver Pilot Program to include the country of Ireland in the newly established probationary program. The Government of Ireland has agreed to provide reciprocal treatment for United States citizens entering Ireland under similar circumstances. The Government of Ireland has also certified that it has established a program to introduce machine-readable passports as required by section 217(g)(2)(D) of the Act. Therefore, having met all of the other requirements of section 217(g) of the Immigration and Nationality Act, as amended, Ireland is designated as a country participating in the Probationary Program portion of the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their

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designees. (See the Department of State Rule published elsewhere in this issue of the **Federal Register**.)

The Service's implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity are as follows: this rule relieves a restriction and is beneficial to both the traveling public and U.S. businesses.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction to both the public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service herein certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will not have any impact on family well being.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.5 is amended by redesignating paragraph (a) as paragraph (a)(1), revising the heading of newly designated (a)(1) to read "*Visa Waiver Pilot Program Countries.*" and adding a new paragraph (a)(2) to read as follows:

§ 217.5 Designated countries.

(a)(1) * * *

(2) *Visa Waiver Pilot Program Countries with Probationary Status.* Effective April 1, 1995, until September 30, 1998 or the expiration of the Visa Waiver Pilot Program, whichever comes first, Ireland has been designated as a Visa Waiver Pilot Program country with Probationary Status in accordance with section 217(g) of the Act.

* * * * *

Dated: March 1, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–7450 Filed 3–27–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–061–2]

Certificate for Importation of Milk and Milk Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of milk and milk products to require that any milk or milk product imported into the United States from countries declared free of rinderpest and foot-and-mouth disease be accompanied by a certificate stating that the milk was produced and processed in a country declared free of rinderpest and foot-and-mouth disease, or that the milk product was processed in a country declared free of rinderpest and foot-and-mouth disease from milk produced in a country declared free of rinderpest and foot-and-mouth disease. The certificate must name the country in which the milk was produced and the country in which the milk or milk product was processed. Also, the certificate must state that, except for certain movement under seal, the milk or milk product has never been in any country in which rinderpest or foot-and-mouth disease exists. Requiring a certificate will help ensure that milk or milk products imported into the United States do not introduce rinderpest or foot-and-mouth disease into the United States.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 40, Riverdale, MD 20737–1228, (301) 734–4401.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine.

The regulations in § 94.1(a)(2) list countries that are declared free of rinderpest and FMD. Milk and milk products have the potential to spread rinderpest and FMD if they are produced or processed in or have transited a country where these diseases exist. Therefore, under § 94.16, milk and milk products are restricted entry into the United States unless they are imported from countries listed in § 94.1(a)(2).

On June 21, 1994, we published in the **Federal Register** (59 FR 31957–31959, Docket No. 93–061–2) a proposal to amend § 94.16 to require that, except for milk and milk products imported from Canada, milk or milk products imported into the United States from a country listed in § 94.1(a)(2) as free of rinderpest and FMD must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate was to state that the milk was produced and processed in a country listed in § 94.1(a)(2), or that the milk product was processed in a country listed in § 94.1(a)(2) from milk produced in a country listed in § 94.1(a)(2). The certificate was to name the country in which the milk was produced and the country in which the milk or milk product was processed. Further, the certificate was to state that, except for movement under seal as described in

§ 94.16(c), the milk or milk product had never been in any country in which rinderpest or FMD existed. We stated in the proposal that this certification would help ensure that milk and milk products imported into the United States do not introduce rinderpest or FMD into the United States.

We solicited comments concerning our proposal for 60 days ending August 22, 1994. We received five comments by that date. They were from domestic and foreign manufacturers, importers and exporters of dairy products, and domestic and foreign dairy industry groups. We carefully considered all of the comments we received. They are discussed below.

One commenter requested that we exempt milk and milk products imported from New Zealand from the certificate requirement. As stated in the proposal, we are exempting milk and milk products imported from Canada from the certificate requirement because Canada has a common land border with only the United States, and Canada imports milk and milk products from other countries under conditions as restrictive as would be acceptable for importation into the United States. The commenter stated that because New Zealand also imports milk and milk products from other countries under conditions as restrictive as would be acceptable for importation into the United States, and because New Zealand does not have a common land border with any country, milk and milk products imported from New Zealand should be given the same exemption as milk and milk products imported from Canada.

We are making no changes to the rule based on this comment. Because Canada does have a common land border with the United States, products moving from Canada into the United States move mostly overland; or, if they are moved by aircraft, they are flown directly to the United States. Either way, there is virtually no risk that the shipment will pass through or land in another country en route to the United States. The risk of this would be greater for a shipment moving from a country that does not share a common land border with the United States, thereby increasing the risk of introducing rinderpest or FMD into the United States.

Another commenter supported the proposal, and asked that we expand the proposal to require a similar certificate for meat and meat byproducts of ruminants and swine imported from countries declared free of rinderpest and FMD. The USDA's Food Safety and Inspection Service (FSIS) imposes strict requirements on the importation of meat and meat byproducts of ruminants and swine into the United States. Among them is the requirement that the meat or meat byproduct be accompanied by a foreign meat inspection certificate and that the meat or meat byproduct be manufactured in a meat establishment certified by FSIS as eligible to import meat and meat byproducts into the United States. We believe the oversight imposed by FSIS on the importation of meat and meat byproducts affords a more than adequate level of protection against the introduction of rinderpest and FMD into the United States, and that it is not necessary to require a certificate for the importation of meat and meat byproducts similar to the one proposed for milk and milk products.

Several commenters who import milk and milk products into the United States from countries declared free of rinderpest and FMD were concerned that the proposed rule would completely prohibit them from importing their products if the products were processed using milk or milk products from a country where rinderpest or FMD exists. Some dairy product companies in FMD- and rinderpest-free countries regularly utilize milk or milk products from countries where rinderpest or FMD exists. Currently, such products may be imported under § 94.16(b)(3) of the regulations. (Section 94.16(b) governs the importation of milk and milk products originating in, or shipped from, any country designated in § 94.1(a) as a country infected with rinderpest or FMD. Paragraph (b)(3) of § 94.16 allows such milk or milk products to be imported into the United States if the importer applies to and receives written permission from the Administrator of APHIS authorizing the importation.)

The intention of our proposed certificate was not to discontinue the importation, in accordance with § 94.16(b)(3), of milk or milk products from an FMD- and rinderpest-free country if milk or milk products from another country were utilized in the processing. We are, therefore, adding a sentence to the proposed regulations based on these comments in order to make it clear that, if milk or milk products from a country declared free of rinderpest and FMD were processed in whole or in part from milk or milk products from a country not declared free of rinderpest or FMD, the milk or milk products may still be imported, as they are currently, under § 94.16(b)(3) of the regulations.

One commenter who supported the proposed rule was concerned that the proposal did not specify how the certification will be monitored and validated on a routine basis by U.S. authorities. It is not clear what the commenter was referring to. However, we can assure the commenter that each certificate will be reviewed at the port of entry by an APHIS inspector. If a shipment of milk or milk products is not accompanied by a certificate or other appropriate paper work, the shipment will be denied importation into the United States. We do not believe any additional specifications are needed to monitor or validate the proposed certificate.

The same commenter was concerned that, because the proposed rule exempts Canada from the certificate requirement, milk or milk products originating in a country where FMD exists could be shipped through one or more other countries before entering Canada for eventual shipment to the United States. For this reason, the commenter stated that milk or milk products transhipped through Canada from another country should not be exempted from the certificate requirement. We are making no changes based on this comment. In the scenario described by the commenter, the milk or milk product would not be imported from Canada into the United States; therefore, the shipment would have to be accompanied by the paperwork appropriate to the disease status of the country of origin, and would not be exempt from the certificate requirement simply because it had moved through Canada. As stated in the proposal, Canada imports milk and milk products from other countries under conditions as restrictive as would be acceptable for importation into the United States, making it highly unlikely that Canadian regulations would allow a situation such as the one posed by the commenter to occur.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will require that, except for milk and milk products imported from Canada, milk and milk products imported into the United States from countries declared free of rinderpest and FMD be accompanied by a certificate

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stating that the milk was produced and processed in a country declared free of rinderpest and FMD, or that the milk product was processed in a country declared free of rinderpest and FMD from milk produced in a country declared free of rinderpest and FMD. The certificate will have to name the country in which the milk was produced and the country in which the milk or milk product was processed. The certificate will also have to state that the milk or milk product has never been in any country in which rinderpest or FMD exists.

We do not expect that requiring a certificate will have any significant economic impact for U.S. importers of milk or milk products. The exporter of the milk or milk products will have to obtain the required certification through the national government of the country of export prior to shipping the milk or milk products to the United States. We do not know how many of those governments will charge a fee for providing the certificate, but it is unlikely that any fee will be high enough to significantly raise the cost of the milk or milk product should the exporter choose to pass the cost of the certificate on to the importer in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.16, a new paragraph (d) is added to read as follows:

§ 94.16 Milk and milk products.

* * * * *

(d) Except for milk and milk products imported from Canada, and except as provided in this paragraph, milk or milk products imported from a country listed in § 94.1(a)(2) as free of rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate must state that the milk was produced and processed in a country listed in § 94.1(a)(2), or that the milk product was processed in a country listed in § 94.1(a)(2) from milk produced in a country listed in § 94.1(a)(2). The certificate must name the country in which the milk was produced and the country in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in any country in which rinderpest or foot-and-mouth disease exists. Milk or milk products from a country listed in § 94.1(a)(2) that were processed in whole or in part from milk or milk products from a country not listed in § 94.1(a)(2) may be imported into the United States in accordance with § 94.16(b)(3).

Done in Washington, DC, this 22nd day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7599 Filed 3–27–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB60

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its risk-based capital standards for insured state nonmember banks to implement section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). Section 350 states that the amount of risk-based capital required to be maintained by any insured depository institution, with respect to assets transferred with recourse, may not exceed the maximum amount of recourse for which the institution is contractually liable under the recourse agreement. This rule will have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution could be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906, or Cristeena G. Naser, Attorney, Legal Division, (202) 898–3587, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's current regulatory capital standards are intended to ensure that FDIC-supervised banks that transfer assets and retain the credit risk inherent in the assets maintain adequate capital to support that risk. This is generally accomplished by requiring that bank assets transferred with recourse continue to be reported on the balance sheet in the Reports of Condition and Income (Call Reports). These amounts are thus included in the calculation of banks' risk-based and leverage capital ratios. The regulatory reporting treatment for most asset transfers with recourse differs from the treatment of such transactions under generally accepted accounting principles (GAAP).[1]

[1] The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus, allows a transfer of receivables with recourse to be accounted for as a sale if the transferor: (1) Surrenders control of the future economic benefits of the assets; (2) is able to reasonably estimate its obligations under the recourse provision; and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the transferor must establish a separate liability account equal to the estimated probable losses under the recourse provision (GAAP recourse liability account).

In cases where an institution retains a low level of recourse, the amount of capital required under the FDIC's risk-based capital standards could exceed the institution's maximum contractual liability under the recourse agreement. This can occur in transactions in which a bank contractually limits its recourse exposure to less than the full effective risk-based capital requirement for the assets transferred—generally, four percent for residential mortgage loans and eight percent for most other assets.

The FDIC and the other federal banking agencies have long recognized this anomaly in the risk-based capital standards. On May 25, 1994, the banking agencies, acting upon a recommendation by the Federal Financial Institutions Examination Council, issued a Notice of Proposed Rulemaking (NPR) (59 FR 27116) addressing the risk-based capital treatment of recourse and direct credit substitutes. One of the principal features of the NPR was a proposal to amend the banking agencies' risk-based capital standards to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. The proposal for these types of transactions would effectively result in a one dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

The proposal requested specific comment on whether an institution should be able to use the balance of the GAAP recourse liability account to reduce the dollar-for-dollar capital charge for the recourse exposure on assets transferred with low level recourse in a transaction reported as a sale for Call Report purposes. In addition, the proposal indicated that the capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities would be the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

The NPR also addressed other issues related to recourse transactions, including equivalent capital treatment of recourse arrangements and direct credit substitutes that provide first dollar loss protection and definitions for "recourse" and associated terms such as "standard representations and warranties." The NPR was issued in conjunction with an Advance Notice of Proposed Rulemaking (ANPR) that outlined a possible alternative approach to deal comprehensively with the risk-based capital treatment of asset securitizations and any associated recourse arrangements and direct credit substitutes. The comment period for the NPR and ANPR ended on July 25, 1994.

During the agencies' review of the comments received, the Riegle Act was signed into law on September 23, 1994. Section 350 of the Act requires the federal banking agencies to issue regulations not later than March 22, 1995, limiting the amount of risk-based capital an insured depository institution is required to hold for assets transferred with recourse to the maximum amount of recourse for which the institution is contractually liable. In order to meet the statutory requirements of section 350, the FDIC is now issuing a rule that puts into final form only those portions of the NPR dealing with low level recourse transactions.

II. Comments Received

In response to the NPR and ANPR, the FDIC received comment letters from 37 entities. Of these respondents, 25 addressed issues related to the NPR's proposed low level recourse capital treatment. These commenters included 12 banking organizations, nine trade associations, one government-sponsored agency, and three other commenters. Of these 25 respondents, 22 provided a favorable overall assessment of the low level recourse proposal. In general, these respondents viewed the low level proposal as a way of correcting an anomaly in the existing risk-based capital standards so that institutions would not be required to hold capital in excess of their contractual liability.

Nevertheless, seven of the commenters further indicated that, while the proposed low level recourse capital treatment was a positive step, it still would result in too high of a capital requirement for assets sold with limited recourse. These respondents, which included five of the 12 banking organizations and two of the nine trade associations, expressed the view that the banking agencies should adopt the GAAP treatment of assets sold with recourse for purposes of calculating the regulatory capital ratios. These commenters maintained that the GAAP recourse liability account provides adequate protection against the risk of loss on assets sold with recourse, obviating the need for additional capital.

The NPR specifically sought comment on five issues related to the proposed capital treatment of low level recourse transactions. Twelve of the 25 respondents commented on the first issue, which concerned the treatment of the GAAP recourse liability account established for assets sold with recourse reported as sales in the Call Report. These 12 commenters favored reducing the capital requirement for low level recourse transactions by the balance of the related GAAP recourse liability account, which would continue to be excluded from an institution's regulatory capital. In their view, not taking the GAAP recourse liability account into consideration would result in double coverage of the portion of the risk provided for in that account.

Twelve commenters, including five banking organizations and five trade associations, responded to the second issue, which sought comment on whether a dollar-for-dollar capital requirement would be too high for low level recourse transactions. Ten commenters indicated that such a capital charge would be too high since it was unlikely that an institution would incur losses up to its maximum contractual liability. Two others responded that whether the capital treatment was too high depended upon the credit quality of the underlying asset pool and the structure of the securitization.

The third issue dealt with ways of demonstrating that the dollar-for-dollar capital requirement might be too high and possible methods for reducing this requirement without jeopardizing safety and soundness. The nine commenters on this issue indicated that historical analysis, examiner review, and "depression scenario" stress testing would show whether the capital requirement would be too high relative to historical losses.

The fourth issue concerned ways the banking agencies could handle the increased probability of loss to the insurance funds administered by the FDIC if less than dollar-for-dollar capital is maintained against low level recourse transactions. The eight commenters on this issue stated that as long as the amount of required capital held against the low level recourse transactions was prudently assessed based upon expected losses, actual losses would seldom, if ever, exceed the capital requirement.

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Thus, the insurance funds would not likely experience losses.

The fifth issue sought comment on whether the proposed low level recourse capital treatment would reduce transaction costs or otherwise help to facilitate the sale or securitization of banks' assets. The eight commenters that responded to this issue were all of the opinion that the low level capital treatment generally would help lower transaction costs and help facilitate securitization.

III. Final Rule

After considering the comments received, further deliberating on the issues involved, particularly the requirements of section 350 of the Riegle Act, and consulting with the other banking agencies, the FDIC is adopting a final rule amending its risk-based capital standards with respect to the treatment of low level recourse transactions. Specifically, the final amendment implements section 350 by reducing the risk-based capital requirements for all recourse transactions in which an FDIC-supervised bank contractually limits its recourse exposure to less than the full, effective risk-based capital requirement for the assets transferred.

This rule applies to low level recourse transactions involving all types of assets, including small business loans, commercial loans, multifamily housing loans, and residential mortgages. In this regard, the FDIC notes that previously under the risk-based capital standards certain residential mortgage loans transferred with recourse were excluded from risk-weighted assets if the institution did not retain significant risk of loss.[2] As proposed, this treatment would be superseded by the broader low level recourse rule that the FDIC is adopting.

Under the final low level recourse rule, an FDIC-supervised bank that contractually limits its maximum recourse obligation to less than the full effective risk-based capital requirement for the transferred assets would be required to hold risk-based capital equal to the contractual maximum amount of its recourse obligation. This requirement limits to one dollar the capital charge for each dollar of low-level recourse exposure. Under this dollar-for-dollar capital requirement, the capital charge for a 100 percent risk-weighted asset transferred with three percent recourse would be three percent of the amount of the transferred assets, rather than the eight percent previously required. Thus, a bank's risk-based capital requirement on a low level recourse transaction would not exceed the contractual maximum amount it could lose under the recourse obligation.

Under the final rule, an institution may reduce the dollar-for-dollar capital charge held against the recourse exposure on assets transferred with low level recourse for a transaction reported as a sale for Call Report purposes by the balance of any associated noncapital GAAP recourse liability account. In adopting this aspect of the final rule, the FDIC concurs with commenters that indicated that nonrecognition of the liability account would result in double coverage of the portion of the credit risk provided for in that account.

In applying the final rule, the FDIC will, as proposed, limit the risk-based capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities to the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

In setting forth this final rule, the FDIC has considered the arguments that several commenters made for adopting for regulatory capital purposes the GAAP treatment for all assets sold with recourse, including those sold with low levels of recourse. Under such a treatment, assets sold with recourse in accordance with GAAP would have no capital requirement, but the GAAP recourse liability account would provide some level of protection against losses. Nevertheless, the FDIC continues to believe it would not be appropriate to adopt for regulatory capital purposes the GAAP treatment of recourse transactions, even if the transferring bank retains only a low level of recourse.

In the FDIC's view, the GAAP recourse liability account would be an inadequate substitute for maintaining capital at a level commensurate with the risks. One of the principal purposes of regulatory capital is to provide a cushion against unexpected losses. In contrast, the GAAP recourse liability account is, in effect, a specific reserve that is intended to cover only an institution's probable expected losses under the recourse provision. In this regard, the FDIC notes that the risk-based capital standards explicitly state that specific reserves created against identified losses may not be included in regulatory capital.

In addition, the amount of credit risk that is typically retained in a recourse transaction greatly exceeds the normal expected losses associated with the transferred assets. Thus, even though a transferring institution may reduce its exposure to potential catastrophic losses by limiting the amount of recourse it provides, it may still retain, in many cases, the bulk of the risk inherent in the assets. For example, an institution transferring high quality assets with a reasonably estimated expected loss rate of one percent that retains ten percent recourse in the normal course of business will sustain the same amount of losses it would have had the assets not been transferred. This occurs because the amount of exposure under the recourse provision is very high relative to the amount of expected losses. The FDIC believes that in such transactions the transferor has not significantly reduced its risk for purposes of assessing regulatory capital and should continue to be assessed regulatory capital as though the assets had not been transferred.

The FDIC is issuing this final rule now in order to implement section 350 of the Riegle Act in accordance with the statutory deadline. Consequently, the rule deals with only those portions of the NPR concerned with low level recourse transactions. The FDIC will continue to consider, on an interagency basis, other aspects of the NPR, as well as all aspects of the ANPR that was issued in conjunction with the NPR.

This final rule is effective April 27, 1995. However, FDIC-supervised banks may choose to apply the low level recourse rule when completing the risk-based capital schedule (Schedule RC–R) in their Reports of Condition and Income (Call Reports) for March 31, 1995.

IV. Regulatory Flexibility Act Analysis

The purpose of this final rule is to reduce the risk-based capital requirement on transfers of assets with low levels of recourse. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this rule will have a beneficial economic impact on small business entities (in this case, small banks) that sell assets with low levels of recourse.

[2] Under this treatment, a pool of residential mortgages that had been transferred with recourse was excluded from risk-weighted assets if the transferring institution did not retain significant risk of loss, *i.e.*, the institution's maximum contractual recourse exposure did not exceed its reasonably estimated probable losses on the transferred mortgages, and the institution established and maintained a recourse liability account equal to the maximum amount of its recourse obligation. Under the low level recourse rule, this type of sale transaction would effectively continue to be excluded from risk-weighted assets because of the size of the recourse liability account that must be maintained.

V. Paperwork Reduction Act

The FDIC has determined that, in comparison to the existing risk-based capital treatment of low level recourse transactions, this final rule will not increase the regulatory paperwork burden of FDIC-supervised banks pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Section II.D.1. of appendix A to part 325 is amended by removing the sixth paragraph and adding in its place two new paragraphs to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *
D. * * *
1. * * *

Sale and repurchase agreements and *asset sales with recourse*, if not already included on the balance sheet, are also converted at 100 percent. For risk-based capital purposes, the definition of sales of assets with recourse, including the sale of one-to-four family residential mortgages, is consistent with the definition contained in the instructions for the preparation of the Consolidated Reports of Condition and Income. Accordingly, except as noted below, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of one-to-four family residential mortgages, is to be converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. The terms of a transfer of assets with recourse may contractually limit the amount of the bank's liability to an amount less than the effective risk-based capital requirement for the assets being transferred with recourse. If such a transaction (including one that, in accordance with the instructions for the preparation of the Consolidated Reports of Condition and Income, is reported as a financing, *i.e.*, the assets are not removed from the balance sheet) meets the criteria for sale treatment under generally accepted accounting principles, the amount of total capital required is equal to the maximum amount of loss possible under the recourse provision. If the transaction is also treated as a sale in accordance with the instructions for the preparation of the Consolidated Reports of Condition and Income, then the required amount of capital may be reduced by the balance of any associated noncapital liability account established pursuant to generally accepted accounting principles to cover estimated probable losses under the recourse provision. So-called "loan strips" (that is, short-term advances sold under long-term commitments without direct recourse) are defined in the instructions for the preparation of the Consolidated Reports of Condition and Income and for risk-based capital purposes as assets sold with recourse.

In addition, a 100 percent conversion factor applies to forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. These obligations include forward purchases, forward deposits placed, and partly paid shares and securities, but do not include forward foreign exchange rate contracts or commitments to make residential mortgage loans.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of March, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–7535 Filed 3–27–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 95–55]

RIN 1550–AA78

Loans to one Borrower

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its lending limits regulation, also known as the loans to one borrower (LTOB) rule, to reflect recent changes to the Office of the Comptroller of the Currency's (OCC's) lending limits regulation. Section 5(u) of the Home Owners' Loan Act requires that savings association lending limits parallel those applicable to national banks. This interim final rule amends OTS's LTOB regulation so that thrifts, like national banks, will use regulatory capital as the starting point for determining "unimpaired capital and unimpaired surplus" for LTOB purposes, removing the need for a separate calculation. It also removes other outdated or redundant provisions.

DATES: The interim final rule is effective March 28, 1995. Written comments on this interim final rule must be received on or before April 27, 1995.

ADDRESSES: Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 95–55. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Project Manager, Policy, (202) 906–5744; Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439; Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Ties Between OCC and OTS Lending Limits

Both savings associations and national banks have statutory limits placed on the amount an institution can lend to one borrower. Since 1989, Section 5(u) of the Home Owners' Loan Act (HOLA) has provided that "Section 5200 of the Revised Statutes applies to savings associations in the same manner and to the same extent as it applies to

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national banks."[1] Section 5200 establishes lending limits, measured as a percentage of an institution's capital and surplus, for national banks.[2] The OCC's implementing regulations appear at 12 CFR part 32. The OTS's LTOB rule references the lending limits set forth in the OCC rule and most lending limit definitions.[3] Therefore, as OCC amends those limits and definitions in Part 32, the new limits and definitions apply directly to savings associations, without further OTS action. However, section 563.93(b)(11) of the OTS LTOB rule currently defines the term "unimpaired capital and unimpaired surplus" by reference to another OCC regulation, 12 CFR 3.100. Any OCC changes to the use of that definition for lending limit purposes would require separate OTS regulatory action to clarify what definition thrifts should use in calculating lending limits.

B. Recent OCC Revisions to Lending Limits

As part of the OCC's Regulation Review Program, the OCC has recently published final revisions to the national bank lending limits regulation.[4] OCC's primary purpose in revising this regulation was to eliminate inefficient and unduly costly regulatory requirements for national banks and thereby better focus the lending limits rule on areas of significant safety and soundness concern.[5] The regulation also incorporates interpretations OCC has developed over the years. These changes will apply to savings associations upon the OCC's rule becoming effective.

One of the most important changes OCC's final rule makes is redefining "capital and surplus." Before amendment, OCC's lending limit rule used a definition of "capital and surplus" at 12 CFR 3.100 that is calculated separately from the definitions of Tier 1 and Tier 2 capital used for determining capital adequacy. In its recent rulemaking, the OCC redefined "capital and surplus" as Tier 1 and Tier 2 capital included in calculating a bank's risk-based capital, plus the balance of its allowances for loan and lease losses (ALLL) not included in its Tier 2 capital. Thus, national banks no longer need to perform totally different calculations for calculating lending limits and capital adequacy, but can use the same Report of Bank Condition (Call Report) line items to calculate both.

The OCC's new definition included the balance of ALLL not already included in Tier 2 capital because the full amount of ALLL had long been included under section 3100. The preamble to the proposal that formed the basis for the recent final rule stated that "The OCC believes it is inadvisable to constrict the lending limit base at a time when concerns about credit availability are widespread, and believes this proposed change will not impact credit availability."[6]

C. Comparable OTS Revisions to Its Lending Limits Regulation

The OTS, in making conforming changes to its LTOB regulation, enables savings associations to realize a similar reduction in regulatory burden. Extensive revision is not necessary because nearly all of the OCC changes will become effective for savings associations by virtue of OTS's referencing of most of the OCC lending limits regulation. However, a few small changes are required.

First, section 563.93(c) is being amended today to remove an obsolete cross-reference to former section 32.7, which OCC removed.

Second, the OCC has changed its lending limits rule to allow national banks to calculate their lending limits quarterly, rather than every time a new loan is made. The OTS LTOB rule already incorporates periodic calculations at section 563.93(f)(1). That section is being modified only to remove an obsolete parenthetical reference to "monthly or quarterly" calculations.

Third, as discussed above, section 563.93(b)'s definition of "unimpaired capital and unimpaired surplus" currently incorporates 12 CFR 3.100. The OCC's lending limits regulation no longer refers to that definition but substitutes a definition based on the components national banks already use in calculating capital for capital adequacy purposes. This has created confusion about how this change applies to savings association calculation of "unimpaired capital and unimpaired surplus." OTS also wants savings associations to have their regulatory calculation burden reduced as much as possible. Because of the structure of the OTS capital regulation, however, an extra step is required to reach the same result as the OCC revision.

For savings associations, the components calculated on their Thrift Financial Report for capital adequacy purposes are core and supplementary capital. These are substantially similar to Tier 1 and Tier 2 capital for banks. However, in calculating core capital for capital adequacy purposes, thrifts may not include investments in certain subsidiaries, commonly known as "nonincludable subsidiaries." This requirement, imposed pursuant to section 5(t) of the HOLA, is designed to ensure that a thrift with investments in such subsidiaries holds enough capital to fully protect it against any risks such investments might pose. An "includable subsidiary" is one engaged solely in activities permissible for a national bank, with a few exceptions not relevant here.[7] A national bank may have subsidiaries, such as service corporations, that engage in activities not authorized for the bank itself.[8] Thus, a national bank may have a subsidiary, which, if held by a savings association, would be considered a "nonincludable subsidiary" and deducted in calculating core capital pursuant to section 5(t).

The section 5(t) deduction from capital has never affected savings associations' lending limit calculations under section 5(u). Section 5(u) does not require such a deduction in calculating capital and surplus for lending limits nor has the OCC required such a deduction. Under both 12 CFR 3.100 and new section 32.2(b), investments in subsidiaries are not deducted in calculating capital. Using the OTS section 5(t) capital definitions could thus cause a savings association with non-includable subsidiaries to have a lower lending limit than it currently has or would have if it were a national bank with the identical subsidiaries. Such a credit-limiting result would not be driven by safety or soundness concerns on the part of either the OTS or the OCC, but merely by a difference in capital components not relevant for lending limit purposes.

If section 3.100 still applied, or if OTS were to reference section 32.2(b), a savings association would not be required to deduct any of its investments in any of its subsidiaries in calculating capital and surplus. However, this approach would not allow savings associations to realize the benefit of being able to use the same basic components used for capital adequacy purposes in calculating lending limits. Unlike national banks, they would continue to have to complete a complex worksheet in order to determine their lending limit base of capital and surplus.

[1] 12 U.S.C. 1464(u)(1).
[2] 12 U.S.C. 84.
[3] 12 CFR 563.93(b), (c)(1994).
[4] *See* 60 FR 8526 (February 15, 1995).
[5] *Id.* at 8527.
[6] 59 FR 6593, 6595 (February 11, 1994).
[7] 12 CFR 567.1(l) (1994).
[8] 12 U.S.C. 1864(f) (bank service corporation may engage in any activity other than deposit taking permitted for a bank holding company, notwithstanding section 1864(d), which otherwise limits the activities of a bank service corporation in which a national bank is a shareholder to services authorized for a national bank).

II. Description of Interim Final Rule

The OTS has therefore determined that unimpaired capital and unimpaired surplus is best defined as the sum of a savings association's core and supplementary capital included in total capital under 12 CFR part 567, plus the balance of its general valuation allowances for loan and lease losses or ALLL not included in its supplementary capital under part 567, plus its investments in subsidiaries that are not included in calculating core capital under part 567. Because the net worth certificates currently specifically included in section 563.93(b)(11) are included in supplementary capital, the new regulation removes this reference.

This definition neither raises nor lowers savings associations' lending limits. It will make it substantially easier for all savings associations to calculate their loan-to-one-borrower limitations because all of the components are already reported on the Thrift Financial Report. This definition eliminates the requirement that a savings association prepare a separate and complex worksheet to calculate its LTOB limit without itself raising or lowering savings associations' lending limits. Just as OCC found it appropriate to continue to include the full balance of the ALLL in its new definition of capital and surplus in order to avoid a credit-limiting result, so the OTS believes it is appropriate to continue to include both the full balance of loss allowances and savings association investments in subsidiaries in calculating unimpaired capital and unimpaired surplus to avoid a credit-limiting result.

The OTS is also removing an obsolete definition of "qualifying association" and an outdated provision in the Appendix to section 563.93 and correcting cross-references.

III. Need for an Interim Final Rule

The OTS believes that an immediately effective interim final rule is appropriate and necessary because of how closely the OTS lending limits regulation is tied to the OCC lending limits regulation. The OCC's final rule is effective March 17, 1995, 30 days after its publication in the **Federal Register**.[9]

The OTS's interim final rule will eliminate any potential confusion for savings associations that may result from the OCC's new lending limit requirements; it will also eliminate any possible lending limit disparities savings associations may have as compared to national banks. Additionally, immediate application of the OTS interim final rule will relieve unnecessary regulatory burdens and provide savings associations with the increased flexibility that national banks have been accorded by the OCC's final rule.

Section 553 of the Administrative Procedure Act[10] requires separate findings for good cause, first, that notice and comment are impracticable, unnecessary, or contrary to the public interest when an agency determines to issue a rule without prior notice and comment and second, when it determines to make a rule effective without a 30-day delay. Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[11] requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under existing section 563.93, savings associations are already bound by the lending limits of the new OCC rule. Allowing 12 CFR 563.93(b)'s outdated cross-reference to 12 CFR 3.100 to remain in place during notice and comment rulemaking and a delayed effective date could lead to considerable confusion and result in savings associations performing unnecessary calculations. Additionally, the OTS believes (as does the OCC with respect to its rule) that this rule relieves burden by eliminating inefficient and unduly costly regulatory requirements and better focusing the lending limit rules on areas of significant safety and soundness concern.[12] For these reasons, the OTS believes there is good cause to make this rule effective immediately upon publication.

IV. Comment Solicitation

Because OTS application of the OCC's new limits is statutorily mandated, this interim final rulemaking does not seek comments on the substance of the OCC's revisions that are referenced in the OTS LTOB rule. However, interested parties are invited to submit written comments on the interim final rule as to the amendments adopted here. A 30-day comment period is provided.

V. Regulatory Flexibility Act

This regulation simplifies lending limit calculations for all savings associations. Other alternatives might result in some smaller savings associations having lower lending limits.

VI. Executive Order 12866

It has been determined that this document is not a significant regulatory action. It will benefit savings associations by simplifying their lending limit calculations. It is not expected to raise or lower savings association lending limits themselves.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends part 563, chapter V, title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.93 is amended by:

a. Removing the phrase "*See* 2 CFR part 32." from the introductory text of paragraph (b) and by adding in lieu thereof the phrase "*See* 12 CFR Part 32.";

b. revising paragraphs (b)(6) and (b)(11);

c. removing the phrase "12 CFR 541.20" from paragraph (b)(9) and by adding in lieu thereof the phrase "12 CFR 541.25";

d. removing the phrase ", but not including 12 CFR 32.7" from the introductory text of paragraph (c);

e. removing the phrase "paragraph (b)(11)" from paragraph (d)(3)(ii) and by adding in lieu thereof the phrase "paragraph (b)(6)";

f. removing the phrase "(monthly or quarterly)" from paragraph (f)(1); and

g. in the appendix to § 563.93, by removing section 563.93–102.

§ 563.93 Lending limitations.

* * * * *

(b) * * *

(6) The term *fully phased-in capital standards* means the capital standards that will be in effect at the expiration of

[9] 60 FR 8526 (February 15, 1995).
[10] 5 U.S.C. 553.
[11] 12 U.S.C. 4802.
[12] *See* 60 FR at 8531.

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all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9.

* * * * *

(11) *Unimpaired capital and unimpaired surplus* means—(i) A savings association's core capital and supplementary capital included in its total capital under part 567 of this chapter; plus

(ii) The balance of a savings association's general valuation allowances for loan and lease losses not included in supplementary capital under part 567 of this chapter; plus

(iii) The amount of a savings association's loans to, investments in, and advances to subsidiaries not included in calculating core capital under part 567 of this chapter.

* * * * *

Dated: March 14, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–7589 Filed 3–27–95; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Delegation of Authority

AGENCY: Small Business Administration (SBA).

ACTION: Notice delegating loan approval to specific agency field personnel.

SUMMARY: This notice delegates authority to a specific SBA field person to approve SBA guaranteed export loans. This authority is based upon the education, training, and experience of such person and is meant to expedite Agency action is processing loan applications.

EFFECTIVE DATE: This notice is effective March 28, 1995.

FOR FURTHER INFORMATION CONTACT: John R. Cox, Associate Administrator for Financial Assistance, 409 Third Street, SW., Washington, DC 20416, Tel. (202) 205–6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published in the **Federal Register**, a final rule amending § 101.3–2 of part 101, Title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices (56 FR 65821). Previously, § 101.3–2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience and/or training. The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease or set the level of authority for any individual SBA field official in a regional, district or branch office, based upon education, training or experience, by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. The Agency is authorized to guarantee up to 90% of a loan depending upon total loan amount. It is essential that SBA have qualified loan officers available to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels of authority because of their additional education, training or experience allow SBA to process an increased number of loan applications. The loan applicant and the lender are both served with quicker and more accurate processing, while SBA is served by quality lending and better relations with participating lenders.

This notice delegates authority to a specific SBA official to approve or decline guaranteed loan applications, as well as to undertake other loan related activities based upon experience. In the United States Export Assistance Center (USEAC) in Long Beach, California, the SBA USEAC Director has successfully completed training courses offered by the Agency. Such training in conjunction with his extensive experience justifies delegating loan approval authority.

No standard delegated authority to approve SBA guaranteed loans exists for a USEAC. This notice establishes the authority to approve SBA guaranteed export loans at $750,000 for the SBA Director at the USEAC in Long Beach, CA and only for that person.

This delegation of authority is specific to the incumbent and continues only so long as he remains in such position.

Dated: March 22, 1995.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 95–7455 Filed 3–27–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–14; Amendment 39–9183; AD 95–07–01]

Airworthiness Directives; Textron Lycoming O–360, LO–360, HO-360, HIO–360, TIO–360, LIO–360, AEIO–360, O–540, IO–540, TIO–540, LTIO–540, IVO–540, AEIO–540, TIO–541, and IO–720 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–07–01 that was sent previously to all known U.S. owners and operators of Textron Lycoming O–360, LO–360, HO–360, HIO–360, TIO–360, LIO–360, AEIO–360, O–540, IO–540, TIO–540, LTIO–540, IVO–540, AEIO–540, TIO–541, and IO–720 series reciprocating engines by individual letters. This AD requires removal prior to further flight of suspect unapproved connecting rod bolts and replacement with serviceable connecting rod bolts. This amendment is prompted by reports of connecting rod bolt failures. The actions specified by this AD are intended to prevent engine failure due to connecting rod bolt failure, which could result in damage to or loss of the aircraft.

DATES: Effective April 12, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–07–01, issued on March 17, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before May 30, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–14, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Richard D. Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; telephone (817) 222–5195, fax (817) 222–5959; or Locke Easton, Aerospace Engineer, Engine and Propeller Standards Staff, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7113, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On March 17, 1995, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 95–07–01, applicable to Textron Lycoming O–360, LO–360, HO–360, HIO–360, TIO–360, LIO–360, AEIO–360, O–540, IO–540, TIO–540, LTIO–540, IVO–540, AEIO–540, TIO–541, and IO–720 series reciprocating engines. That priority letter AD was prompted by reports of connecting rod bolt failures. These connecting rod bolts failed with no particular pattern. The head of the bolt sheared off on some, while others failed at the threads and some at the shank. Examination of test specimens indicate that these connecting rod bolts were fabricated by machining bar stock material, including the head region, thus exposing end-grains in the head-to-shank radius. These connecting rod bolts exhibit extremely small fillet radii, numerous deep machining grooves, and inadequate material selection.

In a letter dated December 15, 1994, Superior Air Parts, Inc., advised the FAA that several connecting rod bolts had fractured in service on a Cessna 177RG on December 9, 1994. The pilot completed a power-off landing with no injuries. In a letter dated January 24, 1995, Textron Lycoming advised the FAA that their laboratory analysis indicated that the failed connecting rod bolts appeared to be suspected unapproved parts. A Superior Air Parts, Inc., report of their own laboratory analysis, dated January 3, 1995, was presented to the FAA in mid-February. Another connecting rod bolt failure was identified during maintenance on a Piper PA–60 on February 21, 1995. Superior Air Parts, Inc. advised the FAA of the second failure on the following day. The FAA had already initiated an independent laboratory analysis of a sample of suspect unapproved connecting rod bolts and received a report on February 23, 1995, which concluded that the connecting rod bolts did not meet material or design specifications. That report corroborated Superior Air Parts, Inc.'s and Textron Lycoming's earlier findings. Subsequent investigation revealed that of the 3,382 connecting rod bolts in the original Superior Air Parts, Inc. inventory, 2,473 had been shipped. The FAA considered all possible actions and concluded that the only prudent course of action was to issue priority letter AD 95–07–01.

These connecting rod bolts were shipped from Superior Air Parts, Inc., between February 15, 1994, and December 20, 1994, as replacements for Textron Lycoming connecting rod bolts, Part Number (P/N) 75060, or Superior Air Parts, Inc., connecting rod bolts, P/N SL75060, or Aircraft Technologies, Inc. P/N AL75060. However, the failed parts have no markings to identify them. The traceability of these bolts is extremely difficult, and the FAA has determined that the vast majority of the bolts distributed cannot be recovered, nor can they be identified by a routine records search of engines which have been overhauled since February 15, 1994. The FAA has concluded that all engines which may have been overhauled using these connecting rod bolts must be visually inspected for the installation of unmarked connecting rod bolts. Further, since it is impossible to analytically determine how long these connecting rod bolts as installed may remain intact, this AD must be complied with before further flight. Therefore, all connecting rod bolts with no markings must be considered suspect unapproved parts. This condition, if not corrected, could result in engine failure due to connecting rod bolt failure, which could result in damage to or loss of the aircraft.

Also, during the investigation the FAA determined that only unmarked 75060 connecting rod bolts shipped from Superior Air Parts, Inc., between February 15, 1994, and December 20, 1994, are considered suspect unapproved parts. Approved serviceable parts can be readily identified by raised letters SPS, S, C, or FC, identifying them as Textron Lycoming parts, or SL75060 etched on the head, identifying them as PMA parts manufactured by Superior Air Parts, Inc., or AL75060 forged into the head, identifying them as PMA parts manufactured by Aircraft Technologies, Inc.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 95–07–01 to prevent engine failure due to connecting rod bolt failure, which could result in damage to or loss of the aircraft. The AD requires removal prior to further flight of suspect unapproved connecting rod bolts and replacement with serviceable connecting rod bolts. Suspect unapproved connecting rod bolts may be identified as those bolts that are not clearly marked on the head by raised letters SPS, S, C, or FC, identifying them as Textron Lycoming parts, or not clearly marked with SL75060 etched on the head, identifying them as PMA parts manufactured by Superior Air Parts, Inc., or not clearly forged into the head with AL75060, identifying them as PMA parts manufactured by Aircraft Technologies, Inc.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 17, 1995, to all known U.S. owners and operators of Textron Lycoming O–360, LO–360, HO–360, HIO–360, TIO–360, LIO–360, AEIO–360, O–540, IO–540, TIO–540, LTIO–540, IVO–540, AEIO–540, TIO–541, and IO–720 series reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA–public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–14." The postcard will be date stamped and returned to the commenter.

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The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-07-01 Textron Lycoming: Amendment 39-XXXX. Docket 95-ANE-14.

Applicability: The following Textron Lycoming reciprocating engine models, assembled on or after February 15, 1994, and that contain connecting rod bolts shipped directly or indirectly from Superior Air Parts, Inc., on or after February 15, 1994:

O-360-A1A, -A1AD, -A1C, -A1D, -A1F6, -A1F6D, -A1G6, - A1G6D, -A1LD, -A2A, -A2D, -A2E, -A2F, -A2G, -A3A, -A3AD, -A4A, -A4G, -A4J, -A4K, -A4M, -A4N, -A5AD, -B2A, -C1A, -C1C, -C1E, -C1F, -C1G, -C2A, -C2C, -C2D, -C2E, -D2A, -D2B, -F1A6; IO-360-A1A, -A1B, -A1B6, -A1B6D, -A1C, -A1D, -A1D6, -A2A, - A2B, -A3B6D, -B1A, -B1B, -B1D, -B1E, -B1F, -B2F, -B2F6, - B4A, -C1A, -C1B, -C1C6, -C1D6, -C1E6, -C1F, -J1A6D; AIO-360-A1A, -A1B, -B1B; LO-360-A1G6D; HO-360-B1A, -B1B; HIO-360- A1A, -B1A, -C1A, -C1B, -E1AD, -E1BD; LIO-360-C1E6; TIO-360- A1B; AEIO-360-A1E, -B1G6, -H1A; O-540-A1A, -A1A5, -A1B5, - A1C5, -A1D, -A1D5, -A2B, -A3D5, -B1A5, -B1B5, -B2B5, -B2C5, -B4B5, -E4A5, -E4B5, -E4C5, -F1A5, -F1B5, -G1A5, -G2A5, - H1B5D, -H2B5D, -J1A5D, -J3A5D, -J3C5D, -L3C5D; IO-540-A1A5, -B1A5, -B1C5, -C1B5, -C4B5, -C4C5, -C4D5D, -D4A5, -E1A5, - E1B5, -G1A5, -G1B5, -G1C5, -G1D5, -G1E5, -G1F5, -J4A5, - K1A5, -K1A5D, -K1B5, -K1C5, -K1D5, -K1E5, K1K5, -M1A5, - N1A5, -P1A5, -R1A5, -T4C5D -K1F5, -K1F5D, -K1G5, -K1G5D, - K1J5D, -K1K5, -M1QA5, -M1B5D, -N1A5, -P1A5, -R1A5, -S1A5, - T4A5D, -T4B5D, -T4CTD, -V4A5D, -W1A5D, -W3A5D, -AA1A5; TIO-540-A1A, -A1B, -A2A, -A2B, -A2C, -C1A, -E1A, -G1A, -H1A, -J2B, -F2BD, -J2BD, -N2BD, -R2AD, -S1AD, -AA1AD, -AB1AD; LTIO-540-J2B, -F2BD, -J2BD. -N2BD, -R2AD; IVO-540-A1A; AEIO- 540-D4B5; TIO-541-A1A, -E1A4, -E1B4, -E1C4; IO-720-A1A, - A1B, -B1B, -B1BD, -C1B, and -D1B.

These engines are installed on but not limited to the following aircraft: Beech series 95, 23, 76, 60; Piper series PA-24, PA-44, PA- 28, PA-34, PA-23, PA-25, PA-32, PA-60, PA-31; Aero Commander (Intermountain, Callair, Aeronautical Agricola Mexicana, Twin Commander Aircraft Corp.) series A-6, A-9, 100, 500; Lake Aircraft Corporation (Consolidated Aero., Inc., REVO) series C-2, LA-4; Mooney Aircraft Corp. series M-20, M-22; Sud Aviation GY-180; Partenavia series P-68; Siai-Marchetti (Agusta S.p.A) series S.205, S.210, F.260, S.208; Procaer series F 15; SOCATA series TB10, MS-893, 235, TB20, TB21; Cessna series 172, 177, 177RG, 182, TR182, 182RG; Teal Aircraft Corporation (Bohica) TWC-1; Avions Mudry et Cie CAP 10; Augustair (Montanair, Inc.) 2150; Grumman American (American General Aircraft Holding Co., Inc.) AA-5 series; Fuji Heavy Industries, Ltd. FA-200 series; Bellanca (American Champion Aircraft Corp.) Aircraft 8GCBC, 8KCAB; Maule Aerospace Technology Corp. series MX-7, M5, M-6; Christen A-1, (Pitts) S1T; Schweizer Aircraft Corp.(Hughes, McDonnell Douglas) 269A series; Rockwell (Commander Aircraft Company) series112, 114; Moravan ZLIN Z 242L; Slingsby Aviation Limited T67M; Enstrom F-28 series; Found Brothers Aviation Ltd. FBA-2C, FBA Centennial "100"; Dornier Luftfahrt GmbH DO-28 series; Spinks Industries, M.H. Spinks, Sr. Rawdon T-1; Pilatus Britten-Norman BN-2 series; Omega Aircraft Corporation BS-12D1; Robinson R-44 series; Aerostar Aircraft Corp. (Piper, Ted Smith); Brantly Helicopters Industries U.S.A. Co., Ltd.305; Pacific Aerospace Corp., Ltd. FU-24-954 series.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to requiest approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different action necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to connecting rod bolt failure, which could result in damage to or loss of the aircraft, accomplish the following:

(a) Prior to further flight, determine if the engine has been assembled on or after February 15, 1994. This AD does not apply to engines assembled prior to February 15, 1994.

(b) For the purpose of this AD, assembled is defined as the construction of an engine from its component parts for any purpose, such as, but not limited, overhaul and inspection.

(c) For engines assembled on or after February 15, 1994, prior to further flight, determine if any connecting rod bolts were replaced during assembly. This AD applies only to engines that had connecting rod bolts replaced on or after February 15, 1994.

(d) For engines that contain replacement connecting rod bolts installed on or after February 15, 1994, prior to further flight, determine if any of those replacement connecting rod bolts were purchased directly from Textron Lycoming or Aircraft Technologies, Inc. This AD does not apply to engines with replacement connecting rod bolts purchased directly from Textron Lycoming or Aircraft Technologies, Inc. In addition, this AD does not apply to engines that were manufactured or remanufactured at Textron Lycoming.

(e) For engines that contain replacement connecting rod bolts installed on or after February 15, 1994, that were not purchased directly from Textron Lycoming or Aircraft Technologies, Inc., prior to further flight, visually inspect to determine if the connecting rod bolts are clearly identified by raised letters SPS, S, C, or FC, identifying them as Textron Lycoming parts, or SL75060 etched on the head, identifying them as PMA parts manufactured by Superior Air Parts, Inc., or AL75060 forged into the head, identifying them as PMA parts manufactured by Aircraft Technologies, Inc. If the connecting rod bolts can be positively identified as provided in this paragraph, no further action is required.

(f) If the connecting rod bolts can not be positively identified in accordance with paragraph (e) of this AD, prior to further flight remove unapproved connecting rod bolts and replace with serviceable parts.

NOTE: Further information may be found in Superior Air Parts Service Bulletin No. 95-002, dated March 3, 1995, or by contacting Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244-3792; telephone (800) 487-4884.

(g) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(h) Special flight permits shall not be issued.

(i) This amendment becomes effective April 12, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95-07-01, issued March 17, 1995, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 23, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95-7683 Filed 3-24-95; 3:14 pm]

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14 CFR Part 71

[Airspace Docket No. 95-ASO-1]

Establishment of Class D Airspace; Cocoa, Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Cocoa Beach, FL. The United States Air Force operates a part-time control tower at the Cape Canaveral Skid Strip. Class D airspace is required when the control tower is open to accommodate the TACAN-A Instrument Approach Procedure (IAP) and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On January 20, 1995 the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Cocoa Beach, FL (60 FR 4131). This action would provide adequate Class D airspace for IFR operations at the Cape Canaveral Skid Strip.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 8, 1994, and effective September 16, 1994. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Cocoa Beach, FL. The United States Air Force operates a part-time control tower at the Cape Canaveral Skid Strip. Class D airspace is required when the control tower is open to accommodate the TACAN-A IAP and for IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * * *

ASO FL D Cocoa Beach, FL [New]

Cape Canaveral Skid Strip, FL

(Lat. 28°28'03"N, long. 80°33'59"W)

That airspace extending upward from the surface to and including 2500 feet MSL within a 4.4-mile radius of the Cape Canaveral Skid Strip. This airspace lies within the confines of R-2932 and is effective on a random basis. The effective days and times are continuously available from Patrick Approach Control.

* * * * * *

Issued in College Park, Georgia, on March 14, 1995.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95-7623 Filed 3-27-95; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ANM-47]

Establishment of Class E Airspace; Arco, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Arco, Idaho, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at Arco-Butte County Airport, Arco, Idaho.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 94-ANM-47, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone number: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

On January 18, 1995, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to establish the Arco, Idaho, Class E airspace area (60 FR 3595). This action is necessary to accommodate a new instrument approach procedure at Arco-Butte County Airport, Arcb, Idaho. The area will be depicted on aeronautical charts for pilot reference.

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Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. This action is the same as the proposal except for a typographical error discovered and offered herein in the airspace description with regard to V–365. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Arco, Idaho. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM ID E5 Arco, ID [New]

Arco, Arco-Butte County Airport, ID
(Lat. 43°36'19" N, long. 113°19'54" W)
Arco-Butte County NDB
(Lat. 43°35'57" N, long. 113°20'32" W)
Pocatello VORTAC
(Lat. 42°52'13" N, long. 112°39'08" W)
Burley VOR/DME
(Lat. 42°34'49" N, long. 113°51'57" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Arco-Butte County Airport, and within 2.5 miles each side of the 166° bearing from the Arco-Butte County NDB extending from the 6.6-mile radius to 7 miles southeast of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 68.5 NM northwest of the PIH VORTAC on V–269, thence southeast along V–269 to 53 NM northwest of the PIH VORTAC on V–269, thence to 29 NM south of the DBS VORTAC on V–257, thence south along V–257 to V–365, thence southwest along V–365 to the BYI VOR/DME, thence northwest along V–231 to 29 NM northwest of the BYI VOR/DME on V–231, to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 10, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–7622 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 375 and 385

[Docket No. RM93–20–001; Order No. 574–A]

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant; Order Denying Reconsideration and Extending Deadline for Filing

Issued March 23, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order Denying Reconsideration and Extending Deadline for Filing.

SUMMARY: The Federal Energy Regulatory Commission is denying reconsideration of Order No. 574, requiring electronic filing of FERC Form No. 1, Annual Report of Major electric utilities, licensees and others. The Commission will continue to require electronic filing for the 1994 reporting year, but will extend the deadline for filing FERC Form No. 1 by one month to May 31, 1995.

EFFECTIVE DATE: This order is effective on March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Mattingly, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, (202) 208–2070.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance is ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

On February 3 and 6, 1995, Union Electric Company (Union Electric) and Edison Electric Institute (EEI), respectively, filed requests for reconsideration of the Commission's Order No. 574, issued in this proceeding on December 29, 1994. Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant, Order No. 574, 60 FR 1716 (Jan. 6, 1995), III FERC Stats. & Regs. ¶31,013 (1995). In Order No. 574, the Commission amended its regulations to require the electronic filing of FERC Form No. 1, Annual Report of Major electric utilities, licensees and others, beginning with the 1994 reporting year, due on or before April 30, 1995.

EEI argues that requiring electronic filing for the 1994 reporting year imposes excessive and unnecessary

burdens on reporting companies. EEI states that additional time is needed to correct some remaining problems with the No. 1 software program, and that additional time is also needed for the respondents to familiarize themselves with the requirements of the software. EEI describes various aspects of the software program which it believes require improvement and notes that the software fails to incorporate certain features anticipated by the Commission in its notice issued in this proceeding on December 30, 1993. Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant, Intent to Act and Response to Comments, 59 FR 1687 (Jan. 12, 1994). EEI argues that in light of the software problems, the Commission should make electronic filing of Form No. 1 voluntary for the 1994 reporting year, with mandatory reporting to commence for the 1995 reporting year after further refinement of the software. Alternatively, EEI requests an extension of the filing deadline from April 30, 1995 to July 31, 1995. Union Electric's comments are largely to the same effect as EEI's comments.

Commission Response

Having reviewed the software program and the field test results, we are of the opinion that the software achieves the Commission's goal—namely, the electronic reporting of Form No. 1.[1] The parties have not shown that electronic reporting of Form No. 1 at this time would be either unduly burdensome or unreasonable. The Commission therefore finds that the requests to make the filing voluntary for the 1994 reporting year do not warrant such an across-the-board delay in implementing the electronic reporting requirement.

The Commission believes that the benefits of electronic filing are substantial and include (1) timely analysis and publication of data, (2) increased data analysis capability, (3) reduced cost of data entry and retrieval, (4) simplification of form design, and (5) overall reduction in filing burden. In the Commission's judgment these benefits are such that electronic filing should not be delayed except for reasons of necessity or demonstrated good cause. The Commission realizes that there will be additional expense and inconvenience required to effect this major change in reporting procedure and format. However, the Commission believes these costs will be one-time costs and are outweighed by the potential benefits.

Additionally, with regard to EEI's assertion that the software program fails to incorporate all features anticipated in the December 30, 1993 notice, the Commission has attempted, insofar as practicable, to incorporate the features listed in the December 30, 1993 notice. For the most part, in fact, the listed features have been incorporated into the 1994 version of the software program. That certain features that were anticipated in-the December 30, 1993 notice have not been included in the 1994 version of the software program does not mean that the Commission will not consider including these features in future versions of the software. Rather, it is the Commission's intention to continue to modify and enhance the software by incorporating in future versions additional features as well as improvements to existing features as appropriate.

Having responded more generally, we now turn to specific objections. The parties contend data entry is very cumbersome and time-consuming. They also note users should not have to lose all data and re-key an entire page when changes or mistakes are made. In our view, the software data entry process is no more cumbersome or time-consuming than any other data entry software. Data have to be manually entered into each data field or imported using one of several available import features. Also, the software includes several features that make the process of data entry less cumbersome and time-consuming:

- The data entry screens are virtually identical to the Form No. 1 schedules and therefore provide a familiar environment in which to enter data;
- There is a "hot-key" that provides immediate on screen access to the instructions for completing a particular Form No. 1 schedule page;
- The bottom of the data-entry screens provide key stroke information for operating the software;
- In order to ensure that data are not lost, as a user exits from any schedule page, there is a prompt to "save" the data;
- Many schedules have automatic subtotaling and totaling features; and
- The software includes a feature that permits a user to cross-check and compare data between schedules (*i.e.*, automated edit checking).

In particular, the last two features relieve users of the burden of manually verifying the accuracy of entered data.

As to concerns over lost data when mistakes are made, this appears to relate to schedule pages with the "floating subtotal/total" feature. Thirteen of the 72 Form No. 1 schedule pages have the "floating subtotal/total" feature. For schedule pages with the "floating subtotal/total" feature, it is true that once the feature is used, changes to the schedule pages cannot be made except by deleting all data entered up to point of the error. This limitation has been explained in the users' manual and emphasized in the "helpful hints" information that was distributed with the software.

The parties contend text fields have very limited word processing features and lack a spell-check feature. This is true. However, the "text editor" feature was not developed as a substitute for a word processor. Since the text will be loaded into a database field, very limited word processing capabilities have been provided. As an alternative, a user may use a software import feature that allows it to create a text file, with *any* personal computer word processing software, and to import the text into a Form No. 1 schedule. The import feature of the software are explained in the users's manual, and helpful hints have been provided for the import feature.

The parties contend there is a lack of flexibility in producing a computer-printed Form No. 1 (*i.e.*, page margins and character print size cannot be changed and binding of paper copies may result in text or numbers being lost). This is true; it results from the software design. We are unable, however, to anticipate each respondent's desired printing preferences. In addition, we anticipate that, due to the time involved in printing a complete Form No. 1 from the software, respondents will produce a "master" and, consistent with current practice, print from that "master" using efficient reproduction procedures. In the reproduction process, respondents have the capability to collate, shift, reduce, etc. the "master" to accommodate their binding preferences.

The parties contend footnote text is quite small, making it difficult to read unless a blank line is inserted between each line of text. The print of a footnote is quite small as it uses compressed print. However, the primary objective of the software is to get the data entered and a data diskette produced for submission to the Commission for loading into its Form No. 1 database. We plan to improve the readability of footnote text in future versions of the software.

The parties contend the software is very inefficient. In our view, this is not a correct assessment of the software.

[1] The Commission provides a user's manual and additional written information as well as support to assist respondents. Additionally, the Commission has established an electric bulletin board system to share information on software matters and user issues.

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The software was designed to collect Form No. 1 data, perform an edit-check of the entered data, print the Form No. 1, and produce a data diskette to file with the Commission. The software fulfills these design objectives.

The parties contend the software is not compatible with different types of printers. The software is compatible with all Hewlett Packard (HP) Laser Jet printers and those printers which emulate the HP standards. We were not able to anticipate all printer and printer configurations preferred by respondents. However, by using the HP standards, we were able to cover most of the respondents' printer requirements.

The parties contend the software is not designed to operate in a local area network (LAN) environment and, because it is not LAN-compatible, many companies will have to enter data twice. The software was not specifically designed to operate in a LAN environment because some respondents do not have LAN capability. Also, for those respondents that do have LANs, there are a variety of LANs in use. Ultimately, if a LAN version of the software were developed, it would require reprogramming of the software so that it would operate on any LAN. This does not mean that the software is not LAN compatible; in fact, the Commission has successfully loaded the software on the Commission's LAN and used it without problems. Also, several respondents have reported that they have been successful in operating the software on their LANs. Further, a lack of LAN compatibility does not mean that data must be entered twice by respondents. The software can be loaded on any number of personal computers where the data can be entered and stored in data files and subsequently transferred to one central personal computer.

The parties contend creation of ASCII files to import data is difficult and tedious. The creation of properly delimited ASCII files for the importing of data is difficult until a user becomes familiar with the procedure. The users' manual addresses this issue and recognizes that the necessary steps are complex. Users should consult with or seek assistance from their data processing or computer departments. Additionally, the general import feature was designed as an alternative data entry process (*i.e.*, there is no requirement that it be used).

The parties contend prior year data cannot be accessed for beginning balances, requiring re-keying of data each year. This is a correct statement, and this is one of the software changes that we are considering for future software versions. This is not a problem for the 1994 reporting year, however, since this is the first year the software is being used and there is no prior year data to be accessed.

The parties contend state schedules identical to Form No. 1 cannot be copied with a name change, forcing complete data re-keying. This is a correct statement. However, the software is designed to not allow changes to the schedule pages. Some of the biggest problems with Form No. 1 reporting compliance have been where respondents have changed schedule formats and not reported consistent with the Form No. 1 reporting requirements. In some cases, in fact, required data were omitted or the modified formats made the reported data of limited or no use.

The parties contend there are no page up/page down keys, forcing numerous key strokes to get to the top or bottom of a page. This is a correct statement. The software was designed for data collection and if data entry is done one data field at a time, the page up/down keys are extraneous to the function.

Finally, the parties contend footnotes cannot reference multiple lines, only one field of data. This is a correct statement. The software was intentionally designed so that each individual data element could be footnoted separately and each footnote could be "linked" with the respective data element in the Commission's Form No. 1 database.

Nevertheless, while the Commission will continue to require the electronic reporting of Form No. 1 for the 1994 reporting year, the Commission recognizes that this will be the first year for such filings and additional time may be necessary to prepare such filings. Accordingly, the Commission will extend the deadline for filing Form No. 1 for the 1994 reporting year by one month, to on or before May 31, 1995.[2]

The Commission Orders

The requests for reconsideration of Order No. 574 are hereby denied. However, the deadline for the submission of Form No. 1 (both electronic and paper copies) for the 1994 reporting year is hereby extended from on or before April 30, 1995, to on or before May 31, 1995.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7588 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The one-month extension in the Form No. 1 filing deadline applies both to the electronic filing requirement and the paper copy filing requirement.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority from the Commissioner of Food and Drugs to reflect recent changes to organizational structures within FDA; to update the titles of certain officials; and to reflect changes in the location and numbering of certain statutory provisions.

EFFECTIVE DATE: March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Edna Morgan, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending certain regulations for delegations of authority in 21 CFR part 5 to reflect recent changes to organizational structures within FDA. This document removes obsolete titles and adds new titles of certain officials in various regions, districts, etc., as well as the Center for Veterinary Medicine (CVM) under the new organizational structure. The document also reflects the changes in the location and numbering of certain statutory provisions. The sections affected are as follows:

Section 5.36 *Certification following inspections* (21 CFR 5.36); § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37); and § 5.63 *Detention of meat, poultry, eggs, and related products* (21 CFR 5.63).

In § 5.36, FDA is deleting the Director, St. Louis Branch from those FDA officials authorized to issue certificates of sanitation. In § 5.37(a)(4)(iii), FDA is deleting the Deputy Director, Division of Compliance, Office of Surveillance and Compliance, Center for Veterinary Medicine, from the list of officials authorized to issue certain written notices or warnings. In § 5.37(a)(6) and (b)(5), FDA is adding the Directors of the Northeast Regional Laboratory, Southeast Regional Laboratory, Winchester Engineering and Analytical Center, and National Forensic Chemistry Center to authorize these officials to issue certain written notices or warnings. Finally, in § 5.63, FDA is deleting the Director, St. Louis Branch from those FDA officials authorized to perform and to designate other officials to perform all of the functions of the Commissioner of Food and Drugs relating to detention of meat, poultry, eggs, and related products.

In § 5.37(a), FDA is changing the reference to "section 306" of the Federal Food, Drug, and Cosmetic Act to read, "section 309" to reflect renumbering accomplished by Pub. L. 102–282. In § 5.37(b), FDA is changing the reference to "section 360C(d) of the Public Health Service Act" to read "section 539(d) of the Federal Food, Drug, and Cosmetic Act" to reflect a redesignation accomplished by Pub. L. 101–629.

Further redelegation of the authority delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706; 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.36 is revised to read as follows:

§ 5.36 Certification following inspections.

Regional Food and Drug Directors and District Directors are authorized to issue certificates of sanitation under § 1240.20 of this chapter.

3. Section 5.37 is amended by revising the introductory text of paragraph (a), by revising paragraph (a)(4)(iii), by adding new paragraphs (a)(6)(v) through (a)(6)(viii), by revising the introductory text of paragraph (b), and by revising the introductory text of paragraph (b)(5) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 309 of the Federal Food, Drug, and Cosmetic Act regarding the issuance of written notices or warnings:

* * * * *

(4) * * *

(iii) The Director, Division of Compliance, Office of Surveillance and Compliance, CVM.

* * * * *

(6) * * *

(v) The Director, Northeast Regional Laboratory, Northeast Region.

(vi) The Director, Southeast Regional Laboratory, Southeast Region.

(vii) The Director, Winchester Engineering and Analytical Center.

(viii) The Director, National Forensic Chemistry Center.

(b) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 539(d) of the Federal Food, Drug, and Cosmetic Act regarding the issuance of written notices or warnings:

* * * * *

(5) Regional Food and Drug Directors; District Directors; the Director, St. Louis Branch; the Director, Northeast Regional Laboratory, Northeast Region; the Director, Southeast Regional Laboratory, Southeast Region; the Director, Winchester Engineering and Analytical Center; and the Director, National Forensic Chemistry Center, when such functions relate to:

* * * * *

4. Section 5.63 is amended by revising the introductory text to read as follows:

§ 5.63 Detention of meat, poultry, eggs, and related products.

The Regional Food and Drug Directors and District Directors are authorized to perform and to designate other officials to perform all of the functions of the Commissioner of Food and Drugs under:

* * * * *

Dated: March 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–7574 Filed 3–27–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 184

[Docket No. 93P–0024]

Diacetyl Tartaric Acid Esters of Mono- and Diglycerides; Revision of Common or Usual Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its regulations to recognize the acronym "DATEM" as the alternate common or usual name of the ingredient diacetyl tartaric acid esters of mono- and diglycerides. This action responds to a citizen petition submitted by Grindsted Products Co. requesting approval of the alternate name.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Office of Food Labeling (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 1994 (59 FR 61560), FDA published a proposal to revise § 184.1101(a) and (e) (21 CFR 184.1101(a) and (e)) on diacetyl tartaric acid esters of mono- and diglycerides to provide for the use of the acronym "DATEM" in food labeling as the alternate common or usual name of this ingredient. The proposal was issued in response to a citizen petition submitted by Grindsted Products Co. No comments were received by the agency in response to the proposal.

II. Conclusion

The agency received no comments on the proposed rule. Thus, the agency concludes that, for the reasons set forth in its proposal, it is appropriate to revise § 184.1101 (e) governing generally recognized as safe (GRAS) food substances to provide for the use of the acronym "DATEM" as the alternate common or usual name of the ingredient diacetyl tartaric acid esters of mono- and diglycerides on food labeling. The agency concludes that there has been sufficient exposure to the term "DATEM" to allow the American consumer to recognize and understand the meaning of this term. The term "DATEM" is acceptable and favorable to both industry and the consumer and, therefore, should be allowed to be used interchangeably with the term "diacetyl tartaric acid esters of mono- and diglycerides."

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III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) and (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. FDA did not receive any comments on this issue and, thus, is aware of no reason to alter this determination.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA did not receive any comments or new information on this issue, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1101 is amended by revising paragraphs (a) and (e) to read as follows:

§ 184.1101 Diacetyl tartaric acid esters of mono- and diglycerides.

* * * * *

(a) Diacetyl tartaric acid esters of mono- and diglycerides, also know as DATEM, are composed of mixed esters of glycerin in which one or more of the hydroxyl groups of glycerin has been esterified by diacetyl tartaric acid and by fatty acids. The ingredient is prepared by the reaction of diacetyl tartaric anhydride with mono- and diglycerides that are derived from edible sources.

* * * * *

(e) *Labeling*: The acronym "DATEM" may be used on food labeling as the alternate common or usual name for the ingredient diacetyl tartaric acid esters of mono- and diglycerides.

Dated: March 17, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–7616 Filed 3–27–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 886

[Docket No. 94M–0260]

Medical Devices; Exemptions From Premarket Notification for Certain Classified Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of December 7, 1994 (59 FR 63005). The document exempted 148 generic types of class I devices from the requirement of premarket notification, with limitations. The document was published with an error in the codified section. This document corrects that error.

EFFECTIVE DATE: January 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 157.

In FR Doc. 94–30025, appearing on page 63005 in the **Federal Register** of Wednesday, December 7, 1994, the following correction is made:

§ 886.4350 [Corrected]

On page 63013, in the third column, in § 886.4350, paragraph (b) is corrected by removing the words "only when the device meets the ANSI standard on optic radiation limits."

Dated: March 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–7512 Filed 3–27–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2177]

VISAS: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule extends the Visa Waiver Pilot Program to September 30, 1996 and creates a new probationary status for certain countries which meet the requirements for that status under the Visa Waiver Pilot Program and which are designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. The extension of time for the Visa Waiver Pilot Program applies to those countries already in the program as well as to any countries which may be designated thereunder in the future. A statistical analysis was made to determine which countries could become visa waiver pilot countries with probationary status. As a result of that initial analysis it has been determined that Ireland, currently, is the only county which meets the criteria set forth for such countries.

DATES: This interim rule is effective on April 1, 1995. Written comments are invited and must be received on or before May 30, 1995.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113 (202) 663–1204.

SUPPLEMENTARY INFORMATION: This interim rule amends part 41, title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended by Pub. L. 103–415, 108 Stat. 4299, approved: 10/25/94 and Pub. L. 103–416, 108 Stat. 4305, approved: 10/25/94. Pub. L. 103–415 amended section 217 of the INA to extend the Visa Waiver Pilot Program (VWPP) through September 30, 1995. Pub. L. 103–416 amended section 217 of the INA to extend the Visa Waiver Pilot Program to September 30, 1996, and to create a new probationary status for certain countries which meet the requirements for that status under the Visa Waiver Pilot Program and which are designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603 added section 217 to the INA. Section 217, 8 U.S.C. 1187, established the nonimmigrant Visa Waiver Pilot Program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. That original provision authorized the participation of eight countries in the VWPP. A final rule containing regulations designed to implement facilitation of the admission of certain nonimmigrant alien visitors under the VWPP was published at 53 FR 24903–24904 of the **Federal Register** of June 30, 1988. Its publication was codified in part 41 of title 22 of the Code of Federal Regulations (CFR), 22 CFR 41.2(1). Under that final rule the United Kingdom was the only county designated to received these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective on December 15, 1988 in a final rule published at 53 FR 50161–50162 of the **Federal Register** of December 13, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland, having met all of the requirements for participants in the Visa Waiver Pilot Program, were added later as designated countries participating in the Pilot Program (i.e., the six remaining countries under the Eight Country Pilot Program established by section 313 of IRCA). This action was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees, in a final rule published at 54 FR 27120–27121 of the **Federal Register** of June 27, 1989.

On November 29, 1990, the President approved the Immigration Act of 1990 (Pub. L. 101–649, 104 Stat 4978) (IA). Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and and extended the program's provisions to all countries that meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder. Section 201 also extended the period of the pilot program until September 30, 1994 for the eight pilot program countries already designated under IRCA as well as for any additional Pilot Program countries that might be designated under the law, as amended, subject to their continued qualification thereunder. (See also: section 303 of the Immigration Technical Corrections Act of 1991, Pub. L. 102–232.)

As a result of these amendments to section 217 of the INA, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added, effective on October 1, 1991. They were so designated as participants in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an Interim Rule published at 56 FR 46716–46717 of the **Federal Register** of September 13, 1991.

Brunei was designated as a participant in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an interim rule published at 58 FR 40581–40586 of the **Federal Register** of July 29, 1993.

Each of the above rules amended 22 CFR 41.2. This interim rule, with request for comments, further amends part 41, title 22 to include Ireland as a Visa Waiver Pilot Program country with probationary status since it has met the requirements for that status under INA 217, as amended.

Under its own laws, Ireland does not now require visas for nationals of the United States entering Ireland for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States nationals entering Ireland. Other requirements are that the country meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; that it meet statutorily prescribed limits on rates of exclusion at port of entry and on overstay limits, and that it has a machine readable passport program. The statutory limits required to be met are higher than those required for non-probationary participation in the visa waiver program. Ireland also meets the other statutory requirements for probationary status. Therefore, Ireland is added, effective April 1, 1995, as a country with probationary status participating in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the **Federal Register**.) Therefore, effective on the publication date, citizens of Ireland shall be eligible for participation in the Visa Waiver Pilot Program.

Interim Rule

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to both the travelling public and United States businesses. Therefore, it is being made effective less than thirty days after publication in the **Federal Register**.

In accordance with 5 U.S.C. 605(b) (Regulatory Flexibility Act), it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104, 66 Stat. 174; 8 U.S.C. 1187, 108 Stat. 4312 and 4313.

2. Section 41.2 is amended by revising paragraph (l) to read as follows:

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§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* (1) Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant, either as:

(i) A citizen of a pilot program country; or

(ii) a citizen of a pilot program country with probationary status, pursuant to the provisions of section 217 of the Act, as amended.

(2) Countries designated as pilot program countries under paragraph (l)(1), (i) of this section, are: the United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); Italy and The Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991; and Brunei (effective July 29, 1993). Countries designated as pilot program countries with probationary status under paragraph (1)(l)(ii) of this section are: Ireland effective April 1, 1995 until September 30, 1998 or the expiration of the Visa Waiver Pilot Program, whichever comes first.

Dated: March 3, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95–7050 Filed 3–27–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8581]

RIN 1545–AQ87

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8581), which were published in the **Federal Register** for Friday, December 23, 1994, (59 FR 66165) relating to certain cash or deferred arrangements and employee and matching contributions under employee plans.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez (202) 622–4606 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416, and 4979 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8581), which was the subject of FR Doc. 94–31427, is corrected as follows:

§ 1.401(k)–1 [Corrected]

On page 66169, column 2, in instructional Par.3, item (2)(iv)(c), the amendatory language "c. Revising *Example 4*, paragraph (i)." is corrected to read "c. Revising *Example 4*, paragraph (i), introductory text.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7501 Filed 3–27–95; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 95–2]

Registration of Claims to Copyright; Group Registration of Daily Newsletters

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of daily newsletters. Publishers of daily newsletters, which are issued routinely at least two times per week, may register these newsletters in groups at a reduced fee, on a single application, if they meet certain requirements. The group registration privilege is contingent upon the publisher or claimant meeting the conditions specified in the regulation. The final rule implements a portion of section 408(c)(1) of the Copyright Act of 1976 relating to the deposit requirements for copyright registration.

EFFECTIVE DATE: This rule will become effective March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under section 407 of the Copyright Act of 1976, title 17 of the U.S. Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect the copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights.

Section 408 of title 17 requires deposit of material in connection with applications for voluntary registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

On December 7, 1990, the Copyright Office issued regulations permitting group registration of serials (55 FR 50556 (Dec. 7, 1990)) and on September 1, 1992, it issued regulations permitting group registration of daily newspapers (57 FR 39615 (Sept. 1, 1992)). Both of those regulations are unchanged and continue to govern group registration of serials, other than daily newsletters. For purposes of this regulation, a daily newsletter is defined as a serial published and distributed by mail or electronic media (telefacsimile, cassette tape, diskette or CD–ROM). Publication must occur at least two days per week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate

house organs, schools, colleges, and churches). Daily newsletters are published series that are not available on newsstands. They are customarily sold by subscription and distributed electronically or by mail.

The Copyright Office is now publishing a regulation that permits group registration of daily newsletters that meet all of the specified conditions. Under the regulation, daily newsletters that are published routinely at least two times per week may be registered in groups at a reduced fee if all other requirements are met. Publishers that meet these qualifications may register all newsletters bearing issue dates within a single calendar month under the same continuing title on a single Form SE/Group with the deposit of a single copy of each issue and a $10 filing fee for each issue. Each issue must be an essentially new collective work or all new issue that has not been published before and must be a work made for hire. The author(s) and claimant(s) must be the same for all of the issues. If the Library of Congress makes a written request, the publisher must give the Library up to two complimentary subscriptions of the specified newsletter.

Registration of claims to copyright is optional, although registration confers several benefits. If a publisher cannot meet any one of the specified conditions and he or she wishes to register then a separate registration is required for each issue. Form SE or Short Form SE should be used.

The Copyright Office is also amending § 202.3(b)(3)(ii) and footnote 6 to § 202.3(c)(2) to conform to the addition of a new § 202.3(b)(8).

List of Subjects in 37 CFR Part 202

Copyright registration.

Final Regulation

In consideration of the foregoing, the Copyright Office amends 37 CFR part 202 in the manner set forth below:

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702; 202.3, 202.19, 202.20, 202.21, and 202.22 are also issued under 17 U.S.C. 407 and 408.

2. In § 202.3, paragraph (b)(8) is redesignated as paragraph (b)(9) and a new paragraph (b)(8) is added to read as follows:

§ 202.3 Registration of Copyright.

* * * * *

(b) * * *

(8) *Group registration of daily newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of two or more issues of a daily newsletter if the following conditions are met:

(i) As used in this regulation, daily newsletter means a serial published and distributed by mail or electronic media (online, telefacsimile, cassette tape, diskette or CD–ROM). Publication must occur at least two days per week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate house organs, schools, colleges, and churches).

(ii) The works must be essentially all new collective works or all new issues that have not been published before.

(iii) Each issue must be a work made for hire.

(iv) The author(s) and claimant(s) must be the same person(s) or organization(s) for all of the issues.

(v) All the items in the group must bear issue dates within a single calendar month under the same continuing title.

(vi) If requested in writing by the Copyright Acquisitions Division of the Library of Congress, the publisher of the newsletter must give the Library of Congress up to two complimentary subscriptions of the newsletter in the edition most suitable to the Library's needs. Subscription copies must be mailed or transmitted to the separate address specified by the Copyright Acquisitions Division in its request. Subscription copies are not required unless expressly requested by the Library of Congress.

(vii) A Form SE/Group shall be submitted for daily newsletters bearing issue dates within a single month, together with one copy of each issue, and a filing fee of $10 for each issue included in the group registration.

* * * * *

3. Section 202.3(b)(3)(ii) is amended by removing "(b)(7)" and adding "(b)(8)".

4. Footnote 6 to § 202.3(c)(2) is revised to read as follows:

[6] In the case of applications for group registration of newspapers, contributions to periodicals, and newsletters, under paragraphs (b)(6), (b)(7), and (b)(8) of this section, the deposits and fees shall comply with those specified in the respective paragraphs.

Dated: March 14, 1995.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–7564 Filed 3–27–95; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–144–2–6918b; FRL–5179–4]

California State Implementation Plan Revision; Interim Final Determination That State Has Corrected Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a notice of proposed rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern rules from the San Diego County Air Poilution Control District (SDCAPCD) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD): SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and SJVUAPCD Rule 4403, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks were activated on September 30, 1993. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiencies that started the sanctions clocks by publishing a notice of final rulemaking in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: *Effective Date:* March 28, 1995.

Comments: Comments must be received by April 27, 1995.

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ADDRESSES: Comments should be sent to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123
San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 1991, the State submitted SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and on May 30, 1991, SJVUAPCD Rule 4403, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities, which EPA disapproved in part on August 30, 1993. 58 FR 4544. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised rules on January 24, 1995 and February 24, 1995. The revised rules were adopted by the SDCAPCD and SJVUAPCD on January 10, 1995 and February 16, 1995 respectively. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and SJVUAPCD Rule 4403, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. SJVUAPCD Rule 4403 replaces SJVUAPCD Rule 465.3 of the same name.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for these areas on August 30, 1993. However, this action will defer the application of the offsets sanctions and will defer the imposition of the highway sanctions. See 59 FR 39832 (Aug. 4, 1994). If EPA's publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clocks. Based on this action, imposition of the offset sanctions will be deferred and imposition of the highway sanctions will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA takes action proposing or disapproving in whole or part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval actions, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(3). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 16, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–7471 Filed 3–27–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No 1; Amdt. 1–269]

Organization and Delegation of Powers and Duties Transfer of Delegations From Assistant Secretary for Governmental Affairs to General Counsel and Deputy General Counsel

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Responsibility for the Department's airline consumer protection program and related responsibilities has been transferred from the Assistant Secretary for Governmental Affairs to the General Counsel and the Deputy General Counsel. This rule amends the delegations to be in accordance with the changed responsibilities. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

EFFECTIVE DATE: This rule becomes effective March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's airline consumer protection program and related responsibilities has been transferred from the Assistant Secretary for Governmental Affairs to the General Counsel and the Deputy General Counsel. This rule amends the delegations to be in accordance with the changed responsibilities. The Office of Intergovernmental and Consumer Affairs has been changed to the Office of Intergovernmental Affairs. The Aviation Consumer Protection Division, located within the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, has been created.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.22 [Amended]

2. Section 1.22(f) is revised to read as follows:

§ 1.22 Structure.

* * * * *

(f) *Office of the Assistant Secretary for Governmental Affairs.* This office is composed of the Offices of Congressional Affairs and Intergovernmental Affairs.

* * * * *

3. In § 1.56a, "1.61(d)" is revised to read "1.57(s)" in paragraph (f)(1).

4. In § 1.56b, "1.61(d)" is revised to read "1.57(s)".

5. Section 1.57 is amended by adding a new paragraph (s) to read as follows:

§ 1.57 Delegations to General Counsel.

* * * * *

(s) Assist and protect consumers in their dealings with the air transportation industry and assist state and local organizations in handling airline consumer complaints. Carry out 49 U.S.C. 40113 and 41771 as appropriate to those functions.

* * * * *

6. Section 1.57a is revised to read as follows:

§ 1.57a Delegations to Deputy General Counsel.

The Deputy General Counsel is delegated authority to:

(a) Appear on behalf of the Department on the record in hearing cases, and to initiate and carry out enforcement actions on behalf of the Department, under the authority transferred to the Department from the Civil Aeronautics Board as described in §§ 1.56a(f) and 1.57(s). This includes the authority to compromise penalties under 49 U.S.C. 46301; to issue appropriate orders, including cease and desist orders, under 49 U.S.C. 46101; and to require the production of information, enter carrier property and inspect records and inquire into the management of the business of a carrier under 49 U.S.C. 41711, as appropriate to the enforcement responsibilities. In carrying out these functions, the Deputy General Counsel is not subject to the supervision of the General Counsel.

(b) Initiate and carry out enforcement actions relating to:

(1) foreign airport security on behalf of the Department under 49 U.S.C. 44907; and

(2) the Consumer Credit Protection Act under section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98–443). In carrying out these functions, the Deputy General Counsel is not subject to the supervision of the General Counsel.

§ 1.61 [Amended]

7. In § 1.61, remove paragraph (d).

Issued at Washington, DC this 22nd day of March, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–7568 Filed 3–27–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 59
Tuesday, March 28, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF23

Petition for Rulemaking; Procedure for Submission

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to petitions for rulemaking. The proposed changes would provide incentive to submit sufficient supporting information in petitions to facilitate more expeditious disposition by the NRC, and would also improve openness of the petition for rulemaking process by delineating priorities for review of the petitions.

DATES: Comment period expires June 12, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received may be examined at: the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.Y. Chang, telephone (301) 415–6450, or Chris Rourk, telephone (301) 415–5865, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

NRC and industry resources are limited and becoming more so. Inefficient regulations, i.e., regulations that are burdensome and have a minimal safety benefit, could divert NRC and industry resources from issues important to safety, thereby adversely affecting safety. While maintaining its emphasis on safety, the NRC over the past 10 years has initiated several programs designed to improve the efficiency of its regulatory program. These efforts include notably the Marginal To Safety (MTS) program, the Regulatory Review Group (RRG) and Cost Beneficial Licensing Actions (CBLA) Task Force studies, and the Technical Specification Amendments Screening Panel.

These programs have identified a number of inefficient regulatory requirements. They also enabled the NRC to conclude, among other matters, that (1) an expanded role for the public, including the industry, to participate in the process of improving regulations through petitions for rulemaking is highly desirable and should be encouraged, and (2) the petition for rulemaking process could be improved to make it more responsive to petitioners.

Description

The NRC has prepared a proposed rule that would modify 10 CFR 2.802, Petition for Rulemaking, to expand the use and improve the responsiveness of the petition for rulemaking process. The proposed rule would also delineate factors that affect priorities for review of petitions. This would improve the openness of the rulemaking process.

The NRC staff currently expends resources in developing responses to petitions for rulemaking that may or may not result in changes to NRC regulations. The reasons for the granting or denial of petitions sometimes only become evident after completion of considerable NRC staff effort that may include the development of a regulatory analysis and a backfit analysis. As a consequence, processing and disposition of petitions sometimes is unduly prolonged. On the other hand, the NRC recognizes that licensees are in the best position to provide information to assist the NRC to assess the effect of regulatory actions and are also the primary beneficiaries of efforts to reduce regulatory requirements that are unduly burdensome but have no commensurable safety benefits.

In order to allow petitions to be treated more expeditiously, to facilitate the submission of petitions with strong technical merit, and to improve the likelihood of acceptance of petitions, the NRC proposes to modify § 2.802 to encourage industry and the public to submit more detailed supporting information in the petition for rulemaking than currently required. The NRC concluded that this modification would be an effective means to help processing the petitions in a more expeditious manner, because this information would enable the NRC staff to conclude, with a minimal expenditure of staff resources, whether to grant or deny the petition. The incentive for any petitioner to take this action would be that more expeditious review and processing of the petition will result. It is expected that this alternative process will be more efficient in the use of NRC staff and industry resources and be more responsive to petitioners. This proposed rule would not change any existing provision regarding petitions for rulemaking, rather it offers an alternative within the petition process which would be available to all petitioners regardless of the nature of the petitions.

The industry is therefore encouraged to identify and propose improvements to regulations that seek to reduce the regulatory burden while providing sufficient supporting information in the petition to demonstrate that the proposed changes will result in significant reduced burden and minimal impact to overall safety (safety neutrality). Similarly, members of the public who seek safety enhancement through the rulemaking process are encouraged to make use of the sizable publicly available safety information to support and expedite their petitions.

It is to be noted that the prioritization and scheduling for review and disposition by NRC are based on consideration of the merit of each petition. The merit of a petition is judged on its safety significance and the level of detail of supporting information. Petitions containing supporting information additional to those currently required would improve their priority for review and receive more expeditious disposition. Consideration of safety significance is the first criterion for prioritizing the review and disposition of petitions. It is the primary concern of the NRC to ensure that design and operation of NRC licensed facilities are carried out in a manner which assures adequate protection of public health and safety, of the environment, and of national security. Therefore, petitions found by the NRC to raise a concern in this regard would receive immediate NRC attention. In assessing the safety significance of petitions consideration would be given to the technical information submitted and other information available to the NRC, and to whether the proposal is likely to meet the criteria of the backfit rule. Petitions that are safety neutral, i.e., implementation of which would result in an insignificant change to the level of protection to public health and safety, would be resolved in such a way as to minimize the cost to the NRC and maximize the benefit to the petitioner.

The more detailed supporting information in addition to that required in the current § 2.802(c) should include the suggested regulatory text, regulatory analysis, backfit analysis (if required), information required by the National Environmental Policy Act (NEPA), and a guidance document similar in nature to a Regulatory Guide, if needed, in support of a proposed rule, as described in paragraph (d)(2) of the proposed rule. The regulatory analysis is important for petitions seeking either to enhance safety or to reduce regulatory burden, because it would provide information on the changes to risk levels as well as costs associated with proposed alternatives.

The proposed changes would afford any petitioner two options: submit the minimal threshold information in the petition that is required by the current rule and be subject to the regular processing procedures, or submit more detailed supporting information and analyses in the petition in return for a more expeditious processing procedure by the NRC. The proposed revisions would not change any existing provision regarding petitions for rulemaking if they meet the minimum threshold requirement of the current § 2.802(c).

Subsequent to the establishment of review priority the NRC would develop a schedule for all petitions that are docketed. This schedule would reflect the priority of each petition based on consideration of the combination of safety significance and level of detail of supporting information. A summary of petitions for rulemaking, including the status of each petition, would be prepared semiannually by the NRC staff, as described in paragraph (h) of the proposed rule. A copy of this report would be available for public review in the NRC Public Document Room.

Further, the NRC has decided to provide administrative procedures to make it easier for concerned parties to submit petitions for changes to regulatory guidance documents, such as regulatory guides, bulletins, generic letters and sections of the Standard Review Plan (SRP). These documents do not have the force and effect of a regulation, but they are used by the NRC staff to identify methods that would comply with the regulation. A formal procedure which enables interested parties to propose changes to such regulatory guidance documents does not now exist. The guidance for preparation of more detailed petitions for rulemaking as well as petitions requesting the revision of regulatory guidance documents will be provided in proposed Regulatory Guides 10.XX and 10.XY to be developed in the near future.

Specific Considerations

Advice and recommendations on the proposed revision to 10 CFR 2.802 and on any other points considered pertinent are invited from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

1. Is the concept of the proposal sound, namely that all petitioners have the option to submit more detailed supporting information which, if found adequate, would lead to faster NRC disposition?

2. Is the description of information required for detailed supporting information in paragraph (d)(2) sufficiently complete to avoid unnecessary correspondence after the petition has been docketed?

3. Under what circumstances should a guidance document in the form of a Regulatory Guide be required to support a petition? What criteria are appropriate for not requiring it?

4. Should there be an NRC electronic bulletin board dealing exclusively with petitions?

5. As the NRC attempts to shift rulemaking approaches to be more performance-based and risk-based, what changes would be appropriate for the information requirements under the proposed revision of 10 CFR 2.802?

6. Should administrative procedures be established to allow petitions for changes to regulatory guidance documents, such as regulatory guides, bulletins, generic letters, and sections of the Standard Review Plan? Should these procedures be incorporated in a rule?

Environmental Impact: Categorical Exclusion

The proposed regulations involve an amendment to 10 CFR 2.802, and qualify as actions eligible for the categorical exclusion from environmental review in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for these proposed regulations.

Paperwork Reduction Act Statement

The proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average an additional 500 hours for each PRM that contains additional supporting information and analyses. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0136), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Administrative Procedure Act requires each Federal agency to give interested persons the right to petition for the issuance, amendment, or repeal of a rule. The proposed changes would facilitate more expeditious disposition by the NRC of petitions with sufficient supporting information, and would also improve the openness of the rulemaking process by delineating petition review priorities. This expended right, however, is available to any interested petitioner. The proposed rule does not affect any existing rights and gives expanded rights to licensees and interested persons. This proposed rule constitutes the preferred course of action and the cost involved in its promulgation and action is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for the proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a

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substantial number of small entities. Any interested person has the right to submit a petition for rulemaking under the existing guidelines. If an interested person voluntarily chooses to develop additional information and perform additional analysis to support a proposed petition, the proposed rule would further encourage petitioners to do so. If the interested person is unable or unwilling to incur the costs associated with developing additional information and performing these analyses, a petition may be submitted under the existing rule. The NRC staff will continue to perform the analyses that may be required to resolve the petition. The proposed rule does not impose any obligations on regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act (15 U.S.C. 632), or within the small business standards contained in 13 CFR Part 121

Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721, also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b,i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557 Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

§ 2.8 [Amended]

2. Section 2.8 paragraph (b) is revised to read as follows:

* * * * *

(b) The approved information collection requirements contained in this part appear in § 2.802 and appendix C.

3. Section 2.802 is revised to read as follows:

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend, or rescind any regulation. The petition should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Chief, Docketing and Service Branch.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Chief, Rules Review and Directives Branch. A prospective petitioner may also telephone the Rules Review and Directives Branch on (301) 415–7158 or toll free on (800) 368–5642.

(1) In any consultation before the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to:

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for regulation, and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner

(2) In providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) Petitions for rulemaking will be prioritized and scheduled for review and disposition by NRC on the basis of the following considerations:

(1) Safety significance of the issues identified or alternatives proposed in petitions will be the dominant consideration for the prioritization of petitions.

(2) Petitions containing supporting information additional to that described in paragraph (c) of this section, will improve the priority for review and more expeditious disposition. Sufficient supporting information for higher priority should include:

(i) The text of a proposed, revised, or amended regulation ("the proposed rule");

(ii) Supplementary information constituting the proposed statement of considerations for the regulation;

(iii) Supporting material to show conformance with legal requirements such as the National Environmental Policy Act, the Paperwork Reduction Act, and the Regulatory Flexibility Act, as appropriate;

(iv) A regulatory analysis. For information on the form and content of a regulatory analysis see NUREG/BR–0058[1] and NUREG/CR–3568;[2]

(v) Supporting information that responds to 10 CFR 50.109(c), the Backfit rule where applicable; and

(vi) A guidance document in the form of a Regulatory Guide when necessary (Note that a Regulatory Guide is usually provided for a performance based regulation).

(e) The petitioner may request the Commission to suspend all or part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(f) If it is determined that the petition includes the information required by paragraphs (c) and, if petitioner elects, (d)(2) of this section and is complete, the Director, Division of Freedom of Information and Publications Services, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the **Federal Register**, or, in appropriate cases, may be invited for the first time upon publication in the **Federal Register** of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(g) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraphs (c) and, if applicable, (d)(2) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(h) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Dated at Rockville, MD, this 22nd day of March 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–7563 Filed 3–27–95; 8:45 am]

BILLING CODE 7590–01–P

[1] NUREG/BR–0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Rev. 1, May 1984. A draft Rev. 2 of this report was issued for comment in August 1993, and should be published as final report in the near future.

[2] NUREG/CR–3568, "A Handbook for Value-Impact Assessment," December 1983. The document is currently undergoing revision and will tentatively be titled the "Regulatory Analysis Technical Evaluation Handbook."

Note: Copies of NUREG/BR–0058 and NUREG/CR–3568 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0872]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend its Regulation Y to eliminate the need for a bank holding company to file a request with the Board for a determination under section 2(g)(3) of the Bank Holding Company Act that it no longer controls shares or assets that it has sold to a third party with financing if: The purchaser is not an affiliate or principal shareholder of the divesting holding company, or a company controlled by the principal shareholder; and there are no officers, directors, trustees or beneficiaries of the acquiror in common with or subject to control by the divesting company. The Board believes that the elimination of the requirement for a determination of control for these types of divestitures will reduce the regulatory burden on bank holding companies without undermining the purposes of the Bank Holding Company Act. This proposal has been identified in connection with the Board's continuing effort to eliminate obsolete or unnecessary regulations or applications.

DATES: Comments must be submitted on or before April 28, 1995

ADDRESSES: Comments should refer to Docket No. R–0872 and may be mailed to William W. Wiles, Secretary, Board o Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551 Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452–3289), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federa Reserve System, 20th and C Streets NW., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Under section 2(g)(3) of the Bank Holding Company Act (12 U.S.C. 1841(g)), shares transferred by a bank holding company to any transferee where the transferee is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with the transferor, are deemed to be controlled by the transferor unless the Board, after an opportunity for a hearing, determines that the transferor is not capable of controlling the transferee. The Board proposes to amend § 225.32 of the Board's Regulation Y (12 CFR 225.32) to exempt from the presumption of control those divestitures where a bank holding company is financing the sale of assets or shares that it acquired so long as (i) the property is not sold to an affiliate or principal shareholder of the divesting holding company, or a company controlled by such a principal shareholder; and (ii) there are no officers, directors, trustees, or beneficiaries of the acquiror in common with or subject to control by the divesting company.

A review of the 2(g)(3) determinations over the past ten years indicates that almost all control determinations under

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that section have arisen from bank holding companies selling property they acquired in satisfaction of a debt previously contracted ("dpc property") where the bank holding company was trying to recoup its losses on a loan from the sale of the collateral. In these cases, the record indicates that the divestitures and financing arrangements have been conducted on an arm's-length basis, and there is no evidence of divesting companies exercising control of the assets after the sale. In other cases where a bank holding company sold an asset or subsidiary that it had acquired in the normal course of business and financed the sale of the asset or subsidiary, the assets were sold because, in most cases, the bank holding company was no longer interested in engaging in that business.

The elimination of the requirement to obtain a control determination will reduce the regulatory burden on bank holding companies without eliminating the Board's ability to supervise any attempt to control the divested asset in the future. Although the Board would no longer require a bank holding company to obtain a control determination, the Board, through the examination process, can review the authority under which a bank holding company controls the asset in question, and take appropriate supervisory action if any unlawful control is found to persist. In addition, the Board would continue to require a divesting company to obtain a 2(g)(3) determination if: (i) The asset were transferred to an affiliate or principal shareholder of the divesting holding company, or a company controlled by the principal shareholder; or (ii) an interlock existed between the divesting company and the acquiring person. In these cases, staff believes that there is a greater potential for continued control by the bank holding company that should be reviewed. The General Counsel will continue to review these divestitures on a case by case basis to determine if a control determination is appropriate.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant adverse economic impact on a substantial number of small entities and that any impact on those entities should be positive. The amendments would reduce regulatory burdens imposed by Regulation Y, and the amendment would have no particular adverse effect on other entities.

Paperwork Reduction Act Analysis

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is contained in these changes.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.32, paragraph (a)(2) is redesignated as paragraph (a)(3) and a new paragraph (a)(2) is added to read as follows:

§ 225.32 Divestiture proceedings.

(a) * * *

(2) The presumption of control in paragraph (a)(1)(i) of this section shall not apply to the sale or divestiture of assets or voting securities by a divesting company if:

(i) The acquiring person is not an affiliate or a principal shareholder of the divesting company, or a company controlled by such a principal shareholder; and

(ii) The acquiring person does not have any officer, director, trustee, or beneficiary in common with or subject to control by the divesting company.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 22, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–7518 Filed 3–27–95; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AB06

Contracts Adverse to Safety and Soundness of Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule; withdrawal

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is withdrawing its proposed rule which would have implemented the statutory prohibition on contracts that adversely affect the safety or soundness of insured depository institutions. The statutory provision remains in place and unchanged. The FDIC has decided to withdraw the proposed rule because the existence of adverse contracts involving insured institutions has decreased considerably since the proposed rule was issued for public comment on April 1, 1991, because of the overwhelmingly negative comments received from the industry to the proposal, and because of an FDIC policy statement that recommends the withdrawal of proposed rules that have not been acted upon by the FDIC Board of Directors within nine months of the date of proposal. Many of the negative comments received in response to the proposal expressed the view that such a regulation would create unnecessary regulatory burden and that the Federal banking agencies already possess the necessary supervisory authority to deal with adverse contracts. Since the type of activity that the proposed rule was intended to eliminate (*i.e.*, abuses involving contracts made by or on behalf of an insured institution that seriously jeopardize or misrepresent its safety and soundness) has been substantially reduced through greater industry awareness and use of alternative supervisory actions by the Federal banking agencies, there appears to be no need to promulgate such a regulation at this time. However, the FDIC may decide at a later date to publish a new proposal if it determines that the existence of adverse contracts has increased or that such action is otherwise necessary or appropriate.

DATES: The withdrawal of proposed Part 334 is made on March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918; Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896; or Gwen E. Factor, Counsel, Legal Division, (202) 898–8522, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 225 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added new section 30 to the Federal Deposit

Insurance Act (Act), 12 U.S.C. 1831g, which prohibits any insured depository institution from entering into a written or oral contract with any person to provide goods, products or services to or for the benefit of the institution if the performance of such contract would adversely affect its safety or soundness. Section 30(b) authorizes the FDIC to prescribe such regulations as may be necessary to carry out the purposes of section 30. In accordance with this authority, the FDIC Board of Directors issued for public comment a proposal to add new Part 334 to the FDIC's rules and regulations (which was published in the **Federal Register** on April 1, 1991 (56 FR 13291)) to address adverse contracts.

The proposed rule would have implemented section 30 of the Act by prohibiting any insured depository institution from entering into any contract determined to be adverse and would have treated all adverse contracts uniformly without distinguishing between contracts with affiliates and those with non-affiliates. The proposed rule would not have defined with specificity the types of contracts that would be considered adverse. Instead, the proposal provided examples of terms that could indicate an adverse arrangement and identified prohibited actions by a discussion of previously encountered abuses.

Under the proposed rule, each contract would have been evaluated separately on the basis of its own terms and by comparison with the terms of similar contracts entered into by the institution and other institutions. The burden of establishing the propriety of a contract with respect to which the appropriate Federal banking agency has made an initial determination of adverse effect on the institution's safety or soundness would have been on the institution and its contractor. As discussed in the preamble, the "preponderance of evidence" standard normally would have applied, but where there was evidence of bad faith, intentional wrong-doing or fraud, the propriety and legality of the contract would have been determined by clear and convincing evidence. The proposed rule also would have made clear that enforcement actions may be taken directly against any contractor, as an "institution-affiliated party".

The proposed rule also requested specific comment on how to prevent abuses involving contracts with holding companies and other affiliates. Although an approach for dealing with affiliate contracts was discussed in the preamble, no rule was proposed. It was suggested that the FDIC might establish a rebuttable regulatory presumption that certain types of contracts between an insured institution and its affiliates are adverse. However, it was specifically noted that such a rebuttable presumption would not prohibit all affiliate contracts. Instead, only certain specified types of contracts would be covered and contracts with other insured institutions or with subsidiaries of insured institutions would be excluded from being presumed adverse.

Discussion

Summary of Comments Received

The FDIC received 206 comments on the proposed rule. Almost all of the comments received opposed the proposed rule or suggested major changes, while many commenters requested that the FDIC withdraw the proposed rule. Many commenters expressed the view that a regulation dealing with adverse contracts would create an unnecessary regulatory burden and that the Federal banking agencies already possess the necessary supervisory authority to deal with such contracts. Many of the objections to the proposal focused on the possibility of treating contracts with affiliates differently from those with non-affiliates and were virtually unanimous in their opposition to developing an additional rule dealing with affiliate contracts. Other objections to the proposed rule focused on: (1) Inadequacies in the definition of "contract"; (2) the requirement that an insured institution must rebut a prima facie case that a particular contract is adverse with clear and convincing evidence; and (3) including independent contractors as "institution-affiliated parties" who could be joined to FDIC cease-and-desist actions against insured institutions and/or named as respondents in civil money penalty and prohibition actions.

Policy Statement

The FDIC's policy statement on Development and Review of FDIC Rules and Regulations (44 FR 31007, May 30, 1979) calls for withdrawal of any proposed regulation with respect to which final action by the FDIC Board of Directors has not been taken within nine months from the date of proposal. The FDIC believes that withdrawal of the proposed rule is appropriate because no action has been taken with respect to the proposal for over nine months.

Effect of Withdrawal of Proposed Rule

Section 30 of the Act authorizes (but does not require) the FDIC to promulgate such regulations as may be necessary to administer and carry out the purposes of, and prevent evasions of, the statutory prohibition. The statute is enforceable by its own terms by the FDIC and the other Federal banking agencies in the absence of an implementing regulation. The FDIC has decided to withdraw the proposed rule because of the significant decrease in the type of activity that the proposed rule was intended to eliminate (i.e., abuses involving contracts made by or on behalf of an insured institution that seriously jeopardize or misrepresent its safety and soundness), the overwhelmingly negative comments received on the proposed rule, and an FDIC policy statement that recommends the withdrawal of proposed rules that have not been acted upon by the FDIC Board of Directors within nine months of the date of proposal. Moreover, the FDIC believes that the statute can be administered without regulation. The FDIC may decide, however, at a later date to publish a new proposal if it determines that the existence of adverse contracts has increased or that such action is otherwise necessary or appropriate. If the FDIC wishes at a later date to promulgate a regulation that deals with or addresses adverse contracts, it will begin the rulemaking process anew.

In consideration of the foregoing, the FDIC hereby withdraws proposed new Part 334 of Title 12 of the Code of Federal Regulations.

By Order of the Board of Directors.

Dated at Washington, DC, this 21st day of March 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–7522 Filed 3–27–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Fiscal Year 1998 Rotorcraft Research and Development Initiative, Program Identification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Call for part 27 and 29 research and development program proposals.

SUMMARY: This notice announces a call for proposals that will define the Federal Aviation Administration (FAA), Aircraft Certification Service, Rotorcraft Directorate Research and Development

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(RE&D) initiative for Fiscal Year (FY) 1998 by defining and documenting specific, potential RE&D program proposals. The call for proposals will focus on Aircraft Certification RE&D programs that support activity related to FAR Parts 27, 29, and associated operations Parts. Other FAA requirements such as flight standards, air traffic, or airway facilities will not be addressed. The FAA is soliciting the public sector to ensure that proposed Rotorcraft RE&D requirements will have relevant, practical applications and will be cost effective.

DATES: The call for proposals will be open until close of business May 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Mike Mathias, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0111; telephone (817) 222–5123.

SUPPLEMENTARY INFORMATION: Each FY the FAA prepares an RE&D program plan that includes new (and amended) RE&D proposals. The Aircraft Certification Service's Rotorcraft Directorate is responsible for preparing its part of the overall FAA submittal.

The philosophy of the RE&D process is to create an atmosphere that will promote the identification of requirements by any person or organization in the government or private sector. This makes the RE&D process more responsive to public sector needs. Within the Aircraft Certification Service, the RE&D process places increased emphasis on FAA Aircraft Certification Directorate and Division level participation in identifying new requirements and in sponsoring and monitoring the resulting RE&D projects.

Therefore, as part of the overall FAA and Aircraft Certification initiative, the FAA's Rotorcraft Directorate is undertaking a directly-related initiative specifically for the rotorcraft community. It has the same basic mission, goals, and procedures as the agency-wide initiative.

The Rotorcraft Directorate will implement its segment of the FY-98 submittal by identifying, describing, evaluating, and cataloging potential RE&D requirements (i.e., proposals) for potential sponsorship and incorporation into the overall FAA FY-98 RE&D submittal. This will result in a coordinated FY-98 rotorcraft requirements package that will be assigned to the appropriate FAA RE&D provider organizations when approved and when funds are allocated by the budget process.

It should be stressed that the proposals that are evaluated as a result of this notice, if accepted, will not be funded until the overall FAA FY 98 RE&D submittal is funded, (i.e., at least two (2) years after their original submittal on 10/15/95) and that reprogramming of limited RE&D resources before then is highly unlikely Also, the accepted proposals will have to compete for resources with other requirements identified for RE&D by other FAA activities. Nonetheless, the need clearly exists to identify Rotorcraft Certification RE&D needs to compete for the agency's RE&D resources.

As a matter of information, there are four primary FAA RE&D supplier organizations: (1) The Technical Center (ACD) in Atlantic City, New Jersey; (2) the Research and Development Service (ARD) in Washington, D.C.; (3) the Office of Environment and Energy (AEE) in Washington, D.C.; and (4) the Office of Aviation Medicine's Civil Aeromedical Institute (AAM/CAMI) in Oklahoma City, Oklahoma. These organizations perform the RE&D on programs that are approved and funded through the process.

Although not mandatory, the format of Figure 1 for RE&D proposals is preferred:

Figure 1—FY-98 Rotorcraft Directorate RE&D Program Description Form

Originator

(Insert Name, Address, Phone Number, and Fax Number)

Proposed RE&D Program Descriptions & Objectives

(Insert Brief Description of the proposal program and its major goals and objectives)

Note: A more detailed description may be attached in addition to this summary but is not mandatory at this time.

How Would You Accomplish this Program?

(Insert Brief Description of your recommended method of accomplishing the proposed RE&D program)

Justification/History

(If appropriate, furnish data such as a concise accident/incident history and any other relevant statistics or information that would show that the proposed research is needed, cost-effective, and applicable to developing a solution to the proposed RE&D project This history/justification input data will be used to aid in assessing the relative value of the proposed RD&D project.)

Anticipated Benefits/Products and Beneficiaries

(Insert Brief Description of anticipated benefits/products, who would benefit, and how)

If an RE&D proposal has been submitted previously, then (unless a major change or update has been made) it is on file and need not be resubmitted.

Copies of this notice are being mailed to all known interested parties. Any interested party who desires but has not received a copy of this notice by May 8, 1995, should request a copy from Mary June Bruner, FAA Rotorcraft Standards Staff, Fort Worth, TX 76137–0111, telephone (817) 222–5110.

Issued in Fort Worth, Texas, on March 16, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service

[FR Doc. 95–7618 Filed 3–27–95; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 95–ASO–7]

Proposed Establishment of Class D Airspace; Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Jackson, TN. A non-federal control tower is being commissioned at the Jackson/McKellar-Sipes Regional Airport. Class D airspace is required when the control tower is in operation to accommodate current Standard Instrument Approach Procedures (SIAPs) and for instrument flight rules (IFR) operations at the airport. This action would also modify the Class E airspace to classify the airspace as part-time when the tower is closed.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–7, Manager, System Management Branch, ASO–530, P.O Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Jackson, TN. A non-federal control tower is being commissioned at the Jackson/McKellar-Sipes Regional Airport. Class D airspace is required when the control tower is in operation to accommodate current SIAPs and for IFR operations at the airport. This action would also modify the Class E2 airspace designation to classify the airspace as part-time when the tower is closed. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO TN D Jackson, TN [New]

Jackson/McKellar-Sipes Regional Airport, TN
(lat. 35°35'59" N, long. 88°54'56" W)
McKellar VOR/DME
(lat. 35°36'13" N, long. 88°54'38" W)

That airspace extending upward from the surface to and including 2900 feet MSL within a 4.2-mile radius of the Jackson/McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO TN E2 Jackson, TN [Revised]

Jackson/McKellar-Sipes Regional Airport, TN
(lat. 35°35'59" N, long. 88°54'56" W)
McKellar VOR/DME
(lat. 35°36'13" N, long. 88°54'38" W)

Within a 4.2-mile radius of the Jackson/McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 14, 1995.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–7621 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANE–07]

Proposed Amendment of Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

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SUMMARY: This notice proposes to amend the Class E5 airspace at Claremont Municipal Airport, Claremont, NH. This revision is necessary to provide adequate controlled airspace for the new GPS Runway 29, Standard Instrument Approach Procedure (SIAP). The proposal would add an extension running easterly from the basic radius of Class E airspace that extends from 700 feet above the surface.

DATES: Comments must be received on or before April 27, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7049; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–536, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire, event that provides the factual basis supporting the view and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 95–ANE–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to increase the Class E airspace in the vicinity of Claremont Municipal Airport, Claremont, NH. The proposal would add to the basic radius of Class E airspace that extends upward from 700 feet above the surface, airspace within 2 miles on each side of the 094° bearing from the Claremont Non-Directional Beacon (NDB) extending from the 5.5-mile radius to 15.3 miles east of the Claremont NDB. This proposal would not affect that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas. This proposal is necessary to provide adequate controlled airspace for the new GPS Runway 29, Standard Instrument Approach Procedure at Claremont Municipal Airport, Claremont, NH. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE NH E5 Claremont, NH [Amended]

Claremont NDB
(lat. 43°22'10" N, long. 72°22'16" W)

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Claremont NDB; and within 2 miles on each side of the 094° bearing from the Claremont NDB, extending from 5.5-mile radius to 15.3 miles east of the Claremont NDB; excluding that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas.

* * * * *

Issued in Burlington, Massachusetts, on March 17, 1995.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 95–7620 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–10]

Proposed Alteration of Jet Route J–66

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Jet Route J–66 from the Dallas-Fort Worth, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), via the Bonham, TX, VORTAC, to the Little Rock, AR, VORTAC. Altering J–66 would enhance the flow of air traffic, simplify routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduce controller and pilot workload.

DATES: Comments must be received on or before May 12, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 94–ASW–10, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace–Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASW–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter J–66 from the Dallas-Fort Worth, TX, VORTAC, to the Little Rock, AR, VORTAC. This proposed rule would alter that portion of J–66 within the State of Texas from the Dallas-Fort Worth VORTAC, via the Bonham VORTAC, to the Little Rock VORTAC. Additionally, the Glove intersection would be established at the Texarkana 279°T(286°M) and the Bonham 056°T(064°M) radials to assist navigation along J–66. Altering J–66 would enhance the flow of air traffic, simplify routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduce controller and pilot workload. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1.The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–66 [Revised]

From Newman, TX; Abilene, TX; Dallas-Fort Worth, TX; Bonham, TX; Little Rock, AR; Memphis, TN; to Rome, GA.

* * * * *

Issued in Washington, DC, on March 16, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–7619 Filed 3–27–95; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public. Information on room numbers will be available in the lobby of the designated building. A schedule of additional meetings will be provided in a future notice.

DATES: The meeting is scheduled for April 17–19, 1995. The meeting will begin at 1:00 p.m. on April 17th.

ADDRESSES: Hyatt Hotel at Dulles Airport—2300 Dulles Corner Boulevard, Herndon, VA 22071; telephone (703) 713–1234.

FOR FURTHER INFORMATION CONTACT: Ann Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC)(59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid June, 1994, and has met six times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Allocation of Responsibility, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations have been established and preliminary resolutions of issues are now occurring at the meetings.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Facilitator to obtain appropriate accommodations.

During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219–7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, NW, Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, DC, this 22nd day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–7527 Filed 3–27–95; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Review of regulations; request for comment.

SUMMARY: In a March 1, 1994, document (59 FR 9718), the Minerals Management Service (MMS) announced its intent to establish periodic reviews of its significant regulations and asked the public to participate in the reviews. The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective, or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised either because they are unclear, inefficient, or interfere with normal market conditions. Comments were received from the March 1 document (the Notice) and acknowledged by MMS in a July 15, 1994, document (59 FR 36108).

The purpose of this document is to: Provide a status update of the MMS action taken on the regulations identified in the March 1 review; and provide the public a second opportunity to identify MMS regulations that should be eliminated or revised. A list of regulations identified for elimination will be sent to the President by June 1, 1995.

DATES: Written comments must be received by April 27, 1995.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4013; 1849 C Street NW.; Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, telephone (202) 208–3976; Fax (202) 208–4891.

SUPPLEMENTARY INFORMATION: MMS began a review of its regulations in early 1994 pursuant to the directives contained in the President's Executive Order 12866. The Executive Order calls for periodic regulatory reviews to ensure that all significant regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the agency's objectives and presidential priorities.

MMS invited the public to participate in the regulatory review. The invitation was sent out via different media, namely a notice dated March 1, 1994 (59 FR 9718), MMS and independent publications, and public speeches by MMS officials during that time.

MMS received approximately 40 public comments which were almost equally divided between its Royalty Management and Offshore Minerals Management Programs. MMS acknowledged the comments in a July 15, 1994, notice (59 FR 36108) and set forth its planned actions to address the comments, along with an estimated timetable for the actions.

This notice updates the MMS planned actions and related timetables. This notice also requests additional comments form the public identifying regulations that should be either eliminated or revised.

In recent years, MMS has made an effort to work more closely with its regulated customers and will increase this effort in the future. During the past year, MMS has worked with representatives from organizations affected by its regulations and brought them into the early development of two major rulemakings. The representatives formed committees or work groups under the negotiated rulemaking process. They either have been or will be working together to form a consensus on some very difficult and sometimes contentious issues. The representatives function as the spokesperson on behalf of either industry, States, Tribes, or local governments.

MMS is committed to working more closely with its regulated customers in the future; moving from a process of regulation to one of partnership, with common objectives. In a speech on February 21, 1995, the President asked all Federal agencies to pursue a similar course. He asked them to change their regulatory culture by consulting more frequently with the people affected by their (the agency) regulations, in particular by convening groups consisting of front-line regulators and the regulated public, in order to find ways to achieve the public interest while avoiding costly litigation. The President also asked all agencies to identify (by June 1, 1995) regulations that can be eliminated and to change the way they measure performance (focusing on achieving regulatory objectives rather than on increasing compliance orders). MMS is interested in comments from the public on how we can best respond to the President's guidance.

MMS regulations are found at Title 30 in the Code of Federal Regulations. Parts 201 through 243 contain regulations applicable to MMS' Royalty Management Program; Parts 250 through 282 are applicable to MMS' Offshore Minerals Management; and Part 290 is applicable to Administrative Appeals.

Status Report

The following is a discussion showing the progress MMS has made in reviewing its regulations in response to the comments received to the Notice.

A. Offshore Minerals Management (OMM) Program

In response to the public comments on the Notice, OMM is currently reviewing the following eight sections of OMM regulations.

1. Regulations Applicable to Production in Deepwater (30 CFR Part 250, Subpart H, Production)

Comments Received—(a) "Revise current regulations to provide for approval of extended flaring periods under certain situations (e.g., deepwater prospects, well tests, etc.) and clarify criteria for flaring or venting small amounts of gas",

(b) "Revise requirements associated with subsea installations * * *, etc.

Action Planned—An MMS workgroup is finalizing a report that recommends revising various policies and regulations associated with deepwater development. The workgroup will submit the final report to MMS management in March 1995. The report will include the following recommendations:

For (a) above, current regulations provide sufficient flexibility to meet industry needs while all parties gain greater experience with deepwater operations. MMS will continue approving requests for extended gas flaring and well testing on a case-by-case basis. Regions will establish regional guidelines for approval of extended testing and flaring.

For (b) above, revise the leakage rates and extend the testing frequency and closure time requirements for underwater safety valves and subsurface safety valves for subsea wells. MMS will consider an alternate arrangement of underwater safety valves for subsea wells on a case-by-case basis. MMS will not revise the leakage rate requirements for surface safety valves at this time. This recommendation also addresses emergency shutdown system requirements for subsea wells.

Timetable—Based on the recommendations of the workgroup, MMS will formulate a policy on deepwater activities. MMS will continue to work with operators under existing regulations when appropriate.

2. Regulations Applicable to Blowout Preventer (BOP) Testing and Maintenance Requirements (30 CFR 250.56 and 57)

Comments Received—"Revise BOP testing regulations to allow for less frequent and shorter tests. Allow 14 day BOP test interval vs. current 7 day * * *."

Action Planned—MMS recently completed a study to assess the performance of BOP systems during testing. The results of this study did not support industry claims about the high reliability of BOP equipment or provide justification for less frequent testing.

Timetable—MMS will continue its review of BOP testing and maintenance requirements, with a focus on stricter maintenance requirements. With improved performance, MMS would consider if further flexibility on BOP testing frequency can be provided to industry. At this time, MMS does not plan on revising its regulations.

3. Regulations Governing Safety and Pollution Prevention Equipment (30 CFR 250.126)

Comments Received—"Reduce associated administrative burden on lessees and operators by eliminating unnecessary record keeping requirements (i.e., inventory lists, paperwork notifications, etc.)."

Action Planned—MMS considered the use of a negotiated rulemaking as part of this review.

Timetable—MMS has initiated the "convening" stage of the negotiated rulemaking. This stage is nearing completion and the "convener's" recommendation on whether to proceed with the negotiated rulemaking will be made by April 1995. If the "convener" recommends against a negotiated rulemaking, MMS will use other means to address this issue.

4. Regulations Governing Conservation of Resources and Diligence (30 CFR 250, Subpart A, General and Subpart K, Oil and Gas Production Rates)

Comments Received—(a) "Revise Suspension of Production approval/lease holding criteria * * *", (b) "Revise Determination of Well Producibility to make wireline testing and/or mud logging analysis optional * * *", (c) "revise current regulations to provide for approval of extended flaring periods * * *", (d) "Relax restrictions on commingling reservoirs in a common wellbore * * *", (e) "Allow flexibility in the methods of testing subsea wells. * * *", etc.

Action Planned—(a), (b), and, (d) above have been reviewed by MMS. MMS is considering options to revise the regulations. For (c) above, MMS will review current regulations when air quality studies currently underway are completed. For (e) above, MMS will not change the regulations. Current regulations allow operators to request that different testing methods be allowed when conventional testing is impractical.

Timetable—For (a), (b), and, (d) above, the course of action should be determined by the summer of 1995 Rulemaking will be initiated if appropriate.

5. Regulations Regarding Construction and Removal of Platforms and Structures (30 CFR 250, Subpart I, Platforms and Structures)

Comments Received—(a) "Modify platform design wave return period calculation by placing a cap of 100 years on the field life calculation * * *", (b)

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"Adopt API RP2A (20th edition) Section 14, Surveys, in its entirety * * *", (c) "Revise site clearance requirements * * *", (d) "Revise requirements for placing protective domes over well stubs * * *", etc.

Action Planned—For (a) above, MMS has reviewed this request. MMS is reviewing options to revise its regulations. For (b) above, MMS will not modify the regulations. Current rules allow operators to petition for longer inspection intervals. For (c) and (d) above, MMS published a notice on February 1, 1995 (60 FR 6281), asking for comments on these issues. Based on the responses, MMS will formulate a policy.

Timetable—For (a) above, the course of action should be determined by the summer of 1995. Appropriate action will follow. For (c) and (d) above, comments were due on March 3, 1995. MMS will consider regulatory options following analysis of the comments. A course of action should be established by the fall of 1995.

6. Regulations Applicable to Directional Surveys (30 CFR 250.51)

Comments Received—"Revise directional survey requirements to allow a composite measurement-while-drilling directional survey to be acceptable * * *"

Action Planned—MMS has completed a review of this issue and is planning to update the regulations to keep up with current technology.

Timetable—Proposed changes to the regulations are being circulated internally. Proposed rule should be prepared by summer of 1995.

7. Regulations Applicable to Daily Pollution Inspection Requirements (30 CFR 250.41)

Comments Received—"Revise current requirements for daily pollution inspection of unmanned production facilities * * *."

Action Planned—MMS is currently studying this issue to see if changes to the regulations are warranted.

Timetable—By summer of 1995, MMS will make a decision on whether changes to the regulations are needed.

8. Regulations Applicable to Production Safety System Training (30 CFR 250.214)

Comments Received—"Revise training regulations to reduce the associated burden on operators by modifying requirements (e.g., frequency, refresher requirements, structure, etc.) and allow expanded training delivery modes."

Action Planned—MMS has issued an Advance Notice of Proposed Rulemaking and received comments. A Notice of Proposed Rulemaking (NPR) which would provide greater flexibility to industry is being prepared at this time.

Timetable—The NPR should be published by late 1995.

B. Royalty Management Program (RMP)

RMP is reviewing regulations in the following six areas.

1. Regulations Applicable to Valuation of Gas Produced From Unitized/Communitized Properties (Takes vs. Entitlements). Also, Regulations Applicable to Non-Arm's-Length Sales (30 CFR 202), and Payment/Reporting Systems

To resolve the complex issues dealing with the valuation of gas for royalty purposes, MMS is using the negotiated rulemaking process. This process enables MMS to arrive at a consensus with industry, the States, and Indian tribes. All Committee meetings are announced in the **Federal Register**.

Comments Received—"Regulations concerning Takes vs. Entitlements are confusing and make compliance difficult * * * valuing gas under a non-arm's-length transaction is burdensome * * *."

Action Planned on Federal Leases—Formed the Federal Gas Valuation Negotiated Rulemaking Committee with representation from MMS, industry, and the States. The Committee addressed valuation of gas produced from agreements (Takes vs. Entitlements), the benchmark valuation system for valuing gas sold under non-arm's-length contracts, and reporting simplicity and administrative cost savings. MMS is now preparing a proposed rule based on the consensus arrived at by the Committee in early February.

Timetable—MMS plans to publish a proposed rule by mid-1995.

Action Planned on Indian Leases—MMS has obtained approval for a negotiated rulemaking for revising Indian gas valuation regulations. An informal MMS group had been studying the issues, but MMS has now superseded this group with the Indian Gas Valuation Negotiated Rulemaking Committee. This Committee consists of representatives from MMS, various Indian tribes, the Council of Energy Resources Tribes, the Bureau of Indian Affairs, and industry. The Committee will discuss major portion analysis, dual accounting, and percentage of proceeds contracts.

Timetable—The first meeting of the Committee was held on February 22 and 23, 1995.

2. Regulations Clarifying the Responsibilities of Payors and Lessees (30 CFR 218 and 211)

Comments Received—"Existing regulations are unclear as to the obligations and liabilities of payors and lessees."

Action Planned—A workgroup was assembled to review the options associated with this issue. The workgroup reached agreement and developed a proposed rule. The rule will establish liability for royalty due on Federal and Indian leases, and will clarify the responsibility to pay and report royalty and other payments.

Timetable—MMS plans to publish the proposed rule by mid-1995.

3. Refunds Due to Industry Which Are Controlled by Section 10 of the Outer Continental Shelf Lands Act

Comments Received—Industry has difficulty complying with the 2-year limitation on refunds. There is an inequity between the 2-year refund requirement and the no-year limitation for MMS to collect royalty underpayments.

Action Taken—On July 28, 1994, MMS published a final rule titled "Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts Under Federal Offshore Minerals Leases" (59 FR 38359). This rule established procedures for obtaining refunds and credits of excess payments and clarifies what payments are not subject to Section 10's requirements. The rule also provides for a *de minimus* exception to the MMS approval process.

4. Penalties and Assessments

Comments Received—Recent regulations and pending legislation tend toward ever increasing penalties and assessments. Sufficient incentives already exist to ensure correct and timely payments. Many reporting errors by payors are due to unavoidable circumstances. Severe penalties are unjustified.

Action Taken—MMS has used penalties and assessments not so much to punish but to ensure compliance with the Federal Oil and Gas Royalty Management Act (FOGRMA). FOGRMA requires MMS to distribute money to shareholders in the same month it is collected from payors on Federal and Indian leases. Without an effective strategy to encourage timely and accurate reporting, the collection and distribution system could quickly fall out of compliance with the demands of the legislation. MMS, however, is looking at situations where it can ease some of the reporting requirements and minimize assessments. For example, MMS has taken action to adjust its billing thresholds to minimize "nuisance" bills for trivial assessments.

In a related area, MMS is addressing the financial impacts incurred by payors that fail to timely file certain forms. MMS formed a study group to evaluate the existing regulatory requirements for oil and gas allowances including the assessments and sanctions for untimely filed forms. The Study Group was comprised of representatives from MMS, industry, and the State and Tribal Royalty Audit Committee. It addressed the need for and equity of allowance payback and late payment interest charges for untimely filed forms. The Study Group found that the penalties were not consistent with the crime and proposed alternatives to the payback penalty. MMS has prepared two proposed rules to implement the Study Group's recommendations—one dealing with oil and gas, and one dealing with coal.

Timetable—MMS plans to publish the proposed rules by mid-1995.

5. The Appeals Process

Comments Received—Current appeals process is too long.

Action Taken—MMS has undertaken a streamlining review of its administrative appeals process. MMS has transferred decisionmaking on routine appeals from the Appeals Division to the Royalty Management Program. This has reduced the Appeals Division's workload by 20 percent and freed up staff to work on more complex appeals cases.

MMS also initiated three pilot programs in its streamlining efforts. One pilot program aims to decrease the time and expense incurred by MMS in its preparation of an appellant's administrative record. A second pilot program involves reformatting the decisionmaking process to speed the issuance of shorter, more timely decisions. The third pilot program will test the use of alternative dispute resolution mechanisms to resolve many of the administrative appeals.

Timetable—The first two pilots were put in place the latter half of 1994, and the third pilot began the end of February 1995.

6. Other

Comments Received—MMS received unfavorable comments on proposed rules concerning administrative offset and credit adjustments. Comments were also received about closing audit periods and receiving orders to perform self-audits. Finally, there were comments received about the estimated royalty payment system and that guidance given to payors over the phone was overruled by RMP auditors.

Action Taken—The administrative offset and credit adjustment rules have been consolidated as a final rule. MMS recognizes that many companies oppose these rules but considers the rules to be important enough that they should proceed to the final rulemaking stage.

Some of the issues regarding closing audit periods and orders to perform recalculations of royalties are being addressed in a manual MMS is preparing on audit procedures. With respect to the other comments received, MMS will address them in order ways, such as ongoing customer service initiatives.

Timetable—Publication of the administrative offset-credit adjustment final rule is scheduled for mid-1995. The audit manual will be available later this year.

Dated: March 22, 1995.

Cynthia Quarterman,

Acting Director, Minerals Management Service.

[FR Doc. 95-7534 Filed 3-27-95; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-144-2-6918a; FRL-5179-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from fixed and floating roof tanks at bulk plants and terminals; and fugitives at light crude oil production, gas production, and natural gas processing facilities.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this NPRM will incorporate these rules into the federally approved SIP. In addition, final action on these rules will serve as a final determination that deficiencies in each rule identified by EPA in a limited approval/limited disapproval action on August 30, 1993 have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. An Interim Final Determination published in today's **Federal Register** will defer the imposition of sanctions until EPA takes final rulemaking action. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals. SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before April 27, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

San Joaquin Valley Unified Air Pollution Control District 1999 Tuolumne Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: San Diego County Air Pollution Control District (SDCAPCD) Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4403, Components Serving Light Crude Oil or Gases at

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Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. These rules were submitted by the California Air Resources Board to EPA on January 24, 1995 and February 24, 1995 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Diego County Area and San Joaquin Valley Area which includes the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD.[2] 43 FR 8964; 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[3] 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[4] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Both the San Diego County Area and the San Joaquin Valley Area are classified as serious;[5] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 24, 1995 and February 24, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and SJVUAPCD Rule 4403, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. SDCAPCD adopted Rule 61.1 on January 10, 1995 and SJVUAPCD adopted Rule 4403 on February 16, 1995. These submitted rules were found to be complete on February 24, 1995 and March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[6] and are being proposed for approval into the SIP.

SDCAPCD Rule 61.1 controls VOC emissions from fixed and floating roof tanks at bulk plants and terminals. SJVUAPCD Rule 4403 controls VOC fugitive emissions from oil and gas production and processing facilities. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled, "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA 450/2-78-047; "Control of Volatile Organic Emissions from Petroleum Liquid Storage in Fixed Roof Tanks," EPA 450/2-77-036; and "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA-450/3-83-007. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 4. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals includes the following significant changes from the current SIP:

- The exemption section was revised to delete the reference to rule 11.
- A recordkeeping requirement was added to demonstrate exemption eligibility
- Test methods were added for determination of true vapor pressure and control efficiency of vapor control systems. (A detailed summary of rule changes is provided in the Technical Support Document (TSD) dated March 7, 1995).
- SJVUAPCD Rule 4403, Components Serving Light Crude Oil or Gases and Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities includes the following significant changes from the current SIP:
- Definitions have been added for rule clarification.
- The exemption section was amended to exclude components from being exempt from leak minimization or recordkeeping requirements.
- Violation language was added so that any leaks in excess of the leak thresholds will constitute a violation of the rule.
- The variance provision has been removed.
- Repair procedures for essential components have been added.
- Various recordkeeping requirements were added.
- The test method section was amended to reference methods for determining true vapor pressure. (A detailed summary of rule changes is provided in the TSD dated March 7, 1995).

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDCAPCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals; and SJVUAPCD Rule 4403, Components Serving Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.

Date Signed: March 16, 1995

Felicia Marcus,

Regional Administrator

[FR Doc. 95-7472 Filed 3-27-95; 8:45 am]

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[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all the above eight counties except the Southeast Desert Air Basin portion of Kern County.

[3] This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[5] The San Diego County and the San Joaquin Valley Areas were redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[6] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650 and 651

[I.D. 031695A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting the New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings are scheduled as follows:

1. March 29, 1995, 10 a.m.; and
2. March 30, 1995, 8:30 a.m.

Comments must be received by March 30, 1995.

ADDRESSES: The meetings will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: 508-774-6800. Comments may be sent to the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director; telephone: 617-231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, March 29, 1995

The meeting will begin with introductions and announcements. The Groundfish Oversight Committee will report on its progress in developing management alternatives for Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP), in consideration of low abundances of key fish stocks in the northeast. This meeting will be the first at which the Groundfish Committee-initiated framework adjustment to the Northeast Multispecies and Sea Scallop FMPs will be discussed. The purpose of the framework is to correct the baseline used by Vessel Tracking Systems (VTS) to calculate days at sea (DAS).

During the afternoon session, Dr William Hogarth of NMFS will brief the Council on the management status of weakfish and striped bass. Following his presentation, the Ad Hoc Committee on the Reauthorization of the Magnuson Fishery Conservation and Management Act will discuss aspects of the various reauthorization bills and ask the full Council for its views.

Thursday, March 30, 1995

The Lobster Committee will discuss the list of potential issues to be reviewed in the Council's public hearing document for a lobster stock rebuilding/effort reduction program. This will be the final meeting to consider a framework adjustment to the Lobster FMP that would address a range of issues related to lobster limited access permits (see below). The Sea Scallop Committee will revisit the issue of specifications for twine tops used in scallop gear and referred to in Framework Adjustment 5 to the Scallop FMP. This will also be the final meeting to consider Framework Adjustment 5 to the FMP that would modify gear restrictions for scallop limited access fishing vessels (see below). The Gear Conflict Committee will report on its efforts to reach an agreement that might reduce interactions between various

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gear types in the New England region. The Herring Committee will report on its mid-March meeting held jointly with U.S. and Canadian herring industry representatives and management officials.

If time allows, there will be reports from the Council Chairman; Council Executive Director; National Marine Fisheries Service Acting Regional Director; Northeast Fisheries Science Center liaison; Mid-Atlantic Fishery Management Council liaison; and representatives from the Coast Guard and from the Atlantic States Marine Fisheries Commission.

Abbreviated Rulemaking Action—Northeast Multispecies and Atlantic Sea Scallops

This meeting will be the first of two public meetings to consider a Groundfish Committee-initiated action on an adjustment to the Northeast Multispecies and Sea Scallop FMPs under the framework for abbreviated rulemaking contained in 50 CFR 651.40 and 50 CFR 650.40, respectively, to correct the baseline used by VTS to monitor and count individual vessel DAS. The current regulations indicate the COLREGS Demarcation Line as the baseline for the VTS to determine when a vessel is at sea for the purpose of counting that day against the vessel's total allocation of fishing days. In the process of implementing this system, the NMFS Enforcement Division determined that the COLREGS line is inappropriate and has proposed an alternative line. The issue will be discussed again at the Council meeting on May 17 and 18. The public is encouraged to attend and provide comments or submit them in writing (see **ADDRESSES**). If the Director, Northeast Region, NMFS (Regional Director), concurs with the Council's recommendations on this framework adjustment, he could publish it as a proposed or a final rule in the **Federal Register** after the May meetings.

Abbreviated Rulemaking Action—American Lobster

The Council will consider final action on an adjustment to the American Lobster FMP under the framework for abbreviated rulemaking contained in 50 CFR 649.44. At its January 11 and 12, 1995, meeting, the Council announced it would initiate a framework adjustment that would modify eligibility criteria for lobster limited access permits. This has been addressed in the following manner: (1) Fishermen who fished for lobsters in the EEZ prior to the control date will qualify for a lobster limited access permit if participation in the Federal fishery can be demonstrated, and they meet all other eligibility criteria; (2) a person who owned a lobster vessel, but who leased a lobster license and meets all other eligibility criteria will qualify for a lobster limited access permit; (3) owners, but not necessarily operators, of lobster vessels may be eligible for limited access permits, provided they meet all other eligibility criteria; (4) in the case of partnership arrangements involving the operation of a single vessel, only one limited access permit will be issued; (5) a vessel and a federally endorsed lobster permit may be transferred together through inheritance, but the transfer of the permit only, without the qualifying vessel, may not occur under this circumstance. The public is encouraged to attend this meeting and to provide comments or submit them in writing to the Council (see **ADDRESSES**). If the Regional Director concurs with the Council's recommendations on this framework adjustment, he could publish it as a proposed or a final rule in the **Federal Register**.

Abbreviated Rulemaking Action—Atlantic Sea Scallops

The Council will consider final action on an adjustment to the Atlantic Sea Scallop FMP under the framework for abbreviated rulemaking contained in 50 CFR 650.40. At its December 8, 1994, and January 12, 1995, meetings, the Council announced it would initiate a framework adjustment that would modify gear restrictions for scallop limited access fishing vessels. This has been addressed in the following manner: (1) Limited access vessels will be restricted from fishing for scallops with nets while under the DAS program unless the vessel has not used a scallop dredge since 1987; and (2) limited access vessels will be restricted from fishing for scallops, using dredges with twine tops that extend the full distance to the club stick while under the DAS program. The twine top restriction will require seven rows of steel rings for dredges greater than 8 ft (244 cm) wide, or four rows for single dredges 8 ft (244 cm) wide or less, between the club stick and twine top. The public is encouraged to attend this meeting and to provide comments or submit them in writing to the Council (see **ADDRESSES**). If the Regional Director concurs with the Council's recommendations on this framework adjustment, he could publish it as a proposed or a final rule in the **Federal Register**.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at 617–231–0422, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 95–7553 Filed 3–23–95; 11:05 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 59

Tuesday, March 28, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–022–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 25 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require that a person obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
95–031–01	Oregon State University.	1/31/95	Poplar trees genetically engineered to express reproductive sterility and herbicide tolerance.	Oregon.
95–031–02	Pioneer Hi-Bred International, Incorporated.	1/31/95	Sunflower plants genetically engineered to express marker genes.	California.
95–031–03, renewal of permit 93–049–02, issued on 5/4/93.	University of Idaho	1/31/95	Rapeseed plants genetically engineered to express tolerance to the phosphinothricin class of herbicides.	Idaho
95–031–04	Asgrow Seed Company.	1/31/95	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia, Michigan.
95–031–05	University of Idaho	1/31/95	Potato plants genetically engineered to express resistance to barley yellow dwarf virus, potato leaf roll virus, potato virus Y, and tobacco vein mottling virus.	Idaho
95–031–06, renewal of permit 90–088–01, issued on 7/11/90.	Asgrow Seed Company	1/31/95	Melon plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, water-melon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.
95–031–07	Northrup King Company.	1/31/95	Corn plants genetically engineered to express fungal resistance.	Minnesota.
95–031–08	University of Idaho	1/31/95	Rapeseed plants genetically engineered to express tolerance to the phosphinothricin class of herbicides.	Idaho, Michigan, North Dakota.
95–033–01	VanderHave USA	2/2/95	Sunflower plants genetically engineered to express fungal resistance or a sulphur-rich seed storage protein.	North Dakota.

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Application No.	Applicant	Date received	Organisms	Field test location
95–037–01	InterMountain Canola Company.	2/6/95	Rapeseed plants genetically engineered to express modified fatty acids.	Colorado.
95–040–01	Asgrow Seed Company.	2/9/95	Melon plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, squash mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.
95–041–01	R.J. Reynolds Tobacco Company.	2/10/95	Tobacco mosaic virus genetically engineered to express proteins of pharmaceutical interest.	North Carolina.
95–041–02, renewal of permit 94–168–01, issued on 10/12/94.	Calgene, Incorporated	2/10/95	Canola plants genetically engineered to express an altered oil profile.	California.
95–045–01	Louisiana State University.	2/14/95	Rice plants genetically engineered to express fungal resistance.	Louisiana.
95–045–02	Monsanto Company	2/14/95	Wheat plants genetically engineered for resistance to wheat streak mosaic virus.	Kansas.
95–046–01	Northrup King Company.	2/15/95	Corn plants genetically engineered for resistance to corn rootworm.	Minnesota.
95–053–01	PanAmerican Seed Company.	2/22/95	Petunia plants genetically engineered for resistance to fungi and bacteria.	Florida, Illinois.
95–054–01	Calgene, Incorporated	2/23/95	Canola plants genetically engineered for oil modification.	Wisconsin.
95–054–03, renewal of permit, 94–038–01, issued on 4/6/94.	Calgene, Incorporated	2/23/95	Canola plants genetically engineered for oil modification.	North Dakota.
95–059–01	Asgrow Seed Company.	2/28/95	Melon plants genetically engineered to express altered ethylene biosynthesis.	Michigan.
95–059–02	Asgrow Seed Company.	2/28/95	Watermelon plants genetically engineered for resistance to watermelon mosaic virus 2 and zucchini yellow mosaic virus.	Michigan.
95–065–01	University of Chicago	3/06/95	*Atropa belladonna* plants genetically engineered to express an altered alkaloid profile for resistance to insect herbivores.	Illinois.
95–065–02, renewal of permit 91–077–01, issued on 6/18/91.	Harris Moran Seed Company.	3/06/95	Melon plants genetically engineered for resistance to cucumber mosaic virus.	California.
95–066–01, renewal of permit 92–037–07, issued on 5/18/92.	Asgrow Seed Company.	3/07/95	Melon plants genetically engineered for resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Florida.
95–067–01	Petoseed Company	3/08/95	Squash plants genetically engineered for resistance to cucumber mosaic virus and watermelon mosaic virus 2.	California

Done in Washington, DC, this 22nd day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7601 Filed 3–27–95; 8:45 am]

BILLING CODE 3410–34–P

Consolidated Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Consolidated Farm Service Agency, USDA.

ACTION: Notice of publication of Warehouses Licensed Under the U.S. Warehouse Act and the availability of a listing of cancellations and/or terminations occurring during calendar year 1994.

SUMMARY: Notice is hereby given that the Consolidated Farm Service Agency has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1994, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1994 is also available. Interested parties may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Fry, Consolidated Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, P.O. Box 2415, Room 5962, South Agriculture Building, Washington, D.C. 20013–2415, telephone: 202–720–3822.

Signed at Washington, D.C., on March 22 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency.

[FR Doc. 95–7602 Filed 3–27–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Establishment of Two Purchase Units, California and Oregon, and an Addition to the Sur Sur Purchase Unit, California

AGENCY: Forest Service, USDA.

ACTION: Notice of Establishment of Purchase Units.

SUMMARY: On March 9, 1995, the Deputy Under Secretary, Natural Resources and Environment, created Leads Island Purchase Unit, 283 acres, more or less, Douglas County, Oregon, and the Twin Peaks Purchase Unit, 404 acres, more or less, Monterey County, California; also 924.59 acres, more or less, were added to the existing Sur Sur Purchase Unit, Monterey County, California. Copies of the establishment documents, which include the legal description of the lands within these purchases units, appear at the end of this notice.

EFFECTIVE DATE: The effective date of these purchase units was March 9, 1995.

ADDRESSES: Copies of the maps showing these purchase units are on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC. 20090–6090, (202) 205–1248.

Sterling J. Wilcox,

Acting Associate Deputy Chief.

Leeds Island Purchase Unit

Douglas County, Oregon

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949), the Leeds Island Purchase Unit is being created in Douglas County, Oregon. The lands within the purchase unit are described as follows:

Douglas County, Oregon, Willamette Meridian

T. 21 S., R. 12 W.
Sec. 27: Pt. W½: SW¼SE¼
Sec. 28: E½E½
Sec. 34: E½W¼, Lots 1, 2, 3

The area described contains 283 acres, more or less.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Twin Peaks Purchase Unit, Monterey County, California

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949) a purchase unit is being established and is described as follows:

Monterey County, California, Mount Diable Meridian

T.18S., R.1E.
Sec. 2 N½

The area described aggregate 404 acres, more or less, and are adjacent to the Los Padres National Forest, California.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Sur Sur Purchase Unit Addition, Monterey County, California

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949) the following described lands are being added to the Sur Sur Purchase Unit which was created May 21, 1993 (58 FR 35427):

Mount Diablo Meridian, Monterey County, California

T. 24 S., R. 5 E.
Sec. 4: SE¼SE¼;
Sec. 9: Lot 2 except the westerly 700' thereof measured at right angles to the westerly line of said lot, Lot 3, Lot 4, Lot 5, NE¼NE¼
Sec. 10: NW¼NW¼; (215.93 ac)
Sec. 14: Lot 2, Lot 3, NE¼SW¼W½SE¼
Sec. 23: Lot 1; (182.62 ac)
T. 24 S., R. 6 E.,
Sec. 31: Lot 5, NE¼NE¼; (77.81 ac)
Sec. 32: Lot 1, Lot 2, W¼NE¼, NE¼NE¼, NW¼, E½SW¼, NW¼SE¼; (448.23 ac)

The area described aggregates 924.59 acres, more or less, and the lands are adjacent to the Los Padres National Forest, California.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: March 9, 1995.

Adela Backiel,

Deputy Under Secretary

[FR Doc. 95–7614 Filed 3–27–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 22, 1994, the Department of Commerce published the preliminary results of review of the antidumping duty order on rayon filament yarn from Germany. The review covers the subsidiaries of one producer/importer, Akzo Faser N.V. Its subsidiaries are Akzo Fibers, Inc., in the United States, and Akzo Faser A.G., in Germany.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, and the correction of clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1993, Akzo Faser N.V and its subsidiaries (Akzo) requested that the Department of Commerce (the Department) conduct an administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. We initiated the review, which covers the period February 20, 1992 through May 31, 1993, on July 21, 1993 (58 FR 39007). On June 22, 1994, the Department published the preliminary results of the administrative review (59 FR 32181). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 5403.10.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rayon Corporation (the petitioner) and the respondent on July 22, 1994. We received rebuttal comments from the petitioner and the respondent on July 29, 1994. At the request of the respondent, we held a public hearing on August 5, 1994.

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General Comments

Comment 1

Petitioner argues that significant issues within this review could have been resolved during a verification, and challenges the accuracy of the dumping margin because of the lack of verification. Petitioner contends that key issues addressed in the following comments, such as Research and Development expenses (R&D), General and Administrative (G&A) expenses, and restructuring costs, could have been reconciled through verification. Petitioner argues that the Department should not assume that information relating to these issues is accurate simply because it was verified during the investigation, as the issues and calculations change between investigations and reviews.

Akzo states that the absence of verification does not undermine the integrity of its responses, and that verification was not required in this review. Referring to the statute and regulations, Akzo claims that verification is required only if it was not performed in either of the two immediately preceding reviews and it was requested by an interested party within 120 days from publication of the notice of initiation of the review. Akzo contends that neither element was satisfied in this review. Moreover, Akzo asserts that it submitted all of its responses with appropriate certifications of accuracy and completeness as required by statute and regulation. Akzo cities Calcium Aluminate Cement, Cement Clinker and Flux from France (59 FR 14,136, 14,140, March 25, 1994), as an example of the Department's verification practices.

Department's Position

The Department agrees with respondent that, in accordance with section 776(b)(3) of the Tariff Act, in conducting an administrative review, the Department will verify all information relied upon in making a determination (1) if verification is timely requested and no verification was made during the two immediately preceding reviews, or (2) if good cause exists for verification. This administrative review is the first review of the antidumping duty order in this case, and verification was not timely requested. The Department has undertaken verification for good cause only in exceptional circumstances. In conducting this review, the Department determined that there was not good cause for a verification. Section 776(b)(3) of the Tariff Act, and the Department's regulations do not require verification under these circumstances. See Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review (57 FR 4953, February 11, 1992), and Calcium Aluminate Cement, Cement Clinker and Flux from France (59 FR 14136, March 25, 1994).

Comment 2

Petitioner argues that Akzo did not provide cost data maintained in the normal course of business; rather, petitioner contends that Akzo generated this data solely for purposes of this review. Petitioner maintains that, with respect to fixed costs, Akzo claimed that differences between actual and standard costs were not maintained in the normal course of business. It is the petitioner's viewpoint that Akzo does maintain records of actual costs for its fixed costs, but has not provided this information. Also, petitioner claims that Akzo did not provide the information necessary for the Department to calculate an actual per-unit cost on a product-specific or plant basis. Petitioner asserts that Akzo instead provided the Department with a plant-wide "variance" used to calculate cost of manufacture.

Respondent states that it reported actual costs by calculating the product-specific per-unit costs through the application of plant-wide variances, according to questionnaire instructions and Departmental practice. Therefore, respondent argues that the costs, as reported, are correct and valid.

Department's Position

We agree with Akzo, in that there is no evidence that Akzo's costs were incorrectly reported. Akzo stated in its questionnaire response that it based its costs on the standard cost system used in its normal course of business. As Akzo explained in its rebuttal brief and questionnaire submission, it based its costs on the standard costs system, and deviated from this basis only when necessary to comply with certain calculations as required by the Department's questionnaire. The plant-wide variance was calculated as the difference between total standard costs and total actual costs of production. The Department has accepted the use of plant-wide variances in similar cases. See Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review (57 FR 4956, February 11, 1992).

General and Administrative Expenses

Comment 3

Petitioner argues that the extraordinary costs incurred by Akzo Faser N.V due to plant closure are not fully reflected in the cost of manufacture. Petitioner believes that the Department handled these expenses correctly when it reallocated all of the industrial rayon-specific shutdown expenses to the product under review. The petitioner contends that Akzo has two facilities in Germany which produce the subject merchandise, and that one of them was in the process of closing during the period of review (POR). Petitioner adds that such a dramatic change in operations results in higher product-specific costs. Petitioner also contends that the methodology used by the respondent virtually eliminates these costs by allocating them over all of the production of Akzo Faser N.V.

Akzo states that it included the extraordinary loss associated with the plant closure in its reported G&A expenses, using the methodology it used in the less than fair value (LTFV) investigation. See High Tenacity Rayon Filament Yarn from Germany (57 FR 21773, May 22, 1992). Akzo argues that it is inappropriate to allocate all of the expenses of a plant closure solely to industrial rayon yarn when such expenses relate to the operations of the entire corporation. Akzo also contends that an expense can be applied solely to rayon yarn operations only if it is not extraordinary and, as a plant closure has not occurred in years, this expense qualified as "extraordinary." Akzo cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (54 FR 18992, 1976, May 5 1989), as an example of the Department's practice regarding extraordinary expenses.

Department's Position

We disagree with Akzo's characterization of the plant closing costs as extraordinary losses and with the company's contention that extraordinary losses cannot be charged specifically to the subject merchandise. The fact that plant closings are infrequent in occurrence does not necessarily make the costs associated with such events extraordinary. Nor does it dictate how the Department will treat these costs for purposes of computing COP and CV.

Nonetheless, after further examination of the record, it is not evident that the plant closing losses reported by Akzo relate solely to the company's rayon yarn production. Consequently, the Department regards these costs as general in nature rather than specific to the subject merchandise. For the final results, the Department has, therefore, accepted Akzo's plant closing cost calculation which was based on an allocation across all products manufactured by the company.

Comment 4

Akzo disagrees with the Department's re-allocation of its G&A expenses in the preliminary results. Akzo argues that the Department should not have disregarded Akzo's submitted G&A costs, which were allocated to different groups based on specific allocation methodologies.

Akzo states that the Department's re-allocation of G&A expenses across all operations was not in accordance with Departmental practices, and that the ratios, as submitted by Akzo, are in accord with Departmental practice and case precedent. Akzo states that, because of the organizational structure and the integrated nature of its operations across national borders, the reported ratios are clearly more accurate than any overall average ratios for Akzo Faser. Akzo also states that the G&A expense ratios it reported are in accord with the audited financial statements of Akzo N.V., and have been reconciled to the audited financial statements.

Akzo argues further that the expenses accumulated at each organization unit do not relate to operations outside that unit. According to Akzo, the Department's allocation methodology attributes to Akzo Faser itself G&A expenses incurred solely by Akzo Fibers B.V (an affiliate of Akzo Faser not involved in the review). Akzo also argues that if the Department follows its position in Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (58 FR 37154, July 9, 1993), it should reject Akzo's methodology only if the facts specific to the situation indicate that the divisional G&A expenses are not accurate.

Petitioner argues that the Department's recalculation of the G&A expenses is the most accurate and transparent method, and is in accord with Akzo's financial statement and the Department's standard practices. Petitioner argues further that there are discrepancies between Akzo's three-tiered G&A expense levels and Akzo's financial statements. Petitioner asserts that the best methodology of measuring G&A expenses is using Akzo's financial statements and not the tier methodology that Akzo used for the response.

Department's Position

We agree with the petitioner. Akso submitted company-specific G&A expenses based on a three-tiered calculation methodology consisting of the company's business, divisional, and corporate levels. Akzo's G&A calculation, however, did not reconcile to Akzo Faser AG's audited financial statements. Nor did the Akzo's submitted G&A expense include amounts for certain miscellaneous items that were treated as G&A in the company's annual report. Because of these inconsistencies, for the final results, the Department computed Akzo's G&A expenses using the company's unconsolidated audited financial statements and including an amount representing an allocated share of G&A incurred by companies related to Akzo and involved in the production of the subject merchandise. The Department calculated per unit G&A expenses for the subject merchandise based on a factor derived as the ratio of Akzo's total G&A to the company's cost of sales. This method is consistent with our past practice. See Certain Hot Rolled Carbon Steel Flat Products, Certain Cold rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan; Final Determination of Sales at Less Than Fair Value (58 FR 37154, July 9, 1993), and Frozen Concentrated Orange Juice From Brazil; Final Determination of Sales at Less Than Fair Value (52 FR 8329, March 17, 1987).

Research and Development

Comment 5

Akzo disagrees with the Department's allocation of its R&D expenses over all of its product lines, and asserts that a product-specific breakdown of R&D expenses would be more accurate and in accordance with prior Department decisions. Akzo allocates R&D expenses on a product-specific or product-line basis, according to the nature of the research being performed. Akzo explains that the vast majority of R&D expenses listed in Akzo Faser AG's annual report are specifically related to products other than industrial rayon, and thus are not general in nature and do not relate to all operations. Akzo contends that it acted properly and in accordance with precedent by not allocating these R&D costs to subject merchandise. Akzo cites Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Flats From France (58 FR 37125, July 9, 1993), and Antifriction Bearings (Other than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom (58 FR 39729, July 26, 1992).

Petitioner argues that the Department's recalculation of R&D expenses in the preliminary results of review was the most accurate and transparent, and is in accord with Akzo's financial statement and the Department's standard practices.

Department's Position

The Department agrees with Akzo. The R&D expenses submitted by Akzo were allocated on a product-specific or product line basis, according to the nature of the research being performed. The methodology used to allocate the R&D is that used in Akzo's normal course of business and reconciles to the financial statements. Further, the Department has accepted the submitted methodology in similar cases. See Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France (58 FR 37125, July 9, 1993), and Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom (58 FR 19729, July 26, 1992).

Foreign Market Value Adjustments

Comment 6

Petitioner disagrees with the Department's decision in the preliminary results to allow an adjustment to FMV for a third-party payment. Petitioner contends that this payment is based on the sale of a further-manufactured product, rather than the subject merchandise, unprocessed yarn, which Akzo sells to a converter. In the petitioner's viewpoint, the payment appears to have no impact on the price of the unprocessed yarn.

According to Akzo, it sells rayon in the home market to a converter, who alters the rayon yarn for a specific use and then sells the rayon to a third party. Akzo provides a rebate directly to this third party. Akzo argues that, in the preliminary results, the Department treated the third-party payments in a manner consistent with the final determination of sales at LTFV in the original investigation. Akzo asserts that there can be no other purpose for the third-party payment except to encourage certain third parties to use the

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respondent's merchandise. Therefore, Akzo contends that the third-party payment represents a price decrease for the third party, and that the payment does have an impact on the price of the yarn when sold to the first unrelated party.

Department's Position

We agree with respondent. Based upon the record evidence for this review, the Department has concluded that these expenses should be considered direct expenses to be deducted from the FMV.

When making adjustments attributable to differences in circumstances of sale, it is incumbent upon the Department to ensure that such adjustments account only for those expenses that have a direct impact upon any existing U.S. and home market price differentials. Section 773(a)(4) of the Tariff Act states that an adjustment shall be made only "if it is established to the satisfaction of the administering authority that the amount of any difference between United States price and foreign market value" is due to differences in circumstances of sale.

Since Akzo's third party payments qualify as variable and reasonably attributable to the subject merchandise, Akzo met the Department's criteria for identifying whether an expense can have a direct impact upon price. Therefore, Akzo's payments can qualify as a circumstance of sale adjustment.

In the LTFV verification report, the Department, indicated that:

> Akzo makes payments to tire manufacturers based upon their purchases of Akzo-sourced yarn from converter-customers of Akzo's. The converters provided additional finishing to the Akzo yarn.

Given that those expenses fluctuate depending on a tire company's purchases from a converter and correspondingly, such expenses would not have been incurred were it not for certain sales of the subject merchandise, those payments are then considered variable. Furthermore, the Department is in agreement with Akzo's assertion that the third party payments are primarily made as an inducement to purchase responsent's merchandise. In this regard, these expenses are promotional in nature and thereby have a direct relationship to Akzo's sales to the converter.

As the respondent established its claim to the adjustments with record evidence, the Department will adjust FMV for this expense in the final results.

Differences in Merchandise

Comment 7

Petitioner argues that, if the third party payment for the converted rayon yarn (as discussed above in Comment 6) is allowable, then a difference-in-merchandise calculation should be conducted in order to compare the converted rayon yarn (and not the unprocessed rayon yarn) to similar U.S. sales.

Akzo argues that a difference-in-merchandise calculation is not warranted, as the merchandise, when sold to the first unrelated party, is subject merchandise; Akzo maintains that it is only after sale to the first unrelated party that the merchandise undergoes further manufacturing.

Department's Position

We agree with Akzo in that a difference-in-merchandise calculation would be necessary, in this case, only when the product sold to the first unrelated purchaser in the home market differs physically from the product sold in the United States. (See 19 CFR 353.57.) However, as the Department determined that the third party payment expense was directly attributable to the subject merchandise and applicable as a deduction to the FMV, a difference-in-merchandise calculation is unnecessary.

Ministerial Errors

Comment 8

The respondent asserts that the Department made a clerical error with respect to the extraordinary expenses of Akzo N.V., in that the Department calculated a ratio of extraordinary expenses, denominated in guilders, to the cost of sales, which is denominated in Deutschemarks. Further, the respondent asserts that the Department should capture these costs at the corporate level using the methodology submitted in the response, and not at the company level as the Department did for the preliminary results. The respondent states these costs relate to the operations of the entire corporation and not solely to industrial yarn.

While petitioner does not specifically address this clerical error, petitioner does state that it supports the Department's position of allocating the plant closure expenses directly to the product under review. Petitioner further states that the Department has not fully applied the actual cost of restructuring Akzo's yarn production facilities to Akzo's actual costs, and that the calculations for G&A expenses presented by Akzo were not useable.

Department's Position

We agree with Akzo that we calculated the ratio in two different currencies. However, as discussed in our response to Comment 3, we have disregarded this ratio for these final results, and have instead used Akzo's submitted plant closure costs and extraordinary losses. Therefore, although we agree with respondent, this issue is moot.

We also agree with Akzo that its extraordinary expenses should be captured at the corporate level because, as discussed in our response to Comment 3, there is no evidence on the record to indicate that the extraordinary losses, as reported, relate solely to rayon yarn. Therefore, we adjusted for the expenses at a corporate level, and not at a product-specific level. As Akzo submitted its expenses at a corporate level, no adjustment to its reported plant closure and extraordinary losses was deemed necessary.

Comment 9

The respondent asserts that the Department made a clerical error with respect to the foreign unit price in dollars (FUPDOL) calculations, in that the Department treated U.S. packing costs as a Deutschemark per pound expense, rather than a Deutschemark per kilogram expense, and that the Department should divide the reported packing costs by the pounds-to-kilograms conversion rate to arrive at the correct unit amount.

Petitioner does not contest this clerical error.

Department's Position

We agree that the calculation should be corrected to reflect the metric measurement, and have changed the calculation accordingly.

Final Results of Review

Based on our analysis of comments received and the correction of ministerial errors, we have determined that a final margin of 0.56 percent exists for Akzo for the period February 20, 1992, through May 31, 1993.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price (USP) and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Akzo will be 0.56 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the original investigation; and (4) the "all others" rate will be 24.58 percent, established in the LTFV investigation, and in accordance with the Department's practice. See *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (2993), and *Federal Mogul Corp.*, 822 F. Supp. (1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice services as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7609 Filed 3-27-95; 8:45 am]

BILLING CODE 3510-DS-M

Department of the Interior, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94-141. *Applicant:* Department of the Interior, Menlo Park, CA 94025. *Instrument:* SIR Mass Spectrometer, Model PRISM. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 442, January 4, 1995. *Reasons:* The foreign instrument provides: (1) an adjustable multicollector with four deep Faraday buckets, (2) an electromagnetic sector analyzer with a 50 cm dispersion and (3) an online elemental analyzer.

Docket Number: 94-148. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* Isotope Ratio-Gas Source Mass Spectrometer, Model PRISM. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 443, January 4, 1995. *Reasons:* The foreign instrument provides: (1) an adjustable multicollector with four deep Faraday buckets, (2) an electromagnetic sector analyzer with a 50 cm dispersion and (3) an automatic cold finger for samples as small as 0.2 ml.

These capabilities of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 95-7610 Filed 3-27-95; 8:45 am]

BILLING CODE 3510-DS-F

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain circular welded carbon steel pipe and tubes from Thailand. We have preliminary determined the net subsidy to be 0.73 percent ad valorem for Saha Thai Pipe and Tube Company and all other companies for the period January 1, 1992, through December 31, 1992. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. customs to assess countervailing duties as indicated above.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Penelope Naas and Gary Bettger, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-3534 or 482-2239, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1993, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" (58 FR 41239) of the countervailing duty order on pipes and tubes from Thailand (50 FR 32751; August 14, 1985). On August 31, 1993, the respondents, the Royal Thai Government (RTG) and Saha Thai Pipe and Tube Company (Saha Thai), requested an administrative review of this order. We initiated a review of the period January 1, 1992, through December 31, 1992, on September 30, 1993 (58 FR 51053). The review covers one manufacturer/exporter of the subject merchandise and nine programs. The final results of the last administrative review in this case were published October 9, 1991 (56 FR 50852).

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Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

On March 29, 1994, the Department clarified the Harmonized Tariff Schedule (HTS) numbers that were applicable to the subject merchandise (see *Memorandum* to Susan Esserman from Susan Kuhbach, available in the Central Records Unit, Room B099, Main Commerce Building). This clarification was necessary because of annual changes in the HTS.

The scope now reads:

Imports covered in this review are shipments of circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1992, through December 31, 1992.

Analysis of Programs

Export Packing Credits

Export packing credits (EPCs) are short-term loans used for pre-shipment export financing. The loans are issued by commercial banks in baht for up to 180 days. The banks are required to charge no more than a maximum interest rate of ten percent per annum on the loan. Interest is paid on the due date of the loan. To obtain these loans, exporters issue promissory notes to the lending bank. The notes must be supported by an irrevocable letter of credit, a sales agreement, a purchase order, warehouse receipt, or issuance export bill. Commercial banks can lend up to the amount of the shipment. They then can rediscount 50 percent of the loan with the Bank of Thailand (BOT). On the date the loan is due, the BOT debits the commercial bank's account for the principal and the interest due. The commercial bank then debits the exporter's account or extends further credit at negotiated, commercial rates to the exporter. If the terms of the loan are not met, the BOT charges the commercial bank a penalty retroactive to the first day of the loan.

In case of non-performance by the exporter on the due date of the loan, the exporter is charged an additional penalty interest rate of 6.5 percent on the entire loan. This penalty is forgiven and the exporter receives the EPC preferential rate if it makes the export shipment or receives payment in foreign currency for the product within 60 days after the due date of the promissory note. Because EPCs are available only to exporters, they are countervailable to the extent that the loans are provided at preferential rates.

To determine whether the loans are preferential, we ordinarily use the predominant source of short-term financing in the country in question. Where there is no single, predominant source of short-term financing, we may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question, weighted, whenever possible, according to the value of the financing granted by each source. In *Final Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand* (56 FR 46299; Sept. 11, 1991) (*Steel Wire Rope*), the Department concluded that the minimum loan rate (MLR) and the minimum overdraft rate (MOR) as reported in the BOT Quarterly Bulletin are more representative of the prevailing short-term interest rates in Thailand than the rates used in previous cases. Based on that determination and on the recent United States Court of International Trade (CIT) decision in *Royal Thai Government and TTU Industrial Corp.* v *United States*, 850 F. Supp. 44 (CIT 1994), which said that the average rate of the MLR and MOR rates was the appropriate benchmark for short term loans, we are using the average of the 1992 MLR and MOR rates as reported in the BOT Quarterly Bulletin for 1992. That rate was 12.19 percent, which exceeded the maximum interest rate on EPCs of 10 percent. Therefore, we preliminarily determine that EPC loans are preferential.

To calculate the benefit provided to Saha Thai, currently the only known producer/exporter of the subject merchandise, by the EPC loans during the period of review (POR), we compared the amount of interest actually paid to the amount that would have been paid at the benchmark rate. At verification, we noted that the company had to specify the destination of the merchandise in order to receive the EPC loans. Because Saha Thai had to specify the destination of the subject merchandise at approval and because they exported only the subject merchandise to the United States, we divided the benefit by its total exports of the subject merchandise to the United States to arrive at a net bounty or grant of 0.73 percent *ad valorem*.

Programs Preliminarily Determined Not Used

We also examined the following programs and preliminarily determine that Saha Thai did not apply for or receive benefits under these programs for the review period.

1. Tax Certificates for Exporters
2. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
3. Repurchase of Industrial Bills
4. Export Processing Zones
5. International Trade Promotion Fund/ Export Promotion Fund
6. Electricity Discounts for Exporters
7. Reduced Business Taxes for Producers of Imediate Goods for Export Industries
8. Additional Incentives under the IPA

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy for the period of January 1, 1992, through December 31, 1992, to be 0.73 percent *ad valorem* for all exporters and producers of pipe and tube from Thailand.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 0.73 percent *ad valorem* on the f.o.b. invoice price on all shipments of this merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after January 1, 1992, and on or before December 31, 1992.

Further, the Department intends to instruct the Customs Service to collect cash deposits on shipments of 0.73 percent *ad valorem* on the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days after the date of publication of this written notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief. The administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7613 Filed 3–27–95; 8:45 am]

BILLING CODE 3510–DS–P

Foreign-Trade Zones Board

[Order No. 732]

Grant of Authority for Subzone Status BASF Corporation (Caprolactam/ Nylon-6 Resin); Freeport, TX

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Freeport, Texas (Brazos River Harbor Navigation District), grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the chemical products manufacturing facilities of BASF Corporation in Freeport, Texas, was filed by the Board on February 2, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 3–93, 58 FR 8929, 2–18–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest provided approval is subject to certain conditions;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149A) at the plant sites of BASF Corporation in Freeport, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that nonprivileged foreign (NPF) status (19 CFR 146.42) may be elected for foreign caprolactam extract (HTSUS 2933.71.0000–6) and cyclohexanone (HTSUS 2914.22.1000) up to a level of 45 million kilograms (100 mil. lbs.) annually for each item.

2. The authority with regard to the NPF option is initially granted until December 31, 1999, subject to extension.

Signed at Washington, DC, this 17th day of March 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–7611 Filed 3–27–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Marine Sanctuary Symbol

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: SRD is announcing the adoption of a symbol for the National Marine Sanctuary Program as required by the National Marine Sanctuaries Act. The symbol is one element of a pilot project to enhance funding for designation and management of national marine sanctuaries. In accordance with the Act, SRD is publishing, in the **Federal Register**, the symbol shown in the attachment to this document. This symbol shall be the official symbol for the National Marine Sanctuary Program. This notice also announces the opportunity for interested persons to become official sponsors of the National Marine Sanctuary Program or of individual sanctuaries.

DATES: The Office of Ocean and Coastal Resource Management will begin using the symbol immediately.

ADDRESSES: Information on becoming an official sponsor may be obtained from: Justin Kenney, National Oceanic and Atmospheric Administration, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Justin Kenney at (301) 713–3145 ext. 153 or Harriet Sopher at (301) 713–3125 ext. 109.

SUPPLEMENTARY INFORMATION: Under Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, the United States Congress has authorized the designation of discrete areas of the marine environment as National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management. The National Marine Sanctuary Program was established by the Act, and is administered by the Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration.

The mission of the National Marine Sanctuary Program is to identify, designate and manage areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, and aesthetic qualities.

The Program currently has 14 designated sites including Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, Channel Islands, Hawaiian Islands Humphack Whale, Fagatele Bay, Flower Garden Banks, Looe Key, Key Largo, Gray's Reef, the Monitor, Florida Keys, and the Stellwaen Bank National Marine Sanctuaries.

In 1992, with the passage of the National Marine Sanctuaries Act, Pub. L. 102–587, Congress directed the National Marine Sanctuary Program to enhance funding for the designation and management of national marine sanctuaries through the creation, adoption and marketing of a logo. Through a partnership with the National Fish and Wildlife Foundation, the Sanctuary Program received *pro bono* assistance from Lintas, a national public

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relations and marketing firm, in developing the sanctuary symbol.

The National Marine Sanctuaries Act also directs the Sanctuary Program to solicit and designate official sponsors of the Program or of individual National Marine Sanctuaries. These sponsors shall be authorized to manufacture, reproduce, or use the symbol. The Sanctuary Program is authorized to sell rights to the logo for such use and retain the funds to enhance and manage National Marine Sanctuaries. The symbol is the property of the United States and it is unlawful for any person, except a designated sponsor, to manufacture, reproduce or use the symbol. Persons interested in becoming an official sponsor of the National Marine Sanctuary Program or of an individual sanctuary should contact Justin Kenney.

Dated: March 22, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

BILLING CODE 3510-08-M

Attachment—National Marine Sanctuary Symbol



NATIONAL MARINE SANCTUARIES

[FR Doc. 95-7508 Filed 3-27-95; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. This document is intended to notify the general public.

DATE AND TIME: Tuesday, April 11, 1995, beginning at 9:00 a.m. and ending at 5:00 p.m.

ADDRESSES: The Hyatt Regency Washington, 400 New Jersey Avenue NW., Columbia B Room, in Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue SW., Suite 601, Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The Advisory Committee will meet in Washington, DC on April 11, 1995, from 9 a.m. to 5 p.m.

The proposed agenda includes discussion sessions on the FFELP. Among the topics to be addressed are: an update on current and future opportunities for streamlining the FFELP; program integrity; and stability in the FFELP. Those who cannot attend the hearing are invited to submit written testimony for the record. Written testimony should be mailed to the Advisory Committee office. Space is limited and you are encouraged to register early if you plan to attend. To register, please fax your name, title, affiliation, complete address, telephone number, and fax number to the Advisory Committee staff office at (202) 401-3467. If you are unable to fax, please mail your registration information or contact the Advisory Committee staff office at (202) 708-7439. Also, you may register through INTERNET at *Hope—Gray@DOED.gov* The registration deadline is Thursday, April 6, 1995.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: March 22, 1995.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 95-7528 Filed 3-27-95; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

National Electric and Magnetic Fields Advisory Committee; Reestablishment

Pursuant to section 14(a)(2)(a) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101-6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Electric and Magnetic Fields Advisory Committee has been reestablished for a 2-year period. The Committee will provide advice to the Secretary of Energy and the Director of the National Institute of Environmental Health Sciences.

The reestablishment of the National Electric and Magnetic Fields Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95-91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Rachel Murphy Samuel at (202) 586-3279.

Issued in Washington, DC, on March 20, 1995.

JoAnn Whitman,

Deputy Advisory Committee Management Officer

[FR Doc. 95-7604 Filed 3-27-95; 8:45 am]

BILLING CODE 6450-01-M

Preparation of an Environmental Impact Statement for the Management of Spent Nuclear Fuel From the K-Basins at the Hanford Site, Richland, WA

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500-1508) and the DOE NEPA regulations (10 CFR Part 1021) to examine alternatives for the management of spent nuclear fuel (SNF) currently stored in the K-East and K-West SNF storage basins (K-Basins) at the Hanford Site DOE also announces its intent to conduct public meetings on the proposed scope of the EIS and invites public comment on the proposed scope, including the issues and alternatives to be evaluated in the EIS.

Approximately 2100 metric tons of uranium in the form of irradiated defense production reactor fuels are stored in the Hanford K-Basins, 40-year-old facilities located near the Columbia River. The K-East Basin has leaked water in the past and may still be leaking small quantities of water. Much of the SNF stored there is damaged and continues to deteriorate. The K-Basins are not suitable for long-term SNF storage.

In a November 1993 report entitled, "Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and other Reactor Irradiated Nuclear Materials and their Environmental, Safety, and Health Vulnerabilities," DOE identified K-Basins storage problems as requiring priority attention Similar findings have been reached by the Defense Nuclear Facilities Safety Board, in its recommendation 94-1, and by DOE stakeholders.

The purpose of DOE's action would be to (1) prevent the potential release of radioactive materials into the air or the soil surrounding the K-Basins storage area and their potential migration through the soil column and into the nearby Columbia River due to a failure of the existing K-Basins, (2) reduce occupational radiation exposure, (3) enhance near-term safety by eliminating the risks posed to the public and workers by the formation of reactive compounds during continued deterioration of SNF in the K-Basins.

DOE proposes to take expeditious action to reduce risks to public health and the environment by removing SNF from the K-Basins and, subsequently, to take action to manage the SNF in a safe and environmentally sound manner for up to 40 years until ultimate disposition decisions are made and implemented. The EIS would evaluate a range of implementation alternatives for the proposed action, including alternative SNF management locations (relocating the SNF to a new, or modified existing facility at the Hanford Site or other DOE sites), alternative storage methods (wet or dry storage), and alternative stabilization technologies that might be used to prepare the SNF for storage until decisions on ultimate disposition are made and implemented at either a domestic or foreign facility. The EIS would also evaluate a no action alternative involving continued-storage of fuel in the K-Basins, including continued maintenance, monitoring and surveillance, and an alternative involving continued storage in the K-Basins with safety upgrades that might include overpacking existing fuel containers and performing life extension upgrades for the K-Basins.

Under all of the implementation alternatives for the proposed action, sludge would be removed from the K-East Basin and stored, treated or disposed of using existing waste management systems. Water remaining in the K-Basins after SNF and sludge removal would be treated and disposed of and the K-Basins would be deactivated.

DOE also proposes to take several interim actions to improve the safety posture of the K-Basins and to support the preparation of this EIS. These include the construction of cofferdams to mitigate the consequences of a basin failure, characterization of the K-Basins SNF and sludge, facility maintenance or upgrades needed for continued safe operations, dose reduction activities, and removal of debris such as unused canisters and discarded tools from the

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K-Basins. DOE is also preparing an environmental assessment for a proposed interim action to move approximately four metric tons of SNF from the Plutonium Uranium Extraction Plant (PUREX) and the N-Reactor to the K-Basins for storage and subsequent management with the SNF already in the K-Basins.

DOE is considering system-wide management alternatives for all of its SNF (including that currently stored in the K-Basins and elsewhere at Hanford) in the Programmatic SNF Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS, DOE/EIS–0203 (SNF PEIS). In the Record of Decision for the SNF PEIS, which DOE expects to issue by June 1995, DOE will make strategic decisions regarding the future management of SNF until ultimate disposition decisions are made and implemented. Site-specific NEPA documents would be prepared, as appropriate, to implement the programmatic decisions made in the SNF PEIS.

In the K-Basins EIS, DOE plans to address both the expeditious removal and temporary storage of K-Basins SNF, and the subsequent management of that SNF. DOE believes that expeditious removal and storage of K-Basins SNF away from the Columbia River is needed to reduce risks to public health and the environment, and that this part of its proposed action would be compatible with the full range of alternatives for subsequent management of K-Basins SNF being evaluated in the SNF PEIS (i.e., the K-Basins fuels would either be managed at the Hanford Site, or shipped offsite for management at another location).

Any decision on expeditious removal and subsequent management of K-Basins SNF would be made and implemented in a manner consistent with programmatic decisions on management of all of DOE's SNF that will be made in the SNF PEIS Record of Decision.

DATES: DOE invites all interested parties to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be assessed in the K-Basins EIS during a comment period ending May 12, 1995.

The public is also invited to attend scoping meetings at which oral comments may be presented on the scope of the EIS. Oral and written comments will be considered equally in preparation of the EIS.

Written comments must be postmarked by May 12, 1995 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable. Oral and written comments will be received at public scoping meetings to be held on the dates and at the locations given below:

Hanford-House Red Lion, 802 George Washington Way, Richland, WA 99352, Phone: (509) 946–7611 or (800) 547–8010.	Apr. 18, 1995.
Spokane Shilo Inn, 923 East 3rd Avenue, Spokane, WA 99202, Phone: (509) 535–9000.	Apr. 20, 1995.
Portland Red Lion Inn, 310 S.W. Lincoln, Portland, OR 97201, Phone: (503) 221–0450.	Apr. 25, 1995.
Seattle Center, 305 Harrison Street, Seattle, WA 98109, Phone: (206) 684–7202.	Apr. 27, 1995.

Each scoping meeting will begin with a short presentation by DOE officials on the EIS process, the overall Hanford Site SNF project, and the proposed action. Individuals and organization spokespersons will then be invited to present comments. The agenda will be repeated twice daily at each location, with afternoon and evening sessions. The hours for the sessions will be: 1 pm to 4:30 pm and 6:30 pm to 10 pm.

Requests to speak at these meetings may be made at the meeting or by calling the toll-free telephone number, 1–800–321–2008, by 3:00 pm the day before the meeting or by writing to Suzanne Clark (see **ADDRESSES**, below). Speakers will be heard on a first-come first-served basis as time permits. Written comments will also be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

The meetings will be conducted by a moderator who may ask speakers clarifying questions. Individuals requesting to speak on behalf of an organization must identify the organization. Time limits for speakers will be determined by the number of speakers and the allotted time. Comments will be recorded by a court reporter and will become part of the scoping meeting record. DOE will also provide opportunities for informal discussions about the scope and content of the EIS, and will make subject matter experts available to answer questions about the proposal.

DOE will review the comments and will prepare an Implementation Plan that will record the results of the scoping process; provide guidance for preparation of the EIS; and establish its scope, content, and schedule. Copies of the Implementation Plan will be made available for inspection in the public reading rooms listed below.

ADDRESSES: Written comments on the scope of the K-Basins EIS, questions concerning the Hanford Site SNF project, requests to speak at the public meetings, and requests for copies of the Implementation Plan and/or the Draft EIS should be directed to the DOE Document Manager listed below.

FOR FURTHER INFORMATION CONTACT: Suzanne Clark, Document Manager, K-Basins EIS Scoping Comments, U.S. Department of Energy, Post Office Box 550, Richland, Washington 99352, Telephone: 509–376–9055 or 1–800–321–2008.

For information on the DOE NEPA process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–4600, or leave a message at 1–800–472–2756.

Copies of DOE documents referenced in this notice and related background information are available for inspection during normal business hours at the following locations:

1. U.S. Department of Energy, Forrestal Building, Freedom of Information Reading Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–6020
2. Richland Public Library, 955 Northgate, Richland, WA 99352–3539, Phone: (509) 943–7457
3. Foley Center Library, Gonzaga University, E. 502 Boone, Spokane, WA 99258, Phone: (509) 484–2831
4. Branford Price Millar Library, Government Documents Section, Portland State University, 924 Southwest Harrison, Portland, OR 97201, Phone: (509) 725–4617
5. Suzzallo Library, Government Publications, University of Washington, Seattle, WA 98195, Phone: (206) 543–9158
6. U.S. DOE Public Reading Room, Washington State University, 100 Sprout Road (Room 130), Richland, WA 99352, Phone: (509) 376–8583

SUPPLEMENTARY INFORMATION: DOE operated nine water-cooled, graphite-moderated reactors, from 1944 to 1988 at the Hanford Site to produce plutonium by irradiating uranium. Most of the irradiated nuclear fuel (referred to in this Notice as SNF) from these reactors was reprocessed at Hanford chemical separations facilities to recover plutonium, uranium, and other materials to support the DOE nuclear weapons production mission. In 1992, because additional quantities of these materials were no longer needed, reprocessing was halted at the Hanford Site before all the SNF was reprocessed. As a result, approximately 2100 metric tons of SNF remains in storage at the Hanford Site's K-Basins in the 100–K Area. Additional SNF from a variety of defense and research missions remains at other locations at the Hanford Site.

The K-East and K-West Basins were constructed in the early 1950s to provide temporary storage of fuel discharged from the K Reactors. The K Reactors were shut down in 1970, and the basins were subsequently used to store SNF from N Reactor. The basins are located approximately 1,000 feet from the Columbia River. They are unlined, concrete, 1.3 million-gallon water pools with an asphaltic membrane beneath each basin. The K-East Basin presently stores approximately 1,150 metric tons of SNF. The SNF has been stored under water in open-top canisters for periods ranging from 6 to 23 years. The fuel is corroding, and an estimated 50 cubic meters of sludge (containing radionuclides, corrosion products and miscellaneous materials) has accumulated in the basin. The K-East basin has leaked to the environment, most likely at the basin discharge chute construction joint. The asphaltic membrane does not extend beneath this area.

The K-West Basin presently stores approximately 950 metric tons of SNF. Prior to storage in the K-West Basin, the SNF was placed in closed containers, so there is no appreciable sludge buildup in the K-West Basin. The K-West Basin is not believed to be leaking. The discharge chute construction joints between the foundations of the Basins and the K Reactors are not adequately reinforced, and a seismic event could trigger considerable leakage due to displacement.

In February 1994, the Defense Nuclear Facilities Safety Board, in its Recommendation 94–1 to DOE, expressed significant concern with continued storage at the K-East Basin, as follows:

"The K-East Basin at the Hanford Site contains hundreds of tons of deteriorating irradiated nuclear fuel from the N Reactor. This fuel has been heavily corroded during its long period of storage under water, and the bottom of the basin is now covered by a thick deposit of sludge containing actinide compounds and fission products. The basin is near the Columbia River. It has leaked on several occasions, is likely to leak again, and has design and construction defects that make it seismically unsafe."

Proposed Action

DOE proposes to take expeditious action to reduce risks to public health and the environment by removing SNF from the K-Basins and, subsequently, to take action to manage the SNF in a safe and environmentally sound manner until ultimate disposition decisions are made and implemented.

Preliminary Description of Alternatives

The proposed K-Basins EIS would analyze the potential environmental consequences of reasonable alternatives for reducing risks associated with the management of SNF in the K-Basins. A preliminary list of alternatives includes: (1) Continued storage in the K-Basins with no modifications except for continued maintenance, monitoring, and ongoing safety upgrades (no action); (2) enhanced storage in the K-Basins, which would involve overpacking SNF and performing facility life extension safety upgrades at the K-Basins in addition to the monitoring, maintenance and ongoing safety upgrades; and (3) alternatives for implementing the proposed action that would involve removal of K-Basins SNF, temporary storage of the SNF at a newly constructed facility or modified existing facility, and subsequent management at Hanford or processing at a foreign facility or an offsite location, depending on decisions to be made based on the SNF PEIS. The no-action alternative is included to provide a baseline for comparison among alternatives, and to comply with the Council on Environmental Quality regulation (40 CFR 1502.14 (d)) that requires consideration of a no-action alternative.

Under all of the removal alternatives, the first step would involve placing the K-Basin SNF canisters and sludge adhering to or within the canisters after sludge removal activities in wet or damp multi-canister overpacks, sealing an inert atmosphere in the overpacks, and transferring the overpacked SNF and canister sludge to a newly-constructed or modified existing facility at the Hanford site for temporary storage. One option that DOE is considering involves modifying the existing foundation for the high-level waste canister storage building at Hanford to serve as a storage facility for the K-Basin SNF. (Construction of the canister storage building was halted at the foundation stage when the high-level waste vitrification project was suspended.) The canister storage building could also be modified to accommodate subsequent (second step, see below) SNF management actions that may be needed, including SNF treatment and dry storage. As part of the first step, after removing the fuel, DOE would deactivate the K-Basins, which would involve removal and, as appropriate, treatment, storage and disposal of the K-East Basin sludge and the water from both basins using existing waste management systems at the Hanford Site. Taking this first step would be compatible with the full range of the reasonable alternatives for subsequent management of K-Basin or other DOE SNF, and would be consistent with the full range of alternatives that DOE is considering in the SNF PEIS.

The second step would involve subsequent actions to continue to manage the SNF in a safe and environmentally responsible manner until ultimate disposition decisions are made and implemented. DOE will consider a full range of reasonable alternatives, including deferring the second step. Alternatives to be considered would include alternative SNF management locations at the Hanford Site or, depending on decisions to be made based on the SNF PEIS, at other DOE sites. Alternative storage methods include wet storage and dry storage. The K-Basin SNF may require stabilization to eliminate potential reactivity or pyrophoricity and ensure its safe management. Alternative stabilization technologies to be considered would include surface passivation (drying, dehydriding and then canning in an inert atmosphere), calcining (dissolving, oxidizing, and solidifying the SNF), and other processing (including dissolving, oxidizing, separating, and solidifying SNF components) at a domestic or foreign facility.

Any decision to remove and subsequently manage K-Basin SNF would be made and implemented in a manner consistent with the SNF PEIS Record of Decision. The SNF PEIS alternatives include a No Action alternative under which DOE would take only those minimal actions that are required for safe and secure SNF management; a Decentralization Alternative that would require SNF irradiated at Hanford to be managed at Hanford; a 1992/1993 Planning Basis Alternative that would ship TRIGA reactor fuel currently stored at Hanford to Idaho National Engineering Laboratory, but otherwise would be the same as the decentralization alternative; a Regionalization Alternative that considers shipping Hanford SNF offsite or naming Hanford as the regional management location for SNF west of the Mississippi River; and a Centralization Alternative where all

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SNF would be sent to one site (Hanford or another candidate site) for management. Under these alternatives, K-Basins SNF would either be managed at Hanford or shipped to the regional or central storage site (if Hanford is not chosen as the regional or central storage site).

Interim Actions

DOE has prepared an Environmental Assessment for the proposed Characterization of Stored Defense Production Spent Nuclear Fuel and Associated Materials at Hanford Site, Richland, Washington, (DOE/EA–1030, March 1995), to obtain information needed to analyze the environmental impacts of alternative methods of removing and managing the fuel and sludge in the K-Basins. The proposed characterization would support the preparation of this EIS. The characterization data are also needed to help DOE develop safety analyses for management of K-Basins and other Hanford SNF, including those for transportation and conditioning. DOE issued a Finding of No Significant Impact for this action on March 13, 1995.

DOE is also preparing an environmental assessment for the proposal to transfer approximately four metric tons of defense production reactor irradiated fuel to the K-Basins to enable deactivation of the Plutonium/Uranium Extraction (PUREX) Plant and the N-Reactor. This proposed transfer of fuel, which involves a relatively small amount of SNF, is intended to eliminate safety risks associated with continued storage of SNF at the PUREX plant and N-Reactor. The PUREX Plant and N-Reactor inventories would not add appreciably to the amount of SNF currently stored in the K-Basins or to the environmental impacts of continued storage in the K-Basins during the time needed for the Department to implement decisions on management of K-Basins SNF.

DOE also proposes to take other near-term actions to improve the safety posture of the K-Basins. Installation of cofferdams would isolate the discharge chute and prevent leaks in the event of a basin failure. The cofferdams also would prevent the potential release of radioactively contaminated water and possible airborne releases that could result from exposed sludge and SNF after a basin failure. (Sludge could be released to the air as a dry powder, or the potentially pyrophoric SNF could ignite if it is not kept wet until it is stabilized.) Systems needed for safe operations would be upgraded, including the electrical, potable water, fire protection, and certain maintenance systems, and the ion exchange system used to treat the water in the K-Basins. Debris (unused canisters, discarded tools and similar items) would be removed from the K-Basins and managed as solid waste.

Compatibility With Possible Future Decisions

The phase-out of chemical reprocessing in support of the weapons production mission throughout the DOE complex resulted in the need to identify a strategy for the management of all DOE-owned SNF until its ultimate disposition. To that end, DOE is preparing the SNF PEIS. The Draft SNF PEIS was issued for public comment in June 1994, the final SNF PEIS is scheduled to be issued by April 30, 1995, and the Record of Decision by June 1995. The SNF PEIS Record of Decision would establish programmatic direction for DOE SNF management, and would identify which DOE sites would manage DOE SNF until ultimate disposition decisions are made and implemented. Proposals to implement the programmatic decisions regarding Hanford's role in the Department's overall SNF strategy would be covered in Hanford-specific NEPA documents, such as the K-Basins EIS.

DOE plans to address in the K-Basins EIS both the expeditious removal and temporary storage of K-Basins SNF, and the subsequent management of that SNF. DOE believes that expeditious removal and temporary storage of K-Basins SNF away from the Columbia River is needed to reduce risks to public health and the environment, and that this part of its proposed action would be compatible with the full range of alternatives for subsequent management of K-Basins SNF to be evaluated in the SNF PEIS (i.e., the K-Basins fuels would either be managed at the Hanford Site, or shipped offsite for management at another location). Any decision on expeditious removal and subsequent management of K-Basins SNF would be made and implemented in a manner consistent with decisions on management of other SNF that DOE will make in the SNF PEIS Record of Decision.

Additional Technical Information

Additional technical information on the conditions at the K-Basins is provided in the November 1993 report, "Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and other Reactor Irradiated Nuclear Materials and their Environmental, Safety, and Health Vulnerabilities." This evaluation was followed by a Plan of Action to Resolve Spent Nuclear Fuel Vulnerabilities in February 1994, which identified three phases to resolve those vulnerabilities. The Phase I Action Plan, which addresses the most urgent activities (including the Hanford K-Basins), was issued immediately. The Phase II Action Plan was released in April 1994 for public comment. The Phase III Action Plan was issued in October 1994. All of these documents are available upon request from the K-Basins EIS Document Manager identified above.

Related NEPA Documentation

Department of Energy NEPA documents have been or are being prepared that are related to, but not within the proposed scope of, the K-Basins EIS. These include:

1. Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Draft EIS, DOE/EIS–0203–D, June 1994. Hanford is being considered as a candidate site for a full range of SNF management functions. Alternatively, Hanford Site SNF would be transported for management at other DOE site(s). DOE expects to complete the Final EIS in April, 1995 and Issue a Record of Decision by June 1, 1995.
2. Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, Draft EIS in preparation, DOE/EIS–0218D. Hanford is being considered as a candidate site for the management of foreign research reactor fuel. Management alternatives at Hanford include wet or dry storage as well as processing in new or existing facilities. The Draft EIS is scheduled to be issued in April, 1995.
3. Waste Management Programmatic Environmental Impact Statement, Draft EIS in preparation (DOE/EIS–0200). Hanford is being considered as an alternative site for centralized or regionalized management of DOE wastes. Alternatively, Hanford would manage its own wastes or ship its wastes offsite for management at another DOE facility and/or a commercial facility. DOE plans to issue a draft EIS in May 1995, and complete the final EIS in February 1996.
4. Environmental Impact Statement, Tank Waste Remediation System, Draft EIS under preparation. This EIS will examine the continued management, and eventual treatment, storage and disposal of high-level radioactive wastes stored in the Hanford Tank farms.
5. Environmental Impact Statement, Disposal of Hanford High-Level, Transuranic, and Tank Wastes, DOE/EIS–0113, December 1987
6. Environmental Impact Statement, Operation of PUREX and Uranium Oxide Plant Facilities, DOE/EIS–0089, February 1982
7. Environmental Impact Statement, Waste Management Operations, Hanford Reservation, Richland, Washington, ERDA–1538, 1975, U.S. Energy and Research Development Administration, Washington, D.C.
8. Environmental Impact Statement, Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington, DOE/EIS–0119, December 1992.
9. Environmental Assessment of 105–KE and 105–KW Basins Fuel Encapsulation and Repackaging, 100–K Area, Hanford Site, Richland, Washington, DOE/EA–0535, June 1992.
10. Environmental Assessment for Characterization of Stored Defense Production Spent Nuclear Fuel and Associated Materials at Hanford Site, Richland, Washington, DOE/EA–1030, March 1995.
11. Environmental Assessment: Transfer of Plutonium Uranium Extraction Plant and 105 N Reactor Irradiated Fuel for Encapsulation and Storage at the 105 KE and 105 KW Reactor Fuel Storage Basins, 100 and 200 Areas, Hanford Site, Richland, Washington, DOE/EA–0988, in preparation.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. The list is presented to facilitate comment on the scope of the EIS. It is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives:

- Effects on the public and on-site workers from releases of radiological and nonradiological materials during normal operations and reasonably foreseeable accidents.
- Effects on air and water quality from normal operations and accidents.
- Cumulative effects, including impacts from other past, present, and reasonably foreseeable actions at the site.
- Effects on endangered species, archaeological/historical sites, floodplains, and wetlands.
- Effects on future decommissioning actions.
- Effects from transportation and from transportation accidents.
- Socioeconomic impacts on surrounding communities.
- Disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Unavoidable adverse environmental effects.
- Short-term uses of the environment versus long-term productivity.
- Potential irretrievable and irreversible commitment of resources.

Issued in Washington, DC, this 20th day of March, 1995.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

[FR Doc. 95–7607 Filed 3–27–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments; Notice

AGENCY: U.S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: April 10, 1995, 8:15 a.m.–5:00 p.m., April 11, 1995, 8:30 a.m.–5:00 p.m., April 12, 1995, 8:30 a.m.–1:00 p.m.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, April 10, 1995

8:15 a.m. Call to order and Opening Remarks
8:25 a.m. Approval of Minutes
8:30 a.m. Public Comment
10:45 a.m. Discussion, Final Report and Recommendation
12:15 p.m. Lunch
1:30 p.m. Discussion, Final Report and Recommendation (continued)
5:00 p.m. Meeting Adjourned

Tuesday, April 11, 1995

8:30 a.m. Opening Remarks
8:40 a.m. Discussion, Final Report and Recommendation
12:15 p.m. Lunch
1:30 p.m. Discussion, Final Report and Recommendation (continued)
5:00 p.m. Meeting Adjourned

Wednesday, April 12, 1995

8:30 a.m. Opening Remarks
8:05 a.m. Discussion, Final Report and Recommendation
10:30 a.m. Break
11:00 a.m. Discussion, Final Report and Recommendation (continued)
1:00 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington DC on March 23, 1995

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–7605 Filed 3–27–95; 8:45 am]

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Federal Energy Regulatory Commission

[Docket No. RP95–208–000]

Kansas and Oklahoma Cities v. Williams Natural Gas Company; Notice of Complaint and Request for Declaratory Order

March 22, 1995.

Take notice that on March 15, 1995, The Kansas and Oklahoma Cities (Cities) filed an Emergency Complaint and Request for Declaratory order relating to William Natural Gas Company's (WNG) proposed new Third Right of First Refusal Procedure (ROFR), required by the Commission in its order in this proceeding on November 4, 1994. The November order stated that the Third Open Season should be completed by May 1, 1995.

On March 10, 1995, WNG sent a "Notice of Non-Preferential Right Bidders in WNG's Order No. 636 Open Season Held in August, 1993" relating to the procedures it would apply in the Third Right of First Refusal Process. Cities states that since the request for bids in the Third ROFR procedure will be sent by WNG to the Cities and other bidders as early as March 15, 1995, with responses due three days thereafter, the Cities are forced to seek emergency action from the Commission in order to ensure that the Commission's instructions for the conduct of the Third Right of First Refusal Process have been properly carried out.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before April 11, 1995.

Lois D. Cashell,

Secretary

[FR Doc. 95–7540 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2872–000]

Allan D. Gilmour; Notice of Filing

March 22, 1995.

Take notice that on March 20, 1995, Allan D. Gilmour (Applicant), tendered for filing an application under Section 305(b) to hold the following interlocking positions:

Director—The Detroit Edison Company
Director—The Prudential Insurance Company of America

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7539 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–83–000]

Dayton Power & Light Co.; Notice of Filing

March 22, 1995.

Take notice that on March 13, 1995, Dayton Power & Light Company tendered for filing additional information in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7537 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–412–000]

Dayton Power & Light Co.; Notice of Filing

March 22, 1995.

Take notice that on March 13, 1995, Dayton Power & Light Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7538 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–28–000]

K N Interstate Gas Transmission Co.; Notice of Refund Report

March 22, 1995.

Take notice that on March 16, 1995, K N Interstate Gas Transmission Co. (KNI), filed a refund report in the referenced docket. KNI states that the refund report shows the Kansas *ad valorem* tax refund amounts refunded by first sellers and the allocation of those refund amounts to former jurisdictional sales customers. These amounts were paid on March 13, 1995.

KNI further states that copies of the filing were served upon former jurisdictional sales customers of K N Energy, Inc. and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7541 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–268–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

March 21, 1995.

Take notice that on March 17, 1995, as supplemented on March 21, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–268–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct and operate approximately three miles of six-inch pipeline and a meter/regulator station delivery tap located in DeSoto Parish, Louisiana for delivery of natural gas to International Paper (IP), an end-user, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch requests authorization to construct and operate approximately 15,700 feet of six-inch pipeline and a six-inch meter/regulator station which will connect with Koch's 24-inch Carthage-Sterlington line near Mansfield, Louisiana. Koch states these facilities are required to comply with the terms of a transportation agreement with IP to provide it with 20,000 MMBtu of interruptible service on a peak day.

Koch indicates that it is authorized to provide interruptible transportation to IP in Docket No. ST95–86–000. Koch states that it provides such transportation to IP pursuant to Koch's blanket certificate in Docket No. CP88–6–000. Koch also indicates that the volumes delivered are within IP's certificated entitlement and that Koch's tariff does not prohibit the construction or operation of the proposed facilities. Koch further indicates that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. It is indicated that the estimated cost of construction is $640,000.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7542 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–5–005]

Koch Gateway Pipeline Co.; Notice of Filing

March 22, 1995.

Take notice that on March 1, 1995, Koch Gateway Pipeline Company (Koch), filed revised standards of conduct to reflect changes required by Order Nos. 566 through 566–B.[1]

Koch states that copies of its filing were mailed to all current jurisdictional customers, interested governmental bodies and parties on the official service list compiled by the Secretary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before April 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–7543 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994); Order No. 566–A *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶61,334 (December 14 1994); *appeal docketed sub nom Conoco, Inc* v *FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

[Docket No. CP92–508–007 and RP94–80–007]

National Fuel Gas Supply Corp.; Notice of Compliance Filing

March 22, 1995.

Take notice that on February 28, 1995, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, Substitute Second Revised Sheet Nos. 236 and 237, to be effective July 1, 1994, and Substitute Third Revised Sheet Nos. 236 and 237 to be effective August 24, 1994.

National Fuel states that the tariff sheets are being filed in compliance with the February 13, 1995, order of the Commission requiring it to flow back interruptible services to its SS–1 and SS–2 customers, effective July 1, 1994, when Penn-York Energy Corporation was merged into National Fuel.

National Fuel states that it is serving copies of the filing to its firm customers, state commissions, and other interested parties.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before March 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–7544 Filed 3–27–95; 8:45 am]

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[Docket No. RP95-80-001]

National Fuel Gas Supply Corp.; Notice of Supplemental Compliance Filing

March 22, 1995.

Take notice that on March 16, 1995, National Fuel Gas Supply Corporation (National) tendered a supplemental filing to its February 14, 1995, compliance filing in the above-captioned proceeding.

National states that this filing proposes to answer all outstanding concerns regarding its request for waiver of Section 21 of its FERC Gas Tariff, Third Revised Volume No. 1. National states that it requested waiver of Section 21 to the extent necessary to recover interest accrued between the time it is billed for upstream Account No. 186 and 191 costs and the time it receives payment from its customers, after the Commission authorizes the flow through.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7545 Filed 3-27-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-271-000]

Questar Pipeline Co.; Notice of Request Under Blanket Authorization

March 22, 1995.

Take notice that on March 17, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95-271-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate delivery point facilities on Questar's transmission system to serve the Western Market Center (WMC), under the authorization issued in Docket No. CP82-491-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection

Questar proposes to construct and operate one 10-inch tap, approximately 1,250 linear feet of 10¾-inch pipeline and appurtenant facilities at an estimated cost of $99,330. It states that the installation of the proposed facilities will allow Questar to deliver up to approximately 140 Mmcf per day to the WMC located in Lincoln County, Wyoming. Questar states that the WMC is a natural gas market hub where various pipeline companies tie into a single header facility. Questar submits that the header tie-in enables shippers to redirect natural gas, on a real-time basis, from one market to another. It is stated that the WMC is to be constructed, owned and operated by Overland Trail Transmission Company, an intrastate pipeline company, to provide service under § 311 of the Natural Gas Policy Act.

Questar explains that the proposed facilities will also serve as a receipt point, the installation and usage of which is automatically authorized pursuant to Questar's Part 157, Subpart F blanket certificate and by operation of the Commission's Regulations at 18 CFR 157.208(a).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7546 Filed 3-27-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-203-054]

Tennessee Gas Pipeline Co.; Notice of Filing Refund Report

March 22, 1995.

Take notice that on March 20, 1995, Tennessee Gas Pipeline Company (Tennessee), filed its report of refunds for the above-referenced dockets for the period September 1, 1993 through January 31, 1995.

Furthermore, in compliance with the Commission's February 25, 1995 order in Docket No. RP91-203-046, Tennessee states it is making revisions to its July 7, 1994 Refund Report which effectuated refunds for the period prior to Tennessee's restructuring (February 1, 1992 through August 31, 1993). Specifically, that order required Tennessee to make PTR fuel refunds in cash instead of in-kind, refund National Fuel Gas Supply an additional $738,282, plus applicable interest, associated with errors on original refund for their T-1 contract, correct certain errors in the original refund report associated with PTR transportation, and continue to work with customers to the extent necessary to further verify their refund calculations. As outlined below, Tennessee states it has made PTR fuel refunds in cash, refunded National Fuel an additional $750,419 on February 16, 1995, and corrected the original refund on October 28, 1994.

Tennessee states that copies of the refund report have been mailed to all affected state regulatory commissions and that customers were served with calculations supporting the refunds on the date which the refunds were made.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before March 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 95-7547 Filed 3-27-95; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11445-001 New York]

Adirondack Hydro Development Associates; Notice of Surrender of Preliminary Permit

March 22, 1995.

Take notice that the Adirondack Hydro Development Associates, permittee for the Delta Dam Project No. 11445, located on the Mohawk River, in Oneida County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 7, 1994, and would have expired on January 31, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on March 10, 1995, and the preliminary permit for Project No. 11445 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7536 Filed 3-27-95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5179-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 27, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, please refer to EPA ICR #0794.06.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notification of Substantial Risks Under section 8(e) of the Toxic Substances Control Act (TSCA). (EPA ICR No.: 0794.06; OMB No.: 2070-0046). This is a request for extension of the expiration date of a currently approved collection

Abstract: Under section 8(e) of TSCA, chemical manufacturers, importers, processors, and distributors must immediately inform EPA when they obtain information which indicates that their product(s) may present a substantial risk of injury to health or the environment. Section 8(e) of TSCA is an important and useful tool for early warning and the identification of new substantial risks posed by exposure to chemical substances. The EPA and other Federal agencies use this information to determine and control chemical risks

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 21 hours per initial section 8(e) submission and 4 hours per follow-up/supplemental section 8(e) submission. EPA experience has shown that approximately 2.2 follow-up/supplemental section 8(e) submissions are received on a yearly basis per initial submission. This estimate includes the time needed to review instructions, gather and submit the data needed, and complete and review the collection of information

Respondents: Chemical manufacturers, importers, processors, and distributors

Estimated No. of Respondents: 450

Estimated No. of Responses Per Respondent: 3

Estimated Total Annual Burden on Respondents: 13,400 hours

Frequency of Collection: On occasion

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #0794.06 and OMB #2070-0046) to:

Sandy Farmer, EPA ICR #0794.06, U.S. Environmental Protection Agency, Information Policy Branch—(2136), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, OMB #2070-0046, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 22, 1995.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 95-7593 Filed 3-27-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5172-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260-2740, please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1716.01; NESHAP for Wood Furniture Manufacturing Operations, 63-JJ; was approved 02/10/95; OMB No. 2060-0324; expires 02/28/98.

EPA ICR No. 0559.05; Application for Reference or Equivalent Method Determination; was approved 01/31/95; OMB No. 2080-0005; expires 01/31/98.

EPA ICR No. 1432.15; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock use of Ozone-Depleting Substances; was approved 01/31/95; OMB No. 2060-0170; expires 09/30/96.

EPA ICR No. 1463.03; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); was approved 01/31/95; OMB No. 2050-0096; expires 01/31/98.

EPA ICR No. 1304.04; Application for Preauthorization of a CERCLA Response Action Claim for CERCLA Response Action; was approved 01/27/95; OMB No. 2050-0106; expires 01/31/98.

EPA ICR No. 0229.09; Discharge Monitoring Report for the NPDES/Sewage Sludge Monitoring Reports; was approved 01/20/95; OMB No. 2040-0004; expires 01/31/98.

EPA ICR No. 1647.01; Exports from and Imports to the United States under the OECD Decision; was approved 01/27/95; OMB No. 2050-0143; expires 01/31/98.

EPA ICR No. 1732.01; Application to or Participation in the National Radon Measurement Proficiency (RMP) Program and/or the National Contractor Proficiency (RCP) Program; was approved 02/02/95; OMB No. 2060-0315; expires 02/28/98.

Dated: March 21, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95-7594 Filed 3-27-95; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5179-6]

Russo Development Corporation Site, NJ; Proposed Amendment to March 21, 1988, Clean Water Act Section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

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ACTION: Notice of consideration of amendment of Section 404(c) final determination and request for comment.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is considering amendment of the total site prohibition identified in EPA's March 21, 1988, Final Determination concerning the Russo Development Corporation (Russo) site in Carlstadt, New Jersey, pursuant to Section 404(c) of the Clean Water Act (CWA). EPA is considering amendment of this Final Determination on the basis that compensatory mitigation now proposed by Russo would satisfactorily address the unacceptable adverse effects to wildlife described in the March 21, 1988, document. This amendment would be done as a prerequisite to Russo seeking CWA after-the-fact authorization for the past discharge of fill material into the subject wetlands for the purpose of constructing a warehouse complex, as well as authorization for the future discharge of fill material into remaining wetlands for additional development activities. This proposed action would revise the Section 404(c) prohibition adopted in 1988 to a restriction on discharges at the site based on Russo's meeting the compensatory mitigation requirements specified in this document.

EPA's 1988 Final Determination in this case concerned a 57.5 acre wetland in Carlstadt, New Jersey where Russo proposed to maintain 52.5 acres of unauthorized fill (of which 44 acres have been built upon) and to fill the remaining five acres of wetland of a 13.5 acre parcel to complete a warehouse complex. The Final Determination states that the Russo site was/is very valuable to wildlife from a site specific and cumulative standpoint and, therefore, that its values must be retained. EPA also found that the compensatory mitigation proposed by Russo would not replace those wildlife values that had been and were anticipated to be lost. In the Final Determination, however, EPA indicated that this prohibition could be reconsidered upon demonstration that the adverse effects to wildlife have been satisfactorily addressed.

EPA is requesting comments on this proposed amendment of the Final Determination's total site prohibition to a restriction that would allow specification of the 13.5 acre site as a discharge location provided Russo agrees to deed over an approximately 16 acre parcel of wetlands in Ridgefield, N.J. for preservation, and provide $700,000 for the purpose of enhancing wetlands at this site and on sites to be contained in the Hackensack Meadowlands District mitigation bank. In particular, EPA is interested in comments relating to the currently proposed compensatory mitigation and its ability to replace the wildlife values lost as a result of past fill activities, as well as anticipated losses due to proposed discharges in the subject wetlands.

DATES: Written comments concerning this proposed amendment must be submitted to EPA on or before April 27, 1995.

ADDRESSES: Copies of EPA's 1988 Final Determination and relevant documents supporting the proposed modification are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, Wetlands Division, 499 South Capitol Street, SW, Fairchild Building, Room 703, Washington, DC 20009

U.S. Environmental Protection Agency—Region II, Water Management Division, 26 Federal Plaza, Jacob K. Javits Federal Building, Room 1137, New York, NY 10278

Comments must be submitted in writing to Joseph P. DaVia, Acting Chief, Elevated Cases Section, Mail Code: 4502F, U.S. EPA, 401 M Street SW, Washington, DC 20460. Written comments may also be sent by facsimile to Mr. DaVia at (202) 260–7546.

FOR FURTHER INFORMATION CONTACT: John Ettinger (EPA) at (202) 260–1190.

SUPPLEMENTARY INFORMATION: On March 21, 1988, the Assistant Administrator (AA) for Water of the United States Environmental Protection Agency (EPA) rendered a final determination which prohibited the designation of 57.5 acres of wetlands as a disposal site for fill material. These wetlands were and are currently owned by the Russo Development Corporation (Russo), and are located in the Hackensack Meadowlands in Carlstadt, Bergen County, New Jersey. The reason cited by the AA for Water for this action was that the discharge of fill would have unacceptable adverse effects, both immediately and cumulatively, to wildlife in the Meadowlands. This action was taken pursuant to Section 404(c) of the Clean Water Act (CWA, U.S.C. 1251 *et seq.*), which authorizes the Administrator (who has delegated this authority to the AA for Water), after notice and opportunity for a public hearing, to prohibit or restrict the use of any defined area as a disposal or discharge site for dredged material or fill. In such a case, the AA for Water must have first determined that such discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Procedural History and Rationale for the Determination

The chronology of the Corps and EPA actions leading up to EPA's 1988 404(c) determination is summarized in the Final Determination of the AA for Water. Briefly, the events are summarized as follows: In 1981, Russo placed 44 acres of fill for the purpose of constructing a warehouse complex in Carlstadt in the Hackensack Meadowlands in Bergen County, New Jersey (44 acre tract). Russo constructed six warehouses and began a seventh on the 44 acre tract. Russo subsequently excavated most of the adjacent 13.5 acre parcel (13.5 acre tract) and then filled 8.5 of the 13.5 acres in order to build more warehouses. The Corps issued a cease and desist order subsequent to his placement of 8.5 acres of fill. Five acres of the 13.5 acre tract remain wetland. Russo excavated two to three acres of the unfilled five acres to remove unsuitable soils and fill with suitable construction material. This excavated area subsequently ponded and developed into open water with aquatic and emergent vegetation.

EPA first learned of Russo's fill activities in an April 22, 1985, letter from the Corps which announced their investigation of unauthorized fill activity on the 8.5 acres. The Corps subsequently extended enforcement action to the 44-acre tract as well. EPA initially recommended either removal of fill or mitigation to compensate for the wetlands losses. The Corps processed an after-the-fact permit application and issued a public notice on August 28, 1985, proposing to authorize 55 acres of existing fill (later corrected to 52.5 acres) and to authorize the placement of additional fill in the remaining five acres of wetland.

On December 22, 1986, the Corps submitted a Notice of Intent to Issue a permit to the Russo Development Corporation accompanied by a Statement of Findings, environmental assessment, and evaluation of compliance with the Section 404(b)(l) Guidelines. The permit decision would authorize 0.5:1 value-for-value compensation for the 57.5 acre loss of wetlands. The mitigation proposal would provide for the enhancement of a nearby, unspecified wetland northeast of the project site and would secure the permanent preservation of a 23 acre wetland site in Troy Meadows in the Passaic River basin (to the southwest of the Hackensack River basin). EPA responded on December 24, 1986, requesting a meeting with the Division Engineer and suspension of further action on the project. The U. S. Fish & Wildlife Service (FWS) also elevated the decision under CWA Section 404(q). Subsequently, EPA and the Corps attempted to negotiate a resolution which would provide a 1:1 value-for-value compensation, but were unsuccessful. Unable to resolve both agencies' concerns, the Corps eventually issued its final Notice of Intent to Issue on March 23, 1987, proposing to authorize 52.5 acres of existing fill and placement of five additional acres of fill, and to require Russo to compensate on a 0.5:1 value-for-value basis for the loss of 57.5 acres of wetlands. Under Section 404(q) of the CWA, EPA requested elevation of the permit decision to national level review on April 27, 1987, and that request was denied by the Department of the Army on May 8, 1987.

Having exhausted administrative procedures to resolve agency concerns, the Regional Administrator for Region II then notified the District Engineer and the Russo Development Corporation on May 26, 1987, in accordance with Section 404(c), of his intent to issue a public notice of a proposed determination to prohibit or restrict the discharge of fill on the Russo site, based on his belief that the discharge had resulted and would result in unacceptable adverse effects to wildlife. The letter afforded the mentioned recipients 15 days to demonstrate that no unacceptable adverse effects would occur as a result of permit issuance. On May 27, 1987, the District Engineer responded that his analysis clearly demonstrated that no unacceptable adverse effects would occur from permit issuance. Russo responded on June 10, 1987, concluding that EPA could not successfully argue that the project would have an unacceptable adverse effect on the environment, and they requested the Corps decision to issue a permit be affirmed. The Regional Administrator concluded that no new information had been presented and therefore he was not satisfied that the project would not pose unacceptable adverse impacts.

On August 7, 1987, a public notice was published in the **Federal Register** and the New Jersey Star Ledger announcing the proposed determination to prohibit or restrict the discharge of fill material. The comment period extended for 60 days and closed on October 6, 1987. The notice requested comment on the need for a public hearing. There was response requesting a public hearing, and the holding of a hearing was found to be in the public interest. On October 13 and 14, 1987, a public notice was published in the New Jersey Star Ledger and the **Federal Register** scheduling a public hearing for November 5, 1987. The hearing was held and the comment period closed on November 20, 1987.

The Regional Administrator forwarded his Recommended Determination to the AA for Water, along with the Administrative Record of the case. The Recommended Determination was adopted by the AA for Water and was incorporated into his final decision. The decision to prohibit the specification of the Russo wetlands as a fill disposal site was based upon findings by the AA for Water that: 1. The wetlands on the Russo tracts were valuable to wildlife because they represented a diverse array of wetland types, types which are rare in the context of the Meadowlands landscape; 2. the wetlands on the Russo tracts supported/support a large mix of species, most of which are declining in New Jersey due in part or whole to a loss and/or deterioration of available habitat (of particular importance was/is the ability of the site to support populations of black duck, a FWS species of special concern, whose populations have declined nationally due to a loss and/or deterioration of available habitat); 3. the loss of this habitat would cause unacceptable impacts to wildlife values unless these values were maintained through mitigation; and, 4. the proposed/required mitigation would neither compensate for the loss of approximately 57.5 acres of valuable wildlife habitat nor constitute appropriate and practicable mitigation. Therefore, the mitigation would not offset the significant wildlife impacts identified. Thus, the fill had resulted and would result in unacceptable adverse impacts to wildlife under Section 404(c) of the Clean Water Act. Accordingly, the AA for Water prohibited the designation of the Russo tracts as a discharge site.

As part of the findings and conclusions which led to the prohibition of the Russo site as a fill discharge site, the AA for Water noted the following:

> In the present case, my findings of unacceptable adverse effects stems [sic] from current and anticipated losses of valuable wildlife habitat that has/will result from direct effects of discharges regulated under Section 404 of the CWA and within the Russo site. As previously stated, however, fill has already been placed on approximately 52.5 acres of wetlands and only 5 acres remain unfilled. Although I have concluded that the wildlife values previously and currently provided by the Russo tract are important enough to preserve, the fact remains that most of the site has been filled and its value to wildlife destroyed. Also, I am mindful that under these circumstances, final action by EPA pursuant to Section 404(c) of the CWA will not prevent the occurrence of most of the unacceptable adverse effect or accomplish reversal of such effects. Further actions will be necessary, either within the context of voluntary compliance by Russo or an enforcement action, to determine the extent of wetland value replacement and pursue compensatory action. The site has been damaged and, indeed, some or all of this damage may be irreversible. In addition, the presence of tenanted warehouses on the unauthorized fill raises other issues that run counter to restoration of the site. Mitigation has been a focal point of discussions with respect to this project during the Corps permit process as well as a contributing factor to my determination of unacceptable adverse effects. If the condition of the Russo tract precludes onsite restoration from a technical or practical standpoint, then EPA would expect to pursue replacement of lost wildlife values elsewhere. Mitigation of lost wildlife values will not be required for any portions of the previously discussed old field areas that are determined to have been uplands.[1]

The AA for Water did note the following:

> I will reconsider this prohibition at the request of EPA's Regional Administrator in Region II upon a showing that the unacceptable adverse effects to wildlife have been addressed to his satisfaction.

Judicial Decisions Related to the Proposed Amendment of EPA's 404(c) Determination

Russo brought suit against the Corps and EPA in U.S. District Court. *Russo Development Corporation v. Thomas et al.*, No. 87–3916 (D.N.J.). In a series of opinions, the court vacated in part and remanded in part EPA's 404(c) decision. In its first decision, the court found the Corps had been arbitrary and capricious in requiring Russo to submit jointly an

[1] As part of the Final Determination, the AA for Water noted that portions of the areas delineated as old field on EPA's map of the Russo site in its pre-discharge condition may have contained uplands, because the information on vegetation at this point was inconclusive and raised the possibility that portions of the old field areas may have been uplands. That consideration did not alter the final decision, which was based on conclusions concerning the extent of the wildlife values provided by the site, nor did it alter conclusions that the proposed/permitted mitigation was inadequate, since the portions of the tract in question comprised a small portion of the impact area. The jurisdictional issue was left unresolved due to Russo's desire for a timely decision by EPA. However, it was noted that the issue might ultimately affect the precise amount of mitigation necessary, since no compensation would be required for areas determined to be uplands, which are not jurisdictional under Section 404.

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application for a permit encompassing both the 13.5 and 44 acre sites. The court found that, on the facts of this case, the activities on the two sites did not constitute the "same project" under applicable Corps regulations (33 CFR 325.1(d)(2)). To remedy this error, the court stated that it would "limit the plaintiff's application for a Corps permit and the subsequent grant and veto of the permit to the 13.5 acre parcel." 735 F. Supp. 631, 637 (D.N.J. 1989). This decision therefore vacated EPA's Section 404(c) determination as it related to the 44 acre parcel. See also *Id.*, at 639 ("Because of the court's decision that the veto of the 44 acre parcel is void, the question [of the validity of EPA's 404(c) decision] concerns only the 8.5 acre tract."). The court also held in this opinion that EPA should have considered the New Jersey Coastal Management Program in its 404(c) determination. The court also dismissed Russo's claims that EPA's and the Corps' actions violated Russo's due process rights under the Constitution.

On May 17, 1991, the court ruled on the remainder of Russo's claims in this case. *Russo Development Corporation v. Reilly*, 1991 U.S. Dist. Lexis 20965, 21 ELR 21345. The court first dismissed Russo's claims that EPA and the Corps acted in bad faith, and that the agencies had failed to demonstrate that they had jurisdiction over the 13.5 acre site under the CWA. Consistent with the holding in its 1989 opinion that it was arbitrary and capricious for the Corps and EPA to link the 44 acre and 13.5 acre parcels in their decisions, the court remanded the permitting and veto decisions for further considerations. The court further directed the Corps and EPA to consider, on remand, the precise extent of CWA jurisdiction over the 13.5 acre site and the appropriate mitigation to compensate for impacts to the site. The court also directed EPA to articulate on remand its reasons for any deviations of its decision from the New Jersey Coastal Zone Management Plan.

New Information and Developments Supporting Reconsideration of the 404(c) Prohibition

Since 1988, several important pieces of new information concerning the site and concerning wildlife habitat utilization within the Meadowlands have been developed subsequent to the prohibition of the site for fill discharge. These include:

1. A re-evaluation of the extent of wetlands on the 13.5-acre site (April 15, 1992, Corps memorandum). The Corps determined that 3.27 acres of the 13.5 acre site are not considered to have been wetlands, while the remaining 10.23 acres were wetlands prior to disturbance in 1985. Based on the criteria used in this re-evaluation, EPA has re-evaluated the pre-discharge extent of jurisdiction on the 44-acre parcel as well, and finds that approximately 40.7 acres of this tract were wetlands subject to jurisdiction under Section 404 of the CWA.

2. A study of habitat utilization by numerous species of wildlife, particularly birds, of *Phragmites*-dominated habitat in the Meadowlands. This report, Site Survey Report: Ecological Studies, Hartz Mountain Development Corporation Villages at Mill Creek, was prepared in December, 1991 by U.S. EPA Region II and Gannett Fleming, Inc. This study provides detailed information on the wetland characteristics which are of value to wildlife in the Meadowlands, which species use this habitat, and how this habitat is used. Based on this information, a more precise determination can be made of the wetland values lost on the Russo tracts, and what features could be provided in a mitigation proposal to replace those values. In particular, this study provided detailed information on the use of these habitats by black duck, which is a FWS species of special concern. In the Final Determination, the AA for Water's conclusions that the fill would cause unacceptable adverse effects to wildlife were strongly influenced by the impacts of the fill on black duck. Based on this new information, a better estimate of the Russo tract's importance in supporting black duck populations in its pre-discharge state may be made.[2] In addition, habitat attributes which support black duck populations in the Meadowlands have been identified. These habitat attributes can be provided in a mitigation design for the purpose of more predictably increasing habitat value to black ducks. This would provide compensation for the loss to this species and would reduce cumulative impacts to this species.

3. The development of a Mitigation Banking Agreement for the Meadowlands. This agreement is currently being developed and is expected to be completed shortly. Under this agreement, the Hackensack Meadowlands Development Commission (HMDC) would develop and administer several mitigation banks. Some of these would be implemented by performing mitigation on publicly or quasi-publicly owned wetlands (thus not requiring outright purchase of these lands), and HMDC is seeking to acquire additional lands on which to implement mitigation. Since EPA and the Corps would be among the Federal agencies participating in the mitigation banking process, they would be advising HMDC on the design, construction, monitoring and remedial action for mitigation projects on a more comprehensive and consistent scale. Consequently, value replacement, performance, and success could be more predictably and consistently ensured through this mechanism. Thus, mitigation opportunities within the Hackensack River basin, within the area of impact, could be provided where opportunity was previously scarce or unavailable to private developers.

4. Selected terms of a proposed agreement reached between the Corps, EPA and Russo to settle litigation regarding this matter. Under the settlement terms, Russo would deed over, for preservation and enhancement, an approximately 16-acre parcel of wetlands in Ridgefield, NJ, (the Ridgefield tract) located approximately 1.5 miles from the subject Russo tracts. Russo would also provide $700,000 for the purpose of enhancing wetlands, both at this site and on sites contained in the HMDC mitigation bank.

The Final Determination by the AA for Water treated the 44 and 13.5 acre tracts as a single ecological unit for the purposes of evaluating their loss to the ecosystem. As discussed above, the court in *Russo Development Corporation v. Thomas, et al.* invalidated the linkage of the 13.5 and 44 acre parcels by the Corps, and vacated EPA's 404(c) determination as to the 44 acre parcel. Therefore, the proposed amendment to revise EPA's 404(c) determination would amend only the portion of EPA's original 404(c) prohibition that has remained in effect (i.e., for the 13.5 acre parcel). Because the proposed settlement terms discussed above seek to resolve all issues related to both the 44 and 13.5 acre parcels, however, this notice also discusses the adequacy of mitigation as it relates to all of the activities conducted by Russo on the two sites. Russo has agreed to waive any objections to the agencies' consideration of the totality of the impacts of fill at the 44 acre and 13.5 acre sites in their determinations on remand.

Wetland Values Lost, and Outline of Unacceptable Adverse Effects to Wildlife

The Final Determination of the AA for Water identified several habitat features on the Russo tracts which contributed to their ecological importance. First, several different types of wetland habitat were found on each of the tracts. This juxtaposition of wetland types to each other, as well as to surrounding wetland areas, provided habitat diversity in a landscape that is generally somewhat monotypic in nature. Second, several of the wetland types, viz., wet meadow, mixed emergent, and wooded, are relatively rare in the Meadowlands, and provided habitat for a large mix of species. Many of these species are experiencing population declines within New Jersey, which are attributable in whole or in part to loss and/or deterioration of available habitat. The interspersion of habitat types, along with the relative rarity of those types, made the Russo tracts valuable to wildlife. The breakdown of wetland types by approximate acreage[3] is provided in Table 1 below:

TABLE 1.—ACREAGE (APPROXIMATE) OF WETLAND TYPES COMPRISING THE TWO RUSSO TRACTS IN CARLSTADT, NJ

Wetland type	13.5 acre tract	44 acre tract
Wet Meadow	3.68 ac	21.73 ac
Mixed Emergents	1.14 ac	2.92 ac
Wooded	0.00 ac	0.37 ac
Phragmites	5.41 ac	15.69 ac
Old field (subsequently determined to be non jurisdictional)	3.27 ac	3.30 ac
Total	13.50 ac	44.00 ac

The conclusion and findings of the Final Determination were that unacceptable adverse effects to wildlife were caused by/ would be caused by the fill unless those values are maintained through mitigation. While the quality and importance of the lost wetlands to the lower Hackensack watershed weighed strongly in the AA for Water's decision to prohibit specification of the sites for disposal, perhaps the most significant factor contributing to the finding of the AA for Water was that the impacts were unlikely to be adequately compensated by the proposed/permitted mitigation plan.

The mitigation plan which was originally proposed by Russo during the permit evaluation was considered by EPA to be both inappropriate in type and inadequate in its extent to provide sufficient compensation for the wetlands values lost. The plan comprised two parts: enhancement of offsite wetlands within the Hackensack basin and preservation of wetlands outside the basin. The enhancement component of the mitigation proposal would have provided enhancement of an unspecified acreage of wetlands somewhere to the northeast of the site. Since the location and exact acreage proposed for enhancement were never identified, the existing and post-enhancement wetland values could not be evaluated to determine how much compensation would have been provided by those means.

The other component, which was the proposed preservation of a 23 acre wetland parcel outside the Hackensack River basin, would not have provided any increase in wetland value to compensate for wetland values lost as a result of the filling activity, since the parcel was already a functioning wetland and no other enhancement activity was proposed to provide an increase in value. Furthermore, any wetland value which might have been added to that parcel would not have provided compensation in the watershed where the damage occurred, and so could not have compensated for the loss to the Hackensack River system. Finally, the Corps permit required only 0.5:1 value for value replacement, which would have resulted in, at best, a 50% loss of wetland values as a result of Russo's activities.

Desirability of Obtaining Compensatory Mitigation

Russo's activities on the 13.5-acre site have destroyed almost all of the pre-discharge wetland characteristics of the site. The site was almost completely excavated of its original soil. Eight and one half acres were subsequently filled with shot rock to a depth of several feet. The stone used for fill was of varying sizes, but most of the material would be classified as boulders, according to the Wentworth scale. The fill material has continued to compact and consolidate in the ensuing nine years since the fill activity took place, and it is likely that the underlying soil layers have also compacted. Therefore, the likelihood of restoring this site to its original condition or to a suitable wetland condition is small, and it is not practicable or feasible to consider this as a preferred option. Consequently, offsite mitigation would need to be provided to eliminate the unacceptable adverse effects to wildlife identified in the decision of the AA for Water to prohibit specification of this site under Section 404(c).

Likewise, the 44-acre parcel was filled in 1981 with material of the same type. The soils on this site are more likely to have compacted and consolidated into material unlikely to support site restoration, because the site has been constructed on and has had functioning warehouses with concomitant large vehicle traffic since the early 1980's. This site is even less likely to be restorable to a suitable wetland condition than the 13.5 acre parcel owing to this factor and also to the fact that tenanted warehouses occupy the site. As such, offsite compensatory mitigation would be needed to offset the wildlife values lost as a result of the fill activity.

Mechanisms To Provide Compensatory Mitigation

The changes in circumstances and information described above have improved the ability of Russo to achieve reasonable compensation for wetland wildlife values lost as a result of the unauthorized discharge of fill. One of the main factors which influenced Russo's original mitigation proposal was the alleged difficulty in privately obtaining large tracts of wetlands within the Meadowlands for the purpose of providing compensatory mitigation. This can now be addressed with the use of a mitigation bank, which will obtain and have available large wetlands tracts for the purposes of providing compensatory mitigation. HMDC's proposed mitigation bank will make wetland mitigation on a substantial acreage within the Hackensack River basin, the area of impact, available for purchase. With adequate funding, wetland enhancement through this mitigation bank can be obtained, and will provide significant compensation opportunity.

Under the terms of the settlement discussed above, Russo will provide approximately 16 acres of wetlands which will provide additional compensatory value via enhancement. Thus, between the land to be provided by Russo and the lands available for enhancement in the mitigation bank, sufficient land for mitigation purposes is now reasonably available to provide compensation for the wetlands losses resulting from the discharges of fill on the Russo tracts.

Under the terms of the settlement, Russo also would provide a total of $700,000 for the purposes of implementing compensatory mitigation through the HMDC mitigation bank. A portion of this funding will be spent

[2] Black ducks would have used the mixed emergent areas for feeding and resting, which are identified in the January 19, 1988, Recommendation of the Regional Administrator pursuant to Section 404(c) of the CWA.

[3] The acreages have been calculated based on the wetland map provided in the Maguire Group report entitled, Vegetation Types—1978. Because the extent and description of these types is based on aerial photointerpretation, and not on precise survey, acreages can only be approximate.

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providing enhancement to the 16-acre Ridgefield tract. The remainder of the funds will be used to enhance the wetland values of acreage within the HMDC mitigation bank. The means to provide compensation for lost wetland values are therefore available. What remains is to provide a demonstration that adequate compensation, and appropriate compensation, can be provided through this proposal.

Determination of Adequate Compensation

The additional information on habitat values in the Meadowlands which was provided in the EPA study previously referenced provides useful guidance for the appropriate design of mitigation sites in the Meadowlands. A mitigation design which incorporates the habitat features identified by this study as valuable is likely to provide a greater guarantee of success in achieving the goal of no net loss in wetland values. Such a design would be directly tailored to wildlife needs in the Meadowlands, and is thus appropriate to compensate for the particular values lost from the Russo tracts. For example, open water areas which are interspersed among and surrounded by *Phragmites* were found to be preferentially used as resting/feeding habitat by overwintering black ducks, *Anas rubripes*, a FWS species of special concern. The open water provides necessary feeding/resting habitat, while the associated *Phragmites* provides shelter from winter winds, thus reducing caloric requirements and stress on this species. Mitigation designed to increase hydrologic flow and provide open water areas interspersed with *Phragmites* will greatly increase the value of those tracts to black duck populations in the Meadowlands. Such a component responds directly to one of the wildlife losses of concern identified by the AA for Water in the Final Determination, and will provide compensation for this loss. While the exact location of the acreage proposed for enhancement has not yet been specified, the mitigation bank locations which are being evaluated by HMDC have the similar habitat features and are generally good candidates for enhancement. The candidate sites are large tracts, mostly dominated by a monoculture or near-monoculture of *Phragmites*. Most of the proposed bank sites have a reduced or nonexistent flow and interspersion of water, or have been cut off from tidal inundation. A variety of different mitigation activities are able to be performed on such sites and will provide good compensation for wildlife values which were lost/are being lost from the Russo tracts.

Since the mitigation banks are not yet functioning, the precise type and amount of mitigation that will be performed to compensate for the wetlands values lost from the Russo tract has yet to be determined. However, outlined below in Table 2 is an example mitigation strategy that would likely be feasible to implement with the funding made available by Russo for mitigation activities. EPA believes, moreover, that such a mitigation strategy would adequately compensate for wetland losses experienced on the Russo tracts.

TABLE 2.—WETLAND TYPES, BY ACREAGE, WHICH WERE LOST FROM THE RUSSO 13.5-ACRE TRACT, AND ENHANCEMENT ACTIVITIES WHICH WOULD PROVIDE ADEQUATE COMPENSATION FOR THOSE LOSSES

Wetland type lost (acres)	Enhancement activity	Habitat improvement which will result from the enhancement activity
Mixed emergents/open water (1.14 ac).	Excavation of two 1-acre ponds or meandering channels in *Phragmites* fields; planting/seeding with emergent species at fringe.	Diverse ponds or watercourses attractive to waterfowl and muskrats, able to provide winter shelter and improved feeding.
Wet meadow (3.68 ac)	Remove *Phragmites* on 4 ac and excavate to maintain a permanently saturated hydrologic regime; seed with mixture of wet meadow species. In tidal areas, an alternative would be establishment of high salt marsh. Since there is less plant diversity in a high salt marsh, 6 acres of enhancement would be recommended.	Creation of habitat valuable to raptors and species such as woodcock and pheasant; possible provision of nesting habitat for certain species of waterfowl. Wet meadow would directly replace lost habitat type.
Phragmites, unbroken field (5.41 ac).	*Either* excavation of 5.41 ac from upland to create regularly saturated habitat and planting or seeding with suitable wetland emergents, *or* excavation and eradication of approximately 5.5 acres of tidal, unbroken *Phragmites* to average mean water and planting or seeding with *Spartina alterniflora* and shrubs.	Creation of saturated system of emergents which would provide the same functions as *Phragmites*. Enhancement to a *S. alterniflora* marsh increases value seasonally to wildlife, but more plant diversity is needed since enhancement is occurring on a functioning wetland. Shrub layer provides this.

Three types of wetland habitat are believed to have existed on the 13.5-acre site prior to Russo's fill activities; viz., mixed emergent, wet meadow, and *Phragmites*. Since 3.27 acres, which was identified by aerial photography as "old field" has been determined by the Corps to have been a non-wetland area, a determination with which EPA concurs, no compensation is required for fill activity which occurred on this portion of the site.[4]

The excavation of two, one-acre ponds or approximately two acres of meandering channel will provide two acres of valuable feeding/resting habitat for waterfowl, particularly black duck. The mixed emergent areas originally present on the 13.5-acre site totalled 1.14 acres. This acreage, however, was divided among three areas, and was less likely to be attractive to waterfowl than a single pond or watercourse of the same size. Since an existing wetland, which has functional values of its own, will be excavated to create the ponds or channel, it will lose some functional value as a result of the excavation activity. The creation of an additional acre of open water is likely to offset any losses associated with the enhancement activity itself. The cost of such an enhancement is likely to be low, since only the fringe of the ponds would be seeded, and would probably not exceed $5,000/acre, based on EPA Region II's best estimates of cost.

The enhancement of approximately four acres of *Phragmites* monoculture to provide a frequently saturated wet meadow will restore the same acreage of wet meadow that was lost from the site. As an alternative, should the proposed mitigation site be tidal, a tidal high salt marsh, dominated by *Spartina patens* and *Distichlis spicata*, can be established. High salt marsh is also a remnant habitat in the District, and

[4] This is consistent with the findings and guidance of the AA for Water set forth in the Final Determination.

would provide many of the same values to wildlife as wet meadow (i.e., attractive to raptors, small mammals, etc.) but is not usually as species-rich in plants, including those with food value to wildlife, as a freshwater wet meadow. Consequently, this type of compensation should be established at a 1.5:1 acreage replacement, since it represents out-of-kind mitigation, and would not have as many functions as the habitat for which it is providing compensation.

The remaining 5.4 acres of the 13.5-acre tract was dominated by *Phragmites*. The creation of a 5.4 acre emergent marsh from upland would offset this loss. If enhancement is the technique used (as is likely), then the replacement vegetation for *Phragmites* must be twice as valuable to wildlife to provide value-for-value compensation for wildlife. Based on EPA studies, *Spartina* marsh habitat is more attractive to wading birds and waterfowl, and is of equal value to certain passerine species. *Phragmites*-dominated habitat can be doubled in its value to most wildlife species if it is enhanced to provide an equal acreage of *Spartina alterniflora*/scrub-shrub marsh, and it is interspersed with the other proposed habitat types. Therefore, conversion of approximately 5.5 acres of uniform *Phragmites* to *S. alterniflora*/scrub-shrub salt marsh will compensate for the wildlife value of the 5.41 acres of *Phragmites* marsh lost from the Russo 13.5-acre tract, and will result in no net loss of wildlife value for the acreage lost.

Estimates for the eradication of *Phragmites*, excavation and seeding of other species (such as *Spartina* or hydrophytic herbaceous forbs, such as those found in wet meadow habitats) varies, but are expected to average about $20,000/acre, based on EPA Region II's best available information. Approximately nine acres of such enhancement would be required to provide the suggested wet meadow and *S. alterniflora*/scrub-shrub marsh. (The land acquisition for mitigation activities will already have occurred when these activities are expected to be implemented.) Adequate funds would therefore be available to provide the requisite enhancement to ensure a value-for-value replacement.

The balance of the funds would go toward providing replacement of wetland wildlife value lost as a result of filling the 44-acre tract. An example mitigation strategy that would likely be feasible to implement with the resources made available by Russo, and which would provide compensation for wildlife values lost from the 44-acre tract is listed in Table 3.

TABLE 3.—WETLAND TYPES, BY ACREAGE, WHICH WERE LOST FROM THE 44-ACRE TRACT, AND ENHANCEMENT ACTIVITIES WHICH WOULD PROVIDE ADEQUATE COMPENSATION FOR THOSE LOSSES

Wetland type lost (acres)	Enhancement activity	Habitat improvement which will result from the enhancement activity
Mixed emergents/open water (2.92 ac).	Excavation of 6 acres of open water habitat (ponds and/or channels) in *Phragmites* fields; planting/seeding with other emergent species at fringe..	Diverse ponds or watercourses attractive to waterfowl and muskrats, able to provide preferred winter shelter and improved feeding.
Wooded (0.37 ac) ..... *Phragmites* areas (15.69 ac)	Planting of approximately 3 acres of shrub/tree layer on 16.5 ac Ridgefield tract	Provides nesting opportunities for waterfowl/passerine species, as well as buffer from developed area. Fruit-bearing shrubs greatly increases wildlife food value.
Wet meadow (21.73 ac)	Removal of *Phragmites* on 22 ac and excavation to achieve seasonally saturated hydrologic regime with some ponded areas. Seeding with a mixture of wet meadow grasses and forbs. Alternatively, establishment of 33 ac of high salt marsh	Creation of habitat valuable to raptors and species such as woodcock and pheasant; possible provision of nesting habitat for certain species of waterfowl. Direct replacement of habitat type lost.

The rationale for the types of enhancements suggested for the 44-acre tract is essentially the same as for the proposal for the 13.5-acre tract. The one component which is different is the proposal to mitigate for the loss of approximately 15.7 acres of homogeneous *Phragmites* fields and for the loss of 0.37 acres of wooded habitat by providing approximately three acres of a shrub/woody vegetation layer on the 16.5 acre Ridgefield tract. The Ridgefield tract is essentially a monoculture of *Phragmites*; however, it contains abundant marsh/open water tidally influenced complexes. As previously mentioned, this type of *Phragmites*/open water mosaic provides feeding and resting areas to waterfowl on a year round basis, but is especially valuable to overwintering waterfowl because it provides them not only with feeding and resting areas but also with shelter from severe weather, thus lowering their expenditure of calories. Consequently, its existing wildlife value is good in context of the Meadowlands as a landscape. However, it does not provide any nesting opportunities for birds requiring trees and shrubs. Neither does it contain any substantial source of fruits or seeds which are used as preferred foods by wildlife such as pheasant, woodcock, etc., which were believed to have been on the 44-acre tract prior to filling. Both the nesting and food values to wildlife are largely lacking in the immediate vicinity of the Ridgefield tract. By providing the woody vegetation layer, at an acreage ten times that which was lost on the 44-acre tract, this value is not only replaced for the woody vegetation that was lost, but also enhances the entire 16.5-acres and provides wildlife value that has never been on that parcel. When considered in conjunction with the valuable open water mosaic present on that site, we believe that the enhancement will increase the value of the Ridgefield site sufficiently to compensate for the loss of the 15.7 acre homogeneous *Phragmites* field and .37 acres of wooded wetlands.

Most of the wetlands on the 13.5-acre tract have already been filled and converted to upland; the entire tract has been disturbed from its original condition. If the prohibition on fill is amended to allow the proposed settlement to proceed, it is likely that Russo would be permitted to complete his activity on site. The calculation of mitigation includes considerations based on the complete loss of the tract's wetlands value.

Proposed Action and Consistency With the New Jersey Coastal Zone Management Plan (CZMP)

In its May 17, 1991 opinion, the court in *Russo Development Corp v. Reilly*, No. 87–3916, held that EPA was arbitrary and capricious for failing to articulate its reasons for deviating from the New Jersey Coastal Zone Management Plan (CZMP) in the Agency's 404(c) determination. The

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Agency's decision was remanded to EPA in part on this ground.

Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) prohibits a Federal permit from being issued for an activity affecting any land or water use or natural resource of the coastal zone of that state until the applicant furnishes a certification that the activity is consistent with an approved CZMP, and the State concurs in the certification or waives review. This portion of the CZMA is implemented in the Corps regulations by 33 CFR 325.2(b)(2). Because the Corps' regulations adequately address the CZM consistency requirement, EPA did not duplicate § 325.2(b)(2) in the 404(b)(1) Guidelines.

The Hackensack Meadowlands District Master Plan is the Coastal Zone Management Plan for the Meadowlands District, and the current plan zones the 13.5 acre parcel for development. Because EPA's 404(c) determination, if it is finalized as proposed today, would no longer preclude the Corps from authorizing fill activity on the 13.5 acre parcel, such an action would appear to be consistent with the Master Plan. Of course, under section 307(c)(3)(A) of the CZMA and 33 CFR 325.2(b)(2), it is the State that ultimately would have the authority to determine consistency of a new permit proposal with the applicable plan.

Conclusions

The Final Determination by the AA for Water contemplated a reconsideration of the prohibition upon a showing that adequate mitigation could be provided to offset unacceptable impacts to wildlife. Russo has proposed the following mitigation to compensate for impacts of the fill activity: (1) Deed over an approximately 16 acre parcel of wetlands in Ridgefield, N.J. for preservation, and (2) provide $700,000 for the purpose of enhancing wetlands at this site and on sites to be contained in the Hackensack Meadowlands District mitigation bank. Since there will be Federal oversight of the type of enhancements performed, as well as the design, construction, and implementation of the mitigation activities, and since the funding provided for mitigation would be applied to enhancement alone[5], the mitigation activities would be applied to sufficient acreage, and would be of appropriate kind and quality, to provide adequate compensation for losses of wetlands values which resulted/are resulting from the unauthorized fill.

Unlike the proposal in the original permit, all of the compensation proposed will involve an increase in value and will be located within the lower Hackensack River basin (the location of the impact). Furthermore, the proposed combinations of mitigation activities will ensure that a mosaic of different habitats, which was an important factor contributing to the wildlife value of the Russo tracts, will be restored elsewhere within the relevant area of the impact. Finally, the above proposals will provide adequate acreage of the different wetland types to compensate for the extent of wildlife values lost on the Russo tracts. Therefore, under the terms of the settlement, there would be no significant loss of wetland values which would not be offset by appropriate and adequate mitigation. There would, we believe, no longer be unacceptable adverse effects to wildlife from this activity. The prohibition on specifying the Russo tracts as disposal sites for fill would no longer be necessary to prevent unacceptable adverse effects to wildlife and the aquatic ecosystem. EPA therefore proposes that, conditional upon a binding agreement by Russo to provide the funds and land preservation discussed above, the Section 404(c) prohibition on specification of the 13.5-acre site for fill material be removed, and a restriction be imposed that would allow specification of these areas as disposal sites provided Russo implements the mitigation plan discussed above.

Dated: March 21, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 95–7590 Filed 3–27–95; 8:45 am]

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[5] Costs for enhancement vary widely, but private contractors generally range from $10,000–$20,000/acre in this area to implement mitigation, based on an informal EPA Region II survey of costs. In this case, monitoring will be overseen by agency personnel, which reduces the cost. Because the mitigation activities will occur over a large number of acres, there is an economy of scale involved in design and construction, since mobilization/demobilization and design costs will be distributed over many participants. Finally, since there would be a large pool of wetlands acreage available for enhancement, wetlands to be enhanced using Russo's funds can be strategically chosen so that the value increase of Russo's portion of the mitigation may be maximized.

[FRL–5179–8]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, Subpart B-Primary Enforcement Responsibility, that the State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Office of Drinking Water of the Department of Environment and Natural Resources, has adopted regulations for total coliforms, surface water treatment, Phase II (7 inorganic and 26 organic chemicals), Phase IIb (1 inorganic and 4 organic chemicals), and Phase V (5 inorganic and 18 organic chemicals) that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 for total coliforms (**Federal Register** Vol. 54, No. 124, June 29, 1989, Pg. 27544–27568), surface water treatment (**Federal Register** Vol. 54, No. 124, June 29, 1989, Pg. 27486–27541), Phase II (**Federal Register** Vol. 56, No. 20, January 30, 1991, Pg. 3526–3597), Phase IIb (**Federal Register** Vol. 56, No. 126, July 1, 1991, Pg. 30266–30281), and Phase V (**Federal Register** Vol. 57, No. 138, July 17, 1992, Pg. 31776–31849). The Environmental Protection Agency (EPA) has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWRs. EPA therefore approves South Dakota's primacy revisions for Total Coliforms, Surface Water Treatment, Phase II, IIb, and V Rules. This determination shall become effective April 27, 1995.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before April 27, 1995. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o David Schmidt (8WM–DW), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on April 27, 1995. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) Department of Environment and Natural Resources, Office of Drinking Water, 523 East Capital Avenue, Pierre, South Dakota.

FOR FURTHER INFORMATION CONTACT: David Schmidt, Drinking Water Branch, EPA Region VIII (8WM–DW), 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1415.

Dated: March 20, 1995.

Kerrigan Clough,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 95–7591 Filed 3–27–95; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

[NV 95–13]

Policy Statement Concerning the Release of Consolidated Reporting System Information

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On March 20, 1995, the Farm Credit Administration (FCA) adopted a policy statement concerning the release of reports of condition and performance (Call Reports) and other reports containing nonexempt information (such as the Uniform Performance Report (UPR) and the Uniform Peer Performance Report (UPPR)) that are produced from the FCA's Consolidated Reporting System (CRS) (hereinafter nonexempt CRS Reports). Under this policy, the UPR and UPPR will be disclosed to the institution that submitted the information 50 days after the end of a quarter or a fiscal year. All other reports containing nonexempt information that are produced from the FCA's CRS would be disclosed, as available, to System institutions and to the general public 90 days after the end of a quarter or a fiscal year. For purposes of this policy, nonexempt CRS Reports are defined as reports produced from the CRS containing information that has been routinely disclosed in System institutions' quarterly and annual financial reports to shareholders and filed with the FCA pursuant to 12 CFR part 620. The FCA intends to set user fees for the dissemination of this information sufficient to recover the cost of dissemination. Nonexempt CRS Report information has been previously disclosed on a case-by-case basis in response to Freedom of Information Act requests. The FCA believes that providing the public access to nonexempt CRS Report information under this policy statement would enhance the FCA's information management activities in an efficient, effective, and economical manner.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Nan P. Mitchem, Compliance Officer, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4073, TDD (703)883–4444

or

Jane M. Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4071, TDD (703)883–4444.

SUPPLEMENTARY INFORMATION:

Background

Call Reports and other nonexempt information produced from the FCA's CRS contain valuable information and could be useful to Farm Credit System institutions and to members of the public by enabling them to evaluate the financial condition of the institution in comparison to its peers. This policy statement is intended to provide for the dissemination of this information in a manner that effectively balances the goals of maximizing the usefulness of the information and minimizing the cost to the Government and the public. Similarly, the Federal Financial Institutions Examination Council, which consists of the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, has made a determination to disseminate CRS-type information to banks, State banking departments, and the public in a report known as the Uniform Bank Performance Report.

The FCA's objective in adopting this policy statement is to enhance the utility of Call Reports for System institutions and the public, and to make available in an orderly and consistent way nonexempt information (i.e., information that has been routinely disclosed in System institutions' quarterly and annual financial reports and filed with the FCA) in conformance with the objectives set forth in OMB Circular A–130. This policy statement should benefit System institutions and the public by establishing a more effective and efficient means of accessing information that can be used to evaluate and compare System institutions and their performance. The release of nonexempt CRS Reports should also benefit the FCA in its regulatory role and in accomplishing its mission by enhancing the agency's communications with System institutions. Additionally, the FCA believes that the availability of nonexempt CRS Reports will enhance its ability to oversee and examine institutions.

Availability of Nonexempt CRS Reports

Under the policy statement, the UPR and UPPR will be disclosed free of charge to the institution that submitted the information 50 days after the end of a quarter or a fiscal year. All other reports containing nonexempt information that are produced from the FCA's CRS would be disclosed, as available, to System institutions and to the general public 90 days after the end

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of a quarter or a fiscal year. The delay in availability of nonexempt CRS Reports would allow System institutions to publish their quarterly and annual financial reports prior to FCA dissemination. At a System institution's request, a copy of a nonexempt CRS Report containing Call Report information of another institution or computer diskettes containing nonexempt Call Report information of all System institutions would be provided for a fee. Nonexempt CRS Reports or computer diskettes containing nonexempt Call Report information would also be made available, upon request, to the general public for a fee. The FCA believes that disclosing reports such as the UPR and the UPPR will assist institutions and the public in their analyses and evaluations of the delivery of financial services by allowing comparisons of financial performance. To provide further assistance to System institutions and the public, a detailed description of the UPR and the UPPR is provided below.

A determination on a special request (i.e., ad hoc report) for nonexempt CRS information and any fees assessed from any System institution or the general public would be made on a case-by-case basis. Special requests would be granted only when the benefit to the FCA significantly outweighs the burden to the agency in complying with the request. Requests for fee waivers may be granted to educational institutions, researchers, Governmental agencies, newspapers, and other parties, only when the agency determines that the benefit derived from releasing the information exceeds the fees being waived. All requests for release of CRS information should be directed to the Office of Resources Management, Information Resources Division, Customer Planning Team.

The FCA uses the UPR and the UPPR as analytical tools for supervisory and examination purposes, offsite monitoring and evaluation, and financial analysis. The reports, which are based on data from the CRS and updated quarterly, contain information using key ratios, percentages, and dollar amounts. The UPPR also contains peer averages, as well as percentile rankings for all direct lender associations falling within one of four peer groups based on asset size. Each report displays four reporting periods. Yearend reports contain financial data for the current year and the previous 3 years. Quarterend reports contain financial data for the current quarter, the same quarter for the previous year, and yearend information for the previous 2 years.

These reports are organized to facilitate agency decisionmaking concerning the adequacy of capital, asset quality, earnings, and liquidity. Both the UPR and the UPPR are organized as follows:

Section I is a summary. It provides key balance sheet and income statement items, as well as key ratios.

Section II presents a condensed balance sheet and summary information on loan categories by performance category. The balance sheet items are combined into key categories.

Section III addresses the composition of capital as a percentage of assets and its relationship to liabilities, unallocated retained earnings, and risk-adjusted assets.

Section IV contains information on assets, changes in assets, the percentage of loans in each loan performance category, the various relationships of the allowance accounts to loans and acquired properties, and gains and losses incurred from the valuation and disposition of these assets.

Section V is a year-to-date condensed income statement.

Section VI presents earnings and profitability measurements and certain ratios involving net interest income. Also, this section contains information on the return on average assets and component ratios. Ratios of operating expenses are also shown in this section.

Section VII contains liquidity measurements and compares maturing assets to maturing liabilities. This section also addresses collateral and funds availability for investments.

User Fees

User fees for the above information would be sufficient to recover the cost of dissemination. A CRS pricing schedule will be developed. Special requests for information not listed on the CRS pricing schedule may be subject to fees to recover the agency's cost of complying with the request, which may include the cost of collecting and processing, as well as disseminating the information.

The following glossary contains definitions that may be useful to an understanding of this policy.

A. *Farm Credit System institutions* means the Farm Credit Banks, banks for cooperatives, agricultural credit banks, production credit associations, Federal land bank associations, agricultural credit associations, Federal land credit associations, service corporations chartered under the Farm Credit Act of 1971, as amended, the Federal Farm Credit Banks Funding Corporation, and Farm Credit System Financial Assistance Corporation.

B. *System Banks and associations* means the Farm Credit banks, banks for cooperatives, agricultural credit banks, production credit associations, Federal land bank associations, agricultural credit associations, and Federal land credit associations.

C. *Direct lender associations* means production credit associations, agricultural credit associations, and Federal land credit associations.

D. *Call Report* means reports of financial condition and performance prepared and filed by Farm Credit System institutions in accordance with the FCA Uniform Call Report Instructions.

E. *Call Report information* means data contained in Call Reports.

F. *Consolidated Reporting System (CRS)* means all programs, files, documentation, and interfaces with source data, created and used to store, process, and retrieve CRS Derived Data and produce CRS Reports.

G. *CRS Reports* means reports produced via the CRS System for agency use in planning, monitoring, and analyzing the performance of Farm Credit System institutions.

H. *Computer Diskette* means a standard 3 ½" magnetic type diskette used with personal computers that contains Call Report information of all System institutions in an ASCII format.

The text of the Board's policy statement concerning the release of CRS information to System institutions and to the general public is set forth below in its entirety:

FCA BOARD ACTION ON POLICY STATEMENT CONCERNING THE RELEASE OF CONSOLIDATED REPORTING SYSTEM INFORMATION, NV 95–13, FCA–PS–65

Effective Date: March 20, 1995.

Effect on Previous Action: None.

Source of Authority: 12 CFR part 621, subpart D; 12 CFR 602.200; OMB Circular A–130 (July 2, 1993).

Purpose: The Farm Credit Administration (FCA) Board is hereby adopting a policy to disclose reports of condition and performance (Call Reports) and other reports containing nonexempt information (such as the Uniform Performance Report (UPR) and the Uniform Peer Performance Report (UPPR)) that are produced from the FCA's Consolidated Reporting System (CRS) (hereinafter nonexempt CRS Reports). Under this policy, the UPR and UPPR will be disclosed to the institution that submitted the information 50 days after the end of a quarter or a fiscal year. All other reports containing nonexempt information that are produced from the FCA's CRS would be disclosed, as available, to System institutions and to the general public 90 days after the end of a quarter or a fiscal year. For purposes of this policy, nonexempt CRS Reports are defined as reports produced from the CRS containing information that has been routinely disclosed in Farm Credit System (System) institutions' quarterly and annual financial reports and filed with the FCA.

Objectives: The FCA's mission is to facilitate the competitive delivery of financial services to agriculture while protecting the public, the taxpayer, and the investor. Consistent with that mission, the FCA endeavors to provide information to System institutions and to the public. Call Reports and other nonexempt CRS Reports contain information of value to the agency, the System, and the public that enables an evaluation of the financial condition of a System institution in comparison to its peers. Release of this information will provide institutions with a succinct assessment of performance, in addition to that provided in the examination process. The FCA believes that implementation of this policy statement will enhance the FCA's information management activities in an efficient, effective, and economical manner consistent with the objectives of OMB Circular A–130.

Operating Principles: Certain information reported to the agency in compliance with Call Report instructions, such as asset and liability repricing schedules or loan specific data, will continue to be exempt from disclosure and will not be made available under this policy statement. Nonexempt CRS Reports will be disclosed under a pricing schedule to be subsequently determined.

Certain nonexempt CRS Reports (such as the UPR and the UPPR) that contain Call Report information will be routinely forwarded free of charge to the institution that submitted the information or will be made available, upon request, to the general public for a fee. Upon request by a System institution, the FCA will make available free of charge any other nonexempt CRS Reports that contain Call Report information submitted by that institution, or, for a fee, will make available a copy of a nonexempt CRS Report containing Call Report information of another institution or computer diskettes containing nonexempt Call Report information of all System institutions. A determination on a special request (i.e., ad hoc report) for nonexempt CRS information and any fees assessed from any System institution or the general public will be made on a case-by-case basis. Special requests will be granted only when the benefit to the FCA significantly outweighs the burden to the agency in complying with the request. All requests for release of CRS information should be directed to the Office of Resources Management, Information Resources Division, Customer Planning Team.

Any fees assessed under this policy for disclosing routine nonexempt CRS Reports will be sufficient to recover the cost of dissemination. Special requests will be subject to fees to recover the agency's cost of complying with the request, which will include the cost of collecting and processing, as well as disseminating the information. Requests for fee waivers may be granted to educational institutions, researchers, Governmental agencies, newspapers, and other parties, only when the agency determines that the benefit derived from releasing the information exceeds the fees being waived.

Delegated Authority: The Director, Office of Resources Management, in concurrence with the Director, Office of Examination, Director, Office of Special Supervision and Corporate Affairs, and General Counsel is responsible for implementing this policy statement, developing operating procedures, developing a pricing schedule for the fees to be charged for the reports, and developing specific guidelines for fee waivers when releasing reports to educational institutions, researchers, Governmental agencies, newspapers, and other parties, as determined to be appropriate. Any of these responsibilities may be delegated.

Reporting Requirements: The Director, Office of Resources Management, shall make a report annually concerning nonexempt CRS Report releases and the number of requests and fees received to the Chief Operating Officer.

Adopted this 20th day of March, 1995 by order of the Board.

Dated: March 22, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–7554 Filed 3–27–95; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Intra-Agency Appellate Process

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of guidelines.

SUMMARY: On March 21, 1995, the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) adopted guidelines for the establishment of an independent intra-agency appellate process to review material supervisory determinations as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The guidelines were effective upon adoption and supersede the FDIC's procedures for requesting review of supervisory determinations set forth in FIL–11–92, dated February 7, 1992. The guidelines are intended to clarify the types of determinations that are eligible for review and establish the process by which appeals will be considered and decided.

DATES: The guidelines were effective on March 21, 1995.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist (202/898–6892), Division of Supervision; Ken A. Quincy, Section Chief (202/942–3088), Division of Compliance and Consumer Affairs; Gwen E. Factor, Counsel (202/898–8522), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Act) requires the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. The process is to be established within 180 days after enactment of the Act (i.e., by March 22, 1995). The Act defines the term "independent appellate process" to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In establishing the appeals process, the FDIC must ensure that: (1) any appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

Section 309(c) of the Act requires public notice and opportunity for comment on proposed guidelines for the establishment of the independent appellate process. On December 28, 1994, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments on

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proposed guidelines (59 *Fed. Reg.* 66965). The comment period closed on January 27, 1995.

Discussion of Comments on Proposed Guidelines

The FDIC received 24 comment letters on the proposed guidelines, including some after the close of the comment period. Fourteen were from depository institutions, four from trade associations, one from a State banking department, and five from other interested parties. The comments generally supported the proposed guidelines, although various suggestions and recommendations were made to revise the proposal. The following is a discussion of the comments received on the proposal, including those received after the close of the comment period.

A. Independent Appellate Process

The Act requires the FDIC to establish an independent appellate process for the review of material supervisory determinations by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. To satisfy this requirement, the FDIC proposed to establish a Supervision Appeals Review Committee consisting of the Vice Chairperson as chair of the Committee, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees) to consider and decide appeals of material supervisory determinations.

Several commenters expressed concern regarding the composition of the Committee, suggesting that a committee composed only of senior regulators lacks balance and cannot be fair and unbiased. The FDIC does not share this view and points out that a majority of the members of the Committee are not directly responsible for the FDIC's supervision or compliance activities and do not report to the individuals responsible for those activities. Moreover, the Committee would include the Ombudsman (who reports on all matters to the Chairperson) and the Vice Chairperson The FDIC believes, however, that the inclusion of individuals who are knowledgeable and experienced in matters relating to the FDIC's supervision and compliance activities—the Directors of the Division of Supervision and the Division of Compliance and Consumer Affairs—would bring to the Committee the necessary experience and judgment to make well-informed decisions concerning determinations under review. The FDIC is confident that the members of the Committee can and will exercise their authority to review supervisory determinations in a responsible and unbiased manner. The FDIC believes that the long range interests of both the agency and the institutions it supervises are best served by assuring that all supervisory determinations (including appeals thereof) are as fair and accurate as possible.

Several commenters suggested including on the Committee individuals from outside the FDIC, such as representatives of the banking community and other governmental agencies. The FDIC believes that the addition of individuals from outside the FDIC not only is unnecessary to assure that the appeals process is fair and unbiased but also would be inappropriate. The addition of such individuals to the Committee would not be consistent with the statutory mandate to establish an "intra-agency" appeals process and could raise questions regarding the disclosure of records and other information contained in or related to examination, operating and other reports concerning an institution (which are generally exempt from public disclosure).

The FDIC requested specific comment on whether the Vice Chairperson should be included as a member of the Committee, even if it would mean that occasionally he might need to recuse himself from participation in a related enforcement action. Specific comment was also requested on how the Committee might be structured if the Vice Chairperson were not included. As discussed in the notice of proposed guidelines, the Vice Chairperson may be involved in the consideration and disposition of enforcement proceedings before the Board of Directors which, on occasion, may involve matters considered by the Committee. While the FDIC believes that the inclusion of the Vice Chairperson on the Committee should lend credibility, fairness and balance to the appeals process, it recognizes that the Vice Chairperson's participation in an appeal of certain material supervisory determinations could give the Vice Chairperson access to information which may not be part of the administrative record of a factually related enforcement proceeding. Although such a situation is unlikely to occur, if it does occur it may be prudent for the Vice Chairperson to recuse himself from participation in the related enforcement proceeding. Of the commenters that addressed this aspect of the proposal, all supported including the Vice Chairperson on the Committee, even if it would mean that occasionally he might need to recuse himself from participation in a related enforcement action. Commenters generally agreed that inclusion of the Vice Chairperson on the Committee would lend credibility, fairness and balance to the process.

One commenter suggested that the Committee has too much "horsepower" and that its members may have other, more pressing matters to which they may need to attend. The FDIC is committed to establishing a fair and credible review process and believes that the proposed committee structure accomplishes that objective. The FDIC recognizes, however, that at times some members of the Committee may need to delegate their responsibility to serve on the Committee to a senior member of their staff but believes that this in no way should diminish the credibility, balance or fairness of the Committee or the process.

In addition, many commenters expressed support for the proposed composition and structure of the Committee. After considering all of the comments on this aspect of the proposal, the FDIC continues to believe that the proposed composition and structure of the Committee not only satisfies the requirement of the Act to establish an independent intra-agency appellate process but also lends credibility, fairness and balance to the process. The FDIC therefore believes that no change to this provision is necessary.

B. Institutions Eligible To Appeal

The Act requires that the FDIC's appeals process be available to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC proposed that its appeals process be available not only to the insured depository institutions that it supervises (i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks) but also to other insured depository institutions with respect to which it makes material supervisory determinations. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

C. Material Supervisory Determinations

The Act requires the FDIC to establish an appeals process to review material supervisory determinations. The term "material supervisory determinations" is defined in the Act to include determinations relating to: (1) examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant to an institution. The Act specifically excludes from the definition of "material supervisory determinations" a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o.

1. Examination Ratings

The FDIC proposed to construe the reference to "examination ratings" to mean: (a) CAMEL ratings under the Uniform Financial Institutions Rating System; (b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations; (c) trust ratings under the Uniform Interagency Trust Rating System; (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System; (e) consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System; (f) registered transfer agent examination ratings; (g) government securities dealer examination ratings; and (h) municipal securities dealer examination ratings.

One commenter suggested that the proposed guidelines should be clarified to specifically reference the composite CAMEL rating (which is the rating revealed to an institution) as the rating eligible for appeal since component CAMEL ratings are not revealed to an institution. The FDIC believes that no change to this provision of the proposed guidelines is necessary. Since component ratings are not revealed to an institution, such ratings cannot be appealed regardless of whether there is a specific reference in the guidelines to composite ratings. The FDIC believes that the language of this provision is consistent with its intent to permit any examination rating revealed to an institution to be appealed.

2. Adequacy of Loan Loss Reserve Provisions

Since the Act defines material supervisory determinations to include the adequacy of loan loss reserve provisions, the FDIC proposed that such determinations be eligible for appeal. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

3. Loan Classifications

The Act defines material supervisory determinations to include determinations relating to loan classifications on loans that are significant to an institution. The FDIC proposed that classifications of other assets that are significant to an institution should also be eligible for appeal. In addition, the FDIC proposed that a classified loan or other asset could be regarded as significant to an institution if the amount of the loan or asset, individually or together with other classified loans or assets, equals or exceeds 10 percent of the institution's capital or 1 percent of its total assets.

A number of commenters suggested that the proposed guidelines were not clear as to how the 10 percent of capital or 1 percent of assets threshold may be reached on an aggregated basis. A few commenters noted that, while a particular percentage may be significant for one institution, it may not be significant for another institution depending on the totality of the circumstances. Another commenter suggested that there should be an ability to appeal not merely where there is a specified percentage of the portfolio classified, but where any classification has an adverse impact on the institution. In consideration of the concerns expressed with respect to this aspect of the proposal, the proposal has been revised to eliminate the 1 percent of assets threshold and clarify that loan or other asset classifications in dispute, individually or together with other classified loans or assets in dispute, that exceed 10 percent of an institution's total capital may be appealed. The FDIC believes that capital is the more sensitive and critical measure and that such measure should enable an institution to appeal classifications that materially affect the institution. The FDIC further believes that limiting loan and other asset classification appeals to those that involve a significant level of classification (*i.e.*, enough to be material) is necessary not only to discourage insignificant or unnecessary appeals but also to carry out the Act's intent that classifications that have a significant impact on an institution be eligible for appeal.

4. Determinations Not Eligible for Appeal

As provided in the Act, the term "material supervisory determinations" does not include a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The FDIC proposed that the term "material supervisory determinations" also should not include: (a) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (b) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties); (c) decisions to initiate informal enforcement actions (such as memoranda of understanding); (d) determinations relating to a violation of a statute or regulation; and (e) any other determinations not specified in the Act as being eligible for appeal.

A number of commenters suggested that these limitations were too restrictive and pointed out that the statutory listing of material supervisory determinations was merely illustrative and not intended to be exhaustive. They also noted that the proposals of the other banking agencies were not as restrictive as the FDIC's proposal. Upon further consideration of the relevant statutory language, the FDIC now believes that the proposal was unnecessarily restrictive as to the scope of determinations eligible for appeal. Consequently, the FDIC has expanded the scope of determinations that are eligible for appeal in two significant respects.

First, determinations relating to a violation of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution are eligible for appeal. The FDIC recognizes that interpretations of statutes or regulations frequently are the subject of differing views between examiners and the institution involved and such matters can have a material effect on the institution and the supervisory treatment accorded it. Review of such determinations is therefore consistent with the Act's goal of ensuring review of material supervisory determinations.

Second, instead of specifically excluding determinations not specified in the Act as being ineligible for appeal, the FDIC has created a catch-all category of other material supervisory determinations that may be appealed. Such category includes any determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

A number of commenters questioned the exclusion of decisions to initiate formal or informal enforcement actions from the scope of appealable determinations. A few commenters

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recommended that at least decisions to initiate informal enforcement actions should be appealable. One commenter argued that, if a determination to initiate an informal enforcement action was eligible for appeal, an institution could avoid the cost and burden associated with such action while an appeal is pending that could be resolved in the institution's favor. While there is some merit to this view, the FDIC believes that the possible abuse of the appeals process to delay or otherwise impede well-founded enforcement actions outweighs the concerns expressed. Moreover, appeals will be processed and decided expeditiously which the FDIC believes should minimize any costs or other burdens to the institution associated with an informal enforcement action.

One commenter questioned the exclusion of determinations relating to deposit insurance assessment risk classifications. The FDIC recognizes that such determinations may have a material impact on an institution but points out that it has procedures in place (which are set forth as an attachment to FIL–27–94, dated April 26, 1994) for requesting review of deposit insurance assessment risk classifications. Since the FDIC's role as deposit insurer is separate and distinct from its role as supervisor, it believes that review of determinations relating to deposit insurance assessment risk classifications should be kept separate from review of supervisory determinations. The FDIC believes that the current procedures for requesting review of deposit insurance assessment risk classifications are sufficient and that allowing parallel rights of appeal for such determinations would be confusing, duplicative, and wasteful.

One commenter recommended that examiner criticisms of insider related matters should be eligible for appeal, even in those instances where small or no dollar amounts are involved. Since the appeals process is designed to allow institutions to appeal material supervisory determinations, the FDIC believes that insider related matters that qualify as material supervisory determinations should be eligible for appeal while those matters that do not qualify should not be eligible for appeal.

A few commenters suggested that the provision in the proposed guidelines regarding determinations not eligible for appeal be revised to clarify that the underlying basis for a determination to take prompt corrective action or initiate a formal or informal enforcement action is appealable so long as it otherwise qualifies. The FDIC does not intend to exclude from the appeals process such underlying determinations so long as they are eligible for appeal. Based on these comments, the FDIC has revised the proposal to clarify this issue.

D. Authority To Initiate Appeal

The FDIC proposed that an institution should not be permitted to initiate an appeal of a material supervisory determination unless its board of directors considered the merits of the appeal and authorized that it be filed. This requirement was intended to assure that an institution's board of directors not only had knowledge of a possible appeal but also had an opportunity to consider its merits. The FDIC noted in the proposed guidelines that such involvement by the board of directors in the decision to initiate an appeal is consistent with its responsibility to oversee the institution's management and may discourage insignificant or unnecessary appeals. No commenters were critical of this requirement. However, one commenter expressly stated that such requirement should eliminate any frivolous appeals brought because of a personality conflict between a senior officer and an examiner. The FDIC therefore believes that no change to this aspect of the proposal is necessary.

E. Effect on Supervisory or Enforcement Actions

Section 309(g) of the Act provides that "[n]othing in ... section [309] shall affect the authority of an appropriate Federal banking agency or the National Credit Administration Board to take enforcement or supervisory action." To reiterate this mandate as well as to discourage any possible abuse of the appeals process, the FDIC proposed that use of the appeals process by any institution should not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against an institution.

No commenters directly addressed this aspect of the proposal. However, one commenter questioned whether there would be any adverse or prejudicial effect on an institution involved in a formal enforcement proceeding for failure to file an appeal of a related matter. That commenter also questioned the extent to which a final decision made by the Supervision Appeals Review Committee may be subject to collateral attack or review by an administrative law judge in an administrative enforcement action. The FDIC believes that the appeal process is not intended to affect the rights of parties in connection with enforcement proceedings.

F. Effect on Applications or Requests for Approval

The FDIC proposed that any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request would not be considered until a final decision concerning the appeal was made unless otherwise requested by the institution. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary.

G. Scope of Review

The FDIC proposed that the appropriate scope of review of any material supervisory determination should be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and that consideration should not be given to any facts or circumstances that occur or corrective action taken after the determination was made. No commenters questioned this limitation, although one commenter requested that the proposed guidelines be clarified to provide that the FDIC will consider facts and circumstances that existed at the time the determination was made but that may have been discovered or come to the attention of the FDIC or the institution after such determination. The FDIC believes that this is a useful clarification and has revised the proposed guidelines accordingly. However, the FDIC cautions institutions not to introduce or present information or arguments for the first time on appeal which could have been introduced or presented to the on-site examiner and/or appropriate Regional Office. While such information or arguments will be considered on appeal, the introduction of such information or arguments at a late date could impede the prompt and expeditious resolution of disputes.

H. Review Procedures

The FDIC proposed that an institution could appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The proposed guidelines would have required that the on-site examiner and the Regional Office promptly respond to any concerns raised by an institution regarding a material supervisory determination. Several commenters

incorrectly understood this provision to mean that an institution must first attempt to resolve any disputed determination with the on-site examiner and/or the appropriate Regional Office before it may file an appeal. While the proposed guidelines would have encouraged informal resolution of disputes, it was not intended to make informal resolution a condition to the filing of an appeal with the Washington Office. The FDIC therefore has revised the proposed guidelines to make this clear

The FDIC reiterated in the proposed guidelines that codification of this appeals process was not intended to affect its longstanding practice of affording institutions opportunities to express their views and concerns throughout the examination/supervisory process. Institutions are encouraged to discuss examination findings, loan loss reserve provisions and classifications on loans and other assets during on-site examinations as well as express any concerns to senior staff of the appropriate Regional Office if a matter has not been resolved by the on-site examiner. The FDIC continues to believe that an institution is best served by raising questions or objections concerning an examination when they arise through these informal processes rather than after the close of an examination and the filing of an appeal.

The proposed guidelines would have required all appeals to the Washington Office to be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A few commenters suggested that the time period in which an institution could file an appeal should be shortened, while others suggested a longer period. However, one commenter stated that the proposed time period was appropriate. The FDIC has reconsidered this issue but, given the time necessary for an institution to review findings, prepare a written appeal and obtain board approval, continues to believe that the proposed time period is appropriate.

To initiate an appeal, the FDIC proposed that the institution would have to submit, in writing, to the Director of the Division of Supervision, if the dispute was with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the dispute was with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review would have been required to include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position, and any good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed. No commenters addressed this aspect of the proposal. The FDIC therefore believes that no change to this provision is necessary, other than to require that the request for review include (in addition to the information listed in the proposed guidelines) citation of any relevant statute, regulation, policy statement or other authority to support the institution's position regarding the dispute and how resolution of the dispute would impact the institution and why such impact would be material.

The FDIC further proposed that the appropriate Division Director could, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she could not resolve the appeal in favor of the institution, must refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which was proposed to be comprised of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees)) would have reviewed the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The proposed guidelines would have required that the notice of decision contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

A few commenters suggested that the time period in which the FDIC must consider and decide an appeal should be shortened. However, given the time necessary to fully and fairly review an appeal and convene a meeting of the Supervision Review Appeals Committee, the FDIC continues to believe that the proposed time period is appropriate. One commenter suggested that the proposal be revised to provide an institution with the right to request an appearance before the Supervision Appeals Review Committee to present evidence or otherwise support its position. The FDIC agrees that an institution should have the right to request an appearance before the Committee to present evidence or otherwise support its position but believes that the Committee should have the discretion, depending on the facts and circumstances of the determination under appeal and whether such appearance would be productive, to determine whether to allow such appearance.

The proposed guidelines would have required that, if sufficient information was not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of its decision would be extended upon agreement of the institution for such additional time as it would take the institution to provide the information requested by the Committee. If the institution failed to provide the requested information, the Committee could (but would not have been required to) consider and decide the appeal on the information available. One commenter suggested that this provision was unclear. The FDIC believes that this provision is straightforward but explains that it was intended to allow the Committee to extend the time in which it must issue a decision in order to request and receive additional information from the institution. Under the proposal, the institution could refuse to agree to the delay or to provide the additional information, in which case the Committee could decide the appeal on the existing record or consider the appeal abandoned.

The FDIC proposed that the decision of the Supervision Appeals Review Committee would constitute the final supervisory decision of the FDIC and would not be eligible for further appeal pursuant to the FDIC's appeals process unless new information was submitted. In such case, the Committee could, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause was shown why such new information

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was material to the dispute. No commenters directly addressed this aspect of the proposal.

A few commenters suggested that an institution's position with respect to a determination under review should prevail if the FDIC fails to notify the institution of its decision within 60 days of receipt by the appropriate Division Director of the institution's request for review. The FDIC believes that appeals should be decided on their merits and not as a result of a failure to meet a time deadline. Nevertheless, the FDIC pledges to make every effort to decide an appeal and notify the institution of its decision within the 60-day time period. If, however, the institution believes that the FDIC has not acted in good faith to decide an appeal and notify the institution of its decision within this time period, it may request that the Ombudsman investigate or otherwise intervene in the matter.

One commenter suggested that the proposed guidelines be revised to address how records are to be expunged when a determination (that is part of an examination report or other written communication) is subsequently reversed through the appeals process. The FDIC is not convinced that a determination which is reversed through the appeals process needs to be expunged from the record. The FDIC believes that there is little risk that a subsequent reviewer of the institution's record will overlook the reversal and consider the determination as part of the record in its dealings with the institution.

I. Limitation of Use of Agency Ombudsman

Section 309(d) of the Act requires the FDIC to appoint an Ombudsman to act as a liaison with respect to any problem that any person may have in dealing with the FDIC resulting from its regulatory activities. The FDIC proposed that, in order to preserve the integrity of the appeals process, the merits of any material supervisory determination for which an appeal had been initiated or a final decision made should not be eligible for consideration by the Ombudsman. The FDIC also proposed, however, that the Ombudsman should not be prohibited from considering any other problems that an institution may have in dealing with the FDIC in connection with its appeals process, including consideration of the overall fairness, efficiency or effectiveness of the process.

A few commenters suggested that the Ombudsman should have the opportunity to consider and decide appeals outside the structure of the Supervision Appeals Review Committee. The FDIC believes that a committee approach, which brings together the experience and judgment of a variety of individuals from different disciplines (including the Ombudsman), is more likely to produce fair and sound results for both the institution involved and the FDIC than a process in which a single individual (such as the Ombudsman) alone considers and decides appeals. Moreover, as a member of the Supervision Appeals Review Committee, the Ombudsman will consider and participate in all appeals.

J. Coordination With State Regulatory Authorities

Two commenters suggested that the proposed guidelines should be revised to require that the FDIC coordinate with the appropriate State regulatory authority with respect to the appeal of a material supervisory determination that is the joint product of the FDIC and the State regulatory authority. These commenters also suggested that a representative of the appropriate State regulatory authority should sit on the Supervision Appeals Review Committee. The FDIC believes that such coordination is necessary but does not believe that a representative of the appropriate State regulatory authority should sit on the Committee. The FDIC believes that the inclusion of a representative of a State regulatory authority on the Committee would not be consistent with the statutory mandate to establish an "intra-agency" appeals process. However, to provide for coordination with State regulatory authorities with respect to the appeal of a joint material supervisory determination, the FDIC has revised the proposal to specifically require that the appropriate Division Director promptly notify the appropriate State regulatory authority of any appeal of a joint supervisory determination as well as to provide the regulatory authority with a copy of the institution's request for review and any other related materials and solicit the regulatory authority's views regarding the merits of the appeal before making a final decision. That Director will present the views of the regulatory authority (as well as his or her own views) before the Committee and attempt to reconcile the views of the regulatory authority with the views of the Committee. The Committee will notify the institution and the State regulatory authority of its decision and any differences remaining between the institution and the State authority will be left to those parties to resolve.

K. Prohibition on Examiner Retaliation

The FDIC proposed that any retaliation, abuse, or retribution by an agency examiner against an institution that appeals a material supervisory determination would constitute unprofessional conduct and should subject the examiner to appropriate disciplinary or remedial action by the appropriate Division Director. Under the proposed guidelines, such disciplinary or remedial action could have included oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the institution that was the subject of the retaliation, abuse, or retribution.

A few commenters suggested that the proposed guidelines be clarified to provide who an institution may contact in the event it believes or has any evidence that it has been subject to examiner retaliation. Other commenters suggested that the role of the Ombudsman should be expanded to include receiving, monitoring, and investigating complaints of examiner retaliation. The FDIC believes that the Ombudsman should be permitted to receive and investigate complaints of examiner retaliation as well as make recommendations to the appropriate Division Director for corrective action. The FDIC therefore has revised the proposed guidelines to provide that any institution that believes or has any evidence that it has been subject to examiner retaliation may file a complaint with the Ombudsman and/or the appropriate Division Director, Federal Deposit Insurance Corporation, 550 17th Street, Washington, D.C. 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken.

Other commenters suggested that the FDIC should contact every institution that files an appeal at various intervals after the appeal to inquire as to whether the institution believes or has any evidence that it has been subject to examiner retaliation. The FDIC does not believe that routine follow-up inquiries would be useful or productive in every case in which an institution has filed an appeal. Consequently, the FDIC will rely on complaints of examiner retaliation that it receives from institutions to monitor and investigate such activity.

One commenter suggested that the prohibition against examiner retaliation should be extended to cover all Regional Office personnel. The FDIC believes that retaliation by any employee at any level constitutes unprofessional conduct and should subject the employee to appropriate disciplinary or remedial action. Accordingly, the FDIC has revised the proposed guidelines to make clear that the prohibition on retaliation extends to all personnel, including Regional and Washington Office personnel.

For the reasons set out in the Preamble, the Board has adopted the Guidelines for Review of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Act) requires the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC has adopted these Guidelines for Appeals of Material Supervisory Determinations (Guidelines) in accordance with the Act. The Guidelines describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided.

B. Independent Appellate Process

The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by a supervisory appeals review committee consisting of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees).

C. Institutions Eligible to Appeal

These Guidelines apply not only to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks) but also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Material Supervisory Determinations

1 Determinations Eligible for Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines. Material supervisory determinations mean:

(a) CAMEL ratings under the Uniform Financial Institutions Rating System;

(b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System.

(f) registered transfer agent examination ratings;

(g) government securities dealer examination ratings;

(h) municipal securities dealer examination ratings;

(i) determinations relating to the adequacy of loan loss reserve provisions;

(j) classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;

(k) determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution; and

(l) any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

2. Determinations Not Eligible for Appeal

Material supervisory determinations do not include: (a) decisions to appoint a conservator or receiver for an insured depository institution; (b) decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o; (c) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (d) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties) or under any other provisions of law or regulation; and (e) decisions to initiate informal enforcement actions (such as memoranda of understanding). The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (e.g., loan classifications) are appealable provided they otherwise qualify

E. Authority to Initiate Appeals

An institution may not initiate an appeal of a material supervisory determination pursuant to the procedures set forth in these Guidelines unless its board of directors has considered the merits of the appeal and authorized that it be filed.

F. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

G. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

H. Scope of Review

The scope of review of any material supervisory determination pursuant to the procedures set forth in these Guidelines is limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. However, the FDIC will consider any facts or circumstances that existed prior to or at the time the determination was made but that may have been discovered or come to the attention of the FDIC or the institution after such determination.

I. Review Procedures

An institution may appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office are expected to promptly respond

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to any concerns raised by an institution regarding a material supervisory determination. If an institution is unable to resolve the dispute with the on-site examiner or the Regional Office, it may appeal the determination to the Washington Office. While informal resolution of disputes is encouraged, it is not a condition to the filing of an appeal with the Washington Office.

All appeals to the Washington Office must be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. To initiate an appeal, the institution must submit, in writing, to the Director of the Division of Supervision, if the institution was unable to resolve the dispute with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the institution was unable to resolve the dispute with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review should include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would impact the institution and why such impact would be material, and the good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed.

The appropriate Division Director may, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she cannot resolve the appeal in favor of the institution, will refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which is comprised of the Vice Chairperson, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel (or their designees)) will review the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and the support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The notice of decision must contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

The institution may request an appearance before the Supervision Appeals Review Committee to present evidence or otherwise support its position. The Committee may in its discretion, depending on the facts and circumstances of the determination under appeal and whether such appearance would be productive, determine whether to allow such appearance.

If sufficient information is not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of the decision will be extended upon agreement of the institution for such additional time as it takes the institution to provide the information requested by the Committee. If the institution fails to provide the requested information, the Committee may but will not be required to consider and decide the appeal. Moreover, if the FDIC fails to notify the institution of its decision within 60 days of receipt by the appropriate Division Director of the institution's request for review, the institution may request that the Ombudsman investigate or otherwise intervene in the matter.

The decision of the Supervision Appeals Review Committee will constitute the final supervisory decision of the FDIC and will not be eligible for further appeal pursuant to the procedures set forth in these Guidelines unless new information is submitted. In such case, the Committee may, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause is shown why such new information is material to the dispute.

J. Limitation on Use of Agency Ombudsman

The merits of any material supervisory determination for which an appeal has been initiated or a final decision made will not be eligible for consideration by the Ombudsman (except in his or her capacity as a member of the Supervision Appeals Review Committee). Any other problems, however, that an institution may have in dealing with the FDIC in connection with the procedures set forth in these Guidelines are eligible for consideration by the Ombudsman, including consideration of the overall fairness, efficiency or effectiveness of the process.

K. Coordination With State Regulatory Authorities

In the event that a material supervisory determination under appeal is the joint product of the FDIC and a State regulatory authority, the appropriate Division Director will promptly notify the appropriate State regulatory authority of the appeal, provide to the regulatory authority a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the appeal before making a final decision. That Director will present the views of the regulatory authority (as well as his or her own views) before the Supervision Appeals Review Committee and attempt to reconcile the views of the regulatory authority with the views of the Supervision Appeals Review Committee. The Supervision Appeals Review Committee will notify the institution and the State regulatory authority of its decision and any differences remaining between the institution and the State authority will be left to those parties to resolve.

L. Prohibition on Examiner Retaliation

Any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action by the appropriate Division Director. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the institution that was the subject of the retaliation, abuse, or retribution. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Ombudsman and/or the appropriate Division Director, Federal Deposit Insurance Corporation, 550 17th Street, Washington, D.C. 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken.

By order of the Board of Directors.

Dated at Washington, D.C. this 21st day of March, 1995

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 95–7523 Filed 3–27–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Availability of FEMA-REP–11, Revision

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability.

SUMMARY: FEMA announces the availability of the document "A Guide to Preparing Public Information Materials and Emergency Alert System Instructions for Radiological Emergencies," FEMA-REP–11, Revision, and requests comments on the document.

DATES: Comments and responses should be sent no later than June 26, 1994.

ADDRESSES: Comments on "FEMA-REP–11, Revision" should be sent to the Rules Docket Clerk, Office of the General Counsel, room 840, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Senior Policy Advisor, Preparedness and Policy Branch, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2857.

SUPPLEMENTARY INFORMATION: FEMA-REP–11 was first published in June 1987. This document provided assistance to State and local governments and Nuclear Regulatory Commission (NRC) licensees in the development of emergency public information materials. This revision continues to provide such assistance, and provides additional guidance on the development, review, and evaluation of emergency broadcast messages for the public. Our intent is to help responsible organizations to alert the public and to provide emergency instructions and information on the classification of an emergency, the populations and areas potentially affected, and the protective measures that may be necessary. We welcome your comments on this document.

Dated: March 20, 1995

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises

[FR Doc. 95–7578 Filed 3–27–95; 8:45 am]

BILLING CODE 6718–20–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–068

Title: Inter-American Freight Conference

Parties:

A.P. Moller-Maersk Line
Empresa de Navegacao Alianca, S.A
Frota Amazonica S.A.
Columbus Line
Transroll/Sea-Land Joint Service
Crowley American Transport, Inc.
A/S Ivarans Rederi d/b/a Ivaran Lines
Companhia Maritima Nacional
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas

Synopsis: The proposed amendment adds a new Article 14.04—Service Contracts, which establishes rules for any new member that joins the conference with respect to that member's independent service contracts.

Agreement No.: 203–011492

Title: TWRA/8900 Discussion Agreement

Parties:

American President Lines, Ltd.
Transpacific Westbound Rate Agreement
Croatia Line
Hapag Lloyd AG
The "8900" Lines Agreement
A.P. Moller-Maersk Line
DSR-Senator Joint Service
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
P&O Containers, Ltd.
United Arab Shipping Company (S.A.G.)
Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
The National Shipping Company of Saudi Arabia

Synopsis: The proposed Agreement authorizes the parties to meet and discuss tariffs, service contracts, service items, rates, charges, classifications, practices, terms, conditions, rules, regulations, and other matters of mutual concern in the trade from U.S. ports and points to ports and points in India, Pakistan, Bangladesh, Sri Lanka and Myanmar. Adherence to any agreement reached is voluntary.

Agreement No.: 203–011493

Title: Cool Carriers AB/Dammers Chartering NV Discussion Agreement

Parties:

Cool Carriers AB
Dammers Chartering NV

Synopsis: The proposed Agreement authorizes the parties to meet and discuss, tariffs, service contracts, service items, general rate levels (including general rate increases and decreases), specific rates, charges, classifications, practices, terms, conditions, rules, regulations, and other matters of mutual concern in the trade between ports and points in Australia to ports and points in the U.S. Adherence to any agreement reached is voluntary.

Dated: March 22, 1995

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary

[FR Doc. 95–7529 Filed 3–27–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3599
Name: Fari International, Inc.
Address: 8550 N.W. 66th Street, Miami, FL 33166

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Date Revoked: February 20, 1995
Reason: Failed to furnish a valid surety bond.
License Number: 2261
Name: Chicago Cargo Corporation
Address: 9420 W. Foster Ave., Ste. L–1, Chicago, IL 60656
Date Revoked: February 22, 1995
Reason: Failed to furnish a valid surety bond.
License Number: 3818
Name: Jamar Shipping, Inc.
Address: 16511 Hedgecroft, Ste. 208, Houston, TX 77060
Date Revoked: February 24, 1995
Reason: Failed to furnish a valid surety bond.
License Number: 1305
Name: W.A. Phelps & Co., Inc.
Address: One World Trade Center, #2109, New York, NY 10048
Date Revoked: February 25, 1995
Reason: Failed to furnish a valid surety bond.
License Number: 3438
Name: Virgilio A. Camota dba Jenken Freight Services
Address: World Trade Center, Ste. 219, San Francisco, CA 94111
Date Revoked: March 3, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 95–7531 Filed 3–27–95; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarded License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Southern World International, Inc., 815 NW., 57th Ave., Suite 307, Miami, FL 33126, Officers: Herbert T Whitley, III, President, David H. Paulsen, Secretary
Penbroke Marine Services, Inc., 803 Castleton Ave., Staten Island, NY 10310, Officers: Wayne R. Lindeman, President, Renate K. Lindeman, Director/Secretary
B.W.S. Trade Coordinators, Inc., 115 Essex Road, Summit, NJ 07901, Officers; James O. Bohnstedt, President, Angelo A. Borras, Vice President
Sureway Air Traffic Corporation, d/b/a Sureway International Logistics, 48–40 34th Street, Long Island City, NY 11101, Officers: Thomas Lopresti, President, Joe Caruvana, Vice President

Dated: March 22, 1995.
By the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
[FR Doc. 95–7530 Filed 3–27–95; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Heartland Financial USA, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heartland Financial USA, Inc., Dubuque, Iowa; to acquire 100 percent of the voting shares of Riverside Community Bank, Rockford, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Financial Corporation, Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank (in organization), Topeka, Kansas.

Board of Governors of the Federal Reserve System, March 22, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board
[FR Doc. 95–7520 Filed 3–27–95; 8:45 am]
BILLING CODE 6210–01–F

Professional Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Professional Bancorp, Santa Monica, California; to engage *de novo* in making and servicing of loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 22, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–7521 Filed 3–27–95; 8:45 am]
BILLING CODE 6210–01–F

Otis Truman Arnold, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Otis Truman and Anita Ray Arnold, both of Texarkana, Texas; to acquire a total of 49.1 percent of the voting shares of New Boston Bancshares, Inc., New Boston, Texas, and thereby indirectly acquire First National Bank of New Boston, New Boston, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. James Lester Ryan, Orinda, California; to acquire an additional 2.32 percent, for a total of 10.65 percent, of the voting shares of BWC Corp., Walnut Creek, California, and thereby indirectly acquire Bank of Walnut Creek, Walnut Creek, California.

Board of Governors of the Federal Reserve System, March 22, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–7519 Filed 3–27–95; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 10 a.m.–5 p.m., April 12, 1995.

Place: The Washington Court Hotel, Ash Room, 525 New Jersey Avenue, NW, Washington, DC 20001

Status: Closed 10 a.m.–12 noon; Open 1 p.m.–5 p.m.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters To Be Discussed: The agenda will include personnel and organizational issues relating to the reorganization of NIOSH. The meeting will convene in closed session from 10 a.m. to 12 noon to discuss subject matter relating solely to the internal personnel rules and practices of NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(2), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. The open portion of the meeting will include a report from the Director of NIOSH, a toxicology report, an extramural report, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road NE., Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: March 22, 1995.

Jack Jackson,
Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).
[FR Doc. 95–7579 Filed 3–27–95; 8:45 am]
BILLING CODE 4163–19–M

Food and Drug Administration

[Docket No. 94D–0407]

Miscellaneous Compliance Policy Guides; Revocation

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of two compliance policy guides (CPG's) because they are outdated. This action is being taken to ensure that FDA's CPG's are accurate and current.

DATES: Effective March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–594–1785.

SUPPLEMENTARY INFORMATION: FDA is revoking the following CPG's because they are outdated:

(1) CPG 7126.06 "State Analysis of Animal Feed for Protein, Fat, and Fiber Content," and

(2) CPG 7126.14 "Protein in Animal Feeds."

These CPG's were intended to assist the States in enforcing their requirements for guaranteed analysis labeling claims when their regulatory authority was insufficient. However, State regulatory authority is sufficient, and the States have not required use of these CPG's for a number of years. Futhermore, if FDA regulatory action is required, the agency has ample authority. Therefore, FDA is revoking CPG's 7126.06 and 7126.14 because the are outdated.

Dated: March 13, 1995

Gary Dykstra,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 95–7615 Filed 3–27–95; 8:45 am]
BILLING CODE 4160–01–F

[Docket No. 94D–0356]

Protocol Development for Clinical Effectiveness and Target Animal Safety Trials; Availability of Guideline

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guideline entitled, "Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials" prepared by the Center for Veterinary Medicine (CVM) This guideline describes a suggested systematic approach to be followed when designing and reporting effectiveness and target animal safety studies that are conducted to provide data to support animal drug approvals.

DATES: Written comments may be submitted at any time.

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ADDRESSES: Submit written requests for single copies of the guideline entitled, "Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials" to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Larry Ventura, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1647.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the guideline entitled, "Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials" prepared by CVM. The guideline is intended to be used by clinical investigators, study monitors, and sponsors, when designing investigations of effectiveness and target animal safety for animal drug approval and may be used when submitting the final reports of these trials. This guideline was written in response to a request by the animal health industry for guidance on facilitating protocol development and expediting CVM's review of the submitted protocols, and it should help sponsors to include all essential components of the study in the protocol. More uniform reports should allow a systematic, orderly review of the data by CVM. The goals of the protocol development guideline are to:

1. Suggest a uniform system for writing study protocols,
2. Provide a reference of essential items that should be considered for inclusion in a study protocol,
3. Facilitate the development of complete study protocol(s) by the author(s),
4. Design more user friendly protocols for investigator(s),
5. Enable FDA reviewers to evaluate study protocols more quickly and convey their comments in terms more easily understood by the sponsor, and
6. Reduce the number of essential revisions of study protocols.

The guideline offers a complete outline of the components necessary for a well-designed study so that CVM and industry have a common reference point. This uniform approach will facilitate the drafting of study reports by the sponsor and their subsequent review by CVM. The contents of this guideline are neither all inclusive nor will all items listed be applicable to all study protocols. It is the responsibility of the sponsor to ensure that the essential components of a study are included in their protocol. Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements A person may follow the guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA.

Guidelines are generally issued under §§ 10.85(a) and 10.90(b)(21 CFR 10.85(a) and 10.90(b)). The agency is now in the process of revising §§ 10.85(a) and 10.90(b). Therefore, this guideline is not being issued under the authority of §§ 10.85(a) and 10.90(b). A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the document are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy, identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, at the Dockets Management Branch.

Dated: March 16, 1995.

William B. Schultz,

Deputy Commissioner for Policy

[FR Doc. 95–7513 Filed 3–27–95; 8:45 am]

BILLING CODE 4160–01–F

Industry and Consumer Exchange Meeting Concerning FDA and APHIS Activities on a Potential Agreement With the European Union Related to Human and Animal Drug and Biological Product Information; Notice of Public Meeting

AGENCIES: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) and Animal and Plant Health Inspection Service (APHIS) are cosponsoring a public meeting with all persons interested in a potential agreement with the European Union that would facilitate the harmonization of good manufacturing practices (GMP's) and quality controls for human and animal drug and biological products and associated compliance and enforcement activities, and provide for the exchange and use of such information by the respective regulatory authorities. Such an agreement would enhance the goals of harmonizing the monitoring and enforcement standards of the GMP's and would facilitate international trade.

DATES: The industry and consumer exchange meeting will be held on Friday, March 31, 1995, 9 a.m. to 12 m.

ADDRESSES: The industry and consumer exchange meeting will be held at the Hubert H. Humphrey Bldg., Humphrey Auditorium, 200 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter M. Batts, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4480 (Fax 301–443–0235).

Those persons interested in attending this meeting should Fax their registration, including name, firm, or organization name, address, and telephone number to Nathaniel L. Geary, Office of External Affairs, Food and Drug Administration (301–443–5153) or telephone 301–443–6776. There is no registration fee, but advance registration is requested. Additionally, if there are any individuals that wish to make a presentation at this meeting, advance notice is required.

SUPPLEMENTARY INFORMATION: The purpose of the public meeting is to provide information concerning FDA and APHIS activities with the European Union related to human and animal drug and biological product GMP's and quality controls, as well as to provide an opportunity to hear and address concerns from persons involved in these industries and persons representing consumer and other interests.

FDA and APHIS have been participating in bilateral Mutual Recognition Agreement talks. These talks are being led by the Office of the U.S. Trade Representative and the Department of Commerce and by representatives of the European Union. FDA and APHIS will meet with representatives from the European Union and its Member States from April 3 to April 5, 1995, in Brussels, Belgium to exchange information on their respective programs. During the Brussels meeting, U.S. industry will have the opportunity to present its experience with U.S. and European GMP and quality control programs.

Dated: March 24, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–7740 Filed 3–24–95; 3:14 pm]

BILLING CODE 4160–01–F

Investigational New Drugs; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of the clinical hold review committee, which reviews the clinical holds that the Center for Drug Evaluation and Research (CDER) has placed on certain investigational new drug trials. The committee was established as a 1-year experiment in August 1991. The committee met quarterly through 1992 and currently meets semiannually as a regular program. The committee last met in October 1994. FDA is inviting any interested drug company to use the confidential mechanism to submit to the committee for its review the name and number of any investigational new drug trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in June 1995. Drug companies may submit review requests for the June meeting before April 27, 1995.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, rm. 14–105, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: FDA regulations at part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs in human subjects. These regulations require that the sponsor of a clinical investigation submit an investigational new drug application (IND) to FDA outlining the proposed use of the investigational drug. The IND must contain the study protocol, a summary of human and animal experience with the drug, and information about the drug's chemistry and pharmacology. FDA reviews an IND to help ensure the safety and rights of subjects and to help ensure that the quality of any scientific evaluation of drugs is adequate to permit an evaluation of the drug's efficacy and safety. An investigational new drug for which an IND is in effect is exempt from the premarketing approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug.

If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may impose a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug trials. A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be placed on one or more of the investigations covered by an IND. When a proposed study is placed on clinical hold, subjects may not be given the investigational drug as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug, and patients already in the study should stop receiving therapy involving the investigational drug unless FDA specifically permits it.

FDA regulations at 21 CFR 312.42 describe the grounds for the imposition of a clinical hold. When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for the imposition of a hold order, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, the agency may order a clinical hold. In CDER, a clinical hold is ordered by or on behalf of the director of the division that is responsible for review of the IND. The order identifies the studies under the IND to which the hold applies and explains the basis for the action. The hold order may be made by telephone or other means of rapid communication, or in writing. Within 30 days of the imposition of the clinical hold, the division director provides the sponsor with a written explanation of the basis for the hold. Any sponsor who has not received a written explanation within 30 days should notify the division and request that it be issued. In addition to providing a statement of reasons, this ensures that the hold is recorded in CDER's management information system.

The clinical hold order specifies whether the sponsor may resume the affected investigation without prior notification by FDA once the deficiency has been corrected. If the order does not permit the resumption, an investigation may resume only after the division director or his or her designee has notified the sponsor that the investigation may proceed. Resumption may be authorized by telephone or other means of rapid communication. If all investigations covered by an IND remain on clinical hold for 1 year or longer, FDA may place the IND on inactive status.

FDA regulations at 21 CFR 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, a sponsor may request a meeting with the review staff and management to discuss the hold.

Over the years, drug sponsors have expressed a number of concerns about the clinical hold process, including concerns about the scientific and procedural adequacy of some agency actions. FDA undertook several initiatives to evaluate the consistency and fairness of the Center's practices in imposing clinical holds. First, CDER completed a center-wide review of clinical holds recorded in the management information system. While some differences in practice and procedure were discerned among divisions, it appeared that the procedures specified in the regulations were, in general, being followed, and that holds were scientifically supportable.

Second, FDA established a committee in CDER to review selected clinical holds for scientific and procedural quality. The committee held pilot

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meetings in 1991 and 1992. The trial phase of the committee review process confirmed the agency's view that the divisions in CDER impose clinical holds in a matter that is generally consistent with FDA's procedural requirements and that holds are imposed on scientifically supportable grounds.

The clinical hold committee review process is now a regular, ongoing program. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending hold to have that hold considered "anonymously." The committee consists of senior managers in CDER, a senior official from the Center for Biologics Evaluation and Research, and FDA's Chief Mediator and Ombudsman. The committee now meets semiannually. The committee last met in October 1994.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review holds proposed for review by drug sponsors. In general, a drug sponsor should consider requesting review when it disagrees with the agency's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to FDA's Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CDER staff, with the exception of the Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with agency regulations and CDER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, will be available from the Chief Mediator and Ombudsman. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites drug companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational new drug trial that was placed on clinical hold during the past 12 months that they want the committee to review at its June meeting. Submissions should be made by April 27, 1995, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: March 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–7575 Filed 3–27–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: April 12, 1995.

Time: 2 p.m.

Place: NIH, Westwood Building, Room 303, Telephone Conference.

Contact Person: Dr. Joe Marwah, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7158.

Name of SEP: Biological and Physiological Sciences.

Date: April 18, 1995.

Time: 12:30 p.m.

Place: NIH, Westwood Building, Room 417B, Telephone Conference.

Contact Person: Dr. Gerald Greenhouse, Scientific Review Admin., 5333 Westbard Ave., Room 417B, Bethesda, MD 20892, (301) 594–7385.

Name of SEP: Multidisciplinary Sciences.

Date: April 26, 1995.

Time: 10 a.m.

Place: NIH, Westwood Building, Room 2A15, Telephone Conference.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 5333 Westbard Ave., Room 2A15, Bethesda, MD 20892, (301) 594–7374.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 83.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7515 Filed 3–27–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 60997–8, November 29, 1994) is amended to reflect the reorganization of the Office of the Director, National Institute of Allergy and Infectious Diseases (OD/NIAID). The reorganization consists of the following: (1) Retitle the (a) Office of Administrative Management (HNM17) to the Office of Administrative Services (HNM17); (b) Financial Management and Information Systems Branch (HNM173) to the Office of Financial Management (HNMI2); and (c) Personnel Management Branch (HNMI74) to the Office of Human Resources Management (HNM14); (2) establish the Office of Technology Information Systems (HNM15); and (3) transfer the functions of the Office of Tropical Medicine and International Research (OTMIR) (HNM19) to the Division of Microbiology and Infectious Diseases (HNM5) and abolish the OTMIR. This reorganization will enable the NIAID to better fulfill its mission by restructuring the OD/NIAID to better integrate related program areas and streamline operations.

Section HN–B, Organization and Functions is amended as follow: (1) Under the heading *Office of the Director (HNM1), National Institute of Allergy and Infectious Diseases (HNM),* insert the following:

Office of Financial Management (HNM12). (1) Serves as principal advisor to the Institute Director, Deputy Director for Management and Operations, and Division Directors in the financial management aspects of the planning, formulation, execution, and evaluation of the Institute's research grant, training, and intramural research programs; (2) collaborates with program planning staff in the development and coordination of the Institute programs with the budget process; (3) formulates and monitors the Institute's financial management program and establishes a system of effective control of funds utilized

through intramural research, grants, and contractual processes, including provision of the full range of program fiscal control for the Institute's extramural grant and contract programs; (4) is responsible for: (a) providing budget guidance to NIAID program areas; (b) compiling and preparing the Institute budget and assuring that the budget meets the needs of the Institute management in controlling the financial aspects of its diverse and complex research programs in allergic and infectious diseases; (5) is responsible for devising financial data systems for NIAID that are beneficial in obtaining data for management decisions, and at the same time are sufficiently compatible with the central NIH accounting system so that dual reporting does not exist; (6) develops budget back-up material for OMB and Congressional appropriation hearings and assists in the briefing of witnesses in defense of the budget before NIH, PHS, DHHS, and Congress; (7) serves as a focal point for the monitoring and clearance of budgetary and fiscal data as the result of Congressional and public inquiries; (8) provides fiscal data required in program evaluation and development, including developing, charting, and analyzing historical information depicting Council and fiscal year activity; (9) prepares special reports for the OD/NIAID Advisory Council and Subcommittees, and the NIH, DHHS, and OMB; (10) provides fact-finding, evaluation, and advisory staff services to the Division Directors; (11) maintains dollar control over the international transactions for the Institute; (12) designs, develops, and maintains the computer-based scientific and fiscal data collection, storage, and retrieval system for the Institute's contracts, grants, intramural research projects, fellowships and training awards; and (13) serves as an advisor to senior staff in the development of appropriate criteria and formats for the production of reports based on the data.

(2) After the heading *Office of Communications (HNM13),* insert the following:

Office of Human Resources Management (HNM14). (1) Advises the Director, Deputy Director for Management and Operations, and Division Directors and their staff on all aspects of personnel management; (2) evaluates Institute personnel programs; (3) provides central personnel management services for the NIAID; (4) provides leadership and planning for the NIAID on personnel policy development, training, personnel planning, recruitment, employee development, salary administration, equal employment opportunity, and other personnel functions; (5) makes studies and recommendations to top Institute management for new or redirected personnel efforts and policies; and (6) works closely with the Director, OHRM/NIH and staff in all aspects of personnel management.

Office of Technology Information Systems (HNM15). (1) Plans and evaluates requirements for database management systems (DBMS); (2) supports the day-to-day operation of client/server database systems; (3) directs the integration of the NIAID database systems into a cohesive, unified environment; (4) coordinates the database information systems to provide a secure, streamlined, and integrated information repository; (5) directs the development of DBMS systems from the initial requirements analysis to the final deployment of production systems and project management of externally developed systems; (6) interacts with the NIH DBMS technical community to further the integration of NIAID systems with global NIH systems (ADB, MIS, IMPACT); (7) provides oversight for the migration of existing stand-alone applications (EDS, PAF, PATS, PAM) into an integrated, client/server platform; (8) provides basic personal computer hardware and software support services to the staff; (9) provides in-depth guidance and supports working with existing information technology personnel; (10) maintains or provides guidance for the maintenance of the LAN/WAN infrastructure, including the Local and Wide area network cabling plant, backbone connections, routers, protocol routing, and problem resolution; (11) maintains or consults on the support of file and print servers, e-mail, host access (Delpro), and backup services; (12) is responsible for the design and implementation of new LAN/WAN infrastructures (including renovations and upgrades to meet changes in technical industry standards; (13) provides solution enhancements and extensions to existing systems; (14) extends the reach of in-house E-mail systems to inter-operate with other E-mail systems; and maintains streamlined connectivity with other NIH systems; (15) is responsible for vision, trial, and implementation of new technologies (e.g.: video-conferencing; digital imaging; remote computing/telecommuting; document imaging and archiving; virtual reality technologies, cellular/wireless technologies (voice and data); and Internet access to multimedia information [Gopher, Mosaic] electronic scientific journals.); and (16) as negotiated with other organizations, provides all or selected functions noted above under the NIH service center concept.

(3) Under the heading *Office of Administrative Management (HNM17),* delete the title and functional statement in their entirety and substitute the following:

Office of Administrative Services (HNM17). (1) Exercises the responsibilities of the Executive Officer, NIAID; (2) directs, coordinates, and conducts administrative activities of the Institute by providing assistance in the areas of: (a) administrative management and services for the extramural, intramural, and OD organizations of the Institute; (b) management analysis services; (c) network services; and (d) acquisition management services; (3) advises the Director, Deputy Director for Management and Operations, and Division Directors on developments in management and their implications and effects on program management; (4) develops policies on administrative management and prepares and issues procedures and guidelines for implementation of administrative policies and requirements; and (5) coordinates the government ethics program of the Institute.

(4) Under the heading *Office of Tropical Medicine and International Research (HNM19),* delete the title and functional statement in their entirety.

Dated: January 26, 1995

Harold Varmus,

Director, NIH.

[FR Doc. 95–7516 Filed 3–27–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse Prevention Conference Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Substance Abuse Prevention Conference Review Committee, in April 1995.

The meeting of the Committee will include discussion of announcements and reports of administrative, legislative, and program developments. The Committee will also be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, Committee Management Liaison, Office of

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Extramural Activities Review, SAMHSA, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–4783.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee
Meeting Date(s): April 10–13, 1995
Place: Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814
Open: April 10, 1995, 8:30 a.m.–9:30 a.m.
Closed: April 10, 1995, 9:30 a.m. to April 13, 1995, at adjournment
Contact: Ferdinand W. Hui, Ph.D.; Rockwall II Building, Suite 630, Telephone: (301) 443–9912.

Dated: March 22, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–7573 Filed 3–27–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3908]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 17, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notices of Submission of Proposed Information Collection to OMB

Proposal: Schedule of Pooled Project Mortgage.
Office: Government National Mortgage Association.
Description of the need for the information and its proposed use: Form HUD–11721 provides a means of identifying specific project mortgages in the pool and assures that all required mortgage documents have been delivered to a document custodian. This information is necessary to assure GNNA's interest in the pooled mortgage in event of a default.
Form Number: HUD–11721.
Respondents: Businesses or Other For-Profit and the Federal Government.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11721	80		5		.1		40

Total Estimated Burden Hours: 40.
Status: Extension with changes.
Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1995.

Proposal: Schedule of Pooled Loans—Manufactured Home Loans; Issuer Certification of Pool Composition-Manufactured Home Loans.
Office: Government National Mortgage Association.
Description of the Need for the Information and Its Proposed Use: The information collected provides a means of identifying specific manufactured home loans in the pool and assure that all the required loans and related documents have been delivered to a document custodian. In addition this information is necessary to assure GNNA's interest in the pooled loans in the event of a default and to provide information on interest rates, terms, and constraints for manufactured home loan pools.
Form Number: HUD–11725 and HUD–11739.
Respondents: Businesses or Other For-Profit and the Federal Government.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11725	12		20		.25		60
HUD–11739	12		20		.25		60

Total Estimated Burden Hours: 120.
Status: Extension with changes.
Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1995.

Proposal: Lead-Based Paint Hazard Control Grant Program Data Collection for Rounds Two and Three Granntees.
Office: Lead-Based Paint Abatement and Poisoning Prevention.
Description of the Need for the Information and Its Proposed Use: This data collection is designed to provide timely information to HUD regarding the implementation progress of the grantees on carrying out the Lead-Based Paint Hazard Control Grant Program. The information collection will also be used to provide Congress with status reports as required by Title X of the Housing and Community Development Act of 1992.
Form Number: None.
Respondents: State, Local, or Tribal Governments
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Data Collection	51		4		45		9,075

Total Estimated Burden Hours: 9,075.
Status: New.
Contact: Susan C. Judd, HUD, (202) 755–1822; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1995.

Proposal: 1995 Property Owners and Managers Survey—Computer Assisted Telephone Interview (CATI).
Office: Policy Development and Research.
Description of the Need for the Information and Its Proposed Use: The purpose of this pre-call survey is to verify and update the names and addresses of owners/managers of rental properties. These owners/managers will be interviewed in the 1995 Property Owners and Managers Survey.
Form Number: None.
Respondents: Businesses or Other For-Profit.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	17,500		1		.08		1,458

Total Estimated Burden Hours: 1,458.
Status: New.
Contact: Duane McGough, HUD, (202) 708–1060; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1995.

[FR Doc. 95–7550 Filed 3–27–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–800265

Applicant: Patrick Stanosheck, Cheyenne, WY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F.W.M. Bowker, "Thornkoof", Grahmstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–800228

Applicant: Smithkline Beecham Pharmaceuticals, King of Prussia, PA.

The applicant requests a permit to export and reimport nonliving museum/herbarium plant specimens previously accessioned into the applicant's collection for the purpose of scientific research.

PRT–772163

Applicant: Morris Animal Foundation, Englewood, CO

The applicant requests a permit to import blood, serum, and tissue samples collected from wild specimens of *Gorilla gorilla beringei* in Rwanda for the purpose of scientific research to enhance the survival of the species in the wild.

PRT–800371

Applicant: Mark O'Brien Productions, Inc., Orlando, FL.

The applicant requests a permit to export and reimport one captive-bred male leopard (*Panthera pardus*) to and from locations throughout the world for the purpose of enhancement of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 23, 1995

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–7597 Filed 3–27–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Intent To Issue a Prospectus for the Operation of an Air Taxi Service Within Channel Islands National Park

Summary: The National Park Service is seeking to award a concession permit for the operation of a Fixed Wing Air Taxi Service from two local airports to Santa Rosa Island in Channel Islands National Park.

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Supplemental Information: The operation will provide the public with an opportunity to fly to the second largest island within the park. Visitors arriving by the Air Taxi Service will be picked up at the airstrip and given a guided tour of the island by National Park Service personnel.

To be placed on the mailing list to receive this prospectus, send your name and address to: Superintendent, Channel Islands National Park, Attention: Air Taxi, 1901 Spinnaker Drive, Ventura, CA 93001, or call: (805) 658–5717—Jack Fitzgerald.

Applicants will be accepted for Sixty (60) days under the terms described in the Prospectus. The Sixty (60) day application period will begin with the release of the Prospectus which is expected to occur shortly after the publication of this notice.

Dated: February 27, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–7533 Filed 3–27–95; 8:45 am]

BILLING CODE 4310–70–M

DEPARMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 18, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 12, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Russell County

Yuchi Town, Address Restricted, Fort Benning, 95000453

ALASKA

Dillingham Borough—Census Area

Fishermen's Co-op, 247 Main St., Dillingham, 95000400

Juneau Borough—Census Area

Chicken Ridge Historic District, Roughly, along Seventh St., Goldbelt Ave., Dixon St. and Basin Rd., Juneau, 95000420

COLORADO

Douglas County

First National Bank of Douglas County, 300 Wilcox St., Castle Rock, 95000440

Las Animas County

Carnegie Public Library, 202 N. Animas St., Trinidad, 95000438

Rio Grande County

Carnegie Library, 120 Jefferson St., Monte Vista, 95000439

CONNECTICUT

Middlesex County

Fenwick Historic District, Roughly, along Agawam, Neponset and Pettipaug Aves., Town of Old Saybrook, Fenwick, 95000437

Tolland County

Somersville Historic District, Roughly, along Main, Maple and School Sts., Pinney and Shaker Rd. and Quality Ave., Town of Somers, Somersville, 95000401

DISTRICT OF COLUMBIA

District of Columia State Equivalent

Metropolitan Club, 1700 H St., NW., Washington, 95000441

O Street Market, 1400 7th St., NW., Washington, 95000442

GEORGIA

Chattahoochee County

Fort Benning Main Post Historic District, Jct. of I–85 and US 280/27, Fort Benning, 95000454

INDIANA

Marion County

Christian Park School No. 82 (Public School Building in Indianapolis Built Before 1940 MPS), 4700 English Ave., Indianapolis, 95000421

KANSAS

Dickinson County

Coulson, Emerson House, 813 N. Olive St., Abilene, 95000444

Saline County

Mount Barbara, 100 Mt. Barbara, Salina, 95000445

MICHIGAN

Benzie County

Frankfort Land Company House, 428 Leelanau St., Frankfort, 95000452

Kalamazoo County

South Street Historic District (Boundary Increase), Roughly, W. Lovell St. from Oakland Dr. to Pearl St. and Academy St. E of Oakland, Kalamazoo, 95000447

Stuart Area Historic District (Boundary Increase), Roughly along Ransom and Willard Sts., Allen Blvd. and Eleanor St., and 425—433 Douglas St. and 816 North St., Kalamazoo, 95000448

Ottawa County

Ottawa Beach Historic District, Ottawa Beach Rd., Park Township, Ottawa Beach, 95000451

NEW JERSEY

Camden County

Berlin Historic District, Roughly, along Washington, E. Taunton and Haines Aves. and parts of S. White Horse Pike, Jackson Rd. and Jefferson Ave., Berlin, 95000408

Mercer County

Brearley, Charles, House, 73 N. Clinton Ave., Trenton, 95000407

Higbee Street School, 20 Bellevue Ave., Trenton, 95000409

Monmouth County

River Street School, 60 River St., Red Bank, 95000410

NEW YORK

Orleans County

Medina Armory (Army National Guard Armories in New York State MPS), 302 Pearl St., Medina, 95000399

PUERTO RICO

Humacao Municipality

Guzman Family Pantheon, Jct. of Pàdre Rivera and Miguel Casillas Sts., Humacao, 95000436

Lopez de Pereyo, Palmira, House, Jct. of Font Martelo and Minerva Sts., Humacao, 95000435

TENNESSEE

Robertson County

Woodard Hall Farm (Boundary Increase) (Historic Family Farms in Middle Tennessee MPS), 5876 Owens Chapel Rd., Springfield vicinity, 95000450

Rutherford County

Coff-E-Hill Farm, 3783 Cripple Creek Rd., Readyville vicinity, 95000412

TEXAS

Potter County

Ranchotel, 2501 W. Sixth Ave., Amarillo, 95000411

UTAH

Davis County

Knowlton, George Quincy House, 93 E. 400 North, Farmington, 95000416

Garfield County

Administration Building, Old (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000430

Bryce Canyon Historic District (Boundary Increase) (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000434

Bryce Canyon National Park Scenic Trails Historic District (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000422

Bryce Inn (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000425

Horse Barn (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000433

Loop C Comfort Station (Bryce Canyon National Park MPS), N. Campground, Bryce Canyon National Park, Bryce Canyon vicinity, 95000428

Loop D Comfort Station (Bryce Canyon National Park MPS), N. Campground, Bryce Canyon National Park, Bryce Canyon vicinity, 95000429

National Park Service Housing, Old, Historic District (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000424

Rainbow Point Comfort Station and Overlook Shelter (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000427

Riggs Spring Fire Trail (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000431

Tropic Ditch (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000432

Under-the-Rim-Trail (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000423

Utah Parks Company Service Station (Bryce Canyon National Park MPS), Bryce Canyon National Park, Bryce Canyon vicinity, 95000426

Salt Lake County

Hest Jordan Hard Meetinghouse, 1140 W. 7800 South, West Jordan, 95000415

Wasatch County

Crook, Heber and Matilda, House and Lake Creek Schoolhouse, 4800 E. Lake Creek, Rd., Heber City, 95000414

Washington County

Hurricane—LaVerkin Bridge, E. o UT 9 over the Virgin R., Hurricane, 95000413

WEST VIRGINIA

Barbour County

Adaland, Co. Rd. 77/5 WV 76 at Fox Grape Run, Berryberg vicinity, 95000419

Berkeley County

Opequon Golf Club, Golf Club Rd. E of Opequon Cr., Martinsburg, 95000417

Jefferson County

Jefferson County Alms House, WV Secondary 15 SE of Leetown, Leetown vicinity, 95000418

WISCONSIN

Dodge County

Main Street Historic District, Roughly, 103 N. Main St.—126 S. Main St. and Bridge St. from Main to School St., Mayville, 95000443

La Crosse County

Callahan, John L. House, 933 Rose St., La Crosse, 95000406

Milwaukee County

Brewers Hill Historic District (Boundary Increase) (Brewer's Hill MRA), Roughly, Brown and Lloyd Sts. and Garfield and North Aves. from 2nd St. to Hubbard St., Milwaukee, 95000449

Waukesha County

Morey—Andrews House, 704 Westowne Ave., Waukesha, 95000405

Morey—Lewis House, 1312 Pleasant View Ave., Waukesha, 95000402

Morey—Markham House, 1017 Westowne Ave., Waukesha, 95000403

Morey—Seidens House, 2020 Easy St., Waukesha, 95000404

[FR Doc. 95–7566 Filed 3–27–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–711 (Final)]

Oil Country Tubular Goods (OCTG) From Argentina

AGENCY: United States International Trade Commission.

ACTION: Rescission of institution of final investigation.

SUMMARY: On March 8, 1995, the Commission received a letter from the U.S. Department of Commerce (Commerce) stating that it had amended its preliminary determination on OCTG from Argentina to correct for a ministerial error. Pursuant to this correction, Commerce has made a preliminary determination that OCTG from Argentina are not being sold at less than fair value within the meaning of the Tariff Act of 1930. Accordingly, the Commission rescinds its institution of a final investigation of OCTG from Argentina. However, because of the Commission's ongoing investigations on OCTG from Austria, Italy, Japan, and Korea, and because imports of OCTG from Argentina remain subject to investigation at Commerce, the Commission will continue its investigative activities, pending a final determination by Commerce.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: The institution of this investigation is being rescinded under authority of the Tariff Act of 1930, title VII.

Issued: March 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–7569 Filed 3–27–95; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Temporary Closing of Reference Service on Certain Textual Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for certain textual records holdings in the National Archives related to the move to the National Archives at College Park (Archives II) and the relocation of some records to the National Archives Building.

SUMMARY: This notice provides information about the period of time that reference service on certain textual records holdings of the National Archives will be unavailable due to the move of those holdings from their current locations in the National Archives Building in Washington, DC, and the Washington National Records Center in Suitland, Maryland, to new locations in either the new Archives II facility in College Park, Maryland, or the National Archives Building in Washington, DC. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

During the periods shown for the record groups listed on the schedule at the end of this notice, the National Archives will be unable to provide records for research, or process requests for reproductions (fee orders) or requests for information from these records. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for reopening the records for reference service. Changes in the overall move schedule may require changes in these dates.

For schedule updates and information on the new location of the records, call the User Services Division at (202) 501–5400.

Dated: March 20, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

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RECORD GROUPS CLOSING JULY–DECEMBER 1995

Cluster title	RG No.	Record group short title	Close date	Reopen date
Air Force	342	U.S. Air Force Commands, Activities, and Organizations	05/16/95	07/18/95
American Indian Related Records	217	Accounting Officers of the Department of the Treasury	06/26/95	08/30/95
Defense and Related Activities	333	International Military Agencies	05/08/95	07/06/95
Defense and Related Activities	334	Interservice Agencies	05/15/95	08/01/95
Defense and Related Activities	349	Joint Commands	06/12/95	08/11/95
Defense and Related Activities	361	Defense Logistics Agency	06/19/95	08/15/95
Defense and Related Activities	373	Defense Intelligence Agency	06/30/95	08/29/95
Defense and Related Activities	371	Defense Information Systems Agency	07/03/95	08/23/95
Defense and Related Activities	374	Defense Nuclear Agency	07/03/95	08/21/95
Defense and Related Activities	457	National Security Agency/Central Security Service	07/31/95	09/27/95
Defense and Related Activities	518	U.S. Central Command	08/15/95	10/03/95
Donated Materials	200	National Archives Gift Collection	10/06/95	11/09/95
Donated Materials	274	National Archives Collection of Records of Inaugural Committees.	10/18/95	11/22/95
Donated Materials	401	National Archives Collection of Materials Relating to Polar Regions.	10/23/95	11/29/95
Donated Materials	421	National Trust for Historic Preservation	10/27/95	12/04/95
Genealogical Related Records	015	Veterans Administration	10/16/95	01/12/96
Genealogical Related Records	029	Bureau of the Census	10/24/95	02/02/96
Genealogical Related Records	049	Bureau of Land Management	11/07/95	06/19/96
Judicial Branch	276	U.S. Courts of Appeals	05/19/95	07/03/95
Judicial Branch	482	Judicial Panel on Multidistrict Litigation	06/05/95	07/12/95
Maritime	026	U.S. Coast Guard	12/04/95	01/31/96
Modern Army	247	Office of the Chief of Chaplains	05/01/95	06/09/95
Modern Army	260	U.S. Occupation Headquarters, World War II	05/08/95	07/10/95
Modern Army	319	Army Staff	06/12/95	10/05/95
Modern Army	331	Allied Operational and Occupation Headquarters, World War II.	09/18/95	12/01/95
Modern Army	332	U.S. Theaters of War, World War II	10/31/95	12/13/95
Modern Army	335	Office of the Secretary of the Army	11/09/95	01/02/96
Modern Army	336	Office of the Chief of Transportation	11/29/95	01/12/96
Modern Army	337	Headquarters Army Ground Forces	12/11/95	01/25/96
Modern Army	338	U.S. Army Commands	12/18/95	04/11/96
Modern Navy	019	Bureau of Ships	07/31/95	12/21/95
Modern Navy	024	Bureau of Naval Personnel	10/20/95	01/25/96
Modern Navy	037	Hydrographic Office	11/20/95	02/02/96
Modern Navy	038	Office of the Chief of Naval Operations	11/17/95	02/27/96
Old Army	018	Army Air Forces	10/12/95	11/13/95
Old Army	077	Office of the Chief of Engineers	09/29/95	11/24/95
Old Army	092	Office of the Quartermaster General	10/26/95	12/20/95
Old Army	111	Office of the Chief Signal Officer	11/17/95	12/22/95
Old Army	112	Office of the Surgeon General (Army)	11/22/95	01/03/96
Old Army	153	Office of the Judge Advocate General (Army)	11/27/95	01/18/96
Old Army	156	Office of the Chief of Ordnance	12/11/95	02/09/96
State/Foreign Relations	084	Foreign Service Posts	04/04/95	09/22/95
State/Foreign Relations	208	Office of War Information	08/25/95	10/02/95
State/Foreign Relations	229	Office of Inter-American Affairs	09/01/95	10/04/95
State/Foreign Relations	239	American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas.	09/06/95	10/06/95
State/Foreign Relations	256	American Commission to Negotiate Peace	09/06/95	10/11/95
State/Foreign Relations	261	Former Russian Agencies	09/06/95	10/11/95
State/Foreign Relations	268	Philippine War Damage Commission	09/12/95	10/13/95
State/Foreign Relations	275	Displaced Persons Commission	09/12/95	10/13/95
State/Foreign Relations	286	Agency for International Development	09/15/95	10/17/95
State/Foreign Relations	306	U.S. Information Agency	09/18/95	10/19/95
State/Foreign Relations	316	Japan-United States Friendship Commission	09/25/95	10/03/95
State/Foreign Relations	353	Interdepartmental and Intradepartmental Committees (State Department).	09/26/95	10/03/95
State/Foreign Relations	383	Arms Control and Disarmament Agency	10/03/95	11/02/95
State/Foreign Relations	466	U.S. High Commissioner for Germany	10/16/95	11/21/95
State/Foreign Relations	469	U.S. Foreign Assistance Agencies, 1948–61	10/24/95	01/08/96
State/Foreign Relations	490	Peace Corps	12/04/95	01/10/96
Treasury/Revenue/Finance	101	Office of the Comptroller of the Currency	05/01/95	07/28/95
Treasury/Revenue/Finance	104	U.S. Mint	05/20/95	08/03/95
Treasury/Revenue/Finance	180	Commodity Futures Trading Corporation	05/30/95	08/09/95
Treasury/Revenue/Finance	195	Federal Home Loan Bank Board	05/30/95	08/11/95
Treasury/Revenue/Finance	265	Office of Foreign Assets Control	07/03/95	08/15/95
Treasury/Revenue/Finance	266	Securities and Exchange Commission	07/10/95	08/23/95
Treasury/Revenue/Finance	275	Export-Import Bank of the United States	07/17/95	08/25/95
Treasury/Revenue/Finance	318	Bureau of Engraving and Printing	07/19/95	08/29/95

RECORD GROUPS CLOSING JULY–DECEMBER 1995—Continued

Cluster title	RG No.	Record group short title	Close date	Reopen date
Treasury/Revenue/Finance	365	Treasury Department Collection of Confederate Records	07/24/95	08/31/95
Treasury/Revenue/Finance	366	Civil War Special Agencies of the Treasury Department	07/24/95	08/31/95

[FR Doc. 95–7514 Filed 3–27–95; 8:45 am]
BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board; Notice

Before Administrative Judges: Peter B. Bloch, Chair, Dr. James H. Carpenter, Thomas D. Murphy.

[Docket Nos. 50–424–OLA–3 50–425–OLA–3; Re: License Amendment (Transfer to Southern Nuclear) ASLBP No. 96–671–01–OLA–3]

March 22, 1995.

In the matter of Georgia Power Company, *et al.*: (Vogtle Electric Generating Plant, Units 1 and 2)

Pursuant to 10 CFR § 2.752, we will hold a public evidentiary hearing beginning at 9 am on April 17, 1995, at the Hearing Room (T 3 B45), Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The purpose of the hearing is to receive evidence concerning alleged misrepresentations about diesel generators at the Vogtle Nuclear Power Plant. The first week of hearing may include Saturday April 22. Thereafter, the hearing will recess until May 17. It will reconvene on that date at a place that is to be determined in light of the needs of the parties.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 95–7562 Filed 3–27–95; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District, (Rancho Seco Nuclear Generating Station); Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

I

Sacramento Municipal Utility District (SMUD, the licensee) is the holder of Facility Operating License No. DPR–54 issued by the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to 10 CFR part 50 on August 16, 1974. The license was amended on March 17, 1992, to remove the authority of the licensee to operate the Rancho Seco Nuclear Generating Station (Rancho Seco). The facility is located on the licensee site in Sacramento County, California.

II

On June 6, 1989, the voters of Sacramento approved a referendum indicating their desire that the licensee not operate Rancho Seco. On June 7, 1989, the licensee shut down Rancho Seco after approximately 15 years of operation. The licensee defueled the reactor and reduced its staff. In a letter of May 20, 1991, the licensee requested approval of the proposed decommissioning plan for Rancho Seco. The Decommissioning Plan was supplemented on April 15, August 6, and August 31, 1992; January 7, April 7, and April 19, 1993; and March 23, April 28, July 26, and October 26, 1994.

A Notice of Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing related to the requested action was published in the **Federal Register** on March 19, 1992 (57 FR 9577). The Environmental and Resources Conservation Organization (ECO), in its letter of April 20, 1992, provided comments on the proposed action and requested a hearing. On May 8, 1992, the Secretary of the Commission forwarded the request for hearing to the Atomic Safety and Licensing Board (ASLB) for further action. The ASLB issued an order which terminated the proceeding by denying standing to ECO (LBP–92–23, dated August 20, 1992). On September 8, 1992, ECO appealed this ruling to the Commission pursuant to 10 CFR 2.714(a). In CLI–93–03, dated March 3, 1993, the Commission remanded certain issues raised by ECO to the ASLB for further consideration. On June 16, 1993, the staff issued its decommissioning safety evaluation and associated environmental assessment. As allowed by CLI–93–03, on July 12, 1993, ECO submitted contentions to the ASLB on (1) adequacy of the NRC environmental assessment, (2) adequacy of the SMUD analysis of a postulated loss of offsite power, (3) adequacy of the funding plan proposed by SMUD, and (4) adequacy of the staff safety evaluation. On November 30, 1993, the ASLB admitted only the decommissioning funding issue for litigation. On December 15, 1993, the licensee petitioned the Commission for directed certification of the funding issue. On March 1, 1994, (in CLI–94–02), the Commission declined to review the ASLB determinations on the particular issues. On August 1, 1994, ECO reached a settlement with the licensee and filed a notice of withdrawal suggesting that the ASLB terminate the proceeding. A termination order was issued by the ASLB on August 11, 1994. On September 2, 1994, (in CLI–94–14), the Commission concluded that *sua sponte* review of the matter was unwarranted and authorized the staff to issue a decommissioning order.

III

The NRC has reviewed the licensee application with respect to the provisions of the Commission rules and regulations and has found that decommissioning as stated in the Rancho Seco Decommissioning Plan will be consistent with the regulations in 10 CFR Ch. I, and will not be inimical to the common defense and security or to the health and safety of the public. The bases for these findings are given in the staff safety evaluation previously issued on June 16, 1993, and updated by the supplemental safety evaluation issued concurrently with this Order.

The staff concluded that this Order should contain provisions which: (1) Specify the method by which changes may be made to the FSAR (now referred to as the Defueled Safety Analysis Report or DSAR) and to the decommissioning plan; (2) require periodic updating of the FSAR/DSAR and decommissioning plan; and (3) require the licensee to maintain its fire protection program in accordance with this Order. The staff has discussed these additional provisions with the licensee and they were found to be mutually acceptable.

IV

Accordingly, pursuant to sections 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954 (as amended), 10 CFR 50.82, and the Commission Order

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(CLI–94–14) of September 2, 1994, the Rancho Seco decommissioning plan is approved and decommissioning of the Rancho Seco Nuclear Generating Station is authorized subject to the following conditions:

(A) The licensee shall update both the decommissioning plan and the final Safety Analysis Report (FSAR), currently entitled "Defueled Safety Analysis Report" or DSAR by the Rancho Seco licensee, in accordance with the methodology specified in 10 CFR 50.71(e), except that the frequency of updates shall be at least every 2 years. With respect to changes to the facility or procedures described in the updated FSAR/DSAR or changes to the Decommissioning Plan, and the conduct of tests and experiments not described in the FSAR/DSAR, the provisions of 10 CFR 50.59 shall apply.

(B) The licensee shall maintain a fire protection program to address the potential for fires which could result in a nuclear hazard, i.e., cause the release or loss of control of radioactive materials. The objectives of the fire protection program are to: (1) Reasonably prevent such fires from occurring; (2) rapidly detect, control, and extinguish those fires which do occur; and (3) ensure that the potential hazard due to fire to the public, environment, and plant personnel is small. The fire protection program shall be assessed by the licensee on a regular basis and revised as appropriate throughout the various stages of facility decommissioning. The licensee may make changes to the fire protection program without NRC approval if the changes do not reduce the effectiveness of fire protection measures needed to prevent a nuclear hazard at the Rancho Seco facility, taking into account the decommissioning plant conditions and activities.

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that assessment, the Commission has determined that the proposed action will not result in any significant impact on the quality of the human environment and that an environmental impact statement needed not be prepared. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on June 23, 1993 (58 FR 34065). Comments were received from ECO and are addressed in the supplemental safety evaluation issued concurrently with this Order.

For further details with respect to this action, see: (1) The application for authorization to decommission the facility, of May 20, 1991, as supplemented April 15, August 6, August 31, 1992, January 7, April 7, April 19, 1993, March 23, April 28, July 26, and October 26, 1994; (2) the related Commission safety evaluations dated June 16, 1993 and March 20, 1995; and (3) the Environmental Assessment and Finding of No Significant Impact of June 16, 1993. These documents are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95825. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Project Support.

Dated at Rockville, MD, this 20th day of March 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 95–7572 Filed 3–27–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Unit No. 1

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is reviewing the proposed corporate restructuring of San Diego Gas & Electric Company (SDG&E), one of the co-owners of San Onofre Nuclear Generating Station, Unit 1. By letter dated November 15, 1994, Richard A. Meserve of Covington & Burling, Counsel for SDG&E, informed the Commission that a corporate restructuring of SDG&E has been proposed that will result in the creation of a holding company under the temporary name SDO Parent Co., Inc. ("Parent Company") of which SDG&E would become a subsidiary. Under the restructuring, the holders of SDG&E common stock will become the holders of common stock of the Parent Company on a share-by-share basis. After the restructuring, SDG&E will continue to be a public utility providing the same utility services as it did immediately prior to the reorganization. SDG&E will continue to be a licensee of the San Onofre units, and no transfer of the operating licenses or interests in the units will result from the restructuring. Control of the operating licenses for the San Onofre units, now held by SDG&E and its co-owners, will remain with SDG&E and the same owners and will not be affected by the restructuring.

Dated at Rockville, MD, this 20th day of March 1995.

For the Nuclear Regulatory Commission

Seymour H. Weiss,

Project Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7571 Filed 3–27–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior To January 1, 1979," Section III.J, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York. This exemption would be a modification of an exemption which has been previously issued on January 7, 1987.

Environmental Assessment

Identification of Proposed Action

Section III.J of 10 CFR Part 50, Appendix R, requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

During a programmatic review of Appendix R compliance strategy at Indian Point Nuclear Generating Unit No. 3 (IP3), the licensee identified that certain additional operator actions, which had not been included in the previous Appendix R compliance strategy, are needed. These additional operator actions are needed in the outside yard area at the condensate storage tank (RWST), and backup service water pump platform.

By letter dated January 7, 1987, the NRC previously approved an exemption from the emergency lighting requirements of Appendix R, Section III.J to allow the use of security lighting for access and egress to the Appendix R diesel generator which is also located in the outside yard. The license has, therefore, requested a modification to the exemption which was previously issued by the NRC on January 7, 1987, to extend the use of security lighting in the outside yard to include the CST, RWST, and backup service water platform.

Need for the Proposed Action

The proposed exemption is needed to permit the licensee to restart and operate the plant without being in violation of the Commission's regulations and to obviate the need for extensive modifications. Physical modification of the plant to achieve literal compliance with 10 CFR Part 50, Appendix R, Section III.J, would require installation of emergency lighting in an exposed outdoor environment which would require special protective enclosures and extensive maintenance to maintain operability. Since security lighting which meets the requirements of 10 CFR 73.55(c)(5) is already installed in these areas and since this security lighting has already been acceptable to justify a similar exemption which was issued on January 7, 1987, application of the regulation in this particular circumstance would not be necessary to achieve the underlying purpose of the rule. The security lighting system achieves the underlying purpose of the rule in that it provides adequate illumination to perform the above-mentioned activities in the outside yard for a period of at least 8 hours, has its own independent emergency generator power source, and is not impacted by fires in other areas of the plant for which Appendix R fires need to be considered.

Environmental Impacts of the Proposed Action

The proposed action is to modify the exemption which was previously issued by the NRC on January 7, 1987, to extend the use of security lighting in the outside yard to include the CST, RWST, and backup service water platform. The Commission has completed its evaluation of the proposed action and concludes that the probability or consequences of accidents will not increase, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the State of New York regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 15, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 23rd day of March 1995.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director Project Directorate I–1 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–7696 Filed 3–27–95; 8:45 am]

BILLING CODE 7590–01–M

Virginia Electric & Power Co.; North Anna Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit No. 2 (NA–2) located in Louisa County, Virginia.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 2, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 16 months from the March 1995 refueling outage to the October 1996 refueling outage would be granted. In addition, the proposed action would exempt the licensee from a portion of Section IV.A that requires a Type A test to be performed following a major modification or replacement of a component which is part of the primary reactor containment boundary.

Specifically, the post-modification exemption is requested from performing a Type A test due to the activities associated with the upcoming NA–2 steam generator replacement.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A tests from the NA–2 March 1995 refueling steam generator replacement outage to the October 1996 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemptions would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemptions would not affect facility radiation levels or facility radiological effluents. The licensee will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting

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containment leakage paths with the Type A tests confirming the Type B and C test results. The planned replacement of the NA–2 steam generators affects only the closed piping system inside containment which includes the main steam lines, the feedwater lines, and the secondary side of the steam generators. The affected area of the primary containment boundary is also part of the pressure boundary of an ASME Class 2 component/piping system and, as such, the replacement of the NA–2 steam generators are subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface, volumetric, and system pressure test requirements are more stringent than the Type A testing requirements of Appendix J. The acceptance criteria for ASME Section XI system pressure testing of welded joints is zero leakage and the test pressure for the system pressure test will be in excess of 20 times that of a type A test. In addition, the steam generator replacement activities do not affect the containment structure or the containment liner. The NRC staff considers that these inspections provide an important added level of confidence in the continued integrity of the containment boundary. The NRC staff also notes that the containment is maintained at a subatmospheric pressure which provides a means for continuously monitoring potential containment leakage paths during power operation. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action.

Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for NA–2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Virginia State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 2, 1995, which is available for public inspection at the Commission's Public Document Room, Swem Library, College of William and Mary, Williamsburg, Virginia 23185, and The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 23rd day of March 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7695 Filed 3–27–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 272–5407.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

PROPOSED REVISIONS

Regulation C	File No. 270–68.

PROPOSED REVISIONS—Continued

Form S–1	File No. 270–58.
Form S–2	File No. 270–60.
Form S–3	File No. 270–61.
Form S–11	File No. 270–64.
Form SB–1	File No. 270–374.
Form SB–2	File No. 270–366.
Form F–1	File No. 270–249.
Form F–2	File No. 270–250.
Form F–3	File No. 270–251.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.),* that the Securities and Exchange Commission ("Commission") has submitted proposed rule revisions for OMB approval. Forms S–1, S–2, S–3, S–11, SB–1, SB–2, F–1, F–2, and F–3 are used to register securities under the Securities Act of 1933 and Regulation C governs the filing of such forms. The staff estimates that if the proposed amendments are adopted, approximately 1,249 respondents would file Form S–1 annually at an estimated 1,257 burden hours per response with a total annual burden of 1,569,993 hours; 344 respondents would file Form S–2 annually at an estimated 487 burden hours per response with a total annual burden of 167,528 hours; 2,290 respondents would file Form S–3 annually at an estimated 413 burden hours per response with a total annual burden of 945,770 hours; 345 respondents would file Form S–11 annually at an estimated 859 burden hours per response with a total annual burden of 296,355 hours; 260 respondents would file Form SB–1 annually at an estimated 725 burden hours per response with a total annual burden of 188,500 hours; 269 respondents would file Form SB–2 annually at an estimated 893 burden hours per response with a total annual burden of 240,217 hours; 15 respondents would file Form F–1 annually at an estimated 1,885 burden hours per response with a total annual burden of 28,275 hours; 4 respondents would file Form F–2 annually at an estimated 575 burden hours per response with a total annual burden of 2,300 hours; 6 respondents would file Form F–3 annually at an estimated 180 burden hours per response with a total annual burden of 1,080 hours and Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in the above referenced forms and other filings under the federal securities laws.

General comments regarding the estimated burden hours should be directed to the Clearance Officer for the Securities Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to David T. Copehafer, Acting Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer for the Securities/ Exchange Commission, Project Nos. 3235–0074; 3235–0065; 3235–0072; 33235–0073; 3235–0067; 3235–0423; 3235–0418; 3235–0258; 3235–0257; and 3235–0256, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7532 Filed 3–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35523; File Nos. SR–Amex–95–13; SR–CBOE–95–13, SR–NYSE–9504, SR–PSE–95–05, and SR–PHLX–95–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc., Relating to Permanent Approval of the Hedge Exemption Pilot Programs

March 22, 1995

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the Chicago Board Options Exchange, Inc. ("CBOE"); on February 3, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX"); on February 21, 1995, the Pacific Stock Exchange, Inc. ("PSE"); on February 28, 1995, the New York Stock Exchange, Inc. ("NYSE"); and on March 14, 1995, the American Stock Exchange, Inc. ("Amex") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes filed by the Amex and PHLX request permanent approval of the Exchanges' pilot program for exemptions from equity option position limits for certain hedged positions.[1]

The proposals filed by the CBOE, NYSE, and the PSE request permanent approval of the Exchanges' pilot programs for position limit exemptions for certain hedged equity option positions and certain stock index option positions.

The text of the proposals are available at the Office of the Secretary of the respective Exchanges and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved pilot programs proposed by the Amex and the PHLX providing exemptions from positions limits for certain fully hedged equity option positions.[2] In addition, the Commission has previously approved pilot programs proposed by the CBOE, the NYSE and the PSE providing exemptions from position limits for certain fully hedged equity option positions and/or stock index option positions.[3] The Exchanges' pilot programs were most recently extended through May 17, 1995.[4]

Each of the pilot programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[5] Under all of the pilot programs, exercise limits continue to correspond to position limits, so that investors are allowed to exercise, during five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the pilot program.[6]

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to protect investors and the public interest and to remove impediments and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments on the proposed rule changes were neither solicited nor received.

[1] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

[2] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

[3] *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving CBOE's equity option hedge exemption pilot programs); 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988) (approving CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving PSE's equity option hedge exemption pilot program); and 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order approving PSE's stock index option hedge exemption pilot program).

[4] *See* Securities Exchange Act Release Nos. 24986 (November 18, 1994), 59 FR 60856 (November 28, 1994) (order approving File Nos. SR–Amex–94–49, SR–CBOE–94–41, SR–PSE–94–33, and SR–PHLX–94–53); and 35194 (January 5, 1995), 60 FR 2800 (January 11, 1995) (order approving File Nos. SR–NYSE–94–47).

[5] Under the pilot, the Exchanges must determine on a case-by-case basis whether an instrument that is being used as the basis for an underlying hedged position is readily and immediately convertible into a security that is convertible at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. In addition, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. *See, e.g.,* Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339 (September 2, 1993) (order approving File No. SR–CBOE–91–43).

[6] Exercise limits prohibits the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days.

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III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by April 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-7576 Filed 3-27-95; 8:45 am]

BILLING CODE 8010-01-M

[7] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35519; File No. SR-CBOE-95-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Solicited Transactions

March 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 14, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify paragraph (e) of Rule 6.9 concerning solicited transactions so as to eliminate the requirement that the terms of the matching order be disclosed to the trading crowd.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. the test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Paragraph (e) of Rule 6.9 restricts the ability of a member to trade options, securities underlying such options, and related instruments while in possession of knowledge of all the material terms of an "original order" and a solicited matching order unless either of two conditions is met. One of the conditions is that all the terms of both the original order and the matching order be disclosed to the trading crowd.[2]

The Exchange now proposes to amend paragraph (e) to eliminate the requirement that the terms of the matching order be disclosed to the trading crowd. Thus, a member will be able to trade options, the securities underlying such options, and any related instruments once the terms of the original order have been disclosed. Under the Exchange's proposal, when there has been advance solicitation of the other side of an original order, a member (or associated person) with knowledge of the original order and a matching responsive order may not buy or sell the option or the underlying security until the terms of the original order are disclosed to the trading crowd; once those terms are disclosed, however, the member may trade even if the terms of the matching order are not disclosed. As explained below, this modification would place solicited parties on an equal footing with Exchange members who have knowledge of the terms of the original order only, and would conform the trading restriction in paragraph (e) to the various priority provisions of Rule 6.9 and Interpretation .02 thereunder, which generally require disclosure only of the terms of an original order, not the terms of a matching solicited order.

The Exchange believes that this amendment is appropriate to achieve the primary purpose of Rule 6.9, which is to facilitate and regulate solicitation without imposing undue restrictions on trading, particularly anticipatory hedge transactions. As currently structured, the trading restrictions in paragraph (e) impose a special and substantial burden on any solicited party who was indicated, in response to a solicitation, an intention to place a matching responsive order. Under the present rule, such a solicited party may not trade based on knowledge of the impending solicited transaction, even if the original order has been fully disclosed to the crowd, until the solicited order is also disclosed.

In contrast to this treatment of solicited parties, paragraph (e) does not restrict trading by other CBOE members who know the terms of the disclosed order but who, if solicited, have not indicated an intention to trade at the original order's limit and who are otherwise unaware of any specific matching solicited order. Such parties may trade under the current rule even if they believe that an execution of the original order is imminent based on market circumstances.

The Exchange has concluded that this disparity in treatment places undue restrictions on solicited parties. Once an original order is fully disclosed to the trading crowd, those in the crowd have essentially the same market information as do solicited persons. Moreover, any solicited person who has privately indicated an intention to place a responsive order, and anyone aware of that intention, necessarily remains subject to the risks of the market and the auction process when entering a responsive order or affecting anticipatory trades. In such circumstances, all Exchange members should be able to effect trades on equal terms, and the proposal would achieve that equality of treatment.

Accordingly, the Exchange has concluded that paragraph (e) should be modified to require disclosure of the terms of the original order only. The Exchange believes that this narrower disclosure requirement will provide the trading crowd with a fair and full opportunity to make informed trading decisions without subjecting solicited parties and the solicitation process to overly burdensome restrictions.

The CBOE believes that its proposal is consistent with Section 6(b) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Specifically, the CBOE believes that its proposal will enhance the CBOE auction by restricting the trading activities of all CBOE members and associated persons equally.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-95-07 and should be submitted by April 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-7577 Filed 3-27-95; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The other such condition is that the solicited order can no longer reasonably be considered imminent in view of the passage of time since the solicitation.

[3] 17 CFR 200.30-3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2766]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 12, 1995, and amendments thereto on March 16 and 17, I find that the following counties in the State of California constitute a disaster area due to damages resulting from severe winter storms causing flooding, landslides, and mud debris flows beginning on February 13, 1995 and continuing: Amador, Butte, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yola, and Yuba. Applications for loans for physical damages may be filed until the close of business on May 11, 1995, and for loans for economic injury until the close of business on December 12, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795

or other locally announced locations. In addition, applications for economic injury loans from small business located in the following contiguous counties may be filed until the specified date at the above location: Alameda, Alpine, Calaveras, Contra Costa, Del Norte, Merced, San Francisco, San Joaquin, and San Mateo Counties in California: Clark, Douglas, Esmeralda, Mineral, Nye, and Washoe Counties in Nevada; LaPaz, Mohave, and Yuma Counties in Arizona; and Jackson, Josephine, Klamath, and Lake Counties in Oregon.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276606. For economic injury the numbers are 849100 for California; 849200 for Nevada; 849300 for Arizona; and 849400 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 17, 1995.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95-7510 Filed 3-27-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee, Air Carrier Operations—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a new task assigned to the Aviation Rulemaking Advisory Committee (ARAC) and its decision to form the Fatigue Countermeasures and Alertness Management Techniques Working Group to analyze and recommend to it solutions to issues contained in the assigned tasks. This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Quentin Smith, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2109, January 22, 1991; and 58 FR 9230, February 19, 1993). ARAC provides advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. One area ARAC deals with is Air Carrier Operations issues. These issues involve the operational requirements for air carriers, to include crewmember requirements, airplane operating performance and limitations, and eequipment requirements. The new task is related to these issues.

Task

The following new task is being assigned to ARAC:

To develop an advisory circular that ourlines fatigue countermeasures and alertness management techniques that could improve safety in air transportation. This advisory circular will discuss the current state of the knowledge associated with the physiological mechanisms underlying fatigue; demonstrate how this knowledge can be applied to improve flight crew rest, alertness, and performance; and provide practical recommendations for use by crewmembers.

A recommendation in the form of an advisory circular, or other advisory material, will be submitted in a format prescribed by the FAA. The recommendation should be fully justified, and the justification should be presented as part of the recommendation.

ARAC recommendations to the FAA should be accompanied by appropriate documents. Recommendations for rulemaking should be accompanied by a complete draft of the notice(s) of proposed rulemaking, including the benefit/cost analysis and other required analyses. Recommendations for the issue of guidance material should be accompanied by a complete advisory circular.

ARAC Activity

In order to carry out the functions of the committee to develop advice and recommendations, ARAC may choose to establish working groups to which specific tasks are assigned. Such working groups are comprised of experts from those organizations having an interest in certain tasks assigned to ARAC. This notice is intended to notify the public that ARAC is establishing the Fatigue Countermeasures and Alertness Management Working Group.

Working Group Formation

Any individual who has expertise in the subject matter and wishes to become a member of the Fatigue Countermeasures and Alertness Management Techniques Working Group should contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group.

Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as an ARAC recommendation.

Working Group Reports

Each working group formed to consider an ARAC task(s) is expected to comply with the procedures adopted by ARAC and given to the working group chair. As part of the procedures, the working group is expected to:

A. Recommend a work plan for completion of the task(s), including rationale, for consideration at the meeting of ARAC to consider Air Carrier Operations issues held following publication of this notice.

B. Give a detailed conceptual presentation on the task to ARAC before proceeding with the task.

C. Give a status report on the task at each meeting of ARAC held to consider Air Carrier Operations issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of ARAC will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Fatigue Countermeasures and Alertness Management Techniques Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on March 22,1995.

Quentin Smith,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–7624 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations.

DATES: The meeting will be held on March 29, 1995, from 10:00 a.m. until 3:00 p.m.

ADDRESSES: The meeting will be held at the Worthington Hotel, 200 Main Street, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–1744.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration.

Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of general aviation aircraft inspection and maintenance, specifically § 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attendance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 22, 1995.

Frederick J. Leonelli,

Assistant Executive Director , Air Carrier/ General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–7625 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Tanana, AK; Notice of Change in Facility Operation

Notice is hereby given that on or about March 31, 1995, the Flight Service Station at Tanana, Alaska, will be closed. Services to the general aviation public formerly provided by this facility will be provided by the Automated Flight Service Station at Fairbanks, Alaska.

This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on March 6, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–7626 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Medford-Jackson County Airport, Submitted by Jackson County, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Medford-Jackson County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 27, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: Medford-Jackson County Airport, 3650 Biddle Road, Medford, OR 97504.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Medford-Jackson County Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Trujillo, (206) 227–2629; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invite public comment on the application to use PFC revenue at Medford-Jackson County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 22, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Jackson County was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 29, 1995.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: May 1, 1995

Proposed charge expiration date: October 31, 1995

Total estimated PFC revenues: $52,000.00

Brief description of proposed project: Pave perimeter roadway inside AOA and conduct pavement evaluation and management program.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Submitted with application dated December 21, 1992, and approved in Record of Decision dated April 21, 1993, as follows: Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded [conducted] within a 25-mile radius of the airport, and other similar limited, irregular, special service operations by such Air Taxi/ Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540; Renton, Washington 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Medford-Jackson County Airport.

Issued in Renton, Washington on March 22, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–7617 Filed 3–27–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of

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October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Mongolia: The Legacy of Chinggis Khan" (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Asian Art Museum, San Francisco, California from on or about July 19, 1995 through October 15, 1995 and Denver Art Museum, Denver, Colorado from on or about November 11, 1995 through February 25, 1996 and National Geographic Society, Washington, DC. from on or about April 3, 1996 through July 7, 1996 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 22, 1995.

Les Jin,

General Counsel.

[FR Doc. 95-7565 Filed 3-27-95; 8:45 am]

BILLING CODE 8230-01-M

[1]A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 619-5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 59
Tuesday, March 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, March 30, 1995

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, March 30, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1). Summary: The Commission will review the results of the first four years of local exchange carrier price cap regulation.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: March 23, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7694 Filed 3–24–95; 11:01 am]

BILLING CODE 6712–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, April 4, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6413A—Aviation Accident Report: Flight Into Terrain During Missed Approach, USAir Flight 1016, Douglas DC–9, Charlotte/Douglas International Airport, Charlotte, North Carolina, July 2, 1994

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 24, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–7746 Filed 3–24–95; 3:33 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 27, April 3, 10, and 17, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERED TO BE CONSIDERED:

Week of March 27

Tuesday, March 28

2:00 p.m.
Briefing on Status of Reactor Regulatory Reform Initiatives (Public Meeting)
(Contact: Gene Imbro, 301–415–2969)

Wednesday, March 29

10:00 a.m.
Briefing by National Academy of Sciences on Status of Independent Review of Medical Use Program (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
2:00 p.m.
Briefing on Lessons Learned from Enhanced Participatory Rulemakings (Public Meeting)
(Contact: Chip Cameron, 301–415–1642)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule to Eliminate Requirement for Prior Commission Approval for a Specific ISFSI License at a Reactor Site (10 CFR Part 72) (Tentative)
b. Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of April 3—Tentative

Wednesday, April 5

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Edward Butcher, 301–415–3183)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
*(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

Wednesday, April 19

10:00 a.m.
Briefing on IPE Program and Severe Accident Research Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

Friday, April 21

10:00 a.m.
Briefing on Commission Decision Tracking System (CDTS) (Public Meeting)
(Contact: Samuel Chilk, 301–415–1875)

Note: Affirmation sessions are initially scheduled and annpunced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: March 24, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–7739 Filed 3–24–95; 2:45 pm]

BILLING CODE 7590–01–M

UMI

VOL
60

ISS
59

MR
28

1995

UMI

federal register

Tuesday
March 28, 1995

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308
Exempt Chemical Preparations; Final Rule

UMI

VOL 60 ISS 59 MR 28 1995

UMI

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 130P]

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the list of exempt chemical preparations set forth in § 1308.24(i) of Title 21 of the Code of Federal Regulations. This action is in response to DEA's periodic review of the exempt chemical preparation list and of new applications for exemptions filed with DEA. Preparations included in the list are exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration Regulations.

EFFECTIVE DATE: March 28, 1995. Comments must be submitted on or before April 27, 1995.

ADDRESSES: Comments and objections should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that, as packaged, it does not present any significant potential for abuse. This authority has been delegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), 28 CFR 0.104.

The Deputy Assistant Administrator has received application pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The listing of products in 21 CFR 1308.24(i) may exempt persons who handle them from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 of the Act and § 1301.74 of the regulations. The Deputy Assistant Administrator hereby certifies that these matters will have no significant impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Accordingly, the Deputy Assistant Administrator certifies this action will have no impact on the ability of small businesses to compete and he therefore determines that no regulatory flexibility analysis is required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) has determined that listings of exempt chemical preparation are exempt from centralized review under Executive Order 12866.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811 (g)(3)(B)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), and redelegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, the Deputy Assistant Administrator hereby amends 21 CFR Part 1308 as set forth below.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. In § 1308.24(i), the table is amended to read as follows:

§ 1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

Dated: March 17, 1995.

Howard McClain, Jr.,

Acting Deputy Assistant Administrator; Office of Diversion Control, Drug Enforcement Administration.

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EXEMPT CHEMICAL PREPARATIONS

Supplier	Product name	Form	Date
Aalto Scientific, LTD	Therapeutic Drug Monitoring Control Level I, II, III Freeze Dried.	Vial: 5ml	04/09/91
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution.	Bottle:3.2 ml	12/02/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution.	Bottle:3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No. 9671-55).	Reagent Pack:50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Fluorescein Tracer Solution, No. 9670-T, No. 9670T0013.	Vial: 3.2ml, Kit: 100 vials	04/18/89
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack, No. 9670-55.	50 Test Unit	04/18/89
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution, No. 9673-T, No. 9673T0013.	Vial: 3.2ml, Kit: 100 vials	04/18/89
Abbott Laboratories	ADx Opiates Reagent Pack, No. 9673-55	50 Test Unit	04/18/89
Abbott Laboratories	ADx Propoxyphene Fluorescein Tracer Solutions Item No. 9675T0011.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	ADx Propoxyphene Reagent Pack Item No.9675-55.	Kit: 50 test	11/30/90
Abbott Laboratories	Advisor (4 Track); Code 9A18-21	Kit: 40 Discs	03/25/94
Abbott Laboratories	Advisor Cannabinoids Bulk Tracer No.76224.	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 5ml; Amp: 20ml, 10ml, 5ml, 2ml.	04/10/92
Abbott Laboratories	Advisor Card & Cover No.07A15	Box: 2000 Cards	04/10/92
Abbott Laboratories	Advisor Card & Tracer No.07A14	Box: 2000 Cards	04/10/92
Abbott Laboratories	Advisor Card with Cover; Code 05B08	Box: 2000 Cards	03/25/94
Abbott Laboratories	Advisor Card with Tracer; Code 05B07	Box: 2000 Cards	03/25/94
Abbott Laboratories	Advisor Cocaine Bulk Tracer (in-process) No.77458A.	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 5ml; Amp: 20ml, 10ml, 5ml, 2ml.	06/08/92
Abbott Laboratories	Advisor Cocaine Bulk Tracer No.77458	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 5ml; Amp: 20ml, 10ml, 5ml, 2ml.	04/10/92
Abbott Laboratories	Advisor Controls, Code 6A63-10	Kit: 2 Bottles	01/25/94
Abbott Laboratories	Advisor Drug of Abuse Screening System No.6A60-10.	Kit: 10 Discs	04/10/92
Abbott Laboratories	Advisor Drug of Abuse Screening System No.6A60-21.	Kit: 40 Discs	04/10/92
Abbott Laboratories	Advisor Opiates Bulk Tracer (in-process) No.78692A.	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 5ml; Amp: 20ml, 10ml, 5ml, 2ml.	06/08/92
Abbott Laboratories	Advisor Opiates Bulk Tracer No.78692	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 5ml; Amp: 20ml, 10ml, 5ml, 2ml.	04/10/92
Abbott Laboratories	Advisor Positive Control, Bulk, Code 82979.	Carboy: 50, 45, 20, 10L; Flask: 6, 4, 2, 1L; 500, 250, 200, 125, 100, 50ml; Bottle: 8, 4, 2, 1L; 500, 250, 125, 50, 30, 10, 5ml.	01/25/94
Abbott Laboratories	Advisor Positive Control, Code 6A63P	Bottle: 5ml	01/25/94
Abbott Laboratories	Advisor Positive Control, In-Process, Code 6A63P001.	Box: 100 Bottles	01/25/94
Abbott Laboratories	Advisor Reaction Disc No.6A60B	Disc: 1 Card	04/10/92
Abbott Laboratories	Advisor Reaction Discs (4 Track); Code 9A18.	Inner Carton: 20 Discs	03/25/94
Abbott Laboratories	Advisor Reaction Discs No.6A60	Carton: 20 Discs	04/10/92
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Carboy: 10L Flask: 6L, 2L, 1L, 250ml, 200ml.	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Amphetamine Class Bulk Calibrator B-F	50L, 45L, 20L, 10L, 8L, 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 125ml, 100ml, 50ml, 30ml, 20ml, 15ml, 10ml, 5ml, 2ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Control L and H	50L, 45L, 20L, 10L, 8L, 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 125ml, 100ml, 50ml, 30ml, 20ml, 15ml, 5ml.2ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Tracer: No. 94699.	50L, 45L, 20L, 10L, 8L, 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 125ml, 100ml, 50ml, 30ml, 20ml, 15ml, 10ml, 5ml, 2ml.	03/01/88
Abbott Laboratories	Amphetamine Class QC Primary B-F, L, M, H No. 9667 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88

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Supplier	Product name	Form	Date
Abbott Laboratories	Amphetamine Class Stock Tracer: No. 94700.	Bottle: 30 ml	03/01/88
Abbott Laboratories	Amphetamine Stock Standard No. 97072, 97072 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	Amphetamine/Metamphetamine QC Primary Bulk Control M, No. 9668-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine (II) QC Primary B-F, L, M, H No. 1A99 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Calibrators B-F Code No. 1A99 (B-F).	50L, 45.5L, 20 L, 19L, 13.25L, 13L, 10 L, 9.5L, 9L Carboy; 6 L, 4L, 2 L, 1 L, 250 ml, 200 ml Flask.	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls (L, M, H) Code No. 1A99 (L, M, H).	50L, 45.5L, 20 L, 19L, 13.25L, 13L, 10 L, 9.5L, 9L Carboy; 6 L, 4L, 2 L, 1 L, 250 ml, 200 ml Flask.	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls, No. 1A99X, Y, Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators B-F No. 1A99 B-F.	5 ml Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators No. 1A99-01.	Kit: 6 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Control X, Y, Z; NO. 1A99-02, 03, 04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Control X, Y, Z; No. 1A99X, Y, Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Controls (L, M, H) No. 1A99-L, M, H.	5 ML Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Controls No. 1A99-10.	Kit: 3 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II QC Primary 2-6 QT, NG, CO, PS No. 1A99 2-6 QT-QC & NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Amphetamine/Methamphetamine II QC Primary 8QT NO. 1A998QT-QC.	Carboy: 20L, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Calibrator B, C, D, E, F; No. 01A99-B, C, D, E, F.	Carboy: 20L, 10L, 6L, 2L, 1L, 250ml, 200ml.	07/14/89
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Control L, M, H, ; No. 01A99-L, M, H.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	07/14/89
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary B-F, L, M, H No. 9668 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary Standard Control M, No. 9668-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	AxSYM Cannabinoids Fluorescein Tracer; Code 3B28T0001.	Bottles: 35, 20, 15ml; Box: 100 vials; Tray: 200vials.	06/02/94
Abbott Laboratories	AxSYM Cannabinoids Reagent Pack	Kit: 100 Tests	07/27/94
Abbott Laboratories	AxSYM Cocaine Metabolite Fluorescein Tracer Solution; Code 3B24T0001.	Bottles: 35, 20, 15ml; Box: 100 vials; Tray: 200 vials.	06/02/94
Abbott Laboratories	AxSYM Cocaine Metabolite Reagent Pack.	Kit: 100 Tests	07/27/94
Abbott Laboratories	AxSYM Opiates Fluorescein Tracer Solution; Code 3B25T0001.	Bottles: 35, 20, 15ml; Box: 100 vials; Tray: 200 vials.	06/02/94
Abbott Laboratories	AxSYM Opiates Reagent Pack	Kit: 100 Tests	07/27/94
Abbott Laboratories	AxSYM Phenobarbital Calibrator B, code 7A70-B.	Vial: 5ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Calibrator C, Code 7A70-C.	Vial: 5ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Calibrator D, Code 7A70-D.	Vial: 5ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Calibrator E, Code 7A70-E.	Vial: 5ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Calibrator F, Code 7A70-F.	Vial: 5ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Calibrators (B-F), Code 7A70-01.	Kit: 6 Vials	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Control H, Code 7A70-H.	Vial: 10ml	01/25/94
Abbott Laboratories	AxSYM Phenobarbital Control M, 7A70-M	Vial: 10ml	01/25/94

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	AxSYM Phenobarbital Controls (L, M, H), Code 7A70-L.	Kit: 3 Vials	01/25/94
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824.	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	Barbiturate II U Control L, M, H; No. 9669 L, M, H-11.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates Bulk Calibrator B-F No. 9669 B-F.	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	07/01/88
Abbott Laboratories	Barbiturates Bulk Control L, H No. 9669 L, H.	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	07/01/88
Abbott Laboratories	Barbiturates Bulk Controls, No. 9669X, Y, Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Barbiturates Control X, Y, Z; No. 9669X, Y, Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Barbiturates II QC Primary NG, CO, PS No. 9669 NG/CO/PS-11-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Barbiturates II U Bulk Calibrators B-F; No. 9669 B-F-05.	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, Flask: 250ml, 200ml.	10/17/89
Abbott Laboratories	Barbiturates II U Bulk Controls L, M, H; No. 9669 L, M, H - 11.	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, Flask: 250ml, 200ml.	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B-F; No. 9669 B-F-05.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B-F; No. 9669-05.	Kit: 6 vials	10/17/89
Abbott Laboratories	Barbiturates II U Controls L, M, H; No. 9661-11.	Kit: 3 vials	10/17/89
Abbott Laboratories	Barbiturates II U QC Primary B-F; No. 9669 B-F-05 QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/17/89
bott Laboratories	Barbiturates II U QC Primary L, M, H; No. 9689 L, M, H-11 QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/17/89
Abbott Laboratories	Barbiturates QC Primary B-F, L, M, H No. 9669 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary X, No. 9669X-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Barbiturates Serum Bulk Calibrator B-F, No. 9679 B-F.	Carboy, Flask, Bottle or Ampule: 50, 45, 20, 10, 8, 6, 4, 2, 1-(L); 500, 250, 200, 125, 100, 50, 30, 20, 15, 10, 5, 2-(ml).	01/03/89
Abbott Laboratories	Barbiturates Serum Bulk Control L, M, H; No. 9676 L, M, H.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B-F, No. 9679-01.	Kit: 6 vials	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B/F, No. 9679 B/F.	Bottle: 5ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L, M, H; No. 9679 L, M, H.	Bottle: 5ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L, M, H; No. 9679-10.	Kit: 3 vials	01/03/89
Abbott Laboratories	Barbiturates Serum QC Primary B-F, L, M, H; No. 9679 (B-F, L, M, H)-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	01/03/89
Abbott Laboratories	Benzodiazepine Serum QC Primary B-F, L, M, H No. 9682 (B-F, L, M, H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Bulk Calibrator No. 9674 B-F.	Carboy: 50L, 45.5L, 20L, 19.5L, 19L, 13.25L, 13L, 10L, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Control L, H No. 9674 L, H.	Carboy: 50L, 45.5L, 20L, 19L, 13.25zl, 13L, 10L, 9.5, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml,.	07/18/88
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87

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EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Benzodiazepines QC Primary NG, CO, PS No. 9674NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Benzodiazepines QC Primary, B-F, L, M, H No. 9674 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators B-F: Code No. 9682 B-F.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/87
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators: No. 9682 B-F.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter.	05/02/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls L, M, & H: Code No. 9682 L, M, & H.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls: No. 9682 L, M, H.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter, 250 ml, 200 ml.	05/02/88
Abbott Laboratories	Benzoylecgonine Stock Standard No. 97182, 97182 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950ml, 500ml, 100ml, 5ml.	11/23/88
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182.	Bottle: 125ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids - GS Bulk Controls, No. 3897X, Y, Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Cannabinoids - GS Control X, Y, Z; No. 3897 - 02, 03, 04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Cannabinoids - GS Control X, Y, Z; No. 3897X, Y, Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F, No. 9671 (B02-F02).	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/24/86
Abbott Laboratories	Cannabinoids Bulk Controls L, M, H; No. 9671 (L11, M11H11).	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/24/86
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/27/86
Abbott Laboratories	Cannabinoids Bulk Tracer; Code 3B28T	Sizes: 50, 45, 20, 10, 8, 6, 4, 2, 1L; 500, 250, 200, 125, 100, 50, 35, 30, 20, 15, 10, 5ml; Ampules: 50, 20, 15, 10, 5, 2ml.	06/02/94
Abbott Laboratories	Cannabinoids QC Primary 2-6 QT, NG, CO, PS No. 9671-11 2-6 QT-QC & NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Cannabinoids QC Primary 8QT No. 9671-11 8QT-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	Cannabinoids QC Primary NBS, B-F, L, M, H; No. 9671-02[NBS, B-F]-QC; No. 9671-11[L, M, H]-QC.	Carboy: 10L, Flask: 4L, 2L, 500ml, 250ml, 100ml, 200ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids QC Primary NBS, B-F, L, M, H; No. 9671 (NBS, B-F, L, M, H)-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Standard (94568)	Bottle: 125 ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No. 94193).	Bottle: 125 ml	10/24/86
Abbott Laboratories	Cannabinoids Stock Standard 10mcg/ml-No. 94568, 5mcg/ml-NO. 94568A, 1mcg/ml-No. 94568B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, bottle: 950ml, 500ml, 100ml, 5ml.	12/27/89
Abbott Laboratories	Cannabinoids Stock Standard; 10mcg/ml-No. 94193, 5mcg/ml-No. 94193A, 1mcg/ml-No. 94193B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, bottle: 950ml, 500ml, 100ml, 5ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 30ml, 5ml; Amp: 20, 10, 5, 2ml.	10/27/86
Abbott Laboratories	Cannabinoids-GS Bulk Calibrators B-F No. 3897 B-F.	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoids-GS Bulk Controls (L, M, H) Code No. 3897 (L, M, H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoids-GS Bulk Tracer Code No. 95826.	10 L Carboy; 6 L, 2 L Flask	07/28/88
Abbott Laboratories	Cannabinoids-GS Calibrators B-F No. 3897 B-F.	5 ml Vial	07/28/88

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Supplier	Product name	Form	Date
Abbott Laboratories	Cannabinoids-GS Calibrators No. 3897-01.	Kit: 6 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls (L, M, H) No. 3897-L, M, H.	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls No. 3897-10	Kit: 3 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS QC Primary NBS, B-F, L, M, H; No. 3897 (NBS, B-F, L, M, H)-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids-GS Reagent Pack 100 Test No. 3897-20.	Kit: 100 Tests	07/28/88
Abbott Laboratories	Cannabinoids-GS Reagent Pack 100 Test, No. 3897-19.	Kit: 100 Tests	09/22/89
Abbott Laboratories	Cannabinoids-GS Tracer Code No. 3897-T.	5 ml Vial	07/28/88
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator B-F No. 9670 B-F.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B-F No. 9670.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls L, H No. 9670-L, H.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls, No. 9670X, Y, Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 97075.	Carboy: 50L, 45.5L, 20L, 13.25L, 13L, 10L, 9L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/30/85
Abbott Laboratories	Cocaine Metabolite Control X, Y, Z; No. 9670X, Y, Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Cocaine Metabolite QC Primary 2-6 QT, NG, CO, PS No. 9670 2-6 QT-QC & NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Cocaine Metabolite QC Primary 2-6 QT-C, 8QT-C No. 9670 2-6 QTC-QC, 9670 8QTC-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/28/91
Abbott Laboratories	Cocaine Metabolite QC Primary 8QT No. 9670 8QT-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	Cocaine Metabolite QC Primary B-F, L, M, H, No. 9670 (B-F, L, M, H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/23/88
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary X, No. 9670X-QC; Primary Z, No. 9670Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 97156.	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Bottles: 950ml, 500ml, 100ml, 50ml, 30ml, 5ml; Amp: 20, 10, 5, 2ml.	10/30/85
Abbott Laboratories	Codeine Metabolite Bulk Tracer; Code 3B48T	Sizes: 50, 45, 20, 10, 8, 6, 4, 2, 1L, 500, 250, 200, 125, 100, 50, 35, 30, 20, 15, 10, 5ml; Ampules: 50, 20, 15, 10, 5, 2ml.	06/02/94
Abbott Laboratories	High Multiconstituent (9) Stock Standard Cat. No. 92622.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Low Multiconstituent (9) Stock Standard Cat. No. 92620.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Low, Medium, High Multiconstituent Stock Standards, No. 90967, 90968, 90969.	Carboy: 10, 20L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/06/89
Abbott Laboratories	Medium Multiconstituent (9) Stock Standard Cat. No. 92621.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Methadone Bulk Calibrators (B-F) Code No. 9676 (B-F).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88
Abbott Laboratories	Methadone Bulk Calibrators (L, M, H) Code No. 9676 (L, M, H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88

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Abbott Laboratories	Methadone Bulk Stock Standard Code No. 95952.	10 L Carboy; 6 L, 2 L, 1 L Flask	09/02/88
Abbott Laboratories	Methadone Calibrators No. 9676-01	Kit: 6 Vials	09/02/88
Abbott Laboratories	Methadone Calibrators B-F No. 9676 B-F	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls L, M, H No. 9676-L, M, H.	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls No. 9676-10	Kit: 3 Vials	09/02/88
Abbott Laboratories	Methadone QC Primary NG, CO, PS No. 9676 NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Methadone Stock Standard Code No. 95720.	1 L, 500 ml, 100 ml Bottle	09/02/88
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Morphine Stock Standard, No.97291 A-B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Multiconstituent (9) QC Control H Cat. No. 92625.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Multiconstituent (9) QC Control L Cat. No. 92623.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Multiconstituent (9) QC Control M Cat. No. 92624.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	07/02/91
Abbott Laboratories	Multiconstituent Bulk Controls L, M, H (No. 9687-L, M, H).	Carboy: 20L, 10L, Flask: 10L, 6L, 4L, 2L, 1L, 250ml, 200ml.	09/03/87
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays Bulk L, M, H; No. 9687-L, M, H.	Carboy: 20L, 10L, 19L, 9.5L, 6L, 4L, 1L, Flask: 250ml, 200ml.	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays L, M, H; No. 9687-L, M, H.	Vial: 5 ml	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays QC Primanes L, M, H; No. 9687-L, H, H-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/06/89
Abbott Laboratories	Multiconstituent Controls for Abused Drug Assays, No. 9687-10.	Kit: 6 vials	10/06/89
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard No. 94941	Carboy: 10 liters; Flask: 6 liters, 2 liters, 1 liter.	05/02/88
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard: Code No.94941.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/87
Abbott Laboratories	Nordiazepam Serum Stock Standard No. 94941, 94941 A, B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Nordiazepam Serum Stock Standard: Code No. 94941.	Bottle: 125 ml	12/07/87
Abbott Laboratories	Nordiazepam Serum Stock Standard: No. 94941	Bottle: 125 ml	05/02/88
Abbott Laboratories	Nordiazepam Stock Standard No. 97757, 97757 A, B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B-F, No.9673 B-F	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673 L and H.	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/07/86
Abbott Laboratories	Opiates Bulk Controls, No. 9673X, Y, Z	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Opiates Bulk Tracer, No. 97458	Carboy: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/07/86
Abbott Laboratories	Opiates Bulk Tracer; Code: 3B25T	Sizes: 50, 45, 20, 10, 8, 6, 4, 2, 1L, 500, 250, 200, 125, 100, 50, 35, 30, 20, 15, 10, 5ml; Ampules: 50, 20, 15, 10, 5, 2ml.	06/02/94
Abbott Laboratories	Opiates Control X, Y, Z; No. 9673X, Y, Z	Vial: 5ml	01/19/89
Abbott Laboratories	Opiates QC Primary (B-F, L, M, H) QC No. 9673 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Opiates QC Primary 2-6 QT, NG, CO, PS No. 9673 2-6 QT-QC & NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91

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Supplier	Product name	Form	Date
Abbott Laboratories	Opiates QC Primary 8QT No. 9673 8QT-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Opiates QC Primary X, No. 9673X-QC; Primary Y, No. 9673Y-QC; PrimaryZ, No. 9673Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Flasks: 6L, 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml; Botles: 950ml, 500ml, 100ml, 50ml, 30ml, 5ml; Amp: 20, 10, 5, 2ml.	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B-F No. 9672 B-F.	Carboy: 50L, 45.5L, 20L, 13.25L, 13L, 10L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M, No. 9672 M.	Carboy: 50L, 45.5L, 20L, 13.25L, 13L, 10L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	09/26/86
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672 L and H.	Carboy: 50L, 45.5L, 20L, 13.25L, 13L, 10L, 9L Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Controls, No. 9672X, Y, Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Phencyclidine Control X, Y, Z; No. 9672X, Y, Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Phencyclidine QC Primary (B-F, L, M, H) QC No. 9672 (B-F, L, M, H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Phencyclidine QC Primary 2-6 QT NG, CO, PS No. 9672 2-6 QT-QC & NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Phencyclidine QC Primary 8QT No. 9672 8QT-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	Phencyclidine QC Primary X, No. 9672X-QC; Primary Z, No. 9672Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Phencyclidine Stock Standard No. 97158, 97158 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Phencyclidine Stock Standard, No. 95356	Flask: 100ml, 200ml, 250ml, 500ml, 1L, 2L, 4L, Bottle: 5ml, 100ml, 500ml, 950 ml, Carboys: 10L, 20L.	04/18/89
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Phenobarbital Bulk Calibrators No. 9500 B-F.	Carboy: 50L, 45.5L, 19L, 13.25L, 13L, 9.5L, 9L; Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	06/16/88
Abbott Laboratories	Phenobarbital Bulk Controls No. 9500 L, M, H.	Carboy: 50L, 45.5L, 19L, 13.25L, 13L, 9.5L, 9L; Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	06/16/88
Abbott Laboratories	Phenobarbital Control L, Code: 7A70-L	Vial: 10ml	01/25/94
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84
Abbott Laboratories	Phenobarbital QC Primary B-F, L, M, H Item No. 9500B-F, L, M, H.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottles: 950, 500, 100, 50, 5ml; Ampules: 20, 10, 5, 2ml.	01/04/91
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard 500 ug/ml Item No. 99259.	Carboy: 50, 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottles: 950, 500, 100, 50, 5ml; Ampules: 20, 10, 5, 2ml.	01/04/91
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml.	09/21/77
Abbott Laboratories	Polyethylene Glycol 8000, 18% Solution in 0.09M Barbital Buffer: No. 07602.	Stainless Steel Tank: 1000 liters	03/09/88
Abbott Laboratories	Progesterone Buffer No.2242J	Bottle: 30ml	03/11/92
Abbott Laboratories	Progesterone Buffer No.2242J0001	Box: 100 Bottles/30ml	03/11/92

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Supplier	Product name	Form	Date
Abbott Laboratories	Progesterone Bulk Buffer No.12918	Carboy: 50L, 25L, 20L, 19L, 15L, 13L, 10L, 9L; Bottle: 950ml, 500ml, 100ml, 50ml, 30ml, 20ml; Amp: 20ml, 10ml, 5ml, 2ml.	05/11/92
Abbott Laboratories	Progesterone Reagent Pack No.2242-20	Kit: 4 Bottles	03/11/92
Abbott Laboratories	Propoxyphene Bulk Calibrator B-F No. 9675 B-F.	Carboys or Flasks: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Control L, M, H No. 9675 L, M, H.	Carboys or Flasks: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Tracer Item No. 92003.	Carboys or Flasks: 50L, 45.5L, 20L, 19L, 13.25L, 13L, 10L, 9.5L, 9L, 6L, 4L, 2L, 1L, 250ml, 200ml.	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675-01.	Kit: 5 vials	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675B-F.	Vial: 5ml	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675-10	Kit: 3 vials	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675L, M, H.	Vial: 5ml	11/30/90
Abbott Laboratories	Propoxyphene QC Primary B-F, L, M, H, Z Item No. 9675(B-F, L, M, H, Z)-QC.	Carboy: 20, 10L Flasks: 6, 4, 2, 1L, 500, 250, 200, 100ml Bottles: 950, 500, 100, 50, 5ml Ampules: 20, 10, 5, 2ml.	11/30/90
Abbott Laboratories	Propoxyphene QC Primary NG, CO, PS No. 9675 NG/CO/PS-QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950ml, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	02/20/91
Abbott Laboratories	Propoxyphene Stock Standard, 100 mcg/ml Item No. 92005.	Carboys: 20, 10L Flasks: 6, 4, 2, 1L, 500, 250, 200, 100ml Bottles: 950, 500, 100, 50, 5ml Ampules: 20, 10, 5, 2ml.	11/30/90
Abbott Laboratories	Propoxyphene Stock Tracer Item No. 92001.	Bottle: 12ml	11/30/90
Abbott Laboratories	Propoxyphene Tracer Item No. 9675-T	Bottles: 3.2ml, 5ml	11/30/90
Abbott Laboratories	Secobarbital Bulk Calibrator, B-F No. 9669.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Secobarbital Stock Standard 1000mcg/ml-No. 90107, 500mcg/ml-No. 90107A, 200mcg/ml-No. 90107B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	01/03/89
Abbott Laboratories	Secobarbital Stock Standard No. 97171, 97171 A, B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L, M, H).	Bottle: 4ml	10/03/85
Abbott Laboratories	TDx Amphetamine Class Calibrators 9667-01.	Kit containing 6 vials	03/01/88
Abbott Laboratories	TDx Amphetamine Class Calibrators B-F	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine Class Control L and H	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine Class Controls 9667-10.	Kit containing 2 vials	03/01/88
Abbott Laboratories	TDx Amphetamine Class Reagent Pack, No. 9667-60.	Kit containing 1 vial	03/01/88
Abbott Laboratories	TDx Amphetamine Class Tracer Solution, No. 9667T.	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668-01.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668-10.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669 B-F.	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669-01	Kit: 5 Vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators, B-F No. 9669.	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control L, H No. 9669 L, H.	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669.	Bottle: 4ml	10/08/85
Abbott Laboratories	TDx Barbiturates Controls No. 9669-10	Kit: 2 Vials, 5 ml each	07/01/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	TDx Benzodiazepines Calibrator No. 9674 B-F.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators No. 9674-01.	Kit: 5 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674-01.	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls L, H No. 9674 L, H.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls L, H No. 9674-10.	Kit: 2 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674-10.	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Serum Calibrator No. 9682 B-F.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators B-F: Code No. 9682 B-F.	Bottle: 4ml, 5ml	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: Code No. 9682-01.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: No. 9682-01.	Kit containing 6 vials	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls L, M, & H: No. 9682 L, M, H.	Bottle: 4 ml	12/07/87
Abbott Laboratories	TDx Benzodiazepines Serum Controls L, M, H: No. 9682 L, M, H.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: Code No. 9682-10.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: No. 9682-10.	Kit containing 3 vials	05/02/88
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (9671-02).	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (No. 9671-01).	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L, M, and H (9671-11).	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L, M, H (No. 9671-10).	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671-T).	Bottle: 5 ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671-20).	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator B-F No. 9670 B-F.	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B-F No. 9670.	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Calibrators No. 9670-01.	Kit: 5 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control L, H No. 9670 L, H.	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669.	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Controls No. 9670-10.	Kit: 2 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670 T0001.	Kit: 100 Vials, 5 ml Each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670-T.	Box: 5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack No. 9670-20.	Kit: 100 Tests	07/07/88
Abbott Laboratories	TDx Multiconstituent Controls L, M, H (No. 9687-L, M, H).	Bottle: 5 ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators B-F: No. 9673-01.	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Calibrators, B-F No. 9673	5 ml Vial	05/07/86
Abbott Laboratories	TDx Opiates Controls L and H: No. 9673 L, H.	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 5ml	05/07/86
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution No. 9673 T0001.	Box: 10 Vials, 5 ml each	07/08/88
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution: No. 9673-T.	Reagent Well: 5 ml	02/29/88

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Supplier	Product name	Form	Date
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673-20, 100 tests.	Reagent Well: 5ml , 100 tests	05/07/86
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Control L, M, H No. 9672 L, M, H.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators B-F No. 9672-01.	Kit: 5 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators, B-F No. 9672.	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86
Abbott Laboratories	TDx Phencyclidine Controls L, M, H No. 9672 L, M, H.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls No. 9672-10	Kit: 3 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672.	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Calibrators B-F No. 9500 B-F.	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrators No. 9500-01 (9500 B-F).	Kit: 6 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500 L, M, H.	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500-10 (9500 L, M, H).	Kit: 3 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml.	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Propoxyphene Reagent Pack Item No. 9675-20.	Kit: 100 tests	11/30/90
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10).	Kit: 6 Bottles	09/03/87
Abbott Laboratories	TDx or TDx/TDxFLx Propoxyphene Fluorescein Tracer Solution Item No. 9675T0001.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	TDx, ADx Amphetamine Class Reagent Pack, No.9667-20, No. 9667-55.	Kit: 100 tests	03/01/88
Abbott Laboratories	TDx/TDxFLx Propoxyphene Reagent Pack Item No. 9675-60.	Kit: 100 tests	11/30/90
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125.	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Abbott Laboratories	TrakPak Five Drug Control 2-6 QT Nos. 92212-92216.	Carboy: 20, 10L Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml Bottle: 950, 500, 100, 50, 5ml Ampule: 20, 10, 5, 2ml.	10/19/90
Abbott Laboratories	TrakPak Five Drug Control 8QT No. 93349.	Carboy: 20, 10l; FlaskL: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottle: 950, 500, 100, 50, 5ml; Ampule: 20, 10, 5, 2ml.	10/25/91
Abbott Laboratories	TrakPak Five Drug Control Stock No. 92210.	Carboy: 20, 10L Flask: 6, 4, 2, 1L, 500, 250, 200, 100ml Bottle: 950, 500, 100, 50, 5ml Ampule: 20, 10, 5, 2ml.	10/19/90
Abbott Laboratories	Trakpak Card w/Cover Code t01249	Box: 2000 cards w/cover	03/08/91
Abbott Laboratories	Trakpak Card w/Tracers Code t01248	Box: 2000 cards	03/08/91
Abbott Laboratories	Trakpak Cocaine Tracer Code t92199	Flasks: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottles: 950, 500, 100, 50, 5ml; Ampules: 20, 10, 5, 2ml.	03/08/91
Abbott Laboratories	Trakpak Drug of Abuse Screening System (40 test kit) Code t04A74.	Kit: 40 cartridges	03/08/91
Abbott Laboratories	Trakpak Negative Control Code t04A74C	Vial: 5ml	03/08/91
Abbott Laboratories	Trakpak Opiates Tracer Code t92198	Flasks: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottles: 950, 5, 00, 100, 50, 5ml; Ampules: 20, 10, 5, 2ml.	03/08/91
Abbott Laboratories	Trakpak Reaction Cartridge Code t04A74B.	Cartridge: 1 card	03/08/91
Abbott Laboratories	Trakpak THC Tracer Code t92200	Flasks: 6, 4, 2, 1L, 500, 250, 200, 100ml; Bottles: 950, 500, 100, 50, 5ml; Ampules: 20, 10, 5, 2ml.	03/08/91
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrator B, C, D, E, F; No. 01A99-B, C, D, E, F.	Vial: 5 ml	07/14/89

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Supplier	Product name	Form	Date
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrators, No. 01A99-01.	Kit: 6 vials	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Control L, M, H; No. 01A99-L, M, H.	Vial: 5 ml	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Controls, No. 01A99-10.	Kit: 3 vials	07/14/89
Abbott Laboratories	X Systems Methadone Calibrators B-F	Bottle: 5ml	05/15/92
Abbott Laboratories	X Systems Methadone Calibrators B-F	Kit: 6 Bottles	05/12/92
Abbott Laboratories	X Systems Methadone Controls L, M, H, No. 9676-10.	Kit: 3 Bottles	05/15/92
Abbott Laboratories	X Systems Methadone Controls L, M, H; No. 9676 L, M, H.	Bottle: 5ml	05/15/92
Abbott Laboratories	d-Amphetamine (II) Bulk Stock Standard Code No. 95947.	10 L Carboy; 6 L, 2 L, 1 L Flask	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard Code No. 95934.	1 L, 500 ml, 100 ml Bottle	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard No. 95934, 95934 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid.	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells.	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial: 10ml	04/18/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells.	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/84
Adri/Technam	Drug Standards, Acid/ Neutral Mixture A and B.	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial: 10ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle: 10ml	05/03/73
Alltech-Applied Science Laboratories	4-Methylaminorex	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	6-Acetylcodeine	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	6-Monoacetylmorphine HCl	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Allylisobutylbarbituric Acid	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Alphenal	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Alprazolam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Amobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Amphetamine HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Barbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72
Alltech-Applied Science Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85

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Supplier	Product name	Form	Date
Alltech-Applied Science Laboratories	Benzoylecgonine Tetrahydrate 7.5ug, 50ug, 250ug.	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Bromazepam	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Butabarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Butethal	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Cannabidiol	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Cannabinol	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Clonazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Cocaine	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Codeine	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Cyclopentobarbital	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Delta-8-Tetrahydro-cannabinol	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Alltech-Applied Science Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Diallybarbituric acid	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Diazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Drug Mix Four	Ampoule: 1 ml	11/03/86
Alltech-Applied Science Laboratories	Drug Mix One	Ampoule: 1 ml	10/21/86
Alltech-Applied Science Laboratories	Drug Mix Three	Ampoule: 1 ml	11/03/86
Alltech-Applied Science Laboratories	Drug Mix Two	Ampoule: 1 ml	10/21/86
Alltech-Applied Science Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Ecgonine Methyl Ester HCl	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Ethinamate	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Fenfluramine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Fentanyl	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Flurazepam HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	GC/MS Benzoylecgonine Calibration Standards Kit.	Kit: 3 vials	02/16/90
Alltech-Applied Science Laboratories	Glutethimide	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Halazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	L-Amphetamine HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Levorphanol Tartrate	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Lorazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Lysergic Acid Diethylamide	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	MDA HCl	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	MDE HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	MDMA HCl	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Medazepam	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Mephobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Meprobamate	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Mescaline	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Metharbital	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Methohexital	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Methyprylon	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Alltech-Applied Science Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Alltech-Applied Science Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Alltech-Applied Science Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Alltech-Applied Science Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Alltech-Applied Science Laboratories	Morphine	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	N-Ethylamphetamine	Amber Ampoule: 1ml	02/16/90

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Supplier	Product name	Form	Date
Alltech-Applied Science Laboratories	N-Hydroxy-MDA	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science Laboratories	Nalorphine	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Nitrazepam	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Norcodeine HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Nordiazepam	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Normeperidine HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Normorphine	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Alltech-Applied Science Laboratories	Oxazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Pemoline	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Pentazocine	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Pentazocine HBr	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Phenmetrazine HCl	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Phentermine	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Prazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Propylbenzoyl-ecgonine	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Psilocybin	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Psilocyn	Vial: 1 ml	11/06/87
Alltech-Applied Science Laboratories	Secobarbital	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Alltech-Applied Science Laboratories	Talbutal	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Temazepam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	Thebaine	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Thiamylal	Vial: 1ml	01/24/73
Alltech-Applied Science Laboratories	Thiopental	Vial: 1 ml	06/16/89
Alltech-Applied Science Laboratories	Toxi Clean Test Mix	Vial: 1 ml	03/30/88
Alltech-Applied Science Laboratories	Triazolam	Vial: 1ml	04/16/85
Alltech-Applied Science Laboratories	d3-Benzoylecgonine Tetrahydrate	Amber Ampoule: 5ml	02/16/90
Alltech-Applied Science Laboratories	l-Methamphetamine HCl	Vial: 1 ml	06/16/89
American Biological Technologies, Inc.	Dade Urine Chemistry Control, Level I & II.	Glass Vial: 15ml	04/08/91
American Monitor Corporation	Qualify I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Qualify II	Glass Vial: 10ml	10/09/75
Amersham Corporation	5 Alpha-Dihydro[1, 2, 4, 5, 6, 7-3H]Testosterone Cat. No. TRK.443.	Vial: 6ml	04/02/91
Amersham Corporation	5 alpha-Dihydro[1 alpha, 2 alpha(n)-3H] Testosterone Cat. No. TRK.395.	Vial: 6ml	04/02/91
Amersham Corporation	5 alpha-dihydro[1, 2, 4, 5, 6, 7-3H] Testosterone Reagent 4 T/DHT RIA Kit.	Vial: 1ml	04/11/91
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004.	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014.	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091, IM 3094.	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlite FSH Assay, Cat. Code LAN.0077, Cat. Code LAN.2077.	Glass vial: 5.8ml, 38.1ml, 240 tests, 144 tests.	05/30/89
Amersham Corporation	Amerlite Rubella Antibody Assay, Cat. Code LAN.0200, Cat. Code LAN.2200.	Glass vial: 5.8ml, 38.1ml, 240 tests, 144 tests.	05/30/89
Amersham Corporation	Amerlite TSH Assay, Cat. Code LAN.0001, Cat. Code LAN.2001.	Glass vial: 5.8ml, 240 tests, 144 tests	05/30/89
Amersham Corporation	Amerlite TT3 Assay: Catalog Code Lan. 0003, Lan. 1003, and Lan.2003.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Amerlite TT4 Assay: Catalog Code Lan. 0002, Lan. 1002, Lan. 2002.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Dihydrotestosterone Standard Reagnet 3 T/DHT RIA Kit.	Vial: 5.5ml	04/11/91
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA-363.	Vial: 0.32 to 1.89mg	03/27/72
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537.	Vial: 0.39 to 5.85mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80

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Supplier	Product name	Form	Date
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024.	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	Testosterone Standard Reagent 2 T/DHT RIA Kit.	Vial: 5.5ml	04/11/91
Amersham Corporation	Testosterone-3-(0-carboxymethyl)oximino-(2-[125I] iodohistamine)10uCi, 25uCi Cat. No. IM.128.	Vial: 1.2ml	04/02/91
Amersham Corporation	Testosterone/dihydrotestosterone [3H] assay system Cat. No. TRK-600.	Kit: 200 assays	04/11/91
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5-95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002mg to 0.015mg	02/26/74
Amersham Corporation	[1(n)-3H]Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1, 2, 6, 7-3H] Testosterone Cat. No. TRK.402.	Vial: 6ml	04/02/91
Amersham Corporation	[1, 7, 8(n)-3H]Dihydromorphine, No. TRK-450.	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476.	Vial: 3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15, 16(n)-3H] Etorphine Catalog No. TRK 476.	Vial: 13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[17 alpha-methyl-3H] Mibolerone Cat. No. TRK.764.	Vial: 6ml	04/02/91
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461.	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[3H]11-Ketotestosterone Cat. No. TRQ.5919.	Vial: 5.7ml	06/13/91
Amersham Corporation	[4-14C] Testosterone 50uCi, 250uCi Cat. No. CFA.129.	Vial: 6ml	04/02/91
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572.	Multidose Glass Vial: 56mm x 25mm	09/28/77
Analytical Control Systems, Inc.	Benchmark I TDM Control 1L, 2M, 3H	Plastic Vial: 5ml per Vial; 1-120 Vials per Bag.	10/02/91
Armed Forces Institute of Pathology	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules.	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
Atochem North America, Inc.	M&T NiproTeq SB Additive	Polypropylene Containers: 5 gallons, 55 gallons.	03/10/88
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot Lot B-G.	Kit: 7-3 ml Vials; 3 ml Vial	08/18/88
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot-Lot Phenobarbital.	3ml, 6ml, 10ml, 30ml, 50ml Vial	08/18/88
BHP Diagnostix, Inc.	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Baxter Diagnostics Inc.	(125I) Human TSH Tracer, Cat. No. CA-2623.	Vial: 15ml	12/07/89
Baxter Diagnostics Inc.	Absorbed Plasma and Serum Reagents Kit B4233-2.	Glass Vial: 5ml (Lyophilized Material)	08/16/71
Baxter Diagnostics Inc.	Bovine Chemistry Control I.X Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc.	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc.	Buffered Thrombin (Bovine) Catalog No. B4233-40.	Bottle: 5ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc.	Dade IAC.X Comprehensive Immuno-Assay Control, Tri-Level Unassayed.	Kit: 6 bottles	08/27/91
Baxter Diagnostics Inc.	Dade Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc.	Dade Immunoassay Control, Level II-Intermediate.	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc.	Dade Immunoassay Control, Level III-High.	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc.	Dade Immunoassay Controls, Tri-Level	Kit: 3 bottles	04/25/86
Baxter Diagnostics Inc.	Dade Moni-Trol Gold, Level 1X Chemistry Control and Carbonate Diluent 1.	Kit: 55 Vials	08/31/94
Baxter Diagnostics Inc.	Dade Moni-Trol Gold, Level 1X and Level 2X Chemistry Controls.	Bottle: 18ml	08/31/94
Baxter Diagnostics Inc.	Dade Moni-Trol Gold, Level 2X Chemistry Control and Carbonate Diluent 2.	Kit: 55 Vials	08/31/94
Baxter Diagnostics Inc.	Dade TDM Control Level I-Low B5700-2	Glass Vial: 9ml (Lyophilized Material)	01/21/82

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Supplier	Product name	Form	Date
Baxter Diagnostics Inc.	Dade TDM Control Level II-Intermediate B5700-3.	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc.	Dade TDM Control Level III-High B5700-4	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc.	Dade Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700-1).	Kit: 9 Vials	03/10/87
Baxter Diagnostics Inc.	Dade Urine Chemistry Control Level I, II	Kit: 10 Bottles; Bottle: 18ml	08/02/91
Baxter Diagnostics Inc.	Data-Fi Euglobulin Lysis Set Cat. No. B4233-40.	Kit: 70 Tests	09/09/86
Baxter Diagnostics Inc.	Data-Fi Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38.	Glass Vial: 5ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc.	Data-Fi Fibrinogen Determination Reagents Cat. No. B4233-15.	Kit: 50 tests	09/09/86
Baxter Diagnostics Inc.	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233-30).	Kit: 10 Vials	03/10/87
Baxter Diagnostics Inc.	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material) Vial: 9ml Carton: 10 vials, Cat. No. 28 10 09.	05/18/81
Baxter Diagnostics Inc.	Data-Fi Thrombin Reagent	Bottle: 9 ml (Lyophilized Material)	07/20/83
Baxter Diagnostics Inc.	EXCEL-QC Level 1 Serum Chemistry Control.	Botttle: 18ml	08/04/93
Baxter Diagnostics Inc.	EXCEL-QC Level 1 and Level 2 Serum Chemistry Control and Carbonate Diluent 1 and 2.	Kit: 12 Bottles	08/04/93
Baxter Diagnostics Inc.	EXCEL-QC Level 2 Serum Chemistry Control.	Bottle: 18ml	08/04/93
Baxter Diagnostics Inc.	Immunoassay Control Level I-III Unassayed.	Bottle: 9ml	08/27/91
Baxter Diagnostics Inc.	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103-XXX.	Bottle: 9ml (Lyophilzed Material)	01/20/84
Baxter Diagnostics Inc.	Moni-Trol Level I.X Special Order Request B5106-5X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Diagnostics Inc.	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103-XXX, B5113-XXX.	Bottle: 9ml (Lyophilized Material)	01/20/84
Baxter Diagnostics Inc.	Moni-Trol Level II.X Special Order Request B5106-6X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Diagnostics Inc.	Moni-Trol. ES Level I Chemistry Control, Assayed..	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Diagnostics Inc.	Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Diagnostics Inc.	Moni-Trol. ES Level II Chemistry Control, Assayed.	Bottle: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Diagnostics Inc.	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Diagnostics Inc.	Owren's Veronal Buffer	Bottle: 18ml	08/16/71
Baxter Diagnostics Inc.	Paramax Phenobarbital Calibrator I, II, III, Cat. ι B-6109-11.	Kit: 6 Glass Bottles; 6ml each	07/07/93
Baxter Diagnostics Inc.	Paramax Phenobarbital Calibrator Level II	Glass Bottle: 6ml	07/07/93
Baxter Diagnostics Inc.	Paramax Phenobarbital Calibrator Level III.	Glass Bottle: 6ml	07/07/93
Baxter Diagnostics Inc.	Status Estradiol Conjugate	Vial: 8ml	03/12/93
Baxter Diagnostics Inc.	Stratus Phenobarbital Calibrators B, C, D, E, & F.	Glass Vial: 3ml	06/27/83
Baxter Diagnostics Inc.	Stratus Phenobarbital Conjugate	Glass Vial: 6ml	01/25/82
Baxter Diagnostics Inc.	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700-22).	Kit: 120 tests	03/10/87
Baxter Diagnostics Inc.	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material) Vial: 5ml Carton: 10 vials, Cat.No. 28 10 12.	08/16/71
Baxter Diagnostics, Inc.	Status Estradiol Antibody Solution	Vial: 33.5ml	03/12/93
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g.	05/22/79
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g.	04/24/71
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E..	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles.	11/11/80
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86

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Supplier	Product name	Form	Date
Beckman Instruments, Inc.	Paragon Electrophoresis System: Alkaline Phosphatase Isoenzyme Electrophoresis (Isopal) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: High Resolution Electrophoresis (HRE) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunoelectrophoresis (IEP) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lipoprotein Electrophoresis (LIPO) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Serum Protein Electrophoresis (SPE) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc.	Synchron Control: Multilevel Comprehensive Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20ml; Kit: 6 bottles	05/13/91
Beckman Instruments, Inc.	Triad LINK Comprehensive Custom Unassayed Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20ml; Box: 20 Bottles	05/13/91
Beckman Instruments, Inc.	Triad NYSPATH Comprehensive Custom Unassayed Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20ml; Box 20 Bottles	05/13/91
Beckman Instruments, Inc.	Vigil PRx Multilevel Protein/Drug Control Serum Levels I, II, III.	Plastic Bottle: 10ml; Kit: 6 Bottles	05/13/91
Becton Dickinson & Company	IQ Immunochemistry System, Thyroid Stimulating Hormone Catalog No. 3010.	Kit: 25 tests	06/30/87
Becton Dickinson & Company	Neonatal T4 Tracer, Catalog ↓264015	Bottle: 125ml	01/15/92
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125ml	09/27/78
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259624	Clear vial: 10ml	09/04/86
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g.	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013.	Foil Pouch: ≥5.35≥ x ≥5.25≥	09/17/79
Bio-Metric Systems, Incorporated	Cocaine-Enzyme Conjugate	Vial: 250ml, 100ml, 50ml	07/07/92
Bio-Metric Systems, Incorporated	Cocaine-ImmunoPrime Modified Carrier	Vial: 50ml, 10ml	07/07/92
Bio-Metric Systems, Incorporated	Morphine-Enzyme Conjugate	Vial: 250ml, 100ml, 50ml	07/07/92
Bio-Metric Systems, Incorporated	Morphine-ImmunoPrime Modified Carrier	Vial: 50ml, 10ml	07/07/92
Bio-Metric Systems, Incorporated	Phencyclidine-Enzyme Conjugate	Vial: 250ml, 100ml, 50ml	07/07/92
Bio-Metric Systems, Incorporated	Phencyclidine-ImmunoPrime Modified Carrier.	Vial: 50ml, 10ml	07/07/92
Bio-Metric Systems, Incorporated	Tetrahydrocannabinol-Enzyme Conjugate	Vial: 250ml, 100ml, 50ml	07/07/92
Bio-Metric Systems, Incorporated	Tetrahydrocannabinol-ImmunoPrime Carrier.	Vial: 50ml, 10ml	07/07/92
Bio-Rad Laboratories	Benzodiazepines/Tricyclic Antidepressants by HPLC.	Kit: 100 tests	02/08/90
Bio-Rad Laboratories	CoTube Estradiol Tracer	Glass Bottle: 125ml	07/28/93
Bio-Rad Laboratories	Dade Urine Chemistry Control Levels I AND II.	Vial: 20 ml, 50 ml	01/05/88
Bio-Rad Laboratories	Dade Urine Toxiology Control	Vial: 50 ml	01/05/88
Bio-Rad Laboratories	Internal Standard	Amber vial: 30ml Flask: 200ml-2000ml	02/08/90
Bio-Rad Laboratories	Methadone/Methadone Metabolite Reagent Kit.	400 tests	09/17/90
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/ Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine immunobeads.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	09/24/82
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77

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Supplier	Product name	Form	Date
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/ Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	REMEDI DPS Check Mix	Vial: 20ml, Flask: 1L-10L	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Combination.	Vial: 20ml, Flask: 250ml-6000ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard One	Vial: 20ml, Flask: 250ml-2500ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Two	Vial: 20ml, Flask: 250ml-5000ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Urine Calibrator	Vial: 20ml, Flask: 1L-10L	09/17/90
Bio-Rad Laboratories	Serum Calibrator 1	Amber vial: 20ml Polypropylene container: 20L.	02/08/90
Bio-Rad Laboratories	Serum Calibrator 2	Amber vial: 20ml Polypropylene container: 20L.	02/08/90
Bio-Rad Laboratories	Serum Calibrator for Benzodiazepines/ Tricyclics, Contains 2.	Box: 2 vials	02/08/90
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125.	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories (ECS Division)	Liquichek Therapeutic Drug Monitoring Control (TDM), Levels 1, 2, 3.	Vial: 10ml	06/01/94
Bio-Rad Laboratories (ECS Division)	Liquichek Unassayed Chemistry Control (Human) Levels 1, 2.	Vial: 20ml	06/01/94
Bio-Rad Laboratories (ECS Division)	Lyphochek Fertility Control Serum (Human) Levels 1, 2, 3.	Vial: 10ml	06/01/94
Bio-Rad Laboratories (ECS Division)	Lyphochek Urine Toxicology Screen-Low Control.	Vial: 20ml	06/01/94
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250 ml	09/09/77
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g.	05/09/74
Bio-Rad Laboratories, (Chemical Division)	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Electrophoresis Buffer, Dry-Pack	Package: ; 6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer I, pH 8.6.	Dry-pack: ; 25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer II, pH 8.6.	Dry-pack: ; 15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III, pH 8.6.	Dry-pack: ; 6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III-a, pH 8.8.	Dry-pack: ; 15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Reagent No. 3	Bottle: 165 ml	12/14/72
Bio-Rad Laboratories, (Clinical Division)	Benzodiazepines/Tricyclics/Plasma Catecholamines (BZ/TCA/pCats) Serum Calibrators Bulk Preparations.	Polypropylene Container: 15L - 100L	03/28/91
Bio-Rad Laboratories, (Clinical Division)	Plasma Catecholamines by HPLC, 100 Test.	Kit: 100 Test	03/28/91
Bio-Rad Laboratories, (Clinical Division)	Plasma Catecholamines by HPLC, Serum Calibrator Set, 1x6 vials.	Vial: 20ml; Set: 6 vials	03/28/91
Bio-Rad Laboratories, (ECS Division)	Benzo/TCA Control Levels I & II	Vial: 10ml; Box: 6 vials	03/20/91
Bio-Rad Laboratories, (ECS Division)	Blind Performance Specimen Set Cat. ↓610.	Kit: 5 bottles	09/14/90
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Assayed Chemistry Control Serum (Human) Levels I and II.	Vials: 10 ml. each	04/13/88
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Immunoassay Plus Control Serum Levels 1-3.	Vial: 10ml; Kit: 12 vials	09/14/90
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Confirm.	Box: 10 vials; Vial: 50ml	09/14/91
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Law.	Vials: 20 ml. each	04/13/88
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Screen.	Box: 10 vials; Vial: 20ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Lyphochek Immunoassay Control Levels I, II, III.	Vial: 10 ml	09/24/87
Bio-Rad Laboratories, (ECS Division)	Lyphochek Quantitative Urine Control Levels I and II.	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories, (ECS Division)	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	08/20/84
Bio-Rad Laboratories, (ECS Division)	Lyphochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories, (ECS Division)	Lyphochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories, (ECS Division)	Positive for Amphetamines	Bottle: 90ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Cocaine	Bottle: 90ml	09/14/90

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Supplier	Product name	Form	Date
Bio-Rad Laboratories, (ECS Division)	Positive for Marihuana	Bottle: 90ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Opiates	Bottle: 90ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Phencyclidine	Bottle: 90ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Urine Toxicology Control No. C-470-25	Amber Vial: 50ml	09/19/79
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Biopool International	Drugs of Abuse Controls GC/MS L-2, L-3 and L-4.	Kit: 6 Vials	01/04/94
Biopool International	Drugs of Abuse Controls GC/MS L-2, L-3 and L-4.	Vial: 12ml	01/04/94
Biopool International	Drugs of Abuse Controls L-2, L-3 and L-4	Kit: 6 Vials	01/04/94
Biopool International	Drugs of Abuse Controls L-2, L-3 and L-4	Vial: 12ml	01/04/94
Bioscientific Corp.	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box.	07/14/77
Bioscientific Corp/ECA	Agarose Barbital Buffer CSB 470182	Vial: 7 drams	11/15/90
Bioscientific Corp/ECA	Agarose Barbital Buffer ECA 470182	Vial: 12 drams; Box: 3 vials	11/15/90
Bioscientific Corp/ECA	Agarose Barbital-EDTA Buffer ECA 470180.	Vial: 12 drams, Box: 3 vials	11/15/90
Bioscientific Corp/ECA	ECA Buffer ECA 0320024	Vial: 12 drams, Box: 12 vials	11/15/90
Bioscientific Corp/ECA	General Procedure Agarose Film ıECA 470100.	Plastic Tray 4.5≥x5≥, Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	LD Agarose Gel ıCSB 102	Plastic Tray: 3≥x5≥, Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	Protein Agarose Gel ıPSB 103	Plastic Tray 3≥x5≥, Kit: 10 trays	09/10/90
Biosite Diagnostics	Alprazolam Stock Solution, 31366	Vial: 2ml	05/26/92
Biosite Diagnostics	Alprazolam Threshold Control Calibrators 2-6; 31446-31450.	Flask: 250ml	05/26/92
Biosite Diagnostics	Amphetamine Enzyme Conjugate 31111, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Amphetamine QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Amphetamine QC Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Barbiturate Conjugate	Plastic Bottles: 2ml - 60 ml	11/30/90
Biosite Diagnostics	Barbiturate Conjugate Control	Vial: 0.5, 1, 2, 5, 15, 50ml	03/28/94
Biosite Diagnostics	Barbiturate Derivative	Vial: 8, 16, 32 ml	11/30/90
Biosite Diagnostics	Barbiturate Enzyme Conjugate 31110, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Barbiturate QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Barbiturate QC Control (Bulk)	Bottle: 5L - 10L	10/29/91
Biosite Diagnostics	Barbiturate Threshold Control Calibrators 2-6; 31356-31360.	Flask: 250ml	05/26/92
Biosite Diagnostics	Benzodiazepine Controls, 1-6 31088-31093, 7-11 31098-31102, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/91
Biosite Diagnostics	Benzodiazepine QC Control 3	Vial: 5ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 1	Vial: 5ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 1 (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 2	Vial: 5ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 2 (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 3 (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Benzoylecgonine Conjugate	Plastic Bottles: 2ml - 60 ml	11/30/90
Biosite Diagnostics	Benzoylecgonine Conjugate II, III, IV, & V	Vial: 1.5ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Conjugate II, III, IV, & V Bulk.	Bottle: 5, 15, 30 & 60 ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Controls, 1-5 31041-31045, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Enzyme Conjugate 31105, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Enzyme Conjugate II	Vial: 1.5ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Standards, 1-6 31035-31040, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Stock Solution, 31322	Vial: 2ml	05/26/92
Biosite Diagnostics	Benzoylecgonine Threshold Control Calibrators 2-6; 31341-31345.	Flask: 250ml	05/26/92
Biosite Diagnostics	Cocaine QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Cocaine QC Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Conjugate (Intermediate)	Vial: 2, 5, 15, 50, 60, 100, 250, 500, 1000, 2000ml.	03/28/94
Biosite Diagnostics	Conjugate Bead, Intervention	Bottle: 15, 50, 100, 250, 500, 1000, 2000ml.	11/09/93
Biosite Diagnostics	Conjugate Bead, TCA	Bottle: 15, 50, 100, 250, 500, 1000, 2000ml.	11/09/93
Biosite Diagnostics	Conjugate Beads (Bulk)	Bottles: 15, 50, 100, 250, 500, 1000, 2000ml.	11/30/90
Biosite Diagnostics	Conjugate Beads Triage MTD	Vial: 15, 50, 100, 250, 500, 1000, 2000ml	03/28/94

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Biosite Diagnostics	Conjugate Beads Triage and MTD	Vial: 15, 50, 100, 250, 500, 1000, 2000ml	03/28/94
Biosite Diagnostics	D-Amphetamine Stock Solution, 31323	Vial: 2ml	05/26/92
Biosite Diagnostics	D-Amphetamine Threshold Control Calibrator, 31376.	Flask: 250ml	05/26/92
Biosite Diagnostics	D-Methamphetamine Stock Solution, 31324.	Vial: 2ml	05/26/92
Biosite Diagnostics	D-Methamphetamine Threshold Control Calibrator, 31381.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Drugs of Abuse Controls-Level 2, Positive	Pack: 6 Vials; 5ml/vial	12/14/94
Biosite Diagnostics	Drugs of Abuse Controls-Level 3, Hi-Positive.	Pack: 6 Vials; 5ml/vial	12/14/94
Biosite Diagnostics	Estazolam TTC Stock Solution	Vial: 1ml	11/09/93
Biosite Diagnostics	Estazolam Threshold Control Calibrators 2-6.	Vial: .25-1ml	11/09/93
Biosite Diagnostics	Estazolam Threshold Control Calibrators 2-6 Bulk Formulation.	Vial: 5-20ml	11/09/93
Biosite Diagnostics	Flurazepam Enzyme Conjugate 31109, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Flurazepam Standards, 1-7 31081-31087, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Intervention Bead Solution	Vial: 2, 5, 15, 50, 100, 250, 500ml	03/28/94
Biosite Diagnostics	Intervention Conjugate (Bulk)	Bottled/Flask: 1L-4L	11/09/93
Biosite Diagnostics	Labeled Benzoylecgonine Conjugate	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labeled Conjugate Mixture 13	Vial: 2, 5, 15, 50, 100, 250, 500ml	03/28/94
Biosite Diagnostics	Labeled Conjugate Mixture 2	Plastic Bottles: 10ml- 1L	11/30/90
Biosite Diagnostics	Labeled Conjugate Mixture 5	Bottles: 2, 5, 15, 50, 100, 250, 500ml	10/29/91
Biosite Diagnostics	Labeled Conjugate Mixture 7	Bottle: 20L, 10L, 5L, 1L	12/22/92
Biosite Diagnostics	Labeled Conjugate Mixture 9	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labeled Morphine Conjugate	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labeled TCA Conjugate	Bottled/Flask: 2, 5, 15, 50, 60, 100, 250, 260, 500, 1000, 2000ml.	11/09/93
Biosite Diagnostics	Labeled THC Conjugate	Plastic Bottles: 10ml - 1L	11/30/90
Biosite Diagnostics	Labeled THC Conjugate (Mixture 13)	Flask: 500, 250, 100, 50, 15, 5, 2ml	03/28/94
Biosite Diagnostics	Labeled THC Conjugate Mixture 4	Bottles: 2, 5, 15, 50, 100, 250, 500ml	10/29/91
Biosite Diagnostics	Labeled Triage MTD Conjugate (Bulk)	Vial: 2, 5, 15, 50, 60, 100, 250, 260, 500ml.	03/28/94
Biosite Diagnostics	Lorazepam Enzyme Conjugate 31108, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Lorazepam Standards, 1-4 31094-31097, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Lormetazepam Stock Solution	Vial: 1ml	11/09/93
Biosite Diagnostics	Methadone Control	Vial: 2ml	12/22/92
Biosite Diagnostics	Methadone Standards 1-6	Vial: 2ml, 50ml	12/22/92
Biosite Diagnostics	Methadone Stock Solution	Vial: 2ml, 50ml	12/22/92
Biosite Diagnostics	Methamphetamine Enzyme Conjugate 31104, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Methamphetamine QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Methamphetamine QC Control (Bulk)	Bottle: 5L - 10L	10/29/91
Biosite Diagnostics	Morphine Conjugate	Plastic Bottles: 2ml - 60 ml	11/30/90
Biosite Diagnostics	Morphine Control 3	Vial: 2ml, 50ml	12/22/92
Biosite Diagnostics	Morphine Controls, 1-5 31076-31080, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Morphine Enzyme Conjugate 31107, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	Morphine Standard 6, 31220 Bulk Formulation.	Vial: 1.5ml, 5-20ml; Flask: 20-50ml	03/14/91
Biosite Diagnostics	Morphine Standards, 1-5 31071-31075, Bulk Formulation.	Vial; 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Morphine Stock Solution, 31325	Vial: 2ml	05/26/92
Biosite Diagnostics	Opiate QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Opiate QC Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Opiate Threshold Control Calibrators 2-6; 31346-31350.	Flask: 250ml	05/26/92
Biosite Diagnostics	PCP QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	PCP QC Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Phencyclidine Control 7 Bulk Formulation	Vial: 5-20ml	11/09/93
Biosite Diagnostics	Phencyclidine Controls 5 -6, 31256-31256 Bulk Formulation.	Vial: 1.5ml, 5-20ml; Flask: 20-50ml	03/14/91
Biosite Diagnostics	Phencyclidine Controls, 1-4 31010-31013, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Phencyclidine Enzyme Conjugate 31103, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90

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Biosite Diagnostics	Phencyclidine Standard 7	Vial: .25-1ml	11/09/93
Biosite Diagnostics	Phencyclidine Standards 1-4 31006-31009, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Phencyclidine Standards 5-6, 31253-31254 Bulk Formulation.	Vial: 1.5ml, 5-20 ml; Flask: 20-50ml	03/14/91
Biosite Diagnostics	Phencyclidine Stock Solution, 31321	Vial: 2ml	05/26/92
Biosite Diagnostics	Phencyclidine Threshold Control Calibrators 2-6; 31366-31370.	Flask: 250ml	05/26/92
Biosite Diagnostics	Phenobarbital Controls, 1-8 31063-31070, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	Phenobarbital Standards, 1-8 31055-31062, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	RT-5 Drugs of Abuse, Positive	Pack: 6 Vials; 5ml/vial	12/14/94
Biosite Diagnostics	Secobarbital Stock Solution, 31326	Vial: 2ml	05/26/92
Biosite Diagnostics	THC Conjugate	Plastic Bottles: 2ml - 60 ml	11/30/90
Biosite Diagnostics	THC Conjugate Control	Vial: 0.5, 1, 2, 5, 15, 50ml	03/28/94
Biosite Diagnostics	THC Controls, 1-3 31052-31054, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	THC Enzyme Conjugate 31106, Bulk Formulation.	Vial: 100ml, 1.5ml	10/24/90
Biosite Diagnostics	THC QC Control	Vial: 5ml	10/29/91
Biosite Diagnostics	THC QC Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	THC Standards, 1-6 31046-31051, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	THC Standards, 7-9	Vial: .25-1ml	11/09/93
Biosite Diagnostics	THC Standards, 7-9 Bulk Formulation	Vial: 5-20ml	11/09/93
Biosite Diagnostics	THC Threshold Control Calibrators 2-6; 31371-31375.	Flask: 250ml	05/26/92
Biosite Diagnostics	Temazepam Stock Solution, 31337	Vial: 2ml	05/26/92
Biosite Diagnostics	Temazepam Threshold Control Calibrators 2-6; 31451-31455.	Flask: 250ml	05/26/92
Biosite Diagnostics	Threshold Control A & B	Vial: 5ml	10/29/91
Biosite Diagnostics	Threshold Control A & B (Bulk)	Bottle: 1L - 20L	10/29/91
Biosite Diagnostics	Threshold Controls C, D, E, F, G, H	Vial: 3.5-5ml	11/09/93
Biosite Diagnostics	Thresholds C, D, E, F, G, H Bulk Solution	Bottle: 1-5ml	11/09/93
Biosite Diagnostics	Triage 6 Panel for Drugs of Abuse	Box: 10, 25 cassettes	10/05/92
Biosite Diagnostics	Triage 7 Conjugate	Vial: 2, 5, 15, 50, 60, 100, 250, 260, 500ml.	03/28/94
Biosite Diagnostics	Triage 8 Panel for Drugs of Abuse	Box: 3, 10, 25 Cassettes	03/23/94
Biosite Diagnostics	Triage 8 Panel for Drugs of Abuse	Box: 3, 10, 25 Cassettes	03/28/94
Biosite Diagnostics	Triage 8 Panel for Drugs of Abuse	Pouch: 1 Cassette	03/28/94
Biosite Diagnostics	Triage DOA Demo Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Triage DOA Demo Control (Bulk)	Bottle: 0.5L - 10L	10/29/91
Biosite Diagnostics	Triage Drug Screen Control	Vial: 5ml	10/29/91
Biosite Diagnostics	Triage Drug Screen Control (Bulk)	Bottle: 0.5 - 20L	10/29/91
Biosite Diagnostics	Triage Intervention Panel for Drugs of Abuse.	Box: 10, 25 Pouches	11/09/93
Biosite Diagnostics	Triage Intervention Test Device	Pouch: 1 each	11/09/93
Biosite Diagnostics	Triage Panel for Drugs of Abuse	Box: 10, 25 cassettes	11/30/90
Biosite Diagnostics	Triage Panel for Drugs of Abuse Plus Tricyclic Antidepressants.	Box: 10, 25 Pouches	11/09/93
Biosite Diagnostics	Triage Panel for Drugs of Abuse Plus methadone.	Box; 3, 10, 25 Cassettes	03/23/94
Biosite Diagnostics	Triage Panel for Drugs of Abuse plus Methadone.	Box: 3, 10, 25 Cassettes	03/28/94
Biosite Diagnostics	Triage Panel for Drugs of Abuse plus Methadone Test Device.	Pouch: 1 Cassette	03/28/94
Biosite Diagnostics	Triage Panel for Drugs of Abuse plus Tricyclic Antidepressants, Cat\92000.	Kit: 25 Tests	11/01/93
Biosite Diagnostics	Triage Panel for Drugs of Abuse plus Tricyclic Antidepressants, Cat\92010.	Kit: 10 Tests	11/01/93
Biosite Diagnostics	Triage Plus TCA Test Device	Pouch: 1 each	11/09/93
Biosite Diagnostics	Triage Test Device	Metallic Pouch: 1 each	11/30/90
Biosite Diagnostics	Triage and MTD Conjugate (Bulk)	Vial: 2, 5, 15, 50, 60, 100, 250, 260, 500ml.	03/28/94
Biosite Diagnostics	Triage-7 Conjugate Beads	Bottle: 15, 50, 100, 250, 500, 1000, 2000ml.	12/22/92
Biosite Diagnostics	Triage-7 Device	Pouch: 1 cassette	12/22/92
Biosite Diagnostics	Triage-7 Panel for Drugs	Box: 10, 25 cassettes	12/22/92
Biosite Diagnostics	d-Amphetamine Controls, 1-5 31030-31034, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90

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Supplier	Product name	Form	Date
Biosite Diagnostics	d-Amphetamine Standards, 1-6 31024-31029, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	d-Methamphetamine Controls 5-6, 31020, 31257 Bulk Formulation.	Vial: 1.5ml, 20-50ml; Flask: 20-50ml	03/14/91
Biosite Diagnostics	d-Methamphetamine Controls, 1-4 31020-31023, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Biosite Diagnostics	d-Methamphetamine Standards, 1-6 31014-31019, Bulk Formulation.	Vial: 50ml, 1.5ml	10/24/90
Boehringer Mannheim	2a Amph ED Reagent for 500ml; Cat\ 1300796	Vial: 500ml	04/13/94
Boehringer Mannheim	2a Amphetamines ED Reagent for 85 ml; Cat\ 1404234.	Vial: 100ml	04/13/94
Boehringer Mannheim	Amphetamine System Pack for 85ml; Cat\ 81-3300.	Kit: 4 Bottles	04/13/94
Boehringer Mannheim	Amphetamines Systems Pack for 500ml; Cat\ 81-3400.	Kit: 4 Bottles	04/13/94
Boehringer Mannheim	CEDI DAU 4-Drug Intermediate Calibrator	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU 4-Drug Cutoff Calibrator	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU 4-Drug High Calibrator	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU 5-Drug Cutoff Calibrator	Bottle: 5, 15ml	06/30/94
Boehringer Mannheim	CEDIA DAU Amphetamine Assay- Cat\ 83-3300 and 85-3300.	Kit: 4 Bottles; 18ml each	07/19/94
Boehringer Mannheim	CEDIA DAU Barb/Benz 200	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU Barb/Benz 300 Calibrator	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU Barb/Benz High Calibrator	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU Barb/Benz Intermediate Calibrator.	Bottle: 10, 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU Cocaine Assay- Cat\ 83-2300 and 85-2300.	Kit: 4 Bottles; 18ml each	07/19/94
Boehringer Mannheim	CEDIA DAU Cocaine Assay; Cat\ 81-2300.	Kit: 4 Bottles, 85ml	01/24/94
Boehringer Mannheim	CEDIA DAU Cocaine Assay; Cat\ 81-2400.	Kit: 4 Bottles, 500ml	01/24/94
Boehringer Mannheim	CEDIA DAU Multi-Level THC Assay; Cat\ 81-2700.	Kit: 4 Bottles, 85ml	01/24/94
Boehringer Mannheim	CEDIA DAU Multi-Level THC Assay; Cat\ 81-2800.	Kit: 4 Bottles, 500ml	01/24/94
Boehringer Mannheim	CEDIA DAU Opiate Assay- Cat\ 83-2900 and 85-2900.	Kit: 4 Bottles; 18ml each	07/19/94
Boehringer Mannheim	CEDIA DAU Opiate Assay; Cat\ 81-2900	Kit: 4 Bottles, 85ml	01/24/94
Boehringer Mannheim	CEDIA DAU Opiate Assay; Cat\ 81-3000	Kit: 4 Bottles, 500ml	01/24/94
Boehringer Mannheim	CEDIA DAU Propoxyphene Assays; 18ml, 85ml, 500ml.	Kit: 4 Bottles	11/30/94
Boehringer Mannheim	CEDIA DAU Propoxyphene Cutoff Calibrator.	Vial: 10ml	11/30/94
Boehringer Mannheim	CEDIA DAU Propoxyphene High Calibrator.	Vial: 10ml	11/30/94
Boehringer Mannheim	CEDIA DAU Propoxyphene Intermediate Calibrator.	Vial: 10ml	11/30/94
Boehringer Mannheim	CEDIA DAU THC 100ng/ml Calibrator	Bottle: 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU THC 150ng/ml Calibrator	Bottle: 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU THC 25ng/ml Calibrator	Bottle: 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU THC 50ng/ml Calibrator	Bottle: 15ml	04/01/94
Boehringer Mannheim	CEDIA DAU THC 75 ng/ml Calibrator	Bottle: 15ml	04/01/94
Boehringer Mannheim	CEDIA Multi-Level THC Assay-CAt\ 83-2700 and 85-2700.	Kit: 4 Bottles; 18ml each	07/19/94
Boehringer Mannheim	Multi-Drug Control Set, t\946380	2 Vials; 15ml/vial	05/10/94
Boehringer Mannheim	Multi-Drug Set, t\946379	2 Vials; 5ml/vial	05/10/94
Boehringer Mannheim	Propoxyphene Conjugate	Vial: 25ml	11/30/94
Boehringer Mannheim	Propoxyphene Cutoff Bulk Calibrator	Carboy: 4L	11/30/94
Boehringer Mannheim	Propoxyphene ED Bulk Reagent	Carboy: 25L	11/30/94
Boehringer Mannheim	Propoxyphene ED Reagent	Vial: 7, 100, 190ml	11/30/94
Boehringer Mannheim	Propoxyphene High Bulk Calibrator	Carboy: 4L	11/30/94
Boehringer Mannheim	Propoxyphene Intermediate Bulk Calibrator.	Carboy: 4L	11/30/94
Boehringer Mannheim	Propoxyphene Spiking Solution	Vial: 2L	11/30/94
Boehringer Mannheim	Reference Propoxyphene Bulk Manufacturing Calibrators E, F, G, H, I, J, K and Open.	Carboy: 5L	11/30/94
Boehringer Mannheim	Reference Propoxyphene Manufacturing Calibrators E, F, G, H, I, J, K and Open.	Vial: 3, 5ml	11/30/94
Boehringer Mannheim	Specialty Control Set 1, t\946381	2 Vials; 15ml/vial	05/10/94

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Supplier	Product name	Form	Date
Boehringer Mannheim	Specialty Control Set 2, 946383	2 Vials: 15ml/vial	05/10/94
Boehringer Mannheim	THC 100 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Boehringer Mannheim	THC 100 Controls (High & Low)	Bottle: 15ml	06/30/94
Boehringer Mannheim	THC 100 Controls (High & Low) Bulk	Carboy: 150L	06/30/94
Boehringer Mannheim	THC 25 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Boehringer Mannheim	THC 25 Controls (High & Low)	Bottle: 15ml	06/30/94
Boehringer Mannheim	THC 25 Controls (High & Low) Bulk	Carboy: 150L	06/30/94
Boehringer Mannheim	THC 50 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Boehringer Mannheim	THC 50 Controls (High & Low)	Bottle: 15ml	06/30/94
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
Cambridge Medical Diagnostics, Incorporated.	125I Human Parathyroid Hormone 44-68	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetraiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1-84) Standard.	6 Vials: 5ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 AntiSerum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1ml	03/29/85
Casco Standards	1-(1-Phenylcyclohexyl)pyrrolidine Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	1-Phenylcyclohexylamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/23/90
Casco Standards	1-[1-(2-thienyl)-cyclohexyl]-piperdine Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/23/90
Casco Standards	1-[1-2(2-thienyl)-cyclohexyl]-pyrrolidine Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 Plastic Cup: 125ml.	03/23/90
Casco Standards	11-OH-delta-8-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	11-OH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic cup: 125ml.	03/21/90
Casco Standards	11-nor-delta-8-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	11-nor-delta-9-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 vials	03/21/90
Casco Standards	8-B-11-diOH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90

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Casco Standards	8-B-OH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Allobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastci Cup: 125ml.	03/21/90
Casco Standards	Alphenal Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50 75 vials Plastic cup: 125ml.	03/21/90
Casco Standards	Alprazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Amobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Aprobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Barbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Benzoylecgonine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Benzphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Bromazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butabarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butalbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butethal Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cannabidiol Cross-Reactant	Cryo-Vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cannabinol Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic cup: 125ml.	03/21/90
Casco Standards	Chlordiazepoxide Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Clonazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cocaine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cyclopentobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Diazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Ecgonine HCl Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Ecgonine-methyl ester HCl hydrate Cross-Reactant.	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Fenfluramine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Flunitrazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Flurazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Halazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Hexobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Lorazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDA Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDE Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDMA Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Medazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Midazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Nitrazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 03/21/90.	03/21/90
Casco Standards	Nordiazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Oxazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90

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Casco Standards	Pentobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phencyclidine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/23/90
Casco Standards	Phenmetrazine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phenobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phentermine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Pinazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Prazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Propylhexedrine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Secobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Talbutal Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Temazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Triazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	d-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	d-Methamphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	l-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	p-OH-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Cayman Chemical Company	Testesterone	Vial: 3ml	04/07/93
Ciba Corning Diagnostics Corp.	AACC Tox	Glass Vial: 30ml	01/20/86
Ciba Corning Diagnostics Corp.	ACS Estradiol Component Sets	Kits: 3 Vials; 18 vials	01/31/94
Ciba Corning Diagnostics Corp.	ACS Estradiol Component Sets Releasing Reagent.	Bottle: 30ml	01/31/94
Ciba Corning Diagnostics Corp.	ACS FT4	Kit: 50 Test, 300 Test	03/26/91
Ciba Corning Diagnostics Corp.	ACS FT4 Lite Reagent	Vial: 7ml	03/26/91
Ciba Corning Diagnostics Corp.	ACS FT4 Lite Reagent	Vial: 7ml	03/26/91
Ciba Corning Diagnostics Corp.	ACS FT4 Solid Phase	Vial: 26ml	03/26/91
Ciba Corning Diagnostics Corp.	ACS Ferritin Lite Reagent	Vial: 7ml; Kit: 50, 300, 3000 Tests	04/15/91
Ciba Corning Diagnostics Corp.	ACS Ferritin Solid Phase	Vial: 26ml; Kit: 50 Tests, 300 Tests	04/15/91
Ciba Corning Diagnostics Corp.	ACS HCG Solid Phase	Vial: 26ml; Kit: 50 Tests, 300 Tests	04/18/91
Ciba Corning Diagnostics Corp.	ACS Magnetic Check	Plastic Vial: 26ml	06/18/91
Ciba Corning Diagnostics Corp.	ACS Magnetic Check II	Plastic Vial: 26ml	06/18/91
Ciba Corning Diagnostics Corp.	ACS Multical E Pack (Low & High Calibrator).	Kits: 4 Vials; 2 vials	01/31/94
Ciba Corning Diagnostics Corp.	ACS Multical High Calibrator	Vial: 10ml	01/31/94
Ciba Corning Diagnostics Corp.	ACS Multical Low Calibrator	Vial: 10ml	01/31/94
Ciba Corning Diagnostics Corp.	ACS Performance Verification Test Kit	Kit: 6 Vials	06/18/91
Ciba Corning Diagnostics Corp.	ACS T3 Kit	Kit: 50, 300, 3000 Tests	07/22/91
Ciba Corning Diagnostics Corp.	ACS T3 Lite Reagent	Plastic Vial: 7ml	07/22/91
Ciba Corning Diagnostics Corp.	ACS T3 Solid Phase	Plastic Vial: 26ml	07/22/91
Ciba Corning Diagnostics Corp.	ACS T4	Kit: 50 Test, 300 Test	03/26/91
Ciba Corning Diagnostics Corp.	ACS T4 Lite Reagent	Vial: 7ml	03/26/91
Ciba Corning Diagnostics Corp.	ACS T4 Solid Phase	Vial: 26ml	03/26/91
Ciba Corning Diagnostics Corp.	ACS Testosterone Component Sets (50 Tests).	Set: 2 Bottles	03/28/94
Ciba Corning Diagnostics Corp.	ACS Testosterone Component Sets (500 Tests).	Set: 12 Bottles	03/28/94
Ciba Corning Diagnostics Corp.	ACS Testosterone Lite Reagent	Bottle: 10ml	03/28/94
Ciba Corning Diagnostics Corp.	ACS Testosterone Releasing Agent	Bottle: 30ml	07/20/94
Ciba Corning Diagnostics Corp.	ACS Wash Check Solid Phase	Plastic Vial: 26ml	06/18/91
Ciba Corning Diagnostics Corp.	ALP Buffer Concentrate Cat. No. 470244	Plastic Bottle: 175ml	10/28/91
Ciba Corning Diagnostics Corp.	ALP Gel/12 Cat. No. 470246	2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp.	ALP Gel/8 Cat. No. 470243	2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp.	ALP Gel/8 and Buffer Cat. No. 470240	Kit: 10 Plates; Plastic Bottle: 175ml	10/28/91
Ciba Corning Diagnostics Corp.	Alkaline Hemoglobin Buffer Cat. No. 470580.	Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Alkaline Hemoglobin Kit/8 Cat. No. 470678.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91

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Supplier	Product name	Form	Date
Ciba Corning Diagnostics Corp.	CVM Chemistry (Calibration Verification Material for Chemistry), Levels 1 thru 8.	Kit: 16 Vials; 5ml/vial	06/14/94
Ciba Corning Diagnostics Corp.	Ciba Corning ANTICONV/ASTH I, II	Kit Contains: 10ml vial, 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM I	Vial: 5ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM I, II & III	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM II	Vial: 5ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM III	Vial: 5ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TOX I, II	Kit: Contains: 10ml vial, 5 Vials each level.	12/16/85
Ciba Corning Diagnostics Corp.	Ciba Corning Urine II	Vial: 30ml	05/22/85
Ciba Corning Diagnostics Corp.	DAU I, No. 9076	Glass vial: 25ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU II No. 9077	Glass Vial: 25ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU III, No. 9078	Glass vial: 25ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU IV, No. 9079	Glass Vial: 25ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU V, No. 9085	Glass Vial: 25ml; Box: 10 vials	05/10/91
Ciba Corning Diagnostics Corp.	Double Four-Track Gel Cat. No. 470179 .	Plate: 8 Tests; Kit: 12 Plates	10/28/91
Ciba Corning Diagnostics Corp.	HDL Cholesterol Gel/8 and Buffer Cat. No. 470618.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	High Resolution Protein Gel/8 Cat. NO. 470201.	Kit: 12 Plates; 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp.	High Resolution Protein Kit/8 Cat. No. 470682.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Immophase Ferritin Controls	Glass Vial: 3 ml	01/19/87
Ciba Corning Diagnostics Corp.	Immophase Ferritin Standards	Glass Vial: 5 ml	09/16/86
Ciba Corning Diagnostics Corp.	Immunoelectrophoresis Gel/10 Cat. No. 470090.	Kit: 12 Plates; 2 Plates: 20 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Immunoelectrophoresis Kit/8 Cat. No. 470684.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	L-TDM I	Glass Vial: 5 ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	L-TDM I, II, III Kit	Kit: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	L-TDM II	Glass Vial: 5ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	L-TDM III	Glass Vial: 5ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	LD Isoenzyme Gel/8 and Buffer Cat. No. 470620.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	LVM HI-CHEM DIL	Vial: 10ml	06/21/90
Ciba Corning Diagnostics Corp.	LVM, Product Code - 9774	Carton: 12 vials	06/21/90
Ciba Corning Diagnostics Corp.	Ligand Plus 1, 2, 3	Kit: 15 Bottles, 5ml/bottle	06/17/94
Ciba Corning Diagnostics Corp.	Linearity Reference Material LNM-A, LNM-B, LNM-C.	Vial: 10ml; Kit: 2 vials	02/12/91
Ciba Corning Diagnostics Corp.	Linearity Survey LN3-A, LN3-B, LN3-C	Vial: 10ml; Kit: 2 vials	02/12/91
Ciba Corning Diagnostics Corp.	Linearity Survey LN4-A, LN4-B, LN4-C	Vial: 25ml; Kit: 2 vials	02/12/91
Ciba Corning Diagnostics Corp.	Lipoprotein Kit/8 Cat. No. 470694	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	MULTIQUAL ABN UNASY	Vial: 3ml, 10ml, Carton: 15 vials, 10 vials	04/09/89
Ciba Corning Diagnostics Corp.	MULTIQUAL I Assay, Product Code 9816	Kit: 15 vials; 3ml/vial	08/05/92
Ciba Corning Diagnostics Corp.	MULTIQUAL II Assay, Product Code 9817.	Kit: 15 vials; 3ml/vial	08/05/92
Ciba Corning Diagnostics Corp.	MULTIQUAL III Assay, Product Code 9818.	Kit: 15 vials; 3ml/vial	08/05/92
Ciba Corning Diagnostics Corp.	MULTIQUAL NOR UNASY	Vial: 3ml, 10ml, Carton: 15 vials, 10 vials	04/09/89
Ciba Corning Diagnostics Corp.	Magic Ferritin 2000 Standard	Plastic Vial: 1 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Controls	Plastic Vial: 5 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Standards	Polypropylene Vial: 3 ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin Zero Standard	Plastic Vial: 50 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Lite FT4 Component Set	Set: 100, 400 Tests	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite FT4 Kit	Kit: 100 Tests	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite FT4 Lite Reagent	Bottle: 10ml, 40ml	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite FT4 Solid Phase	Bottle: 50ml, 200ml	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Bulk Lite Reageant	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Solid Phase	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite HCG Solid Phase	Plastic vial: 50ml, Kit: 100 tests	12/09/88
Ciba Corning Diagnostics Corp.	Magic Lite T3 Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite T3 Kit	Kit: 100 Tests	06/27/91
Ciba Corning Diagnostics Corp.	Magic Lite T3 Lite Reagent	Plastic Vial: 30ml	06/27/91
Ciba Corning Diagnostics Corp.	Magic Lite T3 Solid Phase	Plastic Vial: 75ml	06/27/91
Ciba Corning Diagnostics Corp.	Magic Lite T4 Component Set	Set: 100, 400, 1200 Tests	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite T4 Kit	Kit: 100 Tests	07/06/94
Ciba Corning Diagnostics Corp.	Magic Lite T4 Solid Phase	Bottle: 25ml, 100ml	07/06/94
Ciba Corning Diagnostics Corp.	Magic T4 Antibody	Plastic Vial: 50 ml and 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic T4 Antibody	Vial: 50ml, 200ml	11/01/90
Ciba Corning Diagnostics Corp.	Multi-LD Gel Cat. No. 470221	Kit: 12 Plates; 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Multi-SPE Gel Cat. No. 470252	Kit: 12 Plates; 2 Plates: 32 Tests	10/28/91

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Ciba Corning Diagnostics Corp.	Multitrac ALP Gel/12 and Buffer Cat. No. 470240.	Kit: 10 Plates; Plastic Bottle: 175ml	10/28/91
Ciba Corning Diagnostics Corp.	Multitrac Immunofixation Kit/12 Cat. No. 470585.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Multitrac LD Isoenzyme Gel/12 and Buffer Cat. No. 470622.	Kit: 10 Plates; Plastic vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Multitrac LD Isoenzyme Gel/16 and Buffer Cat. No. 470625.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Multitrac Lipoprotein Kit/12 Cat. No. 470695.	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Multitrac Serum Protein Kit/12 Cat. No. 470697.	Kit: 10 Plates; Plastic vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	QCS ABN ASY	Vial: 5ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp.	QCS ABN ASY No. 9705/9705A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN ASY No. 9707/9707A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN UNASY No. 9691/9691A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN UNASY No. 9717/9717A	Box: 10 vials, Vial: 10 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY	Vial: 5 ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY No. 9702/9702A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY No. 9704/9704A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS Nor UNASY No. 9681/9681A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS Nor UNASY No. 9716/9716A	Box: 10 vials, Vial 10 ml	12/15/89
Ciba Corning Diagnostics Corp.	Reagent A- Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A- Alt 7	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A-Ammonia 10	Vial: 10 ml	03/24/79
Ciba Corning Diagnostics Corp.	Serum Protein Kit/8 Cat. No. 470696	Kit: 10 Plates; Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Special Barbital Buffer Set, Catalog No. 470182.	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal Buffer Cat. No. 470586	Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp.	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal Gel/12 Cat. No. 470554	Kit: 12 Plates; 2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal Gel/16 or Multi-SPE Gel Cat. No. 470066.	Kit: 12 Plates; 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal IEP Gel Cat. No. 470222	Kit: 12 Plates; 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal II Gel/12 Cat. No. 470262	Kit: 12 Plates; 2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal II Gel/12 Cat. No. 470362	Kit: 12 Plates	09/22/92
Ciba Corning Diagnostics Corp.	Universal II Gel/16 Cat. No. 470268	Kit: 12 Plates; 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal II Gel/8 Cat. No. 470261	Kit: 12 Plates; 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp.	Universal II Gel/8 Cat. No. 470361	Kit: 12 Plates	09/22/92
Ciba Corning Diagnostics Corp.	Universal PHAB Buffer Set Catalog No. 470180.	Kit: 3 vials per kit	09/26/79
Cone Biotech, Inc.	American Association of Bioanalysts, Urine Toxicology Survey.	Vial: 20ml Kit: 2 vials	05/30/90
Cone Biotech, Inc.	CAP/Cocaine Reference Material Levels II, III, and IV.	Vial: 20 ml	03/07/88
Cone Biotech, Inc.	College of American Pathologists (CAP) Reference Material for Cocaine in Urine.	Vial: 15ml Kit: 4 vials	05/30/90
Cone Biotech, Inc.	College of American Pathologists Forensic Urine Drug Testing Survey Material (AACC/CAP).	Vial: 100ml	05/30/90
Cone Biotech, Inc.	College of American Pathologists Toxicology Survey (CAP).	Vial: 50ml	05/30/90
Cone Biotech, Inc.	College of American Pathologists Urine Toxicology Survey (CAP).	Vial: 50ml	05/30/90
Cone Biotech, Inc.	QCM-UTI	Vial: 20ml	03/07/85
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls.	Vials: 8ml	02/27/84
Cone Biotech, Inc.	UDM-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle: 60 ml	08/31/87
Cone Biotech, Inc.	UDS and UDC CAP/AACC Forensic Urine Drug Testing.	Vial: 30 ml	01/06/88
Consolidated Technologies, Inc.	AAB Urine Drug Screening Survey	Vial: 20ml	07/14/94
Consolidated Technologies, Inc.	AACC/CAP Athletic Drug Testing Survey	Bottle; 125ml	07/14/94
Consolidated Technologies, Inc.	AACC/CAP Forensic Urine Drug Testing Confirmatory Survey.	Vial: 50ml	07/14/94
Consolidated Technologies, Inc.	AACC/CAP Forensic Urine Drug Testing Screening Survey.	Vial: 15ml	07/14/94
Consolidated Technologies, Inc.	ADT-1 thru ADT-40	Vial: 125ml	06/10/92
Consolidated Technologies, Inc.	CAP Forensic Pathology Survey	Vial: 5, 15, 50ml	07/14/94
Consolidated Technologies, Inc.	CAP Toxicology Survey	Vial: 30, 50ml	07/14/94
Consolidated Technologies, Inc.	CAP Urine Toxicology Survey	Vial: 50ml	07/14/94

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Supplier	Product name	Form	Date
Consolidated Technologies, Inc.	HIST Multi-Drug Reference Material	Vial: 15ml	10/22/92
Consolidated Technologies, Inc.	Morphine Glucuronide Calibration Set	Kit: 4 Vials	09/09/92
Consolidated Technologies, Inc.	Morphine Glucuronide Reference Levels 1, 2, 3.	Vial: 20ml	09/09/92
Diagnostic Products Corporation	125-I Barbiturate Isotope: Cat. No. TBA2, TBAY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Benzolyecgonine Isotope: Cat. No. TCN2, TCNY2.	Vial: 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Benzoylecgonine Isotope (DA): Cat. No. CND2, YCND2.	Vial: 10 ml, 100 ml, 675 ml	03/01/88
Diagnostic Products Corporation	125-I Fentanyl Isotope: Cat. No. TFN2	Vial: 500 ml	03/01/88
Diagnostic Products Corporation	125-I Methadone Isotope: Cat. No. TMD2	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125-I Methaqualone Isotope: Cat. No. TMQ2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125-I Morphine Isotope: Cat. No. TMP2, TMPY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I PCP Isotope: Cat. No. TPC2, TPCY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Serum Morphine Isotope: Cat. No. TSM2.	Vial: 110 ml	03/01/88
Diagnostic Products Corporation	125-I THC Isotope: Cat. No. THD2, YTHD2.	Vial: 20 ml, 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators B-F: Cat. No. APD4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators Cat. No. MAP 4-8.	Vial: 5ml	07/05/90
Diagnostic Products Corporation	Amphetamine Controls, Cat. No. ACO1, ACO2.	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	Amphetamine Controls: Cat. No. 5AC01, 5ACO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Isotope: Cat. No. APD2, 5APD2, YAPD2.	Vial: 20 ml, 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparation: Cat. No. 5YAP7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparations, Cat. NO. APD5, APD9.	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	Barbiturate Calibrators B-G: Cat. No. BAC4-9.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Barbiturate Reference Preparations: Cat. No. 5YBA5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (CAC) B-F: Cat. No. COC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA) B-F: Cat. No. CND4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA): Cat. No. CNC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation (DA): Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation: Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	C-Terminal PTH Antiserum: Cat. No. PCD1.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	CON6- Immunoassay Tri-level Control Cat. No. CON6.	Kit: 6 vials	03/25/91
Diagnostic Products Corporation	Canine T3 Isotope: Cat. No. TC32	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates In Urine: Cat. No. TKBA1, TKBA5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates Qualitative Determination In Urine: Cat. No. TKBAY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Canine T3: Cat. No. TKC31, TKC35.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Cocaine Metabolite: Cat. No. TKCN1, TKCN5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Fentanyl: Cat. No. TKFN1	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Free Testosterone Cat. No. TKTF 1, 2.	Kit: 100, 200 Tests	03/25/91
Diagnostic Products Corporation	Coat-A-Count LSD 100, 500, Cat. NO. TKLS1, TKLS5.	Kit: 8 vials, 19 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count LSD Qualitative Determination in Urine, Cat. No. TKLSY.	Kit: 8 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count Metabolite Qualitative Determinants In Urine: Cat. No. TKCNY.	Kit: 2500 tests	03/01/88

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Supplier	Product name	Form	Date
Diagnostic Products Corporation	Coat-A-Count Methadone: Cat. No. TKMD1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Methaqualone: Cat. No. TKMQ1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine Qualitative Determinations In Urine: Cat. No. TKMPY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine: Cat. No. TKMP1, TKMP5, TKMPX.	Kit: 100 tests, 500 tests, 1000 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen Qualitative Determinations In Urine: Cat. No. TKOSY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen: Cat. No. TK0S1, TKOS5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) In Urine: Cat. NO. TKCY1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) Qualitative Determinations In Urine: Cat. No. TKPCY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Serum Morphine: Cat. No. TKSM1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Total Testosterone Cat. No. TKTT 1, 2, 5.	Kit: 100, 200, 500 Tests	03/25/91
Diagnostic Products Corporation	Donkey Anti-Goat Gamma Globulin (PTH-Ultra): Cat. No. PTDG.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine, Cat. No. KAPD1, KAPD5.	Kit: 6 vials	03/20/89
Diagnostic Products Corporation	Double Antibody Amphetamine, Qualitative Determinations In Urine: Cat. No. KAPDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine: Cat. No. KAPD1, KAPD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cannabinoids (THC) In Urine: Cat. No. KTHD1, KTHD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corperation	Double Antibody Cannabinoids (THC) Quanitative Determinations In Urine: Cat. No. KTHDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite Qualitive Determination In Urine: Cat. No. KCNDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite: Cat. No. KCND1, KCND5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-C: KPCD1, KPCD2	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-M: Cat. No. KPMD1.	Kit: 70 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Testosterone Cat. No. KTTD1, 2.	Kit: 100, 200 Tests	03/25/91
Diagnostic Products Corporation	Double Antibody Ultra-PTH: Cat. No. KPTD1, KPTD2.	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Enzyme-Labeled Amphetamine Cat. No. MEAP2, 5MEAP2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled Cocaine Metabolite Cat. No. MECC2, 5MECC2.	Glass Vial: 11ml, 60ml	01/25/91
Diagnostic Products Corporation	Enzyme-Labeled Methamphetamine Cat. No. MEMA2, 5MEMA2.	Vial: 11ml, 60ml	09/28/90
Diagnostic Products Corporation	Enzyme-Labeled Opiates Cat. No. MEOP2, 5MEOP2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled PCP Cat. No. MEPC2, 5MEPC2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled THC Cat. No. METH 2, 5METH2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	EquiCON-DOA Drugs of Abuse Equine Urine Controls Cat. No. EDAC.	Kit: 2 Vials	03/25/91
Diagnostic Products Corporation	EquiCon-DOA Level 2, 3 Cat. No. EDAC 2, 3.	Vial: 30ml	03/25/91
Diagnostic Products Corporation	Fentanyl Calibrators: Cat. No. FNC4-9	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Free Testosterone Calibrators Cat. No. TFC4-8.	Vial: 3.5ml	03/25/91
Diagnostic Products Corporation	Goat Anti-Rabbit Gamma Globulin/4% PEG Saline: Cat. No. 5N6.	Vial: 110 ml, 320 ml	03/01/88
Diagnostic Products Corporation	LSD Calibrators B-F, Cat. No. LSCH-8	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	LSD Controls, Cat. NO. 5LCO1, 5LCO2, LSCO1, LSCO2.	Vial: 120ml, 5ml	03/20/89

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Supplier	Product name	Form	Date
Diagnostic Products Corporation	LSD Isotope, Cat. No. TLSY2, TLS2	Vial: 105 ml, 550 ml	03/20/89
Diagnostic Products Corporation	LSD. Reference Preparation, Cat. No. 5YLS6.	Vial: 120ml	03/20/89
Diagnostic Products Corporation	Low and High Barbiturate Urinary Controls: Cat. No. 5BCO1, 5BCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Benzoylecgonine Urinary Controls (DA): Cat. No. 5COO1, 5COO2, CNC02, CNCO3.	Vial: 3.5 ml, 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Cannabinoid Urinary Controls: Cat. No. 5TC01, 5TCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Morphine Urinary Controls: Cat. No. 5MCO1, 5MCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Opiate Urinary Controls: Cat. No. 5OCO1, 5OCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High PCP Urinary Controls: Cat. No. 5PCO1, 5PCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Methadone Calibrators: Cat. No. MDC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Methamphetamine Calibrators Cat. No. MMA-8.	Vial: 5ml	09/28/90
Diagnostic Products Corporation	Methamphetamine Cartridges Cat. No. VMADC.	Cartridge: 5ml	01/25/91
Diagnostic Products Corporation	Methamphetamine Positive Reference Cat. No. VMAPC.	Vial: 3ml	01/25/91
Diagnostic Products Corporation	Methaqualone Calibrators: Cat. No. MQC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Mid-Molecule PTH Antiserum: Cat. No. PMD1.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Milenia Amphetamine Cat. No. MKAP1, MKAP5.	Kit: 7 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Milenia Cannabinoids Cat. No. MK TH1, MKTH5.	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Milenia Cocaine Metabolite Cat. No. MKCC1, MKCC5.	Kit: 96 Tests, 480 Tests	01/25/91
Diagnostic Products Corporation	Milenia Cocaine References and Controls Cat. No. MC3, 6; MCCC1, 2.	Glass Vial: 5ml	01/25/91
Diagnostic Products Corporation	Milenia Methamphetamine Cat. No. MKMA1, MKMA5.	Kit: 96 wells, 480 wells	09/28/90
Diagnostic Products Corporation	Milenia Opiates Cat. No. MKOP1, MKOP5.	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Milenia PCP Cat. No. MKPC1, MKPC5	Kit: 6 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Morphine Calibrators: Cat. No. MPC4-8	Vial: 3.5 ml, 10 ml	03/01/88
Diagnostic Products Corporation	Morphine Reference Preparation: Cat. No. 5YMPY7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Opiate Calibrators: Cat. No. OSC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Opiate Cartridges Cat. No. VOSDC	Cartridge: 5ml	07/05/90
Diagnostic Products Corporation	Opiates Calibrators Cat. No. MOP 4-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	Opiates Positive Reference Cat. No. VOSPC.	Vial: 1ml	07/05/90
Diagnostic Products Corporation	Opiates Reference Preparation: Cat. No. 5YOS7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PCP Calibrators Cat. No. MPC 3-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	PCP Calibrators: Cat. No. PCC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	PCP Reference Preparation: Cat. No. 5YPC6.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PTH (C-Terminal) Isotope: Cat. No. PCD2.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Antiserum: Cat. No. PTD1	Vial: 5 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Isotope: Cat. No. PTD2	Vial 5 ml	03/01/88
Diagnostic Products Corporation	PTH-M isotope: Cat. No. PMD2	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	RIA Controls Level 4, 5, 6 Cat. NO. CON4, CON5, CON6.	Vial: 10ml	03/25/91
Diagnostic Products Corporation	Serum Morphine Calibrators: Cat. No. SMC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Serum Morphine Controls: Cat. No. SMCO2, SMCO3.	Vail: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators B-F: Cat. No. THD4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators Cat. No. MTH 4-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	THC Reference Preperation: Cat. No. 5YTH7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Ten One Methamphetamine Cat. No. VKMA1, VKMA4.	Kit: 12 Tests, 48 Tests	01/25/91

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Supplier	Product name	Form	Date
Diagnostic Products Corporation	Ten One Opiates Cat. No. VKSO1, VKSO4.	Kit: 1 vial, 12 & 48 5ml cartridges	07/05/90
Diagnostic Products Corporation	Testosterone Calibrators Cat. No. TTD3-8	Vial: 3.5ml	03/25/91
Diagnostic Products Corporation	Total Testosterone Calibrators Cat. No. TTC4-8.	Vial: 3.5ml	03/25/91
Diagnostic Products Corporation	Triiodothyronine (T3) Isotope: Cat. No. TT32.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	[125I] Free Testosterone Cat. No. TTF2	Vial: 105ml	03/25/91
Diagnostic Products Corporation	[125I] Testosterone Cat. No. TTD2	Vial: 10ml	03/25/91
Diagnostic Products Corporation	[125I] Total Testosterone Cat. No. TTT 2	Vial: 105ml	03/25/91
Diagnostic Systems Laboratories Inc.	Radioimmunoassay Kit for the Measurement of Dehydroepiandrosterone (DHEA), DSL 8900.	Kit: 100 Tests	10/08/93
Diagnostics Reagents, Inc.	Amphetamines Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Amphetamines Enzyme Immunoassay Kit\ 0017.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Amphetamines Enzyme Immunoassay Kit\ 0018.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Barbiturate Enzyme Congugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Barbiturate Enzyme Immunoassay Kit\ 0225.	Kit: 2 Bottles; 100 ml each	10/20/93
Diagnostics Reagents, Inc.	Barbiturate Enzyme Immunoassay Kit\ 0226.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Benzodiazepine Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Benzodiazepine Enzyme Immunoassay Kit\ 0039.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Benzodiazepine Enzyme Immunoassay Kit\ 0040.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Cannabinoid Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Cannabinoid Enzyme Immunoassay Kit\ 0185.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Cannabinoid Enzyme Immunoassay Kit\ 0186.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Cocaine Metabolite Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Cocaine Metabolite Enzyme Immunoassay Kit\ 0055.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Cocaine Metabolite Enzyme Immunoassay Kit\ 0056.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse High Calibrator A, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse High Calibrator A, Cat\ 0324.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse High Calibrator, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse High Calibrator, Cat\ 0035.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level 2 Control, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level 2 Control, Cat\ 0208.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level 2A Control, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level 2A Control, Cat\ 0331.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level I Control, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level I Control, Cat\ 0210.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level IA Control, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Level IA Control, Cat\ 0329.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Low Calibrator A, Cat\ 0322.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Low Calibrator, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Low Calibrator, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	Drugs of Abuse Low Calibrator, Cat\ 0034.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	Methadone Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Methadone Enzyme Immunoassay Kit\ 0596.	Kit: 2 Bottles; 100ml each	10/20/93

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Supplier	Product name	Form	Date
Diagnostics Reagents, Inc.	Methadone Enzyme Immunoassay Kit\ 0597.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Methadone Metabolite Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Methadone Metabolite Enzyme Immunoassay Kit\ 0200.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Methadone Metabolite Enzyme Immunoassay Kit\ 0201.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Methaqualone Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Methaqualone Enzyme Immunoassay Kit\ 0514.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Methaqualone Enzyme Immunoassay Kit\ 0515.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Opiate Enzyme Conjugate Reagent, Bulk	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Opiate Enzyme Immunoassay Kit\ 0135	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Opiate Enzyme Immunoassay Kit\ 0136	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Phencyclidine Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Phencyclidine Enzyme Immunoassay Kit\ 0160.	Kit: 2 Bottles; 100ml each	10/20/93
Diagnostics Reagents, Inc.	Phencyclidine Enzyme Immunoassay Kit\ 0161.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	Propoxyphene Enzyme Conjugate Reagent, Bulk.	Carboy: 20, 10, 5, 1 L	10/20/93
Diagnostics Reagents, Inc.	Propoxyphene Enzyme Immunoassay Kit\ 0432.	Kit: 2 Bottles; 100 ml each	10/20/93
Diagnostics Reagents, Inc.	Propoxyphene Enzyme Immunoassay Kit\ 0433.	Kit: 2 Bottles; 500ml each	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 100ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 100ng/ml, Cat\ 0044.	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 200ng/ml Cat\ 0206	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 200ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 20ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 50ng/ml	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator 50ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Calibrator, 20ng/ml, Cat\ 0235	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control 125ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control 40ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control 60ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control 75ng/ml, Bulk	Bottle: 5L, 1L, 500ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control, 125ng/ml, Cat\ 0212	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control, 40ng/ml, Cat\ 0170	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control, 60ng/ml, Cat\ 0168	Bottle: 5ml	10/20/93
Diagnostics Reagents, Inc.	THC Urine Control, 75ng/ml, Cat\ 0214	Bottle: 5ml	10/20/93
Diagnostics Systems Laboratories Inc.	DHEA Controls I and II, DSL 8951 & 8952.	Vial: 3.5ml	10/08/93
Diagnostics Systems Laboratories Inc.	DHEA Standards, A-F, DSL 8901-8906	Vial: 3.5ml	10/08/93
Diagnostics Systems Laboratories Inc.	Radioimmunoassay Kit for the Measurement of Dehydroepiandrosterone (DHEA), DSL 9000.	Kit; 100 Tests	10/08/93
Diagnostics Systems Laboratories Inc.	Radioimmunoassay Kit for the Quantitative Measurement of Testosterone, DSL 4000.	Kit: 100 Tests	10/08/93
Diagnostics Systems Laboratories Inc.	Radioimmunoassay Kit for the Quantitative Measurement of Testosterone, DSL 4100.	Kit: 100 Tests	10/08/93
Diagnostics Systems Laboratories Inc.	Testosterone Controls I and II, DSL 4051 & 4052.	Vial: 3.5ml	10/08/93
Diagnostics Systems Laboratories Inc.	Testosterone Standards A-F, DSL 4001-4006.	Vial: 3.5ml	10/08/93
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes-10.65 g. per envelope.	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730-274.	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709-339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.014M)-GVB Buffer, 753-034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753-037	Bottle: 50ml	08/09/73

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Supplier	Product name	Form	Date
Diamedix Corporation	Glucose-GVB 1 Buffer, 753-036	Bottle: 50ml	08/09/73
Duo Research, Inc.	Drug Testing Assessment Program Quality Control Samples.	Kit: 25 bottles	12/26/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample.	Bottle: 65ml	02/27/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86
DynaGen, Inc.	Benzoylecgonine and delta-9 THC-Carboxylic Acid Cat\ 700-111	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	D-Amphetamine and DL-Methamphetamine Cat\ 700-107	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	D-Amphetamine, D-Methamphetamine and delta-9 THC-Carboxylic Acid Cat\ 700-112.	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	D-Amphetamine, Pseudoephedrine, DL-Methamphetamine and Phenylpropanolamine Cat\ 700-116.	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	DL-Methamphetamine Cat\ 700-110	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Hydrocodone Cat\ 700-106	Plastic bottle: 100ml	07/27/93
DynaGen, Inc.	Hydromorphone Cat\ 700-108	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Methadone Cat\ 700-118	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Methaqualone Cat\ 700-119	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Morphine, Codeine and 6-Monoacetylmorphine Cat\ 700-114.	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Oxazepam Cat\ 700-120	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Phencyclidine and Hydrocodone Cat\ 700-115.	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	ProCheck Blind Performance Specimens Cat\ 500-100.	Kit: 25 Bottles; 100ml plastic	07/27/93
DynaGen, Inc.	ProCheck Blind Performance Specimens Cat\ 500-200.	Kit: 5 bottles; 100ml plastic	07/27/93
DynaGen, Inc.	Propoxyphene Cat\ 700-121	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	Secobarbital Cat\ 700-117	Plastic Bottle: 100ml	07/27/93
DynaGen, Inc.	delta 9 THC-Carboxylic Acid and Phentermine Cat\ 700-113.	Plastic Bottle: 100ml	07/27/93
E.I duPont de Nemours & Co., Inc, Medical Products.	Phenobarbital (PHNO) Flex Reagent Cartridge.	Cartridge: Plastic	05/26/94
E.I duPont de Nemours & Co., Inc, Medical Products.	Urine Opiates Screen (UOPI) Flex Reagent Cartridge.	Cartridge: Plastic	04/19/94
E.I. duPont de Nemours & Co., Inc, Medical Products.	Urine Cannabinoids Screen (UTHC) Flex Reagent Cartridge.	Cartridge: Plastic	04/19/94
E.I duPont de Nemours & Co., Inc, Medical Products.	Urine Cocaine Metabolites Screen (UCOC) Flex Reagent Cartridge.	Cartridge: Plastic	04/19/94
E.I. duPont de Nemours & Co., Inc.	(1) PREP Sample Preparation and Analysis Kit.	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I duPont de Nemours & Co., Inc.	(2a) PREP Liquid Chromatography Verifier.	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3a) PREP Calibrator-Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3b) PREP Calibrator-Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3c) PREP Calibrator-Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3d) PREP Calibrator-Level 4	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(4a) PREP Control-Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(4b) PREP Control-High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	DM/TU Saturating Reagent	Plastic Bottle: 1L, 10L, 20L	02/22/89
E.I. duPont de Nemours & Co., Inc.	DuPont Drug Calibrator-A (levels 1-5)	Vial: 6ml, Box: 10 vials	09/28/90
E.I. duPont de Nemours & Co., Inc.	DuPont Drug Calibrators- Levels 1 through 5.	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Inc.	DuPont Phenobarbital Assay	Vial: 6 ml	10/13/86
E.I. duPont de Nemours & Co., Inc.	DuPont U Amp Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U Barb Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U Benz Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U COC Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U OPI Enzyme Pack Reagent	Bottle: 1 liter	08/28/87
E.I. duPont de Nemours & Co., Inc.	DuPont U THC Enzyme Pack Reagent	Bottle: 1 Liter	01/04/88
E.I. duPont de Nemours & Co., Inc.	DuPont Urine Drugs-of-Abuse Calibrator (Levels 0, 1, 2).	Box: 6 Vials, 6ml Vial	07/27/87
E.I. duPont de Nemours & Co., Inc.	DuPont Urine Drugs-of-Abuse Control	Vial: 6 ml	08/03/87

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Supplier	Product name	Form	Date
E.I. duPont de Nemours & Co., Inc.	DuPont aca Barbiturate Screen Analytical Test Pack.	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Inc.	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. duPont de Nemours & Co., Inc.	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 4	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Theophylline Calibrator Levels 1, 2 and 3	Vial: 6 ml. Box contains 2 vials each level	09/21/88
E.I. duPont de Nemours & Co., Inc.	Thyroid Rotor	Foil Pouch: 1 Rotor Shelf Carton: 10 Rotors Box: 5 Shelf Cartons(50 Rotors).	10/25/88
E.I. duPont de Nemours & Co., Inc.	Thyronine (TU) Uptake Flex	32 Test Cartridge, Carton: 7 cartridges	03/29/89
E.I. duPont de Nemours & Co., Inc.	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge.	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co., Inc.	Urine Amphetamine (U Amp) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Barbiturate (U Barb) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Benzodiazepine (U Benz) Test Pack.	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Cannabinoid (U THC) Test Pack	Carton: 50 tests	11/09/87
E.I. duPont de Nemours & Co., Inc.	Urine Cocaine (U COC) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Opiate (U OPI) Test Pack	Carton: 50 tests	07/08/87
E.I. duPont de Nemours & Co., Inc.	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Inc.	aca Thryonine Uptake Analytical Test Pack.	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co., Inc.	aca Urine Methadone Calibrator (Level 1 & 2).	Vial: 10ml	09/17/93
E.I. duPont de Nemours & Co., Inc.	aca Urine Methadone Control (Negative/Positive).	Vial: 6ml	09/17/93
E.I. duPont de Nemours & Co., Inc., Medical Products.	5-Cyclohexenyl-3, 5, -Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial: 250 microcuries , 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Acetaldehyde (1, 2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510.	Combi-Vial: 100 microcuries, 250 microcuries.	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Diazepam [Methyl-3H] Catalog No. NET-564.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	09/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydromorphine [7, 8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie .	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydrotestosterone, [1, 2, 4, 5, 6, 7, 16, 17-3H(N)].	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydrotestosterone, [1, 2, 4, 5, 6, 7-3H(N)]-.	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydrotestosterone, [1, 2-3H(N)]	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydrotestosterone, [4-14C]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Drug Discovery Kit, No. NED-002, NED-002A.	Kit: 100 tests, 500 tests	08/08/89
E.I. duPont de Nemours & Co., Inc., Medical Products.	Flunitrazepam (Methyl-3H)	Combi-Vial: 5 microcuries, 14 microcuries	08/08/89
E.I. duPont de Nemours & Co., Inc., Medical Products.	Flunitrazepam 2.5 Micro M	Combi-Vial: 2.0 ml	08/08/89
E.I. duPont de Nemours & Co., Inc., Medical Products.	Flunitrazepam [Methyl-3H] NET 567	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	04/29/87
E.I. duPont de Nemours & Co., Inc., Medical Products.	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	11/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	Mazindol (4'-3H) Catalog No.NET-816	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	05/17/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Methylenedioxymethamphetamine, (+)3, 4-[N-methyl-3H] NET 957.	Combi-Vial: 0.0250 millicunes, 0.25 millicuries, 1.0 millicuries.	08/25/75
E.I. duPont de Nemours & Co., Inc., Medical Products.	Methylphenidate, +/- threo[methyl-3H]NET-857.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Mibolerone	Glass Vial: 5ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Mibolerone, [17Alpha-methyl-3H]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91

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E.I. duPont de Nemours & Co., Inc., Medical Products.	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co., Inc., Medical Products.	N-[1-(2-Thienyl) Cyclohexyl]-3, 4-Piperidine (Pipendyl-3, 4-3H)NET-886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Phencyclidine [Piperidyl-3, 4-3H(N)], Catalog No NET-630.	Combi-Vial: 0.250 millicurie, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [1, 2, 6, 7, 16, 17-3H(N)]	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [1, 2, 6, 7-3H(N)]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [1Alpha, 2Alpha, -3H(N)]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [1Beta, 2Beta, -3H(N)]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [4-14C]-	NENSURE Vial: 0.8ml, 6.2ml; Glass Vial: 10ml.	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	Testosterone, [7-3H(N)]-	NENSURE Vial: 0.8ml, 6.2ml	11/01/91
E.I. duPont de Nemours & Co., Inc., Medical Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
EDITEK Inc.	EZ-SCREEN Amphetamines Bulk Conjugate	Bottle: 250ml	08/17/94
EDITEK Inc.	EZ-SCREEN Amphetamines Bulk Positive Control.	Bottle: 4L	08/17/94
EDITEK Inc.	EZ-SCREEN Amphetamines Positive Control Stock.	Flask: 100ml	08/17/94
EDITEK Inc.	EZ-SCREEN Amphetamines QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN Barbiturates Bulk Conjugate	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN Barbiturates Bulk Positive Control.	Bottle: 8L	08/17/94
EDITEK Inc.	EZ-SCREEN Barbiturates Positive Control Stock.	Flask: 100ml	08/17/94
EDITEK Inc.	EZ-SCREEN Barbiturates QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN CANNABINOID/COCAINE 0.5ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN CANNABINOID/COCAINE 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN CANNABINOID/COCAINE/OPIATES Bulk Positive Control.	Bottle: 20L	08/17/94
EDITEK Inc.	EZ-SCREEN COCAINE Bulk Conjugate	Bottle: 250ml	08/17/94
EDITEK Inc.	EZ-SCREEN COCAINE Bulk Positive Control.	Bottle: 8L	08/17/94
EDITEK Inc.	EZ-SCREEN COCAINE Positive Control	Flask: 100ml	08/17/94
EDITEK Inc.	EZ-SCREEN COCAINE QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN OPIATES Bulk Conjugate	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN OPIATES Bulk Positive Control.	Bottle: 4L	08/17/94
EDITEK Inc.	EZ-SCREEN OPIATES Positive Control Stock.	Flask: 100ml	08/17/94
EDITEK Inc.	EZ-SCREEN OPIATES QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN PCP Bulk Conjugate	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN PCP Bulk Positive Control	Bottle: 2L	08/17/94
EDITEK Inc.	EZ-SCREEN PCP Positive Control Stock	Flask: 100ml	08/17/94
EDITEK Inc.	EZ-SCREEN PCP QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN THC Bulk Conjugate	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN THC Bulk Positive Control	Bottle: 8L	08/17/94
EDITEK Inc.	EZ-SCREEN THC Positive Control Stock	Flask: 10ml	08/17/94
EDITEK Inc.	EZ-SCREEN THC QC Standard	Tube: 50ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines 0.5ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines 20-Test Bulk Kit.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines 20-Test Pack.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Amphetamines Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: Barbiturates 0.5ml Positive Control.	Tube: 2.2ml	08/17/94

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Supplier	Product name	Form	Date
EDITEK Inc.	EZ-SCREEN: Barbiturates 20-Test Bulk Kit.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: Barbiturates 20-Test Pack.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: Barbiturates 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Barbiturates Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: Barbiturates Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID 0.5 ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID 20-Test Bulk Kit.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID 20-Test Pack.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE 20-Test Bulk Kit.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE 20-Test Pack.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE Test Kit.	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES 0.5ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES 10-Test Bulk Kit.	Kit: 10 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES 20-Test Kit Pack.	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: CANNABINOID/COCAINE/OPIATES Test Kit.	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE 0.5ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE 20 Test Bulk Kit	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE 20-Test Pack	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: COCAINE Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES 0.5ml Positive Control.	Tube: 2.2ml	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES 20 Test Pack	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES 20-Test Bulk Kit	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES 5.0ml Positive Control.	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES Enzyme Conjugate.	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: OPIATES Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP 0.5ml Positive Control	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP 20-Test Bulk Kit	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP 20-Test Kit	Kit: 20 Tests	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP 5.0ml Positive Control	Bottle: 15ml	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP Enzyme Conjugate	Ampule: 0.8ml	08/17/94
EDITEK Inc.	EZ-SCREEN: PCP Test Kit	Kit: 1 Test	08/17/94
EDITEK Inc.	VERDICT COCAINE One-Step Drug Test; Product ı 600230.	Pouch: 1 each; Box: 50 Pouches	08/02/94
EDITEK Inc.	VERDICT Cocaine Bulk Conjugate	Vial: 2ml	08/14/94
EDITEK Inc.	VERDICT Cocaine Bulk Conjugate	Vial: 2ml	08/14/94
EDITEK Inc.	VERDICT Cocaine QC Standard	Tube: 50ml	08/14/94
EDITEK Inc.	VERDICT OPIATES One-Step Drug Test; Product ı 600233.	Pouch: 1 each; Box: 50 Pouches	08/02/94
EDITEK Inc.	VERDICT Opiates Bulk Conjugate	Vial: 2ml	08/14/94
EDITEK Inc.	VERDICT Opiates Bulk Conjugate	Vial: 5ml	08/14/94

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EDITEK Inc.	VERDICT Opiates QC Standard	Tube: 15ml	08/14/94
EDITEK Inc.	VERDICT THC Bulk Conjugate	Vial: 2ml	08/14/94
EDITEK Inc.	VERDICT THC Bulk Conjugate	Vial: 5ml	08/14/94
EDITEK Inc.	VERDICT THC One-Step Drug Test; Product ı 600212.	Pouch: 1 each; Box: 50 Pouches	08/02/94
EDITEK Inc.	VERDICT THC QC Standard	Tube: 50ml	08/14/94
EDITEK Inc.	VERDICT THC/COCAINE One-Step Drug Test.	Pouch: 2 Kits	08/14/94
EM Diagnostic Systems, Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems, Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton: 48 Test Packs	09/09/86
EM Diagnostic Systems, Inc.	Easytest Phenobarbital Assay Item No. 67534/93.	Cuvette: 1.8ml (40 cuvettes /carton)	06/11/86
Eastman Kodak Company	KODATROL Control I Control and Diluent Set.	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/88
Eastman Kodak Company	KODATROL Control II Control and Diluent Set.	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/88
Eastman Kodak Company	Kodak EKTACHEM Specialty Calibrator	Vial: 3ml	09/13/85
Eastman Kodak Company	Kodak EKTACHEM Specialty Control I	Vial: 3ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control II	Glass Vial: 6 ml	11/10/87
Electro-Nucleonics Laboratories, Incorporated.	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital.	Kit	11/30/82
Eli Lilly and Company	Propoxyphene Industrial Hygiene Air Monitoring Sample Cassette.	Cassette: Plastic	07/13/94
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle: 1 or 2 liter	05/28/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Enzyme Conjugate.	Ampule: 1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Kit Catalog No. 216-2BP	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Positive Control	Ampule: 1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid/Cocaine-Enzyme Conjugate.	Polyethylene Tube: containing ampule with 1 tablet, Kit: 1 test.	12/20/88
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid/Cocaine-Positive Control.	Polyethylene Tube: 2.2ml, Kit: 1 test	12/20/89
Fisher Diagnostics	TheraChem Anticonvulsants/Theophylline, Level I, II.	Kit: 9 vials, vial: 5ml	03/03/81
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g.	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.16 g.	10/27/72
Fisher Scientific	IL-Test Phenobarbital	Kit: contains 2 plastic containers of reagent 2.	03/15/88
Fisher Scientific	IL-Test Phenobarbital Conjugate, Reagent 2.	Plastic Container: 16 ml	03/15/88
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial: 10 ml	08/18/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-38	Vial: 25 ml	08/18/86
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level I.	Vial: 10ml, Box: 50 vials, Carton: 4 boxes	07/25/89
Fisher Scientific	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level II.	Vial: 10 ml, Box: 50 vials, Carton: 4 boxes.	07/25/89
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 Vials	11/26/86
Fisher Scientific	TDM Cal (B-F)	Vials: 5 ml	11/26/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58.	Kit: 6 vials	01/12/84

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Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845-94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842-31.	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841-31.	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847-31.	Vial: 5ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935-80.	Vial: 25ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950-61	Vial: 25ml	04/06/78
Flow Laboratories	DGV No. 28-010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human ≥O≥ DGV (Dextrose Gelatin Veronal Buffer) No. 28-080.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2.	Bottle: 500 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No.815-0566-1 and No.815-0566-2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815-0246-1.	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc.	Drug Control Set No 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc.	Drug Standard Set, No 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc.	Hi-Phore Buffer	Glass Vial: 15 g.	02/11/82
Gelman Sciences, Inc.	High Resolution Buffer-Tris Barbital Buffer No 51104.	Vial: 10 dr	12/22/71
Gumm Chem. Co.	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Niflow Maintenace Additive	Drums: 5 Gallons	09/30/85
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No.898-98	Pillow: 1 g. each	11/30/71
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet: 18.332 g. , 10 packets/box	03/26/86
Helena Laboratories	Cardio REP CK Isoenzymes Gel	Plate: 4.6≥x 2.4≥	09/24/93
Helena Laboratories	Cardio REP CK Isoenzymes Kit, Catı 3310.	Kit: 10 Plates	09/24/93
Helena Laboratories	Cardio REP CK Isoforms Gel	Plate: 4.6≥x 2.4≥	09/24/93
Helena Laboratories	Cardio REP CK Isoforms Kit, Catı 3305	Kit: 10 Plates	09/24/93
Helena Laboratories	Electra B1 Buffer, Catalog No.5016	Packet: 13.1g. 10 packets/ box	12/28/73
Helena Laboratories	Electra B2 Buffer , Catalog No. 5017	Packet: 18.2 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/ box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet: 9.7 g.	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Owren's Veronal Buffer Cat. No. 5375	Plastic Bottle: 125 ml	09/15/88
Helena Laboratories	REP ALP-15 Gel	Plate: 5.8≥x 5.5≥	08/26/93
Helena Laboratories	REP Alkaline Phosphatase Catı 3152	Kit: 10 Plates	08/26/93
Helena Laboratories	REP CK Isoforms-15	Plate: 5.8≥x5.5≥	03/09/88
Helena Laboratories	REP CK Isoforms-15 Kit: Cat. No. 3081	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK Isoforms-4 Catı 3083	Kit: 10 Plates	08/26/93
Helena Laboratories	REP CK Isoforms-4 Gel	PLate: 5.8≥x 1.25≥	08/26/93
Helena Laboratories	REP CK Isoforms-8 Catı 3082	Kit: 10 Plates	08/26/93
Helena Laboratories	REP CK Isoforms-8 Gel	Plate: 5.8≥x 2.18≥	08/26/93
Helena Laboratories	REP CK-12	Plate: 5.8≥x2.18≥	03/09/88
Helena Laboratories	REP CK-12 Isoenzyme Kit: Cat. No. 3071	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK-2 STAT Kit, Cat. No. 3074	Kit: 10 plates (5.8≥ X 0.6≥)	03/30/89
Helena Laboratories	REP CK-30	Plate: 5.8≥x5.5≥	03/09/88
Helena Laboratories	REP CK-30 Isoenzyme Kit	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK-6	Plate: 5.8≥x1.25≥	03/09/88
Helena Laboratories	REP CK-6 Isoenzyme Kit: Cat. No. 3072	Kit: 10 plates	03/09/88
Helena Laboratories	REP ImmunoFix Kit ı 3150	Kit: 10 plates	03/09/93
Helena Laboratories	REP LD	Plates: 5.8≥x5.5≥, 5.8≥x2.18≥, 5.8≥x1.25≥	03/09/88
Helena Laboratories	REP SPE Hi Res-15 Kit, Cat. No. 3176	Kit: 10 plates (5.8≥ X 5.5≥)	03/30/89
Helena Laboratories	REP SPE-16 Template (Acid Blue) Kit, Catı 3171.	Kit: 10 Plates	09/14/93
Helena Laboratories	REP SPE-16 Template (Ponceau S) Kit, Catı 3161.	Kit: 10 Plates	09/14/93

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Supplier	Product name	Form	Date
Helena Laboratories	REP SPE-16 Template Gel	Plate: 5.8≥x 2.18≥	09/14/93
Helena Laboratories	REP SPE-30 Template (Acid Blue) Kit, Cati 3170.	Kit: 10 Plates	09/14/93
Helena Laboratories	REP SPE-30 Template (Ponceau S) Kit, Cati 3160.	Kit: 10 Plates	09/14/93
Helena Laboratories	REP SPE-30 Template Gel	Plate: 5.8≥x 5.5≥	09/14/93
Helena Laboratories	REP SPE-8 Template (Acid Blue) Kit, Cati 3172.	Kit: 10 Plates	09/14/93
Helena Laboratories	REP SPE-8 Template (Ponceau S) Kit, Cati 3162.	Kit: 10 Plates	09/14/93
Helena Laboratories	REP SPE-8 Template Gel	Plate: 5.8≥x 1.25≥	09/14/93
Helena Laboratories	REP Ultra-30 HDL, VLDL/LDL Gel	Plate: 5.8≥x 5.5≥	09/24/93
Helena Laboratories	REP Ultra-30 HDL, VLDL/LDL Kit, Cati 3183.	Kit: 10 Plates	09/24/93
Helena Laboratories	REP Ultra-8 HDL, VLDL/LDL Gel	Plate: 5.8≥x 1.25≥	09/24/93
Helena Laboratories	REP Ultra-8 HDL, VLDL/LDL Kit, Cati 3185.	Kit: 10 Plates	09/24/93
Helena Laboratories	REP-HDL-12 Isoenzyme Kit Cat. No. 3187	Kit: 10 Plates (5.8≥ X 2.18≥)	09/15/88
Helena Laboratories	REP-HDL-30 Isoenzyme Kit Cat. No. 3186.	Kit: 10 Plates (5.8≥ X 5.5≥)	09/15/88
Helena Laboratories	REP-HDL-6 Isoenzyme Kit Cat. No. 3188	Kit: 10 Plates (5.8≥ X 1.25≥)	09/15/88
Helena Laboratories	REP-Lipo-12 Kit Cat. No. 3181	Kit: 10 Plates (5.8≥ X 2.18≥)	09/15/88
Helena Laboratories	REP-Lipo-30 Kit Cat. No. 3180	Kit: 10 Plates (5.8≥ X 5.5≥)	09/15/88
Helena Laboratories	REP-Lipo-6 Kit Cat. No. 3182	Kit: 10 Plates (5.8≥ X 1.25≥)	09/15/88
Helena Laboratories	REP-SP-12 Isoenzyme Kit Cat. No. 3171	Kit: 10 Plates (5.8≥ X 2.18≥)	09/15/88
Helena Laboratories	REP-SP-30 Isoenzyme Kit Cat. No. 3170	Kit: 10 Plates (5.8≥ X 5.5≥)	09/15/88
Helena Laboratories	REP-SP-6 Isoenzyme Kit Cat. No. 3172	Kit: 10 Plates (5.8≥ X 1.25≥)	09/15/88
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470).	Kit: 3 Packages buffer 36 g.	01/24/86
Helena Laboratories	TITAN GEL Alkaline Phosphatase (HR) Cati 3058.	Kit: 10 Plates	08/26/93
Helena Laboratories	TITAN GEL Alkaline Phosphatase (HR) Kit, Cat. No. 3058.	Kit: 1 bag	06/19/89
Helena Laboratories	TITAN GEL Alkaline Phosphatase Buffer	Plastic Bag: 13.1g	06/19/89
Helena Laboratories	TITAN GEL Alkaline Phosphatase Gel	Plate: 3.5≥x 2.9≥	08/26/93
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet: 25.9 g.	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit: 10 Plates (90mm X 75mm) , 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate: (90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet: 25.9 g.	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate: (90mm X 75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No.3046.	Kit: 10 Plates (90mm X 75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel ImmunoFix Plus Kit	Kit: 10 plates, 1 pkg IFE buffer	03/09/93
Helena Laboratories	Titan Gel ImmunoFix-9 Kit	Kit: 10 plates, 1 pkg IFE buffer	03/09/93
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet: 19.6 g.	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No.3062.	Kit: 10 Plates (90mm X 75mm), 1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet: 21.5 g	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle: 10 ml	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g.	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial: 2ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet: 17.3 g.	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No.3045	Kit: 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90 x 75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095.	Kit: 10 plates (81 x 143 mm) 1 packet buffer (21.6 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Plate	Plate: (81 x 143 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Kit Catalog No. 3091.	Kit: 10 plates (81 x 143 mm) 1 packet buffer (29.1 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Plate	Plate: 81 x 143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet: 29.1 g.	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041.	Kit: 10 Plates (90mm X 75mm), 1 Packet Buffer.	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet: 25.9g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No.3035.	Kit: 10 Plates (90mm X 75mm), 2 Packets Buffer.	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate: (90mm X 75mm)	03/03/86

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Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053.	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet: 5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates, 1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73
High Standard Products	(DL) Methamphetamine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	(DL) Methamphetamine-d10 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	(DL) Methamphetamine-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	11-Nor-Delta-8-Carboxy THC; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	11-Nor-Delta-8-Carboxy-Tetrahydrocannabinol 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	11-Nor-Delta-9-Carboxy THC Controls; 10, 20, 100 ng/ml.	Ampules: 6; 3 of 2ml, 3 of 20ml	04/15/94
High Standard Products	11-Nor-Delta-9-Carboxy THC Screening/ Confirmation Calibrators; 10, 25, 50, 100, 250, ng/ml.	Ampules: 10; 5 of 2ml, 5 of 20ml	04/15/94
High Standard Products	11-Nor-Delta-9-Carboxy THC-d10; 0.1mg/ml.	Ampule: 2ml	04/15/94
High Standard Products	11-Nor-Delta-9-Carboxy THC; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	11-Nor-Delta-9-Carboxy-Tetrahydrocannabinol 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	11-Nor-Delta-9-Carboxy-Tetrahydrocannabinol-d10 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	11-Nor-Delta-9-Carboxy-Tetrahydrocannabinol-d3 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	3, 4-Methylenedioxymethamphetamine (MDMA) 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	3, 4-Methylenedioxymethamphetamine-d5 (MDMA) 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	3-Methylfentanyl 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	3-Methylfentanyl-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	4-Hydroxyamphetamine; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	4-Hydroxymethamphetamine; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	4-Methoxyamphetamine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	4-Methoxyamphetamine-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	6-Acetylmorphine 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	6-Acetylmorphine-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	6-Acetylmorphine; 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Amphetamine Cut-Off Controls; 375, 625, 1500 ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Amphetamine Screening Confirmation Calibrators; 500, 1000, 1500, 2000 ng/ml.	Ampules: 4; 20ml each	04/15/94
High Standard Products	Benzoylecgonine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Benzoylecgonine Cut-Off Controls; 100, 200, 300, ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Benzoylecgonine Propyl Ester 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Benzoylecgonine Screening Confirmation Calibrators; 150, 300, 450, 600 ng/ml.	Ampules: 4; 20ml each	04/15/94
High Standard Products	Benzoylecgonine-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Benzoylecgonine-d3; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Benzoylecgonine-d8 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Benzoylecgonine-d8; 0.1mg/ml	Ampule; 2ml	04/15/94
High Standard Products	Cocaethylene 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Cocaethylene-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Cocaethylene-d3; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Cocaethylene-d8 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Cocaethylene-d8; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Cocaine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Cocaine-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Cocaine-d8 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Codeine 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Codeine Cut-Off Controls; 225, 375, 900 ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Codeine Screening Confirmation Calibrators; 300, 600, 900, 1200 ng/ml.	Ampules: 4; 20ml each	04/15/94
High Standard Products	Codeine-d3 100ug/ml	Ampule: 2ml	05/11/93

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High Standard Products	Codeine-d3; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Codeine-d6 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Codeine-d6; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	D-Amphetamine; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	DL Amphetamine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	DL Amphetamine-d10 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	DL Amphetamine-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	DL-Amphetamine-d11; 0.1mg/ml	Ampule: 2ml, 20ml	04/15/94
High Standard Products	DL-Amphetamine-d5; 0.1mg/ml	Ampule; 2ml	04/15/94
High Standard Products	DL-Amphetamine-d6; 0.1mg/ml	Ampule: 2ml, 20ml	04/15/94
High Standard Products	Delta-8-Tetrahydrocannabinol 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Delta-9-THC; 1.0mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Delta-9-Tetrahydrocannabinol 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Delta-9-Tetrahydrocannabinol 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Delta-9-Tetrahydrocannabinol-d10 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	Delta-9-Tetrahydrocannabinol-d6 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	Diazepam 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Diazepam-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Diphenoxylate 1.0 mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Ecgonine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Ecgonine Methyl Ester 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Ecgonine Methyl Ester-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Ecgonine-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Fentanyl 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Fentanyl-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Fentanyl-d5; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Hydrocodone 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Hydrocodone-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Hydromorphone 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Hydromorphone-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Lysergic Acid Diethylamide 25 ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Lysergic Acid Diethylamide-d3 25 ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Lysergic Acid Diethylamide-d7; 0.025mg/ml.	Ampule: 2ml	04/15/94
High Standard Products	Lysergic Acid Diethylamide-d 25ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Lysergic Acid N-Methyl-Propylamide (LAMPA) 25ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	Methadone 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Methadone-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Methamphetamine Cut-Off Controls; 225, 375, 900 ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Methamphetamine Screening Confirmation Calibrators; 500, 1000, 1500, 2000 ng/ml.	Ampules: 4; 20ml each	04/15/94
High Standard Products	Methamphetamine-d14; 0.1mg/ml	Ampule: 2ml, 20ml	04/15/94
High Standard Products	Methamphetamine-d5; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Methamphetamine-d9; 0.1mg/ml	Ampule: 2ml, 20ml	04/15/94
High Standard Products	Methaqualone 1.0 mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Methaqualone-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Methylenedioxyamphetamine (MDA) 1.0mg/ml.	Ampule: 2ml	05/11/93
High Standard Products	Methylenedioxyamphetamine (MDA) d-5 100ug/ml.	Ampule: 2ml	05/11/93
High Standard Products	Morphine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Morphine Cut-Off Controls; 225, 375, 900 ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Morphine Screening Confirmation Calibrators; 300, 600, 900, 1200 ng/ml.	Ampule: 4; 20ml each	04/15/94
High Standard Products	Morphine-d3 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Morphine-d3; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Morphine-d4; 0.1mg/ml	Ampule: 2ml, 20ml	04/15/94
High Standard Products	NIDA Cut-Off Controls; Levels 1, 2, 3	Ampules: 6; 3 of 2ml, 3 of 20ml	04/15/94
High Standard Products	Norcocaine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Norcodeine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Nordiazepam 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Nordiazepam-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Normorphine 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Oxazepam 1.0mg/ml	Ampule: 2ml	05/11/9
High Standard Products	Oxazepam-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Phencyclidine 1.0mg/ml	Ampule: 2ml	05/11/93

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Supplier	Product name	Form	Date
High Standard Products	Phencyclidine Cut-Off Controls; 18, 32, 75 ng/ml.	Ampules: 3; 20ml each	04/15/94
High Standard Products	Phencyclidine Screening Confirmation Calibrators; 25, 50, 75, 100 ng/ml.	Ampule: 4; 20ml each	04/15/94
High Standard Products	Phencyclidine-d10 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Phencyclidine-d10; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Phencyclidine-d5 100ug/ml	Ampule: 2ml	05/11/93
High Standard Products	Phencyclidine-d5; 0.1mg/ml	Ampule: 2ml	04/15/94
High Standard Products	Temazepam 1.0mg/ml	Ampule: 2ml	05/11/93
High Standard Products	Temazepam-d5 100ug/ml	Ampule: 2ml	05/11/93
Hycor Biomedical, Inc.	Hycor AccuPINCH Cocaine Test	Bottle: 3ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Hycor AccuPINCH Methamphetamine Test.	bottle: 3ml; Kit: 50 Tests	10/29/91
Hycor Biomedical, Inc.	Hycor AccuPINCH Morphine Test	Bottle: 3ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Hycor AccuPINCH Phencyclidine Test	Bottle: 3ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Hycor AccuPINCH THC Test	Bottle: 3ml; Kit: 50 Tests	10/29/91
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator BARBITURATES Urine Calibrator- 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator DELTA-9-THC Urine Calibrator - 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator NORDIAZEPAM Urine Calibrator - 3 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator OPIATES Urine Calibrator.- 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator PHENCYCLIDINE Urine Calibrator - 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator, Amphetamine Urine Calibrator - 4 level.	Vial: 10ml, Kit: 12 vials, Kit: 4 vials	03/29/89
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator, Benzoylecgonine Urine Calibrator - 4 level.	Vial: 10ml, Kit: 12 vials, Kit: 4 vials	03/29/89
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control High Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Low Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Mid Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Multi-Pack	Kit: 15 vials	03/01/90
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, HIGH POSITIVE.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, LOWER THRESHOLD.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, UPPER THRESHOLD.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Urine Control, CONFIRMATION.	Box: 4-100 ml Bottles	10/21/88
Hycor/ICL Scientific	Drugs of Abuse Urine Control, SCREEN	Box: 4-30 ml Bottles	10/21/88
ICL Scientific	Therapeutic Drug Control I , TDC I (High Level).	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack..	Glass Vials (12): 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level).	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level).	Glass Vial: 10ml	08/14/85
ICN Micromedic Systems, Inc.	Immunogen: BZ-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: BZ-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: CD-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: M-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: M-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: TF-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Micromedic Combostat THC/Cocaine STANDARDS-2, 3, and 4.	Amber Glass Vial: 2 ml Plastic Bottle: 100 ml.	02/24/88
ICN Micromedic Systems, Inc.	Micromedic CrackPot 57Co/125I Tracer Solution.	Plastic Bottle: 25 ml, 1000 ml	02/24/88
ICN Micromedic Systems, Inc.	Micromedic Morphine 125I Tracer Solution.	Bottle: 50 ml, 1000 ml	02/29/88
ICN Micromedic Systems, Inc.	Micromedic Morphine Standards 2, 3 and 4.	Bottle: 5 ml, 100 ml	02/29/88
INCSTAR Corporation	(125I) Human TSH Tracer Cat. No. CA-2623.	Vial: 15ml	03/08/91

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Supplier	Product name	Form	Date
INCSTAR Corporation	Anticonvulsant Drug Controls Levels I and II Cat. Nos. CA-2419, CA-2420.	Vial: 3.5ml	03/08/91
INCSTAR Corporation	Assay Buffer Cat. No. CA-2742	Bottle: 150ml	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) Phenobarbital Radioimmunoassay Kits Cat. Nos. CA-2545, CA-2565.	Kit: 50, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) Phenytoin Radioimmunoassay Kits Cat. Nos. CA-2537, CA-2557.	Kit: 50, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) T3 Uptake Radioimmunoassay Kit Catalog Nos. CA-2539, CA-2539J, CA-2559, CA-2559J.	Kit: 100, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Dab (125I) hTSH Radioimmunoassay Kit Cat. No. CA-1591.	Kit: 125 assays; Vial: 15ml	03/08/91
INCSTAR Corporation	HTSH Non-Specific Binding Reagent Cat. No. CA-2752.	Vial: 3.5ml	03/08/91
INCSTAR Corporation	Human TSH Controls Levels I & II Cat. Nos. CA-2452, CA-2453.	Vial: 3.5ml	03/08/91
INCSTAR Corporation	Human hTSH Blank Cat. No. CA-2885	Vial: 15ml	03/08/91
INCSTAR Corporation	Phenobarbital Standards: 1, 3, 10, 30, 100 ug/ml Cat. Nos. CA-2380-2384.	Bottle: 3.5ml	03/08/91
INCSTAR Corporation	Rabbit Anti-Human TSH Serum Cat. No. CA-2145.	Vial: 15ml	03/08/91
INCSTAR Corporation	htsH Standards: 2, 5, 10, 20, 50 ulU/ml Cat. Nos. CA-2886-2890.	Bottle: 3.5ml	03/08/91
Immunotech Corp.	Amphetamine Enzyme Conjugate	Bottle: 10.5ml	09/28/89
Immunotech Corp.	Amphetamine Positive Urine Calibrator	Bottle: 1ml	09/28/89
Immunotech Corp.	Amphetamine-ALK Phos Cat. No. 612; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Amphetamine-HRP Cat. No. 613; 50 units	Bottle: 10ml	03/12/90
Immunotech Corp.	Benzoylecgonine-Alk Phos Cat. 602; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Benzoylecgonine-HRP Cat. No. 604; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Cocaine Conjugate No. 0364-SIG	Bottle: 75ml	06/13/91
Immunotech Corp.	Cocaine Metabolite Enzyme Conjugate	Vial: 10.5ml	09/28/89
Immunotech Corp.	Cocaine Metabolite Positive Urine Calibrator.	Vial: 2ml	09/28/90
Immunotech Corp.	Delta-8-tetrahydrocannabinol-ALK Phos Cat. No. 616; 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp.	Delta-8-tetrahydrocannabinol-HRP Cat. No. 618; 50 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	ENDAB Phenobarbital Kit, Cat. No. 119	Kit: 100 tests, 4 Bottles: 1 ml ea.	09/28/89
Immunotech Corp.	Methamphetamine-ALK Phos Cat. No. 614; 50 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Methamphetamine-HRP Cat. No. 615; 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp.	Micro Dau Amphetamine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Benzodiazepine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Cocaine Metabolite Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Opiates Enzyme Immunoassay Test Kit.	Kit: 96 tests	12/19/89
Immunotech Corp.	Micro Dau PCP Enzyme Immunoassay Kit Cat. No. 175.	Kit: 96 tests	07/11/90
Immunotech Corp.	Micro Dau THC Enzyme Immunoassay Test Kit Cat. No. 173.	Kit: 96 tests	07/11/90
Immunotech Corp.	Morphine Positive Urine Calibrator	Vial: 3.5 ml	12/19/89
Immunotech Corp.	Morphine-ALK Phos Cat. No. 610; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Morphine-HRP Cat. No. 611; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Opiates Enzyme Conjugate	Vial: 10 ml	12/19/89
Immunotech Corp.	Oxazepam Enzyme Conjugate	Bottle: 10.5ml	09/28/89
Immunotech Corp.	Oxazepam Positive Urine Calibrator	Bottle: 2ml	09/28/89
Immunotech Corp.	Oxazepam-ALK Phos Cat. No. 606; 50 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Oxazepam-HRP Cat No. 608; 50 units	Bottle: 10ml	03/12/90

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Supplier	Product name	Form	Date
Immunotech Corp.	PCP Enzyme Conjugate Cat. No. 375	Vial: 20ml	07/11/90
Immunotech Corp.	PCP Positive Urine Calibrator Cat. No. 418.	Vial: 3ml	07/11/90
Immunotech Corp.	Phenobarbital Enzyme Conjugate	Bottle: 10.0ml	09/28/89
Immunotech Corp.	Phenobarbital Serum Standard: 3ug/ml, 10ug/ml, 30ug/ml, 60ug/ml.	4 Bottles: 1ml each	09/28/89
Immunotech Corp.	THC Enzyme Conjugate Cat. No. 373	Vial: 20ml	07/11/90
Immunotech Corp.	THC Positive Urine Calibrator Cat No. 416 50ng/ml, 417 100ng/ml.	Vial: 3ml	07/11/90
Industrial Analytical Laboratory, Inc.	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol.	Ampule: 1ml	09/04/85
Industrial Analytical Laboratory, Inc.	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule: 1 ml	02/18/87
Industrial Optical	Opti-Kleen	Bottle: 5 gallon	06/24/81
International BioClinical, Inc.	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
International BioClinical, Inc.	Phenobarbital Stock Tracer	Vial: 5 ml	09/23/87
International Technidyne Corp.	Hemochron Control Plasma Quality Control Test Kit.	Kit: 18 Tests; Test tube: 9ml; Vial: 5ml	03/11/91
Janssen Pharmaceutica, Inc.	3H Alfentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	3H Fentanyl	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	3H Sufentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	Alfentanil Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc.	Fentanyl Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc.	Sufentanil Radioimmunoassay Kit	Kit: 500 tests	05/13/85
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	IEP Buffer No. 900	Vial: 7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No.910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	Styrofoam Container: 25 film	06/22/87
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012.	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit Catalog No. 823.	Kit: 400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit, Catalog No. 833.	Kit: 100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent Catalog No. 785.	Bottle: 500ml	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent No.834.	2 Glass Bottles: 110ml	06/24/81
LKB Instruments, Inc.	Tris-barbiturate Buffer pH 8.6	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company	Etorphine Standard Solution	Plastic Carboy: 1 Liter	10/31/83
Life Technologies, Inc.	AmnioMax-C100 First Dilution	Bottle: 1L	02/17/94
Life Technologies, Inc.	AmnioMax-C100 Second Dilution	Bottle: 1L	02/17/94
Life Technologies, Inc.	AmnioMax-C100 Stock Solution	Bottle: 1L	02/17/94
Life Technologies, Inc.	AmnioMax-C100 Supplement	Bottle: 15ml, 75ml	02/17/94
Life Technologies, Inc.	Testosterone Stock Solution	Bottle: 1L	10/04/94
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package: 6.510 grams	08/28/72
Mallinckrodt Chemical, Inc.	Naloxone/6-Beta Naltrexol	Bottle: 60ml	10/06/94
Mallinckrodt Chemical, Inc.	Naltrexone/6-beta Naltrexol Standard Solution.	Bottle: 60ml	10/04/94
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid.	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin..	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Sensitized RBC.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Benzoylecgonine	Screw Cap Vial: 25mg and 100 mg	04/18/74
Materials & Technology Systems	Benzoylecgonine Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Carboxymethylmorphine	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin..	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Methadone Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Morphine Standard	Screw Cap Vial: 10ml	07/17/73
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial: 8ml, 10ml	05/03/73
McGean-Rocho, Inc.	Chloral Solution Denatured	Plastic container; 1, 5, 55 Gallons	01/11/91
McGean-Rocho, Inc.	Reflexion Semi-Bright B	Plastic container; 1, 5, 55 Gallons	01/11/91
McGean-Rocho, Inc.	Reflexion Semi-Bright S	Plastic container; 1, 5, 55 Gallons	01/11/91

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Supplier	Product name	Form	Date
Medi-Chem, Inc.	Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No.250.	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc	Transfer Pilot Material Calibrators; Levels 2, 3, 4, 5.	Glass vial: 3-5ml	07/29/94
Medical Analysis Systems, Inc	Transfer Pilot Material Controls; Negative QC and Positive QC.	Glass vial: 3-5ml	07/29/94
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 1.	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 2.	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 3.	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	Amobarbital, ι117 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Benzoylecgonine, ι432 Intermediate Solution.	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Benzoylecgonine, ι483 Intermediate Solution.	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Benzoylecgonine, ι719 Intermediate Solution.	Bottle: 10-1800ml	10/22/93
Medical Analysis Systems, Inc.	Butalbital, ι429 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	CHALLENGE Liquid Therapeutic Drug Linearity Controls.	Kit: 10 Bottles	01/24/91
Medical Analysis Systems, Inc.	CHALLENGE Liquid Therapeutic Drug Linearity Controls TD1 A-E; TD2 A-E.	Glass Bottles: 5ml; 1 Set: 5 Bottles	01/24/91
Medical Analysis Systems, Inc.	ChemTrak Liquid Unassayed	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control Assayed, Level 1, 2, & 3.	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control, Level 1, 2, & 3	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc.	Clonazepam, ι473 Intermediate Solution	Bottle: 50-500ml	10/22/93
Medical Analysis Systems, Inc.	Codeine, ι435 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	D-Amphetamine, ι423 Intermediate Solution.	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	D-Methamphetamine, ι422 Intermediate Solution.	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 1, ι1921 Bulk Solution	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 2, ι1922 Bulk Solution	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 2, ιC38979 Bulk Solution	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 3, ιC38978 Bulk Solution	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 4, ιC38980 Bulk Solution	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Calibrator 4, ιC38980P Pilot Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 2, ι1912 Bulk Solution	Bottle: 20-200L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 3, ι1943 Bulk Solution	Bottle: 20-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 3, ι1913 Bulk Solution	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 4, ι1914 Bulk Solution	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 4, ι1914P Pilot Solution	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 4, ι1944 Bulk Solution	Bottle: 20-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Control 4, ι1944P Pilot Solution	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	DOA Control G2, ι1915 Bulk Solution	Bottle: 20-200L	10/22/93
Medical Analysis Systems, Inc.	DOA Control G3, ι1916 Bulk Solution	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	DOA Control G4, ι1917 Bulk Solution	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	DOA Control G4, ι1917P Pilot Solution	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	DOA Cutoff Control, ι1946 Bulk Solution	Bottle: 1-10L	10/22/93
Medical Analysis Systems, Inc.	DOA Cutoff Control, ι1946P Pilot Solution	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	DOA High Control, ι1945 Bulk Solution	Bottle: 1-10L	10/22/93
Medical Analysis Systems, Inc.	DOA Liquid Drugs of Abuse Controls Level 2, 3, 4.	Vial: 5ml, 18ml; Box: 6-8ml vials; Box: 8-5ml vials.	10/12/90
Medical Analysis Systems, Inc.	DOA Low Control, ι1947 Bulk Solution	Bottle: 1-10L	10/22/93
Medical Analysis Systems, Inc.	DOA Positive Control, ι1924 Bulk Solution.	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	DOA Positive Control, ι1924P Pilot Solution.	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	DOA Positive Control, ιC38981 Bulk Solution.	Bottle: 10-100L	10/22/93
Medical Analysis Systems, Inc.	Diazepam, ι430 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Liquid Urine Control Level 1	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc.	Liquimmune Immunoassay Control 1, ι2300 Bulk Solution.	Bottle: 40-100L	10/22/93
Medical Analysis Systems, Inc.	Liquimmune Immunoassay Control 1, ι2300P Pilot Solution.	Bottle: .1-1L	10/22/93

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Medical Analysis Systems, Inc.	Liquimmune Immunoassay Control 2, ι2301 Bulk Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	Liquimmune Immunoassay Control 3, ι2302 Bulk Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	Liquimmune Immunoassay Control 3, ι2302P Pilot Solution.	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	Methadone, ι438 Intermediate Solution	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Methaqualone, ι439 Intermediate Solution	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Morphine Glucuronide, ι433 Intermediate Solution.	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Morphine, ι434 Intermediate Solution	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Nordiazepam, ι431 Intermediate Solution	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Pentobarbital, ι426 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Phencyclidine, ι437 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Phenobarbital, ι418 Intermediate Solution	Bottle: 50-700ml	10/22/93
Medical Analysis Systems, Inc.	Phenobarbital, ι425 Intermediate Solution	Bottle: 10-100ml	10/22/93
Medical Analysis Systems, Inc.	Phenobarbital, ι745 Intermediate Solution	Bottle: 50-200ml	10/22/93
Medical Analysis Systems, Inc.	Propoxyphene, ι440 Intermediate Solution.	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	Secobarbital, ι427 Intermediate Solution	Bottle: 10-250ml	10/22/93
Medical Analysis Systems, Inc.	TDM Plus.XL Level I, II or III Unassayed Enhanced Liquid Drug Control.	Bottle: 5ml, Box: 6 bottles	09/05/90
Medical Analysis Systems, Inc.	Testosterone, ι748 Intermediate Solution	Bottle: 50-200ml	10/22/93
Medical Analysis Systems, Inc.	Therapeutic Drug Monitoring Control 1, ι1581 Bulk Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	Therapeutic Drug Monitoring Control 2, ι1582 Bulk Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	Therapeutic Drug Monitoring Control 3, ι1583 Bulk Solution.	Bottle: 20-300L	10/22/93
Medical Analysis Systems, Inc.	Therapeutic Drug Monitoring Control 3, ι1583P Pilot Solution.	Bottle: .1-1L	10/22/93
Medical Analysis Systems, Inc.	Tri-Point Liquimmune Ligand Control, Levels 1, 2 and 3.	Glass Bottle: 5ml; Kit: 6 Bottles	10/23/91
Medical Analysis Systems, Inc.	Tri-Point Liquimmune Ligand Control, Levels 1, 2 and 3.	Glass Bottle: 5ml; Kit: 6 bottles	10/23/91
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 2.	Kit: 6 x 5ml Vials	10/08/86
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 3.	Kit: 6 x 5ml Vials	10/08/86
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level I.	Kit: 6 x 5ml Vials	10/08/86
Meloy Labs, Inc.	Counterelectrophoresis Plates, G-301	Plates: 10 determinations	09/05/73
Meloy Labs, Inc.	Immunoelectrophoresis Plates, G-201	Plates: 6 / unit	09/05/73
Merck and Co., Inc.	Amphetamine - d6 HCl, Cat. No. MD-3892.	Ampule: 2 or 5 ml	08/30/89
Merck and Co., Inc.	Cocaine - d3 HCl Catalog ι MD-3677	Ampule: 2 or 5 ml.	06/13/88
Merck and Co., Inc.	Codeine - d3 H2O (N-methyl-d3) No. MD-3776.	2 ml, 5ml ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc.	Codeine-d3 Catalog ι MD-3678	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1 Phenyl-2-aminopropane 1, 1, 2, 3, 3, 3, -d6 (Amphetamine-d6)Catalog ι MD-3682.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1 Phenyl-2-methylaminopropane-1, 1, 2, 3, 3, 3-d6 HCl (Methamphetamine d6) Catalog ι MD-3683.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1-Phenyl-2-aminopropane-1, 1, 2, 3, 3, 3-d6 HCL No. MD-3778.	2 ml, 5 ml amber ampule Carton: 5 ampules.	09/06/88
Merck and Co., Inc.	Ecgonine - d3 Methyl Ester HCl Catalog ι MD3679.	Ampule: 2 or 5 ml.	06/13/88
Merck and Co., Inc.	Methamphetamine - d9 HCl, Cat. No. MD-3853.	Ampule: 2 or 5 ml	08/30/89
Merck and Co., Inc.	Morphine - d3 HCl 3H20 (N-methyl-d3) No. MD-3777.	2 ml, 5 ml ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc.	Morphine - d3 HCl Catalog ι MD-3680	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	O-Benzoylecgonine-d3 Catalog ι MD-3676.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	Phen-d5-cyclidine HCl Catalog ι MD-3681	Ampule: 2 or 5 ml	06/13/88
Microdiagnostics, Inc.	Amphetamine Enzyme Conjugate	Bottle: 10ml	12/24/92
Microdiagnostics, Inc.	Cocaine Enzyme Conjugate	Bottle: 10ml	12/24/92
Microdiagnostics, Inc.	EIA for Amphetamine Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc.	EIA for Cocaine Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc.	EIA for Marijuana Metabolites	Kit: 2 bottles	12/24/92

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Supplier	Product name	Form	Date
Microdiagnostics, Inc.	EIA for Opiate Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc.	EIA for PCP Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc.	Opiate Enzyme Conjugate	Bottle: 10ml	12/24/92
Microdiagnostics, Inc.	PCP Enzyme Conjugate	Bottle: 10ml	12/24/92
Microdiagnostics, Inc.	Positive Amphetamine Standard	Bottle: 2ml	12/24/92
Microdiagnostics, Inc.	Positive Cocaine Standard	Bottle: 2ml	12/24/92
Microdiagnostics, Inc.	Positive Opiate Standard	Bottle: 2ml	12/24/92
Microdiagnostics, Inc.	Positive PCP Standard	Bottle: 2ml	12/24/92
Microdiagnostics, Inc.	Positive THC Standard	Bottle: 2ml	12/24/92
Microdiagnostics, Inc.	THC Enzyme Conjugate	Bottle: 10ml	12/24/92
Microgenics Corporation	4-Drug Barbiturate Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	4-Drug Cutoff Bulk Calibrator	Carboy: 6L	12/01/93
Microgenics Corporation	4-Drug High Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	4-Drug Intermediate Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	5-Drug Cutoff Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	Amphetamine ED Bulk Reagent	Carboy: 25L	04/13/94
Microgenics Corporation	Amphetamine Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Amphetamine Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Amphetamine/Methamphetamine Bulk Manufacturing Calibrator Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Amphetamine/Methamphetamine Manufacturing Calibrator Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Amphetamines Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	Barbiturate Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Barbiturate Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	Barbiturate/Benzodiazepine 200 Cutoff Calibrator.	Carboy: 4L	12/01/93
Microgenics Corporation	Barbiturate/Benzodiazepine 300 Cutoff Calibrator.	Carboy: 2L	12/01/93
Microgenics Corporation	Barbiturate/Benzodiazepine High Bulk Calibrator.	Carboy: 2L	12/01/93
Microgenics Corporation	Barbiturate/Benzodiazepine Intermediate Bulk Calibrator.	Carboy: 2L	12/01/93
Microgenics Corporation	Barbiturates Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Benzodiazepine Ethanol Stock	Vial: 25ml	12/01/93
Microgenics Corporation	Benzodiazepine Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Benzodiazepine Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20.94
Microgenics Corporation	Benzodiazepine Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	Bulk Calibrator Solution 80ug/ml, 40ug/ml	Carboy: 10L	11/13/90
Microgenics Corporation	CEDAI DAU Opiate Assay Cat‹ 80-3000	Kit: 4 Bottles, 500ml	12/01/93
Microgenics Corporation	CEDIA DAU 4-Drug Cutoff Calibrator	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU 4-Drug High Calibrator	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU 4-Drug Intermediate Calibrator.	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU 5-Drug Cutoff Calibrator	Bottle: 5, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU Amphetamine Assay (For 85ml, 500ml).	Kit: 4 Bottles	04/13/94
Microgenics Corporation	CEDIA DAU Amphetamine ED Reagent	Vial: 100ml, 500ml	04/13/94
Microgenics Corporation	CEDIA DAU Barb/Benz 200 Calibrator	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU Barb/Benz 300 Calibrator	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU Barb/Benz High Calibrator	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU Barb/Benz Intermediate Calibrator.	Bottle: 10, 15ml	12/01/93
Microgenics Corporation	CEDIA DAU Cocaine Assay Cat‹ 80-2300	Kit: 4 Bottles, 85ml	12/01/93
Microgenics Corporation	CEDIA DAU Cocaine Assay Cat‹ 80-2400	Kit: 4 Bottles, 500ml	12/01/93
Microgenics Corporation	CEDIA DAU Cocaine ED Reagent, Cat‹ 80-2300.	Vial: 100ml	12/01/93
Microgenics Corporation	CEDIA DAU Cocaine ED Reagent, Cat‹ 80-2400.	Vial: 500ml	12/01/93
Microgenics Corporation	CEDIA DAU Multi-Drug Control Set, ‹80-0120.	2 Vials; 5ml/vial	05/10/94

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Supplier	Product name	Form	Date
Microgenics Corporation	CEDIA DAU Multi-Drug Control Set, ‹80-0124.	2 Vials; 15ml/vial	05/10/94
Microgenics Corporation	CEDIA DAU Multi-Level THC Assay Cat‹ 80-2700.	Kit: 4 Bottles, 85ml	12/01/93
Microgenics Corporation	CEDIA DAU Multi-Level THC Assay Cat‹ 80-2800.	Kit: 4 Bottles, 500ml	12/01/93
Microgenics Corporation	CEDIA DAU Multi-Level THC ED Reagent, Cat‹ 80-2700.	Vial: 100ml	12/01/93
Microgenics Corporation	CEDIA DAU Multi-Level THC ED Reagent, Cat‹ 80-2800.	Vial: 500ml	12/01/93
Microgenics Corporation	CEDIA DAU Opiate Assay Cat‹ 80-2900	Kit: 4 Bottles, 85ml	12/01/93
Microgenics Corporation	CEDIA DAU Opiate ED Reagent, Cat‹ 80-2900.	Vial: 100ml	12/01/93
Microgenics Corporation	CEDIA DAU Opiates ED Reagent, Cat‹ 80-3000.	Vial: 500ml	12/01/93
Microgenics Corporation	CEDIA DAU Specialty Control Set 1, ‹80-0121.	2 Vials; 15ml/vial	05/10/94
Microgenics Corporation	CEDIA DAU Specialty Control Set 2, ‹80-0122.	2 Vials; 15ml/vial	05/10/94
Microgenics Corporation	CEDIA DAU THC 100ng/ml Calibrator	Bottle: 15ml	12/01/93
Microgenics Corporation	CEDIA DAU THC 150ng/ml Calibrator	Bottle: 15ml	12/01/93
Microgenics Corporation	CEDIA DAU THC 25ng/ml Calibrator	Bottle: 15ml	12/01/93
Microgenics Corporation	CEDIA DAU THC 50ng/ml Calibrator	Bottle: 15ml	12/01/93
Microgenics Corporation	CEDIA DAU THC 75ng/ml Calibrator	Bottle: 15ml	12/01/93
Microgenics Corporation	Cocaine Conjugate	Vial: 25ml	12/01/93
Microgenics Corporation	Cocaine ED Bulk Reagent	Carboy: 25L	12/01/93
Microgenics Corporation	Cocaine Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Cocaine Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Cocaine Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	In-house Phenobarbital Bulk Primary Standard 40ug/ml, 80ug/ml.	Bottle: 2L	11/13/90
Microgenics Corporation	In-house Phenobarbital Primary Standard 40ug/ml, 80ug/ml.	Micro tube: 1.5ml; Box: 100 tubes	11/13/90
Microgenics Corporation	In-house manufacturing Bulk Calibrator 10ug/ml, 20ug/ml, 40 ug/ml, 60ug/ml, 80ug/ml, 90ug/ml Phenobarbital.	Bottle: 2L	11/13/90
Microgenics Corporation	In-house manufacturing Calibrator 10ug/ml, 20ug/ml, 40ug/ml, 60ug/ml80ug/ml, 90ug/ml Phenobaribtal.	Vial: 3.5ml	11/13/90
Microgenics Corporation	Methamphetamine Conjugate	Vial: 25ml	04/13/94
Microgenics Corporation	Methamphetamine Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Methamphetamine Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, Open.	Vial: 3.5ml or 5.0ml	04/20/94
Microgenics Corporation	Microgenics CEDIA Phenobarbital Assay 40ug/ml, 80ug/ml.	Vial: 3.5ml; Kit: 2 vials	11/13/90
Microgenics Corporation	Morphine Conjugate	Vial: 25ml	12/01/93
Microgenics Corporation	Opiate ED Bulk Reagent	Carboy: 25L	12/01/93
Microgenics Corporation	Opiate Manufacturing Bulk Calibrators E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Opiate Manufacturing Calibrators E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Opiate Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	PCP Spiking Solution	Carboy: 2L	12/01/93
Microgenics Corporation	PCP Stock Concentrate	Vial: 10ml	12/01/93
Microgenics Corporation	Phencyclidine Manufacturing Bulk Calibrators E, F, G, H, I, J, K, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	Phencyclidine Manufacturing Calibrators E, F, G, H, I, J, K, Open.	Vial: 3.5 or 5.0ml	04/20/94
Microgenics Corporation	Phenobarbital Stock Solution	Flask: 100ml	11/13/90
Microgenics Corporation	THC 100 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Microgenics Corporation	THC 100 Controls (High & Low)	Bottle: 15ml	06/30/94
Microgenics Corporation	THC 100 Controls (High & Low) Bulk	Carboy: 150L	06/30/94
Microgenics Corporation	THC 100ng/ml Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	THC 150ng/ml Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	THC 25 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Microgenics Corporation	THC 25 Controls (High & Low)	Bottle: 15ml	06/30/94
Microgenics Corporation	THC 25 Controls (High & Low) Bulk	Carboy: 150L	06/30/94

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Supplier	Product name	Form	Date
Microgenics Corporation	THC 25ng/ml Bulk Calibrator	Carboy: 2L	12/01/93
Microgenics Corporation	THC 50 Control Set	Box: 2 Bottles; 15ml each	06/30/94
Microgenics Corporation	THC 50 Controls (High & Low)	Bottle: 15ml	06/30/94
Microgenics Corporation	THC 50 Controls (High & Low) Bulk	Carboy: 150L	06/30/94
Microgenics Corporation	THC 50ng/ml Bulk Calibrator	Carboy: 4L	12/01/93
Microgenics Corporation	THC 75ng/ml Bulk Calibrator	Carboy: 1L	12/01/93
Microgenics Corporation	THC Conjugate	Vial: 25ml	12/01/93
Microgenics Corporation	THC ED Bulk Reagent	Carboy: 25L	12/01/93
Microgenics Corporation	THC Manufacturing Bulk Calibrators B, C, D, E, F, G, H, I, J, K, L, Open.	Carboy or Beaker: 4L	04/20/94
Microgenics Corporation	THC Manufacturing Calibrators B, C, D, E, F, G, H, I, J, K, L, Open.	Vial: 3.5 or 5.0ml	04/20/94
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution.	Nalgene Bottle: 4 oz.	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz.	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Miles Inc.	Immuno-1 Setpoint TDM Calibrators Kit No. T03-2864 Component No. T13-2864(02-06).	Glass Bottles: 5ml; Kit: 5 Bottles	01/03/91
Miles Inc.	Technicon Immuno 1 TESTpoint Ligand Controls, Kit No. T03-3393-01; Level I T13-3394-01; Level II T13-3395-01; Level III T13-3396-01.	Glass vial; 5ml; Kit: 6 vials	3/16/92
Miles Inc.	Technicon RA Systems Set Point	Vial: 5ml Kit: 5 vials	07/20/90
Miles Laboratories, Inc.	SERALYZER ARIS Phenobarbital Calibrator Kit, ι 6453.	Kit: 2 vials; 1ml/vial	04/29/93
Miles Laboratories, Inc.	SERALYZER ARIS Phenobarbital Calibrator and Control Kit, ι 6455T.	Kit: 4 vials; 1ml/vial	04/29/93
Miles Laboratories, Inc.	SERALYZER ARIS Phenobarbital Control Kit, ι 6454T.	Kit: 2 vials; 1ml/vial	04/29/93
Miles Laboratories, Inc.	SERALYZER ARIS Phenytoin Bulk Reagent Paper.	Bulk	06/15/94
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay Control	Vial: 1ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay High Calibrator.	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay Low Calibrator.	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories, Inc.	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Monobind, Inc.	Monobind T3 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc.	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind, Inc.	Monobind T4 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc.	Monobind T4 Tracer Reagent	Wheaton Glass Container 55ml	11/08/77
Monobind, Inc.	Monobind TSH Antibody Reagent	Test Tube w/Cap: 10.5ml	11/08/77
Monobind, Inc.	Monobind TSH Non-Specific Buffer	Wheaton Glass: 1.05ml	11/08/77
Monobind, Inc.	Monobind TSH Precipitating Reagent	Plastic Container w/Cap : 105ml	11/08/77
Monobind, Inc.	Monobind TSH Tracer Reagent	Wheaton Glass Container 10.5ml	11/08/77
Monobind, Inc.	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml.	05/15/78
Monobind, Inc.	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml.	05/15/78
Monobind, Inc.	TSH Radioimmunoassay Test System	Kit: 100 Tests	11/08/77
Monobind, Inc.	Thyroxine Radioimmunoassay Test System.	Kit: 100 Tests	11/08/77
Monobind, Inc.	Triiodothyronine Radioimmunoassay Test System.	Kit: 100 tests	11/08/77
Monoclonal Antibodies, Inc.	Test Kit for Cocaine Metabolites in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Opiates in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Tetrahydrocannabinol (THC) in Urine.	Kit: 50 tests	10/17/86
NSI Technology Services Corp.	Alpha, alpha-dimethyl-phenethylamine	Amber Ampoule: 2ml	03/02/89
Nuclear Diagnostics, Inc.	MAAT T3 Uptake Reagent	Bottle: 105ml, 210ml; Kit: 1 bottle 210ml	11/16/90

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Supplier	Product name	Form	Date
Nuclear Diagnostics, Inc.	SPINSEP-TBG Reagent Catalog No. 17100.	Polypropylene Bottle: 105ml	12/15/77
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Antiserum Catalog No. 16100A.	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Reagent Catalog No. 16100.	Polypropylene Bottle: 105ml	07/08/77
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Reagent Catalog No. 16100R.	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc.	TRIA-P.E.G. Antiserum Catalog No. 12100A.	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc.	TRIA-P.E.G. Reagent Catalog No.12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation	Compound N Solution	Steel Drum: 55 gallon	10/01/75
Organon Teknika Corp.	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp.	Barbital Buffered Saline with Azide	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/28/80
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/18/79
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 16 ounce	01/20/76
Organon Teknika Corp.	Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials / kit	04/16/81
Organon Teknika Corp.	Modified Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp.	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp.	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp.	Platelin	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	Platelin Plus Activator	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp.	Profile General- Levels I & II	Vial: 5 ml	02/22/82
Organon Teknika Corp.	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp.	Simplastin	Vial: 4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp.	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr..	01/20/76
Organon Teknika Corp.	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr..	01/20/76
Organon Teknika Corp.	TETRA-TAB-RIA T4 Diagnostic Kit	Kit: 40tests, 200tests	01/20/76
Organon Teknika Corp.	TETRA-TUBE RIA T4 Diagnostic Kit	Kit: 100 tests, 500 tests	05/03/83
Organon Teknika Corp.	TGTR Set	Package: 4 Tests per set	03/13/72
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp.	TRIS/Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Unassayed Chemistry Serum Control, Levels I & II.	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems, Inc.	Activated ThromboFAX No.721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems, Inc.	Ortho Activated PTT Reagent	Glass Vial: 30 determination size, 100	05/23/83
Ortho Diagnostic Systems, Inc.	Ortho Plasma Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems, Inc.	Ortho Plasma Coagulation Control Level II.	Glass Vial: 5ml	10/25/83
Othro Diagnostic Systems, Inc.	ORTHO Owren's Buffer	Kit: 6-20 ml vials	08/26/88
PB Diagnostic Systems, Inc.	OPUS Phenobarbital Calibrators: 5, 10, 20, 40, 80ug/ml.	Vial: 2.5ml Carton: 5 vials	08/07/90
PB Diagnostic Systems, Inc.	OPUS Phenobarbital Test Modules	Plastic Test Module, Tray: 5 modules, Carton: 50 modules.	08/07/90
PB Diagnostics Systems, Inc	Estradiol Reagent	6 Vials; 1ml/vial	10/28/93
PB Diagnostics Systems, Inc	Estradiol Test Module	Plastic plate: 1.7≥x .7≥x 3.5≥	10/28/93
PB Diagnostics Systems, Inc	OPUS Estradiol Kit	Kit: 50 Tests	10/28/93
Pacific Hemostasis	Barbital Buffered Saline	Vial: 100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline (Bulk)	Carboy: 100L	10/05/94
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial: 90ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin (Bulk).	Carboy: 100L	10/05/94
Pacific Hemostasis	Diluting Fluid	Vial: 20ml	05/24/84
Pacific Hemostasis	Diluting Fluid (Bulk)	Carboy: 100L	10/05/94
Pacific Hemostasis	Kontact	Vial: 4ml, 10ml	03/22/94
Pacific Hemostasis	Kontact (Bulk)	Carboy: 200L	10/05/94
Pacific Hemostasis	Kontact Kit (10ml) Cat\ 224-006	Kit: 10 Vials	03/22/94
Pacific Hemostasis	Kontact Kit (4ml) Cat\ 257-324	Kit: 10 Vials	03/22/94
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml.	01/04/79

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Supplier	Product name	Form	Date
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit: 2nd Antiserum ...	Bottle: 50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml, 1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle: 100ml, 1000ml	01/04/79
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Opiates Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Princeton Separations, Inc.	Panagel 16	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Separations, Inc.	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Separations, Inc.	Panagel LD Isoenzyme Electrode Buffer .	Pouch: 11.85 gms	06/29/87
Princeton Separations, Inc.	Panagel LD Isoenzyme Slide	Pouch: 1 slide	06/29/87
Quality Assurance Service Corp.	Q.A. Toxicology Blood Controls	Vial: 6ml, 12ml Plastic Bottle: 60ml, 90ml, 250ml, 625ml Glass Bottle: 6ml-100ml.	01/23/90
Quality Assurance Service Corp.	Q.A. Toxicology Serum Controls	Vial: 6ml, 12ml Plastic Bottle: 60ml, 90ml, 250ml, 625ml Glass Bottle: 6ml-100ml.	01/23/90
Quality Assurance Service Corp.	Q.A. Toxicology Urine Controls	Vial: 6ml, 12ml Plastic Bottle: 60ml, 90ml, 250ml, 625ml Glass Bottle: 6ml-100ml.	01/23/90
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Urine Drugs of Abuse Control Catalog No. 12-2411-1.	Dropper Bottle: 15 ml	02/23/87
Quin-Tec, Inc.	Additive SB-1	Drum: 55 gals.	05/11/87
Quin-Tec, Inc.	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Quin-Tec, Inc.	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Radian Corporation	(+/-) 11-Nor-9-Carboxy-delta 9-THC-D9 0.01mg/ml, 0.1mg/ml, 1.0mg/ml.	Vial: 2ml	06/12/91
Radian Corporation	(-)-11-Nor-9-carboxy-delta-9 THC; 1.0mg/ml, 100ug/ml.	Vial: 2ml	01/25/95
Radian Corporation	2-S Methcathinone-D5 HCl 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93
Radian Corporation	2R-Cathinone HCL 100ug/ml, 1.0mg/ml ...	Ampule: 2ml	12/22/93
Radian Corporation	2R-Cathinone-D5 HCL 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93
Radian Corporation	2R-Methcathinone HCL 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93
Radian Corporation	2R-Methcathinone-D5 HCL 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93

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Supplier	Product name	Form	Date
Radian Corporation	2S-Cathinone HCL 100ug/ml, 1.0mg/ml ...	Ampule: 2ml	12/22/93
Radian Corporation	2S-Cathinone-D5 HCL 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93
Radian Corporation	2S-Methcathinone HCL 100ug/ml, 1.0mg/ml.	Ampule: 2ml	12/22/93
Radian Corporation	3'-Hydroxystanozolol-D3; 100ug/ml, 1.0mg/ml.	Ampule: 2ml	06/06/94
Radian Corporation	3'-Hydroxystanozolol; 100ug/ml, 1.0mg/ml	Ampule: 2ml	06/06/94
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 0.1 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 1.0 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 0.1 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 1.0 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxyamphetamine 0.1, 1.0 mg/ml.	Amber glass ampule: 2ml	01/12/89
Radian Corporation	3, 4-Methylenedioxymethamphetamine 0.1, 1.0 mg/ml.	Amber glass ampule: 2ml	01/12/89
Radian Corporation	4-Methylaminorex 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	4-Methylaminorex-D5 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	6-Acetylmorphine	Ampule: 2 ml	12/04/87
Radian Corporation	6-Acetylmorphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	6-Acetylmorphine-D6; 100ug/ml, 1.0mg/ml	Ampule: 2ml	04/25/94
Radian Corporation	9-Carboxy-11-nor-Delta-9-Tetrahydrocannabinol-D3.	Ampule: 2 ml	12/04/87
Radian Corporation	9-Carboxy-11-nor-delta-9-THC 0.1, 1.0 mg/ml.	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Alpha-Hydroxyalprazolam 0.1 mg/ml, 1.0 mg/ml.	Vial: 2ml	06/12/91
Radian Corporation	Alpha-Hydroxyalprazolam-D5 0.1 mg/ml, 1.0 mg/ml.	Vial: 2ml	06/12/91
Radian Corporation	Alpha-Hydroxytriazolam 0.1mg/ml, 1.0mg/ml.	Ampule: 2ml	04/27/92
Radian Corporation	Alpha-Hydroxytriazolam-D4, 0.1mg/ml, 1.0mg/ml.	Ampule: 2ml	04/27/92
Radian Corporation	Alprazolam 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	11/05/90
Radian Corporation	Alprazolam-D5 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	11/05/90
Radian Corporation	Amobarbital 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Amphetamine-D3 0.1 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	Anhydroecgonine 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Anhydroecgonine-D3 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Benzoylecgonine	Ampule: 2ml	12/04/87
Radian Corporation	Benzoylecgonine-D3	Ampule: 2ml	12/04/87
Radian Corporation	Bromazepam; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Buprenorphine 0.1	Ampule: 2ml	02/01/91
Radian Corporation	Buprenorphine-D4 0.1 mg/ml	Ampule: 2ml	02/01/91
Radian Corporation	Chlordiazepoxide 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	Clonazepam-D4; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Cocaethylene 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	12/13/90
Radian Corporation	Cocaethylene-D3	Ampule: 2ml	12/13/90
Radian Corporation	Cocaethylene-D8 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	Cocaine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Cocaine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Codeine	Ampule: 2 ml	03/09/88
Radian Corporation	Codeine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	D-Amphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	D-Methamphetamine 0.1 mg/ml, 1.0 mg/ml.	Vial: 2ml	06/12/91
Radian Corporation	D-Propoxyphene 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	04/27/92
Radian Corporation	D-Propoxyphene 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	DL-3, 4-MDEA 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	DL-3, 4-MDEA-D5 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	DL-Amphetamine 0.1, 1.0 mg/ml	Ampule: 2ml	12/04/87
Radian Corporation	DL-Amphetamine-D11, 0.1mg/ml, 1.0mg/ml.	Ampule: 2ml	04/27/92
Radian Corporation	DL-Amphetamine-D3 0.1, 1.0 mg/ml	Ampule: 2ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 (SC) 0.1, 1.0 mg/ml	Ampule: 2ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2ml	12/04/87
Radian Corporation	DL-Amphetamine-D8, 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92

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Supplier	Product name	Form	Date
Radian Corporation	DL-MDEA-D6; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	DL-Methamphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	DL-Methamphetamine-D11 0.1mg/ml, 1.0mg/ml.	Ampule: 2ml	06/16/93
Radian Corporation	DL-Methamphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Methamphetamine-D8 (Phenyl-D5 & N-Methyl-D3) 100ug/ml, 1.0mg/ml.	Ampule: 2ml	04/06/93
Radian Corporation	DL-Methamphetamine-D8 0.1 mg/ml	Ampule: 2ml	12/04/87
Radian Corporation	DL-Methamphetamine-D8, 0.1mg/ml, 1.0mg/ml.	Ampule: 2ml	04/27/92
Radian Corporation	DL-Propoxyphene - D5 0.1, 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Delta-9-Tetrahydrocannabinol 0.1, 1.0 mg/ml.	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Delta-9-Tetrahydrocannabinol-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Diazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Diazepam-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Diazepam-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine 0.1 mg/ml, 1.0 mg/ml	Vial: 2ml	06/12/91
Radian Corporation	Ecgonine Methyl Ester 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Ecgonine Methyl Ester-D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester-D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine-D3 0.1 mg/ml, 1.0 mg/ml	Vial: 2ml	06/12/91
Radian Corporation	Estazolam; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Fentanyl	Ampule: 2ml	01/02/91
Radian Corporation	Fentanyl-D5	Ampule: 2ml	01/02/91
Radian Corporation	Flunitrazepam; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Flurazepam 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Heroin-D3; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Heroin-D6; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Heroin-D9; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Heroin; 1.0mg/ml, 100ug/ml	Ampule: 2ml	08/23/94
Radian Corporation	Hexobarbital; 1.0mg/ml, 100ug/ml	Ampule: 2ml	08/23/94
Radian Corporation	Hydrocodone - D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone - D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Hydromorphone - D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone - D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Ibogaine 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	Ibogaine-D3 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	Lorazepam 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Lorazepam-D4, 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Meperidine 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Meperidine 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Meprobamate 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Mescaline 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Mescaline-D9 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Methadone - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Methaqualone - D4 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone - D4 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Methcathinone 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Methcathinone-D5 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Method 8270 Supplemental Stock Standard - 2000ug/ml.	Vial: 2ml	01/25/95
Radian Corporation	Methohexital 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Methohexital-D5; 1.0mg/ml, 100ug/ml	Ampule: 2ml	08/23/94
Radian Corporation	Methylphenidate 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Methyltestosterone; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Midazolam; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Morphine	Ampule: 2 ml	03/09/88
Radian Corporation	Morphine-3-Beta-D-glucuronide 0.1, 1.0mg/ml.	Ampule: 2ml	02/01/91
Radian Corporation	Morphine-3-Beta-D-glucuronide-D3 0.1, 1.0mg/ml.	Ampule: 2ml	02/01/91
Radian Corporation	Morphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	N-Ethylamphetamine; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Nitrazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/17/90
Radian Corporation	Nitrazepam-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/17/90
Radian Corporation	Norcocaine 0.1 mg/ml, 1.0 mg/ml	Vial: 2ml	06/12/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Radian Corporation	Norcocaine-D8 100ug/ml, 1.0mg/ml	Ampule: 2ml	12/22/93
Radian Corporation	Nordiazepam - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Noroxycodone 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	06/16/93
Radian Corporation	Noroxymorphone 100ug/ml, 1.0mg/ml	Ampule: 2ml	06/16/93
Radian Corporation	Oxazepam - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam -3-Beta-D-Glucuronide-D5; 100ug/ml, 1.0mg/ml.	Ampule: 2ml	04/25/94
Radian Corporation	Oxazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Oxazepam-3-Beta-D-Glucuronide; 100ug/ml, 1.0mg/ml.	Ampule: 2ml	04/25/94
Radian Corporation	Oxycodone-D6 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	06/16/93
Radian Corporation	Pentobarbital 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/24/90
Radian Corporation	Pentobarbital-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/24/90
Radian Corporation	Phencyclidine 0.1 mg/ml, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Phencyclidine-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Phenobarbital 0.1 mg/ml, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Phenobarbital-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	Phentermine-D3; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Phentermine; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Prazepam 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Prazepam-D5 100ug/ml, 1.0mg/ml	Ampule: 2ml	01/29/93
Radian Corporation	Quazepam; 1.0mg/ml, 100ug/ml	Vial: 2ml	01/25/95
Radian Corporation	Stanozolol-D3; 100ug/ml, 1.0mg/ml	Ampule: 2ml	06/06/94
Radian Corporation	Stanozolol; 100ug/ml, 1.0mg/ml	Ampule: 2ml	06/06/94
Radian Corporation	Temazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/17/90
Radian Corporation	Temazepam-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2ml	09/17/90
Radian Corporation	Triazolam 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	Triazolam-D4 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	04/27/92
Radian Corporation	m-Hydroxybenzoylecgonine; 1.0mg/ml, 100ug/ml.	Vial: 2ml	01/25/95
Research Diagnostics	3H Alfentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Fentanyl	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Sufentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	Alfentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Alfentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Fentanyl Analogs Reference Standards for Drug Analysis.	Amber Ampule: 1 ml, Plastic Shell: 5 ampules, Kit: 2 shells (10 ampules).	10/17/89
Research Diagnostics	Fentanyl Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Sufentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit..	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit..	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing: 24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2- 250ml Bottles.	06/27/80
Restek Corp	EPA Exempt Mix ι1	Ampule: 1.25ml	03/18/94
Restek Corp	EPA Exempt Mix ι2	Ampule: 1.25ml	03/18/94
Restek Corp	EPA Exempt Mix ι3	Ampule: 1.25ml	03/18/94
Restek Corp	Thebaine	Ampule: 2ml	01/08/93
Restek Corp.	Alprazolam	Ampule: 2ml	01/08/93
Restek Corp.	Amobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Amphetamine	Ampule: 2ml	01/08/93
Restek Corp.	Aprobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Barbital	Ampule: 2ml	01/08/93
Restek Corp.	Benzoylecgonine	Ampule: 2ml	01/08/93
Restek Corp.	Benzphetamine	Ampule: 2ml	01/08/93
Restek Corp.	Bromazepam	Ampule: 2ml	01/08/93

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Supplier	Product name	Form	Date
Restek Corp.	Butabarbital	Ampule: 2ml	01/08/93
Restek Corp.	Butalbital	Ampule: 2ml	01/08/93
Restek Corp.	Cannabdiol delta-8	Ampule: 2ml	01/08/93
Restek Corp.	Cannabinol	Ampule: 2ml	01/08/93
Restek Corp.	Chlordiazepoxide	Ampule: 2ml	01/08/93
Restek Corp.	Clobazam	Ampule: 2ml	01/08/93
Restek Corp.	Clonazepam	Ampule: 2ml	01/08/93
Restek Corp.	Cocaethylene	Ampule: 2ml	01/08/93
Restek Corp.	Cocaine	Ampule: 2ml	01/08/93
Restek Corp.	Codeine	Ampule: 2ml	01/08/93
Restek Corp.	Desmethyl Diazepam	Ampule: 2ml	01/08/93
Restek Corp.	Diacetylmorphine	Ampule: 2ml	01/08/93
Restek Corp.	Diazepam	Ampule: 2ml	01/08/93
Restek Corp.	Ecgonine	Ampule: 2ml	01/08/93
Restek Corp.	Ecgonine methyl ester	Ampule: 2ml	01/08/93
Restek Corp.	Fenfluramine	Ampule: 2ml	01/08/93
Restek Corp.	Fentanyl	Ampule: 2ml	01/08/93
Restek Corp.	Flunitrazepam	Ampule: 2ml	01/08/93
Restek Corp.	Flurazepam	Ampule: 2ml	01/08/93
Restek Corp.	Glutethimide	Ampule: 2ml	01/08/93
Restek Corp.	Hexobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Hydrocodone	Ampule: 2ml	01/08/93
Restek Corp.	Levorphanol	Ampule: 2ml	01/08/93
Restek Corp.	Lorazepam	Ampule: 2ml	01/08/93
Restek Corp.	Medazepam	Ampule: 2ml	01/08/93
Restek Corp.	Meperidine	Ampule: 2ml	01/08/93
Restek Corp.	Mephobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Meprobamate	Ampule: 2ml	01/08/93
Restek Corp.	Methadone	Ampule: 2ml	01/08/93
Restek Corp.	Methamphetamine	Ampule: 2ml	01/08/93
Restek Corp.	Methohexital	Ampule: 2ml	01/08/93
Restek Corp.	Methyprylon	Ampule: 2ml	01/08/93
Restek Corp.	Morphine	Ampule: 2ml	01/08/93
Restek Corp.	Nitrazepam	Ampule: 2ml	01/08/93
Restek Corp.	Oxazepam	Ampule: 2ml	01/08/93
Restek Corp.	Oxycodone	Ampule: 2ml	01/08/93
Restek Corp.	Pentazocine	Ampule: 2ml	01/08/93
Restek Corp.	Pentobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Phencyclidine	Ampule: 2ml	01/08/93
Restek Corp.	Phendimetrazine	Ampule: 2ml	01/08/93
Restek Corp.	Phenmetrazine	Ampule: 2ml	01/08/93
Restek Corp.	Phenobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Phentermine	Ampule: 2ml	01/08/93
Restek Corp.	Prazepam	Ampule: 2ml	01/08/93
Restek Corp.	Propoxyphene	Ampule: 2ml	01/08/93
Restek Corp.	Secobarbital	Ampule: 2ml	01/08/93
Restek Corp.	Talbutal	Ampule: 2ml	01/08/93
Restek Corp.	Temazepam	Ampule: 2ml	01/08/93
Restek Corp.	Tetrahydrocannabinol 11-nor delta-9-THC-carboxylic acid.	Ampule: 2ml	01/08/93
Restek Corp.	Tetrahydrocannabinol delta-9	Ampule: 2ml	01/08/93
Restek Corp.	Thiamylal	Ampule: 2ml	01/08/93
Restek Corp.	Thiopental	Ampule: 2ml	01/08/93
Restek Corp.	Triazolam	Ampule: 2ml	01/08/93
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Benzoylecgonine Microparticle Reagent.	Bottle: 4.5L	03/31/94
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Cannabinoids Microparticle Reagent.	Bottle: 4.5L	03/31/94
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Opiates Microparticle Reagent.	Bottle: 4.5L	03/31/94
Roche Diagnostic Systems, Inc.	ABUSCREEN Radioimmunoassay for Methamphetamine High Specificity.	Kit: 100 tests, 2500 tests	03/01/89
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Amphetamine.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Barbiturate.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Cannabinoids.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Cocaine Metabolite.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for LSD (Lysergic Acid Diethylamide).	Kit: 2 Vials	10/12/87

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Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Methamphetamine (High Specificity).	Kit: 2 vials	05/27/92
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Morphine.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Calibration Standard for Phencyclidine (PCP).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE Calibration Pack	Kit: 8 vials	05/18/92
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE Calibrator Level 3	Pack: 6 vials	05/18/92
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE Positive Control	Pack: 6 vials	05/18/92
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE THC Positive Control	Kit: 6 vials; 4ml/vial	03/22/93
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE for Cocaine Metabolite.	Kit: 100, 1000, 8000 Tests	03/19/91
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE for Opiates	Kit: 100, 1000, 8000 Tests	03/19/91
Roche Diagnostic Systems, Inc.	Abuscreen ONLINE for THC	Vial: 100, 1000, 8000 Tests	03/19/91
Roche Diagnostic Systems, Inc.	Abuscreen ONTRACK for Benzodiazepines Positive Control.	Vial: 4ml	03/22/93
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK ≥THC≥ (100ng/ml)	Kit: 50 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK ≥THC≥ Positive Control.	Vial: 4 ML	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine	Kit: 50 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturate	Kit: 50 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturates Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Benzodiazepines	Kit: 50 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite	Kit: 50 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Methadone	Kits: 50, 100 Tests	09/06/93
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Methadone Positive Reference Control.	Vial: 4ml	09/06/93
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine	Kits: 50 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Phencyclidine (PCP)	Kit: 50 tests, 100 tests	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Phencyclidine (PCP) Positive Control.	Vial: 4 ml	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK THC (50ng/ml)	Kit: 50 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit: 100 tests, 2500 tests	09/13/85
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Barbiturates.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Benzodiazepines.	Kit: 100 tests, 2500 tests	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cannabinoids.	Kit: 100 Tests 2, 500 Tests	08/14/81
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cocaine Metabolite.	Kit: 100 Tests, 2500 Tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Methaqualone.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Morphine.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Phencyclidine (PCP).	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Amphetamine.	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Barbiturate.	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Cannabinoids.	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Cocaine Metabolite.	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for LSD (Lysergic Acid Diethylamide).	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Methamphetamine (High Specificity).	Kit: 3 vials, 100ml each	05/27/92

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Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Morphine.	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls and Calibrator for Phencyclidine (PCP).	Kit: 3 Vials, 100ml each	10/12/87
Roche Diagnostic Systems, Inc.	CAL PACK Abuscreen ONLINE THC Calibration Pack.	Kit: 4 vials	09/11/91
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Calibrators	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Reagents for Phenobarbital	Kit: 100 tests	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP TDM Controls	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8..	Vial: 10, 20, 50, or 100ml	01/25/83
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9	Vial: 10ml, 20ml, 50ml, or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9A	Vial: 10ml, 20ml, 50ml, or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No.10	Vial: 10ml, 20ml, 50ml, or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparation No.10A	Vial: 10ml, 20ml, 50ml, or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A, & 8A..	Vial: 10ml, 20ml, 50ml, or 100ml	07/12/83
Rowley Biochemical Institute, Inc.	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Aldehyde Thionin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Mayer's Hematoxylin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Schering Corp.	Hepaquik	Vial: 9 Dram and Plate	07/16/72
Serex Inc.	Benzoylecgonine Positive Control	Bottle: 1 ml	12/16/89
Serex Inc.	Benzoylecgonine Standards	Bottle: 1 ml	12/16/89
Serex Inc.	CoMA EIA for Cocaine Metabolite	Kit: 96 tests, 2 Bottles: 5 ml ea., Assay Plate: 96 wells.	10/17/89
Serex Inc.	Cocaine Metabolite Standards and Controls Kit.	Kit: 3 bottles - 100 Assays	12/16/89
Serex, Inc.	Automates CoMA Cocaine Metabolite Assay.	Kit: 3 Bottles; 50, 1000 Tests	07/22/92
Serex, Inc.	Automates CoMA Cocaine Metabolite Assay Reagent B.	Bottle: 12.5ml, 50ml	07/22/92
Serex, Inc.	Automates CoMA High Calibrator	Vial: 5ml	07/22/92
Serex, Inc.	Automates CoMA Plus Cocaine Metabolite Assay.	Kit: 3 Bottles; 50, 1000 Tests	07/22/92
Serex. Inc.	Automates CoMA Low Calibrator	Vial: 5ml	07/22/92
Serex. Inc.	Automates CoMA Plus Cocaine Metabolite Assay Reagent B.	Bottle: 12, 5ml, 50ml	07/22/92
Serono Diagnostics, Inc.	rT3 Barbital Buffer	Glass Vial: 120ml	10/26/84
Serono Diagnostics, Inc.	rT3-125I	Glass Vial: 13ml	10/26/84
Serono Diagnostics, Inc.	rT3-Antiserum	Glass Vial: 13ml	10/26/84
Sherwood Medical Company	Lancer Fibrinogen Determination, Reagent Kit Catalog No. 8889-007608.	Kit	04/17/75
Sigma Chemical Co.	(+)Deoxyephedrine-d5 HCl (D-5914	Ampule: 2ml	08/28/90
Sigma Chemical Co.	(+-)-(2 Methylamino)propiophenone Hydrochloride.	Ampule: 1ml	07/30/92
Sigma Chemical Co.	(+/-) 2, 5-Dimethoxy-4-bromo-amphetamine Hydrobromide, D-7633.	Ampule: 2ml	09/25/91
Sigma Chemical Co.	(+/-) 2, 5-Dimethoxy-4-methyl-amphetamine HCl, D-7883.	Ampule: 2ml	09/25/91
Sigma Chemical Co.	(+/-) Deoxyephedrine HCl, D-7508	Ampule: 2ml	09/25/91
Sigma Chemical Co.	(-) Deoxyephedrine, D-7258	Ampule: 2ml	09/25/91
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764.	Vial: 1ml	05/11/81
Sigma Chemical Co.	11-Hydroxy-delta-9-Tetrahydrocannabinol Cat. No. H3879.	Ampule: 2ml	11/06/91
Sigma Chemical Co.	11-nor-delta-9-THC-9-Carboxylic Acid (N-6893.	Ampule: 2ml	08/28/90
Sigma Chemical Co.	11-nor-delta-9-Tetrahyrocannabinol, 9-Carboxylic .05 mg/ml acid, No. N-5642.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	11Beta-Hydroxytestosterone, H-4648	Vial: 2ml	02/04/94
Sigma Chemical Co.	19-Nortesterone 17-Phenylpropionate, N 2771.	Ampule: 1ml	07/30/92
Sigma Chemical Co.	19-Nortesterone 17-Propionate, N 2896	Ampule: 1ml	07/30/92
Sigma Chemical Co.	19-Nortestosterone 17-Decanoate, N 3021.	Ampule: 1ml	07/30/92
Sigma Chemical Co.	3, 4 Methylenedioxymethamphetamine 1 mg/ml, No. M-5029.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	3, 4-Methylenedioxyamphetamine, No. M-3272.	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	3-Methylfentanyl HCl, M-6255	Ampule: 2ml	09/25/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Sigma Chemical Co.	5, 5-Diallylbarbituric Acid, Product No. D-6013.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	5-Alpha-Androstan-17beta-ol-3-one Benzoate, A 9687.	Ampule: 1ml	07/30/92
Sigma Chemical Co.	6-Tetrahydrocannabinol, Product No. T-4889.	Vial: 1ml	05/11/81
Sigma Chemical Co.	AST Reagent A, Stock No.56-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	Acid Hematoxylin Solution, No. 285-2	Bulk: 1000L	05/04/93
Sigma Chemical Co.	Acid Hematoxylin Solution, No.285-2	Bottle: 25ml, 100ml	08/06/73
Sigma Chemical Co.	Adenosine Phosphate Substrate, Product No. 675-1.	Bottle: 4 ounce	07/25/83
Sigma Chemical Co.	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co.	Allylisobutylbarbituric Acid (A-1038)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co.	Alpha-Ethyltryptamine, E-1392	Vial: 2ml	02/04/94
Sigma Chemical Co.	Alphaprodine Hydrochloride (A-1537)	Ampule: 1ml	08/27/84
Sigma Chemical Co.	Alphenal (A-1163)	Ampule: 1ml	04/10/85
Sigma Chemical Co.	Alprazolam .25 mg/ml, No. A-5052	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Alprazolam-d5 (A-7055	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Ammonia Reagent , Stock No. 170-10	Vial: 10ml	02/17/77
Sigma Chemical Co.	Ammonia Reagent Kit: Stock No. 170-10	Kit: 10 Vials	02/17/77
Sigma Chemical Co.	Ammonia Reagent Stock No. 170-10	Vial: 30ml	12/13/77
Sigma Chemical Co.	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co.	Amobarbital , Product No. A-5142	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Amobarbital Sodium Salt, Product No. A-7441.	Ampule: 1ml	05/13/93
Sigma Chemical Co.	Antibody Sensitized Sheep Erythrocytes (EA7S).	Vials: 2ml and 5X 2ml	04/02/86
Sigma Chemical Co.	Aprobarbital , Product No. A-7023	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Barbital Buffer , Product No. B-6632	Polyethylene Vial: 30ml	05/11/77
Sigma Chemical Co.	Barbital Buffer 5X Concentrate Electrophoresis Reagent Cat. No. B-3506.	Bottle: 200ml	11/14/91
Sigma Chemical Co.	Barbital Buffer with Albumin Stock No. 880-3.	Vial: 20ml	07/11/80
Sigma Chemical Co.	Barbital, Product No. B-8632	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Benzoylecgonine 1 mg/ml, No. B-8900	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Benzoylecgonine-d3 (B-3277	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Benzphetamine Hydrochloride, Product No. B-8765.	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co.	Bromazepam (B-5402	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Bufotenine Monooxalate, Product No. B-8757.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Buprenorphine Hydrochloride	Vial: 2ml	09/12/94
Sigma Chemical Co.	Butabarbital , Product No. B-8882	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Butalbital, Product No. B-5514	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Butethal (B-7516)	Ampule: 1ml	09/05/85
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Vial: 1ml	05/11/81
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Vial: 1ml	05/11/81
Sigma Chemical Co.	Chloral Hydrate , Product No. C-6516	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Chlorazepam Dipotassium Salt, (C-9531)	Ampule: 1ml	05/24/85
Sigma Chemical Co.	Chlordiazepoxide (C-4782)	Ampule: 1ml	09/05/85
Sigma Chemical Co.	Chlordiazepoxide Hydrochloride Acetonitrile Drug Standard (C-9547.	Ampule: 2ml	06/26/90
Sigma Chemical Co.	Chlordiazepoxide-d5 (C-5047	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Clobazam, No. C-6667	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Clonazepam, Product No. C-4404	Sealed Ampule: 1ml	06/06/84
Sigma Chemical Co.	Cocaethylene, C-7313	Vial: 2ml	02/04/94
Sigma Chemical Co.	Cocaine Hydrochloride Product No. C-1528.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Cocaine-d3 (C-3547	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Codeine-d3 HCl (C-3672	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Codeine.Product No. C-1653	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	D-Amphetamine Sulfate, Product No. A-3278.	Vial: 1ml	05/11/81
Sigma Chemical Co.	DL-Amphetamine HCL , Product No. A-5017.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Delorazepam (D-5789	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Desmethyldiazepam 1 mg/ml, No. D-3162	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Desmethyldiazepam-d5 (D-6039	Ampule: 2ml	08/28/90

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Supplier	Product name	Form	Date
Sigma Chemical Co.	Dextropropoxyphene Hydrochloride (D-8901).	Ampule: 1ml	09/27/84
Sigma Chemical Co.	Diazepam, Product No. D-9900	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co.	Diazepam-d5 (D-5664	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Diethylpropion Hydrochloride, Product No. D-7274.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Diphenoxylate (D-0780)	Ampule: 1ml	09/05/85
Sigma Chemical Co.	Drug Standard Mix 1, D-3155	Ampule: 2ml	04/18/86
Sigma Chemical Co.	Drug Standard Mix 2, D-3030	Ampule: 2ml	04/18/86
Sigma Chemical Co.	Ecgonine Hydrochloride 1 mg/ml, No. E-9762.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Ecgonine-d3 HCl (E-2014	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Ecgonine-d3 Methyl Ester HCl (E-2139	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Estazolam (E-1139	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Ethinamate (E-8508)	Ampule: 1ml	04/10/85
Sigma Chemical Co.	Ethylmorphine, E-3377	Ampule: 2ml	09/25/91
Sigma Chemical Co.	Fencamfamine Hydrochloride	Vial: 2ml	09/12/94
Sigma Chemical Co.	Fenfluramine Hydrochloride, Product No. F-1884.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Fenproporex Hydrochloride, No. F-7261	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Fentanyl Citrate, No. F-5886	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co.	Fentanyl-d5 Citrate (F-2520	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Flunitrazepam No. F-8763	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Flurazepam Dihydrochloride Methanol Drug Standard, No. F-9134.	Ampule: 2 ml	10/20/89
Sigma Chemical Co.	Flurazepam Dihydrochloride, Product No. F-9134.	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co.	Gelatin Veronal Buffer (GVB2+) No. G-6514.	Vial: 50 ml, 250ml	09/15/86
Sigma Chemical Co.	Glutethimide, Product No. G-3134	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 675-2.	Bottle: 4 ounce	07/25/83
Sigma Chemical Co.	Heroin Hydrochloride .1 mg/ml, No. H-5144.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Hexobarbital, Product No. H-2007	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Hydrocodone Bitartrate, No. H-2269	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Hydromorphone Hydrochloride No. H-7141.	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Ibogaine HCL, Product No. I-4630	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	LDH Electrophoresis Buffer, Stock No. 705-1.	Bottle: 30ml	01/04/77
Sigma Chemical Co.	LDH-P Reagent No. 125-100	Vial: 100ml	05/29/73
Sigma Chemical Co.	Levorphanol Tartrate 1 mg/ml, No. L-0896.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Lorazepam (L-0140)	Ampule: 1ml	05/24/85
Sigma Chemical Co.	Lormetazepam, No. 8145	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Lysergic Acid , Product No. L-5881	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Lysergic Acid Diethylamide (L-8147	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Lysergic Acid Diethylamide, Drug Standard No. L-5406.	Ampule: 1ml	08/17/94
Sigma Chemical Co.	Mayer's Hematoxylin Solution, MHS-1, MHS-16, MHS-32, MHS-80, MHS-128.	Bottle: 3ml, 6ml, 25ml, 100ml, 225ml, 500ml, 1.0L, 2.5L, 4.0L.	08/06/73
Sigma Chemical Co.	Mayer's Hematoxylin Solution, No. MHS-1.	Bulk: 1000L	05/04/93
Sigma Chemical Co.	Mebutamate (M-3772)	Ampule: 1ml	09/05/85
Sigma Chemical Co.	Medazepam (M-7646)	Ampule: 1ml	05/24/85
Sigma Chemical Co.	Meperidine Hydrochloride (M-1020)	Ampule: 1ml	08/27/84
Sigma Chemical Co.	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co.	Meprobamate (M-0271)	Ampule: 1ml	05/24/85
Sigma Chemical Co.	Mescaline HC1 , Product No. M-5153	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Methadone Hydrochloride, Product No. M-3268.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Methadone-d3 (M-4781	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Methamphetamine HC1 , Product No. M-5260.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Methaqualone Hydrochloride, Product No. M-3393.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Methaqualone-d4 (M-5406	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Methylphenidate Hydrochloride (M-1145) .	Ampule: 1ml	10/31/84
Sigma Chemical Co.	Methyprylon, Product No. M-1769	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co.	Morphine Sulfate, No. M-9524	Glass Ampule: 2ml	06/06/89

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Supplier	Product name	Form	Date
Sigma Chemical Co.	Morphine-3-B-D Glucuronide, Product No. M-4266.	Ampule: 1ml	10/21/82
Sigma Chemical Co.	Morphine-d3 HCl, M-6380	Ampule: 2ml	09/25/91
Sigma Chemical Co.	N, N-Diethyltryptamine, Product No. D-0392.	Vial: 1ml	05/11/81
Sigma Chemical Co.	N, N-Dimethyltryptamine, Product No. D-6263.	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Nalorphine Hydrochloride	Ampule: 1ml	08/27/84
Sigma Chemical Co.	Nitrazepam, N-3397	Ampule: 1ml	09/08/93
Sigma Chemical Co.	Norcodeine Hydrochloride, No. N-3017	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Normorphine HCl (N-7393	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Noroxymorphone (N-7018	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Owren's Buffer, No. 05880	Bottle: 500ml; Vial: 20ml; Box: 5vials	04/05/89
Sigma Chemical Co.	Oxazepam, No. O-1755	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Oxazepam-d5 (O-1381	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Oxazolam, No. O-8005	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Oxycodone Hydrochloride, Product No. O-2628.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82
Sigma Chemical Co.	Pemoline, Product No. P-3518	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Pentazocine Hydrochloride, Product No. P-7530.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Pentobarbital, Product No. P-3393	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Phencyclidine, No. P-7043	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Phencyclidine-d5 HCl (P-6054	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co.	Phenobarbital FPIA Calibrator Set Cat. No. P9051.	Kit: 6 vials	11/21/89
Sigma Chemical Co.	Phenobarbital FPIA Calibrator: A-No.P8301, B-No.P8426, C-No.P8551, D-No.P8676, E-No.P8801, F-NO.P8926.	Vial: 2.5 ml	11/21/89
Sigma Chemical Co.	Phenobarbital Primary Stock Solution No. Z-5419.	Bottle: 10, 5, 1L, 500, 100ml	02/01/91
Sigma Chemical Co.	Phenobarbital Prod. No.P-3643	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Phentermine Hydrochloride, Product No. P-7655.	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Phenylacetone, Product No. P-2024	Vial: 1ml	05/11/81
Sigma Chemical Co.	Prazepam, No. P-7168	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Psilocin (P-4054	Ampule: 2ml	08/28/90
Sigma Chemical Co.	SIA Cocaine Metabolites	Kit: 96 Tests	07/11/91
Sigma Chemical Co.	SIA Conjugate Cocaine Metabolites	Bottle: 75ml	07/11/91
Sigma Chemical Co.	SIA Positive Reference Cocaine Metabolites.	Vial: 1ml	07/11/91
Sigma Chemical Co.	Secobarbital, Product No. S-4006	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	Secobarbital-d5, S-4628	Ampule: 2ml	09/25/91
Sigma Chemical Co.	Temazepam, No. T-4903	Vial: 1 ml	06/30/87
Sigma Chemical Co.	Tenocyclidine HCl, T-3507	Ampule: 2ml	09/25/91
Sigma Chemical Co.	Testosterone 17beta-Cypionate, T 3415	Ampule: 1ml	07/30/92
Sigma Chemical Co.	Testosterone Enanthate, T 3540	Ampule: 1ml	07/30/92
Sigma Chemical Co.	Testosterone Propionate, T 3665	Ampule: 1ml	07/30/92
Sigma Chemical Co.	Thebaine, Product No. T-5270	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co.	Thiamylal Sodium, Product No. T-6896	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co.	Thiopental (T-1022)	Ampule: 1ml	08/27/84
Sigma Chemical Co.	Triazolam (T-7658	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Trizma-Barbital Buffer, Stock No. 710-1	Bottle: 30ml	01/04/77
Sigma Chemical Co.	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Sigma Chemical Co.	Z9999, Field Test Sample PSEUDOnarcotics Marihuana Formulation.	Vial: 400ml	03/14/91
Sigma Chemical Co.	d-Amphetamine-d3 Sulfate (A-7180	Ampule: 2ml	08/28/90
Sigma Chemical Co.	d-Lysergic Acid Cat. No. L-9752	Ampule: 2ml	11/06/91
Sigma Chemical Co.	d-Propoxyphene-d7 HCl (P-4179	Ampule: 2ml	08/28/90
Sigma Chemical Co.	d-Propoxyphene-d7 HCl (P-4179	Ampule: 2ml	08/28/90
Sigma Chemical Co.	delta-9-tetrahydrocannabinol-d3 (T-8783	Ampule: 2ml	08/28/90
Sigma Chemical Co.	dl-Amphetamine, A-2262	Ampule: 2ml	09/25/91
Sigma Chemical Co.	l-Amphetamine, A-9136	Ampule: 2ml	09/25/91
Sigma Chemical Co.	p-Methoxyamphetamine HCl (M-4656	Ampule: 2ml	08/28/90
Sigma Diagnostics	CA System Buffer	Bottle: 500ml	09/08/93
Smart Chemical Co.	Regal 180XL	Plastic Drum: 55 gallon	06/12/86
SolarCare Technology Control	LSD EIA	Kit: 3 vials	05/05/90
SolarCare Technology Corporation	Benzoylecgonine Cutoff Calibrator	Vial: 4ml	05/05/90
SolarCare Technology Corporation	Benzoylecgonine Negative Control	Vial: 4ml	05/05/90

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Supplier	Product name	Form	Date
SolarCare Technology Corporation	Benzoylecgonine Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine Cutoff Calibrator	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Cocaine Metabolite EIA	Kit: 30 vials	06/05/90
SolarCare Technology Corporation	Cocaine Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Cutoff Calibrator	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Low Level Benzodiazepine (Tnazolam) EIA.	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Triazolam Cutoff Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Triazolam Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Triazolam Positive Control	Vial: 4ml	06/05/90
Supelco, Inc.	Alk Mix No. 04-9210	Vial: 1ml	08/28/73
Supelco, Inc.	Amobarbital, No.04-9170	Ampule: 1ml	12/22/72
Supelco, Inc.	Amph. Mix Catalog No. 4-9205	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Amphetamine No.04-9165	Ampule: 1ml	12/22/72
Supelco, Inc.	Anticonvulsant Mixture No.1; No. 04-9202	Glass Serum Bottle: 50ml	06/16/77
Supelco, Inc.	Antiepileptic Calibration Standard Kit, No.4-9259.	Kit: 3 Ampules	05/21/80
Supelco, Inc.	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule: 5ml	05/21/80
Supelco, Inc.	Appendix IX Contract Mix 3	Ampule: 2ml	12/22/94
Supelco, Inc.	Aprobarbital No.04-9171	Ampule: 1ml	12/22/72
Supelco, Inc.	Barb. Mix 1, Catalog No. 4-9200	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barb. Mix 2, Catalog No. 4-9201	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barbital, Catalog No. 4-9279	Glass Ampule: 10ml	06/09/86
Supelco, Inc.	Barbiturates Test Mix Catalog No. 4-9295	Ampule: 2 ml	02/25/87
Supelco, Inc.	Cannabidiol, No.04-9221	Ampule: 1ml	11/27/74
Supelco, Inc.	Cannabinol, No.04-9235	Ampule: 1ml	11/27/74
Supelco, Inc.	Chloral Hydrate Kit, Product ι 4-8112	Kit: 19 Vials; 2ml each	09/06/94
Supelco, Inc.	Chloral Hydrate, Product ι 4-7276	Vial: 2ml	09/06/94
Supelco, Inc.	Cocaine, No.04-9188	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Codeine No.04-9161	Ampule: 1ml	12/22/72
Supelco, Inc.	Cyclobarbital No.04-9175	Ampule: 1ml	12/22/72
Supelco, Inc.	Delta-1 THC, No.04-9237	Ampule: 1ml	11/27/74
Supelco, Inc.	Delta-6 THC, No.04-9238	Ampule: 1ml	11/27/74
Supelco, Inc.	Dextroamphetamine, No.4-9185	Glass Ampule: 1ml	05/21/80
Supelco, Inc.	EPA 8270 Base/Neutrals Mix B, Product ι 4-8195.	Vial: 2ml	08/31/94
Supelco, Inc.	Glutethimide No.04-9173	Ampule: 1ml	12/22/72
Supelco, Inc.	Heroin No.04-9162	Ampule: 1ml	12/22/72
Supelco, Inc.	Hexobarbital No.04-9177	Ampule: 1ml	12/22/72
Supelco, Inc.	Mephobarbital No.04-9178	Ampule: 1ml	12/22/72
Supelco, Inc.	Meprobamate, No.4-9184	Glass Ampule: 1ml	05/21/80
Supelco, Inc.	Methadone No.04-9163	Ampule: 1ml	12/22/72
Supelco, Inc.	Methamphetamine No.04-9168	Ampule: 1ml	12/22/72
Supelco, Inc.	Methaqualone, No.04-9183	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Morphine No. 04-9160	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc.	Pentobarbital No. 04-9179	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc.	Phenobarbital No. 04-9181	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc.	Psilocybin, No.04-9191	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Secobarbital No. 04-9180	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc.	alpha, alpha-Dimethylphenethylamine, Product ι 4-8377.	Vial: 2ml	08/31/94
Sure-Tech Diagnostic Associates, Inc.	3, 4-Methylenedioxyamphetamine in Urine Matrix; Prod 928.	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	3, 4-Methylenedioxymethylamphetamine in Urine Matrix; Prod 929.	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Alprazolam in Urine Matrix; Prod. 920	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Codeine in Urine Matrix; Prod 924	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	D-Methamphetamine/D-Amphetamine in Urine Matrix; Prod 926.	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	D-Propoxyphene in Urine Matrix; Prod 936.	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Amphetamine Kit No. ST 904, Vial No. 904-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine & Marijuana Kit No. ST 903.	Kit: 2 vials	05/11/90

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Supplier	Product name	Form	Date
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine, Kit No. ST 901, Vial No. 901-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Marijuana, Kit No. ST 902, Vial No. 902-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Opiates Kit No. ST 905, Vial No. 905-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Phencyclidine Kit No. ST 906, Vial No. 906-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Codeine No. 907-P.	Vial: 20ml; Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methadone NNo. 908-P.	Vial: 20ml; Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methamphetamine No. 909-P.	Vial: 20ml; Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methaqualone No. 913-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Oxazepam No. 910-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Propoxyphene No. 911-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Secobarbital No. 912-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Meperidine in Urine Matrix; Prod 930	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Methadone in Urine Matrix; Prod 925	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Methaqualone in Urine Matrix; Prod 927	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Morphine-3-Glucuronide in Urine Matrix; Prod 931.	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Nordiazepam in Urine Matrix; Prod 932	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Normeperidine in Urine Matrix; Prod 933	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Oxazepam in Urine Matrix; Prod 934	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Phencyclidine in Urine Matrix; Prod 935	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Secobarbital in Urine Matrix; Prod 937	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Temazepam in Urine Matrix; Prod 938	Vial: 20ml	04/24/92
Sure-Tech Diagnostic Associates, Inc.	Triazolam in Urine Matrix; Prod 939	Vial: 20ml	04/24/92
Sure-Tech Diagnostics Associates, Inc.	9-Carboxyl-11 Nor-A-9-THC in Urine MAtrix; Prod 923.	Vial: 20ml	04/24/92
Sure-Tech Diagnostics Associates, Inc.	Benzoylecgonine in Urine Matrix; Prod 922.	Vial: 20ml	04/24/92
Sure-Tech Diagnostics Associates, Inc.	D-Amphetamine in Urine Matrix; Prod. 921.	Vial: 20ml	04/24/92
Syva Co.	AccuLevel Phenobarbital Test Control Stock Solution.	Flask: 50ml	10/31/85
Syva Co.	AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control (2)AccuLevel Reagent I.	(1)Glass Vial: 6ml; (2)Glass Vial: 9ml, 12 Vials per test kit.	01/24/86
Syva Co.	Advance T-3 Uptake Assay	Kit: 100 tests	05/11/82
Syva Co.	Advance Thyroxin Assay	Kit: 100 tests	05/11/82
Syva Co.	Antiepileptic Drug Control	Vial: 10ml , Lyophilized	08/27/74
Syva Co.	EMIT 2000 Phenobarbital Bulk Reagent 1	Bottle: 1000ml	07/14/94
Syva Co.	EMIT 2000 Phenobarbital Bulk Reagent B	Bottle: 200ml	02/22/93
Syva Co.	EMIT 2000 Phenobarbital Calibrators 5, 10, 20, 40 and 80.	Bottle: 3ml	07/14/94
Syva Co.	EMIT IIC Cannabinoid Assay	Kit: 2 Bottles	12/15/93
Syva Co.	EMIT IIC Cannabinoid Assay Reagent 2	Bottle: 500ml	12/15/93
Syva Co.	EMIT IIC Phencyclidine Assay	Kit: 2 Bottles	12/15/93
Syva Co.	EMIT IIC Phencyclidine Assay Reagent 2	Bottle: 500ml	12/15/93
Syva Co.	EMIT Thyroxine Assay, Cat. No. 6J909	Glass Bottle: 4oz., Kit: 500 Assays	01/23/89
Syva Co.	Emit 2000 Phenobarbital Assay (Convenience Pack).	Kit: 1 cassette; Cassette: 11ml	08/05/91
Syva Co.	Emit 2000 Phenobarbital Assay; Enzyme Reagent 2.	Kit: 1 bottle; Bottle: 15ml	08/05/91

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Supplier	Product name	Form	Date
Syva Co.	Emit 2000 Phenobarbital Bulk Reagent	Bottle: 200ml	06/09/93
Syva Co.	Emit 2000 Phenobarbital Calibrators (5, 10, 20, 40, 80).	Kit: 5 vials	08/05/91
Syva Co.	Emit 700 Amphetamine Assay Catalog No. 3C919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Barbiturate Assay Catalog No.3D919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Benzodiazepine Assay Reagent 2.	Glass Bottle: 180ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Calibrator A Catalog No. 3A919	Bottle: 3ml	10/05/84
Syva Co.	Emit 700 Calibrator B Catalog No. 3A969	Bottle: 3ml	10/05/84
Syva Co.	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969.	Bottle: 3ml	10/09/84
Syva Co.	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959.	Plastic Bottle: 180ml	09/15/86
Syva Co.	Emit 700 Cannabinoid 100ng Assay, Positive Control.	Bottle: 3ml	07/31/89
Syva Co.	Emit 700 Cannabinoid 20ng Assay Calibrator.	Glass Bottle: 5ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Cannabinoid 20ng Assay Control Set-Positive Control.	Glass Bottle: 5ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Cannabinoid Control Set Catalog No. 3M989.	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Control Set A Catalog No. 3A939.	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Control Set B Catalog No. 3A989.	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Methaqualone Assay Catalog No. 3Q919.	Bottle: 180ml	10/19/84
Syva Co.	Emit 700 Opiate Assay Catalog No.3B919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Phencyclidine Assay Catalog No. 3J919.	Bottle: 180ml	10/12/84
Syva Co.	Emit AED-No. 1 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 2 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 3 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 4 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 5 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co.	Emit Amphetamine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Amphetamine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Amphetamine Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Barbiturate Bulk Powder Reagent 2 .	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Barbiturate Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Barbiturate Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Benzodiazepine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Benzodiazepine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Benzodiazepine Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Calibrator B Level 1 (cutoff)	Vial: 5ml, 25ml	06/19/91
Syva Co.	Emit Calibrator B Level 2 (high)	Vial: 5ml, 25ml	06/19/91
Syva Co.	Emit Cannabinoid (100) Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Cannabinoid (100) Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Cannabinoid Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Cocaine Metabolite Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Cocaine Metabolite Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Cocaine Metabolite Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Convenience Pack Phenobarbital Assay: Catalog No. 5D009.	Plastic Cassette: 100 tests	11/23/87
Syva Co.	Emit Convenience Pack: T-Uptake Assay (Thyroid Hormone Binding Ratio).	Kit: 100 Tests Ea. Kit-Plastic Cassette: 16 ml.	05/09/88

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Supplier	Product name	Form	Date
Syva Co.	Emit Convenience Pack: Thyroxine Assay Enzyme Reagent B.	Plastic Cassette: 8ml, Kit: 100 Assays	02/22/89
Syva Co.	Emit Delta 9 Cannabinoid 100 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 20 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 400 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 50 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit HVA Amphetamine Assay Catalog No. 3C619.	Kit: 2500 Assays	06/30/88
Syva Co.	Emit HVA Barbiturate Assay Catalog No. 3D619.	Kit: 2500 Assays	06/30/88
Syva Co.	Emit HVA Calibrator Kit Catalog No. 3A619.	Kit: 500 Tests Each Kit - 2 Glass Bottles 100 ml..	05/10/88
Syva Co.	Emit HVA Cannabinoid 100 ng Assay Control Kit, Catalog No. 3M739.	Kit: 2 Bottles, 50 ml. ea.	07/15/88
Syva Co.	Emit HVA Cannabinoid 100 ng. Assay Calibrator Kit, Catalog No. 3M729.	Kit: 3 Bottles 50 ml. ea.	07/15/88
Syva Co.	Emit HVA Cannabinoid 100 ng. Assay Kit, Catalog No. 3M719.	Kit: 2500 Assays	07/15/88
Syva Co.	Emit HVA Cocaine Metabolite Assay Catalog No. 3H619.	Bottle: 125 ml	05/10/88
Syva Co.	Emit HVA Control Kit Catalog No. 3A629	Kit: 500 Tests Each Kit-2 Glass Bottles - 100 ml.	05/10/88
Syva Co.	Emit HVA Opiate Assay Catalog No. 3B619.	Bottle: 125 ml	05/10/88
Syva Co.	Emit HVA Phencyclidine Assay Catalog No. 3J619.	Bottle: 125 ml	05/19/88
Syva Co.	Emit II Barbiturate Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Calibrator A Level 1 (Cutoff)	Vial: 10ml, 50ml	06/29/90
Syva Co.	Emit II Calibrator A Level 2 (high)	Vial: 10ml, 50ml	06/29/90
Syva Co.	Emit II Cannabinoid 20ng, 50ng, 100ng Assay.	Bottle: 4oz, 500ml; Kit: 100ml, 500ml	10/12/90
Syva Co.	Emit II Cocaine Metabolite Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Delta 9 Cannabinoid 20ng/ml, 50ng/ml, 100ng/ml, 200ng/ml, Calibrator/Control.	Vial: 10ml, 50ml	10/12/90
Syva Co.	Emit II Methadone Assay	Kit: 2 vials	01/26/93
Syva Co.	Emit II Methadone Assay Reagent 2	Bottle: 100ml, 500ml	01/26/93
Syva Co.	Emit II Methaqualone Assay	Kit: 2 vials	01/26/93
Syva Co.	Emit II Methaqualone Assay Reagent 2	Bottle: 100ml, 500ml	01/26/93
Syva Co.	Emit II Monoclonal Amphetamine/Methamphetamine Assay.	Kit: 2 vials	01/26/93
Syva Co.	Emit II Monoclonal Amphetamine/Methamphetamine Assay Enzyme Reagent 2.	Vial: 100ml, 500ml	01/26/93
Syva Co.	Emit II Opiate Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Phencyclidine Assay	Bottle: 4oz, 500ml; Kit: 100ml, 500ml	10/26/90
Syva Co.	Emit IIC Barbiturate Assay	Kit: 2 Vials	01/06/94
Syva Co.	Emit IIC Barbiturate Enzyme Reagent 2	Vial: 500ml	01/06/94
Syva Co.	Emit IIC Calibrators 0, 1, 2, 3, 4, 5	Vial: 10ml	01/06/94
Syva Co.	Emit IIC Opiate Assay	Kit: 2 Vials	01/06/94
Syva Co.	Emit IIC Opiate Enzyme Reagent 2	Vial: 500ml	01/06/94
Syva Co.	Emit Methadone Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Methadone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Methadone Bulk Reagent	Bottle: 1000ml	06/07/93
Syva Co.	Emit Methaqualone Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Methaqualone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Opiate Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Opiate Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Opiate Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Phencyclidine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Phencyclidine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Phencyclidine Bulk Reagent B	Glass Bottle: 1000ml	12/05/90

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Supplier	Product name	Form	Date
Syva Co.	Emit Phenobarbital Bulk Powder Reagent B.	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Phenobarbital Bulk Powder Reagent B Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Phenobarbital Enzyme Reagent B	Vial: 6 ml , Lyophilized	08/27/74
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent.	Steel Drum: 7 gallon	06/05/86
Syva Co.	Emit Qst Primidone Assay Catalog No. 6D819.	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	Emit Serum Barbiturate-Enzyme Reagent B.	Bottle: 3ml	05/22/79
Syva Co.	Emit T-Uptake Assay	Bottle: 4 oz., 1L, Kit: 500 tests, 5000 tests.	05/25/89
Syva Co.	Emit T-Uptake Assay (Thyroid Hormone Binding Ratio) Catalog No. 6J519.	Polyethylene Bottle: 4 oz.	02/29/88
Syva Co.	Emit T-Uptake Bulk Powder Reagent A	Bottle: 1000 ml	10/04/89
Syva Co.	Emit T-Uptake Bulk Powder Reagent A Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit THC 50/100ng Assay	Kit; 2vials, 500ml each	10/11/93
Syva Co.	Emit THC Calibrators; 0ng/mlk, 50ng/ml, 100ng/ml, 200ng/ml.	Vial: 10ml	10/11/93
Syva Co.	Emit THC Controls; Levels I, II, III, IV	Vial: 10ml	10/11/93
Syva Co.	Emit Thyroxine Assay	Glass Bottle: 8 oz., 1L, Kit: 1300 tests, 5000 tests.	05/25/89
Syva Co.	Emit Thyroxine Bulk Powder Reagent B	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Thyroxine Bulk Powder Reagent B Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle: 3ml	02/01/79
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Amphetamine Class Low Calibrator, Cat. No. 3C179.	Glass Vial: 5ml	01/30/89
Syva Co.	Emit d.a.u. Amphetamine Class Medium Calibrator, Cat. No. 3C189.	Glass Vial: 5ml	01/30/89
Syva Co.	Emit d.a.u. Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119.	Kit: 1000 tests	09/12/86
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Calibrator.	Kit: 3 vials	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Low Calibrator.	Vial: 3ml	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Medium Calibrator.	Vial: 3ml	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619.	Kit: 100 tests	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B.	Vial: 10ml Lyophilized Powder	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 50 ng Assay Calibrators, Low And Medium: Cat. No. 3M509.	Vial: 5 ml	06/01/88
Syva Co.	Emit d.a.u. Cannabinoid 50 ng Assay: Cat. No. 3M519.	Kit: 100 tests	06/01/88
Syva Co.	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019.	Kit: 100 tests	09/24/84
Syva Co.	Emit d.a.u. Cannabinoid Urine Calibrator Set.	Kit: 3 Vials, 3ml Each	01/03/80
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit d.a.u. Low Calibrator A	Vial: 5 ml	06/30/89
Syva Co.	Emit d.a.u. Low Calibrator A, Catalog No. 3C579.	5 ml vial	10/06/88
Syva Co.	Emit d.a.u. Low Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Medium Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit d.a.u. Medium Calibrator A	Vial: 5 ml	06/30/89
Syva Co.	Emit d.a.u. Medium Calibrator A, Catalog No. 3C569.	5 ml vial	10/06/88

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Supplier	Product name	Form	Date
Syva Co.	Emit d.a.u. Medium Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit: 100 tests, 1000 tests	10/05/84
Syva Co.	Emit d.a.u. Methaqualone Assay	Kit: 100 tests	04/27/82
Syva Co.	Emit d.a.u. Monoclonal Amphetamine/Methamphetamine Assay, Catalog No3C549 100 tests, 3C559 1000 tests.	Kit: 100 tests, 1000 tests	10/06/88
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B.	Bottle: 6ml	02/01/79
Syva Co.	Emit-Qst Phenobarbital Assay, Catalog Number 6D819.	Kit: 50 Vials	01/18/84
Syva Co.	Emit-Tox Serum Barbiturate Assay	Kit: 50 tests	05/22/79
Syva Co.	Emit-Tox Serum Calibrators; Low and Medium.	Bottle: 3ml	02/01/79
Syva Co.	Emit-st Amphetamine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Barbiturate Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Cannabinoid Assay Catalog No. 3M319.	Vial: 6ml, 80 Vials/Kit	09/27/84
Syva Co.	Emit-st Cannabinoid Calibrator	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Cannabinoid Controls	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Opiate Assay	Kit: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Phencyclidine Assay	Vial: 3ml, 80 vials/kit	01/07/81
Syva Co.	Emit-st Serum Barbiturate Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Calibrator	Vial: 3ml	02/16/81
Syva Co.	Emit-st Serum Controls	Vial: 3ml, 2 vials/kit	02/16/81
Syva Co.	Emit-st Serum Phencyclidine Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Urine Calibrator A	Vial: 1ml, 3 vials/kit	10/03/80
Syva Co.	Emit-st Urine Cocaine Metabolite Assay	Vial: 3 ml, 80 Vials/Kit	03/16/82
Syva Co.	Emit-st Urine Controls A	Vial: 1ml, 6 vials/kit	10/03/80
Syva Co.	Emit-st Urine Methadone Assay	Vial: 3ml , 80 vials/kit	03/22/82
Syva Co.	Emit-st Urine Methaqualone Assay	Kit: 80 Vials	04/27/82
Syva Co.	Emit-st Urine Methaqualone Calibrator	Vial: 3ml	04/27/82
Syva Co.	Emit-st Urine Methaqualone Controls	Vial: 3ml	04/27/82
Syva Co.	IL test AED Calibrator 1	Vial: 5 ml	04/06/90
Syva Co.	IL test AED Calibrator 2	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 3	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 4	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 5	Vial: 5ml	04/06/90
Syva Co.	IL test Cannabinoid 100ng, 400ng calibrator.	Vial: 5ml	04/06/90
Syva Co.	IL test set A calibrator	Vial: 5ml	04/06/90
Syva Co.	IL test set A control	Vial: 5ml	04/06/90
Syva Co.	IL test set B calibrator	Vial: 5ml	04/06/90
Syva Co.	IL test set B control	Vial: 5ml	04/06/90
Syva Co.	Vista Thyroxine Uptake Reagent Cartridge.	Cartridge: 4ml	01/22/93
Syva Co.	Vista Triiodothyronine (T3) Reagent Cartridge.	Cartridge: 2.02 ml	09/11/92
Tempil Division. Big Three Industries, Inc.	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Binding Site, Inc.	I.F.E. Buffer	Plastic Bottle: 125ml	12/05/91
The Binding Site, Inc.	Immunofixation Kit	Kit: 125ml Plastic Bottle	12/05/91
The Theta Corp.	Allobarbital No.FP305	Vial: 2ml	04/10/73
The Theta Corp.	Amobarbital No. FP313	Vial: 2ml	04/10/73
The Theta Corp.	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp.	Anileridine No. FP203	Vial: 2ml	04/10/73
The Theta Corp.	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp.	Barbital No.FP314	Vial: 2ml	04/10/73
The Theta Corp.	Benzoylecgonine FP-1001	Vial: 2 ml	01/24/87
The Theta Corp.	Butabarbital No. FP315	Vial: 2ml	04/10/73
The Theta Corp.	Butalbital No. FP307	Vial: 2ml	04/10/73
The Theta Corp.	Chloral Betaine No. FP502	Vial: 2ml	04/10/73
The Theta Corp.	Chloral Hydrate No. FP501	Vial: 2ml	04/10/73
The Theta Corp.	Cocaine No. FP601	Vial: 2ml	04/10/73
The Theta Corp.	Codeine No. FP102	Vial: 2ml	04/10/73
The Theta Corp.	Cyclobarbital No. FP308	Vial: 2ml	04/10/73
The Theta Corp.	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73

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Supplier	Product name	Form	Date
The Theta Corp.	Diphenoxylate No. FP205	Vial: 2ml	04/10/73
The Theta Corp.	Ethchlorvynol No. FP508	Vial: 2ml	04/10/73
The Theta Corp.	Ethylmorphine No. FP106	Vial: 2ml	04/10/73
The Theta Corp.	FP207	Vial: 2ml	09/04/80
The Theta Corp.	FP210	Vial: 2ml	05/15/84
The Theta Corp.	FP214	Vial: 2ml	04/10/84
The Theta Corp.	FP327	Vial: 2ml	04/10/84
The Theta Corp.	FP405	Vial: 2ml	03/08/79
The Theta Corp.	FP411	Vial: 2ml	05/15/84
The Theta Corp.	FP412	Vial: 2ml	05/15/84
The Theta Corp.	FP416	Vial: 2ml	05/15/84
The Theta Corp.	FP512	Vial: 2ml	03/08/79
The Theta Corp.	FP513	Vial: 2ml	03/08/79
The Theta Corp.	FP514	Vial: 2ml	05/15/84
The Theta Corp.	FP515	Vial: 2ml	03/08/79
The Theta Corp.	FP556	Vial: 2ml	04/10/84
The Theta Corp.	FP601A	Vial: 2ml	05/15/84
The Theta Corp.	FP607	Vial: 2ml	05/15/84
The Theta Corp.	FP609	Vial: 2ml	05/15/84
The Theta Corp.	Fentanyl No. FP211	Vial: 2ml	04/10/73
The Theta Corp.	Glutethimide No. FP404	Vial: 2ml	04/10/73
The Theta Corp.	Heptabarbital No. FP309	Vial: 2ml	04/10/73
The Theta Corp.	Hexabarbital No. FP303	Vial: 2ml	04/10/73
The Theta Corp.	Hydrocodone No. FP107	Vial: 2ml	04/10/73
The Theta Corp.	Hydromorphone No. FP103	Vial: 2ml	04/10/73
The Theta Corp.	Levorphanol No. FP208	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-104	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-201	Vial: 2ml	04/10/73
The Theta Corp.	Meperidine No.FP201	Vial: 2ml	04/10/73
The Theta Corp.	Mephobarbital No. FP301	Vial: 2ml	04/10/73
The Theta Corp.	Meprobamate No. FP402	Vial: 2ml	04/10/73
The Theta Corp.	Methadone No. FP206	Vial: 2ml	04/10/73
The Theta Corp.	Methamphetamine No. FP603	Vial: 2ml	04/10/73
The Theta Corp.	Metharbital No. FP302	Vial: 2ml	04/10/73
The Theta Corp.	Methohexital No. FP304	Vial: 2ml	04/10/73
The Theta Corp.	Methylphenidate No. FP605	Vial: 2ml	04/10/73
The Theta Corp.	Monthly Urine Test No. FPM-103	Vial: 2ml	04/10/73
The Theta Corp.	Morphine No. FP101	Vial: 2ml	04/10/73
The Theta Corp.	Oxycodone No. FP109	Vial: 2ml	04/10/73
The Theta Corp.	Oxymorphone No. FP104	Vial: 2ml	04/10/73
The Theta Corp.	Paraldehyde No.FP506	Vial: 2ml	04/10/73
The Theta Corp.	Pentobarbital No. FP318	Vial: 2ml	04/10/73
The Theta Corp.	Phenazocine No. FP213	Vial: 2ml	04/10/73
The Theta Corp.	Phenmetrazine No. FP606	Vial: 2ml	04/10/73
The Theta Corp.	Phenobarbital No. FP320	Vial: 2ml	04/10/73
The Theta Corp.	Piminodine No. FP202	Vial: 2ml	04/10/73
The Theta Corp.	Probarbital No. FP319	Vial: 2ml	04/10/73
The Theta Corp.	Secobarbital No. FP310	Vial: 2ml	04/10/73
The Theta Corp.	Talbutal No. FP311	Vial: 2ml	04/10/73
The Theta Corp.	Test Mixture SM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Thiamylal No. FP322	Vial: 2ml	04/10/73
The Theta Corp.	Thiopental No. FP321	Vial: 2ml	04/10/73
The Theta Corp.	Vinbarbital No. FP312	Vial: 2ml	04/10/73
The Theta Corp.	Weekly Urine Test (FDA) No. FPM-101	Vial: 2ml	04/10/73
The Theta Corp.	Weekly Urine Test (States) No. FPM-102	Vial: 2ml	04/10/73
The Upjohn Company	DDHQ Spent Oxidant	Fiber Drum: 30 Gallons	12/19/94
Toxi-Lab, Inc.	Proficiency Sample	Plastic Bottle Containing 40 ml	06/22/82
Toxi-Lab, Inc.	Special Toxi-Discs	Plastic vial or bottle containing 50 standard discs.	03/30/77
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-4 Catalog No. 234.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-5 Catalog No. 235.	Plastic vial containing 50 standard discs ..	06/15/88

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Supplier	Product name	Form	Date
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-6 Catalog No. 236.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Control	Plastic Bottle Containing 50 ml	03/30/77
Toxi-Lab, Inc.	Toxi-Control THC	Plastic Bottle Containing 50 ml	10/05/83
Toxi-Lab, Inc.	Toxi-Disc A Series	Plastic vial containing 50 standard discs ..	05/06/75
Toxi-Lab, Inc.	Toxi-Disc B Series	Plastic vial containing 50 standard discs ..	05/06/75
Toxi-Lab, Inc.	Toxi-Discs Library II, No 3 Catalog No. 131C.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 1 Catalog No. 131A.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 10 Catalog No. 131K.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 11, Catalog No. 131L.	Plastic visal containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 12 Catalog No. 131M.	plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 2 Catalog No. 131B.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 5 Catalog No. 131E.	Plastic via containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 8 Catalog No. 131H.	Plastic vial containing 50 standard discs ..	06/15/88
Toxi-Lab, Inc.	Toxi-Discs THC	Plastic vial containing 50 standard discs ..	10/05/83
Toxi-Lab, Inc.	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms.	09/24/80
Toxi-Lab, Inc.	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Tudor Laboratories, Inc.	FPIA Phenobarbital Kit - Cat. No. 105	Kit: 100 tests	11/27/89
Tudor Laboratories, Inc.	Phenobarbital Calibrator Kit Cat. No. 205	Kit: 6 vials	11/27/89
Tudor Laboratories, Inc.	Phenobarbital Calibrators B, C, D, E, F	Vial: 4.0 ml	11/27/89
Universal Reagents, Inc.	Drug Monitoring & Toxicology No. DM 90-5, DM-62.	Bottle: 10ml	10/09/90
Utak Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Barbiturates No. 71916.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Serum Control-Dried ι88112 ..	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried ι88113 ..	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried ι88120 ..	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658..	In Bottles	05/24/76
Utak Laboratories	Toxicology Urine Control-Dried ι88100	Bottle: 20ml	07/29/82
Utak Laboratories	Toxicology Urine Control-Dried ι88121	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle: 1 oz.	05/24/76
Ventrex Laboratories, Inc.	PTH Antiserum	Vial: 5ml	04/12/90
Ventrex Laboratories, Inc.	PTH Assay Buffer	Vial: 10ml	04/12/90
Ventrex Laboratories, Inc.	PTH Omega Radioimmunoassay Kit	Kit: 60 tests	04/12/90
Ventrex Laboratories, Inc.	PTH Second Antibody	Vial: 10ml	04/12/90
Ventrex Laboratories, Inc.	PTH Tracer Buffer	Vial: 5 ml	04/12/90
Wien Laboratories, Inc.	3H Dihydrotestosterone Cat. No. D-1916 .	Vial: 5.5ml	02/21/91
Wien Laboratories, Inc.	3H Epi-Testosterone Cat. No. T-1028	Vial: 5.5ml	02/21/91
Wien Laboratories, Inc.	3H Testosterone Cat. No. T-3027	Vial: 5.5ml	02/21/91
Wien Laboratories, Inc.	ANS Buffer pH 8.6 Catalog No. T-5144 ...	Plastic Bottle: 100ml	05/14/75
Wien Laboratories, Inc.	Buffer Reagent pH 8.6 Catalog No. T-5065.	Bottle: 4oz.	12/22/72
Wien Laboratories, Inc.	Coated Charcoal Suspension No. T-5077	Bottle: 4oz.	12/22/72
Wien Laboratories, Inc.	Dihydrotestosterone Standard 1ng/ml Cat. No. D-1928.	Vial: 5.5ml	02/21/91

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Supplier	Product name	Form	Date
Wien Laboratories, Inc.	Epi-Testosterone Standard, 10ng/ml Cat. No. T-1016.	Vial: 5.5ml	02/21/91
Wien Laboratories, Inc.	Epi-Testosterone Test Set Cat. No. TS-1010.	Kit: 2 Bottles	02/21/91
Wien Laboratories, Inc.	Methamphetamine: HRP EIA Conjugate	Vial: 5ml, 10ml	06/25/90
Wien Laboratories, Inc.	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial: 20ml	09/13/78
Wien Laboratories, Inc.	Testosterone Standard, 10ng/ml Cat. No. T-3039.	Vial: 5.5ml	02/21/91
Wien Laboratories, Inc.	Testosterone Test Set Cat. No. TS-333	Kit: 2 Bottles	02/21/91
Windsor Laboratories, Inc.	Calibrators FPR Phenobarbital	Kit: 6 Vials	10/30/86
Windsor Laboratories, Inc.	Phenobarbital Fluorescence Polarization Immunoassay Kit.	Kit: 100 tests	11/20/86

[FR Doc. 95-7466 Filed 3-27-95; 8:45 am]
BILLING CODE 4410-09-P

federal register

Tuesday
March 28, 1995

Part III

Pension Benefit Guaranty Corporation

29 CFR Part 2627
Single Employer Plans: Disclosure To Participants; Proposed Rule

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2627

RIN 1212–AA77

Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing regulations to implement a new notice requirement under section 4011 of the Employee Retirement Income Security Act of 1974. Section 4011 requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

DATES: Comments must be received on or before April 27, 1995.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On December 8, 1994, section 775 of the Retirement Protection Act of 1994 (subtitle F of title VII of the Uruguay Round Agreements Act, Pub. L. No. 103–465, 108 Stat. 4809 (1994)) added section 4011 to ERISA. Under section 4011, a plan subject to the variable rate premium under section 4006(a)(3)(E) must provide a notice (the "Participant Notice") unless the plan meets one of the exemptions discussed below.

DRC Exception Test

A plan does not have to provide the Participant Notice for a plan year if it meets the DRC Exception Test in § 2627.3(b) for that plan year or the prior plan year. In general, a plan passes that test if it is exempt from making a deficit reduction contribution ("DRC") by reason of section 302(d)(9) of ERISA.

Prior Plan Year Option

The Participant Notice for a plan year must be provided during that plan year. Because in many cases the DRC is not available until after the end of the plan year, § 2627.3(a) provides that the plan administrator may determine whether a Participant Notice is required for a plan year by applying the DRC Exception Test to that plan year or the prior plan year.

1994 Plan Year

A plan administrator may test whether a Participant Notice is required for the 1995 plan year by applying the DRC Exception Test to the 1994 plan year. Because the exemption from the DRC under section 302(d)(9) applies only to post-1994 plan years, § 2627.3(b)(2) includes a rule for determining whether a plan meets the DRC Exception Test for the 1994 plan year: the plan must satisfy any requirement in section 302(d)(9)(D)(i) for any two of the plan years beginning in 1992, 1993, and 1994.

Special Relief Rules for Small Plans

1995 Exemption

A plan that is exempt from the DRC for either the 1994 or 1995 plan year because it is a "small plan" under section 302(d)(6)(A) (100 or fewer participants) does not have to give the Participant Notice for the 1995 plan year (§ 2627.5(a)).

Small Plan DRC Exception Test

For a post-1995 plan year, a plan is not exempt from the Participant Notice requirement solely because it is a small plan. Like all plans, a small plan is exempt for a post-1995 plan year if it meets the DRC Exception Test for that plan year or the prior plan year. Because small plans do not ordinarily perform the calculations necessary to determine whether they are exempt from the DRC requirement, the proposed regulation provides several optional simplified rules that small plans may use in applying the DRC Exception Test.

First, § 2627.5(b)(1) provides that for purposes of applying the DRC Exception Test, a small plan may determine its funded current liability percentage (under section 302(d)(9)(C)) by using the beginning-of-plan-year market value of assets and the beginning-of-plan-year current liability for total benefits that it reports on Schedule B to Form 5500 (*e.g.*, on the 1994 form, line 6c and column (3) of line 6d(iv)).

Second, § 2627.5(b)(2) includes a special rule for determining whether a small plan satisfies the requirements of section 302(d)(9)(D)(i) for a pre-1995 plan year. (This rule only affects Participant Notices for 1996, 1997, and 1998 plan years.) Under this special rule, a small plan satisfies those requirements for a pre-1995 plan year if the ratio of the plan's assets (without subtracting any credit balance under section 302(b)) to its current liability (using the highest allowable interest rate under section 302(d)(7)(C)) for that plan year was at least 90 percent.

Third, § 2627.5(b)(3) provides a special rule that a small plan may use to adjust its current liability to reflect the difference between the top interest rate in the permissible interest rate corridor for the plan year and the interest rate the plan used. A small plan that chooses not to recalculate its current liability using the higher interest rate may adjust its current liability by decreasing the current liability by one percent for each tenth of a percentage point by which the top interest rate in the permissible corridor exceeds the interest rate the plan used.

For example, assume that a small plan's current liability as of January 1, 1996, is $200,000, based on an interest rate of 7.43 percent. Assume further that the top rate in the corridor for the 1996 plan year is 8.17 percent. Because 8.17 exceeds 7.43 by 0.74, the current liability could be reduced by 7.4 percent to $185,200 (92.6 percent of $200,000).

New Plans

Section 2627.4 exempts new and newly-covered plans from the Participant Notice requirement for their first plan year of coverage by the PBGC insurance system.

Mergers, Consolidations, and Spinoffs

The PBGC invites comments on how to address DRC testing and other related issues where a plan has been involved in a merger, consolidation, or spinoff since the prior plan year.

Persons Entitled to Receive Notice

Section 2627.6 requires that the Participant Notice be issued to participants, beneficiaries, alternate payees, and any employee organization that represents participants for purposes of collective bargaining. Plan administrators may select, as the date for determining who is entitled to receive the Participant Notice for a plan year, any date between the last day of the prior plan year and the day on which the Participant Notice is due. A plan administrator may select the same or a different date for each plan year, as long as a change in dates between plan years does not exclude a substantial number of participants and beneficiaries.

Time Limit for Issuing Notice

Under § 2627.7, the plan administrator must provide the Participant Notice for a plan year no later than two months after the deadline, including extensions, for filing the annual report (Form 5500 series) for the prior plan year (see 29 CFR 2520.104a–5(a)(2)). This is also the time limit for furnishing the summary annual report for the prior plan year (see 29 CFR 2520.104b–10(c)). Section 2627.7 allows the PBGC to extend the time limit for issuing the Participant Notice when the President of the United States declares that a major disaster exists.

Manner of Issuing Notice

Section 2627.8 requires plan administrators to issue the Participant Notice in a manner reasonably calculated to ensure actual receipt. Methods acceptable for furnishing the summary annual report are acceptable; plan administrators may not merely post the Participant Notice at worksite locations.

The plan administrator may issue the Participant Notice for a plan year together with another document, such as the summary annual report for the prior plan year, so long as the Participant Notice is in a separate document.

Content of Notice

Section 2627.9 requires that the Participant Notice include (1) certain identifying information, (2) information on the plan's funding status (the "Notice Funding Percentage," a statement that the funding level may be substantially lower if the plan terminates, identification of any plan years during the five immediately preceding plan years for which the IRS granted a minimum funding waiver, and identification of any plan years for which the plan has not received the minimum contribution required under section 302 of ERISA), and (3) information on the PBGC's guarantee (the nature of the guarantee, a summary of the types of benefits that are not guaranteed, and the limitations on the guarantee, *e.g.*, the maximum benefit guaranteed). Participants must be informed that they can obtain additional information on the guarantee by requesting a PBGC booklet from Box YGP, Pueblo, Colorado 81009, and advised of the current price of the booklet. (The booklet will be available for $1.25 beginning January 1, 1996. The PBGC anticipates that it will provide information on any future price increases.)

Notice Funding Percentage

The Notice Funding Percentage is the plan's "funded current liability percentage," as that term is defined in section 302(d)(9)(C) of ERISA (*i.e.*, assets are not reduced by any credit balance and the highest allowable interest rate is used). This is the same percentage that is used to determine whether the Participant Notice is required. The Participant Notice may include the Notice Funding Percentage for either the plan year for which the Participant Notice is issued or for the prior plan year. A small plan may determine its funded current liability percentage for a plan year using the simplified rules in the Small Plan DRC Exception Test.

A plan's funded current liability percentage will not necessarily reflect the plan's funding level if the plan were to terminate. Different actuarial assumptions are used to calculate current liability and termination liability. In addition, the PBGC's experience is that a plan's funding level often drops just prior to termination. In the interest of consistency and administrative simplicity, the PBGC proposes to base the Notice Funding Percentage on the plan's funded current liability percentage.

Model Notice

The Appendix includes a Model Participant Notice as an example of a Participant Notice that meets the requirements of the proposed rule.

Foreign Language Requirements

As in the case of the summary annual report (29 CFR 2520.104b–10(e)), when specified numbers or percentages of participants are literate only in the same non-English language, the plan administrator is required to provide them with a Participant Notice that prominently displays a legend, in their common foreign language, offering them assistance in that language.

Relationship to 70 Percent Disclosure Requirement

The plan administrator of a plan that is less than 70 percent funded must disclose the plan's funding percentage in the annual report and the summary annual report (sections 103(d)(11) and 104(b)(3) of ERISA). The Department of Labor has advised the PBGC that if a plan administrator provides the Participant Notice under section 4011, the Department of Labor will treat the plan administrator as having complied with the requirement to disclose the plan's funding percentage (for the prior plan year) in the summary annual report. (The plan administrator still will be required to disclose the plan's funding percentage in the annual report.)

Penalties for Non-Compliance

Failure to issue a Participant Notice in accordance with the requirements of this part would constitute a violation of title IV of ERISA. The PBGC may remedy violations of notification requirements by assessing a penalty under section 4071. Section 4071 authorizes the agency to assess a penalty, payable to the PBGC, against a plan administrator who fails, within the specified time limit, to provide any Participant Notice, or who omits material information from a Participant Notice. (The penalty may not exceed $1,000 for each day for which the failure continues.)

If a plan administrator issues a Participant Notice for the 1995 plan year that meets the requirements of this proposed rule, the PBGC will not assess section 4071 penalties based on a failure to comply with any different requirements of a final rule implementing section 4011.

Effective Date

The Participant Notice requirement applies for plan years beginning on or after January 1, 1995.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The provisions in this proposed rule will implement policy decisions made by Congress in imposing a participant notice requirement. They reflect the PBGC's interpretation of the statutory standards and prescribe the time, form, and manner of issuance of the required notice.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that, if adopted, this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Small plans are exempt from the Participant Notice requirement for the 1995 plan year. For subsequent plan years, neither the cost of determining whether a plan is subject to the Participant Notice requirement nor the cost of preparing and issuing the Participant Notice is expected to be significant for a substantial number of small entities. The proposed regulation contains special rules designed to simplify the Participant Notice requirement for small plans.

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List of Subjects—29 CFR Part 2627

Employee benefit plans, Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend subchapter C, chapter XXVI of 29 CFR by adding a new part 2627 to read as follows:

PART 2627—DISCLOSURE TO PARTICIPANTS

Sec.

2627.1 Purpose and scope.
2627.2 Definitions.
2627.3 Notice requirement.
2627.4 Exemption for new and newly-covered plans.
2627.5 Small plan rules.
2627.6 Persons entitled to notice.
2627.7 Time of notice.
2627.8 Manner of issuance of notice.
2627.9 Form of notice.
Appendix to part 2627

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 2627.1 Purpose and scope.

(a) *Purpose.* This part prescribes rules and procedures for complying with the requirements of section 4011 of the Act.

(b) *Scope.* This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of the Act.

§ 2627.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Participant has the meaning in § 2617.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of the Act and this part.

Plan administrator means the administrator, as defined in section 4001(a)(1) of the Act.

§ 2627.3 Notice requirement.

(a) *General.* Except as provided in §§ 2627.4 and 2627.5(a), a plan is subject to the Participant Notice requirement for a plan year if—

(1) A variable rate premium is payable for the plan under section 4006(a)(3)(E) of the Act and part 2610 of this chapter for that plan year; and

(2) The plan does not meet the Deficit Reduction Contribution ("DRC") Exception Test in paragraph (b) of this section (which may be applied using the Small Plan DRC Exception Test rules in § 2627.5(b), where applicable) for that plan year or for the prior plan year.

(b) *DRC Exception Test.* (1) *Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of the Act for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of the Act.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of the Act of up to $1,000 a day for each day that the failure continues.

§ 2627.4 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the requirement to provide a Participant Notice for the first plan year for which the plan must pay premiums under part 2610 of this chapter.

§ 2627.5 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of the Act for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of the Act for a pre-1995 plan year by reason of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of the Act, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under section 302(d)(7)(C) of the Act, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 2627.6 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee (as defined in section 206(d)(3)(K) of the Act), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine who is a person that must receive the Participant Notice, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 2627.7 Time of notice.

The Participant Notice for a plan year must be issued no later than two months after the deadline for filing the annual report for the previous plan year (see § 2520.104a–5(a)(2) of this title). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 2627.8 Manner of issuance of notice.

The Participant Notice shall be issued by using measures reasonably calculated to ensure actual receipt by the persons entitled to receive it. It may be issued together with another document, such as the summary annual report required under section 104(b)(3) of the Act for the prior plan year, but must be in a separate document.

§ 2627.9 Form of notice.

(a) *General.* The Participant Notice shall be written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in the Appendix of this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the plan year for which the notice is given, and the name, address, and telephone number of the plan administrator and of the individual(s) who can answer questions about the plan's funding);

(2) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section;

(3) A statement that the funding level of the plan may be substantially lower if the plan terminates;

(4) If the plan has been granted a minimum funding waiver under section 303 of the Act for any of the five plan years immediately preceding the plan year and the amortization base established as a result thereof has not (as of the end of the prior plan year) been reduced to zero, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(5) If the plan has not received the minimum contribution required under section 302 of the Act for any prior plan year, a statement identifying each such plan year;

(6) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(7) A statement that further information about the PBGC's guarantee may be obtained by requesting the booklet "Your Guaranteed Pension" from Box YGP, Pueblo, Colorado 81009, along with the current price of the booklet.

(c) *Notice Funding Percentage.*

(1) *General Rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the "funded current liability percentage" (as that term is defined in section 302(d)(9)(C) of the Act) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of the Act for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in § 2627.5(b).

(d) *Additional information.* The plan administrator may include in the Participant Notice a statement that a plan's underfunding will not necessarily lead to its termination and that the risk of benefit loss in the event of its termination depends on its funding level and the financial condition of the companies responsible for its funding. The plan administrator may include in the Participant Notice any other information not required by paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under § 2627.6) covers the numbers or percentages specified in § 2520.104b–10(e) of this title of participants literate only in the same non-English language, the plan administrator shall provide those participants an English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any procedures participants must follow to obtain such assistance.

Appendix to Part 2627

Paragraph A is an example of a Participant Notice that satisfies the requirements of § 2627.9 when the required information is filled in (subject to §§ 2627.9(d)–(e), where applicable). Paragraph B is a table of maximum guaranteed benefits (which the PBGC will update yearly).

A. Model Participant Notice

Notice to Participants of [Plan Name, EIN, PN] Sponsored by [Contributing Sponsors] [Plan Year 19XX]

We are required by law to provide you with information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a U.S. government agency.

Your Plan's Funding

Your plan has [INSERT NOTICE FUNDING PERCENTAGE] percent of the funds needed for benefits promised to employees and retirees. Experience has shown that the funding level may be substantially lower if the plan terminates.

A plan's funding and the financial condition of a company must be considered when determining the potential risk of benefit loss.

[Include the following paragraph only if the plan has been granted a funding waiver in any of the previous five plan years.]

Your plan received a funding waiver for [List any of the five previous plan years for which a funding waiver was granted]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[Include the following sentence only if the plan has not received a minimum contribution required from the employer.]

Your plan has not received the minimum contribution required from the employer for [LIST APPLICABLE PLAN YEARS].

PBGC Guarantees

The fact that a plan is underfunded does not mean that it will terminate. If this does occur, the PBGC guarantees all pension benefits for most people. However, some people may lose some benefits.

The PBGC pays pension benefits, up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE] per month or [INSERT FROM TABLE] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].
- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE] per month or [INSERT FROM TABLE] per year for an individual who starts receiving benefits at age 55.
- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits.

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan terminates, usually because you have not worked enough years for the company.
- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.
- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay are not guaranteed.
- The PBGC does not pay lump sums exceeding $3,500.

Where To Get More Information

Your plan administrator is [Name], [Title], at [Business Address and Phone Number]. If you would like more information about the funding of your plan, contact [Name], [Title], at [Business Address and Phone Number].

For more information about PBGC and the benefits it guarantees, you may request a copy of "Your Guaranteed Pension" for $1.25 by writing to Box YGP, Pueblo, Colorado 81009. ["Your Guaranteed Pension" will not be available until January 1, 1996.]

B. Table of Maximum Guaranteed Benefits

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If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:			
	Age 65		Age 55	
	Monthly	Annual	Monthly	Annual
1995	$2,573.86	$30,886.32	$1,158.24	$13,898.88

Issued in Washington, DC, this 20th day of March 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–7548 Filed 3–27–95; 8:45 am]

BILLING CODE 7708–01–P

federal register

Tuesday
March 28, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 203

Single Family Mortgage Limits: Redelegation of Authority; Final Rule and Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–95–1778; FR–3866–F–01]

RIN 2502–AG47

Single Family Mortgage Limits: Redelegation of Authority; Final Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Single Family Mortgage Insurance regulations to recognize the redelegation of the authority to increase Federal Housing Administration (FHA) single family maximum mortgage limits and designate high cost areas. The FHA Commissioner is redelegating this authority to certain officials in HUD's local offices. This redelegation is consistent with the primary objectives of the recent reorganization of HUD's Office of Housing, which are to provide local offices with more direct authority and to enhance the delivery of services to clients.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maynard Curry, Office of Insured Single Family Housing, Room 9276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2121, or (202) 708–4594 (TDD). (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

Section 203(b)(2) of the National Housing Act and 24 CFR 203.18(a)(1) prevent insured mortgages for 1-family residences from exceeding 95 percent of the median house price for the area, as determined by the Secretary. To date, the determination of the median price is based on actual sales prices for new and existing homes. The authority to make this determination has been delegated to the Assistant Secretary for Housing-Federal Housing Commissioner (the Commissioner). The Commissioner issues periodic notices in the **Federal Register** announcing the mortgage limits for each area of the country after determining the median house price for each area. A local HUD office can recommend interim changes for specific areas based on locally-gathered information on changes in house prices, but those changes cannot be announced without approval by the Commissioner.

HUD has recently been reorganized to provide more direct authority to its local offices regarding operation of its programs. Regulations that reserve to Headquarters functions that are locally-based, such as the determination of median house prices in an area, are inconsistent with the new emphasis on empowerment of local offices.

HUD is taking two actions to recognize the reorganization and to facilitate the timely adjustment of area mortgage limits in response to increases [1] in median area house prices. First, HUD is amending two provisions in the current regulations (24 CFR 203.18(h) and 203.18b(b)(2)) to provide greater administrative flexibility regarding the determination and announcement of mortgage limits based on median area house prices. Second, HUD is preparing a formal delegation of authority to identify specified officials in the local offices who are authorized to determine median area house prices and the resulting maximum mortgage amounts. HUD is also publishing this delegation of authority today as a separate document.

HUD expects that increases in median house prices can be determined at the local level more rapidly than at Headquarters and with comparable accuracy. Currently Headquarters staff makes recommendations to the Commissioner based on two approaches. Under the first approach, a comprehensive review is performed of median house prices in all areas. This review occurs from time to time, but normally no more frequently than annually. Price data comes from two sources: the Federal Housing Finance Board (FHFB) and the WEFA Group, a private consulting firm. A chart is prepared for approval by the Commissioner that shows the maximum mortgage amount for each area based on 95 percent of the median house price in the area (subject to a statutory floor and ceiling on these amounts). The last such chart was published in the **Federal Register** on March 15, 1993 (58 FR 13950).

HUD also has a procedure for receiving and reviewing local appeals between publication of the charts with national updates if "any party believes that a mortgage limit established by the Secretary * * * does not accurately reflect the median house prices in an area." 24 CFR 203.18b(a). The party seeking a change in the mortgage limit (typically a mortgagee or an organization of mortgagees or real estate professionals) must collect and submit data showing the actual sales prices for all new and existing homes in the area over a period of time that varies with the number of sales involved. This data goes to the local office, which submits a recommendation based on the data to the Commissioner for a final determination. Once the Commissioner approves a change in the mortgage limit for an area based on the change in median house price, the new mortgage limit can be made effective through an administrative announcement to affected mortgagees in advance of being included in a **Federal Register** notice.

Under this final rule, the local appeals approach will serve as the usual method leading to mortgage limit increases, except that local offices may also take the initiative in generating submissions of actual sales price data to compensate for the lack of periodic national updates. The change in regulations and the delegation of authority do not prevent the Commissioner from also approving appropriate mortgage limit increases when information available to the Commissioner indicates that increases are warranted. The Commissioner may continue to receive periodic information on median house prices from national sources such as FHFB and the WEFA Group to confirm the accuracy of local office determinations. The Commissioner will maintain a national compilation of mortgage limits for all areas and may choose to continue periodic publication of a national compilation in the **Federal Register** for information purposes.

HUD will add a new chapter to HUD Handbook 4000.2 to ensure that local offices have adequate instructions on their new role. These instructions will cover such matters as appropriate sources of house sales price data, extra weight that may be given to new home sales prices in certain circumstances, and identification of the pertinent "area" in compliance with the statutory definition of that term. These instructions should ensure a high degree of consistency in approach among the different local offices.

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides an exception from that general rule with respect to rules governing HUD's organization or its own internal practices or procedures. This final rule

[1] HUD has avoided reducing mortgage limits in response to temporary reductions in local market prices. Therefore, the focus of this rulemaking is only on increases to mortgage limits.

is limited to a revision of the respective roles of the Commissioner and the local offices and therefore qualifies for the exception.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The redelegation of authority implemented by this rule is a matter of HUD's internal practices or procedures, and it will not have an impact on small entities.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to delegations of authority and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The redelegation of authority implemented by this rule is a matter of HUD's internal practices or procedures. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. In § 203.18, paragraph (h) is revised to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(h) *Notice of maximum mortgage amount.* A maximum mortgage amount based on the 1-family median house price for an area under paragraph (a)(1) of this section may be made effective by:

(1) Providing direct notice to affected mortgagees through an administrative issuance; or

(2) Publishing a notice in the **Federal Register**.

§ 203.18b [Amended]

3. In § 203.18b, paragraph (b)(2) is amended by removing the second sentence.

Dated: March 20, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–7552 Filed 3–27–95; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–95–1087; FR–3892–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority to specified officials within local HUD offices to determine median house prices and the resulting maximum mortgage amounts pursuant to 24 CFR 203.18, 24 CFR 203.18b, and Section 203(b)(2) of the National Housing Act. Published elsewhere in the **Federal Register** today is notice of a rule change to 24 CFR 203.18 and 203.18b, consistent with this redelegation.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maynard Curry, Office of Insured Single Family Housing, Room 9276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2121, or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 203(b)(2) of the National Housing Act and 24 CFR 203.18(a)(1) prevent insured mortgages for 1-family residences from exceeding 95 percent of the median house price for the area, as determined by the Secretary. The authority to make this determination has been delegated to the Assistant Secretary for Housing—Federal Housing Commissioner (FHA Commissioner). Published elsewhere in today's **Federal Register** is a final rule amending HUD's Single Family Mortgage Insurance regulations pertaining to the means of determining the median single family house price and resulting maximum mortgage amount for a particular area. This rule change permits the FHA Commissioner to redelegate to the local level the authority to make these determinations. HUD has recently been reorganized to provide more direct authority to its local offices regarding operation of its programs. This redelegation is consistent with the new emphasis on empowerment of local offices.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The authority under 24 CFR 203.18, 24 CFR 203.18b, and Section 203(b)(2) of the National Housing Act to determine single family median house prices and maximum mortgage amounts in particular areas, including the authority to increase the single family maximum mortgage limits and to designate high cost areas, is redelegated to the following:

1. For each category AA local field office (also known as a "Super A" or "Double A" office), to the Office of Housing Director, who retains this authority and redelegates it to the Single Family Housing Division Director.

2. To The Deputy Assistant Secretary for Single Family Housing, who retains this authority and redelegates it to the Single Family Housing Division Director, for each category A, B, C, and D local field office.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: March 20, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–7551 Filed 3–27–95; 8:45 am]

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3–29–95
Vol. 60 No. 60

federal register

Wednesday
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3-29-95
Vol. 60 No. 60
Pages 16035–16362

Wednesday
March 29, 1995

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Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–17 of March 16, 1995

Drawdown of Commodities and Services From the Inventory and Resources of the Department of Defense To Support Activities of the Palestinian Police Force

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the "Act"), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value not to exceed $5 million to provide and transport 200 vehicles and concurrent spare parts to Israel for use by the Palestinian police force.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 16, 1995.

[FR Doc. 95–7881
Filed 3–27–95; 3:17 p.m.]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AF18

Federal Employees Health Benefits Program: Filing Claims; Disputed Claims Procedures and Court Actions

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to revise the requirement that legal actions to recover on a claim under the Federal Employees Health Benefits (FEHB) Program should be brought against the health benefits carrier rather than OPM, and to clarify the procedures for filing claims for payment or service under the FEHB Program. The purpose of these interim regulations is to clarify that if a covered individual chooses to bring legal action pertaining to a denial of an FEHB benefit, such legal action should be brought against OPM, and to clarify the administrative review process that must precede legal action in the courts.

DATES: These interim regulations are effective March 29, 1995. Comments must be received on or before May 30, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or delivery to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606–0004.

SUPPLEMENTARY INFORMATION: Historically, OPM has required that covered individuals who want to bring suit because an FEHB carrier has denied their claim for health benefits must sue the carrier, not OPM. These interim regulations provide that legal actions arising out of a denial of FEHB benefits should be brought against OPM rather than the FEHB carrier that made the initial denial decision. Because OPM has the authority under the FEHB law to order the carrier to pay the claim, OPM has determined it is appropriate under current statute for the covered individual to bring suit against OPM if OPM declines to order the carrier to pay the claim. The interim regulations also clarify the process and circumstances for bringing legal actions under the FEHB Program. They clearly state that the administrative review process set forth in 5 CFR 890.105 must be completed before suit is brought. To further clarify the purpose and intent of these regulations, we have changed the title of the regulation at 890.107 from "Legal actions" to "Court Review."

The legislative history of § 8902(j), title 5, United States Code, shows that Congress intended OPM (at that time the Civil Service Commission) to provide an administrative appeal process, binding upon the carriers, that would save covered individuals the expense and delay of being forced into the courts to recover on meritorious claims for benefits. Based upon this directive and its central role in the administration of the FEBH Program, OPM established a detailed administrative review process for benefits claims leading to a final decision on such claims by OPM. It is OPM's view that this administrative review process must be followed before legal action is pursued in the courts. Further, the matter to be reviewed by a court upon appeal is the OPM decision affirming the carrier's denial of benefits, with the court's review being limited to an examination of OPM's administrative decision to deny the claim for payment or services.

Health insurance contracts under the FEHB Program are Federal contracts under 5 U.S.C., chapter 89. Accordingly, legal actions concerning disputes arising or relating to those contracts are controlled by Federal, rather than State law. Congress, in the FEHB Act, mandated Federal uniformity for all matters that relate to (1) the nature or extent of coverage; (2) benefits; and (3) payment of benefits under the FEHB Program. By statute, all health insurance contracts require the carrier to agree to pay or provide a health service or supply in an individual case if OPM finds that the covered individual is entitled to the benefit under the terms of the contract. Congress also directed OPM to take a central role in determining whether a health service or supply should be provided in individual cases to covered individuals and, if it should be provided, to require carriers to pay for such health service or supply. These interim regulations reaffirm the principle of uniformity in the FEHB Program by providing that in judicial disputes regarding the denial of a health benefits claim, review is to be limited to the record that was before OPM and that was the basis of the OPM decision to disallow the benefit. In the event that an appropriate court concludes that benefits should have been awarded under the FEBH Act, the court possesses ample authority to require OPM to order that such payments be made to the covered individual from the carrier. These interim regulations clarify that OPM intends for its decision to be upheld unless the court concludes that the OPM decision affirming the carrier's denial of benefits was inconsistent with the standard for a final agency action under applicable Federal law.

The administrative review process is set forth in 15 CFR 890.105, Filing claims for payment or service. Section 890.105 outlines the procedures for filing claims for payment or service when there is a disagreement over payment or service between the carrier and the covered individual. In addition, the regulations make minor changes in the time limits for carrier reconsideration and OPM review of claims in 890.105 to make the language easier to read.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of rulemaking because these interim regulations remove a restriction on the actions of Federal employees and annuitants.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations primarily affect

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individuals enrolled under the Federal Employees Health Benefits Program.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reports and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.101 paragraph (a) is amended by adding a definition of "covered individual" to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Covered individual means an enrollee or a covered family member.

* * * * *

3. Section 890.105 is revised to read as follows:

§ 890.105 Filing claims for payment or service.

(a) *General.* Each health benefits carrier resolves claims filed under the plan. All health benefits claims must be submitted initially to the carrier of the claimant's health benefits plan. If the carrier denies a claim (or a portion of a claim), the covered individual may ask the carrier to reconsider its denial. If the carrier affirms its denial or fails to respond as required by paragraph (b) of this section, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the carrier and OPM review processes specified in this section before seeking judicial review of the denied claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 1 year from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the carrier in which to submit a written request for reconsideration to the carrier.

(2) The carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the carrier's notice requesting additional information. The carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this section if the carrier fails to act within 30 days after the covered individual's request for reconsideration or the carrier's receipt of additional information.

(3) The covered individual may write to OPM and request that OPM review the carrier's decision if the carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within 30 days after the date it receives the request or within 30 days after the date it receives the additional information requested. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this section.

(4) The carrier may extend the time limit for a covered individual's submission of additional information to the carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual must put the request to the carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The carrier must provide written notice to the covered individual of its determination. If the carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this section, within 120 days after the date of the covered individual's timely request for reconsideration by the carrier; or

(iii) Within 120 days after the date the carrier requests additional information from the covered individual, or the date the covered individual is notified that the carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the carrier, OPM may:

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the carrier, the carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this section, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the carrier.

4. Section 890.107 is revised to read as follows:

§ 890.107 Court Review.

(a) A suit to compel enrollment under § 890.102 of this part must be brought against the employing office that made the enrollment decision.

(b) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(c) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of State statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM. The recovery in such a suit will be limited to the amount of benefits in dispute.

(d) An action under paragraph (c) of this section to recover on a claim for health benefits:

(1) May not be brought prior to exhaustion of the administrative remedies provided in § 890.105;

(2) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(3) Will be limited to the record that was before OPM when it rendered its decision affirming the carrier's denial of benefits.

[FR Doc. 95–7793 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 286, and 299

[INS No. 1312–93]

RIN 1115–AB78

Establishment of Pilot Programs To Charge a Commuter User Fee at Selected Ports of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to implement pilot programs to charge fees for inspection service provided to selected land border Ports-of-Entry (POEs). Limited resources and increasing commuter traffic over the land borders has resulted in costly delays to transborder travelers. Pilot projects, such as the Dedicated Commuter Lanes (DCLs), in which eligible groups may expeditiously enter the United States through designated lanes, will enabled the Service to increase staffing, enhance inspection services, and reduce delays in crossing the border.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Mocny, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 514–3275.

SUPPLEMENTARY INFORMATION: Commuter traffic over our land borders has increased significantly each year over the past decade, and in fiscal year 1992 accounted for approximately 90 percent of all inspections completed. At certain locations, traffic backups sometimes last several hours. Such delays are both irritating and costly to the traveling public. Through automation and an increase in the inspection force, the Service could significantly reduce these delays. However, the appropriated funds have not kept up with the rapid growth in land border traffic. Although revenue from the Immigration User Fee Account, authorized by Congress in 1986 and covering commercial air and sea arrivals of POEs, has enabled the Service to more than triple the number of available air and seaport inspectors, these funds may not, by statute, be used to staff land border POEs.

Provisions of Public Laws 101–515 and 103–121

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. 101–515, dated November 5, 1990, Congress included language which allows for pilot programs on the inspection fee concept on the land borders. This law, added as section 286(q) of the Immigration and Naturalization Act (Act), and amended by section 309(a)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, dated December 12, 1991, authorizes the Attorney General to establish pilot projects which include the charging of a fee and provides that the fee collected may be used only to enhance inspection services. Pursuant to this law, such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. All such pilot projects were scheduled to terminate on September 30, 1993, but were extended by Congress until September 30, 1996, by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994 Pub. L. 103–121, dated October 27, 1993. This law also limited these projects only to the northern border of the United States. However, in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, dated August 26, 1994, Congress authorized the expansion of the commuter lane pilot project to land border crossings in California.

Discussion of Comments

The Service Published an interim Regulation on May 13, 1991, at 56 FR 21917–21920, amending 8 CFR Parts 103, 286, and 299. In this rule, the Service sought to use DCLs to enhance services to those border crossers who most frequently enter the United States over the land borders. The interim rule also contained a provision for the establishment of a per vehicle user fee at selected POEs. The interim rule included a request for comments by August 12, 1991. The Service received three responses, each discussing several issues.

Use of Funds

One commenter expressed concern that the revenues generated from the projects will be channeled to the General Fund and not used for the specific purpose of aiding border congestion and delays. The revenues generated by the DCL implementation are controlled by section 286(q) of the Act, which states that such funds will be used to provide land border inspection services. A separate land

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Border Inspection Fee Account has been created, and the funds collected must be used in direct support and enhancement of the land border inspections operations, as directed by Congress.

Concerns About Dedicated Commuter Lanes

Two commenters expressed concern that many locations on the southern border have severe traffic congestion and that, as many people enroll in the program, the special commuter lanes will become as congested as the regular lanes. If the response to the program were too great for one lane, a second lane could be opened at some locations, since much of the traffic would be removed from the regular lanes. Only by pilot testing this program can the Service determine the efficacy of this approach to expedite traffic and alleviate border congestion. The purpose of the DCL Program is to pre-screen those commuters deemed to be low-risk, so that only a brief examination of the vehicle or personal identifier need be conducted, thereby shortening the time needed for each individual inspection, and expediting the flow of traffic. By removing these commuters from the regular lanes, all traffic moves more quickly. In the test conducted in Blaine, Washington, the commuter lane still expedites traffic, in spite of a large number of enrollees.

The Service is bound by the provisions of Pub. L. 103–121 and cannot consider DCLs on the southern border, except in California, until legislation authorizes us to do so. However, the Service will explore any operational alternatives to further promote facilitation of entry and expeditious primary processing to decrease congestion at affected POEs along the southern border.

One commenter stated that anyone is a potential smuggler and that all who enter the United States along the southern border should face the risk of being searched. The application procedures for enrollment in the DCL Program provides a more thorough screening of DCL users than would normally be conducted were the person crossing through normal traffic lanes. In addition, the regulations provide for random compliance checks of participants and their vehicles at any time during use of the commuter lane.

One commenter expressed concern that there is an element of elitism in the application process for participation in the DCL Program, in that persons with higher incomes will receive special treatment, can better afford the benefit, and will be able to more easily provide adequate background information.

The DCL Program is a strictly voluntary program. Those who feel they cannot afford the fee need not participate and can continue to cross through the regular traffic lanes at no cost. All persons crossing a bridge must pay a bridge toll or fee, regardless of income. The average per-crossing cost for the DCL Program, a program designed for frequent crossers, is significantly lower than that paid to cross most bridges. Based upon both random sampling and local community assessments, the current annual cost of $25.00 per application is not cost prohibitive to the majority of the travelling public.

Economic Impact of User Fees

One Commenter objected to the establishment of per vehicle fees as imposing an extra burden on transborder industry and border communities and a barrier to trade. The commenter suggested that with bridge-crossing fees already levied at many points along the southern border, the additional fees would render the crossing too expensive and eventually lead to reduced trade and a decline in the economies of the border communities.

Traffic congestion at the border also costs local communities enormous amounts of revenue in lost time and productivity, as well as severely impacting the environment. The purpose of imposing user fees of this type is to allow the Service to hire more staff and implement technology to aid inspection and expedite traffic.

The section allowing for the establishment of a per vehicle fee has been removed from the final rule. Such a broad-based fee is not consistent with the intent of the legislation of which this regulation is based, which is to establish pilot projects at selected locations.

Participation in the DCL Program

The interim rule restricted participation in the DCL Program to citizens of the United States and contiguous countries. One commenter recommended expanding the identified groups eligible to participate in the DCL Program. The suggestion coincided with recommendations made by local officials and current participants in the DCL Program. Accordingly, additional user groups have been added to participate in the DCL Program as follows: third-country aliens who have been lawfully admitted for permanent residence (LAPRs) in the United States and lawful permanent residents (Landed immigrants) in Canada who are citizens of the Commonwealth countries.

Expansion of eligibility to LAPRs of the United States, and landed immigrants of Canada who are citizens of the Commonwealth countries is in keeping with the Immigration and Naturalization Act entry requirements for those travelers who are not required visas to enter into the United States for business or pleasure. Since the restriction on operating a Dedicated Commuter Lane was only recently lifted, and the Service regulates permanent residents of Mexico differently than Canadian permanent residents, further study on whether or not to include permanent residents of Mexico in the DCL program is needed. Inclusion of permanent residents of Mexico may be proposed in future regulation by the Service.

Additional Changes

The interim rule contained the criteria that the location selected have an identifiable group of low-risk border crossers who cross a minimum of once weekly for a regular defined purpose. To allow for greater use of the DCL Program and more flexibility for its users, the final rule removes the requirement that the participant enter once weekly.

The interim rule provided that only the District Director could revoke an individual's participation in the DCL program. The final rule extends this authority to the Chief Patrol Agent if the participant violates any of the conditions of the DCL program and is encountered by the Border Patrol outside the POE. This addition to the Rule will enhance control of participation in the DCL program.

Participation in the DCL Program requires the payment of an annual fee for adjudication of the application and issuance of a vehicle and/or personal identifier. The initial DCL in Blaine used a windshield decal to identify a participating vehicle. Diverse types of technology may be introduced and used for rapid vehicle or driver identification, ranging from a simple method involving windshield stickers or similar items, to radio frequency identification tags or various forms of biometrics. Language in the final rule has been modified to allow for the use of other forms of identification technology.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule applies to individuals, not small entities, and provides a clear benefit to participants by allowing expeditious passage through a POE. Although there is a fee charged for this service, participation is voluntary.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that is will have no effect on family well-being.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy Act, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule which was published on May 13, 1991, at 56 FR 21917–21920 amending 8 CFR parts 103, 286, and 299 is adopted as a final rule with the following changes:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.8 is amended by:

a. Revising paragraph (b)(1)(i);

b. Removing the word "and" at the end of the sentence of paragraph (b)(1)(ii);

c. Removing the "." at the end of paragraph (b)(1)(iii), and replacing it with a "; and";

d. Adding paragraph (b)(1)(iv);

e. Revising paragraph (b)(2)(i) through (v);

f. Adding paragraph (b)(2)(vi);

g. Revising paragraph (b)(4)(iii);

h. Revising paragraph (b)(6);

i. Revising paragraph (b)(7); and by

j. Removing paragraph (c), to read as follows:

§ 286.8 Establishment of pilot programs for the charging of a land border user fee for inspection services.

* * * * *

(b) * * *

(1) * * *

(i) The location has an identifiable group of low-risk frequent border crossers;

* * * * *

(iv) The port of entry is located on the northern or the California border of the United States.

(2) * * *

(i) The applicant is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program in which the applicant seeks to participate; or, the applicant is a national or citizen of a third-country who has been lawfully admitted for permanent residence (LAPR) in the United States; or, the applicant is a lawful permanent resident (landed immigrant) of Canada who is a citizen of the Commonwealth countries;

(ii) The applicant who is not a United States citizen must be otherwise admissible to the United States and must be in possession of any documents required under § 212.1 of this chapter for entry to the United States whenever using the dedicated commuter lane;

(iii) The applicant agrees to furnish all information requested on the application, Form I–823, Application—Dedicated Commuter-Lane Program;

(iv) The applicant pays the required fee, upon approval of the application;

(v) The applicant agrees to a physical inspection of the registered vehicle prior to initial use of the dedicated commuter lane; and

(vi) When entering through a dedicated commuter lane, each applicant must be in possession of any authorization document or documents issued for use of the dedicated commuter lane.

* * * * *

(4) * * *

(iii) Applications for participation in the dedicated commuter lane program must be submitted annually at a port of entry having a dedicated commuter lane program. The application may be submitted either in person or by mail; however, each applicant must be personally inspected prior to approval of the application. Authorization documents, such as decals or authorization letters, shall be valid for one year from date of approval.

* * * * *

(6) *Violation of conditions of the program.* A participant who violates any condition for the use of the dedicated commuter lane may be removed from the program at the discretion of the District Director, and shall be subject to the imposition of applicable fines, penalties, and/or sanctions as provided by law. The Chief Patrol Agent may, in an exercise of discretion, remove from the program a participant who violates any condition of use and who is encountered by the Border Patrol outside of the port of entry.

(7) *Responsibility of participant.*

(i) It shall be the responsibility of the participant to notify the Service if an approved vehicle is sold, stolen, or disposed of otherwise. If the vehicle is sold or damaged beyond repair, it is the responsibility of the participant to remove or obliterate any identifier or other authorization for participation in the program from the vehicle at the time of such sale or disposal. A participant must submit a new properly executed Form I–823 with fee in order to receive a new authorization document or device, valid for one year from date of approval.

(ii) If a damaged vehicle is being repaired and the identifier must be affixed to the vehicle, the Service may issue a replacement identifying document or device. The identifying authorization shall be valid to the date of the original authorization. The program participant must submit a properly executed Form I–823, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the repair of the vehicle.

(iii) If a windshield becomes broken and must be replaced, and an identifying decal authorizing that

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vehicle to use a dedicated commuter lane is affixed to the broken windshield, the Service may issue a replacement decal. The program participant must submit a properly executed Form I–823, Application—Dedicated Commuter Lane Program, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the purchase of a new windshield.

Dated: January 18, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–7629 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Parts 235 and 242

[INS No. 1616–93]

RIN 1115–AD50

List of Countries for Which Privilege of Communication is Allowed

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the list of countries with which the United States has existing treaties requiring immediate communication with appropriate consular or diplomatic officers whenever nationals of those countries are detained in exclusion or expulsion proceedings. This rule is necessary to ensure that foreign nationals who are arrested by immigration officers in the United States will be aware of their privilege of communication with the consular or diplomatic officers of the country of his or her nationality. It is also necessary that immigration officers be kept abreast of changes of United States treaty obligations that require mandatory notification to certain countries when nationals of those countries are arrested. When aliens are detained by the Immigration and Naturalization Service (INS) officers at ports of entry, consular or diplomatic officers must be notified as presently required in 8 CFR 242 for deportation proceedings. Therefore, a addition will be made at 8 CFR 235 to make clear that the notification requirement applies equally in exclusion proceedings. This revision will have an impact on ensuring that the treaty rights of foreign nationals are protected.

DATES: This interim rule is effective March 29, 1995. Written comments must be submitted on or before May 30, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536 Attention: Public Comment Clerk. To ensure proper handling please reference INS number 1616–93 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3038 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone (202) 514–0747.

SUPPLEMENTARY INFORMATION: A number of changes are necessary to revise 8 CFR 242.2(g), the regulation that ensures immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries with which we have existing treaties are detained in exclusion or expulsion proceedings. A cross reference is being made to part 235 by adding a subsection, 235.3(g), to make clear that the mandatory notification requirement applies equally to exclusion and deportation proceedings.

Three countries, Malawi, Kenya, and Uganda are being removed from the list of countries for which consular notification is mandatory. The United States-United Kingdom consular convention which made notification mandatory is no longer in effect for these three countries, although it was in effect for a time after they became independent.

Other countries removed from the mandatory notification list include Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chile, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Gabon, Federal Republic of Germany, Guatemala, Holy See, Honduras, Iraq, Ireland, Italy, Laos, Lesotho, Liechtenstein, Luxembourg, Madagascar, Mali, Mexico, Nepal, New Zealand, Niger, Oman, Pakistan, Panama, Paraguay, Portugal, Republic of China, Rwanda, Senegal, Somalia, Spain, Sweden, Switzerland, Tunisia, Uruguay, Upper Volta, Venezuela, Republic of Viet-Nam, and Yugoslavia. These countries have been removed because the Service has been informed by the Department of State that there has never been an obligation required by treaty to provide mandatory notification. Henceforth, the listing will only reflect those countries that do have treaties with the United States.

The disintegration of the Union of Soviet Socialist Republics (USSR) causes us to list the twelve Soviet successor states separately. The twelve states are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

We are also, however, listing "Union of Soviet Socialist Republics (USSR)," with a footnote listing the twelve successor states and noting that they continue to be covered by the mandatory notice provision of the United States-USSR consular convention. Including "USSR" with a footnote as a safeguard is advisable for the time being, since some nationals of the successor states may still be travelling on USSR passports.

Due to the break up of Czechoslovakia, the Czech and Slovak Republics will be listed separately as mandatory notification countries. The consular convention with Czechoslovakia, which contained a mandatory notification provision, remains in force with respect to both new countries.

Other countries being added to the mandatory notification list as a result of treaties with the United States include Albania, Antigua, Bahamas, Barbados, Belize, Brunei, Bulgaria, Dominica, Grenada, Kiribati, Mongolia, St. Kitts/Nevis, St. Lucia, St. Vincent/Grenadines, Seychelles, South Korea, and Tuvalu.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for immediate implementation of this interim rule are as follows: The treaties to which the United States is a signatory require immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries are detained in exclusion or expulsion proceedings. Accordingly, implementation of this requirement cannot be delayed without the United States being in violation of its treaty obligations.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule primarily concerns matters of agency records and proof of facts at administrative hearings that do not concern small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation has no impact on family well-being.

List of Subjects

8 CFR Part 235

Administrative practice and procedure, Aliens, Detention, Immigration, Port of entry, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

2. In § 235.3, a new paragraph (g) is added to read as follows:

§ 235.3 Detention and deferred inspection.

* * * * *

(g) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to 8 CFR 242.2(g) apply to exclusion proceedings.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

4. In § 242.2, paragraph (g) is revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

* * * * *

(g) *Privilege of communication.* Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf:

Albania [1]
Antigua
Armenia
Azerbaijan
Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of) [2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland
Romania
Russian Federation
St. Kitts/Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
South Korea
Tajikistan
Tanzania
Tonga
Trinidad/Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom [3]
U.S.S.R. [4]
Uzbekistan
Zambia

1. Arrangements with these countries provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

2. When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the Coordination Council for North American Affairs, the unofficial entity representing Taiwan's interests in the United States.

3. British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

4. All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

* * * * *

Dated: March 23, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–7684 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 94–087–1]

Canadian Border Ports; Baudette, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Baudette, MN, as a Canadian border port for pet birds, poultry, horses, ruminants, swine, and germ plasm. We have determined that Baudette, MN, has inspection facilities which meet our

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requirements for Canadian border port status. This action will provide an additional Canadian border port.

DATES: This rule will be effective on May 30, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 28, 1995.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 94–087–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your submission refers to Docket No. 94–087–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, Import/Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737–1228; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals and animal products into the United States. The regulations designate land border ports along the U.S.-Canada border which have inspection facilities for the importation of certain animals and germ plasm that require inspection. Section 92.102(a) of the regulations lists the special ports having inspection facilities for the importation of certain pet birds. Sections 92.203(b), 92.303(b), 92.403(b), 92.503(b) and 98.33(b) of the regulations list the Canadian border ports having inspection facilities for the importation of certain poultry, horses, ruminants, swine and germ plasm, respectively.

A new facility in Baudette, MN, is ready for use as an inspection station. We have determined that the Animal and Plant Health Inspection Service has the personnel and facilities at Baudette, MN, required to effectively provide inspection services. Baudette, MN, is currently listed in §§ 92.403(e) and 92.503(e) as a limited port for ruminants and ruminant products and swine and swine products, respectively. Limited ports are used for animals and animal products that do not require restraint and holding facilities. Since Baudette, MN, is capable of performing full inspection services, we will remove Baudette, MN, from the list of limited ports.

This rule will amend §§ 92.102(a), 92.203(b), 92.303(b), 92.403(b), 92.403(e), 92.503(b), 92.503(e), and 98.33(b) in accordance with the procedures explained below under "Dates." The amendment will add Baudette, MN, as a Canadian border port and remove it as a limited port.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Currently, Baudette, MN, is a limited port for certain ruminants, ruminant products, swine, and swine products. This rule will add Baudette, MN, as a Canadian border port for certain pet birds, poultry, horses, ruminants, swine, and germ plasm. We believe the primary impact will be on importers of certain pet birds, poultry, horses, ruminants, swine, and germ plasm. Few if any of these entities can be regarded as small.

If this rule is not adopted, some importers would have to travel long distances to a port in another State. We believe that adding Baudette, MN, as a Canadian border port will benefit U.S. importers of pet birds, poultry, horses, ruminants, and swine since these importations will now be logistically easier for a number of these entities. Based on information from the local livestock industry we expect 500 to 1,000 head of Canadian cattle to be imported into the United States through Baudette, MN. Approximately half of these imports will be diverted from other ports. In 1993, cattle imports into the United States from Canada totaled approximately 1.2 million head. Therefore, we do not anticipate this increase in the imports to have a significant economic impact.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, 9 CFR parts 92 and 98 are amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.102 [Amended]

2. In § 92.102, paragraph (a) is amended by adding the words "Baudette, Minnesota;" immediately after "New York, New York;".

§§ 92.203, 92.303, 92.403, and 92.503 [Amended]

3. Sections 92.203, 92.303, 92.403, and 92.503 are amended by adding the words "Baudette, Minnesota;" immediately after "Michigan;" in the following places:

a. In § 92.203, paragraph (b);
b. In § 92.303, paragraph (b);
c. In § 92.403, paragraph (b); and
d. In § 92.503, paragraph (b).

§§ 92.403 and 92.503 [Amended]

4. Sections 92.403 and 92.503 are amended by removing the words "Baudette and" in the following places:

a. In § 92.403, paragraph (e) and
b. In § 92.503, paragraph (e).

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.33 [Amended]

5. In § 98.33, paragraph (b) is amended by adding "Baudette, Minnesota;" immediately after "Sault Ste. Marie, Michigan;".

Done in Washington, DC, this 22nd day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7598 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–34–P

EXPORT-IMPORT BANK

12 CFR Parts 401, 402, and 406

General Procedures, Extension of Credit, and Book-Entry Procedures; Removal of Obsolete Regulation

AGENCY: Export-Import Bank.

ACTION: Final rule.

SUMMARY: The Export-Import Bank ("Ex-Im Bank") is removing its existing regulations at 12 CFR parts 401, 402 and 406. These regulations no longer accurately describe the programs and policies of Ex-Im Bank.

EFFECTIVE DATE: The removal of 12 CFR parts 401, 402 and 406 is effective as of March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Carol Lee, Export-Import Bank of the United States, General Counsel, 811 Vermont Ave., NW., Washington, DC 20571, tel. (202) 565–3430.

SUPPLEMENTARY INFORMATION:

List of Subjects

12 CFR Part 401

Administrative practice and procedure, Banks, banking, Exports, Insurance, Loan programs—business, Organization and functions (Government agencies).

12 CFR Part 402

Banks, banking, Exports, Insurance, Loan programs—business.

12 CFR Part 406

Accounting, Banks, banking, Federal Reserve System, Government securities.

PARTS 401, 402, and 406—[REMOVED]

Accordingly, under authority of 5 U.S.C. 552, 12 CFR parts 401, 402 and 406 are removed.

Dated: March 14, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank.

[FR Doc. 95–6846 Filed 3–28–95; 8:45 am]

BILLING CODE 6690–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AB95

Amending the NASA Research Grant Handbook To Address Education Grants, Training Grants, and Reduce the Threshold for Incremental Funding of Grants

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has revised its Research Grant Handbook to define education and training grants, permit the award of education grants, and decrease the threshold for incremental funding of grants. The purpose of these changes are to increase the coverage of the Handbook and provide greater funding flexibility. These changes benefit both NASA and the grantee community.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas W. Dussault, (202) 358–0463.

SUPPLEMENTARY INFORMATION:

Background

In response to the interim rule (59 FR 36355, July 18, 1994), NASA received 1 comment from 1 person.

The only comment made was in regard to lowering the threshold for incrementally funding grants. In the interim rule NASA lowered the threshold for being able to incrementally fund grants from over $1 million to $50,000. The comment made was that $50,000 was thought to be too low and that NASA should consider raising it to $250,000. The lower threshold of $50,000 was selected because it allows NASA greater flexibility to award grants when the bulk of the funding will not be available until the next fiscal year.

Impact

NASA certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 1260

Grants.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1260 is amended as follows:

PART 1260—[AMENDED]

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.).

2. Under the authority of Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), the interim rule published at 59

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FR 36355, July 18, 1994, is adopted as final without change.

[FR Doc. 95–7735 Filed 3–28–95; 8:45 am]

BILLING CODE 7515–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 123, 145 and 178

[T.D. 94–47]

RIN 1515–AB40

Elimination of Certain Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Programs and Provisions

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule document which amended the Customs Regulations by removing certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs. The correction involves an amendatory instruction regarding § 178.2 of the Customs Regulations which lists the control numbers for approvals of information collection requirements.

EFFECTIVE DATE: This correction is effective June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1994, Customs published in the **Federal Register** (59 FR 25563) a final rule document amending the Customs Regulations to remove certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs. Among the amendments were consequential amendments to § 178.2 of the Customs Regulations (19 CFR 178.2) concerning the revision, removal or addition of listings in the table setting forth the listing of Office of Management and Budget control numbers for approvals of information collection requirements pursuant to the Paperwork Reduction Act of 1980. One of the removed listings referred to in the amendatory instruction was the listing for § 10.8(e). However, this reference was incorrect because, in an interim rule document published in the **Federal Register** on December 30, 1993 (58 FR 69460), § 178.2 had been amended by removing from the table the reference to "§ 10.8(e)" and adding, in its place, the reference "§ 10.8(f)". Accordingly, this document corrects the amendatory instruction for § 178.2 in the May 17, 1994, final rule document to properly refer to the removal of § 10.8(f).

Correction of Publication

In the document published in the **Federal Register** as T.D. 94–47 on May 17, 1994 (59 FR 25563), on page 25571, second and third columns, the amendatory instruction for § 178.2 is corrected to read as follows:

§ 178.2 [Corrected]

"2. Section 178.2 is amended by revising the listings for §§ 10.1 and 10.173, removing the listings for §§ 10.8(f), 10.9(e), and 10.191–10.198 and adding, in their place respectively, listings for §§ 10.8, 10.9, and 10.198 to read as follows:"

Dated: March 23, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95–7721 Filed 3–28–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 2162]

Schedule of Fees for Consular Services

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishing fees for the processing of fingerprints required of certain applicants for immigrant visas. These fees, pursuant to the guidelines set out in Office of Management and Budget (OMB) Circular No. A–25, are set at a cost-recovery based level of $25.00 per set of fingerprints.

DATES: *Effective Date:* March 29, 1995. *Comments:* Comments are due on or before April 28, 1995.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818.

FOR FURTHER INFORMATION CONTACT: John Arndt, Management Analyst, Officer of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818, (202) 647–1272.

SUPPLEMENTARY INFORMATION:

Background

Section 140(d) of the Foreign Relations Authorization Act, FY 94–95 (Public Law 103–236), enacted April 30, 1994, authorizes the Department of State to obtain the full content of criminal history records of those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center. To do so requires submission of fingerprint records. The statute further provides that the Department shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 90 (Public Law 101–162), and that the program shall end on January 1, 1998.

Section 505 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, FY 95 (Public Law 103–317), enacted August 26, 1994, requires the Secretary of State, in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available, to submit to the Federal Bureau of Investigation (F.B.I.) records of fingerprints for all immigrant visa applicants over sixteen years of age to ascertain whether such applications have been previously convicted of a felony under State or Federal law in the United States. Section 505 further provides that the Department shall pay all appropriate fees for this fingerprinting pilot program and that the program shall end on January 1, 1998.

Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to exercise the President's authority under 22 U.S.C. 4219 to prescribe rates of fees to be charged for official services performed by the Department of State. Under this authority, the Department has determined a number of fees for consular services performed overseas, as well as in the United States, within the guidelines set by OMB Circular No. A–25. The policy set out in OMB Circular A–25 states that services which directly benefit individuals, organizations, or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The principles of OMB Circular A–25 have guided various fee studies conducted by the Department.

Under Delegation of Authority No. 198, the Secretary of State delegated to the Under Secretary for Management all management-related functions arising out of the activities or certain bureaus, including the Bureau of Consular Affairs. Pursuant to this Delegation, the Under Secretary of Management has the authority to establish the fingerprinting fee and to promulgate this regulation.

The fingerprint fee is set at $25.00 to recover the cost to the Department of paying the F.B.I.'s $18.00 fee for examining and checking the fingerprints against its fingerprint records. Added to the F.B.I. charge of $18.00 is $7.00 in administrative costs for each set of fingerprints which will cover the cost to the Department of taking the applicant's fingerprints, transmitting them to the F.B.I., and obtaining and reviewing records from the F.B.I. It will also cover the costs of equipment, renovations, furnishings, and supplies used in connection with the fingerprint program. This $7.00 figure was determined by calculating the estimated cost of fingerprinting 205,000 immigrant visa applicants (the estimated number of applicants that will be affected by section 140(d) of Public Law 103–236 and by section 505 of Public Law 103–317), and then dividing that figure by the number of affected immigrant visa applicants to arrive at the pro rata unit cost of implementing the new fingerprinting requirement.

Section 140(d) of the Foreign Relations Authorization Act, FY 94–95 (Public Law 103–236), enacted April 30, 1994, authorizes the Department of State to obtain the full content of criminal history records of those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center.

Section 505(e) of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, FY 95 (Public Law 103–317), enacted August 26, 1994, requires the Department of State, in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available, to submit records of fingerprints for all immigrant visa applicants over sixteen years of age to the F.B.I. to ascertain whether such applicants have been previously convicted of a felony under State or Federal law in the United States.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). The Department of State is statutorily authorized to obtain the full content of criminal history records as described above. In accordance with this requirement, the Department has already begun transmitting the names of immigrant visa applicants to the F.B.I. This rule must take effect upon publication to ensure that the Department is reimbursed for the expenses it will incur in obtaining those records.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by Executive Order 12778 and certified to be in compliance therewith. This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 22

Passport and visas.

Accordingly, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1182, 1351; 22 U.S.C. 211a, 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; EO 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; EO 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In § 22.1, the table is amended under the undesignated centered heading, "Visa Services for Aliens" by revising the parenthetical after item 25 and adding items 27 and 28 and a parenthetical after the items to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
. . . . .	
(Item No. 26 vacant.)	
27. For the taking of fingerprints for those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center	$25.00
28. For the taking of fingerprints from immigrant visa applicants pursuant to 8 U.S.C. 1182	25.00
(Item No. 29 vacant.)	
. . . . .	

Dated: March 11, 1995.

Richard Moose,

Under Secretary for Management, Department of State.

[FR Doc. 95–7687 Filed 3–28–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of recodification of Oklahoma's coal mining rules and revisions to the rules pertaining to hydrologic balance requirements for siltation structures, sedimentation pond storage volume, subsidence control and public notice, road systems, protection of underground

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mining, and soil removal, stockpiling, and replacement requirements for prime farmland. Oklahoma submitted the amendment with the intent of revising its rules to be consistent with the corresponding Federal regulations, clarifying ambiguities, and improving operational efficiency.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Amendment

On September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*, administrative record No. OK–963). Oklahoma submitted the proposed amendment in part at its own initiative and in part with the intent of revising the Oklahoma program to be consistent with the corresponding Federal regulations.

Oklahoma proposed to revise the Oklahoma Coal Rules and Regulations at Department of Mines/Rules and Regulations (DOM/RR) sections 816.46 and 817.46, hydrologic balance and siltation structures; section 823.12, prime farmland soil removal; section 823.13, prime farmland soil stockpiling; and section 823.14, prime farmland soil replacement. Oklahoma also proposed to recodify its rules in accordance with the standards set forth by the Oklahoma State Legislature and the Office of Administrative Code.

OSM announced receipt of the proposed amendment in the September 27, 1994, **Federal Register** (59 FR 49223), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK–963.03). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 27, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of recodified Oklahoma Administrative Code (OAC) 460:20–27–20(b) and 460:20–31–17(b), primary road certification requirements for road systems and transportation facilities. OSM also identified concerns with Oklahoma's proposed rule recodification relating to OAC 460:20–43–12(f)(8), sedimentation pond storage volume; OAC 460:20–43–47 and 460:20–43–48, subsidence control for surface mining activities; OAC 460:20–45–28, protection of underground mining; and various editorial and citation inconsistencies. OSM notified Oklahoma of the concerns by letter dated November 22, 1994 (administrative record No. OK–963.08).

By letter dated December 20, 1994, Oklahoma responded to the concerns identified in OSM's November 22, 1994, letter by submitting the revised amendment and additional explanatory information (administrative record No. OK–963.10). The provisions that Oklahoma proposed to revise and add were: OAC 460:20–27–20(b) and 460:20–31–17(b), concerning the as-built requirements regarding primary road certification for road systems and transportation facilities; OAC 460:20–43–12(f)(8), concerning the requirement that sediment shall be removed from a structure when the sediment storage volume is 80 percent filled; OAC 460:20–45–47 and 460:20–45–48, concerning subsidence control for surface mining activities; and OAC 460:20–45–28, concerning the protection of underground mining. Oklahoma also proposed revisions to and provided additional explanatory information for the recodification of its coal mining rules.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by Oklahoma, OSM reopened the public comment period in the December 30, 1994, **Federal Register** (59 FR 67694; administrative record No. OK–963.12). The public comment period closed on January 17, 1995.

After the closing of the reopened comment period, OSM became aware that both Oklahoma's September 14, 1994, and December 20, 1994, amendment submittals contained a number of rule revisions that were previously approved by OSM on December 18, 1990 (55 FR 51902), and promulgated by Oklahoma on July 25, 1994. Because the previously approved provisions were formatted in such a manner so as to appear as if they were being submitted for the first time, OSM, in both the September 27, 1994, and December 30, 1994, **Federal Register** notices opening and reopening the public comment period, inadvertently identified those previously approved Oklahoma rules as being currently proposed revisions to the Oklahoma program. To alleviate confusion as to which provisions were actually unapproved when submitted to OSM for approval, this notice addresses only the unapproved provisions submitted by Oklahoma.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Oklahoma on September 14, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. The Director approves the proposed amendment.

1. Nonsubstantive Recodification of Oklahoma's Rules

Oklahoma, in accordance with the standards set forth by the Oklahoma State Legislature and the Oklahoma Office of Administrative Code, proposed to recodify its coal mining rules as OAC title 460, chapter 20, with underlying subchapters specifying the various surface and underground coal mining provisions.

Oklahoma's proposed recodification of its rules is nonsubstantive in nature, and the Director finds that the recodification does not make its rules less effective than the Federal regulations. Therefore, the Director approves the proposed recodification. OSM uses Oklahoma's recodified rule citations throughout this **Federal Register** notice.

2. Substantive Revisions to Oklahoma's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Oklahoma proposed revisions to OAC 460:20–49–5(a)(1), 460:20–49–6, and 460:20–49–7(5), concerning soil removal, stockpiling, and replacement requirements for prime farmland, that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations at 30 CFR 701.5, 823.12(c)(1), and 823.14(e).

Because these proposed Oklahoma rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. OAC 460:20–27–20(b), 460:20–31–17(b), 460:20–43–53(1), and 460:20–45–53(1), Primary Road Certification Requirements for Road Systems and Transportation Facilities

Oklahoma proposed to revise its rules by moving the "as-built" certification requirements for primary roads from its permitting rules at OAC 460:20–27–20(b) and 460:20–31–17(b) to its performance standard rules at 460:20–43–53(1) and 460:20–45–53(1). As-built certifications ensure that structures are constructed as designed.

The Federal as-built regulations at 30 CFR 816.151(a) and 817.151(a) require, in pertinent part, that the construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor with experience in the design and construction of roads.

Oklahoma's moving of its as-built requirements for primary roads from the permitting requirements of OAC 460:20–27–20(b) and 460:20–31–17(b) to the performance standard requirements of OAC 460:20–43–53(1) and 460:20–45–53(1) is consistent with the as-built counterpart Federal regulations at 30 CFR 816.151(a) and 817.151(a), which are contained in the Federal road performance standards.

The Director finds that Oklahoma's proposed revisions to OAC 460:20–43–53(1), and 460:20–45–53(1) are no less effective than the Federal regulations at 30 CFR 816.151(a) and 817.151(a). The Director approves Oklahoma's rule revisions.

4. OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), Certification of Construction of Siltation Structures by Qualified, Registered Professional Engineers and Land Surveyors

At OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), Oklahoma proposed to delete the references to OAC 460:20–27–14(a) and 460:20–31–9(a). Existing OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) authorize both qualified, registered professional engineers and land surveyors in Oklahoma to certify the *construction* of siltation structures; existing referenced OAC 460:20–27–14(a) and 460:20–31–9(a) authorize only qualified, registered professional engineers to certify *design plans* for siltation structures. OSM approved these existing rules on December 18, 1990, (finding No. 2, 55 FR 51902, 51903–4) on the basis that the by-laws of the Oklahoma State Board of Registration of Professional Engineers and Surveyors authorizes qualified, registered professional engineers to certify the construction and design of siltation structures but authorizes qualified, professional land surveyors to certify only the construction of siltation structures. In this approval, OSM found Oklahoma's rules to be no less effective than the corresponding Federal regulations at 30 CFR 816.46(b)(3) and 817.46(b)(3).

Oklahoma's proposed deletions in the construction certification rules at OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) of the references to the design certification rules at OAC 460:20–27–14(a) and 460:20–31–9(a) eliminate any possible confusion on what certifications qualified, registered professional engineers and land surveyors can make under the approved Oklahoma program.

Oklahoma's proposed revisions to OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) deleting the references to OAC 460:20–27–14(a) and 460:20–31–9(a) are consistent with OSM's previous approval and are no less effective than the Federal regulations at 30 CFR 816.46(b)(3) and 817.46(b)(3). Accordingly, the Director approves Oklahoma's rule revisions.

5. OAC 460:20–43–12(f)(8), Sedimentation Pond Storage Volume

Oklahoma proposed to revise OAC 460:20–43–12(f)(8) to delete the requirement that sediment be removed from a sedimentation pond when the sediment storage volume is 80 percent filled. It did so to be consistent with its rule at OAC 460:20–43(c)(1)(C)(vi) and the Federal regulations at 30 CFR 816.46(c)(iii)(F) that require that ponds be maintained to provide *periodic* sediment removal sufficient to maintain adequate volume for the design event. Oklahoma's proposed deletion of OAC 460:20–43–12(f)(8) alleviates the regulatory inconsistency in its rules with the provision at OAC 460:20–43–12(c)(1)(C)(vi) and is consistent with and no less effective than the Federal regulations at 30 CFR 816.46(c)(iii)(F). Accordingly, the Director approves Oklahoma's proposed rule revision.

6. OAC 460:20–43–47 and 48, Subsidence Control and Public Notice

Oklahoma proposed to revise its *surface* mining activities performance standards provisions at OAC 460:20–43–47 and 48 to add subsidence control and public notice measures that apply to *underground* mining activities. Oklahoma explained that it was doing so because it issues underground mine permits pursuant to the surface mine requirements included in Subchapter 43 (administrative record No. OK–963.10).

The Federal regulations corresponding to OAC 460:20–43–47 and 48 are at 30 CFR 817.121 and 817.122. These Oklahoma rules include the same subsidence control and notice requirements as these Federal regulations. However, OSM notes it has proposed revisions to 30 CFR 817.121 to comply with revisions to SMCRA made by the Energy Policy Act of 1992 (58 FR 50174, September 24, 1993). Once OSM promulgates new regulations, it will notify Oklahoma in accordance with 30 CFR 732.17(d) of any necessary revisions to Oklahoma's program. Until such time the Director finds that Oklahoma's proposed subsidence control and notice rules at OAC 460:20–43–47 and 48 are no less effective than the currently promulgated regulations at 30 CFR 817.121 and 817.122. Therefore, the Director approves the proposed rule revisions.

7. OAC 460:20–45–28, Protection of Underground Mining

Oklahoma proposed to revise its *underground* mining performance standards at OAC 460:20–45–28 to delete a provision regarding the protection of underground mining operations from the effects of surface mining activities. However, Oklahoma still retains in its *surface* mining performance standards at OAC 460:20–43–28 an identical requirement. Therefore, the Oklahoma rules still provide an identical level of protection to underground mining operations from the adverse effects of surface mining activities.

There are no Federal *underground* mining regulations that correspond to the deleted Oklahoma rule. However, the Federal *surface* mining regulation at 30 CFR 816.79 sets forth provisions regarding the protection of underground mining operations from the effects of surface mining activities that are substantively identical to the Oklahoma *surface* mining requirements at OAC 460:20–43–28. Therefore, the Director finds that the proposed deletion of the underground mining protection provision at OAC 460–20–45–28 and retention of an identical provision at OAC 460:20–43–28 is no less effective than the Federal regulations at 30 CFR 816.79. The Director approves the proposed rule revision.

IV. Summary and Disposition of Comments

The Director notes that the following public and Federal agency comments were received in response to the

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September 27, 1994, and December 30, 1994, proposed rule **Federal Register** notices that inadvertently identified certain previously approved Oklahoma rules as being currently proposed revisions to the Oklahoma program.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (administrative record No. OK–963.02).

The U.S. Army Corps of Engineers responded on September 30, 1994, that Oklahoma's proposed revisions were satisfactory (administrative record No. OK–963.04).

The U.S. Bureau of Mines (BOM) responded on September 27, 1994, that while Oklahoma's proposed rule to OAC 460:20–27–14(a)(1)(A) deletes the reference to preparation and certification of the design of ponds, impoundments, banks, dams and embankments, by a "professional geologist, or a qualified, registered, professional land surveyor," the proposed rule to OAC 460:20–43–12(b)(3) then adds the statement that siltation structure construction may be certified by a "registered professional land surveyor" (administrative record No. OK–963.05). BOM further stated that this appears to be a contradiction in that in one instance, qualified, registered, professional land surveyors are not allowed to design the ponds, yet they are allowed to certify that the ponds are constructed correctly. Finally, BOM commented that this same contradiction occurs in OAC 460:20–45–12 for underground mining activities.

As discussed in finding No. 4 and OSM's December 18, 1990, final rule **Federal Register** notice, Oklahoma's by-laws of the State Board of Registration for Professional Engineers and Surveyors do not authorize registered land surveyors in Oklahoma to prepare and/or certify engineered designs, but they do authorize land surveyors to certify the construction of siltation structures since certification that a structure is built according to design does not require the same qualified expertise as the actual design of the structure (finding No. 2, 55 FR 51902, 51903–4). Accordingly, Oklahoma's rules at OAC 460:20–27–14(a)(1)(A), 460:20–31–9(a)(1)(A, 460:20–43–12(b)(3), and 460:20–45–12(b)(3) do not contradict each other.

The U.S. Bureau of Land Management (BLM) responded on October 12, 1994, by commenting that under OAC 460:20–45–12(b)(3), a registered professional land surveyor is authorized to certify that siltation structures are constructed as designed, but the authorization for a registered professional land surveyor to prepare and certify siltation structure plans designs has been removed elsewhere in Oklahoma's rules (administrative record No. OK–963.06). BLM then inquired as to whether OSM intended to retain the certification authorization for registered professional land surveyors at OAC 460:20–45–12(b)(3). In response to this comment, the Director refers BLM to the discussion above, which responds to BOM concerns regarding the same issue.

BLM further commented that it questioned the practicality of the change under the prime farmland soil removal rule at OAC 460:20–49–5(a)(1) where Oklahoma proposed to delete language that would have allowed surface coal mining and reclamation operations on prime farmland to remove other suitable soil materials which will create a final soil having productive capacity equal to that which existed prior to mining.

BLM commented that when soil is removed, stockpiled, and reapplied there is some loss and mixing due to the limitations of the handling process itself. When soil is removed and stockpiled there is a mycorrhyzal degradation within the soil. Further, more significant mycorrhyzal degradation occurs over time within the stockpile. Mycorrhyzal degradation lowers soil productivity. BLM also stated that expecting greater productivity from soil which has undergone such disturbance is not reasonable and that it would be more productive for the guidelines to recommend seeding topsoil piles with a temporary cover grass for the duration of stockpiling. Finally, BLM commented that such seeding would maintain some of the mycorrhyzal community within the stockpiled topsoil.

The Director acknowledges BLM's concerns regarding diminished soil productivity. However, section 515(b)(7)(A) of SMCRA requires, in pertinent part, that "[f]or all prime farm lands * * * the operator shall, as a minimum, be required to * * * segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a *greater* productivity capacity * * *" (emphasis added). Also, the corresponding Federal regulations at 30 CFR 823.12(c)(1) require, in pertinent part, that "[s]oil removal and stockpiling operations on prime farmland shall be conducted to * * * remove other suitable soil materials where such other soil materials will create a final soil having a *greater* productive capacity than that which exist prior to mining" (emphasis added). OSM previously approved Oklahoma's rule revision in the December 18, 1990, final rule **Federal Register** notice (55 FR 51902, 51903), as being substantively identical to the corresponding provisions of the Federal regulations at 30 CFR 823.12(c)(1). Accordingly, Oklahoma's deletion of the aforementioned phrase "an equal or" is no less stringent than section 515(b)(7)(A) of SMCRA and no less effective than the corresponding Federal regulations at 30 CFR 823.12(c)(1).

In addition, the Director notes that the State and Federal requirements that a final soil have a greater productive capacity than that which existed prior to mining applies only to *topsoil substitutes*, and not the original topsoil material. Finally, the Director refers BLM to the Federal regulations at 30 CFR 816.22(c)(2)(iii), which require, in pertinent part, that "[s]tockpiled topsoil materials shall be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority." Oklahoma's counterpart rule at OAC 460:20–43–7(c)(2)(C) is substantively identical to 30 CFR 816.22(c)(2)(iii). While OSM cannot dictate that Oklahoma always require operators to seed topsoil, by virtue of the fact that nearly all operators in Oklahoma do seed topsoil, BLM's recommendation for seeding topsoil piles is almost always implemented in Oklahoma.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. OK–963.02). It responded on October 13, 1994, that it had no objections to the approval of Oklahoma's proposed regulations (administrative record No. OK–963.07).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. OK–963.02). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Oklahoma's proposed amendment as submitted on September 14, 1994, and as revised on December 20, 1994.

The Director approves, as discussed in: Finding No. 1, concerning Oklahoma's proposed recodification of its coal mining rules; finding No. 2, OAC 460:20–49–5(a)(1), 460:20–49–6, and 460:20–49–7(5), concerning soil removal, stockpiling, and replacement requirements for prime farland; finding No. 3, OAC 460:20–27–20(b), 460:20–31–17(b), 460:20–43–53(1), and 460:20–45–53(1), concerning primary road certification requirements for road systems and transportation facilities; finding No. 4, OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), concerning certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; finding No. 5, OAC 460:20–43–12(f)(8), concerning sedimentation pond storage volume; finding No. 6, OAC 460:20–43–47 and –48, concerning subsidence control and public notice; and finding No. 7, OAC 460:20–45–28, concerning protection of underground mining.

The Director approves the rules as proposed by Oklahoma with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 25, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (p) to read as follows:

§ 936.15 Approval of amendments to the Oklahoma regulatory program.

* * * * *

(p) Recodification of Oklahoma's rules and revisions to the following provisions of Oklahoma's recodified rules, as submitted to OSM on September 14, 1994, and as revised on December 20, 1994, are approved effective March 29, 1995:

OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), certification of construction of siltation structures by qualified, registered professional engineers and land surveyors;

OAC 460: 20–43–12(f)(8), sedimentation pond storage volume;

OAC 460: 20–43–47 and 48, subsidence control for surface mining activities;

OAC 460: 20–43–53(1) and 460:20–45–53(1), primary road certification requirements for road systems and transportation facilities;

OAC 460: 20–45–28, protection of underground mining; and

OAC 460: 20–49–5(a)(1), 460: 20–49–6, and 460:20–49–7(5), soil removal, soil stockpiling, and soil replacement requirements for prime farmland.

[FR Doc. 95–7697 Filed 3–28–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[FAP 3H5673, 4H5695, 4H5696/R2119; FRL–4942–9]

RIN 2070–AB78

Food and Feed Additive Regulations for d-Limonene, Dihydro-5-Pentyl-2(3H)-Furanone, and Dihydro-5-Heptyl-2(3H)-Furanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes food/feed additive regulations for residues of the insecticides d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insect-repellent tablecloths and in insect-repellent strips used in food/feed handling establishments. Rod Products Co. requested these regulations.

EFFECTIVE DATE: These regulations become effective March 29, 1995.

ADDRESSES: Written objections, identified by the document control number, [FAP 3H5673, 4H5695, 4H5696/R2119], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: Forrest.Robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1995 (60 FR 7511), EPA issued a proposed rule that gave notice that Rod Products Co., 4600 Glencoe Ave., No. 4, Marina del Rey, CA 90292-6363, had submitted to EPA food/feed additive petitions (FAPs) 3H5673, 4H5695, and 4H5696, which requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, amend 40 CFR parts 185 and 186 by establishing regulations for residues for d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insecticide-repellent tablecloths used in food/feed-handling establishments. The registrant subsequently requested the addition of insect repellent strips used in food/feed handling establishments.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new §§ 185.1975, 185.1985, and 185,3775, to read as follows:

§ 185.1975 Dihydro-5-heptyl-2(3H)-furanone.

The food additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

§ 185.1985 Dihydro-5-pentyl-2(3H)-furanone.

The food additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Enviornmental Protection Agency, and it shall be used in accordance with such label and labeling.

§ 185.3775 d-Limonene.

The food additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new §§ 186.1975, 186.1985, and 186.3775, to read as follows:

§ 186.1975 Dihydro-5-heptyl-2(3H)-furanone.

The feed additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

§ 186.1985 Dihydro-5-pentyl-2(3H)-furanone.

The feed additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

§ 186.3775 d-Limonene.

The feed additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 95–7715 Filed 3–28–95; 8:45 am]

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40 CFR Part 300

[FRL–5180–4]

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP); CERCLIS Definition Change

AGENCY: Environmental Protection Agency.

ACTION: Amendment to change definition.

SUMMARY: The Environmental Protection Agency (EPA) is adopting new procedures for maintaining its Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS). CERCLIS is the data base and data management system EPA uses to track activities at sites considered for cleanup under the Comprehensive Environmental Response and Liability Act (CERCLA) (also known as Superfund).

Today's document announces the decision to remove from CERCLIS those sites that EPA has decided do not warrant further evaluation under Superfund. We specifically include sites that the Agency has given a designation of "No Further Response Action Planned" (NFRAP), to eliminate any possible disincentive to purchase, improve, redevelop, and revitalize sites, related to inclusion on CERCLIS.

EFFECTIVE DATE: This rule is effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Cullen, Office of Program Management, Office of Emergency and Remedial Response (5201G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346, or (703) 412–9810 in the Washington DC, metropolitan area.

SUPPLEMENTARY INFORMATION: Sites given a NFRAP designation will now be placed in a separate archived data base. This document reflects these decisions by instituting formal changes to the part of EPA's regulations known as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. Specifically, EPA is changing the definition of CERCLIS, found at 40 CFR 300.5, to provide that NFRAP sites will be placed in a separate archived data base that will also be available to the public.

This amendment to the CERCLIS definition also reflects the possibility that, in the future, EPA may consider archiving other categories of sites from CERCLIS at which the Agency's Superfund program has no further involvement.

Since these changes are matters relating to internal Agency management, there is no requirement for public notice and opportunity to comment.

The NCP describes CERCLIS and NFRAP in its "Definitions" section, 40 CFR 300.5. CERCLIS contains the official inventory of potential CERCLA sites and supports EPA's site planning

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and tracking functions. CERCLIS contains information from pre-remedial, remedial, removal and enforcement actions of the Superfund program, and has the flexibility to retrieve these actions separately for tracking, planning or analysis purposes.

When a site is identified and placed in CERCLIS, it may undergo a series of evaluations of increasing complexity. These include a Preliminary Assessment, a Site Inspection, an Expanded Site Inspection, listing on the National Priorities List (NPL), conducting a Remedial Investigation/Feasibility Study, signing a Record of Decision detailing the remedial action which will be taken, completing all remedial actions, formally deleting the site from the NPL, taking enforcement actions against liable parties, and conducting removal actions or other actions to stabilize site conditions.

At any stage prior to listing a site on the NPL, EPA may determine that no further response action under CERCLA is appropriate, and the site is given a NFRAP designation or it may be deferred to another authority for response action. This means that no additional Federal steps under CERCLA will be taken at the site unless further information warrants such action.

According to the CERCLIS definition in § 300.5 of the NCP, a site is not removed from the CERCLIS data base after evaluations have been completed. This would include sites that have been given a NFRAP designation. This means that over 20,000 NFRAP sites continued to remain in CERCLIS even though no further action was planned.

In the revision to the NCP issued on March 8, 1990, (55 FR 8666) EPA explained that sites were not removed from the CERCLIS data base after completion of evaluations "in order to document that the evaluation took place and to preclude the possibility that it be needlessly repeated." 40 CFR 300.5 (definition of CERCLIS); see also 55 FR 8692–8693. This, of course, included NFRAP sites.

Since the NCP revision, however, the CERCLIS data base has taken on more significance than EPA had intended. While inclusion of a site in CERCLIS does not represent a determination of any party's liability or a finding that any response action is necessary, numerous oral and written comments have come to EPA from property owners, the housing and banking industry, prospective purchasers of CERCLIS properties, and the general public indicating that there is an apparent yet unintended stigma attached to sites in CERCLIS. This stigma has resulted in economic drawbacks as well as the disincentive to purchase, improve, redevelop, and revitalize sites.

Because of this unintended stigma, EPA has decided to change the way it handles NFRAP sites and will exclude sites designated as NFRAP from the CERCLIS inventory. NFRAP sites will be removed from CERCLIS and archived as historical records. A NFRAP designation means that no additional steps under the Federal Superfund program will be taken at the site unless new information arrives which indicates otherwise. This archived database will be retrievable and accessible to the public upon request.

EPA Administrator Carol Browner announced the decision to remove NFRAP sites from the CERCLIS data base on January 25, 1995. Today's action formally amends the CERCLIS definition to implement the Administrator's announcement.

EPA is also considering removing from CERCLIS other categories of sites at which the EPA Superfund program has no further involvement. These sites could include sites deleted from the NPL or those being addressed by EPA's corrective action program under the Resource Conservation and Recovery Act (RCRA). In order to increase its flexibility in managing these sites on CERCLIS, EPA is also amending the CERCLIS definition to remove any statement that sites at which EPA has no further Superfund involvement will remain on CERCLIS. EPA has not made the decision on these other sites, yet, but will notify the public of any decision.

In the 1990 revision to the NCP, EPA did respond to public comments on the structure of CERCLIS and decided to leave sites on CERCLIS even after completion of evaluations, including NFRAP sites. It was not necessary at that time to take comment on this issue, nor is it necessary now that EPA is amending the NCP. This is because the Administrative Procedure Act (APA), 5 U.S.C. 553(a), exempts from requirements for public notice and opportunity to comment any "matter relating to agency management. * * *" 5 U.S.C. 553(a)(2). How EPA structures its CERCLIS data base and management system is a matter relating to Agency management.

To the extent it may be argued that public notice and opportunity to comment is required, EPA finds that good cause exists, under 5 U.S.C. 553(b), not to apply these requirements because this amendment has no legal effect, and no effect on choosing Superfund cleanup actions, since the decision has already been make that there will be no further Superfund action at NFRAP sites. Therefore, compliance with notice and hearing requirements are unnecessary.

According to its regulatory definition, at 40 CFR 300.5, CERCLIS is an EPA computerized database and "*management system* that inventories and tracks releases addressed or needed to be addressed by the Superfund program." [Emphasis added]. It simply "stores *management* information on all sites evaluated under Superfund." [Emphasis added]. *See*, Final Rule, National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8666 at 8693 (March 8, 1990). Designations in CERCLIS are only memorializations of Agency decisions already made. Today's action does not change the public's ability to obtain any information compiled at any time in the CERCLIS data base.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 23, 1995.

Elliott P. Laws,

Assistant Administrator.

Therefore, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Section 300.5 is amended by revising the definition for "CERCLIS" to read as follows:

§ 300.5 Definitions.

* * * * *

CERCLIS is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and data management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPA's site planning and tracking functions. Sites that EPA decides do not warrant moving further in the site evaluation process are given a "No Further Response Action Planned" (NFRAP) designation. This means that no additional federal steps under CERCLA will be taken at the site unless

future information so warrants. Sites given a NFRAP designation are placed in a separate archival data base. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary.

* * * * *

[FR Doc. 95–7596 Filed 3–28–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 95–1]

Filing of Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order will clarify the Commission's rule regarding the filing of documents by including language stating that, unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or Commission staff acting on delegated authority, documents are deemed filed when they are received by the Commission. This order is intended to provide guidance to the public and avoid any potential uncertainty.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Donna Viert, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Order

In the matter of: Amendment of the Commission's Rules of Practice and Procedure.

Adopted: January 3, 1995.

Released: February 21, 1995.

By the Commission:

1. On September 26, 1994, Multinational Legal Services, P.C. (MLS) filed a Petition for Reconsideration or Clarification of the Commission's *Order*, FCC 94–210, released August 24, 1994, 59 Fed. Reg. 44340 (1994), by which the Commission promulgated new section 1.7 of its Rules, 47 CFR 1.7. In adopting section 1.7, the *Order* formalized a Commission practice of accepting documents as filed when they are received at a location designated by the Commission. The *Order* may have created some confusion, and to address this, we grant MLS's petition and clarify the language of section 1.7. *See* 59 FR 44340.

2. In its petition, MLS argues that section 1.7 may create uncertainty about the filing deadline for time-critical applications at the lockbox facility of the Mellon Bank in Pittsburgh, Pennsylvania. In accordance with procedural rules adopted in connection with our fee collection program, applications submitted to the lockbox facility by the next business day after an official filing deadline are considered timely filed.[1] This procedural rule allowing additional time is not, however, codified in the Code of Federal Regulations. MLS notes that this rule may therefore conflict with the newly promulgated section 1.7 which states that:

> Unless otherwise provided in this Title [47], pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

3. To avoid potential confusion, we will adopt MLS's recommendation (with one minor change) and clarify section 1.7 by including language stating that, unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or Commission staff acting on delegated authority, documents are deemed filed when they are received by the Commission.

4. In view of the foregoing and pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), it is ordered that the Petition for Reconsideration or Clarification filed by Multinational Legal Services, P.C. is granted.

5. It is further ordered that Part 1 of the Commission's Rules is amended in the manner indicated below to be effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

[1] *Fee Collection Program*, 5 FCC Rcd 3558, 3565 (1990); *Public Notice, Filing of Time Critical Feeable Applications*, 67 Rad. Reg (P&F) 2d 1127 (1990); *see GAF Broadcasting Company*, 8 FCC Rcd 1742, 1744 (Aud. Serv. Div. 1993) (application received at the lockbox facility the day after the official deadline considered timely filed).

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.7 is revised to read as follows:

§ 1.7 Documents are filed upon receipt.

Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

[FR Doc. 95–7700 Filed 3–28–95; 8:45 am]

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47 CFR Part 15

[DH 95–581]

Closed Captioning Requirements for Computer Systems Used as Television Receivers

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: The FCC's Office of Engineering and Technology is issuing this document interpreting the requirements of the Television Decoder Circuitry Act of 1990 and the FCC rules implementing that Act, as they apply to computer systems. These requirements specify that all devices designed to receive television service must be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when the picture size of such a device is 33 cm (13 inches) or greater in size. This interpretation is intended to provide guidance for computer manufacturers and vendors with regard to the application of the closed caption circuitry requirements to computers and other related equipment that provide the capability to receive television transmissions.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Richard Engelman, Office of Engineering and Technology, (202) 776–1626.

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SUPPLEMENTARY INFORMATION:

Closed Captioning Requirements for Computer Systems Used As Television Receivers

Several manufacturers have requested information on the requirements for displaying closed captioning as they apply to computers that have the capability to receive television signals. This Public Notice describes the Office of Engineering and Technology's (OET) interpretation of the requirements of the Television Decoder Circuitry Act of 1990, and the rules implementing that Act, as they apply to computer systems. As indicated below, computer systems that are sold with a monitor that has a "viewable picture" size of 13 inches or greater and that have the capability to receive television service must be able to display closed captions transmitted on television signals. Closed captioning capability is not required for smaller monitors, for systems without television reception capability, for computers sold without monitors, or for "plug-in" circuit boards that add television reception capability.

Section 15.119 of the Commission's rules, and the Television Decoder Circuitry Act of 1990 (Pub. L. 101–431) upon which this rule section is based, require that all devices designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such a device is manufactured in the United States or imported for use in the United States, and its television picture screen is 33 cm (13 inches) or greater in size. *See* 47 CFR 15.119 and 47 U.S.C. 303(u) and 330(b).

Personal computers can now be equipped to receive and display broadcast television programming. This capability can be marketed in a variety or ways. For example, built-in TV receiver capability can be included in personal computers that are marketed as complete systems, *e.g.*, systems that include both a computer and monitor. Built-in TV receiver capability can also be included in personal computers sold without a monitor. In addition, TV receiver capability can be provided on plug-in circuit cards that can be used to add TV reception capability to an existing personal computer.

The screen sizes for TV receivers and monitors used with personal computers traditionally have been measured differently by manufacturers in the two industries. TV receiver screen size is measured on the basis of the "viewable picture" area, in accordance with Federal Trade Commission (FTC) regulations. *See* 16 CFR Part 410. Computer monitors traditionally are measured on the basis of the overall physical size of the picture tube. In many cases, computer monitors marketed as ¼ inches or larger actually have a viewable picture size of less than 33 cm (13 inches). We note that the majority of computer monitors being sold now have a viewable picture size that is smaller than 33 cm (13 inches), although the number of models with larger picture sizes is increasing.

OET interprets that the requirements of § 15.119 apply to computer systems that have the capability to receive TV broadcast signals and include a monitor that has a "viewable picture" size of 33 cm (13 inches) or larger, as measured in accordance with the FTC regulations, 16 CFR Part 410. For purposes of this interpretation, a computer system may be a single unit, with the computer and monitor in the same housing, or separate computer and monitor units.

As a practical matter, computers and monitors sold together as systems are often marketed with separate prices. This allows consumers greater flexibility in choosing a system that meets their needs. OET interprets that where computers and monitors are priced separately but sold together, *i.e.*, as part of the same business transaction, they are nonetheless computer systems for purposes of the closed caption display capability requirements and must comply with those requirements if the "viewable picture" of the monitor is 33 cm (13 inches) or larger.

The requirements of § 15.119 do not apply to:

—Computers or computer systems that do not have the capability to receive TV broadcast signals;
—Computers sold without monitors;
—Computer systems with monitors that do not have a viewable picture of 33 cm (13") or larger; or,
—Separate "plug-in " circuit boards.

In issuing this interpretation, we wish to emphasize that we recognize the importance of closed captioning display as a feature of TV reception capability included in personal computers. We therefore will monitor the practices of the computer industry with regard to this feature, particularly with regard to the practices of selling computers and monitors together, and will consider appropriate action in the future as may be necessary to ensure this feature is adequately available to the public.

By the Chief, Office of Engineering and Technology.

Office of Engineering and Technology contact: Richard Engelman at (202) 776–1626.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7650 Filed 3–28–95; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1604 and 1652

RIN 3206–AG30

Federal Employees Health Benefits Acquisition Regulation Filing Health Benefit Claims; Addition of Contract Clause

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to add a new contract clause of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The clause clarifies for both FEHB carriers and covered individuals the circumstances under which OPM may render a decision regarding a covered individual who asks OPM to review a health benefits plan's denial of a claim if the plan has either affirmed its denial when the covered individual requested reconsideration, or failed to respond to the covered individual's request for reconsideration as provided by OPM's regulations. The clause further clarifies the circumstances under which claimants may seek court review of benefit denials under the FEHB Program. The purpose of these interim regulations is to clarify that covered individuals who wish to bring legal action regarding a denial of an FEHB benefit must pursue such claim against OPM. Further, the interim regulations clarify the administrative review process that must precede legal action in the courts.

DATES: These interim regulations are effective March 29, 1995. Comments must be received on or before May 30, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606–0004.

SUPPLEMENTARY INFORMATION:

Historically, OPM has required that

covered individuals who want to bring suit because an FEHB carrier has denied their claim for health benefits must sue the carrier, not OPM. These interim regulations provide that legal actions arising out of a denial of FEHB benefits should be brought against OPM rather than the FEHB carrier that made the initial denial decision. Because OPM has the authority under the FEHB law to order the carrier to pay the claim, OPM has determined it is appropriate under current statute for the covered individuals to bring suit against OPM if OPM declines to order the carrier to pay the claim. The clause clarifies the process and circumstances for bringing legal actions under the FEHB Program and gives the administrative review process that must be completed before suit is brought.

The legislative history of § 8902(j), title 5, United States Code, shows that Congress intended OPM (at that time the Civil Service Commission) to provide an administrative appeal process, binding upon the carriers, that would save covered individuals the expense and delay of being forced into the courts to recover on meritorious claims for benefits. Based upon this directive and its central role in the administration of the FEHB Program, OPM established a detailed administrative review process for benefits claims leading to a final decision on such claims by OPM. It is OPM's view that this administrative review process must be followed before legal action is pursued in the courts. Further, the matter to be reviewed by a court upon appeal is the OPM decision affirming the carrier's denial of benefits, with the court's review being limited to an examination of OPM's administrative decision to deny the claim for payment or services.

Health insurance contracts under the FEHB Program are Federal contracts under 5 U.S.C., chapter 89. Accordingly, legal actions concerning disputes arising or relating to those contracts are controlled by Federal, rather than State law. Congress, in the FEHB Act, mandated Federal uniformity for all matters that relate to (1) the nature or extent of coverage; (2) benefits; and (3) payment of benefits under the FEHB Program. By statute, all health insurance contracts require the carrier to agree to pay or provide a health service or supply in an individual case if OPM finds that the covered individual is entitled to the benefit under the terms of the contract. Congress also directed OPM to take a central role in determining whether a health service or supply should be provided in individual cases to covered individuals and, if it should be provided, to require carriers to pay for such health service or supply. These interim regulations reaffirm the principle of uniformity in the FEHB Program by providing that in judicial disputes regarding the denial of a health benefits claim, review is to be limited to the record that was before OPM and that was the basis of the OPM decision to disallow the benefit. In the event that an appropriate court concludes that benefits should have been awarded under the FEHB Act, the court possesses ample authority to require OPM to order that such payments be made to the covered individual from the carrier. These interim regulations clarify that OPM intends for its decision to be upheld unless the Court concludes that the OPM decision affirming the carrier's denial of benefits was inconsistent with the standard for final agency action under applicable Federal law.

The new clause reflects the administrative review procedures that must precede court review. These procedures are prescribed by regulations at 5 CFR 890.105 and reflects minor changes that OPM is making to 5 CFR 890.105 by interim regulations being published in conjunction with this interim regulation The new clause also reflects regulations and 5 CFR 890.107 regarding court review and reflects changes OPM is making to 5 CFR 890.107 by regulations also being published in conjunction with this interim regulations.

OPM proposes to incorporate these procedures into the FEHB contract by adding a new clause 1652.204–72, Filing Health Benefit Claims/Court Review of Disputed Claims, to Subpart 1652.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation merely incorporates administrative procedures and regulatory requirements into FEHB contracts.

List of Subjects in 48 CFR Parts 1604 and 1652

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 48 CFR chapter 16 as follows:

PART 1604—ADMINISTRATIVE MATTERS

1. The authority citation for parts 1604 and 1652 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In part 1604 subpart 1604.71 is added to read as follows:

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing Health Benefit Claims/ Court Review of Disputed Claims.

Guidelines for an Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204–72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

PART 1652—CONTRACT CLAUSES

3. Subpart 1652.2 is amended by adding section 1652.204–72 to read as follows:

Subpart 1652.2—Texts of FEHBP Clauses

1652.204–72 Filing Health Benefit Claims/ Court Review of Disputed Claims.

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS

(a) *General.* The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial. If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM review processes specified in this clause before seeking judicial review of the denied claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 1 year from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to

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make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within 30 days after the covered individual's request for reconsideration or the Carrier's receipt of additional information.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within 30 days after the date it receives the request or within 30 days after the date it receives the additional information requested. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this clause.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or

(iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the Carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) *Court review.* (1) A suit to compel enrollment under § 890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM. The recovery in such a suit will be limited to the amount of benefits in dispute.

(4) An action under paragraph (f)(3) of this clause to recover on a claim for health benefits:

(i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (e) of this clause;

(ii) May not be brought later than December 31 of the third year after the year in which the care or service was provided; and

(iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of Clause)

[FR Doc. 95–7792 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1840, 1841, 1842, 1845, 1851, 1852, and 1870

[NFSD 89–18]

RIN 2700–AB83

NASA FAR Supplement; Miscellaneous Amendments

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as the NASA FAR Supplement rewrite, procurement integrity, cost-reimbursement contracts, architect-engineer services, acquisition of utility services, and audit tracking and resolution.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482; e-mail: dbeck@proc.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

A cross-reference is added to 1813.7104(a) due to FAC 90–24. The FAC allows the head of contracting activity to exclude contracting officers (with micro-purchase authority only) from the procurement integrity definition of "procurement official" if the HCA determines that it is unlikely that the contracting officer's acquisitions will exceed $20,000 in any 12-month period.

Sections 1816.301, 1816.301–3 and 1816.403 are removed due to FAC 90–24's removal of FAR 16.301 and 16.403.

Various changes include: (i) Lowering the selection official level for A–E contracts from the head of the installation to an executive level manager in the requirements office; (ii) eliminate 1836.600–70 on inter-organization acquisition coverage through NASA Headquarters Code HS; and (iii) upgrade the ethics certificate associated with selection of A–E contracts.

Subpart 1803.3 is redesignated as Part 1841. NFS clauses on utility services are removed where new FAR clauses provide adequate coverage.

Changes are necessary for NASA's audit followup system to comply with Office of Management and Budget (OMB) Circular A–50, "Audit Followup." In addition, they streamline the coverage on audit tracking and resolution and relocate the coverage within the NASA FAR Supplement.

Miscellaneous changes and corrections are found in the following sections: 1801.104–370; 1801.603–2 (reference to SF 171 deleted); Subpart 1804.8 (title change of subpart heading); 1804.805 (title change to section heading); 1806.303–1; 1808.002–71 and –76 (removed due to fAR coverage); Subpart 1808.7 (title change to subpart heading and "workshop" changed to new FAR terminology "nonprofit agency"; 1815.613–71; 1819.708–70; 1825.403–70; 1832.402; 1842.202–70; 1845.106–70; 1845.405; 1845.407; 1845.608–6; 1845.610–2; 1845.7203; 1845.7205; 1845.7213; 1851.102; 1870.103, App. I. Chapter 7, Appendix C; and 1870.303, App. I, Chapter 4.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1840, 1841, 1842, 1845, 1851, 1852, and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Chapter 18 is amended as follows:

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1842, 1845, 1851, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1801.104–370 [Amended]

2. In section 1801.104–370, paragraph (a), "Ms. Joan Brooks (202–358–2105)" is revised to read "Mrs. Cynthia O'Bryant (202–358–1248)".

3. In section 1801.104–370, paragraphs (e) and (f), "Code JBD–4" is revised to read "Code JOB–19".

4. In section 1801.104–370, paragraph (f), "Code HS, Gloria Shively (202–358–2080)" is revised to read "Code HP, Cynthia O'Bryant (202–358–1248)" and "Code JM–2" is revised to read "Code JMS".

1801.603–2 [Amepded]

5. In section 1801.603–2, paragraph (d)(1) introductory text, the phrase "(or SF 171)" is removed.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.8 [Amended]

6. In subpart 1804.8, the title "Contract Files" is revised to read "Government Contract Files".

1804.805 [Amended]

7. In section 1804.805, the section heading "Disposal of contract files." is revised to read "Storage, handling, and disposal of contract files."

PART 1806—COMPETITION REQUIREMENTS

1806.303–1 [Amended]

8. In section 1806.301–1, paragraph (b), "Code IRD" is revised to read "Code IR".

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002–71 [Removed]

9. Section 1808.002–71 is removed.

1808.002–76 [Removed]

10. Section 1808.002–76 is removed.

Subpart 1808.3 [Removed]

11. Subpart 1808.3 is removed.

Subpart 1808.7 [Amended]

12. The title of subpart 1808.7 "Acquisition From The Blind And Other Severely Handicapped" is revised to read "Acquisition From Nonprofit Agencies Employing People Who Are Blind Or Severely Disabled".

1808.705–1 [Amended]

13. In section 1808.705–1, paragraph (b), the phrase "to obtain workshop-produced supplies" is revised to read "to obtain nonprofit agency-produced supplies".

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1813.7104 [Amended]

14. In section 1813.7104, the following sentence is added to the end of paragraph (a) to read as follows:

"See 48 CFR (FAR) 3.104–4(h)(5) for procurement integrity requirements."

PART 1815—CONTRACTING BY NEGOTIATION

1815.871 and 1815.872 [Removed]

15. Sections 1815.871 and 1815.872 are removed.

PART 1816—TYPES OF CONTRACTS

1816.301 and 1816.301–3 [Removed]

16. Sections 1816.301 and 1816.301–3 are removed.

1816.403 [Removed]

17. Section 1816.403 is removed.

PART 1832—ADVANCE PAYMENTS

1832.402 [Removed]

18. In section 1832.402, paragraph (a)(1) is amended by removing the second sentence.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.6 [Amended]

1836.600 and 1836.600–70 [Removed]

19. and 20. Sections 1836.600 and 1836.600–70 are removed.

1836.602–2 [Amended]

21. Sections 1836.602–2 is revised to read as follows:

1836.602–2 Evaluation boards.

In compliance with 48 CFR (FAR) 36.602–2, the person designated as the

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selection authority, unless Field Installation Management Instructions designate higher authority, shall establish an architect-engineer selection board to be composed of at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an appropriate official from the requiring office; and, an appropriate technical official familiar with any unique subject matter (see 48 CFR (FAR) 36.102, Definitions, "Architect-engineer services") critical to the requirement. Each board shall include an appropriate procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board and the selection authority. Where appropriate, a procurement official may serve as a voting member on evaluation boards. Appointment of non-Government employees as voting members is not authorized.

22. Section 1836.602–4 is revised to read as follows:

1836.602–4 Selection authority.

The first level manager above the requirement office who is serving in grade GS 16 or above under the General Schedule or in a comparable or higher position under another schedule, or otherwise, is designated as the selection authority for purposes of 48 CFR (FAR) 36.602.4.

23. Section 1836.602–5 is revised to read as follows:

1836.602–5 Short selection processes for contracts not to exceed the small purchase limitation.

(a) Use of the procedures at 48 CFR (FAR) 36.602–5 (a) or (b) is at the discretion of the selection authority specified in 1836.602–4.

(b) The selection authority specified in 1836.602–4 is designated as the selection authority for purposes of 48 CFR (FAR) 36.602–5(b)(2).

1836.602–70 [Amended]

24. In section 1836.602–70, paragraph (b)(1), "the Comptroller" is revised to read "the Chief Financial Officer (CFO)/Comptroller".

25. In section 1836.602–71, paragraph (a)(1) is revised to read as follows:

1836.602–71 Conflict of interest.

(a)(1) All persons participating in an architect-engineer evaluation, review or selection activity shall have a written certification on file in NASA stating knowledge of and compliance with the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (August 1992) and the NASA Supplement (September 28, 1994) to the Office of Government Ethics's Standard of Ethical Conduct for Employees of the Executive Branch (August 1992). The minimum certification shall be:

Certification

I, the undersigned, hereby certify that I have: (i) read the Office of Government Ethics' Standard of Ethical Conduct for Employees of the Executive Branch (August 1992) and the NASA Supplement (September 28, 1994) to the Office of Government Ethics' Standard of Ethical Conduct for Employees of the Executive Branch (August 1992); (ii) filed the relevant [insert "Standard Form 278" for any employee who's annual salary is 120 percent above step one of grade 15 of the General Schedule (GS) or "Standard Form 450" for employees whose annual salary is at or below step ten of grade 15 of the General Schedule (GS)]; and, (iii) examined the attached list of competitors for the [Title] project before the architect-engineer selection board. I further certify that I have no financial or other personal interest in these firms.

(Signature)

(Date)

(End of certification)

* * * * *

1836.602–71 [Amended]

26. In paragraph (a)(3) of section 1836.602–71, the word "center" is revised to read "installation" in two occurrences.

PART 1840 [ADDED AND RESERVED]

27. Part 1840 is added and reserved.

PART 1841—ACQUISITION OF UTILITY SERVICES

28. Part 1841 is added as set forth below:

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.1—General

1841.101 Definitions.

Subpart 1841.2—Acquiring Utility Services

1841.201 Policy.
1841.204 GSA areawide contracts.
1841.205 Separate contracts.
1841.205–70 Renewal of contracts.
1841.205–71 Headquarters requirement for copies of contracts.
1841.205–72 Contents of a negotiated utility service contract.
1841.205–73 Authorization for procurement of wellhead natural gas.
1841.205–74 Utility service narrative.
1841.205–75 Contracts requiring Headquarters approval.
1841.206 Interagency agreements.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1841.1—General

1841.101 Definitions.

Utility suppliers, as used in this subpart, may be quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a sole-source position. Under common law, public utilities must render service at reasonable rates and without discrimination. Their operations, management, rates, and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

Subpart 1841.2—Acquiring Utility Services

1841.201 Policy.

(a) Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see 48 CFR (FAR) 41.203), technical personnel shall contact the Environmental Management Division (Code JE), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100–202, Sec. 8093, 101 Stat. 1329–79). Before acquiring electric utility service, the contracting officer shall determine whether the manner of acquisition, in particular, competitive acquisition under 48 CFR (FAR) 41.205(b), would be inconsistent with state law. Section 8093 of Pub. L. 100–202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute "purchases" for purposes of section 8093.

1841.204 GSA Areawide Contracts.

(a) GSA publishes a checklist of utility services available under its areawide public utility contracts. The checklist specifies contract numbers, expiration dates, companies, and areas serviced. Copies of the checklist may be obtained from GSA, Public Utility Division (PPU), Public Buildings Service, Washington, DC 20405 ((202) 501–3994).

(b) In determining whether a GSA area-wide public utility contract is adequate to meet requirements, procurement officers should consider (1) the areawide contract rates and volume of service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(c) If a procurement officer finds that a separate negotiated contract would be more advantageous to the Government than the GSA areawide public utility contract, the procurement officer shall submit a request to the Associate Administrator for Procurement, NASA Headquarters (Code HS), for a waiver of the requirement to use the GSA areawide public utility contract. The request shall explain the merit of a separately negotiated contract.

1841.205 Separate contracts.

1841.205–70 Renewal of contracts.

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) Contracting officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

1841.205–71 Headquarters requirement for copies of contracts.

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, and modification to the Associate Administrator for Procurement, NASA Headquarters (Code HS) and the Environmental Management Division, NASA Headquarters (Code JE).

1841.205–72 Contents of a negotiated utility service contract.

(a) All negotiated utility service contracts estimated to exceed $2,500 annually shall be written in accordance with the directions in paragraphs (a)(1) through (5) of this section:

(1) *SF 26.* Use Standard Form 26 (see 48 CFR (FAR) 53.215–1(b)).

(2) *Appendix A.*

(i) Include the rate schedule, which shall consist of—

(A) The published rate schedule of the contractor approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. _____," and be entitled "Rate Schedule." Each page shall indicate its number and the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to stating the rate applicable to the contract, Appendix A shall include any applicable rules or regulations (whether established by the regulatory body, the contractor, or negotiation between the contractor and the Government) pertaining to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee not exceeding $1,000 for the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, if the contract period is less than 6 months. In all other instances where a connection charge is involved, the "Connection Charge" clause (48 CFR (FAR) 52.241–9) and Appendix C (see paragraph (a)(4) of this section) shall be included in the contract.

(3) *Appendix B.* Include the service specifications applicable to the contract, which shall consist of a specially drafted attachment to the contract bearing the legend "Appendix B, attached to and made a part of Contract No._____," and the title of the appropriate service specifications. Each page shall indicate its number and the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing; and

(vi) A statement of the capacity and flow of the service.

(4) *Appendix C.* Include the connection charge schedule required whenever the contract includes the connection charge clause at 48 CFR (FAR) 52.241–9 or the termination clause at 48 CFR (FAR) 52.241–10. It shall bear the legend "Appendix C, attached to and made a part of Contract No. _____," and be entitled "Connection Charge Schedule." Each page shall indicate its number and the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall contain as a minimum a detailed description of the new facilities to be furnished by the contractor.

(5) Include any contract clauses required by 1841.501 or 48 CFR (FAR) 41.501.

(b) Any negotiated utility service contract estimated not to exceed $2,500 annually shall consist of—

(1) Standard Form 26 (48 CFR (FAR) 53.215–1(b));

(2) An Appendix A (see paragraph (a)(2) of this section); and

(3) Any contract clauses required by 1841.501 or 48 CFR (FAR) 41.501.

1841.205–73 Authorization for procurement of wellhead natural gas.

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in 48 CFR (FAR) part 41. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with 48 CFR (FAR) 41.204.

(b) GSA provides assistance to Federal agencies in the procurement of natural gas wellhead supplies. Contracting officers requiring assistance in determining the feasibility of procuring natural gas supplies on a facility by facility basis may contact General Services Administration, Public Building Services, Public Utilities Division, Code PPU ((202) 501–3994). In contacting GSA, contracting officers should provide data pertaining to present gas usage exceeding 50,000 Mcf per year. GSA has found that 50,000 Mcf is the annual volume below which wellhead purchases may not be economically feasible.

1841.205–74 Utility service narrative.

(a) Before initiating negotiations, the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Associate Administrator for Procurement (Code

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HS), NASA Headquarters. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) Justification of the reasonableness of the proposed rate;

(3) An outline of the field installation's proposed negotiation tactics, basis for position, and any alternative position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any unusual factors affecting the procurement.

(b) The Associate Administrator for Procurement (Code HS), with the coordination of the Environmental Management Division (Code JE), will review the information submitted under paragraph (a) of this section. If NASA Headquarters desires to participate in the negotiations, the Associate Administrator for Procurement (Code HS), NASA Headquarters, shall inform the contracting officer within 30 days after receipt of the Utility Service Narrative.

1841.205–75 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Associate Administrator for Procurement, NASA Headquarters (Code HS), for approval as required by 48 CFR 1804.7203 and 1807.71.

1841.206 Interagency agreements.

(a) The Department of Defense (DOD) enters into areawide fuel oil and other energy-service contracts. DOD areawide contracts provide that the contractor shall, upon receipt of an order in the form prescribed by the contract, furnish the service involved without further negotiations as to rates and charges, in accordance with the established and field rate schedules applicable to the service.

(b) When procuring utility services from another Government agency by cross-servicing, the procurement office shall use a memorandum of understanding specifying the services to be provided and the conditions under which they will be supplied. A Utility Service Narrative shall be submitted in accordance with 1841.205–74.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention.

(a) When the contractor notifies the contracting officer as provided in the change of rates clause at 48 CFR (FAR) 52.241–7, or whenever the contractor requests that rate changes be negotiated, as provided in the change in rates clause at 48 CFR (FAR) 52.241–8, the contracting officer shall notify the Associate Administrator for Procurement, NASA Headquarters (Code HS) and the Environmental Management Division, NASA Headquarters (Code JE). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation under paragraph (a) (1) or (2) of this section, and the basis for the recommendation.

(1) When notice is received that the contractor has filed an application for rate changes before the local regulatory body, the contracting officer shall recommend whether or not the Government should intervene at the hearing on the application. If it is recommended that the Government intervene, the recommendation shall be accompanied by a statement containing the basis for intervention and the extent to which the installation can support intervention by presenting testimony, preparing exhibits, and furnishing legal counsel.

(2) When notice is received that the contractor requests that rate changes be negotiated, the contracting officer shall recommend the position to be taken by the Government regarding the rate changes and state the extent to which installation personnel are available to support this position.

(b) The Associate Administrator for Procurement, NASA Headquarters, with the technical assistance of the Environmental Management Division (Code JE), NASA Headquarters, shall furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. Before recommending any action, the Associate Administrator for Procurement, NASA Headquarters shall, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the instructions of the Associate Administrator for Procurement, NASA Headquarters, for at least 30 calendar days before submitting the matter to GSA (see 48 CFR (FAR) 41.402(b)) or taking other action concerning the proposed rate changes.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

The contracting officer shall insert the clause at 48 CFR 1852.241–70, Renewal of Contract, whenever it is desirable that the utility service be provided under the same terms and conditions for more than 1 year (see 1841.205–70).

PART 1842—CONTRACT ADMINISTRATION

1842.202–70 [Amended]

29. In section 1842.202–70, paragraph (d), "Headquarters Supply and Equipment Management Office, Code JLE" is revised to read "Headquarters Logistics Management Office, Code JLG".

Subpart 1842.73 [Added]

30. Subpart 1842.73 is added as set forth below:

Subpart 1842.73—Audit Tracking and Resolution

1842.7301 NASA external audit followup system.

(a) This section implements OMB Circular No. A–50, NASA Management Instruction (NMI) 9970.1A, Audit Followup, and NASA Audit Followup Handbook 9970.2, which provide more detailed guidance. Recommendations for external audits (contracts and OMB Circulars No. A–128, Audits of State and Local Governments, and A–133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 48 CFR 1815.807–71.

(b) The external audit followup system tracks all contract and OMB Circular A–128 or A–133 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but at a maximum, within 6 months of the date of the audit report.

(c) (1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with DCAA by means of the DCAA form, Contract Audit Followup Summary Sheet. The use of this form by DCAA and NASA is covered in Chapter 6 of the NASA Audit Followup Handbook.

(2) Identification and tracking of A–128 and A–133 audit reports are accomplished in cooperation with the

NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA field installation having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify whether there were any audit findings.

(d) (1) Chapter 6 of the NASA Audit Followup Handbook identifies which contract audit reports are reportable semiannually to Code HC.

(2) Only trackable A–128 and A–133 audit reports involving the following shall be reported semiannually to Code HC—

(i) A significant management control issue; or

(ii) For an individual NASA award, either the lower of 10 percent or $10,000 of the costs incurred in the period covered by the audit are questioned; or for institution-wide issues, the lower of 10 percent or $10,000 of the total costs incurred involving Government funds for the period covered by the audit are questioned.

(e) (1) The resolution and disposition of contract audits is covered by Chapter 6 of the NASA Audit Followup Handbook.

(2) The resolution and disposition of A–128 and A–133 are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having an institution-wide impact are the responsibility of the cognizant Federal agency. OMB's January 6, 1986, **Federal Register** Notice (51 FR 552), titled "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Governments," provides cognizant agency assignments for OMB Circular A–128. For organizations subject to OMB Circular A–133, the cognizant agency is either assigned pursuant to OMB Circular A–88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions," or if not formally assigned, it is based on which Federal agency provided the largest amount of funds for the audited period. In such cases where NASA is the cognizant Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the "cognizant field installation," i.e., the field installation having the largest total award dollar amount for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each field installation having resolution responsibility for the particular report to the OIG Center office within whose geographic area of responsibility the audited organization is located.

PART 1845—GOVERNMENT PROPERTY

1845.106–70 [Amended]

31. In section 1845.106–70, paragraph (e), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.405 [Amended]

32. In section 1845.405, paragraph (b), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)" and "Code IRD" is revised to read "Code IR".

1845.407 [Amended]

33. In section 1845.407, paragraph (a), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.608–6 [Amended]

34. In section 1845.608–6, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.610–2 [Amended]

35. In section 1845.610–2, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.7203 [Amended]

36. In section 1845.7203, "Supply and Equipment Management Office is revised to read "Logistics Management Office" and "Code JLE" is revised to read "Code JLG" in two occurrences.

1845.7205 [Amended]

37. In section 1845.7205, paragraph (f)(1), "Code JLE" is revised to read "Code JLG".

38. In section 1845.7205, paragraph (i), "Code JLE" is revised to read "Code JLG".

1845.7213 [Amended]

39. In section 1845.7213, paragraph (c)(1) introductory text, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

40. In section 1851.102, the first sentence of paragraph (b) is revised to read as follows:

1851.102 Authorization to use Government supply sources.

(a) * * *

(b) The contracting officer shall forward letters of authorization to the installation's Logistics Management Officer, Attention: Activity Address Code Coordinator, who will forward them to the Logistics Management Office, NASA Headquarters (Code JLG), for verification and transmittal to GSA. * * *

* * * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.208–70, 1852.208–71, 1852.208–72, 1852.208–73, 1852.208–74, 1852.208–76, 1852.208–77, 1852.208–78, 1852.208–79, 1852.208–80, 1852.208–83 [Removed]

41. Sections 1852.208–70, 1852.208–71, 1852.208–72, 1852.208–73, 1852.208–74, 1852.208–76, 1852.208–77, 1852.208–78, 1852.208–79, 1852.208–80, and 1852.208–83 are removed.

1852.208–75 [Redesignated as 1852.241–70]

42. Section 1852.208–75 is redesignated as section 1852.241–70 and the introductory text is revised to read as follow:

1852.241–70 Renewal of Contract.

As prescribed in 48 CFR 1841.501(b), insert the following clause:

* * * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.103 NASA acquisition of investigations.

43. In Appendix C to Appendix I of section 1870.103, Section II, paragraph A.3.a., "Office of Policy Coordination and International Relations, Code IRD" is revised to read "Office of External Relations, Code IR" and in paragraph A.3.d., "Code IRD" is revised to read "Code IR" and "Office of Policy Coordination and International Relations" is revised to read "Office of External Relations".

[FR Doc. 95–7612 Filed 3–28–95; 8:45 am]
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48 CFR Parts 1815, 1837 and 1852

RIN 2700–AB40

Revision to NASA FAR Supplement; Uncompensated Overtime

AGENCY: Office of Procurement, Analysis Division, National Aeronautics and Space Administration (NASA).

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ACTION: Final rule.

SUMMARY: This final rule sets forth the Agency's policy regarding the acceptability of uncompensated overtime (UCOT) in acquisition proposals. It establishes that UCOT provided by employees who are exempt from the Fair Labor Standards Act is neither encouraged nor discouraged, but that labor rates must be adjusted to account for any UCOT proposed. Further, any UCOT proposed must be supported by company policy, timekeeping and accounting systems, and the historical basis. The proposal evaluation will include a technical and cost risk assessment. A sample list of criteria to be considered during evaluation is included.

This final rule includes a solicitation provision for use in procurements estimated to exceed $500,000. Its use is optional in procurements between $100,000 and $500,000. The solicitation provision sets forth the agency policy and specifies the type of information needed to support any proposed UCOT.

This coverage was generated in response to industry and internal NASA requests for a uniform UCOT policy within the Agency. The coverage will promote consistent treatment of UCOT proposals, without constraining contractors' prerogatives in deciding whether to propose UCOT.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Childs, Telephone: (202) 358–0454.

SUPPLEMENTARY INFORMATION:

Background

NASA published a proposed rule in 59 FR 9951. March 2, 1994, essentially the same as that being promulgated here. Based on a review of public comments on the proposed rule, only minor changes were made. Fourteen comments were received from eight sources:

Two commenters recommended expansion of the applicability of the proposed rule, by deletion of the phrase "in key technical positions" in the first sentence of 48 CFR 1815.608–72. CONCUR—this change was accepted.

Three commenters recommended that the clause at 48 CFR 1852.237–72 include the policy statement that UCOT is neither encouraged nor discouraged. A fourth commenter expressed a similar concern. CONCUR—a preamble paragraph was added to address this in the clause, based on the policy in 48 CFR 1837.102(b).

Five commenters recommended a policy reversal, so as to either prohibit bidding of UCOT or nullify any pricing advantage. NONCONCUR—it is not our intention to restrict offerors' options in developing their proposals.

The remaining comments addressed minor clarifications or editorial changes. Some editorial changes were made to better organize the coverage and correct typographical errors.

In addition, a new paragraph (b) is added in 48 CFR 1815.608–72, containing a list of sample criteria for NASA personnel to consider in evaluating UCOT in proposals.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule and assigned control number 2700–0080.

List of Subjects in 48 CFR Parts 1815, 1837 and 1852

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1837 and 1852 are amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 1815, 1837 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Section 1815.608–72 is added to read as follows:

1815.608–72 Uncompensated overtime.

(a) The contracting officer shall conduct a risk assessment of any proposal received for technical and professional services that includes unrealistically low labor rates, or uses a high level of uncompensated overtime (as defined in the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime). Such practices on the part of the contractor may jeopardize its ability to successfully perform contract requirements due, for example, to its inability to hire or retain qualified personnel. Such a risk assessment shall be performed as part of the technical evaluation and considered in proposal evaluation (see 48 CFR (FAR) 22.11 and 48 CFR 1837.102(b)).

(b) The risk assessment should consider factors such as—

(1) The number of hours that current employees have been accustomed to working, and the normal number of work hours for the local industry;

(2) The turnover rates for the firm and for the industry in the firm's geographical area;

(3) Whether employees involved in uncompensated overtime share directly in the firm's profits; e.g., through employee-ownership or a profit-sharing plan;

(4) Whether the contract period of performance is short, or whether uncompensated overtime will be used for only a relatively short period of time;

(5) Whether the firm uses approximately the same level of uncompensated overtime in its non-government business;

(6) Any potential for decline in quality or safety both during performance and in any deliverable produced; and

(7) The ability of the contractor to respond to an emergency requiring additional effort.

PART 1837—SERVICE CONTRACTING

3. Section 1837.102 is added to read as follows:

1837.102 Policy.

(a) To the maximum extent practicable, it is the policy of NASA to acquire services on the basis of the task to be performed rather than on a labor-hour basis.

(b) The use of uncompensated overtime (as defined in the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime) is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) 22.11). The provision at 48 CFR 1852.237–72 requires offerors to identify uncompensated overtime hours and the effective hourly rate for all Fair Labor Standards Act-exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 48 CFR 1815.608–72).

4. Section 1837.110 is revised to read as follows:

1837.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall obtain the Associate Administrator for Procurement's (Code HC) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

(b) The following provision applies to procurements under which professional and technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed.

(1) If the resulting contract is expected to exceed $500,000, the contracting officer shall insert in the solicitation the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime.

(2) If the resulting contract is expected to exceed $100,000 but not exceed $500,000, the contracting officer may insert in the solicitation the provisions at 48 CFR 1852.237–72, Identification of Uncompensated Overtime.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.237–72 is added to read as follows:

1852.237–72 Identification of Uncompensated Overtime.

As prescribed in 48 CFR 1827.110(b), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME

(APRIL 1995)

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

(a) *Definitions.* As used in this provision:

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Effective hourly rate is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20.00 per hour would be converted to an effective hourly rate of $17.78 per hour [($20.00×40) divided by 45=$17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

[FR Doc. 95–7734 Filed 3–28–95; 8:45 am]

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DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 95–1]

Amendment to the Justice Acquisition Regulations (JAR) Regarding Career Development, Contracting Authority, and Responsibilities

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by revising policies and procedures for redelegation of authority for contractual actions of goods and services; revising regulations to set forth the Department of Justice system for selection, appointment, and termination of appointment of contracting officers; and incorporating the agency's policies and procedures regarding the Procurement Career Management Program.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Part 2801

Government procurement.

Dated: March 21, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. The heading of subpart 2801.6 is revised to read as follows:

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2801.601 is amended by revising paragraph (d) to read as follows:

2801.601 General.

* * * * *

(d) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational

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relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

* * * * *

4. Section 2801.603 is revised to read as follows:

2801.603 Selection, appointment and termination of appointment.

2801.603–2 Selection.

Selection of contracting officers shall be in accordance with criteria and procedures established by each Bureau Procurement Chief in his or her component.

5. Section 2801.670 is added to read as follows:

2801.670 Department of Justice Procurement Career Management Program.

(a) Each Bureau Procurement Chief shall develop a procurement career management program for contracting personnel in his or her component.

(b) The program shall cover all contracting personnel with less than seven year experience in the categories described below:

(1) Occupational series 1102;

(2) Contracting officers with contracting authority above the simplified acquisition threshold;

(3) Occupational series 1105, other individuals performing purchasing duties and individuals with contracting authority at or under the simplified acquisition threshold.

(c)(1) The program shall include:

(i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or his job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(2) Individual assessments and development plans should be designed to fit the needs of the component, but they should build upon the units of competence and instruction prepared by the Federal Acquisition Institute wherever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies by the time the employee has obtained seven years of experience in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to OFPP Policy Letter 92–3, shall be attained for any contracting duty that is actually required to be performed on the job.

(3) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving small purchases. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(4) Individual assessments of covered employee skills shall be completed by June 27, 1995, or within 90 days of the employee's entry on duty.

[FR Doc. 95–7677 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–01–M

Proposed Rules

Federal Register

Vol. 60, No. 60

Wednesday, March 29, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 94–069–1]

Unshu Oranges From Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions, Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action would relieve restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

DATES: Consideration will be given only to comments received on or before April 28, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–069–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 94–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, MD 20737–1228, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease which affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

Currently, the regulations in 7 CFR 319.28 (the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. unshu, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

We are proposing to amend the regulations to allow the importation and interstate movement, under identical restrictions, of Unshu oranges grown in citrus canker-free areas on Cheju Island, Republic of Korea. To qualify for importation into the United States, the oranges would have to meet the following requirements:

(1) They must be grown and packed in isolated, canker-free export areas where only Unshu orange trees are grown. These areas must be surrounded by a disease-free buffer zone in which only certain varieties of citrus may be grown;

(2) Korean and U.S. plant protection officials must jointly inspect the canker free export areas and buffer zones, and must jointly inspect Unshu oranges in the groves prior to and during harvest and in the packinghouses during packing operations;

(3) Before packing, the Unshu oranges must be given a USDA-prescribed surface sterilization with a bleach and water solution;

(4) On boxes in which Unshu oranges are packed and on the tissue paper wrapping of individual Unshu oranges there must be stamped or printed a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal under a Federal plant quarantine;

(5) The Unshu oranges must also be accompanied by a certificate from the Korean Plant Protection Service certifying that the fruit is apparently free of citrus canker.

Also, we are proposing to amend the regulations in § 301.83 to prohibit the movement of Cheju Island Unshu oranges from any quarantined area into or through any nonquarantined area of the United States. The quarantined areas in the United States for Unshu oranges from Cheju Island would be the same as those established for Unshu oranges from Japan.

These safeguards would be adequate to ensure that the Unshu oranges from Cheju Island, Republic of Korea, would not disseminate citrus canker if permitted into the United States.

Miscellaneous

Currently, under § 319.28 (b)(1) and (b)(2) of the regulations, the Animal and Plant Health Inspection Service (APHIS) requires that qualified Japanese and U.S. plant pathologists jointly inspect the canker-free export areas, buffer zones, and Unshu oranges. APHIS believes that these joint inspections could be carried out effectively by plant protection officers from APHIS and the country of origin of the Unshu oranges, either Japan or the Republic of Korea, rather than by plant pathologists. Plant protection officers given this duty would be trained to examine trees and fruit for the presence of citrus canker and other diseases. Therefore, we are proposing to allow plant protection officers from APHIS and Japan or the Republic of Korea to carry out these joint inspections.

Also, under § 319.28(a)(1) of the regulations, APHIS prohibits the importation of citrus fruit from eastern, southeastern Asia, and other areas.

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Several countries, including India, Burma, Ceylon, Thailand, Indochina, China, and Japan are mentioned. APHIS considers the Republic of Korea to be part of eastern Asia and prohibits the importation of Korean citrus, even though Korea is not specifically listed under § 319.28(a)(1). We are proposing to add the Republic of Korea to this list in order to clarify the prohibition on the importation of Korean citrus.

Finally, under § 319.28(b)(7) of the regulations, Unshu oranges grown in Japan are subject to a final examination at the port of arrival in the United States by APHIS inspectors to determine if they are infected with citrus canker. This requirement is redundant, since § 319.56–6 of the Fruits and Vegetables regulations contains a similar provision that applies to all imported produce. We are proposing, therefore, to remove § 319.28(b)(7) from the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

This proposed rule would allow Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period of time each year, from early November into mid-January.

In the 1992–93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 to 2.4 million pounds, less than one one-hundredth of one percent of total tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Korean Unshu oranges would amount to less than one percent of the total domestic tangerine production, it would constitute twice the annual domestic production of satsuma tangerines. Again, however, these Korean Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

Executive Order 12778

This proposed rule would allow Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94–069–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.83 [Amended]

2. In § 301.83, paragraph (a) would be amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.28 [Amended]

4. Section 319.28 would be amended as follows:

a. Paragraph (a)(1) would be amended by adding the phrase "the Republic of Korea," immediately following the phrase "Japan and adjacent islands,".

b. Paragraph (b) introductory text would be amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

c. In paragraph (b)(1), the first sentence would be amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place; and in the third and sixth sentences, the word "pathologists" would be removed and the phrase "protection officers" would be added in its place and the word "Japan" would be removed and the phrase "the country of origin" would be added in its place.

d. Paragraph (b)(2) would be amended by removing the word "pathologists" and adding the phrase "protection officers" in its place and by removing the word "Japan" and adding the phrase "the country of origin" in its place.

e. Paragraph (b)(4)(ii) would be amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place.

f. Paragraph (b)(7) would be removed.

g. In paragraph (f), the word "Japan" would be removed and the phrase "the country of origin of the Unshu oranges" would be added in its place.

Done in Washington, DC, this 22nd day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7600 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 359

RIN 3064–AB11

Regulation of Golden Parachutes and Other Benefits Which May Be Subject to Misuse

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule limiting golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies. The purpose of this rule is to prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, and the federal deposit insurance funds.

DATES: Comments must be received by May 30, 1995.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918, 550 17th Street, N.W., Washington, D.C.; Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896, 1776 F Street, N.W., Washington, D.C. 20429; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898–3872; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant impact on a substantial number of small entities.

Background

Section 2523 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990[1] (Fraud Act) amended the Federal Deposit Insurance Act (FDI Act) by adding a new section 18(k). Pub. L. No. 101–647, § 2523 (1990). This section 18(k)(1) provides that "[t]he Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment". 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in sections 18(k)(4) and (5)(A) of the FDI Act, respectively. *Id.* at 1828(k) (4) and (5)(A). The statute's proscriptions are applicable to insured depository institutions and depository institution holding companies. *Id.*

On October 7, 1991, the FDIC published a notice of proposed rulemaking entitled "Regulation of Golden Parachutes and Other Benefits Which Are Subject to Misuse" to implement this provision of the Fraud Act. 56 FR 50529 (1991) (to be codified at 12 CFR Part 359). By the end of the sixty day comment period, the FDIC received 186 letters commenting on the proposed regulation. The majority of these comment letters suggested that the FDIC revise the proposed rule in order to strike a more equitable balance between the protection of the deposit insurance funds and the needs of depository institutions and depository institution holding companies to attract and retain qualified directors and management. Many of the comment letters also suggested certain technical amendments to the proposed rule to make it reflect more accurately the FDIC's intentions as stated in the preamble. A few comment letters requested that no regulation be promulgated. These letters expressed the opinion that abuses should be dealt with on a case-by-case basis through the use of enforcement proceedings. It should be noted that the FDIC was gratified to observe the exceptionally high level of preparation and thought which went into many of the comment letters.

Due to the significant amount of time which has passed since the publication of the first proposed rule (the First Proposal), the FDIC has decided to publish a second proposal for public comment (the Second Proposal). The Second Proposal incorporates many of the suggestions which were made by the commenters to the First Proposal.

Summary of the Second Proposal

The golden parachute portion of the Second Proposal affects insured depository institutions seeking to make the golden parachute payments[2] only if the institution is in a "troubled" condition.[3] The proposed regulation would apply to affiliated depository institution holding companies either if the holding company itself is troubled or if it seeks to make a golden parachute payment to an institution-affiliated party (IAP) of a troubled subsidiary insured depository institution. The indemnification portion of the Second Proposal is applicable to all insured depository institutions and their holding companies regardless of their financial condition.

Generally, the Second Proposal prohibits institutions which are insolvent, in conservatorship or receivership, rated "4" or "5", in a troubled condition as defined in the regulations of the appropriate federal banking agency, or which are subject to a proceeding to terminate deposit insurance from making any payment to an institution-affiliated party which is contingent on the termination of that person's affiliation with the institution, except payments of death or disability benefits, payments pursuant to qualified retirement plans and employee welfare

[1] The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 is title XXV of the Crime Control Act of 1990, S. 3266, which was passed by Congress on October 27, 1990 and signed by the President on November 29, 1990.

[2] The terms "golden parachute payment" and "golden parachute" are used interchangeably throughout this discussion.

[3] The use of the term "troubled" in this preamble shall refer to an institution or holding company which meets any of the criteria set forth in §§ 359.1(f)(1)(ii) (A) through (E) of the Second Proposal.

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benefit plans and two other exceptions which are described in more detail below. The Second Proposal also prohibits institutions from paying or reimbursing an institution-affiliated party's legal and other professional expenses incurred in administrative or civil proceedings instituted by any federal banking agency unless certain criteria are satisfied. Under no circumstances does the Second Proposal allow the reimbursement or payment of fines or penalties assessed against an institution-affiliated party as a result of such a proceeding.

The Second Proposal recognizes several "exceptions" to the prohibition against golden parachute payments.[4] First, § 359.4(b) of the Second Proposal allows an insured depository institution or its depository institution holding company to make a golden parachute payment to an institution-affiliated party who is hired by an institution or holding company with the written consent of the appropriate federal banking agency at a time when the institution or holding company satisfies or is expected to satisfy any of the criteria set forth in § 359.1(f)(1)(ii) of the Second Proposal,[5] and whose golden parachute agreement is approved by the FDIC in its corporate capacity as the regulator of operating state nonmember banks. These criteria are taken from section 18(k) of the FDI Act. (12 U.S.C 1828(k)(4)(A)(ii)).

Second, § 359.4(c) of the Second Proposal permits a golden parachute payment, not to exceed twelve months salary, to an institution-affiliated party in the event of an unassisted change in control, with the prior consent of the appropriate federal banking agency.

The third "exception" is contained in § 359.1(f) of the Second Proposal, which defines a "golden parachute payment". The FDIC recognizes that one important tool in restoring an institution to financial health may be institutional downsizing through personnel reductions in force. In such situations, institutions may choose to employ an existing severance pay plan or adopt a new plan to assist employees whose employment is terminated. In addition, many corporations (in various industries) maintain severance pay plans which pay benefits to employees who lose their jobs through no fault of their own, for reasons such as an overall reduction in force. Thus, § 359.1(f)(2)(v) of the Second Proposal provides that the term "golden parachute payment" does not include any payment made pursuant to a nondiscriminatory severance plan or arrangement which provides for the payment of severance benefits to all eligible employees upon involuntary termination for other than cause, or early retirement, in conjunction with a reduction in force. However, the Second Proposal limits the maximum severance benefit that any employee may receive pursuant to such a plan to twelve months' base salary, although an institution may request consent to make larger payments. In the event that any senior executive officer, as defined in § 303.14(a)(3) of these regulations, is eligible for such severance benefits, the depository institution or holding company must provide 30 days prior written notice to its primary regulator and the FDIC before making such a payment to those individuals.

The fourth "exception" to the golden parachute payment prohibition is contained in § 359.1(d) of the Second Proposal which defines "*bona fide* deferred compensation plan or arrangement". Section 18(k) of the FDI Act explicitly authorizes the FDIC to define, by regulation or order, permissible *bona fide* deferred compensation plan[s] or arrangement[s]. (12 U.S.C. 1828(k)(4)(C)(ii)).

The definition of "golden parachute payment" contained in § 359.1(f) of the Second Proposal also sets forth several other straightforward exceptions which do not require further discussion here.

Section 18(k)(2) of the FDI Act provides that the FDIC "shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) [its authority to prohibit or limit golden parachute payments and indemnification payments]". The section also sets forth a number of illustrative factors that should be considered. The Corporation has carefully considered these factors in arriving at the conclusion that golden parachute payments generally should be prohibited, except in the narrow circumstances delineated in § 359.4 of the Second Proposal. Section 359.4 of the Second Proposal also sets forth a procedure to allow an institution or institution-affiliated party which desires to make a payment or enter into an agreement which it determines should not be prohibited, but which is not clearly covered by any of the express "exceptions" to the prohibition, to solicit appropriate regulatory approvals. In so doing, the institution or institution-affiliated party will be required to address certain of the factors enumerated in section 18(k) of the FDI Act, and the appropriate federal banking agency and the Corporation may consider the remaining factors and any other circumstances which bear on the issue of whether the proposed payment would be contrary to the intent of the prohibition.

Section 18(k) of the FDI Act also authorizes the FDIC to prohibit or limit indemnification payments. (12 U.S.C. 1828(k)(5).) A "prohibited indemnification payment" is defined in the Second Proposal as payment by an insured depository institution or its depository institution holding company for the benefit of an IAP in order to pay or reimburse such person for any liability or legal expense sustained with regard to an administrative or civil enforcement action which results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the conduct of the affairs of an insured depository institution or required to cease and desist from or take any affirmative action described in section 8(b) of the FDI Act. The legislative history of the Fraud Act, which added section 18(k) to the FDI Act, makes it clear that this section is intended (i) to preserve the deterrent effects of administrative enforcement or civil actions by insuring that institution-affiliated parties who are found to have violated the law, engaged in unsafe or unsound banking practices or breached any fiduciary duty to the institution, pay any civil money penalties and associated legal expenses out of their own pockets without reimbursement from the institution or its holding company and (ii) to safeguard the assets of financial institutions by prohibiting the expenditure of funds to defend, pay penalties imposed on or reimburse institution-affiliated parties who have been found to have violated the law. 136 Cong. Rec. E3687 (daily ed. November 2, 1990) (statement of Rep. Schumer).

The FDIC is of the opinion that it would be inconsistent with the intent of the Fraud Act categorically to prohibit insured depository institutions and holding companies from advancing funds to pay or reimburse IAP's for reasonable legal or other professional expenses incurred in defending against an administrative or civil action brought by a federal banking agency prior to the entry of a final order. Therefore, § 359.5 of the Second Proposal sets forth the circumstances under which such indemnification payments may be made. The FDIC is of the opinion that five criteria must be satisfied in order to permit an institution to make or agree to make any indemnification payment to or for the benefit of any IAP prior to the entry of a final order in the IAP's favor. However, an institution or its holding company may purchase commercial insurance policies or fidelity bonds, at a reasonable cost, which may pay the cost of defending an administrative proceeding or civil action. Such insurance cannot pay any penalty or judgement. However, it may pay restitution to the insured depository institution, depository institution holding company or the receiver.

[4] More precisely, only two of these are actual exceptions to the prohibition in that they permit a payment or agreement which is covered by the statutory language. The others are definitions of statutory terms which have been developed or refined by the Corporation.

[5] These criteria are that the institution or holding company is insolvent, in conservatorship of receivership, troubled, rated "4" or "5", or subject to a proceeding to terminate deposit insurance.

Issues Raised By Commentators—Golden Parachutes

The FDIC has carefully reviewed and analyzed the substantial number of comment letters which it received in response to the First Proposal. With regard to the golden parachute portion of the First Proposal, the most significant issues raised by the comment letters are discussed below.

1. Bona Fide Deferred Compensation Plans

A substantial number of commenters raised the issue of whether the requirement that *bona fide* deferred compensation plans be "funded" in order to be excluded from the regulation's proscriptions is appropriate. Section 359.1(d)(2) of the First Proposal established a requirement that a nonqualified[6] deferred compensation plan be "funded" in order to be considered a "*bona fide* deferred compensation plan or arrangement" which is excluded from the definition of golden parachute payment. The term funded was defined as meaning that "specific assets are segregated or otherwise set aside so that such assets are not available to the institution or holding company for any purpose other than distribution to the participating employee(s) and are not available to satisfy claims of the institution's or holding company's creditors". First Proposal § 359.1(d)(2). The vast majority of comment letters which the FDIC received raised the issue of the appropriate definition of *bona fide* deferred compensation plan and virtually every letter which raised this issue disagreed with the Corporation's imposition of the funding requirement. The predominant argument against such a requirement is that when Congress drafted section 18(k)(4)(C)(ii) of the FDI Act to exclude *bona fide* deferred compensation plans from the definition of golden parachute, it was aware and approved of the established industry practice of utilizing unfunded, nonqualified deferred compensation plans (commonly referred to as elective, excess or supplemental plans) to supplement the traditional tax qualified defined benefit or defined contribution retirement plan. Many of the comment letters also pointed out that the Internal Revenue Code (26 U.S.C. 1 *et seq.*) (the "Code") recognizes these types of nonqualified deferred compensation plans and urged the FDIC to look to the Code as being dispositive. Almost all of the relevant comment letters expressed grave concerns that the FDIC's imposition of the funding requirement would upset established deferred compensation plans and prompt depository institutions and holding companies to incur significant unwanted expenses by terminating these plans and making cash payments to the beneficiaries. Nonetheless, Congress chose not to define the term "*bona fide* deferred compensation plan", but explicitly left that task to the FDIC.

First, it should be pointed out that the FDIC is not bound by the provisions of the Internal Revenue Code, or any other federal statute, in defining the term *bona fide* deferred compensation plan or arrangement. While the Code's explanation and treatment of such plans may be instructive, it is not binding on the Corporation in the context of this rulemaking. Similarly, the fact that the industry has utilized unfunded, non-qualified plans for a period of time and would be inconvenienced by the implementation of the proposed regulation is insufficient to compel the change that the majority of comments advocate. The FDIC's responsibility is to ascertain the proper meaning of the term *bona fide* deferred compensation plan, while ensuring that such definition does not permit depository institutions, holding companies or institution-affiliated parties to circumvent the intent of the statute by exploiting an imprecisely drafted definition. On the other hand, if the Corporation can accomplish its purposes in a manner that is less disruptive but just as effective as the scheme set forth in the First Proposal, such an alternative bears close scrutiny.

The FDIC has been persuaded by the many comments it received with regard to the definition of *bona fide* deferred compensation plan that the funding requirement which was contained in § 359.1(d)(2) of the First Proposal is not necessary and should be deleted. Thus, the definition of *bona fide* deferred compensation plan or arrangement, which appears in § 359.1(d) of the Second Proposal, does not contain such a requirement. This provision of the Second Proposal permits unfunded, nonqualified deferred compensation plans provided the institution or holding company utilizes either a rabbi or a secular trust (which are properly accounted for) or the benefits or payments are expensed as an accrued liability according to generally accepted accounting principles (GAAP). Second Proposal § 359.1(d). It is the FDIC's judgment that these requirements will permit depository institutions and holding companies to utilize deferred compensation plans for legitimate purposes, while ensuring that such plans can not be used as a vehicle to make what would otherwise be considered a prohibited golden parachute payment.

2. Severance Pay Plans

All the comment letters which raised the issue expressed support for the FDIC's decision to except traditional severance pay plans which cover reductions in force from the definition of golden parachute payment. However, a substantial percentage of these letters urged the Corporation to increase the allowable amount of severance pay from six to twelve months salary and to expand the exception to include payments pursuant to voluntary resignations or early retirements which occur in conjunction with a reduction in force instituted by a depository institution or holding company. After careful consideration, the Corporation has elected to increase the permissible amount of severance pay from six to twelve months' salary. In addition, the regulation has been amended to permit institutions to request consent to pay greater severance benefits. Second Proposal § 359.1(f)(2)(v). The FDIC requests public comment on this new alternative. The inclusion in the exception of voluntary resignations and early retirements in conjunction with a reduction in force provides depository institutions and holding companies with more flexibility in achieving an optimum workforce size and cost savings. Second Proposal § 359.1(f)(2)(v). The FDIC has also decided to include a definition of the term "nondiscriminatory" in § 359.1(j) of the Second Proposal in an effort to make it clear how this term should be applied in the context of this regulation. The Corporation emphasizes that this exception is only applicable to institution-affiliated parties who are

[6] The term "nonqualified" refers to a benefit plan which is not qualified (or is not intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401).

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terminated, resign or retire due to a reduction in force and receive severance benefits pursuant to a existing nondiscriminatory severance pay plan.

3. White Knight Exception

Section 359.4 of the First Proposal sets forth what is commonly referred to as the "white knight" exception to the golden parachute prohibition. This provision permits a troubled depository institution or holding company to hire an individual and agree to pay him/her a golden parachute payment upon termination of employment, provided that the amount and terms of the golden parachute payment receive the prior written consent of the appropriate federal banking agency and the FDIC. As we stated in the preamble to the First Proposal:

> The purpose of this exception is to permit a troubled institution or holding company to attempt to reverse its slide toward economic failure by attracting competent, new management which enjoys the confidence of that institution's primary federal regulator and the FDIC. . . . [T]he FDIC is aware that individuals who possess the experience and expertise which qualify them for such a position are highly sought after business persons who, in most circumstances, already have established successful careers with other financial institutions. In order to induce such an individual to leave an established, stable career for a job in a troubled institution which may not survive regardless of that individual's efforts, it is generally necessary to agree to pay that individual some sort of severance payment in the event that the efforts of the individual for the institution are not successful. It is the FDIC's view that . . . such agreements reflect good business judgment, recognize the realities of the marketplace and may benefit both the institution and the deposit insurance funds.

(56 FR 50531, October 7, 1991). While every comment letter which addressed this exception supported it, a significant percentage of those letters urged the FDIC to broaden the exception in certain respects. First, it was recommended that the Corporation revise § 359.4 of the First Proposal to automatically grandfather institution-affiliated parties who were hired to assist troubled depository institutions and holding companies prior to the effective date of the final regulation. The FDIC has carefully considered this suggestion and is of the opinion that such an across-the-board grandfathering would not be prudent. Section 359.4 is structured so that the appropriate federal banking agency and the FDIC have an opportunity to review the amount and terms of any proposed severance arrangement prior to it being entered into. To grandfather all such existing severance agreements would deny the appropriate federal banking agency and the FDIC the opportunity to conduct this review. However, institution-affiliated parties, insured depository institutions and holding companies are of course free to request review and approval of existing agreements for institution-affiliated parties who were hired at a time when the depository institution or holding company already met any of the criteria listed in § 359.1(f)(1)(ii) of the Second Proposal.

Second, a significant number of commentators also suggested that the white knight exception be broadened to encompass individuals who are hired "in contemplation of" the depository institution or holding company becoming troubled. These letters urged this revision as a way to allow depository institutions to address their problems sooner and, thus, more effectively. The FDIC concurs in this line of reasoning. It makes good sense that the value of this exception can be enhanced by not restricting its coverage to institutions which are already categorized as troubled. If existing management or a board of directors is of the reasoned opinion that the institution in question is sliding toward becoming troubled and that new management is needed to arrest that slide, then prudent business practice would suggest that it is better to hire such new management sooner rather than later. Therefore, the exception has been expanded to allow applicants to apply for an exemption prior to becoming troubled when they are of the opinion that they are approaching a troubled condition and new management is needed. Second Proposal § 359.4(b).

Third, several comment letters suggested that the FDIC broaden the § 359.4 exception of the First Proposal to include current officers and employees of a depository institution who are promoted to executive positions at a time when the institution is troubled. While the FDIC agrees that "it is not axiomatic that competent new management can only be found outside of an institution", the underlying reason for allowing what would otherwise be a prohibited golden parachute payment is not present in the case of a current employee who is promoted to an executive position. As we stated earlier, this type of severance payment will be approved in limited circumstances as a way to entice competent management to sever established ties with their current employer and take a calculated risk that they can assist in bringing a troubled institution back to financial health. This rationale does not apply to the case of a current employee of a troubled institution since he/she does not need to be enticed to give up an established, stable career with another employer.

The FDIC's experience since the publication of the First Proposal has made it clear that some confusion exists concerning the proper procedure to request and the effect of obtaining prior written consent for a white knight exception. Interested parties are referred to new § 359.6 of the Second Proposal, "Filing Instructions". In terms of effect, the FDIC would like to clarify that approval of a white knight exception does not improve the white knight's position in the event of the insolvency of the institution as the FDIC (in its corporate capacity) can neither bind a receiver nor affect the provability of receivership claims. In the event that the insured depository institution is placed into receivership or conservatorship, the FDIC (in its corporate capacity) would not be obligated to pay the promised severance benefit and the white knight would be accorded no preferential treatment on the basis of such prior approval.

4. Permissible Golden Parachutes in Changes in Control

Several comment letters noted that the First Proposal does not provide an exception to the prohibition against golden parachute payments in the case of a change in control where the depository institution to be acquired is troubled. These letters raised the arguments which were briefly mentioned in the preamble to the First Proposal (56 FR 50529, October 7, 1991) concerning the benefits of protecting executive officers of companies which are the subject of hostile takeovers so that their business decisions concerning what is best for their company are not influenced by the acquisition's ultimate effect on their employment. While the FDIC agrees that golden parachute payments can serve a useful purpose in such circumstances, expanding the exceptions permitted pursuant to § 359.4 of the First Proposal to include golden parachute payments made in the context of changes in control would open the door to the possibility of payments being made to institution-affiliated parties who are substantially responsible for the depository institution's troubled condition. After balancing the relative advantages and disadvantages of expanding § 359.4 to include this exception, the FDIC is of the opinion that the safety of the deposit insurance funds and the soundness of the banking system in general is best served by permitting limited golden parachute payments with prior regulatory approval in the context of unassisted changes in control.[7] While this decision does not adopt completely the position advocated by the majority of comment letters, the FDIC is concerned that a more open-ended exception would have the unfortunate result of allowing institution-affiliated parties who are substantially responsible for the troubled condition of their depository institutions to receive golden parachute payments.

5. Definition of Golden Parachute Payment

A significant number of comment letters pointed out that a literal reading of the definition of golden parachute payment contained in § 359.1(g) of the First Proposal would include certain forms of retirement payments being made to former institution-affiliated parties who retired and began collecting such payments at a time when the depository institution or its holding company did not satisfy any of the circumstances delineated in §§ 359.1(g)(1)(ii) (A) through (E) of the First Proposal, but which institution or holding company subsequently became troubled. It was also brought to our attention that a literal reading of the definition seemed to provide that even when a troubled depository institution or its holding company ceased satisfying any of the criteria delineated in §§ 359.1(g)(1)(ii) (A) through (E) of the First Proposal, golden parachute payments to institution-affiliated parties who leave the institution subsequent to its return to financial health would continue to be prohibited. It is not the FDIC's intent that the regulation produce either of these results. Institution-affiliated parties who retire from an insured depository institution or holding company at a time when it is not troubled and begin collecting periodic retirement payments should not have to worry that the subsequent deterioration of the institution or holding company will jeopardize their continuing to receive such payments, at least as far as this regulation is concerned.[8] Similarly, if a depository institution or holding company recovers from its troubled condition, then it is no longer covered under the scope of the regulation with respect to its existing institution-affiliated parties, and what might have been considered prohibited golden parachute payments would no longer be unlawful and could be paid to an institution-affiliated party whose employment is terminated once the institution or holding company is no longer troubled.[9] It is our opinion that the revised definition of bona fide deferred compensation plan or arrangement contained in § 359.1(d) of the Second Proposal should alleviate these concerns since the revised definition recognizes and includes well-established forms of deferred compensation. However, the FDIC has also chosen to revise the definition of golden parachute payment, which is contained in § 359.1(f) of the Second Proposal, to make it clear that to be a golden parachute, an institution-affiliated party's employment by or affiliation with an insured depository institution or holding company must terminate at a time when the institution or holding company is troubled or in contemplation of it becoming troubled. Second Proposal § 359.1(f)(1)(iii). If an institution-affiliated party's employment is terminated at a time when the depository institution or holding company is troubled, the payment of prohibited golden parachute payments to that individual will continue to be prohibited even after the institution or holding company ceases to be troubled.

6. Definition of Depository Institution Holding Company

Section 359.1(f) of the First Proposal, the definition of "depository institution holding company", includes any bank holding company, savings and loan holding company and any direct or indirect subsidiary thereof, other than an insured depository institution. A number of comment letters raised the concern that the definition in the First Proposal is not consistent with the definition of depository institution holding company contained in section 3(w)(1) of the FDI Act. A number of comment letters also argued that the broader definition used in the First Proposal would improperly include non-financial services affiliates that are not involved with the business conducted by the insured depository institution within the purview of the regulation. Pursuant to the First Proposal, golden parachute payments by a non-financial services company to one of its executives would be restricted simply because that company was ultimately owned by a holding company which also owned an insured depository institution. After considering this point, the FDIC agrees that the definition of depository institution holding company in the Second Proposal should mirror the definition contained in section 3(w)(1) of the FDI Act. Second Proposal § 359.1(b).

7. Scope of Rule

Section 359.1(j) of the First Proposal contains the definition of institution-affiliated party. A number of comment letters raised the issue that the regulatory definition proposed by the FDIC goes beyond the statutory definition contained in section 3(u) of the FDI Act by including persons who have a certain relationship with a depository institution holding company. However, in carefully reviewing the language of section 18(k)(4)(A) of the FDI Act, the FDIC is of the opinion that Congress intended to include within the statute's scope individuals who are institution-affiliated parties of depository institution holding companies.

> The term "golden parachute payment" means any payment * * * by any insured depository institution or depository institution holding company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or holding company that * * * is contingent on the termination of such party's affiliation with the institution or holding company * * * [Emphasis added].

12 U.S.C. 1828(k)(4)(A). This interpretation is consistent with section 8(b)(3) of the FDI Act which provides that the Act's enforcement provisions are equally applicable to bank holding companies. Our consultations with the Federal Reserve Board staff have established that the Federal Reserve Board's established position is that it has the authority to take enforcement action against institution-affiliated parties of bank holding companies pursuant to section 8(b)(3) of the FDI Act.

The FDIC is also of the opinion that to interpret section 18(k) to not apply to institution-affiliated parties of holding companies would subvert the statute's intent by leaving a significant gap in its coverage. Federal Reserve staff has advised the Corporation that some of the most abusive golden parachute payments which were made prior to the enactment of the statute and were known to Congress at the time involved IAPs of holding companies. Thus, the FDIC has decided not to revise the definition of IAP contained in the First Proposal, except for a minor technical change.

[7] Obviously, this analysis does not apply to situations where the Corporation is assisting in the acquisition of a troubled insured depository institution pursuant to section 13 of the FDI Act.

[8] Obviously, the financial deterioration of the institution or holding company may adversely affect the institution's or holding company's ability to make the payments regardless of the regulation.

[9] This payment could include benefits which continued to accrue during the tenure of the institution's or holding company's troubled condition.

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8. Limitation to Executive Officers and Directors

Several comment letters suggested that the scope of the regulation should be limited to cover only executive officers and directors of insured depository institutions and depository institution holding companies, as opposed to institution-affiliated parties of institutions and holding companies. On the other hand, section 18(k)(4) of the FDI Act explicitly refers to "institution-affiliated party".

While potential golden parachute abuses could theoretically involve non-executive officers and non-directors, it has been the FDIC's experience that such instances are extremely rare. It is not the FDIC's intent to place unfair and inappropriate limits on payments to a bank or holding company's non-official or non-managerial staff. This is evidenced, for example, by the severance pay exception which is contained in § 359.1(f)(2)(v) of the Second Proposal. In the Corporation's view, it is very unlikely that a bank teller (or other non-executive/non-director) would come within the scope of this rule since bank tellers generally do not get paid golden parachutes. That being the case, and in view of the fact that the statute uses the term "institution-affiliated party", the FDIC has chosen not to explicitly exclude employees who are not senior executive officers or directors from the Second Proposal's scope. It should also be pointed out that any such employee who feels that he/she is being unfairly affected by the rule could apply for permission to receive a payment pursuant to § 359.4 of the Second Proposal.

9. Golden Parachute Agreements Entered Into Prior to Effective Date of Final Regulation

The First Proposal took the position that the regulation could limit or prohibit golden parachute and/or indemnification payments which are sought to be made pursuant to contracts and agreements which were entered into prior to the effective date of the final regulation, *i.e.*, as of the effective date of the statute. A number of comment letters briefly asserted that the regulation could not lawfully affect such agreements since to do so would be "unconstitutional". However, the vast majority of comment letters which raised this issue did not explain in any detail the basis for this alleged unconstitutionality.

The FDIC has examined this issue in greater depth and while we remain convinced that ample precedent exists to support the position which was taken in the First Proposal, no compelling need exists to apply the regulation in this fashion. However, the FDIC views the Second Proposal as putting institutions and IAPs on notice of the Corporation's views with regard to these types of agreements and the FDIC will look unfavorably upon any golden parachute agreement which is entered into after the date of this proposal but before the effective date of the final regulation as an attempt to circumvent the regulation.

10. Prior Approval of Otherwise Prohibited Golden Parachutes

Section 359.2(b) of the First Proposal permits the payment of a golden parachute provided that such payment is approved by the institution's appropriate federal banking agency, with the written concurrence of the FDIC. Several comment letters pointed out, however, that this subsection afforded only depository institutions and holding companies the right to request such an exception. In the interest of fairness, the FDIC has revised this subsection to permit institution-affiliated parties to also request permission to receive such a payment.[10]

Section 359.2(b) of the First Proposal also requires that applicants requesting permission to make or receive an otherwise prohibited golden parachute payment shall provide the appropriate federal banking agency and the FDIC with certain information. First Proposal §§ 359.2(b) (1) through (4). A significant number of commentators asserted that this section of the First Proposal improperly reverses the burden of proof as delineated in section 18(k)(2) of the FDI Act to compel the applicant to demonstrate that the applicant has no reasonable basis to believe that the institution-affiliated party to whom the payment is to be made has committed any fraudulent act, is substantially responsible for the insolvency of the institution or holding company, has materially violated any banking law or regulation or has violated certain specific federal criminal laws. These comment letters also asserted that the structure of the proposed regulation requires the applicant to "prove a negative", an impossible task.

The FDIC is of the opinion that the arguments advanced in the comment letters concerning an inappropriate reversal of the burden of proof are misplaced. First, a careful reading of section 18(k)(2) of the FDI Act reveals that it does not establish a burden of proof, in the traditional legal sense, at all. What this subsection does is to delineate certain factors which Congress suggests that the FDIC consider in evaluating a request to pay or receive an otherwise prohibited golden parachute payment. This list of factors is not mandatory, nor is it exclusive. The only mandatory language in section 18(k)(2) requires the FDIC to prescribe whatever factors it ultimately decides to consider in any regulation it promulgates. The statute does not address the question of which party bears the burden of producing evidence or the burden of proof. What the FDIC has chosen to do in the First Proposal is to place the burden of production of evidence where it most reasonably belongs, with the party that possesses or has the most complete access to the information which is necessary for the Corporation to make an informed and equitable judgment. The FDIC is not requiring that a party seeking to make or receive a golden parachute payment "prove his or her innocence".

In response to the comment letters, the FDIC has revised § 359.2(b) of the First Proposal in an effort to clarify how this section will function. These revisions make it clear that the depository institution, holding company or institution-affiliated party seeking a determination that an otherwise prohibited golden parachute payment is permissible is required to inform the appropriate federal banking agency and the FDIC of any information of which it is aware that would indicate that there is a reasonable basis to believe that the institution-affiliated party in question satisfies any of the criteria set forth in §§ 359.4(d) (1) through (4) of the Second Proposal. If the applicant is not aware of any such information, it shall so certify.

11. Condition of Institution at Time of Termination of Employment Is Crucial

Previously in this preamble, we clarified that the Second Proposal should not be construed to cut off the payment of retirement benefits to former institution-affiliated employees who retired and began receiving retirement payments at a time when the depository institution or its holding company was not troubled, in the event that such institution or holding company subsequently becomes troubled. This same question arises in the case of non-retirement benefits. For example, while most golden parachute payments are lump sum, the Corporation is aware of instances where such payments are made in periodic installments. The FDIC is of the opinion that as long as the institution-affiliated party did not terminate his/her employment in contemplation of the depository institution or holding company becoming troubled in an effort to circumvent the regulation's proscriptions, such payments should be allowed to continue because the nexus between the institution-affiliated party and the institution's or holding company's troubled condition would not be present. However, this is not meant to suggest that such retirement benefits or permissible golden parachute payments will be continued in the event that the institution is placed into conservatorship or receivership.

[10] Such a request should be in letter form to the FDIC's Regional Director (DOS) for the region in which the depository institution or holding company is headquartered.

12. Other Golden Parachute Issues

A number of comment letters took issue with the fact that the First Proposal prohibits the payment of a golden parachute by both an insured depository institution and its holding company when either of those entities is troubled. These letters suggested that the First Proposal should be revised to provide that only the troubled entity be prohibited from making a golden parachute payment. The FDIC has carefully considered this suggestion and has decided to scale back its original proposal and to adopt a modified version of the commenters' suggestion. Thus, a troubled insured depository institution may not make a golden parachute payment to any of its IAPs, excluding any of the exceptions described previously. In addition, a depository institution holding company may not make a golden parachute payment to any of its IAPs if it is troubled and may not pay a golden parachute to an IAP of an affiliated insured depository institution if that institution is troubled.

The FDIC received several comment letters which suggested that the Corporation make an exception to the golden parachute prohibition for depository institutions with a composite rating of "4", but which exceed all applicable regulatory capital requirements. The FDIC has decided not to incorporate this exception into the Second Proposal since an institution's capital level is only one indication of its overall financial health.

A significant number of comment letters expressed concern that the criteria delineated in § 359.1(g)(1)(ii)(C) of the First Proposal (that the depository institution or holding company be designated troubled by its primary federal regulator) is overly broad since it would include any institution or holding company which is subject to a written supervisory agreement even if that institution or holding company is not experiencing significant financial difficulties. Since the nature of written supervisory agreements vary and that the facts of each case are so individual, the FDIC prefers not to make a blanket exception to the rule in this case. Rather, the Corporation will consider exceptions on a case by case basis pursuant to § 359.4(d) of the Second Proposal.

Issues Raised By Commentators—Indemnification Payments

The FDIC has carefully reviewed and analyzed the comment letters with regard to the indemnification portion of the First Proposal.

1. Criteria for Making Indemnification Payments

Section 359.5 of the First Proposal delineates the circumstances under which an insured depository institution or depository institution holding company may make or agree to make indemnification payments to institution-affiliated parties. The comment letters made it clear that this section of the First Proposal is viewed as being just as significant as the sections dealing with golden parachute payments. The overwhelming majority of comment letters expressed the opinion that the prohibitions contained in this section of the First Proposal would make it unreasonably difficult for depository institutions and holding companies to attract and retain competent officers, directors and employees.

Section 359.5(a) of the First Proposal sets forth six criteria which must be met in order for a depository institution or holding company to make or agree to make indemnification payments to an institution-affiliated party. The majority of comment letters which raised indemnification issues focused on § 359.5(a)(1) of the First Proposal. This subsection provides that in order to indemnify an institution-affiliated party, the institution's or holding company's board of directors, in good faith, must determine in writing that the institution-affiliated party has a "substantial likelihood of prevailing on the merits". The consensus of commentators' opinions was that this standard is so difficult to meet that a board of directors very rarely, if ever, would be able to authorize indemnification. Many comment letters pointed out that requests for indemnification are customarily made at the commencement of an administrative action or civil proceeding when the institution-affiliated party and his/her counsel are just beginning to assemble their case. Thus, many of the facts and circumstances surrounding the conduct in question are not yet known. This being the case, the commentators argued that it would be very difficult for a board of directors to find that an institution-affiliated party had a substantial likelihood of prevailing on the merits. Too many unanswered questions would be present for such a finding to be realistically made. The commentators recommended a variety of lesser standards, most notably that the institution-affiliated party "acted in good faith and in a manner he/she believed to be in the best interests of the institution", that there is a "reasonable likelihood of prevailing on the merits" or that the FDIC defer to the applicable state law standard.

After considerable review, the FDIC agrees with the position expressed by the majority of commentators that the standard contained in § 359.5(a)(1) of the First Proposal imposes too significant an obstacle to reasonable and fair indemnification payments. However, the Corporation does not agree with the commentators who suggested that it should defer to the applicable state law standard. In enacting section 18(k) of the FDI Act, Congress made it quite clear that there was to be one uniform federal standard to govern the making of indemnification payments by insured depository institutions and depository institution holding companies. In an effort to balance the need of depository institutions to attract and retain qualified directors and management with the protection of the deposit insurance funds, the FDIC has decided to revise § 359.5(a)(1) of the First Proposal to utilize a somewhat less stringent standard. Therefore, § 359.5 of the Second Proposal requires that the depository institution's or holding company's board of directors determines in writing that the institution-affiliated party requesting indemnification "acted in good faith and in a manner which he/she believed to be in the best interests of the institution". Of course, the FDIC expects that an institution's board of directors will make such a finding only after due investigation.

2. Continual Monitoring by Board of Directors Not Required

A significant number of comment letters also took issue with the FDIC's requirement, contained in § 359.5(a)(3) of the First Proposal, that the institution's or holding company's board of directors continually monitor actions against institution-affiliated parties so that it can reassess its

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decision to permit indemnification. These commentators expressed the opinion that such a requirement places an unfair and undue burden on both the board of directors and the institution-affiliated party seeking indemnification. The proposed standard would mean that a board's decision would never be "final", regardless of the amount of time, effort and painstaking review that went into it. It would also mean that an institution-affiliated party could never depend on indemnification since a prior decision to approve indemnification could be revoked at any time. The FDIC agrees that there is value in encouraging an amount of certainty in such cases. Thus, this requirement has been deleted from the Second Proposal.

3. Permissible Indemnification Payments

Section 359.5(a)(4) of the First Proposal prohibits the use of indemnification payments to pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of an administrative proceeding or civil action instituted by any federal banking agency or any judgment or penalty imposed with respect to any such matter where the IAP is assessed a civil money penalty, removed from office or made subject to a cease and desist order. The FDIC received a substantial number of comment letters which addressed this particular restriction. Interestingly, however, while the proscription of the use of indemnification to pay for settlements was criticized, the arguments against it were often diametrically opposed. For example, a number of comment letters made the argument that to prohibit the use of indemnification to pay for costs associated with settlements would force institution-affiliated parties to litigate every action to its ultimate conclusion in the hope of earning the right to be indemnified. On the other hand, an approximately equal number of comment letters argued just as vociferously that this requirement would compel institution-affiliated parties to settle actions immediately before costs became prohibitively high, thereby denying them an opportunity to defend themselves. Other comment letters pointed out that negotiated settlements benefit all parties involved and that a settlement where the institution-affiliated party does not admit to wrongdoing should not come within the definition of indemnification payment contained in section 18(k)(5)(A) of the FDI Act because the settlement agreement would not contain any penalty or require any affirmative action that would, if embodied in a final order, preclude indemnification under FDI Act section 18(k)(5)(A) and § 359.5(a)(5) of the First Proposal.

After considerable review, the FDIC has chosen not to permit indemnification of settlement costs by the depository institution or holding company where the IAP is assessed a civil money penalty, removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution or required to cease and desist from or take any affirmative action described in section 8(b) of the Act.[11] However, insured depository institutions and depository institution holding companies may purchase commercial insurance policies or fidelity bonds, at a reasonable cost, which may pay all costs incurred in an action or proceeding which is settled, except civil money penalties and judgements. As we noted earlier, it is also permissible for insurance policies and bonds to pay restitution to the depository institution, holding company or receiver.

4. Involvement by Majority or All of Board of Directors

A significant number of comment letters pointed out that § 359.5(b) of the First Proposal, which prohibits an institution-affiliated party who is requesting indemnification from participating in any way in the board's discussion and approval of such payments, does not take into account situations where the majority or all the members of the board of directors are the subject of an enforcement action or civil proceeding. Thus, consistent with several recommendations we received, the FDIC has added new §§ 359.5 (c) and (d) to the Second Proposal. Section 359.5(c) provides that if a majority of the members of an institution's or holding company's board of directors are named as respondents in an administrative proceeding or civil action commenced by any federal banking agency the remaining board member(s) may either make an independent decision concerning authorization of indemnification payments or retain independent legal counsel to provide an opinion as to whether the conditions contained in § 359.5(a) of the Second Proposal have been met. If the entire board of directors is subject to the administrative action or civil proceeding, § 359.5(d) of the Second Proposal requires the board to retain independent legal counsel to opine as to whether the conditions set forth in § 359.5(a) have been met. If independent legal counsel is of the opinion that these conditions have been met, the board may rely on such an opinion in authorizing the requested indemnification.[12] The FDIC would regard legal counsel as being "independent" (for purposes of this regulation) if the attorney(s) is not a member of the depository institution's or holding company's in-house legal staff, does not have an ongoing relationship with the depository institution or holding company and no other conflict of interest is present. The FDIC is of the opinion that these procedures effectively address the difficulties inherent in situations where the majority of or the entire board of directors of an institution or holding company are the subjects of an enforcement proceeding. The use of independent legal counsel ensures an unbiased review of the five criteria necessary to approve indemnification and does not impose any undue hardship upon the depository institution or holding company in question.

5. Definition of Indemnification Payment

Section 359.1(h) of the First Proposal contained the definition of "indemnification payment". A number of comment letters expressed concern that even if an institution or holding company could qualify to purchase a commercial insurance policy or fidelity bond which would cover the costs of defending and/or settling an administrative action or civil proceeding commenced by a federal banking agency, the proposed regulation prohibited an institution or holding company from purchasing such coverage. First Proposal § 359.1(h)(2). Upon further consideration, as we noted earlier herein, the FDIC is of the opinion that if a depository institution or holding company can purchase, at reasonable rates, a commercial insurance policy or fidelity bond which will pay the costs of defending and/or settling an administrative action or civil proceeding commenced by a federal banking agency, neither the statute nor any consideration of safe and sound banking practice require the Corporation to interfere with such an arrangement. Section 359.1(l)(2) of the Second Proposal reflects this change. This revision should address the concerns

[11] If indemnification was authorized and paid by the depository institution or holding company pursuant to section 359.5 of this part, the IAP is obligated to reimburse the institution or holding company, respectively.

[12] Of course, the board of directors could decline to approve the indemnification request despite counsel's favorable opinion.

raised by numerous comment letters that the proposed regulation's restriction would impair the ability of depository institutions and holding companies to attract and retain competent management and directors. It is important to emphasize that the Second Proposal would prohibit such an insurance policy or bond from being used to pay or reimburse an institution-affiliated party for the amount of any judgment or civil money penalty assessed against him/her.

6. Fees Incurred During Investigations

The First Proposal did not address the question of whether indemnification for counsel fees incurred during the investigative stage of a potential administrative enforcement action should be permitted. In view of the definition of indemnification payment contained in section 18(k)(5)(A) of the FDI Act and its specific reference to "any administrative proceeding or civil action instituted by the appropriate Federal banking agency", the FDIC is of the opinion that indemnification of such expenses incurred prior to the commencement of a formal action should not be prohibited.

Technical Amendments

The comment letters also suggested a number of technical revisions to the First Proposal to clarify certain provisions or avoid certain anomalies. The definition of golden parachute payment contained in section 18(k)(4)(A) of the FDI Act refers to "any payment (or any agreement to make any payment) in the nature of compensation * * *." The definition contained in section 359.1(g)(1) of the First Proposal deleted the phrase "in the nature of compensation". Several comment letters pointed out that the deletion of this phrase from the regulatory definition could be construed to prohibit the customary payment of certain accrued benefits upon termination of employment (e.g., accrued vacation, sick leave, etc.). Since it is not the FDIC's intent to prohibit depository institutions and holding companies, even those that are troubled, from paying terminating employees for accrued but unused benefits such as vacation or sick time, this phrase has been added to the Second Proposal.[13] Second Proposal § 359.1(f)(1).

Several comment letters also pointed out that the definition of "*bona fide* deferred compensation plan or arrangement" contained in § 359.1(d)(1) of the First Proposal did not allow for reasonable earnings on elective deferred compensation. Section 359.1(d)(1) of the Second Proposal makes it clear that a *bona fide* deferred compensation plan includes the reasonable investment return on such elective deferrals.

Section 18(k)(4)(C) of the FDI Act and § 359.1(g)(2) of the First Proposal delineate certain types of payments which are not included within the definition of golden parachute. In describing such payments, the words "nondiscriminatory" and "benefit plan" are used. In view of the fact that the precise definition of these terms is very important, the FDIC has added them to the list of definitions contained in the Second Proposal. Second Proposal §§ 359.1 (c) and (j). In a similar vein, several comment letters suggested that the term "indemnification payment" contained in § 359.1(h) of the First Proposal be changed to "prohibited indemnification payment" in order to avoid confusion with certain types of indemnification payments which are permissible. The FDIC agrees with and has adopted this suggestion. Second Proposal § 359.1(l).

A significant number of comment letters pointed out that while the definition of an excess deferred compensation plan contained in § 359.1(d)(2)(i) of the First Proposal correctly referenced the limitations imposed by section 415 of the Internal Revenue Code of 1986, sections 401(a)(17) and 402(g) of the Code are also applicable, but were not referenced. The FDIC has revised the Second Proposal to include references to these two provisions of the Internal Revenue Code, as well as any other applicable provisions. Second Proposal § 359.1(d)(2)(i).

A very small number of comment letters informed us that certain states, particularly California, have statutes which require all covered employers to pay severance benefits in certain circumstances. These commentators were concerned that the definition of golden parachute payment in the First Proposal would conflict with such state statutes. In order to avoid such a conflict, the FDIC revised the definition of golden parachute payment to explicitly exclude any severance or similar payment which is required to be paid pursuant to state law which applies to all employers, except those that are exempted due to their small number of employees or other similar criteria. Second Proposal § 359.1(f)(2)(vi).

The FDIC has also chosen to clarify the definition of "payment" contained in § 359.1(*l*) of the First Proposal by making it explicit that the phrase "the conferring of any benefit" includes the granting of stock options and stock appreciation rights. Second Proposal § 359.1(k)(3).

The FDIC has added a new subsection to the proposed regulation, § 359.6, entitled "Filing Instructions". This new subsection contains instructions on where and how to file written requests for prior approval to make certain payments which are otherwise not permitted.

Closed Bank/Receivership Issues

The FDIC has added a new § 359.7 to the proposed regulation to make it clear that this regulation would not bind any receiver of a failed insured depository institution. The fact that the FDIC or any other federal banking agency consents to certain types of payments does not imply that the approving agency or the receiver will be responsible for making the payments in event of the insolvency of the institution or that the recipient will receive some sort of preference over other creditors from the receivership.

Other Enforcement Authority

The FDIC notes that its authority to regulate golden parachutes and indemnification payments pursuant to section 18(k) of the FDI Act is in addition to its safety and soundness enforcement authority pursuant to section 8 of the FDI Act.

Delegations of Authority

The FDIC is also proposing to amend § 303.7 of its regulations, 12 CFR 303.7, to add a new paragraph (g) which would delegate the Board's authority to the Executive Director, Supervision and Resolutions, Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or deny requests to make excess nondiscriminatory severance plan payments as permitted by § 359.1(f)(2)(v) and golden parachute payments to "white knights", in change of control situations and other golden parachute payments which are not covered under any of the regulation's explicit exceptions, as permitted by § 359.4.

Request for Public Comment

The FDIC hereby requests comment on all aspects of the Second Proposal, including both legal and policy considerations. In particular, the Corporation is especially interested in whether the revisions to the First Proposal in response to the first set of

[13] Claims for certain benefits may not be provable or constitute "actual direct compensatory damages" under 12 U.S.C. 1821(e)(3) if the institution is placed into receivership. This regulation does not provide otherwise.

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public comment letters adequately address the concerns which were raised. Of course, commenters should discuss any new issues which have been raised as a result of these revisions by the FDIC. Interested parties are invited to submit comments during a 60 day comment period.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 359

Banks, Banking, Golden parachute payments, Indemnity payments.

For the reasons set out in the preamble, the FDIC Board of Directors hereby proposes to amend 12 CFR part 303 and to add part 359 to title 12, chapter III, subchapter B, of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1831e, 1831o, 1831p–1(a); 15 U.S.C. 1607.

2. In § 303.7, the section heading is revised and a new paragraph (g) is added to read as follows:

§ 303.7 Delegation of authority to the Executive Director for Supervision and Resolutions, the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

* * * * *

(g) *Requests pursuant to section 18(k) of the Act.* Authority is delegated to the Executive Director, the Director, and where confirmed in writing by the Executive Director or Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or deny requests pursuant to section 18(k) of the Act to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

(2) Golden parachute payments permitted by 12 CFR 359.4.

3. New part 359 is added to read as follows:

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

359.0 Scope.
359.1 Definitions.
359.2 Golden parachute payments prohibited.
359.3 Prohibited indemnification payments.
359.4 Permissible golden parachute payments.
359.5 Permissible indemnification payments.
359.6 Filing instructions.
359.7 Applicability in the event of receivership.

Authority: 12 U.S.C. 1828(k).

§ 359.0 Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of insured depository institutions, their subsidiaries and affiliated depository institution holding companies to make golden parachute and indemnification payments to institution-affiliated parties (IAP).

(b) The limitations on golden parachute payments apply to troubled insured depository institutions which seek to make golden parachute payments to their IAPs. The limitations also apply to depository institution holding companies which are troubled and seek to make golden parachute payments to their IAPs as well as healthy holding companies which seek to make golden parachute payments to IAPs of a troubled insured depository institution subsidiary. A "golden parachute payment" is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the insured depository institution making the payment is troubled or, if the payment is being made by an affiliated holding company, either the holding company itself or the insured depository institution employing the IAP, is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, nonqualified *bona fide* deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefit plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving the hiring of a "white knight" and unassisted changes in control. A procedure is also set forth whereby an institution or IAP can request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all insured depository institutions, their subsidiaries and affiliated depository institution holding companies regardless of their financial health. Generally, this part prohibits insured depository institutions, their subsidiaries and affiliated holding companies from indemnifying an IAP for costs sustained with regard to an administrative or civil enforcement action commenced by any federal banking agency which results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of an insured depository institution or required to cease and desist from or take an affirmative action described in section 8(b) (12 U.S.C. 1818(b)) of the Federal Deposit Insurance Act (FDI Act). However, there are exceptions to this general prohibition. First, an institution or holding company may purchase commercial insurance to cover such expenses, except judgments and penalties. Second, the institution or holding company may indemnify an IAP directly, except for judgments and penalties, if its board of directors makes certain specific findings.

§ 359.1 Definitions.

(a) *Act* means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1811, *et seq.*).

(b) *Appropriate federal banking agency, bank holding company, depository institution holding company* and *savings and loan holding company* have the meanings given to such terms in section 3 of the Act.

(c) *Benefit plan* means any plan, contract, agreement or other arrangement which is an "employee welfare benefit plan" as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided however, that such term shall not include any plan intended to be subject to paragraphs (f)(2)(iii) and (v) of this section.

(d) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement whereby:

(1) An IAP voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and

the insured depository institution or depository institution holding company either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of the institution's or holding company's creditors in the case of insolvency; or

(2) An insured depository institution or depository institution holding company establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (e)(1) of this section:

(i) Solely for the purpose of providing benefits for certain IAPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (f)(2)(v) of this section and permissible golden parachute payments described in § 359.4); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (d)(1) and (2) of this section, the following requirements shall apply:

(i) The plan was in effect at least one year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than one year prior to any of the events described in paragraph (f)(1)(ii) of this section and in accordance with any amendments to such plan during such one year period that do not increase the benefits payable thereunder;

(iii) The IAP has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(vi) The insured depository institution or depository institution holding company has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the institution's or holding company's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(e) *Corporation* means the Federal Deposit Insurance Corporation, in its corporate capacity.

(f)(1) The term *golden parachute payment* means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or an affiliated depository institution holding company for the benefit of any current or former IAP pursuant to an obligation of such institution or holding company that:

(i) Is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the institution or holding company; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the insured depository institution which is making the payment or bankruptcy or insolvency (or similar event) of the depository institution holding company which is making the payment; or

(B) The appointment of any conservator or receiver for such insured depository institution; or

(C) A determination by the insured depository institution's or depository institution holding company's appropriate federal banking agency, respectively, that the insured depository institution or depository institution holding company is in a troubled condition, as defined in the applicable regulations of the appropriate federal banking agency (§ 303.14(a)(4) of this chapter); or

(D) The insured depository institution is assigned a composite rating of 4 or 5 by the appropriate federal banking agency or informed in writing by the Corporation that it is rated a 4 or 5 under the Uniform Financial Institutions Rating System of the Federal Financial Institutions Examination Council, or the depository institution holding company is assigned a composite rating of 4 or 5 or unsatisfactory by its appropriate federal banking agency; or

(E) The insured depository institution is subject to a proceeding to terminate or suspend deposit insurance for such institution; and

(iii)(A) Is payable to an IAP whose employment by or affiliation with an insured depository institution is terminated at a time when the insured depository institution by which the IAP is employed or with which the IAP is affiliated satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A) through (E) of this section, or in contemplation of any of these conditions; or

(B) Is payable to an IAP whose employment by or affiliation with an insured depository institution holding company is terminated at a time when the insured depository institution holding company by which the IAP is employed or with which the IAP is affiliated satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A), (C) or (D) of this section, or in contemplation of any of these conditions.

(2) *Exceptions.* The term *golden parachute payment* shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country; or

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (c) of this section; or

(iii) Any payment made pursuant to a *bona fide* deferred compensation plan or arrangement as defined in paragraph (d) of this section; or

(iv) Any payment made by reason of termination caused by the death or disability of an institution-affiliated party; or

(v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement, in conjunction with a reduction in force instituted by the insured depository institution or depository institution holding company;

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provided, however, that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve months (or such longer period or greater benefit as the Corporation shall consent to) immediately preceding termination of employment, resignation or early retirement, and such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the insured depository institution or depository institution holding company was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the prior written consent of the appropriate federal banking agency; *provided further, however,* that no such payment shall be made to any senior executive officer (as defined in § 303.14(a)(3) of this chapter) of any insured depository institution or depository institution holding company without providing 30 days prior written notice to the appropriate federal banking agency and the FDIC; or

(vi) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vii) Any other payment which the Corporation determines to be permissible in accordance with § 359.4 of this part.

(g) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Corporation pursuant to the Act, or any subsidiary thereof.

(h) *Institution-affiliated party (IAP)* means:

(1) Any director, officer, employee, or controlling stockholder (other than a depository institution holding company) of, or agent for, an insured depository institution or depository institution holding company;

(2) Any other person who has filed or is required to file a change-in-control notice with the appropriate federal banking agency under section 7(j) of the Act (12 U.S.C. 1817(j));

(3) Any shareholder (other than a depository institution holding company), consultant, joint venture partner, and any other person as determined by the appropriate federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution or depository institution holding company; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in: Any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution or depository institution holding company.

(i) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(j) *Nondiscriminatory* means that the plan, contract or arrangement in question applies to all employees of an insured depository institution or depository institution holding company who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract or arrangement may provide different benefits to IAPs based only upon length of service and/or position. In the event that an employee's position is used as a basis for providing a different level of benefits, employees who are not senior executive officers (as defined in § 303.14(a)(3) of this chapter) of the insured depository institution or depository institution holding company shall be treated more favorably than senior executive officers.

(k) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(l) *Prohibited indemnification payment.* (1) The term *prohibited indemnification payment* means any payment (or any agreement or arrangement to make any payment) by any insured depository institution or an affiliated depository institution holding company for the benefit of any person who is or was an IAP of such insured depository institution, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by any federal banking agency which results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution.

(2) *Exception.* The term *prohibited indemnification payment* shall not include any reasonable payment by an insured depository institution or depository institution holding company which is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or bond shall not be used to pay or reimburse an IAP for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency, but may pay the amount of any restitution to the insured depository institution, depository institution holding company or receiver.

§ 359.2 Golden parachute payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment, except as provided in this part.

§ 359.3 Prohibited indemnification payments.

No insured depository institution or depository institution holding company shall make or agree to make any prohibited indemnification payment, except as provided in this part.

§ 359.4 Permissible golden parachute payments.

(a) An insured depository institution or depository institution holding company may agree to make or may make a golden parachute payment if and to the extent that:

(1) The appropriate federal banking agency, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible; or

(2) Such an agreement is made in order to hire a person to become an IAP either at a time when the insured depository institution or depository institution holding company satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in § 359.1(f)(1)(ii), and the institution's appropriate federal banking agency and the Corporation consent in writing to the amount and terms of the golden parachute payment. Such consent by the FDIC and the institution's appropriate federal banking agency shall not improve the IAP's position in the event of the insolvency of the institution since such consent can neither bind a receiver nor affect the provability of receivership claims. In the event that the institution is placed into receivership or conservatorship, the FDIC and/or the institution's appropriate federal banking agency shall not be obligated to pay the promised golden parachute and the IAP shall not be accorded preferential treatment on the basis of such prior approval; or

(3) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed twelve months salary, to an IAP in the event of a change in control of the insured depository institution; *provided, however,* that an insured depository institution or depository institution holding company shall obtain the consent of the appropriate federal banking agency prior to making such a payment and this paragraph (a)(3) shall not apply to any change in control of an insured depository institution which results from an assisted transaction as described in section 13 of the Act (12 U.S.C. 1823) or the insured depository institution being placed into conservatorship or receivership; and

(4) An insured depository institution, depository institution holding company or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section shall demonstrate that it does not possess and is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had or is likely to have a material adverse effect on the institution or holding company;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition, as defined by applicable regulations of the appropriate federal banking agency, of the insured depository institution, depository institution holding company or any insured depository institution subsidiary of such holding company;

(iii) The IAP has materially violated any applicable federal or state banking law or regulation that has had or is likely to have a material effect on the insured depository institution or depository institution holding company; and

(iv) The IAP has violated or conspired to violate section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

§ 359.5 Permissible indemnification payments.

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an IAP with respect to an administrative proceeding or civil action initiated by any federal banking agency if:

(1) The insured depository institution's or depository institution holding company's board of directors, in good faith, determines in writing after due investigation and consideration that the institution-affiliated party acted in good faith and in a manner he/she believed to be in the best interests of the institution;

(2) The insured depository institution's or depository institution holding company's board of directors, respectively, in good faith, determines in writing after due investigation and consideration that the payment of such expenses will not materially adversely affect the institution's or holding company's safety and soundness;

(3) The indemnification payments are limited to the payment or reimbursement of reasonable legal, professional or other expenses incurred in connection with an IAP's involvement in an administrative proceeding or civil action instituted by any federal banking agency; but in no event shall such indemnification pay or reimburse an IAP for the amount of, or any cost incurred in connection with, any judgment, penalty or settlement with respect to any such claim, proceeding or action, pursuant to which the IAP:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution;

(4) The IAP agrees in writing to reimburse the insured depository institution or depository institution holding company for such indemnification payments in the event that the proceeding or action results in a final order or is settled on terms under which the IAP:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(5) The insured depository institution or depository institution holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An IAP requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however,* that such IAP may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the

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administrative proceeding or civil action.

(c) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with an opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with an opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

§ 359.6 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the FDIC regional director (Supervision) for the region in which the institution is located. The request shall be in letter form and shall contain all relevant factual information as well as the reasons why such approval should be granted. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC district office where the institution is located. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where the prior consent of only the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this paragraph shall be submitted to the primary federal regulator as described in this paragraph.

§ 359.7 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted hereunder by the FDIC (in its corporate capacity), shall not in any way bind any receiver of a failed insured depository institution. Any consent or approval granted hereunder by the FDIC or any other federal banking agency shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the FDIC is appointed as receiver for any depository institution, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IAP contrary to 12 U.S.C. 1828(k)(3).

By order of the Board of Directors, dated at Washington, D.C., this 21st day of March, 1995.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–7603 Filed 3–28–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950222055–5055–01]

RIN 0648–AH92

Restricting or Prohibiting Attracting Sharks by Chum or Other Means in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Extension of comment period.

SUMMARY: The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to restrict or prohibit the attracting of sharks by the use of chum or other means in the MBNMS. An advance notice of proposed rulemaking published February 28, 1995 (60 FR 10812) discusses the reasons SRD is considering restricting or prohibiting this activity in the MBNMS. A thirty day comment period was to close on March 30, 1995. This notice extends the comment period by fifteen days.

DATES: Comments must be received by April 14, 1995.

ADDRESSES: Comments should be sent to Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same address and at the Monterey Bay National Marine Sanctuary office at 299 Foam Street, Suite D, Monterey, California, 93940.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141 or Aaron King at (408) 647–4257 or at mbmns@igc.apc.org.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: March 21, 1995.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–7606 Filed 3–28–95; 8:45 am]

BILLING CODE 3510–08–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Notice of Proposed Rulemaking Concerning Federal Register Notices and Service of Documents on Other Agencies

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to amend certain final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) to do the following: eliminate the **Federal Register** publication requirement for certain notices that are not required by law; and reduce the number of documents that are served on other Federal agencies pursuant to section 337(b)(2).

DATES: Comments on the proposed amendments to the final rules will be considered if received on or before May 30, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 to eventually replace the interim rules currently found in 19 CFR parts 210 and 211.[1] The interim rules in 19 CFR Parts 210 and 211 (1994) apply to all pending investigations and related proceedings that were instituted before September 1, 1994. The final rules, which went into effect on Aug. 31, 1994, and will be codified in 19 CFR Part 210 in 1995, apply to all investigations and related proceedings instituted on or after September 1, 1994.[2]

The interim and final Commission rules governing investigations and related proceedings under section 337 require the Commission to serve various documents on other Federal agencies and to publish a notice in the **Federal Register** when certain events occur. The Commission Inspector General's (IG's) Audit Report No. IG–03–94, *Review of Ways to Increase the Economy and Efficiency of the Process for Conducting Section 337 Investigations* (Aug. 19, 1994), criticized those practices.

The IG recommended that the Commission cease publication of **Federal Register** notices that are not required by law. She suggested that the following factors supported such action: (1) The publication fees are not nominal; (2) significant amounts of staff time and resources are consumed in the preparation of notices for publication; (3) the parties to an investigation are served with copies of all notices issued in the investigation and thus do not have to rely on the **Federal Register**; and (4) interested persons who are not parties can obtain copies of Commission notices from sources other than the **Federal Register**. The Commission agreed that it should cease the publication of some, but not all, **Federal Register** notices that are not required by law.

The IG also recommended that the Commission cease the current practice of routinely serving various section 337 documents on other agencies, which practice was initiated in order to comply with the section 337(b)(2) provision requiring the Commission to consult with and to seek advice and information from other agencies. The IG noted that other agencies rarely commented and often did not review the section 337 documents that were served.

The Commission agreed with the IG's conclusion that the Commission rules should be amended to eliminate the requirement that various documents be served on other agencies and that the Commission's present system of complying with the statutory mandate to consult with such agencies needs improvement.

On behalf of the Commission, the Chairman issued administrative orders implementing the proposed changes by suspending the relevant interim and final rules on an interim basis. See Administrative Orders 95–09 (Mar 1, 1995), 95–10 (Mar. 1, 1995), 95–11 (Mar. 21, 1995), and 95–12 (Mar. 21, 1995).

The Commission also decided to publish proposed amendments to the final rules to eliminate the **Federal Register** publication requirement for some, but not all, notices that are not required by statute. The specific amendments that the Commission is contemplating are discussed below.

Final Rule 210.7

Final rule 210.7 is currently entitled "*Service of process and other documents.*" The Commission proposes to amend that rule by retitling it "*Service of process and other documents; publication of notices*" and by adding provisions concerning the publication of **Federal Register** notices. The Commission thought it best to add the new publication provisions to an existing rule rather than creating a new rule, in order to avoid having to renumber the existing rules.

The Commission proposes to amend the text of final rule 210.7 by designating the current text as paragraph (a) of the amended rule and then adding a new paragraph (b) which provides that notices will be published in the **Federal Register** only when such publication is required—

1. By a rule in 19 CFR Chapter II of the Commission's rules of Practice and Procedure (which includes the rules of general application in Part 201 as well as the rules in Part 210); or

2. By order of an ALJ or the Commission (notwithstanding the absence of a rule specifically authorizing publication of the notice in question); or

3. Because an ALJ or the Commission has determined to amend or supplement a previously published notice.

Section 337 notices are available for public inspection in the Office of the Secretary. They will also be made available on WESTLAW and LEXIS. The Commission also is exploring the possibility of making its section 337 notices available on the Internet.

Final Rule 210.11

Paragraph (a) of final rule 210.11 governs service of documents by the Commission Secretary when the Commission institutes a section 337 investigation. Paragraph (a) currently requires the Secretary to serve nonconfidential copies of the following documents on other Federal agencies:

(1) The complaint; (2) the notice of investigation; and (3) the motion for temporary relief (if any).

The Commission proposes to amend paragraph (a) to eliminate the requirement that copies of the complaint and motion for temporary relief must be served on other agencies. Copies of those submissions will be made available to the other agencies upon request. The amended paragraph (a) will be will designated paragraph (a)(1) of the amended rule 210.11 and will contain no reference to service of documents on other agencies. The Commission proposes to create a new paragraph (a)(2) stating that the Commission will serve copies of the notice of investigation on other Federal agencies.

Final Rule 210.21

Paragraph (b)(2) of final rule 210.21 discusses the action to be taken when an administrative law judge (ALJ) certifies to the Commission an initial determination (ID) granting a motion for termination of an investigation in whole or part on the basis of a licensing, settlement, or other agreement. The Commission proposes to amend this rule by eliminating the requirement that

[1] See 59 FR 39020, Part II (Aug. 1, 1994) as corrected by 59 FR 64286 (Dec. 14, 1994).

[2] Interim amendments to the final rules were published at 59 FR 67622 (Dec. 30, 1994). Those amendments apply to all section 337 complaints filed on or after January 1, 1995.

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a notice soliciting public comments on the ID is to be published in the **Federal Register**. Paragraph (b)(2) will also be amended to provide that if the Commission's final disposition of the ID results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**.

Finally, paragraph (b)(2) will be amended to state that notice of the ID will be given to the other Federal agencies and departments. The cover letter accompanying the notice will:

1. Identify the parties and products involved (to the extent that information does not appear in the notice);
2. Offer to provide the nonconfidential version of the ID upon request; and
3. List an appropriate person to contact for further information.

If the Commission ultimately determines to make its IDs and other section 337 documents available on the Internet, all cover letters also will explain how the ID and other documents can be accessed on the Internet.

Paragraph (c)(2) of final rule 210.21 discusses the final disposition of an ID granting a motion for termination of an investigation in whole or part on the basis of a consent order. Paragraph (c)(2)(i) of that rule will be amended to omit the requirement that copies of an ID are to be served on other Federal agencies. The amended paragraph will provide that notice of the ID will be given to the other agencies. (The notice will be accompanied by a cover letter of the sort described above in connection with notice of an ID granting termination on the basis of a settlement, licensing, or other agreement.)

The Commission proposes to amend paragraph (c)(2)(ii) by eliminating the requirement that notice of the Commission's final disposition of the ID granting a motion for termination on the basis of a consent order is to be published in the **Federal Register**. Instead, the amended rule will state that a notice will be published only if the final disposition of the ID results in termination of the investigation in its entirety. A **Federal Register** notice will not be published if the disposition terminates the investigation only in part (i.e., as to one or more, but not all, respondents).

Paragraph (d) of final rule 210.21 was added by the December 30, 1994, interim amendments to Part 210 to implement the Uruguay Round Agreements Act. Paragraph (d) discusses the final disposition of an ID granting a motion for termination of an investigation in whole or part on the basis of an arbitration agreement. The Commission proposes to amend paragraph (d) by eliminating the requirement that notice of the Commission's final disposition of the ID granting a motion for termination on the basis of an arbitration agreement is to be published in the **Federal Register**. Instead, the amended rule will state that a notice will be published only if the final disposition of the ID results in termination of the investigation in its entirety.

Final Rule 210.41

Final rule 210.41, as amended on December 30, 1994, currently states that, except as provided in the rules governing terminations on the basis of a consent order, settlement, licensing, arbitration or other agreement, an order of termination issued by the Commission shall constitute a determination of the Commission. The Commission proposes to further amend final rule 210.41 by adding a sentence stating that the Commission shall publish in the **Federal Register** notice of each Commission order that terminates an investigation in its entirety.

Final Rule 210.42

Paragraph (e) of final rule 210.42 indicates that nonconfidential copies of all IDs on matters other than temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (e) to provide that notice of IDs granting motions for termination of an investigation in whole or part on the basis of a consent order or a licensing, settlement, or other agreement—and notice of such other IDs as the Commission may order—will be provided to the customary Federal agencies (in the manner described above in connection with paragraphs (b)(2) and (c)(2)(i) of final rule 210.21 concerning notices of IDs granting termination on the basis of a consent order or a licensing, settlement, or other agreement).

Paragraph (i) of final rule 210.42 currently states that notice of the Commission's decision to review an ID will be published in the **Federal Register**. The Commission proposes to amend that paragraph by deleting the publication requirement and replacing it with a statement that if the Commission's decision terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

Final Rule 210.43

Paragraph (d)(3) of final rule 210.43 currently states that notice of the Commission's decision to grant a petition for review of an ID on a matter other than temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (d)(3) to state that such a notice will be served on the other agencies only if the notice also solicits written submissions from interested persons on the issues of remedy, the public interest, and bonding by respondents.

Final Rule 210.45

Paragraph (c) of final rule 210.45 currently describes the action that the Commission may take upon review of an ID on a matter other than temporary relief. The Commission proposes to amend paragraph (c) to provide that if the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

Final Rule 210.66

Paragraph (d) of final rule 210.66 states that copies of the nonconfidential version of each ID on temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (d) to state that notice of the ID will be provided to the other agencies (in the manner described above in connection with final rule 210.21 concerning notice of IDs granting termination on the basis of a consent order or a licensing, settlement, or other agreement).

Paragraph (f) of final rule 210.66 currently states that notice of the Commission's final disposition of a temporary relief ID will be published in the **Federal Register**. The Commission proposes to amend paragraph (f) to state that notice of the determination will be published in the **Federal Register** only if the Commission's disposition of the ID has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. (Section 337(j)(1) requires that a notice be published in those circumstances.)

Final Rule 210.74

Paragraph (b) of final rule 210.74 describes the procedure for Commission modification of the reporting requirements of consent orders. The Commission proposes to amend paragraph (b) to provide that notice of any proposed change will be published in the **Federal Register** only if the Commission determines to solicit public comment on the proposed change.

Final Rule 210.75

Paragraph (b) of final rule 210.75 describes the Commission action to be taken following receipt of a petition for modification or rescission of a remedial order, a consent order, or another

Commission order. The Commission proposes to amend paragraph (b) by removing the requirement that notice of the institution of such proceedings be published in the **Federal Register**.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule amendments will be promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553), and will be codified in 19 CFR part 210. If and when the final rules are amended, the Commission will also revoke appropriate provisions of the interim rules.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Advisory opinions, Business and industry, Customs duties and inspection, Imports, Investigations.

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to revise § 210.7 to read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) *Manner of service.* The service of process and all documents issued by or on behalf of the Commission or the administrative law judge—and the service of all documents issued by parties under §§ 210.27 through 210.34 of this part—shall be in accordance with § 201.16 of this chapter, unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(b) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the **Federal Register** only as specifically provided in paragraph (b)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (b)(1) of this section, notice of the amendment will be published in the **Federal Register**.

3. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.11 to read as follows:

§ 210.11 Service of complaint and notice of investigation.

(a)(1) Notwithstanding the provisions of § 210.54 requiring service of the complaint by the complainant, the Commission, upon institution of an investigation, shall serve copies of the complaint and the notice of investigation (and any accompanying motion for temporary relief) upon each respondent and the embassy in Washington, DC of the government of each foreign country represented by each respondent. All respondents named after an investigation has been instituted and the governments of the foreign countries they represent shall be served as soon as possible after the respondents are named.

(2) The Commission shall serve copies of the notice of investigation upon the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate.

* * * * *

4. For the reasons set forth in the preamble, the Commission proposes to revise paragraphs (b)(2), (c)(2)(i), (c)(2)(ii), and (d) of § 210.21 to read as follows:

§ 210.21 Termination of investigations.

* * * * *

(b) *Termination by settlement.* * * *

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. Notice of the initial determination and the agreement shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**. An order of termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) *Termination by entry of consent order.* * * *

(2) *Commission disposition of consent order.* (i) If an initial determination granting the motion for termination based on a consent order stipulation is filed with the Commission, notice of the initial determination and the consent order stipulation shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

(ii) The Commission, after considering the effect of the settlement by consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, shall dispose of the initial determination according to the procedures of §§ 210.42 through 210.45. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**. An order of termination by consent order need not constitute a determination as to violation of section 337. Should the Commission reverse the initial determination, the parties are in no way bound by their proposal in later actions before the Commission.

* * * * *

(d) *Termination based upon arbitration agreement.* Upon filing of a motion for termination with the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. A notice will be published in the **Federal Register** if the Commission's final disposition of the initial determination results in termination of the investigation in its entirety. An order of termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

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5. For the reasons set forth in the preamble, the Commission proposes to revise § 210.41 to read as follows:

§ 210.41 Termination of investigation.

Except as provided in § 210.21(b)(2), (c), and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c). The Commission shall publish in the **Federal Register** notice of each Commission order that terminates an investigation in its entirety.

6. For the reasons set forth in the preamble, the Commission proposes to amend paragraphs (e) and (i) of § 210.42 to read as follows:

§ 210.42 Initial determinations.

* * * * *

(e) *Notice to and advice from other departments and agencies.* Notice of each initial determination granting a motion for termination of an investigation in whole or part on the basis of a consent order or a settlement, licensing, or other agreement pursuant to § 210.21 of this part, and notice of such other initial determinations as the Commission may order, shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies 10 days after the service of an initial determination to submit their comments.

* * * * *

(i) *Notice of determination.* A notice stating the Commission's decision on whether to review an initial determination will be issued by the Secretary and served on the parties. Notice of the Commission's decision will be published in the **Federal Register** if the decision results in termination of the investigation in its entirety.

7. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (d)(3) of § 210.43 to read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

* * * * *

(d) * * *

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. If the notice solicits written submissions from interested persons on the issues of remedy, the public interest, and bonding in addition to announcing the Commission's decision to grant a petition for review of the ID, the notice shall be served by the Secretary on all parties, the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

8. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (c) of § 210.45 to read as follows:

§ 210.45 Review of initial determinations on matters other than temporary relief.

* * * * *

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

9. For the reasons set forth in the preamble, the Commission proposes to revise paragraphs (d) and (f) of § 210.66 to read as follows:

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

* * * * *

(d) Notice of the initial determination shall be served on the other agencies listed in § 210.50(a)(2). Those agencies will be given 10 calendar days from the date of service of the notice to file comments on the initial determination.

* * * * *

(f) If the Commission determines to modify, reverse, or set aside the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or set aside the administrative law judge's initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission's determination concerning the initial determination will be issued on the statutory deadline for determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the **Federal Register** if the Commission's disposition of the ID has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

10. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (b) of § 210.74 to read as follows:

§ 210.74 Modification of reporting requirements.

* * * * *

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall serve notice of any proposed change, together with the reporting requirements to be modified and the reasons therefor, on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter. Notice of any proposed change in the reporting requirements will be published in the **Federal Register** if the Commission determines to solicit public comment on the proposed change.

11. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (b)(1) of § 210.75 to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

* * * * *

(b) *Formal enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing of a

complaint by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

* * * * *

Issued: March 22, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–7567 Filed 3–28–95; 8:45 am]

BILLING CODE 7020–02–P

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19 CFR Part 210

Filing of Complaints Alleging Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to amend the Commission's final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The proposed amendments require section 337 complainants to file equal numbers of confidential and nonconfidential copies of complaints and to file them on the same date.

DATES: Comments on the proposed amendments will be considered by the Commission if received on or before April 28, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210.[1] The current 10-day deadline under final rule 210.4(f)(3)(i) for section 337 complainants to file nonconfidential copies of their complaints after the confidential version is filed has generated concern on the part of law firms and their clients (or potential clients) that become aware that a section 337 complaint has been filed (presumably via the Commission's petition and complaint line recording) but are not able to examine immediately a nonconfidential version of the complaint. The Commission now believes that there is no reason to apply a 10-day delay to the filing of nonconfidential copies of complaints, since section 337 complainants normally have ample time to prepare a public version of their complaint and should be able to file that version simultaneously with the confidential version. The Commission thus proposes to amend the final rules to require section 337 complainants to file equal numbers of confidential and nonconfidential copies of complaints and to file them on the same date.

The proposed rule amendments set forth in this notice are intended to streamline administrative process by improving the speed and efficiency of the Commission's distribution and service of nonconfidential copies of complaints. The Commission believes that the proposed rule changes, if promulgated, will achieve those objectives by doing the following:

1. Eliminating the need for the Dockets Branch of the Office of the Secretary to make copies of the nonconfidential version of each complaint in order to perform the required distribution and service of nonconfidential copies of the complaint;

2. Facilitating the ability of the Dockets Branch to promptly distribute nonconfidential copies of complaints to interested persons and the Commission immediately after the complaint is filed; and

3. Facilitating the ability of the Dockets Branch to promptly serve nonconfidential copies of each complaint on the respondents and the appropriate embassies immediately after the Commission votes to institute an investigation in response to the complaint.

The public comments filed in response to this notice will aid the Commission in determining whether the proposed rule amendments will achieve the desired streamlining objectives.

Section-by-Section Analysis of the Proposed Amendments

In order to effectuate the proposed rule changes concerning the filing of nonconfidential copies of complaints, the Commission proposes to amend final rules 210.4, 210.5, 210.8, and 210.52 in the manner described below.

Subpart A—Rules of General Applicability

Final Rule 210.4

Paragraph (f)(3) of final rule 210.4 currently requires section 337 complainants to file nonconfidential copies of their complaints 10 days after the confidential version is filed. The Commission proposes to amend paragraph (f)(3) to require complainants to file nonconfidential copies of their complaints concurrently with the confidential copies.

Final Rule 210.5

Paragraph (a) of final rule 210.5 currently states that, unless the Commission or an administrative law judge (ALJ) orders otherwise, confidential business information shall be submitted in accordance with 19 CFR 201.6(c), which requires that business information for which the supplier desires confidential treatment must be clearly labelled "confidential business information" when submitted and must be segregated from other material being submitted.

The Commission proposes to amend paragraph (a) of final rule 210.5 to provide that confidential business information shall be submitted in accordance with 19 CFR 201.6(b) (instead of 19 CFR 201.6(c)), since 19 CFR 201.6(b) outlines the procedure for submitting business information in confidence. Paragraph (a) of final rule 210.5 also will be amended to provide that in the case of a complaint and a motion for temporary relief, the requisite number of nonconfidential copies is prescribed by final rule 210.8(a) (and not by 19 CFR 201.8(d)).[2]

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[1] *See* 59 FR 39020, Part II (Aug. 1, 1994), as corrected by 59 FR 64286 (Dec. 14, 1994) and amended by 59 FR 67622 (Dec. 30, 1994).

[2] Section 201.6(b)(3)(v) of 19 CFR requires the filing of a nonconfidential copy of the document for which confidential treatment is being sought, as required in 19 CFR 201.8(d). Section 201.8(d) of 19 CFR requires the filing of "at least four" nonconfidential copies.

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Final Rule 210.8

Paragraph (a) of final rule 210.8 discusses the number of copies of the complaint and any motion for temporary relief which each complainant must file with the Commission. The Commission proposes to amend paragraph (a) to require the complainant to file enough nonconfidential copies for use by the Commission and its staff, service by the Commission on each proposed respondent, and service by the Commission on the government of the country of each foreign respondent.

Subpart H—Temporary Relief

Final Rule 210.52

Paragraph (e) of final rule 210.52 identifies the rules to be followed if a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in 19 CFR 201.6(a). The Commission proposes to amend paragraph (e) of final rule 210.52 to include references to final rules 210.4(a) and 210.8(a) (which the Commission also proposes to amend).

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (f)(3) of § 210.4 to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) *Specifications; filing of documents.*

* * *

(3) (i) If a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a) of this part.

(ii) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(A) A supplement to a complaint and all exhibits thereto;

(B) A response to a complaint and all supplements and exhibits thereto;

(C) All submissions relating to a motion to amend the complaint or notice of investigation; and

(D) All submissions addressed to the Commission.

Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

3. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.5 to read as follows:

§ 210.5 Confidential business information.

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with § 201.6(a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with § 201.6(b) of this chapter. In the case of a complaint and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by § 210.8(a) of this part.

* * * * *

4. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.8 to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

(a) *Upon receipt of complaint.* A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies. The complainant shall file 14 confidential copies of the complaint, 14 nonconfidential copies, plus one confidential copy and one nonconfidential copy for each person named in the complaint as violating section 337 of the Tariff Act of 1930, and one nonconfidential copy for the government of each foreign country of any person or persons so named. If the complainant is seeking temporary relief, the complainant must file 14 confidential copies of the motion, 14 nonconfidential copies, plus one additional confidential copy and one additional nonconfidential copy of the motion for such relief for each proposed respondent, and one nonconfidential copy for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

* * * * *

5. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (e) of § 210.52 to read as follows:

§ 210.52 Motions for temporary relief.

* * * * *

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant must follow the procedure outlined in §§ 210.4(a), 210.5(a), 201.6(a) and (c), 210.8(a), and 210.55 of this part.

Issued: March 23, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–7648 Filed 3–28–95; 8:45 am]

BILLING CODE 7020-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5174–3]

National Emission Standards for Hazardous Air Pollutants Streamlined Development: Announcement and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement and Request for comments.

SUMMARY: Section 112(d) of the Clean Air Act (CAA) directs EPA to reduce emissions of hazardous air pollutants (HAPs) by requiring new and existing sources to achieve an emissions standard attainable by the maximum achievable control technology (MACT). The HAPs regulated under Section 112 have been characterized as carcinogenic, mutagenic, bioaccumulative, and causing other adverse health and environmental effects. MACT standards are intended to significantly reduce these effects.

This notice announces and requests comments on EPA's plan to use a streamlined approach to promulgating MACT standards, termed MACT Partnerships. Section 112(e) requires EPA to promulgate, on a strict schedule, MACT standards for the more than 150 source categories of HAPs listed pursuant to Section 112(c)(1). This large number of MACT standards can not be addressed by the traditional approach to standards development. The MACT Partnerships approach is designed to expedite the regulatory development process and provide information for case-by-case emission limitation determinations as required by Section 112(g) and 112(j) of the CAA. The MACT Partnerships approach is founded on the mutual interests of all the major stakeholders, including EPA, States and local agencies, industry, and environmental organizations. This notice also announces the availability on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards, of an initial list of MACT standards being handled under MACT Partnerships.

DATES: *Comments:* Comments must be received on or before May 15, 1995.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate or as a WP5.1 file, if possible) to: Policy, Planning, and Standards Group; Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5623.

TTN: The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For general information concerning this notice, contact Albert H. Wehe at (919) 541–5623; Policy, Planning and Standards Group; Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Section 112(c) and 112(e) of the CAA, EPA published two **Federal Register** notices laying out the source categories of HAPs regulated under Section 112(d) of the Clean Air Act. In the first **Federal Register** notice (57 FR 31578, July 16, 1992), EPA published the source categories of HAPs as required under Section 112(c). In the second **Federal Register** notice (58 FR 83941, December 3, 1993), EPA presented the list in a regulatory schedule as required by Section 112(e). In addition to requiring the regulatory schedule, Section 112(e) requires EPA to develop MACT standards under Section 112(d) according to this regulatory schedule.

There are consequences if EPA fails to set the MACT standards on time. Thirty-nine MACT standards were targeted for promulgation by November 1994, forty-three more by Nov 1997, and an additional eighty-seven by Nov 2000. Section 112(j) of the CAA requires the States to establish emission limitations, using a case-by-case determination of what the Federal standard would have been if EPA fails to promulgate Federal standards.

Case-by-case MACT determinations under 112(j) will require substantial information and resources from State and local agencies, industry, and environmental groups. Individually, State and local agencies, industry and environmental groups have expressed their interest in avoiding a significant number of case-by-case MACT determinations. Accordingly, there appears to be a strong incentive for EPA, State and local agencies, industry and environmental groups to work together to enable EPA to promulgate the standards on schedule and to gather information for 112(j) case-by-case MACT determinations.

II. Current Situation

The EPA is currently behind schedule on a number of MACT standards due in November 1994 and potentially behind schedule on a number of MACT standards due in November 1997. The EPA has promulgated about one-half of the MACT standards due in November 1994. The EPA is already under court-ordered schedules to complete many of the remaining MACT standards due in November 1994. These schedules will ensure that standards are promulgated before case-by-case MACT determinations would be required by Section 112(j). The EPA has recently been served notice by an environmental group indicating the group plans to file a petition to compel EPA to promulgate the few standards due in November 1994 that are not done nor on an existing court-ordered schedule.

In 1994, EPA had to postpone work on several of the MACT standards due in November 1997 and November 2000 (the 7-year and 10-year MACT standards) as a result of resource constraints. The EPA had to do so in part to ensure that adequate resources were available for the court-ordered MACT standards. These resource constraints have put EPA behind on completing the 7-year and 10-year MACT standards.

The amount of work (and therefore resources) needed to complete the 7-year and 10-year MACT standards on time is difficult to predict. Nevertheless, given the EPA's experience of the MACT standards completed to date, EPA believes that the amount of work can be significantly reduced by streamlining and re-engineering the way these standards are developed. This work helps EPA appropriately subcategorize source categories, define the MACT floor (see Section 112(d)), address emissions of special HAPs (e.g., Great Waters and urban air toxics), and evaluate potential regulatory options beyond the MACT floor.

Resources have been traditionally used by EPA to gather and analyze essentially all the data and information necessary to reach the regulatory decisions associated with standards such as MACT standards. Many of the 7-year and 10-year MACT standards had not been studied by EPA prior to recent years. Traditionally, EPA has found that it takes about 4 years to develop national technology-based standards such as MACT standards. Accordingly, to complete the 7-year MACT standards by November 1997, EPA had to begin in earnest to work on these standards early in 1994. Thus, to complete the 7-year MACT standards on time, EPA needs to reduce the amount of work and time associated with these standards.

In order to meet both the 7-year and 10-year deadlines, EPA has concluded that it must develop new approaches to streamline the standard setting process and to leverage its limited resources. To that end, EPA is currently initiating a new process for developing MACT standards that involves a partnership with states, industry, and environmental organizations. This partnership, called MACT Partnerships, is founded on the

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mutual interests of all the major stakeholders in the air toxics program.

For many source categories for which MACT standards are required, State and local agency personnel have the expertise, information and desire to provide technical assistance for the development of MACT standards. Industry personnel are also invaluable sources of technical expertise and data needed to develop MACT standards. In addition, environmental groups have a thorough understanding of the interests of the public and can assist in the development of as many MACT standards as practical.

III. Streamlined MACT Development Approach

The MACT Partnerships program, as currently envisioned, involves two phases for each MACT standard. The first phase involves development of a "presumptive MACT". A "presumptive MACT" is not an emission standard; but it serves as a statement of current knowledge of maximum available control technologies and a basis for a decision on how to develop the emission standard for the source category involved. The second phase is the formal standard development process, which results in a promulgated MACT standard for the source category.

In the first phase of the MACT Partnerships program, the development of a "presumptive MACT", begins with two main steps: (1) A meeting between EPA and State and local agencies, known as the presumptive MACT meeting and (2) consultations with industry, environmental and other interest groups. In the presumptive-MACT meeting, EPA, and States review available information to estimate what MACT would be if only this information were used in the determination. This draft presumptive MACT then goes through a consultation stage where industry and environmental groups are invited to comment on the selected presumptive MACT. After this consultation, EPA and the State/local agencies determine a final presumptive MACT and how best to complete the development of a standard, with the normal opportunities for public comment. This determination of a presumptive MACT and a decision on how to complete development of a standard are the two products of the first phase.

For the second phase of MACT Partnerships, EPA envisions the use of one of three basic regulatory development paths: Adopt-a-MACT, share-a-MACT, or a streamlined-traditional approach. In all cases, EPA would eventually propose and then promulgate the MACT standard. The "Adopt-a-MACT" path allows EPA to enter into an agreement with a State wherein the State would accept primary responsibility for data collection and analysis. Alternatively, a "share-a-MACT" path allows states, industry or both to share with EPA the responsibility for developing the underlying data and analysis from which EPA would determine the MACT emission limitation. When no suitable partners can be found, a "streamlined-traditional" path is the last alternative. In the "streamlined-traditional" path, EPA would go through a streamlined process of the traditional rule development, with a presumptive MACT specification as an intermediate stage. No matter what path is chosen, almost all standards would go through phase one, namely, the presumptive MACT meeting and the second consultative stage.

The EPA has successfully worked with States and industry in the development of presumptive MACT in two pilot projects. One project concerned the MACT standard primary aluminum manufacturing. The States of Washington and New York worked with EPA in the development of a presumptive MACT. In addition, the Aluminum Manufacturers Association and its member companies participated. For the second project, EPA worked with the States of Wisconsin and Maryland to develop a presumptive MACT for bakers yeast manufacturing. Both EPA and State partners have worked with the industry to move from the presumptive MACT to develop a MACT standard that is scheduled to be proposed in the fall of 1995.

Currently, EPA is beginning more than 25 projects within the MACT Partnerships program. Presumptive MACT meetings are scheduled over the next several months. For the information of the public, EPA has developed a table of these projects and has added it to the Technology Transfer Network bulletin board system (TTN BBS) See **ADDRESSES** section above for information on how to access the TTN BBS. The list can be found under the Clean Air Act (Rules/Guidance/Policy) section, Tittle III: Hazardous Air Pollutants subsection and then the Status of Rules/Projects portion of the TTN BBS.

In summary, the MACT Partnerships program is one way to pursue new, assertive ways to develop MACT standards. MACT Partnerships is characterized by EPA and State/localities working together with industry and environmentalists to fulfill the mandate to set MACT standards for sources of hazardous air pollutants. Given the mutual interest of all the stakeholders and EPA's current "budgetary" situation within the air toxics program, EPA has begun redefining its role in selected areas of MACT standard development for many MACT standards as a coordinator and facilitator.

IV. Request for Comments

With this notice the EPA is requesting comments on:

(1) The concept of MACT Partnerships as an approach for streamlining the development of MACT standards,

(2) How to improve the MACT Partnership approach,

(3) Alternative ways to streamline the MACT development process, and

(4) Using presumptive MACT as a starting point for case-by-case MACT determinations.

V. Administrative Requirement

A. Paperwork Reduction Act

The request for comments detailed in this notice seeks voluntary responses and does not affect information collection burdens.

B. Executive Order 12866 Review

This notice is a request for comments and, therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866. It was not considered significant.

Dated: March 14, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95-7492 Filed 3-28-95; 8:45 am]

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40 CFR Part 63

[AD-FRL-5175-9]

RIN 2060-AE37

National Emission Standards for Hazardous Air Pollutant Emissions From the Production of Acrylonitrile Butadiene Styrene (ABS) Resin, Styrene Acrylonitrile (SAN) Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene (MABS) Resin, Methyl Methacrylate Butadiene Styrene (MBS) Resin, Polystyrene Resin, Poly (Ethylene Terephthalate) (PET) Resin, and Nitrile Resin (Group IV Polymers and Resins)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed rule would reduce emissions of organic hazardous air pollutants (HAP) from existing and new facilities that manufacture one or more of the following Group IV polymers and resins: Acrylonitrile butadiene styrene (ABS) resin, styrene acrylonitrile (SAN) resin, methyl methacrylate acrylonitrile butadiene styrene (MABS) resin, methyl methacrylate butadiene styrene (MBS) resin, polystyrene resin, poly (ethylene terephthalate) (PET) resin, and nitrile resin. The EPA is in the process of developing standards for a wide range of types of polymer and resin production facilities. The polymers and resins covered by this proposed rule are thermoplastics, and with two exceptions, use styrene as the dominant feedstock. These thermoplastics are basically intermediate products used to produce automotive plastic parts, appliances and appliance parts, housewares, polyester fibers, packing and containers, soft drink bottles, and toys. In the production of thermoplastics, a variety of organic HAP are used as monomers or are created as by-products. The organic HAP emitted by the facilities covered by this proposed rule include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The proposed rule is estimated to reduce organic HAP emissions from existing facilities by 11,750 megagrams per year (Mg/yr). The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act (Act) as amended in 1990, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population".

The proposed rule implements section 112(d) of the Act, which requires the Administrator or Administrator's designee, hereafter referred to as Administrator, to regulate emissions of HAP listed in section 112(b) of the Act. The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of organic HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any non-air quality, health and environmental impacts, and energy requirements.

Under today's action, the EPA is also proposing to revise subpart DDD of 40 CFR part 60 by removing all references to polystyrene and PET facilities contained therein. This proposed action is being taken because today's proposed rule would supersede the requirements specified in subpart DDD of 40 CFR part 60 for polystyrene and PET facilities.

Finally, under today's action, the EPA is proposing to add nitrile resin production to the source category list under section 112(c) of the Act and to the source category schedule under section 112(e) of the Act with a promulgation date no later than November 15, 2000.

DATES: *Comments.* Comments must be received on or before May 30, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 19, 1995, a public hearing will be held on April 28, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541-5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by April 19, 1995 by contacting Ms. Marguerite Thweatt; Organic Chemicals Group, (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE-131), Attention: Docket No. A-92-45, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M-1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 382-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. Leslie Evans at (919) 541-5410, Organic Chemicals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The proposed regulatory text is not included in this **Federal Register** document, but is available in Docket No. A-92-45, on the Technology Transfer Network (TTN), or from the EPA contact person designated in this notice. The TTN, EPA's electronic bulletin board, provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541-5742 for up to a 14,400 bps modem. If more information on the TTN is needed, call the HELP line at (919) 541-5384.

In addition to the proposed regulatory text, the Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket (Docket No. A-92-45, Category II-A), and on the TTN. This document is entitled Hazardous Air Pollutant Emissions From Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Proposed Standards, March 1995, and has been assigned document number EPA-453/R-95-004a.

Other materials related to this rulemaking, including technical memoranda, are available for review in the docket. Some of these memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A-92-45, Category II-A) and from the EPA Library by calling (919) 541-2777. The document is entitled Hazardous Air Pollutant Emissions From Process Units in the Thermoplastics Manufacturing Industry—Supplementary Information Document for Proposed Standards, March 1995, and has been assigned document number EPA-453/R-95-003a.

The information presented in this preamble is organized as follows:

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II. Background
  A. Summary of Considerations Made in Developing This Rule
  B. Regulatory Background
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Proposed Standards
  A. Source Categories To Be Regulated
  B. Relationship to Other Rules
  C. Pollutants To Be Regulated
  D. Affected Emission Points
  E. Format of the Standards
  F. Proposed Standards
  G. Compliance and Performance Test Provisions and Monitoring Requirements
  H. Recordkeeping and Reporting Requirements
V. Solicitation of Comments
VI. Summary of Environmental, Energy, Cost, and Economic Impacts
  A. Facilities Affected by These NESHAP
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D. Energy Impacts
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VII. Administrative Requirements
A. Public Hearing
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C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Paperwork Reduction Act
F. Regulatory Flexibility Act
G. Miscellaneous

I. List of Affected Source Categories

Section 112 of the Act requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) of the Act and work practice and equipment standards under section 112(h) of the Act for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, as required under section 112(c) of the Act. Included on that list were major sources emitting HAP from ABS, SAN, MABS, MBS, polystyrene, and PET. Nitrile resin production is being added to the source category list under section 112(c) of the Act because, based on information obtained during the gathering of HAP emission data for this proposed rule, the one facility identified as producing nitrile resins was determined to be a major source. Further, the EPA decided to include nitrile resin production under today's proposed rule because of similarities in process operations, emission characteristics, and control device applicability and costs with the various styrene-based resin source categories. For the purpose of this notice, these seven polymer and resin source categories are collectively referred to as the Group IV polymers and resins or the Group IV thermoplastics.

The EPA identified a total of 66 facilities producing one or more of the Group IV thermoplastics. Twenty facilities were identified that produced thermoplastics using multiple processes and, thus, fall within multiple subcategories. For example, six of the PET facilities use both the continuous terephthalic acid (TPA) process and the continuous dimethyl terephthalate (DMT) process.

All of the facilities considered in the analysis supporting today's proposed rule are believed to be major sources according to the 1990 Amendments criterion of emitting or of having the potential to emit 10 tons per year (tons/yr) of any one HAP or 25 tons/yr of combined HAP. (A year, for the purposes of compliance with this rule, is any consecutive twelve month period or 365 rolling days). The proposed rule would apply to all major sources that produce any of the seven thermoplastics identified in this notice. Area sources would not be subject to this proposed rule.

In developing the background information to support the proposed rule, the EPA chose to subcategorize four of the seven source categories for purposes of analyzing the maximum achievable control technology (MACT) floors and developing regulatory alternatives. A source category was subcategorized to account for major differences in production methods, raw material usage, or both. Table 1 summarizes the subcategories developed.

TABLE 1.—SUBCATEGORIZATION OF GROUP IV POLYMERS AND RESINS[a]

Source category	Subcategory	Number of facilities in subcategory[b]
ABS	Continuous mass	5
	Continuous emulsion	2
	Batch emulsion	4
	Batch suspension	2
	Batch latex	1
SAN	Continuous	3
	Batch	2
	ASA/AMSAN	1
Polystyrene	Continuous	22
	Batch	11
	EPS	7
PET	TPA, continuous	12
	TPA, batch	1
	DMT, continuous	10
	DMT, batch	10

[a] As discussed in the text, subcategorization was not needed for MABS, MBS, and nitrile facilities. Thus, these source categories are not shown in this table.
[b] Number of facilities include one or more process units of each described subcategory. Some facilities use more than one type of production method or raw material (process). Therefore, it is incorrect to sum these numbers to calculate the total number of facilities within a source category.
ASA=acrylonitrile styrene acrylate.
AMSAN=alpha methyl styrene acrylonitrile.
EPS=expandable polystyrene.
TPA=terephthalic acid.
DMT=dimethyl terephthalate.

No subcategorization was found to be justified for the three facilities producing MBS. Only one facility was found to produce MABS and only one to produce nitrile resins. Hereafter, for purposes of this preamble and the proposed standards, the terms "subcategory" and "subcategories" include the production of MBS, MABS, and nitrile even though these are source categories.

Upon inspection (see Section IV, Summary of Proposed Standards), it may appear that subcategorization does not affect the outcome of the proposed standards since the same level of control is required across most of the subcategories for a given type of emission point (e.g., storage vessel, process vent, etc.). In fact, subcategorization does affect the proposed level of control for individual types of emission points. As the development of the proposed standards progressed beyond the technical analyses and the structure of the regulation was examined, the EPA considered different options that would create fewer subcategories for defining the source categories.

In previous rules, the EPA considered by-products, co-products, and intermediates to be products of a process. In the implementation of these previous rules, there has been confusion over the meaning of the terms "product" and "to produce" and the correct way to decide whether a source "produces" a listed chemical and is subject to the standard.

This confusion arises because of the complexity, diversity, and the highly integrated nature of the subject industries.

Because of this confusion, applicability will be based on the primary product that is produced by a thermoplastic product process unit. By-products, co-products, and isolated intermediates would not be considered in determining applicability. For the purposes of this rule, the EPA does not consider wastes to be products. Also, impurities or trace contaminants that are coincidentally processed and are not isolated are not considered to be a product.

The primary product of the thermoplastic product process unit is determined only once, and the determination would be based on the product that represents the largest percentage of the total mass produced by the thermoplastic product process unit.

II. Background

A. Summary of Considerations Made in Developing This Rule

The Act was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote public health and welfare and the productive capacity of its population" (section 101(b)(1) of the Act). As such, this regulation protects the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the Act.

The HAP listed in section 112(b)(1) of the Act emitted by the thermoplastic facilities covered by this proposed rule include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; liver and kidney toxicity, and neurotoxicity. These effects can range from mild to severe. In extreme circumstances, death can result from exposure. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., presence of pre-existing disease) and lifestyle. Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit in land or water and cause subsequent adverse human health or ecosystem effects.

The EPA does not have the type of current detailed data on each of the thermoplastic facilities covered by this rule, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the organic HAP emitted from these facilities and resulting health effects. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the promulgated standard will substantially reduce emissions and exposures to the level achievable with maximum achievable control technology.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from the existing facilities known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor were selected when they were judged to be reasonable "taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements" (Section 112(d)(2) of the Act). In most instances, the proposed standards reflect regulatory alternatives that are judged to be reasonable and are equivalent to or more stringent than the MACT floor. In a few instances, the MACT floor was found to have a relatively high cost. In these cases, the MACT floor was chosen because a less costly, yet otherwise reasonable, regulatory alternative was not available.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount allowed by the Act. Based on the number of existing sources affected by this rule, the EPA believes that required retrofits or other actions can be achieved in the timeframe allotted. New facilities are required to comply with the standard upon start-up. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon start-up.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that affected sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. This rule refers extensively to the HON (40 CFR part 63, subparts F, G, and H). In doing so, this rule has benefited from the extensive public debate and participation experienced in the HON rulemaking. The EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections, depending on which method would be least confusing for a given situation.

Representatives from other interested EPA offices and programs, including State and Regional environmental agency personnel, participated in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and is given opportunities to review and comment on the regulation before proposal and promulgation. Therefore, the EPA believes that the implication to other EPA offices and programs has been adequately considered during the development of these standards. In addition, the EPA has met with some members of industry concerning these standards. Finally, industry, regulatory authorities, and environmental groups will have the opportunity to comment on the proposed standards and provide additional information during the public comment period following proposal.

These standards will result in an organic HAP emission reduction of 11,750 Mg/yr for existing facilities and 7,395 Mg/yr for new sources. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other standards mandated by the Act, will achieve the primary goal of the Clean Air Act, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

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B. Regulatory Background

In 1990 (55 FR 51010, December 11, 1990), the EPA promulgated new source performance standards (NSPS) affecting four types of polymer manufacturing facilities (subpart DDD of 40 CFR part 60). Two of these four types—polystyrene and PET—are being affected by today's proposed rule. In addition, polystyrene manufacturing facilities may be subject to State regulations as the result of a control techniques guideline (CTG) document (EPA–450/3–83–008, November 1983; Docket No. A–92–45, Category II-A) addressing, in part, polystyrene manufacturing.

For polystyrene, subpart DDD applies to those facilities that use a continuous process to manufacture general purpose or high impact polystyrene. Facilities that produce general purpose or high impact polystyrene using a batch process were not covered under subpart DDD because information at that time indicated that no new facilities would be constructed using batch processes to produce general purpose or high impact polystyrene. Subpart DDD also applies to all facilities that manufacture expandable polystyrene (EPS), regardless of the process used.

For general purpose or high impact polystyrene facilities using a continuous process and all facilities producing EPS, subpart DDD requires control of continuous process volatile organic compound (VOC) emissions from each material recovery section. The standard for material recovery section process emissions is: (1) Limit the emissions of total organic compounds (TOC) (minus methane and ethane) to 0.0036 kilograms (kg) of TOC per megagram (Mg) of product (0.0036 pounds (lbs) TOC/1,000 lbs of product) from each material recovery section, (2) limit the outlet gas temperature from each final condenser in each material recovery section to −25 degrees Celcius (−25° C) (−13° Fahrenheit (−13° F)), or (3) reduce emissions from each material recovery section by 98 weight percent or to 20 parts per million by volume (ppmv). Modified or reconstructed affected facilities with uncontrolled emission rates at or below 0.05 kg TOC per Mg of product were exempted from this part of subpart DDD.

Like subpart DDD, the CTG applies to material recovery section continuous process emissions at polystyrene facilities using a continuous process. The CTG's recommended emission limit is 0.12 kg TOC/Mg of product.

Subpart DDD also requires control of VOC emissions from equipment leaks from polystyrene facilities using a continuous process and from all EPS facilities. With one exception, subpart DDD's standards for equipment leaks are the same as those for synthetic organic chemical manufacturing industry (SOCMI) facilities under subpart VV of 40 CFR part 60. The one exception concerns polymer pumps that are designed with a "bleed port." Such pumps are exempted from the definition of a "visible leak of fluid," but the exemption expires when the existing pump is replaced or reconstructed.

As mentioned previously, subpart DDD also applies to PET facilities that use either a DMT or TPA continuous process. Subpart DDD does not apply to PET facilities that use a batch process because the EPA did not expect any new PET facilities to be constructed using a batch process. For PET facilities using a continuous process, subpart DDD only requires control of selected process emissions. Standards were not proposed or promulgated for equipment leak emissions at PET facilities because available information at that time showed that equipment leak components at facilities using the continuous TPA process were in heavy liquid service and that continuous DMT facilities were already covered by the SOCMI equipment leak standards (subpart VV of 40 CFR part 60).

Table 2 summarizes subpart DDD requirements for process emissions for new, modified, or reconstructed PET facilities. For both DMT and TPA continuous facilities, subpart DDD limits ethylene glycol emissions from the polymerization reaction section by requiring compliance with an emission rate limit (0.02 kg TOC/Mg of product) and an ethylene glycol weight percent concentration limit (either 0.35 or 6.0 percent depending on the type of process) for the cooling water in the cooling tower. In addition, subpart DDD limits process emissions from the material recovery section at continuous DMT facilities and from the raw material preparation section at continuous TPA facilities.

TABLE 2.—SUMMARY OF NSPS PET STANDARDS

Process	Affected facility	Viscosity	Number of end finishers	Type of vacuum producer	Standard
DMT	Material Recovery.	Low			0.018 kg TOC/Mg of product *OR* limit temperature to +37 °F from each final condenser in the material recovery section.
		High	Single		(same as above).
			Multiple		(same as above).
DMT	Polymerization Reaction.	Low		Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system.
		High	Single	Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system.
			Multiple	Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 6.0 percent ethylene glycol by weight in the cooling water in the cooling tower.
TPA	Raw Materials Preparation.	Low			0.04 kg TOC/Mg of product.
		High	Single		(same as above).

TABLE 2.—SUMMARY OF NSPS PET STANDARDS—Continued

Process	Affected facility	Viscosity	Number of end finishers	Type of vacuum producer	Standard
TPA	Polymerization Reaction.		Multiple		(same as above).
		Low		Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system.
		High	Single	Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system.
			Multiple	Not steam jets	0.02 kg TOC/Mg of product.
				Steam jets	0.02 kg TOC/Mg of product *AND* 6.0 percent ethylene glycol by weight in the cooling water in the cooling tower.

Key:
DMT = dimethyl terephthalate.
TPA = terephthalic acid.

In a manner similar to polystyrene facilities, subpart DDD has uncontrolled emission rate thresholds at or below which modified or reconstructed PET facilities are exempt. Table 3 summarizes these threshold emission rates.

TABLE 3.—SUMMARY OF PET THRESHOLD EMISSION RATES

Production process	Process section	Uncontrolled emission rate, kg TOC/Mg product[a]
Poly(ethylene terephthalate), dimethyl terephthalate process	Material Recovery	0.12[b,c]
	Polymerization Reaction	1.80[c,d,e]
Poly(ethylene terephthalate), terephthalic acid process	Raw Materials	g
	Preparation	1.80[c,e,h]
	Polymerization Reaction	3.92[c,f,h]

[a] "Uncontrolled emission rate" refers to the emission rate of a vent stream that vents directly to the atmosphere and to the emission rate of a vent stream to the atmosphere that would occur in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.
[b] Emission rate applies to continuous emissions only.
[c] Applies to modified or reconstructed affected facilities only.
[d] Includes emissions from the cooling water tower.
[e] Applies to a process line producing low viscosity poly(ethylene terephthalate).
[f] Applies to a process line producing high viscosity poly(ethylene terephthalate).
[g] See footnote h.
[h] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw materials preparation section (i.e., the esterifiers).

In 1994 (59 FR 46350, September 8, 1994), the EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for industrial process cooling towers (40 CFR part 63, subpart G). This rule prohibits the use of chromium-based water treatment chemicals in industrial process cooling towers. Owners and operators of existing industrial process cooling towers must comply within 18 months of September 8, 1994, while owners and operators of new industrial process cooling towers must comply by September 8, 1994 or at initial start-up, depending on when construction was commenced.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Act gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes ABS, SAN, MABS, MBS, polystyrene, and PET. Today's action proposes to add nitrile resin production to this list.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section

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112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. Consideration of control levels more stringent than the MACT floor (described below) must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3) of the Act). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3) of the Act). These two minimum levels of control define the MACT floor for new and existing sources.

Two interpretations have been evaluated by the EPA for representing the MACT floor for existing sources. One interpretation is that the MACT floor is represented by the worst performing source of the best 12 percent performing sources. The second interpretation is that the MACT floor is represented by the "average emission limitation achieved" by the best performing sources, where the "average" is based on a measure of central tendency, such as the arithmetic mean, median, or mode. This latter interpretation is referred to as the "higher floor interpretation." In a June 6, 1994 **Federal Register** notice (59 FR 29196), the EPA presented its interpretation of the statutory language concerning the MACT floor for existing sources. Based on a review of the statute, legislative history, and public comments, the EPA believes that the "higher floor interpretation" is a better reading of the statutory language. The determination of the MACT floor for existing sources under today's rule followed the "higher floor interpretation."

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

Today's proposed standards would regulate organic HAP process emissions from facilities in one of the 18 thermoplastic subcategories listed below, provided that a facility is determined to be a major source. For this proposed rule, an affected source is defined as one of the following:

- All organic HAP emission points at a facility using a continuous emulsion process to produce ABS.
- All organic HAP emission points at a facility using a continuous mass process to produce ABS.
- All organic HAP emission points at a facility using a batch emulsion process to produce ABS.
- All organic HAP emission points at a facility using a batch suspension process to produce ABS.
- All organic HAP emission points at a facility using a batch latex process to produce ABS.
- All organic HAP emission points at a facility producing MABS.
- All organic HAP emission points at a facility producing MBS.
- All organic HAP emission points at a facility using a continuous process to produce SAN.
- All organic HAP emission points at a facility using a batch process to produce SAN.
- All organic HAP emission points at a facility producing ASA/AMSAN.
- All organic HAP emission points at a facility using a continuous process to produce polystyrene.
- All organic HAP emission points at a facility using a batch process to produce polystyrene.
- All organic HAP emission points at a facility producing EPS.
- All organic HAP emission points at a facility using a continuous TPA process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a batch TPA process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a continuous DMT process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a batch DMT process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility producing nitrile resins.

The proposed rule regulates emissions from solid state PET processes if they are collocated with a TPA or DMT fed PET process, but does not regulate emissions from independently located solid state PET processes (i.e., those that purchase low molecular weight PET from an off-site source). As part of the rulemaking, information was submitted by the industry for collocated solid state PET processes, but none was submitted for independently located solid state PET processes.

(**Note**: The data request did not distinguish solid state as a separate process which might have precipitated companies not submitting data concerning PET produced by this process.)

In addition, the EPA believes that independently located solid state PET processes are likely to be non-major sources because there is not a significant source of organic HAP emissions from the solid state process. The emissions from a solid state process are typically the result of release of residual monomer in the low molecular weight PET. For these reasons, the EPA chose not to include independently located solid state PET processes in today's proposed rule.

B. Relationship to Other Rules

Sources subject to the proposed rule are also subject to other existing rules. In some cases, the proposed rule supersedes existing rules and affected sources are no longer required to comply with the existing rule. In other cases, there is no conflict between the existing rule and the proposed rule, and in these cases, the affected source must comply with both rules.

Sources subject to the proposed rule and subject to the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of the proposed rule. After the compliance date of the proposed rule, compliance with the proposed rule will constitute compliance with subpart I.

Sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). After the compliance date for the proposed rule, such storage vessels are only subject to the proposed rule and are no longer required to comply with subpart Kb.

Some sources subject to the proposed rule that produce PET or polystyrene are also subject to the NSPS for Polymers Manufacturing (40 CFR part 60, subpart DDD). After the compliance date for the proposed rule, such sources are only subject to the proposed rule and are no longer required to comply with subpart DDD. As part of this rulemaking, the EPA is proposing to modify subpart DDD to exclude reference to the manufacture of polystyrene and PET.

Sources subject to the proposed rule may have cooling towers subject to the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Therefore, sources subject to both rules must comply with both rules.

C. Pollutants To Be Regulated

The subcategories covered by today's proposed rule emit a variety of organic HAP. Among the most significant emissions of organic HAP are the following: Styrene, acrylonitrile, and butadiene from styrene-based resin production, which includes the production of ABS, SAN, MABS, MBS, and polystyrene; acrylonitrile from nitrile resin production; and ethylene glycol, methanol, acetaldehyde, and dioxane from PET production. The proposed standards would regulate emissions of these compounds, as well as a variety of other organic HAP that are emitted.

D. Affected Emission Points

Emissions from the following types of emission points (i.e. emission source types) are being covered by today's proposed rule: storage vessels, process vents, equipment leaks, wastewater operations, heat exchange systems and process contact cooling towers.

E. Format of the Standards

As discussed in more detail in Section IV.F, Proposed Standards, the Hazardous Organic NESHAP (HON) (subparts F, G, H, and I of 40 CFR part 63), the polymer manufacturing NSPS (subpart DDD of 40 CFR part 60), and the Batch Processes Alternative Control Techniques (ACT) document (EPA 453/R–93–017, November 1993; Docket No. A–92–45, Category II–A) provided a basis for selection of the proposed formats. In most instances, the format of today's proposed standards is the same as those found in the HON, Batch Processes ACT, and subpart DDD. The following paragraphs summarize the selected formats, including those that are different from the HON, Batch Processes ACT, and subpart DDD. The formats and their selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation (Docket No. A–92–45, Category II–A).

For storage vessels, the format of the proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and control device are selected, the format is a combination of design and equipment standards.

For process vents, the format of the proposed standards is also dependent on the method selected to comply with the standards. If a flare is selected, the format is a combination of equipment and operating specifications. If a control device other than a flare is used, the formats are a percent reduction and an outlet concentration.

For equipment leaks, the proposed standards incorporate several formats: Equipment, design, base performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment because of the nature of the equipment, available control techniques, and applicability of the measurement method.

For wastewater streams requiring control, the proposed standards incorporate several formats: Equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of organic HAP from the wastewater stream itself, several alternative formats are included, including five alternative numerical emission limit formats (overall percent reduction for total volatile organic HAP (VOHAP), individual organic HAP percent reduction, effluent concentration limit for total VOHAP, individual VOHAP effluent concentration limits, and mass removal for organic HAP) and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

Finally, a work practice standard is adopted for all cooling water/process heat exchange systems at Group IV resin facilities. This standard requires a leak detection and repair program to detect and repair leaks of organic HAP into cooling tower water. In addition, the proposed standards include a work practice standard that prohibits the use of cooling tower water in contact condensers in vacuum systems located at PET facilities.

F. Proposed Standards

With relatively few exceptions, the standards being proposed under today's action for storage vessels, continuous process vents, equipment leaks, wastewater operations, and heat exchange systems are the same as those promulgated for the corresponding types of emission points at facilities subject to the HON (subparts F, G, H, and I). The proposed standards also require emissions from certain batch process vents to be reduced by at least 90 percent or to be controlled in a flare that meets the requirements of § 63.11(b) of subpart A of 40 CFR part 63. (The criteria used to determine which batch process vents require control was based on the approach described in the Batch Processes ACT.) The standards being proposed today for certain continuous process vents from polystyrene facilities and from PET facilities using a continuous process require the same levels of control as were promulgated for these facilities under subpart DDD of 40 CFR part 60. Finally, for PET facilities, the proposed standards would prohibit the use of cooling tower water in contact condensers in the vacuum systems and would require that all vacuum system wastewater containing any of the organic HAP identified in Table 9 of the HON wastewater provisions be controlled to the same level of control as required under the HON, regardless of the wastewater stream's organic HAP content or flowrate.

Under the proposed standards, emissions from existing or new batch process vents, heat exchange systems not including process contact cooling towers, and equipment leaks are required to be controlled to the levels specified in the proposed standards. Emissions from existing storage vessels, continuous process vents, process wastewater streams, and process contact cooling towers are required to be controlled to the levels specified in the proposed standards or alternatively, the emissions averaging compliance approach specified in the rule may be used. Emissions from new storage vessels, continuous process vents, process wastewater streams, and process contact cooling towers are required to be controlled to the levels specified in the proposed standards. The emissions averaging compliance approach may not be used for new sources.

Tables 4 and 5 summarize the level of control being proposed under today's proposed standards. For those types of emission points where the level of control is the same as the HON, this is indicated in the table by the acronym "HON." Similarly, where the proposed level of control is the same as promulgated under subpart DDD of 40 CFR part 60, this is indicated by the use of the words "same as under subpart DDD." Finally, where the proposed

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level of control is more stringent than the level of control in the HON or in subpart DDD for that type of emission point, the words "MACT floor" are used.

TABLE 4.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES IN RELATIONSHIP TO SUBPARTS G AND H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
ABS, continuous emulsion.	HON	HON	HON	HON	HON for heat exchange systems.
ABS, continuous mass	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
ABS, batch emulsion	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
ABS, batch suspension.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
ABS, latex	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
MABS	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
MBS	HON	Continuous Process Vents: MACT Floor Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
SAN, continuous	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
SAN, batch	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
ASA/AMSAN	MACT Floor.	MACT Floor	HON	No control	HON for heat exchange systems.
Polystyrene, continuous.	MACT Floor.	Continuous Process Vents from material recovery: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
Polystyrene, batch	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
Expandable polystyrene.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.
PET-TPA, continuous	HON	Continuous Process Vents from raw material preparation and polymerization reaction sections: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater).[a]	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.
PET-TPA, batch - DMT, batch.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater)..	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.
PET-DMT, continuous	HON	Continuous Process Vents from material recovery and polymerization reaction sections: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater).[a]	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.

TABLE 4.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES IN RELATIONSHIP TO SUBPARTS G AND H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60—Continued

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
Nitrile	MACT Floor.	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare.	HON	HON	HON for heat exchange systems.

[a] Vacuum system wastewater streams containing any organic HAP identified in Table 9 of the HON wastewater provisions (subpart G) shall be considered Group 1 and are required to be controlled.

TABLE 5.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES IN RELATIONSHIP TO SUBPARTS G & H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
ABS, continuous emulsion.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
ABS, continuous mass	Regulatory Alternative 2[a].	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
ABS. batch emulsion	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
ABS. batch suspension.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
ABS, latex	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
MABS	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
MBS	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
SAN, continuous	MACT Floor.	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
SAN, batch	HON	MACT Floor	HON	HON	HON for heat exchange systems.
ASA/AMSAN	MACT Floor.	MACT Floor	HON	No control	HON for heat exchange systems.
Polystyrene, continuous.	MACT Floor.	Continuous Process Vents from material recovery: Same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
Polystyrene, batch	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
Expandable polystyrene.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.
PET—TPA, continuous.	HON	Continuous Process Vents from raw material preparation and polymerization reaction sections: same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater).[b]	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.

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TABLE 5.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES IN RELATIONSHIP TO SUBPARTS G & H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60—Continued

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
PET—TPA, batch—DMT, batch.	HON	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater).[b]	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.
PET—DMT, continuous.	HON	Continuous Process Vents from material recovery and polymerization reaction sections: same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON for wastewater (including all vacuum system generated wastewater).[b]	No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems.
Nitrile	MACT Floor.	Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare.	HON	HON	HON for heat exchange systems.

[a] The proposed standard is more stringent than the MACT floor, which is more stringent than the HON.
[b] Vacuum system wastewater streams containing any organic HAP identified in Table 9 of the HON wastewater provisions (subpart G) shall be considered Group 1 and are required to be controlled.

1. Storage vessels

Tables 6 and 7 summarize the proposed standards for existing and new storage vessels, respectively. The proposed standards would require owners and operators to first determine whether or not a storage vessel was required to be controlled. This is done through the application of certain criteria to each storage vessel. For those storage vessels determined to require control, the proposed rule then specifies the level of control required.

TABLE 6.—PROPOSED STANDARDS FOR EXISTING STORAGE VESSELS

Subcategory	Applicability criteria[a]	Level of Control[b]
All ABS SAN, continuous SAN, batch MABS MBS Polystyrene, batch All PET Nitrile (except as noted below).	Vapor pressure ≥0.75 psia and capacity ≥40,000 gallons[c]. Vapor pressure ≥1.9 psia and capacity ≥20,000 gallons[c]	If vapor pressure is <11.1 psia: 1. fixed roof and internal floating roof; or 2. external floating roof; or 3. an external floating roof converted to an internal floating roof; or 4. a closed vent system and control device. If vapor pressure ≥11.1 psia: a closed vent system and control device[d]
ASA/AMSAN	AMST for capacities ≥10,200 gallons Styrene/acrylonitrile for capacities ≥1,000 gallons. Acrylonitrile for capacities ≥20,000 gallons Any other chemical: Vapor pressure ≥0.75 psia and capacity ≥40,000 gallonsc. Vapor pressure ≥1.9 psia and capacity ≥20,000 gallons[c]	98 percent reduction. 98 percent reduction. 98 percent reduction. If vapor pressure is <11.1 psia: 1. fixed roof and internal floating roof; or 2. external floating roof; or 3. an external floating roof converted to an internal floating roof; or 4. a closed vent system and control device. If vapor pressure ≥11.1 psia: a closed vent system and control device[d]
Nitrile	Control all acrylonitrile storage vessels ≥3,500 gallons.	(same as the HON level of control).
Polystyrene, continuous	Vapor pressure 0.28 psia and capacity ≥20,000 gallons. Vapor pressure ≥2.08 psia and capacity ≥10,000 but less than 20,000 gallons	(same as the HON level of control)

[a] Storage vessels that meet the criteria are defined as Group 1 storage vessels and control of their emissions would be required. Storage vessels that do not meet the criteria are defined as Group 2 storage vessels and control of their emissions is not required.
[b] Required for Group 1 storage vessels only.
[c] The applicability criteria for these subcategories are the same as in the HON.
[d] The level of control is the same as the HON.
KEY: AMST = alpha methyl styrene.

TABLE 7.—PROPOSED STANDARDS FOR NEW STORAGE VESSELS

Subcategory	Applicability criteria[a]	Level of control[b]
All ABS (except CM) SAN, batch MABS MBS Polystyrene, batch All PET Nitrile (except as noted below).	Vapor pressure ≥0.1 psia and capacity ≥40,000 gallons[c]. Vapor pressure ≥1.9 psia and capacity ≥10,000 gallons[c]	If vapor pressure is <11.1 psia: 1. fixed roof and internal floating roof; or 2. external floating roof; or 3. an external floating roof converted to an internal floating roof; or 4. a closed vent system and control device. If vapor pressure ≥11.1 psia: a closed vent system and control device[d].
ABS, CM	VP ≥ 1.9 psia and capacity ≥10,000 gallons and <12,000 gallons. Styrene for capacities ≥12,000 gallons VP ≥ 0.0782 psia and ≥12,000 gallons	(same as the HON level of control).
SAN, continuous	VP ≥ 0.0735 to <0.1 psia and capacity ≥600,000 gallons. VP ≥ 0.1 to <1.45 psia and ≥40,000 gallons VP ≥ 1.45 to <14.7 psia and capacity ≥8,000 to <40,000 gallons.	90 percent reduction. (same as the HON level of control). 98 percent reduction.
ASA/AMS	AMST for capacities ≥10,200 gallons Styrene/acrylonitrile for capacities ≥1,000 gallons. Acrylonitrile for capacities ≥20,000 gallons Any other chemical: Vapor pressure ≥0.1 psia and capacity ≥40,000 gallons[c]. Vapor pressure ≥1.9 psia and capacity ≥10,000 gallons[c]	98 percent reduction. 98 percent reduction. 98 percent reduction. (same as the HON level of control).
Nitrile	Control all acrylonitrile storage vessels ≥ 3,500 gallons.	(same as the HON level of control).
Polystyrene, continuous	Vapor pressure ≥ 0.78 psia and capacity ≥ 29,000 gallons. Vapor pressure ≥ 0.09 psia and capacity ≥ 12,000 gallons but less than 29,000 gallons. Vapor pressure ≥ 1.1 psia and capacity ≥ 5,170 gallons but less than 12,000 gallons .	(same as the HON level of control).

[a] Storage vessels that meet the criteria are defined as Group 1 storage vessels and control of their emissions would be required. Storage vessels that do not meet the criteria are defined as Group 2 storage vessels and control of their emissions is not required.
[b] Required for Group 1 storage vessels only.
[c] The applicability criteria for these subcategories are the same as those in the HON.
[d] The level of control is the same as in the HON.
KEY: CM = continuous mass; VP = vapor pressure.

a. *Applicability criteria.* For most existing and new storage vessels, the proposed criteria for determining which storage vessels are to be controlled are identical to the criteria from the HON storage vessel provisions and are based on storage vessel capacity and vapor pressure of the stored material. Typically, the vapor pressures and storage vessel capacity criteria that determine Group 1 or Group 2 status are different for existing and new sources. As in the HON, if a storage vessel meets the applicability criteria and is required to be controlled under today's proposed rule, it is referred to as a Group 1 storage vessel. If a storage vessel is not required to apply controls, it is referred to as a Group 2 storage vessel.

For new ABS, continuous mass facilities, the applicability criteria also rely on vapor pressure and storage vessel capacity, but use different levels of each for defining a Group 1 storage vessel (see Table 7).

For new continuous SAN facilities, the proposed standards for storage vessels rely on five different combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 7.

For existing continuous polystyrene facilities, the proposed standards for storage vessels rely on two combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 6.

For new continuous polystyrene facilities, the proposed standards for storage vessels rely on three combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 7.

For existing and new ASA/AMSAN facilities, the proposed standards for storage vessels have two parts to the applicability criteria. The first part identifies specific chemical and storage vessel capacity combinations. The second part applies vapor pressure and storage vessel capacity applicability criteria for storage vessels containing chemicals not specifically identified.

For existing and new nitrile facilities, all acrylonitrile storage vessels with capacities greater than or equal to 3,500 gallons are required to be controlled. For all other chemicals, the applicability criteria are the same as in the HON.

b. *Level of control.* Except for the subcategories discussed below, the level of control required for storage vessels determined to be Group 1 storage vessels under the appropriate applicability criteria being proposed in today's rule is either technical modification to the tank (e.g., the installation of an internal floating roof)

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or the use of a closed vent system and control device that is generally required to achieve at least 95 percent emission reduction. (This is the same level of control as required under the HON.) For all subcategories, storage vessels determined to be Group 2 are not required to be controlled.

For new continuous SAN facilities, different levels of control for two of the five applicability criteria combinations are being proposed. For the applicability combination of vapor pressure greater than 0.0735 but less than 0.1 pounds per square inch absolute (psia) *and* storage vessel capacity greater than or equal to 600,000 gallons, the proposed standard would require an emission reduction of 90 percent or more. For the applicability combination of vapor pressure greater than or equal to 1.45 but less than 14.7 psia *and* storage vessel capacity greater than or equal to 8,000 gallons but less than 40,000 gallons, the proposed standard would require an emission reduction of 98 percent or more.

For ASA/AMSAN facilities, different levels of control for storage vessels determined to be Group 1 based on the specific chemical/storage vessel capacity combination criteria are being proposed. For these storage vessels, the level of control being proposed is 98 percent.

2. Process Vents

As for storage vessels, the proposed standards for process vents require owners and operators to first determine whether or not a process vent (or set of process vents) requires control and, if so, then specifies the level of control required.

a. *Applicability criteria.* Tables 8 and 9 summarize the proposed applicability criteria for continuous and batch process vents at existing and new facilities, respectively. As for storage vessels, process vents that meet the applicability criteria are referred to as Group 1 process vents and those that do not are referred to as Group 2 process vents. With the exceptions discussed below, the proposed rule would require control of only those process vents determined to be Group 1 process vents under the appropriate criteria.

TABLE 8.—SUMMARY OF PROPOSED PROCESS VENT APPLICABILITY CRITERIA FOR EXISTING FACILITIES

Process vents	Subcategory	Applicability criteria	
Continuous Unit Operations	All (except as specified below)	TRE[a] ≤ 1.	
	MBS	TRE[a] ≤ 3.7.	
	ASA/AMSAN	None. All vents are required to be controlled.	
	Polystyrene, continuous: material recovery	None. Must meet standard.	
	PET/DMT, continuous: material recovery	0.12 kg TOC per Mg product[b].	
	PET/DMT, continuous: polymerization reaction	None. Must meet standard.	
	PET/TPA, continuous: raw material preparation and polymerization reaction.	None. Must meet standard.	
Batch Unit Operations	All	Stream volatility	Flowrate regression equation[c]
		Low	(0.00437) AE—51.6[d].
		Moderate	(0.00187) AE—14.0[d].
		High	(0.00081) AE—8.5[d].

[a] The total resource effectiveness (TRE) value is a reflection of the cost effectiveness of controlling an individual process vent. There are different TRE coefficients for existing and new process vents.
[b] If emissions from the described process vents are greater than the applicability criteria, control is required.
[c] If actual stream flowrate (standard cubic meters per minute) is less than the flowrate calculated by the regression equation, the process vent is required to be controlled.
[d] AE = annual emissions in kilograms per year.

TABLE 9.—SUMMARY OF PROPOSED PROCESS VENT APPLICABILITY CRITERIA FOR NEW FACILITIES

Process vents	Subcategory	Applicability criteria	
Continuous Unit Operations	All (except as specified below)	TRE[a] ≤ 1	
	SAN, batch	None. Must meet standard.	
	ASA/AMSAN	None. All vents are required to be controlled.	
	Polystyrene, continuous: material recovery	None. Must meet standard.	
	PET/DMT, continuous: material recovery and polymerization reaction.	None. Must meet standard.	
	PET/TPA, continuous: Raw material preparation and polymerization reaction.	None. Must meet standard.	
Batch Unit Operations	All (except as specified below)	Stream volatility	Flowrate regression equation[b]
		Low	(0.00437) AE—51.6[c].
		Moderate	(0.00187) AE—14.0[c].
		High	(0.00081) AE—8.5[c].
	SAN, batch	None	Must meet standard.

[a] The total resource effectiveness (TRE) value is a reflection of the cost effectiveness of controlling an individual process vent. There are different TRE coefficients for existing and new process vents.
[b] If actual stream flowrate (standard cubic meters per minute) is less than the flowrate calculated by the regression equation, the process vent is required to be controlled.
[c] AE=annual emissions in kilograms per year.

Except for certain PET and polystyrene continuous process vents, Group 1 continuous process vents are determined by comparing each process vent's total resource effectiveness (TRE) value to a TRE value of unity. The TRE is a reflection of the costs and other associated impacts of controlling an individual process vent. It is determined based on process vent stream characteristics such as emissions (mass per hour), heat content, and flowrate. The procedure in the proposed rule for determining Group 1 process vents is the same procedure as in the HON.

Except for continuous process vents at existing MBS facilities, continuous process vents with a TRE value of 1 or less would be classified as a Group 1 process vent. For continuous process vents at existing MBS facilities, a TRE value of 3.7 or less defines a Group 1 process vent.

As seen in Tables 8 and 9, there are no applicability criteria specified for several subcategories. At these facilities, a Group 1/Group 2 determination does not need to be made and all process vents are required to be controlled.

For process vents associated with the material recovery section from existing PET facilities using a continuous DMT process, Group 1 process vents are determined by comparing uncontrolled emission rates with threshold emission rates. Process vents associated with the material recovery section at an existing PET facility using a continuous DMT process would be considered Group 1 process vents if the uncontrolled emission rate is greater than 0.12 kg TOC per Mg of product (see Table 8). For other process vents at existing and new polystyrene and PET facilities (see Tables 8 and 9), there are no applicability criteria. These process vents must meet the proposed standards.

For process vents from batch unit operations, the process vent is first characterized as to its volatility—low, medium, or high. Next, the estimate of the stream's annual emissions is entered in the appropriate flowrate regression equation. If the actual flowrate is less than the calculated flowrate, then the batch process vent is a Group 1 vent under these standards, and control is required. As seen in Tables 8 and 9, the batch process vent applicability criteria are the same for existing and new sources, except for new SAN batch facilities.

For new SAN batch facilities, there are no applicability criteria for individual process vent streams; all process vents are subject to control in that the proposed standard for these facilities requires an overall emission reduction of 84 percent from all process vents.

A batch process vent that is combined with a continuous process vent prior to a control or recovery device is not required to comply with the batch process vent provisions if there are no emissions to the atmosphere up until the point the batch vent stream is combined with the continuous vent stream. The combined vent would be required to comply with the continuous process vent provisions. The presence of a batch process vent in a continuous process vent stream would necessitate that all applicability tests and performance tests be conducted while the batch process vent is emitting (i.e. at maximum operating conditions).

b. *Level of control.* For continuous process vents, most of the facilities are required to control Group 1 process vents by at least 98 percent. If a flare is used, it must meet the design and operating requirements of § 63.11(b) of subpart A of 40 CFR part 63. Exceptions to this are described in the paragraphs below.

For continuous process emissions from the material recovery section of polystyrene plants using a continuous process, the proposed standards would (1) limit the emissions of TOC (minus methane and ethane) to 0.0036 kg TOC/Mg per megagram (Mg) of product (0.0036 pounds (lbs) TOC/1,000 lbs of product) from each material recovery section, or (2) limit the outlet gas temperature from each final condenser in each material recovery section to −25°C (−13°F), or (3) reduce emissions from each material recovery section by 98 weight percent or to 20 ppmv. These are the same requirements as in subpart DDD.

For PET facilities using a continuous TPA process, the proposed standards would limit continuous process vent emissions from (1) the raw material preparation section to 0.04 kg TOC/Mg of product and (2) the polymerization reaction section to 0.02 kg TOC/Mg of product. Similarly, for PET facilities using a continuous DMT process, the proposed standards would limit (1) continuous process vent emissions from the material recovery section to 0.018 kg TOC/Mg of product or the temperature to 37°F from each final condenser in the material recovery section and (2) continuous process vent emissions from the polymerization reaction section to 0.02 kg TOC/Mg of product. These are also the same requirements that are in subpart DDD, with the exception that cooling tower emissions would not be considered as part of the polymerization reaction section.

For Group 1 continuous process emissions from other process sections at polystyrene and PET facilities, the proposed standards would require emission reduction by at least 98 percent or control by a flare that meets the requirements of § 63.11(b) of subpart A of 40 CFR part 63.

For batch process vents, the proposed standards would require Group 1 process vents from batch unit operations to be controlled by at least 90 percent.

There are three subcategories where the proposed standards are based on the MACT floor. These subcategories are existing MBS facilities, existing and new ASA/AMSAN facilities, and new SAN, batch facilities.

For existing MBS facilities, the proposed standards require continuous process vents at facilities to either (1) meet an emission level of 0.000590 kg of emissions per megagram of product for all continuous process vents or (2) control all continuous process vents with a total resource effectiveness (TRE) of 3.7 or less by at least 98 percent. The TRE is to be calculated for each process vent using the same TRE coefficients as for other existing sources. The development of the MACT floor and applicability criteria for MBS existing sources is documented in Docket No. A–92–45, Category II–B and in the SID.

For both existing and new ASA/AMSAN facilities, the proposed rule requires all process vents (continuous and batch) at both existing and new facilities to control emissions by at least 98 percent.

For new SAN, batch facilities, the proposed rule requires an overall emission reduction of 84 percent of process vent emissions.

3. Equipment Leaks

For all the subcategories, both existing and new facilities would be required to implement a leak detection and repair (LDAR) program. With a few exceptions, the LDAR program being proposed is the same as that specified in the National Emission Standards for Organic HAP for Equipment Leaks (40 CFR part 63, subpart H) and the National Emission Standards for Organic HAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I). Under the proposed standards, work practice requirements to reduce emissions from equipment that are in volatile HAP service for 300 or more hours per year (hr/yr) are specified. The proposed standards define "in volatile HAP service" as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. Equipment

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subject to the proposed standards are: Valves, pumps, compressors, connectors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, agitators, surge control vessels, bottoms receivers, and closed-vent systems and control devices.

Affected sources currently complying with the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of today's proposed rule. Further, affected sources complying with subpart I through a quality improvement program shall be allowed to continue these programs without interruption as part of complying with today's proposed rule. In other words, becoming subject to today's proposed rule does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

4. Wastewater

Except for ASA/AMSAN facilities, the proposed standards require owners and operators to determine for each wastewater stream at its point of generation whether it is a Group 1 or Group 2 wastewater stream. As for process vents, Group 1 wastewater streams are required to be controlled, while Group 2 wastewater streams are not required to be controlled. The wastewater stream characteristics used to make the Group 1/Group 2 applicability determination are flowrate and organic HAP concentration. The proposed criteria for determining Group 1 wastewater streams are presented in Table 10 and are the same criteria used in the HON. The level of control required for Group 1 wastewater streams is dependent upon the organic HAP constituents in the wastewater stream. The levels of control proposed for these standards are the same as those for the HON. The proposed rule would not control wastewater emissions from any existing or new ASA/AMSAN facilities.

TABLE 10.—PROPOSED WASTEWATER APPLICABILITY CRITERIA [a] [b]

Existing source criteria	New source criteria
VOHAP[c] concentration ≥ 10,000 ppmw	Same as existing criteria
or	*and*
VOHAP[c] concentration ≥ 1,000 ppmw *and* flow rate ≥ 10 liters per minute	for a subset of organic HAP...VOHAP[c] concentration ≥10 ppmw *and* flowrate ≥0.02 liters per minute.

[a] Wastewater streams meeting these criteria are considered Group 1 wastewater streams and control is required.
[b] There are exemptions for minimal flowrates and concentrations.
[c] VOHAP=volatile organic HAP.

The proposed standards require owners and operators to comply with the maintenance wastewater requirements in § 63.105 of subpart F of this part. These provisions require owners and operators to include a description of procedures for managing wastewaters generated during maintenance in their start-up, shutdown and malfunction plan. The start-up, shutdown, and malfunction plan is required under subpart A of 40 CFR part 63.

5. Heat Exchange Systems and Process Contact Cooling Towers

Today's proposed standards would require a monitoring program to detect leakage of organic HAP from the process into the cooling water. The proposed monitoring program is the same as that in the HON (subpart F of this part). The proposed rule would also prohibit the use of cooling tower water in contact condensers in the vacuum systems at PET facilities. Further, if a wastewater stream is generated from the vacuum system and it contains any of the organic HAP identified in Table 9 of the HON wastewater provisions (subpart G), the proposed rule would require it to be controlled regardless of its organic HAP concentration or flowrate. The level of control required is the same as that for a Group 1 wastewater stream.

These provisions for control of emissions from process contact cooling towers are independent of the provisions of the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q) which may also be applicable to these cooling towers.

The EPA solicits comments on the emission reduction potential, costs, and technical feasibility of all control options for process contact cooling towers at PET facilities. Any comments on alternate control options should address the emissions from the cooling tower, the emissions from any wastewater discharged from the equipment required by the control option, and any "reactor process" or "distillation column" vent emissions associated with the option.

6. Emissions Averaging

Today's proposed standards would apply essentially the same emissions averaging scheme as has been adopted by the HON, although the emissions averaging provisions of the proposed rule are entirely contained in the proposed rule instead of referring to the subpart G emissions averaging provisions. Under the proposed rule, emissions averaging would be allowed among five collocated existing emission points belonging to the same subcategory. This number may be increased by three additional points if pollution prevention measures are to be used to control emission points to be included in the average. However, emissions from batch process vents and equipment leaks would not be allowed to be averaged. The owner or operator must demonstrate that the averaging scheme will not result in greater hazard or risk relative to strict compliance with the standards in the absence of averaging.

The EPA specifically requests comments on the selection of the limit of (5, or 8 if pollution prevention measures are used) emission points to be allowed per subcategory for purposes of averaging in this proposed rule. Will this limit preclude known opportunities within real facilities to generate cost-effective credits within a category or subcategory? Any comments on this need to address specifics on the emission and cost quantities computed, with detailed calculations and references to show how these quantities were determined.

The EPA is including emissions from process contact cooling towers and vacuum system wastewater at existing PET facilities in the emissions averaging procedures for the proposed rule. As noted earlier, the proposed standards would (1) prohibit existing PET facilities from using cooling tower water in the contact condensers associated with vacuum systems, and (2) would require the control of any wastewater stream generated by the vacuum system containing organic HAP listed on Table 9 of the wastewater provisions in subpart G of this part to the level required for a Group 1 process wastewater stream. Control is required regardless of the organic HAP concentration and flowrate of the stream.

The proposed prohibition for cooling tower water would eliminate organic HAP emissions from the process contact cooling towers since the cooling tower water would not come in contact with the organic HAP generated by the process. If an owner or operator elected to comply with the proposed emissions averaging procedures, the owner or operator could elect not to eliminate process contact cooling tower water from the vacuum system. This would create a debit; that is, organic HAP emissions would now occur from the cooling tower, whereas, under the proposed rule, no organic HAP emissions would occur. Thus, the proposed emissions averaging procedures only include process contact cooling towers in the equation for the calculation of debits. On the other hand, since the proposed standard would eliminate organic HAP emissions from the cooling tower, there is no opportunity for an owner or operator to control cooling tower emissions to a level more stringent than the proposed rule. Thus, the proposed emissions averaging procedures for calculating credits do not include process contact cooling towers. The EPA is specifically requesting information on methodologies which could be used to estimate emissions from process contact cooling towers.

The EPA requests comments on all aspects of the implementation of emissions averaging and on ways that the emissions averaging provisions can be made more flexible without reducing the emission reduction. A discussion of the rationale for the proposed emissions averaging provisions is contained in Chapter 4 of the Basis and Purpose Document.

G. Compliance and Performance Test Provisions and Monitoring Requirements

Compliance and performance test provisions and monitoring requirements contained in today's proposed rule are very similar to those found in the HON (subpart G of part 63). Each type of emission point is discussed briefly in the paragraphs below. Also, significant differences from the parameter monitoring requirements found in subpart G are discussed.

1. Continuous Process Vents

The proposed regulations for process vents from continuous unit operations (continuous process vents) require the owner or operator to either calculate a TRE index value to determine whether each continuous process vent is a Group 1 or Group 2 vent, or the owner or operator can elect to comply with the control requirements without calculating the TRE index. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in the proposed rule.

Performance test provisions are included for Group 1 continuous process vents to verify that the control device achieves the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the proposed rule.

Compliance provisions for continuous process vents at polystyrene and PET facilities are included in the proposed rule. For owners or operators electing to comply with a kg TOC/Mg of product limit, procedures to demonstrate compliance are provided. Also, procedures are included in the proposed rule to demonstrate compliance with the requirement to reduce overall process vent emissions (continuous and batch) by 84 percent for new SAN, batch facilities.

2. Batch Process Vents

Similar to the provisions for continuous process vents, there is a procedure for determining which batch process vents are Group 1 and which are Group 2. This procedure is based on annual emissions and annual average flowrate of the batch process vent. Equations for estimating annual emissions and annual average flowrates are provided in the proposed rule.

Performance test provisions are included for Group 1 batch process vents to verify that the control or recovery device achieves the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the proposed rule.

For Group 2 batch process vents, the proposed rule requires owners and operators to establish a batch cycle limitation. The batch cycle limitation limits the number of batch cycles that can be accomplished for a given batch unit operation per year (i.e., for the operations that feed a single batch process vent). This enforceable limitation ensures that a Group 2 batch process vent does not become a Group 1 batch process vent as a result of running more batches than anticipated when the group determination was made. The determination of the batch cycle limitation is not tied to any previous production amounts. An affected source may set the batch cycle limitation at any level it desires as long as the batch process vent remains a Group 2 batch process vent. Alternatively the proposed rule would allow owners and operators to declare any Group 2 batch process vent to be a Group 1 batch process vent. In such cases, control of the batch process vent is required.

As described earlier, procedures are included in the proposed rule to demonstrate compliance with the requirement to reduce overall process vent emissions (continuous and batch) by 84 percent for new SAN, batch facilities.

3. Storage Vessels

Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must identify the appropriate monitoring procedures to be followed in order to demonstrate compliance. Monitoring parameters and procedures for many of the control devices likely to be used are already identified in other parts of the proposed rule. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the proposed rule.

4. Wastewater

For demonstrating compliance with the various requirements, the proposed rule allows the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the regulation.

5. Equipment Leaks

The proposed rule retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. The proposed rule requires the use of Method 18 to determine the organic content of a process stream. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to test for leaks.

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6. Heat Exchange Systems

Monitoring of cooling water is required to detect leaks in non-contact heat exchange systems. If a leak is detected, the heat exchange system must be repaired.

7. Process Contact Cooling Towers

Owners and operators of affected sources subject to these provisions are required to indicate in their Implementation Plan and Notification of Compliance Status reports that cooling tower water will not be used in contact condensers associated with vacuum systems.

8. Continuous Parameter Monitoring

When compared to the HON, the proposed rule contains two significant differences related to continuous parameter monitoring. First, the proposed rule does not allow any excused excursions. The proposed rule, as did subpart G, requires at least 75 percent of monitoring data to constitute a valid days worth of data for continuous and batch process vents. Failure to have a valid day's worth of monitoring data is considered an excursion. The criteria for determining a valid day's or hour's worth of data are provided in the proposed rule. Second, the procedure for determining the parameter monitoring level for continuous and batch process vents is both more specific and restrictive than the procedure in subpart G because it relies exclusively on performance tests.

H. Recordkeeping and Reporting Requirements

The general recordkeeping and reporting requirements of this subpart are very similar to those found in subpart G of 40 CFR part 63. The proposed rule also relies on the provisions of subpart A of 40 CFR part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. Specific recordkeeping and reporting requirements for each type of emission point are also included in the proposed rule.

The proposed rule requires sources to keep records and submit reports of information necessary to document compliance. Records must be kept for 5 years. The following six types of reports must be submitted to the Administrator as appropriate: (1) Initial Notification, (2) Implementation Plan (if an operating permit application has not been submitted or, for new sources, an application for approval of construction or reconstruction), (3) Emissions Averaging Plan, (4) Notification of Compliance Status, (5) Periodic Reports, and (6) other reports. The requirements for each of the six types of reports are summarized below. In addition, sources complying with the equipment leak requirements contained in subpart H must follow the recordkeeping and reporting requirements of subpart H.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation, whichever is later. The notification must list the thermoplastic processes that are subject to the proposed rule, and which provisions may apply (e.g., continuous process vents, batch process vents, storage vessels, wastewater, and/or equipment leak provisions). A detailed identification of emission points is not necessary for the Initial Notification. The notification, however, must include a statement of whether the affected source expects that it can achieve compliance by the specified compliance date.

2. Implementation Plan

The Implementation Plan details how the affected source plans to comply. An Implementation Plan would be required only for affected sources that have not yet submitted an operating permit application or for new sources that have not yet submitted the same information as part of their application for approval of construction or reconstruction.

The Implementation Plan would be due 12 months prior to the date of compliance. For new sources, Implementation Plans would be submitted with the Notification of Compliance Status.

The information in the Implementation Plan should be incorporated into the affected source's operating permit application. The terms and conditions of the plan, as approved by the permit authority, would then be incorporated into the operating permit.

The Implementation Plan would include a list of emission points subject to the continuous process vents, batch process vents, storage vessels, wastewater, heat exchange systems, process contact cooling towers, and equipment leak provisions and, as applicable, whether each emission point (e.g., storage vessel or process vent) is Group 1 or Group 2. The control technology or method of compliance planned for each Group 1 emission point must be specified.

The plan must also certify that appropriate testing, monitoring, reporting, and recordkeeping will be done for each Group 1 emission point. If an affected source requests approval to monitor a unique parameter, a rationale must be included.

3. Emissions Averaging Plan

The Emissions Averaging Plan would be due 18 months prior to the date of compliance. New sources are not allowed to comply through the use of emissions averaging.

For points included in emissions averaging, the Emissions Averaging Plan would include: an identification of all points in the average and whether they are Group 1 or Group 2 points; the specific control technique or pollution prevention measure that will be applied to each point; the control efficiency for each control used in the average; the projected credit or debit generated by each point; and the overall expected credits and debits. The plan must include a demonstration that the emissions averaging scheme will not result in greater hazard or risk than if the emission points would comply with the standards in the absence of averaging. The plan must also certify that the same types of testing, monitoring, reporting, and recordkeeping that are required by the proposed rule for Group 1 points will be done for all points (both Group 1 and Group 2) included in an emissions average. If an affected source requests approval to monitor a unique parameter or use a unique recordkeeping and reporting system, a rationale must be included in the Emissions Averaging Plan.

4. Notification of Compliance Status

The Notification of Compliance Status would be required 150 days after the affected source's compliance date. It contains the information for Group 1 emission points and for all emission points in emissions averages, necessary to demonstrate that compliance has been achieved. Such information includes, but is not limited to, the results of any performance tests for continuous and/or batch process vents and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; TRE determinations for continuous process vents; group determinations for batch process vents; design analyses for storage vessels and wastewater emission points; monitored parameter levels for each emission point and supporting data for the designated level; and values of all parameters used to calculate emission credits and debits for emissions averaging.

5. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there are two exceptions. First, quarterly reports must be submitted for all points included in an emissions average. Second, if monitoring results show that the parameter values for an emission point are above the maximum or below the minimum established levels for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For emission points involved in emissions averages, the report would include the results of the calculations of credits and debits for each month and for the quarter. For continuously monitored parameters, the data on those periods when the parameters are above the maximum or below the minimum established levels are included in the reports. Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information the affected source is required to report under its operating permit or Implementation Plan would also be described in Periodic Reports.

6. Other Reports

Other reports required under the proposed rule include: reports of start-up, shutdown, and malfunction; process changes that change the compliance status of process vents; and requests for extensions of repair and notifications of inspections for storage vessels and wastewater.

In addition, quarterly reporting of the number of batch cycles accomplished for Group 2 batch process vents is required. Every fourth quarterly report would be required to include the total batch cycles accomplished during the previous 12 months, and a statement whether the owner or operator is in compliance with the batch cycle limitation.

V. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided.

Specifically, the EPA is requesting comments and data on several aspects of the proposed rule. First, the EPA solicits comments and data on the technical feasibility and costs for emission control techniques for the vacuum system and associated process contact cooling towers used in PET production as described in Section IV.F.5 of this preamble and in the Basis and Purpose Document, Chapter 6. Second, the EPA solicits comments on several aspects of the emissions averaging provisions as described in Section IV.F.6 of this preamble and in the Basis and Purpose Document, Chapter 4. The emissions averaging provisions in this proposed rule are modeled after those in the HON. The EPA is interested in comments on all aspects, but is especially interested in comments on the limitation of the number of emission points allowed in an average and on ways that the implementation of emissions averaging can be made more flexible without reducing the emission reduction. Third, the EPA solicits comments related to the use of subpart DDD emission limits and the proposed modification to subpart DDD. Fourth, and finally, in some instances, the EPA has required control more stringent than that required by the MACT floor. In these instances, the EPA has judged the impacts to be reasonable. The EPA specifically solicits comments on these decisions.

VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (water and solid waste), energy, cost, and economic impacts resulting from the control of organic HAP emissions under this rule.

A. Facilities Affected by These NESHAP

The proposed rule would affect ABS, SAN, MABS, MBS, polystyrene, PET, and nitrile facilities that are major sources in themselves, or that are located at a major source. Based on available information, all of the facilities at which these thermoplastics are produced were judged to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.)

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood because emissions and control data were collected on each facility included in the analysis. The impacts estimates were determined for both existing facilities and new facilities (i.e., those that are expected to begin operation through 1999).

The expected growth rate in each of the seven source categories was analyzed (see Docket No. A–92–45, Category II–B) and the SID. Based on this analysis, the following average annual growth rates (percent per year) through 1999 were estimated:

- ABS—4 percent.
- SAN—4 percent.
- MABS—3 percent.
- MBS—3 percent.
- Polystyrene—3 percent.
- PET—10 percent for bottle-grade resins and 4 percent for other PET resins.
- Nitrile—3 percent.

The impacts for existing sources were estimated by bringing each facility's control level up to the proposed standards. For new sources, impacts were based on identifying the number of new facilities required to meet the expected growth within the source category, identifying the types of facilities (e.g., batch versus continuous) that would be built, and then selecting a subset of the existing facilities to represent the expected growth. The impacts on these "new" facilities were determined by applying the proposed standards for new sources to the selected subset of facilities assuming the existing level of control. This methodology is discussed in detail in Docket No. A–92–45, Category II–B and the SID.

B. Primary Air Impacts

The proposed standards are estimated to reduce organic HAP emissions from all existing sources by 11,750 Mg/yr from a baseline level of 24,780 Mg/yr. This is a 47 percent reduction. For new facilities, the proposed standards are estimated to reduce organic HAP emissions by 7,395 Mg/yr from a baseline level of 14,920 Mg/yr, for a 50 percent reduction. Table 11 summarizes the organic HAP emission reductions for each individual subcategory.

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TABLE 11.—Organic HAP Emissions and Emission Reductions

Subcategory	Existing sources			New sources		
	Baseline, Mg/yr	Emission reduction, Mg/yr	Percent reduction	Baseline, Mg/yr	Emission Reduction, Mg/yr	Percent reduction
ABS, continuous mass	240	190	80%	95	87	92%
ABS, continuous emulsion [a]	1,110	>180	>16%	400	>115	>29%
ABS, batch emulsion	500	56	11%	35	15	43%
ABS, batch suspension	15	5	33%	13	5	38%
ABS, latex	3	2	67%	—	—	—
SAN, continuous	110	65	60%	40	25	63%
SAN, batch	35	13	37%	20	6	30%
ASA/AMSAN	100	94	94%	—	—	—
MABS [a]	86	>38	>44%	—	—	—
MBS	190	130	68%	20	16	80%
Polystyrene, continuous	1,440	1,060	74%	330	240	73%
Polystyrene, batch	190	130	68%	—	—	—
Expandable polystyrene	450	92	20%	—	—	—
PET-TPA, continuous	6,090	2,400	40%	6,090	2,200	36%
PET-TPA, batch [a]	1,310	>6	>1%	1,310	>6	>1%
PET-DMT, continuous	4,480	2,330	52%	3,190	1,810	57%
PET-DMT, batch	8,400	4,950	59%	3,380	2,870	85%
Nitrile	30	10	33%	—	—	—
Totals [b]	24,780	11,750	47%	14,920	7,395	50%

—No new growth projected, therefore no impacts expected.
[a] A portion of the emission reductions for this subcategory are confidential business information.
[b] Total values are affected by the subcategories for which some data are confidential business information.

C. Non-Air Impacts

The proposed standards are not expected to generate any adverse water impacts. Depending on the methods selected to comply with the proposed prohibition of cooling tower water in contact condensers, the amount of wastewater generated at PET facilities could decrease.

The proposed standards are not expected to increase the generation of solid waste at any Group IV thermoplastic facility.

D. Energy Impacts

Energy impacts include increased energy use (fuel) for the operation of control equipment, energy credits attributable to the prevention of organic HAP emissions from equipment leaks, and emissions of particulates, sulfur dioxides (SOx), and nitrogen oxide (NOx) (secondary air impacts) associated with increased energy use. Under today's proposed rule, energy use is expected to increase by approximately 30,000 barrels of oil per year for existing sources and 44,000 for new sources. The emissions of secondary air pollutants associated with this energy increase are 70 Mg/yr for existing sources and 80 Mg/yr for new sources. At the same time, energy credits attributable to the prevention of organic HAP emissions from equipment leaks are approximately 17,000 barrels of oil per year for existing sources and 8,000 for new sources. This results in a net increase of approximately 13,000 barrels of oil per year for existing sources and 36,000 for new sources.

These figures are related to the control of process vents, wastewater operations, and equipment leaks. Energy impacts related to storage vessels were not estimated since many storage vessels would be controlled through the use of internal floating roofs which do not have any associated energy impacts. Further, the estimates above do not include the projected energy savings associated with control of emissions from process contact cooling towers and vacuum system wastewater associated with the manufacture of PET. The majority of existing vacuum systems are operated with steam jets, which are very energy intensive. The precise affect of the proposed rule on the use of steam jets cannot be predicted with accuracy. However, it is anticipated by the EPA that compliance with the proposed rule will, in almost all cases, decrease the energy demand of the vacuum systems.

Given the relatively small energy impacts projected for the control of process vents, wastewater operations, and equipment leaks and the projected energy savings associated with control of vacuum system air emissions, the EPA has judged the energy impacts associated with today's proposed rule to be acceptable.

E. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 12 presents the estimated capital and annual costs and average cost effectiveness by subcategory.

TABLE 12.—SUMMARY OF COST IMPACTS

Subcategory	Existing sources			New sources		
	Total capital cost, $1000	Total annual costs, $1000/yr	Average cost-effectiveness ($/Mg)	Total capital cost, $1000	Total annual costs, $1000/yr	Average cost-Effectiveness ($/Mg)
ABS, continuous mass	210	100	550	150	38	430
ABS, continuous emulsion [a]	>3,540	>1,300	<7,160	>3,490	>1,730	<14,970
ABS, batch emulsion	430	310	5,550	18	14	960
ABS, batch suspension	28	19	3,570	28	19	3,760
ABS, latex	0.5	−0.5	−240	—	—	—
SAN, continuous	450	160	2,520	180	38	1,490
SAN, batch	80	33	2,520	1	−1.3	−210
ASA/AMSAN	550	200	2,150	—	—	—
MABS [a]	90	>−2	>−50	—	—	—
MBS	550	360	2,720	440	234	14,200
Polystyrene, continuous	770	280	260	200	90	350
Polystyrene, batch	300	160	1,270	—	—	—
Expandable polystyrene	110	50	540	—	—	—
PET-TPA, continuous	40,790	2,970	1,230	2,160	−3,926	−1,770
PET-TPA, batch [a]	>30	>18	<3,180	>30	>18	<3,180
PET-DMT, continuous	28,250	3,010	1,300	2,200	−970	−540
PET-DMT, batch	22,080	3,360	880	1,440	−38	−13
Nitrile	9	7	660	—	—	—
Totals [b]	98,270	12,330	1,050	10,340	−2,750	−370

—No new growth projected, therefore no impacts expected.
[a] A portion of the costs and/or emission reductions for this subcategory are confidential business information.
[b] Total values are affected by the subcategories for which some data are confidential business information.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $98 million (1989 dollars), and total annual costs would by $12.3 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the proposed rule would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Since the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

F. Economic Impacts

The economic impact analysis for the selected regulatory alternatives shows that the estimated price increases for the affected chemicals range from 0.1 percent for nitrile to 2.8 percent for SAN. Estimated decreases in output range from 0.1 percent for polystyrene to 4.6 percent for SAN. Net annual exports (exports minus imports) are predicted to decrease by an average of 2.5 percent.

As many as five PET facilities and one ABS facility are at risk of discontinuing PET and ABS production, respectively, due to the burden of compliance with the standard. This does not mean that the facilities affected face the risk of closure. The facilities affected will continue to produce other chemicals whose processes are not affected by this standard.

Three assumptions in the analysis likely lead to an overestimate of the number of facilities at risk of discontinuing production of affected chemicals. First, the economic analysis model assumes that all PET and ABS facilities compete in a national market, though in reality some facilities may be protected from some competitors by regional or local trade barriers.

Second, it is assumed that the facilities with the highest control cost per unit of production also have the highest baseline production costs per unit. This assumption may not always be true since the baseline production costs per unit are not known, and thus the estimated number of facilities that would discontinue production of affected chemicals may be too high.

Third, for the production of PET, the selected regulatory alternative includes the control of organic HAP emissions from the vacuum system and process contact cooling tower. Control of these emissions is the highest cost item in the selected regulatory alternative and is the biggest contributor to the risk of facilities discontinuing PET production. The economic analysis is based on the use of ethylene glycol jets to control these emissions. There are a number of potential control technologies for these emissions that are expected by the EPA to have lower costs, but costs for these control technologies were not calculated. Ethylene glycol jets are being used by at least two facilities and data were available from one facility. The EPA has and will continue to investigate other control technologies for control of these emissions. The EPA invites comment and data on other control technologies.

More detailed information concerning the economic impacts and analysis are included in the Regulatory Impacts Analysis document (Docket No. A–92–45, Category II–B).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for ABS, SAN, MABS, MBS, polystyrene, PET, and nitrile production should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section

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of this preamble and should refer to Docket No. A–92–45.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of the proposed rule. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, we have involved State, local, and tribal governments in the development of this rule. These governments are not directly impacted by the rule; i.e. they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g. incorporate the rule into permits and enforce the rule. They will collect permit fees which will be used to offset the resource burden of implementing the rule. Two representatives of the State governments have been members of the EPA Work Group developing the rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representatives. Their comments have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA (ICR No. 1737.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 938 hours per response per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a thermoplastic producing firm is classified as a small entity if it has less than 750 employees, and is unaffiliated with a larger entity. Based upon this criterion, only one firm employs less than 750 workers.

Data were available to examine two of the criteria: the potential for closure, and a comparison of compliance costs as a percentage of sales.

For criterion one, the affected source is not expected to fall at risk of closure from the regulation, thus this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the affected source, and this does not meet criterion two.

The affected firm is an MBS producer, and since the economics analysis lead to the conclusion that no MBS facilities are at risk of closure, this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the firm.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section near the beginning of this preamble).

G. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 15, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–7066 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4233/P609; FRL–4944–7]

RIN 2070–AC18

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a tolerance for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile), resulting from the application of its octanoic and heptanoic acid esters. The proposal would amend the tolerance in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on transgenic cottonseed.

DATES: Written comments, identified by the document control number, [PP 3F4233/P609], must be received on or before April 28, 1995.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Rm., 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: Taylor.Robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54354), announcing that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance. Based on bridging studies, the Agency has determined that bromoxynil octanoate and bromoxynil heptanoate are toxicologically equivalent. For this reason, studies using the bromoxynil phenol are accepted in fulfillment of studies required for bromoxynil octanoate and bromoxynil heptanoate.

Phenol technical-grade bromoxynil

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in LD_{50} = 81 mg/kg (males) and LD_{50} = 93 mg/kg (females).

3. A 2-year combined feeding/carcinogenicity study was conducted with rats administered (oral) dosages of 0, 60, 190, or 600 ppm (0, 2.6, 8.2, or 28 mg/kg/day in males; 0, 3.3, 11.0, or 41 mg/kg/day in females) bromoxynil phenol in the diet. In males the no-observed-effect-level (NOEL) for systemic toxicity is 2.6 mg/kg/day, and the lowest-effect-level (LEL) is 8.2 mg/kg/day. In females, the NOEL is 3.3 mg/kg/day, and the lowest-effect-level (LEL) is 11.0 mg/kg/day. This study did not demonstrate any increase in tumor incidences in either male or female rats. This study has not been considered by the RfD committee. The RfD was set based on the NOEL from the supplementary rat study (see item #4).

4. A 2-year combined feeding/carcinogenicity study was conducted with rats administered bromoxynil phenol in the diet at dose levels of 0, 10, 30, or 100 ppm (0, 0.5, 1.5, or 5 mg/kg/day). In both males and females, the NOEL and LOEL for systemic toxicity was 5 mg/kg/day and >5 mg/kg/day, respectively. At the highest dose tested, increased liver weights were observed at 12 months, but not at 24 months. This study was considered negative for carcinogenicity. This study is considered supplementary. The RfD is based on this study and an uncertainty factor of 300 rather than 100 was used since the study is supplementary.

5. A 1-year oral study was conducted with dogs administered bromoxynil phenol at dose levels of 0, 0.1, 0.3, 1.5, or 7.5 mg/kg/day in capsules. The NOEL is 0.3 mg/kg/day and the LEL is 1.5 mg/kg/day in both males and females.

6. An 18-month carcinogenicity study was conducted with mice administered bromoxynil phenol at dose levels of 0, 10, 30, or 100 ppm (0, 1.3, 3.9, or 13 mg/kg/day) in the diet. For males, dose-related increases in hyperplastic nodules and liver adenomas/carcinomas were observed which were statistically significant at the 13-mg/kg/day dose level. Increased relative liver weights

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were also observed. In females, increased absolute liver weights and relative liver and kidney weights were observed. The study was considered negative for carcinogenicity for females.

7. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 4, 12.5, or 40 mg/kg/day. The maternal NOEL and LEL are 12.5 mg/kg/day and 40 mg/kg/day, respectively. The developmental NOEL and LEL are 4 mg/kg/day and 12.5 mg/kg/day, respectively.

8. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 5, 15, or 35 mg/kg/day. The maternal NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively. The fetotoxicity and developmental NOEL and LEL are less than 5 mg/kg/day and 5 mg/kg/day, respectively.

9. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.7, 5, or 15 mg/kg/day. The maternal NOEL and LEL is 5 mg/kg/day and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively.

10. A developmental toxicity study was conducted with rabbits administered (orally) bromoxynil phenol at dose levels of 0, 15, 30, or 60 mg/kg/day. The maternal NOEL and LEL are 15 mg/kg/day and 30 mg/kg/day, respectively. The developmental NOEL and LEL are less than 15 mg/kg/day and 15 mg/kg/day, respectively.

11. A developmental toxicity study was conducted with mice administered (orally) bromoxynil phenol at dose levels of 0, 11, 32, or 96 mg/kg/day. The maternal NOEL and LEL are 11 mg/kg/day and 32 mg/kg/day, respectively. The developmental NOEL and LEL are 32 mg/kg/day and 96 mg/kg/day, respectively.

12. A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 0.8, 4, or 21 mg/kg/day in the diet. The systemic adult rat NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day. The reproductive NOEL is 21 mg/kg/day, and the LEL is greater than 21 mg/kg/day. The postnatal developmental NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day.

13. A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.5, 5, or 15 mg/kg/day in the diet. The systemic adult rat NOEL is 1.5 mg/kg/day (tentative), and the LEL is 5 mg/kg/day (tentative). The reproductive NOEL is 15 mg/kg/day, and the LEL is greater than 15 mg/kg/day. The offspring developmental NOEL is 5 mg/kg/day, and the LEL is 15 mg/kg/day.

14. Mutagenicity data included unscheduled DNA synthesis study—rat primary hepatocytes (negative); in vitro transformation assay—mouse cells (negative); sister chromosomal exchange study—CHO cells (negative); forward mutation study—mouse lymphoma cells (negative without activation and positive with activation); DNA repair test—E. coli (positive); in vitro chromosomal aberration (negative without activation and positive with activation); two separate micronucleus assays (both negative); forward mutation—CHO cells (negative); and Ames study Salmonella typhimurium (negative with and without activation).

Heptanoate technical-grade bromoxynil

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in LD_{50} = 362 mg/kg (males) and LD_{50} = 292 mg/kg (females).

3. A general metabolism study was conducted with rats, and the results were similar when a single low dose (2 mg/kg), a single high dose (20 mg/kg) or a low dose (2 mg/kg/day) administered for 14 consecutive days were administered. Bromoxynil heptanoate is rapidly absorbed and widely distributed in most tissues. The highest concentrations were found in the blood, plasma, liver, kidney, and thyroid. Higher tissue concentrations were found in females than in males. Excretion was more rapid in males. Most of the radioactivity was excreted in the urine, mostly in the form of bromoxynil phenol. Bromoxynil phenol and bromoxynil heptanoate were present in the feces. There was no significant retention in tissues after 7 days. Essentially, bromoxynil heptanoate was metabolized to bromoxynil phenol via ester hydrolysis.

Octanoate technical-grade bromoxynil

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in LD_{50} = 400 mg/kg (males) and LD_{50} = 238 mg/kg (females).

3. A 13-week oral study was conducted with rats administered bromoxynil octanoate at dose levels of 0, 150, 600, or 1,100 ppm (0, 11, 45, or 91 mg/kg/day in males; 0, 13, 55, or 111 mg/kg/day in females) in the diet. This is equivalent to 0, 8, 31, or 63 mg/kg/day in males; 0, 9, 38, or 77 mg/kg/day in females of bromoxynil phenol. The NOEL and LEL in males are 31 mg/kg/day and 63 mg/kg/day, respectively. In females, the NOEL and LEL are 9 mg/kg/day and 38 mg/kg/day, respectively.

4. A developmental toxicity study was conducted with rats administered (orally) bromoxynil octanoate at dose levels of 0, 2.4, 7.3, or 21.8 mg/kg/day. This is equivalent to 0, 1.7, 5, or 15 mg/kg/day of bromoxynil phenol. The maternal NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively.

5. Mutagenicity data included the following: the Ames study—Salmonella typhimurium (negative with and without activation); micronucleus assay (negative); and unscheduled DNA synthesis—rat primary hepatocytes (negative).

Carcinogenicity Peer Review Committee/SAP

The Scientific Advisory Panel met on June 25, 1992, to review the scientific issues regarding the Carcinogenicity Peer Review Committee's classification of bromoxynil as a Group C carcinogen and recommended that a low- dose extrapolation model, applied to the experimental animal tumor data, be used for quantification (Q_1*) of human risk. The Panel felt that a Group D classification was more consistent with the existing data base. The SAP concluded that the available data did not provide sufficient evidence to classify bromoxynil as Group C and recommended a Group D classification pending completion of the ongoing mouse carcinogenicity study. The SAP further recommended that the mouse study be extended beyond 18 months (e.g., 24 months) if survival was adequate and that contemporary historical control data be made available at the time of evaluation.

After the SAP meeting the Carcinogenicity Peer Review Committee met on July 29, 1992, to further discuss and evaluate the weight-of-the-evidence on bromoxynil with particular reference to its carcinogenic potential. The Peer Review Committee (PRC) concluded that the classification of bromoxynil as a Group C, possible human carcinogen, should be maintained and recommended that for the purpose of risk characterization the Reference Dose (RfD) methodology should be used at this time. The PRC also placed a condition on the decision to defer utilization of a Q_1*. The condition was that additional uses should not be granted prior to analysis of the new mouse study. The PRC agreed that the results of the new mouse cancer study were critical to the ultimate classification and dose-response assessment. Since the conditional registration involves a new use, HED has determined that it is prudent to apply the Q_1* to existing data.

Nature of the Residue and Analytical Method

The nature of the residue in transgenic cotton is considered to be adequately understood. The primary bromoxynil metabolite in transgenic cotton is 3,5-dibromo-4-hydroxybenzoic acid (DBHA). DBHA is only a major metabolite in/on bromoxynil treated transgenic cotton. For the purposes of a time-limited tolerance, only the parent compound will be regulated as in 40 CFR 180.324. This interim decision is based on the minimal risk resulting from total residues of the parent and metabolite in cottonseed contributing only about 1/1000th to the total dietary exposure from all registered uses of bromoxynil.

Adequate methodology is available for enforcement purposes, based upon methods for the parent compound. The method is a modified version of Method I in the Pesticide Analytical Manual (PAM), Vol. II. The method involves sample reflux in methanolic KOH, partitioning with ether/hexane, concentration of the organic phase, derivatization with diazomethane and analysis by GC. The limit of detection (LOD) for this method is 0.02 ppm.

The nature of the residue in ruminants and poultry is considered to be adequately understood. Any secondary residues occurring in the fat, meat, and meat byproducts of cattle, goats, horses, poultry, and sheep will be covered by existing tolerances.

Risk Assessment

The reference dose (RfD) (acceptable daily intake (ADI)) for bromoxynil is calculated to be 0.02 mg/kg body weight/day based on a 2-year rat chronic feeding study with a NOEL of 5.0 mg/kg bwt/day and a safety factor of 300. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.450 ug/kg bwt/day or 2.25% of the RfD for the overall U.S. population. The use on transgenic cotton would contribute less than 0.0004 ug/kg bwt/day representing approximately 1/1000 of the total dietary exposure to bromoxynil residue. This analysis comparing the dietary exposure from bromoxynil to the noncarcinogenic chronic effects results in a negligible chronic risk.

Although the new mouse study has been received, a full review by the Agency has not been completed at this time. Therefore, an estimate of the upper-bound carcinogenic risk has been estimated based on published tolerances and the previously determined upper bound potency factor (Q_1* = 4.1 X 10^{-1} $(mg/kg/day)^{-1}$). The resulting upper-bound cancer risk was found to be 2 X 10^{-4}. An additional cancer risk as a result of the use of bromoxynil on transgenic BXN cotton would be 2 X 10^{-7}, which is incrementally insignificant. The 10^{-4} risk includes the assumption that residues were present in or on every commodity at tolerance level and that one hundred percent of the acreage for every commodity was treated with bromoxynil. Thus, this cancer risk should be viewed as an unrealistic "worst case" estimate. The risk resulting from the use of bromoxynil on transgenic cotton alone will be negligible.

Based on the above information cited, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term, and in accordance with the provisions of the conditional registration.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8F3671/609]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12866.

Pursuant to requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, it is proposed that part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.324, by adding new paragraph (d), to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

(d) Tolerances are established for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and heptanoic acid esters in or on the following raw agricultural commodity:

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Commodity	Parts per million	Expiration date
Cottonseed (transgenic BXN variaties only)	0.04	April 1, 1997

[FR Doc. 95–7714 Filed 3–28–95; 8:45 am]
BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 60, No. 60
Wednesday, March 29, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 24, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Food and Consumer Service
Annual Report of State Revenue Matching
FCS–13
State, Local or Tribal Government; 57 responses; 4,560 hours
Alan Rich (703) 305–2113

Reinstatement

• Rural Utilities Service
Financial and Statistical Report for Telephone Borrowers
REA 479
Individual or households; Business or other for-profit; Not-for-profit institutions; 900 responses; 7,740 hours
Jonathan Claffey (202) 720–9539

• Rural Utilities Service
RUS Policy on Audits of Electric and Telephone Borrowers
Individuals or households; Business or other for-profit; Not-for-profit institutions; 3,872 responses; 20,330 hours
Roberta Purcell (202) 720–5227

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 95–7722 Filed 3–28–95; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agriculture Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service intends to grant to Schell Electronics, Inc., having a place of business in Chanute, Kansas, an exclusive license to Serial Number 08/078,341, filed June 21, 1993, "Method of Controlling Animals with Electronic Fencing". Notice of Availability was published in the **Federal Register** on September 24, 1993.

DATES: Comments must be received on or before May 28, 1995.

ADDRESSES: Send comments to: Janet I. Stockhausen, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen at the address given above, Telephone: (608) 231–9502.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 25 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.
[FR Doc. 95–7725 Filed 3–28–95; 8:45 am]
BILLING CODE 3410–03–M

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AL–169 Northeastern Alabama Feeder Pig Association, Inc., Section, Alabama.	May 22, 1987.
AL–172 Northwest Alabama Feeder Pig Association, Russellville, Alabama.	June 8, 1987.
AL–174 Central Alabama Feeder Pig Association, Clanton, Alabama.	May 27, 1987.
TX–329 San Augustine Livestock Auction, Inc., San Augustine, Texas.	July 16, 1984.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC, this 23rd day of March 1995.

Daniel L. Van Ackeren,
Acting Director, Livestock Marketing Division.
[FR Doc. 95–7726 Filed 3–28–95; 8:45 am]
BILLING CODE 3216–KD–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-836]

Antidumping Duty Order: Glycine From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel or Kristie Strecker, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–3174, respectively.

Scope of Order

The product covered by this proceeding is glycine which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This proceeding includes glycine of all purity levels.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended ("the Act"), on January 23, 1995, the Department of Commerce ("the Department") made its final determination that glycine from the People's Republic of China ("PRC") is being sold at less than fair value (60 FR 5620, January 23, 1995). On March 14, 1995, the U.S. International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise. Additionally, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), the ITC examined whether material injury would have been found "but for" the suspension of liquidation of the merchandise. Of the votes in the ITC's final determination (Publication 2863), three constitute an affirmative "but for" finding, and two constitute a negative "but for" finding. *MBL (USA) Corp. v. the United States*, 787 F.Supp. 202 (CIT 1992). One Commissioner stated that the "but for" finding was moot because there are no imports that could be affected by a "but for" determination. Based on the three affirmative votes, we have determined that the ITC made an affirmative "but for" finding. Even if the non-voting commissioner voted negative on "but for", we would consider the "but for" vote affirmative, in accordance with the tie vote rule. 19 US.C 1677 (11).

When the ITC finds threat of material injury, and there is an affirmative "but for" finding, the "General Rule" provision of section 736(b)(1) of the Act applies. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of glycine from the PRC. According to the "General Rule" these antidumping duties will be assessed on all unliquidated entries of glycine from the PRC entered or withdrawn from warehouse, for consumption, on or after November 16, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 59211).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
All Companies	155.89

This notice constitutes the antidumping duty order with respect to glycine from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7727 Filed 3–28–95; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 031495B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 945 (P319D).

SUMMARY: Notice is hereby given that Dr. Randall S. Wells, Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, has been issued a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, North; St. Petersburg, FL 33702 (813/570–5312).

SUPPLEMENTARY INFORMATION: On February 15, 1995, notice was published in the **Federal Register** (60 FR 8640) that a request for a scientific research permit to take bottlenose dolphins (*Tursiops truncatus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: March 21, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–7679 Filed 3–28–95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 031495D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 1 to scientific research permit no. 838 (P535).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 838 submitted by Stephen J. Insley and Peter Marler, Animal Communication Laboratory, University of California, Davis, CA 95616–8761, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 838, issued May 17, 1993 (58 FR 29810), had been requested by the above-named individuals. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 838 authorizes scientific research on up to 210 northern fur seals (*Callorhinus ursinus*). Of these, up to 100 fur seals (50 females/50 pups) may be bleach marked and tagged with plastic All-Flex tags or metal monel tags and up to 110 fur seals may be inadvertently harassed over a 2-year period. The permit was modified to extend the period of validity to December 31, 1996, and increase the number of animals that may be inadvertently harassed to 150 over a 4-year period.

Dated: March 23, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–7680 Filed 3–28–95; 8:45 am]

BILLING CODE 3510-22-F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 April 1995 at 10 am in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 March 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–7643 Filed 3–28–95; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers

Proposal To Issue a Nationwide Permit

AGENCY: Corps of Engineers, DoD.

ACTION: Correction.

SUMMARY: This document contains a correction to a proposal to issue a new nationwide permit which was published in the **Federal Register** on Thursday, March 23, 1995, (60 FR 15439–15443). On page 15440, in the third column, paragraph d. should be replaced with the following language:

d. The discharge is part of a single and complete project and that for any subdivision created or subdivided after March 6, 1995, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision.

Dated: March 23, 1995.

Michael L. Davis,

Chief, Regulatory Branch, Operations, Construction and Readiness Division, Directorate of Civil Work.

[FR Doc. 95–7649 Filed 3–28–95; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review Expedited

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Title: Fast Response Survey System—School Survey on Racial and Ethnic Classifications
Frequency: One time
Affected Public: Individuals or households
Reporting Burden:
Responses: 900
Burden Hours: 450
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This sample survey of approximately 1,000 public school principals requests data on current procedures used by schools to collect information on student's race/ethnicity, how schools report this information for federal purposes, and the extent to which the five standard federal categories adequately describe the school's current population. The survey is part of a federal-government-wide review process being conducted by the Office of Management and budget (OMB). Information from the survey will be used to evaluate and assess proposed changes and revisions to the five standard categories currently used and issued 17 years ago by OMB.

Additional Information: Clearance for this information collection is requested for March 31, 1995. The survey must be started by April 7, 1995 to allow the eight weeks needed to administer it before the public school year closes. The survey must be administered this year to remain within deadlines imposed by the testing program for the Year 2000 Census.

[FR Doc. 95–7654 Filed 3–28–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations
Frequency: Annually
Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Governments
Reporting Burden:
Responses: 9
Burden Hours: 45
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Federally recognized Indian tribes and tribal organizations are required to submit continuation applications to the Secretary to operate the Even Start program.

Additional Information: Clearance for this information collection is requested for April 1, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7655 Filed 3–28–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 15, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice

Dated: March 23, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Educational and Research Improvement

Type of Review: Expedited
Title: Opportunity-to-Learn Development Grants
Frequency: Annually
Affected Public: Not-for-profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 5
Burden Hours: 3,200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This information will be used by the Department of Education, Office of Educational Research and Improvement to determine eligibility, select applicants for funding, and determine budgetary amounts. The respondents will be consortia as described in the statute organized to compete for this grant program

Additional Information: Clearance for this information collection is requested for April 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7656 Filed 3–28–95; 8:45 am]
BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) was requested by March 24, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and person an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violates State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Preliminary State Consolidated Plan
Frequency: One time
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 57
Burden Hours: 11,172
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: An alternative method for applying certain program funds in a consolidated manner by a state educational agency.

Additional Information: Clearance for this information collection was requested for March 24, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7657 Filed 3–28–95; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.
ACTION: Notice of the Closing Date for Receipt of State Applications for Fiscal Year 1995.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1995 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the

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Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c-1070c-4)

Closing Date for Transmittal of Applications: An application for fiscal year 1995 SSIG funds must be mailed or hand-delivered by April 28, 1995.

Application Form: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Pell and State Grant Section, Room 3053, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, SW., Washington, DC 20202–5447.

The Secretary will accept the following proof of mailing: (1) a legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use registered or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1995 funding.

Application Delivered by Hand: An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, SW., Room 3053, General Service Administration Regional Office Building #3, Washington, DC Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1994, 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

Applicable Regulations: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Greg Gerrans, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, DC 20202–5447; telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. (20 U.S.C. 1070c–1070c–4)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: March 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–7658 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–P

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the initial meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: April 11, 1995, from 9:30 a.m. to 4 p.m. and April 12, 1995, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre Hotel & Towers located at 1143 New Hampshire Avenue, NW. Call (202) 708–8667 for current information.

FOR FURTHER INFORMATION CONTACT: Nancy Davis, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW, The Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Board is open to the public. The meeting will be primarily devoted to presentations by agency heads on efforts to implement Executive Order 12867.

Records are kept of all Board proceedings, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, SW., The Portals Building, Suite 605, Washington, DC 20202, from the hours of 8:30 am to 5:00 pm.

Dated: March 21, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–7702 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the second meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATE AND TIMES: The committee will first tour the Rocky Flats Environmental Technology Site on the morning of Thursday, April 13, 1995. A public comment session will follow at 11:15 am to 12:00 pm and will be conducted at the United States Department of Energy Rocky Flats Field Office, Building 60, Highway 93, Golden, CO 80404. The Committee meeting will begin at 1:30 pm at the Holiday Inn Denver Northglenn followed by a second public comment session at 6:30 pm. The Friday, April 14, 1995, Committee session will be conducted from 8:00 am to 12:00 pm at the same location.

ADDRESSES: Holiday Inn Denver Northglenn, 10 East 120th Avenue, Northglenn, CO 80233.

FOR FURTHER INFORMATION CONTACT: Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202)254–3826 .

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to nuclear safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 24 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, state, Tribal, and industry interests and experience.

Purpose of the Meeting

This is the second meeting of the Committee. The Committee will receive information from federal and state officials and focus on committee operations.

Tentative Agenda

The Advisory Committee meeting will focus on the regulatory framework for oversight of DOE activities. The Committee will receive presentations on regulatory practices at Rocky Flats by the DOE, contractor, state, and the Defense Nuclear Facilities Safety Board. There will also be a presentation on critiques of and options for regulation compiled by the Congressional Resource Services. The agenda will provide opportunities for public comment both at Rocky Flats after the Advisory Committee's site tour and at 6:30 pm at the Holiday Inn Denver Northglenn. A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public are welcome to make oral statements. Those who wish to do so should contact Catherine Volk at the address or telephone number listed above. Individuals may also register on April 13, 1995 at the meeting sites. Every effort will be made to hear all those wishing to speak. Written comments are welcomed, and should be mailed to Catherine Volk, 1726 M St. NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on March 24, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–7731 Filed 3–28–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–24–006, et al.]

Enron Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Enron Power Marketing, Inc.

[Docket No. ER94–24–006]

Take notice that on March 2, 1995, Enron Power Marketing, Inc. tendered for filing a summary of its activity for the quarter ending December 31, 1994.

2. LG&E Power Marketing, Inc.

[Docket No. ER94–1188–004]

Take notice that on March 6, 1995, LG&E Power Marketing, Inc. tendered for filing a letter stating the summary of activity for the quarter ending December 31, 1994.

3. Southern California Edison Co.

[Docket No. ER94–1608–000]

Take notice that on March 8, 1995, Southern California Edison Company tendered for filing an amendment in the above referenced docket.

Comment date: April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket Nos. ER95–478–000 and ER95–479–000]

Take notice that on March 1, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced dockets.

Comment date: April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

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5. Citizens Utilities Co.

[Docket No. ES95–25–000]

Take notice that on March 17, 1995, Citizens Utilities Company (Citizens), filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than 900,000 shares of common stock series B of Citizens pursuant to the provisions of Citizens Non-Employee Directors' Deferred Fee Equity Plan. Also, Citizens requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Appalachian Power Co.

[Docket No. FA91–64–001]

Take notice that on March 21, 1995, Appalachian Power Company (APCo), tendered for filing its compliance report in the above-referenced docket. The compliance report was filed in response to the January 12, 1995, Letter Order in this docket, which order APCo to refund to its wholesale customers the time value of money related to the accounting and billing of certain railcar maintenance costs during the period January 1991 through January 12, 1992.

APCo states that a copy of the filing was served upon its wholesale customers, the Virginia State Corporation Commission, the Public Service Commission of West Virginia and the Tennessee Public Service Commission.

Comment date: April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Air Products and Chemicals, Inc.

[Docket No. QF84–166–001]

On March 20, 1995, Air Products and Chemicals, Inc. (Air Chemicals) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of Air Products' cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Scott Paper Co.

[Docket No. QF86–557–001]

On March 16, 1995, Scott Paper Company tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership and technical characteristics of the facility.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7660 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2290–006–CA]

Southern California Edison Company; Notice of Availability of Draft Environmental Assessment

March 23, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for an existing licensed hydropower project on the Kern River owned and operated by the Southern California Edison Company: the Kern River No. 3 Project No. 2290, located in Kern and Tulare Counties, California. Subsequently, the Commission's staff prepared a Draft Environmental Assessment (DEA) that discusses the relicensing of the project.

In the DEA, staff evaluates the potential environmental impacts that would result from the continued operation of the project. Staff concludes that relicensing the project with appropriate enhancement measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2290 to the first page of all comments.

For further information, please contact Kathleen Sherman, Environmental Coordinator, at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7659 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–151–001, et al.]

Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

March 21, 1995

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP94–151–001]

Take notice that on March 16, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–151–001 a petition to amend the application filed in Docket No. CP94–151–000 to abandon by transfer to its affiliate, Panhandle Field Services Company (Field Services) the majority of the facilities for which refunctionalization from gathering to transmission was denied by the Commission's order issued February 14, 1995, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Panhandle states that in the February 14, 1995, order the Commission approved the refunctionalization from gathering to transmission of 50 of 168 facilities. Panhandle also notes that among the 50 refunctionalized facilities were six meters located on facilities the Commission determined to be gathering. Panhandle also states that it is requesting rehearing of the Commission's determination that six of the remaining facilities are gathering. Panhandle is then requesting authorization to abandon by transfer to Field Services a total of 116 facilities, including the six above-mentioned meters, but not including the six facilities for which it is requesting rehearing.

Panhandle states that approval of the amended application for abandonment will facilitate the termination of its gathering function, and would eliminate the need for Panhandle to retain a gathering rate.

Comment date: April 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP95–257–000]

Take notice that on March 10, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–257–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a delivery tap and associated facilities in Audrain County, Missouri for deliveries to Cerro Copper Casting (Cerro Copper), a Division of Cerro Copper Tube Co, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to construct a 2-inch hot tap, approximately 7500 feet of 3-inch pipeline and a dual 2-inch meter and regulating station on its Mexico Lateral at Station 58+00, Section 27, Township 51 North, Range 9 West in Audrain County, Missouri. This interconnect/delivery tap was requested of Panhandle by Cerro Copper for meeting the 500 Mcf of natural gas per day demand by its new copper billet casting plant still under construction. Panhandle states it understands that Cerro Copper does not have a contract with Union Electric Company, a local distribution company, to provide service to the new plant, and that the proposed delivery point does not constitute a bypass of Union Electric. The estimated cost is $630,000 which is 100% reimbursible to Panhandle. The proposed construction, according to Panhandle, will not detriment or disadvantage any of its customers.

Comment date: May 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP95–263–000]

Take notice that on March 14, 1995, Columbia Gas Transmission Corporation (Columbia), filed in Docket No. CP95–263–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for AlliedSignal Inc. (AlliedSignal), formerly Allied Corporation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that the service is provided pursuant to Rate Schedule X–116, with transportation of up to 15,000 Dth per day of natural gas, which was authorized by Order issued August 19, 1983 in Docket No. CP83–324 as amended.

Columbia states further that the transportation authority is no longer required, the transportation agreement has terminated and alternative service is being provided AlliedSignal under Part 284 Firm Transportation Service under the FTS Rate Schedule filed in Docket No. ST91–1495.

Comment date: April 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. MidAmerican Energy Company and Iowa-Illinois Gas and Electric Co.

[Docket No. CP95–264–000]

Take notice that on March 16, 1995, MidAmerican Energy Company (MidAmerican), P.O. Box 657, Des Moines, Iowa 50303, and Iowa-Illinois Gas and Electric Company, P.O. Box 4350, Davenport, Iowa 52808 (Iowa-Illinois)—together referred to as Applicants—filed in Docket No. CP95–264–000 an application pursuant to Sections 1(c), 7(b), 7(c), and 7(f) of the Natural Gas Act requesting permission and approval for Iowa-Illinois to abandon certain facilities, a declaration that MidAmerican is exempt from the NGA for certain parts of its service area, a service area determination for MidAmerican, and a declaration that MidAmerican qualifies pursuant to the Natural Gas Policy Act as a local distribution company in those areas where it receives a service area determination, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that MidAmerican, Iowa-Illinois, Midwest Power Systems Inc. (Midwest Power) and Midwest Resources Inc. (Midwest Resources) have entered into an Agreement and Plan of Merger whereby MidAmerican will be the surviving corporation and public utility. Applicants state that Iowa-Illinois and Midwest Power have filed an application with the Commission for authorization and approval of the merger pursuant to Section 203 of the Federal Power Act (FPA) in Docket No. EC95–004–000. In addition, it is stated that MidAmerican has filed open access electric transmission tariffs in Docket No. ER95–188–000 as well as an application pursuant to Section 204 of the FPA requesting authority to issue securities and assume liabilities.

Applicants indicate that upon consummation of the merger, Iowa-Illinois will cease to provide any public utility services, and all of the public utility services previously provided by Iowa-Illinois will be provided by MidAmerican, including services which require utilization of the facilities which Iowa-Illinois seeks to abandon. MidAmerican's operation of these facilities will occur pursuant to the service area determination which MidAmerican requests pursuant to Section 7(f) of the NGA. The service areas proposed by MidAmerican for determination are identical to the service areas determined for Iowa-Illinois and Midwest Power's predecessor in Docket Nos. CP86–688–000, CP89–655–000, and CP89–2002–000.

MidAmerican also seeks exemption from the NGA pursuant to Section 1(c) for four parts of its service area. Iowa-Illinois was granted an exemption pursuant to Section 1(c) of the NGA for these four parts of its service area in Docket No. CP86–605–000. Applicants also request that the Commission declare that MidAmerican is a local distribution company. Applicants state that Iowa-Illinois and Midwest Power's predecessors were declared by the Commission to be local distribution companies in Docket Nos. CP86–688–000, CP89–2002–000, and CP89–2002–001.

Applicants request that the Commission issue an order authorizing its requests prior to or concurrently with its order authorizing and approving the proposed merger in Docket No. EC95–004–000 and that such authorizations be made effective at the time of the merger.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

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filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7661 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MT95–9–000]

Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 20, 1995, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 1995:

First Revised Sheet No. 374
First Revised Sheet No. 375
First Revised Sheet No. 376
First Revised Sheet No. 384
First Revised Sheet No. 385
First Revised Sheet No. 386

Columbia Gulf is tendering for filing revised portions of its "Request for Service—New Agreement" and "Request for Service—Increase in Quantity of an Existing Agreement" forms contained in its FERC Gas Tariff. Columbia Gulf states that the filing is being made in accordance with Order No. 566, which eliminated the requirement in 18 CFR 250.16(b)(1)(ii) that a pipeline include the information required for a Form No. 592 Affiliate Transportation Log in the request for service forms in the pipeline's tariff. Under previous regulations, a pipeline was required to report certain information on Form No. 592 that a pipeline could only obtain through its request for service forms. In Order No. 566, "the Commission is no longer requiring pipelines to report these categories of information, and therefore, a tariff provision requiring shippers to disclose such information is no longer needed."

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7663 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–8–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 20, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 1995:

First Revised Sheet No. 552
First Revised Sheet No. 553
First Revised Sheet No. 554
First Revised Sheet No. 571
First Revised Sheet No. 572
First Revised Sheet No. 573

Columbia is tendering for filing revised portions of its "Request for Service—New Agreement" and "Request for Service—Increase in Quantity of an Existing Agreement" forms contained in its FERC Gas Tariff. Columbia states that the filing is being made in accordance with Order No. 566, which eliminated the requirement in 18 CFR 250.16(b)(1)(ii) that a pipeline include the information required for a Form No. 592 Affiliate Transportation Log in the request for service forms in the pipeline's tariff. Under previous regulations, a pipeline was required to report certain information on Form No. 592 that a pipeline could only obtain through its request for service forms. in Order No. 566, "the Commission is no longer requiring pipelines to report these categories of information, and therefore, a tariff provision requiring shippers to disclose such information is no longer needed." Columbia also states that, for administrative convenience in processing requests for service making use of Columbia's SIT Rate Schedule, it is adding new item ten to the "Request for Service—New Agreement" form (First Revised Sheet No. 553). Columbia states that this is consistent with Section 1 of Columbia's SIT Rate Schedule.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7662 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–29–000]

East Tennessee Natural Gas Co.; Notice of Filing of Refund Report

March 23, 1995.

On March 20, 1995, East Tennessee Natural Gas Company (East Tennessee), filed its report of refunds to flow through amounts received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee).

East Tennessee states that it received from Tennessee on February 16, 1995, a refund of amounts paid during September and October 1993, under its former Tennessee Rate Schedules FT–A, LMS–MA, and FS. Tennessee effectuated the refund pursuant to the Commission's order dated November 15, 1994, in Docket Nos. RS92–23 and RP91–203 *et al.* accpeting Tennessee's July 15, 1994 compliance filing implementing settlement rates.

On February 16, 1995, East Tennessee states that it disbursed the refunds, totaling $543,583, to its former jurisdictional sales customers.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7664 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–211–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 21, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets to be effective April 21, 1995.

Natural states that the purpose of the filing is to (1) align the rates and amortization period for its remaining firm shippers with those applicable to shippers under various settlements approved by the Commission, and (2) extend the applicability of the pricing differential method at least through the end of the proposed four-year base amortization period.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective April 21, 1995.

Natural states that copies of the filing are being mailed to the parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7665 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–209–000]

Southern Natural Gas Co.; Notice of Tariff Filing

March 23, 1995.

On March 15, 1995, Southern Natural Gas Company (Southern), tendered for filing in the above-captioned proceedings a Stipulation and Agreement. Take notice that simultaneously with the filing of the Stipulation, and filed under the same transmittal letter, Southern filed revised tariff sheets which Southern requested to become effective March 1 and April 1, 1995. The tariff sheets proposed to be effective March 1, 1995, seek to place the settlement rates into effect on an interim basis as provided in the Stipulation. The tariff sheets proposed to be effective April 1, 1995, seek to implement the Account 858 and Southern Energy surcharges, also as provided in the Stipulation.

As required by the Commission's Rules of Practice and Procedure, a copy of the filing has been served by regular mail on all parties to this proceeding, and by overnight mail to all parties which have participated actively in the settlement conference, and is being served on all of Southern's shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

Attachment A

I. Proposed Tariff Sheets To Be Effective March 1, 1995

Southern Natural Gas Company, FERC Gas Tariff

Seventh Revised Volume No. 1:

Original Sheet Nos. 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a, 53b
First Revised Sheet Nos. 38, 40, 50, 51, 52, 71, 79, 85
Second Revised Sheet Nos. 37, 49, 60, 61, 62, 72, 80, 86, 195

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Third Revised Sheet No. 42
Fourth Revised Sheet Nos. 41, 53

First Revised Volume No. 2A:

Twentieth Revised Sheet No. 94

II. Proposed Tariff Sheets To Be Effective April 1, 1995

Southern Natural Gas Company, FERC Gas Tariff

Seventh Revised Volume No. 1:

First Revised Sheet No. 15a
First Revised Sheet No. 17a
Original Sheet Nos. 34B–D
Original Sheet No. 41a
Original Sheet No. 53a

[FR Doc. 95–7666 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Energy Efficiency and Water Conservation at Federal Facilities

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice announces the members of the Federal Interagency Energy Policy Committee (656 Committee) as designated by each agency. Section 310 of Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, requires each agency head to designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of the Order and appoint such official to the 656 Committee. This notice is being published in the interest of open communication within the Federal Government.

FOR FURTHER INFORMATION CONTACT: Mark Ginsberg, EE–90, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–5772.

SUPPLEMENTARY INFORMATION: Section 201 of Executive Order No. 12902, 59 FR 11463 (1994), state that the Federal Interagency Energy Policy Committee ("656 Committee") serves as a forum to coordinate issues involved in implementing energy efficiency, water conservation, and solar and other renewable energy in the Federal sector.

The "656" Committee originated from the legislative requirements of Section 656 of the Department of Energy Organization Act, 42 U.S.C. 7266. This Section required the Secretaries of Defense, Commerce, Energy, Housing and Urban Development, Transportation, Agriculture, and the Interior; the Postmaster General of the United States Postal Service; and the Administrator of the General Services Administration each to designate one Assistant Secretary or Assistant Administrator as the principal energy conservation officer of the respective Department or Administration.

The National Aeronautics and Space Administration, the Veterans Administration (currently the Department of Veterans Affairs), and the Environmental Protection Agency were asked by the Department of Energy to designate an individual of similar status to participate as a member. These 12 agencies consume approximately 98 percent of all Federal energy. The Departments of Education, Health and Human Services, Labor, State, and Treasury were invited to join in October, 1993.

The "656" Committee is chaired by the Assistant Secretary for Energy Efficiency and Renewable Energy, Department of Energy. It meets periodically to provide policy guidance and to review agency progress on Federal energy conservation plans and associated investments. The purpose of the Committee is to strengthen energy conservation programs which emphasize productivity through the efficient use of energy, and concurrently encourage interagency cooperation in energy conservation. It permits top management of the Federal Government to focus attention on the tasks and missions related to National objectives rather than on the tasks of a particular agency.

The following is a list of the members of the "656 Committee":

Federal Interagency Energy Policy Committee

Chair

Ms. Christine Ervin, Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–1, Forrestal Building, Room 6C–016, 1000 Independence Avenue, SW, Washington, DC 20585, Phone: (202) 586–9220, Fax: (202) 586–9260

Agriculture

Mr. Wardell C. Townsend, Jr., Assistant Secretary for Administration, U.S. Department of Agriculture, Administration Building, Room 248W, 14th and Independence Avenue, SW, Washington, DC 20250, Phone: 202–720–3590, Fax: 202–720–2191

Commerce

Mr. Thomas R. Bloom, Chief Financial Officer and Assistant Secretary for Administration, U.S. Department of Commerce, Main Commerce, Room 5830, 14th and Constitution Avenue, NW, Washington, DC 20230, Phone: 202–482–4951, Fax: 202–482–3592

Defense

Mr. Joshua Gotbaum, Assistant Secretary of Defense for Economic Security, U.S. Department of Defense, The Pentagon, Room 3E808, Washington, DC 20301–3300, Phone: 703–695–6639, Fax: 703–693–7011

Education

Mr. Rodney A. McCowan, Assistant Secretary Human Resources and Administration, U.S. Department of Education, Room 3181, 400 Maryland Avenue, SW, Washington, DC 20207, Phone: 202–401–0470, Fax: 202–401–0485

Environmental Protection Agency

Mr. Jonathan Z. Cannon, Assistant Administrator and Chief Financial Officer, Office of Administration and Resources Management, Environmental Protection Agency, 1111 West Tower, Mail Code 3101, 401 M Street, SW, Washington, DC 20460, Phone: 202–260–4600, Fax: 202–260–0835

General Service Administration

Mr. Kenneth R. Kimbrough, Commissioner of Public Buildings Service, General Services Administration, Room 6344, 18th and F Streets, NW, Washington, DC 20405, Phone: 202–501–1100, Fax: 202–219–2310

Health and Human Services

Mr. Kenneth S. Apfel, Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 508–G, 200 Independence Avenue, SW, Washington, DC 20201, Phone: 202–690–6396, Fax: 202–690–5405

Housing and Urban Development

Ms. Marilynn A. Davis, Assistant Secretary for Administration, U.S. Department of Housing and Urban Development, Room 10110, 451 7th Street, SW, Washington, DC 20410, Phone: 202–708–0940, Fax: 202–619–8129

Interior

Ms. Bonnie Cohen, Assistant Secretary for Policy, Management and Budget, U.S. Department of the Interior, Mail Stop 6214, Room 6117, 1849 C Street, NW, Washington, DC 20240, Phone: 202–208–6182, Fax: 202–208–5048

Justice

Mr. Stephen R. Colgate, Assistant Attorney General for Administration, U.S. Department of Justice, Room 1111, 10th and Constitution Avenue, NW, Washington, DC 20530, Phone: 202–514–3101, Fax: 202–514–1778

Labor

Ms. Cecilia J. Bankins, Acting Assistant Secretary for Administration and Management, U.S. Department of Labor, Room S–2514, 200 Constitution Avenue, NW, Washington, DC 20210, Phone: 202–219–9086, Fax: 202–219–8822

NASA

Ms. Benita A. Cooper,
Associate Administrator for Management
Systems and Facilities,
National Aeronautics and Space Administration,
Code J, Room 3Y04,
300 E Street, SW,
Washington, DC 20024–3210,
Phone: 202–358–2800,
Fax: 202–358–3068

U.S. Postal Service

Mr. William Dowling,
Vice President Engineering,
U.S. Postal Service,
8403 Lee Highway,
4th Floor,
Merrifield, VA 22082–8101,
Phone: 703–280–7001,
Fax: 703–280–5669

State

Mr. Patrick S. Kennedy,
Assistant Secretary for Administration,
U.S. Department of State,
Room 6330,
22nd & C Streets, NW,
Washington, DC 20520,
Phone: 202–647–1492,
Fax: 202–647–1558

Transportation

Mr. Jon H. Seymour,
Assistant Secretary for Administration,
U.S. Department of Transportation,
Room 10314,
400 7th Street, SW,
Washington, DC 20590,
Phone: 202–366–2332,
Fax: 202–366–9634

Treasury

Mr. George Munoz,
Assistant Secretary for Management/ Chief Financial Officer,
U.S. Department of the Treasury,
Room 2423, Main Treasury Building,
15th & Pennsylvania Avenue, NW,
Washington, DC 20220,
Phone: 202–622–1280,
Fax: 202–622–2795

Veterans Affairs

Mr. C. Wayne Hawkins,
Deputy Under Secretary for Health for Administration and Operations (10B),
U.S. Department of Veterans Affairs,
810 Vermont Avenue, NW,
Washington, DC 20420,
Phone: 202–535–7606,
Fax: 202–535–7630

Non-Member Participant

OMB

Dr. Kathleen Peroff,
Deputy Associate Director,
Energy and Science Division,
Office of Management and Budget,
New Executive Office Building,
Room 8001,
725 17th Street, NW,
Washington, DC 20503,
Phone: 202–395–3404,
Fax: 202–395–4817

Issued in Washington, DC on March 23, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–7733 Filed 3–28–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5180–9]

Acid Rain Program: Notice of State and Local Acid Rain Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Title IV of the Clean Air Act requires EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under titles IV and V of the Act, State and local permitting authorities develop and administer acid rain programs as part of their title V operating permits programs. The State and local permitting authorities listed in this notice have submitted acid rain programs for EPA review that have subsequently been determined to be acceptable to the EPA Administrator as part of their title V operating permits programs. This notice is for informational purposes only and does not replace any other **Federal Register** title V operating permits program approval notices.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA, Acid Rain Division (6204J), 401 M St., SW, Washington, DC 20460, (202) 233–9077.

SUPPLEMENTARY INFORMATION: In Phase I of the Acid Rain Program (1995 through 1999), EPA issues Phase I acid rain permits and is the permitting authority for certain acid rain affected sources, most of which are coal burning, electric generating plants. In Phase II of the Acid Rain Program (beginning in the year 2000 and continuing thereafter), State and local permitting authorities are required under titles IV and V of the Act to act as the permitting authority for all acid rain affected sources and issue acid rain permits as part of their title V operating permits programs. Affected sources must submit their initial Phase II acid rain permit applications to the appropriate permitting authority no later than January 1, 1996. Initial acid rain permits must be issued to all affected sources no later than December 31, 1997.

If, by November 15, 1995, the State or local jurisdiction (e.g., district, county, or city) in which an affected source is located has both (1) an acid rain program identified in this or a comparable **Federal Register** notice as acceptable to the Administrator and (2) a title V operating permits program granted full or interim approval by the Administrator in a **Federal Register** notice, then the designated representative of the affected source should submit the initial Phase II acid rain permit application and 3 copies to that state or local authority. Otherwise, the designated representative should submit the initial Phase II acid rain permit application and one copy to the EPA Regional office for the region, and two copies to the State or local jurisdiction, in which the source is located.

The following State or local permitting authorities have submitted acid rain programs that are acceptable to the Administrator as part of their title V operating permits programs:

Region 4

The Department of Natural Resources, in the state of Georgia;

The Department for Environmental Protection, in the Commonwealth of Kentucky;

The Chattanooga-Hamilton County Air Pollution Control Bureau, in the state of Tennessee;

The Knox County Department of Air Pollution Control, in the state of Tennessee;

The Metropolitan Government of Nashville and Davidson County, in the state of Tennessee.

Region 6

The Department of Pollution Control and Quality, in the state of Arkansas;

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The Department of Environmental Quality, in the state of Louisiana;
The Department of Environmental Quality, in the state of Oklahoma.

Region 7

The Department of Natural Resources, in the state of Iowa;
The Department of Health and Environment, in the state of Kansas;
The Department of Natural Resources, in the state of Missouri;
The Department of Environmental Quality, in the state of Nebraska.

Region 8

The Department of Environmental Quality, in the state of Utah.

Region 9

The Department of Environmental Quality, in the state of Arizona;
The Pinal County Department of Health and Human Services, in the state of Arizona;
The Bay Area Air Quality Management District, in the state of California;
The Monterey Bay Unified Air Pollution Control District, in the state of California;
The Division of Environmental Protection, in the state of Nevada.

Region 10

The Department of Environmental Quality, in the state of Oregon;
The Benton County Clean Air Authority, in the state of Washington;
The Northwest Air Pollution Authority, in the state of Washington;
The Olympic Air Pollution Control Authority, in the state of Washington;
The Puget Sound Air Pollution Control Agency, in the state of Washington;
The Southwest Air Pollution Control Authority, in the state of Washington;
The Spokane County Air Pollution Control Authority, in the state of Washington;
The Washington Department of Ecology, in the state of Washington;
The Yakima County Clean Air Authority, in the state of Washington.

Dated: March 22, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–7719 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–P

[PF–621; FRL–4939–4]

Pesticide Tolerance Petitions; Filings and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings of petitions (PP) and a food additive petition (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities. It also announces the withdrawal of a petition.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
George LaRocca (PM 15)	Rm. 204, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-305-7830.	Do.
Phil Hutton (PM 90)	5th Floor, CS #1, 703-308-8260.	2800 Crystal Drive, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 4E4422.* American Semiochemicals Association, 1620 I St., NW., Washington, DC 20006, has submitted the petition proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of all lepidopteran pheromones, independent of mode of application or physical form or shape. (PM 90)

2. *PP 5F4462.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 1913, Kansas City, MO 64120-0013, has submitted the petition pursuant to section 408(d)(1) of the Federal Food, Drug and Cosmetic Act to propose that 40 CFR 180.436 be amended to establish a tolerance for the insecticide cyfluthrin (cyano (4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropane-carboxylate) in or on the raw agricultural commodity pears at 0.20 part per million. (PM 13)

3. *FAP 4H5704.* Ecoscience Corp., 377 Plantation St., Worcester, MA 01605, has submitted the food/feed additive petition proposing to establish exemptions from the requirement of a tolerance for residues of the microbial pest control agent *Metarhizium anisopliae* strain of ESC 1 in or on all processed food and animal feed when applied as an insecticide to structures. (PM 90)

Withdrawal of Filing

4. *PP 8F3656.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has requested the withdrawal of the petition without prejudice to future filing. Notice of the petition was originally published in the **Federal Register** of October 12, 1988 (53 FR 39594) and proposed to amend 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazin-5-(4H)-one and its triazinone metabolites in or on wheat grain at 0.03 part per million (ppm), wheat straw at 0.5 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm, meat, fat, and meat byproducts of poultry at 0.05 ppm, milk at 0.03 ppm, and eggs at 0.01 ppm. (PM 23)

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: February 23, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7580; Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34073; FRL 4941–9]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 27, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 19 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 27, 1995 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000228–00093	Bin Spray	Malathion	Peanut storage areas, bagged flour, packaged cereals, EC formulation on stored wheat, oats, corn rye, barley
000228–00274	ULV Malathion 95	Malathion	Sugar beets (as a ULV formulation), feed lots, holding pens
000264–00465	MOCAP 10G	Ethoprop	All turf uses except golf courses
000352–00479	DuPont Technical Vendex Miticide	Fenbutatin Oxide	Ornamental use
000352–00480	Dupont Vendex 50WP Miticide	Fenbutatin Oxide	Ornamental use
000352–00493	DuPont Vendex 4L Miticide	Fenbutatin Oxide	Ornamental use
000869–00027	Green Light 50% Malathion	Malathion	Cole crops, squash, plums, fleas & ticks in pet quarters, yards, use on dogs
001015–00066	Douglas Malathion 57-WE	Malathion	Melons, pumpkins, asparagus, carrots, vegetables grown in commercial green houses, almonds, apples, dormant or delayed sprays, filberts, grape vines (overwintering on nursery stock only), pears, pineapple, plums, prunes quince, field crops, pasture, range grasses, peanuts, safflower, soybeans, sugar beets, tobacco, stored products, fly & mosquito control. livestock pest control, forest trees, around the home, in and around greenhouses & gardens, in and around wineries & processing plants, plants processing dry milk, food & nonfood areas of food handling establishments
001386–00114	Insect Spray	Malathion	Crack & crevice treatment in food holding areas, poultry direct application, poultry premises treatment, poultry roost paint, dogs & cats spray, dogs & cats animal quarters, melons
001386–00124	Malathion-5 Emulsifiable Concentrate	Malathion	Melons, peanuts, green sorghum, cranberries, asparagus, carrots, beef cattle, sheep, goats, swine, poultry, peanut protection, grain protection of stored grain
001386–00605	Malathion-6 Grain	Malathion	Stored grain sorghum, field & garden seeds, rice

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TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
001622–00054	Roach & Insect Spray	Malathion	All indoor uses
010370–00047	Fords Lawn Granules	Chlorpyrifos	Sugar beets
019713–00046	Drexel Simazine 80W	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00060	Drexel Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00252	Drexel Simazine 90DF	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00271	Simazine 80W Herbicide	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00273	IDA, Inc. Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland
056644–00069	Security Brand Malathion Multi-Purpose Spray	Malathion	Almonds, apples, asparagus, filberts, peanuts, pears, pineapples, plums, prunes, melons, pumpkins, quince, dog & cat pests, animal quarters

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000264	Rhone-Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709.
000352	DuPont Agricultural Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000659	Green Light Co., P.O. Box 17985, San Antonio, TX 78217.
001015	Douglas Chemical Co., 1500 E. Old 210 Hwy., Liberty, MO 64068.
001386	Universal Cooperatives, Inc., 7801 Metro Parkway, P.O. Box 460, Minneapolis, MN 55440.
001622	Klix Chemical Co., 551 Railroad Ave., South San Francisco, CA 94080.
010370	Roussel Uclaf Corp., 95 Chestnut Ridge Road, P.O. Box 30, Montvale, NJ 07645.
019713	Drexel Chemical Company, P.O. Box 9306, 2487 Pennsylvania St., Memphis, TN 38190.
056644	Security Products Co. of Delaware, Inc., P.O. Box 59084, Minneapolis, MN 55459.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 15, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–7583 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180961; FRL 4942–2]

2,4-D; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide 2,4-D (EPA Reg. No. 264–2) to control waterplantain on up to 20,000 acres of wildrice in Minnesota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision on whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180961," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, 2,4-D, available as Weedar 64 (EPA Reg. No. 264–2) from Rhone-Poulenc Ag Company, to control waterplantain which develops a dense leaf canopy in wild rice fields and is known to reduce wild rice yields by more than 90 percent. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, waterplantain is found in nearly all Minnesota fields which have been cropped continuously to wild rice. In the spring waterplantain appears two to three weeks before wild rice emerges and severly obstructs wild rice development. No herbicides are currently registered for use on wild rice because of a ruling by EPA that disallowed chemicals that are registered for use on "rice" to be used on wild rice because of differences in taxonomy and growing practices of the two crops. Non-chemical control by hand-weeding or mechanical cultivation is not practical since wild rice fields are flooded with water.

Under the proposed exemption a maximum of one application could be applied, at a rate of 8.0 fl. oz. of product (0.25 lb active ingredient (a.i.) per acre). A maximum of 1,375 gal. of product or 5,500 lbs. (a.i.) could be applied in 1994. Applications would be made between May 1 and July 31, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for this use of 2,4-D on wild rice in Minnesota have been requested and granted for the past 5 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7585 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180963; FRL 4942–4]

Fomesafen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New York State Department of Environmental Conservation (hereafter referred to as the "Applicant") for use of the pesticide fomesafen (Reflex 2LC) (EPA Reg. No. 10182–83) manufactured by Zeneca Ag Products, to control broadleaf weeds on up to 24,383 acres of snap beans. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180963," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Reflex 2LC. The Applicant provided information in accordance with 40 CFR part 166 to the Agency which supports the position that an emergency situation would exist for New York snap bean growers if Reflex 2LC is not available for use this growing season.

According to the Applicant, infestations of broadleaf weeds have caused significant yield reductions in dry and snap bean fields in New York State. Cultural practices and the use of registered alternative herbicides have proven ineffective in controlling a variety of broadleaf weed species. Bean crop yields have significantly declined and the incidence of weed contamination in the final product has increased steadily since the loss of the herbicide Premerge (dinoseb) in 1987.

Under the proposed exemption a maximum of one application could be applied, at a rate of 1.0 to 1.25 pints of Reflex 2LC per acre (0.25 to 0.313 lb active ingredient (a.i.) per acre). A maximum of 3,816 gallons of product or 7,632 pounds of (a.i.) could be applied

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in 1995. Applications would be made between June 1, and August 15, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of fomesafen on snap and dry beans have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the New York State Department of Environmental Conservation.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7584 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180966; FRL 4943–7]

Lactofen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide Lactofen (Cobra Herbicide) (EPA Reg. No. 59639–34) manufactured by Valent U.S.A. Corp., to control black nightshade, hairy nightshade, and redroot pigweed on up to 2,000 acres of snap beans. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180966," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Lactofen (Cobra Herbicide). The Applicant provided information (in accordance with 40 CFR part 166) to the Agency which supports the position that an emergency situation would exist for Oregon snap bean growers if Cobra Herbicide is not available for use this growing season.

According to the Applicant, infestations of black night shade, hairy nightshade, and redroot pigweed have caused significant yield reductions in snap bean fields in Oregon. The registered herbicides do not control these identified weed species.

Snap bean crop yields have significantly declined and the incidence of weed contamination in the final product has increased steadily since the loss of Chloramben Herbicide (Amiben).

Under the proposed exemption a maximum of one application could be applied, at a rate of 3/4 pint (.1875 lb. active ingredient (a.i.)) of product per acre. A maximum of 281.25 gallons of product or 375 lbs. of (a.i.) could be applied in 1995. Application would occur between April 1, 1995 and July 31, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of Cobra Herbicide on snap beans have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oregon Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7582 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180965; FRL 4942–6]

Oxytetracycline; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Michigan, Oregon and Washington Departments of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide,

oxytetracycline, to control fire blight on apples for 5,000 acres in Michigan, 4,340 acres in Oregon, and 3,000 acres in Washington State. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180965," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemptions for use of the bactericide, oxytetracycline, available as Terramycin (EPA Reg. No. 618–104) from Merck and Company, to control fireblight on up to 5,000 acres of apples in Michigan, 4,340 in Oregon and 3,000 in Washington State. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, the bactericide commonly used to control fire blight has been streptomycin, however, apples have developed a resistance to streptomycin and have become susceptible to blight. None of the registered pesticides are effective against this disease and, without an effective control growers will incur significant economic losses during the 1995 growing season.

Under the proposed exemptions, a maximum of five ground applications of Terramycin for Michigan, and a maximum of up to eight application for Oregon and Washington, would be made at 0.8 ounces to 1.0 pound of product (50 to 100 gallons of a 200 ppm solution per acre). A 60–day preharvest interval will be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of oxytetracycline on apples have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Michigan, Oregon and Washington Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7717 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180967; FRL 4944–3]

Pyrithiobac-Sodium; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the "Applicant") for use of the pesticide pyrithiobac-sodium, to control morningglory and cocklebur on up to 500,000 acres of cotton in Arkansas. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180967," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide,

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Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, pyrithiobac-sodium, available as Staple from DuPont Agricultural Products, to control morningglory and cocklebur on up to 500,000 acres of cotton in Arkansas. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the registered alternative herbicides Command and Cotoran, provide only fair control unless environmental conditions are perfect. If no rainfall occurs for activation of the soil applied herbicide, no height difference is established for the post-directed spray. This is often compounded by wet weather preventing the directed application to be made. Command was used last year by over one-half of the Arkansas cotton growers for morningglory control. Command provides good control of pitted morningglory, but poor control of the entire leaf and ivyleaf species. In addition, off-target movement problems have created a controversy in Arkansas and the long-term future of this herbicide remains clouded. Even with Command, an emergency situation exists for an over-the-top herbicide for morningglory control. In addition, a second weed that is rapidly increasing is the cocklebur which is resistant to MSMA and DSMA. The arsenical herbicides have been Arkansas primary means of cocklebur control and resistance is fast rendering them useless. The applicant estimates a yield loss ranging from 17 to 66 percent due to cocklebur and a 72 percent yield loss due to pitted morningglory.

Under the proposed exemption, a maximum of two ground or air applications of Staple would be made at 1.0 fluid ounces of product (or 1.18 to 2.35 ozs 85 percent SP/A) per acre. Not to exceed 2.0 fluid ounces of product per acre. No applications would be made within 45 days of harvest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)].

Pyrithiobac-sodium is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7581 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50805; FRL–4934–5]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–128. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 300 pounds of the insecticide/miticide 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile on 150 acres of greenhouse and shadehouse ornamentals to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Carolina, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from January 18, 1995 to January 18, 1997. (Dennis Edwards, Jr., PM 19, CM #2, Rm. 207, (703–305–6386))

524–EUP–85. Issuance. Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005. This experimental use permit allows the use of 556.875 pounds of the herbicide glyphosate on 500 acres of soybeans to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin. The experimental use permit is effective from January 19, 1995 to January 19, 1996. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, CM #2, Rm. 241, (703–305–6800))

54555–EUP–6. Issuance. SKW Trostberg, AG., c/o Siemer and Associates, Inc., 4672 W. Jennifer, Suite 103, Fresno, CA 93722. This experimental use permit allows the use of 28,531 pounds of the growth regulator hydrogen cyanamide on 2,437.9 acres of top fruits to evaluate control of diseases and maturation of fruit. The program is authorized only in the States of Alabama, Arizona, California, Florida, Georgia, and Texas. The experimental use permit is effective from January 12, 1995 to January 12, 1996. (Joanne I. Miller, PM 23, CM #2, Rm. 237, (703–305–7830))

707–EUP–122. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 321 pounds of the active ingredient α-butyl-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile on 535 acres of cucurbits to evaluate the control of various fungi. The program is authorized only in the States of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from July 1, 1994 to June 30, 1995. A temporary tolerance for residues of the active ingredient in or on curcurbits has been established. (Steve Robbins, PM 21, CM #2, Rm. 259, (703–305–6900))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: March 7, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7716 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5179–8]

Notice of Proposed Administrative Settlement; Lorentz Barrel and Drum Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA," commonly referred to as Superfund), 42 U.S.C. 9622(i) and Section 7003(d) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6973, notice is hereby given of a proposed cost recovery administrative settlement concerning the Lorentz Barrel and Drum Superfund Site in San Jose, California (the "Site"). The United States Environmental Protection Agency ("EPA") is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA and RCRA of 88 *de minimis* parties for all past and future response costs associated with the Lorentz Barrel and Drum Site. The names of the settling parties are listed below in the Supplementary Information section. These 88 parties collectively have agreed to pay $1,853,545.51 to EPA and $1,273,062.71 to the California Department of Toxic Substances Control ("California DTSC").

EPA is entering into this agreement under the authority of Section 122(g)(4) of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. A *de minimis* party is one that contributed a minimal amount of hazardous substances to a site in comparison to other hazardous substances at a site, and contributed hazardous substances that are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at a site. Under the authority granted by Section 122(g), EPA proposes to settle with 88 potentially responsible parties at the Lorentz Barrel and Drum Superfund Site, each of whom is responsible for no more than one percent of the barrels or drums that may have contained hazardous substances sent to the Site, as reflected on the waste-in list developed by EPA.

De minimis settling parties will be required to pay their allocated share of all part response costs and the estimated future response costs at the Lorentz Barrel and Drum Site, including all federal and state response costs, and a premium to cover the risks of remedy failure and cost overruns. Fifteen of the settling *de minimis* parties were parties to earlier settlements with EPA in which they conducted cleanup work at the Site. EPA has calculated the value of the prior settlors' work and has arrived at an equitable amount which the 15 prior settlors have agreed to pay in this settlement to resolve their liabilities to EPA and the California DTSC for the Site.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30 day public comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

DATES: Pursuant to Section 122(i)(1) of CERCLA and Section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement for thirty (30) days following the date of publication of this Notice. If EPA receives a request for a public hearing within thirty (30) days following the date of publication of this Notice, pursuant to Section 7003(d) of RCRA, EPA will hold a public hearing to afford the public an opportunity to comment on the proposed settlement.

ADDRESSES: Comments and requests for a public hearing should be addressed to the Docket Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: Lorentz Barrel and Drum Superfund Site, San Jose, California, U.S. EPA Docket No. 95–01. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above. EPA's response to any comments received will be available for inspection from the Regional Hearing Clerk; at the Dr. Martin Luther King, Jr. Public Library, Reference Desk, 180 W. San Carlos Street, San Jose, CA 95113; and at San Jose State University, Clark Library, Government Publications Desk, One Washington Square, San Jose, CA 95192.

FOR FURTHER INFORMATION CONTACT: Mary S. Andrews, Senior Associate, (202) 260–3109, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement (2244), Room 3105, 401 M Street SW., Washington, DC 20460, or Randa Bishlawi, Assistant Regional Counsel, (415) 744–1345, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: The proposed *de minimis* settlement resolves EPA and California DTSC's claims under Section 107 of CERCLA and Section 7003 of RCRA against the following Respondents: A.J. Raisch Paving Company, Albuquerque Enterprises, Allgood Industries, Amchem Products Inc., American National Can Company, Ampex Corporation, Ashland Chemical Company, Auto Body Supply Warehouse, Bayday Chemical, Boise Cascade Company, Central Valley Beverage, Conoco Inc., Consolidated Freightways, Container Corporation of America, Continental Can Company Inc., Cul Mar, Daw Printing Ink Company, Day-Brite Lighting Inc., Defense Logistics Agency, Dymo Industries Inc., Eastman Kodak Company, El Camino Hospital, Exchange Linen Services, Fiberglass Representatives Inc., Firestone Tire & Rubber Company, Fletco Paint Company, General Electric Company, Georgia Pacific Corporation, Getty Oil, Gilroy Foods Inc., Great Western Chemical Company, Green Giant Company, Guardian Sanitary Supply Company, H & H Robertson Company, Holly Sugar Refinery, Hewlett Packard Company, I.B.M., Inland Container, International Rotex, IT Transportation, Jasco Chemical Company, Jones Hamilton Company, Kern Food Inc., KTI Chemical Inc., L.& N. Uniform Supply Company, Lockheed, Minwax Company Inc., Morton Paint Company, Nasa Ames Research Center, National Fiberglass Corporation, National Semiconductor Corporation, National Starch & Chemical Company, State of Nevada Department of Highways, Norton Company, Olin Corporation, Pacific Gas

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& Electric Company, Packaging Industries Inc., Patterson Pacific Parchment Company, Patterson Frozen Foods, Pepsi Cola Bottling Company, Potlatch Corporation, Quaker State Oil Company, Raychem Corporation, San Jose Graphics, San Jose Hospital, San Jose State University, Sanmina Corporation, Santa Clara County, Santa Clara Valley Water Conservation District, Sea & Ski Corporation, Sierra Chemical Company, Solvent Service Company, Stanford Linear Accelerator, Stockton Door Company, Tenneco Inc., Tidewater Oil Company, Tom Matsui, U.S. Air Force, U.S. Steel Corporation, United Air Lines, United Can Company, Universe Paint Company, University of California, Valley Farm Supply, Van Waters & Rogers Inc., Van Products Company, Inc., Vi-Tex Packaging Company and Westinghouse Electric Corporation.

Dated: March 14, 1995.

Keith Takata,

Acting Director, Hazardous Waste Management Division.

[FR Doc. 95–7592 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL—5179–2]

Sparks Solvent Fuel Site; Notice of Proposed De minimis Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given of a proposed *de minimis* administrative cost recovery settlement entered into by EPA, Region IX and Air BP, and operating division of BP Exploration & Oil Inc. (AIR BP). The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that Air BP will reimburse EPA its proportional share of the costs incurred at, in connection with, or anticipated to be incurred by EPA in providing oversight to a time critical removal being conducted at the Sparks Solvent Fuel site in Sparks, Nevada.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA 94105, Attention: Steve Armsey, Regional Hearing Clerk.

ADDRESSES: A copy of the proposed settlement may be obtained from Steve Armsey, U.S. EPA Region IX Hearing Clerk (RC–1), 75 Hawthorne St., San Francisco, CA. 94105. Comments should reference the Sparks Solvent Fuel site and EPA Docket No. 95–09.

FOR FURTHER INFORMATION CONTACT: Mark Klaiman, Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne St., San Francisco, CA, 94105, Telephone: (414) 744–1374.

Dated: March 9, 1995.

Laura Yoshii,

Acting Director, Hazardous Waste Management Division.

[FR Doc. 95–7720 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 89–97; DA 95–414]

Private Wireless Division, Southern California Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Acting Chief, Private Wireless Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Southern California (Region 5). As a result of accepting the amendment for the Plan for Region 5, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Deborah A.R. Behlin, Wireless Telecommunications Bureau, Private Wireless Division (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Southern California Public Safety Plan.

Adopted: February 28, 1995.
Released: March 13, 1995.

By the Acting Chief, Private Radio Division, Wireless Telecommunications Bureau and the Acting Chief, Spectrum Engineering Division, Office of Engineering and Technology:

1. By letter dated August 1, 1994, Region 5 (Southern California) proposed to amend the Region 5 Public Safety Plan that was accepted under delegated authority, by the Commission on November 8, 1989, 4 FCC Rcd 8352 (1989). The proposed amendment would revise the current channel allotments.

2. On October 5, 1994, the Commission placed the letter on Public Notice with comments due on November 4, 1994, 59 FR 50761 (1994). On November 3, 1994, Region 27 (Nevada) filed a request to extend the comment period. The comment period was extended until November 25, 1994; however, no further comments were filed.

3. We have reviewed the proposed amendment to the Region 5 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered, That the Public Safety Radio Plan for Region 5 is amended, as set forth in the Region's letter of August 1, 1994. This amendment is effective immediately.

5. For further information, contact Deborah Behlin at (202) 418–0680.

Federal Communications Commission:

Robert H. McNamara,

Acting Chief, Private Radio Division.

[FR Doc. 95–7701 Filed 3–28–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213–010955–004.
Title: ACL/H–L Reciprocal Sparce Charter and Sailing Agreement.
Parties:

Atlantic Container Line AB
Hapag-Lloyd AG

Synopsis: The proposed amendment increases the number of vessels to be employed under the Agreement to 23 (previously 20), and makes other non-significant modifications to the Agreement.

Agreement No.: 202–011241–014.
Title: USA-North Europe Rate Agreement.
Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

Synopsis: The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No.: 202–011242–014.
Title: North Europe-USA Rate Agreement.
Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

Synopsis: The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No. 206–011243–004.
Title: Trans-Atlantic Carrier Association Agreement.
Parties:

North Europe-USA Rate Agreement
USA-North Europe Rate Agreement

Synopsis: The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No.: 202–011375–017.
Title: Trans-Atlantic Conference.
Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synopsis: The proposed amendment modifies Articles 13 and 14 of the Agreement to facilitate independent action procedures and to provide for a more flexible service contract shipper/carrier negotiation/participation process. The provisions comply with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No.: 203–011494.
Title: TMM/Contship Space Charter and Sailing Agreement.
Parties:

Transportacion Maritima Mexicana, S.A. de C.V.
Contship Containerlines Limited

Synopsis: The proposed Agreement authorizes the parties to charter space to each other and to rationalize sailings in the trades between U.S. Atlantic and Gulf ports and U.S. points, and (1) ports and points in Spain, Italy, and France and European points and (2) ports and points in Mexico. The Agreement also permits the parties to discuss and agree upon rates, charges, rules, terms of service contracts, and other transportation terms and conditions on a voluntary basis.

Agreement No.: 224–200925.
Title: Port of New York & New Jersey/American President Lines, Inc., Container Incentive Agreement.
Parties:

Port Authority of New York & New Jersey ("Port")
American President Lines, Inc. ("APL")

Synopsis: The Agreement provides for the Port to pay APL an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200926.
Title: Port of New York & New Jersey/Ivaran Agencies, Inc., Container Incentive Agreement.
Parties:

Port Authority of New York & New Jersey ("Port")
Ivaran Agencies, Inc. ("Ivaran")

Synopsis: The Agreement provides for the Port to pay Ivaran an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: March 24, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7698 Filed 3–28–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Herbert Marvin Barnard, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Herbert Marvin Barnard, Huntsville, Alabama; to acquire 10.52

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percent; Eula Tabor Brooks, Huntsville, Alabama, to acquire 8.61 percent; Otha Wilson Cole, Huntsville, Alabama, to acquire 6.70 percent, Mildred Louise Olszewski, Huntsville, Alabama, to acquire 7.65 percent; John Oscar Vickers, Jr., Huntsville, Alabama, to acquire 7.65 percent; and Kenneth Dean Willis, Huntsville, Alabama, to acquire 7.65 percent, of the voting shares of Childersburg, Bancorporation, Inc., Childersburg, Alabama, and thereby indirectly acquire First Bank of Childersburg, Vincent, Alabama.

Board of Governors of the Federal Reserve System, March 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7688 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

Central and Southern Holding Company; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central and Southern Holding Company, Milledgeville, Georgia; to acquire 5.7 percent of Nova Financial Corporation, Atlanta, Georgia, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Georgia.

Board of Governors of the Federal Reserve System, March 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7689 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

Milton Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Milton Bancshares, Inc., Milton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milton, Milton, Wisconsin.

Board of Governors of the Federal Reserve System, March 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7690 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

Union Bancshares of Campbell County, Inc., et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Union Bancshares of Campbell County, Inc., Jellico, Tennessee; to retain 6.1 percent of its subsidiary Gem City Development Corporation, Jellico, Tennessee, and thereby engage in community, development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., to engage *de novo* in the purchasing of loan participations and the making of direct loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Ainsworth Company, Ainsworth, Nebraska; to engage *de novo* through its subsidiary First National Agency of Ainsworth, Inc., Ainsworth, Nebraska, in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7691 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

U.S. Trust Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to acquire all of the voting shares of New USTC Holding Company, New York, New York, and New U.S. Trust Company, New York, New York. United States Trust Company of New York, New York, New York, also has applied to become a bank holding company by acquiring New U.S. Trust Company of New York (in organization). New USTC Holding Company has applied to become a bank holding company by acquiring New U.S. Trust Company of New York, New York, New York; U.S.T.L.P.O. Corp., Dallas, Texas, and thereby indirectly acquire U.S. Trust Company of Texas, N.A., Dallas, Texas; and U.S. Trust Company of California, Los Angeles, California.

In connection with these applications, New USTC Holdings Corporation has applied to acquire certain of U.S. Trust Corporation's nonbanking subsidiaries and thereby engage in through the U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, in the following activities: (1) trust company, investment and financial advisory, community development, and savings association operations activities, pursuant to §§ 225.25(b)(3), (4), (6), and (9), of the Board's Regulation Y; (2) through CTMC Holding Company and its wholly-owned subsidiaries, U.S. Trust Company of the Pacific Northwest, and CTC Consulting, all of Portland, Oregon, in trust company, and investment and financial advisory activities, pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y; (3) through Campbell, Cowperthwait & Co., Inc., New York, New York, in investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y; (4) through U.S. Trust Company of New Jersey and its wholly-owned subsidiary, U.S.T. Securities Corp., both of Princeton, New Jersey, in trust company, investment and financial advisory, securities brokerage, and riskless principal activities, pursuant to §§ 225.25(b)(3), (4), and (15) of the Board's Regulation Y and by Board order (*U.S. Trust Corporation* 78 *Federal Reserve Bulletin* 336 (1992)); and (5) through U.S. Trust Company of Connecticut, Stamford, Connecticut, in trust company and investment and financial advisory activities, pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7692 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951–0054]

Glaxo plc; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a British drug company to divest, within nine months, Wellcome's worldwide research and development assets for certain non-injectable drugs used to treat migraine headaches, or else agree to have a Commission-appointed trustee complete the transaction. In addition, the consent agreement would require Glaxo, for a period to ten years, to obtain Commission approval before acquiring more than a one percent interest in any entity involved in the clinical development, manufacture or sale of non-injectable migraine drugs.

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

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Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of: Glaxo plc, a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation of the Acquisition of certain stock of Wellcome plc ("Wellcome") by Glaxo plc ("Glaxo"), and it now appearing that Glaxo, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an Agreement Containing Consent Order to (i) divest certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondent, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed Respondent Glaxo is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its principal place of business located at Landsdowne House, Berkeley Square, London W1X 6BQ, England.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondent's counsel, Charles E. Koob, Esquire, of Simpson, Thacher & Bartlett at 425 Lexington Avenue, New York, New York 10017–3954, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. Proposed Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "Glaxo" means Glaxo plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Glaxo plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

B. "Wellcome" means Wellcome plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Wellcome plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the acquisition by Glaxo of the capital stock of Wellcome pursuant to an offer announced on January 23, 1995.

E. "Sumatriptan" means the compound with the formula 3-[2-(Dimethylamino)ethyl]-N-methylindole-5-methanosulfonamide and/or or the butanedioate (I:I) salt thereof [i.e. the "succinate"] in respect of its therapeutic indication for the treatment of the disease migraine.

F. "311C90" means the compound with the formula (S)-4-[[3-2-(dimethylamino)ethyl]-]H-indol-5-yl]methyl]-2-oxazolidinone and/or a pharmaceutically acceptable salt thereof in respect of its therapeutic indication for the treatment of the disease migraine.

G. "Wellcome's 311C90 Assets" means Wellcome's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of 311C90 that are not part of Wellcome's physical facilities. "Wellcome's 311C90 Assets" include, but are not limited to, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution

information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Wellcome's 311C90, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain United States Food and Drug Administration ("FDA") approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States or other countries for Wellcome's 311C90.

H. "Glaxo's Sumatriptan Assets" means Glaxo's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of Glaxo's Sumatriptan that are not part of Glaxo's physical facilities. "Glaxo's Sumatriptan Assets" include, but are not limited, to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Glaxo's Sumatriptan, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain FDA approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States or other countries for Glaxo's Sumatriptan.

I. "Alternative Assets to be Divested" means Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets at the discretion of the trustee to be appointed pursuant to Paragraph IV. of this Order.

J. "Acquirer" means the entity to whom Glaxo shall divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets pursuant to this Order.

K. "Non-injectable $5HT_{1D}$ agonists" means any $5HT_{1D}$ agonist medicine formulation intended for the treatment of the disease migraine to be administered to patients by any method other than subcutaneous, intramuscular or intravenous injection.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final Wellcome's 311C90 Assets.

B. Respondent shall divest Wellcome's 311C90 Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of Wellcome's 311C90 Assets is to ensure continued research and development of Wellcome's 311C90, in the same manner in which Wellcome's 311C90 would be researched and developed absent the proposed Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's Complaint.

C. The time period for divestiture pursuant to this Paragraph II. of this Order shall be tolled if and when Respondent:

1. Provides to the Commission objective evidence, including, but not limited to, results of clinical trials, indicating that, based on 311C90's medical profile, and through no fault of Respondent, Wellcome's 311C90 Assets are not viable or marketable; and

2. Petitions the Commission to modify this Order, pursuant to section 5(b) of the FTC Act and Section 2.51 of the Commission's Rules of Practice, based on the circumstances described in Subparagraph II.C.1 of this Order.

This tolling of the time period for divestiture shall end when the Commission rules on Respondent's petition to modify this Order.

III

It is further ordered that:

A. Within forty-five (45) days of the date this Order becomes final, the Commission shall appoint a trustee to ensure that Glaxo expeditiously performs its responsibilities required by this Order. Glaxo shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee with ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after the appointment of the trustee, Glaxo shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to assure Glaxo's compliance with the terms of this Order. As part of the trustee agreement, the trustee shall execute confidentiality agreement(s) with Glaxo.

3. The trustee shall serve until either (a) the Acquirer has filed with the FDA for approval to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); (b) the trustee determines that the Acquirer has abandoned its efforts to obtain FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); or (c) the trustee determines that the Acquirer has failed to exercise reasonable diligence in research and development toward obtaining FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order), which lack of diligence will have been certified to and accepted by the Commission, whichever comes first. The trustee's service shall continue for no more than two (2) years following divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets or to any other relevant information as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to the research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities pursuant to this Order.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the

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trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

6. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

7. If the trustee ceases to act or fails to act diligently a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

8. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the requirements of this Order.

9. The trustee shall report in writing to Respondent and the Commission every one hundred and eighty (180) days concerning the trustee's obligation pursuant to this Paragraph III.

B. Respondent shall comply with all reasonable directives of the trustee regarding Respondent's obligations to comply with this Order.

C. The trustee may require Glaxo to manufacture Wellcome's 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) for use by the Acquirer in conducting clinical trials or bioequivalency studies if:

1. The Acquirer has depleted its inventory of 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) acquired pursuant to the divestiture;

2. The Acquirer has a need to conduct further clinical development trials or bioequivalency studies prior to submission of an application to the FDA to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatripan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); and

3. Despite good faith support to establish its own manufacturing capability for 311C90 (or Sumatripan, if Galaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order), the Acquirer has not succeeded in doing so as of the time 311C90 (or Sumatripan, if Galaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) is needed for such clinical trials or bioequivalency studies. The trustee shall determine reasonable compensation for Glaxo, based upon the costs of manufacture, for such production.

IV

It is further ordered that:

A. If Glaxo has not divested, absolutely and in good faith and with the Commission's prior approval, Wellcome's 311C90 Assets within the time required by Paragraphs II.A. and II.C. of this Order, the Commission may direct the trustee appointed pursuant to Paragraph III. of this Order to divest the Alternative Assets to be Divested. Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest the Alternative Assets to be Divested shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If the trustee is directed under Subparagraph A. of this Paragraph to divest the Alternative Assets to be Divested, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall extend the authority and responsibilities of the trustee appointed under Paragraph III. of this Order to include divesting the Alternative Assets to be Divested.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Alternative Assets to be Divested.

3. Within ten (10) days after the extension of the trustee's authority and responsibilities, Respondent shall amend the existing trust agreement in a manner that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the extension of the trustee's authorities and responsibilities as described in Paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, or to any other relevant information, as the trustee may reasonable request, including but not limited to all records kept in the normal course of business that relate to research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Alternative Assets to be Divested.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other

expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except of the extent that such liabilities, losses, damages, claims or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

9. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

10. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

11. If a divestiture application filed pursuant to this Paragraph IV. is pending before the Commission, and Respondent petitions the Commission to modify this Order based on the conditions in Paragraph II.C., then the Commission shall not approve the divestiture application until it rules on the petition to modify.

V

It is further ordered that:

A. Upon reasonable notice and request from the Acquirer to Glaxo, Glaxo shall provide information, technical assistance and advice to the Acquirer with respect to Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) such that the Acquirer will be capable of continuing the current research and development. Such assistance shall include reasonable consultation with knowledgeable employees of Glaxo and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order). However, Respondent shall not be required to continue providing such assistance for more than twelve (12) months after divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Respondent may require reimbursement from the Acquirer for all of its own direct costs incurred in providing the services required by this Subparagraph V.A. Direct costs, as used in this Subparagraph V.A., means all actual costs incurred exclusive of overhead costs.

B. Pending divestiture of Wellcome's 311C90 Assets pursuant to Paragraph II. of this Order or the Alternative Assets to be Divested pursuant to Paragraph IV. of this Order, Respondent shall:

1. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, except for ordinary wear and tear; and

2. Maintain research and development of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets at the levels planned by Wellcome for 311C90 and Glaxo for Sumatriptan as of January 1, 1995.

C. Glaxo shall maintain physical assets necessary to manufacture Wellcome's 311C90 and Glaxo Sumatriptan until the Acquirer has filed with the FDA for approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested pursuant to Paragraph IV.A. of this Order). The maintenance of physical assets described in this Subparagraph shall not exceed two (2) years following divestitute of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Provided however, that Glaxo shall be allowed to discontinue maintenance of the physical assets necessary to manufacture Glaxo's Sumatriptan if Glaxo divests Wellcome's 311C90 Assets pursuant to this Order.

VI

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or noncorporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, (1) the clinical development of non-injectable $5HT_{1D}$ agonists for approval by the FDA for the treatment of migraines or (2) the manufacture and sale of non-injectable $5HT_{1D}$ agonists for approval by the FDA for the treatment of migraines; or

B. Acquire any assets currently used for or previously used for (and still suitable for use for) (1) the clinical development of non-injectable $5HT_{1D}$ agonists approved by the FDA for the treatment of migraines or (2) the manufacture and sale of noninjectable $5HT_{1D}$ agonists approved by the FDA for the treatment of migraines.

Provided, however, that this Paragraph VI. shall not apply to the acquisition of products or services in the ordinary course of business.

VII

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty days (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II., III., IV., V.A. and V.B. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II., III., IV. and V. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II., III., IV. and V. of this Order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control or Respondent, relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may

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have counsel present regarding such matters.

IX

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from Glaxo plc ("Glaxo") under which Glaxo would be required to divest worldwide assets relating to the research and development, manufacture, distribution and sale of a therapeutic compound for the treatment of migraine headaches ("Wellcome's 311C90 Assets") to a Commission-approved purchaser.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an offer announced on January 23, 1995, Glaxo, a British company, will acquire all of the capital stock of Wellcome plc ("Wellcome"), a British company.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the research and development of non-injectable $5HT_{1D}$ agonists. $5HT_{1D}$ agonists are a specific class of drugs known to act on receptors in the human body that are responsible for migraine attacks.

The proposed consent order would remedy the alleged violation by replacing the lost competition that would result from the acquisition. Under the proposed Consent Order, Glaxo is required to provide technical assistance and advice to assist the purchaser of Wellcome's 311C90 Assets in obtaining FDA approval to manufacture and sell non-injectable $5HT_{1D}$ agonists. The proposed Order also provides for a trustee to assure that Glaxo appropriately divests the Wellcome 311C90 Assets. If Glaxo fails to divest the Wellcome 311C90 Assets within nine months, then the trustee's authority may be extended to include responsibility to divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets.[1] The potential that the trustee could ultimately divest Sumatriptan, a highly-valued product already on the market to treat migraine, ensures that Glaxo will exert all possible efforts to divest Wellcome's 311C90 Assets.

Under the provisions of the order, Glaxo is also required to provide to the Commission a report of compliance with the divestiture provisions of the order within sixty (60) days following the date this order becomes final, and every sixty (60) days thereafter until Glaxo has completely divested its interest in Wellcome's 311C90 Assets.

The proposed Consent Order will also prohibit Glaxo, for a period of ten (10) years, from acquiring more than a one percent interest in any entity involved in, or any assets used for, the clinical development or manufacture and sale of non-injectable $5HT_{1D}$ agonists either to be approved by or already approved by the Food and Drug Administration ("FDA") for the treatment of migraines.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Glaxo will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires Glaxo to notify the Commission at least thirty (30) days prior to any change in the structure of Glaxo resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–7630 Filed 3–28–95; 8:45 am]

BILLING CODE 6750-01-M

[1] Glaxo's Sumatriptan, marketed under the brand name Imitrex®, is currently on the market in the U.S. to treat patients with migraine attacks. It is available in the U.S. only in injectable form.

[File No. 911 0095]

La Asociacion Medica de Puerto Rico, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Medical Association, the Physiatry Section, and the two doctors from encouraging, organizing or entering into: any boycott or refusal to deal with any third-party payer; or any agreement to refuse to provide services to patients covered by any third-party payer. In addition, the consent agreement would prohibit, for five years, the respondents from soliciting information from physiatrists regarding their decisions whether to participate in agreements with insurers and provide service; from passing such information along to other doctors; and from giving physiatrists advice about making those decisions.

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Alan Loughnan or Alice Au, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, N.Y. 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of : La Asociació Médica de Puerto Rico, an unincorporated association, La Sección de Fisiatría de La Asociación Médica de Puerto Rico, an unincorporated association, Rafael L. Oms, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico, and Rafael E. Seín, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico.

The Federal Trade Commission having initiated an investigation of certain acts and practices of La Asociación Médica de Puerto Rico, ("La Asociación Médica") an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico, ("La Sección de Fisiatría") an unincorporated association; Rafael L. Oms, M.D. ("Oms"), individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico; and Rafael E. Seín, M.D. ("Seín"), individually and as an officer of La Médica de Fisiatría de la Asociación Médica de Puerto Rico (hereinafter sometimes referred to as "proposed respondents"); and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated, and providing for other relief:

It is hereby agreed by and between the proposed respondents, by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents La Asociación Médica and La Sección de Fisiatría are unincorporated associations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with their offices and principal place of business at Ave. Fernández Juncos Num. 1305, Apartado 9387, Santurce, Puerto Rico, 00908.

Proposed respondents Dr. Oms and Dr. Seín are physiatrists, licensed to practice medicine in the Commonwealth of Puerto Rico. Drs. Oms and Seín have at relevant times been officers of La Sección de Fisiatría. Dr. Oms' business address is Palmas Mail Station, Box 879, Suite 170, Humacao, Puerto Rico, 00792, and Dr. Seín's business address is 11746 Fernandez Juncos Station, San Juan, Puerto Rico 00910–1746.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft of complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "La Asociación Médica" means La Asociación Médica de Puerto Rico, the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates, and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

B. "La Sección de Fisiatría" means La Sección de Fisiatría de la Asociación Médica de Puerto Rico, the Physiatry Section of the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

C. "Rafael Oms" means Rafael L. Oms, M.D., his agents, and employees;

D. "Rafael Seín" means Rafael E. Seín, M.D., his agents, and employees;

E. "Third-party payer" means any person or entity that provides a program or plan pursuant to which such person or entity agrees to pay for treatment by physicians or therapists to individuals described in the plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, whether operated by a private or governmental entity; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; health benefits programs for government employees, retirees, and dependents; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs; and

F. "Participation agreement" means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a physician or therapist for the provision of medical, physical therapy, or other health-care services to Covered Persons, and the physician or therapist agrees to accept such payment from the third-party payer for such provision of medical, physical therapy, or other health-care

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services during the term of the agreement.

II

It is further ordered that respondents, directly or indirectly, or through any corporate or other device, in or in connection with their activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to boycott or refuse to deal with any third-party payer, or to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into any proposed or existing participation agreement;

B. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to refuse to provide services to patients covered by any third-party payer in any proposed or existing participation agreement, or to threaten to refuse to provide services to such patients;

C. For a period of five (5) years after the date this order becomes final, continuing a formal or informal meeting of physiatrists after:

1. Any person makes any statement concerning one or more physiatrists' intentions or decisions with respect to

a. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

b. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement;

and respondents La Asociación Méedica and La Sección de Fisiatría fail to eject such person from the meeting; or

2. Two persons make statements prohibited in order Paragraphs II.C.1.a. or II.C.1.b.;

provided, however, that respondent Oms or Seín shall not be in violation of the order if, immediately following a violation of this paragraph of the order, he leaves a meeting continued in violation of this paragraph, and within thirty (30) days after such meeting, reports to the Commission the circumstances of such meeting, the substance and source of the prohibited statements, and the respondents' actions in response thereto;

D. For a period of five (5) years after the date this order becomes final, providing advice to any physiatrist regarding

1. The desirability or appropriateness of participating in any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement;

provided, however, that nothing contained in this Paragraph II.D. shall prohibit respondents from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payer;

E. For a period of five (5) years after the date this order becomes final, communicating in any way to any physiatrist any information concerning any physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement; or

F. For a period of five (5) years after the date this order becomes final, soliciting from any physiatrist any information concerning that physiatrist's or any other physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement.

Provided, however, that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal, state, or commonwealth government executive agency or legislative body concerning legislation, rules, programs, or procedures, or to participate in any federal, state or commonwealth administrative or judicial proceeding;

Provided further that this order shall not be construed to prohibit any respondent or any member of respondent associations from entering into an agreement or combination with any other physician or health care practitioner with whom the individual physician practices in partnership or in a professional corporation, or who is employed by the same person.

III

It is further ordered that this order shall not be construed to prohibit respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither nor is part of (1) an agreement, proposed agreement, or attempt to enter into an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

IV

It is further ordered that:

A. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying compliant to each of its current members, and to the last known address of any other person who was a member of La Sección de Fisiatría in 1990 or 1991;

B. La Asociación Médica, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of its current members who is not also a member of La Sección de Fisiatría;

C. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribution by first-class mail a copy of this order and the accompanying complaint to each third-party payer with whom La Sección de Fisiatría has entered into negotiations concerning the provision of physiatry services;

D. La Asociación Médica, within sixty (60) days after the date on which this order becomes final, publish in Spanish this order and the accompanying complaint in an issue of *Prensa Médica* or in any successor publication, in the same type size normally used for articles that are published in *Prensa Médica* or successor publication;

E. La Sección de Fisiatría and La Asociación Médica, for a period of five (5) years after the date on which this order becomes final, provide each new member of La Sección de Fisiatría and new member of La Asociación Médica with a copy of this order at the time the member is accepted into membership of La Sección de Fisiatría or La Asociación Médica;

F. La Sección de Fisiatría and La Asociación Médica each file a verified, written report with the Commission within ninety (90) days after the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary of the date on which this order becomes final, and at such other times as the Commission may require, by written notice to La Sección de Fisiatría or La Asociación Médica, setting forth in detail the manner and form in which it has complied and is complying with this order;

G. La Sección de Fisiatría and La Asociación Médica for a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by Parts II and IV of this order;

H. For a period of five (5) years after the date on which this order becomes final, La Sección de Fisiatría and La Asociación Médica notify the Commission at least thirty (30) days prior to any proposed change in La Sección de Fisiatría or La Asociación Médica, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, a change of name, a change of address, or any other change that may affect compliance obligations with this order.

It is further ordered that this order shall terminate on March 30, 2015.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from La Asociación Médica de Puerto Rico ("La Asociació Médica"), an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico ("La Sección de Fisiatría"), an unincorporated association; Rafael L. Oms, M.D.; and Rafael E. Seín, M.D.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that La Asociación Médica, La Sección de Fisiatría, Dr. Oms, Dr. Seín, and others have restrained competition among physiatrists by conspiring to engage in a concerted refusal to deal with La Administración de Compensaciones por Accidentes de Automóviles ("Administration for Compensation of Automobile Accidents" or "ACAA") or to treat ACAA Patients. ACAA is a third-party payer that provides health coverage to automobile accident victims in Puerto Rico. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

The respondents have signed a consent agreement that prohibits them from engaging in unlawful concerted action. Paragraph A of Section II prohibits the respondents from entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating, in, or carrying out any agreement with an insurer. Paragraph B is similar to Paragraph A, but prohibits refusals or threats to refuse to provide services to patients covered by any insurer. The complaint alleges that the physiatrists attempted to coerce ACAA through a concerted refusal to treat certain patients insured by ACAA.

Paragraphs C, D, E, and F of Section II are fencing-in paragraphs intended to prevent the respondents from engaging in actions that might in the future facilitate a concerted refusal to deal with an insurer of covered patients. The fencing-in provisions of Section II shall terminate five years after the date of issuance of the order. Paragraph C prohibits the respondents from continuing any meeting of physiatrists at which any person makes a statement about intentions or decisions with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreement, unless such person is ejected from he meeting by La Asociación Médica and La Sección de Fisiatría. Paragraph C also prohibits respondents from continuing any meeting at which two persons make such statements. Although Drs. Oms and Seíbn are not required to eject a person from a meeting, Drs. Oms and Seín are required to leave any meeting at which any person makes a statement about intentions or decision with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreements, unless such person is ejected from the meeting by La Asociatión Médica and La Sección de Fisiatrī; or at which two persons makes such statements. After Drs. Oms and Seín leave such a meeting, they re required to report to the Commission the circumstances of the meeting.

Paragraph D of Section II prohibits respondents from providing advice to any physiatrist on the desirability or appropriateness of participating in or refusing to provide services to patients covered by any insurer's program (but permits purely factual communications describing the terms of a participation agreement). Paragraph E prohibits respondents from communication to any physiatrist information concerning any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement. Paragraph F prohibits respondents from soliciting information from any physiatrist concerning that person's or any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement.

Section II contains a provision stating that the order does not impair respondents' First Amendment rights to petition the government. Section I also contains another proviso stating that the order does not prevent respondents or association members from forming physician partnerships or professional corporations.

Section III of the proposed order makes clear that the order does not prevent individual respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither constitutes nor is part of (1) an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

Secion IV of the proposed order contains standard notification and compliance provisions. These notification, reporting, and record keeping requirements apply only to La Asociación Médica and La Sección de Fisiatría.

Finally, Section V of the proposed order contains a twenty year "sunset" provision. Under this section, the terms of the order shall terminate twenty years after the date of issuance of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–7631 Filed 3–28–95; 8:45 am]

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[Dkt. 9266]

Red Apple Companies, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the consent order permits the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent order also prohibits the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, are prohibited from entering into or enforcing any restrictions that would prevent any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street from operating the stores as supermarkets.

DATES: Compaint issued May 27, 1994. Order issued February 28, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Monday, December 19, 1994, there was published in the **Federal Register**, 59 FR 65364, a proposed consent agreement with analysis In the Matter of Red Apple Companies, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed from of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

Donald S. Clark,

Secretary.

[FR Doc. 95–7632 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3559]

Sulzer Limited; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Sulzer, a Swiss firm to divest, within six months, a copy of all the information necessary to purchase ingredients for, to manufacture and to sell aluminum polyester powder—equivalent to Sulzer's Amdry 2010—to a Commission-approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to divest copies of both the Amdry 2010 information and all product information relating to the acquired firms aluminum polyester powder. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any assets in the aluminum polyester powder market.

DATES: Compalint and Order issued February 23, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Thursday, October 13, 1994, there was published in the **Federal Register**, 59 FR 51983, a proposed consent agreement with analysis In the Matter of Sulzer Limited, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45,18).

Donald S. Clark.

Secretary.

[FR Doc. 95–7633 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 912 3232]

Taleigh Corporation, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent agreement would require the respondents to possess scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or stop-smoking product, or of any food, dietary supplement, drug, or device. In addition, the consent agreement would require the owner to post a $300,000 performance bond, or to establish an escrow account in the amount of $300,000, as a condition of advertising, promoting, selling or distributing any weight-loss or smoking deterrent or cessation product.

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Joel Winston or Richard Cleland, FTC/S–4002, Washington, D.C. 20580. (202) 326–3153 or 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Raleigh Corporation, and Choice Diet Products, Inc., corporations; and William J. Santamaria, individually and as an officer and director of said corporations.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of Taleigh Corporation, a Florida corporation, Choice Diet Products, Inc., a New York corporation, and William J. Santamaria, individually and as an officer of said corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Taleigh Corporation, a Florida corporation, by its duly authorized officer, Choice Diet Products, Inc., a New York corporation, by its duly authorized officer, and William J. Santamaria, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Taleigh Corporation, formerly known as Taleigh, Inc., a Florida corporation, is organized, exists and does business under and by virtue of the laws of the State of Florida. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent Choice Diet Products, Inc., a New York corporation, is organized, exists and does business under and by virtue of the laws of the State of New York. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent William J. Santamaria is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporation and his address is 20640 Baybrooke Court, Boca Raton, FL 33498.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as circumstances may require) and decision in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft of complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is subsequently withdrawn by the Commission pursuant to the provision of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order:

1. "Clearly and prominently" as used herein shall mean as follows:

(a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Purchase price" shall mean all amounts paid to respondents in cash or by check, or charged to a consumer's credit card account or debited from a consumer's checking account, including, where applicable, sales tax, and any charges not authorized by consumers to be charged to their charge card accounts or debited from their checking accounts, *provided however*, with regard to Part XIV, purchase price shall not include shipping or handling charges if such charges are not included in respondents' guarantee or refund offer.

4. "Weight-loss product" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or

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elimination of fat, slimming, or caloric deficit in a user of the product or program.

5. "Smoking deterrent or cessation product" shall mean any product or program designed to aid or assist the user to stop or reduce the cigarette urge, break the cigarette habit, or stop or reduce smoking.

I

It is ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of FormulaTrim 3000, MegaLoss 1000, MegaLoss 3000, MiracleTrim, or any other weight-loss product containing phenylpropanolamine as the active ingredient, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product causes or assists in causing rapid weight loss;

B. Such product causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake;

C. Such product is new or unique or contains a new or unique ingredient;

D. Such product causes the burning of more body fat than five hours of aerobics, running ten miles nonstop, swimming two and a half miles, exercising six hours nonstop, or any similar exercise activity; or

E. Such product contains an active ingredient that, prior to the sale of such product, was available only through doctors.

II

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such weight-loss product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and, in a television or videotape advertisement, simultaneously in both the audio and video portions of the advertisement, that reducing caloric intake and/or increasing exercise is required to lose weight; *provided however,* that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such product is effective without reducing caloric intake and/or increasing exercise.

III

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program causes or assists in causing weight loss, or assists in maintaining weight loss;

B. Such product or program causes or assists in causing weight loss without exercise or reducing caloric intake;

C. Such product or program causes the burning of more body fat than any amount of exercise activity; or

D. Such product or program causes or assists the user to stop or reduce smoking easily;

unless such representation is true, and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any substantially similar product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program enables users to stop smoking easily; or

B. Such product or program works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

V

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any other smoking deterrent cessation product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any misrepresentation, including through the name of the product, concerning the nature or mechanism of operation of such product, including, but not limited to, that such product contains nicotine or works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

VI

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in

connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Such product or program is new or unique or contains a new or unique ingredient;

B. Consumers who order the product or program will receive a personal consultation from a physician, medical professional or weight-loss counselor; or

C. Any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of such product or program represents the typical or ordinary experience of members of the public who use the product or program.

VII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, where one exists, between a person providing an endorsement of any product or program, as "endorsement" is defined in 16 C.F.R. § 255.0(b), and any respondent, or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. For purposes of this Order, "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

VIII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program does not cause any dangerous side effects, nervous jitters, or insomnia;

B. Such product or program burns, reduces, or diminishes body fat; or

C. Such product or program significantly shrinks fat cells;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

X

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device, as "food," "drug," and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any representation regarding the performance, benefits, efficacy, or safety of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

XI

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

XII

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

XIII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from charging a consumer's credit card account or debiting a consumer's checking account in an amount in excess of the amount affirmatively authorized by the consumer.

XIV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their

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officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that consumers can receive a refund, through such terms as "money back guarantee" or similar terms, unless respondents refund the full purchase price at the consumer's request in accordance with the provisions of this Part;

B. Failing to disclose, clearly and prominently, any material limitations or conditions that apply to a guarantee, warranty or refund policy;

C. Failing to comply, where applicable, with the requirements of Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e and 12 CFR 226.12(e)(1); and

D. Failing to refund the full purchase price in accordance with the terms of a guarantee, warranty or refund policy within a reasonable period of time after a consumer complies with the conditions for receiving a refund. For purposes of this Part, "a reasonable period of time" shall be:

(1) That period of time specified in respondents' solicitation if such period is clearly and prominently disclosed to the consumer in the solicitation; or

(2) If no period of time is clearly and prominently disclosed, a period of thirty (30) days following the date that the consumer complies with the conditions for receiving a refund.

For purposes of determining whether a consumer has complied with the conditions for receiving a refund, the date for determining whether the consumer has returned the product or program within the specified time shall be the date the consumer mails or causes the product or program to be shipped to the respondents or respondents' designated agents.

XV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from violating any provision of The Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 F.R. 49095.

XVI

It is further ordered that respondent William J. Santamaria, and respondent Santamaria's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product to the general public, unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondent Santamaria first obtains a performance bond in the principal sum of three hundred thousand dollars ($300,000). Said bond shall be conditioned upon compliance by respondent Santamaria with the provisions of the Federal Trade Commission Act, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as respondent Santamaria continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. The bond shall cite this Order as the subject matter of the bond and provide surety against respondent Santamaria's failure to pay consumer redress or disgorgement as set forth herein. Such performance bond shall be an insurance agreement providing surety issued by a surety company that is admitted to do business in a state in which respondent Santamaria is doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring.

Respondent Santamaria shall provide a copy of such performance bond to the associate director of the Federal Trade Commission's Division of Enforcement, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, prior to the commencement of any business for which such bond is required.

Provided, however, in lieu of a performance bond, respondent Santamaria may establish and fund, pursuant to the terms set forth herein, an escrow account in the principal sum of three hundred thousand dollars ($300,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve. Respondent Santamaria shall maintain such amount in that account for so long as he continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. Respondent Santamaria shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this Order as Exhibit A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Santamaria for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of this Order or the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the performance bond or funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, *provided that,* if respondent Santamaria has agreed to the entry of a court order or an order of the Commission, a specific finding that Santamaria violated the terms of this Order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Santamaria at his last known address.

Respondent Santamaria may not disclose the existence of the performance bond or escrow account to any consumer, or other purchaser or prospective purchaser, to whom a

covered product is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond or escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Santamaria engaged in false and misleading representations.

XVII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

XVIII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that are relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

XIX

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing for a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

XX

It is further ordered that respondent, William J. Santamaria, shall, for a period of seven (7) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business of employment and his duties and responsibilities.

XXI

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writ ing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and trade practices related to the sale of several weight-loss pills and a smoking cessation product. The Commission's Complaint alleges that proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria made a number of false claims regarding the speed and ease with which consumers can burn fat and lose substantial amounts of weight with proposed respondents' weight-loss pills—MegaLoss, FormulaTrim, and MiracleTrim. The Complaint also alleges that proposed respondents falsely promoted these products as new or unique, as causing weight loss without the need for users to diet or exercise, and as providing the same weight-loss benefits as exercise. With respect to MiracleTrim, the Complaint also alleges that respondents falsely represented that consumers who ordered MiracleTrim would receive a personal weight-loss consultation from a qualified professional.

With respect to MegaLoss, the Complaint also alleges that proposed respondents represented that the product would not cause nervous jitters or insomnia, or have any dangerous side effects, and that, prior to the sale of MegaLoss, the active ingredient in the product was not available without a prescription. The Complaint further alleges that respondents represented that FormulaTrim and MegaLoss would "burn fat" and that MegaLoss and MiracleTrim would significantly shrink millions of fat cells.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made the claims set forth above. The Complaint further alleges that proposed respondents falsely represented that the MegaLoss and FormulaTrim pills are scientifically proven to cause significant weight loss. The Complaint also charges that proposed respondents failed to disclose adequately that certain consumer endorsers appearing in their advertising had a material connection to proposed respondents, in that the consumers had been compensated or offered significant compensation for their endorsement.

The Complaint further alleges that proposed respondents have engaged in several unfair and deceptive trade practices, including: (1) Debiting consumers' bank accounts or billing consumers' credit card accounts without their authorization; (2) offering a money-back guarantee in their ads and then denying refunds or failing to make timely refunds to consumers who have returned the product within the required time period; (3) failing to deliver products at all or failing to deliver products within a reasonable period of time; and (4) violating the Truth in Lending Act by not processing credit charges in a timely fashion.

Regarding Nicotain, a purported smoking cessation product, the Complaint charges proposed respondents with representing falsely

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and without a reasonable basis that Nicotain enables smokers to stop smoking quickly and easily, and that it works through the same mechanism as a prescription smoking deterrent patch.

With respect to the advertising for both the weight loss pills and Nicotain, the Complaint alleges that proposed respondents falsely represented that consumer testimonials appearing in the ads reflect the typical or ordinary experience of members of the public who have used the products.

The proposed consent order ontains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that MegaLoss, FormulaTrim, and MiracleTrim, or any other weight-loss product containing phenylpropanolamine as the active ingredient: (1) Causes or assists in causing rapid weight loss; (2) causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake; (3) is new or unique or contains a new or unique ingredient; (4) causes the burning of more body fat than certain strenuous exercise; or (5) contains an active ingredient that, prior to the sale of such product, was available only through doctors.

Part II requires the proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of a weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary. Part III prohibits proposed respondents from making the types of weight-loss, fat burning and smoking cessation claims alleged in the complaint to be false and unsubstantiated, unless the claims are true and substantiated by competent and reliable scientific evidence. Part IV prohibits proposed respondents from representing that Nicotain or any substantially similar product (a) will enable smokers to stop smoking easily, or (b) works through a mechanism substantially similar to a prescription smoking deterrent patch. Part V prohibits any misrepresentation concerning the nature or mechanism of operation of any smoking cessation product.

Part VI prohibits proposed respondents from misrepresenting that: (1) Any product or program is new or unique, or contains a new or unique ingredient; (2) consumers who order any product or program will receive a personal consultation from a physician or medically trained weight-loss counselor; or (3) the results claimed in consumer testimonials constitute the typical or ordinary experience of members of the public who use the advertised product or program.

Part VII of the proposed order requires proposed respondents to disclose, clearly and prominently, a material connection, where one exists, between any endorser and the proposed respondents.

Part VIII prohibits proposed respondents from misrepresenting the contents, validity, results, conclusions, or interpretations of any test or study. Part IX requires that proposed respondents have competent and reliable scientific evidence to substantiate the following categories of claims for any product or program: (1) Any representations regarding dangerous side effects, nervous jitters, insomnia, or any other adverse health effects; (2) any representations that the product or program burns, reduces, or diminishes body fat; and (3) any representations that the product or program will significantly shrink fat cells. Part X requires proposed respondents to possess scientific substantiation before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device.

Parts XI and XII contain safe harbors for claims that are permitted on the labeling of foods and drugs under the applicable FDA regulations.

Part XIII bans proposed respondents' practice of charging a consumer's credit card account of debiting a consumer's checking account in excess of the amount affirmatively authorized by the consumer. Under Part XIV, proposed respondents are prohibited from misrepresenting the terms of a money-back guarantee and from failing to provide a refund when a consumer has complied with the conditions stated in the advertisement for obtaining a refund. Part XV prohibits proposed respondents from failing to comply with the requirements of the Commission's Mail or Telephone Order Merchandise Rule, as amended, effective March 1, 1994.

Part XVI requires that as a condition of advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product, proposed respondent Santamaria either obtain a performance bond or establish an escrow account in the amount of $300,000.

Part XVII requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part XVIII requires the proposed corporate respondents to distribute a copy of the order to current and future principals, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part XIX of the proposed order, the proposed corporate respondents must notify the Federal Trade Commission at least thirty (30) days prior to certain proposed changes in their structures. Part XX requires that proposed respondent Santamaria, for a period of seven (7) years, notify the Commission of any change in his business or employment. Part XXI obliges proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–7634 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of April/May 1995:

Name: HRSA AIDS Advisory Committee Clinical Issues Subcommittee.

Time: April 26, 1995, 10:00 a.m.–4:00 p.m.

Place: Grand Hyatt Washington Hotel, 1000 S Street NW., Washington, D.C. 20001.

The meeting is open to the public.

Purpose: To facilitate timely dissemination of information about new developments in clinical research, drug development, and policies on HIV diseases into language relevant for practicing caregivers supported by HRSA's HIV/AIDS programs.

Agenda: The meeting will include a discussion of the purpose of the subcommittee and the mechanisms for accomplishing its activities.

* * * * *

Name: HRSA AIDS Advisory Committee Evaluation Subcommittee.

Time: May 4, 1995, 10:00 a.m.–4:00 p.m.

Place: Ramada Bethesda Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

Purpose: To review HRSA's evaluation activities in HIV and recommend new ones.

Agenda: This is the initial meeting of this subcommittee. The subcommittee and consultants will be provided an orientation on evaluation policies and programs.

For further information on the Subcommittee meetings, please contact A. Russell Gerber at (301) 443–4588.

* * * * *

Name: HRSA AIDS Advisory Committee.

Time: May 16, 1995, 1:00 p.m.–5:00 p.m.; May 17, 1995, 8:30 a.m.–5:00 p.m.; May 18, 1995, 8:30 a.m.–2:00 p.m.

Place: Phillips Ballroom, Radisson-Barcelo Hotel, 2121 P Street NW., Washington, D.C. 20037.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: The topics to be discussed include the Relationship of Prevention to Care; AIDS Clinical Trial Group 076 Implementation Update; National Health Service Corps; Health Professions Training; Evaluation; and the Reauthorization of the Ryan White Comprehensive AIDS Resources and Emergency Act.

Anyone requiring information regarding the subject Committee should contact Judy Hagopian, AIDS Program Office, Health Resources and Services Administration, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0866.

* * * * *

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: May 24–26, 1995, 9:00 a.m.

Place: Holiday Inn Crowne Plaza, Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on May 24, 1995, 9:00 a.m.–10:00 a.m.

Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Maternal and Child Health Bureau.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on May 24 at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, D.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda Items are subject to change as priorities dictate.

Dated: March 24, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–7704 Filed 3–28–95; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to establish a new routine use applicable to the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058. The proposed routine use will allow SSA to verify the personal identification information presented to State motor vehicle agencies (MVA) by individuals seeking drivers' licenses and identification cards. This verification service will assist those MVAs' efforts to determine whether the identification information used by individuals to obtain such documents is correct.

We invite public comment on this publication.

DATES: We filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 8, 1995. The routine use will become effective as proposed, without further notice on May 8, 1995, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at that address by making arrangements with the contact person below.

FOR FURTHER INFORMATION CONTACT: Mrs. Alicia Matthews, Social Insurance Specialist, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1723.

SUPPLEMENTARY INFORMATION:

A. Discussion of Proposed Routine Use

Under the national policy established by section 205(c)(2)(C)(i) of the Social Security Act (the Act) States are authorized to use the SSN in the administration of their drivers' license laws for the purpose of establishing the identity of individuals affected by such laws, and may require any individual affected by such laws to furnish to the States (or any agency having administrative responsibility for such laws) his or her SSN. Some MVAs use the SSN to establish the identity of individuals being issued drivers' licenses. Some MVAs also use the SSN to establish the identity of individuals being issued identification cards. Federal law does not specifically authorize the States' use of the SSN for the issuance of general identification cards.

Documents such as the driver's license and the State-issued identification card can be used to establish identity for Federal programs and State and local public assistance programs. The driver's license and identification card can also be used to establish identity for personal and commercial purposes, such as establishing credit and check cashing. State agencies which issue identification documents such as drivers' licenses and identification cards are likely points at which persons might attempt to use SSNs that were not assigned to them in schemes to deceive those agencies and obtain the desired documents. Section 208(a)(7) of the Act provides that any person who, with intent to deceive, represents that an SSN is the one that was assigned by the Secretary of HHS to him or her, when in fact it was not assigned to that person, is guilty of a felony, and upon conviction may be fined, imprisoned, or both.

SSA considers performing verification services for State MVAs as a legitimate function in the administration of the Act. Although the verification services are not specifically mentioned in section 205(c)(2)(C)(i) of the Act, they will assist States in using SSNs as authorized by that statute in administering their driver's license laws. In addition, such verification services will help the States detect and

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deter the illegal conduct described in section 208(a)(7) of the Act.

Moreover, verification of information identifying individuals in MVA records would have a positive impact on the administration of Federal and State programs administered by State and local governments, such as those providing medical services, cash payments, child support enforcement and other types of assistance. MVA records are useful to these agencies, and they are required or authorized by law to use SSNs to identify individuals in connection with these programs. *See*,e.g., sections 205(c)(2)(C)(i) and (v) and 1137 of the Act (42 U.S.C. 405(c)(2)(C)(i) and (v) and 1320b-7). By assisting MVAs with their efforts to obtain and maintain accurate information identifying individuals who apply for, or are issued, drivers' licenses or identification documents, SSA would help make MVA records more useful to these assistance programs.

SSA disclosure of information from the Master Files of SSN Holders and SSN Applications system of records under currently published routine uses may involve providing the correct SSN to an entity when it either has no SSN, or has an incorrect one for a particular individual, or verifying only the fact that an entity has the SSN associated with a particular individual in this system of records. Under the proposed routine use, SSA would only verify that the personal identifying data submitted by the State MVAs match or do not match data in this system of records, and identify the data elements that do not match. SSA would not disclose the data contained in this system of records (such as name or SSN) if the MVA has non-matching data.

The proposed routine use statement will read as follows:

"Personal identification data (i.e., name, SSN, and date of birth) concerning individuals who apply for, or are issued, drivers' licenses or other identification documents may be verified for State motor vehicle agencies (MVA) that issue such licenses or documents. In performing such 'verification,' SSA may indicate whether the identifying data furnished by a State MVA concerning an individual match or do not match data maintained in this system of records, and SSA may identify the particular data elements that do not match. SSA will not disclose information from this system of records which does not match the information furnished by the State MVA."

We are not publishing in its entirety the notice of the system of records to which we are adding the proposed new routine use statement. A notice of that system, the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058, was last published in the **Federal Register** at 60 FR 12964, March 9, 1995.

B. Compatibility of Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consents for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. The drivers' licenses and identification cards issued by the MVAs to administer their laws also can be used to establish the identity of individuals for Federal program purposes, and purposes of State and local public assistance programs.

SSA collects and maintains SSNs and other personal identification data in the Master Files of Social Security Number (SSN) Holders and SSN Applications in order to identify and retrieve information about individuals in SSA records, to administer programs for which SSA is responsible, and to detect the use of an SSN by a person to whom that SSN was not assigned. As mentioned above, State MVAs use such information for the same or similar purposes. Providing verification services to State MVAs would assist the implementation of the national policy described in section 205(c)(2)(C)(i) of the Act, would assist the detection and deterrence of conduct that violates section 208(a)(7) of the Act, and would support the effective and efficient administration of various assistance programs by State and local governments. For these reasons, we find that providing verification services to State MVAs serves purposes that are compatible with purposes for which SSA collects the identification information that would be disclosed in performing those services and meets the criteria of the Privacy Act for the establishment of a routine use. Providing such services under a routine use is also permitted by 20 CFR 401.115.

C. Effect of the Proposal on Individual Rights

As discussed above, the proposed new routine use will permit SSA to verify the identification data used by State MVAs to administer their driver's license and identification card programs. SSA will follow all statutory and regulatory requirements for disclosure. SSA will perform verification services under written agreements which stipulate that MVAs will only collect, verify and redisclose SSNs as provided for by Federal and State law. SSA will safeguard the information that it receives from MVAs for verification to prevent unauthorized access to personal information. Thus, we do not anticipate that the disclosures authorized by the new routine use statement will have any unwarranted effect on the privacy or other rights of individuals.

Dated: March 8, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–7713 Filed 3–28–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–95–1990–02]

Environmental Statements; Availability, etc.: Miramar Gold Corp., Lyon County, NV

AGENCY: Bureau of Land Management, Carson City District Office.

ACTION: Notice of intent to prepare an environmental impact statement on a plan of operations for Miramar Gold Corporation in Lyon County, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR Part 3809, the Bureau of Land Management will be directing the preparation of an Environmental Impact Statement to be produced by a third-party contractor on the impacts of a proposed Plan of Operations for gold mining at Talapoosa by Miramar Gold Corporation, in Lyon County, Nevada. The Bureau invites comments on the scope of the analysis.

EFFECTIVE DATE: An open-house meeting will be held April 19, 1995 at the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Carson City, NV, and again on April 20, 1995 at the Mcatee Building, 2495 Ft. Churchill Rd., Silver Springs, NV, to allow the public an opportunity to identify issues and concerns to be addressed in the Environmental Impact Statement. Both meetings are scheduled from 4:00 pm to 7:00 pm. Representatives of Miramar Gold Corporation will be available to answer

questions about the Plan of Operations. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations and the scope of the Environmental Impact Statement will be accepted until May 5, 1995.

A Draft Environmental Impact Statement is expected to be completed by late summer 1995 and made available for public review and comment. At that time a Notice of Availability of the Draft Environmental Impact Statement will be published in the **Federal Register**. The comment period on the Draft Environmental Impact Statement will be 60 days from the date the Notice of Availability is published.

FOR FURTHER INFORMATION CONTACT: Scoping comments may be sent to: District Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706. ATTN: Talapoosa Environmental Impact Statement Project Manager.

For additional information, write to the above address or call Ron Moore at (702) 885–6155.

SUPPLEMENTARY INFORMATION: Miramar Gold Corporation of Reno, Nevada has submitted a Plan of Operations for the Talapoosa Mine located approximately 3 miles north of Silver Springs, Nevada. The proposed operation will include an open-pit mine, tailing facilities, heap leach facilities, waste rock dumps, water treatment facilities, a milling complex as well as administrative and maintenance buildings. The proposal is expected to disturb 570 acres of public and private land.

The issues expected to be analyzed in the Environmental Impact Statement are: Surface and groundwater quantity and quality, mine pit water quality, threatened and endangered species, wildlife, cultural resources, reclamation, hazardous materials, air quality, soils and watershed, vegetation, visual resources, recreation and wilderness, social and economic values, geology, paleontology, grazing management, access and land use, noise, and cumulative impacts. These topics will be evaluated by an interdisciplinary team and will include review of the proposed Plan of Operations as well as other pertinent environmental documents and studies.

A range of alternatives (including but not limited to alternative reclamation measures and the no-action alternative), as well as mitigating measures, will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands.

Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the Plan of Operations are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the Draft Environmental Impact Statement.

It is important that those interested in the Plan of Operations participate in the scoping and commenting processes. To be most helpful, comments should be as specific as possible.

The tentative project schedule is as follows:

Begin Public Comment Period—April 1995
Issuance of Draft Environmental Impact Statement—August 1995
File Final Environmental Impact Statement—November 1995
Record of Decision—January 1996
Begin Construction of Operation—Spring of 1996.

The Bureau of Land Management's scoping process for the Environmental Impact Statement will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives; (3) Notification of interested groups, individuals and agencies so that additional information concerning these issues, or other additional issues, can be obtained.

Dated: March 21, 1995.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 95–7644 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–HC–P

[CO–034–95–1220–00]

Designation Order; San Miguel County, CO; Establishment of 7 Day Camping Limit on Public Lands Within San Miguel and Montrose Counties, Colorado

AGENCY: Bureau of Land Management, Uncompahgre Basin Resource Area, Montrose District, Montrose, Colorado.

ACTION: Amendment of existing 14 day camping stay limits on 32,641 acres of public lands administered by the Bureau of Land Management as a San Miguel River Special Recreation Management Area (SRMA) and Area of Critical Environmental Concern (ACEC) in San Miguel and Montrose Counties, Colorado.

SUMMARY: Notice is given that person(s) may occupy a designated camping site or multiple sites on BLM Public Lands not closed or otherwise restricted to camping within the San Miguel River Special Recreation Management Area located in the San Miguel and Montrose Counties, Colorado, for a total period of not more than seven (7) days within a thirty (30) day period.

Following the seven (7) day period, person(s) may not relocate on public lands within the Special Recreation Management Area defined to the north by the town of Pinon in Montrose County, approximately nine miles northwest of the town of Norwood, and to the south by Deep Creek, approximately 7 miles east of the town of Telluride on the San Miguel River, until completion of the thirty (30) day period.

The seven (7) day limit may be reached either through a number of separate visits or through a period of continuous occupation of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the seven (7) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments, or anywhere else on BLM public lands within the State of Colorado for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping stay limit does not apply to Long Term Visitor Use Areas which may be so designated in the future by the BLM Montrose District office.

DATES: This camping stay limit will be effective May 1, 1995.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established to assist the Bureau in reducing the incidences of long-term occupancy trespass being conducted under the guise of camping on public lands within the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

The restriction is also necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping. The restriction applies to all public land users except those who have obtained prior approval from the authorized officer, and those who are specifically allowed a longer stay under terms of a Special Recreation Permit.

CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3 provide BLM authority for establishing

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this camping stay limit. The decision for reducing the fourteen day (14) limit to seven (7) days is in compliance with the Bureau's San Juan/San Miguel Resource Management Plan Amendment; San Miguel River ACEC and SRMA, 1993.

8360.0–7 PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this camping stay limit for public lands administered by the BLM in San Miguel and Montrose Counties in the State of Colorado may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Basin Resource Area, Montrose District, 2505 South Townsend Ave., Montrose, Colorado 80401, (970) 249–6047.

Dated: March 22, 1995.

Philip Dwyer,

Acting District Manager.

[FR Doc. 95–7681 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–JB–M

[NM–010–1610–00]

Intent To Prepare a Rio Puerco Resource Area Resource Management Plan (RMP) Amendment/Environmental Impact Statement (EIS) for El Malpais National Conservation Area (NCA) and Chain of Craters Wilderness Study Unit (WSU); Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a RMP amendment/EIS and invitation to participate in developing a management plan for the El Malpais NCA including recommendation on the wilderness suitability of the Chain of Craters WSU.

SUMMARY: The Bureau of Land Management, Albuquerque District is initiating the preparation of the El Malpais NCA management plan and EIS. This action will amend the Rio Puerco RMP. It will include a recommendation on the wilderness suitability of the Chain of Craters WSU and may consider establishment of Areas of Critical Environmental Concern. Proposed planning criteria and dates of public scoping meetings are also included herein.

DATES: Written comments regarding issues to be addressed in developing the draft El Malpais Plan must be submitted on or before May 19, 1995. In addition to written comments, two public scoping meetings will be held in April (see below.)

ADDRESSES: Comments should be sent to the El Malpais Planning Team, BLM, Albuquerque District, 435 Montano NE., Albuquerque, NM 87107–4935.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton at 505–761–8746 or Patty McLean at 505–761–8728, at 435 Montano NE., Albuquerque, NM 87107–4935.

PUBLIC MEETINGS: The public is invited to attend two public meetings to identify issues to be considered in the draft El Malpais Plan and Chain of Craters wilderness suitability analysis. The meetings will be held at the following times and locations:

Date/time	Location
April 25, 1995 ..... 7 p.m.–10 p.m	National Guard Armory. 2001 East Santa Fe Avenue, Grants, NM.
April 27, 1995 ..... 7 p.m.–10 p.m	Amberley Suite Hotel. 7620 Pan American Freeway NE., Albuquerque, NM.

SUPPLEMENTARY INFORMATION: The El Malpais NCA, near Grants, New Mexico was established by Public Law 100–225 on December 31, 1987. The NCA encompasses 262,600 acres. The Chain of Craters WSU, established through the same legislation, totals 18,300 acres and is included within the NCA. Between 1988 and 1991, BLM developed a General Management Plan (GMP) for the El Malpais NCA. BLM considered the GMP an "activity plan" and completed an environmental assessment, rather than a formal RMP amendment and EIS. The GMP was appealed to the Interior Board of Land Appeals (IBLA) by the New Mexico Wilderness Coalition on the grounds that the plan required an EIS and in 1994 IBLA decided in favor of the appellants and directed BLM to prepare an RMP amendment. The proposed El Malpais Plan and EIS will direct the management of the NCA for the next ten to twenty years and will address all requirements of PL 100–225 and the Federal Land Policy and Management Act, including a suitability analysis and recommendation for the Chain of Craters Wilderness Study Area. The planning area will include all lands within or contiguous to the NCA boundary, including lands acquired since the NCA was established.

The El Malpais plan will be developed by an interdisciplinary team representing Archeology, Range, Outdoor Recreation, Interpretation and Wildlife Biology. Additional technical support will be provided by other Technical Specialists as needed.

Anticipated Planning Issues

Suggested issues to be addressed in the plan include the following: American Indian Issues; Boundary Adjustments; Cultural Resources; Desired Plant Communities; Facility Development; Interpretation and Public Education; Natural Resources; Range Management; Recreation; Transportation (including ORV designation); Wilderness (WSA and designated wilderness areas); and Wildlife Habitat.

Planning Criteria

Proposed planning criteria for development of the El Malpais Plan are listed below. Public comment is invited. Planning criteria may be changed as planning proceeds based on public suggestions and the findings of various studies and assessments.

1. Actions must comply with laws, executive orders, and regulations.
2. In each planned action, resource outputs must be reasonable and achievable.
3. Planned actions will sustain the productivity and diversity of natural systems in the NCA.
4. The plan will be developed using the best available scientific information as the cornerstone for resource allocations and other land management decisions in the NCA. The plan will incorporate the work done for the GMP published in 1991 as well as new information attained since establishment of the NCA.
5. The BLM will use an interdisciplinary approach to land management.
6. The BLM will base planning and management on long-term horizons and goals.
7. To the extent possible, this plan will be consistent with the lands and policies of tribes, other federal agencies, and state and local governments.
8. Consideration will be given to designating special administrative management areas within the planning area, such as Areas of Critical Environmental Concern and Research Natural Areas.
9. Planned actions will contribute to or sustain the health of the land. Monitoring and inventory information will be used to assess the effect of management actions.

Public Participation

Public participation activities during the planning process will include consultation with affected users and other agencies, meetings with interested groups and individuals, mail outs, media notices, **Federal Register** notices, public meetings, and distribution of the Plan and EIS for comments.

Complete records of the planning process will be available for public review at the address above.

Dated: March 20, 1995.

Michael R. Ford,

District Manager.

[FR Doc. 95–7645 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–FB–M

[WY–930–1430–01; WYW 123105]

Cancellation of Proposed Withdrawal, Correction of Decision Record; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a proposal to withdraw 5,417.43 acres of Federal surface and mineral estate, and another 40.00 acres of Federal mineral estate only, in Bighorn County to protect significant paleontological resource values discovered near Greybull, Wyoming. The public lands and mineral estate were temporarily closed for two years from surface entry and mining location to allow various studies and analyses to be made in support of a final decision concerning the proposed withdrawal. The land automatically became open to entry under the general land laws, including the mining laws, on January 15, 1994, when the temporary segregation expired. The lands have been, and remain open to mineral leasing.

This notice also corrects the acreage in the Decision Record for the Brown/Howe Dinosaur Area Environmental Assessment (WY–017–EA3–056), dated January 20, 1995. The correct acreage of public land surface designated an Area of Critical Environmental Concern is 5,417.43 acres, instead of 5,457.43 acres.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, (307) 775–6115.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** on January 16, 1992, which segregated for two years the Federal surface and mineral estate described in the notice from entry under the general land laws, including the mining laws, subject to valid existing rights. The Bureau of Land Management has determined withdrawal of Federal land and Federal mineral estate is not needed to protect the paleontological resources present. The Cody Resource Management Plan contains management prescriptions for the area which afford adequate protection. The following described area was designated on January 20, 1995, as the Brown/Howe Dinosaur Area ACEC.

Sixth Principal Meridian, Bighorn County, Wyoming

T. 54 N., R. 91 W.,
- Sec. 4, lots 1–2, S½NE¼, SE¼SW¼, SE¼;
- Sec. 5, SE¼NE¼, SE¼SW¼, SE¼;
- Sec. 7, lots 9, 10, and 13;
- Sec. 8, N½, SW¼, N½SE¼, SW¼SE¼;
- Sec. 9, lots 1–14;
- Sec. 16, NE¼, SW¼;
- Sec. 17, W½NE¼, W½, SE¼;
- Sec. 18, lots 5–11;
- Sec. 19, E½, NE¼NW¼;
- Sec. 20, N½, N½SW¼, SW¼SW¼, E½SE¼;
- Sec. 21, N½NW¼, SW¼NW¼, W½SW¼;
- Sec. 29, E½NE¼, SW¼NE¼, W½, N½SE¼, SW¼SE¼;
- Sec. 30, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
- Sec. 31, lot 5;
- Sec. 32, W½NE¼, NW¼, NE¼SW¼, W½SE¼.

The area described contains 5,417.43 acres in Bighorn County, Wyoming.

Dated: March 17, 1995.

Alan R. Pierson,

State Director.

[FR Doc. 95–7646 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–22–P

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities in Kings Canyon National Park

SUMMARY: The National Park Service is seeking to award a concession contract for the future operation and improvement of existing visitor facilities within Kings Canyon National Park, which is part of Sequoia and Kings Canyon National Parks.

SUPPLEMENTARY INFORMATION: The concession facilities, which include overnight accommodations, food service, retail and other related operations, are located at the Grant Grove and Cedar Grove areas of the park. Grant Grove is a year-round operation, and Cedar Grove operates only during the summer.

To be placed on the mailing list to receive this prospectus send your name and address to: National Park Service/ Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for One Hundred and Twenty (120) days under the terms described in the Prospectus. The One Hundred and Twenty (120) day application period will begin with the release of the Prospectus, is expected to occur shortly after the publication of this notice.

Dated: November 16, 1994.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 95–7728 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Intent To Issue a Prospectus for the Construction and Operation of Hotel and Related Facilities in Sequoia National Park

SUMMARY: The National Park Service is seeking to award a new concession contract for the construction of new visitor facilities and continued operation of certain existing facilities within Sequoia National Park, which is part of Sequoia and Kings Canyon National Parks.

SUPPLEMENTARY INFORMATION: The development to be constructed includes a 414 room hotel, food service and other related commercial and support facilities. Extensive site preparation and infrastructure work have already been completed by the Government.

To be placed on the mailing list to receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for One Hundred and Twenty (120) days under the terms described in the Prospectus. The One Hundred and Twenty (120) day application period will begin with the release of the Prospectus, which will occur shortly after the publication of this notice.

Dated: November 16, 1994.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 95–7729 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, Environmental Impact Statement, Isle Royale National Park, Michigan

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a

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general management plan, Isle Royale National Park, Keweenaw County, Michigan.

SUMMARY: The National Park Service, in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) will prepare an environmental impact statement (EIS) on a general management plan for Isle Royale National Park.

Isle Royale National Park currently operates under a Master Plan written in 1963. Because the master plan is severely outdated, the park does not have a comprehensive plan to set forth the basic management philosophy for the park, direct decision-making, and provide strategies for addressing issues and achieving management objectives. This planning effort will result in a comprehensive general management plan that guides the future use of resources and facilities; identifies future needs for facility types; clarifies research and resource management needs and priorities; encompasses preservation of natural and cultural resources; and addresses changing levels of park visitation over the next 10–15 year period. Carrying capacity issues will be addressed by incorporating the Visitor Experience and Resource Protection (VERP) process into the general management plan effort.

The EIS will describe a range of alternatives for management of Isle Royale National Park, including the no action alternative, and analyze their impacts on natural and cultural resources, recreation use, and any other current uses.

Major issues to be addressed in the EIS will include the following:

1. Island visitation has outgrown park infrastructure and operations. This contributes to crowding that already occurs in some areas due to the commercial boat schedules.

2. Increasing motorized boat use is taxing park operations and infrastructure and is causing friction between motorized and nonmotorized users.

3. Visitor facilities are deteriorating. It is increasingly difficult and expensive to replace these facilities due to laws passed since 1963. It is currently undetermined what facilities are appropriate on the island and if facilities should be enlarged to respond to the increasing visitation or if visitation should be limited and facilities reduced.

Additional issues to be addressed in the EIS may be identified during the scoping process. Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

Public scoping will begin in summer of 1995 and continue through the fall. Prior public notice of scoping processes will be issued. The public is encouraged to send written comments and suggestions concerning preparation of the EIS to Mr. Doug Barnard, Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931–1895. The National Park Service will accept comments at this address at any time during the EIS process. However, to facilitate timely identification of issues and impact topics to be addressed in the EIS, the National Park Service recommends that initial comments be submitted by October 31, 1995.

The responsible official is William W. Schenk, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska.

FOR FURTHER INFORMATION CONTACT: Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931–1895, phone 906–337–4991 (summer) or 906–482–0986 (winter).

Dated: March 20, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–7738 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–P

Aniakchak National Monument Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.
(2) Superintendent's welcome:
  a. Review of SRC function and purpose.
  b. Aniakchak National Monument subsistence management report.
(3) Old business:
  a. Review and approve minutes from last meeting.
  b. Status of hunting plan recommendations.
  c. Election of chairperson.
(4) New business:
  a. Federal Subsistence Program Update.
  b. Resident zone community boundaries.
  c. Aniakchak National Monument Resource Management Plan.
  d. Public and other agency comments.
(5) Subsistence hunting program recommendations work session:
  a. Finalize recommendations.
  b. Draft new recommendations.
(6) Adjournment.

DATES: The meeting will begin at 9:00 a.m. on Thursday, April 6, and conclude at 12:00 noon on Friday, April 7, 1995.

LOCATION: The meeting will be held at the National Park Service Office in King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

David B. Ames,

Acting Regional Director.

[FR Doc. 95–7672 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

Jimmy Carter National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4:00 p.m., at the following location and date.

DATES: April 5–6, 1995.

LOCATION: The Carter Center, One Copenhill, Atlanta, Georgia 30307.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman
Dr. James Sterling Young
Dr. Donald B. Schewe
Dr. Henry King Stanford
Dr. Barbara Fields
Director, National Park Service, Ex-Officio member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: March 22, 1995.

Frank Catroppa,

Acting Regional Director, Southeast Region.

[FR Doc. 95–7673 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

Pea Ridge National Military Park Advisory Team; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 6:00 p.m., on Thursday, April 20, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matter to be discussed at this meeting includes: Boundary Study.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: March 20, 1995.

Ernest W. Ortega,

Regional Director, Southwest Region.

[FR Doc. 95–7674 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0048), Washington, D.C. 20503, telephone 202–395–7340.

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR Part 817

OMB approval number: 1029–0048

Abstract: Sections 515 and 516 of Public Law 95–87 provide that permittees conducting surface mining operations with underground mining activities shall meet applicable performance standards of the Act. The information is used by the regulatory authority in monitoring and inspecting the operations for compliance with the Act.

Bureau form number: None

Frequency: On occasion, quarterly, and annually

Description of respondents: Underground Coal Mining Operators

Estimated Completion Time: 4 hours

Annual Responses: 74,933

Annual Burden Hours: 301,772

Bureau clearance officer: John A. Trelease (202) 343–1475

Dated: January 10, 1995.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–7627 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–699 (Final)]

Commission Determination To Conduct a Portion of the Hearing "In Camera"

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

In the Matter of: Stainless Steel Angle from Japan.

SUMMARY: Upon request of respondent Aichi Steel Works, Ltd. (Aichi) and petitioner Slater Corporation (Slater) in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for March 30, 1995, *in camera*. *See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 FR 66,719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1), as 0amended, 59 FR 66,719 (Dec. 28, 1994)).

FOR FURTHER INFORMATION CONTACT: Lyle Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3107. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Aichi and Slater have justified the need for a closed session. Because petitioner Slater is the sole domestic producer, a full discussion of petitioner's financial condition and of many of the indicators that the Commission examines in assessing material injury by reason of subject imports can only occur if at least part of the hearing is held *in camera*. In addition, because certain information is contained only in confidential questionnaire responses of importers and producers and there are only three

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mill depots that sell the subject imports, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation including BPI by petitioner and for questions from the Commission relating to the BPI, followed by a presentation including BPI by respondents, followed by questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except: those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner will also be granted access to the closed session while such data is discussed. Similarly, if BPI of respondents' witnesses will be discussed in the *in camera* session, respondents' witnesses will also be granted access to the closed session while such data is discussed. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Stainless Steel Angle from Japan*, Inv. No. 731–TA–699 (Final) may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: March 27, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–7859 Filed 3–28–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act for Tribal Governments

(2) Violence Against Women Program Office, United States Department of Justice.

(3) Primary—State, Local or Tribal Government, Others—None. The Crime Act of 1994 enacted the Violence Against Women Program. This program awards grant money to the states, territories, and Indian tribal governments to combat violence against women. The actual legislation dictates that in order to receive federal monies, these grantees must certify that rape exams will be paid for by some entity other than the victim, and the victim will also not incur the cost of filing fees for criminal charges.

(4) 20 annual respondents at .15 hours per response.

(5) 5 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 23, 1995.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 95–7685 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(2) Violence Against Women Program Office, United States Department of Justice.

(3) Primary = State, Local or Tribal Government, Others = None. The Crime Act of 1994 enacted the Violence Against Women Program. This program awards grant money to the states, territories, and Indian tribal governments to combat violence against women. The actual legislation dictates that in order to receive federal monies, these grantees must certify that rape exams will be paid for by some entity other than the victim, and the victim will also not incur the cost of filing fees for criminal charges.

(4) 54 annual respondents at .15 hours per response.

(5) 13.5 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 23, 1995.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 95–7686 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–21–M

Drug Enforcement Administration

[Docket No. 94–70]

Zack B. Brown, M.D.; Denial of Application

On February 25, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Zack B. Brown, M.D. (Respondent) of Detroit, Michigan, proposing to deny his application for registration as a practitioner. The statutory basis for the Order to Show Cause was the Respondent's registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner.

On September 30, 1994, following prehearing procedures and prior to any evidentiary hearing, the Government filed a motion for summary disposition alleging that Respondent no longer held state authorization to handle controlled substances following the suspension of Respondent's license to practice medicine in Michigan by the Michigan Board of Medicine. Respondent did not file a response to the Government's motion and did not deny that his state license to handle controlled substances had been suspended.

On October 17, 1994, the administrative law judge entered her Opinion and Recommended Decision granting the Government's motion for summary disposition and recommending that the Respondent's application for DEA Certificate of Registration be denied. No exceptions were filed by either party.

On November 21, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirely, the Deputy Administrator enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein. On August 17, 1994, the Michigan Board of Medicine summarily suspended the Respondent's state license to practice medicine. On September 26, 1994, an Order Continuing the Summary Suspension of August 17 was issued by the Michigan Office of Legal Services (Department of Commerce). Judge Bittner found that, by virtue of the suspension of Respondent's license to practice medicine in Michigan, it was reasonable to infer, and Respondent did not deny, that because he is not authorized to practice medicine in Michigan, he also is not authorized to handle controlled substances within that state. Judge Bittner concluded that DEA has no authority to register a practitioner, unless that practitioner is authorized by the state to dispense controlled substances. The DEA has consistently held this position. *See Bobby Watts, M.D.*, 53 FR 11919 (1988); *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992).

In cases such as the present, where a Respondent is not authorized to handle controlled substances in the state in which he proposes to practice, a motion for summary disposition is properly entertained. It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *See Phillip E. Kirk, M.D.*, 48 FR 32877 (1983), aff'd sub nom *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). Congress did not intend for administrative agencies to conduct hearings where no issues remain in dispute. *United States v. Consolidated Mines and Smelting Company, Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Based on the foregoing, the Deputy Administrator concludes that Respondent's application for registration must be denied. 21 U.S.C. 823(f) and 824(a)(3). Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority invested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration of Zack B. Brown be, and hereby is, denied. This order is effective April 28, 1995.

Dated: March 23, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–7642 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1689–95; AG Order No. 1959–95]

RIN 1115–AC30

Extension of Designation of Liberia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until March 28, 1996, the Attorney General's designation of Liberia under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as amended ("the Act"). Accordingly, eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on March 27, 1992. In addition during the extension period, some aliens may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on March 29,

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1995, and will remain in effect until March 28, 1996. Re-registration procedures become effective on March 29, 1995, and will remain in effect until April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals for a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state, or a part thereof, upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. The Attorney General extended the designation of Liberia under the Temporary Protected Status program for additional 12-month periods until March 28, 1995, 59 FR 9997.

This notice extends the designation of Liberia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, must comply in applying for continuation of Temporary Protected Status

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's Temporary Protected Status designation, late initial registrations are possible for some Liberians under 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since March 27, 1991, and must have had a valid immigrant or non-immigrant status during the original registration period. For each Application for Temporary Protected Status, Form I–821, filed for late initial registration, a fee of fifty dollars ($50) is charged. An Application for Employment Authorization, Form I–765, must be filed together with Form I–821 in all cases. However, the fee prescribed in 8 CFR 103.7(b)(1) for Form I–765, which is currently seventy dollars ($70), is only charged if the alien requests employment authorization.

The filing fee is required when Form I–765 is filed as part of either a re-registration or as part of a late initial registration for Temporary Protected Status. This filing fee must accompany Form I–765 unless a properly documented fee waiver requests is submitted to the Immigration and Naturalization Service or the applicant does not request employment authorization.

Notice of Extension of Designation of Liberia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Liberia; and (b) whether permitting nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Liberia continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Liberia under section 244A(b) of the Act is extended for an additional 12-month period from March 29, 1995, to March 28, 1996.

(2) I estimate that there are approximately 4,000 nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who received a grant of Temporary Protected Status during the initial period of designation from March 27, 1991, to March 27, 1992, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on March 29, 1995, and ending on April 27, 1995, in order to be eligible for Temporary Protected Status during the period from March 29, 1995, until March 28, 1996. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–821 together with Form I–765 for information purposes, but in such cases both Form I–821 and Form I–765 may be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) and (C) of the Act, the Attorney General will review, at least 60 days before March 28, 1996, the designation of Liberia under the Temporary Protected Status program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 23, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–7678 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Topper Coal Company

[Docket No. M–95–21–C]

Topper Coal Company, Inc., 266 Rocky Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation

requirements) to its No. 10 Mine (I.D. No. 15–17516) located in Pike County, Kentucky. The petitioner proposes to use specific electric face equipment without canopies which would include one 16RB Joy Cutting Machine; two 21 SC Joy Shuttle Cars; two CX–2 S & S Scoops; one Fletcher Roof Bolter; and one Long Airdox Roof Bolter. The petitioner states that the use of canopies would limit the visibility of the equipment operator, and could be a contributing factor in any accidents which may arise.

2. Helvetia Coal Company

[Docket No. M–95–22–C]

Helvatia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Marshall Run Mine (I.D. No. 36–08435) located in Indiana County, Pennsylvania. The petitioner proposes to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity at each temporary electrical installation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. U.S. Steel Mining Company, Inc.

[Docket No. M–95–23–C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (deluge-type water spray systems) to its Gary No. 50 Mine (I.D. No. 46–01816) located in Wyoming County, Pennsylvania. The petitioner proposes to continue its weekly inspections and functional testing of the complete deluge-type water spray system and to remove blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Green Coal Company, Inc.

[Docket No. M–95–24–C]

Green Coal Company, Inc., P.O. Box 908, Owensboro, Kentucky 42302 has filed a petition to modify the application of 30 CFR 77.1605(d) (loading and haulage equipment; installations) to its K–9 Panther Mine (I.D. No. 15–01982) located in Daviess County, Kentucky and its Henderson County Mine No. 1 (I.D. No. 15–16454) located in Henderson County, Kentucky. Instead of using tail lights on mobile equipment, the petitioner proposes to build a metal rack across the complete width of the rear of the mobile equipment; to paint the rack with fluorescent paint, strip with fluorescent tape, and add reflectors; and to have the rear end of the equipment so that it can be seen on the longest section of any part of the mine property haulage roads. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

5. Southern Utah Fuel Company

[Docket No. M–95–25–C]

Southern Utah Fuel Company, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.380(d)(3) and (4) (escapeways; bituminous and lignite mines) to its SUFCo Mine (I.D. No. 42–00089) located in Sevier County, Utah. As an alternate escapeway from the 2 East workings to the surface, the petitioner proposes to use the main return to #3 crosscut where the escapeway will then enter the #1 beltline entry. At this point the escapeway would cross over the #1 belt (height 4 feet) to the walkway side of the belt and then proceed along this side of the belt to the surface at a distance of approximately 450 feet. The petitioner states that because of conventional supports and a barring wall for the tunnel liner in the belt opening, the escapeway width is less that 6 feet; that the narrowest point in this escapeway is the last 17 feet of the drift opening where the width between the roof supports is 2 feet; that because of the cement barring wall and the belt structure, this width cannot be increased; and that an airlock with 3 feet by 7 feet doors is installed inby the drift opening with one side of the airlock 85 feet inby the opening and the other side 140 feet inby. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. McElroy Coal Company

[Docket No. M–95–26–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Monterey Coal Company

[Docket No. M–95–27–C]

Monterey Coal Company, P.O. Box 94, Albers, Illinois 62215 has filed a petition to modify the application of 30 CFR 75.1100–2(i)(1) (quantity and location of firefighting equipment) to its No. 2 Mine (I.D. No. 11–02371) located in Clinton County, Illinois. Instead of using the emergency materials required in the mandatory standard, the petitioner proposes to use the following materials: 112 Kennedy Metal Stopping Panels with associated head sills and twist clamps, 24 Kennedy Stopping Rib Angles, 2 rolls of tape, 2 twist tools, 2 rolls of brattice cloth, 2 stopping jacks, 2 picks, 2 shovels, 6 buckets of Celtite 10–12 Airtite (or equivalent material for stoppings), and 5 tons of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Sky High Coal Company

[Docket No. M–95–28–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use a gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use hoisting rope with a safety factor at least 3 times greater than required and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connection device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. U.S. Steel Mining Co., Inc.

[Docket No. M–95–29–C]

U.S. Steel Mining Co., Inc., 67 Seal Road, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Maple Creek Mine (I.D. No. 36–00970) located in Washington County,

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Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall mining equipment. The Petitioner states that all electrical personnel would receive training before the alternate method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Sky High Coal Company

[Docket No. M–95–30–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Sky High Coal Company

[Docket No. M–95–31–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. As an alternative to removing the batteries and transporting them in the gunboat to the surface for charging, the petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air which is used to ventilate the charging station continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Sky High Coal Company

[Docket No. M–95–32–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Sky High Coal Company

[Docket No. M–95–33–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Sky High Coal Company

[Docket No. M–95–34–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Sky High Coal Company

[Docket No. M–95–35–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Consolidation Coal Company

[Docket No. M–95–36–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421, has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. The petitioner proposes to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Cyprus Emerald Resources Corporation

[Docket No. M–95–37–C]

Cyprus Emerald Resources Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15219–2887 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Twentymile Coal Company

[Docket No. M–95–38–C]

Twentymile Coal Company, 600 Grant Street, Pittsburgh, Pennsylvania 15219–2887 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1995. Copies of these petitions are available for inspection at that address.

Dated: March 22, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–7647 Filed 3–28–95; 8:45 am]

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Occupational Safety and Health Administration

[Docket No. NRTL–3–93]

Factory Mutual Research Corporation

AGENCY: Occupational Safety and Health Administration Department of Labor.

ACTION: Notice of Application for Renewal of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

SUMMARY: This notice announces the application of the Factory Mutual Research Corporation for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 30, 1995.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington , DC. 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

Notice of Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Factory Mutual Research Corporation (FMRC) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for renewal of its recognition of the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062

743 Reynolds Road, West Gloucester, Rhode Island 02814

Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Factory Mutual Research Corporation (FMRC) and Underwriters Laboratories Incorporated (UL). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1907 stated, in part, that Factory Mutual Research Corporation was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period FMRC was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. FMRC has applied for renewal of its recognition as an NRTL within the specified time frame (application dated October 8, 1992) and retains temporary recognition pending OSHA's final decision in this renewal process.

Application

According to the applicant Factory Mutual began testing products in 1886; the first published listings of approved fire hose appeared in 1907. As of October 1992, FMRC approved products and services for approximately 1900 manufacturers and service providers in the United States and 32 foreign countries.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for renewal of its recognition to certify products in the area of testing which it has specified.

Factory Mutual Research Corporation states that its application demonstrates that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, quality control and calibration programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards. In summary, it claims that it has the experience, expertise, personnel, organization, equipment, and facilities suitable for renewal of its accreditation as an OSHA Nationally Recognized Testing Laboratory.

In support of its application, FMRC has attached various exhibits [see Exhibits 2A(1), 2A(2), 2A(3), and 2A(4)]. According to the applicant, it demonstrates its capability to perform testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate standards [see Ex. 2A(1)]; has the proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs [see Ex. 2A(2)]; and has also the capability to perform experimental testing and examining of equipment and materials for workplace safety purposes to determine the conformance with appropriate test standards or performance in a specified manner.

FMRC further asserts that it provides the following controls or services: A registered certification mark [see Ex. 2A(3)]; product evaluation of samples submitted by manufacturers to assure conformance with the test standards; and a facilities and procedures quality audit program to monitor production and use of the FMRC Approval Mark, supplemented with periodic inspections of user premises for monitoring product performance and for identifying the listed or labeled equipment or materials [see Exs. 2A(2)] and 2A(3)].

The applicant also states that it is a non-profit corporation and, accordingly, is not owned, operated or controlled by any company manufacturing, supplying or distributing any portion of the materials and products examined and tested. Further, FMRC claims not to have any financial interest in any company manufacturing, supplying, or distributing materials or products examined [see Ex. 2A(3)].

If clients, FMRC personnel, users, or other sources, file a complaint or disagrees with a decision relating to the standard, to engineering, use, or to inspection, they can present and discuss their views with the involved Engineer(s) and Section Manager in an effort to resolve any disagreement. If the matter cannot be satisfactorily resolved at that level, they are referred to the Department Manager, then to the Division Manager and finally if the complaint is still unresolved it is referred to the Chief Operating Officer

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for the final decision. Equipment rental is infrequent and used only for a special one-time test or when a similar piece of equipment is in repair. The equipment is leased from reputable dealers and operation manuals and calibration certification are required to be supplied.

Finally, Factory Mutual Research Corporation states that it provides creditable reports and findings which are objective and without bias, as well as a fair and reasonable system of handling complaints [see Ex. 2A(2)].

FMRC's application contained 4 enclosures, which they identified as Exhibits 1, 2, 3 and 4. For OSHA's purposes, these documents are listed as Exhibits 2A(1), 2A(2), 2A(3), and 2A(4), respectively. Exhibit 2A(1) lists the test standards for which the applicant desired accreditation, and includes copies of those prepared and published by FMRC. Exhibit 2A(2) consists of FMRC's Operations and Quality Assurance Manual (OQAM) dealing with various facets of the Approvals Division, such as background and history; a demonstration of reporting results; the FMRC organizational chart; the Electrical Department; handling of complaints; laboratory operations; personnel, including position descriptions; descriptions of the facilities; details of procedures with test samples; test procedures; record keeping and data collection; documentation and document control; reports; test equipment including the calibration program; the facilities and procedures audit; product re-examination program; approval standards including mechanics of development; status of approval or listing; guides and listing procedures; follow-up testing; the Quality Assurance program; and a listing of blank forms used in the Approvals Division. Exhibit 2A(3) contains a statement of independence; a listing of FMRC's certification marks; a brochure concerning its approval services; a sample of the general procedure format; and a listing of test equipment. Finally, the last enclosure, Exhibit 2A(4), encompasses the FMRC Approval Guide, including two supplements.

The test procedure method is identified in the revised 5–15–92 version of the General Test Procedure Format. This format identifies specific paragraphs for specific information. General headings include the Purpose and Scope, Test Criteria, Samples Required, Test Facilities and Equipment, Test Setup, Operations, Test Results, and Safety Precautions. The test procedures listing is being updated to reflect the latest procedures.

Facilities

Factory Mutual Research Corporation (FMRC) headquarters in Norwood, Massachusetts occupies a 40 acre site with more than a dozen buildings totaling some 235,550 square feet. Approximately 50 percent of the floor space is allocated for product testing. The Norwood complex is also headquarters for Factory Mutual Engineering Corp. (FMEC) and Factory Mutual Engineering Association (FMEA). Under Factory Mutual Research Corporation are the Standards Division, Approvals Division, Research Division, Loss Operational Analysis Department, and the Administration Department. Many of the administrative and operational support activities for FMRC, such as legal, accounting, and personnel, are provided by FMEC. The Approvals Division of FMRC has responsibility for the Facilities and Procedures Audits (follow-up program for manufacturers); however, in the United States, inspectors are provided by FMEA while overseas they are provided by Factory Mutual International (FMI). The Approvals Division has a technical staff of approximately 75, consisting of 10 managers, 51 engineers, and 15 technicians. FMEA has approximately 960 inspectors and FMI 300.

The West Glocester facility occupies a 1500 acre site. The main building totals some 30,260 square feet. Three large fire test pads and the associated control room occupy most of this space. Additional facilities at West Glocester include a large hydraulics laboratory and a structure to study explosions of combustible dusts and flammable gases or vapors. The West Glocester facility has a staff of approximately 35. However, most of the facility is devoted to the testing of sprinkler and other fire extinguishment system.

Audit Structure

A new audit schedule addresses the frequency of audits and includes the West Glocester facilities. The schedule also includes an aggressive approach to resolving identified discrepancies.

The Facilities and Procedures Audits (F&PA) for FMRC Practices and Procedures provide information on how to perform a proper and successful Approvals Division Facilities and Procedures Audit (F&PA). This document provides guidance on the program, scope of the audits, Areas of Investigation of a Manufacturers Quality Assurance Program, and the preparation, planning and conducting of the audit.

The frequency of audits at the manufacturing site are monitored to insure the yearly minimum (at least quarterly for the NRTL program) is maintained and is in accordance with QAM Section 17.4.

Internal Controls (Quality Assurance)

The Operations and Quality Assurance Manual documents the procedures for controlling the quality of operations in the Approvals Division. The manual includes a policy statement and methods to evaluate and correct quality system problems and includes the necessary ingredients for an effective Quality Assurance Program.

Portions of the Operations and Quality Assurance Manual describe the general policy requiring outside testing laboratories to meet the applicable quality assurance standards of the Approvals Division. The Manual does not specify which outside NRTL laboratories are acceptable, only that the laboratory must meet the Approvals Division quality assurance requirements.

The Technical Report Format is described in the Operations and Quality Assurance Manual (OQAM), and contains the name and address of the testing location, job identification number, name and address of the client, facilities and procedures audit inspection results, conclusion, signatures and other relevant information.

Another section of the Operations and Quality Assurance Manual addresses the Record Keeping Requirements, to include the retention time for specific types of records.

The Follow-up Program is also discussed in the OQAM. Initial factory inspections for an approval/listing process are normally conducted by the Approvals Division personnel (FMRC). Subsequent follow-ups are commonly conducted by the FMEA District Offices in North America, and by FMI in other locations.

Programs

FMRC administers several operational programs, some of which have been in effect for a number of years. Some of these programs have provided the test and evaluation data for products that have been approved and are still being supplied by manufacturers for introduction into the workplaces of the United States.

The following programs have been examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that

NRTLs may engage in under the OSHA/NRTL program. See Exhibit 2C, an addendum to the original "On-Site Review Report (Survey)", dated March 10, 1995, (Exhibit 2B), which reviews the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures".

Basic Program

This program is one in which FMRC performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program

This program is utilized when such as the size, complexity, or uniqueness of a product requires testing at the manufacturer's or other outside laboratory's facilities, or when a manufacturer is entering the Laboratory Qualification Program. The tests are in accordance with the appropriate recognized standard(s) and are witnessed by an FMRC technical representative. The specific information required by the FMRC Operations and Quality Assurance manual to insure equivalency with tests conducted at FMRC is recorded in the Project Data Record (test notebook).

FMRC Laboratory Qualification Program

Since 1979, manufacturers of electrical utilization equipment (process control and test and measuring instrumentation for use in ordinary "non-hazardous" locations) meeting specific criteria, have been allowed to submit test data to FMRC to be used as a part of the approval process. The data submitted by the manufacturer may be used in lieu of tests conducted by FMRC or, at its discretion, FMRC may conduct comparative tests to insure accurateness of manufacturers' supplied data. This includes a review of the product submitted for approval.

The qualification procedures include on-site assessments and an evaluation for usage of proper standards, client personnel, testing facilities and verification testing. Part of the program includes periodic review visits.

A specific department of the client is qualified to generate the necessary test and evaluation information that a product meets the appropriate standards. Test equipment, calibration program, test personnel, test procedures, design origination and change, and the marking and documentation submittal are specified in the Laboratory Qualification Report. The information and a sample product is sent to FMRC for its review.

The program allows for unannounced on-site visits to the manufacturer's facility to verify compliance with the program. An up-to-date listing is maintained of the manufacturing laboratories that are qualified under this program.

International Electrotechnical Commission (IEC) CB Scheme

The IEC–CB Scheme is a certification program for gaining product approval recognition on an international level. Products tested by any National Certification Body (NCB) that participates in the CB Scheme will be accepted for approval without the need for retesting in other member (of the CB Scheme) countries.

Eligibility in the CB Scheme requires that members be recognized by their own governments as an accredited national organization having the authority to issue a listing or place a mark on products that meet specific national standards.

FMRC is accredited by the IEC for testing and evaluating electrical equipment for measurement, control and laboratory use, and information processing equipment including electrical business equipment.

Interlaboratory Agreements

FMRC tests products for, and accepts test data from, internationally recognized laboratories which have interlaboratory agreements with FMRC. The laboratory generating the test data conducts these tests in accordance with the nationally recognized standards of the laboratory certifying the product. Regularly scheduled audits are conducted at each laboratory to insure the competence of the laboratory. The audits include a review of personnel, test equipment, test procedures, documentation control, and quality of operation.

FMRC asserts that it may accept components which have been tested at other laboratories after review of the test report and any additional evaluation necessary. The evaluation by the applicant includes an assurance that the other laboratory's performance meets the level that FMRC would provide had it performed the service.

Standards

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

FMRC 1110—Indicator Posts
FMRC 1221—Backflow Preventers
FMRC 1321—Controllers for Electric Motor Driven Fire Pumps
FMRC 1333—Diesel Engine Fire Pump Drivers
FMRC 1635—Plastic Pipe and Fittings for Automatic Sprinkler Systems
FMRC 3600—Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
FMRC 3610—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations
FMRC 3611—Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
FMRC 3615— Explosionproof Electrical Equipment, General Requirements
FMRC 3620—Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
FMRC 3810—Electrical and Electronic Test, Measuring, and Process Control Equipment
FMRC 6051—Safety Containers and Filling, Supply and Disposal Containers
FMRC 6310—Combustible Gas Detectors
FMRC 7812—Industrial Trucks—LP–Gas
FMRC 7816—Industrial Trucks—LP–Gas Dual Fuel
FMRC 7820—Industrial Trucks—Electric
ANSI Z8.1—Commercial Laundry and Drycleaning Equipment and Operations
ANSI/ISA S12.12—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations
ANSI/ISA S12.13.1—Performance Requirements for Combustible Gas Detectors
ANSI/ISA S12.15—Hydrogen Sulfide Detection Instruments
ANSI/ISA S82.01—Electrical and Electronic Test, Measuring Equipment
ANSI/ISA S82.02—Electrical and Electronic Test and Measuring Equipment
ANSI/ISA S82.03—Electrical and Electronic Process Measuring and Control
ANSI/NEMA ICS 2—Industrial Control Devices, Controllers and Assemblies
ANSI/NEMA 250—Enclosures for Electrical Equipment
ANSI/NFPA 11—Low Expansion Foam and Combined Agent Systems
ANSI/NFPA 11A—Medium- and High-Expansion Foam Systems
ANSI/NFPA 12—Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A—Halon 1301 Fire Extinguishing Agent Systems

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ANSI/NFPA 13—Installation of Sprinkler Systems
ANSI/NFPA 16—Deluge Foam-Water Sprinkler and Spray Systems
ANSI/NFPA 17—Dry Chemical Extinguishing Systems
ANSI/NFPA 20—Centrifugal Fire Pumps
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 38—Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems
ANSI/UL 154—Carbon-Dioxide Fire Extinguishers
ANSI/UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguishers
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 711—Fire Extinguishers, Rating and Fire Testing of
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 827—Central-Stations for Watchmen, Fire-Alarm, and Supervisory Services
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1058—Halogen Agent Extinguishing System Units
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1236—Electric Battery Chargers
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

Preliminary Finding

The Factory Mutual Research Corporation addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Operations and Quality Assurance Manual including a description of its documentation, calibration system, appeals procedures, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey teams in the on-site evaluations, [Ex. 2B(1)], were adequately responded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparation of the final survey reports of the Factory Mutual Research Corporation, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 2B).

Following a review of the application file and the on-site survey reports of the FMRC Norwood, Massachusetts and the West Glocester, Rhode Island facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory for the above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Factory Mutual Research Corporation facilities for which accreditation was requested (Norwood, MA and West Glocester, RI) can meet the requirements for renewal of its recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 30, 1995, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Copies of the FMRC application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–93), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Factory Mutual Research Corporation) satisfies the requirements for renewal of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of § 1910.7.

Signed at Washington, DC, this 22nd day of March 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–7675 Filed 3–28–95; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–4–93]

Underwriters Laboratories Incorporated

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Application for Renewal of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

SUMMARY: This notice announces the application of the Underwriters Laboratories Incorporated for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 30, 1995.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, D.C. 20210.

Notice of Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that Underwriters Laboratories Incorporated (UL) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for renewal of its recognition for the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

333 Pfingsten Road, Northbrook, Illinois 60062
1285 Walt Whitman Road, Melville, Long Island, New York 11747
1655 Scott Boulevard, Santa Clara, California 95050
12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709
2600 N.W. Lake Road, Camas, Washington 98607
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong
UL International Services, Ltd., 3rd Floor, No. 35, Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Underwriters Laboratories Incorporated (UL) and Factory Mutual Research Corporation (FMRC). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1910.7 stated, in part, that Underwriters Laboratories Incorporated was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period UL was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. UL has applied for renewal of its recognition as an NRTL within the specified time frame (application dated September 30, 1993) and retains temporary recognition pending OSHA's final decision in this renewal process.

Application

According to the applicant, Underwriters Laboratories Inc., is an independent, not-for-profit product safety certification organization, which was founded in 1894. UL has requested accreditation for its five major domestic certification locations, including its newest facility at Camas, Washington, and two overseas subsidiaries.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for renewal of its recognition to certify products in the areas of testing which it has specified.

Underwriters Laboratories Inc. states that its application demonstrates that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, quality control and calibration programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards.

It also claims that it supplies, to the extent needed for the particular equipment or materials listed, labeled or accepted, the following control or services: Implementation of control procedures for identifying UL Certified equipment or materials; inspection of the run of production of such items at factories; and conducting of field inspections.

UL states, further, that it is completely independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes.

The applicant maintains that it has effective procedures for reports that are objective and without bias; and for handling complaints and disputes under a fair and reasonable system.

In summary, UL claims that it has the experience, expertise, personnel, organization, equipment, and facilities suitable for renewal of its accreditation as an OSHA Nationally Recognized Testing Laboratory.

UL's application (Exhibit 2A) consisted of the following segments which, it states, demonstrate the above claims:

Section 1—Introduction, purpose and format; Section 2—Scope and Application, standards sought for recognition; Section 3—Organizational Data, applicant's background, history, ownership, testing locations and external organizations used for technical support; Section 4—Affiliation, statement of independence; Section 5—Personnel, numbers and job descriptions of and training programs for technical staff, identification and qualifications of key personnel; Section 6—Services Provided, services provided certification marks, reports and records, follow-up inspection program and testing, and various programs involving client participation; Section 7—Testing Experience, testing experience, standards writing activity, and identification of various accreditations; Section 8—Control Programs, quality improvement system including Quality Control Manual, recording and control of data, supervision of samples, access security system, test procedures, lab personnel qualifications and test equipment records, standards, codes and regulations distribution, and uniform requirements interpretations; Section 9—Appeals Procedures/ Procedures and Reports, appeals system, and product field reports; Section 10—Test Equipment, appropriateness and calibration of test equipment; Section 11—Facilities, size and adequacy of each facility; and Section 12—Supplemental Information—representative NRTL program form.

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Facilities

Underwriters Laboratories Inc. has five main test facilities located in the United States, and two subsidiary laboratories in Asia. They are located in Northbrook, IL; Melville, NY; Santa Clara, CA; Research Triangle Park, NC; Camas, WA; Taipei, Taiwan; and, Hong Kong.

The Northbrook, Illinois facility contains the corporate headquarters and is the center for developing and distributing documents for the organization. It consists of three separate testing complexes, the largest of which contains the headquarters offices and the majority of the testing laboratories. Contained within this complex are the Standards Division, Follow-Up Services Division, Legal, Engineering Services Division, Administrative Division, Accounting, and External Affairs Division. Roughly 36 percent of the approximately 1700 employees comprise the technical staff at Northbrook.

All hazardous location testing is conducted at Northbrook. This facility, as do each of the others, performs testing and follow-up services for certain of UL's client base. Normally, each facility's clients are located within their own geographical area.

Other specifics of the Northbrook facility are contained in the Northbrook Report, Exhibit 2B, under headings pertaining to facilities, test equipment, calibration program, test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, personnel, recognized third party testing, manufacturing site data, outside rental equipment, and third party contract services. In most instances, the procedures at the other four U.S. locations track those found at Northbrook, as do many of the procedures at both the Taiwan and Hong Kong facilities.

The Melville, New York facility houses the East and West International Inspection Services department that manages the follow-up inspections for products manufactured overseas. Each US based UL facility has an International Inspection Coordinator who functions on behalf of both the East and West International Inspection Services (IIS).

The IIS is divided into two sections for administrative purposes—Eastern and Western. The Eastern section includes inspection centers in Asia, Australasia, Indian subcontinent and Canada. In addition, the Eastern Section coordinates the follow-up and engineering services for China. The Western section includes Mexico, Central and South America, the Caribbean, Africa, Europe, and the Near and Middle East.

UL maintains its own overseas inspection centers in many countries and also contracts out inspections to other inspection services. Many of these contracted inspection services have been in place for over 30 years. The services are performed by private inspection companies, by government inspection agencies, or by a quasi-governmental agency similar to our Postal Service.

The facilities located at Research Triangle Park, North Carolina, Santa Clara, California and Camas, Washington utilize procedures essentially similar to those as Northbrook and normally perform testing and follow-up services for clients located within their geographical areas.

The technical staff at Camas, Washington, the newest facility, is comprised of some 22 employees. The laboratory conducts electrical/electronic testing. The equipment not available is purchased or loaned to Camas from other UL offices if required for short-term periods.

The Hong Kong and Taiwan facilities conduct testing and perform evaluations for clients located in the Far East. However, a client may choose to have the testing and evaluation done at one of the U.S. facilities.

The Hong Kong facility provides testing support for the UL programs for clients in Hong Kong, China, and Australasia. This office has been open since 1988.

In the Hong Kong area the testing laboratory and inspection services are housed in the same building. UL staff of the Inspection and Administration Services monitors the China National Import & Export Commodities Inspection Corporation (CCIC) for inspections carried out in China, which are controlled out of the UL Melville office. The staff also performs the inspections in Hong Kong.

The UL laboratory in Taiwan has been in existence for over 20 years, and performs services for clients within its geographical area. The Follow-Up Services Office in Taiwan (the Administration and Inspection Services Office) has been in existence for about 10 years.

The latest test standards are supplied from the Northbrook Office for both locations.

Neither facility rents equipments or subcontracts testing. Products that cannot be tested because of the lack of equipment are generally sent to a UL laboratory facility in the United States.

Senior management personnel are rotated from stateside appointments to positions in both the Hong Kong and the Taiwan offices.

All official UL records are in English. Some files contain translations and notes that are in other languages. Agreements between clients and the laboratory are in English. The required files for the record system are the same as those required for products that are processed through one of the UL laboratories in the United States.

Specifics of the on-site investigations for all of the facilities may be found in the On-Site Review Reports (Surveys), Exhibits 2B and 2C. Interested persons are invited to review these reports.

UL also maintains offices in Atlanta, Baltimore, Boston, Dallas, Minneapolis, Portland, Norman (OK), and Seattle. Staff at these locations provide engineering services to clients in their geographical area, and report directly to one of the five domestic offices where their work is reviewed.

Internal Controls (Quality Assurance)

The UL Quality Assurance (QA) Program is documented in a number of manuals that address various functions. There is not a single overall document called a QA Manual which alone defines the corporate QA policy. The Engineering Department Manual (EDM) has many of the elements normally associated with a QA Manual and provides general corporate direction. Some of the elements that are addressed are: work definitions, costing guidelines, agreement forms, files, test waiving, follow-up services policy, client-agent relations, products in foreign countries, and confidentiality. This document is presently under revision. A program for continuous quality improvement is in place. The Q-Plus program utilizes an employee team concept for continuous quality improvement.

The Laboratory Operations Manual (LOM) outlines the laboratory quality program and establishes minimum guidelines for such functions as development of forms, data requirements, equipment maintenance and calibration, report reviewing, auditing, identification of applicable tests, and corrective action procedures. The LOM also establishes policies for test standards, test equipment, qualified personnel, laboratory procedures and documentation, and self-monitoring and self-improvement.

The Follow-Up Services (FUS) Manual provides guidance for field inspectors who monitor product manufacturing under the applicant's FUS Agreement. This Manual provides the day-to-day operational guidance for inspection personnel. Other major departments utilize their own manuals for providing day-to-day direction.

For the purpose of consistent application of requirements in the standards, a program is in place which provides the controls and flexibility for developing and interpreting standards. Each location has a designated engineer who is responsible for the interpretations for a particular standard. One engineer is the primary designated engineer, and is responsible for the coordination of all other designated engineers as well as insuring the consistency of all interpretations.

Relative to the NRTL program, the Engineering Department and Laboratory Operations manuals are the main documents in the UL organization. The LOM is considered as corporate policy and its purpose is to provide a framework for procedures and controls to assure that the requisite degrees of accuracy are achieved.

Programs

UL operates a variety of services and organizational programs. Some of the programs have been in effect for decades, and have provided the test and evaluation data for products that have been approved and are still being supplied by manufacturers for introduction into the workplaces of the United States.

The following programs have been examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program. See Exhibits 2C and 2C(1), concerning the survey and acceptance of the Camas, Washington facility, dated March 10, 1995, which also review and recommend inclusion of the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures" (Exhibit 8).

Basic Program

This program is one in which UL performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program

This program involves the use of UL Technical Personnel at a manufacturer's test site to witness testing for products that will be listed by UL. The manufacturer's facilities used for this purpose are qualified by the UL engineering department. The follow-up program is the normal one for that product and manufacturer (Ex. 2B, Santa Clara Report, Section 11).

Client Agent Program (CAP)

This program qualifies intermediaries that interface between UL and the client. This usually involves overseas clients utilizing US based agents. This program qualifies the intermediaries in administrative areas, technical areas, or in a combination of both. An intermediary that is qualified in the technical areas can perform testing on behalf of the client. The Client Agent Program does not prohibit an agent from providing technical advice on modifications to the product in order to meet the requirements of the standard. However, the CAP program is not intended to qualify agents in providing technical advice to clients. Administratively qualified intermediaries provide documentation, drawing, and translation support for the client.

China National Import and Export Commodities Inspection Corporation (CCIC) Inspection Program

The CCIC is a Chinese government organization that is retained by the UL Inspection Services to perform follow-up inspections in China. This inspection program is under the oversight control of UL personnel through the Hong Kong facility, and the International Inspection Services Department (Ex. 2b, Melville Report, Sections 8 & 13).

National Certification Body (NCB)

Underwriters Laboratories is one of five NRTLs that are participants in the International Electrotechnical Commission (IEC) Certification Body (CB) Scheme. This is an international program that allows laboratories accredited as Certified Bodies to exchange test reports with each other during the process of certifying products. The IEC has allowed NRTLs to participate in this Scheme because they have been accredited by OSHA. The IEC requires governmental oversight for participants.

Client Test Data Program (CTDP)

This program is the most extensively used and the basic program that involves client participation. This program involves the systematic qualification of the client by reviewing their laboratory, environmental controls, testing instrumentation, electrical power system, the client personnel involved in the program, the access to the latest UL standards, mutual testing, confidence building and the correlation of the testing packages with UL test results. Specific test information is required to be submitted and UL performs verification testing at intervals not known by the participant. There is no change in surveillance conducted by UL's follow-up services. There is an additional review conducted by UL engineering personnel that is conducted at least yearly to assess the participant's continued capability to be in the program. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Compliance Management and Product Assurance Program (COMPASS)

This program is a voluntary process that allows qualified manufacturers that have successfully utilized the CTDP Program to perform limited self evaluation and testing within specified categories.

For minor changes to already listed products, the client reviews the changes and performs any needed tests, and continues to use the listing mark. The client submits the documentation to UL for review. If the product does not comply, the manufacturer is required to remove the UL marks. This procedure for handling minor changes was designed to handle the real life situations, such as a purchasing department electing to purchase an alternate switch. Rather than wait for a variation notice to be issued by UL's follow-up services representative, this path serves to keep the client and UL in close contact between inspections. Minor changes are defined as modifications which involve the use of an alternate or optional component in a previously accepted product. An example is the substitution of a comparable switch from a different manufacturer, or the change of horsepower of a motor.

For major changes or new products the client must submit a sample and all documentation to UL for review. Depending upon the situation, UL may determine that the nature of the change and experience with the client and testing associated are such that additional verification testing is not necessary. In this situation, UL will authorize the use of the listing mark.

UL may determine that immediate verification testing is not needed. In this situation, the authorization to use the Listing mark is given but verification testing is conducted later. In all cases, verification testing is conducted for new products. In all situations where verification testing is needed, if

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correlation does not exist, the listing marks must be removed.

The follow-up program and engineering department audits are the same as with CTDP, and an additional audit of the client's quality system is performed. Both CTDP and COMPASS involve UL making a determination of the compliance of the product with the standard at some point in the process. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Total Certification Program (TCP)

This program parallels the manufacturer and UL in a combined evaluation of products. This is in contrast to the sequential process that is used under the COMPASS program where the manufacturer tests and evaluates and then submits the information to UL.

The program involves the testing and evaluation of a product by the manufacturer, and also the manufacturer's determination of compliance with a standard. The manufacturer is subject to continuous involvement with UL throughout the design and production of the product. UL conducts regular audits throughout the process including verification testing. Similar to the COMPASS program, the manufacturer must qualify for this program by demonstrating the ability to test and evaluate a product and it must have a viable quality assurance program, in addition to having the personnel and equipment to provide creditable results. In all cases, it is UL who authorizes the use of the listing mark. The manufacturer is audited four times a year by the UL engineering staff, and twice a year the manufacturer's quality assurance program is reviewed. Follow-up inspectors continue to conduct follow-ups.

Audit Structure

Corporate level audits are performed yearly while site or operational audits are performed semi-annually. Many of the documented audit programs are relatively new and a long term historical record does not exist. UL has an audit schedule listing for 1993 and 1994 that has been followed, and addresses various operating units of the organization.

Standards

Underwriters Laboratories Inc. desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1b—Household Cooking Gas Appliances
ANSI Z21.5.1—Gas Clothes Dryers—Type 1
ANSI Z21.5.2—Gas Clothes Dryers—Type 2
ANSI Z21.10.1—Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2—Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3—Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1—Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2—Gas-Fired Room Heaters—Univented Room Heaters
ANSI Z21.12—Listing Requirements for Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14—Approval Requirements for Industrial Gas Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.16—Gas Unit Heaters
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.19—Refrigerators Using Gas Fuel
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.22—Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.29—Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.37—Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41—Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42—Gas-Fired Illuminating Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.45—Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47—Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53—Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54—Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55—Gas-Fired Sauna Heaters
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.58—Outdoor Cooking Gas Appliances
ANSI Z21.61—Gas-Fired Toilets
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z21.66—Automatic Vent Damper Devices for Use With Gas-Fired Appliances
ANSI Z21.69—Connectors for Movable Gas Appliances
ANSI Z21.74—Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76—Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
ANSI Z83.3—Gas Utilization Equipment in Large Boilers
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6—Gas-Fired Infrared Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI Z83.17—Direct Gas Fired Door Heaters
ANSI Z83.18—Direct Gas Fired Industrial Air Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 9—Fire Tests of Window Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
UL 13—Power-Limited Circuit Cables
ANSI/UL 14B—Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors

ANSI/UL 14C—Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 30—Metal Safety Cans
ANSI/UL 33—Heat Responsive Links for Fire-Protection Service
UL 38—Manually Actuated Signalling Boxes for Use With Fire Protective Signalling Systems
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Enclosures for Electrical Equipment
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 58—Steel Underground Tanks for Flammable and Combustible Liquids
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 80—Steel Inside Tanks for Oil Burner Fuel
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 92—Fire Extinguisher and Booster Hose
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 96—Lightning Protection Components
UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices and Contacts
UL 109—Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use
ANSI/UL 122—Photographic Equipment
ANSI/UL 123—Oxy-Fuel Gas Torches
UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
ANSI/UL 130—Electric Heating Pads
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141—Garment Finishing Appliances
ANSI/UL 142—Steel Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
UL 147A—Nonrefillable (Disposable) Type Fuel Gas Cylinder Assemblies
UL 147B—Nonrefillable (Disposable) Type Metal Container Assemblies for Butane
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
UL 155—Tests for Fire Resistance of Vault and File Room Doors
UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 180—Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 181—Factory-Made Air Ducts and Air Connectors
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 193—Alarm Valves for Fire-Protection Service
UL 194—Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 199—Automatic Sprinklers for Fire-Protection Service
ANSI/UL 203—Pipe Hanger Equipment for Fire-Protection Service
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
UL 213—Rubber Gasketed Fittings for Fire-Protection Service
ANSI/UL 217—Single and Multiple Station Smoke Detectors
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 252—Compressed Gas Regulators
UL 260—Dry Pipe and Deluge Valves for Fire-Protection Service
UL 262—Gate Valves for Fire-Protection Service
ANSI/UL 268—Smoke Detectors for Fire Protective Signalling Systems
ANSI/UL 268A—Smoke Detectors for Duct Application
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
UL 296A—Waste Oil-Burning Air-Heating Appliances
UL 297—Portable Medium-Pressure Acetylene Generators
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
UL 305—Panic Hardware
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 312—Check Valves for Fire-Protection Service
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 330—Gasoline Hose
ANSI/UL 331—Strainers for Flammable Fluids and Anhydrous Ammonia
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 385—Play Pipes for Water Supply Testing in Fire Protection Service
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 399—Drinking-Water Coolers
UL 404—Gauges, Indicating Pressure, for Compressed Gas Service

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UL 407—Manifolds for Compressed Gases
UL 408—Stationary Medium Pressure Acetylene Generators
UL 409—Stationary Low-Pressure Acetylene Generators
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP–Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 521—Heat Detectors for Fire Protective Signaling Systems
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 555—Fire Dampers
UL 555S—Leakage Rated Dampers for Use in Smoke Control Systems
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
UL 565—Liquid Level Gauges and Indicators for Anhydrous Ammonia and LP-Gas
ANSI/UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 569—Pigtails and Flexible Hoses
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 611—Central-Station Burglar-Alarm Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 626—2½ Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use With Burglar-Alarm Systems
ANSI/UL 636—Holdup Alarm Units and Systems
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 644-Container Assemblies for LP-Gas
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 681—Installation and Classification of Mercantile and Bank Burglar-Alarm Systems
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Idustrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 756—Coin and Currency Changers and Actuators

UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Group C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central Stations for Watchman, Fire-Alarm, and Supervisory Services
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
UL 860—Pipe Unions for Flammable and Combustible Fluids and Fire Protection Service
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 887—Delayed-Action Timelocks
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetric Refrigerant Motor-Compressors
ANSI/UL 987—Statutory and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptable-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Therman Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1034—Burglary Resistant Electric Locking Mechanisms
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
ANSI/UL 1062—Unit Substations
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
ANSI/UL 1091—Butterfly Valves for Fire Protection Service

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ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1314—Special-Purpose Containers
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
ANSI/UL 1322—Fabricated Scaffold Planks and Stages
UL 1323—Scaffold Hoists
ANSI/UL 1332—Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1446—Systems of Insulating Materials—General
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
ANSI/UL 1484—Residential Gas Detectors
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492—Audio and Video Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubes, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I, and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Applicances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
ANSI/UL 1703—Flat Plate Photo Voltaic Modules and Panels
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
ANSI/UL 1726—Automatic Drain Valves for Standpipe Systems
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
ANSI/UL 1739—Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1767—Early-Suppression Fast-Response Sprinklers
ANSI/UL 1769—Cylinder Valves
ANSI/UL 1773—Termination Boxes
UL 1776—High-Pressure Cleaning Machines
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Preliminary Finding

Underwriters Laboratories Incorporated addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; a summary of its listing, labeling, and follow-up services, including examples; a statement of its independence as a testing laboratory; and a discussion of its control programs, including the Q-Plus Program and a copy of its Laboratory Operations Manual; and descriptions of its calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey teams in the on-site evaluations [Ex. 2B(1)] were adequately resonded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparation of the final survey reports of Underwriters Laboratories Incorporated, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey); see Ex. 2B.

Following a review of the application file, and the on-site survey reports of the Northbrook, Illinois; Melville, New York; Research Triangle Park, North Carolina; Santa Clara, California; Camas, Washington; and the subsidiary Taipei, Taiwan, and Hong Kong facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory for the above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that the Underwriters Laboratories Incorporated facilities for which accreditation was requested can meet the requirements for recognition (Camas, WA), or renewal of recognition (all others noted above), as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 30, 1995, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the UL application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–4–93 , are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Underwriters Laboratories Incorporated) satisfies the requirements for renewal of its recognition as an NRTL will be made on the basis of the entire record including the public submissions an any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of Section 1910.7.

Signed at Washington, DC this 22nd day of March 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–7676 Filed 3–28–95; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: April 20–21, 1995.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media program for the March 10, 1995 deadline, submitted to the

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Division of Public Programs, for projects after September 1, 1995.

2. Date: April 27–28, 1995.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media program for the March 10, 1995 deadline, submitted to the Division of Public Programs, for projects beginning after September 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–7641 Filed 3–28–95; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Company, et al., Palo Verde Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), Type A Tests, to the Arizona Public Service Company, et al. (APS or the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit rescheduling the third containment integrated leak rate test (ILRT) in the first 10-year service period from the fifth refueling outage (1R5) currently scheduled for May 1995 to the sixth refueling outage (1R6) planned for September 1996. The requested exemption would also allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection (ISI) period.

The proposed action is in accordance with the licensee's application for exemption dated December 28, 1994.

The Need for the Proposed Action

The current containment integrated leakage rate test (ILRT) requirements for Palo Verde Nuclear Generating Station, Unit 1, as set forth in Appendix J, are that, after the preoperational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year period. Also, the third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspection. To date, for Palo Verde Nuclear Generating Station, Unit 1, the preoperational and the first two periodic ILRTs have been conducted. The most recent ILRT was conducted in February 1990, approximately 59 months ago. Thus, in accordance with Appendix J, an ILRT would have to be conducted during the upcoming refueling outage (1R5, scheduled for May 1995).

The licensee has requested a schedular exemption from Appendix J. Specifically, the exemption would allow APS to delay the Unit 1 third Type A test until the September 1996 refueling outage (1R6) and allow APS to only perform the three tests required by 10 CFR Part 50, Appendix J. As such, the third Type A test would be performed within 10 calendar years from the common start date of the initial ISI interval and 10 years and 8 months from the date of Unit 1 commercial operation. With this exemption, the interval between the second and third Type A test would be approximately 81 months.

The licensee also requested an exemption that would allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection period. Specifically, subsequent Type A testing would be performed in accordance with the requirements of 10 CFR Part 50, Appendix J (three Type A tests every 10 years at approximately equal intervals), commencing from the completion of the Unit 1 sixth refueling outage (1R6). A CILRT would not need to be performed during the 10-year ISI outage planned for the Spring of 1998 (1R7). Therefore, the need for the licensee's proposed action is to allow a longer interval between the Palo Verde Unit 1 second and third periodic Type A ILRTs. This action, along with decoupling the requirement to perform an ILRT at the end of the 10-year inservice inspection period, will eliminate the need for an additional test. The licensee concluded that the extension of the Type A test interval has a negligible impact on overall risk and results in a cost savings.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Palo Verde Nuclear Generating Station, Unit 1. The licensee has provided an acceptable basis for concluding that the proposed one-time extension of the Type A test interval would maintain the containment leakage rates within acceptable limits. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing on the containment. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that here are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is not significant increase in the allowable individual or cumulative occupation radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2, and 3," dated February 1982.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Arizona State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated December 28, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 24th day of March 1995.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7699 Filed 3–28–95; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 73rd meeting on April 12–13, 1995, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance, with the exemption of portions that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for this meeting shall be as follows:

Wednesday and Thursday, April 12 and 13, 1995—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. *DOE's Approach to Groundwater Travel Time*—The Committee will hear presentations by and hold discussions with representatives of the Department of Energy and the NRC staff and their consultants on the Department's approach to resolving the groundwater travel time issue associated with the proposed Yucca Mountain high-level waste repository.

B. *Meeting with the Director, NRC's Division of Waste Management, Nuclear Materials Safety & Safeguards*—The Director will provide information to the Committee on current waste management issues, which may include the use of expert judgment, a discussion of NRC's key technical uncertainties associated with Yucca Mountain, and a Performance Assessment Vertical Slice Review of volcanism and groundwater travel time.

C. *National Performance Review Phase 2*—The Committee will hear presentations by and hold discussions with the NRC staff on initiatives to streamline the federal government and regulatory process.

D. *Meeting with the Director, NRC's Office of Nuclear Materials Safety and Safeguards*—The Committee will welcome the new Director and discuss interactions between the Committee and the Office of NMSS.

E. *Preparation of ACNW Reports*—The Committee will discuss proposed reports on the Approach to Groundwater Travel Time at Yucca Mountain, a low-level waste branch technical position on performance assessment, a proposed NRC rule on radiological criteria for decommissioning and the EPA's preproposal standard on low-level waste disposal. Additional topics will be considered as time permits including the engineered barrier system for the proposed Yucca Mountain repository, the evaluation of rock mechanics for the proposed Yucca Mountain site, and DOE's program approach.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to the selection of new ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (Telephone 301/415–7360), between 7:30 A.M. and 4:15 P.M. EST.

Dated: March 24, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–7737 Filed 3–28–95; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 3, 1995, through March 17, 1995. The last biweekly notice was published on March 15, 1995.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation

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of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 28, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: February 24, 1995

Description of amendment request: The proposed change would remove Section 4.3 from the Technical Specifications (TS) because the primary system testing following opening is already performed in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, as implemented in the licensee's inservice inspection program as required by TS 4.0.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons.

1. The requested change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This requested change will provide consistency between our Technical Specifications (TS) and 10 CFR 50.55a which requires testing in accordance with Section XI of the ASME Boiler and Pressure Vessel Code, The requirements contained in TS Section 4.3 were placed into TS prior to incorporation of Section XI into the ASME Boiler and Pressure Vessel Code. The NRC and industry have since recognized the ASME Boiler and Pressure Vessel Code, Section XI as the appropriate testing program. Adequate assurance of primary system integrity will be provided since primary system testing will continue to be controlled and performed in accordance with the rules for inservice inspections provided by ASME Boiler and Pressure Vessel Code, Section XI as implemented by our approved In-Service Inspection (ISI) Program, as required by TS Section 4.0.1. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested change deletes the current TS requirements for primary system testing by recognizing that we will continue to perform required testing consistent with 10 CFR 50.55a and ASME Boiler and Pressure Vessel Code, Section XI, as implemented by our approved ISI Program, as required by TS Section 4.0.1. This requested change does not involve the addition or modification of plant equipment, nor does it alter the design or operation of plant systems. Therefore, the requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested change does not involve a significant reduction in a margin of safety. The requested change deletes the current TS Section 4.3 requirements for primary system testing and maintains the margin of safety by continuing to perform required testing in accordance with 10 CFR 50.55a and ASME Boiler and Pressure Vessel Code, Section XI, as implemented by our approved ISI Program, as required by TS Section 4.0.1. Therefore, the requested change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: March 3, 1995

Description of amendment request: The proposed amendment would eliminate the requirement to perform periodic measurement testing of the response times for selected pressure and differential pressure sensors. The requirement that reactor trip and engineered safety feature response time functions be within their specified limit at least once per 18 months will be verified instead of demonstrated. The associated bases section for response time requirements will be changed to allow the sensor response time portion of the channel response time to use historical records, testing results, or vendor supplied engineering specifications. No other changes to response time methods are included in this change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not result in a condition where the design, material, or construction standards that were

applicable prior to the change are altered nor does it modify any system interface. The same Reactor Trip System and Engineered Safety Features Actuation System instrumentation is being used; the time response allocations/modeling assumptions in the Final Safety Analysis Report (FSAR) Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the performance of the pressure and the differential pressure transmitters used in the plant protection systems. The sensors will still have response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain sensors (assuring equipemt operable) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

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3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment to [sic] does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect sensor response time. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: May 20, 1994, as supplemented February 2, 1995

Description of amendment request: The proposed amendment would permit the licensee to use an alternate repair criteria (ARC), designated as the F* criteria. Use of the F* criteria would allow tubes with otherwise pluggable indications, to remain in service as long as the indications are below the designated minimum distance of the F* criteria. The F* criteria for Byron and Braidwood defines a length of 1.7 inches of undegraded expanded tube within the tubesheet as the minimum distance acceptable for implementing the ARC. Below the F* length, a circumferential tube defect can exist and the tube can remain in service. The proposed amendment will change the plugging limit definition and would exclude plugging steam generator tubes with indications that satisfy the F* criteria. The F* criteria maintains the structural integrity of the degraded tube as the primary pressure boundary and allows the tube to remain in service for heat transfer and core cooling.

This alternate repair criteria qualification is documented in Babcock & Wilcox Nuclear Technologies (BWNT) Topical Report BAW-10196 P Revision 1, "W-D4 F* Qualification Report," which is included as part of the licensee's submittal. The staff's proposed no significant hazards consideration determination for the requested change was published on July 6, 1994 (59 FR 34659). In response to the staff's request for additional information by letter dated February 2, 1995, the licensee revised their previous submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting qualification report for subject criteria demonstrates that the presence of the tubesheet will enhance the tube integrity in the region of the tube-to-tubesheet roll expansions by precluding tube deformation beyond its initial expanded outside diameter. The resistance to a tube rupture is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into tubesheet provides a mechanical leak limiting seal between the tube and the tubesheet. A tube rupture cannot occur because the contact between the tube and the tubesheet does not permit sufficient movement of tube material.

The type of degradation for which the F* criteria has been developed (cracking with a circumferential orientation) can theoretically lead to a postulated tube rupture event provided that the postulated through-wall circumferential crack exists near the top of the tubesheet. An evaluation including analysis and testing has been done to determine the resistive strength of the expanded tubes within the tubesheet. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the F* criteria. The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. For consistency with current offsite dose limits, the site allowable leakage limit during a MSLB has been conservatively calculated to be 12.8 gpm for Byron and 9.1 gpm for Braidwood, which includes the accident leakage from IPC in addition to the accident leakage from F* on the faulted steam generator and the operational leakage limit. The operational leakage limit of Specification 3.4.6.2.c in each of the three remaining intact steam generators shall include the operational leakage from F*. As a requirement for operation following application IPC, the projected distribution of crack indications over the operating period must be verified to result in primary to secondary accident leakage less than the site allowable leakage limit. Thus, the consequences of a MSLB remain unchanged.

The tube rupture and pullout is fully bounded by the existing steam generator tube rupture analysis included in the UFSAR. The leakage testing of the roll expanded tubes indicates that for tube expansion lengths approximately equal to the * distance, any postulated primary to secondary leakage from * tubes would be insignificant. The proposed alternate repair criteria does not adversely impact any other previously evaluated design basis accident.

The leakage from an F* tube would be limited by the tube-to-tubesheet interface since this leak would occur below the secondary face of the tubesheet. Qualification testing and previous experience indicate that normal and faulted leakage is well below Technical Specification and administrative limits creating no increase in the consequences associated with tube rupture type leakages. The UFSAR analyzed accident scenarios are still bounding since the normal and faulted leak rates are well within the normal operating limit of 150 gallons per day. This conclusion is consistent with previous F* programs approved and used at other operating plants.

All of the design and operating characteristics of the steam generator and connected systems are preserved since the F* criteria utilizes the "as rolled" tube configuration that exists as part of the original steam generator design. The F* joint has been analyzed and tested for design, operating, and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. The potential for a tube rupture is not increased from the original submittal as demonstrated in the qualification analyses and testing completed in the BWNT report.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

Implementation of the proposed F* criteria does not introduce any changes to the plant design basis. Use of the criteria does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. In the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore. This engagement length would prevent any interaction of the severed tube with neighboring tubes. Any hypothetical accident as a result of any tube degradation in the expanded region of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle leak tightness will be maintained such that any postulated accident leakage from F* tubes will be negligible with regard to offsite doses.

Therefore, there is not a potential for creating the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The use of the F* criteria has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Regulatory Guide 1.121 and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the * criteria is any degradation indication in the tubesheet region, more than the F* distance from the secondary face of the tubesheet or the top of the last hardroll contact point whichever is further into the tubesheet. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code and Regulatory Guide 1.121 used in steam generator design. The * distance has been verified by various testing to be greater than the length of the roll expanded tube-to-tubesheet interface required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. The protective boundaries of the steam generator continue to be maintained with the use of the F* criteria. A tube with the indication of degradation previously requiring removal from service can be kept in service through the F* criteria. Since the joint is contained within the tubesheet bore, there is no additional risk associated with the previously analyzed tube rupture event. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the UFSAR accident analyses.

Implementation of the alternate repair criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired by sleeves. Both plugs and sleeves reduce the RCS flow margin; thus, implementation of the F* criteria will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 22, 1994, as supplemented January 30, March 2, and March 13, 1995.

Description of amendment request: This request was previously published in the Federal Register on February 15, 1995 (60 FR 8746). It is being renoticed to provide clarification to the scope of the original request. The amendments would revise Technical Specification (TS) 3.8 to establish restricted loading patterns and associated burnup criteria for placing fuel in the Oconee spent fuel pools. In addition, the Design Features sections associated with the reactor and fuel storage would be revised. These changes are necessary to address two new fuel designs which have increased initial fuel enrichment and therefore cannot be stored in the spent fuel pools under existing TS or loaded into the reactor. An administrative change would be made to TS 6.9.1 to include spent fuel pool boron concentration in the Core Operating Limits Report. Other administrative changes would be made in the Design Features section to make the specification consistent with wording in the standard TS. Finally, the two additional supplements to the original request are referenced herein.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to changes in Cycle 15 parameters to determine the effect of the Cycle 16 reload and to ensure that the acceptance criteria of the FSAR safety analyses remain satisfied. The transient evaluation of Cycle 16 is considered to be bounded by previously accepted analyses. Section 7 of the Reload Report addresses "Accident and Transient Analysis" for this core reload.

There is no increase in the probability or consequences of an accident due to the spent fuel storage restrictions proposed in this amendment request. It has been shown that the calculated, worst case k_{eff} for this area is [less than or equal to] 0.95 under all conditions. There is no increase in the probability of a fuel drop accident in the SFP [spent fuel pool] since the mass of the new assemblies is not significantly different from the mass of the old assemblies. The likelihood of other accidents, previously evaluated and described in the FSAR, is also not affected by the proposed changes. In fact, it could be postulated that since the increase in fuel enrichment will allow for extended fuel cycle lengths, there will be a decrease in fuel movement and the probability of an accident may actually be reduced. There is also no increase in the consequences of a fuel rod drop accident in the SFP since the fission product inventory of individual fuel assemblies will not change significantly as a result of increasing the initial enrichment. In addition, no change to safety related systems is being made. Therefore, the consequences of a fuel rupture accident remain unchanged. In addition, it has been shown that k_{eff} all conditions. Therefore, the consequences of a criticality accident in the SFP remain unchanged as well. The above analysis ensures that the proposed reload amendment request will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The analyses performed in support of this reload are in accordance with the NRC approved methods delineated in Specification 6.9.2. The predicted operating characteristics of Oconee 3 Cycle 16 are similar to previously licensed designs. The Mark B10T and Mark B11 fuel assembly designs remain mechanically compatible with all fuel handling equipment. Therefore, no new or different kind of fuel handling accident is created by the proposed amendment request.

Section 15.11 of the Oconee FSAR states that the refueling boron concentration is maintained such that a criticality accident during refueling is not considered credible. The proposed amendment request continues to assure that a criticality accident in the SFP or during refueling is not credible. The double contingency principle discussed in ANSI N-16.1-1975 and the April 1978 NRC letter allows credit for soluble boron under other abnormal or accident conditions, since only a single accident need be considered at one time. Thus, by requiring a minimum boron concentration in the SFP, a criticality accident caused by violating the SFP storage restrictions is not considered credible. Therefore, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The Oconee 3 Cycle 16 design was performed using the NRC approved methods given in Specification 6.9.2. The safety limits for Oconee 3 Cycle 16 are unchanged from previous cycles. The limits and margins summarized in the Oconee 3 Cycle 16 Reload Report are well within the allowable limits and requirements, and reflect no reductions to any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

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satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 14, 1993, as supplemented by letter dated March 3, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by removing the reactor vessel material specimen withdrawal schedule and by updating the reactor coolant system pressure-temperature (P-T) curves. The specimen withdrawal schedule will be relocated to the Updated Final Safety Analysis Report (UFSAR). The original Notice was published on January 19, 1994 (59 FR 2867).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Although the Reactor Vessel material specimens withdrawal schedule will be removed from the Technical Specifications, the Technical Specifications bases will continue to provide background information on the use of the data obtained from material specimens. Also, updates to the schedule will continue to be submitted to the NRC for approval prior to implementation.

Operating the plant in accordance with the new, updated P-T Curves will assure preserving the structural integrity of the reactor vessel over the life of the plant. The pressure and temperature limits were developed in accordance with 10 CFR [Part] 50 Appendix G requirements.

Removing the requirements associated with the previous exemption to Appendix H (TS 4.4.8.1.2 items a & b) is purely an administrative change.

Therefore, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

Removal of the Reactor Vessel material specimen schedule from the Technical Specifications has no impact on accidents at the plant. Updates to the schedule will still be required to be submitted to the NRC prior to implementation per Section II.B.3 of Appendix H to 10 CFR Part 50.

Also, updates to the P-T Curves will not create a new or different type [of] accident. The reactor vessel beltline P-T limits were revised applying the general guidance of the ASME Code, Appendix G procedures with the necessary margins of safety for heatup, cooldown and inservice hydro test conditions.

The change to TS 4.4.8.1.2 items a & b is purely administrative.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of the schedule for Reactor Vessel material specimen withdrawal from the Technical Specifications does not impact the margin of safety. The schedule will continue to receive NRC review and approval prior to implementation of updates to the schedule.

Updates to the P-T Curves are provided to preserve the margin to [sic] safety to assure that when stressed under operating, maintenance and testing the boundary behaves in a non-brittle manner and the probability of rapidly propagating fracture is minimized.

The change to TS 4.4.8.1.2 items a & b is purely administrative.

Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 22, 1995

Description of amendment request: The proposed changes are administrative in nature in that reference to an "automatic" containment air lock tester will be deleted from TS 4.6.1.3. The automatic airlock tester is no longer being used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature in that the revision will eliminate the wording associated with optional use of the personnel airlock automatic leakage tester. The requirement for testing the personnel airlock at a pressure greater than or equal to P_a for at least 15 minutes remains unchanged. The acceptance criteria of personnel airlock seal leakage less than 0.01 L_a is also unchanged. The automatic leakage tester is not an accident initiator nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposal does not involve any changes to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it alter any assumptions or conditions in the plant safety analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2)Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to remove the reference to the personnel airlock automatic tester from the technical specifications will not introduce any new failure modes or system interactions, nor will it require the installation of any new or modified equipment. The requirement to leak test the personnel air locks will not be changed. Thus, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment is administrative in nature in that it eliminates the reference to the personnel airlock automatic leakage tester but does not alter the surveillance and acceptance criteria for such testing. Seal leakage testing is performed in accordance with an approved plant procedure which allows use of either an automatic tester or a portable testing cart. The automatic leakage tester is not used to actuate safety related equipment, provide interlocks, or perform plant control functions. The conditions evaluated in the plant accident and transient analyses do not involve this tester. The proposed change does not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 27, 1995

Description of amendment request: The proposed amendment will change Table 3.3-3 and 3.3-4 to accommodate an improved coincidence logic and relay replacement for the 4.16 kV Loss of Voltage Relays. Actions required for certain trip units with the number of operable channels one less than the total number of channels will also be changed. In addition, the format used to state the time delay for the 4.16 kV Degraded Voltage trip unit will be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will result in a better overall posture of the plant under degraded/loss of voltage conditions. The design upgrade for the 4.16 kV Loss of Voltage system is more reliable, has inherently higher accuracy, and is easier to maintain and calibrate in the field. The coincidence logic will eliminate the spurious plant trip potential from the existing design. Restating the maximum time delay for the 4.16 kV Degraded Voltage (coincident with SIAS [safety injection actuation signal]) protective relays in a "less than" format will assure that the transfer of power to the on-site sources occurs before the level of voltage becomes injurious to the equipment under accident conditions, and will ensure that stripping of the emergency power busses and loading of the EDG (s) [emergency diesel generators] will occur within the time allowed by original design criteria. The maximum allowed time delay for this function is not being increased, and the time delay assumed in the accident analyses for connecting the emergency bus to the diesel generator will not be exceeded. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2)Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the operation, function or modes of plant operation. The ability of the loss of power and degraded grid voltage protection scheme to properly transfer from the off-site to the on-site power sources is being maintained. The relays in the improved design of the 4.16 kV Loss of Voltage function are of the type presently being used in identical applications at both St. Lucie plant units. No new hazards are created or postulated which may cause an accident different from any accident previously analyzed. The modifications will result in a more sensitive protection scheme allowing continuous operation without unnecessary challenges to the safety systems, and will continue to provide adequate protection to all the safety equipment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The capability of the loss of power and degraded grid voltage protection scheme is enhanced by the changes being proposed and is confirmed by the existing surveillance requirements. The planned modifications to the 4.16 kV Loss of Voltage function will result in a more sensitive undervoltage detection system and reduce the possibility of spurious actuation. The maximum time assumed in the safety analyses for connecting each Emergency Bus to its dedicated Emergency Diesel Generator is not being changed, and assurance that separation from a degraded off-site power source will occur before this time interval is exceeded during accident conditions will be maintained by the proposed amendment. Accordingly, the margin of safety is not affected. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS [Technical Specifications] Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 27, 1995

Description of amendment request: The proposed amendment will modify surveillance requirement (SR) 4.9.8.1 and 4.9.8.2 to allow a reduction in the required minimum shutdown cooling flow rate under certain conditions during operational MODE 6. In addition, the format of the SR will be changed to clarify the intent of the stated surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the SDCS [shutdown cooling system] is not an accident initiator and, therefore, does not significantly increase the probability of an accident previously evaluated.

The proposed change will allow a plant configuration needed to perform maintenance activities on LPSI [low-pressure safety injection]/SDCS headers by isolating one injection flow line for an operable SDCS train during certain MODE 6 conditions. In the event of a failure or unavailability of the alternate SDCS train, this configuration could result in the proposed minimum flow rate.

The proposed change only modifies the minimum required flow rate, and does not affect the probability of this event. FPL has evaluated the proposed value of reactor coolant flow and has shown that the bases for the existing LCO [limiting condition for operation] will continue to be satisfied. Therefore, there are no significant increases in the consequences of any event from the proposed change. No other system interactions are involved related to previously evaluated accidents, and the proposed change has no adverse effect on any other system performance.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the normal operation of the plant. No new

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systems are introduced and there is no adverse effect on any other system configuration or performance. The change will, however, allow isolation of one SDCS injection flow path for maintenance activities in MODE 6 under controlled conditions. The failure of the alternate SDCS train does not create a new accident and has been further evaluated in the reduced flow configuration, and shown to meet all the TS bases requirements. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The safety considerations related to the proposed change are described in the bases to TS [Technical Specification] 3/4.9.8. FPL has evaluated the proposed reduction in SDCS flow requirement, under stated conditions, and has shown that the proposed flow rate meets all the TS bases requirements involving decay heat removal, boron dilution, and stratification. Established acceptance criteria providing margins of safety are not being changed by the proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: March 14, 1995

Description of amendment request: Georgia Power Company (GPC or the licensee) has proposed a temporary change to Hatch Unit 2 Technical Specification (TS) Required Action 3.3.6.1.F.1, and associated Bases. The proposed change would add a note to the Primary Containment Isolation Instrumentation actions to permit the drywell and wetwell purge valves which are isolated by the drywell radiation monitor signal to be opened with one inoperable drywell radiation monitor. The note will expire prior to startup from the Hatch Unit 2 refueling/maintenance outage scheduled in the fall of 1995, at which time the radiation monitor can be repaired or replaced. Should the unit be forced into a cold shutdown of sufficient duration (i.e., drywell de-inerted), the inoperable radiation monitor will be repaired at that time. The TS containment sections allow these valves to be opened for inerting, de-inerting, and pressure control. However, with radiation monitor 2D11-K621B inoperable, the primary containment isolation instrumentation TS require the valves be closed until the unit achieves a cold shutdown condition. Without the ability to open these valves until cold shutdown, pressure control and de-inerting are difficult.

The purpose of the high drywell radiation primary containment isolation signal is to limit fission product release following a postulated loss-of-coolant accident (LOCA) with significant fuel damage. It is one of several signals which isolate the primary containment vent and purge valves. A high drywell pressure signal will not only shut down the reactor and generate a LOCA signal, it will also isolate these valves.

High drywell radiation indicates possible gross failure of the fuel cladding. The generation of this isolation signal is not credited in any accident or transient analysis. Chapter 15 of the Hatch Unit 2 Final Safety Analysis Report (FSAR) discusses the radiological consequences of a postulated large break LOCA with fuel failure to show conformance to 10 CFR Part 100 and 10 CFR Part 50, Appendix A. This analysis is not affected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Opening the containment purge and vent valves with an inoperable drywell radiation monitor will not increase the probability of any previously evaluated accident. The fact that the monitor cannot send an automatic isolation signal will not significantly affect the consequences of an accident. The function of the primary containment isolation signal is to detect and limit release of fission products following significant fuel damage. The generation of this isolation signal is not credited in any accident or transient analysis. Chapter 15 of the Unit 2 FSAR evaluates the radiological consequences of a postulated design basis LOCA with non-mechanistic fuel damage. This licensing evaluation shows conformance to the radiological limits presented in 10 CFR 100 and 10 CFR 50, Appendix A. The results of this analysis are not affected since the valves are otherwise operable and receive isolation signals from other instrumentation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the installation of any new equipment, or the modification of any equipment designed to prevent or mitigate the consequences of accidents or transients. Therefore, the change has no effect on any accident initiator, and no new or different type of accidents are postulated to occur.

3. The proposed amendment does not result in a significant reduction in the margin of safety.

As discussed in Item 1 above, the assumptions and results of the licensing evaluations remain unchanged. Therefore, the margin of safety is not significantly affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 28, 1995

Description of amendment request: Technical Specification (TS) Section 6.5.1.12 would be revised to delete the requirement to render determinations in writing with regard to whether or not activities listed in TS Sections 6.5.1.2 and 6.5.1.5 constitute an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed change removes the requirement to render determinations in writing with regard to whether or not opposed changes to the Technical Specifications and investigations of violations of Technical Specifications constitute an unreviewed safety question. This change is considered an administrative change to remove a requirement which is not relevant to these activities and which is also consistent with the BWR Revised Standard Technical Specifications (NUREG 1433). Existing requirements to perform Technical and Independent Safety Reviews of these activities are not affected. Therefore, the proposed amendment does not significantly increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is considered administrative since it removes a requirement which is not relevant to the affected activities, and which is also consistent with the BWR Revised Standard Technical Specifications Administrative Controls for Review and Audit. Existing requirements to perform Technical and Independent Safety Reviews for the affected activities are not changed. Therefore, this change has no effect on the possibility of creating a new or different king of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed change removes a requirement which is not relevant to the affected activities. Existing Technical Specification requirements to perform Technical and Independent Safety Reviews for the affected activities are not changed and therefore, will continue to ensure that such activities properly address nuclear safety and safe plant operation. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 15, 1995

Description of amendment request: The proposed amendment would modify (by relocation to the Technical Requirements Manual) Technical Specification (TS) 3/4.3.3.7, Chemical Detection Systems, and TS 3/4.8.4.1, Electrical Equipment Protective Devices - Containment Penetration Conductor Overcurrent Protective Devices, and the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on the probability or consequences of any accident previously evaluated.

The proposed change does not alter the assumptions previously made in the listed Technical Specifications. The proposed change allows the Commission and South Texas more effective use of personnel resources to control requirements that meet the four Criteria in the Final Policy Statement. The proposed change will not change the dose to workers.

Since the probability of a (sic) accident is unaffected by the administrative relocation of the listed Technical Specifications, and the doses are not affected and do not exceed acceptance limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on any previously evaluated accident. It does not represent a change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. The margin of safety is not reduced when the requirements are relocated to a Licensee-controlled document because the requirements to change a License Basis Document via the 10CFR 50.59 process ensures the same questions concerning the margin to safety required for a License Amendment are asked. The major difference is the time and expense required for the License Amendments. Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 15, 1995

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Description of amendment request: The proposed amendment would modify Technical Specification 4.6.2.3.a.2 (and associated Bases) to reflect the reactor containment fan cooler flow rate assumed in the accident analyses and to specify that this flow is provided by the component cooling water system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification 4.6.2.3.a.2 is to reflect the cooling water temperature assumed in the accident analyses. The revised Technical Specification surveillance requirement will change the cooling water flow rate requirement to each Reactor Containment Fan Cooler from greater than or equal to 550 gallons per minute to greater than or equal to 1800 gallons per minute.

The proposed change, which will result in an increased acceptance criteria for the flow to the Reactor Containment Fan Coolers, is not indicative of accident initiators. The change will ensure that the surveillance requirement reflects the flow rate value assumed in the South Texas Project accident analyses and that the design and operability requirements of equipment important to safety are ensured.

The accident mitigation features of the plant are not affected by the proposed change since the change reflects the original assumptions made in the design of the accident mitigation features of the South Texas Project. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not create the possibility of a new or different kind of accident previously evaluated in the Safety Analysis Report because all the accidents were analyzed with a flow rate of 1800 gallons per minute to the Reactor Containment Fan Cooler.

3. Does the proposed change involve a significant reduction in a margin of safety?

There will be no adverse affects on margins of safety since a more stringent surveillance requirement will be applied to the Reactor Containment Fan Cooler. The Technical Specification operability and surveillance requirements are not reduced but rather made more restrictive by this proposed change. The change ensures that the margin of safety originally intended for the Reactor Containment Fan Coolers is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 13, 1995

Description of amendment request: The proposed amendment would delete the audit frequency requirements from the Duane Arnold Energy Center Technical Specifications (TS) and add them to the Quality Assurance Program Description located in the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not impact the operation of the plant or the plant's response to any accident. Because it will allow management the flexibility to adjust the audit frequencies based upon the performance of the program or organization being audited, the overall performance of the organization will be improved.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not affect the operation or design of the plant; therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated. The audits will continue to be performed to provide assurance of conformance to the applicable requirements.

(3) The proposed amendment will not reduce the margin of safety. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not affect the operation or design of the plant. Safety limits and limiting safety system settings are not affected by this proposed amendment. The amendment removes requirements for frequency of audits from the TS, thus permitting more effective scheduling of audits based on performance and the status of the activities audited. This should result in a more effective audit program that will contribute to an improvement in the overall performance of the organization.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis & Bockius, 1800 M Street, N. W., Washington, D. C. 20036-5869NRC Acting Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 10, 1995

Description of amendment request: The proposed amendment would modify Technical Specification 3.3.2.1, "Control Rod Block Instrumentation," to revise two surveillance requirements and their associated notes for the Rod Withdrawal Limiter (RWL) mode of the Rod Pattern Control System. These changes will conform these requirements to their original bases and eliminate the potential for unnecessary power reductions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes are consistent with the Rod Withdrawal Error (RWE) analysis presented in Clinton Power Station (CPS) Updated Safety Analysis Report (USAR) Section 15.4.2. The proposed changes do not result in any change to plant equipment or operation; only the plant conditions for which the Rod Withdrawal Limiter (RWL) function(s) are required to be tested are being revised. The proposed changes continue to ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. The proposed changes have no impact on the probability of occurrence of a RWE event. Therefore, the proposed changes do not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not result in any changes to plant equipment or operation; only the plant conditions for which the RWL function(s) are required to be OPERABLE and tested are being revised. The proposed changes continue to ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. As a result, no new failure modes are introduced. The proposed changes are clearly within the limits of plant operation as described in the USAR and the RWE analyses. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes revise the testing requirements to be consistent with the testing required prior to Amendment No. 95. The proposed changes ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. The proposed changes are clearly within the limits of plant operation as described in the USAR and the RWE analyses. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th St., Decatur, Illinois 62525.

NRC Acting Project Director: John N. Hannon

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: February 14, 1995

Description of amendment request: The proposed amendment would change responsibility for audits of the emergency and security plans and their implementing procedures. Audit responsibility would change from the licensee's Nuclear Safety Audit and Review (NSAR) Committee and the Plant Operation Review Committee (PORC), to the respective emergency and security plans. The proposed amendment is consistent with the guidance of NRC Generic Letter 93-07, Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans, dated December 28, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the Standards of 10 CFR 50.92(c). A summary of the licensee's analysis is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes do not have a direct effect on the physical plant or the maintenance of the physical plant, but would improve the safe operation of the plant by reducing the administrative burden of PORC and NSAR. This change would allow a better focus of management resources to the operational safety oversight of plant activities. The requirement to review, audit, document, control, and submit for regulatory review, the Emergency Plan and the Security Plan and their implementing procedures, is defined by regulation and remains unchanged. The proposed changes will not, of themselves, result in any reduction in the effectiveness of either the Emergency Plan or the Security Plan to protect the health and safety of the public. The proposed changes, therefore, will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

This change is administrative in nature and does not change or modify the physical plant or maintenance of the physical plant. Applicable regulations continue to enforce the requirement for review and audit by individuals not responsible for implementation of the existing programs. Consequently, independent oversight of the programs and procedures is not compromised by these proposed changes. The possibility of a new or different accident from any previously evaluated as a result of future changes in the implementation of the Security or Emergency Plans is not created.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes will revise the administrative responsibilities of the PORC and NSAR committees allowing a better focus of resources on operational safety reviews. The requirements of the applicable Federal and State regulations ensure the continued effective oversight of the implementation of Security and Emergency Plans. Consequently, the adoption of the proposed changes would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, Maine 04011

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 18, 1994, as supplemented February 21, 1995.

Description of amendment request: The following changes requested in the October 18, 1994, submittal were published in **Federal Register** on November 9, 1994 (59 FR 35876). The proposed amendment would require three Type A overall integrated Containment Leakage Tests be conducted at approximately equal intervals during shutdowns during each 10 year service period. For the third Type A test for the second 10-year period, it would be conducted during the thirteenth refueling outage extending the second 10-year service period to the end of the thirteenth refueling outage. The amendment would also change the Containment Leakage Bases by reflecting the conditions of a proposed exemption to 10CFR50, Appendix J, that would remove the requirement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection.

By letter dated February 21, 1995, the licensee withdrew the action related to conducting the third Type A test for the second 10-year period during the thirteenth refueling outage and the reference to a proposed exemption to 10 CFR 50, Appendix J, that would remove the requirement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection. The following basis for the proposed no significant hazards consideration determination relates to the February 21, 1995, request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

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consideration, which is presented below:

The proposed change does not involve a SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Type A tests are performed to ensure that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate at the design pressure. This assures compliance with the dose limits of 10CFR100.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

Historically, Type A tests have a relatively low failure rate where Type B and C testing (local leakage rate tests) could not detect the leakage path. Most Type A test failures are attributed to failures of Type B or C components (containment penetrations and isolation valves). Type B and C components are tested per Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications. These tests are required to be conducted at intervals no greater than 24 months. These local leakage rate tests provide assurance that containment integrity is maintained. The Type B and C tests will continue to be performed in accordance with the requirements of Surveillance Requirement 4.6.1.2.d.

The previous Type A, B, and C tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining a conservative margin between the acceptance criterion and the "As-Found" and "As-Left" leakage results Based on this, the Millstone Unit No. 2 containment is considered to be in sound condition.

Based on the above, the proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility in scheduling the Type A tests It does not make any physical or operational changes to existing plant structures, systems, or components. In addition, the proposed change does not modify the acceptance criteria for the Type A tests. Maintaining the leakage through the containment boundary to the atmosphere within a specific value ensures that the plant complies with the requirements of 10CFR100. The containment boundary servos as an accident mitigator; it is not an accident initiator. Therefore, the proposed change to Surveillance Requirement 4.6.1.2.a does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

Based on the above, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: February 1, 1995

Description of amendment request: This Technical Specification (TS) change would modify the applicable operational conditions for the secondary containment isolation radiation monitors located on the refueling floor and for the radiation monitor located in the railroad access shaft. Specifically, for the refueling floor exhaust duct and wall exhaust duct radiation monitors, the proposed change would modify the applicable operational condition during specific control rod testing evolutions which are core alterations and would indicate that the operability requirement does not apply during shutdown margin demonstrations. For the railroad access shaft exhaust duct radiation monitor, the change to the TS would modify the applicable operational condition to address plant evolutions involving irradiated fuel transfer within the railroad accessshaft and above the access shaft with the equipment hatch open.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. The proposed change to the applicable operational condition for the refueling floor process radiation monitors does not affect the probability of the design basis accidents. The monitors function in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust system and provide isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and accident probability. The monitors act to mitigate the offsite effects of airborne contamination producing accidents, they are not potential accident initiators.

The proposed change does not result in a significant increase in the consequence of the design basis accidents. The postulated event associated with control rod related CORE ALTERATIONS which could result in increased Zone III airborne radioactivity concentrations is criticality resulting from a single control rod withdrawal, resulting in release of fission products. The probability of an unintended criticality from a single control rod withdrawal is low, and the potential for this criticality to result in fuel failure under shutdown conditions is even more remote. Withdrawal of a single control rod is an analyzed evolution during which time adequate design and operating controls exist to preclude criticality. However, in the unlikely event criticality should occur, the potential offsite effects would not be significant. Localized criticality involving a leaking rod, or criticality induced fuel failure, are the postulated mechanisms by which an increase in Zone III airborne radioactivity could be attained. Neither of these postulated, but very unlikely events, will result in radioactive release in excess of 10CFR100 limits. Any release would be monitored by instrumentation in the Reactor Building vent stack required to be OPERABLE at all times. In addition, Area Radiation Monitors are installed on the refueling floor to supplement the refueling floor process radiation monitors by providing radiological information to plant operators. Operators can use the vent stack and/or ARM information to manually initiate secondary containment isolation if radiological conditions warrant this action. Emergency Operating Procedures direct operator action in the event of higher than normal radiation readings.

b. The proposed change to the applicable operational condition for the railroad access shaft process radiation monitor does not affect the probability of the design basis accidents. The monitor functions in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust system and provides isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and accident probability. The monitor acts to mitigate the offsite effects of airborne contamination producing accidents, it is not a potential accident initiator.

The proposed change does not result in a significant increase in the consequence of the design basis accidents. The design intent of the railroad access shaft process radiation monitor is to monitor radiation in the unfiltered air from the Zone III railroad access shaft exhaust system, and provide signals which automatically isolate the Zone III portion of the secondary containment, start the Standby Gas Treatment System, and start the Recirculation System (Zone III) on a high radiation condition within the access shaft. This function is intended to limit the consequences of a fuel handling accident in the railroad access shaft. The monitor has no significant capability to react to a CORE ALTERATION related transient, or one resulting from operations with the potential to drain the reactor vessel. The design intent of the monitor is maintained under the proposed change, as the proposed change focuses monitor operability on conditions when irradiated fuel is in the railroad access shaft or above it with the railroad access shaft cover open.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without significantly increasing the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access ShaftExhaust Duct Radiation Monitor function in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust system and provide isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and the potential for creating new or different accident scenarios. The monitors act to mitigate the offsite effects of airborne contamination producing accidents, they are not potential accident initiators.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without creating the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

a. The proposed change to the applicable operational condition for the refueling floor process radiation monitors does not involve a significant reduction in the margin of safety. The postulated event associated with control rod related CORE ALTERATIONS which could result in increased Zone III airborne radioactivity concentrations is criticality resulting from a single control rod withdrawal under shutdown conditions. There are multiple barriers to protect against the postulated event of criticality from a single rod withdrawal. Technical Specifications, plant operating procedures, and plant design control the withdrawal of control rods to minimize the potential for an inadvertent criticality event during shutdown. In addition, a fuel loading verification is performed, per procedure, on the as loaded core configuration to ensure that the fuel is loaded correctly. Each reload core is designed such that there is at least a 99.9% probability with a 95% confidence that the core will not be critical as a result of a single control rod withdrawal. The safety margin associated with a potential criticality event from a single control rod withdrawal, under shutdown conditions, is not impacted by the proposed change.

In the unlikely event that control rod manipulations resulted in reactor criticality, adequate protective measures are provided by core monitoring instrumentation required to be operable in OPCON 5. Under this scenario, assuming the inadvertent control rod withdrawal resulted in a significant reactivity addition, the Reactor Protection System (RPS) would respond by inserting all control rods via the Scram function. The RPS monitors for recriticality during OPCON 5 with SRMs (per Technical Specification Section 3.9.2), and IRMs. The safety margin associated with RPS response to a criticality event, under shutdown conditions, is not impacted by the proposed change.

Assuming that a criticality did occur as a result of a single control rod withdrawal, any increase in Zone III airborne radioactivity from a previously failed assembly located in the vicinity of the withdrawn control rod or a fuel rod failure associated with the control rod withdrawal would not result in an offsite dose exceeding regulatory limits. Assuming that criticality occurs following core loading and verification (i.e. ≤20 days after shutdown), the offsite dose as a result of the release of fission products from a single failed fuel rod would be much less than 1% of the applicable site boundary limits. In addition, the failure of four complete fuel assemblies (i.e. nearly equal to 300 fuel rods in the bundles surrounding the withdrawn control rod) would not result in offsite dose exceeding the applicable regulatory limits. Failure of more than four complete fuel assemblies due to the withdrawal of a single control rod in OPCON 5 is not considered credible. In fact, given the initial conditions of this event (i.e. cold, zero power, subcritical) and the reactivity characteristics of the fuel (i.e. negative fuel temperature reactivity coefficient) it is very unlikely that a criticality of this nature would result in failure of any fuel rods. Although the refueling floor process radiation monitors would not be OPERABLE, Zone III airborne radioactivity concentrations can be independently detected with Area Radiation Monitors (ARMs) which are located on the refueling floor. These monitors provide control room indication, and would alert operators to changing radiological conditions on the refueling floor. In addition to providing personnel notification, the ARMs act as a supplement to the process radiation monitors in detecting abnormal migrations of radioactive material in or from the process streams. Operators can manually initiate secondary containment isolation based on ARM input. The Emergency Operating Procedures require the operators to take appropriate actions on higher than normal radiation readings. Moreover, any airborne radioactivity leakage from Zone III would be monitored via instrumentation in the Reactor Building vent stack required to be OPERABLE at all times; local alarms, remote recording, and main control room and Technical Support Center alarms are provided. Operators can manually initiate secondary containment isolation based on exhaust sample readings. Due to the bounding regulatory limits and the redundant monitoring and operator response capabilities, the safety margin associated with the potential for offsite airborne radioactive release, under shutdown conditions, is not significantly impacted by the proposed change.

b. The elimination of operability requirements associated with CORE ALTERATIONS, operations with the potential to drain the reactor vessel, and other irradiated fuel moves not associated with the railroad access shaft, do not affect the ability of the railroad access shaft process radiation monitor to implement its design function. As such, the current operability requirements for the monitor which involve evolutions in areas other than the railroad access shaft do not contribute to the margin of plant safety; thus eliminating these operability requirements will not reduce the margin of plant safety.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stol:

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Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: February 2, 1995

Description of amendment request: This amendment would change the Technical Specifications for the units to increase the licensed discharge fuel assembly exposure for SPC 9X9-2 fuel from 40 to 45 GWD/MTU.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

PP&L—s technical basis for increasing the licensed discharge exposure limit as proposed is documented in PL-NF-94-005-P-A. The technical basis includes onsite fuel inspections, fuel design analyses and evaluations, and an in-reactor fuel assembly extended exposure demonstration. In response to NRC concerns on fuel failures at higher exposures, very conservative analyses were performed for the CRDA [control rod drive assembly] assuming very low failure thresholds, and offsite dose calculation results were shown to be well within regulatory limits, even at a failure threshold of 30 cal/gm. The NRC has previously reviewed and approved all of the above information, and inspection results have met all approved criteria.

An evaluation of FSAR [Final Safety Analysis Report] design basis events was performed to determine the impact of the proposed increase in fuel exposure. The LOCA [loss-of-coolant accident] analysis performed in support of PP&L—s Power Uprate efforts incorporated the effects of higher exposure and LHGR [linear heat generation rate]. From a radiological release perspective, the Power Uprate evaluations of LOCA, MSLB [main steam line break], CRDA, and refueling accidents each bound the potential impacts of extended exposure fuel.

Those reload analyses deemed necessary to confirm that the above conclusions remain valid will be performed on a cycle-specific basis.

Based on the above, the proposed action will not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed action will increase the residence time of fuel within the Susquehanna reactors. The potential consequences of this action remain solely with the fuel—s ability to perform within specified limits during the increased duty, and were reviewed in I above. All required evaluations involving fuel impacts have been previously evaluated.

Based on the above, the proposed action cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

III. Involve a significant reduction in a margin of safety.

The proposed action will allow increasing the licensed discharge fuel assembly exposure limit, resulting in increases in the fuel rod LHGR and LHGR for APRM [average power range monitor] Setpoints, which are controlled via the Technical Specifications and the Core Operating Limits Report.

The discussion in I. above delineates the evaluations performed to support this action. It concludes that neither the probability nor the consequences of events previously evaluated will be affected. Operator performance will not be affected, because the operators only monitor the ratio of the fuel LHGR to the fuel design limit. No other potentially impacted safety margins have been identified.

Based on the above, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: February 10, 1995

Description of amendment request: The proposed amendment would modify the Susquehanna Steam Electric Station, Unit 1 and 2 Technical Specifications (TS) to (1) extend the allowable out-of-service times (AOTs) for maintenance and repair and the surveillance test intervals (STIs) between channel functional tests for the following groups of instruments: reactor protection systems instrumentation (TS 3.3.1), isolation actuation instrumentation (TS 3.3.2), emergency core cooling system actuation instrumentation (TS 3.3.3), ATWS (anticipated transient without scram) recirculation pump trip system instrumentation (TS 3.3.4.1), end-of-cycle recirculation pump trip system instrumentation (TS 3.3.4.2), reactor core isolation cooling system (RCIC) actuation instrumentation (TS 3.3.5), control rod block instrumentation (TS 3.3.6), radiation monitoring instrumentation (TS 3.3.7.1), and feedwater/main turbine trip system actuation instrumentation (TS 3.3.90); (2) change the required actions and AOTs for the instruments listed above to make requirements consistent with supporting analysis in General Electric topical reports and change additional actions required to prevent extended AOTs from resulting in extended loss of instrument function; (3) change the required actions and AOTs for the instruments listed above for instrumentation associated with the ADS (automatic depressurization system), recirculation pump trip, and pump suction lineup for HPCI (high pressure core injection) and RCIC; (4) change applicability requirements and required actions for the reactor vessel water level-low, level 3 function that isolates the RHR (residual heat removal) system shutdown cooling system so that the function is required to be operable in operational conditions 3, 4, and 5 to prevent inadvertent loss of reactor coolant via the RHR shutdown cooling system; (5) remove notes in Table 3.3.2-1, 3.3.2-2, and 4.3.1-1 related to maintenance on leak detection temperature detectors and remove the note to TS 3.3.6 for Unit 1 related to a previous relief from TS 3.0.4; and reformat, renumber, and/or reword existing requirements to incorporate the changes listed above.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes increase the AOTs and STIs for actuation instrumentation intended to detect or mitigate accidents; establish required actions consistent with NUREG-1433 for some instruments that are more specific but equivalent to existing required actions; establish new requirements to prevent inadvertent loss of reactor coolant via the RHR Shutdown Cooling System during OPERATIONAL CONDITIONS 3, 4 and 5; and, eliminate notes that were intended to provide one time only exemptions from certain requirements. The proposed changes affect only those Technical Specification requirements that govern operability, required actions and routine testing of plant instruments that detect or mitigate accidents. The proposed changes do not affect any equipment or requirements that are assumed to be initiators of any analyzed events. Therefore, the proposed changes will not involve an increase in the probability of occurrence of an accident previously evaluated.

The proposed changes will not increase the consequences of an accident previously evaluated because the changes will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested or inspected. The proposed changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. The proposed changes extend the intervals between required performances of routine instrument testing. The proposed changes also modify time limits allowed for operation with inoperable instrument channels in situations when an inoperable instrument channel would not prevent actuation of the associated equipment. These changes are based on the demonstrated reliability of these instruments and are justified by the analysis in References 1 through 8 [See February 10, 1995 application]. The small increases in the probability that the proposed changes will result in an equipment actuation failure has been determined in References 1 through 8 [See February 10, 1995 application] to be offset by safety benefits such as a reduction in the number of inadvertent actuations, a reduction in wear due to excessive testing, and better utilization of plant personnel and resources. These changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function.

Proposed changes to required actions and completion times for instrumentation associated with the ADS initiation, Recirculation Pump Trip, and pump suction lineup for HPCI and RCIC make the required actions and completion times consistent with NUREG-1433, Standard Technical Specifications for General Electric Plants, BWR/4, Revision 0 (Reference 12). These changes are also consistent with the assumptions used in References 1 through 8 [See February 10, 1995 application]. Therefore, these changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In addition, the proposed change provides the benefit of avoiding an unnecessary shutdown transient when appropriate measures are available to compensate for the inoperable instrumentation. Therefore, the proposed changes will not increase the consequences of an accident previously evaluated.

There is no significant increase in the probability or consequences of an accident previously evaluated resulting from changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above or from the removal of notes that were intended for one time only use and are no longer applicable.

II. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. The changes in normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes: increase the AOTs and STIs for actuation instrumentation intended to detect or mitigate accidents; establish required actions consistent with NUREG-1433 for some instruments that are more specific but equivalent to existing required actions; establish new requirements to prevent inadvertent loss of reactor coolant via the RHR Shutdown Cooling System during Operational Conditions 3, 4 and 5; and, eliminate notes that were intended to provide one time only exemptions from certain requirements.

There is no significant reduction in the margin of safety resulting from changes to the minimum surveillance test intervals (STIs) and allowable out-of-service times (AOTs) for the testing and/or repair of instrumentation. This conclusion is based on the demonstrated reliability of these instruments and is justified by the analysis in References 1 through 8 [See February 10 1995 application]. The small increases in the probability that the proposed changes will result in an equipment actuation failure has been determined in References 1 through 8 [See February 10, 1995 application] to be offset by safety benefits such as a reduction in the number of inadvertent actuations, a reduction in wear due to excessive testing.

These changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function.

There is no significant reduction in the margin of safety resulting from changes to required actions and completion times for instrumentation associated with the ADS initiation, Recirculation Pump Trip, and pump suction lineup for HPCI and RCIC. These changes make the required actions and completion times consistent with NUREG-1433, Standard Technical Specifications for General Electric Plants, BWR/4. These changes are also consistent with the assumptions used in References 1 through 8 [See February 10, 1995 application]. Therefore, these changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In addition, the proposed change provides the benefit of avoiding an unnecessary shutdown transient when appropriate measures are available to compensate for the inoperable instrumentation. Additionally, the proposed required actions ensure that actions to mitigate loss of single failure tolerance are initiated within 24 hours (12 hours for RPS) in accordance with the results of the analyses in References 1 through 8 [See February 10, 1995 application] and action to mitigate a loss of instrument function is initiated within 1 hour. Therefore, these changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function. The Pennsylvania Power & Light Company performed reviews that confirmed the analyses in References 1 through 8 [See February 10, 1995 application] are applicable to SSES and that there would be no effect on the identification of excessive instrument setpoint drift as a result of increasing the minimum interval between instrument functional tests from monthly to quarterly.

There is no significant reduction in the margin of safety resulting from changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above or from the removal of notes that were intended for one time only use and are no longer applicable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 13, 1995

Description of amendment request: The proposed changes concern a revision to the frequency of calibration for the Local Power Range Monitor (LPRM) signals from every 6 weeks to every 2000 Megawatt Days per Standard Ton (MWD/ST).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

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1. The proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

This change does not affect the operation of any equipment. The change does not affect the fundamental method by which the LPRMs are calibrated. The increased time between required LPRM calibrations does not affect either the initiator of any accident previously evaluated or any equipment required to mitigate the consequences of an accident, or the isotopic inventory in the fuel. Thus, the change does not increase either the probability or the radiological consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The GETAB determination of the Maximum Critical Power Ratio (MCPR) Safety Limit allows a maximum total nodal uncertainty of the TIP readings (of which the LPRM Update uncertainty is a part) of 8.7%. The change in LPRM calibration frequency results in an LPRM Update uncertainty of 4.2% nodal power. This, combined with the other uncertainties which comprise the total TIP readings uncertainty, yields a total TIP readings uncertainty of less than the allowed 8.7%. Thus the change in LPRM calibration frequency will not affect the MCPR Safety Limit.

The LPRMs are utilized as input to the APRM and RBM systems. The primary safety function of the APRM system is to initiate a scram during core-wide neutron flux transients before the actual core-wide neutron flux level exceeds the safety analysis design basis. This prevents fuel damage from single operator errors or equipment malfunctions. The APRMs are calibrated at least twice per week to the plant heat balance, utilize a radially and axially diverse group of LPRMs as input and are utilized to detect changes in average, not local, power changes. Therefore, the effects of decreasing the LPRM calibration frequency on the APRM system responses will be minimal due to any individual LPRM drift being practically canceled out (due to diversity of input) and/or due to the frequent recalibration of the APRMs to an independent power calculation (the heat balance). Thus, decreasing the LPRM calibration frequency will not significantly impact the performance of the APRM system's scram function, and there is no impact on transient delta-CPRs.

The RBM system is utilized in the mitigation of a Rod Withdrawal Error (RWE). The RBM system is designed to prevent the operator from increasing the local power significantly when withdrawing a control rod. On each selection of a control rod, the average of the assigned, unbypassed LPRMs is adjusted to equal a 100% reference signal for each of the two RBM channels. Each RBM channel automatically limits the local thermal margin changes by limiting the allowable change in local average neutron flux to the RBM setpoint. If the local average neutron flux change is greater than that allowed by the RBM setpoint, within either RBM channel, the rod withdrawal permissive is removed preventing further movement. Since the change in local neutron flux is calculated from the change in the average of the LPRM readings, and calibrated on every rod selection to the reference signal, offsets in individual LPRM readings due to calibration differences are effectively eliminated for a given RBM setpoint. Therefore, the constraints on the withdrawal of any given rod are unchanged and there will not be any increase in RWE delta-CPR.

Since the MCPR Safety Limit is unaffected and the delta-CPR values are unchanged, the cycle CPR limits are unchanged. Therefore, the change in the frequency of LPRM calibration does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 23, 1995

Description of amendment request: The proposed amendment would change the minimum emergency diesel generator (EDG) fuel oil requirements of Technical Specifications Section 3.7 (Auxiliary Electrical Systems) from 7056 to 6721 gallons. The change is requested based on a recent modification which installed a more accurate level indicator for each of the three fuel oil tanks. The new indicators have an accuracy of plus or minus 50 gallons while the old indicators had an accuracy of plus or minus 385 gallons. Thus, the actual volume of fuel oil available to each of the EDGs remains unchanged at 6671 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed. This amendment application is the result of a modification which installed new fuel oil level indicators (for each of the three EDG fuel oil tanks). These new indicators reduce the amount of measurement uncertainty by 335 gallons. The proposed reduction in minimum fuel oil corresponds to this reduction in uncertainty and therefore does not affect the amount of fuel oil available for use in the EDG storage tanks. This ensures that sufficient oil is present to power the minimum safeguards equipment for 48 hours, assuming two EDGs are operable.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not affect the way the plant operates. This amendment application is the result of a modification which installed new fuel oil level indicators which have a higher accuracy than the previous ones. The requested change in the minimum required fuel oil volume corresponds to this reduction in measurement uncertainty. Therefore, there is no affect on the amount of oil available for use by the EDGs.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. This amendment application is the result of a modification which installed new fuel oil level indicators. These new indicators reduce the amount of measurement uncertainty by 335 gallons. The proposed reduction in minimum fuel oil corresponds to this reduction in uncertainty and therefore does not affect the amount of fuel oil available for use in the EDG storage tanks. This ensures that sufficient oil is present to power the minimum safeguards equipment for 48 hours, assuming two EDGs are operable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh

Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: March 2, 1995

Description of amendment request: The proposed amendment would change the titles of several management positions as described in Technical Specifications Section 6.0 (Administrative Controls). Specifically, the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer would be changed to Shift Manager and Chief Nuclear Officer, respectively. In addition, the position titles of Senior Reactor Operator (SRO) and Reactor Operator (RO) would be deleted and replaced with qualification requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes eliminate the position titles of SRO and RO and replace them with required qualifications. These changes do not alter the function or criterion necessary to fulfill the minimum shift crew requirements listed in Technical Specification Table 6.2-1. The position title changes for the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer are administrative in nature.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they are administrative in nature. The changes do not affect plant equipment or operation. They allow the Authority (the licensee) to replace the position title of SRO with Control Room Supervisor. This change signifies the switchover of this position from union to management, but does not alter the position's functions or license requirements. The Authority is not planning a title change for the RO, but is rewording the Technical Specifications concerning this position for consistency. The change in position titles from the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer to Shift Manager and Chief Nuclear Officer, respectively, are administrative changes.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes eliminate the position titles of SRO and RO and replace them with required qualifications. These changes do not alter the function or criterion necessary to fulfill the minimum shift crew requirements listed in Technical Specification Table 6.2-1. The position title changes for the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer are administrative as they do not alter the qualifications necessary to fill these positions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 30, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to remove the specifications associated with the Loose-Part Detection System (LPDS). Specifically, TS 3.3.7.9, "Loose-Part Detection System," Surveillance Requirement 4.3.7.9, associated Bases and the index would be revised to indicate that the LPDS has been removed. The LPDS will subsequently be relocated to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes relocate the Loose Parts Detection System (LPDS) from the Technical Specifications (TS) to the UFSAR. Subsequent changes to LPDS requirements would require a review, in accordance with the provisions of 10CFR50.59 to determine if an unreviewed safety question exists.

Relocation of the LPDS is consistent with the NRC Final Policy Statement on TS improvements. In part, the Final Policy Statement provides screening [criteria] to evaluate TS requirements for the purpose of relocation to other licensee controlled documents. Limiting Conditions for Operation (LCOs) which do not meet any of the Final Policy Statement [criteria] may be proposed for relocation. The LPDS does not satisfy any of the Final Policy Statement screening [criteria].

The proposed changes do not affect any material conditions of the plant that could directly contribute to causing or mitigating the effects of an accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any changes to plant structures, systems or components. Also, the proposed changes were compared to the [criteria] presented in the Final Policy Statement. The proposed changes do not meet any of the screening [criteria] presented in the Final Policy Statement and, therefore, may be proposed for relocation from the TS.

Upon approval of the proposed changes, the LPDS will be relocated to the UFSAR. Subsequent changes to LPDS requirements would require a review, in accordance with the provisions of 10CFR50.59 to determine if an unreviewed safety question exists

The relocation of the LPDS from the TS does not result in a significant increase of core damage frequency of offsite release. The LPDS is not modeled in the Hope Creek Probabilistic Risk Assessment.

These proposed changes do not affect equipment or its operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. These changes were compared against the screening [criteria] of the Final Policy Statement. The changes do not meet any of the Final Policy Statement screening [criteria] and, therefore, may be proposed for relocation from the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

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satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 31, 1994

Description of amendment request: The amendment request proposes that certain valves be reclassified and deleted from Technical Specification (TS) Table 3.6.3-1 "Primary Containment Isolation Valves." The valves are located on lines which serve closed, safety class 2 Engineered Safety Feature (ESF) systems. In addition to the subject valves, each of these lines are provided with an automatic Containment Isolation Valve (CIV) outside containment which remains subject to TS Table 3.6.3-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The valves, which will be deleted from TS Table 3.6.3-1, serve water-filled, Safety Class 2, seismic Category I ESF system lines. Safety Class 2, seismic Category I ESF system lines utilize other, automatic CIVs outside the Containment in addition to the valves subject to this amendment application. These other CIVs will continue to be listed in TS Table 3.6.3-1 and subject to the requirements specified in the Technical Specifications. In addition, the piping serving these ESF systems constitutes closed systems (i.e., extended Containment boundaries) outside Containment, as described in HCGS [Hope Creek Generating Station] UFSAR [Updated Final Safety Analysis Report] Section 6.2.4.3.5. The dual barriers provided by the CIVs and closed system piping outside the Containment satisfy the "other defined basis" requirements of GDC [General Design Criteria] 55 and 56, as clarified in RG [Regulatory Guide] 1.141 and the ANSI/ANS Standard referenced therein. These dual barriers prevent post-accident Containment leakage and provide protection against postulated single active and passive failures. Therefore, the post-accident integrity of the Containment can be assured following the removal of the subject valves from TS Table 3.6.3-1.

The elimination of the subject valves from the list of CIVs will not increase the potential for containment leakage due to the presence of the other CIVs and use of closed system piping. The proposed change does not affect the design, functions, and operation of these valves. The valves will remain fully operational and capable of performing all of their required system and safety-related functions. Other applicable requirements, pertaining either to the valves or the systems they serve which are imposed by Technical Specifications, are not affected by this amendment application.

Certain valves, which are Reactor Coolant System Pressure Isolation Valves, remain subject to Technical Specification 3/4.4.3.2. In addition, all of the valves included in this amendment application will continue to be inspected and tested per the applicable requirements of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME XI) in accordance with Technical Specification 4.0.5.

The changes associated with this amendment application will not affect the overall leak-tight integrity of the Primary Reactor Containment, which will be demonstrated during 10CFR50 Appendix J Type A Integrated Leak Rate Testing as described in the Hope Creek Generating Station Updated Final Safety Analysis Report (HCGS UFSAR) Section 6.2.6.1. Radiological releases and their consequences due to leakage of the subject valves will be within the existing plant licensing basis.

The proposed change does not change the physical plant or the manner in which it is operated. The change eliminates unnecessary Appendix J testing requirements for certain valves while retaining those tests needed to assure required Containment isolation capabilities. The new bases for satisfying GDC 55 and 56 provide equivalent levels of protection against offsite radiation releases.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor does it alter the way in which any plant systems operate. Post-accident Containment isolation features, boundaries and system interfaces are not affected by the changes. The change eliminates unnecessary Appendix J tests for certain valves while retaining those tests needed to assure that the Containment isolation features perform as required. Therefore, there are no new possibilities or types of accidents considered.

3. Will not involve a significant reduction in a margin of safety.

The proposed elimination of certain valves from the list of isolation valves contained in Technical Specification Table 3.6.3-1 will not adversely affect the margins of safety associated with the plant's licensing bases

The use of other CIVs outside Containment, which are subject to Type C testing with gas in accordance with the Technical Specifications, in conjunction with the closed system/extended Containment boundary piping, provides a redundant barrier against Containment leakage and provides protection against postulated single active and passive failures. The subject valves will be tested in accordance with the ASME B&PV Code Section XI - Division 1, Article IWV-3000, as required. 10CFR50 Appendix J, Type A testing will ensure that the overall Containment leakage rate is consistent with the plant's licensing bases. Existing Containment isolation features, boundaries and system interfaces are not affected by the change.

Since the valves and the systems they serve are located either in the Drywell or in the Reactor Building, any leakage (e.g., packing gland leakage) which escapes the confines of the closed system piping, will be contained within the Containment or in the Reactor Building. These areas are radiologically controlled and monitored. Any releases to the Reactor Building are processed by the Filtration, Recirculation, and Ventilation System. This assures that all radioactive releases to the environment are within the existing plant licensing bases.

The elimination of unnecessary Appendix J testing for certain valves will not affect the existing radiological release evaluations currently described in the HCGS-UFSAR.

The proposed Amendment will not affect the functional capability of any plant safety-related structures, systems or components.

In addition, the implementation of the proposed Amendment will result in a reduction of radiological exposure to plant personnel. Therefore, the proposed revision will not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 30, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications for Hope Creek Generating Station by relocating the tables of response time limits for the Reactor Protection System (RPS), the Isolation System, and the Emergency Core Cooling system (ECCS) instrumentation from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR). This proposed amendment is a "line-item" technical specification improvement and follows the guidance of Generic Letter 93-08, "Relocation of Technical Specification Tables of Instrument Response Time Limits".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protection System (RPS), the Isolation System, and the Emergency Core Cooling System (ECCS) instrumentation are used to mitigate the consequences of accidents and provide the necessary signals to actuate the safety equipment needed to mitigate accidents and transients. The proposed changes relocate the RPS, the Isolation System, and the ECCS instrument response times from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR) but will not change the operability or surveillance requirements for these instruments. With these proposed changes, revisions to the response times for these instruments can be made pursuant to 10CFR50.59. The proposed changes will not alter any accident initiators or the consequences of any analyzed accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes relocate the RPS, the Isolation System, and the ECCS instrumentation response time limits from the Technical Specifications to the UFSAR but does not change the function of those instruments. The proposed changes do not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed changes. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes will not affect the functions of the RPS, the Isolation System, or the ECCS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements on these instruments. The administrative change control provisions for the UFSAR and the plant procedures written pursuant to 10CFR50.59 are adequate to control future revisions to the response time limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 9, 1994

Description of amendment request: The proposed amendments would make three changes to the Surveillance Requirements for the hydrogen recombiners: (1) eliminate the 6-month functional test; (2) remove the requirement to maintain the hydrogen recombiner heater sheath temperature at or above 1200 degrees Fahrenheit for at least 4 hours; and (3) remove the note that addresses the 6-month functional test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The hydrogen recombiners (HRs) are designed to limit post accident hydrogen accumulation inside containment and can have no affect on the probability of any accident previously evaluated.

The proposed HR Surveillance Requirement (SR) revisions would continue to demonstrate the ability of the HRs to perform their safety function. The proposed changes are consistent with the intent of NUREG-1366 and Generic Letter 93-05 in that at powertesting will be reduced and subsequent testing will be performed at least once per 18 months. In accordance with the provisions of Generic Letter 93-05, the proposed changes were reviewed to assess compatibility with plant operating experience. A review of the last 5 years of HR operating history indicates no adverse conditions which would preclude removal of the 6 month functional test.

In regard to the specific testing conducted, the proposed changes retain the 18 month functional heatup test, as revised. This is different than the recommendations of NUREG-1366 and Generic Letter 93-05 which extend the 6 month functional test to at least once each refueling interval. However, the 18 month functional heatup test provides a more meaningful demonstration of operability, and on this basis, was chosen to be retained.

The proposed changes revise the 18 month functional heatup test so that HR heater sheath temperatures are no longer required to be maintained [greater than or equal to] 1200°F for at least 4 hours. The requirement to increase HR heater sheath temperature to [greater than or equal to] 1200°F within 5 hours is not affected and has been retained. A review of HR 18 month functional heatup tests over the last 6 years indicates demonstrated capability of the HR to maintain heater sheath temperatures [greater than or equal to] 1200°F for 4 hours. Removal of this requirement would reduce the potential for component degradation while increasing reliability.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would only affect the SRs of the HRs. The proposed changes would not allow operation in any configuration prohibited by the present Technical Specifications. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes will not reduce the ability of the HRs to perform their safety function. The basis for NUREG-1366 and Generic Letter 93-05 is that plant safety can be improved, equipment degradation decreased and personnel burden decreased by reducing the amount of testing at power. The proposed changes do this by eliminating the 6 month HR functional test and making the revised 18 month functional heatup test the exclusive system functional test for the HRs.

The proposed changes also revise the 18 month HR functional heatup test. The 18 month functional heatup test provides a more meaningful demonstration of system operability, and on this basis, was chosen to be retained. In addition, these changes would reduce the potential for component degradation while increasing reliability.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and

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Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 9, 1995

Description of amendment request: The proposed amendments would revise the Technical Specifications to reflect organizational changes and resultant management title changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed management title changes from Vice President and Chief Nuclear Officer to Chief Nuclear Officer and President - Nuclear Business Unit or Vice President - Nuclear Operations, and from General Manager - Quality Assurance and Nuclear Safety to Director - Quality Assurance and Nuclear Safety Review, and the proposed change to eliminate the Radiation Protection/ Chemistry Manager and establish the Radiation Protection Manager and Chemistry Manager, are administrative in nature and do not affect assumptions contained in the plant safety analysis, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are purely administrative and will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. The changes discussed herein do not reduce the Technical Specification safety margin since all organizational responsibilities are being adequately implemented, and all personnel in place are properly qualified. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Sacramento Municipal Utility District (SMUD), Docket No. 50-312, Rancho Seco Nuclear Station, Sacramento County, California

Date of amendment request: February 28, 1995

Description of amendment request: The proposed amendment (PA-188) would permit SMUD to change the audit frequencies contained in the Rancho Seco Quality Manual (RSQM) in accordance with 10 CFR 50.59 and 10 CFR 50.54(a)(3) without first requiring a license amendment. This proposed amendment would not change the type or description of the audits required in the Permanently Defueled Technical Specifications (PDTS). In addition, the reporting frequency of the Radioactive Effluent Release Report would be changed from semi-annual to annual as permitted by 10 CFR 50.36a(a)(2).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has reviewed the proposed changes against each of the no significant hazards consideration criteria in 10 CFR 50.92, and, based on their safety analysis, concludes:

A significant increase in the probability or consequences of an accident previously evaluated will not be created because the proposed PDTS changes (1) comply with Radioactive Effluent Release Report reporting frequency specified in 10 CFR 50.36a(a)(2), (2) only relocate the frequencies for the PDTS D6.5.4 required audits to the RSQM, (3) ensure any future District initiated changes to RSQM audit frequencies meet the administrative and regulatory review requirements specified in 10 CFR 50.54(a), and (4) have no affect on any credible accidents previously evaluated in the Rancho Seco Defueled Safety Analysis Report (DSAR) for Rancho Seco in the permanently defueled mode (PDM); i.e., the dropped fuel assembly accident, the loss of off-site power condition, or a radwaste tank rupture.

PA-188 will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because the proposed PDTS changes (1) do not modify the configuration of the facility or its mode of operation, (2) are in compliance with 10 CFR 50.36a(a)(2), (3) only relocate the audit frequencies to the RSQM, (4) require any future RSQM audit frequency changes to conform to the administrative and regulatory controls contained in 10 CFR 50.54(a), and (5) do not provide any new mechanisms by which an accident can occur.

The proposed PDTS amendment will not involve a significant reduction in the margin of safety because the District will continue to maintain a quality assurance program, in accordance with 10 CFR 50, Appendix B, and will continue to perform shutdown activities in a safe manner. The District's quality assurance program will continue to (1) meet the applicable 10 CFR 50 requirements during the PDM and (2) have the ability to determine if plant operations during the PDM are performed without undue risk to the health and safety of the public. Also, the proposed change does not affect the operation of Rancho Seco or any plant systems. Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Central Library, Government Documents 828 I Street, Sacramento, CA 95814

Attorney for licensee: Dana Appling, Esq., Sacramento Municipal Utility District, P. O. Box 15830, Sacramento, CA 95852-1830

NRC Project Director: Seymour H. Weiss

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 21, 1995

Description of amendment request: The proposed amendment changes the Technical Specifications (TS) to incorporate the model TS changes of the Draft Generic Letter (GL), "Guidance for Modification of Technical Specifications to Reflect (A) Revisions to 10 CFR Part 20 'Standards for Protection Against Radiation' and 10 CFR 50.36a, —Technical Specifications on Effluents from Nuclear Power Reactors,— (B) related Current Industry Initiatives, and (C) Miscellaneous Related Editorial Clarifications."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated does not involve a significant increase.

The proposed TS changes showing the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed revision to the liquid and gaseous release rate limits will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the method of (algorithm) determining release rate limits and will not change net limits or change the more restrictive 10 CFR 50 Appendix I dose limits.

The proposed revision to the radioactive material quantity in the settling pond will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the method of (algorithm) determining the quantity of radioactive material in the settling pond and will not change net limits.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. The curie limit is not affected, therefore, the change does not represent a decrease in the level of control previously evaluated.

The proposed revision to the distance at which dose rates are measured from the radiation source or surface will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no increase in the individual or cumulative occupational radiation exposures. The change in distance is conservative in its effect on worker protection and is in conformance with 10 CFR 20.1601 requirements.

2.The possibility of a new or different kind of accident from any previously evaluated is not created.

The proposed TS changes showing the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, relocation of the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and relocation of the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not create the possibility of a new or different kind of accident from any previously evaluated because the revisions are administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the liquid and gaseous release rate limits will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the quantity of radioactive material in the settling pond will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

Implementation of the more conservative distance at which dose rates are measured will not create the possibility of a new or different kind of accident from any previously evaluated.

3. A significant reduction in a margin of safety is not involved.

The proposed revisions due to the location of requirements will not reduce a margin of safety because they are administrative in nature. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The proposed revision to liquid and gaseous release rate limits will not reduce a margin of safety because it is administrative in nature. These revisions preserve the existing level of effluent control. No changes to the more restrictive 10 CFR 50 Appendix I dose limits are made. There are no equipment or operational procedure changes, therefore, no accidents of any kind will be created by this change.

The proposed revision to the quantity of radioactive material in the settling pond will not reduce a margin of safety because it is administrative in nature and preserve(s) the existing level of effluent control. There are no equipment or operational procedure changes, therefore, no accidents of any kind will be created by this change.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not reduce a margin of safety because it is administrative in nature and preserve(s) the existing level of effluent control. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The change in distance for a High Radiation Area classification from 18 in. (45 cm) to (30 cm) 12 in. from the radiation source or surface will not reduce the margin of safety because this change will reduce the worker's stay time in the area and therefore minimize exposure.

Accordingly, this proposed change does not involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: William H. Bateman

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 6, 1995

Description of amendment request: The proposed amendment would discontinue the seismic monitoring network around the Virgil C. Summer Nuclear Station on the basis that the minimum requirements of License Condition (LC) 2.C(24) have been satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since the seismic monitoring network provides no direct input for operator action to control the plant. This network only functions to provide an estimate of the magnitude and location of an earthquake.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the seismic monitoring network serves to record an earthquake with no direct input for operator action. Removal of the network will have no affect on the design or operation of the plant.

3. The proposed amendment does not involve a significant reduction in the margin of safety since the microseismic network does not control any safety functions of the plant nor provide any annunciation for operator action to control the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: William H. Bateman

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, BrownsFerry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: November 15, 1994; superseded March 7, 1995 (TS 350)

Description of amendment request: The proposed change would remove the frequency for each of the audits specified in the administrative controls section of the technical specifications (TS), except those related to the fire protection system. The requirements to perform the audits would be retained, but the frequency for their performance would be controlled by a requirement to be added to the Nuclear Quality Assurance Plan. This would require that the audits listed in the TS (except those related to the fire protection system) be performed on a biennial frequency. In addition, the proposed change would remove the requirement to perform site Radiological Emergency Plan, Physical Security Plan, and the Safeguard Contingency Plan reviews and audits from the TS, since these requirements presently exist in their respective Plans.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA [the Tennessee Valley Authority] has concluded that operation of [the Browns Ferry Nuclear Plant] BFN Units 1, 2, and 3 in accordance with the proposed change to the technical specifications does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c). TVA's conclusion is based on the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by this Technical Specification change which only affects review and audit frequencies. This Technical Specification change will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed change. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change.

The proposed change only affects review and audit frequencies. As such, the proposed change has no impact on accident initiators or plant equipment, and thus, does not affect the probabilities or consequences of an accident.

Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, a change related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change concerning conduct of reviews and audits does not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 19, 1994; superseded May 16, 1994; superseded February 10, 1995; supplemented February 17, 1995 (TS 93-04)

Description of amendment request: The proposed change would clarify the technical specifications (TS) regarding the dual function of the containment vacuum relief system (i.e., vacuum relief and containment isolation). A proposed change to TS 3/4.6.3, "Containment Isolation Valves," would indicate that the existing Action statements refer to the valves listed in Sections A, B, C and D.4 of Table 3.6-2. An Action statement would be added to indicate the actions that would be required should one or more vacuum relief isolation valve(s) shown in Table 3.6-2, Section D.1 through D.3 become inoperable. The required action would be to return the valve(s) to the operable status within 72 hours or be in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours. Proposed changes to TS 3/4.6.6, "Vacuum Relief Valves," would: (1) change the terminology from vacuum relief "valve" to "line;" (2) change the Limiting Condition for Operation to indicate that all three primary containment vacuum relief lines shall be operable; (3) add a footnote that references Limiting Condition for Operation 3.6.3 in the event that one or more of the vacuum relief valves are incapable of performing a containment isolation function; and (4) change the allowed outage time for restoring an inoperable vacuum relief line from 4 hours to 72 hours. Other proposed changes affect Bases 3/4.6.6 section and TS index pages to reflect the proposed changes indicated above. Proposed changes to Table 3.6-2 would remove double asterisks (**) from various valves and remove the referenced note that states: "This valve is required after completion of the associated modification." The proposed changes were originally noticed on May 12, 1993 (58 FR 28060), which was superseded by the notice published on June 22, 1994 (59 FR 32237).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed TS change does not affect any system functions or design functions. The proposed change addresses the acceptability of SQN's vacuum relief valves for containment isolation protection, and utilizing these normally closed valves for TS-required isolation in the event the associated air-operated butterfly isolation valve(s) is incapable of automatic closure. This approach remains consistent with the vacuum relief valve's containment isolation design function.

SQN's vacuum relief valves (spring-loaded, swing-disk check valves) are designed to provide a qualified containment boundary to limit leakage of airborne fission products from the containment atmosphere during normal operation and during an analyzed pressurization event inside containment. Each valve is leak tested in accordance with 10 CFR 50, Appendix J (Type C test), to ensure that the leakage rate from the valve (when combined with the leakage rate from all other Types B and C containment penetrations) remains within the maximum allowable leakage rate of 0.60 La. The containment leak rate assumed in the worst-case design basis accident analysis (loss-of-coolant accident [LOCA]) bounds the 0.60 La leakage limit.

The vacuum relief valves are normally closed valves and are held closed by a spring force during normal plant operation. The valves would experience additional closing force during a pressurization event inside containment (e.g., LOCA). A review of the design basis events involving containment depressurization indicates that there are no postulated scenarios that would open the vacuum relief valves followed by a LOCA or other accident condition requiring containment isolation. This containment isolation function remains consistent with the SQN Final Safety Analysis Report Section 6.2.6, and the exemption to 10 CFR 50, General Design Criteria 56, provided in NUREG-1232.

A 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status ensures that redundant isolation capability is restored in a reasonable amount of time. SQN's vacuum relief valves are considered to be highly reliable as a containment isolation boundary. Accordingly, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 72-hour allowed outage time for restoring the containment vacuum relief function is consistent with standard TS (STS) bases and does not increase the probability of consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No physical modification is being made to any plant hardware, plant operating setpoints, limits, or operating procedures as a result of this change. TVA's proposed change provides a TS improvement that clarifies the configuration and function of SQN's vacuum relief valves as designed. The proposed change removes the potential for creating a conflict between Specification 3/4.6.3, "Containment Isolation Valves," and Specification 3/4.6.6, "Vacuum Relief Valves." SQN's vacuum relief valves provide qualified containment isolation protection that meets the intent of the TS action requirement for containment isolation

The proposed change does not alter any accident analysis or any assumptions used to support the accident analyses. The containment leakage assumptions used to determine offsite dose limits for compliance with 10 CFR 100 are not affected.

A 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status ensures that redundant isolation capability is restored in a reasonable amount of time. SQN's vacuum relief valves are considered to be highly reliable as a containment isolation boundary. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The 72-hour allowed outage time (AOT) for restoring the containment vacuum relief function is consistent with STS bases and does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The margin of safety provided by the design of SQN's containment vacuum relief lines remains unchanged. TVA's proposed change does not affect the containment isolation function or the allowable containment leakage rate values specified in the TSs. The proposed change ensures that the proper action is taken in the event the automatic closure capability of the containment vacuum relief isolation valve(s) is lost for any reason (improper action would be the isolation of a vacuum relief line that is required to be operable in accordance with TS 3/4.6.6).

The 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status does not reduce the margin of safety because the containment isolation function is satisfied by qualified vacuum relief valves. The vacuum relief and containment isolation functions continue to be maintained under the proposed TS change. Accordingly, the proposed change does not involve a reduction in the margin of safety.

The 72-hour AOT for restoring the containment vacuum relief function is consistent with STS bases and does not reduce the margin of safety.

Staff review of other changes proposed by the licensee has concluded that they are administrative in nature and/or remove outdated requirements.

The NRC has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 15, 1994; superseded March 7, 1995 (TS 94-12)

Description of amendment request: The proposed change would remove the frequency for each of the audits specified in the administrative controls section of the technical specifications (TS), except those related to the fire protection system. The requirements to perform the audits would be retained, but the frequency for their performance would be controlled by a requirement to be added to the Nuclear Quality Assurance Plan. This would require that the audits listed in the TS (except those related to the fire protection system) be performed on a biennial frequency. In addition, the proposed change would remove the requirement to perform site Radiological Emergency Plan, Physical Security Plan, and the Safeguard Contingency Plan reviews and audits from the TS, since these requirements presently exist in their respective Plans.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The standards used to arrive at a determination that a Technical Specification change request involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which states that no significant hazards considerations are involved if the operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is addressed as follows:

1. Operation of the facility in accordance with the proposed technical specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by the Technical Specification change which only affects review and audit frequencies. This Technical Specification change will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the FSAR are not increased by this change.

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The proposed change only affects review and audit frequencies. As such, the proposed change has no impact on accident initiators or plant equipment, and thus, does not affect the probabilities or consequences of an accident.

Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

2. Operation of the facility in accordance with the proposed technical specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, a change related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Operation of the facility in accordance with the proposed technical specifications would not involve a significant reduction in a margin of safety.

The proposed change concerning conduct of reviews and audits does not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: January 14, 1992, as supplemented by letter dated February 10, 1995.

Description of amendment request: The proposed amendment would revise surveillance requirements associated with the reactor recirculation system jet pumps. The February 10, 1995, submittal provided clarifying information and requested additional revisions to provide consistency with the improved standard technical specifications (NUREG-1433 and NUREG-1434).This notice supplements the initial no significant hazards consideration determination which was published in the Federal Register on May 27, 1992 (57 FR 22272).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Change in permissible diffuser-to-lower plenum differential pressure of any individual jet pump from established two recirculation loop operation patterns: from 10% to 20%.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change increases the variance allowed in a surveillance acceptance criteria consistent with the recommendations of General Electric SIL-330 and NUREG/CR-3052. The jet pumps are not assumed to be an initiator of any analyzed event and are therefore not included in safety analysis assumptions described in FSAR Chapters 6.2.1 (Recirculation Line Rupture, Short Term Accident Response), 6.3 (Acceptance for ECCS Performance, Criterion 5), and 15.6.5, which defers to Sections 6.2 and 6.3 for analysis of piping breaks inside containment.

The jet pumps must, however, maintain structural integrity to ensure that any recirculation line break would still allow core flooding to 2/3 of the core height, i.e., the level of the jet pump inlet as described in FSAR Section 1.2.2. (Reactor Recirculation System). Adopting the recommendations, which ensure jet pump operability, will not affect the consequences of accident since the recommended acceptance criteria still provide adequate assurance of jet pump operability. This change will not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed chango will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adopting the recommended acceptance criteria of 20% will not create the possibility of a new or different kind of accident. No new or different type of equipment will be installed. Therefore this change will not physically alter the plant. Nor is the surveillance method changed. Incorporation of the 20% acceptance criteria will conform to the General Electric recommendations provided to ensure operability and will therefore not adversely impact jet pump operability. Operation is consistent with the current safety analysis assumptions described in FSAR Chapters 6 and 15. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

Modification of acceptance criteria from 10% to 20% is considered a relaxation from existing requirements, however, the margin of safety is not significantly reduced because the proposed changes to the acceptance criteria will continue to verify jet pump operability. The change reflects the recommendations in SIL-330 and NUREG/CR-3052. The safety analysis assumptions are unchanged, therefore no safety margin is impacted. In addition, this change provides the benefit of potentially avoiding an unnecessary shutdown transient when the jet pumps are still capable of performing their safety function and well within accepted criteria for confirming operability.

Requested change to surveillance requirements regarding the 4 hour grace period and requested change to an LCO regarding 4.0.4 applicability.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not increase the probability or consequences of an accident. The jet pumps are not assumed to be an initiator of an analyzed event.

The first note allows time after the loop is placed in service to establish appropriate conditions for test performance. The surveillance can only be performed during jet pump operation, therefore, four hours is allowed to perform the surveillance after the loop is placed in service. This allows time to establish conditions appropriate for data collection and evaluation.

The second note states the surveillance is not required to be performed until 24 hours after greater than 25% RTP. The surveillance does not have to be performed at RTP less than 25% because during low flow conditions, jet pump noise approaches the threshold response of the associated flow instrumentation and precludes the collection of meaningful data. The 24 hours is an acceptable time to establish conditions appropriate to perform this surveillance. The proposed change provides confirmation of jet pump operability within a reasonable time after the jet pumps are required.

The four hour and 24 hour allowances are justified since, as described in Generic Letter 87-09, it is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed because the vast majority of surveillances demonstrate systems or components are operable. Accordingly, surveillance modification will not increase the probability or consequences of accident.

In addition, there is no importance placed on the order of the notes; the surveillance is only required to be performed when all conditions specified in both notes are met.

Performance of the surveillance under the proposed conditions will provide a greater level of confidence that the jet pumps are operable. As a result, the consequences of an accident are not affected by this change, which simply designates time requirements for the verification of operability. This change will not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The surveillance requirement is being performed to confirm jet pump operability at the earliest opportunity after the jet pumps are required. No new or different type of equipment will be installed, therefore this change will not physically alter the plant. The changes in methods governing normal plant operation and testing are consistent with the current safety analysis assumptions described in FSAR Chapters 6 and 15.

Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety:

The margin of safety is not significantly reduced because the changes to the surveillance frequency will continue to provide the necessary assurance of jet pump operability. These changes effectively extend the initial performance of the surveillance requirement by 4 or 24 hours and provide the benefit of allowing the surveillances to be postponed until plant conditions exist which permit acquisition of meaningful data. The safety analysis assumption of operable jet pumps will be maintained, thus no safety margin is impacted.

Requested change to Technical Specification Surveillance 4.4.1.2.2.c discussion for diffuser and an editorial change to Technical Specification 3/4.8.3, "Onsite Power Distribution Systems," correcting Technical Specification Surveillance 3.8.3.1.b.1 to provide nomenclature distribution panel.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the word "difference" to "diffuser" is a purely administrative change which corrects an error in Technical Specification surveillance 4.4.1.2.2.c. This does not have an impact on FSAR accident analysis.

The proposed change corrects 3.8.3.1.b.1 to provide nomenclature clarification. This is a purely administrative change which corrects an error in the Technical Specification. There is no impact on FSAR accident analysis.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed editorial changes are purely administrative changes which correct errors in the Technical Specification. No new or different type of equipment will be installed, therefore these changes will not physically alter the plant. The safety analysis assumptions are unchanged.

Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed editorial changes do not modify safety analysis assumptions, therefore no safety margin is impacted.

Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 28, 1995

Description of amendment request: The amendments would modify Technical Specification (TS) 3/4.6.2, "Depressurization and Cooling Systems - Containment Spray system" Surveillance Requirement (SR) 4.6.2.1b, with NUREG-1431 SR 3.6.6A.4. This change replaces the specific pump flow and head values now contained in the SR with the general requirement that the pump develop the required head at the flow test point. Also, Bases 3/4.6.2.1, "Containment Spray System", will be revised to expand the detail consistent with the NUREG-1431 Bases SR 3.6.6A.4. The Bases from NUREG-1431 has minor modifications to reflect (1) that the containment spray pumps are tested via a special test line which allows testing at flows higher than that allowed by the miniflow recirculation line; (2) the "pump design curve" is termed the "analytical pump curve≥; and (3) the reference to the technical requirements manual where the pump head requirements are defined is provided for the user's information.

Date of individual notice in the **Federal Register:** March 6, 1995 (60 FR 12255)

Expiration date of individual notice: April 5, 1995

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

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under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 2, 1994

Brief description of amendments: These amendments revise the Technical Specifications regarding the emergency diesel generators (EDGs) by modifying the surveillance requirements to include verification that the EDG high crankcase pressure trip is bypassed when a Safety Injection Actuation Signal is present. A footnote is also included which indicates that the verification of the high crankcase pressure trip bypass is not required on a particular EDG until the modification implementing the bypass has been completed for the EDG. The footnote further indicates that the modifications are to be completed by February 28, 1996.

Date of issuance: March 3, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 203 and 181

Facility Operating License No. DPR-53 and DPR-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47165) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 8, 1993, as supplemented on March 2, 1995.

Brief description of amendments: The amendments revise Section 5.0, Design Features. The revisions are generally consistent with the format and content of the improved Standard TSs for Combustion Engineering plants provided in NUREG-1432. The two subsections, for which the request to delete has been withdrawn, have been reformatted to be consistent with NUREG-1432 and are included in the enclosed amendments.

Date of issuance: March 14, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1 - 204 - Unit 2 - 182

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2861) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 14, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: November 22, 1994

Brief description of amendment: The amendment revises the mode conditions under which the Scram Discharge Instrument Volume - Scram Trip Bypass in Table 3.2.C.1 is required to be operable and changes the associated functional test frequency from quarterly to once per operating cycle in Table 3.2.C.

Date of issuance: March 8, 1995

Effective date: March 8, 1995

Amendment No.: 159

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1995 (60 FR 3671) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South CarolinaDate of application for amendment: July 29, 1994, as supplemented January 29, 1995

Brief description of amendment: The amendment is to reduce the frequency of testing an operable EDG when the other EDG is inoperable and also to prevent entry into TS Section 3.0.

Date of issuance: March 3, 1995

Effective date: March 3, 1995

Amendment No.: 158

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45018) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: December 27, 1994

Brief description of amendment: The amendment relocates the turbine rotor inspection requirement, TS 4.1-3, Item 13, to the Updated Final Safety Analysis Report, Section 10.2.

Date of issuance: March 17, 1995

Effective date: March 17, 1995

Amendment No.: 159

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6298) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Carolina Power & Light Company, et al., Docket No. 50-400, Sheron Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 19, 1994

Brief description of amendment: The amendment will provide a one-time schedular extension for a Technical Specifications surveillance interval from 40 months plus or minus 10 months to approximately 54 months to allow the third Type A test to be performed during refueling outage 7.

Date of issuance: March 10, 1995

Effective date: March 10, 1995

Amendment No. 54

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6298) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, IllinoisDate of application for amendments: October 24, 1994

Brief description of amendments: The amendments restructure the primary containment and primary containment leakage technical specifications to reduce the repetition of those requirements contained in NRC regulations such as Appendix J to 10 CFR Part 50. The amendments also support the licensee's requested exemptions from Appendix J requirements related to the scheduling of containment integrated leakage rate tests. The staff has addressed the licensee's requested exemptions separately from the issuance of these amendments. In addition to the restructuring and scheduling changes, the amendments incorporate the relocation of the list of primary containment isolation valves in accordance with Generic Letter 91-08 and a revision to the interval for functional testing of hydrogen recombiners in accordance with Generic Letter 93-05.

Date of issuance: March 16, 1995

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 102 and 87

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 498). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 13, 1994, as supplemented on December 20, 1994, January 12, 1995, and January 31, 1995.

Brief description of amendment: The amendment would revise Technical Specifications Sections 3.1.F and 4.13 to allow the repair of steam generator tubes via the implementation of an F* criteria. This would allow tubes that are degraded in a location not affecting structural integrity of the tube to remain in service as an alternative to removal from service through the use of tube plugs. The requested changes related to tube sleeving will be addressed in a separate amendment.

Date of issuance: March 13, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 180

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27051) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South CarolinaDate of application for amendments: October 18, 1994, as supplemented February 7, 1995

Brief description of amendments: The amendments revise the frequency for conducting the Catawba Unit 1 Integrated Leak Rate Test from a nominal frequency of once per 40 months to once per 60 months. The amendments also involves the granting of an exemption from the requirements of 10 CFR Part 50, Appendix J.

Date of issuance: March 9, 1995

Effective date: To be implemented within 30 days from the date of issuance

Amendment Nos.: 129 and 123

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1995 (60 FR 7073) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 29, 1994 as supplemented by letters dated January 12, January 27, February 6, February 16 and March 13, 1995.

Brief description of amendments: The requested amendment revises, in part, Technical Specifications 4.4.5.2, 4.4.5.4, 4.4.5.5 and 3.4.8 for Catawba Unit 1, Cycle 9 operation to permit the use of a voltage-based steam generator tube repair criteria for defects confined within the thickness of the tube support plate.

Date of issuance: March 17, 1995

Effective date: To be implemented within 30 days from the date of issuance

Amendment Nos.: 130 and 124

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 9, 1995 (60 FR 7801) The February 6 and 16, and March 13, 1995, letters provided clarifying information that did not change the scope of the original Novemb, 1994, application and initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: August 30, 1994, as supplemented by letter dated March 5, 1995.

Brief description of amendment: The amendment relocated refueling cycle specific parameters from the technical specifications to the core operating limits report per NRC Generic Letter 88-16. Additionally, the amendment adds a 24 hour limit on operations when only one reactor coolant pump is operating in each loop.

Date of issuance: March 16, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 178

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1995 (60 FR 3672)

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The additional information contained in the supplemental letter dated March 5, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room location:*Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: October 27, 1994

Brief description of amendments: These administrative amendments correct editorial errors, remove deleted pages, clarify confusing statements and eliminate inconsistencies identified by the plant operations staff.

Date of issuance: March 15, 1995

Effective date: March 15, 1995

Amendment Nos.: 134 and 73

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1994 (59 FR 60379) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 14, 1994, as supplemented by letter dated November 10, 1994, and February 8, 1995.

Brief description of amendment: The amendment revised the River Bend Station, Unit 1 technical specifications to remove various component lists from the technical specifications and relocate them to plant procedures. The component lists are not necessary to support the actions or surveillances required by the technical specifications. In addition, these revisions have been identified as a line item improvement to the technical specifications. The amendment also revised the technical specifications to relocate the reactor vessel material specimen withdrawal schedule to the updated safety analysis report.

Date of issuance: March 8, 1995

Effective date: March 8, 1995

Amendment No.: 76

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65815) The additional information contained in the supplemental letter dated February 8, 1995, was clarifying in nature and thus within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 15, 1994

Brief description of amendment: The amendment revised the River Bend Station, Unit 1 technical specifications to remove the "Turbine Overspeed System" requirements and relocate them to plant procedures. The relocation of these requirements is a line item improvement to the technical specifications.

Date of issuance: March 15, 1995

Effective date: March 15, 1995

Amendment No.: 77

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27056) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 13, 1994

Brief description of amendment: The amendment modifies Clinton Power Station Technical Specification 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," by changing the frequency of leak testing the 36-inch supply and exhaust containment ventilation isolation valves. The test frequency, which is currently once every 184 days, will now be performed in accordance with 10 CFR 50, Appendix J. In the event the valves are opened, they must be leak tested within 92 days.

Date of issuance: March 6, 1995

Effective date: March 6, 1995

Amendment No.: 97

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49427) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: January 27, 1995

Brief description of amendment: The amendment modifies the technical specifications (TSs) by eliminating selected response time testing as described in the BWROG topical report NEDO-32291, "System Analyses for Elimination of Selected Response Time Testing Requirements." The affected TSs are TS 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," TS 3.3.5.1, "Emergency Core Cooling System (ECCS) Instrumentation," TS 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," and TS 3.5.1, "ECCS - Operating."

Date of issuance: March 9, 1995

Effective date: March 9, 1995

Amendment No.: 98

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1995 (60 FR 6739) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MichiganDate of application for amendments: August 12, 1992, as supplemented April 12, 1993.

Brief description of amendments: The amendments change the minimum channels operable for the pressurizer safety valve position indicator acoustic monitor to two out of three total from one per valve.

Date of issuance: March 6, 1995

Effective date: March 6, 1995, with full implementation within 180 days

Amendment Nos.: 191 and 177

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6302) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: October 7, 1994

Brief description of amendments: The amendments remove the audit of the emergency and security plans and implementing procedures from the list of responsibilities of the Nuclear Safety and Design Review Committee (NSDRC). The amendment also removes the requirements for Plant Nuclear Safety Review Committee (PNSRC) review of the emergency and security plans, their implementing procedures, and changes to the implementing procedures. Changes to the composition of the PNSRC and the NSDRC are also made to reflect organizational changes and references to the Plant Manager in Section 6 are revised to Site Vice President/Plant Manager, or designee.

Date of issuance: March 6, 1995

Effective date: March 6, 1995

Amendment Nos.: 192 and 178

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65816) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 17, 1994, as supplemented February 10, 1995

Brief description of amendments: The amendments revise Technical Specification Section 3/4.1.3 to increase the limit for control rod misalignment at or below 85% rated thermal power. The amendments also increase the limit for control rod misalignment above 85% rated thermal power if there is sufficient margin in the heat flux and the nuclear enthalpy hot channel factors.

Date of issuance: March 15, 1995

Effective date: March 15, 1995

Amendment Nos.: 193/179

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10008) The February 10, 1995, letter provided clarifying information which resolved a potential inconsistency between ACTION statement 3.1.3.1.c.2.d and the possibility that a greater misalignment may be allowed below 85% power than that allowed above 85% power. This letter did not change the staff's initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 18, 1994

Brief description of amendment: The amendment changes the title of certain Plant Operation Review Committee members to reflect recent Maine Yankee organizational changes, deletes training requirements that duplicate 10 CFR 50.120; and changes the reporting frequency requirements and submittal schedule for the Radioactive Effluent Release and Estimated Dose and Meteorological Summary Reports to comply to 10 CFR 50.36a(a)(2).

Date of issuance: March 8, 1995

Effective date: March 8, 1995

Amendment No.: 148

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6303) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: July 21, 1994, as supplemented, December 5, 1994, December 14, 1994, January 11, 1995, and February 1, 1995.

Brief description of amendment: The amendment revises Technical Specifications (TSs) 2.1.2 (Fuel Cladding Integrity), 3.1.7 (Fuel Rods), 3.6.2/4.6.2 (Protective Instrumentation), and the associated Bases to allow the use of Range 10 on the IRMs with the Reactor Protection System low pressure trip for main steam line isolation valve closure not in bypass. The amendment also makes associated changes to TSs Setpoints, Bases, References, and Notes for TSs 2.1.2, 3.1.7, and 3.6.2/4.6.2.

Date of issuance: March 3, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 153

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45028) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile PointNuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 21, 1994

Brief description of amendment: The amendment revises Technical Specification 4.8.1.1.2.a.8 by adding a footnote which permits performance of

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the 24-hour functional test of the emergency diesel generators (EDGs) during power operation. Previously, the 24-hour functional test was required to be performed during shutdown. The amendment requires that the other two EDGs be operable during the tests and that the tests be aborted if either of the other two EDGs become inoperable.

Date of issuance: March 7, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 64

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55875) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 13, 1995

Brief description of amendments: The amendments revise Prairie Island Nuclear Generating Plant Technical Specification 4.4.D.1 to change the interval for the performance of the Residual Heat Removal (RHR) System leakage test from once every 12 months to perform the test during each refueling shutdown.

Date of issuance: March 8, 1995

Effective date: March 8, 1995, with full implementation within 30 days.

Amendment Nos.: 115 and 108

Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995, (60 FR 6308) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendment: August 30, 1994

Brief description of amendment: The amendments revise the Technical Specifications (TS) for Prairie Island Nuclear Generating Plant as recommended by Generic Lotter (GL) 93-05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operations." The amendments also revise the testing and calibration requirements associated with the containment hydrogen recombiners.

Date of issuance: March 10, 1995

Effective date: March 10, 1995, with full implementation within 30 days.

Amendment Nos.: 116/109

Facility Operating License No. DPR-42 and DRP-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6305) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 17, 1994 (Reference LAR 94-07)

Brief description of amendments: The amendment relocates Technical Specifications (TS) 3/4.4.2.1, "Safety Valves - Shutdown," 3/4.4.7, "Chemistry," 3/4.4.9.2, "Pressurizer (Temperature Limits)," 3/4.4.10, "Structural Integrity," and 3/4.4.11, "Reactor Vessel Head Vents," in accordance with the Commission's Final Policy Statement for relocation of current TS that do not meet any of the screening criteria for retention. As part of the relocation of TS 3/4.4.2.1, TS 3/4.4.2.2, "Safety Valves - Operating," would be revised to require that the pressurizer safety valves be operable in Mode 4 with the reactor coolant system cold-leg temperature greater than the low-temperature overpressure protection system enable temperature, and TS 6.8, "Procedures and Programs," would be revised to include the reactor coolant pump flywheel inspection program.

Date of issuance: March 9, 1995

Effective date: Ninety days from date of issuance.

Amendment Nos.: Unit 1 - Amendment No. 98; Unit 2 - Amendment No. 97

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 12, 1994 (59 FR 51621) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of application for amendments: April 16, 1993

Brief description of amendments: These amendments revised the Updated Final Safety Analysis Report to reflect the fact that the air-operated outboard isolation valves in the containment penetration for lines supplying control air to equipment in the containment, unlike other isolation valves, do not fail closed on loss of 125 Volt DC power to their control solenoids.

Date of issuance: March 16, 1995

Effective date: March 16, 1995

Amendment Nos. 164 and 145

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the License.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30201) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, AlabamaDate of application for amendments: October 12, 1993 (TS 320)

Brief description of amendment: The proposed amendment would delete reference in the BFN Unit 3 Technical Specifications (TS) to the Reactor Water Cleanup (RWCU) system floor drain high temperature switches and the RWCU system space high temperature switches. The amendment also adds clarifying remarks to Tables 3.2.A and 3.2.B of the TS for each of the BFN units. The remarks list the actuation signals for various primary containment valve group isolations.

Date of issuance: March 15, 1995

Effective date: March 15, 1995

Amendment Nos.: 219, 235, 193

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 5, 1994 (59 FR 630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendments: March 31, 1994

Brief description of amendment: The proposed changes revise the setpoints for instrumentation used to isolate high energy line breaks in the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems. The amendment also defines specific areas where steam line space temperatures are monitored.

Date of issuance: March 16, 1995

Effective date: March 16, 1995

Amendment Nos.: 220 and 194

Facility Operating License Nos. DPR-33 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1994 (59 FR 42347) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 18, 1994 (published in Federal Register as November 11, 1994)

Brief description of amendments: The proposed amendment would modify the technical specifications (TS) by deleting accelerated testing and special reporting requirements for CPSES Units 1 and 2 emergency diesel generators. These changes are based on Generic Letter 94-01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators," dated May 31, 1994.

Date of issuance: March 3, 1995

Effective date: March 3, 1995 to be implemented within 90 days of issuance

Amendment Nos.: Unit 1 - Amendment No. 35; Unit 2 - Amendment No. 21

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 7, 1994 (59 FR 63127) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment August 4, 1994, as supplemented on October 31, 1994

Brief description of amendment: The amendment revises the Technical Specification Tables 3.3-1 and 4.3-1, and Bases pages B 2-8 and B 3/4 4-1. The changes reflect the reanalysis of the boron dilution transient for shutdown modes to address non-conservatisms in the previous event analysis.

Date of issuance: March 7, 1995

Effective date: March 7, 1995, and to be implemented within 30 days.

Amendment No.: 94

Facility Operating License No. NPF-30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49439) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1995. The October 31, 1994, letter provided supplemented information that did not change the initial proposed no significant hazards consideration determination.No Significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 14, 1994

Brief description of amendment: This amendment revises the identification of low reactor pressure instrument trip card from a "slave" trip card designation to a "master" trip card designation.

Date of issuance: March 3, 1995

Effective date: March 3, 1995

Amendment No.: 142

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6315) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: December 22, 1994, as supplemented by letters dated February 1, 1995 and February 21, 1995

Brief description of amendments: These amendments revise Point Beach Nuclear Plant Technical Specification (TS) Section 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray," TS Section 15.3.4, "Steam and Power Conversion System," TS Section 15.3.5, "Instrumentation System," TS Section 15.3.7, "Auxiliary Electrical Systems," TS Section 15.3.14, "Fire Protection System," and TS Section 15.4.1, "Operation Safety Review." The modifications delete obsolete TSs, provide spring 1995 outage-specific TSs as part of the ongoing diesel upgrade project, update several TSs to be consistent with the upgrade project design changes, and change one monthly testing requirement. In addition, the bases for TS Sections 15.3.3 and 15.3.7 are modified to be consistent with the TS changes.

Date of issuance: March 6, 1995

Effective date: March 6, 1995 and to be implemented within 45 days.

Amendment Nos.: 161 and 165

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6316).

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The February 1, 1995, and February 21, 1995, submittals provided additional supplemental information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 28, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 9, 1995

Brief description of amendments: The amendments revise the reference in Technical Specification (TS) 6.9.1.6.b to the analytical method used to determine the heat flux hot channel factor for TS 3.2.2.

Date of issuance: March 14, 1995

Effective date: March 14, 1995, to be implemented prior to the end of the Unit 1 fifth refueling outage.

Amendment Nos.: Unit 1 - Amendment No. 72; Unit 2 - Amendment No. 61

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 14,1995.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

Dated at Rockville, Maryland, this 22nd day of March 1995.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 95-7570 Filed 3-28-95; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 13, 1995 (60 FR 13488). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 1995, and February 28, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30„will also be published.

Schedule A

The following exception was established:

Ounce of Prevention Council

Up to 25 positions established to create the President's Prevention Council Office supporting the Ounce of Prevention Council created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointment may be made under this authority after February 29, 1996. Effective February 13, 1995.

Schedule B

The following exception was established:

National Archives and Records Administration

Executive Director, National Historical Publications and Records Commission. Effective February 16, 1995.

Schedule C

The following exceptions were established:

Agency for International Development

Special Assistant to the Assistant Administrator, Bureau for Europe and New Independent States. Effective February 16, 1995.

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Public Affairs Specialist to the Chief, Public Liaison Office, Bureau for Legislation and Public Affairs. Effective February 24, 1995.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective February 22, 1995.

Department of Agriculture

Special Assistant to the Administrator, Food and Nutrition Service. Effective February 10, 1995.

Staff Assistant to the Secretary of Agriculture. Effective February 22, 1995.

Department of the Army (DOD)

Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management). Effective February 14, 1995.

Staff Assistant to the Assistant Secretary of the Army. Effective February 22, 1995.

Department of Commerce

Confidential Assistant to the Deputy Assistant Secretary for International Economic Development. Effective February 1, 1995.

Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective February 1, 1995.

Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service. Effective February 2, 1995.

Director, Office of Export Promotion Coordination to the Deputy Assistant Secretary for Trade Development. Effective February 3, 1995.

Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective February 2, 1995.

Special Assistant to the Director, Minority Business Development Agency. Effective February 14, 1995.

Confidential Assistant to the Under Secretary for Travel and Tourism. Effective February 21, 1995.

Confidential Assistant to the Director, Office of Public Affairs. Effective February 22, 1995.

Department of Defense

Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy). Effective February 2, 1995.

Defense Fellow to the Assistant Secretary of Defense (International Security Affairs). Effective February 6, 1995.

Personal and Confidential Assistant to the Under Secretary of Defense (Policy). Effective February 22, 1995.

Department of Energy

Special Assistant to the Director, Press Services Division. Effective February 2, 1995.

Department of Housing and Urban Development

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective February 16, 1995.

Special Projects Officer to the Deputy Secretary, Field Management. Effective February 17, 1995.

Deputy Assistant Secretary for Empowerment Zones to the Assistant Secretary for Community Planning and Development. Effective February 24, 1995.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective February 28, 1995

Department of the Interior

Special Assistant to the Director, National Biological Service. Effective February 1, 1995.

Staff Assistant to the Special Assistant to the Director, National Park Service. Effective February 3, 1995.

Special Assistant to the Director, National Parks Service. Effective February 7, 1995.

Special Assistant (White House Liaison) to the Deputy Chief of Staff. Effective February 7, 1995.

Director, Office of Regulatory Affairs to the Associate Deputy Chief of Staff. Effective February 8, 1995.

Department of Justice

Assistant to the Associate Attorney General. Effective February 15, 1995.

Department of Labor

Deputy Assistant Secretary to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration. Effective February 2, 1995.

Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 3, 1995.

Special Assistant to the Deputy Secretary. Effective February 14, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 17, 1995.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 28, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 28, 1995.

Department of State

Secretary to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective February 7, 1995.

Special Assistant to the U.S. Permanent Representative to the United Nations. Effective February 7, 1995.

Protocol Officer to the Chief of Protocol. Effective February 7, 1995.

Protocol Assistant to the Deputy Chief of Protocol. Effective February 7, 1995.

Special Advisor to the Director, Policy Planning Staff. Effective February 27, 1995.

Special Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective February 27, 1995.

Department of Transportation

Scheduling Assistant to the Special Assistant for Scheduling and Advance. Effective February 24, 1995.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Commissioner. Effective February 28, 1995.

Interstate Commerce Commission

Confidential Assistant to the Chairman. Effective February 3, 1995.

Executive Assistant to the Commissioner. Effective February 28, 1995.

Office of Management and Budget

Confidential Assistant to the Associate Director for Legislative Affairs. Effective February 2, 1995.

Legislative Assistant to the Associate Director for Legislative Affairs. Effective February 7, 1995.

Special Assistant for Policy and Legislation to the Associate Director for Legislative Affairs. Effective February 7, 1995.

President's Commission on White House Fellowships

Special Assistant to the Director, President's Commission on White House Fellowships. Effective February 22, 1995.

Small Business Administration

Consumer Affairs Officer to the Associate Administrator, Communications and Public Liaison. Effective February 3, 1995.

Special Assistant to the Consumer Affairs Officer. Effective February 3, 1995.

Assistant to the Administrator, Small Business Administration. Effective February 6, 1995.

United States Information Agency

Special Assistant to the Associate Director for Programs, Bureau of Information. Effective February 28, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958, Comp., p. 218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–7635 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

PENSION BENEFIT GUARANTY CORPORATION

Disaster Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of disaster relief in response to California floods.

SUMMARY: The Pension Benefit Guaranty Corporation is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review and standard and distress termination regulations. This relief is generally available to persons residing in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the severe floods in California.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Five areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, (4) deadlines for filing a distress termination notice and, in the case of a plan that is sufficient for guaranteed benefits, issuing notices of benefit distribution and completing the distribution of plan assets, and (5) deadlines for filing requests for reconsideration or appeals of certain agency determinations.

On March 12, 1995, the President of the United States declared, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the severe floods in California. At this time, fifty California counties are designated areas (within the meaning of Federal Emergency Management Agency ("FEMA") regulations; 44 CFR 205.2(a)(5)).

Given the severity of this major disaster, as the Acting Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, and standard termination deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business, or for which the office of a service provider, bank, insurance company, or other person maintaining information necessary to meet the applicable deadlines, is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area.

The PBGC had issued an earlier notice of disaster relief in response to the severe flooding in California (60 FR 7596, February 8, 1995). Filers who fell within the scope of that notice were afforded relief in various areas, provided that they took certain actions by March 2, 1995. The PBGC is extending the March 2, 1995, deadline to April 30, 1995, in the case of filers to whom today's notice is applicable under the rules stated in the immediately preceding paragraph..

Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after February 13, 1995, and before April 30, 1995, if the payment is made by April 30, 1995. The PBGC is not permitted by law to waive late payment interest charges. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

Section 4071 Penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices that were, or will be, required to be filed with the PBGC on or after February 13, 1995, and before April 30, 1995, if the notice is filed by April 30, 1995:

(1) Post-distribution certification for single-employer plan (PBGC Form 501 or 602; ERISA section 4041(b)(3)(B) or (c)(3)(B); 29 CFR 2617.28(h) or 2616.29(b)),

(2) Notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2),

(3) Notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)), and

(4) Reportable event notice, except for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or transactions involving a change in contributing sponsor or controlled group (29 CFR 2615.21, 2615.22, and 2615.23), or reportable events described in amended ERISA section 4043(c) (9)–(12). (Subsection (b) of section 4043 as it presently appears in 29 U.S.C. 1343 was redesignated as subsection (c) and amended, in part, with the addition of new reportable events in paragraphs (9) through (12) by the Retirement Protection Act of 1994, Subtitle F, Title VII, Uruguay Round Agreements Act, Sec. 771(c)(3), Public Law 103–465, 108 Stat. 5042 (1994) (the ("RPA amendments").)

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed:

(1) Notice of failure to make required contributions totaling more than $1 million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.31). The timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late.

(2) Notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. The timely filed notice must include at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable.

(3) Notice of a reportable event described in the RPA amendments for

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which notice is required no later than 30 days after the event occurs.

(A) If the event is reportable under both the RPA amendments and 29 CFR 2615, the notice will be considered timely filed if the notice satisfies the requirements described in paragraph (2) above.

(B) If the event is reportable only under the RPA amendments, the notice will be considered timely filed if the notice includes at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9).

(4) Notice of a reportable event described in the RPA amendments for which notice is required at least 30 days before the event occurs The notice will be considered timely filed if the filer makes a good faith effort to include with the notice at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable, may be filed late and should be filed as soon thereafter as it is available.

This relief applies to notices that were, or will be, required to be filed with the PBGC on or after February 13, 1995, and before April 30, 1995, provided that all supporting information and documentation are filed by April 30, 1995.

Standard and Distress Termination Notices and Distribution of Assets

With respect to a standard termination for which the standard termination notice is required to be filed, or the distribution of plan assets is required to be completed, on or after February 13, 1995, the PBGC is (pursuant to 29 CFR 2617.25(a)(2) and 2617.28(f)(4)) extending to April 30, 1995, the time within which the standard termination notice must be filed (and, thus, the time within which notices of plan benefits must be provided) and the time within which the distribution of plan assets must be completed. With respect to a distress termination for which the distress termination notice is required to be filed or, in the case of a plan that is sufficient for guaranteed benefits, other actions must be taken on or after February 13, 1995, the PBGC is (pursuant to 29 CFR 2616.10(a) and 2616.24(d)) extending to April 30, 1995, the time within which the termination notice must be filed and, in the case of a plan that is sufficient for guaranteed benefits, notices of benefit distribution must be provided and plan assets must be distributed. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification.

Requests for Reconsideration or Appeals

For persons who are aggrieved by certain agency determinations and for whom a request for reconsideration or an appeal is required to be filed on or after February 13, 1995, and before April 30, 1995, the PBGC is (pursuant to 29 CFR § 2606.4(b)) extending the time for filing to April 30, 1995.

Applying for Waivers/Extensions

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print "CALIFORNIA FLOOD RELIEF (MARCH 1995), County of (fill in appropriate county name and state)" at the top center.

Issued in Washington, DC, this 22nd day of March 1995.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–7703 Filed 3–28–95; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35529; File No. SR–BSE–95–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Permanent Approval of BEACON Subscriber Credits

March 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the February 13, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 13, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[1] and on March 23, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks permanent approval of its fee schedule regarding BEACON subscriber credits.[3] The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

TRANSACTION FEES

Trade Recording and Comparison Charges

Trade up to and including 2,000 shares	No charge.
All trades accumulate for volume discounts	No charge.
*Trades above 2,000 shares	
First 2,500 trades per month	$.29 per 100 shares.
Next 2,500 trades per month	.25 per 100 shares.
Next 2,500 trades per month	.15 per 100 shares.
Over 7,500 trades per month	.05 per 100 shares.
Maximum charge per side (non-cross)	50.00.

[1] See letter from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 9, 1995. Amendment No. 1 corrects Exhibit the fee being amended and deleting unnecessary language.

[2] See letter from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 22, 1995. Amendment No. 2 corrects Exhibit volume discounts" below the schedule of volume discounts.

[3] This credit was approved initially by the Commission for a period of one hundred and twenty days, which ended on January 30, 1995. See Securities Exchange Act Release No. 34868 (Oct. 20.

TRANSACTION FEES—Continued

Trade Recording and Comparison Charges

Maximum charge per side (cross)	25.00.
All trades accumulate for volume discounts [4].	
*BEACON subscriber Credits	.25 per trade.
All non-self-directed, electronically routed trades (credit is limited to total monthly layoff transaction fees)	

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to seek permanent approval of the portion of the Exchange's fee schedule that relates to the $.25 per trade credit on all non-self-directed, electronically routed, Exchange executed, trades of any size. For purposes of the per trade credit, "non-self-directed" shall mean entered by a BEACON subscriber in a stock in which the routing firm has no affiliation with or financial interest in the specialist operation registered in such stock. The aggregate credit per firm shall be limited to the total monthly layoff transaction fees charged to that firm.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–95–04 and should be submitted by April 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7705 Filed 3–28–95; 8:45 am]

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[4] Regardless of the size of a particular trade, all trades accumulate for volume discounts for trades over 2,000 shares. For example, if 2,501 trades were conducted with the first 2,500 trades at 100 shares per trade and the last trade at 2,001 shares, the first 2,500 trades would be assessed no fee and the 2,501 trade at 2,001 shares would be charged $.25 per 100 shares. Telephone conversation with Karen Aluise, BSE and Jennifer S. Choi, SEC, on March 14, 1995

[5] The layoff transaction fees refer to the trade recording and comparison charges incurred by a firm as a result of executing layoff trades The term "layoff" refers to any trade wherein a specialist is eliminating (or decreasing) a position in a security in which he makes a market. Telephone conversation with Karen Aluise, BSE, and Jennifer S. Choi, SEC, on March 14, 1995.

[Release No. 34–35531; File No. SR–CHX–95–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Technical Amendments to the Exchange's MAX Rules

March 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 37(b) of Article XX, relating to the Exchange's Midwest Automated Execution System ("MAX"). The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

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Article XX

Rule 37

(b) The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule (and) is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1) Size. The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. The first parameter, the auto-execution threshold, must be set at 1099 shares (the default size) or greater. The second parameter, the auto-acceptance threshold, must be set at 2099 shares (the *system* default [size]) or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order sending firm sends an order through MAX that is greater than the Specialist's auto-acceptance threshold, a Specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the Specialist, the order will be designated as an open order. If the order sending firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order will not be available for automatic execution but will be designated in the open order book. A specialist may manually execute any portion of such order and the difference shall remain as an open order. If the order sending firm sends an order through MAX that is less than or equal to the auto-execution threshold, such order will be automatically executed.

* * * * *

(7) Pricing *For Automatic Execution.* All agency market orders *and all limit orders that are marketable when entered into the MAX System, that are of a size less than or equal to the auto-execution threshold and are* eligible for execution under the BEST Rule will *automatically* be filled at the best bid (for a sell order) or offer (for a buy order) disseminated pursuant to SEC Rule 11Ac1–1 or better. [All agency limit orders will be filled at the limit price (i) when the stock is bid or offered at the limit price with sufficient size, as the case may be, in the primary market, and (ii)] *All other agency limit orders will automatically be filled at the limit price* when there is a price penetration of the limit price in the primary market. However, if the price differential between the trade-through price and the last sale is more than ¼ point of 1% of the value of the trade-through price, which ever is less, a second print at a trade-through price which is less than ¼ point (or 1%) away from the previous trade-through price is necessary before the MAX System will automatically execute the agency limit order. For purposes of this Rule, "agency order" shall mean an order for the account for a customer but shall not include professional orders as defined in Article XXX, Rule 2, interpretation and policy .04.

* * * * *

(10) All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Subject to Interpretations and Policies .03 under paragraph (a) under this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials.

[(10)] *(11)* Notwithstanding anything in this Rule to the contrary, no market order *or limit order that is marketable when entered into the MAX System* [entered in MAX] will be [required to be] automatically executed if the size associated with the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1 is of a size less than *such* [the] market order *or limit order* [entered in MAX].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the Securities Exchange Act Release No. 35010 (Nov. 28, 1994), 59 FR 62767 (Dec. 6, 1994), the Exchange codified the operation of the CHX's MAX System into CHX Article XX, Rule 37(b). However, the codification contained several inadvertent errors and omissions. The purpose of the proposed change is to make technical changes to Rule 37(b) to correct those inadvertent errors and omissions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange [1] and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent

[1] The rules regarding the operation of the CHX's MAX System were in existence before exchanges were required to file their rules with the Commission. Telephone conversation with David Rusoff, Foley & Lardner, and Glen Barrentine, Senior Counsel, SEC, on March 20, 1995.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–07 and should be submitted by April 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7706 Filed 3–28–95; 8:45 am]

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[Release No. 34–35525; File No. SR–NASD–95–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

March 23, 1995.

On February 1, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 32(c) of the Code of Arbitration Procedure "(Code") [3] to require the parties to exchange documents at least 20 days before a hearing, instead of 10 days before a hearing as currently required.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35370, February 14, 1995) and by publication in the **Federal Register** (60 FR 9708, February 21, 1995). No comment letters were received. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 32(c) (CCH) ¶3732.

Section 32(c) currently requires all parties to serve on each other's copies of documents in their possession they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than 10 calender days prior to the first scheduled hearing date. Parties often request additional discovery as a result of information obtained through the exchange of documents. These requests can create a significant burden on the NASD's Arbitration Department, which currently must respond in a short period of time to numerous requests for additional discovery that arise from the exchange of documents intended to be used by the parties at the hearing. These request also can create a significant burden on the arbitrators and the parties. Therefore, the NASD has amended Section 32(c) of the Code to require the parties to exchange documents at least 20 days before a hearing, instead of 10 days before a hearing as currently required.[4] The rule change is intended to reduce the burden to the NASD's Arbitation Department, arbitrators and the parties in responding to last minute discovery requests by requiring parties to exchange documents earlier in the arbitration process.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [5] because the rule change will protect investors and the public interest by requiring parties to exchange documents earlier in the arbitration process. This, in turn, will facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and by reducing the burdens on the forum staff, arbitrators and the parties in dealing with such requests.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–05 be, and hereby is, approved.

For the Commission, by the Division of market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7707 Filed 3–28–95; 8:45 am]

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[4] The Securities Industry Conference on Arbitration approved this proposal as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

[5] 15 U.S.C. 78o–3.

[Release No. 34–35528; File No. SR–Phlx–94–77]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to the Imposition of an Approved Lessor's Initiation Fee and a Requirement that Approved Lessors Pledge to Abide by the By-Laws and Rules

March 23, 1995.

I. Introduction

On January 11, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its By-Laws, Article XII, Section 12–8 by adding a new paragraph (e), which would impose an initiation fee of $1,500.00 on an approved lessor and a requirement that approved lessors pledge to abide by the Phlx By-Laws and Rules. On January 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] Amendment No. 1 proposed to alter the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35302 (Jan. 31, 1995), 60 FR 7254 (Feb. 7, 1995). No comments were received on the proposal. On March 20, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4] This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of the Proposals

At the present time, the Exchange's By-Laws impose an initiation fee of $1,500.00 on a member upon election and on a non-member foreign currency options participant [5] upon the purchase

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] See letter from Murray L. Ross, Secretary, Phlx, to Sharon Lawson, Assistant Director, SEC, dated January 25, 1995.

[4] See letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated March 16, 1995.

[5] The term "foreign currency options participant" includes a member of the Exchange who has purchased a foreign currency options participation and a non-member who has been admitted to the

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of a foreign currency options participation.[6] The By-Laws, however, only impose a fee on an approved lessor[7] when a lessor makes an application to lease a membership.[8] The Exchange's By-Laws also currently require persons elected to membership and non-members admitted as foreign currency options participants to pledge in writing to abide by the Phlx By-Laws and Rules.[9]

The Exchange proposes to amend the By-Laws, Article XII, Section 12–8 by adding a new paragraph (e), which would impose an initiation fee of $1,500.00 on approved lessors and By-Laws, Article XII, Section 12–9 by adding a new paragraph (b), which would require that approved lessors pledge to abide by the By-Laws and Rules of the Exchange. The Exchange also is amending the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The proposed rule change requires that an approved lessor pay the initiation fee upon registration.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the requirements of Section 6(b)(4), which requires the rules of an exchange to provide for equitable allocation of fees and charges, and Section 6(b)(5), which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Under new Section 12–8(e), Article XII of the By-Laws, an approved lessor must pay an initiation fee of $1,500.00 upon registration. Members who lease their membership to a lessee are not required by the Exchange to register as approved lessors, and, therefore, will not be subject to an additional fee. The Commission believes that the fee amendments to the By-Laws and Schedule of Fees and Charges equitably allocate reasonable fees among the users of its facilities by assessing the same fee on purchasers of equitable title to Phlx membership and non-member foreign currency options participations.

New Section 12–9(b), Article XII of the By-Laws, also requires an approved lessor to pledge to abide by the By-Laws and Rules of the Exchange. The Commission believes that such a requirement furthers the interest of investors and the public in that it serves to impress upon approved lessors their obligations to comply with the By-Laws and Rules of the Exchange.

Moreover, the Commission finds good cause for approving Amendment No. 2 to the rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[11] Amendment No. 2 does not affect the substance of the original proposal but merely would place the requirement that approved lessors pledge to abide by the By-Laws and Rules in Article XII, Section 12–9 of the By-Laws (Acceptance of By-Laws) rather than in Article XII, Section 12–8 (Admission and Transfer Fees) as originally proposed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–94–77 and should be submitted by April 19, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–94–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7708 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

Exchange as a foreign currency options participant See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(i), (CCH) ¶ 1001.

[6] The initiation fee imposed on members upon election also applies to non-member foreign currency options participants. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(m), (CCH) ¶ 1001.

[7] The term "approved lessor" means a lessor approved by the Exchange under its By-Laws and Rules. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(h), (CCH) ¶ 1001. A "lessor" is a holder of equitable title to a membership in the Exchange including a former member of the Exchange, who has leased legal title to his membership to a lessee. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(f), (CCH) ¶ 1001.

[8] See Philadelphia Stock Exchange Guide, By-Laws, Article XII, Section 12–8(c), (CCH) ¶ 1001.

[9] See Philadelphia Stock Exchange Guide, By-Laws, Article XII, Section 12–9, (CCH) ¶ 1284.

[10] 15 U.S.C. 78f(b) (1988).

[11] Securities Exchange Act Release No. 35302 (Jan. 31, 1995), 60 FR 7254 (Feb. 7, 1995).

[12] 15 U.S.C. 78s(b)(2)-(1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. IC–20963; International Series Release No. 796; 812–9380]

The Bank of New York, et al.; Notice of Application

March 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 ("Act").

APPLICANT: The Bank of New York ("BNY").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 17(f).

SUMMARY OF APPLICATION: Applicant requests an order that would permit Bank of New York-Argentina to act as custodian or subcustodian for investment company assets in Argentina under two alternative forms of foreign custody arrangements.

FILING DATES: The application was filed on December 20, 1994 and amended on March 7, 1995 and March 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 17, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One Wall Street, New York, New York 10286.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942–0570 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION. The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. BNY is incorporated and doing business under the laws of the State of New York, and is regulated as a bank by the Superintendent of Banks of that State. BNY is a subsidiary of The Bank of New York Company Inc., which is one of the leading financial services providers in the United States. BNY maintains a network of custody and subcustody service providers for United States investment companies ("U.S. Investment Companies") and their custodians at various locations throughout the world.

2. BNY-Argentina, a wholly-owned subsidiary of BNY, is authorized to engage in the business of commerical banking in Argentina. BNY-Argentina offers customers a wide range of retail and wholesale banking services, including custody services to support Argentine and foreign investors.

3. BNY requests relief to permit BNY-Argentina to provide custody services in accordance with the following arrangements: (i) BNY, as custodian or subcustodian for a U.S. Investment Company, will deposit, or cause or permit the U.S. Investment Company to deposit, its assets with BNY-Argentina as delegate for BNY, or (ii) BNY-Argentina, as custodian or subcustodian, will receive and hold the assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian. Under either arrangement BNY will assume liability for losses caused by BNY-Argentina and there will be no difference in the scope of BNY's liability under either arrangement.

4. BNY is proposing these alternative arrangements to make the services of BNY-Argentina available to U.S. Investment Companies (or their custodians) whether or not those customers use the services of BNY as global custodian. If a U.S. Investment Company does not wish to use the global custody services of BNY, it may use the services of BNY-Argentina directly without incurring the operational constraints, inconvenience, and cost of interposing an additional point of contact in the custody chain.

Applicant's Legal Analysis

1. Section 17(f) of the Act provides that a registered management investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. BNY-Argentina does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 permits certain entities located outside the United States to serve as custodian for investment company assets. One such entity is a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000. The rule defines the term "Qualified U.S. Bank" to include a banking institution organized under the laws of the United States that has an aggregate capital, surplus, and undivided profit of not less than $500,000. BNY is a Qualified U.S. Bank as defined in the rule. BNY-Argentina, however, does not qualify as an eligible foreign custodian because it does not meet the minimum shareholders' equity requirement.

3. Applicant requests an order under section 6(c) of the Act that would exempt it from section 17(f) to the extent necessary for BNY-Argentina to maintain custody of assets of U.S. Investment Companies. Applicant believes that the exemption is necessary or appropriate in the Public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

If the requested order is granted, applicant agrees to the following conditions:

1. The foreign custody arrangements proposed regarding BNY-Argentina will satisfy the requirements of rule 17f–5 in all respects other than BNY-Argentina's level of shareholders' equity.

2. BNY, any U.S. Investment Company, and any custodian for a U.S Investment Company, will deposit assets with BNY-Argentina only in accordance with one of the two contractual arrangements described below, which arrangement will remain in effect at all times during which BNY-Argentina fails to satisfy the requirements of rule 17f–5.

a. *The Custody Agreement/ Subcustody Agreement Arrangement.* Where BNY acts as custodian or subcustodian for a U.S. Investment Company, it will deposit assets with BNY-Argentina only in accordance with the Custody Agreement and Subcustody Agreement described below.

i. The Custody Agreement will be between BNY and the U.S. Investment Company (or its custodian). In that agreement, BNY will undertake to provide specified custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize BNY to delegate to BNY-Argentina such of BNY's duties and obligations as will be necessary to permit BNY-Argentina to hold in custody the assets of U.S. Investment Companies. The Custody Agreement will further provide that BNY will be liable for any loss, damage, cost, expense, liability, or claim due to such delegation, except such loss as may result from (a) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency of BNY-Argentina) for which neither BNY nor BNY-Argentina would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, acts of God, nuclear incidents, and the like).

ii. A Subcustody Agreement will be executed by BNY and BNY-Argentina. Pursuant to this agreement, BNY will delegate to BNY-Argentina such of BNY's duties and obligations as will be necessary to permit BNY-Argentina to hold assets in custody in Argentina. The Subcustody Agreement will explicitly provide that (i) BNY-Argentina is acting as a foreign custodian for assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC and (ii) the U.S.

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Investment Company or its custodian (as the case may be) that has entered into a Custody Agreement will be entitled to enforce the terms of the subcustody Agreement and can seek relief directly against BNY-Argentina. Further, the Subcustody Agreement will be governed either by New York law or by Argentina law. If it is governed by Argentine law, BNY shall obtain an opinion of Argentina Counsel opining as to the enforceability of the rights of a third party beneficiary under the laws of Argentina.

b. *The Three-Party Agreement Arrangement.* Where BNY-Argentina acts directly as custodian or subcustodian for a U.S. Investment Company, BNY-Argentina will receive assets only in accordance with a three-party agreement (the "Three-Party Agreement") among (i) BNY-Argentina, (ii) BNY, and (iii) the U.S. Investment Company or any custodian for a U.S. Investment Company, pursuant to which BNY-Argentina will undertake to provide specified custody or subcustody services. The Three-party Agreement will provide that BNY will be liable for any loss, damage, cost, expense, liability, or claim due to such delegation, except such loss as may result from (a) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency of BNY-Argentina) for which neither BNY nor BNY-Argentina would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, acts of God, nuclear incidents, and the like).

3. BNY currently satisfies and will continue to satisfy the Qualified U.S. Bank requirement set forth in rule 17f–5(c)(3).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7651 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–8502]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Comptek Research, Inc., Common Stock, $0.02 Par Value)

March 23, 1995.

Comptek Research, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") form listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security was originally registered on the BSE in july 1983. In July 1987, the Company registered the Security on the American Stock Exchange, Inc. ("Amex"). Substantially, all of the trading activities in the Security occurs on the Amex. In 1994, for example, the total volume of Security traded in all markets was 2,370,200. Trades on the Amex constituted 2,257,400 or 95% of the total volume.

The Company anticipates that delisting from the BSE will result in a savings of annual fees paid to the BSE, as well as administrative costs. The Company submits that listing on the Amex, the primary market for trading activities in the Security is currently sufficient, and continued listing on the BSE serves no substantial benefit to shareholders.

Any interested person may, on or before April 13, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–7652 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Pet Incorporated, 5¾% Notes due 1998 and 6½% Notes due 2003) File No. 1–10672

March 23, 1995.

Pet Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The Company is a majority owned subsidiary of The Pillsbury company, a Delaware corporation, and an indirect majority owned subsidiary of Grand Metropolitan Public Limited Company, a company organized under the laws of England ("GrandMet"). On February 9, 1995, TPC America Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of The Pillsbury Company ("TPC"), acquired approximately 94% of the issued and outstanding shares of the Company's Common Stock pursuant to a tender offer for all of the outstanding shares. The Tender Offer was pursuant to the Agreement and Plan of Merger among the Company, Pillsbury, TPC and, solely with respect to specified portions of the Merger Agreement, GrandMet. TPC will be merged with and into the Company pursuant to The Merger Agreement.[1] The Merger is expected to be consummated on May 12, 1995.

Pursuant to the approval of GrandMet's Executive Committee granted on March 7, 1995, GrandMet intends to guarantee the payment of principal and interest on the outstanding Securities. In addition, GrandMet will annually provide the holders of the Securities with copies of GrandMet's annual audited consolidated financial information.

The reasons alleged in the application for withdrawing the Security from listing and registration includes the following:

According to the Company, the Securities should be withdrawn on the NYSE because:

(1) The Securities are held by a small number of holders. As of January 13, 1995, there were 9 registered holders of the 5¾% Notes Due 1998 and 16 registered holders of the 6½% Notes Due 2003;

(2) No trading in the Securities has been reported on the NYSE since the issuance in July of 1993;

(3) Upon the withdrawal of the Securities and the Common Stock from listing on the NYSE and the deregistration of the Securities and the Common Stock, the Company will no longer be subject to the reporting requirements of the Exchange Act. As a consequence, the Company will not be required to incur the costs of preparing separate annual and periodic reports. The Company notes that it is not obligated under any document to maintain the listing or registration of the Securities on the NYSE or any other national securities exchange; and

(4) According to the Company, GrandMet intends to guarantee the payment of principal and interest on the outstanding Securities and will annually provide the holders of outstanding Securities with copies of GrandMet's annual audited consolidated financial information. We note that the credit rating of GrandMet debt is currently higher than the Company's and that, based on current ratings, the Guarantee will effectively improve the rating of the Securities.

Any interested person may, on or before April 13, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date of mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–7653 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The Company intends to request the NYSE to file an application to strike the Common Stock from listing and registration on the NYSE effective as of the consummation of the Merger

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting, which will be held in two sessions, is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting in two sessions on April 11 and 12, 1995, in Washington, D.C.:

1. Tuesday, April 11—Session I, Planning.

2. Wednesday, April 12—Session II, General.

ADDRESSES: The sessions of the meeting will be held at the following location:

1. April 11—Session I, Planning—Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room 6221, 8:30 a.m. to noon.

2. April 12—Session II, General—Federal Deposit Insurance Corporation, 750 17th Street, N.W., Board Room 6010, 8:30 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The Board's charter was issued March 9, 1994.

Agendas

An agenda will be available at each session of the meeting. At the April 11 planning session, the Board will review the status of five issues: the merger of the RTC and FDIC affordable housing programs, financing strategies and resources, selection of affordable housing assets, expansion of the Housing Opportunity Hotline and participation of community and nonprofit organizations in the affordable housing programs. In addition, the Board will discuss the Congressional rescission of FY'95 appropriations for affordable housing, and there will be a presentation on the RTC Technical Assistance Advisor Program. Members of the public who attend the planning session will be asked to reserve questions or comments until the second session of the meeting on the following day. At the April 12 general session, there will be presentations on the disposition of real estate property with no value, FDIC's oversight of open bank fair lending and FDIC's Massachusetts Foreclosure Avoidance Pilot program. In addition, the Board will receive reports on the unification of the RTC and FDIC affordable housing programs and FDIC 1995 and 1996 housing appropriations. The Board's chair or its Designated Federal Officer may authorize a member or members of the public to address the Board during the public forum portion of the second session. After all reports are given and comments are received from member of the public in attendance, the Board will develop its own recommendations.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the April 11 and 12 meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: March 23, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–7628 Filed 3–28–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF VETERANS AFFAIRS

[VA Form 4–5579]

Information Collection Under OMB Review: Collection of Government Funds Via Credit Card

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue,

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NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 28, 1995.

Dated: March 20, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension

1. Collection of Government Funds Via Credit Card, VA Form 4–5579.
2. Use of this form will allow credit cards to be used to collect funds due the Government. The information collected is needed to properly record collection of the payment and to assess liability to the debtor's credit card account.
3. Individuals or households.
4. 166 hours.
5. 1 minute.
6. On occasion.
7. 10,000 respondents.

[FR Doc. 95–7638 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–P

Information Collections Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before April 28, 1995.

Dated: March 20, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Application for Ordinary Life Insurance (Age 65), VA Form 29–8485, and Information About Modified Life Insurance Reduction and Replacement Features (Age 65), VA Form 29–8700.
2. These forms are used by the policyholder to apply for replacement insurance for modified life reduced at age 65. The information is used by VA to determine eligibility for the insurance.
3. Individuals or households.
4. 642 hours.
5. 5 minutes.
6. On occasion.
7. 7,700 respondents.

Reinstatement

1. Loan and Cash Surrender Values, VA Form 29–5772.
2. The form is used by the insured to request a loan or cash surrender value on his/her insurance. The information is used by VA to initiate the processing of the insured's request for a policy loan or cash surrender.
3. Individuals or households.
4. 5,250 hours.
5. 10 minutes.
6. On occasion.
7. 31,500 respondents.

Reinstatement

1. Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran (NSLI), VA Form Letter 29–596.
2. This form letter is used by the administrator, executor, or next of kin of a deceased veteran to support a claim for money in the form of unearned or unapplied insurance premiums due the veteran's estate. The information is used by VA to establish entitlement to the refundable credit.
3. Individuals or households.
4. 78 hours.
5. 15 minutes.
6. On occasion.
7. 312 respondents.

Reinstatement

1. HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a, and Uniform Residential Loan Application, Freddie Mac 65/ Fannie Mae Form 1003.
2. The form serves as a joint loan application for VA and the Department of Housing and Urban Development (HUD) insured loans. The form is used by lenders and veterans to apply for VA-guaranty of home loans. The information is used by VA to determine compliance with eligibility requirements.
3. Individuals or households—Business or other for-profit.
4. 28,800 hours.
5. 6 minutes.
6. On occasion.
7. 288,000 respondents.

Extension

1. Loan Service Report, VA Form 26–6808.
2. The use of this form will allow VA to service delinquent guaranteed and insured home loans, loan sold, and portfolio loans to determine whether relief measures can be extended to assist the obligor in retaining the property.
3. Individuals or households.
4. 27,083 hours.
5. 25 minutes.
6. On occasion.
7. 65,000 respondents.

Extension

1. Request for Identifying Information Re: Veteran's Loan Records, VA Form Letter 26–626.
2. This form letter is used to notify a correspondent that additional information is needed in order to identify and associate their previous correspondence with the correct veteran's loan application or records.
3. Individuals or households.
4. 200 hours.
5. 5 minutes.
6. On occasion.
7. 2,400 respondents.

Extension

1. Request for Organizational Data from Builder, VA Form Letter 26–312.
2. The form letter is completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. The information is used to determine eligibility for participation in the Loan Guaranty Program.
3. Business or other for-profit.
4. 4,000 hours.
5. 30 minutes.
6. On occasion.
7. 8,000 respondents.

[FR Doc. 95–7637 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Cemeteries and Memorials, Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials for Fiscal Year 1994 has been issued. The Report summarizes activities of the Committee on matters relative to programs, policies and accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Department of Veterans Affairs, National Cemetery System, 810 Vermont Ave., NW., Washington, DC 20420

Dated: March 16, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–7636 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Friday, May 5, 1995, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting will be held in Room 230 and commence at 8:30 a.m. and adjourn at 4 p.m.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 535–7293, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to April 28, 1995.

Dated: March 13, 1995.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–7639 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974: New System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. "Privacy Act of 1974; New System of Records; Workers' Compensation/Occupational Safety and Health Management Information System—VA (86VA058)".

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 et seq.) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. Pursuant to 5 U.S.C. 8145 the Secretary, Department of Labor (DOL) is responsible for administering the provisions of the FECA. This responsibility was delegated effective September 27, 1974, to the Director, Office of Workers' Compensation Programs (OWCP) except as FECA pertains to the Employees Compensation Appeals Board (5 U.S.C. 8149). DOL published Federal Regulations in 20 CFR, part 10 Employees' Benefits Claims for Compensation Under the FECA, as amended, defining responsibilities for each employing agency to case manage each of their claims and return claimants to duty as soon as possible. Pursuant to 5 U.S.C. 8147, each employing agency is responsible for refunding all compensation benefit costs for their claimants, incurred by OWCP, to DOL.

VA will use this system of records to carry out its statutory duty to case manage each of its claims. Employees with OWCP case management and safety responsibilities will be able to view and download all information pertaining to claimants under each employing facility's management control. The information in this system of records will provide OWCP case managers with the most current information available on job-injured/disease claims. The Inspector General's audit of VA's OWCP program in 1993, concluded that employing facilities were not effectively managing the program. The information in this data base was developed to provide field facilities with assistance for more aggressive case management. The system will also be used to produce statistical management reports and monitor the case management performance of each VA employing facility. Additionally, the Workers' Compensation/Occupational Safety and Health Management Information System—VA (WC/OSH MIS) data base will be used by VA's Office of Occupational Safety and Health to manage the VA Safety Program. Statistical reports will identify the source and type of injuries occurring at each facility. The reports will allow Safety officials to focus on the correction and prevention of additional injuries/diseases. Accident prevention lowers the OWCP costs through cost avoidance.

The information maintained in this system of records in hard copy and magnetic media storage devices will include the claimant's name, address, social security number, date of birth, grade, salary, telephone number, OWCP's case adjudication status (approved or denied, waiting adjudication, file sent to Hearings and Review for decision), accepted medical condition(s), compensation paid (amount and time period covered), medical bills paid (name of physician, hospital or health facility, type of treatment, date of treatment, amount paid, amount paid for medical equipment, and rehabilitation expenses), continuation of pay (COP) authorized or denied, dates COP is paid, number of days of COP, and total amount of all expenses paid.

Access to the Workers' Compensation/Office of Safety and Health Management Information System is restricted to Human Resources Management and Safety Officials. Paper records are maintained in a secured area with limited access. Access to data by means of on-line (query) or down-loading with a personal computer is restricted to authorized employees by means of unique user identification and passwords. User identifications will be issued by the Chief, Human Resources Management at each employing facility. The Chief, Human Resources Management will issue user identifications to the safety official and OWCP officials at their respective facilities.

VA will have six routine uses for records maintained in this system.

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First, disclosure may be made to any third-party or representative acting on claimant's behalf until the claim is adjudicated, all appeal rights are resolved, and the case file is closed.

Second, in the event that records in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Third, disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Fourth, disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Fifth, disclosure may be made to any source from which additional information is needed in order to properly make case management decisions.

Sixth, disclosure of statistical data may be made to other VA facilities and Federal agencies.

A "Report to Public a **Federal Register** Notice of a New System of Records" and an advance copy of the new system notice have been provided to the Chairpersons of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), as required by the Privacy Act, 5 U.S.C. 522(r), and guidelines issued by OMB (59 FR 37916), July 25, 1994. (The Law and the guidelines specifically provide for submitting the report to the House Committee on Government Operations; However, the House has renamed the Committee as the Committee on Government Reform and Oversight.)

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974 for investigatory, judicial, and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed system of records to the Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before April 28, 1995, will be considered. All written comments received will be available for public inspection in Room 119 at the above address only between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 8, 1995.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine use statements included herein are effective April 28, 1995.

Approved: March 10, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

55VA058

SYSTEM NAME:

Workers' Compensation/Occupational Safety and Health Management Information System—VA (WC/OSH–MIS).

SYSTEM LOCATION:

Department of Veterans Affairs (VA) Austin Automation Center, Austin, Texas, and information in the data base can be viewed and down-loaded by employees with workers' compensation case management and safety responsibilities at VA employing facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All VA and former VA employees who have incurred a job-related injury/disease and have an active claim file with the Office of Workers' Compensation Programs (OWCP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include the OWCP quarterly injury/disease chargeback reports, weekly Case Management File (CMF) reports, weekly Automated Compensation Payment System (ACPS) reports, weekly Bill Payment System (BPS) reports, data on VA's continuation of pay (COP) costs, and some elements from the Personnel and Accounting Integrated Data System—VA. The computer data base records will include the claimant's name, address, social security number, date of birth, grade, salary, telephone number, OWCP's case adjudication status (approved or denied, waiting adjudication, file sent to Hearings and Review for decision), accepted medical condition(s), compensation paid (amount and time period covered), medical bills paid (name of physician, hospital or health facility, type of treatment, date of treatment, amount paid, amount paid for medical equipment, and rehabilitation expenses), COP authorized or denied, dates COP is paid, number of days of COP, and total amount paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 91–596, 5 U.S.C. 8101 et seq. and Federal Regulations 20 CFR part 10, 29 CFR part 1960, and 5 CFR ch. 1, part 353.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to any third-party or representative acting on claimant's behalf until the claim is adjudicated, all appeal rights are resolved, and the case file is closed.

2. In the event that records in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Disclosure may be made to any source from which additional information is needed in order to properly make case management decisions.

6. Disclosure of statistical data may be made to other VA facilities and Federal agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and computer storage media.

RETRIEVABILITY:

Information is retrievable by the name of VA claimant, social security number, and OWCP case file number.

SAFEGUARDS:

Access to the WC/OSH–MIS data base is restricted to Human Resources Management and Safety Officials. Paper records are maintained in a secured area with limited access. Access to data is by means of on-line (query) data base or downloading with a personal computer and is restricted to authorized employees by means of unique user identification and passwords.

RETENTION AND DISPOSAL:

Records are destroyed thirty years after OWCP closes the claimant's case file. Records are destroyed by shredding or burning paper documents, or by erasing the magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Human Resources Management (05), 810 Vermont Avenue, NW, Washington, DC 20420.

NOTIFICATION PROCEDURES:

Employees desiring to know whether this system of records contains a record pertaining to him or her, must submit a written request to the VA Human Resources Management Office of employment or to the office of last employment for former employees.

RECORD ACCESS PROCEDURES:

Employees seeking information regarding access to and contesting of VA records may write, call, or visit the VA Human Resources Management Office of employment.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORDS SOURCE CATEGORIES:

Data tapes furnished by OWCP, data elements from the Personnel and Accounting Integrated Data System–VA, VA continuation of pay (COP) data, and VA employees.

[FR Doc. 95–7640 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–M

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federal register

Wednesday
March 29, 1995

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 119, et al.
Commuter Operations and General Certification and Operations Requirements; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 125, 127, and 135

[Docket No. 28154; Notice No. 95–5]

Commuter Operations and General Certification and Operations Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The proposed rule would revise the requirements concerning operating certificates and operations specifications. The rule would also propose certain management officials for all operators under parts 121 and 135. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board (NTSB), testimony at Congressional hearings, and accident statistics. The proposed rule is intended to increase safety in scheduled passenger-carrying operations and to clarify, update, and consolidate the certification and operations requirements for persons who transport persons or property by air for compensation or hire.

DATES: Comments must be received on or before June 27, 1995.

ADDRESSES: Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. , 800 Independence Avenue SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov Comments must be marked Docket No. . Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8248.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. ." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Outline of NPRM

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Background

I. Introduction

Currently, scheduled passenger-carrying air transportation operations under common carriage are conducted under the Federal Aviation Regulations (FAR) of 14 CFR part 121 and part 135. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of over 30 seats or more than 7,500 pounds payload capacity are conducted under part 121. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of 30 seats or less or 7,500 pounds or less payload capacity are conducted under part 135. Part 121, which provides the safety requirements for all major air carriers (as well as for any operator conducting scheduled or nonscheduled operations with airplanes configured with more than 30 passenger seats), is generally considered to have more restrictive requirements than part 135. The differences between parts 121 and 135 reflect differences in the size of the aircraft and the scope of the operations. Part 135 is considered to provide a level of safety comparable to part 121; however, the FAA continually evaluates changes in the industry and the aviation environment that may necessitate upgrading the regulations in order to continue to fulfill the agency's statutory requirement.

II. History

For most of the history of aviation safety regulations, one dividing line served to separate the regulations that determined airplane design and type certification, flight operations, maintenance, pilot, and economic requirements. The dividing line between these sets of regulations was first established in 1953 and was based on the maximum certificated takeoff weight (MCTW) of an airplane.

Airplanes with an MCTW of 12,500 pounds or less were small airplanes and were operated under part 135. Airplanes with an MCTW of more than 12,500 pounds were considered large airplanes. Large airplanes, which were generally designed to carry 20 or more passengers, were used for scheduled air transportation while small airplanes, which were generally designed to carry fewer than 10 passengers, were used for on-demand air taxi service. The Civil Aeronautics Board (CAB) used the large/small dividing line to separate major airline companies, who were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the CAB in order to operate in interstate commerce as a common carrier, from on-demand air taxi operators, who were exempted from obtaining a CPCN.

Currently, a small number of CPCN's, and the companies that received them became household names to the air traveling public (Eastern, American, Delta, Pan Am, TWA, etc.). In contrast, on-demand air taxi operators numbered in the thousands.

Before 1970, the typical air taxi operator was a fixed-base operator, usually at a small airport, that owned fewer than five airplanes and provided on-demand air transportation as well as other services, such as training new pilots and selling and renting small airplanes. Typically, the air taxi portion of such an operator's business was a small part of that business and rarely involved any scheduled operations.

Beginning in the late 1960's, airplane manufacturers began to design and build small airplanes that were capable of carrying more than 10 passengers, and pushed the passenger capacity of the small airplanes higher until it approached 20 passengers. As these airplanes became available, some air taxi operators began to offer services that resembled the services of the major airlines. There was an economic incentive for these new commuter-type operators to buy these airplanes and operate under the less restrictive requirements of part 135. As part 135 operators acquired more of these airplanes, the nature of some part 135 operations changed dramatically from the traditional small airplane air taxi operation to a scheduled commuter operation. Although the number of these scheduled operators grew, they still remained a small percent of the thousands of air taxi operators.

In 1978, as a result of the Airline Deregulation Act, the airline industry was deregulated economically, with air carriers given more freedom to enter and exit markets without prior government economic approval. This caused major changes throughout the airline industry. One of the most significant changes was the ability of the major carriers to eliminate service to smaller points that proved to be uneconomical for the size of aircraft they operated and to be replaced at those points by the smaller commuter carriers. Under this system, the major part 121 air carriers provided service to the large metropolitan airports, while the growing class of scheduled part 135 air carriers provided service between the smaller communities as well as feeder service from the smaller points to the larger cities to connect with the major carriers' operations. This became commonly known as the 'hub and spoke' system. The most significant effect of these changes was that the traditional two categories of operations had been replaced by three categories of operations. The new category contained scheduled commuter operations that were neither traditional air taxis nor traditional major air carriers.

Also in 1978, in response to the Airline Deregulation Act, the FAA reissued part 135 standards to upgrade commuter and air taxi safety requirements and make them more like part 121. At that time part 135 operators were required to meet more stringent requirements in several areas, including weather reporting, flightcrew training, maintenance, and qualifications for management personnel.

Since 1978, the FAA has issued a number of separate rule changes to further align part 135 safety requirements. Certain part 135 operators (depending on type of engines and passenger-seating capacity) are now required to have cockpit voice recorders, flight data recorders (except some 10- to 19-seat airplanes), and ground proximity warning systems.

Despite the FAA's realignment of part 135, differences between the regulations still exist. The economic incentive to operate under part 135 still exists because the requirements in part 135 are still less restrictive than the part 121 requirements in most instances.

For the remainder of this document the following terms are used in the following ways. "Commuter," "commuter airline," and "commuter operator" means those operators and scheduled passenger-carrying operations conducted under part 135 in airplanes with a passenger-seating capacity of 30 or fewer seats. This is the FAA's current use of the word "commuter," which does not include scheduled passenger-carrying operations conducted under part 121 in airplanes with a seating capacity of 31 to 60 seats. The Department of Transportation (DOT) uses the term "commuter" more broadly to include all scheduled passenger-carrying operations conducted in airplanes with a passenger-seating capacity of 20 to 60 seats. The term "regional," which is used by industry to refer to short-haul, passenger-carrying, scheduled operations conducted under part 121 or part 135, is not generally used by the FAA and is not used in this document.

III. The Problem and Recent FAA Actions

Recent part 135 commuter accidents have focused public, government, and industry attention on the safety of commuter operations. While the safety level of part 135 operations has continued to improve, accident data, public perception, and recent government inquiries show a need for additional measures.

III.A. Accident Rate for Commuter Operations

The airline industry that uses airplanes with a passenger-seating capacity of 60 or fewer seats to conduct scheduled operations under parts 121 and 135 is an essential part of the air transportation network in the U.S. These airlines now fly more than all airlines did in 1958. In 1993, over 50 million passengers, 12 percent of the total passenger flights in the country, were flown by these airlines. Half of these passengers were flown in part 135 operations, i.e., in aircraft with 30 or fewer seats.

The typical airplane flown in commuter operations under part 135 is a turbopropeller-powered 19-seat airplane such as the Brazilian-made

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Embraer Bandeirante, the German-made Dornier 228, the British-made BAE 31 Jetstream, and the U.S.-made Fairchild Metro and Beechcraft 1900. These modern airplanes have advanced electronics and are type certificated for two pilots. They cruise at 250 knots at an altitude of 25,000 feet. Over the past two decades the safety record of part 135 commuters has greatly improved. The accident rate per 100,000 departures in 1993 was one-fourth the accident rate in 1980. However, the accident rate for commuter airlines operating under part 135 continues to be higher than the rate for domestic part 121 airlines. In the past 2 years, several commuter airline accidents occurred that attracted media and public attention and caused government and industry officials to scrutinize the safety system for commuter operations under part 135. A summary of the most pertinent of these accidents follows:

• On December 1, 1993, a Jetstream 31, operated by Express II (operated as Northwest Airlink), crashed at Hibbing, Minnesota, on an instrument approach, killing 18 people. A major factor in the accident was the captain's failure to follow standard operating procedures in his decision to use an excessive descent rate during the approach.

• On January 7, 1994, a Jetstream 41, operated by Atlantic Coast Airlines (as United Express), stalled while executing an instrument landing system approach to the Port Columbus Airport in Columbus, Ohio. Of the eight people on board, five died and three survived. The National Transportation Safety Board (NTSB) found that the flightcrew flew an unstabilized approach, failed to monitor airspeed, improperly responded to the stall warning, and allowed the airplane to stall.

• On December 13, 1994, a Jetstream 3200, operated by Flagship Airlines (as American Eagle), crashed at Raleigh-Durham, North Carolina, on an instrument approach, killing the two pilots, and 15 of the 18 passengers. The cause of the accident is not yet known.

These accidents involved commuter flights conducted under part 135. Media attention to these and other commuter-type accidents has increased concerns about the safety of these operations.

III.B. Public Perception

With the increase in the number of flights to many communities conducted in airplanes with a seating capacity of 30 seats or less, some members of the public are questioning whether they are receiving an appropriate level of safety in small propeller-driven airplanes as compared to the level of safety they receive in large jets. This public concern is partly a result of the integration of commuter carriers with major airlines under an arrangement known as code-sharing. The term "code-sharing" refers to the computerized airline reservation system that lists a commuter flight in the reservation system under the same code used by a major carrier. Code sharing arrangements range from marketing agreements to ownership of the code-sharing partner by the major carrier. A passenger who books with a major carrier may have a leg of the flight automatically booked with a smaller commuter affiliate of the major carrier. The first time the passenger realizes this is during boarding the smaller airplane. Despite the practice of the affiliate commuter using a similar uniform and airplane paint scheme as the major airline, the passenger realizes that the type of service has changed: there is a stairway off the tarmac rather than a ramp at the terminal; there is less leg room and less room for carry-on baggage; there is more noise; the flight is at a lower altitude; etc.

With the media attention to recent commuter accidents, the passenger may also believe that the flight involves more risk because the smaller airplane and its operation may not have to meet the same safety standards. Most passengers probably do not realize that some differences in standards are necessary because of differences in the airplane and operation and that some of the accidents that are categorized by the media as "commuter" accidents occurred in flights that were being conducted under part 121; that is, in airplanes with over 30 passenger seats.

As stated earlier in this notice, the differences in regulations were initially based on differences in the types of operations and differences in the size of airplanes; these differences in many instances still apply. One would not expect, nor would it be feasible, for a 6-seat airplane operated as an on-demand air taxi to meet all of the requirements that a scheduled 350-seat transport category jet must meet. There are inherent differences between the 6-seater and the large jet. The 6-seater cannot accommodate all the safety equipment or redundant systems of a large jet. On the other hand, the 6-seater may fill a need by being more maneuverable and capable of using smaller airports, etc.

While some of the differences in the requirements between part 121 and part 135 reflect differences in the size and operation of the airplanes, other differences do not, such as how many hours a pilot may fly, what emergency equipment must be carried, and what procedures must be followed in icing conditions. Some differences between the two sets of regulations must be maintained while others can be eliminated to improve the safety of commuter operations.

III.C. Congressional Hearings

On February 9, 1994, Congress held hearings on the adequacy of commuter airline safety regulations. The purpose of the hearings was to determine if FAA safety regulations should be modified to establish a single standard for all scheduled operations regardless of airplane size. Testimony was presented by the FAA Administrator, the Chairman of the NTSB, the president of the Regional Airline Association, the president of the Airline Pilots Association, the president of the Airline Dispatchers Federation, and the director of the Aviation Consumer Action Project.

Most testimony supported the view that the requirements for 10- to 30-seat commuter operations should be as restrictive as those for airplanes with 31 or more seats under part 121; that safety equipment such as flight data recorders, ground proximity warning systems, and Traffic Alert and Collision Avoidance System (TCAS) should be required on airplanes used in commuter service; that pilot training should be the same in part 135 commuter operations as is in part 121; and that part 135 commuter operations should use a dispatch system.

III.D. NTSB Study

In November 1994, the NTSB published a study on commuter airline safety. (National Transportation Safety Board Safety Study: Commuter Airline Safety, NTSB/SS–94/02.) The study was based on the NTSB's analysis of accident investigations and previous studies, on a recent site survey of airline operations and policies conducted at a representative sample of commuter airlines, and on information obtained from a public forum on commuter airline safety convened by the NTSB.

The findings of the study relevant to this rulemaking are as follows:

(1) The commuter air carrier industry has experienced major growth in passenger traffic and changes in its operating characteristics since 1980. There has been a trend toward operating larger, more sophisticated airplanes, and many carriers have established code-sharing arrangements with major airlines. The regulations in part 135 have not kept pace with many of the changes in the industry.

(2) Pressure on part 135 pilots to accomplish several tasks, such as obtaining weather information,

calculating minimum fuel load, and calculating weight and balance, between flights in short periods of time increases the risk of critical mistakes that could jeopardize the safety of flight.

The key NTSB recommendations based on these findings are to revise the FAR such that:

• All scheduled passenger service conducted in airplanes with 20 or more passenger seats would be conducted according to the provisions of 14 CFR part 121.

• All scheduled passenger service conducted in airplanes with 10 to 19 passenger seats would be conducted in accordance with 14 CFR part 121, or its functional equivalent, wherever possible.

The FAA published all of the NTSB recommendations in the **Federal Register** and requested public comments on the recommendations (59 FR 63185, December 7, 1994). Thirty-nine comments were received. Commenters included small air carriers, trade associations, aircraft manufacturers, airport operators, and individuals.

Of the comments relevant to this rulemaking, most generally support expanding the operational rules of part 121, except for flight time limitations, to commuter operations under part 135. Several commenters express concern about specific requirements that might apply. Commenters had considerable reservations about applying certain part 121 equipment requirements to smaller airplanes. The FAA considered all of the comments in developing this proposed rule.

III.E. Recent FAA Actions

Recently the FAA issued a number of proposed rules that would increase the safety of commuter operations under part 135. In August 1992, the FAA proposed a new part 142 that would contain certification and operating rules for training centers. The purpose of that rulemaking is to provide standardized quality pilot training for individuals, operators, and air carriers and to increase the accessibility of flight simulators and flight training devices for pilot training. (57 FR 35888, August 11, 1992.) The FAA intends to issue a final rule by May 1995.

In July 1993, the FAA proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes by upgrading the requirements for seat restraint systems and increasing the downward inertia load factor for items of mass within the cabin. The proposal also would upgrade the flammability standards for seat cushions in airplanes used by commuter operators. These proposed amendments would improve the occupant protection provisions for these types of airplanes and would provide seat restraint requirements and flammability standards commensurate with those for transport category airplanes. (58 FR 38028; July 14, 1993) The FAA received an additional report on commuter airplane accident data analysis in October 1994. Based on the fact that General Aircraft Manufacturers Association had requested additional information be made available before the NPRM was published, a notice to reopen the comment period was issued October 28, 1994, and published November 4, 1994. The reopened comment period closed March 4, 1995.

In December 1994, the FAA proposed to revise the training and qualification requirements to require certificate holders that conduct commuter operations under part 135 with airplanes requiring two pilots or having 10 or more passenger seats to comply with the part 121 training, checking, and qualification requirements. The proposed rule would also mandate crew resource management training for pilots, dispatchers, and flight attendants in part 121. (59 FR 64272, December 13, 1994) The FAA intends to issue a final rule by mid 1995.

While these measures along with the earlier amendments to part 135 continue to make the requirements between parts 121 and 135 similar, some differences remain. Eliminating these differences would increase safety in commuter operations.

IV. The Proposal

The FAA proposes in this rulemaking to eliminate the differences in requirements for scheduled passenger operations using airplanes with a passenger-seating configuration of 10 or more. While a distinction still exists between large air carriers and on-demand air taxis, the FAA believes that the distinction should no longer be maintained for scheduled passenger operations and that all scheduled operations in airplanes with a passenger-seating configuration of 10 or more should comply with part 121 requirements. In addition, the FAA proposes that all turbojets used in scheduled passenger-carrying operations under part 135 comply with part 121 requirements regardless of seating capacity

The FAA Administrator, when prescribing safety regulations, is required by statute to consider "the duty of an air carrier to provide service with the highest possible degree of safety in the public interest." (49 U.S.C. 44701(d)(1)(A)) The FAA considers that the most appropriate way to meet this statutory mandate and to reduce the accident rate for current part 135 commuters operating airplanes with 10 to 30 passenger seats is to require scheduled passenger operations in those airplanes to meet most of the minimum requirements of part 121 that are relevant to the type of operation and size of the airplane.

Typically, the FAA revises safety regulations when specific events (such as accidents or incidents) indicate a need to raise or adjust certain standards. In most instances when standards are revised the FAA can discuss specific reasons for each change and can estimate whether each change is cost beneficial. This proposed rulemaking does not lend itself to this type of item by item justification and cost benefit analysis because it is difficult to precisely state which rule, in isolation from other rules, will prevent an accident or incident.

The numerous proposed revisions that would result from requiring affected part 135 commuter operators to comply with most part 121 requirements cannot readily be evaluated according to specific accidents that would be prevented. The FAA is proposing to apply much of the part 121 requirements on affected part 135 commuters because the agency believes that for those commuters the part 121 approach is appropriate for the type of operations these affected commuters conduct and that the part 121 approach to safety will reduce the accident rate for those operators. The proposed revisions cumulatively would increase the level of safety by requiring certain improvements in flightcrew qualifications, cabin safety equipment and cabin materials, airplane preformance requirements, aircraft operational control, and aircraft maintenance. Some proposed requirements would be simply a necessary part of the overall revision. For example, compliance with the manual requirements of part 121, which are similar to the requirements for affected commuters in part 135, would necessitate developing, producing, and distributing new manuals to reflect the many operational changes that would result. A dispatch system, for example, would require numerous manual changes. Compliance with the manual requirements simply reinforces many safety requirements found elsewhere. It also sets forth the operator's approved procedures for dealing with various situations. The impact of such a change cannot be evaluated separately in terms of accidents prevented, but manual

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changes are an essential part of changing a part 135 operation to a part 121 operation.

Other revisions, such as requirements for certain cabin safety equipment and materials, are cumulative; that is, each requirement works as part of the overall change to increase the survivability rate in accidents. Increasing the safety level, including passenger survivability in accidents, is the result of many distinct requirements associated with emergency equipment, crewmember training, passenger briefing, and aircraft interior design. Over time, these improvements in cabin safety have saved many lives, prevented injuries, and prevented damage to property, though it would be almost impossible to determine how many lives have been saved or injuries prevented by any specific requirement. The basic justification for many of these requirements is that they make sense if the goal is to get passengers out of an accident alive.

The same is true for many of the proposed revisions in this rulemaking. The overall approach to regulating under part 121 has proven to provide the highest level of safety in air transportation in the world. Therefore, wherever feasible and logical, the FAA proposes to apply the part 121 approach to the affected commuters in order to increase safety in these operations. Because the accident rate for part 135 commuters using aircraft configured with 10–30 seats is .33 per 100,000 departures, these proposed changes will yield safety benefits that outweigh costs even if the rule is only 75% effective.

V. Major Issues [See Table 1]

In the development of this rulemaking, the FAA addressed several major issues. One of these issues is applicability, the question of where to draw the dividing line for commuter operations. Currently scheduled passenger-carrying operations in airplanes with a passenger-seating configuration of more than 30 seats must comply with part 121 requirements. Commuter operations under part 135 include scheduled passenger-carrying operations in airplanes of 30 seats or less. While this proposal is drawing the part 121 dividing line at scheduled passenger-carrying operations using airplanes having a passenger-seating configuration of 10 or more, it can be argued that all passenger-carrying airplane operat ons under part 135, including on-demand air taxi operators, should meet the safety requirements of part 121. Another major issue is aircraft type certification. Some of the airplanes being affected by this rulemaking are type certificated under part 23 requirements for commuter category airplanes (or earlier versions—SFAR 23 or 41), which are in some respects less stringent than the requirements in part 25 for transport category airplanes. The issue is whether all airplanes used by affected commuters should be type certificated under part 25 as transport category airplanes, so that at some point in the future only part 25-certificated airplanes could be used in scheduled passenger-carrying operations. The FAA also considered several issues connected with operational safety. These issues include airmen qualifications, crew flight time requirements, the need for dispatch systems, and compliance with safety equipment requirements. The FAA also considered the issue of operating into and out of airports that do not meet part 139 (Certification and Operations: Land Airports Serving Certain Air Carriers) requirements.

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED

Issue/Requirement	Effective date of required upgrade is as stated, measured from the rule publication date			
	Upgrade will apply to all airplanes including new and future certificated		Upgrade will apply to newly manufactured and future certificated airplanes	Upgrade will apply to future certificated airplanes
	W/I 12 months	W/I years (#)	After years#	After 3/24/95
1. Passenger Seat Cushion Flammability		2		
2. Cargo and Baggage Compartments			4	
3. Fuel Tank Access Covers				Yes.
4. Lavatory Fire Protection		2		
5. Access to Emergency Exits				Yes.
6. Ditching Emergency Exits		2		
7. Two-discharge Fire Extinguishers				Yes.
8. Damage Due to a Failed Prop. Blade				Yes.
9. Bird Strike Damage				Yes.
10. Flammability of Interior Materials			4	
11. Dynamic Seat Testing				Yes.
12. Floor Proximity Lighting		2		
13. Redundant Control Systems				Yes.
14. Exterior Emergency Exit Markings	Yes			
15. Separation of Pitot Tubes				Yes.
16. Pitot Heat Indication System		4		
17. Landing Gear Aural Warning		2		
18. Takeoff Warning System			4	
19. Self Locking Nuts, Fasteners				Yes.
20. Dual Control System				Yes.
21. Reinforcement Near Propellers				Yes.
22. Exterior Emergency Lighting		2		
23. Emergency Exit Handle Illumination		2		
24. Performance & Obs. Clearance	Yes			
25. Accelerate-stop Requirements	Yes			
26. First Aid Kits-new req., 10–19 Pax	Yes			
27. Emergency Medical Kits, 20–30 Pax	Yes			
28. Wing Ice Light	Yes			
29. Fasten Seat Belt Light	Yes			

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED—Continued

Issue/Requirement	Effective date of required upgrade is as stated, measured from the rule publication date			
	Upgrade will apply to all airplanes including new and future certificated		Upgrade will apply to newly manufactured and future certificated airplanes	Upgrade will apply to future certificated airplanes
	W/I 12 months	W/I years (#)	After years#	After 3/24/95
30. Third Attitude Indicator	Yes			
31. Airborne Weather Radar	Yes			
32. Protective Breathing Equipment		2		
33. Single Point Inertial Harness			1	
34. Cabin Ozone Concentration	Yes			
35. Retention of Galley Equipment	Yes			
36. Transponders	Yes			
37. Cargo in Pax Compartment	Yes			
38. Two Landing Lights				Yes.

V.A. Applicability

The FAA is proposing that in addition to the operations already covered by part 121, those requirements would apply to all scheduled passenger-carrying operations for compensation or hire in airplanes with a passenger-seating configuration of 10 or more seats and to all scheduled passenger-carrying operations for compensation or hire in turbojet-powered airplanes regardless of seating capacity. (Throughout this document operators of those airplanes may be referred to as "the affected operators" or "the affected commuters" or words to that effect.) The proposed dividing line would bring most commuter operations now conducted under part 135 into part 121. There are scheduled operations using airplanes of less than 10 passenger seats conducted under part 135 but they typically occur in geographic areas such as Alaska and Hawaii where air transportation is virtually the only feasible mode of transportation and where the operational environment is unlike other air transportation environments. They typically are short-haul operations often carrying only four to six passengers. They resemble air taxi operations more than commuter operations even though the flights are scheduled.

The NTSB, as stated earlier in this preamble, recommends that the FAA revise the regulations so that all scheduled passenger service in airplanes with 20 or more passenger seats be conducted under part 121 and that scheduled passenger service conducted in airplanes with 10 to 19 passenger seats be conducted under part 121 or its functional equivalent wherever possible. This proposal is in line with the NTSB recommendation. While all certificate holders operating airplanes in scheduled passenger-carrying operations with a 10 or more passenger seat configuration would come under part 121, if compliance with certain requirements would not be feasible for certain airplanes, the proposed rule would provide an exception or appropriate alternate standards. (All significant exceptions are specifically covered in the subpart discussion of this preamble.)

The proposed rule would also change the definition of "scheduled." The frequency of operations test of five round trips per week would be eliminated. For a discussion of this issue, see the part 119 discussion in section VI.A of this preamble.

All turbojets used in scheduled passenger-carrying operations, regardless of the seating configuration, would be moved over to part 121 because the typical type of operation of these airplanes warrants a higher safety standard. The FAA believes that currently no turbojets are being used in scheduled passenger-carrying operations under part 135 and that this part of the proposed applicability would not affect any current operator. The FAA seeks comments on whether any turbojets are being operated in scheduled passenger-carrying operations under part 135 and would be affected by this rulemaking.

On-demand air taxi operations are not being included in the proposal because these operations are unlike commuter or major air carrier operations. In addition, the NTSB recommendations and the accidents that spawned this rulemaking involve only commuter operations. Any part 135 certificate holder who conducts on-demand operations could be authorized to conduct its operations under certain part 121 rules [see proposed section 119.21(c)].

Single-engine airplanes are not included in the proposed rule because part 121 applies only to multiengine airplanes. Single-engine airplanes would continue to operate under part 135 whether scheduled or not. However, part 135 would apply to scheduled passenger-carrying operations with airplanes with a seating capacity of 9 or less passenger seats. Therefore, single-engine airplanes with a seating capacity of more than 9 passenger seats would also be prohibited from conducting scheduled operations under part 135. In effect, this rulemaking would require single-engine airplanes with 10 or more passenger seats now operated in scheduled passenger-carrying operations under part 135 to reduce the passenger-seating capacity to 9 or less. Single-engine airplanes that are used in nonscheduled operations in common carriage may continue to operate under the on-demand rules of part 135.

The primary impact on the use of single engine-airplanes would be on operations in Alaska. The FAA specifically requests comments on the potential impact on Alaskan operations. Comments should contain as much factual information as possible and should address possible alternative requirements where the commenter believes that this proposal would cause unjustified limitations on current airplane operations in Alaska.

Rotorcraft operations would remain under part 135; however, additional standards for scheduled passenger-carrying rotorcraft operations may be considered at a future date. Also, additional standards for on-demand air taxi operations may be considered in the future.

V.B. Aircraft Certification

Airplanes operated under part 121 are type certificated under part 25 (or a predecessor or are subject to special airworthiness requirements in part 121),

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which specifies airworthiness standards for transport category airplanes. Those airplanes operated under part 135 that have a passenger-seating configuration of 20 to 30 seats are also type certificated under part 25. Other airplanes operated under part 135 are permitted to be type certificated under part 23, which specifies airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. Airplanes operated under part 135 and having a passenger-seating configuration of 10 to 19 seats are type certificated under the commuter category airworthiness standards of part 23 (or a predecessor to commuter category airplanes, e.g., SFAR 23, SFAR 41). To be type certificated under the normal category of part 23, the airplane must have a maximum certificated takeoff weight of less than 12,500 pounds. Nothing prohibits a manufacturer from type certificating a 10- to 19-seat airplane under part 25.

An applicant for type certification of a turbopropeller-powered airplane with a passenger seating capacity of 19 or less passenger seats has the option of requesting type certification in either the commuter category under the provisions of part 23 of the FAR or the transport category under the provisions of part 25 of the FAR. Commuter category type-certification standards differ in some areas from the corresponding transport category type-certification standards. In some of those areas, airplanes with a passenger seating capacity of 19 or less passenger seats can achieve the same level of safety without full compliance with the standards of part 25 because of their size, airspeed, or other pertinent parameters.

In the interest of establishing a common approach for all airplanes with 10 or more passenger seats used in scheduled passenger-carrying operations under part 121, the FAA proposes to amend part 121 to require all airplanes for which an application for type certification is made after March 24, 1995, including those with 10- to 19-passenger seats, to be type certificated in the transport category if they are operated in scheduled passenger operations. In order to ensure that this proposed change would not place any undue burden on an applicant for type certification of airplanes that could otherwise be type certificated in the commuter category, the FAA plans to review the standards of parts 23 and 25. If it is determined that the level of safety intended by part 25 could be achieved for those airplanes with 19 or fewer passenger seats through compliance with a particular standard of part 23 in lieu of the corresponding standard of part 25, part 25 would be amended to offer the part 23 standard as an option. Areas identified for further review in this regard include:

§ 25.21(f) Measurement of wind 10 meters above the surface,
§ 25.251 Vibration and buffeting,
§ 25.361 Engine torque,
§ 25.812(b) Exit sign size, and
§ 25.812(l) Inoperative lighting.

The FAA specifically requests comments concerning the above subjects and standards of part 23 commuter category that could be considered as optional standards for part 25. It must be emphasized that any standard adopted as an option must achieve the same level of safety as that currently intended by part 25. Although this study is prompted by the 10- to 19-passenger airplanes that would be operated under part 121, any changes made to part 25 in this regard would apply to type certification of each 10- to 19-passenger airplane in the transport category. Any changes to part 25 that are deemed appropriate would be the subject of a future notice of proposed rulemaking.

The FAA also proposes that airplanes configured with 10- to 19-passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply with certain performance and equipment requirements in part 121. Some of these part 121 requirements would be based on part 25 requirements. The FAA proposes specific compliance dates, recognizing that for some airplanes the cost of retrofitting may result in discontinuing use of the airplane and replacing that airplane with a part 25 certificated airplane.

V.C. Flight Time Limits and Rest Requirements

Subpart Q of part 121 establishes the flight time limits and rest requirements for flight crewmembers used by domestic air carriers. Flight time limits and rest requirements for flight crewmembers used by flag and supplemental operators are established in subparts R and S, respectively. The comparable limits in part 135 are in subpart F.

In 1985 (50 FR 29319; July 18, 1985), the FAA issued changes to the flight time limitation and rest requirements in parts 121 and 135. These changes clarified and improved the flight time limits and rest requirements in part 121 for domestic operations and for the first time established cumulative weekly, monthly, and annual flight time limitations in part 135. The flight time limitations for scheduled operations under part 135 are less restrictive than those for domestic part 121 operations. Currently under part 121, domestic flight time limits (§ 121.471) are 1,000 hours per calendar year, 100 hours per calendar month, and 30 hours in any consecutive 7 days. Flag flight time limits (§ 121.481) are 1,000 hours per 12-calendar-month period, 100 hours per calendar month, and 32 hours in any 7 consecutive days. Under part 135 (§ 135.265), scheduled passenger-carrying operations must comply with flight time limits of 1,200 hours per calendar year, 120 hours per calendar month, and 34 hours in any 7 consecutive days.

For comparison purposes:

121 domestic	121 flag	135
1,000	1,000	1,200
100	100	120
30	32	34

At the time these rules were issued, the FAA believed that the less restrictive cumulative flight time limits of part 135 were acceptable because part 135 operators had not previously had any cumulative limitations and the less restrictive limits allowed for some flexibility for operations that necessitated more flight hours during peak seasons.

There is no longer a justification for the difference in cumulative flight time limits between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135 and applying the less restrictive flight time limits for its part 135 operations. The only significant differences are in the size of the airplanes and the number of passengers, differences that do not justify less restrictive flight time limits for crewmembers.

Therefore, the FAA proposes that the part 121 domestic flight time limits and rest requirements would apply to affected commuter operators when conducting operations within the United States. Affected commuter operators when conducting operations to or from the United States would comply with the flag flight time limitations and rest requirements of subpart R.

Additionally, when these operators use these same airplanes for nonscheduled operations, those airplanes would be required to comply with supplemental flight time limitations and rest requirements of subpart S of part 121. (See the discussion under part 119 of the preamble for further information on flag and supplemental operations.)

The flight time limitations and rest requirements for flag and supplemental operations were not updated in 1985 when domestic limits were. In view of this, the FAA is developing an NPRM that it plans to issue in mid-1995 that would set forth a common approach to reduce the effects of fatigue on crewmembers in all kinds of operations under parts 121 and 135.

Section 135.261(b)(1) allows scheduled passenger-carrying operations conducted solely within the State of Alaska to comply with the nonscheduled limitations of part 135. This rulemaking does not propose to include an exception for Alaska under part 121 flight time limits. This proposal, in effect, would eliminate this option in Alaska for scheduled passenger-carrying operations of airplanes with 10 or more passenger seats. The FAA believes this is necessary because pilots in Alaska are flying in the same type of scheduled operations as pilots in other parts of the country and are subject to the same fatigue factors. The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

V.D. Age 60 Rule

Section 121.383 prohibits a certificate holder from using the services of any person as a pilot on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday and prohibits any person from serving as a pilot on an airplane engaged in part 121 operations if that person has reached his or her 60th birthday. Part 135 does not have any age limitation. The FAA proposes to impose one age limit on all pilots employed in part 121 operations, including those pilots currently employed in certain part 135 scheduled operations.

The Age 60 Rule, as the requirement has come to be known, has been the subject of considerable attention by the FAA, pilot groups, and others. The FAA is presently considering whether, in the interest of safety, the Age 60 rule should be maintained as is or revised to allow pilots to continue to fly in part 121 operations past their 60th birthday. If the FAA determines that it is appropriate to propose a different age limitation, it will propose to apply the revised limitation to all part 121 operations, including those commuter operations affected by this rule.

V.E. Dispatch System

Parts 121 and 135 require operators to exercise operational control over all flights conducted by the operator. Operational control is defined in 14 CFR part 1 as "the exercise of authority over initiating, conducting and terminating a flight." Operational control consists of making decisions and performing activities on a daily basis which are necessary to operate specific flights safely. These activities include, but are not limited to, crew and airplane scheduling, reviewing weather and NOTAM's (Notices to Airmen), and flight planning. Operational control systems vary according to the kind of operation, the complexity of operations, and the means of communication used to exercise operational control. Parts 121 and 135, in pertinent part, provide for three general types of operational control systems: Aircraft dispatch, flight following, and flight-locating systems.

While part 121 requires certificate holders conducting domestic and flag operations to have aircraft dispatch systems to exercise operational control of flights, part 135 does not. A certificate holder that conducts domestic or flag operations under part 121 must use a certificated aircraft dispatcher. The aircraft dispatcher in conjunction with the pilot in command (PIC), establishes the flight plan and monitors the flight from flight release to flight completion. The aircraft dispatcher provides the PIC with information on weather changes, fuel level, weight and balance, and destination airport conditions and capabilities; and, jointly with the PIC, makes decisions affecting the continuing safety of the flight. Under part 135 operations the PIC is typically responsible for these operational control functions. The following sections describe the three types of operational control in the FAR.

Aircraft Dispatch Systems. Section 121.395 requires operators subject to the flag or domestic rules of part 121 to use certificated aircraft dispatchers who, along with the PIC, under §§ 121.533 and 121.535, are jointly responsible for exercising operational control over certain aspects of flights. A PIC may not initiate or continue a flight unless both the PIC and the aircraft dispatcher controlling the flight agree that the flight can be conducted safely as planned under reported and forecast conditions. The FAR require that both the aircraft dispatcher and the PIC sign a dispatch release. Section 121.463 requires that each aircraft dispatcher be familiar with all essential operating procedures for that segment of the operation over which he or she exercises dispatch jurisdiction. Before dispatching any flight, an aircraft dispatcher must be thoroughly familiar with the en route and terminal weather conditions and the status of communications, navigation, and airport facilities. Section 121.601 requires that the aircraft dispatcher provide the PIC with a preflight briefing on each of these items. An aircraft dispatcher must monitor the progress of each flight under the dispatcher's control until the flight has landed or passed beyond the dispatcher's area of control or until the dispatcher is relieved by another dispatcher. Flight monitoring, at a minimum, must include monitoring the flight's fuel supply, remaining flight time, terminal weather trends, en route winds and weather, and the status of airport and navigational facilities. Section 121.99 requires that rapid and reliable two-way radio communications between each flight and the dispatcher be available at any time in the flight. Once initiated, a flight must continue to its destination as planned and in accordance with the conditions of the dispatch release unless, in the opinion of either the PIC or the dispatcher, it is unsafe to do so. In such cases, the dispatch release must be amended. Section 121.557 authorizes the PIC to deviate from the conditions of the dispatch release to the extent necessary for safety in an emergency. When the PIC exercises this authority, the regulation requires the PIC to keep both air traffic control (ATC) and dispatch fully informed of the progress of the flight.

Flight Following Systems. Operators subject to part 121 supplemental rules (charter operations, all-cargo operations, etc.) are not required to have dispatch systems because such systems are impractical for operators who do not fly to the same destinations on a scheduled basis. Section 121.537 requires operators who are subject to the supplemental rules of part 121 to place the major responsibility for operational control of flights with the director of operations. The director of operations may delegate authority for the control of the flight to other employees (known as flight followers). Flight following personnel are not required to be certificated aircraft dispatchers. Under a flight following system, PIC's are responsible for preflight planning and for the safe conduct of the flight. A PIC may not begin a flight unless the PIC is thoroughly familiar with reported and forecast weather conditions on the route

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to be flown and has obtained all available reports on airport conditions and irregularities of navigation facilities that may affect the safety of the flight. A flight release specifying the conditions under which the flight will be conducted is prepared and signed by the PIC before the flight may depart. Section 121.597(b) prohibits the PIC from signing the release until the director of operations or the flight follower, if delegated the authority, concurs that the flight can be safely conducted as planned. During the flight the PIC must obtain any additional available information on meteorological conditions and navigational and airport facilities that may affect the safety of the flight. The operator is responsible for ensuring that the PIC has the means to obtain this information. The operator is not required to provide the capability for inflight radio communications between the director of operations or flight follower and the PIC. The director of operations is responsible for monitoring the progress of each flight from its point of origin to its arrival at the destination.

Flight Locating Systems. While § 135.77 requires that each operator exercise operational control, part 135 does not specify a particular means of exercising continuous operational control of all aspects of the flight. Since part 135 operations range from visual flight rule operations in simple airplanes to extended overwater operations in jet transport airplanes, the regulations allow the operator to use a means that is appropriate to the operating conditions. Part 135 does not require operators to prepare a formal release authorizing a specific flight. Section 135.69 requires that the operator restrict or suspend operations when either the PIC or the operator becomes aware of a hazardous condition. The operator's manual must provide for adequate briefing and trip planning procedures to ensure that all safety requirements are fulfilled. Part 135 operators commonly delegate release authority to PIC's. Section 135.79 requires that each operator maintain at least a flight locating system for those flights for which an FAA flight plan is not filed. The system must provide for the timely notification of an FAA facility or a search and rescue facility if an airplane is overdue or missing. Part 135 operators may require PIC's to file ATC flight plans as a means of complying with this requirement. Part 135 operators are not required to have the capability to contact flights while they are airborne. Part 135 does not specify the qualifications or titles of individuals authorized to release or follow flights.

FAA Dispatch Proposal. For scheduled passenger-carrying operations, the safest means for maintaining operational control is an aircraft dispatch system. This allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. It also provides the pilot with verification of pilot calculations related to weight and balance, fuel load, etc., since these detailed calculations are also performed by the aircraft dispatcher. Weather changes en route, airport and airport facility, and other essential information is made available to the pilot through the dispatcher. If an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow.

While the safety benefits of a dispatch system are significant, there is substantial cost involved in establishing a dispatch system because dispatchers must be hired and trained and dispatch centers and equipment must be available for communicating. In addition, some part 135 operators who would be subject to part 121 requirements as a result of this rulemaking already use an aircraft dispatch system.

The Congressional hearings on commuter operations included presentations directly related to requiring dispatchers for commuter operations conducted under part 135. Arguments for part 135 dispatchers included the following: (1) NTSB said that a lack of direct management oversight and inexperienced crews may have contributed to some part 135 commuter accidents and that a dispatcher may provide an additional safety enhancement; (2) the Airline Dispatchers Federation (ADF) said that dispatchers can prevent accidents by assisting the pilot with preflight planning and providing safety information throughout flights. ADF added that using dispatchers would not be costly because carriers would save fuel. They also said that sufficient staff may already exist to handle dispatcher duties. ADF representatives testified that pilots should fly the airplane and let dispatchers take over some of the traditional pilot workload (e.g., flight planning to include fuel planning, weather checks, weight and balance calculations).

Contrary to ADF's suggestion about dispatchers taking over some of the pilots' work load, the FAA believes that, although the aircraft dispatcher initially performs certain calculations, the pilot is still required to check the dispatcher's calculations before flight. The redundancy of the dispatch system provides assurance that the calculations are accurate. This is especially important in fast turn-arounds, common in commuter operations.

The NTSB safety study on commuter airline safety (as cited earlier) reports that for 20 commuter airlines that were surveyed: 4 provide licensed dispatch services (these 4 also conduct part 121 scheduled operations); 16 provide weather information to the pilot at each station through computerized services, station agents, or ramp personnel; at 19 airlines, the pilots calculate weight and balance for each flight; and at 11 airlines, the pilots are responsible for calculating the minimum fuel load for each flight.

The NTSB found that pressures on part 135 pilots to accomplish several tasks—such as obtaining weather information, calculating minimum fuel load, and calculating weight and balances—between flights in short periods of time increase the risk of critical mistakes that could jeopardize safety.

Pilot responses to questions in the survey about dispatch services and comments made during a public forum conducted by NTSB indicated that it was extremely difficult for the pilots to accomplish the tasks correctly in the amount of time they had during turn-arounds. Pressure to perform the tasks rapidly is most extreme for newly employed captains and first officers who are concerned that their performance evaluations will suffer if they are responsible for flight delays. Pilots reported that they would feel more confident if their weight and balance and fuel calculations were verified by a trained and licensed dispatcher.

The NTSB safety study recommendations include requiring principal operations inspectors to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. (NTSB recommendation A–94–193)

To correct these identified problems, the proposed rule would require all affected commuters to meet all part 121 dispatch requirements, including dispatcher qualification requirements, recordkeeping, and flight release requirements. Affected commuters who would conduct some nonscheduled flights under part 121 supplemental rules could use a flight following method for the nonscheduled flights.

The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

V.F. Major Equipment Items

Part 121, subpart K, contains certain equipment requirements for airplanes operated under that part. Some of these items of equipment are considered major because they are relatively costly to buy and install and they provide major safety benefits. These items include flight data recorders (§§ 121.343 and 135.152), traffic alert and collision avoidance system (§§ 121.356 and 135.180), airborne weather radar (§§ 121.357 and 135.173), low altitude windshear (§ 121.358), and cockpit voice recorders (§§ 121.359 and 135.151). Of the above items, airborne weather radar is the only equipment requirement that would be added for 10- to 19-passenger-configurated airplanes under this proposal. Each major equipment requirement affected or not affected by the proposed rule is discussed below.

Flight Data Recorders (FDR). FDR are required in part 121 for all large airplanes. Stated simply, the regulations require operators to equip certain airplanes at specified times with digital FDR that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture of the airplane. FDR are required in part 135 for multiengine turbine-powered airplanes with a passenger-seating configuration of 10 to 19 seats that were brought on to the U.S. register after October 11, 1991. This means that airplanes manufactured after that date or brought into the country and registered after that date must have FDR, but airplanes previously registered do not have to be retrofitted with FDR. Airplanes having a passenger-seating configuration of 20 or more seats must be equipped with FDR no matter when they were registered.

FDR are an essential tool for determining the causes of airplane accidents. As cockpit technology has advanced FDR have been developed to capture more information on the flight characteristics of an airplane and thereby yield more helpful information in determining the causes of accidents.

Concurrent with this rulemaking, the FAA had determined that the FDR regulations in part 121 need to be updated to address technological advances in airplanes and FDR equipment. The FAA had made a preliminary decision to issue a proposal on FDR in the near future. Subsequent to its review, the NTSB, on February 22, 1995, issued three recommendations concerning FDR changes, and a public meeting is scheduled for April 20, 1995. In light of these developments, it would not be prudent to require affected operators to comply with current part 121 requirements at this time. This proposal would therefore maintain the status quo on FDR requirements, pending future rulemaking.

Traffic Alert and Collision Avoidance System (TCAS). Both parts 121 (§ 121.356) and 135 (§ 135.180) require TCAS. Section 121.356(a) requires TCAS II with an appropriate class of Mode S transponders for airplanes with more than 30 seats. Section 121.356(b) requires passenger or combination cargo/passenger airplanes with seating configurations of 10 to 30 seats to have an approved TCAS by December 31, 1995 (59 FR 67584; December 29, 1994).

In both part 121 and part 135, a TCAS II System installed in a 10- to 30-seat airplane must be capable of coordinating with TCAS units that meet TSO C–119.

Section 121.356(c) requires that the manuals required by § 121.131 shall contain certain information in the TCAS II System. Section 135.180(b) has a similar requirement stating that the flight manual required by § 135.21 shall contain certain information on TCAS I.

Since the requirements for 10- to 30-seat airplanes are substantially the same, affected commuters would be able to comply with the part 121 requirements. The manual requirements in part 121 would be updated to apply to TCAS I as well as TCAS II.

Airborne Weather Radar. Section 121.357 requires an approved airborne weather radar on all transport category airplanes. Part 135 has requirements identical to part 121 for large transport category airplanes in passenger operations (§ 135.175), but part 135 requirements are less restrictive for airplanes with a passenger-seating configuration of 10 to 19 seats (that is, nontransport category) (§ 135.173). These airplanes may have either airborne weather radar or airborne thunderstorm detection equipment. Both parts 121 and 135 contain exceptions for operations in the states of Hawaii and Alaska and parts of Canada.

While most commuters operating under part 135 probably have airborne weather radar, some of the 10- to 19-passenger-seat airplanes may not. Airborne weather radar provides a higher level of safety than thunderstorm detection equipment because it provides pilots with a more accurate presentation of the relative location and distance of potentially severe weather conditions. Radar may be tilted up or down to show the maximum tops of thunderstorm areas and may be adjusted to display the relative density and strength of the area of potentially severe weather. With radar in an aircraft it is feasible to maneuver safely through an unanticipated entrance into severe weather conditions.

This proposal would require all affected operators to have airborne weather radar on their airplanes.

Low-Altitude Windshear. Low-altitude windshear equipment provides a warning to the flightcrew if windshear is in the area and provides guidance for avoiding windshear. Section 121.358 requires low-altitude windshear equipment on turbine-powered airplanes. The definition in § 121.358(d)(1) for turbine-powered excludes turbopropeller-powered and piston-powered airplanes. Part 135 does not require low-altitude windshear equipment. Both part 121 and part 135 (§§ 121.404 and 135.10) require windshear training for crewmembers; part 121 requires ground and flight (simulator) training while part 135 requires ground training.

The proposed rule would not require low-altitude windshear equipment for turbopropeller-powered or piston-powered airplanes since these airplanes are already excluded under the part 121 definition. The performance characteristics of these airplanes make them better able to escape from an inadvertent windshear encounter. The turbopropeller engines and straighter wings of these airplanes enable lift and acceleration to be more immediately applied, thus making the airplanes better able to escape from inadvertent windshear encounters.

If any turbojet-powered airplane is being used in scheduled passenger-carrying operations under part 135, it would have to comply with the part 121 low-altitude windshear equipment requirements. The FAA requests information on any operator who would be affected by this requirement.

Cockpit Voice Recorders (CVR). CVR provide accident investigators with information about the flight which helps to determine the cause of an accident or incident and thereby helps to prevent future accidents.

Section 121.359 requires CVR on all large turbine-engine-powered airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger-seating configuration of six or more and for which two pilots are required by type certification, and § 135.151(b) requires another standard

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for all multiengine turbine-powered airplanes or rotorcraft having a seating configuration of 20 or more seats.

The proposed rule would not change current CVR requirements. These standards, updated in 1988, continue to be appropriate to the types of operations involved. The requirements now in part 135 for 10- to 19-seat airplanes would be incorporated into part 121 under the proposed rule.

V.G. Airports

Section 121.590 requires that no air carrier or pilot conducting operations under part 121 may operate an airplane into a land airport in the U.S. (or territory, etc.) unless the airport is certificated under 14 CFR part 139. Section 135.229 states that no certificate holder may use any airport unless it is adequate for the proposed operation.

Part 139 prescribes regulations governing the certification and operation of land airports that are served by any scheduled or nonscheduled passenger air carrier operating airplanes with a seating capacity of more than 30 passengers. Therefore, part 135 commuter operators may use airports that are not FAA certificated.

Part 139 contains requirements for aircraft rescue and fire fighting equipment, airport guidance signs, airfield inspection procedures, airport staff training, airfield discrepancy reporting (Notices to Airmen), airfield pavement maintenance standards, emergency plans, snow and ice control plans, and runway and taxiway standards.

The statutory authority for the FAA to certificate airports, as specified in 49 U.S.C. 44706(a), limits that authority to an airport "that serves an air carrier operating aircraft designed for at least 31 passenger seats." The NTSB has recommended that the FAA seek legislative expansion of the statute to include in the Airport Certification Program all airports served by air carriers that provide scheduled passenger carrying service and revise part 135 to permit scheduled passenger operations only into airports certificated under the standards in part 139.

In response to the NTSB recommendation, the FAA in conjunction with the Department of Transportation, is proposing legislation which would grant the agency the authority to certificate any airport which receives scheduled service by an air carrier utilizing airplanes designed for 10 or more passenger seats. If approved, this legislation would add approximately 200 airports to the FAA's airport certification program.

Until such legislation is enacted, according to the proposed rule, affected commuters would be permitted to operate into other than part 139 certificated airports. Should the FAA receive expanded authority over airport certification, the FAA would, through rulemaking, propose standards that are sufficiently flexible to cover the range of airports presently served under part 135. These standards could not, in all cases, be at the level currently required under part 139 for part 121 operations.

In anticipation of receiving the necessary legislative authority, the FAA has proposed a task to the Aviation Rulemaking Advisory Committee (ARAC). The task requests ARAC to recommend what requirements in part 139 should be applicable to these airports. In making these recommendations ARAC is to consider accepted industry practices regarding airport safety, personnel available at these airports, costs associated with meeting these requirements (e.g., capital, operating, and maintenance costs), and the types of accidents/incidents that have occurred at these airports. The ARAC task allows all segments of the industry the opportunity to provide input into this effort at the earliest stages and will serve as the basis for rulemaking if the legislative authority is granted.

V.H. Proposed Effective Date and Compliance Schedule

The FAA proposes an effective date of 30 days and a general compliance date of 1 year. The FAA also proposes delayed compliance dates for certain actions as listed below. Proposed §§ 121.2 and 135.2 set out the compliance schedule and an accelerated compliance option, as discussed below.

Under the proposal, affected operators would comply with each requirement in part 121 unless an exception is provided in part 121. Therefore, it is important for affected operators to examine and comment on the potential impact on their operations of every part 121 requirement and not just those requirements specifically discussed in this NPRM.

It is the FAA's intention that if a final rule is adopted as a result of this NPRM, the final rule would be published not later than December 31, 1995, and that within 1 year of that date, that is, by December 31, 1996, all affected operators that have air carrier certification or operating certificates issued under part 135 at the time of publication would have completed the approval process and obtained new operations specifications giving them authority to conduct domestic or flag operations under part 121.

Under this proposal, persons who submit applications for or obtain air carrier certificates or operating certificates after 30 days after the effective of the final rule would be required to obtain part 121 operations specifications; however, these new entrants would meet the same requirements as the affected commuters, i.e., delayed dates for compliance and retrofit.

The FAA proposes longer compliance dates than the proposed 1-year general compliance date for some equipment requirements. These requirements, which fall into two categories, retrofit requirements and requirements for newly manufactured airplanes, are explained later in the preamble under the applicable part 121 subpart and are set out in proposed §§ 121.2 and 135.2 (these two sections are identical). In each case, the FAA has calculated the compliance time in consideration that, even if each of the retrofits were to be started immediately, it would take considerable time to accomplish them fleet-wide. Factors that mitigate for a period longer than one year include:

- The necessity for redesign of approved structures and systems, and the extent of those redesigns.
- The requirement to test such redesigns, including the effect of the redesign on other systems.
- The availability of FAA resources for witnessing tests and for making findings of compliance.
- The labor and airplane downtime necessary to accomplish the retrofits.
- The availability (or lack thereof) of appropriate materials and parts, and qualified designers and installers. The short lead times from suppliers and other entities not subject to direct control of operators are also relevent, especially since affected operators may be competing for the same resources.
- The effect of achieving compliance of other requirements that would be imposed by this or other rulemakings. (For example, the compliance period for the proposed requirements for flammability for compliant seat cushions and flotation-capable seat cushions would coincide.)

The longer compliance times are summarized as follows:

Two-year retrofit period. The following would require to be retrofitted within 2 years after the publication date of the final rule:

- Landing gear aural warning device (§ 121.289).
- Ditching emergency exits requirements in § 25.807(e) (§ 121.293(a)).

- Lavatory fire protection (§ 121.308).
- Floor proximity lighting, emergency exit handle illumination, and interior and exterior emergency lighting (§ 121.310 (c), (d), (e), and (h)).
- Passenger seat cushion flammability and flotation (§§ 121.312(c) and 121.340).
- Protective breathing equipment (§ 121.337(b)).

For example, compliance with the lavatory fire protection requirements would include redesigning existing lavatories to incorporate automatic fire extinguishers and other hardware, where none had existed before. In attempting to comply with the passenger seat cushion requirements, affected operators may end up competing for suppliers' cushion materials. The incorporation of PBE equipment in cockpits, where space may be scarce, may necessitate design compromises that must be carefully evaluated.

Four year retrofit. The following would be required to be retrofitted within 4 years after the publication date of the final rule:

- Pitot heat indication system (§ 121.342).

Additional factors may mitigate for proposing requirements to apply only to newly manufactured airplanes. In addition to consideration of the extent of redesigning and replacing existing systems and structures, the need to revise and re-tool manufacturing processes frequently will be relevant.

Newly manufactured within 1 year. The following would be required of newly manufactured airplanes operated in scheduled service 1 year after the publication date of the final rule:

- Safety belts and shoulder harnesses (§ 121.311(f)).

Compliance with this requirement would mandate that use of each belt and harness system, when buckled, allows each flight crewmember to perform their duties, including reaching controls on the flight deck; this may entail a redesign to ensure the proper crewmember-to-control interface.

Newly manufactured within 4 years. The following would be required of newly manufactured airplanes operated in scheduled service 4 years after the publication date of the final rule:

- Takeoff warning system (§ 121.293(b)).
- Compartment interior flammability (§ 121.312(a)).
- Cargo and baggage compartments (§ 121.314).

Compliance with the cargo and baggage compartment requirements, for example, would involve redesigning the airplanes to incorporate detector and extinguisher systems; in addition, new compartment liner materials would be incorporated. Compliance would likely necessitate the incorporation of redesigned mechanical, structural, and electrical systems to support the new systems. Designs and materials that have been approved for transport category airplanes may or may not "work" in other certificated airplanes; design and testing resources would be expended to confirm whether they do. Space within the fuselages of affected airplanes will likely be at a premium, thus limiting many design alternatives. The availability of (or lack thereof) design, part, and material support may be noticeably affected by competition for them among several operators.

To ensure an orderly transition to part 121 operations, the FAA proposes that a transition plan be submitted by each affected commuter within 60 days of the publication date of the final rule. Such a plan would enable operators to transition to part 121 operations efficiently and methodically, while giving the FAA the information it needs to allocate FAA inspector resources appropriately to ensure that all affected commuters receive both help and oversight as they move to part 121 operations.

Proposed §§ 121.2(g) and 135.2(g) set out the elements of the transition plan. It must contain a calendar of events and show detailed plans for obtaining new part 121 operations specifications, showing compliance with all applicable part 121 requirements, and purchasing and installing equipment within the time allowed for each equipment requirement. Specific discussion of such items as developing and implementing a dispatch system, updating manuals to meet part 121 requirements, and conducting any necessary proving tests would be included in the plan. The plan should also address how compliance with this rule would be coordinated with the implementation of the new rule requiring training under part 121, subparts N and O. (See discussion under "FAA Related Actions," above.)

The FAA requests comments on the proposed effective date and compliance schedule. The FAA encourages affected operators to achieve compliance sooner than the 1-year general compliance date and delayed compliance dates and would like to provide incentives that the FAA can reasonably provide. The FAA requests comments on possible incentives for early compliance.

VI. Discussion of Specific Proposals

VI.A. Part 119—Certification: Air Carriers and Commercial Operators: Summary

Purpose of Part 119. Part 119 is a proposed new part that consolidates into one part the certification and operations specifications requirements for persons who operate under parts 121 and 135. These regulations are currently in SFAR 38–2, which replaced the certification and operations specification requirements in parts 121 and 135 in response to the Airline Deregulation Act of 1978.

Part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988; Docket No. 25713). Based on comments received on the definition of "scheduled operation" in the NPRM, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in 1993 (58 FR 32248; June 8, 1993; Docket No. 25713).

In this NPRM, the FAA is republishing the entire text of part 119 for comment because of the length of time since the first NPRM, the number of changes that have been made to the proposed text, and the significance of the changes to part 119 that are proposed as a result of this NPRM.

In this section of the preamble, changes to proposed part 119 that are the result of this NPRM are explained. Other changes to part 119 that are not related to this NPRM are discussed later in the preamble, after the discussion of the proposed changes to parts 121 and 135.

The FAA requests comments on all aspects of part 119. However, comments already received on the first NPRM and the SNPRM for part 119 will be considered before issuing part 119 as a final rule; therefore, commenters do not need to repeat statements already submitted to the FAA.

Changes to Part 119 as a Result of this NPRM. Proposed § 119.3 contains definitions for the 5 kinds of operations conducted under parts 121 and 135 (Domestic, Flag, and Supplemental in part 121 and Commuter and On-demand in part 135). The FAA proposes to move the affected commuters to part 121 by changing the definitions for "Commuter operations," "Domestic operations," and "Flag operations."

The most important change to the proposed definitions of "domestic operations" and "flag operations" is that instead of applying to airplanes with more than 30 passenger seats, the definitions would apply to airplanes with more than 9 passenger seats. However, scheduled passenger-carrying operations conducted with turbojet-

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powered airplanes are defined as "domestic operations," or "flag operations," regardless of the number of passenger seats. Minor changes are also made in the part of the definitions that specifically identify which operations are considered "domestic" and "flag." "Domestic operations" generally mean operations are conducted between points within the 48 contiguous states and the District of Columbia, or between any two points within any state, territory or possession of the U.S. "Flag operations" generally mean operations conducted between any point within Alaska or Hawaii, or any territory or possession of the U.S., and any point outside the U.S., Alaska, Hawaii, or possession of the U.S.—and, any point outside Alaska, Hawaii, or any territory or possession of the U.S. Flag operations also include operations conducted between any point within the 48 contiguous states or the District of Columbia and any points outside the contiguous states or the District of Columbia.

The definition of "commuter operation" would be changed so that smaller airplanes used in scheduled passenger operations would be considered commuter—those conducted with airplanes that have 9 or less passenger seats, except for turbojet-powered airplanes, as explained above, and those that are conducted with rotorcraft, regardless of the size.

A change to the definition of "scheduled operation" may have an effect on certain operations that are not currently considered "commuter operations." Under SFAR 38–2 and as previously proposed in part 119, the only operations that are considered commuter are those with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. Scheduled operations with a lesser frequency are conducted under the on-demand rules. In this NPRM, the FAA proposes to eliminate the frequency test so that an operation with as few as one scheduled flight per week would have to be conducted under either the commuter rules of part 135 (for airplanes configured with 9 or fewer passenger seats) or the domestic or flag rules of part 121 (for airplanes configured with more than 9 passenger seats). This change is being proposed so that all scheduled passenger operators would be required to follow the applicable rules, i.e., domestic, flag, or commuter. The FAA is not aware of any operations that would be affected by eliminating the frequency test and specifically requests comments on the impact of this proposed change.

The definitions of "on-demand operation" and "supplemental operation" have been rewritten to make it clearer which operations fall into these categories. They have not changed significantly from current rules or from the NPRM, except for one important difference. This NPRM does not change the basic dividing line between on-demand and supplemental operations (more than a 30-passenger-seat configuration or more than 7,500 pound payload capacity is a supplemental operation), except that if a specific airplane with a passenger-seating configuration of 10 to 30 seats is used in domestic or flag operations as a result of this rule, any nonscheduled operation conducted with that airplane must be conducted under the part 121 supplemental rules, instead of under the on-demand rules of part 135. This is necessary because an airplane must be listed in a certificate holder's operations specifications as either a part 121 or a part 135 airplane; it cannot be switched back and forth between parts without a major investment of time and resources by both the operator and the FAA. Switching between parts entails many things, including airplane conformity checks, equipment checks, and record checks.

Section 119.21 contains the regulatory roadmap that requires domestic, flag, and supplemental operations to be conducted under part 121 and commuter and on-demand operations to be conducted under part 135. (See also Table 2 for a visual aid to the operating rules that apply to different kinds of operations.) This section has been reorganized and rewritten to make it easier to follow. It contains a provision that allows commuter operations to be conducted under domestic or flag rules, if the certificate holder obtains authorization from the Administrator. Likewise, part 135 on-demand operations may be conducted under the supplemental rules of part 121, if the certificate holder obtains authorization from the Administrator.

Section 119.49, Contents of Operations Specifications, specifies all of the items that are listed in each certificate holder's operations specifications. Although no substantive changes are being proposed for this section, affected commuters should carefully review this section because they would need to obtain revised operations specifications that allow them to conduct operations under part 121. Generally, affected commuters who conduct domestic operations would need to obtain operations specifications for domestic operations, while affected commuters who operate internationally would need to obtain operations specifications for flag operations. The items included in operations specifications for commuter operations are the same as for domestic and flag operations except that, under § 119.49(a)(4), domestic and flag operations must also list provisional and refueling airports. Affected commuters would need to identify these airports for their operations.

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS

Size/weight of aircraft	Part 121 domestic (Scheduled)	Part 121 flag (Scheduled)	Part 121 supplemental (Not scheduled)	Part 135 commuter (Scheduled)	Part 135 on-demand (Not scheduled)	Part 125 (Not scheduled)
Airplanes (Common Carriage):						
≤9 seats and ≤7500 lbs	No [1]	No [1]	No [2]	Yes [1]	Yes [2]	No
10–30 seats and ≤7500 lbs	Yes	Yes	No [2]	No	Yes [2]	No
>30 seats or >7500 lbs	Yes	Yes	Yes	No	No	No
Airplanes (When common carriage is not involved):						
<20 seats or <6000 lbs	No	No	No	No	Yes	No
≥20 seats or ≥6000 lbs	No	No	No	No	No	Yes

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS—Continued

Size/weight of aircraft	Part 121 domestic (Scheduled)	Part 121 flag (Scheduled)	Part 121 supplemental (Not scheduled)	Part 135 commuter (Scheduled)	Part 135 on-demand (Not scheduled)	Part 125 (Not scheduled)
Rotorcraft:						
Common carriage and when common carriage is not involved.	No	No	No	Yes	Yes	No

[1] Turbojet-powered airplanes used in scheduled passenger-carrying operations must comply with part 121 regardless of passenger seating or payload capacity.
[2] If turbojet-powered airplanes and other airplanes with 10–30 seat configurations are used for part 121 Domestic or Flag operations, non-scheduled or charter operations with that airplane shall be conducted under part 121 supplemental rules.

Also, current FAA policy and guidance require a 121 operator to have detailed operations specifications for intended VFR operations. Part 135 is more liberal in the conduct of VFR operations allowed. FAA believes that a higher level of safety is gained by conducting operations under instrument flight rules (IFR). Therefore IFR operations are seen as the standard; VFR operations, although still allowed, would be an exception approved only through operations specifications.

Before the FAA approves an affected commuter for domestic or flag operations and issues the new operations specifications, an FAA inspector would need to review all of the certificate holder's operations and procedures to ensure that the certificate holder has made the changes necessary in its operations to comply with part 121 rules. The FAA inspector would review and approve such items as the dispatch system, revised manuals, procedures for complying with part 121 flight time and rest requirements, completion of airplane proving flights, etc. The FAA will provide guidance to the affected commuters so that they can prepare for this approval process.

Requirements for the types and qualifications of management personnel for parts 121 and 135 operations are consolidated in proposed part 119. Sections 119.65 and 119.69 contain the types of management positions required for part 121 and part 135 operations, respectively. Sections 119.67 and 119.71 specify the qualifications for individuals in those positions. Section 119.65 proposes that part 121 operations have a Director of Safety, a Director of Operations, a Chief Pilot, a Director of Maintenance, and a Chief Inspector. Section 119.69 proposes that part 135 operations have only a Director of Operations, a Chief Pilot, and a Director of Maintenance. However, § 119.65(b) contains a provision that the Administrator may approve positions or numbers of positions other than those listed above for a particular operation if the certificate holder can show that safety can be maintained with fewer or different categories of management personnel.

The FAA is proposing in § 119.65 that each certificate holder that conducts operations under part 121 must have a Director of Safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. In its recent survey of 21 commuter airlines, the NTSB found that the person most likely approached by pilots with safety concerns was the Chief Pilot or the Director of Operations, the persons also responsible for the day-to-day management of line operations. The FAA agrees with the NTSB that, although other management personnel should be informed and aware of safety concerns, a safety officer can be most effective when functioning independently of those with responsibility for day-to-day operations. For this reason, ideally the Director of Safety should not also be assigned to any of the other required management positions in § 119.65 (Director of Operations, Chief Pilot, Director of Maintenance, Chief Inspector), nor should the Director of Safety report to any of those positions, but should instead report to only the highest management levels at the airline. However, the FAA realizes that this could create a problem for smaller operators with fewer management level positions. The FAA invites comments on how to structure an independent safety function in airlines of different sizes and is particularly interested in responses to questions such as: Should the rules require that the Director of Safety be a separate position, totally independent of other management positions? What would be the burden of such a requirement? If, following a review of the comments received, the FAA decides to adopt a mandatory separation of function, the final rule will specifically require this.

The qualification requirements for management positions are similar for parts 121 and 135 operations, except that the qualifications for Director of Operations and Director of Maintenance are more stringent for part 121 than for part 135. Under § 119.67(a), a Director of Operations for a part 121 operation must have both 3 years supervisory or managerial experience within the last 6 years and 3 years experience as a pilot in command (PIC) of a large airplane. If the person is becoming the Director of Operations for the first time, the three years as a PIC must have been within the last 6 years. Under § 119.71(a), a Director of Operations for a part 135 operation must have either 3 years supervisory or managerial experience within the last 6 years or 3 years experience as a PIC. Again, if the person is becoming Director of Operations for the first time, the three years of PIC experience must have been within the last 6 years. Under § 119.67(c), a Director of Maintenance for a part 121 operation must have 5 years experience within the past 5 years in one or a combination of maintaining the same category and class of airplane as the certificate holder uses or repairing airplane in the same category and class of airplane as the certificate holder uses in a certificated airframe repair station.

In addition the person must have 1 year of supervisory experience in maintaining the same category and class of airplane as the certificate holder uses. Under § 119.71(e), a Director of Maintenance for a part 135 operation must have either 3 years experience within the past 3 years maintaining the same category and class of aircraft as the certificate holder uses or 3 years experience within the past 3 years repairing aircraft in the same category and class of aircraft as the certificate holder uses in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service. Under § 119.67(e) affected commuters who currently employ persons as Director of Operations, Director of Maintenance, or Chief Pilot who do not meet the airman, managerial or supervisory experience

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requirements in proposed § 119.67 may request the Manager of the Flight Standards Division in the region of the certificate-holding district office to authorize the continued employment of those individuals. The certificate holder must be able to show that those individuals have comparable aeronautical experience that qualifies them to serve as Director of Operations, Director of Maintenance, or Chief Pilot for a part 121 operation. Proposed § 119.67(e) does not allow for a waiver of the airman certification requirements by the Managers of the Flight Standards Division for those management positions.

VI.B. Part 121 Discussion

The FAA has evaluated each requirement in part 121 to determine what effect compliance would have on affected operators. The following discussion describes (1) any proposed revisions to part 121 that would be necessary so that affected operators can comply with the requirement; and (2) any requirements that would be new or different for affected operators and that would impose a burden on the affected operators. If the FAA has determined that current part 121 and 135 requirements are identical or similar or that the change in compliance would not impose a burden, the requirements are not for the most part discussed.

Since all of part 121 would apply to affected operators unless otherwise stated in the proposed rule, each affected operator and individual should evaluate all of part 121, not only the proposed revisions, to determine how the proposed rule would affect them. The FAA invites comments on any effects of this proposed rule whether or not the requirements have been specifically addressed in this notice.

Discussion of subpart A revisions appears in the part 119 portion of the preamble. Subparts B–D would be reserved since the current substance of these subparts would be subsumed under part 119.

VI.B.1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers

Section 121.97 requires all domestic and flag operators to show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. They must also have an approved system to disseminate this information to appropriate personnel. Part 135 has similar requirements, but part 121 does require additional information. The FAA believes this would not have a significant impact on operators affected by this rule change.

Section 121.99 requires all domestic and flag operators to have a two-way air/ground communications system between each airplane and the appropriate air traffic control facility, along the entire route. In the 48 contiguous States and the District of Columbia, the communications system between each airplane and the dispatch center must be independent of any system operated by the United States. This would be a new requirement for the affected operators.

Section 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for the operation. For operations within the 48 contiguous States and the District of Columbia, these reports must be prepared by the National Weather Service. For other areas, a system must be approved by the Administrator. Section 135.213 has similar requirements, except the pilot in command is allowed to use various other sources, including his own weather assessment, for VFR operations. This section also requires reports of adverse weather phenomena. The FAA proposes that affected operators comply with part 121.

Section 121.107 requires each domestic and flag operator to have enough dispatch centers, adequate for the intended operation. This would be a new requirement for affected operators.

See the Dispatch System discussion in the "Major Issues" section of this NPRM for further discussion of this subpart.

VI.B.2. Subpart F—Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

This subpart is similar to subpart E, except it applies to supplemental operations, and discusses flight following requirements. This subpart would apply in cases where an affected operator uses an airplane that is also used in domestic operations to conduct a nonscheduled operation, as discussed above in Section VI.A.—Part 119 Summary.

See the Dispatch System and Flight Following System discussion in the "Major Issues" section of this NPRM for further discussion of this subpart.

VI.B.3. Subpart G—Manual Requirements

Manual requirements: Contents and personnel: Under subpart G of part 121 certificate holders are required to prepare and keep current a manual containing policies, procedures, applicable regulations, and other information necessary to allow crewmembers and ground personnel to conduct the operations properly (see § 121.133 and § 121.135). While the requirements of parts 121 and 135 are similar, part 121 manual requirements contain a more extensive list of manual contents (§ 121.135). Under part 121 the manual or appropriate parts must also be furnished to more personnel, such as aircraft dispatchers, flight attendants, and made available to others, such as station agents. The effect of these differences between compliance with part 121 versus compliance with part 135 would be significant for commuter operators. The proposal would require developing, producing, and distributing new manuals appropriate to part 121. In addition, § 121.137 requires the air carrier to issue a manual or appropriate parts to each crewmember and requires each crewmember to keep the manual up to date and have it with him or her when performing assigned duties. Part 135 does not require that flight attendants be issued a manual; however, it does require that persons to whom a manual is issued must keep it up-to-date (see § 135.21). The FAA believes that each crewmember should have his or her own manual containing up-to-date information and regulations pertinent to the crewmembers assigned duties. For flight attendants the manual would contain information about inflight medical emergencies, airplane evacuations, water landings, and other emergencies.

Airplane flight manual. Section 121.141 requires each certificate holder to keep a current approved airplane flight manual for each type of transport category airplane that it operates and to carry in each transport category airplane either the current flight manual or the manual required by § 121.133 if that manual contains the flight manual information. Part 135 does not have a comparable requirement; however, part 135 operators currently must comply with § 91.9, which requires an approved airplane flight manual on board the airplane if that manual has been developed. All operators affected by this proposal would already have an approved airplane flight manual. The requirement under part 121 is more permissive, allowing appropriate parts of the certificate holder's manual to be developed and carried instead of the flight manual and allowing some modifications of flight manual information if they are approved by the Administrator. This action proposes to include airplanes used by affected commuters under the manual requirements of § 121.141 and the

applicability statement of the current rule would be revised accordingly.

VI.B.4. Subpart H—Airplane Requirements

Subpart H of part 121 contains airplane requirements that apply to all certificate holders operating under part 121. Section 121.153 contains general requirements (e.g., airplanes must be in an airworthy condition) that would add no additional burden to airplanes presently operated under part 135.

Section 121.157 contains type certification requirements for various types of airplanes operated under part 121. Paragraph (a) of § 121.157 contains requirements that apply to airplanes type certificated before July 1, 1942. While it is unlikely that any airplanes of this vintage are presently operating under part 135 (except possibly an occasional DC–3) these requirements would be appropriate to such operations and therefore would not be changed.

Paragraph (b) of § 121.157 states that except for C–46 type airplanes covered in paragraphs (c) and (d), no airplane type certificated after June 30, 1942 may be operated under part 121 "unless it is certificated as a transport category airplane" and meets applicable airplane performance operating limitations as specified in paragraphs (a), (b), (d), and (e) of § 121.173. Since most of the 10-to-19 passenger airplanes that would be affected by this proposal were type certificated in the commuter category (or one of the predecessors of the commuter category) a new exception to paragraph (b) is proposed as a new paragraph (e).

Paragraphs (c) and (d) of § 121.157 apply to C–46 type airplanes and would not have any impact on this rulemaking since no C–46 type airplanes are presently operating under part 135.

Current paragraph (e) of § 121.157 would be deleted because helicopters are no longer operated under part 121.

Proposed new paragraph (e) would allow nontransport category airplanes type certificated after December 31, 1964, to be operated under part 121 if they were type certificated in the commuter category or fall into one of the categories listed below (referred to as "commuter category predecessors") and meet the additional airworthiness requirements of subpart I as made applicable by the proposed amendments to that subpart:

1. Airplanes type certificated before July 1, 1970, in the normal category that meet special conditions issued by the Administrator for airplanes intended for use in operations under part 135.

2. Airplanes type certificated before July 19, 1970, in the normal category that meet the additional airworthiness standards in Special Federal Aviation Regulation No. 23.

3. Airplanes type certificated in the normal category that meet additional airworthiness standards in appendix A of part 135.

4. Airplanes type certificated in the normal category and that comply with either section 1.(a) or section 1.(b) of Special Federal Aviation Regulation No. 41.

Proposed new paragraph (f) would require that to be operated under part 121 newly type certificated airplanes (i.e., those for which an application is submitted after the publication of this NPRM) must be type certificated under part 25. For newly type certificated airplanes this change would, in effect, reinstate the requirement that airplanes operated under part 121 must be transport category airplanes. Notwithstanding this proposal, the FAA recognizes that some present requirements of part 25 may not be appropriate for all propeller-driven, multiengine airplanes with less than 20 passenger seats (present airplanes used by affected commuters). Therefore the FAA, as previously discussed, has undertaken a comparative review of parts 23 and 25 and will in the near future propose changes to part 25 as appropriate to accommodate these airplanes which would previously have been type certificated in the commuter category under part 23.

Single-engine airplanes. Section 121.159 prohibits operation of single-engine airplanes under part 121. No change to this prohibition is proposed in this rulemaking since the FAA does not consider single-engine airplanes acceptable to part 121 standards. For example, a single-engine airplane could not meet part 121 requirements, such as the one-engine-inoperative requirements of § 121.191. This section is amended to delete an obsolete reference to § 121.9.

Airplane limitations: Type of route. Section 121.161 requires that a two-engine or three-engine airplane must be within 1 hour flying time from an adequate airport at normal cruising speed with one engine inoperative. While part 135 does not contain a comparable requirement, the FAA believes that this requirement can be met by present part 135 operators with the possible exception of some Alaskan operations. Since § 121.161 contains authority for deviations if approved by the FAA (AC 120–42 contains acceptable criteria), this requirement should not impose any undue burden.

This section also requires (with some exceptions for older airplanes) part 25 ditching certification for extended overwater operations, which the FAA believes should be applied to the operations that would be moved from part 135 to part 121 by this proposal. Therefore, no changes are proposed to this requirement.

The FAA invites specific comments on the potential impact of these proposals on operations in Alaska.

Proving tests. Section 121.163 provides proving test requirements for Part 121. Section 135.145 requires 25 hours of proving tests for certificate holders that operate turbojet airplanes or airplanes for which two pilots are required by this chapter for operations under VFR if that airplane or an airplane of the same make and similar design has not been previously proved in any operations under part 135. Like § 135.145, § 121.163 requires proving tests for materially altered airplanes. However, in contrast, under § 121.163, proving tests apply to each airplane to be operated under part 121; it also describes three types of proving tests. Under § 121.163 and § 135.145, additional proving tests are required after the aircraft type certification tests. In other words, the initial operator of a type of airplane must conduct at least 100 hours of proving tests acceptable to the FAA, which can be reduced in appropriate circumstances. Moreover, for each kind of operation (e.g., domestic, flag, supplemental) that an operator conducts, 50 hours of proving tests are required, which are also reducible in appropriate circumstances.

For existing airplanes, in each case the FAA would assess whether to reduce proving test hours required by § 121.163(b) for the target operators that would be subject to § 121.163 if this proposal is adopted. Factors that might be considered in any request for reduction in proving test hours include the operator's experience and performance in part 135 operations.

VI.B.5. Subpart I—Airplane Performance Operating Limitations

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes, and §§ 121.189 through 121.197 apply to turbine-powered-engine transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

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Sections 135.361 through 135.395 are virtually identical to §§ 121.171 through 121.205; the main differences reflect the absence of a dispatch system in part 135 operations. Section 135.363 makes clear that the term "large nontransport category airplane" as used in the subpart means an airplane type certificated before July 1, 1942. This language does not appear in part 121 because it is understood from the context in part 121 that the term "nontransport category airplane" is referring to older airplanes that were type certificated before the transport category was established. This clarification was needed in part 135 because of the existence of commuter category airplanes, most of which fit the definition of "large" and are also "nontransport category" airplanes. Part 135 addresses performance operating limitations for commuter category airplanes in § 135.398 by referencing §§ 135.385 and 135.387, which parallel §§ 121.195 and 121.197. The FAA believes that airplanes type certificated in the commuter category (or its predecessors) that would be operated under part 121 under this proposal should be required to meet, and are capable of meeting, the same performance operating limitations that now apply only to airplanes type certificated in the transport category. Therefore, the FAA proposes to delete the term "transport category" throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This proposal would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

VI.B.6. Subpart J—Special Airworthiness Requirements

Subpart J contains special airworthiness requirements that, as stated in the applicability section (§ 121.211), apply to all certificate holders. While this is semantically accurate, it is confusing because the airplane description in § 121.213 in fact describes pre-1942 nontransport category and pre-October 1946 transport category airplanes thereby limiting the applicability of §§ 121.215 through 121.283 to those airplanes. Sections 121.285 through 121.291 apply across-the-board to present part 121 operations.

To clarify the applicability of this subpart, the FAA proposes to expand § 121.211 to include the substance of § 121.213. As proposed, § 121.211 would break the special airworthiness requirements into three categories: (1) Those that apply to certain older type certificated airplanes (§§ 121.215 through 121.283); (2) those that apply to all airplanes operating under part 121 (§§ 121.285 through 121.291); and (3) those that would apply to airplanes presently operating under part 135 (proposed new § 121.293).

Cargo carried in the passenger compartment. Section 121.285 requires that cargo carried in passenger compartments must be stowed in a fully enclosed bin or carried aft of a bulkhead or divider and properly restrained. Section 135.87 allows operators to carry cargo in an approved cargo compartment instead of a fully enclosed bin and to carry restrained cargo anywhere in the passenger compartment if it is restrained by a net that meets the requirements of § 23.787(e). The FAA considers that it is not practical to require airplanes now operating safely under part 135 to install fully enclosed cargo bins or to be otherwise as limited as required by § 121.285. Therefore, FAA proposes to amend § 121.285 to add an exception for commuter category (and predecessor) airplanes that would have the effect of allowing cargo to be carried in the passenger compartment as it is today.

Landing gear aural warning device. Section 121.289 contains a requirement for a landing gear aural warning device for large airplanes. Thus, at present this section applies to any airplane with a maximum certificated takeoff weight of more than 12,500 pounds. Appendix A of part 135 requires a landing gear warning device for airplanes having retractable landing gear and wing flaps, but the device need not be aural. The FAA considers that the cost of replacing a warning light with a warning sound would be minimal. Therefore, this section would apply to any airplane that presently operates under part 135 and that would be required by this proposal to operate under part 121. To allow adequate time for airplanes without aural warning devices to be retrofitted, the FAA proposes a compliance date of 2 years after the publication date of the final rule.

Emergency evacuation and ditching demonstrations. Section 121.291 contains requirements for conducting demonstrations of airplane evacuation and ditching procedures. The FAA requires these demonstrations upon introduction of a new type and model of airplane into passenger-carrying operations. For airplanes with a seating capacity of more than 44 passengers, an actual evacuation demonstration must show that the full capacity of the airplane and the crewmembers can be evacuated within 90 seconds. Also, for airplanes with more than 44 passenger seats a partial demonstration is required, as specified in § 121.291(c). Demonstrations are not required for airplanes with fewer than 44 passenger seats.

Under § 121.291(d) any certificate holder operating or proposing to operate one or more landplanes of any size in extended overwater operations must conduct a simulated ditching in accordance with Appendix D to part 121. The purpose of the ditching demonstration is to show that the certificate holder's training and procedures for a new type and model of airplane are satisfactory. The simulated ditching does not specifically require the use of flight attendants; the FAA proposes to apply this rule to any affected commuter operator who conducts extended overwater operations, whether or not flight attendants are used in the operation.

The FAA intends to apply this provision to the affected commuter operators only when a new type and model of airplane is introduced after the effective date of the final rule. If a certificate holder has been using an airplane in scheduled passenger-carrying operations before the effective date of the final rule and the FAA has not found any serious deficiencies with its ditching procedures during the past 5 years during either normal or National Aviation Safety Inspection Program (NASIP) inspections that have not been satisfactorily corrected, the FAA may make a determination that the operator's crewmember emergency training and ditching procedures are adequate.

The FAA proposes to amend § 121.291 to clarify that the partial demonstration and emergency evacuation procedures apply only to airplanes with more than 44 passenger seats.

New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes. In general, airplanes currently flown under part 121 must be transport category airplanes; that is, type certificated under part 25 or one of its predecessors (see § 121.157). The only exceptions are several models of airplanes that were type certificated before the transport category was established. For these earlier airplanes, part 121 contains special requirements established to ensure that transport category standards would be met to the maximum extent feasible. By requiring that airplanes previously operated under part 135 meet most part 121

requirements, the FAA would ensure that these airplanes type certificated in the commuter category or its predecessors, for the most part, meet part 121 safety standards. However, because these airplanes were not type certificated in the transport category, the FAA has reviewed part 25 to determine whether any additional requirements should be added to part 121 either as a retrofit requirement or a requirement that applies only to airplanes manufactured after some future date. There are two such requirements and each is discussed separately in this section of the preamble.

Ditching emergency exits. Section 25.807(e) contains requirements for ditching emergency exits in transport category airplanes. Regardless of whether or not the airplane is certificated for ditching, it must have exits that are usable while the airplane is afloat, in case ditching occurs during an overwater climb-out or approach. The ditching exits for transport category airplanes with 10 or more passenger seats must meet at least the dimensions of a Type III passenger emergency exit (20 inches wide by 36 inches high).

Part 23, as recently amended by Amendment 23–46 (59 FR 25772; May 17, 1994), now contains requirements for ditching exits; however, all of the normal or commuter category airplanes currently in service were type certificated before that amendment became effective. The FAA proposes to amend part 121 (proposed new § 121.293(a)) to require ditching exits for nontransport category airplanes type certificated after December 31, 1964. Unlike those required for transport category airplanes, the ditching exits would only have to be as large as those currently required by § 23.807(b) (19 inch by 26 inch ellipses). Compliance would be required 2 years after the publication date of the final rule. This proposed requirement would not entail adding new exits. The overwing exits of most airplanes type certificated under part 23 would probably qualify as ditching exits. Part 25 airplanes intended for non-part 121 transportation sometimes comply by providing a sheet metal dam that can be installed in the passenger entry doorway. If it is necessary to consider a floor-level exit as a ditching exit in a nontransport category airplane, a similar sheet metal dam could be provided. Therefore, the FAA believes that the cost of this proposal is minimal.

Takeoff warning system. Section 25.703 requires an aural warning to the flightcrew at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. Part 23 does not require a takeoff warning system; in addition, part 23 airplanes typically do not have multiple types of devices. Accidents have occurred on transport category airplanes when the flightcrews initiated takeoffs when the airplanes were not in the proper configurations for takeoff. While the FAA is not aware of any incidents or accidents involving airplanes used by affected commuters, the FAA believes the cost of this modification on future manufactured airplanes is moderate. The FAA proposes that airplanes manufactured after a date 4 years after the publication date of the final rule would be required to have a takeoff warning system as required by § 25.703 except that a warning would not be required for any device if it is demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition (see proposed § 121.293(b)).

VI.B.7. Subpart K—Instrument and Equipment Requirements

Instrument and equipment requirements are contained in part 121, subpart K and part 135 subpart C. The requirements are in addition to the airplane and equipment requirements of part 91. The discussion below emphasizes all new or revised equipment requirements except for major equipment such as flight data recorders and airborne weather radar, which are previously discussed in the "Major Issues" section of this notice.

The proposal would require commuter operators to comply with part 121 airplane and equipment requirements except in areas that will be specifically discussed.

Sections 121.303, 121.305, and 121.307 require certain airplane instruments and equipment. Most of the airplanes used by affected commuters already have these instruments and equipment as required under part 135 (§§ 135.143 and 135.149). Some of the part 121 equipment is required under part 135 only for IFR or for VFR over-the-top and VFR night operations. Under this proposal this equipment would be required for all operations.

Lavatory fire protection. Section 121.308 currently requires lavatory smoke detection systems, or equivalent, and automatically discharging fire extinguishers in lavatory receptacles for towels, paper, or waste for passenger-carrying transport category airplanes. Although mitigated somewhat by the typically shorter flight stage lengths, a passenger's temptation to smoke illicitly in a lavatory (when there is one), exists in nontransport category airplanes used in air carrier service as well as in transport category airplanes. This is particularly true today, since smoking has been banned on most domestic airline flights. Furthermore, the consequences of illicit smoking could be equally catastrophic regardless of how the airplane was type certificated. Therefore, the FAA proposes to apply the requirements of § 121.308 to airplanes formerly operated under part 135 that are equipped with lavatories. Section 121.308 would be amended to delete the references to transport category. The FAA proposes that the required equipment be installed within 2 years after the publication date of the final rule.

Emergency equipment. Section 121.309(b) requires that each item of emergency and flotation equipment must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes. Section 135.177(b) contains a similar requirement for part 135 operators of airplanes with more than 19 seats. The FAA proposes requiring affected commuter operations, including those with airplanes of 10 to 19 seats, to comply with the existing part 121 requirement. Other provisions in this proposal would require additional emergency equipment to be installed by the new part 121 operators. This requirement would mandate only that the equipment be inspected in accordance with the established periods.

Hand-held fire extinguishers. Sections 121.309(c) and 135.155 contain the requirements for hand-held fire extinguishers aboard airplanes. The requirements are basically the same, except that part 121 requires that at least two of the required hand fire extinguishers must contain Halon, or equivalent. Part 135 does not require any Halon fire extinguishers. Part 121 requires a hand-held fire extinguisher to be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment. Part 121 also requires that at least one hand fire extinguisher be conveniently located and easily accessible for use in the galley when the galley is in a passenger compartment. The FAA proposes that the affected commuters comply with the part 121 requirements for fire extinguishers. The FAA proposes to amend § 121.309(c)(7) to require that at least one of the fire extinguishers in the passenger compartment must be a Halon fire

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extinguisher or equivalent. The FAA has in prior rulemakings addressed the need to allow Halon equivalents because the availability of Halon may be limited in the future (see, for example, 56 FR 15452, April 16, 1991).

First aid kits and medical kits. Section 121.309(d) requires that both approved first aid kits and approved emergency medical kits be carried on board passenger-carrying airplanes. The medical kits are intended to be used only by medically qualified persons, such as doctors, who may be on board the airplane. Section 135.177(a)(1) requires first aid kits to be carried on board airplanes with more than 19 passengers.

The FAA believes that, regardless of the size of the airplane, flight attendant requirement, or other factors, inflight emergencies could occur and a first aid kit may be needed. In the absence of a flight attendant, a flight crewmember or a passenger could use the first aid kit. Therefore the FAA proposes that first aid kits be required for all airplanes with more than 9 passenger seats operating under part 121.

The medical kit contains medical supplies such as certain drugs, syringes, and needles. Although medical kits may be used only by medically qualified personnel, flight attendants are required to be familiar with the medical kit and its contents. Since a flight attendant can monitor the security and use of the medical kit, medical kits should be required only on airplanes that are required to have a flight attendant. Additionally, if the FAA were to require a medical kit on 10–19 seat airplanes, that would mean that a pilot could be required to leave the flight deck to administer the use of the kit. Moreover, security and location of the kit pose additional problems for requiring a medical kit on an airplane where there is no flight attendant. Therefore, the FAA proposes to amend § 121.309(d) to require medical kits only for airplanes that are required to have a flight attendant. However, following review of the comments received, if the FAA decides to require a medical kit onboard 10–19 seat airplanes, the final rule will specifically require the medical kit for such airplanes.

Affected commuters should be aware of a recent rule requiring disposable latex gloves for both first aid kits and medical kits. The changes to part 121 in that rulemaking would apply also to commuters affected by this NPRM. (See 59 FR 52640; October 18, 1994, and 59 FR 62276; December 2, 1994.)

Crash ax. Section 121.309(e) requires that each airplane be equipped with a crash ax, while § 135.177 requires a crash ax only for airplanes with a passenger seating configuration of more than 19 passengers. Crash axes are intended to be used by crewmembers to escape from the flight deck in the event of an accident. In airplanes that do not have a separate flight deck and lockable door, crash axes normally would not be needed by the flight crewmembers to escape from the flight deck. The FAA therefore proposes in § 121.309 to retain the present requirement for crash axes only in airplanes that have a separate flight deck and lockable door.

Emergency evacuation lighting and marking requirements. Section 121.310(c), by referencing § 25.812(e), requires emergency evacuation lighting for passengers when all sources of illumination more than 4 feet above the cabin aisle are totally obscured. This requirement, which was adopted to enable passengers to find the emergency exits when the cabin is filled with dense smoke, applies to all transport category airplanes regardless of how many passenger seats they have. There is no corresponding requirement in part 23 or in part 135 for airplanes having a passenger-seating configuration of less than 20 seats. The FAA believes that applying this requirement to propeller-driven airplanes with 10 to 19 passenger seats is consistent with the present requirements for transport category turbojet-powered airplanes with similar seating capacities because the need to ensure conspicuous lighting of the exit is the same for nontransport category airplanes as for transport category.

Section 121.310(d) for emergency light operation requires that each light required by paragraphs (c) and (h) must be operable manually and must operate automatically from the independent lighting system. These requirements would apply to affected commuters. In § 121.310(d)(2)(i) each light must be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat. Under the proposed rule this requirement would be modified for affected commuter operations that would not be required to have a flight attendant.

Section 121.310(e) requires that an exit operating handle may not be used if its brightness decreases below a specified level. Section 135.178(e) contains an identical requirement for airplanes having a passenger seating configuration of more than 19 seats. Under this proposal the requirement would also apply to airplanes with a passenger configuration of 10–19 seats. Compliance with this requirement can be demonstrated by assuring that the exit operating handle is well illuminated by the emergency lighting system or by using a self-illumination system.

Section 121.310(f) contains standards for access to various exit types that, by virtue of § 121.157, presently apply only to transport category airplanes. Section 135.178(f) is identical for airplanes having a passenger configuration of more than 19 seats. The FAA considers that because of the sizes and configurations (that is, 10 to 19 passenger-seat configurations) of the airplanes and because of the type certification requirements of part 23, applicable to these exits, it is not necessary to apply these requirements to the nontransport category airplanes operating under part 135 that would be affected by this rulemaking. Therefore, the FAA proposes to amend § 121.310(f) to exclude commuter category (or predecessor) airplanes.

Section 121.310(g) (and its parallel requirement in § 135.178(g) for more than 19 passenger seat airplanes) require emergency exits to be marked on the outside by a 2-inch band contrasting in color with the surrounding fuselage. This requirement was adopted to enable ground rescue personnel to locate the exits more rapidly in an emergency condition. Most airplanes with a passenger-seating configuration of less than 20 seats operating under part 135 already meet this requirement and, for those that do not, compliance would merely require painting the bands around each exit. By proposing to require compliance with this requirement, the FAA would standardize the presentation of exit markings for the benefit of ground rescue personnel at minimum cost. Compliance would be required within 1 year after the publication date of a final rule.

Section 121.310(h) requires airplanes for which the application for type certification was made before May 1, 1972, to meet the exterior emergency lighting standards of § 25.812, in effect on April 30, 1972, or any later standards in effect if the application for type certification was made later. The lighting is provided for two purposes. One is to preclude passengers from hesitating as they leave the airplane because they cannot see what they are stepping into. The other is to preclude injuries when the airplane has come to rest on uneven, rocky, or wooded terrain. The need for such lighting is not related in any way to the size of the airplane. The FAA proposes to require non-transport category airplanes type certificated after December 31, 1964 (i.e., part 23 normal and utility category)

to comply with § 25.812 in effect April 30, 1972, within 2 years after the publication date of a final rule.

The FAA proposes that airplanes with a passenger seating configuration of less than 20 seats previously operated under part 135 be required to comply with the above described emergency lighting systems (that is, emergency exit signs, interior lighting, exit handles, and exterior lighting) and, except for the marking requirement discussed above, proposes a compliance date 2 years after the publication date of a final rule. Because of the potentially high cost of this proposed retrofit requirement, the FAA invites comments on the feasibility of meeting these part 121 emergency lighting requirements and of alternative means of achieving an acceptable level of safety.

Seatbacks. Section 121.311 prohibits a certificate holder from taking off or landing unless passenger seats are in the upright position. Section 135.117 requires only that passengers be briefed that seats should be in the upright position. The FAA proposes that affected commuters be required to comply with § 121.311.

Seat belt and shoulder harnesses on the flight deck. Section 121.311(f) requires a combined seat belt and shoulder harness, with a single-point release that meets the requirements of § 25.785. Part 135 does not contain a requirement for a single-point release system although the FAA believes that virtually all commuter category airplanes being manufactured today have such a system. To ensure that this is the case for newly manufactured airplanes the FAA proposes to require that airplanes manufactured after 1 year after publication of final rule meet the requirements of § 121.311(f).

Interior materials and passenger seat cushion flammability. Section 25.853(b) was amended in 1984 to require seat cushions to meet greatly enhanced flammability standards. At the same time, §§ 121.312(b) and 135.169(a) (but not for commuter category airplanes) were amended to require airplanes already in service to meet the improved seat cushion flammability standards after November 1987. In the 7 years that have passed since that date, the improved cushions are credited with saving a number of passengers' lives.

The seat cushion flammability standards apply to all transport category airplanes regardless of the passenger capacity. In the case of an inflight cabin fire the probability that a fire would occur in a commuter or normal category airplanes is exactly the same as in a transport airplane. Once a fire occurs, occupants are presented with exactly the same hazards as in a transport category. The need for seat cushions meeting the same flammability standards, therefore, is exactly the same. Fires are generally caused by fuel tanks being ruptured during a crash. The improved seat cushion standards provide considerable additional protection in a postcrash fire; they also provide considerable protection for airplanes of all passenger capacities from inflight fires. Tests have shown that cushions meeting these standards are much less likely to ignite and sustain a flame than those that do not meet the standards. Preventing a fire from occurring is the best possible form of fire protection. If a fire does occur, compliance with the improved seat cushion flammability standards slows the spread of the fire through the cabin and provides more time to bring it under control. Therefore, the FAA proposes to require nontransport category airplanes type certificated after December 31, 1964, to comply with the same seat cushion flammability standards that apply to other airplanes operated under part 121. Compliance would be required by a date 2 years after the publication date of the final rule or on the first replacement of the cushions, whichever occurs first. The proposed rule would allow for granting deviations for up to 2 additional years when justified by unique integral-seat cushion configurations.

In addition to the flammability standards that already existed in part 25, that part was amended in 1986 to require large surface-area components (e.g., sidewalls, bulkheads, ceilings, etc.) to pass tests using the Ohio State University (OSU) radiant rate of heat release test apparatus. The OSU test requirements for large surface-area materials were not made applicable to airplanes with a seating capacity of 19 or less seats. For those airplanes, the flammability standards that previously existed in part 25 were considered adequate and appropriate. The costs of retrofitting existing airplanes now would not be commensurate with the minimal increase in safety that would result. However, the FAA finds that it is reasonable to propose that nontransport category airplanes newly manufactured after 4 years after the publication date of the final rule comply with § 121.312(a) by meeting the same large-surface area component flammability requirements currently required for transport category airplanes.

Cockpit and door keys. Section 121.313 requires that there be a lockable door between the cockpit and the cabin and that there be a key for each cockpit door that is readily available to each crewmember. Currently, part 135 does not address this issue. The FAA proposes that the affected commuters be required to comply with the part 121 rule if there is a door with a lock or a door that can be retrofitted with a lock. (Curtains or accordion doors are not considered lockable doors.) If a lockable door already exists or can be retrofitted, the certificate holder would be required to provide a cockpit key that is readily available to each crewmember. The language of § 121.313(f) would be changed to exclude airplanes that do not have cockpit doors.

Cargo and baggage compartments. Part 25 (as referenced in § 121.314) contains requirements for cargo or baggage compartment liners, smoke detection, and fire extinguishment for various classes of compartments. The compartment classification system, also duplicated in § 121.221 (which as previously discussed applies only to certain airplanes type certificated before November 1, 1946), is based on the compartment's accessibility for fire detection and extinguishment. Part 25 was amended in 1989 to require the liners of Class C and D compartments to meet more stringent flammability standards. Section 121.314 was also adopted at that time to require the improved liners in existing transport category airplanes on a retroactive basis.

Part 23 contains no classification system or requirements for compartment fire protection; however, a proposed rule to add comparable requirements was issued on July 22, 1994, (59 FR 37620). While the cost of providing liners, smoke detection, and fire extinguishers in the cargo or baggage compartments of existing part 23 airplanes would be prohibitive, the FAA believes that it would be appropriate to require liners, smoke detection, and fire extinguishment for remote cargo or baggage compartments in newly manufactured part 23 airplanes. Therefore, the FAA proposes to require this modification for commuter category (or its predecessor) airplanes manufactured 4 years or more after the publication date of the final rule.

There is no service history of specific problems from the absence of this equipment. Because of the potential high cost of compliance, the FAA specifically requests comments describing how this safety objective can be achieved, including alternatives such as requiring only liners and smoke detection. The FAA needs to obtain specific and detailed information concerning cost and other problems associated with this proposal in order to make an informed decision at the final rule stage of this rulemaking.

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Fuel tank access covers. As a result of the 1985 Manchester British Air Tours accident (in which a piece of metal from the aircraft engine punctured the fuel tank access panel and created a fire), § 25.963(e) was amended in 1989 to require that all covers located in an area where a strike by foreign objects is likely must have as much resistance to fire or debris penetration as the surrounding structure. Concurrent with this amendment, § 121.316 was amended to require airplanes already in service to comply with § 25.963(e) on a retrofit basis. These requirements pertain to all transport category, turbine-powered airplanes. Due to their smaller size and turbo-propeller configuration, part 23 nontransport airplanes generally do not present the same hazard. Fuel tanks of current designs are located in the wings well aft of the strike zone of any engine debris. Also, these part 23 airplanes are likely to have access covers that provide no less resistance to fire or debris penetration than the surrounding wing structure. The FAA considers that it would be a waste of resources to require a demonstration of compliance. Therefore, the FAA does not propose to require part 23 nontransport airplanes to comply with §§ 25.963(e) and 121.316. Since § 121.316 applies only to "turbine-powered transport category" airplanes, no rule change is needed. The FAA points out that transport category airplanes previously operated under part 135 would have to comply with § 121.316.

Oxygen requirements. Sections 121.327 through 121.335 cover supplemental oxygen requirements and oxygen equipment requirements. The requirements are similar to the oxygen requirements in § 135.157 except that for certain airplanes, part 121 requires less oxygen. Each affected commuter who would have to comply with part 121 oxygen requirements as a result of this rulemaking should readily be able to operate its airplanes in accordance with the oxygen requirements specified in part 121.

Portable oxygen for flight attendants. Section 121.333(d) requires that each flight attendant shall, during flights above 25,000 feet, carry portable oxygen equipment with at least a 15-minute supply of oxygen, unless there are enough portable oxygen units with masks or spare outlets and masks are distributed through the cabin to ensure immediate availability of oxygen to each flight attendant, regardless of his or her location at the time of cabin depressurization. Part 135 does not have a similar requirement for portable oxygen for flight attendants. The FAA proposes that affected commuters who use flight attendants in their operations and that operate above 25,000 feet be required to comply with the part 121 requirement.

Protective breathing equipment (PBE). Section 121.337 contains requirements for equipping the flight deck and passenger compartments of transport category airplanes with PBE. Part 135 does not currently require any type of PBE.

There are two kinds of PBE with two sets of approval criteria. PBE may be portable or built into the airplane (fixed or sedentary). A PBE unit consists of an oxygen supply and facial protection, such as a full face mask, smoke hood, or face mask and goggles. A fixed or portable PBE is installed in the airplane for use by flight crewmembers while they are at their stations. Portable PBE that meets applicable criteria and is approved may be used on the flight deck and/or throughout the airplane.

Section 121.337(b)(8) requires PBE, either fixed or portable, to be conveniently located on the flight deck and easily accessible for immediate use by each flight crewmember. In addition, § 121.337(b)(9) requires that for combatting fires a portable PBE must be located on or close to the flight deck with easy access by each flight crewmember for fighting fires. A portable PBE in the passenger compartment must be located within 3 feet of each hand fire extinguisher. Both of these requirements provide that the Administrator may authorize another location if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

The proposed rule would require affected commuters to comply with the PBE requirements of § 121.337. To be in compliance, an airplane with a passenger-seating configuration of 10 to 19 seats would have to have at least three PBE: one PBE, fixed or portable, for each flight crewmember at their station, and an additional portable PBE on the flight deck for use in fighting fires. An airplane with a passenger-seating configuration of 20 to 30 seats would have to have at least four PBE: One PBE, fixed or portable, for each flight crewmember at their station; an additional portable PBE on the flight deck for fighting fires; and a portable PBE in the passenger compartment located within 3 feet of the required hand fire extinguisher.

The applicability of the current rule would be revised to include other than transport category airplanes. Section 121.337(b)(9)(iv) would also be revised to except airplanes having a passenger-seating configuration of fewer than 20 seats and a payload capacity of 7,500 pounds or less from the requirement to have a PBE in the passenger compartment. The exception is needed because these airplanes are not required to have a flight attendant; the portable PBE on the flight deck would be used by a flight crewmember for fighting a fire.

There are major safety benefits to requiring PBE. PBE prevents injury or death of crewmembers from smoke or harmful gasses and enables them to continue flying the airplane and assisting passengers. PBE decreases the likelihood of death or injury to passengers because crewmembers will not be incapacitated by smoke or harmful gasses and thus are able to continue to perform their duties. Finally, PBE allows crewmembers to fight fires without succumbing to smoke inhalation, thereby decreasing the risk of passenger injury and death. The FAA proposes to apply the PBE requirement to affected commuters because fires occur at least as frequently in airplanes used by affected commuters as they do in the larger airplanes currently operated under part 121. Fires can have worse effects in smaller airplanes because there is less room to move passengers away from the source of the fire. Also, since there is less cabin volume, the smoke may become worse more quickly.

The FAA proposes to require compliance with § 121.337 by a date 2 years after the publication date of the final rule.

Additional life rafts for extended overwater operations. Sections 121.339 and 135.167 require that airplanes engaged in extended overwater operations provide enough life rafts of a rated capacity and buoyancy to accommodate the occupants of the airplane. In addition, § 121.339 requires excess rafts so that all occupants of the airplane can be accommodated in the event of the loss of one raft of the largest rated capacity.

A life raft, which is approximately the size of a suitcase before it is inflated, is an important piece of survival equipment in an emergency ditching. Rafts facilitate rescue efforts by keeping passengers together and helping to prevent hypothermia. The FAA believes that the affected commuters that engage in extended overwater operations should be required to meet the part 121 requirements. As with current part 121 certificate holders, affected commuters can apply for waivers, and the FAA can decide, on a case-by-case basis, if a waiver is appropriate. These waivers are issued pursuant to § 121.339(a) which permits the Administrator to allow deviation from the requirement to carry certain equipment for extended overwater operations. Since there are few extended overwater operations conducted by commuters, the FAA does not expect this proposed requirement to have a significant impact.

Flotation devices. Unless an airplane is equipped with life preservers, flotation cushions are required in § 121.340 for each passenger whenever an airplane is used in any overwater operation. In parts 121 and 135, life preservers are required only for extended overwater operations, (§§ 121.339 and 135.167). Therefore, airplanes used in extended overwater operations would already be equipped with life preservers, so they would not need to have flotation cushions. Section 121.340 has been applied so that virtually every airplane is equipped with either flotation cushions or life preservers, because it is practically impossible to operate any place without flying over a body of water of sufficient depth to require some sort of flotation means.

The advantage of requiring flotation means is that if an airplane crashes in the water, occupants would be provided some protection. Many of the most active airports have runways with takeoff or landing approaches over water. While ditchings (anticipated water landings) in the high seas are relatively rare events, crashes in the water at the end of runways are less rare and can result in drownings.

Therefore, the FAA proposes that airplanes equipped with 10 or more seats operating in scheduled passenger operations and not already equipped with life preservers be equipped with flotation cushions. To allow any replacement of seat cushions to be coordinated with the seat cushion flammability requirements of § 121.312(c), the FAA proposes a compliance date of 2 years after the publication date of the final rule.

Pitot heat indication system. Section 25.1326 requires a pitot heat indication system to indicate to the flightcrew when a pitot heating system is not operating. Part 23 currently requires pitot heat systems for airplanes approved for IFR flight or flight in icing conditions, but doesn't address the requirement for a pitot heat indication system. This new requirement applies to new type certification and will not affect existing in-service commuter airplanes or future production of currently approved commuter airplanes. Section 121.342 currently requires a pitot heat indication system on all airplanes that have a pitot heating system installed.

In recommendation A–92–86, the National Transportation Safety Board (NTSB) recommended that small airplanes certificated to operate in icing conditions and at altitudes of 18,000 feet mean sea level and above should be modified to provide a pitot heat operating light similar to the light required by § 25.1326. As recommended by the NTSB, part 23 is currently being amended to require such indication for commuter category airplanes (Notice 94–21, 59 FR 37620, July 22, 1994).

The FAA proposes to amend § 121.342 to require nontransport category airplanes type certificated after December 31, 1964, to incorporate pitot heat indication systems. Affected commuters would have to comply within 4 years after the publication date of this rulemaking.

Flight data recorders. Section 121.343 requires operators to equip certain airplanes with flight data recorders (FDR) that have certain data parameters. Section 135.152(a) requires FDR in multiengine turbine-powered airplanes with a passenger configuration of 10 to 19 seats that were brought onto the U.S. register after October 11, 1991. Section 135.152(b) requires FDR on multiengine, turbine-powered airplanes having a passenger seating configuration of 20 to 30 seats.

As discussed in the "Major Issues" section of this notice, the FDR requirements would continue unchanged under the proposal. Therefore, the current applicable requirements in part 135 would be moved into part 121 by reference in proposed § 121.344.

Radio equipment. Sections 121.345 through 121.351 cover radio equipment requirements. Part 121 specifies radio equipment requirements for operations under VFR over routes navigated by pilotage, for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top, and for extended overwater operations. The requirements are more specific and restrictive than those in § 135.161. The radio equipment requirements in part 121 are cumulative; that is, the regulations prescribe basic radio equipment requirements for VFR over routes navigated by pilotage and additional equipment for VFR over-the-top or IFR. Most part 121 operations are conducted under IFR. The proposed rule would require affected commuters to comply with part 121 radio equipment requirements. Because additional equipment would be required for VFR conditions in operations under part 121, the FAA requests comments on the appropriateness of the part 121 requirements for operations presently conducted under part 135 and, if inappropriate, commenter recommendations for alternate requirements.

Emergency equipment for operations over uninhabited terrain. Section 121.353 prescribes the emergency equipment needed for operations over uninhabited terrain areas for flag and supplemental air carriers and commercial operators. The requirements include pyrotechnic signaling devices, emergency locator transmitters (ELT's), and survival kits equipped for the route to be flown. Similar requirements exist in part 135 for airplanes having a passenger-seating configuration of more than 19 passengers. (§§ 135.177 and 135.178). The proposed rule would require compliance with § 121.353. Survival kits would be a new requirement for affected commuter operators of airplanes with 10 to 19 seats.

Airborne weather radar. Section 121.357 requires airborne weather radar equipment for transport category airplanes (except for C–46 airplanes). Similar requirements exist in § 135.175, which applies to large transport category airplanes. Section 135.173 allows for the use of either airborne weather radar equipment or approved thunderstorm detection equipment. As discussed in the "Major Issues" section of this notice, affected commuters would be required to have approved airborne weather radar equipment. The applicability language of part 121 would be revised accordingly.

Low-altitude windshear systems. Section 121.358 requires either low-altitude windshear warning and guidance systems or predicting systems on turbine-powered airplanes. The definition for turbine-powered airplanes in § 121.358(d) specifically excludes turbo-propeller-powered airplanes. As discussed in the "Major Issues" section of this notice, this requirement would not apply to affected commuter operators using turbo-propeller-powered or piston-powered airplanes.

Cockpit voice recorders. Section 121.359 requires cockpit voice recorders (CVR) on all large turbine-powered-engine airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by type certification, and another standard for all multiengine turbine-powered airplanes or rotorcraft

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having a seating configuration of 20 or more seats. As discussed in the "Major Issues" section of this notice, the proposal would not change current CVR requirements; and CVR language from part 135 would be incorporated to maintain existing part 135 requirements.

Ground proximity warning system (GPWS). GPWS provides a warning to the flightcrew when an airplane is dangerously close to the ground, allowing time for the flightcrew to take corrective action and avoid collision with the ground. These types of accidents are called controlled flight into terrain (CFIT) because they occur when the flightcrew is not aware that the airplane is dangerously close to terrain.

Section 121.360 requires GPWS on turbine-powered airplanes. Section 121.360(f) also requires a ground proximity warning-glide slope deviation alerting system that meets certain standards. Section 135.153 requires a ground proximity warning system for any turbine-powered airplane having a passenger-seating configuration of 10 or more seats. There is also a provision in § 135.153(b) that allows an airplane to be operated until April 20, 1996, without a GPWS if the airplane is equipped with an alternative system that conveys warnings of excessive closure rates with the terrain and if certain other requirements are met. Part 135 does not specifically require a glide slope deviation alerting system nor does it provide specific TSO standards as part 121 does.

Although the GPWS requirements in parts 121 and 135 appear to be different, any approved GPWS under part 135 would be capable of complying with part 121 standards. By April 20, 1996, which will precede the compliance date of this proposed rule, all affected commuter airplanes must have approved GPWS. Therefore, there will be no difference in the requirements as of the effective date of this proposed rulemaking.

VI.B.8. Subpart L—Maintenance, Preventive Maintenance, and Alterations

Applicability. Part 121 operators are required to adopt a continuous airworthiness maintenance program (CAMP), which has a proven track record for large transport category airplane. Under § 135.411(a)(2), airplanes that are type certificated for a passenger-seating configuration of 10 seats or more are already required to comply with a CAMP similar to part 121 requirements. The proposed rule would require all airplanes type certificated for 10 or more passengers to comply with part 121 CAMP requirements. These requirements are consistent with present-day maintenance standards and techniques to manage airplane airworthiness. The proposal to include affected commuters under part 121 maintenance requirements would not necessitate a revision to § 121.361.

Section 121.361(b) contains a deviation provision allowing certain noncertificated persons to perform maintenance. Affected commuters would now have this option available. Since many of the airplanes that are the subject of this rulemaking are manufactured outside the United States, this deviation provision would allow operators to have the original equipment manufacturers perform some overhauls and repairs.

Responsibility for airworthiness. Section 121.363 places the responsibility for the airworthiness of an airplane on the certificate holder. Under the proposal affected commuters would have to comply with § 121.363. A similar requirement appears in § 135.413. Section 135.413(a) requires a part 135 operator to have defects repaired between required maintenance under part 43. This provision does not appear in part 121. Part 121 operators are required to have defects repaired in accordance with their maintenance manual. As an FAA-approved maintenance manual requires no less than the part 43 requirements, affected commuters would experience no change in requirements.

Maintenance, preventive maintenance, and alteration organization. Section 121.365 requires the certificate holder to have an adequate maintenance organization for the accomplishment of maintenance, preventive maintenance, and alterations on its airplanes. The provision allows the certificate holder to arrange with another person to accomplish the work, provided that the certificate holder determines that the person has an organization adequate to perform the work. This provision requires separate inspection functions to ensure that those items directly affecting the safety of flight are verified to be correct by someone other than the person who performed the work. Since § 135.423 is essentially identical to § 121.365, there would be no change in requirements for affected operators. Affected operators would be required to comply with part 121.

The FAA recognizes that other provisions of this proposed rule, which would require affected operators to install new equipment and might lead to replacement of part 23 type certificated airplanes with part 25 type certificated airplanes, could necessitate that maintenance personnel (as required by this section and by §§ 121.367 and 121.371) have additional skills and training. The effect of these other provisions on maintenance costs is discussed in the regulatory evaluation summary in this notice.

Maintenance, Preventive Maintenance, and Alterations Programs. Section 121.367 establishes the requirement for a certificate holder to have an inspection program and a program covering other maintenance, preventive maintenance, and alterations. The rule provides for accomplishment of maintenance, preventive maintenance, and alterations in accordance with the certificate holder's manual regardless of whether the work is performed by the certificate holder or another person. The corresponding part 135 provision, § 135.425, is essentially identical. Affected operators would be required to comply with part 121.

Manual requirements. Section 121.369 requires the certificate holder to include in its manual a description of the organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any required inspections, other maintenance, preventive maintenance, or alterations. The manual must contain the programs required by § 121.367, including the methods of performing required inspections, other maintenance, preventive maintenance, or alterations. This provision requires a certificate holder to provide a maintenance program in manual form to be used in its organization in the performance of maintenance, preventive maintenance, and alteration programs. This manual is necessary to ensure that the certificate holder has provided an adequate maintenance program for the airworthiness of its airplanes and to inform its personnel, or other persons who perform maintenance, of their responsibilities regarding the performance of maintenance on the airplane.

Section 135.427 is basically identical to § 121.369. Affected operators would be required to comply with part 121.

Required inspection personnel. Section 121.371 contains certain requirements for inspection personnel, including provisions for specific qualifications for and supervision of an inspection unit. Included is a requirement for listing persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are

authorized to perform. This ensures that competent and properly trained inspection personnel are authorized to perform the required inspections. Section 135.429 has language that is similar to this section. Affected operators would be required to comply with part 121.

Continuing analysis and surveillance. Section 121.373 on continuing analysis and surveillance is in nearly all respects identical to the provisions of § 135.431. The FAA proposes that affected commuters would comply with § 121.373. Section 121.373 provides for the establishment by the certificate holder of a system to continually analyze the performance and effectiveness of the programs covering maintenance, preventive maintenance, and alterations. This section also provides for the correction of any deficiencies in those programs. Also included in this section is a provision whereby the Administrator may require the certificate holder to make changes in either or both of its programs described in paragraph (a) if those programs do not contain adequate procedures and standards to meet the requirements of this part. The requirement is necessary to provide feedback to the certificate holder on the certificate holder's programs covering maintenance, preventive maintenance, and alterations, so that deficiencies can be corrected. The requirement for a procedure providing for changes required by the Administrator is similar to procedures included in other parts of the Federal Aviation Regulations and ensures that deficient programs are corrected promptly. Since §§ 121.373 and 135.431 are basically identical, no new burdens would be imposed by the proposal to require affected operators to comply with § 121.373.

Maintenance and preventive maintenance training programs. Section 121.375 requires training programs that ensure that persons performing maintenance or preventive maintenance functions (including inspection personnel) are fully informed about procedures, techniques, and new equipment in use and that those personnel are competent to perform their required duties. This section is identical to § 135.433. Affected operators would be required to comply with part 121.

Maintenance and preventive maintenance personnel duty time limitations. Section 121.377 establishes the requirements for maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any 1 calendar month. This requirement is for maintenance personnel within the United States. This provision would be a new requirement for affected commuters. The FAA believes that this provision to be a necessary safety precaution to ensure that maintenance personnel are provided adequate rest.

Certificate requirements. Section 121.378 requires that each person, other than a repair station certificated under the provisions of Subpart C of part 145, who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections, hold an appropriate airman certificate. The FAA determined when this provision was adopted for part 121 that it was necessary to ensure that the certificate holder uses maintenance personnel who have adequate knowledge of the regulations and hold an appropriate airman certificate. An identical requirement appears in § 135.435. The FAA proposes that affected operators would comply with part 121.

Authority to perform and approve maintenance, preventive maintenance, and alterations. Section 121.379 allows the certificate holder to have maintenance performed by other persons. The rule also permits a certificate holder to perform maintenance for other certificate holders. This provision allows the part 121 certificate holder some flexibility in scheduling and performing its maintenance by allowing the work to be performed by other persons when the certificate holder does not have the personnel or facilities available to perform certain maintenance. The rule requires that all major repairs and alterations must have been accomplished with data approved by the Administrator. Section 135.437 contains the same requirements. The FAA proposes that affected operators would comply with part 121.

Maintenance recording requirements. Section 121.380 provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. The rule also specifies the length of time that the records must be retained and requires that the records be transferred with the airplane at the time it is sold. The requirements of §§ 135.439 and 121.380 are essentially identical so few new recordkeeping requirements would be imposed. A small change is necessary to § 121.380(a)(2) to accommodate propeller-driven airplanes used by some affected commuters. This proposed requirement is in § 135.439(a)(2)(i).

Section 121.380(a)(2)(v) would be amended to adopt the language found in § 135.439(a)(2)(v) to provide more complete records on airworthiness directive compliance. The current part 121 requirement does not specify maintaining in the records the times and dates for conducting recurring actions required by an airworthiness directive, although the FAA assumes that current part 121 certificate holders already do this. This is particularly important if ownership of an airplane is transferred.

Transfer of maintenance records. Section 121.380a requires the certificate holder to transfer certain maintenance records to the purchaser at time of the sale, in either plain language form or in coded form. The coded form must provide for the preservation and retrieval of information in a manner acceptable to the Administrator. The purchaser may permit the seller to keep physical custody of the records; however, custody by the seller does not relieve the purchaser of the responsibility under § 121.380(c) to make the records available for inspection by a representative of the Administrator or authorized representatives of the National Transportation Safety Board. The purpose of this section is to ensure that a new owner receives all the records that are to be maintained by an operator as required by § 121.380. This section is worded the same as § 135.441 except that the part 121 provision allows the purchaser to select the format of the transferred records.

The FAA notes that both § 121.380 and § 121.380a, and all other maintenance recordkeeping requirements, are being reviewed by an Aviation Rulemaking Advisory Committee (ARAC) that is studying ways to improve the recordkeeping requirements.

VI.B.9. Subpart M—Airman and Crewmember Requirements

Subpart M of part 121 and subparts E and F or part 135 contain airman and crewmember requirements. A discussion of the Age 60 Rule appears in the "Major Issues" section of this notice.

Flight attendant complement. The number of flight attendants required on airplanes varies depending on the seating capacity of the airplane. Section 121.391 requires one flight attendant for airplanes having a seating capacity of more than 9 but less than 51 passengers. Section 135.107 requires one flight attendant for airplanes having a passenger seating configuration, excluding any pilot seat, of more than 19 passengers.

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Flight attendants are required on airplanes to perform essential routine and emergency safety duties. Routine duties include numerous items, such as passenger briefings and ensuring that carry-on baggage is correctly stowed. On larger airplanes flight attendants are needed in emergencies to operate emergency equipment and assist passengers in evacuating the airplane. Airplanes currently operated under part 121 are larger and heavier, the distance to the nearest emergency exit may be greater, and the emergency equipment is more complex to operate. Small airplanes are easier to evacuate than large airplanes and the close proximity of the flightcrew make handling inflight emergencies easier than on large airplanes. In addition, airplanes with passenger-seating capacities from 10 to 19 might have to install an additional seat for the flight attendant or dedicate a seat which could be revenue producing to provide a seat for a flight attendant. Not requiring flight attendants for commuter airplanes with a seating capacity of less than 20 passengers has not proven to be a safety hazard. Therefore, the FAA is retaining the requirement for a flight attendant for more than 9 passengers for current part 121 airplanes, but proposes to require a flight attendant for affected commuters only in airplanes with more than 19 passenger seats. This change would not have any effect on current part 121 certificate holders and would not impact the affected commuters since it is the current standard for part 135.

Flight attendants being seated during movement on the surface. Section 121.391(d) states that during movement on the surface, flight attendants must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants. Part 135 has a similar provision in § 135.128(a), except that it does not specify that flight attendants may be performing safety duties during movement on the surface. The FAA proposes that the affected commuters with flight attendants comply with the part 121 rules and that flight attendants be allowed to perform safety related duties, such as ensuring that passenger seat belts are fastened and conducting passenger briefings, during movement on the surface.

Flight attendants or other qualified personnel at the gate. Section 121.391(e) requires that a specified number of flight attendants be on board the airplane when it is parked at the gate and passengers are on board and that the number of flight attendants cannot be reduced unless certain conditions are met. It also allows the use of "substitutes" providing they are qualified. Part 135 does not have requirements on flight attendants at the gate, although commuter operators may have policies preventing unattended passengers when the airplane is parked at the gate. The FAA proposes that all airplanes being operated by affected commuters be required to comply with current § 121.391(e); that is, they must have a flight attendant or substitute (such as a flight crewmember) on board when the airplane is parked at the gate and passengers are on board. The substitutes must be given training in the emergency evacuation procedures for that airplane as required by § 121.417 and they must be identified to the passengers. If there is only one flight attendant or other qualified personnel on board the airplane, that person must be located in accordance with the certificate holder's FAA-approved operating procedures.

Since as a result of this proposed rule § 121.391(e) would apply in the future to operations that do not use flight attendants, the FAA proposes to move paragraph (e) to a new separate section, proposed § 121.393, to highlight the crewmember requirements that apply when an airplane is on the ground and will continue to another destination.

Aircraft dispatchers. Section 121.395 requires that each domestic and flag air carrier shall provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight. This would be a new requirement for affected commuters. It is associated with compliance with the dispatch requirements of part 121, which is discussed in the "Major Issues" section of this preamble.

VI.B.10. Subparts N and O—Training Program and Crewmember Qualifications

There are no proposed revisions to these subparts in this notice except that § 121.435 would be removed. It is an obsolete requirement since helicopters are no longer operated under part 121. See discussion of a recent proposal to these subparts in the "Recent FAA Actions" section of this notice.

VI.B.11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers

The requirements in § 121.463 of subpart P would be revised to clarify where an observer is to sit if the airplane does not have a jump seat on the flight deck.

VI.B.12. Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.13. Subpart R—Flight Time Limitations: Flag Air Carriers

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.14. Subpart S—Flight Time Limitations: Supplemental Air Carriers and Commercial Limitations

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.15. Subpart T—Flight Operations

This subpart prescribes requirements for flight operations applicable to all certificate holders except as otherwise specified. The requirements include responsibility for operational control, passenger briefings, use of oxygen, carry-on baggage, use of certificated airports, and other requirements.

Operational control. Sections 121.533 and 121.535 require each domestic and flag operation to be responsible for operational control and specifies the responsibilities for aircraft dispatchers and pilots for each flight release. These would be new requirements for affected commuters. Section 121.537 contains the requirements for operational control for supplemental operations. While the requirements for domestic and flag operations are based on a dispatch system, the requirements for supplemental operations are based on a flight following system. For all three types of operations the requirements in part 121 for operational control are more detailed and provide better guidance than those in part 135 (§§ 135.77 and 135.79). Part 121 assigns specific responsibilities to the pilot in command and the aircraft dispatcher, clearly stating these requirements and how operational control is to be implemented. In part 135, the certificate holder must list names and titles of those responsible for operational control, but there are no specific requirements. Operational control is critical to flight safety and the requirements in part 121 would provide a higher level of safety for affected commuters.

Admission to the flight deck. Section 121.547 specifies who may be admitted to the flight deck of a passenger-carrying airplane. The part 121 section is similar to but more detailed than § 135.75, which applies to the admission of FAA inspectors to the pilots' compartment, except that § 121.547 provides for additional types of persons who may be admitted.

Emergency procedures. Parts 121 and 135 require that, when the certificate holder or PIC knows of conditions that are a hazard to safe operations, the operation must be restricted or suspended until the hazardous conditions are corrected. (See §§ 121.551, 121.553, and 135.69.) In addition, § 135.69(b) provides for the PIC to continue a flight towards an airport where hazardous conditions exist if (1) it may be reasonably expected that by the time of estimated arrival the conditions will have been corrected, or (2) there is no safer procedure. In the latter event, continuation is an emergency situation under § 135.19 (subsumed by proposed § 119.58), which allows the PIC to deviate from the rules of the part to the extent required to meet the emergency.

Sections 121.557, 121.559, and 135.19 on emergency procedures would be removed from this subpart and covered in proposed part 119.

Section 121.565 would be a new requirement for affected commuters now operating under part 135. This section requires a pilot in command to take certain actions in the event of an engine failure, such as to land at the nearest suitable airport, to report the engine failure to the appropriate ground station and keep the station informed of the flight's progress, and to send a written report to the operations manager (or other, as specified) if the pilot has not landed at the nearest suitable airport after the engine failure.

Passenger information. Both parts 121 and 135 contain requirements for the oral briefing of passengers on the use of seatbelts, smoking, and the location and use of emergency exits and equipment (see §§ 121.571, 121.333, 121.573, 121.585, 135.117, 135.127). The oral briefing must be supplemented by printed cards for each passenger and must contain diagrams showing emergency exits and additional instructions. The passenger information rules in parts 121 and 135 are similar, but part 121 is more specific in some respects, while part 135 is more specific in others. The FAA proposes to amend § 121.571(a) to bring over from § 135.117 requirements for additional passenger information for airplanes with no flight attendant. This additional information includes instructions on location of survival equipment, location and operation of oxygen equipment, location and operation of fire extinguishers, and placement of seat backs in an upright position for takeoffs and landings. The FAA proposes that the affected commuters otherwise comply with the part 121 rules on passenger information. The printed cards would need to be revised or supplemented to provide information on flotation cushions or other required flotation devices once they are installed.

A small change is proposed for § 121.571(a)(3) to allow a flight crewmember (instead of a flight attendant) to provide an individual briefing of a person who may need assistance in the event of an emergency, in cases where an airplane does not have a flight attendant.

Oxygen for medical use by passengers. Section 121.574 provides that a certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen if, among other requirements, the equipment is furnished by the certificate holder. Under current § 135.91, the certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen provided certain requirements are met. In addition, under part 121, the equipment must be part of a certificate holder's maintenance program; under part 135 it is required as part of the certificate holder's maintenance program only if the certificate holder owns the equipment. Section 135.91(d) contains a provision for permitting a noncomplying oxygen bottle provided by medical emergency service personnel to be carried on board the airplane; this provision would not be carried forward into part 121.

Part 121 requires the certificate holder to supply the oxygen to ensure that internal contamination of the pressurized oxygen does not occur. The contamination of the cylinder with a flammable material (grease, oil) could result in a serious fire or explosion when these cylinders are operated on a pressurized airplane. Under the proposal, the FAA would limit the use of oxygen units to those maintained by the air carrier as is presently provided in § 121.574. Most of the airplanes operated by the affected commuters are pressurized and frequently operate above 10,000 feet. The operating conditions and safety concerns are similar for part 121 operators and the affected commuters.

Alcoholic beverages. Sections 121.575 and 135.121 contain requirements controlling the serving or consumption of alcoholic beverages on airplane. The requirements are similar except for three additional requirements in § 121.575. Certificate holders are prohibited from serving alcohol to persons who have legal access to armed weapons and to persons who are being escorted by an armed law enforcement escort. Also, part 121 requires certificate holders to report any disturbances caused by people who appear to be intoxicated. Since these differences are minor and are not expected to impose a burden on affected commuters, the FAA proposes that affected commuters comply with the requirements of § 121.575.

Retention of items of mass. Section 121.576 requires that airplanes must have a means to prevent each item of galley equipment and each serving cart, when not in use, and each item of crew baggage, which is carried in the crew or passenger compartment, from becoming a hazard. Section 121.577 prohibits a certificate holder from moving an airplane on the surface or taking off unless such items are secure. Sections 135.87 and 135.122 require certificate holders to ensure that such items are secure before takeoff. The FAA proposes that the affected commuters comply with § 121.577, which is substantively the same as § 135.122.

Cabin ozone concentration. Section 121.578 sets maximum levels of ozone concentration inside the cabins of transport category airplanes operating above 27,000 feet. Commuter (and predecessor) airplanes do not, generally, operate at these altitudes; nevertheless, the FAA believes that these rules should apply whenever the altitudes are exceeded. The FAA proposes to amend § 121.578(b) to delete the references to transport category airplanes. Section 121.578(d) contains deviation authority if the certificate holder shows that compliance with the current rule is unreasonable either because of circumstances beyond its control or because of an unreasonable economic burden.

Minimum altitudes for use of autopilot. Sections 121.579 and 135.93 establish minimum altitudes for use of autopilots. The two sections are similar; however, part 135 does not specify weather requirements for an approach. In a current NPRM proposing to revise the minimum altitude for use of an autopilot (59 FR 63868, December 9, 1994), which is under consideration for the minimum altitude for autopilot use corresponds to the type certificate of the autopilot and altitude stated in the Airplane Flight Manual (AFM). If accepted as proposed, the AFM would establish guidance that would be edited and approved in the air carriers operations specifications.

Forward observer's seat. Section 121.581 requires a certificate holder to make available a seat on the flight deck of each airplane for use by the Administrator while conducting en route inspections. Comparable § 135.75 requires, for such inspections, a forward

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observer's seat on the flight deck or a forward passenger seat with headset or speaker. Because airplanes in the 10- to 30-seat range may not have an observer's seat on the flight deck, the option of providing a forward passenger seat would be moved into part 121.

Authority to refuse transportation. Section 121.586 prohibits a certificate holder from refusing transportation to a passenger on the basis that the passenger will need the assistance of another person to move quickly to an exit in the event of an emergency, unless the certificate holder has established procedures for the carriage of such passengers and the passenger either fails to comply or cannot be carried in accordance with the procedures. Part 135 does not specifically prohibit a certificate holder from refusing transportation to such passengers nor does it specifically require procedures; however, § 135.23(q) requires that the certificate holder's manual contain procedures for the emergency evacuation of passengers who may need assistance. Because these procedures are currently required as part of the manual requirements of part 135, § 121.586 would not pose any burden on the certificate holder; rather it would clarify the conditions under which a certificate holder may refuse transportation.

Carry-on baggage. Requirements for the stowage of carry-on baggage aboard airplanes are found in §§ 121.589 and 135.87. There are three significant differences between the requirements in parts 121 and 135.

First, part 121 requires certificate holders to have an approved carry-on baggage program with which both the certificate holder and the passengers are required to comply.

Second, part 121 requires that carry-on baggage be scanned before boarding to ensure the size and amount of baggage is consistent with the program.

Third, no certificate holder may allow all passenger entry doors of an airplane to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each article of baggage is stowed in accordance with the requirements of that certificate holder's program.

The FAA proposes that the certificate holders upgrading to part 121 as a result of this NPRM would comply with the part 121 carry-on baggage rules. This would require the preparation and approval of a carry-on baggage program. Variations in the types of airplanes used or crewmember complement can be addressed in the program. For instance, procedures for stowing baggage on airplanes having overhead racks that are not certificated for carriage of carry-on baggage or cargo would be specified. Procedures for scanning baggage would be spelled out in the program, according to the type of operation. In addition, crewmember responsibilities for stowage of baggage for operations that do not require a flight attendant would be addressed. This program is necessary to assure that all certificate holders operating under part 121 have procedures to prevent an airplane from taking off with baggage that has not been properly stowed.

Airports. Section 121.590 provides that air carriers and pilots operating under part 121 must operate an airplane into a land airport that is certificated under part 139. As discussed under the "Major Issues" section of this notice, the proposed rule language would allow affected commuters into and out of other than part 139 airports pending legislation that would authorize the FAA to regulate airports (in a future rulemaking) that serve passenger-carrying operations of airplanes having a seating capacity of less than 30 passengers. Section 121.590 would be revised to incorporate pertinent requirements of § 135.229.

VI.B.16. Subpart U—Dispatching and Flight Release Rules

Subpart U, in conjunction with sections of subpart T, prescribes dispatching and flight release rules for domestic and flag operations. Sections 121.533, 121.535, and 121.537 prescribe who has operational control of flights for domestic, flag, and supplemental part 121 operations. In addition, §§ 121.533 and 121.535 require flight releases before a flight can take off. Subpart U prescribes who has dispatch and flight release authority, requires flight releases for supplemental operations, and specifies requirements rules for flight releases under certain conditions. All of these rules would be new requirements for all affected commuters.

Flight release authority: Supplemental. Section 121.597, which applies to supplemental operations, requires a flight release signed by the pilot when the pilot and the person authorized by the certificate holder to exercise operational control believe that the flight can be made safely. This would be a new requirement for affected commuters who conduct supplemental flights. Under part 135 releases are not required for either scheduled or on-demand flights.

Dispatch or flight release under VFR. Section 121.611 states that no person may dispatch or release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport. Part 135 does not have a comparable release requirement, though for VFR over-the-top carrying passenger operations (§ 135.211), no person may operate an airplane unless weather reports or forecasts indicate that the weather at the intended point of termination meets certain visibility requirements.

Operations in icing conditions. Section 121.629 contains requirements for operations in icing conditions. This section requires a certificate holder to have an approved ground deicing/anti-icing program, and the certificate holder, including all personnel assigned duties, must comply with that program. The regulations prescribe the general content of the program, including what must be covered in ground training for flight crewmembers and other personnel. Section 121.629(d) provides that, in lieu of the program, a certificate holder may conduct a check from outside the airplane when conditions are such that frost, snow, or ice may adhere to airplane surfaces.

Section 135.227 prescribes the requirements for takeoff in icing conditions for part 135 operations. Parts 135 and 121 are similar. Part 135 allows the carrier the option to comply with part 121 deicing/anti-icing program requirements. Most affected commuters already comply with part 121 program requirements. Part 135 states that the certificate holder may not authorize a flight to takeoff in icing conditions unless the pilot has received the applicable training under § 135.341; the training requirements for part 121 (§ 121.629) and part 135 (§ 135.345) are identical. Under part 135, having a deicing/anti-icing program is only one of the options for taking off in icing conditions; other options are conducting a pretakeoff contamination check or having an approved alternative procedure. Since most of the affected commuters already have an approved deicing/anti-icing program that complies with part 121 requirements, the proposed rule would require all affected commuters to comply with the part 121 requirements.

Fuel reserves. Sections 121.639, 121.641, 121.643, and 121.645 contain fuel reserve requirements based on the type of operation to be conducted. These fuel reserve requirements do not distinguish between VFR and IFR operations. Section 121.639 requires 45 minutes of fuel reserve for domestic air carriers and for certain other air carrier operations.

Section 135.209 requires 30 minutes of fuel reserve for day VFR conditions and 45 minutes for night VFR conditions. Section 135.223 requires 45 minutes for IFR conditions.

The FAA proposes to require affected commuters to comply with the fuel reserve requirements of part 121 but recognizes that the proposed change could have an impact on operators that conduct operations in VFR conditions. Under the proposal these operations would have to have an additional 15 minutes of fuel reserve to be in compliance. The FAA invites comments on the impact the proposal would have on operators that conduct operations in VFR conditions.

VI.B.17. Subpart V—Records and Reports

Subpart V prescribes requirements for the preparation and maintenance of records and reports for all certificate holders operating under part 121. Although many of the requirements are identical to or similar to the recordkeeping requirements in §§ 135.63 and 135.65, part 121 requires additional information, including new records and reports. For instance, additional load manifest information is required under part 121.

Under the proposal, the most significant change in recordkeeping requirements would be the addition of records required in part 121 for a dispatch system. These include maintaining aircraft dispatcher records and dispatch release records. Affected commuters would be required to comply with all applicable dispatch recordkeeping requirements in subpart V.

Section 121.689 prescribes the requirements for flight release forms for supplemental operations under part 121. These requirements would be new for affected commuters who would conduct on-demand type operations under part 121 supplemental rules.

Maintenance log: Airplane. Section 121.701 requires that an airplane maintenance log be used to record the occurrences of mechanical irregularities and deferred maintenance items. The airplane maintenance log is required to be kept in the airplane. Both §§ 121.701(a) and 135.65(c) require that any person taking action concerning a reported or observed failure or malfunction of the airplane must record that action in the airplane maintenance log. The certificate holder is required to establish and include in its manual a procedure for keeping adequate copies of the log in the airplane. Section 135.65 additionally requires the pilot in command to ensure the status of each irregularity entered in the maintenance log. The FAA is not proposing that this requirement be added to part 121 because under existing part 121 rules, no airplane can be dispatched without a maintenance release that accomplishes the same purpose.

Mechanical reliability reports. The provisions of § 121.703(a) and § 135.415(a) that require mechanical reliability reports are virtually identical except for §§ 135.415(a)(12) and 121.703(a)(17). Subparagraph (a)(12) of § 135.415 provides the qualification that the landing gear extension should be "unwanted." The FAA proposes to adopt the part 135 language because the FAA is concerned with unplanned in-flight extensions of the landing gear. The § 121.703(a)(17) provision on emergency evacuation systems required under the proposal, which is absent from the corresponding part 135 rule, would be adopted for affected commuters. The part 121 standard is proposed because the FAA needs to know about all potentially defective evacuation systems so that the defect would be immediately corrected.

Paragraph 121.703(e) on transmitting reports is more detailed than the equivalent paragraph in part 135. Part 121 additionally requires records of the flight number and stage, the emergency procedures effected, the nature of the failure, the repair status of the affected part, and whether the airplane was grounded. The FAA is proposing to require that affected commuters follow the more detailed requirements of part 121 because the additional data would add information to the database. These reports would enhance the airplane airworthiness standards that are monitored to ensure that corrective action can be taken if unsatisfactory trends develop. The remaining provisions of § 135.415 are the same as those in § 121.703.

Paragraph (f) would be amended to delete an obsolete reference to § 37.17, which no longer exists in the regulations.

Mechanical interruption summary report. Section 121.705 requires that these mechanical interruption summary reports be submitted "regularly and promptly" but does not clearly define the standard for the timeliness of the submission. Part 121 operators have for many years had maintenance manual requirements that essentially required that these reports be submitted on a monthly basis. The equivalent part 135 requirement specifically calls for the monthly submission of these reports. The FAA proposes to require that affected commuters comply with the part 121 requirement in order to have the timing established in the operator's manual which allows for differences among operators. Section 121.705(b) contains a requirement that is not found in the corresponding § 135.417 section That provision requires reporting premature engine removals. The FAA proposes to require affected commuters to comply with this requirement because of a need to track the reliability of engines. The FAA maintains a database of premature engine removals that would allow operators to predict engine life or the possible development of fleet-wide problems. Initially this database was limited primarily to part 121 operators of large airplanes with new engines. The FAA is expanding this database to cover most engine types. This provision provides for reporting mechanical interruptions that are not reported under other sections. The FAA needs these reports to obtain data by which airplane airworthiness standards are monitored and to ensure that corrective action can be taken if unsatisfactory trends develop.

Alteration and repair reports. Section 121.707 requires part 121 operators to submit to the FAA a copy of a report of each major alteration or major repair. Although corresponding § 135.439(a)(2)(vi) requires the retention of these reports but does not specifically require that they be submitted to the FAA, they are required to be submitted under part 43. Therefore, under the proposal affected commuters would comply with the requirements of § 121.707.

Airworthiness release or airplane log entry. Section 121.709 requires the certificate holder to prepare or cause to be prepared either an airworthiness release or an appropriate entry in the airplane log after the performance of maintenance, preventive maintenance, or alterations. The airworthiness release or log entry must be prepared in accordance with the procedures set forth in the certificate holder's manual. The current requirements in § 135.443 essentially mirror the requirements of § 121.709 so there would be minimum burden for affected commuters. Section 121.709(c) contains a provision that is not found in part 135. That provision requires that a copy of the airworthiness release be given to the pilot in command and that a certificate holder retain a copy for at least 2 months. The proposed rule would require affected commuters to comply with this provision. The FAA considers that this additional requirement is necessary to provide a system for the flightcrew to determine the airworthiness status of an airplane after maintenance has been performed and to determine the

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airworthiness of the airplane prior to flight. The person providing an airworthiness release or airplane log entry is required to determine that all the requirements for inspection and airworthiness are satisfied.

Other recordkeeping requirements. New recordkeeping requirements for affected commuter operators, which the FAA does not believe would impose a significant burden, would be § 121.711, which requires a record of each en route radio contact between the air carrier and its pilots; § 121.713, which requires commercial operators to keep copies of contracts; and § 121.715, which requires reporting of in-flight medical emergencies.

VI.C. Proposed Part 119 Explanation

New part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988). It is being entirely republished in this NPRM because of the number of changes the FAA has made in the proposed rule language since 1988. The changes that are the result of the review of commuter operations are discussed earlier in the preamble under "Changes to part 119 as a result of this NPRM." In this section of the preamble the organization and substance of the entire part are summarized, along with an explanation of changes to the proposed rule language that have been made since 1988.

The first objective of the proposed rule is to establish a permanent guide in a new part 119 that would enable persons who provide transportation of people or cargo to determine what certification, operations, maintenance, and other regulatory requirements they must comply with. A second objective is to determine certification and operating requirements.

This proposed rule does not address the certification rules found in parts 125, 133, or 137.

The proposed rule would accomplish the following:

(1) Incorporate SFAR 38–2 into a new part 119 as Subparts A and B;

(2) Revise certification procedures now in parts 121 and 135 and consolidate them in a new part 119 as Subpart C;

(3) Revise wet leasing requirements;

(4) Provide definitions for terms such as "direct air carrier" and "kind of operation;"

(5) Provide a roadmap for certificate holders to lead them to the operating rules in part 121, 125, or 135 that they must comply with for the kind of operations that they conduct;

(6) Clarify the requirements for operations specifications by adding definitions for terms such as "domestic operation" and "supplemental operation;"

(7) Add management requirements for domestic and flag operations conducted under part 121 consistent with those that now exist for supplemental operations conducted under part 121, and consolidate part 121 and part 135 management requirements;

(8) Rescind part 127 and any requirements that pertain solely to helicopters in part 121, Subparts A through D; and

(9) Throughout part 121, Subparts A through D and part 135, Subpart A, change various references from CAB requirements to DOT requirements, change language where needed, and make incidental editorial changes.

In accomplishing the above changes, the FAA has edited current regulatory language for clarity and consistency.

Organization of New Part 119. Proposed new part 119 reorganizes into one part many requirements that now exist in SFAR 38–2 and in parts 121 and 135. Subpart A of proposed part 119 sets forth in general terms the applicability of the part, requirements and prohibitions covered by the part, definitions for terms used in Subchapter G, the types of certificates issued, and general provisions concerning operations specifications. Subpart B provides the guidelines and benchmarks which determine what operating requirements apply to each kind of operation. Among other things, subpart C updates and consolidates into a central location the certification rules now found in SFAR 38–2 and in parts 121 and 135. These subparts are discussed in more detail below.

Subpart A—General

Proposed Subpart A provides that part 119 would apply to persons operating or intending to operate civil aircraft as an air carrier or commercial operator conducting passenger operations, cargo operations, or both. A person would be issued only one certificate and all operations would be conducted under that certificate regardless of the kind of operation or the class or size of the aircraft. Persons authorized to conduct operations as an air carrier (i.e., in interstate, overseas, and foreign common carriage) would be issued an Air Carrier Certificate, currently referred to as "Air Carrier Operating Certificate." Persons who conduct intrastate common carriage operations, persons who conduct non-common carriage operations as a commercial operator, and persons conducting certain other operations not involving common carriage would be issued an Operating Certificate.

The FAA would issue operations specifications reflecting the kind of operations to be conducted. The operations specifications would prescribe the authorizations, limitations, and procedures under which each type and size of aircraft would be operated.

The FAA would not issue certificates to foreign air carriers but would continue to issue operations specifications in accordance with part 129 to foreign air carriers who possess economic authority to conduct common carriage operations within the United States.

Section 119.3—Definitions. To clarify which operational rules apply to specific kinds of operations, proposed § 119.3 defines several terms. Many of the aspects of these new definitions related to this NPRM, e.g., "scheduled operation," "domestic operations," "flag operations," "supplemental operations," "on-demand operations," and "commuter operations" have been previously discussed. Commenters should note that in this proposal the FAA has attempted to include in the definition of "scheduled operation" elements that would distinguish it from nonscheduled operations for compensation or hire in common carriage. The FAA considers the distinguishing factors of a scheduled operation are that departure location, arrival location, and departure time are determined by the certificate holder, and the certificate holder offers such operations in advance (i.e., holds out). In contrast, a nonscheduled common carriage operation for compensation or hire, i.e., on-demand operations and supplemental operations, are characterized by a negotiation in which the customer or customer's representative negotiates the departure, departure time, and arrival location. The only holding out that a nonscheduled common carriage operator might engage in would be letting others know that it would be available for such things as charter flights and other operations in which departure time, departure location, and arrival location are negotiated.

Many of the other definitions are carried over from SFAR 38–2 and are self-explanatory. Some terms and definitions, however, would be modified from SFAR 38–2 to make them consistent with this codification and the changes affecting commuter operations. Under SFAR 38–2, the following terms are used: "domestic air carrier," "supplemental air carrier," and "commuter air carrier." In this proposal, domestic operation, supplemental operation, and commuter operation would cover not only air carriers, but

also intrastate commercial operators engaged in common carriage. The proposed definition for "domestic operation" includes intrastate common carriage operations within Hawaii and Alaska, which presently follow the rules for flag operations. This change would standardize the requirements for all U.S. operators conducting intrastate scheduled operations under part 121.

The FAA proposes to introduce a new definition—"noncommon carriage"—to more clearly recognize and distinguish that certain operations for compensation or hire are accomplished without a prior holding out. For instance, many operations that are conducted under part 125 are "noncommon carriage" in that the customer pays for the transportation by air, but the operator neither held out a schedule of flight times nor held out that it was available for negotiating departure time, departure location, and arrival location. It should be noted, however, that part 125 operations are not limited to noncommon carriage operations. Assuming an airplane has a seating configuration of 20 or more passenger seats or maximum payload capacity of 6,000 pounds or more, part 125 applies in situations "when common carriage is not involved." The FAA believes that it is important to clarify the meaning of "when common carriage is not involved" and its regulatory twin "operations not involving common carriage." Both of those phrases mean not only "noncommon carriage" but also operations in which persons or cargo are transported without compensation or hire and operations not involving the transportation of persons or cargo. Readers are reminded that for those airplanes that are usually used by certificate holders in parts 121, 135, or 137 operations, part 125 does not apply when those airplanes have no passengers or cargo (certificate holders operate such flights under part 91). Additionally, part 125 does not apply in other situations where part 91 alone applies, e.g., an exclusive flight for the free transportation of company employees.

The FAA is proposing a new term—"wet lease." Existing § 121.6 describes a wet lease situation without using the "wet lease" term. This situation describes a lease involving an airplane and at least one pilot flight crewmember. In the proposed new term, a wet lease would be defined as one involving the lease of an entire airplane and at least one crewmember. Thus, if a person leases an airplane and any crewmember (e.g., flight attendant, flight engineer, or pilot), it would be considered a wet lease. For an articulation of how this new definition applies operationally, see the discussion concerning § 119.53.

The definition of "direct air carrier" is included in this NPRM because the FAA finds it necessary to make a distinction between the direct air carrier, with operational control over flights, and the indirect air carrier (for example, a freight forwarder) who is not authorized to exercise operational control over flights.

New definitions have also been added for clarity, such as definitions for "passenger carrying," "principal base of operations," and "kind of operation."

The proposed definitions also include terms which would enable operators to distinguish clearly among kinds of operations. The FAA has noted confusion over certain terms in the past and intends to eliminate the confusion by defining the proposed terms clearly and, where needed, including clarification in Subpart C certification requirements.

"Maximum payload capacity." In January 1995, the FAA issued a draft Advisory Circular (AC) 120–27c, "Aircraft Weight and Balance Control," containing proposed guidance for determining the standard average weights for crewmembers. The proposed standard average weights were based on recent data obtained from air carrier surveys. The FAA proposes to amend the current standard allowance for crewmembers—200 pounds for each required crewmember. The proposed standard allowances for crewmembers would be 180 pounds for male flight attendants, 130 pounds for female flight attendants, or 140 pounds average for all flight attendants. In addition, for male flight crewmembers, the standard average weight would be 180 pounds each, and for female flight crewmembers, 130 pounds each. These standard average weights do not include any carry-on baggage. If this NPRM concerning the standard average weights for crewmembers is not adopted, the FAA would amend the draft AC to reflect the existing regulations that specify a weight allowance of 200 pounds for each required crewmember. Thus, the final AC would accurately reflect what the regulations allow.

As used within the proposed part, these definitions, in conjunction with proposed changes to certification requirements that would be incorporated in Subpart C, would clarify which operators must obtain Air Carrier Certificates or Operating Certificates.

Section 119.5—Certifications, authorizations, and prohibitions. In general, § 119.5 (a), (b), and (c) identify the type of certificate—an air carrier certificate or an operating certificate—the Administrator would issue to different persons depending on the nature of their operations. In § 119.5(d), the FAA proposes to issue only one certificate to an operator engaging in common carriage, regardless of the kind of operation or the class or size of the aircraft to be operated. For example, if an operator used Boeing 757 aircraft in scheduled operations both within the U.S. and abroad, that operator would be issued one air carrier certificate and that certificate with its operations specifications would authorize these two kinds of operation (i.e., domestic and flag). If that same operator used airplanes with a seating capacity of 9 or less passenger seats in scheduled operations and used another make and model airplane in nonscheduled common carriage operations, only one air carrier certificate would be issued, but the certificate and the operations specifications would contain two additional kinds of operations, i.e., commuter and on-demand. See §§ 119.37(f) and 119.49 (a)(5), (b)(5), and (c)(4).

In § 119.5(e), the FAA proposes to issue only one certificate to an operator engaging in noncommon carriage, regardless of the kind of operation, or the class or size of the aircraft to be operated. Thus, a person who conducts noncommon carriage operations with aircraft configurated with more than 20 passenger seats or a payload capacity of 6,000 lbs. or more, (for which part 125 would apply) and also aircraft configurated with fewer than 20 passenger seats or a payload capacity of less than 6,000 lbs. (for which part 135 would apply) would only be issued one operating certificate.

Under § 119.5(f), a person conducting more than one kind of operation must conduct each operation in accordance with the FAR applicable to the kind of operation and the operations specifications issued for the kind of operation.

In § 119.5(h), the FAA proposes to prohibit a person who holds an operating certificate authorizing noncommon carriage from conducting any operation in common carriage. Similarly, the FAA proposes that a person holding an air carrier certificate or an operating certificate authorizing common carriage operations shall not conduct any noncommon carriage operations. The essential difference between a common carriage operation and a noncommon carriage operation is the presence or absence of a holding out. The FAA believes that an operator engaged in common carriage (holding out) cannot unequivocally claim that it

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can engage in a noncommon carriage operation that would not have benefited from the holding out activities of the common carriage operation.

Finally, in § 119.5(j), the FAA proposes to prohibit certificate holders that operate under parts 121 and 135 from operating in geographical areas unless the operations specifications specifically authorize operations in those areas.

Section 119.7—Operations specifications. In § 119.7, the FAA identifies items that must be contained in each certificate holder's operations specifications and restates the existing provision that operations specifications are not part of a certificate.

Section 119.9—Use of business names. In this section, the FAA proposes to prohibit certificate holders that operate airplanes under part 121 or 135 from using a business name other than the name appearing in a certificate holder's operations specifications. The FAA proposes that the name of the certificate holder conducting the operation must be displayed on the airplane and clearly visible and readable to a person standing on the ground at any time except during flight time. If the logo or livery of the airplane clearly identifies the certificate holder, no other identification is needed. The purpose of this proposed requirement is for the FAA to be able to identify, primarily for purposes of ramp inspections, those who appear to have operational control of the airplane. Because this regulation would apply to airplane ranging in size from a small reciprocating-engine-powered airplane carrying four persons to a Boeing 747, it is not practical for the FAA to define the size letters that would be required. Any means of identification which satisfies this requirement is acceptable, including signs temporarily affixed in windows or on the door or fuselage of the airplane.

With regard to the issue of whether the logo of the freight forwarder may also appear on the airplane, the FAA believes that the logo of the freight forwarder may remain on the airplane as long as the name of the certificate holder who has operational control is clearly identified.

Because display of the operator's business name may pose unacceptable security risks for U.S. certificate holders who conduct operations in certain foreign countries, the FAA proposes that the Assistant Administrator for Civil Aviation Security may authorize certain certificate holders to conduct operations without complying with the requirement to display, on the airplane, the name of the certificate holder operating it.

Proposed Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

Proposed subpart B sets forth the operating requirements that would apply for specific kinds of operations. The requirements of this subpart must be read in conjunction with the definitions for different kinds of operations found in § 119.3, specifically the definitions for "scheduled operation," "domestic operation", "flag operation," "supplemental operation," "commuter operation," "on-demand operation," "noncommon carriage," and "when common carriage is not involved." Significant changes have been made to these definitions. Changes which relate to affected commuters are described earlier in the preamble under "Changes proposed for part 119 as a result of this NPRM." Other changes to definitions in part 119 are explained above under "Definitions."

Proposed § 119.21 directs domestic, flag, and supplemental operations to be conducted under the rules in part 121 for those kinds of operations, while commuter and on-demand operations are to be conducted under part 135. Under 119.21(a) the Administrator may permit certain intrastate Alaskan operations to be conducted under some of the flag requirements. Based on a showing of safety in air commerce, the Administrator may permit some operations among the Aleutian Islands and some operations between the Aleutian Islands and the rest of Alaska to be conducted under the applicable rules for flag operations contained in Subpart U of part 121. Also, under § 119.21(a)(3) it is proposed that any certificate holder conducting supplemental operations under part 121 between airports that are also served by the air carrier's domestic or flag operations may be authorized or required to conduct those operations under the domestic or flag rules. In addition, it is proposed that similar existing provisions be retained that certain all-cargo operations that regularly and frequently serve the same two airports may be required to be conducted under domestic or flag rules.

Section 119.23 directs operations when common carriage is not involved using airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, to be conducted under part 125. Noncommon carriage operations conducted with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds, are to be conducted under the rules of part 135 that apply to on-demand operations. "When common carriage is not involved" and "noncommon carriage" are explained under "Definitions" above.

Section 119.25 directs all rotorcraft operations to be conducted under part 135 regardless of the size or seating capacity of the rotorcraft. However, external-load operators and agricultural aircraft operators must comply with part 133 or part 137 of the FAR, respectively.

This NPRM proposes to rescind part 127. Rotorcraft operators that previously operated under part 127 would be directed in Subpart B to conduct those operations under part 135 since those regulations have been more recently updated and, therefore, are more current and provide a more appropriate level of safety.

Proposed Subpart C—Certification Requirements and Operations Specifications

The proposed new part 119, Subpart C, contains the procedural certification requirements and operations specifications requirements for all operations conducted under parts 121 and 135. Many of the requirements in proposed Subpart C were drawn from certification and operations specifications sections in—

(1) Part 121, Subparts A, B, C, and D;
(2) Part 135, Subpart A; and
(3) SFAR 38–2.

The requirements are thus consolidated in proposed Subpart C and invalid references to the CAB and other obsolete references are changed or deleted.

The proposed rules applicable to part 121 operations and part 135 operations have been combined wherever possible. In rare instances, this has necessitated extending part 135 certification requirements to part 121 or vice versa.

Certain additions or revisions to current rules are being proposed which would clarify certification procedures and facilitate FAA processing and inspection functions. The discussion below addresses only important additions or revisions.

Section 119.33—General requirements. Proposed § 119.33(c) would require an applicant for a certificate to conduct the proving tests required for certification under the appropriate requirements of part 121 or part 135. The purpose of the tests is to demonstrate (as one of the last steps in the certification process) that the applicant is qualified and eligible to receive a certificate. Currently an

applicant is required to obtain a deviation from part 125 (for airplanes with a passenger-seating configuration of 20 or more or a maximum payload capacity of 6,000 pounds or more) to conduct proving tests under the authority of part 91 and the appropriate requirements of part 121 or part 135. This change would permit applicants to complete the certification process without having to obtain either a deviation or certification to conduct operations under part 125. It is also proposed to amend §§ 121.163, 125.1, and 135.145 to make the proving test requirements consistent in those parts.

Section 119.35—Certificate application. Proposed § 119.35 would require a certificate applicant to submit the application 90 days before the intended date of operation rather than 60 days, as presently required. A 90-day submission requirement more realistically reflects the actual time the agency needs to process applications and documentation. As discussed in Advisory Circular (AC) 120–49, there are five phases in the certification process. The applicant begins with a preapplication statement of intent and proceeds through the necessary preparation of documents, and demonstration and inspection of the aircraft. Whether this schedule proceeds on time is, in large part, controlled by the applicant. As stated in the AC, "Failure to accomplish an item or event in a satisfactory manner or in accordance with the schedule of events could delay the certification." The FAA encourages applicants to provide the certification project manager with draft materials during the preapplication period so that problems are not incurred during formal review of the application package. The 90 days, however, refers to the period of formal review of the completed application package. The agency finds that this length of time is necessary for proper review of the application.

The FAA points out that under 49 U.S.C. 44705, the Administrator of the FAA is responsible for ensuring that each air carrier "properly and adequately is equipped and able to operate safely." In order to fulfill this safety responsibility, the FAA must exercise the authority to request any information to make a determination of an air carrier's fitness to operate.

Paragraphs (c) through (h) of § 119.35 are proposed recodifications of §§ 121.47, 121.48, and 121.49. Generally speaking, these sections deal with the disclosure of financial information as well as the disclosure of people and entities that would control the new certificate holder. It should be noted that those three sections and their proposed recodification in § 119.35(c) through (h) only apply to persons who are not air carriers and who are applying for authority to engage in intrastate common carriage but have not undergone a fitness review by the Department of Transportation. The language has been updated to make it consistent with new definitions and certification requirements applicable to these operators. For persons applying for authority to conduct intrastate common carriage operations under part 135 these would be new requirements. The FAA believes these requirements are necessary because financial information, management information, and information concerning who controls the certificate holder can reveal potential shortcomings in the applicant's ability to conduct a safe operation.

Section 119.41—Amending a certificate. Proposed § 119.41 contains new procedures for making administrative changes to the operating certificate. These procedures are modeled after the procedures used to amend operations specifications and would standardize the amendment process.

In addition, under § 119.41 applications for amendments to certificates would have to be submitted 15 days in advance of the time the operator wants the amendments to be effective, unless the Administrator approves a shorter period when circumstances warrant (i.e., minor or routine amendments).

Section 119.45—Use of operations specifications. Section 119.45 is a recodification of § 121.75.

Section 119.47—Maintaining a principal base of operations, main operations base, and main maintenance base; change of address. Proposed § 119.47 requires that a certificate holder maintain a principal base of operations and also allows it to establish a main operations and main maintenance base. "Principal base of operations" is defined in § 119.3 as "the primary operating location of a certificate holder as established by the certificate holder." Air carriers with large operations may have other bases located with or separate from the principal base of operations. The FAA proposes to refer to these bases as "main operations base" and "main maintenance base." New automated operations specifications would provide for this information. Written notification must be provided to the certificate-holding district office before establishing or relocating a principal base of operations, a main operations base, or a main maintenance base. The principal base of operations, the main operations base, and the main maintenance base may be at the same location. This requirement is derived from § 135.27(a) which requires that a certificate holder maintain a principal business office. The proposed terminology clarifies that the FAA needs to know the location of the primary point of contact between the FAA and the certificate holder. Certificate holders would no longer be required to report changes of address for business offices. Elimination of this requirement does not affect the carrier's responsibility under 49 U.S.C. 46103 to notify the FAA and Office of the Secretary of Transportation (OST) of an address for service of process (see proposed § 119.49(a)(1), (b)(1) and (c)(1)).

Section 119.49—Contents of operations specifications. Proposed §§ 119.49(a)(2), (b)(2), and (c)(2) require that each certificate holder obtain operations specifications that list other business names under which the certificate holder may operate. The requirement is proposed to facilitate enforcement and surveillance functions. Current rules under part 135 already require certificate holders to list their alternate business names on their operating certificates. Current part 121 places no restrictions on the use of alternate business names; however, air carriers are prohibited in the economic regulations from using any names that have not been specifically authorized by OST.

The FAA proposes to extend the requirement on alternate business names to part 121 certificate holders to enhance the agency's ability to maintain proper surveillance over these operations and to further prohibit a carrier from using any name not authorized by the Secretary of Transportation. Before deregulation, the number of large carriers operating under part 121 was relatively limited and the activities of these carriers were well defined and stable. Because of economic deregulation, such carriers have proliferated and many conduct operations under one or more trade names. Thus it is necessary for such names to be specifically listed on a carriers operations specifications.

Proposed §§ 119.49 (a)(3), (b)(3), and (c)(3) add a requirement that operations specifications contain a reference to the economic authority issued by OST. The requirement that a carrier have the necessary economic authority is not new. The proposal to include this reference in the operations specifications is intended to clarify that the requirement still exists

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notwithstanding the demise of the CAB. The effect of this proposal is to tie the extent of authority contained in a certificate holder's operations specifications to the extent of any required economic authority.

Proposed § 119.49(a)(4) requires a certificate holder conducting domestic, flag, or commuter operations to obtain operations specifications that list each type of aircraft authorized for use and each aircraft's registration markings and serial number. In current § 121.25, for domestic of flag, the registration markings and serial number are not required. The requirement to list registration markings does exist in current § 121.45 for supplemental operations and in all of part 135. The new requirement is proposed in the interest of consistency and to facilitate FAA enforcement and surveillance functions. Any burden of the new requirement would be offset by a proposed provision in §§ 119.49(a)(4)(i), (b)(4)(i), and (c)(6)(i) that would allow certificate holders to submit a current list, which could be a computerized list of aircraft and regular airports and to reference that list on the operations specifications. Current format and procedures for approving operations specifications require that each aircraft be identified on the appropriate form. This current format does not allow use of computer printouts and can lead to excessively lengthy operations specifications.

Section 119.51—Amending operations specifications. Under § 119.51 applications for amendments to operations specifications would have to be submitted 15 days in advance for minor or routine amendments; however the FAA proposes to require that certificate holders file applications to amend operations specifications at least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisition or airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations. It has been the FAA's experience that these types of major changes do take at least 90 days for the agency to determine that, as a result of the change, the applicant is properly and adequately equipped and is able to conduct a safe operation.

Proposed § 119.51(e) is basically a recodification of the emergency amendment procedures for operations specifications that already exist in § 121.79. Under § 121.79, if the FAA Flight Standards District Office (FSDO) finds that there is an emergency requiring immediate action, then the amendment becomes effective immediately and any petition for reconsideration to the Director, Flight Standards Service, does not stay the effectiveness of the amendment. Under § 135.17, although the FSDO can issue an amendment that is effective immediately, the filing of a petition for reconsideration stays the effectiveness of the amendment. However, if the Director finds there is an emergency requiring immediate action, then the Director notifies the certificate holder that the amendment is effective upon the date the certificate holder receives the director's finding. In this NPRM, the FAA proposes to adopt—for 121 and 135 operations—the same procedures for emergency amendments to operation specifications. Because safety may require an immediate change to operations specifications for part 135 operations, the FAA has decided to propose a procedure whereby the on-site inspectors make the initial determination that an emergency exists. The proposed procedure change would, like current part 121 procedures, not result in a stay simply because the certificate holder petitioned for a reconsideration of the amendment.

Section 119.53—Wet leasing of aircraft. Proposed § 119.53 on wet leasing would be revised from current § 121.6 to do the following: (1) Clarify that the leasing requirements pertain only to wet leasing (which is defined in § 119.3 as a lease of an aircraft that includes the provision of any crewmember); (2) extend the wet leasing requirements to part 135 operations; (3) prohibit a wet lease from a foreign air carrier or any other foreign person; (4) prohibit a wet lease from any person not authorized to engage in common carriage; (5) specify that the Administrator, upon approval of the wet lease, would determine which party to the agreement has operational control and would amend the appropriate operations specifications of both parties, if necessary; and (6) allow a wet lease charter flight to transport passengers who are stranded because of the cancellation of their scheduled flight, provided that the wet lease flight is authorized by OST or the Administrator, as applicable, and that the charter flight is conducted under the rules applicable to a supplemental or on-demand operation. These clarifications reflect for the most part current administrative procedures.

Proposed § 119.53(e) would add a provision to prohibit a certificate holder from conducting any type of flight, not specified in its operations specifications, for another certificate holder. The purpose of this provision is to emphasize that a certificate holder may not contract to perform any flight it is not authorized to perform by its own operations specifications. This means that a certificate holder that agrees to perform scheduled flights for another carrier under a wet lease must conduct those operations under the domestic or flag rules of part 121, or commuter rules of part 135, just as the original carrier would have. To do this it must have operations specifications authorizing it to perform domestic, flag, or commuter rules just as the original certificate holder would have.

For example, airline A conducts domestic operations between New York and Miami. Because of unanticipated problems, it finds it is unable to perform these flights for a period of 3 days. It arranges with airline B to operate these flights under wet lease, in which airline B retains operational control of the conduct of the flights. Airline B must operate these flights under the rules in part 121 applicable to domestic operations, just as airline A would have to do, and airline B must have operations specifications authorizing it to conduct domestic operations.

If the requirement for appropriate operations specifications is not maintained, an operator could conduct "scheduled" operations through wet leases with several carriers authorized to conduct only supplemental operations. In addition, an operator might be induced to undertake an overly ambitious schedule of flight operations with the expectation that any required augmentation could be quickly obtained through a wet lease with a carrier authorized to conduct only supplemental operations. Because the frequency and regularity of a scheduled operation require different infrastructure, contractual arrangements with operators flying under the supplemental or on-demand rules cannot be tolerated.

In addition, § 119.53(e) requires that these substitute operations be conducted at ground locations that are: (1) Between airports for which the substitute certificate holder holds authority for scheduled operations or (2) within geographical areas for which the substitute certificate holder has authority for conducting supplemental or on-demand operations.

The FAA recognizes that cases may occur where a certificate holder conducting scheduled operations is forced to cancel a flight and finds it impractical on extremely short notice to arrange for a substitute carrier with operations specifications that fully meet the proposed requirements. In the rare situation where passengers could be stranded, the FAA and OST have agreed to procedures that would give the passengers the option of taking a charter flight in place of the flight originally scheduled. In such a situation, the operator providing the substitute flight would have to obtain a waiver of 14 CFR part 380 requirements from OST based on an emergency need. See proposed § 119.53(f). The passengers would then be given the option of making their own arrangements, working out arrangements with the original carrier, or taking the charter flight. Each passenger who elects to take the emergency charter flight would be given an appropriate ticket (or other flight document) by the charter operator before the passenger boards the charter flight aircraft. The operator of this charter flight would have operational control and would conduct the flight under the supplemental or on-demand rules, as applicable. Comments are solicited on whether this procedure is adequate to cover any potential hardships.

Section 119.55—Obtaining deviation authority to perform operations under a U.S. military contract. This section contains various requirements for an operator who performs military contract services, involving deviations from their normal operations. These requirements include, among others, (1) an application requesting authority to perform the service, (2) certification by the Department of Defense that the service cannot be performed without the deviation, and (3) an appropriate amendment to the certificate holder's operations specifications by the Administrator. Many of these requirements are currently set forth in § 121.57, which applies only to supplemental operations.

In this NPRM, the FAA is proposing a new procedure in order to obtain deviation authority to perform under a U.S. military contract. Under this proposed procedure, the certificate holder must submit its request for deviation authority to the Department of Defense's Air Mobility Command (AMC). AMC would review the requests and forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review. The FAA is making this proposal because during the Desert Shield/Desert Storm operations, the agency was inundated with requests for deviations. The FAA believes that the AMC has the resources to consolidate these requests, identify the specific FARs from which relief is sought, and evaluate the requests to determine whether the relief sought would be needed to accomplish the military mission. The FAA believes that this proposed procedure would enable the agency to process these requests more efficiently, should the need arise in the future.

Emergency Operations (Sections 119.57 and 119.58). The FAA is proposing two new sections concerning emergency situations. These two new sections are generally recodifications of §§ 121.57(c), 121.557, 121.559, and 135.19. On the one hand, § 119.57 is designed to address emergency situations in which it is impossible for the certificate holder planning to conduct emergency operations to act without complex and thorough planning. For example, § 119.57 would most often be used to respond to natural disasters such as massive floods and earthquakes. On the other hand, § 119.58 is designed to address an emergency situation in which complex and thorough planning are not possible because of the nature of the emergency. In other words, the nature of the emergency may be such that unless immediate action is taken, all would be lost, and any delayed action would be futile. Readers are reminded that in pure part 91 operations, § 91.3 applies.

Section 119.59—Conducting tests and inspections. Proposed language has been included in § 119.59(b)(1) and (e) to emphasize both the authority of FAA inspectors to gain access to a certificate holder's books and records and the fact that a certificate holder risks suspension of part or all of its operations specifications if it fails to provide that access. This language is an important reminder of the FAA's statutory authority and duty to determine whether an operator continues to be properly equipped to comply with the FAR and whether the operator can operate safely. Without access to those records, the FAA cannot fulfill its safety mission. The proposed paragraph makes explicit the intent of present §§ 13.7 and 121.81, Subpart V of part 121, and § 135.63. The purpose of the principal base of operations is for each certificate holder to provide to the FAA one location that the FAA would use as its main point of contact. It is the focus of liaison between representatives of the FAA and the operational management of the certificate holder. The FAA requires notification when this location changes so that it can adjust its staff accordingly. Proposed § 119.59(b)(1) would require that the operations specifications and certificate must be maintained at the principal base; other records must be identified in a current listing at the principal base that shows the location and person responsible for each individual report and record.

Section 119.63—Recency of operation. Proposed § 119.63 would prohibit a certificate holder from conducting a kind of operation if that kind of operation has not been conducted for a period of 30 consecutive days. To resume that kind of operation the certificate holder must advise the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and make itself available for any FAA reexamination that the FAA considers necessary. This requirement is being proposed because the FAA believes that the safety requirements for a particular kind of operation might not be met adequately by an operator that does not conduct that kind of operations for that length of time. Safety requires at least 5 days notice so that the FAA has the opportunity to conduct an inspection or reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation. Unless the FAA suspends or revokes the operator's certificate or withdraws the authorization in the operations specification for that kind of operation, the certificate holder may resume that kind of operation on the sixth consecutive calendar day after it notified the FAA of its plans to resume that kind of operation. Even if the FAA decides not to conduct a reinspection or a reexamination during that 5-consecutive-calendar-day period, the certificate holder may nonetheless resume operations on the sixth consecutive calendar day after the notification. For seasonal operators, advance planning and coordination with the certificate holding district office would make resumption of operations smoother.

Management Requirements Proposed For Part 119 (Proposed Sections 119.65 through 119.71). Currently the FAA has specific regulations governing qualifications for the management personnel of supplemental air carriers and commercial operators (§§ 121.59–121.61) and air taxi/commercial operators (§§ 135.37—135.39). Part 121 does not have specific regulations governing management personnel of domestic and flag carriers. Under the authority of 49 U.S.C. 44705 and as stated in § 121.27(a)(2) of the FAR, the Administrator must find that "the applicant is properly and adequately equipped and able to conduct a safe

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operation in accordance with this part." To fulfill this responsibility, it is necessary to propose standard management personnel qualifications for each certificate holder operating under part 121 of the FAR.

The proposed rule would consolidate management personnel requirements for operations conducted under part 135 or part 121 into new part 119. In proposed §§ 119.65 and 119.67 management personnel requirements would be established for all operations conducted under part 121, including domestic and flag operations, as well as supplemental operations.

The proposed management personnel requirements for operations conducted under part 135 (§§ 119.69 and 119.71) would be substantially the same as those currently in §§ 135.37 and 135.39. The proposed management personnel requirements for operations conducted under part 121 (§§ 119.65 and 119.67) would be similar to those currently in §§ 121.59 and 121.61, which now apply only to supplemental operations.

The only significant changes under the proposed management requirements for part 121 and part 135 would be as follows:

• *Director of safety.* As previously discussed, the FAA is proposing that each certificate holder that conducts operations under part 121 must have a director of safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. The FAA proposes to eliminate the position of general manager, which is presently required for certificate holders who conduct supplemental operations under part 121.

• *Director of operations.* Current §§ 121.61(a)(1) and 135.39(a)(1)(i) require that a director of operations hold or have held an airline transport pilot (ATP) certificate. Proposed §§ 119.67(a) and 119.71(a) require that a director of operations currently hold an ATP. This change reflects current administrative procedures; an ATP certificate no longer has an expiration date and is revoked only for cause. However, the requirement does not mean that the director of operations must currently meet medical certification requirements.

Current § 121.61(a) requires a director of operations to have at least 3 years of experience as a pilot in command (PIC) of a large airplane or have 3 years experience as a director of operations of an operation using large airplanes or a position of comparable responsibility. In the 1988 NPRM for a new part 119 and again in this NPRM, the FAA proposes for § 119.67(a) to require a director of operations to have both 3 years experience as a PIC of an aircraft under part 121 or part 135 and 3 years supervisory experience in a position that exercised control over any operations conducted with aircraft under part 121 or part 135. This change would assure that a director of operations under part 121 has both the technical and management expertise necessary to direct operations of airplanes used in part 121.

Since 1988, the FAA has decided to propose an additional eligibility requirement for a first-time director of operations and a first-time chief pilot. (There is a later discussion of the eligibility requirements for a chief pilot.) The FAA is proposing that certain experience for the director of operations have been obtained recently. In the case of a person becoming a director of operations for the first time, the FAA is proposing that the PIC experience in large aircraft be recent, i.e., 3 years of experience within the past 6 years. (See § 119.67(a)(3)(i).) Additionally, for all directors of operation under part 121, the minimum of 3 years of supervisory or managerial experience must have been obtained within the last 6 years. (See § 119.67(a)(2).)

Current § 135.39(a)(2) requires that the director of operations for a certificate holder who is not conducting any operation for which a PIC is required to hold an ATP certificate must hold a commercial pilot certificate. Proposed § 119.71(b)(1) would revise the requirement to "a commercial pilot certificate with an instrument rating" to ensure that a director of operations has at least minimum experience in instrument flying.

Additionally, for operations conducted under part 135, the FAA proposes that the director of operations have the following experience:

(1) At least 3 years of supervisory or managerial experience within the last 6 years, in a position that exercised operational control over any operations conducted under parts 121 or 135; or

(2) For a person with previous experience as a director of operations, at least 3 years experience as a PIC of aircraft operated under 121 or 135; or for a person becoming a director of operations for the first time, the 3 years of PIC experience must have been obtained within the past 6 years.

• *Director of maintenance.* Current § 121.61(c) requires that a director of maintenance hold a current mechanic certificate with airframe and powerplant ratings. In order to standardize the certificates required for the director of maintenance, proposed § 119.67(c) and 119.71(e) would require that a director of maintenance hold a current mechanic certificate with both airframe and powerplant ratings.

In addition to the foregoing, to serve as director of maintenance for an operation conducted under part 121, a person must have 1 year of experience in a position of returning airplane to service, at least 5 years experience within the past 5 years in one or a combination of the following: maintaining airplanes in the same category and class as the certificate holder uses or repairing airplanes in a certificated airplane repair station that maintains airplanes in the same category and class as the certificate holder uses.

Also, the requirement in present § 135.39(c) that the required experience in maintaining large aircraft must include the recency requirements of § 65.83 has been added to proposed § 119.67(c) and carried over to proposed § 119.71(e).

• *Chief pilot.* Current § 135.39(b)(1) requires that a chief pilot who conducts any operation for which the PIC is required to hold an airline transport pilot certificate must "hold a current airline transport pilot certificate with appropriate ratings for at least one of the types of aircraft used." Similarly current paragraph (b)(2) requires that a chief pilot of a certificate holder who is not conducting any operation for which the PIC is required to hold an airline transport pilot certificate must "hold a current commercial pilot certificate with an instrument rating." Proposed § 119.71(c)(1) and (d)(1) omits the word "current" because these pilot certificates no longer have an expiration date and are revoked only for cause. The words "and be qualified to serve as PIC in at least one type of aircraft used in the certificate holder's operation" are added to clarify that the chief pilot must meet recency of experience requirements and medical requirements. Readers should note that, in order to be a chief pilot for an operator that conducts part 135 operations, that person must be qualified to serve as PIC in operations conducted under that part. The FAA feels that this proposed requirement is necessary for chief pilots under part 135, but not required for chief pilots under part 121 because part 121 requires operational control systems (e.g., dispatch system, flight following system) that are more robust than the operational control systems required under part 135. In fact, part 135 does not require a dispatch system or a flight following system; as a minimum, it only requires a flight locating system.

To be eligible to be a chief pilot in part 121 operations, or part 135 operations in which any operation requires that the PIC hold an ATP certificate, a person must hold an ATP certificate. A commercial pilot certificate, with appropriate ratings, is sufficient for a chief pilot at a part 135 operation that only conducts operations for which the PIC's are required to hold a commercial pilot certificate.

In addition to holding the appropriate certificate, in order to be eligible to be a chief pilot in part 121 or 135 operations, a person must have at least 3 years experience as a PIC of aircraft operated under parts 121 or 135. However, if that person is becoming a chief pilot for the first time, the 3 years experience must have been obtained within the previous 6 years.

• *Chief inspector.* Section 121.61 requires a chief inspector for each supplemental or commercial operator conducting part 121 operations. This proposal would standardize this requirement for all operators under part 121. In addition to the existing eligibility requirements, the chief inspector would be required to have at least 1 year of experience in a supervisory position maintaining large aircraft. See 119.67(d).

• *Deviation authority.* The deviation authority contained in §§ 121.61(b)(2) and 135.39(d) has been combined and made applicable to all management personnel. Sections 119.67(e) and 119.71(f) authorize the Manager of the Flight Standards Division in the region of the certificate holding district office to authorize a certificate holder to employ a person who does not meet the qualifications in proposed §§ 119.67 or 119.71. For a certificate holder or applicant that wants to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, airframe and powerplant certificate), the deviation authority sections would not cover such a lack of airman certification situation. The deviation authority provides a means for competent and qualified personnel who do not meet the management personnel qualifications to be employed in required positions.

Revisions to Parts 121 and 135

As discussed earlier, SFAR 38 and SFAR 38–2 were intended as temporary measures that superseded certain provisions in the FAR. Thus, both special regulations began with the statement "Contrary provisions of parts 121, 123, 127, and 135 of the Federal Aviation Regulations notwithstanding* * *." This statement served to inform operators that requirements in the regulations that were contrary to the requirements in the SFAR were superseded by the SFAR. The purpose of the proposed revisions to part 121 Subparts A, B, C, and D, and part 135, Subpart A, is to delete all sections which have been moved to part 119 and to eliminate all references contradictory to part 119, such as requirements using outdated terminology. Subparts B, C, and D and certain sections of Subpart A of part 121 are entirely deleted as well as certain sections of Subpart A of part 135 because these requirements are either obsolete or have been moved to proposed part 119. The FAA anticipates that a derivation table, showing the origin and current source of many of the proposed new sections, will appear in a final rule document. Also, a description of some of these revisions occurs in the "Editorial Changes" and the section-by-section portions of this preamble.

Rescinding Part 127 and Related Rotorcraft Regulations

SFAR 38–2 required rotorcraft operations that were formerly conducted under part 121 or part 127 to be conducted under part 135. Part 127 and rotorcraft sections of part 121 have been in effect for 20 years without substantive change despite significant changes in equipment and technology during the period. The rotorcraft requirements under part 121 and all of part 127 would have needed complete revision and updating to be applicable to today's technology. In contrast, part 135 has been updated in recent years. Since most rotorcraft have less than a 30-passenger seating capacity and a payload capacity of less than 7,500 pounds, the FAA decided in the interests of efficiency and safety that rotorcraft operations should comply with the requirements of part 135. In accordance with SFAR 38–2, part 135 requirements superseded part 127 and §§ 121.13 and 121.157. In effect this notice formally proposes a rescission of part 127 and related part 121 sections which were suspended by SFAR 38–2.

The FAA stated in its preamble to the proposed SFAR 38–2 and reiterates in this proposal that, if the air transportation industry significantly expands the use of rotorcraft with more than 30 passenger seats or more than 7,500 pounds payload capacity, appropriate rules would be developed to clearly specify the operating requirements for this class of rotorcraft. However, in the interim, if an operator requests authority to operate this class of large rotorcraft where safety requirements in addition to those prescribed in part 135 are warranted, special operations specifications would be issued, appropriate to the aircraft size and kind of operation.

Editorial Changes

The proposed new part 119 and revisions to parts 121 and 135 would require certain editorial changes. These changes have been made for clarity and consistency and to facilitate combining the requirements of parts 121 and 135. None of these changes would impose any additional requirements on persons affected by the regulations.

The following are examples of changes that would be incorporated in proposed part 119 and made to all of the sections remaining in part 121, Subpart A, and part 135, Subpart A, as well as to other parts of the FAR in order to make them consistent with each other and to reflect current FAA administrative procedures:

(1) References to "domestic, flag, supplemental, or commuter air carriers" have been changed to "domestic, flag, supplemental, or commuter operation," as appropriate.

(2) References to "Domestic, Flag, or Supplemental Air Carrier Operating Certificates" have been changed to "Air Carrier Certificates."

(3) References to "ATCO Operating Certificates" have been changed to "Air Carrier Certificate" or "Operating Certificate."

(4) References to "Flight Standards District Office" and "District Office" have been changed to "certificate-holding district office," and a definition for "certificate-holding district office" has been added.

(5) Obsolete references and compliance dates have been deleted to reflect current FAA procedures and the current FAR.

(6) Language changes have been made for consistency and to facilitate computer searches for certain terms; for example, "principal operations base ' is changed to "principal base of operations."

(7) An effort has been made to break unwieldy paragraphs into more manageable divisions.

In the final rule for this proposal, the FAA will make similar editorial changes in the remaining subparts of parts 121 and 135 and in any other parts affected.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal

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agency shall propose or adopt a regulation only upon area benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would generate benefits that justify its costs and is "a significant regulatory action" as defined in the Executive Order. The FAA estimates, however, that the NPRM would have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of the proposed rule is estimated to be $275 million (or $199 million, discounted at 7 percent), over the next 10 years, in 1994 dollars.

The FAA examined each section of part 121 to determine the potential costs of compliance for existing part 135 commuter operators with airplanes of 10 or more passenger seats. First, all of the sections in part 121 were divided into five areas: (1) Operations, (2) Cabin safety, (3) Certification, (4) Maintenance, and (5) Part 119. Next, multidisciplinary teams of FAA personnel evaluated each of the five areas to determine which sections would impose additional costs and which would not. The following represents the results of that evaluation.

A. *Sections without cost impacts.* Those part 121 sections that the FAA has determined would not impose additional costs on part 135 commuter operators are not described in this summary evaluation. Each of those part 121 sections would not impose costs for one of the following reasons: (1) Current practice is identical or very similar to the new requirement; (2) the new requirement represents minor procedural changes; (3) the section determines general applicability and does not specifically impose any costs; or (4) certain requirements of part 135 would be incorporated into part 121 without change. Those part 121 sections without costs are described in the full evaluation under each of the areas for which they apply. While not shown in this summary evaluation, it is important to note that 10 of the sections in the proposed rule were identified as having negligible costs. These negligible costs, even when combined, would not be significant.

B. *Sections with potential cost impacts.* The proposed rule would impose costs on part 135 operators with 10-to-30-seat airplanes. The FAA estimates the total cost of the proposed rule would be $275 million over the next 10 years, with a present value of $199 million. The potential costs are as follows:

Area	10–19 seats	20–30 seats	Total cost	Present value
Operations	$141.8	$58.5	$200.3	$141.2
Maintenance	0.1	0.0	0.1	0.1
Cabin Safety	11.7	8.8	20.5	15.2
Part 119	1.6	0.4	2.0	1.7
Certification	51.4	0.7	52.1	41.0
Total	206.6	68.4	275.0	199.2

Based on the $207 million figure shown above, the FAA estimates that, on average over the next 10 years, the price of a one-way airline ticket would increase by 1.7 percent or by $1.91 (from $110 to $112) for affected operators with 10-to-19-seat airplanes. Similarly, based on the $68 million figure, the ticket price would increase by 0.6 percent or by $0.68 (from $110 to $111) for affected operators with 20-to-30-seat airplanes.

In addition to the information shown in the table above, it is important to note that the undiscounted cost per airplane in each of the first four years of the proposed rule, by seat category, sheds light on the initial compliance costs incurred by the impacted operators. Costs are highest during the first year (1996) and drop each year thereafter. In 1996, affected operators with 10-to-19-seat and 20-to-30-seat airplanes would incur per airplane costs of $50,000 and $26,000, respectively. Similarly, in 1997, there would be costs of $23,000 and $16,000, respectively. In 1998, there would be costs of $23,000 and $15,000, respectively. And in 1999, there would be costs of $24,000 and $14,000, respectively.

1. Operations. *Section 121.135—Contents of manual.* This section would require the affected operators to have more extensive operations manuals than are currently required under part 135 Part 121 requires more detailed instructions to flight and ground personnel, including dispatch procedures, airport information, and approach procedures. The manuals of part 121 operators are, on average, about three times as voluminous as those of part 135 operators. Thus, compliance with this effort would result in major rewriting of manuals. Based on cost information received from industry, the FAA estimates that, on average, each commuter operator that would come into part 121 would spend about $50,000 for new manuals. This cost estimate multiplied times the number of operators expected to be in existence over the next 10 years amounts to an estimated $3.9 million ($3.5 million, discounted).

Section 121.337—Protective breathing equipment (PBE) for the Cockpit. This section requires PBE units for cockpit crewmembers operating transport category airplanes. Part 135 has no such requirement. This evaluation assumes that three PBE units (one for each pilot station and another for fighting fires) would be installed in existing and future impacted airplanes with 10 to 19 seats. There is very little information available related to the number of PBE units on these types of airplanes. As a result of this uncertainty, the FAA solicits comments from the public and the aviation community on the number of part 135 airplanes, with 10 to 19 passenger seats, that are equipped with PBEs in the cockpit and whether the units are fixed or portable. Based on information received from FAA technical personnel, affected airplanes with 20–30 passenger seats already have fixed PBE at each of the two pilot stations in the cockpit. Therefore, only one additional portable PBE would be needed for fighting fires in the cockpit of such airplanes.

Since portable PBEs are much cheaper (and more practical in many situations) than fixed PBEs, commuters are assumed to acquire and install portable PBEs in the cockpit, especially those impacted airplanes with 10 to 19 passenger seats. In addition to PBE, this evaluation includes costs for weight penalty (5 pounds per unit) and PBE training for new pilots. The estimated cost of each PBE unit ($400), combined with the other cost components, multiplied times the number of airplanes in existence over the next 10 years results in $4.3 million ($3.7 million, discounted).

Section 121.357—Airborne weather radar. This section would require the affected operators to equip their airplanes with approved weather radar. Currently, § 135.173 requires that operators equip their airplanes with either thunderstorm detection equipment or approved weather radar. However, section 135.175 requires operators with 20–30 passenger seats to equip their airplanes with weather radar. Based on information received from industry, an estimated 90 percent of all commuter airplanes with 10 to 19 passenger seats are assumed to already have approved weather radar equipment. Therefore, the FAA assumes that this section would only impact an estimated 10 percent of those operators with 10-to-19-seat airplanes in 1996 and subsequent years.

This evaluation assumes an average cost of $30,000 per radar unit and a weight penalty of about 25 pounds per airplane. The sum of these cost components multiplied times the number of commuter airplanes expected to be in existence over the next 10 years amounts to an estimated cost of $3 million ($2.7 million, discounted).

Section 121.471—Flight time limitations and rest requirements (All flight crewmembers). This section would require affected operators to comply with part 121 flight time limitations and rest requirements for all flight crew members. Under this proposal, current flight time limitations and rest requirements for commuters would change as follows: from 1,200 to 1000 hours per calendar year, from 120 to 100 hours per calendar month, and from 34 to 30 hours in any seven consecutive days. Although this section pertains mainly to pilots, operators are assumed to apply the same procedures for the respective number of flight attendants. Under a recently published rule on flight and duty time for flight attendants, the FAA gave operators an option to adjust the rest and duty requirements of flight attendants based on those for pilots. This evaluation also assumes that they would adopt that option since it is cheaper to do so for some current part 121 operators.

According to industry representatives, most affected operators are already using rest and duty flight limitations that would be required by this section. On average, pilots of affected operators fly fewer evaluation assumes that 75 percent of affected operators already meet this requirement and that the other operators would have to increase their flight crews by 20 percent. The FAA estimates that an average of 559 additional pilots and flight attendants would be hired and retained between 1996 and 2005. This evaluation also estimates a weighted average annual salary for these entry level new hires to be $19,200 (including fringe benefits). Based on these cost components, the potential cost of compliance would be an estimated $107 million ($75 million, discounted).

Sections 121.593–595: Dispatching authority for domestic and flag air carriers; 121.107: Dispatch centers; 121.533–535: Responsibility for operational control; 121.683: Crewmember and dispatcher record; 121.687: Dispatch release; and other sections that assign specific duties to dispatchers. These sections would require dispatchers and dispatch centers to authorize flights for affected operators with 10 to 30 passenger seats. Dispatchers are not required under part 135. The evaluation assumes that operators currently certificated only under part 135 do not employ fully qualified dispatchers; it further assumes that operators certificated under both parts 121 and 135 employ about one half as many qualified dispatchers as they would need to dispatch all of their flights. According to the Airline Dispatcher Federation, virtually all part 135 operators already have facilities and communications equipment that satisfy the dispatch requirements under part 121. Accordingly, the FAA has not included estimates of additional costs attributable to facilities and equipment. The FAA estimates that the dispatcher requirement would cost an estimated $83 million ($57 million, discounted) over the next 10 years. Operators of 10-to-19-seat airplanes would bear approximately $58 million of the costs ($40 million, discounted).

2. Cabin Safety. *Sections 121.133, 121.135, and 121.137—Flight attendant manual.* These sections would require all flight attendants to have an operations manual. There is no such requirement for flight attendants working for part 135 operators. This requirement would necessitate preparing such manuals for each 20–30 seat airplane (airplanes with 10 to 19 passenger seats are assumed not to have flight attendants). The costs would involve the preparation of the manual contents by a flight attendant supervisor and a paperwork and layout specialist and the copying and binding of the finished manual. FAA analysis projects 352 airplanes operated by 21 air carriers in 1996 and 580 airplanes operated by 36 air carriers in 2005. Each airplane has one flight attendant, so the number of manuals is estimated to equal the projected number of airplanes. The 10-year cost for the preparation, copying, and binding of these manuals would be $394,100 ($330,900, discounted).

Sections 121.285 and 121.589—Carry-On baggage. These sections would require those part 135 commuter operators coming into part 121 to develop a program to visually screen and stow carry-on baggage. Part 121 requires that a crewmember verify that all baggage is properly secured before all doors are closed and the airplane leaves the gate. The cost of this requirement would involve the preparation of an addendum to the Operations Specifications in which each carrier would outline procedures for screening baggage. Each carrier would bear the cost of developing the addendum for the airplanes in their fleet. The number of air carriers is projected to rise from 69 in 1996 to 77 in 2005. For each air carrier, developing the addendum would involve two people, a flight attendant supervisor for 20–30 seat airplanes and a crewmember supervisor for 10-to-19-seat airplanes (both paid at $24.00/hr) and a clerical person to do the paperwork (an average of 8 hours each). The 10-year cost for operators of 10-to-30-seat airplanes is estimated to be $161,100 ($147,900, discounted).

Section 121.291—Ditching demonstration. This section would require air carriers to conduct a ditching evacuation demonstration for new airplanes prior to normal operations. The one-time demonstration only applies when an operator introduces a new airplane make and model currently not in its fleet. This requirement would not apply to the current fleet. Because there are no data available on the extent to which operators would acquire new makes and models in the future, the FAA has made some assumptions. The analysis assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended overwater flights. Hence, the evaluation probably overstates the number of ditching demonstrations needed. As a result of this uncertainty, the FAA solicits comments from the aviation community on the number of new airplane makes and models that air carriers plan to acquire between 1996 and 2005.

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The evaluation assumes that over 10 years, 89 tests would be conducted, at an average cost of $400 per test. The cost elements of the demonstration include crewmember compensation (based on 5 hours) and repacking the life rafts (8 hours of labor by maintenance personnel). Air carriers only compensate crewmembers for emergency training at 3.5 hours paid out of 8 hours of training, as it is not considered flight time. The wage rates for the training hours were multiplied times 0.4375. Based on crew compositions, two pilots would need to be compensated for 10-to-19-seat airplanes, and two pilots and a flight attendant would need to be compensated for 20-to-30-seat airplanes. The FAA estimates that the 10-year cost for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes would be $35,600 ($25,300, discounted).

Section 121.309—Medical kits. This section would require one medical kit per airplane for affected operators moving into part 121. The costs of providing medical kits include acquisition ($200 each) with a 25 percent spares ratio, replacement (5 percent per year), maintenance ($20 per year), a weight penalty (7 pounds per unit), physician consultation expenses ($500 per consultation twice a year per air carrier to obtain certain contents, such as prescription drugs, for the medical kits), and record keeping (1 hour per instance a kit is used). Acquisition, replacement, and maintenance costs are a function of the number of airplanes, while physician costs are incurred by individual operators. The FAA estimates that the 10-year cost for providing medical kits on the 20–30 seat airplanes now operating under part 135 would be $783,900 ($552,800, discounted).

Section 121.309—First aid kit. This section would require airplanes to have at least one first aid kit. Currently, part 135 requires all airplanes with greater than 19 seats to have one kit. This section would require a first aid kit on all 10-to-19-seat airplanes. The costs are composed of acquisition ($70 per kit) with a 25 percent spares ratio, a 5 percent replacement rate, and annual maintenance ($7 per kit). Costs are a function of the 10-to-19-seat airplane count, which is projected to be 822 in 1996 and 730 in 2005. The 10-year cost of this requirement would be $157,400 ($126,100, discounted).

Section 121.309—Halon fire extinguishers or equivalent. This section would require all affected airplanes to replace existing fire extinguishers (two per 10-to-30-seat airplane—one in the cabin and one in the cockpit) with halon fire extinguishers or the equivalent. This evaluation assumes that no part 135 airplanes are currently equipped with halon fire extinguishers. It also assumes that, since part 135 airplanes were already equipped with fire extinguishers, there would be no additional maintenance costs or weight penalties for this equipment. Based on an industry survey, a 5-pound halon fire extinguisher costs about $100. The cost of this section would involve purchasing the requisite number of halon fire extinguishers per airplane in 1996 with a 10 percent spares ratio. With a five percent recharge rate per year after 1996, the FAA has estimated that the 10-year cost of this requirement is $413,200 ($348,300, discounted). The highest annual cost occurs in 1996 when the 10-to-30-seat airplanes are initially equipped.

Section 121.313—Cockpit key. This section would require all crewmembers to have access to a key for the cockpit door. This requirement would apply only to 20-to-30-seat airplanes because airplanes with 10 to 19 seats are not required to have locking cockpit doors. The cost of this requirement would involve copying one key for each airplane. Due to the low cost of copying a key (about $1 per key), the FAA estimates the cost of compliance for this requirement to be $600 ($500, discounted). The highest annual cost ($300 discounted) would occur in 1996 when all 20-to-30-seat airplanes in the fleet would have their keys made. Cost estimates for subsequent years are based on the projected annual increase in airplanes.

Section 121.333—Portable oxygen. This section would require airplanes that are certificated to fly above 25,000 feet to have a portable oxygen unit for each flight attendant. This requirement would apply only to commuter airplanes having more than 19 seats because no 10-to-19-seat airplanes in commuter operations are certificated to fly above 25,000 feet, and none of them have flight attendants. In 1994, 78.2 percent of 20-to-30-seat airplanes were certificated to fly above 25,000 feet, and this evaluation projects this percentage into the future. This cost estimate takes into account oxygen unit acquisition ($400 per unit) with a 25 percent spares ratio, a 5 percent replacement rate per year, annual maintenance ($40 per unit), and a weight penalty (5.5 pounds per unit; assuming one unit per airplane, with spares kept on the ground). The evaluation assumes that 344 oxygen units would be purchased in 1996 and new airplanes would be outfitted in the future. Future year costs are based on the projected annual increase in airplanes. The 10-year cost to equip all 20-to-30-seat airplanes would be $520,200 ($385,500, discounted).

Sections 121.333, 121.571, 121.573—Passenger information. These sections establish standards for passenger card information under part 121. Although the passenger card information requirements for part 135 operators are similar, new cards would have to be prepared for 20-to-30-seat airplanes; 10-to-19-seat airplanes already exceed the part 121 standards. Industry experience has shown that each card has a lifetime of approximately 3 years. Assuming a phase-in period of one year, one-third of the cards would normally have been replaced during that period anyway. Hence, the two-thirds of the cards normally not scheduled for replacement would need to be replaced. The new information would also need to be included in any flight attendant manual and in the oral briefing. Preparation costs would involve two people, a flight attendant supervisor and a paperwork layout specialist. This effort would require an average of 2 hours each to prepare the new information card. The FAA assumes that it would cost $1 to print and distribute each information card. The 10-year cost for the preparation of these cards would be $130,100 ($94,200, discounted).

Section 121.337—Protective breathing equipment (PBE) for the cabin. This section would require a PBE unit in the passenger section of the airplane cabin. The evaluation examines the costs of placing one PBE on all 20-to-30-seat airplanes currently operating under part 135. PBE units would be required in the cabin area of 10-to-30-seat airplanes; however, the PBE in the 10-to-19-seat airplanes would be used by crew members, and their costs are reflected in the Operations section of this analysis. Costs include acquisition of a portable PBE unit ($400 per unit) with a 25 percent spares ratio, annual maintenance ($40 per unit), a 5 percent replacement rate per year, and a weight penalty (5 pounds per unit). After initial PBE acquisition in 1996, new PBE acquisition costs are the sum of the projected increase in airplanes and the replacement quota. Ten-year costs to supply all 20-to-30-seat airplanes are estimated at $659,100 ($488,900, discounted).

Section 121.339—Life rafts. This section would require all airplanes involved in extended overwater flight to have an additional life raft on board. The FAA assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended over water flights. Costs include raft acquisition ($5,000 per raft), annual maintenance ($500 per year), a 5 percent replacement rate per year, and a weight penalty (85 pounds per raft). The 10-year cost to equip the affected part 135 airplanes with an additional life raft would be $4.4 million ($3.4 million, discounted).

This section would require operators to provide a flotation cushion or life vest for each passenger seat on all airplanes. The FAA assumes that operators of 10-to-19-seat airplanes would not be able to install flotation cushions and would therefore obtain life vests. The FAA also assumes that operators of 20-to-30-seat airplanes would replace existing seat cushions with flotation cushions. Current 10-to-19-seat airplanes average 18.62 seats per airplane and 20-to-30-seat airplanes average 29.9 seats per airplane. This evaluation assumes that these ratios remain constant into the future. The total number of cushions and life vests per year is derived by multiplying the number of seats per airplane times the projected airplane count for the 10–19 seat and 20-to-30-seat airplane categories. The cost of providing flotation cushions and life vests includes acquisition ($50 each) with a 25 percent spares ratio, annual maintenance ($5 each), a 5 percent replacement rate per year, and a weight penalty (2 pounds for the life vests on the 10-to-19-seat airplanes and no weight penalty for the 20-to-30-seat airplanes because the existing seat cushions weigh the same as the flotation cushions). Future year costs are based on the projected annual increase in 10-to-30-seat airplanes. The 10-year cost for providing flotation cushions or life vests on 10-to-30-seat airplanes would be $5.1 million ($3.9 million, discounted).

Section 121.391—Flight attendant at the gate. This section would require affected operators to have a flight attendant or other authorized person on the airplane during intermediate stops while passengers are on board. The FAA assumes that these airplanes have and would continue to have the same number of daily intermediate stops (3 per day) as part 121 airplanes. Flight attendant coverage would be provided by personnel who are already compensated, except during airplane delays (3 percent of flights) when those persons are no longer available.

The FAA has determined that individual operators could comply with this requirement by following one of three scenarios. Under the first scenario, operators would require all passengers to deplane during intermediate stops at the gate. There may be a cost in inconvenience to passengers who have to deplane, which in turn may ultimatley reduce the amount that they are willing to pay to fly these routes. The FAA has not attempted to quantify this cost due to the lack of information. Interested persons with quantifiable data on the cost of this inconvenience are invited to submit information to the docket. Under the second scenario, operators would require either a flight attendant or pilot to remain on the airplane. Under the third scenario, operators would allow a trained, authorized person to stand in for the flight attendant or pilot when coverage is needed due to a flight delay. The FAA expects air carriers to choose each of the first two options 40 percent of the time and the third option 20 percent of the time due to the higher costs, which include initial training costs and the costs of keeping such personnel on stand-by at intermediate stops. The air carriers would incur the cost of wage compensation when personnel who are not already compensated stay on board airplanes during delays. The 10-year cost of requiring flight attendants (or other designated personnel) at the gate on 10-to-30-seat airplanes is estimated at $7.5 million ($5.2 million, discounted).

Section 121.417—Protective breathing equipment training. This section would require part 135 flight attendants to be trained in PBE usage by fighting an actual fire. Specifically, this proposed rule change would require all current and future flight attendants on 20-to-30-seat airplanes to receive one-time PBE training fighting an actual fire during the first year (1996). The FAA estimates training costs (including wages, transportation, and equipment) to be $135.50 for each flight attendant per session. Total instruction costs, which include $125 per session per instructor, were calculated by assuming 20 flight attendants per class (900 flight attendants in 1996). Maintenance labor ($28 per session) is needed to clean up after training. The 10-year cost for part 135 flight attendants to receive PBE training would be $323,500 ($250,500, discounted).

3. Certification. *Section 121.161(a)—Airplane limitations: Type of route.* This section would require that an adequate airport be within one hour flying time at single engine cruising speed along all points of the designated flight route. There is no similar requirement in part 135. This requirement would not affect current part 135 operators in the 48 states, but it could affect 6 of the 12 part 135 operators in Alaska. The FAA estimates that about 150 flights would be affected annually, with reroutings adding about one-half hour to each flight. Applying an hourly variable operating cost of $500, the FAA estimates that annual operating costs would increase by about $37,500. Over the 10-year period, this section would cost an estimated $375,000 ($263,000, discounted).

Sections 121.177—Takeoff limitations. Section 121.177(a)(1) would require that an airplane be able to stop safely on the runway, as shown by the accelerate stop distance data, at any time during takeoff until reaching critical-engine failure speed. While this requirement would have minimal effect on operators, manufacturers would be required to calculate accelerate-stop distances for recertification. The FAA estimates that recertification would cost about $5,000 per airplane type for each of the 13 existing commuter category type certificated airplanes, for a first year cost of about $65,000. There would be no ascribable costs for future type certificate airplanes because accelerate-stop distances would be demonstrated during the normal certification process. Over the 10-year period, this section would cost an estimated $65,000 ($61,000, discounted).

Section 121.305—Flight and navigational equipment. Section 121.305(j) would require a third attitude indicator. This device is not required on part 23 certificated airplanes, although at least one model (Beech 1900–D) has it as standard equipment. The FAA proposes a one-year retrofit period. The FAA estimates that it would cost about $50,000 for a manufacturer to design, test, and document the results for FAA acceptance. The FAA also estimates that it would cost $16,000 per airplane to retrofit this device, which would add about 5 pounds of weight. For newly manufactured airplanes, installation would cost about $8,000. The annual maintenance, inspection, and repair costs would be about 10 percent of the installation costs on a new airplane. After adjusting for the number of existing commuter category airplanes that have this equipment, the FAA estimates that first-year retrofitting would cost about $12.8 million. The annual weight penalty would be between $9,000 and $10,000. The annual compliance cost for newly manufactured airplanes would be between $160,000 and $200,000. The annual maintenance cost would be between $450,000 and $600,000. Total costs over 10 years would amount to about $19.2 million ($18.4 million, discounted).

Section 121.308—Lavatory fire protection. Section 121.308(a) would require each lavatory to have a smoke detector system connected to a warning light in the flight deck and to a warning

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light or aural warning that can be detected by a flight attendant in the passenger cabin. Section 121.308(b) would require each lavatory to have a built-in automatic fire extinguisher in each disposal receptacle. These requirements are also contained in section 25.854 for airplanes type certificated after 1991. There are no such requirements in part 135 or part 23. The FAA proposes to apply these requirements to airplanes with 20 or more seats currently operating under part 135. The cabin warning signal would not be applied to airplanes with 19 or fewer seats because they have no flight attendant.

The FAA estimates that about half of the 272 airplanes used in part 135 operations and certificated before 1991 as part 25 airplanes do not have these fire warning and fire extinguishing devices. However, nearly all recently manufactured airplanes do have them. Consequently, the FAA assumes that all newly manufactured airplanes would have these devices even in the absence of a regulatory requirement. Thus, there would be no incremental compliance cost for newly manufactured airplanes.

The FAA estimates that it would cost about $175 to retrofit a warning signal that would add about 5 pounds of weight and involve about $50 a year in maintenance and about $15 a year for replacement. The FAA estimates that it would cost about $300 to retrofit receptacle automatic fire extinguishers that would add about 5 pounds of weight, cost about $50 per year in maintenance, and cost about $25 per year for replacement. Based on these assumptions, the retrofitting costs would be about $23,800 for fire detectors and about $40,800 for receptacle fire extinguishers. The annual weight penalty for both devices would be about $4,000. The annual maintenance and replacement costs would be about $20,000. The total costs over 10 years would be about $263,000 ($206,000, discounted).

Sections 121.310 (b), (c), (d), (e), and (h)—Cabin emergency lighting equipment. These sections are analyzed together because they comprise an integrated system. Section 121.310(b) requires interior emergency exit markings (1) above the aisle near each emergency exit or at another ceiling location if the aisle height is too low and (2) next to each emergency exit. Section 121.310(c) requires an emergency lighting system that is independent of the main lighting system's power supply and that illuminates each exit sign and the floor proximity emergency escape path marking. Section 121.310(d) requires that these emergency lights (1) be automatically activated in a crash landing or whenever the airplane's normal electric power is interrupted and (2) have the capability to be manually operated from the flight deck and from a point in the cabin readily accessible to the flight attendant's seat. Section 121.310(e) requires luminescent emergency exit operating handles for airplanes certificated after May 1, 1972, and allows painted emergency exit operating handles in airplanes certificated prior to that date. Section 121.310(h) requires airplanes to have the independently powered exterior emergency exit lighting specified in section 25.812 (f) and (g) to illuminate both the area where the first step out of the exit would be taken as well as the area (for an overwing exit) where the first step off the wing would be taken.

There are no parallel requirements in part 135, although an airplane type certificated under part 23 must have a self-illuminating exit or an independently electrically illuminated sign under section 23.811(b). Commuter category airplanes do not have these signs, markings, the associated independent electrical system, and exterior lighting. The FAA proposes a 2-year retrofit period. The emergency lighting would meet the requirements of section 121.310(e) for an illuminating emergency exit handle.

The FAA estimates that this total retrofit electrical package would cost about $2,500 for a commuter category airplane and would add about 20 pounds of weight. The FAA also assumes that the annual maintenance and replacement costs would be about 10 percent of the retrofitting cost. For newly manufactured airplanes, the installation cost would be about $2,000. On this basis, the retrofitting cost would be about $1 million per year for the first 2 years. The weight penalty cost would be about $22,500 in the first year and about $45,000 in each year thereafter. The annual maintenance cost would be between $200,000 and $250,000. Since newly manufactured airplanes would largely replace existing airplanes, these weight penalty, maintenance, and replacement costs are included in the retrofitting costs above. The total costs over 10 years would be about $3.6 million ($2.5 million, discounted).

Section 121.310(g)—Exterior exit marking. Section 121.310(g) would require each emergency exit and the means of opening that exit from the outside to be marked (painted) on the outside of the airplane. The exit must be marked by a 2 inch colored band. There are no similar requirements in part 135 but airplanes certificated under part 23 must have a marking that is readily identifiable under § 23.811(a). The FAA estimates that about 90 percent of airplanes in part 135 operation have markings that would comply with section 121.310(g). For the remaining 10 percent that would need marking changes, this requirement would cost about $100 per airplane. On this basis, the FAA estimates that one-time repainting costs would be about $8,000 ($7,400, discounted) in 1996.

Section 121.311(g)—Shoulder Harnesses. This section requires flight attendant seats to have shoulder harnesses. There is no similar requirement in part 135. This requirement would only affect airplanes with 20–30 seats because airplanes with fewer seats do not have flight attendants. The FAA proposes to require that harnesses be installed within one year. The FAA believes that a retrofit and an installation on a new airplane would cost about the same—about $300 for the harness and about four hours for the installation (at about $20 per hour). The harnesses would have a 20-year life span and would involve about $15 in annual maintenance and inspection. On that basis, the first year compliance cost would be about $135,000, and the annual compliance cost for new airplanes would be between $15,000 and $19,000. The total costs over 10 years would be about $284,000 ($228,000, discounted).

Section 121.312(b)—Passenger Seat Cushion Fire Blocking Materials. This section would require that passenger seat cushions comply with the fire protection standards in section 25.853(b). This section would require that existing seat cushions in commuter category airplanes be replaced by fire resistant cushions. The proposed rule would provide a 2-year retrofit period plus 2 additional years if there are demonstrated difficulties in installing fire resistant seat cushions.

Although different compliance costs could be incurred by different commuter airplane models because the seat construction differs among these models, the FAA estimates that retrofitting a fire blocking seat cushion would cost approximately $20,000 per airplane and would add a total of 38 pounds (2 pounds per seat) of weight. Assuming that an equal number of airplanes would be retrofitted every year for the next 4 years, the FAA estimates that retrofitting seats would cost about $3.8 million in the first year and about $3.4 million in each of the next 3 years. The weight penalty would be about $20,000 in the first year and increase by $20,000 each year for 3 years until reaching an annual total of $80,000.

There would be no incremental inspection, maintenance, or repair costs because, in general, seat cushions are reupholstered rather than replaced, and the reupholstering cost would be independent of the underlying structure of the seat cushion.

For newly manufactured airplanes, there would be no incremental installation costs because it would take the manufacturer the same amount of time to install a seat with a fire blocked cushion as it would to install a seat with a non-fire blocked cushion. Thus, the only incremental cost for fire blocking seat cushions in newly manufactured airplanes would be the cost difference between fire blocked seats and non-fire blocked seats. The FAA estimates that this differential would be about $5,000 per airplane and add about 2 pounds of weight per seat. Therefore, the annual cost for newly manufactured airplanes would be about $150,000. Since these newly manufactured airplanes would largely replace existing airplanes, the weight penalty cost is included in the retrofitting cost estimates. Over the 10-year period, this cost would be about $15.5 million ($12.8 million, discounted).

The FAA, however, believes that these unit costs for both retrofitted and new installations would likely decrease over time, as fire blocked seats become the industry norm rather than an infrequently selected option. As they become more widely used, the large initial engineering, development, and testing costs would be amortized over more seats, and the per seat production costs would similarly decline as the number manufactured increases. Nevertheless, in order not to underestimate the compliance costs, the FAA has not incorporated any prediction concerning potential reductions in future fire blocked seat costs. The FAA requests information and comments on this assumption.

Section 121.314—Cargo and Baggage Compartments. Sections 121.314, 25.855, 25.857, 25.858, and part 25 appendix F part III would require fire retardant fiberglass cargo liners, smoke detectors that signal the flight deck, and fire extinguishing systems in Class C and D cargo baggage compartments. There are similar requirements for commuter category airplanes in section 23.853(d)(3). This section would require new production commuter category airplane cargo compartments to meet these part 121 and part 25 requirements within 4 years. Over the 10-year period, the estimated cost of compliance for these three requirements would be $5.5 million ($3 4 million, discounted).

Section 121.314 was amended in 1989 to require fire retardant fiberglass cargo liners in newly manufactured part 25 airplanes, but the requirement to retrofit airplanes in part 121 operation was limited to airplanes with cargo areas greater than 200 cubic feet. The FAA estimates that the initial engineering, development, and testing costs would be about $10,000 per type certificate. Although there would be no incremental labor costs for liner installations in newly manufactured airplanes, the FAA estimates that the incremental materials would cost about $10,000 and would add about 5 pounds of weight. The FAA assumes that there would be no incremental inspection, maintenance, or repair costs. Based on these assumptions, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $300,000 and $350,000. The annual weight penalty would be about $4,000 in the first year, increasing by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes.

With respect to fire detection systems, the FAA estimates that the initial engineering, development, and testing costs would be about $20,000 per type certificate. The FAA also estimates that it would cost about $4,500 per newly manufactured airplane to install this system and that it would add about 5 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be about 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be about $130,000. The weight penalty would be about $4,000 in the first year and increase by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, inspection, maintenance, and repair costs would be about $13,500 in the first year and would increase by $13,500 each year thereafter.

With respect to automatic fire extinguishing systems, the FAA estimates that the initial engineering, development, and testing costs would be about $30,000 per type certificate. The FAA also estimates that it would cost about $9,000 per newly manufactured airplane to incorporate this system and that it would add about 10 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes would be about $430,000. The weight penalty cost would be about $8,000 in the first year and would increase by $8,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, maintenance and repair costs would be about $27,000 in the first year and would increase by $27,000 each year thereafter.

Section 121.342—Pitot Heat Indication System. This section would require a pitot heat indication system to indicate to the flight crew whether or not the pitot heating system is operating. Part 23.1323 requires that a pitot heat system for most commuter category airplanes but there are no requirements for a heat indication system. The FAA proposes to require that existing commuter category airplanes have these heat indicating systems within four years. The FAA estimates that it would cost a manufacturer about $10,000 for initial engineering design, testing, and FAA approval. The FAA also estimates that it would cost about $500 to retrofit each airplane. There would be minimal weight penalty, inspection, maintenance, and repair costs. Over the 10-year period, this cost would be $1.2 million ($1 million, discounted).

Section 25.703—Takeoff Warning System. This section requires an aural warning at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. There is no similar requirement in part 23. However, commuter category airplanes do not have leading edge devices, wing spoilers, or speed brakes. Further, these airplanes have demonstrated the ability to safely continue takeoff under abused trim conditions. As a result, the only additional monitoring would be for the flap settings.

Currently, there is rulemaking on the installation of digital flight data recorders (DFDR) in future airplanes. As DFDRs would monitor flap settings if they are required in future production airplanes, the FAA estimates that the average cost to engineer, develop, test, and install an aural warning would be about $1,000 per airplane. If, however, the DFDRs are not required, the FAA estimates that the average cost to engineer, develop, test, and install an aural takeoff warning device would be about $16,000 per airplane. The annual inspection, maintenance, and repair costs would amount to about 10 percent of the installation costs. The FAA proposes to require these aural warning devices on new production commuter

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category airplanes produced four years or more after the final rule effective date. On that basis, if DFDRs are required equipment, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $30,000 and $35,000, with total costs over the 10-year period of about $200,000 ($120,000, discounted). The annual maintenance cost would be between $3,000 and $4,000, increasing by about $3,500 every year thereafter, and totaling $80,500 over 10 years ($45,000, discounted). If DFDRs are not required equipment, then the annual incremental cost for newly-manufactured airplanes, beginning after 4 years, would be between $480,000 and $560,000, with total costs over 10 years of about $3.0 million ($1.8 million, discounted). The annual maintenance cost would be between $48,000 and $56,000, with total costs over 10 years of about $1.1 million ($650,000, discounted). The total compliance costs over 10 years would equal about $4.1 million ($2.5 million, discounted).

Section 25.807(e)—Ditching Emergency Exits. This section would require exits that are usable while the airplane is afloat, even if the airplane is not certificated for ditching. Amendment 23–46 to part 23 contains a similar requirement but all current commuter category airplanes were type-certificated before this amendment became effective. However, the overwing exits on nearly all commuter category airplanes already qualify as ditching exits. The provision would require the manufacturer to demonstrate to the FAA that the overwing exits can qualify. The proposed rule would allow manufacturers two years to provide this demonstration. The FAA estimates that such a process would cost about $5,000 for each of the 13 commuter category type certificated airplane models. On this basis, the compliance cost over the first 2 years would be about $65,000 ($59,000, discounted).

4. Maintenance. The FAA estimates that the cost of compliance for maintenance would amount to $105,000 over the next 10 years. Affected operators would incur costs to revise and upgrade their continuous airworthiness maintenance programs (CAMP). This and other cost considerations are discussed below.

Section 121.361—Applicability. The proposed rule would require affected operators with airplanes of 10 or more passenger seats to have a part 121 maintenance program. The proposed rule would require all part 135 commuters currently operating under a CAMP to revise and upgrade their program. Since these operators already have a CAMP, the only requirement of the proposed rule would to revise and upgrade their existing program. The FAA estimates the potential cost of this section is $105,000 ($98,000. discounted).

Other cost considerations. In addition to those maintenance cost estimates for equipment contained in the cabin safety, operations, and certification areas of this evaluation, the proposed rule may impose additional costs for training maintenance personnel. Compliance with the more complexed equipment requirements of the proposed rule may necessitate additional training of maintenance personnel. Despite surveying several small operators to obtain information on the costs of such training, the FAA needs more data to estimate such costs. The FAA believes that some commuters may incur higher training costs as the result of the proposed rule, though to what extent is uncertain. As the result of this uncertainty, the FAA solicits comments from the aviation community as to what extent the affected commuters would incur additional costs for training maintenance personnel.

5. Part 119. Part 119 is a proposed new part that consolidates the certification and operations specifications requirements for persons who operate under parts 121 and 135. Most of these regulations are currently in SFAR 38–2; therefore, moving them to part 119 would not impose any additional cost. However, some sections currently under parts 121 and 135 would be moved to part 119. The costs imposed by those sections on the affected part 135 operators are presented below. Over 10 years, the costs of these provisions are estimated to be $2.2 million ($1.8 million, discounted).

Sections 119.33(c), 121.163—Proving tests. When an operator changes the type of operation it conducts or purchases an airplane that is new to that operator, that operator must go through a proving test. A proving test consists of a non-passenger flight in which the operator proves it is capable of safely conducting that type of operation or airplane. Going from a part 135 operation to part 121 operation would be a change in operation and be subject to a proving test. Under the proposed rule, there would be two costs associated with proving tests—initial and recurring. The initial cost would be proving tests for the existing fleet (existing as of 1996). The recurring costs would be for any future operational or airplane changes that would normally require a proving test as required by the existing rule.

The current regulation prescribes 50 hours of flight for a part 121 (section 121.163(b)(1)) proving test. This is the number that part 135 operators switching to part 121 would be subject to. However, the current rule also allows for deviations from the 50-hour requirement. A sample of FAA records on proving tests shows that, since 1991, there has been a wide range of hours actually flown for proving tests. This is because the amount that the operator is allowed to deviate from the prescribed number of hours is based on what that operator requests and on what the FAA will allow. However, based on the above sample, the FAA assumes for the purposes of this analysis, the average deviation would be 50 percent, or 25 hours.

The FAA estimates that 25 hours of proving flights would cost the operator approximately $13,400 for a 20-to-30-seat airplane and $12,900 for a 10-to-19-seat airplane. The difference in cost is due to the flight attendant being on board in the 20-to-30-seat airplanes. These costs are based on the following assumptions:

Airplane Operation Cost

Hours of test flight time, 25
Airplane operating cost/hr., $370
Pilot salary per hr., $47
Flight attendant per hr., $20

Management Costs

Manager salary per hr., $23
Secretary salary per hr., $10
Maintenance salary per hr., $21
Days of preparing for test, 3

If there is a proving test for each type of airplane for each part 135 carrier affected by the proposed rule, then there would be approximately 98 proving tests to bring the current fleet up to part 121 standards. The cost to the 69 part 135 operators in 1996 for the initial 98 proving tests would be approximately $1.27 million. Of this cost, approximately $281,000 would be incurred by operators with 20-to-30-seat airplanes and $992,000 by operators with 10-to-19-seat airplanes.

The recurring costs would accrue over the next 10 years as a result of the affected operators having to conduct a part 121 proving test instead of a part 135 proving test. If the prescribed number of hours for part 135 and part 121 operators is 25 and 50 respectively, and the average deviation is 50 percent, then the difference in hours would be 13 [(50–25) × .5]. Also, the FAA found from the survey of its records that, on average, operators conduct one proving test every four years, which equates to approximately two tests over the 10-year period.

If the average number of operators over the next 10 years is 75, then the FAA will conduct approximately 15 ((75 operators × 2 tests)/10 years) proving tests annually—12 for 10-to-19-seat airplanes and 3 for 20-to-30-seat airplanes. The FAA estimates that the increased cost of a proving test per part 135 operator would be $6,040 for a 20-to-30-seat airplane and $5,790 for a 10-to-19-seat airplane. For all affected operators, the proposed rule would impose approximately $87,600 annually in additional costs for proving tests. Over the next 10 years, the total recurring cost of this provision would be $876,000 ($616,000, discounted).

Section 119.67—Directors of maintenance/operations and chief inspector The proposed rule would impose costs by expanding the applicability of the part 121 director requirements to include the affected part 135 operators. This proposal would impose costs on commuter operators who would have to require directors of maintenance and operations to meet the part 121 employment experience standards.

The proposed rule also would impose costs by expanding the requirements themselves, thereby potentially affecting all part 121 operators. These costs would occur due to the expanded requirement that directors have both technical and management experience. The existing rule requires one or the other. The part 121 standards at issue are as follows:

—Director of Maintenance—five years (instead of three years for part 135 operators) of maintenance experience and one year of managerial or supervisory experience (in part 135 this is optional);
—Director of Operations—three years experience as a pilot in command (same for part 135) and three years supervisory or managerial experience (in part 135 this is optional).

For commuter operators, these new standards could potentially impose increased personnel costs. Costs would accrue to the extent that operators would have to pay higher wages. The FAA has not identified any existing directors (commuter or air carrier) who would not meet the proposed standards. Thus, the proposed rule would not impose any costs initially.

Costs could accrue in the future as new directors need to be hired since commuter operators may have to pay a higher wage that would commensurate with the new experience level. This assumes that a director candidate with two additional years of maintenance experience or a candidate with three additional years of managerial or supervisory experience, for example, would necessarily command a higher wage than someone who did not have the same years of experience. This higher personnel cost also could affect current part 121 operators who, in the future, may be prohibited from hiring director candidates who only have technical or management experience. Under the proposed rule, they would have to hire a candidate with both, and therefore, potentially pay a higher salary.

The proposed rule would also require current commuter operators to designate a chief inspector. The requirements for the chief inspector are that they have one year of experience in a supervisory position maintaining large aircraft. To the extent that an operator does not have anyone who meets this qualification, and therefore, has to hire an additional person, then the proposed rule would impose costs.

The FAA does not know to what extent commuter operators would have to pay director's wages higher than they otherwise would or hire an additional person for chief inspector. In regard to those potential wages and hirings, the FAA solicits comment from the industry.

Section 121.159—Single-engine airplane costs. The proposed rule would prohibit the use of single-engine airplanes in scheduled passenger service under part 121. The FAA has identified 10 single-engine airplanes with 10 seats or more involved in scheduled passenger operations. These airplanes are flown by four commuter operators, all in Alaska. As a result of the proposed rule, these operators would need to either sell these airplanes, change them to all-cargo operations, or remove seats so that there are no more than nine passenger seats. Since most of these planes have 10 passenger seats, the FAA believes that the most probable outcome would be for the operators to remove one passenger seat from scheduled passenger service, and thereby, operate the airplane under part 135.

The FAA assumes that there would be no cost to remove the seats since typically, the tenth passenger seat on these airplanes can also be used as a co-pilot seat since it is located next to the pilot. Thus, operators could avoid the cost of removing the seat by not allowing passengers to sit there. However, potential costs would accrue from the lost revenue that operators would incur from not being able to sell a ticket for that tenth seat.

Costs would accrue to the extent that the reduced capacity (due to the seat removal) would not meet system-wide passenger demand. The FAA used a model that correlates the system-wide load factor to unmet demand (which is the basis to measure revenue loss). From this model, the FAA calculated that an operator would incur lost revenue of $1,535 annually due to the loss of one seat on these airplanes. Total cost of the removal of passenger seats for the 10-year period is $15,350 ($10,781, discounted).

Benefits

The commuter segment of the U.S. airline industry is a vital and growing component of the nation's air carrier system. Commuter aircraft transport passengers between small communities and large hubs, and they play a vital role in transporting passengers over short distances, regardless of airport or community size. In many cases they are a community's only convenient link to the rest of the nation's air transportation system.

Over the past 15 years, the commuter industry has grown considerably. In 1993, for example, enplanements for commuter carriers grew by more than 10 percent, far outpacing the one percent growth of enplanements on larger carriers. Forecasts of commuter industry activity give every indication that growth in this segment of the airline industry will continue to be robust during the next 10 years.

Many commuter carriers operate in partnership with major air carriers, providing transportation to and from hub locations that would be unprofitable with larger aircraft. These partnerships frequently operate within a seamless ticketing environment, in which the major carrier issues a ticket that includes one or more trip segments on a commuter. As these relationships between major carriers and commuter airlines continue to grow, it will become more common for the average long distance flyer to spend some time on a commuter.

The combined effect of a continuing growth in the commuter industry and the ever growing relationship between major carriers and their commuter counterparts will progressively blur the distinction between one type of carrier and another, but will view each component as simply a part of the nation's air transportation system. Therefore, it is important to establish a common approach toward regulatory safety. Air carrier accidents affect public confidence in air transportation,

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perhaps more than accidents in any other mode.

What is the public value or benefit of air transportation? It would be nearly impossible to calculate something that has been so widely accepted in the American lifestyle. One figure that represents the very least value the public places on traveling by air is the annual amount the public spends on air transportation, or in other words, annual air carrier revenues. In 1994, the FAA estimated that amount to be $88 billion. If public confidence wavers by only one percent, annual total air carrier revenues would be reduced by $880 million, which is a minimum dollar estimate of the cost that the public would experience in terms of being denied a fast, safe means of transportation. Some studies have been done to measure the effect of change in public confidence. In 1987, the FAA studied the impact of acts of terrorism on aircraft travel on North Atlantic Routes. Correlations were calculated between the amount of media attention given to a specific act of terrorism and corresponding traffic reductions. The study concluded that there were short-term, carrier-specific correlations between the two. Following a well publicized incident, ridership on the carrier experiencing the incident would drop as much as 50 percent for a few months. In another instance, a major air carrier reported that two catastrophic accidents in 1994 resulted in a half-year revenue loss to that carrier of $150 million. These examples relate to carriers utilizing large aircraft, but point out that public use of air transportation can be affected by the prevailing level of public confidence.

The American public demands a high degree of safety in air travel. This is manifested by the large amount of media attention given to the rare accidents that do occur, by the short term reductions in revenues carriers have experienced following accidents or acts of terrorism, and by the pressure placed on the FAA as the regulator of air safety to further reduce accident rates.

The FAA is confident that the proposed rule would further reduce air carrier accidents. The rule proposes dozens of changes in the way that smaller air carrier airplanes are built, maintained, and operated—all aimed at eliminating or at the very least minimizing the differences between small and large airplanes and the way they operate. Many of these changes result in small, unmeasurable safety improvements when examined in isolation, but taken together result in a measurable difference. That measurable difference ultimately is to bring commuter accident rates down to the very low level of that of the major carriers. That rate is nearing the point of rare, random events.

What follows is a quantified analysis of the potential benefits of the proposed rule based on the assumption that it will bring about further reductions in the commuter accident rate. The analysis finds that measurable potential benefits substantially exceed the cost of the rule, but the FAA believes that the larger but nonquantifiable benefit is public confidence in air transportation.

Potential Safety Benefits. The FAA estimates that from 1996 to 2005, the proposed rule has the potential to prevent approximately 94 accidents, providing an estimated benefit of $555 million (or $393 million, discounted). This benefit is based on the assumption that the proposed rule would significantly close the accident-rate gap between airplanes with 10 to 30 seats now operating under part 135 and airplanes with 31 to 60 seats now operating under part 121. FAA is using the smaller part 121 airplanes for comparison because they operate more similarly to 10-to-30-seat airplanes than do the larger part 121 airplanes.

Typically, the FAA estimates aviation safety benefits based on rates of specific types of accidents that the rulemaking would prevent in the future. However, for this rulemaking, the FAA used a more broad-based accident rate. This approach was adopted because the scope of the various components of the proposed rule covers such a wide range and many of those components are interrelated. For instance, additional safety equipment like PBEs could save lives; but PBEs are of little use if the flight crew is too tired to use them in a timely and correct manner. It would be extremely difficult to determine the benefit of PBEs completely separate from flight-time limitations.

To estimate the potential benefits of the proposed rule, the FAA assembled a database of relevant part 121 and part 135 commuter accidents between 1982 and 1993 based on National Transportation Safety Board (NTSB) accident reports. The FAA then divided the annual number of accidents by the annual number of scheduled departures to get the annual accident rate. The FAA took the difference in annual accident rates for 10-to-30-seat, part 135 airplanes and 31-to-60-seat, part 121 airplanes and multiplied them by the projected annual number of scheduled departures for 10-to-30-seat part 135 airplanes. This gives the projected annual number of accidents that the proposed rule could potentially prevent. The FAA estimates that from 1996 to 2005, the number of accidents that potentially could be prevented is 94. Then, multiplying the number of potentially prevented accidents by the average cost of a part 135 accident ($5.9 million) gives the total potential benefits of the proposed rule, $555 million from 1996 to 2005. The present value of this benefit is $393 million.

The extent to which the accident rate gap could be closed by the proposed rule is not certain. This uncertainty is based on the following factors:

—Inherent differences in airplane performance for airplanes with fewer than 30 seats and airplanes with more than 30 seats;
—Inherent differences within the 10-to-30-seat range, which can include single- and multi-engine piston and turboprop airplanes;
—The proposed regulations would still allow some exemptions for airplanes with 10 to 30 seats, especially with respect to certification;
—Not all part 121 requirements would be applied to 10-to-30-seat airplanes with this proposed rule (flight data recorders, cockpit voice recorders, and crew training for instance);
—To the extent that past FAA rulemaking has been effective in preventing accidents over the years, the accident rates used in this analysis already reflect the accidents prevented by past rulemaking. However, to the extent that some recent rules may not be fully implemented, the potential benefits of the proposed rule will be overstated;
—There is a higher proportion of 10-to-30-seat airplanes operating in Alaska, which has a considerably higher accident rate than the rest of the country;
—In some instances, the proposed rule would not prevent a potential accident but rather mitigate it by lessening the severity of the casualties and airplane damage;
—The accident rates reflect the extent to which part 135 operators are already in compliance with the proposed rule. To the extent that differences in part 121 and part 135 operating procedures and airplane standards can be reduced, so too can the difference in their accident rates.

The extent to which the accident rate gap closes will determine how much of the potential $393 million in potential benefits actually accrues. Given the scope of the proposed rule, the FAA anticipates a significant amount of the accident rate gap to close.

Comparison of Costs and Benefits

The proposed rule is expected to generate safety benefits in the amount of $555 million ($393 million, discounted) from 1996 to 2005. Over the same period, the proposed rule would impose costs of $275 million ($199 million, discounted).

There are two important points that should be noted about the benefits estimate. First, the estimate has not been adjusted to account for accidents that would be prevented by other NPRMs that the FAA has issued. One NPRM in particular, the Air Carrier Training Program, would prevent many of the same accidents that this proposed rule would prevent (the cost of that rule to commuter operators would be $36 million). Second, the FAA is not certain how effective the proposed rule would be in completely closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes.

In spite of these uncertainties, the FAA contends that the proposed rule would be cost-beneficial. This assessment is based on the fact that the combined cost of the Air Carrier Training Program NPRM and this NPRM, totaling $235 million ($199 + $36), is still less than the total potential benefits of this NPRM. Both NPRMs would have to be only 60 percent effective in closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes for the benefits to exceed the costs.

Initial Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. With respect to the proposed rule, a "small entity" is a commuter operator (with 10 to 30 seats) that owns, but does not necessarily operate, nine or fewer airplanes. A "significant economic impact on a small entity" is defined as an annualized net compliance cost to a small commuter operator which is greater than or equal to $67,000. A "substantial number of small entities" is defined as a number that is 11 or more and which is more than one-third of the small commuter operators subject to the proposed rule.

A. *Initial regulatory flexibility determination.* The number of small commuter operators that would be affected by the proposed rule was based on the average forecasted number of operators owning 10-to-30-seat airplanes for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA estimates that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also calculates that these 75 operators would own 1,267 airplanes with 10 to 30 seats, of which the 24 small commuter operators would own 108 airplanes. In addition, the FAA estimates that 23 of the 24 small commuter operators would own 105 airplanes with 10 to 19 seats and 2 of the 24 small commuter operators would own 3 airplanes with 20 to 30 seats (this means that one operator owns both 10-to-19-seat airplanes and 20-to-30-seat airplanes.)

The discounted cost of the proposed rule over the 10-year period would be $199 million or about $28 million annualized at 7 percent, of which 1) those operators owning 10 to 19 seat airplanes would account for about $150 million or $21 million annualized and 2) those operators owning 20 to 30 seat airplanes would account for $48 million or $7 million annualized. The 24 small commuter operators would account for $20 million (discounted) or $2.9 million annualized, of which the 23 small commuter operators owning 10-to-19-seat airplanes would account for about $19.9 million (discounted) or about $2.8 million annualized and the 2 small commuter operators owning 20-to-30-seat airplanes would account for about $305,000 (discounted) or about $43,000 annualized. The annualized cost per airplane would be about $27,000 for 10-to-19-seat airplanes and would be about $14,500 for 20-to-30-seat airplanes.

In analyzing the major sections of this proposed rule the FAA estimates that: operations would account for $141 million (discounted) or $20 million annualized; maintenance would account for $90,000 (discounted) or $13,000 annualized; cabin safety would account for $16 million (discounted) or $2 million annualized; part 119 would account for $2 million (discounted) or $236,000 annualized; and certification would account for $39 million (discounted) or $6 million annualized.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this proposed rule would have a significant economic impact on any operator owning more than two 10 to 19 seat airplanes (2 airplanes x $27,000 per airplane = $54,000) or any operator owning more than four 20 to 30 seat airplanes (4 airplanes x $14,500 per airplane = $58,000). In forecasting the number of airplanes that each small operator would own, the FAA assumed that the existing small operators would continue to own the same number of airplanes they currently own and the additional forecasted number of small operators would each own 9 airplanes that have 10 to 19 seats (so as not to underestimate the impact on small entities). Fourteen small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur annualized costs exceeding the $67,000 threshold. The FAA has made a determination that the proposed rule would result in a significant economic impact on a substantial number of small entities.

B. *Initial regulatory flexibility analysis.* As the proposed rule could have a significant economic impact on a substantial number of small part 135 commuter operators, an initial regulatory flexibility analysis has been prepared. This analysis assures that agencies have examined selected regulatory alternatives which could minimize the economic burdens of the proposed rule on small entities. As delineated in section 603(b) of the RFA, this initial regulatory flexibility analysis is required to identify: (1) the reasons why the agency is considering the action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule will apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) all Federal rules which may duplicate, overlap or conflict with the proposed rule. Section 603(c) of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. As required by sections 603(b) and (c), the following analysis addresses the proposed rule as it relates to the affected small commuter operators.

A. *Why agency action is taken.* The main reason for this proposal is that the FAA Administrator, when prescribing safety regulations, is required by statute to consider "the duty of an air carrier to provide service with the highest possible degree of safety in the public interest." The FAA has determined that the most appropriate way to meet this statutory mandate is to require scheduled passenger operations in

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airplanes with 10 or more passenger seats and scheduled passenger operations in turbojets to meet, where appropriate, at least the minimum requirements of part 121. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board, testimony from congressional hearings, and accident statistics. More detailed reasons for the agency action are provided in the NPRM.

B. *Objective of and legal basis for the proposed rule.* The objective of the proposed rule is to increase safety in scheduled passenger-carrying operations. The proposed rule would also clarify, update, and consolidate the certification and operations specifications requirements for persons who operate airplanes for compensation or hire. This objective is more thoroughly discussed in the preamble to the NPRM.

The legal basis of the proposed rule is 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, 1472, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

C. *Description of the small entities affected by the proposed rule.* The proposal would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger seating configuration of 10 to 30 seats and those conducting scheduled operations in turbojets.

The number of small entities that would be affected by the proposed rule is based on the average forecasted number of operators for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA projects that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also estimates that the 75 commuter operators would own 1,267 airplanes, of which the 24 small commuter operators would own 108 airplanes.

D. *Compliance requirements of the proposed rule.* The proposal would require certain part 135 operators to comply with specific part 119 and 121 standards. While all commuter operators owning airplanes with 10 or more passenger seats would come under part 121, wherever compliance would not be feasible for smaller airplanes, part 121 would provide an exception. These exceptions include the requirements for low-altitude windshear equipment, flight data recorders, and flight attendants in airplanes with 10 to 19 passenger seats. In addition, these operators will continue to comply with several part 135 requirements as they currently exist, such as the ground proximity warning system, the traffic alert and collision avoidance system, and cockpit voice recorders. The preamble to the NPRM provides a more thorough discussion of the compliance requirements of the proposed rule.

E. *Overlap of the proposed rule with other Federal regulations.* No other Federal rules would duplicate, overlap, or conflict with the proposed rule.

F. *Alternatives to the proposed rule.* According to the RFA, significant alternatives may include: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use of performance rather than design standards; or an exemption from coverage of the rule, or any part thereof, for such small entities. The FAA considered two alternative approaches to the proposed rule.

Alternative one—retain status quo. This alternative would retain the status quo by allowing part 135 operators to continue operating under the existing part 135 standards. As there would be no changes in the existing requirements, there would be no change in the compliance costs. However, there would also be no improvement in benefits and the level of safety would remain the same for the commuter operators. The FAA rejected this approach because it does not meet the agency's objective of maintaining and enhancing aviation safety for the traveling public.

Alternative two—same as the proposed rule except for elimination of the proposed flight time limitations and rest requirements and the proposed dispatcher requirements. This alternative would be similar to the proposed rule except for elimination of: (1) The proposed flight time limitations and rest requirements for all flight crewmembers and (2) the proposed dispatcher requirements. This means that part 135 commuter operators would not need to hire additional pilots and flight attendants to meet the proposed flight time limitations and rest requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $75 million (discounted) or $11 million annualized. Also, additional dispatchers would not be needed to meet the proposed dispatcher requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $57 million (discounted) or $8 million annualized. Thus, this alternative would result in a compliance cost reduction over the 10-year period of about $132 million (discounted) or about $19 million annualized. By subtracting these compliance costs from those for the proposed rule, the FAA estimates that this alternative would result in compliance costs of about $66 million (discounted) or about $9 million annualized. The annualized cost per airplane would be about $11,100 for 10-to-19 seat airplanes and would be about $1,300 for 20 to 30 seat airplanes.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this alternative would have a significant economic impact on any operator owning more than six 10-to-19-seat airplanes (6 airplanes x $11,100 per airplane = $66,600) or any operator owning more than fifty-one 20-to-30-seat airplanes (51 airplanes x $1,300 per airplane = $66,300). Six small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur an annualized cost exceeding the $67,000 threshold. This alternative would not impact a substantial number of small operators. This assessment is based on the fact that only 7 of the 24 small operators would incur costs in excess of the threshold. Therefore, this alternative would not have a significant economic impact on a substantial number of small entities.

Executive Order (E. O.) 12866 states that in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net safety benefits, unless a statute requires another regulatory approach. To ensure that commuter airplanes are as safe as possible, the FAA believes that flight time rest and duty requirements and dispatcher requirements are necessary. With respect to flight time limits, the FAA believes that there is no longer a justification for the difference between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135. With respect to the flight dispatch system, the FAA believes that this system is the safest means for maintaining operational control. It allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. In addition, if an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow. A more thorough discussion of the reasons the FAA believes that these requirements are necessary is provided in the preamble. The FAA concludes that the reduction in the estimated compliance costs resulting from elimination of these requirements does not justify the expected significant corresponding decrease in benefits. Therefore, the FAA is rejecting this alternative because it would not maximize net benefits as required under E.O. 12866.

International Trade Impact Assessment

The impact of the proposed rule on international trade is expected to be minimal. With regard to commuter carrier operations, most of the nation's commuter airlines operate on domestic routes, with only limited international operations and no transoceanic routes. These international operations consist of a number of cross-border services between cities in the United States and locations near the borders of Canada and Mexico. There are relatively few carriers engaging in this kind of commuter service, with only a limited number of flights. Most of these services are between points in the border states, such as California, Arizona, New Mexico, Texas, Wisconsin, Michigan, and New York, flying to Mexican and Canadian cities. Therefore, the primary impact of this proposed rule is expected to be in the domestic air carrier market, with little impact on international trade.

Commuter airplanes are sold worldwide, and there are some potential international trade impacts. This rulemaking could impact the competitiveness of airplanes made for the U.S. market that are later resold on the international market. Under the proposed rulemaking, commuter airplanes made for the American market would include new equipment and upgrades necessary to meet the expanded safety requirements. These improvements would increase the cost and maintenance requirements for the airplanes and may negatively affect their sales potential in foreign markets, particularly to customers in developing nations.

Many of the smaller air carriers in the developing world fly under significantly lower safety requirements than are required in the United States. Customers in those countries may not be interested in purchasing airplanes that exceed minimum requirements. Further, these operators may lack the facilities, equipment, and expertise that are necessary to keep these more sophisticated systems operational. Therefore, when purchasing airplanes, either new or second hand, they focus on airplanes that rely on a minimum of complex systems and equipment.

Although sales of smaller airplanes to developing countries represent an important component of the market, the largest markets by far are in North America and western Europe. In this case, since the airplanes would have to operate under similar standards as before their resale, there would be no impact. According to recent estimates, the worldwide market for commuter airplanes is estimated to be almost $20 billion over the next ten years, with a projected 59 percent of those sales occurring in North America. Sales to Europe account for approximately 20 percent of the sales, with the remainder spread throughout the rest of the world. Therefore, this proposed rule would only have a negative impact on less than 21 percent of foreign sales of U.S.-made airplanes.

This proposed rule is also not expected to result in an improved market position for foreign airplane manufacturers. Their status with regard to market share or sales in the U.S. is not expected to change in response to this proposed rule.

Federalism Implications

The proposed regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. (new), TITLE: Commuter Operations and General Certification and Operations Requirements; PROPOSED USE OF INFORMATION: The FAA will use this information to determine if carriers are operating in accordance with minimum safety standards; FREQUENCY: As required; BURDEN ESTIMATE: 1,370; RESPONDENTS: Part 135 carriers conducting scheduled passenger-carrying operations in airplanes with 10–30 seats; FORMS: FAA Form 8400–6 and 8070–1; AVERAGE BURDEN HOURS PER RESPONDENT: 18; For further information contact: IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC, 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for FAA. It is requested that comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this proposed regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the proposed rule would have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordingkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordingkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

VIII. The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

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proposes to amend the Federal Aviation Regulations (14 CFR parts 119, 121, 125, 127, and 135) as follows:

1. The heading of Subchapter G is revised to read:

SUBCHAPTER G—AIR CARRIERS AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

2. A new part 119 is added to 14 CFR Chapter I, Subchapter G, to read as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.

119.1 Applicability.
119.3 Definitions.
119.5 Certification, authorizations, and prohibitions.
119.7 Operations specifications.
119.9 Use of business names.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.
119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.
119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

119.31 Applicability.
119.33 General requirements.
119.35 Certificate application.
119.37 Contents of an Air Carrier Certificate or Operating Certificate.
119.39 Issuing or denying a certificate.
119.41 Amending a certificate.
119.43 Certificate holder's duty to maintain operations specifications.
119.45 Use of operations specifications.
119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.
119.49 Contents of operations specifications.
119.51 Amending operations specifications.
119.53 Wet leasing of aircraft.
119.55 Obtaining deviation authority to perform operations under a U.S. military contract.
119.57 Obtaining deviation authority to perform an emergency operation.
119.58 Emergencies requiring immediate decision and action.
119.59 Conducting tests and inspections.
119.61 Duration of certificate and operations specifications.
119.63 Recency of operation.
119.65 Management personnel required for operations conducted under part 121 of this chapter.
119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.
119.69 Management personnel required for operations conducted under part 135 of this chapter.
119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105

Subpart A—General

§ 119.1 Applicability.

(a) This part applies to each person operating or intending to operate civil aircraft—

(1) As an air carrier or commercial operator, or both, in air commerce or

(2) When common carriage is not involved, in operations of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.

(b) This part prescribes—

(1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;

(2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under parts 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;

(3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;

(4) Requirements affecting wet leasing of aircraft;

(5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and

(6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.

(c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by parts 119, 121, 125, or 135 of this chapter.

(d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport, except that these operations must comply with §§ 121.455, 121.457, 135.249, 135.251, 135.253, 135.255, and 135.353 of this chapter;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;

(ii) Each flight is made under day VFR conditions;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under part 133 of this chapter or 375 of this title;

(9) Emergency mail service conducted under 49 U.S.C. 41906; or

(10) Operations conducted under the provisions of § 91.321 of this chapter.

§ 119.3 Definitions.

For the purpose of Subchapter G of this chapter, the term—

All-cargo operation means any operation for compensation or hire that is other than a passenger-carrying operation.

Certificate-holding district office means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

Commuter operation means any scheduled operation conducted by any person operating—

(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seating configuration of 9 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less or

(2) Rotorcraft.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

Domestic operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Between any points entirely within any State, territory, or possession of the United States; or

(iii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

Empty weight means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Flag operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States or the District of Columbia.

Justifiable aircraft equipment means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

Maximum payload capacity means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flight crewmembers—180 pounds.

(B) For female flight crewmembers—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

Maximum zero fuel weight means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

Noncommon carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seating configuration of 30 seats or fewer, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

(ii) Noncommon carriage operations conducted with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, or a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in § 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

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Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seating configuration of more than 30 seats, excluding any required crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each airplane having a passenger-seating configuration of more than 9 seats and less than 31 seats, excluding any required crewmember seat and any turbojet powered airplane, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative or

(ii) All-cargo operations.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

When common carriage is not involved or *operations not involving common carriage* means any of the following:

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

§ 119.5 Certifications, authorizations, and prohibitions.

(a) A person authorized by the Administrator to conduct operations as a direct air carrier will be issued an Air Carrier Certificate.

(b) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations when common carriage is not involved as an operator of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

(d) A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(e) A person authorized to engage in noncommon carriage under part 125 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such noncommon carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(f) A person conducting operations under more than one paragraph of §§ 119.21, 119.23, or 119.25 shall conduct those operations in compliance with—

(1) The requirements specified in each paragraph of those sections for the kind of operation conducted under that paragraph and

(2) The appropriate authorizations, limitations, and procedures specified in the operations specifications for each kind of operation.

(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

(h) A person holding an Operating Certificate authorizing noncommon carriage operations shall not conduct any operations in common carriage. A person holding an Air Carrier Certificate or Operating Certificate authorizing common carriage operations shall not conduct any operations in noncommon carriage.

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

(j) A certificate holder under this part may not operate aircraft under part 121 or part 135 of this chapter in a geographical area unless its operations specifications specifically authorize the certificate holder to operate in that area.

§ 119.7 Operations specifications.

(a) Each certificate holder's operations specifications must contain—

(1) The authorizations, limitations, and certain procedures under which each kind of operation, if applicable, is to be conducted and

(2) Certain other procedures under which each class and size of aircraft is to be operated.

(b) Except for operations specifications paragraphs identifying authorized kinds of operations, operations specifications are not a part of a certificate.

§ 119.9 Use of business names.

(a) A certificate holder under this part may not operate an aircraft under part 121 or part 135 of this chapter using a business name other than a business name appearing in the certificate holder's operations specifications.

(b) Unless otherwise authorized by the Assistant Administrator for Civil Aviation Security, no person may operate an aircraft under part 121 or part 135 of this chapter unless the name of the certificate holder who is operating the aircraft is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the aircraft and its readability must be acceptable to the Administrator.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter

§ 119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.

(a) Each person who conducts operations as a direct air carrier or as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conducts its:

(1) Domestic operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a showing of safety in air commerce, the Administrator may permit persons who conduct domestic operations between any point located within Alaska's Aleutian Islands chain and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter.

(2) Flag operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of safety in air commerce, the Administrator may authorize or require the following operations to be conducted under paragraph (a)(1) or (2) of this section:

(i) Passenger-carrying operations which are conducted between points that are also served by the certificate holder's domestic or flag operations.

(ii) All-cargo operations which are conducted regularly and frequently between the same two points.

(4) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(5) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) Persons who are subject to the requirements of paragraph (a)(4) of this section may conduct those operations in accordance with the requirements of paragraph (a)(1) or (a)(2) of this section, provided they obtain authorization from the Administrator.

(c) Persons who are subject to the requirements of paragraph (a)(5) of this section may conduct those operations in accordance with the requirements of paragraph (a)(3) of this section, provided they obtain authorization from the Administrator.

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, shall, unless deviation authority is issued:

(1) Comply with the certification and operations specifications requirements of part 125 of this chapter;

(2) Conduct its operations with those airplanes in accordance with the requirements of part 125 of this chapter; and

(3) Be issued operations specifications in accordance with those requirements.

(b) Each person who conducts noncommon carriage operations for compensation or hire with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds shall:

(1) Comply with the certification and operations specifications requirements in Subpart C of this part;

(2) Conduct those operations in accordance with the requirements of part 135 of this chapter, except for those requirements applicable only to commuter operations; and

(3) Be issued operations specifications in accordance with those requirements.

§ 119.25 Rotorcraft operations: direct air carriers and commercial operators.

Each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations specifications requirements of Subpart C of this part, and shall conduct its:

(a) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

§ 119.31 Applicability.

This subpart sets out certification requirements and prescribes the content of operations specifications and certain other requirements for operations conducted under part 121 or part 135 of this chapter.

§ 119.33 General requirements.

(a) A person may not operate as a direct air carrier unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Air Carrier Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(b) A person other than a direct air carrier may not conduct any commercial passenger or cargo aircraft operation for compensation or hire under part 121 or part 135 of this chapter unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Operating Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(c) Each applicant for a certificate under this part shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or 135 of this chapter. All proving tests must be conducted in a manner acceptable to the Administrator. All proving tests must be conducted under the appropriate operating and maintenance requirements of part 121 or 135 of this chapter that would apply if the applicant were fully certificated. The Administrator will issue a letter of authorization to each person stating the various authorities under which the proving tests shall be conducted.

§ 119.35 Certificate application.

(a) A person applying to the Administrator for an Air Carrier Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

(c) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal operations base.

(d) Each application submitted under paragraph (c) of this section must contain a signed statement showing the following:

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(1) For corporate applicants:
(i) The name and address of each stockholder who owns five percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.
(ii) The name and address of each director and each officer, and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.
(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant, and each person under direct or indirect control with the applicant.
(2) For non-corporate applicants:
(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.
(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.
(e) In addition, each applicant for the original issue of an operating certificate must submit with the application a signed statement showing—
(1) The financial information listed in paragraph (h) of this section; and
(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.
(f) Each applicant for, or holder of, a certificate issued under this part, shall notify the Administrator within 10 days after—
(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (d)(1) or (d)(2) of this section; or
(2) A change in the financial information submitted to the Administrator under paragraph (h) of this section that occurs while the application for the issue is pending before the FAA and that would made the applicant's financial situation substantially less favorable than originally reported.
(g) Each financial statement containing financial information required by paragraph (h) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.
(h) Each applicant for the original issue of an operating certificate must submit the following financial information:
(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.
(2) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.
(3) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.
(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—
(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;
(ii) Estimated amount of operating and nonoperating expenses by expense objective classification; and
(iii) Estimated net profit or loss for the period.
(5) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—
(i) Acquisition of property and equipment (explain);
(ii) Retirement of debt (explain);
(iii) Additional working capital (explain);
(iv) Operating losses other than depreciation and amortization (explain); and
(v) Other (explain).
(6) An estimate of the cash that will be available during the first 6 months after the month in which the certificate is expected to be issued, from—
(i) Sale of property or flight equipment (explain);
(ii) New debt (explain);
(iii) New equity (explain);
(iv) Working capital reduction (explain);
(v) Operations (profits) (explain);
(vi) Depreciation and amortization (explain); and
(vii) Other (explain).
(7) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and period of coverage; and special conditions, exclusions, and limitations.
(8) Any other financial information that the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct his or her operations with the degree of safety required in the public interest.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes—
(a) The certificate holder's name;
(b) The location of the certificate holder's principal base of operations;
(c) The certificate number;
(d) The certificate's effective date;
(e) The name or the designator of the certificate-holding district office;
(f) Kinds of operations authorized; and
(g) A certification that—
(1) In the case of an Air Carrier certificate, the certificate holder meets the appropriate requirements of this chapter and holds any required economic authority from the Department of Transportation, authorizing it to conduct common carriage operations or
(2) In the case of an Operating Certificate, the certificate holder—
(i) Meets the appropriate requirements of this chapter authorizing it to conduct intrastate common carriage operations or
(ii) Meets the appropriate requirements of this chapter authorizing it to conduct noncommon carriage operations.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if after investigation, the Administrator finds that the applicant—
(1) Meets the applicable requirements of this part;
(2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and
(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that—
(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;
(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;
(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;
(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or
(5) In the case of an applicant for an Operating Certificate for intrastate common carriage that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if—
(1) The Administrator under section 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1429), and part 13 of this chapter, determines that safety in air commerce and the public interest requires the amendment or
(2) The certificate holder applies for the amendment and the certificate holding district office determines that safety in air commerce and the public interest allows the amendment.
(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.
(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:
(1) The certificate holder must file an application to amend its certificate with the certificate holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period and
(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.
(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:
(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial and
(2) The certificate holder must petition for reconsideration to the Director, Flight Standards Service.

§ 119.43 Certificate holder's duty to maintain operations specifications.

(a) Each certificate holder shall maintain a complete and separate set of its operations specifications at its principal base of operations.
(b) Each certificate holder shall insert pertinent excerpts of its operations specifications, or references thereto, in its manual and shall—
(1) Clearly identify each such excerpt as a part of its operations specifications and
(2) State that compliance with each operations specifications requirement is mandatory.

§ 119.45 Use of operations specifications.

(a) Each certificate holder shall keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.
(b) Each certificate holder shall maintain a complete and separate set of its operations specifications. In addition, each certificate holder shall insert pertinent excerpts of its operations specifications, or reference thereto, in its manual in such a manner that they retain their identity as operations specifications.

§ 119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.

(a) Each certificate holder must maintain a principal base of operations. Each certificate holder may also establish a main operations base and a main maintenance base which may be located at either the same location as the principal base of operations or at separate locations.
(b) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a certificate holder must provide written notification to its certificate holding district office.

§ 119.49 Contents of operations specifications.

(a) Each certificate holder conducting domestic, flag, or commuter operations must obtain operations specifications containing all of the following:
(1) The specific location of the certificate holder's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.
(2) Other business names under which the certificate holder may operate.
(3) Reference to the economic authority issued by the Department of Transportation, if required.
(4) Type of aircraft, registration markings, and serial numbers of each aircraft authorized for use, and each regular and alternate airport to be used in scheduled operations, and, except for commuter operations, each provisional and refueling airport.
(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (a)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.
(ii) The certificate holder may not conduct any operation using any aircraft or airport not listed.
(5) Kinds of operations authorized.
(6) Authorization and limitations for routes and areas of operations.
(7) Airport limitations.
(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.
(9) Authorization for the method of controlling weight and balance of aircraft.
(10) Interline equipment interchange requirements, if relevant.
(11) Aircraft wet lease information required by § 119.53(c).
(12) Any authorized deviation and exemption granted from any requirement of this chapter.
(13) Any other item the Administrator determines is necessary.
(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:
(1) The specific location of the certificate holder's principal base of operations, and, if different, the address

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that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3) (i) or (ii).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(c) Each certificate holder conducting on-demand operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Kind and area of operations authorized.

(5) Category and class of aircraft that may be used in those operations.

(6) Type of aircraft, registration markings, and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (c)(6) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(7) Registration markings of each aircraft that is to be inspected under an approved aircraft inspection program under § 135.419 of this chapter.

(8) Time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(9) Additional maintenance items required by the Administrator under § 135.421 of this chapter.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorized deviation or exemption from any requirement of this chapter.

(12) Any other item the Administrator determines is necessary.

(d) Each certificate holder shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

§ 119.51 Amending operations specifications.

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator, on his own initiative, determines that safety in air commerce and the public interest require the amendment or

(2) The certificate holder applies for the amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment to a certificate holder's operations specifications, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment.

(2) The certificate-holding district office sets a reasonable period (but not less than seven days) within which the certificate holder may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment;

(ii) The partial adoption of the proposed amendment; or

(iii) The withdrawal of the proposed amendment.

(4) If the certificate-holding district office issues an amendment to the operations specifications, it becomes effective not less than 30 days after the certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety in air commerce or

(ii) The certificate holder petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisitions of airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the certificate-holding district office approves the amendment, following coordination with the certificate holder regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the amendment of operations specifications the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial of the amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment to its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the certificate-holding district office unless the certificate holding district office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends the operations specifications and makes the amendment effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office articulates the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 119.53 Wet leasing of aircraft.

(a) Prior to conducting operations involving a wet lease, each certificate holder under this part authorized to conduct common carriage operations under this subchapter shall provide the Administrator with a copy of the wet lease to be executed which would lease the aircraft to any other person engaged in common carriage operations under this subchapter including foreign air carriers or to any other foreign person engaged in common carriage wholly outside the United States.

(b) No certificate holder under this part may wet lease from a foreign air carrier or any other foreign person or any person not authorized to engage in common carriage.

(c) Upon receiving a copy of a wet lease, the Administrator determines which party to the agreement has operational control of the aircraft and issues amendments to the operations specifications of each party to the agreement, as needed. The lessor must provide the following information to be incorporated into the operations specifications of both parties, as needed.

(1) The names of the parties to the agreement and the duration thereof.

(2) The nationality and registration markings of each aircraft involved in the agreement.

(3) The kind of operation (e.g., domestic, flag, supplemental, commuter, or on-demand).

(4) The airports or areas of operation.

(5) A statement specifying the party deemed to have operational control and the times, airports, or areas under which such operational control is exercised.

(d) In making the determination of paragraph (c) of this section, the Administrator will consider the following:

(1) Crewmembers and training.

(2) Airworthiness and performance of maintenance.

(3) Dispatch.

(4) Servicing the aircraft.

(5) Scheduling.

(6) Any other factor the Administrator considers relevant.

(e) Except as provided in paragraph (f) of this section, a certificate holder under this part operating under part 121 or 135 of this chapter may not conduct any operation for another certificate holder under this part or a foreign air carrier under part 129 of this chapter or a foreign person engaged in common carriage wholly outside the United States unless it holds applicable Department of Transportation economic authority, if required, and is authorized under its operations specifications to conduct the same kinds of operations (as defined in § 119.3). The certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation. These substitute operations must be conducted between airports for which the substitute certificate holder holds authority for scheduled operations or within areas of operations for which the substitute certificate holder has authority for supplemental or on-demand operations.

(f) A certificate holder under this part may, if authorized by the Department of Transportation under § 380.3 of this title and the Administrator in the case of interstate commuter, interstate domestic, and flag operations, or the Administrator in the case of scheduled intrastate common carriage operations, conduct one or more wet-lease charter flights for passengers who are stranded because of the cancellation of their scheduled flights. The wet-lease charter flights must be conducted under the rules of part 121 or part 135 of this chapter applicable to supplemental or on-demand operations.

§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 121, or part 135 of this chapter in order to perform operations under a U.S military contract.

(b) A certificate holder that has a contract with the U.S. Department of Defense's Air Mobility Command (AMC) must submit a request for deviation authority to AMC. AMC will review the requests, then forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review and action.

(c) The Administrator may authorize a deviation to perform operations under a U.S. military contract under the following conditions—

(1) The Department of Defense certifies to the Administrator that the operation is essential to the national defense;

(2) The Department of Defense further certifies that the certificate holder cannot perform the operation without deviation authority;

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

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(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property, and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 Emergencies requiring immediate decision and action.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter to the extent required in the interest of safety.

(b) In an emergency situation arising during flight, that requires immediate decision and action by an aircraft dispatcher or appropriate management personnel, and that is known to him, he shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If he cannot communicate with the pilot, he shall declare an emergency and take any reasonable action necessary under the circumstances.

(c) Whenever a pilot in command or a dispatcher or an appropriate management person exercises emergency authority, he shall keep the appropriate ATC facility, ground radio station, and, if applicable, dispatch centers, fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the certificate holder's management to the Administrator within 10 days of the emergency action.

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with the Federal Aviation Act of 1958, as amended, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Operating Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under this title applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.49;

(3) The certificate holder does not conduct a kind of operation for more than thirty days and fails to follow the procedures of § 119.63 upon resuming that kind of operation; or

(4) The Administrator suspends or revokes the operations specifications for a kind of operation.

§ 119.63 Recency of operation.

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless within the preceding 30 consecutive calendar days the certificate holder conducted such kind of operation.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the preceding 30 consecutive calendar days it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and

(2) It makes itself available and accessible during the five consecutive calendar day period in the event that the FAA decides to conduct a full reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the highest degree of safety in its operations. The certificate holder must have qualified personnel serving full-time in the following or equivalent positions:

(1) Director of Safety.

(2) Director of Operations.

(3) Chief Pilot.

(4) Director of Maintenance.

(5) Chief Inspector.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following materials with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) Federal Aviation Regulations;

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 121 of this chapter); and

(v) The manual required by § 121.133 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must:

(1) State in the general policy provisions of the manual required by § 121.133 of this chapter, the duties, responsibilities, and authority of personnel required under paragraph (a) of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) To serve as Director of Operations under § 119.65(a) a person must—

(1) Hold an airline transport pilot certificate;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135 of this chapter; and

(3) In the case of a person becoming a Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Chief Pilot under § 119.65(a) a person must hold an airline transport pilot certificate with appropriate ratings for at least one of the aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Director of Maintenance under § 119.65(a) a person must—

(1) Hold a mechanic certificate with airframe and power plant ratings;

(2) Have 1 year of experience in a position responsible for returning aircraft to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (c)(4)(ii) of this section maintaining the same category and class of airplane as the certificate holder uses; and

(4) Have 5 years experience within the past 5 years in one or a combination of the following—

(i) Maintaining large aircraft, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses or

(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.

(d) To serve as Chief Inspector under § 119.65(a) a person must—

(1) Hold a mechanic certificate with both airframe and power plant ratings, and have held these ratings for at least 3 years; and

(2) Have at least 3 years of maintenance experience on different types of large aircraft with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year in a supervisory capacity maintaining large aircraft.

(e) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the safety of its operations. Except for a certificate holder using only 1 pilot in its operations, the certificate holder must have qualified personnel serving in the following or equivalent positions:

(1) Director of Operations.

(2) Chief Pilot.

(3) Director of Maintenance.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following material

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with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) Federal Aviation Regulations;

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 135 of this chapter); and

(v) The manual required by § 135.21 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must—

(1) State in the general policy provisions of the manual required by § 135.21 of this chapter, the duties, responsibilities, and authority of personnel required or approved under paragraph (a) or (b), respectively, of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding District Office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

(a) To serve as Director of Operations under § 119.69(a) for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 of part 135 of this chapter or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Chief Pilot under § 119.69(a) for a certificate holder conducting any operation for which the pilot in command is requited to hold an airline transport pilot certificate a person must hold an airline pilot certificate with appropriate ratings and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(e) To serve as Director of Maintenance under § 119.69(a) a person must hold a mechanic certificate with airframe and power plant ratings and either:

(1) Have 3 years of experience within the past 3 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 3 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(f) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

4. The heading for part 121 is revised to read as set forth above.

SFAR 38–2 [Removed]

5. Special Federal Aviation Regulation 38–2, Certification and Operating Requirements is removed

6. Section 121.1 is revised to read as follows:

§ 121.1 Applicability.

This part prescribes rules governing—

(a) The domestic, flag, and supplemental operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58, 14 CFR part 121, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(d) Nonstop sightseeing flights that begin and end at the same airport, and

are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 121.455 and 121.457.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

7. Section 121.2 is added to read as follows:

§ 121.2 Compliance schedule for transition to part 121.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10–30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after [Insert date 1 year after publication date of the final rule] unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]:

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310(c),(d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) [4 years after publication date of final rule): Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) (1 year after publication date of final rule): Section 121.311(f), Safety belts and shoulder harnesses.

(2) (4 years after publication date of final rule):

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication date of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under this part. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of this part on or before [Insert date 1 year after the publication date of the final rule]; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

§§ 121.3, 121.5, 121.7, 121.9, and 121.13 [Removed]

8. Sections 121.3, 121.5, 121.7, 121.9 and 121.13 are removed.

§ 121.4 [Amended]

9. Section 121.4 is amended by removing "§ 121.3" wherever it appears and adding in its place "part 119 of this chapter".

10. Section 121.15 is revised to read as follows:

§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If a certificate holder operating under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

Subpart B—[Removed and Reserved]

11. Subpart B (Sections 121.21 through 121.29) is removed, and the subpart heading is reserved.

Subpart C—[Removed and Reserved]

12. Subpart C (§§ 121.41 through 121.61) is removed and the subpart heading is reserved.

Subpart D—[Removed and Reserved]

13. Subpart D (§§ 121.71 through 121.83) is removed and the subpart heading is reserved.

14. Section 121.141 is amended by revising the section heading, paragraph (a), and the introductory text of paragraph (b) to read as follows:

§ 121.141 Airplane flight manual.

(a) Each certificate holder shall keep a current approved airplane flight manual for each type of aircraft that it operates except for nontransport category airplanes certificated before January 1, 1965.

(b) In each airplane identified in paragraph (a) of this section, the certificate holder shall carry either the manual required by § 121.133, if it contains the information required for the applicable flight manual and this information is clearly identified as flight manual requirements, or an approved Airplane Manual. If the certificate holder elects to carry the manual required by § 121.133, he may revise the operating procedures sections and modify the presentation of performance data from the applicable flight manual if the revised operating procedures and

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modified performance date presentation are—

* * * * *

15. Section 121.157 is amended by revising paragraphs (b) and (e) and by adding a new paragraph (f) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

* * * * *

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c), (d), (e), and (f) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173(a), (b), (d), and (e).

* * * * *

(e) *Commuter category and predecessor airplanes.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate a nontransport category airplane type certificated after December 31, 1964, under this part, unless it meets the applicable requirements of § 121.173(a), (b), (d), and (e) and was type certificated in the commuter category or meets one of the following requirements:

(1) The airplane was type certificated in the normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

(2) The airplane was type certificated in the normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23, 14 CFR part 23.

(3) The airplane was type certificated in the normal category and meets the additional airworthiness standards in appendix A of part 135 of this chapter.

(4) The airplane was type certificated in the normal category and complies with either section 1.(a) or 1.(b) of SFAR No. 41, 14 CFR part 21.

(f) *Newly type certificated airplanes.* No person may operate an airplane for which the application for a type certificate is submitted after [Insert publication date of NPRM] unless the airplane is type certificated under part 25 of this chapter.

16. Section 121.159 is revised to read as follows:

§ 121.159 Single-engine airplanes prohibited.

No certificate holder may operate a single-engine airplane under this part.

17. Section 121.163 is amended by revising paragraphs (a), (b), and (c) and the introductory text of paragraph (d) to read as follows:

§ 121.163 Airplane proving tests.

(a) *Initial airplane proving tests.* No person may operate an airplane not before proven for use in a kind of operation under this part unless an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests acceptable to the Administrator, including a representative number of flights into en route airports. The requirement for at least 100 hours of proving tests may be reduced by the Administrator if the Administrator determines that a satisfactory level of proficiency has been demonstrated to justify the reduction. At least 10 hours of proving flights must be flown at night; these tests are irreducible.

(b) *Proving tests for kinds of operations.* Unless otherwise authorized by the Administrator, for each type of airplane, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct, including a representative number of flights into en route airports.

(c) *Proving tests for materially altered airplanes.* Unless otherwise authorized by the Administrator, for each type of airplane that is materially altered in design, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct with that airplane, including a representative number of flights into en route airports.

(d) *Definition of materially altered.* For the purposes of paragraph (c) of this section, a type of airplane is considered to be materially altered in design if the alterations include—

* * * * *

18. Subpart I is amended by removing the words "transport category" wherever they appear.

18A. Paragraphs (a) through (e) of § 121.173 are revised to read as follows:

§ 121.173 General.

(a) Except as provided in paragraph (c) of this section, each certificate holder operating a reciprocating-engine-powered airplane shall comply with §§ 121.175 through 121.187.

(b) Except as provided in paragraph (c) of this section, each certificate holder operating a turbine-engine-powered airplane shall comply with the applicable provisions of §§ 121.189 through 121.197, except that when it operates a turbo-propeller-powered airplane type certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 121.175 through 121.187.

(c) Each certificate holder operating a large nontransport category airplane type certificated before January 1, 1965, shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 121.175 through 121.197. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

(e) Except as provided in paragraph (c) of this section, no person may take off a reciprocating engine powered airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of 14 CFR part 121, subpart I) after taking into account the temperature operating correction factors in the applicable Airplane Flight Manual.

* * * * *

19. Section 121.175 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

§ 121.175 Airplanes: Reciprocating engine powered: Weight limitations.

* * * * *

(f) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

20. Section 121.177 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.177 Airplanes: Reciprocating engine powered: Takeoff limitations.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

21. Section 121.179 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.179 Airplanes: Reciprocating engine powered: En route limitations: all engines operating.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

22. Section 121.181 is amended by revising the section heading and adding a new paragraph (d) to read as follows:

§ 121.181 Airplanes: Reciprocating engine powered: En route limitations: One engine inoperative.

* * * * *

(d) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

23. Section 121.185 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.185 Airplanes: Reciprocating engine powered: Landing limitations: Destination airport.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

24. Section 121.187 is amended by revising the section heading, designating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 121.187 Airplanes: Reciprocating engine powered: Landing limitations: Alternate airport.

* * * * *

(b) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

25. Section 121.211 is revised to read as follows:

§ 121.211 Applicability.

(a) This subpart prescribes special airworthiness requirements applicable to certificate holders as stated in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraph (d) of this section, each airplane type certificated under Aero Bulletin 7A or part 4 of the Civil Air Regulations in effect before November 1, 1946 must meet the special airworthiness requirements in §§ 121.215 through 121.283.

(c) Each certificate holder must comply with the requirements of §§ 121.285 through 121.291.

(d) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (b) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance only with those requirements that are necessary to accomplish the basic objectives of this part.

(e) No person may operate under this part a nontransport category airplane type certificated after December 31, 1964 unless the airplane meets the special airworthiness requirements in § 121.293.

§ 121.213 [Removed and Reserved]

26. Section 121.213 is removed and reserved.

27. Section 121.285 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 121.285 Carriage of cargo in passenger cargo compartments.

(a) Except as provided in paragraph (b), (c), or (d) of this section, no certificate holder may carry cargo in the passenger compartment of an airplane.

* * * * *

(d) Cargo may be carried anywhere in the passenger compartment of a nontransport category airplane type certificated after December 31, 1964, in an approved cargo rack, bin, or compartment installed in or on the airplane or if it is carried in accordance with paragraphs (c)(1) through (c)(5) of this section.

§ 121.289 [Amended]

28. Section 121.289(a) introductory text is amended by removing the word "large."

29. Section 121.291 is amended by revising the introductory text of paragraph (b) and the introductory text of paragraph (c) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(b) Each certificate holder conducting operations with airplanes with a seating capacity of more than 44 passengers must conduct a partial demonstration of emergency evacuation procedures in accordance with paragraph (c) of this section upon:

* * * * *

(c) In conducting the partial demonstration required by paragraph (b) of this section, each certificate holder must:

* * * * *

30. A new § 121.293 is added to read as follows:

§ 121.293 Special airworthiness requirements for nontransport category airplanes type certificated after December 31, 1964.

(a) No person may operate a nontransport category airplane type certificated after December 31, 1964, unless the airplane meets the requirements for ditching emergency exits in § 23.807(e) of this chapter.

(b) No certificate holder may operate a nontransport category airplane manufactured after [Insert date 4 years after publication date of final rule] unless the airplane contains a takeoff warning system that meets the requirements of § 25.703. However, the takeoff warning system does not have to cover any device for which it can be demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition.

§ 121.308 [Amended]

31. Section 121.308 is amended by removing the words "transport category" in paragraphs (a) and (b).

32. Section 121.309 is amended by revising paragraphs (c)(7), (d)(1), and (e) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) * * *

(7) At least two of the required hand fire extinguisher installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent. At least one hand fire extinguisher in the passenger compartment must contain Halon 1211 or equivalent.

* * * * *

(d) *First aid and emergency medical equipment and protective gloves.* (1) For treatment of injuries or medical emergencies that might occur during flight time or in minor accidents each passenger-carrying airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(i) Approved first aid kits and

(ii) For airplanes requiring a flight attendant, an emergency medical kit.

* * * * *

(e) *Crash ax.* Each airplane with a separate flight deck and lockable door must be equipped with a crash ax.

* * * * *

33. Section 121.310 is amended by revising paragraph (d)(2)(i) and paragraph (f) introductory text to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(d) * * *

(2) * * *

(i) Be operable manually both from the flight crew station and, for airplanes on which a flight attendant is required from a point in the passenger compartment that is readily accessible to a normal flight attendant seat;

(f) *Emergency exit access.* Except for nontransport category airplanes certificated after December 31, 1964 access to emergency exits must be provided as follows for each passenger-carrying airplane:

* * * * *

34. Section 121.312 is amended by adding the words "transport category before the word "airplanes" in

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paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 121.312 Materials for compartment interiors.

* * * * *

(c) For nontransport category airplanes type certificated after December 31, 1964, after [Insert date 2 years after effective date of final rule] or after the seat cushion is replaced, whichever occurs first, each seat cushion, except those on flight crewmember seats, in any compartment occupied by crew or passengers must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c) of this chapter, effective November 26, 1984, and appendix F to part 25 of this chapter, effective November 26, 1984. The Administrator may grant a deviation from this requirement for up to an additional 2 years if he finds that it is justified by an integral-seat cushion configuration.

35. Section 121.313(f) is revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, without a door are not required to comply with this paragraph.

* * * * *

36. Section 121.337 is amended by removing the words "transport category" from the introductory text in paragraph (b) and by revising paragraph (b)(9)(iv) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(9) * * *

(iv) Except airplanes having a passenger-seating configuration of fewer than 20 passenger seats, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, in each passenger compartment, one located within 3 feet of each hand fire extinguisher required by § 121.309, except that the Administrator may authorize a deviation allowing locations of PBE more than 3 feet from required hand fire extinguisher locations if special circumstances exist that make compliance impractical and the proposed deviation provides an equivalent level of safety.

* * * * *

37. Section 121.340 is amended by revising paragraph (a) to read as follows:

§ 121.340 Emergency flotation means.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(1) or with an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

* * * * *

§ 121.342 [Amended]

38. Section 121.342 is amended by adding the words "or a nontransport category airplane type certificated after December 31, 1964, "after the word "airplane" in paragraph (a).

§ 121.343 [Amended]

39. Section 121.343 is amended by revising the section heading to read "Flight recorders: Airplanes with a payload capacity of more than 7,500 pounds."

40. Section 121.344 is added to read as follows:

§ 121.344 Flight recorders: Airplanes with a payload capacity of 7,500 pounds or less.

No person may operate an airplane with a payload capacity of 7,500 pounds or less unless it meets the requirements for flight recorders in § 135.152 of this chapter.

41. Section 121.356 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

* * * * *

(c) The appropriate manuals required by § 121.131 shall contain the following information on the TCAS II System or TCAS I System, as appropriate, as required by this section:

* * * * *

41. Section 121.357 is amended by revising paragraph (a) and introductory text of paragraph (c) to read as follows:

§ 121.357 Airborne weather radar equipment requirements.

(a) No person may operate any airplane (except C–46 type airplanes) unless approved airborne weather radar equipment has been installed in the airplane.

* * * * *

(c) Each person operating an airplane required to have approved airborne weather radar equipment installed shall, when using it under this part, operate it in accordance with the following:

* * * * *

42. Section 121.359 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 121.359 Cockpit voice recorders.

(a) No certificate holder may operate a turbine-powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) The cockpit voice recorder required by this section for a turbine-powered airplane having a passenger seating configuration of 10 to 19 seats and a maximum payload capacity of 7,500 pounds or less must comply with the following application standards: § 23.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g); or § 25.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable.

(c) Except as provided in paragraph (b), the cockpit voice recorder required by this section must meet the following application standards:

(1) The requirements of § 25.1457 of this chapter.

(2) Each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact, unless the cockpit voice recorder, and the flight recorder required by § 121.343, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

* * * * *

43. Section 121.380 is amended by revising paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(v), (a)(2)(vi), (b)(1), and (b)(2) to read as follows:

§ 121.380 Maintenance recording requirements.

(a) Each certificate holder shall keep (using the system specified in the manual required in § 121.369) the following records for the periods specified in paragraph (b) of this section:

* * * * *

(2) * * *

(i) The total time in service of the airframe, engine, and propeller.

(ii) The current status of life-limited parts of each airframe, engine, propeller, and appliance.

* * * * *

(v) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vi) A list of current major alterations to each airframe, engine, propeller, and appliance.

(b) * * *

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, and applianco, the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

* * * * *

44. Section 121.391 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; by revising paragraphs (a) introductory text and (a)(1); by adding a new paragraph (a)(2); and by removing paragraph (e) to read as follows:

§ 121.391 Flight attendants.

(a) Each certificate holder shall provide at least the following flight attendants on each passenger-carrying airplane used:

(1) For airplanes having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

* * * * *

45. Section 121.393 is added to read as follows:

§ 121.393 Crewmember requirements at stops where passengers remain on board.

At stops where passengers remain on board, the certificate holder must meet the following requirements:

(a) Certificate holders who are not required to use a flight attendant under § 121.391(a) must have on board a person who is qualified in the emergency evacuation procedures for that aircraft as required in § 121.417. That person must be identified to the passengers.

(b) If flight attendants are required, but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder must ensure that the airplane's engines are shut down and at least one floor-level exit remains open to provide for passenger deplaning.

(2) The number of flight attendants on board must be at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(3) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(c) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

§ 121.435 [Removed]

46. Section 121.435 is removed.

47. Section 121.463 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 121.463 Aircraft dispatcher qualifications.

(a) * * *

(2) Operating familiarization consisting of at least 5 hours observing operations under this part from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. A person may serve as an aircraft dispatcher without meeting the requirement of this paragraph (a) for 90 days after initial introduction of the airplane into operations under this part.

* * * * *

(c) No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as an aircraft dispatcher unless within the preceding 12 calendar months the aircraft dispatcher has satisfactorily completed operating familiarization consisting of at least 5 hours observing operations under this part, in one of the types of airplanes in each group to be dispatched. This observation shall be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. The requirement of this paragraph (a) may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. The requirement of this paragraph (a) may be satisfied by observation of 5 hours of simulator training for each airplane group in one of the simulators approved under § 121.407 for the group. However, if the requirement of this paragraph (a) is met by the use of a simulator, no reduction in hours is permitted.

* * * * *

§§ 121.557 and 121.559 [Removed]

48. Sections 121.557 and 121.559 are removed.

49. Section 121.571 is amended by adding a new paragraph (a)(1)(v) and by revising the introductory text of paragraph (a)(3) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(v) On operations that do not use a flight attendant, the following additional information:

(A) The placement of seat backs in an upright position before takeoff and landing.

(B) Location of survival equipment.

(C) If the flight involves operations above 12,000 MSL, the normal and emergency use of oxygen.

(D) Location and operation of fire extinguisher.

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, before each takeoff a required crewmember assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the required crewmember shall—

* * * * *

50. Section 121.578(b) introductory text is revised to read as follows:

§ 121.578 Cabin ozone concentration.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may operate an airplane above the following flight levels unless it is successfully demonstrated to the Administrator that the concentration of ozone inside the cabin will not exceed—

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51. Section 121.581 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 121.581 Forward observer's seat: En route inspections.

(a) Except as provided in paragraph (c) of this section, each certificate holder shall make available a seat on the flight deck of each airplane, used by it in air commerce, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

* * * * *

(c) For any airplane that does not have an observer seat on the flight deck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

§ 121.583 [Amended]

52. Section 121.583(a) is amended by removing the reference to ",121.161,."

53. Section 121.590 is amended by revising paragraph (a) and (b) to read as follows: paragraph (b) to read as follows:

§ 121.590 Use of certificated land airports.

(a) Except as provided in paragraph (b) of this section or unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(b) Certificate holders conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate those airplanes into airports not certificated under part 139 of this chapter if the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

54. Section 121.703 is amended by revising paragraphs (a)(12) and (f) to read as follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(12) An unwanted landing gear extension or retraction, or an unwanted opening or closing of landing gear doors during flight;

* * * * *

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of 14 CFR part 830.

* * * * *

55. Section 121.713 is revised to read as follows:

§ 121.713 Retention of contracts and amendments: Commercial operatorsho conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least 1 year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

55A. The title for 14 CFR part 125 is revised to read as follows:

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

56. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101 40102, 40103, 40113, 44105, 44106, 44111 44701–44717, 44722, 44901, 44903, 44904 44906, 44912, 44914, 44936, 44938, 46103 46105.

57. Paragraph (b)(4) of § 125.1 is revised to read as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of part 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter; or

* * * * *

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

58. Part 127 is removed.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

59. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

60. The heading for part 135 is revised to read as set forth above.

61. Section 135.1 is revised to read as follows:

§ 135.1 Applicability.

(a) This part prescribes rules governing—

(1) The commuter or on-demand operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

62. Section 135.2 is revised to read as follows:

§ 135.2 Compliance schedule for transition to part 121.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10 to 30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310 (c), (d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) [4 years after publication date of final rule]: Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [1 year after publication date of final rule]: Section 121.311(f), Safety belts and shoulder harnesses.

(2) [4 years after publication date of final rule]:

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under part 121 of this chapter. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of part 121 of this chapter on or before [Insert date 1 year after the publication date of the final rule].

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

§§ 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 [Removed]

63. Sections 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 are removed.

§ 135.7 [Amended]

64. Section 135.7 is amended by removing "§ 135.5" wherever it appears and adding in its place "part 119 of this chapter".

§ 135.21 [Amended]

65. Section 135.21 (b) and (f) are amended by revising "principal operations base" to read "principal base of operations."

§ 135.23 [Amended]

66. Section 135.23(a) is amended by removing the reference "§ 135.37(a)" and adding in its place "§ 119.69(a) of this chapter".

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§ 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 [Removed]

67. Section 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 are removed.

68. Section 135.41 is revised to read as follows:

§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate operating under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 135.43 [Amended]

69. Section 135.43 is amended by:

(A) Revising "FAA Flight Standards District Office charged with the overall inspection" in paragraph (b) to read "certificate-holding district office."

(B) Revising "Flight Standards District Office" in paragraph (c) to read "certificate-holding district office."

70. Section 135.64 is added to read as follows:

§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

§ 135.105 [Amended]

71. Section 135.105(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

§ 135.145 [Amended]

72. Section 135.145 is amended by revising the words "certificate holder or applicant for an air carrier or operating certificate" in paragraphs (a) and (b) to read "certificate holder", wherever they appear.

§ 135.165 [Amended]

73. Section 135.165(a) is amended by revising the phrase "carrying passengers as a *Commuter Air Carrier*" as defined in part 298 of this title," to read "in a commuter operation, as defined in part 119 of this chapter."

74. Section 135.243(a) is revised to read as follows:

§ 135.243 Pilot in command qualifications.

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—

(1) Of a turbojet airplane, of an airplane having a passenger-seating configuration, excluding any pilot seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

(2) Of a helicopter in a scheduled interstate air transportation operation by an air carrier within the 48 contiguous states unless that person holds an airline transport pilot certificate, appropriate type ratings, and an instrument rating.

* * * * *

§ 135.244 [Amended]

75. Section 135.244(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

76. Section 135.248 is added to read as follows:

§ 135.248 Use of maintenance personnel.

Notwithstanding the provisions of §§ 135.249, 135.251, 135.253, and 135.255, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

77. Section 135.352 is added to read as follows:

§ 135.352 Use of maintenance personnel.

Notwithstanding the provisions of § 135.353, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

Issued in Washington, DC, on March 16, 1995.

Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

[FR Doc. 95–7488 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–13–P

federal register

Wednesday
March 29, 1995

Part III

Environmental Protection Agency

40 CFR Parts 704, 720, 721, and 723

Revisions of Premanufacture Notification Regulations; Expedited Process to Issue Significant New Use Rules for Selected New Chemical Substances; Revisions of Exemptions for Polymers; and Revision of Exemptions for Chemical Substances Manufactured in Small Quantities-Low Release and Exposure Exemptions; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704, 720 and 721

[OPPTS–50593B; FRL–4921–8]

RIN 2070–AC14

Premanufacture Notification; Revisions of Premanufacture Notification Regulations; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: Pursuant to section 5 of the Toxic Substances Control Act (TSCA), EPA is promulgating procedural amendments to the premanufacture notification (PMN) rule to incorporate a number of regulatory initiatives designed to streamline and reduce the administrative costs and burdens of the section 5 new chemicals program. These actions will allow EPA to concentrate its limited resources on identifying and controlling those new chemical substances most likely to present an unreasonable risk of injury to human health and the environment.

DATES: This rule will become effective May 30, 1995. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern savings time on April 12, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA published its final PMN rule (40 CFR part 720) on May 13, 1983 (48 FR 21722) and subsequently amended certain parts of the rule on September 13, 1983 (48 FR 41132) and April 22, 1986 (51 FR 15096). On February 8, 1993, EPA proposed additional amendments to the PMN rule (58 FR 7661). Please consult those documents for further information on the PMN rule and the proposed amendments. The docket control number for this action is OPPTS–50593B.

I. Background

A. Statutory Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. For the purposes of TSCA, a new chemical substance is one that is not listed in the Master File of the TSCA Chemical Substance Inventory ("the Inventory") compiled under TSCA section 8(b), which consists of substances originally reported under the Inventory reporting regulations (40 CFR part 710) and substances added via notices of commencement of manufacture or import (NOCs)(40 CFR 720.102) from submitters of PMNs.

B. History

Since 1979, EPA has reviewed over 25,000 section 5 notices for new chemical substances. During the intervening years, EPA has implemented a number of initiatives which have enabled the Agency to review a growing number of new chemical substances more efficiently. As discussed in the February 8, 1993 proposed rule (58 FR 7661), EPA is amending the PMN rule at 40 CFR part 720 to further reduce the costs of administering the Agency's new chemicals program and to implement other efficiencies for EPA and submitters. Please consult the proposed rule for a more detailed discussion of the objectives and rationale for these amendments.

II. Discussion of Final Amendments and Response to Comments

The final rule adopts the proposed amendments with minor revisions. The Agency reviewed and considered all comments received on the proposed amendments. A complete copy of all comments received is available in the public docket for this rulemaking, along with EPA's response to comments not addressed in this document. A discussion of the final amendments including a summary of significant comments and the Agency's response follows:

A. Correct Chemical Identity

EPA is amending §720.45(a) of the PMN rule to require that submitters of section 5 notices provide the currently correct Chemical Abstracts (CA) Index Name or CA Preferred Name for each chemical substance included in the notice ("reported substance") that is consistent with TSCA Inventory listings for similar substances. Persons who request a search of the confidential Inventory by demonstrating a *bona fide* intent to manufacture or import a chemical substance for commercial purposes ("*bona fide*") will also be required to provide CA nomenclature and chemical identity information in accordance with amended §720.25, as discussed later in this document. The rule also requires that a currently valid Chemical Abstracts Service (CAS) Registry Number (CASRN) consistent with the CA name be reported for the substance if a CASRN already exists for that substance. Until now, the PMN rule has indicated that CA nomenclature is the preferred, but not required chemical nomenclature system for PMN reporting. Therefore, submitters were able in the past to identify the PMN substance using alternative nomenclature. Having the currently correct CA identification for a substance is important to EPA because the reporting of incorrect, inconsistent, ambiguous, or obsolete chemical names; molecular formulae, or chemical structure information, or names that are not CA Index or CA Preferred Names, causes extra resources to be spent by EPA in establishing the best descriptions for substances under TSCA for searching the Inventory.

Although a CASRN has not been routinely required for a reported substance if a CASRN is not already available and the amendment only requires that CASRNs be reported for substances that already have them, EPA strongly recommends that submitters provide CASRNs for all reported substances, especially when the chemical identity is not being claimed as confidential business information (CBI). The fact that a CASRN exists does not prohibit a submitter from claiming this information as confidential. Having more substances reported with CASRNs will save EPA resources involved with chemical review and Inventory searching.

Submitters must provide a CA Index Name or CA Preferred Name that is consistent with the application of the Ninth Collective Index (9CI) of CA nomenclature rules and conventions. (This definitive guide to CA nomenclature has been used since 1972.) Whether to report a CA Index Name or Preferred Name for a substance depends on whether the chemical identity of the substance is well-defined or poorly defined.

For well-defined substances appropriately named using CA Index nomenclature, the specific chemical name chosen as most accurately describing the substance should be based on all information that the submitter can reasonably ascertain about its chemical structure, including, where applicable, the degree of structural specificity of the substance (e.g., whether specific isomers are intended to be manufactured in the reaction that produces the substance). For poorly defined substances properly named using CA Preferred nomenclature, the specific name of choice should be based on the

submitter's knowledge of the identities of the chemical precursors used, the sources of the reactants (synthetic, isolated by processing from certain naturally occurring materials, etc.), the nature of the reaction, and the types of chemical substances constituting the product combination, etc. For naming any kind of substance, the submitter's knowledge of impurities or byproducts is also a consideration.

When more than one substance results from a reaction, one should determine whether the product combination can be viewed for TSCA purposes as a mixture of separately reportable substances. For example, when the intended product combination is known to always be completely composed of a specific number of identified substances that do not react with one another, the combination can be represented as a mixture of individual components. If this is not the case, a single chemical name must be used to collectively describe the product combination as one substance. Where the chemical components can be represented as a mixture, they may be reported in a single PMN as long as the components are not intended to be separated. Otherwise, multiple PMNs or a consolidated PMN (requiring pre-approval by EPA) must be submitted.

The PMN rule retains all of the other chemical identity information required at §720.45(a), including molecular formula and chemical structure information. However, for substances not able to be characterized by a single chemical structure, the amendments require the submitted representative or partial structural diagram to be as complete as known to or reasonably ascertainable by the submitter. Failure to fully comply with the chemical identification elements of this requirement will result in the notice being declared incomplete by EPA pursuant to §720.65(c)(1). Such incomplete notices will not be processed or reviewed by the Agency until the chemical identification requirement is satisfied.

Concerning the degree of chemical structure information that can be reasonably ascertained for a given substance, submitters should understand that, for TSCA Inventory purposes, all substances are categorized by EPA into two groups according to the degree of certainty about the chemical structure of a substance: Class 1 and Class 2. Class 1 substances are those of precisely known chemical composition for which a single, complete structural diagram can be drawn. Class 2 substances are those having chemical compositions not completely definite or known; therefore, they cannot be characterized by definite, complete chemical structure diagrams. This rule amendment requires complete structural diagrams to be provided for Class 1 substances; for Class 2 substances, partial structure diagrams are required that are as complete as can be reasonably ascertained from the Class 2 chemical identity.

All of the chemical identification requirements described above should be satisfied if the submitter uses the CAS Registry Services Inventory Expert Service, which is a special extension of CAS for identifying substances to be submitted under TSCA. Submitters may also choose to use the services of another chemical information service or consultant that the submitter considers capable of generating correct CA names, chemical structure diagrams or molecular formulae where appropriate, and obtaining existing CASRNs. Alternatively, the submitter can search publicly available databases to retrieve this information, if available, or attempt to generate a name without assistance from another person or organization, if the submitter has sufficient knowledge about the Ninth Collective (9CI) Index of CA nomenclature rules and conventions and about how similar substances are named for the Inventory.

Information describing CA nomenclature rules and conventions can be obtained from CAS. In addition, the Agency is preparing a series of Inventory nomenclature papers that are intended to generate better understanding of how various classes of substances or types of complex product combinations are identified for TSCA purposes. The Inventory papers provide informal technical guidance that is intended solely to illustrate how various types of substances are represented on the TSCA Inventory based on the information provided by the submitters. The papers are not intended to be used for identifying substances for reporting purposes or for determining the need to report. Generally, EPA has attempted to maintain a consistent Inventory by closely following the guidance contained in the papers. However, EPA cannot guarantee that the guidance discussed in these papers has been applied to all substances listed on the Inventory. The initial Inventory reporting utilized four types of reporting forms with very different format and data requirements, making it difficult to ensure complete consistency. The Inventory papers will be available from the TSCA Assistance Information Service at (202) 554–1404; TTD (202) 554–0551; on line service modem (202) 554–5603.

An information sheet on the CAS Registry Services is also available from the TSCA Assistance Information Service. Printed copies of the non-confidential Inventory can be purchased from the Government Printing Office; computer tapes, CD ROM, and PC diskettes, (up-dated semi-annually) containing this Inventory information can be purchased from the National Technical Information Service (NTIS).

Regardless of how submitters determine correct CA chemical nomenclature, submitters should provide the party generating the CA nomenclature with the same chemical identity information that the submitter would have to send to EPA if reporting the substance in a PMN: the same types of information, levels of detail, degrees of specificity, byproduct and impurity information, etc. The party assigning a chemical identity should ensure that the name choice reflects the current CA nomenclature rules and conventions, as well as how similar substances are named for the Inventory, or the chemical name will be incorrect and the notice may be declared incomplete by the Agency.

The final rule at §720.45(a)(3)(i) and (ii) sets forth the required mechanism for obtaining CA nomenclature directly from CAS or alternative sources, as follows:

Method 1. A submitter using this method obtains the correct chemical identification directly from the CAS Registry Services Inventory Expert Service prior to submitting a notice to EPA. CAS will provide such services pursuant to arrangements between CAS and persons informing CAS that their substances will be reported to EPA in a notice. Submitters should call or write to the CAS Registry Services for information. Submitters must provide EPA with a copy of the chemical identification report obtained from CAS along with the completed notice, to verify that they obtained the information directly from CAS.

EPA believes that most submitters will find it advantageous to utilize the services of CAS to meet this requirement. As discussed in the proposed rule, due to CAS' authoritative position in the field of chemical identification and its familiarity with TSCA Inventory and nomenclature policies, EPA believes that chemical names and other chemical identity information assigned by CAS according to this method should be acceptable to the Agency. For these reasons, EPA strongly recommends that submitters use the services of CAS to satisfy the amended provisions.

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Submitters should note, however, that if EPA disagrees with the identification assigned by CAS to a given substance, the Agency reserves the final authority to designate how a reported substance should be named and represented for the Inventory. This will not delay processing of the PMN by EPA. In the event EPA does not agree with a chemical name, CASRN, chemical structure or molecular formula provided to a submitter by CAS for TSCA purposes according to Method 1, EPA will work with CAS to either modify the submitted chemical identity when necessary or confirm that CAS' identification is most appropriate, to ensure that a correct TSCA description is assigned. Using Method 1, there will be no delay in EPA review or additional cost to the submitter resulting from an identification error by CAS or an identity verification request by EPA provided that the submitter has given complete chemical information to CAS that is identical to the chemical identity information contained in the section 5 notice to EPA. EPA will assume responsibility for resolving chemical identity problems occurring when Method 1 is used. However, if EPA determines that the chemical identity information submitted to EPA is not identical to that provided CAS, the notice may be deemed incomplete in accordance with §720.65(c)(1).

Method 2. Using this method, a submitter may obtain the required chemical identity information from any chemical information service or consultant, or can retrieve or develop the proper CA identifications without assistance. EPA emphasizes that with this method submitters will need to provide for each substance a correct CA Index or Preferred Name and other chemical identity information, as required under §720.45(a)(1) and (2), that is consistent with Inventory listings for similar substances. It will be the submitter's responsibility under Method 2 to seek the required information from a source the submitter believes to be sufficiently knowledgeable about CA nomenclature conventions and TSCA Inventory listings.

In contrast to Method 1, if a submitter uses Method 2 and reports any chemical identity information that is considered incorrect by EPA, the submitter, not the Agency, will be considered responsible for correcting the chemical identification. EPA will declare such a notice incomplete under §720.65(c)(1) and will not further process or review it until the submitter provides the fully correct chemical identity information specified in this amendment.

Concerning the task of generating correct CA nomenclature, it should be noted that there are many chemical names on the CAS Registry File, particularly CA names for indefinitely described substances, that are not appropriate for uniquely identifying substances on the Inventory. Thus, the application of just the CA nomenclature rules to name a new substance may not necessarily guarantee an acceptable chemical name for TSCA purposes. One must also be familiar with the ways in which similar substances are listed in the Inventory. As stated above, EPA is developing papers on specific Inventory nomenclature issues for public distribution.

Whether a submitter uses CAS or another method to obtain CA nomenclature, EPA will assume that upon sending a notice to the Agency, the submitter agrees with the chemical identity information provided by the source. Regardless of which method is chosen by a submitter for properly identifying a reported substance, EPA remains the final authority for naming new substances for the TSCA Inventory.

For submitters to have ample time to become familiar with the process of obtaining chemical identity information from CAS, another chemical information service, or a consulting party for obtaining chemical identifications, submitters should contact their chosen source at least 1 or 2 months before the intended submission date of a notice. This is especially important the first time one would have to report under this amendment.

EPA anticipates that many submitters would consider chemical identity information and/or submitter identity information given to CAS (by Method 1) or another third party (by Method 2) to be CBI. Until submitted to EPA under a provision of TSCA, CBI is not subject to EPA's procedural and security protections under TSCA. Therefore, provisions for handling any CBI first submitted to CAS or another outside party must be arranged directly with that party. Submitters should not assume that CAS or another outside party is required to adhere to EPA's TSCA-CBI procedures regarding the possession, handling, labelling, storage, tracking, auditing, or other processing of this information.

However, based on currently available information, it is EPA's understanding that any confidential, proprietary, or trade secret information that CAS would receive according to Method 1 of this rule amendment prior to the information being reported to EPA would be handled in accordance with the long-established security procedures and policies that CAS has implemented to safeguard any confidential information provided by its customers.

When submitting chemical substance identity information to CAS or any other information service, a submitter who indicates that the substance identity is CBI should be aware that a CASRN for that substance may already exist due to CAS's prior knowledge of the existence of that substance from another source. In such a case, the chemical identity would already have been assigned a CASRN and placed by CAS in its publicly accessible files.

Based on its knowledge of CAS's procedures, EPA believes that CAS currently does not place the substance identity into the publicly available CAS Registry File, if not already present there, when a submitter has requested confidential treatment of the information. However, EPA cannot ensure that CAS will continue this practice in the future, nor can EPA ensure how other services handle this type of information. As always, it is the submitter's responsibility to ensure that the information service it uses properly protects the confidentiality of its data. Submitters choosing to use either Method 1 or Method 2 should inquire how the information service, consultant, or party receiving their confidential information will handle, protect, and use such information.

The final rule at §720.45(a)(4) and (5) sets forth procedures for importers and manufacturers who do not possess the complete chemical identity information required to submit a notice to EPA about a substance they intend to import or manufacture because of proprietary claims by the U.S. or foreign supplier of the new chemical substance or a reactant used to manufacture the new chemical substance. Section 720.45(a)(4) requires that the importer of a proprietary new chemical substance have the foreign supplier follow the procedures for obtaining CAS nomenclature for the new chemical substance from CAS or alternative sources as specified in §720.45(a)(3) The foreign supplier would provide the chemical identity information on the new chemical substance specified in §§720.45 (a)(1) and (2) directly to EPA as part of a joint submission or letter of support clearly referencing the importer's notice and in the case of PMNs, the user fee identification number of the PMN submission established by the U.S. submitter (see 40 CFR 700.45(e)(3)).

Section 720.45(a)(5) contains provisions for manufacturers who cannot provide complete chemical identity information because the new chemical substance is manufactured using a reactant whose identity is claimed confidential by its supplier. In this situation, however, due to logistical obstacles to generating correct CA nomenclature and other chemical identity information for a substance based on multiple submissions from different sources, each containing part of the overall chemical identity, EPA will not require the submitter to first develop or obtain a correct CA chemical identification for the given substance before submitting a section 5 notice. Instead, the final rule requires that the manufacturer provide all the information known by the manufacturer about the chemical identity of the reported substance and the proprietary reactant. This would typically include tradename, generic chemical name, or partial composition information about the confidential reactant such as that listed in a Material Safety Data Sheet (MSDS) or in other product literature and any other chemical identity information the submitter may know or reasonably ascertain about the confidential reactant or reported substance. In addition, the manufacturer must ensure that the supplier of the proprietary reactant sends a letter of support directly to EPA providing the specific chemical identity of the confidential reactant, including the CAS number, if available, and the appropriate PMN or exemption number, if applicable. This should be information known to or reasonably ascertainable by the supplier since that person is responsible for determining that the proprietary reactant is either on the Inventory or being manufactured under terms of an applicable section 5 exemption.

As indicated above, §§720.45(a)(4) and (5) require that persons providing information as part of a joint submission or letter of support clearly reference the importer or manufacturer's notice and user fee identification number (See 40 CFR 700.45(c)(3)), if appropriate so that EPA can be sure of properly linking the two submissions. In addition, any CBI claims must be clearly marked in the notice or letter of support along with a statement that this information must not be shared with the notice submitter. The statutory review period for a section 5 notice will not begin until EPA receives all parts of a joint notice, or all necessary supporting documents providing chemical identity information for a notice.

Comment. EPA should resolve nomenclature issues leading to inconsistency (1) within the TSCA Inventory, (2) between CAS and TSCA nomenclature and (3) between how a substance is named for TSCA purposes and how it is named by the chemical industry for marketing purposes.

Response. Basically, there is only one set of nomenclature rules used for the TSCA Inventory; the CA nomenclature system has always been utilized by EPA to represent and name substances for Inventory purposes. However, recognizing the complexity of the various types of commercial chemical substances that would be reported under TSCA and the need for accurately representing these substances on the Inventory, EPA held numerous meetings with trade associations at the time the Initial Inventory was compiled to develop guidelines for identifying these substances. Before the Inventory was initially compiled, EPA worked with CAS to refine some of the nomenclature policies for certain categories of chemical substances, such as (1) substances of variable composition, (2) natural fats, and (3) polymers.

The TSCA Inventory was initially compiled from information submitted by chemical manufacturers, importers, and processors. Perceived Inventory inconsistencies reflect the different ways in which similar substances were described and reported by submitters. Differences in commercial intent, author emphasis, and level of detail or knowledge of composition resulted in some variation in names. This flexibility in nomenclature was considered necessary by the chemical industry at the time of the Initial Inventory reporting. The Agency checked the original 160,000 reports for the Initial Inventory using a computer program that was designed to identify obvious discrepancies; the Agency then worked with the submitters of problem substances to correct the Inventory reports. If there were no obvious discrepancies, the Agency was not able to identify substances that were identified incorrectly by the submitters, and consequently, some incorrectly identified substances might have been added to the Inventory. However, when the Agency adds substances to the Inventory through the PMN program, it works with the submitters and CAS to attempt to ensure that consistent nomenclature is used.

The Agency will continue using its current nomenclature system, striving to maintain consistency. As discussed above, a series of Inventory nomenclature guidance papers (that will be available through TSCA's Assistance Information Service) is under development at the Agency to publicly articulate Agency nomenclature practices used for Inventory representation of various types of chemical substances.

Comment. CA nomenclature should not be required for TSCA submissions; CAS should not have an exclusive interest.

Response. EPA developed the TSCA Inventory using CA nomenclature and numbers; CAS has been assisting EPA in compiling, maintaining and updating the Inventory since 1977. CA nomenclature and numbers are used by all major industrial countries for their chemical inventories. This form of international harmonization enhances international trade and conserves the resources of chemical industries and governments. Many major chemical manufacturers now utilize CA nomenclature, too. The use of one nomenclature system minimizes confusion in regulatory matters and trade, and facilitates compliance monitoring. Moreover, the Agency has the authority to specify the form of nomenclature for TSCA purposes. Therefore, the Agency believes that the use of CA nomenclature is appropriate. Submitters have the choice of which nomenclature service to use, as long as names are consistent with TSCA nomenclature requirements.

Comment. Problems with nomenclature not provided by CAS should not delay Agency review.

Response. Chemical identification errors by submitters result in wasted resources and significant delays for both EPA and submitters. For this reason, the Agency has determined that it will consider submissions incomplete and thus delay their review if the incorrect nomenclature is received from a source other than CAS. The Agency believes, as a result of its years of experience using CAS nomenclature, that chemical substance identities provided by CAS specifically for TSCA purposes will rarely be in error and that any errors would be relatively minor. EPA has insufficient experience with other chemical nomenclature services to allow EPA to assume that the nomenclature provided by such services would normally be consistent with Inventory nomenclature requirements.

Comment. The burden of supplying CA nomenclature is significant, both in terms of time and financial resources.

Response. The Agency disagrees with this comment. The Agency recognizes that the time and cost of submitting a notice will increase to some extent because of the requirement to use CAS nomenclature. This will be true for those who utilize the TSCA nomenclature services of CAS or other providers or choose to develop CAS nomenclature on their own. EPA does

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not believe that this requirement will present significant problems because, in EPA's experience under the section 5 program, some submitters already use CAS private registry services, despite the absence of a requirement to do so under the previous PMN regulations, apparently with minimal added cost or delay.

The Agency recognizes that the lead time required to prepare a PMN may increase. In most cases, submitters can be preparing other sections of their notices pending nomenclature assignments. The added up-front time in compiling a PMN should not be a major factor. According to EPA records many PMN substances are not manufactured until a month or more after the PMN review period ends. The Agency believes that submitters should always take the time necessary to ensure that their chemical substance is correctly identified upfront. The practice of relying on EPA to correct submitter errors, after the fact, has over the years consumed significant Agency resources. The Agency believes that this change in the procedural rule will place this responsibility where it legitimately belongs.

Comment. The burden imposed on small manufacturers and importers is too large.

Response. EPA does not consider this burden to be unreasonable, especially because small companies already save $2,400 on each of their PMN submissions compared with larger companies. Small companies have historically been responsible for a disproportionately large number of errors in chemical identities. The burden of generating CA nomenclature will be offset, in many cases, because with the inclusion of proper chemical names in the initial section 5 notice the review period will not be suspended for problems with chemical identity. Small companies may also benefit significantly from an early knowledge of the correct chemical identity, which may enhance their customer service, Inventory search efforts, and regulatory compliance.

Comment. Requirements to generate CA nomenclature will create problems in protecting confidentiality.

Response. The Agency does not believe that the requirement for CA nomenclature will create undue problems with confidentiality for submitters. All submitters must be responsible for the confidentiality of their information prior to submission to the Agency.

Comment. EPA should not require CA nomenclature for polymers and for *bona fide* inquiries (*bona fides*).

Response. While submitters must report all monomers and other reactants used to manufacture reported polymers, CA nomenclature is required for polymers, in part, because in certain cases the appropriate CA name for the polymer is based on more than just the names of the monomers and other reactants. CA nomenclature for certain polymeric substances may be based on structural repeating units or other important structural features of the polymeric material. Examples include certain block polymers, certain post-treated or functionalized polymers, and siloxanes and silicones. The Agency has chosen to maintain a consistent policy for nomenclature using CA names for all substances, avoiding the potential confusion and compliance problems which could occur if only some substances required CA names.

In a separate rulemaking published concurrently with this document, the Agency has decided not to require CAS nomenclature for polymers that are manufactured under terms of the polymer exemption in accordance with 40 CFR 723.250, since the Agency will no longer review exemption notices for exempted polymers. However, since chemical identity information is required as part of the recordkeeping requirements, persons who are manufacturing polymers under terms of the polymer exemption are encouraged to use standard CA nomenclature in their records.

The Inventory search process is the same for both PMNs and for *bona fides*. In the case of *bona fides*, chemical identity issues frequently have interfered with the Agency's ability to give an accurate response to submitters within the 30–day period to which the Agency has committed itself. In general, there have been more problems with chemical identity for *bona fides* than for PMNs, in part because much less chemical information has been required for *bona fides* than for PMN submissions. Once a correct chemical name is developed for purposes of a *bona fide*, the same name can be used for a subsequent PMN submission without further expense.

B. Revised Requirements for Bona Fides

The Agency is amending §720.25 by revising certain provisions of the procedures to establish a *bona fide* intent to manufacture or import a substance. This amendment reduces or simplifies existing analytical information requirements, modifies and/or clarifies other existing information requirements, and requires some additional types of information in *bona fides*.

The amendments eliminate the need for elemental analysis data [former §720.25(b)(2)(iv)] as well as reduce and simplify other analytical information requirements [former §720.25(b)(2)(v)] by identifying an infrared spectrum as the usual practice for characterizing the new chemical substance. Two other parts of this section, regarding chemical identity information, and the description of research and development (R&D) activities and use [former §720.25(b)(2)(i) and (iii), respectively] were modified and/or clarified. There are three new information requirements regarding the most probable manufacturing site and process to be used, as well as an approximate date when the submitter would be likely to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that the amendments represent a balanced trade off of requirements between the former and amended provisions. The amendments will enable submitters to better demonstrate a *bona fide* intent while the Agency will be better able to protect the CBI of the original submitters of Inventory substances. The additional information or data required in the amendment is considered reasonably ascertainable by the submitter, and generally would have been determined already by the time the submitter has developed a *bona fide* intent to manufacture or import a substance for a commercial purpose. Under the amended §720.25(b)(2)(i), submitters of a *bona fide* must provide, as described in the amended provisions of §720.45(a) discussed in unit II.A above, a currently correct CA Index Name or CA Preferred Name, whichever is appropriate, and a currently correct CASRN (if the substance already has a CASRN assigned to it). In addition, the Agency requires a molecular formula and a complete or partial chemical structure diagram if these are known or reasonably ascertainable. Failure to fully comply with the chemical identification elements of this requirement will result in the *bona fide* being declared incomplete by EPA and returned to the submitter.

The amendments modify the requirement for a description of R&D activities conducted to date on the substance and the purpose for manufacture or import [former §720.25(b)(2)(iii)]. Since in the past many submitters have inadvertently omitted one of these two different pieces of information in their notices, EPA is making the requirements clearer by separating the requests for the description of R&D activities and the purpose for which the submitter will manufacture or import the substance into different subparagraphs of the amended rule [amended §720.25(b)(2)(iii) and (iv), respectively]. In addition, in the amended §720.25(b)(2)(iii)(A), EPA elaborates on the information required by listing some of the general types of R&D activities to be reported. Also, the year in which R&D was started by the submitter on the substance is required. EPA believes that these modifications will enable the submitter to indicate the scope and length of its commitment towards developing the substance for commercial use. EPA expects that this information be briefly stated.

In the amended §720.25(b)(2)(iii)(B), EPA provides an alternative reporting requirement for importers who do not perform R&D activities on the substance and have no knowledge of R&D activities that may have been conducted outside of the United States. Such importers will be allowed, in lieu of presenting R&D information, to indicate for how long, and in which country a given substance has been in commerce outside the United States, as well as to state whether they believe that the substance has already been used outside of the United States for the same commercial applications intended by the submitter. This alternative requirement is similar to the informal EPA practice in the past of allowing such a prospective importer to satisfy the former §720.25(b)(2)(iii) by providing certain information on foreign commercial activity of the substance.

In the amended §720.25(b)(2)(iv), for clarity, the term "purpose" used in the former §720.25(b)(iii) has been replaced by the phrase "major intended application or use" because some submitters have misunderstood the type of information required and have not provided a description of the intended end use.

EPA has simplified the analytical data requirements in the amended §720.25(b)(2)(v) to reflect the usual practice of submitters providing an infrared spectrum to characterize the chemical substance. An infrared spectrum is required, unless infrared analysis is not suitable for the substance or does not yield good structural information about the substance. In such cases, the amendment requires a spectrum or instrumental readout from another method of spectral or instrumental analysis that yields better structural or compositional information.

Amended §720.25(b)(2)(vi) consists of a minor but new information requirement to estimate the month and year in which the person would intend to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that submitters with a *bona fide* interest in a substance would have already considered a future timeframe for reporting the substance under section 5 if in fact it is a new chemical substance. The intent of this requirement is not to legally bind the submitter to a certain date for submission of a PMN. In addition to using this information to determine a demonstration of a *bona fide* intent to manufacture or import the substance, if EPA can anticipate how many *bona fide* submitters may report their substances in PMNs in a given year, the Agency may be able to better allocate resources for reviewing the expected PMNs.

Amended §720.25(b)(2)(vii) requires the address of the facility under the submitter's control where the substance is most likely be manufactured or processed in the future for a commercial purpose. For imported substances it requires the facility at which processing is most likely to occur, if any.

Amended §720.25(b)(2)(viii) requires a manufacturer to briefly describe either in words or with a process flow diagram the manufacturing process that the submitter would most likely use to produce commercial quantities of the substance. The process description does not have to be detailed or comprehensive. Importers are required to briefly describe how the substance would most likely be processed or used at a site controlled by them, or, if no processing or use of the substance is anticipated to occur at a submitter-controlled facility, an importer may state that such commercial activity is not expected to occur. This information is not intended to be legally binding, but rather to assist EPA in determining whether the submitter appears to have serious intentions for commercializing the substance in question.

The Agency has also clarified the procedure for a foreign manufacturer or supplier to provide confidential chemical identity information directly to EPA, to complete a notice when the chemical identity is considered proprietary information by the foreign party and will not be disclosed to the *bona fide* submitter. As amended, it is the importer's responsibility at §720.25(b)(3)(i) to ensure that the foreign supplier provides the required chemical identity information in accordance with §§720.45(a)(1), (2), and (3) to EPA in a timely manner so that EPA can easily link the information to the importer's *bona fide*.

The amendments at §720.25(b)(3)(ii) indicate how to meet chemical identification requirements when submitters of substances to be manufactured or imported do not possess full knowledge of the chemical identity of the substance to be reported because a purchased reactant or component used in the reported material has a confidential chemical identity that is the proprietary information of the supplier. Similar to the procedures specified at §720.45(a)(5) for section 5 notices involving confidential (often trademarked or tradenamed products) reactants or starting materials, the *bona fide* submitter reports all the information known by the submitter about the substance identity. In addition, the supplier must submit a letter of support to EPA providing the specific chemical identity of the proprietary reactant, including the CAS number, if available, and referencing the submitter's *bona fide*. As previously discussed in this Unit under Correct Chemical Identity, correct CA nomenclature is not required when a reported substance involves the use of a purchased proprietary reactant. This is due to logistical obstacles involved in generating correct CA identifications for substances based on multiple submissions of parts of the overall identity from different sources. However, the submitter must coordinate with the supplier to ensure that the remaining specific chemical identity information is sent by the chemical supplier directly to EPA in a timely manner, to complete the *bona fide* request and initiate review by EPA. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the submitter's *bona fide*, the *bona fide* will be considered incomplete.

Further, EPA has included language in amended §720.25(b)(9) to describe what constitutes an incomplete *bona fide*, and how EPA will handle incomplete ones. When an incomplete *bona fide* is received and identified as such, EPA will immediately return the *bona fide* (minus any supplier-confidential portions) directly to the submitter. The submitter will then have to resubmit the completed *bona fide*, in its entirety, to have EPA perform the Inventory search and respond to the inquiry.

Comment. Appropriate *bona fide* intent exists even though many *bona fide* substances are never submitted as PMNs.

Response. Each *bona fide* request requires a certification statement about commercial intent. As a result, the Agency believes it is reasonable to expect that most *bona fide* submissions involving substances not found to be on the Inventory would result in

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subsequent PMNs. This judgment takes into account the types of factors that could legitimately cause submitters to change their minds. The Agency expects that once the new requirements are in place, a larger percentage of *bona fides* will eventually result in submission of PMNs.

Comment. The proposed *bona fide* requirements are burdensome and the existing requirements need not be changed; EPA should not require process information, specific manufacturing site, the year that research and development started (or the length of foreign use), or the estimated date of PMN submission in order to establish *bona fide* intent.

Response. EPA believes that the information requested does not cause a significant burden because it should be known to or reasonably ascertainable by the submitter without developing or collecting additional data. EPA believes that submitters who have not yet considered these topics or developed this information are not at a commercial development stage consistent with showing *bona fide* intent.

Comment. EPA should focus on abusers of the *bona fide* process rather than increasing the reporting burdens on all submitters.

Response. The Agency believes that the perceived problem of submitter abuse of the *bona fide* process involves more than a few submitters. EPA believes that the best solution is to improve the integrity of the entire process through the new requirements so that all submitters will demonstrate a serious *bona fide* intent prior to receiving confidential Inventory information.

Comment. Greatly increased requirements for *bona fide* intent may lead to more PMN submissions.

Response. Rather than increasing the number of PMNs, EPA believes that the revised procedures will reduce the number of *bona fides* from persons who do not have a *bona fide* intent to manufacture the substance. In any event, persons who intend to manufacture or import a new chemical substance for a commercial purpose are free to submit a PMN without submitting a prior *bona fide*.

C. "Two percent rule" for Polymers

Section 720.45(a)(2)(iii) allows submitters to indicate on the PMN form which monomers and other reactants used at 2 weight percent or less (based on the dry weight of the polymer) should be included as part of the polymer description on the Inventory. This gives a manufacturer the flexibility of increasing the weight percent above the 2 percent level without submitting another PMN, but also requires that the monomer or reactant always be present at some level in the polymer. In practice, many polymer manufacturers currently request Agency pre-approval of a consolidated PMN to allow the manufacture of a new polymer with levels of monomers above and below the two percent level (i.e., with and without the monomer in the polymer's chemical identity). As a general rule, if the weight of monomer or reactant charged to the reaction vessel is 2 percent or less, the monomer or reactant is not considered part of the chemical identity of the polymer, unless indicated by the submitter on the PMN form. The 2 percent limit for polymers, referred to as the "two percent rule", has been in place since the Inventory reporting regulations were published on December 23, 1977 (see 40 CFR 710.5(c)) and was adopted because the Agency and the regulated community believed it would be difficult to identify the exact amount of monomers or other reactants actually incorporated in the final polymer. Accordingly, polymer manufacturers can use other monomers or reactants at 2 percent or less without changing the chemical identity of an Inventory-listed polymer.

Under the final rule, persons may continue to determine the weight percentage of monomer or other reactant based on the weight of monomer or other reactant actually "charged" to the reaction vessel. However, §720.45(a)(iii)(B) now allows persons the flexibility, where technically feasible, to determine the minimum weight of monomer or other reactant required in theory to account for the actual weight of monomer or other reactant molecules or fragments chemically "incorporated" (chemically combined) in the polymeric substance manufactured. Consequently, a PMN submitter or a person relying on existing polymer Inventory listings may determine which monomers or other reactants constitute the polymer identity on the basis of either method.

During the compilation of the Inventory, the method of reporting the percent composition of monomers and other reactants "as charged" was viewed as a reasonable approach by chemical and polymer industries. However, due to advanced analytical capabilities developed over the intervening years, certain polymer manufacturers asked EPA to revise the "two percent rule" to allow manufacturers the option of determining the amounts of monomers and other reactants that are present "in chemically combined form" (incorporated) in a polymer as an alternative to the practice of requiring reporting based on the amounts added (charged) to the reaction vessel. The final rule allows this option. The Agency believes that allowing submitters to report on the basis of amounts incorporated in the polymer will provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this action will allow manufacturers greater flexibility in commercial innovation, reduce the number of unnecessary PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. However, the Agency believes that manufacturers should be aware that there may be certain drawbacks and burdens involved in using the method of computation based on incorporated amounts of monomers and other reactants. For example, use of the "incorporated" method may have regulatory consequences if process modifications (such as a change in catalyst or solvent used or method and/or order of charging the reactants) affect the degree of chemical incorporation such that the 2 percent level is exceeded for a monomer or other reactant not specified as part of the chemical identity for the polymer, as discussed in the proposed rule (58 FR 7664).

If a person determines those monomers or other reactants used at 2 percent or less on the basis of the amount incorporated in the polymer, EPA believes that it is reasonable to require that such manufacturers maintain in their records analytical data or appropriate theoretical calculations (if it can be documented that an analytical determination is not feasible or not necessary) to demonstrate that the amounts of monomers and other reactants incorporated in the manufactured polymer have been accurately determined [§720.45(a)(2)(iv)]. Additional guidance on appropriate measurements or theoretical calculations is available in EPA's Draft Technical Guidance Document on the Polymer Exemption Rule. That document is in the docket for that rulemaking (OPPTS 50594B) and is available through the TSCA Assistance Information Service.

EPA recognizes that it was a matter of convenience, rather than one of science, to have thus far required reporting of the amounts of polymer reactants charged rather than the amounts incorporated; the former method requires only "bookkeeping", while the latter may require extensive and expensive analytical work. After 16 years of experience with the Inventory and PMN reporting rules, however, EPA has come to realize that the "amount charged" approach has drawbacks. In particular, this approach of identifying many polymers based on monomers and other reactants charged to the reactor in quantities significantly larger than the amounts found to be incorporated in the polymer may not adequately represent the physical, chemical, and toxicological properties of the polymer.

Until now under the PMN rule, inefficiently incorporated reactants, reactants charged in large excess, and reactants with other functions besides their reactant ones were often likely to produce reportable polymers, even though the degree of chemical incorporation may have been less than or equal to two percent. For example, free-radical initiators are often charged in quantities greater than two percent to start many polymer chains simultaneously and limit the amount of high-molecular-weight polymer produced. Chemical incorporation of these initiators is inefficient, since many processes other than chain initiation can consume the initiator. The weight of the final polymer that can be attributed to fragments originating from the initiator is often less than 2 percent by weight. In the past, a manufacturer may have used many different initiators, all charged at greater than 2 percent, to produce what would be the same polymer if the "incorporated" method of computation was used. The result represented what many manufacturers believed to be excess reporting. Similar problems arose with solvents that have reactive functions, and with neutralizing agents used in excess of their salt-forming capacities. Technical details concerning the "two percent rule" are contained in EPA's Draft Technical Guidance Document on the Polymer Exemption Rule, which is available in the public docket for this rulemaking [OPPTS–50593B].

The Agency has always believed the actual content of a polymer is a better indicator of its physical, chemical, and toxicological properties, but adopted the "amount charged" method of computation as a matter of convenience to industry. The Agency believes that, in light of advanced analytical capabilities, it is now reasonable to also allow the submitter to optionally use the amounts of monomers and other reactants incorporated, as an alternative to the "amounts-charged" method.

Comment. Several comments supported EPA's proposal to modify the "two percent rule" by allowing polymer manufacturers to determine the amounts of monomers and other reactants that are "incorporated" in the polymer, as an alternative to the current practice of reporting based on the "amounts charged" to the reaction vessel. One comment stated that the use of the incorporation method, where the technology is available and feasible, more accurately represents the actual properties of the polymer. Commenters also stated that PMN submitters and/or manufacturers relying on existing listings of polymers on the Inventory should be able to use either method as long as they are in compliance with the "two percent rule."

Response. The proposed amendment was intended to allow this flexibility. Persons relying on existing Inventory listings of polymers or persons submitting PMNs may use either method as long as they can demonstrate the percentage of monomers or other reactants either charged to the reaction vessel or incorporated in the polymer.

Comment. The amendment to the "two percent rule" should be clearly stated to be an option rather than a regulatory requirement. EPA should abandon the proposed rule's arbitrary distinction and clarify that, for purposes of TSCA compliance, a polymer should be described either by analysis or by calculation.

Response. EPA has clearly indicated in this preamble and in the regulatory text that a manufacturer may use either method to determine which monomers or other reactants constitute the polymer identity.

Comment. EPA should establish a "five percent rule" for non-monomer reactants such as free radical initiators, chain transfer reagents, and pH neutralizing agents. These reactants are known to correlate poorly with the amounts charged and incorporated. Routine analytical testing would be inconclusive.

Response. EPA continues to believe, as stated in the preamble to the proposed rule (58 FR 7672), that a 5 percent rule would create a larger potential variation in those physical and chemical properties of a polymer that may have toxicological implications. Further, adopting a "five percent rule" would not be consistent with the Agency's goal of harmonizing, to the extent possible, the reporting of polymers with other international reporting practices that use a 2 percent standard.

In the past, industry has asserted that free radical initiators were not expected to be incorporated, so allowing a company to use the "incorporated" method should already provide a greater measure of flexibility. Manufacturers who are unable to develop reliable analytical data or reasonable theoretical calculations to support their use of the "incorporated" method should continue to follow the current practice of calculating 2 percent based on the monomers and other reactants "charged" to the reaction vessel.

Comment. EPA should allow use of any scientifically sound and technically appropriate incorporation measurement or theoretical calculation method. The proposal should be modified so that analytical and recordkeeping requirements for the incorporation method are not so onerous as to virtually negate the advantage of its use. A company that uses the "incorporated" method would be required to maintain analytical data to support this determination at the site of manufacture.

Response. The rule does not specify any particular analytical methodology for the "incorporated" method. The Agency would also allow theoretical calculations if it can be documented that an analytical determination is not technically feasible or not necessary as discussed above. Further, EPA believes that it is reasonable to require that manufacturers who use the "incorporated" method maintain records of analytical data or appropriate theoretical calculations that demonstrate compliance with the "two percent rule" at the site of manufacture to verify compliance in a straightforward manner.

D. Multiple photocopies of section 5 submissions

The Agency is amending §720.40(d)(2) to require submitters to provide EPA with one original and two complete copies of section 5 notices, in addition to a sanitized copy in which CBI has been deleted under §720.80. Submitters are also required to provide one original and two additional copies of any test data.

Comment. EPA should not require the submission of copies of test data. Test reports range from hundreds to thousands of pages and submitting extra copies would result in excessive volumes of material for EPA to handle.

Response The two extra copies of test data will reduce the Agency's administrative burden and will facilitate scientific reviews of the data submitted. The Agency's request for these test results falls clearly within the General Information Collection Guidelines, 5 CFR 1320.6 of the rules on the Paperwork Reduction Act of May 10, 1988 promulgated by the Office of Management and Budget. Under these guidelines, the Agency is allowed to request an original and two copies of

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any document that satisfies its statutory requirements.

E. Electronic Transmission of Section 5 Notices; Removal of PMN from the CFR

EPA is amending the PMN rule at §720.40(a) to allow for future reporting via magnetic or other electronic media. This amendment is designed to promote the use of electronic media for data submission. EPA is investigating the use of magnetic tape, floppy diskettes, and electronic data interchange as means to submit information, and is participating in a nation-wide trend toward reducing reliance on paper for information transfer. EPA has already taken steps in TSCA and other program areas to encourage electronic submission, and intends to expand this effort to the PMN review program.

Information may be submitted electronically (on magnetic or other media) once EPA publishes a format for electronic submissions. Pilot projects using electronic submissions for the Inventory Update Rule (40 CFR part 710) and Toxic Release Inventory Rule (40 CFR part 372) will be used as a baseline for enhancements to developing a standard Agency-wide format. Such submissions will have to meet this format and all other media specifications published by EPA.

EPA is taking this opportunity to remove the full text of EPA form 7710–25 (PMN form) from the Code of Federal Regulations (CFR)(40 CFR part 720, Appendix A) and also correct the address for availability (40 CFR 720.40). The PMN form, which has been printed each year in the CFR, requires approximately 10 pages of publication and does not represent the most current document in use by PMN submitters. Removing the form from the CFR reflects standard Agency policy of not printing the full text of final forms in the CFR and will result in a significant cost savings for the Agency. In general, EPA has determined that it is not legally obligated to publish forms in full text. Under the Administrative Procedure Act (APA), 5 U.S.C. 552(a)(1)(c), EPA is obligated to describe forms and give a source of availability. In addition to removing the form, EPA is making conforming amendments to those sections that reference part 720, Appendix A to remove reference to Appendix A.

In addition, the PMN form that appears in the CFR has been photo reduced and cannot be used in a practical sense by those who must comply with the reporting requirements. More importantly, the Agency has continued to implement editorial revisions to the form since it was first published as part of the final rule in 1983. These revisions are intended to reflect PMN regulations and the policy initiatives implemented during the intervening years. Any substantive removal or addition of reporting requirements is accomplished by notice and comment rulemaking.

Comment. Comments were generally supportive of developing an electronic data interchange (EDI) with the Agency, although some reservations and concerns were expressed. Comments questioned (1) how practical it might be to submit some information, such as toxicity studies, electronically, (2) signature certification and (3) the security of CBI submissions. One comment suggested holding a workshop to address CBI concerns.

Response. EPA will not implement an EDI application for TSCA section 5 submissions until an Agency policy is developed for EDI standard practices. Thus, submitters would not have to develop unique interchange devices for section 5.

Electronic authentification technology is commercially available to address signature certification concerns and general security concerns. The Agency is required to protect CBI, and any EDI practices will ensure the confidentiality of data transmissions. The Agency is receptive to working with industry and other concerned parties to develop an EDI application for the New Chemicals Program, including CBI procedures. In the interim, the Agency encourages the use of PMN software developed by industry and approved for use by the Agency for generating hardcopy section 5 notices.

In addition to EDI, the Agency is analyzing other electronic reporting media to determine which is most appropriate for these submissions, given the variety of documents and materials involved. All comments on electronic reporting are welcome.

F. Mandatory Form for Notice of Commencement of Manufacture or Import (NOC)

Under this amendment, all PMN submitters are required to use a standard one-page form to submit a NOC. In addition, the NOC information requirements at §720.102(c) have been slightly expanded; however, all information can be provided on the one-page standard form (EPA Form 7710–56).

Every NOC received at EPA on or after the effective date of these final rule amendments must contain the required information on the new standard NOC reporting form. This form will automatically be provided to each PMN submitter as an attachment to EPA's letter acknowledging PMN receipt letter sent to submitters shortly after each PMN is received. Persons who have not submitted NOCs for PMNs that have been previously submitted to EPA can obtain copies of the NOC form from the TSCA Assistance Information Office. Many submitters are already reporting voluntarily using a similar form.

Previous NOC information reporting requirements, which are unaffected by these amendments, include specific chemical identity of the PMN substance, PMN number, the date manufacture or import commenced, and substantiation of CBI claims for chemical identity, which is required at the time a NOC is submitted. The amendment at §720.102(c)(ix) requests a clear indication of whether the submitter identity and/or other information on the form are also claimed as confidential. Confidentiality claims can only be asserted by the submitter if corresponding claims were made in the PMN.

EPA is amending NOC reporting to require that complete submitter identity information be provided on the form. This would include the name and address of the submitter, the name and dated signature of the authorized official, and the name and telephone number of a technical contact in the United States.

The amended NOC provisions also require a generic chemical name for a substance whose chemical identity is claimed as CBI. This name could either be (1) the same generic name provided in the PMN, (2) a generic name as revised by the submitter, as long as it masks no more of the chemical identity than the original generic name provided, or (3) an improved or corrected generic name agreed to via negotiation with EPA.

Because the initial intention to manufacture or import a substance sometimes changes between the time of PMN submission and the NOC, submitters are required to specify in the NOC whether commencement occurred via manufacture or import and the address of the site(s) at which manufacture commenced.

All of the above amendments to information requirements for NOCs involve information that the submitter will already know by the time manufacture or importation of the substance has commenced. Consequently, providing this information in the NOC will not constitute a significant reporting burden. EPA will not process a NOC that does not contain the chemical identity, the date of commencement, and the PMN number.

Comment. EPA needs to define in the regulations or form the "date of commencement." Is this the first date that a chemical reaction occurs in the manufacturing operation; the date that the last amount of final product is produced in a batch operation; the first date that the PMN chemical is drummed off; or another date?

Response. The Agency considers the date of commencement to mean the date of completion of manufacture for non-exempt commercial purposes of the first amount (e.g., batch, drum, etc.) of the chemical substance identified in the PMN. The Agency chose not to use the date on which the manufacturing process is started because that particular process may in some instances not result in the successful manufacture of the PMN substance. For importers, the date of commencement is the date the new chemical substance clears United States Customs. The final rule contains this definition.

Comment. The information required for an NOC duplicates that already submitted in the PMN: site of manufacture, name and telephone number of technical contact. This information should not be required, since a manufacturer is free to change any of these items after the PMN review period has expired. The Inventory Update Rule is the appropriate vehicle for the Agency to gather this information.

Response. An NOC may be filed years after the PMN was submitted. In the interim, the information provided in the original PMN may have changed due to change of location, change in ownership, etc. Up-to-date telephone numbers are important when problems need to be resolved. The Agency believes that the site of first manufacture or import is an important compliance monitoring tool. Although the Agency recognizes that a company may switch from import to domestic manufacture (or vice versa) after the PMN review period has expired, the Agency may find cause to investigate such changes that occur shortly after the expiration of the PMN review period.

Comment. The NOC form should be made available for public comment prior to finalization.

Response Although the form was not published in the **Federal Register** as part of the proposed rulemaking, it was available in the public docket and at the public hearings for this rulemaking held on April 26–27, 1993. Draft copies of the form have been available through the TSCA Assistance Information Office. The form has also been routinely distributed to all PMN submitters for use on a voluntary basis during the past year.

Comment. EPA should clarify its statement that an NOC will be declared incomplete if any required information is missing. It is possible that EPA could declare an NOC incomplete past the 30–day period, potentially resulting in a compliance problem. EPA should provide that the original NOC filing date will be considered the effective date for determining compliance with the requirement that the NOC be filed within 30 days after the first day of commercial manufacture or importation. For example, if EPA determines that responses to CBI claims are inadequate, the NOC should not be declared untimely because it is considered incomplete.

Response. EPA will continue its practice of adding a PMN substance to the Inventory as of the date the Agency receives the NOC from the PMN submitter with the correct chemical identity, date of commencement and PMN number. Further, EPA does not believe it is a significant burden for companies to submit a completed standard one-page NOC form that requests information that should be known to the submitter when manufacture or importation commences.

Comment. The NOC form should be computer compatible or the submitter should be allowed to use a computer facsimile as long as it has the same format as the NOC form. Companies should not be required to receive advance approval of computer facsimiles.

Response. The Agency will allow submitters to use a computer generated form, as long as the form is readable by Agency staff.

Comment. EPA should allow an "authorized official or designated representative" to sign the NOC form. The term "authorized official" might be construed to mean a corporate vice president. This type of form should not require a corporate vice president's signature.

Response. The "authorized official" has always been designated by the submitting company and should be a person that the submitting company deems responsible for the truth and accuracy of each statement in the certification.

Comment. The NOC form and/or accompanying instructions should indicate clearly that a sanitized version must be submitted if any information is claimed confidential and that all submitter identification information will be treated as CBI. Furthermore, the submitter must be permitted to claim the signature of the authorized official as CBI.

Response. EPA does not require submission of a sanitized copy of the NOC form because NOC submissions are not placed in the public files. Information on the NOC form that was claimed confidential in the original PMN submission may also be claimed confidential on the NOC form, although new confidentiality claims cannot be made in an NOC for information not claimed as confidential in the original PMN submission.

G. Comments on Other Issues

The Agency also discussed certain issues relating to CBI claims in the proposed rule (56 FR 7865) but did not propose any additional PMN rule amendments at that time. The Public Docket for this rulemaking contains a complete set of comments on this issue, as well as comments received in response to a discussion on use of geographic locators by section 5 reporting facilities. Several industry commenters expressed concern about the discussion in the proposal regarding enhanced review of all confidential claims. Specifically, some commenters were concerned that the discussion signalled a change of rules on making CBI claims in the PMN process. As stated in the proposal, the purpose behind the discussion of CBI claims filed in PMNs was to remind the regulated community of its obligations concerning CBI claims. As noted at that time, there are no changes to the CBI procedures included in the PMN rule amendments.

Industry submitters have an obligation to insure that only that information which needs to be kept confidential is claimed as CBI. Further, CBI claims are routinely reviewed and submitters who make broad, indiscriminate CBI claims will be contacted and requested to substantiate their claims pursuant to 40 CFR part 2.

III. Economic Analysis

EPA has evaluated the potential costs of the amendments for potential submitters of section 5 notices. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50593B).

The regulatory impact analysis estimates the costs and benefits attributable to the regulation. In this case, the analysis also contains estimates for the three additional amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These new provisions amend the PMN Exemptions for Polymers, Chemical Substances

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Manufactured in Quantities of 1,000 Kilograms or Less per Year (40 CFR part 723), and the Expedited Process for Issuing Significant New Use Rules (40 CFR part 721). Because these regulations are amendments to current regulations, their costs and benefits are incremental as compared to the current regulations.

The costs and benefits associated with these amendments are partially quantified; many of the benefits are unquantified but are of significant importance. Considering only the quantified costs and benefits, there is a slight cost increase for industry and a slight cost savings for EPA. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	-0.1	0.1
2,000	-0.3	0.2
3,000	-0.4	0.2 – 0.3

The aspects of the amendments that have the greatest quantified cost impact on industry are the change in requirements for a *bona fide* TSCA Inventory search request and the requirement to provide correct chemical identification. Both requirements are expected to enable the Agency to utilize resources more effectively, thereby providing better service to industry. One of the major unquantified benefits of this amendment is increased flexibility under the "two percent rule," allowing industry to make minor compositional changes, providing more manufacturing latitude to the submitter and possibly reducing the number of section 5 submissions. Another unquantified change is the requirement to use a standardized form for NOCs, the impact of which is expected to be minimal as many submitters are already using a similar form.

IV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50593B). The record includes basic information including public comments considered by the Agency in developing this rule amendment. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G307 (Northeast Mall), 401 M St., SW., Washington, DC.

V. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a "significant regulatory action" as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant") (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" under section 3 (f) of the Order. This action is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the section 5 notice submitters were small firms, the number of small businesses affected by this action will not be substantial.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq and have been assigned OMB control number 2070–0012. The public reporting burden for this collection of information is estimated to vary from 18 to 21 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects

40 CFR Part 704

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Imports, Reporting and recordkeeping requirements.

40 CFR Part 720

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

40 CFR Part 721

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances, Imports, Labeling, Occupational Safety and Health, Reporting and Recordkeeping requirements.

Dated: March 21, 1995.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, parts 704, 720 and 721 are amended as follows:

1. In part 704:

PART 704—[AMENDED]

a. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 704.25 is amended by revising paragraph (d) to read as follows:

§704.25 11-Aminoundecanoic acid.

* * * * *

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice Form (EPA Form 7710–25).

* * * * *

c. Section 704.104 is amended by revising paragraph (d) to read as follows:

§704.104 Hexafluoropropylene oxide.

* * * * *

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice Form (EPA Form 7710–25).

* * * * *

2. In part 720:

PART 720 — [AMENDED]

a. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

b. Section 720.25 is amended by revising paragraphs (a), (b)(1), (2)(i), (2)(iii), (2)(iv), (2)(v), (3), and by adding paragraphs (b)(2)(vi), (2)(vii), (2)(viii), and (b)(9) to read as follows:

§720.25 Determining whether a chemical substance is on the inventory.

(a) A new chemical substance is any chemical substance that is not currently listed on the Inventory.

(b)(1) A chemical substance is listed in the public portion of the Inventory by a specific chemical name (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name) and a Chemical Abstracts Service (CAS) Registry Number if its identity is not confidential. If its identity is confidential, it is listed in the public portion of the Inventory by a TSCA Accession Number and a generic chemical name that masks the specific substance identity. The confidential substance is listed by its specific chemical name only in the confidential portion of the Inventory, which is not available to the public. A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the public portion of the Inventory may ask EPA whether the substance is included in the confidential Inventory. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture or import the chemical substance for commercial purposes.

(2) * * *

(i) Except as provided in paragraphs (b)((3)(i) and (ii) of this section, the specific chemical identity of the substance that the person intends to manufacture or import, using the currently, correct CA name for the substance and the other correct chemical identity information in accordance with §§720.45(a)(1), (2)), and (3).

* * * * *

(iii)(A) A brief description of the research and development activities conducted to date related to the substance, including the year in which the person first started to conduct research or development activity on the substance, and the general types of research and development activities conducted thus far (e.g., synthesis, substance isolation/purification, formulating, product development, process development, end-use application, toxicity testing, etc.). The person must also indicate whether any pilot plant or production-scale plant evaluations have been conducted involving the manufacture or processing of the substance.

(B) If an importer is unable to provide the information requested in paragraph (b)(2)(iii)(A) of this section from the foreign manufacturer or supplier, the following information shall be submitted:

(*1*) A brief statement indicating how long the substance has been in commercial use outside of the United States.

(*2*) The name of a country in which it has been commercially used.

(*3*) Whether the importer believes that the substance has already been used commercially, in any country, for the same purpose or application that the importer is intending.

(*iv*) A specific description of the major intended application or use of the substance.

(*v*) An infrared spectrum of the substance, or alternative spectra or other data which identify the substance if infrared analysis is not suitable for the substance or does not yield a reasonable amount of structural information. When using alternative spectra or instrumental analysis, the person must submit a spectrum or instrumental readout for the substance.

(vi) The estimated date (month/year) in which the person intends to submit a Premanufacture Notice (PMN) for this substance if EPA informs the notice submitter that the substance is not on the Inventory.

(vii) The address of the facility under the control of the submitter at which the manufacture or processing of the substance would most likely occur. For an imported substance, the facility under the control of the importer at which processing of the substance would likely occur, if any.

(viii)(A) For substances intended to be manufactured in the United States, a description of the most probable manufacturing process that would be used by the submitter to produce the substance for non-exempt commercial purposes.

(B) For substances intended to be imported, a brief description of how the submitter is most likely to process or use the substance for a commercial purpose. If the substance is not expected to be processed or used at any facility under the importer's control, a statement to this effect must be included along with a description of how the substance will be processed or used at sites controlled by others, if this information is known or reasonably ascertainable.

(3)(i) If an importer cannot provide the chemical identity information required by paragraph (b)(2)(i) and (v) of this section because it is claimed confidential by its foreign manufacturer or supplier, the foreign manufacturer or supplier must supply the required information directly to EPA in accordance with §720.45(a)(1), (2), and (3) and reference the importer's notice. If the appropriate supporting document from the foreign party is not received within 30 days after EPA receives the importer's notice, the notice will be considered incomplete.

(ii) If a manufacturer cannot provide all of the required information in accordance with §720.45(a)(1), (2), and (3) because the new chemical substance is manufactured using a reactant that has a specific chemical identity claimed as confidential by its supplier, the notice must contain chemical identity information that is as complete as known by the manufacturer. In addition, a letter of support for the notice must then be sent to EPA by the chemical supplier of the confidential reactant, providing the specific chemical identity of the proprietary reactant. The letter of support must reference the manufacturer's notice. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the manufacturer's notice, the notice will be considered incomplete.

* * * * *

(9) If the required chemical identity information has not been reported correctly or completely in the notice (except as provided under paragraph (b)(3)(ii) of this section) or if any other required data or information has been omitted or is incomplete, EPA will consider the whole notice to be incomplete. As soon as an incomplete notice is identified as such by EPA, the Agency will immediately return the notice directly to the submitter. The submitter must then resubmit the whole, completed *bona fide* notice to EPA in order to have the Agency perform the desired Inventory search and respond to the notice.

c. Section 720.40 is amended by revising paragraphs (a) and (d) to read as follows:

§720.40 General.

(a) *Use of the notice form; electronic submissions.* (1) Each person who is required by subpart B of this part to submit a notice must complete, sign, and submit a notice containing the information in the form and manner specified in this paragraph. The information submitted and all attachments (unless the attachment appears in the open scientific literature) must be in English. All information submitted must be true and correct.

(2) Information may be submitted on paper, or electronically, as follows:

(i) Information submitted on paper must be submitted in the form and manner set forth in EPA Form No. 7710–25, which is available from the

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Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information which is not submitted on the EPA Form No. 7710-25 or a photocopy thereof (e.g., on a form created by commercial form-making software) must be in a format pre-approved by the Agency.

(ii) Information may be submitted electronically (on magnetic or other media) pursuant to an EPA published format for electronic submissions. Such submissions must comply with this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of Form 7710–25.

* * * * *

(d) *General notice requirements.* (1) Each person who submits a notice must provide the information described in §720.45 and specified on the notice form, to the extent such information is known to or reasonably ascertainable by the person. In accordance with §720.50, the notice must also include any test data in the person's possession or control, and descriptions of other data which are known to or reasonably ascertainable by the person and which concern the health and environmental effects of the new chemical substance.

(2) A person who submits a notice to EPA under this part must provide EPA with an original and two complete copies of the notice, including all test data and any other information attached to the notice form. If information is claimed as confidential pursuant to §720.80, a sanitized copy must also be provided.

* * * * *

d. Section 720.45 is amended by revising paragraph (a) to read as follows:

§720.45 Information that must be included in the notice form.

* * * * *

(a)(1) The specific chemical identity of the substance that the person intends to manufacture or import, which includes the following:

(i) The currently correct Chemical Abstracts (CA) name for the substance, based on the Ninth Collective Index (9CI) of CA nomenclature rules and conventions, and consistent with listings for similar substances in the Inventory. For each substance having a chemical composition that can be represented by a specific, complete chemical structure diagram (a Class 1 substance), a CA Index Name must be provided. For each chemical substance that cannot be fully represented by a complete, specific chemical structure diagram (a Class 2 substance), or if the substance is a polymer, a CA Index Name or CA Preferred Name must be provided (whichever is appropriate based on CA 9CI nomenclature rules and conventions). In addition, for a Class 2 substance, the notice must identify the immediate chemical precursors and reactants by specific chemical name and Chemical Abstracts Service Registry Number (CASRN), if the number is available. Tradenames or generic names of chemical precursors or reactants are not acceptable as substitutes for specific chemical names.

(ii) The currently correct CASRN for the substance if a CASRN already exists for the substance.

(iii) For a Class 1 substance and for any Class 2 substance for which a definite molecular formula is known or reasonably ascertainable, the correct molecular formula.

(iv) For a Class 1 substance, a complete, correct chemical structure diagram; for a Class 2 substance or polymer, a correct representative or partial chemical structure diagram, as complete as can be known, if one can be reasonably ascertained.

(2) For a polymer, the submitter must also report the following:

(i) The specific chemical name and CASRN, if the number is available, of each monomer and other reactant used, at any weight percent, to manufacture the polymer. Tradenames or generic names of chemical reactants or monomers are not acceptable as substitutes for specific chemical names.

(ii) The typical percent by weight of each monomer and other reactant in the polymer (weight of the monomer or other reactant expressed as a percentage of the weight of the polymeric chemical substance manufactured), and the maximum residual amount of each monomer present in the polymer.

(iii) For monomers and other reactants used at 2 weight percent or less (based on the dry weight of the polymer manufactured), indicate on the PMN form any such monomers and other reactants that should be included as part of the polymer description on the Inventory, where the weight percent is based on either (A) the weight of monomer or other reactant actually charged to the reaction vessel, or (B) the minimum weight of monomer or other reactant required in theory to account for the actual weight of monomer or other reactant molecules or fragments chemically incorporated (chemically combined) in the polymeric substance manufactured.

(iv) For a determination that 2 weight percent or less of a monomer or other reactant is incorporated (chemically combined) in a polymeric substance manufactured, as specified in paragraphs (a)(2)(iii)(B) of this section, analytical data or appropriate theoretical calculations (if it can be documented that analytical measurement is not feasible or not necessary) to support this determination must be maintained at the site of manufacture or import of the polymer.

(v) Measured or estimated values of the minimum number-average molecular weight of the polymer and the amount of low molecular weight species below 500 and below 1,000 molecular weight, with a description of how the measured or estimated values were obtained.

(3) The person must use one of the following two methods to develop or obtain the specified chemical identity information reported under paragraphs (a)(1) and (2) of this section and must identify the method used in the notice:

(i) *Method 1.* Obtain the correct chemical identity information required by paragraphs (a)(1) and (2) of this section directly from the Chemical Abstracts Service (CAS), specifically from the CAS Registry Services Inventory Expert Service, prior to submitting a notice to EPA. A copy of the chemical identification report obtained from CAS must be submitted with the notice.

(ii) *Method 2.* Obtain the correct chemical identity information required by paragraphs (a)(1) and (2) from any source. The notice will be incomplete according to §720.65(c)(1)(vi) if the person uses Method 2 and any chemical identity information is determined to be incorrect by EPA.

(4) If an importer submitting the notice cannot provide all the information specified in paragraphs (a)(1) and (2) of this section because it is claimed as confidential by the foreign supplier of the substance, the importer must have the foreign supplier follow the procedures in paragraph (a)(3) of this section and provide the correct chemical identity information specified in paragraphs (a)(1) and (2) of this section directly to EPA in a joint submission or as a letter of support to the notice, which clearly references the importer's notice and PMN User Fee Identification Number. The statutory review process will commence upon receipt of both the notice and the complete, correct information.

(5) If a manufacturer cannot provide all the information specified in paragraphs (a)(1) and (2) of this section because the new chemical substance is manufactured using a reactant having a specific chemical identity claimed as confidential by its supplier, the manufacturer must submit a notice directly to EPA containing all the information known by the manufacturer about the chemical identity of the reported substance and its proprietary reactant. In addition, the manufacturer must ensure that the supplier of the confidential reactant submit a letter of support directly to EPA providing the specific chemical identity of the confidential reactant, including the CAS number, if available, and the appropriate PMN or exemption number, if applicable. The letter of support must reference the manufacturer's name and PMN User Fee Identification Number under §700.45(c)(3) of this chapter. The statutory review period will commence upon receipt of both the notice and the letter of support.

* * * * *

e. Section 720.80 is amended by revising paragraph (b)(2) to read as follows:

§720.80 General provisions.

* * * * *

(b) * * *

(2) If any information is claimed as confidential, the person must submit, in addition to the copies specified by §720.40, a sanitized copy of the notice form (or electronic submission) and any attachments.

(i) The original and two copies of the notice, specified at §720.40 (or electronic submission) and attachments must be complete. The submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form (or in EPA's electronic submission instructions).

(ii) The sanitized copy must be complete except that all information claimed as confidential in the original must be deleted. EPA will place this sanitized copy in the public file.

(iii) If the person does not provide the sanitized copy, or information in a health and safety study (except information claimed as confidential in accordance with §720.90), the submission will be deemed incomplete and the notice review period will not begin until EPA receives the sanitized copy or the health and safety study information is included, in accordance with §720.65(c)(1)(vii).

* * * * *

f. Section 720.95 is amended by revising the third sentence to read as follows:

§720.95 Public file.

* * * Any of the nonconfidential material described in this subpart will be available for public inspection in the TSCA Nonconfidential Information Center, Room B607, Northeast Mall, 401 M St., SW., Washington, DC between the hours of 1 p.m. and 4 p.m., weekdays, excluding legal holidays.

g. Section 720.102 is amended by revising paragraphs (c) and (d) to read as follows:

§720.102 Notice of commencement of manufacture or import.

* * * * *

(c) *Information to be reported on form.* (1) The notice must be submitted on EPA (Form 7710–56), which is available from the Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The form must be signed and dated by an authorized official. All information specified on the form must be provided. The notice must contain the following information:

(i) The specific chemical identity of the PMN substance.

(ii) A generic chemical name (if the chemical identity is claimed as confidential by the submitter).

(iii) The premanufacture notice (PMN) number assigned by EPA.

(iv) The date of commencement for the submitter's manufacture or import for a non-exempt commercial purpose (indicating whether the substance was initially manufactured in the United States or imported). The date of commencement is the date of completion of non-exempt manufacture of the first amount (batch, drum, etc.) of new chemical substance identified in the submitter's PMN. For importers, the date of commencement is the date the new chemical substance clears United States customs.

(v) The name and address of the submitter.

(vi) The name of the authorized official.

(vii) The name and telephone number of a technical contact in the United States.

(viii) The address of the site where commencement of manufacture occurred.

(ix) Clear indications of whether the chemical identity, submitter identity, and/or other information are claimed as confidential by the submitter.

(2) If the submitter claims the chemical identity confidential, and wants the identity to be listed on the confidential portion of the Inventory, the claim must be reasserted and substantiated in accordance with §720.85(b). Otherwise, EPA will list the specific chemical identity on the public Inventory. Submitters who did not claim the chemical identity, submitter identity, or other information to be confidential in the PMN cannot claim this information as confidential in the notice of commencement.

(d) *Where to submit.* Notices of commencement of manufacture or import should be submitted to:

TSCA Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

* * * * *

Appendix A [Removed]

h. Appendix A to part 720 is removed.

3. In part 721:

PART 721—[AMENDED]

a. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2652(c).

b. Section 721.25 is amended by revising the last sentence of paragraph (a) to read as follows:

§721.25 Notice requirements and procedures.

(a)* * * The notice must be submitted on EPA Form 7710–25, and must comply with the requirements of part 720 of this chapter, except to the extent that they are inconsistent with this part 721.

* * * * *

[FR Doc. 95–7709 Filed 3–24–95; 3:32 pm]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50595B; FRL–4921–9]

RIN 2070–AC14

Amendment for Expedited Process To Issue Significant New Use Rules for Selected New Chemical Substances; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating an amendment to the regulations governing significant new uses of chemical substances. The amendment authorizes EPA to impose any of the "significant new use" designations in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate "significant new use" rules (SNURs) for

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certain new chemical substances not subject to the Toxic Substances Control Act (TSCA) section 5(e) Orders (referred to as "non-5(e) SNURs"). Currently, the significant new use regulations limit the type of activities which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. This amendment allows EPA to promulgate expedited SNURs for certain new chemical substances without issuing a section 5(e) Order for the substance, and thereby facilitates EPA's ability to efficiently and expeditiously regulate new chemical substances.

DATES: This rule will become effective on May 30, 1995. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 12, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, when EPA regulates activities associated with a new chemical substance described in a premanufacture notice (PMN), EPA generally issues an Order under section 5(e) of TSCA regulating the PMN submitter and/or promulgates a SNUR under section 5(a)(2) regulating all manufacturers and processors of the PMN substance. EPA promulgated a procedural "Generic SNUR" (or "Expedited Follow-Up Rule") in 40 CFR part 721 on July 27, 1989 (54 FR 31298). On February 8, 1993, EPA proposed amending the SNUR regulations in 40 CFR 721.170(c)(1) to authorize EPA to impose any of the "significant new use" designations in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate non-5(e) SNURs. 58 FR 7676. (Public hearings were held in April 1993.) Previously, significant new use designations available for expedited non-5(e) SNURs were limited to environmental release activities and certain industrial, commercial, or consumer activities. This amendment authorizes EPA to include other important designations, such as protection in the workplace and hazard communication, in non-5(e) SNURs promulgated via expedited rulemaking procedures.

As explained in the rule proposal: "Whereas a section 5(e) Order applies only to the original PMN submitter who signs the Order, a SNUR applies to all manufacturers and processors of the chemical substance. The reporting requirements of a non-5(e) SNUR apply also to the original PMN submitter (because, without a section 5(e) Order, the PMN submitter is not exempted by 40 CFR 721.45(i)). Since only one Agency action is required instead of two, and fewer EPA resources are necessary to obtain similar regulatory results, a non-5(e) SNUR is more efficient than a combination of section 5(e) Order and '5(e)-SNUR' (under 40 CFR 721.160) to regulate new chemical substances." 58 FR 7677. The rule proposal also stated that promulgation of a non-5(e) SNUR would allow the PMN submitter to commence commercial manufacture of the PMN substance sooner than would issuance of a section 5(e) Order followed by promulgation of a 5(e)-SNUR.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). The enumerated factors pertain to the potential for increased manufacturing and processing volume, increased exposure, and changes in anticipated methods of manufacture, processing, distribution and disposal. Once EPA has, by rule, determined that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before commencing any manufacturing, importing, or processing activities designated by the SNUR as a "significant new use." The mechanism for reporting under this requirement is set out in 40 CFR 721.10.

The supporting rationale and background for SNURs are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published on April 24, 1990 at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations.

II. Applicability of General Provisions

General provisions for SNURs appear in subpart A of 40 CFR part 721. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of SNURs to uses occurring before the effective date of a SNUR. Rules on user fees appear in 40 CFR part 700. Persons subject to a SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action, if appropriate, under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Discussion of Comments and Final Rule

The public comments submitted to EPA on the proposed rule indicated a need for clarification regarding EPA's goals underlying this rule amendment. The goals that EPA believes are promoted by this amendment are: (1) to regulate new chemical substance risks using fewer EPA resources, and (2) to allow PMN submitters proposing to produce such substances to commence commercial manufacture sooner (subject to appropriate limitations that reduce risk). The amendment will achieve these goals by eliminating language in 40 CFR §721.170(c)(1) that previously prevented EPA from promulgating expedited non-5(e) SNURs containing worker protection or hazard communication requirements. In cases where those types of requirements are appropriate, this amendment will enable EPA and the PMN submitter to bypass development of a section 5(e) Order and proceed directly to promulgation of a SNUR. The PMN submitter and other interested parties will generally have a similar opportunity for dialogue with EPA and input into development of the specific regulatory terms as they do in the development of a section 5(e) Order/5(e)-SNUR combination.

1. *Comment.* Many comments indicated concern that EPA would use the amendment to promulgate more SNURs with less input from the PMN submitter.

EPA Response. To the contrary, EPA's intentions are to: (1) issue fewer section 5(e) Orders, not more SNURs; and (2) where appropriate, develop non-5(e) SNURs based on voluntary amendments of PMNs that accomplish the same end as section 5(e) Order/5(e)-SNUR combinations but without the extra step.

In particular, EPA intends a process involving the active participation of the original PMN submitter for the substance that may be subject to a SNUR; this process will be less formal than negotiating a section 5(e) Consent Order.

As explained in the preamble to the proposed rule (58 FR 7678, February 8, 1993), the non-5(e) SNUR process provides interested persons several opportunities for comment. Section 721.170(d)(2) requires EPA to notify the PMN submitter at least 7 days before expiration of the 90–day PMN review period regarding the Agency's risk concerns and the activities under consideration for designation as a significant new use. In most cases, EPA actually expects to provide this notice many days before the "Day-83" deadline required by section 721.170(d)(2). Of course, once a PMN submitter receives this notice, the submitter may respond to EPA with comments regarding both the risk concerns and the potential regulatory terms or "significant new use" designations. Furthermore, the expedited "direct final" non-5(e) SNUR rulemaking procedure does provide a comment opportunity, which was described in the preamble to the proposed rule (58 FR 7678) as well as in the preamble to the Generic SNUR (54 FR 31305, July 27, 1989). Thus, this expanded non-5(e) SNUR process will in fact provide individual notice to the PMN submitter before the non-5(e) SNUR is published, followed by notice and opportunity for comment to all persons when the non-5(e) SNUR is published in the **Federal Register**.

Also as stated in the rule proposal: "A non-5(e) SNUR is typically appropriate for PMNs on chemical substances expected to be toxic but where the PMN indicates the submitter's intention to limit activities, implement control measures, or otherwise adequately mitigate human exposures and environmental releases. Activities described in such PMNs may not present an unreasonable risk of injury to human health or the environment so as to warrant the issuance of an Order under section 5(e) of TSCA [followed by promulgation of a 5(e)–SNUR], but deviations from the described activities may present an unreasonable risk warranting the imposition of regulatory controls via a section 5(e) Order. In those cases, a non-5(e) SNUR may be the least burdensome regulatory alternative for the Agency to pursue, as it will allow the PMN submitter to proceed with planned activities while requiring notification to, and review by, EPA for activities which have not been reviewed." 58 FR 7677.

Additionally, using this non-5(e) SNUR process, where EPA perceives that use of a new chemical substance as described in the PMN may present unreasonable risk, then, instead of suggesting a section 5(e) Consent Order/5(e)-SNUR combination, EPA may informally request the submitter to amend its PMN to include appropriate exposure controls. If the submitter agrees to amend its PMN accordingly, EPA can then allow the submitter to commence manufacture immediately upon expiration of the 90–day PMN review period. Because the amended PMN would reflect the same controls that will be in the non-5(e) SNUR, EPA will not require the submitter to wait until the non-5(e) SNUR is published to commence commercial manufacture.

If, instead, the PMN submitter cannot reach agreement with EPA regarding the need or appropriateness of the modified terms for the PMN, and/or prefers to negotiate a formal section 5(e) Consent Order, EPA may then issue a section 5(e) Order. However, experience shows that additional time and resources will very probably need to be expended before the section 5(e) Order can be finalized, which must occur before EPA will allow the PMN review period to expire, which in turn must precede commencement of commercial manufacture of the PMN substance. Section 5(e)(1)(B)(ii) of TSCA prohibits EPA from issuing a section 5(e) Order after expiration of the 90–day statutory review period. Therefore, EPA will not allow the review period to expire until the section 5(e) Order is finalized, and "extension" (pursuant to TSCA section 5(c)) or "suspension" (pursuant to 40 CFR 720.75(b)) of the review period is usually necessary to allow sufficient time for development of the section 5(e) Order. TSCA section 5(a) prohibits commencement of commercial manufacture of the PMN substance before the 90–day statutory PMN review period expires. Furthermore, if EPA and the submitter cannot agree on the terms for a section 5(e) Consent Order, EPA can issue a section 5(e) Order unilaterally.

Thus, this rule amendment is intended to eliminate unnecessary section 5(e) Orders and should not itself increase the number of new chemical substances regulated by EPA via SNURs under section 5 of TSCA. Rather, substances that would formerly have been regulated by 5(e)-SNURs may now be regulated by non-5(e) SNURs. The amendment still requires EPA to provide notice allowing the PMN submitter (or others) to respond to EPA with comments regarding the perceived risks and the proposed regulatory requirements for a given new chemical substance.

2. *Comment.* Some comments indicated a desire for criteria to restrict EPA's discretion as to when it would use the non-5(e) SNUR procedure. The Chemical Manufacturers' Association (CMA) suggested that EPA should commit to promulgating expedited non-5(e) SNURs only when EPA finds that the chemical substance "may present an unreasonable risk," i.e., the standard articulated in TSCA section 5(e) for the issuance of administrative orders.

EPA Response. EPA has stated many times that TSCA authorizes EPA to promulgate a SNUR without finding that a chemical substance "may present unreasonable risk." Rather, section 5(a)(2) of TSCA and 40 CFR 721.170(b), which is not being amended in this rulemaking, set forth the criteria EPA has used and will continue to use for non-5(e) SNURs.

As discussed above, where EPA perceives that the scenario described in a PMN may present an unreasonable risk, EPA may request the submitter to amend the PMN to include appropriate exposure controls. If the submitter refuses, EPA would not promulgate a non-5(e) SNUR, but would likely attempt to negotiate a section 5(e) Consent Order. Unlike promulgation of a non-5(e) SNUR, to issue a section 5(e) Consent Order, EPA must determine that activities associated with the PMN substance "may present an unreasonable risk" of injury to human health or the environment. Again, however, extension or suspension of the review period would be necessary to allow sufficient time for development of the section 5(e) Order, and, if EPA and the submitter cannot agree on the need or terms for a section 5(e) Consent Order, EPA can issue a section 5(e) Order unilaterally.

Nevertheless, as elaborated elsewhere, EPA believes that non-5(e) SNURs will save time and resources for both EPA and industry without unduly sacrificing the ability to negotiate the regulatory terms. EPA expects that PMN submitters will recognize this and will generally prefer a non-5(e) SNUR over a section 5(e) Order/5(e)–SNUR combination.

3. *Comment.* Many commenters disapproved of EPA's ability to use the expedited non-5(e) SNUR procedure to impose regulatory requirements not listed in subpart B of 40 CFR part 721.

EPA Response. The final rule limits "significant new use" designations for non-5(e) SNURs to subpart B provisions only. EPA expects that limiting expedited non-5(e) SNURs to the standard "significant new use" designations published in subpart B ...

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40 CFR part 721 will help provide PMN submitters with a clear understanding when notified by EPA of the regulatory terms that EPA intends to apply to their PMN substance via a non-5(e) SNUR.

If, in the future, EPA decides that additional "significant new use" designations are needed for non-5(e) SNURs, EPA can add those designations to subpart B via notice and comment rulemaking or promulgate individual SNURs containing those designations through notice and comment rulemaking.

4. *Comment.* Several commenters disagreed with EPA's assertion that, since suspensions to issue section 5(e) Orders would be eliminated, the proposed amendment would allow commercial manufacture to commence sooner. They stated the amendment would actually cause greater delay because EPA could declare any use inconsistent with the PMN to be a significant new use. They claim that the PMN submitter will need more time to identify all potential uses and associated information before submitting a PMN, so that EPA will not promulgate a SNUR requiring further notices for those uses of the substance.

EPA Response. The comment indicates a need to clarify how EPA regulates new chemical substances and particularly how the word "use" is employed in the context of new chemical substance SNURs and section 5(e) Consent Orders. The SNURs promulgated by EPA to date for new chemical substances show that EPA rarely, if ever, designates as a "significant new use" every activity not expressly contemplated in the PMN. Rather, EPA generally defines a "significant new use" for new chemical substances as activities lacking specific exposure controls (such as gloves, goggles, respirators and waste disposal) which therefore may present an unreasonable health or environmental risk. EPA will define as "significant" any use not identified in the PMN only where the substance is expected to be toxic and EPA cannot be certain that specific exposure controls will adequately mitigate all concerns. In sum, the amendment is not intended to change the substantive content or terms that EPA has used to regulate new chemical substances or to write SNURs in the past; rather, it is a procedural change enabling EPA to establish those same terms in an expedited SNUR without first issuing a section 5(e) Consent Order. This amendment should not change the amount of time and effort a PMN submitter must invest to identify potential uses of the new chemical substance. PMN submitters will continue to be required to provide information that is known to or reasonably ascertainable by the submitter when the PMN is submitted and throughout the PMN review period. (15 U.S.C. 2604(d)(1)(A), 40 CFR 720.45).

5. *Comment.* One commenter stated that certain designations in subpart B are "by their nature" not appropriate for non-5(e) SNURs (quoting the preambles to the proposed and final Generic SNUR, see e.g., 54 FR 31304). The commenter also stated "EPA should not designate the failure to use personal protective equipment as a significant new use of a chemical substance that has completed premanufacture review and is not subject to an Order under Section 5(e). If such protection is required, it should be imposed on the initial manufacturer who submitted the PMN pursuant to a Section 5(e) Consent Order .... EPA should not shortcut this process simply because 'a non-5(e) SNUR is more efficient than a combination of Section 5(e) order and a 5(e) SNUR ... to regulate new chemical substances.'" 58 FR 7677.

EPA Response. Several provisions in subpart B (i.e., 40 CFR 721.80(k), (q), and (t)) expressly refer to terms of the section 5(e) Consent Order and are thus inapplicable to non-5(e) SNURs. There is no need to specifically exclude these provisions from §721.170.

Based on over 4 years of experience with 5(e)–SNURs and non-5(e) SNURs under §§721.160 and 721.170, EPA now believes that provisions for worker protection and hazard communication should be available if EPA and the PMN submitter prefer to bypass the cumbersome section 5(e) Order/5(e)–SNUR process and go directly to a non-5(e) SNUR. Under the revised non-5(e) SNUR process, allowing designation of any of the "significant new use" provisions in subpart B, risks to workers can be controlled via SNURs without the need to also issue Consent Orders.

EPA believes the imposition of worker protection requirements in a non-5(e) SNUR is appropriate where the new chemical substance is expected to be toxic to humans and the PMN indicates that the submitter will implement worker protection measures. Again, this non-5(e) SNUR will not only save EPA resources, but will also allow the PMN submitter to commence manufacture sooner (i.e., immediately upon expiration of the 90–day review period, rather than suspending or extending the review period to negotiate a section 5(e) Order), provided that the submitter does in fact implement the stated protective measures so that the submitter is not required by the SNUR to submit another notice to EPA. The non-5(e) SNUR will bind the PMN submitter as effectively as a section 5(e) Order while saving the submitter the costs of delayed marketing of the new chemical substance.

6. *Comment.* EPA should not disrupt business by defining as a "significant new use" an activity which the original PMN submitter or another company commences between the filing of the notice of commencement (NOC) of manufacture (per 40 CFR 720.102) and the publication of the SNUR.

EPA Response. EPA generally does not consider those activities that commenced prior to publication of a proposed SNUR to be "significant new uses." In SNUR preambles for individual chemicals, EPA routinely states that a "new" use is one that is not ongoing when the proposed SNUR is published in the **Federal Register**. If EPA is informed that a use which it proposes to define as "new" was already ongoing before the proposal was published, EPA will generally determine that use is not "new." See, e.g., 57 FR 31326, July 15, 1992. (One exception would be if the original PMN submitter engaged in an activity prohibited by a section 5(e) Order.)

7. *Comment.* Employers have hazard communication and worker protection obligations under the Occupational Safety and Health Act without regard to the existence of TSCA section 5(e) Orders and SNURs. EPA should not over extend itself into the area of occupational safety and health.

EPA Response. TSCA section 5 authorizes EPA to review and regulate new chemical substances to prevent unreasonable risks to human health and the environment. A senate report discussion of TSCA section 5 expressly notes that the Federal statutes existing when TSCA was enacted, including specifically the Occupational Safety and Health Act, "do not provide for this type of premarket scrutiny." *S. Rept. No. 698, 94th Cong. 2d Sess. 1 (1976).* Requirements imposed by the Occupational Safety and Health Administration (OSHA) may not always apply to new chemical substances governed by TSCA section 5. For example, OSHA hazard communication requirements only apply to a substance for which there is at least one positive study (29 CFR 1910.1200(d)(2)), whereas many new chemical substances have not been tested at all. Furthermore, OSHA permissible exposure limits (PELs) (29 CFR Part 1910) generally apply only to specific chemical substances, and very few new chemical substances subject to section 5 of TSCA are subject to OSHA PELs. Lastly, the requirements of EPA's worker protection and hazard communication provisions in section 5(e) Consent Orders and SNURs are consistent with OSHA's requirements.

8. *Comment.* One commenter stated that the increased incidence of non-5(e) SNURs would subject more chemicals to TSCA section 12(b) export notification requirements, increasing the burden on industry and EPA to report such activity. The commenter suggested a mechanism so that substances subject to a SNUR but contained in finished products or a small percentage of a mixture were not subject to TSCA 12(b) notification.

EPA Response. As stated previously in response to other comments, the intent of this rule amendment is not to increase the number of new chemical substances regulated by EPA. Rather EPA expects to offer PMN submitters the option of a non-5(e) SNUR, instead of a section 5(e) Consent Order. In either instance, EPA has determined that exposure controls are needed and will regulate the substance through one of those procedural mechanisms. This rule will not increase the section 12(b) reporting burden on industry or EPA.

The same comment suggesting a *de minimis* exemption for section 12(b) reporting was recently submitted on a proposed amendment to the section 12(b) rule at 40 CFR part 707, subpart D. EPA considered this comment in that rulemaking and stated in the preamble to the final rule amending the section 12(b) rule: "While de minimis–type regulatory exemptions may be appropriate in many circumstances, at the present time, EPA believes it is preferable to provide foreign countries 12(b) notifications so they have the opportunity to make their own determinations regarding what level of a chemical in mixtures is deemed important. However, if further experience with the 12(b) or PIC [Prior Informed Consent joint program of the United Nations Environment Programme and the Food and Agriculture Organization] programs indicate that a *de minimis* regulatory exemption is warranted, EPA will reexamine this option at a later time." 58 FR 40240–41; July 27, 1993. Therefore, under the current rules implementing section 12(b) of TSCA (40 CFR part 707, subpart D), if a substance or mixture is subject to a section 5(e) Order or rule, then export notification is required, except for substances contained in "articles" (as defined in 40 CFR 720.3(c)).

9. *Comment.* The original Generic SNUR, including the restriction on non-5(e) SNUR designations, was negotiated by a multi-interest dialogue group and should not be changed unilaterally by EPA.

EPA Response. EPA has followed the notice and comment rulemaking procedures required by the Administrative Procedure Act, and believes it has improved the final rule amendment in direct response to the valuable comments that were submitted. Given the elimination of non-subpart B provisions, the benefits to PMN submitters from this rulemaking, and the potential delays of procedural approaches other than promulgating this final rule at this time, EPA has decided that it is in the public interest to go forward with this final rule. EPA expects this final rule to satisfy all statutory requirements and most, if not all, interested parties.

IV. Economic Analysis

The Agency's complete economic analysis is available in the public record for this rulemaking (OPPTS–50595B). The regulatory impact analysis estimates the costs and benefits attributable to the final regulation. In this case, the analysis also contains estimates for three amendments to other regulations, namely the Revisions of Premanufacture Notification Regulations, the Revision of Exemption for Chemical Substances Manufactured in Quantities of 1,000 Kilograms or Less Per Year, and the Revisions of Exemption for Polymers. As these regulations are amendments to current regulations, the costs and benefits are incremental and estimate the effect of the amendment with respect to the old regulation.

This non-5(e) SNUR amendment will eliminate the need to develop a section 5(e) Consent Order before promulgating an expedited SNUR in those cases where EPA determines that activities described in the PMN submission will not present unreasonable risk. The major industry benefit is the avoidance of the delay and costs associated with negotiating a Consent Order; generally, the submitter will be able to commence commercial manufacture immediately after the 90–day PMN review period without suspending or extending it. The submitter, along with other manufacturers and processors, will be bound by the expedited SNUR.

Industry savings from this amendment are based on avoidance of delay costs and are estimated to range from $65,000 to $330,000 per year. Annual government savings are estimated to range from $240,000 to $960,000. These estimates are based on the following assumptions: (1) 1,000 to 3,000 PMNs will be submitted annually; (2) in the absence of this amendment, 5% of these PMNs will be subject to section 5(e) Orders; and (3) with this amendment, 40% of these section 5(e) Orders will be avoided and replaced by non-5(e) SNURs.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50595B). The record includes basic information and comments considered by the Agency in developing this rule. A public version of the record is available in the TSCA Nonconfidential Information Center, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located in Rm. NE–B607, Northeast Mall, 401 M St., SW., Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a "significant regulatory action" as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant") (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866 (58 FR 51735, October 4, '993) it has been determined that this rule is not a "significant regulatory action" under section 3(f) of the Order. This action is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the

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SNUR notice submitters were small firms, the number of small businesses affected by this rule will not be substantial.

C. Paperwork Reduction Act

There is no additional reporting burden associated with this amendment. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq., and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 21, 1995.

Carol M. Browner,

Administrator.

Therefore, 40 CFR Chapter I, part 721 is amended as follows:

PART 721 — [AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By revising §721.170(c)(1) to read as follows:

§721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.

* * * * *

(c) * * *

(1) When EPA decides to establish significant new use reporting requirements under this section, EPA may designate as a significant new use any one or more of the activities set forth in subpart B of this part. In addition, EPA may designate specific recordkeeping requirements described under subpart C of this part that are applicable to the substance.

* * * * *

[FR Doc. 95–7710 Filed 3–24–95; 3:32 pm]

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40 CFR Part 723

[OPPTS–50594B; FRL–4929–8]

RIN 2070–AC14

Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments to the polymer exemption rule to expand the exemption criteria and exempt manufacturers of eligible polymers from certain section 5 premanufacture notification (PMN) requirements. EPA has determined that the manufacture, processing, distribution in commerce, use, and disposal of new chemical substances meeting the revised polymer exemption criteria will not present an unreasonable risk of injury to human health or the environment under terms of the exemption. These final amendments reflect criteria developed and used by EPA to assess the hazards associated with new polymeric substances over the past 15 years the New Chemicals Program has been in place. EPA believes that these amendments will encourage the manufacture of safer polymers by reducing industry's reporting burden for this category of chemical substances.

DATES: This rule will become effective May 30, 1995. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 12, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404; TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The polymer exemption rule was originally promulgated on November 21, 1984. The supporting rationale and background for that exemption was published at 49 FR 46066 on November 21, 1984 and 46 FR 54688 on November 3, 1981. On February 8, 1993, EPA proposed amendments to the 1984 polymer exemption rule (58 FR 7679). Consult those documents for further information on the objectives, rationale, and procedures for the rule and the basis for the finding that polymers eligible for exemption will not present an unreasonable risk of injury to human health and the environment under terms of the exemption. The docket control number for this document is OPPTS–50594B.

The amended rule allows manufacture and distribution of polymers meeting the exemption criteria without submission of a PMN or an exemption notice prior to commencement of manufacture for a commercial purpose under terms of the exemption. However, manufacturers of exempted polymers are required to submit an annual report on exempted polymers for which manufacture or importation commenced for the first time under terms of the exemption during the preceding calendar year. Recordkeeping requirements are retained as part of the rule to document compliance with the exemption criteria. Overall, these amendments constitute a substantial revision of the existing polymer exemption rule.

I. Background

A. Statutory Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. A "new chemical substance" is any substance that is not on the Inventory of Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment. In this preamble and under the rule, references to "manufacture" and "manufacturer" include "import" and "importer", respectively, as defined in TSCA section 3 and the PMN rule.

B. History/Rationale

In 1984, the Agency published a TSCA section 5(h)(4) rule granting an exemption for persons who manufacture or import certain polymers, set forth at 40 CFR 723.250. Since promulgation of the 1984 polymer exemption rule (the "1984 exemption"), the Agency has reviewed over 2,000 polymers submitted as polymer exemption notices in the 21–day review process in addition to over 10,000 polymers submitted as PMNs since the initiation of the 90–day PMN review process in 1979. In the course of performing hazard and risk assessments for these polymers, the Agency has developed internal guidelines for identifying polymeric substances that do not present an unreasonable risk of injury to human health or the environment. These guidelines are based on (1) EPA's ongoing review of the available literature on the toxicity of polymers, (2) EPA's analyses of various samples of the PMN polymer data base, (3) information provided to EPA by outside groups

during and subsequent to development of the 1984 exemption, and (4) professional judgment of EPA staff scientists. The final rule will bring the 1984 polymer exemption criteria into close alignment with the internal criteria currently being used by EPA to assess hazards and risks of polymers. The eligibility criteria in the final rule, which are based on the 1984 polymer exemption criteria, have been refined and expanded to allow more low-risk polymers to qualify for exemption. While expanding the category of safer polymers, the exemption continues to exclude or restrict those polymers that the Agency believes should be reviewed under the 90–day PMN process.

Both the Agency and the polymer industry have had 10 years of practical experience with the polymer exemption. Since the current exemption criteria define what the Agency considers to be low-risk polymers, eligible polymers generally receive only a cursory Agency review to validate that the polymer meets the eligibility criteria. Consequently, most polymers eligible for the exemption present no issues and manufacture can commence when the 21–day review period expires.

Based on the Agency's review and analysis of polymer exemption applications submitted to date, EPA has determined that an overwhelming number of submitters correctly determined the eligibility status of the polymer. Consequently, the Agency believes that it is no longer necessary for EPA to expend its limited resources to validate a polymer's eligibility under the exemption. The Agency would like to shift the resources currently expended on analytical screening of this class of low-risk substances to the substantive review of substances that present unknown or potentially higher risks. Moreover, the Agency believes that industry has become sufficiently familiar with the criteria over the past 10 years and is capable of correctly determining the eligibility of a polymer under the exemption. Therefore, EPA has decided to eliminate the requirement that a company submit an exemption application prior to the manufacture or importation of an exempted polymer under terms of the exemption. Instead, the final rule requires submission of an annual report on polymers for which manufacture or importation under terms of the exemption commenced for the first time during the preceding calendar year. However, to increase the level of assurance that polymers manufactured under the exemption meet the eligibility criteria, EPA has prepared a draft technical guidance document and will hold workshops on determining eligibility of exempted polymers for polymer manufacturers. In addition, the final rule requires that records documenting an exempted polymer's eligibility under terms of the exemption be maintained at the manufacturing site.

The Agency believes that expanding the 1984 exemption criteria and eliminating routine EPA review will increase the number of polymeric substances eligible for exemption, encourage the manufacture of safer polymers, and result in resource savings to industry and the EPA without decreasing or compromising the level of risk reduction/management afforded by a 21–day or 90–day review of these same substances.

II. Final Amendments

A. Summary of Final Amendments

1. *Definition of polymer.* To be considered for exemption, substances must meet the definition of polymer in the rule. EPA is amending the definition of "polymer" to adopt the exact wording of the internationally recognized definition of polymer which was developed at the Organization of Economic Cooperation and Development (OECD) Expert Group Meetings on Polymers held in Toronto, Canada (January, 1990), Paris, France (October, 1991), and Tokyo, Japan (April, 1993) and agreed upon in May, 1993 by the OECD Member Countries. (Copies of the OECD Chairperson's reports are available in the docket for this rulemaking.) The definition, which is based on the Agency's 1984 polymer definition at 40 CFR 723.250, ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding. Minor revisions are included in the definition in response to comments.

2. *Classes of polymers ineligible for exemption.* Section 723.250(d) of the 1984 exemption established certain classes of polymers that were ineligible for exemption. As with the 1984 exemption, polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize will remain ineligible for exemption in this final rule. In addition, polymers that are prepared from monomers or other reactants that are included in the polymer identity must be existing chemical substances on the TSCA Inventory or otherwise excluded or manufactured under terms of another TSCA section 5 exemption. The final rule excludes from eligibility water-absorbing polymers with molecular weights (MW) equal to or greater than 10,000 daltons; moreover, the term "water-absorbing" has been re-defined to describe more specifically the category of polymers that the Agency believes should remain subject to the full PMN review process. The final rule also amends certain restrictions contained in the 1984 exemption for cationic polymers and polymers that contain certain elements. Restriction on polymers that contain certain reactive functional groups have been amended and are part of the eligibility criteria for polymers with MW equal to or greater than 1,000 and less than 10,000 daltons (§720.250(e)(1)).

3. *Polymers eligible for the exemption.* Polymers with number-average MW greater than 1,000 daltons and polyesters that are made from a specified list of reactants remain eligible for exemption. The final rule sets limits on oligomer content and reactive functional groups for polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons. In addition, polymers with number-average MW equal to or greater than 10,000 daltons and restricted oligomer content are also eligible for exemption. In the 1993 proposal, the Agency requested comment on its proposal to impose certain restrictions relating to potential inhalation exposure of respirable water-insoluble polymer particles, along with several alternatives for dealing with potential lung effects associated with the inhalation of water-insoluble particles of respirable size. Based on comments and further analysis of the available data, the Agency has removed the restrictions on water-insoluble polymers with MW of 10,000 daltons or greater, with the exception of water-absorbing polymers which are ineligible for exemption.

Polyesters remain eligible as in the current exemption; however, in response to comments that the Agency should expand the category of polyester polymers eligible for exemption, the final rule includes a number of additional substances in the list of acceptable polyester reactants.

Finally, the following classes of polymers are now eligible for exemption: (a) polymers that contain less than 32 percent carbon; (b) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers; and (c) polymers made from reactants that contain halogen atoms or cyano groups

4. *General provisions.* In the 1993 proposal, manufacturers and importers would have been required to submit an abbreviated notice within 30 calendar days following the first manufacture or import of an eligible polymer rather

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than 21 days prior to manufacture (import) as required in the 1984 exemption. However, the final rule further modifies the notification provisions and now requires only that manufacturers of exempt polymers submit an annual report on all exempted polymers for which manufacture or importation under terms of the exemption commenced for the first time during the preceding calendar year. This annual report would provide the Agency with information concerning use of the exemption. Manufacturers are required to maintain specific records to document a polymer's eligibility under the exemption rule.

With the elimination of the obligation to notify EPA in advance of manufacture of an exempted polymer, the use of EPA Form 7710–25 will not be required. However, the final rule requires that certain information be maintained at the site of manufacture including chemical identity and structure, records of production volume for the first 3 years of manufacture, date of commencement of manufacture or import, certification that the polymer meets the conditions of the exemption, and information that demonstrates compliance with the exemption, including analytical data or other information that substantiates the manufacturer's claim of eligibility under criteria established for minimum number average MW and restricted oligomer content.

EPA proposed but is not requiring that polymer identity be described by a Chemical Abstracts (CA) Index Name or CA Preferred Name, since manufacturers are not required to submit an exemption notice to the Agency under the final rule. Finally, the Agency has determined, for the reasons outlined in the discussion below, that the revocation provisions in the 1993 proposal are not necessary for the Agency to make its determination that this category of substances will not present unreasonable risk to human health and the environment and has deleted these provisions in their entirety.

B. Discussion of the Amendments and Response to Comments

The final rule adopts many of the proposed amendments without changes. However, as indicated above, certain provisions of the proposed amendments have been revised in light of the Agency's consideration of comments received. A discussion of the major comments, the Agency's responses, and the amended provisions follow:

1. *Definition of polymer.* Under the proposal, EPA proposed to revise the definition of polymer in the 1984 exemption to conform with the international definition of polymer recently adopted by OECD Member Countries, including the United States, Canada, Japan, and the member nations of the European Union. The revised definition retains the meaning and purpose of the 1984 exemption definition of polymer. For purposes of this exemption, the term "polymer" means "a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units."

The term "monomer unit," which replaces the non-standard term "internal subunit" used in the 1984 exemption, means the reacted form of the monomer in a polymer, i.e., the monomer must have formed at least one covalent bond with another like or unlike molecule under the conditions of the relevant polymer-forming reaction. The fact that a monomer must be capable of forming two or more such bonds is not a requirement that it do so to be considered "the reacted form;" one is sufficient. Consequently, "polymer molecules," defined as containing "at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant," continue to require at least 4 precursor units, as in the 1984 definition. The difference is that, under the proposal, at least 3 of the units must be in a "sequence," and further, one of the groupings could come from an "other reactant" as well as from a monomer. The first change ("sequence") is slightly more restrictive and the second ("other reactant") slightly less restrictive than the present definition. The net effect of the change, made to be consistent with protocols of the OECD, is expected to be minimal. The term "sequence" is defined as part of the polymer definition in the final rule. "Monomer" and "reactant" remain consistent with the terms used for purposes of Inventory reporting and premanufacture notification, wherein "reactants" include monomers, chain transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups if incorporated into the polymer molecule.

Comment. The Society of the Plastics Industry (SPI) commented that the new polymer definition should be clear and complete. By using wording that strays from the OECD definition, EPA has rendered its definition unclear and made interpretation difficult. The definition of "polymer molecule" that uses the term "monomer unit" cannot be equated with the earlier definition that used "internal subunit" because a "monomer unit" does not have to be internal. The term "polymer molecule" defined at §723.250(b), requiring at least two internal monomer units, is in conflict with the statement in the preamble that "at least three of the units must be internal."

Response. The polymer definition in the proposed rule represents a version proposed before an OECD meeting held in April 1993 in which the participants agreed upon an interpretation of the polymer definition. (The definition of the term "polymer molecule", which is responsible for some of the confusion, was introduced to assist in defining "polyester," which is not relevant to the OECD definition of polymer.) EPA has therefore made changes in the relevant provisions of the rule.

Comment. SPI commented that the definition of "reactant" is inconsistent with the definition of "reactive functional group" and is problematic because of EPA's dependence on subjective intent; it recommends that the language "reasonably be anticipated" and "reasonably ascertainable" be used instead of depending on intent.

Response. The Agency does not believe there is an inconsistency between the definitions, nor any particular reason why they should be consistent, since they are describing different things and addressing different issues. Sodium hydroxide may be a reactant, but it can hardly be a reactive functional group. Furthermore, many chemically reactive substances are not "reactants" in this context because they are not intended (or reasonably anticipated) to become chemically part of the polymer.

2. *Polymers ineligible for exemption*—(a) *Exclusion of certain polymers that are cationic or anticipated to become cationic in aquatic environments.* The Agency continues to have ecotoxicity concerns for cationic polymers with specific characteristics but believes that certain restrictions in the 1984 exemption can be modified as discussed in the 1993 proposal. No comments were received on this provision. Accordingly, under the final rule, the current restriction on cationic polymers at §723.250(d)(1) is amended to provide that certain cationic polymers will be eligible for exemption if:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (e.g., polymers that will be used as ion exchange beads), or

(ii) The combined (total) functional group equivalent weight of cationic groups (e.g., primary, secondary and tertiary amines, quaternary ammonium, phosphonium, and sulfonium) in the polymer is equal to or greater than 5,000. "Equivalent weight" of a functional group means the ratio of the molecular weight to the number of occurrences of that functional group in the molecule. It is the weight of substance that contains one formula-weight of the functional group. In addition, the definition of "cationic polymer" was rephrased in the final rule to replace the term "subunit," which as discussed previously in this unit under Definition of Polymer is considered a non-standard term.

(b) *Exclusion of polymers with certain weight content of certain elements.* The rule continues to exclude from eligibility polymers containing certain levels of particular elements from the exemption if the elements are present as an integral part of the polymer structure, or present as counterions in the polymer. However, as proposed, the Agency is expanding the list of allowable elements set forth at §§723.250(d)(2)(ii)(B) and (C) to include chlorine, bromine, and iodine as the monatomic counterions; and fluorine, chlorine, bromine, and iodine as covalently bound to carbon. The Agency received no comments on this specific provision.

(c) *Exclusion of polymers that degrade, decompose, or depolymerize.* The rule continues the exclusion at §723.250(d)(3) for polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. A description of what the Agency considers degradation, decomposition and depolymerization for purposes of this exemption is contained in the final rule. No specific comments were received on this provision.

(d) *Exclusion of polymers that are prepared from monomers or other reactants that are not already on the TSCA Inventory.* As proposed, polymers that are manufactured using monomers or other reactants that are not on the TSCA Inventory, or that are not manufactured under an applicable section 5 exemption are not eligible for exemption at §723.250(d)(4). Some confusion surrounded the Agency's position on the use of non-Inventory listed monomers or other reactants at levels of 2 percent or less, as evidenced at the public hearing on the proposed rule held in Washington, D.C. on April 26–27, 1993 and written comments on this proposal. EPA is making clear that this provision relates specifically to monomers or other reactants that would be considered part of the polymer's identity, if the same substance was reported in a PMN, i.e., those substances charged to the reaction vessel or incorporated in the polymer at levels greater than 2 percent. The provision will not restrict the use of non-Inventory listed reactants that are not considered part of the polymer identity, provided that those reactants do not introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption. In other words, the "two percent rule" affects only the identity of the polymer, not its eligibility. This is consistent with the 1984 exemption. However, in practice, the use of non-Inventory listed monomers or reactants at 2 percent or less may be applicable only to imported polymers since chemical substances used as feedstocks in domestic manufacture must be on the Inventory or otherwise excluded or exempted from the section 5 requirements. In a separate rulemaking being published concurrently with this document [Revisions of Premanufacture Notification Regulations], EPA amended the "Two Percent Rule" to allow submitters greater flexibility in determining the amount of monomer or other reactant used in the manufacture of a polymer. Please consult that rule for further information.

As stated in the proposal, hazard concerns for polymers are often based on a concern for residual monomers or other reactants in the polymer. Since residual levels of monomers or other reactants are not restricted under the exemption and EPA is not reviewing exempt polymers, the Agency is restricting this exemption to those polymers manufactured using only Inventory-listed (or otherwise excluded or manufactured under an applicable section 5 exemption) constituent monomers or other reactants that are part of the polymer's chemical identity This ensures that the Agency will review polymers that contain new chemical monomers or other reactants through the full PMN process and can regulate any new polymer that may cause concern as a result of residual monomers or reactants that are new chemical substances.

Comment. The Synthetic Organic Chemical Manufacturers Association (SOCMA), The Dow Chemical Company (Dow), Monsanto Company, and SPI commented that imported polymers should be treated as polymers produced in the United States. That is, if the imported polymer meets the polymer exemption criteria but contains a non-Inventory listed monomer or reactant (at greater than 2 percent), that polymer should be eligible for the polymer exemption as long as the residual monomer or reactant level is kept below 1 percent (0.1 percent if a carcinogen). The importer may have no reason to ever bring the monomer or other reactant into the United States, and thus no PMN would be filed on that material. This would reduce the burden on those companies importing polymers that meet the exemption criteria since PMNs would not have to be filed for the monomers that these polymers contain. The residual monomer level limit would address any potential risk to health and the environment.

Response. Imported polymers are being treated the same under this exclusion as polymers manufactured in the United States. As stated above, the Agency wants to be able to assess new monomers and reactants if present as residuals. Further, the Agency has not considered setting a specific level for residuals nor concluded that polymers made with presently unknown monomers (i.e., chemicals not on the Inventory or exempted) will not present an unreasonable risk to health or the environment.

(e) *Exclusion of water-absorbing polymers with number-average MW equal to or greater than 10,000 daltons.* The final rule excludes from the exemption water-absorbing polymers having MW of 10,000 daltons or greater (§723.250(d)(5)). In the proposal, EPA had defined a water-absorbing polymer as a polymeric substance that, either in whole or in part, increases its volume when in contact with water. Numerous comments were received by the Agency concerning this definition and the MW restriction. Commenters argued that this restriction represented a very narrow approach by the Agency since it was based on the TSCA section 8(e) study, designated 8(e)–1795 and FYI–470, on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons. The section 8(e) data on the toxicity of the water-absorbing polyacrylate polymer included a 1-year chronic inhalation study, a 2-year chronic/oncogenicity study, and a

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subchronic inhalation study. As discussed in the 1993 proposal, preliminary data from the 2–year chronic inhalation study reported squamous cell carcinoma and bronchio-alveolar carcinomas. The exposure concentrations were 0.05, 0.2, and 0.8 mg/m³. Preliminary pathology reports state that cancer was observed in the two highest concentrations. Since the 1993 proposal, the final report on the 2–year chronic inhalation study has been received and reviewed by the Agency. The final report confirms the preliminary conclusions that under the conditions of the study, the water-absorbing polyacrylate polymer was carcinogenic to F344 rats, inducing lung tumors (bronchiolar/alveolar adenomas and adenocarcinomas) in both males and females. Statistically significant increased incidences of lung tumors were seen in both male and female rats exposed to 0.8 mg/m³ of the polymer. The tumor incidences in males and female rats also showed significant trends as analyzed using the Logistic Regression Test. At the present time published Agency guidelines state that cancer may be a non-threshold effect, i.e., that dose is cumulative over a lifetime (see Guidelines for Carcinogen Risk Assessment, 51 FR 33998, September 24, 1986 and Risk Assessment Guidelines of 1986, Document No. EPA/600/8–87/045). Consequently, EPA has excluded such polymers from the exemption and will review them in the full PMN process to ensure that they do not present an unreasonable risk of injury to human health or the environment. The subject polymer evaluated in the study has no reactive functionalities and no residuals below 1,000 daltons, conditions which might have excluded it from this exemption, and, if present, could have played a role in the reported carcinogenicity. In the absence of these factors, the Agency concluded that the water-absorbing properties of the polymer may have played a role in the reported carcinogenicity findings. The Agency intends to keep abreast of the scientific findings related to the inhalation toxicity of water-absorbing high MW polymers, which for purposes of this rule means polymers with MW equal to or greater than 10,000 daltons, and will consider modifying these conclusions as the data so warrant.

The Agency examined more closely its own databases to determine the MW range for water-absorbing polymers and their water-absorbing capabilities. The polymer that was the subject of the section 8(e) report is a so-called "super absorbent" material of the type used primarily in applications such as disposable diapers and paper towels. It is the Agency's understanding that to be applicable for these types of uses, the polymers must absorb at least 60 – 100 times their weight of water. The Agency also has observed that these polymers have molecular weights (MW) in the 1 million dalton range. The Agency recognizes that although many other high MW polymers absorb water to some extent, they do not belong to the class identified as "super absorbent." To the Agency's knowledge, data showing adverse lung effects which include oncogenicity do not exist on other than the single high MW "super absorbent" type polymer that was the subject of this section 8(e) study. Based on the review of this polymer, the Agency, at this time, is still unable to establish an exact MW limit for water-absorbing polymers likely to cause effects similar to those reported in the section 8(e) study, but believes that it is reasonable to set the number-average MW exclusion for water-absorbing polymers at 10,000 daltons. Based on EPA's professional judgment, the Agency believes that a MW of 10,000 daltons is a reasonable value where absorption is slow enough that a compound can be considered to persist in the lung. In addition, this MW is two orders of magnitude less than the MW of the tested polymer. The Agency believes that polymers with a number-average MW less than 10,000 daltons, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

In response to comments requesting a definition of "water absorbing" that more accurately bounds the category of polymers of concern, EPA has defined a "water-absorbing polymer" as a polymer that is capable of absorbing its weight of water. Although the tested polyacrylate polymer absorbs 100 times its weight of water, the Agency lowered the threshold for exclusion in this rule to "absorbing its weight of water", a threshold which is 2 orders of magnitude less than that of the tested polymer. The hundredfold difference in water absorption is believed to be appropriate based in part on the limited data, duration of the studies, effects noted, dose levels at which effects were seen, extrapolation from animal to humans, and the professional judgment of EPA experts.

Comment. Monsanto comments that the definition of water-absorbing is entirely too broad. Nearly all polymers will absorb some minute amount of water which will alter its volume if the measurements are precise enough. A better approach might be to exclude from the exemption polymers that will absorb more than 20 percent of their weight of water.

Response. The Agency agrees that the definition in the proposal, which defined a water-absorbing polymer as any polymeric substance that, either in whole or in part, increases its volume when in contact with water, was too broad and has narrowed the definition.

Comment. 3M states that the water-absorbing exclusion is based on a single section 8(e) report on a polyacrylate polymer with a MW of greater than 1 million daltons. While 3M understands the Agency's desire to develop an excluded class with an apparent safety factor in terms of MW, the company asks EPA to better define water-absorbing and review industry and scientific data to restrict the exclusion to water-absorbing polymer classes and MW ranges of true concern.

Response. As discussed above, based on the limited data received by EPA, the Agency was unable to establish an exact MW limit but believes it is reasonable to set the MW exclusion at 10,000 daltons.

3. *Elimination of specific exclusions contained in the 1984 exemption.* No comments were received on the Agency's proposal to remove three of the exclusion criteria present in the 1984 exemption including (a) polymers containing less than 32 percent carbon, (b) biopolymers, and (c) polymers manufactured from reactants containing halogen atoms or cyano groups. Therefore, these restrictions have been deleted from the final rule as proposed Further discussion of this issue is contained in the proposed rule.

4. *Exemption criteria.* The Agency is amending the exemption criteria for polymers with MW of 1,000 daltons or greater by establishing two MW ranges with restricted oligomer content. Section 723.250(e)(1) sets out exemption criteria for polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons, while §723.250(e)(2) sets out criteria for polymers with number-average MW equal to or greater than 10,000 daltons The exemption criteria for polyester polymers manufactured using certain specified precursors have been retained and redesignated at §723.250(e)(3).

Under the final rule, polymers eligible for exemption include the following:

a. *Polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons.* Section 723.250 (e)(1) exempts polymers with number average MW equal to or greater than 1,000 and less than 10,000 daltons (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000) provided the polymer also meets the following criterion: the polymer can not contain reactive functional groups except as specified in paragraph (e)(1)(ii).

i. *Restrictions on number average MW and oligomer content.* As discussed in the proposal, a chemical must be absorbed by an organism in order to cause an adverse health or ecological effect, other than direct contact effects; further, the ability of a molecule to pass through membranes and therefore be absorbed by organisms generally decreases with increasing MW (size).

Based on these principles, the Agency concluded that low MW species content provides an appropriate indication of the concerns that EPA has for polymers, namely, the content of potentially absorbable low MW compounds. As was proposed, the final rule includes restrictions on the percentage of low MW components directly derived from the monomers or other reactants for §723.250(e)(1) polymers. The criterion requires that oligomer content be less than 10 percent below MW 500 and less than 25 percent below MW 1,000.

Under the final rule, companies are free to manufacture any exempted polymer with any residual reactant content desired, as long as the percentages of low MW species do not exceed the levels specified in the exemption criteria.

Comment. SPI commented that number-average MW is a poor criterion for determining the amount of low MW oligomers present, and that the weight percentages of material with MW below 500 and 1,000 daltons are a better indicator of concern.

Response. While the Agency agrees that the number-average MW is by itself a less than perfect measure of the amount of low MW species present, a high statistical correlation of the two values was established by EPA in the course of preparing the criteria for the 1984 exemption, and EPA's experience since then has reinforced the correlation. In addition, the most frequently used method for determining the number-average MW, size-exclusion chromatography, also yields the percentages of material in given MW ranges. It should also be noted that because the Agency has concerns for possible lung effects associated with certain water-absorbing polymers with MW greater than 10,000 daltons, determination of number-average MW is needed for more than one criterion.

ii. *Allowable reactive functional groups.* The final rule excludes from eligibility under the §723.250(e)(1) criterion certain polymers that contain reactive functional groups [groups that are intended or can reasonably be anticipated to undergo further reaction). The final rule also amends certain restrictions in the 1984 exemption.

As discussed in the proposal, polymers that contain reactive functional groups may be capable of reacting with tissues or other chemical constituents of living organisms. Absorption of polymers containing reactive functional groups is also plausible since reactive groups can cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration.

There are no restrictions on polymers containing certain reactive functional groups that generally lack reactivity in biological settings. Under §723.250(e)(1)(ii)(A), polymers containing only the following reactive functional groups remain eligible for the exemption without restrictions on equivalent weight: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered "ordinary" (i.e., not specially activated either by being part of a larger functional group, such as a vinyl ether, or by other activating influences, for example, strongly electron-withdrawing sulfone group with which the olefinic groups interact), butenedioic acid groups, and conjugated olefinic groups in naturally-occurring fats, oils, and carboxylic acids.

Certain other functional groups are also implicitly permitted. Obviously, carboxylic esters, ethers, amides, urethanes, and sulfones are among them, although not listed above, because polyesters, -ethers, -amides, -urethanes, and -sulfones are among the types of polymers allowed under the exemption. As long as these groups have not been modified to enhance their reactivity (for example, dinitrophenyl esters of carboxylic acids would be considered reactive; see also the related discussion of "ordinary" above), they are assumed not to be reactive. Please consult the draft technical guidance document for further discussion of this issue.

Further, as discussed in the proposal, EPA believes that the following groups generally lack or have low reactivity in biological settings and has therefore included them in §723.250(e)(1)(ii)(A): blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except reactive halogen-containing groups such as benzylic or allylic halides).

iii. *Allowable equivalent weights for other reactive functional groups.* In the 1984 exemption, the Agency established equivalent weight criteria which allowed low concentrations of reactive functional groups to be present in the polymer molecules. At that time EPA believed that a level of less than 1 gram-formula weight of reactive functional groups in 10,000 grams of polymer was sufficient to ensure that the reactive functional group was substantially diluted by polymeric material. Based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the reactive functional group equivalent weight can be lowered accordingly, because of EPA's lower level of concern. For example, data generated by companies through the PMN program (either as section 5(e) testing or via voluntary programs) and reviewed by EPA now indicate that epoxy resins with epoxide equivalent weights greater than 800 are negative in the Ames assay; and numerous so-called "engineering" plastics containing substantial concentrations of anhydride functional groups derived from maleic anhydride are essentially inert to water and other reagents that might ordinarily react with them by virtue of the overall insolubility and hydrophobicity of the polymer. The final rule establishes equivalent weights of 1,000 and 5,000 daltons for specific reactive functional groups, as discussed below.

Section 723.250(e)(1)(ii)(B) sets forth allowable equivalent weights at 1,000 for the combined weight of certain polymer reactive functional groups (other than those of lower concern identified in §723.250(e)(1)(ii)(A), which are not restricted), based on the Agency's lower level of concern for these reactive groups. These groups will include the following: acid halides; acid anhydrides; aldehydes; hemiacetals; methylolamides, -amines or -ureas; alkoxysilanes with alkoxy greater than C_2; allyl ethers, conjugated olefins; cyanates; epoxides; imines; and unsubstituted positions ortho or para to phenolic hydroxyl.

All other reactive functional groups (except those that are unrestricted) are required at §723.250(e)(1)(ii)(C) to have a combined equivalent weight of 5,000 daltons or greater, including pendant acrylates and methacrylates, aziridines, carbodiimides, halosilanes, hydrosilanes, hydrazines, isocyanates, isothiocyanates, alpha or beta lactones, methoxy or ethoxy silanes, vinyl sulfones or analogous compounds, and any other reactive functional group not listed at §§723.250(e)(1)(ii)(A) or (B).

EPA requested comment on the complexity of this specific provision and was concerned that smaller businesses or those with limited technical resources would have trouble interpreting the exemption criteria for reactive functional groups, if the groups

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are complicated, and might choose not to use the exemption for eligible polymers. Such persons would, of course, have the option of using 5,000 as the equivalent weight if they are uncertain whether a particular reactive functional group is listed under §§723.250(e)(1)(ii)(A) and (B). No adverse comments were received on the Agency's specific approach. Therefore, the final rule includes this provision as proposed.

EPA believes that restrictions on reactive functional groups are not necessary for polymers with a number-average MW equal to or greater than 10,000 because, as stated in the proposed rule, polymers of this size are not expected to be absorbed by biological systems.

b. *Polymers with number-average MW equal to 10,000 daltons or greater.* Section 723.250(e)(2) exempts polymers with number average MW equal to 10,000 daltons or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000). The Agency established this separate category for polymers with number-average MW equal to or greater than 10,000 daltons because high MW polymers are not expected to be readily absorbable by any route of exposure because of their molecular size. As stated earlier in this unit, polymers with a number-average MW of less than 10,000 daltons, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

In the 1993 proposal, EPA proposed as a condition of the exemption that the submitter evaluate the potential for inhalation exposure to respirable particles of water-insoluble polymers and, if warranted, provide adequate notification and appropriate protective measures to exposed workers. At that time, EPA had expressed concern for potential health effects that may be caused by inhalation of respirable particles of water-insoluble high MW polymers of 10,000 daltons or greater based on section 8(e) data which are discussed below. In the 1984 exemption, the Agency also discussed a similar concern for potential health risks but in the preamble to the 1984 final polymer exemption rule, EPA concluded that such exposure to polymer particulates was generally limited and expected to be of low risk [49 FR 46082, November 21, 1984]. Following publication of the 1993 proposal, the Agency received numerous adverse comments regarding EPA's proposed conditions on this category of high MW polymers which, as a class in general, is considered to be one of the safest categories of chemicals in commerce.

To address these comments, the Agency reviewed in detail its experience with polymers in the New Chemicals Program and in particular re-examined its database of polymers submitted under the 1984 polymer exemption rule to determine what percentage of these polymers afforded the potential for inhalation exposure. In particular, the Agency examined 553 polymer exemption notices received since 1991 and found that of the 18 polymers that fit the proposed exemption criteria for water-insoluble polymers, only 1 polymer presented a possible inhalation risk based on particle size and use considerations. The exemption application for this polymer was converted to a PMN to allow a full review in the 90–day PMN review process. The Agency's review did not result in a finding that the manufacture, processing, use, or disposal of the polymer "may present" an unreasonable risk to human health and the polymer was dropped from further review. In view of the Agency's experience over the last 3 years and its judgment that exposure patterns will not change appreciably, the Agency has concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers, as a class, will result in unreasonable risk of injury to human health or the environment. In the 1993 proposal, EPA stated that it received TSCA section 8(e) data, designated 8(e)–0668, reporting irreversible lung damage linked with inhalation of respirable particles of water-insoluble polymers with MW of 70,000 daltons or greater. Of these data, the central study was contained in section 8(e)–0668. The subject chemical was a toner used in copy machines. This submission included chronic inhalation studies in both rats and hamsters and concluded that both species suffered similar lung damage when respirable dusts were inhaled at levels that also produced "lung overloading." In addition, studies were performed on clearance rates that demonstrated that impaired clearance occurred without regard to particle concentration once overloading had taken place. Other section 8(e) data on water-insoluble high MW polymers did not include chronic studies, but were shorter term studies that resulted in a similar type of lung damage. The 1993 proposal contains a full discussion concerning these data and the issues the data raised for the Agency.

In the 1993 proposal, EPA proposed an exposure level for respirable polymer dust of 0.5 mg/m³ as an 8–hour time weighted average to provide an adequate margin of safety given the Agency's interpretation of the section 8(e) data and believed that this level was technologically feasible. EPA assumed that most companies would be in compliance with the Occupational and Safety and Health Administration's (OSHA) existing Permissible Exposure Limit (PEL) for respirable Particulates Not Otherwise Regulated (PNOR), as an 8–hour time weighted average of 5 mg/m³ and that EPA's proposed lower limit of 0.5 mg/m³ could be attained through additional engineering controls, work practices, good housekeeping practices, or different respiratory protection. While EPA is not imposing conditions on this category of high MW polymers as part of the final rule, the Agency believes that manufacturers and users of polymers and chemical substances, in general, where feasible should take appropriate action to mitigate exposure to all respirable particles. In addition EPA has raised the general issue of particulate inhalation exposure to the attention of the "ONE" Committee, which is an intra-agency committee of OSHA, National Institute for Occupational Safety and Health, the Mine Safety and Health Administration and EPA representatives, formed in 1988 as a focal point for coordination and information exchange related to occupational issues. When further research is conducted in the area of particulate inhalation exposure and the data gaps are addressed (see "Inhalation Toxicity of High Molecular Weight Polymers, Workshop Proceedings, by Technical Resources, Inc., 1993), EPA may refine the eligibility criteria further for the polymer exemption or may impose new restrictions, if necessary.

Comment. The American Fiber Manufacturers Association (AFMA) comments that it was unwarranted to impose restrictive evaluation criteria for products based on the limited data available. AFMA stated that since EPA has already restricted the introduction of polymers containing chemically reactive groups and water-absorbing polymers, the remaining polymers should not present any special hazard dependent solely upon MW. This restriction should be eliminated.

Response. As stated previously, EPA has concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers as a class will result in unreasonable risk of injury to human health or the environment. Consequently, the final rule does not impose restrictive evaluation criteria on this class of polymers

Comment. AFMA commented that the 1991 EPA workshop on Inhalation Toxicity of High MW Polymers recommended against using MW as a predictor of inhalation toxicity, stating that the workshop concluded that knowledge of MW alone does not provide enough information about the material for use in predicting inhalation toxicity and that lung toxicity seen in animals with excessive lung burdens of high MW polymers is likely the result of a particle overload mechanism. The Workshop did not believe there is a relationship between MW and particle overloading that would justify use of MW for the proposed criteria determinant.

Response. The Workshop was advisory in nature and the opinions of the participants are not necessarily those of EPA. Nevertheless, EPA has reconsidered its own experience with such polymers and the available data for water-insoluble polymers and concluded that the proposed MW criteria were unduly limited and its reliance on MW as a restricting factor is unnecessary. Therefore, the limitation on water-insoluble polymers has been removed.

Comment. AFMA cited a report (attached to AFMA's comments) where polypropylene fibers were tested in subchronic inhalation studies. Under the conditions of the study, these high MW water-insoluble polymers are not fibrogenic, yet would be needlessly and improperly regulated by EPA as proposed.

Response. The report cited by AFMA is a 90–day inhalation study of polypropylene fibers, not respirable particulate dust. The toxicity of fibers involves factors such as length and diameter which are unique to fibers and not applicable to respirable dust. The study therefore, has limited relevancy to the polymer exemption criteria.

Comment. AFMA states that data filed under TSCA section 8(e) HQ– 0487–0668 and section 8(e) HQ–0983–0492 S both involve polymers which fall below the proposed 10,000 MW cut-off. Both polymers appear to be biologically-active (acutely toxic) with reactive functional groups associated with them, rendering each ineligible for PMN exemption regardless of their MW. In both cases, MW would be an inappropriate primary determinant of toxicity.

Response. EPA agrees that these polymers would not be eligible for the exemption under the criterion which restricts reactive functional groups. Further, these studies were not used by the Agency in assessing concerns for high MW water-insoluable polymer.

Comment. AFMA stated that data on the pulmonary toxicity of xerographic toner, as filed in TSCA section 8(e)HQ–0487–0668, should not be used in determining polymer toxicity criteria. The "toner" tested was a mixture of materials, not a single polymer. Approximately 10 percent of this mixture is reported to be carbon black. EPA should defend its rationale for including this mixture in the database for water-insoluble polymers. AFMA contends it is inappropriate for EPA to restrict use of an entire class of polymers based on extrapolation of the results of a toxicity study on a mixture.

Response. It is EPA's understanding that the carbon black was encased in the polymer and therefore not bioavailable. Only the polymer was available for contact with the experimental animal. Thus EPA does not consider the carbon black to be a factor in the toxicity described in TSCA 8(e)HQ487–0668. As discussed previously in this unit and in the preamble to the proposed rule, EPA did not rely solely on this particular study but also considered other data albeit shorter term studies. Based on EPA's experience in evaluating polymers as discussed above, EPA has decided to proceed as described in this rulemaking.

Comment. AFMA states that the inhalation data on super-absorbent polymers are inappropriate for use in determining exemption criteria in the water-insoluble polymer section of the proposed rule. It appears that TSCA section 8(e) filings reporting pulmonary toxicity [as reported hazardous in 8(e)HQ–0382–0438 S, section, 8(e)HQ–0683–0484 S, 8(e)HZ–1291–1795, and FYI–OTS–1285– 0470] were used by EPA to propose conditions on water-insoluble polymers as part of the exemption. However, EPA has not provided relevant data to show that similar pulmonary toxicity would occur in water-insoluble and water-absorbent polymers. Accordingly, AFMA believes it inappropriate for EPA to use toxicity data obtained from water-absorbent polymers in a manner that affects the exemption eligibility of water-insoluble polymers. AFMA believes that in the absence of adequate supporting data, these polymers should be treated as nuisance particulates.

Response. EPA agrees that use of the data on super-absorbent polymers are not appropriate for use in determining exemption criteria for water-insoluble polymers. Further, in its proposal, EPA did not use the data on super-absorbent polymers in determining exemption criteria of water-insoluble polymers.

Comment. Elf Atochem commented that by setting a 0.5 mg/m³ dust concentration level (a factor of 10 less than OSHA's PEL of 5 mg/m³), the acceptability of new polymers would be greatly reduced. To maintain consistency between Federal agencies, EPA should raise its workplace exposure level to be consistent with the OSHA standard. In addition, Exxon commented that the imposition of inhalation standards that are inconsistent not only with OSHA PEL levels but with existing polymers creates yet another disincentive for pursuing polymer exemptions.

Response. EPA agrees that consistency among Federal regulations regarding workplace exposure is desirable. EPA has elected not to establish an exposure limit for respirable particles at this time for reasons given above. However, TSCA provides authority to "protect human health and the environment" and authorizes EPA to establish limits on worker exposure for new chemical substances where such exposure may present an unreasonable risk of injury to human health. EPA has removed the proposed limitations on water-insoluble polymers for the reasons stated above However, the Agency believes that manufacturers and users of polymers and other chemical substances should take appropriate actions to mitigate exposure to all respirable particles as part of good industrial hygiene practices.

c. *Polyester polymers manufactured solely from reactants listed at §723.250(e)(3).* The Agency has had sufficient experience in reviewing polymer exemption notices for polyester polymers that are prepared using reactants specified in the 1984 exemption rule that the Agency does not believe such polymers present an unreasonable risk of injury to human health or the environment. Accordingly, these polyester polymers continue to be eligible for exemption. As discussed in the 1993 proposal, EPA is deleting footnote No. 2 in §723.250(e)(3), which is no longer applicable, because under the final rule all monomers and reactants used to manufacture the polymer must be on the TSCA Inventory.

There are many polyester polymer reactants that are not included in the 1984 polyester exemption list, and the Agency requested comments on expanding the list of potential polyester reactants. Several companies identified reactants for Agency review. Agency scientists, using structure-activity relationships and their expert judgment, evaluated the candidate reactants and identified no health or ecological concerns for these reactants. Based on

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the Agency's evaluation, the following substances have been added to Table 1 of this regulation: canola oil; castor oil fatty acids; dehydrated castor-oil fatty acids; C_{16-18} and C_{18}–unsatd. fatty acids; C_{18}–unsatd. fatty acids, dimers; oxidized linseed oil; conjugated sunflower oil fatty acid; C_{16-18} and C_{18}–unsatd. glycerides; butanedioic acid, dimethyl ester; butanedioic acid, diethyl ester; pentanedioic acid, dimethyl ester; pentanedioic acid, diethyl ester; hexanedioic acid, dimethyl ester; hexanedioic acid, diethyl ester; heptanedioic acid; heptanedioic acid, dimethyl ester; octanedioic acid; octanedioic acid, dimethyl ester; nonanedioic acid, dimethyl ester; nonanedioic acid, diethyl ester; decanedioic acid, dimethyl ester; undecanedioic acid; dodecanedioic acid; diethyl terephthalate; dimethyl terephthalate; dimethyl isophthalate; 2-methyl-1,3-propanediol; diethylene glycol.

One reactant, terephthaloyl chloride [CASRN: 100–20–9], was not approved for inclusion in the list of reactants because the Agency does not believe it has had sufficient experience with the reactant or ones of this type. The Agency has decided not to include the following substances in the list of eligible reactants for polyester because they are not on the TSCA Inventory: heptanedioic acid, diethyl ester [CASRN: 2050–20–6]; octanedioic acid, diethyl ester [CASRN: 2050–23–9]; undecanedioic acid, dimethyl ester [CASRN: 4567–98–0]; undecanedioic acid, diethyl ester [CASRN: 22543–29–9]; dodecane-dioic acid, dimethyl ester [CASRN: 1731–79–9]; dodecanedioic acid, diethyl ester [CASRN: 10471–28–0].

Comment. CMA commented that the list of eligible reactants for polyester polymers under the 1984 rule is extremely limited, that many analogous polyols and acids on the Inventory are worthy of inclusion, and that in practice polyesters are often made from esters rather than acids. CMA, Arco, and Eastman proposed expanding the list to include a number of additional substances. CMA, Arco, Dow, Quantum, and Rohm Haas recommended that EPA develop and publish procedures for periodic updating of the "approved" reactants list.

Response. The Agency agrees with the general tenor of the comments and notes that the original "approved" reactants list was compiled from suggestions submitted by manufacturers, after review by Agency scientists. The Agency believes that it would be appropriate in the future to propose amendments to this section to allow expansion of the list of eligible precursors, when additional candidates have been identified. To support requests for additional reactants, petitioners should provide health and environmental effects information on the candidate reactants, which must be already on the Inventory.

5. *Determination of eligibility.* The Agency believes that, when a polymer is manufactured under the terms of the exemption, it is reasonable for the manufacturer to take on a greater burden to demonstrate eligibility than under the 1984 exemption because EPA is eliminating its premanufacture review of these polymers. Under the 1984 exemption, the Agency did not require that submitters perform analytical measurements of the physical and chemical properties of polymers, but allowed manufacturers to determine compliance with the exemption conditions on whatever basis the manufacturer deemed appropriate. These included using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge of process and purification steps.

Under the final rule, the Agency will no longer receive and review exemption notices prior to manufacture or import of exempted polymers nor verify a polymer's eligibility under terms of the exemption. Consequently, the manufacturer must take the steps necessary to ensure that a chemical substance is eligible for exemption. Therefore, the Agency is requiring that a manufacturer generate appropriate records and data to demonstrate that a substance meets the eligibility criteria set forth at §723.250(e) to ensure compliance with the exemption.

The final rule requires manufacturers of exempt substances at §723.250(e)(1) and (e)(2) to generate appropriate analytical data, if applicable, or theoretical calculations if it can be documented that an analytical determination can not be made or is not necessary, to demonstrate that the polymer meets the minimum number average MW and corresponding restrictions on oligomer content. The Agency has not specified a particular analytical method to demonstrate compliance with the eligibility criteria, but allows the manufacturer to use an appropriate method of analysis that generates the data to verify compliance with the criteria, such as gel permeation chromatography or vapor pressure osmometry. Performance of such analysis is required prior to commencement of manufacture or import in accordance with the exemption. A number of commenters stated that manufacturers were concerned about the requirement to generate updated analyses and documentation to demonstrate that a given polymer continues to qualify for the exemption whenever a manufacturing process change occurs that could possibly cause the polymer to not meet the exemption criteria. Although the manufacturer is not required to generate updated analytical data on the exempted polymer under the final rule, EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. Obviously, if a new chemical substance is generated during subsequent manufacture, the manufacturer would be required to be in compliance with all the section 5 provisions.

Manufacturers are expected to follow the provisions of the exemption for research and development (R&D) activities during the period of evaluation of eligibility of a substance under the exemption criteria prior to actual manufacture under the exemption provisions. Such R&D activities will be subject to the R&D procedural and recordkeeping provisions in the PMN rule at 40 CFR 720.36 and 720.78, respectively. To enhance compliance with the criteria, EPA is publishing a draft technical guidance document for this rule and will hold a series of workshops on these criteria to facilitate understanding and compliance with this exemption.

6. *Reporting requirements.* The proposed rule would have required that a notice be filed with EPA within 30 days after manufacture or importation for commercial purposes instead of 21 days prior to manufacture of an eligible polymer as under the current exemption. The Agency also solicited comment on a "no reporting" option for this category of substances. In light of the Agency's determination that this class of polymeric substances will not present an unreasonable risk of injury to human health or the environment if manufactured under the criteria specified in this rule, and in the interests of reducing the reporting burdens for both industry and EPA, the final rule will require only annual reporting on polymers for which manufacture or importation under terms of the exemption has commenced for the first time during the preceding calendar year. This reporting requirement will allow EPA inspectors to determine which companies have manufactured polymers under the exemption thereby allowing them to ensure compliance with the provisions of this rule during site inspections. The final rule requires that a company file a polymer exemption report to EPA, postmarked by January 31, that includes all chemical substances for which manufacture or importation commenced under the terms of the exemption during the preceding year [§723.250(f)]. Such report must include submitter identity information including company name and address, a technical contact (a person available in the United States) and telephone number, and the number of eligible substances for which manufacture commenced under the terms of the exemption during the previous calendar year.

A company may decide to report by plant site instead of submitting a single company report which consolidates reporting on the number of polymers manufactured for the first time under terms of the exemption; however, reporting on the number of polymers manufactured under the exemption should not be duplicated. EPA believes that an annual report on the number of polymers being manufactured for the first time under terms of the exemption will alleviate industry's reporting burden by reducing the information submission requirements while providing EPA with a direct mechanism for monitoring compliance. This type of reporting will also provide a useful measure of the utility of the polymer exemption.

7. *Chemical identity information.* As discussed above, an exemption notice is no longer required under the final rule. However, manufacturers of polymers under terms of the exemption are required to maintain certain information at the site of manufacture, including chemical identity and a structural diagram, to the extent known or reasonably ascertainable, as specified at §723.250(g). The 1993 proposal, if adopted, would have required a Chemical Abstracts (CA) Index Name or CA Preferred Name, CAS Registry number (or EPA Inventory accession or PMN number) for each reactant used at greater than 2 percent (by weight) to manufacture the polymer, or alternatively, incorporated at greater than 2 percent (by weight) in the polymer. Although the Agency encourages the use of CA nomenclature, the final rule does not require CA nomenclature since polymers manufactured under terms of the exemption will not be placed on the TSCA Inventory. For purposes of determining chemical identity, the manufacturer may determine whether a reactant is used or incorporated at greater than 2 percent (by weight). However, as discussed earlier in unit II B.2(d) of this preamble, reactants that introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption are not allowed. The "two percent rule" affects only the polymer's identity, not its eligibility under the exemption criteria.

Under the final polymer exemption rule, the manufacturer is required to maintain appropriate analytical data or other supporting information to demonstrate that the exempted polymer meets the specific number-average MW and restricted oligomer content criteria at §723.250(e)(1) or (e)(2), as discussed under unit II.B.5 of this preamble. The final rule allows the company to make the polymer with MW ranges, or residual reactant concentrations, etc., as the company desires, provided that these values fall within the exemption criteria.

8. *Certification.* The final rule retains provisions that require that the manufacturer of an exempt polymer, as of the date of first manufacture, certify that the polymer meets the definition of a polymer, is not specifically excluded from the exemption, and meets the conditions of the exemption [§723.250(h)(3)]. Certification statements must be retained with the other required records at the manufacturing or import site.

9. *Recordkeeping.* EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program and has retained this provision in the final rule at §723.250(j), while including some additional provisions proposed in 1993 since EPA will no longer receive exemption notices. These additional provisions include certification statements, chemical identity information, and analytical data, as discussed in this unit. Documentation of information would be used by enforcement personnel to determine compliance with the rule. The recordkeeping requirements have been amended to require that the manufacturer maintain certain information at the site of manufacture or the site of import.

Comment. Some commenters suggested that the present recordkeeping requirements for the polymer exemption would be adequate to ensure industry compliance.

Response. Since the Agency will not conduct any premanufacturing review of exempted polymers, EPA believes that it is important for manufacturers to develop and maintain more detailed and comprehensive records than are required by the current polymer exemption. EPA believes that the recordkeeping requirements are necessary to ensure that manufacturers are able to demonstrate compliance by documenting that the exempted polymers meet the eligibility criteria.

10. *Inspections.* The Agency will continue to periodically inspect companies to ensure compliance with TSCA section 5. Those companies with past violations may be inspected more frequently. To determine compliance with the polymer exemption, the EPA inspector will focus on the information in the company's records, including the analytical data documenting the substance's eligibility under the exemption.

11. *Deletion of proposed revocation provisions.* The 1993 proposal contained provisions to allow EPA to revoke the exemption for an exempted polymer and require a full PMN review if EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to human health or the environment.

The Agency has determined, for the reasons outlined below, to delete the proposed revocation provision in its entirety. When the Agency proposed amendments to the polymer rule in 1993, development of the revocation provisions was predicated on EPA's evaluation of the section 8(e) data on certain high MW water-insoluble polymers previously discussed in this unit. EPA believed it was prudent, given its evaluation of the data at the time of the proposal, to ensure it had a mechanism in place to identify eligible polymers which may pose an unreasonable risk of injury to human health or the environment. Specifically, the Agency was concerned that additional section 8(e) data or other adverse data would be received which might compromise the ability of the Agency to prevent unreasonable risk of injury to human health or the environment in a timely fashion.

The Agency received numerous comments reflecting general dissatisfaction with the proposed revocation provisions. Specifically, the comments received by the Agency, both in writing and in conjunction with the public hearing on the proposed rule, were as follows:

(1) The provisions do not provide recourse for the submitter and allow insufficient time for objections to be lodged with the Agency;

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(2) The provisions will discourage many companies from developing new products;

(3) Specialty chemical companies in particular would not be as willing to develop new products under the threat that they would be banned from the marketplace;

(4) The revocation provisions of the proposal reduce the commercial acceptability of the exemption process and business managers will prefer the stability and certainty of clearance through submission of a PMN, rather than risk potential business interruptions under the terms of the proposed exemption; and

(5) The provision will threaten the utility of the entire exemption procedure as a vehicle for reducing the number of PMNs that are filed for substances that pose no reasonable likelihood of harm to health or the environment.

Based on consideration of these adverse comments and in light of the Agency's conclusion that the likelihood of eligible polymers posing an unreasonable risk is low, the Agency has determined that these provisions are not necessary to support the Agency's statutory finding that polymers manufactured under terms of the exemption will not present an unreasonable risk of injury to human health and the environment. Should evidence be received by the Agency that casts reasonable doubt on the appropriateness of a criterion or set of criteria, the Agency has other regulatory options available, such as publication of a proposed amendment to the polymer exemption rule to either refine the criteria or impose new restrictions, similar to EPA's treatment of water-absorbing high MW polymers in this rulemaking. Specifically, EPA proposed an amendment to the 1984 exemption that would exclude this category of polymers from eligibility for the exemption based on the Agency's evaluation of certain section 8(e) data as discussed in unit II.B.2(e) of this preamble. After publishing its 1993 proposal and providing an opportunity for public comment, the Agency amended the 1984 exemption in this rulemaking to exclude high MW water-absorbing polymers from eligibility. Similarly, any future proposed revisions would also be subject to notice in the **Federal Register** and comment in accordance with the Administrative Procedure Act.

12. *Inventory status of exempted polymer.* Polymers that were reviewed under the terms of the 1984 polymer exemption rule and included on the Inventory will remain on the Inventory, with the restrictions concerning low MW species content and maximum residual amounts of reactants specified for each exempted polymer still in force. Polymers manufactured under the amended exemption will not be included on the Inventory. A number of commenters argued that exempt polymers warrant inclusion on the TSCA Inventory, since customers rely on Inventory listings to confirm a product's regulatory compliance. Since the Agency will not be receiving information on the chemical identity of the exempted polymer as part of the reporting requirement, the Agency will not have a mechanism for including exempted polymers on the Inventory. However, the Agency recognizes that it is essential that manufacturers have an adequate method to assure their customers that their products are in compliance with TSCA regulations and agrees that an Inventory listing of the substance would simplify this process. Under the final rule, an exempted polymer remains a new chemical substance (although legitimately manufactured under terms of the exemption) until a PMN has been submitted for the substance and has completed the PMN review period, followed by manufacture for non-exempt commercial purpose and subsequent NOC. Nonetheless, it is current practice that manufacturers employ a variety of methods to assure customers that a chemical substance is in compliance, particularly in situations where the Agency does not include an exempted substance on the Inventory, as is the case for low volume, test marketing, and R&D substances. Since the Agency will neither be receiving notices for exempted polymers nor providing receipt numbers (similar to the status of R&D substances), manufacturers who use this exemption should rely on practices similar to ones currently used for R&D substances. These include appropriate labeling and reference to the polymer exemption rule at 40 CFR 723.250 and this **Federal Register** document. A company might also consider setting up a system for identifying exempted polymers which relates back to the exemption and use this identification code to identify polymers in any commercial activity or Material Safety Data Sheet (MSDS).

The Agency believes that use of the polymer exemption provides significant benefits to polymer manufacturers for a number of reasons discussed in this document. Moreover, polymers manufactured under this exemption have been identified by EPA as some of the least hazardous substances in commerce. In light of pollution prevention and product stewardship initiatives undertaken by the regulated community, the Agency believes that the marketing of safer chemical substances should enhance the commercial viability of these substances.

Comment. CMA states that customers rely on TSCA Inventory listings to confirm a product's regulatory compliance. Elf Atochem argues that inclusion on a separate list leaves the regulatory status of exempt polymers rather ambiguous.

Response. As discussed above, the Agency believes that manufacturers who use the exemption will be able to develop adequate methods of assuring their customers that these polymers are not only in compliance with TSCA regulations but meet the Agency's low-risk criteria.

13. *Transition period until final rule becomes effective.* The Agency will continue to accept and review polymer exemption applications under the terms of the 1984 exemption at 40 CFR 723.250 until the effective date of this final rule. No new exemption applications will be accepted after the effective date of this rule.

If a manufacturer who submitted a polymer exemption application under the 1984 exemption rule but has not yet submitted a NOC wishes to add its polymer to the Inventory, the person may submit the NOC in accordance with 40 CFR 720.102. The exempt polymer will then be listed on the Inventory with the applicable 1984 polymer exemption criteria and exemption category restrictions on residual monomers/reactants and low MW species content. The manufacturer may instead choose to manufacture under the terms of the new exemption.

III. Response to Other Alternatives Considered

EPA requested comments and data on all aspects of the 1993 proposal, including the following specific issues discussed below:

Other Polymers Considered for Exemption

1. *Polymer salts.* The Agency has also considered a proposal to exempt certain salts of polymers that are listed on the TSCA inventory but was unable to make the determination that, as a class, all of these polymers will not present an unreasonable risk of injury to human health or the environment. However, EPA believes that many individual polymer salts will be eligible for exemption under the amended criteria.

2. *Polymers containing high cationic functional group.* The Agency considered allowing, under the exemption, polymers which contain high percentages of amine (low amine equivalent weight) in their structures but decided against this approach. Accordingly, polymers with high cationic functional groups continue to be subject to the restrictions under §723.250(d)(1) for the following reason. In the past, the main concern for cationic polymers was for ecotoxicity, specifically, aquatic toxicity. There has been a significant amount of data generated by industry in response to section 5(e) consent orders or on a voluntary basis, which after EPA review, was concluded to demonstrate that for the category of polymers with a high amine or cationic content, equivalent weight of 425 daltons or less, there is sufficient mitigation of the risk, through the mechanism of dissolved-organic-carbon (DOC), to render this polymer class of low risk for ecotoxicity if used according to current standard practices. The Agency believes that these data sufficiently support the conclusion that high amine content polymers, as specified above, will not pose an unreasonable risk of injury for aquatic toxicity.

However, as discussed in the 1993 proposal, EPA received section 8(e) data on a polymer with high cationic functional group content in which test results demonstrated lethality in standard eye irritation tests in rabbits. This study has resulted in high concerns for acute lethality as demonstrated by this polymer. The polymer used in the study met all provisions of the proposed polymer exemption and would have qualified for exemption if the low cationic functional group equivalent weight (high cationic content) provision was incorporated as part of the exemption criteria. It is for this reason that EPA believes that it would be inappropriate to include the high cationic functional group content allowance in the final rule at this time and will continue to restrict these polymers under the final rule.

Comment. One commenter stated that the exclusion of the polymers with high cationic functional group content is based upon the assumption that all high cationic charge polymers have similar physical-chemical, steric, structural and toxicological properties and that the concern should be more focused on the class of polymers that cause the adverse effect.

Response. The Agency agrees that it may be more appropriate to use the definition of the class of cationic polymers to exclude the polymers of concern from the exemption in lieu of the broader-based exclusion. However, this preliminary assessment is based on section 8(e) data that are claimed as CBI. (At the time of the proposal, EPA believed that it would be able to resolve the CBI claim in a way that would allow the public an opportunity to comment on the data.) To date, the submitter of the 8(e) data has declined to rescind the CBI claim on the chemical structure despite repeated requests. Nor were publicly accessible data received during the comment period that support narrowing the category of polymers excluded from the exemption. Therefore, because the public has not had an opportunity to comment on the basis for such an exemption and in order not to delay issuance of this final rule until the CBI issues can be resolved, the Agency has elected not to include a more narrow category in this rulemaking. The Agency may continue discussions with the submitter of the section 8(e) data and amend this section as appropriate in the future.

IV. Regulatory Analysis

A. Summary of Risk Assessment

1. *Introduction.* The Agency has determined that polymers defined by the exemption criteria set forth in this rule are of low concern due to their lack of reactivity and their molecular size. These criteria have been developed based on the Agency's review of over 5,000 polymer submissions since the original polymer exemption rule in 1984 (49 FR 46066). The Agency believes that polymers eligible for this exemption are generally of low risk and that sufficient information exists on the potential risks of other polymers with certain characteristics to make them ineligible for the exemption.

2. *Approach to risk analysis.* The Agency based its risk analysis on (a) the effect MW has on the overall risk a polymer poses, (b) the specific concerns the Agency has had in the past for polymers submitted as PMNs, (c) toxicological data available on particular polymers, (d) an analysis of the Agency's database on over 500 polymers received in the last 3 years under the current polymer exemption to determine the potential for exposure to respirable particles of insoluble high MW polymers, and (e) an analysis of the Agency's experience to date in assessing potential risks of new polymers submitted as PMNs or exemption applications. The 1993 proposal contains an extensive discussion of the Agency's approach and limitations to that approach. The proposal also details EPA's extensive evaluation of ecotoxicity considerations for polymers. The discussion below is limited to an analysis of the inhalation toxicity concerns associated with exposure to respirable polymeric particles.

3. *Inhalation toxicity.* As discussed in the 1993 proposal, health concerns exist for certain types of polymers that have been found to produce lung toxicity if inhaled. Based on section 8(e) data on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons that indicated a potential oncogenic (cancer) concern for this type of high MW water-absorbing polymer, the Agency has excluded water-absorbing polymers of MW equal to or greater than 10,000 daltons from the exemption. Other section 8(e) data on high MW water-insoluble polymers were indicative of a lung-overload phenomenon and did not demonstrate any carcingenic response under conditions of the studies. Please consult units II.B.4(b) and IV.C of this preamble and the preamble to the proposed rule for a full discussion of this issue.

The final rule does not impose a condition in the exemption on high MW water-insoluble polymers linked to the evaluation of the potential for inhalation exposure to respirable particles as was contemplated in the 1993 proposal. Based on numerous comments received on these proposed limitations on high MW water-insoluble polymers, the Agency reevaluated the existing scientific data and its own experience in reviewing the potential for inhalation exposure to such polymers submitted under the current polymer exemption. Based on these analyses, EPA has determined that there is an exceedingly low probability that potential inhalation exposure to high MW water-insoluble polymers, as a class, will result in unreasonable risk of injury to human health or the environment. This conclusion reaffirms EPA's finding at the time of promulgation of the 1984 exemption that exposure to polymer particulates was generally limited and expected to be of low risk.

Based on over 15 years experience with polymers, EPA considers that the criteria set forth in this exemption define polymers of low-concern and that the potential risk from respirable particles of high MW water-insoluble polymers is low. Therefore, the Agency has not retained in this rulemaking the requirement that companies evaluate the potential for inhalation exposure to respirable particles for this specific category. However, EPA believes that as part of responsible health and safety and product stewardship programs in general, manufacturers and their customers should be aware of the

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potential for toxicity from any respirable particle and when producing or using such materials take measures to keep their workplace free of respirable dusts of any type.

B. Summary of Regulatory Impact Analysis

EPA has evaluated the potential costs of the final amendments for potential manufacturers of exempt polymers. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50594B).

The regulatory impact analysis estimates the costs and benefits attributable to the final regulation. In this case, the analysis also contains estimates for the three additional final amendments to section 5 regulations that are published elsewhere in this Federal Register. These rules amend the PMN regulations, the Low Volume Exemption Rule, and the Expedited Process for Issuing Significant New Use Rules. Because these final regulations are amendments to current regulations, the costs and benefits are incremental and estimate the effect of the final rule with respect to the current regulations.

The costs and benefits associated with the polymer exemption amendments are partially quantified; many of the benefits are unquantified but are expected to be of significant importance as discussed later in this unit. Considering only the quantified costs and benefits, there is a cost saving. Since the number of section 5 submissions received by the Agency varies, this analysis used three scenarios, assuming either 1,000, 2,000, or 3,000 annual submissions, to reflect the expected range of submissions. The savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	4.7 – 6.8	0.2 – 0.4
2,000	9.4 – 13.5	0.4 – 0.8
3,000	14.2 – 20.3	0.6 – 1.2

The industry costs associated with these amendments are labor requirements for preparation of an annual report and recordkeeping costs. Reporting and delay costs are eliminated due to the elimination of submission requirements. The user fee is no longer applicable since exemption notices will not be required. Moreover, the amendment makes a larger number of polymers eligible for the exemption, further reducing the reporting and delay costs for those substances.

The unquantified benefits include increased flexibility for industry due to the expanded exemption criteria. In addition, Agency resources will be focused on those substances more likely to pose an unreasonable risk.

C. EPA's Approach to Making the No Unreasonable Risk Finding

1. *Statutory background.* Pursuant to section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical may be taken for a category of such substances.

While TSCA does not contain a definition of "unreasonable risk," the legislative history indicates that the determination of unreasonable risk requires a balancing of the considerations of both the severity and the probability that harm will occur against the effect of the final regulatory action on the availability to society of the benefits of the chemical substance [House Report 1341, 94th Cong., 2nd Session, 14 (1976)]. This analysis can include an estimate of factors such as market potential, the effect of the regulation on promoting or hindering the economic appeal of a substance, environmental effects, and many other factors which are difficult to define and quantify precisely. EPA may rely not only on data available to it, but also on its professional judgment. Congress recognized that the implementation of the unreasonable risk standard "will vary on the specific regulatory authority which the Administrator seeks to exercise" [Ibid.]

2. *EPA's approach.* In determining whether the category of polymeric substances being considered for exemption presents an unreasonable risk of injury to human health or the environment, the Agency considers more than just the inherent risks presented by the overall category of polymers. The Agency also considers how the criteria of the exemption maintain full regulatory oversight on higher risk polymers while promoting the manufacture of low-risk polymers by providing regulatory relief for them.

The amended polymer exemption modifies the requirements for eligible polymers from the current polymer exemption requirements and the general PMN requirements. EPA therefore compares the risks posed by the substances being considered for an amended exemption with the risks which would have resulted from the same category of substances, if that category of substances had been subject to full notice submission requirements and 90–day EPA review or, where applicable, the reporting requirements of the current polymer exemption and the abbreviated 21–day review. Certainly it is not possible to eliminate all risks associated with the manufacture, processing, distribution in commerce, use, and disposal of any new chemical substance nor was this Congress' intent. The standard embodied by a section 5(h)(4) exemption does not require the Agency to ensure absolute safety from the activities associated with an exempted substance.

3. *Application of no unreasonable risk factors.* The following is an explanation of the factors and their analysis relevant to the no unreasonable risk finding. The design of the final polymer exemption together with intrinsic properties of polymers significantly limit the risks of injury to human health or the environment that exempt polymers may present. Polymers as a general class are relatively unreactive and, at or above a MW of 10,000, are not easily absorbed by body tissue because they do not easily transport across human membranes. As originally discussed in the Agency's 1984 polymer exemption rule:

> ...for a chemical to elicit a toxic response within an organism, it must come into direct contact with the biological cells from which it elicits the response. Because all organisms are encased in protective membranes, a chemical must usually penetrate these membranes and be translocated to various parts of the organism to gain access to target sites. Therefore, it can be reasoned that if a chemical cannot penetrate the protective membranes to gain access to a target site, it usually cannot elicit a response in the organism no matter what inherent potential it may have to do so. It can be further reasoned that if a chemical cannot elicit a response, it will generally not present a risk [49 FR 46081 (November 21, 1984].

EPA's conclusions regarding low risk potential for polymers that meet the eligibility criteria are supported by the available data as well as EPA's scientific professional judgment based on 15 years experience reviewing polymers under the PMN and current polymer exemption requirements. Pursuant to the final rule, certain polymers will be automatically ineligible for the polymer exemption. EPA has excluded those polymers for which: (a) The Agency still has insufficient data and review experience to find that they will not present an unreasonable risk of injury, or (b) the Agency has found that, under certain conditions, based on data on the polymers in question, a polymer, or subset of polymers, may present an unreasonable risk, thereby requiring a closer examination of the conditions of manufacturing, processing, distribution in commerce, use, and disposal during a full 90–day PMN review. This level of analysis would be necessary to make an appropriate determination about risk.

In 1982, when the Risk Analysis and Evaluation of PMN Regulatory Decisions for Polymers was performed for the original polymer rule, the Agency determined that high MW polymers containing small amounts of low MW species were not considered an unreasonable risk to humans or the environment. Extensive discussion on this topic can be found in the 1982 proposed polymer exemption rule and the preamble to the final rule promulgated in 1984. The Agency has assumed that monomers would be of greater concern than oligomers, and that oligomers would be of greater concern than polymers based on the probability that the monomer would be more readily absorbed and, on a weight basis, be more reactive than the resulting oligomer or polymer. In its 1982 proposal, the Agency proposed to allow polymers with MW greater than 20,000 daltons to be manufactured without any premanufacture review by EPA but determined in the final rule that an abbreviated review period was necessary due to concerns for unreacted monomers and low MW species. The Agency is now modifying this approach, based on the review and hazard assessment of polymers reviewed as PMNs or polymer exemptions since the 1984 polymer exemption was promulgated. The Agency now believes that it has sufficient experience with high MW polymers such that a "no unreasonable risk" finding may be made for a broader class of these substances without EPA premanufacture review.

Over the past 15 years, the Agency has reviewed over 10,000 polymers in the New Chemicals Program (over approximately 50 percent of all PMNs are polymers). Of these 10,000, the polymers that would have qualified for the final polymer exemption rule have consistently been characterized as posing low concern for both adverse health and environmental risks by the Agency during the course of PMN review. The characteristics of a significant number of polymers (i.e., their MW and/or physical/chemical properties), are such that they are neither absorbed by biological systems nor do they interact with biological systems, as described above. (A more detailed discussion is provided in the preambles to the 1984 polymer exemption and the 1993 proposal.) Furthermore, these polymers do not degrade to toxic species in the environment.

The Agency has developed specific criteria which define low-risk polymeric substances. Such criteria include limitations on low MW species, reactive functional groups, and cationic polymers. Many of these criteria are outgrowths of the criteria used to determine eligibility under the current polymer exemption that has been in effect since 1984. Further, the Agency uses these same criteria to identify low-risk polymers in its PMN review process. The 1984 polymer exemption, which uses the same types of criteria as these final exemption criteria to determine eligibility, required a 21–day premanufacture review period. The Agency believes that this review period for polymers that meet the final exemption criteria is unnecessary based on EPA's finding that these exemption criteria place sufficient constraints on risk, such that EPA review of these eligible polymers would not result in any additional protection. Accordingly, exempting polymers that meet the low-risk eligibility criteria will allow the Agency to refocus its limited resources on those non-exempt substances which, by comparison, may pose a considerable risk to society.

In its 1993 proposal, the Agency expressed concern for potential lung toxicity due to inhalation of respirable high MW polymers. Toxicity studies, in the form of section 8(e) submissions on a water-absorbing high MW polymer and certain water-insoluble high MW polymers, indicated two areas of potential concern with high MW polymers.

The data set on the water-absorbing polymer, which is discussed in detail in unit II.B.2(e) of this preamble, included a 2-year chronic inhalation study reporting squamous cell carcinoma and bronchio-alveolar carcinomas at concentrations of 0.2 mg/m^3 and 0.8 mg/m^3 for the tested polymer, which was a water-absorbing polyacrylate polymer having a MW of greater than 1 million daltons. The tested polymer lacked both reactive functionalities and low MW species (below a MW of 1,000 daltons), factors that could have played a role in the reported carcinogenicity. In the absence of these factors, the Agency concluded that the water-absorbing properties of the polymer may have played a role in the reported carcinogenicity findings. Although the Agency was unable to establish a link between MW and toxicity for water-absorbing polymers, the Agency set the number average MW exclusion at 10,000 daltons which the Agency believes is a reasonable value at which absorption is a sufficiently slow process that a substance can persist in the lung. This MW level is also two orders of magnitude below that of the tested polymer. At 10,000 daltons and greater, these water-absorbing polymers are not likely to be absorbed, so mechanisms for detoxification which are available for lower MW polymers may not be available. Thus the respirable particles are expected to remain in the lung for extended periods. As stated earlier in unit II of this preamble, EPA believes that polymers with MW less than 10,000 daltons can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards. Based on these findings, the Agency has determined that exposure to respirable fractions of these polymers might present an unreasonable risk to human health and has excluded water-absorbing polymers with MW of 10,000 daltons or greater from the exemption eligibility.

Moreover, in response to comments requesting a definition of "water-absorbing" that more accurately defines this parameter for polymers of concern and based on further evaluation of the 2-year inhalation study on the polyacrylate polymer, the final rule defines a "water-absorbing polymer" as a polymer capable of absorbing its weight of water. Although the subject polyacrylate polymer absorbs approximately 100 times its weight of water, the Agency lowered the threshold for exclusion in this rule to absorbing its weight of water by using a hundredfold factor. This definition more accurately bounds the category of polymers that the Agency believes should be subject to the full PMN review process, pending the development of data that would mitigate the Agency's concern. These two limitations allow the Agency to conclude that the non-excluded water-absorbing polymers will not present an unreasonable risk of injury to human health. Accordingly, the final rule defines the term "water-absorbing" and excludes such polymers with MW of 10,000 or greater from the exemption.

The section 8(e) data on high MW water-insoluble polymers, which are discussed in detail in the 1993 proposal, indicated that inhalation of respirable particles of certain high MW water-insoluble polymers resulted in irreversible lung damage (fibrosis) but, under the conditions of the study, no

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carcinogenic response to experimental animals. Numerous comments received on this issue questioned the Agency's use of a limited set of data to impose restrictions on an entire class of water-insoluble high MW polymers that are generally recognized as polymers of low-concern. In the proposed rule, the Agency itself recognized that imposing conditions under the exemption on high MW water-insoluble polymers may not have been appropriate and had requested comments on the alternative of imposing no limitations on the exemption eligibility of this category of polymers. In light of this and in response to numerous comments, the Agency re-examined its proposal to impose conditions on this category of high MW water-insoluble polymers. Please consult unit II.B of this preamble for an extensive discussion of this issue.

Based on its evaluation of 553 polymers that were the subject of polymer exemption applications during the past 3 years, as previously discussed in unit II.B.4(b) of this preamble, EPA concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers, as a class, would result in an unreasonable risk of injury to human health or the environment. EPA reached a similar conclusion during promulgation of the 1984 exemption that exposure to polymer particulates was generally limited and expected to be of low risk. In its 1984 rule, EPA had recognized that particulate inhalation exposure was a potential source of toxicity which was not explained by MW, stating then that the review experience developed in the PMN program had demonstrated that exposure to polymer particulates was generally limited and therefore expected to be of low concern. 49 FR 46082 (November 21, 1984).

Further, EPA reviewed the section 8(e) data that were the basis of the Agency's concern regarding potential inhalation toxicity of high MW water-insoluble polymers. The studies on a toner for copy machines that was a water-insoluble polymer with a MW of 70,000 daltons included chronic inhalation studies in both rats and hamsters. These studies indicated that both species suffered similar lung damage when respirable dusts were inhaled at levels that also produced lung overloading. Other studies were performed on clearance rates that demonstrated that impaired clearance occurred without regard to particle concentration in the air once overloading had taken place. Other section 8(e) data on water-insoluble high MW polymers did not include chronic studies, but were shorter term studies that resulted in lung damage consistent with the damage seen when "lung overloading" occurred on a chronic basis.

Based on the above mentioned limited data and uncertainty as to all the factors contributing to the identified effects, the Agency determined that it could not draw any broad scientific conclusions in which lung toxicity is linked affirmatively with any specific chemical class or category of high MW water-insoluble polymers. In addition, it should be recognized that the chronic toxicity endpoint being addresssed for water-insoluble polymers was only seen under conditions of lung overload (which suggests the presence of a threshold for this type of toxicity). In the case of the water-absorbing polymers, which exhibit a cancer endpoint, the exemption criteria reflect the more conservative approach which the Agency has historically adopted for oncogenicity concerns. Further, it is clear from the Agency's experience in assessing high MW water-insoluble polymers that members of this class of polymers have rarely been subject to control action as a result of PMN review.

In the present rulemaking, based on numerous comments on this issue and the Agency's finding that exposure to respirable particles of high MW water-insoluble particles is expected to be limited, the Agency has concluded that it can make its statutory finding that polymers meeting the eligibility criteria will not present an unreasonable risk of injury to human health or the environment. The Agency believes that the criteria set forth in this exemption are sufficient to mitigate risk, particularly when compared to the benefits, *in toto*, of encouraging further development of comparatively lower risk classes of chemicals, such as polymers. Furthermore, the expedited manufacture of eligible new polymers will provide essential benefits to industry and to the public, which comprise an important element in the finding of no unreasonable risk.

4. *Benefits.* The following discussion describes the benefits of this rule in a qualitative manner; for a more quantitative approach, see the economic analysis discussion in unit V.B of this preamble. It is reasonable to assume that a newly developed polymer will either possess a new function or serve an existing function more efficiently or less expensively. The reduction in delay for that polymer to be introduced into commerce is a benefit to both manufacturers and the general public, who will have access to the substance in a more timely manner.

The benefits analyzed encompass more than the costs associated with submitting the polymer for review in a full PMN. Rather, EPA's benefit analysis included a consideration of the broader benefits of reduction of costs to society by providing a less burdensome alternative for polymer manufacturers, including a reduction in the burden associated with both full PMN and current polymer exemption requirements. EPA's unreasonable risk determination is based on broader benefits to society as well as those benefits attributable to the substance itself.

Some of the costs directly attributable to the substance include the preparation of the PMN or polymer exemption form as well as the delay in the commercial market introduction of the new chemical substance. On the other hand, there are broad societal benefits that can not be directly attributed to any one chemical substance or category of substances. Such benefits include a reduction in Agency review resources being dedicated to a category of compounds determined to be of low risk, and a concomitant shift in those resources to the review of substances of greater known concern. While factors such as these are generally not of the type that EPA would take into account when making an individual control decision on a new chemical substance, they have a significant effect on society which is directly linked to EPA's exercise of its exemption authority, and are therefore appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances. The costs of reporting requirements will also be eliminated since companies will be able to manufacture polymers under terms of the exemption without submitting PMNs or exemption notices. These savings are detailed in the Regulatory Impact Anafysis report which is available in the public docket for this rulemaking (docket control number OPPTS–50594B).

Manufacturers of polymers for which there is little concern bear a significant regulatory burden. By incorporating into the exemption those criteria that the EPA uses internally to judge the risks posed by polymers, the Agency removes the regulatory impediments to the design, manufacture, and commercialization of this large class of chemical substances and substantially reduces costs associated with industry's reporting burden for polymers meeting these low–risk criteria.

In addition, if the exemption is used to its greatest advantage, more than 31 percent of the resources allocated to the PMN program by EPA could be shifted from this category of low concern to those chemicals considered to pose a considerably greater risk to society. Finally, manufacturers of these polymeric substances will be given greater flexibility provided they meet the terms of the criteria of the exemption.

One of the benefits of the rule is that it incorporates exactly those criteria that delineate the areas of concern to EPA. By including this level of specificity in the rule, EPA provides industry with an understanding of which specific chemicals and chemical properties within the general class of polymers are considered to be hazards and which are considered relatively innocuous. Industry can use this information to design future polymeric products or classes of polymers that can supply the function that is desired while minimizing or eliminating any hazard. Supplying this information as criteria in the rule allows industry to engage in up-front risk-reduction activities by designing new products that conform with the provisions of the polymer exemption while reducing regulatory compliance costs.

Further, this rule provides pollution prevention benefits as well in three areas: the functional group equivalent weight specifications, the acceptable monomers list, and the water absorbability criteria. Pollution prevention principles have the goal of reducing or eliminating the use or generation of hazardous feedstocks, by-products, or products. By adherence to the lists of feedstocks and reactants of low concern contained in this rule, companies will be able to accomplish these pollution prevention goals while minimizing their regulatory compliance costs.

In view of the extensive and continually increasing use of polymers in commerce, encouraging industry to expand the use of low risk polymers can result in significant benefits to society. In general, such low risk polymers can, and often do, function as replacements for heavy metals, many of which can cause detrimental human health effects to multiple organ systems as well as permanently contaminating the ecosystem with subsequent damage to the flora and fauna. The benefits of encouraging the development of new chemical substances of low concern in place of those existing substances with known hazards touch on all aspects of human activity and the environment including less hazardous work place environments, safer products available for the consumer, and materials that will not decompose to toxic products in the disposal sites.

5. *Risk/benefit balance.* Determining the presence or absence of an unreasonable risk requires balancing of the benefits and risks posed by a regulatory action. EPA has determined that the risks are low based on the inherent properties of this class of substances and the additional safeguards provided by the risk-based ineligibility provisions.

EPA believes that the benefits of this action are quite significant. Promoting the development of this category of polymeric substances by reducing the regulatory burden in both reporting requirements and in eliminating the delay of these products into commerce will have discernible benefits to society. The added benefit of concentrating limited EPA resources on regulation of substances which have a greater potential to present significant risks, rather than a category such as polymers, which have a minimal potential for significant risk, is difficult to quantify, but is considered substantial nonetheless.

Given the above analysis, EPA concludes that the polymers covered by the scope of this final rule will not present an unreasonable risk of injury to human health or the environment when manufactured under the conditions of this exemption.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50594B). The record includes basic information considered by the Agency in developing this final rule. A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located at EPA Headquarters in Rm. NE–B307, 401 M St., SW., Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a "significant regulatory action" as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant") (2) create serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or load programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not a "significant regulatory action" under section 3(f) of the Order. This action is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the polymer exemption notice submitters were small firms, the number of small businesses affected by this action will not be substantial. In addition, since this action will generally reduce the existing burden and cost imposed on PMN submitters, the impact of this action on small entities should be an overall positive one.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012. The public reporting burden for this exemption has been eliminated. The public reporting burden for a PMN submission is estimated to vary from 95 to 110 hours; the burden for the 1984 polymer exemption is estimated to vary from 29.5 to 40 hours.

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Hazardous materials, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I, subchapter R, part 723 is amended as follows:

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PART 723—[AMENDED]

1. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604

2. By revising §723.250 to read as follows:

§723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must:

(i) Determine that the substance meets the definition of polymer in paragraph (b) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a report as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (j) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of the Act, 15 U.S.C. 2602, the following definitions apply to this part.

Act means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

Biopolymer means a polymer directly produced by living or once-living cells or cellular components.

Category of chemical substances has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

Cationic polymer means a polymer that contains a net positively charged atom(s) or associated groups of atoms covalently linked to its polymer molecule.

Chemical substance, Director, EPA, importer, impurity, Inventory, known to or reasonably ascertainable, manufacture, manufacturer, mixture, new chemical, person, possession or control, process and test data have the same meanings as in §720.3 of this chapter.

Equivalent weight of a functional group means the ratio of the molecular weight to the number of occurrences of that functional group in the molecule. It is the weight of substance that contains one formula-weight of the functional group.

Internal monomer unit means a monomer unit that is covalently bonded to at least two other molecules. Internal monomer units of polymer molecules are chemically derived from monomer molecules that have formed covalent bonds between two or more other monomer molecules or other reactants.

Monomer means a chemical substance that is capable of forming covalent bonds with two or more like or unlike molecules under the conditions of the relevant polymer-forming reaction used for the particular process.

Monomer Unit means the reacted form of the monomer in a polymer.

Number-average molecular weight means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

Oligomer means a polymer molecule consisting of only a few monomer units (dimer, trimer, tetramer)

Other reactant means a molecule linked to one or more sequences of monomer units but which, under the relevant reaction conditions used for the particular process, cannot become a repeating unit in the polymer structure.

Polyester means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal monomer units together.

Polymer means a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. In the context of this definition, sequence means that the monomer units under consideration are covalently bound to one another and form a continuous string within the molecule, uninterrupted by units other than monomer units.

Polymer molecule means a molecule which contains a sequence of at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant.

Reactant means a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition.

Reactive functional group means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo further chemical reaction.

Reasonably anticipated means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under §720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of "polymer" in paragraph (b) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*— (1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes) unless:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (e.g., polymers that will be used as ion exchange beads), or

(ii) The combined (total) functional group equivalent weight of cationic groups in the polymer is equal to or greater than 5,000.

(2) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) The elements listed in paragraph (d)(2)(i) of this section.

(B) Sodium, magnesium, aluminum, potassium, calcium, chlorine, bromine, and iodine as the monatomic counterions Na^{+}, Mg^{+2}, Al^{+3}, K^{+}, Ca^{+2}, Cl^{-}, Br^{-}, or I^{-}.

(C) Fluorine, chlorine, bromine, and iodine covalently bound to carbon.

(D) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(3) *Polymers which degrade, decompose, or depolymerize.* A polymer cannot be manufactured under this section if the polymer is designed or is reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. For the purposes of this section, degradation, decomposition, or depolymerization mean those types of chemical change that convert a polymeric substance into simpler, smaller substances, through processes including but not limited to oxidation, hydrolysis, attack by solvents, heat, light, or microbial action.

(4) *Polymers manufactured or imported from monomers and reactants not on the TSCA Chemical Substance Inventory.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is prepared from monomers and/or other reactants (that are either charged to the reaction vessel or incorporated in the polymer at levels of greater than 2 weight percent) that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

(5) *Water absorbing polymers with number average molecular weight (MW) 10,000 and greater.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is a water absorbing polymer and has a number average MW greater than or equal to 10,000 daltons. For purposes of this section, a water-absorbing polymer is a polymeric substance that is capable of absorbing its weight of water.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers with number average MW greater than or equal to 1,000 and less than 10,000 daltons (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000).* (i) The polymer must have a number average MW greater than or equal to 1,000 and less than 10,000 daltons and contain less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000.

(ii) The polymer cannot contain reactive functional groups unless it meets one of the following criteria:

(A) The polymer contains only the following reactive functional groups: carboxylic acid groups, aliphatic hydroxyl groups,unconjugated olefinic groups that are considered "ordinary,"(i.e., not specially activated either by being part of a larger functional group, such as a vinyl ether, or by other activating influences, e.g., strongly electron-withdrawing sulfone group with which the olefinic groups interact), butenedioic acid groups, those conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids, blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except that reactive halogen-containing groups such as benzylic or allylichalides cannot be included).

(B) The polymer has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for the following reactive functional groups: acidhalides; acid anhydrides; aldehydes, hemiacetals; methylolamides,- amines or,- ureas; alkoxysilanes with alkoxy greater than C_2-alkoxysilanes; allyl ethers; conjugated olefins;cyanates; epoxides; imines; or unsubstituted positions *ortho* or *para* to phenolic hydroxyl; or

(C) If any reactive functional groups not included in paragraph (e)(1)(ii)(A) and (B) of this section are present, the combined (total) reactive group equivalent weight, including any groups listed in paragraph (e)(1)(ii)(B), is greater than or equal to 5,000.

(2) *Polymers with number average MW greater than or equal to 10,000 (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000)* . The polymer must have a number average MW greater than or equal to 10,000 daltons and contain less than 2 percent oligomeric material below MW 500 and less than 5 percent oligomeric material below MW 1000.

(3) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b) of this section and is manufactured solely from one or more of the reactants in the following Table 1:

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE

Reactant	CAS No.
Monobasic Acids and Natural Oils	
Benzoic acid	65–85–0
Canola oil	120962–03–0
Coconut oil	8001–31–8*
Corn oil	8001–30–7*
Cottonseed oil	8001–29–4*
Dodecanoic acid	143–07–7
Fats and glyceridic oils, anchovy	128952–11–4*
Fats and glyceridic oils, babassu	91078–92–1*
Fats and glyceridic oils, herring	68153–06–0*
Fats and glyceridic oils, menhaden	8002–50–4*
Fats and glyceridic oils, sardine	93334–41–9*
Fats and glyceridic oils, oiticica	8016–35–1*
Fatty acids,C_{16-18} and C_{18}-unsatd.	67701–08–0*
Fatty acids, castor-oil	61789–44–4*
Fatty acids, coco	61788–47–4*
Fatty acids, dehydrated castor-oil	61789–45–5*
Fatty acids, linseed oil	68424–45–3*
Fatty acids, safflower oil	
Fatty acids, soya	68308–53–2*
Fatty acids, sunflower oil	84625–38–7*
Fatty acids, sunflower-oil, conjugated	68953–27–5*
Fatty acids, tall-oil	61790–12–3*
Fatty acids, tall-oil, conjugated*	
Fatty acids, vegetable oil	61788–66–7*
Glycerides, C_{16-18} and C_{18}-unsatd.	67701–30–8*
Heptanoic acid	111–14–8

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TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

Reactant	CAS No.
Hexanoic acid	142–62–1
Hexanoic acid, 3,3,5-trimethyl-	3302–10–1
Linseed oil	8001–26–1*
Linseed oil, oxidized	68649–95–6*
Nonanoic acid	112–05–0
Oils, Cannabis*	
Oils, palm kernel	8023–79–8*
Oils, perilla	68132–21–8*
Oils, walnut	8024–09–7
Safflower oil	8001–23–8*
Soybean oil	8001–22–7*
Sunflower oil	8001–21–6*
Tung oil	8001–20–5*
Di and Tri Basic Acids:	
1,2-Benzenedicarboxylic acid	88–99–3
1,3-Benzenedicarboxylic acid	121–91–5
1,3-Benzenedicarboxylic acid, dimethyl ester	1459–93–4
1,4-Benzenedicarboxylic acid	100–21–0
1,4-Benzenedicarboxylic acid, diethyl ester	636–09–9
1,4-Benzenedicarboxylic acid, dimethyl ester	120–61–6
1,2,4-Benzenetricarboxylic acid	528–44–9
Butanedioic acid	110–15–6
Butanedioic acid, diethyl ester	123–25–1
Butanedioic acid, dimethyl ester	106–65–0
2-Butenedioic acid (E)–	110–17–8
Decanedioic acid	111–20–6
Decanedioic acid, diethyl ester	110–40–7
Decanedioic acid, dimethyl ester	106–79–6
Dodecanedioic acid	693–23–2
Fatty acids, C_{18}-unsatd., dimers	61788–89–4*
Heptanedioic acid	111–16–0
Heptanedioic acid, dimethyl ester	1732–08–7
Hexanedioic acid	124–04–9
Hexanedioic acid, dimethyl ester	627–93–0
Hexanedioic acid, diethyl ester	141–28–6
Nonanedioic acid	123–99–9
Nonanedioic acid, dimethyl ester	1732–10–1
Nonanedioic acid, diethyl ester	624–17–9
Octanedioic acid	(505–48–6)
Octanedioic acid, dimethyl ester	1732–09–8
Pentanedioic acid	(110–94–1)
Pentanedioic acid, dimethyl ester	1119–40–0
Pentanedioic acid, diethyl ester	818–38–2
Undecanedioic acid	1852–04–6
Polyols	
1,3-Butanediol	107–88–0
1,4-Butanediol	110–63–4
1,4-Cyclohexanedimethanol	105–08–8
1,2-Ethanediol	107–21–1
Ethanol, 2,2'-oxybis-	111–46–6
1,6-Hexanediol	629–11–8
1,3-Pentanediol, 2,2,4-trimethyl-	144–19–4
1,2-Propanediol,	57–55–6
1,3-Propanediol, 2,2-bis(hydroxymethyl)-	115–77–5
1,3-Propanediol, 2,2-dimethyl-	126–30–7
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-	77–99–6
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl-	77–85–0
1,3-propanediol, 2-methyl	2163–42–0
1,2,3-Propanetriol	56–81–5
1,2,3-Propanetriol, homopolymer	25618–55–7
2-Propen-1-ol, polymer with ethenylbenzene	25119–62–4
Modifiers	
Acetic acid, 2,2'-oxybis-	110–99–6
1-Butanol	71–36–3**
Cyclohexanol	108–93–0
Cyclohexanol, 4,4'-(1-methylethylidene)bis-	80–04–6
Ethanol, 2-(2-butoxyethoxy)-	112–34–5
1-Hexanol	111–27–3
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane	72318–84–4*
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7-(1-methylethyl)-	13393–93–6

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

Reactant	CAS No.
Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2,2'- [(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane].	25036-25-3
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated	68440–65–3*
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated	68957–04–0*
Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated	†68957–06–2*
Silsesquioxanes, Ph Pr	†68037–90–1*

* Chemical substance of unknown or variable composition,complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

** These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Exemption report for polymers manufactured under the terms of this section.* For substances exempt under paragraphs (e)(1), (e)(2), and (e)(3) of this section a report of manufacture or import must be submitted (postmarked) by January 31 of the year subsequent to initial manufacture. The notice must include:

(1) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact.

(2) *Number of substances manufactured.* Number of substances manufactured. The manufacturer must identify the number of polymers manufactured under terms of the exemption for the first time in the year preceding the notice.

. (g) *Chemical identity information.* For substances exempt under paragraph (e) of this section the manufacturer must to the extent known to or reasonably ascertainable by the manufacturer identify the following and maintain the records in accordance with paragraph (j) of this section:

(1) A specific chemical name and CAS Registry Number (or EPA assigned Accession Number) for each "reactant," as that term is defined in paragraph (b) of this section, used at any weight in the manufacture of the polymer. For purposes of determining chemical identity, the manufacturer may determine whether a reactant is used at greater than two weight percent according to either the weight of the reactant charged to the reaction vessel or the weight of the chemically combined (incorporated) reactant in the polymer. Manufacturers who choose the "incorporated" method must have analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate compliance with this paragraph. Reactants that introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption are not allowed at any level.

(2) A representative structural diagram, if possible.

(h) *Certification.* To manufacture a substance under the terms of this section, a manufacturer must as of the date of first manufacture, make the following certification statements and maintain them in accordance with paragraph (j) of this section:

(1) The substance is manufactured or imported for a commercial purpose other than for research and development.

(2) All information in the certification is truthful.

(3) The new chemical substance meets the definition of a polymer, is not specifically excluded from the exemption in paragraph (d) of this section, and meets the conditions of the exemption in paragraph (e) of this section.

(i) *Exemptions granted under superseded regulations.* Manufacturers granted exemptions under the superseded requirements of §723.250 (as in effect on May 26, 1995) shall either continue to comply with those requirements or follow all procedural and recordkeeping requirements pursuant to this section. If an exemption holder continues to follow the superseded regulations, the Notice of Commencement requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria and exemption category restrictions on residual monomer/reactant and low molecular weight species content limitations.

(j) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e) of this section, must retain the records described in this paragraph at the manufacturing site for a period of 5 years from the date of commencement of manufacture or import.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) Chemical identity information as required in paragraph (g) of this section.

(ii) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(iii) Records of production volume for the first 3 years of manufacture and the date of commencement of manufacture.

(iv) Information to demonstrate that the new polymer meets the exemption criteria in paragraphs (e)(1), (e)(2), or (e)(3) of this section.

(v) Analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate that the polymer meets the number-average MW exemption criteria in paragraphs (e)(1) or (e)(2) of this section.The analytical tests may include gel permeation chromatography (GPC),vapor pressure osmometry (VPO), or other such tests,which will demonstrate that the polymer meets the number-average MW criterion.

(vi) Analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate that the polymer meets the criteria in paragraphs (e)(1) or (e)(2) of this section, meets the low MW content criteria in paragraphs (e)(1) or (e)(2) of this section.

(vii) If applicable, analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary) required in paragraph (g) of this section for determining monomers or reactants charged to the reaction vessel at greater than 2 weight percent but incorporated at 2 weight percent or less in the manufactured polymer.

(viii) The certification statements as required under paragraph (h) of this section.

(3) The manufacturer must submit the records listed in paragraph (j)(2) of this section to EPA upon written request by EPA. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of EPA, must

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permit such person at all reasonable times to have access to and to copy these records.

(k) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: TSCA Document Control Officer, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(l) *Compliance.* (1) A person who manufactures or imports a new chemical substance and fails to comply with any provision of this section is in violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties insection 16 of the Act (15 U.S.C. 2615) for each violation.-Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 2616).

(m) *Inspections.* EPA will conduct inspections under section 11 ofthe Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

(n) *Confidentiality.* If a manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in 40 CFR part 2. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

[FR Doc. 95–7712 Filed 3–24–95; 3:32 pm]

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40 CFR Part 723

[OPTS–50596B; FRL–4923–1]

RIN 2070–AC14

Premanufacture Notification Exemption; Revision of Exemption for Chemical Substances Manufactured in Small Quantities; Low Release and Exposure Exemption; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of any new chemical substance from some or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. EPA is amending the current TSCA section 5(h)(4) limited exemption defined at 40 CFR 723.50 for persons who manufacture certain chemical substances in quantities of 1,000 kilograms or less per year. This amendment will increase the volume limit to 10,000 kilograms or less a year. Also, this amendment adds a new section 5(h)(4) exemption category for certain chemical substances with low environmental releases and human exposures. This amendment will significantly reduce administrative burdens on EPA and industry and will expedite the Agency review process so that lower risk chemical substances may be marketed more quickly. To ensure that these chemical substances will not present an unreasonable risk, EPA has included procedural safeguards, including a 30–day review, and other conditions in the exemption.

DATES: This rule is effective May 30, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time, on April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The original exemption for chemical substances manufactured in quantities of 1,000 kilograms or less per year became effective on August 26, 1985. The supporting rationale and background for that exemption were published at 50 FR 16477 on April 26, 1985 and 47 FR 33896, August 4, 1982. This rule was proposed in the **Federal Register** on February 8, 1993 (58 FR 7646). Public hearings on this and related PMN exemptions were held in Washington, DC. on April 26–28, 1993. While general background information is presented here, readers should also consult the preambles for those notices for further information on the objectives and rationale for the rule and the basis for finding under TSCA section 5(h)(4) that activities involving the exempt chemical substances will not present an unreasonable risk of injury to human health or the environment.

I. Background

Section 5(a)(1) of TSCA (15 U.S.C. 2604 (a)(1)) requires any person who intends to manufacture or import a new chemical substance to notify EPA 90 days before manufacture or importation begins. Section 5(h)(4) of TSCA (15 U.S.C. 2604(h)(4)) allows the EPA, by rule, to grant an exemption from any or all of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a substance will not present an unreasonable risk of injury to health or the environment.

II. Final Exemption

A. Summary of the Rule

1. *Chemical substances manufactured at 10,000 kg or less per year.* Manufacturers of all new chemical substances manufactured in quantities of 10,000 kilograms or less per year are eligible to apply for a new category of exemption. (Note that throughout 40 CFR parts 720, 721, and 723, the term "manufacturer" is defined in TSCA section 3(8), 15 U.S.C. 2602(8), to include persons who import the specified chemical substance; the term "manufacture" is defined to include importation.) Upon approval, manufacturers will be permitted to manufacture up to 10,000 kilograms of the new chemical substance during

every 12 month period following the date of review period expiration without submitting a full premanufacture notice ("PMN") under section 5(a)(1) of TSCA.

As with the prior exemption for new chemical substances produced at 1,000 kg or less, new chemical substances will not be approved under the new exemption if the Agency believes that they or their reasonably anticipated metabolites, environmental transformation products, byproducts, or impurities raise a concern for serious acute or chronic human health effects or significant environmental effects under reasonably anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. Any exemption application will be denied if the Agency is unable to affirmatively find that manufacture, processing, distribution in commerce, use, and disposal of the exempted substance pursuant to the exemption will not present an unreasonable risk of injury to human health or the environment.

Manufacturers requesting this exemption must submit notices 30 days prior to commencement of manufacture or import. As with the prior exemption, where manufacturers provide information on human exposure controls or environmental release controls to support the exemption notice, the manufacturers must maintain those controls throughout the duration of the exemption. If EPA identifies a potential risk from a new chemical substance, but believes that the risk may be sufficiently mitigated through pollution prevention techniques and/or exposure and release controls, the Agency may conditionally approve the exemption pending the manufacturer's submission of an amended exemption notice which includes those or equivalent techniques or controls. If there is insufficient time remaining in the review period to provide the amended information, manufacturers may request a temporary suspension of the review period under 40 CFR 720.75(b). All amended pages of the exception notice must be received by the Agency prior to the expiration of the exemption review period.

Manufacturers are similarly bound to the uses described in their exemption notices and may not change the manufacturing sites identified in their notices unless they either meet the conditions specified in paragraph (j)(6) of the exemption or submit a new exemption notice.

In accordance with practice under the superseded 1,000 kilogram exemption, the Agency will generally perform the risk assessment under the new exemption as if the total amount permissible under the exemption (10,000 kilograms) were being produced. However, submitters wishing their exemptions to be reviewed based upon annual production volumes lower than 10,000 kilograms may so indicate in their exemption notice by marking the binding box adjacent to the production volume space on the form. Submitters who so elect, however, are bound by their election. Submitters who subsequently wish to increase their maximum production volume under the exemption must submit a new exemption notice cross-referencing the original exemption number on the cover of the notice. If the new exemption is granted, it will supersede the previous exemption.

As of the effective date of this rule, the existing 1,000 kilogram exemption category will no longer be available for new exemptions. All exemptions previously granted under the 1,000 kilogram exemption will remain binding and effective under the superseded provisions of 40 CFR 723.50 even though such provisions will no longer be contained in the Code of Federal Regulations. Any modification of the terms of a previously granted exemption must be requested via a new exemption notice. For example, a manufacturer or importer who was granted an exemption under the prior 1,000 kilogram per year or less exemption may submit a new exemption notice to increase the production volume up to 10,000 kilograms per year for the same chemical substance. If such manufacturer does apply for the 10,000 kilogram exemption, its notice will be reviewed for unreasonable risk at the increased production volume. A new risk assessment will be performed based on the information submitted in the new notice. A submitter of a subsequent 10,000 kilogram exemption may continue to manufacture under the terms of the 1,000 kilogram exemption until a regulatory decision is made on the new exemption notice. If the new notice is granted, it will supersede the 1,000 kilogram exemption.

2. *Low release and exposure chemicals.* In connection with the Agency's overall pollution prevention strategy, EPA is adding a new exemption category for chemical substances with low environmental releases and low human exposures during their manufacture, distribution in commerce, processing, use, and disposal. All manufacturers and importers of new chemical substances subject to PMN requirements meeting the stated release and exposure criteria are eligible to apply for this low release and exposure (LoREX) exemption, regardless of production volume. The LoREX exemption is intended to encourage companies to develop manufacturing, processing, use, and disposal techniques which minimize exposures to workers, consumers, the general public, and the environment.

As with the low volume exemption, the uses of the new chemical substances are restricted to those approved in the exemption notice, and submitters must maintain any exposure or release controls throughout the period of the exemption. Manufacturing sites identified in the exemption notice are binding unless specified conditions are satisfied. (See Comment 3, unit II.B. of this preamble). EPA believes that these binding provisions of the LoREX exemption will, in many instances, prove to be an effective substitute to regulation under section 5(e) of TSCA. Thus, EPA expects this new exemption category to significantly reduce the administrative costs presently devoted to section 5(e) consent order development and review, and to permit manufacturers to commence commercial production of their new products more quickly, while ensuring against unreasonable risk of injury to human health or the environment.

Prospective submitters should be mindful that the principal focus of the LoREX exemption is on release and exposure, not toxicity. Except where specifically noted in paragraph (c) of the regulation, EPA will generally be unable to conduct a thorough review of any submitted test data within the allotted review period and may request a temporary suspension of the review period if data are submitted. Although the Agency encourages data development for new chemical substances, manufacturers with submissions which involve extensive data reviews may, in some cases, be better served under a PMN review. Such manufacturers are envouraged to contact the Pre Notice Communications Staff for guidance prior to notice submission. To the extent that the Agency must undertake extensive detailed examination of the inherent toxicity of a given chemical substance, submission of a PMN may be more appropriate. (Of course, any toxicity data on the new chemical substance in the possession or control of the manufacturer must accompany the submission whether necessary for exemption approval or not).

To satisfy the required section 5(h)(4) findings of no unreasonable risk, the exemption notice submitter must first meet the eligibility criteria listed in paragraph (c) of the rule indicating that exposure to the new substance, and

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hence the risk presented by the substance, is low. Except as provided under the surface water and ambient air criteria, the human exposure side of the eligibility criteria requires the submitter to show that there are no exposures to consumers or the general public inherent in the proposed manufacturing, processing, or uses of the substance, and that any worker exposure which is likely to occur will be adequately controlled through use of engineering controls, work practices, and/or personal protective equipment.

In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are listed. In assessing the potential for environmental release, the submitter is required to consider all routine releases from manufacture, processing, and use, including releases associated with cleaning of equipment and from disposal or cleaning of containers and packaging. For ambient surface water, submitters must either (1) prevent all direct and indirect releases of the exempted substance to surface waters; or (2) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90 and 721.91.

As stated in paragraph (c)(2)(iii) of the rule, the Agency may approve of a surface water concentration level above 1 ppb for a new chemical substance if the manufacturer supports a request for a higher concentration with relevant and scientifically valid data on the new chemical substance or a close structural analogue of the substance which demonstrates that the new substance will not present an unreasonable risk of injury to aquatic species or human health at the higher concentration When such data is submitted, the Agency may request the manufacturer to temporarily suspend the review period to permit adequate time to review the data.

Based on the Agency's conservative assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criteria in nearly every case; therefore, compliance with the drinking water exposure criteria will be presumed from compliance with the 1 ppb surface water level. The Agency reserves the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious chronic effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage if the Agency makes the findings in §723.50(d).

The LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 $\mu g/m^3$. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criterion, submitters must calculate exposure levels using the method described in §723.50(c)(2). As with drinking water exposures, the Agency may require lower air release levels in individual cases as the Agency makes the finding in §723.50(d).

For land/groundwater disposal, LoREX substances must not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the groundwater migration potential of the new substance is negligible. To make such a demonstration, a submitter must provide (1) data on the biodegradation and leaching potential of the new substance or a close analogue of the substance, (2) data on the inherent physical or chemical properties of the new substance (e.g., solubility in water), or (3) other data which clearly establishes that significant releases to groundwater will not occur. To fulfill this requirement, EPA suggests the following core set of tests to establish groundwater migration potential: (a) An inherent biodegradability in soil test (40 CFR 796.3400); (b) an anaerobic biodegradability of organic chemicals test (40 CFR 796.3140); and (c) depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil thin layer chromatography test (40 CFR 796.2700). Although the Agency prefers test data on the specific new chemical substance, it will consider submitted data on close structural analogues to the new chemical substance. EPA strongly suggests that submitters contact the TSCA Prenotice Coordinator for guidance prior to commencement of the above testing.

Although it is difficult to state in advance precisely what combinations of results from the above testing would clearly establish that the groundwater migration potential of a chemical substance is "negligible", some broad parameters may be given. For example, manufacturers who perform soil adsorption testing that result in values for the logarithm of the soil adsorption coefficient ("log KOC") of their new chemical substances of 4.5 or greater will generally be found to have satisfied the "negligible groundwater migration potential" standard, unless there is reason to believe that the substance is extremely persistent in the environment. Similarly, biodegradation test data demonstrating half-lives of chemical substances of under 1 week, or complete degradation in under 2 weeks, would satisfy the LoREX criterion in most instances. Hydrolysis data showing that a new chemical substance hydrolyses at a rapid rate would also generally be accepted by the Agency. Chemical substances which do not show either a 4.5 or greater Log KOC value alone or a half-life of under 1 week alone may nonetheless qualify for the LoREX exemption if the two values in combination, or together with other relevant data, support a conclusion that significant amounts of the substances will not reach aquifers.

The Agency encourages potential submitters to consult with the Agency prior to the initiation of any testing. Such consultation frequently results in more relevant data and can often lower the submitters' test costs.

Upon approval of a LoREX exemption, the submitter is bound to the uses and the exposure and release controls described in the approved exemption. The submitter is also bound to the listed manufacturing sites unless the conditions described in paragraph (j)(6) are met. The Agency will deny an exemption application despite satisfaction of the LoREX exemption criteria if EPA makes the findings in §723.50(d) or if there are issues concerning exposure or toxicity that require further review beyond 30 days under §723.50(h)(1).

B. Discussion of the Public Comments and the Final Rule

This unit of the preamble summarizes the major public comments received, clarifies several areas of confusion identified by the public comments, and discusses the differences between the final rule and the proposal. Readers are also encouraged to consult the preamble of the proposed rule (58 FR 7646) for further explanation of these provisions.

Comment 1—Information reporting burden. Several commenters suggested that the information reporting requirements for both proposed exemption categories are overly burdensome and would discourage use of those exemptions; they believed that, because of this burden, many potential applicants would choose to submit full PMNs rather than use either of these two exemptions.

Response. The Agency reviewed the proposed information reporting requirements and has, to lesson that burden, revised those requirements in several areas, as described below. However, after close examination, EPA concluded that, in the context of these two exemption categories, some additional reporting burden is inevitable if the exemptions are to be practicable. This conclusion was based upon several factors. First, EPA believes that more information is necessary to support the TSCA section 5(h)(4) "will not present an unreasonable risk" finding for the higher production volume chemical substances likely to be reviewed under both the expanded low volume exemption, and for the new LoREX exemption category which does not contain any production volume limitations for eligibility. Second, in the Agency's experience under the prior low volume exemption (LVE), resolution of many exemption applications has been significantly delayed because additional information was needed to make regulatory decisions. Between June 1992 and January 1993, for example, over 12 percent of the LVE submissions were suspended during the review period pending receipt of additional human exposure, environmental release, worker protection, and/or environmental release control information necessary for the Agency's risk assessment. The percentage of submissions delayed for additional information would likely be significantly higher for the new higher-volume exemptions without some augmentation of the reporting requirements. Such delays would be very costly to both industry, through lost sales, and to EPA, through higher administrative expenditures.

One reporting area which several commenters identified as being particularly burdensome on manufacturers was human exposure/environmental release estimates, especially estimates for processing and use sites controlled by others. This burden was asserted to be especially acute on manufacturers of small volume specialty chemical products.

Upon review of these comments, EPA believes that, if provided with basic process descriptions for the proposed manufacturing, processing, and use operations of a new chemical substance, EPA can generate adequate exposure and release estimates for most types of new chemical substances which may be manufactured under the new low volume exemption. This belief is based on the experience gained from reviewing TSCA section 5 submissions for over 25,000 new chemical substances over the past 16 years. Therefore, the final rule has been amended to make information on human exposures and environmental releases for low volume exemption applicants optional if that information is not known by or readily available to the manufacturer. Manufacturers should be aware, however, that EPA-generated exposure and release estimates will generally be very conservative due to the uncertainties over the actual operating conditions which will be present at the manufacturing, processing, and use sites. Therefore, it will generally be in the applicants' interest to supply exposure and release data wherever possible. To assist in reporting such data under both the low volume and LoREX exemptions, the Agency has prepared a draft guidance document: Guidance for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50. This document may be obtained through the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

Comment 2— Customer noncompliance reporting provisions. Several companies expressed concern over the provisions in the proposal which would require exemption holders to immediately cease distribution of the exempted substance to any downstream recipient the holder learns is processing or using the exempt substance in violation of use, environmental release, worker exposure, or other restrictions of the exemption, and to report such violations to the Agency. It was suggested that the Agency adopt the alternative procedures for dealing with customer noncompliance now used by the Agency in its TSCA section 5(e) consent orders.

Response. The provisions in the proposal for customer notification of exemption restrictions and for reporting customer noncompliance and ceasing distribution pending EPA's investigation into deviations from exemption conditions are not new; they were retained from the prior low volume exemption regulation. (See existing 40 CFR 723.50(j)). The Agency has serious concerns over the environmental and human health risks which may result from any failures by downstream recipients to comply with the requirements of an approved exemption. Nevertheless, the Agency appreciates the difficulties which may flow from a requirement to immediately cease distribution to noncomplying customers, regardless of the gravity of the violation, and believes that the procedures developed in the section 5 consent order context would be appropriate in this exemption also. Therefore, the final rule has been modified as follows: If a manufacturer holding an exemption learns that a direct or indirect customer is processing or using the exempt substance in violation of any provisions of the exemption, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately unless the manufacturer is able to document each of the following: (1) That the manufacturer has, within 5 working days, notified the customer in writing that the customer has failed to comply with the conditions specified in §723.50 and the exemption notice; and (2) that, within 15 working days of notifying the customer of the noncompliance, the manufacturer received from the customer, in writing, a statement of assurance that the customer is aware of the terms of §723.50 and the exemption notice and will comply with those terms. If, after receiving a statement of assurance from a customer, the manufacturer obtains knowledge that the customer has failed to comply with any of the conditions specified in the §723.50 and the exemption notice, the manufacturer must immediately cease supplying the exempted substance to that customer and must report the failure to comply to EPA within 15 days of obtaining this knowledge. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the new chemical substance to the customer may resume.

Comment 3— Changes in manufacturing site. Several commenters requested that the Agency consider providing greater flexibility regarding changes in manufacturing sites for both categories of exemptions. They stated that such unanticipated changes as a sudden increase in demand or equipment failure at the original site can quickly create a need to employ an alternative manufacturing site on short notice. In such cases, the proposed process of obtaining approval for a new site may preclude the start up of another manufacturing operation in a timely fashion.

Response. In response to these comments, the Agency has added a new provision to the final rule which permits applicants to change manufacturing sites under the following conditions: First, where the magnitude, frequency, and duration of exposure of workers to the chemical substance at the new manufacturing site is equal to, or less than, the magnitude, frequency, and duration of worker exposures to the

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chemical substance at the manufacturing sites for which the Agency performed its risk-assessment pursuant to the original exemption notice; and second, where either (1) at the new manufacturing site, the manufacturer does not release to surface waters any of the chemical substance, or any waste streams containing the chemical substance; or (2) at the new manufacturing site, the manufacturer maintains surface water concentrations of the chemical substance, resulting from direct or indirect discharges from the manufacturing site, at or below 1 ppb, or at or below an alternative concentration level approved by the Agency in writing or under the procedures described at 40 CFR 723.50(c)(2)(iii) of the rule. The surface water concentrations shall be calculated using the method described at 40 CFR 721.91 and 721.92.

To meet the first condition described above regarding worker exposure, a manufacturer need only maintain records showing that the new manufacturing site is employing the same basic manufacturing technology as that described in its initial exemption notice, such that there is not an appreciable difference in worker exposures during operations at the new site compared to the original sites. Alternatively, a manufacturer could show that the technology at the new site, though different, actually decreases worker exposure levels because of improved containment equipment, mechanization of manufacturing processes, or similar improvements.

The water release conditions may be satisfied simply by calculating the surface water concentrations using the method described at 40 CFR 721.90 and 721.91 and maintaining records of the calculations. For chemical substances regulated under either LoREX or the low volume exemption, the surface water concentrations must be at or below 1 ppb. If the Agency has approved a higher concentration level for a particular LoREX chemical substance under the procedures described at 40 CFR 723.50(c)(2)(iii), the water concentration must be at or below that higher level. The Agency will, upon request, provide LVE holders with the water concentration of concern ("COC") used by the Agency in its risk assessment for the new chemical substance. LVE holders changing manufacturing sites must maintain surface water concentration levels at or below 1 ppb or the Agency-prescribed COC, whichever is greater.

All manufacturers who change or add manufacturing sites pursuant to these procedures must inform the Agency of the address of the new sites no later than 30 days after the commencement of manufacture at each new site. All other terms and conditions of the original exemption will continue in effect.

Comment 4—LoREX eligibility criteria. Several commenters suggested that the proposed LoREX eligibility criteria were too stringent, that very few chemical substances could meet the eligibility requirements, and that the Agency would achieve its streamlining objectives more directly by establishing an exemption for site-limited intermediates.

Response. The Agency largely disagrees with these comments. As explained in unit II. A. 2. of this preamble, EPA believes that the performance-based eligibility criteria for the LoREX exemption will be achievable for a significant number of new chemical substances, and that, once manufacturers become more familiar with the criteria, they will find it to be much more versatile than a site-limited intermediate exemption.

As discussed above in this preamble, the Agency has prepared a draft guidance document to assist manufacturers in reporting exposure and release information under this exemption. The draft document, entitled Guidelines for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50, explains in detail the type of information EPA will need to assess the potential risks of new chemical substances manufactured under the LoREX and low volume exemptions, and the type of documentation the Agency believes is adequate to support an exemption. The document may be obtained through the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

As stated throughout the proposal, the Agency was very interested in considering any alternative LoREX criteria which commenters might suggest. Despite those invitations, very little comment was offered on the specific proposed criteria itself. Nevertheless, the Agency reexamined the proposed criteria and has decided that the ambient surface water criteria could be amended to permit higher water concentrations in certain cases. Specifically, EPA determined that it could permit surface water concentrations above the standard 1 ppb if the higher level is supported by relevant and scientifically valid data on the new chemical substance or on a close structural analogue to the new chemical substance which adequately demonstrates that the new chemical substance will not present an unreasonable risk of injury to aquatic species or human health at the higher surface water concentration. Because scientific review of submitted test data will often require more than the normal 30–day review period, the Agency may, on a case-by-case basis, request manufacturers to temporarily suspend the review period pending data review.

Comment 5—Revocation provisions. Several commenters objected to the proposed provisions regarding revocation of exemptions after expiration of the review period. Under the proposal, the Agency could, based on new information, notify an exemption holder that EPA had determined that the new chemical substance did not meet the terms of the exemption and, after providing an opportunity for the holder to submit objections, could issue a final determination revoking the exemption if it disagreed with the exemption holder's objections. Numerous commenters were very concerned over the potential for business interruptions and loss of credibility with customers, and predicted that many prospective exemption applicants would choose submission of a full premanufacture notification rather than risk revocation of an exemption under the proposed provisions. Many suggested that the Agency reinstate the original notice of ineligibility provisions contained in the prior low volume exemption regulations.

Response. The Agency believes that manufacturers' concerns over unwarranted revocations overstate the potential for commercial harm coming to them as a result of these provisions. In fact, as the Agency stated during public hearings on the exemption, in the 9 years that the low volume exemption has been in effect, EPA has yet to invoke the post-review period revocation provisions in a single instance. Moreover, the Agency believes that the type of information which would convince it to invoke the revocation provisions would also convince most exemption holders to voluntarily withdraw their exemptions or undertake appropriate measures to mitigate the potential risk posed by the new chemical substance. Nevertheless, the Agency understands that a perceived risk of sudden business interruptions by prospective applicants and their customers may greatly discourage utilization of the exemption. In the final rule, therefore, EPA has reinstated the post-review period notice of ineligibility provisions as they were promulgated in the original low volume exemption. Those provisions differ from the proposed provisions in 2 principal respects: first, the decision to invoke the provisions must be made by the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances; and second, if the Assistant Administrator determines, after a final determination that the substance does not meet the terms of the exemption, that the exemption holder acted with due diligence and in good faith to meet the terms of the exemption, the exemption holder may, if it submits a PMN for the new chemical substance, continue to manufacture, process, use, and distribute the new chemical substance unless EPA subsequently takes action under section 5(e) or 5(f) of TSCA.

Comment 6—User fees. Most commenters stated that, because exemption applications are less burdensome upon the Agency than a full PMN submissions, the proposed $2,500 user fee for the exemptions should be lowered to reflect this savings.

Response. Although the applications submitted under these two exemptions will be less costly, on average, for the Agency to review than PMN submissions, the average cost to the Agency of reviewing an exemption will still exceed $2,500; however, as a further incentive for manufacturers to utilize these exemptions wherever possible, the Agency has at this time decided not to impose a user fee requirement for these exemptions.

III. Rationale for Expanding the Low Volume Exemption Category

A. Chemical Substances Manufactured at 10,000 Kilograms or Less Per Year

The basic rationale for expanding the low volume exemption category from 1,000 kilograms per year to 10,000 kilograms per year is the same as that for proposing the exemption initially: chemical substances produced in lower quantities generally involve correspondingly lower human exposures and environmental releases, and thus generally present less risk than high volume substances. In the Agency's experience reviewing PMN substances in the 1,000 to 10,000 annual production range, very few of these substances present risks of injury to human health or the environment significantly greater than the substances produced under the existing low volume exemption. Additionally, the Agency believes that the low volume exemption has been a very successful regulatory mechanism as measured by the level of EPA administrative resources needed to implement it and the relative burden it places on manufacturers. Because of this success, EPA believes that both its interests and the interests of industry will be served by enlarging the portion of new chemical substences which may be manufactured under the exemption.

B. Low Release and Exposure (LoREX) Chemical Substances

In addition to the production volume-based category described above, EPA is promulgating a new TSCA section 5(h)(4) exemption category based on low levels of environmental release of and human exposure to the new chemical substance. Eligibility is independent of production volume level.

The Agency believes that the concept of basing an exemption on low release and exposure offers several potential advantages over a more broad volume-based exemption. First, an exposure-driven exemption generally provides a more direct gauge of the magnitude of risk presented by a given new chemical substance. Production volume alone is only an indirect indicator of exposures and releases. Secondly, EPA believes that the existence of a LoREX exemption will encourage pollution prevention techniques by rewarding manufacturers able to meet the low release and exposure criteria with more timely regulatory decisions, and in many cases, with less burdensome regulatory controls. Such a result would entail substantial time and resource savings for both EPA and industry.

1. *LoREX criteria.* EPA has decided to set general performance standards for the LoREX exemption. Persons applying for exemptions are responsible for complying with these performance standards. Section 723.50(c) sets out the performance standards as "criteria." Some are absolute, e.g., no releases to surface waters resulting in water concentrations above 1 ppb. Others set a goal but allow compliance to be achieved without an absolute guarantee (e.g., no dermal or inhalation worker exposure) but this result is assumed to occur if "adequate" controls are used. In others, a general standard is set, but EPA can approve a different level for a specific new chemical substance (e.g., no surface water releases resulting in surface water concentrations above 1 ppb unless a higher concentration is approved based on data provided by the applicant in the notice). In all cases, EPA does not specify how the exemption applicant is to achieve the performance standard. In its exemption notice, the applicant will describe how it limits exposure with respect to all the criteria in the exemption. EPA will evaluate whether these meet the criteria in §723.50(c)(2). If they do, EPA will grant the exemption. If the exemption is granted by EPA, the exemption holder is responsible for complying with the standards throughout the period of the exemption and with any controls or limitations specified in its exemption notice.

a. *Human exposure.* In determining the appropriate criteria for defining the types and/or levels of exposure which should constitute "low exposure" to humans, EPA considered three distinct populations: workers, consumers, and the general population. EPA believes that, for purposes of this exposure-based exemption, any direct exposures to consumers and the general population would be, in the context of an abbreviated review period, inconsistent with the Agency's statutory obligation under section 5(h)(4) to affirmatively find that the exempted substances will not present an unreasonable risk of injury to human health. Therefore, the Agency believes that any consumer and/or general population exposures (other than the negligible drinking water and ambient air exposures discussed later in this preamble) should automatically disqualify new chemical substances from LoREX exemption eligibility.

Exposures to workers may be more readily monitored and controlled through engineering controls, workplace practices, and/or protective equipment requirements. Therefore, the Agency believes that it may, consistent with its section 5(h)(4) obligation, approve a high percentage of LoREX exemption notices where appropriate control measures are instituted in the workplace.

Workplace exposures may occur through inhalation or dermal contact. For dermal exposures, the Agency believes that the general dermal exposure requirements used in section 5(e) consent orders and significant new use rules (SNURs) generally provide "adequate dermal exposure controls." These include that all workers reasonably likely to be exposed to LoREX substances be provided with, and required to wear, chemical protective equipment which provides a barrier to prevent all dermal exposure to the substance. Chemical protective clothing used to provide this barrier is demonstrated to be impervious to the substance under the expected conditions of use and duration of exposure. Such demonstration could be accomplished under the procedures described at 40 CFR 721.63(a)(3)(i) - (ii) of the SNUR provisions by actually testing the material used to make the chemical protective clothing and/or by evaluating the specifications from the

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manufacturer or supplier of the chemical protective clothing to establish that it will be impervious to the exempted substance alone and in likely combination with other chemical substances in the work area.

To provide "adequate inhalation exposure controls," submitters of LoREX exemption notices will (i) identify the workplace operations where inhalation exposure is likely to occur; (2) assess the magnitude, frequency, and duration of potential exposure; (3) assess the effectiveness of the various exposure controls; and (4) select the method or combination of methods that will provide workers with the appropriate protection for the given workplace. While the Agency strongly encourages submitters to reduce workplace exposures at their source, where feasible, submitters could also "provide adequate inhalation exposure controls" based on the use of appropriate respiratory protection equipment. To achieve adequate controls, the Agency believes it most appropriate for a submitter to comply with the general requirements regarding respiratory protection used in TSCA section 5(e) consent orders and SNURS. These requirements stipulate the use of respiratory protection in accordance with the National Institute of Occupational Safety and Health (NIOSH) regulations at 30 CFR part 11, and the Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.134. (See generally 40 CFR 721.63). Similarly, the inherent physical or chemical properties of the substance submitted for an exemption may form the basis for a conclusion of adequate exposure controls, as in a nonvolatile dye manufactured, processed, and used only in solution, such that inhalation of particulates will not occur.

b. *Environmental release*— i. *Water releases*. The LoREX water release eligibility criterion of <1 ppb surface water concentration was established on the basis of EPA's experience in conducting environmental risk assessments on PMN substances. The concentration level must be calculated by the submitter using the method described in 40 CFR 721.90 and 721.91. Based on EPA's PMN experience, aquatic toxicity concern levels have only very rarely been established at levels below 1 ppb. Thus, EPA is confident that the vast majority of LoREX exemption notices satisfying this criterion will not present an unreasonable risk of acute or chronic aquatic toxicity, and that the Agency's risk assessment capabilities will identify those few exemptions which may require more strict concentration levels to protect against potential aquatic risks during the 30–day notice period.

ii. *Air releases from incineration*. The LoREX incineration air release eligibility criterion of < 1 $\mu g/m^3$, like the ambient surface water criterion, was selected on the basis of experience gained in conducting risk assessments on over 25,000 new chemical substances since 1979. At this maximum annual average concentration, EPA believes that, using worst case estimates, the maximum human exposures downwind from incinerators will be toxicologically insignificant for most of the chemical substances it is likely to review under the LoREX exemption. As noted above, however, the Agency may require individual submitters to adhere to lower incineration release levels for substances for which chronic toxicity concerns are raised during the risk assessment.

The methodology for calculating maximum annual average concentration (see subparagraph (c)(2)(iv) of the rule) was based on computer modeling similar to that used by the Agency in the PMN review process. Those interested in more detail on this methodology should consult the docket established for this rulemaking.

Submitters should also be aware that, although the final rule has not established generic eligibility criteria for fugitive air emissions unrelated to incineration, the Agency will review the potential for such emissions on a case-by-case basis, and will deny exemptions if the air emissions reach such levels as to undermine the Agency's ability to conclude that the substances in question will not present an unreasonable risk. Based on EPA's PMN experience, chemical substances with fugitive air emissions under 23 kilograms per site per year are seldom found to present an unreasonable risk of injury to the general population. Therefore, manufacturers submitting a LoREX exemption notice for substances with fugitive air emissions below that level are unlikely to be denied an exemption on that basis.

iii. *Land/groundwater releases*. The final rule excludes from eligibility all chemical substances which will be disposed of via landfill unless the submitter demonstrates to EPA in the notice that the exempted substance has negligible ground-water migration potential. This standard was deemed most appropriate for this purpose because the Agency was unable to develop a broadly applicable method for estimating groundwater concentrations of chemical substances based on landfill disposal volume that would allow development of a generic criterion. Given the many variables involved in making such estimates (e.g., migration rates, biodegradation rates, sediment/soil adsorption rates), EPA does not believe it will be possible to develop a generic model for estimating groundwater concentrations for a significant number of substances with sufficient reliability to support the requisite "will not present an unreasonable risk" finding. Consequently, the Agency believes that, in the context of an abbreviated review period in which in-depth case-by-case assessments of groundwater leaching potential are infeasible, prudence dictates that negligible release be the primary standard.

However, potential LoREX exemption submitters with no viable alternatives to landfill disposal have the option of demonstrating to the Agency's satisfaction that their substance will not migrate to groundwater. A list of suggested tests to establish groundwater migration potential is contained in Units II.A.2. of this preamble. If such a demonstration is made, a submitter would be permitted to landfill excess quantities of the exempted substance up to the amounts approved in its exemption notice. In all cases, however, the Agency strongly encourages submitters to strive for total elimination of releases through employment of the best available pollution prevention techniques. (See Unit II.A.2. of this preamble for further guidance on this criterion).

IV. Regulatory Analysis

A. Summary of Risk Assessment

1. *10,000 kilogram/year chemical substances*. To assess the risk associated with raising the ceiling for new chemical substances eligible for the low volume exemption from 1,000 kilograms/year to 10,000 kilograms/year, the Agency relied primarily upon the risk assessment developed to support the 1985 final low volume rule, along with the earlier version used to support the 1982 proposed low volume and site-limited intermediate rules.

a. *Exposure assessment*. The exposure assessment illustrates that, while low production volume in itself limits potential for exposure and environmental release, manufacture, processing, and use of new chemical substances can in some circumstances result in significant exposures at both the 1,000 and 10,000 kilogram annual production levels.

i. *Occupational exposure*. Based on PMN data, the number of workers exposed during manufacturing ranged from an average of about four for new chemical substances manufactured in quantities of 1,000 kilograms or less per year to an average of about eight for new chemical substances manufactured in quantities of 10,000 kilograms or less per year. Duration of exposure associated with manufacture averaged about 5 hours per day at both production levels, and the average number of days of production per year was 62.

Only a limited number of PMNs included estimates of workplace concentration. The average concentrations associated with manufacture were most often in the ranges of 0 to 1 and 1 to 10 mg/m^3 for airborne solids and in the 1 to 10 ppm range for vapors. EPA's evaluation of OSHA data (USEPA, OTS "Site-Limited Intermediate Exemption: Occupational Exposure and Environmental Release Assessment." March 19, 1982) indicated a time weighted average (TWA) of 6 ppm, with a maximum value of 72 ppm for vapors. EPA believes that data obtained from OSHA monitoring activities provides more reliable estimates of workplace concentrations.

EPA's analysis of processing and use of low volume chemicals indicated that the wide variety of possible processing and use operations can result in a wider range and higher level of exposures than is typically associated with manufacturing operations. The average number of workers exposed during processing and use operations exceeded the average numbers typically exposed during manufacturing. The number ranged from an average of 12 workers for a chemical processed in quantities of 1,000 kilograms or less per year to an average of 141 workers for chemicals processed or used in quantities of 10,000 kilograms or less per year.

ii. *Consumer exposure*. Consumer exposures were assessed for five use scenarios: photographic chemicals used in home darkrooms; spray adhesives; paints; dyes; and fragrances used in detergents. The use scenarios, which reflected actual uses reported in PMNs, were selected to represent divergent and potentially significant exposure situations. In these scenarios, the individual lifetime average daily exposures were estimated to range from 0.0016 mg/kg/day for a fragrance in soap to negligible levels for dyed fabrics.

According to EPA's analysis, many of the consumer use scenarios could result in relatively large numbers of consumers exposed. The numbers of consumers potentially exposed at the 10,000 kilogram production level ranged from 76,000,000 for a fragrance in shampoo to 98,000 for a spray adhesive. Because the concentration of a new chemical substance in a final product remains constant, the production volume is likely to affect only the number of consumers exposed, not the exposure level to each individual. Therefore, the number of consumers exposed at the 10,000 kilogram production limit is about 10 times the number that would be exposed at the 1,000 kilogram limit.

b. *Environmental release*. The Agency used data derived from PMN submissions for estimating the likely magnitude, duration, and frequency of environmental releases from manufacturing chemical substances under the new low volume exemption. The exposure analysis indicated that the average quantity released to water is 0.08 percent of the production volume, with an upper bound of 0.4 percent. Amounts released to air average 0.03 percent of production volume, with a 0.2 percent upper bound. However, some processing and industrial uses result in more substantial release rates, with a range from 0.3 to 25 percent of the production volume released to water. Discharges of a new low volume chemical substance from a single site processing 10,000 kilograms of the substance were estimated to produce environmental concentrations ranging from less than 0.0005 to 5.2 ppm in a receiving stream whose stream dilution factor was equal to the national median for streams receiving effluent from industrial facilities.

In some cases, such as detergent additives, environmental releases from consumer uses equaled the total production volume; however, the actual magnitude of environmental exposure was determined to be insignificant due to the low production volume, the wide distribution of release, and the small amount of new chemical substance typically contained in each consumer product.

c. *Risk under exemption conditions*. There are several elements of the exemption amendment that will significantly reduce risks to human health and the environment.

Chemical substances with carcinogenic, teratogenic, neurotoxic, and other chronic effects appear to present the greatest risks even at relatively low exposures. The Agency will deny exemptions for new substances which may cause such effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. These denials will significantly reduce the likelihood that chemicals that present such risks would be manufactured under the amended exemption. If the exemptions for such substances are denied, or if their submitters are required to resubmit their exemption notices to provide for more stringent release and exposure controls prior to approval, the range of potential risks would be substantially below the high end of EPA's estimates.

In addition, under the amended regulation, EPA would continue to review all exemption notices during the 30–day review period. This review will help ensure that manufacturers choose appropriate safeguards to control risks, as well as provide a screen to identify substances that do not qualify for the exemption.

2. *Low exposure/release chemical substances*. The risk associated with a given substance is a function of both the inherent toxicity (hazard) of the substance and the exposure of the relevant organism to the substance. Therefore, to the extent that releases and exposures are maintained below certain critical levels, potential risks presented by the substance are minimal. To assess the potential risk associated with the LoREX exemption, the Agency evaluated the exposure and release criteria in the context of its experience conducting risk assessments on over 25,000 new chemical substances in the PMN program over the last 16 years. Based on this experience, EPA tailored its LoREX exemption criteria in a manner to exclude from eligibility virtually all of the new chemical substances which the Agency believes could present potentially significant human or environmental exposures under conditions of manufacturing, processing, and use. For those substances which meet the eligibility criteria but may nevertheless present significant risks due to unusually high known or predicted toxicity levels, the Agency will either deny the exemptions or condition approval upon satisfaction of stricter exposure and release requirements.

a. *Human exposure*. Due to the wide range of possible consumer and general population exposures from the universe of new chemical substances, the Agency concluded that it could not develop any meaningful consumer or general population exposure criteria which would consistently screen out those substances which would present unreasonable risks from direct dermal or inhalation exposures. Consequently, EPA has excluded from LoREX exemption eligibility all new chemical substances which entail any direct consumer or general population exposure (except for negligible drinking water and ambient air exposures discussed in Unit IV.A.2.b. of this preamble). New chemical substances

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intended for use in consumer paints, detergents, dyes, and other consumer products, therefore, would have to be reviewed by the Agency in a full PMN or under one of the other applicable PMN exemptions, unless the chemical substance is completely reacted, encapsulated in a polymer matrix, or otherwise not bioavailable in the final product.

EPA has substantial experience with controlling worker exposure to new chemical substances from reviewing notices for over 25,000 new substances under section 5 of TSCA and issuing several hundred section 5(e) consent orders and SNURs with worker protection requirements. EPA believes that worker exposure to new chemical substances can be controlled adequately through the use of appropriate engineering/process controls and, if such controls cannot be used, through use of appropriate personal protective equipment. EPA has prescribed such controls and personal protective equipment in several hundred section 5(e) consent orders and believes that their proper use reduces worker dermal and inhalation exposure to new chemical substances to minimal levels. Thus, EPA concluded that for workers, who can be protected adequately from exposure to new chemical substances, it would set a goal of no dermal or inhalation exposure and allow persons applying for LoREX exemptions to meet those goals by using "adequate" controls and personal protective equipment modelled on the sorts of controls EPA has employed in the section 5(e) context.

b. *Environmental releases.* In terms of environmental releases, there are LoREX eligibility criteria for releases to three environmental media. For ambient surface water, the Agency is requiring that submitters either (i) prevent all direct and indirect releases of the exempted substance to surface waters; or (ii) demonstrate that any releases to surface water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90 and 721.91. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criterion in nearly every case; therefore, compliance with the drinking water exposure criterion will be presumed from compliance with the 1 ppb surface water level. The Agency retains the authority, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious effects are raised, or under conditions where projected drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The LoREX eligibility criterion for maximum annual average ambient air release concentrations from incineration of the new chemical substance is 1 μg/m³. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in §723.50(c)(2)(iv). As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for significant health effects are raised for the new substance.

For land/groundwater disposal, EPA is requiring that a LoREX substance not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the substance will not migrate to groundwater. (Consult unit II.A.2. of this preamble for further information on this criterion.)

Upon approval of a LoREX exemption, the submitter is bound to the continuous use of the exposure and release controls described in the approved exemption notice, as well as the listed uses and, unless specified conditions are met, manufacturing sites. The Agency will deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if EPA determines that the new substance may cause serious acute or chronic effects or significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, and disposal.

V. Economic Impact

The regulatory impact analysis estimates the costs and benefits attributable to the regulation. In this case, the analysis also contains estimates for the three additional amendments to EPA's TSCA section 5 regulations, namely the Polymer Amendment, the Procedural Amendment, and the Non-5(e) Significant New Use Rule Amendment, also published today. Because these regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the amendment with respect to the current regulation.

The costs and benefits associated with this amendment are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings in most instances. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1000	0.2 – 0.4	1.3 – 1.5
2000	0.4 – 0.7	2.5 – 3.1
3000	0.5 – 1.1	3.8 – 4.6

This amendment expands the low volume exemption and establishes the LoREX exemption. Industry costs associated with the amendment to the low volume exemption are reporting costs and delay costs. Per submission reporting costs are increased due to the more comprehensive submission requirements. Delay costs for those substances which qualify for the current exemption are slightly higher, while delay costs are significantly reduced for those substances which currently must submit a full PMN submission but would qualify for the new exemption. Delay costs are the costs associated with the delayed introduction of the substance into the market due to section 5 regulations.

Industry costs associated with the LoREX exemption are also reporting costs and delay costs. Because this would be a new exemption, all of the submitters would have originally been required to submit a full PMN submission and would be required to pay a user fee. Also, the reporting requirements are only slightly more than current requirements.

Unquantified benefits associated with this amendment include (1) increased use of pollution prevention practices by submitters; (2) a greater emphasis on the use of low risk chemicals; and (3) bringing LoREX substance and new substances manufactured between 1,000 and 10,000 kg per year to market more quickly. Regarding the third benefit, most chemical substances eligible for the exemption will clear review at least 60 days more quickly than if they had been submitted under a PMN; those substances that would have been regulated under section 5(e) will clear review, on average, 90 to 150 days sooner.

The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50596B).

VI. Finding of No Unreasonable Risk

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances. Under this regulation, EPA is exempting two categories of chemical substances: those with production volumes less than or equal to 10,000 kilograms/year, and those with low human exposure and low release to the environment. EPA has determined that these are appropriate categories under TSCA sections 6(c) and 5(h)(4). For each of these categories, as discussed below, EPA has made a finding that new chemical substances eligible for the exemptions will not present an unreasonable risk of injury to human health or the environment when manufactured, processed, used, distributed in commerce, or disposed of under the terms of the exemptions, including EPA's 30–day review.

The term "unreasonable risk" is not defined in TSCA. The legislative history, however, indicates that unreasonable risk involves the balancing of the probability that harm will occur and the magnitude and severity of that harm against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance.

2. *Risks.* In making the "will not present an unreasonable risk" finding under TSCA section 5(h)(4), EPA first considered the risk posed by granting each of the exemptions. Risk is the combination of the hazard presented by a chemical substance or category of chemical substances and the exposure of humans or the environment to the substances or category. EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, distribution, and fate of the chemical substance in the environment, disposal methods, waste water treatment, use of protective equipment and engineering controls, use patterns, and market potential of the chemical substance. These variables are difficult to quantify and standardize, thus EPA must supplement the available data with its professional judgment.

EPA's determination that manufacture, processing, use, distribution in commerce, and disposal of these two categories of substances under the terms of these exemptions will not present an unreasonable risk of injury to human health or the environment is based on consideration of (i) the limitations on risk that would result from the safeguards built into the rule, including Agency review; (ii) the limitations on risk resulting from the restriction of the exemptions to the chemical substances manufactured at volumes of 10,000 kg/yr or less and to low release/low exposure chemical substances; (iii) the benefits to industry and the public provided by new chemical substances manufactured under the exemption; and (iv) the benefits to the public and the Agency from the Agency's enhanced ability to utilize its limited resources on reviewing new chemical substances and uses of higher risk and concern. EPA recognizes that, even with the safeguards imposed by this rule, it is not ensuring that there will be no risk from new chemical substances manufactured under the exemption. The statute does not require zero risk. Rather, it defines unreasonable risk as a balancing of risk and benefit. Because of the safeguards in the amended regulation, the requirement that the provisions of the approved exemption are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if the full PMN process were completed. Furthermore, the new chemical substances provide benefits to industry and to the public. These benefits are an important element in the finding that these substances will not present an unreasonable risk.

The conditions of these exemptions are designed to mitigate risk, largely by the use of: (i) the reviews conducted by the Agency to assess whether the new chemical substances may cause chronic or acute human health or environmental effects; and (ii) the binding nature of the provisions of exemption notices, including the controls placed on exposure through worker protection requirements. For the low volume exemption, EPA determined that risks would generally be low because low production volume substances typically are not expected to result in high exposure to humans or the environment. Similarly, the eligibility criteria for the LoREX exemption directly limit permissible releases of and exposures to the exempted substances. In addition to the general finding of low release/low exposure, and therefore low risk for these categories, the restrictions and safeguards built into the exemptions will ensure that the risks presented by the exempt substances are low. For example, worker protection requirements and release restrictions imposed by the terms of the exemptions will minimize exposure, and therefore, risk.

a. *EPA review.* Within the 30–day review period, EPA is confident that it can identify the few new chemical substances under these exemptions that will pose potential risks which require more detailed and comprehensive review. EPA's abbreviated review plays an important role in the two exemptions and in the unreasonable risk finding. EPA has lengthened the review period from 21 to 30 days to ensure that staff resources will be sufficient to review the exemption notices under the amended rule. Information to be reviewed include production volume, hazard information, descriptions of the manufacturing, processing, and uses, exposure controls, releases to the environment, and certain physical/chemical data which EPA will assess in making a determination of risk. During this period, the Agency will have sufficient time to identify any issues or problems that will require more careful analysis, such as that available in a full PMN review. If EPA determines that a new chemical substance is not eligible for an exemption, manufacture will not begin. The manufacturer would then be required to comply with TSCA section 5(a)(1) before the substance could be manufactured for commercial purposes by submitting a full PMN to the Agency.

Despite the low risk generally associated with low volume and low release/low exposure substances, EPA recognizes that some substances that meet the general requirements for these exemptions, may present risks that are not appropriate for an exemption, thus EPA performs a 30–day review of each exemption notice and can deny individual exemptions. For example, a highly toxic chemical substance may present an unreasonable risk even if exposure to the substance is low. Likewise, a low production volume chemical substance may present an unreasonable risk if it is hazardous and is manufactured or processed in a manner that would result in high human exposure or high release to the environment. Thus, although EPA is making a general finding that these categories of new chemical substances will not present an unreasonable risk under the terms of the exemptions, EPA will continue to evaluate exemption notices on a case-by-case basis to determine if individual substances

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should be denied an exemption based on the potential risks presented by those substances. For a further discussion of how EPA will determine when to deny an exemption, see Unit III. of this notice.

b. *New information and EPA revocation.* In addition to these safeguards, the rule contains several other provisions that further limit the possibility that exempted substances may present unreasonable risks. Most important, the rule establishes procedures for revocation of the exemption if EPA later determines that the substance may cause serious acute or chronic human effects or environmental effects. In addition, EPA has the authority to require documents relevant to an exemption from the manufacturer (in addition to the information provided in the exemption notice), and the manufacturer would be required to submit promptly to EPA any new data indicating that a substance is ineligible. These provisions will ensure that eligibility for and continuation of the exemption will be determined on the basis of the best available information, regardless of when the information becomes available.

3. *Benefits.* EPA believes that these exemptions will allow many manufacturers to introduce new chemical substances in commerce much more rapidly than via the PMN process. The time and resource savings will also benefit EPA which will, by utilizing its limited assets more efficiently, be able to apply more staff time to reviewing higher risk chemical substances and uses.

4. *Pollution prevention considerations.* The LoREX exemption is expected to further the Agency's pollution prevention efforts by encouraging development of manufacturing processes and technologies which reduce chemical releases and exposures at their source. Such reductions not only limit potential risks to people and the environment, but may also produce significant long-term cost savings to industry through the recapture and reuse of substances which would otherwise have been released into workplaces or the environment.

5. *Risk/benefit balance.* As discussed above, EPA has determined that the risk presented by exempting these two categories of new chemical substances is low. At the same time, there are significant benefits to be achieved by the exemptions, which encourage innovation and permit manufacturers to introduce new chemical substances into commerce more rapidly. Thus, EPA has determined that, under the terms of this rule, the risks associated with low volume substances and low release/low exposure substances are outweighed by the benefits to society of exempting these substances from full PMN review.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50596B). The record includes basic information considered by the Agency in developing this rule. A public version of the record is available in the TSCA Nonconfidential Information Center from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located in Rm. NE–B607 (Northeast Mall), 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a "significant regulatory action" as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant") (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866, it has been determined that this rule is not "a significant regulatory action" under section 3(f) of the Order. This action is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the notice submitters were small firms, the number of small businesses affected by this action will not be substantial. In addition, since this action will generally reduce the existing burden and cost imposed on notice submitters, the impact of this action on small entities should be an overall positive one.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012. The public reporting burden for this collection of information is estimated to vary from 96 to 116 hours per response, with an average of 106 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I, part 723 is amended as follows:

PART 723 — [AMENDED]

1. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

2. By revising §723.50 to read as follows:

§723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

(a) *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of:

(i) Chemical substances manufactured in quantities of 10,000 kilograms or less per year.

(ii) Chemical substances with low environmental releases and human exposures.

(2) To manufacture a new chemical substance under the terms of this exemption a manufacturer must:

(i) Submit a notice of intent to manufacture 30 days before manufacture begins, as required under paragraph (e) of this section.

(ii) Comply with all other provisions of this section.

(b) *Definitions.* The following definitions apply to this subpart.

(1) *Act* means the Toxic Substances Control Act (15 U.S.C. 2601 et seq).

(2) *Consumer* means a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment.

(3) *Environment* has the same meaning as in section 3 of the Act (15 U.S.C. 2602).

(4) *Environmental transformation product* means any chemical substance resulting from the action of environmental processes on a parent compound that changes the molecular identity of the parent compound.

(5) *Metabolite* means a chemical entity produced by one or more enzymatic or nonenzymatic reactions as a result of exposure of an organism to a chemical substance.

(6) *Serious acute effects* means human disease processes or other adverse effects that have short latency periods for development, result from short-term exposure, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(7) *Serious chronic effects* means human disease processes or other adverse effects that have long latency periods for development, result from long-term exposure, are long-term illnesses, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(8) *Significant environmental effects* means:

(i) Any irreversible damage to biological, commercial, or agricultural resources of importance to society;

(ii) Any reversible damage to biological, commercial, or agricultural resources of importance to society if the damage persists beyond a single generation of the damaged resource or beyond a single year; or

(iii) Any known or reasonably anticipated loss of members of an endangered or threatened species. Endangered or threatened species are those species identified as such by the Secretary of the Interior in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531).

(9) *Site* means a contiguous property unit. Property divided only by a public right-of-way is one site. There may be more than one manufacturing plant on a single site.

(10) The terms *byproduct, EPA, importer, impurity, known to or reasonably ascertainable, manufacture, manufacturer, new chemical substance, person, possession or control, and test data* have the same meanings as in §720.3 of this chapter.

(c) *Exemption categories.* Except as provided in paragraph (d) of this section, this exemption applies to:

(1) Any manufacturer of a new chemical substance manufactured in quantities of 10,000 kilograms or less per year under the terms of this exemption.

(2) Any manufacturer of a new chemical substance satisfying all of the following low environmental release and low human exposure eligibility criteria:

(i) *Consumers and the general population.* For exposure of consumers and the general population to the new chemical substance during all manufacturing, processing, distribution in commerce, use, and disposal of the substance:

(A) No dermal exposure.

(B) No inhalation exposure (except as described in paragraph (c)(2)(iv) of this section.

(C) Exposure in drinking water no greater than a 1 milligram per year (estimated average dosage resulting from drinking water exposure in streams from the maximum allowable concentration level from ambient surface water releases established under paragraph (c)(2)(iii) of this section or a higher concentration authorized by EPA under paragraph (c)(2)(iii) of this section).

(ii) *Workers.* For exposure of workers to the new chemical substance during all manufacturing, processing, distribution in commerce, use and disposal of the substance:

(A) No dermal exposure (this criterion is met if adequate dermal exposure controls are used in accordance with applicable EPA guidance).

(B) No inhalation exposure (this criterion is considered to be met if adequate inhalation exposure controls are used in accordance with applicable EPA guidance).

(iii) *Ambient surface water.* For ambient surface water releases, no releases resulting in surface water concentrations above 1 part per billion, calculated using the methods prescribed in §§721.90 and 721.91, unless EPA has approved a higher surface water concentration supported by relevant and scientifically valid data submitted to EPA in a notice under paragraph (e) of this section on the substance or a close structural analogue of the substance which demonstrates that the new substance will not present an unreasonable risk of injury to aquatic species or human health at the higher concentration.

(iv) *Incineration.* For ambient air releases from incineration, no releases of the new chemical substance above 1 microgram per cubic meter maximum annual average concentration, calculated using the formula:

(kg/day of release after treatment) multiplied by (number of release days per year) multiplied by (9.68×10^{-6}) micrograms per cubic meter.

(v) *Land or groundwater.* For releases to land or groundwater, no releases to groundwater, to land, or to a landfill unless the manufacturer has demonstrated to EPA's satisfaction in a notice under paragraph (e) of this section that the new substance has negligible groundwater migration potential.

(d) *Chemical substances that cannot be manufactured under this exemption.* A new chemical substance cannot be manufactured under this section, notwithstanding satisfaction of the criterion of paragraphs (c)(1) or (c)(2) of this section, if EPA determines, in accordance with paragraph (g) of this section, that the substance, any reasonably anticipated metabolites, environmental transformation products, or byproducts of the substance, or any reasonably anticipated impurities in the substance may cause, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance:

(1) Serious acute (lethal or sublethal) effects.

(2) Serious chronic (including carcinogenic and teratogenic) effects.

(3) Significant environmental effects.

(e) *Exemption notice.* (1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. The notice must be sent in writing to: TSCA Document Control Officer, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The date of submission will be the date on which the notice is received by the TSCA Document Control Officer. EPA will acknowledge the receipt of the notice by letter. The letter will identify

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the date on which the review period begins. The notice shall be submitted using EPA Form No. 7710–25 ("the PMN form"), which may be obtained from EPA by writing the Environmental Assistance Division, (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460, or by calling the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

(2) The notice shall contain the information described below, pursuant to the referenced provisions of §720.45.

(i) Manufacturer identity.

(ii) Chemical identity (§720.45(a)).

(iii) Impurities (§720.45(b)).

(iv) Known synonyms or trade names (§720.45(c)).

(v) Byproducts (§720.45(d)).

(vi) Production volume (§720.45(e)).

(A) Manufacturers submitting an exemption application under paragraph (c)(1) of this section will be assumed to be manufacturing at an annual production volume of 10,000 kilograms. Manufacturers who intend to manufacture an exempted substance at annual volumes of less than 10,000 kilograms and wish EPA to conduct its risk assessment based upon such lesser annual production level rather than a 10,000–kilograms level, may so specify by writing the lesser annual production volume in the appropriate box on the PMN form and marking the adjacent binding option box. Manufacturers who opt to specify annual production levels below 10,000 kilograms and who mark the production volume binding option box shall not manufacture more than the specific annual amount of the exempted substance unless a new exemption notice for a higher (up to 10,000 kgs) manufacturing volume is submitted and approved pursuant to this section.

(B) Manufacturers submitting an exemption under paragraph (c)(2) of this section shall list the estimated maximum amount to be manufactured during the first year of production and the estimated maximum amount to be manufactured during any 12–month period during the first 3 years of production.

(vii) Description of intended categories of use. (§720.45(f)).

(viii) For manufacturer-controlled sites, the manufacturer shall supply identity of manufacturing sites, process descriptions, and worker exposure and environmental release information (§720.45(g)); for sites not controlled by the manufacturer, processing and use operation descriptions, estimated number of processing and use sites, and worker exposure/environmental release information (§720.45(h)). A manufacturer applying for an exemption under paragraph (c)(1) of this section need not provide information on worker exposure and environmental release referenced in paragraphs (e)(2)(viii) of this section if such information is not known or not readily available to the manufacturer. To assist in reporting this information, manufacturers may obtain a copy of EPA's Guidance for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50, available from the Environmental Assistance Division at the address listed in paragraph (e)(1) of this section. Where worker exposure and environmental release information is not supplied by the manufacturer, EPA will generally apply "bounding estimates" (i.e., exposure estimates higher than those incurred by persons in the population with the highest exposure) to account for uncertainties in actual exposure and release scenarios.

(ix) Type and category of notice. The manufacturer must clearly indicate on the first page of the PMN form that the submission is a "TSCA section 5(h)(4) exemption notice," and must indicate whether the notice is being submitted under paragraph (c)(1) or (c)(2) of this section. Manufacturers of chemical substances that qualify for an exemption under both paragraph (c)(1) and (c)(2) of this section may apply for either exemption, but not both.

(x) Test data (§720.50).

(xi) Certification. In addition to the certifications required in EPA form 7710–25, the following certifications shall be included in notices under this section. The manufacturer must certify that:

(A) The manufacturer intends to manufacture or import the new chemical substance for commercial purposes, other than in small quantities solely for research and development, under the terms of this section.

(B) The manufacturer is familiar with the terms of this section and will comply with those terms.

(C) The new chemical substance for which the notice is submitted meets all applicable exemption conditions.

(D) For substances manufactured under paragraph (c)(1) of this section, the manufacturer intends to commence manufacture of the exempted substance for commercial purposes within 1 year of the date of the expiration of the 30–day review period.

(xii) Sanitized copy of notice. (A) The manufacturer must make all claims of confidentiality in accordance with paragraph (l) of this section. If any information is claimed confidential, the manufacturer must submit a second copy of the notice, with all information claimed as confidential deleted, in accordance with paragraph (l)(3) of this section.

(B) If the manufacturer does not provide the second copy, the submission will be considered incomplete.

(3) *Incomplete notices.* If EPA receives a submission which does not include all of the information required under this paragraph (e) of this section, the submission will be determined to be incomplete by EPA. When a submission for a new chemical substance has been determined to be incomplete, a manufacturer reapplying for an exemption for the new chemical substance must submit a new exemption notice containing all the information required under this paragraph (e) of this section including a certification page containing an original dated signature; partial submissions sent to EPA to supplement notices declared incomplete will not be accepted. Photocopied pages from previously submitted exemption forms will be accepted provided that the certifications page contains an original dated signature.

(f) *Multiple exemption holders.* (1) A manufacturer who intends to manufacture a substance for which an exemption under this section was previously approved may apply for an exemption under paragraph (c)(1) or (c)(2) of this section; however, EPA will not approve any subsequent exemption application under paragraph (c)(1) of this section unless it can determine that the potential human exposure to, and environmental release of, the new chemical substance at the higher aggregate production volume will not present an unreasonable risk of injury to human health or the environment.

(2)(i) If EPA proposes to deny an exemption application for a substance for which another manufacturer currently holds an exemption, and that proposed denial is based exclusively on the cumulative human exposure or environmental release of the substance which precludes the EPA from determining that the subsequent applicant's activities will not present an unreasonable risk of injury to human health or the environment, the EPA will notify the first exemption holder that it must, within 21 days of its receipt of EPA's notice, either:

(A) Provide a new certification that it has commenced, or that it will commence, manufacture of the new chemical substance under this section within 1 year of the expiration of its exemption review period; or

(B) Withdraw its exemption for the new chemical substance.

(ii) If the first exemption holder does not respond to the EPA's notice under paragraph (f)(2)(i) of this section within the prescribed time period, EPA shall issue a notice of ineligibility to the first exemption holder under the provisions of paragraph (h)(2) of this section.

(g) *Review period.* (1) EPA will review the notice submitted under paragraph (e) of this section to determine whether manufacture of the new chemical substance is eligible for the exemption. The review period will end 30 days after receipt of the notice by the TSCA Document Control Officer. To provide additional time to address any unresolved issues concerning an exemption application, the exemption applicant may, at any time during the review period, request a suspension of the review period pursuant to the provisions of §720.75(b) of this chapter.

(2) Upon expiration of the 30–day review period, if EPA has taken no action, the manufacturer may consider its exemption approved and begin to manufacture the new chemical substance under the terms described in its notice and in this section.

(h) *Notice of ineligibility*—(1) *During the review period.* If the EPA determines during the review period that manufacture of the new chemical substance does not meet the terms of this section or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30–day review period, EPA will notify the manufacturer by telephone that the substance is not eligible. This telephone notification will subsequently be confirmed by certified letter that identifies the reasons for the ineligibility determination. The manufacturer may not begin manufacture of the new chemical substance without complying with section 5(a)(1) of the Act or submitting a new notice under paragraph (e) of this section that satisfies EPA's concerns.

(2) *After the review period.* (i)(A) If at any time after the review period specified in paragraph (g) of this section the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances ("the Assistant Administrator") makes a preliminary determination that manufacture of the new chemical substance does not meet the terms of this section, the Assistant Administrator will notify the manufacturer by certified letter that EPA believes that the new chemical substance does not meet the terms of the section.

(B) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (h)(2)(i)(A) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the notification and if the manufacturer submits objections or an explanation under paragraph (h)(2)(ii) of this section. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (h)(2)(iii) of this section.

(ii) A manufacturer who has received notice under paragraph (h)(2)(i)(A) of this section may submit, within 15 days of receipt of written notification, detailed objections to the determination or an explanation of its diligence and good faith efforts in attempting to comply with the terms of this section.

(iii) The Assistant Administrator will consider any objections or explanation submitted under paragraph (h)(2)(ii) of this section and will make a final determination. The Assistant Administrator will notify the manufacturer of the final determination by telephone within 15 days of receipt of the objections or explanation, and subsequently by certified letter.

(iv) If the Assistant Administrator determines that manufacture of the new chemical substance meets the terms of this section, the manufacturer may continue or resume manufacture, processing, distribution in commerce, and use in accordance with the terms of this section.

(v) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer did not act with due diligence and in good faith to meet the terms of this section, the manufacturer must cease any continuing manufacture, processing, distribution in commerce, and use of the new chemical substance within 7 days of the written notification under paragraph (h)(2)(iii) of this section. The manufacturer may not resume manufacture, processing, distribution in commerce, and use of the new chemical substance until it submits a notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(vi) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer acted with due diligence and in good faith to meet the terms of this section, the manufacturer may continue manufacture, processing, distribution in commerce, and use of the new chemical substance if:

(A) It was actually manufacturing, processing, distributing in commerce, or using the chemical substance at the time it received the notification specified in paragraph (h)(2)(i)(A) of this section.

(B) It submits a notice on the new chemical substance under section 5(a)(1) of the Act and part 720 of this chapter within 15 days of receipt of the written notification under paragraph (h)(2)(iii) of this section. Such manufacture, processing, distribution in commerce, and use may continue unless EPA takes action under section 5(e) or 5(f) of the Act.

(3) Action under this paragraph does not preclude action under sections 7, 15, 16, or 17 of the Act.

(i) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify under terms of this section, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information. If, during the notice review period specified in paragraph (g) of this section, the submitter obtains possession, control, or knowledge of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the notice, the submitter must send that information to the address listed on the notice form within 10 days of receiving the new information, but no later than 5 days before the end of the notice review period. The new submission must clearly identify the submitter and the exemption notice to which the new information is related. If the new information becomes available during the last 5 days of the notice review period, the submitter must immediately inform its EPA contact for that notice by telephone.

(j) *Changes in manufacturing site, use, human exposure and environmental release controls, and certain manufacturing volumes.* (1) Except as provided in paragraph (j)(6) of this section, chemical substances manufactured under this section must be manufactured at the site or sites described, for the uses described, and under the human exposure and environmental release controls described in the exemption notice under paragraph (e) of this section.

(2) Where the manufacturer lists a specific physical form in which the new chemical substance will be manufactured, processed, and/or used,

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the manufacturer must continue manufacturing, processing, and/or using the new chemical substance in either the same physical form described in the notice under paragraph (e), or in a physical form which will not increase the human exposure to or environmental release of the new chemical substance over those exposures or releases resulting from the specified physical form (e.g., a manufacturer which specifies that the new chemical substance will be produced in a non-volatile liquid form generally may not change to a respirable powder form).

(3) The annual production volume of chemical substances manufactured under paragraph (c)(1) of this section for which the manufacturer designated a binding annual production volume pursuant to paragraph (e)(2)(vi) of this section must not exceed that designated volume.

(4) Any person who manufactures a new chemical substance under paragraph (c)(1) or (c)(2) of this section must comply with the provisions of this section, including submission of a new notice under paragraph (e) of this section, before:

(i) Manufacturing the new chemical substance at a site that was not approved in a previous exemption notice for the substance, except as provided in paragraph (j)(6) of this section.

(ii) Manufacturing the new chemical substance for a use that was not approved in a previous exemption notice for the substance.

(iii) Manufacturing the new chemical substance without employing the human exposure and environmental release controls approved in a previous exemption notice for the substance.

(iv) Manufacturing the new chemical substance in a physical form different than that physical form approved in a previous exemption notice for the substance and which form may increase the human exposure to, or environmental release of, the new chemical substance over those exposures or releases resulting from the physical form approved in the previous notice.

(v) Manufacturing the chemical substance in annual production volumes above any volume designated by the manufacturer as binding under paragraph (e)(2)(vi) of this section in a previous exemption notice for the substance.

(5) In an exemption notice informing EPA of a change in site, use, or worker protection, or environmental release controls, the manufacturer is not required to provide all of the same information submitted to EPA in a previous exemption notice for that chemical substance. The new exemption notice, however, must indicate the identity of the new chemical substance; the manufacturer's name; the name and telephone number of a technical contact; and location of the new site, new worker protection or environmental release controls, and new use information. The notice must also include the EPA-designated exemption number assigned to the previous notice and a new certification by the manufacturer, as described in paragraph (e)(2)(xi) of this section.

(6)(i) A manufacturer may, without submitting a new notice, manufacture the new chemical substance at a site not listed in its exemption application under the following conditions:

(A) the magnitude, frequency, and duration of exposure of individual workers to the new chemical substance at the new manufacturing site is equal to, or less than, the magnitude, frequency, and duration of exposure of the individual workers to the new chemical substance at the manufacturing site for which the EPA performed its original risk-assessment pursuant to the original exemption notice; and

(B) Either (*1*) at the new manufacturing site, the manufacturer does not release to surface waters any of the new chemical substance, or any waste streams containing the new chemical substance; or (*2*) at the new manufacturing site, the manufacturer maintains surface water concentrations of the chemical substance, resulting from direct or indirect discharges from the manufacturing site, at or below 1 part per billion, or at or below an alternative concentration level approved by the Agency in writing or under the procedures described in paragraph (c)(2)(iii) of this section, using the water concentration calculation method described at §§721.90 and 721.91.

(ii) The manufacturer shall notify EPA of any new manufacturing site no later than 30 days after the commencement of manufacture of the new chemical substance under the exemption at the new manufacturing site as follows:

(A) The notification must contain the EPA-designated exemption number to which the notification applies, manufacturer identity, the street address of the new manufacturing site, the date on which manufacture commenced at the new site, the name and telephone number of a technical contact at the new site, any claim of confidentiality, and a statement that the notification is an amendment to the original exemption application under the terms of this section.

(B) The notification may be submitted on EPA form 7710–56 "Notice of Commencement of Manufacture;" however, the manufacturer must add the statement required under paragraph (j)(6)(ii)(A) of this section that the notification is an amendment to the original exemption.

(C) The notification must contain an original signature of an authorized official of the manufacturer.

(k) *Customer notification.* (1) Manufacturers of new chemical substances described in paragraphs (c)(1) and (c)(2) of this section must notify processors and industrial users that the substance can be used only for the uses specified in the exemption notice at paragraph (e) of this section. The manufacturer must also inform processors and industrial users of any controls specified in the exemption notice. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, or any other method that adequately informs them of use restrictions or controls.

(2) A manufacturer of a new chemical substance described in paragraph (c)(2) of this section may distribute the chemical substance only to other persons who agree in writing to not further distribute the substance until it has been reacted, incorporated into an article, or otherwise rendered into a physical form or state in which environmental releases and human exposures above the eligibility criteria in paragraph (c)(2) of this section are not likely to occur.

(3) If the manufacturer learns that a direct or indirect customer is processing or using the new substance in violation of use restrictions or without imposing prescribed worker protection or environmental release controls, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately unless the manufacturer is able to document each of the following:

(i) That the manufacturer has, within 5 working days, notified the customer in writing that the customer has failed to comply with the conditions specified in this section and the exemption notice under paragraph (e) of this section.

(ii) That, within 15 working days of notifying the customer of the noncompliance, the manufacturer received from the customer, in writing, a statement of assurance that the customer is aware of the terms of this section and the exemption notice and will comply with those terms.

(4) If, after receiving a statement of assurance from a customer under paragraph (k)(3)(ii) of this section, the manufacturer obtains knowledge that the customer has again failed to comply with any of the conditions specified in this section or the exemption notice, the manufacturer shall cease supplying the new chemical substance to that customer and shall report the failure to comply to EPA within 15 days of obtaining this knowledge. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the chemical substance to the customer may resume.

(l) *Confidentiality.* (1) If the manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in part 2 of this chapter. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph (l) must provide a generic chemical name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the manufacturer will be subject to EPA review and approval in accordance with the procedures specified in §720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice with all information claimed as confidential deleted. EPA will place the second copy in the public file.

(m) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of this section (as in effect on May 26, 1995) shall either continue to comply with those requirements (including the production volume limit) or apply for a new exemption pursuant to this section. EPA will not accept requests to amend exemptions granted under the superseded requirements; manufacturers wishing to amend such exemptions must submit a new exemption under paragraph (e) of this section. If a new exemption for a new chemical substance is granted under this exemption to the manufacturer holding an exemption under the superseded requirements, the exemption under the superseded requirements for such substance shall be void.

(n) *Recordkeeping.* (1) A manufacturer of a new chemical substance under paragraph (c) of this section must maintain the records described in this paragraph at the manufacturing site or site of importation for a period of 5 years after date of their preparation.

(2) The records must include the following to demonstrate compliance with this section:

(i) Records of annual production volume and import volume;

(ii) Records documenting complaince with the applicable requirements and restrictions of paragraphs (c), (e), (f), (h), (i), (j), and (k) of this section.

(3) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(2) of this section.

(4) The manufacturer must submit the records listed in paragraph (n)(2) of this section to EPA upon written request. Manufacturers must provide these records within 15 working days of receipt of such request.

(o) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Submitting materially misleading or false information in connection with the requirements of any provision of this section is a violation of this section and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(4) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section, or act to seize any chemical substance manufactured or processed in violation of this section, or take other action under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 1616).

[FR Doc. 95–7711 Filed 3–24–95; 3:32 pm]
BILLING CODE 6560–50–F

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federal register

Wednesday
March 29, 1995

Part IV

Department of Labor

29 CFR Part 270
Permanent Replacement of Lawfully Striking Employees by Federal Contractors; Proposed Rule

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DEPARTMENT OF LABOR

29 CFR Part 270

RIN 1294–AA13

Office of the American Workplace; Permanent Replacement of Lawfully Striking Employees by Federal Contractors

AGENCY: Office of the American Workplace, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth proposed regulations for implementing Executive Order 12954, which was signed by President Clinton on March 8, 1995 and became effective on that date, and was published in the **Federal Register** on March 10, 1995. Executive Order 12954 provides that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, federal contracting agencies shall not contract with employers that permanently replace lawfully striking employees.

DATES: Interested parties may submit written comments on this proposal by April 28, 1995.

ADDRESSES: Written comments should be submitted to the Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charles L. Smith, Special Assistant to the Deputy Secretary, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210, (202) 219–6045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 8, 1995, President Clinton signed Executive Order 12954, "Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts." In the Order, the President makes the finding that economy and efficiency in procurement are generally advanced by contracting with employers that do not permanently replace lawfully striking employees. That is, the permanent replacement of strikers can adversely affect a contractor's ability to reliably provide high quality goods and services, thereby adversely affecting the Federal Government's economy, efficiency, and cost of operations. The Order then states that "[i]t is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees." The Order further states that all discretion under the Order is to be exercised in accordance with this policy.

The Order then establishes a flexible mechanism, based on case-by-case determinations, designed to ensure economy and efficiency in government procurement involving contractors that have permanently replaced lawfully striking employees. Under the Order, the Secretary of Labor is authorized to conduct investigations, either on the basis of a complaint or on his or her own initiative, and to hold hearings as he or she deems advisable in order to determine whether an organizational unit of a federal contractor has permanently replaced lawfully striking employees.

If the Secretary finds that an organizational unit of a federal contractor has permanently replaced lawfully striking employees, he or she may exercise either or both of two options. First, he or she may find that existing contracts should be terminated for convenience; the head of the contracting agency may object to that finding in writing and the termination for convenience shall not be issued.

Second, the Secretary may find that it is appropriate to debar the employer from future contracts and renewal of existing contracts until the labor dispute is resolved. However, a contracting agency may enter into a contract with the employer if there is a compelling reason to do so.

The Secretary has delegated his authority under the Order to the Assistant Secretary for the American Workplace in Secretary's Order No. 2–95, signed on March 8, 1995, and published in the **Federal Register** on March 13, 1995, 60 FR 13602.

Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866. The Department is issuing this rule in conformance with that Executive Order. The Department has determined that the potential benefits of this regulatory action outweigh the potential costs, and that the rule promotes the President's priorities. This rule does not meet the criteria of section 3(f)(1) of Executive Order 12866 and, therefore, the information in section 6(a)(3)(C) of that Executive Order is not required. This rule has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

The Agency Head has certified that this rule is not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 270

Administrative practice and procedure; Government contracts; Federal contractors and subcontractors.

Signed at Washington, D.C., this 24th day of March, 1995.

Charles L. Smith,

Special Assistant to the Deputy Secretary.

Accordingly, it is proposed to amend 29 CFR Chapter II by adding a new Part 270 as set forth below.

PART 270—OBLIGATIONS OF FEDERAL CONTRACTING AGENCIES: PERMANENT REPLACEMENT OF LAWFULLY STRIKING EMPLOYEES

Subpart A—Preliminary Matters

Sec.
270.1 Definitions.
270.2 Statement of policy.

Subpart B—Enforcement

270.10 Complaints.
270.11 Investigations.
270.12 Findings by the Assistant Secretary.
270.13 Hearings.
270.14 Termination of contract for convenience.
270.15 Debarment.
270.16 Determination of resolution of labor dispute.

Subpart C—Ancillary Matters

270.20 Cooperation with the Assistant Secretary.
270.21 Rulings and interpretations.
270.22 Delegation of authority by the Secretary.
270.23 General.

Authority: Executive Order No. 12954, 60 FR 13023, March 10, 1995; Secretary's Order No. 2–95, 60 FR 13602, March 13, 1995.

Subpart A—Preliminary Matters

§ 270.1 Definitions.

(a) *Affiliates* means business concerns, organizations, or individuals among which, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interest among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for the American Workplace.

(c) *Contract* means a mutually binding agreement between the Government as a buyer, represented by a contracting agency, and a seller, where the seller agrees to furnish supplies or services (including construction) and the Government agrees to pay for them. It includes job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders under which the contract becomes effective by written acceptance or performance; and bilateral modifications to a contract, which increase the supplies or services to be delivered under the contract. For purposes of this part a contract is limited to agreements in which the Government agrees to pay an amount in excess of the Simplified Acquisition Threshold of $100,000 specified in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11). The term "contract" does not include agreements in which the parties stand in the relationship of employer and employee.

(d) *Contracting agency* means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(e) *Contractor* means a prime contractor.

(f) *Department* means the U.S. Department of Labor.

(g) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor.

(h) *Employee* includes any employee of an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but does not include any individual having the status of an independent contractor or any individual employed as a supervisor.

(i) *Government* means the government of the United States of America.

(j) *Labor dispute* includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(k) *Lawfully striking employee* means an employee who is engaged in a strike that has not been finally adjudicated to be unlawful under any applicable federal, state, or local law.

(l) *Order* means Executive Order 12954, dated March 8, 1995 (60 FR 13023, March 10, 1995).

(m) *Organizational unit of a federal contractor includes:*

(1) A division or other organizational element of a person that is responsible as the prime contractor for performing a contract, and (2) Any other affiliate of the person that could provide the goods or services required to be provided under the contract.

(n) *Permanently replaced,* when used in connection with a lawfully striking employee, means that during a lawful strike the employer has placed an individual in the lawfully striking employee's position, and the striking employee does not have an unconditional right to reinstatement.

(o) *Person* means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(p) *Prime contractor* means any person holding a contract with a contracting agency.

(q) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

§ 270.2 Statement of Policy.

(a) It is the policy of the Executive Branch of the Federal Government that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees.

(b) All discretion under the Order and this part shall be exercised consistent with this policy.

(c) The Order and this part apply only to contracts in excess of the Simplified Acquisition Threshold of $100,000 established in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11).

Subpart B—Enforcement

§ 270.10 Complaints.

(a) Complaints may be filed by an employee of an organizational unit of a federal contractor, or his or her representative, alleging that the organizational unit has permanently replaced lawfully striking employees. All complaints should be filed with the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210.

(b) The complaint must be in writing and should include the name, address, and telephone number of the complainant, the name and address of the organizational unit of the federal contractor alleged to have permanently replaced lawfully striking employees, an identification of the lawfully striking employees who were allegedly permanently replaced, and any other pertinent information which will assist in the investigation and resolution of the complaint.

§ 270.11 Investigations.

The Deputy Assistant Secretary may cause an investigation to be conducted of an organizational unit of a federal contractor, regarding the permanent replacement of lawfully striking employees, on the basis of complaints filed with the Department, information submitted by other persons, or other available information. The Deputy Assistant Secretary shall notify the organizational unit of a federal contractor of the initiation of an investigation and the potential consequences under the Order. The Deputy Assistant Secretary may also cause a fact finding hearing to be conducted, either instead of or in addition to an investigation. The Deputy Assistant Secretary shall transmit the record, including a proposed finding of fact and a recommendation as to debarment and/or termination of a contract or contracts, to the Assistant Secretary.

§ 270.12 Findings by the Assistant Secretary.

(a) Upon receipt of the record, the Assistant Secretary shall make a finding as to whether the organizational unit of the federal contractor has permanently replaced lawfully striking employees.

(b) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees, he or she shall determine whether it is appropriate to propose debarment.

(c) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees after March 8, 1995, the effective date of the Order, he or she shall also determine whether

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it is appropriate to propose termination for convenience of the contract or contracts of the organizational unit.

(d) If the Assistant Secretary proposes debarment and/or termination, he or she shall send the organizational unit a notice of proposed debarment and/or termination by certified mail, return receipt requested, advising the organizational unit of its right, within 15 days after receipt of the notice, to submit, in person, in writing, or through a representative, information and argument in opposition to debarment and/or termination.

§ 270.13 Hearings.

(a) If the Assistant Secretary finds that the submission by the organizational unit of a federal contractor in opposition to the proposed debarment and/or termination raises a genuine dispute over facts material to the proposed debarment and/or termination, the Assistant Secretary shall afford the organizational unit the opportunity to appear at an informal hearing. The Assistant Secretary or his or her designee shall preside over the proceeding.

(b) The Assistant Secretary shall make a decision on the proposed debarment and/or termination of a contract or contract based on the record.

§ 270.14 Termination of contract for convenience.

(a) Upon finding that termination of a contract or contracts for convenience is appropriate, the Assistant Secretary shall notify the organizational unit of a federal contractor by certified mail, return receipt requested, and shall transmit that finding to the head of any department or agency that contracts with the organizational unit.

(b) The head of the department or agency shall notify the Assistant Secretary in writing of those contracts that have been terminated for convenience pursuant to the Assistant Secretary's finding.

(c) If the head of the department or agency objects to the termination for convenience of a contract, he or she shall notify the Assistant Secretary in writing, promptly after receipt of the Assistant Secretary's finding, of the reasons for not terminating the contract and the termination for convenience shall not be issued.

§ 270.15 Debarment.

(a) The scope of any debarment normally will be limited to the organizational unit of a federal contractor that the Assistant Secretary has found to have permanently replaced lawfully striking employees.

(b) Upon finding that debarment is appropriate, the Assistant Secretary shall promptly notify the organizational unit of the federal contractor by certified mail, return receipt requested. The notice shall advise the organizational unit of the federal contractor:

(1) Of the effective date of the debarment;

(2) That the debarment will not extend beyond the date when the labor dispute precipitating the permanent replacement of lawfully striking employees has been resolved, as determined by the Assistant Secretary in accordance with § 270.16;

(3) That under the debarment, contracting agencies throughout the executive branch of the Government shall not contract or consent to subcontracts with the organizational unit of the federal contractor nor renew or otherwise extend the duration of current contracts, unless the head of a contracting agency or his or her designee determines that there is a compelling reason for such action.

(c) The Assistant Secretary shall notify the Administrator of the General Services Administration of the debarment and the Administrator shall include the contractor on the list of debarred contractors. The Assistant Secretary shall publish or cause to be published in the **Federal Register**, the names of contractors that have, in the judgment of the Assistant Secretary, permanently replaced lawfully striking employees and have been the subject of debarment. Departments and agencies shall not renew or otherwise extend the duration of current contracts or solicit offers from, award contracts to, or consent to subcontracts with these contractors unless the head of the agency or his or her designee determines, in writing, that there is compelling reason for such action.

§ 270.16 Determination of Resolution of Labor Dispute.

(a) The Assistant Secretary may cause an investigation to be conducted, on his or her own initiative or upon request by any person, to determine whether a labor dispute that resulted in debarment has been resolved. Among the factors or conditions that the Assistant Secretary may consider are:

(1) Whether the parties to the labor dispute have either reached a formal settlement or agreed on a procedure for resolving their differences;

(2) Whether the parties have agreed informally to end the labor dispute without the signing of a written agreement;

(3) Whether striking employees have returned to work;

(4) Any other relevant factors tending to lead to the conclusion that the labor dispute has ended.

(b) If the Assistant Secretary determines that the labor dispute has been resolved, he or she shall terminate the debarment and notify the public, federal agencies, federal contractors, and other interested persons, through publication in the **Federal Register** or otherwise, of this action.

Subpart C—Ancillary Matters

§ 270.20 Cooperation with the Assistant Secretary.

Consistent with section 7 of the Order, each contracting agency shall cooperate with the Assistant Secretary and provide such information and assistance as the Assistant Secretary may require in the performance of the Assistant Secretary's functions under the Order and the regulations in this part.

§ 270.21 Rulings and Interpretations.

Rulings under or interpretations of the Order or the regulations contained in this part shall be made by the Assistant Secretary or his or her designee.

§ 270.22 Delegation of Authority by the Secretary.

Consistent with section 8 of the Order, the Secretary may delegate any function or duty of the Secretary under this Order to any officer in the Department or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

§ 270.23 General.

(a) The regulations in this part implement Executive Order 12954 only and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Consistent with section 10 of the Order, nothing contained in the Order or this part, or promulgated pursuant to the Order or this part, is intended to confer any substantive or procedural right, benefit, or privilege enforceable at law by a party against the United States, its agencies or instrumentalities, its officers, or its employees.

[FR Doc. 95–7732 Filed 3–24–95; 4:09 pm]

BILLING CODE 4510–86–P

federal register

Wednesday
March 29, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 594 and 595
John Heinz Neighborhood Development Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 594 and 595

[Docket No. R–95–1865; FR–3389–F–02]

RIN 2506–AB48

John Heinz Neighborhood Development Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The John Heinz Neighborhood Development Program was established as a permanent program in the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program. Pending this final rule, the permanent program has been implemented through Notices of Funding Availability (NOFAs) published in the **Federal Register**. The most recent NOFA was published on February 24, 1995.

This final rule establishes the requirements applicable to the permanent program and contains HUD's responses to comments received on the proposed rule. The rule, which takes effect before the deadline for applications under the February 24 NOFA, will govern that NOFA and future funding competitions that may be announced from time to time.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Grant Officer, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7218, 451 Seventh Street SW., Washington, D.C. 20410; telephone number (202) 708–2186. The TDD number is (202) 708–1455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535–0084.

Background

Section 832 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318a) established the John Heinz Neighborhood Development Program as a permanent program of the Department. Previously, the program had been authorized and operated as a demonstration program, pursuant to section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). On June 8, 1993 (58 FR 32210), HUD published a proposed rule addressing requirements of the permanent program. This proposed rule referenced a notice of funding availability (NOFA) that was published on the same day as the proposed rule (58 FR 32215) and invited public comment on the announced requirements.

Discussion of Public Comments

The Department received only one comment in response to the proposed rule. The comment, from the National Neighborhood Coalition, incorporated four separate points that are addressed in this section of the preamble.

(1) *Neighborhood resident participation.* The commenter stated that two conditions are critical to the success and sustainability of the organization and projects that it undertakes. The comment emphasized the importance of both participation by residents of the neighborhood and a governing body whose composition reflects the demographic characteristics of the neighborhood. HUD agrees with this observation, and the final rule indicates that NOFAs developed for this program will give appropriate weight to this factor.

(2) *Neighborhood Development Funding Organizations (NDFO).* Another comment questioned the requirement that an applicant obtain the participation of an NDFO (bank) located within the neighborhood, noting that a number of organizations do not have bank branches located within their neighborhoods. The final rule clarifies this requirement by omitting any requirement that the NDFO be located within the neighborhood.

(3) *Record of past performance of an applicant.* Another comment suggested that the record of past performance of an applicant is a critical factor. HUD took this comment into consideration, but believes that the record of past performance is adequately reflected in other factors. The final rule is unchanged on this point.

(4) *Smaller Grants to Fledgling Organizations.* The commenter also suggested that HUD make smaller grants in the $5,000 to $20,000 range to fledgling organizations to help them get started. HUD already has the authority to make smaller grants to these organizations; therefore, the final rule is unchanged on this point.

Removal of Part 595

Currently 24 CFR part 595 contains regulations for the Neighborhood Self-Help Development Program. Although this program was conceptually similar to the John Heinz Neighborhood Development Program, the authorizing legislation for the Neighborhood Self-Help Development Program was repealed in 1981 (42 U.S.C. 8121 note, 95 Stat. 398). Therefore, the Department is removing part 595 from the Code of Federal Regulations, in order to avoid confusion about the status of that program.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The program implemented by this rule will provide incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the program implemented by this rule is to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families is indirect and beneficial, no further review is considered necessary.

Environmental Review

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes program regulations for the award of grants to neighborhood development organizations for the purpose of supporting local efforts to improve opportunities relating to employment, business, housing, and services within the participating neighborhoods.

Semiannual Agenda of Regulations

This rule was listed as Item No. 1842 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57663), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

The Federal Domestic Assistance Catalog number for this program is 14.242.

List of Subjects

24 CFR Part 594

Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 595

Community development, Grant programs—housing and community development, Urban renewal.

Accordingly, and under the authority of 42 U.S.C. 3535(d), 24 CFR chapter V is amended as follows:

1. Part 594 is added to read as follows:

PART 594—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM

Subpart A—General

Sec.
594.1 Applicability and purpose.
594.3 Definitions.

Subpart B—Eligibility

594.5 Eligible applicants.
594.7 Other threshold requirements.
594.10 Eligible activities.

Subpart C—Funding Allocation and Criteria

594.15 Allocation amounts.
594.17 General criteria for competitive selection.

Subpart D—Award and Use of Grant Amounts

594.20 Submission procedures.
594.23 Approval and certification procedures.
594.25 Project administration.
594.28 Environmental reviews.
594.30 Equal opportunity and other Federal requirements.

Authority: 42 U.S.C. 3535(d) and 5318a.

Subpart A—General

§ 594.1 Applicability and purpose.

(a) *General.* This part establishes as a permanent program the John Heinz Neighborhood Development Program, as authorized by section 832 of the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program under Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note).

(b) *Purpose.* The program is intended to assist communities to become more viable, by providing incentive funds to carry out neighborhood development activities that benefit low- and moderate-income families. The program objectives are to increase the capacity of neighborhood organizations, promote long-term financial support for their neighborhood projects, and encourage greater participation of neighborhood organizations with private and public institutions.

§ 594.3 Definitions.

Empowerment zone means an area designated by HUD as an Empowerment Zone under 26 U.S.C. 1391–1393.

Enterprise community means an area designated by HUD as an Enterprise Community under 26 U.S.C. 1391–1393.

Grantee means an eligible neighborhood organization that executes a grant agreement with HUD under this part.

HUD means the Department of Housing and Urban Development.

Low- and moderate-income persons means families and individuals whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of HUD in accordance with 42 U.S.C. 5302(a)(20).

Neighborhood development funding organization means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., or the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

Neighborhood development organization means the same as the term is defined in § 594.5.

Rural neighborhoods. In small cities with under 10,000 in population and in rural areas, a neighborhood area can be the same unit as the unit of general local government.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; the Federated States of Micronesia; the Marshall Islands; or a general purpose political subdivision thereof.

Subpart B—Eligibility

§ 594.5 Eligible applicants.

(a) *General requirements.* To be eligible under this program, a neighborhood development organization must be located within the neighborhood for which assistance is to be provided. It cannot be a city-wide consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following requirements:

(1) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(2) The organization must be responsible through a governing body to the residents of the neighborhood it serves, and not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(3) The organization must have conducted business for at least one year;

(4) The organization must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974, 42 U.S.C. 5318;

(ii) The area is designated as an Enterprise Community or Empowerment Zone under Federal law as enacted;

(iii) The area is designated as an enterprise zone under State law and is recognized by the Secretary as a State enterprise zone for purposes of this part; or

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(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991, 12 U.S.C. 1834a(b)(1); and

(5) The organization must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons.

(b) *Special eligibility.* Any facility that provides small entrepreneurial business with affordable shared support services and business development services and that meets the requirements of paragraph (a) of this section may also be eligible to participate in this program.

§ 594.7 Other threshold requirements.

In addition, an applicant must meet the following threshold requirements:

(a) Specify a management business plan for accomplishing one or more of the eligible activities specified in § 594.10;

(b) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization; and

(c) Specify a strategy for increasing the capacity of the applicant.

§ 594.10 Eligible activities.

Eligible activities include, but are not limited to, the following:

(a) Developing economic development activities that include:

(1) Creating permanent jobs in the neighborhood; or

(2) Establishing or expanding businesses within the neighborhood;

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood; and

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts.

Subpart C—Funding Allocation and Criteria

§ 594.15 Allocation amounts.

(a) *Amounts and match requirement.* HUD will make grants, in the form of matching funds, to eligible neighborhood development organizations. HUD reserves the right to make grants for less than the maximum amount established by statute, and to limit the number of times a previous grantee can receive funding. A Federal matching ratio will be established for each grantee in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the greatest degree of economic distress or the smallest number of households.

(b) *Administrative costs.* The Secretary may use no more than 5 percent of the funds appropriated for the program for administrative or other expenses in connection with the program.

§ 594.17 General criteria for competitive selection.

(a) *Criteria.* HUD will use the following general criteria for selecting and ranking applications for all competitions for John Heinz Neighborhood Development Program funds. The relative values for the criteria will be indicated in each NOFA:

(1) The degree of economic distress and the benefit to low- and moderate-income residents of the neighborhood;

(2) The past performance in carrying out eligible activities, and staff capability;

(3) The quality of the Management/Business Plan;

(4) The evidence of coordination and resident participation; and

(5) The quality of the strategy to increase the capacity of the organization and the strategy developed for meeting long-term financial needs.

(b) *Geographic diversity.* The Department also reserves the right to fund applicants in other than rank order, for the purpose of achieving geographic balance.

Subpart D—Award and Use of Grant Amounts

§ 594.20 Submission procedures.

(a) *Use of NOFAs.* The Department will publish a Notice of Funding Availability (NOFA) in the **Federal Register** for each funding competition under this program, indicating the objective of the competition; the amount of funding available; the application procedures, including the eligible applicants and activities to be funded; and any special conditions applicable to the competition, including the requirements for the match. The NOFA also will describe the maximum points to be awarded under each evaluation criterion, for the purpose of ranking applications, and any special factors to be considered in assigning the points to each criterion.

(b) Applications shall be submitted in accordance with the time, place, and content described in the NOFA.

(Approved by the Office of Management and Budget under control number 2535–0084)

§ 594.23 Approval and certification procedures.

(a) *Approval of application.* HUD's acceptance of an application for review does not imply a commitment to provide funding. HUD will provide notification of whether a project will be funded in accordance with the criteria and procedures set out in the applicable NOFA.

(b) *Certifications.* In the absence of independent evidence that tends to challenge in a substantial manner the certifications made by the applicant pursuant to § 594.30, the required certifications will be accepted by HUD.

However, if independent evidence is available that tends to challenge in a substantial manner an applicant's certification, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certification is satisfactory.

§ 594.25 Project administration.

Project administration will be governed by the terms of the grant agreement.

§ 594.28 Environmental reviews.

(a) For all proposed actions or activities that are not considered categorically excluded under 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA).

(b) Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other applicable requirements of environmental statutes, Executive Orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees shall adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

§ 594.30 Equal opportunity and other Federal requirements.

Each participating neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity in Housing) (3 CFR, 1958–1963 Comp., p. 652) and implementing regulations at 24 CFR Part 107; and applicable provisions of the Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., including Title VI (42 U.S.C. 2000d) (Nondiscrimination in

Federally Assisted Programs) and its implementing regulations at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 (Equal Employment Opportunity) (3 CFR, 1964–1965 Comp., p. 339) and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135;

(d) The requirements of Executive Order 11625 (3 CFR, 1971–1975 Comp., p. 616), Executive Order 12138 (3 CFR., 1979 Comp., p. 393), and Executive Order 12432 (3 CFR, 1983 Comp., p. 198). Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded;

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309);

(f) The requirements of the Americans with Disabilities Act (42 U.S.C. 12181–12189) and implementing regulations at 28 CFR part 36, as applicable;

(g) The Consolidated Plan of the appropriate unit of general local government; and

(h) Other Federal requirements as specified in the applicable NOFA and application kit.

PART 595—[REMOVED AND RESERVED]

2. Part 595 is removed and reserved.

Dated: March 16, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–7402 Filed 3–28–95; 8:45 am]

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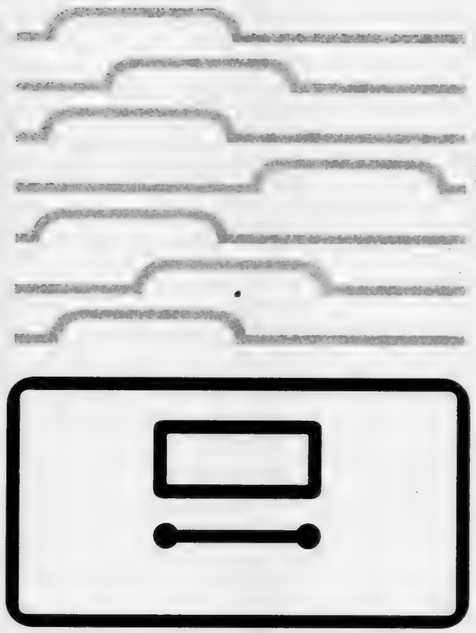
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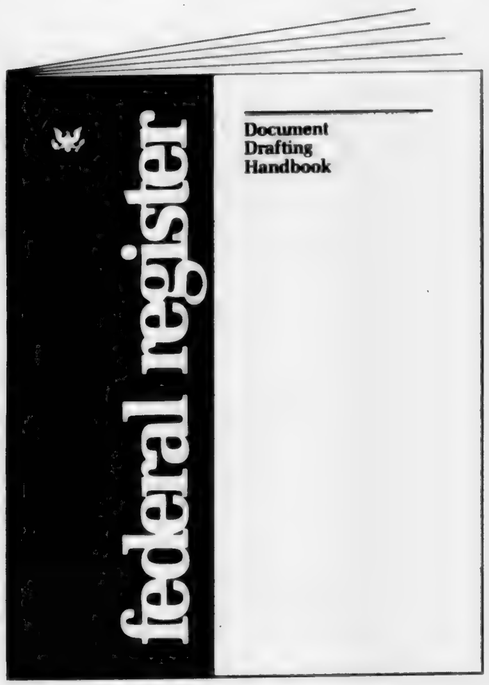
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG74

Prevailing Rate Systems; Abolishment of Clinton, NY, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Clinton, NY, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and add Clinton County, NY, as an area of application to the Oneida, NY, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

DATES: This interim rule becomes effective on March 30, 1995. Comments must be received by May 1, 1995. Employees paid rates from the Clinton, NY, NAF wage schedule will continue to be paid from the schedule until their conversion to the new Oneida, NY, NAF wage schedule on its effective date, May 4, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Clinton, NY, NAF wage area be abolished and that Clinton County be added as an area of application to the Oneida, NY, NAF wage area. With the scheduled 1995 closing of the host installation, Plattsburgh Air Force Base (AFB), there will no longer be a local activity with the capability to do the Clinton, NY, survey. There will, however, still be about 23 NAF employees in Clinton County. Neither of the current area of application counties, Chittenden and Franklin, VT, has FWS NAF employees.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

There criteria are discussed in turn below.

Of the largest nearby activities with NAF employees, Plattsburgh AFB, Clinton County, NY, is closest to Griffiss Air Force Base, Oneida, NY. Slightly more distant are Portsmouth Naval Shipyard and the U.S. Military Academy. Distances from Plattsburgh Air Force Base to the host activities of the surrounding wage areas are as follows: Griffiss Air Force Base, Oneida County, 320 km (199 miles); Portsmouth Naval Ship Yard, York County, ME, 362 km (225 miles); and the United States Military Academy, Orange County, NY, 396 km (246 miles).

Considering transportation facilities, from Plattsburgh AFB, the largest installations in the three surrounding survey areas can all be reached easily by Interstate Highways and some primary undivided roads. An analysis of 1990 census commuting patterns data indicates that no workers commute between Clinton County, NY, and the three survey counties under consideration (Oneida, York, and Orange).

In terms of similarities of the counties in overall population, private employment, and kinds and sizes of private industrial establishments, Clinton County is most similar to York County.

In summary, the first criterion, proximity, favors Oneida County. Considering the second criterion, transportation facilities and commuting patterns, none of the three counties being considered is favored. The third criterion, similarities in population and industry, favors York County. On balance, evaluation under the criteria favors the definition of Clinton County to the Oneida, NY, NAF wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the March 1995 Clinton survey must otherwise begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In Appendix B to subpart B of part 532, the listing for the State of New York is amended by removing the entry for Clinton.

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B of part 532 is amended by removing the entry

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for Clinton, New York, and by revising the entry for Oneida, New York, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

Oneida

Survey area

New York:
Oneida

Area of application. Survey area plus:

New York:
Albany
Clinton (Effective date May 4, 1995)
Jefferson
Onondago
Ontario
Saratoga
Schenectady
Seneca
Steuben

* * * * *

[FR Doc. 95–7760 Filed 3–29–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 68

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

General Regulations and Standards for Certain Agricultural Commodities; Transfer of Regulations

ACTION: Final rule.

SUMMARY: This rule reflects the redesignation of 7 CFR Part 68 as 7 CFR Part 868. The transfer of Part 68 from 7 CFR Chapter I to 7 CFR Chapter VIII as Part 868 is being undertaken to consolidate into one chapter the regulations of the Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA).

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: George Wollam, GIPSA–FGIS, USDA, Room 0623 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX/(202) 720–4628; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA), established by the Secretary of Agriculture, Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994, is consolidating those regulations which the Federal Grain Inspection Service (FGIS), a program of GIPSA, is responsible for administering. The FGIS regulations are currently found in 7 CFR Chapter I part 68 and 7 CFR Chapter VIII. This rule reflects the transfer of Part 68 from Chapter I to Chapter VIII as Part 868, thus consolidating all FGIS regulations within Chapter VIII.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, noticed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12868. Finally, this action is not a rule as defined by the Regulatory Flexibility Act., Pub. L. No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in Part 68

Administrative practice and procedures, Agricultural commodities.

For reasons set forth in the preamble and background, 7 CFR Chapters I and VIII are amended as follows:

PART 68—[REDESIGNATED AS PART 868]

1. Part 68 is transferred from Chapter I to Chapter VIII and redesignated as Part 868. The heading of redesignated Part 868 is revised to read as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

2. The authority citation for redesignated Part 868 continues to read as follows:

Authority: Secs 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

3. Internal paragraph references in newly redesignated part 868 are revised as follows:

Old section	Old reference	New section	New reference
68.20(a)	§§ 68.40 through 68.44	868.20(a)	§§ 868.40 through 868.44.
68.20(b)	§§ 68.50 through 68.52 and §§ 68.60 through 68.63.	868.20(b)	§§ 868.50 through 868.52 and §§ 868.60 through 868.63.
68.21(e)	§ 68.34	868.21(e)	§ 868.34.
68.21(f)	§ 68.24	868.21(f)	§ 868.24.
68.21(j)	§§ 68.90–68.92	868.21(j)	§§ 868.90–868.92.
68.22	§ 68.26	868.22	§ 868.26.
68.24(a)	§ 68.21	868.24(a)	§ 868.21.
68.26	§§ 68.22, 68.23, or 68.24	868.26	§§ 868.22, 868.23, or 868.24.
68.33(a)(2)	§ 68.35(e)	868.33(a)(2)	§ 868.35(e).
68.33(a)(3)	§ 68.35(e), § 68.61(b)	868.33(a)(3)	§ 868.35(e), § 868.61(b).
68.42(a)	§ 68.21	868.42(a)	§ 868.21.
68.43	§ 68.70	868.43	§ 868.70.
68.51(a)	§ 68.21 (twice)	868.51(a)	§ 868.21 (twice).
68.52(a)	§ 68.70	868.52(a)	§ 868.70.
68.52(b)	§ 68.71	868.52(b)	§ 868.71.
68.61(a)	§ 68.21 (twice)	868.61(a)	§ 868.21 (twice).
68.71(e)	§§ 68.70–68.75	868.71(e)	§§ 868.70–868.75.
68.74(f)	§ 68.70(b)	868.74(f)	§ 868.70(b).
68.75(c)	§ 68.70(b)	868.75(c)	§ 868.70(b).
68.81(d)	§ 68.84	868.81(d)	§ 868.84.

Old section	Old reference	New section	New reference
68.82	§ 68.81 (a) and (b)	868.82	§ 868.81 (a) and (b).
68.83	§ 68.81 (a) and (b)	868.83	§ 868.81 (a) and (b).
68.92(a)	§§ 68.90 and 68.91	868.92(a)	§§ 868.90 and 868.91.
68.92(a)(5)	§ 68.92(c)	868.92(a)(5)	§ 868.92(c).
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68.103	§§ 68.133 through 68.142	868.103	§§ 868.133 through 868.142.
68.141	§ 68.142 (a) and (b); § 68.142 (c) and (d).	868.141	§ 868.142 (a) and (b); § 868.142 (c) and (d).
68.201	(see § 68.202(i))	868.201	(see § 868.202(i)).
68.205	(see § 68.202(f))	868.205	(see § 868.202(f)).
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68.211(b)(5)	(see § 68.213)	868.211(b)(5)	(see § 868.213).
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68.256	(see § 68.252(g))	868.256	(see § 868.252(g)).
68.262(a)(5)	(see § 68.264)	868.262(a)(5)	(see § 868.264).
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68.316	§ 68.314	868.316	§ 868.314.
68.403(b)	§ 68.402(d)	868.403(b)	§ 868.402(d).
68.406	(See also § 68.408.)	868.406	(See also § 868.408).
68.408	§ 68.406	868.408	§ 868.406.
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68.503	(see § 68.506)	868.503	(see § 868.506).
68.504	(see § 68.506)	868.503	(see § 868.506).
68.507	(See also § 68.509.)	868.507	(See also § 868.509).
68.601(d)	(see § 68.606)	868.601(d)	(see § 868.606).
68.602(b)	§ 68.601(c)	868.601(c)	§ 868.601(c).
68.603	(see § 68.606)	868.603	(see § 868.606).
68.604	(see § 68.606)	868.604	(see § 868.606).
68.607	(see also § 68.609)	868.607	(see also § 868.609).
68.611	(see § 68.606)	868.611	(see § 868.606).

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Dated: March 14, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-6906 Filed 3-29-95; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-15-AD; Amendment 39-9184; AD 95-02-17]

Airworthiness Directives; Beech Aircraft Corporation Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95-02-17, which was sent previously to known U.S. owners and operators of certain Beech Aircraft Corporation Model 1900D airplanes. This AD requires inspecting (one-time) the elevator trim tab control cables at the top of the vertical stabilizer to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and replacing any cable that is incorrectly routed or chafed. The actions specified by this AD are intended to prevent in-flight separation of the elevator trim tab control cable caused by misrouting, which could result in loss of control of the airplane.

DATES: Effective April 17, 1995, to all persons except those to whom it was made immediately effective by priority letter AD 95-02-17, issued January 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-15-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4124; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an in-flight separation of the elevator trim tab control ("nose up" and "nose down") cable on a Beech Model 1900D airplane. The reported cable separation prevented the airplane flight crew from using manual and electrical nose up trim, and the flight crew experienced high elevator "nose down" control forces. The flight crew was then able to land the airplane without further incident.

Investigation of this incident showed that the elevator trim tab control cable had separated in the vicinity of its guide pulley, which is located at the top of the vertical stabilizer. The cable had been routed outside the lower cable pulley guard pin instead of under the guard pin. The routing configuration caused the cable to rub against the stabilizer rib, resulting in cable separation.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Model 1900D airplanes of the same type design, the FAA issued priority letter AD 95-02-17 on January 25, 1995, to prevent in-flight separation of the elevator trim tab control cable caused by misrouting, which could result in loss of control of the airplane. The AD requires inspecting (one-time) the elevator trim tab control cables at the top of the vertical stabilizer to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and replacing any cable that is incorrectly routed or chafed. Accomplishment of the required actions is in accordance with the Beech 1900D Maintenance Manual, part number 129-590000-15A11, Chapters 5-20-07, page 203; 6-40-00, page 3; 6-50-00, page 16; and 27-30-04, pages 202 and 203.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make AD 95-02-17 effective immediately by individual letters issued on January 25, 1995, to known U.S. operators of certain Beech Model 1900D airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-15-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95-02-17 Beech Aircraft Corporation: Amendment 39-9184; Docket No. 95-CE-15-AD.

Applicability: Model 1900D airplanes, serial numbers UE-1 through UE-131, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent in-flight separation of the elevator trim tab control cable, which could lead to loss of control of the airplane, accomplish the following:

(a) In accordance with Beech 1900D Maintenance Manual, part number 129-590000-15A11, Chapters 5-20-07, page 203; 6-40-00, page 3; 6-50-00, page 16; and 27-30-04, pages 202 and 203:

(1) Remove access panel Number 333ATC, which is located on the top surface of the horizontal stabilizer, to gain access to the elevator trim tab cable, guides, and pulleys;

(2) Inspect the cable routing to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and

(3) Replace any cable that is incorrectly routed (cable that does not meet the criteria above in paragraph (a)(2) of this AD) or is chafed.

Note 2: The procedures listed in Beech Communique 1900D-112, dated January 1995, "Inspection of Elevator Trim Tab Control Cables", are similar to those included in this priority letter AD. Complying with all procedures in Beech Communique 1900D-112 is considered equivalent to the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and is considered "unless already accomplished" for this portion of the AD.

Note 3: The compliance time specified in this AD takes precedence over that specified in Beech Communique 1900D-112, dated January 1995, "Inspection of Elevator Trim Tab Control Cables".

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Information that relates to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39-9184) becomes effective on April 17, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95-02-17, issued January 25, 1995, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-7784 Filed 3-29-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 94-ASO-17]

Establishment and Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error to the final rule published in the **Federal Register** on February 7, 1995, which modified the airspace designation for Jet Route J-20, Airspace Docket No. 94-ASO-17. This action is necessary to revise a segment of the route to reflect "Falcon, CO; Hugo, CO" in lieu of the Denver, CO, Very High Frequency Omnidirectional Range, which no longer exists.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: On February 7, 1995 the FAA published a final rule to modify several existing jet routes in the Miami, FL, area (60 FR 7116) with an effective date of March 30, 1995. The airspace designation for Jet Route J-20 was modified in the State of Florida to support the commissioning of the Virginia Key, Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME). However, in the interim, a clarification of the current airspace designation for Jet Route J-20 was published in the **Federal Register** on February 10, 1995, Airspace Docket No. 95-ANM-7 (60 FR 8166) with an effective date of February 28, 1995, due to the opening of the new Denver International Airport. This action corrects that segment of the jet route's designation, which should be revised to reflect "Falcon, CO; Hugo, CO;" in lieu of "Denver, CO; Kiowa, CO;".

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on February 7, 1995 (60 FR 7116; **Federal Register** Document 95-2737) is corrected by substituting the designation for Jet Route J-20 with the following:

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Paragraph 2004—Jet Routes

* * * * *

J–20 [Revised]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

* * * * *

Issued in Washington, DC, on March 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7830 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 228 and 237

RIN: 3220–AA59

Computation of Survivor Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulations by adding a new part dealing with the computation of survivor annuities as provided in the Railroad Retirement Act of 1974 (Act). This part replaces part 237 of the Board's regulations, which is removed. The Board's previous regulations regarding the computation of survivor annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

EFFECTIVE DATE: March 30, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone 312–751–4513, (FTS 312–386–4513), TTD 312–751–4701, TTD (FTS 312–386–4701).

SUPPLEMENTARY INFORMATION: This regulation provides the rules for computing the amount of a survivor annuity under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is generally computed under social security rules based on the employee's earnings under both the railroad retirement and the social security systems. The second tier (tier II) is based solely on the employee's railroad earnings and is a set percentage of the employee's tier II annuity component.

The rule is divided into three subparts, A–C:

Subpart A is an introduction to the part. It provides a listing of other relevant regulations, part 225, Primary Insurance Amount Determinations, and part 216, Eligibility for an Annuity (§ 228.1) and sets forth a general explanation of tier I and tier II annuity components (§ 228.2).

Subpart B sets forth the computation of the tier I annuity component. Section 228.10 describes the tier I of the widow(er)'s annuity; § 228.11, the tier I of widow(er) with a child in care; § 228.12, the tier I of child's annuity; and § 228.13, the tier I of a parent's annuity.

Section 228.14 describes when and how the tier I annuity component is reduced for the family maximum, which is a provision in the Social Security Act that limits the total monthly benefits to which beneficiaries may be entitled.

Section 228.15 describes the age reduction applicable to the tier I annuity component if the survivor begins to receive benefits prior to the retirement age specified in the Social Security Act.

Section 228.16 describes the adjustment of the age reduction factor when the widow(er) attains retirement age.

Section 228.17 describes how the widow(er)'s annuity is adjusted if the employee died before he or she reached age 62.

Section 228.18 describes how the tier I is reduced due to receipt of a public pension.

Section 228.19 describes how the tier I component is reduced due to receipt of a social security benefit.

Sections 228.20–228.22 describe the reduction in a survivor annuity due to receipt of other types of railroad retirement annuities.

Section 228.23 describes the order in which the above-described reductions are made. Finally, § 228.40 describes the cost-of-living increases applicable to the tier I annuity component.

Subpart C describes the computation of the tier II annuity component. Section 228.50 describes the tier II annuity component for various types of survivor annuitants. It also describes the age reduction applicable to the tier II annuity component.

Section 228.51 describes the reduction to the tier II annuity component known as the takeback amount which was imposed by the 1983 amendments to the Railroad Retirement Act.

Section 228.52 describes the increase in the tier II annuity component when a widow(er) is entitled to a railroad retirement annuity which caused a reduction in the widow(er)'s tier I annuity component.

Section 228.53 describes the increase in the tier II annuity component to insure that a widow(er)'s annuity is no less than the spouse annuity the widow(er) was receiving before the employee died.

Finally, § 228.60 describes the cost-of-living increase applicable to the tier II annuity component.

The Board published this rule in proposed form on September 30, 1993 (58 FR 51024) inviting comment by November 1, 1993; no comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 228

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

1. Part 228, Computation of Survivor Annuities, is added to read as follows:

PART 228—COMPUTATION OF SURVIVOR ANNUITIES

Subpart A—General

Sec.
228.1 Introduction.
228.2 Tier I and tier II annuity components.

Subpart B—The Tier I Annuity Component

228.10 Computation of the tier I annuity component for a widow(er), disabled widow(er), remarried widow(er), and a surviving divorced spouse.
228.11 Computation of the tier I annuity component of a widow(er) with a child in care, remarried widow(er) with a child in care, or a surviving divorced spouse with a child in care.
228.12 Computation of the tier I annuity component of a child's insurance annuity.
228.13 Computation of the tier I annuity component of a parent's insurance annuity.
228.14 Family maximum.
228.15 Reduction for age.
228.16 Adjustments in the age reduction factor (ARF).
228.17 Adjustments to the widow(er)'s, disabled widow(er)'s, surviving divorced spouse's, and remarried widow(er)'s tier I annuity amount.
228.18 Reduction for public pension.
228.19 Reduction for a social security benefit.
228.20 Reduction for an employee annuity.
228.21 Entitlement as a spouse or divorced spouse and as a survivor.
228.22 Entitlement to more than one survivor annuity.
228.23 Priority of reductions.
228.40 Cost of living increase applicable to the tier I annuity component.

Subpart C—The Tier II Annuity Component

228.50 Tier II annuity component for widow(er), child, or parent.
228.51 Takeback amount.
228.52 Restored amount.
228.53 Spouse minimum guarantee.
228.60 Cost of living increase.

Authority: 45 U.S.C. 231f.

PART 228—COMPUTATION OF SURVIVOR ANNUITIES

Subpart A—General

§ 228.1 Introduction.

(a) *What does this part include?* This part includes the computation of a widow(er)'s, disabled widow(er)'s, remarried widow(er)'s, surviving divorced spouse's, parent's, and child's insurance annuity under the Railroad Retirement Act. This part describes the two annuity components or tiers which are included in these annuities. The tier I annuity component, which may be payable in all of the above annuities, is described in subpart B of this part. Subpart C of this part describes the tier II annuity component which is only applicable to the widow(er)'s, disabled widow(er)'s, parent's, and child's annuity.

(b) *Other relevant parts.* (1) Part 225, Primary Insurance Amount Determinations, describes the various types of primary insurance amounts which form the basis of the computation of the tier I annuity component described in this part.

(2) Part 216, Eligibility for an Annuity, describes the eligibility requirements for receipt of the annuity computations described in this part.

§ 228.2 Tier I and tier II annuity components.

(a) *Tier I annuity component.* The Tier I annuity component is generally the amount that would have been payable under the Social Security Act if all of the employee's earnings after 1936 under both the railroad retirement system and the social security system had been creditable under the Social Security Act.

(b) *Tier II annuity component.* The tier II annuity component is the portion of the survivor's annuity which is based on an employee's railroad earnings only. The tier II component of an annuity described in this part is a specified percentage of the employee's actual or anticipated tier II annuity component.

Subpart B—The Tier I Annuity Component

§ 228.10 Computation of the tier I annuity component for a widow(er), disabled widow(er), remarried widow(er), and a surviving divorced spouse.

The tier I annuity component for these beneficiaries is generally based on the survivor tier I Primary Insurance Amount (PIA). The survivor tier I PIA is determined in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) up to the maximum creditable amounts through the year of the employee's death. See part 225 of this chapter. This amount may be further adjusted for certain reductions or deductions as described in §§ 228.15–228.20 of this part and is subject to the family maximum. See § 228.14 of this part.

§ 228.11 Computation of the tier I annuity component of a widow(er) with a child in care, remarried widow(er) with a child in care, or a surviving divorced spouse with a child in care.

The tier I annuity component of a widow(er), remarried widow(er), or a surviving divorced spouse with a child of the employee in his or her care is 75 percent of the PIA computed under § 228.10 of this part. The amount may be adjusted for certain reductions and deductions described in §§ 228.15–228.20 of this part and is subject to the family maximum. See § 228.14 of this part.

§ 228.12 Computation of the tier I annuity component of a child's insurance annuity.

The tier I annuity component of a child's insurance annuity is 75 percent of the PIA computed under § 228.10 of this part. The amount may be adjusted for the family maximum. See § 228.14 of this part.

§ 228.13 Computation of the tier I annuity component of a parent's insurance annuity.

The tier I annuity component of a parent's insurance annuity is dependent on whether one or two parents are entitled.

(a) *One parent entitled.* A parent's tier I annuity component is equal to 82½ percent of the PIA computed under § 228.10 of this part.

(b) *More than one parent entitled.* A parent's tier I annuity component is equal to 75 percent of the PIA computed under § 228.10 of this part.

(c) The amounts computed under paragraph (a) or (b) of this section may be adjusted for the family maximum. See § 228.14 of this part.

§ 228.14 Family maximum.

(a) *Family maximum defined.* Under the Social Security Act, the amount of total monthly benefits that can be paid for any month on one person's earnings record is limited. This limited amount is called the family maximum. The family maximum is based on the survivor tier I PIA (see part 225 of this chapter). Generally, if three or more persons are entitled to benefits, their benefits will be adjusted for the family maximum.

(b) *Computation of the family maximum.*—(1) *The employee attains age 62, has a period of disability or dies prior to 1979.* The maximum is the amount appearing in column V of the applicable table published each year by the Secretary of Health and Human Services on the line on which appears in column IV the primary insurance amount of the insured individual whose compensation is the basis for the benefits payable. Where the total of the survivor benefits exceeds the maximum, the total tier I benefits for each month after 1964 are reduced to the amount appearing in column V. Each survivor's benefit is proportionately reduced, based on the percentage of the PIA used to compute the survivor benefits. However, when any of the persons entitled to benefits on the insured individual's compensation would, except for the limitation described in § 404.353(b) of title 20 (dealing with the entitlement to more than one child's benefit), be entitled to a child's annuity on the basis of the compensation of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—

(i) The sum of the maximum amounts of benefits payable on the basis of the compensation of all such insured individuals, or

(ii) The last figure in column V of the applicable table published each year by the Secretary of Health and Human Services. The "applicable table" refers to the table which is effective for the month the benefit is payable.

(2) *The employee attains age 62, has a period of disability or dies in 1979.* The maximum is computed as follows:

(i) 150 percent of the first $230 of the individual's primary insurance amount, plus

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(ii) 272 percent of the primary insurance amount over $230 but not over $332, plus

(iii) 134 percent of the primary insurance amount over $332 but not over $433, plus

(iv) 175 percent of the primary insurance amount over $433.

If the total of this computation is not a multiple of $0.10, it will be rounded to the next lower multiple of $0.10.

(3) *The employee attains age 62, or has a period of disability or dies after 1979.* The maximum is computed as in paragraph (b)(2) of this section. However, the dollar amounts shown there will be updated each year after 1979 as average earnings rise. This updating is done by first dividing the average of the total wages for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (b)(2) of this section. Each updated dollar amount will be rounded to the nearer dollar, if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1. Before November 2 of each calendar year after 1978, the Secretary of Health and Human Services will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(c) *Special minimum PIA.* Regardless of the method used to compute the primary insurance amount, if the special minimum primary insurance amount described in § 404.261 to this title is higher, then the family maximum will be based upon the special minimum primary insurance amount.

§ 228.15 Reduction for age.

(a) *Widow(er), surviving divorced spouse, or remarried widow(er).* The tier I annuity component is reduced 19/40 of 1 percent multiplied by the number of months before the annuitant attains full retirement age (presently age 65) effective with the annuity beginning date for widow(ers) born before 1/2/40. (For widow(ers) born after 1/1/40, see section 216(l) of the Social Security Act.)

(b) *Disabled widow(er), disabled surviving divorced spouse, or disabled remarried widow(er).* The tier I annuity component is reduced for a maximum of 60 months even though the annuity may begin at age 50.

§ 228.16 Adjustments in the age reduction factor (ARF).

Upon the attainment of retirement age, the previously-computed age reduction factor is adjusted to remove those months for which a full annuity was not paid even though the individual was entitled.

§ 228.17 Adjustments to the widow(er)'s, disabled widow(er)'s, surviving divorced spouse's, and remarried widow(er)'s tier I annuity amount.

(a) If the employee died before attaining age 62 and after 1978 and the widow(er), disabled widow(er), remarried widow(er), or surviving divorced spouse is first eligible after 1984, the Board will compute the tier I annuity amount as if the employee had not died but had reached age 62 in the second year after the indexing year (see § 225.2 of this chapter); *provided, however,* that if the employee was entitled to a primary insurance amount based on average monthly wages this section is not applicable. The indexing year is never earlier than the second year before the year of the employee's death. Except for this limitation it is the earlier of——

(1) The year the employee attained age 60, or would have attained age 60 had the employee lived, and

(2) The second year before the year in which the widow(er), remarried widow(er), or surviving divorced spouse becomes eligible for such an annuity, has attained age 60, or is age 50–59 and disabled.

(b) The tier I annuity component is increased if the employee's annuity was increased or would have been increased based on delayed retirement credits (see § 225.36 of this chapter).

(c) The tier I annuity component is reduced if the employee had been entitled to an age reduced annuity, including an annuity based on 30 years of service, which is reduced for age because it began before the employee attained age 62. In this instance, the widow(er)'s, remarried widow(er)'s, or surviving divorced spouse's tier I annuity component after applying any reduction for age is further reduced to the larger of amount the employee would have received as a tier I annuity component if still alive or 82½ percent of his or her primary insurance amount.

§ 228.18 Reduction for public pension.

(a) The tier I annuity component of a widow(er), remarried widow(er), surviving divorced spouse, or disabled widow(er) annuity, as described in the preceding sections of this part, is reduced if the survivor is in receipt of a public pension.

(b) When reduction is required. Unless the survivor annuitant meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the survivor annuitant is receiving a monthly pension from a Federal, State, or local government agency (Government pension) for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security, or if they are covered under social security solely by an election to become subject to the Federal Employees and Retirement System made after December 31, 1987, and have not worked 60 months under that system.

(c) Payment in a lump sum. If the Government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period for the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual case basis.

(d) Exceptions. The reduction does not apply:

(1) If the survivor is receiving a Government pension based on employment for an interstate instrumentality; or

(2) If the survivor receives or is eligible to receive a Government pension for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977, assuming the employee's earnings had been covered under that Act (even though he or she did not actually claim such benefits or become entitled for such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a surviving divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a Government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If a survivor annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a Government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If a survivor annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If a survivor annuitant was eligible for a Government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d) (2) and (3) of this section. If an annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) The one-half support test. For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the survivor annuity is based had a period of disability which did not end before he or she became entitled to an age and service or disability annuity, or died, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the beginning of his or her period of disability; or

(ii) At the time he or she became entitled to an age and service or disability annuity; or

(iii) At the time of his or her death.

(2) If the employee upon whose compensation the survivor annuity is based did not have a period of disability at the time of his or her entitlement or death, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the time he or she became entitled to an age and service annuity or disability annuity; or

(ii) At the time of his or her death.

(f) Amount of reduction. (1) If a survivor annuitant becomes eligible for a Government pension after June 1983, the Board will reduce (but not below zero) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If a survivor annuitant became eligible for a Government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (but not below zero) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) Reduction not applicable. This reduction is not applied to claimants who both filed and were entitled to benefits prior to December 1977.

§ 228.19 Reduction for a social security benefit.

The tier I annuity component is reduced for the amount of any social security benefit to which the survivor annuitant is entitled.

§ 228.20 Reduction for an employee annuity.

(a) *General.* If an individual is entitled to an annuity as a survivor, and is also entitled to an employee annuity, then the survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the survivor or the individual upon whose earnings record the survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a survivor, then the tier I component of the survivor annuity must be reduced by the amount of the tier I component of the employee annuity after reduction for age. Where the survivor is entitled to a tier II component and either the survivor or the employee had railroad earnings before 1975, a portion of this reduction may be restored in the computation of the tier II component (see § 228.52 of this part).

§ 228.21 Entitlement as a spouse or divorced spouse and as a survivor.

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she may receive the smaller annuity rather than the larger annuity.

§ 228.22 Entitlement to more than one survivor annuity.

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she may receive the smaller annuity rather than the larger annuity.

§ 228.23 Priority of reductions.

The tier I component of the survivor annuity is first reduced by the family maximum, if applicable, then any applicable age reduction, then by any public pension offset, then by any social security benefit payable, then by the tier I component of any employee annuity payable to the survivor annuitant.

§ 228.40 Cost of living increase applicable to the tier I annuity component.

The tier I annuity component of a survivor annuity is increased at the same time and by the same percentage as the increase provided for under section 215(i) of the Social Security Act. The amount of the increase is published in the **Federal Register** annually. The cost-of-living increase is payable beginning with the benefit for the month of December of the year for which the increase is due. The increase is paid in the January payment.

Subpart C—The Tier II Annuity Component

§ 228.50 Tier II annuity component widow(er), child, or parent.

(a) *General.* The tier II annuity component is an additional amount payable to a widow(er), disabled widow(er), child, or parent, but not to a surviving divorced spouse or remarried widow(er), and a parent as provided in paragraph (b)(2) of this section, based on the railroad employee's earnings in the railroad industry. Unlike the tier I annuity component it is not reduced for any other social insurance benefit except a railroad retirement annuity. See §§ 228.20–228.23 of this part.

(b) *Amount of the tier II annuity component (1981 amendment).*—(1) *Widow(er) or disabled widow(er).* The amount of a widow(er)'s or disabled widow(er)'s tier II annuity component is 50 percent of the amount of the employee's tier II which would have been payable in the month in which the widow became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time.

(2) *Parent.* The amount of a parent's tier II annuity component is 35 percent of the amount of the employee's tier II annuity component which would have been payable in the month in which the parent became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time. However, if another

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survivor is entitled, or potentially entitled, to a tier II annuity component, the parent tier II annuity component is zero.

(3) *Child.* The amount of each child's tier II annuity component is 15 percent of the employee's tier II annuity component which would have been payable in the month in which the child became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time.

(c) *Minimum tier II survivor annuity components.* If the total tier II annuity components payable to survivors is less than 35 percent of the employee's tier II annuity component which would have been payable in the month the survivors became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time, the individual tier II annuity components computed in paragraph (b) of this section shall be increased proportionally so that the total of all such tier II annuity components equals 35 percent of the employee's tier II annuity component.

(d) *Maximum tier II annuity components.* If the total tier II survivor annuity components payable to survivors exceeds 80 percent of the employee's tier II annuity component which would have been payable in the month the survivors became entitled had the employee been alive and entitled to an annuity under the Railroad Retirement Act at that time, the individual tier II annuity components computed in paragraph (b) of this section shall be reduced proportionally so that the total of all such tier II annuity components totals no more than 80 percent of the employee's tier II annuity component.

(e) *Age reduction.* The tier II annuity component of a widow(er) or disabled widow(er) is subject to reduction by the same age reduction factor as is applicable to the tier I annuity component. See § 228.15 of this part.

§ 228.51 Takeback amount.

(a) The 1983 amendments to the Railroad Retirement Act provided that a portion of the cost-of-living increases payable on the tier I annuity component be offset from the amount of the tier II annuity. This amount is the takeback amount. The amount of the takeback and its application depends on the employee and survivor's annuity beginning dates.

(b)(1) The tier II takeback amount for survivors whose annuity beginning date is January 1, 1984 or later is usually the amount of the employee's takeback amount. That amount is equal to 5 percent of the employee's primary insurance amount, less all applicable reductions (net tier I), on November 1, 1983. However, if the employee's annuity was reduced for a social security benefit but the survivor's annuity is not, the takeback amount is the amount the employee's annuity would have been reduced for the takeback if the employee's annuity had not been reduced for a social security benefit. If the employee's annuity had not been tiered or was being paid under the overall minimum, the Board will compute the amount of the tier II takeback that would have been applicable to the employee's annuity.

(2) The tier II takeback amount for survivors whose annuity beginning date is before January 1, 1984 is equal to 5 percent of the survivor's net tier I annuity component, before deduction on account of work, on November 1, 1983.

(3) The tier II takeback will be applied in accord with the above paragraphs in any case where the employee died or retired before January 1, 1984. If the employee died or retires after December 31, 1983, or the employee never retired and dies after December 31, 1993, no takeback will be applied to the survivor's annuity.

(c) No takeback is applied if the survivor tier II annuity amount before the takeback is applied is $10.00 or less and cost-of-living increases have not increased the tier II annuity amount to more than $10.00 (the takeback may never reduce the tier II to an amount less than $10.00).

§ 228.52 Restored amount.

(a) *General.* A restored amount is added to the tier II annuity component of a widow(er)'s annuity whose annuity is reduced for receipt of an employee annuity under the Railroad Retirement Act provided either the employee or the widow(er) had ten years of creditable railroad service prior to January 1, 1975.

(b) *Amount.* The amount of the tier II restored amount for a widow(er) is the difference between the amount payable as a widow(er) under the Railroad Retirement Act of 1937 as increased by all annual social security cost-of-living percentage increases from January 1, 1975, until the later of the annuity beginning date of either the employee's annuity or the widow(er)'s annuity and the amount payable to the widow(er) under the Railroad Retirement Act of 1974 under the rules set forth in this part.

(c) *Widower.* In order to qualify for an annuity under the 1937 Act and thus for a restored amount, a widower must have been dependent on his spouse for at least 50 percent of his support in the year prior to her death or at the time the spouse's annuity began.

§ 228.53 Spouse minimum guarantee.

The Railroad Retirement Act provides that a spouse should receive no less as a widow(er) than he or she received as a spouse. However, if the widow(er) becomes entitled to a social security benefit, thus reducing his or her annuity, the spouse minimum guarantee is payable only to the extent that it guarantees the amount that the widow(er) would have received as a spouse had he or she been entitled to a social security benefit in the month preceding the employee's death in an amount equal to the amount of the social security benefit payable at the time the widow(er) first became entitled to the social security benefit.

§ 228.60 Cost-of-living increase.

The tier II annuity component of a survivor annuity under the Railroad Retirement Act is increased by 32.5 percent of the percentage increase under section 215(i) of the Social Security Act at the same time that any such increase is payable. The amount of the increase is published in the **Federal Register** annually. The cost-of-living is payable beginning with the benefit payable for the month of December of the year for which the increase is due. The increase is paid in the January payment. In addition, in determining the amount of the tier II component at the time the survivor annuity begins, all cost-of-living increases that were applied or would have been applied after the employee's annuity beginning date or death and prior to the surviving annuity beginning date are taken into consideration.

PART 237—[REMOVED AND RESERVED]

2. Part 237 consisting of §§ 237.101–237.108 is hereby removed and reserved.

Dated: March 24, 1995.

By authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–7778 Filed 3–29–95; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC98

Supplemental Security Income for the Aged, Blind, and Disabled Elimination of Waiting Period for Termination of Couple Status

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 8012(a) of Pub. L. 101–239 which, effective October 1, 1990, changed the definition of the term "eligible spouse" as it is used in the supplemental security income (SSI) program. Under the former definition of "eligible spouse," members of an SSI eligible couple who began living apart could not be treated as individuals for SSI eligibility and payment purposes during the first 6 months following the month in which they began living apart. The statutory change eliminated the 6-month waiting period. The final rule revises the definition of "eligible spouse" contained in the regulations as well as makes a number of other conforming changes. Finally, the rule eliminates provisions in the regulations pertaining to eligible couples living apart.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding this document—Harry Short, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 1614(b) of the Social Security Act (the Act), as in effect until October 1, 1990, defined an eligible spouse as "an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months." One effect of this definition was to create a 6-month waiting period before the members of an eligible couple, who begin living apart, could be treated as individuals for SSI purposes.

Section 8012 of Public Law 101–239 (the Omnibus Budget Reconciliation Act of 1989) eliminated the 6-month waiting period by revising the definition of an eligible spouse. Effective October 1, 1990, "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that eligible individual on the first day of the month, or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under the SSI program during the month, at the time the application or request is filed.

This final rule revises the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c) to reflect section 8012 of Public Law 101–239.

The legislative history does not indicate that Congress intended to treat couples who are temporarily separate as individuals. Therefore, the rule also provides in § 416.1801(c) that an individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1)(E) or (G) of the Act.

In addition to revising the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c), a number of other sections in the regulations are revised to eliminate provisions which refer to the prior rule for terminating eligible couple status based on a 6-month period of living apart. These sections are as follows:

- Section 416.305(b)(1) is revised to remove language regarding the eligible spouse living apart from the eligible individual for a period of 6 months.
- Section 416.412 is amended by using more precise language in the first sentence when referring to a member of an eligible couple temporarily residing in a medical care facility. We also make a technical change for convenience in future updating by showing the payment amounts for such eligible couple in a table rather than as text and updating the table with the amounts published in the **Federal Register** at:

52 FR 41672 (10/29/87)
53 FR 43932 (10/31/88)
54 FR 45801 (10/31/89)
54 FR 53751 (12/29/89)
55 FR 45856 (10/31/90)
56 FR 55325 (10/25/91)
57 FR 48619 (10/27/92)
58 FR 58004 (10/28/93)
59 FR 54464 (10/31/94)

- Section 416.414 is revised to specify that the computations in paragraphs (b)(2) and (b)(3) are applicable only when one or both members of an eligible couple are temporarily absent from home per § 416.1149(c)(1). As their absence is temporary, they are not separated.
- Section 416.430, which deals with essential person increments, is revised by removing language regarding when the members of an eligible couple live apart and adding language to explain how to pay a couple when one member is temporarily absent and subject to the $30 payment limit while an inpatient at a medical facility where Medicaid is paying more than half the cost of care. The reference to § 416.531 is also changed to § 416.413.
- In § 416.432, a portion of the introductory language and paragraphs (a) and (b) are removed. The removed material concerns members of an eligible couple who have separated.
- Section 416.532(e), which provides for essential person increments when members of an eligible couple live apart, is removed.
- In § 416.554, the last sentence of the text and example three regarding separated members of an eligible couple are revised.
- In § 416.1130(c), the last sentence, which refers to members of an eligible couple who have different living arrangements, is removed.
- In § 416.1147, paragraphs (a) and (d) are removed and the remaining paragraphs are revised and redesignated (a), (b), (c), and (d) respectively. The deleted material deals with valuation of in-kind support and maintenance for a member of an eligible couple who is separated from his or her spouse.
- Section 416.1802(b) is revised to remove language referring to computation of benefits for separated members of an eligible couple.
- Section 416.1806 is revised to contain rules on who will be considered the individual's spouse, if more than one person would qualify.
- Section 416.1811 is removed as a result of the revision to § 416.1806. The cross-reference to § 416.1811 in § 416.1101 (definition of "spouse") is also removed.
- Section 416.1830(a)(1) is revised to provide that, if the members of an eligible couple begin living apart, they will be treated as individuals beginning with the month following the calendar month they stopped living together.
- In § 416.1832 (c) and (d), the cross-references to § 416.1806 (b) and (c) respectively are revised to refer to § 416.1806 (a)(2) and (a)(3) respectively. This change is necessitated by the revision we are making to § 416.1806.
- Section 416.1832(d) is revised to provide that, if a marital relationship has been found to exist solely because a man and woman are living together and leading others to believe that they are husband and wife, such marital relationship will be considered to end as of the date the man and woman stop living together.

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Public Comments

This rule was published as a Notice of Proposed Rulemaking on March 8, 1994 (59 FR 10766). A 60-day comment period was provided. We did not receive any public comments. We are, therefore, adopting the rule essentially as proposed with the exception of some nonsubstantive technical revisions and the addition of the technical and update change being made to § 416.412 discussed above.

Obsolete Social Security Rulings

Enactment of Section 8012(a) of Public Law 101–239 has made the following Social Security Rulings (SSRs) obsolete: 76–28, 76–41, and 88–11c. Therefore, we are rescinding these SSRs simultaneously with the publication of this final rule.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and states. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This final regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income

Dated: February 1, 1995.

Shirley Chater,

Commissioner of Social Security.

Approved: March 24, 1995

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED.

1. The authority citation for subpart A continues to read as follows:

Authority: Secs. 1102 and 1601–1634 of the Social Security Act; 42 U.S.C. 1302 and 1381–1383c; sec. 212 of Pub. L. 93–66, 87 Stat. 155 and sec. 502(a) of Pub. L. 94–241, 90 Stat. 268.

2. In § 416.120, paragraph (c)(14) is revised to read as follows:

§ 416.120 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.* * * *

(14) *Eligible spouse* means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

* * * * *

3. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1611 and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, 1383(a), (d), and (e).

4. In § 416.305, paragraph (b)(1) is revised to read as follows:

§ 416.305 You must file an application to receive supplemental security income benefits.

* * * * *

(b) *Exceptions.* You need not file a new application if—

(1) You have been receiving benefits as an eligible spouse and are no longer living with your husband or wife;

* * * * *

5. The authority citation for subpart D continues to read as follows:

Authority: Sec. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple, neither of whom is temporarily residing in a medical care facility as described in § 416.1149(c)(1) nor is a qualified individual (as defined in § 416.211), shall be payable at the following rate:

Effective date	Percentage increase	Rate per year	Rate per month
07/82	7.4	$5,116.80	$426.40
07/83	3.5	5,476.80	456.40
01/84	3.5	5,664.00	472.00
01/85	3.5	5,856.00	488.00
01/86	3.1	6,048.00	504.00
01/87	1.3	6,120.00	510.00
01/88	4.2	6,384.00	532.00
01/89	4.0	6,636.00	553.00
01/90	4.7	6,948.00	579.00
01/91	5.4	7,320.00	610.00
01/92	3.7	7,596.00	633.00
01/93	3.0	7,824.00	652.00
01/94	2.6	8,028.00	669.00
01/95	2.8	8,244.00	687.00

The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. In § 416.414, the paragraph headings for paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) * * *

(2) *Eligible couple both of whom are temporarily absent from home in medical care facilities as described in § 416.1149(c)(1).* * * *

(3) *Eligible couple with one spouse who is temporarily absent from home as described in § 416.1149(c)(1).* * * *

* * * * *

8. Section 416.430 is revised to read as follows:

§ 416.430 Eligible individual with eligible spouse; essential person(s) present.

(a) When an eligible individual with an eligible spouse has an essential person (§ 416.222) living in his or her home, or when both such persons each has an essential person, the increase in the rate of payment is determined in accordance with §§ 416.413 and 416.532. The income of the essential person(s) is included in the income of the couple and the payment due will be equally divided between each member of the eligible couple.

(b) When one member of an eligible couple is temporarily absent in accordance with § 416.1149(c)(1) and § 416.222(c) and either one or both individuals has an essential person, add the essential person increment to the benefit rate for the member of the couple who is actually residing with the essential person and include the income of the essential person in that member's income. See § 416.414(b)(3).

9. Section 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status which involves the formation or dissolution of an eligible couple (for example, marriage, divorce), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual, the benefit amount for each person shall be determined individually for each month beginning with the first month after the month in which the dissolution occurs. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to §§ 416.410 or 416.413 and 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules when in-kind support and maintenance is involved.

(b) When two eligible individuals become an eligible couple, the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple according to §§ 416.412 or 416.413 and 416.414 and applying the requirements in § 416.420(a).

10. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a)–(d) and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a)–(d) and (g).

§ 416.532 [Amended]

11. In § 416.532, paragraph (e) is removed.

12. Section 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery would be *against equity and good conscience.* Adjustment or recovery is considered to be *against equity and good conscience* if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself. In addition, adjustment or recovery is considered to be *against equity and good conscience* for an individual who is a member of an eligible couple that is legally separated and/or living apart for that part of an overpayment not received, but subject to recovery under § 416.570.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case, recovery would be considered "against equity and good conscience."

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered "against equity and good conscience."

Example 3: Mr. and Mrs. Smith—members of an eligible couple—separate in July. Later in July, Mr. Smith receives earned income resulting in an overpayment to both. Mrs. Smith is found to be without fault in causing the overpayment. Recovery from Mrs. Smith of Mr. Smith's part of the couple's overpayment is waived as being *against equity and good conscience.* Whether recovery of Mr. Smith's portion of the couple's overpayment can be waived will be evaluated separately.

13. The authority citation for subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

§ 416.1101 [Amended]

14. In § 416.1101, the parenthetical reference in the definition of "*Spouse*" which reads "(See §§ 416.1806 through 416.1811)" is revised to read "(See § 416.1806)."

15. In § 416.1130, paragraph (c) is revised to read as follows:

§ 416.1130 Introduction.

* * * * *

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145.

16. Section 416.1147 is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household throughout a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month one of you is in the medical institution. The one living in another person's household is eligible at an

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eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

(d) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month that one of you is in the medical institution (§ 416.211(b)). We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

17. The authority citation for subpart R continues to read as follows:

Authority: Secs. 1102, 1614 (b) (c), and (d), and 1631 (d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383 (d)(1) and (e).

18. In § 416.1801(c), the definition of "eligible spouse" is revised to read as follows:

§ 416.1801 Introduction.

* * * * *

(c) * * *

Eligible spouse means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who was living in the same household with that person on—

(i) The date of filing an application for benefits (for the month of an application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months. An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

* * * * *

19. In § 416.1802, paragraph (b) is revised to read as follows:

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

* * * * *

(b) *If you have an eligible spouse*—

(1) *Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculated the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

* * * * *

20. Section 416.1806 is revised to read as follows:

§ 416.1806 Whether you are married and who is your spouse.

(a) We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(1) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(2) We have decided that either of you is entitled to husband's or wife's Social Security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(3) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

(b) if more than one person would qualify as your husband or wife under paragraph (a) of this section, we will consider the person you are presently living with to be your spouse for SSI purposes.

§ 416.1811 [Removed]

21. Section 416.1811 is removed.

22. In § 416.1830, paragraph (a) is revised to read as follows:

§ 416.1830 When we stop considering you and your spouse an eligible couple.

* * * * *

(a) The calendar month after the month you stopped living with your eligible spouse, or

* * * * *

23. In § 416.1832, paragraphs (c) and (d) are revised to read as follows:

§ 416.1832 When we consider your marriage ended.

* * * * *

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1806(a)(2); or

(d) You and your spouse stop living together, if we considered you married only because of § 416.1806(a)(3).

[FR Doc. 95–7847 Filed 3–29–95; 8:45 am]

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Food and Drug Administration

21 CFR Part 450

[Docket No. 94N–0302]

Antibiotic Drugs; Bleomycin Sulfate; Withdrawal of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; withdrawal of regulation.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a regulation that established standards for an antibiotic drug, nonsterile bleomycin sulfate bulk drug substance. This action is taken to allow interested persons an opportunity to comment on the standards for nonsterile bleomycin sulfate bulk drug substance. In a future issue of the **Federal Register**, the agency will issue a proposed rule setting forth standards for bulk nonsterile bleomycin sulfate.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1994 (59 FR 50484), FDA published a new antibiotic regulation setting forth standards for a nonsterile bleomycin sulfate bulk drug substance (21 CFR 450.10). This was published as a final rule to become effective on November 3, 1994. This new regulation differed from the monograph standards for sterile bleomycin sulfate bulk drug, set forth in 21 CFR 450.10a, in two respects: The new regulation did not require sterility at the bulk stage, and the new regulation did not require testing for pyrogens at the bulk stage.

Bristol-Myers Squibb Co., the sponsor of the innovator product, filed a petition for stay pursuant to 21 CFR 10.35, objecting to FDA's decision to promulgate the new regulation without notice and a prior opportunity for public comment. On November 9, 1994, FDA agreed to stay the effective date of the monograph for nonsterile bleomycin sulfate bulk drug substance to reconsider the manner in which the agency promulgated the new monograph. A copy of FDA's letter notifying Bristol-Myers Squibb Co. of the stay is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. In the **Federal Register** of March 1, 1995 (60 FR 11026), FDA published a stay of the monograph for nonsterile bleomycin sulfate bulk drug substance.

Because of the issues that may arise based on the coexistence of alternative standards for nonsterile bleomycin sulfate bulk drug and sterile bleomycin sulfate bulk drug, and because several manufacturers have demonstrated an interest in manufacturing bulk bleomycin sulfate and finished dosage forms for the drug, FDA finds that it is appropriate to provide an opportunity for public comment on the standards. Therefore, FDA is withdrawing the regulation for nonsterile bleomycin sulfate bulk drug substance, and will propose a new regulation setting forth standards for nonsterile bleomycin sulfate bulk drug substance in a future issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

List of Subjects in 21 CFR Part 450

Antibiotics.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 450.10 [Removed]

2. Section 450.10 *Bleomycin sulfate* is removed.

Dated: March 18, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–7802 Filed 3–29–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A, Appendices A and B, and Parts 91, 248, 570, 572, 582, 583, 882, 889 and 890

[Docket No. R–94–1731; FR–3611–F–08]

RIN 2501–AB72

Consolidated Plan for Community Planning and Development Programs: Conforming Changes to Program Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This rule amends the Department's existing regulations for programs that refer to the Comprehensive Housing Affordability Strategy (CHAS) to replace references to the CHAS with references to the document that has replaced it—the Consolidated Plan. A final rule was published on January 5, 1995, that revised 24 CFR part 91 to replace the CHAS with the consolidated plan as the document that embodies a jurisdiction's determination of housing needs and planned use of HUD funds to meet those needs.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Policy Coordination, Office of Community Planning and Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A final rule providing for a consolidated plan and a single performance report for all HUD community planning and development formula grant programs was published on January 5, 1995, effective February 6, 1995, which affects determinations of consistency of applications for funding for other programs, as described in 24 CFR 91.2(b). The programs affected, for which conforming changes are necessary to published program requirements, are HOPE for Public and Indian Housing Homeownership Program ("HOPE 1") (program guidelines codified as Appendix A to Subtitle A of 24 CFR), HOPE for Homeownership of Multifamily Units Program ("HOPE 2") (program guidelines codified as Appendix B to Subtitle A of 24 CFR), Lead-Based Paint Hazard Reduction Program (Part 35), Prepayment of Low Income Housing Mortgages (Part 248), HOPE for Homeownership of Single Family Homes Program (Part 572), Shelter Plus Care Program (Part 582), Supportive Housing Program (Part 583), Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (Part 882, Subpart H), Supportive Housing for the Elderly Program (Part 889), and Supportive Housing for Persons With Disabilities Program (Part 890). The regulations (or guidelines, in the case of HOPE 1 and HOPE 2) for all of these programs are amended by this rule, except for the Lead-Based Paint Hazard Reduction Program, for which a separate rulemaking is underway.

In addition, the Community Development Block Grant (CDBG) program regulations are being amended in this rule to make the provision in the CDBG rule concerning the deadline for submitting the consolidated plan consistent with the provision in the consolidated plan rule. (Section 91.15 provides that a consolidated plan must be submitted no later than August 16 of the federal fiscal year for which funding is sought, whereas § 570.304(c)(1) states that the first working day of September is the deadline.)

Another technical correction being made in this rule is to remove from 24 CFR part 91 a provision that conflicts with a State CDBG program provision. (Section 570.483(d) prescribes the manner in which States meet the requirements for funding an activity under the "urgent need" national objective. Section 91.320(g)(1)(i) of the consolidated plan rule prescribes another method.) The Department wishes to preserve the method specified in the CDBG State program regulation, so this rule removes the provision from the consolidated plan rule.

II. Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR

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part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. This rule is technical in nature, making amendments to program regulations to conform their terminology to the status of the current consolidated plan regulations at 24 CFR part 91. No purpose would be served by requesting comments on this technical change. In fact, this rule is effective retroactive to the effective date of the final consolidated plan rule, so that the references to the CHAS, which is superseded by the Consolidated Plan, can instead refer to the then operative document.

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Consolidated Plan final rule. That Finding of No Significant Impact, applicable to this technical conforming rule, is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to technical amendments necessary to carry out accurately the provisions of programs whose regulations were not amended in the original Consolidated Plan rule.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order since it is only a technical, conforming rule.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it imposes no new burdens on jurisdictions.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, Grant programs—housing and community development, American Samoa, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

Accordingly, Appendices A and B to Subtitle A of title 24 Code of Federal Regulations and parts 91, 248, 570, 572, 582, 583, 882, 889, and 890 of title 24 of the Code of Federal Regulations are amended as follows:

Appendix A to Subtitle A of 24 CFR [Amended]

1. Appendix A is amended in the following way:

a. In Section II., Definitions, the definition of the term "CHAS" is removed and a definition of the term "Consolidated Plan" is added in its place, to read as follows:

Consolidated plan. The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under Community Planning and Development formula grant programs, which is prepared in accordance with the process prescribed in 24 CFR part 91.

b. In Section III, under the heading of *Section 310. Applications for planning grants.*, in paragraph (b)(4), the term "CHAS" is removed wherever it appears, and the term "Consolidated Plan" is added in each of those places.

c. In Section IV, under the heading of *Section 415. Applications for implementation grants.*, in paragraph (b)(17), the term "CHAS" is removed wherever it appears, and the term "Consolidated Plan" is added in each of those places.

Appendix B to Subtitle A of 24 CFR [Amended]

2. Appendix B is amended in the following way:

a. In Section II., Definitions, the definition of the term "CHAS" is removed and a definition of the term "Consolidated Plan" is added in its place, to read as follows:

Consolidated plan. The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under Community Planning and Development formula grant programs, which is prepared in accordance with the process prescribed in 24 CFR part 91.

b. In Section III, under the heading of *Section 310. Applications for planning grants.*, in paragraph (b)(4), the term "CHAS" is removed wherever it appears, and the term "Consolidated Plan" is added in each of those places.

c. In Section IV, under the heading of *Section 415. Applications for implementation grants.*, in paragraph (b)(17), the term "CHAS" is removed wherever it appears, and the term "Consolidated Plan" is added in each of those places.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.2 [Amended]

4. Section 91.2 is amended by removing from paragraph (b)(10) the phrase, "subpart E", and adding in its place the phrase, "subpart F".

§ 91.320 [Amended]

5. Section 91.320 is amended by removing paragraph (g)(1)(i) and by removing the paragraph designation (g)(1)(ii).

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

6. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1715l note, 4101 note, and 4101–4124; 42 U.S.C. 3535(d).

7. In § 248.177, paragraph (b)(6) is revised to read as follows:

§ 248.177 Delegated responsibility to State agencies.

* * * * *

(b) * * *

(6) A certification by the public official responsible for submitting the consolidated plan under 24 CFR part 91 that the proposed activities are consistent with the approved consolidated plan of the State within which the eligible low income housing is located; and

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

8. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

9. In § 570.304, paragraph (c)(1) is revised to read as follows:

§ 570.304 Making of grants.

* * * * *

(c) * * *

(1) Either the consolidated plan is not received by August 16 of the federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, subpart F—in which case, the grantee will forfeit the entire entitlement amount; or

* * * * *

§ 570.509 [Amended]

10. Section 570.509 is amended by removing from paragraph (d) the word "CHAS" wherever it appears and adding in its place the words "consolidated plan".

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

11. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

12. Section 572.400 is revised to read as follows:

§ 572.400 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 582—SHELTER PLUS CARE

13. The authority citation for part 582 is revised to read as follows:

Authority: 42 U.S.C. 11403 note and 3535(d).

14. Section 582.120 is revised to read as follows:

§ 582.120 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan. If the applicant is a State, and the project will be located in a unit of general local government that is required to have, or has, a complete consolidated plan, or that is applying for Shelter Plus Care assistance under the same Notice of Fund Availability (NOFA) and will have an abbreviated consolidated plan with respect to that application, the State also must submit a certification by the unit of general local government that the State's application is consistent with the unit of general local government's HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the

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jurisdiction is following its HUD-approved consolidated plan and the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 583—SUPPORTIVE HOUSING PROGRAM

15. The authority citation for part 583 is revised to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

16. Section 583.155 is revised to read as follows:

§ 583.155 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR EXISTING HOUSING

17. The authority citation for part 882 continues to read as follows:
AUTHORITY: 12 U.S.C. 1701q, 42 U.S.C. 3535(d).

18. In § 882.805, paragraph (b)(2) is revised to read as follows:

§ 882.805 PHA application process, HUD review and selection, ACC execution, and pre-rehabilitation activities.

* * * * *

(b) * * *

(2) *Consolidated plan.* (i) *Certification of consistency.* Except as provided in paragraph (b)(2)(ii) of this section, the applicant must submit a certification by the jurisdiction in which the proposed project will be located that the jurisdiction is following, and the applicant's application for funding is consistent with, the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consolidated regulations at 24 CFR part 91, subpart F, and as may be further described in the NOFA.

(ii) *Exception.* The consolidated plan certification is not required where the proposed project will be located on a reservation of an Indian tribe or the Insular Area of Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands.

(iii) *Timing of consolidated plan certification submission.* Unless otherwise set forth in the NOFA, the required certification must be submitted by the funding application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

19. The authority citation for part 889 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 8013.

20. In § 889.270, paragraph (b)(3) is revised to read as follows:

§ 889.270 Application contents.

* * * * *

(b) * * *

(3) The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification requirements of 24 CFR part 91, subpart F, and as may be further described in the NOFA. This certification is not required where the proposed project will be located in the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands. Unless otherwise set forth in the NOFA, the required certification must be submitted by the application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

21. The authority citation for part 890 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

22. In § 890.265, paragraph (b)(3) is revised to read as follows:

§ 890.265 Application contents.

* * * * *

(b) * * *

(3) The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification requirements of 24 CFR part 91, subpart F, and as may be further described in the NOFA. This certification is not required where the proposed project will be located in the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands. Unless otherwise set forth in the NOFA, the required certification must be submitted by the application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

Dated: March 21, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–7730 Filed 3–29–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8115]

Income Taxes; Unisex Annuity Tables; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations (T.D. 8115), which were published Friday, December 19, 1986 (51 FR 45690), relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Brant Goldwyn (202) 622–6040, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction adopt the mortality assumptions used to develop the proposed annuity tables. Thus, the revised tables are based, as are Tables I through IV of § 1.72–9, on individual annuitant mortality.

Need for Correction

As published, T.D. 8115 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.72–9, Table VII, years 21 through 30, is amended by revising the entry for age 39 to read as follows:

§ 1.72–9 Tables.

* * * * *

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
. . .	.	.	.	.	.	.	.	.	.	.
39	2	2	2	2	3	3	3	3	4	4
. . .	.	.	.	.	.	.	.	.	.	.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 95–7849 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[TD 8552]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8552), which were published in the **Federal Register** for Friday, July 8, 1994, (59 FR 34971) relating to intercompany transfer pricing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sim. Seo at (202) 622–3840, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contains changes made to section 482 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8552), which are the subject of FR Doc. 94–16456, is corrected as follows:

§ 1.482–2 [Corrected]

1. On page 35002, column 2, § 1.482–2 (a)(1)(ii)(A), introductory text, line 2, the language "*indebtedness.* Paragraph (e) of this" is corrected to read "*indebtedness.* Paragraph (a) of this".

2. On page 35002, column 2, § 1.482–2 (a)(1)(ii)(B), line 2, the language "paragraph (e) does not apply to so much" is corrected to read "paragraph (a) does not apply to so much".

3. On page 35005, columns 2 and 3, the undesignated paragraph following § 1.482–2(a)(3)(iv) is removed and § 1.482–2 (a)(3)(iv) is corrected to read as follows:

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§ 1.482–2 Determination of taxable income in specific situations.

(a) * * *

(3) * * *

(iv) Fourth, section 482 and paragraphs (b) through (d) of this section and §§ 1.482–3 through 1.482–7, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of § 1.482–3, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

* * * * *

4. On page 35008, column 2, § 1.482–2 (b)(7)(ii)(C), line 14 from the top of the column, the language "subdivision (c). For purposes of this" is corrected to read "paragraph (b)(7)(ii)(C). For purposes of this".

5. On page 35008, column 2, § 1.482–2 (b)(7)(iv), line 7, the language "For purposes of this subdivision," is corrected to read "For purposes of this paragraph (b)(7)(iv),".

6. On page 35008, column 3, § 1.482–2 (b)(7)(v), *Example 1*, the last two lines, the language "of X as described in subdivision (i) of this subparagraph." is corrected to read "of X as described in paragraph (b)(7)(i) of this section.".

7. On page 35008, column 3, § 1.482–2 (b)(7)(v), *Example 2*, the last two lines, the language "activities within the meaning of subdivision (ii) of this subparagraph." is corrected to read "activities within the meaning of paragraph (b)(7)(ii) of this section.".

8. On page 35010, column 1, § 1.482–2 (b)(7)(v), *Example 13*, line 6, the language "meaning of paragraph (d)(4) of this section)." is corrected to read "meaning of § 1.482–7T).".

§ 1.482–3 [Corrected]

9. On page 35012, column 1, § 1.482–3 (b)(4), *Example 4*, lines 20 and 21, the language "arms's length range pursuant to § 1.482–1(e)(iii)(A). If the effects of the geographic" is corrected to read "arm's length range pursuant to § 1.482–1(e)(2)(iii)(A). If the effects of the geographic".

10. On page 35012, column 1, § 1.482–3 (b)(4), *Example 4*, last line, the language "pursuant to § 1.482–1(e)(iii)(B)." is corrected to read "pursuant to § 1.482–1(e)(2)(iii)(B).".

11. On page 35014, column 1, § 1.482–3 (c)(4), *Example 4*, line 1, the paragraph designation (i) is removed, and *Example 4*, line 15, the language "to § 1.482–3(c)(iii)(B), must be made to" is corrected to read "to § 1.482–3(c)(3)(iii)(B), must be made to".

12. On page 35015, column 1, § 1.482–3 (d)(3)(iii)(B), line 6, the language "gross profit margin affects the reliability" is corrected to read "gross profit markup affects the reliability".

§ 1.482–6 [Corrected]

13. On page 35027, column 2, § 1.482–6 (c)(3)(ii)(C)(*1*), line 3, the language "paragraph (c)(2)(ii)(C)(*1*);" is corrected to read "paragraph (c)(2)(ii)(C)(*1*) of this section;".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7858 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 25

[TD 8540]

RIN 1545–AM81

Valuation Tables; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8540], which were published in the **Federal Register** for Friday, June 10, 1994 (59 FR 30100). The final regulations relate to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 170, 642, 664, 7520, 2031 and 2512 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that are misleading and in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which are the subject of FR Doc. 94–12294, is corrected as follows:

§ 25.2523(a)–1 [Corrected]

On page 30103, references "25.2523(a)–1(d)" in column 1, lines 2 through 5 from the bottom of the table, are corrected as follows:

Section	Remove	Add
. . .	. . .	. . .
25.2523(a)–1(e) second sentence	. . .	. . .
25.2523(a)–1(e) third sentence	. . .	. . .
25.2523(a)–1(e) fourth sentence	. . .	. . .
25.2523(a)–1(e) fifth sentence	. . .	. . .
. . .	. . .	. . .

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Domestic).

[FR Doc. 95–7856 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AA85

The Family and Medical Leave Act of 1993; Correction

AGENCY: Wage and Hour Division, Labor.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations implementing the Family and Medical Leave Act of 1993, 29 CFR part 825, which were published in the **Federal Register** Friday, January 6, 1995 (60 FR 2180).

EFFECTIVE DATE: This correction document is effective on March 30, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Final regulations implementing the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 *et seq.*, were published in the **Federal Register** on January 6, 1995. On February 3, 1995, the effective date of the final regulations was deferred from February 6, 1995, until April 6, 1995 (*see* 60 FR 6658). As published on January 6, the final regulations contain errors which may prove to be misleading and are in need of clarification. In some instances, cross-references and citations of sections of the regulations contain inadvertent errors and should be corrected as set forth below.

Correction

In rule document 94–32342 beginning on page 2180 in the issue of Friday, January 6, 1995, make the following corrections:

§ 825.100 [Corrected]

1. On page 2238, in the third column, in § 825.100(a), in the eighteenth line, the citation in the parentheses is corrected to read "see § 825.306(b)(4)".

§ 825.110 [Corrected]

2. On page 2242, in the second column, in § 825.110(c), in the thirty-second line, the reference to "§ 825.500(e)" is corrected to read "§ 825.500(f)."

§ 825.111 [Corrected]

3. On page 2243, in the second column, in § 825.111(c), the last sentence of that section is corrected to read "See § 825.105(c)."

§ 825.202 [Corrected]

4. On page 2247, in the first column, in § 825.202(c), in the sixteenth line, "for a child or parent with" is corrected to read "for a child with".

§ 825.207 [Corrected]

5. On page 2249, in the first column, in § 825.207(d)(2), the second sentence is corrected to read, "If the employer designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.".

§ 825.208 [Corrected]

6. On page 2250, in the third column, in § 825.208(e)(1), the second sentence is corrected to read, "If leave is taken for an FMLA reason but the employer was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employer within two business days of returning to work of the reason for the leave.".

§ 825.209 [Corrected]

7. On page 2251, in the second column, in § 825.209(e), the last sentence of that section is corrected to read "See § 825.212(c)."

§ 825.210 [Corrected]

8. On page 2252, in the first column, in § 825.210(f), the last sentence of that section is corrected to read "*See* paragraph (c) of this section and § 825.207(d)(2)."

§ 825.214 [Corrected]

9. On page 2253, in the second column, in § 825.214(a), the last sentence of that section is corrected to read "See also § 825.106(e) for the obligations of joint employers."

§ 825.301 [Corrected]

10. On page 2256, in the third column, in § 825.301(b)(1)(v), in the last sentence of that section, the citation in the parentheses is corrected to read "(see § 825.310);".

§ 825.307 [Corrected]

11. On page 2259, in the third column, in § 825.307(a)(2), the last sentence of that section is corrected to read "See also paragraphs (e) and (f) of this section."

§ 825.310 [Corrected]

12. On page 2261, in the first column, in § 825.310(f), in the sixth line, "paragraph (c) of this section" is corrected to read "paragraph (e) of this section".

§ 825.312 [Corrected]

13. On page 2261, in the second column, in § 825.312(b), in the eighth line, the citations in the parentheses are corrected to read "§§ 825.305 and 825.311".

§ 825.312 [Corrected]

14. On page 2261, in the third column, in § 825.312(c), the last sentence of that section in parentheses is corrected to read "(See §§ 825.310 and 825.311.)".

§ 825.312 [Corrected]

15. On page 2262, in the first column, in § 825.312(f), in the last sentence of that section, the citation in parentheses is corrected to read "§ 825.219".

§ 825.500 [Corrected]

16. On page 2263, in the first column, in § 825.500(c)(4), in the seventh line, the citation in parentheses is corrected to read "§ 825.310(b)".

§ 825.500 [Corrected]

17. On page 2263, in the second column, at the end of § 825.500(g)(3), add, "(Approved by the Office of Management and Budget under control number 1215–0181.)".

§ 825.702 [Corrected]

18. On page 2266, in the second column, in § 825.702(d)(2), in the twenty-sixth line, the citation is corrected to read "§ 825.207(d)(2)".

§ 825.800 [Corrected]

19. On page 2269, in the first column, in the second full paragraph numbered "(3)" in the definition of *Serious health condition*, in the ninth line, after "stomach," insert "minor".

Appendix A to Part 825—[Corrected]

20. On page 2269, in the third column, in the ninth entry of that column in Appendix A entitled "COBRA," the third citation is corrected to read "825.213(e)."

Signed in Washington, DC, this 10th day of March, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 95–7808 Filed 3–29–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7126

[CA–930–1430–01; CACA 29698]

Withdrawal of Public Land for the Coachella Division, All-American Canal System; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 359.19 acres of public land from surface entry and mining for a period of 20 years for the operation and maintenance of the Bureau of Reclamation's Coachella Division of the All-American Canal System. The land has been and will remain open to mineral leasing and the Materials Act of 1947.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825; 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by section

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204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from the Materials Act of 1947 or leasing under the mineral leasing laws, for the operation and maintenance of the Bureau of Reclamation's Coachella Division of the All-American Canal System:

San Bernardino Meridian

T. 7 S., R. 10 E.,
Sec. 18, lots 1 and 2 of the NW¼, N½ lot 2 of the SW¼, and NE¼.

The area described contains 359.19 acres in Riverside County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7812 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–40–P

43 CFR Public Land Order 7127

[UT–942–1430–01; UTU–71781]

Withdrawal of Public Land for Westwater Canyon of the Colorado River; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,710 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the recreational, scenic, geologic, cultural, and fish and wildlife values of the Westwater Canyon of the Colorado River. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management recreation area:

Salt Lake Meridian

T. 21 S., R. 24 E.,
Sec. 24, lots 11 to 21, inclusive, and NE¼SE¼;
Sec. 25, lot 2 and N½NW¼NE¼.
T. 20 S., R. 25 E.,
Sec. 22, lots 1, 2, and 4 to 8, inclusive, and E½NW¼NE¼;
Sec. 23, lots 7 and 8, and SW¼NW¼;
Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, and W½SE¼SW¼;
Sec. 27, lots 1 to 5, inclusive, and SW¼NE¼;
Sec. 33, lots 1 to 4, inclusive, NW¼NE¼, and E½NE¼NW¼;
Sec. 34, lots 1 to 8, inclusive, NW¼NE¼, W½NW¼NW¼, SW¼NW¼, SE¼SW¼, and N½NE¼SE¼;
Sec. 35, lots 1 and 2, W½NE¼NW¼, and SW¼NW¼.
T. 21 S., R. 25 E.,
Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, NE¼NE¼SW¼, W½SW¼, NW¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, and W½E½SE¼;
Sec. 4, lots 1 and 5;
Sec. 8, SE¼NE¼ and E½SE¼;
Sec. 9, lots 1 to 15, inclusive, SE¼SW¼, and N½SE¼SE¼;
Sec. 10, lots 1 to 6, inclusive, W½NE¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼, and N½SW¼SW¼;
Sec. 16, lots 1 to 4, inclusive;
Sec. 17, lots 1, 2, 3, and 5 to 12, inclusive, and N½N½SE¼;
Sec. 18, SE¼SE¼;
Sec. 19, lots 1, 2, and 6 to 13, inclusive, NE¼SE¼, and SW¼SE¼;
Sec. 20, lots 1 to 3, inclusive, and W½NE¼NW¼;
Sec. 30, lot 1 and N½NE¼NW¼.

Unsurveyed lands in the Colorado River bed, in the area described above, are included in this order. The area described contains approximately 4,710 acres in Grand County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7814 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

43 CFR Public Land Order 7128

[UT–942–1430–01; UTU–2036, UTU–4061, UTU–42919]

Partial Revocation of Executive Order No. 5327, Public Land Order No. 4522, and Secretarial Order of June 11, 1943; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order, a Secretarial order, and a public land order insofar as they affect 828.13 acres withdrawn for protection of oil shale resources (798.13 acres) and a first form reclamation withdrawal (30 acres). The lands are no longer needed for these purposes and the revocation is needed to permit disposal of the lands through public sale under Section 203 of the Federal Land Policy and Management Act of 1976. This action will open the lands to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 5327 and Public Land Order No. 4522, which withdrew public land for protection of oil shale and associated values, are hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 5 S., R. 19 E.,
Sec. 12, E½NE¼, S½N½SW¼NE¼, and S½SW¼NE¼.
T. 7 S., R. 19 E.,
Sec. 1, lots 2 to 4, inclusive, SW¼NE¼, SW¼NW¼, SE¼SW¼, and SW¼SE¼.
T. 7 S., R. 20 E.,

Sec. 5, lots 3 and 4, SW¼NW¼, and SW¼;
Sec. 6, lots 1 and 2;
Sec. 15, NW¼NE¼.

The areas described aggregate 798.13 acres in Uintah County.

2. Secretarial Order, dated June 11, 1943, which withdrew public land for the Jensen Unit of the Central Utah Project, for the Bureau of Reclamation, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 3 S., R. 22 E.,
Sec. 11, NW¼SW¼NE¼ and S½SW¼NE¼.

The area described contains 30 acres in Uintah County.

3. At 9 a.m. on May 1, 1995, the lands described in paragraphs 1 and 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 1, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on May 1, 1995, the lands described in paragraphs 1 and 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7813 Filed 3–29–95; 8:45 am]

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Proposed Rules

Federal Register

Vol. 60, No. 61

Thursday, March 30, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[INS No. 1672–94; AG Order No. 1957–95]

RIN 1115–AD76

Administrative Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish alternative administrative deportation procedures for aliens not admitted for permanent residence and not eligible for any relief from deportation who have been convicted of aggravated felonies. This regulation is necessary to implement a recently enacted statutory measure eliminating the requirement for a hearing before an immigration judge and limiting judicial review. While incorporation procedural safeguards, it will expedite the deportation process in certain cases involving serious criminal offenses.

DATES: Written comments must be submitted on or before May 30, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5307, 425 I Street NW., Washington, DC 20536. Attention: Public Comment Clerk. To ensure proper handling, please reference INS No. 1672–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Leonard C. Loveless, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 514–2865.

SUPPLEMENTARY INFORMATION: This proposed rule establishes an expedited administrative deportation process. Section 130004 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, amended section 242A of the Immigration and Nationality Act (Act), effective September 14, 1994, to authorize such a process. Amended section 242A(b) of the Act authorizes the Attorney General to implement a deportation procedure that eliminates hearings before immigration judges for certain aliens convicted of serious criminal offenses. Limited judicial review is authorized upon the filing of a petition for review within 30 days after the administrative deportation order is issued. Also, the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, enacted October 25, 1994, made minor technical changes to the statutory administrative deportation procedures.

Before enactment of Public Law 103–322, except in the case of certain Visa Waiver Pilot Program and crewman violators, deportation proceedings were required to be conducted before an immigration judge pursuant to section 242(b) of the Act. By enactment of Public Law 103–322, Congress provided for a more streamlined deportation process for an alien who is convicted of an aggravated felony and who is not a lawful permanent resident. The procedure is available only if the alien is not eligible for any form of relief from deportation under the Act. Section 242A(b)(4) requires the Attorney General to prescribe regulations to conduct proceedings under the section. This proposed rule authorizes a district director or chief patrol agent to issue a final administrative order of deportation in accordance with section 242A(b) of the Act.

The proposed rule would require the Service to perform certain functions to afford the alien procedural protection during the administrative process:

a. The alien would be given reasonable notice of the charge of deportability. The notice would set forth allegations of fact and conclusions of law establishing that the alien is not a lawful permanent resident, is deportable under section 241(a)(2)(A)(iii) of the Act (relating to conviction for an aggravated felony), and is ineligible for relief from deportation.

b. The charge of deportability would be supported by clear, convincing, and unequivocal evidence, and a record would be maintained for judicial review.

c. The alien would have an opportunity to be represented by counsel in the deportation proceedings at no expense to the government.

d. The alien would have a reasonable opportunity to inspect the evidence and rebut the allegations and/or charge within ten days, with an extension granted by the district director or chief patrol agent for good cause shown.

e. The person who renders the final decision would not be the same person who issues the notice of the Service's intention to issue a final order (i.e. the charge).

f. The alien would be able to seek review of the final order by filing a petition for judicial review within 30 days.

During the administrative deportation process, the district direct or chief patrol agent would determine the alien's custody status in accordance with applicable provisions of section 242 of the Act. The alien would be able to seek review of the custody determination in habeas corpus proceedings.

Section 242(b) of the Act does not apply when the alien is eligible for relief from deportation under the Act. If the Service finds that the alien's response presents a prima facie claim of statutory eligibility for relief, the rule proposes that the district director or chief patrol agent (or their designee) shall terminate proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

Limited judicial review of the final administrative deportation order may be obtained by filing a petition for review in accordance with section 106 of the Act. The review, however, is statutorily limited to: (1) Whether the person is in fact the alien described in the order; (2) whether the person was not lawfully admitted for permanent residence at the time at which deportation proceedings commenced; (3) whether the person is not eligible for any relief from deportation; (4) whether the alien has been convicted of an aggravated felony and such conviction has become final; and (5) whether the alien was afforded

the procedures required by section 242A(b)(4) of the Act.

Sections 242(a) (2)(A) and (2)(B) of the at require the Service to detain, until the order is executed, any aggravated felon who has not been "lawfully admitted." An alien who has been lawfully admitted may be released from custody if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceedings. An immigration judge is not authorized to consider (or redetermine) custody issues under the rule. The alien may seek review of the bond determination by filing a writ of habeas corpus with the district court.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities because the affected parties are individual aliens who have been ordered deported from the United States.

Executive Order No. 12866

This rule is not considered to be a "significant regulatory action" within the meaning of section 3(f) of E.O. 12866, Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order No. 12612

This rule is not considered to have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

Executive Order 12606

The Attorney General certifies that she has assessed this rule in light of the criteria in E.O. 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. In part 242, a new § 242.25 is added to read as follows:

§ 242.25 Proceedings under section 242A(b) of the Act.

(a) *Definitions.* As used in this section—

Deciding Service officer means a district director, chief patrol agent, or his or her designated representative who is not the same person as the issuing Service officer.

Issuing Service officer means any Service officer listed in § 242.1(a) as authorized to issue orders to show cause.

Prima facie claim means a claim that, on its face and consistent with the evidence in the record of proceeding, demonstrates present statutory eligibility for a specific form of relief from deportation under the Immigration and Nationality Act (Act).

(b) *Preliminary consideration and notice of intent to issue a final administrative deportation order; commencement of proceedings.* (1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon the alien a notice of intent to issue a final administrative deportation order (Notice of Intent, Form I–851) if he or she is satisfied that there is evidence sufficient to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence;

(iii) Has been convicted (as demonstrated by one or more of the sources listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final;

(iv) Is deportable under section 241(a)(2)(A)(iii) of the Act; and

(v) Does not appear statutorily eligible for any relief from deportation under the Act.

(2) *Notice.* Deportation proceedings under section 242A(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by § 103.5a(a)(2), 103.5a(b), and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a final administrative order of deportation (Final Administrative Deportation Order, Form I–851A) without a hearing before an immigration judge. This notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien:

(i) Has the privilege of being represented by counsel of the alien's choosing, at no expense to the government, as long as counsel is authorized to practice in deportation proceedings;

(ii) May inspect the evidence supporting the Notice of Intent; and

(iii) May rebut the charges within ten calendar days after service of such notice (or thirteen (13) days if service of the Notice was by mail). The Notice of Intent shall also advise the alien that he or she may designate in writing, within ten calendar days of service of the Notice of Intent (or thirteen calendar days if service is by mail), the country to which he or she chooses to be deported in accordance with section 243 of the Act, in the event that a Final Administrative Deportation Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 243 of the Act.

(c) *Alien's response.* (1) *Time for response.* The alien will have ten calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail,

(1) To designate his or her choice of country for deportation and

(ii) To submit a written response rebutting the allegations and/or charge and/or requesting the opportunity to review the government's evidence. The alien should send his or her designation of country for deportation, and his or her written response to the charge, to the deciding Service officer at the address provided in the Notice of Intent. If the final date for filing falls on a Saturday, Sunday, or legal holiday, the time shall be extended to the next business day. The time for response may be extended by the deciding Service officer for good cause shown in a written request for extension received within the time to submit a written response. The request must explain specifically why an extension is necessary. A request for extension of time for response will not automatically toll the prescribed period (e.g., ten days) for that response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien may, in writing, choose to accept immediate issuance of a Final Administrative Deportation Order.

(2) *Nature of response; request to review evidence.* The alien's written response must indicate which finding(s) are being challenged and must be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge. if the written response

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requests the opportunity to review the government's evidence, the alien will be served with a copy of the evidence in the record of proceeding relied on by the government to support the allegations and/or charge. The alien may, within ten days following service of the government's evidence (thirteen days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. Either the alien's initial written response or the alien's final response must be accompanied by an affidavit and a completed and signed application designed for any relief sought.

(d) *Determination by deciding Service officer.* (1) *No response; acceptance of Final Administrative Deportation Order.* If

(i) A timely response is not received by the deciding Service officer, or

(ii) The alien accepts immediate issuance of the Final Administrative Deportation Order, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(2) *Response submitted.* (i) *Insufficient rebuttal; no prima facie claim or genuine issue of material fact.* If the deciding Service officer finds that the response fails to rebut the allegations and charge in the Notice of Intent, fails to present a prima facie claim of relief from deportation under the Act, and fails to raise a genuine issue of material fact, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(ii) *Additional evidence required.* If the deciding Service officer finds that the alien's response raises a genuine issue of material fact regarding the preliminary findings, he or she

(A) May request additional information from any source, including the alien, as he or she may deem appropriate, or

(B) Issue an order to show cause to initiate deportation proceedings under section 242(b) of the Act. If the deciding Service officer considers additional information from a source other than the alien, that evidence shall be provided to the alien, and the alien may, within ten days of service thereof (thirteen days if service is by mail) furnish a response to the deciding Service officer. If, after considering all additional information, the deciding Service officer finds that deportation is supported by the requisite proof, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order.

(iii) *Secretary eligibility for relief; conversion to proceedings under section 242(b) of the Act.* If the deciding Service officer finds that the alien has presented a prima facie claim of present statutory eligibility for a specific form of relief from deportation, the deciding Service officer shall terminate the expedited proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 242A(b) of the Act, in the exercise of his or her discretion.

(e) *Proceedings commenced under section 242(b) of the Act.* In any proceeding commenced under section 242(b) of the Act, if it appears that the respondent's case falls under the provisions of section 242A(b) of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 242A(b) of the Act. However, in the absence of any such request, the immigration judge shall complete the pending proceeding commenced under section 242(b) of the Act.

(f) *Executing final order of deciding Service officer—*

(1) *Thirty (30) calendar days.* Upon the issuance of a Final Administrative Deportation Order, the Service shall issue a warrant of deportation issued in accordance with 8 CFR part 243.2; such warrant shall be executed no sooner than 30 calendar days after the date the Final Administrative Deportation Order is issued, unless the 30-day period is waived in writing by the alien. The 72-hour provisions of § 243.3(b) of this chapter shall not apply.

(2) *Place to which deported.* The deciding Service officer shall designate the country of deportation, in the manner prescribed by section 243(a) of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a warrant of deportation, the alien may be arrested and taken into custody under the authority of a warrant of arrest issued by an officer listed in § 242.2(c)(1) of this chapter. Pursuant to section 242(a)(2)(A) of the Act, pending proceedings under section 242A(b) of the Act, the deciding Service officer shall not release an alien who has not been lawfully admitted. Pursuant to section 242(a)(2)(B) of the Act, the deciding Service officer may release an alien who has been lawfully admitted based upon factors considered under § 242.2(h) of this chapter. The decision of the deciding Service officer concerning custody or bond is not administratively appealable during proceedings initiated under section 242A(b) of the Act and this section.

(h) *Record of proceeding.* A record of proceeding shall be maintained by the Service for judicial review of the Final Administrative Deportation Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to, the charging document (Notice of Intent); the Final Administrative Deportation Order; the alien's response, if any; all evidence in support of the charges; and any admissible evidence, briefs, or documents submitted by either party respecting deportability or relief from deportation.

Dated: March 16, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–7754 Filed 3–29–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–177–AD]

Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes Equipped With J.C. Carter Company Fuel Valve Actuators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 727 and Model 737 series airplanes, that would have required replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. That proposal was prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and crossfeed valves slipped at cold temperatures due to improper functioning. This action revises the proposed rule by expanding the applicability to include an additional actuator. The actions specified by this proposed AD are intended to prevent improper functioning of these actuators, which could result in a fuel imbalance due to the inability of the flight crew to crossfeed fuel; improperly functioning actuators could also prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

DATES: Comments must be received by May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Bray, Aerospace Engineer, Propulsion Branch, ANM–141S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–177–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA,Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 727 and Model 737 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 15, 1994 (59 FR 64628). That NPRM would have required replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with a new actuator. That NPRM was prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and crossfeed valves slipped at cold temperatures when the engine shutoff valve was commanded to either the "close" or "open" position. Improper functioning of these actuators, if not corrected, could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel, or could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

Since the issuance of that NPRM, the FAA has received a report indicating that additional fuel valve actuators (Model EM487–2, serial numbers 0001 through 1443 inclusive) installed on certain Model 727 and Model 737 series airplanes are also subject to the same failure. The FAA has determined that these additional actuators are subject to the addressed unsafe condition.

The FAA has reviewed and approved a later version of J. C. Carter Company Service Bulletin 61163–28–08, dated December 2, 1994. J. C. Carter Company Service Bulletin 61163–28–08, dated September 1, 1994, was cited in the NPRM as the appropriate source of service information. The replacement procedures described in the later version of the service bulletin are identical to those described in the earlier version of the service bulletin. However, the later version expands the effectivity listing to include additional actuators. The applicability and paragraph (e) of the supplemental NPRM have been revised to reference the later version of the service bulletin.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long standing requirement.

There are approximately 4,137 Model 727 and Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,190 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by J.C. Carter Company at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $394,200, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

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proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–177–AD.

Applicability: Model 727 and Model 737 series airplanes; equipped with J.C. Carter Company fuel valve actuators, as listed in J.C. Carter Company Service Bulletin 61163–28–08, dated December 2, 1994, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper functioning of certain actuators, which could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel, or which could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the actuator having part number (P/N) 40574–2 (Model EM487–2, serial numbers 0001 through 1443 inclusive; and Model EM487–3, serial numbers 0001 through 2711 inclusive), on the fuel system crossfeed valve and the engine shutoff valves with a new actuator having P/N 40574–4, in accordance with the Accomplishment Instructions of J.C. Carter Company Service Bulletin 61163–28–08, dated December 2, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7779 Filed 3–29–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–116–AD]

Airworthiness Directives; Fokker Model F28 Mk 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mk 0100 series airplanes. This proposal would require the installation of modified Passenger Service Unit (PSU) panel lenses. This proposal would also require a one-time post-installation inspection to detect corrosion or deterioration of the PSU connectors, and correction of discrepancies, and application of sealant. This proposal is prompted by reports that "No Smoking" and "Fasten Seat Belt" signs installed in certain overhead PSU's are not readable from passengers' and flight attendants' seats. This proposal is also prompted by reports of smoke in the passenger cabin caused by overheating of the PSU connectors. The actions specified by the proposed AD are intended to ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–116–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mk 0100 series airplanes. The RLD advises that the "No Smoking" and "Fasten Seat Belt" signs installed in certain overhead Passenger Service Units (PSU) on these airplanes may not be readable to each seated passenger under all probable conditions of cabin illumination. Additionally, these "No Smoking" or "Fasten Seat Belt" signs are not visible at all from the flight attendants' seats in the aft cabin. The ability to clearly see these signs under all conditions of illumination in the cabin is necessary in order to ensure that passengers and flight attendants are notified when smoking is not permitted on an aircraft, and when seat belts must be fastened. If the "No Smoking" signs are not readable or visible, passengers and flight attendants may not be aware of situations when smoking on the airplane could present a fire hazard. If the "Fasten Seat Belts" signs are not readable or visible, passengers and flight attendants may not be aware of situations when it is necessary that they be properly restrained in their seats to prevent injury during turbulent or other flight conditions.

Additionally, the RLD advises that there have been two reports of smoke in the passenger aft compartment coming from a PSU. Investigation revealed that, in each case, the cause of the smoke was water ingress (condensation from the air duct) in the electrical connectors of the PSU. Water ingression in PSU connectors can result in corrosion of the contacts. Because there is a 115V (alternating) current present, the temperature inside the connector can rise subsequently and cause the connector to melt. This condition, if not corrected, can result in failure of the warning signs at the PSU to illuminate and could pose a fire hazard.

Fokker has issued Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994), which describes procedures for installing modified PSU panel lenses. (This Fokker service bulletin refers to Grimes Aerospace Service Bulletins 10–1178–33–0036 and 10–1178–33–0039, Revision 1, dated October 31, 1993, for additional installation instructions.) Certain of the modified lenses are configured so that the readability of the warning signs from the passengers' seats is improved. Other modified lenses incorporate a tilted legend (prisma lens) that makes readability possible from the aft cabin flight attendants' seats. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive BLA 94–078(A), dated May 11, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Fokker also has issued Service Bulletin SB100–25–068, dated March 31, 1994, which describes procedures for conducting a one-time inspection to detect corrosion or deterioration of the PSU connectors, correction of discrepancies identified, and application of sealant. Fokker recommends that this inspection be performed after the modified PSU panel lenses are installed in accordance with Service Bulletin SBF100–25–061. The RLD has classified this service bulletin as "Recommended."

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the installation of modified PSU panel lenses. This action would be required to be accomplished in accordance with the Fokker Service Bulletin SBF100–25–061, described previously.

Additionally, this proposed AD would require a one-time post-installation inspection to detect corrosion or deterioration of the PSU connectors, correction of discrepancies identified, and application of sealant. These actions would be required to be accomplished in accordance with Fokker Service Bulletin SB100–25–068.

The proposed AD would be applicable only to Model F28 Mk 0100 series airplanes having serial numbers 11244 through 11437, inclusive. Beginning at serial number 11438, the modified PSU panel lenses were installed during production.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 83 airplanes of U.S. registry would be affected by this proposed AD.

The proposed installation of the modified PSU's would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $248 per airplane. Based on these figures, the total cost impact of the proposed installation action on U.S. operators is estimated to be $30,544, or $368 per airplane.

The proposed one-time inspection of the PSU connectors would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspection action on U.S. operators is estimated to be $24,900, or $300 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD is estimated to be $55,444, or $668 per airplane. This total cost impact figure is

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based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–116–AD.

Applicability: Model F28 Mk 0100 series airplanes having serial numbers 11244 through 11437, inclusive; and equipped with Grimes Aerospace Passenger Service Units having part number (P/N) 10–1178–( ) through P/N 10–1571–( ), inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard, accomplish the following:

(a) Within 9 months after the effective date of this AD, install modified Passenger Service Unit (PSU) panel lenses in accordance with Fokker Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994).

(b) Prior to further flight after accomplishing the installation required by paragraph (a) of this AD, perform a one-time post-installation inspection to detect corrosion and/or deterioration of the PSU connector, in accordance with Fokker Service Bulletin SBF100–25–068, dated March 31, 1994. Prior to further flight, correct any discrepancies detected and apply sealant in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a Grimes Aerospace Passenger Service Unit having part number (P/N) 10–1178–( ) through P/N 10–1571–( ), inclusive.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Aircraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7780 Filed 3–29–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–06–AD]

Airworthiness Directives; Boeing Model 747 SP, SR, –100, –200, and –300 Series Airplanes Equipped With Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes. This proposal would require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This proposal is prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by May 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general. Based on the data gathered from this ongoing investigation, the FAA issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes [for example, reference AD 94–14–02, amendment 39–8954 (59 FR 33646, June 30, 1994) for certain Model 757 series airplanes; and AD 94–16–03, amendment 39–8993 (59 FR 41229, August 11, 1994) for certain Model 767 series airplanes]. These actions were taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-flight thrust reverser deployment. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results indicate that Model 747 SP, SR, –100, –200, –300, and -400 series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high-speed climb or during cruise.

In light of that information, the FAA determined that certain inspections and functional tests of the thrust reverser control and indication system on all Model 747 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747 series airplanes. Subsequently, on July 13, 1994, the FAA issued AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), to require inspections and functional tests of the thrust reverser control and indication system on all Model 747–400 series airplanes.

In the preamble to the notice of AD 94–15–05, the FAA indicated that it was considering similar rulemaking action for other Model 747 series airplanes. The FAA now has determined that such rulemaking action is indeed necessary, and this proposed AD follows from that determination. The FAA has determined that inspections and functional tests of the thrust reverser control and indication system, similar to those currently required by AD 94–15–05 for Model 747–400 series airplanes, are necessary for Model 747 SP, SR, -100, -200, and -300 series airplanes in order to reduce the exposure of these airplanes to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994, which describes procedures for repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. The alert service bulletin recommends that these initial tests be accomplished no later than 1,300 flight hours after release of the alert service bulletin. The alert service bulletin also recommends a repetitive test interval of 2,000 flight hours.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found during the test. The actions would be required to be accomplished in accordance with the

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alert service bulletin described previously.

In developing appropriate compliance times for the initial test contained in this proposed AD, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the proposed actions. In consideration of these items, the FAA determined that 90 days (for the initial test of the PDU) represents the maximum interval of time allowable wherein that test can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA has determined that the proposed repetitive interval of 2,000 flight hours is appropriate, based on the service history of similar components and on an analysis of the system design to predict the reliability of the system during the service life of the aircraft.

The thrust reverser control and indication system on Model 747–400 series airplanes is similar to the system installed on the airplanes addressed in this proposed AD. The compliance time for the initial test proposed in this AD corresponds to that specified in AD 94–15–05 for Model 747–400 series airplanes. The repetitive test interval specified in this proposed AD should allow operators to perform the test during regularly scheduled maintenance.

This proposed AD also would require that operators submit a report of initial test results to the FAA.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 456 Model 747 SP, SR, –100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $166,080, or $960 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–06–AD.

Applicability: Model 747 SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(b) If any of the tests required by this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(c) Within 30 days after performing each initial test required by this AD, submit a report of the test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7781 Filed 3–29–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–CE–32–AD]

Airworthiness Directives; Stemme S10 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme S10 gliders. The proposed action would require modifying the rudder control cable system. Rupture of a turnbuckle eye bolt in the rudder control cable system on one of the affected gliders prompted the proposed action. The actions specified by the proposed AD are intended to prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on Stemme S10 gliders. The LBA reports that the rudder control cable turnbuckle eye bolt ruptured on one of the affected gliders, which resulted in loss of rudder control. Under the current configuration, the rudder control cables from the right and left pedals meet at the turnbuckle in the tailboom in a way that subjects the turnbuckle eye bolt to resistant forces (tensile and bending) that could pull the bolt from the rudder assembly. If not detected and corrected, rudder control cable turnbuckle eye bolt rupture could result in rudder control cable system failure and subsequent loss of rudder control.

Stemme has issued Service Bulletin (SB) A31–10–018, dated June 3, 1994, which specifies procedures for modifying the rudder control cable system on these S10 gliders. Pages 1–3 of this service bulletin are written in German and pages 4–6 are English translations. The LBA classified this service bulletin as mandatory and issued LBA AD 94–260, dated August 25, 1994, in order to assure the continued airworthiness of these gliders in Germany.

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme S10 gliders of the same type design, the proposed AD would require modifying the rudder control cable system. The proposed action would be accomplished in accordance with the instructions to Stemme SB A31–10–018 (pages 4–6), dated June 3, 1994.

The FAA estimates that 3 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $56 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $888 ($296 per airplane). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed modification.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

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between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new AD to read as follows:

Stemme: Docket No. 94–CE–32–AD.

Applicability: S10 gliders (serial numbers 10–03 through 10–58), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required upon the accumulation of 150 hours time-in-service (TIS) or within the next 20 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control, accomplish the following:

(a) Modify the rudder control cable system in accordance with the instructions in Stemme Service Bulletin A31–10–018 (pages 4–6), dated June 3, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7787 Filed 3–29–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–CE–36–AD]

Airworthiness Directives; HOAC AUSTRIA GmbH HK 36R "Super Dimona" Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain HOAC AUSTRIA GmbH (HOAC) HK 36R "Super Dimona" gliders. The proposed action would require inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. Reports received by the Federal Aviation Administration (FAA) of severe exhaust system corrosion on the affected gliders, including one of excessive corrosion (rusting through), prompted the proposed action. The actions specified by the proposed AD are intended to prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–36–AD Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A–2700 Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH (ACG), which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain HOAC HK 36R "Super Dimona" gliders. The ACG reports several incidents of severe exhaust system corrosion on the affected gliders, including one of excessive corrosion (rusting through). If not detected and corrected, excessive corrosion could result in high carbon monoxide levels in the cockpit and subsequent passenger injury.

HOAC has issued Service Bulletin (SB) 33, dated July 15, 1993, which specifies procedures for inspecting the exhaust system of these HK 36R "Super Dimona" gliders for corrosion, replacing the exhaust systems, and installing a carbon monoxide detector. The ACG classified this service bulletin as mandatory and issued ACG AD No. 74, in order to assure the continued airworthiness of these gliders in Austria.

This glider model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ACG has kept the FAA informed of the situation described above. The FAA has examined the findings of the ACG, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other HOAC HK 36R "Super Dimona" gliders of the same type design, the proposed AD would require inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. The proposed action would be accomplished in accordance with the Measures section of HOAC SB 33, dated July 15, 1993.

The FAA estimates that 4 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $25 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $580 ($145 per glider). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed installation or accomplished the proposed inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

HOAC AUSTRIA GmbH: Docket No. 94–CE–36–AD.

Applicability: HK 36R "Super Dimona" gliders (serial numbers 36.302 through 36.324), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required within the next 10 hours time-in- service after the effective date of this AD, unless already accomplished.

To prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries, accomplish the following:

(a) Inspect the exhaust system for corrosion in accordance with the Measures section of HOAC Service Bulletin (SB) 33, dated July 15, 1993. If corrosion if found, prior to further flight, replace the exhaust system in accordance with the Measurement section of HOAC SB 33, dated July 15, 1993.

(b) Install a carbon monoxide detector in accordance with the Measures section of HOAC SB 33, dated July 15, 1993.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A- 2700 Wiener Neustadt, Austria; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7783 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–35–AD]

Airworthiness Directives; Scheibe Flugzeugbau GmbH SF34 and SF34B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Scheibe Flugzeugbau GmbH (Scheibe) SF34 and SF34B gliders. The proposed action would require adding armature (supportive covering) to both wings, modifying the root rib of the left wing, and incorporating changes and operating limitations to the flight manual. Failure of the left wing root rib on one of the affected gliders while in flight prompted the proposed action. The actions specified by the proposed AD are intended to prevent fatigue failure of the wing, which could result in loss of control of the glider.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–35–AD Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Scheibe Flugzeugbau GmbH, August Pfaltz—Strasse 23, Dachau, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Scheibe SF34 and SF34B gliders. The LBA reports that fatigue failure of the root rib occurred on one of these gliders while in flight, which resulted in an accident. The glider in the referenced accident was within 3,000 to 6,000 hours time-in-service (TIS). The life limit of the wing structure was recently extended from 3,000 hours TIS to 6,000 hours TIS.

Scheibe has issued Technical Note (TN) Number 336–2, dated March 10, 1995, which specifies procedures for adding armature (supportive covering) to both wings and modifying the root rib of the left wing. This TN also specifies changes and operating limitations to be incorporated into the flight manual. The LBA classified this service bulletin as mandatory and issued LBA AD 89–73, dated May 10, 1989, in order to assure the continued airworthiness of these gliders in Germany.

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Scheibe SF34 and SF34B gliders of the same type design, the proposed AD would require adding armature (supportive covering) to both wings, modifying the root rib of the left wing, and incorporating changes and operating limitations to the flight manual. The proposed addition and modification would be accomplished in accordance with Scheibe TN Number 336–2, dated March 10, 1989. The operating limitations and flight manual changes are included in the TN.

The FAA estimates that 2 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,500 ($1,250 per glider). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed addition, modification, or operating changes and limitations.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new AD to read as follows:

Scheibe Flugzeugbau GmbH: Docket No. 94–CE–35–AD.

Applicability: SF34 and SF34B gliders (serial number 5102 through 5131), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required within the next 50 hours TIS after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of the wing, which could result in loss of control of the glider, accomplish the following:

(a) Add armature (supportive covering) to both wings in accordance with the job instructions section of Scheibe Technical Note (TN) No. 336–2, dated March 10, 1989.

(b) Modify the root rib of the left wing in accordance with the job instructions section of Scheibe TN No. 336–2, dated March 10, 1989.

(c) Accomplish the following flight manual changes:

(1) Replace pages 1 and 13 of the flight manual with the revised pages 1 and 13 included with Scheibe TN Number 336–1, dated March 10, 1989.

(2) Replace pages 1 and 11 in the Instructions for Continued Airworthiness with the revised pages 1 and 11 included with Scheibe TN Number 336–1, dated March 10, 1989.

(3) In page 8 of the flight manual, add 1 kg to the current empty weight of the glider and deduct 1kg from the current maximum load as specified in paragraph 3 of the Instructions section of Scheibe TN Number 336–1, dated March 10, 1989.

(4) Remove existing operating limitations and incorporate new operating limitations into the Limitations section of the flight manual as specified in paragraph 4 of the Instructions section of Scheibe TN Number 336–1, dated March 10, 1989.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Scheibe Flugzeugbau GmbH, Dachau, Aug. Pfaltz - Str. 23, Dachau, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7799 Filed 3–29–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 929 and 937

[Docket No. 941085–4285]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Proposed Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; removal and revision of regulations; Summary of Draft Management Plan; Proposed Designation Document; Public Availability of Draft Management Plan and Draft Environmental Impact Statement.

SUMMARY: NOAA, as required by section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act, is proposing a comprehensive management plan and implementing regulations to manage an approximately 2,800 square nautical mile area of coastal and ocean waters and the submerged lands thereunder, surrounding the Florida Keys in and adjacent to the State of Florida, designated by the Florida Keys National Marine Sanctuary and Protection Act as the Florida Keys National Marine Sanctuary (the "Sanctuary"). This document publishes the Designation Document, and summarizes the draft comprehensive management plan, for the Sanctuary. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary. The proposed regulations would implement the comprehensive management plan and govern the conduct of activities consistent with the provisions of the Designation Document. The intended effect of the Designation Document, proposed regulations, and DEIS/MP is to protect the conservation, recreational, ecological, historical, research,

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educational, and aesthetic qualities of the Florida Keys coastal and ocean waters and the submerged lands thereunder.

DATES: Comments are invited and will be considered if submitted in writing to the address below by December 31, 1995.

ADDRESSES: Requests for the above described documents and comments should be submitted to the Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, 305/743–2437 or Edward Lindelof, Atlantic, Great Lakes and Gulf Branch Chief, 301/713–3137 X 131.

SUPPLEMENTARY INFORMATION:

I. Introduction

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the "MPRSA"), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The Florida Keys National Marine Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) signed into law on November 16, 1990.

NOAA held six public scoping meetings during the months of April and May, 1991, to solicit public comments on the proposed management of the Sanctuary: Key Largo on April 10th, Miami on April 11th, Marathon on April 15th, and Key West on April 16th, Key Largo on April 17, and Washington, D.C. on May 6. Notice of the scoping meetings was published in local newspapers. NOAA invited all interested persons to attend, and asked those attending the meeting to comment on readily identifiable issues, suggest additional issues for examination, and provide information useful in managing the Sanctuary.

The authority of the Secretary to designate national marine sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10–15, section 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (Sept. 21, 1983, as amended).

Holders of, owners of, or future applicants for leases, permits, licenses, approvals, other authorizations, or rights of subsistence use of, or access to, Sanctuary resources, are specifically invited to comment on how they may be affected by the designation of the Sanctuary and particularly sections 929.14–929.16 of the proposed regulations.

Comments are also specifically sought on the adequacy of the regulatory regime to protect Sanctuary resources and qualities.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and final regulations implementing the comprehensive management plan will be published in the **Federal Register**. The designation document, management plan, and regulations will become final and take effect at the close of a 45-day Congressional review period unless a joint resolution disapproving any of the terms of designation is enacted, in which case only the terms not disapproved will take effect, or the Governor of the State of Florida certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms will not take effect in the area of the Sanctuary lying within the seaward boundary of the State. A document will be published in the **Federal Register** announcing the effective date.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the Florida Keys National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The DEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be conducted in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The proposed goals and objectives for the Sanctuary are: (1) Enhance resource protection through comprehensive and coordinated conservation and ecosystem management that complements existing regulatory authorities; (2) support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decision-making in national marine sanctuaries; (3) enhance public awareness, understanding, and the wise use of the marine environment through public interpretive, educational, and recreational programs, and (4) facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the Sanctuary.

A. Resource Protection

The highest priority management goal is to protect the marine environment, resources, and qualities of the Sanctuary. The specific objectives of protection efforts are to: (1) Reduce threats to Sanctuary resources; (2) encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (*e.g.*, monitoring and emergency-response programs); (3) develop an effective and coordinated program for the enforcement of Sanctuary regulations in addition to other regulations already in place; (4) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives through an educational/interpretive program stressing resource sensitivity and wise use; (5) ensure that the water quality of the Florida Keys is maintained at a level consistent with the purposes of Sanctuary designation; (6) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (7) ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and (8) coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources.

B. Research Program

Effective management of the Sanctuary requires the conduct of a Sanctuary research program. The purpose of Sanctuary research is to improve understanding of the Florida Keys' coastal and offshore environment, resources, and qualities, and to resolve specific management problems. Some of these management problems involve resources common to coastal and offshore waters, and nearby Federal, State, and local refuges and reserves. Research results will both support management efforts to protect Sanctuary resources and qualities, and be incorporated into interpretative programs for visitors and others interested in the Sanctuary.

Specific objectives for the research program are to: (1) establish a framework and procedures for administering research to ensure that

research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) focus and coordinate data collection efforts on the physical, chemical, geological, and biological oceanography of the Sanctuary; (3) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (4) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (5) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; (6) encourage information exchange and cooperation among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management; and (7) incorporate research results into the interpretive/education program in a format useful for the general public.

C. Education

The goal for the Sanctuary education program is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for Sanctuary management by offering programs suited to visitors with a diverse range of interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

D. Visitor Use

The Sanctuary goal for visitor use management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies, and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and minimize potential user conflicts.

The Sanctuary would be managed from a headquarters facility located in the Florida Keys region.

III. Designation Document

Section 304(a)(4) of the MPRSA requires that the Terms of Designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

Designation Document for the Florida Keys National Marine Sanctuary

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), Public Law 101–605, set out as a note to 16 U.S.C. 1433, was signed into law. The Florida Keys National Marine Sanctuary and Protection Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters, as described in section 5 of the FKNMSPA, as the Florida Keys National Marine Sanctuary.

Article I. Effect of Designation

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended (the "MPRSA"), 16 U.S.C. 1431 et seq., authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Florida Keys National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that will be regulated initially, or may be subject to regulated subsequent regulation in order to protect Sanctuary resources and qualities. Such listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the procedures outlined in section 304(a) of the MPRSA.

Article II. Description of the Area

The Florida Keys National Marine Sanctuary boundary encompasses approximately 2,800 square nautical miles (9,500 square kilometers) of coastal and oceanic waters, and the submerged lands thereunder, surrounding the Florida Keys in and adjacent to the State of Florida. The Sanctuary boundary extends from the northeasternmost point of Biscayne National Park out to the Dry Tortugas, a linear distance of approximately 320 kilometers. The boundary on the Atlantic Ocean side of the Florida Keys runs south from Biscayne National Park following approximately the 300-foot isobath, which curves in a southwesterly direction along the Florida Keys archipelago ending at the Dry Tortugas. The boundary on the Gulf of Mexico-side of the Florida Keys runs in an easterly direction from the Dry Tortugas paralleling the Florida Keys, approximately five miles to the north, and then follows the Everglades National Park boundary until Division Point at which time the boundary follows the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then follows the southern boundary of Biscayne National Park and up its eastern boundary until its northeasternmost point.

The shoreward boundary of the Sanctuary is the mean high-water mark. The Sanctuary boundary encompasses all of the Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the seagrass meadows of Florida Bay. The precise boundary of the Sanctuary is set forth at the end of this Designation Document.

Article III. Characteristics of the Area that Give it Particular Value

The Florida Keys are a limestone island archipelago extending southwest over 320 kilometers from the southern tip of the Florida mainland. The Keys are located at the southern edge of the Floridian Plateau, a large carbonate platform made of a depth of up to 7,000 meters of marine sediments, which have been accumulating for 150 million years and have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, described as an active lime-mud factory because of the high carbonate content of the silts and muds; the Southwest

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Continental Shelf; the Straits of Florida; and the Keys themselves.

The 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of estuarine and marine fauna and flora, including, in addition to the Florida reef tract, thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Federal, State, local, and private organizations currently protect, preserve and set regulations at 121 sites throughout the Keys, covering approximately 2.0 million acres.

The Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, and submerged cultural and historic resources (i.e., shipwrecks) abound in the surrounding waters. In addition, the Sanctuary may contain substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource-use pressures, the quality and quantity of Sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive management, monitoring and research of the Florida Keys' region.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

In order to protect the characteristics and values of the Sanctuary described above, all activities adversely affecting the resources or property of the Sanctuary, whether individually or cumulatively, or that pose harm to users of the Sanctuary are subject to regulation, including regulation of method, location and times of conducting the activity, assessment of fees for conducting the activity, and prohibition of the activity, either throughout the entire Sanctuary (including both land and water areas), after public notice and an opportunity for comment, or within identified portions of the Sanctuary or in areas adjacent to the Sanctuary to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational or esthetic resources and qualities of the area. Such activities include, but are not limited to:

a. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter, including aerially-sprayed pesticides, that enters or could enter the Sanctuary; and reporting of discharges or deposits, from within or from beyond the boundary of the Sanctuary, any material or other matter, including aerially-sprayed pesticides, that enters or could enter the Sanctuary;

b. Exploring for, developing, or producing oil, gas or minerals (e.g., clay, stone, sand, gravel, metalliferous ores and nonmetalliferous ores or any other solid material or other matter of commercial value) in the Sanctuary;

c. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of a marine mammal, marine reptile, seabird, historical resource or other Sanctuary resource;

e. Touching with any part of the body, climbing on, taking, removing, moving, catching, collecting, harvesting, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of living or dead coral;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

g. Operation of a vessel (i.e., watercraft of any description), including but not limited to anchoring or otherwise mooring a vessel; and all activities necessary for vessel operation or maintenance, such as pump-out of sanitary wastes and refueling, in the Sanctuary or any part thereof or in marinas or at docks within or adjacent to the Sanctuary;

h. Removal of vessels grounded, lodged, stuck or otherwise perched on coral reefs or other Sanctuary resources; and removal from any location within the Sanctuary and disposal of derelict or abandoned vessels or other vessels for which ownership cannot be determined or for which owner takes no action for removal or disposal; and salvaging and towing of abandoned or disabled vessels or of vessels otherwise needing salvaging and towing;

i. Possessing or using within the Sanctuary or any part thereof, any fishing gear, trap, device, equipment or means, whether regulated based on method or based on quantity of fish present or quantity of fish caught in identified fisheries; and providing information to Federal, State, and local officials within the Sanctuary and adjacent to the Sanctuary about the quantity and type of fish and other living Sanctuary resources caught during any vessel travel;

j. Possessing or using explosives or air guns or releasing electrical charges or substances poisonous or toxic to fish and other living resources within the Sanctuary boundary or adjacent to the Sanctuary boundary;

k. Stocking or release of native or exotic species;

l. Harvesting or otherwise taking sponges;

m. Removal and disposal of lost or out-of-season gear discovered within the Sanctuary boundary;

n. Development or conduct in the Sanctuary of mariculture activities;

o. Flying a motorized aircraft above the Sanctuary;

p. Construction, alteration, repair or other work on docks and marinas;

q. Activities or situations on land that may result in water quality degradation, including but not limited to:

1. Dredging and filling, particularly of wetlands;

2. Construction activities;

3. Use and management of hazardous chemicals, including, but not limited to, pesticides, fertilizers, and motor oil;

4. Waste disposal and discharge on land; and

5. Water quality in basins and canals; and

r. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in section 1 of this article, is subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

If any valid law or regulation issued by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 16, 1990). However, the Secretary of Commerce or designee may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approving: (1) The exploration for, leasing of, development of, or production of minerals or hydrocarbons within the Sanctuary; or (2) the disposal of dredged material within the Sanctuary, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to Section 940.10, of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under Section 304(a) of the MPRSA, may be modified only by the procedures outlined in such section, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees, and the Governor of the State of Florida, and approval by the Secretary of Commerce or designee.

Florida Keys National Marine Sanctuary Boundary Coordinates (based on North American datum of 1983.)

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

IV. Summary of Proposed Regulations

Two sets of existing regulations will be eliminated and replaced by the proposed rule. Specifically, parts 929 and 937 to title 15, Code of Federal Regulations, implementing the Key Largo and Looe Key sanctuaries, respectively, will be removed and replaced by the proposed revision to part 929. Pursuant to section 5 of the Florida Keys National Marine Sanctuary and Protection Act, the existing Key Largo and Looe Key National Marine Sanctuaries will be incorporated into the Florida Keys National Marine Sanctuary.

The proposed regulations set forth the boundary of the Sanctuary; prohibit a range of activities generally and within specific Sanctuary zones; establish procedures for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, establish procedures for applying for Special Use permits; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity; establish notification procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Section 929.1 sets forth as the purpose of the regulations to implement the designation and comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the Sanctuary in order to protect, preserve and manage the conservation, ecological, recreational, research, educational,

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historical and aesthetic resources and qualities of the area.

Section 929.2 and appendix I following § 929.16 describe the boundary of the Sanctuary as established by Section 5 of the Florida Keys National Marine Sanctuary and Protection Act.

Section 929.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the NMSA.

Section 929.4 allows all activities except those prohibited by § 929.5 or by § 929.6 to be conducted subject to all applicable access and use restrictions imposed within Sanctuary zones pursuant to § 929.6, subject to all prohibitions, restrictions and conditions validly imposed by any other Federal, State, or local authority of competent jurisdiction, subject to any emergency regulations promulgated pursuant to § 929.7, and subject to the liability established by Section 312 of the NMSA. This section is intended to assure that activities other than those prohibited or otherwise restricted or conditioned pursuant to this part, or pursuant to any other Federal, State, or local authority of competent jurisdiction, are allowed within the Sanctuary. Accordingly, such provision for allowed activities is not intended to preempt other, more protective, regulatory provisions imposed by any other Federal, State or local authority of competent jurisdiction.

Section 929.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for: (1) The exploration for, leasing, development or production of minerals or hydrocarbons within the Sanctuary, or (2) the disposal of dredged material or primary (or untreated) sewage within the Sanctuary (except by a certification, pursuant to § 929.14, of valid authorizations in existence on the effective date of Sanctuary designation) could be conducted lawfully if one of the following three (3) situations applies:

(1) The activity is necessary to respond to an emergency threatening life or the environment.

(2) The activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of: a National Marine Sanctuary permit issued under § 929.10; or a National Marine Sanctuary Historical Resources permit issued under § 929.11.

(3) The activity is specifically authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction in existence on (or conducted pursuant to any valid right of subsistent use or access in existence on) the effective date of the Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management (hereinafter the Director) was notified of the existence of such authorization or right and the holder requests certification by the Director or designee pursuant to § 929.14, the holder complies with the requirements of § 929.14, and the holder complies with any terms and conditions on the exercise of such authorization the Director or designee imposes as a condition of certification to achieve the purposes for which the Sanctuary was designated.

(4) The activity is specifically authorized by a valid lease, permit, license or approval or other authorization issued after the effective date of the Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the Director or designee was notified of the application in accordance with the requirements of § 929.15, the applicant complies with the requirements of § 919.15, the Director or designee notifies the applicant or authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary. This prohibition is based on best available scientific information which establishes that the Sanctuary's significant natural resources and qualities are especially sensitive to potential impacts from outer continental shelf minerals or hydrocarbon activities and should be protected. Specifically, the corals, seagrasses, and mangroves of the Florida Keys and the Sanctuary's high water quality are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the Sanctuary boundary would help protect the Sanctuary's resources and qualities. A prohibition on mineral activities within the Sanctuary is necessary to protect Sanctuary resources and qualities, consistent with the prohibition on drilling into, dredging or otherwise altering the seabed discussed below.

The second activity prohibited is the removal of, injury to, or possession of coral or live rock. The intent of this prohibition is to conserve the coral reefs, to protect the biodiversity of the Sanctuary, to protect the habitats of commercially and ecologically important species, and to preserve the natural functional aspects of the ecosystem.

The third activity prohibited is the alteration of, or construction on the seabed. This prohibition includes the use of propeller wash deflectors. The intent of this prohibition is to protect the resources of the Sanctuary, such as seagrasses, from the harmful effects of activities such as, but not limited to, treasure hunting, drilling into the seabed, mining, ocean mineral extraction, and dumping of dredge spoils.

The fourth activity prohibited is the discharging or depositing of materials or other matter. The intent of this prohibition is to protect the Sanctuary resources and qualities against the harmful effects of land based and vessel source pollution, to reduce and prevent contamination by marine debris and related impacts associated with pollution of the marine environment of the Sanctuary.

The fifth activity prohibited is the operation of: (1) A tank vessel or a vessel greater than 50 meters in registered length in an area to be avoided (ATBA); or (2) any vessel in a manner that is either dangerous to people or harms Sanctuary resources. The boundary coordinates for the ATBAs are listed in Appendix VII to part 929. The prohibition is designed to prevent vessel groundings on the coral reef, and thus to minimize the risk of extensive physical damage, spills and associated, possibly irreparable, injury to Sanctuary resources likely to result from a grounding of a large vessel and tank vessel. This prohibition further is intended to prevent injury to Sanctuary resources, prevent injury to humans (e.g., divers and swimmers), and to reduce shoreline erosion.

The sixth activity prohibited is diving without a red and white "divers down" flag or a blue and white "alpha" flag in Federal waters. The intent of this prohibition is to prevent injury to humans and thereby facilitate safe, multiple use of the Sanctuary.

The seventh activity prohibited is the release of exotic species. Exotic species can permanently alter an ecosystem by out competing indigenous species, preying on indigenous species, etc. The intent of this prohibition is to prevent injury to Sanctuary resources, to protect the biodiversity of the Sanctuary, and to preserve the natural functional aspects of the ecosystem.

The eighth activity prohibited is the tampering with official signs or markers

or navigational aids. The intent of this prohibition is to prevent injury to Sanctuary resources, primarily corals and seagrasses, and to prevent injury to humans.

The ninth activity prohibited is the removing or injuring Sanctuary historical resources. Submerged historical resources constitute important, irreplaceable, public resources of the Sanctuary because they contain important information about human history and culture. This prohibition is designed to protect these resources so that they may be researched, and information about their contents and type made available for the benefit of the public. This prohibition does not apply to accidental moving, possession, or injury during normal fishing operations.

The tenth activity prohibited is taking or possessing protected wildlife. The Sanctuary is an important staging area, breeding area, and feeding area for a variety of wildlife, including a number of endangered and threatened species. The intent of this prohibition is to protect Sanctuary resources and endangered and/or threatened species.

The eleventh activity prohibited is the possession or use of explosives and electrical discharges. The intent of this prohibition is to prevent injury to Sanctuary resources or to humans.

The twelfth activity prohibited is interfering with law enforcement officers. The intent of this prohibition is to prevent the obstruction of justice.

Section 929.5(b) regulates the taking or landing of marine life species, in accordance with the Marine Life rule of the Florida Administrative Code reproduced in Appendix VIII to this part. The intent of this regulation is to protect Sanctuary resources and biodiversity by adopting relevant portions of the Florida Marine Life rule as a uniform regulation to be applied throughout the (federal and state) waters of the Sanctuary.

Section 929.6 establishes five types of water use zones within the Sanctuary, the prohibitions applicable to uses within such zones, and the regulations governing access to, and use of, the resources of such zones. The five zone types are: Existing Management Areas; Wildlife Management Areas; Sanctuary Preservation Areas; Replenishment Reserves and Special Use Areas. The proposed location of these zones is specified in Appendices II, III, IV, V and VI to this part, respectively, corresponding to the five zone types stated above. The intent of the zoning regulations is to protect Sanctuary resources and biodiversity, and provide for effective management and facilitation of multiple, compatible uses, consistent with the purposes of the Sanctuary designation.

Section 929.6(a) provides that the regulations applicable to the conduct of activities within any of the five types of Sanctuary zones are in addition to the general prohibitions set forth in paragraphs (a) and (b) of § 929.5. Activities conducted in those areas of the Sanctuary that are located in two or more overlapping zones shall be concurrently subject to the regulations applicable to each such overlapping zone.

Section 929.6 identifies certain Existing Management Areas which are listed in Appendix II to part 929. Existing Management Areas are existing Federal, State or local resource management areas subject to the continuing management and control of another agency, notwithstanding the exercise of concurrent authority by the Assistant Administrator in accordance with this part. To the extent possible, consistent with the purposes for which the Sanctuary was designated, the regulations applicable to Existing Management Areas shall be applied in a manner that is compatible with such existing management authorities. Identification of the Key Largo and Looe Key Existing Management Areas constitutes recognition of these areas as pre-existing National Marine Sanctuaries that were subject to the management and control of the Assistant Administrator prior to Sanctuary designation, and for which continuing regulation as Existing Management Areas will serve to maintain, to the extent possible, a level of management and control of uses in such areas that is at least as protective of Sanctuary resources and qualities as that provided by their former status as discrete National Marine Sanctuaries.

Section 929.6(b)(2) further prohibits the operation of personal watercraft, airboats or water skiing within the Great White Heron or Key West National Wildlife Existing Management Areas. The intent of this prohibition is to protect Sanctuary resources and qualities through coordination with the U.S. Fish and Wildlife Service in a manner that recognizes and complements the existing management of these areas as components of the National Wildlife Refuge System.

Section 929.6(c) sets forth the rules governing access to, and use of, the Wildlife Management Areas described in Appendix III to part 929. Specifically, access and use restrictions may include the designation of any such zones as an "idle/no-wake speed", a "no motor" or a "no access buffer" areas. The Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall effect such designation by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. The intent of these rules is to protect Sanctuary wildlife resources from injury or harmful disturbance within sensitive areas and habitats of the Sanctuary.

Section 929.6(d) sets forth prohibitions applicable to activities conducted within Sanctuary Preservation Areas and Replenishment Reserves. Specific prohibitions include possessing, harvesting or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism in such areas; fishing by any means; touching living or dead coral, including but not limited to standing on a living or dead coral formation; placing anchors so as to touch living or dead coral or any sessile organism. Vessels shall use mooring buoys or anchoring areas when such facilities or areas have been designated and are available.

Section 929.6(d) further provides that the Director or designee may impose a limited access designation, or temporary area closure, within any Sanctuary Preservation Area if the Director determines that such action is reasonably necessary to allow for recovery of the living resources of such area from the adverse, cumulative effects of concentrated use.

The intent of the establishment of, and regulation of uses within, the Sanctuary Preservation Areas is to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. The intent of the establishment of, and iregulation of uses within, the Replenishment Reserves is to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Section 929.6(e) establishes procedures and criteria pursuant to which the Director or designee may set aside discrete areas of the Sanctuary as Special Use Areas, and designate such areas as "recovery areas", "restoration areas", "research only areas" or

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"facilitated use areas", as appropriate, to protect the Sanctuary resources and qualities and allow for multiple, compatible uses within the Sanctuary. Section 929.6(e) further provides criteria pursuant to which the Director or designee may issue an emergency notice modifying the number, location or designation applicable to Special Use Areas if the Director of designee determines that such immediate action is reasonably necessary to prevent significant injury to Sanctuary resources or to initiate restoration or research activities where, due to emergency or unforseen circumstances, delay would impair the ability of such activities to succeed.

Section 929.7 authorizes the regulation, including prohibition, on an immediate, temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 929.8 sets forth the maximum statutory civil penalty for violating the NMSA, the regulations or any permit issued pursuant thereto—$100,000. Each such violation shall be subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

Section 929.9 repeats the provision in Section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages and interest resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages and interest resulting from destruction, loss or injury. The purpose of these sections is to notify the public of the liability for violating a Sanctuary regulation, a permit issued pursuant thereto or the NMSA.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 929.10 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be issued by the Director or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research or monitoring related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. For activities proposed to be conducted within Replenisment Reserves or Sanctuary Preservation Areas, the Director or designee shall further find that such activities will further and are consistent with the purposes for which such zone was established. In deciding whether to issue a permit, the Director or designee is required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the indirect, secondary or cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 929.11 sets forth the application procedures and issuance criteria for National Marine Sanctuary Historical Resources permits to conduct specific research activities involving the exploration for, recovery of, or transfer of historical Sanctuary resources specified under § 929.11 and otherwise prohibited by the regulations. A permit may be issued by the Director or designee at his or her discretion in accordance with the requirements of § 929.11 and consistent with the Programmatic Agreement Among NOAA, the Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement). Recovery of historical resources will only be permitted when developed in conjunction with research to preserve the historic information for public use. Intrusive research and/or recovery will be based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resources in place.

Section 929.12 sets forth criteria governing the issuance of Special Use permits to conduct concession-type, commercial activities within the Sanctuary. In accordance with the provisions of Section 310 of the NMSA, the Director or designee may require a Special Use permit for any such activity if he or she determines such authorization is necessary to establish conditions of access to and use of any Sanctuary resource, or to promote public use and understanding of any Sanctuary resource. No special use permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource.

Applicants for Special Use permits are required to follow the same procedures specified for National Marine Sanctuary permits in § 929.10 (d) through (g).

All National Marine Sanctuary, National Marine Sanctuary Historical Resources, or Special Use permits are subject to the general permit conditions specified in § 929.10(h). With respect to any such permit, the Director or designee, at his or her discretion, also may impose special permit conditions in accordance with § 929.10(i).

Section 929.13 provides that any person conducting research in the Sanctuary, including such research not involving prohibited activities, may voluntarily register with the appropriate Sanctuary field office. Upon registration, the Sanctuary office will issue a research flag to be used while conducting research within the Sanctuary. Copies of research results, abstracts, and reports may be submitted to the Sanctuary field office to be retained for Sanctuary management purposes, public observation, and peer review.

Section 929.14 sets forth procedures for requesting certification of leases, permits, licenses, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an otherwise prohibited activity. Notwithstanding the prohibitions under paragraph (a) of § 929.5 or § 929.6, a person may conduct any activity specifically authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 929.14 (*e.g.*, notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as she or he deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

Section 929.14 allows the holder 90 days from the effective date of the proposed Sanctuary regulations in part 929 to request certification. The holder is allowed to conduct the activity without being in violation of paragraph (a) of § 929.5 or 929.6 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 929.14.

Section 929.14 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval or other authorization or right as she or he deems reasonably necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under Section 304(c)(2) of the NMSA. (Section 929.14 has no application to mineral or hydrocarbon activities as there is no existing lease, permit, license, approval, other authorization or right for any of these activities within the Sanctuary).

The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 929.16.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 929.15.

Section 929.15 provides, consistent with paragraph (f) of § 929.5, that notwithstanding the prohibitions under paragraph (a) of § 929.5 or § 929.6, a person may conduct any activity specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the efffective date of the proposed Sanctuary regulations, whichever is later, that the applicant is in compliance with the other provisions in § 929.15, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

Section 929.15 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application or an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 929.15.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 929.16.

Section 929.16 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) the granting, denial, conditioning, amendment, suspension or revocation of a National Marine Sanctuary permit under § 929.10, a National Marine Sanctuary Historical Resources permit under § 929.11, or a Special Use permit under § 929.12 or Section 310 of the NMSA; (2) the conditioning, amendment, suspension, or revocation of a certification under § 929.14; or (3) the objection to issuance or the imposition of terms and conditions under § 929.15.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or rights or conditioning or objecting to proposed authorizations NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants.

V. Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Section 304 of the MPRSA requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, the proposed terms of the designation, the proposed regulations, a draft environmental impact statement, and a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement and surveillance activities, for the area. In accordance with Section 304, the required documents are being submitted to the specified Congressional Committees.

Executive Order 12866

Under Executive Order 12866, if the proposed regulations are "significant" as defined in section 3(f) (1), (2), (3) or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Information and Regulatory Affairs (OIRA) of OMB. The Administration of NOAA has determined that the proposed regulations are significant. The required assessment has been prepared and submitted to OIRA.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited. The procedures proposed in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on small entities. The proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities, and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the

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Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.65 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, Room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation document, draft management plan, and proposed implementing regulations. The FA concluded that all would be fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a Draft Environmental Impact Statement (DEIS) has been prepared for the designation and the proposed regulations. As required by Section 304(a)(2), the DEIS includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration for, development, production of minerals and hydrocarbons from the Sanctuary might have a takings implication if it abrogated an existing lease for Outer Continental Shelf (OCS) tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Parts 929 and 937

Administrative practice and procedure, Coastal zone, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 13, 1995.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Chapter IX is proposed to be amended as follows:

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

1. Part 929 is revised to read as follows:

PART 929—FLORIDA KEYS NATIONAL MARINE SANCTUARY

Sec.

929.1 Purpose.
929.2 Boundary.
929.3 Definitions.
929.4 Allowed activities.
929.5 Prohibited activities; Sanctuary wide.
929.6 Additional activity regulations by Sanctuary zone.
929.7 Emergency regulations.
929.8 Penalties.
929.9 Response costs and damages.
929.10 National Marine Sanctuary Permits; application procedures and issuance criteria.
929.11 National Marine Sanctuary Historical Resources Permits; exploration, research/recovery, research/recovery/transfer; application procedures and issuance criteria.
929.12 Special Use Permits.
929.13 Sanctuary registry; research notice.
929.14 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
929.15 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
929.16 Appeals of administrative action.
Appendix I to Part 929—Florida Keys National Marine Sanctuary boundary coordinates
Appendix II to Part 929—Existing Management Areas
Appendix III to Part 929—Wildlife Management Areas
Appendix IV to Part 929—Replenishment Reserves
Appendix V to Part 929—Sanctuary Preservation Areas
Appendix VI to Part 929—Special Use Areas
Appendix VII to Part 929—Coordinates for the Area to be Avoided
Appendix VIII to Part 929—Marine Life Rule

Authority: 16 U.S.C. 1431 *et seq.*; Pub. L. 101–605, 104 Stat. 3090–3093.

§ 929.1 Purpose.

The purpose of the regulations in this part is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

§ 929.2 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this part, with the exception of areas within the Dry Tortugas National Park. Appendix I to this part sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA section 5 (b)(2)).

§ 929.3 Definitions.

(a) The following definitions apply to this part:

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605, 104 Stat. 3090–3093), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this § 929.3, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Area to be avoided means the area decribed in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 929.5(a)(1)). Appendix VII to this part sets forth the geographic coordinates of the area to be avoided, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service.

Existing Management Area means a portion of the Sanctuary that is within an existing resource management area established by NOAA or by another Federal, State, or local authority of competent jurisdiction within the Sanctuary and that is identified in Appendix II to this Part.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, and birds.

Fishing means:

(1)(i) The catching, taking, or harvesting of fish;

(ii) The attempted catching, taking, or harvesting of fish;

(iii) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(iv) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1)(i) through (iii) of this definition.

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties", as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Idle/no-wake speed means a speed at which a boat is operated that is no greater than 4 knots and does not produce a wake.

Injure means to change adversely, either in the long or short term, a chemical, biological, or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate (including dead coral or rock). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum CNIDARIA: Class Anthozoa: Order Actinaria); sponges (Phylum PORIFERA); tube worms (Phylum ANNELIDA), including fan worms, feather duster worms, and christmas tree worms; bryozoans (Phylum BRYOZOA); sea squirts (Phylum CHORDATA); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), corraline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.). Individual mollusk shells (scallops, clams, oysters, etc.) are not intended to be included in the definition as hard substrate.

Marine Life Species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46–42.001, Florida Administrative Code, set forth in Appendix VIII to this part.

Mineral means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore, or any other non-living solid material or other non-living solid matter of commercial value.

Person means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or of any State, regional, or local unit of government, or of any foreign government.

Personal watercraft means any jet and air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses a two-cycle inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop-dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary, excluding disturbance to bottom sediments resulting from normal vessel propulsion. Prop-dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary.

Prop-scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury, excluding minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Replenishment Reserve means a Sanctuary zone encompassing an area of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including public access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means a Sanctuary zone encompassing a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including public access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research.

Sanctuary quality means any of those ambient conditions, physical-chemical

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characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the seabed and substratum, bottom formations, hard and soft corals and coralline structures, algae, phytoplankton, seagrasses, mangroves and other marine plants, zooplankton, marine invertebrates, fish, marine amphibians and reptiles, marine mammals, sea birds, and other marine wildlife and their habitats, and historical resources.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens, H. engelmannii, H. johnsonii;* and *Ruppia maritima.*

Taking means:

(1)(i) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(ii) For any other marine mammal, sea turtle or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(2) For the purpose of both paragraphs (1)(i) and (ii) of this definition, the term includes, but is not limited to, collecting any dead or injured marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine mammal, sea turtle or seabird.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States (46 U.S.C. 2101).

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation.

Tropical fish means any species, or part thereof, included in section (2) of Rule 46–42.001, Florida Administrative Code, (as set forth in Appendix VIII to this part).

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while manuevering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms "vessel," "watercraft," and "boat" are deemed to have the same meaning.

Wildlife Management Area means a Sanctuary zone established for the management, protection, and preservation of Sanctuary wildlife resources, including such a zone established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted or otherwise regulated to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 929.4 Allowed activities.

(a) All activities, except those prohibited pursuant to § 929.5 or § 929.6, may be conducted subject to all applicable access and use restrictions imposed within sanctuary zones pursuant to § 929.6, subject to the provisions of § 929.12, subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State or local authority of competent jurisdiction, subject to any emergency regulations promulgated pursuant to § 929.7, and subject to the liability established by Section 312 of the NMSA (see § 929.9).

(b) Fishing activities may be conducted subject to all applicable regulations imposed by Federal and State fishery management authorities of competent jurisdiction within the Sanctuary, provided that the Assistant Administrator may regulate fishing activities within the Sanctuary, pursuant to the procedure set forth in Section 304(a)(5) of the NMSA, to the extent such Sanctuary fishing regulations are reasonably necessary to fulfill the purposes and policies of the NMSA and the goals and objectives of the Sanctuary designation.

§ 929.5 Prohibited activities; Sanctuary-wide.

(a) Except as specified in paragraph (c) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.*

(i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR Part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable state authority of competent jurisdiction within the Sanctuary for live rock cultured on state submerged lands leased from the State of Florida, pursuant to applicable state law. See section 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see paragraph (a)(3)(iii) of this section and § 929.6(d)(1)(iv));

(ii) Traditional fishing activities outside Replenishment Reserves or Sanctuary Preservation Areas;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, or piers authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharging or depositing materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, fish chum or bait that is produced, or used, and discarded while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined by section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(4)(i)(A) through (D) of this section.

(iii) Notwithstanding the exceptions contained in paragraphs (a)(4)(i)(A) through (D) of this section, discharging or depositing any material or other matter, except cooling water or engine exhaust into the waters of any Wildlife Management Area, Replenishment Reserve, Sanctuary Preservation Area, or Special Use Area.

(5) *Operation of vessels.* (i) Operating a tank vessel or a vessel greater than 50 meters in registered length in an area to be avoided. The prohibition in this subparagraph shall not apply to necessary operations of public vessels, defined as operations essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment.

(ii) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(iii) Anchoring a vessel on coral, in depths less than 50 feet.

(iv) Operating a vessel at a speed greater than idle/no-wake speed within a residential canal, within 100 yards of the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters), or within 200 yards of:

(A) Residential shorelines;

(B) Mangrove fringed islands;

(C) Stationary vessels; or

(D) Signs indicating emergent or shallow reefs.

(v) Operating a vessel in such a manner as to injure or cause disturbance to wading or nesting birds or marine mammals.

(vi) The prohibitions contained in this paragraph shall not apply to law enforcement officials while in the performance of enforcement duties.

(6) *Diving without flag.* Diving or snorkeling without flying in a conspicious manner the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters).

(7) *Release of exotic species.* Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or reptile into the Sanctuary.

(8) *Tampering with markers.* Marking, defacing, or damaging in any way or displacing, removing, or tampering with any signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Removing or injuring Sanctuary historical resources.* Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Taking or possessing protected wildlife.* Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(11) *Possession or use of explosives or electrical charges.* Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Interfering with law enforcement.* Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) *Marine Life rule.* No person shall harvest, possess, or land any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46–42.001 through 46–42.003, 46–42.0035, and 46–42.005 through 46–42.007 of the Florida Administrative Code, (set forth in Appendix VIII to this part), and such rules shall apply *mutatis mutandis* (with necessary editorial changes) to all federal and state waters within the Sanctuary.

(c) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to § 929.10, or a National Marine Sanctuary Historical Resources permit issued pursuant to § 929.11.

(d) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 929.14 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

(e) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 929.15, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems

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reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraph (c) of this section and § 929.15(a), in no event may the Director or designee issue a permit under §§ 929.10, 929.11 or 929.12, or under Section 310 of the NMSA, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 929.14, of a valid authorization in existence on the effective date of Sanctuary designation), and any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

(g)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. Military activities are activities conducted by the Department of Defense with or without participation by foreign forces. The prohibitions in paragraphs (a) and (b) of this section and § 929.6 do not apply to existing classes of military activities, which were conducted prior to the effective date of the regulations in this part, as identified in the Environmental Impact Statement and Management Plan for the Florida Keys National Marine Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraphs (a) and (b) of this section and § 929.6 by the Director or designee after consultation between the Director or designee and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or any Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity will be treated as a new activity under this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (g)(1).

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

§ 929.6 Additional activity regulations by Sanctuary zone.

(a) In addition to the prohibitions set forth in § 929.5, which apply throughout the Sanctuary, the following requirements in this § 929.6 apply with respect to activities conducted within the Sanctuary zones described in this § 929.6 and in Appendices II through V to this part. Activities conducted in those areas of the Sanctuary that are located within two or more overlapping Sanctuary zones shall be concurrently subject to the regulations applicable to each such overlapping zone.

(b) *Existing Management Areas.*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (the former Key Largo and Looe Key National Marine Sanctuaries as described in Appendix II to this part):

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand which is consistent with both the applicable regulations under the appropriate Fishery Management Plan and the regulations in this part is allowed.

(ii) Taking or collecting any tropical fish.

(iii) Using wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Using, carrying or possessing, except while passing without interruption through the zones or for law enforcement purposes, the following: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Within the Great White Heron and Key West National Wildlife Refuge Management Areas (The Great White Heron and Key West National Wildlife Refuges as described in Appendix II to this part), operating a personal watercraft (PWC), operating an airboat, or water skiing, except within the following areas:

Township 66 South, Range 29 East, Sections 5, 11, 12 and 14;
Township 66 South, Range 28 East, Section 2;
Township 67 South, Range 26 East, Sections 16 and 20 all Tallahassee Meridian, is prohibited.

(c) *Wildlife Management Areas.* (1) Persons conducting activities within the Wildlife Management Areas described in Appendix III to this part shall comply with the regulations governing access to, and use of, such areas, also set forth in Appendix III to this part. The following activities are prohibited:

(i) Operating a vessel in a wildlife management area designated as an "idle/no-wake speed" zone, in accordance with paragraph (c)(2) of this section, at a speed greater than idle/no-wake speed as defined in § 929.3.

(ii) Operating a vessel in a Wildlife Management Area designated as a "no motor" zone, in accordance with paragraph (c)(2) of this section, using a boat motor powered by combustible fuel, except that vessels with such motors are permitted access to "no motor" zones only through the use of a push pole, paddle, electric motor or similar means of operation not involving the use of a gasoline or diesel powered boat motor.

(iii) Operating a vessel, by any means whatsoever, in a wildlife management area designated as a "no access buffer zone", in accordance with paragraph (c)(2) of this section.

(2) Access and use restrictions applicable to the Wildlife Management Areas listed in Appendix III to this part may include the designation of any such zone as an "idle/no-wake speed", a "no motor" or a "no access buffer" area. The Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall effect such designation by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. Official signs posted pursuant to this paragraph shall display the official logo of the Sanctuary. Each such sign shall clearly delineate such zone as an "idle/no-wake speed", a "no motor" or a "no access buffer" zone, and shall allow instant, long-range recognition by boaters.

(3) The Director or designee shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment, management, and enforcement of Wildlife Management Areas.

(4) The Director or designee may modify the number, location, or access and use restrictions applicable to Wildlife Management Areas if the Director or designee finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director or designee will effect such modification by:

(i) Publishing in the **Federal Register**, after notice and a request for public comments in accordance with the Administrative Procedure Act, an amendment to the list of such areas set forth in Appendix III to this part, and a notice regarding the time and place where maps depicting the precise locations of such areas will be made available for public inspection; and

(ii) Posting official signs designating such areas in accordance with paragraph (c)(2) of this section.

(d) *Sanctuary Preservation Areas and Replenishment Reserves.* (1) In addition to the prohibitions set forth in § 929.5, and the regulations applicable to any overlapping zones set forth in this section, the following activities are prohibited within the Replenishment Reserves described in Appendix IV to this part, and within the Sanctuary Preservation Areas, described in Appendix V to this part:

(i) Possessing (regardless of where taken from), moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities.

(ii) Fishing by any means. However, possession of gear capable of harvesting fish aboard a vessel, provided such gear is stowed away prior to entering and during transit through the zone, shall not be deemed a violation of this prohibition, and no presumption of fishing activity shall be drawn therefrom.

(iii) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(iv) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any sessile organism. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other sessile organisms. No further diving is permitted until the anchor is placed in accordance with these requirements.

(2) Vessels shall use mooring buoys or anchoring areas when such facilities or areas have been designated and are available.

(3) Notwithstanding paragraph (d)(1) of this section, the following activities are allowed within the Key Largo Replenishment Reserve described in Appendix IV to this part:

(i) catch and release fishing from the shore to a depth of 12 feet; and

(ii) harvest of spiny lobster by trap from sand or seagrass bottom habitats.

(4) The Director or designee may impose a limited access designation, or temporary area closure, within any Sanctuary Preservation Area if the Director determines that such action is reasonably necessary to allow for recovery of the living resources of such area from the adverse, cumulative effects of concentrated use:

(i) Except for passage without interruption through the area, for law enforcement or for monitoring pursuant to paragraph (d)(4)(iii) of this section, no person shall:

(A) Enter a Sanctuary Preservation Area subject to a limited access designation, except by the use of such mooring buoys or anchoring areas as are designated and available for use within such area at the time of the entry; or

(B) Enter a Sanctuary Preservation Area subject to a temporary area closure, during the pendancy of the area closure.

(ii) In adopting any limited access designation or temporary area closure pursuant to this paragraph (d)(4), the Director or designee will determine, on the basis of the best available data, information and studies, that:

(A) A concentration of use appears to be causing or contributing to significant degradation of the living resources of the area;

(B) The access restriction or temporary area closure to be imposed is reasonably necessary to allow recovery of the living resources of the area.

(iii) The Director or designee will provide for continuous monitoring of the area during the pendancy of the limited access designation or temporary area closure.

(iv) The Director or designee will provide public notice of the limited access designation or temporary area closure through publishing notice in the **Federal Register**, and such other means as the Director or designee may deem appropriate. With respect to a temporary area closure, the Director or designee will specify the period of such closure.

(e) *Special Use Areas.* (1) The Director or designee may set aside discrete areas of the Sanctuary as Special Use Areas, and, by designation pursuant to this paragraph (e), impose the use restrictions specified in paragraph (e)(3) of this section. Special Use Areas are described in Appendix VI to this part, in accordance with the following designations and corresponding objectives:

(i) "Recovery areas" to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) "Restoration areas" to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) "Research only areas" to provide for scientific research or education relating to protection and management; and

(iv) "Facilitated use areas" to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of Special Use permits pursuant to § 929.12.

(2) The total restricted area shall not exceed a size the Director or designee deems reasonably necessary to accomplish these objectives.

(3) Persons conducting activities within any Special Use Area shall comply with the access and use restriction specified in this paragraph and made applicable to such an area by means of its designation as a "recovery area", "restoration area", "research only area" or "facilitated use area." Except for passage without interruption through the area and for law enforcement, no person may enter into a Special Use Area except to conduct or cause to be conducted the following uses and activities:

(i) Habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources within such an area designated as either a "recovery area" or a "restoration area";

(ii) Scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of

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a valid Sanctuary permit issued pursuant to § 929.10 or § 929.11 within such an area designated as a "research only area"; or

(iii) Uses and activities specified by the Director or designee or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid special use permit issued pursuant to § 929.12 within such an area designated as a "facilitated use area."

(4) (i) The Director or designee may modify the number, location or designation applicable to Special Use Zones by publishing in the **Federal Register**, after notice and a request for public comments in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this part, except that, with respect to such zones designated as "recovery areas", "restoration areas," or "research only areas," the Director or designee may modify the number, location or designation of such zones by publishing a notice of such action in the **Federal Register** if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director or designee determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director or designee will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the **Federal Register**.

§ 929.7 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 929.8 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each such violation shall be subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

§ 929.9 Response costs and damages.

Under Section 312 of the NMSA, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages, and interest resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages, and interest resulting from such destruction, loss, or injury.

§ 929.10 National Marine Sanctuary Permits; application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 929.5 or § 929.6 if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under this § 929.10 or an Historical Resources permit issued under § 929.11.

(b)(1) The Director or designee, at his or her discretion, may issue a permit, in accordance with this section, and subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 929.5 or § 929.6 if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational, natural or historical resource value of the Sanctuary;

(iii) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(iv) Assist in managing the Sanctuary.

(2) For activities proposed to be conducted within Replenishment Reserves or Sanctuary Preservation Areas, the Director or designee shall further find that such activities will further and are consistent with the purposes for which such zone was established.

(c) In deciding whether to issue a permit, the Director or designee may consider:

(1) The professional qualifications and financial ability of the applicant as related to the proposed activity;

(2) The duration of the activity and the duration of its effects;

(3) The appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity;

(4) The extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities;

(5) Any indirect, secondary or cumulative effects of the activity;

(6) The end value of the activity; and

(7) Such other factors as he or she deems appropriate depending on the type of activity proposed in the application.

(d) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(1) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(4) The benefit to be derived from the activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(e) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director or designee may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director or designee within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director or designee to constitute abandonment or withdrawal of the permit application.

(f) A permit issued pursuant to this § 929.10 or § 929.11 is nontransferable.

(g) The Director or designee may amend, suspend, or revoke a permit for good cause. The Director or designee may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a previous permit, of the regulations in this part, of the NMSA or FKNMSA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in 15 CFR Part 904, subpart D.

(h) Any permit issued pursuant to this § 929.10, § 929.11, § 929.12, or Section 310 of the NMSA shall be subject to the following general conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources, except that a permit issued under this § 929.10 or § 929.11 may authorize negligible short-term adverse effects on Sanctuary resources and qualities.

(2) The permittee shall agree to hold the United States harmless against any and all claims arising out of the conduct of the permitted activities.

(3) The permit shall be issued for a period not exceeding five years. However, the permittee may request permit renewal or a different permit pursuant to the same procedure as provided by this § 929.10. Upon the permittee's request for renewal, the Director or designee shall: review all annual reports submitted by the permittee pursuant to paragraph (h)(4) of this section. In order to renew the permit, the Director or designee must find that the activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit; ascertain the permittee has at no time violated the permit, or these regulations; and ascertain the permittee has not destroyed, caused the loss of, or injured Sanctuary resources while conducting the permitted activities, except for any negligible short-term adverse effects on Sanctuary resources and qualities authorized by the permit pursuant to paragraph (h)(1) of this section.

(4) The permit or a copy thereof shall be displayed on board all vessels or aircraft used in the conduct of the permitted activity.

(i) In addition to the general conditions listed in paragraphs (h)(1) through (4) of this section, any permit issued pursuant to this § 929.10, § 929.11, § 929.12, or Section 310 of the NMSA may be subject to such specific terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director or designee deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such conditions may include, without limitation, a condition that:

(1) Any data or information obtained under the permit shall be made available to the public;

(2) A NOAA official shall be allowed to observe any activity conducted under the permit;

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit;

(4) The permittee shall submit an annual report to the Director or designee not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the term of the permit; and/or

(5) The permittee shall purchase and maintain general liability insurance against any and all claims arising out of the permitted activities. A copy of the insurance policy shall be submitted to the Director or designee.

(j) The applicant for or holder of a National Marine Sanctuary or a National Marine Sanctuary Historical Resources permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 929.16.

§ 929.11 National Marine Sanctuary Historical Resources Permits; exploration, research/recovery, research/recovery/transfer; application procedures and issuance criteria.

(a) The Director or designee, at his or her discretion, may issue a research/exploration, research/recovery, or research/recovery/transfer permit, in accordance with this § 929.11, and subject to such terms and conditions as he or she deems appropriate, to conduct an activity specified under this § 929.11 and prohibited by §§ 929.5 or 929.6. Activities conducted pursuant to a permit issued under this § 929.11 shall be consistent and conform with the [proposed] Procedures for Submerged Cultural Resources Agreement Among NOAA, The Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The SCR Agreement is reproduced as an appendix to the "Regulatory Action Plan" set forth in Volume 1 of the [draft] Florida Keys National Marine Sanctuary Management Plan, dated March 1995. Copies of the SCR Agreement may be inspected at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910 or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050. The SCR Agreement is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. [1]

(b) Applications for research/recovery and research/recovery/transfer permits shall follow the procedures listed in § 929.10 (d) through (g).

(c) Any permit issued pursuant to this § 929.11 shall be subject to the general conditions listed in § 929.10(h) (1) through (4), and any special conditions that may be imposed by the Director or designee in accordance with § 929.10(i). In addition, the following general conditions shall apply to all research/recovery and research/recovery/transfer permits:

(1) The permittee shall post a performance bond commensurate with the scope of work to cover costs associated with the recovery. The bond shall be released only after the project is completed according to the agreed-upon terms, the artifacts are conserved, and a final report is delivered and approved by Director or designee in accordance with the SCR Agreement; and

(2) The permittee, at his or her own expense, shall provide secure storage of the artifacts recovered pursuant to research/recovery or research/recovery/transfer permit, and the permittee shall obtain insurance for the artifacts equivalent to the fair market value as determined by a qualified objective assessor. Such assessor shall be identified or approved by the Director or designee.

(d) *Survey and Inventory Permits.* (1) The Director or designee may issue a survey and inventory permit to conduct non-intrusive survey activities that will not include excavation, removal, or

[1] The incorporation by reference will be submitted to the Office of the Federal Register for approval.

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recovery of historical resources, nor result in destruction of, loss of, or injury to Sanctuary resources.

(2) Survey and inventory reports and daily logs must be prepared describing the activities conducted pursuant and results obtained from the activities authorized in the exploration permit. Copies of the report and daily logs and any other data derived from the survey shall be delivered in a timely manner pursuant to a deadline proscribed in the permit and will be stored in a repository to be named in the permit.

(e) *Research/Recovery Permits.* (1) Recovery of historical resources will only be permitted when developed in conjunction with research to preserve the historic information for public use. Intrusive research and/or recovery will be permitted based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resource in place.

(2) For sites where no prior federally adjudicated claim exists, and for federally adjudicated admiralty claim sites within the Sanctuary, the following minimum requirements apply as general permit conditions and may be subject to separate approval, as specified by the Director or designee:

(i) The applicant must have secured Federal, State, and local permits from all agencies with jurisdiction over the proposed activities;

(ii) A professional archaeologist must be in charge of planning, conducting, and supervising field operations, analysis;

(iii) A conservation laboratory must be in place before field operations are begun, and a professional nautical conservator must be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered;

(iv) A curation agreement with a museum or facility for curation, display, and maintenance of the recovered historical resources must be in place before field operations have begun;

(v) The site's archaeological information must be fully documented, including measured drawings, site maps drawn to professional standards, and a photographic record;

(vi) Final reports must be prepared describing research design, methodology, laboratory analyses, findings, and other items. These reports shall be delivered in a timely manner pursuant to a deadline proscribed in the permit;

(vii) Copies of all reports, site maps, field notes, and other data and records derived from the project will be stored in a repository to be named in the permit.

(f) *Research/Recovery/Transfer Permits.* (1) Agreements for the curation and display of recovered historical resources may provide for the release of public artifacts for private sale transfer if such sale transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Sale distribution of historical resources shall be executed pursuant to the SCR Agreement.

(2) All research/recovery/transfer permits shall be subject to the requirements in paragraph (e) of this section.

(3) All research/recovery/transfer permits shall be subject to the requirements for special use permits listed in § 929.12 (c) through (f).

§ 929.12 Special Use Permits.

(a)(1) The Director or designee may require a special use permit in order to conduct a concession-type, commercial activity within the Sanctuary if the Director or designee determines such authorization is reasonably necessary:

(i) To establish conditions of access to and use of any Sanctuary resource; or

(ii) To promote public use and understanding of any Sanctuary resource.

(2) No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource.

(b) Applications for such permits shall follow the procedures listed in § 929.10(d) through (g).

(c) Any special use permit issued pursuant to this § 929.12 shall be subject to the general conditions listed in § 929.10(h)(1) through (4), and any special conditions that may be imposed by the Director or designee in accordance with § 929.10(i).

(d) The Director or designee may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this § 929.12. No special use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director or designee by a fee schedule set forth as a permit condition.

(e) In assessing a fee under paragraph (f) of this section, the Director or designee shall include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including costs for:

(i) Number of personnel;
(ii) Personnel hours;
(iii) Equipment;
(iv) Biological assessments;
(v) Copying; and
(vi) Overhead directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, by the Director or designee as a direct result of the conduct of the activity for which the special use permit was issued, including, but not limited to:

(i) The cost of monitoring the conduct both during and after the activity is completed in order to assess the impacts to Sanctuary resources;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(f) Special-use permits may not be transferred, sold, or assigned except with the written approval of the Director or designee. The permittee shall provide the Director or designee with written notice of any such transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(g) Nothing in this § 929.12 shall be considered to require a person to obtain a permit under this § 929.12 for the conduct of any fishing activities within the Sanctuary.

§ 929.13 Sanctuary registry; research notice.

Any person conducting research in the Sanctuary, including such research not involving activities prohibited by §§ 929.5 or 929.6, may voluntarily register with the appropriate Sanctuary field office. Such registration should include the type of research being conducted, location of research area, and name, addressee, and contact telephone numbers of the principal investigator or research expedition leader. Upon registration, the Sanctuary office will issue a research flag to be used while conducting research within the Sanctuary. The flag must be returned upon completion of all research activities. Copies of research results, abstracts, and reports may be submitted to the Sanctuary field office

to be retained for Sanctuary management purposes, public observation, and peer review.

§ 929.14 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 929.5 or § 929.6 if such activity is specifically authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of the regulations in this part, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 929.14; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 929.5 or § 929.6 may conduct the activity without being in violation of specified provisions of § 929.5 or § 929.6, pending final agency action on his or her certification request, provided the holder is in compliance with this § 929.14.

(c) Any holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 929.5 or § 929.6.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 929.14 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 929.14, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 929.14 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 929.16.

(j) Any amendment, renewal, or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization, or right is subject to the provisions of § 929.15.

§ 929.15 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 929.5 or 929.6 if such activity is specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or of the effective date of the regulations in this part, whichever is later;

(2) The applicant complies with the other provisions of this § 929.15;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval, or other authorization from any Federal, State, or local authority (or for an amendment, renewal, or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by §§ 929.5 or 929.6.

(c) Notification of filings of applications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of such lease, license, permit, approval, or other authorization (or to issuance of an amendment, extension, or renewal of such authorization), or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing,

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whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed reasonably necessary to protect Sanctuary resources and qualities.

(f) The Director or designee may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 929.15 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the provisions set forth in § 929.16.

§ 929.16 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see 15 CFR part 904, subpart D, for applicable procedures), an applicant for, or a holder of, a § 929.10 Sanctuary permit, an applicant for, or a holder of, a § 929.11 Sanctuary Historical Resources Permit, an applicant for, or a holder of, a § 929.12 Special Use Permit, a § 929.14 certification requester, or a § 929.15 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director or designee of a National Marine Sanctuary, National Marine Sanctuary Historical Resources or Special Use Permit;

(2) The conditioning, amendment, suspension, or revocation of a certification under § 929.14; or

(3) The objection to issuance or the imposition of terms and conditions under § 929.15.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, MD 20910.

(c) While the appeal is pending, appellants may not conduct their activities without being subject to the prohibitions in § § 929.5 and 929.6.

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems reasonably necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place, and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record before the hearing officer closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this section other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee, or hearing officer for good cause.

Appendix I to Part 929—Florida Keys National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983.)

The boundary of the Florida Keys National Marine Sanctuary—

(a) begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,
(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and
(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;
(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,
(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,
(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,
(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,
(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,
(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,
(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,
(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,
(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,
(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,
(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and
(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a) of this Appendix.

Appendix II to Part 929—Existing Management Areas

The four (4) areas are identified as follows:

National Oceanic and Atmospheric Administration

Pre-existing National Marine Sanctuaries:

(1) Key Largo National Marine Sanctuary (see 15 CFR Part 929, as revised January 1, 1995).

(2) Looe Key National Marine Sanctuary (see 15 CFR Part 937, as revised January 1, 1995).

United States Fish and Wildlife Service

(3) Great White Heron National Wildlife Refuge
(4) Key West National Wildlife Refuge

Appendix III to Part 929—Wildlife Management Areas

The twenty-six (26) zones are described as follows:

Area	Measure
(1) Bay Keys	No motor zone (300 feet) around one island; Idle/no-wake speed in tidal creeks
(2) Boca Grande Key.	Close south one-half of the beach.
(3) Woman Key	Close east one-half of the beach and sand spit (southeast side).
(4) Cayo Agua Keys.	Idle/ no-wake speed zone in all tidal creeks.
(5) Cotton Key	No motor zone on tidal flat.
(6) Snake Creek	Do.
(7) Cottrell Key	No motor zone (300 feet) around entire island.
(8) Little Mullet Key	No access buffer zone (300 feet) around entire island.
(9) Big Mullet Key	No motor zone (300 feet) around entire island.
(10) Crocodile Lake	No access buffer zone (300 feet) along shoreline.
(11) East Harbor Key.	No access buffer zone (300 feet) around northernmost island.
(12) Lower Harbor Keys.	Idle/ no-wake speed zone in all tidal creeks.
(13) Horseshoe Key	No access buffer zone (300 feet) around main island.
(14) Marquesas Keys.	(i) No motor zones (300 feet) around 3 small islands on western side of chain; (ii) no access buffer zone (300 feet) around one island at western side of chain; (iii) idle/ no-wake speed zone through one tidal creek on southern side of chain.
(15) Tidal flat south of Marvin Key.	No access buffer zone.
(16) Mud Keys (i)	Idle/ no-wake speed zones in 2 main creeks; (ii) No access in 2 smaller creeks.
(17) Pelican Shoal	No landing and no access out to 50 feet from shore between April 1 and September 15.
(18) Rodriguez Key	No motor zone on tidal flat.
(19) Dove Key	No motor zone on tidal flat; No access zone around the two small islands.
(20) Tavernier Key	No motor zone on tidal flat.
(21) Sawyer Keys	Close tidal creeks on south side.
(22) Snipe Keys (tidal creeks north of Outer narrows).	(i) Idle no-wake speed zone in main tidal creek; (ii) No motor zone elsewhere.
(23) Upper Harbor Key.	No access buffer zone (300 feet) around entire island.
(24) East Content Keys.	Idle/ no-wake speed zones in tidal creeks between southwesternmost islands.
(25) West Content Keys.	Idle/ no-wake speed zones in tidal creeks; no access buffer zone in one cove.
(26) Little Crane Key.	No access buffer zone (300 feet) around entire island.

Appendix IV to Part 929—Replenishment Reserves

The three (3) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
KEY LARGO		
1	25°17.7'N	80°16.9'W
2	25°15.2'N	80°11.2'W
3	25°11.6'N	80°13.3'W
4	25°14.3'N	80°19.0'W
SAMBOS		
1	24°33.70'N	81°40.80'W
2	24°28.70'N	81°41.90'W
3	24°28.50'N	81°43.70'W
4	24°33.50'N	81°43.10'W
DRY TORTUGAS		
1	24°45.70'N	82°45.00'W
2	24°22.20'N	82°45.00'W
3	24°22.00'N	82°48.00'W
4	24°25.30'N	82°52.00'W
5	24°34.00'N	82°52.00'W
6	24°34.00'N	82°54.00'W
7	24°37.00'N	82°48.00'W
8	24°40.00 N	82°46.00'W
9	24°42.00'N	82°46.00'W
10	24°43.90'N	82°48.00'W
11	24°43.50'N	82°52.00'W
12	24°45.90'N	82°52.00'W

Appendix V to Part 929—Sanctuary Preservation Areas

The nineteen (19) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
ALLIGATOR REEF		
1	24°51.2'N	80°37.1'W
2	24°50.8'N	80°36.8'W
3	24°50.4'N	80°37.3'W
CARYSFORT/SOUTH CARYSFORT REEF		
1	25°14.1'N	80°12.6'W
2	25°13.7'N	80°12.2'W
3	25°12.2'N	80°13.4'W
4	25°12.5'N	80°13.8'W
CHEECA ROCKS		
1	24°54.5'N	80°37.6'W
2	24°54.3'N	80°37.5'W
3	24°54.2'N	80°37.7'W
4	24°54.5'N	80°37.8'W
COFFINS PATCH		
1	24°41.1'N	80°57.5'W
2	24°40.6'N	80°58.4'W
3	24°41.5'N	80°57.7'W
4	24°41.1'N	80°58.6'W
CONCH REEF		
1	24°57.5'N	80°27.4'W
2	24°57.4'N	80°27.3'W
3	24°57.0'N	80°27.7'W
4	24°56.9'N	80°27.6'W
DAVIS REEF		
1	24°55.6'N	80°30.3'W
2	24°55.3'N	80°30.0'W
3	24°55.1'N	80°30.4'W
4	24°55.4'N	80°30.7'W
DRY ROCKS		
1	25°7.6'N	80°17.9'W
2	25°7.4'N	80°17.7'W
3	25°7.3'N	80°17.8'W
4	25°7.4'N	80°18.1'W
GRECIAN ROCKS		
1	25°6.9'N	80°18.2'W
2	25°6.6'N	80°17.9'W
3	25°6.1'N	80°18.5'W
4	25°6.2'N	80°18.6'W
5	25°6.8'N	80°18.6'W
EASTERN DRY ROCKS		
1	24°27.9'N	81°50.5'W
2	24°27.7'N	81°50.4'W
3	24°27.5'N	81°50.6'W
4	24°27.7'N	81°50.8'W
THE ELBOW		
1	25°9.1'N	80°15.4'W
2	25°8.9'N	80°15.1'W
3	25°8.1'N	80°15.7'W
4	25°8.8'N	80°15.7'W
FRENCH REEF		
1	25°2.2'N	80°20.6'W
2	25°1.8'N	80°21.0'W
3	25°2.3'N	80°21.2'W
HEN AND CHICKENS		
1	24°56.4'N	80°32.9'W
2	24°56.2'N	80°32.7'W
3	24°55.7'N	80°33.1'W
4	24°55.9'N	80°33.3'W
LOOE KEY		
1	24°33.2'N	81°24.2'W

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Point	Latitude	Longitude
2	24°32.6'N	81°24.1'W
3	24°32.4'N	81°24.7'W
4	24°33.1'N	81°24.8'W
MOLASSES REEF		
1	25°0.9'N	80°22.4'W
2	25°0.7'N	80°22.0'W
3	25°0.2'N	80°22.8'W
4	25°0.7'N	80°22.8'W
NEWFOUND HARBOR KEY		
1	24°37.1'N	81°23.3'W
2	24°36.7'N	81°23.8'W
3	24°36.8'N	81°23.3'W
4	24°36.9'N	81°23.9'W
ROCK KEY		
1	24°27.5'N	81°51.3'W
2	24°27.3'N	81°51.2'W
3	24°27.2'N	81°51.5'W
4	24°27.5'N	81°51.6'W
SAND KEY		
1	24°27.6'N	81°53.1'W
2	24°27.0'N	81°53.1'W
3	24°27.0'N	81°52.3'W
4	24°27.6'N	81°52.3'W
SOMBRERO KEY		
1	24°37.8'N	81°6.7'W
2	24°37.3'N	81°6.1'W
3	24°37.1'N	81°6.8'W
WESTERN SAMBO		
1	24°29.1'N	81°42.6'W
2	24°28.8'N	81°42.4'W
3	24°28.6'N	81°43.2'W
4	24°28.9'N	81°43.4'W

Appendix VI to Part 929—Special Use Areas

The four (4) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
CONCH REEF (RESEARCH ONLY)		
1	24°57.4'N	80°27.3'W
2	24°57.0'N	80°27.0'W
3	24°56.7'N	80°27.4'W
4	24°57.0'N	80°27.7'W
LOOE KEY (RESEARCH ONLY)		
1	24°34.1'N	81°23.3'W
2	24°34.0'N	81°23.2'W
3	24°33.8'N	81°23.8'W
4	24°34.0'N	81°23.9'W
PELICAN SHOAL (RESEARCH ONLY)		
1	24°30.3'N	81°37.7'W
2	24°30.0'N	81°37.7'W
3	24°30.0'N	81°38.0'W
4	24°30.2'N	81°38.0'W
TENNESSEE REEF (RESEARCH ONLY)		
1	24°45.9'N	80°45.6'W
2	24°45.7'N	80°45.4'W
3	24°46.0'N	80°44.9'W
4	24°46.2'N	80°45.1'W

Appendix VII to Part 929—Coordinates for the Area to be Avoided

In the Vicinity of the Florida Keys

(Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990.)

Point	Latitude	Longitude
1	25°45.00'N	80°06.10'W.
2	25°38.70'N	80°02.70'W.
3	25°22.00'N	80°03.00'W.
4	25°00.20'N	80°13.40'W.
5	24°37.90'N	80°47.30'W.
6	24°29.20'N	81°17.30'W.
7	24°22.30'N	81°43.17'W.
8	24°28.00'N	81°43.17'W.
9	24°28.70'N	81°43.50'W.
10	24°29.80'N	81°43.17'W.
11	24°33.10'N	81°35.15'W.
12	24°33.60'N	81°26.00'W.
13	24°38.20'N	81°07.00'W.
14	24°43.20'N	80°53.20'W.
15	24°46.10'N	80°46.15'W.
16	24°51.10'N	80°37.10'W.
17	24°57.50'N	80°27.50'W.
18	25°09.90'N	80°16.20'W.
19	25°24.00'N	80°09.10'W.
20	25°31.50'N	80°07.00'W.
21	25°39.70'N	80°06.85'W.
22	25°45.00'N	80°06.10'W.

In the Vicinity of Key West Harbor

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
23	24°27.95'N	81°48.65'W.
24	24°23.00'N	81°53.50'W.
25	24°26.60'N	81°58.50'W.
26	24°27.75'N	81°55.70'W.
27	24°29.35'N	81°53.40'W.
28	24°29.35'N	81°50.00'W.
29	24°27.95'N	81°48.65'W.

Area Surrounding the Marquesas Keys

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
30	24°26.60'N	81°59.55'W.
31	24°23.00'N	82°03.50'W.
32	24°23.60'N	82°27.80'W.
33	24°34.50'N	82°37.50'W.
34	24°43.00'N	82°26.50'W.
35	24°38.31'N	81°54.06'W.
36	24°37.91'N	81°53.40'W.
37	24°36.15'N	81°51.78'W.
38	24°34.40'N	81°50.60'W.
39	24°33.44'N	81°49.73'W.
40	24°31.20'N	81°52.10'W.
41	24°28.70'N	81°56.80'W.
42	24°26.60'N	81°59.55'W.

Area Surrounding the Dry Tortugas Islands

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
43	24°32.00'N	82°53.50'W.
44	24°32.00'N	83°00.05'W.
45	24°39.70'N	83°00.05'W.
46	24°45.60'N	82°54.40'W.
47	24°45.60'N	82°47.20'W.
48	24°42.80'N	82°43.90'W.
49	24°39.50'N	82°43.90'W.
50	24°35.60'N	82°46.40'W.
51	24°32.00'N	82°53.50'W.

Appendix VIII to Part 929—Marine Life Rule

[As excerpted from Chapter 46–42 of the Florida Administrative Code]

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species."
46–42.002 Definitions.
46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.
46–42.0035 Live Landing and Live Well Requirements.
46–42.0036 Harvest in Biscayne National Park.*
46–42.004 Size Limits.
46–42.005 Bag Limits.
46–42.006 Commercial Season, Harvest Limits.
46–42.007 Gear Specifications and Prohibited Gear.
46–42.008 Live Rock.**
46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species".—

(1)(a) The purpose and intent of this chapter are to protect and conserve Florida's tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.

(b) It is the express intent of the Marine Fisheries Commission to phase out the landing of live rock harvested in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters. Such harvest is and will continue to be prohibited in Florida waters, except that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Moray eels—Any species of the Family Muraenidae.

(b) Snake eels—Any species of the Genera *Myrichthys* and *Myrophis* of the Family Ophichthidae.

(c) Toadfish—Any species of the Family Batrachoididae.

(d) Frogfish—Any species of the Family Antennariidae.

(e) Batfish—Any species of the Family Ogcocephalidae.

(f) Clingfish—Any species of the Family Gobiesocidae.

(g) Trumpetfish—Any species of the Family Aulostomidae.

(h) Cornetfish—Any species of the Family Fistulariidae.

(i) Pipefish/seahorses—Any species of the Family Syngnathidae.

(j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca*, and seabass of the genus *Centropristis*.

(k) Basslets—Any species of the Family Grammistidae.

(l) Cardinalfish—Any species of the Family Apogonidae.

(m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus *Equetus* of the Family Sciaenidae.

(n) Reef Croakers—Any of the species *Odontocion dentex*.

(o) Sweepers—Any species of the Family Pempherididae.

(p) Butterflyfish—Any species of the Family Chaetodontidae.

(q) Angelfish—Any species of the Family Pomacanthidae.

(r) Damselfish—Any species of the Family Pomacentridae.

(s) Hawkfish—Any species of the Family Cirrhitidae.

(t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus*.

(u) Parrotfish—Any species of the Family Scaridae.

(v) Jawfish—Any species of the Family Opistognathidae.

(w) Blennies—Any species of the Families Clinidae or Blenniidae.

(x) Sleepers—Any species of the Family Eleotrididae.

(y) Gobies—Any species of the Family Gobiidae.

(z) Tangs and surgeonfish—Any species of the Family Acanthuridae.

(aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, *Balistidae capriscus*.

(bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.

(cc) Pufferfish/burrfish/balloonfish—Any of the following species:

1. Balloonfish—*Diodon holocanthus*.
2. Sharpnose puffer—*Canthigaster rostrata*.
3. Striped burrfish—*Chilomycterus schoepfi*.

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to § 370.01(20), Florida Statutes:

(a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.

(b) Upside-down jellyfish—Any species of the Genus Cassiopeia.

(c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans Gorgonia flabellum and Gorgonia ventalina.

(e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells—Any of the species Astraea americana or Astraea phoebia.

(h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.

(i) Fileclams—Any species of the Genus Lima.

(j) Octopods—Any species of the Order Octopoda, except the common octopus, Octopodus vulgaris.

(k) Shrimp—Any of the following species:

1. Cleaner shrimp and peppermint shrimp—Any species of the Genera Periclimenes or Lysmata.
2. Coral shrimp—Any species of the Genus Stenopus.
3. Snapping shrimp—Any species of the Genus Alpheus.

(l) Crabs—Any of the following species:

1. Yellowline arrow crab—Stenorhynchus seticornis.
2. Furcate spider or decorator crab—Stenocionops furcata.
3. Thinstripe hermit crab—Clibanarius vittatus.
4. Polkadotted hermit crab—Phimochirus operculatus.
5. Spotted porcelain crab—Porcellana sayana.
6. Nimble spray or urchin crab—Percnon gibbesi.
7. False arrow crab—Metoporhaphis calcarata.

(m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, Oreaster reticulatus.

(n) Brittlestars—Any species of the Class Ophiuroidea.

(o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, Diadema antillarum, and sand dollars and sea biscuits, Order Clypeasteroida.

(p) Sea cucumbers—Any species of the Class Holothuroidea.

(q) Sea lillies—Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Caulerpa—Any species of the Family Caulerpaceae.

(b) Halimeda/mermaid's fan/mermaid's shaving brush—Any species of the Family Halimedaceae.

(c) Coralline red algae—Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term "marine life species" is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1–1–91, Amended 7–1–92.

46–42.002 Definitions.—As used in this rule chapter:

(1) "Barrier net," also known as a "fence net," means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) "Drop net" means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.

(3) "Gorgonian," except for purposes of Rule 46–42.001, means any member of any species of the Subclass Octocorallia, except the species Gorgonia flabellum and Gorgonia ventalina.

(4) "Hand held net" means a landing or dip net as defined in Rule 46–4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.

(5) "Harvest" means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to

* Part 42.0036 is not set forth because it does not apply to the Sanctuary.

** Part 42.008 is not set forth because it is regulated pursuant to § 929.5(2)(ii).

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the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(6) "Harvest for commercial purposes" means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(7) "Land," when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(8) "Live rock"- see definition in section 929.3

(9) "Slurp gun" means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) "Total length" means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) "Trawl" means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. "Roller frame trawl" means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located above or at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) "Tropical fish" means any species included in subsection (2) of Rule 46–42.001, or any part thereof.

(13) "Tropical ornamental marine life species" means any species included in subsections (2) or (3) of Rule 46–42.001, or any part thereof.

(14) "Tropical ornamental marine plant" means any species included in subsection (4) of Rule 46–42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.— No person shall harvest, possess while in or on the waters of the state, or land any of the following species:

(1) Longspine urchin, *Diadema antillarum*.

(2) Bahama starfish, *Oreaster reticulatus*.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.0035 Live Landing and Live Well Requirements.—

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 7–1–92.

46–42.004 Size Limits.—

(1) Angelfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1 1/2) inches for:

a. Gray angelfish (*Pomacanthus arcuatus*).

b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) inches for:

a. Blue angelfish (*Holacanthus bermudensis*).

b. Queen angelfish (*Holacanthus ciliaris*).

3. Two (2) inches for rock beauty (*Holacanthus tricolor*).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Ten (10) inches for angelfish, except rock beauty (*Holacanthus tricolor*).

2. Six (6) inches for rock beauty.

(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.005 Bag limit.—

(1) Except as provided in Rule 46–42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of gorgonians. Each colony of gorgonian or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein.

(b) If the harvest of gorgonians in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to the end of any calendar year, the season for harvest of gorgonians in state waters shall also close until the following January 1, upon notice given by the Executive Director of the Department of Natural Resources, in the manner provided in s. 120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91.

46–42.006 Commercial Season, Harvest Limits.—

(1) Except as provided in Rule 46–42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46–42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Natural Resources.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on January 1 of each year and continues through December 31 of the same year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of gorgonians unless and until the season for all harvest of gorgonians in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of gorgonians in state waters shall also close until the following January 1, upon notice given by the Executive Director of the Department of Natural Resources, in the manner provided in Section 120.52(16)(d), Florida Statutes.

(d) A limit of 200 giant Caribbean or "pink-tipped" anemones (*Condylactus gigantea*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.007 Gear Specifications and Prohibited Gear.

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding 3/4 inch stretched mesh.

(c) Drop net, with a mesh size not exceeding 3/4 inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Natural Resources pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Natural Resources pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, *Hippocampus zosterae*, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than 3/4 inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46–42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

PART 937—[REMOVED AND RESERVED]

2. Part 937 is removed and reserved.

[FR Doc. 95–7669 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

46 CFR Chapter I

[CGD 95–022]

Presidential Regulation Review

AGENCY: Coast Guard, DOT.

ACTION: Public meeting; request for comments.

SUMMARY: The Coast Guard will conduct a public meeting to provide the public an opportunity to comment on Coast Guard regulations and the regulatory process. Comments are sought on changes to Coast Guard regulations that would make them less burdensome or more flexible, including use of negotiated rulemaking to effect changes, and on improvements that could be made to the enforcement process, while still ensuring a high level of safety and environmental protection.

DATES: The meeting will be held April 20, 1995, from 9 a.m. to 3 p.m. Written material must be received not later than May 1, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce P. Novak, Regulations Coordinator, Oil Pollution Act (OPA 90) Staff, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6819. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The President recently announced a Regulatory Reinvention initiative. Under this initiative agencies are directed to review their regulations; improve their enforcement efforts to focus on results, not punishment; meet with the people affected by their regulations; and substantially increase their efforts to promote consensual rulemaking.

In reviewing existing regulations the Coast Guard will be focussing on the following issues: (1) Identification of obsolete regulations; (2) suggestions for achieving the intended goal of regulations that would be more efficient and/or less intrusive; (3) identification of private sector alternatives to regulations such as market mechanisms, that can achieve the objectives of regulations; (4) could private business, setting its own standards and being subject to public accountability, do the job as well; and (5) could State or local government regulations be used in lieu of Coast Guard regulation?

The Coast Guard is interested in suggestions on areas where the goals of our regulatory and enforcement programs are not clear, and on recommendations for improvements that would focus on attaining defined safety and environmental protection results rather than mandating the use of specific methods or equipment.

The Coast Guard would also like to discuss techniques for developing consensus rules. Negotiated rulemaking is currently being offered as the primary way of achieving consensus rulemaking. The Coast Guard has used negotiated rulemaking and has explored its use for several rulemaking projects. While negotiated rulemaking has the ability to

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bring together private parties with widely disparate views, not all rulemakings are appropriate for use of this process The report accompanying the National Performance Review identifies the following limits on use of the negotiated rulemaking process:

(1) The number of distinct interests concerned with the proposed rule, including any relevant government agencies, must be small enough so that they can be fairly represented by not more than 20 to 25 negotiators;

(2) There should be a number of diverse issues that participants can rank according to their own priorities, so that there will be room for compromise on some of the issues as an agreement is sought;

(3) It is essential that the issues to be negotiated not require compromise of principles so fundamental to the parties that productive negotiations are unrealistic;

(4) Parties must be willing to negotiate in good faith, and no single interest should be able to dominate the negotiations; and

(5) The parties cannot have an incentive to stall; therefore, they must believe that the agency itself will issue a rule if consensus is not reached. A statutory requirement that the agency issue some type of rule is often helpful.

The Coast Guard is interested in suggestions for use of negotiated rulemaking to make changes to existing regulations, or where regulations currently under development may be converted to negotiated rulemakings. The Coast Guard is also interested in suggestions of alternative techniques that may facilitate consensual rulemaking where a formal negotiated rulemaking is not appropriate.

The Coast Guard recently undertook a comprehensive review of its regulatory process and has now promulgated a new internal rulemaking instruction. The new instruction embodies certain reforms that are designed to make the Coast Guard's rulemaking process more responsive to public need and more timely.

The Coast Guard has been using expanded opportunities for early public participation before issuing a proposed rule. The Coast Guard has held numerous public meetings on issues of concern that might result in regulations. The purpose of the meetings is to solicit public participation on a wide range of issues such as: (1) Possible non-regulatory alternatives; (2) is a regulatory solution technologically feasible; (3) what regulatory alternatives are available; (4) what are the probable benefits; and (5) what are the probable costs?

The Coast Guard has also been making extensive use of its advisory committees early in the rulemaking process. The advisory committees have a particular expertise and are able to advise the Coast Guard on impacts to the industry and the environment, technological feasibility, alternatives, existence of industry standards, and so on.

Although the resulting rules are not precisely consensual, they result in broad public participation in the rulemaking process. Interested parties discuss concerns and issues with each other and the Coast Guard at informal meetings and workshops where there is considerable give and take among the participants. The Coast Guard has found that this early identification and discussion of issues results in a better crafted proposed rule that is subject to less adverse comment.

The Coast Guard is also being responsive to the public's demand for more timely rulemaking by increasing personnel accountability. Once timelines for major milestones have been approved by the Coast Guard's Marine Safety Council, progress on the rulemaking is closely monitored and delays must be explained. This justification and review process also keeps senior management informed concerning the progress of developing rules. Also, management must review existing resource commitments and agree to provide adequate resources to develop a rule before initiating one.

The public is invited to comment with regard to the use of the negotiated rulemaking process for current Coast Guard rulemaking projects. Comments are also invited on the Coast Guard's participatory rulemaking process.

Attendance at the April 20 meeting is open to the public. Members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: March 23, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 95–7736 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–610–00–4110–2411]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this proposed rule to amend the regulations relating to the waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment would establish the conditions under which the operators of properties that produce "heavy oil" (crude oil with a gravity of less than 20 degrees) can obtain a reduction in the royalty rate. This action is being taken to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production, provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field. The BLM believes that this amendment will result in substantial additional revenue for the States and Federal Government, increase the cumulative amount of domestic oil production from existing wells, increase the percentage of oil recovery from presently developed reservoirs, minimize the necessity of drilling new wells with their additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability in the jobs and services related to the domestic oil industry.

DATES: Comments should be submitted by May 30, 1995. Comments postmarked after this date may not be considered as part of the decisionmaking process in issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management, (202) 452–0340.

SUPPLEMENTARY INFORMATION: Existing section 3103.4–1 of Title 43, Code of Federal Regulations, provides two forms of Federal oil and gas royalty reduction: on a case-by-case basis upon application, and for stripper wells. In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development, or that a lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The provision concerning stripper well properties allows royalty reduction for properties that produce an average of less than 15 barrels of oil per eligible well per well-day.

The Bureau of Land Management (BLM) has reason to believe that additional royalty relief for producers of heavy crude oil may be necessary to maintain current levels of development, promote investment in enhanced recovery efforts, and encourage maximum recovery of the resource, thus warranting royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209).

Fluctuating oil prices, combined with high production costs, have resulted in an uncertain economic future for producers of low gravity crude oil. As recently as last January, California producers of heavy crude were spending between $9 and $10 to produce a barrel of crude oil that was typically selling for between $8.50 and $9 per barrel (from data provided by the Conservation Commission of California Oil and Gas Producers). When depreciation, depletion, and amortization costs were considered, nearly 69% of the state's production was uneconomic and more than 13,000 industry and industry-related jobs were at risk (California Independent Petroleum Association).

Heavy crude oil prices have recently risen to the point that the immediate crisis in California has passed. Many of the heavy oil properties remain only marginally economic, however, and are vulnerable to future down-turns in oil prices. As many as two-thirds of the marginal properties could be lost during a period of sustained low oil prices (National Petroleum Council Committee on Marginal Wells/Executive Summary—Draft). The danger in losing these wells is that, although production from individual wells may be small, their collective loss would be significant. The United States would lose the opportunity to take advantage of new technologies being developed by the Department of Energy (DOE) and industry, and the remaining recoverable reserves would be lost.

This proposed rule would preserve the contribution of marginal producers of heavy crude oil to the national reserve base. As a result of this relief, more wells should stay on line (even in periods of depressed oil prices), fewer recoverable reserves should be lost, and there will be less adverse economic impact on States and local communities.

The DOE has modeled the BLM's proposed royalty rate reduction for heavy crude oil. It is DOE's conclusion that the proposal will benefit all producers of heavy oil while remaining revenue neutral to all oil producing States except California (California contains the majority of the nation's heavy oil reserves). Assuming a West Texas Intermediate Crude oil price of $20 per barrel—a price consistent with recent oil markets—the proposal can be expected to increase recoverable reserves in California by around 72 percent, from 132.8 million barrels to 228.5 million barrels. The increase in recoverable reserves will ultimately result in a 35 percent increase in Federal revenues (royalties and individual and corporate taxes) and a 49 percent increase in California State revenues.

A provision of the proposed rule provides for the termination of individual royalty reductions should the average price of West Texas Intermediate Crude oil rise to a level greater than $28 per barrel for a period of at least 6 consecutive months. This provision is intended to ensure that royalty relief is only provided during periods of low market prices.

The proposed rule establishes a sliding scale royalty rate for qualifying heavy-oil-producing properties. The sliding scale is intended to somewhat offset the reduced prices paid for oil as oil gravity decreases. The reduced royalty rate applies to qualifying heavy oil properties rather than individual wells, because production is normally not measured for individual oil wells, and is based on the average gravity of the oil weighted by the production of heavy oil from each well within the property. A weighted average gravity is used to prevent gravity manipulation by selectively producing wells on a property with heavier gravity crude. Using a weighted average of oil gravity encourages maximum recovery from all wells within a property by removing the economic advantage of selective production.

The rule provides that either the operator (as defined at 43 CFR 3100.0–5) or the payor (as defined at 30 CFR 208.2) must calculate the weighted average gravity of the oil—measured on the American Petroleum Institute (API) scale—produced from a property every 12 months to determine the appropriate royalty rate. The royalty rate for years subsequent to the initial 12 month period will be the lesser of the newly calculated royalty rate or the royalty rate determined for the initial year. This provision is necessary to avoid discouraging additional investment in enhanced recovery and workovers that may have the collateral effect of increasing the gravity of the oil produced from the property. In no case, however, would the royalty rate exceed the rate established by the terms of the lease.

The section amended by this proposed rule also provides for royalty rate reductions for stripper oil wells. Many provisions of this proposed rule are essentially the same as the provisions of the existing regulations that pertain to stripper wells, except that references to "stripper well" have been replaced with "heavy oil well." The similarity between the existing provisions pertaining to stripper wells and the provisions of this proposed rule could allow for some restructuring of section 43 CFR 3103.4–1 to reduce the overall regulatory text and to increase clarity. The public is invited to comment on whether reorganizing 43 CFR 3103.4–1 should be considered in preparing the final heavy oil royalty reduction rule.

The principal author of this proposed rule is Dr. John W. Bebout, Senior Technical Specialist, Division of Fluid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The BLM has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because the proposed royalty rate reduction is voluntary, requires no additional paperwork, and applies to all operators regardless of size. Additionally the BLM has determined, under Executive Order 12630, that the rulemaking will not cause a taking of private property.

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The BLM has certified that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0090 and 1004–0145.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the preamble, and under the authorities cited below, Part 3100, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3103.4–1 is amended by revising paragraph (b)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM office. It must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(e)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(f) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures.

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (f)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1994, the operator must submit Purchaser's Statements for July, August, and September of 1994;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1994, the operator must submit Purchaser's Statements for the months of September 1993, and March and September 1994; and

(iii) If a property has multiple sales each month, the operator must submit Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/ payor for calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V_1 \times G_1)+(V_2 \times G_2)+(V_n \times G_n)}{V_1+V_2+V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1=Average Production (bbls) of Well #1 over the last 3 calendar months of sales

V_2=Average Production (bbls) of Well #2 over the last 3 calendar months of sales

V_n=Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last 3 calendar months of sales

G_1=Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales

G_2=Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales

G_n=Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last 3 calendar months of sales

Example: Lease "A" has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above—

$$\frac{(4{,}000 \times 13)+(6{,}000 \times 21)+(2{,}000 \times 14)}{(4{,}000+6{,}000+2{,}000)} = 17.2 \text{ Weighted Average API gravity for property}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (f)(3) of this section and assigned to all property subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) *Qualifying royalty rate determination.*

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no further reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (f)(5)(iii) of this section).

(ii) *Calculating the qualifying royalty rate.* If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the nearest whole degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

ROYALTY RATE REDUCTION FOR HEAVY OIL

Weighted average API gravity (degrees)	Royalty rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

(iii) *New royalty rate effective date.* The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months. If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

(iv) *Royalty rate determinations in subsequent years.*

(A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (f)(5)(ii) of this section.

(B) The operator/payor must compare the newly determined royalty rate to the initial qualifying royalty rate. The operator/payor must notify BLM of its determinations under this paragraph and paragraph (A) of this § 3103.1–4(f)(5)(iv). The lower of the two rates will be used for the new 12-month period. The new royalty rate will not become effective until the first day of the second month after BLM receives notification, and will remain effective for 12 calendar months. Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will remain at the previous royalty rate until the next 12-month anniversary.

(C) The royalty rate will never exceed the heavy oil property royalty rate calculated during the first qualifying period unless and until BLM terminates all heavy oil royalty rate reductions under paragraph (f)(6) (i) or (ii) of this section.

(v) *Prohibition.* Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (f).

(vi) *Certification.* The operator/payor must use the applicable royalty rate when submitting the required royalty reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (f), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (f).

(vii) *Agency action.* If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable immediately upon receipt of this notice. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (f) upon 6 month's notice in the **Federal Register** when BLM determines that—

(i) The average oil price remains above $28 per barrel over a period of 6 consecutive months (based on the West Texas Intermediate Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1997, the royalty rate reductions authorized by this paragraph (f) have not been not effective in reducing the loss of otherwise recoverable reserves resulting from wells being shut in or abandoned.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) for oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3–2 will continue to apply.

* * * * *

Dated: October 11, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7794 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–84–P

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Notices

Federal Register

Vol. 60, No. 61

Thursday, March 30, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–95–001]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that it is approving the test marketing of USDA grade identified boneless/skinless poultry legs and drumsticks, based on tentative grade standards.

DATES: This test-market period begins March 30, 1995 and ends April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of poultry products. Quality in practical terms refers to the usability, desirability, and value of a product, as well as its marketability. Poultry grade standards identify and measure degrees of quality in poultry products. They permit important quality attributes to be evaluated uniformly and accurately; they provide a way for buyers and sellers to negotiate using a common language.

Once poultry has been graded according to these standards, it may be identified with the USDA grademark. Over the years, processors have found it advantageous to market grade-identified poultry products and consumers have come to rely on the USDA grademark as assurance that they are getting the quality they want.

Poultry producers and processors are continually developing new, innovative products. Chicken and turkey, in particular, have been transformed into a myriad of boneless and/or skinless products, increasing poultry's share of the consumer's food dollar and responding to consumer demand for food with more built-in convenience and less fat. Current regulations (7 CFR Part 70) provide grade standards for boneless poultry breasts, thighs, and tenderloins (§ 70.231), as well as for skinless carcasses and parts (§ 70.232).

The Agency has received several industry requests to permit the grade identification of boneless/skinless poultry legs and drumsticks. These products are currently being marketed ungraded because there are no grade standards for them. The Agency has worked with members of the industry to develop tentative grade standards which will result in a high-quality product. The Agency is ready to move forward to a test marketing phase for boneless/skinless poultry legs and drumsticks.

The Agency recognizes that before new standards of quality can be established or current standards of quality can be amended, appropriate investigation is needed. This includes the test marketing of experimental packs of grade-identified poultry products to determine production requirements and consumer acceptance, and to permit the collection of other necessary data. Current regulations (§ 70.3) provide the Agency with the flexibility needed to permit such experimentation, so that new procedures and grading techniques may be tested.

The Agency is granting permission for the test marketing of grade-identified boneless/skinless poultry legs and drumsticks based on tentative standards for one year. At the expiration of this one-year period, the Agency will then evaluate the test results to determine if the current poultry grading regulations should be amended, through notice-and-comment rulemaking, to include the following tentative standards.

Tentative Poultry Grade Standards for Boneless/Skinless Poultry Legs and Drumsticks—A Quality

1. The leg or drum shall be cut as specified in § 70.210(e)(6).

2. The skin and bones shall be removed in a neat manner, without undue mutilation of adjacent muscle.

3. Boneless/skinless legs and drumsticks shall be free of tendons extending more than one-half inch beyond the meat tissue, cartilage, blood clots, bruises, and discolorations other than slight discolorations, provided they do not detract from the appearance of the product.

4. Minor flesh abrasions on the outer muscle surface due to preparation techniques and trimming are permitted provided the outer surface remains smooth with no angular cuts or tears. Holes resulting from the removal of the patella (knee cap) are permitted, provided the bulk of the thigh and drum remain intact and connected.

5. Trimming on the inner muscle surface is permitted, provided it results in a relatively smooth appearance.

6. Trimming is permitted around the outer edges of the muscle, provided the trimming results in a portion that approximates the same symmetrical appearance and meat yield of the original part.

7. Boneless/skinless drumsticks may be further separated by a single cut parallel to the tibiotarsus and labeled as boneless/skinless drumstick halves.

Dated: March 22, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–7724 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 95–023–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for cotton lines designated as 1445 and 1698 that have been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these cotton lines present a plant pest risk.

DATES: Written comments must be received on or before May 30, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–023–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 95–023–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Branch Chief, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 14, 1995, APHIS received a petition (APHIS Petition No. 95–045–01p) from the Monsanto Company of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for cotton lines designated as 1445 and 1698 that have been genetically engineered for tolerance to the herbicide glyphosate. As described in the petition, cotton (*Gossypium hirsutum* L.) lines 1445 and 1698 contain the gene for CP4 EPSPS (5-enolpyruvylshikimate-3-phosphate synthase) isolated from *Agrobacterium* sp. strain CP4, which encodes an enzyme conferring tolerance to glyphosate, the active ingredient in Roundup® herbicide. Cotton lines 1445 and 1698 also contain the *nptII* gene, which encodes the selectable marker neomycin phosphotransferase II, and the *aad* gene, which encodes the bacterial selectable marker 3''(9)-O-aminoglycoside adenylyltransferase. Expression of the *nptII* gene is driven by the 35S promoter derived from the plant pathogen cauliflower mosaic virus. The subject cotton lines were produced through the use of *Agrobacterium tumefaciens* transformation, a full description of which is provided in the petition.

The subject cotton lines are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, vector agents, promoters, and terminators) derived from plant pathogens. Cotton lines 1445 and 1698 were evaluated in field trials conducted under APHIS permits or notifications in 1992, 1993, and 1994. In the process of reviewing the applications for those field trials, APHIS determined that the vectors were disarmed, and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease, or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Cotton lines 1445 and 1698 are also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by regulation. Plants that have been genetically modified for tolerance or resistance to herbicides are not regulated under FIFRA because the plants themselves are not considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period,

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and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Monsanto Company's cotton lines 1445 and 1698 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 24th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7835 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Newspaper Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 1, 1995. The list of newspapers will remain in effect until October 1995 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5279.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Standard-Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
Mountain Home News, Mountain Home, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton Forest Supervisor decisions:

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Challis National Forest

Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah

Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger Decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt National Forest

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge and Ruby Mountain District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
Jarbidge District Ranger decisions:
Twin Fall Times News, Twin Falls, Idaho

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Toiyabe National Forest

Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News. Tonopah, Nevada
Las Vegas District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah.

Dated: March 17, 1995.

Jack A. Blackwell,

Deputy Regional Forester.

[FR Doc. 95–7820 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–11–M

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 13 & 14, 1995 at Rock Springs Guest Ranch, 10 miles north of Bend, Oregon off Highway 20. Times are 6 to 9 p.m. April 13, and 8 a.m. to 4 p.m. April 14. Agenda items include: (1) Context of the Advisory Committee and background on the President's Forest Plan; (2) introduction of members; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship to the PIEC; and (6) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 503–383–4704.

Dated: March 21, 1995.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 95–7749 Filed 3–29–95; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Final Determination

We determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to exporters Greenwich Metals and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

Verifications were conducted at the Chicago, Illinois, facilities of MG Metals from December 6 to December 7, 1994; at Gerald Metals' Lausanne, Switzerland, offices from December 13 to December 14, 1994, and at its Stamford, Conn., offices on January 24 and January 25, 1995; at Concern Oriana's (formerly Concern Chlorvinyl) facilities in Kalush, Ukraine; and at the Greenwich, Conn., facilities of Greenwich Metals from January 30 to January 31, 1995.

On January 31, 1995, we amended our preliminary determination to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation ("POI").

Respondents Concern Oriana, Gerald Metals, Greenwich Metals, Hochschild Partners, as well as petitioners,[2] filed case and rebuttal briefs. A public hearing was held on February 24, 1995.

Scope of Investigation[3]

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses: (1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to all below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

[2] Magnesium Corporation of America; Dow Chemical; International Union of Operating Engineers, Local 564; and United Steel Workers of America, Local 8319.

[3] The scope of this investigation has been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 5 in the "Interested Party Comments" section of this notice, below, for a discussion of the scope modification. For a detailed definition of alloy magnesium, see the "Scope of Investigation" section of the concurrent investigations of alloy magnesium from the People's Republic of China and the Russian Federation.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium from Ukraine to the United States by Gerald Metals, Hochschild Partners, and MG Metals were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the

first company to sell Ukraine-produced pure magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Ukraine-wide" deposit rate.

B. All Other Companies

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. Several companies in Ukraine either failed to respond to either our initial requests for information about U.S. sales, or failed to respond to our request for permission to verify. These companies include: Zaporozhye Titanium-Magnesium Plant, a Ukrainian producer; and Alex, Mages, and Intreid, Ukrainian exporters. Accordingly, we have based the "Ukraine-wide" duty deposit rate—applicable to all companies except those that (1) made POI U.S. sales of subject merchandise, and (2), participated in this investigation—on the best information available ("BIA").

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in *Coumarin*,[4] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Ukraine-wide deposit rate at 104.27 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

[4] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

United States Price

We based USP for third-country exporters Gerald Metals and Hochschild on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For Gerald Metals and Hochschild, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. For Gerald Metals, we made the following deductions (where appropriate): ocean freight; foreign brokerage; U.S. Brokerage and handling charges; U.S. duty; and U.S. inland freight. For Hochschild Partners, we made the following deductions (where appropriate) for foreign brokerage; ocean freight; marine insurance; and U.S. inland freight.

We based USP for MG Metals, a third-country exporter, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated ESP based on packed delivered prices. For MG Metals, we made the following deductions (where appropriate) for ocean freight; marine insurance; foreign brokerage; U.S. inland freight; U.S. inland insurance, U.S. duties; U.S. brokerage and handling; and additional packing costs.

From each exporter's U.S. price, we continued to deduct foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) using the per-ton foreign inland freight figure reported in the petition in order to account for this movement charge from producer to the intermediate destination.

Minor adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of adjustments).

Foreign Market Value

A. Surrogate Country Selection

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market-economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Indonesia as our primary surrogate country and resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. These countries are appropriate surrogate countries for the reasons set forth in our preliminary determination. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Indonesia or Egypt.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated FMV, with regard to the exporters' U.S. sales of magnesium produced by Concern Oriana, based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). With regard to the exporters' U.S. sales of magnesium produced by the other Ukraine manufacturer, Zaporpzhye Titanium-Magnesium Plant (from which we did not receive factors of production data), we did not calculate FMV; instead, we assigned an uncooperative BIA margin which equalled the highest adjusted alleged margin cited in our initiation notice (as indicated in our amended preliminary determination).

The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) An imputed factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We granted a by-product offset against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum imputed amounts for general expenses and profit. We followed the same methodology for packing costs used at the preliminary determination; however, adjusted the packing material cost so as not to double count certain materials. Additionally, we used the Indonesian unskilled labor rate for packing labor.

We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments. Based on verification, we adjusted the values of magnesium

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chloride and chlorine to reflect the actual purity used in the production (or yielded as a by-product) of subject merchandise. We recalculated certain reported inland freight distances between factory and input supplier based on verified distances. We used labor rates from Indonesia specific to skilled and unskilled labor. One material input, considered a direct material for the preliminary determination, has not been accounted for in our final determination because it was discovered at verification to be an indirect material.

Verification

As provided in Section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: BIA for Refusal to Permit Verification

Petitioners argue that the Department should assign a margin based on total BIA to all companies that reported having made no POI sales of subject merchandise, but that did not indicate in their response to the Department's inquiry that they would permit verification of this information.

DOC Position

We agree with petitioners and have assigned a margin based on total BIA to those companies that either refused verification or did not respond to our request to verify a report of no sales.

Comment 2: Surrogate Value for Magnesium Chloride

Concern Oriana asserts that the surrogate value used for magnesium chloride in the preliminary determination was aberrational and unrealistic because: (1) The surrogate value is almost five times greater on a per-unit basis than the Brazil value of hydrated carnallite provided in the petition, of which magnesium chloride is but one cost component; (2) the UN Trade Commodity Statistics show an export value for Indonesia which is one third that of the import value; and (3) values for imports of magnesium chloride into other potential surrogate countries vary more than 500 percent, demonstrating that the value used for the preliminary determination is inherently unreliable.

Concern Oriana requests that the Department use the value of hydrated carnallite from the petition as a more realistic and accurate surrogate for the value of magnesium chloride used in the production of magnesium.

Petitioners counter that the Department should not use a surrogate value for hydrated carnallite, a completely different material, when a nonaberrational price is available for a commodity category containing the actual materials used in the production process. Specifically, petitioners contend that the Indonesian price for magnesium chloride and the petition's price for hydrated carnallite cannot be compared. Petitioners also contend that the range of import prices for magnesium chloride from other potential surrogate countries ($159 to $1,000/per metric ton) demonstrates that the price used in the preliminary determination ($152.89 per metric ton) is conservative rather than aberrational. Petitioners note as well that the Indonesian import price fits into the high preference category of the Department's hierarchy for surrogate values: it is publicly available information, it is non-export value, and it is contemporaneous to the POI, unlike the petition value for a totally different product suggested by respondents.

DOC Position

We agree with petitioners that the record does not support a finding that the surrogate value for magnesium chloride is aberrational or otherwise inappropriate. First, it is not accurate to characterize magnesium chloride as "but one cost component" of hydrated carnallite. The fact that hydrated carnallite is processed to obtain magnesium chloride (rather than vice versa) makes a higher price for magnesium chloride logical. Second, although import prices in other surrogate countries vary, Concern Oriana has not demonstrated that this variance should be construed as evidence that the value used here is unreliable. Third, we have specifically expressed a preference for import values over export values when both are available (*see PRC Pencils*[5]).

Comment 3: Basis for Greenwich Metals' Deposit Rate

Petitioners assert that verification revealed that Greenwich's reported U.S. sales of subject merchandise were entirely of merchandise that it had purchased from a European trader that was aware that the merchandise was destined for the United States. Consequently, petitioners request that the Department assign Greenwich the "Ukraine-wide" rate and assign the European trader the BIA rate for not participating in this investigation.

Greenwich counters that it properly reported the sales in question as its own U.S. sales. Greenwich argues that the European trader did not know the ultimate destination of the merchandise because Greenwich did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Greenwich also argues that the European trader did not know the ultimate destination of subject merchandise at the time the terms of the sale were fixed because Greenwich bought the merchandise on a "duty-unpaid" basis—leaving Greenwich the option of selling the merchandise in either the U.S. market or in a third country.

DOC Position

We agree with petitioners. First, the record does not support Greenwich's claim that it did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Rather, as verification revealed, the contract setting the terms of sale included as identification of the shipment destination. Second, the fact that sales terms are "duty unpaid" is far outweighed by the fact that the merchandise was shipped to the United States and the absence of any indication that the seller could legitimately expect such sales not to enter the U.S. market. Accordingly, we have not calculated a company-specific margin for Greenwich because we find that it did not make any U.S. sales of the subject merchandise during the POI. Instead, Greenwich and its European supplier will both be subject to the "Ukraine-wide" rate.

Comment 4: Completeness of Ukraine Magnesium Industry's Response

Petitioners argue that, as state owned entities, Zaporozhye and Concern Oriana comprise the consolidated magnesium industry in Ukraine. According to petitioners, total BIA should be assigned to this consolidated Ukrainian industry because the industry as a whole failed to report complete sales information (*i.e.*, Zaporozhye did not provide a complete response to the questionnaire). They also claim that total BIA should also be assigned to third-country exporters because of the Ukrainian industry's non-cooperation.

If the Department elects not to apply total BIA to all third-country exporters in this proceeding, then petitioners contend that the Department should base FMV for the exporters' U.S. sales (1) wholly on BIA, disregarding Concern Oriana's factors of production, or (2) on a simple average of Concern Oriana's calculated FMV and a BIA-based FMV for Zaporozhye, or that the Department should link individual exporters' applicable deposit rate to the specific producer which supplies subject merchandise.

Gerald Metals counters that Concern Oriana's magnesium production process is similar to that of Zaporozhye and, therefore, the Department should use only verified information from Concern Oriana to calculate FMV in its LTFV analyses.

DOC Position

If an antidumping duty order is issued in this proceeding, any direct sales from Ukraine will be subject to a deposit rate based on total BIA. (*See* discussion of "All Other Companies" in the "Fair Value Comparisons" section of this notice, above).

As to the third-country exporters, we have continued to follow the approach set out in the preliminary determination. We have based FMV for those companies' reported U.S. sales of Concern-Oriana-produced merchandise on Concern Oriana's factors of production; we have not calculated FMV for reported sales of Zaporozhye-produced merchandise, but instead have assigned an uncooperative BIA margin. This approach is consistent with the approach that we have taken in other NME cases, such as *Coumarin, Pencils,* and *PRC Sulfur Dyes*[6], where the Department based FMV for an exporter not controlled by the central government only on the factors of production of the producer or producers which supplied subject merchandise to that exporter. Under this approach, individual transaction margins are then weight averaged to arrive at a single, exporter-specific deposit rate. Further, in a situation like that created here by Zaporozhye's failure to respond, where FMV information needed to calculate a margin is not available, the Department has, as here, resorted to partial BIA and plugged into the weighted-average calculations BIA margins for individual transactions. (See, *e.t., Pencils.*)

Comment 5: Scope

Petitioners contend that the Department should clarify the scope in this proceeding. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered as within the scope. Petitioners propose a revised scope to achieve this end.

Greenwich argues that the proposed revised scope is flawed because it appears to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners that some magnesium is produced which, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill an order for pure magnesium.

We therefore have revised the scope to include this off-specification pure magnesium within the definition of pure magnesium. Off-specification pure magnesium is described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum). Consequently, we have not adopted scope language proposed by petitioners that refers to alloy magnesium defined by "other industry standards" in illustrating products that are not off-specification pure magnesium. Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, we believe that metal with a primary magnesium content below that level should be captured in the scope if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that the scope encompasses only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium is excluded.

Comment 6: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for the chlorine by-product of the magnesium production process was erroneous for the following reasons: (1) the producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that such benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Concern Oriana argues that the cost of manufacturing magnesium should be reduced by the value of chlorine by-product.

DOC Position

We agree with petitioners in part. First, because the by-product results from the production process and is either used by the magnesium producer or sold for use by some other company in the NME country, it is a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted the by-product's surrogate CIF import value to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate; for by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (see, *e.g., Coumarin*).

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that an amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

[5] Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (60 FR 55625, November 8, 1994)

[6] Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993)

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Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in *Coumarin*, and note that the questionnaires they received did not contain section D, the section dealing with general expenses.

DOC Response

We agree with respondents that an addition to FMV of actual reseller general expenses and profit would be inappropriate. Given that Ukraine is an NME and the Ukrainian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S. prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g., Coumarin* and *Sparklers*[7]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Command 8: Surrogate Value of Labor

Petitioners challenge the Department's use of an unskilled labor value in the preliminary determination to account for both skilled and unskilled labor. Petitioners assert that, if the Department cannot locate specific skilled and unskilled labor values from the chosen surrogate countries, the Department should employ labor rates from the petition as BIA.

DOC Position

We have obtained and used Indonesian wage data for 1992 for skilled and unskilled labor (see *PRC Lighters*[8]). Because Indonesia is our primary surrogate country, we do not need to address the question of an appropriate alternative source of values for these factors.

Comment 9: Unreported Material.

Petitions assert that the Department should include in Concern Oriana's FMV the value for a material which was not included in the preliminary determination. In its questionnaire response, Concern Oriana did not provide usage information for this material, claiming that its value was not significant. Petitioners contend that the value in Ukraine is not relevant since the input would be valued in a surrogate country. Therefore, as BIA, petitioners advocate use of an average of all other direct input values as the value for this input.

DOC Position

We disagree. Verification confirmed that this factor was properly omitted since it was a waste product of the magnesium production process for which only a very small fraction was recycled into the production process. Therefore, it is appropriate not to value this input in the FMV calculation.

Comment 10: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from Ukraine that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have calculated a single, "Ukraine-wide" deposit rate applicable to all exporters in Ukraine, as well as any exporters in third countries that have not been assigned a company-specific margin. As is discussed under "All Other Companies" in the "Fair Value Comparisons" section of this notice, the record in this investigation indicates that Ukraine exporters of magnesium may not have responded to our questionnaire; therefore, the "Ukraine-wide" deposit rate has been calculated based on total BIA.

The weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Weighted-average margin percentage
Gerald Metals	103.27
MG Metals	79.87
Hochschild Partners	92.21
Ukraine-Wide Rate	104.27

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether imports the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the investigation will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on all after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7775 Filed 3-29-95; 8:45 am]

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[7] *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991)

[8] Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (59 FR 64191, December 13, 1994)

[A-570-832 and A-570-833]

Notice of Final Determinations of sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

Final Determinations

The Department of Commerce (the Department) determines that pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the Department announced its preliminary determinations on October 27, 1994, (59 FR 55424, November 7, 1994) the following events have occurred:

On October 19, 1994, Min He Magnesium (Min He), a producer and exporter of the subject merchandise, and Xiamen Xing Xia Co. Ltd (Xing Xia), an exporter of the subject merchandise, requested that we postpone our final determinations by 60 days pursuant to 19 CFR 353.20(b)(1). On November 7, 1994, we published a notice postponing the final determinations (59 FR 55424).

In January, 1995, we conducted verification of the questionnaire responses at Min He and Xing Xia. On February 10, 1995, petitioner filed a case brief. On February 17, 1995, respondents filed a rebuttal brief and petitioner withdrew its request for a public hearing.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 1 in the "Interested Party Comments" section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and

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stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) or 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The period of investigation (POI) for pure magnesium is April 1, 1993 through March 31, 1994. The POI for alloy magnesium is September 1, 1992 through March 31, 1994.

Best Information Available (BIA)

The Department's antidumping questionnaire was sent to seven companies located in the PRC, in addition to the copy sent to the Ministry of Foreign Trade and Economic Cooperation. Of these seven companies, responses were received from only one, Min He. Two companies, Luoyang Copper Working Plant and Northeast Light Alloy Fabrication Plant, replied that they did not export the subject merchandise. Two companies, Harbin Non-Ferrous Metal Smelter and Fushun Aluminum Smelter, did not respond to the questionnaires at all and the questionnaires sent to the other two companies, Yingkou Magnesium Works and Tongling Copper Smelter, were returned as undeliverable. Another company, Xing Xia, was accepted by the Department as a voluntary respondent.

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country and treat responses from individual companies as single consolidated response. Since none of the respondents requested a separate rate in either the pure magnesium or alloy magnesium investigation, all respondents are treated as one entity for the purposes of assigning an antidumping margin in each investigation.

At the time of the preliminary determination, it was unclear whether there were nonresponding potential exporters during the POI. Since the preliminary determination, we have identified nonresponding potential exporters. The required consolidated response in this case is incomplete because these companies failed to respond to the Department's questionnaire. Moreover, the portion of the response that was submitted, (*i.e.* Min He and Xing Xia) failed to verify. (*see* verification reports dated February 3, 1995)

Although the participating respondents, Min He and Xing Xia, did attempt to cooperate with the Department's requests for documentation during their respective verifications, they were not able to do so and the Department was unable to verify the accuracy and completeness of the information reported in their questionnaire responses. Therefore, the Department must assign an antidumping margin on the basis of BIA pursuant to section 776 (b) and (c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See* Allied Signal v. United States, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)). In this case, the Department has determined that the respondent, a single entity as explained above, is uncooperative because known exporters did not respond to the Department's questionnaire. This fact impeded significantly the Department's investigation.

When a respondent is uncooperative, the Department normally uses as BIA the higher of 1) the highest margin in the petition; 2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or 3) the estimated margin found for the affected firm in the preliminary determination. (*See* Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)). In this investigation, the preliminary determination margins are higher than the petition margins, as revised in the initiation notice. (*See* Initiation of Antidumping Duty Investigations: Pure and Alloy Magnesium From the People's Republic of China, the Russian Federation, and Ukraine (59 FR 21748, April 26, 1994). Therefore, as BIA, we are assigning to all exporters of PRC pure magnesium and ally magnesium the rates calculated in the preliminary determinations. (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plated From Belgium (58 FR 37083, July 9, 1993). (For further discussion of BIA, see Comment 2)

Verification

As provided in section 776(b) of the Act, we attempted to verify all information submitted by respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Interested Party Comments

Comment 1

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is less than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Respondents argued that petitioners' request for "clarification" of scope was untimely. They further argued that petitioners concerns about circumvention are merely speculative because no order yet exists as a result of this investigation. Furthermore, respondents stated that petitioners should have their concerns addressed in a request for scope review or an anticircumvention investigation.

DOC Position

We agree with petitioners that some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the record in this case show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We not that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (*See* Final Calculation Memorandum of the concurrent investigations of pure magnesium and alloy magnesium from the Russian Federation and ally magnesium from the Ukraine). Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 2

Petitioners state that the Department should base the dumping margins for all producers and exporters of magnesium from the PRC on BIA, and argue that the BIA rate should be calculated using the factors data found at verification and the lowest United States price in the petition. At verification we found discrepancies in the factor usage data, the additional unreported factors, as well as, mis-reported data on labor and electricity. However, if the suggested methodology is not used, petitioners argue that the Department should not use as BIA a rate lower than the highest rate alleged in the petition.

Min He and Xing Xia argue that, although that they were unable to provide all of the information requested by the Department, they were cooperative and provided timely responses. In view of this cooperation, they argue the Department should not resort to the punitive first tier BIA. Instead, the Department should base its BIA rate on the margins alleged in the petition. They also argue that since the Department was unable to verify the information reported, it must revert to BIA from the petition and publicly available sources, and thus not use facts found at verification to calculate the foreign market value.

DOC Position

The Department does not agree that respondents should be granted cooperative BIA rates. As stated above, because no exporter is being granted a separate dumping margin, we are assigning one country-wide margin in each of the investigations. Given that certain exporters failed to respond to our questionnaire, we are assigning an uncooperative BIA rate, pursuant to our long-standing practice.

Petitioners have asked the Department to depart from its standard practice and adjust this BIA rate based on information discovered at verification. Petitioners are essentially asking the Department to adjust the BIA rate to make it more accurate. However, it is a generally accepted principle that BIA "is not necessarily accurate information, * * * [but rather is] * * * information which becomes usable because respondent has failed to provide accurate information." (See *Association Columbiana de Exportadoras de Flores* v. *United States*, 704 F. Supp. 1114, 1126 (Ct. Int'l Trade 1989), *rev'd in part on remand*, 717 F. Supp. 834 (Ct. Int'l Trade 1989), *aff'd on other grounds*, 901 F.2d 1089 (Fed Cir. 1990) *cert. denied*, 111 S. Ct. 136 (1990)). The Department's practice is to apply, as BIA, the highest margin already calculated and not to engage in the exercise of attempting to calculate the highest possible margin. The purpose of resorting to BIA is not to be punitive but to encourage respondents to properly respond to the Department's requests for information. The Department believes that the 108.26% rate for pure magnesium and 79.38% rate for alloy magnesium accomplish this purpose.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC that are entered, or withdrawn from warehouse, from consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall in each proceeding, require a cash deposit or posting of a bond equal to 108.26 percent *ad valorem* on all entries of certain pure magnesium from the PRC and 79.38 percent *ad valorem* on all entries of certain alloy magnesium from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not

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exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7776 Filed 3-29-95; 8:45 am]

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(A-821-805, A-821-806)

Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3773, (202) 482-0631 or (202) 482-0922, respectively.

Final Determination

We determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to respondent exporters Amalgamet Canada, Greenwich Metals, and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

All participating respondents' (in each proceeding) supplemental questionnaire responses were received and verifications were conducted as detailed in Appendix I.

On January 31, 1995, we amended our preliminary determinations to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Certain respondents (Amalgamet Canada, AVISMA, SMW, Gerald Metals, Greenwich Metals and Hochschild Partners) and petitioners filed case briefs. Rebuttal briefs were submitted by petitioners and the following respondents: Amalgamet Canada, AVISMA, SMW, Razno, Interlink, & AIOC, Gerald Metals, Greenwich Metals, and Hochschild Partners. A public hearing was held on February 28, 1995.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 9 in the "Interested Party Comments" section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation ("POI").

from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium to the United States by AIOC, Gerald Metals, Greenwich Metals, Hochschild Partners, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Amalgamet, Gerald Metals, and SMW, were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the first company to sell Russia-produced alloy magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Russia-wide" deposit rate for alloy magnesium.

Amalgamet Canada is closely related to W&O Bergmann in that a large percentage of each company's shares are owned by a common owner (Preussag). Bergmann was sent an antidumping questionnaire in August, but, despite its close relationship to Amalgamet, never apprised us of Amalgamet's POI U.S. sales of subject merchandise.[2]

The questionnaire sent to Bergmann clearly instructed Bergmann to report "the names and addresses of all related companies in all countries dealing" with the subject merchandise. Had Bergmann properly participated in these investigations, Amalgamet would have been identified in a timely fashion, and would have been instructed to respond to the questionnaire. Amalgamet and Bergmann should have known that Amalgamet's participation in these proceedings was mandatory based on Bergmann's receipt of the questionnaire. Accordingly, Amalgamet and Bergmann will be assigned a deposit rate based on the best information available ("BIA") based on their failure to participate despite early notice of the investigations.

B. All Other Companies

In both proceedings, there is nothing on the record to indicate that any exporters within Russia failed to report U.S. sales of subject merchandise during the POI. The only Russian exporter to have sold either product to the United States during the POI is SMW. Because SMW's calculated margin in both proceedings is zero, we have based the "Russia-wide" deposit rate on a simple average of the rates applicable to all companies considered mandatory respondents, excluding calculated rates that are zero or *de minimis*. In these proceedings, because all such companies' margins are based on BIA, the "Russia-wide" rate is also based entirely on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in Coumarin,[3] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the

[2] Until just prior to our preliminary determinations, the record showed that Bergmann by itself was a mandatory respondent; this changed (albeit temporarily given Amalgamet's post-preliminary-determination revelation that it had made U.S. sales) when Bergmann stated in an October 1994 fax that earlier-disclosed sales of subject merchandise, although to a U.S. company, were sold "fob Rotterdam, Antwerp or Zeebrugge" without knowledge of destination on Bergmann's part.

[3] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

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highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Russia-wide deposit rate at 100.25 percent and 153.65 percent, *ad valorem*, in the pure magnesium and alloy magnesium, respectively. These margins represent the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

United States Price

As detailed below, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We based USP on ESP, in accordance with section 772(c) of the Act, when the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

Both purchase price and ESP were based on packed prices to unrelated purchasers in the United States, according to the applicable delivery terms, with appropriate price adjustments. The following is a summary of U.S. price calculations for each exporter, with an asterisk ("*") designating price adjustments applicable to some but not all sales (see Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of these adjustments).

Exporter	Terms of sale	Price adjustments
Pure Magnesium		
AIOC (PP, ESP)	CIF, FOB, Delivered	Foreign inland freight, storage charges, inspection charges*, sample costs charges*, document charges*, other foreign inland freight, dunnage, ocean freight, seaway tolls, U.S. duty, stevedoring, wharfage*, unloading charges*, warehousing*, U.S. inland freight.
Interlink (PP)	Delivered, In-Warehouse	Foreign insurance, ocean freight, marine insurance, procedure fees, harbor maintenance fees, U.S. inland freight, U.S. inland insurance*, U.S. brokerage.
Gerald (PP)	In-Warehouse, Delivered, FOT Warehouse.	Foreign brokerage, foreign inland freight*, ocean freight, U.S. inland freight*, U.S. brokerage, oxidation credits.*
Greenwich (PP, ESP)	Delivered, FOT, In-warehouse.	Discounts*, foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight*, U.S. inland insurance, U.S. brokerage, third party payments.*
Hochschild (PP)	Delivered	Foreign brokerage, ocean freight, marine insurance, U.S. duty*, U.S. inland freight*, U.S. brokerage*, third party payments.*
HDM (ESP)	Delivered	Ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage*, repacking*, U.S. containerization*, other containerization.
MG (PP, ESP)	Delivered	Foreign brokerage*, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, repacking.*
Razno (PP)	CIF, FOB	Foreign brokerage, foreign inland freight, oxidation credits.*
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Alloy Magnesium		
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Gerald (PP)	In-Warehouse, Delivered FOT Warehouse.	Foreign brokerage*, foreign inland freight*, ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage, third party payments.

From each exporter's U.S. price, we also deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) as follows: For SMW and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for all other exporters, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters did not in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for exporter-incurred selling expenses, nor did we deduct export taxes paid by Russian companies to the Russian government because the actual amounts paid are an internal expense within an NME country. We adjusted reported marine insurance and ocean freight charges for Razno as follows: a reported figure that was an extended value (*i.e.*, an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount.

The following adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, for details of these adjustments):

AIOC (Pure Magnesium): AIOC's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. Based on verification findings, minor corrections to reported figures for inspection fees, sample costs, dunnage, ocean freight, seaway tolls, U.S. duties, unloading. Additionally, we deducted an amount for marine insurance based on verification.

Gerald Metals (Pure Magnesium and Alloy Magnesium): Minor corrections to reported figures for foreign brokerage, foreign inland freight, ocean freight, U.S. brokerage, third party payments, and oxidation credits were made based on verification findings.

Hochschild Partners (Pure Magnesium): Hochschild's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. An additional unreported U.S. sale was discovered at verification and included in its final sales listing. For purposes of calculating a unit margin for this sale, we applied the highest reported charges for ocean freight, foreign brokerage and marine insurance, as well as the highest reported U.S. movement charges applicable to the delivery terms of this sale. Minor adjustments to reported figures for foreign brokerage, ocean freight, and marine insurance were also made based on verification findings. Finally, third party payment figures relating to certain sales were disclosed at verification.

Hunter Douglas (Pure Magnesium): Minor corrections to reported figures for ocean freight, U.S. duty, U.S. brokerage, and U.S. containerization charges were made based on verification findings.

Interlink (Pure Magnesium): Interlink's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that had been improperly excluded. Additionally, minor corrections to reported figures for ocean freight and U.S. brokerage were made based on verification findings.

Razno Alloys (Pure Magnesium): Razno's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that verification revealed had been improperly excluded. Additionally, although we considered Razno a Russian company for our preliminary determination because its sales office is in Moscow, we have determined that Razno would more properly be characterized as a Swiss company. It is registered in Switzerland, its accounts are kept in Switzerland, and its ownership is majority non-Russian. Finally, minor corrections were made to reported figures for foreign brokerage based on verification.

Foreign Market Value

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We recalculated certain inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) A factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We also granted certain by-product offsets against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value factors of production, with the following exceptions: (1) We used a publicly available, published Brazilian rate for unskilled labor; (2) we used a publicly available, published Brazilian unit price for natural gas; and (3) we applied a publicly available, published Brazilian industrial rate for electricity used by electricity-intensive industries with comparable levels of electricity consumption and capacity as magnesium producers.

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. Alternatively, an NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs (a market-oriented industry or "MOI" claim).

In these investigations, the Russian manufacturers, Avisma and SMW, claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994. Alternatively, the two companies claim MOI for the magnesium industry in Russia.

Regarding the revocation of NME status, the Department's analysis centers around a government's role in economic activity. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland (58 FR 37205, July 9, 1993). Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Regarding the MOI claim, information on the record suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, as stated in the preliminary determination, we determine that the prices or costs of producing magnesium in Russia should not be used to calculate fair value. No new information has been presented since then to alter this conclusion.

B. Separate Rates

In each of these proceedings, SMW requested that the Department calculate a dumping margin and assign a deposit rate separate from other potential Russian exporters. For our preliminary determination, we decided that we did not need to address the issue because (1) SMW was the only Russian exporter of alloy magnesium; and (2) we decided that SMW's pure magnesium exports were too small to consider in margin

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calculations. However, we have now reconsidered our position that SMW's status as the only Russian company to sell to the United States obviates the need for a separate rates analysis when a separate rates claim has been put forward. SMW has claimed that government ownership and control are absent and, therefore, as a POI exporter, it is entitled to consideration of its claim.[4]

Further, we no longer consider SMW's pure magnesium sales insignificant because we have determined, as discussed above, that Razno Alloys, preliminarily found to be a Russian company, is actually a Swiss company. Razno's redefined status as a Swiss company renders SMW's pure magnesium exports significant in that SMW was the only company in Russia to have exported any pure magnesium directly to the United States. Thus, SMW is the only Russian company that exported either pure or alloy magnesium to the United States.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department employs the criteria developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[5] and *de facto*[6] governmental control over export activities.

Ownership

SMW is a joint-stock company ("JSC") that was state-owned until 1992, when a transition to private and employee ownership was begun. At the end of the POI, the Perm Regional Fund of State Property ("Perm Fund") owned 20 percent of SMW's shares, with the rest of shares owned by a workers collective—51 percent—or private companies (*e.g.*, investment funds). Verification supported SMW's account of its ownership status.

Control

Government control over SMW's export operations (both *de jure* and *de facto*) is absent. Specifically:

The July 1, 1992, Decree of the President of the Russian Federation: Measures for the Organization and Reconstruction of State Enterprises, and the Transferring of State Enterprises into Joint Stock Companies ("Decree 721"), establishes that JSCs are "out of the control of Ministries, State and Local administrative organs and authorities."

The July 3, 1991, law, "On Privatization of State-Owned and Municipal Enterprises," is divided into three sections dealing with general principles, procedures and means, and concluding principles. It is also divided into 31 articles. Significant articles include:

Article 6, which establishes Russian Federal Property Fund to act as temporary "possessor of RSFSR [Russian Federation] deeds to enterprises" and to sell shares and deeds to enterprises. Limits Fund's voting rights to a maximum of 20 percent of shares. States that Fund may not "interfere in the operations of enterprises except in cases stipulated by enterprises' founding documents and the legislation of the RSFSR • • •"; and

Article 9, which forbids buying of enterprises undergoing privatization by state entities or certain state-held companies/funds.

With respect to *de facto* aspects of government control over export activities, SMW sets its own prices[7] and "has free access to" the proceeds and profits of its export sales, would finance its own losses if they occurred, and could purchase foreign currency with rubles or otherwise dispose of assets (but has never actually had done so). Verification of sales transactions revealed no evidence of government involvement in the disposition of SMW's proceeds from export sales aside from the already-reported requirement that SMW convert half of foreign exchange earnings to rubles.

As a shareholder, the Perm Fund was able to appoint one of SMW's 15 Board members and votes in the appointment of the general director. The other 14 Board members are employees. In fact, minutes of SMW's 1993 Board meeting, examined at verification, did not appear to indicate participation by a representative associated with the Perm Fund or with any other government entity.

Although the Board of shareholders did not appoint SMW's general director, it did, based on the minutes of its 1993 meeting, reaffirm the basic terms of SMW's contract with the general director, who had been appointed before SMW became a JSC. This reaffirmation indicates that the Board controlled decisions regarding the appointment of management even though it did not choose to make a management change upon becoming a JSC.

In summary, the evidence favors a finding that government control is absent and, accordingly, we find that SMW should be considered a separate company for purposes of assigning a deposit rate.

C. Surrogate Country Selection

We selected Brazil as the appropriate surrogate country for the reasons set forth in our preliminary determinations. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Brazil.

D. Factors of Production

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We have adjusted the surrogate inland freight charge for transporting factor inputs from supplier to factory to reflect the surrogate value for the actual quantity being transported. We recalculated inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our final calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value the raw materials, except where corrections were possible or necessary.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. No new information has been placed on the record since our preliminary determination. Therefore, we continue to find that critical circumstances exist with respect to all imports of alloy magnesium except those of Gerald Metals and SMW.

Interested Party Comments

Comment 1: Russian Manufacturers' Knowledge of Destination

Petitioners contend that Avisma and SMW should be assigned BIA margins because they knew at the time of sale to third-country resellers that the merchandise was destined for the United States. Petitioners note that the producers completed GSP forms, sold to customers that had U.S. addresses, and were explicitly told by some customers of merchandise's destination. Because of this knowledge on Avisma's and SMW's part, petitioners argue, resellers claiming to be the first to sell to a U.S. customer in the sales process should be assigned the "Russia-wide" rate.

Avisma and SMW argue that they did not know at the time of sale that merchandise was destined for the United States. The companies assert that the GSP forms were filled out by the producers after the sales were made, indicating that at the time of sale the producers did not know the destination. Avisma and SMW argue that the customer's address is irrelevant because magnesium is a commodity product that can be sold anywhere in the world. Finally, the companies point out that verification confirmed that there was no indication that either Avisma or SMW failed to report any U.S. sales.

DOC Position

We agree with Avisma and SMW. Based on our examination of sales and export documents at verification, we found nothing to indicate any unreported instances of merchandise being sold with the knowledge at the time of sale that the ultimate destination was the United States. We verified that simply because a purchaser's address is in the United States does not mean that the merchandise is destined for the United States. In fact, magnesium sold to purchasers with U.S. addresses was frequently shipped to non-U.S. destinations. Although SMW did, as some exporters stated, eventually learn of some of its merchandise's sale to U.S. customers, this knowledge always came after SMW had sold the merchandise.

Comment 2: Completeness and Accuracy of Various Resellers' Reporting of U.S. Sales

Petitioners contend that total or partial BIA is warranted for AIOC, Razno, Interlink, Hochschild and Greenwich Metals because these companies made various errors in reporting U.S. sales that were not revealed until just prior to, or during, verification. Petitioners also advocate total BIA for each exporter for which any verification revealed that the exporter failed to report sales of the subject merchandise, as well as for all companies that refused verification.

The companies argue that BIA is not warranted because the errors made were not serious and were corrected.

DOC Position

We agree with petitioners in part. We determined that the errors cited by petitioners for AIOC, Razno, and Interlink were inadvertent and were, in the end, verified. There is nothing to indicate that the omission of these sales would have had any impact on these companies' margins. Further, we are satisfied that the record is now complete and accurate as to these companies' POI sales of subject merchandise. Accordingly, the reported information, as corrected based on verification, is the appropriate basis for our respective LTFV determinations for AIOC, Razno, and Interlink.

We disagree that BIA is warranted for Hochschild's failure to report a pre-POI contract discovered at verification; instead, we have included in Hochschild's sales listing information gathered at verification regarding this sale.

We agree with petitioners that Hochschild and Greenwich Metals incorrectly reported certain sales as U.S. sales. Verification demonstrated that the contracts setting terms of sale by these companies' suppliers included an identification of the shipment destination. This fact outweighs the contention that the companies had the option of transshipping the merchandise to another country. Accordingly, we determine that Greenwich did not make any U.S. sales of alloy magnesium during the POI and we have not calculated a company-specific alloy magnesium margin for Greenwich. Instead, Greenwich will be subject to the "Russia-wide" rate. We have also eliminated these improperly included sales from Hochschild's sales listing and have assigned the appropriate margin to Hochschild's European supplier.

Finally, with the exception of those participating exporters that have remedied reporting deficiencies, any exporter that improperly did not report POI sales is subject to suspension of liquidation at the "Russia-wide" rate (which is based entirely on BIA), as are all companies that reported having made no sales.

Comment 3: Scope

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Greenwich argues that the proposed revised scopes are flawed because they appear to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in

[4] Although Avisma also made a separate rates claim, it did not make any POI direct U.S. sales. It is, for good reason, unprecedented for the Department to entertain separate rates claims from companies that have not made direct sales to the United States: Analyzing and verifying separate rates claims from such companies would be a great burden, and government involvement in export sales operations could be hard to fully evaluate absent sales to the United States.

[5] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[6] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).

[7] Although an export license was required in order to make export sales, and the nominal purpose was to allow the licensing authority to approve the export price, SMW characterized this procedure as pro forma. Verification revealed no indication that such control had ever been exercised: export licenses that had been issued, examined in the context of reviewing SMW's sales, appeared to reflect without exception prices negotiated between SMW and its customers. The price negotiation process did not appear to involve any government authorities.

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applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum.) Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 4: Surrogate Value for Electricity

Avisma and SMW contend that published, public information indicates that large industrial users of electricity in Brazil receive a lower electricity rate (compared to other types of users). Respondents assert that information on the record indicates that Avisma and SMW are "large industrial users" of electricity and, as such, would receive a lower electricity rate if they bought electricity in Brazil. Therefore, respondents argue the appropriate value for electricity is $0.0235/Kwh.

Petitioners contend that the Department should continue to use the $0.055/Kwh rate for electricity value because the record does not show that the rate advocated by Avisma and SMW is the rate actually paid by the magnesium industry in Brazil. Petitioners charge that the record shows that the Brazil "large industrial user" rates are (1) below cost because they are subsidized, and (2) generally not applicable because they are established pursuant to individual negotiations. Even if the Department were to accept Brazil electricity rate schedules submitted by Avisma and SMW, petitioners contend, there would be no way to determine which rate would be appropriate for Avisma and SMW.

DOC Position

We agree with Avisma and SMW that the Brazil "large industry user" rate is the rate they would have received had they been electricity consumers in Brazil during the POI. For each company, the record contains verified figures on both POI magnesium production and the number of kilowatt hours needed to produce one metric ton. Dividing the total number of kilowatt hours used in POI magnesium production by the number of hours in the POI clearly shows that, at least during the POI, the kilowatt capacity of each user was significantly higher than the minimum necessary to receive the "large industrial user" rate in effect in Brazil during the POI. Although subsidization would not necessarily render a surrogate value inappropriate, petitioners have not in this instance presented evidence of subsidization (providing only a vague reference to possible subsidies in the Amazon region).

Comment 5: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for by-products of the magnesium production process was erroneous for the following reasons: (1) The producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that the benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Avisma and SMW argue that there is nothing on the record indicating that they should not qualify for by-product offsets. With respect to valuation, the companies do not dispute that an appropriate purity level adjustment should be made, but contend that there are no processing costs associated with the by-products which are not captured in costs associated with primary product production. Finally, Avisma and SMW argue that an adjustment to cost of materials is the appropriate adjustment because the Department is using the factors-of-production methodology to calculate FMV.

DOC Position

We agree with petitioners in part and with Avisma and SMW in part. First, because the by-products result from the production process and are either used by the magnesium producer or sold for use by some other company in the NME country, we agree with Avisma and SMW that they are a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted surrogate CIF import value of the by-products to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate. For by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases the surrogate overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (*see, e.g., Coumarin*[8]).

Comment 6: Surrogate Factory Overhead

Petitioners contend that the Department must account for costs associated with the rebuilding of electrolytic cells by adjusting upward the surrogate overhead percentage used in the preliminary determinations. Petitioners suggest using their own experience as to the cost of cell rebuilds expressed as a percentage of the sum of material, labor, and energy costs. Petitioners also suggest that the Department should, in calculating FMV, use an overhead ratio that includes energy in the numerator since verified energy amounts for the producers represent only energy directly related to production.

Avisma, SMW, Interlink, Razno, and AIOC argue that an adjustment to overhead based upon petitioners' cell rebuild experience would be inconsistent with both the Act and Department practice and is, therefore, unwarranted. With respect to energy, these respondents argue that (1) inclusion in the denominator of the overhead ratio should be limited to indirect energy costs, and (2) only direct energy should be included in the base to which the overhead percentage is applied in calculating surrogate overhead.

DOC Position

We agree with respondents that the adjustment proposed by petitioners is not appropriate in this instance. Although we may take into account petitioners' experience in extraordinary circumstances, we generally do not consider petitioners' costs as an appropriate benchmark by which to test the accuracy of surrogate country values. Further, the fact that one element (*i.e*, cell rebuild) of factory overhead has significant cost associated with it does not invalidate the overhead percentage used. Factory overhead is a combination of elements, some of which may be more or less expensive depending on the product or even the company. The Department has rejected item-by-item evaluation of overhead components in the past (see the final determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania, (52 FR 17433, 17436, May 8, 1987)), and we see no reason to alter this practice in this case.

Further, there is no contrary evidence which indicates that the overhead percentage used for the preliminary determinations is an inappropriate surrogate figure. In the absence of an actual overhead for Brazil's magnesium industry, the Department will continue to rely on the surrogate overhead percentage used in the preliminary determination.

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that the percentage used to account for producers' general expenses in calculating FMV should be changed from the statutory minimum to 26.92 percent, which is the ratio of SG&A expenses to cost of goods sold based on figures reported in the 1992 financial statement of an aluminum manufacturer in Brazil. Petitioners also argue that an additional amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

With respect to surrogate SG&A for manufacturers, Avisma, SMW, Interlink, Razno and AIOC argue that the figures put forward by petitioner are bogus because they involve application to an inflation-adjusted base of a percentage that is based on figures that have not been adjusted for inflation. These respondents argue that their own submitted surrogate information is superior to petitioners' information because it is inflation-adjusted. With respect to the question of whether to include in FMV an amount for reseller general expenses, the five aforementioned respondents, along with Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in Coumarin.

DOC Response

With respect to the question of the appropriate surrogate for manufacturer general expenses, we agree with Avisma, SMW, Interlink, Razno and AIOC that use of inflation-adjusted figures is the most appropriate basis for calculating the SG&A ratio. Accordingly, we have used either an appropriate figure from the record or the statutory minimum (10%), whichever is greater.

We also agree with respondents that addition to FMV of actual reseller general expenses would be inappropriate. Given that Russia is an NME and the Russian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g.*, Coumarin and Sparklers[9]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Comment 8: Market Orientation (Russia and Magnesium Industry)

Avisma and SMW contend that, although they "do not expect the magnesium investigation[s] to result in the revocation of Russia's NME status," consideration of whether to revoke Russia's NME status should hinge upon whether there are concrete indicators of market-driven activity rather than on the degree to which the market has moved toward "an orderly Western-style brand of capitalism." The companies also state for the record that they demonstrated that the Russian magnesium industry is market oriented, but opted not to pursue this tack because they anticipated favorable outcomes using factors of production valued in a surrogate country.

Petitioners state that the records in these investigations offer no basis for determining that Russia is no longer an NME for purposes of these investigations, nor do the records support a finding that the magnesium industry is market oriented.

DOC Position

As discussed in the "Foreign Market Value" section, above, we have determined that it would be inappropriate to alter Russia's designation as an NME, and that the Russian magnesium sector is not a market-oriented industry. Should these

[8] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994)

[9] Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991)

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issues arise in future antidumping proceedings involving merchandise from the Russian Federation, the status of market reforms and market orientation of specific industries will be carefully evaluated if raised by parties in those proceedings.

Comment 9: Separate Rates

Petitioners argue that Avisma and SMW are subject to *de jure* and *de facto* government control and thus do not warrant separate rates.

SMW and Avisma counter that they are fully entitled to separate rates.

DOC Position

We agree with respondents in part. As is detailed above, we find that SMW has demonstrated the absence of *de jure* and *de facto* government control and thus is entitled to a separate rate in both proceedings. However, because Avisma did not make any POI U.S. sales of subject merchandise in either proceeding, it is not necessary to address the question of whether Avisma should be assigned a separate rate since such an action would result in no difference in the deposit rate that would apply to any future direct U.S. sales by Avisma.

Comment 10: Export Taxes

Petitioners argue that a tax imposed by the Russian government on magnesium exports must be accounted for in making LTFV comparisons because (1) section 772(d)(2)(B) requires deduction from U.S. price of export taxes, and (2) the tax imposition had the effect of reducing net receipts to the Russian producers selling their magnesium.

DOC Position

We disagree, and have not accounted for the export tax in our LTFV calculations. With respect to the reduction of net receipts to Russian producers, the premise in determining values in NME proceedings is that pecuniary aspects of internal transactions are considered meaningless and thus ignored. The export tax paid to an NME government is an intra-NME transfer of funds between a Russian producer and the Russian government. As such, it is inappropriate to account for such transfers in our LTFV analysis just as it is NME prices and costs.

The Department has interpreted section 772(e)(2), another paragraph dealing with the general question of reductions to U.S. price, as not requiring the deduction of selling expenses from ESP when FMV is based on factors of production. The issue of the export tax is analogous. Similarly, we interpret 772(d)(2)(B) as not requiring the deduction of an intra-NME transfer of funds, even if it is in the form of an export tax. Finally, we note that, in these proceedings, even if a reduction to USP to account for the export tax had been deemed appropriate, it would not have resulted in positive margins for any company receiving a calculated rate.

Comment 11: Surrogate Country Selection

Avisma and SMW contend that Poland, not Brazil, is the more appropriate surrogate country because Poland is the market economy country that most resembles the Russian Federation in economic terms and because Poland produces comparable merchandise. The companies assert that, in selecting a surrogate country, economic similarity should outweigh production of the investigated product.

Petitioners argue that Brazil is the appropriate surrogate country citing, among other factors weighing against selection of Poland, the fact that Poland produces an insignificant quantity of aluminum and no magnesium.

DOC Response

We agree with petitioners. Selection of a proper surrogate country must be made on case-by-case basis, in consideration of the Department's judgment of how to weigh facts on the record within the parameters prescribed by statute and regulations, as well as case precedent. Based on our experience in this case and previous proceedings involving magnesium, we judged electricity use to be a very important factor and thus gave it great weight under the rubric of product comparability. Given the economic comparability of Brazil to the Russian Federation, and since Brazil is a significant producer of electricity-intensive products such as magnesium and aluminum, we continue to find that Brazil is the most appropriate surrogate country in this case.

Comment 12: Quantity and Surrogate Value of Natural Gas, Liquid Petroleum Gas, and Heavy Oil

Petitioners contend that the Department should correct for a mathematical error made in converting a surrogate value for natural gas from a price per cubic meter to a price per metric ton. Petitioners also suggest a value of $290/MT to be the appropriate surrogate value for liquid petroleum gas. Petitioners claim that, for both Avisma and SMW, reported usage of heavy oil and natural gas appears to represent theoretical amounts that do not account for thermal losses (which petitioners suggest should be at least 30 percent).

Avisma, SMW, AIOC, Interlink and Razno argue that a value of $142.86/MT is correct because of an error in the source of petitioners' figure.

DOC Position

We agree with Avisma et al. as to the proper conversion of natural gas quantities. We do not need to address the question about the appropriate value for LPG because we are basing the value for this factor on natural gas. With respect to actual use of heavy oil and natural gas, we did not discover the error claimed by petitioners at verification and thus have not changed the reported quantities.

Comment 13: Quantity and Surrogate Value for Timber

Petitioners contend that the Department, in calculating FMV, should use the information on the record to value the timber used by Avisma and SMW and convert from cubic meters to kilograms.

Avisma, SMW, AIOC, Interlink and Razno advocate conversion of reported figures to board feet rather than kilograms, and use of the POI value of lumber per board foot in the United States.

DOC Position

We agree with petitioners and have valued timber based on their suggested methodology. With respect to the contention of Avisma et al., use of U.S. values for production factors is not appropriate in NME proceedings, particularly when surrogate-country values are available.

Comment 14: Surrogate Values of Carnallite Concentrate and Dehydrated Carnallite

Petitioners argue that the price of dolomite is not an appropriate surrogate for carnallite concentrate and dehydrated carnallite (which, unlike dolomite, are processed materials). Petitioners advocate increasing the dolomite value used in the preliminary determinations to account for processing associated with the manufacture from raw carnallite of either concentrated carnallite or dehydrated carnallite.

Avisma and SMW argue that the price of dolomite is a reasonable surrogate for the price of carnallite concentrate because the two materials have similar magnesium contents and the processing necessary to transform raw carnallite into carnallite concentrate is minimal. The companies contend that the value for calcinated dolomite is not a suitable surrogate for carnallite concentrate because the two materials have completely different chemistries (chiefly, the absence of magnesium chloride in calcinated dolomite) and are used in substantially different magnesium production processes. The two companies advocate calculation of a value for dehydrated carnallite used by SMW based on Avisma's factors of production for that commodity.

DOC Position

We agree with Avisma and SMW. We used the price of dolomite in Brazil, as provided in the petition, as the surrogate for carnallite concentrate. Dolomite, with a comparable magnesium chloride content, is the most appropriate substitute available in the absence of an actual price in Brazil for carnallite concentrate. We have also calculated a value for dehydrated carnallite based on Avisma's factors of production.

Comment 15: Quantity and Surrogate Value of Labor

Petitioners advocate corrections to reported labor figures based on verification findings. Petitioners also argue that the Department should use as a surrogate 1993 wage rates in Brazil to value unskilled labor.

DOC Position

We agree with petitioners and have both corrected the reported labor figures and adopted the alternative value for unskilled labor.

Comment 16: Inflation Adjustments for Brazil Values

Petitioners contend that 1992 Brazil values used as surrogate values should be adjusted for inflation.

Avisma, SMW, AIOC, Interlink and Razno argue that no adjustment is appropriate since dollar-denominated prices of commodity chemicals cannot be assumed to have risen between 1992 and the POI.

DOC Position

We disagree with petitioners. Since we do not know the dates or exchange rates used to convert these values into dollars, an appropriate adjustment (if any) for dollar inflation cannot be determined. Further, the magnitude of any adjustment would likely be small since the data are nearly contemporaneous with the POI.

Comment 17: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from the Russian Federation that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The following companies will be excepted from these instructions because their sales of pure magnesium were found not to have been sold below fair value: AIOC, Amalgamet, Gerald Metals, Greenwich Metals, Hochschild Partners, Hunter Douglas, Interlink, MG Metals, Razno Alloys, or SMW. These companies will be excluded from an antidumping duty order should one be issued.

We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after August 9, 1994 (*i.e.*, the date that is 90 days prior to the date of publication of this notice in the **Federal Register**). Gerald Metals and SMW will be excepted from these instructions because their sales of alloy magnesium were found not to have been sold below fair value. The Customs Service shall, in each proceeding, require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

A. PURE MAGNESIUM

Exporter/manufacturer/producer	Weighted-average margin percentages
AIOC*	0.00
AIOC/Other	100.25
Gerald Metals*	0.00
Gerald Metals/Other	100.25
Greenwich Metals*	0.00
Greenwich Metals/Other	100.25
Hochschild Partners*	0.00
Hochschild Partners/Other	100.25
Hunter Douglas*	0.00
Hunter Douglas/Other	100.25
Interlink*	0.00
Interlink/Other	100.25
MG Metals/Avisma	0.00
MG Metals/SMW	0.00
MG Metals/Other	100.25
Razno Alloys/SMW	0.00
Razno Alloys/Other	100.25
SMW/SMW	0.00

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A. PURE MAGNESIUM—Continued

Exporter/manufacturer/producer	Weighted-average margin percentages
SMW/Other	100.25
Russia-wide	100.25

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

B. ALLOY MAGNESIUM

Manufacturer/producer/exporter	Weighted average margin percentages	Critical circumst.
Gerald Metals*	0.00	No.
Gerald Metals/Other	153.65	Yes.
SMW/SMW	0.00	No.
SMW/Other	153.65	Yes.
Russia-wide	153.65	Yes.

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX I

Company	Rus. pure	CASE rus. alloy	Supp. QR filing date	Verif. start date	Verif. end date	Location
Hunter Douglas	X			12/8	12/8	Chicago.
MG Metals	X			12/6	12/7	Chicago.
Gerald Metals	X	X	11/1, 30	12/13	1/25	Lausanne and Stamford CT.
Interlink	X		11/8	12/15	1/10	Fribourg and NYC.
SMW	X	X		1/18	1/19	Solikamsk, Russia.
AVISMA	X			1/16	1/17	Berezniki, Russia.
Razno	X			1/23	1/24	Zurich.
Hochschild Partners	X			1/26	1/27	NYC.
Greenwich Metals	X	X		1/30	1/31	Greenwich, CT.
Amalgamet	X	X	1/4	2/1	2/2	Toronto.
AIOC	X		11/21	12/15	2/9	NYC.

[FR Doc. 95–7777 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

U.S. DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Applications: Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications to organizations to operate its Minnesota Native American Business Development Center. The solicitation was originally published in the **Federal Register**, Wednesday, January 25, 1995, Vol. 60, No.16; 4890.

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7772 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Applications: Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate its Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the Minnesota Metropolitan Area. The award number of the NABDC will be 05–10–95006–01.

DATES: The closing date for applications is May 1, 1995. Applications must be received on or before May 1, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held at 10:00 a.m., on April 11, 1995, at the Chicago Regional Office, 55 East Monroe Street, Suite 1406, Chicago, Illinois 60603.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D. C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: David Vega, Regional Director at (312) 353–0182.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from September 1, 1995 to September 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. If the recommended applicant is the current incumbent organization, the award will be for 12 months.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, § 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, § 26.605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7773 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Consultant Applications: Nationwide

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications to operate its Native American Business Consultant (NABC) Program. This solicitation was originally published in the **Federal Register**, Thursday, January 12, 1995, Vol. 60, No. 8, 2947.

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7771 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cleveland, OH

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under for its Minority Business Development Center (MBDC) Program to operate the Cleveland, Ohio MBDC. This solicitation was originally published in the **Federal Register**, Monday, October 17, 1994, Vol. 59, No. 199, 52288.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7770 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cincinnati

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate its Cincinnati, Ohio Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Cincinnati Metropolitan Area. The award number of the MBDC will be 05–10–95008–01.

DATES: The closing date for applications is May 1, 1995. Applications must be received in MBDA's Executive Secretariat on or before May 1, 1995. A pre-application conference will be held at 10:00 a.m., on April 11, 1995, at the Chicago Regional Office, 55 East Monroe Street, Suite 1406, Chicago, Illinois 60603.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: David Vega at (312) 353–0182.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from September 1, 1995 to September 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement.

If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

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Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7774 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Technology Administration

[Docket No. 950313072–5072–01]

RIN No.: 0693–AB37

Financial Assistance for Research and Development, U.S.-Israeli Science and Technology Program

AGENCY: Tecnology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Under Secretary for Technology of the United States Department of Commerce invites proposals for financial assistance under the U.S.-Israeli Science and Technology Program (the "Program"). The Program will assist U.S.-based industrial firms that have entered into U.S.-Israeli joint ventures (partnerships of United States and Israeli companies) to carry our research and development on long-term, medium- to high-risk technologies. This Program is separate from the existing Bi-national Industrial R&D Foundation (BIRD), which continues to offer support for commercial joint ventures. Inquiries about BIRD assistance should be addressed directly to the BIRD Foundation, Tel Aviv, Israel.

Such projects should focus on research, development and commercialization of technologies that are not appropriately funded by other U.S. or Israeli government-funded research and development efforts. This assistance will take place through the use of cooperative agreements with U.S.-based industrial firms pursuant to this Notice.

Funding will be made directly to the U.S. firms that are partners in the U.S.-Israeli joint ventures. Funding from the U.S. Department of commerce for the Program is limited to the U.S. partner(s) to a U.S.-Israeli joint venture, with funding for the Israeli partner(s) to be provided by the Israeli Government. On December 21, 1994, the Technology Administration published a notice in the **Federal Register** to announce this Program (FR 65756), including the availability of funds for a first round of awards. Funding recipients for this first round were announced on February 6, 1995, referenced in more detail below.

DATES: Applications must be received on or before Close of Business May 19, 1995. It is expected that the review and selection process will take approximately thirty (30) days.

ADDRESSES: Applications must be submitted to: U.S.-Israel Science and Technology Commission, Room 7068, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lee Bailey, Executive Director, U.S./Israel Science and Technology Commission, telephone number (202) 482–6351.

SUPPLEMENTARY INFORMATION: In March, 1993, President Clinton and Israeli Prime Minister Yitzhak Rabin announced their intention to create the U.S.-Israeli Science and Technology Commission (the "Commission") to promote U.S.-Israeli cooperative science and technology activities that could benefit the two nations' civilian high technology commercial sectors, and create jobs and economic growth. The Commission was established by an agreement of January 18, 1994 between the U.S. and Israeli governments, and plans to implement certain of its objectives through a U.S. non-profit corporation (hereinafter "USNPC").

The Commerce Department expects that the USNPC itself will award future financial assistance agreements under the Program, and may also be in a position to award the agreements contemplated by this notice. Should this occur, applicants that have submitted proposals that remain under review will be asked to transfer their proposals to the USNPC, and will receive further information about the requirements that apply to the USNPC's financial assistance agreements. Applicants should take note that the USNPC's requirements will differ in certain respects from those announced in this notice, including modification with respect to accounting, reporting, and intellectual property requirements, and the adoption of award recovery policies that would apply in cases where the USNPC-sponsored projects result in commercially successful products. Applicants that enter into agreements with the Commerce Department may also be asked to consent to the Department assigning their agreements to the USNPC at a later point, and to negotiate any modifications to the agreement that may be necessary to satisfy the USNPC's financial assistance requirements. For additional information, applicants may contact the Information Contact Person listed above. Funding is intended for projects (1) That will have significant economic benefits for both the United States and Israel and (2) that in general are in the areas of the environment, energy, health, biotechnology, information processing/telecommunications or agriculture, or in the commercialization of defense technologies.

This program announcement has been determined to be not significant for purposes of Executive Order 12866.

Authority

The Under Secretary for Technology, pursuant to the authority delegated to her by section 3706 of Title 15 of the U.S. Code, as well as sections 2.02 and 4.03(d) of Department Organization Order 10–17, dated July 14, 1992, is implementing this activity.

Program Description

The Program will assist eligible U.S.-based industrial firms that have entered into U.S.-Israeli joint ventures (partnerships of United States-based and Israeli-based companies) to carry out research and development of long-term, medium- to high-risk technologies that offer significant economic benefits, that are focused on commercialization and that are not appropriately funded by other U.S. and Israeli government-funded research and development efforts. This assistance will take place through the use of cooperative agreements. U.S. Commerce Department assistance is offered to promote the economy of the U.S. via the creation of new technologies and the commercialization of new and existing technologies.

Funding Availability

The implementation and conduct of this Program is contingent upon the availability of all funding anticipated for its operation. The Commerce Department reserves the right to discontinue this Program in the event all funding is not made available or is otherwise not secured. It is anticipated that funds will be available subject to reprogramming notifications to Congress.

The U.S. Government and the Government of Israel are each making available up to $5 million in the current fiscal year for this Program for qualified projects. The governments of both nations intend to fund this Program at the same level during 1996 and 1997. Two awards and one feasibility study totalling $5,721,000, to be paid over four fiscal years, were announced on February 6, 1995. Within the limits of available funding, there is no predetermined minimum or maximum award. The funds may be spent toward research and development activities consistent with the goals set forth in this Notice.

Matching Funding Requirements—Federal financial assistance must be accompanied by at least an equal matching investment by the U.S.-based firm(s) party to each U.S.-Israeli joint venture. In the event there are multiple U.S.-based firms in a given U.S.-Israeli venture, the aggregate investment of the U.S. partners must at least equally match the Federal investment in that project.

Eligibility Requirements

The Program will accept proposals only from U.S.-Israeli joint ventures led by one U.S.-based industrial partner and one Israeli-based industrial partner. In general, awards will not be made to a joint venture composed of affiliated U.S.- and Israeli-based partners. Concerns are considered to be affiliates of each other when either directly or indirectly (a) one concern controls or has the power to control the other, or (b) a third party or parties controls or has the power to control both, or (c) an identity of interest between or among parties exists such that affiliation may be found.

Federal financial assistance will be given only to U.S.-based industrial partner or to a consortia led by U.S.-based industrial partners. A U.S.-based industrial partner, or a consortia led by U.S.-based industrial partners, shall be eligible to receive assistance under this Program only if the U.S.-based industrial partner, or each member of the consortia, is incorporated in the United States and has its principal place of business in the United States.

Project Eligibility

Proposed projects must meet the following criteria:

- Must be in one of the following areas: The environment, energy, health, biotechnology, information processing/telecommunications, the commercialization of defense technologies, or agriculture. Further, the project must be for research and development activities in long term, medium- to high risk technologies, and which show a plan to commercialization within 48 months.
- Must include technical innovation, significant commercial potential, and economic benefit to both countries.

Award Period

The duration of Federal financial assistance to a U.S.-based industrial firm will not exceed four years.

Indirect Costs

Indirect costs will not be funded under this Program.

Application Forms and Kit

Applicants must submit one (1) signed original plus two copies of each application. Standard Forms 424 and 424A, Application for Federal Assistance (which have been approved under the Paperwork Reduction Act by OMB Control No. 0348–0043 and 0348–0044, respectively) shall be used in applying for financial assistance, plus such additional information as is needed to permit the evaluation of the applications on the criteria set forth below. Forms are available by request from the Information Contact Person listed above. The additional information shall include a business plan containing the following:

- Executive summary (maximum 3 pages);
- Description of the project and technology involved (See Evaluation Criteria No. 1);
- Commercialization objectives including economic benefits to U.S. & Israel and other regions (See Evaluation Criteria No. 2);
- Commercialization plan including project objectives target markets and strategy, technology transfer and intellectual property requirements and additional capital requirements (See Evaluation Criteria No. 3)
- Description of proposed project participant qualifications and time schedule (See Evaluation Criteria No. 4);
- Project management, organizational structure, equipment, facilities and support (See Evaluation Criteria No. 5); and,
- Proposed budget.

Proposals shall not exceed 40 pages (50 pages for joint proposals) exclusive of the Standard Forms. Proposals must be on 8½ by 11" paper (copies double sided) no fold out inserts and no smaller than 12 point type. Additional information beyond the page limit will not be considered. In addition, each proposer is asked to submit a brief one paragraph project summary containing non-proprietary information which may be utilized by the Commission without regard to the Confidentiality Provisions applicable to this notice.

Evaluation Criteria—Factors within each criteria (labelled i, ii, iii, etc.) will be weighed equally. No project will be funded in the absence of a finding of technical and commercial merit by the reviewers. The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are:

(1) Scientific and Technical Merit of the Proposal (30 percent).

(i) Quality and innovativeness of the proposed technical program (i.e. uniqueness with respect to current industry practice).

(ii) Technical feasibility of the project (i.e., are the technical objectives realistic?).

(iii) Coherency of technical plan and clarity of vision of technical objectives.

(iv) Breadth of impact of accomplishment of technical objectives.

(2) Commercial Benefits of the Proposal (20 percent).

(i) Commercial potential of the technology in the proposed venture.

(ii) Potential to improve U.S. and Israeli economic growth and the productivity of a broad spectrum of industrial sectors or businesses within an economically important single sector.

(iii) Timeliness of proposal (i.e. the project results will not occur too late to be competitively useful in the marketplace).

(3) Commercialization Plans for the Project (20 percent).

(i) Evidence that the participants will pursue commercial application of the technology including production and distribution plans.

(ii) Project plan adequately addresses technology transfer and ownership requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, others;

(4) Qualifications of the Proposing Organization(s) (15 percent).

(i) Quality and appropriateness of proposer's commercial and managerial staffing, facilities, equipment, and other resources to accomplish the proposed program objectives.

(ii) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome technical barriers to meeting project objectives.

(iii) For proposals involving laboratory prototype development, evidence of availability of adequate design and manufacturing tools appropriate to the prototype.

(5) Proposer's Level of Commitment and Organizational Structure (15 percent).

(i) Appropriateness of the structure of the proposed organization in terms of composition of participants (i.e. vertical and/or horizontal integration) and existing relationships among the parties.

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(ii) Level of commitment of proposers as demonstrated by contribution of personnel, equipment, facilities, and matching funds.

(iii) Appropriate participation by U.S. small businesses.

(iv) Evidence of a strong commitment by applicants to complete and, if appropriate, provide support for continuation of the program beyond the period of funding.

Selection Procedures

The selection process for awards is a multi-step process based on the criteria listed above.

• In the first step, called the "preliminary screening," representatives from both governments will review the applications and will eliminate those that do not meet the threshold Eligibility Requirements listed above. Further disqualifications will be made if the application is deemed to have serious deficiencies in the technical and/or business plan, if the application does not fall within the overall scope of the Program, or if the application is more appropriately funded by other U.S. or Israeli government-funded research and development efforts.

• In the second step, referred to as the "technical and business review," applications are evaluated under the preceding Evaluation Criteria. Applications are rated as "not recommended" or "recommended." Applications must have high scientific and technical merit to be recommended. Only those applications rated as "recommended" are considered further. Such applications are referred to as "semifinalists." If a majority of either country's representatives rate an application as "not recommended," that application will be disqualified.

• In the third step, referred to as "selection of finalists," representatives from both governments ("the Joint Panel") will prepare a final scoring and ranking of recommended semifinalist applications, based upon evaluative criteria. A list of ranked finalists is then submitted to each respective nation's Selection Official.

• In the final step, referred to as the "selection of awardees," the Selection Officials select funding recipients from among the finalists, based upon the rank order of the applications on the basis of all Evaluation Criteria (see above), assuring appropriate distribution of funds among technologies, activities and recipients, the availability of funds, and upon a determination as to the responsibility of the applicant. The decision of the Selection Officials is final. Applicants not chosen will be notified.

• In the event that a U.S.-Israeli joint venture is ranked as a finalist, but is determined to contain weaknesses in its structure or cohesiveness that may substantially lessen the likelihood of the proposed project's success, the applicant may be informed of the deficiencies and negotiations may be entered into with the applicant in an effort to remedy the deficiencies. If appropriate, funding up to 10% of the amount originally requested by the applicant, but no more than $100,000, may be awarded by the Program to the applicant to conduct a feasibility study. If the Program determines within six months that the organizational deficiencies have been corrected, the Program may award over the life of the project the remaining funds requested by that applicant to that applicant.

• The Program reserves the right to negotiate with applicants selected to receive awards over the cost and scope of the proposed project, e.g., to add or delete a task in order to improve the probability of success.

Funding Logistics

Funding will be made directly to the U.S.-based firm(s) that is/are party to the U.S.-Israeli joint venture.

Rights to Inventions

The provisions of the Bayh-Dole Act (35 U.S.C. 201, et seq., concerning patent rights in inventions made with Federal assistance) and the Government Patent Policy set forth in President Reagan's memorandum to the heads of Executive Departments and Agencies, dated February 18, 1983, shall apply to all Federally-funded research and development activities performed under this Program.

Other Requirements

(1) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) *Preaward Activities*—If applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the U.S. Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover preward costs.

(4) *No Obligation for Future Funding*—If an application is selected for funding under the Program, there is no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the awarding entities. An annual review of each award will be conducted to determine the worthiness of continued or additional future funding.

(5) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the Department of Commerce are made.

(6) *Name Check Review*. All applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) *Primary Applicant Certifications*. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension*. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26 "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace*. Funding recipients (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. *Anti-Lobbying*. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures*. Any applicant or component entity thereof that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(8) *Lower Tier Certifications*. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(9) *False Statements*. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) *Intergovernmental Review*—Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(11) *Purchase of American-Made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, sections 607(a)–(b).

Dated: March 27, 1995.

Mary Lowe Good,

Under Secretary of Commerce for Technology, Department of Commerce.

[FR Doc. 95–7800 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

Office of the Secretary of the Army

Notice of Availability of the Draft Environmental Impact Statement for Disposal and Reuse of Hamilton Army Airfield, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Draft Environmental Impact Statement (DEIS) for disposal of certain excess property at Hamilton Army Airfield, California. The DEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the DEIS have been forwarded to various Federal, state, and local agencies, and certain other interested organizations and individuals.

DATES: Written public comments and suggestions received within 45 days of this Notice of Availability will be considered in preparing the Final Environmental Impact Statement and in preparing a Record of Decision for the Army action.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing or calling Mr. Robert Koenigs, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, 13th Floor, Sacramento, CA 95814–2922 or by calling (916) 557–6712. Mr. Koenigs may also be reached by fax at (916) 557–7876. Questions about the DEIS and written comments may be sent to the same address

Dated 27, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–7850 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed Coos Bay-North Bend Water Supply Project, Coos County, Oregon

AGENCY: U.S. Army Corps of Engineers, Portland District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is the issuance of a Department of the Army permit under Section 404 of the Clean Water Act of 1977, as amended, and Section 9 of the River and Harbor Act of 1899 for the construction of a dam and reservoir on Joe Ney Creek, and raising of an existing dam on Upper Pony Creek. Both projects would be located in Coos County, Oregon. The Coos Bay-North Bend Water Board is the permit applicant, and is proposing this action for the purpose of increasing the municipal and industrial water supply for its service area.

ADDRESSES: U.S. Army Corps of Engineers, Portland District, P.O. Box 2496, Portland, Oregon 97208–2946.

FOR FURTHER INFORMATION CONTACT: Mr. David Kurkoski, (503) 326–6094. Internet address: david_ kurkoski @smtplink.npp.usace. army.mil.

SUPPLEMENTARY INFORMATION: The Coos Bay-North Bend Water Board, Coos County, Oregon has applied to the Portland District, U.S. Army Corps of Engineers for a Department of the Army Permit under section 404 of the Clean Water Act of 1977, as amended, and Section 9 of the River and Harbor Act of 1899. The proposed action is to construct a new dam and reservoir on Joe Ney Creek, and raise an existing dam on Upper Pony Creek to increase the storage capacity of the reservoir. The purpose of the proposed action is to increase municipal and industrial water supply storage for the area serviced by the Water Board.

Pony Creek

The existing Upper Pony Creek Reservoir was created by a dam across Pony Creek near the headwaters at approximately River Mile (RM) 4.5). The dam was constructed in 1951 to provide water storage for the Water Board's service area. The proposed expansion would involve raising the existing 45-foot earthfill dam by 21.5 feet, to increase reservoir storage capacity from the existing 2,150 acre-feet to 6,250 acre-feet.

Joe Ney Creek

The existing reservoir on Joe Ney Creek was created by a 9-foot=high earthen dam constructed in 1947 at RM 1.5. The Water board proposes to build a larger dam approximately 800 feet upstream of the existing dam. the new dam, which would be built to an evaluation of 39 feet, would provide storage for 2,500 acre-feet.

Operations

Both reservoirs would be operated by the Water board for municipal and industrial water supply. Water would be pumped from Joe Ney Reservoir through

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a pipeline across the ridge to the Pony Creek basin, discharging into a natural channel flowing into Upper Pony Creek Reservoir. As needed, water stored in Upper Pony Creek Reservoir would be released into lower Pony Creek where it is withdrawn and treated at the water treatment plant.

The alternatives to be considered in the DEIS area:

—the proposed project
—development of other water supplies to meet the project objectives
—no action.

The scoping process will commence in March 1995 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the DEIS include: effects of the project on wetlands, wildlife habitat and populations, and fisheries.

A formal scoping meeting has not been scheduled. The applicant has scheduled a public meeting to be held at 7:00 pm, on April 5, 1995, at the North Bend Public Library, North Bend, Oregon, the purpose of the public meeting is to provide more information on the project and the scope of studies to be accomplished for this DEIS, to assist interested parties in developing their scoping comments.

The DEIS is scheduled to be made available to the public in late 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–7751 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–AR–M

Corps of Engineers

Finding of No Significant Impact (FNSI) for a Draft Environmental Impact Statement (DEIS) for the Lower Santa Cruz River Flood Control Study, Pinal County, AZ

AGENCY: Corps of Engineers, Los Angeles District, DOD.

ACTION: Finding of no significant impact.

SUMMARY: The **Federal Register**, Volume 55, No. 105, dated May 31, 1990, contained a Notice of Intent to Prepare a Draft Environmental Impact Statement for the Lower Santa Cruz River Flood Control Study, Pinal County, AZ. No implementable flood control plan was developed, and the study has been terminated. No Draft Environmental Impact Statement was prepared.

ADDRESSES: U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Burton, 894–4352.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–7750 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–KF–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Surface Coal Mining Operation in Saline County, Illinois

AGENCY: U.S. Army Corps of Engineers, Louisville District, DOD.

ACTION: Notice of Intent.

SUMMARY: The proposed project involves the surface mining of coal from 1,537 acres of a 1,935 acre site located 1 to 3 miles west of Harrisburg in Saline County, Illinois. The proposed surface mine includes approximately 400 acres of jurisdictional wetlands. The major impacts would be the permanent relocation of Bankston Fork, construction of a haul road to the coal extraction areas using a bridge over Bankston Fork, construction of 12,500 feet of levee along Bankston Fork to provide temporary flood protection for the mining site, and surface mining coal from 1,537 acres.

ADDRESSES: U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201–0059.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Turner, (502) 582–6015.

SUPPLEMENTARY INFORMATION: The wetland areas to be impacted consist of approximately 200 acres of palustrine forested wetlands with the remainder being open water, scrub/shrub, and emergent wetlands. The relocation of Bankston Fork would be accomplished by excavating 291,000 cubic yards of material. This material would be utilized in constructing a temporary flood control levee. The new stream channel would be 7,450 feet long, 450 feet longer than the existing stream channel. After relocating the stream and construction of a bridge, mining would consist of removing the overburden in 150 to 200 foot wide open pits of varying lengths using a large dragline. Mining would progress through the area protected by the levee over a period of 7 years commencing in 1996.

Proposed mitigation for the loss of wetlands will consist of the creation of nearly 700 acres of wetlands on-site and the restoration of same on another 200+ acres both on- and off-site. Open water, forested, scrub/shrub, and emergent wetlands are planned.

The Corps of Engineers will initiate a scoping process for the purpose of determining the range of issues to be addressed in the Draft Environmental Impact Statement (DEIS). A public scoping meeting is scheduled for Wednesday, April 26, 1995, beginning at 7:00 p.m., in the Pruett-Patton Building which is located on Church Street next to and behind the Mitchell-Carnegie Public Library in Harrisburg, Illinois.

A brief presentation will precede the request for public comment. Corps representatives will be available at this meeting to receive comments from the public regarding issues which should be addressed in the preparation of the DEIS. It is important that Federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns. In the interest of available time, each speaker will be asked to limit their oral comments to ten minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the individual or agency believes the DEIS should address. Written statements should be mailed to the above address not later than May 8, 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–7752 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–JB–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Main Station

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Main Station, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Main Station, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the Commission. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Main Station, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 1,184 acres of improved and unimproved fee simple land at the Naval Training Center, Main Station, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks (72 structures). Comments: Approx. 2,703,400 square feet.
—Housing/Housing Support (5 structures). Comments: Approx. 11,290 square feet.
—Personnel/Community Support (75 structures). Comments: Approx. 581,000 square feet.
—Administration (22 structures). Comments: Approx. 227,700 square feet.
—Operational Training/Fuel (20 structures). Comments: Approx. 1,113,000 square feet.
—Maintenance (10 structures). Comments: Approx. 66,000 square feet.
—Storage/Medical (6 structures). Comments: Approx. 114,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Main Station, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7821 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Herndon Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Herndon Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure

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Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson Real Estate Division, Southern, Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Herndon Annex, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Herndon Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 54 acres of improved and unimproved fee simple land at the Naval Training Center, Herndon Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Warehouse/Administration (8 structures). Comments: Approx. 134,900 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Herndon Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7822 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—McCoy Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, McCoy Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, McCoy Annex, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407)-246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, McCoy Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 838 acres of improved and unimproved fee simple land at the Naval Training Center, McCoy Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks/Support (6 structures). Comments: Approx. 62,600 square feet.

—Family Housing/Multiplex (53 structures). Comments: Approx. 452,800 square feet.

—Medical/Community Support (34 structures). Comments: Approx. 358,350 square feet.

—Operational/Administration (10 structures). Comments: Approx. 65,200 square feet.

—Maintenance/Motor Pool (11 structures). Comments: Approx. 36,000 square feet.

—Capehart Duplex Housing (359 structures). Comments: 2,500 square feet per unit on average.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, McCoy Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7823 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Area C

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Area C, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this

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designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Area C, Orlando, FL, is published in the **Federal Register**

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Area C, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 45 acres of improved and unimproved fee simple land at the Naval Training Center, Area C, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Administration/Support (3 structures). Comments: Approx. 58,000 square feet.

—Warehouse/Storage (18 structures). Comments: Approx. 138,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Area C, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 21, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7824 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Education of Migratory Children

AGENCY: Department of Education.

ACTION: Notice of final criteria for FY 1995 consortium incentive grants under part C of title I of the Elementary and Secondary Education Act of 1965.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes final criteria for awarding fiscal year (FY) 1995 Migrant Education Program (MEP) consortium incentive grants under section 1308(d) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act (IASA), to State educational agencies (SEAs) with approved consortium arrangements.

EFFECTIVE DATE: This notice takes effect on May 1, 1995.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 4100, Washington, DC 20202–6135. Telephone: (202) 260–1394. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The MEP, authorized in Title I, Part C of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Consistent with the emphasis that the reauthorized ESEA places upon removing barriers to coordination and integration of programs that serve migratory children, sections 1303(d) and 1308(d) of the ESEA encourage SEAs to consider whether consortium arrangements with other States or appropriate entities would result in a more effective and efficient delivery of MEP services.

In this regard, section 1303(d) directs the Secretary to consult with SEAs whose MEP allocations in any year will be $1 million or less about the desirability of forming consortia. This section also directs the Secretary to approve any SEA's consortium proposal that (1) reduces MEP administrative costs or program function costs, and (2) increases the amount of MEP funds available for direct services to migratory children that add substantially to the educational attainment or welfare of those children. While an SEA may form a consortium arrangement with any appropriate entity, in light of the strong interstate emphases in the MEP the Secretary anticipates that SEAs will consider the benefits of forming consortium arrangements on a multi-State basis. The Secretary also anticipates that SEAs will want to plan their consortium activities to be implemented on a multiyear basis. The Department already has begun discussions with SEA officials about the circumstances in which consortium arrangements might enhance their programs for migratory children.

To encourage SEAs to form consortium arrangements that meet the requirements of section 1303(d), section 1308(d) of the ESEA directs the Secretary to reserve up to $1.5 million of the funds appropriated for the MEP for competitive incentive awards to SEAs with consortium arrangements approved by the Secretary. Section 1308(d) also limits the size of each grant to no more than $250,000, and provides that not fewer than 10 grants shall be made to eligible SEAs with approved consortium arrangements whose MEP formula grant allocations are less than $1 million. While the provision offers all SEAs an incentive to participate in consortium arrangements, it was enacted particularly to benefit those SEAs that, because of the small size of their MEP allocations, may have particular difficulty in both administering the MEP and providing an adequate level of direct services to migratory children.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that, in order that SEAs may use the incentive grant funds as quickly as possible to promote their programs of direct services for migratory children under the MEP formula-grant program, it is desirable to waive public comment for the first year of implementation of this new discretionary grant. This waiver will apply only to the criteria and process included in this notice for awarding FY 1995 consortium incentive grants. Any criteria and procedures that the Department establishes for the award of consortium incentive grants in future years will be based on experiences with this FY 1995 award process, and will be published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

Eligibility for Consortium Incentive Grants

The criteria and procedures announced in this notice govern only the award of consortium incentive grants for FY 1995. These criteria and procedures reflect consideration of comments on a preliminary proposal discussed with State MEP Directors in a meeting in McAllen, Texas on January 26–27, 1995. The Secretary will reserve $1.5 million to implement this consortium incentive grant program in FY 1995. Only SEAs with approved consortium arrangements will be eligible for incentive grants. Consistent with section 1303(d), a consortium arrangement will be approved if it (1) reduces the overall amount of MEP administrative or program function costs across the participating SEAs from the amount that would be incurred in the absence of the consortium, and (2) makes more funds available, overall across the participating SEAs, for direct educational or support services to migratory children so as to add substantially to their welfare or educational attainment than would have been available in the absence of the consortium.

For purposes of section 1303(d), "administrative or program function costs" include all costs that an SEA or its local operating agencies pay from MEP funds to support MEP activities other than direct educational or support services for migratory children. Administrative and program function costs would include the costs of general program administration paid from funds reserved under section 1603(c) of ESEA, as well as the costs of other, program-specific administrative activities, such as identification and recruitment, interstate, intrastate, and interagency coordination, and parent advisory councils. The term "direct educational or support services" means any instructional or support activities provided directly to migratory children, as well as training of instructional or support staff who provide instructional or support services directly to migratory children. For purposes of section 1303(d), the term "other appropriate entity" can mean any public or private agency or organization.

A single SEA may be part of more than one consortium arrangement. However, consistent with section 1303(d) of the ESEA, each consortium arrangement that the Secretary approves must separately decrease the total amount of MEP administrative or program function costs across the participating SEAs and, conversely, increase the total amount of MEP funds that are made available for direct services to migratory children across the participating SEAs. SEAs will submit the information that the Department needs to review and approve the SEA's consortium arrangement, and determine the size of the SEA's consortium incentive grant, through the FY 1995 MEP application or in conjunction with the optional consolidated State plan under section 14302 of the ESEA.

Amount of an SEA's Incentive Grants

Each SEA with one or more consortium arrangements that the Secretary determines meet the criteria in section 1303(d) of the ESEA, and whose consortium arrangements increase the amount of MEP funds available for direct services to migratory children in its State, will receive one incentive award. In determining the size of an SEA's award, the Secretary will rank SEAs seeking incentive grants on the basis of the total percentage increase in MEP funds that the SEA will make available for direct services to migratory children in its State as a result of the SEA's participation in the consortium arrangements, as compared to the level of direct services that would be made available to migratory children in the State in the absence of the consortia.

Example I: SEA A has one consortium arrangement that increases the amount of funds available for direct services in State A by 10 percent, while SEA B has two consortium arrangements that increase the total amount of funds available for direct services in State B by 8 percent. State A would be ranked higher than State B even if SEA B's consortium arrangements permit more total funds to be used for direct services. Example II: SEA C and SEA D participate together in one consortium and this consortium is the only one in which each SEA participates. If the amount available for direct services increases in total across the two States due to participation in the consortium, but the amount available for direct services in State C does not increase, the

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consortium arrangement will be approved, but only State D, and not State C, will receive an incentive grant.

From the information that an SEA submits, the Department will calculate, for each State, the total percentage increase in MEP funds available for direct services as a result of all the approved consortium arrangements in which an applicant SEA participates. The Department will then rank these percentages in descending order and divide the distribution into thirds (that is, by terciles). Each SEA ranked in the highest third of the distribution will receive an incentive grant that is three-times the size of the grant received by each SEA ranked in the lowest third, while each SEA ranked in the middle third will receive an incentive grant that is twice the size of that provided to each SEA ranked in the lowest third. Within each third, grant awards will be of equal size, except that adjustments will be made so that no consortium incentive grant will be greater than $250,000 or 100 percent of the amount of funds awarded to the SEA under its formula grant allocation, whichever is less.

An SEA may use incentive grant funds awarded under section 1308(d) of the ESEA only to provide direct services to migratory children. These funds are in addition to, and not in place of, the funds awarded under the MEP formula grant.

The Secretary implements section 1308(d) in this way in order to (1) reward all SEAs whose participation in consortium arrangements increases direct services to migratory children in their State, (2) provide larger awards to those SEAs whose consortium arrangements most enhance their capacity to deliver direct services, and (3) ensure that FY 1995 funds under this program are available to SEAs as soon as possible.

Because of the criteria and procedures announced in this notice for awarding FY 1995 consortium incentive grants, the regulations and selection criteria contained in 34 CFR Part 205 (Migrant Education Coordination Program) do not apply to this competition.

Applicability of the Education Department General Administrative Regulations (EDGAR)

In view of the process that the Department will use to obtain information on proposed SEA consortium arrangements, and the criteria it will use to determine, by formula, the amount of consortium incentive grant that each applicant SEA will receive, the regulations in 34 CFR Part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR) do not apply. Instead, the incentive grant program is being administered, like the MEP itself, under the provisions of 34 CFR Parts 76, 77, 80, 81, 85, and 86 of EDGAR.

(Program Authority: 20 U.S.C. 6393(d), 6398(d))

(Catalog of Federal Domestic Assistance Number 84.011, Migratory Education Basic State Formula Grant Program)

Dated: March 10, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95-7826 Filed 3-29-95; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Date and Times: Monday, April 17, 1995 from 4:30 a.m. to 6:30 p.m.; Tuesday, April 18, 1995 from 8:30 a.m. to 5:30 p.m.

Place: Willard Inter-Continental Washington, 1401 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 628-9100.

For Further Information Contact: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM-5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-4400. The Internet address is: James.Melillo@em.doe.gov

Supplementary Information: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Monday, April 17, 1995

4:30 p.m. Co-chairs Open the Meeting
Presentation on Environmental Management Budget Challenges & Strategies—Assistant Secretary for Environmental Management
6:30 p.m. Meeting Adjourns

Tuesday, April 18, 1995

8:30 a.m. Co-chairs Resume the Meeting
Overview of Major Budget Issues Confronting the Environmental Management Program Offices—Program Deputy Assistant Secretaries
10:30 a.m. Breakout Sessions on Major Budget Issues Confronting Field Offices and Headquarters
12:00 p.m. Lunch
1:00 p.m. Board Business
1:15 p.m. Reports from Breakout Sessions
2:30 p.m. Board Committee Reports
4:30 p.m. BEMR/PEIS/FFCA Integrated Message Presentation
5:00 p.m. Public Comment Session
5:30 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Board during the public comment session should call (800) 862-8860 and leave a message. Individuals may also register on April 17, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 27, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95-7852 Filed 3-29-95; 8:45 am]

BILLING CODE 6450-01-P

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: U. S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Dates and Times: Thursday, April 20, 9:00 am-4:15 pm; Friday, April 21, 9:00 am-12:00 pm.

Place: Holiday Inn-Capitol, 550 C Street, S.W., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72, Washington, DC 20585, Telephone: (202) 254-5507

Supplementary Information:

Purpose of the Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 20, 1995

A. Opening Remarks
B. Major Topics
1. Effects of Structural Changes in Industry
2. How the NEMS Transportation Module Operates
3. Reconciliation of AEO and STEO Forecasts (Public Comment)

Friday, April 21, 1995

4. Review of RECS Survey Design
5. Estimates of State Level Natural Gas Consumption
6. Results and Overall Plans for Customer Surveys (Public Comment)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254-5409.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E-290), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 27, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee, Management Officer

[FR Doc. 95-7853 Filed 3-29-95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER95-724-000, et al.]

Iowa-Illinois Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Iowa-Illinois Gas and Electric Company

[Docket No. ER95-724-000]

Take notice that on March 10, 1995, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an initial rate schedule consisting of a Transmission Service Agreement dated as of December 16, 1994 between Iowa-Illinois and Louis Dreyfus Electric Power Inc. (Dreyfus).

Iowa-Illinois states that the terms and conditions of this Agreement are identical in all respects to Iowa-Illinois Transmission Service Agreements with other power marketers which have been accepted for filing by the Commission in Docket Nos. ER95-334-000, ER95-426-000, and ER95-541-000. Iowa-Illinois further states that under the Agreement it will provide non-firm transmission service to Dreyfus on a monthly, weekly, daily or hourly basis to transmit power and associated energy from certain defined points to other defined points on Iowa-Illinois' interconnected electric system. Service will be provided upon request by Dreyfus on an as available basis as determined by Iowa-Illinois.

Iowa-Illinois requests a waiver of the Commission's 60-day notice requirement in order to permit the Agreement to become effective on or before April 18, 1995.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission and Dreyfus.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Louisiana Public Service Commission vs. Entergy Services, Inc.

[Docket No. EL95-33-000]

Take notice that on March 15, 1995, the Louisiana Public Service Commission filed a complaint under §§ 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against Entergy Services, Inc., as the representative of Entergy Corporation and its operating companies, Louisiana Power & Light Co. (LP&L), Arkansas Power & Light Co. (AP&L), Mississippi Power & Light Co. (MP&L), and New Orleans Public Service, Inc. (NOPSI). The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of that agreement, under current circumstances, are unjust and unreasonable. Specifically, the complaint alleges that the absence of any provision in the System Agreement excluding curtailable load from the determination of a company's load responsibility under the System Agreement results in an unjust and unreasonable cost allocation to companies that do not cause these costs to be incurred, and results in cross-subsidation among the companies. Additionally, it is alleged that the absence of any provision in MSS-3 for allocating marginal energy costs to customers that purchase energy under Entergy's "real time pricing" rate schedules at the retail level discriminates against a company that offers real time pricing.

Comment date: April 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95-725-000]

Take notice that on March 10, 1995, New England Power Company, tendered for filing a transmission contract for service to the Massachusetts Municipal Wholesale Electric Company.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket Nos. ER95-267-002 and EL95-25-002]

Take notice that on March 13, 1995, New England Power Company (NEP), made a compliance filing in the above referenced, consolidated dockets. NEP's compliance filing conforms fully with the Commission's February 9 order (*New England Power Company*) 70 FERC ¶ 61,152 (1995) by revising NEP's proposed W-95 rate to compute decommissioning and depreciation expense and to amortize materials and supplies inventories and final nuclear fuel cores for NEP's entitlements in Seabrook Unit No. 1 and Millstone Unit No. 3 on the basis of their remaining Nuclear Regulatory Commission license lives of 36 and 39 years, respectively

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER95-726-000]

Take notice that on March 10, 1995, Illinois Power Company (Illinois), tendered for filing an Interchange Agreement between Illinois and NorAm Energy Services, Inc. (NES). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and NES.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

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6. PacifiCorp

[Docket No. ER95-727-000]

Take notice that on March 10, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with AES Power Inc. (AES), Engelhard Power Marketing, Inc. (Engelhard), InterCoast Power Marketing Company (InterCoast) and Gulfstream Energy, LLC (Gulfstream) under PacifiCorp's FERC Electric Tariff, Volume No. 3, Service Schedule PPL-3.

Copies of this filing were supplied to AES, Engelhard, InterCoast, Gulfstream, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7767 Filed 3-29-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP95-178-000]

Williams Natural Gas Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wilson County Replacement Project and Request for Comments on Environmental Issues

March 24, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Wilson County Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Williams Natural Gas Company (Williams) wants to replace about 2,200 feet of 8-inch lateral pipeline with about 2,270 feet of 2-inch and 6-inch lateral pipeline in Wilson County, Kansas. The replacement would continue to provide service to the Neodesha, Kansas area. Williams requests Commission authorization to construct and operate the following facilities needed to continue service:

- abandon in place 1,300 feet of 8-inch lateral pipeline;
- abandon by removal 900 feet of 8-inch lateral pipeline;
- construct 2,144 feet of 6-inch lateral pipeline; and
- construct 130 feet of 2-inch lateral pipeline.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction for the proposed facilities would require about 3.45 acres of land. Following construction, about 2.3 acres would be maintained as permanent right-of-way. The remaining 1.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands [3]
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

One issue that has arisen based on a preliminary review of the proposed facilities and the environmental information provided by Williams concerns the location of a residential area near the proposed pipeline. The proposed right-of-way has been routed to avoid impact to residences, however several new landowners would be affected by the location of the new pipeline right-of-way in Neodosha, Kansas.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal.

[1] Williams Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426 or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Washington, DC 20426.
- Reference Docket No. CP95-130-000.
- Send a copy of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before May 1, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208-1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7765 Filed 3-29-95; 8:45 am]

BILLING CODE 6717-01-M

Notice of Application

March 24, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License

b. *Project No.:* 11214-001.

c. *Date Filed:* February 22, 1995.

d. *Applicant:* Southwestern Electric Cooperative, Inc.

e. *Name of Project:* Carlyle Reservoir

f. *Location:* On the Kaskaskia River near the City of Carlyle, Clinton County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)825(r).

h. *Applicant Contact:* Mr. Robert Weinberg, 1615 M Street, N.W. Suite 800, Washington, DC 20036, (202) 467-6370.

i. *FERC Contact:* Charles T Raabe (dt) (202) 219-2811.

j. *Comment Date:* On or before April 24, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) An intake structure; (2) five 96-inch-diameter penstocks; (3) a power plant having five 800-Kw turbine/generator units; (4) a 1400-foot-long underground and a 3,000-foot-long overhead transmission line; and (5) appurtenant facilities.

l. With this notice, we are initiating consultation with the State Historic Preservation officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application of its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7762 Filed 3-29-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-262-000, et al.]

Phillips Gas Pipeline Company, et al.; Natural Gas Certificate Filings

March 23, 1995.

Take notice that the following filings have been made with the Commission.

1. Phillips Gas Pipeline Company

[Docket No. CP95-262-000]

Take notice that on March 13, 1995, Phillips Gas Pipeline Company (Phillips), P.O. Box 1967, Houston, Texas 77251-1967, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of all of Phillips' interstate pipeline transmission facilities located in Oklahoma and Texas in order to convert the facilities to its former configuration for oil transportation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips requests permission and approval to abandon all of its interstate pipeline facilities consisting of approximately 153 miles of 30-inch pipeline that transports natural gas from Cushing, Oklahoma to approximately 1 mile across the northern Texas border, as well as related facilities and equipment. Phillips proposes to abandon these facilities so that Phillips would be able to perform its former function of transporting oil.

Phillips states that Phillips has not been able to transport any natural gas on a firm basis for almost two years, since May 1, 1993, which has significantly impaired Phillips' ability to recover its cost of service because Phillips' rates are based upon recovery of 100% of its fixed costs through its reservation fees. Phillips states that Phillips Gas Marketing Company (PGMC), an affiliate of Phillips and Phillips' primary interruptible customer, representing over 97% of Phillips' annual volumetric throughput during 1994, recently advised Phillips that PGMC would no longer require any transportation service on Phillips facilities in the near future. Phillips indicates that the imminent loss of over 97% of Phillips' volumetric throughput and Phillips' inability to acquire any firm transportation contracts compels Phillips to seek abandonment authorization for the facilities. Phillips states that Phillips has entered into a joint venture agreement with ARCO Pipeline Company (ARCO) regarding plans to convert the facilities into an oil pipeline to provide useful and necessary oil transportation services. ARCO would make all appropriate filings at the Commission prior to commencing operation of any new oil pipeline facility, it is stated.

Comment date: April 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

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2. Texas Eastern Transmission Corporation

[Docket No. CP95–267–000]

Take notice that on March 17, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–267–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and install an additional tap valve for existing Meter Station 2866 (M&R 2866) in DeSoto Parish, Louisiana under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install an additional 2-inch tap valve (hot tap) on its 24-inch Line 11 near Mile Post 275.79 in DeSoto Parish, Louisiana for delivery of additional natural gas quantities to International Paper Co (IP). The proposed hot tap will increase the maximum delivery capacity at M&R 2866 by up to 6,000 Dth/d. Additional interruptible transportation service will be provided by Texas Eastern to IP pursuant to Rate Schedule IT–1. Texas Eastern will install, own, operate and maintain the hot tap. IP will continue to own and operate M&R 2866. IP will pay Texas Eastern $15,000 for incurred installation costs and expenses. Texas Eastern states that the delivery point installation will not effect its peak day or annual deliveries and that its other customers will not be effected.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP95–273–000]

Take notice that on March 20, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95–273–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) for authorization to establish a bi-directional point in Acadia Parish, Louisiana, in order to receive and deliver gas to a new storage facility operated by Egan Hub Partners, L.P. (Egan), under the blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that Egan requested the construction of the bi-directional point to accommodate up to 300,000 Dth/d on Tennessee's system. Tennessee states that it is Egan's intent to market the storage space to Tennessee's existing local distribution customers. Tennessee asserts that under existing firm or interruptible transportation agreements gas will be moved to and from storage.

Tennessee proposes to install two 8-inch hot tap assemblies on its 16-inch 507G–100 Line and one 12-inch hot tap assembly on its 24-inch 500–1 Line, including two valve actuators, all of which will be on Tennessee's existing right-of-way in Acadia Parish, Louisiana. The electronic gas measurement (EGM) will be installed by Tennessee on a site approved by Egan. Egan proposes to install approximately 200 feet of interconnecting pipe and measurement facilities, located on a site provided by Egan. Tennessee will install, own, operate and maintain the hot tap assemblies, the two valve actuators and EGM, inspect the interconnecting pipe, and inspect and operate the meter. Egan will install, own, operate, and maintain the interconnecting pipe, and install, own, and maintain the meter. The estimated cost for the facilities proposed by Tennessee is $192,400, which Egan will reimburse Tennessee for 100 percent.

Tennessee states that at the present time, there is no anticipation of increasing the maximum daily contract quantities under Tennessee's customers' agreements, whether firm or interruptible; therefore, there is no impact anticipated on peak day and annual deliveries.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–276–000]

Take notice that on March 21, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–276–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the Marion Compressor Station under NGT's blanket certificate issued in Docket No. CP82–384–000, et al., pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon the inactive Marion Compressor Station. It consist of two 350 horsepower reciprocal engines and is located in Crittenden County, Arkansas. NGT states that no customers or services will be abandoned.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7766 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–279–000]

Questar Pipeline Company; Notice of Application

March 24, 1995.

Take notice that on March 22, 1995, Quester Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–279–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon by removal 17 meter runs and appurtenant facilities at Questar's Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authority to abandon 17 previously certificated meter runs, located on various storage injection/withdrawal laterals, that have been utilized historically as flow-control metering facilities in association with storage field dehydration and withdrawal activities at Clay Basin. Questar explains that the metering facilities are located on the Clay Basin side of the primary custody-transfer metering facilities utilized to measure natural gas volumes delivered to and received from Clay Basin via Questar's transmission system. Further, Questar explains that the metering facilities to be abandoned have been replaced by updated equipment and that there will be no adverse impact on storage services provided by Questar at Clay Basin. It is stated that the gas plant investment associated with the Clay Basin metering facilities proposed to be abandoned is approximately $250,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7763 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–148–004, RP95–62–000, RP95–63–000, RP95–64–000, RP95–88–000, RP95–90–000, RP95–112–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

March 24, 1995.

Take notice that a technical conference concerning the above dockets will be convened on April 6, 1995, at 9:00 a.m., at the Crystal City Marriott (Crystal Forum), 1999 Jefferson Davis Highway Arlington, Virginia. The purpose of the technical conference is to continue discussions begun at the prior conference concerning Tennessee's operations.

All parties, as defined by 18 CFR 385.102(c), and all participants as defined in 18 CFR 385.102(b), are invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Jake Hiatt (713) 757–6855 at Tennessee or Chris Young (202) 208–0620 and Robert McLean (202) 208–1179 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7761 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–34–000, RP94–227–000, CP94–254–000, CP94–751–000, CP94–211–000, CP94–676–000, CP95–70–000, CP95–153–000, RS92–87–000, CP95–112–000]

Transwestern Pipeline and Transwestern Gathering Companies; Settlement Conference

March 24, 1995

Take notice that a settlement conference will be convened in the above-docketed proceedings on Thursday, March 30, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E. Washington, D.C. for the purpose of exploring the possible settlement of the above-captioned Transwestern Pipeline Company proceedings. The conference may continue on Friday, March 31, 1995, at 10:00 a.m., for the purpose of discussing the settlement of the certificate proceedings.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party to any of the above-docketed proceedings must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Scott E. Koves at (202) 208–0492.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7764 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–05–NG]

Wasatch Oil & Gas Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wasatch Oil & Gas Corporation authorization to import up to 5 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import.

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This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–7854 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–01–NG]

Pennsylvania Gas and Water Company; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pennsylvania Gas and Water Company long-term authorization to import up to 14,703 Mcf of natural gas per day from Canada beginning May 1, 1995, through October 31, 2002. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–7855 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 4th and Battery Bldg., Suite 700, Seattle, Washington 98121

Vessel: SPIRIT OF COLUMBIA

Dated: March 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7790 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428

Vessel: CARNIVAL DESTINY

Dated: March 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7791 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Gilbert International, Inc., 330 S. Stiles Street, Linden, NJ 07036, Officers: Richard Gilbert, President, Ken Gross, Vice President

Worchel Transport Inc. d/b/a Prime Transport, 182–09 149th Road, Springfield Gardens, NY 11413, Officers: Sam Fischel, President, David Wortman, Vice President

King Yang Shipping, Inc., 222431 S. Vermont Avenue, Torrance, CA 90502, Officer: Arthur King, President

Quality Customs Broker, Inc. dba, Quality Freight Services International, 7071 South 13th Street, Suite 103, Oak Creek, WI 53154, Officer: Karin La Freniere, President

All-Cargo Express, 7800 North University Drive, #201, Tamarac, FL 33321, Alfred L. Cohen, Sole Proprietor

Dated: March 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7789 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0867]

Internal Appeals Process

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final guidelines.

SUMMARY: The Board is issuing its final guidelines on an internal appeals process for institutions wishing to appeal an adverse material supervisory determination.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel, Legal Division (202/452–3236); Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202/452–3946); or Ann Marie Kohlligian, Senior Counsel/Manager, Division of Banking Supervision and Regulation (202/452–3528), Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Act), 12 U.S.C. 4806, requires the Board (as well as the other Federal banking agencies) to establish an independent, intra-agency appellate process that is available to institutions to seek review of material supervisory determinations. Section 309 specifies various requirements that the appellate process must meet.

On December 29, 1994, the Board published for public comment its proposed guidelines that would implement the intra-agency appellant

process required by section 309 of the Act. (59 FR 67297 (December 29, 1994)). In general, the proposed guidelines required that: (1) All appeals be in writing and approved by the institution's board of directors; (2) all appeals be heard and decided within specified timeframes; (3) the initial appeal be heard by a person or persons selected by the Reserve Bank (the review panel) who had not participated in, or reported to the persons who made, the material supervisory determination under review; (4) an adverse decision by the review panel be appealable to a Reserve Bank President; (5) an adverse decision by a Reserve Bank President be appealable to the Board; and (6) Reserve Banks establish safeguards to protect institutions that file appeals from examiner retaliation.

Although section 309 requires the Board to develop an internal appeals process only for state member banks, the proposed guidelines expanded the process and made it available to all institutions that are subject to Federal Reserve oversight, including bank holding companies, U.S. agencies and branches of foreign banks and Edge corporations.[1] The proposed guidelines also defined a "material supervisory determination" to include all material matters relating to the examination or inspection process, but exclude those matters, such as the imposition of a prompt corrective action directive or a cease and desist order, for which an alternative, independent right of appeal exists.

As noted in the proposed guidelines, the Board continues to believe that questions about or objections to supervisory determinations made during the course of an inspection or examination are most effectively handled through the longstanding Federal Reserve practice of resolving any problems informally during the course of the inspection or examination process.

Public Comments

The Board received 27 comments on its proposed guidelines from Federal Reserve Banks, financial institutions, trade associations, law firms and a consulting firm. While the comments were generally supportive of the proposed guidelines, most comments submitted suggested changes or raised concerns regarding the implementation of the internal appeals process. These proposed changes and concerns, which are discussed below, relate to five areas: (1) protection from examiner retaliation; (2) independence of the review panel; (3) who should decide the final appeal at the Board; (4) the need for additional, specific timeframes; and (5) procedural issues.

(1) Protection From Examiner Retaliation

Thirteen comments raised concerns about examiner retaliation. Several comments suggested that the Ombudsman, which the Board is required to establish under section 309 of the Act, should play a role in addressing this issue, such as serving as an independent contact for institutions that believe they have been subject to some form of retaliation or ensuring that different examiners conduct examinations that commence after an appeal has been filed. Some comments suggested that greater Board involvement in the appeals process would protect institutions against retaliation, while others suggested that the guidelines include specific sanctions and disciplinary actions for examiners found to have engaged in retaliation due to an appeal.

The Board acknowledges that some institutions may perceive that availing themselves of the appeals process may result in retaliatory action by examiners. As proposed, the guidelines require the Reserve Banks to establish safeguards to protect institutions that file appeals from retaliation. While the Board believes that this provides sufficient protection and meets the requirements of section 309, the Ombudsman is available to address such concerns and may be contacted by institutions who believe they may have suffered retaliation as a result of an appeal. The role of this official and his/her procedures for addressing these concerns will be outlined in the Board's Policy Statement for the Ombudsman.

(2) Independence of Review Panel

Six comments suggested modifications to the part of the guidelines that addressed the independence of the review panel. Several stated that the appeals process cannot be independent so long as it remains an internal procedure and suggested that outside parties, such as a peer review panel or a panel appointed by the Federal Financial Institutions Examination Council, hear and decide all appeals. Another comment suggested that the review panel exclude not only persons who participated in, or who directly or indirectly report to the person(s) who participated in, the material supervisory determination under appeal, but anyone who directly or indirectly supervises the person(s) who made such determination.

Section 309 of the Act reflects a Congressional conclusion that an intra-agency appeals process will provide institutions with an adequate means to redress adverse material supervisory determinations. The Board does not believe that it is necessary to expand the guidelines beyond what is required by the statute. Similarly, section 309 requires that the person hearing the appeal not directly or indirectly report to the person who initially made the supervisory decision under review. Consequently, the composition of the review panel has not been modified in the final guidelines.

(3) Who Decides the Final Appeal at the Board

The proposed guidelines provided for an appeal of an adverse decision by a Reserve Bank President to the appropriate Board division director, who would consult with the appropriate Governor of the Board's oversight committee for that division. Three comments suggested that it would be more suitable for a Governor to review a decision by a Reserve Bank President. The final guidelines have been modified so that an appeal of a Reserve Bank President's decision will be to the Governor who serves as chairman of the appropriate oversight committee, who will consult with that division's director.

(4) Need for Additional Timeframes

The proposed guidelines required institutions to file an appeal within 30 days of the material supervisory determination and the review panel to decide the appeal within 30 days of its receipt. The proposed guidelines also required Reserve Bank Presidents to make a decision on any matter appealed to them within 30 days of receipt. Several comments noted that the proposed guidelines did not contain timeframes for other actions, such as the time in which an appeal should be filed with a Reserve Bank President or the Board, or the time in which the Board would make a decision on an appeal.

The Board agrees with these comments on the need for additional timeframes. Consequently, the final guidelines require that an appeal to a Reserve Bank President or the Board to be filed within 30 days of receipt of an adverse decision by the review panel or the Reserve Bank President, respectively. The final guidelines also require that the Board decide any appeal within 60 days of its receipt.

[1] The final guidelines have been modified to state explicitly that third party EDP servicers subject to examination by the Federal Reserve may appeal any material supervisory determination.

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(5) Procedural Issues

Several comments suggested that the Board's guidelines include some additional procedures in order to ensure that the internal appeal process works smoothly. One comment suggested that the guidelines explicitly provide that the material supervisory determination remain in effect while it is under appeal, while another comment suggested that the determination be stayed pending the completion of the appeal. The Board believes that it is appropriate for the determination to remain in effect while it is under appeal, and the final guidelines have been modified to state this explicitly. The Board does not believe that section 309 of the Act is intended to stay the Board's supervisory decisions, but rather is designed to provide institutions with a procedure by which to voice objections to supervisory determinations for which no other formal appeals procedures exist.

Another comment suggested that institutions that consent to the issuance of a formal enforcement action, such as a cease and desist order, be allowed to use the internal appeals process to challenge the material supervisory determinations that led to the enforcement action. This suggestion seems inconsistent with the intent of section 309 of the Act, which is to provide an avenue for the review of material supervisory determinations and not to contest enforcement actions for which an alterative appeals mechanism exists. Therefore, the Board has not adopted this suggestion. Another comment suggested that the record be expunged of any material supervisory decisions that have been modified or overturned on appeal. The Board believes that it is appropriate to maintain all records of its supervisory actions, including those relating to a decision that is modified or overturned as a result of an internal appeal. Nonetheless, the Reserve Banks are expected to maintain complete records of any appeal, including updating all files, both hard copy and electronic, to reflect the results of all appeals.

One comment suggested that the board of directors of an institution only be required to approve the initiation of an appeal, but that management be allowed to decide on any subsequent appeals to a Reserve Bank President or the Board. Another comment noted that getting approval of the board of directors of a foreign bank would be extremely difficult in order for its U.S. agency or branch to file timely appeals. The Board continues to believe that the board of directors should be involved in each step of the appeals process; therefore, the final guidelines still require board approval for each step in the appeals process. On the other hand, the final guidelines have been modified to allow the senior management person(s) with authority for U.S. operations of a foreign bank to approve appeals; however, he or she must approve each step of the appeal.

The Board has decided to adopt several other procedural suggestions. The final guidelines provide that any appeal filed must contain all of the facts and arguments that the institution would like to present to the review panel, the Reserve Bank President or the Board, as the case may be, and that the review panel, the Reserve Bank President or the Board may reject the appeal for lack of clarity or information. In such a case, an institution would have 30 days in which to refile a rejected appeal. Last, the final guidelines make explicit that the internal appeals process does not give the appealing institutions any discovery or other similar rights.

Guidelines for Appeals of Material Supervisory Determinations

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806, requires the Board and the other Federal banking agencies to establish an independent, intra-agency process to review appeals of material supervisory determinations.

The purpose of these guidelines is to allow each Reserve Bank to administer its own appellate process, but to establish procedures under which all Reserve Banks' appellate process must operate. Doing so will ensure that each Reserve Bank's process is consistent with section 309 and that institutions will be granted the same appellant rights regardless of the Federal Reserve district in which they reside.

Procedures for Appealing a Material Supervisory Determination. Any appeal of a material supervisory determination pursuant to section 309 shall be filed and considered pursuant to the following procedures.

(1) Any appeal shall be approved by the board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, and filed in writing with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the written material supervisory determination, unless the time for filing is extended by the Reserve Bank. The Reserve Bank shall promptly provide a copy of the appeal to the appropriate division director of the staff of the Board of Governors.

(2) Any appeal shall contain all the facts and arguments that the institution wishes to present. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection of any filing.

(3) The appeal shall be considered in the first instance by a person or persons selected by the Reserve Bank (the review panel) who——

(A) did not participate in the material supervisory determination;

(B) do not directly or indirectly report to the person who made the material supervisory determination under review; and

(C) are qualified to review the material supervisory determination.

(4) The appellant institution may appear before the review panel in order to present testimony and, with the consent of the review panel, witnesses. The review panel shall also solicit the views of the Reserve Bank staff involved in the determination under appeal, Board staff, and, where appropriate, the staff of other supervisory agencies (for example, in case of joint examinations or inspections). Nothing in this appeals process shall create any discovery or other such rights.

(5) Any appeal shall be decided, in writing, by the review panel within 30 calendar days of the filing of an informationally complete appeal, unless the appellant and the review panel jointly agree to extend the time for decision.

(6) Any appellant institution dissatisfied with the decision of the review panel may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the Reserve Bank President by filing a written appeal with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the review panel's written decision. The appeal shall contain all facts and arguments that the institution wishes to be considered. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided by the Reserve Bank President, in writing, within 30 calendar days of the filing of an informationally complete appeal.

(7) Any appellant institution dissatisfied with the decision of the Reserve Bank President may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the appropriate Governor by filing a written appeal with the Secretary of the Board within 30 calendar days of receipt of the Reserve Bank President's written decision. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided, in writing, by the appropriate Governor, who shall consult with the director of the appropriate division of the Board of Governors, within 60 calendar days of the filing of an informationally complete appeal.

Safeguards Against Retaliation. Each Reserve Bank shall establish appropriate safeguards to protect appellants from retaliation. The Board's Ombudsman will periodically contact institutions after their appeals have been decided in order to make certain that no retaliation has occurred. In addition, institutions who believe they have suffered retaliation as the result of an appeal may contact the Board's Ombudsman.

Availability of Procedures. Each Reserve Bank shall make these guidelines and the Reserve Bank's process for selecting a review panel available to each institution in its district, any institution appealing a material supervisory determination, and any member of the public who requests them.

Eligible Institutions. Any institution about which the Federal Reserve makes a material supervisory determination is eligible for the appeal process. This includes state member banks, bank holding companies and their nonbank subsidiaries, U.S. agencies and branches of foreign banks, Edge and agreement corporations, third party EDP servicers, and other entities examined or inspected by a Reserve Bank.

Material Supervisory Determination Defined. Whether an appealed action constitutes a "material supervisory determination" eligible for the appeals process shall be decided by the person or persons hearing the appeal, and a determination that the action is not appealable under these guidelines may be further appealed to the Reserve Bank President or the appropriate oversight Governor in the same manner as any other adverse decision.

The term "material supervisory determination" includes, but is not limited to, material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserves and significant loan classifications. The term does not include any supervisory determination for which an independent right of appeal exists. Such actions include prompt corrective action directives issued pursuant to section 38 of the Federal Deposit Insurance Act, as amended (the FDI Act), actions to impose administrative enforcement actions under the FDI Act and the Bank Holding Company Act of 1956, as amended (the BHC Act), capital directives, and orders issued pursuant to applications under the BHC Act.

Effect of Appeal on Material Supervisory Determinations. A material supervisory determination shall remain in effect while under appeal and until such time it is modified or overturned through the appeals process. The appeal of a material supervisory determination does not prevent the Federal Reserve from taking any supervisory or enforcement action—formal or informal—it deems appropriate to discharge the Federal Reserve's supervisory responsibilities.

Savings Provision. Section 309 expressly provides that it shall not affect the authority of the Board or any other agency to take enforcement or supervisory action against an institution. In such cases, the rights of appeal provided for in the statutes and regulations concerning these actions shall govern.

By order of the Board of Governors of the Federal Reserve System, March 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7795 Filed 3–29–95; 8:45 am]

BILLING CODE 6210–01–P

Agency Forms Under Review; Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Final Board approval of revisions to bank holding company reporting requirements.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Board has given final approval to the revision of the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C; OMB No. 7100-0128); the extension, with revision, of the Quarterly Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies (FR Y-11Q; OMB No. 7100-0244) and the Annual Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies (FR Y-11I; OMB No. 7100-0244); and the elimination of the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary (FR Y-11AS; OMB No. 7100-0244).

The proposal was granted initial approval by the Board on December 16, 1994. Subsequently, the proposal was published in the Federal Register with a thirty day public comment period that expired on January 26, 1995. Comment letters on the proposal were received from four bank holding companies. In general, the comment letters on the proposal were supportive of the changes to the various reports. However, some specific comments were not supportive. These comments noted the increase in burden from some aspects of the proposal and suggested modifications to the proposed revisions. The specific comments on the proposed revisions to the reports are addressed in the discussion of each individual report following later in this notice. After reviewing the comments, the Board has approved the proposed changes as originally issued for comment. In addition to those changes, the Board also has approved two further changes to the FR Y-9C—the elimination of two line items from Schedule HC-F.

The reporting changes, summarized in this notice, will be effective for the FR Y-9C and the FR Y-11Q with the March 31, 1995 reporting date and effective for the FR Y-11I and the FR Y-11AS for the December 31, 1995 reporting date. The FR Y-9C and the FR Y-11Q reports effective for March 31, 1995 reporting date are due to be filed May 15, 1995 and May 30, 1995, respectively.

BACKGROUND: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The FR Y-9 and FR Y-11 series of reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from the Y series reports, are used to detect emerging financial problems, to review performance for pre-inspection analysis, to evaluate bank holding company

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mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall analytical effort.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the revision of the following report:

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies.
Agency form number: FR Y-9C.
OMB Docket number: 7100-0128.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual reporting hours: 172,720.
Estimated average hours per response: Range from 5 to 1,250 hours.
Number of respondents: 1,346.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

The Board's Legal Division has also determined that on the FR Y-9C, Schedule HC-H, Column A, requiring information on "assets past due 30 through 89 days and still accruing" and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: The FR Y-9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y-9C.

The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

The Board has approved the revisions to the FR Y-9C following public comment. Most of the new items are required to maintain consistency with comparable items recently incorporated into the commercial bank Reports of Condition and Income (Call Report) by the Federal Financial Institutions Examination Council (FFIEC).

Public Comments: Three bank holding companies addressed the revisions to the FR Y-9C. As previously discussed, the proposed changes to this report keep the reporting requirements consistent with those changes being incorporated in the "Call Report" to be filed by commercial banks as of March 31, 1995. In the past, bank holding companies have commented that reporting burden is minimized by keeping the changes in the Call Report and the FR Y-9C consistent and by implementing the changes as of the same date.

In their comment letters, two bank holding companies supported the proposed changes to the report. Another bank holding company commented that the proposal expanded the information collected and increased the reporting burden and recommended generally that the Board eliminate all requirements not essential for the performance of the Board's supervisory responsibilities. Specifically, the company recommended that the Board eliminate the proposed requirement for bank holding companies to report gross redemptions of mutual funds and annuities. This item is one of several items relating to the sale of mutual funds by banking organizations added to the report. The Call Report collects some data, but does not collect the amount of redemptions. The Board believes that reporting the amount of redemptions, in addition to the amount of sales, is essential to measure the flow of funds into these new products and, accordingly, has approved the collection of these data. The measurement of the flow of funds is important in assessing the growth of these products. The Board also plans to propose to the FFIEC that these data be collected on the Call Report.

The commenter also recommended that the Board delay implementation of the changes until June 30, 1995. The Board believes that the burden on the majority of companies is lessened by making the changes to the FR Y-9C at the same time as the changes are implemented in the Call Report and has approved the changes for the FR Y-9C as of the March 31, 1995, report. The reports are due forty-five days after March 31, 1995.

Following the review of the public comments, the revisions to the FR Y-9C approved by the Board include:

Schedule HC-A, Securities:

(1) Memoranda items to collect the amortized cost and fair (market) value of high-risk mortgage securities and structured notes have been added.

(2) The reporting instructions for the category labeled "mortgage-backed securities" have been revised to ensure that all such securities are reported. In addition, the line items for collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) issued by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) have been modified to explicitly include REMICs issued by Government National Mortgage Association (GNMA).

Schedule HC-F, Off-Balance Sheet Items:

Part 2 of this schedule has been revised to collect additional information on derivative instruments, including breakdowns of notional contract amounts by instrument type, by risk exposure underlying the contract, and by whether the contract is traded on the exchange or over the counter. In addition, the total notional amount and gross positive and gross negative fair values of contracts held for trading purposes and for purposes other than trading have been included on the schedule.

Schedule HI, Income Statement:

Memoranda items have been included to collect trading revenue that reflects the combined revenues from cash and derivative instruments, with a breakdown by underlying risk exposure, and information on the effect on earnings of derivatives held for purposes other than trading.

Schedules HC-I and HC-J, Risk-Based Capital:

(1) An item has been included to collect the net credit exposure of all derivative contracts taking into consideration netting arrangements permissible under the risk-based capital standards.

(2) The risk-based capital "notional principal value, maturity and replacement cost matrix" for derivatives has been expanded to include an additional remaining maturity time band and four additional categories of derivative contracts (gold, other precious metals, other commodity and equity contracts).

Schedule HI-B, Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses:

The reconciliation of the allocated transfer risk reserve on Memoranda, Part 2, Column B has been deleted.

Schedule Of Trading Account Assets and Liabilities:

A schedule for the reporting of trading account assets and liabilities in a manner consistent with the schedule included in the Call Report has been added to the report. This schedule is to be completed by bank holding companies with total consolidated assets of $1 billion or more, or with $2 billion or more in par/notional amounts of interest rate, foreign exchange rate and other commodity and equity contracts.

Mutual Funds and Annuities Information:

Line items to collect quarterly gross sales of mutual funds (by type of fund) and annuities, including sales of proprietary mutual funds and annuities, and the fee income generated from the sale and servicing of mutual funds and annuities in domestic offices have been added to the report. In addition, a line item to collect the total amount of gross redemptions of mutual funds and annuities during the quarter has been included.

Deletion of Line Items:

In addition to the above changes that were addressed in the Federal Register notice (59 FR 66540), the Board also has approved two further changes to the FR Y-9C—the elimination of two line items from Schedule HC-F. These two items are: Memorandum item 1, "Mortgages sold with recourse that incur no capital charge," and Memorandum item 2, "Mortgages sold with recourse prior to October 12, 1990." The Board noted that one item is no longer needed following the revisions to the Capital Guidelines required by the Riegle Community Development and Regulatory Improvement Act of 1994, and the second item related to recourse is also no longer necessary.

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. *Report title:* Quarterly Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies
Agency form number: FR Y-11Q.
OMB Docket number: 7100-0244.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual reporting hours: 6,696.
Estimated average hours per response: Range from 3.0 to 8.0 hours.
Number of respondents: 270.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The Board has approved the revision of the FR Y-11Q. As approved, the FR Y-11Q will:

(1) Expand the report to collect more detailed financial information, comparable to items collected on the FR Y-9C and

(2) Revise the reporting criteria for bank holding companies with assets of $150 million or more to collect information on an individual basis from each nonbank subsidiary viewed as having a significant effect on the condition of the bank holding company. The revised comprehensive financial statements include a balance sheet, off-balance sheet items, a memoranda section, an income statement, and a statement of changes in equity capital. All bank holding companies with total consolidated assets of $150 million or more would file a report for each individual nonbank subsidiary with total assets equal to 5 percent or more of the bank holding company's consolidated Tier 1 capital, or where the subsidiary's total operating revenue equals 5 percent or more of the bank holding company's consolidated total operating revenue.

Under the prior reporting requirements, the Board collected free-form financial data from each nonbank subsidiary on the FR Y-6, Annual Report of Bank Holding Companies. In addition, nonbank subsidiary data were collected on three automated forms. Large bank holding companies with significant nonbanking assets submitted the FR Y-11Q and the FR Y-11AS. The prior FR Y-11Q was submitted quarterly and collected data from all nonbank subsidiaries on a combined basis. The FR Y-11AS was submitted annually and collected nonbank data on a combined basis by the principal line of business of the nonbank subsidiaries. The third form, FR Y-11I, collected selected financial data from all bank holding companies on each of their nonbank subsidiaries on an annual basis. Under the proposal issued for public comment and now given final approval by the Board, the Board eliminated the collection of free-form nonbank financial data in the FR Y-6, Annual Report of Bank Holding Companies, to offset the increase in the burden of the collection of automated data on the revised FR Y-11Q and the revised FR Y-11I. The Board gave final approval to the deletion of the free-form nonbank financial data in the FR Y-6 on February 7, 1995 (60 FR 12215). The Board also proposed to delete the requirement to submit the FR Y-11AS, and all commenters favored the deletion of this report. Thus, the Board has eliminated the requirement for certain bank holding companies to submit the FR Y-11AS.

Public Comments: Comments on the proposed revisions to the reports collecting data from nonbank subsidiaries were received from four bank holding companies. In addition to those commenting on the FR Y-9C, one commenter only commented on the FR Y-11 series. This commenter supported the proposed revisions and stated that under the revised report that they would only have to file a report for one subsidiary on a quarterly basis rather than providing quarterly data on all subsidiaries on a combined basis. Another commenter welcomed the deletion of certain nonbanking data, but stated their opposition to the increased burden of the FR Y-11Q.

A third commenter proposed increasing the materiality test for completing the FR Y-11Q and suggested several options. These include: nonbank assets as a percentage of total consolidated assets; investment in nonbank subsidiaries as a percentage of Tier 1 capital; or increasing the test of nonbank assets as a percent of Tier 1 capital. The materiality test proposed and adopted by the Board is based on the criteria utilized by Federal Reserve examination staff in determining those nonbanking subsidiaries subject to on-site examinations. In general, this materiality test is used to define those material nonbanking subsidiaries that can have a significant impact on the financial condition of the bank holding company.

The fourth commenter agreed that a revision of the information reported by nonbank subsidiaries is warranted, but suggested that the reporting format follow that of the FR 2314, Report of Condition of Foreign Subsidiaries. However, since the proposed format of the FR Y-11Q and FR Y-11I is consistent with the format of other bank holding company reports and the Call Report filed by commercial banks, the Board approved the format as proposed. The Board believes that conforming the format to that of the Call Report and the other holding company reports should reduce the burden on most bank holding companies. The commenter also recommended that the criteria for determining material nonbank subsidiaries exclude intercompany transactions. The Board believes that intercompany transactions should be

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included as these nonbank subsidiaries serve as funding vehicles for other credit extending nonbank subsidiaries and pose liquidity risks to the bank holding company. Finally, the commenter recommended that the proposed FR Y-11I be further summarized. The revised format is composed of significant asset and liability accounts. Additional schedules are required to be completed only if the nonbank subsidiary is engaged in extensions of credit. The Board believes that the revised report represents the minimum information that should be collected from nonbank subsidiaries to evaluate their financial position and to monitor their potential impact on the bank holding company.

2.Report title: Annual Financial Statements for Nonbanking Subsidiaries.
Agency form number: FR Y-11I.
OMB Docket number: 7100-0244.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual reporting hours: 13,216.
Estimated average hours per response: Range from 0.4 to 8.0 hours.
Number of respondents: 4130.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract and Public Comments: The prior FR Y-11I report was filed by a top-tier bank holding company for each of its nonbank subsidiaries, whether directly or indirectly owned. Combined and consolidated reporting was permitted in some instances. The report consisted of ten summary financial items and two items providing consolidation information.

The Federal Reserve has approved the following revisions to the FR Y-11I:

(1) Expand the report to collect more detailed financial information, comparable to items proposed for the FR Y-11Q but with certain detail reported only as summary items and

(2) Revise the reporting criteria to collect information on an individual basis annually from each nonbank subsidiary not required to file the proposed FR Y-11Q. The revised financial statements will include a balance sheet, income statement, off-balance sheet, and a statement on changes in equity capital. The FR Y-11I will also include a loan schedule to be submitted only by respondents engaged in credit extending activities. The public comments are discussed under the FR Y-11Q report.

Final approval under OMB delegated authority of the elimination of the following report:

1. Report title: Combined Financial Statements of Nonbank Subsidiaries of Holding Companies, by Type of Nonbank Subsidiary.
Agency form number: FR Y-11AS.
OMB Docket number: 7100-0244.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual reporting hours: 1,680.
Estimated average hours per response: Range from 1.0 to 17.0 hours.
Number of respondents: 271.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract: The FR Y-11AS was filed by all bank holding companies meeting the prior reporting criteria for the FR Y-11Q. The report collected the same report items as the FR Y-11Q by type of nonbank activity and consists of a balance sheet, income statement, and a memoranda section. The Board has eliminated this reporting requirement, and all commenters supported this action.

REGULATORY FLEXIBILITY ACT ANALYSIS

The Board certifies that the above bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

By order of the Board of Governors of the Federal Reserve System, March 24, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95-7796 Filed 3-29-95; 8:45AM]
BILLING CODE 6210-01-F

First Community Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Community Corporation, Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, N.A., Lexington, South Carolina (in organization).

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Suburban Illinois Bancorp, Inc., Elmhurst, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Suburban Bank of Elmhurst, Elmhurst, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mountain View Bancshares, Inc., Mountain View, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Mountain View, Mountain View, Arkansas.

Board of Governors of the Federal Reserve System, March 24, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95-7797 Filed 3-29-95; 8:45 am]
BILLING CODE 6210-01-F

Helena Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Helena Bancshares, Inc., Helena, Arkansas; to engage *de novo* through its subsidiary Helena National Leasing Company, Inc., Memphis, Tennessee, in leasing tangible personal property, consisting primarily of business machines, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 24, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95-7798 Filed 3-29-95; 8:45 am]
BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Regional Public Hearings of the Commission on Research Integrity

Pursuant to Pub. L. 92-463, notice is hereby given of two regional public hearings and meetings of the Commission on Research Integrity. All proceedings are open to the public.

The first meeting will be on Monday and Tuesday, April 10 and 11, 1995, at the Countway Library Auditorium, Harvard Medical Center, 25 Shattuck Street, Boston, MA. The Commission will meet from 8:30 a.m. until 5:00 p.m. on the first day to listen to testimony, and from 9:00 a.m. until 5:00 p.m. on the second day to deliberate Commission issues.

The second meeting will be on Thursday and Friday, May 4 and 5, 1995, at the University of Alabama, the Great Hall and Alumni Auditorium respectively, Hill University Center, 1400 University Boulevard, Birmingham, AL. The Commission will meet from 8:30 a.m. until 5:00 p.m. on the first day to deliberate Commission issues, and from 9:00 a.m. until 4:45 p.m. on the second day to listen to testimony.

Interested parties are advised to call the Executive Secretary shortly before the meeting to verify the date, place, and agenda.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services (DHHS) and the Congress on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

In its deliberations, the Commission has confirmed that there are no quick and easy answers for fair, effective, and realistic administrative solutions to a number of issues in research integrity and scientific misconduct. An essential component of the Commission's information-gathering is to interact extensively with relevant constituencies of the scientific community—including junior and senior scientists, witnesses, respondents, academic administrators, as well as students—to understand their particular experiences and views and to explore possible improvements.

Four major areas are currently of great interest to the Commission:

1. *A New Definition of Research Misconduct.* The Commission believes that any definition needs to address the full extent of serious research misconduct, but must avoid a definition that is too broad, vague, and potentially unfair. In addition, a two-tiered approach for research integrity, or failures thereof, would be useful; it would emphasize institutional responsibility, and reserve an oversight role for the Federal Government.

2. *Assurance for Institutions and Accountability for Federally Funded Research.* The Commission is considering that each institution receiving Federal funds develop and submit for Federal review and approval assurances concerning the establishment and implementation of: (a) Good research practices and professional norms; (b) procedures for disseminating that information throughout its community; and (c) educational activities designed to foster practice of the highest ethical standards in the conduct of research for all researchers. Topics affecting good research practices that might be addressed in institutional assurances include: data recording and retention; supervisory responsibility; authorship practices; protection of witnesses; and other professional conduct bearing directly on the integrity of Federally supported research.

3. *Bill of Rights for Witnesses.* Testimony from witnesses (also called "whistleblowers") who have challenged perceived research misconduct reaffirms the Commission's mandate to propose effective whistleblower protection. Witnesses have stated that retaliation occurs with sufficient frequency and impact to have a chilling effect on potential witnesses throughout the research community. The Commission is considering a Witness Bill of Rights.

4. *Codes of Ethics.* Professional organizations have a unique role in the preservation of scientific integrity. The Commission endorses their existence, their continual use in teaching and standard checking, and their ongoing development to keep pace with the ethical issues of the times. The Commission is considering that, to reinforce and augment the influence of normative professional standards, professional organizations should

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become more active in defining, promulgating, and promoting compliance with these standards.

The Commission will also continue discussion of other issues on which the Commission may make recommendations in its final report.

The Commission invites oral or written statements from interested parties. Lengthy statements exceeding 10 or 15 minutes of oral presentation should be submitted in writing or via internet to the Executive Secretary before the meeting. Written statements will be reviewed by Commission Members.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852; (301) 443–5300 (phone); (301) 443–5351 (fax); and hhyatt@oasch.ssw.dhhs.gov (internet) will furnish a preliminary report of the Commission including the Committee charter and roster of the Committee members, and/or a meeting agenda upon request. Individuals wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Henrietta D. Hyatt-Knorr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 95–7782 Filed 3–29–95; 8:45 am]

BILLING CODE 4160–17–P

Agency for Toxic Substances and Disease Registry

[ATSDR–91]

Notice of Proposed Revised Publication Schedule for the Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a proposed change in the publication schedule for the "Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles." According to the proposal, the list would be shifted to a 2-year publication schedule with a yearly informal review and revision. Therefore, the next scheduled publication would be in late 1995 when the 1995 Priority List of Hazardous Substances is made publicly available from ATSDR. At that time, a **Federal Register** notice would be published announcing the availability of the list.

DATES: Comments concerning this notice must be received by May 1, 1995.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–91 and should be sent to the attention of Dr. Jim Holler, Emergency Response and Scientific Assessment Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: The Emergency Response and Scientific Assessment Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6308.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), establishes certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Specifically, section 104(i)(2) of CERCLA, as amended by SARA (42 U.S.C. 9604(i)(2)), requires that the agencies maintain a list, in order of priority, of the hazardous substances found at NPL sites posing the most significant potential threat to human health. This listing is called the "Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles." Each substance on the Priority List is a candidate to become the subject of a toxicological profile prepared by ATSDR and the subsequent identification of priority data needs for that substance.

The history of the Priority List is as follows: The first 100 substances were published in 1987 (52 FR 12866); an additional 100 in 1988 (53 FR 41280); 25 more in 1989 (54 FR 43619); 25 more in 1990 (55 FR 42067); and a revision of the priority-list algorithm, including publication of the final target of 275 substances, was published in 1991 (56 FR 52166). The list of 275 has been reviewed annually, in 1992 (57 FR 48801) and 1993 (59 FR 9486), as called for by the legislation.

The 1991 revision of the algorithm represented a significant advance in the prioritization methodology. This listing now uses information from ATSDR's Hazardous Substance Release/Health Effects Database (HazDat), an active database of contaminants at NPL sites, as found in ATSDR's public health assessments. While the algorithm's use of current data keeps its conclusions contemporary, experience has shown that with this new approach, the Priority List has not changed substantially from year to year, particularly for high-priority substances. ATSDR believes that this stability reflects that the listing activity has fully developed. However, the amount of staff time needed to generate and publish the Priority List each year is not insignificant; substantial resources are still required for quality assurance and preparation and dissemination of results. ATSDR would like to shift some of these resources to implement promising new ideas to enhance the algorithm and data.

For these reasons, ATSDR and EPA would like to shift the Priority List activity to a 2-year publication schedule with a yearly informal review and revision. The informal review and revision would result in an interim list that would not be published or announced in the **Federal Register**, but would be made available on request. The agencies believe that the Priority List activity is mature enough that little is lost by reducing the frequency of publication and much is gained for other activities. This schedule will allow staffers to concentrate on enhancing the quality of the algorithm and its underlying data. It should also allow enough time for (1) the underlying data to change sufficiently so results will be more notably affected, and (2) adequate analysis, feedback, and insight to have occurred in order to enact more valuable revisions with each release.

The publicly announced list would be used to develop toxicological profiles. Placement on the priority list is one factor used to determine if a substance is to be considered for profile development in a given year. However, the interim list may also be reviewed to identify candidate substances that could be targeted for profile development.

ATSDR and EPA would retain the option to re-publish the Priority List in less than 2 years, if important new developments, insights, or resources arise.

Dated: March 24, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–7785 Filed 3–29–95; 8:45 am]

BILLING CODE 4163–70–P

Administration for Children and Families

Office of Community Services; State Median Income Estimates for Four-Person Families (FY 1996); Notice of the Fiscal Year (FY) 1996 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of estimated state median income for FY 1996.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the District of Columbia for FY 1996 (October 1, 1995 to September 30, 1996). In the past, the date for adoption of the state median income estimates has been the first day of the fiscal year after their publication. The adoption date for the state median income estimates now has been changed to be consistent with the adoption date for the poverty income guidelines. Therefore, LIHEAP grantees may adopt the state median income estimates at any time between the date of this publication and the first day of FY 1996 at the LIHEAP grantee's option. This means that LIHEAP grantees could also choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 1995, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using state median income estimates must adjust their income eligibility criteria to be in accord with the FY 1996 state median income estimates.

This listing of estimated state median incomes concerns maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 1995, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone: (202) 401–5304.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 1996 (the period of October 1, 1995, through September 30, 1996).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees can use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FY 1999 by the Human Services Amendments of 1994, Public Law 103–252, which was enacted on May 18, 1994.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1996 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recent available income data. In developing the median income estimates for FY 1996, the Bureau of the Census used the following three sources of data: (1) The March 1994 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1993 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

This is the first year in which income estimates from the March Current Population Survey are based on population controls from the 1990 Decennial Census of Population. Previous income estimates from the March Current Population Survey had been based on population controls from the 1980 Decennial Census of Population. Generally, the use of 1990 population controls results in somewhat lower estimates of income. This has resulted in several states having lower state median income estimates for FY 1996 than for FY 1995.

For further information on the estimating method and data sources, contact Edward Welniak, Chief of the Income Statistics Branch, Housing and Household Economic Statistics Division, at the Bureau of the Census (301–763–8576).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1996 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 1, 1995.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1996[1]

States	Estimated State median income 4-person families[2]	60 percent of estimated State median income 4-person families
Alabama	$37,975	$22,785
Alaska	51,181	30,709
Arizona	39,679	23,807
Arkansas	32,594	19,556
California	44,643	26,786
Colorado	47,112	28,267
Connecticut	59,288	35,573
Delaware	50,228	30,137
District of Col	46,943	28,166
Florida	40,405	24,243

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ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1996[1]—Continued

States	Estimated State median income 4-person families[2]	60 percent of estimated State median income 4-person families
Georgia	44,120	26,472
Hawaii	54,856	32,914
Idaho	39,851	23,911
Illinois	47,975	28,785
Indiana	44,274	26,564
Iowa	42,772	25,663
Kansas	43,155	25,893
Kentucky	36,291	21,775
Louisiana	35,177	21,106
Maine	41,513	24,908
Maryland	53,717	32,230
Massachusetts	55,120	33,072
Michigan	46,633	27,980
Minnesota	48,817	29,290
Mississippi	34,001	20,401
Missouri	42,162	25,297
Montana	38,157	22,894
Nebraska	42,262	25,357
Nevada	46,137	27,682
New Hampshire	49,452	29,671
New Jersey	57,916	34,750
New Mexico	35,560	21,336
New York	47,570	28,542
North Carolina	42,691	25,615
North Dakota	41,084	24,650
Ohio	46,116	27,670
Oklahoma	35,133	21,080
Oregon	42,745	25,647
Pennsylvania	47,109	28,265
Rhode Island	47,908	28,745
South Carolina	40,163	24,098
South Dakota	38,067	22,840
Tennessee	38,341	23,005
Texas	40,688	24,413
Utah	42,630	25,578
Vermont	44,184	26,510
Virginia	47,732	28,639
Washington	50,557	30,334
West Virginia	34,189	20,513
Wisconsin	46,363	27,818
Wyoming	45,414	27,248

Note—FY 1996 covers the period of October 1, 1995 through September 30, 1996. The estimated median income for 4-person families living in the United States is $45,161 for FY 1996. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 1995, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1994 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1993 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

[FR Doc. 95–7741 Filed 3–29–95; 8:45 am]
BILLING CODE 4184–61–P

Food and Drug Administration

[Docket No. 94M–0363]

Exogen™, Inc.; Premarket Approval of Sonic Accelerated Fracture Healing System (SAFHS®); Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 9, 1994 (59 FR 55847). The document announced the approval of the Exogen™, Inc., Sonic Accelerated Fracture Healing System (SAFHS®). Some information was inadvertently omitted and incorrect approval dates were used. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 94–27222, appearing on page 55847, in the **Federal Register** of November 9, 1994, the following corrections are made:

1. On page 55847, in the third column, the "**SUMMARY**" section, beginning in the 5th line, "September 13, 1994" should read "October 5, 1994"; and in the "**SUPPLEMENTARY INFORMATION**" section in, beginning in the 10th line, the words "acceleration of the time to a healed fracture for fresh, closed, distal" should read "the treatment of fresh, closed, posteriorly displaced distal."

2. On page 55848, in the first column, in the first paragraph, in the 31st line, after the word "indication", the following paragraph is added:

All other indications for the device will require additional data, and PMA supplements must be submitted for new indications. Furthermore, the applicant must conduct a study to gather additional information to validate some of the conclusions that were drawn from the PMA studies, based on a larger size.

3. On the same page, in the first column, in the 38th line, after the word "review", the following paragraph is added:

In accordance with the Panel's observation that differences exist in the rate of healing in different age groups, CDRH also directed the applicant to include a warning statement regarding the specific age range of the patients to be treated. CDRH concluded that based on the study's success criteria (e.g., both radiographically and clinically healed), the results of study did show a statistically significant difference in the time to a healed fracture in favor of the active device.

4. On the same page, in the first column, in the 43d line, after the word "panel" the following phrase is added:

"additional statistical analysis of the patient data stratified by age and gender,".

5. On the same page, in the first full paragraph, in the first line, "September 13, 1994" should read "October 5, 1994".

Dated: March 17, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–7744 Filed 3–30–95; 8:45 am]
BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–073–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for demonstration projects submitted to the Department of Health and Human Services during the month of January 1995 under the authority of section 1115 of the Social Security Act. This notice also lists approved, disapproved and pending proposals.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows, 6325 Security Boulevard, Baltimore, MD 21207.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 966–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of January 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new submissions, pending proposals, approvals, and disapprovals. Proposals submitted in response to a grant solicitation or other competitive process will be reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. We have added a new category in this notice entitled "Approved Grant Proposals" to identify grant and cooperative agreement awards for development of demonstration projects that may involve section 1115 authority.

A. Comprehensive Health Reform Programs

1. New Proposals

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand eligibility of persons with incomes up to 250 percent of the Federal poverty level (FPL), with persons with incomes above 133 percent of the FPL paying all or a portion of premiums. To fund the demonstration, the State is seeking a waiver of Federal Medical Assistance Payments (FMAP) requirements, which would effectively create a block grant whereby the Federal share of the demonstration would be fixed over the course of the demonstration and the State would assume the cost of increases as they occurred.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, Post Office 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized individuals will be enrolled during the first two years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

Federal Project Officer: Helaine I. Fingold, Health Care Financing

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Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals:

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware proposes to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, would be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MassHealth—Massachusetts.

Description: Massachusetts proposes a range of strategies that would extend Medicaid coverage to its low-income and uninsured citizens, including the employed, the short-term unemployed, and the long-term unemployed. The proposed program would employ direct provision of health services as well as indirect strategies that would promote market forces to address the needs of the uninsured, by providing subsidies to employers and low-income employees with incomes up to 200 percent of the Federal poverty level.

Date Received: April 15, 1994.

State Contact: Laurie Burgess, Director, Managed Care Program Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 348–5695.

Federal Project Officer: Ed Hutton, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MinnesotaCare—Minnesota.

Description: Minnesota proposes to expand its use of managed care service delivery and to extend Medicaid eligibility to families and children with incomes up to 275 percent of the Federal poverty level. The State would also integrate Medicaid with other public entities that deliver health services.

Date Received: July 28, 1994.

State Contact: Maria Gomez, Commissioner, Health Care Services Delivery, Minnesota Department of Human Services, 444 Lafayette Road N, St. Paul, Minnesota 55155, (612) 297–4113.

Federal Project Officer: Penny Pine, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require that beneficiaries enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Suzanne Rotwein, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the month of January.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded in the month of January. The following are proposals awarded since January 1, 1993:

Demonstration Title/State: MAINE–NET: Medicaid and Medicare Managed Care for the Elderly and Physically Disabled in Maine—Maine.

Description: This project is designed to demonstrate integrated models for the financing and delivery of managed health care and social services for elderly and physically disabled persons on Medicare and/or Medicaid in Maine. The project seeks to promote the development of regional service delivery networks or health plans, particularly in rural areas of the State, that would be responsible for the management, coordination and integration of services, including multi-disciplinary approaches to care planning and service delivery. The demonstration will provide a comprehensive package of primary, acute, and long term care (institutional and noninstitutional) services as part of a prepaid capitated health plan for the target populations. The project is in the early developmental stage.

Date Received: March 25, 1994.

State Contact: Carreen Wright, State of Maine Department of Human Services, State House Station #11, Augusta, Maine 04333.

Federal Project Office: Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, Baltimore, Maryland 21207.

Demonstration Title/State: Project Demonstrating and Evaluating Alternative Methods to Assure and Enhance the Quality of Long Term Care Services for Persons with Developmental Disabilities through Performance-Based Contracts with Service Providers—Minnesota

Description: The purpose of this project is to determine whether and how well the implementation of new approaches to quality assurance, with outcome-based definitions and measures of quality, will replace the input and process measures of quality, and in the process contribute to improving quality of life for persons with developmental disabilities. The Minnesota Department of Human Services will seek Federal authority to waive necessary provisions of intermediate care facilities for the mentally retarded (ICFs/MR) regulations to permit alternative quality assurance mechanisms in selected demonstration, residential, and support service programs. The Department will enter into performance-based contracts with counties, and participating ICF/MR providers. Desirable outcomes include, among others, the enhancement of consumer choice and autonomy, employment, and integration into the community. This project is in the developmental stage.

Date Received: March 25, 1994.

State Contact: Helen M. Yates, Minnesota Department of Human Services, Health Care Administration, 44 Lafayette Road, St. Paul, Minnesota 55155–3853.

Federal Project Officer: Samuel M. Brown, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

5. Approved Proposals

Demonstration Title/State: OhioCare—Ohio.

Description: Ohio will expand Medicaid eligibility to include uninsured persons with incomes up to 100 percent of the Federal poverty level. New and current eligibles in this statewide program will receive services through managed care. Certain special health related services, such as mental health and drug and alcohol addiction services, will also be provided through managed care.

Date Received: March 2, 1994.

Date Awarded: January 17, 1995.

Implementation Date: (Proposed) January 1, 1996.

State Contact: Kathi Glynn, Director, Ohio Medicaid, 30 East Broad Street, Columbus, Ohio 43266, (614) 644–0140.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of January.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan.

Description: The State of Georgia submitted a Section 1115 proposal entitled "Georgia Children's Benefit Plan" that provides preventive and primary care services for children 1 through 5 years of age who are between 133 and 185 percent of the Federal poverty level. The duration of the waiver is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street NW, 201 South Grand Avenue East, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Minnesota Long-Term Care Options Project—Minnesota.

Description: The State proposes to integrate long-term care and acute care services under combined Medicare and Medicaid capitation payments for elderly dual eligibles.

Date Received: April 18, 1994.

State Contact: Pamela Parker, Minnesota Department of Human Services, Human Services Building, 444 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296–2140.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Pay-in Spenddown Pilot—Ohio.

Description: Ohio proposes to implement a one-county pilot program to simplify Medicaid eligibility administration. It would allow the medically needy to pay in spenddown amounts in order to qualify for Medicaid.

Date Received: April 28, 1994.

State Contact: Jeanne Carroll, Ohio Department of Human Services, 30 East Broad Street, Columbus, Ohio 43266, (614) 466–6024.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

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Demonstration Title/State: Virginia.
Description: Virginia proposes to expand Medicaid eligibility to children in the State-funded KIDS CARE program, and provide them with a limited Medicaid benefit restricted to ambulatory services.
Date Received: May 18, 1994.
State Contact: Janet Kennedy, Suite 1300, 600 East Broad Street, Richmond, Virginia 23219, (804) 371–8855.
Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Demonstration—Washington.
Description: The State proposes to provide family planning services to low-income women for an additional 10 months postpartum, which will extend total coverage for such services to one year.
Date Received: April 21, 1994.
State Contact: Claudia Lewis, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, Washington 98504–5530, (206) 586–2751.
Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Wisconsin.
Description: The State proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.
Date Received: March 9, 1994.
State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, Wisconsin 53707, (608) 266–0613.
Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the month of January.

4. Approved Proposals

The following projects were inadvertently omitted from the list of pending proposals published in the **Federal Register** on January 23, 1995 (60 FR 4418).

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Kansas.
Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.
Date Received: Winter 1989.
Date Awarded: January 1995.
Implementation Date: (Proposed) Summer 1995.
State Contact: Evelyn McCormick, R.N., Case Mix Demonstration Project Director, Department of Social And Rehabilitation Services Docking State Office Building, Room 628 South, 915 Southwest Harrison, Topeka, Kansas 66612–1570, (913) 296–4752.
Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Maine.
Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.
Date Received: Winter 1989.
Date Awarded: January 1995.
Implementation Date: (Proposed) Summer 1995.
State Contact: Jamie Collier, Case Mix Demonstration Project Director Division of Medicaid, Robert E. Lee Building, Suite 801, 239 North Lamar Street, Jackson, Mississippi, (601) 359–6081.
Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—New York.
Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.
Date Received: Winter 1989.
Date Awarded: January 1995.
Implementation Date: (Proposed) Summer 1995.
State Contact: David H. Wilcox, CPA, Case Mix Demonstration Project Director, Bureau of Health Economics, 1143 Corning Tower, Empire State Plaza, Albany, New York 12237–0722, (518) 474–2881.
Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—South Dakota.
Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.
Date Received: Winter 1989.
Date Awarded: January 1995.
Implementation Date: (Proposed) Summer 1995.
State Contact: Carol Job, R.N., Case Mix Demonstration Project Director, Department of Social Services and Aging, 700 Governors Drive, Pierre, South Dakota 57501–2291, (605) 773–3656.
Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Texas.
Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.
Date Received: Winter 1989.
Date Awarded: January 1995.
Implementation Date: (Proposed) Summer 1995.
State Contact: Sue Wilson, Case Mix Demonstration Project Director Rate Analysis Department, Texas Department of Human Services P.O. Box 149030, Mailcode W–425, Austin, Texas 78714–9030 (512) 450–3744
Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

The following proposal was approved in January 1995.

Demonstration Title/State: Demonstration Project for Family Planning and Reproductive Services—Maryland.
Description: Maryland will extend Medicaid eligibility for family planning and preventive reproductive services for a 5-year period to women who are Medicaid eligible due to their pregnancy and remain Medicaid eligible 60-days post-partum.
Date Received: June 11, 1994.
Date Awarded: January 18, 1995.
Implementation Date: Not yet determined
State Contact: Jane Forman, Department of Health and Mental Hygiene Room 137, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–6538
Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

The following are projects approved since January 1, 1993, in addition to those published in the **Federal Register** on January 23, 1995 (60 FR 4418).

Demonstration Title/State: Medicaid Direct Purchase Vaccine Program (MDPVP)—Arkansas.
Description: The MDPVP streamlines the reimbursement process for vaccines, by allowing States to directly reimburse manufacturers for vaccines. Vaccine manufacturers send a shipment of vaccines on consignment at no cost to each private physician who treats children on Medicaid. Physicians then bill Medicaid for the office visit when they inoculate children, but not for the cost of the vaccine. The Medicaid program will reimburse the manufacturer directly at a discounted rate, according to the number of vaccines administered. The manufacturer will then send replacement quantities of the vaccines to the private physicians.
Date Received: March 1993.
Date Awarded: June 1993.
Implementation Date: Not Yet Determined.
State Contact: Judy Kerr, Arkansas Department of Human Services, Division of Economic and Medical Services, Donaghey Plaza South, P.O. Box 1437 Little Rock, Arkansas 72203–1437, (501) 682–8360.
Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—Massachusetts.
Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.
Date Received: 1991.
Date Awarded: July 1, 1993.
Implementation Date: July 1993.
State Contact: Milton Argeriou, Ph.D. Project Director, MOTHERS Project, 200

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Lincoln Street, Suite 303, Boston, Massachusetts 02111, (617) 426–5997.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—New York.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Mr. Stuart Lefkowich, Assistant Commissioner, Bureau of Primary Care, Division of Health and Long Term Care, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001, (518) 473–5875

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan—South Carolina.

Description: This project tests the effects on individuals' access to and cost of health care of eliminating categorical eligibility requirements and of raising the financial eligibility limits to 150 percent of the Federal poverty level.

Date Received: Spring 1991.

Date Awarded: February 1993.

Implementation Date: March 1993.

State Contact: Bruce Bondo, Health and Human Services Finance Commission, 1801 Main Street, Columbia, South Carolina 29201, (803) 253–6177.

Federal Project Officer: Jamie Hadley, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—South Carolina.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Bunny W. Jones, State Health and Human Services Finance Commission, Department of High Risk and Maternal Care, P.O. Box 8206, Columbia, South Carolina 29202–8206, (803) 253–6374.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan—Washington.

Description: This project tests the effects of eliminating categorical eligibility requirements and raising the financial eligibility limits to 200 percent of the Federal poverty level on individuals' access to and cost of health care.

Date Received: Spring 1991.

Date Awarded: February 1993.

Implementation Date: March 1993.

State Contact: Rochelle Salsman, Department of Health and Social Services, Medical Assistance Administration, Office of Recipient Services, 617 8th Avenue, SE., 4th Floor, P.O. Box 45530, Olympia, Washington 98504, (206) 753–7463.

Federal Project Officer: Jamie Hadley, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—Washington.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Kathy L. Apodaca, First Steps Plus Project, Medical Assistance Administration, Washington State Department of Health, P.O. Box 45730, Olympia, Washington 98504, (509) 575–2227.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

5. Disapproved Proposals

No proposals were disapproved during the month of January.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: March 21, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–7848 Filed 3–29–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: April 7, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 322, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Admin., 5333 Westbard Ave., Room 322, Bethesda, MD 20892, (301) 594–7154.

Name of SEP: Chemistry and Related Sciences.

Date: April 14, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 322, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Admin., 5333 Westbard Ave., Room 322, Bethesda, MD 20892, (301) 594–7154.

Name of SEP: Behavioral and Neurosciences.

Date: April 21, 1995.

Time: 9:00 a.m.

Place: Rockefeller University, New York, NY.

Contact Person: Dr. Kenneth Newrock, Scientific Review Admin., 5333 Westbard Ave., Room 232, Bethesda, MD 20892, (301) 594–7123.

Name of SEP: Clinical Sciences.

Date: May 1, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 349, Telephone Conference.

Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

The meetings will be closed in accordance with the provisions set forth in section

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7759 Filed 3–29–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Rulings on the Definition of "Eligible Spouse" as it is Used in the Supplemental Security Income (SSI) Program

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Rulings (SSR) 76–28, 76–41, and 88–11c.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 76–28, SSR 76–41, and SSR 88–11c.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 76–28 and SSR 76–41 were published in the 1976–1980 Cumulative Edition of the Rulings, and SSR 88–11c was published in the 1988 Cumulative Edition of the Rulings. These Rulings concern the definition the Social Security Administration used for the term "eligible spouse" in supplemental security income cases.

Section 8012 of Public Law (Pub. L.) 101–239 (the Omnibus Budget Reconciliation Act of 1989) changed the definition of the term "eligible spouse" by eliminating the 6-month waiting period for ending couple status after a separation. The definition of the term "eligible spouse" as used in these Rulings is no longer applicable because of the revised statutory definition. We are publishing final regulations to reflect section 8012 of Pub. L. 101–239 on this date.

(Catalog of Federal Domestic Assistance Program No. 93.807 Supplemental Security Income.)

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–7887 Filed 3–29–95; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy for issuance of permits for giant panda imports; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a proposed policy for issuance of permits for the import of giant pandas under the Convention on International Trade in Endangered Species (CITES) and the U.S. Endangered Species Act (Act). Current policy regarding giant panda imports would be superseded by this policy, if adopted. Specifically, no import permits would typically be issued for animals intentionally removed from the wild. All imports would have to be part of a coordinated international panda conservation effort, and activities would need to benefit panda conservation by supplementing, and not interfering with, China's breeding and research programs. Any net profits raised as a result of a panda loan would need to primarily fund conservation projects, educational programs, and/or breeding efforts in China. The Service proposes two alternatives concerning exhibition. One alternative would allow for import of pandas for short-term exhibition loans only as an ancillary component of a captive-breeding and/or scientific research program, when the display would not interfere with the captive-breeding or research activities. In the other alternative, the Service proposes to retain short-term exhibition loans under certain limited circumstances. The basis for findings required by the CITES on "primarily commercial purposes" and the Act on "enhancement of propagation or survival of the species" are outlined in this proposed policy. The suspension of the review and processing of permit applications to import live giant pandas continues until a decision is made on this proposed policy.

DATES: The Service will consider comments received by May 30, 1995.

ADDRESSES: Comments may be submitted to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 434.

FOR FURTHER INFORMATION CONTACT: Management Authority: Kenneth B. Stansell, Office of Management Authority, at the above address, telephone (703) 358–2093; fax number (703) 358–2280.

Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, telephone (703) 358–1708; fax number (703) 358–2276.

SUPPLEMENTARY INFORMATION:

Background

The survival and ultimately the increase in the population of the giant panda (*Ailuropoda melanoleuca*) in its natural habitat is the strong desire of the United States, the People's Republic of China (China), and the international conservation community. As such, the panda is subject to strict protection by its listing as an endangered species under the Act and its inclusion in Appendix I of CITES.

The Service is responsible for regulating panda loans in the United States by deciding whether to grant import, export, and re-export permits required by the Act and CITES, and interstate and foreign commerce permits under the Act. In making these decisions the Service, under the Act, must determine whether the proposed activities are not likely to jeopardize the continued existence of the giant panda and would enhance its existence in the wild, and under CITES, would be for purposes that are not detrimental to the survival of the species and that are not primarily commercial.

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In the late 1980's the proposals for short-term exhibition loans of giant pandas became an increasingly controversial issue. During one period in 1988, the Service received reports that as many as 30 institutions may have been negotiating, or planning to negotiate, with various entities in China to arrange panda loans, potentially posing additional threats to the wild and captive populations of pandas. As a result the Service, through the public review process, published a policy on March 14, 1991 (56 FR 10809), for the issuance of import permits for short-term exhibition loans.

In 1992, after the Service had issued a permit to the Columbus Zoo to import a pair of giant pandas for a short-term exhibition loan, the CITES Secretariat requested the Service to reevaluate its policy on panda imports. The Service published a notice in the **Federal Register** on June 29, 1992 (57 FR 28825), requesting public comment on existing policy. Three written comments were received. The International Union of Directors of Zoological Gardens suggested that an international management program be developed, especially for the captive population, which should include: (1) The development of a comprehensive, accurate inventory of captive pandas; and (2) a carefully designed breeding program, engaging as many founders and contributors to the gene pool as possible. Although accepting that there may be pandas incapable of breeding that could be used for exhibition, they recommended a complete ban on exhibit loans until a panda management plan is in place.

The World Conservation Union (IUCN) stated there should be a moratorium on short-term non-breeding loans of pandas until there is sufficient evidence that such loans would contribute to a long-term conservation strategy in captivity and in the wild. They believed there is need for a strategy defining priority conservation activities for the species.

The New York Zoological Society viewed short-term exhibition loans as money-making commercial ventures that should not be considered as "not for commercial purposes", stating that any policy should meet the mandatory standards that the American Zoo and Aquarium Association (AZA) has proposed. In their view, poaching continues as a major problem, yet little is being done to stop it. They maintained there should be a complete moratorium on loans until: (1) There is an adequate and complete register and studbook of captive pandas; (2) a complete series of priorities and projects are agreed to by conservation organizations and China; and (3) agreements can be developed with IUCN to meet international conservation concerns, including increased efforts to stop poaching and preserve habitat.

Verbal comments were made by the World Wildlife Fund (WWF) within the comment period, expressing concern about commercial aspects of exhibition loans and the distinction that had been made by the Service in this regard, and that income to the parent city of a zoo should also be considered. They were concerned that exhibition loans could reduce breeding and induce taking from the wild. They thought the Service should provide a clear indication of how it will examine the educational aspect of any exhibits.

Before evaluation of the existing policy on short-term exhibition loans was completed, the Service received an application from the Zoological Society of San Diego (ZSSD) to import a pair of giant pandas for a long-term, captive-breeding loan. On April 20, 1993, the AZA announced the development of a Giant Panda Conservation Action Plan, which has since been formalized. The plan outlines a captive-breeding program with support from 29 zoological institutions in North America. In addition, in July 1993 China's Ministry of Construction (MOC) published the second giant panda studbook, listing all pandas currently in captivity.

With the possibility of receiving an increasing number of import permit applications for giant pandas for public exhibition, scientific research, and/or captive breeding purposes, the Service felt that a re-examination of the long-range implications of panda imports was necessary to ensure that such imports best serve the conservation needs of the species. Thus, on December 20, 1993, the Service announced in a news release the temporary suspension of the processing of any new permit applications for the import of live giant pandas during a reassessment of the current policy. On May 4, 1994, the Service requested public comments and announced a working public meeting to assist the Service in formulating the draft revised policy (59 FR 23077). The suspension of review and processing of any new live giant panda import permits remains in effect.

Public meetings were held by the Service on May 26 and August 23, 1994. For its review, the Service sought information on: Giant panda status and population trends; current information on habitat availability and continuing loss; the status of current breeding efforts; the need to augment breeding efforts outside of China; whether there is adequate genetic diversity within the captive population to maintain sufficient heterozygosity in future generations; whether there is a need for additional genetic material from the wild; the status of reintroduction; and the need for research priorities. The Service also sought information on the status of all existing or proposed conservation programs and management plans for the giant panda. Comments were sought on the current panda loan policy and on specific elements of the findings necessary for permit issuance, including "primarily commercial purposes" and "enhancement".

As a result of the public comment period in 1994, written information and comments were received from the AZA, Busch Gardens, the Humane Society of the United States (HSUS), WWF, and the ZSSD. The AZA commented that: (1) All importers of giant pandas must be required to participate in the giant panda studbook; (2) most of the funds contributed to China must be used for giant panda field conservation projects; (3) there must be a project selection and monitoring system established in China and overseen in North America for the use of funds generated by panda loans; (4) the permittee must show that the importation will not detract from the current panda captive-breeding program in China; (5) genetic and demographic criteria should be used to determine selection of pandas to be imported; (6) there should be no lower age limit for animals to be imported, and pre-reproductive animals should be allowed if the permittee can demonstrate their value within a holistic panda conservation program; (7) loans should be longer than 3 years; (8) animals to be imported must be individually identified; (9) importing facilities must follow recommended minimum housing guidelines, and facilities should be approved by the Chinese; (10) the permittee must show that the importation is part of the AZA Giant Panda Conservation Action Plan, or a similar plan; (11) all permittees must support research aimed at resolving husbandry and management problems of giant pandas and at increasing reproductive success; (12) import must be for a scientific purpose or survival of the species and not likely to jeopardize the continued existence of the species; (13) no animals are to be used in animal acts while in the United States; (14) there must be an education component; and (15) part of the program must be to assist the Chinese in technology transfer and training and collaborative efforts in

panda husbandry, management, and health care.

Busch Gardens commented that: (1) The Service should lift its moratorium on the importation of giant pandas and establish a new policy promptly; (2) since the current policy establishes guidelines for only short-term exhibition loans, the new policy should set specific guidelines for long-term captive-breeding loans; (3) the new policy should recognize that long-term breeding loans sponsored by the AZA under its conservation plan are inherently non-commercial and, therefore, meet the CITES requirement of being "not for primarily commercial purposes", and "for-profit" institutions that participate in the AZA program should be treated in the same way as "not-for-profits"; (4) accounting or reporting obligations should not be imposed on the importer as a result of a long-term breeding loan as they are unnecessary, impracticable, and unprecedented; and (5) neither CITES nor the Act requires an "in fact" finding by the Service that a proposed activity will enhance propagation or survival of the panda, and participants in the AZA plan should automatically meet the enhancement standard of the Act.

The HSUS indicated that: (1) The previous exhibition of pandas in zoos in the United States has not resulted in the improvement of the status of pandas in captivity or in the wild, and experience has shown that large populations of animals in captivity are not an effective conservation tool; (2) they oppose the removal of an endangered animal from the wild for confinement and breeding in zoos unless preservation of the species' ecosystem is assured; (3) it would be desirable to duplicate the experience in Chinese breeding centers of maintaining a number of pandas clustered at one location for breeding; (4) the import of pandas to zoos will always serve a commercial purpose, and there has been little control or guarantee of what happens to funds going to China for panda conservation; and (5) funds, technical assistance, and other efforts should be directed toward protecting habitat and reintroductions. The WWF commented that: (1) Long-term breeding and research loans must be part of an integrated, international program designed to complement conservation efforts for the wild panda population; (2) research loans must be for research that is of high priority, is best conducted outside China, and will produce results that will contribute to the pool of knowledge about giant pandas; (3) standards for commercial vs. not-for-profit institutions need to be clarified—if import of a panda by a city-owned institution can result in the benefit to the local economy in the same manner that for-profit institutions operate to generate a profit, all institutions should be held to the same stringent standards; (4) the standards for "primarily commercial" need to be defined to consider the motivation for a giant panda loan; (5) the requirements on accounting and allowable expenses need to be strengthened—the Service should consider setting a ceiling on the associated expense that an exhibitor can deduct from revenues generated by the loan; (6) it should be clarified that education of the American public is not a criterion in making permit decisions, and education in China related to in-situ panda conservation should be considered as a component of an integrated conservation program; (7) better documentation should be required on the specific conservation projects in China that are to receive funding from an exhibitor, and China's approved and complete National Conservation Project Plan for the Giant Panda and its Habitat (National Plan) for pandas should be used as a guide; and (8) the Service must monitor performance of exhibitors on an annual basis to ensure they are complying with the provisions of the permit.

The ZSSD commented that: (1) There is a need to clarify existing regulations and guidelines; (2) there needs to be a framework that includes agreement on the role for captive breeding, coordinated and effective research with agreed-upon, but flexible, research objectives, effective habitat preservation and restoration with emphasis on management of human conflicts, sufficient funding to accomplish these tasks, with agreed-upon monitoring and sufficient accountability for revenues and expenditures, and agreement on the role of display; and (3) they feel strongly that captive breeding is central. They suggested an approach to the policy that includes a framework agreement between AZA and the Chinese government that would identify priority conservation projects and research priorities with integrated participation by U.S. institutions. Permits could be issued to institutions based on this agreement, and a monitoring and implementation process could be established involving key parties, such as the AZA, the permittee, the Service, and the WWF.

The Service considered these comments and comments given at the two public meetings, plus the experience it has gained since 1991 in applying the current policy, to draft a new proposed policy. The following summarizes information the Service received and gives a brief description of elements in this proposed policy.

Population Status

Precise data on the size of the wild population of giant pandas are not available. The most recent survey, performed from 1985 to 1988, concluded there were between 872 and 1,352 pandas in the wild. The most common current estimate is that there are fewer than 1,000 giant pandas left in the wild and that the population is continuing to decline. In less than 15 years, from 1975 to 1989, the total area of panda habitat declined by 53 percent. This decline was primarily due to logging, grazing, and conversion of forest habitat to agriculture and other uses, resulting in the fragmentation of habitat into small islands. The 1985–88 survey found the wild panda population to be fragmented into 24 isolated groups separated by mountain ranges, rivers, roads, forest clearings, and human settlements. Some of these groups contain fewer than 10 pandas, making them vulnerable demographically and genetically. Without genetic exchange among these populations, the persistence of such small islands of pandas over time is questionable. In addition, poaching continues to take its toll, despite the imposition of harsh penalties, including execution.

Status of Captive Breeding in China and the Need for Breeding Efforts Outside of China

The continued decline of the wild population of giant pandas and the increasing fragmentation of its habitat make it increasingly important to establish a self-sustaining captive population. The existence of a robust captive population could provide insurance against increasing threats to the wild population. The current captive population represents about 10 percent of the total panda population, captive and wild. As of June 1993, there were 113 giant pandas in captivity in 35 institutions—98 animals were in institutions in China and 15 pandas were in 8 institutions located outside of China. Three institutions had 14 to 21 pandas and 4 had 4 to 6 animals. The remaining 28 institutions had 1 or 2 animals. The Chinese recognize that these captive pandas need to be moved for better breeding opportunities and to ensure that all mature individuals participate in breeding. Of the 15 pandas currently held in 8 institutions outside China, 5 institutions hold only 1 panda. These data demonstrate the great need to coordinate the movement of captive-held pandas internationally

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The captive-breeding program in China is not currently self-sustaining. Between 1936 and 1988, 345 pandas held in captivity produced 67 litters of 106 cubs, with only 32 surviving more than a year. In recent years, improvement in management and joint efforts within China have enhanced breeding and survival rates and reduced the infant mortality rate of the captive population. However, a review of the International Studbook of the Giant Panda suggests that the current number of founders that have contributed to the captive population is inadequate. According to the studbook, the current captive population is descended from 30 founders. However, recent research suggests that fewer than 30 founders may exist because the paternity of some of the captive-born pandas is uncertain. The current captive population includes 57 wild-caught pandas that have not reproduced, but only 31 of these are currently of reproductive age. If these pandas could be encouraged to breed before their deaths, the captive population might not need additional genetic material from the wild population for several generations. If immediate action is not taken to enhance captive propagation efforts, additional genetic material might have to be taken from the wild to ensure sufficient genetic diversity in the captive population.

Reintroduction

In view of the information on the status of the panda in the wild and in captivity, the Service recognizes that reintroductions cannot occur until a self-sustaining population of captive-born animals is achieved and sufficient areas of panda habitat are available and secure. The reintroduction of giant pandas is a long-term goal that needs to be incorporated into coordinated international conservation efforts. Protocols for reintroduction must be developed so that they are available when opportunities for reintroduction arise. As used in this notice, a *coordinated international panda conservation effort* means an organized plan through which all panda imports support high priority projects in China's National Plan and are coordinated with China's captive-breeding plan and the AZA Species Survival Plan (SSP) for the panda or other applicable multi-national breeding plans.

Research Priorities

There needs to be a coordinated global effort to set priorities for panda research. China's National Plan (see following section) provides the following research priorities: (1) habitat improvement; (2) captive- breeding; (3) ecology, population status, and monitoring; (4) rearing and nutrition; (5) prevention of illness; and (6) reintroduction of captive pandas to the wild. The "Giant Panda Breeding Plan" developed in China (see following section) lists the following areas that need basic research: (1) artificial insemination biology and techniques; (2) breeding behavior; (3) disease prevention; (4) reproductive physiology; (5) diet; (6) mating ability; (7) reproductive longevity; and (8) fertility. Because of the precarious level of the panda population, it is important that research findings are shared quickly and that information and methodologies are transferred to China for use in the field and in the captive-breeding program.

Giant Panda Conservation Plans

In the past decade, there appear to have been advances in panda conservation as a result of international cooperation with the Chinese ministries The WWF worked closely with the Ministry of Forestry (MOF) to develop a panda conservation plan, which was submitted to the Chinese government in 1989. China's National Plan evolved from this plan, and in 1993 it was approved by China's State Council, with the subsequent development of a priority list of the projects included in the plan. The National Plan proposes establishing 14 new panda reserves, improving 13 existing giant panda nature reserves, constructing 18 panda migration corridors, and setting up 32 habitat management stations. It would cover most of the currently occupied panda habitat, protecting 95 percent of pandas in the wild. With the adoption of the plan, the Chinese government made a major commitment to the conservation of pandas and the plan by appropriating $13 million for its implementation. However, the total required for completion is estimated at $77 million, leaving more than $64 million that must come from outside sources over the next 10 years.

To carry out the fund-raising activities effectively and to ensure that the funds raised would be used entirely for the conservation projects, China issued guidelines, "Utilization and Management of Funds Generated for China's National Conservation Project for the Giant Panda and Its Habitat," which have also been approved by China's State Council. The guidelines indicate that the MOF is responsible for coordinating and organizing the raising of funds under the National Plan and any funds generated must be submitted to the China Protecting Giant Panda Project Office (Project Office), which will be responsible for assuring that specific funds will be used in specific areas. After deductions for some overhead costs, funds will be used entirely for projects in the National Plan, allocated on a priority basis and the Project Office is responsible for announcing the allocation and expenditure of funds generated for the National Plan.

Advances have been made in the captive-breeding efforts as well. In 1993, the second international studbook of giant pandas was published, listing all births, deaths, capture locations, and other valuable data. In September 1993 at the International Giant Panda Conference in Chengdu a document entitled, "Giant Panda Captive Breeding Plan" was presented. It references the Giant Panda Breeding Technical Committee, which coordinates captive-breeding. Although the Service does not know whether this document will become official, it is a clear indication of the increased cooperation between Chinese zoos and MOF panda-breeding facilities.

Recent events suggest that China is interested in working with entities outside of China in an integrated conservation effort that includes conservation in the wild and captive propagation. On January 14, 1994, an agreement was signed between AZA and Chinese officials, in which the Chinese support the long-term giant panda captive-breeding cooperative plan in North America as presented by AZA. The Chinese also indicated that giant pandas removed from the wild before March 1993 and captive-born specimens that do not detract from the breeding efforts in China would be made available for the North American captive population. As part of this agreement, AZA is developing procedures for verifying expenditures within China and for monitoring the progress of conservation projects. Furthermore, China has already agreed to allow AZA personnel to visit China to monitor projects.

The Giant Panda Conservation Action Plan developed by AZA is intended to supplement and support China's National Plan. It calls for 14 priority actions to be implemented by signatories in full collaboration with Chinese colleagues and other conservation organizations. One of the priority actions is to establish a giant panda SSP. The goals of the SSP would include preservation of the species' genetic diversity; research contributing to the survival of both wild and captive populations; public education and professional training, including technology transfer; and direct support of habitat conservation, including financial support.

Purposes

The primary function of any import of giant pandas must be to enhance the ultimate conservation of the species in the wild. This will require a variety of activities and actions in China, including habitat protection, habitat restoration, creation of corridors linking isolated populations, elimination of poaching, development of compatible resource uses in giant panda habitat, educational programs in China that stress the importance of preserving giant pandas and their habitat, development of a self-sustaining captive population, and, eventually, reintroduction of captive-bred animals. This proposed policy would allow for the issuance of permits to import pandas for captive-breeding, scientific research, and/or exhibition purposes, when the activity is part of a coordinated international panda conservation effort. It proposes two alternatives for exhibition. In alternative 1, exhibition would only be allowed as an ancillary component to captive-breeding or scientific research, and such exhibition would be contingent on the absence of conflict between public display and the primary research or captive-breeding activities. Alternative 2 would allow the import of pre-breeding age male pandas for short-term exhibition under certain circumstances. The proposed policy emphasizes that, in addition to the specific purpose(s) of a loan, the permittee must typically fund conservation projects and/or captive-breeding in China, as well as the transfer of scientific and captive-breeding methodologies or conservation education programs to China. Since there are a number of pandas owned by entities outside of China, this proposed policy includes references not only to China but also to lending institutions in other countries. The proposed policy would continue to prohibit the use of pandas in animal acts or shows.

Wild-Taken Pandas

In the past it has been suggested that giant pandas have been recovered (i.e., "rescued") from the wild without sufficient justification, and that such removals were necessary for survival of the species in the wild. The increased international demand for captive giant pandas may have provided incentives that were misdirected in some instances. The bamboo die-offs of the early 1980's perhaps stimulated misguided and unnecessary removals of pandas from the wild.

In recent years, the Chinese government has taken a firm position on captures from the wild and the number of animals brought into captivity has declined. The August 1989 joint report of the MOF and WWF titled, The National Conservation Management Plan for the Giant Panda and its Habitat (WWF Plan), includes *Guidelines for Rescue Operations* in Section 3.8. These recommendations were apparently developed with the bamboo die-off of the early 1980's in mind, and they recommend, among other things, that: (1) No further panda emergency operations should be mounted until another major wave of bamboo flowering affects the panda range; (2) villagers should not receive any financial incentive to rescue pandas; (3) villagers who encounter starving pandas should report immediately to the local forestry officials or designated rangers, who must visit the site to decide whether rescue is necessary; and (4) rescue should only be attempted in terminal cases. It further states that "some of these regulations are already accepted," we assume, by the MOF. The National Plan evolved from this 1989 plan.

A Sichuan Forestry Department document, with a February 20, 1993, date, titled, "Procedure for the Conservation and Rescue of the Giant Panda" (Rescue Procedures), outlines procedures for reporting the occurrence of ill or injured pandas, authorities responsible for rescue decisions, and options to be considered in a rescue. It also refers to a national protocol on panda rescue, and indicates that Sichuan had taken actions regarding possible panda rescues following the lead of the State Council and the MOF. Therefore, it would appear that national panda rescue regulations or policy similar to those used in Sichuan were in effect at least by February 20, 1993.

This policy proposes that pandas removed from the wild prior to December 31, 1986, would be considered for an import loan. This date approximately follows the peak of bamboo die-off in about 1983 by 3 years, allowing a period during which pandas might still have been affected by that event. It appears the Chinese have established even greater restrictions on the rescue of pandas since then. Therefore, the Service generally would not consider any import of pandas removed from the wild after December 31, 1986, unless the circumstances of the removal clearly indicate that the removal conformed to Chinese regulations and was in the best interest of the individual animal and the species.

Age and Other Parameters of Animals Available for Loans

No post-breeding age pandas would be considered for import. Since data now indicate that the reproductive age is higher than originally thought, the Service proposes that post-breeding pandas would be over 20 years of age. The Service feels that the risks from transport to animals over this age would not be acceptable.

For Alternative 1 in the "Exhibition" section, the Service proposes that pre-breeding age pandas will not be considered for an import permit, except for female pandas within an estimated 6 months of their first estrus. For Alternative 2, for short-term exhibition, only the import of pre-breeding male pandas would be considered.

Length of Loans

The Service believes that the length of giant panda loans should be determined by the purpose(s) of the loan and the length of time necessary to accomplish the goals of the import. The Service feels that internationally coordinated giant panda conservation efforts could incorporate various types of loan arrangements requiring varying lengths of time.

Conservation Benefits of Specific Projects

The Service continues to emphasize the need to relate giant panda imports to the enhancement of the species in the wild, especially through funding of *in situ* projects. It is expected that most imports would be for multiple purposes and funds would be generated.

The Service proposes that the allocation of net profits derived by the applicant during a loan period that can be attributed to the loan should be based on ownership of the panda, and should be used for specific areas of conservation. If the panda is owned by China, at least 80 percent of net profits must be used to fund *in-situ* conservation projects in China's National Plan. Remaining funds would be used for panda conservation, including additional *in-situ* conservation projects, education, and/or captive-breeding efforts in China. If the panda is owned by an entity other than China, at least 50 percent of the funds must be used to fund *in-situ* conservation projects in China's National Plan. Remaining funds would be used for panda conservation, including additional *in-situ* conservation projects, education, and/or captive-breeding efforts inside China, and/or captive-breeding efforts outside of China. Specific conservation projects

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and/or activities to be funded must be high-priority projects included in China's National Plan or otherwise specifically and thoroughly justified. The applicant would be required to provide a complete monitoring plan to track disbursement of funds and progress of projects. Instead of outlining exact requirements, the Service proposes that monitoring plans contain components that would clearly show that the projects to be funded will be completed. This should include identification of specific projects with timeframes given for tasks to be completed, and a plan outlining how progress would be documented and how some site inspection would occur. China has recently agreed to these components when working with several groups in the United States. The Service would monitor the progress by requiring the permittee to submit at least an annual report of funds transferred and status of projects funded and implemented.

The Service also proposes that a summary of projects to be funded would be published in the **Federal Register** as part of the public review process when an application is received for a permit to import a giant panda.

Scientific Research

The Service proposes that import applications for scientific research outline how the research would contribute to the conservation of the panda in the wild and in captivity. The proposed policy requires that the applicant provide a research proposal that demonstrates that the research is properly designed and can be accomplished with the available expertise and resources. The Service will not categorize or identify acceptable kinds of research but will retain the option of judging the validity and/or current need of the proposal based on priorities given in a coordinated international panda conservation effort and in China's National Plan.

If the panda would also be on exhibition, the applicant must have a monitoring plan to ensure that the display does not interfere with the research or bias the data.

To the extent possible, the Service would expedite permit applications for biological samples under certain conditions. The researcher needs to keep in mind that under CITES export permits are only valid for 6 months and import permits for 1 year. Authorization under the Act may be granted for 4 years, but then would need to be published in the **Federal Register** for public comment before renewal.

Captive Breeding

The proposed policy would require permittees who import pandas for captive-breeding purposes to participate actively in a coordinated international panda conservation effort. Breeding loans need to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population. Since many of the pandas to be imported into the United States for breeding would have a history of not reproducing, it is anticipated that there will be a research component to the captive-breeding activities.

If the panda would also be on public display, the applicant must have a monitoring plan to ensure that the display does not interfere with the breeding program.

Exhibition

To date, almost all of the loans of giant pandas to the United States have been solely for short-term exhibition purposes and the generation of funds for conservation and captive-breeding activities in China. Funds from the loan of one captive panda from the United Kingdom were used to improve facilities for that animal while at Chapultepec Park Zoo in Mexico City.

The Service anticipates import applications that include public display would contain a component to educate the public in the United States about the ecological roles and conservation needs of the giant panda, but this in and of itself would not be considered to meet the requirement under the Act of enhancing the survival of the giant panda in the wild. If the applicant proposes to develop panda conservation education programs that would be transferred to China, the Service would consider this component as possibly meeting part of the enhancement requirement. The Service emphasizes support for education in China because there appears to be a need for educational programs in areas near giant panda habitat and reserves to enhance panda conservation.

The Service proposes two alternatives on exhibition and invites public comment.

Alternative 1—*Exhibition Solely as an Ancillary Component.* Under this alternative, which would be consistent with the AZA moratorium on short-term panda loans, import of pandas solely for exhibition loans would not be allowed. Educational display would only be allowed as an ancillary component of a captive-breeding and/or scientific research program, when the display would not interfere with the captive-breeding or research activities. Even temporary loans of pandas to another institution during the non-breeding season would not be allowed, as this could be disruptive to behavioral interactions, endocrine monitoring, and research designed to maximize breeding success.

With advances in coordinated international conservation efforts for the giant panda, the Service proposes that institutions in the United States focus their energies on activities with captive pandas that best ensure their recovery. The Service recognizes that the use of any of these animals for short-term exhibition could detract from the overall captive conservation efforts by stimulating institutions to use resources for short-term exhibition, rather than committing resources to needed captive breeding or research. Furthermore, the use of breeding age pandas for short-term exhibition loans could increase the stress and reduce acclimation of pandas to breeding surroundings while minimizing the opportunities for important research and captive-breeding activities. Thus, in this alternative the Service proposes to discontinue the issuance of permits for the import of pandas for solely exhibition purposes (even though such exhibits might raise substantial funds to go back to China); every panda loan would be required to have intrinsic conservation benefits in its own right, in addition to financial contributions to China.

Alternative 2—*Short-term Exhibition.* In this alternative, the Service would issue permits for the import of giant pandas not only for activities as described in alternative 1, but also solely for short-term exhibitions under specific conditions designed to raise funds to be returned to China. Exhibition loans could provide significant funding in support of conservation projects for pandas in the wild, but the Service is still considering whether such loans would in any way have a detrimental affect on pandas in the wild, or would detract from captive-breeding or research efforts.

Greater revenues for panda conservation might be likely from exhibition loans because of higher visitation rates for shorter periods of time, and because viewing opportunities might occur at facilities that might otherwise not be able to qualify for scientific research or captive-breeding purposes. Some concerns expressed in the past about exhibition loans, such as the lack of a studbook and the lack of project priorities, have been addressed, and other concerns about accountability and the lack of a master breeding plan are being addressed. Nevertheless, there remain concerns that short-term loans could in some way affect breeding, stimulate take of additional pandas from the wild, and/or detract from efforts to support overall captive-breeding efforts. Such loans emphasize the purely financial benefits that may be gained from exhibition, rather than any intrinsic benefit from the loan itself.

While there is no available evidence that the import of pandas of pre-breeding ages, as allowed by the previous policy, had subsequently had a detrimental effect on their breeding, AZA has suggested that the loan of only male pandas would further minimize the effects of loans on breeding. The Service agrees with the AZA suggestion and proposes that if the final policy allows any short-term exhibition loans, they would be limited to young, pre-reproductive age male pandas.

With regard to the possible removal of pandas from the wild, projections have changed in that: (1) China in recent years has taken a firm position on capture of pandas from the wild, (2) the Service's proposed policy continues not to allow the import of any pandas that were removed from the wild after 1986, except in unusual yet justifiable circumstances, and (3) the studbook allows for a check on parentage of any captive-bred pandas.

Finally, with regard to possible disruption of efforts to maximize the breeding potential of the captive population, the Service notes: (1) That the Chinese have been developing a captive-breeding plan, (2) the Chinese are supportive of AZA's efforts to augment captive-breeding efforts through research and emphasis on non-reproductive pandas, and (3) the zoo community has shown increasing interest in supporting long-term captive-breeding efforts, although the expense of constructing suitable facilities might exclude some zoos from participating in such long-term loans.

If after reviewing the comments and information received from this notice, the Service concludes that short-term exhibition loans would not be allowed, the Service would likely review this aspect of the panda policy again after accumulating or four or five years' experience and data under the new policy.

Primarily Commercial Purposes

Giant panda loans must be for purposes that are not primarily commercial. This proposed policy does not reflect a significant change from the previous policy since the requirements of CITES have not changed, but there are a few additions. One of the proposed changes is a description of reasonable expenses that could be deducted to calculate net profit, and items that would not be considered reasonable expenses. Another is that the applicant would need to submit a certified statement from a reputable, independent accounting firm that the internal accounting system meets the requirements of Service policy for tracking funds.

Suitability of Facilities

CITES and the regulations under the Act require that the evaluation of an application for an import permit includes consideration of whether the applicant is suitably equipped to house and care for the animals to be imported. The proposed policy continues to require the applicant to demonstrate it has acquired available information on giant panda care and facilities, and training for involved keepers, as well as approval by the Chinese of the quality of the facilities. Although these requirements would enable an evaluation of the applicant's initial abilities to house and care for giant pandas, the Service now feels that additional assurances are needed regarding the long-term care and health of the animals. Therefore, under this proposed policy applicants would be required to develop a protocol for monitoring the continued health and behavior of giant pandas throughout the loan period, or to describe an existing protocol that will be used for this purpose.

Transfer of Pandas to Other Entities within the United States

Before a giant panda is transferred between facilities within the United States, the recipient must obtain an interstate commerce permit under the Act. The Service would, to the extent possible, facilitate the transfer of animals when it is part of a coordinated breeding program. The transfer of animals must also have the prior approval of China or the entity that owns the panda. The number of times an individual panda is transferred within the United States would be closely monitored to protect the overall health of the animal.

Response to the CITES Secretariat's Views on Giant Panda Loans

The text of the 1991 policy is not significantly changed in the proposed revised policy. The requirement of permits under the Act is clarified as the pre-Act exemption (Section 9(b) of the Act) does not apply to animals to be transferred under a lease-hold agreement.

Public Comments Solicited

The Service requests comments on this proposed policy. The final decision on this proposal will take into consideration the comments and any additional information received, and such consideration might lead to a final policy that differs from this proposal.

Required Determination

This document was not subject to Office of Management and Budget review under Executive Order 12866. The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022.

The Service has determined that this proposed policy is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, paragraph 1.10). An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia.

Proposed Revised Policy on Giant Panda Loans

Before any import permit will be issued, the application must be reviewed in terms of the applicable requirements of CITES and the Act by the Service's Offices of Management and Scientific Authority. Issuance of an import permit under CITES requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant is suitably equipped to house and care for the animals. Issuance of a permit under the Act requires prior determinations that, among other things: (1) The import would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15. In addition, Section 9(d) of the Lacey Act, with regulations at 50 CFR 14, Subpart J, requires that shipments of live wild mammals being shipped to the United States are done under humane and healthful conditions

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such that the animals arrive alive, healthy, and uninjured. The policy requires the applicant to demonstrate that the animals will be shipped so as to satisfy this requirement.

Purposes

The primary goal of the policy is to ensure that all imports of giant pandas contribute toward the survival, and ultimately the increase to a self-sustaining level, of panda populations in the wild. All imports must be part of a *coordinated international panda conservation effort*, a term used in this policy to mean an organized plan through which all giant panda imports support high priority projects in China's National Plan and are coordinated with China's captive-breeding plan and AZA's SSP or other applicable multi-national breeding plans. The Service anticipates that most import permit applications will be for multiple purposes. Applicants must identify the primary purpose for the proposed import and all other intended purposes. No activities for additional purposes may be undertaken during the course of the loan without approval from the Service.

The ultimate objective of managing captive pandas should be for breeding and research purposes, and any training or use of pandas in animal acts would be considered as detracting from this objective. Therefore, use of pandas in animal acts or shows during the loan period would be prohibited by condition of the permit.

Wild-Taken Pandas

The following guidelines will be used to evaluate import applications involving pandas removed from the wild. These time constraints are based on information available to the Service suggesting that the removal of pandas from the wild has increasingly come under control by the Chinese, starting prior to the WWF Plan of August 1989.

In all cases, the Service will continue its policy of approving import permit applications only when it is sure that the loan did not, or will not, contribute to the removal of pandas from the wild.

1. Pandas removed from the wild prior to December 31, 1986, will be considered for an import permit.

2. The importation of pandas removed from the wild after December 31, 1986, will not be considered, unless information describing the circumstances of their removal clearly indicates that the Rescue Procedures were followed, that the animal(s) was malnourished, ill, or injured to a degree that justified its removal, and that circumstances of the animal's recovery, of habitat conditions, of population density, or other reasons provided clearly precluded reintroduction of the animal(s).

Age and Other Parameters of Animals Available for Loans

1. Pandas over 20 years of age will not be considered for an import permit because they are probably beyond breeding age, and the risks from the stresses of travel are not biologically acceptable.

2. For alternative 1 in the "Exhibition" Section, pre-breeding age pandas will not be considered for an import loan. This would include females under 4 years of age, and males under 5 years. Even though it is expected that captive-breeding loans will concentrate on the use of pandas that have not been successfully bred in China (or elsewhere), there may be situations in which females within 6 months of their first estrus would be considered to allow a pre-breeding period of acclimation of a pair.

3. In alternative 2, only pre-breeding age male pandas from the age of 2 to 5 will be allowed for short-term exhibition loans.

- Only male pandas that are independent of maternal care but are not yet of breeding age or approaching breeding age will be allowed to be imported. Specifically, this include males at least 2 years of age at the beginning of a loan period and under 5 years at the end of a loan period.
- No pre-reproductive female pandas or breeding age giant pandas of either sex will be considered for short-term loans, even during the non-breeding season.

Length of Loans

The Service will evaluate the length of time requested for the proposed loan to ensure it is appropriate to the proposed activity. For example, if the primary purpose of the import would be for captive breeding and/or research, the length of the loan should be of sufficient duration to accomplish the stated goals. Generally it is anticipated that such activities may require 3 to 5 years, or perhaps a longer time for the maximum benefit to captive-breeding activities in the United States.

Conservation Benefits of Specific Projects

All of the net profits resulting from the import are to be used for conservation of the giant panda and its habitat. Emphasis is on in-situ conservation projects as listed in China's National Plan.

1. Whenever funding is associated with the import of giant pandas, the following must be satisfied:

(a) Net profits are to be allocated as follows:

- If the animals are owned by China, at least 80 percent of the funds are to be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan. The remaining funds must be used to support conservation, including additional *in-situ* projects, education and/or breeding efforts for the giant panda in China. In the event that profits generated exceed the ability of the Chinese to apply the monies to priority projects or captive-breeding in China at any one point in time, then funds may be used to support breeding efforts for the giant panda outside China with approval from the Service.
- If the animals are owned by an entity other than China, at least 50 percent of the funds are to be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan. The remaining funds must be used for panda conservation, including additional *in-situ* conservation projects, education, or captive-breeding efforts in China, and/or captive-breeding efforts outside of China as part of a coordinated international panda conservation effort.

(b) Conservation projects to be funded must meet the following conditions:

- They must be included in a coordinated international panda conservation effort, or compelling reasons must be given for funding other projects. Preferably, any conservation or breeding plan cited as including projects to be funded should be formally approved by China's Project Office of MOF or the appropriate entity in another country, but plans or programs that have not been officially approved will be considered.
- They must be considered to be of high priority in the most recent coordinated international panda conservation effort.
- They must be described as specifically as possible, with funding allocations to specific tasks given in foreign currency (e.g., yuan) and in U.S. dollars, and projected timeframes given for use of the funds to initiate and complete specific projects or activities.

(c) The applicant must provide a plan to monitor the disbursement of funds for selected conservation projects or activities. The plan needs to be sufficiently complete so that the Service is satisfied of its effectiveness and that the projects to be funded will be completed. Such a monitoring plan

should include provisions equivalent to the following:

- Before funds are transferred to the appropriate office in China or the lending entity, the permittee and the appropriate foreign entity should agree on a detailed budget, work plan, and timetable for project completion. Specific, measurable objectives and a schedule for progress reporting should be identified for each project.
- Payments should be made in installments. Each payment needs to be linked to actions taken toward completion of the project(s).
- Subsequent payments should be contingent on approval of progress reports by the permittee.
- An independent audit should be conducted annually to verify disbursement of funds.
- The permittee, its authorized representative, and the Service must have permission from the implementing agency to examine records and to make site visits to funded projects at least annually.

2. Annual reports to the Service will be required, which should give an accounting and report of funds transferred and portions of the project completed (see section under "Primarily Commercial Purposes" for further reporting requirements). Copies of reports received by the applicant from the recipient of funding should be included, with English translations if reports are not in English.

3. As part of the notice of receipt of a permit application published in the **Federal Register** for public comment, the Service will describe the specific projects the applicant is proposing to fund.

Scientific Research

There is a great need for scientific research on the giant panda, both in the wild and in captivity. The research must contribute to the conservation of the panda and typically, when part of an import loan, must provide a source of funds for panda conservation in the wild, as described below.

(1) The applicant must provide information to show that the research is *bona fide*, meaning research that is properly designed and can be accomplished with the expertise and resources available:

- Objectives and goals must be clearly defined. Hypotheses and experimental designs, when applicable, intended to test them must be described.
- Investigative procedures and research protocols must be described in detail or referenced as published in a recognized journal.
- Estimated timeframes need to be given.
- Research must not be duplicative unless it is a collaborative effort, or if repetition can be justified.
- The results of the research would be expected to identify, evaluate, or resolve panda conservation problems or contribute to the basic knowledge of panda biology and ecology deemed important to the survival of the panda.
- The results would likely be published in a scientific journal.

(2) For research with live pandas, the applicant must have the expertise and resources to accomplish the stated objectives.

- Enhancement may be satisfied solely through scientific research if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that would contribute to their conservation in the wild. It is expected that requests to import live pandas for scientific research will also include other, additional enhancement activities, such as the generation of funds for panda conservation in the wild.
- Research must be recognized as a high priority activity by a coordinated international panda conservation effort.
- Proposals must describe how the study may contribute to the conservation of the giant panda in the wild. If *in situ*, the research must be a collaborative effort with Chinese scientists. If the research is *ex situ*, the applicant must describe why it is best conducted outside China, and how any information gained or methodologies developed will be transferred for use in China, including estimated timeframes of transfers, training, or collaborative efforts.
- Any physically invasive procedures to be used or any behavioral modifications anticipated as part of research activities must be described, together with a detailed plan describing how the applicant would respond to and minimize complications that might arise. Any subsequent procedural changes and/or additions must be pre-approved by the Service.
- The permittee must provide an annual report summarizing research activities associated with the purposes of the permit, including a brief description of each project, a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results and copies of published papers resulting from the research. The report should also indicate any transfer of research protocols or methodologies to the Chinese and their use in China, in the wild or in captivity.

(3) If live pandas are going to be on exhibition at any time during the term of the research loan, the following must be satisfied:

- The applicant must provide protocols outlining how the research and exhibition will be monitored to ensure that having the pandas on exhibit is not interfering with the research or biasing data. The applicant must also provide the name, position, and qualifications of the individual who will be responsible for making the decision to take the pandas off of exhibit if the display is interfering with the research.
- The applicant must have adequate facilities to conduct the research and house the pandas separate and apart from the public exhibition areas in case it is found that exhibition interferes with the research.
- The funds generated by the exhibition must be used for conservation projects.

(4) For research involving biological samples, the applicant must have the expertise and resources to accomplish the stated objectives.

- Salvaged specimens (i.e., those obtained from animals that have died of natural causes; naturally shed hair) must be obtained without harassing any live animals, and collection must be authorized by the MOF, MOC, or the Project Office.
- The collection of samples from live captive giant pandas must be done by qualified personnel, preferably veterinarians, with appropriate training and experience in capture, restraint, and sample collection, so as not to result in death or injury of animals. Sampling must also be done in a manner that would not be disruptive to breeding activities. The collection and, subsequent export of such samples to the United States must be done in cooperation with the authority responsible for managing the animals (e.g., MOC).
- Any collection of biological samples from live giant pandas in the wild must be authorized by the MOF Generally, only samples that were collected incidental to the capture of animals for other purposes by MOF biologists will be considered for import However, the import of samples taken from animals captured for the sole purpose of collecting samples for import will be considered if the samples are to be used in research that is expected to have a substantial benefit to giant panda conservation. In this case, import permits must be obtained prior to the collection of the samples. Samples from live wild giant pandas may only be collected by qualified personnel,

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preferably veterinarians, who have appropriate training and experience in capture, restraint, and sampling methodologies appropriate to giant pandas, so that sampling is unlikely to expose live giant pandas to risk of death or injury, or to disrupt mating or parental care of young.

• The results of research conducted with imported specimens must be reported to the Service at least annually; a report should include copies of any scientific publications produced. The report must contain information on the number and type (e.g., blood, hair, skin biopsy) of samples imported, specific source/location from which each sample was collected (if more than one was authorized), and observations on the effects of sampling on the animals. The report must also state whether the research resulted in the development and transfer of research protocols or other methodologies to the Chinese and how these products have been/will be used in China for the conservation of giant pandas.

• The Service will consider the issuance of general permits for the import and export of biological samples when the applicant provides sufficient information to show the conditions outlined in this policy are met and as long as complete annual reports are submitted in a timely manner.

• The import or export of urine, feces, and synthetic DNA, when collected in a manner that does not involve the capture, detention, or killing of protected wildlife, does not require a permit from the Service. The CITES Management Authority of any exporting or importing country should be contacted to meet any requirements it may have.

Captive Breeding

Breeding loans need to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population, and typically also to provide a source of funds for panda conservation in the wild. There is a need to maximize the use of pandas currently held in captivity that are not essential to China's breeding program. It is anticipated many of the animals that may be requested to be imported into the United States will be ones that have not successfully bred in China, and the policy emphasizes the need to have a research component to identify how these individuals may best contribute to the breeding component in China.

(1) The applicant must provide sufficient information to demonstrate the importance and necessity of importing pandas for captive-breeding:

• Enhancement may be satisfied through captive-breeding if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that has promise of contributing to panda conservation. It will be expected to include a research component aimed at increasing reproductive success if the animals involved have a history of being non-breeding animals. It is expected that requests to import live giant pandas for captive breeding will also include other, additional enhancement activities, such as the generation of funds for panda conservation in the wild.

• If research is a component, the applicant must provide information to show that the research satisfies the requirements of this policy concerning scientific research. The research must be recognized as a high priority activity by a coordinated international panda conservation effort.

• The proposed captive-breeding must be part of a coordinated international panda conservation effort designed to complement conservation efforts for the wild panda population, with the applicant actively participating in the plan.

• The breeding loan must demonstrate how it will contribute to the preservation of the panda's gene pool (i.e., retention of maximum genetic diversity). The choice of individuals to be imported should be based on scientific management of the captive populations with genetic and demographic criteria used to determine mating pairs.

• Proposals must describe how the study would contribute to the conservation of the giant panda in the wild or in captivity, and how any information gained or methodologies developed will be transferred for use in China, including estimated timeframes of transfers, training, or collaborative efforts.

(2) The applicant must provide information to show that he/she has the expertise and resources to accomplish the stated objectives:

• The applicant must submit a detailed breeding protocol that outlines when male and females will be paired for breeding, how females and males will be visually and physically separated and/or managed together, with layout of facilities and protocols for rearing potential young.

• Imports of frozen sperm for use in captive breeding must be done in accordance with a coordinated international panda conservation effort.

• Artificial insemination or any other physically invasive procedures must be described, and any subsequent procedural changes and/or additions must be pre-approved by the Service.

• The permittee must provide at least an annual report summarizing breeding activities, and research activities, if pertinent, including a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results, and copies of any published papers. The report should also indicate any transfer of protocols or methodologies to the Chinese and their use in China in the wild or in captivity.

(3) If pandas are going to be on exhibition at any time during the captive-breeding loan:

• The applicant must provide protocols outlining how the captive breeding, its research component, when applicable, and exhibition will be monitored to ensure that having the pandas on exhibit does not interfere with captive breeding and/or its research component. The applicant must also provide the name, position, and qualifications of the individual who will be responsible for making the decision to take the pandas off of exhibit if the display is interfering with the captive-breeding or its research.

• The applicant must have adequate facilities to conduct the captive breeding and its research component, when applicable, and to house the pandas separate and apart from public exhibition areas, in case it is found that the exhibition interferes with the captive breeding or its research.

• The funds generated by the exhibition must be used for conservation projects as previously described.

• The applicant must consent to the movement, substitution, or transfer of any panda to another approved institution if, in the judgment and at the request of China, such action is needed to maximize successful captive-breeding opportunities.

Exhibition

1. The import of giant pandas for the purpose of educational exhibition alone would not be sufficient to satisfy enhancement requirements. The Service encourages institutions importing giant pandas to educate the U.S. public about the ecological role and conservation needs of the giant panda, but will not consider this in reviewing applications. However, if an applicant is developing a panda conservation education program that would be transferable to China, or is developing a program specifically for use in China, particularly in localities near giant panda habitat and reserves, the Service will consider this project as part of a coordinated international conservation effort in making its enhancement finding.

• Educational programs in China should be aimed at local people, school children, panda researchers (field and captive), reserve biologists, and managers.

• Educational activities or projects must be described in detail, including samples of the kinds of educational materials to be used, and a description of evaluation methods.

• The messages conveyed through the educational program should stress historical and contemporary impacts on the status of the giant panda in the wild, and conservation efforts that might be required to halt the species' decline and degradation of its habitat.

2. Alternative 1—Exhibition Solely as an Ancillary Component. Educational displays would only be allowed as an ancillary component of a captive-breeding and/or research program. Specifically, the import of pandas solely for exhibition loans of any length would not be allowed.

3. Alternative 2—Short-term Exhibition. For purposes of this policy, the import of pandas for short-term exhibition loans would be allowed under certain conditions:

• A panda can only be on loan for short-term exhibition for a maximum of 1 year.

• During a single 1-year loan period in the United States, up to 3 different institutions may receive and display the pandas for periods of at least 3 months, unless health considerations dictate otherwise.

• Each institution following the first in the sequence of exhibitions must have submitted complete application materials as well as written authorization from the exporting country's Management Authority and, if from China, from the Protecting Giant Panda Project Office.

Primarily Commercial Purposes

With regard to the determination of whether a loan of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy.

1. Resolution Conf. 5.10 of CITES provides that:

• The nature of the transfer of specimens between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination.

• There may be some commercial aspects of that use, but the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Public, non-profit institutions, organizations and agencies will receive consideration for panda loans. The Service's general regulations at 50 CFR 10.12 define "public" institutions as those that "* * * are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit." Although commercial (profit-making) organizations may also choose to apply for such loans, the profit-making characteristics of such organizations will make it more difficult for the Service to find that the specimen(s) proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied. Of necessity, the burden of proof will be higher for commercial enterprises than for non-profit entities.

3. It is the Service's policy that all funds or other valuable considerations raised directly or indirectly by a public institution or other organization that are obtained by the organization(s) or institution(s) involved (or any for-profit parent organization of the applicant, but not including unrelated private entities, such as hotels, not associated with the applicant) as a result of the panda loan are, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the exhibitions, to be used entirely for the non-commercial purposes outlined in the prior section, "Conservation Benefits of Specific Projects".

• Reasonable expenses include the following: Facility construction if amortized for the entire proposed length of the loan (but not for short-term exhibition loans), facility maintenance, direct labor and operating supplies needed for the care of the pandas (includes keeper and veterinary support), administrative support directly associated with the maintenance of the animals, security needed for the pandas, development of educational materials for use in China, development of educational signs for exhibits in the United States, and supplies or materials necessary to conduct research or captive-breeding activities that have been identified in the application.

• It is the intent of the policy to maximize funds going back to conservation projects in China and, as such, costs associated with ordinary operations, such as advertising, general personnel costs, general legal expenses (not directly related to the panda loan), will not be considered reasonable expenses.

• Collection of revenues generated by the panda loan by the importing institution (e.g., gate receipts, food and drink sales, tourist souvenirs), either for its own use or for the use of other organizations, for purposes other than those previously described, would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

4. Each applicant for a panda loan, in satisfying the applicable requirements of 50 CFR subchapter B, should submit a detailed plan for the allocation of all funds raised in excess of expenses, as a result of the panda loan. The application must also include a certification statement from a reputable, independent accounting firm stating that the applicant's internal accounting system is sufficient to account for and track funds generated directly or indirectly by the panda loan, and for the subsequent disbursement of funds.

5. Each recipient of a permit to obtain a panda loan shall be required, in accordance with 50 CFR 13.45, to submit an annual report to the Service as a condition of the permit. The annual report must contain a full accounting of all funds raised directly or indirectly by the institution or organization, the portion of those funds that is in excess of expenses, and what portion of these funds are to be disbursed for giant panda conservation projects or activities as outlined in the prior section, "Conservation Benefits of Specific Projects".

• The report must include names of people involved, location of the activities, a brief description of each project, and the amount and use of money being provided the project. The report must also identify specific costs that were deducted as reasonable expenses.

• Conservation projects other than those projects presented in the application must receive approval from the Service's Office of Management Authority prior to allocating funds.

These policy considerations will be used by the Service only for determining whether panda imports are primarily commercial in nature. They are not intended to apply to Appendix I import permit applications for other species. All such applications must continue to demonstrate that the proposed import meets the general requirements of resolution Conf. 5.10 to

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satisfy the "not to be used for primarily commercial purposes" test.

Suitability of Facilities and Care

Under CITES, the Service must be "satisfied that the proposed recipient of a living specimen (to be imported) is suitably equipped to house and care for it". Under the regulations implementing the Act, the Service must determine that the applicant has "* * *the expertise, facilities, or other resources* * *to successfully accomplish the objectives* * *". To aid in satisfying these requirements, applicants must provide the following information in addition to the information required in 50 CFR 17.22:

- Copies of protocols for monitoring general health and behavior. In lieu of new protocols, an applicant may submit copies of protocols recommended by a coordinated international panda conservation effort.
- Diagrams and photographs clearly depicting all enclosures where the panda may be housed, including any off-exhibit areas and panda holding area(s) in relation to other facilities, including roads adjacent to such areas.
- Information to demonstrate the applicant has consulted with at least two other facilities that have successfully held pandas in recent years, that the applicant has facility features that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers and veterinarians, have had proper training and experience to care for pandas.
- Approval of facilities by the Chinese or appropriate authority in the lending country, if such a stipulation has been made in a contractual agreement. If approval has not been given prior to applying for the permit, there must be a statement from the applicant certifying that the agreement stipulation will be satisfied before animals are imported.

Transfer of Pandas to Other Entities Within the United States

Applicants proposing to import giant pandas and subsequently transfer them to another entity within the United States should indicate this in the initial import application. The proposed recipient of the panda will need to apply for and receive an interstate commerce permit under the Act prior to the transfer since the pandas are being held under a loan (e.g., lease-hold agreement) from China or other lending entity. The proposed recipient of the panda needs to provide all the information required by the Act, its regulations, and this policy. The Service will facilitate, to the extent possible, the transfer of animals within the United States when part of a coordinated breeding program. If the receiving institution has a panda permit on file with the Service, it can reference the permit number and information in this file, and provide any new information for the Service to review in consideration of an interstate commerce permit. These applications will be published in the **Federal Register**, and so the applicant will need to allow at least 90 days for processing. Such transfers must also have the prior approval of China or the entity that owns the animals. The number of times an individual panda is transferred within the United States will be closely monitored to protect the overall health and well-being of the animal.

Response to the CITES Secretariat's Views on Giant Panda Loans

The Service notes with approval the recommendation of the Secretariat that no exemptions be granted to the requirements of Article III of the Convention for the shipment of giant pandas, even for animals that might otherwise qualify for an exemption as "pre-Convention" animals under Article VII. However, the Service does not have authority under U.S. law to refuse to accept a valid pre-Convention certificate. If the Management Authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and export permit or re-export certificate, as appropriate, from the exporting or re-exporting country in accordance with Article III of the Convention. In addition, even if a valid pre-Convention certificate is issued by the exporting country, an import permit would be required under the Act for all panda loans (and an export permit, if the pandas are to leave the United States), even for pandas acquired prior to January 23, 1984 (the date of the final **Federal Register** notice listing the giant panda under the Act), as the pre-Act exemption (Section 9(b)(1) of the Act) does not apply to animals that are subsequently held in the course of a commercial activity (e.g., lease-hold agreement).

The Service will also continue its policy of approving applications only if it is sure that the proposed loan did not, or will not, contribute to removal of pandas from the wild, and that the non-commercial purposes for the proposed loan predominate.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–7851 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical	Exploration	Jan. 3, 1995
Schlumberger Geco—Prakla.	Exploration	Jan. 3, 1995.
ARCO Alaska, Inc.	Exploration	Feb. 1, 1995.

BP Exploration (Alaska) Inc., (BPX) and ARCO Alaska, Inc., (ARCO) were re-issued reoccurring Letters of Authorization to incidentally take polar bears and walrus during development and production activities based upon receipt of an annual monitoring report. BPX is authorized to incidentally take polar bear and walrus in the Prudhoe Bay, Endicott and Milne Units. ARCO is authorized to incidentally take polar bear and walrus in the Kuparuk River Oilfield. Monitoring reports have been received and are on file at the Marine Mammals Management Office.

FOR FURTHER INFORMATION CONTACT: Mr. David McGillivary or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402; November 16, 1993).

Dated: March 16, 1995.

Rowan W. Gould,

Acting Regional Director.

[FR Doc. 95–7807 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AZ-050–05–1230–00; AZA 23275)

Arizona; Recreation Area Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that the Bureau of Land Management is closing an area, until further notice, of public land known as the Paradise Cove Boat Ramp Recreation Area, or Joe Henry Boat Ramp, located on the Colorado River in Yuma County, Arizona. The area affected by this closure contains 35 acres, more or less.

San Bernardino Meridian, Arizona

T. 16 S., R. 22 E.,
Sec. 28, lots 2, 5, and 6, portion of S½S½.

EFFECTIVE DATE: Upon first printing in **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ed Perault, Supervisory Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: The closure is in response to concerns of public health and safety, excessive illegal dumping, and uncontrollable resource degradation. Future public access at Paradise Cove Boat Ramp Recreation Area will be considered in comprehensive planning efforts at a later date. Violations to this closure are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: March 24, 1995.

Maureen A. Merrell,

Assistant District Manager, Administration/ Acting District Manager.

[FR Doc. 95–7810 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–32–P

[USFS, R–6, 595053; GP5–089; OR–51080]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 106.70 acres of Federal land within the Winema National Forest to surface entry, mining, mineral leasing and geothermal, subject to the laws, rules, and regulations applicable to National Forest System lands. The land has been eliminated from a Forest Service exchange proposal.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the General Exchange Act of March 20, 1922, (16 U.S.C. 485, 486), the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 U.S.C. 751), the following described Federal land has been eliminated from the initial exchange proposal between the Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601–7119, and the G Bar W Land & Cattle Company, Medford, Oregon:

Willamette Meridian

T. 38 S., R. 5 E.,
Sec. 11, lots 3 and 4, NW¼SW¼, and E½SW¼SW¼.

The area described contains 106.70 acres in Klamath County.

At 8:30 a.m., on April 28, 1995, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on April 28, 1995, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on April 28, 1995, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on April 28, 1995, the land will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: March 15, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–7758 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–33–P

[CA–010–05–1430–01: CA–35288]

Notice of Realty Action; Land Use Lease of Public Lands, Amador County, California

AGENCY: Dept. of the Interior, Bureau of Land Management.

REALTY ACTION: Land Use Lease, Amador County, CA 35288.

SUMMARY: The following described public land is being considered for a non-competitive, 20-year, residential, land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Amador County, California

T. 6N., R. 12E., M.D.M.
Sec. 9: Portion of lot 35.
Comprising .011 acre, more or less.

The above parcel of public land would be leased to Roy and Karen Rhoades to resolve a trespass situation. The lease would be issued for a term of 20 years. The land will be leased at fair market value.

The parcel would be subject to any prior existing rights. The lease area will include only that area of public land which is occupied by a portion of the lessees' residence. The occupancy to be authorized by the proposed land use lease was formerly authorized by Small Tract Lease Sac 055095, issued in 1965. The proposal is consistent with the Bureau's land use plans that support the settlement of trespass by lease when an undue hardship case is present.

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ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received by May 15, 1995, which is 45 days from date of publication of this notice in the **FEDERAL REGISTER.**

FOR ADDITIONAL INFORMATION: Contact Dean Decker at (916) 985–4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 95–7819 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–40–M

[UT–050–05–1430–01; U–68990]

Notice of Realty Action

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of realty action; direct sale of public lands in Millard County, Utah.

SUMMARY: The following described public lands have been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, have been found suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), and direct sale procedures (43 CFR 2711.3–3(a)(1). The sale will be at no less than the appraised fair market value of $3,540. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian, Utah

Parcel 1

T. 17 S., R. 6 W.,
Sec. 24, N1/2SE1/4 (Contains 80 acres).

Parcel 2

T. 22 S., R. 19 W.,
Sec. 5, Lot 5 ALL (Contains 21.13 acres).

Combined, parcels 1 and 2 contain 101.13 acres.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Millard County, Utah, for two solid waste disposal sites. Parcel 1 describes the Delta site and parcel 2 describes the Garrison site.

It has been determined that the subject parcel 1 is prospectively valuable for oil and gas and geothermal resources; and parcel 2 is prospectively valuable for oil and gas; therefore, the mineral estate of parcel 1, excluding oil and gas and geothermal resources; and the mineral estate of parcel 2, excluding oil and gas, will be conveyed simultaneously with the surface estate in accordance with Section 209 of FLPMA. Millard County filed an application along with the required $50.00 nonrefundable fee for the conveyance of the mineral interest specified above. The respective oil and gas and geothermal resource minerals will be reserved to the United States.

Parcel 1 is subject to the existing grazing use of Blaine Christensen, Dwain J. Finlinson, Reese E. Finlinson, Rich Finlinson, Joseph T. Finlinson, Clark B. Cox, Burton Lovell & Son, Sinks Land Company, Monte C. Nielson, Spence Butler, Oak City Ward, and Vance Finlinson, holders of grazing preference on the Oak City Allotment. The 80 acres proposed for sale produce 4 AUMs or less of the 1,207 AUMs presently produced on the allotment.

Therefore, approximately 4 AUMs of the 1,207 AUM grazing preference would be removed from grazing as a result of this sale.

Parcel 2 is subject to the existing grazing use of Wm. Earl and Sidney Hayward, and Mt. Moriah Ranches Inc c/o David Eldridge, holders of grazing preference on the Clay Springs Allotment. The 21.13 acres proposed for sale produce 2 AUMs or less of the 2,635 AUMs presently produced on the allotment. Therefore, approximately 2 AUMs of the 2,635 AUM grazing preference would be removed from grazing as a result of this sale. A certified letter was sent to each permittee which served as the 2-year notification of the reduction of their respective grazing privilege, pursuant to 43 CFR 2711.1–3. All grazing privileges on parcel 1 and parcel 2 will expire on May 4, 1995. The patent will not be issued on or before this date.

The patent, when issued, will contain the following reservations to the United States:

1. Parcel 1 and 2, a right-of-way reservation to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 stat. 391; 43 U.S.C. 945 (1970))

2. Parcel 1, the oil and gas and geothermal resources mineral estate would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of FLPMA (43 U.S.C. 1719).

3. Parcel 2, the oil and gas mineral estate would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of FLPMA (43 U.S.C. 1719). And will be subject to all valid existing rights and privileges of record and title restrictions including, but not limited to:

4. The issuance of these patents would be subject to the following indemnification statement signed by the Millard County Commission:

"Millard County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or in the release of hazardous substances from T. 17 S., R. 6 W., Sec. 24, N½SE¼, or from T. 22 S., R. 19 W., Sec. 5, Lot 5 ALL, Salt Lake Meridian, Utah, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States."

Failure of Millard County to submit the full purchase price within the time allowed will result in cancellation of the sale and forfeiture of any deposits. The public lands would be withdrawn from sale and Millard County would be required to bring the existing 80 acre and 21.13 acre landfill sites into compliance with Environmental Protection Agency (EPA) landfill regulations. Otherwise, R&PP lease UTU–51862 may be terminated. If the lease is terminated the existing landfill site would be closed and Millard County would then be required to remove all facilities and rehabilitate the disturbed public lands in accordance with EPA and BLM rules and regulations. The R&PP classification would terminate. The public lands would then continue under the jurisdiction and management of the Bureau of Land Management and become subject to the public land laws and general mining laws. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the House Range and Warm Springs Resource Areas, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, House Range and Warm Springs Resource Areas, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: March 20, 1995.

Samuel R. Rowley,

Associate District Manager.

[FR Doc. 95–7828 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

[UT–050–05–1430–01; U–68991]

Realty Action

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of realty action; direct sale of public lands in Juab County, Utah.

SUMMARY: The following described public lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value $27,000. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian, Utah

T. 13 S., R. 1 W.
Sec. 15, W½NE¼NW¼, NW¼NW¼, S½NW1/4, SW1/4.

Contains 300 acres in Juab County.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Nephi City Corporation of Nephi, Utah, for a regional sanitary landfill. It has been determined that the subject parcel is prospectively valuable for oil and gas; therefore, the mineral estate, excluding oil and gas, will be conveyed simultaneously with the surface estate in accordance with Section 209 of FLPMA. Nephi City Corporation filed an application along with the required $50.00 nonrefundable fee for the conveyance of the mineral interest specified above. The oil and gas minerals in the lands shall be reserved to the United States. The described 300 acres are subject to the existing grazing use of Phillip E. Allred, holder of the grazing preference on the Stone Quarry Allotment. A certified letter was sent to the permittee which served as the 2-year notification of a reduction of his grazing privilege, pursuant to 43 CFR 2711.1–3. This grazing privilege will expire on May 4, 1995. The patent will not be issued on or before this date and will result in the loss of 17 of the 225 AUMs presently produced on this allotment. This will constitute an 8% downward adjustment in the grazing preference. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945 (1970)).

2. All oil and gas resources would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

And will be subject to all valid existing rights and privileges of record and title restrictions including, but not limited to:

1. The subject lands are located within the Hall Creek drainage and the Spring Canyon drainage and both involve base floodplains. Nephi City Corporation must demonstrate their ability to maintain, restore and protect the floodplains on a continuous basis in accordance with Section 3(d) Executive Order 11988 of May 24, 1977 (42 F.R. 26951) (Floodplain Management) and BLM Manual 7221.06D1. The conveyance document will (1) reference those uses that are restricted under Federal, State or local floodplain regulations; and (2) shall include other appropriate restrictions to the uses of properties by Nephi City Corporation and any successors.

2. The follwing indemnification statement signed by the Nephi City Mayor:

"The City of Nephi, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or in the release of hazardous substances from T. 13 S., R. 1 W., Sec. 15, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States."

Failure of Nephi City Corporation to submit the full purchase price within the time allowed will result in cancellation of the sale and forfeiture of any deposits. The public lands would be withdrawn from sale and the City of Nephi would be required to bring the existing 20 acre landfill site into compliance with Environmental Protection Agency (EPA) landfill regulations. Otherwise, R&PP lease UTU–51861 may be terminated. If the lease is terminated the existing landfill site would be closed and the City of Nephi would then be required to remove all facilities and rehabilitate the disturbed public land in accordance with EPA and BLM rules and regulations. The R&PP classification would terminate. The public lands would then continue under the jurisdiction and management of the Bureau of Land Management and become subject to the public land laws and general mining laws.

Detailed information concerning these reservations as well as specific terms and conditions of the sale are available for review at the House Range and Warm Springs Resource Areas, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, House Range and Warm Springs Resource Areas, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: March 20, 1995.

Samuel R. Rowley,

Associate District Manager.

[FR Doc. 95–7829 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

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[OR-942-00-1420-00; G5-092]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 3 W., accepted March 3, 1995
T. 29 S., R. 3 W., accepted March 1, 1995
T. 21 S., R. 7 W., accepted March 3, 1995

Washington

T. 23 N., R. 10 W., accepted February 22, 1995
T. 23 N., R. 11 W., accepted February 22, 1995
T. 23 N., R. 12 W., accepted February 22, 1995
T. 24 N., R. 12 W., accepted February 22, 1995
T. 24 N., R. 13 W., accepted February 22, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (1515 SW 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: March 22, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95-7818 Filed 3-29-95; 8:45 am]

BILLING CODE 4310-33-M

[NM-930-1430-01; KSNM 94549]

Notice of Proposed Modification of Public Land Order 5605; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 95-3171 on page 7785 in the issue of Thursday, February 9, 1995, make the following correction: Under the heading Supplementary Information, the legal description which reads T. 8 S., R. 23 E., should be changed to read T. 8 S., R. 22 E.

Dated: March 22, 1995.

Deputy State Director,

Resource Planning, Use, and Protection.

[FR Doc. 95-7811 Filed 3-29-95; 8:45 am]

BILLING CODE 4310-FB-M

(WY-930-1430-01; NEW 135267)

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service proposes to withdraw approximately 145.87 acres of public land as an addition to the Crescent Lake National Wildlife Refuge, near Alliance, Nebraska. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 28, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-775-6115.

SUPPLEMENTARY INFORMATION: On February 24, 1995, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public land for a period of 50 years, from settlement, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Nebraska

T. 22 N., R. 47 W.,
Sec. 1, lots 10-13, and 16;
Sec 12, lot 1.

The area described contains approximately 145.87 acres in Morrill County.

The purpose of the proposed withdrawal is to reserve the land as an addition to the Crescent Lake National Wildlife Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Fish and Wildlife Service.

Dated: March 23, 1995.

Alan R. Pierson,

State Director, Wyoming.

[FR Doc. 95-7809 Filed 3-29-95; 8:45 am]

BILLING CODE 4310-22-P

National Park Service

Bid Sale of Property; Cuyahoga Valley National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Correction to notice.

SUMMARY: This notice contains corrections to the notice published Friday, March 3, 1995. The notice announced the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109-38, aka 1509 Boston Mills Road, Peninsula, Ohio.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Superintendent John P. Debo, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, OH 44141 (216-526-5256).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1995 the National Park Service (NPS) published in the **Federal Register** (60 FR 11994) a notice announcing the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109-38, aka 1509 Boston Mills Road, Peninsula, Ohio. The correction to the notice advises potential bidders that the successful bidder shall have possession of property and title within sixty (60) days of the sealed bid opening date.

Need for Correction

As published, the notice did not inform potential bidders that possession of the property and title shall take place within sixty (60) days of the bid opening date.

Correction of Publication

Accordingly, the publication on March 3, 1995 of the notice announcing the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109-38, aka 1509 Boston Mills Road, Peninsula, Ohio is corrected as follows:

Add the following sentence to the end of the **SUMMARY** section: The successful high bidder shall have possession of property and title within sixty (60) days of the sealed bid opening.

Dated: March 20, 1995.

John P. Debo,

Superintendent, Cuyahoga Valley NRA.

[FR Doc. 95-7511 Filed 3-29-95; 8:45 am]

BILLING CODE 4310-70-P

Bureau of Reclamation

Environmental Impact Statement/Environmental Impact Report on Sutter, Placer, El Dorado, Sacramento, and San Joaquin Counties, American River Water Resources Investigation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Sacramento Metropolitan Water Authority (SMWA) propose to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) on potential alternative solutions to meeting water-related needs in portions of Sutter, Placer, El Dorado, Sacramento, and San Joaquin Counties as identified through the American River Water Resources Investigation (ARWRI). Reclamation and SMWA will propose possible alternatives representing themes ranging from demand management to all new construction.

DATES: Four public scoping meetings will be held:

Tuesday, April 11, 1995, 7:00 p.m., Stockton, California
Wednesday, April 12, 1995, 1:00 p.m., Placerville, California
Wednesday, April 12, 1995, 7:00 p.m., Auburn, California
Thursday, April 13, 1995, 7:00 p.m., Sacramento, California

ADDRESSES: Meeting locations are:

Stockton Hilton, 2323 Grand Canal Boulevard, Stockton, California
Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, California
Auburn Inn, 1875 Auburn Ravine Road, Auburn, California
Expo Inn, 1413 Howe Avenue, Sacramento, California

Poster session to begin one half hour earlier.

Written comments should be sent to Mr. Alan R. Candlish, Study Manager, Bureau of Reclamation, North-Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630; or Mr. Gene Robinson, Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights, CA 95610-7632.

FOR FURTHER INFORMATION CONTACT: Mr. Alan R. Candlish, Study Manager, Bureau of Reclamation, telephone (916) 989-7255; or Mr. Gene Robinson, Sacramento Metropolitan Water Authority, telephone (916) 967-7692. Letters of inquiry may be sent to the addresses above.

SUPPLEMENTARY INFORMATION: The American River Water Resources Investigation began in 1992 and potential alternative solutions were developed. Three alternatives are being presented for further consideration: (1) Conjunctive use (between ground water and surface water sources); (2) conjunctive use with new storage (possible reservoir sites include Clay Station, Deer Creek, Duck Creek, Small Alder, South Gulch, Texas Hill, and the possible enlargement of the existing Farmington Reservoir); and (3) the construction of a full-size Auburn Reservoir. The investigation is now at the point where the preparation of the EIS/EIR is ready to begin.

Oral comments regarding the proposed alternatives are welcome at the public meetings. Written comments must be received at the above address by May 8, 1995, to ensure consideration in the development of the EIS/EIR.

Dated: March 24, 1995

Dan M. Fults,

Acting Regional Director.

[FR Doc. 95-7788 Filed 3-29-95; 8:45 am]

BILLING CODE 4310-94-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement

Notice is hereby given that a proposed Settlement Agreement in *In re Shenango Inc., et al.*, Case No. 92-25379/JLC (W.D. Pa.), entered into by the United States on behalf of U.S. EPA, the State of Ohio, and debtors Shenango Inc., Shenango Group, Inc., and The Hockensmith Corporation was lodged on March 16, 1994 with the United States Bankruptcy Court for the Western District of Pennsylvania. The proposed Settlement Agreement resolves certain claims of the United States and the State of Ohio under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* and state law relating to the Buckeye Reclamation Landfill Site in Belmont County, Ohio, and certain claims of the United States for pre-petition penalties under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* Under the Settlement Agreement, *inter alia*, the U.S. EPA will have an allowed general unsecured claim of $1,252,846.

The Department of Justice will receive comments relating to the proposed

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Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Shenango Inc., et al.*, D.J. Ref. No. 90–5–2–3–1099D. The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, Pittsburgh, PA 15222; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–7806 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on February 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Whatman Paper, Ltd., has withdrawn its membership with the ALABC.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and the ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on July 29, 1992, 57 Fr 33522. The last notification was filed with the Department on August 26, 1994.

This notice has not yet been published in the Federal Register pursuant to Section 6(b) of the Act.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7805 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and production Act of 1993—High Performance Composites Cooperative Arrangement

Notice is hereby given that, on December 20, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), BDM Federal, Inc., acting on behalf of the High Performance Composites Cooperative Arrangement ("HPC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the additional members are Hexcel Corporation, Pleasanton, CA; and the University of Virginia, Charlottesville, VA.

No other changes have been made in either the membership or planned activity of the HPC. Membership remains open, and the HPC intends to file additional written notification disclosing all changes in membership.

On April 6, 1994, BDM Federal, Inc., acting on behalf of the HPC, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 3, 1994 (59 FR 28899).

The last notification was filed with the Department on November 17, 1995. This notice has not yet been published in the Federal Register pursuant to Section 6(b) of the Act.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7804 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PERF Project 93–16, Dispersion Modeling Project

Notice is hereby given that, on December 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project 93–16, titled "Dispersion Modeling Project" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Phillips Petroleum Company, Bartlesville, OK; Clark Oil & Refining Corporation, Blue Island, IL; CITGO Petroleum Corporation, Tulsa, OK; Allied-Signal, Inc., Morristown, NJ; Amoco Corporation, Chicago, IL; Chevron Research & Technology Company, Richmond, CA; Mobil Research & Development Company, Paulsboro, NJ; Shell Development Company, Houston, TX; Marathon Oil Company, Littleton, CO; Atmosphere Research and Exposure Assessment Laboratory (AREAL), Research Triangle Park, NC; and Western Research Institute, Laramie, NY.

The nature and objectives of the research program performed in accordance with Project 93–16 are to use more realistic modeling techniques in hazard assessments for hypothetical, accidental releases from industrial applications by demonstrating improved model performance using actual field scale data. Achievement of this objective will include the following activities: Data Analysis of previous experiments including data from the CHARR and the CEC major hazards programs; Laboratory scale wind tunnel experiments and performance evaluation; Field experiments and analysis; and Model modifications and performance evaluation.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7803 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–7

DEPARTMENT OF LABOR

Office of the Secretary

Delinquent Filer Voluntary Compliance Program

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review of the information collected pursuant to the Delinquent Filer Voluntary Compliance Program under the Paperwork Reduction Act.

SUMMARY: The Pension and Welfare Benefits Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting the information collection required under the Delinquent Filer Voluntary Compliance Program (Program) for review. The information collected is required to be reported by pension and welfare benefit plan administrators under Title I of the Employee Retirement Income Security Act of 1974. Plan administrators who choose to participate in this Program, which offers a substantial reduction in penalties, are required to submit minimal documentation along with payment to verify plan information and facilitate Federal record keeping.

DATES: Pension and Welfare Benefits Administration has requested an expedited review of this submission under the Paperwork Reduction Act due to the time-sensitive nature of the collection and the penalties that accumulate daily due to late filing or failure to file annual reports; this Office of Management and Budget (OMB) review has been requested to be completed by April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Delinquent Filer Voluntary Compliance Program should be directed to Mr. Kenneth A. Mills, Departmental Clearance Officer, Office of Information Resource Management Policy, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–1301, Washington, D.C. 20210, 202 219–5095. Comments should also be sent to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, NEOB Room 10235, Washington, D.C. 20503, 202 395–7316.

Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 21 minutes
Frequency of Response: Annual
Number of Respondents: 10,000 (year 1); 7,000 in following years
Total Annual Burden Hours: 3,500
Total Annual Responses: 10,000
Affected Public: Business and other for-profit; Not-for-profit institutions
Respondents Obligation to Reply: Voluntary.

Signed at Washington, D.C. this 24th day of March 1995.

Kenneth A. Mills,

Departmental Clearance Officer.

Supporting Statement For Paperwork Reduction Act Submissions

Delinquent Filer Voluntary Compliance Program 1210–AA49

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information.

The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to $1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA and the Secretary's regulations codified in 29 CFR part 2520. Pursuant to 29 CFR 2560.502c-2 and 2570.60 *et seq.* PWBA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $40 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a compete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department has decided to implement the Delinquent Filer Voluntary Compliance (DFVC) Program, under which administrators otherwise subject to the assessment of higher civil penalties will be permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA, referred to as the "Program."

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. For revisions, extensions, and reinstatements of a currently approved collection, indicate the actual use the agency has made of the information received from the current collection.

Under Title I of ERISA, the administrator of each welfare and each pension plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in Section 103 of ERISA. The statutory annual reporting requirements under Title I of ERISA, Title IV of ERISA, and the Internal Revenue Code are satisfied generally by filing, in accordance with the instructions to the forms and related regulations, the appropriate annual return/report (the Form 5500 Series). The Form 5500 Series collection has been given OMB control number 1210–AA16. The Form 5500 Series collection has been approved under the Paperwork Reduction Act on October 28, 1994.

The DFVC Program is intended to afford eligible plan administrators the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the specified civil penalties, set out in the Federal Register Notice.

The DFVC Program is available only to a plan administrator who complies with each of the requirements the Notice prior to the date on which the administrator:

(a) is notified in writing, pursuant to 29 CFR 2560.502c-2, of the Department's intention to assess a civil penalty under section 502(c)(2) of ERISA for failure to file a timely annual report; or

(b) is otherwise notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

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It is anticipated that the administrator of an employee welfare or benefit plan would make use of the DFVC Program no more than once per year, and would avoid use of the Program entirely if the statutory filing obligation were met in a timely manner.

The only information collection requirement in the Notice is the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment will be associated with the relevant plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the first page of the delinquent annual report, which under current procedures is sent to the IRS.

Under current procedures, certain pension plans for highly compensated employees, commonly "top hat" plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans the information collection requirements of the Notice are satisfied by sending a completed first page of an annual report form along with the penalty payment. The one-time statements are required to be sent to a different address within the Department. The Program is designed to allow the processing of all penalty payments at a single location within the Department.

3. Describe any consideration of information technology used to reduce burden, as well as any technical or legal obstacles to reducing burden.

The Department, in conjunction with the IRS, PBGC, and OMB, is currently exploring means by which to enhance the Form 5500 filing review, processing and data system. Until that time when an electronic filing alternative is available, the Department has chosen the least burdensome collection method for receiving notification of participation in the Program and correctly accounting for payment of penalties.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.

The Department, IRS, and PBGC utilize a consolidation annual report (Form 5500 Series) which eliminates the duplicative reporting that would otherwise result from the separate reporting to each agency. However, the consolidated report does not accommodate specific notification of the Department of participation in the Program, nor does it accommodate recording of payment of penalties. Therefore, the minimal information collection requirements of this Program were deemed necessary.

There is no similar information gathered by any state or Federal agency or other sources that would enable the Department of effectively monitor participation in the Program.

5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities (item 15 of the Paperwork Reduction Act Submission form), describe the methods used to minimize burden.

Not Applicable.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the collection is not conducted, it may not be possible to institute the Program because the Department would be unable to determine whether persons seeking to take advantage of the reduced penalties offered under the Program had in fact complied with its conditions. The purpose of the Program is to encourage delinquent plan administrators to come forward and file delinquent reports. Lack of compliance with existing filing requirements impairs the administration and enforcement of the statute by the Department, as well as the IRS and the PBGC. The collection used in the Program creates a minimal burden on plan administrators who are already in breach of ERISA's filing requirements while giving them access to reduced penalties.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6 (*e.g.*, payment to respondents, disclosure of proprietary information, etc.).

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained.

The employee benefit plan community is aware that the Department has been considering institution of a reduced penalty program for persons who voluntary file delinquent reports, and is generally supportive of the Program. The minimal information collection associated with the Program will not dissuade participation by delinquent play administrators.

The Form 5500 Series was developed in coordination with the IRS and PBGC, and the DFVC Program has been reviewed by these agencies as well. In addition, PWBA regularly requests comments from the ERISA Advisory Council with respect to suggestions for reducing paperwork.

9. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The annual reports are required by law to be made available for inspection at the Department and at the offices of the plan administrators. Accordingly, since this collection is merely one page of the annual report, the Department provides no assurance of confidentiality to respondents.

10. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

11. Provide estimates of annualized cost to the Federal Government and to the respondents. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information.

Based on expense estimates, the annual cost to the Department attributable to the receipt and maintenance of the Program is estimated to be approximately $150,000. This figure includes estimated costs to the Department for lockbox maintenance, computer services, and other operational expenses such as equipment, overhead, and support staff.

As reflected in item 12 below, the burden hours attributable to the collection by the universe of respondents is estimated to be 3,500 hours. It is estimated that the cost to plans to complete the collection will range from $20 to $25 per hour. Therefore, the estimated aggregate cost to respondents is approximately $70,000 to $87,500 in the first year, and $49,000 to $61,250 in succeeding years.

12. Provide estimates of the burden of the collection of information including both recordkeeping and reporting requirements. The statement should:

• Provide number of respondents, frequency of response, annual burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated burden and explain the reasons for the variance.

An estimated 10,000 delinquent employee benefit plan administrators are expected to file under the Program in the first year, and an estimated 7,000 filings are expected in subsequent years. Participation in the Program is voluntary, and filing under the Program would not be necessary more often than annually, and most participants would probably participate one time only. The annual burden per filing is estimated to be approximately 21 minutes, based on a pilot pretest of not more than nine people from both Federal employment and the private sector. The burden on respondents is not expected to vary widely because of differences in activity, size or complexity.

• If the request for approval is for more than one form, provide separate burden estimates for each form for which approval is sought and aggregate the burdens on the Paperwork Reduction Act Submission form. If only one form is submitted, you need not duplicate the information entered on the Paperwork Reduction Act Submission form.

Not applicable.

13. For amendments to existing collections, explain reasons for changes in burden, including the need for any increase.

Not applicable.

14. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Form 5500 Series collection, and by extension, this DFVC Program collection, are not a collection of information for statistical use. Once collected, however, the information is available to the Department and the public, and it is used for purposes other than enforcement and disclosure.

[FR Doc. 95–7742 Filed 3–29–95; 8:45 am]

BILLING CODE 4510–22–M

Evaluation of the Summer Youth Employment and Training Program

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Employment and Training Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting a study to examine the range of practices currently being used in the Summer Youth Employment and Training Administration (SYETP) to deliver educational services. It will assess the quality of training and evaluate contributions to the educational deficiencies of participants.

DATES: The Employment and Training Administration has requested an expedited review of this submission under the Paperwork Reduction Act; this Office of Management and Budget (OMB) review has been requested to be completed by April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Evaluation of the SYETP should be directed to Mr. Kenneth A. Mills, Departmental Clearance Officer, Office of Information Resource Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210, (202) 219–5095.

Comments should also be sent to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, NEOB Room 10235, Washington, DC 20503, (202) 395–7316.

Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 113 minutes

Frequency of Response: One time

Number of Respondents: 9,115

Total Annual Burden Hours: 17,167 hours

Total Annual Responses: 9,115

Affected Public: Individuals or households; Non-for-profit institutions; State, Local or Tribal Government

Respondents Obligation to Reply: Voluntary

Signed at Washington, DC, this 24th day of March 1995.

Kenneth A. Mills,

Departmental Clearance Officer.

I. Introduction

This document represents a request for approval of the data collection protocols to be used in the *Evaluation of the Summer Youth Employment and Training Program*, being conducted by Social Policy Research Associates (SPR) and Brandeis University's Center for Human Resources, under contract to the U.S. Department of Labor (DOL). The study uses qualitative (case study) and quantitative data collection and analysis methods to examine training practices being used in the Summer Youth Employment and Training Program (SYETP), Title II–B of JTPA. The Introduction to this document provides a brief overview of the study and its purposes, and it discusses the data collection procedures and analysis plans. Subsequent sections respond to the Office of Management and Budget's (OMB) specific instructions for justification and address issues related to the collection of information using statistical methods.

Background

Funded under Title II–B of the Job Training Partnership Act, SYETP has its origins in a thirty-year federal commitment to create summer jobs for disadvantaged youth. However, developments in recent years have as well affirmed an emphasis on providing educational services. For example, amendments to Title II–B enacted in 1986 enumerated the enhancement of basic educational skills and encouragement of school completion as explicit goals of the program. Further, SDAs were required to assess the reading and mathematics skill levels of SYETP participants and to provide remedial and basic education services where appropriate. Subsequent DOL issuances reinforced the educational emphasis of the Summer Youth program and encouraged efforts to link work and learning.

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Purposes of the Study

The changing focus of SYETP raises questions about the proper role of the program's educational component and the feasibility of diagnosing and meaningfully redressing the basic skills deficiencies of large numbers of youth within the compressed time frame of the summer program. Thus, the objectives of the evaluation are to examine the range of practices currently being used to deliver educational services, explain variation in service designs, assess the quality of training being provided, and evaluate its ability to meet the needs of participants and make significant contributions to their educational deficiencies. Ultimately the study will enable DOL to gauge the adequacy of services currently being provided, identify areas of weakness and, conversely, service designs that appear especially efficacious, and provide leadership and technical assistance to improve training practices.

Conceptual Framework

Guiding the data collection and analysis efforts are a client-level model of high quality educational services and a system-level model of factors that determine training practices. The client-level model of training quality, presented in Exhibit I, depicts how clients flow through the SYETP program, the quality indicators for each type of service that the program provides, and the intended consequences of high-quality services for youth. Steps identified in this model are:

- Recruitment, assessment, and service planning practices. Quality indicators associated with this phase of service delivery include whether programs have a clear strategy for which youth should be targeted and effective procedures to recruit them, whether they conduct a comprehensive assessment of youths' skills and interests, and whether the assessment results are used to develop an individualized service strategy tailored to the skills and interests of each participant.
- Providing effective educational services, either through classroom or work-based instruction. Quality indicators for both training content and instructional methods are identified in the exhibit, including whether the training objectives are well-specified, whether they promote the educational skills needed in the workplace, whether training is provided in a functional context, whether participants' progress is documented, whether there are ample opportunities to learn, and whether the style of instruction promotes active learning that is adaptive to the needs of individual participants.
- Providing linkages with continuing educational activities, to sustain and build on learning gains.

In contrast to the client-level model, the system-level model, shown in Exhibit II, is intended as a casual (rather than a temporal) model and identifies factors that influence service delivery, including those that facilitate or impede the development of high-quality educational services. The far right box of this model contains the elements of high-quality SYETP educational services that were described in the client-level model. The exhibit schematically identifies aspects of Federal and State policies and the local environment that can affect an SDA's program design, and it shows how design decisions and educational provider characteristics, in turn, affect the quality of educational services provided. Specifically, it identifies:

- Federal, State, and local influences on programs' designs, including federal Title II–B policies, other Federal initiatives and policies, State JTPA and educational policies, and characteristics of local youth and of the local area.
- SDA design factors, including program goals, target groups, and service delivery arrangements.
- Attributes of the service providers who deliver educational services to participants, including the types of institutions, their history, objectives, and funding sources.

Questions for the Evaluation

The preceding conceptual frameworks give rise to a number of specific questions to be investigated in the project. These include issues relating to the design of services at the SDA level, the design of services at the level of the educational provider, and the quality and impact of educational services.

- The design of SYETP at the SDA level.

—What general objectives have SDAs established for their Title II–B programs? What specific objectives (in terms of skills to be conveyed, benchmarks to be achieved) have been established for the Title II–B educational components?
—Do programs identify priority client groups? If so, what target groups have they established? Who makes those decisions, and how and why were they made?
—What types of providers are used by the SDA for educational instruction? How were these providers selected and why were they selected?
—How are other services, including supportive services and stipends, used in the summer youth program? How are these services used to support educational and other goals for the program?
—What linkages has the SDA established between its Titles II–B and II–C programs?
—What "front-end" and "back-end" linkages has the SDA established with public schools? Who instigated these linkages and who maintains them? Are the linkages formal or informal?
—What role have federal and state policies and local influences played in the SDA's design decisions? How have these policies been perceived and implemented?

- The design of SYETP at the provider level

—What types of organizations provide educational instruction? What objectives have been established for their programs?
—Why did the provider decide to participate in the summer youth program and how was it selected?
—What objectives has the provider established for its educational program? What skills (e.g., basic skills, SCANS skills) is it endeavoring to teach? Is it attempting to link learning and work?
—What service design is it using to meet these objectives? Who developed the design and why? Was the design established explicitly for the summer youth educational program?
—How are educational services sequenced? How was the curriculum developed?
—How did it recruit and train its staff?
—How have the SDA's objectives for the summer youth educational program been communicated to the service provider and how have they been acted upon?
—What role has the SDA played in designing the provider's educational services, including its content and method of delivery? How does the SDA monitor the services that are being provided and how does it suggest changes?
—How does the provider's design reflect other elements of the local context, including the needs of the community, the characteristics of youth in the area, and the characteristics of the school district?

- The quality and impact of educational services

—What procedures are used by SDAs to recruit youth for the summer program? Do recruitment methods correspond to their targeting goals?
—How is the participant's initial assessment conducted and how is subsequent progress assessed and documented?
—How are individual service plans developed? Are the service plans truly individualized to the needs, skills, and interests of each participant? Does the youth play an active role in formulating the service plan? Are the resulting goals clear and ambitious (without being unrealistic)?
—Does the educational instruction that is being provided have well-specified objectives? Do the objectives indicate skills to be acquired (rather than knowledge to be learned)?
—Does the instruction emphasize skills needed in the workplace? Are the skills taught in a functional context?
—Does the instruction promote active learning and training for transfer?
—Is instruction adaptive and provided by capable and caring adults who view their role as a "facilitator"?
—Have linkages been established to provide feedback to schools or other programs serving the youth?
—What implications do service provider characteristics and design decisions have for the quality of educational services?
—What implications does participation in SYETP, in general, have for stabilizing or improving academic or other achievements, promoting school completion, and increasing the motivation to learn?
—What implications do alternative designs for delivering educational services (e.g., provider characteristics, the locus on instruction) have for these same youth outcomes?

Study Design

To address the research questions identified above, this study uses two evaluation components—a process study and a client-level study of outcomes.

The Process Study

The process study uses a series of "nested" qualitative case studies to examine the design and operation of SYETP services at 30 SDAs nationwide and approximately 3 educational providers at each of these SDAs (up to 90 providers total). The data collection activities will consist of a review of plans for the Summer Program as well as 4-day on-site visits to each selected SDA and its associated providers, during which time researchers will meet with SDA and provider administrators and staff, classroom instructors, and worksite supervisors, and they will observe educational instruction. While on site, researchers also will conduct 1 focus group with approximately 5–6 youth participants at each educational provider visited and review case files for 2 youths at each provider. Follow-up telephone discussions also will be conducted with youths selected for the case file reviews and with their parents and school counselors to learn of retrospective impressions of and satisfaction with the SYETP experience and perceived impacts on subsequent achievements and behaviors in school.

Selecting the Sample

As part of the study, samples are being drawn of 30 SDAs and up to 3 educational activities in each SDA (or 90 total). To ensure that the resulting sample will be nationally representative, the 30 SDAs are being selected using stratified random sampling. In selecting the sample, all SDAs nationwide are being assigned to one of 4 strata. The first 3 of these groups are defined according to the percent of their Summer Youth participants who receive educational instruction, with the first stratum consisting of those SDAs with percents between 1% and 41%, the second between 42% and 73%, and the third between 73% and 100%. These cutoffs were chosen so that approximately equal numbers of youths receiving educational instruction are in each of the three strata. The 4th stratum consists of those SDAs for whom information on the number of participants in educational instruction is not available.

Within each strata, SDAs were sampled with the odds of selection proportionate to the number of participants being served,[1] so that the resulting sample of SDAs is approximately self-weighting.

Because this study is intended to describe and compare the effectiveness of a wide variety of approaches to building the educational skills of SYETP participants, educational providers are selected within each of the 30 SDAs using purposive selection methods. Specifically, all educational providers used by these SDAs are to be categorized according to their:

- Content emphasis (e.g., basic skills only; SCANS foundation skills and/or competencies; or other academic subjects, such as science, history, or art).
- Locus of educational instruction (e.g., classroom-based, work-based, or both).
- Type of provider (e.g., SDA; secondary school, other educational institution such as community college or technical college, or other).
- Targeted participants (e.g., 14–15 year olds, 16–18 year olds, other target groups).

Providers are being selected to ensure the diversity of the sample (both within the SDA and across all 30 SDAs) with respect to these dimensions.

Data Collection

The field protocols, or topic guides, developed for this process study are designed to guide the data collection activities. These protocols will permit site visitors to tailor discussions and observations on a standardized set of issues to the particular context of each case study SDA and sampled educational activity. The following topic guides have been developed and are submitted for OMB's review:

- SDA Guide #1 includes the topics to be covered in discussions with SDA policy, planning, and administrative staff, including those relating to the goals, design, and management of the Summer Program.
- SDA Guide #2 includes the discussion topics to be used with SDA staff responsible for direct operation or oversight of client recruitment, assessment, service planning, and case management services for Title II–B participants.
- Program Guide #1 includes the topics to be covered in discussions with administrators of the selected educational activity, staff that participated in the planning and development of the detailed curriculum, and supervisors responsible for hiring, training, and overseeing instructors/work site supervisors involved in educational activities.
- Program Guide #2 includes the topics to be used in discussions about the classroom-based learning approach with classroom instructors or other staff whose primary responsibility is to support learning in a classroom or individual study setting (e.g., tutors, educational resource staff).
- Program Guide #3 includes the topics to be used in discussions with work project coordinators and worksite supervisors who are involved in work-based learning. This guide includes topics for projects using the 100% work-based learning approach as well as topics for staff involved in work activities that are closely coordinated with classroom-based learning.
- Program Guide #4 is a guide for structured observations of educational activities.
- Program Guide #5 is a guide for structured review of curriculum materials.
- Client Guide #1 describes the topics to be addressed in focus group

[1] Dollar allocations for the Summer Youth program were used in the fourth stratum, because the number of participants receiving educational instruction is not available for these SDAs.

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discussions with approximately 5 youth participating in each selected educational activity.

• Client Guide #2 will be used to extract relevant information for the case history sample from the participants' written case files at the SDA or provider.

• Client Follow-Up Guide describes the topics to be discussed with selected youth participants (i.e., those selected for the case file review) several months after their Summer Program's participation has ended.

• Parent/Guardian Guide will guide the issues to be addressed with these youths' parent or guardian during the follow-up period.

• Counselor Guide describes the topics to be addressed with the youths' secondary school counselors during the school year following the youths' summer participation.

Data Analysis

The analysis of the case studies will begin with a *within-site* explanatory analysis. This task will consist of bringing to bear the data that has been collected to arrive at a comprehensive picture of the practices in each of the SDAs and service providers that were selected for the study and how they have contributed to the needs of the participants. A particular objective will be to uncover especially innovative practices, with an eye to understanding how they were implemented and what makes them work so well.

The next step will consist of *cross-site* comparisons to synthesize the findings. This analysis will clarify further the unique procedures that programs adopt to deliver high quality training in a variety of environments and arrive at an understanding of commonalities and differences between programs and how these are related to effective practices.

Client-Level Study of Outcomes

In addition to collecting and analyzing information from the case studies about program practices, this study also will gather and analyze quantitative information for a sample of approximately 1,800 youths who participate in the Summer Program in 1994 and an additional 4,000 youths who participate in the 1995. By compiling and analyzing information for a sample of participants on the services that were received and the outcomes that were obtained, the study will draw inferences regarding the relative efficacy of various service design and delivery methods.

Selecting Participants for the Study

A key element of the overall research design is to tie the results from the case study observations of classroom instruction and appraisals of training quality to the analysis of participants' outcomes. In this way, inferences can be drawn regarding the relationship between the training practices observed in the field to the consequences of those practices for the youth who receive them. For this reason, participants selected for the client-level study of outcomes will be those whose SYETP instruction was delivered by the service providers whose practices were observed on site. Specifically, participants will be selected in the following ways:

• Preliminary information received from the 30 SDAs has led us to determine that approximately 15 of them require pre-tests and post-tests of basic skills for all participants receiving academic instruction. All youth served in the summer of 1994 by the 3 selected providers in these SDAs will be included in the study. This will yield an expected sample of approximately 1,800 respondents.

• The service providers visited for the case studies in the 30 SDAs included in the study will each be asked to administer a common pre-test/post-test in the summer of 1995, as well as a brief instrument measuring self-esteem. All youth served by these providers will be included in the study. This will yield approximately an additional 3,600 respondents.

• A randomly chosen sample of 400 youths not receiving educational instruction also will be included in the study as a comparison group.

Data Collection

The plan for the client-level study of outcomes is based on the analysis of information for the sampled participants drawn from a variety of sources and that, to a large degree, already exists. Thus, the compilation of these data for analysis purposes entails data gathering at least as much as new data collection. Specific data sources to be used are these:

• The SDA's MIS. Although the specific types of information doubtless will vary from one SDA to the next, most SDAs' MIS will include: participant's demographic and background characteristics (e.g., race, school status, gender), barriers to employment (e.g., whether the youth is a limited-English speaker or has a disability), and summary information about services received. SDAs will be requested to transmit these data to the contractor electronically (e.g., on data diskette).

• SDA's Client Files. Those SDAs able to provide pre-test/post-test scores for youth served in the summer of 1994 will forward those scores to the contractor for data entry. All participating SDAs will forward the hard-copy pre-test/post-tests and self-esteem surveys of sampled participants served in 1995 to the contractor for scoring and keypunching.

• School Records. An important objective of the study is to learn how participants (at least those who are students) fare in their subsequent schooling. Outcomes of interest include measures of academic achievement (e.g., grade-point-average), but also evidence of behavioral problems (e.g., as evidenced by absenteeism, suspensions/expulsions). Thus, school record information will be abstracted for sampled summer 1995 youths who sign and have their parents/guardians sign a consent form.

Exhibit 3 summarizes the variables to be measured from these sources.

Data Analysis

A preliminary analysis will be conducted using SDA MIS data and pre-test/post-test scores for the 1,800 youth who participated in the summer program in 1994, selected as described above. A more comprehensive analysis for a larger sample will be conducted when school record data are collected, for youths who participated in the summer of 1995. Additional outcomes to be examined with these data include: self-esteem, school attendance, grade completion, grade-point average, and absenteeism. Two types of analysis will be conducted:

• Descriptive analyses, which will paint a picture of the characteristics of persons receiving educational instruction in the sampled programs, the types of services received, and the outcomes obtained.

• Explanatory analyses that will examine the efficacy of alternative service designs and delivery mechanisms for subsequent outcomes.

Reporting

The project's major deliverables include:

• An Interim Report. This report will detail the results of the process analysis, describing results from the case studies regarding how services are designed and delivered. It also will include the preliminary results from the study of outcomes based on the data collected for youth who participated in the summer of 1994.

• A Technical Assistance Guide (TAG). The TAG will be a practitioner's guide describing effective practices in the delivery of educational services, focusing especially on how educational instruction can be delivered in a functional, work-related context.

• A Final Report. This report will represent a summation of the study's findings and recommendations. As such, it will include the content of the Interim Report, combined with the comprehensive results of the study of outcomes.

II. Supporting Statement

A. Justification

1. Circumstances Making the Data Collection Necessary

The Department of Labor (DOL) is considering ways of improving the educational component of the JTPA Title II-B Summer Youth Employment and Training program (SYETP), in keeping with Secretary Reich's "First Jobs/New Jobs/Better Jobs" initiative. Its objectives for SYETP are to improve the program's effectiveness in assisting young people acquire strong workplace foundation skills (including basic skills, thinking skills, and interpersonal skills) and gain an appreciation of the inextricable connection between learning and success in the workplace. As part of its effort to foster program improvements, DOL needs to obtain a thorough understanding of educational services currently being provided to summer youth participants—including how participants are assessed, the curriculum being used, and how the educational and work components of SYETP are integrated—and identify particularly efficacious practices.

As part of its response to Executive Order No. 12862 requiring all Federal agencies to develop customer service standards, DOL also needs to know participants' views about the services they received in SYETP, including their service needs and how well the program responded to those needs. This information is critical to implementing changes that can improve program responsiveness.

2. Use of Information and Consequences if Not Collected

The information being collected in this study will be used to address these objectives:

1. Describe variation in the design of SYETP educational services across service delivery areas (SDAs) and their service providers, with respect to general goals and objectives they have established for the program, their targeting decisions, assessment procedures, specific skills being taught, the locus of instruction, linkages between work and learning, and linkages with public schools and year-around Title II–C JTPA services.

2. Describe variation in the quality of educational services, including whether assessments are comprehensive, whether service strategies are individualized to the needs and interests of participants, whether the participants are actively involved in formulating the service plan, whether educational instruction has well-specified objectives relating to skills to be acquired, whether skills are taught in a functional context and emphasize skills needed in the workplace, and whether instruction is adaptive.

3. Identify factors that explain variation in how educational services are being designed and delivered, such as federal policies, opportunities for technical assistance and training, state-level partnerships between JTPA and the school system, and other local influences.

4. Document consequences of participation in SYETP educational services, especially high quality services, for participants' skill levels, subsequent academic achievement, and school attendance and performance.

5. Document participants' satisfaction with the program, including their assessment of the helpfulness of the services they received.

If this information is not collected, DOL will not have the information it needs to evaluate how educational services are being delivered or their effectiveness, and thus it will not have the necessary foundation for implementing program improvements.

3. Considerations to Reduce Burden

The data collection activities have been designed to minimize the burden on respondents in four major ways. First, pre-existing information will be utilized wherever possible to minimize the need for new data collection. These pre-existing sources will include SDAs' plans for their Title II–B programs, RFPs and contracts written by SDAs to secure the services of the direct providers of educational instruction, data collected as part of last summer's study of SYETP, test scores, information from school records, and existing MIS data compiled by SDAs about their participants' characteristics, services, and outcomes. These data sources can be forwarded to the contractor with minimal burden to SDA or school or provider staff and to program participants. Where data abstraction requires hand-coding (e.g., from school records), abstractors will be compensated by the contractor.

Second, where feasible (and at least with respect to the MIS data), information will be transferred to the contractor electronically (i.e., via modem or data diskette), greatly facilitating the data transmission process.

Third, only data of direct relevance to the goals of the study will be collected.

Fourth, much time on site will be devoted to the unobtrusive observation of educational instruction and the review of written documents and participants' case files, and this too should be minimally burdensome to SDA and service provider staff or participants.

4. Efforts to Identify Duplication

A study conducted of SYETP during the summer of 1993 included 50 on-site visits and a mail survey of all SDAs (1205–0327, expired 12/93). However, this data collection focused on general operational issues, did not entail on-site observations of classroom instruction to characterize its quality and did not attempt to study youth at any point beyond their period of participation.

Additional information available about SYETP comes from the SDAS's plans for their summer's activities. However, these documents provide no information about how or how well the plans are implemented, nor do they allow an assessment of the instruction's quality or effectiveness, nor do they speak to the participants' satisfaction with the services they received.

Finally, states are required to submit annual reports providing aggregate counts of participants served and their characteristics (1205–0200, expires 7/97). However, these simple summary reports are useful for little more than identifying the numbers of persons of different ages and education levels who were served.

5. Why Similar Information Cannot be Used

Information from the sources described above will be used to the fullest extent possible in the study being planned. Indeed, these data provide a strong foundation to support the study by providing essential background and other information. However, DOL has concluded, on the basis of the effort to identify duplication, that these pre-existing sources are not adequate to characterize the quality or education services, support an analysis of the factors associated with high quality services, describe the consequences of participation in SYETP for subsequent achievements, or document participants' satisfaction with the program. Nor are they adequate,

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consequently, to support DOL's efforts to foster program improvements.

6. Burden on Small Businesses

Some activities associated with this study will involve the collection of data from the administrators or staff of organizations providing educational instruction as part of SYETP, and some of these entities may be small businesses. However, as described under #3, "Considerations to Reduce Burden," only information of direct relevance to the study's objectives will be collected while on site. Secondly, much on-site data collection to be conducted at service providers will involve the unobtrusive observation of classroom instruction and the review of client case files, and it will thus entail minimal burden on the providers' administrators or staff. Finally, as part of the agreement allowing them to deliver services under JTPA, providers acknowledge DOL's right to evaluate and/or monitor their activities and services.

7. Consequences of Less Frequent Data Collection

The data collection activities associated with this study will be conducted one time only.

8. Collection Inconsistent With 5 CFR 1320.6

Data collection will be consistent with 5 CFR 1320.6.

9. Efforts to Consult With Persons Outside the Agency

Responsibility for devising and carrying out the data collection rests with DOL's contractor, Social Policy Research Associates (SPR), and its subcontractor, Brandeis University's Center for Human Resources. Key personnel associated with these institutions are nationally known experts in evaluation research and have in-depth knowledge of employment and training programs in general and Summer Youth programs in particular.

Additionally, the study team has enlisted the aid of additional experts, who are serving as consultants on the project. Their advice was solicited regarding the usefulness of the data elements to be collected, the feasibility of the data collection plan, and the clarity of instructions. These consultants are:

Ms. Nancy Bross, Public Policy Support, 1377 McLendon Ave., N.E., Atlanta, Georgia 30307, (404) 581–9895

Ms. Lee Bruno, Consultant, 3106 Old Largo Road, Upper Marlborough, Maryland 20772, (301) 627–1415

Ms. Janice Hendrix, North Central Indiana PIC, 36 West Fifth St., Suite 102–B, Peru, Indiana 46970, (317) 473–5571

Mr. Gill Ritt, Career Resource Associates, 2932 Sumac Drive, Atlanta, Georgia 30360, (404) 698–8427

Mr. Kip Stottlemyer, Consultant, 1408 Milestone Drive, Collierville, Tennessee 38017, (901) 854–1438

In addition, all the protocols guiding the conversations with key respondents have been pre-tested on not more than 9 respondents, and modifications to the protocols were made on this basis where it seemed appropriate.

10. Assurances of Confidentiality

The information to be collected will be held strictly confidential and will be used for research purposes only. To ensure confidentiality, DOL will require that the study team take the following measures:

- Access to the data will be limited to the contractor's project team members only.
- Reports to DOL will focus on describing and analyzing the range of service designs and training practices that were observed and will not associate a design or process with any specific SDA or service provider, except by way of providing an example of exemplary practices, and then only with the SDA's approval.
- Reports to DOL that contain individual vignettes based on the experiences of participants will not contain individual names or any other identifying information.
- The contractor's project team members will be trained in the confidentiality requirements and cautioned to use the data for research purposes only.

11. Justification of Questions of a Sensitive Nature

Two sources of data are potentially sensitive. First, pre-tests and post-tests will be administered to youth included in the study. Second, school record information will be abstracted for those youth in the sample who participated in the summer program of 1995 and who return to school in the fall. These data elements are imperative to examine learning gains for those who receive educational services and to examine if SYETP participation is associated with improved school performance.

However, for the most part these data elements do not represent new data collection activities. JTPA currently requires that all summer youth be administered a test of basic skills to determine their need for basic skills remediation, and many SDAs also administer post-tests to document learning gains.

Similarly, information about school performance will be abstracted from existing student files. Moreover, youths and their parents/guardians will be asked to sign a consent form before the abstraction will be conducted. This form will outline the objectives of the study and ask the youth and his/her parent to allow access to student records for purposes of the evaluation. It will be explained that participation in the study is completely voluntary and that a refusal to participate will not jeopardize the youth's receiving SYETP services.

12. Cost to the Federal Government and to Respondents

The total estimate cost to the federal government for the collection and analysis of these data is $849,543. Because the study will be conducted over 3 years,[2] the average per annum cost is approximately $283,000. This amount includes the costs of designing the field protocols, performing the on-site visits and telephone follow-up, recording observations from the site visits, collecting the client-level data for the study of outcomes, analyzing the data, and preparing two reports on the results (i.e., an Interim Report and a Final Report) and a Technical Assistance Guide (to disseminate information on effective practices). The method used to derive this figure entailed a quantification of hours of effort involved by each study team member and included expenses for materials and services (e.g., photocopying expenses and expenses involved in binding the report).

The costs to respondents result only from the time spent answering the questions. Estimates of the time to respond are presented below.

13. Estimate-of-Burden

Below is the estimate of the respondent burden. Time estimates are based on the pretest of the instruments (for the topic guides to be used in the process study) or from the use of the instruments in previous studies (for the pre-test/post-test and self-esteem scales). It is anticipated that these will be conducted within the next year and the burden hours represent the first year burden claimed. If follow-up activities extend beyond one year, an Inventory Correction Worksheet will be submitted.

[2] A separate PWR package will be submitted for any burden associated with follow-up work done after the first year.

Instruments	Number of respondents	Minutes per respondent	Total hours
SDA Guides for Discussions With:			
1. Policy, Planning, and Administrator Staff	60	60	60
2. Recruitment, Service Planning, and Case Management Staff	60	45	45
Program Guides for Discussions With:			
1. Program Administrators	90	90	135
2. Classroom Instructors	85	20	28
3. Work Project Coodinators	10	20	3
Client Guides for:			
1. Focus Group with Participants	450	15	112
2. Participants, at Follow-up	120	15	30
Guide for Discussions with Parents	120	5	10
Guide for Discussions with Regular School Counselors	120	15	30
Pre-test and Post-test of Participant's Basic Skills (Workplace Literacy Test)	4,000	240	16,000
Self-Esteem Instrument (Rosenberg Self-Esteem Scale)	4,000	10	667

Additional data collection to be used in the project represents the abstraction or review of existing information. There are no respondents for these guides and thus they entail minimal burden on SDA or provider personnel or program participants beyond copying documents or data files and shipping them to the contractor. Where hand-extraction of information is required (e.g., from student records, abstractors (SDA or service provider personnel) will be compensated.

14. Reason for Change in Burden

This is a new collection as reported in ETA's ICB (Information Collection Budget). The first year's burden of 17,120 hours is being submitted now. An Inventory Correction Worksheet will be submitted for any follow—up activities in the out years.

15. Plans for Statistical Analysis

Data to be collected for this project for the process study generally will not be analyzed using qualitative research methods, findings will be detailed in a narrative, and their implications for improving program quality will be detailed.

Data collected for the study of outcomes will be analyzed using statistical methods to address these research issues:

- What are the characteristics of persons receiving educational services in the Summer Youth program? Are educational services targeted to those who have a greater need for remediation?
- What types of educational services were provided? Specifically, in what subject areas (e.g., math, reading, other academic subjects, SCANS skills) was instruction provided? With what intensity?
- How does the intensity and nature of the training received relate to outcomes, including learning gains, school attendance rates, grades in school, rates of absenteeism, and suspensions and expulsions? How do the outcomes for youth who received educational instruction compare to those in the compoarison group?
- Data for this component of the project will be compiled in various phases:
- Phase I: Collect MIS and pre-test/post-test data for sample members who participated in the summer program in 1994. Collection of this information will occur during the winter of 1995.
- Phase II: Collect MIS, pre-test/post-test, and self-esteem data for sample members who participated in the summer program in 1995. Collection of this information will occur during the winter of 1996.
- Phase III: Collect school record information. These data will be collected during the summer of 1996, after the conclusions of the 1995–96 school year, so that school outcomes measured for those who participated in the 1995 summer program will reflect a full school year.

Methods to be used in analyzing these data will include univariate and multivariate statistics. Specifically, univariate distributions will be calculated to describe the characteristics of participants, their services, and their outcomes. Cross-tabulations will be used to examine the relationship between variables. Multivariate analyses, primarily regression analysis, will be used to examine how various participant characteristics and measures of services received relate to outcomes.

The project's major deliverables include:

- An Interim Report. This report will detail the results of the process analysis, describing results from the case studies regarding how services are designed and delivered. It also will include the preliminary results from the study of outcomes based on the data collected for youth who participated in the summer of 1994. This report will be completed at the end of the Summer of 1995.
- A Technical Assistance Guide (TAG). The TAG will be a practitioner's guide describing effective practices in the delivery of educational services, focusing especially on how educational instruction can be delivered in a functional, work-related context.

The TAG will be prepared in the Spring of 1996.

- A Final Report. This report will represent a summation of the study's findings and recommendations. As such, it will include the content of the Interim Report, combined with the comprehensive results of the study of outcomes. This report will be prepared in the Spring of 1997.

B. Collection of Information Employing Statistical Methods

This process study utilizes qualitative case study data collection and analysis methods. In terms of identifying appropriate respondents in each local site and analyzing case study data, qualitative rather than statistical methods will be used. Discussions of estimation procedures and degree of accuracy (power analysis) in generalizing sample findings to the universe of all potential respondents are not applicable to the process study, because findings will not be expressed in quantitative terms.

The study of outcomes will employ statistical methods, however. These

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methods are described in the rest of this section.

1. Potential Respondent Universe and Sampling Methods

Approximately 625,000 youths can be expected to participate in the Title II–B program during each of the summers of 1994 and 1995, if current levels of funding are maintained. Of these, about 40%, or 250,000, will be receiving educational services. These youth are served by the nation's approximately 640 service delivery areas (SDAs).

The youths to be included in the study will be served by approximately 90 service providers used for educational instruction in 30 SDAs that were selected for examination in the process study. To ensure that the sample of SDAs is nationally representative, the 30 SDAs are selected using stratified random sampling. In selecting the sample, all SDAs nationwide are assigned to one of 4 strata. The first 3 of these groups are defined according to the percent of their Summer Youth participants that receive educational instruction, with the first stratum consisting of those SDAs with percents between 1 % and 41%, the second between 42% and 73%, and the third between 74% and 100%. These cutoffs were chosen so that approximately equal numbers of youths receiving educational instruction are in each of these three strata. The 4th stratum consists of those SDAs for whom information of the number of participants in educational instruction is not available.

Approximately an equal number of SDAs were drawn from each stratum and, within each stratum, SDAs were sampled with the odds of selection proportionate to the number of participants being served,[3] so that the resulting sample would be approximately self-weighting. The number of SDAs in each stratum and the number selected for the study are shown below.

Percent of the SDA's youths receiving educational instruction	Total number of SDAs	Number of SDAs in the sample
Low: 1% to 41%	273	8
Med. 42% to 73%	132	8
High: 74% to 100%	101	8
Information missing	117	7

Because this study is intended to describe and compare the effectiveness of a wide variety of approaches to building the educational skills of SYETP participants, educational providers are selected within each of the 30 SDAs using purposive selection methods. Specifically, all educational providers used by these SDAs are to be categorized according to their:

- Content emphasis (e.g., basic skills only; SCANS foundation skills and/or competencies; or other academic subjects, such as science, history, or art).
- Locus of educational instruction (e.g., classroom-based, work-based, or both).
- Type of provider (e.g., SDA; secondary school, other educational institution such as community college or technical college, or other).
- Targeted participants (e.g., 14–15 year olds, 16–18 year olds, other target groups).

Providers are being selected to ensure the diversity of the sample (both within the SDA and across all 30 SDAs) with respect to these dimensions.

Because most providers serve fairly few youths, all youths served by the selected providers during the summer of 1995 will generally be selected for the study of outcomes. However, for large providers (those serving more than approximately 70 participants), youths will be selected who attended classes served by the instructors who were observed by the site visitors, the 400 youth to be selected for the comparison group will be selected randomly, approximately 15 from each SDA.

Following the above procedures, an approximately equal number of youths will be selected from each SDA. MIS data for each of these youth, should be available without exception, as will pre-test and post-test scores and the measure of self-esteem. Similarly, because SDAs typically require access to school records as part of the assessment process, we anticipate that high percentages of sampled youths and their parents/guardians will sign the consent forms allowing the researchers' access to this information. At least an 80% rate of cooperation is anticipated.

2. Procedures for the Collection of Information

Sample Selection. As discussed above, the sample has been drawn in a two-stage process. First, a sample of SDAs and their providers was chosen, - and next participants served by these providers are selected, along with a randomly chosen sample of participants for the comparison group.

Degree of Accuracy. To meet DOL's objectives for the survey, the sample size must be sufficient to allow reliable estimation of relatively small differences in outcomes across various service strategies. Let us suppose that the outcome variable is a percentage (e.g., the percentage of participants who complete their next grade level), that the average of the outcome is 50%, that we can explain 25% of the outcome's variation with all predictor variables combined, and that 10% of the variance in the educational components can be explained by other control variables. Under these circumstances, the sample size to be used for this study would be able to detect an approximately 3 percentage points difference in outcomes across a dichotomous measure of service (e.g., instruction is provided in a functional context or not). Note that these are generally fairly conservative assumptions. For example, sample size requirements would be less stringent if the average of the outcome were either higher or lower than 50%.

Estimation Procedures. As described in Section A, Item 15, several estimation techniques will be used. First, means and univariate distributions will be calculated to describe the sample. Second, t-tests of means (for outcomes measured on a continuous scale) and chi-square tests (for categorical variables) will be calculated to determine whether outcomes vary significantly for participants with different characteristics (e.g., age) or who received different services. Third, multivariate analysis methods will be used, with various measures of outcomes as the dependent variable. Independent variables will include participant characteristics (e.g., age, gender, pre-test scores) and measures of the types of services received.

Ordinary least squares (OLS) will be used as the estimation technique for most of these multivariate models, because of its desirable properties. However, OLS is inefficient when the dependent variable is categorical (e.g., whether the next school grade was completed). In these cases, logit analysis will be used.

3. Methods to Maximize Response Rates

Most data to be used for the client study represent pre-existing records collected by SDAs and schools. For this reason, response rates should be quite high for all components of the data collection. Potentially, however, some participants or their parents may deny the researchers access to school records. To minimize this possibility, SDAs and their service providers will be contacted far in advance of the start of the 1995 summer program, and their cooperation will be enlisted. Thus, when youth are first enrolled in the program they can be told immediately that they are being asked to participate in the study and the study's importance can be explained carefully to them.

4. Tests of Procedures

The data collection for the client-level study involves no new survey or other instruments. Therefore, no test of procedures is deemed necessary.

5. Contractor and Individuals Consulted

The Department of Labor has contracted with Social Policy Research Associates (SPR) to design, conduct, and analyze the study of outcomes. Key personnel at SPR at Dr. Ronald D'Amico, Dr. Katherine Dickinson, and Mr. Richard West. They may be contacted at: Social Policy Research Associates, 200 Middlefield Road Suite 100, Menlo Park, CA 94025. Their phone is (415) 617–8625.

[FR Doc. 95–7743 Filed 3–29–95; 8:45 am]
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[3] Dollar allocations for the Summer Youth program were used in the fourth stratum, because the number of participants receiving educational instruction is not available for these USAs.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–026)]

NASA Advisory Council (NAC), Minority Business Resource Advisory, Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: April 26, 1995, 9 a.m. to 4 p.m.

ADDRESSES: NASA, Langley Research Center, Building 1219, Room 225, Hampton, Virginia 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration Room 9K70, 300 E Street SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Overview of Langley Research Center SDB Program
—Report on Action Items from Last Meeting
—Subcommittee Reports
—Update on NASA SDB Program
—Committee Goals for 1995
—Public Comment
—Adjournment

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 24, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–7747 Filed 3–29–95; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–40–8027–MLA–3, ASLBP No. 94–700–04–MLA–3]

Sequoyah Fuels Corp., (Source Material License No. SUB–1010); Notice of Hearing

March 24, 1995.

Notice is hereby given that the Presiding Officer in this proceeding has determined that there should be made available an Opportunity for Intervention in the on-going proceeding which involves a license amendment application of Sequoyah Fuels Corporation for its facility at Gore, Oklahoma. During the course of the course of this proceeding, the Licensee has proposed modifications to the original license amendment application dated May 6, 1994. Because the modifications are significant, a new opportunity for intervention is warranted. The new amendment application seeks to change the existing structure of the Licensee's management team at its facility.

This proceeding is being conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR part 2, subpart L. Further details appear in the Statement of Considerations, Informal Hearing Procedures for Materials Licensing Adjudications, 54 Fed. Reg. 8269 (February 28, 1989). Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St., N.W., Washington, D.C.

Sequoyah Fuels Corporation, Native Americans for a Clean Environment INACE) and The Cherokee Nation (Nation) are parties to this proceeding. In accordance with 10 CFR 2.1205(i)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by he results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(g), (3) the petitioner's areas of concern about the licensing activity which must be germane to the subject matter of the proceeding, and (4) the circumstances establishing that the petition is timely and that the petitioner has the requisite standing to intervene in the hearing.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. Copies should be served upon the Presiding Officer; the Special Assistant; the Assistant General Counsel for Hearings and Enforcement; and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies should also be served on the Licensee, through its attorney Maurice Axelrad, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036; Native Americans for a Clean Environment, through its attorney Diane Curran, Esq., c/o IEER, 6935 Laurel Avenue, Suite 204, Takoma Park, MD 20912; and The Cherokee Nation, through its attorney James Wilcoxen, Esq., Wilcoxen & Wilcoxen, P.O. box 357, Muskogee, OK 74402–0357. Pursuant to 10 CFR 2.1205(j)(2), any party may file an answer to a petition to intervene within 10 days of service of such petition.

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to this proceeding may make a written statement in order to express his or her views of the issues involved in this license renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 2.1251(c). Written statements should be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Rockville, Maryland, March 24, 1995.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 95–7801 Filed 3–29–95; 8:45 am]
BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad

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Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Repayment of Debt
(2) *Form(s) submitted:* ID–22, G–145
(3) *OMB Number:* 3220–0165
(4) *Expiration date of current OMB clearance:* May 31, 1995
(5) *Type of request:* Revision of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual; number of respondents:* 125
(8) *Total annual responses:* 125
(9) *Total annual reporting hours:* 6
(10) *Collection description:* Section 2 of the Railroad Unemployment Insurance Act (RUIA) provides unemployment and sickness benefits for qualified railroad workers. When the RRB determines that an overpayment of RUIA benefits has occurred, it initiates action to notify the claimant and to recover the amount owned the RRB. The collection obtains information needed by the RRB to allow for the repayment of the amount owed by the claimant by credit card, in addition to the customary form of payment by check or money order.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB receiver, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–7755 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Earnings Information Request
(2) *Form(s) submitted:* G–19–F
(3) *OMB Number:* 3220–0184
(4) *Expiration date of current OMB clearance:* May 31, 1995
(5) *Type of request:* Revision of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 3,000
(8) *Total annual responses:* 3,000
(9) *Total annual reporting hours:* 400
(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–7756 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1995, 34.2 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.8 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: March 21, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–7757 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Rule Amendments and New Form:
Rule 24f–1—File No. 270–130
Rule 24f–2—File No. 270–131
Form 24F–2—File No. 270–399

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to rules 24f–1 and 24f–2 under the Investment Company Act of 1940, regarding registration under the Securities Act of 1933 of certain investment company securities. In addition, the Commission has submitted for OMB approval proposed Form 24F–2 for filing annual notices required by rule 24f–2.

Rule 24f–1 permits certain investment companies that have inadvertently sold more shares than are registered to retroactively register the oversold shares under the Securities Act of 1933. The reporting burden under the rule is approximately 2 hours per respondent. The proposed amendments are technical in nature and will not change the reporting burden.

Rule 24f–2 allows certain investment companies to register shares under the Securities Act of 1933 without specifying at the time of registration the total number of shares to be registered. Rule 24f–2 requires investment companies electing to register an indefinite number of shares to file an annual notice ("Rule 24f–2 Notice") with the Commission for purposes of reporting the number of shares sold during the previous fiscal year. Form 24F–2 will provide a standard format for filing Rule 24f–2 Notices. The reporting burden required under Rule 24f–2 is approximately 1.9 hours per respondent. The proposed amendments and form will not change the reporting burden.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, and Clearance Officer for the SEC, Office of Management and Budget, Paperwork Reduction Project numbers 3235–0155 (Rule 24f–1), 3235–0159 (Rule 24f–2), and (Form 24F–2), Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: March 21, 1995.

Margaret E. McFarland,

Deputy Secretary.

[FR Doc. 95–7839 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35524; International Series Release No. 795 File No. SR–Amex–95–04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Margin Levels for Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

March 22, 1995.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the original proposal with the Commission on February 8, 1995. Notice of the proposed rule change appeared in the **Federal Register** on February 17, 1995.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its pending proposal to list warrants on the Exchange based upon the value of the U.S. dollar in relation to the Mexican peso ("Mexican Peso Warrants") in order to specify applicable margin requirements. The text of Amendment No. 1 to the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for Amendment No. 1 to the proposed rule change and discussed any comments it received on the amendment. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the Exchange's proposal to list and trade Mexican Peso Warrants pursuant to Section 106 of the Amex Company Guide, the Amex represented that "the Exchange will require that customer positions in Mexican Peso Warrants be subject to the margin requirements applicable to foreign currency options."[4] The Exchange is now amending that proposal to specify objective margin levels that will be applicable to Mexican Peso Warrants trading on the Exchange. Specifically, the Exchange proposes that for Mexican Peso Warrants held "short" in a customer's account, the margin will be 100% of the current market value of each such warrant plus 12% of the product of the units of underlying currency per warrant and the spot price for such currency. This requirement would apply to both initial and maintenance margin. The minimum "add-on" for out-of-the-money Mexican Peso Warrants would be 8% of the product of the units of underlying currency per warrants and the spot price for such currency.

The Exchange believes that Amendment No. 1 to the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that the proposal will promote just and equitable principles of trade and will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that Amendment No. 1 to the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on Amendment No. 1 to the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, as amended, or

(b) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1991).
[3] See Securities Exchange Act Release No. 35363 (February 13, 1995), 60 FR 9416.
[4] *Id.*
[5] 15 U.S.C. 78f(b)(5) (1988).

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communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–95–04 and should be submitted by April 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7842 Filed 3–29–95; 8:45 am]

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[Release No 34–35532; File No. SR–CBOE–94–43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change Relating to the Listing of Regular and Long-Term Index Options on the S&P SmallCap 600 Index

March 24, 1995.

I. Introduction

On November 8, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commision ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade on the Exchange cash-settled, European-style index options on the Standard & Poor's SmallCap 600 Index ("S&P SmallCap 600" or "Index"), a broad-based capitalization weighted index designed to measure the performance of small capitalization stocks. The CBOE filed Amendment No. 1 to its proposal on January 9, 1995, and Amendment No. 2 to its proposal on March 14, 1995.[3] The proposed rule change was published for comment and appeared in the **Federal Register** on February 1, 1995.[4] No comments were received regarding the CBOE's proposal.

II. Description of the Proposal

A. General

The CBOE proposes to list and trade cash-settled, European-style stock index options on the S&P SmallCap, a capitalization-weighted index of 600 domestic stocks chosen for market size, liquidity, and industry group representation.

B. Composition of the Index

The S&P SmallCap 600 Index has been designed to measure the performance of small capitalization stocks. The Index is a capailization-weighted index of U.S. stocks with each stock affecting the Index in proportion to its market capitalization.

As of October 19, 1994, the 600 component stocks ranged in capitalization from $933 million to $46 million, and the market capitalization of the Index totalled $181 billion. The largest stock accounted for 0.51% of the total weighting of the Index, while the smallest accounted for 0.03%. The median capitalization of the components in the Index was $267 million. A breakdown of the component stocks by trading markets shows that Nasdaq is the primary market for 53% of the weight of the Index (318 issues), the New York Stock Exchange ("NYSE") represents 43% (257 issues), and the American Stock Exchange ("Amex") represents 4% (25 issues). The Nasdaq stocks in the Index are authorized as Nasdaq National Market Securites, the top tier of Nasdaq stocks.

A total of 98 industry groups are represented in the Index. The top five groups and their weights are: (1) Computer Software and Services—9.01%; (2) Insurance—5.13%; (3) Savings and Loans—4.88%; (4) Health Care Services—4.31%; and (5) Banks—Regional—4.26%. During the period April through September 1994, the average monthly trading volume for the Index component stocks ranged from 93,000 to 25.3 million shares. The average monthly volume was 1.9 million shares. The top 100 stocks account for 33.42% of the Index, while the bottom 100 stocks account for 5.69% of the Index. The prices for each of the components ranged from $1.385 to $64.50. The average price was $19.37. The shares outstanding for each of the Index component stocks ranged from 4.0 million to 189.0 million with an average of 17.8 million.[5]

S&P relies on several criteria to select Index component stocks. Among other things, stocks must trade on the NYSE or Amex, or be Nasdaq National Market securities; stocks must trade above $1.00 at the time of selection; companies with 50% or more of their shares outstanding held by another corporation are not included; companies with 60% or more of their shares held by insiders are not included; stocks must have at least a six month trading history; stocks that do not trade on any three days during a 12-month period are not included; and share turnover (annual trading volume as a percent of shares outstanding) has to exceed 20% on an annualized basis. Index component stocks are then chosen from the field of stocks that meets these criteria so that they balance the economic sector weighings, described above.[6]

C. Calculation of the Index

The methodology used to calculate the value of the Index is similar to that used to calculate the value of the S&P 500 Index. The value of the Index is determined by adding the price of each stock multiplied by the number of shares outstanding. This sum is then divided by an index divisor ("Index Divisor") which gives the Index a value of 100 on its base date of December 31, 1993. The Index Divisor is adjusted for pertinent changes as described below in the section titled "Maintenance." The Index had a closing value of 96.82 on September 30, 1994.

D. Maintenance

The S&P SmallCap 600 will be maintained by S&P, and the CBOE has represented that it will not influence any S&P decisions concerning maintenance of the Index.[7] To maintain

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[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Amendment No. 1 Provides the following information regarding the Index: (1) Industry groups represented; (2) price and volume information regarding the component stocks; and (3) component stock selection criteria. See letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Steve Youhn, Attorney, Division of Market Regulation ("Division"), Commission, dated January 5, 1995 ("Amendment No. 1").

Amendment No. 2 provides that the CBOE will monitor the Index semi-annually, and will notify staff of the Commission in the event that certain index component capitalization and volume levels fall below designated thresholds. See letter from Joseph Levin, Vice-President, Research & Product Development, CBOE, to Michael Walinskas, Branch Chief, Division, Commission, dated March 14, 1995 ("Amendment No. 2").

[4] See Securities Exchange Act Release No. 35280 (January 25, 1995), 60 FR 6325.

[5] See Amendment No. 1, *supra* note 3.

[6] *Id.* The CBOE has represented that should the character of the Index change from the basic description contained herein, it shall so notify the Commission staff, and such change could require a filing pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Frances Mazur, Attorney, Division, Commission, on March 1, 1995.

[7] See March 1, 1995 telephone conversation, *supra* note 6.

continuity of the Index, the Index Divisor will be adjust to reflect certain events relating to the component stocks. These events include, but are not limited to, adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to company restructurings or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an Index Divisor adjustment as well.

Although the CBOE is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify staff of the Commission when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; or (2) when 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months.[8]

E. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term (up to three years expiration) index options series ("LEAPS") and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

The Exchange seeks to have the discretion to list series in 2½ point intervals when the Index level is below 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be ⅛th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.

F. Settlement of Index Options

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the immediately preceding Thursday. The exercise settlement value of the Index at option expiration will be calculations by S&P based on the opening prices of the component securities on the business day prior to expiration, which will normally be a Friday ("A.M. Settlement").[9] If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes.

G. Surveillance

The Exchange will use the same surveillance procedures currently used for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the S&P SmallCap 600. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended January 29, 1990, will be applicable to the trading of options on the Index.[10]

H. Position Limits

The Exchange proposes to establish position limits for options on the S&P SmallCap 600 at 100,000 contracts on either side of the market, and no more than 60,000 of such contracts may be in the series in the nearest expiration month. Exercise limits will be set at the same level as position limits.[11] The Exchange represents that these limits are roughly equivalent, in dollar terms, to the limits applicable to comparable small-capitalization indexes, including the Wilshire Small Cap Index and the Russell 2000 Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 600 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes S&P SmallCap 600 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of S&P SmallCap 600 options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[13]

The trading of S&P SmallCap 600 options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based

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[8] See Amendment No. 2, *supra* note 3.

[9] When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

[10] The CBOE is a member of the ISG, which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of the potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[11] See CBOE Rule 24.5.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the S&P SmallCap 600 Index will provide investors with a hedging vehicle that should reflect the overall movement of the small-capitalization stock universe. The Commission also believes that these options and warrants will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

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because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities in particular. First, the Index consists of 600 relatively actively traded,[14] small-capitalization domestic securities. Second, the total capitalization of the Index, as of October 19, 1994, was $181 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of $933 million to a low of $46 million, with a median value of $267 million. Third, the Index includes stocks of companies from a broad range of industries, and no industry segment comprises more than 9.01% of the Index's total value.[15] Fourth, as of October 19, 1994, no single stock comprises more than 0.51% of the Index's total value, and the percentage weighting of the 100 largest issues in the Index accounted for only 33.42% of the Index. Fifth, the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

The Commission believes that the general broad diversification, capitalizations, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small capitalization stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.[16] Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.[17] Fourth, the CBOE has represented that it will monitor the Index semi-annually and will notify the staff of the Commission when: (1) ten percent of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; or (2) ten percent of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months.[18] Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Although a position and exercise limit of 100,000 contracts is high by traditional standards, in dollar value it represents $968,200,000 (based on the September 30, 1994 Index closing value of 96.82), an amount equivalent to that allowed for other small-capitaiization index options currently trading.[19] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[20] In this regard, the NYSE, Amex, and the NASD are all members of ISG.[21] In addition, the CBOE will apply the same surveillance procedures as those used for existing broad based index options trading on the CBOE.

D. Market Impact

The Commission believes that the listing and trading of S&P SmallCap 600 Index Options on the CBOE will not adversely affect the underlying securities markets.[22] First, as described above, the Index is broad-based and comprised of 600 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to S&P SmallCap 600 options. Fourth,

[14] A significant majority of the stocks are relatively actively traded, as indicated by an Index component median average daily trading volume of 53,179 shares. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Division, Commission, on February 23, 1995.

The Commission notes that an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the components stocks' median average daily volume was only 53,179 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the S&P SmallCap 600, the median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks from being selected.

[15] See Section II.B, *supra*.

[16] See *supra* note 14.

[17] Currently, 65% of the Index is accounted for by stocks meetings the CBOE's options listing standards. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Division, Commission, on February 28, 1995. These standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation .01.

As a general matter, for broad-based index options, the Commission prefers that at least 50% of an index's components continue to be options-eligible. Given the broad diversity of the SmallCap 600 Index and the selection and maintenance criteria, together with the fact that 65% of the Index's components are options eligible, the Commission believes that the Index will not be readily susceptible to manipulation. See *supra* Section II.B.

[18] See Amendment No. 2, *Supra* note 3.

[19] The Commission would not be inclined to approve such a high position limit if the position limit dollar equivalent amount were substantially higher than as currently proposed.

[20] See Securities Exchange Act Release No. 31243 (October 5, 1992), 57 FR 45849.

[21] See *supra* note 10.

[22] The CBOE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the S&P SmallCap 600 options. In addition, the Options Price Reporting Authority ("OPRA") has represented that additional traffic generated by options and LEAPs on the S&P SmallCap 600 Index is within OPRA's capacity. *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated October 26, 1994.

the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corportation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P SmallCap 600 options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[23]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the CBOE will monitor, semi-annually, the Index and will notify staff of the Commission in the event that certain index component capitalization and volume levels fall below designated thresholds. The Commission believes that this monitoring provision is not a material change that raises regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons, making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating the the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–43 and should be submitted by April 20, 1995.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (File No SR–CBOE–94–43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7841 Filed 3–29–95; 8:45 am]

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[23] Securities Exchange Act Release No. 30944 (July 28, 1992), 57 FR 33376.

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35533; File No. SR–NASD–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed rule Change by National Association of Securities Dealers, Inc. Relating to Interpretation of the Board of Governors—Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice

March 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Interpretation of the board of Governors—Forwarding of Proxy and Other Material under Article III, Section 1 to the NASD Rules of Fair Practice.[2] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

NASD Rules of Fair Practice

Business Conduct of Members

* * * * *

Article III, Section 1

Interpretation of the Board of Governors

Forwarding of Proxy and Other Materials

Introduction

A member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward (i) all proxy material which is properly furnished to it by the issuer of the securities or a stockholder of such issuer, to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof and (ii) all annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof. For the assistance and guidance of members in meeting their responsibilities, the Board of Governors has promulgated this interpretation. The provisions hereof shall be followed by all members and failure to do so shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice of the Association.

Interpretation

Section 1. No member shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of Section 2 or 3 hereof, unless such member is the beneficial owner of such stock.

Section 2. Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(a)[1] sufficient copies of all soliciting material which such person is sending to registered holders, and

(b)[2] satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall transmit promptly to each beneficial owner of stock of such issuer (*or the beneficial owner's designated investment adviser*) which is in its possession or control and registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy

[1] The NASD initially submitted the proposed rule change on February 5, 1995. Amendment No. 1, submitted on March 22, 1995, replaces the proposed rule change in its entirety.

[2] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.05.

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records maintained by the member, and a letter informing the beneficial owner (*or the beneficial owner's designated investment adviser*) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of rule 17a–4 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. 240.17a–4. Notwithstanding the provisions of this section, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they do desire.

Section 3. A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member which has in its possession or within its control stock registered in the name of another member and which desires to transmit signed proxies pursuant to the provisions of Section 2, shall obtain the requisite number of signed proxies from such holder of record.

Notwithstanding the foregoing,

(a) any member designated by a named ERISA Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary;[3] *and*

(b) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member, may vote such proxies.

Section 4. A member when so requested by an issuer and upon being furnished with:

(a)[1] sufficient copies of annual reports, information statements or other material sent to stockholders, and

(b)[2] satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner *(or the beneficial owner's designated investment adviser)* of stock of such issuer which is in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

Section 5. For purposes of this Interpretation, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to stock holders. The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser. Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act of 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information. Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

* * * * *

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the NASD Board of Governors at its meeting on January 16, 1995, which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the rule change. Article VII, Section 1(a)(4) of the By-Laws permits the Board of Governors to make interpretations of the Rules of Fair Practice without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to John H. Pilcher, General Counsel's Office, at (202) 728–8287.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD reviewed recent amendments to New York Stock Exchange ("NYSE") rules,[4] to allow a beneficial owner of stock to designate a registered investment adviser to vote proxies and receive proxy and related issuer material in lieu of the beneficial owner. Upon review, the NASD believes that providing beneficial owners with the right to make this type of designation benefits investors, and that uniformity between NASD rules and NYSE rules on this subject is appropriate. The NASD also believes that certain investment managers of ERISA Plans in the over-the-counter market shold be allowed to vote proxies.[5] The NASD, therefore, proposes to amend the Board of Governors Interpretation—Forwarding of Proxy and Other Materials under Article III, Section 1 of the NASD Rules of Fair Practice ("Interpretation") to make the NASD rules on these subjects substantially similar to NYSE rules.

Designated Registered Investment Advisers

The rule change would allow a benefical owner of any issuer's stock to inform an NASD member that is the record holder of that stock that the beneficial owner has authorized a designated registered investment adviser to receive and vote proxies and to receive related issuer material in lieu of the beneficial owner.

The rule change would provide that, for purposes of the Interpretation, a "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to receive and vote the proxy, and to receive annual reports and other material sent to stock holders. The beneficial owner would be required to sign a written designattion to the member; such designation must be addressed to the member; and such designation must include the name of the designated investment adviser. The beneficial owner would have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission would have to be in writing and submitted to the member.

The rule change would require that a member who receives a written designation from a beneficial owner ensure that the beneficial owner's designated investment adviser is registered under the Investment Advisers Act of 1940; is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock which is in the possession of the member. Members would be required to keep records substantiating this information.[6]

ERISA Investment Managers

The rule change would provide that any member designated by a named ERISA Plan fiduciary as the investment manager[7] of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities of the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset, and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[8] in that the rule change will benefit investors by: (i) Providing investor with the ability to designate their registered investment advisers to receive and vote their proxies and to receive other material; (ii) providing authority to certain investment managers of ERISA Plans to receive and vote proxies and (iii) providing desired uniformity between NASDA rules and NYSE rules on such proxy procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–95–06 and should be submitted by April 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

[FR Doc. 95–7837 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[3] For purposes of this interpretation, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

[4] Securities Exchange Act Release No. 34596 (Aug. 25, 1994), 59 FR 45050 (Aug. 31, 1994) ("Release 34–34596").

[5] NYSE Rule 450(1) is comparable to the proposed rule change. See 2 NYSE Guide, Rules of Board, Rule 450 (CCH) ¶ 2450.

[6] Release 34–34596, *supra* n. 4, clarified that the NYSE would provide certain additional guidance regarding the NYSE rule changes under an NYSE Information Memo. The NASD's rule change would contain substantially similar requirements as described under Release 34–34596 and contained in the NYSE Information Memo (See NYSE Information Memo No. 94–41 (Sept. 7, 1994).

[7] ERISA defines the term "investment manager" to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) Who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is: (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in that Act; or (iii) an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to that plan. See 29 U.S.C. 1002 (38).

[8] 15 U.S.C. 78o–3.

[Rel. No. IC–20967; 811–4355]

Kidder, Peabody Tax-Free Income Fund; Notice of Application

March 24, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody Tax-Free Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 19, 1985, applicant filed a notification of registration pursuant to section 8(b) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on November 22, 1985, and applicant commenced the initial public offering of its National Tax-Free

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Series' (the "National Series") shares and New York Tax-Free Series' (the "New York Series") shares on December 26, 1985. Applicant's Massachusetts Tax-Free Series never commenced a public offering of its shares.

2. On June 27, 1990, applicant's trustees approved a plan to liquidate applicant's assets and distribute the proceeds in the form of cash to applicant's shareholders. Proxy materials were filed with the SEC and were distributed, on or about August 16, 1990, to applicant's shareholders of record as of July 23, 1990. The liquidation was approved by applicant's shareholders at a meeting held on November 2, 1990.

3. On November 9, 1990, applicant liquidated the National Series' and New York Series' assets. The portfolio securities were disposed of by competitive bidding from 16 dealers, with the transactions being consummated with the highest bidder. No brokerage commissions were paid with respect to these transactions. On November 13, 1990, applicant distributed all of the National Series' assets, $11,002,504, to its shareholders who received distributions equal to their proportionate shares. Each National Series' shareholder received $15.26 per share. Also on November 13, 1990, applicant distributed all of the New York Series' assets, $3,650,797, to its shareholders who received distributions equal to their proportionate shares. Each New York Series' shareholder received $14.88 per share.

4. All expenses incurred in connection with the liquidation, consisting of legal, accounting, printing and other expenses, were borne by Kidder, Peabody & Co. Incorporated, applicant's principal underwriter.

5. As of the date of the application, applicant had no assets, liabilities or shareholders. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to terminate its existence as a Massachusetts business trust as soon as practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-7843 Filed 3-29-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26256]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

March 24, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 17, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70-7701)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act and Rule 54 thereunder.

By orders dated May 23, 1990 (HCAR No. 25093) and July 29, 1994 (HCAR No. 26092, the Commission authorized, among other things, Northeast to issue and sell, and/or purchase in the open market and sell, from time-to-time through December 31, 1995 up to 10 million common shares under Northeast's Dividend Reinvestment Plan ("DRP"). As of March 1, 1995, Northeast has issued and sold 4,470,352 authorized common shares and 4,877,247 shares have been purchased in the open market by an agent acting on behalf of Northeast and distributed to DRP participants pursuant to the DRP.

Northeast now proposes to issue and/or purchase and sell to DRP participants, through December 31, 2005, the remaining 652,401 common shares under the DRP. For the same period Northeast also proposes to issue and/or purchase and sell to DRP participants up to an additional 20 million common shares under the DRP In all respects, the terms and conditions associated with the issuance, acquisition and sale of the shares to be issued under the DRP will remain as previously authorized.

New England Electric System, et al. (70-8475)

New England Electric System ("NEES"), a registered holding company, and New England Electric Resources, Inc. ("NEERI"), its wholly owned, nonutility subsidiary company, both of 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder. The Commission issued a notice of the transaction on November 18, 1994 (HCAR No. 26163). Subsequently, applicants-declarants amended the filing to request additional authorization, thus necessitating this supplemental notice.

NEES proposes to provide financing to NEERI by making capital contributions up to an additional $12.7 million and/or by lending to NEERI from time to time additional amounts not to exceed $12.7 million at any one time, such loans to be in the form of non-interest bearing subordinated notes

NEERI proposes to enter into a joint arrangement with Separation Technologies, Inc. ("STI"), the developer of a process for separating unburned carbon from coal ash. As part of its joint arrangement with STI, NEERI proposes to enter into a project with STI and STI Projects, a Florida General Partnership between STI and Oxbow Carbon International, Inc. ("STIP"), involving the processing of coal ash at an electric generation facility in the New England/New York region ("NE/NY Project") owned by a nonaffiliated electric company ("Owner"). NEERI plans to invest up to $700,000 in the NE/NY Project in return for 15% of certain project revenues.

In addition, NEERI will provide consulting services to STI and/or STIP in connection with the NE/NY Project for a fee. Such services may include marketing, sales, higher value product research and development and engineering consultation on balance of plant equipment matters. STIP will be responsible for processing the ash at the Owner's facility.

NEERI proposes to enter into similar joint arrangements with STI and STIP at other locations where STI equipment will be installed. NEERI's investment in these other utility locations is anticipated to range between $500,000 and $2.0 million per installation, with a cumulative investment not to exceed $10 million. NEERI's investments in such future projects may take the form of, without limitation, joint ventures, general partnerships, limited partnerships, teaming agreements, royalties or other revenue sharing, special purpose entities, loans, and equity participation. NEERI's project investments may involve the acquisition of voting securities or interests not exceeding 9.9%

NEERI proposes to perform research with STI to further refine the carbon-rich and low carbon processed waste stream and to find other applications for the STI separation process in recycling. NEERI states that it will not expend more than $1 million on such research activities. NEERI also proposes to offer marketing and engineering advice and consulting services to STI and STIP.

Furthermore, NEERI proposes to acquire up to $1 million of STI's 6% cumulative convertible preferred stock at a price of $6.50 per share ("Shares"). All or any portion of the Shares shall be convertible at any time, or from time to time, at NEERI's option, into the same number of shares of STI common stock. The Shares will automatically convert to shares of common stock (upon the closing of an initial public offering of STI common stock) in which STI's aggregate gross proceeds from such offering exceed $5 million and in which the share offering price is $6.50 or more. Dividends ion the Shares will accrue cumulatively at a rate of 6% per annum of the price per Share from the date of payment for the Share to the date of its conversion, if any, to common. The 6% cumulative dividend would be paid in STI common shares upon conversion of Shares to common.

NEERI will have the right to exercise one vote per Share on all matters submitted to a vote of STI common stock generally. NEERI will also have the option to appoint one member of the STI Board of Directors. NEERI will have protection against dilution of the Shares for a period of five years after their purchase. NEERI states that its investment in the Shares will result in NEERI's ownership of not more than 5% of the voting securities of STI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-7838 Filed 3-29-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 20966; 811-56211]

TCW High Yield Fund, Inc.; Notice of Application

March 24, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: TCW High Yield Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on February 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company, organized as a corporation under the laws of Maryland. On July 22, 1988, Applicant registered under the Act and filed a registration statement under the Securities Act of 1933 (the "1993 Act"). Applicant's registration statement was not declared effective, and Applicant has made no public offering of its shares.

2. Under letter dated February 15, 1995, Applicant requested that its registration statement under the 1933 Act be withdrawn pursuant to Rule 477 thereunder.

3. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs. After the Commission issues an order declaring that Applicant has ceased to be an investment company, Applicant intends to file Articles of Dissolution with the Maryland Department of Assessments and Taxation in Baltimore, Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-7840 Filed 3-29-95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 2184]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement Concerning the Department of State's Permitting Process for International Bridges Along the Texas/Mexico Border

LEAD AGENCY: Department of State, Washington, D.C.

COOPERATING AGENCIES:
Environmental Protection Agency (EPA)
U.S. Fish and Wildlife Service (F&WS)
U.S. Coast Guard
International Boundary and Water Commission (IBWC), U.S. Section
General Services Administration (GSA)

SUMMARY: Under Executive Order 11423 (August 16, 1968) and the International Bridge Act of 1972, 33 U.S.C. 535 *et seq.*, the U.S. Department of State ("the Department") has the authority, inter alia, to issue permits for the construction of bridges along the Texas/Mexico border. (Once such a permit is granted, other agencies, including the U.S. Section of the IBWC and the U.S.

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Coast Guard, require additional permits related to their respective regulatory functions; the U.S. Army Corps of Engineers may also require separate permits.) To date, with respect to each permit application, the Department has issued a Finding of No Significant Impact, based on an Environmental Assessment (EA), consistent with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* (NEPA).

With several bridges permitted to date and given the expectation of continuing permit applications, the Department intends to prepare voluntarily a Programmatic Environmental Impact Statement (PEIS) to assess the cumulative environmental impacts in the United States of existing bridges along the Texas/Mexico border. The PEIS will also describe the general types of projects expected in the foreseeable future and will address the types of impacts that are expected to result from the continuation of present permitting procedures. The Department will use the results of the PEIS to inform both the manner and substance of its permitting process.

In undertaking this PEIS, the Department has elected to follow the procedures pertaining to the preparation of programmatic environmental impact statements contained in the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR 1500 *et seq.*, as well as by the Department, 22 CFR 161 *et seq.* The Department, EPA, F&WS, IBWC, Coast Guard, GSA and other Federal, state and local agencies will be able to develop supplemental EISs or incorporate the PEIS into future NEPA documentation (EAs or EISs), as allowed by NEPA, for activities or locations not specifically addressed in the PEIS.

ALTERNATIVES PROPOSED: Alternatives to be considered include the No Action alternative. Other alternatives identified during the scoping process will be discussed in the Draft PEIS.

PUBLIC SCOPING: Comments received as a result of this notice will be used to assist the Department primarily in identifying the alternatives to be included in the PEIS and in assessing the impacts, in the United States, of these alternatives on the quality of the human environment. Scoping meetings will be held the week of May 8 in Harlingen, Laredo and El Paso, Texas to identify alternatives and significant issues related to the PEIS. The exact dates, times and locales for these meetings will be published in local newspapers. Individuals or organizations may participate in the scoping process by providing written comments or by attending the scoping meetings. Written comments may be forwarded to either:

U.S. Department of State, OES/ETC, Attn: Ms. Charlotte Roe, 2201 C Street NW., Washington, D.C. 20520, Tel: (202) 647–3367, FAX: (202) 736–7351

USAED, Fort Worth, CESWF–PL–RE, Attn: Mr. Eric Verwers, P.O. Box 17300, Fort Worth, Texas 76102–0300, Tel: (817) 334–2370, FAX: (817) 885–7539.

Comments and suggestions should be received no later than 60 days following this notice in order to be considered in the Draft PEIS.

Charlotte Roe,

Multilateral Affairs Officer, Department of State, OES/ETC.

[FR Doc. 95–7816 Filed 3–29–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2183]

United States International Telecommunications Advisory Committee Radiocommunications Sector Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunications Sector Study Group 8—Mobile Services will meet on 19 April 1995 at 10 a.m. to 1 p.m., in room 1408 at the Department of State, 2201 C Street, Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This April meeting will review the results of the ad hoc groups and task groups of the study group and begin preparations for the June 12–16, 1995 international meeting of Study Group 8.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: In order to gain access to State Department for this meeting, please call 202–647–0201 and leave your name; also, please provide your social security number, and date of birth. Please use "C" Street Entrance.

Dated: March 21, 1995

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunications Sector.

[FR Doc. 95–7825 Filed 3–29–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Airspace Reclassification in the Vicinity of Bellingham, WA, in Support of Transport Canada Terminal Airspace Design; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of meeting; correction.

SUMMARY: This action corrects errors made in the supplementary information portion of the Notice of Informal Airspace Meetings for the Airspace Reclassification in the Vicinity of Bellingham, WA, in support of Transport Canada Terminal Airspace Design, to be held May 9 and May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr, Federal Aviation Administration, Northwest Mountain Regional Office, ANM–530, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone: (206) 227–2532.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document 95–7030 published on March 22, 1995 (60 FR 15172), the telephone number for the contact person should be (206) 227–2532 and under Meeting Procedures, "FAA Southern Region" should be "FAA Northwest Mountain Region."

Issued in Washington, DC on March 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7831 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–P

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lafayette Regional Airport, Lafayette, Louisiana

AGENCY: Federal Aviation Administration (FFA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 1, 1995

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gregory Roberts, Director of Aviation, at the following address: Mr. Gregory Roberts, Director of Aviation, Lafayette Regional Airport, 200 Terminal Drive, Lafayette, Louisiana 70508.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr Ben Guttery, Federal Aviation Administration, Southwest Region Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158)

On March 8, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 21, 1995

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date:
September 1, 1995

Proposed charge expiration date:
October 31, 2002

Total estimated PFC revenue:
$2,946,976.00

Brief description of proposed project(s).

Projects to Impose and Use PFC's

Airside ACAA Lifting Device;
Terminal Improvements and Reimbursement, PFC Development, Implementation, and Administration; and Perimeter Road Rehabilitation

Projects to Impose PFC's

Rehabilitate runway 11/29

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All air taxi/commercial operators (ATCO) filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lafayette Regional Airport.

Issued in Fort Worth, Texas on March 8, 1995.

Edward N. Agnew,

Assistant Manager, Airports Division.

[FR Doc. 95–7832 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Oklahoma County, Oklahoma

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environment Impact Statement (EIS) will be prepared for the proposed highway project in Oklahoma County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Bruce A. Lind, Acting Division Administrator, Federal Highway Administration, 200 Northwest Fifth Street, Room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231–4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation, will prepare an EIS in conjunction with a Major Investment Study (MIS) for a proposal to improve Interstate 40 in Oklahoma County. The proposed improvement would involve reconstructing Interstate 40 from the I–40/Meridian Avenue interchange east 9.6 kilometers (6 miles) to the I–40/I–235/I–35 interchange in Oklahoma City, Oklahoma County. Improvements to this segment of Interstate 40 are considered necessary to provide for the projected traffic demand, to enhance safety and to replace structurally deficient bridge structures.

The MIS/EIS will consider a number of alternatives including: taking no action, reconstruction on existing alignment and construction on new alignment and incorporate mass transit alternatives currently under study.

The MIS/EIS process will solicit input from all appropriate Federal, State and local agencies. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 23, 1995.

Mike Herron,

Technology Operations Engineer, Oklahoma City, Oklahoma.

[FR Doc. 95–7815 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Rock County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed bypass south and west of Janesville on State Highway (STH) 11, Rock County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to improve STH 11 in Rock County, Wisconsin. The proposed improvement creates an arterial bypass south and west of Janesville on STH 11 for a distance of about 9.7 km (6 mi). A new structure over the Rock River is proposed.

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STH 11 is identified in WiosDOT's Corridors 2020 as a 2-lane connector linking Monroe and southwestern Wisconsin to Rock County. The 1991 Rock County Regional Transportation Study included the proposed arterial bypass in their recommendations for enhancing the regional economic development for the corridor. Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of STH 11, and also to provide for the safety and traffic demand of this highway.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the environmental impacts of alternatives including (1) no-build; (2) improvements along existing local roads and (3) an alignment on new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued March 20, 1995.

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–7753 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Dennis A. Scovill, Chief, District Operations-C, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724, Telephone: 916/498–5034.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS), will prepare an Environmental Impact Statement (EIS) on a proposal to extend State Route (SR) 905 easterly approximately six miles, connection Interstate 805 and the Otay Mesa International Boarder Crossing, in Diego County. Sensitive resources already identified within the project area include archaeological sites, vernal pools and other wetlands.

The purpose of the project is to accommodate existing and future east-west traffic generated by development on Otay Mesa and growing use of the Otay Mesa International Port-Of-Entry. Initial freeway construction will be for a four-or-six-lane roadway (depending on the results of traffic modeling studies currently in progress) which would improve safety and traffic flow in the Otay Mesa area. The EIS will address an ultimate ten-lane freeway (including two high occupancy vehicle lanes). The project also includes evaluation of siting locations for six proposed interchanges: including Caliente Boulevard, Heritage Road, Dritannia Boulevard, La Media Road, and Siempre Viva Road, as well as a major junction with (proposed) SR 125.

Several Alternatives are being considered for this project. These include a "no build" alternative, expansion of Otay Mesa Road, several different alignments of a new SR 905 route from I–805 to the Otay Mesa International Border Crossing, and system alternatives (e.g., public transport via electric trolley or bus).

The appropriate federal, state and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this proposal will placed on a mailing list to receive project-related materials.

A public information/scoping meeting is planned for Monday, April 10, 1995 from 6:00 to 8:00 p.m. at the Sanyo Building, 2055 Sanyo Avenue, Otay Mesa. Scoping meetings will also be arranged with responsible/cooperating agencies and special interest groups upon request. A public hearing will be held after the EIS is available for review. Public notice will given as to the time and place of the hearing.

To ensure that the full range of issues related to this proposal action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

Issued on March 24, 1995.

Dennis Scovill,

Chief, District Operations-C, Sacramento, California.

[FR Doc. 95–7786 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

(Dept. Circ. 570, 1994 Rev., Supp. No. 14)

Surety Companies Acceptable on Federal Bonds; Redomestication and Name Change; The Travelers Indemnity Company of Rhode Island

The Travelers Indemnity Company of Rhode Island, a Rhode Island corporation has redomesticated from the state of Rhode Island to the state of Connecticut and has formally changed its name to The Travelers Indemnity Company of Connecticut, both changes effective December 31, 1994. The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34180, July 1, 1994.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to The Travelers Indemnity Company of Connecticut, Hartford, CT. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $21,404,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223).

A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, at page 34180 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (202/FTS) 874–6696.

Dated: March 20, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–7844 Filed 3–29–95; 8:45 am]

BILLING CODE 4810–35–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The National Advisory Board meeting is scheduled for Thursday, April 27, 1995, 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include remarks from executives of the RTC, the Executive Director of the Thrift Depositor Protection Oversight Board and the chair of the National Advisory Board. In addition, there will be briefings from the chairpersons of the six regional advisory boards on their respective meetings held throughout the country from March 2 through April 7. The Board will address the issues involving the RTC's disposition of environmental resources and other special properties. Specific topics addressed at the six regional meetings include: the nature and extent of environmentally sensitive RTC properties; RTC activity in assisting environmental interests to acquire significant properties; the future of the RTC's environmentally sensitive properties when taken over by the Federal Deposit Insurance Corporation; oversight of the hazard remediation program initiated by the RTC, and the status of properties covered by the Coastal Barrier Improvement Act.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: March 27, 1995.

Jill Nevius,

Committee Management Officer

[FR Doc. 95–7836 Filed 3–29–95; 8:45 am]

BILLING CODE 2221–01–M

UNITED STATES INFORMATION AGENCY

Management of the Summer Institute for EFL Teacher Trainers in Eastern/Central Europe and the NIS

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs, English Language programs Division, Programs Branch, of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to conduct a five- to six-week Summer Institute for up to 20 EFL teacher trainers from Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Slovakia, Slovenia, and Ukraine. The exact number of participants will be contingent on available funding.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright Hayes Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number *E/ALP–95–02.*

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 21, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 21 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin by July 5; the program should not run over 6 weeks: it should begin the weekend of July 15 and conclude the week of August 20, 1995.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, English Language Programs Division, E/ELP—Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC 220547, telephone number 202–619–5869, fax number 202–401–1250 to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer/Specialist Marguerite Hess on all industries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, English Language Programs Division, Programs Branch, or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs, English Language

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Program Division, Programs Branch, may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/ALP–95–02, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. professional or educational not-for-profit institutions/organizations to hold a 5–6 week Summer Institute, whose purpose will be to prepare the participants to coordinate EFL teacher training activities in their respective countries upon their return. The Institute will therefore encompass curriculum design and program management as well as training in methodology. Upon completion of the program, graduates of the institution will work together with USIA EFL Fellows who are already working in each country as part of the Eastern/Central European and NIS EFL Fellow Program.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

The proposal must contain a comprehensive line item budget, based on the specific guidance in the Solicitation Package. At this time, the Agency has not determined the full funding level for FY'95.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

Domestic Ground Travel
Book Allowance (not to exceed $400 per participant)
Weekly Stipend for participants
Meals and Lodging for participants and Washington, D.C. escort
Cultural Activities Fee
TESOL Membership Fee
Course/Accreditation Fees
Tax Guidance/Preparation
Educational/Course Materials
Administrative Expenses and Honoraria

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidlines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of Eastern European and NIS Affairs. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is frequent.

10. Cost-effectiveness; The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 30, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 22, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–7863 Filed 3–29–95; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 61
Thursday, March 30, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., March 31, 1995.

CHANGES IN MEETING: Meeting concerning Protocol Revisions was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 28, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–8020 Filed 3–28–95; 3:47 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., March 30, 1995.

CHANGES IN MEETING: Meeting concerning Bunk Beds was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 28, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–8021 Filed 3–28–95; 3:47 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, March 28, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's supervisory and corporate activities, and (2) matters relating to the probable failure of an insured depository institution.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 28, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–8025 Filed 3–28–95; 3:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–7387

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 30, 1995 at 10:00 a.m. Meeting open to the Public

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Regulations:
Proposed Regulation Schedule (continued from meeting of March 23, 1995)
Personal Use of Campaign Funds; Announcement of Effective Date (11 CFR Parts, 100, 104 and 113)

DATE AND TIME: Tuesday, April 4, 1995 at 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. §437g.
Audits conduced pursuant to 2 U.S.C. §437g, §438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, April 6, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–07: Kenneth D. Albertsen on behalf of Key Bank of Alaska
Regulations:
Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–8016 Filed 3–28–95; 3:46 pm]

BILLING CODE 6715–01–M

federal register

Thursday
March 30, 1995

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Parts 9903 and 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs; Final Rule

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903, 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), is revising the Cost Accounting Standards relating to accounting for pension costs under negotiated government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, when promulgating any new or revised Cost Accounting Standard, publish a final rule. This final rule addresses certain problems that have emerged since the original promulgation (in the 1970's) of the pension Standards: CAS 9904.412—"Cost Accounting Standard for composition and measurement of pension cost," and CAS 9904.413, "Adjustment and allocation of pension cost." The changes address pension cost recognition for qualified pension plans subject to the tax-deductibility limits of the Federal Tax Code, problems associated with pension plans that are not qualified plans under the Federal Tax Code, and problems associated with overfunded pension plans.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a final rule.

This final rule is step four in the four step process.

B. Background

Prior Promulgations: The previous CASB published CAS 9904.412—"Cost Accounting Standard for Composition and Measurement of Pension Cost" on September 24, 1975 and CAS 9904.413—"Adjustment and Allocation of Pension Cost" on July 20, 1977. The effective dates of these Standards were January 1, 1976 and March 10, 1978, respectively. These Standards were developed in the early years of the applicability of the Employee Retirement Income Security Act (ERISA). At that time, the problems on which this final rule focuses were not significant. Adequate or minimum, rather than excess funding, concerned pension managers of that era. Over the intervening years, government contractors' pension plans have become more adequately funded. At the same time, limits on the maximum amount of benefits that can be provided by a qualified pension plan have been considerably constrained in real terms. At the time the previous coverage was promulgated, there was little or no inconsistency between an orderly method of accruing pension costs and a contractor's ability to concurrently fund those accruals.

The Tax Reform Act of 1986 amended the Federal Tax Code to impose an excise tax on contributions in excess of the maximum tax-deductible amount for qualified pension plans. Immediately thereafter, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) added a second, often more restrictive full-funding limitation on the determination of the tax-deductible amount. To avoid the incurrence of an unallowable excise tax, government contractors generally did not fund any accrued pension cost in excess of the maximum tax-deductible pension contribution. However, portions of accrued pension costs that were not funded were not allowable. Furthermore, because the Standards prohibited the reassignment of accrued but unfunded pension costs, contractors could not allocate such costs to contracts when funded in future periods. On April 8, 1991, the Board issued a "Memorandum for Agency Senior Procurement Executives" which granted temporary authority to reassign to future periods pension costs that were not funded in the year of accrual because they lacked tax-deductibility.

An overwhelming majority of respondents to the Board's November 1990 solicitation of agenda items gave a high priority to the problems associated with fully-funded qualified plans and those connected with the growing universe of nonqualified pension plans. The Board sought public comments with a set of Staff Discussion Papers. A Paper addressing the "pay-as-you-go" or unfunded plan issue was published by the Board on June 17, 1991. See 56 FR 27780. A Paper seeking views on the "full funding" problem was published on August 19, 1991. See 56 FR 41151. On January 26, 1993, after consideration of the public comments received on these Staff Discussion Papers, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**, 58 FR 6103. The ANPRM set forth proposed amendments to deal with both the unfunded pension plan issue related to nonqualified pension plans and the "full-funding" problem of qualified plans.

In the public comments to the ANPRM, the Board found two areas of concern particularly persuasive. These dealt with the ANPRM lacking any full-funding limitation, and the complexities and problems introduced by drastic revisions to the amortization period for actuarial gains and losses.

The ANPRM was premised on the idea that, by reducing such amortization periods, there would be only a relatively short time lag between cost/price recognition and the eventual funding. This premise, as pointed out by the commenters, was unsound. Because the ANPRM lacked any full-funding limitation, it could result in recognition of pension costs in years in which surplus assets existed. This is of particular concern to the Board because of the number of contractors that now have overfunded plans.

The Board also determined that changing amortization periods, in order to improve cost predictability, was unnecessary. Most commenters believed that a satisfactory degree of predictability could be achieved under the existing Standards' amortization rules.

On November 5, 1993, after consideration of the public comments received on the ANPRM, the CASB published a Notice of Proposed Rulemaking (NPRM), 58 FR 58999. The NPRM set forth proposed amendments to resolve the regulatory conflict for qualified pension plans by incorporating into the Standards the ERISA full-funding limitation, while

maintaining the current amortization rules. To address questions concerning overfunded pension plans, the Board added coverage to CAS 9904.413 defining what constitutes a segment closing and providing greater specificity regarding accounting for pension costs when segments are closed or pension plans are terminated. The NPRM retained the accounting approach for nonqualified pension plans included in the ANPRM.

The public comments received in response to the NPRM raised some new issues. In the final rule, the Board addresses these issues focusing on three areas in particular. These deal with the restriction of accrual accounting by an outside limit, incomplete and unclear coverage for segment closings and pension plan terminations, and the lack of accounting for differences between accrued and funded pension costs. A majority of public comments expressed strong opinions, which were divided between support for accrual accounting and support for funding as the basis for determining allocable contract costs. In addition, numerous public comments were submitted concerning specific actuarial and technical issues.

The final rule reflects these and other concerns expressed by commenters to the NPRM. In addition, certain pension actuaries and the Pension Committee of the American Academy of Actuaries submitted suggestions to address the actuarial soundness of the final rule.

Termination of Temporary Waiver Authority

The final rule removes the regulatory conflict between the funding limits of ERISA and the period assignment provisions of CAS 9904.412–40(c). Therefore, the Board terminates the temporary waiver authority granted in the "Memorandum for Agency Senior Procurement Executives" issued on April 8, 1991

Summary of Proposed Amendments

The Board's final rule provides for accrual accounting to initially compute the pension cost for a cost accounting period. The Board also recognizes that funding of such cost serves to substantiate the cost and adds to the verifiability of the measurement of cost. For assignment purposes, the computed cost is subject to a corridor with zero as the floor and the maximum tax-deductible amount, where applicable, as the ceiling. The computed cost is also subject to an assignable cost limitation so that cost will not be assigned to an overfunded pension plan. The cost assigned to the period must be funded as specified in the Standard to be allocable to final cost objectives. This four-step process of computing, assigning, funding, and allocating pension cost applies to both qualified and nonqualified defined-benefit pension plans.

This final rule affirms the complementary funding approach for nonqualified plans that takes into account Federal income tax deductibility. The Board views the complementary funding approach as a reasonable compromise addressing the Government's concern that claimed cost be substantiated by funding while providing contractors with relief from adverse cash flow consequences of funding a cost that is not tax-deductible. The Board decided that tax-exempt entities do not experience such cash flow disadvantages, and therefore, they are required to fund all pension cost that is assigned to the period.

For nonqualified defined-benefit plans that do not meet the communication, nonforfeiture, or funding criteria, or for which the contractor chooses to use the pay-as-you-go method, the assigned cost is equal to the amount of benefits paid in that period. To promote consistency between periods, this final rule requires that any lump sum settlements or annuity purchases be amortized.

For qualified defined-benefit pension plans, the conflict between the Standards and ERISA is removed. The cost assigned to a period is limited to the accrued cost that can be funded without penalizing a contractor. A $0 floor was added to the corridor to eliminate any inequity between a requirement to credit negative costs to contracts and the contractor's inability to make withdrawal from the funding agency.

By not requiring the assignment of negative pension cost, the Board has deferred the Government's recovery of excess assets in overfunded plans. This delay is appropriate for on-going pension plans when no assets have reverted or inured to the contractor. The effect of this delay has been mitigated by clarifying and strengthening the Government's rights or obligations for a cost adjustment when there is a segment closing, plan termination, or freezing of benefits.

Portions of pension costs computed for a period that fall outside of the assignable cost corridor ($0 floor and a ceiling based on tax-deductibility) are reassigned to future periods, together with an interest adjustment, as portions of unfunded actuarial liability and are identified as assignable cost deficits or assignable cost credits, respectively. Unfunded portions of assigned cost continue to be separately identified and eliminated from future cost computations.

For nonqualified plans, a clarification in the final rule is made by the addition of the concept of "permitted unfunded accruals"; the portion of the computed and assigned cost of a nonqualified plan exempted from current funding based on the tax rate offset. These amounts are updated and described as the accumulated value of permitted unfunded accruals. All such previously assigned and allocated costs, adjusted for earnings, expenses, and benefit payments, are treated as plan assets retained by the contractor for purposes of assessing the funding status of the plan.

The fundamental requirement for assignment of pension cost has been expanded to include a "CAS balance test" modeled after the Internal Revenue Service "equation of balance". The CAS balance test requires that the entire actuarial accrued liability be accounted for by the assets or the portions of unfunded actuarial liability identified under subparagraphs 9904.412–50(a) (1) and (2). For the CAS balance test to function, the definition of unfunded actuarial liability is revised to clarify that an actuarial surplus exists whenever the actuarial value of assets exceeds the actuarial accrued liability. The accumulated value of prepayment credits, that is, funds that have yet to be applied to assigned costs, is excluded from the assets.

Technical corrections have been made to enhance the actuarial completeness of the final rule. Consistent with recent changes in ERISA and Generally Accepted Accounting Principles, as embodied in Statement 87 of the Financial Accounting Standards Board, and reflecting the sophistication of modern actuarial valuations, this final rule requires the use of explicit actuarial assumptions that are individually reasonable. Revisions have been made to distinguish the actuarial value of assets used for computations of on-going pension costs from the market value of assets used for current period adjustments. In addition, Generally Accepted Actuarial Principles and Practices as promulgated by the Actuarial Standards Board were considered in the drafting of this final rule.

Finally, this rule implements an amendment to the CAS applicability and exemption requirements contained in Section 9903.201–1(b)(11). This amendment is made necessary due to recent statutory changes contained in the Federal Acquisition Streamlining Act, Public Law 103–355.

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Transition

The Board is aware that contracting officers and contractors have negotiated many pragmatic agreements while awaiting the promulgation of this final rule. The transition methods and illustrations of 9904.412–64 and 9904.413–64 are presented as model solutions. The Board expects that modifications of these methods and alternate approaches may be necessary to ensure equity for both the Government and contractors. Cognizant Federal officials are encouraged to ratify existing agreements that comport with the concepts of this final rule. For prior agreements or interim solutions based on a "fresh-start" amortization of the unfunded actuarial liability of qualified defined-benefit pension plans, the cognizant Federal official should verify that no portion of unfunded actuarial liability for prior unfunded costs that could have been funded, or, for other previously disallowed costs, have in fact been inadvertently included in pension costs.

The transition rules are constructed on a few basic concepts. Prior assigned costs of qualified plans, which were neither funded nor allocated to contracts because they lacked tax-deductibility, may be assigned, with interest, to periods beginning on or after the effective date of this rule. Conversely, unfunded accrued costs of nonqualified plans allocated to contracts should be treated as assets, updated for earnings and benefit payments, and applied against either the actuarial accrued liability used to compute cost accruals or the benefits paid under the pay-as-you-go method.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this final rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this final rule does not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this final rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

Public Comments: This final rule is based upon the Board's Notice of Proposed Rulemaking made available for public comment on November 5, 1993, 58 FR 58999. Thirty sets of public comments were received from contractors, Government agencies, professional associations, actuarial firms, law firms, public accounting firms, and individuals. The comments received and the Board's actions taken in response thereto are summarized below:

Comment: Twelve commenters expressed concern that the introduction of a funding limit on accrual accounting was a significant departure from the full accrual accounting approach of the ANPRM. Some commenters were also concerned with the complexity inherent in any rule governing pension costs. For these reasons the commenters supported the promulgation of a second NPRM.

Response: The Staff Discussion Papers, the ANPRM, and the NPRM each addressed the role of accrual accounting and the role of funding. The Staff Discussion Paper on fully-funded defined-benefit pension plans requested comments on the relative weights the Board should assign to accrual accounting, funding, and predictability as a basis for cost determination. The Staff Discussion Paper on unfunded nonqualified defined-benefit pension plans balanced its avoidance of a funding requirement with a very constrained method of accrual accounting for so-called "accruable" plans.

In response to the comments on the Staff Discussion Papers, the ANPRM adopted accrual accounting for both qualified plans and accruable nonqualified plans, which permitted certain portions of computed pension costs to be unfunded. Because the Board supported the need to substantiate the accrual with funding, the ANPRM required that the accrued costs for qualified plans be funded as soon as practicable. The ANPRM presumed there would not be a lengthy delay between accrual and funding, and so it did not link the period assignment of the accrual to current period funding. For nonqualified plans, the assignment of accrued costs was tied to funding, but the ANPRM introduced an exception for the effect of taxes on contractor cashflows. As with the Staff Discussion Paper, non-accruable plans, and accruable plans that so elect, were limited to the pay-as-you-go method.

The NPRM kept the same accounting approach for nonqualified plans as the ANPRM. Comments from the Government and contractors persuaded the Board that the conflict between full accrual accounting and ERISA funding, not predictability, was the significant problem. Finding that there could be indefinitely extended delays in the funding of the accruals of overfunded plans, the Board determined that it was necessary to link the period assignment of costs to current period funding in order to assure the verifiability of the accrued amounts. To resolve the conflict with ERISA's funding limits, the ERISA full-funding limitation was incorporated into the NPRM. Furthermore, aware of the need to address overfunded plans, the Board added clarity and specificity to the current period adjustment required when a segment closes. The Board explicitly included an adjustment for plan terminations because there has been some uncertainty as to the prior Board's intent.

With this final rule, the Board affirms the accounting approaches of the NPRM. Throughout the four-step promulgation process, accrual accounting consistently has been the starting point for the recognition of pension costs. The period assignment rule is tied to ERISA's tax-deductible maximum to prevent conflict with any of ERISA's funding limits. This final rule retains the complementary funding rule for nonqualified plans. The Board adopted many technical corrections suggested in public comments from actuaries and other professionals. To ensure that the technical corrections did not alter the conceptual approach of the NPRM, the Board sought and received input from certain pension actuaries and the American Academy of Actuaries.

Besides continuing support for either unrestricted accrual accounting or cost recognition based solely on funding, the public comments on the NPRM generally addressed details of the coverage requiring clarification or correction. This final rule does not deviate from the conceptual construct of the NPRM. As intended by the four-step promulgation process, this rule has evolved and the Board has found an informed balance between the advantages of accrual accounting and funding. Further public exposure would not alter the conceptual approach exposed in the NPRM and expressed in this final rule.

Comment: Thirteen commenters expressed their opposition to the adoption of the ERISA full funding limitation. These commenters supported full accrual accounting as the only method that provides true matching of the incurrence of pension costs with the periods during which benefits were earned. They contend that tax law is not good accrual accounting and that the Board should make accounting rules independently of the concerns of taxability.

Response: The Board continues to recognize that one of the primary benefits of accrual accounting, and one of the stated goals of the Board, is the proper matching of benefiting contracts with the incurrence of expense. The Board also continues to support accrual accounting as the most effective means to promote consistency between cost accounting periods.

This final rule is based on the use of accrual accounting to initially compute the pension cost for a period. The assignable cost is then determined by comparing the computed pension cost accrual to a minimum of $0 and to the maximum tax-deductible amount. The Board has determined that funding is needed to substantiate the cost allocation because of the magnitude of the liability and the extended delay between the accrual of the cost and the settlement of the liability. This final rule has not adopted ERISA as an accounting method, but has modified accrual accounting to fit within the confines of practicable funding.

Comment: Eleven other commenters supported the imposition of the full-funding limit. Two commenters recommended that the cost accrual be subject to a $0 minimum because contractors are prohibited from withdrawing funds from a qualified trust.

Response: In this final rule, the Board refines the NPRM concept of a full-funding limitation. The full-funding limitation of the final rule is implemented through the definition and operation of the "assignable cost limitation" which defines the point when the plan is overfunded for cost recognition purposes. When a pension plan is overfunded, the Government would be violating its fiduciary duty to the taxpayers by advancing any further reimbursements to the contractor. The assignable cost limitation is similar to ERISA's pre-OBRA 87 full funding limitation, but uniquely defined to avoid confusion with ERISA terminology. As with the NPRM, whenever a plan is determined to be overfunded, that is, the actuarial value of assets exceeds the liability, all existing amortization bases are deemed fully amortized and eliminated.

The Board concurs that there should be a $0 floor imposed on the assignable pension cost for the period. The Standard requires the funding agency to be established for the "exclusive benefit" of the participants so that withdrawals by the contractor are prohibited, absent a plan termination. To be internally consistent, this final rule eliminates the assignment of negative costs to a period and the allocation of such credit to contracts, except when either assets revert or inure to the contractor or the segment is no longer continuing.

However, when a contractor makes a voluntary investment decision to not fund the assigned cost of its qualified pension plan, which is otherwise allocable to and payable as cost or price under Government contracts, the contractor has knowingly accepted the consequences of its decision. In this case, because there is no conflict between ERISA and the Standards, there is no reason to alter the cost computation and assignment for the period. Permitting arbitrary reassignment of the cost to other periods would be contrary to the Board's stated goal of enhancing the consistency of costs between periods and could create a potential for gaming.

Comment: A major concern of thirteen commenters was that the full-funding limitation is difficult to predict. Some commenters opined that the emphasis on funding made the rule unnecessarily complex.

Response: In this final rule, full-funding, which is measured by the assignable cost limitation based on the actuarial value of assets and the actuarial accrued liability, is reasonably predictable. Through the smoothing techniques of an asset valuation method, large swings in assets values are dampened. In a relatively stable population, the actuarial accrued liability can be fairly well predicted using actuarial projection techniques for forward pricing purposes. Other events that dramatically affect the liability are addressed in the provisions on cost method changes, segmentation, segment closings, plan terminations, and frozen plans. Finally, contractors have some flexibility in determining the timing of certain other events, such as assumption changes or plan amendments, that affect the size of the actuarial accrued liability.

When pension plan assets and liabilities are sufficiently different in amount, the impact of the tax-deductible limits of ERISA can be forecast with a fair degree of certainty. The tax-deductible limit, computed without regard to the full-funding limitation, is generally based on the normal cost and 10 year amortization of the unfunded actuarial liability and is also relatively predictable.

A predictability problem does arise when a plan is near the threshold of ERISA's full-funding limitations. The impact of these limits is sensitive to small changes in the market value of assets, the actuarial accrued liability, and prevailing Treasury rates. The Board believes that the "all or nothing" nature and the magnitude of the impact are beyond the normal assumption of risk inherent in firm fixed-priced contracting. However, the Board believes that this is a forward-pricing problem that may be addressed by the contracting officer through the negotiation of an advance agreement reflecting the contractor's unique facts, circumstances, and expected level and mix of Government contracting. Such advance agreements could provide a method for achieving equity in the forecasting of pension costs for contractors whose pension plans are close to entering or emerging from the funding limits of ERISA.

While the special problems of forward-pricing will continue to require attention by the contracting officer, this final rule does not add more complication. The concepts of assignable cost limitation, assignable cost deficit, and assignable cost credit contained in this final rule are simply the accounting and actuarial mechanisms necessary to assign computed costs that fall outside of the funding corridor to future periods.

Comment: Twelve commenters noted that, despite the full-funding limitation, the cost assigned under the NPRM could still be greater than the tax-deductible maximum. Seven commenters remarked that ERISA requires amortizations to continue, and a new base be established, when the contribution is affected by the OBRA 87 full-funding limitation only. Seven commenters recommended that subparagraph 9904.412–50(b)(1) be clarified.

Response: This has been corrected in the final rule by using the maximum tax-deductible amount, however determined, as the limit on assignable cost for qualified plans. The accrued pension cost not assigned to the current period is reassigned to future periods as an assignable cost deficit. This final rule also specifies that any negative accrued cost be reassigned to future periods as an assignable cost credit.

This final rule specifies that all existing amortization bases are deemed fully amortized when the accrued cost is affected by the assignable cost limitation. This rule provides that any

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unfunded actuarial liability, including an actuarial surplus, existing in the next accounting period is deemed to be an actuarial gain or loss unless it is attributable to a change in assumptions, plan amendment, or separately identified portions of unfunded actuarial liability attributable to unfunded and/or disallowed pension costs.

Comment: Fifteen commenters stated that funding would not be needed to validate the liability of nonqualified defined-benefit plans if the Board retained the existing requirement that the benefits be "compelled".

Response: The Board believes it is reasonable for the Government to require that pension cost of both qualified and nonqualified pension plans allocated to contracts, which the Government pays for through cost or price, be subject to funding. This final rule ensures that any unfunded portion of assigned cost is isolated from the computation of future cost accruals. To prevent windfall gains or losses and to minimize the need for advance agreements discussed above, costs allocated to fixed-priced contracts must be funded to the extent possible.

The Board notes that the excess funding, which occurs when a contractor funds more than the assigned pension cost for the period, is carried forward to future periods with interest. This final rule retains the premature funding provisions of the original Standard through the definition and operation of prepayment credits.

Comment: Five commenters stated that current period funding of assigned costs for nonqualified pension plans is necessary to enhance the verifiability of all costs allocated to contracts and to reduce the risk that the promised benefits might never be paid.

Response: As already discussed, the Board is persuaded that funding of the assigned cost is necessary to substantiate the liability. The Board is also persuaded that requiring a taxable contractor to fund 100% of the pension cost could impose a cash flow penalty to the extent the amount funded may not be tax-deductible. The Board has modified the funding requirement accordingly. However, the Board does not wish to provide a cash flow advantage to tax-exempt contractors for whom no such cash flow penalty exists. Accordingly, the complementary funding rule is restricted to taxable entities only.

This final rule addresses the risk that unfunded costs will not be verified by providing for an accounting of all assigned costs. Funded costs are captured and accounted for within the assets of the funding agency. Amounts exempted from funding based on the tax-rate are retained in the general assets of the contractor and accounted for within the accumulated value of permitted unfunded accruals. Portions of assigned cost not substantiated by complementary funding must be separately identified and accounted for pursuant to 9904.412–50(a)(2). This final rule ensures that all portions of assigned cost and allocated cost are tracked and accounted for, and thereby removes much of the risk.

Comment: Eight commenters were concerned that a "Rabbi" trust would not satisfy the "exclusive benefit" requirement in the definition of a funding agency since creditors might have superior rights to those of the plan participants. Other commenters asked if other nonqualified trust arrangements could qualify as a funding agency under the Standard.

Response: The Board's intention when revising the definition of a funding agency was to prohibit the use of bookkeeping reserves, escrow accounts, or any other arrangement under which the rights of the plan participants were not clearly superior to those of the plan sponsor. The basic test of "exclusive benefit" is whether the contractor has relinquished all rights to the funds and that, except for the extraordinary event of bankruptcy, the participants have primary rights to the funds. The solvency of a contractor is always a concern to the Government that is not restricted merely to pension costs.

The Board does not intend that a "Rabbi trust" be the only funding arrangement that satisfies the funding agency definition. Other arrangements such as so-called secular trusts can be satisfactory. The Board expects that as tax law changes and as qualified plan benefit limits possibly become more or less restrictive, other funding arrangements may become more effective and more widely adopted.

The Board does not intend for the "exclusive benefit" clause to prohibit asset reversions where, after settling all benefit obligations to plan participants, the residual assets of the trust revert or inure to a contractor. The funding agency coverage in the pension Standards is intended to be consistent with the coverage for funded insurance reserves found at 9904.416–50(a)(1)(v)(B), which permits a reversion of assets only after all benefit obligations have been satisfied through insurance.

Comment: Nine commenters were concerned that taxes and administrative costs associated with Rabbi trusts will increase pension costs. Five commenters believe that the NPRM (and prior ANPRM) complementary funding rule for nonqualified plans creates an administrative burden.

Response: The Board recognizes that there will be some additional expenses associated with the use of complementary funding and the use of nonqualified trust funds. The specificity of the final rule gives contractors clear rules under which they can choose to compute, assign, and allocate the costs of a nonqualified plan. The benefits of an accurate accounting of all assigned costs will offset any increased administrative expense to the Government and contractors.

There will be an increase in the cost of such plans for the taxes on the earnings of the nonqualified trust fund that are directly paid by or reimbursed from the fund. These taxes are a valid expense of the pension plan incurred in response to the final rule's requirement that a portion of the assigned cost be funded. The Board notes that, in fact, such increased costs are being returned to the Government through the payment of the tax.

The rule specifies that income taxes on the earnings of a nonqualified trust are treated as administrative expenses and not as decrements to the assumed investment earning rate. This technical correction clarifies that the interest assumption used to compute actuarial values is not reduced to reflect taxes on fund earnings. This rule is not intended to prevent contractors from expressing the actuarial assumption for administrative expenses as a percentage of the earnings.

Comment: Two commenters suggested that the final rule address how ERISA's funding limits are allocated to segments

Response: Only the maximum tax-deductible amount and the contribution to the funding agency are determined for the pension plan in its entirety. Under segmented accounting, all other aspects of period cost; i.e., normal cost, unfunded actuarial liability, assignable cost limitation, are measured at the segment level. This final rule requires that the tax-deductible maximum, determined for the plan as a whole, must be apportioned to segments using a basis that considers the assignable costs or the funding levels of the segments. Illustrations of how plan-wide values are apportioned to segments have been added.

In addition, to ease the funding of costs attributable to Government contracts, this final rule allows contractors with predominantly commercial business to apportion contributions for qualified defined-benefit plans to their Government segments first, but only if the contractor uses segmented accounting. Unfunded assigned costs, whether attributable to Government contracts or commercial business, will be separately identified under 9904.412–50(a)(2) and thereby isolated from future cost computations and future allocation. This provision allows the contractor to determine when to fund costs of its qualified defined-benefit plan for segments that are associated solely with commercial business.

Although the assets of a pension plan are subject to the claims of all plan participants, the Board believes the funding requirements and protections of ERISA will prevent any untenable differences in funding levels of segments from arising. Because nonqualified plans lack the funding requirement protection of ERISA, the funding of such plans must be apportioned across all segments.

Comment: Four commenters suggested that the definition of a segment closing should be clarified. Concerns were raised that an internal reorganization would require a current period adjustment for a segment closing even though neither the segment's nor the contractor's relationship to the Government had changed.

Response: The definition has been revised to delineate three conditions requiring a current period adjustment. The first condition occurs when there is a change in ownership of the segment, not just a simple reorganization within the contractor's internal structure. The second event is the one addressed in the NPRM; that is, when the contractual relationship ends because the segment operationally ceases to exist. The third case addresses the end of the contractual relationship with the Government, whether the segment continues in operation or not.

Comment: Two commenters opposed using the accrued benefit cost method (ABCM) to determine the actuarial liability for a segment closing or plan termination adjustment. These commenters believe the ABCM understates the liability. Four commenters supported limiting the actuarial assumptions used to determine the segment closing and plan termination adjustment. These commenters also supported a phase-in of benefit improvements adopted within 5 years of a segment closing or plan termination.

Response: In this final rule, the actuarial accrued liability, used for determining the adjustment for a segment closing or curtailment of benefits, is determined using the accrued benefit cost method. For a curtailment of benefits or for plan participants who are terminated from employment in a segment closing, the accrued benefit is the appropriate measure of the ultimate benefit that will be paid under the plan. If plan participants remain employed by the contractor, whether in the same or another segment, the Board believes the responsibility for future salary increases, which are attributable to future productivity, merit, and inflation, belongs to the future customers that benefit from the participants' continued employment. The Board notes that the ABCM does recognize the cost of vesting earned by the participants' future service.

The Board also believes that when there is an immediate period liquidation of the liability through the payment of lump sum settlements or the purchase of annuities, the cost of such settlements and annuities is an exact measure of the liability, although the Government does have a right to share in any future dividends or refunds. This final rule has been revised accordingly.

Consistent with the requirement that actuarial assumptions be individual best-estimates of future long-term economic and demographic trends, this final rule requires that the assumptions used to determine the actuarial liability be consistent with the assumptions that have been in use. This is consistent with the fact that the pension plan is continuing even though the segment has closed or the earning of future benefits has been curtailed. The Board does not intend this rule to prevent contractors from using assumptions that have been revised based on a persuasive actuarial experience study or a change in a plan's investment policy.

This final rule does include a sixty-month phase-in of voluntary benefit improvements to forestall an increase in the liability in contemplation of a segment closing or plan termination. Improvements mandated by law or granted though collective bargaining negotiations are not considered voluntary. A plan termination or curtailment of benefits is viewed as negating the intent of any recent voluntary benefit improvements.

Under the revised definition of a segment closing, some employees may remain in a segment performing non-Government work while other employees may be transferred to other segments. For consistency, the provisions for transfers of either active or retired participants specify that the assets transferred must equal the actuarial accrued liability determined under the accrued benefit cost method.

Comment: One commenter asked if a contractor must determine whether a termination of plan gain or loss has occurred before an adjustment is required. Another commenter asked if a termination of plan gain or loss occurs when a pension plan is "frozen."

Response: The definition has been changed to refer to an event; that is, the termination of a pension plan. Any resultant gain or loss for Government contracting purposes is determined by the 9904.413–50(c)(12) adjustment. The "freezing" of a pension plan is addressed by the addition of a definition for a "Curtailment of Benefits."

Comment: Two commenters supported the amortization of any segment closing adjustment, rather than an immediate period adjustment.

Response: Under this final rule, the 9904.413–50(c)(12) adjustment is determined as a current period adjustment, whether or not assets actually revert from the trust. The Board believes a current period adjustment is appropriate when there is a disruption of the contracting relationship, a discontinuance of the operational segment, or a discontinuance of the pension plan. When such events occur, pension costs can no longer be computed and adjusted on an on-going basis since there are either no future accounting periods in which credits or charges can be allocated to contracts or no future periods in which benefits will be earned.

If a contractor will continue to have a contracting relationship with the Government, the final rule does permit the cognizant Federal official and the contractor to negotiate an amortization schedule. This provision will allow a contractor to allocate an adjustment credit to future years during which it can recover the amount of credited assets either through decreased pension costs or through prices charged to other customers benefiting from the future work performed by plan participants.

Comment: Eleven commenters requested that the Board clarify that the 9904.413–50(c)(12) adjustment could result in a charge to final cost objectives if the liabilities exceeded the assets.

Response: The final rule refers to the "difference" between assets and liabilities without prejudice towards either adjustment credits or adjustment charges. An illustration of the adjustment when liabilities exceed assets has been added.

Comment: Four commenters asked the Board to clarify how the Government's share of the adjustment was to be determined. Five commenters opposed the inclusion of fixed-price contracts in

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any formula used to determine the Government's share.

Response: The asset value used to determine the adjustment amount is the market value of the assets, including permitted unfunded accruals, plus portions of unfunded liability identified pursuant to 9904.412–50(a)(2), i.e., plan assets retained by the contractor due to allocated but unfunded costs. The asset value is reduced for the accumulated value of any prepayment credits since such assets have never been assigned to past periods nor allocated to Government contracts. Because this asset value represents the current value of assigned costs of prior periods, the sum of previously assigned pension costs is the denominator of the fraction. The portion of these assets attributable to the Government's participation in the funding of the pension plan through cost or price is measured by the sum of costs allocated to Government contracts. The fraction is determined based on data from years that are representative of the Government's participation, which is a factual determination best made by the contracting officer.

Costs allocated to fixed-price contracts subject to CAS 9904.412 and 9904.413 are included since the Government has participated in the funding of the plan through the payment of the estimated pension cost considered in the pricing of the contract. A risk/reward of a fixed-price contract is the deviation of actual costs from the estimated cost considered in the price. If a single period event, e.g., segment closing, plan termination, or benefit curtailment, alters the on-going nature of the pension plan or segment, the effect on fixed-price contracts should be similar to that of an accounting practice change.

Comment: Four commenters supported amending the NPRM coverage to explicitly state that the 9904.413–50(c)(12) adjustment is determined net of the excise tax on pension plan asset reversions.

Response: The Board agrees. Before applying the fraction that determines the Government's share, subdivision 9904.413–50(c)(12)(vi) reduces the adjustment amount for any excise taxes assessed on assets that revert to the contractor as part of a pension plan termination. The excise tax is intended to discourage plan sponsors from terminating their qualified pension plans, and under this final rule, Government contractors are subject to the same termination penalty as their commercial counterparts. Since the excise tax is returned to the Government, albeit the Internal Revenue Service, the Board believes equity warrants determining the Government's share based on the net adjustment amount.

While the Board believes the Government's allocable share of any adjustment should be net of any reversion excise tax, the allowability of such excise taxes continues to be determined by the applicable cost principles. Income taxes, which are paid to the Internal Revenue Service as an offset against prior tax deductions, continue not to be allocable.

Comment: Six commenters suggested that a segment closing adjustment is not necessary if the assets and liabilities of the segment were transferred to the successor contractor.

Response: The Board agrees. The appropriate coverage and illustrations have been added.

List of Subjects in 48 CFR Parts 9903 and 9904

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

PART 9903—CONTRACT COVERAGE

1. The authority citations for Parts 9903 and 9904 continue to read as follows:

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422.

9903.201 [Amended]

2. Subsection 9903.201–1 is amended by removing and reserving paragraph (b)(11).

PART 9904—COST ACCOUNTING STANDARDS

3. Subsection 9904.412–30 is amended by revising paragraph (a) to read as follows:

9904.412–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Assignable cost credit* means the decrease in unfunded actuarial liability that results when the pension cost computed for a cost accounting period is less than zero.

(8) *Assignable cost deficit* means the increase in unfunded actuarial liability that results when the pension cost computed for a qualified defined-benefit pension plan exceeds the maximum tax-deductible amount for the cost accounting period determined in accordance with the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended.

(9) *Assignable cost limitation* means the excess, if any, of the actuarial accrued liability plus the current normal cost over the actuarial value of the assets of the pension plan.

(10) *Defined-benefit pension plan* means a pension plan in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits.

(11) *Defined-contribution pension plan* means a pension plan in which the contributions are established in advance and the benefits are determined thereby.

(12) *Funded pension cost* means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

(13) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(14) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(15) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(16) *Multiemployer pension plan* means a plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements between an employee organization and more than one employer.

(17) *Nonforfeitable* means a right to a pension benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the pension plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a pension benefit is not forfeitable solely because it may be affected by the employee's or beneficiary's death, disability, or failure to achieve vesting requirements. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(18) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(19) *Pay-as-you-go cost method* means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

(20) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(21) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(22) *Permitted unfunded accrual* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(23) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(24) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(25) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a Nonqualified Pension Plan.

(b) * * *

4. Subsection 9904.412–40 is revised to read as follows:

9904.412–40 Fundamental requirement.

(a) *Components of pension cost.* (1) For defined-benefit pension plans, except for plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are (i) the normal cost of the period, (ii) a part of any unfunded actuarial liability, (iii) an interest equivalent on the unamortized portion of any unfunded actuarial liability, and (iv) an adjustment for any actuarial gains and losses.

(2) For defined-contribution pension plans, the pension cost for a cost accounting period is the net contribution required to be made for that period, after taking into account dividends and other credits, where applicable.

(3) For defined-benefit pension plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are:

(i) The net amount of periodic benefits paid for that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to amounts paid to irrevocably settle an obligation for periodic benefits due in current and future cost accounting periods.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost of a cost accounting period shall be determined by use of an immediate-gain actuarial cost method

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(2) Each actuarial assumption used to measure pension cost shall be separately identified and shall represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations. The validity of each assumption used shall be evaluated solely with respect to that assumption. Actuarial assumptions used in calculating the amount of an unfunded actuarial liability shall be the same as those used for other components of pension cost.

(c) *Assignment of pension cost.* Except costs assigned to future periods by 9904.412–50(c) (2) and (5), the amount of pension cost computed for a cost accounting period is assignable only to that period. For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the pension cost is assignable only if the sum of (1) the unamortized portions of assignable unfunded actuarial liability developed and amortized pursuant to 9904.412–50(a) (1), and (2) the unassignable portions of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2) equals the total unfunded actuarial liability.

(d) *Allocation of pension cost.* Pension costs assigned to a cost accounting period are allocable to intermediate and final cost objectives only if they meet the requirements for allocation in 9904.412–50(d). Pension costs not meeting these requirements may not be reassigned to any future cost accounting period.

5. Subsection 9904.412–50 is revised to read as follows:

9904.412–50 Techniques for application.

(a) *Components of pension cost.* (1) The following portions of unfunded actuarial liability shall be included as a separately identified part of the pension cost of a cost accounting period and shall be included in equal annual installments. Each installment shall consist of an amortized portion of the unfunded actuarial liability plus an interest equivalent on the unamortized portion of such liability. The period of amortization shall be established as follows:

(i) If amortization of an unfunded actuarial liability has begun prior to the date this Standard first becomes applicable to a contractor, no change in the amortization period is required by this Standard.

(ii) If amortization of an unfunded actuarial liability has not begun prior to the date this Standard first becomes applicable to a contractor, the amortization period shall begin with the period in which the Standard becomes applicable and shall be no more than 30 years nor less than 10 years. However, if the plan was in existence as of January 1, 1974, the amortization period shall be no more than 40 years nor less than 10 years.

(iii) Each increase or decrease in unfunded actuarial liability resulting from the institution of new pension plans, from the adoption of improvements, or other changes to pension plans subsequent to the date this Standard first becomes applicable to a contractor shall be amortized over no more than 30 years nor less than 10 years.

(iv) If any assumptions are changed during an amortization period, the resulting increase or decrease in unfunded actuarial liability shall be separately amortized over no more than 30 years nor less than 10 years.

(v) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be in accordance with Cost Accounting Standard 9904.413.

(vi) Each increase or decrease in unfunded actuarial liability resulting from an assignable cost deficit or credit, respectively, shall be amortized over a period of 10 years.

(vii) Each increase or decrease in unfunded actuarial liability resulting from a change in actuarial cost method, including the asset valuation method, shall be amortized over a period of 10 to 30 years. This provision shall not affect the requirements of 9903.302 to adjust previously priced contracts.

(2) Except as provided in 9904.412–50(d)(2), any portion of unfunded actuarial liability attributable to either (i) pension costs applicable to prior years that were specifically unallowable in accordance with then existing Government contractual provisions or (ii) pension costs assigned to a cost accounting period that were not funded in that period, shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to paragraph (a)(1) of this subsection. Such portions of unfunded actuarial liability shall be adjusted for interest at the valuation rate of interest. The contractor may elect to fund, and thereby reduce, such portions of unfunded actuarial liability and future interest adjustments thereon. Such funding shall not be recognized for purposes of 9904.412–50(d).

(3) A contractor shall establish and consistently follow a policy for selecting specific amortization periods for unfunded actuarial liabilities, if any, that are developed under the actuarial cost method in use. Such policy may give consideration to factors such as the size and nature of the unfunded actuarial liabilities. Except as provided in 9904.412–50(c)(2) or 9904.413–50(c)(12), once the amortization period for a portion of unfunded actuarial liability is selected, the amortization process shall continue to completion.

(4) Any amount funded in excess of the pension cost assigned to a cost accounting period shall be accounted for as a prepayment credit. The accumulated value of such prepayment credits shall be adjusted for interest at the valuation rate of interest until applied towards pension cost in a future accounting period. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund pension costs or to fund portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2). The accumulated value of any prepayment credits shall be excluded from the actuarial value of the assets used to compute pension costs for purposes of this Standard and Cost Accounting Standard 9904.413.

(5) An excise tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a pension plan is not a component of pension cost. Income taxes paid from the funding agency of a nonqualified defined-benefit pension plan on earnings or other asset appreciation of such funding agency shall be treated as an administrative expense of the fund and not as a reduction to the earnings assumption.

(6) For purposes of this Standard, defined-benefit pension plans funded exclusively by the purchase of individual or group permanent insurance or annuity contracts, and thereby exempted from ERISA's minimum funding requirements, shall be treated as defined-contribution pension plans. However, all other defined-benefit pension plans administered wholly or in part through insurance company contracts shall be subject to the provisions of this Standard relative to defined-benefit pension plans.

(7) If a pension plan is supplemented by a separately-funded plan which provides retirement benefits to all of the participants in the basic plan, the two plans shall be considered as a single plan for purposes of this Standard. If the effect of the combined plans is to provide defined-benefits for the plan participants, the combined plans shall

be treated as a defined-benefit plan for purposes of this Standard.

(8) A multiemployer pension plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(9) A pension plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State pension plan shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to cost accounting periods shall be measured by an immediate-gain actuarial cost method.

(2) Where the pension benefit is a function of salaries and wages, the normal cost shall be computed using a projected benefit cost method. The normal cost for the projected benefit shall be expressed either as a percentage of payroll or as an annual accrual based on the service attribution of the benefit formula. Where the pension benefit is not a function of salaries and wages, the normal cost shall be based on employee service.

(3) For defined-benefit plans accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to a cost accounting period shall be measured as the sum of:

(i) The net amount for any periodic benefits paid for that period, and

(ii) The level annual installment required to amortize over 15 years any amounts paid to irrevocably settle an obligation for periodic benefits due in current or future cost accounting periods.

(4) Actuarial assumptions shall reflect long-term trends so as to avoid distortions caused by short-term fluctuations.

(5) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made.

(6) If the evaluation of the validity of actuarial assumptions shows that any assumptions were not reasonable, the contractor shall:

(i) Identify the major causes for the resultant actuarial gains or losses, and

(ii) Provide information as to the basis and rationale used for retaining or revising such assumptions for use in the ensuing cost accounting period(s).

(c) *Assignment of pension cost.* (1) Amounts funded in excess of the pension cost computed for a cost accounting period pursuant to the provisions of this Standard shall be accounted for as a prepayment credit and carried forward to future accounting periods.

(2) For qualified defined-benefit pension plans, the pension cost computed for a cost accounting period is assigned to that period subject to the following adjustments, in order of application:

(i) Any amount of computed pension cost that is less than zero shall be assigned to future accounting periods as an assignable cost credit. The amount of pension cost assigned to the period shall be zero.

(ii) When the pension cost equals or exceeds the assignable cost limitation:

(A) The amount of computed pension cost, adjusted pursuant to paragraph (c)(2)(i) of this subsection, shall not exceed the assignable cost limitation,

(B) All amounts described in 9904.412–50(a)(1) and 9904.413–50(a), which are required to be amortized, shall be considered fully amortized, and

(C) Except for portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.413–50(a)(2), any portion of unfunded actuarial liability, which occurs in the first cost accounting period after the pension cost has been limited by the assignable cost limitation, shall be considered an actuarial gain or loss for purposes of this Standard. Such actuarial gain or loss shall exclude any increase or decrease in unfunded actuarial liability resulting from a plan amendment, change in actuarial assumptions, or change in actuarial cost method effected after the pension cost has been limited by the assignable cost limitation.

(iii) Any amount of computed pension cost of a qualified pension plan, adjusted pursuant to paragraphs (c)(2)(i) and (ii) of this subsection that exceeds the sum of (A) the maximum tax-deductible amount, determined in accordance with ERISA, and (B) the accumulated value of prepayment credits shall be assigned to future accounting periods as an assignable cost deficit. The amount of pension cost assigned to the current period shall not exceed the sum of the maximum tax-deductible amount plus the accumulated value of prepayment credits.

(3) The cost of nonqualified defined-benefit pension plans shall be assigned to cost accounting periods in the same manner as qualified plans (with the exception of paragraph (c)(2)(iii) of this subsection) under the following conditions:

(i) The contractor, in disclosing or establishing his cost accounting practices, elects to have a plan so accounted for;

(ii) The plan is funded through the use of a funding agency; and,

(iii) The right to a pension benefit is nonforfeitable and is communicated to the participants.

(4) The costs of nonqualified defined-benefit pension plans that do not meet all of the requirements in 9904.412–50(c)(3) shall be assigned to cost accounting periods using the pay-as-you-go cost method.

(5) Any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA shall not be assigned to the current period. Rather, such excess shall be treated as an assignable cost deficit, except that it shall be assigned to future cost accounting periods using the same amortization period as used for ERISA purposes.

(d) *Allocation of pension costs.* The amount of pension cost assigned to a cost accounting period allocated to intermediate and final cost objectives shall be limited according to the following criteria:

(1) Except for nonqualified defined-benefit plans, the costs of a pension plan assigned to a cost accounting period are allocable to the extent that they are funded.

(2) For nonqualified defined-benefit pension plans that meet the criteria set forth at 9904.412–50(c)(3), pension costs assigned to a cost accounting period are fully allocable if they are funded at a level at least equal to the percentage of the complement (i.e., 100%-tax rate % = percentage of assigned cost to be funded) of the highest published Federal corporate income tax rate in effect on the first day of the cost accounting period. If the contractor is not subject to Federal income tax, the assigned costs are allocable to the extent such costs are funded. Funding at other levels and benefit payments of such plans are subject to the following:

(i) Funding at less than the foregoing levels shall result in proportional reductions of the amount of assigned cost that can be allocated within the cost accounting period.

(ii) (A) Payments to retirees or beneficiaries shall contain an amount drawn from sources other than the funding agency of the pension plan that is, at least, proportionately equal to the

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accumulated value of permitted unfunded accruals divided by an amount that is the market value of the assets of the pension plan excluding any accumulated value of prepayment credits.

(B) The amount of assigned cost of a cost accounting period that can be allocated shall be reduced to the extent that such payments are drawn in a higher ratio from the funding agency

(iii) The permitted unfunded accruals shall be identified and accounted for year to year, adjusted for benefit payments directly paid by the contractor and for interest at the actual annual earnings rate on the funding agency balance.

(3) For nonqualified defined-benefit pension plans accounted for under the pay-as-you-go method, pension costs assigned to a cost accounting period are allocable in that period.

(4) Funding of pension cost shall be considered to have taken place within the cost accounting period if it is accomplished by the corporate tax filing date for such period including any permissible extensions thereto.

6. Subsection 9904.412–60 is revised to read as follows:

9904.412–60 Illustrations.

(a) *Components of pension cost.* (1) Contractor A has insured pension plans for each of two small groups of employees. One plan is exclusively funded through a group permanent life insurance contract and is exempt from the minimum funding requirements of ERISA. The other plan is funded through a deposit administration contract, which is a form of group deferred annuity contract that is not exempt from ERISA's minimum funding requirements. Both plans provide for defined benefits. Pursuant to 9904.412–50(a)(6), for purposes of this Standard the plan financed through a group permanent insurance contract shall be considered to be a defined-contribution pension plan; the net premium required to be paid for a cost accounting period (after deducting dividends and any credits) shall be the pension cost for that period. However, the deposit administration contract plan is subject to the provisions of this Standard that are applicable to defined-benefit plans.

(2) Contractor B provides pension benefits for certain hourly employees through a multiemployer defined-benefit plan. Under the collective bargaining agreement, the contractor pays six cents into the fund for each hour worked by the covered employees. Pursuant to 9904.412–50(a)(8), the plan shall be considered to be a defined-contribution pension plan. The payments required to be made for a cost accounting period shall constitute the assignable pension cost for that period.

(3) Contractor C provides pension benefits for certain employees through a defined-contribution pension plan. However, the contractor has a separate fund that is used to supplement pension benefits for all of the participants in the basic plan in order to provide a minimum monthly retirement income to each participant. Pursuant to 9904.412–50(a)(7), the two plans shall be considered as a single plan for purposes of this Standard. Because the effect of the supplemental plan is to provide defined-benefits for the plan's participants, the provisions of this Standard relative to defined-benefit pension plans shall be applicable to the combined plan.

(4) Contractor D provides supplemental benefits to key management employees through a nonqualified defined-benefit pension plan funded by a so-called "Rabbi Trust." The trust agreement provides that Federal income taxes levied on the earnings of the Rabbi trust may be paid from the trust. The contractor's actuarial cost method recognizes the administrative expenses of the plan and trust, such as broker and attorney fees, by adding the prior year's expenses to the current year's normal cost. The income taxes paid by the trust on trust earnings shall be accorded the same treatment as any other administrative expense in accordance with 9904.412–50(a)(5).

(5) (i) Contractor E has been using the entry age normal actuarial cost method to compute pension costs. The contractor has three years remaining under a firm fixed price contract subject to this Standard. The contract was priced using the unfunded actuarial liability, normal cost, and net amortization installments developed using the entry age normal method. The contract was priced as follows:

ENTRY AGE NORMAL VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$100,000	$105,000	$110,000
Amortization	50,000	50,000	50,000
Pension cost	150,000	155,000	160,000

(ii) The contractor, after notifying the cognizant Federal official, switches to the projected unit credit actuarial cost method. The unfunded actuarial liability and normal cost decreased when redetermined under the projected unit credit method. Pursuant to 9904.412–50(a)(1)(vii), the contractor determines that an annual installment credit of $20,000 will amortize the decrease in unfunded actuarial liability (UAL) over ten years. The following pension costs are determined under the projected unit credit method:

PROJECTED UNIT CREDIT VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$80,000	$85,000	$90,000
Amortization:			
Prior method	50,000	50,000	50,000
UAL decrease	(20,000)	(20,000)	(20,000)
Pension cost	110,000	115,000	120,000

(iii) The change in cost method is a change in accounting method that decreased previously priced pension costs by $40,000 per year. In accordance with 9903.302, Contractor E shall adjust the cost of the firm fixed-price contract for the remaining three years by $120,000 ($40,000×3 years).

(6) Contractor F has a defined-benefit pension plan for its employees. Prior to being subject to this Standard the contractor's policy was to compute and fund as annual pension cost normal cost plus only interest on the unfunded actuarial liability. Pursuant to 9904.412–40(a)(1), the components of pension cost for a cost accounting period must now include not only the normal cost for the period and interest on the unfunded actuarial liability, but also an amortized portion of the unfunded actuarial liability. The amortization of the liability and the interest equivalent on the unamortized portion of the liability must be computed in equal annual installments.

(b) *Measurement of pension cost.* (1) Contractor G has a pension plan whose costs are assigned to cost accounting periods by use of an actuarial cost method that does not separately identify actuarial gains and losses or the effect on pension cost resulting from changed actuarial assumptions. Contractor G's method is not an immediate-gain cost method and does not comply with the provisions of 9904.412–50(b)(1).

(2) For several years Contractor H has had an unfunded nonqualified pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and recognizes those payments as its pension cost. The contractor paid monthly annuity benefits totaling $24,000 during the current year. During the prior year, Contractor H made lump sum payments to irrevocably settle the benefit liability of several participants with small benefits. The annual installment to amortize these lump sum payments over fifteen years at the valuation interest rate assumption is $5,000. Since the plan does not meet the criteria set forth in 9904.412–50(c)(3)(ii), pension cost must be accounted for using the pay-as-you-go cost method. Pursuant to 9904.412–50(b)(3), the amount of assignable cost allocable to cost objectives of that period is $29,000, which is the sum of the amount of benefits actually paid in that period ($24,000) plus the second annual installment to amortize the prior year's lump sum settlements ($5,000).

(3) Contractor I has two qualified defined-benefit pension plans that provide for fixed dollar payments to hourly employees. Under the first plan, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years. In calculating pension costs, the contractor may not assume future benefits greater than that currently required by the plan. With regard to the second plan, a collective bargaining agreement negotiated with the employees' labor union provides that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider such increased benefits in computing pension costs for the current cost accounting period in accordance with 9904.412–50(b)(5).

(4) In addition to the facts of 9904.412–60(b)(3), assume that Contractor I was required to contribute at a higher level for ERISA purposes because the plan was underfunded. To compute pension costs that are closer to the funding requirements of ERISA, Contractor I decides to "fresh start" the unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1); i.e., treat the entire amount as a newly established portion of unfunded actuarial liability, which is amortized over 10 years in accordance with 9904.412–50(a)(1)(ii). Because the contractor has changed the periods for amortizing the unfunded actuarial liability established pursuant to 9904.412–50(a)(3), the contractor has made a change in accounting practice subject to the provisions of Cost Accounting Standard 9903.302.

(c) *Assignment of pension cost.* (1) Contractor J maintains a qualified defined-benefit pension plan. The actuarial value of the assets of $18 million is subtracted from the actuarial accrued liability of $20 million to determine the total unfunded actuarial liability of $2 million. Pursuant to 9904.412–50(a)(1), Contractor J has identified and is amortizing twelve separate portions of unfunded actuarial liabilities. The sum of the unamortized balances for the twelve separately maintained portions of unfunded actuarial liability equals $1.8 million. In accordance with 9904.412–50(a)(2), the contractor has separately identified, and eliminated from the computation of pension cost, $200,000 attributable to a pension cost assigned to a prior period that was not funded. The sum of the twelve amortization bases maintained pursuant to 9904.412–50(a)(1) and the amount separately identified under 9904.412–50(a)(2) equals $2 million ($1,800,000+200,000). Because the sum of all identified portions of unfunded actuarial liability equals the total unfunded actuarial liability, the plan is in actuarial balance and Contractor J can assign pension cost to the current cost accounting period in accordance with 9904.412–40(c).

(2) Contractor K's pension cost computed for 1996, the current year, is $1.5 million. This computed cost is based on the components of pension cost described in 9904.412–40(a) and 9904.412–50(a) and is measured in accordance with 9904.412–40(b) and 9904.412–50(b). The assignable cost limitation, which is defined at 9904.412–30(a)(9), is $1.3 million. In accordance with the provisions of 9904.412–50(c)(2)(ii)(A), Contractor K's assignable pension cost for 1996 is limited to $1.3 million. In addition, all amounts that were previously being amortized pursuant to 9904.412–50(a)(1) and 9904.413–50(a) are considered fully amortized in accordance with 9904.412–50(c)(2)(ii)(B). The following year, 1997, Contractor K computes an unfunded actuarial liability of $4 million. Contractor K has not changed his actuarial assumptions nor amended the provisions of his pension plan. Contractor K has not had any pension costs disallowed or unfunded in prior periods. Contractor K must treat the entire $4 million of unfunded actuarial liability as an actuarial loss to be amortized over fifteen years beginning in 1997 in accordance with 9904.412–50(c)(2)(ii)(C).

(3) Assume the same facts shown in illustration 9904.412–60(c)(2), except that in 1995, the prior year, Contractor K's assignable pension cost was $800,000, but Contractor K only funded and allocated $600,000. Pursuant to 9904.412–50(a)(2), the $200,000 of unfunded assignable pension cost was separately identified and eliminated from other portions of unfunded actuarial liability. This portion of unfunded actuarial liability was adjusted for 8% interest, which is the interest assumption for 1995 and 1996, and was brought forward to 1996 in accordance with 9904.412–50(a)(2). Therefore, $216,000 ($200,000×1.08) is excluded from the amount considered fully amortized in 1996. The next year 1997, Contractor K must eliminate $233,280 ($216,000×1.08) from the $4 million so that only $3,766,720 is treated as an actuarial loss in accordance with 9904.412–50(c)(2)(ii)(C).

(4) Assume, as in 9904.412–60(c)(2), the 1996 pension cost computed for Contractor K's qualified defined-benefit pension plan is $1.5 million and the assignable cost limitation is $1.7

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million. However, because of the ERISA limitation on tax-deductible contributions, Contractor K cannot fund more than $1 million without incurring an excise tax, which 9904.412–50(a)(5) does not permit to be a component of pension cost. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $500,000 ($1.5 million − $1 million) of pension cost not funded is reassigned to the next ten cost accounting periods beginning in 1997 as an assignable cost deficit in accordance with 9904.412–50(a)(1)(vi).

(5) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the accumulated value of prepayment credits equals $700,000. Therefore, in addition to the $1 million, Contractor K can apply $500,000 of the accumulated value of prepayment credits towards the pension cost computed for the period. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is the full $1.5 million ($1 million+$500,000) computed for the period. The $200,000 of remaining accumulated value of prepayment credits ($700,000 − $500,000) is adjusted for interest at the valuation rate and carried forward until needed in future accounting periods in accordance with 9904.412–50(a)(4).

(6) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the 1996 assignable cost limitation is $1.3 million. Pension cost of $1.5 million is computed for the cost accounting period, but the assignable cost is limited to $1.3 million in accordance with 9904.412–50(c)(2)(ii)(A). Pursuant to 9904.412–50(c)(2)(ii)(B), all existing amortization bases maintained in accordance with subparagraph 9904.412–50(a)(1) are considered fully amortized. The assignable cost of $1.3 million is then compared to the maximum tax-deductible amount of $1 million. Pursuant to 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $300,000 ($1.3 million − $1 million) excess of the assignable cost limitation over the tax-deductible maximum is assigned to future periods as an assignable cost deficit.

(7) Contractor L is currently amortizing a large decrease in unfunded actuarial liability over a period of ten years. A similarly large increase in unfunded actuarial liability is being amortized over 30 years. The absolute value of the resultant net amortization credit is greater than the normal cost so that the pension cost computed for the period is a negative $200,000. Contractor L first applies the provisions of 9904.412–50(c)(2)(i) and determines the assignable pension cost is $0. The negative pension cost of $200,000 is assigned to the next ten cost accounting periods as an assignable cost credit in accordance with 9904.412–50(a)(1)(vi). However, when Contractor L applies the provisions of 9904.412–50(c)(2)(ii), the assignable cost limitation is also $0. Because the assignable cost of $0 determined under 9904.412–50(c)(2)(i) is equal to the assignable cost limitation, the assignable cost credit of $200,000 is considered fully amortized along with all other portions of unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1). Conversely, if the assignable cost limitation had been greater than zero, the assignable cost credit of $200,000 would have carried-forward and amortized in future periods.

(8) Contractor M has a qualified defined-benefit pension plan which is funded through a funding agency. It computes $1 million of pension cost for a cost accounting period. However, pursuant to a waiver granted under the provisions of ERISA, Contractor M is required to fund only $800,000. Under the provisions of 9904.412–50(c)(5), the remaining $200,000 shall be accounted for as an assignable cost deficit and assigned to the next five cost accounting periods in accordance with the terms of the waiver.

(9) Contractor N has a company-wide defined-benefit pension plan, wherein benefits are calculated on one consistently applied formula. That part of the formula defining benefits within ERISA limits is administered and reported as a qualified plan and funded through a funding agency. The remainder of the benefits are considered to be a supplemental or excess plan which, while it meets the criteria at 9904.412–50(c)(3)(iii) as to nonforfeitability and communication, is not funded. The costs of the qualified portion of the plan shall be comprised of those elements of costs delineated at 9904.412–40(a)(1), while the supplemental or excess portion of the plan shall be accounted for and assigned to cost accounting periods under the pay-as-you-go cost method provided at 9904.412–40(a)(3) and 9904.412–50(c)(4).

(10) Assuming the same facts as in 9904.412–60(c)(9), except that Contractor N funds its supplemental or excess plan using a so-called "Rabbi Trust" vehicle. Because the nonqualified plan is funded, the plan meets the criteria set forth at 9904.412–50(c)(3)(ii). Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so pursuant to 9904.412–50(c)(3)(i).

(11) Assuming the same facts as in 9904.412–60(c)(10), except that under the nonqualified portion of the pension plan a former employee will forfeit his pension benefit if the employee goes to work for a competitor within three years of terminating employment. Since the right to a benefit cannot be affected by the unilateral action of the contractor, the right to a benefit is considered to be nonforfeitable for purposes of 9904.412–30(a)(17). The nonqualified plan still meets the criteria set forth at 9904.412–50(c)(3)(iii), and Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so.

(12) Assume the same facts as in 9904.412–60(c)(11), except that Contractor N, while maintaining a "Rabbi Trust" funding vehicle elects to have the plan accounted for under the pay-as-you-go cost method so as to have greater latitude in annual funding decisions. It may so elect pursuant to 9904.412–50(c)(3)(i).

(13) The assignable pension cost for Contractor O's qualified defined-benefit plan is $600,000. For the same period Contractor O contributes $700,000, which is the minimum funding requirement under ERISA. In addition, there exists $75,000 of unfunded actuarial liability that has been separately identified pursuant to 9904.412–50(a)(2). Contractor O may use $75,000 of the contribution in excess of the assignable pension cost to fund this separately identified unfunded actuarial liability, if he so chooses. The effect of the funding is to eliminate the unassignable $75,000 portion of unfunded actuarial liability that had been separately identified and thereby eliminated from the computation of pension costs. Contractor O shall then account for the remaining $25,000 of excess contribution as a prepayment credit in accordance with 9904.412–50(a)(4).

(d) *Allocation of pension cost.* (1) Assume the same set of facts for Contractor M in 9904.412–60(c)(8) except there was no ERISA waiver; i.e., only $800,000 was funded against $1 million of assigned pension cost for the period. Under the provisions of 9904.412–50(d)(1), only $800,000 may be allocated to Contractor M's intermediate and final cost objectives. The remaining $200,000 of assigned cost, which has not been funded, shall be separately identified and maintained in accordance with 9904.412–50(a)(2) so

that it will not be reassigned to any future accounting periods.

(2) Contractor P has a nonqualified defined-benefit pension plan which covers benefits in excess of the ERISA limits. Contractor P has elected to account for this plan in the same manner as its qualified plan and, therefore, has established a "Rabbi Trust" as the funding agency. For the current cost accounting period, the contractor computes and assigns $100,000 as pension cost. The contractor funds $65,000, which is equivalent to a funding level equal to the complement of the highest published Federal corporate income tax rate of 35%. Under the provisions of 9904.412–50(d)(2), the entire $100,000 is allocable to cost objectives of the period.

(3) Assume the set of facts in 9904.412–60(d)(2), except that Contractor P's contribution to the Trust is $59,800. In that event, the provisions of 9904.412–50(d)(2)(i) would limit the amount of assigned cost allocable within the cost accounting period to the percentage of cost funded (i.e., $59,800/$65,000 = 92%). This results in allocable cost of $92,000 (92% of $100,000) for the cost accounting period. Under the provisions of 9904.412–40(c) and 9904.412–50(d)(2)(i), respectively, the unallocable $8,000 may not be assigned to any future cost accounting period. In addition, in accordance with 9904.412–50(a)(2), the $8,000 must be separately identified and no amount of interest on such separately identified $8,000 shall be a component of pension cost in any future cost accounting period.

(4) Again, assume the set of facts in 9904.412–60(d)(2) except that, Contractor P's contribution to the Trust is $105,000 based on a valuation interest assumption of 8%. Under the provisions of 9904.412–50(d)(2) the entire $100,000 is allocable to cost objectives of the period. In accordance with the provisions of 9904.412–50(c)(1) Contractor P has funded $5,000 ($105,000—$100,000) in excess of the assigned pension cost for the period. The $5,000 shall be accounted for as a prepayment credit. Pursuant to 9904.412–50(a)(4), the $5,000 shall be adjusted for interest at the 8% valuation rate of interest and excluded from the actuarial value of assets used to compute the next year's pension cost computations. The accumulated value of prepayment credits of $5,400 [5,000 × 1.08) may be used to fund the next year's assigned pension cost, if needed.

(5) Contractor Q maintains a nonqualified defined-benefit pension plan which satisfies the requirements of 9904.412–50(c)(3). As of the valuation date, the reported funding agency balance is $3.4 million excluding any accumulated value of prepayment credits. When the adjusted funding agency balance is added to the accumulated value of permitted unfunded accruals of $1.6 million, the market value of assets equals $5.0 million ($3.4 million + $1.6 million) in accordance with 9904.412–30(a)(13). During the plan year, retirees receive monthly benefits totalling $350,000. Pursuant to 9904.412–50(d)(2)(ii)(A), at least 32% ($1.6 million divided by $5 million) of these benefit payments shall be made from sources other than the funding agency. Contractor Q, therefore, draws $238,000 from the funding agency assets and pays the remaining $112,000 using general corporate funds.

(6) Assume the same facts as 9904.412–60(d)(5), except that by the time Contractor Q receives its actuarial valuation it has paid retirement benefits equalling $288,000 from funding agency assets. The contractor has made deposits to the funding agency equal to the tax complement of the $500,000 assignable pension cost for the period. Pursuant to 9904.412–50(d)(2)(ii)(B), the assignable $500,000 shall be reduced by the $50,000 ($288,000—$238,000) of benefits paid from the funding agency in excess of the permitted $238,000, unless the contractor makes a deposit to replace the $50,000 inadvertently drawn from the funding agency. If this corrective action is not taken within the time permitted by 9904.412–50(d)(4), Contractor Q shall allocate only $450,000 ($500,000–$50,000) to final cost objectives. Furthermore, the $50,000, which was thereby attributed to benefit payments instead of funding, must be separately identified and maintained in accordance with 9904.412–50(a)(2).

(7) Contractor R has a nonqualified defined-benefit plan that meets the criteria of 9904.412–50(c)(3). For 1996, the funding agency balance was $1,250,000 and the accumulated value of permitted unfunded accruals was $600,000. During 1996 the earnings and appreciation on the assets of the funding agency equalled $125,000, benefit payments to participants totalled $300,000, and administrative expenses were $60,000. All transactions occurred on the first day of the period. In accordance with 9904.412–50(d)(2)(ii)(A), $200,000 of benefits were paid from the funding agency and $100,000 were paid directly from corporate assets. Pension cost of $400,000 was assigned to 1996. Based on the current corporate tax rate of 35%, $260,000 ($400,000 × (1–35%)) was deposited into the funding agency at the beginning of 1996. For 1997 the funding agency balance is $1,375,000 ($1,250,000 + $260,000 + $125,000—$200,000—$60,000). The actual annual earnings rate of the funding agency was 10% for 1996. Pursuant to 9904.412–50(d)(2)(iii), the accumulated value of permitted unfunded accruals is updated from 1996 to 1997 by: (i) adding $140,000 (35% × $400,000), which is the unfunded portion of the assigned cost; (ii) subtracting the $100,000 of benefits paid directly by the contractor and (iii) increasing the value of the assets by $64,000 for imputed earnings at 10% (10% × ($600,000 + $140,000—$100,000)). The accumulated value of permitted unfunded accruals for 1997 is $704,000 ($600,000 + $140,000—$100,000 + $64,000).

7. Subsection 9904.412–63 is revised to read as follows:

9904.412–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow the Standard in 9904.412 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this Standard applies.

8. A new subsection 9904.412–64 is added to read as follows.

9904.412–64 Transition method.

To be acceptable, any method of transition from compliance with Standard 9904.412 in effect prior to March 30, 1995, to compliance with the Standard effective March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA tax-deductibility limitations. The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.412, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the

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provisions of 9904.412–40(c) on requirements for assignment. The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of Standard 9904.412, effective March 30, 1995, and shall be approved by the contracting officer. Examples and illustrations of such transition methods include, but are not limited to, the following:

(a) *Reassignment of certain prior unfunded accruals.*

(1) Any portion of pension cost for a qualified defined-benefit pension plan, assigned to a cost accounting period prior to [insert date of publication in the **Federal Register**], which was not funded because such cost exceeded the maximum tax-deductible amount, determined in accordance with ERISA, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost deficit. However, such costs shall be assigned to periods on or after March 30, 1995, only to the extent that such costs have not previously been allocated as cost or price to contracts subject to this Standard.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (a)(1) of this subsection.

(b) *Reassignment of certain prior unallocated credits.*

(1) Any portion of pension cost for a defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not allocated as a cost or price credit to contracts subject to this Standard because such cost was less than zero, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost credit.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (b)(1) of this subsection.

(c) *Accounting for certain prior allocated unfunded accruals.* Any portion of unfunded pension cost for a nonqualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, that was allocated as cost or price to contracts subject to this Standard, shall be recognized in subsequent accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals.

(d) *"Fresh start" alternative transition method.* The transition methods of paragraphs (a)(1), (b)(1), and (c) of this subsection may be implemented using the so-called "fresh start" method whereby a portion of the unfunded actuarial liability of a defined-benefit pension plan, which occurs in the first cost accounting period after March 30, 1995, shall be treated in the same manner as an actuarial gain or loss. Such portion of unfunded actuarial liability shall exclude any portion of unfunded actuarial liability that must continue to be separately identified and maintained in accordance with 9904.412–50(a)(2), including interest adjustments. If the contracting officer already has approved a different amortization period for the fresh start amortization, then such amortization period shall continue.

(e) *Change to pay-as-you-go method.* A change in accounting method subject to 9903.302 will have occurred whenever costs of a nonqualified defined-benefit pension plan have been accounted for on an accrual basis prior to March 30, 1995, and the contractor must change to the pay-as-you-go cost method because the plan does not meet the requirement of 9904.412–50(c)(3), either by election or otherwise. In such case, any portion of unfunded pension cost, assigned to a cost accounting period prior to March 30, 1995 that was allocated as cost or price to contracts subject to this Standard, shall be assigned to future accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals. Costs computed under the pay-as-you-go cost method shall be charged against such accumulated value of permitted unfunded accruals before such costs may be allocated to contracts.

(f) *Actuarial assumptions.* The actuarial assumptions used to calculate assignable cost deficits, assignable cost credits, or accumulated values of permitted unfunded accruals for transition purposes shall be consistent with the long term assumptions used for valuation purposes for such prior periods unless the contracting officer has previously approved the use of other reasonable assumptions.

(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g) (1) through (9) of this subsection address pension costs and transition amounts determined for the first cost accounting period beginning on or after the date this revised Standard becomes applicable to a contractor. For purposes of these illustrations an interest assumption of 7% is presumed to be in effect for all periods.

(1) For the cost accounting period immediately preceding the date this revised Standard was applicable to a contractor, Contractor S computed and assigned pension cost of $1 million for a qualified defined-benefit pension plan. The contractor made a contribution equal to the maximum tax-deductible amount of $800,000 for the period leaving $200,000 of assigned cost unfunded for the period. Except for this $200,000, no other assigned pension costs have ever been unfunded or otherwise disallowed. Using the transition method of paragraph (a)(1) of this subsection, the contractor shall establish an assignable cost deficit equal to $214,000 ($200,000 × 1.07), which is the prior unfunded assigned cost plus interest. If this assignable cost deficit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the current period.

(2) Assume that Contractor S in 9904.412–64(g)(1) priced the entire $1 million into firm fixed-price contracts. In this case, no assignable cost deficit amount may be established. In addition, the $214,000 ($200,000 × 1.07) shall be separately identified and maintained in accordance with 9904.412–50(a)(2). If all portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(3) Assume the same facts as in 9904.412–64(g)(1), except Contractor S only funded and allocated $500,000. The $300,000 of assigned cost that was not funded, but could have been funded without exceeding the tax-deductible maximum, may not be recognized as an assignable cost deficit. Instead, the $300,000 must be separately identified and maintained in accordance with 9904.412–50(a)(2). If the $321,000 ($300,000 × 1.07) plus the $214,000 already identified as an assignable cost deficit plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(4) Assume that, for Contractor S in 9904.412–64(g)(3), the only portion of unfunded actuarial liability that must be identified under 9904.412–50(a)(2) is the $321,000. If Contractor S chooses to use the "fresh start" transition method, the $321,000 of unfunded assigned cost must be subtracted from the total unfunded actuarial liability in accordance with 9904.412–63(d). The net amount of unfunded actuarial liability shall then be amortized over a

period of fifteen years as an actuarial loss in accordance with 9904.412–50(a)(1)(v) and Cost Accounting Standard 9904.413.

(5) For the cost accounting period immediately preceding the date this revised Standard becomes applicable to a contractor, Contractor T computed and assigned pension cost of negative $400,000 for a qualified defined-benefit plan. Because the contractor could not withdraw assets from the trust fund, the contracting officer agreed that instead of allocating a current period credit to contracts, the negative costs would be carried forward, with interest, and offset against future pension costs allocated to the contract. Using the transition method of paragraph (b)(1) of this subsection, the contractor shall establish an assignable cost credit equal to $428,000 ($400,000 × 1.07). If this assignable cost credit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equals the total unfunded actuarial liability, pension cost may be assigned to the period.

(6) Assume that in 9904.412–64(g)(5), following guidance issued by the contracting agency the contracting officer had deemed the cost for the prior period to be $0. In order to satisfy the requirements of 9904.412–40(c) and assign pension cost to the current period, Contractor S must account for the prior period negative accruals that have not been specifically identified. Following the transition method of paragraph (b)(1) of this subsection, the contractor shall identify $428,000 as an assignable cost credit.

(7) Assume the facts of 9904.412–64(g)(5), except Contractor S uses the "fresh start" transition method. In addition, for the current period the plan is overfunded since the actuarial value of the assets is greater than the actuarial accrued liability. In this case, an actuarial gain equal to the negative unfunded actuarial liability; i.e., actuarial surplus, is recognized since there are no portions of unfunded actuarial liability that must be identified under 9904.412–50(a)(2).

(8) Since March 28, 1989 Contractor U has computed, assigned, and allocated pension costs for a nonqualified defined-benefit plan on an accrual basis. The value of these past accruals, increased for imputed interest at 7% and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Contractor U elects to establish a "Rabbi trust" and the plan meets the other criteria at 9904.412–50(c)(3). Using the transition method of paragraph (c) of this subsection, Contractor U shall recognize the $2 million as the accumulated value of permitted unfunded accruals, which will then be included in the market value and actuarial value of the assets. Because the accumulated value of permitted unfunded accruals is exactly equal to the current period market value of the assets, 100% of benefits for the current period must be paid from sources other than the funding agency in accordance with 9904.412–50(d)(2)(ii).

(9) Assume that Contractor U in 9904.412–64(g)(8) establishes a funding agency, but elects to use the pay-as-you-go method for current and future pension costs. Furthermore, plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (e) of this subsection to ensure prior costs are not redundantly provided for, the contractor shall establish assets; i.e., an accumulated value of permitted unfunded accruals, of $2 million. Since these assets are sufficient to provide for the current benefit payments, no pension costs can be allocated in this period. Furthermore, previously priced contracts subject to this Standard shall be adjusted in accordance with 9903.302. The accumulated value of permitted unfunded accruals shall be carried forward to the next period by adding $140,000 (7% x $2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of permitted unfunded accruals for the next period equals $1,640,000 ($2 million + $140,000—$500,000).

9904.413 [Amended]

9. Subsection 9904.413–30 is amended by revising paragraph (a) to read as follows:

9904.413–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost, for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Curtailment of benefits* means an event; e.g., a plan amendment, in which the pension plan is frozen and no further material benefits accrue. Future service may be the basis for vesting of nonvested benefits existing at the time of the curtailment. The plan may hold assets, pay benefits already accrued, and receive additional contributions for unfunded benefits. Employees may or may not continue working for the contractor.

(8) *Funding agency* means an organization or individual which provides facilities to receive and

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accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(9) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(10) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(11) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(12) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(13) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(14) *Pension plan termination* means an event; i.e., plan amendment, in which either the pension plan ceases to exist and all benefits are settled by purchase of annuities or other means, or the trusteeship of the plan is assumed by the Pension Benefit Guarantee Corporation or other conservator. The plan may or may not be replaced by another plan.

(15) *Permitted unfunded accruals* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(16) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(17) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(18) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

(19) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(20) *Segment closing* means that a segment has (i) been sold or ownership has been otherwise transferred; (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business under contracts subject to this Standard.

(21) *Termination of employment gain or loss* means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which plan participants separate from employment for reasons other than retirement, disability, or death.

(b) * * *

10. Subsection 9904.413–40 is amended by revising paragraphs (b) and (c) to read as follows:

9904.413–40 Fundamental requirement.

(a) * * *

(b) *Valuation of the assets of a pension plan.* The actuarial value of the assets of a pension plan shall be determined under an asset valuation method which takes into account unrealized appreciation and depreciation of the market value of the assets of the pension plan, including the accumulated value of permitted unfunded accruals, and shall be used in measuring the components of pension costs.

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension costs to each segment having participants in a pension plan. A separate calculation of pension costs for a segment is required when the conditions set forth in 9904.413–50(c)(2) or (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base. When pension costs are separately computed for a segment or segments, the provisions of Cost Accounting Standard 9904.412 regarding the assignable cost limitation shall be based on the assets and liabilities for the segment or segments for purposes of such computations. In addition, the amount of pension cost assignable to a segment or segments shall not exceed the maximum tax-deductible amount computed for the plan as a whole and apportioned among the segment(s).

11. Subsection 9904.413–50 is revised to read as follows:

9904.413–50 Techniques for application.

(a) *Assignment of actuarial gains and losses.* (1) In accordance with the provisions of Cost Accounting Standard 9904.412, actuarial gains and losses shall be identified separately from other unfunded actuarial liabilities.

(2) Actuarial gains and losses determined under a pension plan whose

costs are measured by an immediate-gain actuarial cost method shall be amortized over a 15 year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. The installment for a cost accounting period shall consist of an element for amortization of the gain or loss plus an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

(3) Pension plan terminations and curtailments of benefits shall be subject to adjustment in accordance with 9904.413–50(c)(12).

(b) *Valuation of the assets of a pension plan.* (1) The actuarial value of the assets of a pension plan shall be used:

(i) In measuring actuarial gains and losses, and

(ii) For purposes of measuring other components of pension cost.

(2) The actuarial value of the assets of a pension plan may be determined by the use of any recognized asset valuation method which provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan. However, the actuarial value of the assets produced by the method used shall fall within a corridor from 80 to 120 percent of the market value of the assets, determined as of the valuation date. If the method produces a value that falls outside the corridor, the actuarial value of the assets shall be adjusted to equal the nearest boundary of the corridor.

(3) The method selected for valuing pension plan assets shall be consistently applied from year to year within each plan.

(4) The provisions of paragraphs (b)(1) through (3) of this subsection are not applicable to plans that are treated as defined-contribution plans in accordance with 9904.412–50(a)(6).

(5) The market and actuarial values of the assets of a pension plan shall not be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually incurred and paid.

(c) *Allocation of pension cost to segments.* (1) For contractors who compute a composite pension cost covering plan participants in two or more segments, the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based. For example, a base consisting of salaries and wages shall be used for pension costs that are calculated as a percentage of salaries and wages; a base consisting of the number of participants shall be used for pension costs that are calculated as an amount per participant. If pension costs are separately calculated for one or more segments, the contractor shall make a distribution among the segments for the maximum tax-deductible amount and the contribution to the funding agency as follows:

(i) When apportioning the maximum tax-deductible amount, which is determined for a qualified defined-benefit pension plan as a whole pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended, to segments, the contractor shall use a base that considers the otherwise assignable pension costs or the funding levels of the individual segments.

(ii) When apportioning amounts deposited to a funding agency to segments, contractors shall use a base that is representative of the assignable pension costs, determined in accordance with 9904.412–50(c) for the individual segments. However, for qualified defined-benefit pension plans, the contractor may first apportion amounts funded to the segment or segments subject to this Standard.

(2) Separate pension cost for a segment shall be calculated whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of pension cost allocated to the segment:

(i) There is a material termination of employment gain or loss attributable to the segment,

(ii) The level of benefits, eligibility for benefits, or age distribution is materially different for the segment than for the average of all segments, or

(iii) The appropriate actuarial assumptions are, in the aggregate, materially different for the segment than for the average of all segments. Calculations of termination of employment gains and losses shall give consideration to factors such as unexpected early retirements, benefits becoming fully vested, and reinstatements or transfers without loss of benefits. An amount may be estimated for future reemployments.

(3) Pension cost shall also be separately calculated for a segment under circumstances where—

(i) The pension plan for that segment becomes merged with that of another segment, or the pension plan is divided into two or more pension plans, and in either case,

(ii) The ratios of market value of the assets to actuarial accrued liabilities for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the pension plan merger or pension plan division.

(4) For a segment whose pension costs are required to be calculated separately pursuant to paragraphs (c) (2) or (3) of this subsection, such calculations shall be prospective only; pension costs need not be redetermined for prior years.

(5) For a segment whose pension costs are either required to be calculated separately pursuant to paragraph (c)(2) or (c)(3) of this subsection or calculated separately at the election of the contractor, there shall be an initial allocation of a share in the undivided market value of the assets of the pension plan to that segment, as follows:

(i) If the necessary data are readily determinable, the funding agency balance to be allocated to the segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid from such assets. Likewise, the accumulated value of permitted unfunded accruals to be allocated to the segment shall be the amount of permitted unfunded accruals assigned to the segment, increased by interest imputed to such assets, and decreased by benefits paid from sources other than the funding agency; or

(ii) If the data specified in paragraph (c)(5)(i) of this subsection are not readily determinable for certain prior periods, the market value of the assets of the pension plan shall be allocated to the segment as of the earliest date such data are available. Such allocation shall be based on the ratio of the actuarial accrued liability of the segment to the plan as a whole, determined in a manner consistent with the immediate gain actuarial cost method or methods used to compute pension cost. Such assets shall be brought forward as described in paragraph (c)(7) of this subsection.

(iii) The actuarial value of the assets of the pension plan shall be allocated to the segment in the same proportion as the market value of the assets.

(6) If, prior to the time a contractor is required to use this Standard, it has been calculating pension cost separately for individual segments, the amount of assets previously allocated to those segments need not be changed.

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent

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contributions, permitted unfunded accruals, income, benefit payments, and expenses attributable to the segment and paid from the assets of the pension plan. Income and expenses shall include a portion of any investment gains and losses attributable to the assets of the pension plan. Income and expenses of the pension plan assets shall be allocated to the segment in the same proportion that the average value of assets allocated to the segment bears to the average value of total pension plan assets for the period for which income and expenses are being allocated.

(8) If plan participants transfer among segments, contractors need not transfer assets or actuarial accrued liabilities unless a transfer is sufficiently large to distort the segment's ratio of pension plan assets to actuarial accrued liabilities determined using the accrued benefit cost method. If assets and liabilities are transferred, the amount of assets transferred shall be equal to the actuarial accrued liabilities, determined using the accrued benefit cost method, transferred.

(9) Contractors who separately calculate the pension cost of one or more segments may calculate such cost either for all pension plan participants assignable to the segment(s) or for only the active participants of the segment(s). If costs are calculated only for active participants, a separate segment shall be created for all of the inactive participants of the pension plan and the cost thereof shall be calculated. When a contractor makes such an election, assets shall be allocated to the segment for inactive participants in accordance with paragraphs (c) (5), (6), and (7) of this subsection. When an employee of a segment becomes inactive, assets shall be transferred from that segment to the segment established to accumulate the assets and actuarial liabilities for the inactive plan participants. The amount of assets transferred shall be equal to the actuarial accrued liabilities, determined under the accrued benefit cost method, for these inactive plan participants. If inactive participants become active, assets and liabilities shall similarly be transferred to the segments to which the participants are assigned. Such transfers need be made only as of the last day of a cost accounting period. The total annual pension cost for a segment having active employees shall be the amount calculated for the segment plus an allocated portion of the pension cost calculated for the inactive participants. Such an allocation shall be on the same basis as that set forth in paragraph (c)(1) of this subsection.

(10) Where pension cost is separately calculated for one or more segments, the actuarial cost method used for a plan shall be the same for all segments. Unless a separate calculation of pension cost for a segment is made because of a condition set forth in paragraph (c)(2)(iii) of this subsection, the same actuarial assumptions may be used for all segments covered by a plan.

(11) If a pension plan has participants in the home office of a company, the home office shall be treated as a segment for purposes of allocating the cost of the pension plan. Pension cost allocated to a home office shall be a part of the costs to be allocated in accordance with the appropriate requirements of Cost Accounting Standard 9904.403.

(12) If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

(i) The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation.

(ii) In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5) (i) and (ii) of this subsection. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2).

(iii) The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

(iv) Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

(v) If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

(vi) The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(vii) The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule, including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

12. Subsection 9904.413–60 is revised to read as follows:

9904.413–60 Illustrations.

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 9904.413–40(a), the contractor must make an actuarial valuation annually. Any actuarial gains or losses measured must be separately amortized over a 15-year period beginning with the period for which the actuarial valuation is made in accordance with 9904.413–50(a) (1) and (2).

(b)(1) *Valuation of the assets of a pension plan.* Contractor B has a qualified defined-benefit pension plan, the assets of which are invested in equity securities, debt securities, and real property. The contractor, whose cost accounting period is the calendar year, has an annual actuarial valuation of the pension plan assets in June of each year; the effective date of the valuation is the beginning of that year. The contractor's method for valuing the assets of the pension plan is as follows: debt securities expected to be held to maturity are valued on an amortized basis running from initial cost at purchase to par value at maturity; land and buildings are valued at cost less depreciation taken to date; all equity securities and debt securities not expected to be held to maturity are valued on the basis of a five-year moving average of market values. In making an actuarial valuation, the contractor must compare the values reached under the asset valuation method used with the market value of all the assets as required by 9904.413–40(b). In this case, the assets are valued as of January 1 of that year. The contractor established the following values as of the valuation date.

	Asset valuation method	Market
Cash	$100,000	100,000
Equity securities	6,000,000	7,800,000
Debt securities, expected to be held to maturity	550,000	600,000
Other debt securities	600,000	750,000
Land and Buildings, net of depreciation	400,000	750,000
Total	7,650,000	10,000,000

(2) Section 9904.413–50(b)(2) requires that the actuarial value of the assets of the pension plan fall within a corridor from 80 to 120 percent of market. The corridor for the plan's assets as of January 1 is from $12 million to $8 million. Because the asset value reached by the contractor, $7,650,000, falls outside that corridor, the value reached must be adjusted to equal the nearest boundary of the corridor: $8 million. In subsequent years the contractor must continue to use the same method for valuing assets in accordance with 9904.413–50(b)(3). If the value produced falls inside the corridor, such value shall be used in measuring pension costs.

(c) *Allocation of pension costs to segments.* (1) Contractor C has a defined-benefit pension plan covering employees at five segments. Pension cost is computed by use of an immediate-gain actuarial cost method. One segment (X) is devoted primarily to performing work for the Government. During the current cost accounting period, Segment X had a large and unforeseeable reduction of employees because of a contract termination at the convenience of the Government and because the contractor did not receive an anticipated follow-on contract to one that was completed during the period. The segment does continue to perform work under several other Government contracts. As a consequence of this termination of employment gain, a separate calculation of the pension cost for Segment X would result in materially different allocation of costs to the segment than would a composite calculation and allocation by means of a base. Accordingly, pursuant to 9904.413–50(c)(2), the contractor must calculate a separate pension cost for Segment X. In doing so, the entire termination of employment gain must be assigned to Segment X and amortized over fifteen years. If the actuarial assumptions for Segment X continue to be substantially the same as for the other segments, the termination of employment gain may be separately amortized and allocated only to Segment X; all other Segment X computations may be included as part of the composite calculation. After the termination of employment gain is amortized, the contractor is no longer required to separately calculate the costs for Segment X unless subsequent events require each separate calculation.

(2) Contractor D has a defined-benefit pension plan covering employees at ten segments, all of which have some contracts subject to this Standard. The contractor's calculation of normal cost is based on a percentage of payroll for all employees covered by the plan. One of the segments (Segment Y) is entirely devoted to Government work. The contractor's policy is to place junior employees in this segment. The salary scale assumption for employees of the segment is so different from that of the other segments that the pension cost for Segment Y would be materially different if computed separately. Pursuant to 9904.413–50(c)(2)(iii), the contractor must compute the pension cost for Segment Y as if it were a separate pension plan. Therefore, the contractor must allocate a portion of the market value of pension plan's assets to Segment Y in accordance with 9904.413–50(c)(5). Memorandum records may be used in making the allocation. However, because the necessary records only exist for the last five years, 9904.413–50(c)(5)(ii) permits an initial allocation to be made as of the earliest date such records are available. The initial allocation must be made on the basis of the immediate gain actuarial cost method or methods used to calculate prior years' pension cost for the plan. Once the assets have been allocated, they shall be brought forward to the current period as described in 9904.413–50(c)(7). A portion of the undivided actuarial value of assets shall then be allocated to the segment based on the segment's proportion of the market value of assets in accordance with 9904.413–50(c)(5)(iii). In future cost accounting periods, the contractor shall make separate pension cost calculations for Segment Y based on the appropriate salary scale assumption. Because the factors comprising pension cost for the other nine segments are relatively equal, the contractor may compute pension cost for these nine segments by using composite factors. As required by 9904.413–50(c)(1), the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based.

(3) Contractor E has a defined-benefit pension plan which covers employees at twelve segments. The contractor uses composite actuarial assumptions to

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develop a pension cost for all segments. Three of these segments primarily perform Government work; the work at the other nine segments is primarily commercial. Employee turnover at the segments performing commercial work is relatively stable. However, employment experience at the Government segments has been very volatile; there have been large fluctuations in employment levels and the contractor assumes that this pattern of employment will continue to occur. It is evident that separate termination of employment assumptions for the Government segments and the commercial segments will result in materially different pension costs for the Government segments. Therefore, the cost for these segments must be separately calculated, using the appropriate termination of employment assumptions for these segments in accordance with 9904.413–50(c)(2)(iii).

(4) Contractor F has a defined-benefit pension plan covering employees at 25 segments. Twelve of these segments primarily perform Government work; the remaining segments perform primarily commercial work. The contractor's records show that the termination of employment experience and projections for the twelve segments are so different from that of the average of all of the segments that separate pension cost calculations are required for these segments pursuant to 9904.413–50(c)(2). However, because the termination of employment experience and projections are about the same for all twelve segments, Contractor F may calculate a composite pension cost for the twelve segments and allocate the cost to these segments by use of an appropriate allocation base in accordance with 9904.413–50(c)(1).

(5) After this Standard becomes applicable to Contractor G, it acquires Contractor H and makes it Segment H. Prior to the merger, each contractor had its own defined-benefit pension plan. Under the terms of the merger, Contractor H's pension plan and plan assets were merged with those of Contractor G. The actuarial assumptions, current salary scale, and other plan characteristics are about the same for Segment H and Contractor G's other segments. However, based on the same benefits at the time of the merger, the plan of Contractor H had a disproportionately larger unfunded actuarial liability than did Contractor G's plan. Any combining of the assets and actuarial liabilities of both plans would result in materially different pension cost allocation to Contractor G's segments than if pension cost were computed for Segment H on the basis that it had a separate pension plan. Accordingly, pursuant to 9904.413–50(c)(3), Contractor G must allocate to Segment H a portion of the assets of the combined plan. The amount to be allocated shall be the market value of Segment H's pension plan assets at the date of the merger determined in accordance with 9904.413–50(c)(5), and shall be adjusted for subsequent receipts and expenditures applicable to the segment in accordance with 9904.413–50(c)(7). Pursuant to 9904.413–40(b)(1) and 9904.413–50(c)(5)(iii), Contractor G must use these amounts of assets as the basis for determining the actuarial value of assets used for calculating the annual pension cost applicable to Segment H.

(6) Contractor I has a defined-benefit pension plan covering employees at seven segments. The contractor has been making a composite pension cost calculation for all of the segments. However, the contractor determines that, pursuant to this Standard, separate pension costs must be calculated for one of the segments. In accordance with 9904.413–50(c)(9), the contractor elects to allocate pension plan assets only for the active participants of that segment. The contractor must then create a segment to accumulate the assets and actuarial accrued liabilities for the plan's inactive participants. When active participants of a segment become inactive, the contractor must transfer assets to the segment for inactive participants equal to the actuarial accrued liabilities for the participants that become inactive.

(7) Contractor J has a defined-benefit pension plan covering employees at ten segments. The contractor makes a composite pension cost calculation for all segments. The contractor's records show that the termination of employment experience for one segment, which is performing primarily Government work, has been significantly different from the average termination of employment experience of the other segments. Moreover, the contractor assumes that such different experience will continue. Because of this fact, and because the application of a different termination of employment assumption would result in significantly different costs being charged the Government, the contractor must develop separate pension cost for that segment. In accordance with 9904.413–50(c)(2)(ii), the amount of pension cost must be based on an acceptable termination of employment assumption for that segment; however, as provided in 9904.413–50(c)(10), all other assumptions for that segment may be the same as those for the remaining segments.

(8) Contractor K has a five-year contract to operate a Government-owned facility. The employees of that facility are covered by the contractor's overall qualified defined-benefit pension plan which covers salaried and hourly employees at other locations. At the conclusion of the five-year period, the Government decides not to renew the contract. Although some employees are hired by the successor contractor, because Contractor K no longer operates the facility, it meets the 9904.413–30(a)(20)(i) definition of a segment closing. Contractor K must compute the actuarial accrued liability for the pension plan for that facility using the accrued benefit cost method as of the date the contract expired in accordance with 9904.413–50(c)(12)(i). Because many of Contractor K's employees are terminated from the pension plan, the Internal Revenue Service considers it to be a partial plan termination, and thus requires that the terminated employees become fully vested in their accrued benefits to the extent such benefits are funded. Taking this mandated benefit improvement into consideration in accordance with 9904.413–50(c)(12)(iv), the actuary calculates the actuarial accrued liability to be $12.5 million. The contractor must then determine the market value of the pension plan assets allocable to the facility, in accordance with 9904.413–50(c)(5), as of the date agreed to by the contracting parties pursuant to 9904.413–50(c)(12)(iii), the date the contract expired. In making this determination, the contractor is able to do a full historical reconstruction of the market value of the assets allocated to the segment. In this case, the market value of the segment's assets amounted to $13.8 million. Thus, for this facility the value of pension plan assets exceeded the actuarial accrued liability by $1.3 million. Pursuant to 9904.413–50(c)(12)(vi), this amount indicates the extent to which the Government over-contributed to the pension plan for the segment and, accordingly, is the amount of the adjustment due to the Government.

(9) Contractor L operated a segment over the last five years during which 80% of its work was performed under Government CAS-covered contracts. The Government work was equally divided each year between fixed-price and cost-type contracts. The employees of the facility are covered by a funded nonqualified defined-benefit pension plan accounted for in accordance with 9904.412–50(c)(3). For each of the last five years the highest Federal corporate income tax rate has been 30%. Pension costs of $1 million per year were computed using a projected benefit cost method. Contractor L funded at the complement of the tax rate ($700,000 per year). The pension plan assets held by the funding agency earned 8% each year. At the end of the five-year period, the funding agency balance; i.e., the market value of invested assets, was $4.4 million. As of that date, the accumulated value of permitted unfunded accruals; i.e., the current value of the $300,000 not funded each year, is $1.9 million. As defined by 9904.413–30(a)(20)(i), a segment closing occurs when Contractor L sells the segment at the end of the fifth year. Thus, for this segment, the market value of the assets of the pension plan determined in accordance with 9904.413–30(a)(10) is $6.3 million, which is, the sum of the funding account balance ($4.4 million) and the accumulated value of permitted unfunded accruals ($1.9 million). Pursuant to 9904.413–50(c)(12)(i), the contractor uses the accrued benefit cost method to calculate an actuarial accrued liability of $5 million as of that date. There is no transfer of plan assets or liabilities to the buyer. The difference between the market value of the assets and the actuarial accrued liability for the segment is $1.3 million ($6.3 million—$5 million). Pursuant to 9904.413–50(c)(12)(vi), the adjustment due the Government for its 80% share of previously-determined pension costs for CAS-covered contracts is $1.04 million (80% times $1.3 million). Because contractor L has no other Government contracts the $1.04 million is a credit due to the Government.

(10) Assume the same facts as in 9904.413–60(c)(9), except that Contractor L continues to perform substantial Government contract work through other segments. After considering the amount of the adjustment and the current level of contracts, the contracting officer and the contractor establish an amortization schedule so that the $1.04 million is recognized as credits against ongoing contracts in five level annual installments, including an interest adjustment based on the interest assumption used to compute pension costs for the continuing contracts. This amortization schedule satisfies the requirements of 9904.413–50(c)(12))(vii).

(11) Assume the same facts as in 9904.413–60(c)(9). As part of the transfer of ownership, Contractor L also transfers all pension liabilities and assets of the segment to the buyer. Pursuant to 9904.413–50(c)(12)(v), the segment closing adjustment amount for the current period is transferred to the buyer and is subsumed in the future pension cost accounting of the buyer. If the transferred liabilities and assets of the segment are merged into the buyer's pension plan which has a different ratio of market value of pension plan assets to actuarial accrued liabilities, then pension costs must be separately computed in accordance with 9904.413–50(c)(3).

(12) Contractor M sells its only government segment. Through a contract novation, the buyer assumes responsibility for performance of the segment's government contracts. Just prior to the sale, the actuarial accrued liability under the actuarial cost method in use is $18 million and the market value of assets allocated to the segment of $22 million. In accordance with the sales agreement, Contractor M is required to transfer $20 million of assets to the new plan. In determining the segment closing adjustment under 9904.413–12(c)(12) the actuarial accrued liability and the market value of assets are reduced by the amounts transferred to the buyer by the sale. The adjustment amount, which is the difference between the remaining assets ($2 million) and the remaining actuarial liability ($0), is $2 million.

(13) Contractor N has three segments that perform primarily government work and has been separately calculating pension costs for each segment. As part of a corporate reorganization, the contractor closes the production facility for Segment A and transfers all of that segment's contracts and employees to Segments B and C, the two remaining government segments. The pension assets from Segment A are allocated to the remaining segments based on the actuarial accrued liability of the transferred employees. Because Segment A has discontinued operations, a segment closing has occurred pursuant to 9904.413–30(a)(20)(ii). However, because all pension assets and liabilities have been transferred to segments that are the successors in interest of the contracts of Segment A, an immediate period adjustment is not required if Contractor N and the cognizant Federal official negotiate an amortization schedule pursuant to 9904.413–50(c)(12)(vii).

(14) Contractor O does not renew its government contract and decides to not seek additional government contracts for the affected segment. The contractor reduces the work force of the segment that had been dedicated to the government contract and converts the segment's operations to purely commercial work. In accordance with 9904.413–30(a)(20)(iii), the segment has closed. Immediately prior to the end of the contract the market value of the segment's assets was $20 million and the actuarial accrued liability determined under the actuarial cost method in use was $22 million. An actuarial accrued liability of $16 million is determined using the accrued benefit cost method as required by 9904.413–50(c)(12)(i). The segment closing adjustment is $4 million ($20 million—$16 million).

(15) Contractor P terminated its underfunded defined-benefit pension plan for hourly employees. The market value of the assets for the pension plan is $100 million. Although the actuarial accrued liability exceeds the $100 million of assets, the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is only $85 million. Therefore, the $15 million of assets in excess of the liability for guaranteed benefits are allocated to plan participants in accordance with PBGC regulations. The PBGC does not impose an assessment for unfunded guaranteed benefits against the contractor. The adjustment amount determined under 9904.413–50(c)(12) is zero.

(16) Assume the same facts as 9904.413–60(c)(17), except that the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is $120 million. The PBGC imposes a $20 million ($120 million—$100 Million) assessment against Contractor P for the unfunded guaranteed benefits. The contractor then determines the Government's share of the pension plan termination adjustment charge of $20 million in accordance with 9904.413–50(c)(12)(vi). In accordance with 9904.413–50(c)(12)(vii), the cognizant Federal official may negotiate an amortization schedule based on the contractor's schedule of payments to the PBGC.

(17) Assume the same facts as in 9904.413–60(c)(16), except that pursuant to 9904.412–50(a)(2) Contractor P has an unassignable portion of unfunded actuarial liability for prior unfunded pension costs which equals $8 million. The $8 million represents the value of assets that would have been available had all assignable costs been funded and, therefore, must be added to the assets used to determine the pension plan termination adjustment in accordance with 9904.413–50(c)(12)(ii). In this case, the adjustment charge is determined to be $12 million ($20 million − $8 million).

(18) Contractor Q terminates its qualified defined-benefit pension plan without establishing a replacement plan. At termination, the market value

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of assets are $85 million. All obligations for benefits are irrevocably transferred to an insurance company by the purchase of annuity contracts at a cost of $55 million, which thereby determines the actuarial liability in accordance with 9904.413–50(c)(12)(i). The contractor receives a reversion of $30 million ($85 million − $55 million). The adjustment is equal to the reversion amount, which is the excess of the market value of assets over the actuarial liability. However, ERISA imposes a 50% excise tax of $15 million (50% of $30 million) on the reversion amount. In accordance with 9904.413–50(c)(12)(vi), the $30 million adjustment amount is reduced by the $15 million excise tax. Pursuant to 9904.413–50(c)(12)(vi), a share of the $15 million net adjustment ($30 million—$15 million) shall be allocated, without limitation, as a credit to CAS-covered contracts.

(19) Assume that, in addition to the facts of 9904.413–60(c)(18), Contractor Q has an accumulated value of prepayment credits of $10 million. Contractor Q has $3 million of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2). The assets used to determine the adjustment amount equal $78 million. This amount is determined as the market value of assets ($85 million) minus the accumulated value of prepayment credits ($10 million) plus the portion of unfunded actuarial liability maintained pursuant to 9904.412–50(a)(2) ($3 million). Therefore, the difference between the assets and the actuarial liability is $23 million ($78 million − $55 million). In accordance with 9904.413–50(c)(12)(vi), the $23 million adjustment is reduced by the $15 million excise tax to equal $8 million. The contracting officer determines that the pension cost data of the most recent eight years reasonably reflects the government's participation in the pension plan. The sum of costs allocated to fixed-price and cost-type contracts subject to this Standard over the eight-year period is $21 million. The sum of costs assigned to cost accounting periods during the last eight years equals $42 million. Therefore, the government's share of the net adjustment is 50% ($21 million divided by $42 million) of the $8 million and equals $4 million.

(20) Contractor R maintains a qualified defined-benefit pension plan. Contractor R amends the pension plan to eliminate the earning of any future benefits; however the participants do continue to earn vesting service. Pursuant to 9904.413–30(a)(7), a curtailment of benefits has occurred. An actuarial accrued liability of $78 million is determined under the accrued benefit cost method using the interest assumption used for the last four actuarial valuations. The market value of assets, determined in accordance with 9904.413–50(c)(12)(ii), is $90 million. Contractor R shall determine the Government's share of the adjustment in accordance with 9904.413–50(c)(12)(vi). The contractor then shall allocate that share of the $12 million adjustment ($90 million − $78 million) determined under 9904.413–50(c)(12) to CAS-covered contracts. The full amount of adjustment shall be made without limitation in the current cost accounting period unless arrangements to amortize the adjustment are permitted and negotiated pursuant to 9904.413–50(c)(12)(vii).

(21) Contractor S amends its qualified defined-benefit pension plan to "freeze" all accrued benefits at their current level. Although not required by law, the amendment also provides that all accrued benefits are fully vested. Contractor S must determine the adjustment for the curtailment of benefits. Fifteen months prior to the date of the plan amendment freezing benefits, Contractor S voluntarily amended the plan to increase benefits. This voluntary amendment resulted in an overall increase of over 10%. All actuarial accrued liabilities are computed using the accrued benefit cost method. The actuarial accrued liability for all accrued benefits is $1.8 million. The actuarial accrued liability for vested benefits immediately prior to the current plan amendment is $1.6 million. The actuarial accrued liability determined for vested benefits based on the plan provisions before the voluntary amendment is $1.4 million. The $1.4 million actuarial liability is based on benefit provisions that have been in effect for six years and is fully recognized. However, the $200,000 increase in liability due to the voluntary benefit improvement adopted 15 months ago must be phased-in on a prorata basis over 60 months. Therefore, only 25% (16 months divided by 60 months) of the $200,000 increase, or $50,000, can be included in the curtailment liability. The current amendment voluntarily increasing vesting was just adopted and, therefore, none of the associated increase in actuarial accrued liability can be included. Accordingly, in accordance with 9904.413–50(c)(12)(iv), Contractor S determines the adjustment for the curtailment of benefits using an actuarial accrued liability of $1.45 million ($1.4 million plus $50,000).

(22) Contractor T has maintained separate qualified defined-benefit plans for Segments A and B and has separately computed pension costs for each segment. Both segments perform work under contracts subject to this Standard. On the first day of the current cost accounting period, Contractor T merges the two pension plans so that segments A and B are now covered by a single pension plan. Because the ratio of assets to liabilities for each plan is materially different from that of the merged plan, the contractor continues the separate computation of pension costs for each segment pursuant to 9904.413–50(c)(3). After considering the assignable cost limitations for each segment, Contractor T determines the potentially assignable pension cost is $12,000 for Segment A and $24,000 for Segment B. The maximum tax-deductible amount for the merged plan is $30,000, which is $6,000 less than the sum of the otherwise assignable costs for the segments ($36,000). To determine the portion of the total maximum tax-deductible amount applicable to each segment on a reasonable basis, the contractor prorates the $30,000 by the pension cost determined for each segment after considering the assignable cost limitations for each segment. Therefore, in accordance with 9904.413–50(c)(1)(i), the assignable pension cost is $10,000 for Segment A ($30,000 times $12,000 divided by $36,000) and $20,000 for Segment B ($30,000 times $24,000 divided by $36,000). Contractor T funds the full $30,000 and allocates the assignable pension cost for each segment to final cost objectives.

(23) Assume the same facts as in 9904.413–60(c)(22), except that the tax-deductible maximum is $40,000 and the ERISA minimum funding requirement is $18,000. Since funding of the accrued pension cost is not constrained by tax-deductibility, Contractor T determines the assignable pension cost to be $12,000 for Segment A and $24,000 for Segment B. If the contractor funds $36,000, the full assigned pension cost of each segment can be allocated to final cost objectives. However, because the contractor funds only the ERISA minimum of $18,000, the contractor must apportion the $18,000 contribution to each segment on a basis that reflects the assignable pension cost of each segment in accordance with 9904.413–50(c)(1)(ii). To measure the funding level of each segment, Contractor T uses an ERISA minimum funding requirement separately determined for each segment, as if the segment were a separate plan. On this basis, the allocable pension cost is determined to be $8,000 for Segment A and $10,000 for Segment B. In accordance with 9904.412–50(a)(2), Contractor T must separately identify, and eliminate from future cost computations, $4,000 ($12,000 − $8,000) for Segment A and $14,000 ($24,000 − $10,000) for Segment B.

(24) Assume the same facts as in 9904.413–60(c)(23), except that Segment B performs only commercial work. As permitted by 9904.413–50(c)(1)(ii), the contractor first applies $12,000 of the contribution amount to Segment A, which is performing work under Government contracts, for purposes of 9904.412–50(d)(i). The remaining $6,000 is applied to Segment B. The full assigned pension cost of $12,000 for Segment A is funded and such amount is allocable to CAS-covered contracts. Pursuant to 9904.412–50(a)(2), the contractor separately identifies, and eliminates from future pension costs, the $18,000 ($24,000 − $6,000) of unfunded assigned cost for Segment B.

(25) Contractor U has a qualified defined-benefit pension plan covering employees at two segments that perform work on contracts subject to this Standard. The ratio of the actuarial value of assets to actuarial accrued liabilities is significantly different between the two segments. Therefore, Contractor U is required to compute pension cost separately for each segment. The actuarial value of assets allocated to Segment A exceeds the actuarial accrued liability by $50,000. Segment B has an unfunded actuarial liability of $20,000. Thus, the pension plan as a whole has an actuarial surplus of $30,000. Pension cost of $5,000 is computed for Segment B and is less than Segment B's assignable cost limitation of $9,000. The tax-deductible maximum is $0 for the plan as whole and, therefore, $0 for each segment. Contractor U will deem all existing amortization bases maintained for Segment A to be fully amortized in accordance with 9904.412–50(c)(2)(ii). For Segment B, the amortization of existing portions of unfunded actuarial liability continues unabated. Furthermore, pursuant to 9904.412–50(c)(2)(iii), the contractor establishes an additional amortization base for Segment B for the assignable cost deficit of $5,000.

13. Subsection 9904.413–63 is revised to read as follows:

9904.413–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.413 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

14. A new subsection 9904.413–64 is added to read as follows:

9904.413–64 Transition method.

(a) To be acceptable, any method of transition from compliance with Standard 9904.413 in effect prior to March 30, 1995, to compliance with Standard 9904.413 in effect as of March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA funding limitations.

(b) The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.413, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the requirements for assignment of 9904.412–40(c).

(c) Furthermore, this Standard, effective March 30, 1995, clarifies, but is not intended to create, rights of the contracting parties, and specifies techniques for determining adjustments pursuant to 9904.413–50(c)(12). These rights and techniques should be used to resolve outstanding issues that will affect pension costs of contracts subject to this Standard.

(d) The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the contracting officer.

(e) All adjustments shall be prospective only. However, costs/prices of prior and existing contracts not subject to price adjustment may be considered in determining the appropriate transition method or adjustment amount for the computation of costs/prices of contracts subject to this Standard.

[FR Doc. 95–7555 Filed 3–29–95; 8:45 am]
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Part III

Department of Housing and Urban Development

NOFA for Lead-Based Paint (LBP) Risk Assessments; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3778; FR–3875–N–01]

NOFA for Lead-Based Paint (LBP) Risk Assessments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1995.

SUMMARY: This NOFA informs Public Housing Agencies and Indian Housing Authorities (referred to jointly as "HAs") that have pre-1980 family developments, of the availability of up to $8,052,535 in funding for lead-based paint (LBP) risk assessments. The NOFA contains information on the following:

(a) The purpose of the NOFA, available amounts and eligibility;

(b) Application processing, including how to apply and how selections will be made;

(c) A schedule of steps involved in the application process;

(d) Notice that funds will be awarded on a first-come, first-served basis; and

(e) Notice of the requirement that the Department's risk assessment protocol be used by HAs in conducting a LBP risk assessment and in developing recommendations regarding interim controls.

DATES: An application may be submitted immediately after publication of this NOFA, and must be submitted by 3:00 p.m. local time (i.e., the time in the HUD Field Office where the application is submitted) on May 30, 1995. This deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Application kits may be obtained from HUD Field Offices. Completed applications are to be submitted to the Field Office that has jurisdiction over the HA submitting the request for funding. Copies of the Department's LBP risk assessment protocol, which establishes minimum requirements that must be used by HAs funded under this NOFA, are available at cost by calling HUD USER on 1–800–245–2691 or (301) 251–5154 (not a toll-free number). A telecommunications device (TDD) for persons with hearing and speech impediments is available at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, D.C. 20410, telephone (202) 708–1640. Indian Housing Authorities may contact: Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, Washington, DC 20410, telephone (202) 755–0032. A telecommunications device (TDD) for persons with hearing and speech impediments is available at (202) 708–0850 . (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control numbers 0348–0043, 2577–0044, 2525–0101, and 0348–0046.

I. Purpose and Substantive Description

A. Allocation Amounts

(1) *Total amount available.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991; at 105 Stat. 744) (1992 Appropriations Act) set aside $25,000,000, of the $2,800,975,000 of budget authority available for modernization of existing public housing developments, for the risk assessment of lead-based paint (LBP). However, amounts actually available from the appropriated amount were reduced because conversions from Section 8 (U.S. Housing Act of 1937)-funded section 202 (Housing Act of 1959) direct loan projects to rental assistance-funded section 202 grant projects did not occur at the rate anticipated by Congress in the FY 1992 Appropriations Act. Reductions were made in the FY 1991 carryover balances to fund FY 1992 programs, as provided in the Appropriations Act. The amount of funds available for LBP risk assessment in FY 1992 was $23,853,455. In accordance with the language of that Appropriations Act, where funds awarded totaled less than the amount available, the remaining funds are to be carried over in subsequent NOFAs. Thus, in FY 1992, the Department awarded $9,055,821. In FY 1993, $14,797,634 was available for LBP risk assessment funding and $2,840,711 was awarded based on applications received. In FY 1994, $11,946,823 was available; of that amount $3,888,076 was awarded, based on applications received. Additionally, $16,312 was awarded in FY 1994 to correct calculation errors made on applications submitted and eligible for funding in FY 1993. The total amount of funding that remains available under this FY 1995 NOFA is up to $8,052,535. The funding may change if the carryovers, transfers, and recaptures estimated to occur in FY 1995 are not realized.

(2) *Selection of applications for funding.* Awards shall be made on a first-come, first-served basis. Additionally, an application must be complete and must meet the threshold criteria set forth in Section II.B. of this NOFA. As such, it is required that the proposed risk assessment be performed in pre-1980 family developments. Further, the Department has determined that a development targeted within an application will not be eligible for funding where a development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

In these instances, the Department recognizes that hazards have been addressed or identified; thus, there is no need to conduct a risk assessment.

(3) *Cost.* Where a development is eligible to be the subject of a complete risk assessment, in accordance with the threshold criteria set forth in Section II.B. of this NOFA, the HA shall base its funding request on a per-unit-to-be-sampled-per-development cost. The per-unit cost must include costs for collection of dust and soil samples, collection of paint chip samples (where necessary), administration, laboratory analysis of collected paint, dust, and soil samples, interpretation of laboratory results on samples collected, review of maintenance and management practices, and the *development* (not the implementation) of recommendations for interim controls. Costs associated with interim controls are not eligible for funding under this NOFA. Funding of interim controls must be secured from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves, or State/local contributions).

The cost-per-unit-to-be-sampled may not exceed the amount of $495. Prior year funding indicates that a number of HAs were able to complete risk assessments at less than this amount (ranging from $250 to $350 per-unit-to-be-sampled, excluding HA administrative costs). HAs are strongly encouraged to budget prudently for these costs. Where this amount is exceeded, the HA must submit justification of the amount requested, and the Field Office will examine the cost reasonableness of such request.

The number of units to be sampled, which, at a minimum, must be used by HAs funded under this NOFA, is outlined in the table below:

Number of units in development	Number of units for inspecting and testing (collecting samples)
1–4	All.
5–20	4 units or 50% (whichever is greater).
21–75	10 units or 20% (whichever is greater).
76–125	17.
126–175	19.
176–225	20.
226–300	21.
301–400	22.
401–500	23.
501+	24, plus 1 dwelling for each additional increment of 50 units or less.

The method to be used in determining which units are to be included in the sample is as follows:

(a) Units cited as having building code violations within the past year;

(b) Units determined to be in poor condition;

(c) Units that contain two or more children between the ages of 6 months and 6 years;

(d) Units that serve as day-care facilities; and

(e) Units prepared for reoccupancy within the past 3 months. If necessary, add additional units to achieve the required minimum sample number specified in the above table.

Note: In addition to the minimum number of units to be sampled, add units housing children with elevated blood lead levels.

As explained in Section III, Application Content, of this NOFA, an application must state each development number and specify the number of units to be sampled, the amount requested for each development, and the total amount the HA is requesting.

(4) *Distribution of funds.* An administrative decision has been made not to assign funds to HUD Field Offices using the same method as in previous fiscal years. Funds will be assigned to Field Offices based on the number of applications submitted that met the eligibility criteria and the amount of funds requested. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on the date and time applications were received in the HUD Field Office. HUD Field Offices shall date- and time-stamp each application upon receipt.

In Fiscal Year 1995, up to $7,835,117 will be targeted to public housing agencies, and up to $217,418 will be targeted to Indian housing authorities in the Office of Native American Programs (ONAP). As many eligible applications as possible will be funded.

(5) *Remaining funds.* In the event that the funds awarded under this NOFA total less than the amount available, the remaining amount will be carried over to FY 1996, because the FY 1992 Appropriations Act specifically targets these funds for the assessment of risks associated with lead-based paint. If funds are carried over to FY 1996, a subsequent NOFA for these remaining set-aside funds will be published.

(6) *Section 3 (24 CFR part 135).* Section 3 of the Housing and Urban Development Act of 1968 and the regulations at 24 CFR part 135 (see June 30, 1994, Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

B. Eligibility and Requirements

(1) All HAs with pre-1980 family developments are eligible (i.e., both large HAs funded under the Comprehensive Grant Program (CGP) and small HAs funded under the Comprehensive Improvement Assistance Program (CIAP)). Specific developments targeted for funding within an application must meet the requirements set forth in Section II.B. of this NOFA.

(2) HAs, especially smaller ones, are encouraged to form a consortium for purposes of having risk assessments conducted. Such a consortium would enable a number of HAs to obtain coordinated services for those risk assessments.

(3) In accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937 Act) (added by the 1992 Appropriations Act, 105 Stat. 759), pre-1980 family developments within a HA's inventory may be the subject of a LBP risk assessment. As stated in section 14(a)(3), risk assessments are intended "to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families." Risk assessments are not mandatory; however, HAs are strongly encouraged to conduct them. In undertaking a risk assessment, a HA shall use a risk assessment protocol that, at a minimum, follows the Department's Lead-Based Paint Risk Assessment Protocol. Upon completion of the risk assessment, the HA must provide a copy of the results of the risk assessment to the appropriate Field Office. The risk assessment must be completed within eighteen (18) months of HUD's fund reservation notification to the HA.

While the scope of the risk assessment may exceed the contents of the Department's protocol, funding shall be requested based on this protocol. The goal of the protocol is to enable a HA to identify lead hazards, so that appropriate interim controls can be implemented until random testing and/or full abatement can be undertaken. Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The risk assessment protocol has been developed by the Department to ensure compliance with this provision and with certain requirements of the Lead-Based Paint Poisoning Prevention Act.

HAs are expected to implement the interim control recommendations resulting from the completed risk assessment, especially in cases where full abatement will not be undertaken within a reasonable time frame (one year). However, actual implementation of recommendations that result from the risk assessment conducted is not eligible for funding under this NOFA. The implementation of resulting recommendations (*e.g.*, comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves or State/local contributions).

In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to abate lead-based paint hazards; rather, they are interim measures to be used until testing and/or full abatement can be undertaken, as appropriate. Similarly, in no instance

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shall conducting a risk assessment satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test for and abate lead-based paint hazards.

(4) CIAP requirements, as set forth in 24 CFR part 968, subpart B, and the CIAP Handbook, 7485.1 REV–4, are applicable to HAs funded under this NOFA. These requirements encompass implementation schedules, progress reports, budget revisions, requests for extensions, closeouts, etc. Fund requisitions are to be processed through the LOCCS/VRS system.

(5) HAs must follow the requirements of 24 CFR part 85 for the procurement of risk assessments.

(6) In accepting funding to perform a risk assessment, HAs must agree to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol. This evaluation will entail a review of collected sampling data and the effectiveness of recommended interim control procedures.

C. Ineligible Costs and Activities

(1) A specific development targeted within an application is *not* eligible for funding, in accordance with the threshold requirements set forth in Section II.B. of this NOFA, where the development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

(2) Actual implementation of recommendations that result from the risk assessment conducted is *not eligible* for funding under this NOFA. The implementation of resulting recommendations (*e.g.*, comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources [i.e., CIAP, CGP, operating subsidy, or operating reserves). HAs are expected to implement these recommendations, especially those related to interim control measures when abatement of lead hazards will not take place within a reasonable time (one year). *In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test and/or abate lead-based paint hazards.*

(3) Funds under this NOFA may not be used to purchase insurance including existing conditions LBP liability insurance. While funds may be used to conduct risk assessments required to be in place prior to the issuance of an insurance policy, under no circumstance may those funds be used to pay for the premiums associated with this insurance.

D. Selection of Applications

(1) Applications will be selected for funding only after they have been deemed eligible in accordance with the threshold requirements set forth in Section II.B. of this NOFA. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on a first-come, first-served basis as indicated by the date- and time-stamp posted by the HUD Field Office when the HA's application is submitted.

(2) *Field Offices shall ensure that all applications (including copies) are date- and time-stamped immediately upon receipt.* Field Offices shall notify Headquarters of funding decisions on July 13, 1995. The Field Office will be responsible for identifying, notifying applicants of, and receiving corrections of any technical deficiencies in the application, as discussed in Section IV of this NOFA.

(3) The Field Office Public Housing Division Director shall make final funding decisions. Each Field Office will advise Headquarters, by the date specified in Section I.D (2) of this NOFA, of the number of eligible applications, the amounts requested for each eligible development listed in each eligible application, and the total amount requested by an eligible housing authority. Headquarters will assign funds to the Field Offices based on total amounts requested from applicant HAs within each Field Offices' jurisdiction.

E. Notification of Awards

The Field Office will notify the HA of its funding decision after HUD has completed the required congressional notification. Reservation and congressional notification documents will be prepared by the Field Office.

II. Application Process

A. General Requirements

Forms that comprise the application kit are available from HUD Field Offices. To be considered for funding, an original and 2 copies of the application must be submitted to the HUD Field Office that has jurisdiction over the applicant HA. An application may be submitted immediately upon publication of this NOFA, and must be submitted before 3:00 p.m., local time, on May 30, 1995, to the HUD Field Office that has jurisdiction over the applicant HA. The contents of the application are listed below, in Section III of this NOFA.

The above-stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

B. Threshold Requirements

To be considered eligible for funding, an HA must propose to conduct risk assessments for pre-1980 family developments that:

- Have not previously been the subject of a risk assessment; or
- Have not been tested and abated; or
- Have been tested and results were positive, but the developments have not been abated or an adequate interim control plan has not been developed

III. Checklist of Application Submission Requirements

The following documents comprise the application:

(a) OMB Standard Form 424, Application for Federal Assistance (HAs shall complete only items 2, 5, 12, 13, 14, 15, 17 and 18) and SF–424(B);

(b) Form HUD–52825, Comprehensive Assessment/Program Budget, Part I—Summary. The total amount requested for funding will be identified on this form under either account 1410.1, Administration (where HA staff will be used and the HA certifies that it has the capability of, and will be conducting the professional risk assessment; NOTE: a portion, not to exceed ten percent (10%) of the funding requested, may be used for administrative expenses incurred by the HA, including the use of a consultant to prepare background materials in support of the risk assessment), or account 1430.2, Consultant Fees (where the HA will be contracting for the professional risk assessment).

(c) Form HUD–52825, Comprehensive Assessment/Program Budget, Part II—Supporting Pages. Developments proposed to be the subject of a risk assessment are to be identified on this form. The applicant must provide the name; address; project number; total number of units; number of units to be sampled, in accordance with the requirements set forth in Section I.A(3) of this NOFA and in the risk assessment protocol; and amount requested for each development, with supporting justification, as appropriate.

(d) Certification signed by the HA Executive Director that, at a minimum, the risk assessment protocol to be used will be equivalent to the Department's protocol.

(e) Certification signed by the HA Executive Director that the proposed risk assessment will be completed within eighteen (18) months of the date that funds are awarded and that the HA agrees to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol, to assess its validity for the identification of lead-based paint hazards and effectiveness in addressing those hazards.

(f) Certification signed by the HA Executive Director that a copy of the completed risk assessment will be provided to the appropriate HUD Field Office upon completion of the assessment.

(g) Certification that HA staff are qualified to conduct LBP risk assessments in accordance with the protocol, if applicable.

(h) Certification that the HA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135

(i) Form HUD–50070, Certification for Drug-Free Workplace.

(j) Certification for Contracts, Grants, Loans and Cooperative Agreements, required of HAs established under State law that are applying for grants exceeding $100,000.

(k) SF–LLL, Disclosure of Lobbying Activities, required of HAs established under State law only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

Immediately after the submission of an application, the appropriate Field Office will screen the application to determine whether all items were submitted. If items 1, 2, and 3 listed in Section III, Application Content, of this NOFA are missing, the application will be considered substantially incomplete and, therefore, ineligible for processing.

If the HA fails to submit any of items 4–12 listed in Section III of this NOFA, or the application contains a technical mistake, such as an incorrect signatory, the Field Office will immediately notify the HA that it has 14 calendar days from the date of HUD's written notification to submit or correct the specified items. If any of items 4–12 are missing and the HA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

V. Other Matters

A. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA merely sets forth funding availability for HAs to conduct, at their discretion, risk assessments for lead paint hazards.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Families could benefit from this funding action as a result of the identification of immediate and potential lead-based paint hazards; that identification will ultimately lead to a safer environment. However, since the impact on the family is not necessarily significant and is beneficial, no further review is considered necessary

D. Section 102 of the HUD Reform Act, Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified as 24 CFR part 4 and applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two

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provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 has been implemented in 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 1437l and 3535(d)

Dated: March 17, 1995.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–7833 Filed 3–29–95; 8:45 am]

BILLING CODE 4210–33–P

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3–31–95
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federal register

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Friday, March 31, 1995

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[FV94–948–3FR]

Irish Potatoes Grown in Colorado; Reestablishment of Area No. 2 and Area No. 3 Regulatory Boundaries, and Redistribution of Area No. 2 Committee Representation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reestablishes regulatory area boundaries by moving Chaffee County from Area No. 3 to Area No. 2, and combines Chaffee County with Saguache County for the purpose of providing Chaffee County with producer representation on the Area No. 2, rather than the Area No. 3, Committee. This rule will provide for more effective administration of the marketing order and more effective compliance efforts. This rule was unanimously recommended by the Area No.2 and Area No. 3 Committees, the administrative agencies established for these regulatory areas under the marketing order for Colorado potatoes.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Mark A. Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado potatoes who are subject to regulation under the marketing order and approximately 400 producers of Colorado potatoes in the regulatory areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

The production area under Marketing Order No. 948 is divided into three regulatory areas. Area No. 1 (Area 1), also called the Western Slope, consists of 17 counties in the western portion of the State of Colorado. Marketing order regulations are not currently in effect in Area 1 because of limited potato production. Area No. 2 (Area 2), known as the San Luis Valley, consists of 9 counties and is located in the southern part of the State. Area No. 3 (Area 3), the Greeley area, consists of 37 counties covering most of the eastern part of the State. Producers in Areas 2 and 3 produce significant quantities of potatoes, and, thus, have active committees and regulations.

Section 948.150, reestablished area committees as administrative agencies for both of the active areas.

Section 948.53 provides authority for areas, subdivisions of areas, or distribution of representation among the subdivision of areas, to be reestablished by the Secretary upon area committee recommendations.

This final rule (1) reestablishes area boundaries by removing Chaffee County from Area 3 and adding it to Area 2, and (2) combines Chaffee County with Saguache County for the purpose of providing Chaffee County with producer representation on the Area 2 Committee.

The Area 2 and Area 3 Committees met on October 13, 1994, and October 18, 1994, respectively, and each unanimously recommended this reestablishment of boundaries between Area 2 and Area 3. The Colorado Potato Committee, which consists of representatives from both of the area Committees, ratified the recommendation on November 2, 1994. The Area 2 Committee also unanimously recommended that Chaffee County be combined with Saguache County for the purpose of providing Chaffee County with producer

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representation on the Area 2 Committee, rather than the Area 3 Committee.

The Committees made their recommendations to reestablish boundaries after reviewing a request from a producer/handler located near Salida, Colorado, a relatively new potato production area in Chaffee County. Salida is approximately 250 miles from the administrative headquarters of the Area 3 Committee in Greeley, Colorado, but only 65 miles from the administrative headquarters of the Area 2 Committee in Monte Vista, Colorado.

There are approximately 115 acres of potatoes grown in Chaffee County. Arable land in Chaffee County is generally limited to the area around Salida. Industry estimates place the potential for additional potato production at about 500 acres.

The Chaffee County production area is geographically separated from the rest of Area 3 potato production and is much closer to that of Area 2. Potatoes produced in Chaffee County are marketed similarly to those in Area 2. Potatoes grown in Chaffee County are, for example, often marketed through handlers from Area 2, but seldom marketed by Area 3 handlers located outside of Chafee County.

The rule increases the opportunity for the producers or handlers to serve on an area committee by greatly decreasing travel time and cost to attend area Committee meetings. This rule also enable any Chaffeee County producers to be in the same committee area with handlers who most often handle their production.

The rule also modifies the distribution of producer membership of the Area 2 Committee to accommodate the addition of Chaffee County to Area 2. Saguache County, immediately to the south of Chaffee County, currently has one producer representative on the Area 2 Committee. The rule combines Chaffee and Saguache Counties as one district for the purpose of nominating a producer member to the Area 2 Committee. The change will continue to provide balanced representation on the Area 2 Committee, consistent with acreage and production. Chaffee County handlers also will be represented as the Area 2 Committee has five handler member positions, two representing bulk handlers.

The close proximity of the Area 2 administrative office to Chaffee County will improve the efficiency of marketing order administration. Marketing order compliance in Chaffee County will be more efficiently administered by the Area 2 Administrative Committee office because of its proximity to Chaffee County.

Although this final rule removes Chaffee County from Area 3, regulatory language in the newly created section 948.153 only references the addition of Chaffee County to Area 2. Section 948.4 currently states that Area 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area 1 or Area 2. Therefore, the addition of Chaffee County to Area 2 automatically removes Chaffee County from Area 3, with no other corresponding change needed.

The proposed rule concerning this action was published in the January 30, 1995, **Federal Register** (60 FR 5597), with a 30-day comment period ending March 1, 1995. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) the Area 2 committee is planning to conduct its annual nomination meeting on March 31, 1995; and (2) producers and handlers are aware of this action, which was recommended at open committee meetings, and need no additional time to prepare for operation under this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 948.150, paragraph (a) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Seven producers and five handlers selected as follows:

Two (2) producers from Rio Grande County;

One (1) producer from Chaffee County and Saguache County;

One (1) producer from Conejos County;

Two (2) producers from Alamosa County;

One (1) producer from all other counties in Area No. 2;

Two (2) handlers representing bulk handlers in Area No. 2;

Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

3. A new § 948.153 is added to read as follows:

§ 948.153 Reestablishment of area.

Pursuant to § 948.53, Area No. 2 is reestablished as follows:

Area No. 2 (San Luis Valley) includes and consists of the counties of Chaffee, Saguache, Huerfano, Las Animas, Mineral, Archuleta, Rio Grande, Conejos, Costilla, and Alamosa, in the State of Colorado.

Dated: March 27, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–7961 Filed 3–30–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–1]

Amendment of Class D Airspace; Redding, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Redding, CA. This action is necessary due the recent closures of Enterprise Skypark, CA and Redding Sky Ranch Airport, CA. This amendment will delete the Redding Sky Ranch Airport and Enterprise Skypark from the Class D airspace area at Redding, CA.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On January 6, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class D airspace area at Redding, CA (60 FR 3777). The proposed action was necessary due to the closures of Enterprise Skypark, and Redding Sky Ranch Airport, CA. These locations will be deleted from the Class D airspace area at Redding, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace area at Redding, CA by deleting the Redding Sky Ranch Airport and Enterprise Skypark from the Class D airspace area at Redding, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class D Airspace

* * * * *

AWP CA D Redding, CA [Revised]

Redding Municipal Airport, CA
(lat. 40°30'32" N, Long. 122°17'36" W)

That airspace extending upward from the surface to and including 3000 feet MSL within a 4.3-mile radius of the Redding Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on March 15, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–7983 Filed 3–30–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM92–12–000]

Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978; Correction to Order No. 575

March 24, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On January 13, 1995 (60 FR 4831, January 25, 1995), the Federal Energy Regulatory Commission issued a final rule amending its regulations to streamline the processing the Commission's workload and to reduce regulatory burdens on the electric utility and qualifying facility industries. This document corrects an error in an amendment to the Commission's Rules of Practice and Procedure which was intended to remove the phrase "or revised initial" in Rule 713.

EFFECTIVE DATE: February 24, 1995.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary of the Commission (202) 208–0400.

SUPPLEMENTARY INFORMATION: Accordingly, the final rule published January 25, 1995, in the **Federal Register** at 60 FR 4831 (FR Doc. 95–1449), is corrected as follows:

§ 385.713 [Corrected]

On page 4860, in the third column, the amendatory instruction for § 385.713 should be corrected to read as follows:

32. In § 385.713, in paragraph (a)(2)(i), the phrase "or, if appropriate under Rules 717 and 711, to a revised initial decision" is removed; in paragraph (a)(2)(iv), the phrase "or revised initial" is removed; and in paragraph (a)(3), the phrase "or any revised initial decision under Rule 717" is removed.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7899 Filed 3–30–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations to set forth the current organizational structure of the agency as well as the current addresses for headquarters and field offices. This action is necessary to ensure the accuracy of the regulations.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Edna Morgan, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and to provide current addresses for headquarters and for field and district offices.

Notice and comment on these revisions is not necessary under the Administrative Procedure Act because this is a rule of agency organization (5 U.S.C. 553(b)).

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List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706; 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1–300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Immediate Office

Office of the Administrative Law Judge.
Office of Executive Operations.
Office of Equal Employment Opportunity and Civil Rights.
Office of Chief Counsel.
Office of Internal Affairs.

Office of External Affairs

Office of AIDS and Special Health Issues.
Office of Consumer Affairs.
Office of Health Affairs.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Women's Health.

Office of Management and Systems

Office of Planning and Evaluation.
Office of Management.
Office of Information Resources Management.

Office of Policy

Regulations Policy and Management Staff.
Policy Development and Coordination Staff.
Policy Research Staff.
International Policy Staff.

Office of Operations

Office of Biotechnology

Office of Orphan Products Development

National Center for Toxicological Research [2]

Office of the Center Director

Environmental Health and Program Assurance Staff.
Scientific Coordination Staff.
Equal Employment Opportunity Staff.
Technology Advancement Staff.

Office of Planning and Resource Management

Planning Staff.
Financial Management Staff.
Evaluation Staff.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Nutritional Toxicology.
Division of Biometry and Risk Assessment.
Division of Chemistry.
Division of Microbiology.
Division of Neurotoxicology.

Office of Research Support

Veterinary Services Staff.
Information Technology Staff.
Division of Administrative Services.
Division of Facilities Engineering and Maintenance.

Office of Regulatory Affairs

Office of the Associate Commissioner

Contaminants Policy Coordination Staff.
Equal Employment Opportunity Staff.
Strategic Initiatives Staff.

Office of Resource Management

Division of Planning, Evaluation, and Management.
Division of Information Systems.
Division of Human Resource Development.
Division of Management Operations.

Office of Enforcement

Division of Compliance Management and Operations.
Division of Compliance Policy.
Division of Medical Products Quality Assurance.

Office of Regional Operations

Division of Federal-State Relations.
Division of Field Science.
Division of Field Investigations.
Division of Emergency and Epidemiological Operations.
Division of Import Operations and Policy.

Office of Criminal Investigations [3]

Northeast Area Office.[4]
Mid-Atlantic Area Office.[3]
Southeast Area Office.[5]
Midwest Area Office.[6]
Southwest Area Office.[7]
Pacific Area Office.[8]

Center for Biologics Evaluation and Research [9]

Office of the Center Director

Equal Employment and Minority Recruitment Staff.
Congressional and Public Affairs Staff.
Scientific Advisors and Consultants Staff.

Office of Management

Division of Management and Budget.
Division of Scientific and Management Information Systems.
Division of Administrative Management.

Office of Compliance

Division of Case Management.
Division of Bioresearch Monitoring and Regulations.
Division of Inspection and Surveillance.

Office of Therapeutics Research and Review

Division of Cytokine Biology.
Division of Cellular and Gene Therapies.
Division of Hematologic Products.
Division of Monoclonal Antibodies.
Division of Clinical Trial Design and Analysis.
Division of Application Review and Policy.

Office of Vaccines Research and Review

Division of Allergenic Products and Parasitology.
Division of Bacterial Products.
Division of Viral Products.
Division of Vaccines and Related Products Applications.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: Jefferson, AR 72079–9502.

[3] Mailing address: 7500 Standish Pl., rm. 250N, Rockville, MD 20855.

[4] Mailing address: 10 Exchange Pl., 18th floor, Jersey City, NJ 07302.

[5] Mailing address: 8525 NW 53d Terrace, suite 204, Miami, FL 33166.

[6] Mailing address: 3 Arboretum 801 Warrenville Rd., suite 550, Lisle, IL 60532.

[7] Mailing address: 10901 West 84th Terrace, suite 201, Lenexa, KS 66214–3338.

[8] Mailing address: 4365 Executive Dr., suite 230, San Diego, CA 92122.

[9] Mailing address: 1401 Rockville Pike, suite 200S, Rockville, MD 20852–1448.

Office of Establishment Licensing and Product Surveillance

Division of Product Quality Control.
Division of Veterinary Services.
Division of Biostatistics and Epidemiology.
Division of Establishment Licensing.

Office of Blood Research and Review

Division of Blood Applications.
Division of Transfusion Transmitted Diseases.
Division of Hematology.

Center for Drug Evaluation and Research [1]

Office of the Center Director

Pilot Drug Evaluation Staff.
Advisors and Consultants Staff.
Professional Development Staff.
CDER Executive Secretariat Staff.
Equal Employment Opportunity Staff.

Office of Management

Division of Drug Information Resources.
Division of Information Systems Design.
Medical Library.
Division of Management and Budget.

Office of Compliance

Division of Drug Quality Evaluation.
Division of Drug Labeling Compliance.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Oncology and Pulmonary Drug Products.
Division of Neuropharmacological Drug Products.
Division of Medical Imaging, Surgical, and Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Anti-Infective Drug Products.
Division of Metabolism and Endocrine Drug Products.
Division of Anti-Viral Drug Products.
Division of Topical Drug Products.

Office of Drug Standards

Division of Drug Marketing, Advertising, and Communications.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Generic Drugs [10]

Division of Chemistry I.
Division of Chemistry II.
Division of Bioequivalence.
Division of Labeling and Program Support.

Office of Over-the-Counter Drug Evaluation

Monograph Review Staff.
OTC Drug Policy Staff.
Medical Review Staff.

Office of Research Resources

Division of Research and Testing.
Division of Biopharmaceutics.
Division of Drug Analysis.
Division of Clinical Pharmacology.

Center for Devices and Radiological Health [11]

Office of the Center Director

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Health Physics [11]

Office of Health and Industry Programs [12]

Office of Standards and Regulations [11]

Office of Information Systems [13]

Division of Computer Services.
Division of Information Resources.

Office of Compliance [11]

Division of Program Operations.
Division of Bioresearch Monitoring.
Division of Enforcement 1.
Division of Enforcement 2.
Division of Enforcement 3.

Office of Device Evaluation [12]

Division of Cardiovascular, Respiratory and Neurological Devices.
Division of Reproductive, Abdominal, Ear, Nose, and Throat, and Radiological Devices.
Division of General and Restorative Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology [1]

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Science.
Division of Management, Information, and Support Services.

Office of Health and Industry Programs

Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.

Office of Surveillance and Biometrics [12]

Division of Biostatistics.[14]
Division of Postmarket Surveillance.
Division of Surveillance Systems.

Center for Food Safety and Applied Nutrition [15]

Office of the Center Director

Office of Policy, Planning, and Strategic Initiatives.

Office of Programs

Office of Cosmetics and Colors

Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Food Labeling

Division of Programs and Enforcement Policy.
Division of Technical Evaluation.
Division of Science and Applied Technology.

Office of Pre-Market Approval

Division of Product Policy.
Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
Division of Product Manufacture and Use.

Office of Plant and Dairy Foods and Beverages

Division of Programs and Enforcement Policy.
Division of Microanalytical Evaluations.
Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.

Office of Seafood

Division of Special Programs.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Special Nutritionals

Division of Programs and Enforcement Policy.

[10] Mailing address: 7500 Standish Pl., rm. 150, Rockville, MD 20855.

[11] Mailing address: 2094 Gaither Rd., Rockville, MD 20850.

[12] Mailing address: 1350 Piccard Dr., Rockville, MD 20850.

[13] Mailing address: 2098 Gaither Rd., Rockville, MD 20850.

[14] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[15] Mailing address: 200 C St. SW., Washington, DC 20204.

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Division of Science and Applied Technology.

Office of Special Research Skills

Division of Toxicological Research.
Division of Microbiological Studies.

Office of Systems and Support

Quality Assurance Staff.

Office of Constituent Operations

Consumer Education Staff.
Legislative Activities Staff.
Industry Activities Staff.
International Activities Staff.

Office of Field Programs

Division of Enforcement.
Division of HACCP Programs.
Division of Cooperative Programs.
Division of Field Program Planning and Evaluation.

Office of Management Systems

Division of Management Services and Policy.
Division of Planning and Financial Management.
Division of Information Resources Management.
Division of Administrative Services.

Office of Scientific Analysis and Support

Division of Mathematics.
Division of General Scientific Support.
Division of Market Studies.

Center for Veterinary Medicine [10]

Office of the Center Director

Office of Management

Division of Program and Information Systems.
Division of Program Communications and Administrative Management.

Office of Surveillance and Compliance

Division of Compliance.
Division of Animal Feeds.
Division of Surveillance.
Division of Voluntary Compliance and Hearings Development.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology and Environmental Sciences.

Office of Science

Division of Residue Chemistry.

Division of Animal Research.

3. Section 5.115 is revised to read as follows:

§ 5.115 Field Structure.

NORTHEAST REGION

Regional Field Office: 830 Third Ave., Brooklyn, NY 11232.
Northeast Regional Laboratory: 850 Third Ave., Brooklyn , NY 11232.
New York District Office: 850 Third Ave., Brooklyn, NY 11232.
Boston District Office: One Montvale Ave., Stoneham, MA 02180.
Buffalo District Office: 599 Delaware Ave., Buffalo, NY 14202.

MID-ATLANTIC REGION

Regional Field Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.
Philadelphia District Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201.
Cincinnati District Office: 1141 Central Pkwy., Cincinnati, OH 45202–1097.
Newark District Office: Waterview Corporate Center, 10 Waterview Blvd., 3d floor, Parsippany, NJ 07054.

SOUTHEAST REGION

Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Southeast Regional Laboratory: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4296 Elysian Fields Ave., New Orleans, LA 70122.
Orlando District Office: 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809.
San Juan District Office: 466 Fernandez Juncos Ave., San Juan, PR 00901–3223.

MIDWEST REGION

Regional Field Office: 20 North Michigan Ave., rm. 510, Chicago, IL 60602.
Chicago District Office: 300 South Riverside Plaza, suite 550, South Chicago, IL 60606.
Detroit District Office: 1560 East Jefferson Ave., Detroit, MI 48207.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401.

SOUTHWEST REGION

Regional Field Office: 3032 Bryan St., Dallas, TX 75204.
Dallas District Office: 3032 Bryan St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 11630 West 80th St., Lenexa, KS 66214–3340.
St. Louis Branch: 808 North Collins Alley, St. Louis, MO 63102.

PACIFIC REGION

Regional Field Office: Federal Office Bldg., rm. 568, 50 U.N. Plaza, San Francisco, CA 94102.
San Francisco District Office: Federal Office Bldg., rm. 526, 50 U.N. Plaza, San Francisco, CA 94102.
Los Angeles District Office: 1521 West Pico Blvd., Los Angeles, CA 90015–2486.
Seattle District Office: 22201 23d Dr. SE., Bothell, WA 98021–4421.

Dated: March 27, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–7934 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–01–F

[10] Mailing address: 7500 Standish Pl., Rockville, MD 20855.

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Kabi Pharmacia, Inc., to Pharmacia, Inc.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Kabi Pharmacia, Inc., 800 Centennial Ave., Piscataway, NJ 08854, has informed FDA of a change of sponsor name and address from Kabi Pharmacia, Inc., to Pharmacia Inc., P.O. Box 16529, Columbus, OH 43216–6529. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Kabi Pharmacia, Inc.," and alphabetically adding a new entry for "Pharmacia, Inc.," and in the table in paragraph (c)(2) in the entry for "000016" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Pharmacia, Inc., P.O. Box 16529, Columbus, OH 43216–6529	000016

(2) * * *

Drug labeler code	Firm name and address
000016	Pharmacia, Inc., P.O. Box 16529, Columbus, OH 43216–6529

Dated: March 21, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–7865 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 92–15]

RIN 2125–AD53

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document corrects the amendatory language for appendices A and C and the entry for the State of Kentucky in appendix A of Part 658 in the issue of March 22, 1995, in FR Doc. 95–7074 on pages 15214–15216. The March 22 document contained corrections to the FHWA's final rule imposing a freeze on the operation of longer combination vehicles (LCVs) on the Interstate System and vehicles with two or more cargo-carrying units on the National Network (NN), which was published on June 13, 1994.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, (202)366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, (202)366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

The FHWA hereby corrects 23 CFR 658 as published on March 22, 1995, in FR Doc. 95–7074 on page 15214–15216 as follows:

1. On page 15214, in the amendatory language of item number 4, the second sentence should read "The entry for the State of Kentucky is revised and the entry for the State of Virginia is amended by revising the second entry for U.S. 360." ;

2. On pages 15214–15215, in appendix A to Part 658 the entry for the State of Kentucky in the first entry of U.S. 23, in the third column under "to" should read "US 119 near Jenkins"; the second entry of U.S. 23, in the third column under "to" should read "S. end U.S. Grant Bridge South Portsmouth"; the first entry of US 68, in the third column under "to" should read "I–24 Exit 16"; the second entry of US 68, in the third column under "to" should read "Green River Parkway Exit 5 Bowling Green"; the second entry of KY 15, in the first column under "Route" should read "KY 15 Spur"; and in the first column under "Route" the entry for Pennyrile should read "Pennyrile Parkway"; and

3. On page 15216, the amendatory language of item number 5.D. for appendix C to Part 658 should read "In the listing for the State of Oregon, adding at the end a new vehicle 'Truck-trailer—LCV', and revising the *first* reference to US 20 route for a 'Truck tractor and 3 trailing units—LCV';".

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31115; 49 CFR 1.48(b)(19) and (c)(19).

Issued on: March 28, 1995.

Theodore A. McConnell,

Chief Counsel.

[FR Doc. 95–8103 Filed 3–29–95; 3:20 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 204 and 267

[Docket No. R–95–1626; FR–3027–C–03]

RIN 2502–AF25

Appraisals and Property Valuation; Corrections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; Corrections.

SUMMARY: On October 3, 1994 (59 FR 50456), the Department published in the **Federal Register**, a final rule that established minimum standards for real estate appraisals made by staff, fee panel and contract appraisers in determining the maximum insurable mortgage amount in most HUD/FHA single family (one-to-four family) and multifamily transactions; and established criteria for the selection of appraisers by mortgagees. That rule erroneously revised a nonexistent § 204.3(b), which had previously been removed by the complete revision of 24 CFR part 204 on August 5, 1994 (59 FR 39956). To avoid further confusion, this document removes § 204.3(b).

The October 3 final rule also added a new part 267 to title 24 of the Code of Federal Regulations. This document clarifies and corrects cross-references contained in §§ 267.3(c)(1) and (c)(2).

EFFECTIVE DATE: December 2, 1994.

FOR FURTHER INFORMATION CONTACT: For single family programs: Morris Carter,

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Director of the Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone, voice: (202) 708–2720; (TDD) (202) 708–4594. (These are not toll-free numbers.)

For multifamily programs: Linda Cheatham, Director, Office of Insured Multifamily Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000,, telephone, voice: (202) 708–3000; (TDD) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On August 5, 1994 (59 FR 39956), the Department published in the **Federal Register** a final rule that revised, in its entirety, 24 CFR Part 204. With that revision, only one section (§ 204.1) remained in Part 204.

On October 3, 1994 (59 FR 50456), the Department published a final rule establishing minimum standards for real estate appraisals made by staff, fee panel and contract appraisers in determining the maximum insurable mortgage amount in most HUD/FHA single family (one-to-four family) and multifamily transactions; and establishing criteria for the selection of appraisers by mortgagees. The October 3 rule erroneously revised a nonexistent 24 CFR 204.3(b). It also added a new part 267 to title 24 of the Code of Federal Regulations.

In addition, on December 2, 1994 (59 FR 61800), the Department published a correction document to the October 3 final rule. In the December 2 document, § 267.3 was corrected by removing the paragraph designations for paragraphs (c)(3)(i), (ii), and (iii) of that section, and by running the text together to form a single paragraph (c)(3). The document failed, however, to remove two cross-references to paragraph (c)(3)(iii), which were contained in §§ 267.3(c)(1) and (c)(2).

The purpose of this document is to correct errors made in the October 3, 1994 final rule by removing the revision to § 204.3(b), and by amending § 267.3 to remove cross-references contained in §§ 267.3(c)(1) and (c)(2).

Accordingly, FR Doc. 94–24327, a final rule published in the **Federal Register** on October 3, 1994 (59 FR 50456), is corrected as follows:

§ 204.3 [Amended]

1. On page 50464, in column one, amendatory instruction 6. and § 204.3(b) are removed.

§ 267.3 [Amended]

2. On page 50465, in column one, in § 267.3, paragraph (c)(1) is corrected by removing the phrase "paragraph (c)(3)(iii) of this section.", and by adding in its place "paragraph (c)(3) of this section."

3. On page 50465, in column one, in § 267.3, paragraph (c)(2) is corrected by removing the phrase "paragraph (c)(3)(iii) of this section.", and by adding in its place "paragraph (c)(3) of this section."

Dated: March 28, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–8053 Filed 3–30–95; 8:45 am]

BILLING CODE 4210–27–P

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 246 and 266

[Docket No. R–95–1685; FR–3383–F–04]

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans: Conforming Amendment

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; Conforming Amendment.

SUMMARY: On December 5, 1994, HUD published a final rule that finalized the standards and procedures of the Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans, first implemented by a December 3, 1993 interim rule.

The purpose of this final rule is to make a conforming amendment to the December 5, 1994 final rule that will reflect the assumption of environmental review responsibilities by States and units of general local government as provided in an interim rule published by HUD on March 13, 1995.

DATES: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Acting Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, Room 6116, (202) 708–2556. Hearing- and speech-impaired persons may call (202) 708–4594. (The above listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On December 5, 1994 (59 FR 52514), HUD published a final rule that finalized the standards and procedures of the Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans, a program that was implemented by a December 3, 1993 interim rule (58 FR 64032). The preamble to the December 5, 1994 final rule stated that 24 CFR part 266 would be amended upon publication of the changes made to 24 CFR part 58 (See 59 FR 62517, column one).

On March 13, 1995 (60 FR 13518) HUD published an interim rule amending 24 CFR part 58, entitled "Environmental Review Procedures for Recipients Assuming HUD Responsibilities." Section 58.1(c)(8) of the March 13, 1995 interim rule adds the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program under section 542(c) of the Housing and Community Development Act of 1992 as one of the programs and activities for which States and units of general local government are authorized to assume responsibility of environmental review (in lieu of HUD).

Accordingly, § 266.210(b) of the December 5, 1994 final rule, which identifies environmental reviews as a HUD-retained review function, is amended by this final rule to be consistent with § 58.1(c)(8) of the March 13, 1995 interim rule.

II. Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied with prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to the public interest. In the December 5, 1994 final rule, the public was advised that this amendment would be made to the HFA Risk Sharing rule as soon as the changes to part 58 were made. This rule is also technical in nature, since it makes a conforming amendment to part 266 to make it consistent with the recently issued changes to part 58. Additionally, it is contrary to public interest to first seek public comment before issuing this rule for effect because it is in the interest of the HFA Risk Sharing Program, and the participants and beneficiaries thereof, to be able to utilize as soon as possible the amended environmental review procedures of part 58.

III. Other Matters

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the HFA Risk Sharing final rule. That Finding of No Significant Impact remains applicable to this technical confirming rule, and is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to technical amendments necessary to carry out accurately the provisions of programs whose regulations were not amended in the original Consolidated Plan rule.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order since it is only a technical, confirming rule.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it imposes no new burdens on jurisdictions.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, 24 CFR part 266 is amended as follows:

PART 266—HOUSING FINANCE AGENCY RISK–SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

1. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

2. In § 266.201, paragraph (b) is revised to read as follows:

§ 266.210 HUD-retained review functions.

* * * * *

(b) *Environmental review requirements.* To determine compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities, the HUD Field Office (or other responsible entity through such delegation as may be in effect by regulation hereafter) will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 (or as set forth in 24 CFR part 58 for the other responsible entity). These requirements must be completed before HUD may issue the firm approval letter.

* * * * *

Dated: March 28, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–8054 Filed 3–30–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8584]

RIN 1545–AK03

Capitalization of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations [TD 8584] which were published in the **Federal Register** for Thursday, December 29, 1994 (59 FR 67187). The final regulations relate to the requirement to capitalize interest with respect to the production of property.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jan L. Skelton, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 263A(f) of the Internal Revenue Code.

Need for Correction

As published, the final regulations contains errors that are misleading and in need of correction.

Correction of Publication

Accordingly, the publication of final regulations which is the subject of FR Doc. 94–31431, is corrected as follows:

1. On page 67190, column 1, in the preamble following the paragraph heading "In General", second full paragraph, eighth line from the bottom of the paragraph, the word "that" is corrected to read "than".

2. On page 67190, column 1, in the preamble following the paragraph heading "In General", second full paragraph, sixth line from the bottom of the paragraph, the word "for" is corrected to read "under".

3. On page 67190, column 2, in the preamble following the paragraph heading "Accounts Payable and Simplification Rule for Tracing", third full paragraph, line 8, the language "expenditures for all property. IRS and" is corrected to read "expenditures for all property. The IRS and".

4. On page 67191, column 1, in the preamble following the paragraph heading "Notional Principal Contracts", line 1, the word "principle" is corrected to read "principal".

5. On page 67192, in the preamble following the paragraph heading "Land Attributable to Benefitted Property", line 11 from the top of column 1, the word "on" is corrected to read "of".

6. On page 67192, column 3, in the preamble following the paragraph heading "Utilities—Construction Work in Process", paragraph 2, line 7, the language "FAS" is corrected to read "SFAS".

7. On page 67195, column 1, in the preamble following the paragraph heading "In General", paragraph 2, line 1, the date "August 17, 1998" is corrected to read "August 17, 1988".

8. On page 67195, column 2, in the preamble following the paragraph heading "Consolidated Return Interest Rule", first full paragraph, line 5 from the bottom of the paragraph, the language "interest intragroup debt, but at the same" is corrected to read

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"interest on intragroup debt, but at the same".

9. On page 67195, in the preamble following the paragraph heading "Comments on Related Person Rules", line 4 from the top of column 3, the language "Rev. Proc." is corrected to read "Notice".

§ 1.263A–0 [Corrected]

10. On page 67197, column 1, § 1.263A–0, the contents entry for § 1.263A–9(g)(6) is corrected to read as follows:

§ 1.263A–0 Outline of regulations under section 263A.

* * * * *

§ 1.263A–9 The avoided cost method.

* * * * *

(g) * * *

(6) Notional principal contracts and other derivatives. [Reserved]

* * * * *

§ 1.263A–8 [Corrected]

11. On page 67198, column 2, § 1.263A–8, paragraph (b)(2)(iii), line 3, the language "the thresholds under paragraphs" is corrected to read "the classification thresholds under paragraphs".

12. On page 67198, column 3, § 1.263A–8, paragraph (c)(1), last line of the paragraph, the language "windowpanes.)" is corrected to read "windowpanes).".

13. On page 67199, column 3, § 1.263A–8, paragraph (d)(2)(v)(B), line 3, the language "meaning of section 460(e)(6)(A) with" is corrected to read "meaning of section 460(e)(6)(A)) with".

14. On page 67199, column 3, § 1.263A–8, paragraph (d)(2)(v)(B), line 5, section "460(d)(1)(B)(i)" is corrected to read "460(e)(1)(B)(i)".

§ 1.263A–9 [Corrected]

15. On page 67200, column 3, § 1.263A–9, paragraph (b)(2), line 7 from the bottom of the paragraph, the language "the rules of § 1.163–8T Traced debt also" is corrected to read "the rules of § 1.63–8T. Traced debt also".

16. On page 67200, column 3, § 1.263A–9, in the paragraph heading of paragraph (c)(1), line 2, the word "*Rule*" is corrected to read "*rule*".

17. On page 67200, column 3, § 1.263A–9, paragraph (c)(1) introductory text, last line in the column, the word "production" is corrected to read "product".

18. On page 67201, column 1, § 1.263A–9, paragraph (c)(3), paragraph (i) of *Example.*, line 12, the language "$1,000,000 (loan #). The loan is nontraced" is corrected to read "$1,000,000 (loan #1). The loan is nontraced".

19. On page 67201, column 2, § 1.263A–9, paragraph (c)(5)(i)(B), in the *Example.*, line 6, the figure "$2,500,00" is corrected to read "$2,500,000".

20. On page 67202, column 1, § 1.263A–9, in paragraph (c)(5)(iii)(D), line 2, the language "*nontraced debt or rate is contingent*—If" is corrected to read "*nontraced debt or rate is contingent.* If".

21. On page 67202, column 2, § 1.263A–9, paragraph (c)(6), paragraph (ii) of *Example 2.*, line 9, the language "([$1,400,000 − $1,000,000)+" is corrected to read "([($1,400,000 − $1,000,000)+"

22. On page 67202, column 2, § 1.263A–9, in the paragraph heading of paragraph (c)(7), line 3, the period is removed.

23. On page 67202, column 3, § 1.263A–9, paragraph (c)(7)(ii)(A), line 3, the word "expenditures" is corrected to read "expenditure".

24–25. On page 67203, column 1, § 1.263A–9, paragraph (e)(1), line 11, the word "trade" is corrected to read "trace".

26. On page 67203, column 1, § 1.263A–9, paragraph (e)(2), line 7, the language "$10,000,000 gross receipts test for all" is corrected to read "$10,000,000 gross receipts test) and the taxpayer has met the $10,000,000 gross receipts for all".

27. On page 67203, column 1, § 1.263A–9, in the paragraph heading of paragraph (f), line 3, the period is removed.

28. On page 67204, § 1.263A–9, paragraph (f)(3), paragraph (i) of *Example 3.*, line 2 of the table is corrected to read as follows:

No.	Principal	Annual rate (percent)	Period outstanding	Use of proceeds
. . . . .	.	.	.	.
2	2,000,000	11	6/01–12/31	Nontraced.

29. On page 67204, column 1, § 1.263A–9, paragraph (f)(3), paragraph (v) of *Example 3.*, last line, the language "$500,000+$1,000,000+$1,600,000+4)." is corrected to read "$500,000+$1,000,000+ $1,600,000)+4).".

30. On page 67205, column 2, § 1.263A–9, the paragraph designated (g)(2)(iv)(c) is correctly designated paragraph (g)(2)(iv)(C).

31. On page 67205, column 2, § 1.263A–9, paragraph (g)(2)(v), line 4, the word "provisions" is corrected to read "provision".

32. On page 67205, column 3, § 1.263A–9, paragraph (g)(2)(v), paragraph (i) of *Example 1.*, line 2 from the bottom of the paragraph, the language "[$135,000×$108,000]), $75,000 is deferred" is corrected to read "[$135,000+$108,000]), $75,000 is deferred".

33. On page 67205, column 3, § 1.263A–9, paragraph (g)(2)(v), paragraph (ii) of *Example 1.*, line 6, the language "is 11.6 percent ([$135,000×$108,000]+" is corrected to read "is 11.6 percent ([$135,000+$108,000]+".

34. On page 67206, column 3, § 1.263A–9, paragraph (g)(3)(iii)(E), in the *Example.*, line 7 from the bottom of the column, the letter "S" is corrected to read "X".

35. On page 67206, column 3, § 1.263A–9, paragraph (g)(3)(iii)(E), in the *Example.*, line 3 from the bottom of the column, the language "segment is 3-year inventory. Under paragraph" is corrected to read "segment is 3-year old inventory. Under paragraph".

36. On page 67207, column 2, § 1.263A–9, paragraph (g)(5)(iii), paragraph (i) of *Example.*, the last line of the paragraph, the language "([$600,000+$6,000,000]×5,000,000)." is corrected to read "($600,000+$6,000,000×$5,000,000).".

§ 1.263A–10 [Corrected]

37. On page 67207, column 3, the section heading designated "§ 1.263–10" is correctly designated "§ 1.263A–10".

38. On page 67209, column 1, § 1.263A–10, paragraph (b)(5)(iv), the first line of column 1, the word "period" is corrected to read "periods".

39. On page 67209, column 2, § 1.263A–10, paragraph (b)(6), paragraph (ii) of *Example 3.*, line 7, the word "lost" is corrected to read "lot".

40. On page 67209, column 2, § 1.263A–10, paragraph (b)(6), paragraph (ii) of *Example 3.*, line 8, the word "paragraph" is corrected to read "paragraphs".

41. On page 67209, column 2, § 1.263A–10, paragraph (b)(6), paragraph (ii) of *Example 3.*, line 6 from the bottom of the paragraph, the language "paragraph (b)(5) of this section. Under" is corrected to read "paragraph (b)(5) of this section). Under".

42. On page 67210, column 1, § 1.263A–10, paragraph (b)(6), in *Example 6.*, line 7, the language "the costs of the allocable share of swimming" is corrected to read "the costs of the allocable share of the swimming".

§ 1.263A–11 [Corrected]

43. On page 67211, column 1, § 1.263A–11, paragraph (c)(2), line 3, the regulation section "§ 1,263A–8(d)(2)(ii)" is corrected to read "1.263A–8(d)(2)(ii)".

44. On page 67211, column 1, § 1.263A–11, paragraph (d)(1), line 23, the language "or units of production, If an asset used" is corrected to read "or units of production. If an asset used".

45. On page 67211, column 2, § 1.263A–11, paragraph (e)(1)(ii) introductory text, line 2, the language "a unit of real property" is corrected to read "a unit of real property—".

46. On page 67211, column 3, § 1.263A–11, paragraph (e)(1)(iii), line 4, the word "the" is corrected to read "that".

47. On page 67211, column 3, § 1.263A–11, paragraph (e)(2), line 5, the language "property costs are excluded from the" is corrected to read "property costs) are excluded from the".

§ 1.263A–12 [Corrected]

48. On page 67212, column 3, § 1.263A–12, paragraph (d)(4), line 3, the word "example" is corrected to read "examples".

49. On page 67212, column 3, § 1.263A–12, paragraph (e)(2) introductory text, line 1, the word "THe" is corrected to read "The".

§ 1.263A–13 [Corrected]

50. On page 67213, column 3, § 1.263A–13, paragraph (a), line 2 from the bottom of the paragraph, the language "and costs of features based on the" is corrected to read "and costs of common features based on the".

51. On page 67214, column 3, § 1.263A–13, paragraph (c)(7), paragraph (ii) of *Example.*, line 2, the language "the meaning of paragraph (c)(2)(i)) of this" is corrected to read "the meaning of paragraph (c)(2)(i) of this".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Corporate).

[FR Doc. 95–7857 Filed 3–30–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 1

[TD 7837]

Income Tax; Taxable Years Beginning After December 31, 1953; Treatment of Losses on Small Business Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to final regulations [TD 7837] which were published in the **Federal Register** for Wednesday, September 29, 1982 (47 FR 42728). The final regulations restate and clarify a formula relating to the computation of the amount received for designated stock by a small business corporation.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these correcting amendments are under section 1244 of the Internal Revenue Code of 1954.

Need for Correction

As published, the final regulations contains an error that is misleading and in need of correction.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.1244(c)–2(b)(2)(i) is amended by revising the last sentence as follows:

§ 1.1244(c)–2 Small business corporation defined.

* * * * *

(b) * * *

(2) * * *

(i) * * * The amount received for designated stock shall not exceed $1,000,000 less amounts received—

(A) In exchange for stock in years prior to the transitional year;

(B) As contributions to capital in years prior to the transitional year; and

(C) As paid-in surplus in years prior to the transitional year.

* * * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7969 Filed 3–30–95; 8:45 am]

BILLING CODE 4835–01–P

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26 CFR Part 18

[TD 7976]

Certain Elections Under the Deficit Reduction Act of 1984; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the temporary regulations (TD 7976), which were published in the **Federal Register** on Monday, September 10, 1984 (49 FR 35486), relating to the time and manner of making certain elections under the Deficit Reduction Act of 1984.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby, (202) 622–7180 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under various sections of the Internal Revenue Code of 1954 and the Deficit Reduction Act of 1984 (98 Stat. 494).

Need for Correction

As published, TD 7976 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 18

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 18 is corrected by making the following correcting amendment:

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Paragraph 1. The authority citation for part 18 continues to read in part as follows:

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Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 18.0 is revised to read as follows:

§ 18.0 Effective date of temporary regulations under the Subchapter S Revision Act of 1982.

The temporary regulations provided under §§ 18.1361–1, 18.1377–1, 18.1379–1, and 18.1379–2 are effective with respect to taxable years beginning after 1982, and the temporary regulations provided under § 18.1378–1 are effective with respect to elections made after October 19, 1982.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7970 Filed 3–30–95; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF–362; Re: Notice No. 802]

RIN 1512–AA07

Cucamonga Valley Viticultural Area (94F–011P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Bernardino and Riverside Counties, California, to be known as "Cucamonga Valley." The petition was filed by Gino L. Filippi of J. Filippi Vintage Co. on behalf of himself and other growers and wineries in the area.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF received a petition from Gino L. Filippi of J. Filippi Vintage Co. proposing to establish a viticultural area in San Bernardino and Riverside Counties, California, to be known as "Cucamonga Valley." The viticultural area is located in southern California, about 45 miles east of the city of Los Angeles. It contains approximately 109,400 acres. The petitioner states that wine grapes, probably the mission variety, were first planted in the Cucamonga Valley in 1839 or 1840, "undoubtedly one of the first large plantings of grapes in California." According to the petitioner the wine industry in the Cucamonga Valley grew during the late nineteenth and early twentieth centuries, reaching "its peak in the 1940's and 1950's with over 60 wineries producing from approximately 35,000 acres." Today, there are five bonded wineries within the proposed area, and approximately 2,000 acres are planted to wine grapes. The petitioner notes "the area's great history and heritage of wine growing and winemaking is truly more impressive than the number of acres currently farmed."

The petition was also signed by Philo Biane of Rancho de Philo Winery, René Biane of Guasti Plaza, Don Galleano of Galleano Winery, Paul Hofer III of Hofer Ranch, LeAnn Smothers of the City of Rancho Cucamonga, and Jeff Wilson, of Inland Empire West Resource Conservation District.

Notice of Proposed Rulemaking

In response to Mr. Filippi's petition, ATF published a notice of proposed rulemaking, Notice No. 802, in the **Federal Register** on December 2, 1994 (59 FR 61853), proposing the establishment of the Cucamonga Valley viticultural area. The notice requested comments from all interested persons by January 31, 1995.

Comments on Notice of Proposed Rulemaking

ATF received 15 letters of comment and copies of several newspaper articles and a newspaper editorial concerning the proposal to establish the Cucamonga Valley viticultural area. All commenters expressed their support for establishing the Cucamonga Valley viticultural area as proposed in Notice No. 802. Commenters included growers and other local business owners, consumers, and government officials.

The Honorable James L. Brulte, State Assembly Republican Leader, wrote to support recognition of Cucamonga Valley as a viticultural area. The Honorable Fred Aguiar, State Assemblyman for the Sixty-first assembly district, endorsed the establishment of Cucamonga Valley viticultural area and wrote further:

> Our region has a long and distinguished history in the winegrowing industry and it is highly appropriate that this area be recognized for such a distinction.

The San Bernardino County Board of Supervisors adopted a resolution which read, in part, as follows:

> * * * RESOLVED that the Board of Supervisors of the County of San Bernardino, State of California, hereby recognizes the efforts of the local wineries and supports the designation of "CUCAMONGA VALLEY" in advertising and on the labels of wines produced in this vicinity.

The Honorable William J. Alexander, Mayor of Rancho Cucamonga, wrote:

> I would like to express our support in establishing the Cucamonga Valley as a viticulture area. The City of Rancho Cucamonga takes great pride in the fact that the grape vineyards and the wineries of our area contributed so much to the early history of the region. For this reason, a grape cluster has a prominent focus in both the City's seal and logo.

Allyn B. Scheu of Scheu Manufacturing Company wrote that the designation "will help consumers to identify the origins of the wines they buy and will recognize the Cucamonga area's rich heritage of wine production." Charles L. Keagle, a restauranteur, also supported the designation and wrote that "the history of the area, America's first, goes back over 100 years."

Columnist Garry Greenberg of the Victorville, California *Daily Press*, sent in a copy of his September 15, 1994 column which reported on the filing of the petition, and described the Cucamonga Valley area as "the home of the largest winemaking industry in the world a century ago." Mr. Greenberg also sent in the text of a column which he planned to publish in January 1995, encouraging readers to write in support of the proposed area.

The petitioner mailed in a clipping of an editorial from the Inland Valley *Daily Bulletin* of December 30, 1994, which concluded:

> There are 122 viticultural regions in the United States, and 69 of them are in California. The next one should be in California also, in the "Cucamonga Valley."

Evidence of Name

Evidence that the name Cucamonga Valley is locally and/or nationally known as referring to the viticultural area includes:

(a) Leon D. Adams, in *The Wines of America*, describes the Cucamonga Valley as follows:

> The Cucamonga Valley, forty-five miles east of Los Angeles, has grown the bulk of Southern California wine during the present century. The vineyard area extends from Ontario east to Fontana and from the base of the San Gabriel Mountains southward to the Jurupa Hills in Riverside County. The climate, though tempered by winds from the ocean, is as warm as the northern San Joaquin Valley and is classed as Region IV.

(b) An article published in *The Sun*, a San Bernardino, California, newspaper, on March 30, 1994, titled "Fontana winery soaks up more awards," described awards won by two wines from J. Filippi Vintage Co. at a recent competition and stated that the "Ruby Port is produced from Cucamonga Valley grapes, renown for sherry and port wines."

(c) A letter dated August 20, 1991, from the San Bernardino County Archives to the Riverside County Historical Commission discussed designation of the Galleano Winery as a landmark. The letter makes several references to the Cucamonga Valley, mentioning locations within the proposed area such as Rancho Cucamonga, Fontana, Ontario and Mira Loma.

Evidence of Boundaries

As evidence that the boundaries for the area are as specified in the petition, the previously cited excerpt from *The Wines of America*, by Leon D. Adams, states that the vineyard area of the Cucamonga Valley "extends from Ontario east to Fontana and from the base of the San Gabriel Mountains southward to the Jurupa Hills in Riverside County." The San Gabriel Mountains form the northern boundary of the proposed area, and the Jurupa Hills form the eastern part of the southern boundary. The towns of Fontana and Ontario are both within the area.

The petitioner used the 560′ elevation line as the western portion of the southern boundary. He states the area south of that elevation has poor drainage and is mainly used for dairy farming.

In support of Euclid Avenue as the western boundary for the viticultural area, the petitioner gave historical information. He stated that the area west of Euclid Avenue "was subjected to flooding from the San Antonio Canyon. In the 1940's several flood control construction projects began to solve the problem. Historically, agriculture in this area (Upland, CA) was citrus (lemons and oranges)." He stated that citrus trees were grown there because there was a good water source and better drainage than within the viticultural area to the east of Euclid Avenue.

The eastern boundary, made up of Lytle Creek Wash, Warm River, and the Santa Ana River, marks a shift in the type of soil and the ability of the soils to drain. These characteristics will be discussed in detail in the background material on soils.

Geographical Features

The petitioner describes the viticultural area as follows:

> Cucamonga Valley is an east-west oriented valley. The San Gabriel mountains form the valley's northern boundary. The San Antonio Creek, Cucamonga Creek, Deer Creek, Day Creek, San Sevaine Creeks, from west to east respectively, spread out to form alluvial fans as they descend the foothills and emerge in the Cucamonga Plain. These fans contain sand and silt deposits that create a rich mixture of fertile soil.

The viticultural area includes the area described above and the valley drained by the Cucamonga Creek to the south of this alluvial fan. These areas share characteristics of topography, soil composition and climate which distinguish the viticultural area from the surrounding areas. The petitioner provided the following evidence of the area's distinctiveness:

Topography

The U.S.G.S. topographic maps submitted by the petitioner show the viticultural area slopes gradually from 2,000 feet at the northern boundary to 560 feet at the southern boundary. The petitioner describes the San Gabriel mountains to the north of the proposed area as "a great wall, from 8,000 to 10,000 feet high." The Jurupa Mountains to the southeast of the area offer another contrast as they rise steeply from the valley floor to form part of the southern boundary. The balance of the southern boundary, the 560 foot contour line, was chosen because the area at lower elevations was poorly drained and was traditionally used for dairy farming; furthermore, the nearby Prado Dam is scheduled to be raised, so the area to the south of the 560 foot contour line will be flooded.

Soil

According to the petitioner, the soil in the viticultural area is "alluvial valley floors, fans and terraces * * * derived from granitic rock from the San Gabriel formation in the north." He further states that the wine grape vineyards in the region are "found to be located on Delhi, Hanford, Tujunga, Gorgonio and Hilmar soil series" and "most vineyards are nearly level to moderately sloping (0–15°)."

The General Soil Map for southwestern San Bernardino County describes these associations as very deep, "dominantly brownish soils that are coarse textured throughout" and "somewhat excessively drained to excessively drained." On this map, the eastern boundary in particular is distinguished by a change in the soil composition to the Hanford-Greenfield-San Emigdio association, finer textured and less well drained than the soils within the proposed area. The mountainous areas to the north and southeast of the viticultural area have shallower soils over granite, schist and sandstone.

Climate

The petitioner states that the climate in the area is "well-suited for viticulture * * *. There are relatively few nights below freezing in the winter and

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summer days can be very hot, reaching temperatures over 100 degrees Fahrenheit." The climate is classed as Region IV, with a heat summation in the 3,501 to 4,000 degree F. range. The petitioner states this corresponds to the Ukiah, Davis and Lodi areas of California, and is warmer than the Santa Barbara, Santa Rosa and Santa Maria areas to the north and the Temecula and Rancho California areas to the south.

Boundary

The boundary of the Cucamonga Valley viticultural area may be found on ten United States Geological Survey (U.S.G.S.) maps with a scale of 1:24000. The boundary is described in § 9.150.

Miscellaneous

ATF does not wish to give the impression by approving the Cucamonga Valley viticultural area that it is approving or endorsing the quality of wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from Cucamonga Valley.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because:

(1) It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.150 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.150 Cucamonga Valley.

(a) *Name.* The name of the viticultural area described in this section is "Cucamonga Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Cucamonga Valley viticultural area are the following ten U.S.G.S. topographical maps (7.5 minute series 1:24000 scale):

(1) "Mt. Baldy, Calif.," 1967, photorevised 1988.

(2) "Cucamonga Peak, Calif.," 1966, photorevised 1988.

(3) "Devore, Calif.," 1966, photorevised 1988.

(4) "San Bernardino North, Calif.," 1967, photorevised 1988.

(5) "Ontario, Calif.," 1967, photorevised 1981.

(6) "Guasti, Calif.," 1966, photorevised 1981.

(7) "Fontana, Calif.," 1967, photorevised 1980.

(8) "San Bernardino South, Calif.," 1967, photorevised 1980.

(9) "Prado Dam, Calif.," 1967, photorevised 1981.

(10) "Corona North, Calif.," 1967, photorevised 1981.

(c) *Boundary.* The Cucamonga Valley viticultural area is located in San Bernardino and Riverside Counties, California. The boundary is as follows:

(1) The beginning point is the intersection of Euclid Avenue and 24th Street on the Mt. Baldy, Calif. U.S.G.S. map;

(2) From the beginning point, the boundary follows 24th Street east for approximately 0.3 mile, until it reaches the intersection of 24th Street with two unnamed light-duty streets to the north;

(3) The boundary then diverges from 24th Street and goes straight north for approximately 0.3 mile, until it reaches the 2,000 foot contour line;

(4) The boundary then follows the 2,000 foot contour line in a generally easterly direction across the Cucamonga Peak, Calif., U.S.G.S. map and onto the Devore, Calif., U.S.G.S. map until it reaches Lytle Creek Wash;

(5) The boundary follows the intermittent stream in Lytle Creek Wash in a southeasterly direction to the end of the intermittent stream on the Devore, Calif., U.S.G.S. map;

(6) The boundary then continues through Lytle Creek Wash, proceeding southeast in a straight line from the end of the intermittent stream, across the southwest corner of the San Bernardino North, Calif., U.S.G.S. map and onto the San Bernardino, South, Calif., U.S.G.S. map, to the northernmost point of the flood control basin at the end of the Lytle Creek Wash, a distance of approximately 4.3 miles;

(7) The boundary then proceeds in a straight line south-southeast across the flood control basin to the point where Lytle Creek Channel exits the basin;

(8) The boundary continues along Lytle Creek Channel until it empties into Warm Creek;

(9) The boundary then follows Warm Creek until it meets the Santa Ana River;

(10) The boundary then follows the western edge of the Santa Ana River in a generally southwesterly direction until it meets the San Bernardino—Riverside County line;

(11) The boundary follows the county line west, crossing onto the Guasti, Calif., U.S.G.S. map, until it reaches the unnamed channel between Etiwanda and Mulberry Avenues (identified by the petitioner as Etiwanda Creek Channel);

(12) The boundary then follows Etiwanda Creek Channel in a southerly direction until it parallels Bain Street;

(13) The boundary then diverges from Etiwanda Creek Channel and follows Bain Street south until it ends at Limonite Avenue in the northeast corner of the Corona North, Calif., U.S.G.S. map;

(14) The boundary then continues south in a straight line until it reaches the northern shore of the Santa Ana River;

(15) The boundary then follows the north shore of the Santa Ana River until it intersects the 560 foot contour line in Section 1 T3S/R7W;

(16) The boundary then follows the 560′ contour line to the north of the Santa Ana River in a generally westerly direction until it reaches Euclid Avenue on the Prado Dam, Calif., U.S.G.S. map;

(17) The boundary then follows Euclid Avenue north to the point of beginning.

Signed: March 1, 1995.

Daniel R. Black,

Acting Director.

Approved: March 9, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–7893 Filed 3–30–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC31

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The National Park Service (NPS) is promulgating an interim rule to require mountain climbers to register a minimum of 60-days before any climb on Mount McKinley and Mount Foraker in Denali National Park. Mountaineering in the park has increased dramatically over the last ten years. The number of climbers on Mount McKinley has risen from 695 in 1984 to 1,277 in 1994. Climbing-related injuries and deaths have correspondingly increased. By requiring advance registration, the Denali park staff will be able to provide information to prospective mountaineers in advance of their climb. This may include information on the specific dangers they may face, how to prepare and equip, other safety related issues, and requirements concerning resource protection issues such as litter removal and human waste disposal. Currently, climbers are required to register, but may do so as late as the day they depart for the mountain.

DATES: This rule is effective March 31, 1995. *Expiration date:* Section 13.63(f) will expire on March 31, 1997, unless amended or revised by future rulemaking. However, written comments will be accepted until May 30, 1995.

ADDRESSES: Comments should be directed to: Superintendent, PO Box 9, Denali National Park, AK 99755.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Acting Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali National Park, AK 99755.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park was first established as Mt. McKinley National Park on February 26, 1917. A separate Denali National Monument was proclaimed on December 1, 1978. These two were combined, reconfigured and established as Denali National Park and Preserve on December 2, 1980, encompassing 6.5 million acres. Prior to achieving its current configuration, the land the park now encompasses was recognized for its unique ecological value and designated an International Biosphere Reserve in 1976. That designation has since been expanded to encompass the entire 6.5 million acre park and preserve. The park contains North America's highest mountain, 20,320 foot Mount McKinley. Mount Foraker, at 17,400 feet, and numerous large glaciers of the Alaska Range are also a part of this park's subarctic ecosystem. Wildlife includes caribou, Dall sheep, moose, grizzly bears and wolves.

The first ascent of Mount McKinley occurred in 1913. Climbing continued to be a popular activity, although on a small scale, after the park was established. However, during the last ten years mountaineering in the park has increased dramatically. The number of Mount McKinley climbers has risen from 695 in 1984 to 1,277 in 1994. With the numbers of climbers increasing, the number of accidents, rescues, and resource related problems have also increased. Since 1932 a total of 79 mountaineers have perished on the slopes of Mount McKinley; 23 percent of these deaths (18 people) have occurred since 1990. Recent years have also seen an increase in climbing related deaths on Mount Foraker and the other Alaska Range peaks located in the park. In 1990, eight mountaineers were rescued on Mount McKinley. In sharp contrast, the number of mountaineers rescued increased to 28 in 1992, and 27 in 1994. Studies by the NPS showed that the major reason climbers got into trouble on the mountain and required rescue was their unfamiliarity with the hazards unique to Mount McKinley. Specifically, extreme weather conditions, their changeability, and the other hazards associated with climbing in such northerly latitudes caught the climbers unprepared. The NPS determined that climbers need better education and information prior to their climbs and that an appropriate time frame was necessary to convey this information to the climbing community. Climbers from 22 countries registered to climb Mount McKinley in 1990. With so many climbers seeking permits, adequate lead time required to fulfill the requests lengthens. The 60 day pre-registration period will provide sufficient opportunity for the Denali park staff to provide the necessary information to prospective mountaineers on the dangers they may face climbing in the park, how to prepare and equip themselves for the climb, other safety related issues, and requirements concerning resource protection issues such as litter removal and human waste disposal.

Authority

This regulation is promulgated pursuant to the Secretary of the Interior's authority to make and publish necessary and proper rules and regulations for the use and management of parks, monuments and reservations under the jurisdiction of the National Park Service (16 U.S.C. 3).

Interim Rulemaking

The purpose of this rulemaking is to allow the park enough time to provide climbers with better general and safety related information in order to reduce the number of climbing accidents and the attendant injuries and deaths, the occurrence of which have recently and dramatically increased. In order for the NPS to implement these safeguards prior to the 1995 climbing season, which begins in April 1995, the interim rule will need to be effective upon the date of publication. The park is already receiving requests for information about the 1995 climbing season; allowing for notice and comment or delaying the effective date of the rule will not allow the NPS adequate time to implement these safeguards. The interim rule has a two-year "sunset clause". Notice and comment rulemaking will be conducted with full public involvement during this two-year time period. The intended result of this action is to immediately increase the safety of mountain climbers by allowing sufficient time for the park

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to provide the necessary information to all climbers concerning the hazards associated with climbing in Denali National Park.

The NPS is promulgating this interim rule under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(b)(B) from general notice and comment rulemaking. As discussed above, the NPS believes that this exception is warranted because of the time constraints involved. Based upon this discussion, the NPS finds pursuant to 5 U.S.C. 533(b)(B) that it would be contrary to the public interest to publish a notice of proposed rulemaking. The NPS is, however, soliciting comments and will review comments and consider making changes to the rule based upon an analysis of comments.

In accordance with the Administrative Procedure Act (5 U.S.C. 531 *et seq.*), the NPS has further determined that publishing this interim rule 30 days prior to the rule becoming effective could further delay the dissemination of safety and resource related information to climbers. This also would be contrary to the public interest and the intended purpose of the rule. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), and as discussed above, the NPS has been determined that this interim rulemaking is excepted from the 30-day delay of effective date, and shall therefore become effective upon the date published in the **Federal Register**.

Because the NPS is soliciting comments as discussed above, the NPS plans to analyze comments received and prepare further rulemaking, as appropriate.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. However, in accordance with the above discussion, the urgent need to disseminate the information concerning the 60-day pre-registration notice and to ensure the safety of the mountain climbers, it has been determined that it is contrary to the public interest to delay the effective date of this interim rule pending public comment.

Nevertheless, interested persons are invited to submit written comments or suggestions regarding the proposed regulations to the address noted at the beginning of this rulemaking. Comments must be received on or before May 30, 1995. The NPS will review comments and consider making changes to the rule based upon an analysis of comments.

Drafting Information

The primary authors of this rule are Dennis Burnett, Washington Office of Ranger Activities and Brenda Bussard of Denali National Park and Preserve, National Park Service.

Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the NPS has determined that this interim rule will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
(b) Introduce non-compatible uses which compromise the nature and characteristics of the area, or cause physical damage to it;
(c) Conflict with adjacent ownerships or land uses; or
(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this interim rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National Parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR part 13 is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C—Special Regulations—Specific Park areas in Alaska

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.63 [Amended]

2. Section 13.63 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Mountain climbing.* Climbing on Mount McKinley or Mount Foraker without registering, on a form provided by the Superintendent, at least 60 days in advance of the climb is prohibited.

Dated: March 23, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–7906 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AA65

Civil Money Penalties for Referrals to Entities and for Prohibited Arrangements and Schemes

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule implements the civil money penalty (CMP) provisions established through sections 1877(g)(3) and 1877(g)(4) of the Social Security Act. Specifically, in accordance with section 1877(g)(3), these regulations set forth CMPs, assessments and an exclusion against any person who presents, or causes to be presented, a bill or claim the person knows or should know is for a service unlawfully referred under section 1877(a)(1)(A) of the Act, or has not refunded amounts inappropriately collected for a prohibited referral. In addition, in accordance with section 1877(g)(4), these regulations set forth CMPs, assessments and an exclusion in cases where a physician or entity enters into an arrangement or scheme in which the physician or entity knows, or should have known, that the principal purpose is to assure referrals by the physician which, if made directly to a particular entity, would violate the prohibition on referrals described in section 1877(a) of the Act.

DATES: *Effective date:* This final rule with comment period is effective on March 31, 1995.

Comment period: Comments on the applicability of these CMPs for referrals to "designated health services" resulting from provisions in the Omnibus Budget Reconciliation Act (OBRA) of 1993 will be considered if we receive them at the address specified below, no later than 5 p.m. on May 30, 1995. Broadening these CMPs to cover referrals to "designated health services" is discussed in sections I.C. and IV. of this preamble. We will not consider comments on provisions that remain unchanged from the October 20, 1993 proposed rule or on provisions that were changed based on public comments.

ADDRESSES: Mail comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–30–FC, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue, SW., Washington DC 20201. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code LRR–30–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in room 5551, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Legislation, Regulations and Public Affairs Staff, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Omnibus Budget Reconciliation Acts of 1989 and 1990

In an effort to limit physician referrals involving laboratory services, section 6204 of Pub. L. 101–239, the Omnibus Budget Reconciliation Act (OBRA) of 1989, as amended by section 4207(e) of Pub. L. 101–508 (OBRA of 1990), added a new section 1877—Limitations on Certain Physician Referrals—to the Social Security Act.

As set forth by OBRA 1989 and 1990, section 1877, with certain exceptions, prohibited a physician from making a referral to an entity for the furnishing of clinical laboratory services for which Medicare would otherwise pay, if the physician or a member of the physician's immediate family had a financial relationship with that entity. (See the discussion in section I.C. below regarding expansion of this authority to "designated health services" as a result of amendments set forth in OBRA 1993.) This provision further prohibited an entity from presenting, or causing to be presented, a Medicare claim or bill to any individual, third party payer or other entity for laboratory services furnished in accordance with a prohibited referral. The authority for implementing these provisions is a bifurcated responsibility between the Health Care Financing Administration (HCFA) and the OIG. The HCFA has had the responsibility for developing regulations that set forth the specific policies by which such prohibited conduct is defined, while the OIG has maintained responsibility for imposing civil money penalties (CMPs), assessments and program exclusions for violations of this referral ban.

B. Proposed HCFA and OIG Regulations

On March 11, 1992, the HCFA issued proposed regulations (57 FR 8588) setting forth provisions that would—(1) with certain specified exceptions, prohibit a physician from making a referral to an entity for the furnishing of laboratory services for which Medicare would otherwise pay, if the physician or a member of his or her immediate family has a financial relationship with that entity; and (2) prohibit an entity from presenting or causing to be presented a Medicare claim or bill for such services furnished in accordance with that referral. Because the statute was quite detailed in scope, the HCFA proposed rule adhered closely to the statutory language and adopted—with little change—several definitions, such as the definition of prohibited financial relationships and compensation arrangements.

In addition, on October 20, 1993 the OIG issued a proposed rule (58 FR 54096) that was designed to codify the penalty provisions of the statute set forth in sections 1877 (g)(3) and (g)(4) of the Social Security Act. The proposed rule addressed the establishment of CMPs of not more than $15,000 for each violation of the ban on making claims for services resulting from prohibited referrals or failing to make a refund, and CMPs of not more than $100,000 for physicians and entities who engage in a circumvention scheme to avoid detection of prohibited referrals.

C. The Omnibus Budget Reconciliation Act of 1993

The Omnibus Budget Reconciliation Act of 1993 expanded the scope of section 1877 of the Act to extend the prohibition to Medicare *and Medicaid* referrals beyond clinical laboratory service to include various "designated health services." Specifically, OBRA 1993 amended the Medicaid payment provisions by adding a new section 1903(s) to state that no payments are to be made to a State for services furnished by designated health services that violate the referral prohibitions of section 1877. The provision is also applicable to the reporting and penalty provisions under sections 1877(f) and (g)(5) of the Act. The designated health services cover both diagnostic services and therapeutic items and services, including physical and occupational therapy services; radiology services; radiation therapy services and supplies; durable medical equipment (DME) and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

These expansions resulting from OBRA 1993—the expansion to Medicaid to be effective beginning on December 31, 1994, and the expansion to other designated health services to be effective for referrals made after December 31, 1994—were not incorporated into either the HCFA or OIG proposed rules summarized above. The HCFA intends to publish new proposed regulations—separate from the final rule addressing physician ownership of, and referrals to, entities that furnish clinical laboratory services—that will (1) cover how the referral prohibition applies to additional services now covered by section 1877 as the result of OBRA 1993, (2) explain various new exceptions added to the statute, and (3) define key terms such as financial relationship, inpatient/outpatient services, diagnostic services and DME.

However, because the penalty provisions set forth in sections 1877 (g)(3) and (g)(4) of the Act remain unchanged by these amendments, we are incorporating by reference the expansion to designated health services into our final rulemaking for sanctioning improper claims and circumvention schemes. Since the statutory changes associated with these penalty provisions are self-implementing, we believe that the regulatory revisions set forth in this rulemaking can be implemented without interpretation and that public comment would not substantially modify these regulations. We believe that affording additional proposed rulemaking under these circumstances is unnecessary and would delay the promulgation of regulations that correspond with the current statute. Therefore, we find good cause to waive proposed rulemaking for incorporating the statutory expansion to designated health services by reference into our final rulemaking. However, we are providing a 60-day comment period for

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comments limited to the area of designated health services in order to give parties now covered by these CMP regulations as providers of designated health services an opportunity to make applicable comments. Although these regulations are being issued as a final rule, any additional comments will be considered for possible future amendments to the rulemaking, where appropriate.

II. Provisions of the OIG Proposed Rule

The OIG proposed regulations, published in the **Federal Register** on October 20, 1993, provided for a penalty against any person presenting a bill or claim to be paid by Medicare for services furnished under a "self-referral" arrangement prohibited under section 1877(a) of the Act, or any person failing to refund amounts that were inappropriately billed and collected as the result of a prohibited referral. The proposed regulations established—

- A CMP of no more than $15,000 for each service provided in accordance with a prohibited referral, for which a bill or claim was presented, or caused to be presented, or caused to be presented, or which was not properly refunded;
- An assessment of not more than twice the amount claimed for each service that was the basis for the CMP; and
- An exclusion of the individual from Medicare and State health care program participation.

In determining the amount of penalty and assessment for this violation, the proposed rule specified that the OIG would apply the five existing criteria set forth in § 1003.106(a) of the regulations, and proposed a sixth criterion to be applied to consider timeliness and completeness with respect to the appropriate refund(s).

In addition, the proposed regulations provided for a penalty against a physician or entity entering into an agreement or "circumvention" scheme to assure referrals which, if they were made directly, would violate the prohibition on referrals set out in section 1877(a) of the Act. One example of such a scheme would be a cross-referral arrangement where the physician owners of two different entities refer to each other. The proposed regulations established—

- A CMP of not more than $100,000 for each arrangement or circumvention scheme entered into by a physician or entity;
- An assessment of not more than twice the amount claimed by the physician or entity for each service billed under the prohibited arrangement; and
- An exclusion of the physician or entity form Medicare and State health care program participation.

In determining the amount of the penalty and assessment for this violation, the proposed rule specified that the OIG would apply the five existing criteria in § 1003.106(a) of the regulations, and proposed an additional criterion that would consider the amount of ownership interests involved.

III. Response to the Public Comments

In response to this proposed rule, the OIG received a total of five timely-filed public comments from associations and individuals. Set forth below is a summary of those comments received and our response to the various concerns they raised.

Definition of "Timely Basis"

Comment: Proposed § 1003.102(b)(8) stated that the OIG may impose a penalty against any person "who has not refunded on a *timely basis* amounts collected as a result of billing an individual, third party payer or other entity for a clinical laboratory service that was provided in accordance with a prohibited referral * * *" (underlining added). The commenter believes that providers should be made aware of any time requirements to which they will be held accountable, and recommends that we define the term "timely basis."

Response: We agree with the commenter that this term should be clarified, and are defining "timely basis" in § 1003.101 of the regulations as the 60 day period from the time the prohibited amounts are collected. We believe that there is precedent for defining this time period.

Currently, the general government refund policy for *overpayments* is 30 days. For example, section 1815(d) of the Social Security Act—addressing payments to providers under part A of the Medicare program—requires a refund (or offset) of excess payments within 30 days of a final determination that the amount of payment was in excess of the amount due. However, the 30 days begins to run after a *final determination* is made that there was an overpayment, while § 1003.102(b)(8) of our regulations contemplates that the person who collected amounts for a service provided in accordance with a prohibited referral will take the initiative to refund those amounts on a timely basis without first being subject to a "final determination."

The HCFA regulations at 42 CFR 411.24(h) seem more analogous to the "refund" provision addressed in these penalty provisions than to the overpayment time periods. These HCFA Medicare secondary payer regulations require a beneficiary or other party who receives a third party payment to reimburse Medicare within 60 days. Under 411.24(h), the recipient of the third party payment is expected to take the initiative to refund the program, without first receiving notice, or having a "determination" by HCFA that the refund is required. Since the OIG regulations intend for persons who profit from prohibited referrals to initiate making the refund, we believe that a 60 day period is a reasonable time period to establish is defining "timely basis."

Clarifying the Scope of the Regulations

Comment: One commenter asked that we clarify the regulations text to specify, as we did in the preamble to the proposed rule, that *physicians*—as well as the laboratory (or designated health service provider)—may be subject to CMPs for causing the submission of claims for services resulting from prohibited referrals.

Response: We believe that the language set forth in § 1003.102 is adequate to cover the scope of these provisions. The word "person" as defined in § 1003.101 includes an individual, trust, estate, partnership, corporation, professional association or corporation, or other entity. Physicians, as "individuals," are specifically included under this definition.

Criteria for Circumvention Scheme Sanctions

Comment: The rulemaking proposed adding a new criterion in § 1003.106(a) that would take into account the amount of ownership interests involved when determining penalty amounts or assessments for circumvention schemes. One commenter strongly supported this criterion of requiring providers to disclose the *amount* of ownership interest whenever making an ownership disclosure under section 1877 rather than just the fact of ownership interest in a facility.

Response: We appreciate the commenter's support of this additional criterion, and believe that requiring the provider to disclose the amount of ownership will act as a further deterrent to providers referring patients to facilities in which they have financial interests.

Comment: In referencing both § 1003.102(b)(9) of the proposed regulations and existing § 1003.102(c), one commenter raised concerns regarding the ability of outside third parties to effectively counsel

practitioners if such counseling activities were considered subject to penalties as part of a "circumvention" scheme. The commenter expressed concern that the regulation would discourage lawyers, accountants and other professionals from advising physicians on how to set up practices for fear that the advising professional would be "adding and abetting" a violation.

Response: This regulation is directed specifically at *physicians* and *entities* that enter into a "cross-referral arrangement" or a scheme which the physician or entity knows or should know is designed to circumvent the prohibitions of this provision. It should in no way discourage physicians from seeking professional advice in good faith, or discourage attorneys and accountants from giving such advice in good faith.

Resource Issues

Comment: One commenter took issue with the regulatory impact statement that states the rulemaking will have no direct effect on the economy or on Federal or State expenditures. The commenter believes that there will be a considerable increase in the workload of Medicare auditors and fraud units in their efforts to detect fraud and abuse, and believes that the impact statement should reflect these increased activities.

In addition, based on information a second commenter is currently receiving on physician ownership of other entities when individuals are requesting provider numbers, the commenter indicated that they would need to establish specific flags or edits to be adequately apprised of situations involving potential violations.

Response: We do not believe that these penalty provisions will result in significantly increased expenditures for detection efforts in this area, and believe that these concerns do not warrant altering the existing regulatory impact statement. While we do not anticipate funding levels to significantly increase as a result of this additional authority, we remain acutely aware of the issue and need for resources in general, and will continue to invite and rely on active participation from within the health care industry to aid in efforts to accurately and effectively identify and police self-referral violations.

Delaying Issuance of the Final OIG Regulations

Comment: One commenter asked that issuance of the OIG final penalty provisions be delayed until HCFA has promulgated both sets of final implementing regulations addressing prohibited referrals and prohibited arrangements and schemes under section 1877 of the Act.

Response: As indicated above, HCFA plans two separate rulemaking initiatives—one addressing clinical laboratory services and a second for designated health services—to address the prohibitions set forth in section 1877 of the Act. The OIG has always maintained, however, that its statutory CMP authorities are independent authorities under which it may bring enforcement actions before regulations are published. For that reason, we do not believe that it is necessary for the OIG to wait upon finalization of HCFA's regulations to publish in final form our CMP regulations addressing the penalty and enforcement provisions of sections 1877 (g)(3) and (g)(4).

IV. Technical Changes

As discussed above, we are incorporating into this final rule the expansion of section 1877 resulting from OBRA 1993 to include Medicare payments for much of the health care industry, i.e., for clinical laboratory services and the additional ten "designated health services" effective for referrals made after December 31, 1994.

V. Cross-References to the HCFA Regulations

Sections 1003.100(b)(1) (ix)–(xi), 1003.102(a)(5) and 1003.102 (b)(9) and (b)(10) cross-reference HCFA regulations' §§ 411.351 and 411.353 that will not be codified until the HCFA Physician Referral rules are published in final form. We note that these citations to the HCFA regulations are tentative and will be amended, if necessary, when those provisions are finalized.

VI. Regulatory Impact Statement

The Office of Management and Budget has reviewed this final rule with comment period in accordance with the provisions of Executive Order 12866. As discussed above, the provisions contained in this rulemaking set forth new authorities to the OIG for levying CMPs against persons or entities that file claims for services furnished on the basis of prohibited referrals or who engaged in prohibited circumvention schemes proscribed by statute. These provisions are a result of statutory changes and serve to clarify departmental policy with respect to the imposition of CMPs against persons and entities who violate the statute. We believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices discussed in these regulations. As a result, we believe that the aggregate economic impact of these provisions will be minimal, affecting only those who have engaged in prohibited behavior in violation of the statute. As such, this final rule should have no effect on the economy or on Federal or State expenditures.

In addition, we generally prepare a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties may have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, we have concluded, and the Secretary certifies, that a regulatory flexibility analysis is not required for this final rule.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a); by republishing paragraph (b)(1) introductory text; by revising paragraphs (b)(1)(vi) and (b)(1)(vii); and by adding new paragraphs (b)(1)(viii)–(xi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7(c), 1320b(10), 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* * * *

(1) Providers for the imposition of civil money penalties and, as applicable, assessments against persons who—

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(vi) Violate a requirement of section 1867 of the Act or § 489.24 of this title;

(vii) Substantially fail to provide an enrollee with required medically necessary items and services, or engage in certain marketing, enrollment, reporting, claims payment, employment or contracting abuses; or

(viii) Have submitted certain prohibited claims under the Medicare program;

(ix) Present or cause to be presented a bill or claim for designated health service (as defined in § 411.351 of this title) that they know, or should know, were furnished in accordance with a referral prohibited under § 411.353 of this title;

(x) Have collected amounts that they know or should know were billed in violation of § 411.353 of this title and have not refunded the amounts collected on a timely basis; or

(xi) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this title.

* * * * *

3. Section 1003.101 is amended by adding a definition for the term *timely basis* to read as follows:

§ 1003.101 Definitions

* * * * *

Timely basis means, in accordance with § 1003.102(b)(9) of this part, the 60-day period from the time the prohibited amounts are collected by the individual or the entity.

* * * * *

4. Section 1003.102 is amended by revising paragraphs (a)(3), (a)(4) introductory test, and (a)(4)(iii); and by adding paragraphs (a)(5), (b)(9) and (b)(10) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) * * *

(3) An item or service furnished during a period in which the person was excluded from participation in the program to which the claim was made in accordance with a determination made under sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1156 (42 U.S.C. 1320c–5), 1160(b) as in effect on September 2, 1982 (42 U.S.C. 1320c–9(b)), 1842(j)(2) (42 U.S.C. 1395u(j)), 1862(d) as in effect on August 18, 1987 (42 U.S.C. 1395y(d)), or 1866(b) (42 U.S.C. 1395cc(b));

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

* * * * *

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified; or

(5) A payment that such person knows, or should know, may not be made under § 411.353 of this title.

(b) * * *

(9) Has not refunded on a timely basis, as defined in § 1003.101 of this part, amounts collected as the result of billing an individual, third party payer or other entity for a designated health service that was provided in accordance with a prohibited referral as described in § 411.353 of this title;

(10) Is a physician or entity that enters into—

(i) A cross referral arrangement, for example, whereby the physician owners of entity "X" refer to entity "Y," and the physician owners of entity "Y" refer to entity "X" in violation of § 411.353 of this title, or

(ii) Any other arrangement or scheme that the physician or entity knows, or should know, has a principal purpose of circumventing the prohibitions of § 411.353 of this title.

* * * * *

5. Section 1003.103 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

(b) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.102(b)(4), or for each item and service that is subject to a determination under § 1003.102(a)(5) or § 1003.102(b)(9) of this part. The OIG may impose a penalty of not more than $100,000 for each arrangement or scheme that is subject to a determination under § 1003.102(b)(10) of this part.

* * * * *

6. Section 1003.106 is amended by revising paragraph (a)(1) introductory text and paragraph (a)(1)(iv); by redesignating paragraph (a)(1)(v) as paragraph (a)(1)(vii); and by adding new paragraphs (a)(1)(v) and (a)(1)(vi) to read as follows:

§ 1003.106 Determination regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* (1) In determining the amount of any penalty or assessment in accordance with § 1003.102 (a), (b)(1), (b)(4), (b)(9), and (b)(10), the Department will take into account—

* * * * *

(iv) The financial condition of the person presenting the claim or request for payment, or giving the information;

(v) The completeness and timeliness of the refund with respect to § 1003.102(b)(9);

(vi) The amount of financial interest involved with respect to § 1003.102(b)(10); and

* * * * *

Dated: October 4, 1994.

June Gibbs Brown,

Inspector General.

Approved: December 30, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 95–7845 Filed 3–30–95; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7129

[WY–930–1430–01; WYW–92953–01]

Revocation of Executive Order No. 3410, Dated February 22, 1921; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order that involves 2,844.17 acres of National Forest System land withdrawn for powersite purposes in the Shoshone National Forest. The land is no longer needed for powersite purposes. This action will open 2,336.22 acres to such forms of disposition as may by law be made of National Forest System land, including exchange under the General Exchange Act of 1922. The 2,336.22 acres has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. There are 427.95 acres that would remain closed to disposal by an overlapping withdrawal. The remaining 80 acres have been conveyed into private ownership with revocation being a record clearing action as it pertains to that land. The entire acreage, with the exception of the 80 acres, remains open to mining and mineral leasing.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 3410, dated February 22, 1921, which withdrew National Forest System land for powersite purposes, is hereby revoked in its entirety for the following described land:

Sixth Principal Meridian

T. 52 N., R. 105 W.,
Sec. 17, W½;
Sec. 18;
Sec. 19, lots 1 to 4, inclusive E½, and E½W½, (formerly sec. 19, all);
Sec. 20, W½;
Sec. 29, lots 4 to 7, inclusive, SW¼NW¼, and SW¼, (formerly sec. 29, W½);
Sec. 30.

The area described contains 2,844.17 acres in Park County.

2. The following described National Forest System land will remain closed to disposal because of an overlapping withdrawal, Executive Order dated March 27, 1913, for powersite purposes:

Sixth Principal Meridian

T. 52 N., R. 105 W.,
Sec. 19, lots 2 to 4, inclusive, SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼.

The area described contains 427.95 acres in Park County.

3. Revocation of the withdrawal for the following described private land is a record clearing action with no opening:

Sixth Principal Meridian

T. 52 N., R. 105 W.,
Sec. 17, SE¼SW¼;
Sec. 20, NE¼NW¼.

The area described contains 80 acres in Park County.

4. At 9:00 a.m. on May 1, 1995, the land described in paragraph 1, except as provided in paragraphs 2 and 3, will be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land described in paragraph 1 has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required, except for the land described in paragraphs 2 and 3.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–8000 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–22–M

43 CFR Public Land Order 7130

[ID–943–1430–01; IDI–29793]

Modification of Secretarial Order Dated June 18, 1908, and Executive Order No. 2067 Dated October 28, 1914, and Transfer of Jurisdiction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies the Secretarial Order dated June 18, 1908, and Executive Order No. 2067 dated October 28, 1914, insofar as they affect 37.50 acres of public land lying outside National Forest boundaries, withdrawn for a Forest Service guard station/administrative site. This order transfers jurisdiction of the land from the Forest Service to the Fish and Wildlife Service and establishes a 20-year term. The land will continue to be used as an administrative site for the Fish and Wildlife Service and will remain closed to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. The Secretarial Order dated June 18, 1908, and Executive Order No. 2067 dated October 28, 1914, which withdrew land for use by the Forest Service, Department of Agriculture, for a guard station/administrative site, are hereby modified to transfer jurisdiction of the land from the Forest Service to the Fish and Wildlife Service for use as an administrative site. The land is described as follows:

Boise Meridian

(Secretarial Order dated June 18, 1908)
T. 4 S., R. 43 E.,
Sec. 35, E½SE¼NE¼, N½S½NW¼SE¼NE¼ and N½NW¼SE¼NE¼.

(Executive Order No. 2067 dated October 28, 1914)
T. 4 S., R. 43 E.,
Sec. 35, NE¼NE¼SE¼.

The area described contains 37.50 acres in Bonneville County.

2. The land described above continues to be withdrawn from settlement, sale, location, or entry under the pubic land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), to protect the Fish and Wildlife Service Grays Lake Refuge Headquarters. The land has been and remains open to leasing under the mineral leasing laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–8001 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–CG–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–185; RM–8249]

Radio Broadcasting Services; Estes Park, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 271A to Estes Park, Colorado, as that community's first local FM service, in response to a petition for rule making filed on behalf of Hambric Associates. *See* 58 FR 37696, July 13, 1993. With this action, the proceeding is terminated.

DATES: Effective May 12, 1995. The window period for filing applications on Channel 271A at Estes Park, Colorado, will open on May 12, 1995, and close on June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 271A at Estes Park, Colorado, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–185, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for

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inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Estes Park, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7944 Filed 3–30–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–66; RM–8192]

Radio Broadcasting Services; Huntsville and Willis, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of New Wavo Communications Group, Inc., reallocates Channel 279C3 from Huntsville to Willis, Texas, and modifies Station KVST(FM)'s license to specify Willis as its community of license. *See* 58 FR 17818, April 4, 1993. Channel 279C3 can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) northwest to accommodate New Wavo's desired site. The coordinates for Channel 279C3 at Willis are 30–26–55 and 95–31–48.

With this action, this proceeding is terminated.

EFFECTIVE DATE: May 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–66, adopted March 17, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Willis, Channel 279C3 and removing Channel 279C3 at Huntsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7946 Filed 3–30–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–82; RM–8487]

Radio Broadcasting Services; Spencer and Sac City, IA, St. James, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Iowa Great Lakes Broadcasting Company, Inc., substitutes Channel 285C3 for Channel 285A at Spencer, IA, modifies the license of Station KIGL(FM) to specify the higher class channel, substitutes Channel 268A for Channel 285A at St. James, MN, and modifies the license of Station KXAX to specify the alternate Class A channel. The Commission also retained Channel 284A at Sac City, IA. *See* 59 FR 37738, July 25, 1994. Channel 285C3 can be allotted to Spencer with a site restriction of 17.kilometers (10.5 miles) north, at coordinates 43–17–45 North Latitude; 95–10–30 West Longitude, to avoid a short-spacing to unoccupied but applied-for Channel 284A at Sac City, IA and to accommodate petitioner's desired transmitter site. Channel 268A can be allotted to St. James at the presently licensed transmitter site of Station KXAX, at coordinates 44–03–15 North Latitude; 94–39–40 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 12, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–82, adopted March 22, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 285A and adding Channel 285C3 at Spencer.

3. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 285A and adding Channel 268A at St. James.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7948 Filed 3–30–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 032795A]

Groundfish of the Gulf of Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 27, 1995, until 12 noon, A.l.t., April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(1)(i), the deep-water species fishery, which is defined at § 672.20(f)(1)(i)(B)(*2*), was apportioned 100 metric tons of Pacific halibut prohibited species catch for the first season, the period January 20, 1995, through March 31, 1995 (60 FR 8470, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the first seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprises the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7903 Filed 3–27–95; 4:50 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 940710–4292; I.D. 010695A]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Trawl Closure to Protect Red King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; response to comments.

SUMMARY: NMFS responds to comments submitted on the interim emergency rule closing a portion of the Bering Sea to trawl vessels to protect red king crab. NMFS published this emergency rule in the **Federal Register** on January 25, 1995 for comment. No change in the trawl closure was made as a result of this action.

DATES: The emergency interim rule published at 60 FR 4866, January 25, 1995, is effective January 20, 1995, through April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published an emergency interim rule in the **Federal Register** on January 25, 1995 (60 FR 4866) that implemented a closure to trawl vessels in the Bristol Bay area of the Bering Sea. The closure area encompasses the area from 56° to 57 ° N. lat. and 162° to 164° W. long. and is intended to protect female red king crab, in view of the declining Bristol Bay red king crab stocks. Two letters of comment on the emergency rule were received within the comment period and are summarized in the "Response to Comments" section, below. After review of the comments received, NMFS determined that no change to the emergency rule is warranted.

Response to Comments

Two letters of comment were received within the comment period that ended February 9, 1995. A summary of the comments and NMFS' response follows.

Comment 1. The emergency trawl closure area should be reconfigured to remove the 10 minutes of latitude from 56° to 56°10′ N. lat. The closure should have been designed to protect female red king crab, but, for this purpose, the best available biological data do not support inclusion of the 10 minutes of latitude from 56° to 56°10′ N. lat. in the trawl closure area.

Response. NMFS chose the closure area implemented under the emergency rule based on the distribution of female red king crab. Annual NMFS crab survey data show distribution and relative abundance of female red king crab vary from year to year. However, survey data since 1990 indicate that relatively large numbers of female crab have been taken at survey stations in Bristol Bay located around 56° N. lat. Recent 1993 and 1994 trawl survey data show female red king crab are present at survey stations located along 56° N. lat. The relative abundance of female red king crab at these stations was significantly greater in 1993 compared to 1994. The distribution of crab indicated from summer trawl surveys may not represent the distribution of various stock components during winter months; however, because no recent winter trawl survey data exist, NMFS must use the best available scientific data as a basis for the closure determination.

Available observer data on the sex composition of Bristol Bay red king crab taken as bycatch in the trawl fisheries are limited. Sex composition data collected in 1993 for observed hauls between 56° and 56°10′ N. lat. show about one third of the crab sampled for sex composition were females. Between 56° and 57° N. lat. almost 80 percent of the crab sampled for sex composition were females. Despite the fact that the red king crab bycatch limit is still in place and the rock sole fishery can still take the same number of crab, inclusion of the area between 56° and 56°10′ N. lat. provides greater protection to female red king crab.

Comment 2. The emergency rule was undertaken without any economic analysis of the impact of the closure on the trawl fisheries. It was undertaken without any analysis of the impact of other fisheries, such as the *C. bairdi* Tanner crab and red king crab fisheries, on Bristol Bay red king crab stocks.

Response. The short time frame that was available to implement the

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emergency rule precluded an extensive economic analysis. However, the emergency rule does contain economic information that was considered in making the decision for the most appropriate closure area. A more comprehensive economic analysis will be conducted for alternative time/area closures being considered by the Council for an amendment to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands area that would address concerns about the red king crab resource on a long-term basis. A bycatch simulation model is also being updated to analyze the impacts of these alternative closure areas on the affected fisheries. The Council is scheduled to take action on the FMP amendment at its April 1995 meeting. NMFS approved the closure area implemented under the emergency rule based on the best data that was available at the time.

Data that were presented in both the original environmental assessment (EA) prepared for the emergency rule and in a subsequent addendum to the EA indicated the amount of bycatch in the various closure options. This information was used to determine the potential savings in red king crab bycatch and the impacts on other prohibited species bycatch.

Dated: March 27, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–7904 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–23–F

Proposed Rules

Federal Register
Vol. 60, No. 62
Friday, March 31, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[DA–95–10]

Milk in the Paducah, Kentucky Marketing Area; Extension of Time for Filing Comments on Proposed Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing comments to proposed termination of order.

SUMMARY: This notice extends the time for filing comments on the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area. The time has been extended 17 days to April 10, 1995, at the request of interested persons.

DATES: Comments now are due on or before April 10, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Termination of Order: Issued March 3, 1995; published March 9, 1995 (60 FR 12907).

Notice is hereby given that the time for filing comments to the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area is hereby extended from March 24, 1995, to April 10, 1995.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Dated: March 27, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–7962 Filed 3–30–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AE20

Revision of Fee Schedules; 100% Fee Recovery, FY 1995; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of Fee Schedules; 100% Fee Recover, FY 1995: Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on Monday, March 20, 1995 (60 FR 14670). The action is necessary to correct a typographical error.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

On page 14679, Table V, item 2, add the word "on" so that the sentence reads: "Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:"

Dated this 27th day of March, 1995.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–7936 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; reopening of the record; request for public comment and notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record on proposed revisions to requirements for approval of flame-resistant conveyor belts for use in underground mines. Subsequent to the record closing on the conveyor belt proposal, MSHA published another proposed rule which would allow independent laboratories to test and evaluate certain products MSHA approves for use in underground mines. To allow comment on the applicability of the independent laboratory proposal to conveyor belt testing, submission of new relevant data, or updating of comments previously submitted, the Agency is reopening the rulemaking record on the conveyor belt proposal and scheduling a public hearing.

DATES: Written comments must be submitted on or before April 21, 1995.

The public hearing will be held on Tuesday, May.2, 1995, beginning at 9 a.m. All written requests to make oral presentations for the record should be submitted at least 5 days prior to the hearing date. Requests may also be made by calling the MSHA Office of Standards at 703–235–1910.

The public record for the rulemaking will close on June 2, 1995.

ADDRESSES: Send written comments and requests to make oral presentations to MSHA; Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631; Arlington, Virginia 22203. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

The location and address for the public hearing is: Holiday Inn Meadowlands, 340 Racetrack Road, Washington, PA 15301. The Holiday Inn is adjacent to the Meadows Racetrack in Meadowlands approximately 5 miles north of Washington, PA.

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FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On December 24, 1992, MSHA published a proposed rule to implement new procedures and requirements for testing and approval of flame-resistant conveyor belts and requirements for their use in underground coal mines (57 FR 61524). The proposed revision would replace the existing flame test for acceptance of flame-resistant belts specified in Agency regulations. Because of the fire hazards in underground coal mines, existing MSHA safety standards require that conveyor belts be flame-resistant in accordance with specifications of the Secretary and pass the flame test for conveyor belting specified in 30 CFR 18.65. The comment period closed on March 26, 1993. Several commenters requested that the Agency hold public hearings.

On November 30, 1994, the Agency proposed a new part 6 to 30 CFR which would allow independent testing laboratories to test and evaluate certain mining products for use in underground mines, as well as allow the use of equivalent testing and evaluation requirements (59 FR 61376). Under the proposal, an independent laboratory recognized by the Occupational Safety and Health Administration (OSHA) as a nationally recognized testing laboratory would conduct product testing and evaluation currently done by MSHA according to MSHA's testing and evaluation requirements. Upon request by an applicant, the new proposal would also enable the Agency to approve products based upon testing and evaluation requirements other than MSHA's, provided that the alternative requirements are equivalent to the Agency's and provide at least the same measure of protection to miners. Several commenters on the independent laboratory testing proposal questioned how it would relate to the conveyor belt proposal. Since publication of the independent laboratory testing proposal occurred after the close of the conveyor belt record, MSHA is reopening the conveyor belt record for a limited period of time prior to holding a hearing. This will allow all parties to comment on the applicability of the independent laboratory proposal to conveyor belt testing, to submit new relevant data, or to update comments previously submitted.

The purpose of the public hearing is to receive relevant comment and to answer questions concerning the proposal. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions. The order of appearance will be determined by the Agency prior to the hearing, and any unallotted time will be made available to persons making late requests.

The hearing will begin with an opening statement from MSHA. The public will then be given the opportunity to make oral presentations. The hearing panel will be available to answer relevant questions during the presentations. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. At the end of the hearing, time will be made available for rebuttal statements. Verbatim transcripts of the proceedings will be taken and made part of the rulemaking record, and will be made available for review by the public.

At the time of the hearing, MSHA will also accept written comments and appropriate data from any party, including those not presenting oral statements. Written comments and data will be included in the rulemaking record. The record will remain open until June 5, 1995, to allow for the submission of any post-hearing comments.

II. Issues

Although commenters questioned a number of provisions contained in the proposal, some portions of the rule raised issues of particular concern and MSHA will address the following issues at the public hearing and specifically solicits comments, data, and pertinent information on them, in addition to any other aspect of the proposed rule.

A. Proposed Test

The repeatability and reproducibility of the proposed conveyor belt test was questioned by several commenters. The Agency considers "repeatability" to mean the degree of duplication of test results for a sample using a single apparatus in a specific laboratory or location. "Reproducibility" is considered by MSHA to mean the degree of duplication of test results for a sample using the same type of apparatus in a multitude of laboratories or locations. More than 700 individual tests have been conducted by MSHA and serve as a data base to address this issue. MSHA will make available its data on repeatability of the proposed test. In addition, MSHA requests any information or data regarding repeatability and reproducibility, particularly from those parties and individuals who have installed the proposed test apparatus and have used the proposed test in evaluation of conveyor belts.

Several commenters indicated that parameters such as humidity, temperature, atmospheric pressure, and airflow changes affect the proposed test results. In the development of the proposed test, factors such as airflow and temperature were considered. The proposal specifies controlling the temperature of the roof of the test apparatus and the temperature of the air entering the test chamber. Also, the proposal specifies control of the airflow through the apparatus to 200 plus or minus 20 ft/min (61 plus or minus 6 m/min). In addition, a variety of other parameters, such as different airflows, different lengths and widths of test samples, and variations in the duration of the ignition time, were evaluated during development of the proposed test. This information was used in designing the proposed test and establishing its comparison with the large-scale fire test results. MSHA requests specific information or data on the experience that manufacturers and other parties may have with respect to the effect of parameters on the proposed test, such as temperature, humidity, atmospheric pressure, and airflow changes.

In its comments on the proposed rule, Factory Mutual, Norwood, MA, suggested that MSHA consider a conveyor belt test developed by its personnel from which a "fire propagation index" could be determined. Factory Mutual indicated that its test correlated with large-scale conveyor belt fire tests conducted by the U.S. Bureau of Mines in conjunction with MSHA. MSHA requests information from Factory Mutual and other organizations and individuals that have used or have obtained data from the Factory Mutual test or any other test that compares to the proposed test.

B. Pollution Control

Another issue on which commenters expressed concern was the impact the proposed test may have on the environment and what pollution controls may be necessary as a result of the emissions from the testing of conveyor belts. MSHA is interested in hearing from manufacturers who have installed the proposed conveyor belt test apparatus and performed testing of conveyor belts as to the method of pollution control that is used or is necessary to perform testing using the proposed test.

C. Combustion Toxicity

Some commenters indicated that conveyor belts passing the proposed tests would present more of a toxic hazard than conveyor belts meeting the present MSHA acceptance test. MSHA requests any information or data from manufacturers and other parties on the comparison or assessment of the combustion toxicity of conveyor belts meeting the present acceptance test and belts meeting the proposed test.

D. Quality Assurance

Commenters also questioned the proposal regarding the quality assurance (control) program for maintaining conveyor belt as approved. One commenter suggested that inspection of ingredients alone could not ensure that conveyor belting is manufactured as approved, suggesting that a flame test is needed for this assurance. MSHA requests information on the current practices manufacturers use in their quality control programs to maintain a product as approved. MSHA is particularly interested in whether manufacturers flame test belts using the MSHA acceptance test indicated in 30 CFR 18.65, inspect or control ingredients, or perform a combination of both.

E. Cost Data

Commenters provided a range of data on the financial impact of the proposed rule, which included costs of belting passing the proposed flame test ("new" belt), total dollar amount of the conveyor belt market, and belt service life information. MSHA solicits comments and data on the economic impact to all belt manufacturers and all underground coal mines, including small manufacturers and small mine operators. In particular, MSHA requests information for both rubber and PVC types of conveyor belt on: (1) the quantity of belt (in feet or meters) currently in use that would pass the proposed test; (2) the total quantity (in feet or meters) and dollar amount of the market for conveyor belt used in underground coal mines; (3) the cost of belt that will pass the proposed flame test ("new" belt) versus belt that passes the current MSHA flame test ("old" belt); (4) whether costs of the "new" belt will decline as production increases and by how much; and (5) the life and warranty of "new" belt versus "old" belt.

Some manufacturers and other parties have installed the proposed MSHA test apparatus to conduct research and testing on samples of conveyor belts. MSHA also requests information from interested parties on the research and development costs for conveyor belt meeting the new test.

Dated: March 27, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–8018 Filed 3–30–95; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN32–1–6006; FRL–5180–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve State Implementation Plan (SIP) revision request submitted by the State of Indiana for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). The SIP revision request was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM SIP for the Lake County nonattainment area. This area was designated nonattainment for PM and classified as moderate by the Clean Air Act (Act), upon enactment of the 1990 Amendments (amended Act). The amended Act requires that States make plan submittals by November 15, 1991, for those areas designated nonattainment and classified as moderate for PM upon enactment (the "initial moderate nonattainment areas").

DATES: Comments on this SIP revision request and on USEPA's proposed rulemaking action must be received by May 1, 1995.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate PM nonattainment areas are set out in Title I of the amended Act.[1] The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under Title I of the amended Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498, April 16, 1992). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposed rule and the supporting rationale. In this proposed rule on the Indiana moderate PM SIP submittal for the Lake County nonattainment area, USEPA is proposing to apply the interpretations as expressed in the General Preamble, taking into consideration the special factual issues presented.

Part D of Title I contains the provisions applicable to nonattainment areas. Moderate PM nonattainment areas must meet the applicable requirements set out in Subparts 1 (sections 171–179B of the Act) and 4 (sections 188–190 of the Act) of Part D. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. USEPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this proposed rule.

Under Part D, those States containing initial moderate PM nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented;

[1] The 1990 Amendments to the Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM national ambient air quality standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

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2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Control requirements applicable to major stationary sources of PM precursors, except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

II. Analysis of State Submittal

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565–13566). In this proposed rule, USEPA is proposing to approve the SIP revision request submitted to USEPA on June 16, 1993, and supplemented on December 9, 1993, September 8, 1994, and November 17, 1994, for the Lake County nonattainment area. The submittal repeals rules 326 Indiana Administrative Code (IAC) 5–1–6, 6–1–10, and 6–1–11. The submittal contains the following new or revised rules:

326 IAC 1–2–32.1* ..	"Gooseneck cap" definition
326 IAC 1–2–34.1* ..	"Jumper pipe" definition
326 IAC 1–2–62.1* ..	"Quench car" definition
326 IAC 1–2–63.1* ..	"Quench reservoir" definition
326 IAC 1–2–63.2* ..	"Quench tower" definition
326 IAC 5–1–1*	Applicability of rule
326 IAC 5–1–2*	Visible emission limitations
326 IAC 5–1–3*	Temporary exemptions
326 IAC 5–1–4*	Compliance determination
326 IAC 5–1–5*	Violations
326 IAC 5–1–7*	State implementation plan revisions
326 IAC 6–1–10.1(a–k).	Lake County PM10 emissions requirements
326 IAC 6–1–10.2	Lake County PM10 coke battery emissions requirements
326 IAC 6–1–11.1	Lake County fugitive particulate matter control requirements
326 IAC 11–3–2(a–f and i)*.	Emission limitations
326 IAC 11–3–4*	Compliance determination

While some of these rules apply strictly to Lake County, others (marked above with an asterisk) are intended to have state-wide applicability. The USEPA is proposing to approve the rules marked above with an asterisk for the entire state of Indiana. The others are being approved for sources in Lake County only.

Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. The USEPA will consider any comments received during the public comment period before taking final action on the requested SIP revision. Presented below are the SIP requirements under which the submittal was reviewed, and the results of USEPA's review.

1. Procedural Requirements

The Act requires States to observe certain procedural requirements in developing implementation plans for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2]

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see section 110(k)(1) and 57 FR 13565). The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The USEPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA 6 months after receipt of the submission.

The State of Indiana held a public hearing on October 22, 1992, in Gary, Indiana to receive public comment on the requested implementation plan revision for the Lake County PM nonattainment area. Following the public hearing the plan was adopted by the State on May 12, 1993, and submitted to USEPA on June 16, 1993, as a SIP revision request. Supplemental submittals were made with cover letters dated December 9, 1993, September 8, 1994, and November 17, 1994.

The SIP revision request was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated July 13, 1993, was sent to the Commissioner, Office of Air Management, Indiana Department of Environmental Management (IDEM), indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Further, for the attainment demonstration, the SIP must contain a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of an emissions inventory is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventory must be received with the submission (see 57 FR 13539).

The emissions inventory information was compiled from data supplied by individual companies, permit applications in the IDEM files, and information from personnel at local agencies. The emissions inventory contains information on approximately 900 point and area sources. The Lake County PM emissions inventory is dominated by industrial sources, including metal manufacturers, mineral product manufacturers, and food/agricultural facilities. For further information on the emissions inventory, see the Technical Support Document available at the above address.

The USEPA is proposing to approve the emissions inventory because it is generally accurate and comprehensive, and provides a sufficient basis for determining the adequacy of attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(k) of the Act.

3. RACM (Including RACT)

As noted above, the State must submit provisions for initial moderate PM nonattainment areas to assure that RACM (including RACT) are implemented (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). The USEPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures and evaluate them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The State must demonstrate attainment of the NAAQS as expeditiously as practicable but no later than December 31, 1994, unless the State demonstrates that attainment by that date is impracticable. Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that RFP and attainment of the PM NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point, USEPA has identified reasonably available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (see 57 FR 18072–18074, April 28, 1992). The State should add to the list of available measures in an area any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The USEPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, USEPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[3]

A State should submit a reasoned justification for partial or full rejection of any available control measure (including any available control technology) that explains, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable and, therefore, does not constitute RACM (or RACT) for the area. In those PM nonattainment areas where mobile sources significantly contribute to the PM air quality problem, States also must address the section 108(f) transportation control measures (see 57 FR 13561).

The limitations on point sources in Lake County include source-specific emissions limits in terms of pounds per ton (lb/ton), pounds per hour (lbs/hr), pounds per Million British Thermal Units (lb/MMBTU), and grains per dry standard cubic foot (gr/dscf). There are also source-specific opacity limits ranging from 5–20 percent on certain sources in the nonattainment area. These limits are listed in Title 326 Indiana Administrative Code (326 IAC) 6–1–10.1. Compliance with these emissions limits is to be determined using Title 40 of the Code of Federal Regulations, part 60 (40 CFR part 60), appendix M, Methods 201 and 201A for PM; 40 CFR part 60, appendix A, Methods 5, 5A, 5D, 5E or 17 for Total Suspended Particulate; and 40 CFR part 60, appendix A, Method 9 for opacity limits. Other limitations on point sources include emission limits on coke ovens located in Lake County (326 IAC 6–1–10.2) and a general 20 percent opacity limit for all sources in the nonattainment area (326 IAC 5–1–2).

Limitations on sources of fugitive emissions in Lake County include a 10 percent opacity limit for paved roads and parking lots, unpaved roads and parking lots, and wind erosion from storage piles (326 IAC 6–1–11.1(d)). Subsection (e) of this rule also requires sources to submit control plans which will achieve compliance with the limitations of subsection (d). These plans are to include maps and descriptions of facilities, descriptions of the proposed control measures and practices to be implemented, and a schedule for achieving compliance with the rule.

The USEPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. By this notice, USEPA is proposing to approve the control strategy.

4. Attainment Demonstration

As noted above, the State must submit a demonstration for initial moderate PM nonattainment areas (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. In the General Preamble, USEPA indicated that the attainment demonstrations for the initial moderate areas must follow existing modeling guidelines for PM or, if appropriate, may be developed consistent with the supplemental attainment demonstration policy issued for initial areas (see 57 FR 13539).

IDEM began the Lake County modeling study in 1989, using version 88348 of the Industrial Source Complex Short Term model (ISCST). An updated version of ISCST, 90346, was used for the final runs. Version 93109 of the Industrial Source Complex Long Term model (ISCLT2) was used to determine annual average concentrations. Version 93109 is the most recent version of ISCLT2, and the versions of ISCST used by the State were current at the time of application. Therefore, their use is approvable by USEPA. Future SIP revision requests submitted to USEPA must demonstrate attainment of the NAAQS through modeling performed in accordance with current USEPA modeling guidance.

IDEM modeled a total of 540 sources, all with emissions greater than one ton per year. Smaller sources were excluded from the modeling. Direction-specific building dimensions were input for facilities which chose to provide the information. The annual concentrations modeled represent the actual hours of operation of sources which contributed significantly to high annual concentrations.

Average background concentrations for each wind sector were derived from measurements taken at ten local PM monitors during the years 1990 through 1992. The monitors were located in Lake County, Indiana; Porter County, Indiana; and Cook County, Illinois. While the background concentrations were developed so as not to include measurements directly influenced by the emissions from large facilities, monitors within the modeled area were expected to account for the influence of small sources which were not included in the modeled source inventory. IDEM arrived at an average annual background concentration of 23 micrograms per cubic meter ($\mu g/m^3$).

IDEM ran the models with five years of meteorological data (1984–1988) from the Hammond and Whiting Towers, which are located in Lake County. IDEM's final receptor network focused on hot spots pinpointed by earlier modeling runs. Receptors were also placed in Illinois in order to assess interstate impacts. Modeling showed that the Indiana sources did not violate the NAAQS in Illinois.

The final modeling shows that the Lake County PM nonattainment area will attain the 24-hour PM standard. The highest sixth high predicted 24-hour concentration is 149.9 $\mu g/m^3$ (the 24-hour PM standard is 150 $\mu g/m^3$). The final modeling also predicts attainment of the annual PM standard. The highest 5-year average predicted PM concentration is 47.7 $\mu g/m^3$ (the standard is 50 $\mu g/m^3$).

[2] Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

[3] USEPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073–74).

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To have attained the PM NAAQS, an area must have an average of no more than 1.0 expected exceedance of the 24-hour PM NAAQS per year for the previous 3 years at any monitor. In addition, the average of the annual PM concentrations for the previous 3 years at any monitor must be below the annual standard.

A preliminary review of the Lake County air quality monitoring data indicates that the area is attaining the PM NAAQS. No monitor in the Lake County area has shown an exceedance of the annual PM NAAQS in the last 3 years. In addition, the worst-case monitor in the Lake County PM nonattainment area shows an average of 0.75 expected exceedance per year for 1992, 1993, and 1994. The USEPA will make a formal determination of the attainment status of the Lake County PM nonattainment area at a later date.

5. PM Precursors

The control requirements which are applicable to major stationary sources of PM must also apply to major stationary sources of PM precursors unless the USEPA determines such sources do not contribute significantly to PM levels which exceed the National Ambient Air Quality Standards in that area (see section 189(e) of the Act). PM precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. The control requirements that apply to major stationary sources in PM nonattainment areas generally include the following: reasonably available control technology, which applies in moderate PM nonattainment areas; best available control technology, which applies in serious PM nonattainment areas; and control requirements under the applicable new source review provisions, such as the lowest achievable emission rate. The General Preamble (see 57 FR 13539–13540 and 13541–13542) contains a lengthy discussion on control requirements for PM precursors in moderate nonattainment areas and on the type of technical information USEPA will rely on in making any determinations under section 189(e).

Filter analysis data from ambient monitors in Cook County, Illinois (the data was collected in 1992) were used to assess the significance of PM precursors in the Lake County, Indiana PM nonattainment area. The monitors used are located at the Washington School and the Bright School in the city of Chicago, Illinois. These monitors are located approximately .6 and 1.75 miles, respectively, west of the Lake County nonattainment area. Besides the close proximity, these sites are also appropriate because the source mix in southeast Chicago closely approximates that of the Lake County nonattainment area.

The mean sulfate concentration plus the mean nitrate concentration for the Washington school and Bright school monitors were 13.1μg/m³ and 14.9μg/m³ respectively. This compares to an average annual background PM concentration of 23μg/m³ in the Lake County nonattainment area. This illustrates the relative insignificance of the impact of PM precursors, and supports representing PM precursor impacts as part of the background concentration.

Further considerations also argue against applying the same control requirements for precursor sources as for direct emission sources. The climatology in northwest Indiana is such that precursor emission control for a particular source would not have a significant effect until far downwind. Title IV of the Clean Air Act mandates significant particulate precursor emission reductions in Indiana, after which the impacts of these sources on particulate matter concentrations will be even less significant.

For these reasons, it is appropriate to conclude that precursors do not contribute significantly to particulate matter concentrations in the Lake County nonattainment area. This finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The USEPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM nonattainment area plan revisions demonstrating attainment must contain quantitative milestones, which are to be achieved every 3 years, until the area is redesignated to attainment. The plan also must demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate PM nonattainment areas, the emissions reductions progress made between the SIP submittal due date of November 15, 1991 and the attainment date of December 31, 1994, (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement. The *de minimis* timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

In implementing RFP for an initial moderate area, USEPA has reviewed the attainment demonstration and control strategy for the area to determine whether the initial milestones have been satisfied, and to determine whether annual incremental reductions different from those provided in the SIP may be necessary to ensure attainment of the PM NAAQS by December 31, 1994 (see section 171(1)). As indicated, Indiana's PM SIP submittal for the Lake County PM nonattainment area shows that the PM NAAQS will be attained by December 31, 1994. Also, a preliminary review of the monitored air quality data shows that the area is in attainment of the PM NAAQS. Therefore, the RFP requirement has been satisfied.

7. Enforceability

All measures and other elements in the SIP must be enforceable by the State and USEPA. See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556. The USEPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from the Assistant Administrator for Air and Radiation, et al., entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," and with an attached memorandum with the same date and title which contained more detailed guidance from the Associate Enforcement Counsel for Air Enforcement, *et al.* (see 57 FR 13541).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion, including, for example, grain loading limits, lb/ton limits, and lb/MMBTU limits for point sources and opacity limits for roadways and storage piles. The SIP provides that these control measures apply to the Lake County nonattainment area.

Upon initial review of Indiana's submittal, USEPA identified two enforcement concerns. The first enforcement concern was related to the 20 percent opacity limit as it applies to coal preheater bypass stacks at U.S. Steel. A number of years ago, Indiana issued a variance to these stacks under a previous State rule. The USEPA requested IDEM's interpretation of how the variance relates to the new rule. On November 17, 1994, IDEM submitted to USEPA a letter clarifying this issue. In the letter, IDEM stated that "no variance currently exists for the U.S. Steel. Any variance from a previous, repealed rule that existed prior to the adoption of 326 IAC 5–1–2(2)(B) has been superseded by the revised PM rule." Therefore, this issue has been resolved.

The second enforcement concern was related to the shutdown of the A. Metz Asphalt Company in Gary, Indiana. IDEM did not include this source in the emissions inventory because it is not currently operating, but the plant still has a limit in the State rules. The USEPA was concerned about the enforceability of the shutdown, and the possibility that the plant might resume operation. In a November 17, 1994, letter, IDEM assured USEPA that the A. Metz Asphalt Company has not operated since 1989, and does not have a valid operating permit. IDEM stated that restarting of operations at this plant would trigger Indiana's new source review permitting process. Therefore, this issue has been resolved.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures were to have been submitted by November 15, 1993, for initial moderate nonattainment areas. These measures must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the PM NAAQS by the applicable statutory deadline.

On January 25, 1994, a letter was sent to the State indicating that the USEPA was making a finding that the State of Indiana had failed to submit PM contingency measures for the Lake County PM nonattainment area. The letter also stated that Indiana would have 18 months from the date of the letter to make a complete submission of PM contingency measures before USEPA would be mandated to impose sanctions as identified in section 179(b) of the amended Act. The USEPA is currently working with IDEM to develop the required PM contingency measures. The USEPA will take separate rulemaking action on the contingency plan for the Lake County nonattainment area.

III. USEPA's Proposed Rulemaking Action

USEPA is proposing to approve the plan revision submitted to USEPA by the State of Indiana on June 16, 1993, and supplemented on December 9, 1993, September 8, 1994, and November 17, 1994, for the Lake County PM nonattainment area. Among other things, the State of Indiana has demonstrated through modeling that the Lake County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. In addition, a preliminary review of the monitored air quality data for the Lake County area shows that this area is in attainment of the NAAQS.

As noted, additional submittals for the initial moderate PM nonattainment areas are due at later dates. The USEPA will determine the adequacy of any such submittals as appropriate.

USEPA is requesting comments on the requested SIP revision and this proposed rule. As indicated at the outset of this dowment, USEPA will consider any comments received by May 1, 1995.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 21, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–7718 Filed 3–30–95; 8:45 am]

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Notices

Federal Register

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Friday, March 31, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Public Law 92–463, 86 Stat. 770–776), the Cooperative State Research, Education, and Extension Service announces the following meeting:

Name: Committee of Nine.

Date and Time: May 9, 1995, 1:00 p.m.—5:00 p.m.; May 10, 1995, 8:30 a.m.—5:00 p.m.; May 11, 1995, 8:30 a.m.—Noon.

Place: USDA, CSREES, 14th & Independence Avenue, S.W., Room 3854 South Building, Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

Contact person for Agenda and more information: Dr. Walter R. Woods, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research, Education, and Extension Service, 14th & Independence Avenue, S.W., Room 3341, South Building, Washington, D.C. 20250, Telephone: 202–720–4088.

Done at Washington, D.C., this 21st day of March 1995.

William D. Carlson,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–7963 Filed 3–30–95; 8:45 am]

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Forest Service

Notice of Intent to Prepare an Environmental Impact Statement to Amend the Land and Resource Management Plan for the Toyabe National Forest Spring Mountains National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

Preparation of a general management plan for the Spring Mountains National Recreation area as an amendment to the Toiyabe National Forest Land and Resource Management Plan (Forest Plan); Toiyabe National Forest; Spring Mountains National Recreation Area; Clark and Nye Counties, Nevada.

SUMMARY: Pursuant to the Spring Mountains National Recreation Area Act (P.L. 103–63) and 36 CFR 219.10(f), the Forest Supervisor for the Toiyabe National Forest gives notice of the agency's intent to prepare an environmental impact statement (EIS) for the decision to prepare a general management plan for the Spring Mountains National Recreation Area (SMNRA) as an amendment to the Land and Resource Management Plan for the Toiyabe National Forest. This amendment would make specific changes in the Forest Plan, as it applies to the SMNRA. This notice includes a summary of the proposed changes to the Forest Plan, a description of the need for these changes, and a brief description of preliminary issues and potential alternatives to the proposed amendment. This notice also provides estimated dates for filing the draft and final EIS; information on future public involvement; the name and address of the responsible official; and the name of the person who can provide additional information.

DECISION TO BE MADE: The Spring Mountains National Recreation Area is currently managed under three separate land management plans, developed independently by different agencies under different authorities and legislation. One of these is the Forest Plan, which also provides direction for the rest of the 4.5 million acre Toiyabe National Forest. Public Law 103–63 directs the Forest Service to "develop a general management plan for the Recreation Area as an amendment to the Toiyabe National Forest Land and Resource Management Plan."

In January, 1995, the Forest Service released the Analysis of the Management Situation for the SMNRA. This document reviews the best available information on the ecosystems and users of the Spring Mountains, and identifies the need for change in current management direction. Through the process of environmental analysis, the Forest Service will decide whether or not to amend the Forest Plan to address needs for change identified in the Analysis of the Management Situation. Changes are needed to:

—Meet the direction established in the Spring Mountains National Recreation Area Act;
—Improve ecosystem health and sustainability by protecting riparian areas, biodiversity hotspots, habitat for threatened, endangered, and candidate species, and soil and water quality;
—Establish standards and guidelines to protect heritage resources, wilderness characteristics, scenic values, and other resources affecting the public use and enjoyment of the land;
—Respond to population growth and development in Las Vegas and southern Nevada, and changes in public sentiment regarding management of the Spring Mountains;
—Identify opportunities for sustainable recreational use and development;
—Provide management direction for lands transferred to the Forest Service under the Nevada Enhancement Act of 1988;
—Establish ecosystem management as the organizing philosophy for management of the SMNRA;
—Identify goals, objectives, and desired future conditions for each ecological unit of the SMNRA;
—Respond to changes in law and direction in the eight years since the Forest Plan was approved; and
—Establish a program of monitoring and evaluation to support adaptive management of the SMNRA.

The proposed amendment would not make any changes in Forest-wide direction, or in management of other portions of the Toiyabe National Forest. No irreversible or irretrievable commitment of resources (site-specific actions) will be made as a result of this decision. The Forest Plan is a programmatic document; projects to implement it will involve site-specific environmental analysis and appropriate documentation.

DATES: The agency expects to file the draft EIS (DEIS) with the Environmental Protection Agency and make it available for public comment by November, 1995. The agency expects to file the final EIS by July, 1996.

MEETINGS AND PUBLIC INVOLVEMENT: Based on public recommendations, scientific analysis, and the Analysis of the Management Situation, the Toiyabe National Forest has prepared a proposed amendment to the Forest Plan for consideration. The Forest Service invites comments and suggestions from Federal, State and local agencies, American Indian tribes, individuals, and organizations on issues concerning the effects of this proposal. The agency has scheduled public meetings to present and discuss the proposed Forest Plan amendment at:

—Monday, April 10, 7:30 pm, Public Library, Mt. Charleston, NV.
—Tuesday, April 18, 7:00 pm, Chamber of Commerce, Pahrump, NV.
—Tuesday, April 25, 6:00 pm, Cashman Field mtg rms, Las Vegas, NV.
—Date to be arranged, Fire Station, Mountain Springs, NV.

The purpose of these meetings is to discuss the proposed changes to the Forest Plan and to identify issues associated with those changes. Written comments are encouraged. Additional meetings with individuals or groups will be arranged by request.

The Forest has an extensive public mailing list of interested and affected people, developed during preparation of the Analysis of the Management Situation, with additions based on participation at each meeting. The Forest Service will continue to contact everyone on the mailing list at each stage of the planning process to provide information and solicit input. Those interested in being added to the mailing list should call or write to the address below.

In addition, the Forest has continuing contact with federal, state and local agencies such as the Nevada Division of Wildlife, the Nevada Division of State Parks, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Clark County Planning Commission, and Congressional representatives. These agencies, governments and contacts will continue to be part of the planning effort.

Additional public meetings will be scheduled in June to develop a wide range of alternatives to the Proposed Amendment which address the needs identified in the Analysis of the Management Situation, and respond to the significant issues.

Comments will be of most use to the planning team if received before August, 1995. Refer to the **FOR FURTHER INFORMATION CONTACT** in this notice for the contact individual.

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, Planning Team Leader, Spring Mountains National Recreation Area, 2881 S. Valley View, Suite 16, Las Vegas, NV 89102. (702) 873–8800.

RESPONSIBLE OFFICIAL: The Forest Supervisor for the Toiyabe National Forest, located at 1200 Franklin Way, Sparks, NV 89431, is the Responsible Official and deciding official for this action. The Forest Supervisor may delegate this responsibility to an Assistant Forest Supervisor in Las Vegas.

SUPPLEMENTARY INFORMATION: Forest planning is a dynamic process that builds upon new information and conditions developed since adoption of a Forest Plan. Forest Plans may be amended as needed. The adoption of a Forest Plan sets key decisions for the long-term management of a National Forest. These decisions can be described as:

—Establishment of forest-wide multiple-use goals and objectives (36 CFR 219.11(b));
—Establishment of forest-wide management requirements, or standards and guidelines (36 CFR 219.13);
—Establishment of management area direction (prescriptions and associated standards and guidelines) applying to each specific management area (36 CFR 219.11(c));
—Designation of lands suited or not suited for timber production and other resource management activities (36 CFR 219.14, 219.15, 219.20 and 219.21);
—Establishment of monitoring and evaluation requirements (36 CFR 219.11(d)); and
—Recommendations to Congress for the establishment of Wilderness, Wild and Scenic Rivers, Research Natural Areas, and other special designations, as appropriate.

This proposed Forest Plan amendment is limited in scope. Changes are proposed in management area direction, suitability for resource management, monitoring, and recommendations for special designations for the Spring Mountains National Recreation Area (less than 10% of the land area of the Toiyabe National Forest). The proposed amendment would make no changes in forest-wide goals or standards, or in management direction for any other lands on the Toiyabe National Forest.

The amendment process began with the development of an Analysis of the Management Situation (AMS) for the Spring Mountains National Recreation Area (36 CFR 219.12(e)), which was distributed on January 17, 1995. The AMS:

—reflects the results of scientific inventories and surveys;
—compiles public sentiment and suggestions;
summarizes relevant law, regulation, and policy; and
identifies the need for change in current management.

The AMS brings together the best available scientific information to document the conditions and trends of ecosystems and human uses in the Spring Mountains. The public was involved in identifying the need for changes to the Forest Plan, and many groups worked closely with the planning team to develop the AMS. Between May, 1994, and January, 1995, the Forest Service held eight open houses and public meetings, made more than sixty presentations to groups and individuals, and solicited ideas from more than 600 people. Copies of the AMS may be obtained by contacting the **FOR FURTHER INFORMATION** contact identified previously.

Based upon the needs for change identified in the AMS, the Forest Service is proposing specific changes to the long-term management direction for the Spring Mountains National Recreation Area. The public is invited to comment on the proposed changes and to identify alternatives to the proposal which address the needs identified in the AMS.

Proposed Action

The Forest Service proposes to provide new management direction for the Spring Mountains National Recreation Area, one of five districts on the Toiyabe National Forest. The proposal would:

—designate two new management areas and realign one more to encompass lands acquired through the Enhancement Act;
—unify management direction for the SMNRA under a single management plan;
—provide new management prescriptions for the SMNRA, including goals, objectives, desired future condition, standards, and guidelines for each of the four management areas involved;
—expand the Carpenter Canyon Research Natural Area to provide

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additional protection for the unique resources of Carpenter Canyon;
—establish a program of monitoring and evaluation specific to the SMNRA; and
—identify opportunities for sustainable recreational use and development.

The full text of the Proposed Amendment to the Forest Plan is being distributed to the Forest Service's mailing list of potentially interested and affected parties. Copies are available upon request from the Spring Mountains National Recreation Area Planning Team. See **FOR FURTHER INFORMATION CONTACT** above.

This proposal represents a starting point for discussion; the Forest Service will consider all reasonable alternatives to the proposed Forest Plan amendment, including no action (leaving management direction as it is). Public comment on this proposal will be used to develop alternatives to the proposed action. The responsible official may select any alternative developed through this process as the management plan for the SMNRA; the proposed amendment will not necessarily be the preferred alternative.

Purpose and Need/Amendment Topics

Not every issue related to Forest Service management is best addressed through the Forest Plan. Public comment, monitoring of current activities, and direction from the Spring Mountains National Recreation Area Act led to the identification of many topics which might lend themselves to Forest Service action. These topics were categorized as follows:

—Amendment Topics
—Implementation Topics
—Topics outside the jurisdiction of the Forest Service
—Administrative Topics
—Research Topics

Amendment topics are identified and discussed below. Only those topics which fall into this category are addressed in the proposed Forest Plan amendment.

Implementation topics are those where the existing Forest Plan is adequate, but there have been problems with implementation of the Plan. One example is use of motor vehicles in the Mr. Charlestor. Wilderness. Motor vehicles are clearly prohibited in the Wilderness by the Wilderness Act of 1964, the Nevada Wilderness Act, and the Forest Plan. Nevertheless, some use continues to occur, especially at Trough Spring and Wallace Canyon, where old roads cross the Wilderness boundary. This problem is being addressed through placement of barriers (boulders, earth mounds) in road beds, and increased law enforcement.

Topics outside the jurisdiction of the Forest Service include those where the Forest Service does not have authority to act. These topics include issues involving private land or land under the management of other federal agencies (such as the BLM). Some people in the Mt. Charleston area, for example, are concerned over development of additional lots in Kyle Canyon. This is a proper subject for Clark County, but not for the Forest Service, which has no jurisdiction over private land.

Administrative topics are those which relate to budget, personnel, or administrative procedures, rather than land management. These are topics which can be addressed through the Forest Service directives system, and which do not generally require environmental analysis. Examples in this category include fees charged by the Forest Service for campground reservations, group events, and other special land uses. The Forest Service sets these fees through administrative direction, in accordance with existing law and regulation.

Research topics are those where additional information, through research, is needed. Once research topics are identified, they can be investigated by the Forest Service's Intermountain Forest and Range Experiment Station, or by public or private universities. One example is the need to learn more about the ecology of the blackbrush community and its successional pathways.

Amendment topics are those subjects which can best be resolved by amending the Forest Plan. These are also known as "public issues, management concerns, and resource use and development opportunities" (36 CFR 219.12(b)). Through work with interested publics, the Planning Team identified the following fifteen amendment topics in the *Analysis of the Management Situation*.

- FOREST HEALTH/BIODIVERSITY—The Spring Mountains provide a unique and fragile ecosystem—an island in the desert—which harbors many endemic species of plants and animals. As we have learned more about ecosystem dynamics, and as Las Vegas has grown, we have become increasingly aware of potential conflicts. The proposed amendment includes goals, objectives, and standards to assure protection of ecological health and diversity while providing for sustainable recreation use and development.
- THREATENED, ENDANGERED, AND SENSITIVE SPECIES—The Spring Mountains provide habitat for four listed threatened and endangered species, one species proposed for listing, and 54 candidate species, including 22 which occur nowhere else in the world. Proposed standards to protect these species are needed to provide for recovery of listed species, and to keep candidate species from becoming threatened or endangered. The proposed amendment would include a conservation agreement with the U.S. Fish and Wildlife Service which could provide a basis for determinations not to list some candidate species.
- WILDLIFE HABITAT—Wildlife of the SMNRA includes native species ranging from mule deer and desert bighorn sheep to Palmers chipmunk and chuckwalla. Several game species have also been introduced to the range, including elk, chukar, and turkey. Wildlife populations are managed by the Nevada Division of Wildlife. Forest Plan direction is needed, however, to establish habitat management objectives, and to set an appropriate balance between native and non-native species. Proposed objectives, including Appropriate Management Levels (AML's) for elk, are needed in order to provide direction for habitat management, and for improvements such as water development.
- WILD HORSES AND BURROS—Wild horses and burros on the SMNRA are managed by the Forest Service under the authority of the Wild Horses and Burros Protection Act of 1971. Like elk, wild horses and burros have been introduced to the Spring Mountains, and are maintained there to provide for public enjoyment. In some areas of the SMNRA, wild horse populations have increased to the point where riparian and spring sites are affected; in other areas, forage is so limiting that animal condition is poor. Proposed objectives, including Appropriate Management Levels (AML's) are needed in order to provide direction for management of habitat and populations, and for improvements such as water development.
- ARCHAEOLOGY—Many places in the AMNRA have been used by people for thousands of years. Often, these people have left behind evidence of their use of the land, including American Indian rock art and roasting pits, historic cabins and sawmills, and a section of the Spanish Trail/Mormon Road. These artifacts and sites offer us a glimpse of our history and culture, and provide a window on the dynamics and use of the ecosystem. Proposed management direction is needed to protect these resources while also allowing for appropriate interpretation and enjoyment.
- RECREATION AND ADMINISTRATIVE FACILITIES—All of the developed recreation facilities in the SMNRA are located within the old "Developed Canyons" management area—15,500 acres in Kyle Canyon, Lee Canyon, and Deer Creek. Most of the fire and administrative facilities of the SMNRA are in these same canyons. In Cold Creek, heavy recreation use occurs with very limited service, facilities, or management. Many people have suggested dispersing recreation use and facilities over a wider area; the Nevada Division of State Parks commissioned a 1991 study which identified suitable areas for cooperative development of state park facilities. The Proposed Amendment includes determinations of suitability for recreation development, as well as standards and guidelines for development and management of recreation and administrative facilities.
- WILDLAND/URBAN INTERFACE—The SMNRA, and particularly the developed canyons of the east slope, are heavily influenced by urban development centered in Las Vegas. Four small communities are located within the boundaries of the SMNRA, and further subdivision and development on private land is likely. Semi-urban areas surrounded by National Forest System lands often present such issues as fire suppression and conflict with recreation users. Standards are proposed to address fire prevention and suppression, scenic quality, water quality degradation, and loss of wildlife habitat in and around the wildland/urban interface.
- SCENIC QUALITY—One of the principal resources of the SMNRA, and one of the main reasons for its popularity, is the unique quality of the area's scenery. Cliffs, towering ponderosa pines, ancient bristlecones, meadows, and snow-covered peaks all form part of the attraction of the Spring Mountains to visitors. proposed visual quality objectives are needed in order to establish standards for management activities which might affect scenic quality.
- WILDERNESS MANAGEMENT—The 43,000 acre Mt. Charleston Wilderness forms the core of the Spring Mountains National Recreation Area, and includes the highest peaks in the range. The Wilderness also includes most of the bristlecone pine forests, and many species of rare plants and butterflies. Proposed standards and guidelines for recreational use of Wilderness are needed to protect these fragile resources.
- RECREATION MANAGEMENT—In addition to camping and picnicking at developed recreation sites, many people enjoy the SMNRA as a place for sightseeing, horseback riding, mountain biking, off-highway vehicle use, rock climbing, cave exploration, hiking, backpacking, cross-country skiing, and group outings. As the population of southern Nevada grows, these uses can cause damage to natural and cultural features, and sometimes conflict a bit. Proposed standards are needed to provide direction for management of these uses in a sustainable manner, within the capacity of the land.
- TRAILS—Of approximately 50 miles of designated trails in the SMNRA, less than 7 miles are outside the Mt. Charleston Wilderness. Trail riding opportunities for mountain bikes and off-highway vehicles (which are excluded from the Wilderness), and for equestrians are limited. The Spring Mountains offer a great deal of potentially suitable terrain for multiple-use trails, including opportunities for development of regional trail networks. Proposed goals and standards for trail development are needed to suggest appropriate locations and management for trails.
- MONITORING AND RESEARCH—During preparation of the Analysis of the Management Situation, the Forest Service recognized many fields in which information to predict environmental effects is limited. As the Spring Mountains receive unprecedented levels of use, how will ecosystem health and function be affected? If we continue to suppress fires, how will vegetation and wildlife habitat change? How is increasing recreational use affecting historic and prehistoric sites? Our inventories have often left us with more questions than they have answered. The proposed program of monitoring and research is needed to assess the impacts of the management courses we choose, and to permit us to change course if needed.
- LAND ACQUISITION AND DISPOSAL—The boundaries of the SMNRA include 315,648 acres of national forest system land, and 7,171 acres of private land. The Spring Mountains National Recreation Area Act directs the Forest Service to prepare "an inventory of all lands within the Recreation Act not presently managed as National Forest lands that will permit the Secretary to evaluate possible future acquisitions." Land purchases and exchanges are carried out on an equal value basis with willing buyers and sellers. Proposed direction for land adjustment is needed to identify which private parcels are suitable for acquisition, and which national forest parcels, if any, are available for disposal.
- FIRE MANAGEMENT—With increased subdivision and development of private land within the SMNRA boundaries, management of wildfires assumes importance beyond simply the protection of national forest resources. At the same time, successful fire suppression can often lead to dangerous buildups of fuels, and may result in unwanted changes in vegetation and wildlife habitat. Proposed direction for fire suppression, controlled burning, and fuel reduction is needed in order to retain the historic role of fire in the ecosystem while protecting lives, property, and natural resources.
- PRIVATE AND COMMERCIAL DEVELOPMENTS—From time to time, the Forest Service receives requests for private, commercial developments or uses of national forest system land. These may include electronic sites and public utilities, outfitter/guide uses, competitive trail rides and other group activities, and even substantial commercial developments. The Lee Canyon ski area, the electronic sites on Angel Peak and Mt. Potosi, and several organizational camps are among the most visible examples of such uses. Proposed standards for special uses are needed to assist Forest Service managers in identifying which uses are appropriate.

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The Forest Service prepared the proposed action as a starting point for analysis and scoping. The proposed action is one way to respond to the need for change—to the above amendment topics. The Forest Service will use public comment on the proposal to identify significant issues, and to develop to wide range of alternative solutions to address these needs.

Preliminary Issues

Through initial scoping, the Forest Service has identified the following issues relating to the effects of the proposed Forest Plan amendment. These are preliminary issues—additional scoping and public involvement will be used to refine and add to this list to develop a complete understanding of all significant issues related to this proposal.

—UNCERTAIN EFFECTS TO SENSITIVE SPECIES—For many rare species of plants and animals, current research and inventories are not sufficient to identify whether existing uses or alterations to the ecosystem pose a threat to their existence. While we can sometimes identify "biodiversity hotspots," we do not completely understand the critical factors necessary to ensure their protection. Scientists and others are concerned that introduced species (including wild horses and burros), rock climbing, and proposed expansion of recreational facilities and trails, especially in Kyle and Lee Canyons and the Wilderness, may affect rare plants and animals in ways which we do not fully understand.

—LIMITS TO RECREATIONAL USE—The proposal would limit some opportunities for recreational use of the Spring Mountains. Proposed restrictions on equestrian use above timberline, rock climbing in the Wilderness, expansion of the ski area and other commercial developments, closure of the Carpenter Canyon road, and restrictions on development of recreation facilities are, in some peoples' minds, contrary to the spirit of a national recreation area. Some people are concerned that the proposed limits on recreational activities go too far, unnecessarily restricting public use within adequate scientific basis.

—WILD HORSES AND BURROS—The proposed amendment would set appropriate management levels (AML's) for wild horses and burros. Some people are concerned that the proposed AML's are unnecessarily low, and many threaten the long-term survival of these species in southern Nevada by reducing genetic diversity. This concern includes the cumulative effects of other agencies' actions in managing wild horse and burro herds.

—ELK AND OTHER WILDLIFE—The proposed amendment would set an AML for elk, and restrict introduction of new non-native species and augmentation of existing species. Some people believe that the proposed restrictions on wildlife habitat management will restrict wildlife populations far below levels that the ecosystem could support, and will limit the ability of Nevadans to view and hunt game and non-game wildlife.

—CONTROLLED BURNING—The proposed amendment would encourage controlled burning in some areas of the Spring Mountains under certain specific conditions. Some people are concerned that any deliberately set fires could escape and pose a risk to life and property. This concern also includes the effects of fire on vegetation, scenery, and wildlife.

Preliminary Alternatives

The Forest Service will evaluate a wide range of alternatives to the proposed amendment to the Forest Plan, in response to issues identified in the scoping process. The agency expects to consider at least the following alternatives, which respond to preliminary issues identified to date. As new issues are identified through public involvement, new alternatives may be created, and existing alternatives modified. Some of these preliminary alternatives may not be analyzed in detail. The Responsible Official may select the original Proposed Amendment or any of the alternatives to it as the final management plan for the Spring Mountains National Recreation Area.

—Alternative A—Continue to manage the Spring Mountains National Recreation Area under current management plans. Do not amend the Forest Plan. This is the "no action" alternative.

—Alternative B—Maximize protection of natural resources, heritage resources, and ecosystem health. When in doubt over effects, choose standards which will involve the least risk to rare species, natural ecological processes, and heritage resource sites, even if this involves closing many areas or activities to recreational use. Favor native species and natural processes, but use prescribed fire to mimic historic fire regime. Provide for little or no expansion of recreation opportunities. Close the Spring Mountains Wild Horse Territory, and place the horses for adoption or remove them to other territories.

—Alternative C—Within the capacity of the ecosystem, maximize opportunities for recreation (both developed and undeveloped) and customer service, including trails, roads, campgrounds, and other facilities. This alternative would still provide basic protection for threatened and endangered species, and would not permit activities which endanger the long-term health of the ecosystem. However, public uses would not be prohibited or restricted without hard scientific evidence that they are harmful.

—Alternative D—Maintain the same balance of protection and development as the Proposed Amendment, but provide for the maximum sustainable populations of wild horses and burros consistent with maintaining ecosystem health. Provide for water development and other habitat improvements, and favor wild horses over elk, other wildlife, and recreation development.

—Alternative E—Maintain the same balance of protection and development as the Proposed Amendment, but provide for the maximum sustainable diversity and productivity of wildlife habitat, especially for game animals, consistent with maintaining ecosystem health. Encourage introduction of new species which show the potential to naturalize, as appropriate. Provide for water development and other habitat improvements, and favor wildlife over wild horses and recreation development.

—Alternative F—Maintain the same balance of protection and development as the Proposed Amendment, but do not use controlled burns or allow natural fires to burn. Suppress all wildfires aggressively, and use only vegetative treatments to minimize risk to property from fire.

Public Comments on the Draft EIS

After the Draft Environmental Impact Statement has been published, the Forest Service will again be actively seeking information, comments and assistance from Federal, State and local agencies and from individuals and organizations who may be interested in or affected by the proposed action. It is very important that those interested in this proposed action participate at that time.

The DEIS and draft Forest Plan amendment should be available for public review by about November, 1995. After a comment period of 90 days, the Final Environmental Impact Statement and Forest Plan amendment should be completed by September, 1996.

The comment period on the Draft Environmental Impact Statement will extend 90 days from the date the Environmental Protection Agency publishes the "Notice of Availability" in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1973).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 17, 1995.

R.M. "Jim" Nelson,

Forest Supervisor.

[FR Doc. 95–7886 Filed 3–30–95; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement Helicopter Landings in Wilderness, Tongass National Forest, Alaska

AGENCY: Forst Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The original notice of intent to prepare an environmental impact statement for helicopter landings in Wilderness, Tongass National Forest, Alaska was published in the August 31, 1994 **Federal Register** (pages 44964–44965).

The purpose of this revised notice is to clarify the scope of activities to be analyzed in the helicopter landings in wilderness EIS. The EIS will include all helicopter access for recreational purposes including tours, sightseeing, guiding and other commercial recreation purposes. The environmental consequences of helicopter landing for general public access will be addressed. If helicopter landings are approved within Tongass wildernesses, allocation of those landings between commercial visitor service providers and other members of the public would be made in a separate process.

EFFECTIVE DATE: Written comments concerning the revised proposed action to approve helicopter landing areas in Tongass National Forest wilderness should be received on or before May 1, 1995.

ADDRESSES: Send written comments to Bill Tremblay, Team Leader USDA Forest Service, P.O. Box 309, Petersburg, AK 99833.

FOR FURTHER INFORMATION CONTACT: Questions concerning the environmental impact statement should be directed to Bill Tremblay, Team Leader, USDA Forest Service, P.O. Box 309, Petersburg, AK 99833, phone: (907) 772–3841.

SUPPLEMENTARY INFORMATION: The purpose of the project is to provide for use of helicopters for general public access where this use was established prior to designation of Wilderness while managing Tongass National Forest wilderness to provide high quality Wilderness opportunities. In this context, general public access is for activities such as hiking, camping, photography, fishing, skiing, sightseeing, guiding, and other Wilderness-oriented forms of recreation.

The Regional Forester, Phil Janik, will decide whether to allow helicopter landings for access in areas that were used prior to Wilderness designation. If helicopter landings are approved, the Regional Forester will decide which areas will be designated and what restrictions, if any, will be established.

Issuance of the final environmental impact statement is projected in the spring of 1996. The Responsible official for the decision is Phil Janik, Regional Forester, Alaska Region, P.O. Box 21628, Juneau Alaska, 99802–1628.

Dated: March 22, 1995.

Phil Janik,

Regional Forester.

[FR Doc. 95–7888 Filed 3–30–95; 8:45 am]

BILLING CODE 3410–11–M

Sequoia National Forest; California Spotted Owl DEIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces an open house in which the public is invited to participate in an information exchange regarding alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement, as they affect the Sequoia National Forest area.

DATES AND TIME: April 11, from 7:00 p.m. to 9:00 p.m.

ADDRESSES: Springville Veterans Memorial Building, 35944 Highway 190, Springville, CA 93265.

CONTACT PERSON FOR FURTHER INFORMATION: Judy Schutza, Hot Springs Ranger District, Route 4, Box 548, California Hot Springs, CA 93207, (805) 548–6503.

SUPPLEMENTARY INFORMATION: The Forest Service has released a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding the Draft Environmental Impact Statement and the preferred alternative.

The meeting will be informally structured. A member of the team that prepared the DEIS will be available to answer questions and discuss the DEIS. Visual media depicting the alternatives and selected environmental consequences will be displayed.

March 27, 1995.

Linda C. Brett,

Acting Forest Supervisor.

[FR Doc. 95–7907 Filed 3–30–95; 8:45 am]

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Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 13 & 14, 1995 at Rock Springs Guest Ranch, 10 miles north of Bend, Oregon off Highway 20. Times are 6 to 9 pm April 13, and 8 am to 4 pm April 14. Agenda items include: (1) context of the Advisory Committee and background on the President's Forest Plan; (2) introduction of members; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship to the PIEC; and (6) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 503–383–4704.

Dated: March 15, 1995.

Sally Collins,
Deschutes National Forest Supervisor.

[FR Doc. 95–7989 Filed 3–30–95; 8:45 am]
BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the States of Louisiana and North Carolina

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).
ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of the Louisiana Department of Agriculture and Forestry (Louisiana) and the North Carolina Department of Agriculture (North Carolina) will end September 30, 1995, according to the Act, and GIPSA is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before May 1, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Louisiana, main office located in Baton Rouge, Louisiana, to provide inspection and Class X and Class Y weighing services under the Act on October 1, 1992, and North Carolina, main office located in Raleigh, North Carolina, to provide inspection services under the Act on October 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Louisiana and North Carolina end on September 30, 1995.

The geographic area presently assigned to Louisiana, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Louisiana, except those export port locations within the State.

The geographic area presently assigned to North Carolina, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of North Carolina, except those export port locations within the State.

Interested persons, including Louisiana and North Carolina, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 1995, and ending September 30, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 22, 1995

Neil E. Porter
Director, Compliance Division

[FR Doc. 95–7977 Filed 3–30–95; 8:45 am]
BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicant for the Eastern Iowa Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).
ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the geographic area currently assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by May 1, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 31, 1995, **Federal Register** (60 FR 5897), GIPSA asked persons interested in providing official services in the geographic area assigned to Eastern Iowa to submit an application for designation. Eastern Iowa, the only applicant, applied for designation to provide official inspection services in the entire area currently assigned to them. GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning Eastern Iowa. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Eastern Iowa. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 22, 1995

Neil E. Porter
Director, Compliance Division

[FR Doc. 95–7965 Filed 3–30–95; 8:45 am]
BILLING CODE 3410–EN–F

Designation of the Detroit (MI), Keokuk (IA), and Michigan (MI) Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).
ACTION: Notice.

SUMMARY: GIPSA announces the designation of Detroit Grain Inspection Service, Inc. (Detroit), Keokuk Grain Inspection Service (Keokuk), and Michigan Grain Inspection Services, Inc. (Michigan), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: May 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 31, 1994, **Federal Register** (59 FR 54428), GIPSA asked persons interested in providing official services in the geographic areas assigned to Detroit, Keokuk, and Michigan to submit an application for designation. Applications were due by November 30, 1994. There were four applicants: Detroit, Keokuk, and Michigan each applied for designation in the entire area they are currently assigned. Springfield Grain Inspection, Inc. (Springfield), applied for the portion of Keokuk's area that includes all of Mason County and the part of Fulton County South of State Route 24.

GIPSA requested comments on the applicants in the January 3, 1995, **Federal Register** (60 FR 96). Comments were due by January 31, 1995. GIPSA received three comments supporting redesignation of Keokuk. No comments were received regarding Detroit, Michigan, and Springfield.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Detroit and Michigan are able to provide official services in the geographic area for which they applied; and that Keokuk is better able than Springfield to provide official services in the Keokuk geographic area. Effective May 1, 1995, and ending April 30, 1998, Detroit, Keokuk, and Michigan are designated to provide official inspection services in the geographic areas specified in the October **Federal Register**.

Interested persons may obtain official services by contacting Detroit at 313–395–2105, Keokuk at 319–524–6482, and Michigan at 616–781–2711.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 24, 1995

Neil E. Porter
Director, Compliance Division

[FR Doc. 95–7964 Filed 3–30–95; 8:45 am]
BILLING CODE 3410–EN–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene on Thursday, April 20, 1995, from 6:00 p.m. to 8:30 p.m., at the Shiloh Inn, 206 SW Temple, Salt Lake City, Utah 84101. The purpose of the meeting will be to review a draft report on the current project, brief members on Commission and regional activities, discuss current civil rights issues, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Mary Stovall Richards, 801–378–6138 or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 27, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 95–7912 Filed 3–30–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene on Tuesday, April 25, 1995, at 2:00 p.m. and adjourn 5:00 p.m. at the Holiday Inn, 605 E. Broadway, Bismarck, North Dakota 58501. The purpose of the meeting is to brief the Committee on Commission and regional activities, discuss current civil rights issues in the State, and approve plans for factfinding meetings in Bismarck and Fargo.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Betty L. Mills, 701–223–4643, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 27, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 95–7913 Filed 3–30–95; 8:45 am]
BILLING CODE 6335–01–P

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Agenda and Notice of Public Meeting of the Indiana State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Indiana Advisory Committee to the Commission will be held from 9:00 a.m. until 1:00 p.m., on Thursday, April 27, 1995, at the South Bend Public Library, 304 South Main Street, South Bend, Indiana 46601. The purpose of the meeting is to gather information on "The Enforcement of Affirmative Action Compliance in Indiana under Executive Order 11246."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 27, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–7914 Filed 3–30–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–94]

Foreign-Trade Zone 204—Sullivan County, TN (Tri-City area); Application for Subzone Siemens Industrial Automation, Inc. (Programmable Logic Controllers) Carter County, Tennessee; Amendment of Application

Notice is hereby given that the application of the Tri-City Airport Commission, grantee of FTZ 204, requesting special-purpose subzone status for the robotics/programmable logic controller products plant of Siemens Industrial Automation, Inc., Carter County, Tennessee (59 FR 25885, 5/18/94) has been amended to expand the scope of activity to be conducted under zone procedures.

The original application requested authority to manufacture industrial control products using certain foreign components. The amendment includes additional foreign components that could be used in manufacturing authority conducted under zone procedures, including: labels, boxes, screws, data processing machines and parts used for industrial control equipment, resistors, fuses, connectors, plugs, cables, pressure gauges, voltage regulators, and typewriter ribbons (duty range—free to 9.5%).

The application remains otherwise unchanged.

The comment period is reopened until May 15, 1995.

A copy of the application and the amendment will be available for public inspection at each of the following locations:

Tri-City Regional Airport, Room 306, State Highway 75, Blountsville, TN 37617

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: March 23, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–8005 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of April 1995.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Canada
Sugar and Syrups
A–122–085
45 FR 24126
April 9, 1980
Contact: David Dirstine at (202) 482–4033

Greece
Electrolytic Manganese Dioxide
A–484–801
54 FR 15243
April 17, 1989
Contact: Thomas Barlow at (202) 482–5256

Japan
Calcium Hypochlorite
A–588–401
50 FR 15470
April 18, 1985
Contact: Sheila Forbes at (202) 482–5253

Japan
Cyanuric Acid
A–588–019
49 FR 18148
April 27, 1984
Contact: Sheila Forbes at (202) 482–5253

Kenya
Standard Carnations
A–779–602
52 FR 13490
April 23, 1987
Contact: Michael Panfeld at (202) 482–0168

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of April 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: March 7, 1995.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–8002 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–050]

Racing Plates (Aluminum Horseshoes) From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: In response to a request by a respondent, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty finding on racing plates from Canada. The review covers one firm and the period February 1, 1993, through January 31, 1994. Preliminary results were published on December 19, 1994. Since there were no comments, we determine that the dumping margin for Equine Forgings Limited remains at .01 percent, the dumping margin from the preliminary results of review.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published preliminary results on December 19, 1994. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of racing plates (horseshoes) that are made of aluminum, may have cleats or caulks, and come in a variety of sizes. They are used on race horses, polo, jumping, hunting, and other performing horses, as differentiated from pleasure and work horses. During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7616.90.00. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Final Results of Review

The Department received no comments on its preliminary results. Therefore, the margin from the preliminary results is the final margin for the period February 1, 1993, through January 31, 1994:

Manufacturer/exporter	Margin (percent)
Equine Forgings Limited	.014

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review. Since the rate for Equine Forgings Limited is *de minimis*, there will be a cash deposit of zero on shipments from this firm; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the "all others" rate will remain at 6.77 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8012 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–804]

Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 18, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sparklers from the People's Republic of China (PRC) (59 FR 52510). The review was requested for one manufacturer, Guangxi Native Produce Import and Export Corporation, Beihai Fireworks and Firecrackers Branch (Guangxi), of the subject merchandise to the United States and the review period June 1, 1992 through May 31, 1993.

We gave interested parties an opportunity to comment on our preliminary results. We received no

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comments. The final results are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1991, the Department published in the **Federal Register** the antidumping duty order on sparklers from the PRC (56 FR 27946). On June 7, 1993, the Department published a notice in the **Federal Register** notifying interested parties of the opportunity to request an administrative review of sparklers from the PRC (58 FR 31941). On June 28, 1993, the petitioners requested, in accordance with 19 CFR 353.22(a), that we conduct an administrative review of exports to the United States by Guangxi, for the period June 1, 1992, through May 31, 1993. Guangxi had received a separate rate in the final determination of sales at less than fair value (LTFV). We published a notice of initiation of the antidumping administrative review on July 21, 1993 (58 FR 39007). On October 18, 1994, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on sparklers from the PRC. The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this administrative review are sparklers from the PRC. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under subheading 3604.10.00 of the *Harmonized Tariff Schedules* (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding. The period of review (POR) was June 1, 1992, through May 31, 1993.

Best Information Available

On February 22, 1994, we mailed Guangxi a questionnaire explaining the review procedures. The questionnaire, which covered exports to the United States for the POR, was due on April 14, 1994. We did not receive a response by the due date and, thus, asked Skypak International Express (TNT) to trace the mailing and verify Guangxi's receipt of the document. On May 4, 1994, TNT's delivery office in Hong Kong confirmed that the questionnaire was accepted by a representative of Guangxi on March 3, 1994. Because we have received no response and have not been contacted by Guangxi, we determine that Guangxi is an uncooperative respondent. Therefore, in accordance with section 776(c) of the Act, we are using the best information available (BIA) as the basis for determining a dumping margin for Guangxi's United States entries during the POR.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents who cooperate in a review, and margins based on more adverse assumptions for those respondents who do not cooperate in a review. This methodology has been upheld by the U.S. Court of Appeals for the Federal Circuit (*see Allied-Signal Aerospace Co. v. the United States, Slip Op. 93–1049* (Fed. Cir. June 22, 1993); *see also Krupp Stahl Ag. et. al. v. the United States, Slip Op. 93–84* (CIT May 26, 1993)). Given that Guangxi did not respond to the Department's questionnaire, we find that Guangxi has not cooperated in this review.

In accordance with our BIA methodology for uncooperative respondents, we assign as BIA the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin (*see Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.* (57 FR 28379, June 24, 1992)).

We are using as BIA the highest rate established in the remand of the LTFV final determination (58 FR 53708, July 29, 1993), which was 93.54 percent.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are therefore unchanged from those presented in the preliminary results, and we determine that a margin of 93.54 percent exists for Guangxi for the period June 1, 1992, through May 31, 1993.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Guangxi will be the rate as stated above; (2) for PRC exporters not covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will be the PRC country-wide rate of 93.54 percent, the rate established in the remand of the LTFV final determination; and (3) the cash deposit rate for non-PRC exporters will be the rate established for that firm if a separate rate has been established for that firm; if a non-PRC exporter does not have its own separate rate, the deposit rate for that firm's shipments will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until the publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8014 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–806]

Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Lou Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of our preliminary results on December 28, 1994 (59 FR 66912), the following events have occurred:

We gave interested parties an opportunity to comment on the preliminary results. No comments were received.

The Department of Commerce (the Department) has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all cites to the statute and the Department's regulations refer to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of certain small business telephone systems and subassemblies thereof, currently classifiable under the following *Harmonized Tariff Schedule* (HTS) item numbers: 8504.40.0004, 8504.40.0008, 8504.40.0010, 8504.40.0015, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.81.0010, 8517.81.0020, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8517.90.4000, and 8518.30.1000. Although HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

Certain small business telephones and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are designed as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system, monitor the status of other phone sets, and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing, had set, cord (line or hand set), power supply, telephone set circuit cards, or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules and building wiring.

(3) Circuit cards and modules including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise is excluded from the scope of this order: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Final Results of Review

The Department received no comments on its preliminary results of review. Therefore, the final results of our review are identical to those in the preliminary results:

Manufacturer/exporter	Margin (percent)
Bitronic Telecoms Co., Ltd.	6.97

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of this administrative review for all shipments of the subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The case deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 0.00 percent, the "all other" rate established in the original less-than-fair-vaiue investigation by the Department (54 FR 42543, October 17, 1989), in accordance with the decisions of the Court of International Trade in *Floral Trade Council v. United States*, 822 F. Supp. 766 (1993), and *Federal-Mogul Corporation v. United States*, 822 F. Supp. 782 (1993).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antitdumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8013 Filed 3–30–95; 8:45 am]

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[A-427-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Amendment to Final Results of Antidumping Duty Administrative Reviews and Recision of Partial Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative reviews and recision of partial revocation of Antidumping Duty Order.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 10959) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Franco, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The review period was May 1, 1992, through April 30, 1993. Based on corrections to the calculation of United States price (USP), we are amending the final results with respect to French BBs and SPBs sold by one company, SKF France (SKF).

We are also rescinding the revocation of the antidumping duty order on SPBs from France with respect to SKF, since the dumping margin is no longer *de minimis*.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202)482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published in the **Federal Register** the final results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. The review period was May 1, 1992, through April 30, 1993.

In these final results, we revoked in part the antidumping duty order on SPBs from France with respect to SKF based on three consecutive years of zero or de minimis weighted- average dumping margins in accordance with 19 CFR 353.25(a).

Subsequent to the issuance of our final results, the Torrington Company (Torrington), the petitioner, alleged a clerical error in the calculation of dumping margins for SKF with respect to BBs and SPBs from France. We determined there was a ministerial error in the calculation of USP in the final results for AFBs from France sold by SKF. Specifically, purchase price sales made by SKF were reported in French francs, and we failed to convert these prices to U.S. dollars. We have therefore corrected our calculation of SKF's USP.

Recision of Revocation

After correction of this ministerial error, we found that the weighted-average margin for SPBs from France sold by SKF no longer is *de minimis*. Therefore, the criteria for partial revocation pursuant to 19 CFR 353.25(a) have not been met, and we hereby rescind the partial revocation of the antidumping duty order on SPBs from France with respect to SKF.

Amended Final Results of Reviews

As a result of our corrections, we have determined the following percentage weighted-average margins to exist for the period May 1, 1992 through April 30, 1993:

Company	BBs	SPBs
SKF	3.74	49.08

Based on these results, we will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: March 23, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-8011 Filed 3-30-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-834]

Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: James Maeder or Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-3330 or 482-0116, respectively.

Final Determination

We determine that stainless steel angle (SSA) from Japan is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on November 4, 1994 (59 FR 56053, November 10, 1994), the following events have occurred.

On November 23, 1994, the petitioners alleged that the preliminary margin calculations contained three distinct ministerial errors. As detailed in the December 8, 1994, memorandum to Barbara R. Stafford, the Department agreed that the errors identified by the petitioners were ministerial in nature, but did not amend the preliminary determination because these errors were not significant, as defined in the Proposed Regulations (19 CFR 353.15(g)(4)(ii)).

In December 1994, the Department conducted its sales and cost verifications of the respondent, Aichi Steel Works Ltd. ("Aichi") in Japan.

On February 17, 1995, the petitioners and Aichi submitted case briefs. Rebuttal briefs were submitted by both parties on February 24, 1995.

Scope of Investigation

For purposes of this investigation, the term "stainless steel angle" includes hot-rolled, whether or not annealed or descaled, stainless steel products of equal leg length angled at 90 degrees, that are not otherwise advanced.

The stainless steel angle subject to this investigation is currently classifiable under subheadings 7222.40.30.20 and 7222.40.30.60 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

As noted in the March 21, 1995 memorandum from the Acting Director of the Office of Antidumping Investigations to the Deputy Assistant Secretary for Investigations, the Department has clarified the scope of the investigation as published in the preliminary determination, to specifically exclude stainless steel products of unequal leg length.

Period of Investigation

The period of investigation (POI) is November 1, 1993, through April 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. References to the Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (Jan. 10, 1992), concerning corrections of ministerial errors, ("Proposed Regulations"), are provided solely for further explanation of the Department's antidumping practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding, which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Such or Similar Comparisons

For purposes of the final determination, we have determined that SSA constitutes a single "such or similar" category of merchandise.

The respondent reported that there were no sales of identical merchandise in the home market during the POI. Because there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Stainless steel grade; (2) leg-length; (3) thickness; (4) spine length; and (5) other characteristics, as listed in Appendix V of the Department's questionnaire, and in accordance with section 772(16) of the Act.

Fair Value Comparisons

To determine whether sales of SSA from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the home market, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. Further, in accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to an unrelated purchaser before importation into the United States and because exporter's sales price methodology was not otherwise indicated. For the reasons detailed in the *Comment* section of this notice, we reclassified the level of trade of U.S. sales to categorize them as having been made to a trading company.

With regard to the calculation of movement expenses, we made deductions from the U.S. sales price, where appropriate, for foreign brokerage, foreign inland freight, and insurance.

We recalculated U.S. credit expenses based on Aichi's lending rate to its customers as opposed to Aichi's investment return rate. In accordance with section 772(d)(1)(B) of the Act, we added to USP the amount of import duties which were not collected on inputs due to exportation of SSA to the United States.

In accordance with our standard practice, pursuant to the decision of the U.S. Court of International Trade (CIT) in *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 834 F. Supp. 1391 (CIT 1993), our calculations include an adjustment to U.S. price for the consumption tax levied on comparison sales in Japan. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from France (60 FR 10538, 10539, February 27, 1995) and Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan (59 FR 16177, 16179, April 6, 1994), for an explanation of this methodology.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was viable for sales of SSA, in accordance with 19 CFR 353.48(a).

Because Aichi maintained that its sales to related parties in the home market were made at arm's length, we examined those sales under the Department's arm's-length test. Where possible, in applying this test, we compared related and unrelated party sales at the same level of trade. We considered a party as related to the respondent whenever the respondent had a substantial ownership interest in the party. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's arm's-length test. In order to determine whether a sale is made at arm's length, we must compare the related-party price for a given product model to the average price for the same product model as sold to unrelated customers. Therefore, certain related-party sales were excluded from our analysis because those specific product models could not be compared to unrelated sales and because they were made in insignificant quantities.

In the home market, Aichi sells SSAs through several distribution channels. Where Aichi sold SSAs through its subsidiary, that subsidiary's sales to unrelated parties formed the basis of our FMV calculation. We only included sales to the related parties that were made at arm's length.

We calculated FMV based on delivered prices. Deductions were made for discounts and rebates, where applicable.

In light of the decision of the U.S. Court of Appeals for the Federal Circuit's (CAFC) in Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home

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market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust, where appropriate, for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a). Accordingly, in the present case, we deducted post-sale home market inland freight and insurance from FMV under the circumstance-of-sale provision of 19 CFR 353.56(a).

Examination of the facts surrounding one expense claimed as a rebate by Aichi led us to determine that this reported adjustment was, in fact, a transfer of funds from the parent to its subsidiary. As stated in Final Results of Antidumping Duty Administrative Review: Color Television Recievers from Korea (53 FR 24975, July 1, 1988), "Transactions between related parties are intracorporate transfers of funds for which no adjustment should be allowed." In Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland (56 FR 56372, November 4, 1991), we made an exception for rebates paid to a related party where sales to that party were found to be at arm's length. However, in this instance, the rebates in question are to a related reseller, and the sales reported to the Department are the downstream resales of that related party to the first unrelated purchaser. This rebate was not passed on to the unrelated purchaser. Consequently, we did not make any adjustments to FMV for this claimed rebate.

FMV was reduced by home market packing costs and U.S. packing costs were added, in accordance with section 773(a)(1) of the Act. The Department also made circumstance-of-sale adjustments for home market direct selling expenses, which included imputed credit expenses, and commissions, in accordance with 19 CFR 353.56(a)(2). Pre-sale warehousing expenses and pre-sale foreign freight charges were classified as home market indirect selling expenses, pursuant to the Departments practice and as upheld by *The Torrington Co.* v. *the United States*, No. 91–08–00567, Slip Op. 94–168 (CIT 1994). We deducted commissions incurred on home market sales and added total U.S. indirect selling expenses, capped by the amount of home market commissions; those total U.S. indirect selling expenses included U.S. inventory carrying costs, and indirect selling expenses incurred in Japan on U.S. sales.

We adjusted for the consumption tax in accordance with our practice (*see* "United States Price" section of this notice).

Cost of Production (COP)

As we indicated in our preliminary determination, on September 7, 1994, the Department initiated an investigation of sales in the home market made below the cost of production (COP). In order to determine whether home market sales prices were below COP within the meaning of section 773(b) of the Act, we calculated COP based on the sum of the respondent's cost of materials, fabrication, general, and packing expenses, in accordance with 19 CFR 353.51(c). As discussed in the Department's cost verification report, Aichi had misreported the material costs of two SSA models. We corrected the reported material costs used in COP and constructed value (CV) for those two models by using the average material cost of all other models of the same grade as a reasonable surrogate, since verification revealed that the misreporting resulted from a technical flaw inherent in the computerized cost allocations used by Aichi in the normal course of business. We then compared the COP to the home market selling prices, net of movement charges and discounts and rebates.

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. Where we found that over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that respondent's below-cost sales are not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we disregarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of a respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that model and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom (60 FR 10558, 10560, February 27, 1995). Based on this, for U.S. sales of certain products, there were adequate home market sales made above the cost of production to serve as FMV. For U.S. sales of other products, there were not. In such cases, we matched U.S. sales to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials, fabrication, general expenses, profit, and U.S. packing cost. In accordance with section 773(e)(1)(B) of the Act, for general expenses, which include selling and financial expenses (SG&A), we used the reported general expenses because these were greater than the statutory minimum of ten percent of the cost of production. For profit, we used the statutory minimum of eight percent of the cost of manufacturing and general expenses, because Aichi's reported profit was less than eight percent of the total of cost of manufacturing and general expenses.

Currency Conversion

We have made currency conversions based on the official exchange rates, as certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1—Level of Trade

The petitioners maintain that the reported U.S. sales were not made to a distributor, as the respondent claims, but to a trading company. They contend that since the sales are made to Kanematsu [1] for delivery to its wholly-owned subsidiary, KGS, and since Kanematsu is a trading company, U.S. sales should be classified as trading company sales. According to the petitioners, Aichi's descriptions in its June 29, 1994, submissions at exhibits 31 and 32 identify Kanematsu at a different level of trade than reported. The petitioners maintain that the record shows that Kanematsu did not inventory SSA, since the subject merchandise was shipped directly by Aichi to KGS. Thus, they argue, Aichi's own definition categorizes Kanematsu as a trading company.

Aichi claims that it has reported levels of trade based on the different economic functions performed by its customers. According to the respondent, while Kanematsu is nominally a trading company, it actually functions as a distributor in Japan for sales of SSA, since it does take the SSA into inventory. Correspondingly, the respondent reported sales to Kanematsu in the home market as "distributor" sales. Aichi maintains that it detailed in its June 29, 1994, submission and in the documentation of sales at verification, how Aichi's sales to the United States begin with price negotiations held with KGS, not Kanematsu. Aichi stresses that it deals directly with KGS, which functions as a mill depot for Aichi's angles and, therefore, holds inventory. Aichi reiterates that the prices are set between Aichi and KGS on CIF terms considering KGS's function as a mill depot, and that the price to Kanematsu is merely calculated from this CIF price. Respondent's argument centers on the price negotiations between Aichi and KGS, and Kanematsu's role in facilitating the documentation for Aichi's sales to KGS; accordingly, Aichi maintains that its sales are, in effect, to a distributor.

DOC Position

We disagree with the respondent. In accordance with 19 CFR 353.58, we have changed the designation of U.S. sales level of trade to that of a trading company. It is Kanematsu which establishes the basic business relationship with Aichi and which pays for the merchandise. Because Kanematsu is the controlling entity with final approval of the subject sales to the United States, we have determined that the appropriate designation of the level of trade of U.S. sales is that of a trading company transaction. Thus, we are matching trading company sales in Japan to trading company sales in the United States first; if no trading company sales exist in Japan for the product model, then we used distributor sales in Japan instead.

[1] Aichi has not claimed proprietary treatment for the identity of its U.S. customer, nor for that customer's U.S. subsidiary.

Comment 2—Aichi's Price Protection Program as Control

The petitioners maintain that in the event the Department does not classify Aichi's home market sales price protection program as a commission program, the Department should reconsider its determination not to treat Aichi and the participating members of the price protection program as related parties. They restate their argument, previously made before the preliminary determination, that the record demonstrates that the manufacturer, Aichi, exercises significant control over the selling practices of the reseller companies participating in the price protection program. Contending that, while these parties are not related via stock or equity ownership, the business dealings between them do not represent arm's-length transactions, the petitioners argue that the Department should treat these parties as related.

Aichi counters that the Department thoroughly reviewed its records at verification to examine the members' activities, none of which would give Aichi either *de jure* or *de facto* control over these member companies. Rejecting the petitioners' contention that the possibility of control is the operative standard for relatedness, Aichi states that the petitioners have failed to provide any measurable criteria for applying such a standard. Aichi maintains that, in the absence of evidence that Aichi exerts control over these members and in the absence of an ownership interest greater than 5 percent, the petitioners argument that Aichi is related to these customers should be rejected.

DOC Position

We disagree with the petitioners and determine that members of the program are not related. We believe that the evidence on the record does not indicate that Aichi maintains control over members of the price protection program. The information provided does not indicate that Aichi can set the prices of the members; price is set by market conditions. The price protection agreement is not a contractual agreement constituting business control over the members. No evidence exists in the record of this investigation which indicates that Aichi exercises, or can exercise, control over participants in the price protection program.

Comment 3—The Nature of Price Protection Adjustments

The petitioners maintain that the Department should treat the amounts which Aichi claimed as discounts as home market commissions under the commission offset provision. They argue that a review of the administration of the price protection program demonstrates that the adjustments granted represent ommissions rather than discounts, arguing that the calculation of the adjustments is based, not on the purchases made by these firms, but rather on their resales. The petitioners further maintain that discounts are price reductions which are based solely on the transaction between the manufacturer and the immediate purchaser. The analysis conducted by petitioners instead characterizes the reported adjustments as the equivalent of payments for services rendered by a commissioned agent. The petitioners cite to the Final Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan (55 FR 34585,34598 (August 23, 1990)), which they maintain shows that the Department has classified selling expenses as commissions when it found that the manufacturers' trading company performed the functions of a commission agent.

As an alternative approach, the petitioners argue that even if the Department decides not to treat all of the price protection adjustments as commissions, it should, at a minimum, offset indirect U.S. selling expenses against those price protection adjustments expressly identified as commissions.

Aichi states that the petitioners ignore a basic distinction between discounts which are a prepayment price reduction, and commissions which are a form of payment for services. Aichi maintains that its accounting system treats discounts differently from commissions and likewise the Department's methodology should treat the adjustments differently. Citing numerous investigations and court cases, including *Sonco Steel Tube Division* v. *United States*, 714 F. Supp. 1218, 1222 (CIT 1989), Aichi seeks to demonstrate that the Department's practice of treating early payment discounts as price adjustments instead of circumstance-of-sale adjustments is longstanding and supported by the Courts. Aichi believes that the pre-payment price protection adjustments are similar to early-payment discount

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programs and, accordingly, should be given the same treatment in the Department's margin calculations.

Aichi maintains that since the price protection program deals with reductions in prices to its customers, not in selling expenses actually incured, the program cannot be considered to generate commissions. Aichi notes that in its accounting system, the price protection discounts are netted from accounts receivable as a reduction from sales revenue and are, therefore, reflected in its net sales. Aichi contrasts its treatment of commissions (paid only on non-subject merchandise) which are expensed in Aichi's SG&A accounts with its treatment of the price protection adjustments as a component netted from accounts receivable.

Central to Aichi's presentation is its contention that the Department in every prior determination has determined price protection adjustments to be discounts; for this reason it refers to its listing of those determinations in exhibit 4 of its September 19, 1994, submission. According to Aichi, the discount nominally identified as the "commission" adjustment was administered and calculated according to an agreed-upon formula just as are all other components of the price protection program.

Aichi maintains that the petitioners' citation to Sweaters from Taiwan is ill-chosen because, in that investigation, the Department treated payments to a trading company as commissions for a combination of reasons not present here: because the trading company never took possession of the merchandise, because the trading company never paid the manufacturer directly for the merchandise, and because the respondent treated the payment amounts as commission expenses in its accounting records.

DOC Position

We agree, in part, with both parties. Under the program, Aichi receives aggregate monthly resale reports from the price protection member companies; Aichi does not set prices for the member companies. Member companies do not report individual sales prices back to Aichi, only aggregate resales values. The price protection program does not require member companies to report expenses to Aichi; the program's various adjustments take into account that the member firms will incur certain selling expenses in making those resales.

As described by Aichi and verified by the Department, the general purpose and actual administration of the price protection program consists of Aichi granting price reductions to its customer to ensure a set return on the resales of the merchandise. Unlike the company examined in the investigation of *Sweaters from Taiwan*, Aichi did not report the expenses incurred by an intermediary party in making resales. Instead, Aichi is, for the most part, granting discounts in order to ensure that the prices received by resellers are adequate. Because these price adjustments are based on claims settled according to terms agreed upon at sale and before payment, we are treating the claimed adjustments for four of the five elements of the price protection program as discounts, similar in execution to early payment discounts, for purposes of the final determination. *See Sonco Steel Tube Division* v. *United States*, 714 F. Supplement 1218, 1222 (CIT 1989); Granular Polytetrafluorethylene Resin from Japan; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 5622 (January 30, 1995); *et al.*

Four adjustments (the exception being the adjustment calculated in recognition of member companies' role as resellers) are not like commissions, which are normally set at given rates prior to sale and which are not dependent on ultimate resale prices. One component of Aichi's program, however, which was specifically designed in recognition of the selling function of the member companies, is the functional equivalent of a sales commission. As stated by Aichi in its July 28, 1994, submission at 18, "Aichi guarantees * * * a set return on their SSA sales by granting a commission for their resales of Aichi SSAs and price adjustments that 'account' for 'selling expenses' presumably incurred * * * in making resales." The reduction in price termed a commission adjustment is, in fact, similar to a commission payment. The amount is set and administered like a commission. This adjustment is designed, by Aichi's own account, to take into consideration the expenses which the price protection member companies must incur to find and maintain their customers. The importance of this function is underlined by Aichi's reliance on the external sales and marketing abilities of its price-protected customers. We are, therefore, treating this reported adjustment as a commission, deducting it from FMV and adding to FMV indirect selling expenses incurred by Aichi on U.S. sales, capped by the amount of the home market commission.

Comment 4—Duty Drawback

The petitioners maintain that the record in the investigation demonstrates that Aichi is not entitled to an upward adjustment to U.S. price by virtue of duty drawback. They contend that Aichi does not have a valid claim to a duty drawback adjustment because the cost verification demonstrated that import duties were not included in the prices for any of the angle that Aichi sold in Japan during the POI. They cite the December 29, 1994, cost verification report, which states that "Aichi re-exported enough nickel and chromium during the POI in order to avoid paying any (import) duty amounts." They also cite the report's analysis that "since there are no duties included in the home market price, it may be appropriate to exclude the submitted addition to COP and CV for exempted duty, and to exclude the duty adjustment to USP."

The petitioners' contention rests on the concept that the statute requires that import duties be added to U.S. price in order to prevent the creation of dumping margins, or the increase of dumping margins, as a result of comparing duty-inclusive home market prices to duty-exclusive U.S. prices. Based on this interpretation, the petitioners maintain that granting a drawback adjustment in this case would contravene the object of the statute because the record shows that Aichi used both domestic and imported nickel and chromium to manufacture its stainless steel products, and because Japan's substitution drawback regulations allowed Aichi to obtain exemption from payment of duties for all of its imported nickel and chromium. Thus, they argue, all of Aichi's home market sales were at prices that were exclusive of duties on imported nickel and chromium. The petitioners object to the comparison of what they characterize as duty-inclusive U.S. prices to duty-exclusive home market prices.

Alternatively, they argue that if the Department adds duty drawback to Aichi's U.S. prices it should also add the same amount of import duties to Aichi's reported home market prices and reported cost of production.

The petitioners maintain that none of the arguments presented by Aichi in its case brief alters the Department's concerns voiced in the cost verification report. They contend that the reasoning inherent in Aichi's arguments suggests that the drawback adjustment is inappropriate. Petitioners characterize Aichi's reporting as specifically acknowledging that the purpose of the duty drawback adjustment is to "neutralize the duty difference between sales made to the U.S. and sales made in the home market."

Aichi maintains that, in its preliminary determination, the Department correctly made a price-related adjustment to Aichi's U.S. price for duty drawback earned in connection with its exports to the United States. Likewise, Aichi believes that the Department was correct in its preliminary upward adjustment to Aichi's COP and CV for the amount of duty drawback revenues included in its cost of production. According to Aichi, the upward adjustment to cost is necessary because COP and CV are intended to represent the theoretical cost of producing a product to be sold in the home market. Aichi states that its cost system does not specifically allocate duty drawback earned between cost of production for export products and cost of production for home market products. Thus, Aichi maintains, it needed to extract duty drawback savings from its normal cost system to enable the Department to identify the theoretical costs of production for a product to be sold in the home market. Aichi disagrees with the comments in the cost verification report, which noted that there may be a connection between the purpose of Aichi's price-related duty drawback adjustment and its cost-related duty drawback adjustment. Aichi argues that there is no connection because, while the price-related adjustment captures duty drawback savings which are earned in connection with exports to the United States, the cost-related adjustment simply isolates the duty drawback savings included in its normal cost accounting system for all products.

In addressing the petitioners' arguments, Aichi cites to the statute, Court decisions, Department practice, and the GATT, in maintaining that it is irrelevant whether products sold in the home market are produced from imported and duty-paid raw materials. According to Aichi, the petitioners mischaracterize the conditions under which the Department makes a duty-drawback adjustment.

In Aichi's view, the antidumping statute and the Department's practice do not require the respondent receiving rebates on, or exemptions from, import duties by reason of exportation of finished products, to demonstrate that its home market prices include import duties in order for its U.S. prices to be eligible for a duty-drawback adjustment. Aichi maintains that the statute and regulations make clear that the duty-drawback adjustment is to capture a difference in selling circumstances whereby a company receives import duty-drawback rights or earnings by virtue of exportation which are not earned when products are sold on the home market. Citing several investigations, including Certain Welded Stainless Steel Pipe from Korea (57 FR 53693,53696) (1992), Aichi seeks to demonstrate that the Department has consistently used a two prong test to analyze duty-drawback claims:

- Import duty and rebate are directly linked to, and dependent upon one another, and;
- The company claiming the adjustment can demonstrate that there were sufficient imports of imported raw material to account for the duty drawback received on the exports of the manufacturing product.

Aichi faults the petitioners for not noting that the Court of International Trade has flatly rejected past requests to add as a new condition to the two-prong test the mandatory inclusion of dutiable imported inputs into the production of the merchandise sold in the home market. Aichi cites *Chang Tieh Industry* v. *U.S.*, 840 F. Supp. 141, 147 (CIT 1993):

> [Plaintiff's] arguments provide no basis from which to conclude that drawback adjustments should not be made unless ITA determines that the cost of the products sold in the home market is duty-inclusive. To require such a finding would add a new hurdle to the drawback test that is not required by the statute.

Maintaining that the petitioners' suggestion to make an upward duty-drawback adjustment to FMV by increasing the import duty component of cost of production/constructed value is tantamount to not making any adjustment at all, Aichi asks the Department to reject such an alternative. According to Aichi, the amount of import duties included in COP/CV will depend on several factors including: (1) Whether the company normally allocates duty-drawback earnings to the cost of production for export products, (2) the relative quantity of raw materials which are imported and exempted from import duties, and (3) the volume of home market sales relative to the volume of export sales to all countries. Aichi argues that none of these factors affects the calculation of the entitlement or earnings-based adjustment used to increase U.S. price. Aichi concludes that there is no legal or policy reason for denying or changing Aichi's drawback adjustment.

DOC Position

We disagree with the petitioners. The only germane issue is whether or not Aichi's documented duty drawback meets the two pertinent statutory criteria. At verification we examined Aichi's duty drawback and documented that the application of the duty exemption program reported to the Department had been accurately described and quantified. Although Aichi then and now maintains that the imported materials need not have been physically consumed in the actual production of the U.S. shipments, company officials also demonstrated that imported alloys are used in the batches from which SSAs destined for the United States were produced. Most importantly, the inclusion of imported inputs in equal proportions in merchandise sold in both the home market and in the United States *is not* a requirement for obtaining a duty drawback adjustment. As stated by the Department in *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan* (57 FR53705, 53710, November 12, 1992):

> Other claims by petitioners do not speak to the test traditionally applied by the Department but rather seek to impose additional requirements for duty drawback claims, which are not required by the statute, the regulations, or past Department practice. There is no basis for petitioners' argument that the Department should not make a duty drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials.

Therefore, we made a duty drawback adjustment to U.S. price in our final margin calculations following this principle. In accordance with this principle, the Department calculates the amount of duty included in CV. CV includes import duties which have been waived or rebated upon export because such duties are added to U.S. price. The cost figures used for constructed value reflect the weighted-average value of duty costs, which, due to Aichi's use of domestically-sourced inputs in the production of SSA, are not necessarily the exact equivalent of the duty drawback adjustment on U.S. sales.

Comment 5—Rebates

The petitioners argue that the Department should correct the mistake noted in the verification report at pages 20–23, whereby Aichi included the three percent consumption tax in the numerators of its formulas for allocating rebates and thus overstated the reported rebates. The respondent did not address this issue.

DOC Position

On February 23, 1995, the Department instructed Aichi to resubmit a computer tape correcting this calculation error. It did so on March 3, 1995.

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Comment 6—Sales Outside the Ordinary Course of Trade

The petitioners agree with Aichi's contention that sales of ferritic angle should be considered as sales outside the ordinary course of trade because Aichi did not sell ferritic angle to the United States during the POI. They also agree with Aichi's argument that billing and expense adjustments that were erroneously classified as sales transactions should be excluded from consideration as a basis for FMV. They note without comment that Aichi contends that angles with spine length of seven meters are outside of the ordinary course of trade. However, they disagree with Aichi's contention that products for nuclear use, grade 304HT or of special straightness, should be considered outside the ordinary course of trade. The petitioners maintain that since no physical differences existed but, instead, different selling and packing costs were incurred, Aichi should have reported those under the respective charges and adjustment fields available in the sales listing. According to the petitioners, a number of the home market product codes used for those products Aichi identifies as within the ordinary course of trade are also used for those products which Aichi claims to be outside the ordinary course of trade. The petitioners argue that Aichi has not submitted evidence to show that the special sales were made through a different channel of trade or by way of some unusual marketing practice. In the petitioners' view, the Department's acceptance of a designation of outside the ordinary course of trade is normally reserved for sample sales and sales of secondary quality.

The petitioners contend further that, because Aichi did not provide timely evidence to support its claim that nuclear SSAs were sold outside the ordinary course of trade, the Department should not exclude those transactions from the final margin analysis. For support, the petitioners cite the CIT's ruling in *Timken Co.* v. *United States*, 865 F. Supp. 850 (CIT 1994), which overturned the Department's exclusion of certain sales as outside the ordinary course of trade where the respondents only alleged that their sales were not in the ordinary course of trade. Further, the petitioners maintain that Aichi's arguments fail because none of the circumstances identified by Aichi provide a sufficient basis for treating sales for nuclear applications as sales outside the ordinary course of trade. The petitioners maintain that SSAs sold for nuclear purposes possess the same anti-corrosive properties as SSA sold for other applications. Moreover, they contend that special expenses incurred to make nuclear application sales could, and should, have been captured as claims for circumstance of sale adjustments.

Aichi maintains that the nuclear SSA sales involved such different circumstances that they should be excluded from the margin calculation analysis. According to Aichi, the Department verified that the nuclear SSAs are distinguished by their unique sales process and application, and that these factors are sufficient to call for the exclusion of nuclear SSAs from the antidumping analysis. The special requirements for nuclear SSAs, examined at verification, such as special documentation of quality, special warranties, special inspections, special packing, and special quality control inspections, in conjunction with relatively different quantity and prices in comparison to sales of SSA not certified for nuclear use, are factors Aichi lists in support of its request for exclusionary treatment. Aichi cites Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 52 FR 30700, 30704 (August 17, 1987) ("Tapered Roller Bearings from Japan") in support of its contention that the Department excludes sales when the transactions: (1) Involve individual sales at very small quantities at substantially higher prices; (2) most of the sales were later cancelled; and, (3) there were no comparable sales in the United States.

Contending that because the price of nuclear SSAs are set at vastly different price ranges due to the unique nature of the products and their sales process, Aichi rejects the possible use of circumstance-of-sale adjustments as inadequately capturing the basic sales differences. Aichi maintains that these unique circumstances are precisely the reason for excluding these sales as unrepresentative. Aichi further maintains that none of the home market product codes which the petitioners ascribe as applying both to sales designated as outside the ordinary course of trade and to sales designatied as within the ordinary course of trade, pertain to sale of nuclear-use SSA.

DOC Position

We disagree with both parties. As to whether ferritic and nuclear-use sales were made outside the ordinary course of trade, Aichi has made an unsubstantiated argument. Aichi has not substantiated its claim under the guidelines enunciated in Tapered Roller Bearings from Japan, in support of its contentions. Additionally, the claims set forth do not satisfy the criteria enunciated in Final Results of Antidumping Duty Administrative Reviews: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 56 FR 64,753, 64,753–55 (1991) (these terms were reiterated in the Court of International Trade's remand order in Circular Welded Non-Alloy Pipe from the Republic Korea). To determine whether sales were made outside of the ordinary course of trade, it is appropriate for the Department to analyze: (1) The number of home market customers buying the products; (2) the product standards and uses of the products; and, (3) price and profit differentials between the alleged non-ordinary sales and sales made in the ordinary course of trade. (See *Leclede Steel Co.* vs. *U.S.*, No. 92–12–00784, Slip 94–160, at 28–29 (CIT October 12, 1995) Remand Order. Sales of ferritic SSA comprise a relatively small percentage of the total quantity of sales. However, Aichi never reported the data to quantify particular expenses which make such sales unique, nor did it address the market situation of the customers of ferritic SSA. No evidence of special channels of trade for ferritic SSA exists. We examined the spectrum of sales of the grade of SSA to which ferritic SSA belong and found that many of the customers who purchase ferritic SSA also purchase austenitic SSA. On average, ferritic SSA prices are only slightly different from those of austenitic SSA of the same leg-length. No information was submitted providing analysis for determining profit differentials.

Sales of nuclear-use SSA also comprise a small percentage of the total quantity of sales, and only a slightly greater percentage of sales of the same angle type sold for non-nuclear use. On average, nuclear SSA prices are different from non-nuclear SSA of the same physical characteristics. However, Aichi never reported the data to quantify the nuclear-specific technical, packing, and warranty expenses it maintains are unique, nor did it address the market situation of the customers of nuclear-use SSA. No evidence of special channels of trade for nuclear-use SSA exists. We examined the spectrum of sales of the grade of SSA to which nuclear-use SSA belong and found that all of the customers who purchase nuclear SSA also purchase non-nuclear SSA. No information was submitted providing analysis for determining profit differentials.

It is Aichi's responsibility to provide such data in defense of its claims, both for ferritic and for nuclear-use sales.

Aichi provided almost no explanation of any unique sales conditions for ferritic SSA. As regards nuclear-use SSA, Aichi did not provide analysis of the quantitative factors required to determine that such sales are outside of the ordinary course of trade, but instead gave general documentation at verification that such sales had specific sales conditions. Those aspects of the sales process should have been accounted for by a detailed explanation and reporting of circumstance-of-sale adjustments. Therefore, we determine that neither ferritic nor nuclear-use SSA were sold outside of Aichi's normal course of trade.

We are removing the separate line-items for billing and expense adjustments from the sales database for use in the less than fair value comparison, since these were erroneously entered as sales transactions.

We are keeping in the database those sales of SSA which were of odd spine lengths, since these are subject merchandise.

Comment 7—Rate for U.S. Imputed Credit Calculations

Aichi maintains that it reported the correct interest rate to calculate U.S. imputed credit expenses and credit income because this is the rate its pays for the pre-shipment advance money it receives from Kanematsu. According to Aichi, the use of the home market interest rate at the preliminary determination was based on the faulty understanding that the interest rate Aichi had used was based on investment returns. Aichi maintains that the rate reported is that which Aichi pays to Kanematsu for having received the pre-shipment advance money deposited by Kanematsu with Aichi for sales greater than a certain set amount. Therefore, Aichi argues that the correct interest rate for all U.S. imputed credit calculations is the percentage Aichi pays Kanematsu for pre-payment.

The petitioners contend that, because the customer is credited for the time that Aichi held advance payment at a given rate for the period from the receipt of advance payment to shipment, the interest revenue that Aichi earned from the advance payments should have been calculated based on the difference between Aichi's short-term borrowing rate, as manifest by its use of promissory notes, and the interest rate that Aichi paid to Kanematsu. They argue that the Department should value the imputed interest revenue for advance payments at the difference between the two percentages.

In addressing Aichi's arguments, the petitioners counter that the Department should recognize that Aichi was incurring interest expenses for two distinct periods: (1) the period between receipt of the advance payment and the date of shipment, and (2) the period from the date of shipment to the date of final payment. The petitioners argue that Aichi's methodology does not account for the interest rate that Aichi incurred to finance its receivables for the post-shipment period. They maintain that the interest rate for the post-shipment period should be Aichi's home market promissory note discount rate, which reflects the only short-term borrowing that Aichi had during the POI. They argue that the Department should continue to use Aichi's promissory note discount rate to calculate Aichi's post-shipment credit expense.

DOC Position

We agree with the petitioners. The time value of the yen-denominated U.S. sales should be measured by Aichi's short-term borrowings as represented by its use of promissory notes in Japan. Measuring the value of advance payments received by Aichi (*i.e.*, Aichi's imputed credit revenue) should be measured by the difference between the time value of money to Aichi and the credit Aichi gives to Kanematsu for having advanced payment. With regard to establishing the time value of money, we verified Aichi's borrowing rate by examining the discount rate documented by Aichi's promissory notes on home market sales. We also verified the rate used by Aichi to credit Kanematsu for the value of the advance payment received before shipment. For those sales greater than a given amount, Aichi reduced the net total amount due from Kanematsu by the value of the advance payment for the time held, at an interest rate set internally. However, while this amount does reflect Aichi's internal evaluation of the time value of the money advanced by Kanematsu, the rate is not based on actual borrowing by Aichi during the POI. The Department, therefore, used a rate charged for borrowings to determine imputed credit, since by extending credit to its customers, Aichi acted as a lender. It is the Department's practice to use lending rates, as opposed to investment return rates, in calculating credit expenses. (See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Color Negative Photographic Paper and Chemical Components Thereof from Japan 59 FR 16177, (April 6, 1994), and Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Germany, 54 FR 18992, 19053 (May 3, 1989).

We have therefore recalculated imputed U.S. credit expenses based on the interest rate applied by Aichi's banks for discounting promissory notes and applied this rate to the portion of U.S. sales paid after shipment. The net value of Aichi's imputed interest income is measured as the difference between (1) the time value money based on Aichi's Japanese promissory notes and (2) the rate at which Aichi compensated Kanematsu for making advance payments. We have, therefore, also recalculated U.S. credit income on advance payments by using an interest rate that is the difference between the two rates.

Comment 8—Errors in U.S. Indirect Selling Expenses

The petitioners argue that the Department should correct the errors concerning the calculation of U.S. indirect selling expenses as identified in the verification report. In the report, the Department noted that on November 23, 1994, Aichi reported that the correct amount of U.S. indirect selling expenses was a percent of sales value slightly higher than that on the computer tape submitted for purposes of verification. On February 23, 1995, the Department instructed Aichi to resubmit a computer tape correcting this calculation error. On March 1, 1995, Aichi also requested that it revise the home market indirect selling expenses to reflect the narrative data submitted on November 23, 1994. The tape, with the requisite revisions, was submitted on March 3, 1995.

DOC Position

We agree with both parties. We used the revised percentages for both U.S. and home market indirect selling expenses, based on the data first submitted in narrative on November 23, 1994.

Comment 9—Home Market Inland Freight

Aichi states that in preparing the documentation for verification of the home market inland freight charges, several errors had been discovered prior to, and voluntarily disclosed at, verification and corrected for the Department officials' inspection. (The first type of error involved a recording error of the contract rate for the route. The second type of error was due to the fact that the actual delivery route for particular shipments was sometimes different from the standard delivery route reflected in the contract freight

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rate schedule.) The effect of these errors, Aichi emphasizes, had been to understate most inland freight costs. Aichi stresses that shipment-specific reporting of such costs was prohibitively burdensome, since Aichi's computerized records do not contain the data necessary to electronically compile the information. At verification, Aichi adjusted incorrect amounts for specific transactions and provided a revision of the chart showing freight expense charges by domestic destination. Aichi argues that the Department should make the adjustments to the home market inland freight charges based on the verified freight expenses.

The petitioners contend that the Department should use the verified freight rate schedules originally reported and should not accept the revisions to the reported freight schedule rates. They argue that if the Department chooses to rely on the revised home market inland freight charges, it should only do so with respect to those home market sales actually found to contain erroneous freight costs. Additionally, they argue that any revisions to the respondent's home market inland freight costs should not include the amounts reported under the second inland freight variable field which they contend pertain to pre-sale expenses for shipments to the warehouses, and, therefore, should not be deducted as movement charges from FMV.

DOC Position

We agree, in part, with both parties. We used the originally reported values for most home market sales. We examined a selection of the mistakes made in reporting these values and found that, overwhelmingly, the charges under-reported inland freight claimed as a reduction of FMV. Aichi voluntarily disclosed the mistakes and was able to quantify the general effect of the inaccuracies. However, due to the volume and complexity of the errors, a complete revision was not examined at verification. Therefore, we used the originally reported charges, with the exception of the corrections specifically examined at verification; for those transactions we (1) used the revised freight-schedule data reported, and (2) added several invoice-specific corrections noted in the sales verification report at 31.

Because certain expenses reported separately pertain to pre-sale expenses for transportation to warehouses, these costs should be included as a portion of home market indirect selling expenses, rather than movement charge deductions to FMV. Aichi reported on September 19, at 32–33 that "because shipment date to the customer is sale date, these shipments to the warehousers are pre-sale and reported in INLFRTH2." For those transactions whose corrections were examined at verification, the correct values for pre-sale expenses are included in home market indirect selling expenses.

Comment 10—Additional Price Protection Adjustment

Aichi originally argued that the Department should make an adjustment at the final determination for the additional price discounts discovered at verification, maintaining that the unreported discounts are no different from the other price protection discounts previously reported. For this reason, Aichi argued that the Department should adjust the applicable home market sales for these additional discounts.

The petitioners argue that the newly claimed discounts constitute a claim submitted for the first time in Aichi's case brief and as such, is untimely. In its March 3, 1995, submission, Aichi withdrew its claim for additional price protection program discounts.

DOC Position

Since Aichi has withdrawn its own claims, all arguments set forth by the interested parties are moot. We accept Aichi's withdrawal of the request for additional price protection adjustments.

Comment 11—Home Market Bank Charges

Aichi argues that the Department should make an adjustment for Aichi's home market bank charges as direct selling expenses because the Department verified that Aichi incurs bank charges for the processing of promissory notes in connection with home market sales. Aichi cites several cases, including Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela, 58 FR 27522, 27525 (May 10, 1993), to demonstrate that the proper treatment of bank charges is as a circumstance-of-sale adjustment.

The petitioners contend that the Department should reject Aichi's claim for an adjustment based on bank charges given the untimeliness of the claim. Additionally, they argue that the Department did not review documents related to this charge during verification. If the Department were to consider Aichi's claim as timely and substantiated by the verification record, the petitioners maintain that they believe that such bank charges would have also been incurred in the discounting of anticipated revenues for U.S. sales. Therefore, they request that the Department either disregard Aichi's claim or, alternatively, make a similar adjustment for Aichi's U.S. sales.

DOC Position

We agree with the petitioners that the respondent's claim is untimely. Therefore, we did not make any adjustments for bank charges.

Comment 12—Product-Matching Criteria

Aichi argues that the Department should not conduct its sales-below-cost test on a model-specific basis, whereby if more than 90 percent of a model are found to be sold below the cost of production, constructed value is used as the basis of FMV. This claim is premised on Aichi's understanding that it is inconsistent with the statutory preference for price-to-price comparisons to resort to constructed value when a comparable model exits that in the home market that was sold above cost and that satisfies the 20 percent difference in merchandise test. Aichi contends that when there are no above-cost sales for a particular control number designated product, the Department should first compare the U.S. sale to the next most similar product.

The petitioners contest Aichi's proposed revision to matching home market sales of the next most similar model to U.S. prices when the number of sales of the most similar model were found to be insufficient to form the basis of FMV because they were made below the cost of production. They cite to the Department's Import Administration Policy Bulletin 92/4, issued on December 15, 1992, wherein the Department states that because the statute "specifies the determination of such or similar merchandise on the similarity of the merchandise only and not on whether the most similar model is sold above cost, section 771(15) appears to direct us to the use of constructed value when the most similar model is sold below cost."

DOC Position

We agree with the petitioners. As outlined in the December 15, 1995, Office of Policy Bulletin, it is the Department's practice to conduct the sales-below-cost test on a model-specific basis. The memorandum states that "in determining FMV, if the Department finds that sales of a given model, otherwise suitable for comparison, are sold below the cost of production, and the remaining sales of that model are inadequate to determine FMV, the

Department will use constructed value to determine FMV." This has been the Department's consistent practice since the issuance of that Bulletin. Therefore, we used constructed value to determine FMV when 90 percent of the sales of a given model were found to be sold below the cost of production.

Comment 13—Correction to Understated COP

The petitioners contend that the Department should correct all misstated material costs for purposes of the final determination by substituting the highest material cost reported by Aichi for the same grade of material.

Aichi agrees with the petitioners that for two sizes of stainless steel angle products, the reported materials cost does not reflect actual costs and notes that this error was due to an output quantity recording error in Aichi's normal cost accounting system. However, Aichi explains that since neither of these products were produced in significant volume, nor exported to the United States, nor compared to U.S. products in the Department's product matching, they have no relevance in the Department's LTFV comparisons. Accordingly, Aichi contends that the Department should not revise material costs for these two sizes of products. In the event the Department decides to revise material costs for these two sizes of products, Aichi urges the Department to use the average of reported material costs within the same grade of steel rather than the highest reported costs.

DOC Position

We agree in part with petitioner that Aichi's material costs for these two products should be revised. However, because the misstated material costs were due to re-coding errors from its cost accounting system, we do not consider it appropriate to penalize Aichi by using the highest material cost reported for the same grade of material. Instead, we agree with Aichi to revise the material costs for these two products using the average reported material cost within the same grade of steel.

Comment 14—Inclusion of Depreciation Expenses in COP

The petitioners argue that the Department should increase Aichi's reported depreciation expense to account for the special depreciation amount on environmental and conservation equipment. They state that these expenses were recorded in Aichi's accounting records and were reported in its audited financial statements for the fiscal accounting period that covered the POI. Accordingly, the Department should increase Aichi's reported G&A expenses to include the special depreciation expense.

Aichi contends that it included all conventional depreciation expenses in its submitted G&A rate and that it did not include the special depreciation expense or the reversal of this special depreciation because these amounts strictly relate to Japanese tax law. However, if the Department determines that the special depreciation amounts should appropriately be included in the G&A rate calculation, Aichi believes that its COP and CV would decrease due to the fact that the reversal of previously set aside depreciation exceeds the current year's special depreciation.

DOC Position

The Department disagrees with the petitioners that the special depreciation expense should be included in the reported COP and CV amounts. This special depreciation relates solely to Japanese tax law which, in effect, allows companies to accelerate depreciation for purchases of environmental and conservation equipment. Since this depreciation relates solely to tax law and represents no real additional cost to the company, we excluded it from the COP and CV for purposes of the final determination.

Comment 15—Preliminary Ministerial Errors

The petitioners maintain that the Department should make corrections pertaining to the following: (1) Comparison of tax-inclusive U.S. prices to consumption tax-exclusive constructed value; (2) double-counting of other expenses for purposes of determining the SG&A amounts to be used in constructed value calculations; and, (3) double-counting of imputed credit in the formula used to calculate SG&A.

Aichi contends that the Department should incorporate a revision to SG&A in the CV calculations by revising two lines of its preliminary computer programming to include the factor for imputed credit as one of the components of SG&A, but as deductions. Aichi maintains that the imputed credit value should be a downward adjustment to SG&A, both when measuring whether actual or statutory (10 percent) SG&A are to be used, and when defining what actual SG&A is comprised of. According to Aichi, the values reported should be used as downward adjustments to interest expenses requested in the section D questionnaire, based on Aichi's relative value of finished goods inventory and accounts receivable to total assets.

In addition, Aichi argues that, when revising the calculation of SG&A in its programming, the Department should also revise the program to deduct warehousing expenses. Aichi contends that this revision is required because the Department's calculations double-count warehousing. Aichi maintains that home market warehousing expenses are included in FMV as a component of total indirect selling expenses. According to Aichi, the indirect selling expenses for CV are inclusive of warehousing; thus SG&A brings home-market warehousing into FMV when CV is used.

DOC Position

We implemented the three corrections noted after the preliminary determination. Our final calculations took into account the following methodology:

(A) The calculations exclude the tax adjustment included in the U.S. price to CV comparison programming.

(B) The calculations eliminate the "other expenses" added to the SG&A test in the preliminary programming, as these double-counted these expenses.

(C) The calculations eliminate the separate variable for imputed credit used in its SG&A test in the preliminary programming, as this double-counted the expenses. Aichi's claim that the reported value is the required adjustment to interest expenses is not correct; as noted in the final OA memorandum, the interest expense value has already been adjusted for imputed credit by the ratio of Aichi's accounts receivables to total assets.

With regard to Aichi's request to modify the methodology for treating selling expenses, we disagree with Aichi, instead:

(D) We included home market pre-sale warehousing as a component of the indirect selling expenses in CV and also treated U.S. post-sale warehousing as a direct selling expense and adjusted for it as a circumstance-of-sale, pursuant to *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* V. *United States*, 13 F.3d 398 (Fed. Cir. 1994).

Continuation of Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel angle from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from

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warehouse, for consumption on or after November 10, 1994.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin (percentage)
Aichi Steel Works, LTD.	15.06
All Others	15.06

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the Customs Service officers to assess an antidumping duty on SSA from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: March 24, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–8017 Filed 3–30–95; 8:45 am]

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The Scripps Research Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–102. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* NMR Spectrometer, Model Avance DMX750. *Manufacturer:* Bruker, Germany. *Intended Use:* See notice at 59 FR 49645, September 29, 1994. *Reasons:* The foreign instrument provides: (1) superior magnetic field homogeneity and stability with a smaller fringe field and (2) better lock stability (uses digital design), spectral fidelity (uses digital filters) and pulsed field gradient performance (uses 3-axis gradient probe). *Advice Received From:* The National Institutes of Health, January 9, 1995.

Docket Number: 94–112. *Applicant:* Department of Veterans Affairs Medical Center, Kansas City, MO 64128. *Instrument:* Microvolume Stopped Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 52957, October 20, 1994. *Reasons:* The foreign instrument provides: (1) repetitive, single-shot operation providing wavelength dependent time resolved spectra at a rate of 100 000 per second, (2) sub-millisecond dead time and (3) sensitivity to signals <.02AV. *Advice Received From:* The National Institutes of Health, January 9, 1995.

Docket Number: 94–140. *Applicant:* Penn State University, University Park, PA 16802. *Instrument:* Electron Gun for Reflection Electron Diffraction. *Manufacturer:* Staib Instruments, Germany. *Intended Use:* See notice at 59 FR 66941, December 28, 1994. *Reasons:* The foreign accessory provides capability to change the angle of incidence of a high energy electron beam electronically, without affecting the beam's position on the sample surface, in a molecular beam epitaxy system using RHEED. *Advice Received From:* The Center for Telecommunications Research, National Science Foundation, February 9, 1995.

Docket Number: 94–144. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Gas Composition Analyzer, Model Epison II. *Manufacturer:* Thomas Swan, United Kingdom. *Intended Use:* See notice at 60 FR 442, January 4, 1995. *Reasons:* The foreign instrument provides: (1) non-invasive control of gas mixture ratios in a chemical vapor deposition (CVD) system using a unique ultrasonic technique requiring no physical contact with the gas stream and (2) compatibility and sharing of control software with an existing CVD system. *Advice Received From:* The Center for Interfacial Engineering, National Science Foundation, February 9, 1995.

The National Institutes of Health and the National Science Foundation advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–8007 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–012. *Applicant:* University of California, Berkeley, Department of Geology and Geophysics, Berkeley, CA 94720-4767. *Instrument:* Electron Microprobe, Model SX 50. *Manufacturer:* Cameca, France. *Intended Use:* The instrument will be used for studies of various materials including mineral grain separates, whole rock thin sections, soil particles, meteorites, archeological artifacts, experimental glass and crystallite charges, volcanic ashes, rare earth semiconductors, superconducting oxides, silicide and nitride ceramics, and super alloys. The instrument will also be used to teach Geology 401 (Electron Microprobe) to graduate students to provide an in depth understanding of both the technical aspects of the electron microprobe and its theoretical basis. *Application Accepted by Commissioner of Customs:* February 17, 1995.

Docket Number: 95–013. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Eye Tracking System, Model EYELINK. *Manufacturer:* SR Research Ltd., Canada. *Intended Use:* The instrument will be used in a series of experiments planned to investigate performance on perceptual tasks in visual speech perception. Eye-monitoring techniques will be used to precisely determine facial regions attended to by the speechreader. Direct comparisons of performance on a series of perceptual tasks will be made among adults who differ in speechreading proficiency, those with either normal hearing, congenital hearing-loss, or adult-onset hearing loss. *Application Accepted by Commissioner of Customs:* February 22, 1995.

Docket Number: 95–014. *Applicant:* University of Wisconsin-Milwaukee, 3209 North Maryland Avenue, Milwaukee, WI 53211. *Instrument:* Mass Spectrometer, Model Autospec 3000. *Manufacturer:* Fisons Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used for negative ion thermospray studies of ions generated from molecules traditionally difficult to characterize and observe. The instrument will also be used for educational purposes in various chemistry courses. *Application Accepted by Commissioner of Customs:* February 22, 1995.

Docket Number: 95–015. *Applicant:* Georgia State University, University Plaza, Atlanta, GA 30303. *Instrument:* ICP Mass Spectrometer, Model SOLA. *Manufacturer:* Finnigan MAT, United Kingdom. *Intended Use:* The instrument will be used to continue a wide array of geochemical and environmental geochemistry problems. One particular research area of interest is the application of ICP-MS in REE and trace element studies of fluid inclusions. In addition, the instrument will be used for the training of post-doctoral research associates, M.S. students and undergraduate students. *Application Accepted by Commissioner of Customs:* February 23, 1995.

Docket Number: 95–016. *Applicant:* Jersey City State College, Kennedy Boulevard, Jersey City, NJ 07305. *Instrument:* Electron Microscope, Model JEM 1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to teach undergraduate students the principles and techniques of transmission electron microscopy and provide them the instrumental basis for carrying out research at the ultrastructural level. The proposed research includes investigation of the effects of ionizing radiation at the level of tissue and organ ultrastructure and of various chemical toxicants on cellular components. *Application Accepted by Commissioner of Customs:* March 1, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–8008 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DS–F

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated March 23, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per lb.)	Net [2] subsidy (cents per lb.)
Austria	Export Restitution Payments	200.0	200.0
Belgium	European Community (EC) Restitution Payments	38.7	38.7
Canada	Export Assistance on Certain Types of Cheese	25.5	25.5
Denmark	EC Restitution Payments	48.2	48.2
Finland	Export Subsidy	104.7	104.7
France	EC Restitution Payments	49.5	49.5
Germany	EC Restitution Payments	56.5	56.5
Greece	EC Restitution Payments	0.0	0.0
Ireland	EC Restitution Payments	56.3	56.3

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APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy (cents per lb.)	Net [2] subsidy (cents per lb.)
Italy	EC Restitution Payments	87.6	87.6
Luxembourg	EC Restitution Payments	38.7	38.7
Netherlands	EC Restitution Payments	39.5	39.5
Norway	Indirect (Milk) Subsidy	18.3	18.3
	Consumer Subsidy	40.5	40.5
		58.8	58.8
Portugal	EC Restitution Payments	37.3	37.3
Spain	EC Restitution Payments	37.3	37.3
Switzerland	Deficiency Payments	166.1	166.1
U.K.	EC Restitution Payments	40.1	40.1

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 95–8004 Filed 3–30–95; 8:45 am]
BILLING CODE 3510–DS–P

Intent to Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to revocation of any of these orders must submit their comments in writing not later than the last day of April 1995.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke these orders pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders are no longer of interest to interested parties and proceed with the revocations. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

COUNTERVAILING DUTY ORDERS

Argentina:	
Wool (C–357–002)	04/04/83, 48 FR 14423.
Malaysia:	
Carbon Steel Wire Rod (C–557–701).	04/22/88, 53 FR 13303.
Peru:	
Pompon Chrysanthemums (C–333–601).	04/23/87, 52 FR 13491.

Opportunity to Object

Not later than the last day of April 1995, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: March 22, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–8003 Filed 3–30–95; 8:45 am]
BILLING CODE 3510–DS–P

Determination Not to Revoke Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Determination Not to Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty orders listed below.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1994, the Department published in the **Federal Register** (59 FR 67700) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received an objection from a domestic interested party to our intent to revoke these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke these orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

COUNTERVAILING DUTY ORDERS

Korea:	
Stainless Steel Cookware (C–580–602).	01/20/87, 52 FR 2140.
Argentina:	
Non-Rubber Footwear (C–357–052).	01/17/79, 44 FR 3475.
Spain:	
Stainless Steel Wire Rod (C–469–004).	01/03/83, 48 FR 52.
Taiwan:	
Stainless Steel Cookware (C–583–604).	01/20/87, 52 FR 2141.

Dated: March 22, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–8006 Filed 3–30–95; 8:45 am]
BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in all microgravity and space related research including, but not limited to the Space Shuttle, the MIR Space Station, the US Space Station, orbital re-entry vehicles, sounding rockets and low "g" research aircraft, to practice the invention embodied in U.S. Patent Number 5,104,478, titled, "Method For Making Single Crystals" to Instrumentation Technology Associates, Inc., having a place of business in Exton, Pennsylvania. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20852.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 5,104,478 is a method for making single crystals, comprising osmotically removing the solvent from a solution containing the material to be grown into a crystal.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 57, No. 158 (August 14, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: March 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–7860 Filed 3–30–95; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 030995A]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agenda changes.

SUMMARY: An agenda for public meetings of the North Pacific Fishery Management Council (Council) and its advisory bodies, which are scheduled during the week of April 17, 1995, was published in the **Federal Register** on March 17, 1995, (60 FR 14425). The following change is made to the meeting schedule and agenda. All other information originally published remains unchanged.

1. The Scientific and Statistical Committee will begin its meeting at 2:00 p.m., on April 17.

2. The Council's plenary session will begin at 8:00 a.m., on April 19, and will continue through April 24.

3. The report on the status of seabirds has been deleted from the agenda.

4. Initial review of a regulatory amendment for electronic reporting has been added to the agenda.

5. A report on pollock trawl mesh studies has been deleted from the agenda.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7972 Filed 3–30–95; 8:45 am]
BILLING CODE 3510–22–F

[I.D. 032495A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Mackerel Socioeconomic Assessment Panel beginning at 8:30 a.m. on April 13, 1995, and concluding at approximately 5:00 p.m. on April 14, 1995, to review and consider available social and economic data on Gulf king and Spanish mackerels and cobia, and recommend levels of total allowable catch for the 1995–96 fishing year.

ADDRESSES: The meeting will be held at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by April 6, 1995.

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Dated: March 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7973 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–22–F

(I.D. 032495C)

Mid-Atlantic Fishery Management Council; Meeting

AGENCY:: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Demersal Species Committee and Habitat Committee will hold public meetings on April 18–20, 1995, at the Holiday Inn, 39th and Oceanfront, Virginia Beach, VA 23451; telephone: (804) 428–1711. On April 18, the Demersal Species Committee will meet from 1:00 p.m. to 4:00 p.m. On April 19, the Council will meet from 8:00 a.m. to 12:00 p.m. The Habitat Committee will meet from 1:30 p.m. to 4:00 p.m. On April 20, the Council will meet from 8:00 a.m. until approximately 12:00 p.m.

The following topics may be discussed:

1. Action on the scoping process for Amendment 7 to the Summer Flounder Fishery Management Plan.

2. Development of a Council policy on artificial reefs.

3. Review of the NMFS management program for striped bass.

4. Other fishery management matters.

The Council meetings may be revised, lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

Dated: March 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7974 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification to permit no. 835 (P250D).

SUMMARY: Notice is hereby given that the Washington Department of Wildlife, Marine Mammal Institute, 7801 Phillips Road, SW., Tacoma, WA 98498; the National Marine Fisheries Service, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700 - Building 1, Seattle, WA 98115–0070; and the Oregon Department of Fish and Wildlife, Marine Region, Marine Science Drive, Building 3, Newport, OR 97365, have been granted a modification to permit no. 835.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

The permit issued to the Washington Department of Wildlife, the National Marine Mammal Laboratory, and the Oregon Department of Fish and Wildlife has been modified three times. The National Marine Fisheries Service determined that a public comment period was not necessary because no procedure resulted in additional takes being requested and the risk to the animals involved was not expected to increase.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 835, issued on April 27, 1993 (58 FR 26288), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit No. 835 authorizes the permit holder for the inadvertent harassment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and elephant seals (*Mirounga angustirostris*) incidental to the conduct of aerial, ground, and boat surveys. The holders are also authorized to capture, mark, tag, brand, and sample harbor seals.

The permit holders have been granted the following modifications to their permit: (a) The permit holders are authorized to use a gas anesthetic on California sea lions during blood drawing and instrument attachment; (b) to correct an unintentional omission from the original permit, the permit holders are now authorized to take 50 northern elephant seals annually for capture and tagging in Oregon and Washington; (c) the permit holders are authorized to lavage up to 100 harbor seals captured under the original permit.

Dated: March 24, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–7905 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Fiji

March 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Fiji agreed to extend their current bilateral textile agreement for a one-year period beginning on January 1, 1995 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Categories 338/339/638/639 for 1995.

This limit will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Fiji becomes a member of the World Trade Organization.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 24, 1991 and August 20, 1991, as amended and extended, between the Governments of the United States and the Republic of Fiji; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of 1,011,240 dozen [1] of which not more than 842,700 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

Imports charged to this category limit for the period January 1, 1994 through December 31, 1994, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Should Fiji become a member of the World Trade Organization (WTO), the limit set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–7896 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

March 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs revising and establishing limits pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), the current limits are being amended for textile products, produced or manufactured in Hungary and exported during the period beginning on January 1, 1995 and extending through December 31, 1995. These limits are being amended because Hungary is now a member of the World Trade Organization. Also, a level is being established for cotton and man-made fiber textile products in Categories 351/651 for the 1995 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementatin of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on April 3, 1995, you are directed, pursuant the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase and establish levels for the following categories:

Category	Twelve-month restraint limit [1]
351/651	209,625 dozen.
410	898,662 square meters.
433	17,042 dozen.
434	14,460 dozen.
435	24,995 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

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Category	Twelve-month restraint limit [1]
443	160,092 numbers.
444	51,643 numbers.
448	22,089 dozen.
604	1,037,530 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Textile products in Categories 351/651 which have been exported to the United States prior to January 1, 1995 shall not be subject to this directive.

Textile products in Categories 351/651 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–7897 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

March 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits for the new agreement year.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated June 28, 1994 between the Governments of the United States and the State of Qatar establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Qatar becomes a member of the World Trade Organization, the restraint limits will be modified in accordance with the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated June 28, 1994 between the Governments of the United States and the State of Qatar; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 4, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the State of Qatar and exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Restraint limit [1]
340/640	344,500 dozen.
341/641	159,000 dozen.
347/348	392,200 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Qatar become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–7895 Filed 3–30–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 1, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Executive/Personal Time Management System

7520–00–NSH–0087 (1" binder, specialized logo, seven sections, velcro closure)
7520–00–NSH–0091 (1" binder, specialized logo, seven sections, zipper closure)
7520–00–NSH–0092 (1.5" binder, specialized logo, five sections, no closure)
NPA: Easter Seal Society of Allegheny County Pittsburgh, Pennsylvania

G. John Heyer,

General Counsel.

[FR Doc. 95–7979 Filed 3–30–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed Additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 1, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Bottle, Prescription
6530–00–NIB–0007 (120 cc)
6530–00–NIB–0008 (200 cc)
6530–00–NIB–0009 (250 cc)
(Requirements for the Department of Veterans Affairs, Hines, IL)
NPA: Alphapointe Association for the Blind Kansas City, Missouri

Liner, Foam Insert
8470–00–NIB–0002
NPA: Association for the Blind, Inc. Charleston, South Carolina

Service

Janitorial/Custodial
Pentagon Building
Basement and Mezzanine Floors (except restrooms)
Washington, DC
NPA: Didlake, Inc. Manassas, Virginia

G. John Heyer,

General Counsel.

[FR Doc. 95–7980 Filed 3–30–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 1, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 14, December 16, 30, 1994, January 13, 27 and February 10, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 52145, 65026, 67703, 60 FR 3196, 5373 and 7944) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

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3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Tent, Manila
8340–00–252–2299
8340–00–252–2285
8340–00–252–2286
8340–00–252–2269

Services

Grounds Maintenance, Woodford U.S. Army Reserve Center, 1635 Armor Road, Akron, Ohio
Grounds Maintenance, Scouten U.S. Army Reserve Center, 271 Hedges Street, Mansfield, Ohio
Grounds Maintenance, Pennington Memorial U.S. Army Reserve Center, 2164 Harding Higway East, Marion, Ohio
Janitorial/Custodial, Federal Building & U.S. Courthouse, Alabama & 17th Streets, Jasper, Alabama
Janitorial/Custodial, Federal Building & U.S. Courthouse, 1118 24th Avenue, North, Tuscaloosa, Alabama
Janitorial/Custodial, National Weather Service Office, 520 N. Elevar Street, Oxnard, California
Janitorial/Custodial, Basewide, Dover Air Force Base, Delaware
Janitorial/Custodial, Buildings 844, 850, 862, 863, 867, 868 & 869, Fort Campbell, Kentucky
Janitorial/Custodial, Federal Building and U.S. Post Office, 10 E. Babcock Street, Bozeman, Montana
Janitorial/Custodial, Schaffner U.S. Army Reserve Center, 1011 Gorge Boulevard, Akron, Ohio
Janitorial/Custodial, Woodford U.S. Army Reserve Center, 1635 Armor Road, Akron, Ohio,
Janitorial/Custodial, AMSA #3 U.S. Army Reserve Center, 6830 Erie Avenue, Canal Fulton, Ohio
Janitorial/Custodial, Hastings U.S. Army Reserve Center, 3120 Parkway Drive NW, Canton, Ohio
Janitorial/Custodial, Jacob Parrott U.S. Army Reserve Center, 1025 S. Main Street, Kenton, Ohio
Janitorial/Custodial, Scouten U.S. Army Reserve Center, 271 Hedges Street, Mansfield, Ohio
Janitorial/Custodial, Pennington Memorial U.S. Army Reserve Center, 2164 Harding Highway East, Marion, Ohio
Operation of Postal Service Center, Building 20204 and 926, Kirtland Air Force Base, New Mexico
Patient Escort Service, Veterans Administration Hospital, Houston, Texas
Recycling Service, Patrick Air Force Base, Florida
Recycling Service, Basewide, Kelly Air Force Base, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,
General Counsel.
[FR Doc. 95–7981 Filed 3–30–95; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendment Pertaining to the Automatic Adjustment Procedure for Locational Price Differentials Applicable to Deliveries on the Soybean Meal Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBOT") has submitted a proposed amendment to its Regulation 1241.01 regarding the minimum weekly average number of shipping certificates during a crop year that must be outstanding to activate the automatic adjustment procedure for the locational price differentials of the soybean meal futures contract. In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendment is of major economic significance. On behalf of the Commission, the Division is requesting public comment on the proposal.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to the proposed amendment to CBOT soybean meal futures contract's locational price differentials.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The existing terms of the soybean meal futures contract provide for delivery of shipping certificates which call for delivery of soybean meal at specified CBOT-approved (regular) plants located in six different geographical delivery areas (delivery territories). The contract currently sets forth specific fixed locational price differentials applicable to futures deliveries in each non-par delivery territory.[1]

The contract's existing terms also provide for annual adjustments to the above-noted locational price differentials based on a specified formula. Under the formula, the cumulative weekly average of outstanding soybean meal shipping certificates in a given territory relative to the total crushing capacity of all regular plants in that delivery territory for a given crop year is compared to the corresponding relationship for the five remaining delivery territories combined for the same crop year.[2] For any non-par delivery territory, a derived ratio less than or equal to .5 (greater than or equal to 2.0) will result in an increase (decrease) in the price differential for that territory by 50 cents per ton for the next calendar year. For the par delivery territory (see footnote 1), a ratio less than or equal to .5 (equal to or greater than 2.0) will result in a 50-cent-per-ton increase (decrease) in the price differential for all other delivery territories for the next calendar year. Under the contract's current terms, the above-described automatic adjustments may be made only if the weekly average number of outstanding shipping certificates for all territories combined for the crop year is 300 or more. No changes in the locational price differentials currently may be made if this average is less than 300.

The proposed amendment would reduce to 150 from 300 the minimum weekly average number of outstanding shipping certificates during a crop year that must be observed in order to activate the contract's automatic adjustment procedure for locational price differentials for the next succeeding calendar year.

The CBOT indicates that the purpose of the proposed amendment is to allow the contract's locational price differentials to reflect cash market locational price relationships. The CBOT indicates, in this respect, that reducing the minimum weekly average number of outstanding shipping certificates needed to permit changes in the contract's price differentials will allow such differentials to adjust more quickly toward changing cash market price differences between the contract's delivery territories. The CBOT notes that, while the current automatic adjustment feature has been in effect for three years, adjustments to the contract's locational price differentials were made only in 1993, the first calendar year in which such changes were possible under the automatic adjustment procedure. The CBOT further indicated that, since that time, no changes have been made to the price differentials, because the weekly average number of shipping certificates outstanding during the immediately preceding crop years for each of these years was less than 300 shipping certificates.[3] According to the CBOT, if the standard were 150 outstanding certificates, as proposed, the above-noted adjustment formula would have resulted in changes in the locational price differentials for several delivery territories during 1994 and 1995.

The CBOT proposes to make the amendment effective for adjustments in the locational price differentials for the January 1997 and subsequent contract delivery months.

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CBOT in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 by the specified date.

Issued in Washington, D.C. on March 27, 1995.

Blake Imel,
Acting Director.
[FR Doc. 95–7971 Filed 3–30–95; 8:45 am]
BILLING CODE 6351–01–P

[1] Currently, the per delivery area is the Central Territory (consists of the states of Illinois and Kentucky). The contract's locational price differentials for the other five delivery territories are: Northeast Territory (composed of the states of Indiana and Ohio)—$3.00 per ton premium; Mid South Territory (consists of the states of Tennessee, Arkansas and specified northern parts of Mississippi and Alabama)—$5.00 per ton premium; Missouri Territory (composed of the state of Missouri)—$1.00 per ton discount; Eastern Iowa Territory (consists approximately of the southeastern part of the state of Iowa)—$5.00 per ton discount; and Northern Territory (contains that part of the state of Iowa not included in the Eastern Iowa Territory)—$6.00 per ton discount.

[2] Under the contract's rules, all crop years end on August 31. All adjustments to territorial differentials based on a particular crop year become effective with respect to all contract months expiring in the next calendar year.

[3] The CBOT notes that a weekly average of 298 and 222 shipping certificates were outstanding during the 1992/93 and 1993/94 crop years, respectively.

DEPARTMENT OF DEFENSE

Office of the Secretary

Record of Decision for the Theater Missile Defense Extended Test Range Final Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization (BMDO).

ACTION: Record of Decision text is as follows:

INTRODUCTION: This document records [BMDO Director's] decision for the Ballistic Missile Defense Organization to conduct tests at two of four alternative test ranges. The potential for environmental impacts at these ranges was analyzed and documented in the Theater Missile Defense Extended Test Range Final Environmental Impact Statement (FEIS), and the public was notified of its availability on January 13, 1995. The following ranges were considered for extended range testing: White Sands Missile Range (WSMR), New Mexico, Eglin Air Force Base (AFB) Florida, Western Range, California, and Kwajalein Missile Range (KMR), U.S. Army Kwajalein Atoll (USAKA), Republic of the Marshall Islands.

In September 1993, [BMDO] issued [BMDO's] Record of Decision (ROD) for the TMD Final Programmatic Environmental Impact Statement which analyzed potential environmental impacts over the life-cycle of the TMD Program. That document addressed potential environmental consequences of the proposed research, development, testing and production, basing, and eventual decommissioning activities. It serves as the foundation for the TMD Extended Test Range FEIS. [BMDO Director] have also carefully considered the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (Feb. 11, 1994), that this action not have a disproportionate impact on minority or low-income populations.

Need

The proposed extended range testing arises from compelling national security needs recognized by both the Congress and the Administration. Effective Theater Missile Defense (TMD) is necessary to protect forward deployed and expeditionary elements of the Armed Forces of the United States and U.S. friends and allies overseas. Extended range testing is critical to the development of an effective theater missile defense.

Purpose

Extended range tests for TMD must realistically test missile defense systems under circumstances similar to a theater of operations. This includes construction of target launch facilities; development and testing of sensors, Battle Management Command, Control, and Communications components, and defensive missiles; and intercepts of missiles over land and water areas. System operational needs require conducting target and other missile system flight tests and intercepts at altitudes and over distances, greater than can be accommodated by current ranges. These tests validate system design and operational effectiveness of ground-based interceptors to protect our forces and allies overseas from theater ballistic missiles.

Decision

[BMDO Director's] decision is to proceed with the extended range testing at the WSMR and the KRM. At WSMR, [BMDO Director] select the option to launch target missiles from Fort Wingate Depot Activity (FWDA) using Booster Drop Zone C, with intercepts over WSMR. It is part of [BMDO Director's] decision to take action to reserve a portion of FWDA for the proposed TMD activities. On February 28, 1994, the BMDO notified the Secretary of the Army of its potential need for sufficient property at FWDA to conduct missile launch activities, including provision

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for security, safety, and access. The BMDO will confirm its need for property at FWDA and take other necessary actions to ensure such property is not disposed of under the provisions of the Base Realignment and Closure Act. [BMDO Director] have decided not to select sea-based target missile launches at this time. [BMDO Director] select only the land-based target launch option from Wake Island for the KMR alternative. Missile intercepts will take place over existing impact areas or open sea areas at KMR.

Proposed Action and Alternatives

Background: The proposed action analyzed in the TMD Extended Test Range FEIS was to conduct extended range tests of target missiles, defensive missiles, and sensor systems at one or more of four alternative test range areas. The tests would involve target and defense missile launches from existing test ranges and from off-range locations with intercepts over existing ranges or open ocean areas. Preparations and testing would begin in 1995 and continue into the next century. The FEIS compared the impacts of alternative test range areas and a no-action alternative.

As individual TMD system programs mature to the point of defining specific flight/intercept test requirements, the most appropriate test range area(s) capable of meeting test requirements will be identified. The proposed action includes safety measures and standard range operating procedures to ensure the safety of the public and the environment. Some of these safety measures include (1) activating new or existing restricted airspace, (2) the establishment and evacuation of launch hazard areas and booster drop zones, including temporary closure of associated roads, and (3) public notification of launch activities, including Notices to Airmen and Notices to Mariners.

No-Action Alternative: Ongoing activities and operations would continue to be performed at all locations. The development of ground based TMD missile and sensor systems would continue, with missile flight tests and target intercepts being conducted utilizing existing test ranges. Testing for TMD would likely increase at WSMR and possibly at the KMR. Ground-based TMD testing of missile and sensor systems at Eglin AFB and the Western Range would not occur. The missile testing restrictions associated with existing ranges, particularly with shorter range missile flights conducted at WSMR, place artificial limits on system test capabilities. This would make it impossible to fully validate system design and operational effectiveness in a variety of realistic theater environments. Although this alternative is the environmentally preferable alternative, it was not selected because it fails to meet BMDO's mission requirements. A comparison of the impacts at the four ranges revealed the least impacts to resources at the KMR. Impacts to resources at Western Range, Eglin AFB, are roughly equivalent. The greatest potential impacts were identified for the WSMR alternative and are primarily related to land use, cultural, and transportation issues associated with the initial booster drop zones analyzed in the Draft EIS.

White Sands Missile Range Candidate Test Area Alternative: This alternative included defensive missile launches from WSMR, New Mexico, and Fort Bliss, Texas, and off-range target missile launches from FWDA, New Mexico, and the Green River Launch Complex (GRLC), Utah, with intercepts over WSMR. Testing of TMD radars, positioned on WSMR, would occur during these flight tests. This option also included Army tactical missile launches from FWDA with impacts on WSMR. [BMDO Director] anticipate approximately 6 to 8 launches per year from FWDA.

Two potential booster Drop Zones (A and B) were analyzed in the Draft EIS for both the FWDA and GRLC target launch options. Substantial concerns were raised over the use of these drop zones. Although a number of mitigations could have been implemented to minimize the land use and other impacts, they could have become significant. In addition, [BMDO Director] am sensitive to general concerns about missile overflight of substantial areas of Native American lands in Utah and New Mexico. Accordingly, other booster drop zones were identified and analyzed for both the FWDA and GRLC options in a supplement to the Draft EIS. In both cases, these drop zones were further away from the launch position and further along the flight path and required smaller launch hazard areas at the launch site due to a less vertical trajectory at launch. This enabled the respective launch hazard areas to be reduced in size, responsive to the concerns about proximity to schools, residences, and other potential users of surrounding areas at FWDA. It also avoided the requirement to close Interstate 70 and portions of the Green River during launches for the GRLC option.

In the case of the GRLC target launch options, both Booster Drop Zones A and B would have created significant land use problems associated with restricting access to Canyonlands National Park and Dead Horse State Park. Use of either of these drop zones would also have necessitated temporary closure of Interstate 70 and portions of the Green River adjacent to the launch area, due to the requirement for a large launch hazard area. The new Booster Drop Zones C1 and C2 for GRLC included Bureau of Land Management (BLM) state of Utah, and private land, as well as the Bridger Jack Mesa and Fish Creek Canyon Wilderness Study Areas. Concerns included restrictions on public access for recreation, and hunting. Booster impacts within the wilderness study area could be avoided, and missile launches could be timed so as to minimize impacts to recreation and avoid nesting and breeding seasons of sensitive species. However, the authority to use BLM lands for military purposes, including the proposed missile tests involving booster drops, would require a lengthy process that would not be responsive to current testing needs. Consequently GRLC options are not under current consideration.

In the case of the FWDA option, use of either Booster Drop Zone A or B would require a launch hazard area extending up to 4½ miles from the launch site. This caused substantial safety concerns for the local community about a nearby school and residences and other areas at FWDA. In addition, Booster Drop Zone B included portions of the El Malpais National Monument and the El Malpais National Conservation Area, which encompassed wilderness and wilderness study areas. Use of this drop zone would be considered significant because it restricts access to recreational areas and conflicts with the statutory purposes for these special use areas. Booster drop zones A and B will not be used.

The new Booster Drop Zone C for FWDA includes U.S. Forest Service and private land. Both the public land manager and private owner have expressed their willingness to allow use of these lands for booster drops. Use of this booster drop zone greatly reduces the launch hazard area at FWDA and significantly improves safety for nearby schools and residences, in keeping with the purpose of E.O. 12898 to avoid disproportionate impacts on minorities, such as the Indian communities in the Fort Wingate area. No significant environmental impacts have been identified associated with this drop zone.

Kwajalein Missile Range, USAKA, Republic of the Marshall Islands

Alternative: This alternative included missile launches and sensor testing at KMR and Wake Island. USAKA would be primarily used for launching defensive missiles, however, there is a possibility that target missiles may be launched from USAKA. Wake Island would primarily be used for target missile launches, however, it also could be used for defensive missile launches. Technical difficulties with launches and costs removed sea-based target missile launches from consideration. Existing facilities at KMR and at Wake Island and planned construction of Wake Island (analyzed in the Wake Island Environmental Assessment, 1994) would be adequate for TMD interceptor and target launching activities; therefore minimal environmental impacts are anticipated. Issues of concern included potential impacts on sensitive plant and animal species at the KMR and Wake Island, particularly in undisturbed areas, the potential for damage, destruction, or vandalism of cultural resources, and safety issues. Mitigations included avoidance of areas of native vegetation and sea turtle nesting areas, consultation with appropriate U.S. and Marshallese officials to establish procedures to protect cultural resources such as data recovery, and avoidance. Mitigations also establish hazard areas and place operating restrictions on radars to avoid significant impacts. No significant environmental impacts are predicted with the use of KMR or Wake Island.

Eglin Air Force Base Candidate Test Area Alternative: This alternative would include missile launches and sensor testing at Eglin AFB on Santa Rosa Island and at Cape San Blas, Florida, with missile launches from a sea-based platform in the Gulf of Mexico. No significant impacts are predicted with the use of Eglin AFB. Health and safety and airspace impacts would be avoided by the issuance of Notices to Airmen and Notices to Mariners, and ensuring that the launch, booster drop, and intercept debris impact areas are clear of air and water traffic before proceeding with the test flights. This alternative is not selected at this time because test objectives could be met at other ranges, sea-launch capabilities will not be available, and additional test instrumentation is needed.

Western Range Test Area Alternative: This alternative would include missile launches and sensor testing at Vandenberg AFB, San Nicolas Island of the Naval Air Warfare Center Weapons Division, and San Clemente Island of the Naval Air Station North Island, California, with off-range missile launches from a sea-based platform in the Pacific Ocean. No significant impacts are predicted with the use of Western Range. Health and safety and airspace impacts would be avoided by the issuance of Notices to Airmen and Notices to Mariners, and ensuring that the launch, booster drop, and intercept debris impact areas are clear of all air traffic before proceeding with the test flights. This alternative is not selected at this time because test objectives could be met at other ranges, sea-launch capabilities will not be available, and additional test instrumentation is needed.

Alternatives Considered But Not Carried Forward: Initially eleven candidate test range areas were considered for TMD testing. Criteria used to evaluate candidate test ranges included weather, scheduling, range instrumentation, range safety, and debris recovery. All but the four ranges analyzed in the FEIS were eliminated by the criteria established at the beginning of the selection process.

Mitigation, Monitoring, and Enforcement

All practicable means to avoid and minimize environmental harm will be taken. [BMDO Director] direct BMDO Deputies and Program Executive Officers to monitor extended range testing activities and ensure the following mitigation measures described in the TMD Extended Test Range FEIS are implemented. Specifically, at the WSMR, and the associated FWDA, mitigations will include implementing the Evacuation Plan, Booster Recovery Plan, and Emergency Response Plan. Launches will be avoided during weather conditions that would have adverse effects on air quality or on test safety. To the extent possible, launches will be scheduled to avoid major events such as major military maneuvers (i.e., Roving Sand Operations), holidays, hunting seasons, cattle roundups, or local festivities that could be effected by the testing activities. Maximum advance notice of launch activities will be provided to local communities, travelers, etc., as described in the FEIS. Prior to conducting launches and starting construction, consultation with appropriate Federal and state agencies, as discussed in the EIS will occur concerning specific debris impact areas, debris recovery activities, and prelaunch and preconstruction surveys in order to protect cultural resources and threatened and endangered species. American Indian concerns regarding access to and disturbance of sacred lands will be addressed during consultation with each affected American Indian group on a regular basis and prior to each missile launch. Consultation with local community groups will establish the procedures, and coordinate times for use of FWDA lands under BMDO control during periods of launch inactivity.

At the USAKA, the existing USAKA mitigation plan will be followed. Other mitigations include: International Notices to Airmen and Notices to Mariners, timely coordination with the International Civil Aviation Organization through the Federal Aviation Administration, adherence to established procedures for keep-out zones, hazard areas, and limitations on use of radars, and a scheduling plan will be implemented to minimize airspace and health and safety impacts. Preconstruction surveys and/or other mitigation measures will be accomplished in coordination with the appropriate Federal agencies and the Republic of the Marshall Islands Environmental Protection Authority to protect cultural resources and threatened and endangered species. [BMDO Director] will implement appropriate safeguards as subsequent decisions are made regarding system components and basing locations, and as their accompanying environmental documents elaborate specific requirements for monitoring and enforcement.

Date and Signature

Record of Decision was signed March 21, 1995 by Malcolm R. O'Neill, Lieutenant General, United States Army, Director, Ballistic Missile Defense Organization.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Lehner, BMDO/SRE, Washington, DC 20301–7100, (703) 695–8743.

Dated: March 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7892 Filed 3–30–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission is charged with providing an independent review of the roles and missions of the armed services

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to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. The purpose of this meeting is to discuss some of the specific roles and missions issues that are being developed for consideration by the Commission. Material to be discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

DATES: April 9–10, 1995.

Dated: March 27, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7882 Filed 3–30–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Unique Surveillance Technologies

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Unique Surveillance Technologies will meet in closed session on April 4–6, 1995, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and evaluate Have Gaze and related surveillance technologies and to assess overall technological maturity, technical and operational issues, potential military utility, and appropriate technology investment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7891 Filed 3–30–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Base Closure and Realignment Commission Investigative Hearings

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission separate from and independent of DOD).

ACTION: Notice of General Accounting Office and Joint Cross-Service Investigative Hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a day of investigative hearings to be held in Washington, D.C. The purpose of these hearings is for the Commission to receive testimony from the General Accounting Office and Defense Department officials.

The specific dates, locations, and general topics follow:

April 17 (Location: Hart Senate Office Building, Room 216)

—The General Accounting Office formally presents the Commission its detailed analysis of the base-closure selection process and recommendations of the Secretary of Defense.

—Chairpersons of the Defense Department's Joint Cross Service Groups present testimony regarding their recommendations in the following areas:

—Military Depots
—Military Undergrade Pilot Training
—Military Hospitals
—Military Laboratories
—Military Test and Evaluation

The April 17 hearing will begin at 8:00 a.m. The building and room number is noted in parentheses following the date of the hearing. However, hearing location, date, and time are subject to change based upon availability of facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

SUPPLEMENTARY INFORMATION: Changes to the above schedule will be published in the Federal Register by the Commission. Please call the Commission to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the Commission in advance of each event to facilitate their requirements.

Dated: March 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–7889 Filed 3–30–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Environmental Advisory Board; Meeting

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–403), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

Dates: The meeting will be held from 8:00 am, Tuesday, April 11, 1995 to 11:00 am, Thursday April 13, 1995.

Meeting Location: Sheraton Premier Hotel, Tyson's Corner, 8661 Leesburg Pike, Vienna, Virginia.

Addresses: Office of Environmental Policy, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000.

For Further Information Contact: Mr. Paul Rubenstein, (202) 272–8731.

Agenda

The schedule and proposed agenda of the subject meeting on "Planning for Tomorrow: Uniting the Army Corps of Engineers and the Environmental Community" follows:

Tuesday, April 11, 1995

0800–0815 Welcome Ceremonies & Induction of New Board Members
0815–0845 Chief's Charge to the Board
0845–0900 EAB Chair Response
0900–0915 Overview of Meeting Structure
0915–1100 Session 1: "Building New Partnerships—Applying Engineering Means to Achieve Environmental Ends". A Moderated Panel Discussion using a discussion paper followed by comments and discussion:
Moderator: Dr. Lettie Wenner, EAB Chair, Northern Illinois University
Discussants: Dr. Benjamin Dysart, III, Dysart and Associates, Atlanta; Dr. Warren Viessman, Jr., University of Florida; Dr. Evan Vlachos, Colorado State University
1100–1200 Facilitated Group Discussion in Plenary (Facilitator: L. Aggens)

1200–1330 Conference Luncheon: Keynote speech by Major General Stanley Genega, Director of Civil Works on the History of Environmental Partnering in the U.S. Army Corps of Engineers.
1330–1530 Session 2: "Environmental Decision-Making in the Corps—Involvement of Environmental, Community and Other Public Groups in Corps Decision-Making". A Moderated Panel Discussion using prepared case studies examining who participates and how.
Moderator: Dr. James Regens, EAB Vice-Chair, Tulane University
Discussants: Dr. Stuart Langton, Challenge to Leadership, Boston; Mr. James R. Hanchey, USACE, Lower Mississippi Valley Division; Colonel Terrance Salt, South Florida Ecosystem Restoration Task Force; Mr. Joseph Browder, Everglades Coalition; Ms. Karen Illardo, National Audubon Society
1530–1630 Facilitated Group Discussion in Plenary (Facilitator: L. Aggens)
1630 Adjourn

Wednesday, April 12, 1995

0800–0830 Overview of the day.
0830–1000 Simultaneous Workshops on specific environmental programs.—Section 1135 Program
Moderators: Ms. Ellen Cummings, HQUSACE; Mr. Timothy Searchinger, Environmental Defense Fund
Moderators: Mr. Michael Davis, HQUSACE; Mr. Russell Shay, The Nature Conservancy—Methods to Integrate Economics and Environment
Moderators: Mr. Ken Orth, USACE Institute for Water Resources—Environmental Restoration
Moderators: Mr. Larry Lower, USACE Baltimore District; Ms. Constance Hunt, World Wildlife Fund—Flood Plan Management and Non-Structural Approaches
Moderators: Mr. Charles Moeslein, HQUSACE; Mr. Scott Faber, American Rivers—The Corps Partnership Kit
Moderator: Mr. Richard Sinclair, USACE Institute for Water Resources
1000–1030 Break
1030–1200 Simultaneous Workshops Repeated
1200–1330 Lunch
1330–1500 Session 3: A Facilitated Discussion of Issues, concerns and recommendations raised in the simultaneous workshops. (Facilitator: L. Aggens)
1830–2200 Conference Dinner and Special Plenary Session—"Twenty Five Years of the Chief of Engineers Environmental Advisory Board: Perspectives of the History-Makers on its Importance and Influence"
Moderator: Mr. Jimmy Bates, Deputy Director of Civil Works
Keynote Speaker: Dr. John Zirschky, Acting Assistant Secretary of the Army (Civil Works)
Panelists: Lieutenant General Arthur Williams, Chief of Engineers; Dr. Lettie Wenner, EAB Chair; Lieutenant General Frederick Clarke, USA (Ret.); Dr. Lynton Caldwell, EAB Charter Member; Lieutenant General E. R. Heilberg, USA (Ret.); Dr. Warren Viessman, Former EAB Chair; Dr. Beverly Wright, Incoming EAB Member
Guests: Lieutenant General John Morris, USA (Ret.); Lieutenant General Joseph Bratton, USA (Ret.); Lieutenant General Henry Hatch, USA (Ret.)

Thursday, April 13, 1995

0800–0900 Report of the EAB to the Chief
0900–0930 Break
0930–1000 Chief's Response
1000–1100 Public Comments
1100 Adjourn

This meeting is open to the general public but has limited seating.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–7998 Filed 3–30–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). This listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department assistance requirements collected by the Department of Energy (DOE)

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (7) Affected public; (8) An estimate of the number of respondents per report period; (9) An estimate of the number of responses per respondent annually; (10) An estimate of the average hours per response; (11) The estimated total annual respondent burden; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before May 1, 1995. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–555
3. 1902–0098
4. Preservation of Records of Public Utilities and Licenses, Natural Gas Companies and Oil Pipeline Companies
5. Extension
6. Mandatory
7. Business or other for-profit
8. 500 responses
9. 1 response
10. 24,400 hours per response
11. 1,200,000 hours
12. The records retention regulations establish retention periods and necessary guidelines and requirements to sustain retention of applicable records for the 500 regulated public utilities, natural gas and oil pipeline companies subject to the jurisdiction of the Federal Energy Regulatory Commission.

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1).

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Issued in Washington, D.C., March 25, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–7976 Filed 3–30–95; 8:45 am]

BILLING CODE 6455–01–M

Federal Energy Regulatory Commission

[Docket No. CP95–251–000]

Pacific Interstate Transmission Company; Notice of Application

March 27, 1995.

Take notice that on March 8, 1995, Pacific Interstate Transmission Company (PITCO), 633 West Fifth Street, Suite 5400, Los Angeles, California, 90071–2071, filed in Docket No. CP95–251–000, an application pursuant to Section 7(c) of the Natural Gas Act for authorization to establish an additional delivery point at Blanco, New Mexico for the sale of gas to PITCO's sole customer, Southern California Gas Company (SoCalGas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, PITCO intends to establish an additional sale and delivery point at Blanco, New Mexico for the sale of Canadian gas to SoCalGas. PITCO states that the additional sale and delivery point is necessary because of El Paso Natural Gas Company's (El Paso) increasing inability to receive all of PITCO's natural gas supplies on a firm basis at the existing El Paso receipt point from Northwest Pipeline Corporation (Northwest) at Ignacio, Colorado. PITCO says the additional sale and delivery point will provide SoCalGas with greater flexibility concerning its purchases, and will eliminate unnecessary alternative transportation costs and construction of unnecessary pipeline additions.

PITCO states that the addition of new sale and delivery points is specifically provided by the General Terms and Conditions of PITCO's FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 17, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PITCO to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7901 Filed 3–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–000, et al.]

Tennessee Gas Pipeline Company, Notice of Informal Settlement Conference

March 27, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, April 5, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Dennis H. Melvin at (202) 208–0042 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7900 Filed 3–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1545–000]

Calpine Power Marketing, Inc.; Notice of Issuance of Order

March 28, 1995.

On August 9, 1994 and February 8, 1995, Calpine Power Marketing, Inc. (CPMI) submitted for filing a rate schedule under which CPMI will engage in wholesale electric power and energy transactions as a marketer. CPMI also requested waiver of various Commission regulations. In particular, CPMI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CPMI.

On March 9, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CPMI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CPMI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CPMI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7951 Filed 3–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–300–000]

Wickland Power Services; Notice of Issuance of Order

March 28, 1995.

On December 20, 1994 and February 6, 1995, Wickland Power Services (WPS) submitted for filing a rate schedule under which WPS will engage in wholesale electric power and energy transactions as a marketer. WPS also requested waiver of various Commission regulations. In particular, WPS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WPS.

On March 16, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WPS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WPS is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WPS's issuances of securities or assumption of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 17, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7952 Filed 3–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4031–041 et al.]

Hydroelectric Applications, City of Peru, Illinois, et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 4031–041.

c. *Date filed:* September 9, 1994.

d. *Applicant:* City of Peru, Illinois.

e. *Name of Project:* Starved Rock.

f. *Location:* The project is located near Utica, Lasalle County, Illinois, approximate Illinois River mile 231.0.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mayor Donald F. Baker, City of Peru, 1715 Fifth Street, Peru, IL 61354, (815) 223–1148.

i. *FERC Contact:* Buu T. Nguyen, (202) 219–2913.

j. *Comment Date:* April 27, 1995.

k. *Description of Amendment:* The licensee, City of Peru, applied for an amendment of license to include a transmission line which was built in December of 1993. The transmission line is approximately 9.5 miles long. The transmission line travels down the upstream slope of the north embankment, and continues underwater (approximately 180 feet) to the north lock wall. The remaining of the line is overhead type beginning at Dee Bennett Road.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Major New License.

b. *Project No.:* 1951–035.

c. *Applicant:* Georgia Power Company.

d. *Name of Project:* Sinclair Hydroelectric Project.

e. *Location:* on the Oconee River, near Milledgeville, Baldwin County, Georgia.

f. *Applicant Contact:* Don Holder, Georgia Power Company, 333 Piedmont Avenue, Bin No. 10170, Atlanta, GA 30308, (404) 526-7092.

g. *FERC Contact:* Kelly R. Fargo (202) 219-0231.

h. Georgia Power Company served a copy of the Preliminary DEA and Draft License Application on all parties on March 8, 1995, pursuant to 18 CFR 16.8(c)(4). The Commission received a copy of the Preliminary DEA and draft license application on March 8 and March 13, 1995, respectively.

Comments on the draft license application for the Sinclair Project should be sent to the Georgia Power Company with a copy to the Commission at the following address: Federal Energy Regulatory Commission, 825 North Capitol Street, Attn: Ms. Kelly Fargo, Mailstop HL 20.1, Room 1040, Washington, DC 20426.

i. As discussed in the Commission's letter to all parties on February 14, 1995, and pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 90 days from the date that Georgia Power served a copy of the preliminary DEA and draft license application to all parties and serve a copy of the request on the applicant. Any party interested in filing an additional study request must do so before June 13, 1995.

3 a. *Type of Application:* New Major License.

b. *Project No.:* 2389–010.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Edwards Manufacturing Company Inc.

e. *Name of Project:* Augusta Hydroelectric Project.

f. *Location:* On the Kennebec River in Kennebec County, in the City of Augusta, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)– 825(r).

h. *Applicant Contact:* Mr. Mark Isaacson, Vice President, Edwards Manufacturing, 42A North Elm Street, Yarmouth, ME 04096, (207) 846–3991.

i. *FERC Contact:* John S. Blair (202) 219–2845.

j. *Deadline Date:* May 15, 1995.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) The existing 917-foot-long, concrete-capped, timber crib dam composed of (a) a 850-foot long primary spillway topped by 4.5-foot-high wooden flashboards, (b) a 67-foot long bulkhead spillway abuts the primary spillway; (2) an existing impoundment with a surface area of 1,143 acres and a gross storage volume of 16,985 acre-feet; (3) an existing power canal, 450-feet long; (4) an existing 80-foot long and 24-foot-wide masonry gate house; (5) nine generating units with 3.5 mW total generating capacity housed in a combination of a structural steel and masonry building powerhouses.

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The applicant proposes: (1) to install an inflatable rubber crest gate that would increase the elevation of the reservoir by one foot; (2) to retire two of the existing nine generating units and add one new vertical 8 mW Kaplan turbine housed in a new concrete and steel powerhouse, 140 feet long, 63 feet wide, and 50 feet high; the total installed new capacity would be 11 mW; (3) the impoundment would be increased to a total of 1,167 surface acres and a gross storage of 18,437 acre-feet.

The project dam and facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Edwards Manufacturing, 42A North Elm Street, Yarmouth, ME 04096, (207) 846–3991.

4 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2075–009.

c. *Date Filed:* February 7, 1995.

d. *Applicant:* Washington Water Power Company.

e. *Name of Project:* Noxon Rapids.

f. *Location:* On the Clark Fork River in Sanders County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Larry La Bolle, Washington Water Power Company, E. 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220–3737, (509) 482–4710. William J. Madden, Jr., John A. Whittaker IV, Winston & Strawn, 1400 L Street N.W., Washington, D.C. 20005, (202) 371–5700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* May 12, 1995.

k. *Description of the Request:* The licensee requests that its license expiration date be accelerated from April 30, 2005, to February 28, 2001.

l. This notice also Consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11523–000.

c. *Date Filed:* March 1, 1995.

d. *Applicant:* Massachusetts Water Resources Authority.

e. *Name of Project:* Winsor Dam Hydro Project.

f. *Location:* On the Swift River in Hampshire, Franklin, and Worcester Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Brutsch, Director, Waterworks Division, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129, (617) 242–6000.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* May 12, 1995.

k. *Competing Application:* Project No. 11505–000. *Date filed:* November 9, 1994.

l. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 2,900-foot-long Winsor Dam; (2) an existing 25,216-acre reservoir; (3) a proposed water intake; (4) a proposed powerhouse containing a single 1200 kW generating unit; (5) a proposed 13.8-kV or equivalent transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 3,450 MWh and that the cost of the studies under the permit would be $56,000. The dam and water rights are owned by the Metropolitan District Commission, 20 Somerset Street, Boston, MA 02108. The project equipment is owned and operated by the Massachusetts Water Resource Authority, Division Director of Water Works, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129. All power generated would be sold to Massachusetts Electric Company.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

6 a. *Type of Filing:* Settlement Agreement for Permanently Mitigating Fish Mortality at the Ludington Project.

b. *Project No.:* 2680–017.

c. *Date Filed:* February 28, 1995.

d. *Licensees:* Consumers Power Company and The Detroit Edison Company.

e. *Name of Project:* Ludington (FERC No. 2680).

f. *Location:* The eastern shore of Lake Michigan: Mason County.

g. *Filed Pursuant to:* Order Modifying a Mitigative Plan for Turbine Mortality, issued August 11, 1987 (40 FERC ¶62,151).

h. *Licensee Contact:* Mr. William Lange, Consumers Power Company, 1016 16th Street, N.W., 5th Floor, Washington, DC 20036, (202) 293–5795.

i. *FERC Contacts:* Ms. Janet Oakley, (202) 208–0495; Dr. John M. Mudre, (202) 219–1208.

j. *Comment Date:* May 5, 1995.

k. *Description of Filing:* The licensees for the Ludington Project have entered into a settlement agreement with: the State of Michigan and the Michigan Department of Natural Resources; the United States Department of the Interior, on behalf of the Fish and Wildlife Service and as Trustee for Indian tribes, bands or communities with reserved treaty rights in the Michigan waters of Lake Michigan; the Michigan United Conservation Clubs; and the National Wildlife Federation. The settlement agreement provides for mitigation of fish mortality at the project by the seasonal installation of a barrier net around the project's intakes and other measures. The agreement also provides for the development of off-site angler access facilities to mitigate for the loss of angler access to the project jetties, which would be inside the barrier net.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11517–000.

c. *Date Filed:* February 6, 1995.

d. *Applicant:* Androscoggin Hydroelectric Company, Inc.

e. *Name of Project:* Coos Hydropower Project.

f. *Location:* On the Androscoggin River in the Town of Gorham, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. John N. Webster, Androscoggin Hydroelectric Company, Inc., P.O. Box 178, South Berwick, ME 03908, 207–384–5334.

i. *FERC Contact:* Michael Dees 202–219–2807.

j. *Comment Date:* May 12, 1995.

k. *Description of Project:* The proposed project would consist of: (1) A proposed earth and concrete dam 850 feet long; (2) a proposed 75 acre reservoir with a maximum water surface elevation of 854 feet MSL; (3) a proposed powerhouse, 100 feet by 50 feet housing two 3,000 kW hydropower units with a total capacity of 6,000 kW; (4) a proposed 34.5 kV transmission line 1200 feet long; and (5) appurtenant facilities. The applicant estimates that the annual energy generation would be 40 GWh and that the cost of the studies to be performed under the permit would be $100,000. The energy would be sold to businesses or public utility companies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. Initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (May 15, 1995 for Project No. 2389-010). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 28, 1995 for Project No. 2389-010).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or

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"PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b) Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: March 27, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95-7953 Filed 3-30-95; 8:45 am]

BILLING CODE 6717-01-P

Federal Energy Regulatory Commission

[Docket Nos. ST95-1371-000 et al.]

Colorado Interstate Gas Company Notice of Self-Implementing Transactions

March 27, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's regulations and Section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's regulations and Section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's regulations.

A "G-I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95-1371	Colorado Interstate Gas Co.	Montana Power Co	02-01-95	B	10,130	N	F	11-20-93	11-30-06
ST95-1372	Colorado Interstate Gas Co.	Montana Power Co	02-01-95	B	10,500	N	F	06-03-94	12-31-03
ST95-1373	Colorado Interstate Gas Co.	HS Resources, Inc	02-01-95	G-S	7,532	N	I	01-18-95	Indef.
ST95-1374	Columbia Gas Transmission Corp.	Pinnacle Energy Co	02-01-95	G-S	10,000	N	I	01-01-95	Indef.
ST95-1375	Columbia Gas Transmission Corp.	Aurora Natural Gas & Assoc. Prod.	02-01-95	G-S	20,000	N	I	01-09-95	Indef.
ST95-1376	Columbia Gas Transmission Corp.	NGO Development Corp.	02-01-95	G-S	N/A	N	I	01-17-95	Indef.
ST95-1377	ONG Transmission Co	ANR Pipeline Co	02-02-95	C	50,000	N	I	01-18-95	Indef.
ST95-1378	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	02-02-95	B	33,700	Y	I	07-01-93	06-03-94
ST95-1379	Transcontinental Gas P/L Corp.	City of Kings Mountain	02-02-95	G-S	87	N	F	01-01-95	03-17-98
ST95-1380	Colorado Interstate Gas Co.	Montana Power Co	02-02-95	B	21,000	N	F	08-01-94	10-31-03
ST95-1381	Williston Basin Inter P/L Co.	Western Sugar Co	02-03-95	G-S	9,000	A	I	01-05-95	07-31-96
ST95-1382	Transok, Inc	ANR Pipeline Co. et al	02-03-95	C	25,000	N	I	01-20-95	Indef.
ST95-1383	Colorado Interstate Gas Co.	Montana Power Co	02-03-95	B	50,000	N	F	12-03-94	12-31-95
ST95-1384	Williams Natural Gas Co.	Mercado Gas Services, Inc.	02-03-95	G-S	2,200	N	I	12-01-94	Indef.
ST95-1385	Williams Natural Gas Co.	Natural Gas Transmission Service.	02-03-95	G-S	46,500	N	I	02-01-95	02-01-96
ST95-1386	Williams Natural Gas Co.	Trident NGL, Inc	02-03-95	G-S	20,000	N	I	01-19-95	09-30-03
ST95-1387	Williams Natural Gas Co.	Western Resources, Inc	02-03-95	G-S	27,758	N	F	10-01-94	Indef.
ST95-1388	Williams Natural Gas Co.	Western Resources, Inc	02-03-95	G-S	147,670	N	F	10-01-94	Indef.
ST95-1389	Williams Natural Gas Co.	Western Resources, Inc	02-03-95	G-S	26,231	N	F	10-01-94	10-01-95
ST95-1390	Williams Natural Gas Co.	Western Resources, Inc	02-03-95	G-S	271,450	N	F	10-01-94	Indef.
ST95-1391	Williams Natural Gas Co.	Missouri Gas Energy	02-03-95	G-S	4,792	N	F	10-01-94	Indef.
ST95-1392	Williams Natural Gas Co.	Missouri Gas Energy	02-03-95	G-S	6,435	N	F	10-01-94	Indef.
ST95-1393	Williams Natural Gas Co.	Missouri Gas Energy	02-03-95	G-S	160,341	N	F	10-01-94	11-01-98
ST95-1394	Williams Natural Gas Co.	Missouri Gas Energy	02-03-95	G-S	246,228	N	F	10-01-94	Indef.
ST95-1395	Columbia Gas Transmission Corp.	Volunteer Energy Corp	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1396	Columbia Gas Transmission Corp.	Riley Natural Gas Co	02-03-95	G-S	1,500	N	I	02-01-95	Indef.
ST95-1397	Columbia Gas Transmission Corp.	Texas Ohio Gas, Inc	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1398	Columbia Gas Transmission Corp.	Transfuel Marketing Co	02-03-95	G-S	4,300	N	I	02-01-95	Indef.
ST95-1399	Columbia Gas Transmission Corp.	Vineyard Oil & Gas Co	02-03-95	G-S	750	N	I	02-01-95	Indef.
ST95-1400	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1401	Columbia Gas Transmission Corp.	Cabot Oil & Gas Marketing Corp.	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1402	Columbia Gas Transmission Corp.	Arcadia Energy Corp	02-03-95	G-S	3,000	N	I	02-01-95	Indef.
ST95-1403	Columbia Gas Transmission Corp.	Iesco Industrial Energy Services Co.	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1404	Columbia Gas Transmission Corp.	Enron Access Corp	02-03-95	G-S	10,000	N	I	02-01-95	Indef.
ST95-1405	Columbia Gas Transmission Corp.	Appalachian Gas Sales Ags.	02-03-95	G-S	100,000	N	I	02-01-95	Indef.
ST95-1406	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	02-03-95	G-S	10,000	N	I	02-01-95	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–1407	Columbia Gas Transmission Corp.	Ivan Hall & Associates, Inc.	02–03–95	G–S	10,000	N	I	02–01–95	Indef.
ST95–1408	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	02–03–95	G–S	5,000	N	I	02–01–95	Indef.
ST95–1409	Columbia Gas Transmission Corp.	OGLS Operations, Inc ..	02–03–95	G–S	700	N	I	02–01–95	Indef.
ST95–1410	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	02–03–95	G–S	810	Y	I	02–01–95	Indef.
ST95–1411	Columbia Gas Transmission Corp.	Columbia Natural Resources, Inc.	02–03–95	G–S	600	Y	I	02–01–95	Indef.
ST95–1412	Columbia Gas Transmission Corp.	Eastern Marketing Corp	02–03–95	G–S	10,000	N	I	02–01–95	Indef.
ST95–1413	Columbia Gas Transmission Corp.	Atlas Gas Marketing	02–03–95	G–S	5,000	N	I	02–01–95	Indef.
ST95–1414	Columbia Gas Transmission Corp.	Atwood Resources, Inc	02–03–95	G–S	10,000	N	I	02–01–95	Indef.
ST95–1415	Columbia Gas Transmission Corp.	Belden & Blake Corp ...	02–03–95	G–S	1,000	N	I	02–01–95	Indef.
ST95–1416	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co., et al.	02–06–95	C	20,000	N	I	12–01–94	Indef.
ST95–1417	Acadian Gas Pipeline System.	Natural G/P/L Co. of Am., et al.	02–06–95	C	10,000	N	I	01–01–95	Indef.
ST95–1418	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	02–06–95	G–S	3,000	N	F	01–24–95	Indef.
ST95–1419	Colorado Interstate Gas Co.	Montana Power Co	02–06–95	B	20,000	N	F	06–03–94	05–31–95
ST95–1420	Viking Gas Transmission Co.	Utilicorp United Inc	02–06–95	G–S	2,398	N	F	12–01–94	02–28–95
ST95–1421	Koch Gateway Pipeline Co.	CNB/Olympic Gas Services.	02–06–95	G–S	N/A	N	I	01–13–95	Indef.
ST95–1422	Koch Gateway Pipeline Co.	Cenergy Inc	02–06–95	G–S	N/A	N	I	01–26–95	Indef.
ST95–1423	Koch Gateway Pipeline Co.	Texaco Natural Gas Inc	02–06–95	G–S	45,000	N	F	01–10–95	01–10–96
ST95–1424	Koch Gateway Pipeline Co.	Mobil Natural Gas Inc ..	02–06–95	G–S	3,500	N	F	01–10–95	04–10–95
ST95–1425	Koch Gateway Pipeline Co.	Koch Gas Services Co .	02–06–95	G–S	150	Y	F	01–10–95	01–10–96
ST95–1426	Koch Gateway Pipeline Co.	Koch Gas Services Co .	02–06–95	G–S	40,000	Y	F	01–10–95	06–10–95
ST95–1427	Koch Gateway Pipeline Co.	Koch Gas Services Co .	02–06–95	G–S	10,000	Y	F	01–10–95	04–10–95
ST95–1428	Kentucky West Virginia Gas Co.	Mayo State Vocationl Tech. School.	02–06–95	G–S	100	N	I	11–01–94	Indef.
ST95–1429	East Tennessee Natural Gas Co.	Tennessee Gas Marketing Co.	02–06–95	G–S	100,000	N	I	03–01–94	Indef.
ST95–1430	El Paso Natural Gas Co	Transok Gas Co	02–07–95	G–S	103,000	N	I	01–14–95	Indef.
ST95–1431	Transcontinental Gas P/L Corp.	Conagra Energy Services.	02–07–95	G–S	100,000	N	I	01–20–95	Indef.
ST95–1432	East Tennessee Natural Gas Co.	Perry Gas Companies, Inc.	02–07–95	G–S	7,500	N	I	12–01–94	Indef.
ST95–1433	Northern Natural Gas Co.	Superior Water Light & Power Co.	02–07–95	B	1,300	N	F	10–01–94	10–31–08
ST95–1434	Northern Natural Gas Co.	Twister Transmission Co.	02–07–95	G–S	35,000	N	F	06–01–94	03–31–95
ST95–1435	Orange and Rockland Util., Inc.	Con Edison Gas Marketing, Inc.	02–08–95	G–LT	30,000	N	I	11–01–94	11–30–95
ST95–1436	Orange and Rockland Util., Inc.	Brooklyn Interstate Nat. Gas Corp.	02–08–95	G–LT	5,000	N	I	09–30–94	03–31–95
ST95–1437	Naturl Gas P/L Co. of America.	Valero Gas Marketing, L.P.	02–08–95	G–S	25,000	N	F	02–01–96	01–31–96
ST95–1438	Pacific Gas Transmission Co.	Equitable Resources Marketing Co.	02–09–95	G–S	100,000	N	I	01–19–95	Indef.
ST95–1439	Transwestern Pipeline Co.	Gas Co. of New Mexico	02–09–95	G–S	40,000	N	I	12–16–94	12–31–94
ST95–1440	Transwestern Pipeline Co.	KCS Energy Marketing	02–09–95	G–S	100,000	N	I	12–21–94	11–30–95
ST95–1441	Natural Gas P/L Co. of America.	Poco Petroleums Ltd	02–09–95	G–S	175,000	N	I	01–11–95	Indef.
ST95–1442	Chandeleur Pipe Line Co.	Union Oil Co. of California.	02–10–95	K–S	85,680	N	I	10–01–94	02–24–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–1443	National Fuel Gas Supply Corp.	Capital Oil & Gas, Inc ..	02–10–95	G–S	10,000	N	I	02–01–95	02–01–20
ST95–1444	National Fuel Gas Supply Corp.	Public Service Electric and Gas Co.	02–10–95	B	10,000	N	I	01–02–95	01–02–95
ST95–1445	Tennessee Gas Pipeline Co.	Energynorth Natural Gas Inc.	02–10–95	G–S	3,000	N	F	02–05–95	Indef.
ST95–1446	Tennessee Gas Pipeline Co.	Virginia Electric & Power Co.	02–10–95	G–S	7,450	N	F	02–01–95	Indef.
ST95–1447	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	02–10–95	G–S	4,000	N	F	02–01–95	Indef.
ST95–1448	Tennessee Gas Pipeline Co.	Co Energy Trading Co .	02–10–95	G–S	7,121	N	F	02–05–95	Indef.
ST95–1449	Colorado Interstate Gas Co.	Oxy USA, Inc	02–10–95	G–S	20,000	N	F	02–01–95	12–31–01
ST95–1450	Colorado Interstate Gas Co.	Meridian Oil Trading Inc	02–10–95	G–S	5	N	I	01–11–95	Indef.
ST95–1451	Midwestern Gas Transmission Co.	Mobil Natural Gas Inc ..	02–13–95	G–S	9,000	N	F	02–01–95	Indef.
ST95–1452	Florida Gas Transission Co.	Citrus Trading Corp	02–13–95	G–S	600,000	Y	I	01–13–95	Indef.
ST95–1453	Panhandle Eastern Pipe Line Co.	Natural Gas Resources LP.	02–13–95	G–S	100,000	N	I	02–01–95	07–31–96
ST95–1454	Wyoming Interstate Co., Ltd.	Midcon Marketing Corp	02–13–95	G–S	15,000	N	I	02–01–94	Indef.
ST95–1455	Wyoming Interstate Co., Ltd.	Amoco Production Co ..	02–13–95	G–S	5,000	N	I	02–01–94	10–31–96
ST95–1456	Wyoming Interstate Co., Ltd.	Western Gas Resources, Inc.	02–13–95	G–S	15,500	N	I	04–01–94	Indef.
ST95–1457	Colorado Interstate Gas Co.	Public Service Co. of Colorado.	02–13–95	B	543,066	N	F	12–01–94	09–30–96
ST95–1458	Colorado Interstate Gas Co.	Montana Power Co	02–13–95	B	69,700	N	I	05–01–94	Indef.
ST95–1459	U–T Offshore System ..	Tartan Energy Resources, L.C.	02–13–95	K–S	145,000	N	I	01–21–95	Indef.
ST95–1460	U–T Offshore System ..	Coast Energy Group	02–13–95	K–S	7,000	N	F	01–06–95	01–31–95
ST95–1461	U–T Offshore System ..	Cng Energy Services Corp.	02–13–95	K–S	8,000	N	F	01–01–95	01–31–95
ST95–1462	U–T Offshore System ..	Coast Energy Group	02–13–95	K–S	60,000	N	F	01–01–95	01–31–95
ST95–1463	U-T Offshore System ...	CNG Energy Services Corp..	02–13–95	K–S	45,000	N	F	01–01–95	01–31–95
ST95–1464	U-T Offshore System ...	Vastar Gas Marketing, Inc.	02–13–95	K–S	20,497	N	F	01–01–95	01–31–95
ST95–1465	Williston Basin Inter. P/L Co.	Mountain Gas Resources, Inc..	02–13–95	G–S	100,000	A	I	01–14–95	12–31–96
ST95–1466	Kansok Partnership	Riverside Pipeline co ...	02–13–95	C	20,000	N	I	01–01–95	Indef.
ST95–1467	Panhandle Eastern Pipe Line Co.	Texarkoma Transportation Co.	02–14–95	G–S	10,000	N	I	02–02–95	01–31–97
ST95–1468	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Co	02–14–95	G–S	21,000	N	F	02–01–95	02–28–95
ST95–1469	Panhandle Eastern Pipe Line Co.	OXY USA Inc	02–14–95	G–S	10,000	N	F	02–01–95	03–31–95
ST95–1470	Noram Gas Transmission Co.	Cranford Construction Co.	02–14–95	G–S	500	N	F	02–01–95	Indef.
ST95–1471	Noram Gas Transmission Co.	Porocel Corp	02–14–95	G–S	600	N	F	02–01–95	Indef.
ST95–1472	Noram Gas Transmission Co.	Lincoln Automotive	02–14–95	G–S	450	N	F	02–01–95	Indef.
ST95–1473	Noram Gas Transmission Co.	Thompson Industries	02–14–95	G–S	148	N	F	02–01–95	Indef.
ST95–1474	Noram Gas Transmission Co.	Welsco, Inc	02–14–95	G–S	260	N	F	02–01–95	Indef.
ST95–1475	Noram Gas Transmission Co.	Hot Springs Rehabilitation Center.	02–14–95	G–S	356	N	F	02–01–95	Indef.
ST95–1476	Noram Gas Transmission Co.	Pilgrim's Pride Industries.	02–14–95	G–S	400	N	F	02–01–95	Indef.
ST95–1477	Noram Gas Transmission Co.	Pilgrim's Pride Industries.	02–14–95	G–S	200	N	F	02–01–95	Indef.
ST95–1478	Noram Gas Transmission Co.	Arkansas Children's Hosptal.	02–14–95	G–S	100	N	F	02–01–95	Indef.

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ST95–1479	Noram Gas Transmission Co.	Pepsi Cola Bottling Co .	02–14–95	G–S	180	N	F	02–01–95	Indef.
ST95–1480	Noram Gas Transmission Co.	J.I. Case Co	02–14–95	G–S	225	N	F	02–01–95	Indef.
ST95–1481	Noram Gas Transmission Co.	J.P. Emco, Inc	02–14–95	G–S	500	N	F	02–01–95	Indef.
ST95–1482	Questar Pipeline Co	Conoco, Inc	02–14–95	G–S	3,600	N	F	02–01–95	02–28–95
ST95–1483	Columbia Gas Transmission Corp.	Marco Pipeline Enterprises LLC.	02–14–95	G–S	6,500	N	I	02–04–95	Indef.
ST95–1484	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	02–14–95	G–S	10,499	N	F	11–01–94	Indef.
ST95–1485	Columbia Gas Transmission Corp.	Corning Incorporated ...	02–14–95	G–S	1,000	N	F	02–07–95	Indef.
ST95–1486	Colorado Interstate Gas Co.	Montana Power Co	02–14–95	B	10,250	N	I	12–01–94	Indef.
ST95–1487	Colorado Interstate Gas Co.	Montana Power Co	02–14–95	B	18,727	N	I	01–04–95	Indef.
ST95–1488	Colorado Interstate Gas Co.	Montana Power Co	02–14–95	B	3,412	N	I	11–30–93	Indef.
ST95–1489	Colorado Interstate Gas Co.	Montana Power Co	02–14–95	B	20,990	N	I	03–12–94	Indef.
ST95–1490	Northern Border Pipeline Co.	Phibro Energy USA, Inc	02–15–95	G–S	50,000	Y	I	12–01–94	07–31–96
ST95–1491	Northern Border Pipeline Co.	U.S. Gas Transportation Inc.	02–15–95	G–S	100,000	Y	I	01–07–95	02–29–96
ST95–1492	ONG Transmission Co .	Noram Gas Transmission Co.	02–15–95	C	50,000	N	I	01–24–95	Indef.
ST95–1493	ONG Transmission Co .	Noram Gas Transmission Co.	02–15–95	C	50,000	N	I	01–21–95	Indef.
ST95–1494	ONG Transmission Co .	Phillips Gas Pipeline Co	02–15–95	C	50,000	N	I	01–24–95	Indef.
ST95–1495	Transok, Inc	ANR Pipeline Co., et al.	02–16–95	C	10,000	N	I	02–04–95	Indef.
ST95–1496	Trunkline Gas Co	Cargill, Inc	02–16–95	G–S	100,000	N	I	02–04–95	Indef.
ST95–1497	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	06–01–94	Indef.
ST95–1498	East Texas Gas Systems.	Arkla Energy Co	02–16–95	C	50,000	N	I	04–01–93	Indef.
ST95–1499	K N Interstate Gas Trans. Co.	Retex Gathering Co., Inc.	02–16–95	G–S	5,000	N	F	02–01–95	01–31–96
ST95–1500	K N Interstate Gas Trans. Co.	Parker and Parsley Development Co.	02–16–95	G–S	10,000	N	I	01–05–95	Indef.
ST95–1501	K N Interstate Gas Trans. Co.	CON AGRA Energy Services.	02–16–95	G–S	10,000	N	I	01–01–95	Indef.
ST95–1502	Transok, Inc	ANR Pipeline Co., et al	02–16–95	C	10,000	N	I	02–04–95	Indef.
ST95–1503	Texas Gas Transmission Corp.	Dayton Power and Light Co.	02–16–95	G–S	37,190	N	F	12–01–94	Indef.
ST95–1504	K N Interstate Gas Trans. Co.	Con Agra Energy Services.	02–16–95	G–S	3,300	N	F	01–01–95	01–31–95
ST95–1505	East Texas Gas Systems.	Southern Natural Pipeline co.	02–16–95	C	50,000	N	I	07–01–94	Indef.
ST95–1506	East Texas Gas Systems.	Arkla Energy Co	02–16–95	C	50,000	N	I	08–01–92	Indef.
ST95–1507	East Texas Gas Systems.	Arkla Energy Co	02–16–95	C	50,000	N	I	02–01–92	Indef.
ST95–1508	East Texas Gas Systems.	Koch Gateway Pipeline Co.	02–16–95	C	50,000	N	I	07–01–94	Indef.
ST95–1509	East Texas Gas Systems.	Koch Gateway Pipeline Co.	02–16–95	C	50,000	N	I	04–01–94	Indef.
ST95–1510	East Texas Gas Systems.	Koch Gateway Pipeline Co.	02–16–95	C	50,000	N	I	07–01–94	Indef.
ST95–1511	East Texas Gas Systems.	Arkla Energy Co	02–16–95	C	50,000	N	I	08–01–94	Indef.
ST95–1512	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	05–01–93	Indef.
ST95–1513	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	01–01–93	Indef.
ST95–1514	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	10–01–93	Indef.
ST95–1515	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	01–01–93	Indef.
ST95–1516	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	12–01–93	Indef.

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ST95–1517	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	01–01–93	Indef.
ST95–1518	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	06–01–93	Indef.
ST95–1519	Eastrans Limited Partnership.	Natural Gas P/L Co. of America.	02–16–95	C	50,000	N	I	08–01–93	Indef.
ST95–1520	East Texas Gas Systems.	Koch Gateway Pipeline Co.	02–16–95	C	50,000	N	I	10–01–94	Indef.
ST95–1521	Tennessee Gas Pipeline Co.	Philbro Division of Salomon, Inc.	02–17–95	G–S	200,000	N	I	01–18–95	Indef.
ST95–1522	Tennessee Gas Pipeline Co.	Appalachian Gas Sales	02–17–95	G–S	7,500	N	F	02–09–95	Indef.
ST95–1523	Tennessee Gas Pipeline Co.	Forcenergy Gas Exploration, Inc.	02–17–95	G–S	N/A	N	I	01–20–95	Indef.
ST95–1524	Midwestern Gas Transmission Co.	Tenngasco Corp	02–17–95	G–S	1,000,000	Y	I	01–21–95	Indef.
ST95–1525	Alabama-Tennessee Natural Gas Co.	Alatenn Energy Marketing Co., Inc.	02–17–95	G–S	678	N	F	01–25–95	10–31–95
ST95–1526	Freeport Pipeline Co	Koch Gateway Pipeline Co.	02–17–95	C	1,900	N	I	05–01–95	Indef.
ST95–1527	Western Resources, Inc	Panhandle Eastern P/L Co., et al.	02–17–95	C	2,500	N	I	10–01–94	Indef.
ST95–1528	Western Resources, Inc	Panhandle Eastern P/L Co., et al.	02–17–95	C	20,000	N	I	06–01–94	Indef.
ST95–1529	Northwest Pipeline Corp.	Washington Water Power Co.	02–17–95	G–S	22,000	N	F	01–03–95	Indef.
ST95–1530	Florida Gas Transmission Co.	Indiantown Gas Co., Inc	02–17–95	G–S	085	N	I	01–24–95	Indef.
ST95–1531	Sea Robin Pipeline Co .	Superior Natural Gas Corp.	02–17–95	G–S	150,000	Y	I	02–01–95	Indef.
ST95–1532	Texas Eastern Transmission Corp.	Aurora Natural Gas & Assoc. Prod.	02–17–95	G–S	5,000	N	I	02–01–95	Indef.
ST95–1533	Texas Eastern Transmission Corp.	CNG Gas Services Corp.	02–17–95	G–S	45,000	N	I	02–01–95	Indef.
ST95–1534	Texas Eastern Transmission Corp.	Seitel Gas & Energy Corp.	02–17–95	G–S	25,000	N	I	02–01–95	Indef.
ST95–1535	Texas Eastern Transmission Corp.	Seitel Gas & Energy Corp.	02–17–95	G–S	25,000	N	I	02–01–95	Indef.
ST95–1536	Texas Eastern Transmission Corp.	Aurora Natural Gas & Assoc. Prod.	02–17–95	G–S	40,000	N	I	02–01–95	Indef.
ST95–1537	Texas Eastern Transmission Corp.	Aurora Natural Gas & Assoc. Prod.	02–17–95	G–S	40,000	N	I	02–01–95	Indef.
ST95–1538	Texas Eastern Transmission Corp.	Texas-Ohio Gas, Inc	02–17–95	G–S	70,000	N	I	02–01–95	Indef.
ST95–1539	Texas Eastern Transmission Corp.	Texas-Ohio Gas, Inc	02–17–95	G–S	70,000	N	I	02–01–95	Indef.
ST95–1540	Texas Eastern Transmission Corp.	KCS Energy Marketing, Inc.	02–17–95	G–S	16,500	N	I	02–01–95	Indef.
ST95–1541	Texas Eastern Transmission Corp.	KCS Energy Marketing, Inc.	02–17–95	G–S	16,500	N	I	02–01–95	Indef.
ST95–1542	Texas Eastern Transmission Corp.	Colonial Gas Co	02–17–95	G–S	110	N	F	02–01–95	Indef.
ST95–1543	Natural Gas P/L Co. of America.	Tartan Energy Resources, L.C.	02–21–95	G–S	40,000	N	I	01–21–95	Indef.
ST95–1544	Pacific Gas Transmission Co.	NGC Transportation, Inc.	02–21–95	G–S	100,000	N	I	02–01–95	Indef.
ST95–1545	Pacific Gas Transmission Co.	Canwest Gas Supply USA Inc.	02–21–95	G–S	100,000	N	I	02–12–95	Indef.
ST95–1546	Pacific Gas Transmission Co.	Pan-Alberta Gas Ltd	02–21–95	G–S	60,000	N	I	01–27–95	Indef.
ST95–1547	Pacific Gas Transmission Co.	Associated Gas Services, Inc.	02–21–95	G–S	100,000	N	I	01–01–95	Indef.
ST95–1548	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp., et al.	02–21–95	G–HT	5,000	N	I	12–16–95	Indef.
ST95–1549	Noram Gas Transmission Co.	Louis Dreyfus Natural Gas Corp.	02–21–95	G–S	50,000	N	I	03–14–94	Indef.
ST95–1550	Noram Gas Transmission Co.	Aratex Services	02–21–95	G–S	80	N	F	10–01–94	Indef.
ST95–1551	Noram Gas Transmission Co.	Safelite Glass Corp	02–21–95	G–S	325	N	F	10–01–94	Indef.

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ST95–1552	Noram Gas Transmission Co.	Grede Equndries	02–21–95	G–S	400	N	F	10–01–94	Indef.
ST95–1553	Midwestern Gas Transmission Co.	Aluminum Co. of America.	02–21–95	G–S	4,850	N	F	02–01–95	Indef.
ST95–1554	Midwestern Gas Transmission Co.	Woodward Marketing, Inc.	02–21–95	G–S	50,000	N	I	02–10–94	Indef.
ST95–1555	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	02–21–95	G–S	31,830	N	F	09–01–93	Indef.
ST95–1556	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	02–21–95	G–S	10,000	N	F	09–01–93	Indef.
ST95–1557	Tennessee Gas Pipeline Co.	Co Energy Trading Co	02–21–95	G–S	3,166	N	F	02–01–93	Indef.
ST95–1558	Tennessee Gas Pipeline Co.	Appalachian Gas Sales	02–21–95	G–S	7,500	N	F	02–04–95	Indef.
ST95–1559	Tennessee Gas Pipeline Co.	Chevron USA, Inc	02–21–95	G–S	250,000	N	I	01–28–95	Indef.
ST95–1560	Tennessee Gas Pipeline Co.	Co Energy Trading Co	02–21–95	G–S	18,024	N	F	02–01–95	Indef.
ST95–1561	Transcontinental Gas P/L Corp.	Pinnacle Energy Co	02–21–95	G–S	40,000	N	I	02–01–59	Indef.
ST95–1562	Transcontinental Gas P/L Corp.	City of Greer	02–21–95	G–S	87	N	F	02–06–95	03–17–98
ST95–1563	Transcontinental Gas P/L Corp.	Shell Offshore Inc	02–21–95	G–S	5,000	N	I	02–01–95	Indef.
ST95–1564	Transcontinental Gas P/L Corp.	ANR Production Co	02–21–95	G–S	360,000	N	I	02–01–95	Indef.
ST95–1565	Louisiana Resources P/L Co., L.P.	ANR Pipeline Co., et al	02–21–95	C	21,000	N	I	07–01–94	Indef.
ST95–1566	Louisiana Resources P/L Co., L.P.	ANR Pipeline Co., et al	02–21–95	C	50,000	N	I	09–01–94	02–01–96
ST95–1567	Louisiana Resources P/L Co., L.P.	ANR Pipeline Co., et al	02–21–95	C	50,000	N	I	08–01–94	Indef.
ST95–1568	Louisiana Resources P/L Co., L.P.	ANR Pipeline Co., et al	02–21–95	C	40,000	N	I	06–01–94	Indef.
ST95–1569	Louisiana Resources P/L Co., L.P.	ANR Pipeline Co., et al	02–21–95	C	50,000	N	I	09–15–94	Indef.
ST95–1570	Amoco Gas Co	Florida Gas Transmission Co.	02–21–95	G–HT	6,000	N	I	12–22–94	01–01–96
ST95–1571	Transok, Inc	ANR Pipeline Co., et al	02–21–95	C	10,000	N	I	01–27–95	Indef.
ST95–1572	Michigan Consolidated Gas Co.	Phibro Energy	02–21–95	G–HT	30,000	N	I	02–01–94	Indef.
ST95–1573	Michigan Consolidated Gas Co.	Kimball/Tnppe Energy Associates.	02–21–95	G–HT	10,000	N	I	03–01–94	Indef.
ST95–1574	Michigan Consolidated Gas Co.	Gaz Metropolitan, Inc	02–21–95	G–HT	20,000	N	F	11–01–90	Indef.
ST95–1575	Michigan Consolidated Gas Co.	Coastal Gas Marketing Co.	02–21–95	G–HT	10,000	N	I	02–12–93	Indef.
ST95–1576	Michigan Consolidated Gas Co.	AIG Trading Corp	02–21–95	G–HT	2,000	N	F	02–01–94	Indef.
ST95–1577	Michigan Consolidated Gas Co.	AIG Trading Corp	02–21–95	G–HT	250,000	N	I	06–01–93	Indef.
ST95–1578	Michigan Consolidated Gas Co.	Minnegasco	02–21–95	G–HT	100,000	N	I	02–01–94	Indef.
ST95–1579	Michigan Consolidated Gas Co.	Western Gas Marketing, Inc.	02–21–95	G–HT	50,000	N	I	02–01–92	Indef.
ST95–1580	Michigan Consolidated Gas Co.	Union Gas Limited	02–21–95	G–HT	78,333	N	F	05–01–88	Indef.
ST95–1581	Michigan Consolidated Gas Co.	Northridge Petroleum Marketing, Inc.	02–21–95	G–HT	15,000	N	F	01–30–90	Indef.
ST95–1582	Michigan Consolidated Gas Co.	Unigas Corp	02–21–95	G–HT	100,000	N	I	06–15–90	Indef.
ST95–1583	Michigan Consolidated Gas Co.	Oryx Gas Marketing Limited Part.	02–21–95	G–HT	50,000	N	I	02–01–92	Indef.
ST95–1584	Michigan Consolidated Gas Co.	Howard Energy Co	02–21–95	G–HT	50,000	N	I	10–01–91	Indef.
ST95–1585	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	02–22–95	G–S	218,604	N	F	11–01–94	Indef.
ST95–1586	Columbia Gas Transmission Corp.	Midcon Gas Services Corp.	02–22–95	G–S	N/A	N	I	02–10–95	Indef.
ST95–1587	Columbia Gas Transmission Corp.	Pinnacle Energy Co	02–22–95	G–S	10,000	N	I	01–01–95	Indef.

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ST95–1588	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	02–22–95	G–S	218,604	N	F	04–01–94	Indef.
ST95–1589	Columbia Gas Transmission Corp.	Enron Access Corp	02–22–95	G–S	20,000	N	I	02–03–95	Indef.
ST95–1590	Panhandle Eastern Pipe Line Co.	Centana Gathering Co	02–22–95	G–S	13,967	Y	F	02–01–95	07–31–95
ST95–1592	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	02–22–95	G–S	20,000	N	F	02–01–95	02–28–95
ST95–1593	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	02–22–95	G–S	40,000	N	F	02–01–95	02–28–95
ST95–1594	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	02–22–95	G–S	30,000	N	F	02–01–95	02–28–95
ST95–1595	Florida Gas Transmission Co.	Jacksonville Electric Authority.	02–22–95	G–S	20,000	N	F	02–01–95	Indef.
ST95–1596	CNG Transmission Corp.	Columbia Gas of Pennsylvania.	02–22–95	G–S	40,000	N	I	02–02–95	03–31–95
ST95–1597	CNG Transmission Corp.	Stand Energy Corp	02–22–95	G–S	1,000	N	I	01–26–95	03–31–95
ST95–1598	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	02–23–95	G–S	50,000	A	I	01–24–95	01–12–97
ST95–1599	Trailblazer Pipeline Co	Texaco Gas Marketing Inc.	02–23–95	G–S	353,000	N	I	02–01–94	Indef.
ST95–1600	Natural Gas P/L Co. of America.	NCX Co., Inc	02–23–95	G–S	100,000	N	I	02–01–95	Indef.
ST95–1601	Natural Gas P/L Co. of America.	Appalachian Gas Sales	02–23–95	G–S	25,000	N	I	02–09–95	Indef.
ST95–1602	Natural Gas P/L Co. of America.	H & N Gas LTD	02–23–95	G–S	1,000	N	F	02–01–95	11–30–00
ST95–1603	Trailblazer Pipeline Co	Koch Gas Services Co	02–23–95	G–S	353,000	N	I	09–01–94	Indef.
ST95–1604	Natural Gas P/L Co. of America.	National Gas Resources Limited Part.	02–23–95	G–S	5,745	N	F	02–01–95	02–28–95
ST95–1605	El Paso Natural Gas Co	Interenergy Gas Services Corp.	02–23–95	G–S	30,900	N	I	01–27–95	Indef.
ST95–1606	Columbia Gulf Transmission Co.	Boston Gas Co	02–23–95	G–S	100,000	N	I	02–01–95	Indef.
ST95–1607	Columbia Gulf Transmission Co.	CMS Gas Marketing Co	02–23–95	G–S	5,000	N	F	02–01–95	05–31–95
ST95–1608	Columbia Gulf Transmission Co.	Pinnacle Energy Co	02–23–95	G–S	50,000	N	I	02–01–95	Indef.
ST95–1609	Natural Gas P/L Co. of America.	Nichols-Homeshield	02–24–95	G–S	200	N	F	02–01–95	2–28–95
ST95–1610	Natural Gas P/L Co. of America.	GM Hydrocarbons, Ltd	02–24–95	G–S	10,000	N	F	02–10–95	02–13–95
ST95–1611	Natural Gas P/L Co. of America.	Coastal Gas Marketing	02–24–95	G–S	10,000	N	F	02–08–95	02–28–95
ST95–1612	Panhandle Eastern Pipe Line Co.	Panhandle Storage Co	02–24–95	G–S	250,000	Y	I	02–04–95	01–31–97
ST95–1613	Ozark Gas Transmission System.	Comstock Natural Gas, Inc.	02–24–95	G–S	10,000	N	I	10–01–94	Indef.
ST95–1614	Providence Gas Co	Bay State Gas Co	02–24–95	G–LT	10,000	N	I	01–01–95	04–30–95
ST95–1615	Michigan Consolidated Gas Co.	Westcoast Gas Services (U.S.A.) Inc.	02–24–95	G–HT	25,000	N	I	06–01–90	Indef.
ST95–1616	Michigan Consolidated Gas Co.	Nomeco Oil and Gas Co.	02–24–95	G–HT	10,000	N	I	03–01–91	Indef.
ST95–1617	Koch Gateway Pipeline Co.	Western Gas Resources.	02–27–95	G–S	N/A	N	I	01–31–95	Indef.
ST95–1618	Koch Gateway Pipeline Co.	LGS Natural Gas Co	02–27–95	G–S	N/A	N	I	01–31–95	Indef.
ST95–1619	Koch Gateway Pipeline Co.	Louisiana-Nevada Transit Co.	02–27–95	G	N/A	N	I	01–31–95	Indef.
ST95–1620	Koch Gateway Pipeline Co.	Koch Gas Services	02–27–95	G–S	1,750	Y	F	01–31–95	Indef.
ST95–1621	Koch Gateway Pipeline Co.	Koch Gas Services	02–27–95	G–S	75	Y	F	01–31–95	11–01–95
ST95–1622	Mobile Bay Pipeline Co	Conoco, Inc	02–27–95	G–S	N/A	N	I	01–31–95	Indef.
ST95–1623	Mobile Bay Pipeline Co	Chevron U.S.A. Inc	02–27–95	G–S	N/A	N	I	01–31–95	Indef.
ST95–1624	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	02–27–95	B	290	N	F	01–04–95	10–31–95
ST95–1625	Algonquin Gas Transmission Co.	Chesapeake Energy Corp.	02–27–95	G–S	100,000	N	I	01–24–95	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–1626	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	02–27–95	B	39	N	F	01–04–95	Indef.
ST95–1627	Algonquin Gas Transmission Co.	New Jersey Natural Gas Co.	02–27–95	B	10,000	N	I	01–04–95	Indef.
ST95–1628	Algonquin Gas Transmission Co.	Selkirk Cogeneration Partners L.P.	02–27–95	G–S	15,000	N	I	01–04–95	01–05–95
ST95–1629	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	02–28–95	G–S	443	A	F	02–01–95	01–31–05
ST95–1630	Williston Basin Inter. P/L Co.	Koch Gas Services Co .	02–28–95	G–S	277	A	F	02–01–95	01–31–00
ST95–1631	Williston Basin Inter. P/L Co.	Rainbow Gas Co	02–28–95	G–S	2,259	A	F	02–01–95	02–28–95
ST95–1632	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	02–28–95	G–S	30,000	A	I	02–01–95	03–31–96
ST95–1633	Columbia Gulf Transmission Co.	Noram Energy Services, Inc.	02–28–95	G–S	100,000	N	I	02–01–95	Indef.
ST95–1634	Tennessee Gas Pipeline Co.	Co Energy Trading Co .	02–28–95	G–S	7,500	N	F	02–05–95	Indef.
ST95–1635	Tennessee Gas Pipeline Co.	Project Penny Producers.	02–28–95	G–S	5,000	N	F	02–01–95	Indef.
ST95–1636	Tennessee Gas Pipeline Co.	Co Energy Trading Co .	02–28–95	G–S	7,500	N	F	02–09–95	Indef.
ST95–1637	Tennessee Gas Pipeline Co.	Smith Petroleum Corp ..	02–28–95	G–S	N/A	N	I	02–04–95	Indef.
ST95–1638	Tennessee Gas Pipeline Co.	Aurora Natural Gas Assoc. Products.	02–28–95	G–S	4,833	N	F	02–01–95	Indef.
ST95–1639	Tennessee Gas Pipeline Co.	Texas-Ohio Gas Inc	02–28–95	G–S	5,000	N	F	02–01–95	Indef.
ST95–1640	Midwestern Gas Transmission Co.	H&N Gas Ltd	02–28–95	G–S	3,372	N	F	02–01–95	Indef.
ST95–1641	Transcontinental Gas P/L Corp.	SONAT Marketing Co ..	02–28–95	G–S	50,000	N	I	02–17–95	Indef.
ST95–1642	Transcontinental Gas P/L Corp.	Tartan Energy Resources, L.C.	02–28–95	G–S	85,000	N	I	02–17–95	Indef.

[1] Notice of Transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 95–7898 Filed 3–30–95; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5180–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 1995.
FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740, please refer to EPA ICR #186.07.
SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride (40 CFR part 61, subpart F) (EPA ICR #186.07; OMB #2060–0071). This ICR requests renewal of the existing clearance.

Abstract: Owners or operators of polyvinyl chloride, ethylene dichloride, and vinyl chloride monomer plants must submit to EPA or the State regulatory authority an application for approval of construction or modification of their plants and a notification of start-up. They may apply for a waiver of the initial emission test, if desired. Owners and operators of the regulated facilities are required to submit quarterly reports of excess emissions. They must also report each relief valve and manual vent valve discharge within 10 days. Owners or operators must maintain records of leaks detected in accordance with an approved leak detection and elimination program. EPA or the delegated State authority use these data to determine the compliance status of sources, and to target inspections.

Burden Statement: Public reporting burden for this collection of information is estimated to average 50 hours per response for reporting and 140 hours per recordkeeper annually. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: Owners and operators of polyvinyl chloride, ethylene dichloride and vinyl chloride monomer plants.

Estimated Number of Respondents: 45.

Estimated Total Annual Burden on Respondents: 16,000 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #186.07 and OMB #2060–0071) to:

Sandy Farmer, EPA ICR #0186.07, U.S. Environmental Protection Agency, Information Policy Branch (2136),401 M Street, SW., Washington, DC 20460.
and
Troy Hillier, OMB #2060–0071, Office of Management and Budget, Office of Information and Regulatory Affairs,725 17th Street, NW., Washington, DC 20503.

Dated: March 27, 1995.

Paul Lapsley,
Director, Regulatory Management Division.

[FR Doc. 95–7957 Filed 3–30–95; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5181–5]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain Program permitting and monitoring requirements to 69 utility units in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on May 10, 1995, unless significant, adverse comments are received by May 1, 1995. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the **Federal Register**.
ADDRESSES: Administrative Records. The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Maine and Massachusetts: EPA Region 1, JFK Building, One Congress St., Boston, MA 02203.
For plants in Florida and South Carolina: EPA Region 4, 345 Courtland St., NE, Atlanta, GA, 30365.
For plants in Illinois, Indiana, Michigan, and Ohio: EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.
For plants in Iowa: EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101; and at the Iowa Department of Natural Resources (attn: Wayne Wicksell) Henry A. Wallace Building, 900 E. Grand, Des Moines, IA 50319, (515) 281–9012.
For plants in Nebraska: EPA Region 7 (address above) and at the Nebraska Department of Environmental Quality (attn: Todd Ellis) State House Station, P.O. Box 94877, Lincoln, NE 68509–4877, (402) 471–4561.

Comments. Send comments to the following addresses:

For plants in Maine and Massachusetts: Linda Murphy, Division Director, Air, Pesticides and Toxics Management Division, EPA Region 1, (address above).
For plants in Florida and South Carolina: Brian Beals, Air, Pesticides and Toxics Management Division, EPA Region 4, (address above).
For plants in Illinois, Indiana, Michigan and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5, (address above).
For plants in Iowa and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Maine and Massachusetts, Ian Cohen, (617) 565–3029; for plants in Florida and South Carolina, Scott Davis, (404) 347–5014; for plants in Illinois, Cecilia Mijares, (312) 886–0968; for plants in Indiana, Genevieve Nearmyer, (312) 353–4761; for plants in Michigan, Beth Valenziano, (312) 886–2703; for plants in Ohio, Franklin Echevarria, (312) 886–9653; for plants in Iowa and Nebraska, Jon Knodel, (913) 551–7599.
SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions, effective from January 1, 1995 through December 31, 1999, unless otherwise noted below, to the following new units:

Stock Island units D1 and D2 in Florida. The Designated Representative is Carl Jansen.
Breese unit 5 in Illinois. The Designated Representative is Matthew Johnson.
McLeansboro units 3 and 4 in Illinois. The Designated Representative is Dave McDaniels.
Omega JV3 diesel unit 1 in Ohio. The Designated Representative is Carroll Scheer.
30 engine generators owned and operated by Industrial Energy Applications in Iowa. The exemption is effective from January 1, 1996, through December 31, 2000. The Designated Representative is William Douglas.
Osage unit 7 in Iowa. The exemption is effective from January 1, 1996, through December 31, 2000. The Designated Representative is Dennis Fannin.
State Center units 1, 2, 3, 4, and 5 in Iowa. The exemption is effective from January 1, 1996, through December 31, 2000. The Designated Representative is Steven Oslund.
Sarpy County Station unit BSDG1 in Nebraska. The exemption is effective from January 1, 1996, through December 31, 2000. The Designated Representative is William Jones.

Additionally under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from permitting 72.8). utilities may petition EPA for an exemption from permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements (40 CFR 75.67).

While the exempt retired units have been allocated allowances under 40

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CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA is issuing written exemptions from permitting requirements, effective from January 1, 1995, through December 31, 1999, and exemptions from monitoring requirements, effective from January 1, 1995, through December 31, 1999, unless otherwise noted below, to the following retired units:

Somerset units 1, 2, 3, 4, 5, and 6 in Massachusetts. The Designated Representative is Arthur Hatch.

Hagood units 1, 2, and 3 in South Carolina. The Designated Representatiave is W. Moore.

Elmer Stout units 1, 2, 3, 4, 5, 6, 7, and 8 in Indiana. The exemption from permitting requirements is effective from January 1, 1996 through December 31, 2000. The exemption from monitoring requirements is effective from January 1, 1995, through December 31, 2000. The Designated Representative is Robert McKnight.

Delray units 7, 8, 9, 10, 11, and 12 in Michigan. The exemption from permitting requirements is effective from January 1, 1996 through December 31, 2000. The exemption from monitoring requirements is effective from January 1, 1995, through December 31, 2000. The Designated Representative is Frank Agosti.

Dated: March 27, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–7956 Filed 3–30–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5181–4]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 69 utility units in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the exemptions proposed by this action must be received on or before May 1, 1995.

ADDRESSES: *Comments.* Send comments to the following addresses:

For plants in Maine and Massachusetts: Linda Murphy, Division Director, Air, Pesticides and Toxics Management Division, EPA Region 1, JFK Building, One Congress St., Boston, MA 02203.

For plants in Florida and South Carolina: Brian Beals, Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland St., NE, Atlanta, GA, 30365.

For plants in Illinois, Indiana, Michigan and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Iowa and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Maine and Massachusetts, Ian Cohen, (617) 565–3029; for plants in Florida and South Carolina, Scott Davis, (404) 347–5014; for plants in Michigan, Beth Valenziano, (312) 886–2703; for plants in Illinois, Cecilia Mijares, (312) 886–0968; for plants in Indiana, Genevieve Nearmyer, (312) 353–4761; for plants in Ohio, Franklin Echevarria, (312) 886–9653; for plants in Iowa and Nebraska, Jon Knodel, (913) 551–7599.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption will be addresssed in a subsequent final notice based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register**.

Dated: March 27, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–7955 Filed 3–30–95; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–4721–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed March 20, 1995 Through March 24, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950101, DRAFT EIS, USA, MA, Army Material Technology Laboratory Reuse and Disposal, Implementation, Town of Watertown, Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: May 15, 1995, Contact: James Davidson (703) 274–5510.

EIS No. 950102, DRAFT EIS, USA, IN, Jefferson Proving Ground Disposal and Reuse, Implementation, Town of Madison, Jefferson, Jennings and Ripley Counties, IN, Due: May 15, 1995, Contact: James Davidson (703) 274–5510.

EIS No. 950103, FINAL EIS, IBR, AZ, Glen Canyon Dam Operation, Implementation, Colorado River Storage Project, Funding and COE Section 10 and 404 Permits, Coconino County, AZ, Due: May 01, 1995, Contact: Gordon S. Lind (801) 524–5479.

EIS No. 950104, DRAFT EIS, AFS, VT, Mad River Water Withdrawal and Sugarbush South Snowmaking and Trail Improvement Project, Approval, Special-Use and COE Section 404 Permit Issuance, Green Mountain National Forest, Washington County, VT, Due: May 15, 1995, Contact: Samuel M. Emmons (802) 747–6757.

EIS No. 950105, FINAL EIS, FHW, OR, Mill Creek/West Sixth Street Bridge Replacement, Funding, The Dalles, Wasco County, OR, Due: May 01, 1995, Contact: Alan R. Steger (503) 399–5749.

EIS No. 950106, DRAFT EIS, NPS, WA, Mountain Goat Management Within Olympic National Park, Implementation, Clallan, Grays Harbor, Jefferson and Mason Counties, WA, Due: May 31, 1995, Contact: Paul Crawford (360) 452–4501.

EIS No. 950107, DRAFT EIS, AFS, OR, East Fork Deer Creek Long-Term Ecosystem Productivity Research Study, Implementation, Willamette National Forest, Blue River Ranger District, Lane County, OR, Due: May 15, 1995, Contact: Lynn Burditt (503) 822–3317.

EIS No. 950108, FINAL EIS, FHW, MD, US 29 Improvements, Sligo Creek Parkway to the Patuxent River Bridge, Funding and COE Section 404 Permit, Montgomery County, MD, Due: May 01, 1995, Contact: David Lawton (410) 962–4440.

EIS No. 950109, DRAFT SUPPLEMENT, COE, CA, Napa River Flood Control Project, Updated Information, Flood Improvement, City of Napa, Napa County, CA, Due: May 15, 1995, Contact: Thomas Bonetti (916) 557–6727.

EIS No. 950110, FINAL EIS, AFS, NM, Sipapu Ski Area Expansion, Master Development Plan Approval and Special Use Permit, Carson National Forest, Camino Real Ranger District, Taos County, NM, Due: May 01, 1995, Contact: Terry Dilts (505) 587–2255.

EIS No. 950111, DRAFT EIS, COE, VA, Grundy Flood Damage Reduction/ Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, VA, Due: May 15, 1995, Contact: Ben Borda (304) 529–5712.

EIS No. 950112, DRAFT EIS, COE, CA, Santa Paula Creek Flood Control Project, Improvements, Right-of-Way Grant, Ventura County, CA, Due: May 15, 1995, Contact: Jim Hutchison (213) 894–3057.

EIS No. 950113, FINAL EIS, DOE, CO, Flatiron-Erie 115-kV Electrical Transmission Line Replacement of Wood-Pole Structures, Construction, Operation and Right-of-Way Grant, City of Longmont, Larimer, Boulder and Weld Counties, CO, Due: May 01, 1995, Contact: Rodney Jones (303) 490–7200.

EIS No. 950114, DRAFT EIS, GSA, Pacific Highway Port of Entry (POE) Facility Expansion, Construction of WA–543 in Blaine, near the United States/Canada Border in Blaine, Whatcom County, WA, Due: May 15, 1995, Contact: Donna M. Meyer (206) 931–7675.

EIS No. 950115, FINAL EIS, BIA, SD, Rosebud and Cheyenne River Sioux Indian Reservations, Management of the Livestock Grazing and Prairie Dog Control, Funding, Todd and Mellette Counties, SD, Due: May 01, 1995, Contact: Wayland Lilly (605) 226–7621.

Amended Notices

EIS No. 950092, DRAFT EIS, FTA, PR, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, U.S. Coast Guard Bridge Permit, NPDES Permit, COE Section 10 and 404 Permits, PR, Due: May 15, 1995, Contact: Roger Krahl (404) 347–7875. Published FR -3–24–95- Refiled/Due Date Correction

EIS No. 950009, DRAFT EIS, AFS, CA, Elsmere Solid Waste Management Facility, Implementation, Angeles National Forest (ANF) Land Adjustment Plan, Conditional Use and Oak Tree Permit, Los Angeles County, CA, Due: August 04, 1995, Contact: G. Lynn Sprague (818) 574–1613. Published FR -02–03–95 Review period extended.

EIS No. 950034, DRAFT EIS, AFS, AZ, Carlotta Open-Pit Copper Mine Project, Construction and Operation, Plan of Operations and COE Section 404 Permit, Tonto National Forest, Gila and Pinal Counties, AZ, Due: May 11, 1995, Contact: Paul M. Stewart (602) 225–5200. Published FR -02–03–95 Review period extended.

Dated: March 28, 1995

B. Katherine Biggs

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 95–8009 Filed 3–30–95; 8:45 am]

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[ER-FRL–4721–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 27, 1995 Through March 03, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D-FHW-E40756–SC Rating EC2, Greenville Southern Connectors Construction and Operation, I–185 at I–85 south of Donaldson Center Industrial Air Park to I–385 at US 276 and SC–153 Connector from existing SC–153 at I–85 to the Southern Connector, Funding and COE Section 404 Permit, Anderson and Greenville Counties, SC.

Summary: EPA expressed environmental concerns and recommended caution at floodplain crossings. EPA also requested additional information on upland resource impacts.

ERP No. D-FRC-L05206–WA Rating EC2, Snoqualmie Falls Hydroelectric Project, (FERC. Project NO.2493), Relicensing, Snoqualmie River, King County, WA.

Summary: EPA raised environmental concerns over potential impacts to wetlands and groundwater and requested that additional information be included in the final EIS.

ERP No. D–FRC–L05207–WA Rating EO2, Nooksack River Basin Hydroelectric Projects, Seven Projects—(FERC No. 4628) (FERC No. 4738) (FERC No. 4270) (FERC No. 4282) (FERC No. 9231) (FERC No. 4312) and (FERC No. 3721) Construction and Operation, Licensing, Whatcom County, WA.

Summary: EPA expressed environmental objection and identified significant potential impacts to water quality, wetlands, and fish habitat from landslides, associated soil erosion and hydraulic modifications. Additional information is needed on the feasibility of mitigation measures, impacts on wetlands and fish populations.

ERP No. D–FRC–L05208–WA Rating EO2, Skagit River Basin Hydroelectric Projects, Nine Projects—(FERC No.10100) (FERC. No. 4437) (FERC No. 4376) (FERC. No. 3913) (FERC No.9787) (FERC No. 10311) (FERC No. 6984) and (FERC No. 10269 and No. 10416) Construction and Operation, Licensing, Whatcom and Skagit Counties, WA.

Summary: EPA expressed environmental objections and identified significant potential impacts to water quality, wetlands, and fish habitat from landslides, associated soil erosion and hydraulic modifications. EPA requested additional information on the feasibility of mitigation measures, slope failures risks, and effects to wetlands.

Final EISs

ERP No. F-COE-L39050–WA Southwest Harbor Cleanup and Redevelopment Project, Construction, COE Section 10/404 Permit and NPDES Permit Issuance, SW Spokane Street to Elliott Bay and Harbor Avenue SW to the

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West Waterway, Port of Seattle, King County, WA.

Summary: EPA had no objections to the preferred alternative as described in the final EIS based on the new analyses and information presented in the final EIS.

ERP No. F-COE-L81000–WA Auburn Thoroughbred Horse Racing Facility, Construction and Operation, COE Section 404 Permit and NPDES Permit, City of Auburn, King County, WA.

Summary: EPA continued to have environmental concerns regarding the adequacy of wetland mitigation and water quality monitoring plans.

ERP No. F-FHW-E40746–NC US 421 Transportation Improvement just west of the South Fork New River to NC–1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga County, NC.

Summary: EPA continued to have environmental concerns about the ability to adequately contain erosion and sedimentation during construction in the mountain terrain.

Dated: March 28, 1995

B. Katherine Biggs

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–8010 Filed 3–30–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5181–1]

National Technical Conference on Sanitary Sewer Overflows (SSOs)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency's (EPA) is sponsoring a technical conference on Sanitary Sewer Overflows (SSOs). This conference is sponsored by the EPA Office of Research and Development's Center for Environmental Research Information in Cincinnati, OH, in cooperation with the EPA Office of Wastewater Management in Washington, DC.

Background and Purpose

Thousands of municipalities across the nation are serviced by separate sanitary sewer systems. A chronic problem that faces many of these systems is the occurrence of sanitary sewer overflows (SSOs). Caused mainly by the infiltration and inflow of wet weather flows and blockages and flow restrictions in the sewer system, these SSOs can pose a risk to public health and the quality of our nation's waters. The U.S. Environmental Protection Agency (EPA) is currently in the initial stages of evaluating issues associated with SSOs. To bring together individuals from across the country to discuss the technical and institutional issues related to SSOs, EPA's Office of Research and Development is holding this conference on SSOs in cooperation with the EPA Office of Wastewater Management in Washington, DC. All interested persons are invited.

The purpose of this conference is to examine each major issue relating to SSOs by providing an open forum for the presentation of papers and discussions dealing with the technical and institutional issues related to the causes, effects, management and control of SSOs. This conference will include presentations and discussions of the following issues relating to SSOs:

- Problem definition and identification
- Monitoring and reporting
- Sewer system analysis and modeling
- Infiltration (including RII) and inflow sources
- Exfiltration
- Sewer system design and construction for SSO prevention
- Sewer system inspection, operation, maintenance and rehabilitation
- Building sewer inspection and maintenance
- Treatment plant issues
- Regulatory/institutional issues

DATES: The Conference will be held on April 24–26, 1995. On the 24th, the meeting will begin at approximately 10:00 a.m. EST and run until about 5:00 p.m. On the 26th, the meeting will run from about 9:00 a.m. until completion.

ADDRESSES: The Conference will be held at the Renaissance, Washington, DC Hotel—Downtown, 999 9th Street, NW., Washington, DC 20001, (202) 898–9000, Fax: 789–4213.

FOR FURTHER INFORMATION CONTACT: James F. Wheeler of EPA's Office of Wastewater Management, at (202) 260–5827.

Michael B. Cook,

Director, Office of Wastewater Management Designated Federal Official.

[FR Doc. 95–7869 Filed 3–30–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–40028; FRL–4936–7]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from the Toxic Substances Control Act (TSCA), section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on March 31, 1995.

FOR FURTHER INFORMATION CONTACT: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers which submitted exemption applications for testing of the chemical substances named in the final test rules listed below from January 1, 1994 through December 31, 1994. Any application received after that date will be addressed separately.

Chemicals	CAS No.	40 CFR Citation	Company
9,10-anthraquinone	84–65–1	799.500	Medson Farmers Service Co. Inchema Inc. RedEagle Chemicals Co. Zhonghua Chem Corp.
biphenyl	92–52–4	799.925	Nisseki Chemical Texas Inc.
cumene	98–82–8	799.1285	General Electric Co. Nisseki Chemical Texas Inc.
1,3 dichloropropanol (OSW)	96–23–1	799.5055	MacDermid Inc.
diethylene glycol monobutyl ether	112–34–5	799.1560	Cobane Corp.
2-ethylhexanol	104–76–7	799.1645	Lubrizol Corp. 3V Inc.
isopropanol	67–63–0	799.2325	Cobane Corp. Elf Atochem Guardman Products, Inc. Lubrizol Corp.
Office of Water Chemicals			
chloroethane	75–00–3	799.5075	General Motors Corp. Westlake Monomers Corp.
1,1-dichloroethane	75–34–3	799.5075	General Motors Corp. Westlake Monomers Corp.
1,1,2,2-tetrachloroethane	79–34–5	799.5075	General Motors Corp. Westlake Monomers Corp.
n-propylbenzene	103–65–1	799.5075	General Motors Corp. Westlake Monomers Corp.
1,3,5-trimethylbenzene	108–67–8	799.5075	Amoco Oil Co. BASF Corp. Conoco Inc. Exxon Chemical Americas General Motors Corp. Glidden Co. ICI Acrylics, Inc. Mitsubishi Gas Chemical America, Inc. Mobil Oil Corp. Shell Oil Co. Sun Company, Inc. Texaco Inc. Union Carbide Corp. Westlake Monomers Corp.
Multi-Substance Rule for the Testing of Neurotoxicity[1]			
acetone	67–64–1	799.5050	Courtaulds Aerospace Elf Atochem General Motors Corp.
n-amyl acetate	628–63–7	799.5050	Courtaulds Aerospace General Motors Corp.
1-butanol	71–36–3	799.5050	Courtaulds Aerospace General Motors Corp. W. R. Grace Co. Williams-Hayward Protective Coatings, Inc.
n-butyl acetate	123–86–4	799.5050	Courtaulds Aerospace Elf Atochem General Motors Corp. W. R. Grace Co. Olin Chemicals
diethyl ether	60–29–7	799.5050	Courtaulds Aerospace General Motors Corp.
2-ethoxyethanol	110–80–5	799.5050	Courtaulds Aerospace Elf Atochem W. R. Grace Co. General Motors Corp.
ethyl acetate	141–78–6	799.5050	Courtaulds Aerospace General Motors Corp. Tolson USA Inc. Vanity Fair

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Chemicals	CAS No.	40 CFR Citation	Company
isobutyl alcohol	78–83–1	799.5050	Courtaulds Aerospace Elf Atochem General Motors Corp. W. R. Grace Co.
methyl isobutyl ketone	108–10–1	799.5050	Courtaulds Aerospace Elf Atochem General Motors Corp. W. R. Grace Co. Williams-Hayward Protective Coatings, Inc.
tetrahydrofuran	109–99–9	799.5050	Courtaulds Aerospace General Motors Corp.

[1] The Multi-Substance Rule for the Testing of Neurotoxicity has been revoked and replaced with an Enforceable Consent Agreement.

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2601, 2603.

Dated:March 24, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–7960 Filed 3–30–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320.9

March 28, 1995.

The Federal Communications Commission is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission by the Office of Management and Budget (OMB) on October 6, 1994. These collections were all previously approved by OMB and are unchanged. Public comments are invited on any of these collections for a period ending [thirty days from the date of publication in the Federal Register.] Persons wishing to comment on these information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street NW Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0422.

Title: Section 68.5 Waivers (Application Waiver of Hearing Aid Compatibility Requirement).

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 10 responses; 3 hours burden per response; 30 hours total annual burden.

Needs and Uses: Section 710(b) of the Communications Act requires that almost all telephones manufactured or imported into the country after August 16, 1989 be hearing aid compatible. Congress recognized however, that there may be technological and/or economic reasons why some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement for new telephones based on these grounds. Section 68.5 of the Commission rules provide the criteria for assess these waivers. Upon receipt of a waiver request the Commission will determine the merits of the requests and whether the public interest is served by granting a waiver.

OMB Number: 3060–0355.

Title: Rate of Return Reports.

Form No.: FCC 492, FCC 492A.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 193 responses; 8 hours burden per response; 1,544 hours total annual burden.

Needs and Uses: FCC Form 492 is filed by each local exchange carrier (LEC) or group of carriers who file individual access tariffs or who are not subject to Sections 61.41 and 61.49 of the Commission's Rules. Each LEC or group of affiliates subject to the previously stated sections file FCC Form 492A annually. These forms are necessary to monitor the access tariffs and to enforce maximum rate of return prescriptions and price cap earnings levels.

OMB Number: 3060–0357.

Title: Section 63.701 Request for Designation of a Recognized Private Operating Agency.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit

Frequency of Response: On occasion.

Estimated Annual Burden: 30 responses; 5 hours burden per response; 150 hours total annual burden.

Needs and Uses: Filing an application under Section 63.701 is required of those seeking U.S. Government recognition as providers of enhanced services between the U.S. and overseas points. The information is used by the Commission and the Department of State to identify entities which are operating in the name of the U.S, extract from them a promise to obey the ITU Convention and regulations and determine whether they are owned by a foreign government, foreign communications entity or any other foreign entity in the position to discriminate against U.S. suppliers of enhanced services.

OMB Number: 3060–00567.

Title: Section 76.962 Implementation of certification compliance.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 500 responses; 30 minutes burden per response; 250 hours total annual burden.

Needs and Uses: Section 76.962 requires cable operators to certify their compliance with Commission orders requiring prospective rate reductions, refunds, or other remedial relief to subscribers. They must include a description of precise measures taken to implement the remedies ordered by the Commission. This data is used by FCC to monitor the cable operators compliance with Commission orders.

OMB Number: 3060–0331.

Title: Section 76.615 Notification Requirements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,100 responses; 30 minutes burden per response; 1050 hours total annual burden.

Needs and Uses: Section 76.615 requires that cable TV operators notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwith in any 160 microsecond of time equal to or greater than 10 –4 watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical frequency bands. This information is used by FCC to locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services and to minimize the possibility of interference to these safety-of-life services.

OMB Number: 3060–0185.

Title: Section 73.3613.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 5,900 responses; 30 minutes burden per recordkeeper; 2,950 hours total annual burden.

Needs and Uses: Section 73.3613 requires licensees of TV and low power TV broadcast stations to file network affiliation contracts with FCC. All broadcast stations are required to file contracts relating to ownership or control and personnel. Radio licensees are required to file time brokerage agreements which result in arrangement being counted in compliance with local and national radio multiple ownership rules. Cetain contracts must be retained at station. The data is used by FCC to assure that the licensee maintains full control over the station.

OMB Number: 3060–0542.

Title: Frequency Coordinator Evaluation.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions; State, Local or Tribal Governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 11,000 responses; 10 minutes per response; 1,826 hours total annual burden.

Needs and Uses: Report and Order #83–737 requires the Commission to monitor the performance and quality of frequency coordination committees designated for the Private Land Mobile Radio Service. This evaluation is used by FCC staff to evaluate the frequency coordinators process, and service to the public. The Commission will make recommendations on any necessary corrective actions.

OMB Number: 3060–0361.

Title: Section 80.29 Change during license term.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-Profit Institutions; State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 250 responses; 1 hour burden per response; 250 hours total annual burden.

Needs and Uses: The information is used by the FCC to update the coast and ship station license files and data base concering current name and address of licensees. Information concerning changes in the names of vessels is also used to update the ITU List of Ship Stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8065 Filed 3–30–95; 8:45 am]

BILLING CODE 6712–01–F

[CC Docket No. 91–35; DA 95–620]

Request for Additional Comments on the Costs and Benefits of International Blocking for Residential Customers; Pleading Cycle Established

March 24, 1995.

Comments: April 24, 1995.

Reply Comments: May 8, 1995.

The Commission currently has under consideration in the above-referenced docket issues concerning the provision by local exchange carriers (LECs) of a service that automatically blocks international calls.[1]

In the Further Reconsideration and FNPRM in CC Docket 91–35, the Commission request comment on whether it should require LECs to provide international blocking to residential customers in order to prevent toll fraud. Interested parties commented on this issue, and the LECs also provided general information above the costs and difficulties that they would incur to provide this service to residential customers. Parties then commented on the LECs' cost claims. Parties have not, however, commented about any benefits that residential customers may receive by using international blocking for purposes other than toll fraud prevention.

Since this record was established, there has been a significant increase in the number of complaints the Commission has received about information services provided through international toll calls. Such calls are directly dialed by domestic telephone subscribers to information providers located in foreign countries who offer adult-oriented information services. These services arose after the Commission adopted its "pay-per-call" rules in 1991 governing 900 and other information services.[2] The use of international calls to provide domestic information services evades important consumer safeguards in our "pay-per-call" and other rules. Such safeguards include, for example, the requirement that LECs offer a service that blocks these calls and that they identify the calls separately on subscribers' bills. Moreover, the Federal Trade Commission's "pay-per-call" rules require information providers to include a preamble explaining the cost of the call and to allow the caller to hand up before charges commence. See 16 C.F.R. § § 308.5 (a) and (b).

The Commission hereby asks for comments on whether, and in what manner, residential customers would benefit from having the capability to block international calls. In particular, we request comments on whether residential customers would benefit from being able to block international calls in order to limit access to information services. We also solicit comments from the LECs on the costs that the LECs would incur to provide international blocking capability to

[1] See policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35, Notice of Proposed Rule Making, 6 FCC Rcd 1448 (1991), Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736 (1991); Second Report and Order, 7 FCC Rcd 3251 (1992); Order on Reconsideration, 7 FCC Rcd 4355 (1992); and Order on Further Reconsideration and Further Notice of Proposed Rulemaking, 8 FCC Rcd 2863 (1993) (Further Reconsideration and FNPRM).

[2] See Sections 64.1501 to 64.1515 of the Commission's rules. 47 C.F.R. § § 65.1501–64.1515

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residential customers. The LECs' comments on costs should include the categories of costs (e.g., switching, administration, etc.) that would be incurred to provide international blocking capability to all residential customers. They should also show the extent to which those costs would be reduced by not providing blocking in areas in which it would not be technically feasible and economically reasonable to do so. For each instance in which a LEC claims that it would not be technically feasible and economically reasonable to provide residential blocking, its comments should specify the type of equipment, the number of end offices affected, the nature of the problem (i.e., inadequate switch memory) and the percentage of residential access lines that would not receive international blocking. Also, the LEC should provide a timeable indicating when, under its current investment plans, it would become technically feasible and economically reasonable to offer international blocking to residential customers from those end offices.

Interested parties may file comments on these issues no later than April 24, 1995. Replies should be filed by May 8, 1995.

An original and four copies of all comments and replies must be filed in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Thomas G. David, Tariff Division, Common Carrier Bureau, (202) 418–1530.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–7950 Filed 3–30–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011495.
Title: ANZDL/Nedlloyd Space Charter Agreement.
Parties:
Australia-New Zealand Direct Line
Nedlloyd Lijnen, B.V.
Synopsis: The proposed Agreement permits the parties to charter space to and from each other on vessels operated in the trade between U.S Pacific Coast ports and inland and coastal points via such ports, on the one hand, and ports in Australia and New Zealand and inland and coastal points via such ports, on the other.

Agreement No.: 224–200278–001
Title: Port of Oakland/Hyundai Merchant Marine Co., Ltd., Marine Terminal Agreement
Parties:
Port of Oakland
Hyundai Merchant Marine Co., Ltd.
Synopsis: The proposed amendment removes provisions that require payment to the Port for empty containers loaded or discharged from User's vessels and the provisions for additional wharfage refunds to User in the event User has less than ten percent (10%) empty twenty foot equivalent units (TEUs) in a contract year.

Dated: March 28, 1995.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 95–7937 Filed 3–30–95; 8:45 am]
BILLING CODE 6730–01–7

FEDERAL RESERVE SYSTEM

Brazosport, Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Brazosport, Corporation, Freeport, Texas; to acquire First Commerce Mortgage Corporation, Corpus Christi, Texas, and thereby engage in making, acquiring, or servicing loans for itself or for others, and loan marketing and advisory services, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is Corpus Christi, Texas, Brazosport Area, which includes Freeport, Lake Jackson and Clute, Texas.

Board of Governors of the Federal Reserve System, March 27, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-7915 Filed 3-30-95; 8:45 am]
BILLING CODE 6210-01-F

Pikeville National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Pikeville National Corporation and Pikeville Acquisition Corporation, both of Pikeville, Kentucky; to acquire 100 percent of the voting shares of Woodford Bancorp, Inc., Versailles, Kentucky, and thereby indirectly acquire Woodford Bank and Trust Company, Versailles, Kentucky.

In connection with this application Pikeville Acquisition Corporation, Pikeville, Kentucky, has applied become a bank holding company by acquiring Woodford Bancorp, Inc., Versailles, Kentucky.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Mountain Company Profit Sharing/401k and First Mountain Company, both of Montrose, Colorado; to become bank holding companies by acquiring 100 percent of the voting shares of First Mountain State Bank, Montrose, Colorado.

Board of Governors of the Federal Reserve System, March 27, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-7916 Filed 3-30-95; 8:45 am]
BILLING CODE 6210-01-F

The Chase Manhattan Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1995

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Chase Manhattan Corporation, New York, New York; to merge with U.S. Trust Corporation, New York, New York, and thereby indirectly acquire United States Trust Company of New York, New York, New York.

In connection with this application, Applicant also has applied to acquire U.S. Trust Corporation's wholly-owned direct subsidiaries, Mutual Funds Services Company, Boston, Massachusetts, and U.S. Trust Company of Wyoming, Cody, Wyoming, and certain assets and liabilities associated with certain custodial relationships from the U.S. Trust Company of California, N.A., Los Angeles, California, and thereby engage in data processing and trust company activities, pursuant to §§ 225.25(b)(7) and (3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-7917 Filed 3-30-95; 8:45 am]
BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Antiviral Drugs Advisory Committee by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app.2)).

DATES: Authority for this committee will expire on February 15, 1997, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

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Dated: March 24, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–7990 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–01–F

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those information collections recently submitted to OMB.

1. Hill-Burton Community Service Assurance Report—Extension with No Change—0990-0096—The Community Service Assurance Report provides information on community services provided by Hill-Burton recipients. The Public Health Service Act (Titles VI and XVI) requires that this information be obtained periodically to enable assessment of the compliance of recipient Hill-Burton health facilities with their community services assurances. Respondents: State or local governments, non-profit institutions; Total Number of Respondents: 6,300; Frequency of Response: once every three years; Average Burden per Response: 52.5 hours; Estimated Annual Burden: 110,250 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–1053. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Dated: March 21, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 95–7745 Filed 3–30–95; 8:45 am]

BILLING CODE 4150–04–M

Health Resources and Services Administration

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** on March 6, 1995 (60 FR 12242–12245) for applications to provide grants to States to assist them in operating programs for the repayment of educational loans of health professionals in return for practice in federally designated health professional shortage areas to increase the availability of primary health services. The new due date is May 15, 1995. All other information remains unchanged.

Dated: March 27, 1995.

Ciro V. Sumaya,

Administrator

[FR Doc. 95–7868 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

Standing Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Scholarship (Professions) Programs for Fiscal Years (FY's) 1995 and 1996; Notice Correction

In notice Doc. 95–3740 beginning on page 8663 in the issue of Wednesday, February 15, 1995, make the following corrections:

1. On page 8663 in the third column, "**DATES:** The application deadline is April 1, 1995 and 1996." This line should be changed to read "**DATES:** The application deadline is April 14, 1995 and April 1, 1996."

2. One page 8666 in the first column, "Y. Radiologic Technology: Associate and B.S." This line should be changed to read "Y. Radiologic Technology; Associate, BS and Certificate programs."

Dated: March 24, 1995.

Michel E. Lincoln,

Acting Director.

[FR Doc. 95–7866 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 20, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 236A, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Admin., 5333 Westbard Ave., Room 236A, Bethesda, MD 20892, (301) 594–7297.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 21, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 235, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Admin., 5333 Westbard Ave., Room 235, Bethesda, MD 20892, (301) 594–7078.

Name of SEP: Multidisciplinary Sciences.

Date: April 28, 1995.

Time: 12:00 noon.

Place: NIH, Westwood Building, Room 2A05, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Admin., 5333 Westbard Ave., Room 2A05, Bethesda, MD 20892, (301) 594–7053.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7993 Filed 3–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on May 23–24, 1995, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on May 22 in Conference Room B, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on May 23 and from 9 a.m. to adjournment on May 24 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on May 22 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on May 23 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: March 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7992 Filed 3–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Notice of Meeting, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research, on June 4–6, 1995, at the National Institutes of Health, Medical Board Room, Building 10, Rm. 2C116, 9000 Rockville Pike, Bethesda, Maryland, 20892.

This meeting will be open to the public from 8:30 a.m. to 12:20 p.m. and from 1:30 p.m. to 5:00 p.m. on June 5th, and from 8:30 a.m. to 2:10 p.m. on June 6th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on June 4th and from 2:10 p.m. until adjournment on June 6th, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Ms. Mary Whitehead, Federal Building, Room 1012, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Acting Executive Secretary, Dr. Harold Gainer, Acting Director, Division of Intramural Research, NINDS, Building 10, Room 5N214, National Institutes of Health, Bethesda, MD 20892, telephone (301) 496–4297, will furnish a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Acting Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7991 Filed 3–30–95; 8:45 am]

BILLING CODE 4140–01–M

Opportunity For Licensing: HIV–1 Nucleocapsid Protein (p7nc) Capture Assay

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks licensee(s) to develop a novel immunological capture assay for the detection of human immunodeficiency virus (HIV). Scientists at the National Cancer Institute have identified a new screening assay based on the detection in biological samples of p7nc, an HIV nucleocapsid protein. The assay is free from interference by antigen-antibody complexes. Potential uses for this assay include determining the prognosis of disease in an HIV-infected person, monitoring the effectiveness of antiviral treatment, detecting HIV infection in infants born to HIV-infected mothers, and detecting and quantitating HIV in laboratory experiments, i.e., virus production, infectivity assays, neutralization assays and drug effectiveness assays. NIH intends to grant the selected firm(s) world-wide royalty-bearing license(s) to practice the inventions embodied in U.S. Patent Application Serial No. 07/967,658 from Dr. Larry O. Arthur and Dr. Louis E. Henderson entitled "HIV Nucleocapsid Protein Capture Assay and Method of Use." The patent rights in these inventions have been assigned to the United States of America.

SUPPLEMENTARY INFORMATION: The current antigen capture assays for the detection of HIV–1 utilize the capsid antigen p24CA or the matrix protein p17MA. Antibodies to p24 and p17 found in HIV–1-infected persons interfere with the assays and limit their utility. The AIDS Vaccine Development Program at the National Cancer Institute-Frederick Cancer Research and Development Center has found that antibodies to p7 are not prevalent in HIV–1-infected individuals. This observation coupled with the fact that p7 is found in equal molar quantities to p24 in the virus, makes p7 an ideal candidate for an HIV antigen capture assay. A p7 capture assay has been developed and p7 assays of sera of seropositive individuals to which HIV–1 is added demonstrate that HIV–1 can be detected. Similar experiments using commercial p24 assays are negative. The assay may be used for samples containing bodily fluids, tissues, or cell culture fluid. Because the assay is capable of measuring the nucleocapsid protein concentration, which correlates

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with the level of infectious HIV in an infected person, it provides a surrogate marker for AIDS progression. This simple, rapid, quantitative, inexpensive assay may be used (1) As a prognostic indicator of HIV–1 infection and progression to AIDS; (2) in monitoring the effectiveness of anti-viral treatments; (3) to determine HIV–1 infection in infants born to HIV-infected mothers; and (4) to determine if vaccinated persons are infected with HIV–1. In addition, the assay may be used to detect and quantitate HIV–1 in clinical and research laboratories such as propagation in cell culture, isolation from PBMCs, neutralization assays, drug-sensitivity assays, etc. The assay may serve as the basis for an ELISA or immunoblot kit.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have the most meritorious plan for the development of the assay to meet the needs of the public and with the best terms for the NIH. The criteria that NIH will use to evaluate exclusive or non-exclusive license applications will include those set forth by 37 CFR 404.7(a)(1)(ii)–(iv).

EFFECTIVE DATE: In view of the high priority for developing new drugs for the treatment of HIV infection, all proposals must be received by no later than May 30, 1995.

ADDRESSES: Requests for a summary of the technology or other questions and comments concerning the biomedical aspects of this technology should be directed to: Cindy Fuchs, J.D., Office of Technology Development, National Cancer Institute, 1003 West Seventh Street, P.O. Box B, Frederick, MD 21702–1201; Telephone 301/846–1501; Fax 301/846–6820.

Requests for a copy of the patent application, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Steven M. Ferguson, Acting Chief, Infectious Disease Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301/496–7735 ext 266; Fax 301/402–0220. A signed confidentiality agreement will be required to receive a copy of the patent application.

Dated: March 17, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–7994 Filed 3–30–95; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on Friday, March 24.

1. FY 1996 Substance Abuse Prevention and Treatment Block Grant Application Format—0930–0080—Revision—Public Law 102–321 authorized block grants to States for the purpose of providing prevention and treatment services. Under provisions of the law, States may receive allotments only after an application is approved by the Secretary. This submission provides the States with the forms and instructions for their applications so they can comply with the requirements of the law and the regulations implementing the law. Only minor changes are made to facilitate electronic submission, clarify instructions and reflect phase-in of requirements in the 1992 block grant legislation. Respondents: State, Local or Tribal Government; Number of Respondents: 60; Number of Responses per Respondent: 1; Average Burden per Response: 530 hours; Estimated Annual Burden: 31,800 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

2. Survey of Medical Schools to Investigate the Relationships Between Biomedical Research Funding and Specialty Choice—New—A brief survey of medical schools is proposed as part of a study of the relationship between level of funding for biomedical research and production of primary care graduates. Most data will be derived from secondary data sources: only four topics are covered in the survey. Respondents: Business or other for-profit; Not-for-profit institutions; Number of Respondents: 123; Number of Responses per Respondent: 1; Average Burden per Response: .5 hour; Estimated Annual Burden: 62 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

3. National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—Regulations and Forms (45 CFR Part 60)—0915–0126—Revision—Data identifying incompetent, unprofessional and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals, and other providers. Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Title	Number of respondents	Number of responses per respondent	Average burden per response
60.6 (a) Reporting Corrections of Errors and Omissions	2,800	1.04	.25 hour
60.6 (b) Reports of Revisions to Original Actions	350	1.06	.75 hour
60.7 (b) Reporting Medical Malpractice Payments	150	105.33	.75 hour
60.8 (b) Reporting Licensure Action by State Boards	125	21.02	.75 hour
60.9 (a) Reporting Privileging and Professional Society Actions	1,000	1.08	.75 hour
60.9 (c) Request for Hearings by Entities Found in Noncompliance	1	1	8 hours
60.10 (a)(1) Hospital Queries on Applicants; 60.11(a)(1) Other Hospital Queries; 60.11 (a)(6) Queries for Professional Review.	7,200	38.33	.08 hour per name
60.10 (a)(2) Biennial Queries by Hospitals	6,000	186.83	.08 hour per name
60.11 (a)(2) Practitioner Queries	29,000	1	.25 hour
60.11(a)(3) State Licensure Board Queries	70	171	.08 hour
60.11(a)(4) Queries by Nonhospital Health Care Entities	1,860	139.78	.08 hour

Title	Number of respondents	Number of responses per respondent	Average burden per response
60.11 (a)(5) Queries by Attorneys	10	1	.25 hour
60.11(a)(7) Queries for Research Purposes	100	1	1 hour
60.14 (b) Practitioner's Disputing Data Bank Reports	1,080	1	.17 hour
60.14(b) Practitioner Requests for Secretarial Review	100	1	8 hours
60.14(b) Practitioner Statements	2,700	1	1 hour
Biennial Entity Verification Document	5,750	1	.25 hour
Entity File Update	1,150	1	.25 hour

Note: Estimated Total Annual Burden: 167,489 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: March 28, 1995.

James Scanlon,

Director, Data Policy Staff Office of the Assistant Secretary for Health and PHS, Reports Clearance Officer.

[FR Doc. 95–8022 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–01–M

Method for Evaluating and Establishing Reimbursement Rates for Health Care Services Authorized Under the Indian Health Service Contract Health Service Regulations—Portland, Alaska, and Nashville Areas

AGENCY: Indian Health Service, HHS.

ACTION: Extension of Project Date.

SUMMARY: The termination date for the Portland Pilot Project now being conducted in the Portland, Alaska, and Nashville Areas to determine an alternative method of evaluating and establishing reimbursement rates for contract health services has been changed from March 31, 1995 to September 30, 1996.

FOR FURTHER INFORMATION CONTACT: J.T. Garrett, Ed.D., Acting Chief, Health Care Administration Branch, Division of Health Care Administration/Contract Health Services, Room 6A–41, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8373 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) issued a general notice in 56 FR 10566 on March 13, 1991 to inform the public that the IHS was conducting a pilot project in the IHS Portland Area. This project is designed to determine whether an alternative method of evaluating and establishing reimbursement rates for contract health services will result in greater participation by health care providers and lower costs to IHS.

The project invited providers within the Portland Area to submit their most favorable rate quotations and was scheduled to end on March 31, 1992. The response was far greater than the expectations of the IHS. As a result of this greater than expected response, and the need to develop complex rate quotation analysis methodologies for facilities, outpatient and professional providers, and the need to develop preferred provider lists from these analyses, the termination date was extended to March 31, 1993, 57 FR 10671. The termination date was again extended to March 31, 1995, 58 FR 11864. Additionally, the IHS published notification on June 18, 1992, 57 FR 27262, that additional sites were being added to the pilot project to provide more information from a wide geographic area.

The evaluation of the facility component of the project was completed January 28, 1994. The overall results of the evaluation were positive. The formal review process of the professional provider component has not been completed. Extension of the project termination date to September 30, 1996 will allow the IHS time to complete the evaluation and to assess the results. Based upon the results of the evaluation, IHS will formulate, publish and implement a new payment and procurement policy for contract health services. We are, therefore, extending the termination date of this pilot project from March 31, 1995 to September 30, 1996.

This pilot project does not change the current IHS payment policy requirement that health care services be procured at rates which do not exceed prevailing Medicare rates.

Dated: March 24, 1995.

Michel E. Lincoln,

Acting Director.

[FR Doc. 95–7867 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 31, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 24, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–7834 Filed 3–30–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-019-7123-5759-24-1A]

Emergency Closure Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands in the Hollister Resource Area to all motorized vehicle use.

SUMMARY: This emergency closure will close all public lands in Clear Creek Management Area, in San Benito and Fresno Counties, California (approximately 50,000 acres), to the use or operation of all motorized vehicles except as specified.

The purpose of this emergency closure is to protect human life and safety and to protect sensitive resources, including threatened plants and their habitat, soils, and wildlife habitat.

The authorized officer has determined that recent severe storms resulting in local flooding and slides, have made these areas unsafe for motorized use, and that additionally, any motorized use could result in serious damage to the resources mentioned above.

A map of the areas affected by this closure order is on file and can be viewed at the Hollister Area Office of the Bureau of Land Management.

The following persons are exempt from this closure order:

(1) Federal, State, or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Authorized permittees, claimants, or private landowners.

(4) Any member of an organized rescue, fire-fighting force, Emergency Medical Services organization while in the performance and execution of an official duty.

(5) Any member of a federal, state or local public works department while in the performance of an official duty.

SUPPLEMENTARY INFORMATION: This closure is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Any vehicle or instrumentality used in a violation of this order is subject to seizure and possible forfeiture.

DATES: This order is in effect immediately. The closure for Clear Creek will remain in effect until rescinded by the Authorized Officer. The Order may be rescinded when it is determined that recreationists may safely visit the area and sensitive resources are not jeopardized.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resources Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023, (408) 637–8183.

Dated: March 16, 1995.

Robert E. Beehler,

Hollister Area Manager.

[FR Doc. 95–7885 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–4C–M

[ID–942–04–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., March 22, 1995.

The plat representing the dependent resurvey of portions of the north and west boundaries, and subdivisional lines, the subdivision of section 6, and a metes-and-bounds survey in section 6, T. 7 N., R. 23 E., Boise Meridian, Idaho, Group No. 899, was accepted, March 17, 1995.

The supplemental plat, prepared to correct the parenthetical distances, on the line between sections 7 and 18, T. 48 N., R. 1 W., was accepted March 20, 1995.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: March 22, 1995.

Harry K. Smith,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–7883 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–04–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., March 23, 1995.

The plat representing the dependent resurvey of Homestead Entry Survey No. 147 and a portion of the subdivisional lines, T. 16 N., R. 19 E., Boise Meridian, Idaho, Group No. 890, was accepted March 17, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: March 23, 1995.

Harry K. Smith,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–7884 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–1430–01; IDI–31261]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, had filed an application to withdraw 3,805.87 acres of National Forest System lands for protection of the Howell Canyon Recreation Complex. Publication of this notice in the **Federal Register** will close the land up to two years from location and entry under the United States mining laws. The land will remain open to all uses, other than the mining laws.

DATES: Comments and requests for a meeting should be received on or before June 29, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

SUPPLEMENTARY INFORMATION: On March 15, 1995, the United States Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

T. 12 S., R. 24 E.,
Sec. 36, SW¼NW¼, W½SW¼ and S½SE¼.
T. 12 S., R. 25 E.,
Sec. 31, lot 4, NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SW¼ and SE¼;
Sec. 32, S½SE¼SW¼NW¼, SE¼NW¼ and N½SW¼.
T. 13 S., R. 24 E.,
Sec. 1, N½ lot 1, lots 2 to 4 inclusive, S½NW¼ and SW¼;
Sec. 2;

Sec. 3, lots 2 to 4 inclusive, S½N½, N½S½, SW¼SW¼ and SE¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, NE¼SW¼, NW¼SW¼, S½SW¼ and SE¼;
Sec. 5, SE¼;
Sec. 9, N½NE¼, SW¼NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, N½SE¼ and SE¼NE¼;
Sec. 10, W½NW¼;
Sec. 11, NE¼;
Sec. 12, NW¼.

The areas described aggregate 3,805.87 acres in Cassia County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to this date. The temporary uses which may be permitted during this segregation period are leases, licenses, permits, rights-of-way, etc.

The temporary segregation of the lands in connection with this withdrawal application shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Dated: March 22, 1995.

M. William Weigand,

State Office Unit Leader for Realty Unit.

[FR Doc. 95–8019 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–GG–M

Record of Decision Documenting the Department of Interior's Approval for the Central Utah Water Conservancy District To Proceed With the Construction of the Diamond Fork Pipeline, Access Road and Appurtenant Facilities as Part of the Diamond Fork System of the Bonneville Unit of the Central Utah Project, Utah

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of availability of the Diamond Fork pipeline Record of Decision.

Record of Decision

January, 1995

I. Introduction

This document constitutes the Record of Decision (ROD) of the Department of the Interior (Department), documenting the Department's approval for the Central Utah Water Conservancy District (District) to proceed with the construction of the Diamond Fork Pipeline, Access Road and Appurtenant facilities (Diamond Fork Pipeline System) as part of the Diamond Fork System of the Bonneville Unit of the Central Utah Project, as presented in the Recommended Plan in the Final Supplement to the Final Environmental Impact Statement (INT–FES 90–7, dated February 22, 1990) (1990 FS–FEIS), prepared in compliance with the National Environmental Policy Act (NEPA). This project was authorized as a participating project of the Colorado River Storage Project by the Act of April 11, 1956 (70 Stat. 105).

In accordance with the Record of Decision signed by the Commissioner of Reclamation on July 20, 1990 (1990 ROD), copy attached, the Bureau of Reclamation (Reclamation) began implementing the Recommended Plan by constructing Syar Tunnel and the Sixth Water Aqueduct. However, pursuant to the Central Utah Project Completion Act (Titles II through VI of Public Law 102–575, 106 Stat. 4605, October 30, 1992), (CUPCA), the District has adopted the Recommended Plan for the Diamond Fork Pipeline System as described in the 1990 FS-FEIS, and agrees to comply with the environmental commitments, constraints (*e.g.*—pipeline capacity and diameter, annual transbasin diversion, and other operational conditions), and recommendations as described in the 1984 Final Environmental Impact Statement (1984 FEIS) and the 1990 FS-FEIS, and the January 5, 1995, Biological Opinion, copy attached, and to honor all applicable Federal and State laws, including the Drainage and Minor Construction (D&MC) contract dated November 28, 1994, and the Compliance and Cost Sharing Agreements between the United States and the District dated August 11, 1993.

II. Recommended Decision

The Program Director, CUP Completion Act Office recommends proceeding with the construction of the Diamond Fork Pipeline, Access Road, and Appurtenant facilities, as identified in the Recommended Plan in the 1990 FS–FEIS. The Recommended Plan is the most environmentally acceptable, and consistent with the authorized project plan. The Recommended Plan is briefly summarized in section V of this ROD.

III. Basis for Decision

Approval of Reclamation's Recommended Plan in the 1990 ROD was the direct result of a public consultation and coordination process. Of the three downsized alternatives presented in the 1990 FS–FES, the Recommended Plan is the most publicly acceptable method of meeting obligations of the 1980 Instream Flow Agreement while allowing for completion of the authorized project plan as provided for in CUPCA.

In accordance with Section 202(a)(6)(B) of CUPCA, the Department and the District executed a D&MC contract on November 28, 1994, that binds the District to provide the non-Federal cost sharing required in the CUPCA for the Diamond Fork Pipeline, Access Road, and Appurtenant facilities, to design and construct these facilities, and to comply with all Federal fish, wildlife, recreation and environmental laws in accordance with the August 11, 1993, Compliance Agreement.

In its Preconstruction Report that was submitted to the Department on December 12, 1994, copy enclosed, the District officially adopted the Recommended Plan and Mitigation plan, and agreed to comply with the environmental commitments that are identified in the 1990 FS–FEIS for the Diamond Fork System, and the applicable provision of Reclamation's 1990 ROD. Section VI, "Environmental Commitments and Monitoring", of this ROD summarizes the District's environmental commitments and obligations.

On December 19, 1994, the Department approved the District's Preconstruction report and documented again the District's obligations and environmental commitments, copy

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attached. The approval of the Preconstruction Report and this ROD fulfills the final prerequisites contained in the August 11, 1993, Cost Sharing Agreement required prior to initiation of construction of the Diamond Fork Pipeline System.

IV. Decision

The Department's decision is to approve the District proceeding with the construction of the Diamond Fork Pipeline, Access Road, and Appurtenant facilities.

V. Recommended Plan

The Recommended Plan for the system would facilitate the transbasin diversion of an annual average of 101,900 acre-feet of Bonneville Unit water and 61,500 acre-feet of Strawberry Valley Project water from the Uinta Basin to the Bonneville Basin.

Additionally, the system would provide recreation and fishery benefits, wildlife mitigation measures, flood and water quality control, and potential hydroelectric power generation. The transbasin diversion (reduced by 37,900 acre-feet from the recommended plan in the 1984 FEIS) would fulfill the Instream Flow Agreement of 1980, the goal of which was to mitigate up to 50 percent of the fishery impact caused by the Bonneville Unit on streams in the Uinta Basin. The remaining 50 percent would be accomplished through the Aquatic Mitigation Plan developed for the Bonneville Unit. This plan was finalized in December 1988.

Under the Recommended Plan, the Diamond Fork Pipeline System would receive water from Strawberry Reservoir through the already completed Syar Tunnel. From the tunnel outlet, water would enter Sixth Water Aqueduct, which would include Sixth Water Pipeline, Sixth Water Shaft, and Sixth Water Tunnel, all of which have been completed. Water from the aqueduct would be discharged into Sixth Water Creek and subsequently enter the proposed Monks Hollow Reservoir. From the reservoir, a portion of the water would enter the proposed Diamond Fork Pipeline and be conveyed to a proposed bifurcation structure near the confluence of Diamond Fork and the Spanish Fork River. Monks Hollow Reservoir releases not conveyed in the Diamond Fork Pipeline would enter the Diamond Fork stream channel below Monks Hollow Dam and subsequently, the Spanish Fork River.

The Diamond Fork Pipeline, with a capacity of 510 cubic feet per second (cfs), is included in the Recommended Plan for the purpose of removing project water, as well as existing high irrigation flows, from the lower Diamond Fork stream channel. The pipeline would provide considerable enhancement of the Diamond Fork fishery. Under project conditions, the highest average monthly flow below Monks Hollow Reservoir would be 183 cfs. This compares to 294 cfs without the project. The lowest average monthly flow for the minimum year with the project is 5 cfs, as compared to 3 cfs without the project. Construction access will be provided by the existing Diamond Fork Road, which extends from U.S. Highway 6–89 at the mouth of the canyon northeast along the Diamond Fork stream channel. In many areas the Diamond Fork Pipeline will be located in the shoulder of the road. Consequently, in conjunction with the pipeline construction, about 7 miles of the road will be improved to a 24-foot-wide asphalt-surfaced road.

VI. Environmental Commitments and Monitoring

A. Environmental Commitments in the 1990 FS–FEIS

A list of the major environmental commitments made for the Diamond Fork Pipeline System is documented on pages 195–196 of the 1990 FS–FEIS. In the District's Preconstruction Report, the District committed to comply with all the environmental commitments associated with the construction of the Diamond Fork Pipeline System. This includes the following environmental commitments:

1. A total capacity of 510 cfs will be included in the Diamond Fork Pipeline for the purpose of removing project water, as well as existing high irrigation flows, from the lower Diamond Fork to mitigate potential project impacts and provide enhancement to the fishery resource.

2. Public fishing access will be acquired in the lower 2 miles of Diamond Fork.

3. A General Plan will be prepared by the District and approved by the Department and the managing agency for the mitigation measures involving land transfers to other agencies. Specific wildlife management plans will be prepared by the managing agencies for each management area. The General Plan and the specific wildlife management plans will be approved by the Department and the Fish and Wildlife Service before mitigation lands are developed or transferred to another agency for management.

4. The District will continue monitoring the nesting activity of golden eagles in the Diamond Fork area for a period of at least 5 years after completion of the project.

B. Environmental Requirements of the Central Utah Project Completion Act

The CUPCA and the documents executed pursuant to that Act (the two August 11, 1993, Agreements and the November 28, 1994, D&MC contract) set forth the District's additional environmental requirements.

Among the areas of concern are minimum flow requirements. It is anticipated that the Strawberry Valley Project would continue to operate as it does now. Under the M&I System plan, Reclamation stipulated that Bonneville Unit water conveyed through the Diamond Fork drainage would be limited to 30,000 acre-feet annually until the Diamond Fork Power System is in place. This limited delivery would take place during the off-peak and nonirrigation seasons and flows would be limited so as to not degrade the stream channels.

Title III of the CUPCA requires that minimum flows be maintained in the Diamond Fork stream between Monks Hollow Dam and the confluence with the Spanish Fork River. These required flows are 80 cubic-feet per second from May through September and 60 cubic-feet per second from October through April.

The CUPCA also authorizes funds for fish habitat restoration and improvements in the Diamond Fork River and Sixth Water Creek drainage. Under the CUPCA, the Utah Reclamation Mitigation and Conservation Commission has responsibility for administering the mitigation and conservation funds available under the Act.

C. Endangered Species—Conservation Recommendations

As part of its environmental compliance for the 1990 FS–FEIS, Reclamation determined that the construction and operation of the Diamond Fork System would not affect any listed nor candidate species identified under the Endangered Species Act. The U.S. Fish & Wildlife Service (Service) concurred in the no effect determination. Since the filing of the FS–FEIS, a plant known as Ute ladies'-tresses orchid (*Spiranthes diluvialis*) has been added to the endangered species list as a threatened species. Consequently, the District entered into Section 7 consultation with the Service and submitted a Biological Assessment to the Service for their determination of effect. The Service's January 5, 1995, Biological Opinion concludes that: (1) the water depletion associated with construction of the Diamond Fork Pipeline System is 100 acre-feet or less, and sufficient progress has been attained by the Recovery Implementation Program to avoid the likelihood of jeopardy to the Colorado River endangered fish species; and (2) the construction of the pipeline and access road will affect, but is not likely to jeopardize the continued existence of the Ute ladies'-tresses orchid. The Service made six conservation recommendations pursuant to Section 7(a)(1) of the Endangered Species Act. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. In their January 5, 1995, letter to the Service, copy enclosed, and in their January 19, 1995, letter to the Program Director, copy enclosed, the District agreed to implement the following Conservation Recommendations included in the January 5, 1995, Biological Opinion. Those conservation recommendations are stated verbatim as follows:

1. The District should prepare an Environmental Commitment Checklist (ECC) detailing requirements for construction methods and associated activities that are designed to avoid or minimize environmental impacts of the construction project, including impacts to the Ute ladies'-tresses orchid. For example, the ECC should specify requirements that will prevent impacts to the orchid outside of the construction area; establish the minimum necessary boundaries of the construction zone; and, provide a qualified individual to monitor construction activity during stream crossings and at any other sensitive locations identified by the Service. The ECC should be prepared in consultation with cooperating environmental oversight agencies, including the Service. The Service recommends that the District provide this document for Service review and approval prior to initiation of construction.

2. The District should prepare a site rehabilitation/revegetation plan in consultation with, and acceptable to, both the Service and the Forest Service. The plan should include specifications for undesirable plant species monitoring and management.

3. The District should conduct surveys for the Ute ladies'-tresses orchid in areas to be disturbed during the flowering season immediately prior to construction. Plants should be counted and flagged.

4. The District should provide funds for the removal, holding, and transplanting of plants that will be impacted by construction. Plants should be transplanted to a holding facility approved by the Service, such as the Red Butte Garden and Arboretum of the University of Utah. Plants should be maintained there until the following activities occur under the direction of the Service:

a. Selected plants will be transplanted back into the areas from which they were taken when the sites have been rehabilitated and appropriate conditions created to ensure successful reestablishment.

b. Selected plants will be maintained in the holding facility, and serve as propagation stock as determined desirable, for future reintroduction to other areas in the Diamond Fork drainage or along the Wasatch Front. This will ensure that there is a source of genetically compatible individuals to augment or replace populations that may be impacted by the construction and operation of the Diamond Fork System on Diamond Fork and Spanish Fork drainage or Utah Lake caused by operation of the Diamond Fork System.

c. Plants selected by the Service would be available to researchers for conducting approved life history research.

5. After the identified plants have been removed from the impact area, surface substrates (top 6–12 inches) should be scraped off and stockpiled. Following construction, site rehabilitation activities should include replacing the removed surface materials. To the extent possible, compaction and contamination of surface soils with undesirable plant species or other materials should be avoided.

6. The District should prepare and implement a monitoring plan in consultation with, and acceptable to, the Service and the Forest Service. The monitoring plan should be for a minimum of 10 years and have the following objectives:

a. Document the presence and vigor of orchid individuals transplanted back into disturbed sites.

b. Determine the presence and number of new individuals that appear on disturbed sites.

c. Document hydrologic conditions, principally soil moisture and depth to groundwater, seasonally in disturbed sites.

d. Monitor the presence of undesirable plant species and effects of management activities for their control.

e. Over the 10 year monitoring period, document major changes in plant community composition, with particular focus on detecting and documenting changes from a wetland riparian community to a drier, upland riparian community.

D. Environmental Permits

Several water quality permits must be obtained prior to construction of the Diamond Fork Pipeline, Access Road, and Appurtenant facilities. The Clean Water Act of 1977 (P.L. 95–217) requires that Section 402 permits be obtained from Utah Department of Environmental Quality through authority granted by the Environmental Protection Agency for the discharge of any wastewater or process water. Section 404(r) of P.L. 95–217 contains provisions to exempt, in certain instances, congressionally authorized Federal projects from having to obtain a Section 404 Permit from the Army Corps of Engineers for discharge of dredged or fill material into waters of the United States. On November 29, 1994, the Department of the Interior's Program Director submitted the Diamond Fork 1984 FEIS and 1990 FS–FEIS to the Chairman of the U.S. Senate Appropriations Subcommittee on Energy and Water Development and the U.S. House of Representatives Appropriations Subcommittee on Energy and Water Development to ensure the project is in full compliance with Section 404(r) of the Clean Water Act, copies attached. The construction contract will not be awarded and no actual discharge of dredged or fill material in connection with the construction of the Diamond Fork Pipeline System will occur until fiscal year 1996 funds are appropriated by the Congress.

E. Environmental Commitment Plan

The District will prepare a detailed project Environmental Commitment Plan, documenting all mitigation measures and environmental commitments made in the 1984 FEIS and the 1990 FS–FEIS prior to the award of the construction contract of the Diamond Fork Pipeline System. The Environmental Commitment Plan will be developed during the final design and implemented during construction, and operation of the Recommended Plan.

FOR FURTHER INFORMATION: Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237.

Dated: March 30, 1995.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 95–7995 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–RK–P

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: April 20–21, 1995, at 8:30 a.m.

ADDRESSES: First floor conference room, 645 "G" Street, Anchorage, Alaska.

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FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include the review of small-parcel habitat protection efforts and a discussion of long-range restoration planning.

Dated: March 27, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–7943 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–RG–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and related forms may be obtained by contacting Dennis Jones at 303–231–3046. Comments and suggestions on this information collection should be made directly to the Bureau Clearance officer at the telephone number listed below and to the OMB, Paperwork Reduction Project (1010–0022), Washington, D.C. 20503, telephone 202–395–7340.

Title: Report of Sales and Royalty Remittance.

OMB Approval Number: 1010–0022.

Abstract: The Report of Sales and Royalty Remittance is submitted by those individual and companies producing minerals from leased Indian lands or from leased Federal onshore or offshore lands. Respondents report monthly the sales and royalties of oil, gas, and solid minerals taken from Federal and Indian lands. The Minerals Management Service (MMS) uses the data to monitor royalties received, for audits, and to compare reported sales data with production data reported in the MMS Production Accounting and Auditing System.

Bureau Form Number: MMS–2014.

Frequency: Monthly.

Description of Respondents: Companies producing and processing minerals from Federal onshore or offshore leases, and from Indian leases.

Estimated Completion Time: 3 or 7 minutes per reported line.

Annual Responses: 2,000.

Annual Burden Hours: 240,600.

Bureau Clearance Officer: Arthur Quintana 703–787–1101.

Dated: March 1, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–7996 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Reclamation

Draft Environmental Impact Statement for Proposed Acreage Limitation and Water Conservation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the draft environmental impact statement; INT–DES–95–13.

SUMMARY: In response to a September 1993 contract for settlement of a lawsuit filed by the Natural Resources Defense Council, National Wildlife Federation, California Natural Resources Federation, California Association of Family Farmers, California Action Network, League of Rural Voters, Inc., and County of Trinity, California (hereinafter NRDC et al.); and pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) on proposed acreage limitation and water conservation rules and regulations for implementing the Reclamation Reform Act of 1982 (RRA), as amended, throughout the 17 Western States.

The purpose of the DEIS is to evaluate potential impacts associated with the proposed rules and alternatives. As such, the DEIS presents an evaluation of five alternatives, including no action. This is accomplished at a programmatic level and provides the required environmental documentation for implementation of the RRA on a Westwide basis.

DATES: Written comments on the DEIS should be submitted to the Bureau of Reclamation by May 31, 1995. A recorded toll-free number (1–800–861–5443) will be available to make oral comments during the public review period. Comments received in this manner must include the commentor's name in order to be included in the official record. Address and affiliation are optional. Comments will be limited to 15 minutes per call.

ADDRESSES: Written comments on the DEIS and requests for copies should be addressed to: Mr. Ronald J. Schuster (D–5010), Westwide Settlement Manager, Bureau of Reclamation, PO Box 25007, Denver CO 80225. Requests for copies may also be made over the telephone at (303) 236–1061 extension 237.

Copies of the DEIS are available for inspection at the address above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Room 7612, 1849 C Street, NW, Washington DC 20240
- Reclamation Service Center, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver CO 80225
- Pacific Northwest Regional Office, Bureau of Reclamation, Room 214, 1150 North Curtis Road, Boise ID 83706
- Mid-Pacific Regional Office, Bureau of Reclamation, Library, Room W–1522, 2800 Cottage Way, Sacramento CA 95825
- Lower Colorado Regional Office, Bureau of Reclamation, Library, Room M117, Nevada Highway and Park Street, Boulder City NV 89005
- Upper Colorado Regional Office, Bureau of Reclamation, Library, Room 7101, 125 South State Street, Salt Lake City UT 84147
- Great Plains Regional Office, Bureau of Reclamation, Library, Room 2037, Federal Office Building, 316 North 26th Street, Billings MT 59101

Libraries

Arizona

Arizona Department of Water Resources Library, Phoenix
Arizona State Library, Department of Library, Archives and Public Records, Phoenix
Arizona State Regional Library for the Blind and Physically Handicapped, Phoenix
Arizona State University, Noble Science and Engineering Library, Tempe
Arizona State University, Hayden Library, Tempe
Flagstaff City-Coconino County Public Library, Flagstaff
Maricopa County Library, Phoenix
Mesa Public Library, Mesa
Northern Arizona University, Cline Library, Flagstaff
Phoenix Public Library, Phoenix
Scottsdale Public Library, Scottsdale
Tempe Public Library, Tempe
Tucson Pima Library, Tucson
University of Arizona Library, Tucson
Yuma County Library District, Yuma

California

Bay Area Library and Information System, Oakland

California State Library, Sacramento
California State University, Hayward Library, Hayward
California State University, University Library, Los Angeles
California State University Library, Sacramento
Colorado River Board of California Library, Glendale
Environmental Protection Agency, Region IX Library, San Francisco
Fresno County Free Library, Fresno
Fresno State University Library, Fresno
Kern County Library, Bakersfield
Los Angeles Public Library, Los Angeles
Los Angeles Public Library, Water and Power Section, Los Angeles
Sacramento Public Library, Sacramento
San Francisco Public Library, San Francisco
Stanford University Libraries, Stanford
University of California Water Resources Center Library, Berkeley
University of California, General Library, Berkeley
University of California, University Research Library, Los Angeles
University of California, Shields Library, Davis
University of Southern California, Doheny Memorial Library, Los Angeles

Colorado

Colorado State University Libraries, Fort Collins
Denver Central Library, Denver
University of Colorado at Boulder, Norlin Library, Boulder
University of Denver, Penrose Library, Denver
U.S. Air Force Academy, Academy Library, Colorado Springs
Grand Junction Public Library, Grand Junction

Idaho

University of Idaho Library, Moscow
Ada Community Library, Boise
Idaho State Library, Boise
Pocatello Public Library, Pocatello

Kansas

University of Kansas, Lawrence
Kansas State Library, Topeka
Topeka and Shawnee County Public Library, Topeka

Montana

University of Montana, Maurene and Mike Mansfield Library, Missoula
Billings Gazette Library, Billings
Parmly Billings Library, Billings
Missoula Public Library, Missoula

Nebraska

University of Nebraska, D.L. Love Memorial Library, Lincoln
Lincoln City Library, Lincoln
North Platte Public Library, North Platte
Omaha Public Library, Omaha

Nevada

Boulder City Library, Boulder City
Carson City Library, Carson City
Clark County Library District, Las Vegas
Nevada State Library, Carson City
University of Nevada, Reno Library, Reno
University of Nevada at Las Vegas, James Dickinson Library, Las Vegas
Washoe County Library, Reno

New Mexico

Albuquerque Public Library, Albuquerque
New Mexico State Library, Santa Fe
New Mexico State Library, Las Cruces
University of New Mexico, Albuquerque

North Dakota

Bismarck Public Library, Bismarck
Fargo Public Library, Fargo
North Dakota State University, Fargo
Minot Public Library, Minot

Oklahoma

Metropolitan Library System in Oklahoma County Area, Oklahoma City
Oklahoma Department of Libraries, Oklahoma City
Oklahoma State University, Edmon Low Library, Stillwater
University of Oklahoma, University Libraries, Norman

Oregon

Oregon Institute of Technology, Klamath Falls
Portland State University, Millar Library, Portland
University of Oregon Library, Eugene

South Dakota

Rapid City Public Library, Rapid City
Sioux Falls Public Library, Sioux Falls
South Dakota State Library, Pierre

Texas

Amarillo Public Library, Amarillo
Dallas Public Library, Dallas
El Paso Public Library, El Paso
Harris County Public Library, Houston
Texas State Library, Austin
Texas Technical University Library, Lubbock

Utah

Brigham Young University, Harold B. Lee Library, Provo
Cedar City Public Library, Cedar City
Salt Lake City Public Library, Salt Lake City
Salt Lake County Library System, Salt Lake City
Southern Utah State University Library, Cedar City
University of Utah, Marriott Library, Salt Lake City
Utah State University, Merrill Library, Logan
Utah State Library, Salt Lake City
Washington County Library, St. George
Weber State University, Stewart Library, Ogden

Washington

King County Library System, Seattle
Seattle Public Library, Seattle
Spokane Public Library, Spokane, Washington
University of Washington Libraries, Allen Library, Seattle
Washington State Library, Olympia
Yakima Valley Regional Library, Yakima

Wyoming

Laramie County Library System, Cheyenne
Rock Springs Public Library, Rock Springs
University of Wyoming, Coe Library, Laramie
Western Wyoming Community College, Rock Springs
Wyoming State Library, Cheyenne

Other States

District of Columbia Public Library, Washington DC
Library of Congress, Washington DC
Library Program Service, Government Printing Office, Washington DC
New York State Library, Albany, New York
New York Public Library, New York, New York
Research Libraries, New York, New York

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Schuster (D–5010), Westwide Settlement Manager, Bureau of Reclamation, Denver Office, PO Box 25007, Denver CO 80225; telephone: (303) 236–9336 ext 237.

SUPPLEMENTARY INFORMATION: The Reclamation Act of 1902 established a Federal program for irrigation project construction and financing to create farming opportunities and thereby encourage the economic development of the arid West. In recognition of organizational, economic, and technological changes in farming that occurred since 1902, the Reclamation Reform Act of 1982 (RRA), Title II, Public Law 97–293 (96 Stat. 1263), was signed into law on October 12, 1982. The RRA revised the threshold of acres upon which a landowner could receive Reclamation irrigation water. RRA provisions established how much land upon which a landowner could receive Reclamation irrigation water, established reporting requirements and water conservation planning, and set specific criteria for the price at which an individual or legal entity could receive Reclamation water. Amendments to the RRA were included in the Omnibus Budget Reconciliation Act of December 22, 1987 (Reconciliation Act), Title V, Public Law 100–203 (101 Stat. 1330).

Rules and regulations for implementing the RRA, initially becoming effective on January 5, 1984, were amended in 1987, 1988, and 1991. Environmental assessments and associated supplements were prepared in 1983, 1987, and 1988 that resulted in "Findings of No Significant Impact" from implementation of the proposed rules and regulations.

A lawsuit was filed by NRDC et al., challenging in part the inadequacy of the environmental documentation prepared for the 1987 and 1988 amendments to the rules. In September 1993, NRDC et al., the Department of Justice, and the Department of the Interior entered into a contract for the settlement of the lawsuit. Reclamation agreed to comprehensively reexamine implementation of the RRA and existing regulations, possibly resulting in the adoption of revised regulations implementing RRA requirements on a Westwide basis.

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The DEIS presents impact analyses of five alternatives, including no action, that encompass varying levels of regulation necessary to implement the RRA as it currently exists. A Proposed Rule Alternative reflects potential impacts associated with implementing the proposed rules and regulations.

Because the DEIS is programmatic, alternatives were not quantitatively analyzed. Specific assumptions were made to estimate changes to lands, soils, drainage, water, water quality, biological, socioeconomic, recreation, and cultural resources resulting from specific rule changes. While the significance of these impacts on a Westwide basis is small, localized impacts could be significant. Future site-specific actions resulting from any acreage limitation or water conservation provisions will be subject to all applicable Federal laws, including the National Environmental Policy Act.

Dated: March 17, 1995

J. Austin Burke,

Director, Operations.

[FR Doc. 95–7864 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–94–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Fieldcrest Cannon, Inc., 326 East Stadium Drive, Eden, North Carolina 27288.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Fieldcrest Cannon Transportation, Inc., A Delaware Corporation.

B. 1. Parent corporation and address of principal office: Titan Wheel International, Inc., 2701 Spruce Street, Quincy, IL 62301.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Titan Wheel International, (State of Incorporation: Illinois).
Titan Tire Corporation, (State of Incorporation: Iowa).
Titan Wheel Walcott, (State of Incorporation: Iowa).
Titan Wheel Greenwood, (State of Incorporation: South Carolina).
Dico, Inc., (State of Incorporation: Iowa)
Dico, Inc., (State of Incorporation: Wisconsin)
Dico, Inc., (State of Incorporation: Georgia)
Dico, Inc., (State of Incorporation: Georgia)
Dico, Inc., (State of Incorporation: California)
Dico, Inc., (State of Incorporation: Texas)
Dico, Inc., (State of Incorporation: Florida)
Dico Tire, (State of Incorporation: Tennessee)
Nieman's, Ltd., (State of Incorporation: Iowa)
Nieman's of Elkhart, (State of Incorporation: Indiana)
Nieman's of Idaho, (State of Incorporation: Idaho)
TD Wheel Company, (State of Incorporation: Virginia)
Desert Wheel Corporation, (State of Incorporation: Nevada)
Tractech, (State of Incorporation: Michigan)
Automation International, (State of Incorporation: Illinois)
Automotive Wheels, (State of Incorporation: California)

Vernon A. Williams,

Secretary.

[FR Doc. 95–7924 Filed 3–30–95; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 2)]

Intrastate Rail Rate Authority—Arkansas

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Arkansas to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period. The recertification applies retroactively to December 14, 1994, the date when Arkansas' certification was scheduled to expire.

DATES: The effective date of the Commission decision is April 30, 1995. The recertification is retroactive to December 15, 1994, and will expire on January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

Decided: March 22, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary

[FR Doc. 95–7925 Filed 3–30–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32676]

Great Walton Railroad Company, Inc. d/b/a Hartwell Railroad Company—Trackage Rights Exemption—Hartwell Railroad Company

Hartwell Railroad Company (HRC) has agreed to grant 48.3 miles of local and bridge trackage rights to Great Walton Railroad Company, Inc. d/b/a Hartwell Railroad Company (GWRC), over the Toccoa-Elberton Line (Toccoa Line) in Elbert, Franklin, Hart, and Stephens Counties, GA.[1] The trackage rights are between milepost P 0.5 at Toccoa and milepost P 24.5 at Bowersville, where there is a connection to GWRC's tracks, and from there to a connection at milepost P 48.8 at Elberton.

The transaction was to be consummated on March 22, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: William A. Mullins, Troutman Sanders, 601 Pennsylvania Ave., NW., Washington, DC 20004.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: March 24, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7926 Filed 3–30–95; 8:45 am]

BILLING CODE 7035–01–P

[1] HRC, a noncarrier, simultaneously filed a notice of exemption to acquire and operate the Toccoa Line in Hartwell Railroad Company—Acquisition and Operation Exemption—Line of Norfolk Southern Railway Company, Finance Docket No. 32675. The trackage rights agreement was necessary because HRC assertedly will not be prepared to provide immediate service to the line's shippers.

[Finance Docket No. 32675]

Hartwell Railroad Company—Acquisition and Operation Exemption—Line of Norfolk Southern Railway Company

Hartwell Railroad Company (HRC), a noncarrier, has filed a notice of exemption to acquire and operate approximately 48.3-miles of rail line, the Toccoa Line, owned by Norfolk Southern Railway Company.[2] The line extends from milepost P 0.5, near Toccoa, to milepost P 48.80, near Elberton, in Elbert, Franklin, Hart, and Stephens Counties, GA. The proposed transaction is to be consummated after the effective date of the notice of exemption and will result in HRC becoming a class III carrier.[3]

Any comments must be filed with the Commission and served on: William A. Mullins, Troutman Sanders, 601 Pennsylvania Ave., N.W., Washington, DC 20004.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 24, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7927 Filed 3–30–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) No. 1047]

ZRIN: 1121–ZA10

Program Announcement, "Nonparticipating State Program, Wyoming"

AGENCY: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from local public and private nonprofit agencies in the State of Wyoming. The State is not eligible to receive its fiscal years 1993 and 1994 Formula Grants Program allocations under Part B of Title II of the JJDP Act. Eligible applicants for this competitive program are limited to local public and private nonprofit agencies providing services or currently operating in the State. Such agencies are eligible to receive funds to be expended over a two year period. Multiple grants will be made available in amounts ranging from $100,000 to $471,829 per applicant of a total of $943,658 in fiscal year 1993 and 1994 Formula Grant funds that have been reallocated for award under this nonparticipating state program.

DATES: Applications under this program are due May 1, 1995.

ADDRESSES: State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For further information contact Mark A. Roscoe, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 307–5924.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Legislation

Pursuant to section 223(d) of the JJDP Act, the OJJDP Administrator must endeavor to make the Formula Grants Program fund allotment, under section 222(a) of the JJDP Act, to a State which is ineligible to participate in the Formula Grants Program available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used solely for the purpose(s) of achieving compliance with the following JJDP Act core State plan requirements:

1. Section 223(a)(12)(A), which provides that juveniles shall not be placed in secure detention or correctional facilities if (1) they are charged with or have committed offenses that would not be criminal if committed by an adult, (2) they are charged with or have committed offenses which do not constitute violations of valid court orders or Federal or State law prohibiting the possession of a handgun, or (3) they are non-offenders such as dependent or neglected children;

2. Section 223(a)(13), which provides that juveniles alleged or found to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have contact with adults convicted of a crime or awaiting trial on criminal charges;

3. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults, except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

a. Are outside a Metropolitan Statistical Area,
b. Have no existing acceptable alternative placements available,
c. Provide for the sight and sound separation of juveniles and incarcerated adults; and

4. Section 223(a)(23), which provides that States must address efforts to reduce the proportion of juveniles detained or confined in secure facilities who are members of a minority group if such proportion exceeds the proportion such groups represent in the general population.

B. Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

[2] In a concurrently filed notice of exemption, Great Walton Railroad Company, Inc. d/b/a Hartwell Railroad Company—Trackage Rights Exemption—Hartwell Railroad Company, Finance Docket No. 32676, HRC agrees to grant local and overhead trackage rights over the Toccoa Line to Great Walton Railroad Company, Inc., an unaffiliated carrier, because HRC assertedly will not be prepared to provide immediate service to the line's shippers.

[3] Under 49 CFR 1150.32(b), the notice of exemption is effective 7 days after it is filed. The notice was filed on March 15, 1995.

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4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Local private nonprofit agency.* A nonprofit organization that provides services within an identifiable unit(s) or a combination of units of general local government, but which is not under public supervision or control. A nonprofit organization means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

10. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

11. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statues—for reasons other than legally prohibited conduct of the juvenile.

12. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JJDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JJDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JJDP Act, its implementing regulation (28 CFR part 23), or a plan or application submitted pursuant to Part B of Title II of the JJDP Act.

13. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

14. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

15. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) Reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) Determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

(iii) Determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

(iv) Submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii).

The requirements for using this exception can be found in the Formula Grants Regulation, 28 CFR 31.303(f), published in the **Federal Register** of March 10, 1995.

C. Problem to be Addressed

Many Wyoming communities have not been able to successfully address the core requirements of the JJDP Act due to State laws or local policies, lack of coordination, and/or a limited number of alternative resources available to communities. This situation has resulted in among other things, the State's ineligibility for JJDP Act Formula Grant Funds. Specifically, local jurisdictions are using secure facilities inappropriately for a number of reasons:

1. A lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, corrections, public and private service providers, and local public interest groups, which contributes to the inappropriate placement of juveniles in jails and lockups.

2. A lack of public awareness and policies regarding the issues of juveniles in jails and lockups, and the secure confinement of status offenders and nonoffenders;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities and focused upon jurisdictions with the most difficult barriers to overcome; and

4. The lack of alternative services which can be sustained over time with local resources, inclusive but not limited to:

a. Supervision of juveniles in secure facilities that conforms to the requirements set forth in the Formula Grants Regulation, 28 CFR part 31, as revised through March 10, 1995 (60 FR 13330–13340).

b. Intensive supervision in a child's home as a placement alternative.

c. Emergency foster care, shelter care, group care, and independent living arrangements.

d. Crisis intervention services and short-term residential crisis intervention programs that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

e. Objective intake criteria that are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

II. Program Goals and Objectives

Pursuant to section 223(d) of the Act, the goal of this program is to assist Wyoming in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, section 223(a)(14), the removal of juveniles from adult jails and lockups, and section 223(a)(23), efforts to reduce disproportionate minority confinement. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must address one or more of the following objectives:

A. Enhancing systemwide coordination, cooperation and concentration of existing and new resources to develop community juvenile service systems that provide viable alternatives to the use of adult jails and lockups.

B. The development of a flexible statewide network of services and placement options for juvenile offenders and nonoffenders that will provide such juveniles with supervision and control, give them protection from victimization and exploitation, and hold them accountable for their offenses.

C. The development and implementation of objective intake criteria and operational policies and procedures that are consistent with nationally recognized standards and applicable to alleged juvenile offenders and nonoffenders who are awaiting court appearance.

D. An enhanced capacity for parents, schools, police and other private and public youth serving agencies to address juvenile custody issues problems without the use of jail and lockups. This would include, where appropriate, the establishment of local juvenile planning boards or commission to help ensure interagency, multidisciplinary planning and monitoring for juvenile justice system improvements related to custody issues.

E. An increased public awareness of the problems associated with inappropriate juvenile custody practices. It is expected that increased awareness will serve as impetus for the development of public policies to address such problems.

III. Program Strategy

OJJDP anticipates funding multiple applicants to implement the program in Wyoming. Applicants will develop a strategy and provide services in communities directly or through contracts for services designed to move the State or community toward compliance with one or more of the statutory goals.

Any nonprofit organization applicant shall establish an advisory committee that meets, to the degree appropriate, the provisions of section 223(a)(3) to oversee the implementation of program strategy. Where appropriate, consideration should be given to establishing a working relationship with the State Advisory Group and the Wyoming Department of Family Services.

Each applicant is expected to provide an assessment of detention and incarceration legislation, policies, procedures and practices, in the move the State or jurisdiction that is the target of the proposed program.

The strategy developed must support statewide and/or local jurisdictions efforts to coordinate, concentrate and redirect resources to improve services for the care and custody of juveniles. Major activities of a statewide applicant might consist of:

a. Preparing RFP's for local projects;

b. Reviewing applications, selecting finalists and making awards;

c. Convening project staff and advisory committee members to review strategy;

d. Providing training and technical assistance to projects supported under the initiative;

e. Developing and implementing a statewide public education program; and

f. Developing and implementing an assessment of the effectiveness of the overall program.

IV. Dollar Amount and Duration

A. The project period for this program is two years from the date of award. Recipients will be eligible for awards of up to 50% of the total available funds, or $471,829 of $943,658. Funds will be made available through a cooperative agreement. Financial assistance provided under this program requires no matching contribution with the exception of construction funds as provided by section 299C(a)(2) of the JJDP Act.

B. OJJDP anticipates that up to six applicants will be selected pursuant to the selection criteria established in this announcement.

C. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for less than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction. The erection of new buildings or the construction of secure facilities is not permitted with funds acquired through this program.

V. Eligibility Criteria

Applications are invited from local public and private nonprofit agencies within the State of Wyoming that have knowledge and experience in developing and/or implementing programs and projects statewide or at the local level.

To be eligible for consideration, a statewide applicant must demonstrate in the application that it has experience in the following areas:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements on the local level.

B. Knowledge of and experience with juvenile justice systems; local jails, lockups, and secure juvenile detention facilities; the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program; and strategy development and implementation.

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds.

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy Section of this announcement.

E. Capability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the boards of public and private youth service providers which exist within the State for the purpose of achieving the objectives of this program

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation as well as the Standard Form 424. The SF–424 must appear as a cover sheet for the entire application. The project summary should follow the SF–424. All other forms must then follow.

Applicants should be sure to sign OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant's signature on this form provides for compliance with certification requirements under 28 CFR part 69, "New Restrictions on Lobbying" and 28 CFR part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are

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requested to submit the original signed application (SF–424) and four copies to OJJDP. Applications that include proposed noncompetitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

1. Is this program closely related to, a coordination of, or a revision of another current, recent, or expected project supported by funds awarded by another agency? If the answer is yes to any of the above questions, provide the following information:

a. List the names of any organizational units that will assist in any part of this other particular program activity.

b. Enter the title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

c. Give a brief description of the program.

Applications and copies must be sent to the following address: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531.

Applications must be received by mail or delivered to OJJDP by 5p.m., May 1, 1995. Applications that are delivered must be taken to the designated room at the above address between the hours of 8a.m. and 5p.m., except Saturdays, Sundays, and Federal holidays. Applications postmarked after the deadline date will not be considered.

OJJDP will notify applicants in writing that their applications have been received. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission has been selected for funding.

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for reviews by the State.

When submitting joint applications with more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and separate responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

VII. Civil Rights Compliance

A. All receipts of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

A. Program Goals

A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement to include a discussion of the applicants understanding of: (a) The State's placement of juveniles in adult jails and lockups as well as status offenders and non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (b) State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal, (c) programs, community services, organizations and planning approaches which can be used in an effort to develop comprehensive community services and achieve the Act's core requirements, and (d) address efforts to reduce the disproportionate number of minorities held in secure facilities in excess of their proportion in the population.

B. Program Strategy

Applicants should describe the proposed approach for achieving their goals and objectives under the program. A discussion of how the goals and objectives of the program will be accomplished and a description of the products to be prepared, and other anticipated outcome should be included. A plan for assessing the effectiveness of the overall program must be described.

C. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program and how the program will be managed.

D. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working with Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, and other groups whose cooperation or participation is necessary to the success of the program. The applicant must certify that it is able to obtain the necessary cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), private nonprofit applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in an application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

1. Time-Task Plan

Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in the applicants Program Strategy.

VIII. Procedures and Criteria for Selection

All applicants will be evaluated and rated by an OJJDP staff panel according to general selection criteria below. Selection criteria determine each applicant's responsiveness to minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues related to project implementation. OJJDP staff reviewers will use the following criteria to rate applications.

1. Statement of the Problem. (20 points) The applicant includes a clear, concise statement of the problem addressed in this program.

2. Definition of Objectives. (20 points) The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

3. Project Design. (20 points) The project design is sound and constitutes an effective approach to meeting the goals and objectives of this program. The design provides a detailed implementation plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

4. Management Structure. (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. Application explains how the management structure and staffing assignments are consistent with the needs of the program.

5. Organizational Structure. (15 points) The applicant organization's potential to conduct the project successfully must be documented. Applicant demonstrates knowledge of and experience in the juvenile justice field, particularly in the area of study the project addresses. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. The applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

6. Reasonables of Costs. (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

OJJDP staff reviewer recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the award with the selected applicants.

IX. Submission Requirements

This program announcement is a request for proposals from local public and private nonprofit agencies in the State of Wyoming. The applications and necessary forms will be provided upon request. Applicants must submit an original signed application and three copies to OJJDP. Applications must be received by mail or hand delivered to the OJJDP by 5 p.m. EST on May 1, 1995. Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the SRAD, Room 543, 633 Indiana Avenue, NW., Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their application has been selected for funding.

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–7967 Filed 3–30–95; 8:45 am]

BILLING CODE 4410–18–P

[OJP (OJJDP) No. 1046]

RIN 1121–ZA09

Program Announcement, "Nonparticipating State Program, Kentucky"

AGENCY: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from local public and private nonprofit agencies in the State of Kentucky. The State is not eligible to receive its fiscal years 1992 and 1993 Formula Grants Program allocations

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under Part B of Title II of the JJDP Act. Eligible applicants for this competitive program are limited to local public and private nonprofit agencies providing services or currently operating in the State. Such agencies are eligible to receive funds to be expended over a two year period. Multiple grants will be made available in amounts ranging from $100,000 to $693,000 per applicant of a total of $1,386,000 in fiscal year 1992 and 1993 Formula Grant funds that have been reallocated for award under this nonparticipating state program.

DATES: Applications under this program are due May 1, 1995.

ADDRESSES: State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For further information contact Thomas E. Bell, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 307–5921.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Legislation

Pursuant to section 223(d) of the JJDP Act, the OJJDP Administrator must endeavor to make the Formula Grants Program fund allotment, under section 222(a) of the JJDP Act, to a State which is ineligible to participate in the Formula Grants Program available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used solely for the purpose(s) of achieving compliance with the following JJDP Act core State plan requirements:

1. Section 223(a)(12)(A), which provides that juveniles shall not be placed in secure detention or correctional facilities if (1) they are charged with or have committed offenses that would not be criminal if committed by an adult, (2) they are charged with or have committed offenses which do not constitute violations of valid court orders or Federal or State law prohibiting the possession of a handgun, or (3) they are non-offenders such as dependent or neglected children;

2. Section 223(a)(13), which provides that juveniles alleged or found to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have contact with adults convicted of a crime or awaiting trial on criminal charges;

3. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults, except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

a. Are outside a Metropolitan Statistical Area,

b. Have no existing acceptable alternative placements available,

c. Provide for the sight and sound separation of juveniles and incarcerated adults; and

4. Section 223(a)(23), which provides that States must address efforts to reduce the proportion of juveniles detained or confined in secure facilities who are members of a minority group if such proportion exceeds the proportion such groups represent in the general population.

B. Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Local private nonprofit agency.* A nonprofit organization that provides services within an identifiable unit(s) or a combination of units of general local government, but which is not under public supervision or control. A nonprofit organization means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

10. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

11. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

12. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JJDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JJDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JJDP Act, its implementing regulation (28 CFR part 23), or a plan or application submitted pursuant to Part B of Title II of the JJDP Act.

13. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

14. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

15. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) Reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) Determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

(iii) Determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

(iv) Submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii).

The requirements for using this exception can be found in the Formula Grants Regulation, 28 CFR 31.303(f), published in the **Federal Register** of March 10, 1995.

C. Problem to be Addressed

Many Kentucky communities have not been able to successfully address the core requirements of the JJDP Act due to State laws or local policies, lack of coordination, and/or a limited number of alternative resources available to communities. This situation has resulted in among other things, the State's ineligibility for JJDP Act Formula Grant Funds.

Specifically, local jurisdictions are using secure facilities inappropriately for a number of reasons:

1. A lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, corrections, public and private service providers, and local public interest groups, which contributes to the inappropriate placement of juveniles in jails and lockups.

2. A lack of public awareness and policies regarding the issues of juveniles in jails and lockups, and the secure confinement of status offenders and nonoffenders;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities and focused upon jurisdictions with the most difficult barriers to overcome; and

4. The lack of alternative services which can be sustained over time with local resources, inclusive but not limited to:

a. Supervision of juveniles in secure facilities that conforms to the requirements set forth in the Formula Grants Regulation, 28 CFR part 31, as revised through March 10, 1995 (60 FR 13330–13340).

b. Intensive supervision in a child's home as a placement alternative.

c. Emergency foster care, shelter care, group care, and independent living arrangements.

d. Crisis intervention services and short-term residential crisis intervention programs that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

e. Objective intake criteria that are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

II. Program Goals and Objectives

Pursuant to section 223(d) of the Act, the goal of this program is to assist Kentucky in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, section 223(a)(14), the removal of juveniles from adult jails and lockups, and section 223(a)(23), efforts to reduce disproportionate minority confinement. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must address one or more of the following objectives:

A. Enhancing systemwide coordination, cooperation and concentration of existing and new resources to develop community juvenile service systems that provide viable alternatives to the use of adult jails and lockups.

B. The development of a flexible statewide network of services and placement options for juvenile offenders and nonoffenders that will provide such juveniles with supervision and control, give them protection from victimization and exploitation, and hold them accountable for their offenses.

C. The development and implementation of objective intake criteria and operational policies and procedures that are consistent with nationally recognized standards and applicable to alleged juvenile offenders and nonoffenders who are awaiting court appearance.

D. An enhanced capacity for parents, schools, police and other private and public youth serving agencies to address juvenile custody issues without the use of jail and lockups. This would include, where appropriate, the establishment of local juvenile planning boards or commissions to help ensure interagency, multidisciplinary planning and monitoring for juvenile justice improvements related to custody issues.

E. An increased public awareness of the problems associated with inappropriate juvenile custody practices. It is expected that increased awareness will serve as an impetus for the development of public policies to address such problems.

III. Program Strategy

OJJDP anticipates funding multiple applicants to implement the program in Kentucky. Applicants will develop a strategy and provide services in communities directly or through contracts for services designed to move the State or community toward compliance with one or more of the statutory goals.

Any nonprofit organization applicant shall establish an advisory committee that meets, to the degree appropriate, the provisions of section 223(a)(3) to oversee the implementation of program strategy. Where appropriate, consideration should be given to establishing a working relationship with the State Advisory Group and the Kentucky Justice Cabinet.

Each applicant is expected to provide an assessment of, and a strategy for modifying (as needed) juvenile detention legislation, policies, procedures and practices, in the move the State or jurisdiction that is the target of the proposed program.

The strategy developed must support statewide and/or local jurisdictions efforts to coordinate, concentrate and redirect resources to improve services for the care and custody of juveniles. Major activities of a statewide applicant might consist of:

a. Preparing RFP's for local projects;

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b. Reviewing applications, selecting finalists and making awards;

c. Convening project staff and advisory committee members to review strategy;

d. Providing training and technical assistance to projects supported under the initiative;

e. Developing and implementing a statewide public education program; and

f. Developing and implementing an assessment of the effectiveness of the overall program.

IV. Dollar Amount and Duration

A. The project period for this program is two years from the date of award. Recipients will be eligible for awards of up to 50% of the total available funds, or $693,000 of $1,386,000. Funds will be made available through a cooperative agreement. Financial assistance provided under this program requires no matching contribution with the exception of construction funds as provided by section 299C(a)(2) of the JJDP Act.

B. OJJDP anticipates that up to six applicants will be selected pursuant to the selection criteria established in this announcement.

C. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for less than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction. The erection of new buildings or the construction of secure facilities is not permitted with funds acquired through this program.

V. Eligibility Criteria

Applications are invited from local public and private nonprofit agencies within the State of Kentucky that have knowledge and experience in developing and/or implementing programs and projects statewide or at the local level.

To be eligible for consideration, a statewide applicant must demonstrate in the application that it has experience in the following areas:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements on the local level.

B. Knowledge of and experience with juvenile justice systems; local jails, lockups, and secure juvenile detention facilities; the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program; and strategy development and implementation.

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds.

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy Section of this announcement.

E. Capability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the boards of public and private youth service providers which exist within the State for the purpose of achieving the objectives of this program.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation as well as the Standard Form 424. The SF–424 must appear as a cover sheet for the entire application. The project summary should follow the SF–424. All other forms must then follow.

Applicants should be sure to sign OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant signature on this form provides for compliance with certification requirements under 28 CFR part 69, "New Restrictions on Lobbying" and 28 CFR part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are requested to submit the original signed application (SF–424) and four copies to OJJDP. Applications that include proposed noncompetitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

1. Is this program closely related to, a coordination of, or a revision of another current, recent, or expected project supported by funds awarded by another agency? If the answer is yes to any of the above questions, provide the following information:

a. List the names of any organizational units that will assist in any part of this other particular program activity.

b. Enter the title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

c. Give a brief description of the program.

Applications and copies must be sent to the following address: Office of Juvenile Justice, and Delinquency Prevention, 633 Indiana Avenue NW., Room 543 Washington, DC 20531

Applications must be received by mail or delivered to OJJDP by 5 p.m., May 1, 1995. Applications that are delivered must be taken to the designated room at the above address between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, and Federal holidays. Applications postmarked after the deadline date will not be considered. OJJDP will notify applicants in writing that their applications have been received. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission has been selected for funding.

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for reviews by the State.

When submitting joint applications with more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and separate responsibility with the other co-applicant. Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

VII. Civil Rights Compliance

A. All receipts of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

A. Program Goals

A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement to include a discussion of the applicants understanding of: (a) The State's placement of juveniles in adult jails and lockups as well as status offenders and non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (b) State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal, (c) programs, community services, organizations and planning approaches which can be used in an effort to develop comprehensive community services and achieve the Act's core requirements, and (d) address efforts to reduce the disproportionate number of minorities held in secure facilities in excess of their proportion in the population.

B. Program Strategy

Applicants should describe the proposed approach for achieving their goals and objectives under the program. A discussion of how the goals and objectives of the program will be accomplished and a description of the products to be prepared and other anticipated outcomes should be included. A plan for assessing the effectiveness of the overall program must be described.

C. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program and how the program will be managed.

D. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working with Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, and other groups whose cooperation or participation is necessary to the success of the program. The applicant must certify that it is able to obtain the necessary cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), private nonprofit applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in an application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

1. Time-Task Plan

Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in the applicants Program Strategy.

VIII. Procedures and Criteria for Selection

All applicants will be evaluated and rated by an OJJDP staff panel according to general selection criteria below. Selection criteria determine each applicant's responsiveness to minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues related to project implementation. OJJDP staff reviewers will use the following criteria to rate applications.

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1. Statement of the Problem. (20) The applicant includes a clear, concise statement of the problem addressed in this program.

2. Definition of Objectives. (20 points) The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

3. Project Design. (20 points) The project design is sound and constitutes an effective approach to meeting the goals and objectives of this program. The design provides a detailed implementation plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

4. Management Structure. (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. Application explains how the management structure and staffing assignments are consistent with the needs of the program.

5. Organizational Structure. (15 points) The applicant organization's potential to conduct the project successfully must be documented. Applicant demonstrates knowledge of and experience in the juvenile justice field, particularly in the area of study the project addresses. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. The applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

6. Reasonables of Costs. (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

OJJDP staff reviewer recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the award with the selected applicants.

IX. Submission Requirements

This program announcement is a request for proposals from local public and private nonprofit agencies in the State of Kentucky. The applications and necessary forms will be provided upon request. Applicants must submit an original signed application and three copies to OJJDP. Applications must be received by mail or hand delivered to the OJJDP by 5 p.m. EST on May 1, 1995. Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the SRAD, Room 543, 633 Indiana Avenue, NW., Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their application has been selected for funding.

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–7966 Filed 3–30–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 20 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. WI950042, WI950045, WI950046, WI950047, WI950048, and WI950050 dated FEB. 10, 1995, respectively

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision WI950041. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume III:

Florida
FL950098 (MAR. 31, 1995)
Tennessee
TN950061 (MAR. 31, 1995)
TN950062 (MAR. 31, 1995)
TN950063 (MAR. 31, 1995)

Volume IV:

Indiana
IN950042 (MAR. 31, 1995)
IN950043 (MAR. 31, 1995)
IN950044 (MAR. 31, 1995)
IN950045 (MAR. 31, 1995)
IN950046 (MAR. 31, 1995)
IN950047 (MAR. 31, 1995)
IN950048 (MAR. 31, 1995)
IN950049 (MAR. 31, 1995)
IN950050 (MAR. 31, 1995)
IN950051 (MAR. 31, 1995)
IN950052 (MAR. 31, 1995)
IN950053 (MAR. 31, 1995)
IN950054 (MAR. 31, 1995)
IN950055 (MAR. 31, 1995)
IN950056 (MAR. 31, 1995)
IN950057 (MAR. 31, 1995)
IN950058 (MAR. 31, 1995)
MD950011 (FEB. 10, 1995)
MD950012 (FEB. 10, 1995)
MD950022 (FEB. 10, 1995)
Pennsylvania
PA950004 (FEB. 10, 1995)

Volume III:

Florida
FL950077 (FEB. 10, 1995)
Tennessee
TN950001 (FEB. 10, 1995)
TN950005 (FEB. 10, 1995)
TN950016 (FEB. 10, 1995)
TN950017 (FEB. 10, 1995)
TN950019 (FEB. 10, 1995)
TN950057 (FEB. 10, 1995)
TN950059 (FEB. 10, 1995)

Volume IV:

Wisconsin
WI950032 (FEB. 10, 1995)
WI950041 (FEB. 10, 1995)

Volume V:

Arkansas
AR950003(FEB. 10, 1995)
Iowa
IA950019(FEB. 10, 1995)
IA950020(FEB. 10, 1995)
IA950038(FEB. 10, 1995)
IA950049(FEB. 10, 1995)
IA950070(FEB. 10, 1995)
IA950072(FEB. 10, 1995)
IA950077(FEB. 10, 1995)
Kansas
KS950005(FEB. 10, 1995)
KS950014(FEB. 10, 1995)
New Mexico
NM950001(FEB. 10, 1995)
Oklahoma
OK950033(FEB. 10, 1995)
OK950034(FEB. 10, 1995)
OK950035(FEB. 10, 1995)
Texas
TX950003(FEB. 10, 1995)
TX950109(FEB. 10, 1995)

Volume VI:

Colorado
CO950001(FEB. 10, 1995)
Hawaii
HI950001(FEB. 10, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New York
NY950007 (FEB. 10, 1995)
NY950011 (FEB. 10, 1995)
NY950040 (FEB. 10, 1995)
NY950060 (FEB. 10, 1995)

Volume II:

Maryland

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 24th day of March 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–7769 Filed 3–30–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 10, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below not later than April 10, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment

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Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/ workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Tobin Hamilton Co., Inc. (Wkrs)	W. Bridge Water, MA.	03/20/95	01/08/95	30,815	Athletic footwear.
Whitestone Products, Inc. (UPIU)	Piscataway, NJ	03/20/95	03/06/95	30,816	Hospital supplies.
Formfit Rogers/Lappel Corp (Wrks)	Lafayette, TN	03/20/95	03/02/95	30,817	Ladies' lingerie, bras and daywear.
Philips Technology—Airpax, Inc (Wrks)	Cambridge, MD	03/20/95	02/24/95	30,818	Circuit breakers.
AMSCO Basil Mfg. (UAW)	Wilson, NY	03/20/95	03/06/95	30,819	Industrial washing equipment.
General Electric Capitol Corp. (Wkrs)	Erie, PA	03/20/95	03/03/95	30,820	Providing testing of equipment.
Brenda's Sportswear Co., Inc. (Wrks)	Rock Island, TN	03/20/95	02/28/95	30,821	Ladies blouses.
Mosbacher Energy Co. (Wrks)	Houston, TX	03/20/95	02/28/95	30,822	Oil and gas.
Leslie Fay Inc. (ILGWU)	Wilkes-Barre, PA	03/20/95	03/01/95	30,823	Ladies' dresses.
Ricky Fashions (ILGWU)	Wilkes-Barre, PA	03/20/95	03/01/95	30,824	Ladies' dresses.
Red Eagle Resources Corp (Wkrs)	Oklahoma City OK	03/20/95	03/06/95	30,825	Oil and gas.
Dresser Industrial Valve Operation (Co.)	Axexandria, LA	03/20/95	03/03/95	30,826	Industrial line valves.
Fairchild Aircraft, Inc (Wkrs)	San Antonio, TX	03/20/95	03/02/95	30,827	Electrical harnesses.
Greeneville Industries, Inc. (AEU)	Greeneville, TN	03/20/95	02/28/95	30,828	Dozer blades.
Lockheed Ft. Worth Co. (Wkrs)	Ft. Worth, TX	03/20/95	03/01/95	30,829	Wire harnesses for the F-16 aircraft.
Modoc Lumber Co. (Wkrs)	Klamath Falls, OR	03/20/95	03/07/95	30,830	Construction lumber.
National Semiconductor (Co)	South Portland, ME	03/20/95	03/03/95	30,831	Semi conductors.
Scotty's Fashions (ILGWU)	Lewistown, PA	03/20/95	03/07/95	30,832	Ladies' sportswear.
Simon Petroleum Technology Corp. (Co)	Houston, TX	03/20/95	03/07/95	30,833	Seismic data—oil and gas.
Sonat Exploration Company (Wkrs)	Houston, TX	03/20/95	02/22/95	30,834	Crude oil and natural gas.
United Defense, L.P (wkrs)	Aberdeen, SD	03/20/95	01/02/96	30,835	Missile canisters.
American Oil and Gas (Wrks)	Amarillo, TX	03/20/95	03/07/95	30,836	Natural gas-methane, ethane, etc.
American Oil & Gas (Wkrs)	Pampa, TX	03/20/95	03/07/95	30,837	Natural gas-methane, ethane, etc.
Black Box Corporation (Wrks)	Lawrence, PA	03/20/95	03/03/95	30,838	Cable and switches.
Dillon Manufacturing Co., Inc. (Wrks)	Mayfield, KY	03/20/95	03/08/95	30,839	Men's sportcoats and suit coats.
General Mills, Inc. (Union)	Chicago, IL	03/20/95	03/06/95	30,840	Breakfast cereals.
Highland Yarn Mills, Inc. (ACTWU)	High Point, NC	03/20/95	02/21/95	30,841	Combed cotton yarns.
Kresgeville, Mfg. Inc. (Wrks)	Kresgeville, PA	03/20/95	03/08/95	30,842	Ladies garments.
Print and Peel (Wrks)	Paterson, NJ	03/20/95	03/09/95	30,843	Pressure sensitive tape.
Pro Group, Inc.—Golf Bag Division (Co)	Pocahontas, AR	03/20/95	03/07/95	30,844	Golf bags.
Quantum Chemical, Hanson, PLC (Wrks)	Port Arthur, TX	03/20/95	02/15/95	30,845	Plastics.
Scotty's Fashions (Wkrs)	Kresgeville, PA	03/20/95	03/07/95	30,846	Ladies' sportswear.

[FR Doc. 95-7929 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,977]

Exxon Company, U.S.A. a/k/a Exxon Corporation, Corporate Headquarters Staff Located Throughout Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on December 18, 1992 and published in the Federal Register on January 13, 1993 (57 FR 4186).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show a name change from Exxon Company, U.S.A. to Exxon Corporation and some of the workers had their unemployment insurance (UI) taxes paid to Exxon Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-27,977 is hereby issued as follows:

"All workers providing technical, marketing and administrative support for the domestic exploration and production of crude oil and natural gas at the Corporate Headquarters of Exxon Company, U.S.A. a/k/a Exxon Corporation, at various locations in Houston, Texas who became totally or partially separated from employment on or after August 13, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 21st day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7930 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,647]

Amerada Hess Corporation Headquartered in Houston, Texas and Operating at Various Locations in the Following States: TA-W-30,647A Oklahoma, TA-W-30,647B Louisiana, TA-W-30,647C North Dakota, TA-W-30,647D Texas (Except Houston); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification was issued on March 7, 1995 and will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in other parts of Texas besides Houston.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Amerada Hess Corporation, Houston, Texas who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA-W-30,647 is hereby issued as follows:

"All workers of Amerada Hess Corporation, headquartered in Houston, Texas (TA-W-30,647) and operating at various locations in the following cited states who became totally or partially separated from employment on or after January 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974: TA-W-30,647A Oklahoma, TA-W-30,647B Louisiana, TA-W-30,647C North Dakota, TA-W-30,647D Texas, exc Houston"

Signed at Washington, DC, this 21st day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7931 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,799]

Huls America, Incorporated, Elizabeth, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 13, 1995 in response to a worker petition which was filed on behalf of workers and former workers at Huls America, Incorporated, Elizabeth, New Jersey (TA-W-30,799).

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7932 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,182]

Exxon Co., U.S.A., a/k/a Exxon Corporation, Southwestern Production Division, Midland, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on October 6, 1994 and published in the Federal Register on October 21, 1994 (59 FR 53211).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show a name change from Exxon Company, U.S.A. to Exxon Corporation and some of the workers had their unemployment insurance (UI) taxes paid to Exxon Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-30,182 is hereby issued as follows:

"All workers of Exxon Company, U.S.A a/k/a Exxon Corporation, Southwestern Production Division, Midland, Texas who became totally or partially separated from employment on or after August 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 21st day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7938 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,472 and TA-W-30,472A]

Exxon Company, U.S.A. a/k/a Exxon Corporation Santa Ynez Production Division Thousand Oaks, CA, and Exxon Company, U.S.A. a/k/a Exxon Corporation Houston/Corpus Christi Production Division, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on December 15, 1994 and published in the Federal Register on January 20, 1995 (60 FR 4195).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show a name change from Exxon Company, U.S.A. to Exxon Corporation and some of the workers had their unemployment insurance (UI) taxes paid to Exxon Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-30,472 is hereby issued as follows:

"All workers of Exxon Company, U.S.A a/k/a Exxon Corporation, Santa Ynez Production Division, Thousand Oaks, California and the Houston/Corpus Christi Production Division, Houston, Texas who became totally or partially separated from employment on or after October 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 21st day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7928 Filed 3-30-95; 8:45 am]

BILLING CODE 4510-30-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

March 28, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C.

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Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Certification by School Official.
OMB Number: 1215–0061.
Agency Number: CM–981.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 1,500.
Estimated Time Per Respondent: 10 minutes.
Total Burden Hours: 250.
Description: The CM–981 is completed by school officials to verify whether a beneficiary's dependent, aged 18 to 23, qualifies as a full-time dependent student.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Claim for Reimbursement—Assisted Reemployment.
OMB Number: 1215–0178.
Agency Number: CA–2231.
Frequency: Four times per year.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 180.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 360.
Description: The CA–2231 is the form employers submit to the Office of Worker's Compensation Program to claim reimbursement for wages paid under the assisted reemployment demonstration project. The form summarizes terms of employment of Federal employees who acquired a disability through an on-the-job injury and the amount of wages to be reimbursed to their new employer for a prompt decision on payment, and to expedite the project.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: Employment, Wages, and Contribution (ES–202) Report.
OMB Number: 1220–0012.
Frequency: Quarterly.
Affected Public: State, Local or Tribal Government.
Number of Respondents: 53.
Estimated Time Per Respondent: 4,680 hours.
Total Burden Hours: 992,160.
Description: The ES–202 report, which is provided to the Bureau of Labor Statistics by State Employment Security Agencies, is used by the Employment and Training Administration in the administration of Unemployment Insurance (UI) programs; by the Bureau of Economic Analysis as the input to Gross Domestic Product and personal income estimates; by the Bureau of Labor Statistics as an employment benchmark and as the sampling frame for its establishment surveys; and by public and private researchers.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: Response Analysis Survey of BLS 790 and ES–202 Reports.
OMB Number: 1220–0089.
Agency Number: CES/UI RAS.
Frequency: On occasion.
Affected Public: State, Local or Tribal Governments; Businesses or other for-profit; Not-for-profit institutions.
Number of Respondents: 1,080.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 540.
Description: The Current Employment Statistics Survey and Employment and Wages Program are the primary sources of employment and wage information used to measure economic performance. The Response Analysis Survey continues the Bureau of Labor Statistics' efforts to review the sources of information available to respondents, to better match available records to program definitions, and to improve the quality of the data.

Signed at Washington, DC this 28th day of March 1995.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–7968 Filed 3–30–95; 8:45 am]

BILLING CODE 4510–24–27

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: April 13, 1995, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, D.C. 20210.

PURPOSE: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group. Phone: (202) 219–4752.

Signed at Washington, DC, this 27th day of March 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–7933 Filed 3–30–95; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL CAPITAL PLANNING COMMISSION

Environmental Assessment; Availability, etc.: Washington, DC, Sports and Entertainment Arena, Construction and Operation

AGENCY: National Capital Planning Commission.

ACTION: Proposed construction and operation of a sports and entertainment arena in Washington, DC; environmental assessment: notice of availability.

SUMMARY: The National Capital Planning Commission (Commission) announces the availability of a Draft Environmental Assessment (Draft EA) prepared by the District of Columbia as part of the submission requirement in support of Commission action on a proposed modification to the Urban Renewal Plan for the downtown Urban Renewal Area and site and building plans for the proposed construction and operation of a sports and entertainment arena in downtown Washington, DC. The Draft EA has been prepared in conjunction with the DC Government.

DATES: All written comments on issues regarding the environmental review of the proposed sports and entertainment arena must be postmarked by close of business May 1, 1995 and sent to the National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576. Attention: Mr. Maurice Foushee, Community Planner, Phone: (202) 724–0174.

FOR FURTHER INFORMATION PLEASE CONTACT:
National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576. Attention: Ms. Sandra H. Shapiro, General Counsel, Phone: (202) 724–0187.

SUPPLEMENTARY INFORMATION: This Notice of Availability initiates a 30-day agency and public review period for this document. It is important that Federal, regional and local commenting agencies, and interested and affected individuals and groups take this opportunity to review the draft environmental document and provide written comment on environmental issues.

Copies of the Draft EA will be available for inspection at the offices of the National Capital Planning Commission at 801 Pennsylvania Avenue NW; the lobby of One Judiciary Square at 441 Fourth Street, NW; the District Building at 1350 Pennsylvania Avenue NW; at Martin Luther King, Jr. Memorial Library at 901 G Street, NW, and upon request. Notice of the availability of the Draft EA will be published in local papers and copies of this notice will be mailed to those individuals who left a legible address at the public scoping meeting held on February 13, 1995, on this project.

Under the provisions of Section 106 of the National Historic Preservation Act (NHPA), the Commission is required to consult with the DC State Historic Preservation Office and determine the effect of the proposed project on historic properties. A separate document addressing the Commission's responsibilities under NHPA will be available in several weeks.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 95–7975 Filed 3–30–95; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).
Date and Time: April 14–15, 1995, 8:30 a.m.–5:00 p.m.
Location: Room 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. Charles Keith, C–RUI Program Coordinator, Division of Biological Instrumentation and Resources, Room 615, NSF, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1472.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals received in response to the first Collaborative Research at Undergraduate Institutions competition being run by the BIO and MPS directorates.
Reason for Closing: The proposals being reviewed include information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7880 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).
Date and Time: April 19–21, 1995; 9:00 a.m.–6:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.
Type of Meeting: Part-Open.
Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Open session: Friday, April 21, 1995; 9:00 a.m.–12:00 p.m.
Closed session: April 19–20, 1995, 9:00 a.m.–6:00 p.m. and April 21, 1995, 12:00 p.m.–6:00 p.m. To review and evaluate linguistics proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7879 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Anthropological and Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following Seven meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences #1757.
Date and Time: May 7–8, 1995; 9:00 a.m.–5:00 p.m.
Place: The Minneapolis Hilton and Towers, 1001 Marquette Avenue South, Minneapolis, Minnesota 55403–2440.
Contact Person: John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 306–1759.
Agenda: To review and evaluate archaeology proposals as a part of the selection process for awards.
Date and Time: April 24, 1995; 9:00 a.m.–5:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.
Contact Person: John E. Yellen, Program Director for Archaeometry, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 306–1759.
Agenda: To review and evaluate archaeometry proposals as part of the selection process for awards.
Date and Time: May 1, 1995; 1:00 p.m (EST).
Place: Via Conference call with Program Director.
Contact Person: John E. Yellen at the National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, Virginia 22230. Telephone: (703) 306–1759.
Agenda: To review and evaluate systematic collections proposals as part of the selection process for awards.
Date and Time: May 4–5, 1995; 9:00 a.m.–5:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.
Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758

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Agenda: To review and evaluate cultural anthropology proposals as part of the selection process for awards.

Date and Time: April 17, 1995; 10:00 a m.–8:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate cultural dissertation proposals as part of the selection process for awards.

Date and Time: April 24–25, 1995; 8:00 a.m.-5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. James W. Harrington, or David Kirtland, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate geography proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7878 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory panel for Biochemistry and Molecular Structure and Function. (1134)

Date and Time: Wednesday, Thursday and Friday, April 19, 20, 21, 1995 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Marcia Steinberg or Dr. Jack Cohen, Program Directors, Molecular Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Molecular Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate molecular biochemistry proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7876 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience (1158.)

Date and Time: April 20–21, 1995, 9:00 am. to 5:00 p.m.

Place: National Science Foundation, Rm 310, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. James Koening, Program Director, Neuroendocrinology; Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 21, 11:00 a.m. to 12:00 p.m., To discuss research trends and opportunities in Neuroendocrinology. Closed Session: April 20, 9:00 a.m. to 5:00 p.m.; April 21, 1995, 9:00 a.m. to 11:00 a.m., 12:00 p.m. to 5:00 p.m.; To Neuroendocrinology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7877 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids (*1149).

Date and Time: Wednesday April 19, thru Friday April 21, 1995, at 8:30 am to 5:00 pm

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 370.

Type of Meeting: Closed.

Contact Person: DeLill Nassar Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Eukaryotic Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7875 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1208).

Date and Time: April 19, 1995 from 3:00 p.m. to 8:00 p.m.

Place: National Science Foundation, Room 1295, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1890.

Minutes: May be obtained from the contract person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

- Presentation of Interim Report of the Long Range Plan Working Group (E. Moniz)
- Discussion of the essential components of the recommendations to the agencies
- Discussion of progress and plans for completion of the Long Range Plan
- Discussion of the transmittal of the Subcommittee Report on RHIC Experimental Equipment
- Public Comment (*)

(*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7870 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: April 17–18, 1995; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 390, 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria K. Burka, Program Director, Chemical Reaction Processes, CTS, Room 525 (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluation nominations for the NSF Microwave-Induced Reaction Initiative Panel as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7871 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: Wednesday, April 19th, 8:00 a.m.

Place: National Science Foundation, Room 310, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: G.X. Tessema, DMR, H. Hollis Wickman, DMR, 703–306–1995.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR 1995 Faculty Early Career Development (CAREER) Program proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7872 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior (#1160).

Date and Time: April 18, and 19, 1995, 8:30 am to 5:00 pm.

Place: Room 380, National Science Foundation, 420 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1422.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards.

Open Session: April 18, 1995, 1:30 to 2:30 pm—To discuss research trends and opportunities in Integrative Plant Biology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7873 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (#1170).

Date and Time:
April 20, 1995/9:30 am—5:00 pm
April 21, 1995/8:30 am—12 Noon

Place: Room 1235 National Science Board Meeting Room), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, National Science Foundation, Room 505, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1330.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: March 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–7874 Filed 3–30–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

High-Way Engineering & Survey Co. et al; Order

In the Matter of High-Way Engineering & Survey Co. and Art High, dba High-Way Engineering & Survey Co.; Docket No. 030–32271, License No. IDA–234 (Expired) EA No. 95–024.

Order to Cease and Desist Use and Possession of Regulated Byproduct Material

I

High-Way Engineering & Survey Co. (Licensee), is the holder of expired Byproduct Materials License No. IDA–234 (License) which was issued by the State of Idaho and subsequently became a Nuclear Regulatory Commission (NRC or Commission) license on April 26,

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1991, when the State of Idaho discontinued its regulation of radioactive materials. Mr. Art High (owner) is the president of the Licensee. The License authorized the possession and use of 10 millicuries of cesium-137 and 50 millicuries of americium-241:beryllium in sealed sources in gauges. The License expired on June 30, 1991.

II

On January 24, 1995, the Licensee informed the NRC that it still has a Campbell-Pacific nuclear gauge in its possession, which is currently stored in a locked storage shed on the Licensee's property near Bonners Ferry, Idaho. The Licensee neither submitted an application for renewal of the License prior to its expiration on June 30, 1991, as required by 10 CFR 30.37 nor notified the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Mr. Art High, the owner and Radiation Safety Officer, stated the Licensee's intention to terminate the License in telephone conversations on February 27 and March 23, 1992, and again on January 19, 1995. As of the date of this order, the Licensee has neither transferred the licensed material to an authorized recipient nor applied for an NRC license.

The Licensee was notified of the pending expiration of its License in telephone conversations with the NRC Region IV Office staff prior to the License expiration on June 30, 1991. The NRC also corresponded with the Licensee concerning the status of its NRC license. Specifically, an NRC letter dated February 28, 1992, reiterated the Licensee's stated intent to divest itself of the Campbell-Pacific Nuclear Model MC–3 series moisture density gauge and requested that by March 20, 1992, the Licensee transfer all licensable material to a properly authorized recipient and provide a completed NRC Form 314 to assure that the transfer has been completed. A second NRC letter dated March 25, 1992, again reiterated the Licensee's intent to divest itself of the gauge and asserted the basis for the NRC's authority to license byproduct materials and to charge fees. The Licensee also stated its intent during a May 4, 1992 telephone conversation with the NRC to either transfer the byproduct material to another licensee or become properly licensed.

On March 17, 1994, a special, unannounced inspection was conducted by the NRC. The results of the inspection were documented in an April 15, 1994 letter. During the inspection, the Licensee stated that it possessed one gauge which was maintained in locked storage and that it planned to sell the gauge and terminate the License.

During a January 19, 1995 telephone conversation, the Licensee stated that the reasons it had not divested itself of the gauge was that it had been unable to sell the gauge and that the manufacturer wanted a significant amount of money to take possession of the gauge. On January 24, 1995, the Licensee was again contacted by telephone and, despite being told that the gauge manufacturer would take possession of the gauge for no charge, the Licensee refused to transfer it.

III

The Licensee remains in possession of NRC-licensed byproduct material with an expired NRC license. Possession of such material is prohibited. At the time the License expired, 10 CFR 30.36(c) required NRC licensees, in the absence of a timely request for license renewal, to terminate licensed activities and to properly dispose of licensed material on or before the expiration date of the license. The Licensee has violated this requirement by continuing to possess a Campbell-Pacific Nuclear Model MC–3 series moisture density gauge after its License expired on June 30, 1991.

Improper handling of the cesium-137 and americium-241:beryllium sealed sources can result in an unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that possession of NRC-licensed material be under a regulated system of licensing and inspection. The Licensee's possession of NRC-licensed material without a valid NRC license and its unwillingness to respond to numerous NRC written and verbal communications to apply for an NRC license, demonstrate that it is either unable or unwilling to comply with NRC requirements.

Given the circumstances surrounding the Licensee's possession of the byproduct material and its failure to respond to communications with the NRC, I lack the requisite reasonable assurance that the health and safety of the public will be protected while the Licensee remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Section 8, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR parts 20 and 30, IT IS HEREBY ORDERED THAT High-Way Engineering & Survey Co. and Mr. Art High, dba High-Way Engineering & Survey Co. shall:

A. Immediately cease and desist from any further use of byproduct material now in their possession, with the exception that sealed source(s) containing cesium-137 or americium-241:beryllium shall be tested for leakage by a person authorized to perform the test prior to transfer of the source(s) to another person or entity, if a leak test has not been performed within the last six months prior to the transfer.

B. Maintain safe control over the byproduct material, as required by 10 CFR part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage and the testing required by Paragraph A, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

C. Transfer all byproduct material in their possession within 30 days to a person authorized to receive and possess the material. If the Licensee does not have sufficient funds to complete the transfer, the Licensee must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555: (1) An estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that neither Art High, nor High-Way Engineering & Survey Co., qualify for a loan to pay for the transfer; (3) copies of the Federal income tax returns of Art High, and High-Way Engineering & Survey Co., for the years 1993, 1992, 1991, and 1990: and (4) a signed statement agreeing to allow the NRC to receive credit information on Art High and High-Way Engineering & Survey Co., from a credit agency. In addition, if the Licensee has not been able to find an authorized person who will accept the byproduct material, the Licensee must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the byproduct material and the dates that the contacts were made. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.

D. At least two working days to the date of the transfer of the byproduct material, notify Dr. D. Blair Spitzberg, Chief, Nuclear Materials Licensing Branch, NRC, Region IV, by telephone (817–860–8191) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region IV, in writing, under oath or affirmation: (1) Confirmation on NRC Form 314, as required by 10 CFR 30.36(c) at the time the License expired, that the cesium-137 and americium-241:beryllim byproduct material have been transferred, (2) the last date that the byproduct material was used, (3) a copy of the survey performed in accordance with 10 CFR 30.36, as required by the regulation at the time the License expired, and (4) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region IV, 611 Ryan Plaza Dr., Suite 400, Arlington, Texas 76011–8064, and to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

Dated at Rockville, Maryland this 24th day of March 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–7921 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

[License No. 19089–01]

Advanced Medical Systems, Inc; Notice of Amendment to Byproduct Materials and Opportunity for Hearing

This provides notice to the public that the U.S. Nuclear Regulatory Commission has issued a license amendment to Byproduct Material License No. 34–19089–01 issued to Advanced Medical Systems, Inc. for possession and use of byproduct material, cobalt-60 and cesium-137, at the licensee's Cleveland, Ohio facility. The licensee requested the amendment by letter dated March 1, 1995, to establish plans and schedules for (1) dealing with the accumulation of ground water in and around the AMS facility basement and that stored in above ground tanks, (2) immobilizing and/or remediating contamination that has collected in below ground sewage piping and manholes, and (3) processing ground water that may build up around the facility in the future. The amendment requires that these activities begin immediately and be completed within 90 days. The license amendment references letters from the licensee dated January 27, February 2, 10, 14, and March 1, 3, 8, and 10, 1995.

The NRC hereby provides notice and an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with section 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The licensee, Advanced Medical Systems, Inc., to the attention of Seymour S. Stein, Ph.D., President, 121 North Eagle Street, Geneva, Oh 44041; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail Commission, Washington, DC 20555.

For further details with respect to this action, see the licensee's request for license amendment dated March 1, 1995, and the letters referenced above, which are available for inspection at the Commission's Region III Office, 801 Warrenville Road, Lisle, Illinois.

Dated: at Lisle, Illinois, this 24th day of March, 1995.

John A Grobe,

Chief, Nuclear Materials Inspection, Section 2, Division of Radiation Safety and Safeguards, RIII.

[FR Doc. 95–7923 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Entergy Operations, Inc.; Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–29, issued to Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS), located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 24, 1994, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that picture badges and access control cards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed

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by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

Currently, employee and contractor identification badges, coupled with their associated access control cards, are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Grand Gulf site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Grand Gulf Nuclear Station since the operating license was issued. Security personnel retain each identification badge, as well as the associated access control card, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card and an individual access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, enters a personal identification number (PIN), and passes through the turnstile which unlocks if the preset criteria are met. Once inside the station, the individual's PIN is not required in order to further utilize the access authorization card.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badges in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of existing the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges coupled with their associated access control cards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Grand Gulf Nuclear Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Mississippi State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the request for exemption dated May 27, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Dated at Rockville, Maryland this 27th day of March 1995.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulations.

[FR Doc. 95–7920 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Meeting of Waste Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Waste Subcommittee will hold a meeting on May 1, 1995 in Room C–103, Main Building, Department of Energy Federal Building, 2753 South Highland, Las Vegas, Nevada.

The meeting will be open to public attendance.

The subject of review will be research addressed to assessing the safety of high-level waste disposal.

The agenda will be as follows:

8:00–8:15—Introductory remarks.

8:15–9:45—Research program overview.

10:00–12:00—Review of key technical uncertainties and their relationship to specific research projects (regional hydrologic processes, rock mechanics, performance assessment).

1:15–5:30—Review of key technical uncertainties and their relationship to specific research projects, continued (geochemical natural analogs, sorption mechanisms, integrated waste package experiments, tectonics, volcanic systems).

5:30–6:00—Subcommittee discussion.

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and NRC contractors regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/415–6593) between 8:00 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two business days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 27, 1995.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–7919 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

All Licensees; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a letter dated March 8, 1995 from Thomas J. Saporito, Jr., to the Executive Director for Operations, the NRC received a Petition under 10 CFR 2.206 requesting that all licensees be required to review their operating procedures in order to ascertain whether those procedures place any restrictions on the ability of employees to bring safety concerns directly to the NRC without following the normal chain of command. The Petition requests that each licensee be required to report to the Commission, under oath or affirmation, that the review has been completed, that its employees are free to bring concerns to the NRC without following the normal chain of command, and that this information has been communicated to all of its employees.

Petitioner's request is being considered pursuant to 10 CFR 2.206 of the Commission's regulations. Action will be taken on these requests within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 23rd day of March 1995.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 95–7918 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

Draft Report on Responsiveness to the Public; Availability

The Nuclear Regulatory Commission (NRC) has published its Draft Report on Responsiveness to the Public. It has been a long-standing policy of the NRC to conduct its business activities in an open and public manner, and in recent years NRC has moved to be even more open and responsive to the public. The public is defined as individual citizens, public interest groups, petitioners, licensees, industry groups, contractors, the Congress, and others with whom NRC does business.

Recent initiatives to be more responsive to the public have included increased use of public workshops for rulemaking activities, participatory rulemaking, a pilot program opening enforcement conferences to the public, surveys of licensees to identify ways to reduce the regulatory burden on licensees, and the Cost Beneficial Licensing Action Program. While these initiatives represent significant improvements, the NRC has not heretofore given responsiveness to the public priority attention in all NRC programs nor had there been a systematic review of NRC business activities to identify potential improvements.

The National Performance Review has placed new emphasis on Federal agencies "placing the customer first." More can be done to broaden and institutionalize public responsiveness and openness as an underpinning tenet of how NRC does business. In this spirit, on July 27, 1994, the Executive Director for Operations launched the Public Responsiveness Initiative asking NRC program directors to identify the business activities where public interaction is relatively frequent and to develop Public Responsiveness Improvement Plans. The draft report reflects the initial results of that effort and contains improvement plans prepared by the offices. The improvement plans are being published for public comment so that NRC can consider comments and make adjustments and improvements in the plans as implementation proceeds.

Those considering public comment may obtain a free single copy of draft NUREG/BR–0199 by writing to the U.S. Nuclear Regulatory Commission, Office of Administration, Printing and Mail

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Services Section, Washington, DC 20555–0001. In addition, this draft report is available through the Internet World Wide Web server, which can be accessed by using the Uniform Resource Locator, (URL)http:/www.nrc.gov. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC 20555–0001.

Written comments should be mailed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Comments may also be submitted over the Internet to: secy@nrc.gov. Comments must be submitted by May 30, 1995.

Dated at Rockville, Maryland, this 27th day of March, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–7935 Filed 3–30–95; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Sunbow/Sunbow 2, San Diego County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Sunbow/Sunbow 2, located in Chula Vista, San Diego County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until June 29, 1995.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Boulevard, 2nd Floor, West Tower, Newport Beach, CA 92660–2516, (714) 263–4648; Fax (714) 852–7623.

SUPPLEMENTARY INFORMATION: The Sunbow/Sunbow 2 property is located east of Interstate Highway 805 and south of Telegraph Canyon Road in Chula Vista, California. The site consists of approximately 604 acres of undeveloped land with coastal sage scrub habitat. This property contains wetlands and habitat for the Federally-listed endangered California gnatcatcher. The site is adjacent to Greg Rogers Park which is managed by the City of Chula Vista for recreational purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before June 29, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;

2. Agencies or entities of State or local government; and,

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]

Federal Register Publication Date:

[Insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: March 27, 1995.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–7894 Filed 3–30–95; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35534; File No. SR-AMEX–94–52]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to S&P MidCap 400 Depository Receipts

March 24, 1995.

I. Introduction and Background

On November 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Standard & Poor's ("S&P") MidCap 400 Depository Receipts. Notice of the proposal appeared in the **Federal Register** on December 28, 1994.[3] No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

The Amex proposes to list and trade under Amex Rules 1000 *et seq.* S&P MidCap 400 Depositary Receipts. In addition, the Exchange proposes to amend Amex Rule 1000(b)(1) to include a reference to the alternative reinvestment of periodic cash payments to holders to reflect the availability of the DTC Dividend Reinvestment Service ("DRS") to holders of Portfolio Depository Receipts ("PDRs"), and to amend the Amex Rule 1004 disclaimer provision so that it applies to the S&P MidCap 400 Index.[4]

A. Portfolio Depository Receipts

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*[5] to accommodate trading on the Exchange of PDRs, which are securities that represent interests in a unit investment trust ("Trust") operating on an open-end basis and holding a portfolio of securities. The Trust sponsor ("Sponsor") of each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of the Amex.[6] The purpose of each Trust is to allow investors to purchase PDRs, securities that represent proportionate undivided interests in a Trust's underlying securities portfolio, that trade like shares of common stock, and that pay to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount. The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index ("S&P Index"), known as Standard & Poor's Depository Receipts ("SPDRs"). SPDRs have been trading on the Exchange since January 29, 1993.

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Standard & Poor's MidCap 400 Depositary Receipts ("MidCap SPDRs").[7] The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") will act as underwriter of MidCap SPDRs on an agency basis. All orders to create MidCap SPDRs in Creation Unit size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments.[8] The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

It is anticipated that the term of the MidCap SPDR Trust will be 25 years.

B. Issuance of MidCap SPDRs

Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.[9] Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitragers, and the Exchange specialist. On November 17, 1994, the value of an individual MidCap SPDR would have been approximately $34.37.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding MidCap SPDR.

Transactions in MidCap SPDRs may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for MidCap SPDRs shall be 1/32 of $1.00.[10]

C. Redemption

MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

D. Distributions

The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of

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[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35127, (December 20, 1994), 59 FR 66982.

[4] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[5] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253.

[6] Portfolio Depository Receipts and PDRs are service marks of PDR Services Corporation.

[7] "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depository Receipts," "SPDRs," "Standard & Poor's MidCap 400 Depositary Receipts," and "MidCap SPDRs' are trademarks of McGraw-Hill, Inc., and are being used by the Exchange and the Sponsor under license among S&P (a division of McGraw-Hill, Inc.), the Exchange, and the Sponsor.

[8] See "Distributions," *infra*.

[9] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC DRS. See *infra* note 12 and accompanying text.

[10] PDRs originally traded in minimum fractional changes of 1/8 of $1.00, pursuant to Amex Rule 127. See Securities Exchange Act Release No. 31591, *supra* note 5. The Commission approved an Exchange proposal to add Commentary .01 to rule 127 to provide that securities listed under Rule 1000 *et seq.* (PDRs) will trade in minimum fractional changes of 1/32 of $1.00. See Securities Exchange Act Release No. 31794 (January 29, 1993), 58 FR 7272. Subsequently, the Exchange amended Commentary .01 to Rule 127 to provide that the minimum fractional change for SPDRs is 1/64 of $1.00. See Securities Exchange Act Release No. 33900 (April 12, 1994), 59 FR 16585. Nevertheless, the minimum fractional change applicable to MidCap SPDRs will be 1/32 of $1.00.

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dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. Currently, the DTC DRS is available to holders of SPDRs. To reflect the availability of the DTC DRS to PDR holders, the Amex is proposing to amend its Rule 1000(b)(1) definition of PDR to state that in addition to being made in cash, periodic dividend payments to PDR holders may be reinvested in additional PDRs.[11] Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[12] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

E. Criteria for Initial and Continued Listing

Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange establishes a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. With respect to MidCap SPDRs, it is anticipated that a minimum of 75,000 MidCap SPDRs (*i.e.*, three Creation Units of 25,000 MidCap SPDRs each) will be required to be outstanding when trading begins.

The MidCap SPDR Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(1) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(2) if the index on which the Trust is based is no longer calculated; or

(3) if such other event shall occur or condition exist which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.[13] The MidCap SPDR Trust will also terminate if the license agreement with S&P terminates.

F. Trading Halts

Prior to commencement of trading in MidCap SPDRs, the Exchange will issue a circular to members informing them of exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 819C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value;[14] or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[15]

G. Terms and Characteristics

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of PDRs, including MidCap SPDRs, a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such a description be included with any sales material on MidCap SPDRs that is provided to customers or the public. Any other written materials making reference to a series of PDRs as an investment vehicle must state that a written description is available from the broker or the Exchange and that a prospectus may be obtained from the broker. Similarly, the Exchange requires that members and member organizations provide customers with the prospectus for MidCap SPDRs upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase MidCap SPDRs for that omnibus account will be deemed to constitute agreement by the non-member to make the written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading of MidCap SPDRs, the Exchange will distribute to its members and member organizations an Information Circular calling attention to the characteristics of the MidCap SPDR Trust and to applicable Exchange rules.

H. Amendments to Rules 1000(b) and 1004

The Exchange proposes to amend the definition of Portfolio Depositary Receipt in Rule 1000(b) to add a reference to the possible provision by a PDR Trust of reinvestment of periodic cash proceeds corresponding to the regular cash dividends or declarations declared with respect to the underlying stock index securities or portfolio of securities. Amex rule 1004 is also being amended to refer specifically to the S&P MidCap 400 Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[16] Specifically, the Commission finds that the Exchange's proposal to list and trade S&P MidCap SPDRs will provide investors with a convenient way of participating in the securities markets.[17] In particular, the Commission believes that the Exchange's proposal will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.[18]

The Commission believes that listing and trading products, such as MidCap 400 SPDRs, based on a broad portfolio of stocks may benefit the securities markets by reducing volatility, such as that experienced during the October 1987 and 1989 Market Breaks.[19] Creating a product where actual portfolios of stocks and instruments representing portfolios of stock trade at a single location in an auction market environmental may alter the dynamics of program trading,[20] because the availability of such single transaction portfolio trading could promote more traditional block trading techniques.

The 1987 Market Break Report noted the potential benefits of providing institutional investors and member firms with the ability to trade a portfolio of stocks at posts in a single transaction. The trading crowd at a single post can allow a single transaction in a portfolio of securities to take the place of numerous transactions in individual stocks. Trading MidCap SPDRs should also provide an easy and inexpensive method to clear and settle a portfolio of stocks.

An individual MidCap SPDR recently would have had a value of approximately $34, which should make it attractive to individual retail investors who wish to hold a security replicating the performance of a broad portfolio of medium capitalization stocks. Moreover, the Commission believes that MidCap SPDRs will provide investors with several advantages over standard open-end mutual funds specializing in medium capitalization stocks. In particular, investors will be able to trade MidCap SPDRs continuously throughout the business day in secondary market transactions at negotiated prices.[21] In contrast, Investment Company Act Rule 22c–1 [22] limits holders and prospective holders of open-end mutual fund shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Accordingly, MidCap SPDRs will allow investors to (1) respond quickly to market changes; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although the value of MidCap SPDRs is based on the value of the securities held in the Trust, MidCap SPDRs are not leveraged instruments. In essence, MidCap SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P MidCap 400 Index.[23] Accordingly, the level of risk involved in the purchase or sale of a MidCap SPDR is similar to the risk involved in the purchase or sale of equity securities, except that the value of a MidCap SPDR is based on a basket of stocks. Nevertheless, the Commission believes that MidCap SPDRs raise disclosure, market impact, and secondary market trading issues that must be addressed.

A. Disclosure

Existing Amex rules regarding PDRs are applicable to MidCap SPDRs, ensuring that investors are aware of the terms, characteristics, and risks of trading MidCap SPDRs.[24] Accordingly, Amex members must provide their customers trading MidCap SPDRs with a written explanation, prepared by the Amex, describing any special characteristics and risks attendant to trading MidCap SPDRs.[25] Members and member organizations also must include this written product description with any sales material relating to MidCap SPDRs that is provided to customers or the public. Finally, any other written materials provided by a member or member organization to customers or the public that refer to MidCap SPDRs as an investment vehicle must include a statement, in a form specified by the Amex, that a circular and prospectus are available from a broker upon request. A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of MidCap SPDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms.[26]

The Amex's proposal contains no special account opening or customer suitability rules applicable to the

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[11] Telephone conversation between Michael Cavalier, Assistant General Counsel, Amex, and Francois Masur, Attorney, Division of Market Regulation, Commission, on February 24, 1995.

[12] The creation of PDRs in connection with the DTC DRS represents the only circumstance under which PDRs can be created in other than Creation Unit size aggregations.

[13] With respect to the MidCap SPDR Trust, the Sponsor has the discretionary right to terminate the Trust if the value of Trust Securities (as defined in the Trust registration statement) falls below $25,000,000 at any time after six months following, and prior to three years following, inception of the Trust. Following such time, the Sponsor has the discretionary right to terminate if Trust Securities fall below $100,000,000 in value, adjusted annually for inflation.

[14] Amex Rule 918C(b)(3).

[15] Amex Rule 918C(b)(4).

[16] 15 U.S.C. 78f(b)(5) (1988).

[17] The Commission approved Amex rules to accommodate trading on the Exchange of PDRs in Securities Exchange Act Release No. 31591, *supra* note 5. Because the analysis contained in that release is applicable to the Amex's current proposal to list and trade MidCap SPDRs, the Commission is incorporating it by reference.

[18] In originally approving PDRs, the Commission noted that PDRs will benefit investors by allowing them to trade securities based on Trusts in secondary market transactions.

The Commission notes that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem MidCap SPDRs in 25,000 share units. Nevertheless, MidCap SPDRs will have the added benefit of liquidity from the secondary market.

[19] See Division of Market Regulation ("Division"), SEC, The October 1987 Market Break (February, 1988) ("1987 Market Break Report") and Division, SEC, Market Analysis of October 13, and 16, 1989 (December 1990).

[20] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more.

[21] Because of potential arbitrage opportunities, the Commission believes that MidCap SPDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a SPDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Trust will redeem only in-kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the MidCap 400 Index.

[22] 17 CFR 270.22c–1 (1994). Investment Company Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted MidCap SPDRs an exemption from this provision to allow them to trade in the secondary market at negotiated prices. See Investment Company Act Release No. 20844 (January 18, 1995).

[23] Because SPDRs will trade like equity securities, the margin requirements for MidCap SPDRs, as with other PDRs, will be 150% of current market value for short sales, and 50% of current market value for long positions. These are the usual Regulation T, 12 CFR 220 (1994), requirements for equity margin stocks. Accordingly, the Exchange has stated its intention to obtain margin offset treatment with respect to Regulation T customer margin, both for offsetting positions of MidCap SPDRs and an equivalent amount of their component securities, and for "cover" in accordance with the provisions contained in Section 220.5(c)(3) governing options. The Exchange also intend to seek similar margin offset treatment with respect to market maker charges under Exchange Act Rule 15c3–1(c)(2)(x). 17 CFR 240.15c3–1(c)(2)(x) (1994). Telephone Conversation with Michael Cavalier, *supra* note 11.

[24] See Amex Rule 1000, Commentary .01.

[25] The Amex submitted a MidCap SPDR product description as an exhibit to its filing. Among other things, the product description states that MidCap SPDRs possess risks similar to those that exist when investing in a broadly based portfolio of common stocks, including the risk that the general level of stock prices may decline.

[26] See Amex Rule 1000, Commentary .01.

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trading of MidCap SPDRs,[27] therefore, pursuant to Amex Rule 1000(a), the Amex equity rules governing account opening and suitability will apply. Rule 411 provides, among other things, that members shall use due diligence to learn the essential facts relative to every customer, and to every order or account accepted.[28]

B. Market Impact

The Commission believes that the Amex has adequately addressed the potential market impact concerns raised by its proposal. The Exchange's existing trading limit policies regarding PDRs will apply to MidCap SPDRs. Thus, MidCap SPDR trading will halt if the Amex Rule 117 circuit breaker parameters are reached.[29] Similarly, consistent with Amex Rule 918C(b), the Amex may consider trading halts in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, as well as the existence of other unusual conditions.[30]

The Commission believes that the listing and trading of MidCap SPDRs will not adversely affect U.S. securities markets.[31] The corpus of the MidCap SPDR Trust will be a portfolio of stocks replicating the S&P MidCap 400 Index, a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. As described above, the Commission believes that MidCap SPDRs may provide substantial benefits to the marketplace and investors, including enhancing the stability of the markets for individual stocks.[32] Finally, the PDR surveillance procedures, that incorporate and rely upon existing Amex surveillance procedures governing options and equities, will apply to MidCap SPDRs.

C. Trading Rules

The Commission finds that adequate rules and procedures exist to govern the trading of MidCap SPDRs. MidCap SPDRs, like other PDRs, are equity securities that will be subject to Amex rules governing the trading of equity securities, including, among others, rules governing the priority, parity, and precedence of orders and the responsibilities of specialists. In addition, the Amex has developed specific listing and delisting criteria for MidCap SPDRs. These criteria should help to ensure that a minimum level of liquidity will exist in MidCap SPDRs to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of MidCap SPDRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

D. Dividend Reinvestment

The Commission finds that the Exchange's proposal to amend its Rule 1000(b) definition of PDRs is consistent with the Act. Specifically, the amendment makes clear that the DTC Dividend Reinvestment Service will be made available for the use of PDR holders through DTC participant brokers for the re-investment of the cash proceeds of dividend equivalent payments.[33] This should provide investors with a convenient means of re-investing dividend equivalent payments received from SPDRs.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[34] As noted above, the trading of MidCap SPDRs on a secondary market should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that MidCap SPDRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–AMEX–94–52), as amended, is approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7988 Filed 3–30–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35535; File No. SR–NASD–95–8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Extend Certain SOES Rules Through October 2, 1995

March 27, 1995.

I. Introduction

On February 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The NASD proposes to extend through October 2, 1995 certain of the prior changes to its Small Order Execution System ("SOES") that were implemented in January 1994 ("January 1994 Amended SOES Rules"),[3] modified in January 1995

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[27] The exemptions granted by the Commission under the Investment Company Act of 1940 that permit the secondary market trading of MidCap SPDRs, however, are specifically conditioned upon the customer disclosure requirements described above. See Investment Company Act Release No. 20797 (December 23, 1994), 60 FR 163.

[28] See Amex Rule 411.

[29] The circuit breaker rules provide that trading in the stock, options, and futures markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level, and thereafter trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The triggering of futures price limits for the S&P 500, S&P 100, or Major Market Index futures, however, will not in themselves result in a halt in MidCap SPDR trading or delayed openings. Such an event, however, could be considered by the Exchange, along with other factors, in deciding whether to halt trading.

[30] See Securities Exchange Act Release No. 31591, *supra* note 5.

[31] The Commission notes that SPDRs have been trading on the Amex since January 29, 1993, without incident.

[32] Even though PDR transactions may serve as substitutes for transactions in the cash market, thereby making the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing process further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs, including MidCap SPDRs, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance the Commission believes that the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[33] The product description also will be changed to make it clear to investors the availability of the Dividend Reinvestment Service.

[34] 15 U.S.C. § 78f(b)(5) (1988).

[35] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69410 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). *See also* Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

("January 1995 Amended SOES Rules")[4] and are scheduled to expire today. Without further Commission action, the SOES rules would revert to those in effect prior to the January 1994 Amended SOES Rules.

Although characterized by the NASD as a proposal to extend the January 1995 Amended SOES Rules, under this proposal, SOES will operate significantly different from its current operation. Most notably, the NASD's current proposal does not include extension of the currently effective 500 share maximum SOES order size limitation and, accordingly, the maximum order size will return to 1,000 shares on March 28, 1995. While the methodology for calculating the minimum exposure limit will remain unchanged from the January 1994 Amended SOES Rules, increasing the maximum order size from 500 shares to 1,000 shares will raise the minimum exposure limit applicable to unpreferenced orders. For market makers electing not to use the automated quotation update feature, the minimum exposure limit will rise from 1,000 shares to 2,000 shares and, for those electing to use this feature, the minimum exposure limit will rise from 500 to 1,000 shares. Moreover, the current proposal will not reinstate the short sale prohibition. Thus, in comparison to the January 1994 Amended SOES Rules, the effect of this proposal is to remove or alter every change made to SOES so that retail investor access to the Nasdaq market is improved.

Notice of the proposed rule change appeared in the **Federal Register** on February 21, 1995.[5] For the reasons discussed below, this order approves the propose rule change until October 2, 1995.

II. Description of the Current and Prior Proposals

The NASD proposes to extend two of the four January 1994 Amended SOES Rules. Specifically, the NASD proposes to extend until October 2, 1995 changes that:

(1) Reduce the minimum exposure limit for "unpreferenced" SOES orders from five times the maximum order size to two times the maximum order size, and eliminate the exposure limits for "preferenced" SOES orders; and

(2) Add an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (market makers using this update functions may establish an exposure limit equal to the maximum order size for that security).

In contrast, the January 1994 Amended SOES Rules included the above two changes as well as changes that:

(1) Reduced the maximum size order eligible for SOES execution from 1,000 shares to 500 shares; and

(2) Prohibited short sale transactions through SOES.

The January 1995 Amended SOES Rules continued all of the January 1994 Amended SOES Rules except for the short sale prohibition.[6]

III. Comments

The Commission received comments from seven commenters, with four supporting the proposal and three opposing it. The NASD responded to these comments in a letter dated March 22, 1995.[7] Subsequently, two of the original seven commenters submitted letters reiterating their respective positions; one of these supported the proposal and the other opposed it.

Generally, commenters supporting the proposal argue that approval of the March 1995 Amended SOES Rules will limit the exposure of market makers to multiple executions, which will benefit retail investors by producing narrower spreads and more liquid markets.

Commenters opposed to the proposal argue that the statistical and market quality data cited by the NASD in support of its proposal are not sufficient to support the NASD's position. They contend that the two studies on which the NASD relies fail to demonstrate any increase in market quality as a result of the rules and that market makers have ample opportunity to update their quotes in order to avoid multiple SOES executions. One commenter also argued that the NASD has not provided a sufficient basis for establishing the minimum exposure limit at 2,000 shares and that determining the appropriateness of the automated quotation update feature is not possible without information about the extent of its use. Commenters opposed to the NASD's January 1994 Amended SOES Rules and January 1995 Amended SOES Rules argued that decreasing the minimum exposure limit will increase the potential for order queues to develop and, thus, result in inferior executions for retail customers.

IV. Discussion

The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[8] In evaluating a given proposal, the Commission examines the record before it and relevant factors and information.[9] After balancing the advantages and disadvantages of extension, the Commission believes that approval of the March 1995 Amended SOES Rules through October 2, 1995 meets the above standards. Specifically, the Commission believes that returning the maximum order size to 1,000 shares, thus increasing the minimum exposure limit from 1,000 shares to 2,000 shares, and maintaining the automated quotation update feature is appropriate while the NASD considers other methods for handling small orders from retail customers.

In connection with the January 1995 Amended SOES Rules, the NASD submitted an econometric study conducted by the NASD's Economic Research Department [10] and commissioned a consulting economist to provide an assessment of the effect of the January 1994 Amended SOES Rules.[11] In summary, the NASD's

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[4] Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995).

[5] Securities Exchange Act Release No. 35364 (Feb. 13, 1995), 60 FR 9704 (Feb. 21, 1995).

[6] Thus, short sales in compliance with the NASD's short sales rule applicable to the Nasdaq market as a whole are permitted in SOES. *NASD Manual*, Rules of Fair Practices, Sec. 48, CCH ¶ 2200H.

[7] Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Mar. 22, 1995).

[8] 15 U.S.C. § 78o(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards. See S. Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975).

[9] In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S. Rep. No. 75, 94th Cong., 1st. Sess., at 7 (1975).

[10] Securities Exchange Act Release No. 35080 (Dec. 9, 1994), 59 FR 65109 (Dec. 16, 1994). The NASD's Economic Research Department examined Nasdaq bid-ask spreads in specific stocks and price volatility on two sample days each month from November 1993 (three months prior to the effective date of the rules) through August 1994.

[11] Letter from John F. Olson, Counsel for the NASD, Gibson, Dunn & Crutcher, to Jonathan Katz, Secretary, SEC (Dec. 30, 1994) (submitting in connection with File No. SR–NASD–94–68 analysis entitled The Association Between the Interim SOES

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Economic Research Department found that since implementation of the January 1994 Amended SOES Rules: (a) spreads in Nasdaq securities have declined; and (b) volatility of Nasdaq securities appears to be unchanged, except for a brief, market-wide period of volatility in March and April 1994. The commissioned study reported that while percentage quoted spreads increased a statistically insignificant amount, percentage quoted spreads adjusted for other determining factors declined by a statistically significant, but economically insignificant, amount. From this data, the author concluded that the January 1994 Amended SOES Rules did not harm market quality. In support of its current proposal, the NASD also relies on these studies for the proposition that the January 1994 Amended SOES Rules and the January 1995 Amended SOES Rules collectively and individually have improved the quality of the Nasdaq market.

In its order approving the January 1995 Amended SOES Rules, however, the Commission expressed its belief that the empirical data submitted by the NASD demonstrated neither significant improvement to nor serious deterioration in the quality of the Nasdaq market subsequent to the adoption of the January 1994 Amended SOES Rules.[12] Since Commission approval of the January 1995 Amended SOES Rules, no data concerning the impact of the January 1994 Amended SOES Rules or the January 1995 Amended SOES Rules has been submitted. The Commission, therefore, continues to believe that empirical evidence submitted by the NASD demonstrates neither a significant improvement to nor serious deterioration in the quality of the Nasdaq market subsequent to the adoption of the January 1994 Amended SOES Rules. Moreover, the Commission believes this is true whether the amended SOES rules are viewed collectively or individually.

The absence of negative implications for market quality must be considered in conjunction with other effects of the recent changes to SOES on the investing public. The current proposal, in conjunction with termination of the short sale prohibition in January 1995, restores much of the access retail investors with small orders enjoyed prior to the January 1994 Amended SOES Rules and, thus, the Commission believes that a sufficient basis exists for approving the NASD's proposal. Effective March 28, 1995, the 1,000 share maximum order size in effect prior to the January 1994 Amended SOES Rules will be restored. This will provide retail investors enhanced opportunity to obtain execution of transactions between 500 and 1,000 shares and, accordingly, will improve access to the Nasdaq market. The Commission believes that the net effect of the instant proposal and the January 1995 Amended SOES Rules is a substantial departure from the January 1994 Amended SOES Rules, and would eliminate the economically significant restrictions imposed on order entry firms by the prior rules.

The NASD's proposal will continue the methodology for calculating a market maker's minimum exposure limit; that is, two times the maximum order size rather than the pre-January 1994 Amended SOES Rules calculation of five times the maximum order size. Restoring the pre-January 1994 Amended SOES Rules maximum order size of increasing the minimum exposure limit from 1,000 shares to 2,000 shares.

Moreover, the current methodology for calculating a market maker's outstanding exposure limit will continue to exclude orders executed pursuant to a preferencing arrangement. Under the SOES Rules prior to the January 1994 Amended SOES Rules, both preferenced and unpreferenced orders were considered when calculating a market maker's remaining exposure limit. Thus, in relative terms, the 2,000 share exposure limit potentially provides greater liquidity compared to the pre-January 1994 Amended SOES Rules' 5,000 share minimum exposure limit. This assures enhanced access to Nasdaq market makers by both firms with and without preferencing arrangements.

The Commission believes that while the proposal does not restore the pre-January 1994 Amended SOES Rules minimum exposure limit, it provides customers fair access to the Nasdaq market and reasonable assurance of timely executions. In this regard, the maximum order size will equal the size requirement prescribed under the Firm Quote Rule and NASD rules governing the character of market maker quotations.[13] Moreover, market maker's minimum exposure limit for unpreferenced orders will be double its minimum size requirement prescribed under these rules.[14]

The Commission also believes that extending the automated update function is consistent with the Firm Quote Rule. The update function provides market makers the opportunity to update automatically their quotations after executions through SOES;[15] under the Commission's firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes.[16]

The Commission notes commenter views that the NASD's proposal does not go far enough in restoring access available to investors prior to the January 1994 Amended SOES Rules. As discussed above, however, the current proposal does offer investors significantly wider latitude than the January 1994 Amended SOES Rules and the January 1995 Amended SOES Rules. Moreover, the limited duration of the proposal will give the NASD and interested persons an opportunity to assess the broader implications of immediate execution of orders between 500 and 1,000 shares through SOES.

V. Conclusion

As indicated above, the Commission has determined to approve the March 1995 Amended SOES Rules through October 2, 1995. In light of the balance of factors described above and the limited duration of the current proposal, the Commission believes extension of the changed methodology for calculating the minimum exposure and the addition of an automatic quotation update feature is consistent with the Act.

The Commission, in the exercise of the authority delegated to it by Congress, and in light of its experience regulating securities markets and market participants, has determined that approval of the March 1995 Amended SOES Rules until October 2, 1995 is consistent with maintaining investor protection and fair and orderly markets, and that these goals, on balance, outweigh any possible anti-competitive effects on order entry firms and their customers.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR–NASD–95–8 be, and hereby is, approved, effective March 28, 1995 through October 2, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–7987 Filed 3–30–95; 8:45 am]

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Rules and Nasdaq Market Quality prepared by Dean Furbush, Ph.D., Economists Incorporated (Dec. 30, 1994)). This analysis compared sample days in the three months prior to and three months after the effective date of the January 1994 Amended SOES Rules.

[12] Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995).

[13] *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(a), (CCH) ¶ 1819.

[14] 17 CFR 240.11Ac1–1(c). Nonetheless, the Commission is concerned about the potential for delayed and/or inferior executions. In this regard, the Commission expects the NASD to monitor the extent to which exposure limits are exhausted, the extent to which the automated quotation update feature is used, and the effects these two aspects have on liquidity. Moreover, the Commission expects the NASD to consider the possibility of enhancements to eliminate the potential for delayed and/or inferior executions.

[15] In its response to commenters, the NASD indicated that 21 percent of market makers in Nasdaq National Market securities use the automated quotation update feature resulting in 38 percent of all market making positions in Nasdaq National Market securities. Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Mar. 22, 1995).

[16] The Firm Quote Rule requires market makers to execute orders at prices at least as favorable as their quoted prices. The Rule also allows market makers a reasonable period of time to update their quotations following an execution, allows market makers to reject an order if they have communicated a quotation update to their exchange or association, and provides for a size limitation on liability at a given quote. 17 CFR 240.11Ac1–1(c)(2). *See also*, Securities Exchange Act Release No. 14415 (Jan. 16, 1978), 43 FR 4342 (Feb. 1, 1978).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–015]

Load Lines: Barges on Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard proposes to amend its current policy exempting unmanned, river-service, dry-cargo barges operating on Lake Michigan between Chicago (Calumet Harbor), Illinois, and Milwaukee, Wisconsin, from the requirement that they have a Great Lakes Load Line Certificate. In order to qualify for the exemption, the barges must meet certain specified requirements intended to provide a level of safety equivalent to that provided under the Great Lakes load line regulations. Also, the Coast Guard proposes to exempt similar barges under the same requirements operating between Chicago (Calumet Harbor), Illinois, and St. Joseph (Benton Harbor), Michigan. These changes should facilitate the movement of goods along these routes while maintaining an equivalent level of safety.

DATES: This exemption is effective March 31, 1995. Comments must be received on or before May 15, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–015), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William Hayden, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard (G–MTH–3), room 1308, 2100 Second Street, SW., Washington DC 20593–0001. The telephone number is (202) 267–2988.

SUPPLEMENTARY INFORMATION:

Changes to the Chicago to Milwaukee Route Exemption

On September 21, 1992, the Coast Guard published a notice in the Federal Register (57 FR 43479) announcing that unmanned barges designed for river service and carrying dry, non-hazardous cargo from the Illinois River system, via Chicago and Lake Michigan, to Milwaukee, Wisconsin, are exempt from the requirement that they have a Great Lakes Load Line Certificate under 46 CFR part 45. In order to qualify for the exemption, the barges must have a Limited Service Domestic Voyage Load Line Certificate and meet certain special operating restrictions and conditions. Under 46 CFR 45.15(a), Coast Guard determined that, due to the sheltered nature of the voyage along the coast of Lake Michigan and to the special restrictions and conditions imposed, it would be unreasonable to require these barges to have a Great Lakes load line under 46 CFR part 45.

Based on experience gained since 1992, the Coast Guard is making the following changes to the special restrictions and conditions for the exemption:

(1) The lead barge of the tow must have a raked bow. [See paragraph II.4. below.] Comments received at a joint Coast Guard/industry meeting held in Muskegon, Michigan, on October 24, 1994, indicated that using a box (square end) barge as the lead for the tow greatly reduces the transit speed, thereby increasing the transit time. Representatives from several companies operating barges on the Chicago to Milwaukee route stated that they now use a rake-end barge as the lead barge. An increase in speed should reduce the transit time to a harbor of safe refuge in the event of an adverse change in the weather.

(2) Paragraph III.5. allows the initial load line survey for barges less than 10 years old to be conducted with the barge remaining in the water, rather than drydocked or hauled out of the water as presently required. A survey afloat should be sufficient in light of the restricted nature of the route, the relatively benign environment of river service, and the relatively small portion of time the barges would be operating on Lake Michigan. When the barge reaches 10 years of age or upon expiration of its Limited Service Domestic Voyage Load Line Certificate, whichever occurs first, the survey must include drydocking. [See paragraph III.6.]

(3) Carrying cargo to a Lake Michigan port not along the designated route is prohibited. [See paragraph II.2.] The purpose for the exemption is to provide uninterrupted service between the inland waterway system and certain Lake Michigan ports and not to circumvent traditional intra-lake service provided by Great Lakes-capable barges.

Establishment of the Chicago to St. Joseph Route Exemption

As recommended by ABS Americans (ABS) on January 9, 1995, the Coast Guard is granting that a similar exemption with the same restrictions for voyages between Calumet Harbor and Benton Harbor, St. Joseph, Michigan. The Coast Guard is allowing 45 days for public comment and may amend this exemption based on the comments received.

To eliminate duplicative paperwork, an approval for operation on one route constitutes an approval for operation on both routes. [See paragraph I.3.]

For the reasons set out above, the Coast Guard, under 46 U.S.C. 5108 and 46 CFR 45.15(a), amends the exemption announced in the notice of September 21, 1992, (57 FR 43479) as follows:

LIMITED SERVICE DOMESTIC VOYAGE LOAD LINE ROUTES: CHICAGO, ILLINOIS, TO MILWAUKEE,

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WISCONSIN, AND CHICAGO, ILLINOIS, TO ST. JOSEPH, MICHIGAN

I. General

1. A barge operating under the following restrictions and complying with the following conditions is exempt, under 46 CFR 45.15(a), from 46 CFR part 45, Great Lakes Load Lines.

2. This exemption supersedes the exemption announced in the notice published in the **Federal Register** on September 21, 1992, (57 FR 43479).

3. An approval for operation on either route described in paragraph II.2. results in an approval for operation on both routes. A load line certificate under paragraph II for operation on either route may be amended, upon written request to ABS Americans, to include operation on both routes.

II. Operating Restrictions

Each barge must have a Limited Service Domestic Voyage Load Line Certificate under 46 CFR part 44. The following restrictions apply and must appear on the certificate:

1. The certificate is valid only for unmanned, river-service, dry-cargo barges.

2. Barge operation is limited to voyages between Calumet Harbor, Chicago, Illinois, and Milwaukee, Wisconsin, and between Calumet Harbor and Benton Harbor, St. Joseph, Michigan. Barges may make stops at intermediate ports along a route; however, they may not carry cargo directly from a Lake Michigan port on one route to a Lake Michigan port on the other route without first entering the river system at Calumet Harbor.

3. Hazardous materials, as defined in 46 CFR part 148 and 49 CFR chapter I, subchapter C, may not be carried as cargo. Cargo is limited to dry commodities, such as steel products, heavy machinery, dry bulk fertilizer, grain, bulk cement, scrap materials, and forest products.

4. The towing vessel must have adequate horsepower to handle the size of the tow, with a minimum of 1,000 horsepower. The tow is limited to a maximum of three barges, with the lead barge having a raked bow.

5. Before beginning each voyage, the towing vessel operator shall ensure that each barge of the tow meets the following requirements:

(a) Deck and side shell plating is free of visible holes, fractures, or serious indentations, as well as damage that would be considered in excess of normal wear.

(b) The cargo box side and end coamings are watertight.

(c) All manholes are covered and secured watertight.

6. The towing vessel operator shall maintain radio contact with the local weather radio network.

7. Before getting underway, the towing vessel operator shall determine the weather expected along the proposed route. If the following wind speed and wave height limits are expected to be exceeded at any time during the course of the planned voyage on Lake Michigan, the towing vessel may not leave harbor:

(a) When operating between Chicago and Milwaukee.

Wind direction	Continous velocity (knots)	Wave height
SE, E, NE ..	15	4 feet (1.2 m).
N, S, W, NW, SW.	20	4 feet (1.2 m)

(b) When operating between Chicago and St. Joseph.

Wind direction	Continuous velocity (knots)	Wave height
N, W, NW, SW.	15	4 feet (1.2 m).
E, S, NE, SE.	20	4 feet (1.2 m).

While underway, if the wind speed and wave height exceed the limits above, the towing vessel must proceed immediately to the nearest harbor of safe refuge.

8. The distance from shore during the course of a voyage may not exceed 5 nautical miles.

9. Towing is permitted only if ice conditions are such that operation of the vessel is not imperiled.

10. Precautions must be taken to prevent shifting of cargo.

11. The operational requirements in paragraph II are in addition to other applicable requirements for operation on the Great Lakes.

III. Barge Conditions

A barge that meets the following requirements is eligible for a Limited Service Domestic Voyage Load Line Certificate. ABS Americas is authorized to issue these certificates on behalf of the Coast Guard.

In determining a barge's suitability for assignment of a limited service load line, the following variances apply:

1. The barge length to depth ratio must not exceed 22.

2. The barge must be built and maintained to the minimum scantlings of the American Bureau of Shipping (ABS) River Rules in effect at the time of construction. ABS must be provided with evidence demonstrating compliance with the ABS River Rules.

3. The freeboard assigned to the barge must be at least 24 inches (610 millimeters). For an open-hopper barge, the operating freeboard combined with the height of the cargo box coamings must be at least 54 inches (1372 millimeters).

4. An initial load line survey under 46 CFR 42.09–25 and subsequent annual surveys under 46 CFR 42.09–40 are required to determine compliance with the requirements of this notice, the condition of all watertight openings and closures, and the structural integrity of the barge.

5. At the request of the owner, a light-vessel structural survey may be conducted with the barge remaining in the water, rather than drydocked or hauled out as required by 46 CFR 42.09–25(a), if the barge is less than 10 years old and the following are met:

(a) The draft during the survey does not exceed 15 inches (380 millimeters).

(b) The barge is empty and thoroughly cleaned of all debris, excessive rust, scale, mud, and liquids.

(c) Gaugings are taken to the extent necessary to verify that the scantlings are in accordance with approved drawings.

(d) The bottom and side shell plating below the light waterline are closely examined internally. If the surveyor determines that sufficient cause exists, the surveyor may require that the barge be drydocked or hauled out and further external examination conducted.

6. When the barge reaches 10 years of age or upon the expiration of the Limited Service Domestic Voyage Load Line Certificate, whichever occurs first, the barge must be drydocked or hauled out and examined externally.

Dated: March 24, 1995

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 95–7861 Filed 3–30–95; 8:45 am]

BILLING CODE 4910–14–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 24, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50223
Date filed: March 20, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 17, 1995
Description: Application of Independence Air, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing Interstate Scheduled Air Transportation of persons, property, and mail.

Docket Number: 50228
Date filed: March 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 19, 1995
Description: Application of Omni Air Express, Inc., applies, pursuant to Sections 41101 and 41102 of Title 49 of the United States Code, Parts 201 and 204 of the Economic Regulations and Subpart Q of the Procedural Regulations, for issuance of a Certificate of Public Convenience and Necessity to authorize Omni to provide Non-Scheduled, Charter Interstate and Overseas air transportation of persons.

Docket Number: 50229
Date filed: March 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 19, 1995
Description: Application of Omni Air Express, Inc., applies, pursuant to Sections 41101 and 41102 of Title 49 U.S.C., Parts 201 and 204 of the Economic Regulations and Subpart Q of the Regulations, for issuance of a Certificate of Public Convenience and Necessity to authorize Omni to provide Non-Scheduled, Charter Foreign Air Transportation.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–7910 Filed 3–30–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended March 24, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50224
Date filed: March 21, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Telex Reso 033f, Currency Rates Changes for Hungary
Proposed Effective Date: April 1, 1995

Docket Number: 50231
Date filed: March 23, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 734, Special Amending Reso from Zimbabwe, Telex—Correction
Proposed Effective Date: April 1, 1995

Docket Number: 50232
Date filed: March 23, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 733, Specific Commodity Rates from India, Telex—Correction
Proposed Effective Date: April 1, 1995

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–7911 Filed 3–30–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Intent to Prepare Environmental Impact Statement, Miami International Airport, Miami, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that an Environmental Impact Statement (EIS) will be prepared and considered for the proposed construction of a new parallel east/west runway at Miami International Airport.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA, in cooperation with Dade County, Florida, will prepare an Environmental Impact Statement (EIS) for a proposed new parallel transport runway at Miami International Airport (MIA). Because of airlines' rapid growth during 1992 at MIA and the projected future increase in air traffic operations, the Airport Master Plan approved June 29, 1994, recommended the development of a new parallel runway (8,600' x 150') for the short range planning period (0–5 years).

Relocation of existing parallel and connecting taxiways is also proposed. The proposed project would entail construction activity limited to current Airport property (i.e., site preparation, drainage, paving, lighting, NAVAIDS, environmental mitigation, obstruction clearing, and other associated work required for the new runway).

The new runway is planned as a non-precision instrument runway with visibility minimums greater than ¾ of a mile. The runway will have an approach slope of 34:1 with a primary surface width of 500 feet.

The EIS will include evaluation of a no-build alternative and other feasible alternatives that may be identified during the public scoping meeting. The proposed new runway would provide sufficient airfield capacity at MIA to accommodate expected aircraft demand into the 21st century. The increased capacity provided by the proposed project would result in a significant decrease in average aircraft delay times from the projected no-build conditions.

The movement of aircraft operations from existing runways to a new runway could result in changes in runway use. The EIS will determine any noise impacts associated with the operation of the proposed runway. In addition to noise impacts, the EIS will determine any impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous wastes and coastal zone management.

Public Scoping: To ensure that the full range of issues related to the proposed project are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. A public scoping meeting to identify significant issues will be held in Miami, Florida. For this meeting we are inviting the public as well as the local, State and Federal agencies.

Written comments may be mailed to the Informational contact listed above within 30 days from publication of this Notice.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, March 13, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–7984 Filed 3–30–95; 8:45 am]

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Charlotte/Douglas International Airport, Charlotte, NC; Environmental Impact Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Aviation Administration intends to prepare an Environmental Impact Statement (EIS) to address environmental and related impacts expected to be associated with the expansion of Charlotte/Douglas International Airport located at Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747 (404) 305–7153.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare an EIS for the proposed project to construct and operate a third parallel runway west of the existing runway 18R/36L with associated taxiways and other related facilities. The location and length of the runway will be determined in conjunction with the Airport Master Plan Update (AMP) and Part 150 Noise Compatibility Program (NCP) which will be conducted in the same time frame as the EIS except under separate contracts. The planning for the third parallel runway will require close coordination between the EIS and AMP and NCP contractors.

The FAA plans to coordinate with Federal, State, and local agencies which have jurisdiction by law or special expertise with respect to any environmental impacts associated with the proposed project.

The EIS will also evaluate cumulative impacts anticipated to occur as a result of the implementation of other foreseeable future improvements at the Charlotte/Douglas International Airport.

It is anticipated a Request For Qualifications will be advertised in April or May of this year for a consultant to prepare the EIS.

PUBLIC SCOPING: The Federal Aviation Administration will hold a scoping meeting to solicit input from Federal, State, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the project. In addition, a public scoping meeting will be held and the public may submit written comments on the scope of the environmental study to the address identified in **FOR FURTHER INFORMATION CONTACT**. A Public Notice issued at a later date will provide the date, time, and place of the scoping meeting and the period for written comments.

Issued in Atlanta, Georgia, on March 22, 1995.

Howard M. Robinson,

Manager, Atlanta Airports District Office.

[FR Doc. 95–7985 Filed 3–30–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–20; Notice 1]

Child Safety Seats; Agreement Between General Motors and U.S. Department of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; request for certifications.

SUMMARY: This notice describes an agreement between General Motors (GM) and the U.S. Department of Transportation (DOT), under which GM has agreed to donate funds to one or more qualified organizations for the purchase and distribution of child safety seats. Organizations that wish to receive such funds are required to certify in writing that they are qualified, in accordance with criteria established in the agreement. This notice requests that such organizations submit certifications and describes the criteria they must meet and the information they must submit with their certifications to be eligible to receive these funds.

DATES: Certifications must be received no later than May 1, 1995.

ADDRESSES: Certifications should be submitted to: Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Gorcowski, National Organizations Division, NTS–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–2683.

SUPPLEMENTARY INFORMATION: On December 2, 1994, Secretary of Transportation Federico Peña announced that DOT and GM had agreed in principle to a resolution of the investigation by the National Highway Traffic Safety Administration (NHTSA) into an alleged defect related to motor vehicle safety in certain 1970–1991 GM C/K pickup trucks. The terms of the resolution were finalized in a separate agreement that was executed between GM and DOT on March 7, 1995.

Under the terms of the agreement, GM agreed to provide funds over a period of five years to support highway safety research and programs that will prevent motor vehicle deaths and injuries.

In the area of child safety, GM agreed to donate $8,000,000 to qualified organizations for the purchase and distribution of child safety seats. Of this amount, $4,000,000 will be donated during the first year after the date of the agreement (approximately $1,000,000 each quarter) and $4,000,000 will be donated over the next four years. The seats will be directed to low income and special needs populations that are underserved and culturally diverse.

NHTSA estimates that these funds will allow for the purchase and distribution of between 125,000 and 200,000 child safety seats for needy families which, in turn, will save at least 50 lives and prevent approximately 6,000 injuries.

Background

There are approximately 25 million young children, under the age of eight years old, who need the protection of child safety seats. One fourth of these children come from families that are below the poverty level.

As many as 3 million children in low-income families do not have access to adequate child safety seats. An additional 3 million children or more have access to child safety seats but, for a variety of reasons, are not being secured in these seats properly. Additionally, children with special transportation needs, such as children with disabilities, often require uniquely designed child safety seats that are too expensive for most families of average income to afford.

For these and other reasons, millions of children ride each day either unprotected or inadequately protected by child safety seats. A disproportionate number of these children are from low income or rural families or from culturally diverse populations.

To increase child safety seat usage, child safety seats must be made more readily available, particularly to underserved low income and special needs families. These families must also be motivated in the use of child safety seats and educated about their proper usage.

Public interest in child passenger safety today is at an all-time high, and there are a number of national organizations that work in this area. These organizations, in collaboration with state and local affiliates and related agencies, distribute child safety seats in communities and educate families about the proper use of these seats and other

practices that can lead to increased highway safety.

An effective child safety seat program can reach and have a major positive impact on large numbers of children, as well as their families. To be most effective, however, the program must ensure that seats are distributed primarily to the populations most at risk, including underserved low income and special needs families. If programs do not target these populations, the seats could be provided instead to families that could otherwise afford to purchase them, with little net benefit.

List of Qualified Organizations

The agreement between GM and DOT provides:

DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

The agreement provides further that any organization that is interested in being identified as a "qualified organization" must certify to DOT in writing that it will meet a number of criteria set forth in the agreement.

Today's notice describes the criteria that an organization must meet and the information it must submit with its certification, to be identified as a "qualified organization." Certifications must be received no later than 30 days after the date of publication of today's notice in the **Federal Register**. When NHTSA completes its review of the certifications, it will prepare a list of organizations it has identified as qualified and appropriate to receive donations for the purchase and distribution of child safety seats. NHTSA will provide the list to GM and place it in the public docket.

This list of organizations will be used by GM during the first and second quarters of the first year after the date of the agreement, during which time GM will donate a total of approximately $2 million for the purchase and distribution of child safety seats.

Within six months (or less) from the date of publication of today's notice, NHTSA plans to publish a second notice in the **Federal Register** requesting certifications from organizations that wish to receive donations after the second quarter. Any organization that wishes to be included on the second list, whether or not the organization was included on the first list, must submit a certification. NHTSA reserves the right to request at that time the submission of additional information, not identified in today's **Federal Register** notice, from organizations seeking to be included on the second list.

Based on its review of the certifications received in response to the second **Federal Register** notice, NHTSA will prepare a revised list of organizations that have been identified as qualified and appropriate to receive future donations from GM. (As explained earlier, GM will donate approximately $1 million in the third quarter of the first year after the date of the agreement, $1 million in the fourth quarter, and a total of $4 million during the following four-year period.)

NHTSA may, from time to time, publish additional notices requesting certifications and prepare additional revised lists of qualified organizations, if it determines it is appropriate to do so.

Certification Criteria

In accordance with the agreement, in order to be identified as a "qualified organization," an organization must certify in writing that it shall meet eleven separate criteria. Each of these criteria is described below:

(1) Work through affiliates

The organization must certify in writing that it shall:

work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs

Organizations must have established and effective affiliate relationships and on-going collaboration with other appropriate agencies or organizations necessary to carry out the effort. Organizations can satisfy this criterion by showing that they work either through their state or local affiliates (i.e., units or chapters specifically organized to carry out the organization's mission), or with other child safety-related agencies or organizations, such as children's hospitals or fire and rescue agencies.

Organizations may have either a built-in network or collaborative access to such a network. The network must enable the organization to identify families of target populations who have not been reached through traditional channels, including families who could not otherwise afford seats or who have special needs, and to distribute seats and provide education to these families.

Organizations must submit information regarding their structure and a designation of geographic locations of state and local affiliates that are expected to be involved in the effort. Organizations must also submit information regarding the organizations and agencies with which they will be affiliated for purposes of this program.

(2) Existing program or trained staff

The organization must certify in writing that it shall:

have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues

Organizations must have experience, either directly or through their affiliates, with a loaner or give-away program or staff trained in child passenger safety or related issues. The experience or training is necessary to ensure that organizations, or their affiliates, are able to operate such programs, and to meet the deadlines and requirements established in the agreement for distributing seats and providing education.

Organizations must describe their existing loaner or give-away child safety seat programs and their experience in providing education on the use of child safety seats or on other related public health issues. They must identify the number of current trained staff and provide a description of training conducted or taken by their staff and the dates of last training. Organizations may also describe existing loaner or give-away programs, experience in providing education and provide the training information described above for agencies or organizations with which they have collaborative relationships.

(3) Low-income or special needs across broad geographic area

The organization must certify in writing that it shall:

distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States

The intent of this provision is to assure that underserved children from culturally diverse populations throughout the United States receive the benefits of the program. Qualified organizations need not distribute seats in every state. However, they must have a program that is national in scope and reaches their target populations throughout the United States. Organizations must submit their mission statements, a description of the method they will use to identify underserved low income or special needs families, and a list of the geographic locations that would be targeted for receipt of the seats. They must demonstrate the ability to identify underserved low income and special

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needs families, and the ability to distribute seats to these families.

(4) Mix of child safety seats

The organization must certify in writing that it shall:

comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs)

Children of differing ages and transportation needs require different types of child safety seats. The intent of this provision is to assure that the children who are recipients under this program receive seats that meet their needs. The provision is also intended to assure that organizations purchase the correct mix of seats for their target population.

Organizations will need to identify the ages and transportation needs of the intended recipients and the types of seats needed to properly fit the target group. For example, an organization targeting special needs children may need very specialized seats, while a program targeting older children may need convertible toddler and booster child restraint devices.

Organizations must specify the maximum number of seats they are capable of distributing within 120 days of their receipt of the funds and the amount of funding they are requesting from GM to purchase and distribute this number of seats. Organizations must specify the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (e.g., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats), and their expected per unit cost to purchase and distribute each type of seat. Organizations must also describe the method used to derive the mix. They should indicate whether the mix or price would change if they receive less funding than the full amount requested.

(5) Within 120 days

The organization must certify in writing that it shall:

distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds

Organizations will be required, under the agreement, to purchase and distribute all of the seats to local agencies within 120 days of receipt of the funds. To satisfy this criterion, organizations must demonstrate the ability to meet this requirement. Organizations must submit a plan describing how they will reach a broad geographical area and how they will identify the low income and special needs families to be served by this program. The plan must describe how they will accomplish the purchase and distribution of seats within the 120-day period and it must include a proposed schedule for the purchase and distribution of seats.

Organizations must also demonstrate that the distribution and education efforts funded under this program will either create new initiatives, or complement (rather than duplicate) existing initiatives, in the geographic areas to be served. This may be demonstrated by including in the plan, either letters of support from the organizations that are (or would be) responsible for child safety seat programs (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

(6) Educate recipients

The organization must certify in writing that it shall:

educate recipients of the seats as to methods of proper installation and use

While the distribution of child safety seats is vitally important, and can save many children's lives, the effectiveness of those seats in preventing injury and death increases significantly when recipients are trained in and follow proper use and installation instructions. Organizations are required, under the agreement, to provide education to the recipients of the seats regarding the proper installation and use of child safety seats. Organizations must describe the means they or their affiliates will use to educate families about the proper installation and use of child safety seats (e.g., hands-on demonstration, video, brochures).

To assist in this effort, NHTSA will make resources, including materials and technical assistance, available to the selected organizations.

(7) Administrative expenses

The organization must certify in writing that it shall:

not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats

Organizations shall use no more than 10 percent of the funds provided by GM for administrative expenses related to the distribution of the seats. Examples of administrative expenses include operational overhead such as secretarial support, telephone expenses, and time of paid staff to help develop the plans for these efforts. No additional information is required to be submitted at this time in support of this element of the certification.

(8) Added to existing funds and no diversions

The organization must certify in writing that it shall:

add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities

Organizations shall add the GM-provided funds to the total of their existing funds, if any, spent on the distribution of child safety seats to low income and special needs families and not divert any funds currently budgeted to such activities, if any, to other activities. In other words, the funds provided by GM must represent new and additional resources, and may not be used to replace other funds, if any, that otherwise would have been used for the distribution of child safety seats to low-income families and their related education activities. No additional information is required to be submitted at this time in support of this element of the certification.

(9) Third-party audit

The organization must certify in writing that it shall:

allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT

Organizations shall allow the activities conducted pursuant to this program to be audited by such third party as may be selected by DOT. Organizations shall also maintain adequate records to allow an audit to be conducted. No additional information is required to be submitted at this time in support of this element of the certification.

(10) Enforceable commitments and promises

The organization must certify in writing that it shall:

acknowledge and agree that such commitments and promises shall be enforceable

Organizations shall acknowledge and agree that the commitments and promises they make shall be enforceable through legal process or other appropriate means. No additional information is required to be submitted at this time in support of this element of the certification.

(11) No assumption of responsibility

The organization must certify in writing that it shall:

acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use

The organization shall acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use. No additional information is required to be submitted at this time in support of this element of the certification.

Evaluation Criteria

Certifications must demonstrate that the organization meets all criteria listed above. Certifications will be evaluated based on the following factors:

1. Understanding of the requirements of the agreement and soundness of approach as shown by the organization's plan and certification.

2. The ability to identify underserved low income and special needs families.

3. The ability to distribute child safety seats to these target populations at the community level.

- The experience of the organization, or its affiliates, in distributing child safety seats
- The breadth and diversity of the underserved population the organization can effectively reach

4. The ability to provide education to recipients.

- The experience of the organization, or its affiliates, in providing education on the use of child safety seats or on other related public health issues
- The level of training of the organization's staff or of the staff of its affiliates

5. The ability to conduct a distribution and education program that either creates new initiatives, or complements (rather than duplicates) existing initiatives, in the geographic areas to be served.

Certification Procedures

To be considered, certifications must be received no later than 30 days after the date on which today's notice is published in the **Federal Register**. Certifications should be submitted to Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

Certifications must include each of the following:

(1) Certification Statement

A written statement, signed by an authorized official of the organization, certifying that the organization shall:

(i) work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

(2) Plan

A plan describing how the organization will reach a broad geographical area, how it will identify underserved low income and special needs families that will be served by the program, and how it will accomplish the purchase and distribution of child safety seats within 120 days of receipt of the funds. The plan must include a proposed schedule for the purchase and distribution of seats, and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

(3) Additional Information

The following additional information to ensure that the organization is capable of meeting the objectives of the agreement:

- Information regarding the organization's structure and a designation of geographic locations of state and local affiliates to be involved in the effort;
- Information regarding the organizations and agencies with which the organization will be affiliated for purposes of this program;
- A description of the organization's, or its affiliates': existing loaner or give-away programs; experience in providing education on the use of child safety seats or on other related public health issues; the number of trained staff; a description of training conducted or taken; and the dates of last training;
- A mission statement of the organization;
- The method to be used to identify underserved low income or special needs families;
- A list of the geographic locations that would be targeted for receipt of the seats;
- The maximum number of seats the organization is capable of distributing within 120 days of its receipt of the funds; the amount of funding the organization is requesting from GM to purchase and distribute this number of seats; the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (e.g., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats); the expected per unit cost to purchase and distribute each type of seat; the method used to derive the mix; and, if applicable, any change in mix or price if the organization receives less funding than the full amount requested; and
- A description of the means to be used by the organization or its affiliates to educate families about the proper installation and use of child safety seats.

Organizations must submit one original and two copies of their certifications. Certifications shall be subject to 18 U.S.C. 1001, which prohibits to making of false statements. Organizations are requested to submit four additional copies to facilitate the review process, but there is no requirement or obligation to do so.

Organizations that would like to be notified upon receipt of their certifications should enclose a self-addressed stamped postcard in the envelope with their certifications. Upon receiving the certifications, the postcard will be returned by mail.

Issued on: March 27, 1995

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 95–7986 Filed 3–28–95; 2:55 pm]

BILLING CODE 4910–59–P

[Docket No. 94–60; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)).

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The petition, which was submitted by J.K. Motors, Inc. of Kingsville, Maryland (J.K.), a registered importer of motor vehicles, requested NHTSA to decide that a 1994 Alfa Romeo 164 Quadrifoglio passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to the version of the 1994 Alfa Romeo 164 Quadrifoglio that was originally manufactured for importation into and sale in the United States and that was certified by its original manufacturer, Alfa Lancia Industriale, as complying with the safety standards, and (2) it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

NHTSA published a notice in the **Federal Register** on August 15, 1994 (59 FR 41811) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Fiat Auto R&D U.S.A., a division of Fiat Auto U.S.A., Inc. (Fiat), the U.S. representative of the vehicle's original manufacturer.

In its comment, Fiat stated that the structure of the non-U.S. certified Alfa Romeo 164 Quadrifoglio differs from that of its U.S. certified counterpart to accommodate a different powertrain. Fiat further stated that the vehicle's manufacturer determined that "without completely redesigning the rear portion" of the non-U.S. certified Alfa Romeo 164 Quadrifoglio, it would be "extremely costly and technically impossible" to bring the vehicle into compliance with applicable Federal motor vehicle safety standards, particularly Standard No. 301, *Fuel System Integrity*, and other vehicle crashworthiness standards.

NHTSA accorded J.K. an opportunity to respond to Fiat's comments. As of the date of this notice, J.K. has failed to submit such a response. This has compelled NHTSA to conclude, from the state of the record, that the petition does not clearly demonstrate that the non-U.S. certified version of the 1994 Alfa Romeo 164 Quadrifoglio is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1) (formerly section 108(c)(3)(C)(ii) of the Act), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 27, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–7909 Filed 3–30–95; 8:45 am]

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Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC). Each Committee meeting as well as a joint session of the two Committees will be held in Room 2230 of the U.S. Department of Transportation Building, 400 Seventh Street SW., Washington, DC.

On May 2, at 8:00 a.m., the TPSSC will meet. Agenda items include discussion and voting on Qualifications of Pipeline Personnel and Passage of Instrumented Internal Devices.

At 1:00 p.m., TPSSC will be joined by members of the THLPSSC for a joint session which will include:

1. Welcome by the RSPA Administrator
2. Policy Issues
3. Regulatory Reinvention Initiatives
4. Update of the National Association of Pipeline Safety Representatives and National Association of Regulatory Utilities Commissioners Committees
5. One-Call Campaign
6. New Jersey Institute of Technology Report
7. Risk Management

On May 3, from 8:00 a.m. to 12:00 noon, the joint TPSSC–THLPSSC session will include: (1) DOT Restructuring, (2) Legislation, (3) Environmentally Sensitive Areas, and (4) Regulatory Updates including Mandatory Participation in One-Call System, Excess Flow Valves, Definitions of Gas Gathering Lines, Customer Owned Service Lines, and Emergency Flow Restricting Devices.

At 1:00 p.m., the THLPSSC will meet. Agenda items include discussion and voting on Qualification of Pipeline Personnel and Passage of Instrumented Internal Devices.

Each meeting will be open to the public, but attendance will be limited to the space available. Please note that attendance will particularly be limited during the joint session of the two committees because of space constraints.

Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Bernardyne Williams or Gwen Hill, Room 2335, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–6570, not later than April 24, 1995, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC, on March 28, 1995

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–7982 Filed 3–30–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

March 23, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Number: 1550–0062
Form Number: Not Applicable
Type of Review: Extension
Title: Minimum Security Devices and Procedures
Description: The Bank Protection Act and OTS implementing regulations require savings associations to establish security devices and procedures. The required written security program allows OTS to evaluate whether savings associations have adopted polices and procedures to ensure compliance with the regulations and statute.

Respondents: Savings and Loan Associations and Savings Banks
Estimated Number of Recordkeepers: 1,540
Estimated Burden Hours Per Recordkeeper: 2 Hrs. Avg.
Frequency of Response: Recordkeeping
Estimated Total Recordkeeping Burden: 3,080 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–7902 Filed 3–30–95; 8:45 am]

BILLING CODE 6720–01–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 62
Friday, March 31, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 4, 1995.
PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–8116 Filed 3–29–95; 2:23 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, April 4, 1995.
PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Meeting.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–8117 Filed 3–29–95; 2:23 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, April 18, 1995.
PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Meeting.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–8118 Filed 3–29–95; 2:23 pm]
BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 5, 1995.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 29, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–8070 Filed 3–29–95; 11:11 am]
BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Cancellation of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced open meeting (Federal Register, Vol. 60, No. 57, Friday, March 24, 1995) scheduled for March 29, 1995 is canceled and that no earlier announcement of this change was possible.

The previously announced items were:

Board Briefing

1. Insurance Fund Report.

Matters To Be Considered

1. Approval of Minutes of Previous Open Meetings.
2. Request from State of Michigan for Exemption under Section 701.21(h), NCUA's Rules and Regulations, Member Business Loans.
3. Proposed Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
4. Proposed Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker
Secretary of the Board.
[FR Doc. 95–8030 Filed 3–28–95; 4:22 p m.]
BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 60, No. 62
Friday, March 31, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4 and 5

Marine Safety Investigation Process Review

Correction

In proposed rule document 95–6950 beginning on page 15115 in the issue of Wednesday, March 22, 1995 make the following corrections:

On page 15116, in the second column, in the first incomplete paragraph:

(a) In the first line "more" should read "some".

(b) In the penultimate line "investigation" should read "investigating".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8552]
RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482

Correction

In rule document 94–16456 beginning on page 34971 in the issue of Friday, July 8, 1994, make the following corrections:

§ 1.482–5 [Corrected]

On page 35024, in § 1 482–5(e), *Example 1*(iii), in the table, in the second, third, fourth and fifth columns, the entries for "Sales" should read "$500,000", "$560,000", "$500,000" and "$520,000".

BILLING CODE 1505–01–D

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federal register

Friday
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Part II

Department of Education

Direct Grant Programs and Fellowship Programs; Notice

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DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice of direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year 1995.

SUMMARY: The Secretary updates the list of the Department's direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year (FY) 1995 and estimates the deadline dates for the transmittal of applications for many of those programs for which application notices have not yet been published. The Secretary also revises the list of State Single Points of Contact (SPOCs) for programs subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs). The notice is intended to help potential applicants in planning for the remainder of this fiscal year.

DATES: *Dates of Application Notices:* The actual or estimated date for publication of the application notice for a given program is listed in column three of the chart in this notice. For any previously announced program column three also includes the **Federal Register** volume and page reference to that notice. If a program has yet to publish an application notice, an estimated date (est.) or TBA (to be announced) is listed in this notice.

Dates of Availability of Applications: The date on which applications will be available for any given program is in the application notice for that program.

Deadline Dates for Transmitting Applications: The actual or estimated deadline date for transmitting applications under a program is listed in column four of the chart in this notice. If a program has yet to publish an application notice, an estimated deadline date (est.) or TBA is listed in this notice, and the actual deadline date will appear in the application notice to be published in the **Federal Register**.

Deadline Dates for Transmitting Intergovernmental Reviews: For any previously announced program subject to Executive Order 12372, the deadline date for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties is listed in the application notice for that program. A deadline date will also appear in the application notice for any program yet to be announced.

ADDRESSES: *For Applications or Further Information:* The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Intergovernmental Review: The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: On June 10, 1994 the Secretary published in the **Federal Register** (59 FR 30190) the first section of the Department's annual combined application notice (CAN) for FY 1995. Included in that document were individual notices inviting applications for new awards under 65 programs and competitions. These were direct grant and fellowship programs administered mainly by the Office of Postsecondary Education and the Office of Special Education and Rehabilitative Services. Since June 10 a number of other programs have published application notices for new awards for FY 1995.

In the document published on June 10, the Secretary announced the Department's intent to publish a second section of the CAN for FY 1995 in September, 1994. However, legislation authorizing or reauthorizing many of the Department's remaining programs was not enacted until October 20, 1994. This statute, the Improving America's Schools Act of 1994 (Pub. L. 103–382), includes programs administered by the Office of Bilingual Education and Minority Languages Affairs and the Office of Elementary and Secondary Education, some programs of the Office of Educational Research and Improvement, and some programs of other principal offices of the Department. These programs could not publish application notices in September, as originally planned, without enacted legislation authorizing the programs and without subsequent programmatic and fiscal decisions based on that legislation and on budgetary appropriations.

On October 17, 1994 the Secretary published in the **Federal Register** (59 FR 52291) a notice postponing publication of section two of the CAN. The Secretary believed it would be more helpful to the Department's customers to delay publication of that document until a time when application notices for most of these programs could be published or, at least, listed with an estimated date for publication.

In addition to awards under programs affected by reauthorization, awards under some other programs and competitions were to be governed by new regulations or funding priorities that had not yet been issued in final form. Still other programs and competitions had to delay publication of application notices for FY 1995 pending approval of application forms, as well as other information collection requests, by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

In the notice of October 17, the Secretary estimated that publication of section two of the CAN for FY 1995 would take place before the end of January 1995. However, publication of many of the affected application notices has been further postponed to enable the Department to develop policies and procedures designed to make the grant award process and the activities under these grants as accommodating as statutorily permissible to the needs and concerns of the Department's customers.

The Department will continue to publish individual application notices when they are ready. In the meantime, this combined application notice: (1) References all application notices for FY 1995 previously announced in the **Federal Register**, including those contained in section one of the CAN published on June 10, 1994, and (2) to the extent possible, gives estimated dates for programs and competitions for which application notices are to be published at a later date.

As an appendix to the CAN of June 10, 1994, the Secretary published a list of SPOCs for programs subject to Executive Order 12372 and the regulations in 34 CFR part 79. Since publication of that list, Colorado, Massachusetts, and Tennessee have ended their voluntary participation in this review process, Alabama has elected to participate in the process, and, in a few other States, the names or addresses of SPOCs have changed. Therefore, as an appendix to this update of the combined application notice, the Secretary is publishing a revised listing of SPOCs.

Organization of Notice

The chart lists direct grant programs and certain fellowship programs under which the Secretary is making or plans to make new awards in FY 1995. The listings are organized under the following principal program offices of the Department:

Office of Bilingual Education and Minority Languages Affairs.

Office of Educational Research and Improvement.

Office of Elementary and Secondary Education.

Office of Postsecondary Education.

Office of Special Education and Rehabilitative Services.

Office of Vocational and Adult Education.

For each principal office, programs are listed in order of their respective Catalog of Federal Domestic Assistance (CFDA) number.

Programs To Be Announced at a Future Date

For FY 1995 a few programs will be governed by new regulations or funding priorities. This notice references these types of programs with an asterisk following the respective estimated date (est.*) in column three of the chart. For further information regarding these programs, readers are referred to the following notices of proposed priority that have been published in the **Federal Register**:

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center—Notice of Proposed Priority, Selection Criteria, and Post-Award Requirements——60 FR 2956 (1/12/95)

School-to-Work Opportunities Act; State Implementation Grants—Notice of Proposed Selection Criteria and a Proposed Definition of Administrative Costs——60 FR 13312 (3/10/95)

National Education Goals

The Goals 2000: Educate America Act (Pub. L. 103–227), enacted March 31, 1994, enunciates the following National Education Goals for the year 2000:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

For competitions that are still open for FY 1995, the Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs listed in the chart provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

LIST OF APPLICATION NOTICES

CFDA No.	Name of program	Application notice	Application deadline date
Office of Bilingual Education and Minority Languages Affairs			
84.003G	Bilingual Education: Academic Excellence Awards	TBA	TBA
84.194Q	Bilingual Education: State Grant Program	3/31/95 (est.)	5/22/95 (est.)
84.195A	Bilingual Education: Teachers and Personnel Grants.	3/31/95 (est.)	5/22/95 (est.)
84.195B	Bilingual Education: National Professional Development Institutes.	3/31/95 (est.)	5/22/95 (est.)

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LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.195C	Bilingual Education: Graduate Fellowship Program	4/14/95 (est.)	5/30/95 (est.)
84.289P	Bilingual Education: Program Enhancement Grants	3/31/95 (est.)	5/30/95 (est.)
84.290U	Bilingual Education: Comprehensive School Grants	3/31/95 (est.)	5/30/95 (est.)
84.291R	Bilingual Education: Systemwide Improvement Grants.	3/31/95 (est.)	5/30/95 (est.)
84.292A	Bilingual Education: General Research Program	TBA	TBA
84.292B	Bilingual Education: Field-Initiated Research	4/14/95 (est.)	TBA
84.293A	Foreign Language Assistance: General Program	4/14/95 (est.)	5/26/95 (est.)
	Office of Educational Research and Improvement		
	Library Programs		
84.036A	Library Education and Human Resource Development Program—Institutes.	9/29/94 (59 FR 49746)	12/2/94
84.036B	Library Education and Human Resource Development Program—Fellowships.	9/29/94 (59 FR 49746)	12/2/94
84.039D	Library Research and Demonstration Program	12/5/94 (59 FR 62542)	2/6/95
84.163A	Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants.	9/29/94 (59 FR 49746)	12/2/94
84.163B	Library Services to Indian Tribes and Hawaiian Natives Program—Special Grants.	9/29/94 (59 FR 49746)	5/8/95
84.167A	Library Literacy Program	9/29/94 (59 FR 49746)	12/2/94
	National Institute on Student Achievement		
84.279A	Goals 2000: Assessment, Development, and Evaluation.	3/29/95 (est.)	6/15/95 (est.)
84.304A	International Education Exchange Program	2/17/95 (60 FR 9564)	4/17/95
	National Institute on the Education of At-Risk Students		
84.206R	Research and Development Center on the Education of Gifted and Talented Children and Youth.	4/20/95 (est.)*	7/10/95 (est.)
	National Institute on Early Childhood Development and Education		
84.287A	21st Century Community Learning Centers	4/3/95 (est.)	6/16/95 (est.)
	Office of Reform Assistance and Dissemination		
84.073A–1	National Diffusion Network (NDN)—Developer Demonstration Projects.	3/31/95 (est.)	5/31/95 (est.)
84.073F	National Diffusion Network (NDN)—Private School Facilitator.	3/31/95 (est.)	5/31/95 (est.)
84.168E	Dwight D. Eisenhower Professional Development—Federal Activities.	4/14/95 (est.)	6/15/95 (est.)
84.168R	Eisenhower Regional Mathematics and Science Consortia.	4/14/95 (est.)	6/15/95 (est.)
84.203D	Star Schools Program—Continuing Education	4/14/95 (est.)	6/15/95 (est.)
84.206A–1	Jacob K. Javits Gifted and Talented Students Grant Education Program.	3/10/95 (60 FR 13326)	4/25/95
84.215S	Fund for the Improvement of Education (FIE) Demonstration Programs: (1) Elementary School Counseling Partnerships; (2) Middle School-Workplace-Community Partnerships.	3/13/95 (60 FR 13598)	4/28/95
84.215V	Fund for the Improvement of Education (FIE): Partnerships in Character Education Pilot Project.	3/13/95 (60 FR 13588)	4/28/95
84.286A	Telecommunications Demonstration Project for Mathematics.	2/17/95 (60 FR 9576)	4/12/95
84.302A	Regional Technology Consortia	4/7/95 (est.)	6/15/95 (est.)
84.303	Challenge Grants for Technology in Education	3/7/95 (60 FR 12651)	6/2/95
	National Center for Education Statistics		
84.999F	National Assessment of Educational Progress (NAEP) Program—Collection of data for the 1996, 1997, and 1998 NAEP and preparation of sampling weights for the State and national components of the 1996, 1997, and 1998 assessments.	3/10/95 (60 FR 13136)	4/25/95

LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.999G	National Assessment of Educational Progress (NAEP)—1996 and 1997 National Analysis and Reporting.	5/12/95 (est.)	6/26/95 (est.)
	Office of Elementary and Secondary Education		
84.026A	Educational Services for Indian Adults	5/5/95 (est.)	7/17/95 (est.)
84.083A	Women's Educational Equity Act—Implementation Grants.	TBA	TBA
84.083B	Women's Educational Equity Act—Research Grants.	TBA	TBA
84.087A	Indian Fellowship	4/12/95 (est.)	5/30/95 (est.)
84.123A	Civic Education	TBA	TBA
84.165A	Magnet Schools Assistance	3/20/95 (60 FR 14868)	5/12/95
84.184B	Safe and Drug-Free Schools Program—Alternative Education Programs.	5/29/95 (est.)	7/10/95 (est.)
84.209A	Native Hawaiian Family Based Education Centers	3/28/95 (est.)	5/19/95 (est.)
84.210A	Native Hawaiian Gifted and Talented Demonstration Program.	3/28/95 (est.)	5/19/95 (est.)
84.277A	Safe Schools Grants Program	8/15/94 (59 FR 41928)	9/30/94
84.282A	Charter Schools/State Grants and National Activities.	4/12/95 (est.)	6/19/95 (est.)
84.283A	Comprehensive Regional Assistance Centers	5/15/95 (est.)	6/30/95 (est.)
84.285A	Safe and Drug-Free Schools Program: The Community Schools Youth Services and Supervision Grant Program, and the Family and Community Endeavor Schools Grant Program.	3/6/95 (60 FR 12332)	5/5/95
84.296A	Native Hawaiian Community Based Education Learning Centers.	3/28/95 (est.)	5/19/95 (est.)
84.297A	Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program.	3/28/95 (est.)	5/19/95 (est.)
84.299A	Special Projects Demonstration Grants	5/5/95 (est.)	7/17/95 (est.)
84.299B	Special Projects Professional Development Grants	5/5/95 (est.)	7/17/95 (est.)
	Office of Postsecondary Education		
84.016A	Undergraduate International Studies and Foreign Language Program.	6/10/94 (59 FR 30190)	11/4/94
84.017A	International Research and Studies Program	6/10/94 (59 FR 30190)	11/4/94
84.019A	Fulbright-Hays Faculty Research Abroad Program	6/10/94 (59 FR 30190)	10/28/94
84.021A	Fulbright-Hays Group Projects Abroad Program	6/10/94 (59 FR 30190)	10/21/94
84.022A	Fulbright-Hays Doctoral Dissertation Research Abroad.	6/10/94 (59 FR 30190)	10/28/94
84.031A	Strengthening Institutions Program	3/7/95 (60 FR 12543)	5/1/95
84.031S	Strengthening Institutions Program—Hispanic-Serving Institutions.	3/23/95 (60 FR 15448)	5/8/95
84.031A; x84.031G	Designation as an Eligible Institution for the Strengthening Institutions and Endowment Challenge Grant Programs	12/6/94 (59 FR 62964); 2/6/95 (60 FR 7047); 3/13/95 (60 FR 13423).	4/3/95
84.031G	Endowment Challenge Grant Program	6/10/94 (59 FR 30190)	6/16/95
84.047	Upward Bound Program	1/24/95 (60 FR 4759)	2/24/95 (Regular and Veterans); 3/17/95 (Math and Science)
84.055A	Cooperative Education Program—Administration, Part A Projects.	6/10/94 (59 FR 30190); 6/28/95 (59 FR 33331); 12/16/94 (59 FR 65028).	Cancelled
84.055B	Cooperative Education Program—Demonstration Projects.	6/10/94 (59 FR 30190); 12/16/94 (59 FR 65028)	Cancelled
84.055C	Cooperative Education Program—Research Projects.	6/10/94 (59 FR 30190); 12/16/94 (59 FR 65028)	Cancelled
84.055D	Cooperative Education Program—Training and Resource Center Projects.	6/10/94 (59 FR 30190); 12/16/94 (59 FR 65028)	Cancelled
84.055E	Cooperative Education Programs—Administration, Part B Projects.	6/10/94 (59 FR 30190); 12/16/94 (59 FR 65028)	Cancelled
84.094B	Patricia Roberts Harris Fellowship Program—Master's Level and Professional Study.	8/16/94 (59 FR 42130)	10/14/94
84.094B	Patricia Roberts Harris Fellowship Program—Doctoral Study.	8/16/94 (59 FR 42131)	10/14/94
84.097A	Law School Clinical Experience Program	6/10/94 (59 FR 30190)	2/28/95

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LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.120	Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33331)	10/14/94
84.153A	Business and International Education	6/10/94 (59 FR 30190)	11/7/94
84.170	Jacob K. Javits Fellowship Program	8/23/94 (59 FR 43328)	11/28/94
84.200	Graduate Assistance in Areas of National Need Program.	10/13/94 (59 FR 51969)	12/2/94
84.202A	Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education Program.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33331); 10/28/94 (59 FR 54173).	Cancelled
84.217	Ronald E. McNair Postbaccalaureate Achievement Program.	12/19/94 (59 FR 65324)	2/3/95
84.220A	Centers for International Business Education Program.	6/10/94 (59 FR 30190)	11/10/94
84.252	Urban Community Service Program—Designation as an Urban Grant Institution.	01/26/95 (60 FR 5170)	03/1/95
84.252	Urban Community Service Program	04/03/95 (est.)	06/1/95 (est.)
84.261	Dwight D. Eisenhower Leadership Development Program.	6/10/94 (59 FR 30190)	1/20/95
84.272A	National Early Intervention Scholarship and Partnership Program.	TBA	TBA
TBA	Native Hawaiian Higher Education Program	6/9/95 (est.)	7/21/95 (est.)
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A; 84.116B	Fund for the Improvement of Postsecondary Education—Comprehensive Program.	8/18/94 (59 FR 42580)	10/18/95 (preapplications); 3/15/95 (final applications)
84.116F	Fund for the Improvement of Postsecondary Education—Innovative Projects for Community Service.	6/10/94 (59 FR 30190)	12/20/94
84.116N	Fund for the Improvement of Postsecondary Education—North American Trilateral Education Initiative.	TBA	TBA
84.116P	Fund for the Improvement of Postsecondary Education—Disseminating Proven Reforms.	3/24/95	5/25/95
84.183D	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	4/17/95 (est.)	6/16/95 (est.)
	Office of Special Education and Rehabilitative Services *Office of Special Education Programs*		
84.023	Research in Education of Individuals with Disabilities Program.		
84.023A	Advancing and Improving the Research Knowledge Base.	6/10/94 (59 FR 30190)	12/16/94
84.023B	Student-Initiated Research Projects	11/21/94 (59 FR 60054)	2/24/95
84.023C	Field-Initiated Research Projects	6/10/94 (59 FR 30190)	10/24/94
84.023E	Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice.	6/10/94 (59 FR 30190)	10/17/94
84.023F	Examining Alternatives for Outcome Assessment for Children with Disabilities.	11/21/94 (59 FR 60054)	2/24/95
84.023G	Studying Models That Bridge the Gap Between Research and Practice.	11/21/94 (59 FR 60054)	3/24/95
84.023N	Initial career awards	6/10/94 (59 FR 30190)	9/6/94
84.024	Early Education Program for Children with Disabilities.		
84.024B	Model Demonstration Projects for Young Children with Disabilities.	6/10/94 (59 FR 30190)	9/12/94
84.024D	Outreach Projects for Young Children with Disabilities.	11/07/94 (59 FR 55540)	1/17/95
84.024P	Early Childhood Model Inservice Training Projects	6/10/94 (59 FR 30190)	9/19/94
84.024Q	Early Childhood Research Institute: Follow Through	10/13/94 (59 FR 52046)	1/13/95
84.025	Services for Children with Deaf-Blindness Program		
84.025A	State and Multi-State Projects for Children who are Deaf-Blind.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	12/9/94

LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.025A	Optional Pilot Projects for Children who are Deaf-Blind.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	12/9/94
84.025E	Technical Assistance for Transitional Services for Children and Youth who are Deaf-Blind.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	10/17/94
84.026	Educational Media Research, Production, Distribution, and Training Program.		
84.026K	Recorded Audio Cassettes for Visually and Print Disabled Students.	11/7/94 (59 FR 55547)	2/15/95
84.026N	Captioned Films and Videos Distribution System	11/7/94 (59 FR 55547)	3/31/95
84.026Q	Video Description Project	11/7/94 (59 FR 55547)	2/17/95
84.026S	Closed-Captioned Daytime Television Programs	11/7/94 (59 FR 55547)	2/17/95
84.026T	Cultural Experiences for Deaf and Hard-of-Hearing Individuals.	11/7/94 (59 FR 55547)	3/15/95
84.029	Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training and Parent Training and Information Centers.		
84.029A	Training Personnel to Service Low-Incidence Disabilities.	6/10/94 (59 FR 30190)	10/7/94
84.029B	Preparation of Personnel for Careers in Special Education.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	9/30/94
84.029D	Preparation of Leadership Personnel	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	9/16/94
84.029E	Minority Institutions Personnel	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	10/21/94
84.029F	Preparation of Related Services Personnel	6/10/94 (59 FR 30190)	9/23/94
84.029K	Special Projects	6/10/94 (59 FR 30190)	10/28/94
84.029L	Training Educational Interpreters	6/10/94 (59 FR 30190)	10/28/94
84.029M	Parent Training and Information Centers	6/10/94 (59 FR 30190); 7/19/94 (59 FR 36744); 11/7/94 (59 FR 55539).	1/10/95
84.029P	Experimental Parent Centers	6/10/94 (59 FR 30190); 7/19/94 (59 FR 36744); 11/7/94 (59 FR 55541).	1/10/95
84.029Q	Training Early Intervention and Preschool Personnel.	6/10/94 (59 FR 30190); 6/28/94 ((59 FR 33284)	10/14/94
84.078	Postsecondary Education Programs for Individuals with Disabilities.		
84.078C	Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	11/4/94
84.086	Program for Children with Severe Disabilities		
84.086D	Research Project for Educating Children with Severe Disabilities in Inclusive Settings.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	12/2/94
84.086J	Statewide System Change: Children with Severe Disabilities.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	10/17/94
84.086U	Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	1/23/95
84.158	State Systems for Transition Services for Youth with Disabilities Program.		
84.158A	State Systems for Transition Services for Youth with Disabilities Program.	6/10/94 (59 FR 30190)	1/27/95
84.158	Secondary Education and Transitional Services for Youth with Disabilities Program.		
84.158D	Model Demonstration Projects to Identify and Develop Alternatives for Youth with Disabilities Who have Dropped Out of School or are at Risk of Dropping Out of School.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	10/7/94
84.158M	Accessing School to Work and Postsecondary Environments—A Technical Assistance Effort.	3/31/95 (est.)	5/12/95 (est.)
84.158Q	Outreach Projects for Services for Youth with Disabilities.	6/10/94 (59 FR 30190); 6/28/94 (59 FR 33284)	10/7/94
84.159	Special Studies Program		
84.159A	State Agency-Federal Evaluation Studies Projects	6/10/94 (59 FR 30190); 10/19/94 (59 FR 52768)	Cancelled
84.159C	Center to Support the Achievement of World Class Outcomes for Students With Disabilities.	12/21/94	4/21/95
84.159D	State and Local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act.	6/10/94 (59 FR 30190)	8/19/94
84.159E	Longitudinal Study of the Impact of Early Intervention Services on Infants and Toddlers Disabilities.	12/21/94	3/24/95
84.159F	State Agency-Federal Evaluation Studies Projects	6/10/94 (59 FR 30190)	12/9/94
84.180	Technology, Educational Media, and Materials for Individuals with Disabilities Program.		

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CFDA No.	Name of program	Application notice	Application deadline date
84.180G	Technology, Educational Media Materials Research Projects that Promote Literacy.	6/10/94 (59 FR 30190)	9/12/94
84.180U	Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities.	10/13/94	1/27/95
84.221	Native Hawaiian Special Education Program	3/28/95 (est.)	5/19/95 (est.)
84.237	Program for Children and Youth with Serious Emotional Disturbance.		
84.237F	Preventing the Development of Serious Emotional Disturbance Among Children and Youth with Emotional and Behavioral Problems.	6/10/94 (59 FR 30190)	9/16/94
84.237G	Nondiscriminatory, Culturally-Competent Collaborative Demonstration Models To Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems.	10/13/94	1/27/95
	National Institute on Disability and Rehabilitation Research		
84.133A–1	Research and Demonstration Projects	1/17/95 (60 FR 3499); 1/24/95 (60 FR 4762)	3/24/95
84.133A–5	Research and Demonstration Projects	4/7/95 (est.)	5/30/95 (est.)
84.133B	Rehabilitation Research and Training Centers	3/31/95 (est.)	5/30/95 (est.)
84.133D–5	Knowledge Dissemination and Utilization Program	6/8/94 (59 FR 29676); 10/18/94 (59 FR 52523); 2/10/95 (60 FR 8126).	7/22/94; 12/19/94; 4/17/95
84.133D–2	Knowledge Dissemination and Utilization Program	11/18/94 (59 FR 59836)	1/20/95
84.133D–6	Knowledge Dissemination and Utilization Programs	4/21/95 (est.)	6/20/95 (est.)
84.133E	Rehabilitation Engineering Research Centers	11/18/94 (59 FR 59861)	1/20/95
84.133F	Research Fellowships	6/3/94 (59 FR 29138)	11/15/94
84.133G	Field-Initiated Projects	6/3/94 (59 FR 29138)	11/1/94
84.133N	Special Projects and Demonstrations for Spinal Cord Injuries.	6/3/94 (59 FR 29138); 10/11/94 (59 FR 51424)	11/18/94
84.133P	Research Training Program	6/3/94 (59 FR 29138)	10/3/94
84.224A–6	Technical Assistance to State Grantees under the Technology-Related Assistance Program	3/31/95 (est.)	5/30/95 (est.)
84.224A–7	State Grants for Technology-Related Assistance	4/7/95 (est.)	5/30/95 (est.)
	Rehabilitation Services Administration		
84.128G	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.	6/10/94 (59 FR 30190); 10/18/94 (59 FR 52524)	1/25/95
84.128T	Special Projects and Demonstrations for Providing Supported Employment to Individuals with the Most Severe Disabilities and Technical Assistance Projects—Community-Based Projects.	6/10/94 (59 FR 30190)	1/16/95
84.129A–1	Rehabilitation Long-Term Training—Rehabilitation Medicine.	6/10/94 (59 FR 30190)	10/14/94
84.129A–5	Rehabilitation Long-Term Training—Prosthetics and Orthotics.	6/10/94 (59 FR 30190)	10/14/94
84.129B	Rehabilitation Long-Term Training—Rehabilitation Counseling.	6/10/94 (59 FR 30190)	10/14/94
84.129C–1	Rehabilitation Training—Long-Term Training: Rehabilitation Administration.	1/18/95 (60 FR 3632)	3/21/95
84.129D–1	Rehabilitation Long-Term Training—Physical Therapy.	6/10/94 (59 FR 30190)	10/14/94
84.129E	Rehabilitation Long-Term Training—Rehabilitation Technology.	6/10/94 (59 FR 30190)	10/14/94
84.129F	Rehabilitation Long-Term Training—Vocational Evaluation and Work Adjustment.	6/10/94 (59 FR 30190)	10/14/94
84.129H	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Mentally Ill.	6/10/94 (59 FR 30190)	10/14/94
84.129L	Rehabilitation Long-Term Training—Undergraduate Education in Rehabilitation Services.	6/10/94 (59 FR 30190)	10/14/94
84.129P	Rehabilitation Long-Term Training—Specialized Personnel for Rehabilitation of Individuals Who Are Blind Or Have Vision Impairment (Currently: Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Blind).	6/10/94 (59 FR 30190)	10/14/94
84.129Q	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (Currently: Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Deaf).	6/10/94 (59 FR 30190)	10/14/94

LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.129R	Rehabilitation Long-Term Training—Rehabilitation Job Development and Placement.	6/10/94 (59 FR 30190)	10/14/94
84.132A	Centers for Independent Living	12/22/94 (59 FR 66009)	3/17/95
84.160A	Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind.	12/5/94 (59 FR 62511)	2/28/95
84.177A	Independent Living Services for Older Individuals Who Are Blind.	12/27/94 (59 FR 66616)	2/13/95
84.234L	Projects With Industry	12/9/94 (59 FR 63864)	3/13/95
84.235R	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Disabilities.	12/9/94 (59 FR 63863)	3/13/95
84.235S	Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths With Disabilities.	12/9/94 (59 FR 63864)	3/13/95
84.246A	Training Members of American Indian Tribes, State Vocational Rehabilitation Agency Staff, and Rehabilitation Educators on Services for American Indians With Disabilities.	12/5/94 (59 FR 62510)	2/28/95
84.246B	Training Rehabilitation and Mental Health Personnel To Provide Improved Rehabilitation Services to Individuals With Mental Illness.	12/5/94 (59 FR 65210)	2/28/95
84.246J	Training Impartial Hearing Officers on Provisions of the Act.	12/5/94 (59 FR 62511)	2/28/95
84.246K	Personnel Specifically Trained To Deliver Services in Client Assistance Programs.	12/5/94 (59 FR 62511)	2/28/95
84.250E	Vocational Rehabilitation Service Projects for American Indians With Disabilities.	6/10/94 (59 FR 30190); 12/9/94 (59 FR 63722)	6/16/95
84.263A	Rehabilitation Training—Experimental and Innovative Training.	6/10/94 (59 FR 30190)	10/14/94
84.264A–1	Rehabilitation Training—Rehabilitation Continuing Education Programs (for Region V only).	6/10/94 (59 FR 30190)	10/14/94
84.264B	Rehabilitation Continuing Education Programs	12/5/94 (59 FR 62510)	2/28/95
84.275A	Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials.	12/5/94 (59 FR 62509)	2/28/95
	Office of Vocational and Adult Education		
84.077	Bilingual Vocational Training Program	10/27/94 (59 FR 54076)	12/12/94
84.099	Bilingual Vocational Instructor Training Program	10/27/94 (59 FR 54096)	12/12/94
84.101	Indian Vocational Education Training Program	05/26/94 (59 FR 27406)	7/29/94
84.199D	Cooperative Demonstration Program—(Correctional Education).	07/13/94 (59 FR 35791)	09/02/94
84.248	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	08/01/94 (59 FR 39170)	09/16/94

Invitation to Comment

The Secretary welcomes comments and suggestions for improving the annual combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 600 Independence Avenue, SW. (room 5105, FB–10B), Washington, D.C. 20202–2241.

Dated: March 22, 1995.

Richard W. Riley,

Secretary of Education.

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION.

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DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

State Single Points of Contact

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, and Washington. Alabama, which did not participate when this list was last published by the Department of Education in June 1994, now participates.

Alabama

Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, Alabama 36103–5690, Telephone (205) 242–5483, FAX (205) 242–5515

Arizona

Janice Dunn,
Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074, FAX (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, DC 20005, Telephone (202) 727–6554, FAX (202) 727–1617

Florida

Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol (room 1603), Tallahassee, Florida 32399–0001, Telephone (904) 488–8114, FAX (904) 488–9005.

Georgia

Tripp Reid, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., room 401J, Atlanta, Georgia 30334, Telephone (404) 656–3855 or 656–3829, FAX (404) 656–7938

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671, FAX (217) 782–6620

Indiana

Francis E. Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–2972, FAX (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 242–4719, FAX (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone (502) 573–2382, FAX (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 287–3261, FAX (207) 287–6489

Maryland

Mr. Roland E. English III, Chief, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 West Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490, FAX (410) 225–4480

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–7356, FAX (517) 373–6683

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202, Telephone (601) 359–6762, FAX (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834, FAX (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, FAX (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155, FAX (603) 271–1728

New Jersey

Gregory D. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 800, room 813A, Trenton, New Jersey 08625–0800, Telephone (609) 292–9025, FAX (609) 633–2132

New Mexico

Robert Peters, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3861

New York

New York State Clearinghouse, Division of the Budget, State Capital, Albany, New York 12224,Telephone (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232, FAX (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094, FAX (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone (614) 466–0698, FAX (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone (401) 277–2656, FAX (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494, FAX (803) 734–0385

Texas

Tom Adams, Director, Intergovernmental Coordination, P.O. Box 13005, Austin, Texas 78711, Telephone (512) 463–1771, FAX (512) 463–1984

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535, FAX (801) 538–1547

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone (802) 828–3326, FAX (802) 828–3339

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 558–4010, FAX (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone (608) 266–2125, FAX (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574, FAX (307) 638–8967

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone 011–671–472–2285, FAX 011–671–472–2825

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose B. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone (809) 727–4444 or 723–6190, FAX (809) 724–3270 or 724–3103

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone (809) 774–0750 FAX (809) 776–0069

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone (202) 395–5090) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State.

[FR Doc. 95–7768 Filed 3–30–95; 8:45 am]

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federal register

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9, 15, and 42
Federal Acquisition Regulation; Past Performance Information; Final Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 15, and 42

[FAC 90–26; FAR Case 93–02]

RIN 9000–AG45

Federal Acquisition Regulation; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue Federal Acquisition Circular (FAC) 90–26, a final rule amending the Federal Acquisition Regulation (FAR) to establish requirements for the use of past performance information in the contractor selection process. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–26, FAR case 93–02.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed FAR rule was published in the **Federal Register** at 59 FR 8108 on February 17, 1994. The proposed rule required evaluation of past performance in all competitively negotiated acquisitions expected to exceed $100,000, and evaluation of contractor performance on all new contracts exceeding $100,000.

Thirty-five comments from twenty-five sources were received during the public comment period. All comments were considered in the development of this final rule. The final rule differs from the proposed rule in that it (1) permits agencies to use a phase-in approach for implementation of past performance evaluation requirements; (2) clarifies that firms lacking relevant performance history shall receive a neutral evaluation for past performance; (3) permits offerors to submit relevant past performance information to the Government; (4) excludes contracts awarded under FAR Subparts 8.6 and 8.7 from the requirement for evaluation of contractor performance; (5) provides that past performance information files shall not be retained to provide source selection information for longer than three years after completion of contract performance; and (6) contains additional guidance to facilitate the collection and use of past performance information.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 15, and 42

Government procurement.

Dated: March 27, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

FAC 90–26

Federal Acquisition Circular (FAC) 90–26 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–26 are effective May 30, 1995.

Dated: February 27, 1995.

Eleanor R. Spector,

Director, Defense Procurement

Dated: February 2, 1995.

Deidre A. Lee,

Associate Administrator for Procurement, NASA

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy, GSA.

Therefore, 48 CFR Parts 9, 15, and 42 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 15 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.104–1(c) is revised to read as follows:

9.104–1 General standards.

* * * * *

(c) Have a satisfactory performance record (see 48 CFR 9.104–3(c) and part 42, subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104–2;

* * * * *

3. Section 9.105–1(c) is amended by revising the introductory text to read as follows:

9.105–1 Obtaining information.

* * * * *

(c) In making the determination of responsibility (see 9.104–1(c)), the contracting officer shall consider relevant past performance information (see 48 CFR part 42, subpart 42.15). In addition, the contracting officer should use the following sources of information to support such determinations:

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.406–5(b) is amended by revising the last two sentences to read as follows:

15.406–5 Part IV—Representations and instructions.

* * * * *

(b) * * * The severable parts should provide for separation of cost or pricing data, past performance data and, when needed, technical data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, (4) past performance, and (5) cost or pricing data.

* * * * *

5. Section 15.604 is amended by revising paragraphs (b) and (c)(3) to read as follows:

15.604 Responsibilities.

* * * * *

(b) The cognizant technical official is responsible for the technical and past performance requirements related to the source selection process.

(c) * * *

(3) Conducting or controlling all negotiations concerning cost or price, technical requirements, past performance, and other terms and conditions; and

* * * * *

6. Section 15.605 is amended by revising paragraph (b), removing paragraph (c), redesignating (d), (e) and (f) as (c), (d) and (e), respectively, and revising newly-redesignated (d) to read as follows:

15.605 Evaluation factors.

* * * * *

(b)(1) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials except that—

(i) Price or cost to the Government shall be included as an evaluation factor in every source selection.

(ii) Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed $100,000 not later than January 1, 1999, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. Agencies may develop their own phase-in schedule for past performance evaluations which meets or exceeds the following milestones: All solicitations with an estimated value in excess of (A) $1,000,000 issued on or after July 1, 1995; (B) $500,000 issued on or after July 1, 1997; and (C) $100,000 issued on or after January 1, 1999. Past performance may be evaluated in competitively negotiated acquisitions estimated at $100,000 or less at the discretion of the contracting officer.

(iii) Quality shall be addressed in every source selection through inclusion in one or more of the non-cost evaluation factors, such as past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance.

(2) Any other relevant factors, such as cost realism, may also be included.

* * * * *

(d) The solicitation should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. The solicitation shall clearly state the evaluation factors, including cost or price, cost or price-related factors, past performance and other non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection, and their relative importance (see 15.406–5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

* * * * *

7. Section 15.608(a) is amended by revising the introductory text, redesignating paragraph (a)(2) as (a)(3), and adding a new paragraph (a)(2) to read as follows:

15.608 Proposal evaluation.

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

* * * * *

(2) *Past performance evaluation.* (i) Past performance information is an indicator of an offeror's ability to perform the contract. The comparative assessment of past performance information is separate from the responsibility determination required under 48 CFR 9.103. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used.

(ii) Where past performance is to be evaluated, the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by the offerors that were similar in nature to the contract being evaluated, so that the Government may verify the offerors' past performance on these contracts. In addition, at the discretion of the contracting officer, the offerors may provide information on problems encountered on the identified contracts and the offerors' corrective actions. Past performance information may also be obtained from other sources known to the Government. The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each acquisition. Evaluations of contractor performance prepared in accordance with 48 CFR part 42, subpart 42.15 are one source of performance information which may be used.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance.

* * * * *

8. Section 15.610 is amended by removing the word "and" at the end of paragraph (c)(4) and the period at the end of (c)(5) and inserting "; and" in its place; and by adding paragraph (c)(6) to read as follows:

15.610 Written or oral discussion.

* * * * *

(c) * * *

(6) Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed.

* * * * *

9. Section 15.1003(b) is amended by removing the word "and" at the end of paragraph (b)(2) and the period at the end of (b)(3) and inserting "; and" in its place; and by adding paragraph (b)(4) to read as follows:

15.1003 Debriefing of unsuccessful offerors.

* * * * *

(b) * * *

(4) Names of individuals providing reference information about an offeror's past performance.

* * * * *

PART 42—CONTRACT ADMINISTRATION

10. Section 42.302 is amended by adding paragraph (b)(11) to read as follows:

42.302 Contract administration functions.

* * * * *

(b) * * *

(11) Prepare evaluations of contractor performance in accordance with subpart 42.15.

* * * * *

11. Subpart 42.15 is added to read as follows:

Subpart 42.15—Contractor Performance Information

Sec.

42.1500 Scope of subpart.
42.1501 General.
42.1502 Policy.
42.1503 Procedures.

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts.

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However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

42.1501 General.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 beginning July 1, 1995, $500,000 beginning July 1, 1996, and $100,000 beginning January 1, 1998, (regardless of the date of contract award) at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall not evaluate performance for contracts awarded under 48 CFR part 8, subparts 8.6 and 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 48 CFR 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart.

(c) Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

(d) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

[FR Doc. 95–7827 Filed 3–30–95; 8:45 am]
BILLING CODE 6820–34–P

federal register

Friday
March 31, 1995

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784, 817, and 843
Permanent Regulatory Program; Underground Mining Permit Application Requirements and Performance Standards; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784, 817, and 843

RIN 1029–AB69

Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures and certain water supplies, through the adoption of permitting requirements, performance standards, and implementation procedures. The regulations will require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations, and to replace drinking, domestic, and residential water supplies which have been adversely affected by underground coal mining operations. The rule will require repair of damage to include rehabilitation, restoration, or replacement of the identified structures, or compensation to the owners in the full amount of the diminution in value resulting from the subsidence. A pre-subsidence survey will be required to document the condition of non-commercial buildings and occupied residential dwellings and related structures subject to subsidence-related damage caused by underground mining activities. The survey will also be required to document the quantity and quality of all drinking and domestic water supplies that could be contaminated, diminished, or interrupted by subsidence. In addition, a permittee will be required to provide, when necessary, an additional performance bond to cover subsidence-related damage that has occurred to protected structures or water supplies.

Within 120 days from the publication of the rule, OSM will, in consultation with the State Regulatory authority, determine for each State with an approved State regulatory program, the enforcement procedures to ensure prompt compliance with section 720(a) of the Surface Mining Control and Reclamation Act (SMCRA) and the implementing regulations. The performance standards implementing section 720(a) are set forth in 30 CFR §§ 817.41(j) and 817.121(c)(2) and (c)(4). OSM will determine for each such State whether to apply (1) direct interim Federal enforcement of the Energy Policy Act and implementing performance standards, for some or all surface coal mining operations; or (2) the oversight procedures of §§ 843.11 and 843.12(a)(2); or (3) a combination of direct Federal enforcement and State enforcement. As part of the determination process, OSM will consult with each affected State and provide opportunity for public comment. For each State, OSM will publish its determination in the Federal Register.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2564.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Rule and Response to Public Comments.
III. Procedural Matters.

I. Background

Energy Policy Act

The Energy Policy Act of 1992, Pub.L. 102–486, 106 Stat. 2776 (1992) (hereinafter, "the Energy Policy Act") was enacted October 24, 1992. Section 2504 of that Act, 106 Stat. 2776, 3104, amends the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* As noted in the legislative history describing a predecessor to section 2504, the section "provides for greater stability in the surface mining act program by settling controversies over subsidence protection." H.R. Rep. No. 474, 102d Cong., 2d Sess. pt. 8 at 86 (1992). The report also states that "at present, OSM's regulations do not protect coalfield citizens from the types of damages that can occur from land subsidence caused by underground coal mining, either in the form of compensation for, or repair of, damages to homes and other structures as well as replacement of adversely affected water supplies." *Id.*

Section 2504 of the Energy Policy Act added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior is required to promulgate final regulations to implement the provisions of section 720(a) by October 24, 1993.

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. The regulatory and litigation history of relevant subsidence control issues addressed in this final rule was contained in the preamble to the proposed rulemaking. 58 FR 50175, 50177 (September 24, 1993). In addition to the provisions intended to implement new SMCRA section 720, the proposed rule included other subsidence-related provisions. These additional provisions were developed to address issues raised by commenters' responses to a July 18, 1991 Notice of Inquiry soliciting public comment on existing subsidence regulations. OSM indicated in the proposed rule that it contemplated that the rules implementing SMCRA section 720 would immediately supersede inconsistent state performance standards, and would take effect immediately, applicable to underground mining that occurred after October 24, 1992. OSM anticipated that all other provisions would become effective in the same way as other revisions to the permanent program regulations; i.e., 30 days following of promulgation for Federal program States and on Indian lands, and upon the adoption of counterpart State regulatory program provisions in primacy States.

OSM held public hearings on the proposed subsidence rule in Harrisburg, Pennsylvania, November 8, 1993; Columbus, Ohio, November 9, 1993; Whitesburg, Kentucky, November 16, 1993; Salt Lake City, Utah, November 17, 1993; Washington, DC, November 19, 1993; and Washington, Pennsylvania, November 22, 1993. The comment period for the proposed rule closed on January 24, 1994 (as extended on November 22, 1993, 58 FR 61638). Over 275 commenters submitted comments on the proposed rule.

One commenter initially submitted a petition for rulemaking that requested the Secretary to finalize the rules proposed on September 24, 1993 regarding the regulation of water loss and property damage caused by underground coal mining operations, and until such regulations are promulgated, to impose a moratorium on the issuance of new underground mining permits if such operations would present a high risk of subsidence-related damage. In a subsequent letter, the commenter stipulated that they did not intend the petition to be considered a petition for rule-making as provided in SMCRA section 201(g)(1) *et seq.*

In the course of analyzing the comments received on the proposed rule, OSM discussed subsidence-related issues with coal operators and citizens during an on-site tour of coal fields. As a result, OSM reopened the comment period to allow interested persons time to review additional material which consisted of meeting notes from these discussions and handouts and a video tape received during the field tour. 59 FR 37952–37953 (July 26, 1994). This information was added to the Administrative Record and was also available for review at the OSM offices in Pittsburgh, PA; Denver, CO; Harrisburg, PA; Columbus, OH; Knoxville, TN; and Lexington, KY.

In the Federal Register notice to reopen the comment period, OSM took the opportunity to respond to comments received during the initial comment period on the proposed rule, and to requests by States and OSM field offices to clarify the requirement for replacement of water supplies. OSM requested specific comment on an alternative provision to clarify the requirement under sections 717(b) and 720(a)(2) of SMCRA that an operator replace certain types of water supplies. Under the alternative, when the owner confirms in writing that the owner does not desire replacement of the water delivery system, and no such system is needed for either the existing or approved postmining land uses, the permittee may provide replacement of the water supply by demonstrating that an equivalent water source exists that can be developed if desired by future owners. OSM received 26 comments during the comment period which closed on August 25, 1994.

The requirements to repair or compensate for damage to structures, and replace water supplies, were effective upon passage of the Energy Policy Act. Permittees in both primacy States and Federal program States, as well as on Indian lands, are required to comply with these provisions of the Energy Policy Act for their operations conducted after October 24, 1992. In the proposed rulemaking, each regulatory authority was encouraged, pending direct enforcement in a State, to conduct investigations of any complaints alleging violations of the nature covered under new section 720(a). This was intended to ensure that circumstances at a site of alleged violations were observed and documented contemporaneously, and that the documentation would be available for later enforcement action if necessary. OSM conducted investigations of complaints reported to OSM if the State regulatory authority chose not to conduct an investigation. OSM and most State regulatory authorities ensured that complaints were documented and a record of alleged violations was maintained.

Promulgation of final Federal regulations is necessary to enforce the Energy Policy Act requirements to repair or compensate for damages, and replace an adversely affected water supply, due to underground coal operations that occurred after October 24, 1992.

II. Discussion of Final Rule and Response to Public Comments

Section 701.5—Definitions

The following definitions of terms are adopted in the final rulemaking: "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," and "replacement of water supply." The proposed definition of the term "structures or facilities" is not being adopted.

Definition of Drinking, Domestic or Residential Water Supply

The definition for drinking, domestic or residential water supply is being adopted with changes. "Drinking, domestic or residential water supply" would mean water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent they also supply water for drinking, sanitation or other domestic use, for such enterprises.

Several commenters agree with OSM that the definition is needed to implement SMCRA Section 720(a)(2), which requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Commenters also concur with the proposed definition to the extent it excludes water from wells or springs that serve only commercial agricultural or other commercial or industrial enterprises and do not supply drinking water. In response to a recommendation by commenters, OSM recognizes that water pooled in abandoned underground workings could be used as a water supply for drinking, domestic or residential uses, and that it is not uncommon in certain areas for individual residents or communities to obtain their water supply by withdrawing water from such underground workings. In such cases, the underground workings reasonably may be described as equivalent to a well or spring.

A number of commenters argue that inclusion of the appurtenant delivery system in the definition goes beyond the mandate of the Energy Policy Act. OSM concludes that inclusion of the delivery system as part of the water supply is imperative to fulfilling Congressional intent to protect drinking, domestic and residential water supplies. OSM believes that to provide otherwise would fail to ensure meaningful replacement of water to the user, because delivery is essential to provide a water supply at the point of use or consumption. OSM believes inclusion of the delivery system is therefore necessary to make whole the user of a protected water supply. OSM believes this is what Congress intended.

A significant number of commenters recommend that agricultural water supplies, including water used to keep stock animals, should be protected. OSM believes that the Energy Policy Act mandates protection of water supplies used for drinking, domestic and residential purposes. In implementing this mandate, OSM believes it is reasonable to distinguish commercial agricultural and horticultural uses of water from domestic uses such as non-commercial farming, gardening and other horticultural activities. OSM concludes that the terms "domestic" and "residential" are intended to have broader meaning than merely drinking water for human consumption. Rather, these terms reasonably should be understood to include a full range of domestic uses, including irrigation of

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non-commercial gardens and agricultural fields, and use of well and spring water for household purposes other than human consumption. OSM believes it is reasonable to interpret the language of the Energy Policy Act to distinguish private homeowners from commercial and other non-domestic water supply users. Many rural homeowners conduct extensive non-commercial domestic agricultural and horticultural activities, as an integral and even essential part of a homestead. Failure to require replacement of the water supply needed for such domestic agricultural and horticultural uses would fail to make the residential user whole. Therefore, OSM believes this protection reasonably implements the Energy Policy Act.

Definition of Material Damage

The definition of material damage is being adopted as proposed. The term material damage, in the context of §§ 784.20 and 817.121 of this chapter, means any functional impairment of surface lands, features, structures or facilities. The material damage threshold includes any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses, or that causes significant loss in production or income, or any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition. It would also include any situation in which an imminent danger to a person would be created.

A number of commenters opposed the definition of material damage as being too broad and subjective. The commenters added that extending the definition to include impairment of surface lands or physical change that adversely impacts the land's capability, goes beyond the requirements of the Energy Policy Act. The commenters claim that the Energy Policy Act does not necessitate that OSM adopt a national definition for material damage especially since there currently is no national definition of this term as it is used in SMCRA. The commenters rely on the history of the term material damage to assert that the reasons that OSM has not defined the term in the past are applicable to implementing the Energy Policy Act. The commenters go on to state that a national definition would lead to needless litigation as the term is applied to a wide variety of circumstances, and the task of defining the term is better left to the individual regulatory authorities, who could define the term in a manner appropriate for their respective jurisdictions. The commenters argue that the problem with a national definition is further exacerbated by the vague terms used to define material damage. The commenters add that the terms "functional impairment" and "significant adverse impact" do not provide much guidance when applying the definition of material damage to a wide variety of situations and circumstances.

Another group of commenters identify two perceived problems with the proposed definition of material damage. First, the definition fails to explicitly include the loss of value to the land or structures as being material damage. The commenters allege that the Energy Policy Act language supports a "loss of value" component to the definition by providing for repair or compensation "in the full amount of the diminution in value from the subsidence". The commenters note that under the proposed definition, subsidence damage that did not impair the function of a structure but did result in damage that caused the fair market value of the structure to decline, even to the point where the structure could not be sold on the market, would not be considered material damage.

These commenters point out a second perceived problem with the proposed definition. They consider that the use of the qualifier "significantly" in the definition creates too high a threshold of "materiality" and charged that the result is a definition that is contrary to the remedial purposes of SMCRA and the Energy Policy Act. They add that the proposed high threshold of materiality would not allow all of the injured property owners the ability to benefit from the full protection intended by Congress. The commenters also maintain that the rules fail to establish the context in which significant would be defined. The commenters recommend that the term "significantly" be dropped from the definition, and that the definition be clarified to include the loss of value to the land or structures as material damage, and modified to reflect their belief that Congress intended a low threshold for material damage.

OSM has considered these comments, but is not adopting these changes. OSM believes that the final definition of material damage is supported by both SMCRA and the Energy Policy Act. It is both necessary and appropriate to provide an overall policy framework at the national level, within which the state regulatory authorities may continue to make individual determinations of "material damage." It is OSM's conclusion, based on its experience and its observation and evaluation of regulatory program implementation, that such a national policy framework is needed to confer an appropriate minimum degree of consistency in the determinations made by the regulatory authorities and to ensure a level playing field. The definition of "material damage" covers damage to the surface and to surface features, such as wetlands, streams, and bodies of water, and to structures or facilities. OSM believes the final rule language will still allow each regulatory authority to clarify or more specifically define the term, if appropriate, and to use it in a manner appropriate for subsidence problems in the individual jurisdiction. OSM believes the use of the term "significant" is consistent with the commonly understood meaning of the term "material," as "substantial; noticeable;" or "of importance." *See* American Heritage Dictionary, Second College Edition. OSM believes this meaning is also consistent with the context in which the term "material damage" is used, both in the Energy Policy Act and in other provisions of SMCRA. OSM believes that if an impact is insignificant, then the regulatory authority could reasonably conclude that the damage is not material. OSM intends that the determination as to the significance of impact should be made on a case-by-case basis, depending on the individual circumstances. Moreover, OSM intends that any damage that causes the value of a structure to decline materially would be covered by the definition, including damage to the condition, appearance, or utility of the structure.

OSM believes this definition strikes a balance that will, on the one hand, provide some additional guidance, while on the other hand ensuring enough flexibility to support OSM's position that determinations as to material damage should be made on a case-by-case basis. Thus, OSM wishes to emphasize that it is the responsibility of the regulatory authority to make specific determinations on a case-by-case basis as to what would constitute material damage under its regulatory program, consistent with the final definition in paragraph 701.5. This will ensure that the term is applied appropriately to the subsidence problems in each jurisdiction.

Definition of Non-Commercial Building

The definition of the term "non-commercial building" is being adopted as proposed with minor changes. A non-commercial building would mean any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 761.5 of this chapter. Buildings used only for commercial agricultural, industrial, retail or other commercial enterprises are excluded.

A number of commenters agree that the definitions for "non-commercial buildings" and "occupied residential dwelling and structures related thereto" are needed to implement section 2504 of the Energy Policy Act, which requires all underground coal mining operations to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings or related structures as a result of subsidence due to underground mining operations.

In response to a commenter, OSM has revised the proposal to clarify that "commercial" agricultural enterprises are excluded. The definition specifically provides that buildings used only for commercial agricultural and other commercial use are not covered in the definition of "non-commercial" building. Further, the definition requires that the non-commercial use of a building exist on a regular or temporary basis at the time subsidence damage occurs.

Definition of Occupied Residential Dwelling and Related Structures

This provision as proposed defined the term "occupied residential dwelling and related structures" as any building or other structure that, at the time subsidence occurs, is used for human habitation. This definition in the final rule is revised by adding the phrase "temporarily, occasionally, seasonally, or permanently" used for human habitation.

OSM agrees with the commenters that the definition of an "occupied residential dwelling and structures related thereto" should be revised to protect dwellings that are not occupied on a daily basis but are occupied at some time. This change is intended to recognize that dwellings such as rental homes, seasonal homes, and camping cabins are entitled to protection. This term also would include any building, structure, or facility installed on, above, or below, or a combination thereof, the land surface if that building, structure, or facility is adjunct to or used in connection with the occupied dwelling, including non-commercial agricultural and horticultural activities. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables serving the dwelling; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail, or other commercial purposes would be excluded.

OSM recognizes that a similar term "occupied dwelling" is currently defined in 30 CFR 761.5 as "any building that is currently being used on a regular or temporary basis for human habitation." This term is so defined for purposes of Part 761, which implements SMCRA § 522(e)(5), and which, with certain exceptions, does not allow surface coal mining operations to be conducted within 300 feet of any "occupied dwelling." OSM has adopted a somewhat different definition for the term "occupied residential dwelling" for purposes of implementing the Energy Policy Act provisions concerning subsidence control, because of the different purposes served by the definitions and the different language of the Energy Policy Act.

A group of commenters suggest that the definition is overly broad and should be limited to the intentions of Congress found in the Energy Policy Act which were meant to protect only residences and their water supplies. OSM disagrees with the commenters' characterization of congressional intent. OSM maintains that the definition for "occupied residential dwelling and structures related thereto" is needed to implement Section 2504 of the Energy Policy Act of 1992, which requires all underground coal mining operations to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground mining operations.

Definition of Structures or Facilities

In the proposed rule, OSM defined structures and facilities as any building, constructed object or improvement whether installed on, above, or below the land surface, including, but not limited to, park facilities; roads; cemeteries; utilities; fences and other enclosures; retaining walls; and septic sewage treatment, irrigation and drainage systems.

Commenters argue that the Energy Policy Act does not specifically address commercial and certain other non-commercial structures. In addition, the commenters note that there is no need for the expanded definition because current regulations already provide for adequate protection of buildings and structures from underground mining.

One commenter noted that a broad definition of the term "structures or facilities" is supported by the House Committee Report accompanying the House revisions to the Energy Policy Act:

> It is the Committee's intent that the terms "structure or facility" be construed to extend to any improvement on or in the land, such as houses; buildings; gas, water, sewage or other pipelines; telephone, electric and other cables; and water impoundments.

H.R. Rep. No. 474, 102d Cong. 1st Sess., pt. 8, at 133 (1992).

However, this report accompanied a previous version of the Energy Policy Act, which was not passed. And that earlier version, unlike the Energy Policy Act, did not require that OSM prepare a study to evaluate existing subsidence protections of pipelines, before any decision on rulemakings to make changes in protection of pipelines. Therefore, OSM believes that the quoted language is not dispositive as to Congress' intent on interpretation of the term.

OSM considered all comments on the proposed definition, and reevaluated its position on this provision. OSM agrees with those commenters who argue that section 2504 of the Energy Policy Act did not mandate protection of structures and facilities beyond those specifically noted in section 2504 of the Energy Policy Act, and OSM has concluded that the record does not clearly establish that a nation-wide problem exists requiring further subsidence protection of structures and facilities not specifically mentioned in section 2504. Therefore, OSM has decided to address in this rulemaking only those structures addressed in the Energy Policy Act. Therefore OSM is withdrawing the proposed definition and performance standards concerning the term "structures and facilities."

A number of commenters urge that OSM take various steps in this rulemaking to clarify or change existing subsidence control requirements concerning protection of natural gas and petroleum pipelines. Other commenters request that OSM confirm in this rulemaking the applicability of existing rules to such pipelines. However, OSM has concluded that any actions in this rulemaking to clarify, change or otherwise evaluate existing subsidence control requirements for protection of such pipelines would be premature and contrary to Congressional intent as expressed in the Energy Policy Act of 1992. That act provided, in section 2504(a)(2), that:

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(A) The Secretary of the Interior shall review existing requirements related to underground coal mine subsidence and natural gas and petroleum pipeline safety. Such review shall consider the following with respect to subsidence: notification; mitigation; coordination; * * * and the status of Federal, State and local laws, as well as common law, with respect to prevention or mitigation of damage from subsidence.

(B) The review shall also include a survey of the status of Federal, State, and local laws, with respect to the responsibilities of the relevant parties for costs resulting from damage due to subsidence or from mitigation efforts undertaken to prevent damage from subsidence.

(C) In conducting the review, the Secretary * * * shall consult with * * * the Attorney General of the United States, appropriate officials of relevant States, and owners and representatives of natural gas and petroleum pipeline companies and coal companies.

Subsection (2)(D) requires the Secretary to submit a report detailing the results of the review to specified Congressional committees. Subsection (2)(D) also provides that:

Where appropriate, the Secretary of the Interior shall commence a rulemaking to address any deficiencies in existing law determined in the review under subparagraph (A) regarding notification, coordination and mitigation.

Thus, Congress directed that OSM review and report on the status of existing Federal law and consult with the Attorney General in that review, and, where appropriate, commence a rulemaking to address any deficiencies identified in the review. OSM believes it would be premature to summarize the status of existing law or clarify or revise existing law, before the mandated review and report are finished. OSM is currently in the process of completing the report. Therefore, in this rulemaking OSM will not address the status of existing law protecting natural gas and petroleum pipelines from subsidence. Similarly, OSM will not clarify or change existing law, except that, as discussed elsewhere in this rulemaking, OSM is interpreting section 720 to require that individual pipeline connectors attached to structures otherwise protected under section 720 are subject to the protections of section 720. OSM has concluded that this limited protection is necessary to ensure that owners of otherwise protected structures are made whole when material damage occurs. Any action appropriate to clarify or revise the application of subsidence performance standards to natural gas and petroleum pipelines will be taken after completion and distribution of the review and report.

Definition of Replacement of Water Supply

The definition of the term "replacement of water supply" is being adopted as proposed with additional changes. In the final rule, "replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, the provision of a water supply on both a temporary and permanent basis, which is equivalent to the premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply. The definition is applicable to both underground coal mining operations and surface mining operations that affect water supplies. The final rule is intended to apply to replacement of water supply under both sections 717(b) and 720(a)(2) of SMCRA.

Several commenters assert that the proposed requirement that the permittee pay for the operation and maintenance costs of the replacement water supply goes beyond the statutory requirements of the Energy Policy Act which only requires the "replacement" of the water supply. OSM does not agree. OSM maintains that payment of replacement water supply operation and maintenance costs in excess of premining costs is a logical aspect of the requirement to replace the water supply. This provision would ensure that the owner or user of the water supply is made whole, and that no additional costs are passed on to the water supply user after the replacement water supply is installed, beyond those that are customary and reasonable for the premining supply. The definition contemplates that the permittee will pay the capital costs of installing the replacement water supply. For example, if the use of well water can continue, the permittee would pay the cost of designing, drilling, and completing a new or deeper well; purchasing and installing a pump; and/or purchasing and installing a treatment system, as necessary. If the replacement water supply involves a hook-up to a public or private water supply system, the permittee would pay the hook-up costs, including fees, purchase of equipment and supplies, and construction. If a temporary water supply is necessary before the permanent replacement water supply is provided, the permittee would pay the cost of providing the temporary water supply.

A number of commenters support the requirement for the payment of operation and maintenance costs in excess of the customary and reasonable costs for the delivery of the premining water supply. However, the commenters suggested OSM consider a lump sum payment as an alternative to annual payments for operation and maintenance costs for a permanent water supply. OSM has considered the commenters' views and has decided to adopt most of these suggestions. If agreed to by the water supply owner, a one-time payment based on the present worth of the increased annual operating costs for a period of time agreed upon by the water supply owner and the permittee would be considered an acceptable method to fulfill the obligation to pay for the operation and maintenance costs of a permanent water supply in excess of customary and reasonable premining costs. A lump sum payment may be preferable to annual or other periodic payments because only one transaction is needed. Annual payment is not assured if the permittee encounters financial difficulties or goes out of business. Periodic payments could involve complex calculations and excessive and unproductive paperwork and record-keeping. Provision for a lump sum payment should reflect the predicted useful life of a water supply delivery system. For example, 20 years could be a reasonable amount of time to hold a permittee responsible for costs when the delivery system from a spring or well would likely have required repairs within the 20-year period even if the spring or well had not been affected by mining.

Commenters argue that the definition should state that the replacement water supply need only provide the quantity and quality required for actual use. In addition, the commenters recommend that the phrase "provision of an equivalent water delivery system" be deleted because the proposed definition appears to limit replacement to water delivery systems. Under this condition the permittee would not be able to replace the water supply by any means other than a "water delivery system." OSM maintains that the provision of water quality and quantity equivalent to that of premining supplies is plainly required by the term "replacement." Replacement of the delivery system is a reasonable aspect of replacement. The requirement of replacement of water supply includes replacement at no significant cost to the water supply

owner above that which was being paid by the owner for water supply prior to the damage. The obligation of the Energy Policy Act is to replace the supply, as noted in the legislative history. OSM believes that to require that the water supply owner be made whole without imposing significant additional costs will most reasonably implement the Energy Policy Act.

A commenter recommends that the definition of "replacement" address time limits for providing both interim replacement and permanent replacement. The commenter recommends a 48-hour time period to provide a temporary replacement and 1–2 years to provide permanent replacement. OSM agrees that some guidance on the issue of timing of water supply replacement would aid in consistent implementation of replacement requirements. If a temporary water supply is needed before the permanent replacement water supply is provided, it is reasonable to expect that the permittee will provide replacement within a reasonable amount of time. OSM believes that prompt replacement should typically provide: emergency replacement, temporary replacement, and permanent replacement of a water supply. Upon notification that a user's water supply was adversely impacted by mining, the permittee should reasonably provide drinking water to the user within 48 hours of such notification. Within two weeks of notification, the permittee should have the user hooked up to a temporary water supply. The temporary water supply should be connected to the existing plumbing, if any, and allow the user to conduct all normal domestic usage such as drinking, cooking, bathing, and washing. Within two years of notification, the permittee should connect the user to a satisfactory permanent water supply. This guidance is intended to assist regulatory authorities in deciding if water supplies have been "promptly" replaced.

A commenter expresses concern that adoption of the provision to require both underground mining operations and surface mining operations to replace water supplies would violate the Administrative Procedure Act (APA). The commenter charges that surface mine operators were not given adequate notice and opportunity to comment on the proposed provision. OSM disagrees. The proposed definition was explicitly applicable to surface mining (See 58 FR 50178, September 24, 1993), and the proposed rule invited all interested parties to submit comments on the provision.

A commenter notes that the definition does not address the doctrine of prior appropriation and state law regarding the replacement of water rights and requested that the definition include a reference to state law. OSM has concluded that no such discussion is required in this definition. As discussed in more detail below in the preamble discussion of section 817.42(j), neither this definition nor the requirement to replace drinking, domestic, and residential water supplies are intended to affect rights to consume or legitimately use a water supply under a senior water right pursuant to State law.

Commenters argue that it would be inappropriate to require replacement of a water supply that is not needed for the approved postmining land use. In addition, OSM received requests from States and OSM field offices to clarify the requirement for replacement of water supplies. In response to these comments, OSM considered an alternative provision for replacement of water supplies. In the July 26, 1994, notice reopening the public comment period on the proposed rule to provide for review and comment on additional information added to the Administrative Record, OSM requested comments on the proposed alternative provision for water supply replacement (59 FR 37953). This provision provides that when the property owner confirms in writing that the owner does not desire replacement of the delivery system, and no such system is in use at the time of loss, contamination, or interruption, and no such system is needed for the approved postmining land uses, then the permittee may provide replacement of the water supply by demonstrating that an equivalent water source exists that can be developed if desired by future owners. Under this provision an owner could forgo replacement of the water delivery system if the system is not needed for maintenance of the existing land use or attainment of the postmining land use. The permittee would still be required to demonstrate the availability of a water source equivalent to premining quantity and quality, so that the current owner or his or her successor could utilize the water if desired in the future. Where the spring or well also serves other purposes, the quantity of the replacement supply only needs to be equivalent to the premining water supply for drinking, domestic, or residential use.

The majority of commenters support OSM's effort to reduce unnecessary, useless, and burdensome expenses for water replacement. Other commenters characterize the proposed provision as inconsistent with the Energy Policy Act requirement to replace the affected water supply, and assert that there is no authority to waive water replacement, in the absence of explicit statutory authorization of waiver. These commenters allege that the permittee is obliged to replace the water supply, including the delivery system, at no additional cost to the owner. The commenters alleged that the proposed provision would extinguish the replacement rights of tenants, fails to protect the reasonably foreseeable uses and values of property, and fails to ensure implementation of hydrological protection provisions of SMCRA.

OSM does not agree that this provision would fail to ensure implementation of the hydrologic protection requirements of sections 816.41 and 817.41. Existing requirements remain in place, and the permittee must comply with them. OSM expects that any water rights of tenants vis-a-vis a landlord may properly be protected under the terms of the applicable lease for the property. OSM also does not agree that this provision will fail to protect the reasonably foreseeable uses and values of the property, since any decision to forego construction of a delivery system must be consistent with the postmining land use, and the permittee is still required to ensure that a water source equivalent to premining quality and quantity is available.

OSM has decided to adopt the provision outlined in the Federal Register notice reopening the comment period on the proposed rule. Thus, the owner would have the option of foregoing installation of a delivery system, in those circumstances in which the system would be neither wanted or needed, and would not be used if installed. This provision would ensure that all coal mining operations must be conducted so that water resources remain to support the existing and proposed use of the land. The only feature that may be waived is a water delivery system that would not be used for the postmining land use, and was not needed for the land use that existed before mining. Also, the permittee must demonstrate the availability of a water source equivalent to premining quality and quantity. Therefore, OSM believes that the final rule ensures compliance with the Energy Policy Act and section 717 of SMCRA in all essential respects, while avoiding unneeded expense

Section 784.10—Information Collection

OSM is revising Section 784.10 which contains the information collection requirements for Part 784 and the Office

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of Management and Budget (OMB) clearance number. The revision updates the data contained in the section by including the estimated reporting burden per respondent for complying with the information collection requirements.

The collections of information contained in Part 784 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0039. The information will be used to meet the requirements of 30 U.S.C. 1211(b), 1251, 1257, 1258, 1266, and 1309a. The obligation to respond is required to obtain a benefit.

Several commenters asserted that the public reporting burden for the requirements proposed for Part 784 is far greater than that estimated by OSM. They believe that OSM has miscalculated the differences between existing regulations and the proposed regulations, and underestimated the burden on industry to complete the hydrologic information, the pre-subsidence survey and the subsidence control plan.

Based on the comments received, OSM has recalculated the estimated burden hours required to comply with the new requirements. Specifically, commenters claimed that the new requirements of section 784.14 would increase the hydrologic monitoring burden placed on industry. Accordingly, OSM has modified the burden estimate to include the new requirements for section 784.14.

Several commenters also disagreed with OSM's burden estimates to complete the requirements of section 784.20. The expanded requirements include preparation of a pre-subsidence survey which entails preparing a map, a narrative, and a survey, and a subsidence control plan.

Only three commenters submitted comments which contained data on burden hours or the number of structures involved in a pre-subsidence survey. One commenter, a coal company, provided a per structure burden hour, ranging from 3.33–4 hours per structure. The same commenter stated that a recent permit revision submittal for a 5,000 acre permit in a rural area contained 300 structures which, if the new requirements were in place, would have required a pre-subsidence survey taking approximately 1,000+ hours to conduct. One commenter, a major trade association for the coal industry, stated that in the Appalachian region where over 90 percent of all producing underground coal mines are located, between 6 to 12 structures per permit would require a pre-subsidence survey. Another commenter stated that a recent pre-mining survey in Appalachia had required a total of 300 man-hours; however, the commenter did not provide data on the number of structures involved.

Using the data supplied by commenters, OSM has recalculated the estimated *average* burden hours for a pre-subsidence survey at 163.20 hours per permit (12 structures×4 hours×90%+300 structures×4 hours×10%=163.20 hours). This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. OSM considers this to be a very conservative estimate. OSM is required under the Paperwork Reduction Act to renew its information collection clearance every three years. As part of that process, OSM publishes a notice in the **Federal Register** requesting comments on the estimated burden hours. At the first renewal of the clearance, OSM will be able to refine this estimate for pre-subsidence surveys, based on factual information concerning coal industry compliance with the new requirement. The total information collection burden for Part 784, the burden for the pre-subsidence survey and all other requirements, is estimated at 513 hours. This is the time required for a respondent to comply with all of the reporting requirements in Part 784.

Section 784.14(e)(3)(iv)—Hydrologic Information

This provision was proposed as 784.14(e)(3)(v), and has been adopted with some modification in the final rule. Under the final rule, the permit applicant will be required to identify whether the underground mining activities conducted after October 24, 1992, may result in contamination, diminution or interruption of a well or spring which is in existence at the time the permit application is submitted and which is used for domestic, drinking, or residential use within the proposed permit or adjacent areas. Authority for the new requirement may be found in SMCRA sections 201(b)(2), 507(b)(11), 508(a)(13), and 720(b). These sections authorize the imposition of requirements to submit information needed to implement the performance standard in paragraph 817.41(j).

Several commenters object to the proposed requirement that an assessment of probable hydrologic consequences be done for agricultural and industrial water supplies in permit or adjacent areas, noting that SMCRA does not authorize the replacement of water supplies for these uses. Consequently, these commenters believe that a requirement that the PHC determination include any assessment of the potential effect of mining on these supplies is inappropriate. OSM has decided to require replacement only of those types of water supplies specified in the Energy Policy Act, and has decided to withdraw the provision which was published as proposed paragraph 784.14(e)(3)(iv), and which would have established a broader information requirement for water supplies than is required to implement the Energy Policy Act.

Several commenters assert that the probable hydrologic consequences regulations duplicate much of the existing requirements for hydrologic impact assessments as currently required in SMCRA. In addition, the commenters noted that State regulatory agencies already have authority in paragraph 784.14(e)(3) that allows State agencies to require any information they deem necessary to ensure enforcement of the regulations and effective implementation of SMCRA. The commenters maintained that the proposed rules would generate significant inconsistencies which will result in total confusion for both the State regulatory agency and the coal mining community.

The requirement at 784.14(e)(3)(iv) does not duplicate the existing authority in paragraph 784.14; rather, the requirement in paragraph (e)(3)(iv) adds certain wells and springs to the existing list under 784.14(e)(3) of features to be covered in a determination of probable hydrologic consequences. This requirement implements the parallel performance standards at 817.41. Paragraph (e)(3)(iv) ensures that the requirements of 784.14(e)(3) apply to certain wells and springs within the proposed permit area or adjacent area. The requirement would ensure that, prior to mining, the permittee demonstrate whether the proposed operation may result in contamination, diminution, or interruption of a well or spring within a proposed permit area or adjacent area which is used for domestic, drinking or residential purposes.

A commenter alleged that the background data to determine the flow of water, either from a well or a spring, should be normalized for historic parameters to account for extended drought conditions. The commenter went on to note that replacing water at levels measured during dry conditions results in replacement at diminished levels.

OSM understands that certain wells and springs may pose problems for sampling to determine water replacement levels. However, OSM believes that the current regulations implementing those requirements, at 784.14(b) (1) and (2), are adequate to determine the level of a water supply equivalent to the premining water supply and to determine the presence of heavy metals in the water. These regulations require the application to include information on ground water and surface water quality and quantity sufficient to demonstrate seasonal variation and water usage. In addition, the requirement to include an analysis of both suspended and dissolved constituents provides adequate information to determine the presence of heavy metals in the water supply. Moreover, throughout the application process, the regulatory authority may require additional information necessary to assure that the proposed operation will protect the hydrologic balance, or otherwise necessary to understand the potential impacts of the operation.

One commenter characterized the requirement for baseline information for the permit and adjacent areas as flawed because many States do not consider lands overlying underground workings to be within either the permit area or the adjacent area. Therefore, many wells above or close to underground workings would not be surveyed and there would not exist any baseline against which to measure future damage and build an enforceable case for replacement of water rights.

OSM does not agree with this characterization. The term "adjacent area," as defined in 30 CFR 701.5, specifically includes all areas outside the permit area where resources, including wells or springs, could reasonably be expected to be adversely impacted by the proposed mining operation, including probable impacts from underground workings. The 1979 version of this definition similarly included all lands containing potentially affected protected resources outside the permit area. All State programs must contain provisions no less effective than the Federal regulations. OSM is not aware of any State that has a deficient definition of "adjacent area" or its equivalent. Nor is OSM aware of any State that is interpreting its program in the manner alleged by the commenter. Therefore, OSM finds no basis for the commenter's concern.

A commenter expressed concerns as to how an existing operation could demonstrate that it has not adversely impacted a well or spring that serves a water supply, when drought, rather than underground mining, is the primary factor affecting a water supply. The commenter noted that an existing operation would not have prepared a presubsidence survey to establish baseline water conditions. OSM believes such questions are evidentiary issues that must be addressed reasonably on the facts of the individual case, just as such issues are now addressed for replacement of water supplies affected by surface mining. As noted elsewhere in this preamble, a permittee may also voluntarily provide a presubsidence survey.

Section 784.20(a)—Pre-subsidence Survey

This section as proposed would add a paragraph to § 784.20(a), entitled "*Pre-subsidence Survey.*" In response to comments and requests for clarification concerning the scope of the rulemaking and of this paragraph, the proposed requirement is being adopted with modifications in this final rule. The rule language has been revised to provide that each application include a map of the proposed permit area and adjacent area at a scale of 1:12,000 or a larger scale if determined necessary by the regulatory authority. The map would show the type and location within the proposed permit area or adjacent area, of structures and renewable resource lands that subsidence may materially damage, or for which the reasonably foreseeable use may diminished by subsidence. The maps would also be required to show the type and location within the proposed permit area or adjacent area, of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

A narrative is required that must indicate whether subsidence, if it occurred, could cause material damage or diminish the reasonably foreseeable use of the identified structures and renewable resource lands. The narrative is also required to indicate whether subsidence, if it occurred, could contaminate, diminish, or interrupt the identified drinking, domestic, or residential water supplies. In addition to the conventional text format, videos or photographs can be submitted as supplements to the narrative.

Unless the applicant was denied access for such purposes by the owner, the rule also requires a survey which identifies certain features. First, the survey must identify the condition of all non-commercial buildings or occupied residential dwellings and related structures that may be diminished by subsidence within the area encompassed by the applicable angle of draw. Second, the survey must identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant would be required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponds to the angle of draw for the operation. (See discussion of angle of draw in discussion of paragraph 817.121(c)(4), *infra.*) Any technical assessment or engineering evaluations used in determining the pre-mining condition or value of such structures or in determining the premining quantity and quality of protected water supplies would be conducted at the permit applicant's expense. Copies of the survey and any technical assessments or engineering evaluations must be provided by the applicant to the property owner and regulatory authority.

Commenters claim that OSM failed to justify the need for a second map, in addition to the map required by paragraph 783.24(c). The map requirements of paragraph 784.20(a)(1) could be met by the same map submitted to comply with paragraph 783.24(c), so long as it meets the requirements of this paragraph. OSM believes that an explicit requirement to establish and document the location and pre-mining condition of protected structures and lands, and the location and pre-mining quantity and quality of protected water supplies, is essential to establish a sufficient baseline against which the effects of subsidence may be measured and to ensure full implementation of SMCRA sections 516 and 720.

The commenters argue that OSM provided no justification for a standard nationwide map scale and suggest that the determination of the map's scale be left to the individual states, based on mining conditions in each state. Commenters claim that OSM gave no reason why the map scale should be 1:4,800. A commenter pointed out that a map of the mine operation and the affected area at a scale of 1:4,800, as proposed, could be on the order of 7'×10'. OSM agrees that a map of this size would be difficult to review and store. OSM has revised the proposed rule to allow for a map on a scale of 1:12,000, or 1"=1000'. If the regulatory

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authority determines that more detail is needed, for example to show where protected structures or water supplies are located, the regulatory authority may request a larger-scale map. The final map scale requirement will provide both the regulatory authority and permittee with greater flexibility in meeting the requirement.

Commenters state that the requirement that maps must include a narrative description of the hydrologic information is redundant. Commenters allege that a narrative description would not provide any additional information that is useful, since paragraph 784.20 already requires both a map and narrative description. OSM agrees and has modified the rule. The map and narrative required under final sections 784.20(a)(1) and (2) are not intended to expand on the existing responsibility to identify renewable resource lands and identify whether they may be impacted by subsidence. The changes in this provision concerning map and narrative requirements for water supplies protected under section 817.41(j) are intended to provide the information necessary to ensure full implementation of the requirements of SMCRA section 720, concerning protection of water supplies. The changes reflect revisions made to paragraphs 784.20(b), 817.41(j), and 817.121(c). OSM anticipates that the regulatory authority may allow the applicant to utilize (or reference) relevant portions or all of the narrative prepared for the survey, in the subsidence control plan if the later narrative would be redundant.

Several commenters assert that the requirements in the proposed rule governing pre-subsidence surveys would pose a costly burden on permittees if the requirements are interpreted to require identification and cataloguing of the entire land surface and everything on it for the presubsidence survey. Commenters allege this burden is especially likely, considering the broad definition of structures and facilities, and commenters strongly disagree with OSM's assertion in the proposed rule preamble, that the additional survey would impose "little" additional burden on the industry. They also argue that such surveys have a diminishing usefulness as mining plans proceed, since the permit applications in which the survey is to be included are often done years in advance of any actual mining. Commenters also consider the proposed requirement redundant because of the existing survey requirements.

OSM has considered these comments and has modified the final rule. OSM continues to believe that additional requirements are necessary to effectively implement the requirements of the Energy Policy Act and is limiting the final requirement to non-commercial buildings, occupied residential dwellings and related structures, and drinking, domestic, or residential water supplies. As noted above, OSM has also made conforming changes to the requirements in paragraph (a) for a presubsidence map and narrative covering protected features. The regulatory authority, the permittee, and the surface owner will be provided with a better record of the status of these protected features prior to mining. That record will better form the basis of enforcement in the event of subsidence; but it will also better protect the permittee against any claim of damage for which the permittee is not responsible.

Further, OSM believes that these proposed changes will impose no unreasonable burden on the industry. In providing information on these features, the survey should incorporate the baseline water quality and quantity information on existing water supplies required under existing rules at 30 CFR 784.14 and 784.22. This information is also referenced in the final rule provision concerning water supply replacement requirements for underground mining, section 817.41(j). While the commenters may have pointed out a limitation on the long-term usefulness of the information, based on OSM's experience OSM believes that the proposed format for the survey information is the minimum needed to adequately assess the need for a subsidence control plan. OSM notes that the regulatory authority may ask for an update of this information as part of the mid-term permit review process, which would mitigate any problems with outdated information. If a subsidence control plan is needed, information in the presubsidence survey may be incorporated in the subsidence control plan.

Some commenters have noted that the decision as to whether to impose a pre-subsidence survey has been held by the courts to be a matter within the sound discretion of the Secretary, *NWF v. Lujan, supra*, 733 F.Supp. 419 at 429; and is essential to effectuate the protections intended to be afforded by amended Sections 720(a)(1) and (b) of the Act. OSM agrees.

Other commenters characterize this case as rejecting a requirement that an additional survey be done before mining is commenced. OSM does not agree with this characterization. The cited case found that the Act does not speak to the issue of presubsidence surveys, so the matter is within the Secretary's discretion. The court upheld a decision by the Secretary not to adopt certain requirements for a presubsidence survey.

Paragraph 784.20(b)—Subsidence Control Plan

This final rule is modified from the proposal to correspond with the final revisions to paragraphs 817.41(j) and 817.121(a)(2). Otherwise, the requirements under paragraph 784.20(b) in the final rule are the same as proposed. Under the final rule, no further information need be provided in the application under this section if the results of the pre-subsidence survey meet the following criteria:

(1) no structures, facilities, or renewable resource lands exist, or

(2) no material damage or diminution in value or foreseeable use could occur, as a result of mine subsidence, and

(3) the regulatory authority agrees with such conclusion.

A subsidence control plan is required if the survey identifies structures, facilities, or renewable resource lands and shows that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or if the regulatory authority determines that such damage or diminution could occur.

Under the final rule, paragraph 784.20(b), would require each subsidence control plan to contain the following information: (1) a description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, or other extraction methods, including the size, sequence and timing for the development of underground workings; (2) a map of the proposed underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (b)(4), (b)(5), and (b)(7) of this section will be taken to prevent or minimize subsidence and subsidence-related damage; and when applicable, to correct subsidence-related material damage; (3) a description of the physical conditions, such as depth of cover, seam thickness, and lithology of the overlaying strata, which affect the likelihood or extent of subsidence and subsidence-related damage; (4) a description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with paragraph 817.121 of this chapter; (5) except for those areas

where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to: backstowing or backfilling of voids; leaving support pillars of coal; leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and taking measures on the surface to prevent or minimize material damage or diminution in value of the surface; (6) a description of the anticipated effects of planned subsidence, if any; (7) for those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and related structures; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair; (8) a description of the measures to be taken in accordance with §§ 817.41(j) and 817.121(c) of this chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and (9) other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with § 817.121 of this chapter.

In this preamble OSM will use "longwall mining" to refer to the longwall mining and pillar recovery technologies which provide for "planned subsidence in a predictable and controlled manner," as referenced in SMCRA section 516(b)(1). The text of the regulations as adopted continues to use the terms "mining technology which provides for planned subsidence in a predictable and controlled manner" or "planned-subsidence mining methods."

Several commenters support the proposal to require permittees to submit subsidence control plans. These commenters recommend that the subsidence control plan require the permittee to document the full range of steps that can be taken to prevent and mitigate subsidence impacts, including mine design changes and precautionary and preventive measures taken above ground to minimize damage to surface features and structures.

However, some commenters argue that amending paragraph 784.20(b)(5) to require longwall mining to minimize material damage illegally reverses the current regulations of SMCRA, since the Energy Policy Act does not require the change and OSM has not shown a compelling need for such a change. These commenters find no reason to support OSM's decision to reverse the regulatory provisions governing longwall mining. They argue that there are sound policy and technical reasons for supporting the current regulatory scheme and that the proposed rule would incur additional costs on those permittees who utilize the longwall mining technique. OSM believes these requirements are fully authorized under SMCRA sections 201 and 516 and are consistent with and supportive of the requirements of SMCRA section 720. OSM does not agree that this provision is inconsistent with SMCRA or the Energy Policy Act. As discussed *infra*, in response to comments concerning the scope of the requirement, OSM has revised this provision somewhat, to require that, with certain limitations, minimization measures must be taken to protect the same structures for which, in section 720 of SMCRA, Congress has imposed a requirement to repair or compensate for damage. This will ensure that permittees take reasonable steps to minimize subsidence damage to protected structures before it occurs, without incurring unreasonable costs. While OSM recognizes that there will be some additional costs associated with minimization measures, OSM believes it is sound public policy to limit damage to protected structures before it occurs, where reasonable, and that such requirements are fully consistent with SMCRA, as amended. OSM also expects that the limitations on the obligation to minimize, discussed *infra*, will ensure that the expense of minimization will be neither prohibitive nor disproportionate.

One commenter submitted that the proposed regulations would impose an absolute requirement for a subsidence control plan because no one conducting longwall operations on federal lands would ever be able to demonstrate that there would be no "diminution in value." OSM believes that the extent to which longwall operations must prepare pre-subsidence surveys can only be determined on a site-specific basis, because of the number of variables that may affect both the nature and extent of subsidence as well as the damage to any protected structures. The commenter noted that the permittee could not meet the requirement for the subsidence control plan under the existing regulatory framework imposed by the Bureau of Land Management, which requires maximum economic recovery. OSM believes that any requirement to extract minerals for maximum economic recovery by definition must be applied to mean maximum economic recovery *consistent with applicable regulatory requirements*.

Under the final rule, OSM is retaining the language under existing paragraph 784.20(b)(5) that provides an exception to the requirement to submit a detailed description of the measures to be taken on the surface to prevent or minimize material damage or diminution in value of the surface for those areas where planned subsidence is projected to be used.

However, OSM has added paragraph 784.20(b)(7) that requires permittees conducting longwall mining operations that result in planned and controlled subsidence to describe the subsidence control measures they will use to minimize subsidence and subsidence-related material damage to non-commercial buildings and occupied residential dwellings and related structures, or to demonstrate that the costs of minimizing damage to these structures exceed the anticipated cost of repair and are not needed to prevent a threat to health or safety. The proposed rule would have required a description of such measures under paragraph 784.20(b)(5)(iv). The subsidence control measures that a longwall permittee can employ to minimize subsidence and subsidence-related material damage include measures taken on the surface, such as trenching, bracing, and jacking structures. OSM does not intend to require anything other than surface measures to minimize material damage from longwall mining where conventional underground measures may not be practicable. The final rule requires that a permittee using longwall mining technology take necessary measures consistent with the mining method to minimize material damage to surface lands, structures, or facilities, with certain limitations. However, OSM recognizes that underground measures are not normally associated with longwall mining, because they are not normally consistent with longwall technology. For example, changes in the design of an ongoing mining operation would not be required, because OSM has concluded, after considering all comments and available literature, that the expense of such underground measures to minimize material damage from longwall mining would be prohibitive, and therefore inconsistent with congressional intent.

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In responding to the proposal to require longwall permittees to use surface measures to minimize material damage, commenters allege that surface measures to minimize damage are neither technically nor economically practicable. These commenters allege that in some cases use of such measures has not prevented damage; that surface measures are not always appropriate; that many such measures remain experimental, unproven in effectiveness, and uncertain as to structural response; and that they are economically impractical. OSM finds these arguments unavailing, because they are all countered by the terms of paragraph 817.121(a)(2). That provision requires "necessary and prudent" measures, "consistent with the mining method employed," "to the extent technologically and economically feasible." Thus, if a measure is unnecessary or imprudent, inconsistent with longwall mining, or not technologically or economically feasible (or if it will not minimize material damage to protected features), it will not be required.

One commenter alleged that the term "subsidence control" does not include measures taken on the surface as suggested in the proposed rule to protect surface features from damage. The commenter noted that the use of the term subsidence control in SMCRA and the mining industry refers to the mine design including the sizing of openings and pillars which affect ground pressures within the underground mining environment; and in connection with other factors, affect the amount and type of ground movement that could result in surface deformation. To the extent this may have been true in the past, OSM regards this as irrelevant to the merits of this rulemaking, which establishes separate subsidence control requirements for those operations using planned subsidence and for those using conventional mining operations.

OSM is revising paragraph 784.20(b)(5) as an adjunct to the revisions to paragraph 817.121(a). The substance of these revisions is discussed infra under the heading for section 817.121(a).

OSM is also revising section 784.20(b)(8) as an adjunct to the revisions to section 784.20(a) and to reflect the requirements of section 817.41(j).

Section 817.10—Information Collection

OSM is revising Section 817.10 which contains the information collection requirements for Part 817 and the OMB clearance number.

One commenter stated that the burden required to establish a monitoring program under new paragraph 817.121 (c)(4) to determine surface damage based on a specified angle of draw could require 1,000 hours to perform. Consultations were held with OSM mine engineers who estimated the burden at approximately 250 hours. Therefore, OSM estimates the public reporting burden for the new information collection requirements for § 817.121(c)(4) to vary from 250 to 1,000 hours per response.

The collections of information contained in Part 817 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0048. The information will be used to meet the requirements of 30 U.S.C. 1211, 1251, 1266, and 1309(a) which provide, among other things, that permittees conducting underground coal mining operations shall meet the applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting underground mining activities. The obligation to respond is required to obtain a benefit.

Section 817.41(j)—Hydrologic Balance Protection

The proposed rule included two provisions concerning performance standards for underground mining activities, for water supply replacement: paragraphs 817.41(j), concerning replacement of water supply used for agricultural, industrial, or other legitimate use; and 817.41(k), concerning replacement of water supplies used for drinking, domestic, or residential use.

Proposed paragraph 817.41(j) provided that a person who conducts underground mining activities shall replace the water supply of an owner of an interest in real property who obtains water for agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the underground mining activities. Several commenters objected to this requirement.

Commenters claim that OSM provides no justification for changing its longstanding policy of not requiring water replacement for such users. The commenters maintain that the change in policy would contradict section 717(a) of SMCRA, which requires OSM to respect state water and property rights law. The commenters went on to state that this provision of the proposed rule went beyond the requirements of the Energy Policy Act and preempts state water law, thus removing the protections that SMCRA affords to state water laws. The commenters also pointed to the unique physical characteristics of western states that necessitate respect for the individual state water laws. After consideration of all comments on this issue, and after review of all available documentation of the need for the performance standards set out in proposed paragraph 817.41(j), OSM has concluded that the existing record does not clearly support the need for this provision. Therefore, OSM has decided not to exercise its discretionary authority under SMCRA, to require such protection. OSM will not require replacement of water supplies not mandated by the Energy Policy Act. Therefore, OSM is not adopting proposed 817.41(j) that would have required replacement of water supplies used for agricultural and industrial uses.

In proposed 817.41(k), OSM proposed to require a permittee to promptly replace a drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence prior to the date the regulatory authority received the permit application for the underground mining activities. Baseline hydrologic information required in sections 784.14 and 784.22 would be used to determine the impact of underground mining activities on the well or spring.

The final rule provision concerning replacement of drinking, domestic or residential water supply is renumbered and appears at paragraph 817.41(j). Under the final rule, the permittee is required to promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence prior to the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in § 784.14 of this chapter and the geologic information concerning baseline hydrologic conditions required in § 784.22 of this chapter shall be used to determine the impact of underground mining activities upon the well or spring. This information is not intended to be the exclusive basis for determining such impacts, and other relevant information could also be considered. Permittees both in primacy States and in Federal program States, as well as on

Indian lands, are required to comply with these provisions for operations conducted after October 24, 1992.

The majority of commenters agreed that the provision to require the permittee to promptly replace any drinking, domestic, or residential water supplies that have been adversely affected by underground activities is necessary to implement the provision of new SMCRA section 720(a)(2).

While commenters support the adoption of the proposed rule, they maintain that it is not necessary to monitor each water well in order to establish that subsidence has impacted a water supply well. OSM agrees that in many instances it may not be necessary to monitor each well. The location and frequency of well monitoring will be addressed on a case-by-case basis pursuant to existing paragraphs 784.14(h)(1) and 817.41(c).

A commenter asked for clarification that this provision would not in any way affect property rights under existing state water laws consistent with paragraph 717(a). Another commenter further recommended that OSM amend the provision to require that water rights regarding the affected well or spring be approved by the State Engineer or otherwise be recognized under State law. OSM points out that nothing in this requirement is intended to create an exception to section 717(a) of SMCRA. Section 717(a) requires deference to State water law on questions of water allocation and use. OSM interprets section 720 and the implementing rules as not requiring the replacement of water supplies to the extent underground mining activities consume or legitimately use the water supply under a senior water right determined under applicable State law. *See In re Permanent Surface Mining Regulation Litigation II*, Round III, 620 F. Supp. 1519, 1525 (D.C.D.C. 1985). However, OSM believes that section 717(a) concerns rights under State water law to consumption or use of water, and was not intended to address destruction or damage of the *source* of water, or contamination of the water supply. Thus, OSM anticipates that underground mining activities which cause destruction or damage of a water supply source, or contamination of a water supply, would be subject to the replacement requirements of section 720 even if the permittee possessed senior water rights.

A commenter recommended that compensation be available as an option for those limited circumstances where an impacted supply can't be restored. The commenter went on to note that Congress, in enacting the Energy Policy Act, clearly noted that these provisions were not to "prohibit, or interrupt underground coal mining operations." Without the compensation option, the commenter asserted that operations would be forced to cease operating if they couldn't replace the water supplies. OSM does not agree. The terms of the Energy Policy Act unequivocally require replacement. Further, OSM does not anticipate that underground mining operations will be unable to comply with this statutory mandate. For example, if the permittee is unable to restore a spring or aquifer, the permittee should still be able to provide water from an alternative source, such as a public water supply, or by pipeline from another location.

Section 817.121(a)—Subsidence Control

OSM is adopting paragraph 817.121(a)(1) as proposed. The requirement provides that the permittee must *either* adopt measures consistent with known technology which prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; *or* adopt mining technology which provides for planned subsidence in a predictable and controlled manner.

This language is not intended to be a change from the rules promulgated in 1983, (See 48 FR 24652, June 1, 1983), and relies on the basis and purpose stated in 1983. This rulemaking makes minor editing changes intended to more clearly reflect the meaning of the existing rule. Thus, under this provision, as an alternative to adopting measures consistent with known technology which prevents subsidence causing material damage to the extent technologically and economically feasible, an permittee may adopt mining technology which provides for planned subsidence in a predictable and controlled manner.

OSM is adopting paragraph 817.121(a)(2) with modification from the proposed rule. Under the proposed rule, if a permittee employed mining technology which provides for planned subsidence in a predictable and controlled manner, the permittee would have been required to take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to surface lands, structures or facilities to the extent technologically and economically feasible. Under the final rule, the responsibility to minimize damage is limited to structures listed in the Energy Policy Act, namely noncommercial buildings and occupied residential dwellings and related structures. However, unless the anticipated damage would constitute a threat to health or safety, the permittee would not have to take minimization measures if the permittee demonstrates that the cost of minimization would exceed the cost of repair, and would not constitute a threat to health and safety. The permittee is obliged to take minimization measures that are technologically and economically feasible. Upon written consent of the owners of such structures or facilities, no minimization measures would be required.

Section 2504(a)(2)(D) of the Energy Policy Act provides that any rulemaking regarding protection of natural gas or petroleum pipelines from subsidence damage is to be done after the study which OSM is mandated to perform pursuant to paragraph 2504(a)(2)(A) of the Energy Policy Act. Some commenters express concern that proposed paragraph 817.121(a)(2) prejudged this issue, while others support the rule because they believe it does impose additional subsidence damage protection for pipelines. Since OSM has not yet completed the study mandated by the Energy Policy Act, OSM does not intend this rulemaking to affect, interpret, or clarify the status quo regarding subsidence control requirements for natural gas or petroleum transmission pipelines, branch and gathering lines, or distribution mains. For these and other reasons discussed below, OSM has decided to limit 817.121(a)(2) to those structures protected under the Energy Policy Act, namely noncommercial buildings and occupied residential dwellings and related structures.

Commenters claim that the proposed provision that required permittees to minimize damage from planned subsidence operations was vague and unworkable since little guidance was provided as to what minimizing damage would entail. Commenters argue that OSM's contention that the new rule would clarify an unresolved issue over the meaning of paragraph 817.121(a) was misguided, since the proposed rule did little to clarify the issue and would likely result in even more litigation. Commenters also allege that, rather than clarify the obligation of planned subsidence operations concerning subsidence damage, the proposed rule would effectively remove the exception granted in SMCRA for planned subsidence. These commenters questioned the effect of OSM's proposed provision on the planned subsidence exception at section 516(b)(1) of SMCRA if an operator using planned subsidence must adopt and deploy the same

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subsidence control measures as an operation not using planned subsidence.

OSM has considered these comments as well as the existing regulatory scheme of SMCRA and has concluded that, given the lack of clarity of section 516 on this issue, the most reasonable regulatory scheme and the regulatory scheme most consistent with SMCRA as amended by the Energy Policy Act, is to provide longwall subsidence damage minimization requirements that track the protections offered by the Energy Policy Act concerning subsidence from other forms of underground mining. Although the Energy Policy Act does not specifically address a minimization standard for longwall mining, it demonstrates Congress' intent to specifically require subsidence damage repair or compensation only for the structures listed in section 720. Therefore, the final rule limits the requirement to take measures to minimize material damage resulting from longwall subsidence to those structures protected in the Energy Policy Act. This is not a *prevention* standard, so a planned subsidence operation will not be required to meet the same subsidence control standard that applies to an operation not using planned subsidence. The addition of a limited requirement that longwall mine operators "minimize" damage in certain circumstances is not inconsistent with the SMCRA provision at section 516(b)(1) which exempts longwall mining from the requirement to *prevent* material damage. Authority for the minimization standard derives from both section 516(b)(1) and section 720 of SMCRA. OSM recognizes that Congress expressly stated in the Energy Policy Act that nothing in the statute regarding surface owner protections shall be construed to prohibit or interrupt underground coal mining operations. OSM believes that the final rule which contains a limited requirement for longwall operations to minimize subsidence damage in certain circumstances is consistent with Congress' guidance contained in the Energy Policy Act.

OSM believes that, by requiring only surface measures to minimize subsidence damage to non-commercial buildings and occupied residential dwellings and related structures, and only when it is technologically and economically feasible, the final rule establishes reasonable subsidence control measures that are also consistent with Congress' intent to support and encourage the use of planned and controlled subsidence. Further, by also providing that the requirement does not apply if the permittee demonstrates that minimization would cost more than repair, OSM believes it has mitigated any potential for unreasonably expensive minimization measures. OSM recognizes that some material damage to protected structures from planned subsidence is possible and in some cases will not be prevented under this rule. However, under paragraph 817.121(c), such damage has to be repaired. The requirement is not intended to discourage the use of planned and controlled subsidence or to require underground activities not normally associated with such operations. OSM does intend, however, that this rule will require reasonable measures to be taken on the surface to protect occupied residential dwellings and related structures and non-commercial buildings from material damage. OSM believes that the subsidence control policy outlined in the Consolidation Coal Company video, presented to OSM during an on-site tour of coal fields, and available in the administrative record for this rulemaking, illustrates the kinds of measures that would adequately meet the needs of the homeowner and the permittee in deciding when and what types of measures should be taken on the surface to minimize damage. Further, this videotape demonstrates the reasonableness of using such minimization techniques.

The commenters also question the provision that the proposed performance standards are mandatory unless the landowner consents. Commenters state that requiring measures to be taken to protect structures and facilities unless the owner consents, raises a number of issues with regard to exactly when and for what purposes a permittee is required to obtain the owner's consent. For example, if the permittee finds that certain measures are not prudent or economically or technologically feasible, must the permittee still obtain the owner's written consent? Also, if an owner were to steadfastly refuse to consent to an otherwise flawless planned subsidence operation, commenters opined that the requirement to obtain the owner's consent could be considered an uncompensated taking of the permittee's property right.

The obligation to take necessary and prudent measures on the surface consistent with the mining method employed, to minimize material damage to occupied residential dwellings and related structures and non-commercial buildings to the extent technologically and economically feasible, except when minimization costs would exceed repair costs, is mandatory. However, neither the regulatory authority nor the permittee is required to obtain the landowner's concurrence in order to satisfy that test. Instead, the minimization measures would be explained in the subsidence control plan, which the landowner has a right to review and object to, and which requires the approval of the regulatory authority. The consent provision allows the permittee to negotiate an arrangement with an owner of a structure or facility to waive the protection otherwise afforded by paragraph 817.121(a)(2). Such a written waiver would have to waive expressly the regulatory protection provided by the proposed rule and therefore could not be a document which predates adoption of the final rule. OSM notes that such a waiver would not be effective to waive any requirement pursuant to paragraph 817.121(c) to repair damage from subsidence. In addition to the waiver provision, the final rule includes a provision that a permittee will not be required to take measures to minimize subsidence damage upon a demonstration that the costs of such measures would exceed the repair costs for the damage. In both cases, the permittee could allow the damage to occur, and repair it pursuant to paragraph 817.121(c).

One commenter alleges that damage minimization measures for longwall mining cannot be limited to surface measures, because the SMCRA legislative history indicates that Congress contemplated underground preventive measures such as backstowing, provided such measures are technologically and economically feasible. The commenter cites H.R. Rep. No. 218, 95th Congress, First Session (1977) at 125–126. OSM does not agree with this characterization of the cited House Report. OSM believes the cited House Report materials discuss damage prevention and minimization measures appropriate for conventional room-and-pillar mining; there is no specific reference to longwall mining. For example, the referenced portion of the report states that:

> One characteristic of subsidence which disrupts surface land uses is its unpredictable occurrence in terms of both time and location. Subsidence occurs, seemingly on a random basis, at least up to 60 years after mining and even in those areas it is still occurring.

H. Rep. No. 218, 95th Cong., 1st Sess. 126 (1977). Such problems are not characteristic of longwall mining. Therefore, it is unlikely Congress had longwall mining in mind when it discussed appropriate prevention

measures in this passage. OSM concludes the report does not show congressional intent to require use in longwall mining of the measures discussed in this passage.

Section 817.121(c)—Subsidence Control

817.121(c)(1)

In the proposed rule, paragraph 817.121(c)(1) would be modified to substitute "subsidence related material damage" for "any material damage resulting from subsidence; "permittee" for "operator;" and "its pre-subsidence value and supporting reasonably foreseeable uses it was capable of supporting * * *" for "the value and reasonably foreseeable uses which it was capable of supporting * * *." The changes were editing changes not intended to have a substantive effect on the rule. However, commenters express concern over the changes in the language of paragraph (c)(1) because the preamble did not contain an explanation for the proposed changes. In the final rule, OSM is not amending the text of this provision but is adding a heading for the paragraph to assist in reading and application of the provision.

817.121(c)(2)

Paragraph 817.121(c)(2) is being adopted as proposed. The final rule requires that a permittee either promptly repair material damage caused by subsidence to any non-commercial building or occupied residential dwelling or related structure, or compensate for material damage caused by subsidence to those structures. If the repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If the compensation option is selected, the permittee must compensate the owner of the damaged structure in the full amount of the diminution of value resulting from the subsidence-related damage. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply to all subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

Paragraph 817.121(c)(2) implements new SMCRA section 720 (a)(1), which requires that all underground coal mining operations promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings or related structures as a result of subsidence due to underground coal mining operations. Permittees in both primacy States and Federal program States, as well as on Indian lands, are required to comply with this provision for operations conducted after October 24, 1992. Possible interim direct enforcement of this provision by OSM in some primacy States prior to amendment of State programs is addressed below in revisions to Part 843.

A group of commenters recommended that the rule recognize that pre-subsidence agreements and post-subsidence agreements between the property owner and the permittee would satisfy the requirements under paragraph 817.121(c)(2), and that nothing in this paragraph should be construed to prohibit or interrupt underground coal mining operations.

The use of pre- and post-subsidence agreements would be an acceptable means of fulfilling the requirement so long as the terms met the requirement under paragraph 817.121(c)(2) that the permittee repair or compensate any subsidence-related material damage to any non-commercial building or occupied residential dwelling or related structure. Any permittee/owner agreements cannot negate the requirement of the Energy Policy Act to repair or compensate for subsidence-related material damage to occupied residential dwellings and related structures as well as non-commercial buildings. OSM anticipates that repair pursuant to paragraph 817.121(c)(2) will restore the protected structure or facility to its premining capacity, features, value, and utility. OSM reiterates that the requirements in this paragraph are not intended to prohibit or interrupt underground coal mining operations.

Commenters allege that the permittee is not under obligation to repair subsidence-related damage to any building constructed after mining has occurred. OSM agrees with this comment. If the protected structure was damaged from subsidence from underground mining, and that mining occurred after the date set forth in the Energy Policy Act, then the Energy Policy Act requires that the permittee repair or compensate for the material damage. However, Congress does not discuss whether there should be any different treatment for structures that did not exist when the mining took place. For such structures, there would be no opportunity for the permittee to mitigate or prevent subsidence damage, and thus avoid the requirement to repair or compensate. Nor would it be possible for a permittee to anticipate what structures might be built above the mine after mining occurs and thus plan for anticipated costs to determine if mining would be economically feasible. On the other hand, surface owners can know the extent to which land they plan to build on has been undermined by previous mining operations. Therefore, OSM believes that it is reasonable to conclude that the requirement should not apply to structures which did not exist at the time of mining. OSM is adopting this interpretation in the final rule, and has revised paragraph 817.121(c)(2) accordingly.

Commenters also allege that the obligation to repair subsidence-related damage does not apply to buildings acquired after the mining occurred. OSM does not agree. SMCRA section 720 provides that underground coal mining operations conducted after the date of enactment of the Energy Policy Act shall promptly repair or compensate for material damage resulting from subsidence caused to *any* occupied residential dwelling and structures related thereto, or non-commercial building. Section 720 does not distinguish among such structures based on whether they were acquired before or after the date of mining. Rather, all such structures are subject to the requirement to promptly repair or compensate. OSM believes the language of the statute is clear, and the interpretation urged by commenters is inconsistent with the terms of the statute.

A commenter notes that the proposed rules lack provisions establishing requirements for notification of the permittee or regulatory authority, or for estimate, repair, replacement, or compensation time frames. OSM believes that existing citizen complaint procedures are adequate and appropriate to address surface owner complaints of subsidence damage under these rules.

OSM believes preparation or approval of estimates is properly addressed under existing procedures, by case-by-case negotiations with the surface owner, and regulatory authority review of reclamation measures. Similarly, OSM believes timely repair or compensation of protected structures is adequately addressed by the use of the statutory term "prompt," which is commonly understood to mean "expeditious" or "immediate." OSM notes that several commenters give examples of situations which may involve substantial variation in the time required before the full extent of subsidence damage can be confirmed, or before repairs properly may be commenced. OSM concludes that what is reasonably prompt for repair or compensation is properly determined on a case-by-case basis.

Commenters request changes in the existing rules providing for notice to property owners in advance of

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underground mining, because the rules require notice at least six months before mining, and this does not allow the surface owner to determine when mining actually takes place under his property. OSM did not propose to amend existing rules concerning advance notice of underground mining to surface owners, and the record does not justify a new rulemaking on this issue at this time.

A commenter requests that OSM clarify that the permittee is not required to restore or compensate for deterioration to a structure beyond what was caused by subsidence from underground mining. OSM believes the language of proposed paragraph 817.121(c)(2) is clear to this effect and that no rule changes are required to achieve this result.

One commenter asked that OSM make clear that any and all subsidence damage is subject to the requirement to repair and compensate indefinitely into the future, even if the permittee has previously repaired or settled with the affected property owner or pipeline operator; and that OSM clarify that the obligation to repair is not dependent on active mining or an active permit or upon termination of jurisdiction by OSM. OSM agrees that once damage occurs, an underground mining operation has a statutory obligation to repair, which may not be negated by a prior agreement.

817.121(c)(3)

The purpose of proposed paragraph 817.121(c)(3) was to ensure repair or correction of material damage caused by subsidence to those structures and facilities not covered by new SMCRA section 720 (a)(1) and paragraph (c)(2) of proposed section 817.121. The proposed amendments to paragraph (c)(3) would have required repair or correction irrespective of limitations otherwise applicable under State law. The proposed rule would have required a permittee to either correct subsidence-related material damage to any structures or facilities not protected by paragraph (c)(2) by repairing the damage, or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage would have included rehabilitation, restoration or replacement of damaged structures or facilities. Compensation by the permittee could have been accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

A number of commenters support the proposed rule and the need for the proposed rule, and discuss various respects in which the existing rule and state laws fail to adequately protect structures and facilities from subsidence damage. One commenter recommended that OSM draft a regulation stipulating that any and all subsidence damage is subject to the regulations to repair and compensate even if the permittee has previously repaired or settled with the affected property owner.

The majority of commenters noted that in the Energy Policy Act Congress expressly limited relief for damage arising from subsidence to "occupied residential dwellings and structures related thereto, or non-commercial buildings" and water supplies. The commenters argued that for more than a decade OSM has required permittees to correct material damage "to the extent required by state law" and they state that no compelling need has been demonstrated that would require OSM to change its policy and preempt state law and property rights. Therefore, commenters claim that the proposed rule has no basis under the Energy Policy Act and that OSM's cursory explanation of the reasons behind the new rule demands that the proposed rule not be adopted.

Commenters also claim that the existing state law remedies are adequate and that court decisions support their proposition that SMCRA does not specifically "require the Secretary to impose a duty to restore structures damaged by subsidence." *National Wildlife Fed'n* v. *Lujan*, 928 F.2d 453, 458 (D.C. Cir. 1991). These commenters argue that, without ample evidence that state law remedies for such damage are inadequate, there is no compelling reason for OSM to disregard the clear congressional intent behind SMCRA that "state laws govern the resolution of any disputes about property right which might arise from such separations, and this Act does not attempt to tamper with such state laws." S. Rep. No. 95, 95th Cong. 1st Sess. at 56 (1977). Commenters also point out that currently the states conducting 99 percent of the nation's coal mining provide statutory regulatory relief for damage caused by subsidence. Some commenters allege that the proposed rule would significantly affect private property rights and raise numerous issues regarding the Fifth Amendment's takings clause. Those commenters state that there is simply no compelling evidence for OSM to preempt state property law and that the proposed rule violates the express terms of the Energy Policy Act.

Numerous commenters interpret this provision as providing for subsidence protection of natural gas and petroleum pipelines. Some commenters assert that the proposed rule directly contradicts the congressional requirement that the Secretary complete a study on the pipeline issue before any rules on the issue are promulgated. Commenters also comment extensively on the impact the rule would have on the property rights of both coal and pipeline companies. Some commenters argued that even more extensive protection of pipelines is appropriate or necessary. OSM has reviewed these comments, but reiterates that, with the very limited exception noted above for connector lines attached to specific occupied residential dwellings or non-commercial buildings, Congress intended no change in the subsidence control regulations regarding natural gas and petroleum pipelines, and that no rulemaking on this issue is contemplated pending completion of the study on this subject pursuant to section 2504 of the Energy Policy Act. OSM is not addressing this issue in this rulemaking. If, after completion of the subsidence pipeline study, OSM determines that further rulemaking may be appropriate on this subject, OSM will invite interested persons to review and comment on any further rulemaking.

OSM has considered all comments and has decided not to adopt the proposed changes to paragraph 817.121(c)(3). Instead OSM will retain the State law limitation set out in the existing regulations. The basis and purpose for the State law limitation was upheld by the D. C. Circuit Court of Appeals. *National Wildlife Fed'n* v. *Lujan*, 928 F.2d 453, 458 (D.C. Cir. 1991). OSM believes that circumstances have not changed significantly since OSM's adoption of the State law limitation; and OSM concludes that the record developed in this rulemaking is insufficient to justify eliminating the State law limitation except as provided in the Energy Policy Act. Under the final rule, the permittee is required, to the extent required under applicable provisions of State law, to either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this paragraph by repairing the damage, or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage shall include rehabilitation, restoration or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

817.121(c)(4)

OSM proposed paragraph 817.121(c)(4), which would have established a rebuttable presumption of a causal link between the operation of an underground mine and subsidence damage occurring within a specified zone over the area of coal extraction. Specifically, the proposed rule provided that, if damage to lands, structures or facilities occurs as a result of earth movement within an area determined by projecting a 35 degree angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The regulatory authority could also have approved a different angle of draw on a case-by-case basis if the permittee demonstrated that the proposed angle of draw is based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with § 784.20(a) of this chapter, no rebuttable presumption would have existed. These requirements would have applied only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

After reviewing the comments and based on OSM technical analysis, OSM has modified the final rule from that which was proposed. In the final rule, paragraph 817.121(c)(4) has been divided into five subparagraphs for clarification and readability. Final paragraph 817.121(c)(4)(i), provides that if damage to non-commercial buildings or occupied residential dwellings and related structures occurs as a result of earth movement within the area determined by projecting a specified angle of draw from underground mine workings to the surface, a rebuttable presumption exists that the permittee caused the damage. Thus, the final rule is limited to structures protected under section 720(a) of SMCRA. Also, instead of 35 degrees, as proposed, the final rule provides that the presumption applies to a 30 degree angle of draw. However, a State regulatory authority may amend its regulatory program to apply the presumption to a different angle of draw upon demonstrating in writing that the angle is more reasonable than the 30 degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State. OSM recognizes that the "more reasonable" standard is a different standard than would otherwise apply under SMCRA section 503(a) and 30 C.F.R. section 732.15(a) to OSM review of a State regulatory program amendment. However, OSM believes that this is the appropriate standard to apply to approval of a different State-wide angle of draw, because it will allow a State to adopt either a greater or lesser angle of draw, so long as the State angle of draw is better supported by geotechnical analysis than is the 30 degree angle of draw. OSM believes this standard for review will best assure that the area within which the presumption will apply can reasonably be expected to include almost all damage caused by subsidence, without unreasonably expanding the permit applicant's burden of surveying to areas where damage would likely not be attributable to subsidence.

Under final paragraph 817.121(c)(4)(ii), a person may request and the regulatory authority may approve application of the presumption to a different site-specific angle of draw based on a site-specific analysis submitted by the permit applicant. To establish a site-specific angle of draw, a permit applicant must demonstrate and the regulatory authority must determine in writing that the proposed angle of draw has a more reasonable basis than the applicable standard, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation. Like the standard for approval of a different State-wide angle of draw, this standard for approval of a site-specific angle of draw is intended to assure that the area within which the presumption will apply can reasonably be expected to include almost all damage caused by subsidence, without unreasonably requiring the permit applicant to survey the area where damage would likely not be attributable to subsidence.

Under final paragraph 817.121(c)(4)(iii), if the permittee was denied access to the property to conduct the presubsidence survey in accordance with § 784.20(a), no rebuttable presumption exists.

Final paragraph 817.121(c)(4)(iv) sets forth examples of evidence which would rebut the presumption, including evidence that establishes that the damage predated the mining; that the damage was proximately caused by some other factor and not by subsidence; and that the damage occurred outside the surface area where subsidence was caused by the underground mining.

Paragraph 817.121(c)(4)(v) requires that all relevant and reasonably available information must be considered in any determination as to whether subsidence damage to protected structures subject to paragraph 817.121(c)(2) was caused by subsidence from underground mining.

The purpose of paragraph 817.121(c)(4) is to set out a procedure under which a specified area would be subject to a rebuttable presumption that subsidence from underground mining caused surface damage to non-commercial buildings or occupied residential dwellings and related structures. This evidentiary standard would simplify establishing causation of subsidence damage in many cases, by relieving the regulatory authority of the initial burden of providing evidence that damage was caused by the mine operation. The presumption would be established only after it is determined that damage caused by earth movement did in fact occur within the specified angle of draw. The burden of rebutting the presumption will be appropriately on the mine operator, who will have the best information as to the nature, timing, and sequence of mining activities, geological conditions, etc.; i.e., the types of facts directly related to causation of the damage. Permittees may provide information to rebut the presumption either before an enforcement action is taken, when the regulatory authority or OSM is determining whether a violation exists because of a failure to repair or compensate for damage; or after enforcement action occurs.

OSM believes that the establishment of a specific angle for the presumption is important and has a number of effects or ramifications. In any enforcement proceedings concerning allegations of subsidence damage to protected structures, it will affect the initial burdens of going forward with the evidence for both the regulatory authority and the permittee. It will also affect operator permitting costs to some extent, because under the amendments to paragraph 784.20(a)(3) in this rulemaking, once the angle for the presumption is established, permit applicants will be required to comply with all presubsidence survey requirements covering at least the area within the angle to which the presumption applies. OSM has concluded that application of the presumption to the area within a specified angle provides needed protection of surface interests, while providing a clear limitation on the permit expenses that could be incurred in the absence of defined limits to a presumption. As a result, OSM believes applying the presumption to a specified angle will balance the various purposes

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of SMCRA, including both environmental protection and the SMCRA section 102(k) purpose of encouraging the full utilization of coal resources through the application of underground extraction technologies.

Since a presumption is important in all cases, OSM has decided to adopt a nationwide angle of draw for that presumption. Among issues noted by various commenters was concern over using the "angle of draw" and the appropriateness of the angle proposed. Depending on factors such as the location and size of the mine, the percent of extraction, and the local geology, the angle of draw or the area where damage may occur can vary considerably both regionally and locally. Yet, there is a need for a nationwide presumption standard so long as it can be modified on a state-wide or site-specific basis.

Many studies have been conducted to measure the extent of surface displacement and damage resulting from subsidence. OSM has considered such studies including:

Montz, H.W., and Norris, R.U., 1930, "Subsidence from Anthracite Mining, with an Introduction on Surface Report," Transactions AIME, Vol. 88, pp. 98–134.

Newhall, F.N., and Plein, L.N., 1936, "Subsidence at the Merrittstown Air Shaft Near Brownsville, Pennsylvania," Transactions AIME, Vol. 119, pp. 58–94.

Cortis, S.E., 1969, "Coal Mining and Protection of Surface Structures are Compatible," Mining Congress Journal, Vol. 55, No. 6, Jun., pp 84–88.

Bauer, R.A., and Hunt, S.R., 1981, "Profile, Strain, and Time Characteristics of Subsidence from Coal Mining in Illinois," Proceedings 1st Workshop on Surface Subsidence Due to Underground Mining, S.S.Peng, ed., West Virginia University, Morgantown, WV, pp. 207–219.

Conroy, P.J., 1979, "Rock Mechanic Studies, Longwall Demonstration at Old Ben # 24, Benton, Ill.," Phase I and II Reports submitted to USBM, 57 pp.

Peng, S.S., and Chayan, C.T., 1981, "Surface Subsidence, Surface Structural Damages and Subsidence Prediction Modelling in the Appalachian Coalfields," Proceedings Workshop on Surface Subsidence Due to Underground Mining, S.S.Peng, ed., West Virginia University, Morgantown, WV, pp. 73–87.

Adamek, V., and Jeran, P.W., 1981, "Evaluation of Existing Predictive Methods for Mine Subsidence in the US," Proceedings 1st Annual Conference on Ground Control in Longwall Mining and Mining Subsidence, SME–AIME, New York, pp. 183–187.

Wade, L.V., and Conroy, P.J., 1977, "Rock Mechanic Study of a Longwall Panel," Preprint No. 77–I–391, SME Fall Meeting, St. Louis, MO.

Conroy, P.J., 1979, Rock Mechanics Studies, Longwall Demonstration at Old Ben #24, Benton, IL, Phase I and II Report, Submitted to US Bureau of Mines, 57 pp.

Bauer, R.A., and Hunt, S.R., 1981, "Profile, Strain, and Time Characteristics of Subsidence from Coalmining in Illinois," Proceedings, Workshop on Surface Subsidence Due to Underground Mining, S.S.Peng and M.Harthill, eds., West Virginia University, Morgantown, WV, pp. 207–217.

Hood, M., Ewy, R.T., and Riddle, L.R., 1981, "Empirical Methods of Subsidence Predicting—A Case Study," Proceedings Workshop on Surface Subsidence Due to Underground Mining, S.S.Peng, ed., West Virginia University, Morgantown, WV, pp. 100–123.

Gentry, D.W., Able, J.F., 1978, "Rock Mass Response to Mining Longwall Panel 4N York Canyon Mine," Presentation at AIME Annual Meeting, Atlanta, GA, 33 pp.

Allgaier, F.K., 1988, "Surface Subsidence over Longwall Panels in the Western US—Final Results at the Deer Creek Mine, Utah," Information Circular 9194, US Bureau of Mines, 17 pp.

Durand, C.R., 1984, "Coal Mine Subsidence Western United States," Man-Induced Land Subsidence, Reviews in Engineering Geology, Vol. VI, T.L.Holzer, ed., pp. 151–194.

Peng, S.S., and Chiang, H.S., 1984, Longwall Mining, Wiley, New York, 708 pp.

Peng, S.S., 1986, Coal Mine Ground Control, 2nd ed., Wiley, New York, 491 pp.

Hasenfus, G.J., 1984, "The Prediction of Surface Subsidence Due to Room and Pillar Mining in the Appalachian Coalfield," MS Thesis, VPI & SU, 326 pp.

For the following reasons, OSM has concluded that the angle of draw is a reasonable way of delineating the area within which it will be presumed that damage was caused by subsidence. The "angle of draw" is the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough. Thus, the angle of draw is one way to define the outer boundary of subsidence displacement that may occur at the surface. This angle encompasses the area within which both dynamic and static strains, as well as phenomena such as curvature and tilt, would occur from subsidence. As the subsidence trough is developing, soils and rocks within the trough undergo dynamic strains. Dynamic strains change as to intensity and location, as subsidence progresses. After subsidence is completed, the soils and rocks could be in a condition of static strain. Different types and degrees of static strains occur in different locations of the subsidence trough.

OSM has considered defining the area in which a presumption would apply using another type of angle, such as the "angle of critical deformation" (also known as the "angle of break" or "angle of fracture"). This term refers to the inclination from the vertical of the line connecting the edge of the mined area with the surface point exhibiting the *maximum* tensile strain (or stretching). The angle of critical deformation occurs in the area between the boundary of the subsidence trough and the projected vertical from the edge of underground workings. The angle of critical deformation is always smaller than the angle of draw.

However, OSM has concluded that, while the angle of critical deformation describes where the maximum tensile strains (stretching) will occur once subsidence has occurred, the angle is not useful in describing where subsidence damage to structures may occur for two reasons. First, as subsidence is occurring, dynamic strains, both stretching and compressing, vary in location and may occur in places other than where those strains will exist once subsidence is complete. Thus, because the angle of critical deformation does not necessarily reflect where dynamic strains would occur, it may not account for the area where damage may be caused while subsidence is still occurring. Second, because the sensitivity of structures to subsidence damage varies, structural damage may be caused by strains far less than the maximum tensile strain; thus damage may occur to structures that are not subject to maximum tensile strain and that are located outside the angle of critical deformation. Moreover, structures may be more sensitive to damage from other subsidence-related phenomena such as curvature, tilt, and compressive strains that may occur within the angle of draw, but outside the angle of critical deformation.

While recognizing regional and site-specific variability in the angle of draw, OSM has decided to establish a national standard of 30 degrees. This is consistent with the outer limits determined for earth movement in most subsidence studies across the United States, particularly later studies addressing long wall mining. Also, the Subsidence Deformation Prediction Model developed for OSM by Virginia Polytechnical Institute, predicts an angle of draw ranging from 27 degrees to 31 degrees for 90 percent extraction where the percentage of hard rock in the overburden varies from 70 percent to 30 percent respectively. OSM has placed the results of this computer-based analysis in the administrative record for this rulemaking. This nationwide standard is conservative and offers reasonable protection to surface owners under anticipated subsidence scenarios. However States, coal companies, and/or citizens have a mechanism to adopt state or site-specific values based on regional or site-specific data. These variations could be incorporated into State programs or calculated on a permit-specific basis. Thus, the nationwide angle of draw can be replaced by the State, either by a State-wide standard, or on a site-specific basis, to the extent that a different angle of draw is demonstrated to be more reasonable.

Although the final rule provides that the presumption shall apply to a 30-degree angle of draw, it allows the States to establish a different angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground operations. This angle of draw should be the angle within which vertical displacement of the surface is reasonably expected. Further, as discussed above, the rule ensures that the regulatory authority also has the flexibility to establish a different angle of draw on a site-specific basis, where such variation is justified by appropriate geotechnical analysis. OSM anticipates that implementation of this rule will be facilitated through the use of computer-aided-design technology for subsidence prediction. Computer program packages for predicting surface movement and deformation caused by underground coal extraction should be very helpful to States and permittees in this regard. OSM has designed a national computer system, the Technical Information Processing System (TIPS), in close cooperation with the States, which includes the subsidence prediction model previously mentioned (which is also commercially available), for site-specific application. Thus the rule properly provides a national standard, but also provides for variations based on state-of-the-art technology where appropriate because of differences among States or within States.

If Federal enforcement of paragraph 817.121(c)(2) occurs under 30 CFR 843.25 described *infra*, with respect to subsidence-related damage to protected structures caused by underground operations conducted after October 24, 1992, the presumption of causation will attach to the 30-degree angle of draw for all existing permitted operations whether or not a presubsidence survey has been conducted pursuant to the new survey requirements of this rule. The presumption will apply in the period before a State's amended permitting regulations are effective, because the new requirements to survey the condition of surface features will not apply, so there will also be no provision for surface owner denial of permission—and therefore that ground for negating the presumption will not apply. However, during that time, if a permittee elects to conduct a survey of the presubsidence condition of protected structures and access is denied, the decisionmaker may consider those circumstances in deciding whether the presumption has been established. Immediately after the State amends its program, permittees could proceed to request designation of a different angle of draw or utilize the one contained in the state program if different than 30 degrees.

A number of commenters support the proposed provision that would have established a presumption that subsidence caused damage to lands, structures or features within a specified angle of draw of the mining. One commenter further notes that section 784.20 of the proposed rules requires the applicant to show and to survey all structures and facilities which may be materially damaged by mine subsidence, and states that if the identified structures are in fact damaged, then it is logical to assert that the mine caused the damage to those structures and a rebuttable presumption process is reasonable.

Some commenters suggest that the area in which the presumption would apply should be broadened to a 45-degree angle of draw. The commenters allege that this greater area of presumption is supported by the fact that subsidence impacts vary in both scope and range depending on many different factors including the area's geography and the type of mining being conducted. These same commenters add that because of this uncertainty the angle of draw must be large enough to include the wide variety of subsidence impacts.

Other commenters assert that the proposed rule references no sound technical or scientific basis to support the presumption, and that OSM does not have the authority to promulgate the rule. These commenters claim that it is well documented that damage caused by subsidence depends on many different factors which vary throughout the United States; and that a presumption that mining caused the damage within a pre-set nationwide angle of draw fails to take any of the important regional factors into account. Also, commenters argue that the appropriate angle of draw depends on the geology of the region and type of underground mining that is being conducted. It is argued that these regional differences in the effects of underground mining are the very reason that Congress intended for the States to be the primary enforces of SMCRA. The commenters also claim that the "Hasenfus" thesis cited by OSM in the preamble does not support the proposed rule's 35-degree angle of draw because the thesis is based on data collected from room and pillar mines that were mined before the implementation of SMCRA's subsidence control requirements.

The commenters also allege that the rule on presumption has no basis in SMCRA and that the rule violates the allocation of burdens and standards of proof set out in Section 7(c) of the APA, citing *Director, OWCP* v. *Greenwich Collieries*, 114 S. Ct. 2251 (1994) (hereafter, "*Collieries*"). Commenters argue that nothing in SMCRA provides authority for OSM to establish the standard or burden of proof in a civil action seeking to enforce the repair and compensation requirements of section 720 of SMCRA. Commenters also argue that the allocation of the burdens of production and proof must be determined by the applicable law in the forum where the cause is brought. In addition, commenters allege that the proposed rule violates section 7(c) of the APA. Section 7(c) of the APA states that, except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Thus, these commenters interpret the APA to not provide for an agency to relieve a party of its initial burden of production to make out a prima facie case. Under commenters' analysis, presumptions can only be created when a party has first introduced substantial evidence supporting the presumption. Further, the commenters speculate that relieving a party of their duty to establish a prima

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facie case based on a preponderance of the evidence might not survive a challenge based on procedural due process grounds.

OSM recognizes the concerns expressed by the commenters concerning variations in subsidence angle of draw, and the angle wherein damage is expected. As discussed above, OSM has designed the rule to address the possible range of appropriate angles within which it would be reasonable to presume that damage is subsidence related. OSM does not agree with commenters' arguments concerning lack of authority under SMCRA or the APA. OSM believes the rule is fully authorized by, and appropriate for implementation of section 720(a) which requires prompt permittee repair or compensation for damage to protected structures; section 720(b), which requires the Secretary to adopt implementing rules; section 516, which authorizes the Secretary to "promulgate rules and regulations directed toward the surface effects of underground coal mining operations" and to consider the distinct difference between surface coal mining and underground coal mining; section 501(b), which requires the Secretary to adopt implementing procedures and requirements; and section 201(c), which requires the Secretary to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." The Secretary is using his rulemaking authority to adopt provisions reasonable and necessary to guide and facilitate implementation of these sections.

Further, commenters have mischaracterized the effect of the presumption established under this provision. The presumption does not change the ultimate burden of proof in a determination. The ultimate burden of persuasion still lies with the regulatory authority or OSM. OSM believes that inferences and presumptions are an essential aspect of the adversary process. A trier of fact must often determine the existence of an element of a violation from the existence of one or more evidentiary facts. From its experience in implementing SMCRA, OSM believes that there is sufficient nexus and probability of causation between the facts that are deemed to give rise to the rebuttable presumption under this paragraph, and the resulting presumption. As indicated above, OSM believes this presumption is particularly appropriate in light of the fact that the permittee will have the best access to the facts that will be key to any ultimate conclusions on the issue. Such a presumption is consistent with the traditional approach that the burden of going forward with evidence normally falls on the party with knowledge of the facts involved. *See, e.g., EDF, Inc.* v. *EPA*, 548 F.2d 998 at 1004 (D.C. Cir. 1976) as modified and supplemental opinion on denial of rehearing.

In most cases, OSM does not expect section 7(c) of the APA to apply, as most enforcement cases are properly disposed of without the requirement for a formal hearing subject to such provisions of the APA. Rather, the presumption in this rule establishes a standard pursuant to which a regulatory authority shall evaluate permittee compliance with a SMCRA performance standard, for purposes of regulatory authority enforcement of SMCRA. Further, the presumption helps to ascertain the scope of the obligation to repair.

The presumption will not relieve any party of the initial burden of production, but rather defines what that burden will be, and when it may shift, in enforcement actions under this paragraph. That is, in enforcement actions by the State regulatory authority or OSM, if the evidence establishes that damage has occurred to protected structures as a result of earth movement within the applicable angle of draw, then this evidence satisfies the initial burden of production, and then gives rise to a rebuttable presumption of causation by subsidence. At that point the regulatory authority or OSM would have satisfied its obligation to make a prima facie case on the issue of causation. The permittee then has the burden of production to rebut the presumption or to negate other relevant evidence, by providing information that relates to the effect of the underground mining, such as information on the nature and timing of the underground mining operation, geological conditions in the area mined, and the premining condition of the surface feature. The presumption can be rebutted with technical support either prior to an enforcement action being taken by the regulatory authority, or in response to such an action during the review or appeal process. The proof needed to rebut the presumption will be determined on a case-by-case basis. Because the ultimate burden of persuasion still lies with the regulatory authority or OSM, in any cases in which a formal hearing is required to be held, the rebuttable presumption is fully consistent with section 7(c) of the APA, and with the holding in the *Collieries* case cited by commenters (114 S. Ct. 2251). That case interpreted the section 7(c) burden of proof provision, which provides that, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." The court held that, under that APA provision, the proponent of an order has the burden of persuasion, not just the burden of production (or the burden of going forward with the evidence). (114 S. Ct. at 2251). In any case, a determination as to causation must be based on consideration of all relevant and reasonably available information.

OSM does not agree that it is precluded from establishing such a rebuttable presumption based on the commenters' assertion that allocation of burdens of production and proof must be determined by the applicable law of the forum. Underlying State law does not preclude OSM from adopting reasonable rules implementing SMCRA; rather, inconsistent State law must be changed to be consistent with SMCRA and implementing regulations. Therefore, OSM anticipates that an implementing revision to the State regulatory program will be appropriate in most States.

Contrary to commenters' expressed concern, OSM does not intend to require a court to apply the presumption to citizen suits seeking civil remedy under the performance standards of section 720 of SMCRA; OSM anticipates that the court in question will establish the standard or burden of proof to be applied in any civil action before it, consistent with SMCRA.

A commenter has indicated concerns that this presumption will be unfair to existing operations, because they will not have done a presubsidence survey and so will be unable to document premining conditions. OSM does not agree. Permittees have had notice of the amendment establishing the requirements for repair, replacement, and compensation since enactment of the Energy Policy Act in 1992. Therefore, permittees have had ample opportunity to conduct a premining survey to document premining conditions, if they wished to establish baseline information. Further, nothing in existing rules or in the rules being adopted by OSM precludes a permittee from updating information as to premining surface conditions during the course of the mining operation. Therefore, a permittee could reasonably provide a presubsidence survey and then provide an update of conditions a reasonable time before mining is to begin in a particular area. And since permittees are in the best position to establish both what changes have occurred and what actions and geological factors are associated with those changes, they are not disadvantaged by a presumption that recognizes their advantage in documenting and evaluating the consequences of their mining. Also, OSM assumes that if a permittee of an existing operation has made reasonable efforts to conduct a presubsidence survey which documents the presubsidence condition of protected structures, and permission has been refused by a property owner, then in any enforcement proceeding OSM or the regulatory authority may take these circumstances into account in determining what weight, if any, to give to the rebuttable presumption of causation.

OSM believes that commenters' concerns about fairness and about due process with regard to the presumption, are also misplaced. Due process concerns, at bottom, relate to the fundamental fairness of a procedure. OSM believes that the rebuttable presumption will provide a fair process, for several reasons, including the following: first, in adopting a State program amendment, the State may specify a different standard for the angle where appropriate for conditions in the State; second, after amendment of the State program, the permittee may demonstrate that the presumption should apply to a different angle of draw on the particular site; third, in every case the regulatory authority must establish that the structures are within the angle of draw to which the presumption applies, that damage has occurred to the protected structure and that it was caused by earth movement; fourth, the permittee is in the best position to provide baseline information and information as to whether subsidence caused the damage, once damage is established; fifth, the decisionmaker must consider all relevant and reasonably available information; sixth, the presumption does not apply where access for a presubsidence survey pursuant to these rules was denied (and if access for a voluntary survey of presubsidence conditions is denied for an existing operation, the decisionmaker may consider those circumstances in deciding whether the presumption has been established); seventh, the presumption does not change the ultimate burden of proof in a determination; and eighth, administrative and judicial appeals procedures are available to all aggrieved parties.

Some commenters urge that OSM adopt a presumption of subsidence causation for damage to water supplies, similar to that proposed for damage to lands, structures, and features at 817.121(c)(4). Commenters stated that such a presumption should apply to damage to water resources within the greater of a 60-degree angle of draw or 300 feet of the outer boundary of the underground coal mining operation. However, OSM did not propose such a presumption, and believes that water supply damage causation does not lend itself to such a presumption. OSM bases this conclusion in part on its belief that causation of damage to water supply from springs and wells can be far more complex than causation of damage to surface lands and structures, and can involve a potentially greater variety of geological and hydrological formations and dynamics including depth, lateral extent, and recharge of the affected supply. Therefore, OSM has not established such a presumption in this rulemaking.

However, OSM has concluded that the absence of a presumption of causation for replacement of affected water supplies will not inhibit the water supply owner's ability to receive water supply replacement. If the water supply has been contaminated, diminished, or interrupted by the underground mining operation, the permittee is required to promptly replace the affected supply. In the event that the permittee does not replace the water supply, and the water supply owner contacts the regulatory authority regarding water loss, the regulatory authority must investigate to determine if there is sufficient evidence to believe that the domestic, drinking, or residential water supply was adversely affected by subsidence from the underground mining operation and subsequently not promptly replaced by the permittee. If the regulatory authority determines that sufficient evidence exists that a protected water supply has been contaminated, diminished, or interrupted by the underground mining operation, then the regulatory authority will initiate appropriate enforcement action. In any such enforcement action, the burden of proving that the water supply was damaged by subsidence from the underground mining operation is not on the water supply owner, who may not have knowledge of geological conditions and the nature and timing of the mining activities. Rather the initial burden is on the regulatory authority to establish a prima facie case that the water supply was affected by the underground mining. Then the burden of going forward with evidence to rebut the prima facie case would shift to the permittee. The ultimate burden of proof is on the regulatory authority.

817.121(c)(5)

This section as proposed would have provided that, if material damage from subsidence occurs to land, structures, or facilities protected under paragraphs (c)(1) through (c)(3) of this section, the regulatory authority would require the permittee to obtain additional performance bond in the amount of the estimated cost to repair the material damage from subsidence to the protected land, structures, or facilities. The permittee would have been required to obtain the additional bond within 90 days of the occurrence of damage unless repair or compensation is completed within that time frame, in which case no additional bond would be required. In response to comments, these proposed requirements are being modified in the final rule. The final rule ensures that replacement of water supplies protected under paragraph 817.41(j) is also addressed. Further, the final rule provides that if the permittee intends to repair the damage, the required additional bond would amount to the estimated cost of the repairs. If the permittee intends to compensate the owner, the additional bond would amount to the diminution in value of the protected land or structures. If the permittee will replace a protected water supply, the required additional bond would amount to the estimated costs to replace the protected water supply. Also, in response to comments, the final rule provides that, on a case-by-case basis, the 90-day period for posting bond can be extended for up to one year under certain circumstances. This can occur when the permittee demonstrates and the regulatory authority finds in writing that subsidence is not complete, that not all probable subsidence-related damage has occurred to lands or protected structures or that not all reasonably anticipated changes have occurred affecting the protected water supply. In such cases, it would be unreasonable to complete within 90 days the repair of subsidence damage or the replacement of protected water supplies.

Commenters assert that the proposal is not adequately explained and that the requirements would be difficult for some permittees to meet. Also, the rule fails to mention any procedure for the bond's release. Further the commenters argue that surety companies would be reluctant to post bonds for operations subject to the broad scope of the new rules. Without surety companies providing the bonds the permittees would be forced to finance the bonds themselves. This would place a severe financial burden on the permittee which would make it even more difficult for them to prevent or repair subsidence related damage.

OSM disagrees with the commenters that surety companies would be

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reluctant to post the bonds provided for in this paragraph, and that the requirement to obtain additional bonding on a temporary basis would impose such a severe financial burden on the permittee so as to impede their ability to repair subsidence related damage. The current rules at 30 CFR Part 800 already require the permittee to adjust the amount of the bond when the costs of future reclamation increase or when a reclamation obligation is established; for example, when material damage from subsidence occurs. The final rule is intended to avoid incomplete reclamation by clarifying the application to actual subsidence damage of the requirement in 30 CFR 800.15(a) that the regulatory authority specify a period of time or a set schedule to increase the amount of bond when the cost of reclamation changes. Thus, this provision assures that funds are available in a timely fashion to cover the cost of repairs in case of default by the permittee and to encourage prompt repair through the use of a grace period. The final rule does not establish a time limit for repair but rather allows the permittee a 90-day grace period to perform repairs, during which time no additional bond need be posted. The obligation to post increased bond only applies 90 days after damage has occurred. It should be noted that under paragraph 800.14(c), if the liability insurance policy required under section 800.60 would provide coverage sufficient to fund the reclamation of subsidence damage, that insurance may be substituted for increased bond. Procedures for bond release are set forth in sections 800.17 and 800.40.

Commenters charge that the legislative intent behind the Energy Policy Act shows that although the idea of additional bonding for subsidence damage and water replacement was included in the House version of the Energy Policy Act, the provision was deleted in the final conference committee version and the proposed rule requiring additional bonding would be contrary to the legislative intent of Energy Policy Act.

The commenters also rely on case law that has found that bonding for subsidence would be a "highly speculative endeavor" and that a change to such an approach would require "significant new evidence." The commenters reference the decision of the court of appeals in *National Wildlife Fed'n* v. *Hodel*, 839 F.2d 694 (D.C.Cir. 1988). This decision affirmed the Secretary's explanation that because it is difficult to predict with reliability when and how severely subsidence damage to the surface will occur, it is reasonable to issue a permit for underground mining without requiring the posted bond amount to reflect any bond amount for potential subsidence damage, provided that the bond amount could be adjusted upward after the damage began occurring. The court of appeals found that one of the distinct differences between surface and underground mining is the difficulty in accurately estimating the cost of repairing subsidence related material damage.

OSM does not agree with the commenters' interpretation of the legislative history of the Energy Policy Act or the cited case on this issue. As noted above, OSM believes the rule primarily clarifies the application of existing bonding requirements which require adjustment of the bond amount; thus, Congress may have deleted further language on this subject because it was not clearly needed. OSM concludes that the proposed rule is consistent with the case cited by commenters, because the proposed rule provides that the bond amount will be increased to cover required repair work *after* damage occurs, and only if the repair work is not to be completed within 90 days. At that point it is not a "highly speculative endeavor," since the damage will have occurred and estimates of repair costs can be reasonably established. Also, the permittee has control over the timing of repairs and can avoid the bond by repairing or compensating promptly. Thus, while OSM concurs in the rationale of the cited decision, as it concerns pre-subsidence bonding for anticipated subsidence damage, the decision is not applicable to the circumstances addressed in this rule. The proposed rule also provides substantial flexibility to the permittee, because it allows liability insurance proceeds to be applied to the repair effort. OSM believes this rule is consistent with SMCRA and is not inconsistent with any provisions of the Energy Policy Act.

Commenters allege that permanent repair of subsidence damage to structures and lands is seldom completed within 90 days. Potential damage to structures from tertiary settlement and from adjacent mining could delay repair for more than a year. Similarly, to minimize disruption to sowing or harvesting of crops, repair of drainage patterns in agricultural fields should be delayed until the entire field is subsided, and this is rarely possible within 90 days. The commenters argue that to impose additional bonding in such cases when repair cannot be completed within 90 days, accomplishes nothing but additional financial burden on the permittee and encourages premature and substandard restoration of protected features. OSM has considered these arguments and has made some adjustment to the final rule. OSM believes that if delays in repair are likely, then normally bond amounts should be adjusted to ensure that funds will be available later to pay for the repairs, since delays increase the risk that permittee funds may not be available. However, OSM does not intend that the rule encourage inappropriate or premature restoration measures when subsidence related damage is not yet complete, so that subsequently the permittee would have to redo the repairs. Therefore, under the final rule the regulatory authority can extend the 90-day timeframe up to one year under limited circumstances as previously described.

Section 843.25—Direct Federal Enforcement for Repair of Subsidence Damage.

In response to comments asking for clarification as to how immediate enforcement of the Energy Policy Act meshes with the primacy scheme established by SMCRA, OSM is adding a new section 843.25, to provide procedures for initiating and terminating direct Federal enforcement as appropriate, for section 720 of SMCRA concerning subsidence damage caused by underground mining that occurred after October 24, 1992. Section 720(a) of SMCRA requires that "Underground coal mining operations conducted after the date of enactment of this section shall comply with each of the following requirements: * * *." In section 720(b), the Secretary is directed, within one year after the date of enactment of the Energy Policy Act, and after notice and opportunity for comment, to promulgate final regulations to implement subsection 720(a). Thus, the requirements of subsection 720(a) to promptly repair, replace, or compensate were made effective immediately upon enactment of the provision, but the Secretary was directed to adopt implementing regulations during the following year.

843.25(a)

Under paragraph (a) of the final rule, within 120 days from the publication of the rules, OSM will determine for each State with an approved State regulatory program, what enforcement procedures will apply for purposes of implementing SMCRA section 720(a) and implementing regulations. The specific performance standards implementing section 720(a) are set forth in paragraphs 817.41(j) and 817.121(c)(2). OSM will determine for each such State whether (1) there will be direct interim Federal enforcement of the Energy Policy Act and implementing performance standards, for some or all surface coal mining operations; or (2) State enforcement will occur, backed up by OSM using the oversight procedures of paragraphs 843.11 and 843.12(a)(2); or (3) a combination of direct Federal enforcement and State enforcement will occur. As part of the determination process, (4) OSM will consult with each affected State and provide opportunity for public comment. OSM will publish its determination in the **Federal Register**.

In the preamble to the proposed rules (58 FR 50182) OSM "concluded that Congress intended new section 720(a) to immediately supersede inconsistent State program performance standards, by operation of law, as of the effective date of the final Federal rules." OSM also stated in the preamble to the proposed rule, "OSM believes it is essential to provide as orderly a transition as possible for implementing the Energy Policy Act." Id. OSM believes it is also essential to give the fullest possible effect to the State primacy scheme of SMCRA, in implementing the provisions of section 720, including the effective date. Upon further reflection, OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720.

After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA. This decision reflects OSM's general policy of developing a shared commitment with the States in enforcing the Act. To achieve this balance, OSM intends that the consultation and comment process provided for in paragraph 843.25(a) will allow OSM to evaluate affected States' enforcement authority and State plans for implementing section 720, to determine to what extent OSM can rely on state primacy, and ensure prompt compliance with section 720, while complying with the requirement for implementing rules. Once OSM has consulted with the States as to implementation of section 720, OSM will have the information necessary to determine the appropriate enforcement approach for each State. OSM anticipates that some States may have no underground mining, and that some states may have no complaints of damage from underground mining that would be subject to section 720. Some States are already in the process of adopting provisions like section 720, and may promulgate such provisions on or shortly after the effective date of these regulations. Providing for direct Federal enforcement in such States may be unnecessary. Providing for direct Federal enforcement could be unnecessary in any States that adopt provisions covering mining after October 24, 1992, if the State provisions are effective on or will be shortly after the effective date of these regulations. However, some States may take two or three years under Part 732 to adopt State program amendments. For States that do take such an extended time to adopt implementing regulatory program provisions, OSM may well determine it necessary to provide direct Federal enforcement for any damage caused by underground mining that occurs after October 24, 1992, until damage caused by underground mining is covered by such a State provision. OSM also anticipates that a number of States may not authorize enforcement of provisions analogous to section 720, as of October 24, 1992. Kentucky has already informally advised OSM that it does not anticipate providing for enforcement covering mining that occurred before July, 1994. In those States, to ensure compliance with section 720(a) OSM will provide direct Federal enforcement for any claims of damage caused by underground mining which occurs after October 24, 1992, and predates State program amendment. Such Federal enforcement should cause no surprise to permittees, who have been aware of their obligations since passage of the Energy Policy Act in 1992.

One commenter opined that direct enforcement was unnecessary, and that existing procedures for State program amendments would be sufficient to ensure appropriate enforcement. OSM does not agree. As set out above, OSM believes that direct Federal enforcement could be necessary in some States, in order to ensure that prompt compliance is provided with minimum disruption of existing procedures for State primacy. The procedures established in paragraph 843.25(a) will allow for State-by-State determination after appropriate input from affected persons concerning the necessity for direct Federal enforcement.

843.25(b)

Paragraph (b) clarifies how direct Federal enforcement procedures will apply, to the extent they are initiated, and how direct Federal enforcement will be phased out, once State programs are amended to address section 720 and the implementing Federal regulations.

Under paragraph (b)(1) of the final rule, upon a determination by OSM under paragraph (a) that direct Federal enforcement is necessary, paragraph 817.121(c)(2) will apply directly to surface coal mining operations in States with an approved State regulatory program. Paragraph 817.121(c)(2) will apply directly to failure to repair or compensate for subsidence-related material damage to occupied residential dwellings and related structures and non-commercial buildings, and paragraph 817.41(j) will apply directly to failure to replace a contaminated, diminished, or interrupted drinking, domestic, or residential water supply. Both paragraphs apply directly to damage caused by underground mining activities that occurred after October 24, 1992.

Under paragraph (b)(2), upon a determination by OSM under paragraph (a) that direct Federal enforcement is necessary, the provisions of paragraph 843.12(a)(2) will not apply to direct Federal enforcement implementing paragraphs 817.41(j) or 817.121(c)(2). When, on the basis of a Federal inspection pursuant to paragraph (b), an authorized representative determines a violation exists of paragraph 817.41(j) or 817.121(c)(2), the authorized representative will issue a notice of violation or cessation order, as appropriate. Paragraph 843.12(a)(2) provides for a ten-day notice (TDN) to a State, and opportunity for the State to take appropriate action or show good cause for failure to act, before an authorized representative would issue a notice of violation or cessation order.

Under paragraph (b)(3), paragraph (b) providing for direct Federal enforcement will remain effective in a State with an approved State regulatory program until approval, pursuant to Part 732, of provisions adopted by the State consistent with paragraphs 817.41(j) and 817.121(c)(2). Upon approval of those provision, paragraph (b) will remain effective only for violations of paragraphs 817.41(j) and 817.121(c)(2) that are not regulated by the State.

Some commenters request clarification as to how existing procedures for ensuring State primacy in regulatory program implementation will apply under the proposed rule. These commenters allege that OSM has no authority to ignore existing TDN and State program amendment procedures which ensure State primacy in enforcement of SMCRA and ensure that the approved State regulatory program will apply to mining operations in the State until established procedures are

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followed to require State program changes. Other commenters allege that direct Federal enforcement would be inconsistent with SMCRA. OSM does not agree. OSM believes that the limited direct enforcement procedures it is adopting are authorized by both section 720 and section 201(c) of SMCRA. Congress provided no specific statement as to how OSM was to ensure prompt compliance by underground coal mining operations, for damage caused by any underground mining after October 24, 1992. Congress did recognize that to develop such a regulatory scheme would require rulemaking, and provided for such rulemaking in section 720. Enforcement of section 720 will be required to apply to mining that occurs after October 24, 1992. OSM expects that some number of States will not provide implementation of section 720 for mining that has occurred after October 24, 1992, but before State program amendment, and that such States may prefer OSM to carry that enforcement burden. Based on past experience, OSM also expects that the normal process for State regulatory program amendment and OSM approval of State program amendments could take as much as two or three years, after this rule is finalized. Thus, if only State program amendment procedures were followed, it could be as long as five years after enactment of section 720 before some States actually enforced the section. OSM has concluded that following the routine procedures for State program amendment and for TDN's in implementing these rules, would frustrate the requirement for prompt repair, replacement, or compensation for all damage caused by underground mining occurring after October 24, 1992. In reaching this conclusion, OSM considered preliminary information as to complaints already filed with State regulatory authorities alleging violations of section 720. OSM requested such information from several States in which a substantial number of underground coal mining operations are permitted. The States of Virginia, Pennsylvania, West Virginia, and Kentucky have already received a total of over 300 complaints of violations of section 720. Therefore, OSM has concluded that direct Federal enforcement as outlined above, is consistent with, and essential to a reasonable implementation of section 720. However, in response to comments expressing concern about disruption of existing procedures, OSM has sought to provide a more limited direct enforcement process which will cause less disruption of existing procedures in each State.

OSM believes that SMCRA section 201(c)(2) also authorizes this approach. Section 201(c)(2) provides that the Secretary, acting through OSM, will "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Since Congress did not address the issue of how OSM was to meet the mandate for prompt compliance as of October 24, 1992, the Secretary is using his rulemaking authority to provide for direct Federal enforcement where reasonably necessary to implement Congress' mandate for prompt compliance. OSM has concluded that the existing program amendment and enforcement process may not be sufficient to ensure prompt compliance with the statute, and has decided to adopt rules providing for direct Federal enforcement as necessary to ensure prompt compliance with section 720(a).

Commenters argue that the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

One commenter alleges that OSM had not provided sufficient information about enforcement procedures to enable commenters to understand or comment on the procedures for direct enforcement. OSM does not agree. OSM provided sufficient information in the proposed rule to indicate that, in the interests of ensuring prompt compliance, the regulations would be made immediately and directly enforceable. OSM thereby informed all interested persons that OSM did not expect to postpone enforcement pending State program amendment. And OSM believes that neither industry nor State regulatory authorities will be prejudiced by such immediate enforcement, since all interested persons were put on notice by the statute, as well as the proposed rule, that prompt compliance would be required as of October 24, 1992. If there are concerns about opportunity to understand and comment on specific procedures for immediate enforcement, OSM believes that any such concerns will be adequately addressed by the process for consultation and opportunity to comment on appropriate measures for each State.

Other commenters allege that OSM has failed to provide timely rulemaking implementing section 720, and that OSM must promulgate an interim final rule which makes effective for all Federal and State programs, including the Indian lands program, the requirements of section 720, effective October 24, 1992. These commenters further argue that all permits should be modified to include the requirements of section 720 as permit conditions, and that all permitting authorities should be required to require collection and analysis of the data necessary to implement section 720. OSM does not agree. OSM had earlier decided that such an interim final rule was not appropriate, because of OSM's desire to avoid any unnecessary impairment of State primacy. OSM believes that reasonably prompt compliance will be assured in States with approved State regulatory programs under the procedures OSM is adopting, which will provide expeditious direct Federal enforcement where determined necessary. And an interim final rule will not be necessary for Federal program lands or Indian lands because, as discussed below, these final rules are incorporated by reference in the regulatory programs for such lands, and will apply upon the effective date of these rules. Further, OSM is following its normal rulemaking procedures, consistent with the APA. OSM believes that in section 720(b) Congress contemplated notice-and-comment rulemaking as an appropriate mechanism for implementing section 720(a). Given the difficult and controversial issues in this rulemaking, OSM believes it is important to assure full and fair opportunity for all interested persons to comment, and opportunity for OSM to consider all comments before OSM adopts implementing rules. OSM also believes the procedures set out in these rules will assure reasonably timely compliance with section 720 with less uncertainty and less disruption of the existing process than would be caused by the actions advocated by these commenters.

OSM concludes that there will be no prejudice to the interests of

underground coal mine operations to the extent direct Federal enforcement will occur. The industry was on notice that section 720 does specifically require that underground mine operations promptly repair, replace, or compensate for subsidence damage to protected features. The obligation was not changed by this rulemaking. The only question was the mechanism by which the requirement for prompt action would be enforced. And, since Federal enforcement can occur without delay for State program amendments, OSM believes the direct Federal enforcement process will work to the advantage of all interested persons. In cases where direct Federal enforcement is instituted, any evidentiary issues in enforcement should be more readily resolved, because facts will be fresher and more readily recalled than they would be after the delay required for amendment of a State program. In such cases the question whether damage was caused by subsidence from an underground mining operation may be easier to resolve under direct Federal enforcement, than it would be later after the delays required to implement an amended State program.

Effect in Federal Program States and on Indian Lands

The rules adopted today will be applicable through cross-referencing in those States with Federal programs and on Indian lands. The States with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The Indian lands program appears at 30 CFR Part 750. In accordance with 30 CFR 774.11, with respect to existing operations, OSM will notify permittees of the need to revise their permits to conform with the changes to 30 CFR 817.41(j) and 817.121(c).

Effect on State Programs

The performance standards set forth in 30 CFR 817.41(j) and 817.121(c)(2) are required to implement new SMCRA sections 720(a)(1) and (2). New SMCRA section 720(a) requires that operations conducted after October 24, 1992 comply with these provisions.

In the interim pending direct enforcement by a State, enforcement of paragraphs 817.121(c)(2), 817.121(c)(4), and 817.41(j) of this rule will be provided as set forth in section 843.25 of this rulemaking. For purposes of such interim enforcement, the definitions adopted in this rulemaking at section 701.5 and the presumption at paragraph 817.121(c)(4) will be effective and enforced on the same date as the provisions of paragraphs 817.41(j) and 817.121(c)(2).

For all other provisions in the final rule, OSM will follow established procedures for notice of required changes in State regulatory programs. The additional provisions will become effective upon the adoption of counterpart State regulatory program provisions in primacy States. OSM will evaluate permanent State regulatory programs approved under § 503 of the Act to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

III. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1029–0039 and 1029–0048.

Executive Order 12866

This rule has been reviewed under Executive Order 12866.

Benefits

While the cost of the rulemaking can be estimated, the benefits are not readily or completely quantifiable. Water loss and structural damage caused by subsidence from underground coal mining can have very disruptive personal and financial impacts, particularly to middle class and rural landowners. The benefit of avoiding the personal consequences, including those associated with health and safety, is difficult to assess. However, one of the clear benefits of the rule is that the responsibility to repair property damage and replace lost water supplies is shifted from property owners suffering the damage to the mining operations that cause the damage.

OSM's regulations would require replacement of the landowner's domestic water supply in a timely manner. The surface landowner would have water replacement, as necessary, without assuming any additional costs.

Under the regulations, landowners are afforded additional protections for their homes and domestic water supplies. The process for establishing causation between mining and damage to homes and land is simplified. Also, the rule provides that subsidence damage within a specified area associated with a coal mining operation will be presumed to have been caused by that operation, and that the operator will have the burden of refuting such a presumption. This shifts the burden of providing evidence from the property owner to the operator who would have better information as to the nature and timing of the mining activities.

The rule also provides the property owner with an option to receive compensation in a lump sum payment as an alternative to annual payments for operation and maintenance costs for a permanent water supply. If agreed to by the landowner, a one-time payment based on the present worth of the increased annual operating costs for a period of time agreed upon by the landowner and the coal mine operator would fulfill the operator's obligation. Such a payment plan, rather than annual or other periodic payments, would be preferable to the property owner in those cases where the operator might encounter financial difficulties or simply go out of business.

Property owners and coal mine operators would benefit from the requirement to conduct a pre-mine survey. The survey must inventory and document the pre-mining condition of the potentially affected structures and renewable resource lands. Under this requirement, both the surface owner and the mine operator are provided with a more accurate record of the status of the homes and land prior to mining. Hence, the record would be a fairer basis for enforcement in the event of subsidence.

Estimated Costs

The final rule requires all underground coal mining operations promptly to repair or compensate for any material damage to non-commercial buildings and occupied residential dwellings or related structures as a result of subsidence due to underground coal mining operations. Permittees in both primacy States and Federal program States, as well as on Indian lands, are required to comply with this provision for operations conducted after October 24, 1992. This provision is necessary to implement new SMCRA section 720(a)(1) of the Energy Policy Act of 1992.

The estimated cost to coal operators to meet this requirement of the Energy Policy Act is $12.6 million. Most states adopted provisions to implement this requirement following passage of the 1992 Act. These states account for $11.7 million of the $12.6 million estimated

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cost. Other states will need to promulgate implementing provisions on or shortly after the effective date of these regulations. OSM estimates that the cost to coal operators to meet this requirement in those additional states will be $900,000.

The final rule also requires the permittee to promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence prior to the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. This requirement that the permittee promptly replace any drinking, domestic, or residential water supplies that have been adversely affected by underground activities is necessary to implement the provision of new SMCRA section 720(a)(2) of the Energy Policy Act of 1992.

Under the regulations, the operator would pay the capital costs of installing the replacement water supply. For example, if the use of well water can continue, the operator would pay the cost of designing, drilling, and completing a new or deeper well; purchasing and installing a pump; and/or purchasing and installing a treatment system, as necessary. If the replacement water supply involves a hook-up to a public or private water supply system, the operator would pay the hook-up costs, including fees, purchase of equipment and supplies, and construction. If a temporary water supply is necessary before the permanent replacement water supply is provided, the operator would pay the cost of providing the temporary water supply.

The estimated cost to coal operators to meet this requirement of the Energy Policy Act is $11.2 million. Most states adopted provisions to implement this requirement since passage of the 1992 Act. These states account for $9.5 million of the $11.2 million estimated cost. Other states will need to promulgate implementing provisions on or shortly after the effective date of these regulations. OSM estimates that the cost to coal operators to meet this requirement in those additional states will be $1.7.

In addition to the above requirements, OSM believes that the following provisions with an estimated cost to coal operators of $2.7 million were essential to implement the requirements of the Energy Policy Act.

- Pre-Mine Survey: an explicit requirement to establish and document the location and pre-mining condition of protected structures and lands, and the location and pre-mining quantity and quality of protected water supplies, is essential to establish a sufficient baseline against which the effects of subsidence may be measured and to ensure full implementation of SMCRA sections 516 and 720. Estimated cost to coal operators is $1.6 million.
- Pre-subsidence Survey and Subsidence Control Plan: majority of applicants provide the survey, including map, and the subsidence control plan under the existing regulations; cost corresponds to those operators not currently providing the information. Estimated cost to coal operators for both requirements is $65,000.
- Presumption of Causation: presumes that damage was caused by underground coal mining operations; the operator must bear the cost of rebutting the presumption. Estimated cost to coal operators is $420,000.
- Additional Bonding: requirement to increase bond coverage within 90 days of the occurrence of any damage that is not repaired. Estimated cost to coal operators is $620,000.

The total estimated cost to coal operators to meet the subsidence control provisions in the Energy Policy Act of 1992 is $26.5 million. However, because many states have already implemented provisions of the Act accounting for an estimated cost of $21.2 million, the cost that will be incurred by coal operators resulting from promulgation of this final rule is estimated to be $5.3 million.

There are a number of provisions discussed in the proposed rule that have not been adopted in the final rule. A significant change is the decision by OSM not to adopt the proposed requirement to replace agricultural, commercial and industrial water supplies. OSM agreed with commenters that these provisions of the proposed rule went beyond the requirements of the Energy Policy Act. OSM estimates that these provisions not included in the final rule would have cost coal operators more than $7 million. Another proposed requirement that all facilities be covered was not adopted in the final rule. However, this change does not appreciably alter the cost to coal operators of meeting the requirements in this rule.

Regulatory Flexibility Act

The DOI certifies that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This determination is based on the fact that the revisions will have the greatest effect on underground mining operations, and only a small number of small entities mine coal by underground methods. For the purposes of this determination, a small entity is considered anyone whose total annual production at all locations does not exceed 300,000 tons.

National Environmental Policy Act

OSM has prepared a final environmental assessment (EA), and has made a finding that the rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI) has been approved in accordance with OSM procedures under NEPA. The EA and FONSI are on file in the OSM Administrative Record, Room 660, 800 North Capitol Street, Washington, DC.

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, "Civil Justice Reform" (56 FR 55195). In general, the requirements of section 2(b)(2) are covered by the preamble discussion of this rule. Individual elements of the order are addressed below:

A. What would be the preemptive effect, if any, to be given to the regulation?

Section 843.25 sets out a procedure by which OSM may determine on a State-by-State basis that direct Federal enforcement is required in States with approved regulatory programs, in the interim before those programs are amended to implement section 720, to ensure prompt compliance with section 720 of SMCRA, 30 U.S.C. 1309a, and implementing Federal regulations. Any such action would be instituted only upon a determination that in a particular State the action was necessary on an interim basis, to ensure the congressionally mandated prompt compliance with SMCRA section 720, for underground operations conducted after October 24, 1992. This procedure is discussed in the preamble discussion of section 843.25. The other provisions in this rulemaking would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's regulations. Any State law that is inconsistent with or that would preclude implementation of the regulation would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the regulation would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264 (1981).

B. What would be the effect of the regulation on existing Federal law or regulation, if any, including all provisions repealed or modified?

The regulation would modify the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of the action specifies the Federal regulatory provisions that are affected by the revision.

C. Would the regulation provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What would be the retroactive effect, if any, to be given to the regulation?

The Energy Policy Act amended SMCRA by adding a new section 720, 30 U.S.C. 1309a, requiring that underground coal mine operations promptly replace certain adversely affected water supplies and repair or compensate for subsidence damage to specified structures. The requirements are effective October 24, 1992, and apply to underground coal mining operations after that date. Section 720 also required OSM to adopt implementing regulations thereafter. This rulemaking includes provisions to implement those requirements. Thus, those provisions do not create any new retroactive requirements to replace, repair, or compensate; but rather implement the effective date established for these requirements by the Energy Policy Act. Implementing provisions were previously discussed in the preamble.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings would be required before parties may file suit in court challenging the provisions of the revision under section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. Applicable administrative procedures may be found at 43 CFR Part 4.

F. Would the action define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of the action are set forth in 30 CFR 701.5.

G. Would the regulation address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Agency Concurrence

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Author

The principal author of this regulation is Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; telephone (202) 208–2564.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Direct federal enforcement for repair of subsidence damage, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: January 5, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

Accordingly, 30 CFR Parts 701, 784, 817, and 843 are amended as set forth below.

SUBCHAPTER A—GENERAL

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

2. Section 701.5 is amended by adding alphabetically definitions of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," and "replacement of water supply" to read as follows:

§ 701.5 Definitions.

* * * * *

Drinking, domestic or residential water supply means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

* * * * *

Material damage, in the context of §§ 784.20 and 817.121 of this chapter, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

* * * * *

Non-commercial building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 761.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

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Occupied residential dwelling and structures related thereto means, for purposes of §§ 784.20 and 817.121, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

* * * * *

Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

* * * * *

SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION SYSTEMS UNDER REGULATORY PROGRAMS

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 784 is revised to read as follows:

Authority: 16 U.S.C. 470 *et seq.*, 30 U.S.C. 1201 *et seq.* as amended.

4. Section 784.10 is revised as follows:

§ 784.10 Information collection.

(a) The collections of information contained in Part 784 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0039. The information will be used to meet the requirements of 30 U.S.C. 1211(b), 1251, 1257, 1258, 1266, and 1309a. The obligation to respond is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 513 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

5. In Section 784.14 paragraph (e)(3)(ii) is amended by removing the word "and"; (e)(3)(iii)(E) is amended by removing the period and adding a semicolon in its place; and paragraph (e)(3)(iv) is added as follows:

§ 784.14 Hydrologic information.

* * * * *

(e) * * *

* * * * *

(3) * * *

(iv) Whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

* * * * *

6. Section 784.20 is revised to read as follows:

§ 784.20 Subsidence control plan.

(a) *Pre-subsidence survey.* Each application must include:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the regulatory authority, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in § 817.121(c)(4) of this chapter. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and regulatory authority.

(b) *Subsidence control plan.* If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the regulatory authority agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the regulatory authority determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

(1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

(2) A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (b)(4), (b)(5), and (b)(7) of this section will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage;

(3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with § 817.121(c) of this chapter;

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

(i) Backstowing or backfilling of voids;

(ii) Leaving support pillars of coal;

(iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(iv) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;

(6) A description of the anticipated effects of planned subsidence, if any;

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(8) A description of the measures to be taken in accordance with §§ 817.41(j) and 817.121(c) of this chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

(9) Other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with § 817.121 of this chapter.

SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

7. The authority citation for Part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

8. Section 817.10 is revised as follows:

§ 817.10 Information collection.

(a) The collections of information contained in Part 817 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0048. The information will be used to meet the requirements of 30 U.S.C. 1211, 1251, 1266, and 1309a which provide, among other things, that permittees conducting underground coal mining operations will meet the applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting underground mining activities. The obligation to respond is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

9. In § 817.41, paragraph (j) is added to read as follows:

§ 817.41 Hydrologic balance protection.

* * * * *

(j) *Drinking, domestic or residential water supply.* The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in §§ 780.21 and 784.14 of this chapter and the geologic information concerning baseline hydrologic conditions required in §§ 780.21 and 784.22 of this chapter will be used to determine the impact of mining activities upon the water supply.

10. In § 817.121, paragraphs (a) and (c) are revised to read as follows:

§ 817.121 Subsidence control.

(a) *Measures to prevent or minimize damage.* (1) The permittee must either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(i) The permittee has the written consent of their owners or

(ii) Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this part prohibits the standard method of room-and-pillar mining.

* * * * *

(c) *Repair of damage.*

(1) *Repair of damage to surface lands.* The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) *Repair or compensation for damage to non-commercial buildings and dwellings and related structures.* The permittee must promptly repair, or

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compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

(3) *Repair or compensation for damage to other structures.* The permittee must, to the extent required under applicable provisions of State law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.

(4) *Rebuttable presumption of causation by subsidence.*—(i) *Rebuttable presumption of causation for damage within angle of draw.* If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw. A State regulatory authority may amend its program to apply the presumption to a different angle of draw if the regulatory authority shows in writing that the angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.

(ii) *Approval of site-specific angle of draw.* A permittee or permit applicant may request that the presumption apply to an angle of draw different from that established in the regulatory program. The regulatory authority may approve application of the presumption to a site-specific angle of draw different than that contained in the State or Federal program based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the regulatory authority must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in the State or Federal program, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

(iii) *No presumption where access for pre-subsidence survey is denied.* If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with § 784.20(a) of this chapter, no rebuttable presumption will exist.

(iv) *Rebuttal of presumption.* The presumption will be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

(v) *Information to be considered in determination of causation.* In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the regulatory authority.

(5) *Adjustment of bond amount for subsidence damage.* When subsidence-related material damage to land, structures or facilities protected under paragraphs (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under § 817.41 (j) occurs, the regulatory authority must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The regulatory authority may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the regulatory authority finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.

* * * * *

PART 843—FEDERAL ENFORCEMENT

11. The authority citation for Part 843 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended:

12. Section 843.25 is added to read as follows:

§ 843.25 Energy Policy Act enforcement in States with approved State programs.

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under paragraph (b) of this section with respect to some or all surface coal mining operations in each State, or

(2) The procedures of §§ 843.11 and 843.12(a)(2) will apply to State enforcement of the Energy Policy Act, or

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the **Federal Register**.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.

(2) If OSM determines under paragraph (a) of this section that direct Federal enforcement is necessary, the provisions of § 843.12(a)(2) will not apply to direct Federal enforcement actions under this paragraph (b). When, on the basis of any Federal inspection under this paragraph, an authorized representative determines that a violation of § 817.41(j) or § 817.121(c)(2) exists, the authorized representative must issue a notice of violation or cessation order, as appropriate.

(3) This paragraph (b) will remain effective in a State with an approved State regulatory program until the State adopts, and OSM approves, under Part 732 of this chapter, provisions consistent with §§ 817.41(j) and 817.121(c)(2) of this chapter. After these provisions are approved, this paragraph will remain effective only for violations of §§ 817.41(j) and 817.121(c)(2) that are not regulated by the State regulatory authority.

[FR Doc. 95–7954 Filed 3–30–95; 8:45 am]
BILLING CODE 4310–05–P

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federal register

Friday
March 31, 1995

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 124
Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable to Pay; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

RIN: 0905–AE33

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable to Pay

AGENCY: Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: This document revises the rules currently governing how certain health care facilities, assisted under Titles VI and XVI of the Public Health Service Act, fulfill the assurance, given in their applications for assistance, that they would provide a reasonable volume of services to persons unable to pay. Public comment on the current rules and operational experience with them indicated the need to revise the current requirements with respect to nursing homes, many of which are unable under current requirements to meet their obligation to provide such services. The rules below should permit qualified facilities to satisfy their uncompensated services assurance.

DATES: These rules are effective on May 1, 1995.

Applicability For facilities certified under 42 CFR 124.516(b)(1), these rules are applicable on the later of May 1, 1995 or the beginning of the facility's next fiscal year. For all other facilities, these rules are applicable on May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Eulas Dortch, 301–443–5656.

SUPPLEMENTARY INFORMATION: On April 4, 1994, the Secretary of Health and Human Services proposed amending the rules governing what is popularly known as the Hill-Burton uncompensated services program. 59 FR 15693. As explained more fully below, the Notice of Proposed Rulemaking (NPRM) proposed to expand the income eligibility limits applicable to patients served by obligated nursing homes, to help such facilities meet their existing uncompensated services obligations.

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Regulatory Background

Health care facilities covered by the program received construction assistance under two titles of the Public Health Service Act, Title VI (the "Hill-Burton Act", 42 U.S.C. 291, *et seq.*) and Title XVI (42 U.S.C. 300q, *et seq.*). Under both titles, facilities receiving such construction assistance have been required, as a condition of receiving the construction assistance, to provide an assurance that "there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor * * *." 42 U.S.C. 291c(e). See also 42 U.S.C. 300s–1(b)(1)(K)(ii). This assurance is known as the "uncompensated services assurance."

Regulations governing compliance with the uncompensated services assurance were first issued in 1947, and have been revised several times. On May 18, 1979, comprehensive regulations governing compliance with the assurance were issued at 44 FR 29372. Among other things, the 1979 regulations: established a minimum level of uncompensated services facilities were required to provide; set an annual compliance level of uncompensated services to be provided and required facilities to make up any deficit in meeting the annual compliance level through provision of more uncompensated services in later years; required facilities to allocate their uncompensated services either under a plan meeting certain requirements or on a first-request, first-served basis; required facilities to notify the public of the existence of their uncompensated services programs through public notice and provision of personal notice to individuals served by the facilities; and required facilities to keep records documenting compliance and to periodically report concerning compliance. The 1979 regulations also for the first time established national eligibility criteria, based on income: Individuals whose annual income was at or below the poverty level (known as "Category A individuals") were automatically eligible for uncompensated services; individuals whose annual income was at or below two times the poverty level (known as "Category B individuals") were also eligible for uncompensated services, unless the facility decided to limit its services to Category A individuals only. However, the 1979 regulations also provided that amounts to which an individual was entitled under a third-party insurance or governmental program could not be credited towards a facility's uncompensated services quota.

On December 3, 1987, the Secretary revised the 1979 regulations at 52 FR 46022. As pertinent here, the 1987 regulations effected a technical revision of the 1979 regulations, making explicit what had formerly been implicit in those regulations; *i.e.*, that coverage of an indigent under a third-party insurance or governmental program precludes eligibility for uncompensated services. 42 CFR 124.505(a)(1) (1988). This policy simply reflects the long-standing agency view of the uncompensated services program as a program of last resort, designed to serve persons who have no source of payment, such as Medicaid or private insurance, for medical care.

This policy has created major compliance problems for many Hill-Burton-obligated nursing homes. HHS determined that, of the 287 nursing homes with outstanding uncompensated services obligations under the general compliance standards of the regulations, 243 have deficits; the majority of these have received no uncompensated services credit. These deficits persist despite many attempts by HHS to provide technical assistance to nursing homes to bring them into compliance. The fundamental problem is that, in most of these nursing homes, the only individuals who meet the income-eligibility requirements for receipt of uncompensated services are also covered by their state's Medicaid program; hence, they are by definition *ineligible* for uncompensated services under § 124.505(a)(1). Thus, in states in which the Medicaid eligibility limits exceed the Hill-Burton eligibility limits and which cover most or all medical services, nursing homes are chronically unable to fulfill their uncompensated services obligations.

Proposed Rules

HHS established a task force to analyze nursing home compliance issues and develop strategies for dealing with compliance problems. Based on the task force findings and its own survey of regional offices of the Health Care Financing Administration, which administers the Medicaid program, HHS proposed to triple the income eligibility limit for individuals in nursing homes, to create a broader pool of eligible individuals for such facilities. The NPRM accordingly proposed to establish a third income eligibility level (Category C) for nursing home services only. *See*, proposed § 124.505(a)(2)(iii). A Category C individual would be an individual whose annual income is greater than two times, but does not exceed three times, the poverty level. The regulations already define which facilities are "nursing homes" within the scope of the regulation. *See*, § 124.502(h). In addition, the NPRM proposed certain technical and conforming amendments to other sections of the regulations. The principal one was the proposed change to § 124.506(a)(1)(v), to provide that if a nursing home provides services on a reduced charge basis to both Category B and Category C individuals, it may not employ a discount method that gives Category C individuals greater discounts than those given to Category B individuals.

Public Comment and Department's Response

The Department received seven comments on the NPRM, two from nursing home associations and five from representatives of individual nursing homes. While most of the commentors applauded the proposed revisions as a step in the right direction, they made a number of suggestions for other policies that would, in their view, better address the chronic deficit problem faced by so many nursing homes. These comments and the Department's responses thereto are set out below.

1. The most common criticism was that the proposed remedy fails to address what the commentors in general see as the chief problem: The inadequacy of Medicaid reimbursements. The commentors generally noted that their facilities run large losses attributable to the differential between Medicaid reimbursement and actual costs, and suggested that facilities be permitted to write off this differential as uncompensated services. An Ohio facility that advocated this approach noted that, in Ohio, all persons with incomes up to the cost of nursing home services qualify for Medicaid, so that there are no non-Medicaid eligible patients who would qualify for uncompensated services. A variation of this approach was the suggestion that a compliance alternative be created for facilities with a Medicaid patient census of at least 70%.

The Department does not agree that it should treat as uncompensated services amounts in excess of "reasonable costs" (the amount reimbursed by Medicaid). To do so would result in facility credit for unreasonable charges and a reduction in the amount of uncompensated services to persons unable to pay. Rather, it wishes to look at the effect of the rules below, together with the recently adopted charitable facility alternative, on reducing the incidence of intractable deficits. For the same reasons, it is not prepared to craft a compliance alternative for majority-Medicaid facilities along the lines suggested. These facilities, by virtue of their high volume Medicaid levels, have an inherently smaller compliance level under the 3 percent compliance option. However, the Department intends to continue to study this issue.

With respect to the Ohio situation, it is likely that such facilities will qualify under the recently published charitable facility alternative. *See*, 59 FR 44634 (Aug. 30, 1994). Such facilities may be able to satisfy their obligations and make up their deficits under that alternative, as long as they collect no monies (other than those required to be collected under governmental programs) from Hill-Burton eligible patients.

2. One provider association, while supportive of the proposed rules, suggested that the Department adopt additional compliance alternatives for facilities in states which have medically needy programs and which, accordingly, are likely to be unable to benefit from the proposed increase in the income eligibility level. The association suggested that (1) services uncovered by Medicaid be identified and considered eligible for inclusion as uncompensated services, such as additional hours of nursing care, therapies, or other activities; (2) health-related services provided to eligible non-residents on the nursing facility premises be counted as uncompensated services; and (3) services provided by nursing homes off-premises under Medicaid home and community-based waivers be counted as uncompensated services.

Generally, the Department agrees that health services provided by a Hill-Burton facility that are not covered by Medicaid should count as uncompensated services, and it has traditionally accepted them as such. However, since Medicaid patients are not liable for additional hours of care provided which exceed established Medicaid standards, such costs are not considered to be uncompensated services. With respect to the second proposal, there is no problem under the present regulations with counting, toward a facility's uncompensated services quota, health services provided on-premises to eligible nonresidents of the facility. Thus, facilities may include such services in their allocation plans. However, the association's third proposal is not one that the Department can accept, since services which are reimbursed by Medicaid are, by definition, ineligible for Hill-Burton credit.

3. A couple of facilities objected to the proposed rules on the grounds that expanding the income eligibility limits would create a larger pool of eligibles and thus be devastating to facilities that are already in financial straits. One facility asked in particular that it be allowed to write off necessary building maintenance and improvement expenses as uncompensated services, as it is unable to afford to serve more persons below cost than it already does.

These facilities appear to misapprehend the requirements of the current uncompensated services regulations. Under the current regulations, facilities that are financially unable to meet their uncompensated services obligation may apply to have it deferred until they are financially able to make it up. See 42 CFR 124.503(b)(1)(i) and 124.511(c). However, except to the extent building maintenance and improvement expenses are factored into a facility's indirect cost rate that forms part of the basis for its charges for services, such expenses are not creditable as "uncompensated services," because they are not "services" within the meaning of the statute.

4. A couple of commenters stated that the proposed increase in income eligibility limits would be problemmatic for other reasons: (1) Because such individuals would be covered under the proposed Health Security Act; and (2) because the proposed limit exceeds the costs of nursing home services in certain states. The Department, however, does not share the commenters' concerns in this regard. Should health care reform become law, this program (like others) will have to be reviewed for consistency with the operation of the reform statute enacted, but this is not an issue that can productively be addressed before enactment of such a statute. With respect to the second comment, the Department thinks that the income limit will not be a problem in such states, as a facility cannot, in any event, receive credit for more than it charges.

5. No comments were received concerning the conforming and technical amendments proposed. However, the recent adoption of the charitable facility compliance alternative has necessitated a conforming amendment to that section (see § 124.516 below). Otherwise, however, no changes to the proposed technical and conforming amendments have been made.

6. Dates. Note that, with respect to facilities certified under the alternative in the newly adopted § 124.516(b)(1), this amendment is applicable on May 1, 1995 or the beginning of the facility's

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next fiscal year, whichever is later. Thus, it is the Department's intention that the three-year base in § 124.516 will operate prospectively only with respect to the amendment to the charging restriction of § 124.516(b)(1). For example, a nursing home applying for certification under § 124.516(b)(1) in 1996 would only have to demonstrate that it had not charged persons with incomes up to three times the poverty level for that part of the three-year period in which the amendment below applied to it, not for the entire three-year period.

It should be noted that the changes adopted below will not have the same automatic effect for other nursing homes. Rather, unless a nursing home has failed to adopt an allocation plan, it will generally not be required to provide uncompensated services to Category C individuals unless it takes an affirmative action to do so, through publication of a revised allocation plan covering Category C individuals. See, § 124.506(a)(1)(v) below. However, to facilitate prompt coverage of such individuals, a facility need not wait until the effective date of these amendments to publish a revised allocation plan under § 124.506(c), but may do so any time after publication of these amendments, with the effective date of the revised allocation plan being at least 60 days following publication.

Regulatory Flexibility Act and Executive Order 12866

The rules below do not change the existing procedural and reporting requirements for obligated facilities. The Department has determined that the impact will not approach the annual $100 million threshhold for major economic consequences as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The rules below contain no information collection or reporting requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 124

Grant programs—health, Health facilities, Loan programs—health, Low income persons.

Dated: January 12, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: March 24, 1995.

Donna E. Shalala,

Secretary.

For reasons set out in the preamble, subpart F of 42 CFR part 124 is hereby amended to read as follows:

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

1. The authority citation for 42 CFR part 124, subpart F, continues to read as follows:

Authority: 42 U.S.C. 216; 42 U.S.C. 300s(3).

2. The first two sentences of § 124.503(b)(4) are revised to read as follows:

§ 124.503 Compliance level.

(a) * * *

(b) * * *

(4) *Affirmative action plan for precluding future deficits.* Except where a facility reports to the Secretary in accordance with § 124.509(a)(2)(iii) that it was financially unable to provide uncompensated services at the annual compliance level, a facility that fails to meet its annual compliance level in any fiscal year shall, in the following year, develop and implement a plan of action that can reasonably be expected to enable the facility to meet its annual compliance level. Such actions may include special notice to the community through newspaper, radio, and television, or expansion of service to Category B, or, with respect to nursing homes, Category C, persons. * * *

* * * * *

3. Section 124.505 is amended by revising paragraph (a)(2)(ii) and adding (a)(2)(iii) to read as follows:

§ 124.505 Eligibility criteria.

(a) * * *

(2) * * *

(ii) *Category B*—A person whose annual individual or family income, as applicable, is greater than but not more than twice the poverty line issued by the Secretary pursuant to 42 U.S.C. 9902 that applies to the individual or family. If persons in Category B are included in the allocation plan, the facility shall provide uncompensated services to these persons without charge, or in accordance with a schedule of charges as specified in the allocation plan.

(iii) *Category C*—With respect only to persons seeking or receiving nursing home services, a person whose annual or family income, as applicable, is more than twice but not greater than three times the poverty line issued by the Secretary pursuant to 42 U.S.C. 9902 that applies to the individual or family. If persons in Category C are included in the allocation plan, the facility shall provide uncompensated services to these persons without charge, or in accordance with a schedule of charges as specified in the allocation plan; and

* * * * *

4. Section 124.506 is amended by revising paragraph (a)(1)(iii) through (a)(1)(v), the first sentence of paragraph (b)(2), and by adding paragraph (a)(1)(vi), to read as follows:

§ 124.506 Allocation of services; plan requirement.

(a)(1) * * *

(iii) State whether Category B or, in the case of nursing homes only, Category C persons will be provided uncompensated services, and if so, whether the services will be available without charge or at a reduced charge;

(iv) If services will be made available to Category B persons at a reduced charge, specify the method used for reducing charges, and provide that the method is applicable to all persons in Category B;

(v) With respect to nursing homes only, if services will be made available to Category C persons at a reduced charge, specify the method used for reducing charges, provided that such method may not result in greater reductions than those afforded to Category B persons, and provide that this method is applicable to all persons in Category C; and

(vi) Provide that the facility provides uncompensated services to all persons eligible under the plan who request uncompensated services.

(b)(1) * * *

(2) If no plan was previously published in accordance with paragraph (a)(2) of this section, the facility must provide uncompensated services without charge to all applicants in Category A and Category B, and, with respect to nursing homes, Category C, who request service in the facility.* * *

* * * * *

5. Section 124.516 is amended by revising paragraph (b)(1) to read as follows:

§ 124.516 Charitable facility compliance alternative.

(a) * * *

(b) * * *

(1)(i) *For facilities that are nursing homes:* It received, for the three most recent fiscal years, no monies directly from patients with incomes up to triple the current poverty line issued by the

Secretary pursuant to 42 U.S.C. 9902, exclusive of amounts charged or received for purposes of claiming reimbursement under third party insurance or governmental programs, such as Medicaid or Medicare deductible or coinsurance amounts;

(ii) *For all other facilities.* It received, for the three most recent fiscal years, no monies directly from patients with incomes up to double the current poverty line issued by the Secretary pursuant to 42 U.S.C. 9902, exclusive of amounts charged or received for purposes of claiming reimbursement under third party insurance or governmental programs, such as Medicaid or Medicare deductible or coinsurance amounts; or

* * * * *

[FR Doc. 95–7846 Filed 3–30–95; 8:45 am]

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Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization (D&U) Program; Notice

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization (D&U) Program

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 1995–1996 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: All comments concerning this proposed priority should be addressed to Betty Jo Berland, U.S. Department of Education, 600 Independence Avenue SW, Switzer Building, Room 3422, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the D&U program, in the area of community integration for individuals with mental retardation.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

This proposed priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

The Secretary will announce the final funding priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Proposed Priority: Facilitating Community Integration for Individuals with Mental Retardation

Background

NIDRR has supported Rehabilitation Research and Training Centers in the area of mental retardation and developmental disabilities since 1965. In addition, NIDRR has supported a number of research projects targeted on this population in areas such as transition from school to work, public policy and expenditures for developmental disabilities in the U.S., and successful transitions from nursing homes into the community. As a result of such research and training efforts over many years, a large body of knowledge now exists relative to enabling individuals with mental retardation to live in their communities.

The population of public institutions for persons with mental retardation has decreased from 195,000 in 1967 to 81,200 persons in 1991, (Lakin, 1993) as a result of public policy decisions and vigorous efforts of public leadership groups to effect deinstitutionalization. However, successful integration into communities that includes residential, employment, and full participation components is not easily achieved.

During the past eight years there have been major developments in the understanding of community integration needs and strategies, including: Funding models that allow for individualized options; systems for assessing support needs for an individual and in a community; models for both formal and informal support systems, and for integrating the two approaches; and model strategies for systems change within States. (Horner, 1994). Yet in nearly every State, policy and practice do not reflect these advances in knowledge and understanding, and do not take advantage of the best practices models and implementation strategies that have evolved through research and practice.

As a result, innovative supports for living in their own home or community are available to very few of those who potentially could benefit from them. Many thousands of people with developmental disabilities continue to live in private and public institutions and "mini-institutions" in the community. In many cases, "deinstitutionalization has resulted in trans-institutionalization". (Taylor, 1994) There are approximately 64,800 persons with mental retardation and related conditions who are not receiving any form of residential services and who are now on waiting lists for community residential services (Lakin et al., 1993). And, although 48 percent of all individuals with mental retardation nationwide resided in large congregate care settings in 1992, there were 8 States that provided services to more than 60 percent of consumers in family-scale settings serving six or fewer individuals, while conversely, 6 States served fewer than 10 percent of their clients in such small settings (Braddock, 1994).

Thus, there is a demand for community integration assistance, coupled with a tremendous variation in State ability to meet those demands. This variation in services indicates that there is a critical need for information about innovative, state-of-the-art practices and for training and technical assistance on how to improve policies and practices on community integration at the State and community levels.

NIDRR received substantial public comment on its 1995 proposed priorities, contending that there is a national need for information on best practices for community integration and a demand for training of service providers and consumers to help communities overcome the challenges of fully including all of their citizens and their families, and to make community integration a reality. State and local policy makers, regulators, and service agencies, as well as community service providers require training and technical assistance to enable them to address the issues that will emerge as States and localities move toward a system of individualized supports. States and communities require information and training on policies and strategies that could assist them in shifting from a provider-driven to a consumer-driven service delivery system. The quality of community services delivered to persons with disabilities and their families will also depend on the ability of educational, employment and residential service agencies to effectively address the training needs of their approximately 250,000 direct service personnel. (Wallace, T. & Johnson, D., 1992 and Braddock, 1994).

The Secretary believes that there is a critical need for dissemination of information on model programs, integrated statewide systems of service delivery, exemplary practices, and systems change strategies. In addition, there is a need to develop more effective mechanisms for training community-level service providers to ensure the implementation of best practices, and to provide training and technical assistance to consumer-directed self-advocacy organizations and parent organizations.

Priority

Under this priority, the Secretary supports a dissemination and technical assistance center that—(1) identifies and disseminates exemplary practices in community integration for individuals with mental retardation; and (2) provides training and technical assistance to State and local agencies, community-based service providers, and consumer-controlled advocacy organizations to facilitate the adoption of exemplary practices in community integration for individuals with mental retardation.

In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities.

- Design and implement a national information resource on community integration to serve policymakers and administrators, community-based service providers, consumer-controlled advocacy organizations, and individuals with mental retardation and their families, ensuring that information is available in accessible formats appropriate to individuals with a range of sensory, cognitive, and other disabilities;
- Prepare materials on important topical issues, which might include, for example: Strategies to address social and cultural barriers to full inclusion; strategies for cross-agency collaboration in the development of individualized services or case management practices; and reasonable accommodations to facilitate community inclusion, and use them in information dissemination, training, and technical assistance activities as appropriate; and
- Coordinate with existing NIDRR-funded projects and centers, and build upon the products of past NIDRR projects and similar efforts funded by other Federal agencies, to ensure that the best and most current information on needs and best practices is incorporated into the information dissemination, training, and technical assistance of this center.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

Dated: March 28, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

[FR Doc. 95–7942 Filed 3–30–95; 8:45 am]

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Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved First Amendment to Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, has approved the First Amendment to the Tribal/State Gaming Compact Between the Swinomish Indian Tribal Community and the State of Washington executed on January 26, 1995.

DATES: This action is effective March 31, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 17, 1995.

Ada E. Deer,

Assistant Secretary - Indian Affairs.

[FR Doc. 95–7939 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Third Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Third Amendment to the Tribal/State Gaming Compact Between the Tulalip Tribes of Washington and the State of Washington executed on January 26, 1995.

DATES: This action is effective March 31, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: March 17, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–7940 Filed 3–30–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureu of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary - Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Suquamish Tribe and the State of Washington, which was executed on January 26, 1995.

DATES: This action is effective March 31, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: March 17, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–7941 Filed 3–30–95; 8:45 am]

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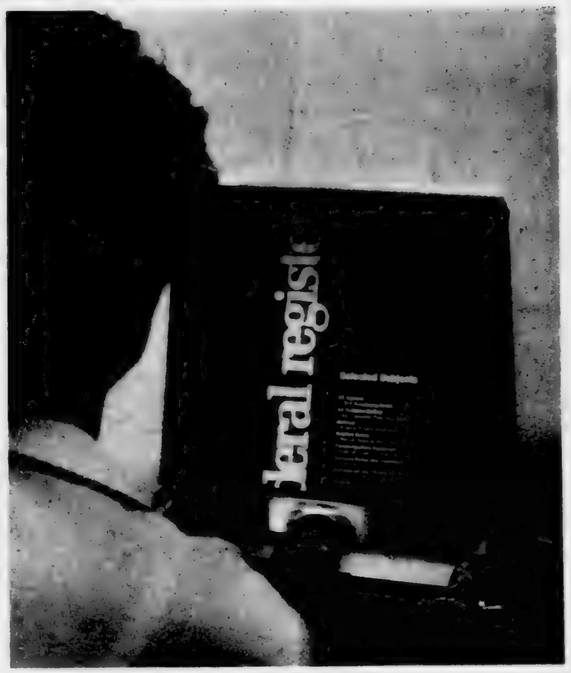
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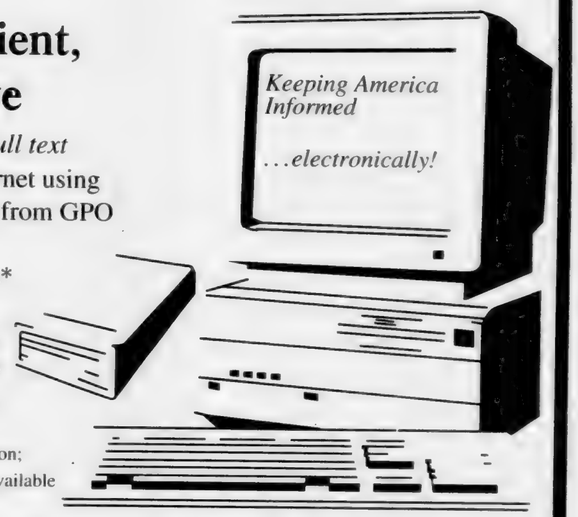
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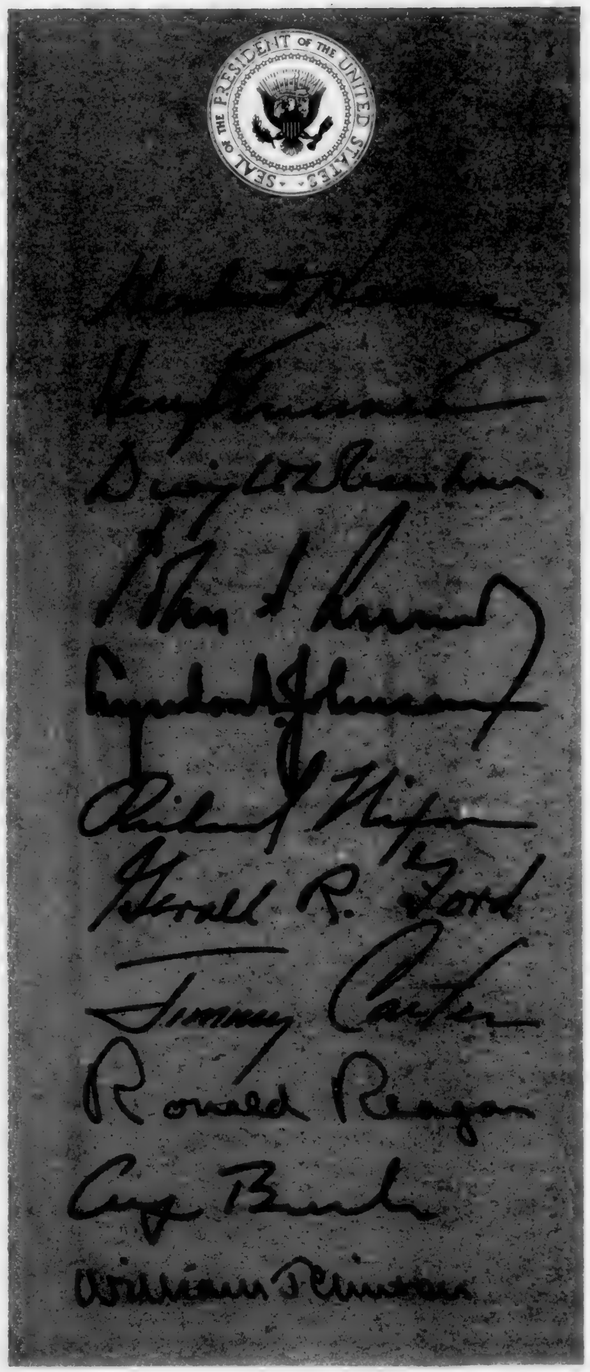
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Titles 1–16—as of Jan. 1
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Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1995.

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An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1994. The CFR volume issued as of April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1994. The CFR volume issued as of July 1, 1991 should be retained.

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6.22 (a) revised; interim 1991
6.23 Revised; interim 1991
6.24 Revised; interim 1991
6.25 (a), (c)(1) introductory text, (ii), (iii), (2) and (3) revised; interim 1992
6.26 (a)(3) through (6), (b)(5) and (f) removed; (b)(1) table, (c) introductory text and (3) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim 1992
6.27 (f) and (h) amended; interim 1993
6.28 Amended; interim 1993
6.29 (b)(3) amended; interim 1993
6.30 (a) introductory text amended; (a)(1) and (2) removed; interim 1993
6.34 Removed; interim 1993

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

52.53 (d) Figures 11 through 14 added 3533
58.305 (b) and (c) revised 4825
58.325 Revised 4826
58.347 Revised 4826
68.1 (b)(2) and (43) revised 5835
201.49 Corrected 2493

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272.1 (g)(139) added 1708
273.7 (d)(1)(i)(B) revised 1708

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.45-3 Regulation at 59 FR 46902 confirmed 5836
301.50-3 (c) amended; (d) revised; interim 2322
301.64 Regulation at 59 FR 51840 confirmed 5087

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301.64-3 Regulation at 59 FR 51840 confirmed 5087
319.37-1 Amended 3077
319.37-5 (n) amended 4530
319.37-8 (e) revised; (g) added 3077
319.37-9 Amended 3078
319.37-13 Footnote 11 redesignated as Footnote 12 3077

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.650—400.658 (Subpart T) Added; interim 1997
402 Added; interim 2002

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Chapter VIII Heading revised 5835
800.0 (b)(3) and (91) revised; Footnote 1 removed 5835
800.2 Revised 5835
800.7 Revised 5836
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929.152 Revised 2
932 Budget of expenses 4532
966 Budget of expenses 3
966.161 (a) and (c) revised 5560
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979 Budget of expenses 5561
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1005.13 (d)(2) stayed in part; eff. 1-1-95 through 2-28-95 320
1032.7 (b) stayed in part; eff. 12-1-94 through 1-31-95 321

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1421.3 Regulation at 59 FR 34348 confirmed 1709
1421.4 Regulation at 59 FR 34348 confirmed 1709
1421.5 Regulation at 59 FR 34348 confirmed 1709
1421.7 Regulation at 59 FR 34348 confirmed 1709
1421.8 Regulation at 59 FR 34348 confirmed 1709
1421.9 Regulation at 59 FR 34348 confirmed 1709
1421.11 Regulation at 59 FR 34349 confirmed 1709
1421.14 Regulation at 59 FR 34349 confirmed 1709
1421.16 Regulation at 59 FR 34349 confirmed 1709
1421.17 Regulation at 59 FR 34349 confirmed 1709
1421.18 Regulation at 59 FR 34350 confirmed 1709
1421.19 Regulation at 59 FR 34350 confirmed 1709
1421.20 Regulation at 59 FR 34350 confirmed 1709
1421.22 Regulation at 59 FR 34350 confirmed 1709
1421.29 Regulation at 59 FR 34351 confirmed 1709
1421.202 Regulation at 59 FR 34351 confirmed 1709
1421.205 Regulation at 59 FR 34351 confirmed 1709
1421.206 Regulation at 59 FR 34351 confirmed 1709

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1421.207 Regulation at 59 FR 34351 confirmed 1709
1421.208 Regulation at 59 FR 34352 confirmed 1709
1421.210 Regulation at 59 FR 34352 confirmed 1709
1421.211 Regulation at 59 FR 34353 confirmed 1709
1421.215 Regulation at 59 FR 34353 confirmed 1709
1421.320 Regulation at 59 FR 34353 confirmed 1709
1421.321 Regulation at 59 FR 34353 confirmed 1709
1421.323 Regulation at 59 FR 34353 confirmed 1709
1421.324 Regulation at 59 FR 34353 confirmed 1709
1425 Authority citation revised 2680
1425.3 (i) and (j) redesignated as (j) and (k); (d), new (j) and new (k) revised; new (i) added 2680
1425.4 (a), (b)(7) and (c) introductory text revised; (e) and (f) added 2681
1425.6 (b)(2) revised 2681
1425.7 (a) revised 2681
1425.8 (b)(2) and (e) revised 2681
1425.9 Introductory text, (d) and (g) revised 2681
1425.10 (b)(3) revised 2682
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1425.16 Redesignated as 1425.17; new 1425.16 added 2682
1425.17 Redesignated as 1425.18; new 1425.17 redesignated from 1425.16; (a)(2), (b)(1)(i), (ii), (iii), (2) and (c)(2) revised; (c)(5) added 2682
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1427.3 Regulation at 59 FR 39252 confirmed 1710
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1710.106 (d) redesignated as (e); new (d) and (f) added 3730
1710.110 (c)(1)(ii) revised; (c)(3) added 3730
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1710.401 OMB number 3732
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1944.158 (i) revised 4070

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240.14a–2 Heading, introductory text, (a) introductory text, (b) introductory text, (2) and (3) amended; (b)(4) added 63684
240.14a–3 (b) introductory text and (e)(2) revised; (b)(1) amended; (b)(12) removed 52696
240.14a–4 (a)(3) note added 67764
240.14a–6 (i) introductory text revised 52696
(n) added 63684
(m) amended 67764
240.14a–7 (b) revised 63684
240.14a–15 Added 63684
240.14a–101 Amended 52696, 67764
240.14a–104 Added 63685
240.14c–3 (a) introductory text revised; (a)(2) removed 52700
(b) note removed 67765
240.14c–5 (h) amended 67765
240.14c–101 Amended 67765
240.14e–1 (e) amended 67765
240.14e–7 Added 63685
240.15Aj–1 (c)(1) revised 66700
240.15c2–12 (c) through (f) redesignated as (d) through (g); note, (b)(5), new (c), (f)(9) and (10) added; (a), new (d), new (e) and new (f)(3) revised; new (g) amended; eff. in part 7–3–95 and in part 1–1–96 59609
240.15c6–1 Regulation at 58 FR 52903 eff. date delayed to 6–7–95 59137
240.17Ad–16 Added 63661
240.17a–21 (a)(4) revised 66701
240.17a–23 Added; eff. 6–1–95 66709
240.19b–4 (e) revised 66701
241 Interpretive releases 26109
249.208a (c) added; Form 8–A amended 55347
Form 8–A amended 67765
Form 8–A corrected 3079
249.220f Form 20–F amended 21656, 65632, 65637, 65640
249.308 Form 8–K amended 67765
249.310 Heading revised; Form 10–K amended 67765
249.310b Form 10–KSB amended 67765
249.311 Form 11–K amended 67765
249.322 Form 12b–25 amended 67766
249.444 Form SE amended 67766
249.447 Form TH amended 67767
249.636 Added; Form 17A–23 added; eff. 6–1–95 66710
249.803 Form X–15AJ–2 amended 66701
249.819 Form 19b–4 amended 66701, 66702
250 Comment request 55573
250.7 (a) revised; (b)(2)(i) and (3)(i) amended; authority citation removed 21927
250.26 (b)(2) amended; authority citation removed 21927
250.27 (a) amended 21927
250.29 Revised 21927
250.40 (a)(5) revised 21927
250.41 (c) revised 21928
250.42 Revised 21928
250.43 (b) revised 21928
250.44 (b) revised 21928
250.49 (c) amended 21928
250.50 Removed 21928
250.52 (c) amended 21928
250.62 (d)(2) and (3) amended 21928
250.63 Amended 21928
250.65 (b)(2) revised 21928
250.71 Heading and (b) revised 21928
250.111 Removed 67766
259.5b Form U5B amended 67766
259.5s Form U5S amended 21928, 67766
259.101 Form U–1 amended 67766
259.212a Form U–12(I)–A amended 21929
259.212b Form U–12(I)–B amended 21929
259.313 Form U–13–60 amended 36262
259.603 Form SE amended 67766
259.604 Form TH amended 67767
260.0–12 Removed 67766
269.8 Form SE amended 67766
269.10 Form TH amended 67767
270.2a19–2 (a)(4) corrected 15501
270.6e–3(T) Amended 43467
270.20a–1 (a) amended; (c) removed 52700
270.20a–2 Removed 52700
270.20a–3 Removed 52700
270.20a–4 Removed 52700
270.30d–1 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 52700

NOTE: Boldface page numbers indicate 1994 changes.

TITLE 17 Chapter II—Con.

274 Authority citation revised 43467, 52701
274.11 Authority citation removed 52701
274.11A Form N-1A amended 43468
Form N-1A corrected 48799
Form N-1A amended; authority citation removed 52701
274.11a-1 Form N-2 amended 43468, 52702
Authority citation removed 52701
274.11b Form N-3 amended 43468, 52702, 52703
Form N-3 corrected 48799
274.11c Form N-4 amended 43468
Form N-4 corrected 48799
274.51 Authority citation removed 52701
274.101 Authority citation removed 52701
274.403 Form SE amended 67766
274.404 Form TH amended 67767
275 Authority citation revised 21661
275.204-1 (b)(1) revised 21661
275.204-3 (f) redesignated as (g); new (f) and (g)(4) added 21661
279.1 Form ADV amended 21662
Form ADV corrected 27659

Chapter IV—Department of the Treasury (Parts 400—499)

402 Authority citation revised 53731
402.2d (j) amended 53731
405 Authority citation revised 53731
405.3 (a)(4) and (5) removed; (a)(6), (7), (8) and (c)(5) redesignated as (a)(4), (5), (6) and (c)(6); heading, new (a)(5) and (c)(6) revised; new (c)(5) and (7) added (OMB number) 53731
(c)(5) corrected 55910

Proposed Rules:

1 ..... 22145, 25351, 27312, 30885, 37189, 66822
3 ..... 37446, 43620
4 ..... 25351, 27312
30 ..... 25351, 27312
35 ..... 54139, 64359
36 ..... 54139, 64359
150 ..... 25351, 27312
200—399 (Ch. II) 61843
210 ..... 16576, 21810, 21814, 42187
228 ..... 36264, 42449, 46304, 55385
229 ..... 21814, 36264, 42449, 46304, 46365, 55385
230 ..... 16576, 36264, 46304, 55385, 65641
232 36264
239 ..... 16576, 36264, 42187, 46365, 55385
240 ..... 19685, 21681, 22773, 29393, 29398, 33236, 34781, 36264, 42449, 46365, 48579, 50866, 52723, 55014, 55385, 63652, 63662
249 ..... 19685, 21810, 21814, 21821, 29393, 29398, 36264, 42449, 46304 4040
250 ..... 36264, 67248
259 ..... 36264, 48183
260 36264
269 36264
270 ..... 16576, 28286, 36264, 39311
274 ..... 16576, 36264, 42187, 55385
402 32155
404 ..... 32155, 58792 4576
405 ..... 58792 4576
449 ..... 66496 5602

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Authority citation revised 4852
2.4 (d) removed; (e) through (h) redesignated as (d) through (g) 4852
2.22 Added 55039
2.23 Added 66718
2.24 Added 347
2.25 Added; interim 65938
11 Appendix A revised 54815
34 Authority citation revised 4852
34.1 (c)(1) and (2) revised 4852
34.2 Revised 4853
34.3 Heading and introductory text revised; (e)(5) and (6) amended; (e)(7), (f) and (g) removed; (h) through (n) redesignated as (f) through (l) 4853
34.4 (a) revised; (c), (g) and (h) removed; (d) and (e) redesignated as (c) and (d); new (c) and new (d) revised; (e) added 4853

NOTE: Boldface page numbers indicate 1994 changes.

34.10 Revised 4853
35.10 (c) added 40240
35.13 (a)(2)(ii) and (iii) redesignated as (a)(2)(iii) and (iv); (a)(2)(i), new (iii) and (d)(1) introductory text revised; new (a)(2)(ii) added; (h)(24) amended 4853
35.23 Added; interim 65938
41 Authority citation revised 4854
41.3 Amended 4854
41.7 Revised 4854
131—141 (Subchapter D) Heading revised 4855
131.50 Revised 4855
131.80 Added 4855
141 FERC Form No. 715 amended 15335
141.1 (b) heading and (2) revised 1718
154 Order on rehearing 54128
Order on rehearing 2011
154.42 Removed 40243
154.63 (b)(1)(v) added 40240
154.91 Removed 40243
154.92 Removed 40243
154.93 Removed 40243
154.94 Removed 40243
154.95 Removed 40243
154.96 Removed 40243
154.97 Removed 40243
154.98 Removed 40243
154.99 Removed 40243
154.100 Removed 40243
154.101 Removed 40243
154.102 Removed 40243
154.103 Removed 40243
154.105 Removed 40243
154.106 Removed 40243
154.107 Removed 40243
154.108 Removed 40243
154.109 Removed 40243
154.109a Removed 40243
154.109b Removed 40243
154.110 Removed 40243
157 Order on rehearing 54128
Order on rehearing 2011
157.23—157.41 (Subpart B) Removed 40243
161 Rehearing denied 15336
161.1 Revised 32897, 52904
161.2 Revised 32897
(c) revised 52904
161.3 (h) removed; (i) through (l) redesignated as (h) through (k); new (h) and new (i) revised 32898
(e), (h) and (k) revised 52904
250 Rehearing denied 15336
250.16 (a)(3), (c)(1) and (d)(1) revised 32885
Revised 32898
(a) revised 52904
270 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
271 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
272 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
273 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
274 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
275 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
284 Order 16537, 23624, 49574
Notice 19637, 22753, 29716, 38901
Rehearing denied 35462, 65707
Order 1718
284.286 (c) revised 32899
292 Authority citation revised 4856
292.101 (b)(1) revised 4856
292.202 (b), (d), (e) and (h) revised; (s) added 4857
292.204 (a)(1) and (b)(2) revised 4857
292.205 (a)(1), (2)(i) introductory text and (b)(1) revised 4857
292.207 (a), (b) and (d) revised 4858
292.601 (c) revised 40470
294 Authority citation revised 4859
294.101 (b)(5) and (f) added 4859
341.4 (f) revised 40256
342 Authority citation revised 59146
342.2 (a) revised 59146
342.3 (e) revised 40256
(b) revised 59146
342.4 (a) revised 40256, 59146
343.3 (a) amended 40256
346 Added 59146
347 Added 59147
347.1 (e) introductory text and (5)(vi) revised 358
348 Added 59160
Order on rehearing 358
375 Authority citation revised 1718
375.302 (t) and (u) added 53351
375.303 (l) revised 1718

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TITLE 18 Chapter I—Con.

381.302 (a) amended 25563
381.303 (a) amended 25563
381.304 (a) amended 25563
381.305 (a) amended 25563
381.403 Amended 25563
381.404 Amended 25563
381.505 (a) amended 25563
381.601 Amended 25563
381.801 Amended 25563
382 Authority citation revised 4859
382.102 (h) through (k) revised; (l), (m) and (n) removed; (o) through (s) redesignated as (l) through (p) 4859
382.201 (a) and (b) revised; (b)(4)(ii) amended 4860
385 Authority citation revised 63247
385.702 (b) removed; (c) redesignated as (b) 4860
385.708 (b)(1), (2)(i), (3), (4), (c) heading, (1), (2) and (d) amended 4860
385.711 Heading and (a)(1)(i) amended 4860
385.712 Heading and (a) amended 4860
385.713 (a)(2)(i), (iv) and (3) amended 4860
385.717 Removed 4860
385.2011 Heading, (c)(3), (e)(1), (2) and (4) revised; (a)(6) added 1718
385.2013 Added 63247

Chapter III—Delaware River Basin Commission (Parts 400—499)

420 Authority citation revised 64571
420.31 (d) and (f) revised 64571

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1312 Authority citation revised 5259
1312.1 (a) amended 5259, 5260
1312.3 (a)(6) added; (i) revised 5259, 5260
1312.4 Heading and (a) revised; (c) added 5259, 5260
1312.7 (b)(4) added 5259, 5261
1312.12 Revised 5261
1312.13 (e) added 5259, 5261
1312.19 Revised 5259
1312.20 Added 5259, 5261
1312.21 Added 5259, 5261

Proposed Rules:

1—399 (Ch. I) 54851, 56421
35 ..... 28297, 35274, 41739
154 3111
158 3141
201 3141
250 3141
260 3141
284 ..... 15672, 15877, 27251, 40493, 60340 ..... 3141, 3783
342 40493
346 40493
347 40493
348 39985
357 40493
385 ..... 40493, 59715, 60926
420 39991
803 29563
804 29563
805 29563
1310 53948

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended 23795
4.2 (a) amended 23795
4.2a Removed 23795
4.14 (b)(1), (2)(ii) introductory text, (B) and (d)(1)(ii) amended 18481
4.30 Regulation at 58 FR 68523 confirmed 46755
4.93 (b)(1) and (2) amended 39682
4.94 (b) amended 39683
10 Authority citation amended 25566, 30293
10.1 (a) introductory text, (2), (b), (d), (f) and (h)(2) revised; (a)(1), (i) and (j)(2) amended; (a)(3) removed 25566
10.8 Revised 25567
10.9 Revised 25568
10.108 Revised 17474
10.151—10.153 Undesignated center heading revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.151 Revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.152 Revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.153 (b), (d)(2), (3) and (f) amended; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.172 Amended 25569
10.173 Revised 25569
10.175 (c)(3) and (4) removed; (c)(5) redesignated as (c)(3); new (c)(3) and (e)(1) revised 25569
10.192 Amended 25570
10.198 Revised 25570
12.104g Table amended 32903
(b) table amended 54818
12.132 (a), (b) and (c) redesignated as (1), (2) and (3); introductory text designated as (a) introductory text; (a) heading and (b) added; interim 31520
19 Authority citation amended 51494
19.6 (a)(1) amended 51494
19.12 (a)(1) amended 51494
19.44 (g) added 51494
24.16 Regulation at 58 FR 68523 confirmed 46755
(b)(14) and (d)(2) removed; (b)(15), (16) and (d)(3) redesignated as (b)(14), (15) and (d)(2); (b)(5), (13), new (14), (c)(3), (e)(2)(ii), (f)(4), (g)(1) introductory text, (iv), (2) and (3) introductory text revised; (c)(1), (2), (e)(2)(i), (f)(3) and (g) introductory text amended; new (d)(3) and (g)(1)(vi) added 46756
24.17 Regulation at 58 FR 68526 confirmed 46755
101 Authority citation revised 30294
101.1 (o) added; authority citation removed; interim 30293
Regulation at 59 FR 30293 and 30294 eff. date delayed 38548
Regulations at 59 FR 30293 and 30294 eff. date delayed 8–23–94 43283
101.3 (b) table amended 16122, 41973, 50690
(b) table amended 5313
101.4 Authority citation removed; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
111 Authority citation amended 30294
User fee due date 53086
111.3 (e) added; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
112.0 Amended 51494
112.2 (b) revised 51494
112.21 Revised 51495
112.25 Revised 51495
113.63 (a)(1) revised 51495
113.73 (a)(1) revised 51495
118.4 (g) revised; (l) added 51495
122.15 (b) table revised 67622
122.24 (b) table amended 16122
122.38 Regulation at 58 FR 68526 confirmed 46755
123 Authority citation amended 23795, 30294
123.1 (c) amended 23795
123.4 (c) amended 25570
123.8 Regulation at 58 FR 68526 confirmed 46755
123.12 (a)(1) and (2) amended; (b) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
123.13 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
123.14 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283

NOTE: Boldface page numbers indicate 1994 changes.

CHANGES APRIL 1, 1994 THROUGH JANUARY 31, 1995

NOTE: Boldface page numbers indicate 1994 changes.

CHANGES APRIL 1, 1994 THROUGH JANUARY 31, 1995

TITLE 19 Chapter I—Con.

123.15 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
123.16 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
123.17 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
123.18 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
125.0 Revised 51495
125.1 Revised 51495
125.11 (a) and (b) amended 51495
125.21 Revised 51495
125.22 Revised 51495
125.23 Revised 51496
125.24 Revised 51496
125.32 Revised 51496
125.33 (a) amended 51496
125.34 Amended 51496
125.35 Revised 51496
125.36 Amended 51496
125.41 Revised 51496
125.42 Amended 51496
128 Authority citation revised 30294
128.21 (a)(4) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
128.23 Revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
128.24 (b) and (c) amended; (d) and (e) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
128.25 Revised; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8–23–94 43283
128.26 Removed; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8–23–94 43283
133 Authority citation amended 55997
133.52 (c)(3) amended 55997
134.55 Regulation at 58 FR 68526 confirmed 46755
(b) revised 46757
141 Authority citation amended 30295
141.4 Revised; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8–23–94 43283
141.113 (b) through (g) redesignated as (c) through (h); new (c) amended; new (b) added 61800
142 Interpretation 17474
143.21 (l) added; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8–23–94 43283
143.23 (i) and (j) added; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8–23–94 43283
143.26 Added; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
145 Authority citation amended 25570, 30296
145.31 Revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
145.32 Revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
145.35 Amended 25570

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146.4 (h) amended 51496
146.40 (b) redesignated as (c); new (b) added 51497
146.66 (a) amended 51497
148 Authority citation amended 30296
148.12 (b)(2)(ii) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
148.51 (b)(1) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
148.64 (b)(1) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
159.6 (a), (b) and (c) amended; (d) revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8–23–94 43283
171 Regulation at 59 FR 14746 confirmed 55999
174.12 (c) revised 34971
174.14 (d) revised 34971
175 Regulation at 59 FR 13450 eff. date corrected to 4–29–94 16895
Interpretation 58771, 60892
178.2 Table amended (OMB numbers) 25571, 51497

Chapter II—United States International Trade Commission (Parts 200—299)

201.13 (m) added 66722
206 Regulation at 59 FR 5091 confirmed 19638
Authority citation revised 10
206.2—206.8 (Subpart A) Revised; interim 10
206.11—206.19 (Subpart B) Revised; interim 12
206.34 Revised; interim 16
206.35 Revised; interim 17
206.51—206.55 (Subpart F) Revised; interim 17
207 Authority citation revised 21
207.1 Revised; interim 21
207.2 (e) revised; interim 21
207.7 (a)(3)(ii), (b)(10), (d), (e) heading, (1), (f)(1), (2) and (g) revised 66723
207.8 Revised; interim 21
207.10 (a) and (c)(2) revised; (d) removed; interim 22
207.11 Revised; interim 22
207.21 (b) revised; interim 22
207.22 Revised 66724
207.23 (a) and (b) revised; (d) added 66724
(c)(2) revised; interim 22
207.29 Added; interim 22
207.40 (a) and (b) revised; interim 22
207.46 Added; interim 23
207.90—207.120 (Subpart G) Regulation at 59 FR 5097 confirmed 19638
210 Revised 39039
Authority citation revised 67626
210.3 Amended; interim 67626
210.4 (d)(3) corrected 64286
(d)(2)(iii) revised; interim 67626
210.5 (b)(2) and (4) revised; (c) and (d) redesignated as (d) and (e); new (c) added; interim 67626
210.12 (a)(9)(i) corrected 64286
210.14 Heading revised; (e) added; interim 67627
210.16 (c)(2) amended; interim 67627
210.21 (a)(2) revised; (d) redesignated as (e); new (d) added; interim 67627
210.22 (b) removed; (c) redesignated as (b); interim 67627
210.23 Amended; interim 67627
210.24 (a)(1) and (b)(2) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); interim 67627
210.39 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; interim 67627
210.41 Revised; interim 67628
210.42 (a)(1)(i), (b), (c) and (h)(3) revised; interim 67628
210.43 (a)(1) and (d)(1) amended; interim 67628
210.49 (a) revised; interim 67628
210.50 (a)(3) revised; (b)(2) amended; (c) and (d) added; interim 67628
210.51 (b) and (c) revised; interim 67629

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TITLE 19 Chapter II—Con.

210.52 (c) revised; (e) removed; (f) redesignated as (e); interim 67629
210.68 Appendix A corrected 64286
210.70 Revised; interim 67629
211 Removed 39039

Proposed Rules:

4 25376
10 54537
12 26151
101 ..... 23817, 41992, 43313, 50717
103 46007
122 50717
123 56014
141 ..... 32942, 36102
142 36102
148 56014
177 ..... 18771, 32942
191 ..... 31177, 41994
201 18982
207 18982
210 3785
353 80
355 80
356 80

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.4 (g)(1) revised 28765

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404.612 (g) redesignated as (h); new (g) added 44923
404.614 (a) revised 44923
404.615 (d) added 44923
404.633 Undesignated center heading and section added 44924
404.900—404.999d (Subpart J) Authority citation revised 44925
404.902 (t) and (u) amended; (v) added 44925
404.903 (l) through (q) amended; (r) added 44925
404.1501—404.1599 (Subpart P) Authority citation revised 41975
404.1501—404.1599 (Subpart P) Appendix 1 corrected 30389
Appendix 1 amended 41975
416.200—416.269 (Subpart B) Authority citation revised 41403
416.215 (a) revised 41400
416.260 Undesignated center heading and section revised 41403
416.261—416.266 Undesignated center heading removed 41403
416.261 Amended 41403
416.262 Introductory text, (a), (b) and (d) revised 41404
416.264 Revised 41404
416.265 Heading, introductory text, (b) and (d) revised 41404
(d) corrected 49291
416.267—416.269 Undesignated center heading removed 41404
416.268 Revised 41404
416.269 Revised 41404
(b)(1) corrected 49291
416.310 (d) revised 44926
416.325 (b)(3) added 44926
416.351 Undesignated center heading and section added 44926
416.415 Added 361
416.1100—416.1182 (Subpart K) Authority citation revised 41405
416.1103 (a)(7) added 33907
416.1110 (e) added 43471
416.1111 (e) added 43471
416.1112 (c)(6) revised 41405
416.1121 (c) revised 43471
416.1123 (e) revised 59364
416.1148 Revised 361
416.1165 Introductory text revised; (i) added 361
416.1201 (b) revised 27988
416.1202 (b) revised 361
416.1208 Added 27989
416.1212 (d) redesignated as (d)(1); (d)(2), (3), (e), (f) and (g) added 43285
416.1400—416.1499 (Subpart N) Authority citation revised 41405
416.1401 Amended 43038
416.1402 (a) and (b) revised; (h) removed; (i) through (n) redesignated as (h) through (m) 41405
(l) and (m) amended; (n) added 43039
(k) and (l) amended; (m) added 44928
416.1403 (a)(13) and (14) added 41405
(a)(15), (16) and (b)(3) added 43039

NOTE: Boldface page numbers indicate 1994 changes.

(a)(2) and (7) through (11) amended; (a)(12) added 44928

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

626 Revised; eff. in part 10-3-94 and 6-30-95 45815
626.2 (a) amended 26600
626.3 (a) amended 26600
626.4 Amended 26601
627 Revised; eff. 6-30-95 45821
628 Revised; eff. 6-30-95 45845
631 Revised; eff. 6-30-95 45857
637 Revised; eff. 6-30-95 45868
655 Authority citation revised 65676
Authority citation revised 3976
655.104 (c)(3) revised 41875
655.112 (a)(2) and (b)(2) revised 41876
655.204 (d)(2) revised 41876
655.206 (c) revised 41876
655.212 Revised 41876
655.500—655.550 (Subpart F) Revised; interim 3955, 3976
655.510 OMB number 3959
655.520 OMB number 3963
655.550 OMB number 3968
655.600—655.675 (Subpart G) Revised; interim 3969, 3977
655.700—655.760 (Subpart H) Revised 65659, 65676
655.730 OMB number 4029
655.760 OMB number 4029
655.800—655.855 (Subpart I) Revised 65672, 65676
655.900 (b)(2)(i) and (d) amended; interim 64776, 64777
(e) added; interim 64777
655.910 (b)(2)(i) and (e) amended; interim 64777
655.940 (d)(1)(i)(B), (h)(1) and (3) amended; interim 64777

Chapter IX—Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

1005 Removed 26601

Proposed Rules:

404 ..... 37000, 37002, 43898, 44674, 52380, 53769
..... 3787
416 ..... 44093, 52380, 53769
422 44674
..... 3787
617 3472
625 63670
638 54539
641 21874

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

5 Authority citation revised 35849
5.22 (a)(8) revised 42491
5.23 (a) introductory text revised; (a)(10)(i) through (vii) added 37419
5.25 (a)(4) revised 42491
5.26 (e) revised 42491
5.30 (a)(1) and (c)(2) revised 42491
5.31 (g) added 31138
(c)(2) and (e)(1) revised 42491
5.35 (b)(3) added 47799
5.37 (a)(3)(i), (ii), and (iii) revised; (a)(3)(iv) added 42491
5.51 (b)(1) revised 2014
5.61 (a), (b)(1), (2), (c)(1), (d), (e), (f)(1) and (g) revised 42492
5.62 Revised 42492
5.66 Revised 42492
5.80 (e) revised 33431
5.85 Added 35849
16 Workshop 29950
73.200 Regulation at 59 FR 10578 effective date confirmed 28765
74.1101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3-19-94 25322
74.1205 (c)(2) revised 40805
Regulation at 59 FR 40805 eff. date confirmed as 9-12-94 53584
74.1340 Regulation at 59 FR 7635 eff. date confirmed as 3-19-94 24643
74.1705 (a)(2) redesignated as (a)(3); new (a)(2) added; (b) revised; (c)(2) and (3) amended 60897
Regulation at 59 FR 60897 eff. date corrected to 12-30-94 61929
Regulations at 59 FR 60897 and 61929 eff. date confirmed as 12-30-94 5131

NOTE: Boldface page numbers indicate 1994 changes.

TITLE 21 Chapter I—Con.

74.2101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3–19–94 25322
74.2205 (b) revised 40805
Regulation at 59 FR 40805 eff. date confirmed as 9–12–94 53584
74.2340 Regulation at 59 FR 7636 eff. date confirmed as 3–19–94 24643
74.2705 (b) introductory text redesignated as (b)(1); (b)(2) added; (c) revised 60898
Regulation at 59 FR 60898 eff. date corrected to 12–30–94 61929
Regulations at 59 FR 60898 and 61929 eff. date confirmed as 12–30–94 5131
74.3602 Regulation at 59 FR 11720 eff. date confirmed 26420
80.10 (a) and (b) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 60899
101 Notice 28480
101.9 (c)(1)(i) revised 62317
101.12 Table 2 amended 24039
101.36 Regulation at 59 FR 371 eff. date corrected to 7–1–95; (b)(4) introductory text, (vi), (c)(10) and (g) amended 24039
101.65 (d)(2), (3) and (4) added 24249
(d)(2)(ii)(A), (C)(*1*), (iv), (3)(ii)(A), (C)(*1*) and (iii) corrected 50828
103.35 (d)(1)(i) table amended; (d)(3) introductory text revised; (d)(3)(i) and (v) added 26937
(d)(1)(i) table, (i) table and (ii) table amended; (d)(3) introductory text, (v) introductory text and (vi) revised; (d)(3)(iii), (iv), (v)(A) through (F) and (vii) added; eff. 5–30–95 61535
131 Authority citation revised 17691
131.130 (a) revised 17691
Regulation at 59 FR 17691 confirmed 32078
135 Authority citation revised 47079
135.110 (a)(1) and (b) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) and (f)(7) added; eff. 9–14–95 47079
Regulation at 59 FR 47079 effective date confirmed 64571
135.115 (a) revised; (c) text redesignated as (c)(1); new (c)(2) added; eff. 9–14–95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
135.120 Removed; eff. 9–14–95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
135.125 Removed; eff. 9–14–95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
166 Authority citation revised 26939
166.110 (a) introductory text heading and (c) heading added; (a)(1) revised; (b) heading and (d) heading amended 26939
172.800 (c)(9), (10) and (11) added 61540
(c)(1) revised; (c)(2) removed 61543
(c)(8) added 61545
172.811 (b) revised 24924
172.841 (b), (c), and (d) redesignated as (c), (d), and (e); new (b) added; new (c) revised 37421
173.21 Added 15623
173.170 Added 26711
173.357 (a)(2) table amended 36937
175.105 (c)(5) table amended 47080
175.300 (d) Table 2 corrected; CFR correction 58775
(b)(3)(xxxvii) added 63894
176.170 (a)(5) table amended 33195, 48391
177.1345 Introductory text revised; (d) added 62318
177.1520 (b) table amended 26422, 43730
177.1580 (b) table amended 43731
177.2600 (c)(4)(i) amended 46171
178.2010 (b) table amended 33196, 45973, 62319
(b) table corrected 54130
178.3295 Table amended 25323
182.1033 Removed 63895
182.1195 Removed 63895
182.1625 Removed 63895
182.1751 Removed 63895
182.1911 Removed 63895
182.3616 (c) revised 65939
182.3637 (c) revised 65939
182.3739 (c) revised 65939
182.3766 (c) revised 65939
182.3798 (c) revised 65939
182.3862 (c) revised 65939
182.6033 Removed 63895
182.6195 Removed 63895

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182.6386 Removed 63895
182.6511 Removed 63895
182.6625 Removed 63895
182.6751 Removed 63895
182.6851 Removed 63895
182.8195 Removed 63895
184.1033 Added 63895
184.1140 Added 63896
184.1195 Added 63896
184.1386 Added 63896
184.1625 Added 63896
184.1751 Added 63896
184.1851 Added 63897
184.1911 Added 63897
201.20 (a) and (b) amended 60898
Regulation at 59 FR 60898 eff. date corrected to 12–30–94 61929
Regulations at 59 FR 60898 and 61929 eff. date confirmed as 12–30–94 5131
201.57 (f)(9) revised 64249
210 Compliance date extended 39255
211 Compliance date extended 39255
211.42 (c) introductory text amended 4091
211.68 (b) amended 4091
211.137 (g) redesignated as (h); new (g) added 4091
211.170 (b) introductory text amended 4091
211.180 (e)(1) revised 4091
310 Technical corrections 49350
310.545 (a)(7) corrected; CFR correction 5313
310.546 Added 43252
314.50 (h) redesignated as (k); new (h), (i) and (j) added 50361
(b) corrected 60051
314.52 Added 50362
314.53 Added 50363
314.54 (a)(1)(vii) added 50364
314.70 (f) added 50364
314.94 (a)(12) added 50364
314.95 Added 50366
314.101 (e) revised 50366
314.107 Added 50367
314.108 Added 50367
319.545 (a)(6)(ii) redesignated as (a)(6)(ii)(A); new (a)(6)(ii)(A) heading, (B) and (d)(23) added; (d) introductory text and (1) revised; eff. 8–23–95 43409
331.30 (d)(1) removed 60556
336.50 (c)(1) revised; eff. 4–11–95 16982
338.50 (c)(3) revised; eff. 4–11–95 16983
341.3 (f), (g) and (h) added; eff. 8–23–95 43409
341.14 (a)(5) and (6) added 29174
341.20 Added; eff. 8–23–95 43409
341.74 (c)(4)(vii), (viii), (ix), (d)(1)(iv) and (v) added 29174
(d)(1)(iv) and (v) corrected 36051
341.80 Added; eff. 8–23–95 43409
341.90 (r) and (s) added 29174
(r) and (s) corrected 36051
343 Announcement 37421
346.18 (b) revised 28767
346.50 (b)(2)(vi) heading and (d)(8) heading amended 28767
347.10 (c) revised 28768
347.50 (b)(3) heading, (c)(2) heading and (d)(3) heading amended 28768
358 Document availability 62569
358.150 (d)(3) revised; eff. 11–23–95 60317
369.20 Amended; eff. 8–23–95 43412
430.4 (a)(69) added 40806
430.5 (a)(104) and (b)(106) added 40806
430.6 (b)(106) added 40806
436.215 (b) table amended; (c)(18) added 40806
436.369 Added 40806
436.370 Added 40807
442.52 Added 26940
442.253 Redesignated as 442.253a; new 442.253 heading added 26941
442.253a Redesignated from 442.253 26941
442.253b Added 26941
450.10 Added 50485
452.160 Redesignated as 452.160a; new 452.160 added 52078
452.160a Redesignated from 452.160 52078
452.160b Added 52078
455.88 Added 40807
(a)(1) corrected 46479
455.188 Added 40808
510 Technical correction 49291
510.600 (c)(1) table and (2) table amended 28768, 31139, 33197, 33198, 33908, 38119, 41664, 41976, 44315, 49576, 50829, 59364
520 Technical correction 50829
520.45a (a), (b), (c), (d)(1), (2) and (3) redesignated as (a)(1), (2), and (3), (a)(4)(i), (ii) and (iii); new (b) added 65711

NOTE: Boldface page numbers indicate 1994 changes.

CHANGES APRIL 1, 1994 THROUGH JANUARY 31, 1995

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520.445b (a) amended; (b), (d)(1), (2), (4)(iii)(B), (C), (iv)(B) and (C) revised; (d)(3) removed; (d)(4)(i)(C) added 39439
520.531 (a) removed; (b) revised 26942
520.580 (b)(1) amended 59365
520.804 Added 17694
520.903c Removed 33198
520.905a (d)(3) added 26943
520.905b (c)(3) added 35252
520.1288 Added 362
520.1485 Heading and (b) revised 3079
520.1660d (a)(6) and (b)(4) added; (e)(1)(ii)(A)(*3*), (B)(*3*), (C)(*3*) and (iii)(C) amended 41664
(e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) corrected 56388
520.1696b (b) revised; (c)(2) amended 42493
(b) revised 58775
520.1720a (b)(3) amended 53585
520.1806 (b) amended 28769
520.1872 Added 33908
520.2045 (b)(2) amended 28769
520.2220a (b) amended 56000
520.2220b (b)(1) amended 56000
520.2220c (c) amended 56000
520.2220d (b) amended 56000
520.2260a (b)(1) amended 22754
520.2260b (b)(1) amended 22754
520.2260c (a) amended 22754
520.2325a (c)(2) amended 28769
(c) amended 33197
520.2325b (c) amended 33197
520.2345a (b)(1) amended 59365
520.2345d Revised 17693
(a)(1) amended 19133
522.246 (a) amended; (c)(3) added 41665
522.313 (d)(4) added 41666
(d)(5) added 54518
522.1145 (a)(2) amended 33198
522.1222a (c) revised 41664, 41976
Corrected 49291
522.1350 Added 37422
522.1660 (b) and (c)(2)(iii) amended 363
522.1680 (b) amended 31139
522.1696a (b)(1) and (2) amended 38119
522.1720 (b)(1) amended 53585
522.1940 (e) redesignated as (d)(2)(iv); (b), (d)(2)(ii), (iii) and (iv) revised; interim 49808
522.2220 (a)(2)(i) amended 56000
522.2477 Revised 4376
522.2680 Revised 19639
524.900 (c) amended 28769
524.1580b (b) amended 33197
524.1580c (b) amended 33197
524.1580d Removed 53586
529.1030 (b) revised; (d) redesignated as (c)(3) 60076
529.1044a (b) amended 31140
529.1186 (b) amended 44315
556.34 Revised 65711
556.200 Revised 41977
556.275 Revised 26943
556.344 (a) revised; (d) added 50830
556.380 Revised 41241
556.425 Revised 17922
556.750 (c) added 38902
558.4 (d) table amended 17477, 18297, 41241
558.95 (b)(4)(ii) added 15624
(b)(1)(xii)(*b*) amended 19134
(b)(1)(x)(*b*) and (xi)(*b*) amended 33197
558.258 (c)(4) added 35252
558.265 (c)(3) added 51498
558.274 (a)(4) and (c)(1) table amended 59365
558.305 Added 18297
558.311 (e)(1) table amended 33197
558.342 (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii), (5)(ii) and (6)(ii) amended 41241
558.355 (f)(1)(xii)(*b*) and (xx)(*b*) amended 33197
(f)(3)(iv)(*b*) and (viii) amended 41241
(f)(2)(ii) and (iii) redesignated as (f)(2)(i)(*a*) and (f)(2)(i)(*b*); new (f)(2)(i)(*b*) revised; new (f)(2)(ii) added 62320
558.360 (d)(2) redesignated as (d)(2)(i); new (d)(2)(i) heading and (ii) added; (d)(3) amended 17922
558.450 (d)(1) Table 1 amended 3080
558.550 (a)(2) revised 15339
(a)(2) amended 19134, 21930, 26423, 26943
(a)(2), (b)(1)(x)(*c*), (xii)(*b*) and (*c*) amended 26424
(b)(1)(ii)(*c*) amended 33197
(b)(2) added 49577
(a)(2) corrected 64739
(a) revised 67185

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(a)(2) revised; (b)(1)(2)(*a*) and (xv)(*a*) amended 3080
558.555 Added 17477
558.586 (a) amended 33197
558.600 (c)(1)(i) amended; (c)(3) added 41975
558.625 (b)(71) removed 33198
558.635 (f)(3) redesignated as (f)(4); new (f)(3) added 38902
(b)(2) amended 54518
573.130 Added 26711
573.920 Stay at 58 FR 47973 confirmed 45973
600 Authority citation revised 54042
600.15 (b) amended 49351
600.80—600.90 (Subpart D) Added 54042
606.65 (c) table amended 23636
606.121 (c)(12)(i), (ii) and (iii) amended 23636
610.9 (a) amended 49351
610.11 Introductory text amended 49351
610.53 (d) amended 49351
630.10 (c)(3) amended 49351
640.6 Introductory text amended 49351
640.21 (c) amended 49351
640.22 (c) amended 49351
640.64 (c) amended 49351
640.74 (a) amended 49351
660.28 (a)(1) table and (4) amended 23637
807.3 (n) amended; (o) and (q) revised 64295
807.87 (i)(2) and (j) amended 64295
807.92 (a) introductory text, (3) through (6) and (b) amended; (d) added 64295
807.93 Revised 64295
807.94 Revised 64296
807.95 (d) revised 64296
812 Notice of applicability 52078
821.2 (b) introductory text amended 31138
864.5350 (b) revised 63007
864.7660 (b) revised 63007
864.7675 (b) revised 63007
864.7900 (b) revised 63007
864.8500 (b) revised 63007
866.5170 (b) revised 63007
866.5220 (b) revised 63007
866.5230 (b) revised 63007
866.5360 (b) revised 63007
866.5370 (b) revised 63007
866.5540 (b) revised 63007
866.5700 (b) revised 63007
868.5340 (b) revised 63007
868.5350 (b) revised 63007
870.1875 (a)(2) revised 63007
872.1500 (b) revised 63007
872.1820 (b) revised 63008
872.3100 (b) amended 63008
872.3130 (b) revised 63008
872.3165 (b) revised 63008
872.3240 (b) revised 63008
872.3285 (b) revised 63008
872.3330 (b) revised 63008
872.3350 (b) revised 63008
872.3360 (b) revised 63008
872.3410 (b) revised 63008
872.3450 (b) revised 63008
872.3490 (b) revised 63008
872.3520 (b) revised 63008
872.3530 (b) revised 63008
872.3580 (b) revised 63008
872.3670 (b) revised 63008
872.3900 (b) revised 63008
872.3910 (b) revised 63008
872.3940 Added 65478
872.3950 Added 65478
872.3960 Added 65478
872.3970 Added 65478
872.4130 (b) revised 63008
872.4535 (b) revised 63008
872.4620 (b) revised 63008
872.4730 (b) revised 63008
872.5410 (b) revised 63009
872.5525 (b) revised 63009
872.5550 (b)(1) revised 63009
872.6030 (b) revised 63009
872.6140 (b) revised 63009
872.6250 (b) revised 63009
872.6300 (b) revised 63009
872.6475 (b) revised 63009
872.6510 (b) revised 63009
872.6640 (b) revised 63009
872.6865 (b) revised 63009
872.6890 (b) revised 63009
874.3375 (b) revised 63009
874.4750 (b) revised 63009
874.5220 (b) revised 63009
874.5800 (b) revised 63009
876.5970 (b) revised 63010
878.1800 (b) revised 63010
878.3750 (b) revised 63010
878.3800 (b) revised 63010
878.3900 (b) revised 63010
878.4100 (b) revised 63010
878.4380 (b) revised 63010
878.4440 (b) revised 63010
878.4470 (b) revised 63010

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878.4635 (b) revised 63010
878.4660 (b) revised 63010
878.4700 (b) revised 63010
878.4730 (b) revised 63010
878.4800 (b) revised 63010
878.4930 (b) revised 63010
878.4950 (b) revised 63010
878.5900 (b) revised 63010
880.2400 (b) revised 63010
880.2720 (b)(1) revised 63011
880.5180 (b) revised 63011
880.5210 (b) revised 63011
880.5240 (b) revised 63011
880.5630 (b) revised 63011
880.5740 (b) revised 63011
880.5780 (b)(2) revised 63011
880.5950 (b) revised 63011
880.6060 (b) revised 63011
880.6150 (b) revised 63011
880.6190 (b) revised 63011
880.6900 (b) revised 63011
882.1430 (b) revised 63011
882.1700 (b) revised 63011
882.1925 (b) revised 63011
882.4030 (b) revised 63011
882.4125 (b) revised 63012
882.4190 (b) revised 63012
882.4200 (b) revised 63012
882.4215 (b) revised 63012
882.4440 (b) revised 63012
882.4500 (b) revised 63012
882.4525 (b) revised 63012
882.4535 (b) revised 63012
882.4600 (b) revised 63012
882.4900 (b) revised 63012
884.5320 Added 67187
886.1040 (b) revised 63012
886.1050 (b) revised 63012
886.1070 (b) revised 63012
886.1090 (b) revised 63012
886.1140 (b) revised 63012
886.1160 (b) revised 63012
886.1250 (b) revised 63012
886.1290 (b) revised 63012
886.1340 (b) revised 63012
886.1350 (b) revised 63012
886.1425 (b) revised 63013
886.1430 (b) revised 63013
886.1435 (b) revised 63013
886.1450 (b) revised 63013
886.1660 (b) revised 63013
886.1680 (b) revised 63013
886.1690 (b) revised 63013
886.1700 (b) revised 63013
886.1810 (b) revised 63013
886.1860 (b) revised 63013
886.1870 (b) revised 63013
886.1910 (b) revised 63013
886.1945 (b) revised 63013
886.4250 (b) revised 63013
886.4350 (b) revised 63013
886.4360 (b) revised 63013
886.4570 (b) revised 63013
886.4750 (b) revised 63014
886.4855 (b) revised 63014
886.5820 (b) revised 63014
886.5840 (b) revised 63014
886.5842 (b) revised 63014
886.5844 (b) revised 63014
886.5900 (b) revised 63014
886.5915 (b) revised 63014
888.4200 (b) revised 63014
888.4210 (b) revised 63014
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888.4540 (b) revised 63014
888.5940 (b) revised 63014
890.1175 (b) revised 63014
890.3100 (b) revised 63014
890.3750 (b) revised 63014
890.3920 (b) revised 63014
890.3940 (b) revised 63015
890.5765 (b) revised 63015
892.1130 (b) revised 63015
892.1350 (b) revised 63015
892.1640 (b) revised 63015
892.5740 (b) revised 63015
900 Workshop 53586
Technical correction 60051
900.2 (e) revised; (r) and (s) added; interim 49812
900.12 (d)(1)(i) revised; interim 49812
900.18 Added; interim 49812
1020.30 (b) amended 26403
1020.32 (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added 26404
1220.40 (a) revised 35253
1270 Workshop 29950

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1306.02 (h) redesignated as (i); new (h) added 26111
1306.11 (a) revised; (e) and (f) added 26111
(a) and (f) corrected 30832
1306.21 (a) and (c) revised 26112
1306.31 (c) revised 26112
(c) corrected 30832
1308.11 (g)(3) removed; (d)(1) through (29) and (g)(4) redesignated as (d)(2) through (30) and (g)(3); new (d)(1) added 46759
Regulation at 59 FR 673 eff. date extended to 6–6–95 65710
1308.24 Regulation at 59 FR 15053 confirmed 52905
1310 Technical correction 52588
1310.04 (f) introductory text revised; (f)(1)(iii) removed; (f)(1)(iv) through (xxiv) redesignated as (f)(1)(iii) through (xxiii); (g) added 51367
1310.06 (b) revised; interim 51364
1313 Technical correction 52588
1313.12 (a) introductory text revised 51367
1313.21 (a) introductory text revised 51367

Proposed Rules:

1—1299 (Ch. I) 26352, 29977, 39888, 62644, 65738
..... 5152
11 ..... 45160, 50793
20 ..... 54046, 60734
..... 5530
54 ..... 48708, 55071
73 23035
74 23035
101 ..... 16577, 36379, 37190, 51030, 52275, 56573
102 ..... 36102, 39635
123 16578
168 23035
170 ..... 51030, 56573
172 23035
173 23035
182 ..... 23035, 55072
184 ..... 23035, 61560, 62366
203 36107
205 36107
310 ..... 51030, 54046, 56573, 60734
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312 ..... 48708, 54046, 55071, 60734
314 ..... 48708, 54046, 55071, 60734
320 ..... 48708, 55071
330 ..... 39499, 48708, 55071
331 17747
333 ..... 31402, 58799
341 34781
343 18507
352 ..... 16042, 29706
369 ..... 31402, 58799
589 44584
600 ..... 28821, 42193, 54046, 56448, 60734

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601 ..... 28821, 42193, 48708, 55071, 56448
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606 ..... 28822, 42193, 56448
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607 ..... 28822, 42193, 56448
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700 16042
740 16042
807 ..... 48708, 55071
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868 37378
870 37378
872 37378
874 ..... 37378, 46479
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888 37378
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1240 16578
1301 ..... 30555, 30738
1307 ..... 51887, 63738
1308 65521
1309 ..... 51887, 54949, 63738
1310 ..... 51887, 63738
1313 ..... 51887, 54949, 63738
1316 ..... 51887, 63738
1403 53706
1404 65607

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 48999
22.1 Table amended; interim 25324, 48999
40 Authority citation revised 51369

TITLE 22 Chapter I—Con.

40.101—40.104 (Subpart K) Heading revised; interim 51369
40.104 Added; interim 51369
40.105 Added 55045
41.107 (e) added; interim 25325
42.61 (a) revised 39955
51 Authority citation revised 48999
51.64 (f) added; interim 48999
51.67 Added; interim 49000
60—65 (Subchapter G) Removed 33909
120.15 Revised 25811
120.16 Revised 25811
121.1 Amended; (c) removed; (d) redesignated as (c) 46548
Amended 46549, 47800
123.16 (a) revised 29951
(b)(1) revised 45622
124.10 Revised 29951
124.15 Added 45622
126 Authority citation revised 42158
126.1 (a) and (d) revised; (f) added 15625
(a) and (c) revised 42158
126.5 Revised 29951
145 Added 18731

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

220 Removed 28769
222 Removed 28769
226 Added; interim 3744

Chapter V—United States Information Agency (Parts 500—599)

502 Revised 18965
514.14 (c) revised; interim 34761
514.30 (b)(3) removed; (i) amended; (j) added; interim 16984
Regulation at 59 FR 16984 confirmed 46918
514.31 Added 64299
518 Added; interim 39440
Regulation at 59 FR 39440 confirmed; authority citation correctly added 61272

Proposed Rules:

42 ..... 18010, 21948
92 64881
135 53706
137 65607
208 65607
213 2911
310 65607
502 ..... 17057, 18772
513 65607
1006 65607
1508 65607

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

172 Authority citation revised 64848
172.1—172.15 (Subpart A) Heading added 64848
172.3 Introductory text added; amended 64848
172.21—172.25 (Subpart B) Added 64848
420—480 (Subchapter E) Heading revised 37557
420 Revised 37557
511 Removed 37563
650 Authority citation revised 37938
650.201 Revised 37939
650.203 Revised 37939
650.205 Revised 37939
650.209 Revised 37939
650.211 Added 37939
655.409 (f) amended 33910
655.601 (a) revised; interim 365
657 Authority citation revised 30418
657.11 Revised 30418
657.13 Revised 30418
657.15 Revised 30418
657.17 Revised 30418
658 Authority citation revised 30419, 36053
658.1 Revised 30419
658.5 Amended 30419
658.13 (d)(1)(i), (2)(i) and (e) amended; (d), (e) and (f) redesignated as (e), (f) and (g); new (d), (e)(4) and (5) added 30419
658.15 (b) and (c) amended 30419
658.17 (f), (g) and (h) redesignated as (g), (h) and (i); new (f), (j) and (k) added; new (h) revised 30420
658.19 (a) revised 30420
658.23 Added 30420
658 Appendix A amended 30421, 36053

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Appendix C added 30422
660 Revised 30300
710 Authority citation revised 25327
710.203 (e)(3) revised 25327
710.204 Added 25327
710.304 (j)(5) amended 25327
712 Authority citation revised 25327
712.408 (a) revised 25327
712.805 (c)(1) revised 25327
713 Authority citation revised 25327
Authority citation corrected 30302
713.103 (h)(1) revised 25327
720 Authority citation revised 25327
720.22 (d)(2) revised 25327

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1205.3 (c) revised 64127
1212.3 (d) amended 39256
1212.7 Amended 39256
1260.19 (d) added 30698
1260.21 (c) revised 30698

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313.6 (a) revised; interim 40474

Proposed Rules:

627 59182
637 35493
645 25579

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

9 Added 31047
17 Authority citation revised 34579, 59647
17.60—17.161 (Subpart C) Authority citation revised 59647
17.60 (a) revised 34579
17.62 Revised 34579
17.64 (a) revised 34580
17.65 (b) revised 34580
17.72 (e) revised 34580
17.110 (b) revised 34580
17.161 (a) revised 59647
24 Authority citation revised 18482
24.700 Revised 18482
42 Revised 29329
50 Authority citation revised 17199, 19107
50.3 Regulation at 57 FR 32110 confirmed 17199
50.4 (b)(3) removed; (b)(1) and (2) revised 19107
50.17 Regulation at 57 FR 32110 confirmed 17199
50.19 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
50.20 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
55 Added 19107
55.12 (b)(2) amended 33199
55.22 Heading revised; (a) introductory text and (b)(1) introductory text amended 33199
58 Authority citation revised 44260
58.1 (c) introductory text, (3) and (4) amended; (c)(5) added; interim 44260
58.2 (a)(4) revised; interim 44260
58.4 (c)(1) amended; interim 44260
58.5 (b)(1) revised 19112
58.77 (d) added; interim 44260
81 Authority citation revised 61506
81.41—81.49 (Subpart E) Continued 54366
81.51 (Subpart F) Added 61506
84 Added; interim in part 47011
91 Revised 1896
Technical correction 2813
91.5 Corrected 4861
91.220 Corrected (OMB number) 4861
91.225 Corrected (OMB number) 4861
91.230 Corrected (OMB number) 4861
91.235 Corrected (OMB number) 4861
91.310 Corrected (OMB number) 4861
91.320 Corrected (OMB number) 4861
91.330 Corrected (OMB number) 4861
91.430 Corrected (OMB number) 4861

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TITLE 24 Subtitle A—Con.

92 Waiver 22506
Technical correction 2813
92.2 Amended; interim; eff. 5–19–94 through 6–20–95 18631
Amended; interim; eff. 10–26–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
Amended 1914
92.4 Added; interim; eff. 5–19–94 through 6–20–95 18631
Redesignated as 92.5; new 92.4 added; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.5 Redesignated from 92.4; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.50 (f) redesignated as (d)(5) and revised; interim; eff. 5–19–94 through 6–20–95 18631
92.52 Revised 1914
92.61 Heading revised; interim; eff. 5–19–94 through 6–20–95 18631
(b)(4) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.64 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.103 (a) revised 1914
92.104 Revised (OMB number) 1914
92.105 Revised (OMB number) 1914
92.150 (b)(2) revised; interim; eff. 5–19–94 through 6–20–95 18632
(b)(5) and (c)(4) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
Revised (OMB number) 1914
92.151 Removed 1914
92.152 Removed 1914
92.200 Amended 1914
92.201 (a) and (b)(1) amended 1914
92.204 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
(c) amended 1914
92.205 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
(a)(1) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.206 Heading, (a)(2), (3), (b), (c) introductory text, (5), (d) and (e) revised; (c)(6) and (7) added; (f) and (g) removed; interim; eff. 5–19–94 through 6–20–95 18632
(b) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.207 Added; interim; eff. 5–19–94 through 6–20–95 18633
(f) amended 1914
92.208 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.209 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.211 (a)(2) and (f)(3) revised; (a)(3) added; interim; eff. 5–19–94 through 6–20–95 18633
(a)(2) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
(a)(1) revised 1914
92.214 (a)(8) revised; interim; eff. 5–19–94 through 6–20–95 18634
(a)(7) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.216 (a)(1) and (2) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.218 (a) introductory text and (c) revised; (e) added; interim; eff. 5–19–94 through 6–20–95 18634
(a) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291

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92.219 Revised; interim; eff. 5–19–94 through 6–20–95 18634
92.220 (a)(1) introductory text, (2), (3) and (5) revised; interim; eff. 5–19–94 through 6–20–95 18634
(a)(6)(ii) amended 1915
92.221 (a)(7) and (c) added; interim; eff. 5–19–94 through 6–20–95 18635
92.222 (a)(2) added; interim; eff. 5–19–94 through 6–20–95 18635
(a)(3) and (4) amended 1915
92.252 (a)(2)(iii) added; (a)(5) amended; (d) revised; interim; eff. 5–19–94 through 6–20–95 18635
(a)(2)(iii) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.254 (a)(1)(i), (4) introductory text, (ii)(C) and (b)(1) revised; (a)(4)(ii)(D) added; interim; eff. 5–19–94 through 6–20–95 18636
(a)(3), (4)(ii)(C) and (D) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.255 Revised; OMB number; interim; eff. 5–19–94 through 6–20–95 18636
92.256 Revised; interim; eff. 5–19–94 through 6–20–95 18636
92.257 Revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.259 Added; interim; eff. 5–19–94 through 6–20–95 18636
92.300 (b), (e) and (f) revised; interim; eff. 5–19–94 through 6–20–95 18637
(b) amended 1915
92.302 (b)(2) amended 1915
92.350 (a)(4) introductory text revised 33893
(b) amended 1915
92.352 (b) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.353 (e) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.354 (a) revised; interim; eff. 5–19–94 through 6–20–95 18637
(a)(2) revised; interim; eff. 10–26–94 through 6–30–95 44263
Regulation at 59 FR 44263 eff. date corrected to 9–26–94 through 6–30–95 49291
92.450 (b) amended 1915
92.451 (a)(1)(iii) and (2) amended 1915
92.453 (b)(2)(ii) amended 1915
92.502 (b)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.504 (e)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.508 (a)(4)(v) revised; interim; eff. 5–19–94 through 6–20–95 18637
(c)(1) amended 1915
92.509 (b) revised 1915
92.625 Added; interim; eff. 5–19–94 through 6–20–95 18638
92.631 (c)(5) added 33893
92.633 Revised; interim; eff. 10–26–94 through 6–30–95 44263
Regulation at 59 FR 44263 eff. date corrected to 9–26–94 through 6–30–95 49291
92 Appendixes A and B amended 33893

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103.335 Amended 39956
103.400 (a)(2), (3), (b) and (c) revised 39956
(a)(2)(i) correctly revised 46759
103.405 (a)(1) and (b) introductory text amended 39956
(b) corrected 46759
135 Revised; interim; eff. 8–1–94 through 6–30–95 33880
Chapter I Appendix IV added 33363

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TITLE 24

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised 36695, 49815, 50143, 50463
200.93 (a)(1) revised; interim 31522
200.155 (a) amended 50143
200.157 (b) through (e) and (f)(1) revised 49815
200.158 Introductory text revised; (c) and (d) removed 49815
200.213 (d) removed; (e) redesignated as (d); interim 31522
200.217 (a)(3) removed; (a)(4) through (8) redesignated as (a)(3) through (7); interim 31522
200.810 (b) revised 50463
200.925a (c)(2) revised; (c)(3) amended 36695
200.925b (c) heading and (5) revised 36695
200.925c (c) introductory text revised 36695
200.926 (c)(2) revised; (c)(3) amended 36695
200.926a (c) heading, (3) and (5) revised 36695
200.926c Table amended 36695
200.926d (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) redesignated as (c)(4)(vii); new (c)(4)(iv), (v) and (vi) added 19112
(c)(4)(iv) corrected 39394
200.926e (b), (c) introductory text, (2) and (d) amended 36695
200.937 (a)(2) amended 36695
201—266 (Subchapter B) Heading revised 62524
203 Authority citation revised 50143, 50463, 65448
203.5 (e) revised 50463
203.23 (a)(5) amended; eff. 4-24-95 53901
203.33 203.251 (r) revised 49815
203.355 (a) introductory text revised; (c) amended; (g) added 50143
203.356 Heading revised; existing text designated as (a); (b) added 50144
203.360 Heading revised; existing text designated as (a); (b) added 50144
203.365 (a) revised 50144
203.370 Added 50144
203.401 (c) redesignated as (d); new (c) added; new (d) revised 50144
203.402 Introductory text and (l) revised; (k)(3), (s) and (t) added 50145
203.403 (d) added 50145
203.408 Revised 49816
203.410 (a) introductory text revised; (a)(1)(ii) and (iii) amended; (a)(1)(iv) added 50145
203.411 Revised 49816
203.427 Added 49816
203.440 (f) revised 49816
203.483 Revised 49816
203.487 Revised 49816
203.501 Added 50145
203.502 (b) revised; eff. 6-19-95 65448
203.508 (e) added; eff. 6-19-95 65448
203.550 (a) amended; (b) removed; (c) revised; eff. 4-24-95 53901
203.554 (d) added; eff. 6-19-95 65448
203.670 Regulation at 58 FR 54246 confirmed 48704
203.671 Regulation at 58 FR 54246 confirmed 48704
203.675 Regulation at 58 FR 54246 confirmed 48704
203.676 Regulation at 58 FR 54246 confirmed 48704
204 Revised 39957
Authority citation revised 50464
204.3 (b) revised 50464
206 Authority citation revised 50464
206.3 Amended 50464
207 Authority citation revised 48730
207.10 Revised 31141
207.32 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
207.36 Regulation at 58 FR 34215 confirmed 28248
207.259 (e)(5) revised 49816
207.260 (e) revised 31141
207.270 Undesignated center heading and section added 48730
208 Technical correction 48171
208.108 (a) heading, (b) heading and (e) heading added; (c) and (d) revised; (a) and (b)(3) amended 43474
208.112 (e) revised 43475
213.13 Revised 31141
213.44 Regulation at 58 FR 34215 confirmed 28248
213.45 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
215.21 (b)(9) removed 32649
215.80 Added 29329
219.210 (c)(3) revised 33894
219.310 (c)(3) revised 33894
220.580 Regulation at 58 FR 34216 confirmed 28248
220.836 Revised 49816
220.842 Revised 49816
221 Authority citation revised 31141, 49816
221.521 Revised 31141
221.560 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
221.563 Regulation at 58 FR 34216 confirmed 28248
221.780 Revised 49816
221.795 Added 29330
232 Heading revised 61226
232.1 (j) revised; (m) through (p) added 61226
232.7 Added 61226
232.30 Revised 61227
232.32 Heading, introductory text, (b) and (c) revised 61227
232.39 (c) added 61227
232.42a Added 61227
232.89 Revised 61227
232.90 Heading, introductory text, (b) and (c) revised 61227
232.94 Regulation at 58 FR 34216 confirmed 28248
232.500 (c)(1) introductory text and (d) revised 61228
232.505 (b) revised 61228
232.600 Regulation at 58 FR 34216 confirmed 28248
232.615 (b) revised 61228
232.893 Revised 49816
232.901 Revised 61228
232.902 Revised 61228
232.903 (a) introductory text, (b) and (d) introductory text amended 61228
234 Authority citation revised 53901
234.38 (a) revised; eff. 4-24-95 53901
235.215 Revised 49817
236.3 (b)(9) removed 32649
236.40 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
236.265 Revised 49817
236.1001 (Subpart F) Added 29331
237 Authority citation revised 49816
237.260 Revised 49817
241 Authority citation revised 49817
241.85 Regulation at 58 FR 34217 confirmed 28248
241.600 Regulation at 58 FR 34217 confirmed 28248
241.893 Revised 49817
241.1085 Regulation at 58 FR 34217 confirmed 28248
242 Authority citation revised 49817
242.43 Revised 31142
242.91 Regulation at 58 FR 34217 confirmed 28248
242.260 Revised 49817
244.182 Regulation at 58 FR 34217 confirmed 28248
246 Authority citation revised 62524
246.1 Regulation at 58 FR 64038 eff. date extended from 12-5-94 60900
(e) added 62524
261 Added 5282
266 Regulation at 58 FR 64038 eff. date extended from 12-5-94 60900
Added 62524
267 Added 50464
267.1 (a) corrected 61801
267.2 Corrected 61801
267.3 (c)(3) corrected 61801
267.9 Corrected 61801
267.12 (a)(3) corrected; (a)(4) and (b)(3) removed 61801
280.207 (a)(4) revised 33894
290.1 Revised 48730
290.3 Amended 48730
290.200—290.202 (Subpart D) Added 48730
291 Authority citation revised 29509
291.1 Regulation at 58 FR 54247 confirmed 48704
291.5 Regulation at 58 FR 54247 confirmed 48704
Amended 48705
291.100 Regulation at 58 FR 54247 confirmed 48704
(d)(2) revised; (h) amended 48705
(d)(2) corrected 63247
291.105 Regulation at 58 FR 54247 confirmed 48704
(a) and (h)(1) revised 48705

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TITLE 24 Chapter II—Con.

291.110 Regulation at 58 FR 54248 confirmed 48704
(a) revised; (b)(1) amended 48705
(b)(1) corrected 52906
291.130 Regulation at 58 FR 54248 confirmed 48704
291.135 Regulation at 58 FR 54248 confirmed 48704
(d) removed 48706
291.400 (b) amended; (c), (d) and (e) revised 29509
291.405 Amended 29510
291.410 (c) introductory text and (d) revised; (c)(6) added 29510
291.415 (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added; (f)(1) amended 29510
291.420 Heading, (a)(1) and (3) revised; (b) amended 29511
291.425 (b) and (c) revised 29511
291.435 (a)(1) amended 29511
(b) removed; (c) redesignated as (b) 59648

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

510 Authority citation revised 29332
510.52 Revised 29332
570 Authority citation revised 66598
Technical correction 2813
570.3 Amended 1915, 1943
570.200 (e) revised 1943
570.201 (o) added 1943
570.202 (a)(1) revised 1944
570.203 Introductory text and (b) revised; (c) added 1944
570.204 Revised 1944
570.205 (a)(3)(i) amended 1915
570.207 (b) introductory text and (3)(iii) revised 1945
570.208 (a) heading, (1)(i), (2)(1) introductory text, (3) introductory text and (4) revised; (a)(1)(iv) amended; (a)(1)(v), (2)(iii), (iv), (d)(5), (6) and (7) added 1945
570.209 Added 1947
570.301 Removed 1915
570.302 Revised (OMB number) 1915
570.303 Revised (OMB number) 1915
570.304 (a) and (c)(1) revised 1915
570.305 Removed 1915
570.306 Removed 1915
570.308 (d) amended 1915
570.420 (d) amended 1915
570.420—570.432 (Subpart F) Revised 66598
570.423 (a), (b) and (c)(1) revised 1915
570.429 (b) amended; (f) and (g) revised 1916
570.430 (f) removed 1916
570.431 (f) removed 1916
570.482 (c) through (g) added 1949
570.483 (b)(4)(iv) redesignated as (b)(4)(vi); (b)(4)(vi)(C) redesignated as (b)(4)(vi)(F); heading, (b)(2)(i)(C), (3) introductory text, new (4)(vi)(B) and new (F) revised; (b)(1)(iv), (2)(iv), (v), new (4)(iv), (v), new (vi)(C), (D), (E), (e)(4) and (5) added 1951
570.485 (a) revised; (b), (c) and (e) removed; (d) redesignated as (b) 1916
570.487 (d) added 33894
(b) revised 1916
570.489 (e)(1) introductory text revised; (e)(2) redesignated as (e)(3); new (e)(2) added 1952
570.491 Revised (OMB number) 1916
570.497 Added 66604
570.500 (a) introductory text and (c) revised; (a)(4) added 1952
570.502 (a)(16) revised 1916
570.506 (e) and (g)(1) revised 1916
(b) introductory text and (c) revised; (b)(2)(iii) amended; (b)(7) through (11) redesignated as (b)(8) through (12); new (b)(7) added 1953
570.507 (a)(2)(ii)(A) revised 66604
(a) revised 1916
570.509 (b)(1) and (d) amended 1916
570.601 (b) amended 1917
570.605 Amended 1917
570.606 (c)(3)(iv) amended 1917
570.607 (b) revised 33894
570.700—570.710 (Subpart M) Revised 66604
570.704 (a)(1)(v), (2) and (b) introductory text amended 1917
570.901 (d) amended 1917
570.904 (c) revised 1917
570.910 (b)(2)(iii) amended 1917
570 Appendix A added 1953
571 Removed; interim 38329

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572.405 (c)(1) revised 33894
574 Regulation at 57 FR 61740 confirmed 17199
Authority citation revised 33894
Technical correction 2813
574.2 (a) revised 17199
Revised 1917
574.3 Amended 17199
Amended 1917
574.100 (a) designation and (b) removed 17199
Existing text designated as (a); (b) added 1917
574.120 Revised 1917
574.140 Removed 17199
574.160 (b) and (c)(5) revised 17199
Removed 1918
574.170 Removed 1918
574.180 Removed 1918
574.190 Amended 1918
574.220 Removed 17199
574.240 (c)(6) revised 17199
(c)(11) amended 1918
574.300 (a) and (c)(1)(i)(C) amended; (b)(7) and (10)(ii) revised 17200
574.310 (a) heading redesignated as (a)(1) heading; new (a)(1) heading and (e) revised; (a)(2) added; (d) introductory text amended 17200
574.330 Introductory text, (a)(1) and (d) amended 17200
574.340 (b) revised 17200
574.520 Revised 1918
574.530 Amended 1918
574.600 (c) revised 33894
574.655 Added 17201
576 Technical correction 2813
576.3 Amended 1918
576.31 (Subpart C) Removed 1918
576.51 Revised (OMB number) 1918
576.53 (a), (b) and (e) removed; (c) and (d) redesignated as (a) and (b) 1918
576.61 Heading and (a) revised 1918
576.63 Heading, (a), (d) introductory text and (1) revised 1918
576.67 (c)(5) and (f)(1) revised 1918
576.79 (a)(4) revised 33894
576.85 Removed 1918
576.87 Amended 1918
582.120 (a), (b) and (d) revised; interim 24253
582.200 Revised; OMB number; interim 24253
582.205 Removed; interim 24254
582.210 Removed; interim 24254
582.215 Removed; interim 24254
582.220 Removed; interim 24254
582.225 Removed; interim 24254
583 Authority citation revised 33894
Regulation at 58 FR 13871 confirmed 36891
583.5 Amended 36891
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 38562
583.100 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (3) added 36891
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 38562
583.115 (b)(2) amended 36891
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 38562
583.120 (a) amended 36891
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 38562
583.130 Revised; OMB number 36891
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 38562
583.140 Revised 36892
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 38562
583.150 (b) removed; (c) redesignated as (b); new (c) added 36892
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 38562
583.155 (a), (b) and (d) revised; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.200 Revised; OMB number; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.205 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.210 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.215 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.220 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.225 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891

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583.300 (e) amended 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.310 (f)(1)(i) and (g) revised; (h) added 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.315 (a)(1) revised 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.325 (b)(4) revised 33894
597 Waiver 2880
Revised 3038

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Revised 22225, 22235
791.402 (c)(2) revised 50159
791.403 Regulation at 58 FR 41428 effective date extended 3344
791.407 (a) introductory text revised; interim 35255

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

813 Authority citation revised 36681
813.104 (b)(2) removed; (b)(3) redesignated as (b)(2) 36681
813.105 (a) introductory text amended; (c), (e)(2) and (4) removed; (e)(3) redesignated as (e)(2) 36681
813.106 (b)(9) removed 32649
813.109 Heading and (a) revised 2662
850 Authority citation revised 29333
850.34 Added (OMB number) 29333
850.35 (d) removed 29335
880 Authority citation revised 22923
880.104 (d) added 59649
880.209 Revised (OMB number) 29335
880.603 (b) introductory text amended; (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3) 36624
880.609 (b) revised 22755
880.612a Added; interim, ... 22923
Revised 65850
880.613 Revised; OMB number 36624
(c)(1)(i) corrected 42159
880.614 Added; OMB number 36625
880.615 Added 36626
880.616 Added 36627
880.617 Added 36627
881 Authority citation revised, ... 22924
881.104 (d) added 59649
881.209 Revised; OMB number 29336
881.603 (b) introductory text amended 36628
881.609 (b) revised 22755
881.612a Added; interim, ... 22924
Revised 65852
881.613 Revised; OMB number 36628
(c)(1)(i) corrected 42159
881.614 Added; OMB number 36629
881.615 Added 36630
881.616 Added 36631
881.617 Added 36631
882 Authority citation revised 24254, 33895, 36681
882.103 Introductory text removed; (b) revised 36681
882.116 (c) revised 36682
882.207 Removed 36682
882.209 (a) revised 36682
882.216 (a)(4) removed 36682
882.219 Removed 36682
882.335 (a)(2)(i) revised 36682
882.406 Revised; OMB number 29337
882.410 (a)(2) revised; OMB number 47773
882.517 Revised; OMB number 36632
(c)(1)(i) corrected 42159
882.518 Added; OMB number 36633
882.519 Added 36633
882.520 Added 36634
882.521 Added 36635
882.701 (c) revised 36682
882.712 Revised; OMB number 29338
882.713 (c)(11) added 33895
882.720 (b)(3)(v) revised 29339
882.721 (c) amended 29340
882.753 (a) revised 36682
882.803 (d) introductory text revised 29340
882.805 (a) through (d) and (f)(10) revised; interim 24254

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882.810 Added; OMB number 29340
883 Authority citation revised, ... 22926
883.105 (d) added 59650
883.311 Revised; OMB number 29341
883.704a Added; interim, ... 22926
Revised 65854
883.710 (b) revised 22755
883.714 Revised; OMB number 36635
(c)(1)(i) corrected 42159
883.715 Added; OMB number 36636
883.716 Added 36637
883.717 Added 36638
883.718 Added 36638
884 Authority citation revised, ... 22927
884.112 Revised; OMB number 29342
884.223a Added; interim, ... 22927
Revised 65855
884.226 Revised; OMB number 36639
(c)(1)(i) corrected 42159
884.227 Added; OMB number 36640
884.228 Added 36641
884.229 Added 36642
884.230 Added 36642
885.5 Amended 2662
885.200 Redesignated as 885.203; new 885.200 added 2662
885.203 Redesignated from 885.200 2662
885.210 (b)(5) revised 2663
885.425 Heading revised; (b) removed; (c) through (f) redesignated as (b) through (e) 2663
885.427 Revised 36643
885.500 Added 2663
885.505 Added 2663
885.510 Added 2663
885.515 Added 2664
885.520 Added 2664
885.525 Added 2664
885.530 Added (OMB number) 2664
885.535 Added 2665
885.600 Added (OMB number) 2665
885.605 Added 2665
885.610 Added (OMB number) 2666
885.615 Added (OMB number) 2667
885.620 Added 2667
885.625 Added 2667
885.630 Added 2667
885.635 Added (OMB number) 2667
885.640 Added (OMB number) 2668
885.645 Added (OMB number) 2668
885.650 Added (OMB number) 2668
886 Authority citation revised, ... 22929
886.132 Revised; OMB number 36643
(c)(1)(i) corrected 42159
886.133 Redesignated as 886.138 36643
Added; OMB number 36644
886.134 Added 36645
886.135 Added 36646
886.136 Added 36647
886.138 Redesignated from 886.133 36643
886.329a Added; interim, ... 22929
Revised 65857
886.337 Revised 36647
887 Authority citation revised 36682
887.5 (c) removed 36682
887.59 (c)(1) and (d) revised 36682
887.105 (b)(1) and (2) amended 36682
887.107 Removed 36682
887.151—887.167 (Subpart D) Heading revised 36682
887.151 Revised 36682
887.153 Removed 36682
887.155 Removed 36682
887.157 Removed 36682
887.565 (c) revised 36682
888 Fair market rent schedules 16408, 49494
Schedule C revised 21835
Technical correction 25703
Fair market rent schedules corrected 26944
Schedule C corrected 26944, 48392
888.203 (b) revised 38564
889 Authority citation revised 36647
889.265 (a)(4) revised 33895
889.611 Added; OMB number 36647
(c)(1)(i) corrected 42159
889.612 Added; OMB number 36648
889.613 Added 36649
889.614 Added 36650
889.615 Added 36650
890.260 (a)(4) revised 33895

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

900 Authority citation revised 28343
900.105 Added; OMB number 29343
904 Authority citation revised 36651
904.122 Revised 36651
905 Authority citation revised 33655, 33895, 36651, 39403, 43630, 51854
905.102 Amended 43630, 44830, 51854
905.120 (j) added 33895
905.160 (a)(3)(ii)(C) revised; interim 31522
905.165 (c)(5) revised 33895

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905.195 Added 31929
905.210 Removed 25812
905.301 (a) revised; (e)(1), (2) and (4) amended 36651
905.303 Added; OMB number 36652
905.304 Added 36653
905.305 Revised 36653
905.306 Added 36654
905.307 Added 36654
905.308 Added 39403
905.416 (a)(3) revised; (d) and (f) amended 36655
905.434 (b)(7) added 43630
905.585 Added 31930
905.601 (b), (k)(2)(i) and (3)(iii) revised; (h) and (j) amended 44830
905.602 Revised 44830
905.642 (d)(4) removed; (g) revised; interim 31523
905.666 (a)(1), (2), (3), (b), (c), (d)(1), (3)(i), (f)(1)(iii) and (m) revised 44831
905.667 (a)(1) and (3) revised 44831
905.669 (a)(1) amended; (b) and (c) revised; (d) added; OMB number 44832
905.672 (a), (b)(2)(i), (3), (4), (5), (c)(2), (d)(1), (2)(i)(E), (4), (5)(i), (iii), (6)(i), (ii), (7)(v), (viii), (xv), (e)(2), (3) and (4) revised; (d)(7)(xviii) added 44832
905.675 (b)(1) amended; (c) revised; OMB number 44834
905.678 Revised; OMB number 44834
905.681 (c)(2) revised; interim 31523
(a) introductory text and (b) revised 44836
905.684 (b)(3) removed; (b)(4) through (7) redesignated as (b)(3) through (6); heading, (a), (b)(2), new (4) and new (6) revised 44836
905.687 (a)(1)(i), (2)(i)(A), (3)(ii), (e)(2) and (4) revised; (e)(7) redesignated as (e)(8); (a)(3)(iii) and new (e)(7) added 44836
905.715 (b)(2) revised 33655
(c)(4)(ii) and (d) removed; (c)(4)(iii), (e), (f) and (g) redesignated as (c)(4)(ii), (d), (e) and (f); (a), (b)(2), (c) introductory text, (2)(iii), (4)(i), new (d) and new (e) amended 51854
905.720 (f) added 25812
(b) existing text designated as (b)(1); (b)(2) added 33655
(g) added 43630
905.730 (c)(1)(i) revised 33655
(c)(2)(i) and (ii) amended 51854
905.960—905.988 (Subpart O) Revised 43630
905.1001—905.1021 (Subpart P) Revised 56359
905.1008 Introductory text revised; (a) amended 36655
906 Authority citation revised 36655
Revised 56365
906.8 Introductory text revised; (a) amended 36655
907 Regulation at 59 FR 3627 confirmed 4346
907.1 (a) designation, heading and (b) removed 4346
907.5 (a) designation, heading and (b) removed 4346
907.6 (b) amended 4346
907.8 (c) introductory text amended; (d) revised 4346
913.106 (b)(9) removed 32649
(c)(8)(ii), (iii) and (10) amended; (c)(11) redesignated as (c)(12); (c)(8)(iv) and new (c)(11) added 43635
941.206 (c) revised 18484
941.207 Revised (OMB number) 29344
941.404 (n) introductory text through (9) redesignated as (n)(1) introductory text through (ix); (n) concluding text designated as (n)(2); heading, new (n)(1) and new (2) revised; (n)(1)(x) added 18484
941.502 (a) revised; interim 31523
945 Added 17662
953 Added; interim 38329
955 Added; interim 42734
960 Authority citation revised 36655, 39405
960.203 Revised 36655
960.204 Revised 36655
960.205 (a) and (c) revised 36656
960.206 (a) amended 36656
960.207 (a) and (b) introductory text amended; (b)(1) and (2) removed 36656
960.211 Revised (OMB number) 36656
960.212 Added (OMB number) 36657
960.213 Added 36658
960.214 Added 36658
960.215 Added 36659

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960.401—960.409 (Subpart D) Heading revised 17667
960.401 Revised 17667
960.403 Revised 17667
960.405 Revised 17667
960.407 Revised 17667
960.409 Removed 17667
960.501—960.511 (Subpart E) Added 39405
961 Authority citation revised 33895
961.29 (b)(4) revised 33895
963 Authority citation revised 33895
963.3 Amended 33895
963.10 (d) revised 33895
964 Revised 43636
965.215 Added 31930
965.705 Added 31930
968 Technical correction 2813
968.102 Revised 44837
968.103 (c) revised 30477
(b), (k)(2)(i) and (3)(iii) revised; (j) amended 44837
968.235 (d)(4) removed; (g) revised; interim 31523
968.305 Amended 44837
968.310 (a)(1), (2), (f)(1)(iii), (b), (c), (d)(1), (3)(i) and (m) revised; (a)(3) amended; (d)(3)(iii) removed; (g)(4) added 44838
968.312 (a)(1) and (3) revised 44838
968.315 Heading, (b), (c)(1) and (5) revised; (a)(1) amended; (d) added; OMB number 44839
968.320 Heading, (a), (b)(2)(i), (3), (4), (5), (c)(2), (d)(1)(i), (ii), (2)(i)(E), (4), (5)(i), (iii), (6)(i), (ii), (7)(v), (viii), (xv), (e)(2), (3) and (4) revised; (d)(7)(xviii) added; OMB number 44839
(d), (e) and (f) redesignated as (e), (f) and (g); new (d) added; (c) introductory text, new (e) introductory text, (4)(i) and (6)(ii) amended 1919
968.325 Heading and (c) revised; OMB number 44841
968.330 (a) through (d), (e) introductory text, (1), (2), (4), (8), (f), (g)(1), (2) introductory text, (i), (h), (i) and (j) revised; (k) added; OMB number 44841
968.335 (c)(2) revised; interim 31523
(a) introductory text and (b) revised 44843
968.340 (b)(3) removed; (b)(4) through (7) redesignated as (b)(3) through (6); (a), (b)(2), new (4) and new (6) revised; OMB number 44843
968.345 (a)(1)(i), (ii), (2)(i)(A), (3)(ii), (e)(2) and (4) revised; (e)(7) redesignated as (e)(8); (a)(3)(iii) and new (e)(7) added; OMB number 44843
968.401—968.425 (Subpart D) Added 30478
968.407 OMB number 30478
968.422 OMB number 30480
968.428 OMB number 30480
970.2 Regulation at 53 FR 30987 confirmed; revised 3716
970.3 Amended 3716
970.4 Regulation at 53 FR 30987 confirmed 3716
(b) and (c) removed; (d) and (e) redesignated as (b) and (c); new (c) revised; new (d), new (e), (f) and (g) added 3717
970.5 Regulation at 53 FR 30987 confirmed 3716
Revised 3717
970.6 Regulation at 53 FR 30988 confirmed 3716
Revised 3719
970.7 Regulation at 53 FR 30988 confirmed 3716
(a)(2) revised 3719
970.8 Regulation at 53 FR 30988 confirmed 3716
(f) and (g) revised; (h) through (m) redesignated as (k) through (p); new (h), new (i) and new (j) added 3719
970.9 Regulation at 53 FR 30988 confirmed 3716
(b) introductory text and (1) revised; new (c) added 3719
970.11 Regulation at 53 FR 30988 confirmed 3716
Revised (OMB number) 3719
970.12 Regulation at 53 FR 30989 confirmed 3716
970.13 Regulation at 53 FR 30968 confirmed 3716
Redesignated as 970.14; new 970.13 added; OMB number 3721
970.14 Redesignated from 970.13 3721

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982 Added 36682
982.210 Regulation at 59 FR 36687 eff. date corrected to 1-18-95 47081
990 Authority citation revised 33655
990.102 Amended 51854
990.107 (b)(2) revised 33655
(c)(4)(ii) and (d) removed; (c)(4)(iii), (e), (f) and (g) redesignated as (c)(4)(ii), (d), (e) and (f); (a), (b)(2), (c) introductory text, (2)(iii), (4)(i), new (d) and new (e) amended 51854
990.108 (b) existing text designated as (b)(1); (b)(2) added 33655
(f) and (g) added 43644
990.110 (c)(1)(i) revised 33656
(c)(2)(i) and (ii) amended 51854
990.401—990.405 (Subpart D) Added 43644
(c)(4)(ii) eff. date corrected to 1-18-95 47081

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

3280 Interpretation 19072, 34294
3282 Interpretation 64100
3500 Regulation at 59 FR 5520 withdrawn 53901
3500.2 Amended; eff. 6-19-95 65448
3500.6 (a)(3)(ii) and (iii) amended; (a)(3)(iv) added 37423
3500.7 (e)(1)(iii) amended 37423
3500.8 (c) added; eff. 4-24-94 53901
3500.17 Added (OMB number); eff. 4-24-95 53902
3500.19 (a) amended; eff. 6-19-95 65448
3500.21 Added; eff. 6-19-95 65448
(e)(2)(i) corrected 2642
3500 Appendix A amended; Appendixes F through J added; eff. 4-24-95 53908
Appendix MS-1 added; eff. 6-19-95 65452
Appendix MS-2 added; eff. 6-19-95 65456
Appendix MS-1 amended 2643
Appendix MS-1 corrected 5962

Proposed Rules:

24 65607
25 65700
26 65700
35 24850
38 54984
43 34300
85 53706
91 40148
92 ..... 34300, 40148
100—199 (Ch. I) 41995, 52104
100 ..... 34902, 40502, 49035, 56449, 64104
125 44596
200 ..... 24850, 43900, 51519
203 36846
..... 4391
215 43900
235 43900
236 43900
247 43900
261 40764
280 24850
290 17500
291 24850
510 24850
511 24850
570 ..... 24850, 28176, 34300, 40148, 41196, 47500
574 40148
576 40148
577 24850
578 24850
579 24850
760 51519
812 43900
813 50870
850 43900
880 ..... 30557, 43900
881 ..... 30557, 43900
882 ..... 24850, 43900
883 ..... 30557, 43900
884 ..... 30557, 43900
885 24850
886 ..... 24850, 30557, 43900
887 ..... 24850, 43900
888 32492
890 24850
900—999 (Ch. IX) 304
900 43900
904 43900
905 ..... 18666, 24850, 39072, 43900, 50870
908 50870
912 43900
913 ..... 18666, 50870
941 ..... 24850, 35834, 44952
950 39072

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960 43900
961 24850
964 18666
965 24850
968 ..... 24850, 40148
982 36846
984 36846
990 18666
3500 ..... 37360, 42784

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

11.100 (a) revised 48722
36 Authority cvitation revised 61765
36.3 Amended 61765
36.10 (a) revised 61765
36.11 (d) added 61765
36.20 (d)(1) through (4) added 61765
36.24 (g) added 61765
36.42 Introductory text and (a) revised 61766
36.61 (a)(1) revised 61766
36.77 Added 61766
113 Removed 54504
141 Authority citation revised 54502
141.10 (d) revised 54502
141.33 (d) revised 54502
200.12 Added 43419
216.100—216.111 (Subpart B) Removed 43419
226.11 (a)(2) revised 22104
248.6 Revised 16757

Proposed Rules:

1—299 (Ch. I) ... 21872, 23774, 33236, 36108, 67592
5 47046
10 40086
20 ..... 16720, 40182
40 18460
46 44016
63 40184
113 16760
115 41948
151 1956
164 35580
165 35580
256 ..... 16726, 30276
281 61220
309 ..... 51908, 52588
900 26920

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction 17154, 36256
Authority citation amended 18747, 24041, 24928, 27459, 30103, 32080, 33432, 34988, 35416, 36363, 39960, 41674, 49579, 50163, 50487, 51371, 63250, 64573, 66462, 67196
Authority citation amended 27, 2500
1.42-5 (b)(1)(vi) and (c)(1)(iii) revised; (b)(1)(vii) amended 50163
1.42-12 (a) corrected 15501
1.42-14 Added 50163
(c), (d)(1) and (k)(2) *Example 4* corrected 3345
1.52-1 (f) amended 30102
1.55-1 Added 60557
1.56(g)-1 (b) introductory text amended 51371
1.61-22T Added 65712
1.101-2 (e)(2) *Example* amended 30102
(e)(1)(iii)(*b*)(*1*) and (*2*) revised; (e)(1)(iii)(*b*)(*3*) removed 30103
1.103-8 (a)(5) revised 24041
1.103-8T Added 24041
1.142(a)(5)-1 Added 66163
1.148-0 (c) amended 24041
1.148-1 (c)(4)(ii)(A) revised 24041
1.148-1T Added 24041
1.148-2 (b)(2)(ii) revised 24042
1.148-2T Added 24042
1.148-3 (h)(3) amended 24042
(j) *Example 1* revised; *Example 2* amended 24350
1.148-3T Added 24042
1.148-4 (b)(5) redesignated as (b)(6); new (b)(5) added; (g), (h)(1), (2)(vii), (ix), (3), (4) and (5) revised 24042
1.148-4T Added 24042
1.148-5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii) and (e)(2)(iii) revised; (e)(2)(ii)(B) amended 24044
1.148-5T Added 24044
1.148-6 (d)(3)(iii)(C) revised 24045
1.148-6T Added 24045
1.148-9 (c)(2)(ii)(B) revised; (h)(4)(vi) added 24045
1.148-9T Added 24045
1.148-10 (b)(2) revised; (c)(2)(ix) amended 24046
(d) *Example 1* amended 24351

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1.148–10T Added 24046
1.148–11 (i) added 24046
1.148–11T Added 24046
1.149(d)–1 (f)(3) revised 24046
1.149(d)–1T Added 24046
1.149(e)–1 (e)(3)(i) and (4) revised 24351
1.150–1 (c)(1) and (4) heading revised; (c)(4)(iii) added 24046
1.150–1T Added 24046
1.167(c)–1 (a)(5) amended 41674
1.168(i)–0 Added 51371
1.168(i)–1 Added 51371
(f)(2)(ii) and (3) corrected 64849
1.170A–4 (d) *Example 9* amended 30102
1.170A–5 (b) *Example 5* amended 30102
1.170A–6 (c)(3)(i), (iii) *Examples 1, 2, 3,* (c)(4), (5) *Examples 1, 2,* and *3;* amended 30102
1.170A–7 (c) amended 30102
1.170A–12 (a)(3) and (c) amended 30102
(a)(3) amended; (b), (e)(1) and (2) revised; (f) and authority citation removed 30104
1.170A–13 Authority citation removed 30105
1.170A–13T Added 27460
1.170A–14 (h)(4) *Example 2* amended 30105
1.174–2(a)(1) revised; (a)(2) and (3) redesignated as (a)(8) and (9); new (a)(2) through (7) added; (c) amended 50160
1.217–2T Added 65712
1.263A–0 Amended 67196
1.263A–1 (a)(2)(i), (3)(v), (b)(3), (4) and (10) amended; (b)(10)(i), (ii) and (j)(4) added 39961
(g)(4)(ii) amended 67197
1.263A–1T (c) and (e) redesignated as 1.263A–4T(c) and 1.263A–7T(e) 39960
Removed 39961
1.263A–2 (a)(1)(ii)(B)(*2*) revised 67197
1.263A–3 (c)(4)(vi) heading and (C) heading revised; (c)(4)(vi)(A), (B) and (C) added 39962
1.263A–4T Added; (c) and (e) redesignated from 1.263A–1T(c) and 1.263A–7T(c) 39960
1.263A–7T Added; (e) redesignated from 1.263A–1T(e); new (e)(1)(i), (ii), (iii)(B), (iv), (2), (3)(i), (4)(i), (ii), (5) *Examples 1* and *3* amended 39960
(e)(6)(i), (ii)(A), (*1*), (C) *Examples* 1, 3, 5, (iii)(A), (B)(*1*), (*2*) *Example,* (C)(*1*), (*2*) Example, (iv)(C) *Example,* (7)(iii)(B), (v) *Example,* (9)(i), (ii) *Examples 1* through *5,* (10)(i), (ii)(A), (iii), (11)(i) through (v) amended 39961
1.263A–8 Added 67198
1.263A–9 Added 67200
1.263A–10 Added 67207
1.263A–11 Added 67210
1.263A–12 Added 67212
1.263A–13 Added 67213
1.263A–14 Added 67215
1.263A–15 Added 67215
1.266–1 (a) redesignated as (a)(1); (a)(2) added 67215
1.279–6 (b)(4) revised 41675
1.301–1 (d)(1)(iii), (h)(2)(ii)(*b*) and (j)(1) amended 2500
1.312–3 Amended 2500
1.337(d)–1 (a)(5) introductory text amended 41674
(a)(5) *Example 8* amended 41675
1.337(d)–2 (c)(4) *Example* amended 41674
1.338–4T (h)(4) corrected 15501
1.341–6 (b)(1), (2)(i), (iii), (3), (h)(4) and (n) amended 2500
1.382–1 Amended 32080
1.382–6 Added; heading revised 32080
1.401–12T Added 63571
1.401(k)–0 Amended 66169
1.401(k)–1 (a)(3)(iv), (b)(4)(ii), (iv), (5)(i), (ii), (6) *Examples 2, 3, 4,* (d)(5), (6)(iv), (e)(6)(ii), (f)(3)(v) *Example,* (7) *Example 1* and (g)(4)(ii) amended; (a)(3)(v), (4)(ii), (iv), (5)(iv), (6)(ii)(C), (7)(i), (b)(1)(i), (ii) heading, (5)(vi), (d)(2)(iv)(A)(*3*), (3), (4)(i), (e)(7), (f)(1)(iii), (2), (3)(ii), (iii)(C), (4)(ii)(B), (7) *Examples 2, 3,* (g)(1)(ii)(B)(*1*), (C)(*1*), (2)(i), (5), (6), (11), (3)(iii)(A), (B)(*2*) and (4)(ii) revised; (a)(3)(vi) *Example 3,* (e)(6)(vi), (15) and (16) added 66169
1.401(m)–0 Amended 66175
1.401(m)–1 (a), (b)(1), (3)(i), (ii), (4)(ii)(B), (5)(v), (c)(1), (e)(1)(iii), (4), (6) *Examples 2* through *6,* (f)(1)(ii)(B), (C)(*1*), (2), (12)(i)(B), (g)(4), (5)(ii)(A) and (B)(*2*) revised; (b)(3)(iii) removed; (b)(3)(vii), (6) *Example 8,* (f)(16) and (17) added; (b)(4)(ii)(A), (5)(i), (ii), (d) *Examples 3, 4,* (e)(3)(ii)(B) and (f)(4)(ii) amended 66175
1.401(m)–2 (a) amended; (b)(1), (c)(1) and (4) and *Example 1* revised 66179
1.401(a)(17)–1 Revised 32905
1.402(a)–1 (d)(3)(iv) revised; (d)(3)(v) added 66180
1.402(g)–1 (e)(5)(ii) revised; (e)(11) *Example 2* amended 66180
1.410(b)–0 Amended 32914
1.410(b)–2 (b)(7) amended 32914
1.410(b)–6 (d)(2)(i), (ii) and (g) corrected 16984
(d)(1), (2)(iv) *Example 2* amended 32914
1.410(b)–7 (c)(4) and (5) revised; (c)(6) removed; (d)(4) amended 32914
1.411(d)–4 Amended 66180
1.414–11 (b)(2) and (4) revised; (b)(3) and (c)(2)(v) amended 32922
1.414(c)–2 (b)(2)(ii) amended 30102
1.414(c)–4 (b)(3)(i) amended 30102
1.414(g)–1T (b)(1) introductory text and (2)(iii) revised; (g) removed 32916
1.414(q)–1 Added 32915
1.414(r)–0 Amended 32916
1.414(r)–1 (c)(2)(ii) *Example,* (d)(4), (9)(i) and (e) amended; (c)(3)(ii) revised 32916
1.414(r)–2 (b)(2), (c)(3) *Examples 1* and *2* revised 32917
1.414(r)–3 (c)(2)(ii), (4), (5)(iii), (7) *Example 1,* (d)(2) and (4) *Example 1* revised; (c)(7) *Examples 3* and *4* redesignated as *Examples 4* and *5;* (b)(4), (c)(6) introductory text, *Examples 2* through *5, 7,* (7) introductory text, *Example 2* and new *Example 5* amended; new (c)(7) *Example 3* added 32917
1.414(r)–4 (b) amended 32919
1.414(r)–5 (b)(5)(ii), (d)(1)(ii)(B), (C), (4) *Example 2,* and (g)(5) revised; (d)(1)(iii) added; (d)(1) concluding text removed; (g)(2)(iii)(A), (D), (3)(ii)(B), (iii)(B), (C), (D) and (g)(6) amended 32919
1.414(r)–6 (a) amended; (b) revised; (c) removed 32920
1.414(r)–7 (c)(2) and (d) removed; (c)(3), (4) and (5) redesignated as (c)(2), (3) and (4); (a)(1), (b)(2)(ii), (3), new (c)(2)(i), (3)(i), (ii) introductory text, (A), (B), (iii) *Example 1,* (4)(i), (ii), (iii) introductory text, (E), (v) introductory text and *Examples 1* through *4* amended; (c)(1) and new (c)(2)(iv) revised; (c)(5) added 32920
1.414(r)–8 (b)(4) *Examples 1* and *4* amended; (b)(2)(iii) and (4) *Example 2* revised; (d)(4) removed; (b)(4) *Examples 3, 4,* and (d)(5) redesignated as *Examples 5, 6* and (d)(4); new (b)(4) *Examples 3* and *4* added; new (b)(4) *Examples 5* and *6* amended 32921
1.415–6 (b)(6)(iv) revised 66181
1.446–3 (h)(2) and (5) introductory text amended 36358
1.446–4 Added 36358
1.453–9 (c)(1)(ii) amended 2500
1.461–1 (a)(2)(iii)(B) revised 36360
1.468A–0 Amended 66473
1.468A–1 (b) introductory text and (4) revised; (d) added 66473
1.468A–3 (h)(1)(v) removed; (h)(1)(vi), (vii) and (viii) redesignated as (h)(1)(v), (vi) and (vii); new (h)(1)(vii) and (i)(1)(ii) revised; (h)(2)(xii) and (xiii) added 66474
1.468A–5 (a)(4) added; (b)(2)(v) amended; (b)(2)(vi) redesignated as (b)(2)(vii); new (b)(2)(vi) added 66474
1.468A–6 Added 66474
1.469–0 Amended 50487
1.469–1 (f)(4)(iii) *Example 3* amended 45623
1.469–1T (e)(5) corrected 17478
(h)(7) amended 41674
1.469–2 (c)(2)(iii)(E), (G) *Example 1,* (v)(C) *Example 1, Example 3,* (6)(i)(A) and (d)(5)(iii)(A)

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amended; (e)(3)(iii)(B) revised 45623
1.469–4 Added 50487
1.469–11 (c)(1)(ii) revised 45623
(a)(1) and (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 50489
1.482–0 Added 34988
1.482–0T Removed 34988
1.482–1 Added 34990
1.482–1T Removed 34988
1.482–2 Added 35002
1.482–2T Removed 34988
(a)(1)(iii)(E)(*3*) *Example* (ii) corrected; (a)(1)(iii)(E)(*3*) *Example* (iii) correctly added; CFR correction 48798
1.482–3 Added 35011
1.482–3T Removed 34988
1.482–4 Added 35016
1.482–4T Removed 34988
1.482–5 Added 35021
1.482–5T Removed 34988
1.482–6 Added 35025
1.482–6T Removed 34988
1.482–8 Added 35028
1.514(c)–2 Added 24928
1.585–1 (b)(2) corrected 15502
1.585–5 (c)(4)(ii) and (d)(2) corrected 15502
1.585–6 (d)(5) *Example 3* corrected 15502
1.585–7 (d)(1) corrected 15502
1.585–8 (b)(2) corrected 15502
1.642(c)–6 (d)(2) amended 30102
(d)(1) redesignated as (d) and (d)(2) and (3) redesignated as 1.642(c)–6A (d)(3) and (4); heading, (a), (b), (c)(1), new (d) and (e) revised; (f) added; authority citation removed 30105
1.642(c)–6A Undesignated center heading and section added; (d)(3) and (4) redesignated from 1.642(c)–6 (d)(2) and (3) 30105
(d)(4) table amended 30116
1.642(c)–7 (d)(2) amended 30102
1.664–1 (a)(6) *Example* amended 30102
(a)(5)(ii)(*b*), (iv)(*a*), (*b*), (c), and (6) introductory text revised; (a)(5)(iv)(*d*) added; authority citation removed 30116
1.664–2 (c) revised; authority citation removed 30116
1.664–4 (b)(2) and (3) amended 30102
(b)(1) redesignated as (b) and (b)(2) through (5) redesignated as 1.664–4A (d)(3) through (6); (a), new (b), (c) and (d) revised; (e) and (f) added; authority citation removed 30117
1.664–4A Undesignated center heading and section added 30116
(d)(3) through (6) redesignated from 1.664–4 30117
(d)(4), (5), (6) heading, Tables D, E, and F(1) amended 30148
1.665(a)–0—1.669(b)–2 Undesignated center heading revised 30148
1.665(a)–0A—1.665(g)–2A Undesignated center heading added 30148
1.701–2 Added 27
1.704–1 (b)(1)(vi), (2)(iv)(*d*)(*3*) and (c) amended 66728
1.704–3 (a)(1) and (3)(i) amended; (d), (e)(2)(iii) and (3) revised; (e)(2)(iv) and (v) removed; (e)(4) added 66728
1.704–3T Removed 66734
1.751–1 (c)(4), (5) and (6) revised 2500
1.761–2 Heading revised; (a)(3) concluding text amended; (d) redesignated as (e); new (d) added 66183
1.809–10 Redesignated from 1.809–10T and amended 49579
1.809–10T Redesignated as 1.809–10 49579
1.860G–1T Added 18747
1.904–4 (j) revised 37672
1.954–2T (g)(2)(i) revised 37672
1.985–0 Amended 37672
1.985–1 (a)(1) and (d)(1)(ii) amended; (b) and (c)(6) revised; (d)(1) concluding text removed 37672
1.985–2 (a) and (b)(2) revised 37673
1.985–3 Revised 37673
1.1011–2 (c) *Example* (*8*) amended 30148
1.1014–5 (a)(3), (c) *Examples 1* through *6* amended 30102
1.1031(b)–2 (b) revised; (c) and (d) added 18749
Heading corrected 33200
1.1031(k)–1 (j)(2) added 18749

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1.1221–2 Added 36363
1.1221–2T Removed 36367
1.1233–2 Redesignated from 1.1233–2T and revised 36367
1.1233–2T Redesignated as 1.1233–2 36367
1.1234–4 Redesignated from 1.1234–4T and revised 36367
1.1234–4T Redesignated as 1.1234–4 36367
1.1254–0 Added 2501
1.1254–1 Added 2502
1.1254–2 Added 2505
1.1254–3 Added 2506
1.1254–4 Added 2507
1.1254–5 Added 2507
1.1254–6 Added 2508
1.1256(e)–1 Added 36367
1.1363–2 Added 51106
1.1374–0 Added 66463
1.1374–1 Redesignated as 1.1374–1A 66462
Added 66463
1.1374–1A Redesignated from 1.1374–1 66462
1.1374–2 Added 66463
1.1374–3 Added 66464
1.1374–4 Added 66464
1.1374–5 Added 66469
1.1374–6 Added 66469
1.1374–7 Added 66469
1.1374–8 Added 66469
1.1374–9 Added 66470
1.1374–10 Added 66470
1.1375–1 Undesignated center heading added 66462
1.1388–1 Undesignated center heading added 24937
1.1398–1 Added 24937
1.1398–2 Added 24938
1.1502–1 (a) amended 41675
1.1502–11 (b) revised 41675
1.1502–13 (j) introductory text, (l)(2) *Example* (*1*), (m)(3) *Example* (*3*), (o)(1)(i), (ii) and (2) *Example* amended 41674
(c)(1)(iii) and (h) *Example* (*17*) amended; (c)(7) redesignated as (c)(8); new (c)(7) added 41677
(c)(1)(i) and (2) amended 67215
1.1502–14 (b)(3)(ii), (d)(3)(ii), (4)(ii)(*b*), (g)(1)(i), (ii) and (2) *Example 1* amended 41674
(a)(2) and (5) revised; (a)(4) redesignated as (a)(6); new (a)(4) and (b)(4) added; new (a)(6) *Example* amended 41677
(c)(1) amended 2508
1.1502–19 Revised 41677
1.1502–20 (a)(1), (3)(ii), (5) introductory text, (c)(1)(i), (ii), (2)(i)(A)(*1*), (B), (D), (ii), (iii), (4) *Example 2*, *Example 7*, (e)(3) *Example 1* and (f) revised; (c)(2)(vii) added; (e)(3) *Example 8* and (g)(3) removed; (g)(4) redesignated as (g)(3); (a)(4), (5) *Example 6*, (6) *Example 5*, (c)(2), (i)(4) *Examples 1*, *3*, *6*, (e)(3) *Example 2*, new (g)(3) *Examples 1*, *2*, and *3* amended 41681
1.1502–31 Revised 41683
1.1502–31T Removed 41685
1.1502–32 Revised 41685
1.1502–32T Removed 41695
1.1502–33 Revised 41695
1.1502–33T Removed 41700
1.1502–43 (a)(3)(ii) and (iii) amended 41674
1.1502–47 (e)(4)(iii)(B) amended 41674
1.1502–75 (d)(5)(viii) amended 41675
(d)(1) amended 41700
1.1502–76 (b) revised; (d) removed 41700
1.1502–80 (c) and (d) added 41703
1.1502–81T (a) amended 41675
1.1552–1 (c)(2) amended 41675
1.6035–1 Amended 64301
1.6038–2 (d)(5) and (f)(10)(v) added; (e), (f)(10)(iii), (iv), (g) introductory text and concluding text amended; (h) revised 64302
1.6046–1 (b)(10) and (g) amended; (f)(5) added 64302
1.6050H–0 Revised 63250
1.6050H–1 (a), (c)(1), (2), (e)(1), (2)(i) and (g) revised; (c)(3) redesignated as (c)(5); (b)(4), new (c)(3), (5) *Example 5*, (e)(2)(iii) and (f) added 63251
1.6050H–2 (a)(2)(iii), (d), (e)(1) and (g) revised; (a)(2)(iv)(B) amended; (a)(2)(v) (e)(2) and (3) redesignated as (a)(2)(vi), (e)(1)(ii) and (iii); new (a)(2)(v), (e)(1)(i) and new (2) added 63253
1.6050I–0T Added 64573
1.6050I–2T Added 64573
1.6302–1T Added 35416

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1.6302–2T Added 35416
1.6302–3T Added 35416
1.6662–0 Amended 35031
1.6662–6T Heading, (d)(2)(ii), (iii)(A), (B), (3)(ii)(B) and (C) revised; (d)(2)(iii)(D) and (3)(iii)(C) added 35031
1.6695–1 (a)(1) introductory text, (b)(1), (4)(iv), (v), (5) introductory text, (c)(1) introductory text, (3) and (e) revised; (b)(4)(vi) added 33432
1.7520–1—1.5520–4 Undesignated center heading added 30148
1.7520–1 Added 30149
1.7520–2 Added 30149
1.7520–3 Added 30150
1.7520–4 Added 30150
15a Authority citation revised 18751
15a.453–1 (b)(3)(i) amended 18751
20 Authority citation revised 30150
20.2013–4 (a) introductory text and *Example (2)* amended 30151
20.2031–0 Added 30151
20.2031–7 (a)(2) amended 30102
(a)(2), (b)(1), (2), (3)(i), (ii), (c), (d), and (e) amended 30103
Redesignated as 20.2031–7A (d); new 20.2031–7 added 30152
20.2031–7A Undesignated center heading and section added 30151
(d) redesignated from 20.2031–7; new (d) heading, (1)(i) and (iii) revised; new (d)(5), (6), Tables A, B and LN amended 30152
20.2031–10 Removed 30170
20.2032–1 (f)(1) amended 30103
20.2039–2 (c)(1)(viii) amended 30103
20.2039–5 (c)(1) and (2) amended 30103
20.2055–2 (f)(2)(iv) amended 30103
(f)(4) revised 30170
20.2056(b)–4 (d) amended 30103
20.7520–1—20.7520–4 Undesignated center heading added 30170
20.7520–1 Added 30170
20.7520–2 Added 30171
20.7520–3 Added 30172
20.7520–4 Added 30172
25 Authority citation amended 23154
Authority citation revised 30172
25.2511–1 (h)(6) and (7) amended 30103
25.2512–0 Added 30173
25.2512–5 (a)(2), (b)(1), (2), (3)(i), (ii), (c), and (d) amended 30103
Redesignated as 25.2512–5A(d); heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii) and (c) through (f) redesignated as 25.2512–5A(d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, *(1)*, *(2)*, (ii), (iii), (2)(C) introductory text, *(1)*, *(2)* introductory text, (i), (ii), (iii) introductory text, (A), (B) and (3) through (6) 30173
Added 30174
25.2512–5A Undesignated center heading and section added; (d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, *(1)*, *(2)*, (C) introductory text, *(1)*, *(2)*, (ii), (iii), (2) introductory text, (i), (ii), (iii) introductory text, (A), (B) and (3) through (6) redesignated from 25.2512–5 heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c) through (f); new (d) heading revised; new (d)(1)(i)(A) and (B) amended 30173
(d)(1)(i)(C) and (5) amended; (d)(1)(iii) and (6) revised 30174
25.2512–9 Removed 30176
25.2515–2 (c) amended 30177
25.2518–3 (a)(1)(iv)(A) amended 30103
25.2522(a)–2 (a) amended 30177
25.2522(c)–3 (d)(2)(iv) amended 30103
(d)(3) revised 30177
25.2523(a)–1 (d) amended 30103
25.2523(c)–1 (c) *Example* amended 30103
25.2701–0 Amended 23154
25.2701–1 (a)(1) amended 23154
25.2701–5 Added 23154
25.2702–3 (b)(3) and (c)(3) amended 23157
25.7520–1—25.7520–4 Undesignated center heading added 30177
25.7520–1 Added 30177
25.7520–2 Added 30178
25.7520–3 Added 30178
25.7520–4 Added 30179
31 Authority citation amended 35416, 65940
31.3121(a)–1 (a) redesignated as (a)(1); (a)(2) added 66189
31.3201–1 Revised 66189
31.3201–2 Revised 66189
31.3202–1 (b) and (f) revised 66189
31.3211–1 Revised 66190
31.3211–2 Revised 66190
31.3221–1 (a) and (b) revised; (d) removed 66190
31.3221–2 Revised 66190
31.3231(a)–1 (a)(1) revised; (c) and (d) redesignated as (d) and (e); new (c) and (f) added 66191
31.3231(e)–1 Revised 66191
31.3231(e)–2 Added 66191
31.3231(e)–2T Removed 66191
31.3231(e)–3 Removed 66191
31.3402(f)(5)–2T Added 65714
31.3402(r)–1T Added 65940
31.6302–1T Added 35416
31.6302(c)–3T Added 35417
40 Authority citation amended 35417
40.6302(c)–1T Added 35417
47 Revised 43040
48 Authority citation amended 33657, 43045
48.4082–1 Added 33657
48.4082–1T Removed 33657
48.4221–3 (e) added 43045
48.6416(b)(2)–2 (b) text redesignated as (b)(1) and amended; new (b)(1) heading and (b)(2) added 43046
54.4979–0 Amended 66181
54.4979–1 (d)(1) and (3) revised; (d)(4) removed; (d)(5) redesignated as (d)(4) 66181
301 Authority citation amended 35
301.6159–1 Added 66193
301.6323(f)–1 (a)(2) amended; (c) and (d) redesignated as (d) and (e); new (c) and new (e) *Examples 5* and *6* added 38120
301.6331–1 (a)(1) amended; (a)(2) revised; (b) redesignated as (b)(2); (b) heading, (1) and (d) added 38903
301.6331–2 Revised 38903
301.6334–1 (a)(2), (3), (8) and (9) amended; (a)(10) through (13), (d) and (e) added 53088
301.6334–2 Revised 53088
301.6334–3 Revised 53089
301.6334–4 Revised 53090
301.6334–5 Removed 53091
301.6334–6 Removed 53091
301.6334–7 Removed 53091
301.6343–1 Revised 35
301.6343–2 Added 37
301.7426–1 (a)(1) revised; (c) added 26601
301.7430–0 Added 29360
301.7430–1 Revised 29357
301.7430–2 Added 29360
301.7430–3 Added 29362
301.7430–4 Added 29363
301.7430–5 Added 29364
301.7430–6 Added 29366
602 Technical correction 17154
602.101 (c) table amended (OMB numbers) 23157, 24939, 27235, 27460, 29366, 30179, 32081, 33433, 35030, 35033, 36360, 36367, 37680, 41703, 50166, 51376, 63254, 64302, 64574, 65714, 66188, 66476, 67215
(c) table amended (OMB numbers) 2509

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1 ..... 15877, 17747, 18011, 18048, 18772, 21697, 22773, 24094, 24095, 24992, 25581, 25584, 25847, 26466, 27515, 30180, 32160, 32670, 34398, 35066, 35418, 36114, 36394, 37450, 37733, 41414, 41739, 46779, 52105, 52110, 53771, 55225, 58800, 59973, 61844, 62370, 62644, 64359, 64633, 64635, 64884, 64909, 65739, 66280, 66498, 66825, 67253, 67658
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25 30180
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1903 Authority citation revised 66613
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1910.132 (g) correctly added 33910
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1910.1200 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
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1926.701 (f)(1) designation and (2) removed 40730
1926.750—1926.752 (Subpart R) Authority citation revised 40730
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1926.950—1926.960 (Subpart V) Authority citation revised 40730
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2509.94-2 Added 38863
2509.94-3 Added 66736

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2606.33 Amended; interim 63573
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2609 Added 61273
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218 Authority citation revised 38906
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230 Authority citation revised 38363
230.451—230.461 (Subpart J) Added 38363
250 Authority citation revised 53093
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250.157 (a)(5) revised 53094
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250.211 Amended 64850
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773.20 (b) and (c) revised 54353
773.21 Introductory text and (a) introductory text amended; (c) removed 54353
773.22 Added 54353
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778.14 (c) introductory text revised 54356
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817.49 (a)(1) through (12) redesignated as (a)(2) through (13); new (a)(1) added; new (a)(4) revised 53030
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840.13 (b) revised 54356
842.11 (e)(4) and (f) revised 60884
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880.7 Redesignated as 880.15 52377
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906.16 Introductory text revised; (g) added 62583
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918.15 Heading revised; (d) added 48174
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920.15 (aa) added 56390
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935.15 (rrr) added 38123
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(ttt) added 51500
(uuu) added 58780
936.15 (n) added 2520
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938.15 (bb) added 36944
938.16 (i), (j) and (k) removed; (nnn) added 36944
944.15 (z) added 35259
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944.16 (a) added 35259
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944.20 (a) revised 49189
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946.15 (hh) added 49197
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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 (a)(1) table amended 47538

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

51 Removed 35624
52 Removed 35624
103 Authority citation revised 52252
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103.11 (a) through (u) redesignated as (b), (c), (f) through (k), (n), (o), (p), (t), (u), (z), (ee), (gg), (hh), (ii), (nn), (oo) and (pp); new (j) amended; new (a), new (d), new (e), new (l), new (m), new (q), new (r), new (s), (v), (w), (x), (y), (aa), (bb), (cc), (dd), (ff), (jj), (kk), (ll) and (mm) added; eff. 1–1–96 228
103.22 (a)(2)(iii) revised; (a)(2)(iv) removed 61662
103.25 (b)(2) revised; eff. 1–1–96 229
103.28 Regulation at 58 FR 13547 withdrawn 61662
103.29 Revised 52252
103.33 (e) and (f) added; eff. 1–1–96 229
(g) added; eff. 1–1–96 238
103.36 Regulation at 58 FR 13548 withdrawn in part; (a) amended; (b)(11) and (12) redesignated as (b)(9) and (10) 61662
103.54 (a)(2)(iii) and (2)(v)(B) revised; (b) and (d) removed; (c) redesignated as (b) 61662

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

205.4 (b) revised 51855
306 Authority citation revised 59036
306.2 (p), (q) and (r) redesignated as (r), (s) and (t); (g) through (o) redesignated as (h)

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306.24 Added 4377
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306.46 Removed 59037
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337 Revised 42162
344 Revised 4504
357 Authority citation revised 59038
357.3 Amended 59038
357.20 (f) added 4377
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Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised 60559
500.524 Added 66476
500.570 Revised 60559
515.416 Revised 44885
515.522 Removed 44885
515.528 (a) introductory text amended 44885
515.533 (d) added 44885
515.560 (g) amended; (a) and (b) revised 44885
515.563 (a) introductory text and (1) revised; (c) removed 44885
515.564 (c) revised; (d) removed 44886
515.565 (b) removed; (c) redesignated as (b) and amended 44886
515.566 (a)(3) and (c)(4)(ii) amended 44886
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550 Appendix A amended 35260
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565.510 Revised 55209
580 Authority citation revised 51066, 66476
580.211 Removed 51066
580.516 Heading revised; (a) and (b) designation removed 51067
580.518 Added 51067
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580.523 Added 51067
580 Appendix A revised 51067

Chapter VI—Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

605 Revised 41978

Proposed Rules:

19 65607
103 52275
209 416
210 ..... 50112, 60576
247 ..... 53125, 60739
344 50874

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

23 Added; interim 4545
43a Removed 1720
62a Removed 65478
77 Added 40809
80 Revised 37680
90 Regulation at 59 FR 16126 comment period extended 34382
Hearing 35463, 36367
90.4 (a)(1)(iii) removed; (b) revised; interim 53739
91 Regulation at 59 FR 16127 comment period extended 34382
Hearing 35463, 36367
91.4 Revised; interim 53739
91.7 (d) removed; (e) and (f) revised; interim 53740
92 Added 42752
98a Removed 42752
104 Removed 49818
112 Added 1720
113 Added 1722
155 Authority citation revised 48565
155.1 Amended 48565
155.2 (c) amended 35464
155.4 (c) introductory text amended 48565
155.5 (b)(2), (3), (7) through (10), (12), (14), (15), (19), (c) and (d) amended 35464
155.6 (b) introductory text and (3) amended 35464
155 Appendix A amended 35464, 48565
199.20 Revised 49818
220.8 (a), (c) heading, (d), (e), (g), (h), (i), (k) and (l) revised; (c) amended 49002

NOTE: Boldface page numbers indicate 1994 changes.

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220.10 (c)(1)(ii) revised 49003
229 Authority citation revised 5260
229.1 (a) amended 5260
229.3 (a)(6) added; (i) revised 5260
229.4 Heading and (a) revised; (c) added 5260
229.7 (b)(4) added 5260, 5261
229.13 (e) added 5260, 5261
229.19 Revised 5260, 5261
229.20 Added 5260, 5261
229.21 Added 5260, 5261
318.5 Revised 65247
323 Appendix H amended 3088
351 Removed 47539
369 Added 35261
378 Revised 43475
383 Removed 34382
384 Added 35262
384 Appendix A amended 41405
388 Revised 43477
389 Removed 34382

Chapter V—Department of the Army (Parts 400—699)

516 Revised 38236
516.4 (b), (i) and (o) correctly revised 45974
516.5 Correctly designated 45974
516.9 (b) correctly revised 45975
516.10 (b) correctly revised 45975
536 Revised 64017
Regulation at 59 FR 64017 withdrawn 1735
537 Removed 64017
Regulation at 59 FR 64017 withdrawn 1735
552.140—552.145 (Subpart K) Added; interim 34581
Added 42755
552.160—552.172 (Subpart M) Added; interim 34762
552.180—552.185 (Subpart N) Added; interim 45212
553.15 (f) through (i) redesignated as (g) through (j); new (f) added 60559
553.15a (e) through (h) redesignated as (f) through (i); new (e) added 60559

Chapter VI—Department of the Navy (Parts 700—799)

701.61—701.67 (Subpart E) Revised 46760
701.100—701.115 (Subpart F) Revised 55348
701.116—701.119 (Subpart G) Revised 55363
706.2 Tables Four and Five amended 35033, 35850, 52910, 59162, 59163
Tables Two and Five amended 38366
Table Two amended 52909, 59162
Tables One and Three amended 52911
Tables Three and Four amended 53098
Tables Four and Five amended 3346
776 Added 45214

Chapter VII—Department of the Air Force (Parts 800—1099)

806 Revised 50835
806b Revised 53099
855 Authority citation revised 38367
855.11 (q) added 38367
989 Revised 4548

Proposed Rules:

25 65607
33 53706
169a 417
184 64911
318 41739
320 61858
323 51911
505 44384
553 34782
766 61561
806b 38389
865 37953
1636 66839

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.01-1—1.01-70 (Subpart 1.01) Authority citation revised 66484
1.01-30 (b) added 36321
Revised 66484
1.01-70 (d)(2) revised; (d)(3) added 66484
1.01-80 Added 66484
1.01-85 Added 66485
1.01-90 Added 66485

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TITLE 33 Chapter I—Con.

1.07–1—1.07–100 (Subpart 1.07) Authority citation revised 66485
1.07–11 Revised 66482
4.02 Table amended (OMB numbers); interim 34227
20.202 (j) corrected 45757
20.203 (b) corrected 45757
20.206 Heading corrected 45757
20.311 (a)(2) and (e) designation corrected 45757
20.805 (a) corrected 45757
20.903 Heading corrected 45757
20.1003 Heading corrected 45757
26 Authority citation revised 36322, 39963
26.02 Amended 36322
26.03 (f) added 36322
26.04 (e) added 36323
26.05 Revised 39963
26.07 Revised 36323
100 Temporary regulations lists 39456, 56393
100.35–T02047 Added (temporary) 38566
100.35–T09018 Added (temporary) 37694
100.35–T09022 Added (temporary) 40819
100.35–T09026 Added (temporary) 42757
100.35–T11001 Added (temporary) 51501
100.35–T11002 Added (temporary) 51501, 51504
100.35–T11–003 Added (temporary) 64851
100.105 (b)(2) revised 49821
100.501 Implementation (temporary) 55583
100.508 Implementation (temporary) 39456
100.513 Implementation (temporary) 39456
100.517 Added 47539
110 Authority citation revised 39965
110.157 (c)(1) and (7) amended 39965
110.168 Heading, (b)(2), (c)(1), (d)(1) through (5), (7), (8), (f)(4)(iv) and (v) revised; (f)(6) amended 39965
110.214 Heading revised; (b)(12) and note amended 39965
110.224 (a)(15) note and (d)(1) table Note a amended 64580
110.235 Revised 40820
117 Temporary drawbridge operation regulations 53351
Temporary drawbridge operation regulations 4378
117.261 (gg) added 47541
(k) revised 47542
(bb) revised 54519
117.495 Revised 4561
117.571 (a)(3) revised; interim 44316
117.621 Revised 2688
117.647 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) 36063
117.667 (b) revised 63898
117.769 Revised 50167
117.821 (b)(5) revised 67630
117.822 Revised (temporary) 38568
Revised 49823
117.875 Revised 52424
117.977 Revised 42758
117.997 (c) through (f) redesignated as (d) through (g); new (c) added; interim 67632
117.1023 Added 46173
117.1059 (d) revised 38569
117.1101 Revised; interim 46335
126 Heading revised 39965
126.05 (a) amended 39965
126.07 (a) amended 39965
126.09 Revised 39965
126.10 (a) revised 39965
126.19 Amended; (a) introductory text designation removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c) 39965
126.21 (b) amended 39965
126.27 (b)(1), (2) and (c) revised 39965
130 Authority citation revised 34227
130.0 Added; interim 34227
131 Authority citation revised 34227
131.0 Added; interim 34227
132 Authority citation revised 34227
132.0 Added; interim 34227
137 Authority citation revised 34227
137.101—137.107 (Subpart B) Removed; interim 34227
137.201—137.215 (Subpart C) Removed; interim 34227
137.300 Added; interim 34227
137.401—137.403 (Subpart E) Removed; interim 34227
138 Added; interim 34227
151.01—151.77 (Subpart A) Authority citation revised 51338
151.05 Amended 51338
151.09 (c) and (d) added 51338

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151.21 (a) amended 51338
151.26 Added 51338
151.27 Added 51342
151.28 Added 51342
151.29 Added 51342
151.47 Amended 45147
151.49 (a) amended 45148
151.1502 Revised 67634
151.1504 Amended 67634
151.1506 Revised 67634
151.1510 (a)(1) and (2) revised 67634
153 Authority citation revised 66485
153.105 Revised 66485
153.107 Removed 66485
155 Authority citation and note revised 53290
155.110 Revised; interim 53290
155.120 (c) added; interim 53290
155.480 Added; interim 53290
155.750 (e) added; interim 53291
155.775 Added; interim 53291
156 Authority citation revised 53291
156.105 Revised; interim 53291
156.120 (bb) added; interim 53291
157 Authority citation revised 40188
157.03 Introductory text revised 40188
157.400—157.410 (Subpart G) Added 40188
160 Authority citation revised 40189
160.3 Revised 36323
160.5 (d) added 36324
160.203 Amended; interim 39459
(a) amended 39966
160.207 Amended; interim 39460
(c)(5) added 40189
160.211 Amended; interim 39460
160.213 Amended; interim 39460
160.215 Revised; interim 39460
161 Revised 36324
161.402 Redesignated as 165.810 36324
161.880 Stayed 12–29–94 to 4–15–95 4379
161.881 Added (temporary) 4379
162.65 (b)(3)(iv) removed 39963
162.100 Added 36333
162.117 Added 36333
164.03 Revised 36334
164.43 Added 36334
165 Temporary regulations lists 39456, 56393
165.T01–064 Added (temporary) 46920
165.T01–107 Added (temporary) 38570
165.T01–114 Added (temporary) 39462
165.T01–118 Added (temporary) 41408
165.T01–131 Added (temporary) 46336
165.T01–132 Added (temporary) 46337
165.T01–138 Added (temporary) 47543
165.T01–153 Added (temporary) 66199
165.T01–156 Added (temporary) 63899
165.T01–160 Added (temporary) 66200
165.T02–055 Added (temporary) 49199
165.T02–064 Added (temporary) 46919
(b) revised (temporary) 53354
(b) revised 66430
165.T05–067 Added (temporary) 39461
165.T05–074 Added (temporary) 47544
165.T05–097 Added (temporary) 63023
165.T05–098 Added (temporary) 56397
165.T07–089 Added (temporary) 44318
165.T07–123 Added (temporary) 63024
165.T09–027 Added (temporary) 44317
165.T11–095 Added (temporary) 50490
165.T11–096 Added (temporary) 50491
165.T11–097 Added (temporary) 50492
165.T11–098 Added (temporary) 50493
165.T13–017 Added (temporary) 38571
165.T13–019 Added (temporary) 40821
165.T13–020 Added (temporary) 40822
165.121 (a)(3) revised 52425
165.503 Implementation 63022
165.530 Added; interim 42759
165.709 Added 56396
165.721 Added 55584
165.803 Regulation at 59 FR 21935 comment period reopened 41405
165.809 Added 36334
165.810 Redesignated from 161.402; heading revised 36324
165.811 Added 36334
165.904 Added 45227
165.1110 Added; interim 46174
Regulation at 59 FR 46174 confirmed 4380
165.1301 Revised 44321
165.1303 Added 36335
165.1704 Added 36335
168 Added 42968
168.50 (b)(2) stayed 54519

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

241 Authority citation revised 5133
241.1 Revised 5133
241.2 Revised 5133
241.3 Revised 5133
241.5 (d) added 5134
241.6 (a) amended 5134
241.7 Amended; (c)(2) revised; (e)(2) amended 5134

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TITLE 33 Chapter II—Con.

334.610 Heading, (a)(3), (6), (b) and (c) revised 48802
334.782 Removed 35851

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.3 (i) revised 45228
402.8 Revised 45229
402.9 Revised 45229
402.11 Revised 45229
402.13 Revised 45230
402.15 Added 45230

Proposed Rules:

1—199 (Ch. I) 47576, 52646
80 ..... 37003, 43620
82 ..... 37003, 43620
84 ..... 37003, 43620
87 ..... 37003, 43620
88 ..... 37003, 42620
90 ..... 37003, 43620
100 ..... 42787, 46208, 59732, 64996
110 55598
..... 2364
117 ..... 45252, 46209, 47577, 49228, 49875, 50528, 50529, 50530, 50531, 55599, 55601, 63068, 63943, 63944, 63945, 64178, 64639
..... 2562, 3791, 3793, 5343
120 46211
128 46211
151 65522
156 ..... 1958, 3185, 5461
162 63947
165 ..... 35290, 35661, 43518, 46378, 52945, 55602, 55603, 63947
166 50533
167 50533
168 65741
181 55823
322 34783
334 33939
..... 4134, 4582

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

73 Revised 5818
74 Revised 34724
Announcement 365
74.12 OMB number pending 34727
74.21 OMB number pending 34728
74.25 OMB number pending 34730
74.34 OMB number pending 34732
74.44 OMB number pending 34734
74.45 OMB number pending 34735
74.46 OMB number pending 34735
74.47 OMB number pending 34735
74.51 OMB number pending 34736
74.52 OMB number pending 34736
74.53 OMB number pending 34737
74.71 OMB number pending 34738
74.72 OMB number pending 34738
75.129 (a)(1) and (2) revised; (a)(3) added 59581
75.560 (a)(1) through (5) revised; (c) and (d) added; authority citation revised 59582
75.561 Revised 59582
75.562 Revised 59582
75.563 Revised 59582
75.564 Removed; new 75.564 added 59582
75.565 Removed 59582
75.566 Removed 59582
75.567 Removed 59582
75.568 Removed 59582
76.560 (a)(1) through (5), (b) and authority citation revised; (c) and (d) added 59582
76.561 Revised 59583
76.563 Revised 59583
76.564 Added 59583
76.565 Added 59583
76.566 Added 59583
76.567 Added 59583
76.568 Added 59584
76.569 Added 59584
77.1 (b) revised; (c) amended 34739
80 Announcement 365
99.3 Amended (effective date pending) 3468
99.8 Added (effective date pending) 3469

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200 Authority citation revised 41169
200.80 (a) introductory text revised (effective date pending) 41169
200.90 Undesignated center heading and section added (OMB number pending) 41169

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201.57 Added (effective date pending) 41169

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

364 Added (effective date pending) 41887
364.10 OMB number 41890
364.11 OMB number 41890
364.12 OMB number 41890
364.13 OMB number 41890
364.20 OMB number 41891
364.21 OMB number 41892
364.22 OMB number 41892
364.23 OMB number 41893
364.24 OMB number 41893
364.25 OMB number 41893
364.26 OMB number 41893
364.27 OMB number 41893
364.28 OMB number 41893
364.29 OMB number 41893
364.30 OMB number 41893
364.31 OMB number 41893
364.32 OMB number 41894
364.33 OMB number 41894
364.34 OMB number 41894
364.35 OMB number 41894
364.36 OMB number 41894
364.37 OMB number 41894
364.38 OMB number 41894
364.39 OMB number 41894
364.40 OMB number 41894
364.41 OMB number 41894
364.42 OMB number 41895
364.43 OMB number 41895
364.50 OMB number 41895
364.51 OMB number 41895
364.52 OMB number 41895
364.53 OMB number 41895
364.59 OMB number 41895
365 Revised (effective date pending) 41898
365.30 OMB number 41899
365.31 OMB number 41899
366 Revised (effective date pending) 41900
366.2 OMB number 41900
366.12 OMB number 41901
366.15 OMB number 41901
366.21 OMB number 41902
366.23 OMB number 41903
366.24 OMB number 41903
366.27 OMB number 41903
366.28 OMB number 41904
366.29 OMB number 41904
366.32 OMB number 41905
366.37 OMB number 41905
366.38 OMB number 41906
366.39 OMB number 41906
366.40 OMB number 41906
366.41 OMB number 41906
366.42 OMB number 41907
366.43 OMB number 41907
366.44 OMB number 41907
366.45 OMB number 41908
366.50 OMB number 41908
367 Revised (effective date pending) 41909
367.11 OMB number 41910
367.22 OMB number 41910
367.31 OMB number 41912
367.32 OMB number 41912
367.42 OMB number 41912
388 Revised (effective date pending) 40178
396 Revised (effective date pending) 52220
396.20 OMB number 52221
396.31 OMB number 52221

Chapter IV—Office of Vocational and Adult Education, Department of Education (Parts 400—499)

403.32 (b)(4) revised (effective date pending) 38512
403.116 (b) and (c) revised; (d) added (effective date pending) 38513
403.118 (a), (b) introductory text, (c)(1), (4) and (5) revised (effective date pending) 38513
403.120 (a) revised (effective date pending) 38513
403.193 (c) introductory text and (1) revised (effective date pending) 38513
405.1 Revised (effective date pending) 38513
405.3 (a) revised (effective date pending) 38513
405.20 (e)(2) revised (effective date pending) 38513
406.1 (a) revised (effective date pending) 38513
406.3 (b)(2) revised (effective date pending) 38514
406.10 (b)(2)(ii) revised (effective date pending) 38514

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TITLE 34
Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600.5 OMB number 47801
(e)(1) revised 61177
600.7 OMB number 47801
600.10 OMB number 47801
600.20 OMB number 47801
600.30 OMB number 47801
600.31 OMB number 47801
602.4 OMB number 46175
602.10 OMB number 46175
602.27 OMB number 46175
607 Authority citation revised 41921
607.1 Revised (effective date pending) 41921
607.2 Revised (effective date pending) 41922
607.4 Revised (effective date pending) 41922
607.6 Revised (effective date pending) 41922
607.7 (a) and (b) amended (effective date pending) 41922
607.8 Revised (effective date pending) 41923
607.9 (a)(3) revised (effective date pending) 41923
607.10 (b) and (c) revised (effective date pending) 41923
607.11 (c) revised (effective date pending) 41924
607.12 (b)(4) added (effective date pending) 41924
607.13 Revised (effective date pending) 41924
607.20 Revised (effective date pending) 41924
607.22 Revised (OMB number pending) 41925
607.23 (c) removed; (d) and (e) redesignated as new (c) and (d) (effective date pending) 41925
607.24 Added (effective date pending) 41925
607.25 Added (effective date pending) 41925
607.31 Revised (effective date pending) 41925
628.20 OMB number 46175
628.32 OMB number 46175
641 Added (effective date pending) 34200
645 Revised 4748
647 Added (effective date pending) 43989
647.21 OMB number pending 43991
647.22 OMB number pending 43991
647.32 OMB number pending 43992
667.3 OMB number 46175
667.4 OMB number 46175
667.8 OMB number 46175
667.12 OMB number 46175
667.15 OMB number 46175
667.21 OMB number 46175
667.22 OMB number 46175
667.26 OMB number 46175
668.2 (b) amended 61178
668.3 OMB number 34964
(c) revised; (d) added (OMB number pending) 61178
668.8 OMB number 34964
(b)(3)(ii), (f)(2), (k)(1) and (2) revised; (j)(2) removed; (j)(3) and (4) redesignated as (j)(2) and (3) (OMB number pending) 61179
668.9 Revised 61179
668.12 OMB number 34964
(b)(2) and (c)(1)(i) revised 61179
668.13 OMB number 34964
668.14 OMB number 34964
668.15 OMB number 34964
(b)(5), (7)(i), (8)(i)(B) and (d)(1) revised; (g) added (OMB number pending) 61179
668.16 OMB number 34964
(e) and (l) revised (OMB number pending) 61180
668.17 OMB number 34964, 36368
(f), (g) and (h) added (OMB number pending) 61200
668.18 Removed 61718
668.22 OMB number 34964
Revised (OMB number pending) 61180
668.23 OMB number 34964
Revised (OMB number pending) 61185
668.25 OMB number 34964
668.26 OMB number 34964
668.51 (a) amended 61207
668.52 Amended 61206, 61207
668.53 (a)(3) and (5) revised 61206
668.54 (b)(2)(vi) and (vii) redesignated as (b)(2)(vii) and (viii); (a)(2), (b)(2)(v) and new (viii) revised; new (b)(2)(vi) added 61206
668.55 (b) revised 61206

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(c) introductory text, (1) and (2) amended 61207
668.56 (a)(5)(i) revised 61206
668.57 (a)(3) introductory text, (c)(1) introductory text and (d)(2) revised 61206
668.58 (a)(2)(iii)(A), (B), (c), (d)(1) and (2) amended 61207
668.59 (a)(2) removed; (a)(3) redesignated as (a)(2); (a)(1) introductory text, new (a)(2) introductory text, new (ii), (b)(1), (c)(2)(ii) and (d) revised; new (a)(2)(i) and (c)(2)(i) amended 61206
(c) introductory text and (1)(ii) amended 61207
668.60 (c)(2) introductory text revised; (b), (1)(i)(A), (C), (D), (ii), (iii) and (d) amended 61207
668.61 (a)(2)(ii)(B) and (b) amended 61207
668.81 (e) added; authority citation revised 61186
668.90 OMB number 34964
668.96 OMB number 34964
668.113 OMB number 34964
668.116 (e)(1)(vi) revised 61186
668.161—668.166 (Subpart K) Added 61718
668.164 OMB number pending 61719
668 Appendix A OMB number 34964
Appendix A revised 61187
674.1 (a) and (b)(1) amended 61415
674.2 (b) amended 61404
(a) and (b) amended 61415
(a) amended 61416
674.3 (a) and (b) amended 61415
674.4 (b) revised; (e) and (f) added 61404
(a) amended 61415
674.5 Added 61405
674.6 Added (OMB number) 61405
674.7 Added 61406
674.8 (a)(2) and (c) revised; (a)(3) through (a)(6) redesignated as (a)(4) through (a)(7); new (a)(3) added 61407
Introductory text amended 61415
674.9 (b) revised; (d)(2) and (e) amended; (f) through (i) added 61407
Introductory text amended 61415
(d)(1) and (2) amended 61416
674.10 (b) revised 61407
674.12 Revised 61407
674.13 (b)(1)(ii) amended 61407
674.14 (b)(1)(ii), (x), (3) amended; (c) introductory text, (1), (2) and (3) revised 61407
(a)(1), (2) introductory text, (b)(1)(iv) and (x) amended 61415
(b)(1)(i) and (3) amended 61416
674.15 (c)(2) amended 61416
674.16 (a)(1)(ii), (x) and (d) revised; (g) and (h) redesignated as (h) and (i); new (g) and (j) added; new (h) amended 61408
(d) and (e) revised 61722
674.17 (a) and (b)(1) amended 61415
674.18 (c) added 61408
(a), (b)(1), (2)(i), (3) and (4) amended 61415
674.19 (e)(2)(ii) revised 61408
(a)(1), (3)(i), (b) heading, (1) introductory text, (ii), (3), (4) introductory text, (d)(4) and (e)(4)(iv) amended 61415
(b) revised 61722
674.20 (b) amended 61415
674.31 (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2)(ii)(A) revised; (a)(2)(iii) added; (b)(6) and (10) revised 61408
(b)(2)(i)(B), (5)(ii)(A) and (7)(ii) amended 61415
674.33 (a)(3) redesignated as (a)(4); new (a)(3), (d) and (e) added; (b) and (c)(1) revised 61408
674.34 Redesignated as 674.35; new 674.34 added (OMB number pending) 61410
674.35 Redesignated as 674.36; new 674.35 redesignated from 674.34 61410
Heading, (a) and (c)(5)(iii) revised; (b)(2) amended 61411
674.36 Redesignated as 674.37; new 674.36 redesignated from 674.35 61410
Heading, (a) and (c)(4)(iii) revised; (b)(2) amended 61411
674.37 Redesignated as 674.38; new 674.37 redesignated from 674.36 61410
674.38 Redesignated as 674.39; new 674.38 redesignated from 674.37 61410
(d) added 61411

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TITLE 34 Chapter VI—Con.

674.39 Redesignated as 674.40; new 674.39 redesignated from 674.38 61410
Heading revised; (b) amended 61411
674.40 Redesignated from 674.39 61410
674.41 (a)(2) amended; (b) removed; (c) redesignated as (b) 61411
674.42 (a)(1)(ii) revised; (a)(3) and (4) redesignated as (a)(4) and (5); new (a)(3) added 61411
(b)(1)(i) amended 61415
674.43 (a)(3) added 61411
674.44 (a)(3) and (d)(1) revised 61412
674.45 (a)(1), (b) and (d) revised; (g) added 61412
674.46 (a)(1) introductory text revised 61412
(a)(1)(i) amended 61415
674.47 (g) revised 61412
674.48 (c)(4)(iii) and (d)(1)(iii) revised 61412
674.49 (g) removed; (h) redesignated as (g); new (g)(3) removed; (a) and new (g)(1) introductory text revised 61412
674.50 (c)(10) revised; OMB number 61412
674.51 (d) through (i) redesignated as (f), (g), (j), (o), (p) and (q); (c) and new (q)(3)(i) through (iv) revised; new (d), new (e), new (h), new (i), (k) through (n), (q)(3)(v) and (r) added 61412
674.52 (b) heading, (1)(ii), (c) heading and (e) added; (b)(1) redesignated as (b)(1)(i); (d) revised 61413
674.53 Redesignated as 674.54; new 674.53 added 61413
674.54 Redesignated as 674.55; new 674.54 redesignated from 674.53 61413
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674.55 Redesignated as 674.56; new 674.55 redesignated from 674.54 61413
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674.60 Redesignated as 674.63; new 674.60 redesignated from 674.57 61413
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675 Heading revised 61416
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675.1 (a) revised 61416
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675.4 (d) introductory text revised; (e) added 61416
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675.8 (d) and (e) amended; (f) and (g) added 61416
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675.9 (d) introductory text amended 61419
675.10 Heading and (c) revised; OMB number 61416
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675.14 (b)(1)(ii), (x), (3), (c) introductory text, (1) and (2) amended; (d)(2) revised 61416
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675.15 (a) introductory text and (c)(2) amended 61419
675.16 (a)(3), (4), (b)(1), (2) and (3) amended 61419
675.17 Amended 61419, 61420
675.18 (a)(3) and (4) redesignated as (a)(4) and (5); new (a)(3), (g) and (h) added; (b)(3), (5) and (f)(1) revised; (f)(4) removed 61417
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675.19 (a)(1), (3)(i) introductory text, (ii) and (b)(4) amended 61419
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675.20 (a) heading, introductory text, (b)(1), (c) heading and (2) introductory text amended 61419
675.21 (b) revised 61417
675.22 (b) heading amended 61419
675.23 (a) and (b)(2)(ii) amended 61419
675.24 Heading (a)(1) and (b) amended 61419
675.25 (a)(1), (2) and (b) amended 61419
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675.32 Revised 61417
675.33 (b) amended 61419
675.34 Heading, (a) and (c) revised 61417
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675.37 (a) amended 61419
675.41—675.50 (Subpart C) Added 61418
675 Appendix B amended 61419
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676.4 (b), (c) and (d) redesignated as (c), (d) and (e); new (e) introductory text amended; (a) revised; new (b) and (f) added 61420
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676.8 Introductory text and (b) amended 61421
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676.15 (a) introductory text and (c)(2) amended 61421
676.16 (f) and (g) redesignated as (g) and (h); new (f) added 61420
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676.21 (b) introductory text amended; (a) revised 61421
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682.100 (a)(4) amended 61215
682.101 (c) revised 61215
682.200 (b) amended 61215
682.201 (a)(4)(i), (5)(i) and (6) revised; (b)(8) added 61215
682.202 Regulation at 59 FR 25745 withdrawn 35625
(a)(6) and (7) added 61427
682.207 (d)(2)(ii) amended; (d)(2)(iii) added 61215
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682.401 (b)(10)(vi)(B)(3) and (14) revised; (b)(10)(iii) and (27) added (OMB number pending) 61428
682.402 Regulation at 59 FR 25746 withdrawn 35625
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682.406 (a)(2)(ii) revised 61429
682.407 Removed 61429
682.410 Regulation at 59 FR 25747 withdrawn in part 35625
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682.411 OMB number 46175
682.413 Regulation at 59 FR 25747 withdrawn 35625
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682.416 OMB number 34964
682.417 Added (OMB number) 60692
682.602 Heading revised; (c) removed; (a) and (b) redesignated as (b) and (c); new (a) added (OMB number pending) 61216
682.603 (h) revised 61722
682.604 (d)(1)(ii)(B) removed; (e)(4) introductory text and (f)(1) revised (OMB number pending) 61216
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685.209 Added (OMB number pending) 34283
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690.2 (a), (b) and (c) amended 54730
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690.12 (a) revised; (c) removed; (b) redesignated as (c); new (b) added (OMB number pending) 54732
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690.14 Heading revised; (c) redesignated as (b); new (b) revised 54732
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690.61 Revised 54732
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690.63 Revised 54733
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690.66 Revised 54734
690.67 Added 54735
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690.72 (a) amended 54730
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690.78 (c) introductory text amended 54730
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690.79 (a)(1) and (2) amended 54730
690.80 Heading, (a) and (b)(1) revised 54735
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103.8 (e) revised; OMB number 44929
133 Authority citation revised 43254
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6 Added 65957
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201 Authority citation revised 38371, 67635
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201.17 (a), (b)(2), (5), (h)(1)(i), (iii), (2)(i), (3)(iii)(A) and (9) amended 67635
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201.31 (d)(2) revised; (d)(3) and (4) redesignated as (d)(6) and (7); new (d)(3), new (4) and (5) added 58789
201.32 Added; interim 38371
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3.204 (b) revised; (c) removed; interim 46338
3.205 (a)(1) and (4) revised; interim 46338
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3.209 (a) and (b) amended; interim 46338
3.210 (b)(3)(i) revised; (c) introductory text and (1)(i) amended; interim 46338
3.211 (a)(1), (2) and (d)(2) amended; interim 46338
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3.309 (c) Note added 35465
3.311 (b)(2)(xviii) and (xix) amended; (b)(2)(xx) added 45975
3.316 Revised 42499
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4.88b Redesignated as 4.88c; new 4.88b redesignated from 4.88a and amended; interim 60902
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8 Authority citation revised 60076
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8.28 (c) amended 65717
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52.50 (c)(65) added 39684
(c)(64) added 52916
(c)(62) added 54388
(c)(66) added 2029
52.120 (c)(69)(i)(A) added 54522
52.220 (c)(186)(i)(D)(*1*) and (189)(i)(B)(*1*) added 39691
(c)(192)(i)(A)(*2*) added 39692
(c)(182)(i)(A)(*4*) and (189)(i)(B)(*2*) added 42165
(c)(197) added 43754
(c)(6) and (183)(i)(A)(*2*) revised; (c)(41)(ii)(A)(*1*) added 44324

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(c)(198) added 44330
(c)(196) added 47546
(c)(188)(i)(A)(3) added 48175, 64132
(c)(184)(i)(B)(4), (187)(i)(B), (189)(i)(A)(5), (190) and (192)(i)(A)(3) added 50499
(c)(194)(i)(B) and (C) added 61546
(c)(199)(i)(A)(1) added 63723
(c)(183)(i)(C)(5), (184)(i)(E) and (188)(i)(D)(2) added 64131
(c)(183)(i)(A)(12), (187)(i)(A)(5), (C) and (195) added 64133
(c)(194) added 64332
(c)(198)(i)(B) added 64338
(c)(186)(i)(D)(2) and (194)(i)(A)(2) added 64339
(c)(200)(ii) added 40
(c)(194)(i)(D) and (E) added 2026
(c)(191)(i)(B) added 4563
(c)(198)(i)(D) added 5582
52.320 (c)(32) and (38) revised 35036
(c)(61) and (67) added 37701
(c)(66) added 42505
(c)(65) added 47095
(c)(68) added 47810
(c)(60) added 51379
(c)(69) added 55585
(c)(64) added 64335
52.329 (a)(1) and (2) removed; (a) revised 42506
(a) revised 64336
52.332 (e) added 47095
(d) added 64336
52.343 (a)(1), (2) (3), (6), (7) and (8) removed; (a)(4), (5), (9) and (10) redesignated as (a)(1), (2), (3) and (4) 42506
52.344 (a) revised 51379
52.370 (c)(66) added 2525
52.381 Added 4737
52.433 Added 4737
52.470 (c)(28) added 5135
52.472 (e) added 5136
52.498 Added 4737
52.510 Added 42168
52.520 (c)(82) added 45978
(c)(85) added 46176
(c)(87) added 46553
(c)(84) added 51383
(c)(78) added 52918
(c)(81) added 45
(c)(88) added 2690
52.582 Added 46178
52.670 (c)(28) added 43751
(c)(30) added 47804
(c)(29) added 61549
52.719 Added 59656
52.720 (c)(103) added 39688
(c)(100) and (101) added 46567
(c)(93)(i)(B) removed 64855
(c)(107) added 5320
52.726 (i) added 46924
(i) removed 63255
(f) revised 64855
52.741 (a)(2) revised 46569
(z)(1)(i) amended; (z)(1)(ii) and (5) removed 41
52.770 (c)(92) added 42509
(c)(89) added 47806
(c)(94) added 51114
(c)(92) removed 55368
52.773 (i) revised 51114
52.777 (f) added 35054, 54395
(g) added 36703
Regulation at 59 FR 35054 removed 44040
Regulation at 59 FR 36700 removed 47263
(d) revised 51114
(j) added 377
52.780 (h) added 51114
52.820 (c)(59) added 65718
52.870 (c)(29) added 52427
52.873 (c) added 52427
52.920 (c)(70) added 55058
52.970 (c)(62) added 50502
(c)(65) added 2016
52.992 Added 5864
52.1019 Added 55053
52.1020 (c)(34) added 2526
(c)(28) added 2887
52.1031 Table amended 2526, 2887
52.1035 Added 4737
52.1070 Regulation at 59 FR 29731 eff. date corrected 35411
(c)(108) added 46179
(c)(103), (104) and (105) added 46181
(c)(109) added 51518
(c)(102) added 60909
(c)(110) through (114) added 2021
52.1079 Added 4737
52.1119 Added 41708
52.1120 (c)(99) added 38373
(c)(101) added 50498
(c)(100) added 2017
52.1160 Added 4737
52.1167 Table amended 38373, 50498
Table amended 2017
52.1170 (c)(96) added 46189
(c)(95) added 47256
(c)(97) added 51381
(c)(100) added 3348

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52.1174 (c) added 37947, 40828
(d) added 46190
52.1219 Added 51863
52.1220 (c)(35) added 46555
(c)(34) added 50495
(c)(36) added 52435
(c)(37) added 63255
(c)(38) added 3546
52.1237 Added 47807
52.1270 (c)(24) added 47260
52.1320 (c)(79) added 43481
(c)(84)(i)(A) revised 45976
52.1370 (c)(33) added 44632
(c)(32) added 55586
(c)(35) added 64139
(c)(37) added 5318
52.1390 Added 64139
52.1420 (c)(41) added 375
52.1519 Added 50506
(a)(2) added 51517
52.1520 (c)(40) added 42768
52.1525 Table amended 42768
52.1530 Added 4737
52.1570 (c)(53) added 39689
52.1582 (c) added 49211
52.1583 Added 4737
52.1605 Table amended 39689
52.1607 Added 34386
52.1620 (c)(58) added 59652
52.1670 (c)(87) added 39686
(c)(88) added 2025
52.1674 Added 4737
52.1679 Table amended 39686
Table amended 2025
52.1690 Added 34386
52.1770 (c)(67) redesignated as (c)(69) 37162
(c)(71) added 41709
(c)(75) added 48402
(c)(76) added 52431
(c)(72) added 54389
(c)(77) added 5138
52.1870 (c)(88) added 46927
(c)(100) added 51866
(c)(104) added 52915
(c)(37) removed 63255
52.1879 (f) added 37949
(f) removed 46764
(a) added 48395
(f) added 3766
52.1881 (a)(12) added 48405
52.1885 (r) added 37949
(r) removed 46764
(a)(5) added 48398
(r) added 3766
(a)(5) removed 5582
52.1888 Added 53589
52.1919 Added 43290
(a)(2) added 53589
52.1970 (c)(107) added 33920
(c)(108) added 43489
(c)(109) added 46562
(c)(107) removed 46930
(c)(110) added 2692
52.1977 Amended 2692
52.2020 (c)(88) added 37163
(c)(94) added 65974
(c)(96) added 2881
52.2026 Added 44937
52.2057 Added 4738
52.2060 Added 1741
52.2070 (c)(40) added 52429
(c)(42) added 2526
52.2079 Added 4738
52.2081 Table amended 52429
Table amended 2526
52.2170 (c)(15) added 53592
52.2178 (c) added 47261
52.2220 (c)(121) added 37943
(c)(122) added 39697
(c)(120) added 47258
(c)(122) removed 53741
(c)(119) added 54524
(c)(122) added 3354
52.2270 (c)(85) added 42764
(c)(87) added 43047
(c)(82) added 44039
(c)(78) added 46557
(c)(84) added 46768
(c)(83) added 47263
(c)(90) added 50504
(c)(89) added 60907
52.2303 (a) revised 46557
52.2307 Added 42765
52.2308 Added 41410, 60714
Regulation at 59 FR 41410 withdrawn 51381
(c) added 5867
52.2309 Added 55589
52.2320 (c)(25) added 35044
(c)(26) added 55586, 64330
52.2370 (c)(21) added 2527
52.2381 Table amended 2527
52.2385 Added 4738
52.2420 (c)(91) added 43287
(c)(102) added 52706
52.2453 Added 4738
52.2470 (c)(44) added 39700
(c)(43) added 44327
(c)(46) added 46766
(c)(48) added 51514
(c)(49) added 54391

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52.2479 Amended 44327
52.2520 (c)(26) added 37698
(c)(31) added 45979
(c)(30) added 45984, 65720
(c)(32) added 45986
(c)(29) and (30) correctly designated as (c)(32) and (31) 52588
(c)(30) removed 55060
52.2522 (f) added 37698
52.2569 Removed 42766
Added 2885
52.2570 (c)(72) added 40826
(c)(73) added 41711
(c)(74) added 43483
(c)(79) added 63049
(c)(78) added 2885
(c)(75) and (76) added 3543
(c)(77) added 5869
52.2585 (c) removed 42766
52.2586 Added 40826
52.2620 (c)(25) added 60905
52.2732 Added 34386
52.2782 Added 34386
55 Authority delegation notices 36065
55.14 (e)(3)(i)(A) added; (e)(3)(ii)(F), (G) and (H) revised 50846
55 Appendix A amended 50846
58 Authority citation revised 41628
58.1 (p) through (y) redesignated as (q) through (z); new (p) added; new (q) revised 41628
(s) amended 41629
58.20 (e)(1) and (6)(i) amended 41628
58.23 (a) amended 41628
58.28 Revised 41628
58.31 (a) and (g)(1) amended 41628
58.34 (a) amended 41628
58.35 Revised 41628
58 Appendixes A through D and F amended 41628
Appendixes A and B amended 41629
60 Authority delegation notices 40258, 49581
Technical correction 49466
60.4 (b) amended 47265
60.391 (a) and (b) amended 51386
60.392 (a) revised 51386
60.393 (c)(1)(i)(E) added 51387
60 Appendix A amended 62924
Appendix B amended 64593
61 Authority citation revised 36301
61.220 (a) revised; (b) removed 36301
61.221 Introductory text, (a) and (c) revised; (d) and (e) added 36301
61.222 (b) revised 36301
61.223 (b)(5) revised 36302
61.226 Added 36302
62.4845 (b)(3) added 50507
63.14 (b)(4) added 62589
(b)(4) and (5) added 4963
63.71 Amended 59924
63.74 Table 1 amended 53110
63.75 (g) added 59924
63.77 (e) revised 59924
63.100 (n) added 53360
(o) added 54132
(n) and (o) revised 5321
63.103 (e) amended 48176
63.100—63.106 (Subpart F) Tables 1 and 2 amended 48176
63.110 (g) added 53360
(g) revised 5321
63.160 (a) revised 48176
(d) added 53360
(d) revised 5321
63.161 Amended 48176
63.162 (b)(1) and (f)(3) revised 48176
63.163 (f) revised 48176
63.164 (c) revised 48176
63.165 (d) and (e) redesignated as (d)(1) and (2) and revised 48176
63.168 (e)(1) and (h)(2) revised 48176
63.169 (a), (c)(3) and (d) revised 48177
63.171 (e) revised 48177
63.172 (b) and (k)(2) revised 48177
63.174 (b)(1), (2), (3)(i) and (f)(2) revised; (b)(3)(ii) and (h)(1) introductory text amended 48177
63.180 (b)(2) amended; (c) introductory text revised 48177
63.181 (b)(1)(i) amended; (d)(5)(i) revised 48177
63.182 (a)(6)(ii), (c) introductory text and (4) revised 48178
63.190 (b)(5), (c) and (e) introductory text revised; (b)(6)(i) removed 48178
(h) added 53360
(i) added 54132
(h) and (i) revised 5321
63.191 (a) revised; (b) amended 48178
63.192 (b)(4) through (8), (e), (i)(1), (2) and (k) revised 48178
63.340—63.347 (Subpart N) Added 4963

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63.360—63.367 (Subpart O) Added 62589
63.400—63.406 (Subpart Q) Added 46350
63.420—63.429 (Subpart R) Added 64318
63.460 (d) corrected 67750
63.460—63.469 (Subpart T) Added 61805
63.701—63.708 (Subpart EE) Added 64596
63 Appendix A amended 61816
Appendix B revised; Appendix C added 61818
Appendix A amended 4979
70 State operating permit program approvals 48802
Regulation at 59 FR 48802 withdrawn 60561
70 Appendix A added; interim 55820
Appendix A amended 59660, 61552, 61827, 62327, 66740
Appendix A amended ... 1744, 2534, 3770, 4568
71 Added 59924
72 Authority citation revised 60229
72.41 (b)(1)(i), (c)(3) introductory text, (i)(B), (C), (ii), (4)(ii), (d)(2) and (e)(1)(i) revised; (c)(3)(i)(D), (iii) and (d)(3) added 60230
(c)(5) and (e)(3)(iv) revised; (c)(6), (7) and (e)(1)(iii) added 60238
72.43 (a) introductory text, (1) introductory text, (b)(1) introductory text, (ii)(A), (3)(i), (c)(4)(i), (ii), (iv), (d) and (f)(1)(ii) revised; (a)(2) added 60230
72.91 (a)(3)(iii) introductory text, (iv), (4), (5), (6) and (b)(2) revised; (a)(7) added 60231
75.4 (a)(3) revised; (a)(4) added 42511
80 Announcement 44633
80.2 (ss) added 39289
(j) and (o) revised; (oo), (tt) and (uu) added 48489
Regulation at 59 FR 39289 stayed 60715
80.22 Heading revised 48490
80.29 Revised; interim (OMB number pending) 35858
80.30 (g)(7) added; interim 35859
80.32 Added 48490
80.33 Added 48490
80.41 (h)(2)(iii), (j)(2) and (m)(1) introductory text revised 36958
80.42 (a) introductory text, (b)(1)(ii), (2)(ii) and (3)(ii) amended; (b)(4) added; (c)(1) table revised 36958
80.45 (b)(3) Table 3, (c)(1)(iv)(A) Table 6, (C)(*5*), (*11*), (*12*), (*14*), (D)(*5*), (*11*), (*12*), (*14*), (8)(ii), (d)(1)(iv)(A), Table 7, (C)(*5*), (e)(3) introductory text and (f)(1) revised; (c)(1)(iv)(B), (C)(*9*), (*13*), (D)(*9*), (*13*), (3)(i), (ii), (4)(ii), (d)(1)(iv)(B), (C)(*9*), (e)(1)(ii), (4)(iii), (5)(iv), (6)(iv), (9) and (10) amended; (e)(3)(i) and (ii) removed 36959
80.46 (f)(1)(ii)(K) table revised 36961
80.48 (c)(1) introductory text and (g) revised; (c)(1)(v) and (2)(iii) amended 36962
80.49 (a)(5)(i) table and (b)(3)(iii) revised 36962
80.59 (a) amended 36962
80.65 (d)(2)(iii), (v)(B), (vi), (3), (e)(2)(i) table, (ii)(A), (f)(4) introductory text and (h) revised; (e)(1) amended 36962
(d)((2)(vi) revised 39289
Regulation at 59 FR 39289 stayed 60715
80.66 (g)(1) and (2)(ii) revised 36963
80.68 (c)(12) redesignated as (c)(13); (c)(8)(ii)(A), (9)(ii)(A), (B), (10)(i), new (13)(v)(G), (H) and (L) revised; new (c)(12) added; new (c)(13) introductory text amended 36963
80.69 (a)(7)(ii) introductory text and (b)(3) revised 36964
80.70 (d)(3)(viii), (ix), (j)(4)(i), (ii), (10)(iv), (11)(i) and (14)(xvii) revised; (d)(3)(x) and (xi) added; (j)(15) removed 36964
(l) introductory text and (1) added 2696
(j) introductory text revised 2699
80.75 (b), (f)(2)(ii)(A)(*1*) and (j) revised 36964
80.76 (c)(2), (3) introductory text, (i) and (ii) revised 36965
80.77 (g)(2)(iii), (iv)(A), (B) and (h) introductory text revised; (g)(3) added 36965

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80.78 (a)(1)(v)(B) and (C) revised 36965
80.81 (a)(2)(iii), (b)(4) and (h) revised 36965
(c)(2), (5), (6) and (10) revised 39289
Regulation at 59 FR 39289 stayed 60715
80.83 Added (OMB number pending in part) 39290
Regulation at 59 FR 39290 stayed 60715
80.90 (b)(1) amended; (e)(2) revised 36965
80.91 (c)(5)(iv), (e)(5)(vi)(A), (B) and (e)(7)(i)(D) added; (d)(1)(i)(A) introductory text, (B), (e)(2)(iv), (v)(A), (4)(i)(A), (B), (ii)(A), (B) and (5)(vi) amended; (d)(1)(i)(A)(*1*), (e)(5)(vii) introductory text, (viii), (7)(i)(A), (C) and (f)(2)(ii) revised 36966
80.93 (a)(3)(ii) amended; (a)(3)(iv) added; (c)(9) revised 36968
80.101 (e)(3), (f)(4)(i), (ii), (g)(1) and (i)(1) introductory text revised 36968
80.102 (b)(1), (d)(1)(i) and (2)(i) amended; (d)(3)(iv), (e)(2)(i) and (f)(2)(1) revised; (d)(3)(v) added 36969
80.104 (a)(2)(ix) revised 36969
80.105 (a)(2) revised 36969
80.125 (a) revised 36969
80.128 (e)(2), (5) and (g)(3)(iii) revised 36969
(a) and (e)(2) revised; (e)(4) and (5) amended; (e)(6) added 39292
Regulation at 59 FR 39292 stayed 60715
80.129 (e) revised 36969
(a), (d)(3)(iii) and (iv) revised; (d)(3)(v) added 39292
Regulation at 59 FR 39292 stayed 60715
80.140—80.160 (Subpart G) Added 54706
80.141 OMB number pending 54707
80.157 OMB number pending 54713
80.158 OMB number pending 54714
80.160 OMB number pending 54715
81 Attainment status determinations 44938
81.301 Table amended 2029
81.305 Table amended 3772
81.306 Table corrected 39394
Table amended 47096, 47811
81.310 Table amended 45
81.315 Table amended 35054, 54395
Regulation at 59 FR 35054 removed 44040
81.318 Table amended 55059
81.320 Table amended 2887
81.324 Table revised 52435
81.330 Table amended 42769
81.333 Table corrected 39394
Table amended 50849
81.334 Table amended 48402
81.336 Table amended 48398, 48405
Table amended 5582
81.339 Table amended 48406
81.343 Table amended 37944, 39697, 53741
Table corrected 40084, 49004
Table revised 3355
81.347 Table amended 3352
81.348 Table amended 39701
81.349 Table amended 45980, 45984, 45986, 55060, 65721
81.350 Table amended 42169
82 Acceptable substitutes listing 44240
Acceptability notice 3318
82.9 (a) introductory text, (1) and (2) revised 65481
82.10 (d) added 41369
82.1—82.13 (Subpart A) Appendix C revised 41369
Appendix E revised 41371
82.100—82.124 (Subpart E) Revised 4020
82.152 (q) and (x) revised 42956
(u) through (y) redesignated as (w) through (aa) and (b) through (t) redesignated as (c) through (u); new (b), new (v) and (bb) added; new (o), new (s) and (z) revised 55925
82.154 (g) and (h) revised 42956
(l) removed; (m), (n) and (o) redesignated as (l), (m) and (n); new (m)(2) through (6) redesignated as (3) through (7); new (m)(2) and (8) added; (g)(1), new (m)(6) and new (7) revised 55926
82.156 (i)(5) added 42171
(a)(1)(ii), (2)(i)(B), (3), (b), (c) and (i)(1) revised; (a)(1)(iii) and (2)(iii) added 42956
OMB number 42960

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(a) introductory text, (1)(i), (2)(i) introductory text and (e) revised 55926
(i)(5) revised 59371
82.158 (b)(2) and (6) revised 42957
82.160 OMB number 42960
82.161 (a) introductory text revised 42957
OMB number 42960
(a) introductory text, (1) and (g) revised; (a)(2) through (5) amended; (a)(6) added 55926
82.162 OMB number 42960
82.164 Introductory text and (a) through (d) revised; (e) and (f) redesignated as (f) and (g); new (e) added 42957
OMB number 42960
Introductory text revised 55927
82.166 (a) and (b) revised 42957
OMB number 42960
82.150—82.166 (Subpart F) Appendix A revised 42957
Appendixes B and D amended; OMB number 42960
Appendix D amended 55927
82.174 (e) added 63256
(e) corrected 3303
85 Heading corrected 33913
Authority citation revised 36986
Announcement 45626
Authority citation revised 4738
85.501—85.505 (Subpart F) Added 48490
85.503 OMB number pending 48490
85.505 OMB number pending 48490
85.1601—85.1606 (Subpart Q) Added 36986
85.2225 (c)(1) table corrected 33913
85.2233 (d) corrected 33913
85.2301—85.2305 (Subpart X) Added 4738
86 Court order 51114
86.1 (b)(1) table revised; (b)(3) added 48491
(b)(2) table amended 50073
86.001–9 (d)(1)(iii) and (iv) added 48491
86.001–28 (h) added 48491
86.004–9 (d)(1)(iii) and (iv) added 48492
86.004–28 (h) added 48492
86.078–3—86.099–11 (Subpart A) Heading revised 48491
86.084–4 (b) redesignated as (c); new (b) added 48492
86.085–37 (b)(1) introductory text revised 50073
86.091–10 (a)(1) introductory text, (i) introductory text, (B)(*2*), (ii) introductory text, (B)(*2*) and (3) revised; (a)(1)(i)(C)(*3*), (ii)(C)(*3*)(v) and (vi) added 48492
86.091–28 (a)(4)(i) introductory text, (C), (ii)(B), (7)(i), (b)(4)(ii), (iii), (6)(i), (c)(4)(ii), (iii)(A)(*1*), (*2*), (B)(*1*), (*2*) and (d)(1) revised 48493
86.092–1 (a) revised 48494
86.094–2 Amended 48494
86.094–3 (b) revised 48494
86.094–8 (a)(1)(i) introductory text, (A) Tables A94–2, A94–3, A94–5 and A94–6 revised 48494
86.094–9 (a)(1)(i)(A) Tables A94–8, A94–9, A94–11, A94–12, (ii)(A) Table A94–14 and Table A94–15 and (d)(1)(i)(A) revised; (d)(1)(i)(C) added 48495
86.094–11 Heading, (a)(1) introductory text, (i)(A), (ii)(B), and (c) revised; (a)(1)(i)(C) added 48497
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 36369
86.094–15 (a)(1) revised 50073
86.094–17 (a) introductory text revised 48497
86.094–23 (b)(3), (4), (c)(1) and (2)(i) revised (OMB number pending) 48498
86.094–24 (a)(5), (6) introductory text, (12), (13) introductory text, (14) introductory text and (15) revised; (a)(13)(i) amended; (a)(6)(iv) and (13)(iii) added (OMB number pending) 48498
(a)(3)(iii) added; (a)(4) introductory text revised 50073
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 36369
86.095–35 (a)(4) heading, (i), (iii)(D), (E), (c)(1)(ii)(A), (B)(*1*) and (g)(1) revised (OMB number pending) 48499
86.096–8 (a)(1)(i), Table A96–1, Table A96–2 and (b)(1) revised 48499
86.096–9 (b)(1) heading, (i)(A) introductory text, (B)(*2*), (b)(1)(ii) and (iii) revised 48500

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86.096–10 (b)(1) heading, (i)(A)(*2*), (B), (C), (ii)(A)(*2*) and (B) revised 48500
86.096–11 (b)(4) redesignated as (b)(5); heading, (a)(1)(i), (2)(ii), (c), and new (b)(5) revised; (a)(1)(iii) and new (b)(4) added 48500
86.096–21 (j) and (k) corrected 33913
86.097–9 (a)(1)(i)(A) Table A97–1, Table A97–2, (ii)(A) Table 97–3 and 97–4 revised 48500
86.098–2 Amended 48501
86.098–8 (d)(1)(iii) and (iv) added 48501
86.098–10 (a)(1)(i) introductory text, (B)(*2*), (ii) introductory text, (B)(*2*), (3)(i) and (ii) revised; (a)(1)(i)(C)(*3*), (ii)(C)(*3*), (v), and (vi) added 48501
86.098–11 Heading, (a)(1)(i), (2)(ii) and (c) revised; new (a)(1)(iii) and (b)(4) added 48502
86.098–28 (h) added (OMB number pending) 48503
86.099–8 (b)(1) revised; (d)(1)(iii) and (iv) added 48503
86.099–9 (b)(1) heading, (i)(A) introductory text, (B)(*2*), (ii) and (iii) revised 48503
86.099–10 (b)(1) heading, (i)(A)(*2*), (B), (C), (ii)(A)(*2*) and (B) revised 48503
86.099–11 (a)(1)(i), (2)(ii) and (c) revised; (a)(1)(iii) and (b)(4) added 48503
86.101 (a)(3) revised 48504
86.104 (b) redesignated as (c) and revised; new (b) added 48504
86.105 (b) revised 48504
86.106–94 (a) revised 48504
86.106–96 (a) revised 48504
86.107–96 (b)(1) revised 48505
86.109–94 (b)(4) and (c)(4) revised 48505
86.110–94 (a)(2), (b) heading, introductory text and (3) revised; (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added 48505
86.111–94 (b)(3) introductory text and (v) revised 48505
(b)(3)(vii) added 50073
86.113–94 Revised (OMB number pending) 48506
86.116–94 Correctly designated 33913
86.121–90 (a)(2) and (b)(3) revised; (d) added 48508
86.127–96 (a)(1), (3), (4), (b), (d) introductory text, (2) and (e) revised 48508
86.129–94 (a) amended 39649
86.130–96 (a) and (b) revised 48509
86.132–90 (a)(4) introductory text and (ii) introductory text revised 48509
86.132–96 (b), (e)(2) heading, introductory text and (f) revised 48509
86.133–96 (a)(1) and (3) revised 48509
86.134–96 (a) revised 48509
86.135–94 (a) revised 48510
86.136–90 (a) heading, introductory text and (b) revised 48510
86.138–96 (a) revised 48510
86.140–94 (a) introductory text and (b) introductory text revised 48510
86.142–90 (o) introductory text revised; (q) and (r) added (OMB number pending) 48510
86.143–96 (a) and (b)(1)(ii)(B) revised 48510
86.144–90 (c)(7)(ii) amended 39649
86.144–94 (c)(7)(ii) amended 39649
(c)(7)(iii) through (xiii) redesignated as (c)(7)(iv) through (xiv); (a)(1), (c)(1)(ii), (3)(iv)(C), (5)(ii), (6)(ii), (8)(i), (ii) and new (c)(7)(iv) through (xiv) revised; (b)(10), (c)(7)(iii), (8)(vi) and (9) added 48510
86.150–98 Heading revised; (d) added 48511
86.157–98 Added (OMB number pending) 48511
86.401–97 Added 48512
86.410–90 (a)(1) introductory text revised 48512
86.509–90 (c)(4) revised 48512
86.513–94 Added (OMB number pending) 48512
86.521–90 (b) introductory text, (2) and (c)(3) revised; (e) added 48514
86.527–90 (a), (c) and (d) revised 48514
86.540–90 (a) introductory text revised 48515
86.542–90 (q) and (r) added (OMB number pending) 48515
86.544–90 (c)(1)(ii), (v), (ix), (3)(iv)(C) and (7)(ii) revised 48515
86.708–94 Technical correction 33913
(a)(1)(i)(A)(*3*) Tables H94–3, H94–4, H94–6 and H94–7 revised 48515
86.708–98 Technical correction 33913
(a)(1)(i) Table H98–1 and Table H98–2 revised 48516
86.709–94 (a)(1)(i)(A)(*3*) Tables H94–9, H94–10, H94–12, H9413, (ii)(A)(*2*) Table H94–15, Table H94–16 and Table H94–18 revised 48516
86.709–99 (a)(1)(i)(A) Table H99–1, H99–2, (ii)(A) Table H99–3 and H99–4 revised 48520
86.884–1 Revised 48521
86.884–4 Amended 48521
86.1201–90—86.1246–96 (Subpart M) Heading revised 48521
86.1201–90 (a) revised 48521
86.1204 Added 48521
86.1205–90 (a) revised 48521
86.1206–96 Introductory text revised 48521
86.1207–96 (b)(1) revised 48521
86.1213–94 Added 48521
86.1221–90 (a) introductory text, (2) and (b)(3) revised; (e) added 48523
86.1227–96 Heading, (b) introductory text and (2) revised 48523
86.1230–96 (a) and (b) revised 48524
86.1232–96 (b) and (f) revised 48524
86.1233–96 (a)(1) and (3) revised 48524
86.1234–96 (a) revised 48524
86.1238–96 (a) revised 48524
86.1242–90 (m) and (n) added (OMB number pending) 48524
86.1243–96 (a) and (b)(1)(ii)(B) revised 48525
86.1306–90 (a) revised 48525
86.1306–96 (a) revised 48525
86.1309–90 Heading, (a)(1) and (b)(4) revised 48525
86.1310–90 Heading, (a) introductory text and (2) revised 48525
86.1311–94 Added 48525
(b)(2)(iii) added 50073
86.1313–94 Revised 48528
86.1314–94 Added 48530
86.1316–94 Added 48530
86.1321–94 Added 48531
86.1325–94 Added 48531
86.1327–94 Added 48532

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86.1327–96 (a), (f)(1) and (2) introductory text revised 48533
86.1332–90 (c)(1) heading, (2) heading, (d)(2) heading, (3) heading, (e)(1) heading and (2) heading revised 48533
86.1336–94 (e)(2) heading revised 48533
86.1337–90 (a)(7), (8), (13), (20) and (26) revised 48533
86.1337–96 (a)(7), (8), (13), (20) and (26) revised 48533
86.1340–94 Added 48534
86.1342–94 Added 48534
86.1344–94 Added 48535
86.1406 (b) corrected 33913
86.1430 (a)(7)(ii) and (c)(3)(ii) corrected 33913
86.1437 (c) corrected 33913
86.1438 (c) corrected 33913
86.1439 (d) amended 33913
(d)(1)(i), (ii)(B) and (2)(i) corrected; (f)(1)(ii)(A) correctly revised 33914
86.1501–84—86.1544–84 (Subpart P) Heading revised 48536
86.1501–94 Added 48536
86.1505–94 Added 48536
86.1506–94 Added 48536
86.1513–90 Added 48536
88.101–94 Redesignated as 88.102–94; new 88.101–94 added (OMB number pending) 50074
88.102–94 Redesignated as 88.103–94; new 88.102–94 redesignated from 88.101–94 and amended 50074
88.103–94 Redesignated from 88.102–94 and amended 50074
88.104–94 Added (OMB number pending) 50074
88.105–94 Added 50077
88.201–94 (a) revised (OMB number pending) 50077
88.201–94—88.206–94 (Subpart B) Tables revised 50079
88.204–94 Added (OMB number pending) 50078
88.206–94 Added (OMB number pending) 50078
88.301–93—88.313–93 (Subpart C) Tables C93–6, C93–6.1 and C93–6.2 removed; Tables C94–1, C94–1.1, C94–1.2, C94–1.3, C94–2, C94–2.1, C94–2.2, C94–

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2.3, C94–3, C94–3.1, C94–3.2 and C94–3.3 revised 50082
88.302–94 Amended 50080
88.305–94 Added 50080
88.306–94 Added (OMB number pending) 50080
88.308–94 Added 50082
88.311–93 (a)(1)(iii), (c) and (d) revised 48536
(c) and (d) revised 50082
95 Added 67638
112 Authority citation revised 34097
Notice 53742
112.2 (a) through (l) designations removed; amended; eff. 8–30–94 34097
112.20 Added; eff. 8–30–94 34098
112.21 Added; eff.8–30–94 34101
112 Existing Appendix redesignated as Appendix A; Appendixes B through F added; eff. 8–30–94 34102
Appendixes D, E and F corrected 49006
123.1 (h) amended 64343
123.21 (a)(1) and (b)(2) amended 64343
123.22 (g) amended 64343
123.31 Heading revised; (a) introductory text and (4) amended 64343
123.32 Heading, introductory text, (b) introductory text, (c), (d) introductory text, (1) and (e) amended; (f) revised 64343
123.33 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) 64343
124.2 Amended 64343
124.51 (c) amended 64343
125.56—125.68 (Subpart G) Authority citation revised 40658
Revised 40658
131.3 (j) amended 64344
131.4 (c) amended 64344
131.7 (b)(2) amended 64344
131.8 Heading, (a) introductory text, (b) introductory text, (2) introductory text, (3) introductory text, (ii), (4) introductory text, (i), (5), (6), (c) introductory text, (1), (2) introductory text, (4) and (5) amended; (b)(3)(iii) removed; (b)(3)(iv) redesignated as (b)(3)(iii) 64344
131.37 Added 4707
141.2 Amended 34322
141.6 (a) revised; (h) amended 34322
141.21 (f)(3) revised; (f)(4) removed; (f)(5), (6)(i), (ii) and (8) amended; (f)(6)(iv) added 62466
141.22 (a) amended 62466
141.23 (a)(1), (2), (5) and (f)(1) revised; (a)(4)(i) table, (c)(1), (2) and (5)(iii) amended 34322
(k)(1) removed; (k)(4), (5) and (6) redesignated as (k)(1), (4) and (5); (l)(1), (2), new (k)(1) table, (q)(3) and (4) amended 34323
(k)(1) revised; (k)(2), (3) and (q) removed; (k)(4) and (5) redesignated as (k)(2) and (3) 62466
141.24 (a) through (e) and (g) removed; (f)(4), (7), (10), (16) and (20) amended; (f)(14)(i), (iii), (h)(4)(i) and (12) introductory text revised; (h)(10)(i), (ii), (iii) and (12)(xv) added 34323
(f)(16) and (h)(12) removed; (e) added; (h)(13) introductory text and (i) revised 62468
141.28 Heading and (a) amended 34323
141.30 (e) revised; Appendixes A, B and C removed 62469
141.32 (e)(30), (33), (35), (41) and (62) amended 34323
141.40 Heading and (e)(5) amended; (g) revised 34323
(h) amended; (j)(2) removed; (j)(3) through (15) redesignated as (j)(2) through (14); (n)(11) revised 34324
(g), (n)(11) and (12) revised 62469
141.41 (d) revised 62470
141.42 (a), (b) and (c) removed 62470
141.60 (a)(3) revised 34324
141.61 (b) amended; table revised 34324
(c) table amended 34325
141.74 (a)(1) and (2) revised; (a)(3) through (7) removed 62470
141.89 (a) introductory text revised; (a) table and (b) removed 62470
142.2 Amended 64344

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142.3 (c) amended 64344
142.62 (a) table amended 34325
142.72—142.78 (Subpart H) Heading revised 64344
142.72 Heading, introductory text and (d) revised 64344
142.76 Heading, introductory text, (b) introductory text, (c), (d) introductory text (1) and (e) amended; (f) revised 64344
142.78 Heading and (a) amended; (b), (c) and (d) removed; (e) redesignated as (b) 64345
143.4 (b) revised 62470
144.3 Amended 64345
145.1 (h) amended 64345
145.52—145.58 (Subpart E) Heading amended 64345
145.52 Heading, introductory text and (d) revised 64345
145.56 Heading, (b) introductory text, (c), (d) introductory text, (1), and (e) amended; (f) revised 64345
145.58 (b), (c) and (d) removed; (e) redesignated as (b); heading, (a) and new (b) amended 64345
148.17 (b) and (c) redesignated as (d) and (e); new (b) and new (c) added 48041
172 Authority citation revised 45611
172.3 Revised 45611
172.43—172.59 (Subpart C) Added 45612
180.1 (h) table amended 46353
180.105 Removed 39468
180.139 Removed 44931
180.156 Removed 35630
180.249 Amended 39466
180.294 (a) table and (b) table amended 46354
180.317 (a) table amended 4863
180.408 (a) table amended 54820
(a) table and (b) table amended 54824
180.412 (a) table amended 4099
180.415 (a) table amended 53748, 53750, 54829
180.417 (b) table revised 4095
180.436 Table amended 63257
180.440 Revised 49825
180.442 Revised 46192
180.443 (a) table revised 54822
180.447 (b) table revised 4093
180.449 (a) revised 49826
(b) table revised 55590
180.450 (a) table amended 44934
180.455 Revised 42514
180.459 Revised 44932
180.461 Revised 39467
180.472 Revised 61278
(c) added 61553
(b) corrected 378
180.473 Added 35629
(b) revised 3547
180.474 Added 39464
180.475 Added 43492
180.476 Added 59167
180.477 Added 61280
180.478 Added 66743
180.479 Added 66743
180.1001 (d) table corrected 35629
(d) table amended 38126
(e) table amended 43494, 53746
(c) table amended 43495, 43496, 54826
(c) table and (e) table amended 44331, 53752, 61276
(c) table and (d) table amended 44936
(c) table, (d) table and (e) table amended 65722
180.1020 Amended 4862
180.1039 Removed 44936
180.1064 Revised 59165
180.1104 Removed 44936
180.1105 Removed 44936
180.1106 Removed 44936
180.1129 Added 43490
180.1132 Added 54825
180.1133 Added 53751
180.1134 Added 49353
180.1135 Added 66741
180.1139 Added 4097
180.1140 Added 4097
180.1141 Added 4097
185.300 Revised 49826
185.350 Added 46769
185.700 Removed 35630
185.900 Added 61278
185.5900 Added 46769
186 Order 54829
186.300 (a) revised 49826
186.700 Removed 35630
186.900 Added 61278
186.1600 Removed 39468
186.2800 Table amended 4099
186.3325 Added 61280
186.5850 Revised 59167
192.00—192.04 (Subpart A) Table added 2866
192.01 (a) and (e) revised; (g) through (r) added 2865

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192.02 Revised 2865
192.03 Added 2866
192.04 Added 2866
192.11 (a) revised; (e) added 2866
192.12 (c) added 2867
192.20 (a)(2) and (3) revised; (b)(1) amended; (a)(4) and (b)(4) added 2867
192.21 Introductory text and (b) revised; (f) redesignated as (h); new (f) and (g) added 2868
192.22 (a) and (b) revised; (d) added 2868
192 Appendix I added 2868
227.6 (c)(2) amended 52652
227.27 (b) amended 52652
228.3 (b) amended 61129
228.12 (b)(70) added 41254
Removed 61129
228.14 Added 61129
228.15 Added 61130
(h)(11)(i) revised 2899
233.60—233.62 (Subpart G) Heading amended 64345
233.60 Heading revised; introductory text amended 64345
233.61 Heading revised; introductory text, (b) introductory text, (c)(2), (d) introductory text, (1), (e) and (f) amended; (c)(3) removed 64345
233.62 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) 64346
258 Authority citation revised 58789
260.11 (a) and (b) amended 62926
(a) amended 3095
260.30 Introductory text and (b) revised 48041
260.31 (a) introductory text and (b) introductory text revised 48041
260.32 Introductory text revised 48041
260.33 Revised 48041
260.106 (c)(1) introductory text, (3) introductory text, (i) introductory text, (A) and (ii) introductory text revised 48042
261.2 (e)(1)(iii) revised 48041
261.3 (c)(2)(ii)(B) revised 38545
261.4 (a)(12) added 38545
261.6 (a)(3)(v) removed; (a)(3)(vi) and (vii) redesignated as (a)(3)(v) and (vi); new (a)(3)(v) revised 38545
261 Appendix IX amended 47814, 52862
Appendix IX amended 1746
262.34 (a)(1)(i), (ii) and (d)(2) revised 62926
264.1 (g)(6) revised 48042
264.13 (b)(6) amended; (b)(8) added 62926
264.15 (b)(4) amended 62926
264.73 (b)(3) and (6) revised 62926
264.77 (c) revised 62926
264.179 Added 62926
264.200 Added 62926
264.232 Added 62926
264.601 Introductory text amended 62927
264.1033 (k)(2) revised; (m) added 62927
264.1080—264.1091 (Subpart CC) Added 62927
265.1 (c)(10) revised 48042
(b) amended 62934
265.13 (b)(6) amended; (b)(8) added 62935
265.15 (b)(4) amended 62935
265.73 (b)(3) and (6) revised 62935
265.77 (d) revised 62935
265.178 Added 62935
265.202 Added 62935
265.231 Added 62935
265.1033 (j)(2) revised; (l) added 62935
265.1080—265.1091 (Subpart CC) Added 62935
266.20 (c) added; eff. 2–24–95 43500
266.23 (a) revised 48042
266.100 (b)(3) revised 38545
266 Appendix XIII added 48042
268.1 (c)(3)(ii), (e)(4) and (5) revised; (c)(3)(iii) added 48043
268.2 (g) and (i) revised 48043
(i) revised 244
268.7 (a)(1) introductory text, (ii), (iv), (v), (2)(i)(B), (3)(vi), (8), (b)(4)(ii), (d) introductory text and (1) revised; (a)(1)(vi) and (3)(vii) added 244
(a) revised 47980
(a) and (b)(4)(ii) revised; (b)(5)(i) added 48043
268.9 (a), (d)(1)(i) and (ii) revised; (d)(1)(iii) removed; (d)(2)(i) and (ii) added 48045
(a) and (d)(2)(i) revised 245
268.38 Added 48045
268.40 Revised 48046
Table revised 246

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268.41 (a) table amended; eff. 2–24–95 43500
Revised 48103
268.42 Note added; (a) introductory text, (c)(2) and (d) revised; Table 2 and Table 3 removed 48103
Table 1 amended 302
268.43 Revised 48103
268.45 (b)(2) revised 48103
268.46 Revised 48103
268.48 Added 48103
Table amended 302
268 Appendix IV revised; Appendix V removed; Appendix X added 48107
Appendix X amended 302
270.4 (a)(2) and (3) revised; (a)(4) added 62952
270.14 (b)(5) revised 62952
270.15 (e) added 62952
270.16 (k) added 62952
270.17 (j) added 62952
270.27 Added 62952
271 State hazardous waste management program authorizations 35266, 39967, 39971, 41979, 43290, 51115, 51116, 51122, 53753, 55322, 55368, 56001, 56397, 56407, 60910, 66200
Technical correction 56573
Corrected 60686
State hazardous waste management program authorizations 2534, 2699, 3095, 4380
271.1 (j) Table 1 and Table 2 amended 48109
(j) Table 1 amended 62952
(j) Table 2 amended 62953
272 State hazardous waste management program authorizations 52084, 56114
272.151 Added 52920
272.1200 Removed 45987
272.1201 Revised 45987
272 Appendix A amended 45987, 52921
282.66 Added 49212
282 Appendix A amended 49213
300 Authority citation revised 47416
Appendix B revised 65212
300.1—300.7 (Subpart A) Revised 47416
300.5 Amended 35854
300.100—300.185 (Subpart B) Revised 47424
300.160 (c) revised 35854
300.200—300.220 (Subpart C) Revised 47440
300.300—300.335 (Subpart D) Revised 47444
300.400 (a) revised 47447
300.405 (a) and (f)(3) revised 47447
300.410 Revised 47448
300.415 Revised 47448
300.510 (c)(2) and (f) revised 35854
300.600—300.615 (Subpart G) Revised 47450
300.700 (Subpart H) Revised 47452
300.900—300.920 (Subpart J) Revised 47453
300 Appendix B amended 43291, 44634, 45628, 46355, 46569, 48179, 54831, 56409
Appendix C revised 47458
Appendix E added 47473
Appendix B amended 4568
350.16 Revised 43048
355 Appendixes A and B amended 51821
372.10 (d) added 61501
372.22 (c) revised 61501
372.25 Introductory text revised 61502
372.27 Added (OMB number pending) 61502
372.65 (c) table amended 34390
(a) and (b) amended 43050
(a) table, (b) table and (c) table amended 61473
372.95 Added (OMB number pending) 61502
501.11 (a)(1) and (b)(2) amended 64346
501.12 (g) amended 64346
501.22 Heading, (a) introductory text and (4) amended 64346
501.23 Heading, introductory text, (b) introductory text, (c), (d) introductory text, (1) and (e) amended; (f) revised 64345
501.24 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) 64346
600 Authority citation revised 39649
600.001–93 Added 39649
600.002–93 Added 39650
600.004–77 Revised 39651
600.006–89 (b)(1)(i) revised; (h) added 39652
600.007–80 (f) introductory text revised 39652

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600.011–93 Added 39652
600.101–93 Added 39652
600.107–93 Added 39652
600.111–93 Added 39652
600.113–93 Added (OMB number pending) 39654
(e)(1) and (g) corrected 44795
Introductory text, (a), (b)(1), (2) and (d) revised; (c)(3) and (h) added 48537
600.201–93 Added 39655
600.206–93 Added (OMB number pending) 39655
600.207–93 Added (OMB number pending) 39655
600.209–95 Added (OMB number pending) 39656
600.301–95 Added 39657
600.307–95 Added (OMB number pending) 39657
600.501–93 Added 39659
600.502–81 (a)(1)(iii) corrected 33914
600.510–93 Added (OMB number pending) 39659
600.511–80 (a)(1) corrected 33914
600.513–91 (a) introductory text, (2) and (b)(2)(xii) revised 39661
600 Appendix VIII revised 39661
712.30 (w) table amended 60718
716.120 (a) table amended 60718
721.825 Added 43296
721.3200 (b)(1) revised 39293
721.3367 Removed 65248
721.4820 (a)(2)(i) and (ii) revised 39296
721.5880 (a)(2), (b)(1) and (2) revised 40260
721.6193 Removed 65249
721.6820 Added 39295
721.8675 (a)(1)(i)(D) and (2)(i)(D) revised 66747
721.8700 (a)(1)(i)(D) and (2)(i)(D) revised 66747
721.8750 (a)(2)(iv) revised 66747
721.8775 (a)(1)(i)(D), (2)(i)(D), (3)(i)(D) and (4)(i)(D) revised 66747
721.8850 (a)(2)(iv) revised 66748
721.8875 (a)(2)(iv) revised 66748
721.8900 (a)(2)(iv) revised 66748
749.68 Heading, (a), (b), (c), (d)(10), (11) and (g)(1) revised 42773
766.35 (b)(4)(i) table amended; (f) revised 46356
799 Clarification 45629
799.2155 (c)(2)(ii)(A) and (d) revised 46357
799.5000 Heading revised; table amended 38920
Table amended 59663
Table amended 4519, 5140
799.5060 Removed 4516

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2 60446
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9 49108
31 53706
32 65607
35 43956
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50 ..... 43956, 58958, 67255
51 ..... 35292, 39501, 49877, 50718, 60740, 66844
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488.18 (a) and (b) revised 56237
488.20 (a) revised 56237
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488.300—488.335 (Subpart E) Added 56238
488.400—488.456 (Subpart F) Added 56243
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489.3 Amended 56250
489.11 (c)(3) removed 56251
489.12 (a) revised 56251
489.13 Revised 56251
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489.16 Removed 56251
489.18 (d) revised 56251
489.53 (a)(13) added; (b) removed; (c) revised 56251
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493 Authority citation revised 62609
493.855 (a) amended 62609
493.1202 Heading revised 62609
493.1203 Heading revised 62609
493.1443 (b)(3)(ii) introductory text and (C) amended 62609
498 Authority citation revised 56251
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498.1 (h) added 56251
498.2 Amended 56251
498.3 (b)(7), (d)(1) and (10) revised; (d)(11) and (12) redesignated as (d)(13) and (14); (b)(12), (13), new (d)(11) and new (12) added 56251
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498.4 Added 56252
498.5 (f)(1), (i)(2) and (j)(1) revised 56252
498.61 Revised 56252

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4.1370 Added 54362
4.1371 Added 54362
4.1372 Added 54362
4.1373 Added 54362
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4.1375 Added 54362
4.1376 Added 54362
4.1377 Added 54363
4.1380—4.1387 Undesignated center heading added 54363
4.1380 Added 54363
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4.1384 Added 54364
4.1385 Added 54364
4.1386 Added 54364
4.1387 Added 54364
7 Authority citation revised 5260
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7.3 (a)(6) added; (i) revised 5260
7.4 Heading and (a) revised; (c) added 5260
7.7 (b)(4) added 5260, 5261
7.13 (e) added 5260, 5261
7.19 Revised 5260, 5261
7.20 Added 5260, 5261
7.21 Added 5260, 5261
12 Authority citation revised 65499
12.700 Revised 65499
12.710 (a), (b) and (c) revised 65500

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964 Revoked by PLO 7091 50698
3862 Corrected by PLO 7093 52921
3953 Revoked in part by PLO 7105 63257
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5023 Revoked by PLO 7096 52922
7046 Corrected by PLO 7097 53362
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59 Authority citation revised 53597
59.1 Amended; interim 53597
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60 Authority citation revised 53598
60.2 (a) revised; interim 53598
Regulation at 59 FR 53598 comment period extended 63726
60.3 (f) added; interim 53598
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61.6 Revised 5585
61.11 (a), (b) and (c) revised 5585
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64 Authority citation revised 53599
64.3 (a)(1) table amended; (b) revised; interim 53599
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64.6 Table revised 53111
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65 Authority citation revised 53599
65.4 Table amended 52437, 64158
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65.14 Redesignated as 65.15; new 65.14 added; interim 53599
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65.15 Redesignated from 65.14; interim 53599
Regulation at 59 FR 53599 comment period extended 63726
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70 Authority citation revised 53600
70.1 Revised; interim 53600
Regulation at 59 FR 53600 comment period extended 63726
70.3 (a) revised; interim 53601
Regulation at 59 FR 53601 comment period extended 63726
70.4 Heading, (a) and (b) revised; interim 53601
Regulation at 59 FR 53601 comment period extended 63726
70.5 (c) revised; interim 53601
Regulation at 59 FR 53601 comment period extended 63726
75 Authority citation revised 53601
75.1 Revised; interim 53601
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75.10 Revised; interim 53601
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75.11 (a)(4), (5) and (7) revised; interim 53601
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75.13 Heading and (c) revised 53601
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60.7 (a), (b) introductory text, (2) introductory text, (i), (iii) and (c) revised 61555
60.9 (a)(1)(iii) revised 61555

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233.20 (a)(15) added 59378

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301.1 Amended 66249
302.70 (a) introductory text and (2) revised; (a)(5)(iii) through (viii) and (11) added 66249
303.4 (d) revised; (f) added 66250
303.5 (a) revised; (f), (g) and (h) added 66250
303.101 (a), (b), (c)(1), (3), (d)(2), (3), (4) and (e) revised; (d)(5) added 66251
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304.23 (d) revised 66251
305 Authority citation revised 66251
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305.10 (a) amended; (c)(2) revised 66252
305.12 (a) revised 66252
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305.57 Removed 66253
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402.2 Amended 65726
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402.26 (b) revised 65727
402.30 Amended 65727
402.34 Added 65727
402.40 Amended 65727
402.51 (a) redesignated as (a)(1); new (a)(1) amended; (a)(2) added; (c) introductory text revised 65727

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801.202 Amended 51387
801 Appendix A amended 51387

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10.201 (a) revised 4524
10.202 Heading revised; (i) added 4524
10.203 Table corrected 50964
10.205 (j) added 4524
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10.209 (g)(1) revised; (h) added 4525
10.305 Revised; interim 53757
10.306 Added; interim 53758
10.480 Revised; interim 53758
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12 Authority citation revised 4525
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12.02–9 (f) added 4525
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16.260 (b)(1) revised 4526
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69 Authority citation revised 50508
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160 Authority citation revised 2486
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160.077–6 Redesignated from 160.077–33; (b) introductory text and (c)(1) revised; (a)(3)(vi) added 2491
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160.077–13 Heading revised; (d) removed 2487
160.077–15 (b)(13) redesignated as (b)(14); heading, (a)(2)(ii), (b)(3), new (14), (c)(2)(ii) and (d)(3) revised; new (b)(13) and table added 2487
160.077–17 Heading and (b)(4) revised; (b)(8) through (11) added 2487
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501 Appendix A revised 67229
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503 Authority citation revised 59170
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552 Authority citation revised 63908
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22.929 (a) introductory text and (b) introductory text amended 59954
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22.947 (b) introductory amended 59954
22.949 (a)(2), (b) introductory text, (2), (c), (d)(1) and (3) revised 59956
22.953 (a)(2)(iii) amended 59954
24 Reconsideration petition 66254
24.204 (f) introductory text revised; (f)(3)(1) amended 55374
(d)(2)(ix) and (x) added; (f) introductory text, (1), (2) and (3) redesignated as (f)(1), (2), (3) and (4); new (f)(1) revised 61830
24.238 Revised 55374
24.307 Amended 59957
24.309 (b)(1) revised 50511
24.406 (b) amended 59957
24.409 (b) amended 59957
24.411 Redesignated from 99.411 and corrected 55210
24.413 (a) introductory text amended 59957
24.426 (a) amended 59957
24.427 (b) amended 59957
24.703 (f) revised; (h) added 53371
24.707 (b) amended 59957
24.709 Revised 63232
(b)(5)(i)(B), (C), (6)(i)(B) and (C) correctly revised 5335
24.711 Revised 63235
(b)(1) and (2) correctly revised 5335
24.712 (d) revised 63235
(d)(1) and (2) correctly revised 5335
24.720 Revised 63236
(f) and (h) correctly revised 5335
24.806 (b) amended 59957
24.809 (b) amended 59957
24.813 (a)(1) revised 53371
(a) introductory text amended 59957
24.816 Removed 53371
24.822 (b) revised 53371
24.826 (a) amended 59957
24.827 (b) amended 59957
24.829 (b) removed; (c) redesignated as (b) 53371
24.833 Added 53371
24.839 (a) and (d) revised 2-6-95 63238
25.110 (b) revised 5333
25.114 (c)(6), (18) and (26) revised; (c)(28) and (d) added 53326
25.115 (d) revised 53327
25.130 (b) revised 53327
25.133 (b) revised 53327
25.136 Added 53327
25.141 (a) and (f) revised 53328
25.143 Added 53328
25.201 Amended 53329
25.202 (a)(4) and (5) added 53329
25.203 (c)(2)(vii) revised; (j) and (k) added 53329
25.208 (c) revised 53329
25.213 Added 53329
25.278 Added 53331
25.279 Added 53331
43.61 (d) revised 5333
43.81 (b) amended 5333
52.120 (d) and (e) revised 53327
61 Memorandum opinion and order 4108
61.42 (a)(1) and (b)(1) amended; (c)(17) redesignated as (c)(18); new (c)(17) added 4569
63 Authority citation revised 63920
63.54 (d) revised; (e)(5), (6), (f) and (g) added 63921
64.1001 (1)(2) amended 5333
69 Memorandum opinion and order 4108
73 Report 53363
Technical correction 55374, 55375
Reconsideration petition 55594
Authority citation revised 62344
73.202 (b) table corrected 50169
(b) table amended 50169, 50850, 51130, 51518, 51866, 51868, 52441, 52442, 53602, 53603, 53604, 53760, 54533, 54534, 55375, 55376, 55594, 56411, 60077, 60078, 60916, 61285, 62614, 65727, 66748, 66749
Technical correction 51867, 51868, 51869
(b) table amended 3557, 5869
73.606 (b) table amended 63726, 64613
73.900 (Subpart G) Heading revised 67102
Added 67102
73.901—73.902 Undesignated center heading removed 67102
73.901 Removed 67102
73.902 Removed 67102
73.903—73.922 Undesignated center heading removed 67102
73.903 Removed 67102

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73.904 Removed 67102
73.905 Removed 67102
73.906 Removed 67102
73.907 Removed 67102
73.908 Removed 67102
73.909 Removed 67102
73.910 Removed 67102
73.912 Removed 67102
73.913 Removed 67102
73.914 Removed 67102
73.915 Removed 67102
73.916 Removed 67102
73.917 Removed 67102
73.918 Removed 67102
73.919 Removed 67102
73.920 Removed 67102
73.921 Removed 67102
73.922 Removed 67102
73.926—73.927 Undesignated center heading removed 67102
73.926 Removed 67102
73.927 Removed 67102
73.931—73.933 Undesignated center heading removed 67102
73.931 Removed 67102
73.932 Removed 67102
73.933 Removed 67102
73.935—73.937 Undesignated center heading removed 67102
73.935 Removed 67102
73.936 Removed 67102
73.937 Removed 67102
73.940—73.943 Undesignated center heading removed 67102
73.940 Removed 67102
73.941 Removed 67102
73.942 Removed 67102
73.943 Removed 67102
73.961—73.962 Undesignated center heading removed 67102
73.961 Removed 67102
73.962 Removed 67102
73.1020 (a)(1) through (18) revised (OMB number pending) 63051
73.1207 (b)(1) revised; (c)(4) added 67102
73.1250 (c) revised; (h) amended 67102
73.1650 Amended 5333
73.1820 (a)(1)(iii) revised 67103
73.3500 Amended (OMB number pending) 63051
73.3526 (g) added (OMB number pending) 62344
73.3527 (g) added (OMB number pending) 62344
73.3549 Heading revised; amended 67103
73.3555 (a)(3)(iii) and (e)(1)(i) revised 62613
73.4017 Revised 52086
73.4050 (b) amended; (c) added 52086
73.4097 Heading revised 67103
73.4107 (a) and (b) amended 52086
73.4163 (d) amended; (e) added 52087
73.4165 Revised 52087
73.4170 Revised 52087
73.4180 (c) added 52087
73.4185 Revised 52087
73.4190 Existing text designated as (a); (b) added 52087
73.4255 (b) amended 52087
73.4267 Existing text designated as (a); (b) and (c) added 52087
73.4280 Revised 52087
73 Index amended 67103
74 Heading revised 63052
74.15 (d) revised (OMB number pending) 63052
74.733 Note amended 63052
76 Memorandum, opinion and order 52087
Report 53363
Authority citation revised 62344
Petition denied 3099
76.3 Amended 67103
76.5 (qq) added 67103
76.7 (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) added 62344
76.55 (a)(2) and (e)(3) note revised; (a)(3)(iii) note, (b)(3) and (d)(6) note added 62344
76.56 (a)(1)(iii), (5) and (b)(1) revised 62344
76.57 (a) revised 62345
76.60 (c) added 62345
76.62 (a) revised 62345
76.64 (b)(2), (e), (f)(4) and (k) revised; (l), (m) and (n) added 62345
76.301 Revised 67103
76.305 (a)(1) added 67103
76.901 (d) added 62623
76.922 (d)(3)(iv)(F) added 53115
(d)(3)(x), (xi) and (e) revised (OMB number pending) 62623
(e)(7) revised 4865
76.924 (f)(5) and (6) redesignated as (f)(6) and (7); new (f)(5) added 53115
76.933 (e) and (f) added 53115

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76.934 Heading revised; (e) added 51871
76.964 Heading revised 62625
76.981 Revised 62625
76.986 Revised 62625
76.987 Added (OMB number pending) 62625
76.1002 (c)(3)(i) removed; (c)(3)(ii) and (iii) redesignated as (c)(3)(i) and (ii) and revised 66259
76.1003 (h) revised 66258
90 Undesignated center heading and note added 59959
Order on reconsideration 3773
90.5 (h) through (k) redesignated (i) through (l); new (h) added 59957
90.75 (a) introductory text revised; (c)(10) amended 59957
90.115 Revised 59957
90.119 Revised 59957
90.131 Introductory text added 59958
90.135 (c) revised 59958
90.145 (c) amended; (d) and (e) added 59958
90.149 (a) revised 59958
90.153 Introductory text amended; (a) through (d) added 59958
90.155 (a) revised 59958
90.159 (a), (b) and (c) amended 59959
90.160 Added 59959
90.161 Added 59959
90.162 Added 59960
90.163 Added 59961
90.164 Added 59961
90.165 Added 59961
90.166 Added 59962
90.167 Added 59963
90.168 Added 59963
90.169 Added 59964
90.179 (g) added 59965
90.403 (c) revised 59965
90.405 (b) revised 59965
90.415 (b) revised 59965
90.425 (e) added 59965
90.437 (b) and (c) revised 59965
90.449 Revised 59965
90.476 (c) added 59965
90.483 Introductory text revised 59966
90.494 (c) revised 59966
90.603 (c) revised 59966
90.607 (b) introductory text and (c) introductory text revised 59966
90.623 (c) introductory text revised 59966
90.627 (b) introductory text revised; (b)(2) amended; (b)(3) removed 59966
90.631 (a) amended; (b) and (c) revised 59966
90.633 (a) revised; (e) amended 59966
90.645 (c) revised 59966
90.703 (c) revised 59966
90.733 (a)(3) revised 59967
94.59 (b) and (f) revised 65503
94.61 (b) table amended 53331
97.5 Revised 54831
97.7 Revised 54832
97.9 Revised 54832
97.17 Revised 54832
97.19 Removed 54832
97.21 Revised 54832
97.23 Revised 54833
97.25 Revised 54833
97.27 Revised 54833
97.29 Added 54833
97.301 (a) through (f) introductory texts revised 54833
97.501 Introductory text, (d) and (e) revised; (f) added 54834
97.505 Revised 54834
97.507 (a) introductory text and (3) revised 54834
97.509 Revised 54834
97.511 Revised 54835
97.515 Removed 54835
97.517 Removed 54835
97.519 (b) revised; (d) added 54835
99.411 Redesignated as 24.411 55210

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular 90-24 64784
Federal Acquisition Circular 90-23 67010
Technical correction 5870
1.105 Revised (OMB numbers) 67065
1.601—1.603-4 (Subpart 1.6) Heading revised 67015
1.603-1 Revised 67015
1.603-3 Revised; interim 64787
3.104-4 (h)(5) added; interim 64787
4.703 (d) redesignated as (e); new (d) added 67015
4.800—4.805 (Subpart 4.8) Heading revised 67016
4.800 Amended; interim 64787
4.802 (f) added 67016
4.805 Introductory text redesignated as (a); heading and new (a) revised; (b) and (c) added; table amended 67016
5.303 (a) revised 67017
6.102 (d)(3) revised 53716
6.302-1 (b)(3) revised 67018
7.102 Amended; interim 64785
7.402 (b)(4) added 67026
7.404 Added 67026
8.001 (a) introductory text, (1)(iv) and (2)(i) revised 53716
(a)(1)(iv) and (2)(i) revised 67027
8.002 (b) revised 67018
(g) revised 67030
8.300—8.309 (Subpart 8.3) Removed 67018
8.401—8.408 (Subpart 8.4) Heading revised 53716
8.401 (a) and (b) amended 53716
8.402 (a) and (b) designation removed 53716
8.403 Removed 53716
8.403-1 Removed 53716
8.403-2 Removed 53716
8.403-3 Removed 53716
8.403-4 Removed 53716
8.404 Revised 53716
(c)(1) and (2) correctly revised 60319
8.404-1 Removed 53717
8.404-2 Removed 53717
8.405 Existing text removed 53717
8.405-1 Removed 53717
8.405-4 Introductory text amended 53717
8.405-5 (a)(3) amended 53717
8.406 Removed 53717
8.407 Removed 53717
8.408 Removed 53717
8.500—8.505 (Subpart 8.5) Added 67030
8.603 (a) revised 67027
8.700—8.715 (Subpart 8.7) Heading revised 67027
8.700 Revised 67027
8.701 Revised 67027
8.702 Revised 67028
8.703 Revised 67028
8.704 (a) introductory text, (1)(ii), (2)(i) and (c) amended 67028
8.705-1 (a) revised 67028
(b) amended 67029
8.705-2 Amended 67029
8.705-3 (a) and (c) amended 67029
8.705-4 (c) revised; (d) amended 67028
(a) and (b) amended 67029
8.706 (a) amended; (b)(1) revised 67028
(b)(2) amended 67029
8.707 (a) amended 67028
(d) and (e) amended 67029
8.708 (d) revised 67028
8.709 Revised 67028
8.710 Introductory text amended 67029
8.711 (a)(1), (2) and (b) revised 67029
8.712 (a) revised; (c) and (d) amended 67029
8.713 (a) and (b) amended 67029
8.714 Revised 67029
8.715 Amended 67029
8.802 (c) redesignated as (c)(1); (c)(2) added 67032

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9.107 Revised 67029
9.405 (a), (d)(2) and (3) amended 67033
9.405–1 (a) amended; (b) redesignated as (c); new (b) added; new (c) revised 67033
9.405–2 (a) amended 67033
9.406–1 (c) amended 67033
9.406–3 (e)(1)(iv) amended 67033
9.407–1 (d) amended 67033
11.002 Amended; interim 64785
13.101 Amended; interim 64787
13.105 (c) amended 53717
(a) revised; (d)(3) and (4) amended; interim 64787
13.106 (a) removed; (b) and (c) redesignated as (a) and (b); interim 64787
13.203–1 (f) amended 53717
13.502 (c) amended; interim 64787
13.601—13.603 (Subpart 13.6) Added; interim 64787
14.201–7 (a), (b)(1) and (c)(1) amended; (d) redesignated as (e); new (d) added; interim 62499
14.202–3 (b) amended 67033
14.214 Removed; interim 62499
15.408 (e) added 67033
15.804–2 (a)(1) and (2) revised; interim 62499
15.804–8 (g) added 67035
15.805–3 Regulation at 57 FR 39586 confirmed 67042
15.812–1 Regulation at 57 FR 39587 confirmed 67042
15.812–2 (a)(3) amended 67018
15.813 Removed; interim 62499
15.813–1 Removed; interim 62499
15.813–2 Removed; interim 62499
15.813–3 Removed; interim 62499
15.813–4 Removed; interim 62499
15.813–5 Removed; interim 62499
15.813–6 Removed; interim 62499
15.813–7 Removed; interim 62499
16.301–3 (a) and (b) amended; (c) removed; (d) redesignated as (c); interim 64785
16.403 (c) removed; (d) redesignated as (c); interim 64785
16.403–1 (c)(1) and (2) amended; (c)(3) removed; interim 64785
16.403–2 (c)(1) and (2) amended; (c)(3) removed; interim 64785
19.000 (a) introductory text amended; interim 64785
(b) revised 67036
19.502–4 (b) amended 67037
19.601 (d) added 67036
19.1001 Introductory text and (b) revised; interim 67036
19.1005 (a)(3) revised; interim 67036
19.1006 (b)(2) revised; interim 67037
22.401 (b) introductory text amended; (b)(3) removed 67038
22.406–3 (b)(1) amended; (b)(4) removed 67038
22.606–2 (b) revised 67039
(b) corrected 5870
22.1002–3 (a) revised 67039
22.1008–3 (e) revised 67040
22.1012–3 (d)(1) amended 67040
22.1012–5 Amended 67040
22.1021 Revised 67041
25.100 Revised; interim 64788
28.301 (a)(1) revised 67043
30 Regulation at 57 FR 39587 confirmed 67042
30.201–4 (b)(1) amended; (b)(2) and (d)(2) revised 67043
30.601 (b) amended 67043
30.602–1 (c)(1) amended 67043
30.602–2 (a)(4) amended 67043
30.602–3 (a) revised 67043
31.109 (a) revised 67045
31.201–1 Existing text designated as (a); new (a) amended; (b) added 67045
31.201–2 Regulation at 57 FR 39590 confirmed 67042
31.201–6 (c) revised 67045
31.203 Regulation at 57 FR 39590 confirmed 67042
31.205–6 Regulations at 57 FR 39590 and 39591 confirmed 67042
(o)(2) revised; (o)(3), (o)(4) and (o)(5) redesignated as (o)(4), (o)(5) and (o)(6); new (o)(3) added; new (o)(5) amended 67046
31.205–10 Regulation at 57 FR 39590 confirmed 67042
31.205–11 Regulation at 57 FR 39591 confirmed 67042
31.205–13 Revised; interim 3315
31.205–14 Revised; interim 3316
31.205–18 Regulation at 57 FR 39591 confirmed 67042
31.205–19 Regulation at 57 FR 39591 confirmed 67042
31.205–24 Regulation at 57 FR 39591 confirmed 67042
31.205–38 Regulation at 57 FR 39591 confirmed 67042

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32.402 (a) amended 67047
32.503–7 Introductory text amended 67043
34.000—34.005–6 (Subpart 34.0) Heading added; interim 67048
34.100–34.104 (Subpart 34.1) Added; interim 67048
35.010 (b) revised 67049
36.212 Added 67049
36.305 Removed 67050
36.522 Added 67050
36.523 Added 67050
37.101 Amended; interim 67051
37.103 (d) added; interim 67051
38.000 Revised 53717
38.101 (a) and (b) amended; (d) removed; (e) redesignated as (d) 53717
38.102 Removed 53717
38.102–1 Removed 53717
38.102–2 Removed 53717
38.102–3 Removed 53717
38.102–4 Removed 53717
38.201 (a) introductory text and (b) revised 53718
38.202 Removed 53718
38.203 Removed 53718
38.204 Removed 53718
38.205 Removed 53718
41 Added 67018
42.203 (a) revised 67043
42.302 (a)(11) introductory text and (iv) revised 67043
42.705–2 (b)(2)(ii) removed; (b)(2)(iii) through (vi) redesignated as (b)(2)(ii) through (v) 67052
44.201–1 (b) revised 67052
44.201–2 (c) revised; (d) removed 67052
44.204 (a)(3) revised 67053
44.205 Removed 67053
44.302 (b) revised 67054
44.304 (a) and (b) amended 67054
44.305–3 (a)(2) revised 67043
45.311 Added 67054
45.603 Introductory text amended 67054
47.104–4 Heading revised; (c) added 67055
52.207–5 Added 67026
52.208–3 Removed 67023
52.208–8 Added 67031
52.209–1 Amended 67056
52.214–27 Amended; interim 62499
52.214–28 Amended; interim 62499
52.214–29 Introductory text amended; interim 62500
52.215–23 Amended; interim 62500
52.215–24 Amended; interim 62500
52.215–25 Amended; interim 62500
52.215–32 Removed; interim 62500
52.215–37 Removed; interim 62500
52.215–39 Amended 67046
52.215–40 Added 67035
52.216–13 Amended 67052
52.219–1 Amended 67037
52.219–9 Amended 67057
52.222–6 Amended 67038
52.230–1 Regulation at 57 FR 39591 confirmed 67042
Amended 67043
52.230–2 Regulation at 57 FR 39592 confirmed 67042
52.230–3 Regulation at 57 FR 39592 confirmed 67042
Amended 67044
52.230–4 Regulation at 57 FR 39593 confirmed 67042
52.230–5 Regulation at 57 FR 39593 confirmed 67042
Amended 67044
52.230–6 Regulation at 57 FR 39591 confirmed 67042
52.234–1 Added; interim 67048
Corrected 5870
52.236–26 Added 67050
52.236–27 Added 67050
52.241 Added 67023
52.241–1 Added 67023
52.241–2 Added 67023
52.241–3 Added 67023
52.241–4 Added 67023
52.241–5 Added 67023
52.241–6 Added 67024
(b)(2) corrected 5870
52.241–7 Added 67024
52.241–8 Added 67024
52.241–9 Added 67024
52.241–10 Added 67025
52.241–11 Added 67025
52.241–12 Added 67025
52.241–13 Added 67025
52.244–1 Amended 67053
52.244–2 Amended 67053
52.247–51 Amended; introductory text revised 67058
52.247–67 Added 67055
53.213 (a) amended 67058
53.214 (g) revised 67033
53.215–1 (h) added 67034
(a) amended 67059

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53.228 (k) and (l) heading revised 67061
53.301–18 Revised 67059
53.301–1414 Revised 67061
53.301–1415 Revised 67063
53.302–17 Revised 67034

Chapter 2—Department of Defense (Parts 200—299)

206.102 (Subpart 206.1) Added; interim 2888
209.101 Revised 51132
Regulation at 58 FR 28464 confirmed 51132
209.104–1 (g)(i) heading revised; (g)(iii) added 51131
Regulation at 58 FR 28464 confirmed; (g)(ii)(A) revised; (g)(ii)(C) amended 51132
209.104–70 Heading and (a) revised; (c) and (d) added 51131
Regulation at 58 FR 28464 confirmed 51132
209.106–2 Regulation at 58 FR 28464 confirmed 51132
209.406–2 Regulation at 58 FR 28464 confirmed 51132
209.406–4 Regulation at 58 FR 28464 confirmed 51132
213.000 Revised 50851
213.101 Revised 50851
213.404 (a) revised 50851
213.505–3 Revised 50851
216.307 Added 53116
225.9 Regulation at 58 FR 28467 confirmed 51132
225.702 Regulation at 58 FR 28467 confirmed 51132
Revised 51133
225.770–1 Regulation at 58 FR 28467 confirmed 51132
225.7002–2 Regulation at 58 FR 28467 confirmed 51132
225.7002–4 Regulation at 58 FR 28467 confirmed 51132
225.7003–2 Regulation at 58 FR 28467 confirmed 51132
225.7005 Regulation at 58 FR 28467 confirmed 51132
225.7014–1 Regulation at 58 FR 28467 confirmed 51132
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225.7019–3 Regulation at 58 FR 28468 confirmed 51132
225.7019–4 Regulation at 58 FR 28468 confirmed 51132
225.7102 Regulation at 58 FR 28468 confirmed 51132
225.7103 Regulation at 58 FR 28468 confirmed 51132
225.7104 Regulation at 58 FR 28468 confirmed 51132
225.7200—225.7203 (Subpart 225.72) Regulation at 58 FR 28469 confirmed 51132
225.7303–2 (a) revised 50511
226.7100 Revised 5870
226.7104 Added 5870
231.205–6 (a)(2) introductory text added; interim 2331
231.205–70 Added; interim 1748
231.303 (3) added 2331
231.603 Introductory text, (1) through (10), (11) introductory text, (i), (ii) and (12) through (15) redesignated as (1) introductory text, (i) through (x), (xi) introductory text, (xi)(A), (B) and (xii) through (xv); new (2) added; interim 2331
231.703 Revised 2331
235 Authority citation revised 4570
235.006 (a) and (b)(iv) added; interim 4570

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235.7000—235.7006 (Subpart 235.70) Added 52443
237.104 (b)(ii) revised; interim 2888
242.705–3 Added 53116
242.1202 Added; interim 1749
242.1204 Added; interim 1749
247.270–5 Revised; interim 50852
247.270–6 Revised; interim 50852
252.203–7001 Regulation at 58 FR 28471 confirmed 51132
252.209–7001 Revised 51131
Regulation at 58 FR 28471 confirmed 51132
252.209–7002 Regulation at 58 FR 28471 confirmed 51132
Amended; (a)(1), (2), (3) and (b) revised 51133
252.209–7003 Added 51131
252.209–7004 Added 51131
252.216–7002 Added 53116
252.219–7003 Regulation at 58 FR 28472 confirmed 51132
252.219–7007 Regulation at 58 FR 28472 confirmed 51132
252.219–7009 Regulation at 58 FR 28472 confirmed 51132
252.222–7001 Regulation at 58 FR 28472 confirmed 51132
252.223–7006 Regulation at 58 FR 28472 confirmed 51132
252.225–7016 Regulation at 58 FR 28473 confirmed 51132
252.225–7025 Regulation at 58 FR 28473 confirmed 51132
252.225–7026 Regulation at 58 FR 28474 confirmed 51132
252.225–7033 Regulation at 58 FR 28474 confirmed 51132
252.227–7013 Regulation at 58 FR 28474 confirmed 51132
252.231–7001 Regulation at 58 FR 28474 confirmed 51132
252.233–7000 Regulation at 58 FR 28475 confirmed 51132
252.237–7020 Regulation at 58 FR 28475 confirmed 51132
252.237–7021 Regulation at 58 FR 28475 confirmed 51132

Chapter 5—General Services Administration (Parts 500—599)

501.105 Revised (OMB numbers) 63260
525.203 Revised 64856
525.205 Revised 64857
525.402 (a) revised 64857
538.203–7 (d) revised 63260
538.203–71 Heading revised; (e) added 52451
538.272 Added 52451
552.225–8 Revised 64857
552.225–9 Revised 64857
552.225–72 Amended 64858
552.225–75 Revised 64858
552.238–75 Revised 63260
552.238–76 Added 52452
552.270–4 Amended 52253
552.270–21 Amended 52253
552.270–25 Amended 52253
552.270–28 Amended 52253
552.270–31 Revised 52253
552.270–41 Added 52253
570.702–22 Revised 52254
570.702–32 Added 52254

Chapter 6—Department of State (Parts 600—699)

600.000 Amended 66750
601 Authority citation revised 66750
601.101—601.105 (Subpart 601.1) Added 66750
601.201–1 Amended 66750
601.301 Revised 66751
601.302 (a) amended 66751
601.303 (c) revised 66751
601.403 Amended 66751
601.404 Amended 66751
601.405 Amended 66751
601.470 Amended 66751
601.471 (a) introductory text amended; (a)(1) and (b) revised 66751
601.570 Revised 66751
601.602–1 (a) and (b) amended 66751
601.602–3 (b)(1) and (c) amended; (b)(2) revised 66751
601.602–3–70 Revised 66751
601.603–3 Revised 66752
601.603–70 Revised 66752
601.670 Revised 66753
602 Authority citation revised 66750
602.101–70 Amended 66753
602.201—602.201–70 (Subpart 602.2) Removed 66753
603 Authority citation revised 66750
603.104—603.104–11 (Subpart 603.1) Added 66753
603.203 Amended 66754
603.303 (c) amended 66754
603.601 Added 66754
603.670 Added 66754

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603.704—603.705 (Subpart 603.7) Added 66754
604 Authority citation revised 66750
604.202 Amended 66754
604.7002 (a) and (b) revised; (c) amended 66754
605 Authority citation revised 66750
605.202–70 (a), (c)(1) and (2) introductory text amended; (b), (c)(2)(i), (ii) and (d) revised; (e) added 66754
605.207 (a)(1) added 66755
605.303 (Subpart 605.3) Added 66755
605.403 Added 66755
605.502 Revised 66755
606 Authority citation revised 66750
606.101–70 Amended 66755
606.302–1 Added 66755
606.302–4 Added 66755
606.302–6 Added 66755
606.303–1 Amended 66755
606.304 (a)(2) and (d) added 66755
606.304–70 Revised 66756
606.370 Added 66756
606.501 Revised 66756
606.570 Added 66756
608 Authority citation revised 66750
608.402—608.402–70 (Subpart 608.4) Removed 66756
609 Authority citation revised 66750
609.202 Amended 66756
609.404 Amended 66756
609.405 Revised 66756
609.405–70 (c) removed; (a) and (b) redesignated as (b) and (c); (a) introductory text redesignated as (a); new (a) revised 66756
610 Added 66756
613 Authority citation revised 66750
613.6–70 Added 66758
613.103–70 (a) and (b) designation removed 66757
613.502–2 Revised 66758
613.505–1 Added 66757
613.505–70 Added 66758
613.507–70 Amended 66758
614 Authority citation revised 66750
614.201–7–70 (a)(1) and (d) removed; (a)(2) redesignated as (a); (b) amended; (c) revised 66758
614.404–1 Amended 66758
615 Authority citation revised 66750
615.106–70 Amended 66758
615.403—615.413–2 (Subpart 615.4) Added 66758
615.504—615.506 (Subpart 615.5) Added 66758
615.604 Added 66759
615.607 Amended 66759
615.608 Amended 66759
616 Authority citation revised 66750
616.102–70 Revised 66759
616.203–4 Amended 66759
616.301–3 Amended 66759
616.306 Amended 66759
616.603–2 Amended 66759
617 Authority citation revised 66750
617.102–2 Amended 66759
617.102–3 Added 66759
617.201–70 Amended 66759
617.204 Added 66759
617.207 Removed 66759
617.207–70 Removed 66759
617.502 Amended 66759
617.504–70 Added 66759
619 Authority citation revised 66750
Nomenclature change 66759
619.201 (c) and (d)(5) amended 66759
619.501 Added 66759
619.506 Added 66759
619.705–1 Added 66760
619.705–3 Amended 66760
619.705–6–70 (b) amended 66760
619.708–70 Added 66760
619.801 Revised 66760
619.810 Added 66760
619.812 Added 66760
619.870 (b) amended 66760
622 Authority citation revised 66750
622.401 Added 66760
622.404–6 (b)(6) added 66760
622.406–3 Added 66760
623 Authority citation revised 66750
623.302–70 (Subpart 623.3) Added 66760
623.470—623.480 (Subpart 623.4) Added 66760
625 Authority citation revised 66750
625.102 Revised 66762
625.108 Amended 66762
625.202 Revised 66762
625.203 Added 66762
625.304 Amended 66762
625.901 Revised 66762
625.1003 (Subpart 625.10) Removed 66762
627 Added 66763
628 Authority citation revised 66750
628.101—628.106–6 (Subpart 628.1) Added 66763

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628.203—628.203–7 (Subpart 628.2) Added 66763
628.305—628.307–70 (Subpart 628.3) Added 66763
631 Added 66764
632 Authority citation revised 66750
632.111–632.111–70 (Subpart 632.1) Removed 66764
632.402 Existing text designated as (c)(1)(iii); (b) added 66764
632.407 Added 66764
632.703–3 (Subpart 632.7) Added 66764
632.803 (Subpart 632.8) Added 66764
632.908 Added 66764
633 Authority citation revised 66750
633.104 Introductory text removed; (a)(1) amended 66764
633.105 Introductory text removed; (a) and (c) amended 66764
633.214–70 Added 66764
634 Authority citation revised 66750
634.001 (b) and (c) amended 66766
634.001–70 Amended 66766
634.003 (a) revised; (b) amended 66766
634.005 Added 66766
634.005–6 Added 66766
636 Authority citation revised 66750
636.101–70 Amended 66766
636.602 Revised 66766
637 Authority citation revised 66750
637.104–70 (f) amended 66766
637.106 Added 66766
637.110 Revised 66766
637.204—637.270 (Subpart 637.2) Removed 66766
639 Added 66766
642 Authority citation revised 66750
642.270 Revised 66766
642.271 Amended 66766
643 Authority citation revised 66750
643.102–70 (b) revised 66767
647 Added 66767
649 Added 66767
651 Added 66767
652 Authority citation revised 66750
652.202–70 Removed 66767
652.203–70 Added 66767
652.203–71 Added 66767
652.206–70 Added 66767
652.214–70 Removed; new 652.214–70 redesignated from 652.214–71 and amended 66767
652.214–71 Redesignated as 652.214–70; new 652.214–71 redesignated from 652.214–72 and amended 66767
652.214–72 Redesignated as 652.214–71 66767
652.216–70 Amended 66768
652.216–71 Added 66768
652.219–70 Added 66768
652.223–70 Added 66768
652.223–71 Added 66768
652.223–72 Added 66768
652.223–73 Added 66769
652.223–74 Added 66769
652.223–75 Added 66769
652.223–76 Added 66769
652.223–77 Added 66769
652.223–78 Added 66769
652.228–71 Added 66770
652.228–72 Added 66770
652.228–73 Added 66770
652.228–74 Added 66771
652.228–75 Added 66771
652.228–76 Added 66771
652.228–77 Added 66771
652.232–70 Revised 66771
652.232–71 Revised 66772
652.237–70 Revised 66772
652.237–71 Added 66772
652.237–72 Added 66772
652.242–70 Amended 66772
652.242–72 Amended 66772
653 Authority citation revised 66750
653.213–70 Revised 66773
653.217 Added 66773
653.217–70 Added 66773
653.219 Added 66773
653.219–70 Added 66773
653.302 Removed 66773
670 (Subchapter I) Removed 66773

Chapter 9—Department of Energy (Parts 900—999)

909.500 Amended 66264
909.570–3 Amended 66264
909.570–4 (a) amended; (b)(4) and (7) revised 66264
909.570–5 Revised 66264
909.570–6 Revised 66265
909.570–7 Revised 66265
909.570–8 Revised 66265
909.570–9 (a) introductory text revised; (a)(3) amended 66265
909.570–10 Revised 66266
909.570–12 Revised 66266
909.570–14 (b)(4), (5), (7), (8) and (12) revised; (b)(6), (9) and (11) amended 66266

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909.570-15 (a) amended 66266
917.502—917.505-71 (Subpart 917.5) Removed 64790
952.209-70 Revised 66266
952.209-71 Removed 66267
952.209-72 Heading revised; amended 66267
970.5204-36 Heading revised; amended 66267

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1652.215-70 Heading revised; amended; interim 62346

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (a) amended 66268
1801.270 Amended 66268
1801.271 (a)(1) amended; (a)(2) revised 66268
1801.272-1 Amended 66268
1801.603-2 (d)(3) revised 66268
1803.104-11 (b) amended 66268
1803.804 (a) and (b) amended 66268
1804.601 Amended 66268
1804.602 Amended 66268
1804.671-4 (k) and (zz)(3) amended 66268
1804.7101 (a) amended 66269
1805.202 Regulation at 58 FR 69246 confirmed 66268
1806.303-270 Amended 66269
1807.7102 Revised 66269
1807.7103-1 Revised 66269
1807.7204 (b) amended 66269
1808.302 (a) amended 66269
1808.405 (a) and (b) redesignated from 1808.405-1; new (a) amended 66269
1808.405-1 Heading removed; (a) and (b) redesignated as 1808.405 (a) and (b) 66269
1812.303-70 (e) amended 66269
1815.804-3 (a)(4) and (d) amended 66269
1815.805-5 (e) amended 66269
1819.505-70 Regulation at 59 FR 38131 confirmed 66268
1819.708-70 (b) amended 66269
1822.406-13 Amended 66269
1822.807 Amended 66269
1825.7200 Amended 66270
1828.001 Removed 65729
1828.371 Revised 65729
1829.203 (a) amended 66270
1833.103 (a) revised; (c) amended 66270
1835.016-70 (b)(6) removed 66270
1837.101—1837.170 (Subpart 1837.1) Revised 60917
1837.202-71 Amended 66270
1842.101 Amended 66270
1842.1004 Amended 66270
1842.1203 (a) introductory text and (c)(1) amended 66270
1842.1203-70 (c) amended 66270
1844.305 Amended 66270
1852.103-70 Amended 66270
1852.204-70 Amended 66270
1852.228-72 Revised 65730
1852.228-76 Revised 65730
1852.228-78 Revised 65731
1852.237-71 Revised 60917
1853.103 Amended 66270
1853.108 Amended 66270
1870.103 Appendix I amended 66271
1870.303 Appendix I amended 66270
1871 Revised 59378

Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9903.102 Amended; OMB number 55753
9903.201-1 (a) revised; (b)(10) removed 55753
9903.201-2 (a) amended; (c) added 55753
9903.201-3 Amended; introductory heading redesignated as (a) heading; introductory text and (a) through (d) redesignated as (a)(1) introductory text and (i) through (iv); (a)(2) added 55754
9903.201-4 (a)(1) and (2) revised; (e) added 55755
9903.201-6 (a) revised 55756
9903.201-7 Added 55756
9903.202-1 (f) added 55756
9903.202-5 Revised 55757
9903.202-6 Added 55757
9903.202-10 Added 55757

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9903.301 Existing text designated as (a); (b) added 55770
9905 Added 55770

Proposed Rules:

1—99 (Ch. I) 2282, 2302, 2370, 3492
3 ..... 61738, 61740
4 66408
9 65623
14 66408
15 66408
18 53706
22 ..... 51399, 60686, 65623
25 66408
28 65623
31 ..... 51399, 60686, 64268, 64542, 65460
32 3988
33 2630
37 64268
39 2630
42 ..... 51399, 60686, 64268, 65460, 65464 2630
44 65623
45 ..... 52277 2370
49 61734
50 ..... 66408 2630
52 ..... 52277, 61734, 61738, 61740, 64268, 65460, 65464, 65623, 66408 ..... 2370, 2630
53 5830
204 66884
210 ..... 66287 4878
215 ..... 66287 4878
219 ..... 64185 4144
231 2924
242 ..... 50539, 62704
252 ..... 64185, 66287 ..... 4144, 4878
253 66884
900—999 (Ch. IX) 56421
912 4397
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917 64791
923 2727
931 54421
942 54421
951 54421
952 ..... 54421 4397
970 ..... 52505, 54421 ..... 2727, 4397
1516 5888
1552 5888
1815 51154
1819 51154
1827 51936
1852 ..... 51154, 51936
1870 51154
5452 ..... 64185 4144
6101 ..... 61861 3948
9903 60948

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.23 (l) revised 2891
1.45 (a)(10) revised 2891
1.54 (b)(11) added 2891
1.59 (b)(2) and (j) removed; (b)(3) through (9) and (k) through (q) redesignated as (b)(2) through (8) and (j) through (p); new (b)(4)(ii) removed 2891
1.70 Added 2891

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

171.7 (a)(3) table amended 55172, 64744, 67405
171.8 Amended 67406
171.11 (d)(5) amended 67406
171.12 (b) introductory text amended 67406
171.14 Regulation at 59 FR 48763 eff. date confirmed as 9-22-94 53116
Revised 67406
172.101 (c)(3), (13) and (k)(1) through (5) revised; (g) amended 67407
(c)(11) introductory text and (12)(iii) amended 67408
Table revised 67409
Appendix B amended 67485
172.102 (c)(1), (2) and (3) amended 67485
172.203 (k)(3) amended; (l)(3) and (o) added 67486
(m)(1) amended 67487
172.204 (a)(2) amended 67487

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172.320 (b) amended 67488
172.325 (c) amended 67489
172.400a (c) and (d) added 67490
172.402 (a)(1) revised; (a)(2) amended; (f) and (g) added 67490
172.411 (d) amended 67490
172.416 (b) amended 67490
172.430 (b) amended 67490
172.540 (b) amended 67490
172.547 (b) amended 67490
172.554 (b) amended 67490
173.2a (b) table amended 67490
173.9 (e) added 67490
173.21 (f)(2) amended 67490
173.22 (a)(2)(iii) and (iv) redesignated as (a)(2)(iv) and (v); new (a)(2)(iii) added; (a)(3)(i) and (4) revised 67491
173.24 (c)(1) and (e)(4)(ii) amended; (d) revised 67491
173.25 (a) introductory text revised; (b) added 67491
173.28 (b)(4) revised; (b)(7) and (c)(4) added 67491
(c)(1)(i) and (3) amended 67492
173.33 (d)(3) amended; (h) added 55172
(c)(5) amended 67492
173.52 (b) Table 1 amended 67492
173.59 Amended 67492
173.60 (b)(15) added 67492
173.62 (a), (c) table and (d) revised; (b) table amended 67492
(e) amended 67506
173.115 Heading and (b) introductory text revised 67506
173.120 (a) revised; (b)(2) amended 67506
(c)(1)(i)(A), (B) and (ii)(A) amended 67507
173.121 (b)(1)(ii) amended; (b)(1)(iv) table and (2)(i) revised 67507
173.124 Heading and (a)(2) revised 67507
173.128 (a) introductory text, (c)(2) and (3) amended; (b)(7) revised; (c)(4) removed; (d) redesignated as (e); new (d) added 67508
173.136 (a) revised 67508
173.137 Introductory text amended; (a), (b) and (c) revised 67508
173.150 Heading and (d) revised; (a), (b) introductory text and (3) amended 67508
173.152 (b)(3) revised 67508
173.158 (f)(3) added 67509
173.164 (b), (c) and (d) redesignated as (c), (d) and (e); new (c) introductory text revised; (a)(1), (2) and new (c)(1) amended; new (b) added 67509
173.166 Heading, (b) and (d)(1) revised; (a), (c), (d)(2) and (f) amended 67509
173.171 (a) amended 67509
173.173 Heading and (b) introductory text revised 67509
173.185 Revised 67509
173.189 Added 67511
173.196 (f) amended 67511
173.201 (b) and (c) amended 67518
173.202 (b) and (c) amended 67518
173.203 (b) and (c) amended 67518
173.211 (c) amended 67511
(b) and (c) amended 67518
173.212 (c) amended 67511
(b) and (c) amended 67518
173.213 (c) amended 67511
(b) and (c) amended 67518
173.224 Revised 67511
173.225 (e)(2) amended 55172
(a) amended; (b) table and (e)(3)(ii) revised; (c)(5) added 67511
173.226 (c)(1) amended 67517
173.304 (a)(2) table amended 67517
173.306 (a)(3)(v) revised; (a)(4) added 67517
173.315 (o)(1) revised; (o)(2) amended 55172
173 Appendix A removed; Appendixes E and F amended; Appendix H added 67517
174.61 Heading revised; (a) amended; (c) removed 64744
174.63 Revised 64744
175.10 (a)(4) introductory text and (13) revised; (a)(12) introductory text amended; (a)(17) removed; (a)(26) added 67518
175.33 (a)(1) introductory text, (6) and (7) amended 67518
176.27 (c) added 67518
176.76 (i) added 67519
177.841 (e)(3) amended 67519
178.2 (a) revised; (e) added 67519
178.3 (a) introductory text and (b) revised; (a)(2) and (4) amended; (a)(5) added 67519

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178.337-1 (a)(3), (e)(1) and (2) amended 55172
178.337-9 (b)(7)(i) removed; (b)(7)(ii) and (iii) redesignated as (b)(7)(i) and (ii) 55173
178.337-11 (a)(2) introductory text revised 55173
178.338-9 (c)(2) revised 55173
178.338-11 (c) introductory text amended 55173
178.345-1 (c) amended; (i)(2) revised 55173
178.345-3 (b) and (c) revised 55173
(d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1), (3) and new (d) amended 55174
178.345-5 (f) added 55175
178.345-6 (a) and (b) amended 55175
178.345-8 (a)(3), (b) introductory text, (1), (c) introductory text, (1) and (d)(3) revised; (e) added 55175
178.345-10 (b)(3)(i) and (ii) revised 55175
178.345-13 (c) heading added 55176
178.345-14 (d) amended 55176
178.345-15 (b)(2) amended; (e) added 55176
178.346-1 (d)(9) and (10) added 55176
178.346-2 (a) designation removed; amended 55176
178.346-10 (b)(1) and (2) amended; (b)(3) added; (c)(1) and (d)(1) revised 55176
178.346-13 (c) revised 55176
178.502 (a) introductory text, (1) introductory text and (3) amended 67519
178.503 (d) redesignated as (e); (a) introductory text, (9), (10), (c) and new (e) illustration revised; (a)(11) and new (d) added 67519
(e)(2) amended 67521
178.508 (b)(2) amended 67521
178.512 (a)(1), (2) and (b)(2) revised; (a)(3) and (4) removed 67521
178.513 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added 67521
178.516 (b)(1) and (2) amended; (b)(3)(iii), (4) and (5) redesignated as (b)(4), (5) and (6) 67521
178.521 (b)(2) amended 67521
178.522 (a)(9), (b)(4) and (5) amended; (a)(10) and (b)(3)(viii) revised; (a)(11) and (b)(3)(ix) added 67521
178.601 (k) redesignated as (l); (b), (g)(2)(i), (vi) and new (l) revised; new (k) added 67521
(g)(2) introductory text, (5)(i) and (ii) amended 67522
178.602 (c) amended 67522
178.603 (a) introductory text and (c) amended; (f)(1) revised 67522
178.604 (d) amended 67522
178.606 (c)(1) amended 67522
178 Appendix C added 67522
180.403 Amended 55177
180.405 (f)(1)(iii) and (4) introductory text amended; (h) revised 55177
180.407 (c) table, (i)(4)(viii) and (ix) amended; (e)(1) and (h)(2) revised; (i)(5), (6) and (7) redesignated as (i)(6), (7) and (8); (i)(4)(x) and new (5) added 55177
(d)(1)(ii), (e)(2)(ii) and (g)(1)(iv) amended; (e)(4) removed; (e)(5) redesignated as (e)(4) 55178
180.413 Revised 55178
199 Authority citation revised 62227, 62239, 62246
199.3 Amended 62227
199.11 (c) revised 62227
199.225 (a)(2), (b)(4)(ii) and (iii) redesignated as (a)(2)(i), (b)(4)(iii) and (iv); (a)(2)(ii) and new (b)(4)(ii) added 62239
(d)(1) revised 62246

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

219 Authority citation revised 60563, 62228, 62239
Announcement 67641
219.5 Amended 62228
219.209 Corrected 50699
219.300 (d) added 62239
219.302 (f) removed 62239
219.303 Revised 60563
219.501 (e) removed; (a) through (d) redesignated as (b) through (e); new (a) added; new (b) through new (e) revised 60564
219.602 Added 62228

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TITLE 49 Chapter II—Con.

219.801 Corrected 50699

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Nomenclature changes 60323
382 Authority citation revised 60323
Authority citation revised 2032
382.107 Amended 60323, 62229
382.115 (a) revised 2032
382.303 (b)(2) redesignated as (b)(4); new (b)(2) and (3) added 62240
382.305 Revised 62229
382.307 (e)(2) and (3) redesignated as (e)(4) and (5); new (e)(2) and new (3) added 62240
387.3 (c) revised 63923
387.5 Amended 63923
387.7 (d)(3) revised 63923
387.9 Revised 63923
387.15 Amended 63924
387.17 Revised 63924
390 Authority citation revised 60323, 67554
390.3 (b) through (f) redesignated as (c) through (g); new (b) added 67554
390.5 Amended 60323
390.50—390.60 (Subpart C) Added 67554
391 Determination 59386
Authority citation revised 60323
391.11 (b)(11) removed; (b)(12) redesignated as (b)(11) 60323
391.35 Removed 60323
391.37 Removed 60323
391.51 (b)(2), (c)(3), (4) and (d)(2) amended; (c)(5) and (d)(3) removed; (d)(4) redesignated as (d)(3) 60323
391.61 Revised 60323
391.67 Revised 60324
391.68 Revised 60324
391.69 Revised 60324
391.71 (a) amended 60324
Heading, (a)(1) and (b)(3) revised 63924
391.73 Revised 60324
391.83 (c) revised 56
392 Authority citation revised 60324, 63924
392.9a Removed 60324
392.10 (a)(2) through (5) and (b)(1) revised 63924
392.12 Removed 60324
392.18 Removed 60324
392.21 Removed 60324
392.25 Revised 63925
392.30 Removed 60324
392.31 Removed 60324
392.32 Removed 60324
392.40 Removed 60324
392.41 Removed 60324
392.42 (Subpart E) Heading revised 60324
392.61 Removed 60324
392.62 Removed 60324
392.65 Removed 60324
392.69 Removed 60324
395 Authority citation revised 60324
395.2 Amended 60324
396 Authority citation revised 60324
396.3 (b)(4) removed; (b)(5) redesignated as (b)(4); (b)(3) amended 60324
397 Authority citation revised 51830, 63925
397.5 Revised 63925
397.7 Revised 63925
397.9 Removed 51830
397.13 Revised 63925
397.19 Revised 63925
397.61—397.77 (Subpart C) Added 51830
397.201 (a) revised; (c) amended 51834
397.203 (a)(3) revised 51834
350—399 (Subchapter B) Appendix H added 67556
Chapter III Appendixes A and C removed 60324

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

501.7 (a)(2) and (3) revised; (a)(4) added 64163
501.8 (f) introductory text and (g) heading revised 64163
541 Authority citation revised 64168
541.3 Revised; eff. 10-25-95 64168
541.4 Revised; eff. 10-25-95 64168
541.5 Revised; eff. 10-25-95 64168
541 Appendix A heading and Appendix B revised; eff. 10-25-95 64169
555 Authority citation revised 1750
555.9 (c)(1) revised 1750

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567 Authority citation revised 64170
567.4 (k) introductory text amended 64170
571 Technical correction 51229
571.108 Amended; eff. 11-1-95 54839
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571.109 Corrected 51229
571.121 Amended 2896
571.131 Regulation at 59 FR 26761 confirmed 5337
571.208 Amended 60918
571.210 Amended 3775
571.303 Amended 2543
571.304 Amended 66776
572 Authority citation revised 2897
572.41 (a) introductory text, (3), (4), (5) and (c) revised 52091
572.42 (a) introductory text revised 52091
572.43 (a) revised 52091
572.44 (b)(1) and (c) revised 52091
572.40—572.44 (Subpart F) Appendix A added 52092
572.74 (c)(2) revised 2897
591 Authority citation revised 52097
591.4 Introductory text revised 52097
591.6 (c) revised 52097
591.10 (b) and (c) revised 52097
591 Appendix A amended; Appendix B added 52097
592 Authority citation revised 52098
592.1 Revised 52098
592.4 Introductory text revised 52098
592.6 (g)(2)(i) revised 52098
592.7 (c) amended 52098
592.8 (g) revised 52098

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

604.9 (b)(8)(iv) revised 51134
653 Authority citation revised 62230
653.7 Amended 62230
653.47 Revised 62230
654 Authority citation revised 62240
654.33 (b) redesignated as (b)(1); (b)(2) added 62240
654.37 (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added 62240

Chapter VIII—National Transportation Safety Board (Parts 800—899)

821 Authority citation revised 59046
821.1 Amended 59046
Regulation at 58 FR 11380 confirmed 59054
821.2 Regulation at 58 FR 11380 confirmed; revised 59054
821.3 Added 59046
821.6 (d) revised 59046
821.7 (a) and (b) revised 59046
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821.9 Revised 59047
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821.12 Revised 59047
821.14 (a) revised 59047
821.19 (b) revised; (d) added 59047
821.20 (b) and (c) revised 59048
821.24 (a), (d) and (e) revised 59048
821.30 (a) revised 59048
Regulation at 58 FR 11381 confirmed 59054
821.31 (a) revised 59048
821.35 (a) revised 59048
821.37 (a) revised 59048
821.38 Revised 59048
821.42 (c) removed; (d) redesignated as (c) 59049
821.43 Revised 59049
821.47 Revised 59049
821.48 (e) revised; (f) removed; (g) redesignated as (f) 59049
821.49 Revised 59049
821.50 (a) and (b) revised 59049
821.54—821.57 (Subpart I) Heading revised 59049
821.54 (a) revised 59049
821.55 (a), (b) and (c) revised; (f) added 59049
821.56 (a) revised 59050
821.57 (b) and (c) revised 59050
821.63 (b) revised 59050
821.64 Revised 59050
Regulation at 58 FR 11381 confirmed 59054
826.2 Regulation at 58 FR 11381 confirmed 59054
826.3 Regulation at 58 FR 11381 confirmed; (a) revised 59054

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002.1 (d), (e)(1) and (f)(6) table revised 67643

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TITLE 49 Chapter X—Con.

1002.2 Table corrected 52372
(c) and (d)(1) revised 63727
(f) revised 67643
(f) table amended 2544
(f) table corrected 4477
1011 Authority citation revised 65505
1011.6 (e) revised 2544
1011.16 (a)(1)(iv) added 65505
1039.11 (a) table amended 51134, 59663, 63925
1130 Authority citation revised 2544
1130.2 (f) amended; (g) added 2544
1160 Revised 63728
1161 Removed 63730
1162 Removed 63730
1163 Removed 63730
1166.3 (c) amended 63730
1249.11 Corrected; CFR correction 52099

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TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

15.11 (b) and (c) amended 62255
15.31—15.33 (Subpart D) Added 62262
17.11 (h) table amended 50805, 60264, 60278, 60334, 63264, 64623, 64866, 65276, 65512
(h) table amended; eff. 8-18-94 to 5-26-95 54840
(h) table amended 2903, 5267, 5273
17.12 (h) table amended 50857, 56333, 56350, 59177, 60568, 62352, 64623
(h) table amended 61, 3561
17.84 (i) added 60264
(i) revised 60279
17.95 (e) amended 65276
20 Authority citation revised 50425
20.20 (b) and (c) revised; (d) and (e) added 53336
20.21 (j) revised 64
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20.103 Corrected 59967
20.104 Seasonal hunting adjustments 50426
Table corrected 55531
20.105 Seasonal hunting adjustments 50427
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20.106 Seasonal hunting adjustments 50442
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20.107 Seasonal hunting adjustments 50442
20.109 Seasonal hunting adjustments 50443
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32.20 Amended 55183
32.22 Amended 55183
32.23 Amended 55184
32.24 Amended 55184
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32.28 Amended 55185
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32.67 Amended 55188
32.68 Amended 55197
32.70 Amended 55188
32.71 Amended 55188
100.25 (k)(1)(vii)(B) table, (18)(iii)(B) table and (20)(iii)(C) table amended 51858
(k)(23)(iii)(C) table and (26)(iii)(B) table amended 51859

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Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers) 66272, 66780
215 Authority citation revised 50375
215.1 Revised; interim 50375
215.11 (Subpart B) Revised; interim 50375
216 Embargoes 65974
216.2 Amended; interim 50375
216.3 Amended; interim 50375
Amended 63062
216.6 (a), (b), (d) and (e) amended; interim 50375
216.7 (a) and (b) amended; interim 50375
216.8 Amended; interim 50375
216.12 (b)(1)(i) amended; interim 50375
216.13 (b) amended; interim 50375
(c) amended; interim 50376
216.14 Heading, (a) introductory text and (b)(1) amended; interim 50376
216.15 Introductory text amended; interim 50376
216.16 Added; interim 50376
216.21 Amended; interim 50376
216.23 (d) amended; interim 50376
216.24 (b)(2)(vii), (viii), (4), (c)(8), (d)(2)(i)(D), (vi), (e)(7) introductory text, (ii) and (g) amended; interim 50376
(d)(2)(i)(A)(*2*) and (*3*) revised 52923
(e)(5)(xiv) revised 63062
216.25 (a) introductory text amended; interim 50376
216.26 (b), (c) and (d) revised; interim 50376
216.31 (a)(10) and (c) amended; interim 50376
216.40 Redesignated as 216.50; interim 50376
216.45 Added; interim 50376
216.50 Redesignated from 216.40; interim 50376
216.70 (a) introductory text and (3) amended; interim 50376
216.72 Amended; interim 50376
216.73 (b)(4) amended; interim 50376

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222.23 Regulation at 59 FR 42352 eff. date corrected to 8–18–94 to 4–17–95 3948
222.31 Revised 3775
227.4 Regulation at 59 FR 42352 eff. date corrected to 8–18–94 to 4–17–95 3948
227.21 Regulation at 59 FR 42353 eff. date corrected to 8–18–94 to 4–17–95 3948
285 Temporary regulations 51871, 54396, 65279
Harvest quotas 55821

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

301 Inseason adjustments 51871, 53117

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

611 Fishery management measures 5762, 64346, 65975
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611.1—611.16 (Subpart A) Appendix A amended 66790
611.62 Removed 66790
625 Harvest quotas 50512, 55822, 60568
Harvest quotas 1757, 2905
630 Temporary regulations 2032
630.7 (q) revised; (y) added 55064
630.50—630.52 (Subpart D) Added 55064
638 Temporary regulations 54841
638.1 Revised 66780
638.2 Amended 66780
638.3 (a) amended; (c) added 66780
638.4 Revised 66780
638.5 Regulations at 59 FR 32939 and 47563 superseded 66780
Revised 66782
638.6 Redesignated as 638.8 66780
Added 66782
638.7 Revised 66782
638.8 Redesignated as 638.9; new 638.8 redesignated from 638.6 66780
638.9 Redesignated from 638.8 66780
638.20—638.28 . (Subpart B) Revised 66783
638.28 Regulations at 59 FR 32939 and 47563 superseded 66783
640.2 Amended 53119
640.4 (a), (b) heading, (1), (2)(vi) and (viii) introductory text revised; (d) amended 53119
640.6 (a), (b) heading and (1) introductory text revised; (b)(2) amended 53119
640.7 (a) revised; (u) added 53119
640.20 (c)(1) amended 53119
640.21 (d) revised 53119
640.22 (b)(3)(i) revised 53120
640.23 (c)(2) revised; (d) amended 53120
641.4 (o)(3) added; eff. 1–1–95 through 2–23–95 67650
641.7 (x) added; eff. 1–1–95 through 2–23–95 67650
641.21 (a)(1) revised 67650
641.24 (b)(1) revised 67651
641.30 Added; eff. 1–1–95 through 2–23–95 67651
642 Temporary regulations 66276
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642.7 (s) amended 53120
642.25 (a)(2) and (b)(2) amended 53120
642.27 (b) amended 53120
642.28 (a)(1) and (2) amended; (b)(1) and (c) revised 53121
646 Heading revised 66272
646.1 Revised 66272
646.2 Amended 66272
646.4 (e) through (m) redesignated as (f) through (n); (a)(3), (b)(2)(vii)(B), (C), (d) and new (j) revised; new (f), (g)(1), (i)(1), (2) and (n) amended; (a)(4), (5) and new (e) added 66272
646.5 (b) and (c)(1) amended 66273
646.7 Revised 66273
(zz) added; interim; eff. 1–18–95 through 4–18–95 3563
646.21 (a)(1)(iv), (v) and (vi) redesignated as (a)(1)(v), (vii) and (viii); (a)(1)(i) and (iii) revised; new (a)(1)(iv) and new (vi) added 66275
(b)(3) added; interim; eff. 1–18–95 through 4–18–95 3563
646.22 (d), (e) and (f) removed; (g) redesignated as (d); new (d)(1)(i) and (ii) introductory text revised; new (d)(1)(iii) amended; new (e), new (f), new (g) and (h) added 66275
646.23 (a)(2) and (3) removed; (a)(4) redesignated as (a)(3); new (a)(2) added; (c)(2) introductory text revised 66275
646.26 Redesignated as 646.27 66275
646.27 Redesignated as 646.28; new 646.27 redesignated from 646.26 66275
646.28 Redesignated as 646.29; new 646.28 redesignated from 646.27 66275
Amended 66276
646.29 Redesignated from 646.28 66275
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650.22 (a) amended 59969
650.27 Revised 59969
651.9 (a)(13), (e)(14) through (21), (28), (29) and (31) stayed; (a)(15) and (e)(36) through (51) added; eff. 12–12–94 through 3–12–95 63929
(e)(36) revised; interim; eff. 1–10–95 through 3–12–95 3103
651.20 (a)(2) through (5), (b)(2), (c)(2), (3), (4), (d)(2), (3), (e)(1)(iv), (2) and (f)(4) stayed; (a)(6) through (10), (b)(3), (c)(5) through (8), (d)(4), (5), (6), (e)(1)(v), (vi), (3), (f)(5) and (6) added; eff. 12–12–94through 3–12–95 63929
(a)(7)(i), (8) introductory text, (9), (c)(6)(ii), (7) introductory text and (d)(5)(ii) revised; interim; eff. 1–10–95 through 3–12–95 3103
651.21 (a), (b) and (c) stayed; (d) added; eff. 12–12–94 through 3–12–95 63932
(d)(1)(ii) and (2)(ii)(B) revised; (d)(1)(iii) and (3)(ii)(C) added; interim; eff. 1–10–95 through 3–12–95 3104
651.22 (d)(2)(i) and (ii) stayed; (d)(2)(iv) and (v) added; eff. 12–12–94 through 3–12–95 63932
651.27 (a) introductory text and (1) through (4) stayed; (a)(5) and (6) added; eff. 12–12–94 through 3–12–95 63932
651.32 (a) stayed; (c) added; eff. 12–12–94 through 3–12–95 63933
651 Figure 3 stayed; Figure 5 added; eff. 12–12–94 through 3–12–95 63933
652 Temporary regulations 66487
658.1 Revised 66790
658.2 Revised 66790
658.3 (a) amended; (c) added 66791
658.4 Revised 66791
658.5 (a) introductory text, (4) and (b) revised 66791
658.6 Revised 66791
658.7 Revised 66791
658.20—658.28 (Subpart B) Revised 66791
658.21 (a) stayed; (d) added; eff. 10–19–94 through 12–31–94 53605
658.22 (a) Figure 1 redesignated as Appendix A Figure 1 66791
658.23 (b) Figure 3 redesignated as Appendix A Figure 3 66791
658.25 Corrected 5461
658 Appendix A Figure 1 redesignated from 658.22 (a) Figure 1 and Figure 3 redesignated from 658.23 (b) Figure 3 66791
Appendix A Figure 2 added 66792
663 Temporary regulations 50857, 51872
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663.45 Added; eff. 12–23–94 through 3–30–95 67653
672 Temporary regulations 50170, 51134, 51872, 51873, 52099, 52923, 53937, 55066, 59969
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672.2 Amended 50701
672.7 (k) revised 50170
672.20 (i)(3) revised; (i)(4) removed; (i)(5), (6) and (7) redesignated as (i)(4), (5) and (6); (j) added 50701
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675 Temporary regulations 50858, 51873, 51874, 52452, 53121, 55822, 60569, 63063, 66276
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Fishery management measures 5762
675.2 Amended 50704
675.20 (j)(3) revised; (j)(4) removed; (j)(5), (6) and (7) redesignated as (j)(4), (5) and (6); (k) added 50704
675.22 (h) added; interim; eff. 1-20-95 through 4-1-95 4869
675.23 (e) revised 64868
675.24 (h) added 4113
676 Fishery management measures 64346, 65975
Fishery management measures 5762
676.13 Regulation at 59 FR 46135 eff. date corrected to 1-1-95 51874
676.16 (i) and (n) removed 51138
Regulation at 59 FR 46135 eff. date corrected to 1-1-95 51874
676.20 (a) revised; (f) introductory text amended 51138
676.21 Revised 51138
676.22 (g) revised 51139
676.24 Regulation at 59 FR 43503 eff. date corrected to 1-1-95 51874
677 Specifications 61556
677.2 Amended 2345
677.4 (a) revised 2346
677.7 (e) revised 2346
677.10 (a)(1)(i)(C) revised 2346
(a)(1)(i)(G) and (H) added; (c)(3) revised; interim; eff. 1-20-95 through 4-1-95 4870
677 Figure 1 revised 2346
678 Temporary regulations 51388, 55066
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678.4 (a)(1) through (4) and (c) redesignated as (a)(1)(i) through (iv) and (l); (a)(1) heading, new (a)(2) and new (c) added; new (a)(1)(i), (d), (e)(1), (g), (h), and new (l) revised; new (a)(1)(iv) amended 52456
678.5 (a)(2) amended; (b) and (c) redesignated as (c) and (d); new (b) added 52456
678.7 (a), (c), (k) through (q) and (s) through (v) revised; (d) amended; (y) and (z) added 52457
678.21 Redesignated as 678.22; new 678.21 added 52457
678.22 Redesignated as 678.23; new 678.22 redesignated from 678.21; (c)(1) revised 52457
678.23 Redesignated as 678.24; new 678.23 redesignated from 678.22 52457
678.24 Redesignated as 678.25; new 678.24 redesignated from 678.23 52457
678.25 Redesignated as 678.26; new 678.25 redesignated from 678.24; (a) introductory text and (2) amended 52457
678.26 Redesignated as 678.27; new 678.26 redesignated from 678.25; (a) and (b) revised; (c) amended; (d) added 52457
678.27 Redesignated as 678.28; new 678.27 redesignated from 678.26 52457
678.28 Redesignated from 678.27 52457
681.2 Amended 56005
681.5 (a), (b) heading, (c) and (d) revised; (e) added 56005
681.7 (b)(5) revised; (b)(14) added 56006
681.11 Added 56006
681.25 Revised 56006
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Additions to Table I, January 1995

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January 1995. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1995. Additions during 1994 are in the December 1994 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

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This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January 1995.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1995. Removals during 1994 are in the December 1994 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

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List of CFR Sections Affected

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 60 FR for 1995) and the page number. Example: 24727 cite as 60 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1995.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1]Jan. 1, 1994
4	(869–026–00003–4)	5.50	Jan. 1, 1995
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Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1994. The CFR volume issued as of April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1994. The CFR volume issued as of July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued as of January 1, 1993 should be retained.

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Yearly subscription (without FR Index and LSA)	494.00	
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Federal Register Document Drafting Handbook	5.50	1991
Guide to Record Retention Requirements in the Code of Federal Regulations	20.00	Jan. 1, 1994
List of CFR Sections Affected, 1973-1985 (Titles 28 through 41) Vol. III	28.00	1990
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LSA (List of CFR Sections Affected):		
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Yearly subscription	24.00	
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317.602 Heading revised; (a) amended 6386
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Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.306 Regulation at 59 FR 55573 confirmed 8926
911 Budget of expenses 8524
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920.131 Added 7432
925 Budget of expenses 3725
929.152 Revised 2
932 Budget of expenses 4532
944.106 Regulation at 59 FR 55573 confirmed 8926
959 Budget of expenses 10480
966 Budget of expenses 3
966.161 (a) and (c) revised 5560
967 Stayed; eff. 1-12-95 through 12-31-97 2874
979 Budget of expenses 5561
982 Marketing percentages 5564
985 Marketing percentages 6394, 8526
989 Budget of expenses 4534
997.51 Regulation at 59 FR 39421 confirmed 6395
997.100 Regulation at 59 FR 39421 confirmed; undesignated center heading and section removed 6395

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1001.50 (b) revised 6607
1001.51 Heading revised; (a) designation and (b) removed 6607
1001.54 Revised 6607
1002.19 Removed 6607
1002.50 (c) revised 6607
1002.51 Heading revised; (a) designation and (b) removed 6607
1002.56 Introductory text and (b) revised; (a) introductory text removed; (a)(1) and (2) through (6) redesignated as (a) and (c) through (g) 6607
1004.21 Removed 6607
1004.50 (b) revised 6607
1004.51 Heading revised; (a) designation and (b) removed 6607
1004.53 Introductory text and (b) revised; (a) introductory text removed; (a)(1), (2) and (3) redesignated as (a), (c) and (d) 6607
1005.7 (d)(3) stayed in part; eff. 3-1-95 through 2-28-96 7434
1005.13 (d)(2) stayed in part; eff. 1-1-95 through 2-28-95 320
1005.20 Removed 6608
1005.50 (b) revised 6608
1005.52 Removed 6608
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1006.19 Removed 6608
1006.50 (b) revised 6608
1006.51a Removed 6608
1006.53 Revised 6608
1007.7 (e)(3) and (4) stayed in part; eff. 3-1-95 through 2-28-96 7434
1007.20 Removed 6608
1007.50 (b) revised 6608
1007.51a Removed 6608
1007.53 Revised 6608
1011.7 (b) amended; eff. 3-1-95 through 7-31-95 6395
(d)(3) stayed in part; eff. 3-1-95 through 2-28-96 7434
1011.20 Removed 6608
1011.50 (b) revised 6608
1011.51a Removed 6608
1011.53 Revised 6608
1012.19 Removed 6608
1012.50 (b) revised 6608
1012.51a Removed 6608
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1013.19 Removed 6608
1013.50 (b) revised 6608
1013.51a Removed 6608
1013.53 Revised 6608
1030.20 Removed 6608
1030.50 (b) revised 6608
1030.51a Removed 6608
1030.53 Revised 6608
1032.7 (b) stayed in part; eff. 12-1-94 through 1-31-95 321
(c) stayed in part; eff. 1-1-95 through 1-31-95 6006
1032.20 Removed 6609
1082.50 (b) revised 6609
1032.51a Removed 6609
1032.53 Revised 6609
1033.20 Removed 6609
1033.50 (b) revised 6609

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1033.51 Heading revised; (a) designation and (b) removed 6609
1033.53 Introductory text and (b) revised; (a) introductory text removed; (a)(1) and (2) through (5) redesignated as (a) and (c) through (f) 6609
1036.20 Removed 6609
1036.50 (b) revised 6609
1036.51a Removed 6609
1036.53 Introductory text and (b) revised; (a) introductory text removed; (a)(1) and (2) through (5) redesignated as (a) and (c) through (f) 6609
1040.21 Removed 6609
1040.50 (b) revised 6609
1040.51a Removed 6609
1040.53 Revised 6609
1044.20 Removed 6609
1044.22 (i)(1)(i) revised; (i)(3) removed 6609
1044.50 (b) revised 6609
1044.51 Heading revised; (a) designation and (b) removed 6609
1046.2 Stayed in part; eff. 3-1-95 through 2-28-96 7434
1046.20 Removed 6609
1046.50 (b) revised 6609
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1049.20 Removed 6610
1049.50 (b) revised 6610
1049.51a Removed 6610
1049.53 Introductory text and (b) revised; (a) introductory text removed; (a)(1) and (2) through (5) redesignated as (a) and (c) through (f) 6610
1050.13 (d)(2) stayed in part 7435
1050.20 Removed 6610
1050.50 (b) revised 6610
1050.51a Removed 6610
1050.53 Revised 6610
1064.20 Removed 6610
1064.50 (b) revised 6610
1064.51a Removed 6610
1064.53 Revised 6610
1065.20 Removed 6610
1065.50 (b) revised 6610
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1065.53 Revised 6610
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1068.53 Revised 6610
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1075.50 (b) revised 6610
1075.51a Heading revised; (a) designation and (b) removed 6610
1075.53 Revised 6610
1076.20 Removed 6610
1076.50 (b) revised 6610
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1124.51 Heading revised; (a) designation and (b) removed; new undesignated text amended 6612
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1124.75 (a)(2)(i) amended 6612
1126.20 Removed 6612
1126.50 (b) revised 6612
1126.51a Removed 6612
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1131.20 Removed 6612
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1134.53 Revised 6612
1135.19 Revised 6612

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1135.50 (b) revised; (e) and (f)(2) amended 6612
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1135.53 (a) revised; (b) removed; (c) redesignated as (b) 6612
1135.74 (b)(2)(i) and (ii) amended 6612
1137.19 Removed 6612
1137.50 (b) revised 6612
1137.51a Removed 6612
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1138.20 Removed 6612
1138.50 (b) revised 6613
1138.52 Removed 6613
1138.54 Revised 6613
1139.19 Removed 6613
1139.50 (b) revised 6613
1139.51 Heading revised; (a) designation and (b) removed 6613
1139.53 (a) revised; (b) removed; (c) redesignated as (b) 6613

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1210.252 (b)(3) amended 10797
1210.302 Amended 10797
1210.305 Revised 10797
1210.306 Amended 10797
1210.314 Added 10797
1210.315 Added 10797
1210.320 (a) revised; (d), (e) and (f) added 10797
1210.321 (a), (b), (c) and (d) redesignated as (b), (c), (e) and (f); new (a) and new (d) added; new (c) amended; (f)(1) removed; (f)(2) and (3) redesignated as (f)(1) and (2); new (b) introductory text, (1), (4), (e), (f) introductory text and (1) revi 10798
1210.322 (a), (b) and (d) revised 10798
1210.325 (a) revised 10798
1210.326 (d), (g), (i), (k), (m) and (n) amended 10798
1210.340 (b) amended 10798
1210.341 (d) through (i) redesignated as (e) through (j); (a), (b) and new (e) revised; new (d) added; new (f), new (g) and new (h) amended 10798
1210.342 Existing text designated as (a); (b), (c) and (d) added 10799
1210.343 Removed 10799
1210.350 Introductory text and (a) through (d) redesignated as (a) introductory text, and (1) through (4); new (b) and new (c) added 10799
1210.351 Amended 10799
1210.352 (a)(1) amended 10799
1210.362 Amended 10799
1210.363 (b) revised 10799
1210.364 (d) amended 10799
1210.400—1210.403 Undesignated center heading added 10799
1210.401 (b) revised 10799
1210.402 (a) revised; (b) amended 10799
1210.404 Undesignated center heading and section added 10800
1210.405 Redesignated from 1210.503; undesignated center heading added; (a) revised 10800
1210.503 Redesignated as 1210.405 10800
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1210.515 (a) revised; (b) redesignated as (c); new (b) added 10800
1210.518 (a) and (b) revised; (c)(1), (2)(viii) and (d)(1) amended 10801
1210.519 Introductory text, (a) and (b) amended 10801
1210.520 Revised 10801
1210.521 Revised 10801
1210.530 Introductory text amended 10801
1210.531 Amended 10801
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1212.2 Amended 7438
1212.5 Amended 7438
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1212.30 (a) amended; (b) revised; (c) and concluding text removed 7438
1212.31 (k) existing and concluding text redesignated as (k)(1) and (2); heading, (a) and new (k)(1) revised 7438
1212.32 Amended 7438
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1212.40 (o) removed; (p), (q) and (r) redesignated as (o), (p) and (q) 7439
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1212.65 (c)(2)(viii) amended 7439
1212.67 (a) introductory text revised 7439
1212.68 (a) amended; (d) added 7439
1212.69 Amended 7439
1212.84 (a) amended 7439
1240.50 Regulation at 59 FR 22493 confirmed 9609
1240.114 Regulation at 59 FR 22493 confirmed 9609

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

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1421.1 Regulation at 59 FR 34347 confirmed 1709
1421.3 Regulation at 59 FR 34348 confirmed 1709
1421.4 Regulation at 59 FR 34348 confirmed 1709
1421.5 Regulation at 59 FR 34348 confirmed 1709
1421.7 Regulation at 59 FR 34348 confirmed 1709
1421.8 Regulation at 59 FR 34348 confirmed 1709
1421.9 Regulation at 59 FR 34348 confirmed 1709
1421.11 Regulation at 59 FR 34349 confirmed 1709
1421.14 Regulation at 59 FR 34349 confirmed 1709
1421.16 Regulation at 59 FR 34349 confirmed 1709
1421.17 Regulation at 59 FR 34349 confirmed 1709
1421.18 Regulation at 59 FR 34350 confirmed 1709
1421.19 Regulation at 59 FR 34350 confirmed 1709
1421.20 Regulation at 59 FR 34350 confirmed 1709
1421.22 Regulation at 59 FR 34350 confirmed 1709

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1421.29 Regulation at 59 FR 34351 confirmed 1709
1421.202 Regulation at 59 FR 34351 confirmed 1709
1421.205 Regulation at 59 FR 34351 confirmed 1709
1421.206 Regulation at 59 FR 34351 confirmed 1709
1421.207 Regulation at 59 FR 34351 confirmed 1709
1421.208 Regulation at 59 FR 34352 confirmed 1709
1421.210 Regulation at 59 FR 34352 confirmed 1709
1421.211 Regulation at 59 FR 34353 confirmed 1709
1421.215 Regulation at 59 FR 34353 confirmed 1709
1421.320 Regulation at 59 FR 34353 confirmed 1709
1421.321 Regulation at 59 FR 34353 confirmed 1709
1421.323 Regulation at 59 FR 34353 confirmed 1709
1421.324 Regulation at 59 FR 34353 confirmed 1709
1425 Authority citation revised 2680
1425.3 (i) and (j) redesignated as (j) and (k); (d), new (j) and new (k) revised; new (i) added 2680
1425.4 (a), (b)(7) and (c) introductory text revised; (e) and (f) added 2681
1425.6 (b)(2) revised 2681
1425.7 (a) revised 2681
1425.8 (b)(2) and (e) revised 2681
1425.9 Introductory text, (d) and (g) revised 2681
1425.10 (b)(3) revised 2682
1425.11 (c)(3) revised 2682
1425.14 (c) revised 2682
1425.16 Redesignated as 1425.17; new 1425.16 added 2682
1425.17 Redesignated as 1425.18; new 1425.17 redesignated from 1425.16; (a)(2), (b)(1)(i), (ii), (iii), (2) and (c)(2) revised; (c)(5) added 2682
1425.18 Redesignated as 1425.19; new 1425.18 redesignated from 1425.17 2682
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1425.19 Redesignated as 1425.20; new 1425.19 redesignated from 1425.18 2682
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1425.22 Redesignated as 1425.24; new 1425.22 redesignated from 1425.21 2682
1425.23 Redesignated as 1425.25 2682
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1425.24 Redesignated from 1425.22 2682
1425.25 Redesignated from 1425.23 2682
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1427.3 Regulation at 59 FR 39252 confirmed 1710
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1427.171 Regulation at 59 FR 39254 confirmed 1710
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1434.26 Regulation at 59 FR 23792 confirmed 322
1434.27 Regulation at 59 FR 23792 confirmed 322
1435.4 (c) redesignated as (e); new (c) and (d) added 5837
1435.500—1435.529 (Subpart) Regulation at 58 FR 36124 confirmed 7700
1435.500 (a)(1) and (2) revised 7700
1435.502 Amended 7700
1435.507 (a) introductory text 7700
1435.510 (d) revised 7700
1435.513 (f) revised; (g) removed; (h) redesignated as (g) 7700
1435.514 (a) revised 7701
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1435.521 (c)(1) revised 7701
1435.528 (a) and (b) revised 7701
1435.530 Regulation at 58 FR 41995 confirmed 7701
1485 Revised 6363

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1710.2 Amended 3730
1710.7 (d)(1)(vi) removed 3730
1710.106 (d) redesignated as (e); new (d) and (f) added 3730
1710.110 (c)(1)(ii) revised; (c)(3) added 3730
1710.112 (b)(10) added 3731
1710.115 (b) revised 3731
1710.116 Removed 3731
1710.251 (b) revised 3731
1710.252 (b) revised 3731
1710.400—1710.407 (Subpart I) Added 3731
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1714.6 (a)(2) revised 3734
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1717.860 (e) removed 3735

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1719 Removed 3735
1726 Revised 10155
1726.37 OMB number 10159
1751 Revised 8174
1755.97 Table amended 5097
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1755.200 Added 5097
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1755.390 OMB number 1711
1755.397 Introductory text amended 1711
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1755.900 OMB number 1711
1773.2 Corrected 2874
1785.17 (Subpart A) Removed 3735

Chapter XVIII—Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1944.151—1944.200 (Subpart D) Exhibits A and A–1 amended 4070
1944.158 (i) revised 4070

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240.13d–2 (c) revised; note amended 67764
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249.308 Form 8–K amended 67765
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250.44 (b) revised 21928
250.49 (c) amended 21928
250.50 Removed 21928
250.52 (c) amended 21928
250.62 (d)(2) and (3) amended 21928
250.63 Amended 21928
250.65 (b)(2) revised 21928
250.71 Heading and (b) revised 21928
250.111 Removed 67766
259.5b Form U5B amended 67766
259.5s Form U5S amended 21928, 67766
259.101 Form U–1 amended 67766
259.212a Form U–12(I)–A amended 21929
259.212b Form U–12(I)–B amended 21929
259.313 Form U–13–60 amended 36262
259.603 Form SE amended 67766
259.604 Form TH amended 67767
260.0–12 Removed 67766
269.8 Form SE amended 67766
269.10 Form TH amended 67767
270.2a19–2 (a)(4) corrected 15501
270.6e–3(T) Amended 43467
270.20a–1 (a) amended; (c) removed 52700
270.20a–2 Removed 52700

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TITLE 17 Chapter II—Con.

270.20a–3 Removed 52700
270.20a–4 Removed 52700
270.30d–1 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 52700
274 Authority citation revised 43467, 52701
274.11 Authority citation removed 52701
274.11A Form N–1A amended 43468
Form N–1A corrected 48799
Form N–1A amended; authority citation removed 52701
274.11a–1 Form N–2 amended 43468, 52702
Authority citation removed 52701
274.11b Form N–3 amended 43468, 52702, 52703
Form N–3 corrected 48799
274.11c Form N–4 amended 43468
Form N–4 corrected 48799
274.51 Authority citation removed 52701
274.101 Authority citation removed 52701
274.403 Form SE amended 67766
274.404 Form TH amended 67767
275 Authority citation revised 21661
275.204–1 (b)(1) revised 21661
275.204–3 (f) redesignated as (g); new (f) and (g)(4) added 21661
279.1 Form ADV amended 21662
Form ADV corrected 27659

Chapter IV—Department of the Treasury (Parts 400—499)

402 Authority citation revised 53731
402.2d (j) amended 53731
405 Authority citation revised 53731
405.3 (a)(4) and (5) removed; (a)(6), (7), (8) and (c)(5) redesignated as (a)(4), (5), (6) and (c)(6); heading, new (a)(5) and (c)(6) revised; new (c)(5) and (7) added (OMB number) 53731
(c)(5) corrected 55910

Proposed Rules:

1 ..... 22145, 25351, 27312, 30885, 37189, 66822
..... 7925
3 ..... 37446, 43620
4 ..... 25351, 27312
30 ..... 25351, 27312
35 ..... 54139, 64359
36 ..... 54139, 64359
150 ..... 25351, 27312
200—399 (Ch. II) 61843
210 ..... 16576, 21810, 21814, 42187
228 ..... 36264, 42449, 46304, 55385
..... 10724
229 ..... 21814, 36264, 42449, 46304, 46365, 55385
..... 10724
230 ..... 16576, 36264, 46304, 55385, 65641
..... 10724
232 36264
239 ..... 16576, 36264, 42187, 46365, 55385
..... 10724
240 ..... 19685, 21681, 22773, 29393, 29398, 33236, 34781, 36264, 42449, 46365, 48579, 50866, 52723, 55014, 55385, 63652, 63662
..... 7718, 10724
249 ..... 19685, 21810, 21814, 21821, 29393, 29398, 36264, 42449, 46304
..... 4040, 7718
250 ..... 36264, 67248
259 ..... 36264, 48183
260 36264
269 36264
270 ..... 16576, 28286, 36264, 39311
..... 7146
274 ..... 16576, 36264, 42187, 55385
..... 7146
275 9750
279 9750
402 32155
404 ..... 32155, 58792
..... 4576
405 58792
..... 4576
449 66496
..... 5602

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Authority citation revised 4852
Policy statement 10015
2.4 (d) removed; (e) through (h) redesignated as (d) through (g) 4852
2.22 Added 55039
2.23 Added 66718

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2.24 Added 347
2.25 Added; interim 65938
11 Appendix A revised 54815
34 Authority citation revised 4852
34.1 (c)(1) and (2) revised 4852
34.2 Revised 4853
34.3 Heading and introductory text revised; (e)(5) and (6) amended; (e)(7), (f) and (g) removed; (h) through (n) redesignated as (f) through (l) 4853
34.4 (a) revised; (c), (g) and (h) removed; (d) and (e) redesignated as (c) and (d); new (c) and new (d) revised; (e) added 4853
34.10 Revised 4853
35.10 (c) added 40240
35.13 (a)(2)(ii) and (iii) redesignated as (a)(2)(iii) and (iv); (a)(2)(i), new (iii) and (d)(1) introductory text revised; new (a)(2)(ii) added; (h)(24) amended 4853
35.23 Added; interim 65938
41 Authority citation revised 4854
41.3 Amended 4854
41.7 Revised 4854
131—141 (Subchapter D) Heading revised 4855
131.50 Revised 4855
131.80 Added 4855
141 FERC Form No. 715 amended 15335
141.1 (b) heading and (2) revised 1718
154 Order on rehearing 54128
Order on rehearing 2011
154.42 Removed 40243
154.63 (b)(1)(v) added 40240
154.91 Removed 40243
154.92 Removed 40243
154.93 Removed 40243
154.94 Removed 40243
154.95 Removed 40243
154.96 Removed 40243
154.97 Removed 40243
154.98 Removed 40243
154.99 Removed 40243
154.100 Removed 40243
154.101 Removed 40243
154.102 Removed 40243
154.103 Removed 40243
154.105 Removed 40243
154.106 Removed 40243
154.107 Removed 40243
154.108 Removed 40243
154.109 Removed 40243
154.109a Removed 40243
154.109b Removed 40243
154.110 Removed 40243
157 Order on rehearing 54128
Order on rehearing 2011
Technical correction 7721
157.23—157.41 (Subpart B) Removed 40243
157.208 (d) Table I revised 6658
157.215 (a) Table II revised 6658
161 Rehearing denied 15336
161.1 Revised 32897, 52904
161.2 Revised 32897
(c) revised 52904
161.3 (h) removed; (i) through (l) redesignated as (h) through (k); new (h) and new (i) revised 32898
(e), (h) and (k) revised 52904
250 Rehearing denied 15336
250.16 (a)(3), (c)(1) and (d)(1) revised 32885
Revised 32898
(a) revised 52904
270 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
271 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
272 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
273 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
274 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
275 Removed 40243
Order on rehearing 54128
Order on rehearing 2011
284 Order 16537, 23624, 49574
Notice 19637, 22753, 29716, 38901
Rehearing denied 35462, 65707
Order 1718, 9775
284.286 (c) revised 32899
292 Authority citation revised 4856
292.101 (b)(1) revised 4856
292.202 (b), (d), (e) and (h) revised; (s) added 4857
292.204 (a)(1) and (b)(2) revised 4857
292.205 (a)(1), (2)(i) introductory text and (b)(1) revised 4857

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292.207 (a), (b) and (d) revised 4858
292.601 (c) revised 40470
294 Authority citation revised 4859
294.101 (b)(5) and (f) added 4859
341.4 (f) revised 40256
342 Authority citation revised 59146
342.2 (a) revised 59146
342.3 (e) revised 40256
(b) revised 59146
342.4 (a) revised 40256, 59146
343.3 (a) amended 40256
346 Added 59146
347 Added 59147
347.1 (e) introductory text and (5)(vi) revised 358
348 Added 59160
Order on rehearing 358
375 Authority citation revised 1718
375.302 (t) and (u) added 53351
375.303 (l) revised 1718
381.302 (a) amended 25563
381.303 (a) amended 25563
381.304 (a) amended 25563
381.305 (a) amended 25563
381.403 Amended 25563
381.404 Amended 25563
381.505 (a) amended 25563
381.601 Amended 25563
381.801 Amended 25563
382 Authority citation revised 4859
382.102 (h) through (k) revised; (l), (m) and (n) removed; (o) through (s) redesignated as (l) through (p) 4859
382.201 (a) and (b) revised; (b)(4)(ii) amended 4860
385 Authority citation revised 63247
385.702 (b) removed; (c) redesignated as (b) 4860
385.708 (b)(1), (2)(i), (3), (4), (c) heading, (1), (2) and (d) amended 4860
385.711 Heading and (a)(1)(i) amended 4860
385.712 Heading and (a) amended 4860
385.713 (a)(2)(i), (iv) and (3) amended 4860
385.717 Removed 4860
385.2011 Heading, (c)(3), (e)(1), (2) and (4) revised; (a)(6) added 1718
385.2013 Added 63247

Chapter III—Delaware River Basin Commission (Parts 400—499)

420 Authority citation revised 64571
420.31 (d) and (f) revised 64571

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1310 Revised 8196
1312 Authority citation revised 5259
1312.1 (a) amended 5259, 5260
1312.3 (a)(6) added; (i) revised 5259, 5260
1312.4 Heading and (a) revised; (c) added 5259, 5260
1312.7 (b)(4) added 5259, 5261
1312.13 (e) added 5259, 5261
1312.19 Revised 5259, 5261
1312.20 Added 5259, 5261
1312.21 Added 5259, 5261

Proposed Rules:

1—399 (Ch. I) 54851, 56421
35 ..... 28297, 35274, 41739
154 3111
158 3141
201 3141
250 3141
260 3141
284 ..... 15672, 15877, 27251, 40493, 60340
..... 3141, 3783
342 40493
346 40493
347 40493
348 39985
357 40493
385 ..... 40493, 59715, 60926
420 39991
803 29563
..... 7925
804 29563
..... 7925
805 29563
..... 7925
1310 53948

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended 23795
4.2 (a) amended 23795
4.2a Removed 23795

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4.14 (b)(1), (2)(ii) introductory text, (B) and (d)(1)(ii) amended 18481
4.22 Amended 6967
4.30 Regulation at 58 FR 68523 confirmed 46755
4.93 (b)(1) and (2) amended 39682
4.94 (b) amended 39683
10 Authority citation amended 25566, 30293
10.1 (a) introductory text, (2), (b), (d), (f) and (h)(2) revised; (a)(1), (i) and (j)(2) amended; (a)(3) removed 25566
10.8 Revised 25567
10.9 Revised 25568
10.108 Revised 17474
10.151—10.153 Undesignated center heading revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.151 Revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.152 Revised; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.153 (b), (d)(2), (3) and (f) amended; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
10.172 Amended 25569
10.173 Revised 25569
10.175 (c)(3) and (4) removed; (c)(5) redesignated as (c)(3); new (c)(3) and (e)(1) revised 25569
10.192 Amended 25570
10.198 Revised 25570
12.104g Table amended 32903
(b) table amended 54818
12.132 (a), (b) and (c) redesignated as (1), (2) and (3); introductory text designated as (a) introductory text; (a) heading and (b) added; interim 31520
19 Authority citation amended 51494
19.6 (a)(1) amended 51494
19.12 (a)(1) amended 51494
19.44 (g) added 51494
24.16 Regulation at 58 FR 68523 confirmed 46755
(b)(14) and (d)(2) removed; (b)(15), (16) and (d)(3) redesignated as (b)(14), (15) and (d)(2); (b)(5), (13), new (14), (c)(3), (e)(2)(ii), (f)(4), (g)(1) introductory text, (iv), (2) and (3) introductory text revised; (c)(1), (2), (e)(2)(i), (f)(3) and (g) introductory text amended; new (d)(3) and (g)(1)(vi) added 46756
24.17 Regulation at 58 FR 68526 confirmed 46755
101 Authority citation revised 30294
101.1 (o) added; authority citation removed; interim 30293
Regulation at 59 FR 30293 and 30294 eff. date delayed 38548
Regulations at 59 FR 30293 and 30294 eff. date delayed 8–23–94 43283
101.3 (b) table amended 16122, 41973, 50690
(b) table amended 5313
101.4 Authority citation removed; interim 30293
Regulation at 59 FR 30293 eff. date delayed 38548
Regulation at 59 FR 30293 eff. date delayed to 8–23–94 43283
111 Authority citation amended 30294
User fee due date 53086
111.3 (e) added; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8–23–94 43283
112.0 Amended 51494
112.2 (b) revised 51494
112.21 Revised 51495
112.25 Revised 51495
113.63 (a)(1) revised 51495
113.73 (a)(1) revised 51495
118.4 (g) revised; (l) added 51495
122.15 (b) table revised 67622
122.24 (b) table amended 16122
122.38 Regulation at 58 FR 68526 confirmed 46755

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123 Authority citation amended 23795, 30294
123.1 (c) amended 23795
123.4 (c) amended 25570
123.8 Regulation at 58 FR 68526 confirmed 46755
123.12 (a)(1) and (2) amended; (b) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.13 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.14 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.15 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.16 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.17 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
123.18 Authority citation revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
125.0 Revised 51495
125.1 Revised 51495
125.11 (a) and (b) amended 51495
125.21 Revised 51495
125.22 Revised 51495
125.23 Revised 51496
125.24 Revised 51496
125.32 Revised 51496
125.33 (a) amended 51496
125.34 Amended 51496
125.35 Revised 51496
125.36 Amended 51496
125.41 Revised 51496
125.42 Amended 51496
128 Authority citation revised 30294
128.21 (a)(4) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
128.23 Revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
128.24 (b) and (c) amended; (d) and (e) revised; interim 30294
Regulation at 59 FR 30294 eff. date delayed 38548
Regulation at 59 FR 30294 eff. date delayed to 8-23-94 43283
128.25 Revised; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8-23-94 43283
128.26 Removed; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8-23-94 43283
133 Authority citation amended 55997
133.52 (c)(3) amended 55997
134.55 Regulation at 58 FR 68526 confirmed 46755
(b) revised 46757
141 Authority citation amended 30295
141.4 Revised; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8-23-94 43283
141.113 (b) through (g) redesignated as (c) through (h); new (c) amended; new (b) added 61800
142 Interpretation 17474
143.21 (l) added; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8-23-94 43283
143.23 (i) and (j) added; interim 30295
Regulation at 59 FR 30295 eff. date delayed 38548
Regulation at 59 FR 30295 eff. date delayed to 8-23-94 43283
143.26 Added; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
145 Authority citation amended 25570, 30296
145.31 Revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
145.32 Revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
145.35 Amended 25570
146.4 (h) amended 51496
146.40 (b) redesignated as (c); new (b) added 51497
146.66 (a) amended 51497
148 Authority citation amended 30296
148.12 (b)(2)(ii) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
148.51 (b)(1) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
148.64 (b)(1) amended; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
159.6 (a), (b) and (c) amended; (d) revised; interim 30296
Regulation at 59 FR 30296 eff. date delayed 38548
Regulation at 59 FR 30296 eff. date delayed to 8-23-94 43283
171 Regulation at 59 FR 14746 confirmed 55999
174.12 (c) revised 34971
174.14 (d) revised 34971
175 Regulation at 59 FR 13450 eff. date corrected to 4-29-94 16895
Interpretation 58771, 60892
178.2 Table amended (OMB numbers) 25571, 51497

Chapter II—United States International Trade Commission (Parts 200—299)

201.13 (m) added 66722
206 Regulation at 59 FR 5091 confirmed 19638
Authority citation revised 10
206.2—206.8 (Subpart A) Revised; interim 10
206.11—206.19 (Subpart B) Revised; interim 12
206.34 Revised; interim 16
206.35 Revised; interim 17
206.51—206.55 (Subpart F) Revised; interim 17
207 Authority citation revised 21
207.1 Revised; interim 21
207.2 (e) revised; interim 21
207.7 (a)(3)(ii), (b)(10), (d), (e) heading, (1), (f)(1), (2) and (g) revised 66723
207.8 Revised; interim 21
207.10 (a) and (c)(2) revised; (d) removed; interim 22
207.11 Revised; interim 22
207.21 (b) revised; interim 22
207.22 Revised 66724
207.23 (a) and (b) revised; (d) added 66724
(c)(2) revised; interim 22
207.29 Added; interim 22
207.40 (a) and (b) revised; interim 22
207.46 Added; interim 23
207.90—207.120 (Subpart G) Regulation at 59 FR 5097 confirmed 19638
210 Revised 39039
Authority citation revised 67626
210.3 Amended; interim 67626
210.4 (d)(3) corrected 64286
(d)(2)(iii) revised; interim 67626
210.5 (b)(2) and (4) revised; (c) and (d) redesignated as (d) and (e); new (c) added; interim 67626
210.12 (a)(9)(i) corrected 64286
210.14 Heading revised; (e) added; interim 67627
210.16 (c)(2) amended; interim 67627

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210.21 (a)(2) revised; (d) redesignated as (e); new (d) added; interim 67627
210.22 (b) removed; (c) redesignated as (b); interim 67627
210.23 Amended; interim 67627
210.24 (a)(1) and (b)(2) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); interim 67627
210.39 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; interim 67627
210.41 Revised; interim 67628
210.42 (a)(1)(i), (b), (c) and (h)(3) revised; interim 67628
210.43 (a)(1) and (d)(1) amended; interim 67628
210.49 (a) revised; interim 67628
210.50 (a)(3) revised; (b)(2) amended; (c) and (d) added; interim 67628
210.51 (b) and (c) revised; interim 67629
210.52 (c) revised; (e) removed; (f) redesignated as (e); interim 67629
210.68 Appendix A corrected 64286
210.70 Revised; interim 67629
211 Removed 39039

Proposed Rules:

4 25376
10 54537
12 26151
101 ..... 23817, 41992, 43313, 50717
103 46007
122 50717
123 56014
134 6464
141 ..... 32942, 36102
142 36102
148 56014
177 ..... 18771, 32942
191 ..... 31177, 41994
201 18982
207 18982
210 ..... 3785, 7723
353 ..... 80, 9802
355 ..... 80, 9802
356 ..... 80, 9802

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.4 (g)(1) revised 28765

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction 10150
404.301—404.395 (Subpart D) Authority citation revised 8145
404.315 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); new (a) heading and new (b) added; interim 8145
404.316 (e) and (f) added; interim 8145
404.321 (d) added; interim 8145
404.322 (b)(5) amended; interim 8145
404.335 (c)(2) and (3) amended; (c)(4) added; interim 8145
404.337 (b)(2) amended; interim 8146
404.350 Introductory text and (a) through (e) redesignated as (a) introductory text and (1) through (5); new (a) heading and new (b) added; interim 8146
404.352 (b)(3) amended; (c) and (d) redesignated as (d) and (e); new (c) added; interim 8146
404.401—404.469 (Subpart E) Authority citation revised 8146
404.402 (a) introductory text revised; interim 8146
404.470 Added; interim 8146
404.480 Added; interim 8146
404.612 (g) redesignated as (h); new (g) added 44923
404.614 (a) revised 44923
404.615 (d) added 44923
404.633 Undesignated center heading and section added 44924
404.900—404.999d (Subpart J) Authority citation revised 44925
Authority citation revised 8147
404.902 (t) and (u) amended; (v) added 44925

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(o) revised; (p) through (v) redesignated as (q) through (w); new (p) added; interim 8147
404.903 (l) through (q) amended; (r) added 44925
404.1501—404.1599 (Subpart P) Authority citation revised 41975
Authority citation revised 8147
404.1535 Added; interim 8147
404.1536 Added; interim 8147
404.1537 Added; interim 8148
404.1538 Added; interim 8148
404.1539 Added; interim 8148
404.1540 Added; interim 8148
404.1541 Added; interim 8148
404.1501—404.1599 (Subpart P) Appendix 1 corrected 30389
Appendix 1 amended 41975
416.200—416.269 (Subpart B) Authority citation revised 41403
416.202 (e) redesignated as (f); new (e) added; interim 8149
416.213 Revised 8149
416.215 (a) revised 41400
416.260 Undesignated center heading and section revised 41403
416.261—416.266 Undesignated center heading removed 41403
416.261 Amended 41403
416.262 Introductory text, (a), (b) and (d) revised 41404
(c) amended; (d) redesignated as (e); new (d) added; interim 8149
416.264 Revised 41404
416.265 Heading, introductory text, (b) and (d) revised 41404
(d) corrected 49291
(a) revised; interim 8149
416.267—416.269 Undesignated center heading removed 41404
416.268 Revised 41404
416.269 Revised 41404
(b)(1) corrected 49291
416.310 (d) revised 44926
416.325 (b)(3) added 44926
416.351 Undesignated center heading and section added 44926
416.415 Added 361
416.501—416.571 (Subpart E) Authority citation revised 8149
Authority citation corrected 10150
416.535 (b) and (c) redesignated as (d) and (e); new (b) added; interim 8149
416.542 (a) revised; interim 8149
416.544 Added; interim 8150
416.558 (a) revised; (c) added; interim 8150
416.601 (b)(1) amended; interim 8150
416.610 (a)(3) revised; interim 8150
416.901—416.998 (Subpart I) Authority citation revised 8150
416.935 Revised; interim 8151
416.936 Revised; interim 8151
416.937 Revised; interim 8151
416.938 Revised; interim 8151
416.939 Revised; interim 8151
416.940 Added; interim 8151
416.941 Added; interim 8152
416.1100—416.1182 (Subpart K) Authority citation revised 41405
416.1103 (a)(7) added 33907
416.1110 (e) added 43471
416.1111 (e) added 43471
416.1112 (c)(6) revised 41405
416.1121 (c) revised 43471
416.1123 (e) revised 59364
(d) revised; interim 8152
416.1148 Revised 361
416.1165 Introductory text revised; (i) added 361
416.1201 (b) revised 27988
416.1202 (b) revised 361
416.1208 Added 27989
416.1212 (d) redesignated as (d)(1); (d)(2), (3), (e), (f) and (g) added 43285
416.1326 Revised; interim 8152
416.1331 (c), (d) and (e) added; interim 8152
416.1335 Revised; interim 8153
416.1400—416.1499 (Subpart N) Authority citation revised 41405
416.1401 Amended 43038
416.1402 (a) and (b) revised; (h) removed; (i) through (n) redesignated as (h) through (m) 41405
(l) and (m) amended; (n) added 43039
(k) and (l) amended; (m) added 44928
(d) revised; interim 8153
416.1403 (a)(13) and (14) added 41405
(a)(15), (16) and (b)(3) added 43039

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(a)(2) and (7) through (11) amended; (a)(12) added 44928
416.1701—416.1725 (Subpart Q) Authority citation revised 8153
416.1725 Revised; interim 8153
422.205 (c) revised 7120

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

626 Revised; eff. in part 10-3-94 and 6-30-95 45815
626.2 (a) amended 26600
626.3 (a) amended 26600
626.4 Amended 26601
627 Revised; eff. 6-30-95 45821
628 Revised; eff. 6-30-95 45845
631 Revised; eff. 6-30-95 45857
637 Revised; eff. 6-30-95 45868
655 Authority citation revised 65676
Authority citation revised 3976
655.104 (c)(3) revised 41875
655.112 (a)(2) and (b)(2) revised 41876
655.204 (d)(2) revised 41876
655.206 (c) revised 41876
655.212 Revised 41876
655.500—655.550 (Subpart F) Revised; interim 3955, 3976
655.510 OMB number 3959
655.520 OMB number 3963
655.550 OMB number 3968
655.600—655.675 (Subpart G) Revised; interim 3969, 3977
655.700—655.760 (Subpart H) Revised 65659, 65676
655.730 OMB number 4029
655.760 OMB number 4029
655.800—655.855 (Subpart I) Revised 65672, 65676
655.900 (b)(2)(i) and (d) amended; interim 64776, 64777
(e) added; interim 64777
655.910 (b)(2)(i) and (e) amended; interim 64777
655.940 (d)(1)(i)(B), (h)(1) and (3) amended; interim 64777

Chapter IX—Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

1005 Removed 26601

Proposed Rules:

217 7728
226 7729
232 7729
404 ..... 37000, 37002, 43898, 44674, 52380, 53769
..... 3787
416 ..... 44093, 52380, 53769
422 44674
..... 3787
617 3472
625 63670
638 54539
641 21874

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

5 Authority citation revised 35849
5.22 (a)(8) revised 42491
5.23 (a) introductory text revised; (a)(10)(i) through (vii) added 37419
5.25 (a)(4) revised 42491
5.26 (e) revised 42491
5.30 (a)(1) and (c)(2) revised 42491
5.31 (g) added 31138
(c)(2) and (e)(1) revised 42491
5.35 (b)(3) added 47799
5.37 (a)(3)(i), (ii), and (iii) revised; (a)(3)(iv) added 42491
5.51 (b)(1) revised 2014
5.61 (a), (b)(1), (2), (c)(1), (d), (e), (f)(1) and (g) revised 42492
5.62 Revised 42492
5.66 Revised 42492
5.80 (e) revised 33431
5.85 Added 35849
14.100 (c)(2)(ii), (6) heading and (ii) revised 9297
16 Workshop 29950
73.200 Regulation at 59 FR 10578 effective date confirmed 28765
73.3106 (a) revised 10497
74.1101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3-19-94 25322
74.1205 (c)(2) revised 40805
Regulation at 59 FR 40805 eff. date confirmed as 9-12-94 53584

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74.1340 Regulation at 59 FR 7635 eff. date confirmed as 3-19-94 24643
74.1705 (a)(2) redesignated as (a)(3); new (a)(2) added; (b) revised; (c)(2) and (3) amended 60897
Regulation at 59 FR 60897 eff. date corrected to 12-30-94 61929
Regulations at 59 FR 60897 and 61929 eff. date confirmed as 12-30-94 5131
74.2101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3-19-94 25322
74.2205 (b) revised 40805
Regulation at 59 FR 40805 eff. date confirmed as 9-12-94 53584
74.2340 Regulation at 59 FR 7636 eff. date confirmed as 3-19-94 24643
74.2705 (b) introductory text redesignated as (b)(1); (b)(2) added; (c) revised 60898
Regulation at 59 FR 60898 eff. date corrected to 12-30-94 61929
Regulations at 59 FR 60898 and 61929 eff. date confirmed as 12-30-94 5131
74.3602 Regulation at 59 FR 11720 eff. date confirmed 26420
80.10 (a) and (b) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 60899
101 Notice 28480
Notice 7711
101.9 (c)(1)(i) revised 62317
101.12 Table 2 amended 24039
101.36 Regulation at 59 FR 371 eff. date corrected to 7-1-95; (b)(4) introductory text, (vi), (c)(10) and (g) amended 24039
101.65 (d)(2), (3) and (4) added 24249
(d)(2)(ii)(A), (C)(*1*), (iv), (3)(ii)(A), (C)(*1*) and (iii) corrected 50828
103.35 (d)(1)(i) table amended; (d)(3) introductory text revised; (d)(3)(i) and (v) added 26937
(d)(1)(i) table, (i) table and (ii) table amended; (d)(3) introductory text, (v) introductory text and (vi) revised; (d)(3)(iii), (iv), (v)(A) through (F) and (vii) added; eff. 5-30-95 61535
131 Authority citation revised 17691
131.130 (a) revised 17691
Regulation at 59 FR 17691 confirmed 32078
135 Authority citation revised 47079
135.110 (a)(1) and (b) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) and (f)(7) added; eff. 9-14-95 47079
Regulation at 59 FR 47079 effective date confirmed 64571
135.115 (a) revised; (c) text redesignated as (c)(1); new (c)(2) added; eff. 9-14-95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
135.120 Removed; eff. 9-14-95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
135.125 Removed; eff. 9-14-95 47080
Regulation at 59 FR 47080 effective date confirmed 64571
166 Authority citation revised 26939
166.110 (a) introductory text heading and (c) heading added; (a)(1) revised; (b) heading and (d) heading amended 26939
172.800 (c)(9), (10) and (11) added 61540
(c)(1) revised; (c)(2) removed 61543
(c)(8) added 61545
172.811 (b) revised 24924
172.841 (b), (c), and (d) redesignated as (c), (d), and (e); new (b) added; new (c) revised 37421
173.21 Added 15623
173.170 Added 26711
173.357 (a)(2) table amended 36937
175.105 (c)(5) table amended 47080
175.300 (d) Table 2 corrected; CFR correction 58775
(b)(3)(xxxvii) added 63894
176.170 (a)(5) table amended 33195, 48391
177.1345 Introductory text revised; (d) added 62318
177.1520 (b) table amended 26422, 43730
177.1580 (b) table amended 43731
177.2600 (c)(4)(i) amended 46171
178.2010 (b) table amended 33196, 45973, 62319
(b) table corrected 54130
(b) table amended 8546

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178.3295 Table amended 25323
182.1033 Removed 63895
182.1195 Removed 63895
182.1625 Removed 63895
182.1751 Removed 63895
182.1911 Removed 63895
182.3616 (c) revised 65939
182.3637 (c) revised 65939
182.3739 (c) revised 65939
182.3766 (c) revised 65939
182.3798 (c) revised 65939
182.3862 (c) revised 65939
182.6033 Removed 63895
182.6195 Removed 63895
182.6386 Removed 63895
182.6511 Removed 63895
182.6625 Removed 63895
182.6751 Removed 63895
182.6851 Removed 63895
182.8195 Removed 63895
184.1033 Added 63895
184.1140 Added 63896
184.1195 Added 63896
184.1386 Added 63896
184.1625 Added 63896
184.1751 Added 63896
184.1851 Added 63897
184.1911 Added 63897
201.20 (a) and (b) amended 60898
Regulation at 59 FR 60898 eff. date corrected to 12–30–94 61929
Regulations at 59 FR 60898 and 61929 eff. date confirmed as 12–30–94 5131
201.57 (f)(9) revised 64249
210 Compliance date extended 39255
211 Compliance date extended 39255
211.42 (c) introductory text amended 4091
211.68 (b) amended 4091
211.137 (g) redesignated as (h); new (g) added 4091
211.170 (b) introductory text amended 4091
211.180 (e)(1) revised 4091
310 Technical corrections 49350
310.545 (a)(7) corrected; CFR correction 5313
(a)(15) and (d)(1) revised; (d)(18) added; eff. 8–15–95 8920
310.546 Added 43252
314.50 (h) redesignated as (k); new (h), (i) and (j) added 50361
(b) corrected 60051
314.52 Added 50362
314.53 Added 50363
314.54 (a)(1)(vii) added 50364
314.70 (f) added 50364
314.94 (a)(12) added 50364
314.95 Added 50366
314.101 (e) revised 50366
314.107 Added 50367
314.108 Added 50367
319.545 (a)(6)(ii) redesignated as (a)(6)(ii)(A); new (a)(6)(ii)(A) heading, (B) and (d)(23) added; (d) introductory text and (1) revised; eff. 8–23–95 43409
331.30 (d)(1) removed 60556
336.50 (c)(1) revised; eff. 4–11–95 16982
338.50 (c)(3) revised; eff. 4–11–95 16983
341.3 (f), (g) and (h) added; eff. 8–23–95 43409
341.14 (a)(5) and (6) added 29174
341.20 Added; eff. 8–23–95 43409
341.74 (c)(4)(vii), (viii), (ix), (d)(1)(iv) and (v) added 29174
(d)(1)(iv) and (v) corrected 36051
341.80 Added; eff. 8–23–95 43409
341.90 (r) and (s) added 29174
(r) and (s) corrected 36051
343 Announcement 37421
346.18 (b) revised 28767
346.50 (b)(2)(vi) heading and (d)(8) heading amended 28767
347.10 (c) revised 28768
347.50 (b)(3) heading, (c)(2) heading and (d)(3) heading amended 28768
358 Document availability 62569
358.150 (d)(3) revised; eff. 11–23–95 60317
369.20 Amended; eff. 8–23–95 43412
430.4 (a)(69) added 40806
430.5 (a)(104) and (b)(106) added 40806
430.6 (b)(106) added 40806
436.215 (b) table amended; (c)(18) added 40806
436.369 Added 40806
436.370 Added 40807
442.52 Added 26940
442.253 Redesignated as 442.253a; new 442.253 heading added 26941
442.253a Redesignated from 442.253 26941
442.253b Added 26941
450.10 Added 50485
452.160 Redesignated as 452.160a; new 452.160 added 52078

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452.160a Redesignated from 452.160 52078
452.160b Added 52078
455.88 Added 40807
(a)(1) corrected 46479
455.188 Added 40808
510 Technical correction 49291
510.600 (c)(1) table and (2) table amended 28768, 31139, 33197, 33198, 33908, 38119, 41664, 41976, 44315, 49576, 50829, 59364
(c)(1) table and (2) table amended 7121
520 Technical correction 50829
520.45a (a), (b), (c), (d)(1), (2) and (3) redesignated as (a)(1), (2), and (3), (a)(4)(i), (ii) and (iii); new (b) added 65711
520.445b (a) amended; (b), (d)(1), (2), (4)(iii)(B), (C), (iv)(B) and (C) revised; (d)(3) removed; (d)(4)(i)(C) added 39439
520.531 (a) removed; (b) revised 26942
520.580 (b)(1) amended 59365
520.804 Added 17694
520.903c Removed 33198
520.905a (d)(3) added 26943
520.905b (c)(3) added 35252
520.1288 Added 362
520.1485 Heading and (b) revised 3079
520.1660d (a)(6) and (b)(4) added; (e)(1)(ii)(A)(*3*), (B)(*3*), (C)(*3*) and (iii)(C) amended 41664
(e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) corrected 56388
520.1696b (b) revised; (c)(2) amended 42493
(b) revised 58775
520.1720a (b)(3) amended 53585
520.1806 (b) amended 28769
520.1872 Added 33908
520.2045 (b)(2) amended 28769
520.2220a (b) amended 56000
520.2220b (b)(1) amended 56000
520.2220c (c) amended 56000
520.2220d (b) amended 56000
520.2260a (b)(1) amended 22754
520.2260b (b)(1) amended 22754
520.2260c (a) amended 22754
520.2325a (c)(2) amended 28769
(c) amended 33197
520.2325b (c) amended 33197
520.2345a (b)(1) amended 59365
520.2345d Revised 17693
(a)(1) amended 19133
522.246 (a) amended; (c)(3) added 41665
522.313 (d)(4) added 41666
(d)(5) added 54518
522.1145 (a)(2) amended 33198
522.1222a (c) revised 41664, 41976
Corrected 49291
522.1350 Added 37422
522.1660 (b) and (c)(2)(iii) amended 363
522.1680 (b) amended 31139
522.1696a (b)(1) and (2) amended 38119
522.1720 (b)(1) amended 53585
522.1940 (e) redesignated as (d)(2)(iv); (b), (d)(2)(ii), (iii) and (iv) revised; interim 49808
522.2220 (a)(2)(i) amended 56000
522.2477 Revised 4376
522.2680 Revised 19639
524.900 (c) amended 28769
524.1580b (b) amended 33197
524.1580c (b) amended 33197
524.1580d Removed 53586
529.1030 (b) revised; (d) redesignated as (c)(3) 60076
529.1044a (b) amended 31140
529.1186 (b) amended 44315
556.34 Revised 65711
556.200 Revised 41977
556.275 Revised 26943
556.344 (a) revised; (d) added 50830
556.380 Revised 41241
556.425 Revised 17922
556.750 (c) added 38902
558.4 (d) table amended 17477, 18297, 41241
558.95 (b)(4)(ii) added 15624
(b)(1)(xii)(*b*) amended 19134
(b)(1)(x)(*b*) and (xi)(*b*) amended 33197
558.258 (c)(4) added 35252
558.265 (c)(3) added 51498
558.274 (a)(4) and (c)(1) table amended 59365
558.305 Added 18297
558.311 (e)(1) table amended 33197
558.342 (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii), (5)(ii) and (6)(ii) amended 41241
558.355 (f)(1)(xii)(*b*) and (xx)(*b*) amended 33197
(f)(3)(iv)(*b*) and (viii) amended 41241

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(f)(2)(ii) and (iii) redesignated as (f)(2)(i)(*a*) and (f)(2)(i)(*b*); new (f)(2)(i)(*b*) revised; new (f)(2)(ii) added 62320
558.360 (d)(2) redesignated as (d)(2)(i); new (d)(2)(i) heading and (ii) added; (d)(3) amended 17922
558.450 (d)(1) Table 1 amended 3080
558.550 (a)(2) revised 15339
(a)(2) amended 19134, 21930, 26423, 26943
(a)(2), (b)(1)(x)(*c*), (xii)(*b*) and (*c*) amended 26424
(b)(1)(ii)(*c*) amended 33197
(b)(2) added 49577
(a)(2) corrected 64739
(a) revised 67185
(a)(2) revised; (b)(1)(ii)(*a*) and (xv)(*a*) amended 3080
558.555 Added 17477
558.586 (a) amended 33197
558.600 (c)(1)(i) amended; (c)(3) added 41975
558.625 (b)(71) removed 33198
(b)(10) revised 7121
(b)(11) and (15) removed 8547
558.635 (f)(3) redesignated as (f)(4); new (f)(3) added 38902
(b)(2) amended 54518
(b)(2) revised 8547
573.130 Added 26711
573.920 Stay at 58 FR 47973 confirmed 45973
600 Authority citation revised 54042
600.15 (b) amended 49351
600.80—600.90 (Subpart D) Added 54042
606.65 (c) table amended 23636
606.121 (c)(12)(i), (ii) and (iii) amended 23636
610.9 (a) amended 49351
610.11 Introductory text amended 49351
610.53 (d) amended 49351
630.10 (c)(3) amended 49351
640.6 Introductory text amended 49351
640.21 (c) amended 49351
640.22 (c) amended 49351
640.64 (c) amended 49351
640.74 (a) amended 49351
660.28 (a)(1) table and (4) amended 23637
807.3 (n) amended; (o) and (q) revised 64295
807.87 (i)(2) and (j) amended 64295
807.92 (a) introductory text, (3) through (6) and (b) amended; (d) added 64295
807.93 Revised 64295
807.94 Revised 64296
807.95 (d) revised 64296
812 Notice of applicability 52078
821.2 (b) introductory text amended 31138
864.5350 (b) revised 63007
864.7660 (b) revised 63007
864.7675 (b) revised 63007
864.7900 (b) revised 63007
864.8500 (b) revised 63007
866.5170 (b) revised 63007
866.5220 (b) revised 63007
866.5230 (b) revised 63007
866.5360 (b) revised 63007
866.5370 (b) revised 63007
866.5540 (b) revised 63007
866.5700 (b) revised 63007
868.5340 (b) revised 63007
868.5350 (b) revised 63007
870.1875 (a)(2) revised 63007
872.1500 (b) revised 63007
872.1820 (b) revised 63008
872.3100 (b) amended 63008
872.3130 (b) revised 63008
872.3165 (b) revised 63008
872.3240 (b) revised 63008
872.3285 (b) revised 63008
872.3330 (b) revised 63008
872.3350 (b) revised 63008
872.3360 (b) revised 63008
872.3410 (b) revised 63008
872.3450 (b) revised 63008
872.3490 (b) revised 63008
872.3520 (b) revised 63008
872.3530 (b) revised 63008
872.3580 (b) revised 63008
872.3670 (b) revised 63008
872.3900 (b) revised 63008
872.3910 (b) revised 63008
872.3940 Added 65478
872.3950 Added 65478
872.3960 Added 65478
872.3970 Added 65478
872.4130 (b) revised 63008
872.4535 (b) revised 63008
872.4620 (b) revised 63008
872.4730 (b) revised 63008
872.5410 (b) revised 63009
872.5525 (b) revised 63009
872.5550 (b)(1) revised 63009
872.6030 (b) revised 63009

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872.6140 (b) revised 63009
872.6250 (b) revised 63009
872.6300 (b) revised 63009
872.6475 (b) revised 63009
872.6510 (b) revised 63009
872.6640 (b) revised 63009
872.6865 (b) revised 63009
872.6890 (b) revised 63009
874.3375 (b) revised 63009
874.4750 (b) revised 63009
874.5220 (b) revised 63009
874.5800 (b) revised 63009
876.5970 (b) revised 63010
878.1800 (b) revised 63010
878.3750 (b) revised 63010
878.3800 (b) revised 63010
878.3900 (b) revised 63010
878.4100 (b) revised 63010
878.4380 (b) revised 63010
878.4440 (b) revised 63010
878.4470 (b) revised 63010
878.4635 (b) revised 63010
878.4660 (b) revised 63010
878.4700 (b) revised 63010
878.4730 (b) revised 63010
878.4800 (b) revised 63010
878.4930 (b) revised 63010
878.4950 (b) revised 63010
878.5900 (b) revised 63010
880.2400 (b) revised 63010
880.2720 (b)(1) revised 63011
880.5180 (b) revised 63011
880.5210 (b) revised 63011
880.5240 (b) revised 63011
880.5630 (b) revised 63011
880.5740 (b) revised 63011
880.5780 (b)(2) revised 63011
880.5950 (b) revised 63011
880.6060 (b) revised 63011
880.6150 (b) revised 63011
880.6190 (b) revised 63011
880.6900 (b) revised 63011
882.1430 (b) revised 63011
882.1700 (b) revised 63011
882.1925 (b) revised 63011
882.4030 (b) revised 63011
882.4125 (b) revised 63012
882.4190 (b) revised 63012
882.4200 (b) revised 63012
882.4215 (b) revised 63012
882.4440 (b) revised 63012
882.4500 (b) revised 63012
882.4525 (b) revised 63012
882.4535 (b) revised 63012
882.4600 (b) revised 63012
882.4900 (b) revised 63012
884.5320 Added 67187
886.1040 (b) revised 63012
886.1050 (b) revised 63012
886.1070 (b) revised 63012
886.1090 (b) revised 63012
886.1140 (b) revised 63012
886.1160 (b) revised 63012
886.1250 (b) revised 63012
886.1290 (b) revised 63012
886.1340 (b) revised 63012
886.1350 (b) revised 63012
886.1425 (b) revised 63013
886.1430 (b) revised 63013
886.1435 (b) revised 63013
886.1450 (b) revised 63013
886.1660 (b) revised 63013
886.1680 (b) revised 63013
886.1690 (b) revised 63013
886.1700 (b) revised 63013
886.1810 (b) revised 63013
886.1860 (b) revised 63013
886.1870 (b) revised 63013
886.1910 (b) revised 63013
886.1945 (b) revised 63013
886.4250 (b) revised 63013
886.4350 (b) revised 63013
886.4360 (b) revised 63013
886.4570 (b) revised 63013
886.4750 (b) revised 63014
886.4955 (b) revised 63014
886.5820 (b) revised 63014
886.5840 (b) revised 63014
886.5842 (b) revised 63014
886.5844 (b) revised 63014
886.5900 (b) revised 63014
886.5915 (b) revised 63014
888.4200 (b) revised 63014
888.4210 (b) revised 63014
888.4230 (b) revised 63014
888.4540 (b) revised 63014
888.5940 (b) revised 63014
890.1175 (b) revised 63014
890.3100 (b) revised 63014
890.3750 (b) revised 63014
890.3920 (b) revised 63014
890.3940 (b) revised 63015
890.5765 (b) revised 63015
892.1130 (b) revised 63015
892.1350 (b) revised 63015
892.1640 (b) revised 63015
892.5740 (b) revised 63015
900 Workshop 53586
Technical correction 60051
900.2 (e) revised; (r) and (s) added; interim 49812
900.12 (d)(1)(i) revised; interim 49812

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TITLE 21 Chapter I—Con.

900.18 Added; interim 49812
1020.30 (b) amended 26403
1020.32 (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added 26404
1220.40 (a) revised 35253
1270 Workshop 29950

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1306.02 (h) redesignated as (i); new (h) added 26111
1306.11 (a) revised; (e) and (f) added 26111
(a) and (f) corrected 30832
1306.21 (a) and (c) revised 26112
1306.31 (c) revised 26112
(c) corrected 30832
1306.11 (g)(3) removed; (d)(1) through (29) and (g)(4) redesignated as (d)(2) through (30) and (g)(3); new (d)(1) added 46759
Regulation at 59 FR 673 eff. date extended to 6-6-95 65710
1306.24 Regulation at 59 FR 15053 confirmed 52905
1310 Technical correction 52588
1310.04 (f) introductory text revised; (f)(1)(iii) removed; (f)(1)(iv) through (xxiv) redesignated as (f)(1)(iii) through (xxiii); (g) added 51367
1310.06 (b) revised; interim 51364
1313 Technical correction 52588
1313.12 (a) introductory text revised 51367
1313.21 (a) introductory text revised 51367

Proposed Rules:

1—1299 (Ch. I) 26352, 29977, 39888, 62644, 65738
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11 ..... 45160, 50793
20 ..... 54046, 60734
..... 5530, 8772
54 ..... 48708, 55071
73 23035
74 23035
101 ..... 16577, 36379, 37190, 51030, 52275, 56573
..... 8989
102 ..... 36102, 39635
111 8989
123 16578
168 23035
170 ..... 51030, 56573
..... 8989
172 23035
173 23035
182 ..... 23035, 55072
184 ..... 23035, 61560, 62366
201 9554
203 36107
205 36107
211 10517
310 ..... 51030, 54046, 56573, 60734
..... 4132, 6892, 8989
312 ..... 48708, 54046, 55071, 60734
314 ..... 48708, 54046, 55071, 60734
320 ..... 48708, 55071
330 ..... 39499, 48708, 55071
331 17747
333 ..... 31402, 58799
341 34781
..... 10286
343 18507
352 ..... 16042, 29706
369 ..... 31402, 58799
589 44584
600 ..... 28821, 42193, 54046, 56448, 60734
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601 ..... 28821, 42193, 48708, 55071, 56448
..... 2351
606 ..... 28822, 42193, 56448
..... 2351
607 ..... 28822, 42193, 56448
..... 2351
610 ..... 28821, 28822, 42193, 56448
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660 ..... 28822, 42193, 56448
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700 16042
740 16042
807 ..... 48708, 55071
810 ..... 30656, 32489
812 ..... 48708, 55071
814 ..... 48708, 55071
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862 37378
864 37378
866 37378
868 37378
870 37378
872 37378
874 ..... 37378, 46479
876 37378

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..... 8595
878 ..... 23036, 37378, 46479
880 37378
882 37378
886 37378
888 37378
890 37378
892 37378
..... 3168
896 9762
1240 16578
1301 ..... 30555, 30738
1307 ..... 51887, 63738
1308 65521
1309 ..... 51887, 54949, 63738
1310 ..... 51887, 63738
..... 10814
1313 ..... 51887, 54949, 63738
1316 ..... 51887, 63738
1403 53706
1404 65607

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 48999
22.1 Table amended; interim 25324, 48999
40 Authority citation revised 51369
40.101—40.104 (Subpart K) Heading revised; interim 51369
40.104 Added; interim 51369
40.105 Added 55045
41 Authority citation revised 10497
41.12 Revised 10497
41.107 (e) added; interim 25325
42 Authority citation revised 10499
42.11 Revised 10499
42.61 (a) revised 39955
43 Authority citation revised 7445
43.21—43.27 (Subpart C) Added; interim 7445
51 Authority citation revised 48999
51.64 (f) added; interim 48999
51.67 Added; interim 49000
60—65 (Subchapter G) Removed 33909
120.15 Revised 25811
120.16 Revised 25811
121.1 Amended; (c) removed; (d) redesignated as (c) 46548
Amended 46549, 47800
123.16 (a) revised 29951
(b)(1) revised 45622
124.10 Revised 29951
124.15 Added 45622
126 Authority citation revised 42158
126.1 (a) and (d) revised; (f) added 15625
(a) and (c) revised 42158
126.5 Revised 29951
145 Added 18731

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

220 Removed 28769
222 Removed 28769
226 Added; interim 3744
Technical correction 7712

Chapter V—United States Information Agency (Parts 500—599)

502 Revised 18965
514.14 (c) revised; interim 34761
514.30 (b)(3) removed; (i) amended; (j) added; interim 16984
Regulation at 59 FR 16984 confirmed 46918
514.31 Added 64299
Regulation at 59 FR 64299 confirmed; revised 8547
518 Added; interim 39440
Regulation at 59 FR 39440 confirmed; authority citation correctly added 61272

Proposed Rules:

42 ..... 18010, 21948
92 64881
135 53706
137 65607
140 7737
208 65607
213 2911
310 65607
502 ..... 17057, 18772
513 65607
1006 65607
1508 65607

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TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

172 Authority citation revised 64848
172.1—172.15 (Subpart A) Heading added 64848
172.3 Introductory text added; amended 64848
172.21—172.25 (Subpart B) Added 64848
420—480 (Subchapter E) Heading revised 37557
420 Revised 37557
511 Removed 37563
650 Authority citation revised 37938
650.201 Revised 37939
650.203 Revised 37939
650.205 Revised 37939
650.209 Revised 37939
650.211 Added 37939
655.409 (f) amended 33910
655.601 (a) revised; interim 365
657 Authority citation revised 30418
657.11 Revised 30418
657.13 Revised 30418
657.15 Revised 30418
657.17 Revised 30418
658 Authority citation revised 30419, 36053
658.1 Revised 30419
658.5 Amended 30419
658.13 (d)(1)(i), (2)(i) and (e) amended; (d), (e) and (f) redesignated as (e), (f) and (g); new (d), (e)(4) and (5) added 30419
658.15 (b) and (c) amended 30419
658.17 (f), (g) and (h) redesignated as (g), (h) and (i); new (f), (j) and (k) added; new (h) revised 30420
658.19 (a) revised 30420
658.23 Added 30420
658 Appendix A amended 30421, 36053
Appendix C added 30422
660 Revised 30300
710 Authority citation revised 25327
710.203 (e)(3) revised 25327
710.204 Added 25327
710.304 (j)(5) amended 25327
712 Authority citation revised 25327
712.408 (a) revised 25327
712.805 (c)(1) revised 25327
713 Authority citation revised 25327
Authority citation corrected 30302
713.103 (h)(1) revised 25327
720 Authority citation revised 25327
720.22 (d)(2) revised 25327

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1205.3 (c) revised 64127
1212.3 (d) amended 39256
1212.7 Amended 39256
1260.19 (d) added 30698
1260.21 (c) revised 30698

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313.6 (a) revised; interim 40474

Proposed Rules:

627 59182
630 9306
637 35493
645 25579

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

9 Added 31047
17 Authority citation revised 34579, 59647
17.60—17.161 (Subpart C) Authority citation revised 59647
17.60 (a) revised 34579
17.62 Revised 34579
17.64 (a) revised 34580
17.65 (b) revised 34580
17.72 (e) revised 34580
17.110 (b) revised 34580
17.161 (a) revised 59647
24 Authority citation revised 18482
24.700 Revised 18482
42 Revised 29329
50 Authority citation revised 17199, 19107

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50.3 Regulation at 57 FR 32110 confirmed 17199
50.4 (b)(3) removed; (b)(1) and (2) revised 19107
50.17 Regulation at 57 FR 32110 confirmed 17199
50.19 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
50.20 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
55 Added 19107
55.12 (b)(2) amended 33199
55.22 Heading revised; (a) introductory text and (b)(1) introductory text amended 33199
58 Authority citation revised 44260
58.1 (c) introductory text, (3) and (4) amended; (c)(5) added; interim 44260
58.2 (a)(4) revised; interim 44260
58.4 (c)(1) amended; interim 44260
58.5 (b)(1) revised 19112
58.77 (d) added; interim 44260
81 Authority citation revised 61506
81.41—81.49 (Subpart E) Continued 54366
81.51 (Subpart F) Added 61506
84 Added; interim in part 47011
91 Revised 1896
Technical correction 2813
Waiver 6967
91.5 Corrected 4861
91.105 (a)(1) corrected 10427
91.220 Corrected (OMB number) 4861
91.225 Corrected (OMB number) 4861
91.230 Corrected (OMB number) 4861
91.235 Corrected (OMB number) 4861
91.310 Corrected (OMB number) 4861
91.320 Corrected (OMB number) 4861
91.330 Corrected (OMB number) 4861
91.402 (b)(1) corrected 10427
91.430 Corrected (OMB number) 4861
92 Waiver 22506
Technical correction 2813
92.2 Amended; interim; eff. 5-19-94 through 6-20-95 18631
Amended; interim; eff. 10-26-95 44261
Regulation at 59 FR 44261 eff. date corrected to 9-26-94 through 6-30-95 49291
Amended 1914
92.4 Added; interim; eff. 5-19-94 through 6-20-95 18631
Redesignated as 92.5; new 92.4 added; interim; eff. 10-26-94 through 6-30-95 44261
Regulation at 59 FR 44261 eff. date corrected to 9-26-94 through 6-30-95 49291
92.5 Redesignated from 92.4; interim; eff. 10-26-94 through 6-30-95 44261
Regulation at 59 FR 44261 eff. date corrected to 9-26-94 through 6-30-95 49291
92.50 (f) redesignated as (d)(5) and revised; interim; eff. 5-19-94 through 6-20-95 18631
92.52 Revised 1914
92.61 Heading revised; interim; eff. 5-19-94 through 6-20-95 18631
(b)(4) revised; interim; eff. 10-26-94 through 6-30-95 44261
Regulation at 59 FR 44261 eff. date corrected to 9-26-94 through 6-30-95 49291
92.64 (a)(1) revised; interim; eff. 5-19-94 through 6-20-95 18632
92.103 (a) revised 1914
92.104 Revised (OMB number) 1914
92.105 Revised (OMB number) 1914
92.150 (b)(2) revised; interim; eff. 5-19-94 through 6-20-95 18632
(b)(5) and (c)(4) revised; interim; eff. 10-26-94 through 6-30-95 44261
Regulation at 59 FR 44261 eff. date corrected to 9-26-94 through 6-30-95 49291
Revised (OMB number) 1914
92.151 Removed 1914
92.152 Removed 1914
92.200 Amended 1914
92.201 (a) and (b)(1) amended 1914
92.204 (a)(1) revised; interim; eff. 5-19-94 through 6-20-95 18632
(c) amended 1914
92.205 (a)(1) revised; interim; eff. 5-19-94 through 6-20-95 18632
(a)(1) revised; interim; eff. 10-26-95 through 6-30-95 44261

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TITLE 24 Subtitle A—Con.

Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.206 Heading, (a)(2), (3), (b), (c) introductory text, (5), (d) and (e) revised; (c)(6) and (7) added; (f) and (g) removed; interim; eff. 5–19–94 through 6–20–95 18632
(b) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
92.207 Added; interim; eff. 5–19–94 through 6–20–95 18633
(f) amended 1914
92.208 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.209 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.211 (a)(2) and (f)(3) revised; (a)(3) added; interim; eff. 5–19–94 through 6–20–95 18633
(a)(2) revised; interim; eff. 10–26–94 through 6–30–95 44261
Regulation at 59 FR 44261 eff. date corrected to 9–26–94 through 6–30–95 49291
(a)(1) revised 1914
92.214 (a)(8) revised; interim; eff. 5–19–94 through 6–20–95 18634
(a)(7) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.216 (a)(1) and (2) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.218 (a) introductory text and (c) revised; (e) added; interim; eff. 5–19–94 through 6–20–95 18634
(a) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.219 Revised; interim; eff. 5–19–94 through 6–20–95 18634
92.220 (a)(1) introductory text, (2), (3) and (5) revised; interim; eff. 5–19–94 through 6–20–95 18634
(a)(6)(ii) amended 1915
92.221 (a)(7) and (c) added; interim; eff. 5–19–94 through 6–20–95 18635
92.222 (a)(2) added; interim; eff. 5–19–94 through 6–20–95 18635
(a)(3) and (4) amended 1915
92.252 (a)(2)(iii) added; (a)(5) amended; (d) revised; interim; eff. 5–19–94 through 6–20–95 18635
(a)(2)(iii) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.254 (a)(1)(i), (4) introductory text, (ii)(C) and (b)(1) revised; (a)(4)(ii)(D) added; interim; eff. 5–19–94 through 6–20–95 18636
(a)(3), (4)(ii)(C) and (D) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.255 Revised; OMB number; interim; eff. 5–19–94 through 6–20–95 18636
92.256 Revised; interim; eff. 5–19–94 through 6–20–95 18636
92.257 Revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.259 Added; interim; eff. 5–19–94 through 6–20–95 18636
92.300 (b), (e) and (f) revised; interim; eff. 5–19–94 through 6–20–95 18637
(b) amended 1915
92.302 (b)(2) amended 1915
92.350 (a)(4) introductory text revised 33893
(b) amended 1915
92.352 (b) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.353 (e) revised; interim; eff. 10–26–94 through 6–30–95 44262
Regulation at 59 FR 44262 eff. date corrected to 9–26–94 through 6–30–95 49291
92.354 (a) revised; interim; eff. 5–19–94 through 6–20–95 18637
(a)(2) revised; interim; eff. 10–26–94 through 6–30–95 44263
Regulation at 59 FR 44263 eff. date corrected to 9–26–94 through 6–30–95 49291
92.450 (b) amended 1915
92.451 (a)(1)(iii) and (2) amended 1915
92.453 (b)(2)(ii) amended 1915
92.502 (b)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.504 (e)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.508 (a)(4)(v) revised; interim; eff. 5–19–94 through 6–20–95 18637
(c)(1) amended 1915
92.509 (b) revised 1915
92.625 Added; interim; eff. 5–19–94 through 6–20–95 18638
92.631 (c)(5) added 33893
92.633 Revised; interim; eff. 10–26–94 through 6–30–95 44263
Regulation at 59 FR 44263 eff. date corrected to 9–26–94 through 6–30–95 49291
92 Appendixes A and B amended 33893

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103.335 Amended 39956
103.400 (a)(2), (3), (b) and (c) revised 39956
(a)(2)(i) correctly revised 46759
103.405 (a)(1) and (b) introductory text amended 39956
(b) corrected 46759
135 Revised; interim; eff. 8–1–94 through 6–30–95 33880
Chapter I Appendix IV added 33363

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised 36695, 49815, 50143, 50463
200.93 (a)(1) revised; interim 31522
200.155 (a) amended 50143
200.157 (b) through (e) and (f)(1) revised 49815
200.158 Introductory text revised; (c) and (d) removed 49815
200.213 (d) removed; (e) redesignated as (d); interim 31522
200.217 (a)(3) removed; (a)(4) through (8) redesignated as (a)(3) through (7); interim 31522
200.810 (b) revised 50463
200.925a (c)(2) revised; (c)(3) amended 36695
200.925b (c) heading and (5) revised 36695
200.925c (c) introductory text revised 36695
200.926 (c)(2) revised; (c)(3) amended 36695
200.926a (c) heading, (3) and (5) revised 36695
200.926c Table amended 36695
200.926d (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) redesignated as (c)(4)(vii); new (c)(4)(iv), (v) and (vi) added 19112
(c)(4)(iv) corrected 39394
200.926e (b), (c) introductory text, (2) and (d) amended 36695
200.937 (a)(2) amended 36695
201—266 (Subchapter B) Heading revised 62524
203 Authority citation revised 50143, 50463, 65448
203.5 (e) revised 50463
203.23 (a)(5) amended; eff. 4–24–95 53901
Regulation at 59 FR 53901 eff. date delayed to 5–24–95 8815
203.33 (b) removed; (c) redesignated as (b) 59648
203.251 (r) revised 49815
203.355 (a) introductory text revised; (c) amended; (g) added 50143

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TITLE 24 Chapter II—Con.

203.356 Heading revised; existing text designated as (a); (b) added 50144
203.360 Heading revised; existing text designated as (a); (b) added 50144
203.365 (a) revised 50144
203.370 Added 50144
203.401 (c) redesignated as (d); new (c) added; new (d) revised 50144
203.402 Introductory text and (l) revised; (k)(3), (s) and (t) added 50145
203.403 (d) added 50145
203.408 Revised 49816
203.410 (a) introductory text revised; (a)(1)(ii) and (iii) amended; (a)(1)(iv) added 50145
203.411 Revised 49816
203.427 Added 49816
203.440 (f) revised 49816
203.483 Revised 49816
203.487 Revised 49816
203.501 Added 50145
203.502 (b) revised; eff. 6-19-95 65448
203.508 (e) added; eff. 6-19-95 65448
203.550 (a) amended; (b) removed; (c) revised; eff. 4-24-95 53901
Regulation at 59 FR 53901 eff. date delayed to 5-24-95 8815
203.554 (d) added; eff. 6-19-95 65448
203.670 Regulation at 58 FR 54246 confirmed 48704
203.671 Regulation at 58 FR 54246 confirmed 48704
203.675 Regulation at 58 FR 54246 confirmed 48704
203.676 Regulation at 58 FR 54246 confirmed 48704
204 Revised 39957
Authority citation revised 50464
204.3 (b) revised 50464
206 Authority citation revised 50464
206.3 Amended 50464
207 Authority citation revised 48730
Authority citation revised 9298
207.10 Revised 31141
207.32 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
Regulation at 58 FR 57560 confirmed 9298
207.32a (h)(2) revised; interim; eff. 3-27-95 to 9-23-96 10017
207.36 Regulation at 58 FR 34215 confirmed 28248
207.259 (e)(5) revised 49816
207.260 (e) revised 31141
207.270 Undesignated center heading and section added 48730
208 Technical correction 48171
208.108 (a) heading, (b) heading and (e) heading added; (c) and (d) revised; (a) and (b)(3) amended 43474
208.112 (e) revised 43475
213.13 Revised 31141
213.44 Regulation at 58 FR 34215 confirmed 28248
213.45 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
Regulation at 58 FR 57560 confirmed 9298
215.21 (b)(9) removed 32649
215.80 Added 29329
219.210 (c)(3) revised 33894
219.310 (c)(3) revised 33894
220.580 Regulation at 58 FR 34216 confirmed 28248
220.836 Revised 49816
220.842 Revised 49816
221 Authority citation revised 31141, 49816
221.521 Revised 31141
221.560 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
Regulation at 58 FR 57560 confirmed 9298
221.563 Regulation at 58 FR 34216 confirmed 28248
221.780 Revised 49816
221.795 Added 29330
232 Heading revised 61226
232.1 (j) revised; (m) through (p) added 61226
232.7 Added 61226
232.30 Revised 61227
232.32 Heading, introductory text, (b) and (c) revised 61227
232.39 (c) added 61227
232.42a Added 61227
232.89 Revised 61227
232.90 Heading, introductory text, (b) and (c) revised 61227
232.94 Regulation at 58 FR 34216 confirmed 28248
232.500 (c)(1) introductory text and (d) revised 61228

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232.505 (b) revised 61228
232.600 Regulation at 58 FR 34216 confirmed 28248
232.615 (b) revised 61228
232.893 Revised 49816
232.901 Revised 61228
232.902 Revised 61228
232.903 (a) introductory text, (b) and (d) introductory text amended 61228
234 Authority citation revised 53901
234.38 (a) revised; eff. 4-24-95 53901
Regulation at 59 FR 53901 eff. date delayed to 5-24-95 8815
235.215 Revised 49817
236.3 (b)(9) removed 32649
236.40 Regulation at 58 FR 57560 eff. date extended to 4-26-95 53731
Regulation at 58 FR 57560 confirmed 9298
236.265 Revised 49817
236.1001 (Subpart F) Added 29331
237 Authority citation revised 49816
237.260 Revised 49817
241 Authority citation revised 49817
241.85 Regulation at 58 FR 34217 confirmed 28248
241.600 Regulation at 58 FR 34217 confirmed 28248
241.893 Revised 49817
241.1085 Regulation at 58 FR 34217 confirmed 28248
242 Authority citation revised 49817
242.43 Revised 31142
242.91 Regulation at 58 FR 34217 confirmed 28248
242.260 Revised 49817
244.182 Regulation at 58 FR 34217 confirmed 28248
246 Authority citation revised 62524
246.1 Regulation at 58 FR 64038 eff. date extended from 12-5-94 60900
(e) added 62524
261 Added 5282
266 Regulation at 58 FR 64038 eff. date extended from 12-5-94 60900
Added 62524
267 Added 50464
267.1 (a) corrected 61801
267.2 Corrected 61801
267.3 (c)(3) corrected 61801
267.9 Corrected 61801
267.12 (a)(3) corrected; (a)(4) and (b)(3) removed 61801
280.207 (a)(4) revised 33894
290.1 Revised 48730
290.3 Amended 48730
290.200—290.202 (Subpart D) Added 48730
291 Authority citation revised 29509
291.1 Regulation at 58 FR 54247 confirmed 48704
291.5 Regulation at 58 FR 54247 confirmed 48704
Amended 48705
291.100 Regulation at 58 FR 54247 confirmed 48704
(d)(2) revised; (h) amended 48705
(d)(2) corrected 63247
291.105 Regulation at 58 FR 54247 confirmed 48704
(a) and (h)(1) revised 48705
291.110 Regulation at 58 FR 54248 confirmed 48704
(a) revised; (b)(1) amended 48705
(b)(1) corrected 52906
291.130 Regulation at 58 FR 54248 confirmed 48704
291.135 Regulation at 58 FR 54248 confirmed 48704
(d) removed 48706
291.400 (b) amended; (c), (d) and (e) revised 29509
291.405 Amended 29510
291.410 (c) introductory text and (d) revised; (c)(6) added 29510
291.415 (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added; (f)(1) amended 29510
291.420 Heading, (a)(1) and (3) revised; (b) amended 29511
291.425 (b) and (c) revised 29511
291.435 (a)(1) amended 29511

Chapter III—Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

390—395 (Subchapter D) Established 9530
390 Transfered to Subchapter D 9530
395 Added 9531

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TITLE 24

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

510 Authority citation revised **29332**
510.52 Revised **29332**
570 Authority citation revised **66598**
Technical correction 2813
Interpretation 10758
570.3 Amended 1915, 1943
570.200 (e) revised 1943
570.201 (o) added 1943
570.202 (a)(1) revised 1944
570.203 Introductory text and (b) revised; (c) added 1944
570.204 Revised 1944
570.205 (a)(3)(i) amended 1915
570.207 (b) introductory text and (3)(iii) revised 1945
570.208 (a) heading, (1)(i), (2)(i) introductory text, (3) introductory text and (4) revised; (a)(1)(iv) amended; (a)(1)(v), (2)(iii), (iv), (d)(5), (6) and (7) added 1945
570.209 Added 1947
570.301 Removed 1915
570.302 Revised (OMB number) 1915
570.303 Revised (OMB number) 1915
570.304 (a) and (c)(1) revised 1915
570.305 Removed 1915
570.306 Removed 1915
570.308 (d) amended 1915
570.420 (d) amended 1915
570.420—570.432 (Subpart F) Revised **66598**
570.423 (a), (b) and (c)(1) revised 1915
570.429 (b) amended; (f) and (g) revised 1916
570.430 (f) removed 1916
570.431 (f) removed 1916
570.482 (c) through (g) added 1949
570.483 (b)(4)(iv) redesignated as (b)(4)(vi); (b)(4)(vi)(C) redesignated as (b)(4)(vi)(F); heading, (b)(2)(i)(C), (3) introductory text, new (4)(vi)(B) and new (F) revised; (b)(1)(iv), (2)(iv), (v), new (4)(iv), (v), new (vi)(C), (D), (E), (e)(4) and (5) added 1951
570.485 (a) revised; (b), (c) and (e) removed; (d) redesignated as (b) 1916
570.487 (d) added **33894**
(b) revised 1916
570.489 (e)(1) introductory text revised; (e)(2) redesignated as (e)(3); new (e)(2) added 1952
570.491 Revised (OMB number) 1916
570.497 Added **66604**
570.500 (a) introductory text and (c) revised; (a)(4) added 1952
570.502 (a)(16) revised 1916
570.506 (e) and (g)(1) revised 1916
(b) introductory text and (c) revised; (b)(2)(iii) amended; (b)(7) through (11) redesignated as (b)(8) through (12); new (b)(7) added 1953
570.507 (a)(2)(ii)(A) revised **66604**
(a) revised 1916
570.509 (b)(1) and (d) amended 1916
570.601 (b) amended 1917
570.605 Amended 1917
570.606 (c)(3)(iv) amended 1917
570.607 (b) revised **33894**
570.700—570.710 (Subpart M) Revised **66604**
570.704 (a)(1)(v), (2) and (b) introductory text amended 1917
570.901 (d) amended 1917
570.904 (c) revised 1917
570.910 (b)(2)(iii) amended 1917
570 Appendix A added 1953
571 Removed; interim **38329**
572.405 (c)(1) revised **33894**
574 Regulation at 57 FR 61740 confirmed **17199**
Authority citation revised **33894**
Technical correction 2813
574.2 (a) amended **17199**
Revised 1917
574.3 Amended **17199**
Amended 1917
574.100 (a) designation and (b) removed **17199**
Existing text designated as (a); (b) added 1917
574.120 Revised 1917
574.140 Removed **17199**
574.160 (b) and (c)(5) revised **17199**
Removed 1918
574.170 Removed 1918
574.180 Removed 1918
574.190 Amended 1918
574.220 Removed **17199**

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574.240 (c)(6) revised **17199**
(c)(11) amended 1918
574.300 (a) and (c)(1)(i)(C) amended; (b)(7) and (10)(ii) revised **17200**
574.310 (a) heading redesignated as (a)(1) heading; new (a)(1) heading and (e) revised; (a)(2) added; (d) introductory text amended **17200**
574.330 Introductory text, (a)(1) and (d) amended **17200**
574.340 (b) revised **17200**
574.520 Revised 1918
574.530 Amended 1918
574.600 (c) revised **33894**
574.655 Added **17201**
576 Technical correction 2813
576.3 Amended 1918
576.31 (Subpart C) Removed 1918
576.51 Revised (OMB number) 1918
576.53 (a), (b) and (e) removed; (c) and (d) redesignated as (a) and (b) 1918
576.61 Heading and (a) revised 1918
576.63 Heading, (a), (d) introductory text and (1) revised 1918
576.67 (c)(5) and (f)(1) revised 1918
576.79 (a)(4) revised **33894**
576.85 Removed 1918
576.87 Amended 1918
582.120 (a), (b) and (d) revised; interim **24253**
582.200 Revised; OMB number; interim **24253**
582.205 Removed; interim **24254**
582.210 Removed; interim **24254**
582.215 Removed; interim **24254**
582.220 Removed; interim **24254**
582.225 Removed; interim **24254**
583 Authority citation revised **33894**
Regulation at 58 FR 13871 confirmed **36891**
583.5 Amended **36891**
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 ..... **38562**
583.100 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (3) added **36891**
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 ..... **38562**
583.115 (b)(2) amended **36891**
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 ..... **38562**
583.120 (a) amended **36891**
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 ..... **38562**
583.130 Revised; OMB number **36891**
Regulation at 59 FR 36891 eff. date corrected to 7–19–94 ..... **38562**
583.140 Revised **36892**
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 ..... **38562**
583.150 (b) removed; (c) redesignated as (b); new (c) added **36892**
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 ..... **38562**
583.155 (a), (b) and (d) revised; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.200 Revised; OMB number; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.205 Removed; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.210 Removed; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.215 Removed; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.220 Removed; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.225 Removed; interim **24254**
Regulation at 59 FR 24254 confirmed **36891**
583.300 (e) amended **36892**
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 ..... **38562**
583.310 (f)(1)(i) and (g) revised; (h) added **36892**
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 ..... **38562**
583.315 (a)(1) revised **36892**
Regulation at 59 FR 36892 eff. date corrected to 7–19–94 ..... **38562**
583.325 (b)(4) revised **33894**
585 Added 9737
585.102 OMB number 9739
585.103 OMB number 9739
585.309 OMB number 9743
585.401 OMB number 9745
585.403 OMB number 9745
585.502 OMB number 9747
597 Waiver 2880
Revised 3038

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Designations 10018

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Revised 22225, 22235
791.402 (c)(2) revised 50159
791.403 Regulation at 58 FR 41428 effective date extended 3344
791.407 (a) introductory text revised; interim 35255

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

813 Authority citation revised 36681
813.104 (b)(2) removed; (b)(3) redesignated as (b)(2) 36681
813.105 (a) introductory text amended; (c), (e)(2) and (4) removed; (e)(3) redesignated as (e)(2) 36681
813.106 (b)(9) removed 32649
813.109 Heading and (a) revised 2662
850 Authority citation revised 29333
850.34 Added (OMB number) 29333
850.35 (d) removed 29335
880 Authority citation revised, ... 22923
880.104 (d) added 59649
880.209 Revised (OMB number) 29335
880.603 (b) introductory text amended; (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3) 36624
880.609 (b) revised 22755
880.612a Added; interim, ... 22923
Revised 65850
880.613 Revised; OMB number 36624
(c)(1)(i) corrected 42159
880.614 Added; OMB number 36625
880.615 Added 36626
880.616 Added 36627
880.617 Added 36627
881 Authority citation revised 22924
881.104 (d) added 59649
881.209 Revised; OMB number 29336
881.603 (b) introductory text amended 36628
881.609 (b) revised 22755
881.612a Added; interim, ... 22924
Revised 65852
881.613 Revised; OMB number 36628
(c)(1)(i) corrected 42159
881.614 Added; OMB number 36629
881.615 Added 36630
881.616 Added 36631
881.617 Added 36631
882 Authority citation revised 24254, 33895, 36681
882.103 Introductory text removed; (b) revised 36681
882.116 (c) revised 36682
882.207 Removed 36682
882.209 (a) revised 36682
882.216 (a)(4) removed 36682
882.219 Removed 36682
882.335 (a)(2)(i) revised 36682
882.406 Revised; OMB number 29337
882.410 (a)(2) revised; OMB number 47773
882.517 Revised; OMB number 36632
(c)(1)(i) corrected 42159
882.518 Added; OMB number 36633
882.519 Added 36633
882.520 Added 36634
882.521 Added 36635
882.701 (c) revised 36682
882.712 Revised; OMB number 29338
882.713 (c)(11) added 33895
882.720 (b)(3)(v) revised 29339
882.721 (c) amended 29340
882.753 (a) revised 36682
882.803 (d) introductory text revised 29340
882.805 (a) through (d) and (f)(10) revised; interim 24254
882.810 Added; OMB number 29340
883 Authority citation revised, ... 22926
883.105 (d) added 59650
883.311 Revised; OMB number 29341
883.704a Added; interim, ... 22926
Revised 65854
883.710 (b) revised 22755
883.714 Revised; OMB number 36635
(c)(1)(i) corrected 42159
883.715 Added; OMB number 36636
883.716 Added 36637

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883.717 Added 36638
883.718 Added 36638
884 Authority citation revised, ... 22927
884.112 Revised; OMB number 29342
884.223a Added; interim, ... 22927
Revised 65855
884.226 Revised; OMB number 36639
(c)(1)(i) corrected 42159
884.227 Added; OMB number 36640
884.228 Added 36641
884.229 Added 36642
884.230 Added 36642
885.5 Amended 2662
885.200 Redesignated as 885.203; new 885.200 added 2662
885.203 Redesignated from 885.200 2662
885.210 (b)(5) revised 2663
885.425 Heading revised; (b) removed; (c) through (f) redesignated as (b) through (e) 2663
885.427 Revised 36643
885.500 Added 2663
885.505 Added 2663
885.510 Added 2663
885.515 Added 2664
885.520 Added 2664
885.525 Added 2664
885.530 Added (OMB number) 2664
885.535 Added 2665
885.600 Added (OMB number) 2665
885.605 Added 2665
885.610 Added (OMB number) 2666
885.615 Added (OMB number) 2667
885.620 Added 2667
885.625 Added 2667
885.630 Added 2667
885.635 Added (OMB number) 2667
885.640 Added (OMB number) 2668
885.645 Added (OMB number) 2668
885.650 Added (OMB number) 2668
886 Authority citation revised, ... 22929
886.132 Revised; OMB number 36643
(c)(1)(i) corrected 42159
886.133 Redesignated as 886.138 36643
Added; OMB number 36644
886.134 Added 36645
886.135 Added 36646
886.136 Added 36647
886.138 Redesignated from 886.133 36643
886.329a Added; interim, ... 22929
Revised 65857
886.337 Revised 36647
887 Authority citation revised 36682
887.5 (c) removed 36682
887.59 (c)(1) and (d) revised 36682
887.105 (b)(1) and (2) amended 36682
887.107 Removed 36682
887.151—887.167 (Subpart D) Heading revised 36682
887.151 Revised 36682
887.153 Removed 36682
887.155 Removed 36682
887.157 Removed 36682
887.565 (c) revised 36682
888 Fair market rent schedules 16408, 26944, 49494
Schedule C revised 21835
Technical correction 25703
Schedule C corrected 26944, 48392
888.203 (b) revised 38564
889 Authority citation revised 36647
889.265 (a)(4) revised 33895
889.611 Added; OMB number 36647
(c)(1)(i) corrected 42159
889.612 Added; OMB number 36648
889.613 Added 36649
889.614 Added 36650
889.615 Added 36650
890.260 (a)(4) revised 33895

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

900 Authority citation revised 28343
900.105 Added; OMB number 29343
904 Authority citation revised 36651
904.122 Revised 36651
905 Authority citation revised 33655, 33895, 36651, 39403, 43630, 51854
905.102 Amended 43630, 44830, 51854
905.120 (j) added 33895
905.160 (a)(3)(ii)(C) revised; interim 31522
905.165 (c)(5) revised 33895
905.195 Added 31929
905.210 Removed 25812
905.301 (a) revised; (e)(1), (2) and (4) amended 36651
905.303 Added; OMB number 36652
905.304 Added 36653
905.305 Revised 36653
905.306 Added 36654
905.307 Added 36654
905.308 Added 39403
905.416 (a)(3) revised; (d) and (f) amended 36655
905.434 (b)(7) added 43630

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905.585 Added 31930
905.601 (b), (k)(2)(i) and (3)(iii) revised; (h) and (j) amended 44830
905.602 Revised 44830
905.642 (d)(4) removed; (g) revised; interim 31523
905.666 (a)(1), (2), (3), (b), (c), (d)(1), (3)(i), (f)(1)(iii) and (m) revised 44831
905.667 (a)(1) and (3) revised 44831
905.669 (a)(1) amended; (b) and (c) revised; (d) added; OMB number 44832
905.672 (a), (b)(2)(i), (3), (4), (5), (c)(2), (d)(1), (2)(i)(E), (4), (5)(i), (iii), (6)(i), (ii), (7)(v), (viii), (xv), (e)(2), (3) and (4) revised; (d)(7)(xviii) added 44832
905.675 (b)(1) amended; (c) revised; OMB number 44834
905.678 Revised; OMB number 44834
905.681 (c)(2) revised; interim 31523
(a) introductory text and (b) revised 44836
905.684 (b)(3) removed; (b)(4) through (7) redesignated as (b)(3) through (6); heading, (a), (b)(2), new (4) and new (6) revised 44836
905.697 (a)(1)(i), (2)(i)(A), (3)(ii), (e)(2) and (4) revised; (e)(7) redesignated as (e)(8); (a)(3)(iii) and new (e)(7) added 44836
905.715 (b)(2) revised 33655
(c)(4)(ii) and (d) removed; (c)(4)(iii), (e), (f) and (g) redesignated as (c)(4)(ii), (d), (e) and (f); (a), (b)(2), (c) introductory text, (2)(iii), (4)(i), new (d) and new (e) amended 51854
905.720 (f) added 25812
(b) existing text designated as (b)(1); (b)(2) added 33655
(g) added 43630
905.730 (c)(1)(i) revised 33655
(c)(2)(i) and (ii) amended 51854
905.960—905.988 (Subpart O) Revised 43630
905.1001—905.1021 (Subpart P) Revised 56359
905.1006 Introductory text revised; (a) amended 36655
906 Authority citation revised 36655
Revised 56365
906.8 Introductory text revised; (a) amended 36655
907 Regulation at 59 FR 3627 confirmed 4346
907.1 (a) designation, heading and (b) removed 4346
907.5 (a) designation, heading and (b) removed 4346
907.6 (b) amended 4346
907.8 (c) introductory text amended; (d) revised 4346
(d) corrected 6400
913.106 (b)(9) removed 32649
(c)(8)(ii), (iii) and (10) amended; (c)(11) redesignated as (c)(12); (c)(8)(iv) and new (c)(11) added 43635
941.206 (c) revised 18484
941.207 Revised (OMB number) 29344
941.404 (n) introductory text through (9) redesignated as (n)(1) introductory text through (ix); (n) concluding text designated as (n)(2); heading, new (n)(1) and new (2) revised; (n)(1)(x) added 18484
941.502 (a) revised; interim 31523
945 Added 17662
953 Added; interim 38329
955 Added; interim 42734
960 Authority citation revised 36655, 39405
960.203 Revised 36655
960.204 Revised 36655
960.205 (a) and (c) revised 36656
960.206 (a) amended 36656
960.207 (a) and (b) introductory text amended; (b)(1) and (2) removed 36656
960.211 Revised (OMB number) 36656
960.212 Added (OMB number) 36657
960.213 Added 36658
960.214 Added 36658
960.215 Added 36659
960.401—960.409 (Subpart D) Heading revised 17667
960.401 Revised 17667
960.403 Revised 17667
960.405 Revised 17667
960.407 Revised 17667
960.409 Removed 17667
960.501—960.511 (Subpart E) Added 39405
961 Authority citation revised 33895
961.29 (b)(4) revised 33895
963 Authority citation revised 33895

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963.3 Amended 33895
963.10 (d) revised 33895
964 Revised 43636
965.215 Added 31930
965.705 Added 31930
968 Technical correction 2813
968.102 Revised 44837
968.103 (c) revised 30477
(b), (k)(2)(i) and (3)(iii) revised; (j) amended 44837
968.235 (d)(4) removed; (g) revised; interim 31523
968.305 Amended 44837
968.310 (a)(1), (2), (f)(1)(iii), (b), (c), (d)(1), (3)(i) and (m) revised; (a)(3) amended; (d)(3)(iii) removed; (g)(4) added 44838
968.312 (a)(1) and (3) revised 44838
968.315 Heading, (b), (c)(1) and (5) revised; (a)(1) amended; (d) added; OMB number 44839
968.320 Heading, (a), (b)(2)(i), (3), (4), (5), (c)(2), (d)(1)(i), (ii), (2)(i)(E), (4), (5)(i), (iii), (6)(i), (ii), (7)(v), (viii), (xv), (e)(2), (3) and (4) revised; (d)(7)(xviii) added; OMB number 44839
(d), (e) and (f) redesignated as (e), (f) and (g); new (d) added; (c) introductory text, new (e) introductory text, (4)(i) and (6)(ii) amended 1919
968.325 Heading and (c) revised; OMB number 44841
968.330 (a) through (d), (e) introductory text, (1), (2), (4), (8), (f), (g)(1), (2) introductory text, (i), (h), (i) and (j) revised; (k) added; OMB number 44841
968.335 (c)(2) revised; interim 31523
(a) introductory text and (b) revised 44843
968.340 (b)(3) removed; (b)(4) through (7) redesignated as (b)(3) through (6); (a), (b)(2), new (4) and new (6) revised; OMB number 44843
968.345 (a)(1)(i), (ii), (2)(i)(A), (3)(ii), (e)(2) and (4) revised; (e)(7) redesignated as (e)(8); (a)(3)(iii) and new (e)(7) added; OMB number 44843
968.401—968.425 (Subpart D) Added 30478
968.407 OMB number 30478
968.422 OMB number 30480
968.428 OMB number 30480
970.2 Regulation at 53 FR 30987 confirmed; revised 3716
970.3 Amended 3716
970.4 Regulation at 53 FR 30987 confirmed 3716
(b) and (c) removed; (d) and (e) redesignated as (b) and (c); new (c) revised; new (d), new (e), (f) and (g) added 3717
970.5 Regulation at 53 FR 30987 confirmed 3716
Revised 3717
970.6 Regulation at 53 FR 30988 confirmed 3716
Revised 3719
970.7 Regulation at 53 FR 30988 confirmed 3716
(a)(2) revised 3719
970.8 Regulation at 53 FR 30988 confirmed 3716
(f) and (g) revised; (h) through (m) redesignated as (k) through (p); new (h), new (i) and new (j) added 3719
970.9 Regulation at 53 FR 30988 confirmed 3716
(b) introductory text and (1) revised; new (c) added 3719
970.11 Regulation at 53 FR 30988 confirmed 3716
Revised (OMB number) 3719
970.12 Regulation at 53 FR 30989 confirmed 3716
970.13 Regulation at 53 FR 30988 confirmed 3716
Redesignated as 970.14; new 970.13 added; OMB number 3721
970.14 Redesignated from 970.13 3721
982 Added 36682
982.210 Regulation at 59 FR 36687 eff. date corrected to 1–18–95 47081
990 Authority citation revised 33655
990.102 Amended 51854
990.107 (b)(2) revised 33655
(c)(4)(ii) and (d) removed; (c)(4)(iii), (e), (f) and (g) redesignated as (c)(4)(ii), (d), (e) and (f); (a), (b)(2), (c) introductory text, (2)(iii),

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(4)(i), new (d) and new (e) amended 51854
990.106 (b) existing text designated as (b)(1); (b)(2) added 33665
(f) and (g) added 43644
990.110 (c)(1)(i) revised 33656
(c)(2)(i) and (ii) amended 51854
990.401—990.405 (Subpart D) Added 43644

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

3280 Interpretation 19072, 34294
3282 Interpretation 64100
3500 Regulation at 59 FR 5520 withdrawn 53901
Authority citation revised 8816
Interpretation 10762
3500.2 Amended; eff. 6-19-95 65448
3500.6 (a)(3)(ii) and (iii) amended; (a)(3)(iv) added 37423
3500.7 (e)(1)(iii) amended 37423
3500.8 (c) added; eff. 4-24-94 53901
Regulation at 59 FR 53901 eff. date delayed to 5-24-95 8815
(c)(1) revised; eff. 5-24-95 8816
3500.17 (a), (b), (c)(1)(i), (i) introductory text, (1) introductory text and (viii) amended; (f)(3)(i)(B), (C), (ii)(B), (4)(i)(C), (ii) and (i)(2) revised; eff. 5-24-95 8816
Added (OMB number); eff. 4-24-95 53902
Regulation at 59 FR 53902 eff. date delayed to 5-24-95 8815
3500.19 (a) amended; eff. 6-19-95 65448
3500.21 Added; eff. 6-19-95 65448
(e)(2)(i) corrected 2642
3500 Appendix A amended; Appendixes F through J added; eff. 4-24-95 53908
Appendix MS-1 added; eff. 6-19-95 65452
Appendix MS-2 added; eff. 6-19-95 65456
Appendix MS-1 amended 2643
Appendix MS-1 corrected 5962
Regulation at 59 FR 53908 eff. date delayed to 5-24-95 8815
Appendixes A and F amended; eff. 5-24-95 8816
Appendixes G through J amended; Appendixes G-1, G-2, H-1, H-2, I-1, I-2, J-1, J-2 and K through N added; eff. 5-24-95 8817

Proposed Rules:

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25 65700
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900 43900
904 43900
905 ..... 18666, 24850, 39072, 43900, 50870
908 50870
912 43900
913 ..... 18666, 50870
941 ..... 24850, 35834, 44952
950 39072
960 43900
961 24850
964 18666
965 24850
968 ..... 24850, 40148
982 36846
984 36846
990 18666
3500 ..... 37360, 42784

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1-299)

11.100 (a) revised 48722
36 Authority cvitation revised 61765
36.3 Amended 61765
36.10 (a) revised 61765
36.11 (d) added 61765
36.20 (d)(1) through (4) added 61765
36.24 (g) added 61765
36.42 Introductory text and (a) revised 61766
36.61 (a)(1) revised 61766
36.77 Added 61766
113 Removed 54504
141 Authority citation revised 54502
141.10 (d) revised 54502
141.33 (d) revised 54502
200.12 Added 43419
216.100—216.111 (Subpart B) Removed 43419
225.30 (d)(5)(ii) corrected 10474
226.11 (a)(2) revised 22104
248.6 Revised 16757

Chapter VI—Office of the Assistant Secretary—Indian Affairs, Department of the Interior (Parts 1000—1099)

Chapter VI Established 8554

Proposed Rules:

1—299 (Ch. I) ... 21872, 23774, 33236, 36108, 67592
5 47046
10 40086
20 ..... 16720, 40182
40 18460
46 44016
63 40184
113 16760
115 41948
151 1956
164 35580
165 35580
256 ..... 16726, 30276
261 61220
309 ..... 51908, 52588
900 26920
1000—1099 (Ch. VI) 8806

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction 17154, 36256
Authority citation amended 18747, 24041, 24928, 27459, 30103, 32080, 33432, 34988, 35416, 36363, 39960, 41674, 49579, 50163, 50487, 51371, 63250, 64573, 66462, 67196
Authority citation amended 27, 2500
1.42-5 (b)(1)(vi) and (c)(1)(iii) revised; (b)(1)(vii) amended 50163
1.42-12 (a) corrected 15501
1.42-14 Added 50163
(c), (d)(1) and (k)(2) *Example 4* corrected 3345
1.52-1 (f) amended 30102
1.55-1 Added 60557
1.56(g)-1 (b) introductory text amended 51371
1.61-22T Added 65712
1.101-2 (e)(2) *Example* amended 30102
(e)(1)(iii)(*b*)(*1*) and (*2*) revised; (e)(1)(iii)(*b*)(*3*) removed 30103
1.103-8 (a)(5) revised 24041
1.103-8T Added 24041
1.142(a)(5)-1 Added 66163
1.148-0 (c) amended 24041
1.148-1 (c)(4)(ii)(A) revised 24041
1.148-1T Added 24041
1.148-2 (b)(2)(ii) revised 24042
1.148-2T Added 24042
1.148-3 (h)(3) amended 24042
(j) *Example 1* revised; *Example 2* amended 24350
1.148-3T Added 24042

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1.148–4 (b)(5) redesignated as (b)(6); new (b)(5) added; (g), (h)(1), (2)(vii), (ix), (3), (4) and (5) revised 24042
1.148–4T Added 24042
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii) and (e)(2)(iii) revised; (e)(2)(ii)(B) amended 24044
1.148–5T Added 24044
1.148–6 (d)(3)(iii)(C) revised 24045
1.148–6T Added 24045
1.148–9 (c)(2)(ii)(B) revised; (h)(4)(vi) added 24045
1.148–9T Added 24045
1.148–10 (b)(2) revised; (c)(2)(ix) amended 24046
(d) *Example 1* amended 24351
1.148–10T Added 24046
1.148–11 (i) added 24046
1.148–11T Added 24046
1.149(d)–1 (f)(3) revised 24046
1.149(d)–1T Added 24046
1.149(e)–1 (e)(3)(i) and (4) revised 24351
1.150–1 (c)(1) and (4) heading revised; (c)(4)(iii) added 24046
1.150–1T Added 24046
1.167(c)–1 (a)(5) amended 41674
1.168(i)–0 Added 51371
1.168(i)–1 Added 51371
(f)(2)(ii) and (3) corrected 64849
1.170A–4 (d) *Example 9* amended 30102
1.170A–5 (b) *Example 5* amended 30102
1.170A–6 (c)(3)(i), (iii) *Examples 1, 2, 3,* (c)(4), (5) *Examples 1, 2,* and *3*; amended 30102
1.170A–7 (c) amended 30102
1.170A–12 (a)(3) and (c) amended 30102
(a)(3) amended; (b), (e)(1) and (2) revised; (f) and authority citation removed 30104
1.170A–13 Authority citation removed 30105
1.170A–13T Added 27460
1.170A–14 (h)(4) *Example 2* amended 30105
1.174–2 (a)(1) revised; (a)(2) and (3) redesignated as (a)(8) and (9); new (a)(2) through (7) added; (c) amended 50160
1.217–2T Added 65712
1.263A–0 Amended 67196
1.263A–1 (a)(2)(i), (3)(v), (b)(3), (4) and (10) amended; (b)(10)(i), (ii) and (j)(4) added 39961
(g)(4)(ii) amended 67197
1.263A–1T (c) and (e) redesignated as 1.263A–4T(c) and 1.263A–7T(e) 39960
Removed 39961
1.263A–2 (a)(1)(ii)(B)(*2*) revised 67197
1.263A–3 (c)(4)(vi) heading and (C) heading revised; (c)(4)(vi)(A), (B) and (C) added 39962
1.263A–4T Added; (c) redesignated from 1.263A–1T(c) 39960
1.263A–7T Added; (e) redesignated from 1.263A–1T(e); new (e)(1)(i), (ii), (iii)(B), (iv), (2), (3)(i), (4)(i), (ii), (5) *Examples 1* and *3* amended 39960
(e)(6)(i), (ii)(A) introductory text, (*1*), (C) *Examples 1, 3, 5,* (iii)(A), (B)(*1*), (*2*) *Example,* (C)(*1*), (*2*) Example, (iv)(C) *Example,* (7)(iii)(B), (v) *Example,* (9)(i), (ii) *Examples 1* through *5,* (10)(i), (ii)(A), (iii), (11)(i) through (v) amended 39961
1.263A–8 Added 67198
1.263A–9 Added 67200
1.263A–10 Added 67207
1.263A–11 Added 67210
1.263A–12 Added 67212
1.263A–13 Added 67213
1.263A–14 Added 67215
1.263A–15 Added 67215
1.266–1 (a) redesignated as (a)(1); (a)(2) added 67215
1.279–6 (b)(4) revised 41675
1.301–1 (d)(1)(iii), (h)(2)(ii)(*b*) and (j)(1) amended 2500
1.312–3 Amended 2500
1.337(d)–1 (a)(5) introductory text amended 41674
(a)(5) *Example 8* amended 41675
1.337(d)–2 (c)(4) *Example* amended 41674
1.338–4T (h)(4) corrected 15501
1.341–6 (b)(1), (2)(i), (iii), (3), (h)(4) and (n) amended 2500
1.382–1 Amended 32080
1.382–6 Added; heading revised 32080
1.401–12T Added 63571
1.401(k)–0 Amended 66169
1.401(k)–1 (a)(3)(iv), (b)(4)(ii), (iv), (5)(i), (ii), (6) *Examples 2, 3, 4,* (d)(5), (6)(iv), (e)(6)(ii), (f)(3)(v) *Example,* (7) *Example 1* and (g)(4)(ii) amended; (a)(3)(v), (4)(ii), (iv), (5)(iv), (6)(ii)(C), (7)(i), (b)(1)(i), (ii) heading, (5)(vi), (d)(2)(iv)(A)(*3*), (3), (4)(i), (e)(7), (f)(1)(iii), (2), (3)(ii), (iii)(C), (4)(ii)(B), (7) *Examples 2, 3,* (g)(1)(ii)(B)(*1*), (C)(*1*), (2)(i), (5), (6), (11), (3)(iii)(A), (B)(*2*) and (4)(ii) revised; (a)(3)(vi) *Example 3,* (e)(6)(vi), (15) and (16) added 66169
1.401(m)–0 Amended 66175
1.401(m)–1 (a), (b)(1), (3)(i), (ii), (4)(ii)(B), (5)(v), (c)(1), (e)(1)(iii), (4), (6) *Examples 2* through *6,* (f)(1)(ii)(B), (C)(*1*), (2), (12)(i)(B), (g)(4), (5)(ii)(A) and (B)(*2*) revised; (b)(3)(iii) removed; (b)(3)(vii), (6) *Example 8,* (f)(16) and (17) added; (b)(4)(ii)(A), (5)(i), (ii), (d) *Examples 3, 4,* (e)(3)(ii)(B) and (f)(4)(ii) amended 66175
1.401(m)–2 (a) amended; (b)(1), (c)(1) and (4) and *Example 1* revised 66179
1.401(a)(17)–1 Revised 32905
1.402(a)–1 (d)(3)(iv) revised; (d)(3)(v) added 66180
1.402(g)–1 (e)(5)(ii) revised; (e)(11) *Example 2* amended 66180
1.410(b)–0 Amended 32914
1.410(b)–2 (b)(7) amended 32914
1.410(b)–6 (d)(2)(i), (ii) and (g) corrected 16984
(d)(1), (2)(iv) *Example 2* amended 32914
1.410(b)–7 (c)(4) and (5) revised; (c)(6) removed; (d)(4) amended 32914
1.411(d)–4 Amended 66180
1.414–11 (b)(2) and (4) revised; (b)(3) and (c)(2)(v) amended 32922
1.414(c)–2 (b)(2)(ii) amended 30102
1.414(c)–4 (b)(3)(i) amended 30102
1.414(g)–1T (b)(1) introductory text and (2)(iii) revised; (g) removed 32916
1.414(q)–1 Added 32915
1.414(r)–0 Amended 32916
1.414(r)–1 (c)(2)(ii) *Example*, (d)(4), (9)(i) and (e) amended; (c)(3)(ii) revised 32916
1.414(r)–2 (b)(2), (c)(3) *Examples 1* and *2* revised 32917
1.414(r)–3 (c)(2)(ii), (4), (5)(iii), (7) *Example 1*, (d)(2) and (4) *Example 1* revised; (c)(7) *Examples 3* and *4* redesignated as *Examples 4* and *5*; (b)(4), (c)(6) introductory text, *Examples 2* through *5, 7*, (7) introductory text, *Example 2* and new *Example 5* amended; new (c)(7) *Example 3* added 32917
1.414(r)–4 (b) amended 32919
1.414(r)–5 (b)(5)(ii), (d)(1)(ii)(B), (C), (4) *Example 2*, and (g)(5) revised; (d)(1)(iii) added; (d)(1) concluding text removed; (g)(2)(iii)(A), (D), (3)(ii)(B), (iii)(B), (C), (D) and (g)(6) amended 32919
1.414(r)–6 (a) amended; (b) revised; (c) removed 32920
1.414(r)–7 (c)(2) and (d) removed; (c)(3), (4) and (5) redesignated as (c)(2), (3) and (4); (a)(1), (b)(2)(ii), (3), new (c)(2)(i), (3)(i), (ii) introductory text, (A), (B), (iii) *Example 1*, (4)(i), (ii), (iii) introductory text, (E), (v) introductory text and *Examples 1* through *4* amended; (c)(1) and new (c)(2)(iv) revised; (c)(5) added 32920
1.414(r)–8 (b)(4) *Examples 1* and *4* amended; (b)(2)(iii) and (4) *Example 2* revised; (d)(4) removed; (b)(4) *Examples 3, 4,* and (d)(5) redesignated as *Examples 5, 6* and (d)(4); new (b)(4) *Examples 3* and *4* added; new (b)(4) *Examples 5* and *6* amended 32921
1.415–6 (b)(6)(iv) revised 66181
1.446–3 (h)(2) and (5) introductory text amended 36358
1.446–4 Added 36358
1.453–9 (c)(1)(ii) amended 2500
1.461–1 (a)(2)(iii)(B) revised 36360
1.468A–0 Amended 66473
1.468A–1 (b) introductory text and (4) revised; (d) added 66473

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1.468A–3 (h)(1)(v) removed; (h)(1)(vi), (vii) and (viii) redesignated as (h)(1)(v), (vi) and (vii); new (h)(1)(vii) and (i)(1)(ii) revised; (h)(2)(xii) and (xiii) added 66474
(h)(1)(vi) corrected 8932
1.468A–5 (a)(4) added; (b)(2)(v) amended; (b)(2)(vi) redesignated as (b)(2)(vii); new (b)(2)(vi) added 66474
(b)(2)(vii) introductory text corrected 8932
1.468A–6 Added 66474
1.469–0 Amended 50487
1.469–1 (f)(4)(iii) *Example 3* amended 45623
1.469–1T (e)(5) corrected 17478
(h)(7) amended 41674
1.469–2 (c)(2)(iii)(E), (G) *Example 1*, (v)(C) *Example 1*, *Example 3*, (6)(i)(A) and (d)(5)(iii)(A) amended; (e)(3)(iii)(B) revised 45623
1.469–4 Added 50487
1.469–11 (c)(1)(ii) revised 45623
(a)(1) and (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 50489
1.482–0 Added 34988
1.482–0T Removed 34988
1.482–1 Added 34990
1.482–1T Removed 34988
1.482–2 Added 35002
1.482–2T Removed 34988
(a)(1)(iii)(E)(*3*) *Example* (ii) corrected; (a)(1)(iii)(E)(*3*) *Example* (iii) correctly added; CFR correction 48798
1.482–3 Added 35011
1.482–3T Removed 34988
1.482–4 Added 35016
1.482–4T Removed 34988
1.482–5 Added 35021
1.482–5T Removed 34988
1.482–6 Added 35025
1.482–6T Removed 34988
1.482–8 Added 35028
1.514(c)–2 Added 24928
1.585–1 (b)(2) corrected 15502
1.585–5 (c)(4)(ii) and (d)(2) corrected 15502
1.585–6 (d)(5) *Example 3* corrected 15502
1.585–7 (d)(1) corrected 15502
1.585–8 (b)(2) corrected 15502
1.642(c)–6 (d)(2) amended 30102
(d)(1) redesignated as (d) and (d)(2) and (3) redesignated as 1.642(c)–6A (d)(3) and (4); heading, (a), (b), (c)(1), new (d) and (e) revised; (f) added; authority citation removed 30105
1.642(c)–6A Undesignated center heading and section added; (d)(3) and (4) redesignated from 1.642(c)–6 (d)(2) and (3) 30105
(d)(4) table amended 30116
1.642(c)–7 (d)(2) amended 30102
1.664–1 (a)(6) *Example* amended 30102
(a)(5)(ii)(*b*), (iv)(*a*), (*b*), (*c*), and (6) introductory text revised; (a)(5)(iv)(*d*) added; authority citation removed 30116
1.664–2 (c) revised; authority citation removed 30116
1.664–4 (b)(2) and (3) amended 30102
(b)(1) redesignated as (b) and (b)(2) through (5) redesignated as 1.664–4A (d)(3) through (6); (a), new (b), (c) and (d) revised; (e) and (f) added; authority citation removed 30117
1.664–4A Undesignated center heading and section added 30116
(d)(3) through (6) redesignated from 1.664–4 30117
(d)(4), (5), (6) heading, Tables D, E, and F(1) amended 30148
1.665(a)–0—1.669(b)–2 Undesignated center heading revised 30148
1.665(a)–0A—1.665(g)–2A Undesignated center heading added 30148
1.701–2 Added 27
(d) *Examples 3*, *7* and *9* amended 9776
(d) *Examples 10* through *13* and (f) *Example 2* amended 9777
1.704–1 (b)(1)(vi), (2)(iv)(*d*)(*3*) and (c) amended 66728
1.704–3 (a)(1) and (3)(i) amended; (d), (e)(2)(iii) and (3) revised; (e)(2)(iv) and (v) removed; (e)(4) added 66728
1.704–3T Removed 66734
1.751–1 (c)(4), (5) and (6) revised 2500

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1.761–2 Heading revised; (a)(3) concluding text amended; (d) redesignated as (e); new (d) added 66183
1.809–10 Redesignated from 1.809–10T and amended 49579
1.809–10T Redesignated as 1.809–10 49579
1.860G–1T Added 18747
1.904–4 (j) revised 37672
1.954–2T (g)(2)(i) revised 37672
1.985–0 Amended 37672
1.985–1 (a)(1) and (d)(1)(ii) amended; (b) and (c)(6) revised; (d)(1) concluding text removed 37672
1.985–2 (a) and (b)(2) revised 37673
1.985–3 Revised 37673
1.1011–2 (c) *Example* (*8*) amended 30148
1.1014–5 (a)(3), (c) *Examples 1* through *6* amended 30102
1.1031(b)–2 (b) revised; (c) and (d) added 18749
Heading corrected 33200
1.1031(k)–1 (j)(2) added 18749
1.1221–2 Added 36363
1.1221–2T Removed 36367
1.1233–2 Redesignated from 1.1233–2T and revised 36367
1.1233–2T Redesignated as 1.1233–2 36367
1.1234–4 Redesignated from 1.1234–4T and revised 36367
1.1234–4T Redesignated as 1.1234–4 36367
1.1254–0 Added 2501
1.1254–1 Added 2502
1.1254–2 Added 2505
1.1254–3 Added 2506
1.1254–4 Added 2507
1.1254–5 Added 2507
1.1254–6 Added 2508
1.1256(e)–1 Added 36367
1.1363–2 Added 51106
1.1374–0 Added 66463
1.1374–1 Redesignated as 1.1374–1A 66462
Added 66463
1.1374–1A Redesignated from 1.1374–1 66462
1.1374–2 Added 66463
1.1374–3 Added 66464
1.1374–4 Added 66464
1.1374–5 Added 66469
1.1374–6 Added 66469
1.1374–7 Added 66469
1.1374–8 Added 66469
1.1374–9 Added 66470
1.1374–10 Added 66470
1.1375–1 Undesignated center heading added 66462
1.1388–1 Undesignated center heading added 24937
1.1398–1 Added 24937
1.1398–2 Added 24938
1.1502–1 (a) amended 41675
1.1502–11 (b) revised 41675
1.1502–13 (j) introductory text, (l)(2) *Example* (*1*), (m)(3) *Example* (*3*), (o)(1)(i), (ii) and (2) *Example* amended 41674
(c)(1)(iii) and (h) *Example* (*17*) amended; (c)(7) redesignated as (c)(8); new (c)(7) added 41677
(c)(1)(i) and (2) amended 67215
1.1502–14 (b)(3)(ii), (d)(3)(ii), (4)(ii)(*b*), (g)(1)(i), (ii) and (2) *Example 1* amended 41674
(a)(2) and (5) revised; (a)(4) redesignated as (a)(6); new (a)(4) and (b)(4) added; new (a)(6) *Example* amended 41677
(c)(1) amended 2508
1.1502–19 Revised 41677
1.1502–20 (a)(1), (3)(ii), (5) introductory text, (c)(1)(i), (ii), (2)(i)(A)(*1*), (B), (D), (ii), (iii), (4) *Example 2*, *Example 7*, (e)(3) *Example 1* and (f) revised; (c)(2)(vii) added; (e)(3) *Example 8* and (g)(3) removed; (g)(4) redesignated as (g)(3); (a)(4), (5) *Example 6*, (6) *Example 5*, (c)(2), (i)(4) *Examples 1*, *3*, *6*, (e)(3) *Example 2*, new (g)(3) *Examples 1*, *2*, and *3* amended 41681
1.1502–31 Revised 41683
1.1502–31T Removed 41685
1.1502–32 Revised 41685
1.1502–32T Removed 41695
1.1502–33 Revised 41695
1.1502–33T Removed 41700
1.1502–43 (a)(3)(ii) and (iii) amended 41674
1.1502–47 (e)(4)(iii)(B) amended 41674
1.1502–75 (d)(5)(viii) amended 41675
(d)(1) amended 41700
1.1502–76 (b) revised; (d) removed 41700
1.1502–80 (c) and (d) added 41703

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1.1502–81T (a) amended 41675
1.1552–1 (c)(2) amended 41675
1.6035–1 Amended 64301
1.6038–2 (d)(5) and (f)(10)(v) added; (e), (f)(10)(iii), (iv), (g) introductory text and concluding text amended; (h) revised 64302
1.6046–1 (b)(10) and (g) amended; (f)(5) added 64302
1.6050H–0 Revised 63250
1.6050H–1 (a), (c)(1), (2), (e)(1), (2)(i) and (g) revised; (c)(3) redesignated as (c)(5); (b)(4), new (c)(3), (5) *Example 5*, (e)(2)(iii) and (f) added 63251
1.6050H–2 (a)(2)(iii), (d), (e)(1) and (g) revised; (a)(2)(iv)(B) amended; (a)(2)(v) (e)(2) and (3) redesignated as (a)(2)(vi), (e)(1)(ii) and (iii); new (a)(2)(v), (e)(1)(i) and new (2) added 63253
1.6050I–0T Added 64573
1.6050I–2T Added 64573
1.6302–1T Added 35416
1.6302–2T Added 35416
1.6302–3T Added 35416
1.6662–0 Amended 35031
1.6662–6T Heading, (d)(2)(ii), (iii)(A), (B), (3)(ii)(B) and (C) revised; (d)(2)(iii)(D) and (3)(iii)(C) added 35031
1.6695–1 (a)(1) introductory text, (b)(1), (4)(iv), (v), (5) introductory text, (c)(1) introductory text, (3) and (e) revised; (b)(4)(vi) added 33432
1.7520–1—1.5520–4 Undesignated center heading added 30148
1.7520–1 Added 30149
1.7520–2 Added 30149
1.7520–3 Added 30150
1.7520–4 Added 30150
15a Authority citation revised 18751
15a.453–1 (b)(3)(i) amended 18751
20 Authority citation revised 30150
20.2013–4 (a) introductory text and *Example (2)* amended 30151
20.2031–0 Added 30151
20.2031–7 (a)(2) amended 30102
(a)(2), (b)(1), (2), (3)(i), (ii), (c), (d), and (e) amended 30103
Redesignated as 20.2031–7A (d); new 20.2031–7 added 30152
20.2031–7A Undesignated center heading and section added 30151
(d) redesignated from 20.2031–7; new (d) heading, (1)(i) and (iii) revised; new (d)(5), (6), Tables A, B and LN amended 30152
20.2031–10 Removed 30170
20.2032–1 (f)(1) amended 30103
20.2039–2 (c)(1)(viii) amended 30103
20.2039–5 (c)(1) and (2) amended 30103
20.2055–2 (f)(2)(iv) amended 30103
(f)(4) revised 30170
20.2056(b)–4 (d) amended 30103
20.7520–1—20.7520–4 Undesignated center heading added 30170
20.7520–1 Added 30170
20.7520–2 Added 30171
20.7520–3 Added 30172
20.7520–4 Added 30172
25 Authority citation amended 23154
Authority citation revised 30172
25.2511–1 (h)(6) and (7) amended 30103
25.2512–0 Added 30173
25.2512–5 (a)(2), (b)(1), (2), (3)(i), (ii), (c), and (d) amended 30103
Redesignated as 25.2512–5A(d); heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii) and (c) through (f) redesignated as 25.2512–5A(d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, *(1)*, *(2)*, (ii), (iii), (2)(C) introductory text, *(1)*, *(2)* introductory text, (i), (ii), (iii) introductory text, (A), (B) and (3) through (6) 30173
Added 30174
25.2512–5A Undesignated center heading and section added; (d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, *(1)*, *(2)*, (C) introductory text, *(1)*, *(2)*, (ii), (iii), (2) introductory text, (i), (ii), (iii) introductory text, (A), (B) and (3) through (6) redesignated from 25.2512–5 heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c) through (f); new (d) heading revised; new (d)(1)(i)(A) and (B) amended 30173
(d)(1)(i)(C) and (5) amended; (d)(1)(iii) and (6) revised 30174
25.2512–9 Removed 30176
25.2515–2 (c) amended 30177
25.2518–3 (a)(1)(iv)(A) amended 30103
Undesignated center heading added 30173
25.2522(a)–2 (a) amended 30177
25.2522(c)–3 (d)(2)(iv) amended 30103
(d)(3) revised 30177
25.2523(a)–1 (d) amended 30103
25.2523(c)–1 (c) *Example* amended 30103
25.2701–0 Amended 23154
25.2701–1 (a)(1) amended 23154
25.2701–5 Added 23154
25.2702–3 (b)(3) and (c)(3) amended 23157
25.7520–1—25.7520–4 Undesignated center heading added 30177
25.7520–1 Added 30177
25.7520–2 Added 30178
25.7520–3 Added 30178
25.7520–4 Added 30179
31 Authority citation amended 35416, 65940
31.3121(a)–1 (a) redesignated as (a)(1); (a)(2) added 66189
31.3201–1 Revised 66189
31.3201–2 Revised 66189
31.3202–1 (b) and (f) revised 66189
31.3211–1 Revised 66190
31.3211–2 Revised 66190
31.3221–1 (a) and (b) revised; (d) removed 66190
31.3221–2 Revised 66190
31.3231(a)–1 (a)(1) revised; (c) and (d) redesignated as (d) and (e); new (c) and (f) added 66191
31.3231(e)–1 Revised 66191
31.3231(e)–2 Added 66191
31.3231(e)–2T Removed 66191
31.3231(e)–3 Removed 66191
31.3402(f)(5)–2T Added 65714
31.3402(r)–1T Added 65940
31.6302–1T Added 35416
31.6302(c)–3T Added 35417
40 Authority citation amended 35417
40.6302(c)–1T Added 35417
47 Revised 43040
48 Authority citation amended 33657, 43045
48.4082–1 Added 33657
48.4082–1T Removed 33657
48.4221–3 (e) added 43045
48.6416(b)(2)–2 (b) text redesignated as (b)(1) and amended; new (b)(1) heading and (b)(2) added 43046
54.4979–0 Amended 66181
54.4979–1 (d)(1) and (3) revised; (d)(4) removed; (d)(5) redesignated as (d)(4) 66181
300 Added 8299
301 Authority citation amended 35
301.6159–1 Added 66193
301.6323(f)–1 (a)(2) amended; (c) and (d) redesignated as (d) and (e); new (c) and new (e) *Examples 5* and *6* added 38120
301.6331–1 (a)(1) amended; (a)(2) revised; (b) redesignated as (b)(2); (b) heading, (1) and (d) added 38903
301.6331–2 Revised 38903
301.6334–1 (a)(2), (3), (8) and (9) amended; (a)(10) through (13), (d) and (e) added 53088
301.6334–2 Revised 53088
301.6334–3 Revised 53089
301.6334–4 Revised 53090
301.6334–5 Removed 53091
301.6334–6 Removed 53091
301.6334–7 Removed 53091
301.6343–1 Revised 35
301.6343–2 Added 37
301.7426–1 (a)(1) revised; (c) added 26601
301.7430–0 Added 29360
301.7430–1 Revised 29357
301.7430–2 Added 29360
301.7430–3 Added 29362
301.7430–4 Added 29363
301.7430–5 Added 29364
301.7430–6 Added 29366
602 Technical correction 17154
602.101 (c) table amended (OMB numbers) 23157, 24939, 27235, 27460, 29366, 30179, 32081, 33433,

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TITLE 26 Chapter I—Con.

35030, 35033, 36360, 36367, 37680, 41703, 50166, 51376, 63254, 64302, 64574, 65714, 66188, 66476, 67215
(c) table amended (OMB numbers) 2509

Proposed Rules:

1 ..... 15877, 17747, 18011, 18048, 18772, 21697, 22773, 24094, 24095, 24992, 25581, 25584, 25847, 26466, 27515, 30180, 32160, 32670, 34398, 35066, 35418, 36114, 36394, 37450, 37733, 41414, 41739, 46779, 52105, 52110, 53771, 55225, 58800, 59973, 61844, 62370, 62644, 64359, 64633, 64635, 64884, 64909, 65739, 66280, 66498, 66825, 67253, 67658
.....397, 406, 2049, 2352, 2557, 2717, 7487, 7488, 9309
20 30180
25 30180
31 ..... 18057, 24096, 35418, 60099, 65740, 65982
40 ..... 35418, 52735
48 52735
53 64359
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300 66828
301 ..... 26608, 37450, 43073, 49613, 64359
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602 ..... 27515, 64635

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.40 (b) revised 42160
5 Interpretation 35623
5.23 (a)(3)(ii) and (iii) revised 67222
(c) revised 67223
5.51 (b) revised 42160
7.31 (b) revised 42160
9.148 Added 26114
70.92 (d)(2)(iii) and (iv) revised 29367
178.11 Amended 10786
178.31 (d) revised 10786
178.102 Revised (OMB number) 10786
178.126a Amended 10787
178.129 (b) revised; OMB number 10787
178.130 (a) and (e) revised 10787
178.131 Revised (OMB number) 10788
178.150 (a) introductory text revised 10788
178.151 Second 178.151 redesignated as 178.152 10788
178.152 Redesignated from second 178.151 10788

Proposed Rules:

4 ..... 15878, 30560
..... 411, 3171
5 ..... 411, 3171
6 ..... 21698, 29215
7 ..... 411, 3171
8 ..... 21698, 29215
9 ..... 55226, 61853
10 ..... 21698, 29215
11 ..... 21698, 29215
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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page
0.1 Amended; interim 8933
0.15 (b)(1)(v), (c) and (e) revised 9777
0.64–1 Amended 41242
0.64–4 Added 46551
0.55—0.64–3 (Subpart K) Appendix amended 42161, 46550
0.89a (c) revised 41242
0.96c Added 60558
0.100—0.104 (Subpart R) Appendix amended 38121
0.111a Added 46551
0.119—0.121 (Subpart U–1) Added; interim 8933
2.13 (a), (b) and (c) revised 45625
2.20 Amended 65941, 65942
2.23 (a), (b) and (c) revised 45625
2.26 (f) added 40258
2.40 (k) and (l)(2) amended 66734
(k) corrected 5461
16.33 Revised 38
16.96 (l) and (m) added 47081
36 Technical correction 5461
36 Appendix A corrected; CFR correction 3080
37 Added 39904, 39908
64.1 Regulation at 59 FR 25816 confirmed 7447
64.2 Regulation at 59 FR 25816 confirmed 7447
68.2 (i) and (k) revised 41243
77 Added 39928
82 Added; interim 50832
Regulation at 59 FR 50832 comment period reopening 63719
91 Added; interim 63019

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

505 Added 64781
524.41 (e) revised 10722
527 Authority citation revised 66148, 67590
527.10 (Subpart B) Removed 67590
527.50 Removed 66148
527.51 Removed 66148
527.52 Removed 66148
527.53 Removed 66148
527.54 Removed 66148
540.105 (c) amended; eff. 1–4–96 240
545.11 (d)(11) added 53345
(d)(10) amended; eff. 1–4–96 240
550 Authority citation added 53343
550.10 (Subpart B) Authority citation removed 53343
550.30 (Subpart D) Authority citation removed 53343
550.40—550.44 (Subpart E) Authority citation removed 53343
550.50—550.58 (Subpart F) Authority citation removed 53343
Revised; interim in part 53343
551.22 (b) revised 62968
551.23 (b) and (d) removed; (c) and (e) redesignated as (b) and (d) 62968
551.24 (b) revised; (c) removed; (d) redesignated as (c) 62968
551.100—551.120 (Subpart J) Revised 60285
551.160—551.164 (Subpart N) Revised 34742
570.33 (c) revised 53937
571.10—571.13 (Subpart B) Revised 35456

Proposed Rules:

16 44383
31 37866
66 53706
67 65607
90 66830
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93 5152
524 54782
542 50179

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

18.3 (b) revised; (f) and (g) added 41876
18.4 (d) revised 41877
18.18 (a) revised 41877
18.19 (f) revised 41877
18.20 (g) revised 41877
18.22 (c) revised 41877
20 Authority citation revised 47250
Heading revised 47250
20.101—20.111 (Subpart E) Added 47250

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TITLE 29 Subtitle A—Con.

24.4 (d)(2)(i), (ii), (d)(3)(i) and (ii) revised 41877
95 Added 38271

Chapter I—National Labor Relations Board (Parts 100—199)

100 Authority citation revised 37158
100.101 Revised 37158
100.102 Revised 37158
100.103 Removed 37158
100.104 Removed 37158
100.105 Removed 37158
100.111 Removed 37158
100.112 Removed 37158
100.113 Removed 37158
100.114 Removed 37158
100.115 Removed 37158
100.116 Removed 37158
100.117 Removed 37158
100.118 Removed 37158
100.119 Removed 37158
100.120 Removed 37158
100.121 Removed 37158
100.122 Removed 37158
100.123 Redesignated as 100.201 37158
100.201—100.209 (Subpart B) Heading revised 37158
100.201 Redesignated from 100.123 and revised 37158
100.202 Removed 37159
100.203 Removed 37159
100.204 Removed 37159
100.205 Removed 37159
100.206 Removed 37159
100.207 Removed 37159
100.208 Removed 37159
100.209 Removed 37159
100.301—100.307 (Subpart C) Heading revised 37159
100.301 Removed 37159
100.302 Removed 37159
100.303 Removed 37159
100.304 Removed 37159
100.305 Removed 37159
100.306 Removed 37159
100.307 Removed 37159
100.401 (Supart D) Redesignated from 100.500 Subpart E and revised 37159
100.500 (Subpart E) Redesignated as 100.401 Subpart D 37159
100.501 Redesignated from 100.601 37159
100.502 Redesignated from 100.602 37159
100.503 Redesignated from 100.603 37159
100.510 Redesignated from 100.610 37159
100.511 Redesignated from 100.611 37159
100.530 Redesignated from 100.630 37159
100.540 Redesignated from 100.640 37159
100.549 Redesignated from 100.649 37159
100.550 Redesignated from 100.650 37159
100.551 Redesignated from 100.651 37159
100.560 Redesignated from 100.660 37159
100.570 Redesignated from 100.670 and amended 37159
100.601—100.671 (Subpart F) Redesignated as Subpart E 37159
100.601 Redesignated as 100.501 37159
100.602 Redesignated as 100.502 37159
100.603 Redesignated as 100.503 37159
100.610 Redesignated as 100.510 37159
100.611 Redesignated as 100.511 37159
100.630 Redesignated as 100.530 37159
100.640 Redesignated as 100.540 37159
100.649 Redesignated as 100.549 37159
100.650 Redesignated as 100.550 37159
100.651 Redesignated as 100.551 37159
100.660 Redesignated as 100.560 37159
100.670 Redesignated as 100.570 37159
102.35 Revised; eff. 2–1–95 through 1–31–96 65944
102.42 Revised; eff. 2–1–95 through 1–31–96 65945
102.45 (a) revised; eff. 2–1–95 through 1–31–96 65945

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

417.16—417.25 (Subpart B) Heading revised 65716
417.16 Revised 65716
417.17 Revised 65717

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

506 Authority citation revised 3977
506.500—506.550 (Subpart F) Revised; interim 3955, 3977
506.510 OMB number 3959
506.520 OMB number 3963
506.550 OMB number 3968
506.600—506.675 (Subpart G) Revised; interim 3969, 3977
507.700—507.760 (Subpart H) Revised 65659, 65676
507.730 OMB number 4029
507.760 OMB number 4029
507.800—507.855 (Subpart I) Revised 65672, 65676
508.900 (b)(2)(i) and (d) amended; interim 64776, 64777
(e) added; interim 64777
508.910 (b)(2)(i) and (e) amended; interim 64777
508.940 (d)(1)(i)(B), (h)(1) and (3) amended; interim 64777
825 Revised 2237
Regulation at 60 FR 2237 eff. date delayed to 4–6–95 6658

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1425 Authority citation revised 2509
1425.2 Revised 2509

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 (a) amended 44928, 52704
1601.80 Amended 54818
1640 Added 39904, 39908

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1903 Authority citation revised 66613
1903.14 Heading revised; (f) added 66613
1910 Technical correction 55208
1910.19 (a) revised 41057
1910.120 Appendix B revised; Appendix E added 43270
1910.132 (g) correctly added 33910
Regulation at 59 FR 16366 eff. date stayed through 10–5–94 34580
1910.133 Table corrected 33911
1910.136 (a) corrected 33911
1910.138 Corrected 33911
1910.261—1910.275 (Subpart R) Authority citation revised 51741
1910.266 Revised 51741
Note added 7449
1910.269 (g)(2)(i) revised 40729
(r)(5) introductory text revised 51748
1910.1000—1910.1500 (Subpart Z) Authority citation revised 36699
Authority citation revised 9624
1910.1001 (a) through (p) revised; OMB number 41057
Appendixes A and B amended 41065
Appendixes D and F amended 41070
Appendixes G and H amended; Appendix J added 41071
(o) revised 9625
1910.1200 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
1910.1201 Added 36700
1915 Authority citation revised 36699
1915.7 Revised 37856
1915.11—1915.16 (Subpart B) Revised 37857
1915.100 Added 36700
1915.1001 Revised; OMB number 41080
(q) revised 9625
1915.1200 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
1917 Authority citation revised 36700
1917.28 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
1917.29 Added 36700
1918 Authority citation revised 36700
1918.90 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
1918.100 Added 36700
1926.50—1926.66 (Subpart D) Authority citation revised 36700, 43275
1926.58 Redesignated as 1926.1101 41131
1926.59 (b)(6)(ii) revised; (c) and (g)(7)(iv) amended 65948
1926.61 Added 36700
1926.65 Appendix B revised; appendix added 43275
1926.95—1926.107 (Subpart E) Authority citation revised 40729

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TITLE 29 Chapter XVII—Con.

1926.104 Removed 40729
Regulation at 59 FR 40729 eff. date stayed to 8-6-95 5131
1926.105 (a) redesignated as 1926.753; removed 40729
Regulation at 59 FR 40729 eff. date stayed to 8-6-95 5131
1926.107 (b), (c) and (f) removed 40729
Regulation at 59 FR 40729 eff. date stayed to 8-6-95 5131
1926.250—1926.252 (Subpart H) Authority citation revised 40729
1926.250 (b)(2) revised 40729
1926.500—1926.503 (Subpart M) Revised 40730
1926.550 (c)(2) and (g)(4)(i)(C) revised 40730
1926.651 Heading and (l) revised 40730
1926.701 (f)(1) designation and (2) removed 40730
1926.750—1926.752 (Subpart R) Authority citation revised 40730
1926.753 Redesignated from 1926.105(a) and heading added 40729
Regulation at 59 FR 40729 eff. date stayed to 8-6-95 5131
1926.950—1926.960 (Subpart V) Authority citation revised 40730
1926.951 (b)(4)(i) revised 40730
1926.1101 Redesignated from 1926.58 41131
Heading and (a) through (p) revised; (q) added; OMB number 41132
Appendix A amended; Appendix B revised 41144
Appendixes D and F revised 41150
Appendix G removed; Appendix H revised 41152
Appendix I amended; Appendix K added 41153
1926.1101—1926.1148 (Subpart Z) Authority citation revised 9625
1926.1101 (q) revised 9625
1928 Authority citation revised 36700
1928.21 (a)(7) added 36700
(a)(3) revised 51748
1952.97 Correctly revised 39257
1952.100 Heading revised 42495
1952.101 Redesignated as 1952.106; new 1952.101 redesignated from 1952.103 42495
1952.102 Redesignated as 1952.105; new 1952.102 redesignated from 1952.104 42495
1952.103 Redesignated as 1952.101; new 1952.103 added 42495
1952.104 Redesignated as 1952.102; new 1952.104 added 42495
1952.105 Redesignated as 1952.107; new 1952.105 redesignated from 1952.102 42495
1952.106 Redesignated from 1952.101 and revised 42495
1952.107 Redesignated from 1952.105 42495
1952.157 Correctly revised 39257
1952.246 (b) corrected 50793
1952.360 Heading revised 42496
1952.361 Redesignated as 1952.366; new 1952.361 redesignated from 1952.363 42497
1952.362 Redesignated as 1952.365; new 1952.362 designated from 1952.364 42496
1952.363 Redesignated as 1952.361; new 1952.363 added 42497
1952.364 Redesignated as 1952.362 42497
1952.365 Redesignated as 1952.367; new 1952.365 redesignated from 1952.362 42496
1952.366 Redesignated from 1952.361 and revised 42497
1952.367 Redesignated from 1952.365 42496

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2509.94-2 Added 38863
2509.94-3 Added 66736

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

2606.33 Amended; interim 62573
2606.53 Amended; interim 62573
2609 Added 61273
Authority citation revised 62573
Subpart D heading added; interim 62574
2609.1 Added; interim 62573
2609.2 Amended; interim 62573
2609.31—2609.34 (Subpart C) Added; interim 62573

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2610 Appendixes A and B amended 36055, 52080
Appendixes A and B amended 3081
2619 Appendix B amended 36056, 41705, 47253, 52082, 58776, 64577
Appendix D amended 64575
Appendix B amended 3083, 8556
2621 Appendix A amended 64579
2622 Appendix A amended 36055, 52080
Appendix A amended 3081
2644 Appendix A amended 36058, 52084
Appendix A amended 3085
2676 Appendix B amended 36057, 41705, 47253, 52082, 58777, 64577
Appendix B amended 3083, 8557

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15 37540
97 53706
98 65607
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570 40318
1470 53706
1471 65607
1609 51396
1910 ..... 42785, 47570, 49874, 58884, 60735
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1915 ..... 34586, 47570, 49874, 58884, 64173
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1917 42785
1918 42785
1926 ..... 37951, 46012, 47570, 49874, 54540, 58884
..... 4132, 4134
1928 ..... 47570, 49874
1960 43786
2600—2699 (Ch. XXVI) 35067
4000—4999 (Ch. XL) 35067

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

75.301 Amended 38358
75.333 (a), (d)(1), (e)(3) and (f) revised 38358
75.335 (a)(1)(iv) and (2) revised 38359

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

216 Authority citation revised 38905
216.40 (b) revised 38905
218 Authority citation revised 38906
218.40 (b) revised 38906
218.53 Added 3087
218.203 Added 3087
230 Authority citation revised 38363
230.451—230.461 (Subpart J) Added 38363
250 Authority citation revised 53093
Interpretation 9298
250.2 Amended 53093
250.26 Added 53093
250.33 (b)(15) and (o) revised 53093
250.34 (b)(8)(v)(A) and (s) revised 53093
250.157 (a)(5) revised 53094
250.159 (c)(4) revised 53094
250.211 Amended 64850
250.212 (a)(2) amended 64850
250.213 Amended 64850
250.214 Amended 64850
254 Regulation at 58 FR 7490 eff. date extended 9626
256 Authority citation revised 53094
256.23 (b) amended 53094
280 Authority citation revised 53094
280.2 Amended 53094
281 Authority citation revised 53094
281.12 (c) amended 53094

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

701.5 Amended 53028, 54352
710.11 (b) revised 43419
715.11 (d) added 43419
716.10 Revised 43420
717.10 Revised 43420
750.10 Revised 43420
750.16 Amended 43420
756.13 Amended 49185
756.14 Added 49185
773 Technical correction 4662
773.5 Amended 54352
773.10 Revised 54352
773.15 (b)(1) introductory text and (2) revised 54353
773.20 (b) and (c) revised 54353
773.21 Introductory text and (a) introductory text amended; (c) removed 54353
773.22 Added 54353
773.23 Added 54354
(a) corrected 61656

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TITLE 30 Chapter VII—Con.

773.24 Added 54354
773.25 Added 54355
(c)(1)(i) corrected 61656
778.14 (c) introductory text revised 54356
780.10 Revised 53028
780.25 (a) heading, introductory text, (2) introductory text, (3) introductory text, (b) and (c)(3) revised; (f) amended 53028
784.16 (a) heading, introductory text, (2) introductory text, (3) introductory text, (b) and (c)(3) revised; (f) amended 53028
816.10 Revised 53029
816.46 (a)(1) transferred to 701.5 53028
(a) and (c)(2) revised 53029
816.49 (a)(1) through (12) redesignated as (a)(2) through (13); new (a)(1) added; new (a)(4) revised; new (a)(5) amended 53029
(a)(6)(i) and (11)(iv) amended; (a)(9)(ii)(A), (B), (12), (c)(2)(i) and (ii) revised; (a)(9)(ii)(C) added 53030
817.46 (a) and (c)(2) revised 53030
817.49 (a)(1) through (12) redesignated as (a)(2) through (13); new (a)(1) added; new (a)(4) revised 53030
(a)(5), (6)(i), (11)(iv) amended; (a)(9)(ii)(A), (B), (12), (c)(2)(i) and (ii) revised; (a)(9)(ii)(C) added 53031
840.10 Revised 60883
840.11 (g)(4) and (h) revised 60883
840.13 (b) revised 54356
842.11 (e)(4) and (f) revised 60884
843.10 Removed 54356
843.24 Added 54356
870 Authority citation revised 9980
870.5 Suspended in part 60318
Amended 9980
880 Heading revised 52377
Authority citation revised 52377
880.1 Revised 52377
880.2 Redesignated as 880.5 52377
880.3 Redesignated as 880.11 52377
880.4 Redesignated as 880.12 52377
880.5 Redesignated as 880.13; new 880.5 redesignated from 880.2; (c) removed; (d) redesignated as (c) and revised; new (d) through (g) added 52377
880.6 Redesignated as 880.14 52377
880.7 Redesignated as 880.15 52377
880.8 Redesignated as 880.16 52377
880.11 Redesignated from 880.3 and revised 52377
880.12 Redesignated from 880.4 Revised 52378
880.13 Redesignated from 880.5 Revised 52378
880.14 Redesignated from 880.6 Revised 52378
880.15 Redesignated from 880.7 Heading, introductory text, (a), (b) and (g) revised 52378
880.16 Redesignated from 880.8 52377
886 Heading revised 9981
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886.1 Revised 9981
886.3 Revised 9981
886.10 Revised (OMB number) 9981
886.11 Revised 9981
886.12 (a) and (b) revised 9981
886.13 Revised 9981
886.14 Revised 9981
886.15 (a) through (d) revised; (a), (b) and (c) redesignated as (b), (c) and (a); (f) removed 9981
886.16 (c) removed; (d) and (e) redesingated as (c) and (f); (a), (b) and new (c) revised; new (d) and new (e) added 9981
886.17 Revised 9982
886.18 (b) and (c) redesignated as (c) and (d); (a)(2), (3), new (c) and new (d) revised; new (b) added 9982
886.19 Revised 9982
886.20 Revised 9982
886.21 (a) revised 9983
886.22 (a) and (d) revised 9983
886.23 Revised 9983
886.24 (a) introductory text and (1) revised; (b) removed; (a) introductory text (1) and (2) redesignated as introductory text, (a) and (b) 9983
886.25 Added 9983
887 Authority citation revised 9983
887.3 Revised 9983
887.10 Revised 9983
887.11 Revised 9983
887.12 (a) and (e) revised; (b) introductory text amended 9983
887.13 Revised 9983
888 Removed 9984

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904.15 Revised 59369
906.15 (q) added 62583
906.16 Introductory text revised; (g) added 62583
913 Authority citation revised 59921
913.10 Amended 59921
913.15 (q) added 59921
914.15 (aaa) added 36062
(bbb) added 38123
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(ddd) added 64130
(eee) added 6401
914.16 (d) removed; (ff) added 52909
(gg) added 64130
914.25 (c) added 53735
916.15 (l) added; interim 46552
917.15 (vv) added 45205
(ww) added 47538
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917.16 (l) added 45206
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917.21 (d) added 38566
918.15 Heading revised; (d) added 48174
(e) added 4544
918.16 Revised 48174
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920.15 (aa) added 56390
(z) added 56392
920.25 Existing text designated as (a); (b) added 63721
926.15 (l) added 6013
926.16 Introductory text revised; (g) through (j) added; authority citation removed 6013
931.15 (s) added 8562
934.15 (r) added 37431
(s) added 37436
934.16 Introductory text and (z) added; (l) removed; (y) revised 37431
935.15 (rrr) added 38123
(sss) added 45212
(ttt) added 51500
(uuu) added 58780
936.15 (n) added 2520
936.16 Revised 2520
938.15 (bb) added 36944
938.16 (i), (j) and (k) removed; (nnn) added 36944
944.15 (z) added 35259
(bb) added 49189
(aa) added 49192
944.16 (a) added 35259
(b) added 49189
944.20 (a) revised 49189
944.25 (b) added 49189
946.15 (hh) added 49197
950.11 Removed 53097
950.15 (u) added 53097
950.16 (hh) added 66197

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52 Removed.....35624
103 Authority citation revised.....52252
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103.11 (a) through (u) redesignated as (b), (c), (f) through (k), (n), (o), (p), (t), (u), (z), (ee), (gg), (hh), (ii), (nn), (oo) and (pp); new (j) amended; new (a), new (d), new (e), new (l), new (m), new (q), new (r), new (s), (v), (w), (x), (y), (aa), (bb), (cc), (dd), (ff), (jj), (kk), (ll) and (mm) added; eff. 1-1-96.....228
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103.25 (b)(2) revised; eff. 1-1-96.....229
103.28 Regulation at 58 FR 13547 withdrawn.....61662
103.29 Revised.....52252
103.33 (e) and (f) added; eff. 1-1-96.....229
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103.36 Regulation at 58 FR 13548 withdrawn in part; (a) amended; (b)(11) and (12) redesignated as (b)(9) and (10).....61662
103.54 (a)(2)(iii) and (2)(v)(B) revised; (b) and (d) removed; (c) redesignated as (b).....61662

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306 Authority citation revised.....59036
306.2 (p), (q) and (r) redesignated as (r), (s) and (t); (g) through (o) redesignated as (h) through (p); new (g) and (q) added.....59036
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357 Authority citation revised.....59038
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500 Authority citation revised.....60559
500.206 Heading, (a) and (b) revised; (c) and Example 4 amended.....8934
500.332 Revised.....8934
500.524 Added.....66476
500.550 Heading and (a) revised; (b) amended.....8934
500.563 Revised.....8935
500.564 Removed.....8935
500.566 Heading, (a) introductory text and (1); (b) removed; (c) redesignated as (b).....8935
500.569 Removed.....8935
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500.579 Existing text designated as (a); (b) added.....8935
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515.560 (g) amended; (a) and (b) revised.....44885
515.563 (a) introductory text and (1) revised; (c) removed.....44885
515.564 (c) revised; (d) removed.....44886
515.565 (b) removed; (c) redesignated as (b) and amended.....44886
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550 Authority citation revised.....8301
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80 Revised.....37680
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90.4 (a)(1)(iii) removed; (b) revised; interim.....53739
91 Regulation at 59 FR 16127 comment period extended.....34382
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91.7 (d) removed; (e) and (f) revised; interim.....53740
92 Added.....42752
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104 Removed.....49818
112 Added.....1720
113 Added.....1722
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155 Authority citation revised.....48565
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155.2 (c) amended 35464
155.4 (c) introductory text amended 48565
155.5 (b)(2), (3), (7) through (10), (12), (14), (15), (19), (c) and (d) amended 35464
155.6 (b) introductory text and (3) amended 35464
155 Appendix A amended 35464, 48565
199.2 (b) amended 6017
199.4 (e)(19) added 6017
199.6 (b)(4)(xiii) added 6019
199.14 (g) through (k) redesignated as (h) through (l); new (g) added 6019
199.20 Revised 49818
220.8 (a), (c) heading, (d), (e), (g), (h), (i), (k) and (l) revised; (c) amended 49002
220.10 (c)(1)(ii) revised 49003
229 Authority citation revised 5260
229.1 (a) amended 5260
229.3 (a)(6) added; (i) revised 5260
229.4 Heading and (a) revised; (c) added 5260
229.7 (b)(4) added 5260, 5261
229.13 (e) added 5260, 5261
229.19 Revised 5260, 5261
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229.21 Added 5260, 5261
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320 Heading revised 7908
320.3 (b) introductory text, (c) introductory text, (2) and (e) revised 7908
320.11 Revised 7909
323 Appendix H amended 3088
351 Removed 47539
369 Added 35261
378 Revised 43475
383 Removed 34382
384 Added 35262
384 Appendix A amended 41405
388 Revised 43477
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516 Revised 38236
516.4 (b), (l) and (o) correctly revised 45974
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516.9 (b) correctly revised 45975
516.10 (b) correctly revised 45975
536 Revised 64017
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537 Removed 64017
Regulation at 59 FR 64017 withdrawn 1735
552.140—552.145 (Subpart K) Added; interim 34581
Added 42755
552.160—552.172 (Subpart M) Added; interim 34762
Regulation at 59 FR 34762 confirmed 8305
552.180—552.185 (Subpart N) Added; interim 45212
553.15 (f) through (i) redesignated as (g) through (j); new (f) added 60559
Regulation at 59 FR 60559 confirmed 8305
553.15a (e) through (h) redesignated as (f) through (i); new (e) added 60559
Regulation at 59 FR 60559 confirmed; heading revised; (e)(2) amended 8305

Chapter VI—Department of the Navy (Parts 700—799)

701.61—701.67 (Subpart E) Revised 46760
701.100—701.115 (Subpart F) Revised 55348
701.116—701.119 (Subpart G) Revised 55363
706.2 Tables Four and Five amended 35033, 35850, 52910, 59162, 59163
Tables Two and Five amended 38366
Table Two amended 52909, 59162
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776 Added 45214

Chapter VII—Department of the Air Force (Parts 800—1099)

806 Revised 50835
806b Revised 53099
855 Authority citation revised 38367
855.11 (q) added 38367
989 Revised 4548

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TITLE 33—NAVIGATION AND NAVIGABLE WATERS

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1.01–1—1.01–70 (Subpart 1.01) Authority citation revised 66484
1.01–30 (b) added 36321
Revised 66484
1.01–70 (d)(2) revised; (d)(3) added 66484
1.01–80 Added 66484
1.01–85 Added 66485
1.01–90 Added 66485
1.07–1—1.07–100 (Subpart 1.07) Authority citation revised 66485
1.07–11 Revised 66482
4.02 Table amended (OMB numbers); interim 34227
20.202 (j) corrected 45757
20.203 (b) corrected 45757
20.206 Heading corrected 45757
20.311 (a)(2) and (e) designation corrected 45757
20.805 (a) corrected 45757
20.903 Heading corrected 45757
20.1003 Heading corrected 45757
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26.02 Amended 36322
26.03 (f) added 36322
26.04 (e) added 36323
26.05 Revised 39963
26.07 Revised 36323
100 Temporary regulations lists 39456, 56393
100.35–T02047 Added (temporary) 38566
100.35–T09018 Added (temporary) 37694
100.35–T09022 Added (temporary) 40819
100.35–T09026 Added (temporary) 42757
100.35–T11001 Added (temporary) 51501
100.35–T11002 Added (temporary) 51501, 51504
100.35–T11–003 Added (temporary) 64851
100.105 (b)(2) revised 49821
100.501 Implementation (temporary) 55583
100.508 Implementation (temporary) 39456
100.513 Implementation (temporary) 39456
100.517 Added 47539
100.801 Added 10314
110 Authority citation revised 39965
110.157 (c)(1) and (7) amended 39965
(a)(8) revised 10020
110.168 Heading, (b)(2), (c)(1), (d)(1) through (5), (7), (8), (f)(4)(iv) and (v) revised; (f)(6) amended 39965
110.214 Heading revised; (b)(12) and note amended 39965
110.224 (a)(15) note and (d)(1) table Note a amended 64580
110.235 Revised 40820
117 Temporary drawbridge operation regulations 53351
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117.261 (gg) added 47541
(k) revised 47542
(bb) revised 54519
117.287 (b–1) revised 6659
117.395 Existing text designated as (a); (b) added; interim 10316
117.491 Revised 7123
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117.571 (a)(3) revised; interim 44316
117.621 Revised 2688
117.647 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) 36063
117.667 (b) revised 63898
117.769 Revised 50167
117.821 (b)(5) revised 67630

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117.822 Revised (temporary) 38568
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117.875 Revised 52424
117.977 Revised 42758
117.997 (c) through (f) redesignated as (d) through (g); new (c) added; interim 67632
117.1023 Added 46173
117.1059 (d) revised 38569
117.1101 Revised; interim 46335
126 Heading revised 39965
126.05 (a) amended 39965
126.07 (a) amended 39965
126.09 Revised 39965
126.10 (a) revised 39965
126.19 Amended; (a) introductory text designation removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c) 39965
126.21 (b) amended 39965
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131 Authority citation revised 34227
131.0 Added; interim 34227
132 Authority citation revised 34227
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137 Authority citation revised 34227
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137.201—137.215 (Subpart C) Removed; interim 34227
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151.01—151.77 (Subpart A) Authority citation revised 51338
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151.26 Added 51338
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151.47 Amended 45147
151.49 (a) amended 45148
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153 Authority citation revised 66485
153.105 Revised 66485
153.107 Removed 66485
155 Authority citation and note revised 53290
155.110 Revised; interim 53290
155.120 (c) added; interim 53290
155.480 Added; interim 53290
155.750 (e) added; interim 53291
155.775 Added; interim 53291
156 Authority citation revised 53291
156.105 Revised; interim 53291
156.120 (bb) added; interim 53291
157 Authority citation revised 40188
157.03 Introductory text revised 40188
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160 Authority citation revised 40189
160.3 Revised 36323
160.5 (d) added 36324
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161.881 Added (temporary) 4379
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162.65 (b)(3)(iv) removed 39963
162.100 Added 36333
162.117 Added 36333
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164.03 Revised 36334
164.43 Added 36334
165 Temporary regulations lists 39456, 56393
165.T01–064 Added (temporary) 46920
165.T01–107 Added (temporary) 38570
165.T01–114 Added (temporary) 39462
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165.T01–131 Added (temporary) 46336
165.T01–132 Added (temporary) 46337
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165.T01–156 Added (temporary) 63899
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165.T05–074 Added (temporary) 47544
165.T05–097 Added (temporary) 63023
165.T05–098 Added (temporary) 56397
165.T07–089 Added (temporary) 44318
165.T07–123 Added (temporary) 63024
165.T09–027 Added (temporary) 44317
165.T11–095 Added (temporary) 50490
165.T11–096 Added (temporary) 50491
165.T11–097 Added (temporary) 50492
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165.T13–017 Added (temporary) 38571
165.T13–019 Added (temporary) 40821
165.T13–020 Added (temporary) 40822
165.121 (a)(3) revised 52425
165.503 Implementation 63022
165.530 Added; interim 42759
165.709 Added 56396
165.721 Added 55584
165.803 Regulation at 59 FR 21935 comment period reopened 41405
165.809 Added 36334
165.810 Redesignated from 161.402; heading revised 36324
165.811 Added 36334
165.904 Added 45227
165.1110 Added; interim 46174
Regulation at 59 FR 46174 confirmed 4380
165.1301 Revised 44321
165.1303 Added 36335
165.1704 Added 36335
168 Added 42968
168.50 (b)(2) stayed 54519

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241 Authority citation revised 5133
241.1 Revised 5133
241.2 Revised 5133
241.3 Revised 5133
241.5 (d) added 5134
241.6 (a) amended 5134
241.7 Amended; (c)(2) revised; (e)(2) amended 5134
334.610 Heading, (a)(3), (6), (b) and (c) revised 48802
334.782 Removed 35851

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402.3 (i) revised 45228
402.8 Revised 45229
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402.11 Revised 45229
402.13 Revised 45230
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Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

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74.51 OMB number pending 34736
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74.52 OMB number pending 34736
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74.53 OMB number pending 34737
OMB number 6660
74.71 OMB number pending 34738
OMB number 6660
74.72 OMB number pending 34738
OMB number 6660
75.118 OMB number 6660
75.129 (a)(1) and (2) revised; (a)(3) added 59581
75.560 (a)(1) through (5) revised; (c) and (d) added; authority citation revised 59582
75.561 Revised 59582
75.562 Revised 59582
75.563 Revised 59582
75.564 Removed; new 75.564 added 59582
75.565 Removed 59582
75.566 Removed 59582
75.567 Removed 59582
75.568 Removed 59582
75.599 OMB number 6660
76.560 (a)(1) through (5), (b) and authority citation revised; (c) and (d) added 59582
76.561 Revised 59583
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Chapter I—Panama Canal Regulations (Parts 1—299)

103 Authority citation revised 44929
103.8 (e) revised; OMB number 44929
133 Authority citation revised 43254
133.1 Introductory text, (a) and (b) revised 43254
133.32 Revised; OMB number 43254
133.33 Revised 43254
135 Revised 43255
135.2 OMB number 43255
135.3 OMB number 43255
135.31 OMB number 43265
135.42 (a)(2)(i) corrected 52862

Proposed Rules:

103 41997
133 36398
135 36398

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

6 Added 65957
7.13 (a) and (f) heading revised; (c) removed 43736
7.45 Revised 58785
(b) corrected 6022

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

242 Policy statement 36063
242.24 (a)(1) table amended 10319, 10320
242.25 (k)(1)(vii)(B) table, (18)(iii)(B) table and (20)(iii)(C) table amended 51858
(k)(23)(iii)(C) table and (26)(iii)(B) table amended 51859
(e)(1) revised; (k)(6)(iii)(B) table and (9)(ii)(E) table amended 10320

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TITLE 36 Chapter II—Con.

(k)(11) table, (12) table, (13)(ii) table, (14)(iii)(B) table, (16) table, (18)(iii) table and (19)(iii) table amended 10321
(k)(20)(iii)(C) table, (21)(iii)(D) table, (25)(iii) table and (26)(iii)(B) table amended 10322
242.27 (f)(3)(iv)(E) added 10322
292.40—292.48 (Subpart F) Revised 36882
296 Authority citation revised 5260
296.1 (a) amended 5260
296.3 (a)(6) added; (i) revised 5260
296.4 Heading and (a) revised; (c) added 5260
296.7 (b)(4) added 5260, 5261
296.13 (e) added 5260, 5261
296.19 Revised 5260, 5261
296.20 Added 5260, 5261
296.21 Added 5260, 5261

Chapter VII—Library of Congress (Parts 700—799)

701 Authority citation revised 55811
701.35 Revised 55812
704 Authority citation revised 35034
704.23 Added 35034
704.24 Added 35035
704.30 (Subpart B) Removed 35035
705 Added 38367

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1258.2 (c)(1) through (5) revised; interim 5580
1258.12 (b) removed; interim 5580

Proposed Rules:

1—199 (Ch. I) 36108
7 37734
..... 4394
13 58804
14 39225
36 38149
68 3599
242 45924
..... 6466
701 48580
702 48193
800 ..... 50396, 61859
..... 86
1191 48542
1207 53706
1209 65607
1400 7506

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Technical correction 45757
1.16 (a), (b), (d) and (f) through (i) revised 43740
1.17 (b) through (g), (j) and (m) through (p) revised 43740
1.18 Revised 43741
1.20 (c), (e), (f), (g), (i)(1) and (j) revised 43741
1.21 (p) removed 43741
1.445 (a) revised 43741
1.482 (a)(1) and (2)(ii) revised 43741
1.492 (a)(1) through (5), (b) and (d) revised 43742
(a)(5) correctly revised 47082

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 38371, 67635
201.6 (c) amended; interim 38371
201.11 Amended 67635
201.17 (a), (b)(2), (5), (h)(1)(i), (iii), (2)(i), (3)(iii)(A) and (9) amended 67635
(k) revised 67636
201.31 (d)(2) revised; (d)(3) and (4) redesignated as (d)(6) and (7); new (d)(3), new (4) and (5) added 58789
201.32 Added; interim 38371
211.3 (a)(7) amended; interim 38372
251.2 (f) added 63040
251.3 (a) and (b) amended 63040
251.4 (a) and (b) amended 63040
251.11 (b) amended 63040
251.13 Introductory text revised 63040
(f) amended 8197
251.14 (d) added 63040
251.22 (c) amended 63040
251.31 (d) revised 63040
251.32 (b) revised 63040
(a) amended 8197
251.33 (b) revised 63040

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(c) amended 63041
(c) amended 8197
251.38 (b) amended 8197
251.41 (b) revised 63041
251.43 (a) revised 63041
251.44 (e)(1) and (g) amended 8197
251.45 Heading, (a), (b) and (c) revised 63041
251.47 (l) amended 63041
251.48 (f)(1)(ii) revised 8197
251.50 Amended 8197
251.51 Heading revised 63041
251.52 (c) amended 63041
(c) amended; (d) added 8197
251.53 (a) amended 63041
251.54 (a) and (c) amended 63042
251.60 Amended 63042
251.61 (d) added 63042
251.63 Revised 63042
251.64 Amended 63042
251.65 Revised 63042
251.72 Removed; new 251.72 redesignated from 251.73 63042
Corrected 8199
251.73 Redesignated as 251.72; new 251.73 redesignated from 251.74 63042
251.74 Redesignated as 251.73 63042
252.1 Amended 8198
252.3 (a)(3) and (4) revised; (d) removed 63042
252.4 (a) and (e) revised 63042
253.5 (c)(1), (2) and (3) revised 60901
253.6 (c)(4) amended 8198
253.10 Amended 63042
254.2 Revised 8198
255.3 (f) and (g) redesignated as (g) and (h); (a) through (e) and new (g) amended; new (f) added 8198
256.1 Amended 8198
257.3 (a)(3) and (4) revised; (d) removed 63043
257.4 (a) and (e) revised 63043
259.1 Amended 8198
259.2 Stayed; eff. 12-7-94 through 2-28-95 63045
(a) and (b) amended 8198
259.3 (d) revised; (f) removed 63043
(a) amended 8198
(d) corrected 8199
259.4 (a) and (b) amended 8198
259.5 (a) and (e) revised 63043

Proposed Rules:

1 ..... 49876, 50181, 56015, 63951, 63966
..... 3700, 8609
3 63951
..... 3700, 8609
5 63966
10 4395
201 38400
..... 2365, 3948

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

2.100 Added 5852
2.101 Added 5852
3.7 (x)(23) authority citation removed; (x)(27), (28) and authority citation added 34383
3.202 (c) amended; interim 46338
3.204 (b) revised; (c) removed; interim 46338
3.205 (a)(1) and (4) revised; interim 46338
3.207 (b) amended; interim 46338
3.209 (a) and (b) amended; interim 46338
3.210 (b)(3)(i) revised; (c) introductory text and (1)(i) amended; interim 46338
3.211 (a)(1), (2) and (d)(2) amended; interim 46338
3.261 (a)(37) added 37695
(a)(38) added 2522
3.262 (m)(2) and (o)(2) amended 35266
(v) added 37696
(w) added 2522
3.272 (h)(1)(ii) amended 35266
(r) added 37696
(q) and authority citation added 45976
(s) added 2523
3.275 (h) added 2523
3.309 (c) Note added 35465
3.311 (b)(2)(xviii) and (xix) amended; (b)(2)(xx) added 45975
(a)(1), (b)(1)(ii) and (iii) amended; (b)(2) introductory text revised; (b)(4) redesignated as (b)(5); new (b)(4) added; (h) removed 9628
3.316 Revised 42499
3.317 Added 6665
3.326 (b) amended; (d) revised; authority citation added 35851

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3.351 (a)(2) authority citation revised 35851
3.385 Revised 60560
3.500 (y) added 6666
(e) amended; (e) authority citation added 9627
3.551 (i) amended 62584
3.807 (c) amended; authority citation added 62585
4 Authority citation revised 46339, 60902
4.84a Table V corrected; CFR correction 7122
4.88a Redesignated as 4.88b; new 4.88a added; interim 60902
4.88b Redesignated as 4.88c; new 4.88b redesignated from 4.88a and amended; interim 60902
4.88c Redesignated from 4.88b; interim 60902
4.115b Amended 46339
8 Authority citation revised 60076
8.0 (b)(1)(iii) revised; authority citation added 60076
8.28 (c) amended 65717
8.116 (a)(1), (2), (3) and (b) amended; (d) and (e) revised; (f) and (g) removed; (h) redesignated as (f); new (f) authority citation added 60077
8a.2 (a), (b)(1) and (7) amended 59921
8a.4 Amended 59921
14.640—14.643 Undesignated center heading added 47084
14.640 Added 47084
14.641 Added 47084
14.642 Added 47084
14.643 Added 47084
17 Authority citation revised 49579, 53355
17.500—17.541 Undesignated center heading revised 53355
17.500 Revised 53355
17.501 Revised 53355
17.502 Added 53357
17.503 Revised 53357
17.504 Revised 53357
17.505 Revised 53357
17.506 Revised 53357
17.507 Revised 53357
17.508 Revised 53357
17.509 Revised 53358
17.510 Revised 53359
17.511 Added 53359
17.514 Removed 53355
17.515 Removed 53355
17.516 Removed 53355
17.517 Removed 53355
17.518 Removed 53355
17.519 Removed 53355
17.520 Removed 53355
17.521 Removed 53355
17.522 Removed 53355
17.523 Removed 53355
17.524 Removed 53355
17.525 Removed 53355
17.527 Removed 53355
17.534 Removed 53355
17.535 Removed 53355
17.540 Removed 53355
17.541 Removed 53355
17.700 Regulation at 59 FR 28265 confirmed; (a) amended 10504
17.700—17.731 Regulation at 59 FR 28265 confirmed 10504
17.701 Regulation at 59 FR 28266 confirmed and amended 10504
17.702 Regulation at 59 FR 28267 confirmed 10504
17.703 Regulation at 59 FR 28267 confirmed 10504
17.704 Regulation at 59 FR 28268 confirmed 10504
17.705 Regulation at 59 FR 28268 confirmed 10504
17.706 Regulation at 59 FR 28268 confirmed 10504
17.707 Regulation at 59 FR 28268 confirmed 10504
17.708 Regulation at 59 FR 28268 confirmed 10504
17.709 Regulation at 59 FR 28268 confirmed 10504
17.710 Regulation at 59 FR 28268 confirmed; (a)(7) revised 10504
17.711 Regulation at 59 FR 28268 confirmed; (b)(4) revised; (d)(4) amended 10504
17.712 Regulation at 59 FR 28270 confirmed 10504
17.713 Regulation at 59 FR 28270 confirmed 10504
17.714 Regulation at 59 FR 28271 confirmed 10504
17.715 Regulation at 59 FR 28271 confirmed 10504
17.716 Regulation at 59 FR 28271 confirmed 10504
17.717 Regulation at 59 FR 28271 confirmed 10504

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17.718 Regulation at 59 FR 28271 confirmed 10504
17.719 Regulation at 59 FR 28272 confirmed 10504
17.720 Regulation at 59 FR 28272 confirmed 10504
17.721 Regulation at 59 FR 28272 confirmed 10504
17.722 Regulation at 59 FR 28272 confirmed 10504
17.723 Regulation at 59 FR 28272 confirmed 10504
17.724 Regulation at 59 FR 28272 confirmed 10504
17.725 Regulation at 59 FR 28273 confirmed 10504
17.726 Regulation at 59 FR 28273 confirmed 10504
17.727 Regulation at 59 FR 28273 confirmed 10504
17.728 Regulation at 59 FR 28274 confirmed 10504
17.729 Regulation at 59 FR 28274 confirmed 10504
17.730 Regulation at 59 FR 28274 confirmed 10504
17.731 Regulation at 59 FR 28274 confirmed; (a)(1) amended 10504
17.800—17.805 Undesignated center heading added 49579
17.800 Added 49579
17.801 Added 49580
17.802 Added 49580
17.803 Added 49580
17.804 Added 49580
17.805 Added 49581
21 Authority citation revised 4561
21.260 (b) revised 4561
21.4800—21.4856 (Subpart F–3) Added 5852
21.7532 Regulation at 58 FR 51781 effective date corrected to 10–5–93 39966
21.7639 Regulation at 58 FR 51781 effective date corrected to 7–31–90 39966
36.4276 (b) amended; (b)(5) revised 48565
36.4300—36.4375 Authority citation revised 49200
36.4313 (b) amended; (b)(5) revised 48566
36.4337 Revised 49200

Proposed Rules:

3 ..... 46379, 60576, 63283
8 45254
14 37008
17 38947
21 ..... 40507, 45644
43 53706
44 65607

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference; interim 65132, 65961
IMM amended; incorporation by reference 7912
111 Corrected 33911
DMM amended; incorporation by reference; interim 39257, 44930, 47085, 47086, 50691, 62323, 65147, 65967
Regulation at 59 FR 23162 effective date delayed 39967
DMM amended; incorporation by reference 5861, 10026
233.1 (c)(3) revised 5581
233.7 (i)(1)(iv) and (v) revised; (i)(1)(vi) removed 35852
(a) revised; (j)(5) amended 5581
(h)(1) amended 8306
262.5 (c) and (d) added 37160
265.6 (d)(8) revised 62324
(d)(1), (2) and (4)(ii) revised 67225
Amended 67226, 67227
266.2 Amended 37160
266.3 (d) added 37160
266.4 (b)(6) added 37160
266.5 (f) added 37161
266.8 (e) added 37161
266.9 Revised 35625
266.10 Added 37161
491 Added 45625
962.26 Revised 51860

Proposed Rules:

20 66839
111 ..... 35873, 37011, 37190, 42536, 45652, 47827, 48194, 51397, 60927, 61302, 66839
..... 5964, 6047, 7154
265 8610
501 5964
3001 ..... 65985, 65987
..... 8211

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TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

9.1 Table corrected (OMB numbers); eff. 8–30–94 ..... **33913**
Table amended (OMB numbers) **34097, 38372, 46350, 47416, 50072, 59650, 59924, 60561, 61805, 62923, 64318, 64593, 65288**
Table amended (OMB numbers) 4962
OMB number; CFR correction 10029
15.3 Revised **50692**
15.4 Amended **50692**
15.11 (c) amended **50692**
15.12 (a) and (d) amended **50692**
15.13 (a), (c), and (d) amended **50692**
15.14 Amended **50692**
15.15 Amended **50692**
15.16 (c) removed **50692**
15.20 Amended **50692**
15.21 Amended **50692**
15.22 Amended **50692**
15.23 Amended **50692**
15.24 (a), (c) and (d) amended **50692**
15.25 Heading, (a), (b) and (c) amended **50692**
15.26 (a) amended; (b) removed **50692**
15.27 Amended **50692**
15.32 Amended **50692**
15.33 Amended **50692**
15.40 Revised **50692**
15.41 Amended **50692**
32 Heading revised **50692**
Authority citation revised **50692**
32.105 (g)(3) and (t)(3) revised **50692**
32.215 (a) revised **50693**
32.335 (a) through (d) amended **50693**
32.430 (a) through (d) amended **50693**
35.105 Amended; interim 371
35.115 (a) amended; interim 371
35.155 Second (c) correctly redesignated as (d) 2881
35.201 Added; interim 371
35.205 Revised; interim 371
35.210 (a) amended; interim 371
35.6105 (b)(5) revised **35853**
35.6400 (a)(1) and (2) revised **35854**
35.9065 (b) removed; (c) redesignated as (b); new (b) introductory text revised; interim 61126
50 Policy decision **38906**
51 Authority citation revised 1738
51.100 (s)(1) introductory text revised **50696**
51.120 Added 4736
51.372 (c), (d) and (e) added 1738
51.448 (b)(2) and (c)(2) redesignated as (b)(3) and (c)(3); (a)(4), new (b)(2), new (c)(2) and (d)(4) added; new (c)(3)(iii) amended; interim; eff. 2–8–95 through 8–8–95 7452
52 Authority citation revised **39859**
State implementation plan determinations **44938, 45230, 45231, 45233, 45746, 50844, 60318, 63045, 63723, 63724**
Technical correction **49004, 64612**
State implementation plan determinations 2523, 6401
52.31 Added **39859**
52.32 Added 4737
52.50 (c)(65) added **39684**
(c)(64) added **52916**
(c)(62) added **54388**
(c)(66) added 2029
52.70 (c)(19) added 8947
52.73 Removed 8948
52.74 (a), (b) designation and (c) removed 8948
52.80 Removed 8948
52.84 Removed 8948
52.95 Removed 8948
52.120 (c)(69)(i)(A) added **54522**
52.220 (c)(186)(i)(D)(*1*) and (189)(i)(B)(*1*) added **39691**
(c)(192)(i)(A)(*2*) added **39692**
(c)(182)(i)(A)(*4*) and (189)(i)(B)(*2*) added **42165**
(c)(197) added **43754**
(c)(6) and (183)(i)(A)(*2*) revised; (c)(41)(ii)(A)(*1*) added **44324**
(c)(198) added **44330**
(c)(196) added **47546**
(c)(188)(i)(A)(*3*) added **48175, 64132**
(c)(184)(i)(B)(*4*), (187)(i)(B), (189)(i)(A)(*5*), (190) and (192)(i)(A)(*3*) added **50499**
(c)(194)(i)(B) and (C) added **61546**
(c)(199)(i)(A)(*1*) added **63723**
(c)(183)(i)(C)(*5*), (184)(i)(E) and (188)(i)(D)(*2*) added **64131**
(c)(183)(i)(A)(*12*), (187)(i)(A)(*5*), (C) and (195) added **64133**
(c)(194) added **64332**
(c)(196)(i)(B) added **64338**

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(c)(186)(i)(D)(*2*) and (194)(i)(A)(*2*) added **64339**
(c)(198)(ii) added 40
(c)(194)(i)(D) and (E) added 2026
(c)(191)(i)(B) added 4563
(c)(198)(i)(D) added 5582
(c)(198)(ii) corrected 7715
(c)(185)(i)(A)(*7*) and (194)(i)(F) added 8566
(c)(179)(i)(D) and (190)(i)(B) added 8949
(c)(199)(i)(A)(*4*) added 8950
52.320 (c)(32) and (38) revised **35036**
(c)(61) and (67) added **37701**
(c)(66) added **42505**
(c)(65) added **47095**
(c)(68) added **47810**
(c)(60) added **51379**
(c)(69) added **55585**
(c)(64) added **64335**
52.329 (a)(1) and (2) removed; (a) revised **42506**
(a) revised **64336**
52.332 (e) added **47095**
(d) added **64336**
52.343 (a)(1), (2) (3), (6), (7) and (8) removed; (a)(4), (5), (9) and (10) redesignated as (a)(1), (2), (3) and (4) **42506**
52.344 (a) revised **51379**
52.370 (c)(66) added 2525
52.381 Added 4737
52.433 Added 4737
52.470 (c)(28) added 5135
52.472 (e) added 5136
52.498 Added 4737
52.510 Added **42168**
52.520 (c)(82) added **45978**
(c)(85) added **46176**
(c)(87) added **46553**
(c)(84) added **51383**
(c)(78) added **52918**
(c)(81) added 45
(c)(88) added 2690
(c)(80) added 8307
(c)(86) added 10330
52.582 Added **46178**
52.670 (c)(28) added **43751**
(c)(30) added **47804**
(c)(29) added **61549**
52.719 Added **59656**
52.720 (c)(103) added **39688**
(c)(100) and (101) added **46567**
(c)(93)(i)(B) removed **64855**
(c)(107) added 5320
52.726 (i) added **46924**
(i) removed **63255**
(f) revised **64855**
52.741 (a)(2) revised **46569**
(z)(1)(i) amended; (z)(1)(ii) and (5) removed 41
52.770 (c)(92) added **42509**
(c)(89) added **47806**
(c)(94) added **51114**
(c)(92) removed **55368**
52.773 (i) revised **51114**
52.777 (f) added **35054, 54395**
(g) added **36703**
Regulation at 59 FR 35054 removed **44040**
Regulation at 59 FR 36700 removed **47263**
(d) revised **51114**
(j) added 377
52.780 (h) added **51114**
52.820 (c)(59) added **65718**
52.870 (c)(29) added **52427**
52.873 (c) added **52427**
52.920 (c)(70) added **55058**
(c)(73) added 7128
52.970 (c)(62) added **50502**
(c)(65) added 2016
52.992 Added 5864
52.1019 Added **55053**
52.1020 (c)(34) added 2526
(c)(28) added 2887
52.1031 Table amended 2526, 2887
52.1035 Added 4737
52.1070 Regulation at 59 FR 29731 eff. date corrected to 7–11–94 ..... **35411**
(c)(108) added **46179**
(c)(103), (104) and (105) added **46181**
(c)(109) added **51518**
(c)(102) added **60909**
(c)(110) through (114) added 2021
52.1079 Added 4737
52.1119 Added **41708**
52.1120 (c)(99) added **38373**
(c)(101) added **50498**
(c)(100) added 2017
(c)(103) added 6029
52.1160 Added 4737
52.1167 Table amended **38373, 50498**
Table amended 2017, 6030
52.1170 (c)(96) added **46189**
(c)(95) added **47256**
(c)(97) added **51381**
(c)(100) added 3348
52.1174 (c) added **37947, 40828**
(d) added **46190**
52.1219 Added **51863**

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52.1220 (c)(35) added 46555
(c)(34) added 50495
(c)(36) added 52435
(c)(37) added 63255
(c)(38) added 3546
52.1237 Added 47807
52.1270 (c)(24) added 47260
52.1320 (c)(79) added 43481
(c)(84)(i)(A) revised 45976
52.1370 (c)(33) added 44632
(c)(32) added 55586
(c)(35) added 64139
(c)(37) added 5318
52.1390 Added 64139
52.1420 (c)(41) added 375
52.1519 Added 50506
(a)(2) added 51517
52.1520 (c)(40) added 42768
52.1525 Table amended 42768
52.1530 Added 4737
52.1570 (c)(53) added 39689
52.1582 (c) added 49211
52.1583 Added 4737
52.1605 Table amended 39689
52.1607 Added 34386
52.1620 (c)(58) added 59652
52.1670 (c)(87) added 39686
(c)(88) added 2025
52.1674 Added 4737
52.1679 Table amended 39686
Table amended 2025
52.1690 Added 34386
52.1770 (c)(67) redesignated as (c)(69) 37162
(c)(71) added 41709
(c)(75) added 48402
(c)(76) added 52431
(c)(72) added 54389
(c)(77) added 5138
52.1870 (c)(88) added 46927
(c)(100) added 51866
(c)(104) added 52915
(c)(37) removed 63255
52.1879 (f) added 37949
(f) removed 46764
(a) added 48395
(f) added 3766
52.1881 (a)(12) added 48405
52.1885 (r) added 37949
(r) removed 46764
(a)(5) added 48398
(r) added 3766
(a)(5) removed 5582
(a)(5) added 7455
52.1888 Added 53589
52.1919 Added 43290
(a)(2) added 53589
52.1970 (c)(107) added 33920
(c)(108) added 43489
(c)(109) added 46562
(c)(107) removed 46930
(c)(110) added 2692
(c)(107) added 8565
52.1977 Amended 2692
52.2020 (c)(88) added 37163
(c)(94) added 65974
(c)(96) added 2881
(c)(93) added 8570
52.2026 Added 44937
52.2057 Added 4738
52.2060 Added 1741
52.2070 (c)(40) added 52429
(c)(42) added 2526
52.2079 Added 4738
52.2081 Table amended 52429
Table amended 2526
52.2120 (c)(38) added 10325
52.2170 (c)(15) added 53592
52.2178 (c) added 47261
52.2219 Revised 10508
52.2220 (c)(121) added 37943
(c)(122) added 39697
(c)(120) added 47258
(c)(122) removed 53741
(c)(119) added 54524
(c)(122) added 3354
(c)(116) added 7715
(c)(124) added 7917
(c)(123) added 10508
52.2225 (b) revised 10508
52.2228 (f) added 7917
52.2270 (c)(85) added 42764
(c)(87) added 43047
(c)(82) added 44039
(c)(78) added 46557
(c)(84) added 46768
(c)(83) added 47263
(c)(90) added 50504
(c)(89) added 60907
52.2303 (a) revised 46557
52.2307 Added 42765
52.2308 Added 41410, 60714
Regulation at 59 FR 41410 withdrawn 51381
(c) added 5867
52.2309 Added 55589
52.2320 (c)(25) added 35044
(c)(26) added 55586, 64330
52.2370 (c)(21) added 2527
52.2381 Table amended 2527
52.2385 Added 4738
52.2420 (c)(91) added 43287

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(c)(102) added 52706
52.2453 Added 4738
52.2470 (c)(44) added 39700
(c)(43) added 44327
(c)(46) added 46766
(c)(48) added 51514
(c)(49) added 54391
(c)(50) added 9780
52.2479 Amended 44327
52.2520 (c)(26) added 37698
(c)(31) added 45979
(c)(30) added 45984, 65720
(c)(32) added 45986
(c)(29) and (30) correctly designated as (c)(32) and (31) 52588
(c)(30) removed 55060
(c)(25) introductory text amended; (c)(33) added 6027
52.2522 (f) added 37698
52.2569 Removed 42766
Added 2885
52.2570 (c)(72) added 40826
(c)(73) added 41711
(c)(74) added 43483
(c)(79) added 63049
(c)(78) added 2885
(c)(75) and (76) added 3543
(c)(77) added 5869
52.2585 (c) removed 42766
52.2586 Added 40826
52.2620 (c)(25) added 60905
52.2732 Added 34386
52.2782 Added 34386
55 Authority delegation notices 36065
55.14 (e)(3)(i)(A) added; (e)(3)(ii)(F), (G) and (H) revised 50846
55 Appendix A amended 50846
58 Authority citation revised 41628
58.1 (p) through (y) redesignated as (q) through (z); new (p) added; new (q) revised 41628
(s) amended 41629
58.20 (e)(1) and (6)(i) amended 41628
58.23 (a) amended 41628
58.28 Revised 41628
58.31 (a) and (g)(1) amended 41628
58.34 (a) amended 41628
58.35 Revised 41628
58 Appendixes A through D and F amended 41628
Appendixes A and B amended 41629
60 Authority delegation notices 40258, 49581
Technical correction 49466
60.4 (b) amended 47265
60.391 (a) and (b) amended 51386
60.392 (a) revised 51386
60.393 (c)(1)(i)(E) added 51387
60 Appendix A amended 62924
Appendix B amended 64593
61 Authority citation revised 36301
61.220 (a) revised; (b) removed 36301
61.221 Introductory text, (a) and (c) revised; (d) and (e) added 36301
61.222 (b) revised 36301
61.223 (b)(5) revised 36302
61.226 Added 36302
62.4845 (b)(3) added 50507
63.14 (b)(4) added 62589
(b)(4) and (5) added 4963
63.71 Amended 59924
63.74 Table 1 amended 53110
63.75 (g) added 59924
63.77 (e) revised 59924
63.100 (n) added 53360
(o) added 54132
(n) and (o) revised 5321
63.103 (e) amended 48176
63.100—63.106 (Subpart F) Tables 1 and 2 amended 48176
63.110 (g) added 53360
(g) revised 5321
63.160 (a) revised 48176
(d) added 53360
(d) revised 5321
63.161 Amended 48176
63.162 (b)(1) and (f)(3) revised 48176
63.163 (f) revised 48176
63.164 (c) revised 48176
63.165 (d) and (e) redesignated as (d)(1) and (2) and revised 48176
63.168 (e)(1) and (h)(2) revised 48176
63.169 (a), (c)(3) and (d) revised 48177
63.171 (e) revised 48177
63.172 (b) and (k)(2) revised 48177
63.174 (b)(1), (2), (3)(i) and (f)(2) revised; (b)(3)(ii) and (h)(1) introductory text amended 48177
63.180 (b)(2) amended; (c) introductory text revised 48177
63.181 (b)(1)(i) amended; (d)(5)(i) revised 48177
63.182 (a)(6)(ii), (c) introductory text and (4) revised 48178
63.190 (b)(5), (c) and (e) introductory text revised; (b)(6)(i) removed 48178

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(h) added 53360
(i) added 54132
(h) and (i) revised 5321
63.191 (a) revised; (b) amended 48178
63.192 (b)(4) through (8), (e), (1)(1), (2) and (k) revised 48178
63.340—63.347 (Subpart N) Added 4963
63.360—63.367 (Subpart O) Added 62589
63.400—63.406 (Subpart Q) Added 46350
63.420—63.429 (Subpart R) Added 64318
63.425 (g)(3) corrected 7627
63.460 (d) corrected 67750
63.460—63.469 (Subpart T) Added 61805
63.701—63.708 (Subpart EE) Added 64596
63 Appendix A amended 61816
Appendix B revised; Appendix C added 61818
Appendix A amended 4979
70 State operating permit program approvals 48802
Regulation at 59 FR 48802 withdrawn 60561
70 Appendix A added; interim 55820
Appendix A amended 59660, 61552, 61827, 62327, 66740
Appendix A amended ... 1744, 2534, 3770, 4568
Regulation at 60 FR 2534 eff. date corrected to 3–13–95 8772
71 Added 59924
72 Authority citation revised 60229
72.41 (b)(1)(i), (c)(3) introductory text, (i)(B), (C), (ii), (4)(ii), (d)(2) and (e)(1)(i) revised; (c)(3)(i)(D), (iii) and (d)(3) added 60230
(c)(5) and (e)(3)(iv) revised; (c)(6), (7) and (e)(1)(iii) added 60238
72.43 (a) introductory text, (1) introductory text, (b)(1) introductory text, (ii)(A), (3)(i), (c)(4)(i), (ii), (iv), (d) and (f)(1)(ii) revised; (a)(2) added 60230
72.91 (a)(3)(iii) introductory text, (iv), (4), (5), (6) and (b)(2) revised; (a)(7) added 60231
75.4 (a)(3) revised; (a)(4) added 42511
80 Announcement 44633
80.2 (ss) added 39289
(j) and (o) revised; (oo), (tt) and (uu) added 48489
Regulation at 59 FR 39289 stayed 60715
80.22 Heading revised 48490
80.29 Revised; interim (OMB number pending) 35858
80.30 (g)(7) added; interim 35859
80.32 Added 48490
80.33 Added 48490
80.41 (h)(2)(iii), (j)(2) and (m)(1) introductory text revised 36958
80.42 (a) introductory text, (b)(1)(ii), (2)(ii) and (3)(ii) amended; (b)(4) added; (c)(1) table revised 36958
(c)(1) table revised 6032
80.45 (b)(3) Table 3, (c)(1)(iv)(A) Table 6, (C)(*5*), (*11*), (*12*), (*14*), (D)(*5*), (*11*), (*12*), (*14*), (8)(ii), (d)(1)(iv)(A), Table 7, (C)(*5*), (e)(3) introductory text and (f)(1) revised; (c)(1)(iv)(B), (C)(*9*), (*13*), (D)(*9*), (*13*), (3)(i), (ii), (4)(ii), (d)(1)(iv)(B), (C)(*9*), (e)(1)(ii), (4)(iii), (5)(iv), (6)(iv), (9) and (10) amended; (e)(3)(i) and (ii) removed 36959
80.46 (f)(1)(ii)(K) table revised 36961
80.48 (c)(1) introductory text and (g) revised; (c)(1)(v) and (2)(iii) amended 36962
80.49 (a)(5)(i) table and (b)(3)(iii) revised 36962
80.59 (a) amended 36962
80.65 (d)(2)(iii), (v)(B), (vi), (3), (e)(2)(i) table, (ii)(A), (f)(4) introductory text and (h) revised; (e)(1) amended 36962
(d)(2)(vi) revised 39289
Regulation at 59 FR 39289 stayed 60715
80.66 (g)(1) and (2)(ii) revised 36963
80.68 (c)(12) redesignated as (c)(13); (c)(8)(ii)(A), (9)(ii)(A), (B), (10)(i), new (13)(v)(G), (H) and (L) revised; new (c)(12) added; new (c)(13) introductory text amended 36963
80.69 (a)(7)(ii) introductory text and (b)(3) revised 36964
80.70 (d)(3)(viii), (ix), (j)(4)(i), (ii), (10)(iv), (11)(i) and (14)(xvii) revised; (d)(3)(x) and (xi) added; (j)(15) removed 36964
(l) introductory text and (1) added 2696
(j) introductory text revised 2699
80.75 (b), (f)(2)(ii)(A)(*1*) and (j) revised 36964
80.76 (c)(2), (3) introductory text, (i) and (ii) revised 36965
80.77 (g)(2)(iii), (iv)(A), (B) and (h) introductory text revised; (g)(3) added 36965
80.78 (a)(1)(v)(B) and (C) revised 36965
80.81 (a)(2)(iii), (b)(4) and (h) revised 36965
(c)(2), (5), (6) and (10) revised 39289
Regulation at 59 FR 39289 stayed 60715
80.83 Added (OMB number pending in part) 39290
Regulation at 59 FR 39290 stayed 60715
80.90 (b)(1) amended; (e)(2) revised 36965
80.91 (c)(5)(iv), (e)(5)(vi)(A), (B) and (e)(7)(i)(D) added; (d)(1)(i)(A) introductory text, (B), (e)(2)(iv), (v)(A), (4)(i)(A), (B), (ii)(A), (B) and (5)(vi) amended; (d)(1)(i)(A)(*1*), (e)(5)(vii) introductory text, (viii), (7)(i)(A), (C) and (f)(2)(ii) revised 36966
(e)(7)(i)(A) and (C) revised; (e)(7)(i)(D) removed 6032
80.93 (a)(3)(ii) amended; (a)(3)(iv) added; (c)(9) revised 36968
80.101 (e)(3), (f)(4)(i), (ii), (g)(1) and (i)(1) introductory text revised 36968
80.102 (b)(1), (d)(1)(i) and (2)(i) amended; (d)(3)(iv), (e)(2)(i) and (f)(2)(1) revised; (d)(3)(v) added 36969
80.104 (a)(2)(ix) revised 36969
80.105 (a)(2) revised 36969
80.125 (a) revised 36969
80.128 (e)(2), (5) and (g)(3)(iii) revised 36969
(a) and (e)(2) revised; (e)(4) and (5) amended; (e)(6) added 39292
Regulation at 59 FR 39292 stayed 60715
80.129 (e) revised 36969
(a), (d)(3)(iii) and (iv) revised; (d)(3)(v) added 39292
Regulation at 59 FR 39292 stayed 60715
80.140—80.160 (Subpart G) Added 54706
80.141 OMB number pending 54707
80.157 OMB number pending 54713
80.158 OMB number pending 54714
80.160 OMB number pending 54715
81 Attainment status designations 44938
81.301 Table amended 2029
81.305 Table amended 3772
81.306 Table corrected 39394
Table amended 47096, 47811
81.310 Table amended 45, 10330
81.315 Table amended 35054, 54395
Regulation at 59 FR 35054 removed 44040
81.318 Table amended 55059
Table amended 7129
81.320 Table amended 2887
81.324 Table revised 52435
81.330 Table amended 42769
81.333 Table corrected 39394
Table amended 50849
81.334 Table amended 48402
81.336 Table amended 48398, 48405
Table amended 5582, 7455
81.339 Table amended 48406
81.343 Table amended 37944, 39697, 53741
Table corrected 40084, 49004
Table revised 3355
81.347 Table amended 3352
81.348 Table amended 39701
81.349 Table amended 45980, 45984, 45986, 55060, 65721
81.350 Table amended 42169
82 Acceptable substitutes listing 44240
Acceptability notice 3318
82.9 (a) introductory text, (1) and (2) revised 65481
82.10 (d) added 41369
82.1—82.13 (Subpart A) Appendix C revised 41369
Appendix E revised 41371
82.100—82.124 (Subpart E) Revised 4020
82.152 (q) and (x) revised 42956
(u) through (y) redesignated as (w) through (aa) and (b) through (t) redesignated as (c) through (u); new (b), new

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(v) and (bb) added; new (o), new (s) and (z) revised 55925
82.154 (g) and (h) revised 42956
(l) removed; (m), (n) and (o) redesignated as (l), (m) and (n); new (m)(2) through (6) redesignated as (3) through (7); new (m)(2) and (8) added; (g)(1), new (m)(6) and new (7) revised 55926
(m)(9) added 7387
82.156 (i)(5) added 42171
(a)(1)(ii), (2)(i)(B), (3), (b), (c) and (i)(1) revised; (a)(1)(iii) and (2)(iii) added 42956
OMB number 42960
(a) introductory text, (1)(i), (2)(i) introductory text and (e) revised 55926
(l)(5) revised 59371
82.158 (b)(2) and (6) revised 42957
82.160 OMB number 42960
82.161 (a) introductory text revised 42957
OMB number 42960
(a) introductory text, (1) and (g) revised; (a)(2) through (5) amended; (a)(6) added 55926
82.162 OMB number 42960
82.164 Introductory text and (a) through (d) revised; (e) and (f) redesignated as (f) and (g); new (e) added 42957
OMB number 42960
Introductory text revised 55927
82.166 (a) and (b) revised 42957
OMB number 42960
82.150—82.166 (Subpart F) Appendix A revised 42957
Appendixes B and D amended; OMB number 42960
Appendix D amended 55927
82.174 (e) added 63256
(e) corrected 3303
85 Heading corrected 33913
Authority citation revised 36986
Announcement 45626
Authority citation revised 4738
85.501—85.505 (Subpart F) Added 48490
85.503 OMB number pending 48490
85.505 OMB number pending 48490
85.1601—85.1606 (Subpart Q) Added 36986
85.2225 (c)(1) table corrected 33913
85.2233 (d) corrected 33913
85.2301—85.2305 (Subpart X) Added 4738
86 Court order 51114
86.1 (b)(1) table revised; (b)(3) added 48491
(b)(2) table amended 50073
86.001–9 (d)(1)(iii) and (iv) added 48491
86.001–28 (h) added 48491
86.004–9 (d)(1)(iii) and (iv) added 48492
86.004–28 (h) added 48492
86.078–3—86.099–11 (Subpart A) Heading revised 48491
86.084–4 (b) redesignated as (c); new (b) added 48492
86.085–37 (b)(1) introductory text revised 50073
86.091–10 (a)(1) introductory text, (i) introductory text, (B)(*2*), (ii) introductory text, (B)(*2*) and (3) revised; (a)(1)(i)(C)(*3*), (ii)(C)(*3*), (v) and (vi) added 48492
86.091–28 (a)(4)(i) introductory text, (C), (ii)(B), (7)(i), (b)(4)(ii), (iii), (6)(i), (c)(4)(ii), (iii)(A)(*1*), (*2*), (B)(*1*), (*2*) and (d)(1) revised 48493
86.092–1 (a) revised 48494
86.094–2 Amended 48494
86.094–3 (b) revised 48494
86.094–8 (a)(1)(i) introductory text, (A) Tables A94–2, A94–3, A94–5 and A94–6 revised 48494
86.094–9 (a)(1)(i)(A) Tables A94–8, A94–9, A94–11, A94–12, (ii)(A) Table A94–14 and Table A94–15 and (d)(1)(i)(A) revised; (d)(1)(i)(C) added 48495
86.094–11 Heading, (a)(1) introductory text, (i)(A), (ii)(B), and (c) revised; (a)(1)(i)(C) added 48497
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 36369
86.094–15 (a)(1) revised 50073
86.094–17 (a) introductory text revised 48497
86.094–23 (b)(3), (4), (c)(1) and (2)(i) revised (OMB number pending) 48498
86.094–24 (a)(5), (6) introductory text, (12), (13) introductory text, (14) introductory text and (15) revised; (a)(13)(i) amended; (a)(6)(iv) and (13)(iii) added (OMB number pending) 48498
(a)(3)(iii) added; (a)(4) introductory text revised 50073
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 36369
86.095–35 (a)(4) heading, (i), (iii)(D), (E), (c)(1)(ii)(A), (B)(*1*) and (g)(1) revised (OMB number pending) 48499
86.096–8 (a)(1)(i), Table A96–1, Table A96–2 and (b)(1) revised 48499
86.096–9 (b)(1) heading, (i)(A) introductory text, (B)(*2*), (b)(1)(ii) and (iii) revised 48500
86.096–10 (b)(1) heading, (i)(A)(*2*), (B), (C), (ii)(A)(*2*) and (B) revised 48500
86.096–11 (b)(4) redesignated as (b)(5); heading, (a)(1)(i), (2)(ii), (c), and new (b)(5) revised; (a)(1)(iii) and new (b)(4) added 48500
86.096–21 (j) and (k) corrected 33913
86.097–9 (a)(1)(i)(A) Table A97–1, Table A97–2, (ii)(A) Table 97–3 and 97–4 revised 48500
86.098–2 Amended 48501
86.098–8 (d)(1)(iii) and (iv) added 48501
86.098–10 (a)(1)(i) introductory text, (B)(*2*), (ii) introductory text, (B)(*2*), (3)(i) and (ii) revised; (a)(1)(i)(C)(*3*), (ii)(C)(*3*), (v), and (vi) added 48501
86.098–11 Heading, (a)(1)(i), (2)(ii) and (c) revised; new (a)(1)(iii) and (b)(4) added 48502
86.098–28 (h) added (OMB number pending) 48503
86.099–8 (b)(1) revised; (d)(1)(iii) and (iv) added 48503
86.099–9 (b)(1) heading, (i)(A) introductory text, (B)(*2*), (ii) and (iii) revised 48503
86.099–10 (b)(1) heading, (i)(A)(*2*), (B), (C), (ii)(A)(*2*) and (B) revised 48503
86.099–11 (a)(1)(i), (2)(ii) and (c) revised; (a)(1)(iii) and (b)(4) added 48503
86.101 (a)(3) revised 48504
86.104 (b) redesignated as (c) and revised; new (b) added 48504
86.105 (b) revised 48504
86.106–94 (a) revised 48504
86.106–96 (a) revised 48504
86.107–96 (b)(1) revised 48505
86.109–94 (b)(4) and (c)(4) revised 48505
86.110–94 (a)(2), (b) heading, introductory text and (3) revised; (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added 48505
86.111–94 (b)(3) introductory text and (v) revised 48505
(b)(3)(vii) added 50073
86.113–94 Revised (OMB number pending) 48506
86.116–94 Correctly designated 33913
86.121–90 (a)(2) and (b)(3) revised; (d) added 48508
86.127–96 (a)(1), (3), (4), (b), (d) introductory text, (2) and (e) revised 48508
86.129–94 (a) amended 39649
86.130–96 (a) and (b) revised 48509
86.132–90 (a)(4) introductory text and (ii) introductory text revised 48509
86.132–96 (b), (e)(2) heading, introductory text and (f) revised 48509
86.133–96 (a)(1) and (3) revised 48509
86.134–96 (a) revised 48509
86.135–94 (a) revised 48510
86.136–90 (a) heading, introductory text and (b) revised 48510
86.138–96 (a) revised 48510
86.140–94 (a) introductory text and (b) introductory text revised 48510
86.142–90 (o) introductory text revised; (q) and (r) added (OMB number pending) 48510
86.143–96 (a) and (b)(1)(ii)(B) revised 48510
86.144–90 (c)(7)(ii) amended 39649
86.144–94 (c)(7)(ii) amended 39649
(c)(7)(iii) through (xiii) redesignated as (c)(7)(iv) through (xiv); (a)(1), (c)(1)(ii), (3)(iv)(C), (5)(ii), (6)(ii), (8)(i), (ii) and new (c)(7)(iv) through (xiv) revised; (b)(10), (c)(7)(iii), (8)(vi) and (9) added 48510
86.150–98 Heading revised; (d) added 48511

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86.157–98 Added (OMB number pending) 48511
86.401–97 Added 48512
86.410–90 (a)(1) introductory text revised 48512
86.509–90 (c)(4) revised 48512
86.513–94 Added (OMB number pending) 48512
86.521–90 (b) introductory text, (2) and (c)(3) revised; (e) added 48514
86.527–90 (a), (c) and (d) revised 48514
86.540–90 (a) introductory text revised 48515
86.542–90 (q) and (r) added (OMB number pending) 48515
86.544–90 (c)(1)(ii), (v), (ix), (3)(iv)(C) and (7)(ii) revised 48515
86.708–94 Technical correction 33913
(a)(1)(i)(A)(*3*) Tables H94–3, H94–4, H94–6 and H94–7 revised 48515
86.708–98 Technical correction 33913
(a)(1)(i) Table H98–1 and Table H98–2 revised 48516
86.709–94 (a)(1)(i)(A)(*3*) Tables H94–9, H94–10, H94–12, H9413, (ii)(A)(*2*) Table H94–15, Table H94–16 and Table H94–18 revised 48516
86.709–99 (a)(1)(i)(A) Table H99–1, H99–2, (ii)(A) Table H99–3 and H99–4 revised 48520
86.884–1 Revised 48521
86.884–4 Amended 48521
86.1201–90—86.1246–96 (Subpart M) Heading revised 48521
86.1201–90 (a) revised 48521
86.1204 Added 48521
86.1205–90 (a) revised 48521
86.1206–96 Introductory text revised 48521
86.1207–96 (b)(1) revised 48521
86.1213–94 Added 48521
86.1221–90 (a) introductory text, (2) and (b)(3) revised; (e) added 48523
86.1227–96 Heading, (b) introductory text and (2) revised 48523
86.1230–96 (a) and (b) revised 48524
86.1232–96 (b) and (f) revised 48524
86.1233–96 (a)(1) and (3) revised 48524
86.1234–96 (a) revised 48524
86.1238–96 (a) revised 48524
86.1242–90 (m) and (n) added (OMB number pending) 48524
86.1243–96 (a) and (b)(1)(ii)(B) revised 48525
86.1306–90 (a) revised 48525
86.1306–96 (a) revised 48525
86.1309–90 Heading, (a)(1) and (b)(4) revised 48525
86.1310–90 Heading, (a) introductory text and (2) revised 48525
86.1311–94 Added 48525
(b)(2)(iii) added 50073
86.1313–94 Revised 48528
86.1314–94 Added 48530
86.1316–94 Added 48530
86.1321–94 Added 48531
86.1325–94 Added 48531
86.1327–94 Added 48532
86.1327–96 (a), (f)(1) and (2) introductory text revised 48533
86.1332–90 (c)(1) heading, (2) heading, (d)(2) heading, (3) heading, (e)(1) heading and (2) heading revised 48533
86.1336–84 (e)(2) heading revised 48533
86.1337–90 (a)(7), (8), (13), (20) and (26) revised 48533
86.1337–96 (a)(7), (8), (13), (20) and (26) revised 48533
86.1340–94 Added 48534
86.1342–94 Added 48534
86.1344–94 Added 48535
86.1406 (b) corrected 33913
86.1430 (a)(7)(ii) and (c)(3)(ii) corrected 33913
86.1437 (c) corrected 33913
86.1438 (c) corrected 33913
86.1439 (d) amended 33913
(d)(1)(i), (ii)(B) and (2)(i) corrected; (f)(1)(ii)(A) correctly revised 33914
86.1501–84—86.1544–84 (Subpart P) Heading revised 48536
86.1501–94 Added 48536
86.1505–94 Added 48536
86.1506–94 Added 48536
86.1513–90 Added 48536
88.101–94 Redesignated as 88.102–94; new 88.101–94 added (OMB number pending) 50074
88.102–94 Redesignated as 88.103–94; new 88.102–94 redesignated from 88.101–94 and amended 50074

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88.103–94 Redesignated from 88.102–94 and amended 50074
88.104–94 Added (OMB number pending) 50074
88.105–94 Added 50077
88.201–94 (a) revised (OMB number pending) 50077
88.201–94—88.206–94 (Subpart B) Tables revised 50079
88.204–94 Added (OMB number pending) 50078
88.206–94 Added (OMB number pending) 50078
88.301–93—88.313–93 (Subpart C) Tables C93–6, C93–6.1 and C93–6.2 removed; Tables C94–1, C94–1.1, C94–1.2, C94–1.3, C94–2, C94–2.1, C94–2.2, C94–2.3, C94–3, C94–3.1, C94–3.2 and C94–3.3 revised 50082
88.302–94 Amended 50080
88.305–94 Added 50080
88.306–94 Added (OMB number pending) 50080
88.308–94 Added 50082
88.311–93 (a)(1)(iii), (c) and (d) revised 48536
(c) and (d) revised 50082
93.128 (b)(2) and (c)(2) redesignated as (b)(3) and (c)(3); (a)(4), new (b)(2), (c)(2) and (d)(4) added; new (c)(3)(iii) amended; interim; eff. 2–8–95 through 8–8–95 7452
95 Added 67638
112 Authority citation revised 34097
Notice 53742
112.2 (a) through (l) designations removed; amended; eff. 8–30–94 34097
112.20 Added; eff. 8–30–94 34098
112.21 Added; eff.8–30–94 34101
112 Existing Appendix redesignated as Appendix A; Appendixes B through F added; eff. 8–30–94 34102
Appendixes D, E and F corrected 49006
123.1 (h) amended 64343
123.21 (a)(1) and (b)(2) amended 64343
123.22 (g) amended 64343
123.31 Heading revised; (a) introductory text and (4) amended 64343
123.32 Heading, introductory text, (b) introductory text, (c), (d) introductory text, (1) and (e) amended; (f) revised 64343
123.33 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) 64343
124.2 Amended 64343
124.51 (c) amended 64343
125.56—125.68 (Subpart G) Authority citation revised 40658
Revised 40658
131.3 (j) amended 64344
131.4 (c) amended 64344
131.7 (b)(2) amended 64344
131.8 Heading, (a) introductory text, (b) introductory text, (2) introductory text, (3) introductory text, (ii), (4) introductory text, (i), (5), (6), (c) introductory text, (1), (2) introductory text, (4) and (5) amended; (b)(3)(iii) removed; (b)(3)(iv) redesignated as (b)(3)(iii) 64344
131.37 Added 4707
141.2 Amended 34322
141.6 (a) revised; (h) amended 34322
141.21 (f)(3) revised; (f)(4) removed; (f)(5), (6)(i), (ii) and (8) amended; (f)(6)(iv) added 62466
141.22 (a) amended 62466
141.23 (a)(1), (2), (5) and (f)(1) revised; (a)(4)(i) table, (c)(1), (2) and (5)(iii) amended 34322
(k)(1) removed; (k)(4), (5) and (6) redesignated as (k)(1), (4) and (5); (i)(1), (2), new (k)(1) table, (q)(3) and (4) amended 34323
(k)(1) revised; (k)(2), (3) and (q) removed; (k)(4) and (5) redesignated as (k)(2) and (3) 62466
141.24 (a) through (e) and (g) removed; (f)(4), (7), (10), (16) and (20) amended; (f)(14)(i), (iii), (h)(4)(i) and (12) introductory text revised; (h)(10)(i), (ii), (iii) and (12)(xv) added 34323
(f)(16) and (h)(12) removed; (e) added; (h)(13) introductory text and (i) revised 62468

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141.28 Heading and (a) amended **34323**
141.30 (e) revised; Appendixes A, B and C removed **62469**
141.32 (e)(30), (33), (35), (41) and (62) amended **34323**
141.40 Heading and (e)(5) amended; (g) revised **34323**
(h) amended; (j)(2) removed; (j)(3) through (15) redesignated as (j)(2) through (14); (n)(11) revised **34324**
(g), (n)(11) and (12) revised **62469**
141.41 (d) revised **62470**
141.42 (a), (b) and (c) removed **62470**
141.60 (a)(3) revised **34324**
141.61 (b) amended; table revised **34324**
(c) table amended **34325**
141.74 (a)(1) and (2) revised; (a)(3) through (7) removed **62470**
141.89 (a) introductory text revised; (a) table and (b) removed **62470**
142.2 Amended **64344**
142.3 (c) amended **64344**
142.62 (a) table amended **34325**
142.72—142.78 (Subpart H) Heading revised **64344**
142.72 Heading, introductory text and (d) revised **64344**
142.76 Heading, introductory text, (b) introductory text, (c), (d) introductory text (1) and (e) amended; (f) revised **64344**
142.78 Heading and (a) amended; (b), (c) and (d) removed; (e) redesignated as (b) **64345**
143.4 (b) revised **62470**
144.3 Amended **64345**
145.1 (h) amended **64345**
145.52—145.58 (Subpart E) Heading amended **64345**
145.52 Heading, introductory text and (d) revised **64345**
145.56 Heading, (b) introductory text, (c), (d) introductory text, (1), and (e) amended; (f) revised **64345**
145.58 (b), (c) and (d) removed; (e) redesignated as (b); heading, (a) and new (b) amended **64345**
148.17 (b) and (c) redesignated as (d) and (e); new (b) and new (c) added **48041**
172 Authority citation revised **45611**
172.3 Revised **45611**
172.43—172.59 (Subpart C) Added **45612**
180.1 (h) table amended **46353**
180.105 Removed **39468**
180.139 Removed **44931**
180.156 Removed **35630**
180.205 (a) table amended 7458
180.249 Amended **39466**
180.254 (c) added 9780
180.294 (a) table and (b) table amended **46354**
180.317 (a) table amended 4863
180.378 (a) introductory text revised 9784
180.379 (a) table amended 9784
180.408 (a) table amended **54820**
(a) table and (b) table amended **54824**
180.412 (a) table amended 4099
180.415 (a) table amended **53748, 53750, 54829**
180.417 (b) table revised 4095
180.418 Introductory text amended 9785
180.422 Introductory text amended 9785
180.436 Table amended **63257**
Table amended 9785
180.438 Table amended 9785
180.440 Revised **49825**
180.442 Revised **46192**
180.443 (a) table revised **54822**
180.447 (b) table revised 4093
180.449 (a) revised **49826**
(b) table revised **55590**
180.450 (a) table amended **44934**
180.455 Revised **42514**
180.459 Revised **44932**
180.461 Revised **39467**
180.466 Table revised 9785
180.472 Revised **61278**
(c) added **61553**
(b) corrected 378
(a) table and (b) introductory text amended; (d) added 9783
180.473 Added **35629**
(b) revised 3547
180.474 Added **39464**
180.475 Added **43492**
180.476 Added **59167**
180.477 Added **61280**
180.478 Added **66743**
180.479 Added **66743**
180.1001 (d) table corrected **35629**

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(d) table amended **38126**
(e) table amended **43494, 53746**
(c) table amended **43495, 43496, 54826**
(c) table and (e) table amended **44331, 53752, 61276**
(c) table and (d) table amended **44936**
(c) table, (d) table and (e) table amended **65722**
(e) table amended 6033
(c) table amended 9782
180.1020 Amended 4862
180.1023 Revised 7459
180.1039 Removed **44936**
180.1054 Revised **59165**
180.1104 Removed **44936**
180.1105 Removed **44936**
180.1106 Removed **44936**
180.1129 Added **43490**
180.1132 Added **54825**
180.1133 Added **53751**
180.1134 Added **49353**
180.1135 Added **66741**
180.1139 Added 4097
180.1140 Added 4097
180.1141 Added 4097
180.1142 Added 7457
185.300 Revised **49826**
185.350 Added **46769**
185.700 Removed **35630**
185.900 Added **61278**
185.1250 (a) revised 9785
185.3225 Table revised 9785
185.5450 Introductory text revised 9785
185.5900 Added **46769**
186 Order **54829**
186.300 (a) revised **49826**
186.700 Removed **35630**
186.900 Added **61278**
186.1250 (a) revised 9786
186.1600 Removed **39468**
186.2800 Table amended 4099
186.3225 Table revised 9786
186.3325 Added **61280**
186.5850 Revised **59167**
192.00—192.04 (Subpart A) Table added 2866
192.01 (a) and (e) revised; (g) through (r) added 2865
192.02 Revised 2865
192.03 Added 2866
192.04 Added 2866
192.11 (a) revised; (e) added 2866
192.12 (c) added 2867
192.20 (a)(2) and (3) revised; (b)(1) amended; (a)(4) and (b)(4) added 2867
192.21 Introductory text and (b) revised; (f) redesignated as (h); new (f) and (g) added 2868
192.22 (a) and (b) revised; (d) added 2868
192 Appendix I added 2868
227.6 (c)(2) amended **52652**
227.27 (b) amended **52652**
228.3 (b) amended **61129**
228.12 (b)(70) added **41254**
Removed **61129**
228.14 Added **61129**
228.15 Added **61130**
(h)(11)(i) revised 2699
233.60—233.62 (Subpart G) Heading amended **64345**
233.60 Heading revised; introductory text amended **64345**
233.61 Heading revised; introductory text, (b) introductory text, (c)(2), (d) introductory text, (1), (e) and (f) amended; (c)(3) removed **64345**
233.62 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) **64346**
258 Authority citation revised **58789**
260.11 (a) and (b) amended **62926**
(a) amended 3095
260.30 Introductory text and (b) revised **48041**
260.31 (a) introductory text and (b) introductory text revised **48041**
260.32 Introductory text revised **48041**
260.33 Revised **48041**
260.106 (c)(1) introductory text, (3) introductory text, (i) introductory text, (A) and (ii) introductory text revised **48042**
261 Determination 7366
261.2 (e)(1)(iii) revised **48041**
261.3 (c)(2)(ii)(B) revised **38545**
(a)(2)(iv)(E) amended; (a)(2)(iv)(F), (G) and (c)(2)(ii)(D) added 7848
261.4 (a)(12) added **38545**
261.6 (a)(3)(v) removed; (a)(3)(vi) and (vii) redesignated as (a)(3)(v) and (vi); new (a)(3)(v) revised **38545**
261.32 Table amended 7849

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261.33 (e) table and (f) table amended 7849
261 Appendix IX amended 47814, 52862
Appendix IX amended 1746
Appendixes VII and VIII amended 7853
262.34 (a)(1)(i), (ii) and (d)(2) revised 62926
264.1 (g)(6) revised 48042
264.13 (b)(6) amended; (b)(8) added 62926
264.15 (b)(4) amended 62926
264.73 (b)(3) and (6) revised 62926
264.77 (c) revised 62926
264.179 Added 62926
264.200 Added 62926
264.232 Added 62926
264.601 Introductory text amended 62927
264.1033 (k)(2) revised; (m) added 62927
264.1080—264.1091 (Subpart CC) Added 62927
265.1 (c)(10) revised 48042
(b) amended 62934
265.13 (b)(6) amended; (b)(8) added 62935
265.15 (b)(4) amended 62935
265.73 (b)(3) and (6) revised 62935
265.77 (d) revised 62935
265.178 Added 62935
265.202 Added 62935
265.231 Added 62935
265.1033 (j)(2) revised; (l) added 62935
265.1080—265.1091 (Subpart CC) Added 62935
266.20 (c) added; eff. 2–24–95 43500
266.23 (a) revised 48042
266.100 (b)(3) revised 38545
266 Appendix XIII added 48042
268.1 (c)(3)(ii), (e)(4) and (5) revised; (c)(3)(iii) added 48043
268.2 (g) and (i) revised 48043
(i) revised 244
268.7 (a)(1) introductory text, (ii), (iv), (v), (2)(i)(B), (3)(vi), (8), (b)(4)(ii), (d) introductory text and (1) revised; (a)(1)(vi) and (3)(vii) added 244
(a) revised 47980
(a) and (b)(4)(ii) revised; (b)(5)(i) added 48043
268.9 (a), (d)(1)(i) and (ii) revised; (d)(1)(iii) removed; (d)(2)(i) and (ii) added 48045
(a) and (d)(2)(i) revised 245
268.38 Added 48045
268.40 Revised 48046
Table revised 246
268.41 (a) table amended; eff. 2–24–95 43500
Revised 48103
268.42 Note added; (a) introductory text, (c)(2) and (d) revised; Table 2 and Table 3 removed 48103
Table 1 amended 302
268.43 Revised 48103
268.45 (b)(2) revised 48103
268.46 Revised 48103
268.48 Added 48103
Table amended 302
268 Appendix IV revised; Appendix V removed; Appendix X added 48107
Appendix X amended 302
270 Interpretation 6666
270.4 (a)(2) and (3) revised; (a)(4) added 62952
270.14 (b)(5) revised 62952
270.15 (e) added 62952
270.16 (k) added 62952
270.17 (j) added 62952
270.27 Added 62952
271 State hazardous waste management program authorizations 35266, 39967, 39971, 41979, 43290, 51115, 51116, 51122, 53753, 55322, 55368, 56001, 56397, 56407, 60910, 66200
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271.1 (j) Table 1 and Table 2 amended 48109
(j) Table 1 amended 62952
(j) Table 2 amended 62953
(j) table amended 7856
272 State hazardous waste management program authorizations 52084, 56114
272.151 Added 52920
272.1200 Removed 45987
272.1201 Revised 45987
272 Appendix A amended 45987, 52921
281 State underground storage tank program authorizations 10331
282.66 Added 49212
282 Appendix A amended 49213

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300 Authority citation revised 47416
Appendix B revised 65212
300.1—300.7 (Subpart A) Revised 47416
300.5 Amended 35854
300.100—300.185 (Subpart B) Revised 47424
300.160 (c) revised 35854
300.200—300.220 (Subpart C) Revised 47440
300.300—300.335 (Subpart D) Revised 47444
300.400 (a) revised 47447
300.405 (a) and (f)(3) revised 47447
300.410 Revised 47448
300.415 Revised 47448
300.510 (c)(2) and (f) revised 35854
300.600—300.615 (Subpart G) Revised 47450
300.700 (Subpart H) Revised 47452
300.900—300.920 (Subpart J) Revised 47453
300 Appendix B amended 43291, 44634, 45628, 46355, 46569, 48179, 54831, 56409
Appendix C revised 47458
Appendix E added 47473
Appendix B amended 4568, 8570, 8571
302.4 Table amended 7856
350.16 Revised 43048
355 Appendixes A and B amended 51821
372.10 (d) added 61501
372.22 (c) revised 61501
372.25 Introductory text revised 61502
372.27 Added (OMB number pending) 61502
372.65 (c) table amended 34390
(a) and (b) amended 43050
(a) table, (b) table and (c) table amended 61473
(a) table and (b) table amended 9301
372.95 Added (OMB number pending) 61502
501.11 (a)(1) and (b)(2) amended 64346
501.12 (g) amended 64346
501.22 Heading, (a) introductory text and (4) amended 64346
501.23 Heading, introductory text, (b) introductory text, (c), (d) introductory text, (1) and (e) amended; (f) revised 64345
501.24 Heading and (a) amended; (b) through (e) removed; (f) redesignated as (b) 64346
600 Authority citation revised 39649
600.001–93 Added 39649
600.002–93 Added 39650
600.004–77 Revised 39651
600.006–89 (b)(1)(i) revised; (h) added 39652
600.007–80 (f) introductory text revised 39652
600.011–93 Added 39652
600.101–93 Added 39652
600.107–93 Added 39652
600.111–93 Added 39652
600.113–93 Added (OMB number pending) 39654
(e)(1) and (g) corrected 44795
Introductory text, (a), (b)(1), (2) and (d) revised; (c)(3) and (h) added 48537
600.201–93 Added 39655
600.206–93 Added (OMB number pending) 39655
600.207–93 Added (OMB number pending) 39655
600.209–95 Added (OMB number pending) 39656
600.301–95 Added 39657
600.307–95 Added (OMB number pending) 39657
600.501–93 Added 39659
600.502–81 (a)(1)(iii) corrected 33914
600.510–93 Added (OMB number pending) 39659
600.511–80 (a)(1) corrected 33914
600.513–91 (a) introductory text, (2) and (b)(2)(xii) revised 39661
600 Appendix VIII revised 39661
712.30 (w) table amended 60718
716.120 (a) table amended 60718
721.825 Added 43296
721.3200 (b)(1) revised 39293
721.3367 Removed 65248
721.4820 (a)(2)(i) and (ii) revised 39296
721.5880 (a)(2), (b)(1) and (2) revised 40260
721.6193 Removed 65249
721.6820 Added 39295
721.8675 (a)(1)(i)(D) and (2)(i)(D) revised 66747
721.8700 (a)(1)(i)(D) and (2)(i)(D) revised 66747
721.8750 (a)(2)(iv) revised 66747

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721.8775 (a)(1)(i)(D), (2)(i)(D), (3)(i)(D) and (4)(i)(D) revised 66747
721.8850 (a)(2)(iv) revised 66748
721.8875 (a)(2)(iv) revised 66748
721.8900 (a)(2)(iv) revised 66748
749.68 Heading, (a), (b), (c), (d)(10), (11) and (g)(1) revised 42773
766.35 (b)(4)(i) table amended; (f) revised 46356
799 Clarification 45629
799.2155 (c)(2)(ii)(A) and (d) revised 46357
799.5000 Heading revised; table amended 38920
Table amended 59663
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799.5050 Removed 4516

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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

51–2.2 (b) amended 59341
51–2.3 Revised 59341
51–2.4 Introductory text, (a), (b), (c), (a) introductory text, (1), (2), and (3) redesignated as (a) introductory text, (1), (2), (3), (4) introductory text, (i) and (ii); new (a) introductory text, (4) introductory text, (i) and (ii) revised; new (b) added; (d) removed 59341
51–2.5 Revised 59342
51–2.6 Existing text redesignated as (a); (b) added 59342
51–2.7 Revised 59342
51–3.2 (d) revised; (e) through (m) redesignated as (f) through (n); new (e) added 59342
51–3.3 Revised 59342
51–4.2 (a)(1) introductory text and (2) introductory text amended 59342
51–4.3 (b)(6) and (c)(1) amended 59343
51–4.5 Heading revised 59343
51–5.2 Heading and (a) revised; (e) amended 59343
51–5.3 (a) amended; (c) added 59343
51–5.4 (d) revised; (f)(1) amended 59343
51–5.5 (b) revised 59343
51–5.6 Revised 59343
51–5.8 Heading revised 59343
51–6.2 (f) amended 59343
51–6.4 (a), (b), (c)(3) and (4), (d) revised; (e) amended 59343
51–6.8 (e) added 59344
51–6.12 (a), (c) and (d) revised; (e) added 59344
51–6.13 Revised 59344
51–8.1 Revised 59344
51–8.3 (b) removed; (c) through (i) redesignated as (b) through (h); introductory text and new (b) revised 59344
51–8.4 Revised 59344
51–8.5 (a) amended 59345
51–8.7 (e) amended 59345
51–8.10(a) through (d) amended 59345
51–8.11 (a) amended 59345
51–8.14 (c) revised 59345
51–9 Authority citation revised 59345
51–9.405 Amended 59345

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

60–250 Authority citation revised 1987
60–250.2 Amended 1987
60–250.4 (b) and (h) revised 1987

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–6.600—101–6.605 (Subpart 101–6.6) Added 54531
101–9 Added 62601
101–17—101–21 (Subchapter D Appendix) Temporary Reg. D–76 added 50508
101–37—101–41 (Subchapter G) Temporary Reg., Rev. 1 added 7129
101–37.100 (Subpart 101–37.1) Revised 3548
101–37.200—101–37.205 (Subpart 101–37.2) Revised 3550
101–37.300—101–37.305 (Subpart 101–37.3) Revised 3552
101–37.401 Removed 3552
101–37.404 Revised 3552
101–37.408 Revised 3553
101–37.500—101–37.506 (Subpart 101–37.5) Revised 3553
101–37.1101 Removed 3554
101–38.202–4 Revised 41410
101–38.800—101–38.801 (Subpart 101–38.8) Heading revised 41411
101–38.800 Revised 41411
101–38.801 Revised 41411
101–38.4900 Revised 41411
101–38.4901 Revised 41411
101–38.4902 Removed 41411
101–37—101–41 (Subchapter G Appendix) Temporary Reg. G–57 added 41412
Temporary reg. G–54 added 42514

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101–45.001 Removed; new 101–45.001 redesignated from 101–45.002 50696
101–45.001–1 Removed 50696
101–45.001–2 Removed 50696
101–45.001–3 Removed 50696
101–45.001–4 Removed 50696
101–45.001–5 Removed 50696
101–45.001–6 Removed 50696
101–45.001–7 Removed 50696
101–45.002 Redesignated as 101–45.001 50696
101–45.103–1 Revised 50696
101–45.103–2 Revised 50696
101–45.103–3 Added 50697
101–45.103–4 Added 50697
101–45.105–3 Revised 50697
101–45.301 Removed 50697
101–45.303 Introductory text revised 50697
101.45.304–3 Removed 50697
101–45.304–6 Revised 50697
101–45.304–7 (a)(4) removed; (c) revised 50697
101–45.304–8 Introductory text and (a) revised 50697
101–45.400—101–45.402 (Subpart 101–45.4) Added 60561
101–45.4701 Revised 50698
101–46.001 Removed; new 101–46.001 redesignated from 101–46.002 50698
101–46.002 Redesignated as 101–46.001 50698
101–46.003 Removed 50698
101–46.004 Removed 50698
101–46.005 Removed 50698
101–46.202 (b)(1)(iii) revised 50698
101–46.300 Revised 50698
101–46.305 Revised 50698

Chapter 105—General Services Administration (Parts 105–1—105–999)

105–72 Added 47268

Chapter 114–Department of the Interior (Parts 114–1—114–99)

114–51 Heading revised 3555
114–51.100 Revised 3555
114–51.101 Removed 3555
114–51.102 Removed 3555
114–51.200—114–51.203 (Subpart 114–51.2) Removed 3555
114–51.300—114–51.303 (Subpart 114–51.3) Removed 3555
114–52 Removed 3555

Chapter 201—Federal Information Resources Management Regulation (Parts 201–1—201–99)

201–1.002–2 (d) and (e) redesignated as (e) and (f); new (d) and (g) added; new (f) revised 66203
201–1.002–3 Added 66203
201–3.001 (b)(1) revised 66203
201–3.402 (b) amended 61282
(b) corrected 2029, 7715
201–4.001 Amended 61282
201–9.202–1 (b)(7) amended 61282
(b)(7) corrected 2029, 7715
201–9.202–2 (b)(1)(ix) amended 61282
(b)(1)(ix) corrected 2029, 7715
201–18.003 Amended 61282
Corrected 2029, 7715
201–20.203–2 (c) revised 66203
201–20.303 (d)(2) amended 61282
(d)(2) corrected 2029, 7716
201–20.305 (a)(3) revised; (a)(5) and (6) added; interim 53361
(a)(7) added 61282
(a)(7) corrected 2030, 7716
201–20.305–1 Introductory text and (c) removed; (a)(1) introductory text, (3) and (b) revised; interim 53362
(a)(1) revised; (c) added 61282
201–21.403 (a)(2)(ii) 61283
(a)(2)(iii) corrected 2030
(a)(2)(ii) corrected 7716
201–21.603 (d)(1) and (3) amended 61283
(d)(1) and (3) corrected 2030, 7716
201–21.604 (a) amended 61283
(a) corrected 2030, 7716
201–23.003 (a) and (c) amended 61283
(a) and (c) corrected 2030, 7716
201–24.101–2 (a) introductory text amended 61283
201–24.101–3 (a) amended; (d) revised; (g) added 61283
201–24.102 (c)(2) amended 61283
201–24.104 Removed 61283
201–37.104–1 (b)(3) corrected 2030
201–39.5 Removed 10509
201–39.001 (b) revised 61283
(b) corrected 2030, 7716
201–39.101–3 (b)(4) and (5) redesignated as (b)(5) and (6); new

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TITLE 41 Chapter 201—Con.

(b)(4) and (7) added; new (b)(6) revised 66203
201-39.101-6 (b) amended 61283
(b) corrected 2030, 7716
201-39.104-1 (b)(3) amended 61283
(b)(3) corrected 7716
201-39.601-2 Removed 10509
201-39.802 Revised 61283
201-39.802-1 Revised 61283
201-39.802-2 Revised 61283
201-39.802-3 Revised 61284
201-39.803-3 Revised 10509
201-39.1402-1 (b) revised 66204
201-39.1501-1 (b) revised 66204
201-39.3304-1 Revised 61284
Corrected 2030, 7716
Chapter 201 FIRMR Index amended 61284
FIRMR Index amended 10510

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-1.3 (a) and (c)(1) revised 46192
301-1.101 (b)(4) added 46193
301-1.202 Heading revised; (a)(5) and (b)(6) added 46193
301-1.205 (e) added 46193
301-4.2 (a) revised; (b) removed; (c) and (d) redesignated as (b) and (c); new (c) amended 66626
301-4.4 Amended 66626
301-7.2 (a)(4) added; (b) revised 46193
301-8.3 (c) revised 43500
301-8.5 (a)(4) added 46194
301-11.2 Revised 46194
301-16.2 (g) removed 46194
301-16.3 Revised 46194
301-16.4 (c)(1) revised 46195
301-17 Added 46195
Chapter 301 Appendix A revised 65682
Appendix A corrected 4477

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302-2.3 (c) introductory text amended 66626
302-6.2 (g)(1) and (2) amended 46357
302-11 Appendixes A through D amended 2536

Proposed Rules:

51-2 38318
51-3 38318
51-4 38318
51-5 38318
51-6 38318
51-8 38318
51-9 38318
101-20 46951
105-68 65607
105-71 53706
201-1 62695
201-2 62695
201-3 62695
201-4 62695
201-6 62695
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201-9 62695
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201-18 62695
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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page
52e.1 (a)(1) and (b) revised 59372
52e.8 Amended 59372
57.4101—57.4116 (Subpart PP) Authority citation revised 63902
57.4101 Revised 63902
57.4102 Amended 63902
57.4105 (d), (e) and (f) introductory text revised 63902
57.4106 (a) introductory text and (5) revised 63902
57.4111 Removed; new 57.4111 redesignated from 57.4112 63902
57.4112 Redesignated as 57.4111 63902
Redesignated from 57.4113 63903
57.4113 Redesignated as 57.4112; new 57.4113 redesignated from 57.4114 63903
57.4114 Redesignated as 57.4113; new 57.4114 redesignated from 57.4115 and revised 63903
57.4115 Redesignated as 57.4114; new 57.4115 redesignated from 57.4116 63903
57.4116 Redesignated as 57.4115 63903
59a.5 (b) introductory text amended 59168
63 Revised 10716
65 Authority citation revised 64141
65.1 (a), (b) concluding text and (c) introductory text revised 64141
65.2 Amended 64141
65.4 (b) revised 64141
65.5 (b) revised 64141
100 Authority citation revised 7693
100.1 Revised 7693
100.2 Amended 7693
100.3 Added 7694

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.310 Table amended (OMB numbers) 51128
Table amended (OMB numbers) 2326
401 Authority citation revised 56232
401.130 (b)(17) revised 56232
401.133 Introductory text revised 56232
403.500—403.512 (Subpart E) Authority citation revised 51128
403.500 Revised 51128
403.501 Added 51129
403.502 Revised 51129
403.504 Revised 51129
403.506 Removed 51129
403.508 Revised 51129
403.510 Added 51129
403.512 Added 51129
405.1411—405.1416 (Subpart N) Redesignated as 486.100—486.110 Subpart C 2326
405.1413 (a)(1) amended 64152
405.1701—405.1726 Undesignated center heading removed 2326
405.1701 Redesignated as 485.701 2326
405.1702 Introductory text removed; (a) through (m) redesignated as 485.705(a), 485.703(a), (b), 485.705(b) through (e), 485.703(c), (d), 485.703(f), (g), 485.703(e) and 485.705(h) 2326
405.1715 Redesignated as 485.707 2326
405.1716 Redesignated as 485.709 2326
405.1717 Redesignated as 485.711 2326
405.1718 Redesignated as 485.713 2326
405.1719 Redesignated as 485.715 2326
405.1720 Redesignated as 485.717 2326
405.1721 Redesignated as 485.719 2326
405.1722 Redesignated as 485.721 2326
405.1723 Redesignated as 485.723 2326
405.1724 Redesignated as 485.725 2326
405.1725 Redesignated as 485.727 2326
405.1726 Redesignated as 485.729 2326
405.1730—405.1737 Undesignated center heading removed 2326
405.1730 Redesignated as 486.150 2326

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405.1731 Redesignated as 486.151 2326
405.1732 Redesignated as 486.153 2326
405.1733 Redesignated as 486.155 2326
405.1734 Redesignated as 486.157 2326
405.1735 Redesignated as 486.159 2326
405.1736 Redesignated as 486.161 2326
405.1737 Redesignated as 486.163 2326
409 Authority citation revised 65493
409.32 (a) revised 65493
409.40 Revised 65494
409.41 Revised 65494
409.42 Revised 65494
409.43 Revised 65494
409.44 Revised 65494
409.45 Added 65495
409.46 Redesignated as 409.50; new 409.46 added 65496
409.47 Added 65496
409.48 Added 65497
409.49 Added 65497
409.50 Redesignated from 409.46 65496
410 Authority citation revised 63462
Technical correction 46
Authority citation revised 2329
410.1 (a) amended 63462
410.10 (u) added 8955
410.31 Added 8955
410.60 (a)(3)(ii) amended 2329
410.152 (b)(4) revised 63462
412 Technical correction 64153
413 Technical correction 64153
413.125 Added 65497
414.1—414.60 (Subpart A) Authority citation revised 63463
414.2 Amended 63463
414.4 Revised 63463
414.39 Added 63463
(b)(2) corrected 49
414.314 (c) revised; (d) removed 63463
417 Authority citation revised 59941
417.440 (f) added 59941
417.454 (b) redesignated as (c); (a) heading, new (b) and (c) heading added 59941
417.600 Amended 59941
417.604 (a) and (b) amended 59941
417.605 Added 59941
417.606 Revised 59941
417.608 Heading, (a) and (c) revised 59942
417.610 Heading, introductory text and (b) revised 59942
417.612 Heading and text amended 59941
417.614 Revised 59942
417.616 (a)(1), (b), (c)(1) and (2) introductory text revised 59942
417.618 Amended 59942
417.620 Revised 59942
417.622 (b) amended 59941
(a) revised 59942
417.630 Revised 59942
417.638 Revised 59942
417.801 (b)(6) redesignated as (b)(7); new (b)(6) added 59943
417.830 Added 59943
417.832 Added 59943
417.834 Added 59943
417.836 Added 59943
417.838 Added 59943
417.840 Added 59943
418 Authority citation revised 65497
418.202 (g) revised 65497
431.115 (c) revised 56232
431.151—431.154 (Subpart D) Heading revised 56232
431.151 Revised 56232
431.152 Revised 56232
431.153 Revised 56232
431.154 Section heading and (a) revised 56233
431.610 (a)(3) added; (g) introductory text and (2) revised 56233
435.115 (f), (g) and (h) added 59376
435.1009 Amended; (b) introductory text and (4) revised 56233
436.114 (f), (g) and (h) added 59377
440.40 Revised 56233
440.140 Revised 56234
440.150 Revised 56234
440.155 Added 56234
441.11 Revised 56234
442 Heading revised 56235
442.1 (a) revised 56235
442.2 Amended 56235
442.12 (c) revised 56235
442.13 (b) and (c) revised 56235
442.14 (b)(2) revised 56235
442.15 Heading revised; (d) removed 56235
442.16 Heading revised 56235
442.30 (a)(1), (2), (4) and (7) revised 56235
442.40 Heading and (b)(1), (2)(ii) and (c)(1) revised 56236

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442.42 (a) revised 56236
442.100—442.119 (Subpart C) Heading revised 56236
442.101 (d)(1) and (2) amended 56236
442.105 Heading, introductory text, (c)(1) and (d)(1) revised 56236
442.109 Heading revised 56236
442.110 Heading and (a) revised 56236
442.116 Removed 56236
442.117 Heading and (a) revised 56236
442.118 Heading, (a), (b)(1) and (3)(i) revised; (c) removed 56236
442.119 Heading, (a)(1) and (b)(1) revised 56236
447.280 Revised 56237
482.21 (b) revised 64152
482.22 (b)(3) revised 64152
482.43 Added 64152
483 Authority citation revised 56237
483.75 Heading revised 56237
484 Authority citation revised 65498
Authority citation revised 2329
484.18 (c) revised 65498
484.36 (b)(2)(iii), (c) and (d) revised 65498
484.38 Amended 2329
484.48 Introductory text revised 65498
485 Authority citation revised 2327
Heading revised 2327
485.70 (e) and (m) amended 2327
485.701—485.729 (Subpart H) Heading added 2327
485.701 Redesignated from 405.1701 2326
Revised 2327
485.703 (a) through (e) redesignated from 405.1702(b), (c), (h), (i) and (l) 2326
Heading revised; amended 2327
485.705 (a) through (h) redesignated from 405.1702(a), (d) through (g), (j), (k) and (m) 2326
Heading and introductory text added 2327
485.707 Redesignated from 405.1715 2326
Heading, introductory text and (a) amended 2327
485.709 Redesignated from 405.1716 2326
(b) revised; (c) and (d) amended 2327
485.711 Redesignated from 405.1717 2326
(a) introductory text, (b)(3) and (c) amended; (b)(1) and (4) revised 2327
485.713 Redesignated from 405.1718 2326
Introductory text and (a)(2) revised; (a)(1) introductory text, (i), (b) and (d) amended 2327
485.715 Redesignated from 405.1719 2326
Heading amended 2327
(a), (b) and (c) amended 2328
485.717 Redesignated from 405.1720 2326
Introductory text and (b) revised; (a) amended 2328
485.719 Redesignated from 405.1721 2326
(a) amended; (b) revised 2328
485.721 Redesignated from 405.1722 2326
Heading amended 2327
(b)(1) through (6), (c), (d) introductory text, (1), (2) introductory text and (1) amended 2328
485.723 Redesignated from 405.1723 2326
Heading amended 2327
(a)(2), (b) introductory text, (1), (2) and (c)(2) amended 2328
485.725 Redesignated from 405.1724 2326
(b) revised; (c) redesignated in part as (c)(1) and in part as (2); new (c)(1), (2) and (e) amended 2328
485.727 Redesignated from 405.1725 2326
Heading amended 2327
Introductory text amended 2329
485.729 Redesignated from 405.1726 2326
Heading amended 2327
Introductory text, (a) and (b) amended 2329
486 Added 2329
486.100—486.110 (Subpart C) Redesignated from 405.1411—405.1416 Subpart N 2326
486.150 Redesignated from 405.1730 2326

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Revised 2329
486.151 Redesignated from 405.1731 2326
Revised 2329
486.153 Redesignated from 405.1732 2326
Heading amended 2329
486.155 Redesignated from 405.1733 2326
Heading, (a) introductory text and (b)(4) amended 2329
486.157 Redesignated from 405.1734 2326
Heading amended 2329
486.159 Redesignated from 405.1735 2326
Revised 2329
486.161 Redesignated from 405.1736 2326
Heading amended 2329
486.163 Redesignated from 405.1737 2326
Introductory text, (b) and (c) amended; (d) revised 2329
488 Technical correction 52862
Authority citation revised 56237
Heading revised 56237
488.11 (b) revised 56237
488.14 Revised 56237
488.18 (a) and (b) revised 56237
488.20 (a) revised 56237
488.24 Revised 56237
488.26 Revised 56237
488.28 Revised 56238
488.50 Removed 56238
488.300—488.335 (Subpart E) Added 56238
488.400—488.456 (Subpart F) Added 56243
489 Technical correction 52862
Authority citation revised 56250
Heading revised 56250
489.3 Amended 56250
489.11 (c)(3) removed 56251
489.12 (a) revised 56251
489.13 Revised 56251
489.15 Removed 56251
489.16 Removed 56251
489.18 (d) revised 56251
489.53 (a)(13) added; (b) removed; (c) revised 56251
489.60 Removed 56251
489.62 Removed 56251
489.64 Removed 56251
489.66 Removed 56251
493 Authority citation revised 62609
493.855 (a) amended 62609
493.1202 Heading revised 62609
493.1203 Heading revised 62609
493.1443 (b)(3)(ii) introductory text and (C) amended 62609
498 Authority citation revised 56251
Heading revised 56251
Authority citation revised 2330
498.1 (h) added 56251
498.2 Amended 56251
498.3 (b)(7), (d)(1) and (10) revised; (d)(11) and (12) redesignated as (d)(13) and (14); (b)(12), (13), new (d)(11) and new (12) added 56251
(b)(6) amended 2330
498.4 Added 56252
498.5 (f)(1), (i)(2) and (j)(1) revised 56252
498.61 Revised 56252

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1003 Technical correction 52862

Proposed Rules:

36 67592
51 64367
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52a 9560
60 59193
63a 4742
400—499 (Ch. IV) 67264, 67265
418 52129
431 60109
440 59624
441 59624
447 59624
482 7514
483 59624
1003 61571

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

2 Appendix B correctly added; CFR correction 10030
4.477 (a) removed; (b) amended 9958

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4.1105 (a)(2) introductory text revised 54362
4.1370—4.1377 Undesignated center heading added 54362
4.1370 Added 54362
4.1371 Added 54362
4.1372 Added 54362
4.1373 Added 54362
(a) corrected 56573
4.1374 Added 54362
4.1375 Added 54362
4.1376 Added 54362
4.1377 Added 54363
4.1380—4.1387 Undesignated center heading added 54363
4.1380 Added 54363
4.1381 Added 54363
4.1382 Added 54363
4.1383 Added 54363
4.1384 Added 54364
4.1385 Added 54364
4.1386 Added 54364
4.1387 Added 54364
7 Authority citation revised 5260
7.1 (a) amended 5260
7.3 (a)(6) added; (i) revised 5260
7.4 Heading and (a) revised; (c) added 5260
7.7 (b)(4) added 5260, 5261
7.13 (e) added 5260, 5261
7.19 Revised 5260, 5261
7.20 Added 5260, 5261
7.21 Added 5260, 5261
12 Authority citation revised 65499
Notice 9786
12.700 Revised 65499
12.710 (a), (b) and (c) revised 65500
18 Notice 9786

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

426 Authority citation revised 10036
426.24 Redesignated as 426.25; new 426.24 added 10036
426.25 Redesignated from 426.24 10036

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1780 Authority citation revised 9958
1784.0-5 (d) amended 9958
1784.2-1 (b) removed; (c) redesignated as (b); new (b) revised 9958
1784.2-2 (a)(1) and (b) revised; (c) added 9958
1784.3 (a), (b)(3), (4), (5), (c), (d) and (g) removed; (b)(1) and (2) redesignated as (a)(1) and (2); (b) removed; (e) and (f) redesignated as (b) and (c); new (a)(1) and new (c) amended; new (d) added 9958
1784.5-1 Amended 9958
1784.5-2 Amended 9958
1784.6 Revised 9958
1784.6-1 Revised 9958
1784.6-2 Added 9959
1784.6-4 Removed 9960
1784.6-5 Removed 9960
4100 Authority citation revised 9960
4100.0-2 Revised 9960
4100.0-5 Amended 9960
4100.0-7 Revised 9962
4100.0-9 Added (OMB numbers) 9962
4110.1 Introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (a) introductory text revised; new (b), new (c) and new (d) added 9962
4110.1-1 Revised 9962
4110.2-1 (a)(1), (2) and (c) revised 9962
4110.2-2 Heading and (a) revised; (c) amended 9962
4110.2-3 (a)(1) revised; (b) amended; (f) redesignated as (g); new (f) added 9963
4110.2-4 Revised 9963
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1.1165 Redesignated as 1.1167; new 1.1165 redesignated from 1.1163 5333
1.1166 Redesignated as 1.1168; new 1.1166 redesignated from 1.1164 5333
1.1167 Redesignated from 1.1165 5333
1.1168 Redesignated from 1.1166 5333
1.1204 (b)(8) added 53759
1.2003 Amended (OMB number pending) 63051
Regulation at 59 FR 63051 eff. date confirmed as 12–20–94 10511
1.2105 (c) revised 64162
2 Memorandum opinion and order 61284
Reconsideration petition 66254
2.106 Table amended 55373, 60562
Table amended; Footnote US243 removed; Footnote 471 corrected 66253
Table amended; Footnote 743A removed; Footnotes 750B, 751A, 751B, US327 and US328 added 8311
5 Memorandum opinion and order 61284
11 Added 67092
15 Reconsideration petition 66254
15.323 (c)(1), (5) and (e) revised 55373
(e) corrected 3303
20.6 Added 59953
(d)(9) and (10) added 61629
21 Report 53363
22 Revised (effective date pending in part) 59507
Authority citation revised 59954
22.105 Table B–1 amended 59954
Table correctly revised 9889
22.115 (a)(2) amended 59954
22.121 (d) corrected 64856
22.131 Revised 59954
22.137 (c)(1)(ii) amended 59954
22.142 (c) introductory text and (d) introductory text amended 59954
22.165 (d)(2) corrected 64856
22.301 Revised 59955
22.313 (a)(4), (b) and (c) revised; (a)(5) added 59955
22.357 Introductory text amended 59954
Revised 59956
22.361 Table correctly revised 9889
22.411 (d)(1) amended 59954
22.413 (b)(1) amended 59954
22.415 (b)(1) amended 59954
22.417 (b)(1) amended 59954
22.507 Amended 59954
22.509 Added 59956
22.529 (a) introductory text and (b) introductory text amended 59954
22.531 (c) amended 59954
22.541 Removed 59956
Stayed 3557
22.561 Table correctly revised 9889
22.591 Table correctly revised 9889
22.621 Table correctly revised 9890
22.627 (b)(1)(i) table correctly revised 9890
22.651 Table correctly revised 9891

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22.709 (b) introductory text amended **59954**
22.717 Revised **59956**
22.725 Table correctly revised 9891
22.757 Table correctly revised 9891
22.803 (a) introductory text and (b) introductory text amended **59954**
22.901 (d) introductory text corrected **64856**
22.905 Table correctly revised 9891
22.911 (b) introductory text amended **59954**
22.929 (a) introductory text and (b) introductory text amended **59954**
22.941 (c) amended **59954**
22.947 (b) introductory amended **59954**
22.949 (a)(2), (b) introductory text, (2), (c), (d)(1) and (3) revised **59956**
22.953 (a)(2)(iii) amended **59954**
22.1007 (a)(1) table, (2) through (6), (b), (c) introductory text and (1) correctly revised 9891
24 Reconsideration petition **66254**
24.204 (f) introductory text revised; (f)(3)(i) amended ..... **55374** (d)(2)(ix) and (x) added; (f) introductory text, (1), (2) and (3) redesignated as (f)(1), (2), (3) and (4); new (f)(1) revised **61830**
24.238 Revised **55374**
24.307 Amended **59957**
24.309 (b)(1) revised **50511**
24.406 (b) amended **59957**
24.409 (b) amended **59957**
24.411 Redesignated from 99.411 and corrected **55210**
24.413 (a) introductory text amended **59957**
24.426 (a) amended **59957**
24.427 (b) amended **59957**
24.703 (f) revised; (h) added **53371**
24.707 (b) amended **59957**
24.709 Revised ..... **63232** (b)(5)(i)(B), (C), (6)(i)(B) and (C) correctly revised 5335
24.711 Revised ..... **63235** (b)(1) and (2) correctly revised 5335
24.712 (d) revised ..... **63235** (d)(1) and (2) correctly revised 5335
24.720 Revised **63236**
(f) and (h) correctly revised 5335
(l)(3) correctly revised 8571
(o) correctly revised 8572
24.806 (b) amended **59957**
24.809 (b) amended **59957**
24.813 (a)(1) revised **53371**
(a) introductory text amended **59957**
24.816 Removed **53371**
24.822 (b) revised **53371**
24.826 (a) amended **59957**
24.827 (b) amended **59957**
24.829 (b) removed; (c) redesignated as (b) **53371**
24.833 Added **53371**
24.839 (a) and (d) revised 2-6-95 ..... **63238**
25.110 (b) revised 5333
25.114 (c)(6), (18) and (26) revised; (c)(28) and (d) added **53326**
25.115 (d) revised **53327**
25.130 (b) revised **53327**
25.133 (b) revised **53327**
25.136 Added **53327**
25.141 (a) and (f) revised **53328**
25.143 Added **53328**
25.201 Amended **53329**
25.202 (a)(4) and (5) added **53329**
25.203 (c)(2)(vii) revised; (j) and (k) added **53329**
25.208 (c) revised **53329**
25.213 Added **53329**
25.278 Added **53331**
25.279 Added **53331**
43.61 (d) revised 5333
43.81 (b) amended 5333
52.120 (d) and (e) revised **53327**
61 Memorandum opinion and order 4108
61.42 (a)(1) and (b)(1) amended; (c)(17) redesignated as (c)(18); new (c)(17) added 4569
63 Authority citation revised **63920**
63.54 (d) revised; (e)(5), (6), (f) and (g) added **63921**
64 Memorandum opinion and order 7131
64.1001 (l)(2) amended 5333
69 Memorandum opinion and order 4108
73 Report **53363**
Technical correction **55374, 55375**
Reconsideration petition **55594**
Authority citation revised **62344**
Reconsideration petition 9628

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73.202 (b) table corrected **50169**
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Technical correction **51867, 51868, 51869**
(b) table amended 3557, 5869, 6671, 10512
73.606 (b) table amended **63726, 64613**
73.900 (Subpart G) Heading revised **67102**
Added **67102**
73.901—73.902 Undesignated center heading removed **67102**
73.901 Removed **67102**
73.902 Removed **67102**
73.903—73.922 Undesignated center heading removed **67102**
73.903 Removed **67102**
73.904 Removed **67102**
73.905 Removed **67102**
73.906 Removed **67102**
73.907 Removed **67102**
73.908 Removed **67102**
73.909 Removed **67102**
73.910 Removed **67102**
73.912 Removed **67102**
73.913 Removed **67102**
73.914 Removed **67102**
73.915 Removed **67102**
73.916 Removed **67102**
73.917 Removed **67102**
73.918 Removed **67102**
73.919 Removed **67102**
73.920 Removed **67102**
73.921 Removed **67102**
73.922 Removed **67102**
73.926—73.927 Undesignated center heading removed **67102**
73.926 Removed **67102**
73.927 Removed **67102**
73.931—73.933 Undesignated center heading removed **67102**
73.931 Removed **67102**
73.932 Removed **67102**
73.933 Removed **67102**
73.935—73.937 Undesignated center heading removed **67102**
73.935 Removed **67102**
73.936 Removed **67102**
73.937 Removed **67102**
73.940—73.943 Undesignated center heading removed **67102**
73.940 Removed **67102**
73.941 Removed **67102**
73.942 Removed **67102**
73.943 Removed **67102**
73.961—73.962 Undesignated center heading removed **67102**
73.961 Removed **67102**
73.962 Removed **67102**
73.1020 (a)(1) through (18) revised (OMB number pending) **63051**
Regulation at 59 FR 63051 eff. date confirmed as 12-20-94 10511
73.1207 (b)(1) revised; (c)(4) added **67102**
73.1250 (c) revised; (h) amended **67102**
73.1650 Amended 5333
73.1820 (a)(1)(iii) revised **67103**
73.3500 Amended (OMB number pending) **63051**
Regulation at 59 FR 63051 eff. date confirmed as 12-20-94 10511
73.3526 (g) added (OMB number pending) **62344**
73.3527 (g) added (OMB number pending) **62344**
73.3549 Heading revised; amended **67103**
73.3555 (a)(3)(iii) and (e)(1)(i) revised **62613**
73.4017 Revised **52086**
73.4050 (b) amended; (c) added **52086**
73.4097 Heading revised **67103**
73.4107 (a) and (b) amended **52086**
73.4163 (d) amended; (e) added **52087**
73.4165 Revised **52087**
73.4170 Revised **52087**
73.4180 (c) added **52087**
73.4185 Revised **52087**
73.4190 Existing text designated as (a); (b) added **52087**
73.4255 (b) amended **52087**
73.4267 Existing text designated as (a); (b) and (c) added **52087**
73.4280 Revised **52087**
73 Index amended **67103**
74 Heading revised **63052**
Regulation at 59 FR 63052 eff. date confirmed as 12-20-94 10511
74.15 (d) revised (OMB number pending) **63052**
Regulation at 59 FR 63052 eff. date confirmed as 12-20-94 10511
74.733 Note amended **63052**
Regulation at 59 FR 63052 eff. date confirmed as 12-20-94 10511

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76 Memorandum, opinion and order 52087
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76.3 Amended 67103
76.5 (qq) added 67103
76.7 (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) added 62344
76.55 (a)(2) and (e)(3) note revised; (a)(3)(iii) note, (b)(3) and (d)(6) note added 62344
76.56 (a)(1)(iii), (5) and (b)(1) revised 62344
76.57 (a) revised 62345
76.60 (c) added 62345
76.62 (a) revised 62345
76.64 (b)(2), (e), (f)(4) and (k) revised; (l), (m) and (n) added 62345
76.301 Revised 67103
76.305 (a)(1) added 67103
76.901 (d) added 62623
76.922 (d)(3)(iv)(F) added 53115
(d)(3)(x), (xi) and (e) revised (OMB number pending) 62623
(e)(7) revised 4865
(d)(2) revised 10514
76.924 (f)(5) and (6) redesignated as (f)(6) and (7); new (f)(5) added 53115
76.933 (e) and (f) added 53115
76.934 Heading revised; (e) added 51871
76.964 Heading revised 62625
76.981 Revised 62625
76.986 Revised 62625
76.987 Added (OMB number pending) 62625
76.1002 (c)(3)(i) removed; (c)(3)(ii) and (iii) redesignated as (c)(3)(i) and (ii) and revised 66259
76.1003 (h) revised 66258
90 Interpretation 9787
90.5 (h) through (k) redesignated (i) through (l); new (h) added 59957
90.75 (a) introductory text revised; (c)(10) amended 59957
90.115 Revised 59957
90.119 Revised 59957
90.131 Introductory text added 59958
90.135 (c) revised 59958
90.145 (c) amended; (d) and (e) added 59958
90.149 (a) revised 59958
90.153 Introductory text amended; (a) through (d) added 59958
90.155 (a) revised 59958
90.159 (a), (b) and (c) amended 59959
90.160—90.169 Undesignated center heading and note added 59959
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90.160 Added 59959
90.161 Added 59959
90.162 Added 59960
90.163 Added 59961
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90.168 Added 59963
90.169 Added 59964
90.179 (g) added 59965
90.403 (c) revised 59965
90.405 (b) revised 59965
90.415 (b) revised 59965
90.425 (e) added 59965
90.437 (b) and (c) revised 59965
90.449 Revised 59965
90.476 (c) added 59965
90.483 Introductory text revised 59966
90.494 (c) revised 59966
90.603 (c) revised 59966
90.607 (b) introductory text and (c) introductory text revised 59966
90.623 (c) introductory text revised 59966
90.627 (b) introductory text revised; (b)(2) amended; (b)(3) removed 59966
90.631 (a) amended; (b) and (c) revised 59966
90.633 (a) revised; (e) amended 59966
90.645 (c) revised 59966
90.703 (c) revised 59966
90.733 (a)(3) revised 59967
94.59 (b) and (f) revised 65503
94.61 (b) table amended 53331
97.3 (a)(11) through (45) redesignated as (a)(12) through (46); new (a)(11) added 7460
97.5 Revised 54831
97.7 Revised 54832
97.9 Revised 54832
97.17 Revised 54832
(f) revised; (h) added 7460
97.19 Removed 54832

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97.21 Revised 54832
(a)(3) revised 7460
97.23 Revised 54833
97.25 Revised 54833
97.27 Revised 54833
97.29 Added 54833
97.301 (a) through (f) introductory texts revised 54833
97.501 Introductory text, (d) and (e) revised; (f) added 54834
97.505 Revised 54834
97.507 (a) introductory text and (3) revised 54834
97.509 Revised 54834
97.511 Revised 54835
97.515 Removed 54835
97.517 Removed 54835
97.519 (b) revised; (d) added 54835
99.411 Redesignated as 24.411 55210

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

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1.105 Revised (OMB numbers) 67065
1.601—1.603-4 (Subpart 1.6) Heading revised 67015
1.603-1 Revised 67015
1.603-3 Revised; interim 64787
3.104-4 (h)(5) added; interim 64787
4.703 (d) redesignated as (e); new (d) added 67015
4.800—4.805 (Subpart 4.8) Heading revised 67016
4.800 Amended; interim 64787
4.802 (f) added 67016
4.805 Introductory text redesignated as (a); heading and new (a) revised; (b) and (c) added; table amended 67016
5.303 (a) revised 67017
6.102 (d)(3) revised 53716
6.302-1 (b)(3) revised 67018
7.102 Amended; interim 64785
7.402 (b)(4) added 67026
7.404 Added 67026
8.001 (a) introductory text, (1)(iv) and (2)(i) revised 53716
(a)(1)(iv) and (2)(i) revised 67027
8.002 (b) revised 67018
(g) revised 67030
8.300—8.309 (Subpart 8.3) Removed 67018
8.401—8.408 (Subpart 8.4) Heading revised 53716
8.401 (a) and (b) amended 53716

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8.402 (a) and (b) designation removed 53716
8.403 Removed 53716
8.403–1 Removed 53716
8.403–2 Removed 53716
8.403–3 Removed 53716
8.403–4 Removed 53716
8.404 Revised 53716
(c)(1) and (2) correctly revised 60319
8.404–1 Removed 53717
8.404–2 Removed 53717
8.405 Existing text removed 53717
8.405–1 Removed 53717
8.405–4 Introductory text amended 53717
8.405–5 (a)(3) amended 53717
8.406 Removed 53717
8.407 Removed 53717
8.408 Removed 53717
8.500—8.505 (Subpart 8.5) Added 67030
8.603 (a) revised 67027
8.700—8.715 (Subpart 8.7) Heading revised 67027
8.700 Revised 67027
8.701 Revised 67027
8.702 Revised 67028
8.703 Revised 67028
8.704 (a) introductory text, (1)(ii), (2)(i) and (c) amended 67028
8.705–1 (a) revised 67028
(b) amended 67029
8.705–2 Amended 67029
8.705–3 (a) and (c) amended 67029
8.705–4 (c) revised; (d) amended 67028
(a) and (b) amended 67029
8.706 (a) amended; (b)(1) revised 67028
(b)(2) amended 67029
8.707 (a) amended 67028
(d) and (e) amended 67029
8.708 (d) revised 67028
8.709 Revised 67028
8.710 Introductory text amended 67029
8.711 (a)(1), (2) and (b) revised 67029
8.712 (a) revised; (c) and (d) amended 67029
8.713 (a) and (b) amended 67029
8.714 Revised 67029
8.715 Amended 67029
8.802 (c) redesignated as (c)(1); (c)(2) added 67032
9.107 Revised 67029
9.405 (a), (d)(2) and (3) amended 67033
9.405–1 (a) amended; (b) redesignated as (c); new (b) added; new (c) revised 67033
9.405–2 (a) amended 67033
9.406–1 (c) amended 67033
9.406–3 (e)(1)(iv) amended 67033
9.407–1 (d) amended 67033
11.002 Amended; interim 64785
13.101 Amended; interim 64787
13.105 (c) amended 53717
(a) revised; (d)(3) and (4) amended; interim 64787
13.106 (a) removed; (b) and (c) redesignated as (a) and (b); interim 64787
13.203–1 (f) amended 53717
13.502 (c) amended; interim 64787
13.601—13.603 (Subpart 13.6) Added; interim 64787
14.201–7 (a), (b)(1) and (c)(1) amended; (d) redesignated as (e); new (d) added; interim 62499
14.202–3 (b) amended 67033
14.214 Removed; interim 62499
15.408 (e) added 67033
15.804–2 (a)(1) and (2) revised; interim 62499
15.804–8 (g) added 67035
15.805–3 Regulation at 57 FR 39586 confirmed 67042
15.812–1 Regulation at 57 FR 39587 confirmed 67042
15.812–2 (a)(3) amended 67018
15.813 Removed; interim 62499
15.813–1 Removed; interim 62499
15.813–2 Removed; interim 62499
15.813–3 Removed; interim 62499
15.813–4 Removed; interim 62499
15.813–5 Removed; interim 62499
15.813–6 Removed; interim 62499
15.813–7 Removed; interim 62499
16.301–3 (a) and (b) amended; (c) removed; (d) redesignated as (c); interim 64785
16.403 (c) removed; (d) redesignated as (c); interim 64785
16.403–1 (c)(1) and (2) amended; (c)(3) removed; interim 64785
16.403–2 (c)(1) and (2) amended; (c)(3) removed; interim 64785
19.000 (a) introductory text amended; interim 64785
(b) revised 67036

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19.502–4 (b) amended 67037
19.601 (d) added 67036
19.1001 Introductory text and (b) revised; interim 67036
19.1005 (a)(3) revised; interim 67036
19.1006 (b)(2) revised; interim 67037
22.401 (b) introductory text amended; (b)(3) removed 67038
22.406–3 (b)(1) amended; (b)(4) removed 67038
22.606–2 (b) revised 67039
(b) corrected 5870
22.1002–3 (a) revised 67039
22.1008–3 (e) revised 67040
22.1012–3 (d)(1) amended 67040
22.1012–5 Amended 67040
22.1021 Revised 67041
25.100 Revised; interim 64788
28.301 (a)(1) revised 67043
30 Regulation at 57 FR 39587 confirmed 67042
30.201–4 (b)(1) amended; (b)(2) and (d)(2) revised 67043
30.601 (b) amended 67043
30.602–1 (c)(1) amended 67043
30.602–2 (a)(4) amended 67043
30.602–3 (a) revised 67043
31.109 (a) revised 67045
31.201–1 Existing text designated as (a); new (a) amended; (b) added 67045
31.201–2 Regulation at 57 FR 39590 confirmed 67042
31.201–6 (c) revised 67045
31.203 Regulation at 57 FR 39590 confirmed 67042
31.205–6 Regulations at 57 FR 39590 and 39591 confirmed 67042
(o)(2) revised; (o)(3), (4) and (5) redesignated as (o)(4), (5) and (6); new (o)(3) added; new (o)(5) amended 67046
31.205–10 Regulation at 57 FR 39590 confirmed 67042
31.205–11 Regulation at 57 FR 39591 confirmed 67042
31.205–13 Revised; interim 3315
(b)(4) corrected 7133
31.205–14 Revised; interim 3316
31.205–18 Regulation at 57 FR 39591 confirmed 67042
31.205–19 Regulation at 57 FR 39591 confirmed 67042
31.205–24 Regulation at 57 FR 39591 confirmed 67042
31.205–38 Regulation at 57 FR 39591 confirmed 67042
32.402 (a) amended 67047
32.503–7 Introductory text amended 67043
34.000—34.005–6 (Subpart 34.0) Heading added; interim 67048
34.100–34.104 (Subpart 34.1) Added; interim 67048
35.010 (b) revised 67049
36.212 Added 67049
36.305 Removed 67050
36.522 Added 67050
36.523 Added 67050
37.101 Amended; interim 67051
37.103 (d) added; interim 67051
38.000 Revised 53717
38.101 (a) and (b) amended; (d) removed; (e) redesignated as (d) 53717
38.102 Removed 53717
38.102–1 Removed 53717
38.102–2 Removed 53717
38.102–3 Removed 53717
38.102–4 Removed 53717
38.201 (a) introductory text and (b) revised 53718
38.202 Removed 53718
38.203 Removed 53718
38.204 Removed 53718
38.205 Removed 53718
41 Added 67018
42.203 (a) revised 67043
42.302 (a)(11) introductory text and (iv) revised 67043
42.705–2 (b)(2)(ii) removed; (b)(2)(iii) through (vi) redesignated as (b)(2)(ii) through (v) 67052
44.201–1 (b) revised 67052
44.201–2 (c) revised; (d) removed 67052
44.204 (a)(3) revised 67053
44.205 Removed 67053
44.302 (b) revised 67054
44.304 (a) and (b) amended 67054
44.305–3 (a)(2) revised 67043
45.311 Added 67054
45.603 Introductory text amended 67054
47.104–4 Heading revised; (c) added 67055
52.207–5 Added 67026
52.208–3 Removed 67023
52.208–8 Added 67031
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52.214–27 Amended; interim....62499
52.214–28 Amended; interim....62499
52.214–29 Introductory text amended; interim....62500
52.215–23 Amended; interim....62500
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601.570 Revised 66751
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603 Authority citation revised 66750
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1652.215-70 Heading revised; amended; interim 62346

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1801.104-370 (a) amended 66268
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1842.101 Amended 66270
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9903.201-2 (a) amended; (c) added 55753
9903.201-3 Amended; introductory heading redesignated as (a) heading; introductory text and (a) through (d) redesignated as (a)(1) introductory text and (i) through (iv); (a)(2) added 55754
9903.201-4 (a)(1) and (2) revised; (e) added 55755
9903.201-6 (a) revised 55756
9903.201-7 Added 55756
9903.202-1 (f) added 55756
9903.202-5 Revised 55757
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9903.202-10 Added 55757
9903.301 Existing text designated as (a); (b) added 55770
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1.23 (l) revised 2891
1.45 (a)(10) revised 2891
1.54 (b)(11) added 2891
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171.7 (a)(3) table amended 55172, 64744, 67405
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171.11 (d)(5) amended 67406
171.12 (b) introductory text amended 67406
171.14 Regulation at 59 FR 48763 eff. date confirmed as 9-22-94 53116
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172.101 (c)(3), (13) and (k)(1) through (5) revised; (g) amended 67407
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172.204 (a)(2) amended 67487
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172.402 (a)(1) revised; (a)(2) amended; (f) and (g) added 67490
172.411 (d) amended 67490
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172.547 (b) amended 67490
172.554 (b) amended 67490
173.2a (b) table amended 67490
173.9 (e) added 67490
173.21 (f)(2) amended 67490
173.22 (a)(2)(iii) and (iv) redesignated as (a)(2)(iv) and (v); new (a)(2)(iii) added; (a)(3)(i) and (4) revised 67491
173.24 (c)(1) and (e)(4)(ii) amended; (d) revised 67491
173.25 (a) introductory text revised; (b) added 67491
173.28 (b)(4) revised; (b)(7) and (c)(4) added 67491
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173.33 (d)(3) amended; (h) added 55172
(c)(5) amended 67492
173.52 (b) Table 1 amended 67492
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173.60 (b)(15) added 67492
173.62 (a), (c) table and (d) revised; (b) table amended 67492
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173.115 Heading and (b) introductory text revised 67506
173.120 (a) revised; (b)(2) amended 67506
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173.121 (b)(1)(ii) amended; (b)(1)(iv) table and (2)(i) revised 67507
173.124 Heading and (a)(2) revised 67507
173.128 (a) introductory text, (c)(2) and (3) amended; (b)(7) revised; (c)(4) removed; (d) redesignated as (e); new (d) added 67508
173.136 (a) revised 67508
173.137 Introductory text amended; (a), (b) and (c) revised 67508

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173.150 Heading and (d) revised; (a), (b) introductory text and (3) amended 67508
173.152 (b)(3) revised 67508
173.158 (f)(3) added 67509
173.164 (b), (c) and (d) redesignated as (c), (d) and (e); new (c) introductory text revised; (a)(1), (2) and new (c)(1) amended; new (b) added 67509
173.166 Heading, (b) and (d)(1) revised; (a), (c), (d)(2) and (f) amended 67509
173.171 (a) amended 67509
173.173 Heading and (b) introductory text revised 67509
173.185 Revised 67509
173.189 Added 67511
173.196 (f) amended 67511
173.201 (b) and (c) amended 67518
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173.224 Revised 67511
173.225 (e)(2) amended 55172
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173.226 (c)(1) amended 67517
173.304 (a)(2) table amended 67517
173.306 (a)(3)(v) revised; (a)(4) added 67517
173.315 (o)(1) revised; (o)(2) amended 55172
173 Appendix A removed; Appendixes E and F amended; Appendix H added 67517
174.61 Heading revised; (a) amended; (c) removed 64744
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175.10 (a)(4) introductory text and (13) revised; (a)(12) introductory text amended; (a)(17) removed; (a)(26) added 67518
175.33 (a)(1) introductory text, (6) and (7) amended 67518
176.27 (c) added 67518
176.76 (i) added 67519
177.841 (e)(3) amended 67519
178.2 (a) revised; (e) added 67519
178.3 (a) introductory text and (b) revised; (a)(2) and (4) amended; (a)(5) added 67519
178.337-1 (a)(3), (e)(1) and (2) amended 55172
178.337-9 (b)(7)(i) removed; (b)(7)(ii) and (iii) redesignated as (b)(7)(i) and (ii) 55173
178.337-11 (a)(2) introductory text revised 55173
178.338-9 (c)(2) revised 55173
178.338-11 (c) introductory text amended 55173
178.345-1 (c) amended; (i)(2) revised 55173
178.345-3 (b) and (c) revised 55173
(d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1), (3) and new (d) amended 55174
178.345-5 (f) added 55175
178.345-6 (a) and (b) amended 55175
178.345-8 (a)(3), (b) introductory text, (1), (c) introductory text, (1) and (d)(3) revised; (e) added 55175
178.345-10 (b)(3)(i) and (ii) revised 55175
178.345-13 (c) heading added 55176
178.345-14 (d) amended 55176
178.345-15 (b)(2) amended; (e) added 55176
178.346-1 (d)(9) and (10) added 55176
178.346-2 (a) designation removed; amended 55176
178.346-10 (b)(1) and (2) amended; (b)(3) added; (c)(1) and (d)(1) revised 55176
178.346-13 (c) revised 55176
178.502 (a) introductory text, (1) introductory text and (3) amended 67519
178.503 (d) redesignated as (e); (a) introductory text, (9), (10), (c) and new (e) illustration revised; (a)(11) and new (d) added 67519
(e)(2) amended 67521
178.508 (b)(2) amended 67521
178.512 (a)(1), (2) and (b)(2) revised; (a)(3) and (4) removed 67521
178.513 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added 67521

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178.516 (b)(1) and (2) amended; (b)(3)(iii), (4) and (5) redesignated as (b)(4), (5) and (6) 67521
178.521 (b)(2) amended 67521
178.522 (a)(9), (b)(4) and (5) amended; (a)(10) and (b)(3)(viii) revised; (a)(11) and (b)(3)(ix) added 67521
178.601 (k) redesignated as (l); (b), (g)(2)(i), (vi) and new (l) revised; new (k) added 67521
(g)(2) introductory text, (5)(i) and (ii) amended 67522
178.602 (c) amended 67522
178.603 (a) introductory text and (c) amended; (f)(1) revised 67522
178.604 (d) amended 67522
178.606 (c)(1) amended 67522
178 Appendix C added 67522
180.403 Amended 55177
180.405 (f)(1)(iii) and (4) introductory text amended; (h) revised 55177
180.407 (c) table, (i)(4)(viii) and (ix) amended; (e)(1) and (h)(2) revised; (i)(5), (6) and (7) redesignated as (i)(6), (7) and (8); (i)(4)(x) and new (5) added 55177
(d)(1)(ii), (e)(2)(ii) and (g)(1)(iv) amended; (e)(4) removed; (e)(5) redesignated as (e)(4) 55178
180.413 Revised 55178
192 Compliance date suspension 7133
199 Authority citation revised 62227, 62239, 62246
199.3 Amended 62227
199.11 (c) revised 62227
199.225 (a)(2), (b)(4)(ii) and (iii) redesignated as (a)(2)(i), (b)(4)(iii) and (iv); (a)(2)(ii) and new (b)(4)(ii) added 62239
(d)(1) revised 62246

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219 Authority citation revised 60563, 62228, 62239
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219.5 Amended 62228
219.209 Corrected 50699
219.300 (d) added 62239
219.302 (f) removed 62239
219.303 Revised 60563
219.501 (e) removed; (a) through (d) redesignated as (b) through (e); new (a) added; new (b) through new (e) revised 60564
219.602 Added 62228
219.801 Corrected 50699

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

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382 Authority citation revised 60323
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382.107 Amended 60323, 62229
382.115 (a) revised 2032
382.303 (b)(2) redesignated as (b)(4); new (b)(2) and (3) added 62240
382.305 Revised 62229
382.307 (e)(2) and (3) redesignated as (e)(4) and (5); new (e)(2) and new (3) added 62240
387.3 (c) revised 63923
387.5 Amended 63923
387.7 (d)(3) revised 63923
387.9 Revised 63923
387.15 Amended 63924
387.17 Revised 63924
390 Authority citation revised 60323, 67554
390.3 (b) through (f) redesignated as (c) through (g); new (b) added 67554
390.5 Amended 60323
390.50—390.60 (Subpart C) Added 67554
391 Determination 59386
Authority citation revised 60323
391.11 (b)(11) removed; (b)(12) redesignated as (b)(11) 60323
391.35 Removed 60323
391.37 Removed 60323
391.51 (b)(2), (c)(3), (4) and (d)(2) amended; (c)(5) and (d)(3) removed; (d)(4) redesignated as (d)(3) 60323
391.61 Revised 60323
391.67 Revised 60324
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391.69 Revised 60324
391.71 (a) amended 60324
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391.73 Revised 60324
391.83 (c) revised 56
392 Authority citation revised 60324, 63924
392.9a Removed 60324
392.10 (a)(2) through (5) and (b)(1) revised 63924
392.12 Removed 60324
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392.25 Revised 63925
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392.42 (Subpart E) Heading revised 60324
392.61 Removed 60324
392.62 Removed 60324
392.65 Removed 60324
392.69 Removed 60324
395 Authority citation revised 60324
395.2 Amended 60324
396 Authority citation revised 60324
396.3 (b)(4) removed; (b)(5) redesignated as (b)(4); (b)(3) amended 60324
397 Authority citation revised 51830, 63925
397.5 Revised 63925
397.7 Revised 63925
397.9 Removed 51830
397.13 Revised 63925
397.19 Revised 63925
397.61—397.77 (Subpart C) Added 51830
397.201 (a) revised; (c) amended 51834
397.203 (a)(3) revised 51834
350—399 (Subchapter B) Appendix H added 67556
Chapter III Appendixes A and C removed 60324

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

501.7 (a)(2) and (3) revised; (a)(4) added 64163
501.8 (f) introductory text and (g) heading revised 64163
(g)(3) removed; (l) added 9789
541 Authority citation revised 64168
541.3 Revised; eff. 10-25-95 64168
541.4 Revised; eff. 10-25-95 64168
541.5 Revised; eff. 10-25-95 64168
541 Appendix A heading and Appendix B revised; eff. 10-25-95 64169
555 Authority citation revised 1750
555.9 (c)(1) revised 1750
567 Authority citation revised 64170
567.4 (k) introductory text amended 64170
571 Technical correction 51229
571.101 Table 2 amended 6432
571.105 Amended 6434
571.108 Amended; eff. 11-1-95 54839
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571.109 Corrected 51229
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571.121 Amended 2896
571.131 Regulation at 59 FR 26761 confirmed 5337
571.135 Added 6434
571.208 Amended 60918
571.210 Amended 3775
571.213 Amended 7464
571.303 Amended 2543
571.304 Amended 66776
572 Authority citation revised 2897
572.41 (a) introductory text, (3), (4), (5) and (c) revised 52091
572.42 (a) introductory text revised 52091
572.43 (a) revised 52091
572.44 (b)(1) and (c) revised 52091
572.40—572.44 (Subpart F) Appendix A added 52092
572.74 (c)(2) revised 2897
591 Authority citation revised 52097
591.4 Introductory text revised 52097
591.6 (c) revised 52097
591.10 (b) and (c) revised 52097
591 Appendix A amended; Appendix B added 52097
592 Authority citation revised 52098
592.1 Revised 52098
592.4 Introductory text revised 52098
592.6 (g)(2)(i) revised 52098
592.7 (c) amended 52098
592.8 (g) revised 52098

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

604.9 (b)(8)(iv) revised 51134
653 Authority citation revised 62230

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653.7 Amended 62230
653.47 Revised 62230
654 Authority citation revised 62240
654.33 (b) redesignated as (b)(1); (b)(2) added 62240
654.37 (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added 62240

Chapter VIII—National Transportation Safety Board (Parts 800—899)

821 Authority citation revised 59046
821.1 Amended 59046
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821.2 Regulation at 58 FR 11380 confirmed; revised 59054
821.3 Added 59046
821.6 (d) revised 59046
821.7 (a) and (b) revised 59046
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821.14 (a) revised 59047
821.19 (b) revised; (d) added 59047
821.20 (b) and (c) revised 59048
821.24 (a), (d) and (e) revised 59048
821.30 (a) revised 59048
Regulation at 58 FR 11381 confirmed 59054
821.31 (a) revised 59048
821.35 (a) revised 59048
821.37 (a) revised 59048
821.38 Revised 59048
821.42 (c) removed; (d) redesignated as (c) 59049
821.43 Revised 59049
821.47 Revised 59049
821.48 (e) revised; (f) removed; (g) redesignated as (f) 59049
821.49 Revised 59049
821.50 (a) and (b) revised 59049
821.54—821.57 (Subpart I) Heading revised 59049
821.54 (a) revised 59049
821.55 (a), (b) and (c) revised; (f) added 59049
821.56 (a) revised 59050
821.57 (b) and (c) revised 59050
821.63 (b) revised 59050
821.64 Revised 59050
Regulation at 58 FR 11381 confirmed 59054
826.2 Regulation at 58 FR 11381 confirmed 59054
826.3 Regulation at 58 FR 11381 confirmed; (a) revised 59054

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1002.1 (d), (e)(1) and (f)(6) table revised 67643
1002.2 Table corrected 52372
(c) and (d)(1) revised 63727
(f) revised 67643
(f) table amended 2544
(f) table corrected 4477
1011 Authority citation revised 65505
1011.6 (e) revised 2544
1011.16 (a)(1)(iv) added 65505
1039.11 (a) table amended 51134, 59663, 63925
1130 Authority citation revised 2544
1130.2 (f) amended; (g) added 2544
1160 Revised 63728
1161 Removed 63730
1162 Removed 63730
1163 Removed 63730
1166.3 (c) amended 63730
1249.11 Corrected; CFR correction 52099

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TITLE 50—WILDLIFE AND FISHERIES

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15.11 (b) and (c) amended 62255
15.31—15.33 (Subpart D) Added 62262
17.11 (h) table amended 50805, 60264, 60278, 60334, 63264, 64623, 64866, 65276, 65512
(h) table amended; eff. 8-18-94 to 5-26-95 54840
(h) table amended 2903, 5267, 5273, 6974, 10715
17.12 (h) table amended 50857, 56333, 56350, 59177, 60568, 62352, 64623
(h) table amended 61, 3561, 6684
17.84 (i) added 60264
(i) revised 60279
17.95 (e) amended 65276
20 Authority citation revised 50425
20.20 (b) and (c) revised; (d) and (e) added 53336
20.21 (j) revised 64
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20.103 Corrected 59967
20.104 Seasonal hunting adjustments 50426
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20.105 Seasonal hunting adjustments 50427
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32.60 Amended **55188**
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32.68 Amended **55197**
32.70 Amended **55188**
32.71 Amended **55188**
100.24 (a)(1) table amended 10319, 10320
100.25 (k)(1)(vii)(B) table, (18)(iii)(B) table and (20)(iii)(C) table amended **51858**
(k)(23)(iii)(C) table and (26)(iii)(B) table amended **51859**
(e)(1) revised; (k)(6)(iii)(B) table and (9)(ii)(E) table amended 10320
(k)(11) table, (12) table, (13)(ii) table, (14)(iii)(B) table, (16) table, (18)(iii) table and (19)(iii) table amended 10321
(k)(20)(iii)(C) table, (21)(iii)(D) table, (25)(iii) table and (26)(iii)(B) table amended 10322
100.27 (f)(3)(iv)(E) added 10322

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers) **66272, 66780**
215 Authority citation revised **50375**
215.1 Revised; interim **50375**
215.11 (Subpart B) Revised; interim **50375**
216 Embargoes **65974**
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216.2 Amended; interim **50375**
216.3 Amended; interim **50375**
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216.6 (a), (b), (d) and (e) amended; interim **50375**
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216.14 Heading, (a) introductory text and (b)(1) amended; interim **50376**
216.15 Introductory text amended; interim **50376**
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216.23 (d) amended; interim **50376**
216.24 (b)(2)(vii), (viii), (4), (c)(8), (d)(2)(i)(D), (vi), (e)(7) introductory text, (ii) and (g) amended; interim **50376**
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(e)(5)(xiv) revised **63062**
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216.26 (b), (c) and (d) revised; interim **50376**
216.31 (a)(10) and (c) amended; interim **50376**
216.40 Redesignated as 216.50; interim **50376**
216.45 Added; interim **50376**
216.50 Redesignated from 216.40; interim **50376**
216.70 (a) introductory text and (3) amended; interim **50376**
216.72 Amended; interim **50376**
216.73 (b)(4) amended; interim **50376**
222.23 Regulation at 59 FR 42352 eff. date corrected to 8–18–94 to 4–17–95 3948
222.31 Revised 3775
227.4 Regulation at 59 FR 42352 eff. date corrected to 8–18–94 to 4–17–95 3948
227.21 Regulation at 59 FR 42353 eff. date corrected to 8–18–94 to 4–17–95 3948
227.72 (e)(1) introductory text revised; (e)(7) added 8958
229.2 (k) revised 6039
229.4 (b)(2) introductory text and (i)(B) revised; (b)(2)(iii) added 6039
229.6 (c)(2)(i) amended; (c)(6) removed; (c)(7) through (10) redesignated as (c)(6) through (9) 6039
229.7 (b) amended; (e) removed; (f) redesignated as (e) 6039
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301 Inseason adjustments **51871, 53117**

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611.62 Removed **66790**
625 Harvest quotas **50512, 55822, 60568**
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630 Temporary regulations 2032
630.7 (q) revised; (y) added **55064**
630.50—630.52 (Subpart D) Added **55064**
638 Temporary regulations **54841**
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638.3 (a) amended; (c) added **66780**
638.4 Revised **66780**
638.5 Regulations at 59 FR 32939 and 47563 superseded **66780**
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638.6 Redesignated as 638.8 ..... **66780**
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640.6 (a), (b) heading and (1) introductory text revised; (b)(2) amended **53119**
640.7 (a) revised; (u) added **53119**
640.20 (c)(1) amended **53119**
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642 Temporary regulations **66276**
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642.25 (a)(2) and (b)(2) amended **53120**
642.27 (b) amended **53120**
642.28 (a)(1) and (2) amended; (b)(1) and (c) revised **53121**
642.32 Added; interim; eff. 2–1–95 through 5–8–95 7136
646 Heading revised **66272**
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646.5 (b) and (c)(1) amended **66273**
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651.4 (f)(2)(iv) revised 6447
651.5 (a) revised 6447
651.9 (a)(13), (e)(14) through (21), (28), (29) and (31) stayed; (a)(15) and (e)(36) through (51) added; eff. 12–12–94 through 3–12–95 63929
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651.21 (a), (b) and (c) stayed; (d) added; eff. 12–12–94 through 3–12–95 63932
(d)(1)(ii) and (2)(ii)(B) revised; (d)(1)(iii) and (3)(ii)(C) added; interim; eff. 1–10–95 through 3–12–95 3104
651.22 (d)(2)(i) and (ii) stayed; (d)(2)(iv) and (v) added; eff. 12–12–94 through 3–12–95 63932
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651.27 (a) introductory text and (1) through (4) stayed; (a)(5) and (6) added; eff. 12–12–94 through 3–12–95 63932
651.32 (a) stayed; (c) added; eff. 12–12–94 through 3–12–95 63933
651 Figure 3 stayed; Figure 5 added; eff. 12–12–94 through 3–12–95 63933
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658.22 (a) Figure 1 redesignated as Appendix A Figure 1 66791
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4–3–95
Vol. 60 No. 63

federal register

Monday
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SECOND CLASS NEWSPAPER
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481 U.S. Government Printing Office
(ISSN 0097-6326)

VOL
60

ISS
63

AP
3

1995

UMI

PO BOX 1346
ANN ARBOR MI 48106

4–3–95
Vol. 60 No. 63
Pages 16765–16978

Monday
April 3, 1995

federal register

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VOL
60
ISS
63
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1995
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB22

Common Crop Insurance Regulations; Regulations for the 1995 and Subsequent Contract Years

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule incorporates into crop insurance policy language the common law principle that Federal Government programs and contracts are subject to appropriations. This rule makes final the interim rule published in the **Federal Register** on September 6, 1994.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, Suite 500, 2101 L Street NW., Washington, DC 20036. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agricultural ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains January 1, 1996.

This rule has been determined to be "not-significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), no information or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. 605), this regulation will not have a significant impact on a substantial number of small entities. The rule would not increase the amount of work required by reinsured companies and their agents, and provides a mechanism for the uninterrupted coverage to the policyholders. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, September 6, 1994, FCIC published an interim rule in the **Federal Register** at 59 FR 45971, to revise the Common Crop Insurance Regulations by adding § 457.9—*Appropriation Contingency*. Following publication of that rule, the public was afforded 60 days to submit written comments, data, and opinions. One comment was received from a private law firm. FCIC's response is as follows:

Comment: The comment recommended extending the appropriation contingency clause from the "1995 crop year only" to "future years".

Response: Since the Federal crop insurance program is subject to the availability of appropriated funds by Congress on a fiscal year basis, FCIC agrees with the comment and has made this change.

List of Subjects in 7 CFR Part 457

Crop insurance.

Accordingly, the interim rule, amending 7 CFR part 457, "Common Crop Insurance Regulations" published on September 6, 1994, at 59 FR 45971, is adopted as final without change and is applicable for the 1995 and succeeding crop years.

Done in Washington, DC, on March 27, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–8047 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV94–925–1–FIR]

Grapes Grown in a Designated Area of Southeastern California; Expenses for the 1995 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule that authorized expenses for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1995 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer its program.

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EFFECTIVE DATE: January 1, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 690–3670; or Rose Aguayo, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 925 (7 CFR Part 925) regulating the handling of table grapes grown in a designated area of California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule authorizes expenditures for the 1995 fiscal year, beginning January 1, 1995, through December 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of grapes regulated under the marketing order each season and approximately 90 grape producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The table grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California table grapes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of table grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on October 20, 1994, and unanimously recommended expenses of $54,427 and an assessment rate of $0.005 per lug. However, the reserve fund was in excess of the amount of expenses for one year. Section 925.42 of the order specifies that the reserve fund may not exceed approximately one fiscal year's expenses. Accordingly, the Department returned the recommendation to the Committee for reconsideration.

The Committee conducted a telephone vote on November 21, 1994, and approved by a majority vote a revised budget with an additional $20,000 for salaries. There were two Committee members who were unavailable to vote. The Committee's recommended revised total expense is $74,427, which is $29,117 less in expenses than the previous year.

The Committee also recommended not to have an assessment rate for the 1995 fiscal year. The $2,500 in interest income and $71,927 from the Committee's authorized reserves will adequately cover estimated expenses.

Major expense categories for the 1995 fiscal year include $24,000 for the Western Grape Leaf Skeletonizer project, $12,487 for salaries, $20,000 for salaries of Los Angeles Market inspectors and $4,440 for rent. Funds in the reserve at the end of the 1995 fiscal year are estimated at $93,431.

This action will not impose additional costs on handlers. The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action was issued as an interim final rule on January 12, 1995, and published in the **Federal Register** (60 FR 3725, January 19, 1995). A 30-day comment period was provided for interested persons. No comments were received.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was originally recommended by the Committee at a public meeting and reconsidered and approved by the Committee through a telephone vote and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 60 FR 3725 on January 19, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8097 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 979

[Docket No. FV94–979–1FIR]

South Texas Melons; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1994, through September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1994–95 fiscal period, which began October 1, 1994, and ends September 30, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 producers of South Texas melons under this marketing order, and approximately 19 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $207,500 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $207,500 were published in the **Federal Register** as an interim final rule November 15, 1994 (59 FR 58760). That interim final rule added § 979.217, authorizing expenses for the Committee, and provided that interested persons could file comments through December 15, 1994. No comments were filed.

The Committee subsequently met on December 13, 1994, and unanimously recommended an increase of $9,700 for administrative expenses, plus $158,426 in research expenses, for a total budget of $375,626. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $22,000 ($15,600), insurance, $6,250 ($5,250), accounting and audit $2,600 ($2,300), rent and utilities, $6,000 ($4,000), disease management programs, $86,716 ($82,000), melon breeding and cultivar development, $43,824 ($23,118), and variety evaluation, $9,186 ($8,460). Items which have decreased compared to the amount budgeted for 1993–94 (in parentheses) are: Insect management programs, $18,700 ($34,390), and $3,823 for cultural practices for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The initial 1994–95 budget, published on November 15, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of

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$0.07 per carton. This rate, when applied to anticipated shipments of approximately 45,000 cartons, will yield $315,000 in assessment income, which, along with $60,626 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of January 31, 1995, were $367,369, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 30, 1995 (60 FR 5560). That interim final rule amended § 979.217 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through March 1, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on October 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule revising § 979.217 which was published at 60 FR 5560 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8098 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W–P

7 CFR Part 982

[Docket No. FV94–982–3FIR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1994–95 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export, and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1994–95 marketing year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers and handlers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. The interim final rule was issued on January 24, 1995, and published in the **Federal Register** (60 FR 5561, January 30, 1995), with an effective date of January 30, 1995. That rule established the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the finalization of interim and final free and restricted percentages will continue to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns. That rule provided a 30-day comment period which ended March 1, 1995. No comments were received.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1994–95 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 25, 1994, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,020 tons of filberts/hazelnuts from the 1994 crop for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 8, 1994, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 19 percent free and 81 percent restricted, and final free and restricted percentages were recommended at 23 percent and 77 percent, respectively. The interim final percentages made an additional 208 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and released 3,775 tons to the domestic inshell market from the 1994 supply subject to regulation. The final marketing percentages released an additional 626 tons from the 1994 crop for domestic use. Thus, a total of 4,401 tons of inshell filberts/hazelnuts was available from the 1994 supply subject to regulation for domestic use when the final percentages were established. The Oregon Agricultural Statistics Service (OASS) provided an early estimate of 19,000 tons total filbert/hazelnut production for the Oregon and Washington area. The Board unanimously voted to accept the OASS estimate of 19,000 tons.

The Board determined that the inshell domestic market conditions would allow more supply without depressing the market and recommended immediate release of the additional 15 percent (the final percentages). The Board believed that the immediate release of filberts/hazelnuts by the final percentages would benefit the industry with increased returns to growers and more inshell filberts/hazelnuts available for consumers.

The marketing order also requires that, procedurally, the Board recommend interim final and final percentages. Therefore, the interim final percentages were recommended even though they will not be utilized this marketing season.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1994–95 marketing year:

	Tons
Inshell Supply:	
(1) Total production (OASS estimate)	19,000
(2) Less substandard, farm use (disappearance)	1,083
(3) Merchantable production (the Board's adjusted crop estimate)	17,917
(4) Plus undeclared carryin as of July 1, 1994, subject to regulation	1,527
(5) Supply subject to regulation (Item 3 plus Item 4)	19,444
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years	4,170

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		Tons
(7) Increase to encourage increased sales (5 percent of Item 6)		208
(8) Less declared carryin as of July 1, 1994, not subject to regulation		603
(9) Adjusted Inshell Trade Demand		3,775
(10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6)		626
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)		4,401
	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5) ×100	19	81
(13) Final percentages (Item 11 divided by Item 5) ×100	23	77

In addition to complying with the provisions of the marketing order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. The volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. At its August 25, 1994, meeting, the Board recommended that an increase of 5 percent (208 tons) for market expansion be included in the inshell trade demand. The established final percentages, which release 100 percent of the inshell trade demand, will make available 4,401 tons from the 1994 crop plus 603 tons of declared carryin which is 120 percent of prior years' sales, thus exceeding the goal of the Guidelines.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 5561, January 30, 1995), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982, which was published at 60 FR 5561 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8100 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W

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7 CFR Part 985

[Docket No. FV95–985–1IFR]

Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim Final Rule with Request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning June 1, 1995, through May 31, 1996. Comments received by May 3, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Robert Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1995–96 fiscal year, beginning June 1, 1995, through May 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 handlers of spearmint oil regulated under the marketing order each season and approximately 260 spearmint oil producers in the Far West. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these producers and handlers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable spearmint oil handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on February 22, 1995, and unanimously recommended a total expense amount of $233,272 for its 1995–96 budget. This is $4,567 less in expenses than the 1994–95 budget.

The Committee also unanimously recommended an assessment rate of $.10 per pound for the 1995–96 fiscal year, which is $.01 more than the assessment rate from the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 2,000,000 pounds from the 1995–96 spearmint oil production, would yield $200,000.00 in assessment income. This, along with approximately $24,272 from the Committee's authorized reserves, and $9,000 interest will be adequate to cover estimated expenses.

Major expense categories for the 1995–96 fiscal year include $101,300 for salaries, $20,000 for market development, and $23,000 for travel. Funds in the reserve at the beginning of the 1995–96 fiscal year are estimated at $160,000, which is within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year starts on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable spearmint oil handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 985.315 is added to read as follows:

§ 985.315 Expenses and assessment rate.

Expenses of $233,272.00 by the Spearmint Oil Administrative Committee are authorized and an assessment rate of $.10 per pound of assessable spearmint oil is established for the fiscal year ending May 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8099 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–02–W

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0863]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions clarify regulatory provisions and provide further guidance on issues of general interest, such as the treatment of various fees and taxes associated with real estate-secured loans and a creditor's

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responsibilities when investigating a claim of the unauthorized use of a credit card.

DATES: This rule is effective April 1, 1995. Compliance is optional until October 1, 1995.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane Jensen Gell or Obrea Otey Poindexter, Staff Attorneys; for Subparts A and C (closed-end credit), Kyung Cho-Miller, Sheilah A. Goodman, W. Kurt Schumacher, Natalie E. Taylor, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 et seq.) is to promote the informed use of consumer credit. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. It also imposes limitations on some credit transactions secured by a consumer's principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). The regulation authorizes the issuance of official staff interpretations of the regulation. (See Appendix C to Regulation Z.) The Board has published a staff commentary to Regulation Z which clarifies existing law and provides guidance to creditors in applying the regulation to specific transactions (Supplement I of this part). The Board updates the commentary periodically as a substitute for individual staff interpretations.

In December, the Board published proposed amendments to the commentary to Regulation Z (59 FR 64351, December 14, 1994). The Board received about 150 comments. Nearly 90% were from creditors or their representatives; the remainder were from consumer advocates, government officials, and individuals. Overall, commenters generally supported the proposed amendments. Views were mixed on a number of comments, and some commenters expressed concerns about issues not addressed in the proposal. Except as discussed below, the commentary has been revised as proposed; some technical suggestions or concerns raised by commenters are addressed. Compliance with the amendments is mandatory on October 1, 1995.

II. Commentary Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(17) Creditor

Paragraph 2(a)(17)(i)

Comment 2(a)(17)(i)–8 clarifies the identity of the creditor for participant loans from an employee savings plan, such as 401(k) plans. The proposal would have clarified that the plan (and not the plan trust or trustee) is the creditor for purposes of the TILA.

Some commenters asked for further guidance when the plan's trust or trustee provide disclosures for the plan's participant loan program. The comment is revised from the proposal for clarity. Creditors should look to the plan (not the trust or trustee) to determine whether the numerical tests for coverage have been met. The person to whom the participant's loan is initially made payable (whether the plan, the trust, or the trustee) is responsible for Regulation Z compliance for participant loans.

Section 226.4—Finance Charge

4(a) Definition

Comment 4(a)–1 is revised as proposed to indicate that section 12 of the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2610) prohibits creditors from charging fees for preparing TILA disclosure statements in RESPA-covered transactions. The comments generally supported the revisions.

The Board received a substantial number of comments relating to the proposed revision to comment 4(a)–3 on fees charged by third parties. While most commenters believed that the comment helped clarify the treatment of third-party fees generally, the examples of settlement agent charges, mortgage broker fees, and taxes raised a number of questions.

Creditors had expressed concern about some charges imposed by loan-closing agents being imputed to the creditor. Some had indicated that despite the fact that they require the use of a closing agent (and in limited ways the agent acts on behalf of the creditor), in the modern mortgage lending environment, creditors do not have control over certain fees that may be charged to consumers by these entities, particularly where there is no affiliation between the creditor and the third party, as is often the case. To address this concern, the proposed revision to comment 4(a)–3 provided by example that if a particular fee imposed by a settlement agent is not required or retained by the creditor, the fee is not a finance charge, even though the creditor requires use of a third party.

Comment 4(a)–3, which applies to all types of credit extensions (not just home-purchase or other home-secured loans), is revised in the final version to clarify the general third-party rule. Upon further analysis, guidance about fees charged by settlement agents in real estate-secured transactions is provided in a separate comment 4(a)–4. This new comment gives the general rule for evaluating settlement agent fees, and is followed by an example. Comments previously numbered 4(a)–4 through –6 are now renumbered.

Many commenters also requested further clarification on the example of mortgage broker fees as a finance charge. The proposed clarification responded to questions about the existing mortgage broker fee example, which had been added to address programs offering lower rates and clearly more favorable terms to borrowers who use the creditor's affiliated mortgage broker than to borrowers who apply to the creditor directly. The particular example has been deleted; while the mortgage broker fee charged in this instance is still considered a finance charge, it is a much less common practice today, and therefore has caused confusion. The example of mortgage broker fees is amended to simply reflect the general rule that a fee is a finance charge if the creditor retains the fee.

With regard to taxes, some commenters noted that the commentary addresses in several areas the issue of whether taxes are finance charges. These commenters requested that all comments referring to taxes be consolidated into one comment. To ease compliance, the reference to taxes currently contained in comment 4(a)–3 is removed. The general rules on the treatment of taxes under the TILA are contained in renumbered and revised comment 4(a)–7, formerly comment 4(a)–6. The current reference to taxes under 4(e)–1 has been revised and the current reference to taxes under 4(a)–1 remains unaffected.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(7)

Comment 4(c)(7)–1 clarifies certain real-estate and residential mortgage transaction costs that are excluded from the finance charge. In response to commenters' suggestions and upon further analysis, the comment is revised to state that fees excludable under this section include not only the cost of the charges excludable under this section, but also the cost of verifying or confirming information relating to excludable item itself. The previous language specifically stated that a credit report fee included the cost of verifying information in the report. This language was intended to be read only as an example. It is now more clearly shown as such. Verification or confirmation fees, like other excludable charges under this section, must be bona fide and reasonable in amount.

The language addressing lump sum charges has been moved to a new comment, 4(c)(7)–2. This provision has been adopted as proposed, with some revisions for clarity. The comment states that a lump sum charge for conducting or attending a closing (charged, for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (such as reviewing or completing documents), even if other incidental services, such as explaining various documents or disbursing funds for the parties, are performed. This is an exception to the general rule on the treatment of lump sum fees. Most commenters supported the proposal as a clarification of the Board's existing position. Several, however, opposed allowing creditors to exclude fees for incidental services where the charge is primarily for services related to items listed in § 226.4(c)(7), believing that this would result in less accurate disclosures.

Comment 4(c)(7)–3 (proposed as 4(c)(7)–2) has been adopted as proposed, with minor changes for clarity. The comment states that charges excludable under § 226.4(c)(7) are those imposed in connection with the initial decision to grant credit—for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The comment also clarifies that fees for services to be performed during the loan term, for example, to monitor a consumer's continued compliance with contract provisions, such as paying property taxes or purchasing flood insurance, are *not* excludable under § 226.4(c)(7), regardless of when they are paid. These recurring administrative fees, paid by the consumer to protect the creditor's security interest, are finance charges.

Commenters generally agreed with the proposed language. Many, however, had concerns regarding the treatment of fees paid at closing for services attributable *both* to the initial credit decision and to services to be performed periodically over the term of the loan. For example, certain flood certification providers charge a consolidated fee, and it may not be clear to creditors what portion of the fee relates to the services connected with the initial credit decision. The final commentary addresses these concerns by specifying that a creditor may treat the entire charge as a finance charge if the creditor is uncertain of the portion properly attributable to the finance charge. Such sum need not be labelled as an estimate.

4(e) Certain Security Interest Charges

Comment 4(e)–1 provides examples of security interest charges that are and are not excludable as finance charges. The proposal stated that only recording fees relating to the obligation between the creditor and the consumer were excludable. Most commenters supported the proposal, although some were opposed. The comment is adopted as proposed, but indicates that fees to record documents such as an assignment between a creditor and a third party are finance charges.

In response to comments and for clarity, the portion of comment 4(e)–1 dealing with taxes has been revised. As discussed above, comment 4(a)–7 (formerly 4(a)–6) contains the general rules on the treatment of taxes.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(b) Time of Disclosures

5(b)(1) Initial Disclosures

Comment 5(b)(1)–1 provides that initial disclosures must be provided before the consumer makes the first purchase under an open-end plan. The comment provides an example to illustrate that when a consumer makes a purchase and opens an account with a retailer contemporaneously, initial disclosures must be given to the consumer at that time.

Comment 5(b)(1)–5 addresses the general rule as it relates to the timing of initial disclosures when a creditor offers consumers an option to transfer outstanding balances with other creditors as part of a preapproval or general solicitation of an open-end credit plan. The proposal required creditors to comply with initial disclosure requirements under § 226.6 before the consumer authorized the balance transfer. The purpose of the proposal was to ensure that consumers receive initial disclosures before the first transaction is made under the plan.

Commenters were divided on the proposal. Several commenters believed that the disclosures required under § 226.5a at the time of solicitation adequately protect and sufficiently inform the consumer about the terms of the credit plan. The initial disclosures required under § 226.6, however, contain important terms that are not included in the solicitation disclosures. For example, the initial disclosures give the cash advance APR, information that could be an important factor in a consumer's decision to authorize a balance transfer. To ease compliance, card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement. Comment 5a–2 provides guidance on the appropriate format for combined disclosures. For example, a creditor could provide the § 226.5a disclosures in a tabular format, along with the additional disclosures required by § 226.6 outside the table.

Other commenters requested an "opt-out" provision that would allow card issuers to comply by establishing a procedure under which a consumer could cancel or reverse the balance transfer after receiving initial disclosures. This option raises concerns about the effect such an approach would have on a consumer whose balance with a third party would be paid by the card issuer. It could be difficult to cancel or reverse the balance transfer transaction.

Commenters suggested that a creditor could comply with the initial disclosure requirements under § 226.6 by delaying the requested transfer for a period of time after the initial disclosures are sent. The delay would ensure that the initial disclosures are received by the consumer before the transferred balance is applied to the new plan. Under the revised commentary, a creditor complies with this section if initial disclosures required under § 226.6 are furnished before a balance transfer transaction occurs.

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Comment 6(b)–1 provides guidance for disclosing a termination fee imposed in an open-end credit plan, as proposed. Commenters generally supported the disclosure of a termination fee as an "other charge." Some commenters believed disclosing the fee as a finance charge might better assist consumers in shopping for a credit plan. But this approach would not facilitate consumer

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shopping based on the APR, since the APR in the initial disclosures reflects on finance charges based on periodic rates, and thus would not be affected by a termination fee. Furthermore, the consumer would gain little from receiving an APR (disproportionately high in some cases) on what might be the last periodic statement for a fee imposed when the consumer closes the plan.

Section 226.12—Special Credit Card Rules

12(b) Liability of Cardholder for Unauthorized Use

Comments 12(b)–2 and –3 address a card issuer's rights and responsibilities in responding to a claim of unauthorized use under § 226.12. Comment 12(b)–2 clarifies that a card issuer is not required to impose any liability. Comment 12(b)–3 clarifies that a card issuer wishing to impose liability must investigate claims in a reasonable manner.

Comment 12(b)–3 lists some of the procedures that may be involved in the investigation of a claim. The procedures involved in conducting a reasonable investigation depend on the facts of the situation; neither a minimum nor a maximum number of steps is required to deem a particular investigation "reasonable." Some commenters expressed concern about card issuers advising consumers that they may be required to appear in a court action. These commenters believed such statements would possibly be misleading and intimidating, and that in any case a court action was independent of a card issuer's investigation. The reference to court appearances has been deleted.

Commenters suggested a variety of other actions that a card issuer may take, in addition to those proposed, in a reasonable investigation of a claim of unauthorized use. The list has been expanded to clarify that a card issuer may request documentation to verify the claim and may request information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

Many commenters expressed concern that the proposed comment prohibited a card issuer from denying a claim because a cardholder refused to comply with any request for cooperation, such as the failure to submit a signed statement. A card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request. For example, a cardholder may return an unsigned questionnaire about the claim but may refuse to submit a sworn statement. The card issuer may not automatically deny the claim because it is unaccompanied by an affidavit. However, the comment also makes clear that the cardholder's failure to cooperate may affect the card issuer's ability to investigate the claim of unauthorized use. For example, if the cardholder fails to respond to requests for information the card issuer can reasonably obtain only from the cardholder, the comment provides that the card issuer, without further information, may reasonably terminate its investigation.

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

Paragraph 15(a)(1)

Comments 15(a)(1)–5 and –6 are revised to provide further guidance on the right to rescind a transaction secured by a consumer's principal dwelling. (See also comments 23(a)(1)–3 and –4.)

15(d) Effects of Rescission

Comment 15(d)(2)–1 is revised to clarify that if a consumer rescinds a credit transaction, the creditor must refund any broker fee that is part of the credit transaction, even though the consumer paid the fee to the broker rather than to the creditor. (See comment 23(d)(2)–1.)

Section 226.16—Advertising

16(d) Additional Requirements for Home Equity Plans

Comment 16(d)–7 clarifies disclosure requirements for balloon payments in home equity plan advertisements. The commentary to § 226.5b(d)(5)(ii) provides that for plans in which a balloon payment will occur if the consumer makes only the minimum payments, the disclosure must state that fact. A comparable requirement applies to advertisements, since the regulatory provisions on treatment of balloon payments in home equity advertising and in disclosures are generally parallel.

A number of commenters thought the proposed comment would require a disclosure about balloon payments in any advertisement for a program in which a balloon payment occurs, regardless of whether the advertisement included a "trigger term." The proposed comment was not intended to impose such a requirement. The comment has been revised to clarify that disclosure is required only if the advertisement contains a statement about a minimum periodic payment. The comment also addresses questions about the required content of the disclosure, including concerns about the effect of the cross-reference to comment 5b(d)(5)(ii)–3.

Subpart C—Closed-End Credit

Section 226.17—General Disclosures

17(a) Form of Disclosures

Paragraph 17(a)(1)

Comment 17(a)(1)–5 is revised to clarify that a late payment fee on a single payment loan is information directly related to the segregated disclosures. The introductory language has been revised to clarify that the list of directly related information is exhaustive.

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(4)

Section 226.17(c)(4) allows creditors to disregard in the payment schedule and other calculations any small variations in the first payment due to a long or short first period. Comment 17(c)(4)–4 clarifies that prepaid finance charges, such as "odd-days" or "per-diem" interest paid at or prior to closing, may not be considered as the first payment on a loan. Thus, "odd-days" interest paid at or prior to closing cannot be considered a part of the payment schedule and disregarded as a irregularity in disclosing the finance charges in the payment schedule. The language has been adopted as proposed, with a minor change made to state that the comment applies to "pre-paid" and "odd-days" interest, using those terms by name.

Commenters favored treating odd-days or per-diem interest collected at closing as being the first payment for the purposes of these "minor irregularities" provisions when the consummation date is subject to change outside of the lender's control (for example, in some escrow-closing states). If interest collected at, or prior to, consummation meets the definition of a prepaid finance charge, it must be treated as such.

The regulation does not require creditors to collect odd-days or per-diem interest at, or prior to, consummation. If that interest is collected as part of the first periodic payment, instead, the minor irregularities provisions of § 226.17(c)(4) would apply to the extent the amount is within those parameters.

17(f) Early Disclosures

Comment 226.17(f)–1 is revised to clarify that the regulation requires redisclosure not only if the APR, at consummation, differs from the earlier disclosed APR by more than the allowable 1/8 or 1/4 of 1 percent

tolerance, but also if the early disclosures were not marked as estimates, and the terms at consummation, other than the APR, differ from the earlier disclosed terms. Language has been added to the second example to illustrate the case when terms at consummation differ from those previously disclosed, where they were not marked as estimates. To facilitate comparison of the two examples, the dates in the second example have been changed to those stated in the first example. A third example has been added to illustrate circumstances when the regulation does not require redisclosure even though the consummated terms, including the APR, differ from the disclosed terms.

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Paragraph 18(c)(1)(iv)

Comment 18(c)(1)(iv)–2 clarifies disclosure requirements under the TILA that are affected by new aggregate accounting rules under the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2601). The comment provides that creditors may use the amount on line 1002 of the HUD–1 or HUD–1A, without adjustment, to calculate the prepaid finance charge under the TILA.

In October 1994, the Department of Housing and Urban Development (HUD), which implements Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2601) through Regulation X (24 CFR Part 3500), amended its regulation to implement new procedures for calculating the amount consumers must pay into escrow accounts associated with RESPA-covered home mortgage loans (59 FR 53890, October 26, 1994, and 60 FR 8812, February 15, 1995). These procedures are being phased in over time for existing escrow accounts; all new escrow accounts established on or after April 24, 1995, must comply with the new procedures. Eventually, all lenders will be required to use an aggregate accounting method instead of a single-item method for RESPA transactions. The use of the aggregate method will affect disclosure requirements under Regulation Z.

Currently, in calculating the amounts required to be paid into escrow accounts at closing, most lenders use what is referred to as the single-item analysis. (Property taxes, insurance, and mortgage insurance premiums are common examples of escrow items.) Under single-item analysis, lenders account separately for each item to be collected at closing and held in escrow.

Under the aggregate accounting method, rather than accounting for each item separately, the amount for escrow is determined as a whole. This will make it difficult for a creditor to determine how much of the aggregate amount is actually allocated to each escrow item.

Regardless of how they collect the funds under RESPA, lenders will continue to disclose escrow items on the HUD settlement statement using the single-item analysis. If the amount actually collected at settlement is affected by the aggregate accounting method, the settlement statement will reflect the adjustment on a separate line in the 1000 series (§ 3500.8(c)(1), 60 FR 8816, February 15, 1995). Mortgage insurance premiums, one of the items typically paid at settlement and included in the escrow account, are listed on line 1002 of the HUD statement. This amount is also a prepaid finance charge under Regulation Z.

If a creditor is collecting the settlement charges using aggregate analysis the amount actually collected may be less than the amount listed on line 1002. Guidance had been requested on what amount lenders should use as the prepaid finance charge, since the amount disclosed is not precisely the amount collected. Various alternatives were considered to ensure as accurate and uniform a disclosure as possible. Comment 18(c)(1)(iv)–2 provides that creditors may use the amount on line 1002, without adjustment, to calculate the prepaid finance charge under the TILA. This approach will ease compliance and provide consumers with an easily identifiable amount for the mortgage insurance. While this method does slightly overstate the amount of the prepaid finance charge for mortgage insurance, nonetheless this method seems to provide the more accurate and equitable treatment possible given the problems associated with identifying the amount of any single item in an aggregate accounting analysis.

Commenters generally supported this approach. Several commenters requested further clarification on whether the approach is mandatory, whether the figure used is considered an estimate, and how the tolerance is applied in this situation. A sentence has been added to the comment to clarify that the Board is deeming the figure used on the HUD–1 or HUD–1A as accurate, for purposes of Regulation Z, as long as that amount is computed in accordance with RESPA. Accordingly, the figure is not considered an estimate, and the tolerance would apply as it does for all other figures disclosed under Regulation Z. As long as the figure disclosed is accurate for purposes of RESPA, the figure is accurate to determine the finance charge tolerance. The approach is mandatory for all loans closed using the aggregate accounting method required by RESPA.

18(d) Finance Charge

Comment 18(d)–2 has been adopted as proposed, with some minor revisions for clarity. The comment states that although there is no specific tolerance for the amount financed, an error in that figure—resulting from an error in the finance charge—does not violate the act or the regulation provided the finance charge disclosed under § 226.18(d) is within the permissible tolerance provided in footnote 41 of the regulation. This same interpretation applies to other disclosures for which the regulation provides no specific tolerance, such as the total of payments.

Most commenters were in favor of the proposal. Views were split among those commenters opposing the proposal. Some suggested that a maximum tolerance of $10 was insufficient to adequately protect lenders. Several others opposed any tolerance for errors in the amount financed or the other disclosures that was not currently addressed in the regulation.

Several commenters pointed out that the language suggested the error must result from an error in the finance charge "that constitutes a part of the amount financed." This phrase has been deleted as unnecessary.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Paragraph 19(b)(2)(vii)

Comment 19(b)(2)(vii)–2, with the exception of a few technical changes, is adopted as proposed. It states that loans with more than one way to trigger negative amortization are separate variable-rate loan programs requiring separate disclosures to the extent they vary from each other. For example, a loan which provides for monthly interest rate changes but only annual payment changes and an option for the borrower to cap the amount of monthly payments whenever the new payment would exceed the old payment by more than a certain margin, contains two separate variable-rate programs. Each program may trigger negative amortization requiring separate disclosures. (See comments 226.19(b)(2)–2 and –3 for a discussion on the definition of a variable-rate program and consolidation of disclosures for more than one program.)

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For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as negative amortization occurs and that the principal balance will increase), except that the disclosure in § 226.19(b)(2)(viii) need not be given for the option.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraph 22(a)(1)

Comment 22(a)(1)–5 corrects an erroneous footnote reference.

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

Paragraph 23(a)(1)

Comment 23(a)(1)–4, which contains an exception to the "one principal dwelling" rule in comment 23(a)(1)–3, is revised. Under the exception, a consumer may have, in effect, two principal dwellings for a time. Even if a consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z may be rescinded when the consumer's current principal dwelling secures the loan. A typical example is a bridge loan.

The proposed comment provided, by example, that a loan secured by the new home and the current home is a residential mortgage transaction. While many commenters agreed with the proposal, some viewed it as a change in the existing interpretation. Upon further analysis, the proposed example would negate the exception to the general rule. The existing language of comment 23(a)(1)–4 has been retained with language and examples added for clarification. Accordingly, even if a loan is a purchase-money loan secured by the new home (that is, a residential mortgage transaction) where that loan also is secured by the consumer's current home, the loan is rescindable.

23(d) Effects of Rescission

Paragraph 23(d)(2)

Comment 23(d)(2)–1 has been revised to clarify that if a consumer rescinds a credit transaction, the creditor must refund to the consumer any broker fee that is part of the credit transaction, even though the consumer paid the fee to the broker rather than to the creditor. Several commenters expressed concern that the literal language of the comment could be construed to encompass a fee paid to a broker who did not participate in the credit transaction. Some commenters wanted broker fees covered only to the extent that the lender required the use of a broker. Creditors must refund to the consumer any broker's fee paid as part of the credit transaction, whether or not the creditor required the use of a broker.

(23)(f) Exempt Transactions

Paragraph (23)(f)(4)

Comment 23(f)–4 clarifies that § 226.23(f)(2) exempts from the right of rescission refinancings by original creditors—to whom a written agreement was originally payable. Therefore, if a consumer refinances with any other creditor, the general rescission model form (model form H–8) is the appropriate form to provide to the consumer.

Several commenters opposed the proposal, which they believe would result in an anomaly. That is, if the original creditor assigns the mortgage to a third party and the consumer returns to the original creditor to refinance (with no new advances), the original creditor would be excused from providing the consumer with the right of rescission.

In certain circumstances the application of this rule may produce an anomalous result. Nevertheless, this interpretation is required by section 103(f) of the act and § 226.2(a)(17) of the regulation, which define "creditor" as "* * * the person to whom the debt arising from the consumer credit transaction is initially payable.* * *".

The comment also clarifies that in a merger, consolidation or acquisition, the acquiring creditor would be considered the original creditor for purposes of the exemption in § 226.23(f)(2). For example, if two lending institutions merge, the resulting institution is considered the original creditor for refinancing mortgages previously originated by either of the two institutions. Accordingly, the new institution may use model form H–9 if new money is advanced. (See comment 2(a)(25)–6.)

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

As proposed, the Board has revised the *1981 changes* paragraph in the reference section to make a technical correction to the second sentence.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction*, under *Paragraph 2(a)(17)(i).*, paragraph 8. is revised to read as follows:

Supplement I—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

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Paragraph 2(a)(17)(i).

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8. *Loans from employee savings plan.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances, and use a trust to administer the receipt and disbursement of funds. Unless each participant's account is an individual plan and trust, the creditor should apply the numerical tests to the plan as a whole rather than to the individual account, even if the loan amount is determined by reference to the balance in the individual account and the repayments are credited to the individual account. The person to whom the obligation is originally made payable (whether the plan, the trust, or the trustee) is the creditor for purposes of the act and regulation.

* * * * *

3. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, the following amendments are made:

a. Under *4(a) Definition.*, paragraphs 1., and 3. are revised, paragraphs 4., 5., and 6 are redesignated as paragraphs 5., 6., and 7., a new paragraph 4. is added, and newly designated paragraph 7. is revised;

b. Under *Paragraph 4(c)(7).*, paragraph 1. is revised and new paragraphs 2. and 3. are added; and

c. Under *(4)(e) Certain security interest charges.*, paragraph 1. is revised.

The revisions and additions read as follows:

* * * * *

Section 226.4—Finance Charge

4(a) Definition.

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. Costs of doing business. * * *

3. *Charges by third parties.* Charges imposed on the consumer by someone other than the creditor are finance charges (unless otherwise excluded) if the creditor requires the use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party, or the creditor retains the charge. For example:

i. The cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

ii. A mortgage broker fee, to the extent that the broker shares the fee with the creditor.

4. *Charges by settlement agents.* Charges imposed on the consumer by a settlement agent (such as an attorney, escrow agent, or title company) are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge for those services is not otherwise excluded from the finance charge. For example, a fee for courier service charged by a settlement agent to send a document to the title company or some other party is not a finance charge, provided that the creditor has not required the use of a courier or retained the charge.

5. *Forfeitures of interest.* * * *

6. *Treatment of fees for use of automated teller machines.* * * *

7. *Taxes.* i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if the tax is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by an other provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

* * * * *

Paragraph 4(c)(7).

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit report fees cover not only the cost of the report, but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax lien status or flood insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

* * * * *

(4)(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, and intangible property or other taxes imposed by the state solely on the creditor and payable by the consumer (if the tax must be paid to record a security agreement).

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

* * * * *

4. In Supplement I to Part 226, under *Section 226.5—General Disclosure Requirements*, under *5(b)(1) Initial disclosures.*, in paragraph 1., the first and second sentences are revised, and a new paragraph 5. is added to read as follows:

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(b)(1) Initial disclosures.

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store), receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below).* * *

* * * * *

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5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must comply with § 226.6 before the balance transfer occurs. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement.

* * * * *

5. In Supplement I to Part 226, under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges.*, paragraph 1. is revised to read as follows:

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (see the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an "other charge," even if membership is required to apply for credit.

vi. Automated teller machine (ATM) charges described in comment 4(a)–5 that are not finance charges.

vii. Charges imposed for the termination of an open-end credit plan.

* * * * *

6. In Supplement I to Part 226, under *Section 226.12—Special Credit Card Provisions*, under *12(b) Liability of cardholder for unauthorized use.*, new paragraphs 2. and 3. are added to read as follows:

* * * * *

Section 226.12—Special Credit Card Provisions

* * * * *

12(b) Liability of cardholder for unauthorized use.

* * * * *

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

* * * * *

7. In Supplement I to Part 226, under Section 226.15 —Right of Rescission, the following amendments are made:

a. Under *Paragraph 15(a)(1).*, paragraph 5. is revised;

b. Under *Paragraph 15(a)(1).*, paragraph 6. is revised; and

c. Under *Paragraph 15(d)(2).*, in paragraph 1., the third sentence is revised.

The additions and revisions read as follows:

* * * * *

Section 226.15—Right of Rescission

* * * * *

Paragraph 15(a)(1).

* * * * *

5. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)–6.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currentiy being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the open-end credit line. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

6. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, a credit plan or extension that is subject to Regulation Z and is secured by the equity in the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge loan). For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.

* * * * *

Paragraph 15(d)(2).

1. *Refunds to consumer.* * * * "Any amount" includes finance charges already accrued, as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid by the consumer directly to a third party, or passed on from the creditor to the third party. * * *

* * * * *

8. In Supplement I to Part 226, under *Section 226.16—Advertising*, under *16(d) Additional Requirements for Home Equity Plans*, a new paragraph 7. is added to read as follows:

* * * * *

Section 226.16—Advertising

* * * * *

16(d) Additional Requirements for Home Equity Plans.

* * * * *

7. *Balloon payment.* In some programs, a balloon payment will occur if only the minimum payments under the plan are made. If an advertisement for such a program contains any statement about a minimum periodic payment, the advertisement must also state that a balloon payment will result (not merely that a balloon payment "may" result). (See comment 5b(d)(5)(ii)–3 for guidance on items not required to be stated in the advertisement, and on situations in which the balloon payment requirement does not apply.)

* * * * *

9. In Supplement I to Part 226, under *Section 226.17—General Disclosure*

Requirements, the following amendments are made:

a. Under *Paragraph 17(a)(1).*, paragraph 5. is revised;

b. Under *Paragraph 17(c)(4).*, a new paragraph 4. is added; and

c. Under *17(f) Early disclosures.*, paragraph 1. is revised.

The revisions and additions read as follows:

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

Paragraph 17(a)(1).

* * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The following is directly related information:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."

ii. A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under § 226.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'You' refers to the customer and 'we' refers to the creditor."

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating, "You may be charged a minimum finance charge."

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal." (See the commentary to § 226.18(f)(1)(iii).)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

xi. If a state or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure given under § 226.18(k) may state, for example, "If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month."

xii. More than one hypothetical example under § 226.18(f)(1)(iv) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects on the payment terms of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. The disclosures set forth under § 226.18(f)(1) for variable-rate transactions subject to § 226.18(f)(2).

xiv. A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

xv. A late-payment fee disclosure under § 226.18(l) on a single payment loan.

* * * * *

Paragraph 17(c)(4).

* * * * *

4. *Relation to prepaid finance charges.* Prepaid finance charges, including "odd-days" or "per-diem" interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

* * * * *

17(f) Early disclosures.

1. *Change in rate or other terms.* Rediscloure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 226.22(a) (⅛ of 1 percentage point in regular transactions and ¼ of 1 percentage point in irregular transactions). Rediscloure is also required, even if the annual percentage rate is within the permitted tolerance, if the disclosures were not based on estimates in accordance with § 226.17(c)(2) and labelled as such. To illustrate:

i. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such;

ii. If disclosures are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. (See § 226.18(d) and footnote 41 of this part); and

iii. If early disclosures are marked as estimates and the disclosed annual percentage rate is within tolerance at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

* * * * *

10. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, the following amendments are made:

a. Under *Paragraph 18(c)(1)(iv).*, a new paragraph 2. is added; and

b. Under *18(d) Finance charge.*, paragraph 2. is revised.

The additions and revisions read as follows:

* * * * *

Section 226.18—Content of Disclosures

* * * * *

Paragraph 18(c)(1)(iv).

* * * * *

2. *Prepaid mortgage insurance premiums.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

18(d) Finance charge.

* * * * *

2. *Tolerance.* A tolerance for the finance charge is provided in footnote 41 of this part. When a miscalculation of the amount financed, or of some other numerical disclosure for which the regulation provides no specific tolerance, results from an error in a finance charge, the miscalculated amount financed or other numerical disclosure does not violate the act or the regulation if the finance charge disclosed under § 226.18(d) is within the permissible tolerance under footnote 41 of this part.

* * * * *

11. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under paragraph

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19(b)(2)(vii)., paragraph 2. is revised to read as follows:

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

Paragraph 19(b)(2)(vii).

* * * * *

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, "If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount." Loans that provide for more than one way to trigger negative amortization are separate variable-rate programs requiring separate disclosures. (See the commentary to § 226.19(b)(2) for a discussion on the definition of a variable-rate loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in § 226.19(b)(2)(viii) need not be provided.

* * * * *

12. In Supplement I to Part 226, under *Section 226.22—Determination of the Annual Percentage Rate*, under *Paragraph 22(a)(1).*, in paragraph 5., the reference "Footnote 45a" is revised to read "Footnote 45d".

13. In Supplement I to Part 226, under *Section 226.23—Right of Rescission*, the following amendments are made:

a. Under *Paragraph 23(a)(1).*, paragraph 3.is revised;

b. Under *Paragraph 23(a)(1).*, paragraph 4. is revised;

c. Under *Paragraph 23(d)(2).*, in paragraph 1., the third sentence is revised; and

d. Under *23(f) Exempt transactions.*, in paragraph 4., two new sentences are added following the first sentence, and a new sentence is added at the end of the paragraph.

The additions and revisions read as follows:

* * * * *

Section 226.23—Right of Rescission

* * * * *

Paragraph 23(a)(1).

* * * * *

3. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 23(a)(1)–4.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the acquisition or construction loan. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

4. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z and secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is subject to the right of rescission regardless of the purpose of that loan. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. A loan secured by both A and B is, likewise, rescindable.

* * * * *

Paragraph 23(d)(2).

1. *Refunds to consumer.* * * * "Any amount" includes finance charges already accrued, as well as other charges, such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. * * *

* * * * *

23(f) Exempt transactions.

* * * * *

4. *New advances.* * * * The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor for purposes of the exemption in § 226.23(f)(2). * * * The general rescission notice (model form H–8) is the appropriate form for use by creditors not considered original creditors in refinancing transactions.

* * * * *

14. In Supplement I to Part 226, under Appendix J, under the heading References, under *1981 changes:*, the last sentence is revised to read as follows:

* * * * *

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

* * * * *

References

* * * * *

1981 changes: * * * Paragraph (b)(5)(vi) has been revised to permit creditors in single-advance, single-payment transactions in which the term is less than a year and is equal to a whole number of months, to use either the 12-month method or the 365-day method to compute the number of unit-periods per year.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8071 Filed 3–31–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–17; Amendment 39–9182; AD 95–07–03]

Airworthiness Directives; AlliedSignal Aerospace GTCP85 Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU), that requires modifying the APU to install an exhaust centerbody. This amendment is prompted by reports of two uncontained APU failures where turbine wheel fragments exited the APU exhaust axially and damaged the aircraft. The actions specified by this AD are intended to prevent an axially uncontained APU failure and damage to the aircraft.

DATES: Effective May 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace Services, P.O. Box 52170, Phoenix, AZ 85072–2170, Attn: Dept. 65–71, Mailstop 1802–AA. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU) was published in the **Federal Register** on July 28, 1994 (59 FR 38384). That action proposed to require modifying the APU to install an exhaust centerbody to contain turbine wheel fragments from exiting the APU axially. Due to the increased risk associated with airborne failures, flight operable APU's would be required to be modified within 24 months after the effective date of the AD, and within 36 months after the effective date of this AD for APU's that are ground operable only. These actions would be performed in accordance with AlliedSignal Aerospace Alert Service Bulletin (ASB) No. GTCP85–49–A6831, dated March 17, 1994, applicable to APU's installed on McDonnell Douglas DC–9/MD–80 series aircraft, and AlliedSignal Aerospace Service Bulletin (SB) No. GTCP85–49–6919, dated May 17, 1994, applicable to APU's installed on several other aircraft makes and models.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the APU's installed on Boeing 737 series aircraft should not be affected by this AD because APU turbine rotor axial uncontainment does not pose a hazard to Boeing 737 series aircraft. The FAA concurs and has revised the AD accordingly.

One commenter states that the APU's installed on British Aerospace BAC 1–11 series aircraft should also not be affected by this AD because APU turbine rotor axial uncontainment does not pose a hazard to British Aerospace BAC 1–11 series aircraft. The FAA concurs and has revised the AD accordingly.

One commenter states that the AD should be applicable only to APU's with the cast material MAR–M–247 turbine wheel, as only these turbine wheels have experienced uncontained failures. The FAA concurs and the applicability paragraph of this final rule has been revised accordingly.

Two commenters state that the AD should clearly specify the APU model numbers affected and agree with the model numbers listed in the applicable service bulletins. The FAA concurs and the applicability paragraph of this final rule has been revised accordingly.

One commenter states that the AD should not be applicable to APU's installed on Boeing 727 aircraft, as the APU is ground operable only. The FAA does not concur. An APU turbine wheel axial uncontainment may pose an unsafe condition even with the aircraft on the ground.

One commenter states that the AlliedSignal Aerospace ASB No. GTCP85–49–A6707, mandated by AD 93–07–13, provides adequate containment capability, and that requiring implementation of AlliedSignal Aerospace SB No. GTCP85–49–6919 is unnecessary. The FAA does not concur. Airworthiness directive 93–07–13 mandates compliance with Garrett SB No. GTCP85–49–A6706, not AlliedSignal Aerospace ASB No. GTCP85–49–A6707 (Garrett has recently undergone a name change to AlliedSignal Aerospace). Even reading the comment as referring to AlliedSignal Aerospace ASB No. GTCP85–49–A6707, that SB only addresses radial, not axial, uncontainment. AlliedSignal Aerospace SB No. GTCP85–49–6919 addresses axial uncontainment.

One commenter states that the final rule should allow use of subsequent revisions to the SB's in order to avoid unnecessary alternate method of compliance requests. The FAA does not concur. If the SB's incorporated by reference in this AD are further revised, those revisions can be reviewed by the FAA in advance of publication and authorized as constituting alternate methods of compliance, thereby alleviating the need for each individual operator to obtain a separate approval to use the revised SB. Until those future revisions exist, however, the FAA cannot incorporate them into this AD.

One commenter states that the AD should not be applicable to APU's with the standard two-piece turbine wheel. The two-piece turbine wheel has not experienced the failure mode addressed in the AD. The FAA concurs and has revised the applicability paragraph to limit the AD to APU's equipped with one-piece cast turbine wheels.

Two commenters concur with the rule as proposed.

Since issuance of the NPRM, the FAA has increased its labor estimate to $60 per work hour. The economic analysis of this AD has been revised accordingly.

In addition, AlliedSignal Aerospace has issued Revision 1 to SB No. GTCP85–49–6919, and ASB No. GTCP85–49–A6831, both dated January 15, 1995. This final rule now references these revised service documents.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 3,000 APU's of the affected design in the worldwide fleet. The FAA estimates that 1,500 APU's installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per APU to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $7,055 per APU if the exhaust duct is not reworkable, $3,254 per APU if the exhaust duct is reworkable, and the FAA estimates that 1,050 domestic APU's are reworkable. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,041,450.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–07–03 AlliedSignal Aerospace: Amendment 39–9182. Docket 94–ANE–17.

Applicability: AlliedSignal Aerospace (formerly Garrett Auxiliary Power Division and Garrett Turbine Engine Co.) GTCP85 series auxiliary power units (APU's) with model numbers listed in AlliedSignal Aerospace Service Bulletin (SB) No. GTCP85–49–6919, Revision 1, dated January 15, 1995, except those APU's installed on Boeing 737 and British Aerospace BAC 1–11 series aircraft; and Alert Service Bulletin (ASB) No. GTCP85–49–A6831, Revision 1, dated January 15, 1995, having a one-piece cast turbine rotor with part numbers (P/N) 3842072–1, -2, -3, and P/N 3604604–1, -2, -3, P/N 3606982–1, and P/N 96895–1 through -8. These APU's are installed on but not limited to Boeing 707 series and 727 series aircraft; Lockheed L382 series aircraft; and McDonnell Douglas DC–8–70 series and DC–9/MD–80 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an axially uncontained APU failure and damage to the aircraft, accomplish the following:

(a) For flight-operable APU's, within 24 months after the effective date of this airworthiness directive (AD), install an exhaust centerbody in accordance with AlliedSignal Aerospace ASB No. GTCP85–49–A6831, Revision 1, dated January 15, 1995, or ASB No. GTCP85–49–A6831, dated March 17, 1994; or SB No. GTCP85–49–6919, Revision 1, dated January 15, 1995, or SB No. GTCP85–49–6919, dated May 17, 1994, as applicable.

(b) For APU's that are ground-operable only, within 36 months after the effective date of this AD, install an exhaust centerbody in accordance with AlliedSignal Aerospace SB No. GTCP85–49–6919, Revision 1, dated January 15, 1995, or SB No. GTCP85–49–6919, dated May 17, 1994.

(c) No action is required if the APU is installed on a Boeing 737 or British Aerospace BAC 1–11 series aircraft until the APU is removed and installed on a different type aircraft.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The installation of the exhaust center body shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
ASB No. GTCP85–49–A6831			
Revision Transmittal Sheet	1	1	January 15, 1995.
	1	1	January 15, 1995.
	2–5	Original	May 17, 1994.
	6	1	January 15, 1995.
	7–8	Original	May 17, 1994.
	9–10	1	January 15, 1995.
Total pages: 11.			
SB No. GTCP85–49–6919	1	1	January 15, 1995.
	2	Original	May 17, 1994.
	3	1	January 15, 1995.
	4	Original	May 17, 1994.
	5	1	January 15, 1995.
	6	Original	May 17, 1994.
	7–10	1	January 15, 1995.
Total Pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace Services, P.O. Box 52170, Phoenix, AZ 85072–2170, Attn: Dept. 65–71, Mailstop 1802–AA. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 3, 1995.

Issued in Burlington, Massachusetts, on March 23, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–7682 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–ANE–46; Amendment 39–9178; AD 94–26–07]

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 94–26–07 that was sent previously to all known U.S. owners and operators of AlliedSignal Inc. TPE331 series turboprop engines by individual letters. This AD requires an amendment to the Emergency Procedures section of the applicable FAA Approved Airplane Flight Manual (AFM) for each applicable engine installation in an aircraft, and initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with alternate fuel controls. This amendment is prompted by reports of excessive wear of the internal fuel control drive splines in fuel controls, which can result in loss of fuel control governor drive. The actions specified by this AD are intended to prevent an uncontained engine failure, damage to the aircraft, or loss of aircraft control.

DATES: Effective April 18, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–26–07, issued on December 13, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–46, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On December 13, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–26–07, applicable to certain AlliedSignal Inc. TPE331 series turboprop engines, which requires an amendment to the Emergency Procedures section of the applicable FAA Approved Airplane Flight Manual (AFM) for each applicable engine installation in an aircraft, and initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with alternate fuel controls. That action was prompted by reports of excessive wear of the internal fuel control drive splines in fuel controls, Part Numbers (P/N) 897770–1 through –8, and 897780–1 through –11. In two instances the spline wear resulted in loss of fuel control governor drive. If this occurs, the underspeed fuel governor increases fuel flow, while the overspeed governor is inoperative and cannot limit engine speed.

The FAA has determined that the most serious consequence of a loss of fuel control governor drive is during reverse thrust when the engine suddenly develops uncommanded forward thrust causing an asymmetric thrust condition on a twin-engine aircraft. Another serious consequence of a loss of fuel control governor drive is during engine start when rapid engine acceleration beyond normal idle speed could result in rotor speed sufficient to cause an uncontained turbine separation. During flight, when the propeller is in propeller-governing mode, the result will be uncommanded increased engine torque and turbine temperature. These conditions, if not corrected, could result in an uncontained engine failure, damage to the aircraft, or loss of aircraft control.

The FAA has reviewed and approved the technical contents of the following service bulletins (SB): AlliedSignal Inc. Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994, applicable to model TPE331–11U engines, that describes procedures for dimensionally inspecting fuel control drive shaft splines; AlliedSignal Inc. SB No. TPE331–73–0224, dated August 17, 1994, and Revision 1, dated September 8, 1994, applicable to model TPE331–11U engines, that describe procedures for replacing affected fuel controls with alternate fuel controls; AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994, applicable to certain TPE331–3, -5, -6, -10, and -12 series engines, that describe procedures for dimensionally inspecting fuel control drive shaft splines; and AlliedSignal Inc. SB No. TPE331–73–0228, dated September 16, 1994, applicable to certain TPE331–3, -5, -6, -10, and -12 series engines TPE331 engines, that describe procedures for replacing affected fuel controls with alternate fuel controls.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 94–26–07 to prevent an uncontained engine failure, damage to the aircraft, or loss of aircraft control. The AD requires an amendment to the Emergency Procedures section of the applicable FAA AFM for each applicable engine installation in an aircraft. This amendment to the applicable AFM describes conditions inflight, during ground start, and during reverse thrust operation that might indicate loss of fuel control governor drive, and provides required procedures for engine shutdown. These AFM changes have been coordinated with the FAA Directorate responsible for the certification of the aircraft involved.

In addition, this AD requires either initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear, or replacing the affected fuel controls with alternate fuel controls constitutes terminating action to the repetitive inspections. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 13, 1994, to all known U.S. owners and operators of AlliedSignal Inc. TPE331 series turboprop engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

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submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–46." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–07 AlliedSignal Inc.: Amendment 39–9178. Docket 94–ANE–46.

Applicability: AlliedSignal Inc. Models TPE331–3, –5, –6, –10, –11U, and –12 series turboprop engines with fuel control assembly Part Numbers (P/N) 897770–1 through 897770–8 and 897780–1 through 897780–11 installed in accordance with AlliedSignal Inc. Service Bulletin (SB) No. TPE331–73–0217, dated July 9, 1993. These engines are installed on but not limited to Mitsubishi MU–2B series (MU–2 series) Solitaire/Marquise, Construcciones Aeronauticas, S.A. C–212 series, British Aerospace (BAe) Jetstream 3101 and 3201 (31 and 32) series, Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series), Twin Commander Models 680, 690, 695 (Jetprop Commander), Short Brothers and Harland, Ltd. SC7 (Skyvan), Dornier 228 series, Beech Model B–100 series aircraft, and Ayres S–2R series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuel control governor drive from excessive wear of the internal fuel control drive splines, which can result in loss of aircraft control, accomplish the following:

(a) Amend the applicable FAA Approved Airplane Flight Manual (AFM) to provide interim emergency procedures to flight crews, within 20 calendar days after the effective date of airworthiness directive (AD), by adding the following to the Emergency Procedures section. This may be accomplished by inserting a copy of this AD into the AFM:

"Inflight: in the event of an uncommanded engine torque and turbine temperature increase, or if engine power fails to respond when the power level is retarded, shut down the affected engine as soon as possible consistent with the safe operation of the aircraft.

Warning: be aware that the affected engine with a failed fuel control governor drive will typically exhibit an increase in power, and if the accepted "dead foot—dead engine" logic is employed, the wrong engine could be shut down because the malfunction will result in an increase in forward thrust from the affected engine. Use caution and monitor cockpit engine indications to aid in identifying the failure mode and the malfunctioning engine.

During Ground Start: if an engine exhibits rapidly increasing RPM above idle values, immediately terminate the start.

If an engine has been shutdown inflight as a result of exhibiting an uncontrolled increase in torque and turbine temperature, do not attempt a ground start until the fuel control is inspected in accordance with the applicable service bulletin.

During Reverse Operation: if an engine suddenly develops forward thrust, immediately terminate reverse thrust. If necessary, shutdown both engines in order to maintain directional control."

(b) For AlliedSignal Model TPE331–11U engines:

(1) Conduct initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear in accordance with the compliance times and procedures described in AlliedSignal Alert Service Bulletin (SB) No. TPE331–A73–0221, Revision 2, dated October 10, 1994. The initial inspection compliance times start upon the effective date of this priority letter AD.

(2) Prior to further flight replace with a serviceable part those fuel controls with drive shaft splines that do not meet the return to service criteria specified in AlliedSignal Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994.

(3) Replacement of fuel controls in accordance with the procedures described in AlliedSignal SB No. TPE331–73–0224, dated August 17, 1994, or Revision 1 of that SB, dated September 8, 1994, with alternate fuel controls constitutes terminating action to the AFM amendment specified in paragraph (a) of this AD, and the inspections specified in paragraph (b)(1) of this AD.

(c) For AlliedSignal TPE331–3, –5, –6, –10, and –12 series engines:

(1) Conduct initial and repetitive dimensional inspections of the fuel control drive shaft splines for wear in accordance with the compliance times and procedures described in AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994. The initial inspection compliance times become effective upon the effective date of this AD.

(2) Prior to further flight replace with a serviceable part those fuel controls with drive shaft splines that do not meet the return to service criteria specified in AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994.

(3) Replacement of fuel controls in accordance with the procedures described in AlliedSignal Inc. SB No. TPE331–73–0228, dated September 16, 1994, with alternate fuel controls constitutes terminating action to the AFM amendment specified in paragraph (a) of this AD, and the inspections specified in paragraph (c)(1) of this AD.

(d) For the purpose of this AD, specific driveshaft operating hours as referenced in AlliedSignal Alert SB No. TPE331–A73–0221, Revision 2, dated October 10, 1994, and AlliedSignal Inc. Alert SB No. TPE331–A73–0226, dated October 10, 1994, may be calculated using fuel control time tracking based on engine operating hours.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following SB's:

Document No.	Pages	Revision	Date
AlliedSignal Inc. Alert SB No. TPE331–A73–0226	1–8	Original	October 10, 1994.
Woodward SB No. WG64050	1–13	Original	October 3, 1994.
Total pages: 21.			
AlliedSignal Inc. Alert SB No. TPE331–A73–0221	1–3	2	October 10, 1994.
	4	Original	June 27, 1994.
Woodward SB No. WG64047	1–12	4	October 3, 1994.
Total pages: 16.			
AlliedSignal Inc. SB No. TPE331–73–0224	1	1	September 8, 1994.
	2	Original	August 17, 1994.
	3–4	1	September 8, 1994.
Total pages: 4.			
Woodward SB No. WG4044	1–3	Original	June 28, 1993.
Total pages: 3.			
AlliedSignal Inc. SB No. TPE331–73–0228	1–10	Original	September 16, 1994.
Total pages: 10.			
AlliedSignal Inc. SB No. TPE331–73–0217	1–10	Original	July 9, 1993.
Total pages: 10.			

Note: The Woodward SB's are attached to the AlliedSignal Alert SB's.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective April 18, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–26–07, issued December 13, 1994, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 20, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–7908 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 115]

Waiver of Two-Year Home-Country Physical Presence Requirement, International Medical Graduates, Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: Section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) amended Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) and added a new subsection (k) to Section 214 of that Act (8 U.S.C. 1184) regarding waiver of the two-year foreign residence requirement as it applies to international medical graduates. This rulemaking amends the Exchange Visitor Program regulations to reflect those legislative changes.

DATES: This interim final rule is effective April 3, 1995. Written comments will be accepted until May 3, 1995. All written communications received by the Agency on or before the closing date will be considered by the Agency before action on a final rule is undertaken.

ADDRESSES: Comments regarding this rule should be addressed as follows: United States Information Agency, Office of the General Counsel, Rulemaking 115, 301 Fourth Street, S.W., Room 700, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: William G. Ohlhausen, Assistant General Counsel, United States Information Agency, 301 Fourth Street, S.W., Washington, DC 20547; telephone (202) 619–6972.

SUPPLEMENTARY INFORMATION: Section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416), adopted in the closing days of the 103rd Congress, amended provisions of the Immigration and Nationality Act which deal with the two-year foreign residence requirement affecting international medical graduates (also known as "foreign medical graduates" or "FMGs") who were admitted to the United States on the J visa, or who acquired such status after admission to the United States, and who are required to return to the country of their nationality or last residence upon the completion of their participation in an exchange visitor program.

The Immigration and Naturalization Service may grant a waiver of the two-year home country physical presence requirement upon the favorable recommendation of the Director of the United States Information Agency. Prior to the recent amendment to Sections 212 and 214 of the Immigration and Nationality Act, there were three bases upon which an alien who is a graduate of a medical school pursuing a program in graduate medical education or training could seek a waiver of the two-year foreign residence requirement. The first basis was the so-called "interested Government Agency" or "IGA" waiver. Under that basis, the Director of the United States Information Agency could recommend a waiver to INS pursuant to the request of an "interested United States Government agency." [Immigration and Nationality Act, as amended, section 212(e) (8 U.S.C. 1182(e); 22 C.F.R. 514.44(a)(2) and (c).]

The other bases upon which a J visa foreign medical graduate could seek a waiver of the two-year foreign residence requirement were to apply to the Immigration and Naturalization Service for a waiver on the grounds that the departure of the alien physician from the United States would "impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or lawfully resident alien), or that the alien

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cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion." [Immigration and Nationality Act, as amended, section 212(e) (8 U.S.C. 1182(e).] Additionally, all three bases for seeking waiver required a finding by the Attorney General that the waiver was in the public interest.

The enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) has now provided an additional basis upon which an international medical graduate may seek a waiver of the two-year home residence requirement. Section 220(a) of that Act added a provision that authorizes a State Department of Public Health or its equivalent to request the Director of USIA to recommend that INS grant the waiver. However, in addition, the new law requires that the government of the country to which the international medical graduate is required to return must furnish the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver, and the medical graduate must demonstrate that he or she has a bona fide offer of full-employment and must agree that he or she will begin employment within 90 days of receiving a waiver, and must agree to continue to work, for a total of not less than three years, at a health care facility in an area designated by the Secretary of Health as having a shortage of health care professionals. [Immigration and Nationality Act, as amended, section 214(k)(1) (8 U.S.C. 1184(k)(1).)

Upon the favorable recommendation of the Director of USIA, the Attorney General may grant the waiver and change the medical graduate's nonimmigrant status from J–1 to H(i)(B). If the international medical graduate obtains a waiver under Public Law 103–416 and thereafter fails to fulfill the terms of his or her employment contract with the health care facility named in the waiver application, then he or she becomes ineligible to apply for an immigrant visa, permanent residence, or any other change of nonimmigrant status until the two-year foreign residence requirement has been met. [Immigration and Nationality Act, section 214(k)(2) (A) and (B). Each State is allotted no more than twenty such waivers each fiscal year. The federal fiscal year commences on October 1 and ends the following September 30. The term "State" includes the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States.

The role of the United States Information Agency under the recent amendments to sections 212(e) and 214 of the Immigration and Nationality Act is limited. Under the amendment to section 212(e), the Commissioner of the Immigration and Naturalization Service will now look to the Director of USIA for a recommendation on international medical graduate waiver cases brought "pursuant to the request of a State Department of Public Health, or its equivalent." Section 212(e) was also amended by adding language that makes it clear that waivers requested by a State Department of Public Health, or its equivalent, shall be subject to the requirements of the new Section 214(k).

Under new Section 214(k)(1)(A), the Attorney General will not grant the waiver unless the country to which the international medical graduate is contractually obligated to return furnishes the Director of USIA with a statement in writing that it has no objection to such waiver.

Reading amended Section 212(e) and new section 214(k) together, the Agency views its role in implementing the statute as including the following: (1) It is to be the recipient of State Department of Public Health applications for waivers for foreign medical graduates who will practice medicine in medically underserved areas; (2) it is to be the recipient of "no objection" letters from the country to which the applicant is contractually obligated to return; and (3) it is to review the applications and no objection letters, determine whether they meet the requirements of the two statutory sections, review the program, policy, and foreign relations aspects of the case, and make a recommendation to the Commissioner of the Immigration and Naturalization Service as to whether the waiver should be granted.

Current regulations regarding requests for waiver made by an interested United States Government agency require the requesting agency to determine that the granting of the waiver would be in the public interest. 22 C.F.R. 514.44(c). This Agency then reviews the program, policy, and foreign relations aspects of the case and forwards its recommendation to the Commissioner. 22 C.F.R. 514.44(c). The Agency intends to follow the same practices with respect to requests for waivers made under the recently amended section 212(e) and the new section 214(k) of the Immigration and Nationality Act.

With respect to the no-objection letters, the Agency notes that the new section 214(k)(1)(A) refers to "an alien who is otherwise contractually obligated to return to a foreign country * * *" (emphasis added.) That phrase "otherwise contractually obligated" is not defined in the statute and there is no legislative history preceding the enactment of the statute which would indicate the specific intent of Congress in using that terminology. However, the Agency believes, based upon the intent of Congress as gleaned from the legislation as a whole, that the term "otherwise contractually obligated" was not meant to have any special meaning, but rather is to be given its ordinary meaning, viz., an obligation arising out of an agreement. Foreign medical graduates are required by statute (Pub. L. 97–116) and regulation (8 C.F.R. 214.2(j)(2); INS Form I–644) to certify annually that, upon the completion or termination of participation in their medical education or training program, they will return to their respective home countries. The Agency deems that certification to be an agreement or contract that obligates the foreign medical graduate to return to his or her home country. Moreover, in almost all cases involving foreign medical graduates, the foreign medical graduate has also given a written assurance to his or her home government that he or she will return to that country upon completion of training in the United States and will engage in the practice of medicine in the area of specialization for which training is being sought. In the view of the Agency, such assurances rise to the level of a contractual obligation or agreement.

The amendment to Section 212(e) refers to "a State Department of Public Health, or its equivalent." Since enactment of the statute, the Agency has received numerous requests for information from a variety of agencies within a given State. In order to avoid confusion in the processing of waiver applications and because of the numerical limitations upon each State set forth in the new statute, this rulemaking provides that each State designate one agency as its "Department of Public Health, or equivalent" for purposes of applying for waivers under Public Law 103–416, and so notify USIA of the name, address, and telephone number of that agency, and the name of the person or persons who are authorized to sign the application for waiver.

The No Objection Letter

Current regulations set forth the procedure for obtaining "no objection" letters from the home country and the manner in which such letters are to be sent to the Agency. 22 C.F.R. 514.44(d). With one exception, this rulemaking provides for the same procedures to be followed with respect to applications for waivers under Public Law 103–416. In order to avoid confusion with other applications for waivers based on no objection from the home country (hitherto unavailable to foreign medical graduates), the no objection letter submitted under Public Law 103–416 should note clearly that the request for the no objection letter was made pursuant to Public Law 103–416. The Agency does not require that a no objection letter be of or on a particular form. The following or similar language will suffice: "Pursuant to Public Law 103–416, the Government of _____ has no objection if (name and address of foreign medical graduate) does not return to _____ to satisfy the two-year foreign residency requirement of Section 212(e) of the Immigration and Nationality Act."

The Application Package

The application for waiver of the two-year home country residence requirement under the provisions of Public Law 103–416 is to originate in the designated State Department of Public Health. USIA is not planning to develop any new forms for such application. However the application is to include the following: (1) A letter from the Director of the designated State Department of Public Health which identifies the foreign medical graduate and states, if so determined, that it is in the public interest that a waiver of the two-year home residence requirement be granted; (2) an employment contract between the alien and the health care facility, which includes the name and address of the specific and a specific geographic area or areas in which the foreign medical graduate will practice medicine. The employment contract shall be valid for at least three years; (3) evidence that the areas of employment stipulated in the employment contract are in geographic areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals; (4) a statement by the foreign medical graduate agreeing to the contractual requirements set forth in Section 214(k)(1) (B) and (C) of the Immigration and Nationality Act; (5) copies of all forms IAP–66 issued to the foreign medical graduate seeking the waiver; (6) a completed data sheet, copies of which will be made available by the Agency to each State Department of Public Health; and (7) because of the numerical limitations on the approval of waivers under Public Law 103–416 each application from a State Department of Public Health shall be numbered sequentially. Should USIA not grant a favorable recommendation on a given application, the State Department of Public Health will be so notified and will be advised that the number may be used on another application.

If a State Department of Public Health files in excess of twenty applications at one time, the Agency will give priority to the first twenty sequentially numbered applications.

Application Period Under Public Law 103–416

Section 220(c) of Public Law 103–416 states that "The amendments made by this section shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act and before June 1, 1996." The Agency believes that the date of June 1, 1996 applies to the status of the foreign medical graduate on that date and not to the new waiver program itself. In other words, if the foreign medical graduate was admitted to the United States on a J visa or acquired a J visa prior to June 1, 1996 in order to pursue graduate medical education or training, he or she would be eligible to apply for a waiver under the provisions of Public Law 103–416 at any time in the future.

Public Law 103–416 was enacted into law on October 25, 1994. Since that date, USIA's Exchange Visitor Program office has received in excess of 100 telephone calls and letters regarding the implementation of the new law. One State Department of Public Health advised at the time of its telephone call that it already had in hand some 400 applications for waiver sponsorship. Therefore, it is imperative that the Agency promulgate implementing regulations as soon as possible. This rulemaking is therefore being promulgated as an Interim Final Rule, effective on the date it is published in the **Federal Register**. Written comments on the Interim Final Rule will be accepted during the thirty-day period following publication of the Interim Final Rule. At the conclusion of the thirty-day comment period, the Agency will review all comments and thereafter promulgate a final rule incorporating such revisions as are appropriate.

Regulatory Analysis and Notices

The Agency invites comments regarding this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedure Act, 5 U.S.C. 553(a)(1), specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been presented to the Office of Management and Budget for clearance pursuant to the provisions of the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Dated: March 27, 1995.

Les Jin,

General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978, 3 CFR, 1978 Comp. p. 168.

Section 514.44 is amended as follows:

§ 514.44 [Amended]

2. In paragraph (a)(2), by inserting "(or in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent)" after "interested United States Government agency"; and

3. In paragraph (a)(2), by inserting after the words "public interest" the following: "except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, the waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184)"; and

4. In paragraph (a)(3), by inserting the following at the end of said paragraph: "Notwithstanding the foregoing, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act

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(8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section"; and

5. In paragraph (d)(3), by inserting the word "solely" after the word "waiver", and by inserting the following at the end of said paragraph: "However, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section"; and

6. By redesignating paragraphs (e), (f), and (g) as (f), (g), and (h), respectively; and

7. By inserting a new paragraph (e) as follows:

§ 514.44 Two-year home-country physical presence requirement.

* * * * *

(e) *Requests for waiver from a State Department of Public Health, or its equivalent, on the basis of Public Law 103–416.*

(1) Pursuant to Public Law 103–416, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, a request for a waiver of the two-year home-country physical presence requirement may be made by a State Department of Public Health, or its equivalent. Such waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and this § 514.44.

(2) With respect to such waiver under Public Law 103–416, the Director of the United States Information Agency is to be furnished with a statement in writing that the country to which such alien is required to return has no objection to such waiver. The no objection statement shall be furnished to the Director in the manner and form set forth in paragraph (d) of this section and, additionally, shall bear a notation that it is being furnished pursuant to Public Law 103–416.

(3) The State Department of Public Health, or equivalent agency, shall include in the waiver application the following:

(A) A completed "Data Sheet." Copies of blank data sheets may be obtained from the Agency's Exchange Visitor Program office.

(B) A letter from the Director of the designated State Department of Public Health, or its equivalent, which identifies the foreign medical graduate by name, country of nationality or last residence, and date of birth, and states that it is in the public interest that a waiver of the two-year home residence requirement be granted;

(C) An employment contract between the foreign medical graduate and the health care facility named in the waiver application, to include the name and address of the health care facility, and the specific geographical area or areas in which the foreign medical graduate will practice medicine. The employment contract shall include a statement by the foreign medical graduate that he or she agrees to meet the requirements set forth in Section 214(k) of the Immigration and Nationality Act. The employment contract shall be valid for at least three years and the geographical areas of employment shall only be in areas, within the respective state, designated by the Secretary of Health and Human Services as having a shortage of health care professionals;

(D) Evidence establishing that the geographic area or areas in the state in which the foreign medical graduate will practice medicine are areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

(E) Copies of all forms IAP–66 issued to the foreign medical graduate seeking the waiver;

(F) A copy of the foreign medical graduate's *curriculam vitae*;

(G) A copy of the statement of no objection from the foreign medical graduate's country of nationality or last residence; and,

(H) Because of the numerical limitations on the approval of waivers under Public Law 103–416, i.e., no more than twenty waivers for each State each fiscal year, each application from a State Department of Public Health, or its equivalent, shall be numbered sequentially, beginning on October 1 of each year.

(4) The Agency's Waiver Review Branch shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Commissioner. Except as set forth in § 514.44(g)(4)(i), the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency.

* * * * *

8. In newly designated paragraph (g)(4)(i), by inserting "(or, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent)" after "interested United States Government agencies."

[FR Doc. 95–7922 Filed 3–31–95; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–111–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to Pennsylvania's Small Operator Assistance Program (SOAP) rules. The amendment is intended to revise the Pennsylvania SOAP program to be consistent with section 507(c) of SMCRA (Energy Policy Act of 1992) and 30 CFR part 795. The proposed amendment would provide more comprehensive assistance to SOAP participants than currently allowed.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Submission of the Amendment

The Energy Policy Act of 1992, Pub. L. 102–486, October 24, 1992, amended several sections of SMCRA. Section 507(c) was amended to expand the coverage of free services that could be provided to qualified applicants for permit application information under SOAP. Before enactment of the Energy Policy Act, services provided by section 507(c) covered the determination of probable hydrologic consequences required by subsection 507(b)(11) and the statement of the results of test boring or core sampling required by subchapter 507(b)(15). The section 507(c) revisions expanded the services under subsection 507(b)(11) to include the engineering analyses and designs necessary for their determination. The revisions also added additional allowable services. These additional services include: the development of cross-section maps and plans required by subsection (b)(14); the geologic drilling and statement of test boring and core sampling required by subsection (b)(15); the collection of archaeological information required by subsection (b)(13) and any other archaeological and historical information required by the regulatory authority; pre-blast surveys required by section 515(b)(15)(E); and the collection of site-specific resource information and the production of protection and enhancement plans for fish and wildlife habitats and other environmental value required by the regulatory authority.

The Energy Policy Act also added section 507(h) which makes the operator liable for reimbursement of SOAP expenses if they exceed the 12-month coal production limit.

OSM published final regulations to implement the above statutory provisions in the **Federal Register**, 59 FR 28136–28174, May 31, 1994.

The Pennsylvania Department of Environmental Resources (PADER) published proposed rules in the Pennsylvania Bulletin (24 Pa.B. 2120–2124, April 23, 1994), to revise the existing SOAP provisions to be consistent with the Federal SOAP revisions. On October 24, 1994, PADER submitted these rules as a program amendment (Administrative Record Number PA 833.00).

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58802), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 15, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

A. Revisions to Pennsylvania's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulation 25 Pa. Code, chapter	Subject	Federal counterpart
86.81(1)(i) ...	Probable hydrologic consequences.	30 CFR 795.9(b)(1).
86.81(1)(ii) ..	Drilling services.	30 CFR 795.9(b)(2).
86.81(1)(v) ..	Preblast surveys.	30 CFR 795.9(b)(5).
86.83(b)(2), (b)(3).	Attributed production.	30 CFR 795.6(a)(2)(i) and (ii).
86.85(a)(1) and (2).	Application approval.	30 CFR 795.9(a).
86.94(a)(4) and (5).	Applicant liability.	30 CFR 796.12(a)(2) and (3).

Because the above proposed provisions are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal regulations.

B. Revisions to Pennsylvania's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. Section 86.81, Program Services

At section 86.81(1), Pennsylvania proposes to delete the word "laboratory" and to replace that term with "consultant." With this change, the regulation provides that the PADER will select and pay a qualified consultant for providing approved SOAP program services.

The counterpart Federal language at 30 CFR 795.9(a) uses the term "laboratory." In its submittal of this change, PADER explained that laboratories in Pennsylvania generally provide only the chemical analyses of water and overburden samples and work as subcontractors to professional engineering and geological consultants who actually collect and evaluate data under contract with the PADER. The Director concurs that use of the term "consultant" is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the counterpart Federal regulations at 30 CFR Part 795.

2. Subsections 86.81(1)(iii) and (iv), Program Services

At subsections 86.81(1) (iii) and (iv), Pennsylvania lists some of the permit application requirements that PADER will fund through the SOAP program services. Subsection 86.81(1)(iii) is the counterpart to 30 CFR 795.9(b) (4) and (6) and would provide funding for services that would provide a description of the existing resources within and adjacent to the proposed permit area.

Subsection 86.81(1)(iv) is the counterpart of 30 CFR 795.9(b)(3) and would provide funding for services that would provide a detailed description, to include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed.

In both of these provisions, 86.81(1)(iii) and (iv), Pennsylvania provides several references to regulations that address the data requirements for specific types of mining activities that will be funded under the expanded SOAP services. In general, the services which Pennsylvania is proposing to fund are authorized in the counterpart Federal regulations at 30 CFR 795.9(b) (3), (4), and (6). However, the references cited by Pennsylvania are general references and may include, in addition to fundable services, permit application requirements which, if funded, would extend SOAP coverage beyond the limits established by SMCRA and the Federal regulations at 30 CFR 795.9(b).

Section 507(c)(1) of SMCRA establishes the SOAP to pay for various permit application requirements, including (a) the determination of probable hydrologic consequences; (b) the development of cross-sections, maps, and plans; (c) the geologic drilling and statement of results of test borings and core samplings; (d) the collection of archaeological information and the preparation of plans necessitated thereby; (e) preblast surveys; and (f) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values. The Federal rules at 30 CFR 795.9(b) further clarify which permit application requirements may be funded through SOAP.

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30 CFR 795.9(b)(3) provides for the funding of the development of cross-section maps and plans required by 30 CFR 779.25 for surface mining and section 783.25 for underground mining permit applications.

30 CFR 795.9(b)(4) provides for the funding of the collection of archeological and historic information and related plans required by 30 CFR 779.12(b) and 783.12(b) and 30 CFR 780.31 and 784.17 and any other archeological and historic information required by the regulatory authority.

30 CFR 795.9(b)(6) provides for the funding of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under SMCRA.

OSM's review of the references cited by Pennsylvania at subsections 86.81(1)(iii) and (iv) has determined that funding has not been explicitly authorized by the Federal regulations at 30 CFR 795.9(b) for the permitting requirements contained in the following Pennsylvania citations:

25 Pa. Code
87.41–42
87.48–49
87.52–53
87.68
87.70–76
87.78–83
88.21–22(1)
88.28–29
88.30
88.32
88.41–44
88.46
88.48
88.50–55
88.57–61
89.31–32
89.37
89.71–73
89.102
89.121–122
89.141(d)

Also, the permitting requirements at 25 Pa. Code 87.77, 88.56, and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks.

Both the Energy Policy Act and 30 CFR 795.9(b)(1) authorize reimbursement for engineering analyses and designs necessary for the determination of probable hydrologic consequences, with the rule specifying that this provision applies to "engineering analyses and designs necessary for the determination in accordance with sections 780.21(f), 784.14(e), and any other applicable provisions of this chapter." Accordingly, preparation of engineering analyses and designs essential to development of an adequate probable hydrologic consequences determination is an authorized SOAP service, whereas preparation of analyses and designs needed solely to satisfy other program requirements is not. For example, preparation of diversion and impoundment plans and designs would be an authorized SOAP service only if the laboratory or other qualified entity cannot satisfactorily prepare the probable hydrologic consequences determination in the absence of these plans and designs.

The Energy Policy Act further authorizes funding for the development of cross sections, maps and plans required by section 507(b)(14) of SMCRA. These requirements are reflected primarily in 30 CFR 779.25 and 783.25, which are cross-referenced in 30 CFR 795.9(b)(3). However, section 507(b)(14) of the Act also provides the basis for those portions of 30 CFR 780.18(b)(3) and 784.13(b)(3) that require cross sections showing the anticipated final surface configuration of the proposed permit area. Therefore, the regulatory authority may fund preparation of these cross sections even though 30 CFR 795.9(b)(3) does not cross-reference the underlying rules.

Because the requirements for operation and reclamation plans and maps, air pollution control plans, and subsidence control plans are not derived from section 507(b)(14) of SMCRA, SOAP funds may not be used for development of these types of maps and plans unless other provisions of section 507(c) of the Act or 30 CFR 795.9(b) specifically authorize such expenditures. The State may be able to demonstrate that funding for some aspects of these maps and plans is appropriate under 30 CFR 795.9(b)(6), which authorizes information collection and preparation of plans "for any other environmental values required by the regulatory authority under the Act."

To be consistent with SMCRA and the counterpart Federal regulations, Pennsylvania must ensure that when implementing its SOAP provisions, it does not authorize expenditures outside of those allowed by SMCRA and the Federal regulations as discussed above. Although the Energy Policy Act and the revisions to 30 CFR 795.9(b) have greatly expanded the scope of services available under SOAP, funding remains limited. Therefore, the program administrator may need to ration funding under the provisions of 30 CFR 795.11(b).

The Director is approving subsections 86.81(1) (iii) and (iv) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing Federal regulations at 30 CFR 795.9(b) as discussed above. The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

3. Section 86.82, Responsibilities

Subsection 86.82(a)(1) is being amended to provide that the PADER will develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered. Prior to this amendment, the provision included qualified laboratories but not consultants. As discussed above in Finding B–1, the addition of "consultants" more closely reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that the use of the term "consultant" is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations.

4. Subsection 86.83(a)(2), Eligibility for Assistance

Subsection 86.83(a)(2) is being amended to provide that an applicant is eligible for assistance if the applicant establishes that the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons.

30 CFR 795.6(a)(2) provides that to be eligible for assistance, the applicant must establish that the probable total attributed annual production from all locations will not exceed 300,000 tons. In the preamble to the approval of the Federal regulation at 30 CFR 795.6(a)(2) (59 FR 28139, May 31, 1994), OSM stated that in order to reduce the potential for fraud and abuse, past production will be used as the standard for evaluating whether an operator's annual production is reasonably expected to be within the 300,000 ton limit for eligibility under the SOAP. Therefore, to be eligible for SOAP assistance, past production records should provide sound evidence that following SOAP approval, production is reasonably likely to remain under 300,000 tons annually.

Therefore, the Director is approving the proposed amendment to subsection 86.83(a)(2) except to the extent that the provision only requires the applicant to establish that annual production following permit issuance is reasonably likely to remain under 300,000 tons for just the first year. In addition, the Director is requiring that Pennsylvania further amend subsection 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

5. Subsection 86.86(b)(6), Right of Entry

This provision is being amended to provide that the application for SOAP assistance shall contain copies of documents which show that the legal right of entry necessary to meet the provisions of section 86.64 (relating to right of entry) have been obtained by the applicant.

The existing subparagraphs 86.84(b)(6) (i) and (ii) are being deleted. Subsection (i) required the applicant to provide documents that show the applicant has a legal right to enter and commence mining within the permit area. Subsection (ii) required documents showing a legal right of entry has been obtained for the office, department and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

The Director finds that the proposed amendment with the requirement to comply with the approved right of entry provisions at section 86.64 is no less effective than the Federal regulations at 30 CFR 795.7(f).

6. Subsection 86.86(a), Notice

This provision is being amended to delete "laboratories" and add in its place "consultants." As discussed above in Finding B–1, the use of "consultant" does not render the Pennsylvania program less effective than the corresponding Federal regulations.

7. Subsection 86.87(a), Determination of Data Requirements

This provision is being amended to provide that if specifically authorized by the PADER in an approved work order, the development of information on environmental resources, operations plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities. While there is no direct counterpart in the Federal regulations, the provision is consistent with the SOAP provision at 30 CFR part 795.9(c) and can be approved.

8. Section 86.88, Data for Probable Hydrologic Consequences (PHC)

This provision is being deleted in its entirety. The requirement to provide a PHC determination for the applicant is located at subsection 86.81(1)(i). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

9. Section 86.89, Data for Test Borings and Core Samplings

This provision is being deleted in its entirety. The requirement to provide data for the results of test borings and core samplings is located at subsection 86.81(1)(ii). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

10. Section 86.91, Definitions and Responsibilities

In subsection 86.91(a), Pennsylvania is amending the term "qualified laboratory" to read "qualified consultant and qualified laboratory." Nonsubstantive wording changes are also being made.

The term "qualified consultant" is being added to subsections 86.91(b) and (c).

As discussed in Finding B–1, the use of the term "qualified consultant" more closely reflects the circumstances by which the SOAP services are obtained in Pennsylvania. The Director finds that the use of the term "qualified consultant" is consistent with the intent of the Federal SOAP regulations and does not render the Pennsylvania program less effective than the Federal regulations.

11. Section 86.92, Basic Qualifications

Pennsylvania is proposing to add "qualified consultant" or "consultant" to subsections 86.92 (a) and (b). As discussed above in Finding B–1, the use of consultants to provide SOAP program services does not render the Pennsylvania program less effective and can be approved.

The State is adding "overburden laboratory" at subsection 86.92(a)(1). As amended, 86.92(a)(1) requires that to be designated as a qualified consultant or laboratory, the consultant or laboratory must be staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed as a water laboratory, "overburden laboratory" or consulting firm. The Director finds that this amendment is consistent with 30 CFR 795.10(a)(1).

The State is adding a new subsection 86.92(a)(6)(iv) to require a demonstration by the laboratory or consultant that it has the analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in "[t]he Department's Overburden Sampling and Testing Manual."

The Director finds this requirement is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 795.10(a)(4) concerning qualified laboratories.

At subsection 86.92(b) the State is deleting language and adding replacement language to make it clear that a qualified laboratory or consultant must be capable of performing the program services in newly revised section 86.81. The Director finds this change to be consistent with and no less effective than the Federal regulations at 30 CFR 795.10(a)(6).

12. Section 86.93, Assistance Funding

The State is deleting the phrase "or the costs of test borings or core sampling" from subsection 86.93(a). As amended, the provision prohibits SOAP funds from OSM to be used to cover administrative costs of the PADER. The Director finds that the deletion of the prohibition that SOAP funds may not be used to cover the costs of test borings or core sampling is consistent with 30 CFR 795.9(b)(2) which authorizes such payments.

13. Section 86.94, Applicant Liability

a. The State is adding the term "consultant" at subsections 86.94 (a), (a)(2), and (d)(1). The State is deleting the term "laboratory" at subsections (a)(2) and (d)(1). As discussed above in Finding B–1, the use of the term "consultant" more accurately reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that use of the term "consultant" is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations at 30 CFR Part 795.

b. The State is adding the phrase "beyond the applicant's control" to the end of the sentence in subsection 86.94(a)(2). With this change, the applicant would not be liable for the costs of program services rendered if the consultant's report indicates that the application is not approvable for

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technical reasons beyond the applicant's control. The Director finds the addition is consistent with the Federal regulation at 30 CFR 795.12(b) which allows the SOAP administrator to waive the reimbursement obligation if the administrator finds that the applicant at all times acted in good faith.

14. Section 86.95, Measurement

This provision is being amended to delete references to the specific name and number of the OSM form on which an operator reports coal production for purposes of complying with the Abandoned Mine Land Reclamation Program requirements. The Director finds that this change improves the accuracy of the provision and does not render the Pennsylvania program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor responded that the amendment will not impact on any existing MSHA regulations (Administrative Record No. PA 833.06). The Soil Conservation Service of the U.S. Department of Agriculture responded that there is no indication that the approval of this amendment would result in any environmental degradation or cause accelerated erosion and sedimentation problems (Administrative Record No. PA 833.05).

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 15, 1994, **Federal Register** (59 FR 58802). The comment period closed on December 15, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Pennsylvania Coal Association commented in support of the amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. PA 833.01). EPA responded on December 6, 1994 (Administrative Record No. PA 833.08), and concurred with the proposed amendments.

V. Director's Decision

Based on the findings above, the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on October 24, 1994.

As noted in Finding B–2 above, the Director is approving chapter 86.81(1)(iii) and (iv), concerning fundable program services, only to the extent that Pennsylvania will implement these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above in Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

As discussed in Finding B–4 above, the Director is approving chapter 86.83(a)(2) except to the extent that the provision limits an operator's obligation to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for all years, not just the first year. In addition, the Director is requiring that Pennsylvania further amend chapter 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance is reasonably likely to remain under 300,000 tons for all years, not just the first year.

The Federal regulations at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 24, 1995.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 938.15, paragraph (cc) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(cc) The SOAP amendment to the Pennsylvania program concerning the Small Operator Assistance Program as submitted to OSM on October 24, 1994, is approved, except as noted herein, effective April 3, 1995:

25 Section 86.81—Program services. Subsection 86.81(1)(iii) and (iv) are approved to the extent that the State will implement those services consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1)(iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed in the preamble at Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

25 Section 86.82—Responsibilities.

25 Section 86.83—Eligibility for assistance. Subchapter 86.83(a)(2) is approved except to the extent that the provision only requires the operator to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for just the first year.

25 Section 86.84—Applications for assistance.

25 Section 86.85—Application approval.

25 Section 86.86—Notice.

25 Section 86.87—Determination of data requirements.

25 Section 86.88—Deletion of this subchapter.

25 Section 86.89—Deletion of this subchapter.

25 Section 86.91—Definitions and responsibilities.

25 Section 86.92—Basic qualifications.

25 Section 86.93—Assistance funding.

25 Section 86.94—Applicant liability.

25 Section 86.95—Measurement.

3. In § 938.16, paragraph (ooo) is added to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(ooo) By September 1, 1995, Pennsylvania shall amend 25 chapter 86.83(a)(2) to be no less effective than 30 CFR 795.6(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

[FR Doc. 95–7817 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 162 and 165

[CGD11–94–007]

RIN 2115–AE84

Regulated Navigation Area; San Francisco Bay Region, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas (RNAs) within the San Francisco Bay Region in the waters of the Golden Gate, Central Bay, Lower Bay, San Pablo Bay and Carquinez Strait. This action is necessary due to vessel congestion in areas where maneuvering room is limited. These RNAs will increase navigation safety in the San Francisco Bay Region by organizing traffic flow patterns; reducing meeting, crossing, and overtaking situations between large vessels in constricted channels; and limiting vessel speed. This rulemaking will also remove existing regulatory language relating to the Pinole Shoal Channel which with be incorporated into the RNA.

EFFECTIVE DATE: This rule is effective on May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Commander Dennis Sobeck, Commanding Officer, Vessel Traffic Service San Francisco, San Francisco; telephone (415) 556–2950.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Commander Dennis Sobeck, Project Manager, Vessel Traffic Service San Francisco, and Lieutenant Commander C. M. Jucknies, Project Counsel, Eleventh Coast Guard District Legal Office.

Regulatory History

On December 12, 1994, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (59 FR 63947). The comment period ended February 10, 1995. The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

In 1972, the Coast Guard, with input from various members of the San Francisco Bay maritime community, established voluntary vessel traffic routing measures for the San Francisco Bay region that consisted of traffic lanes in the Golden Gate and the Central Bay extending to Pinole Shoal Channel; separation zones; a precautionary area east of Alcatraz Island; and an Oakland Harbor Limited Traffic Area. Compliance with these routing measures was voluntary and intended for use by vessels 300 gross tons or greater.

In 1991, the precautionary area east of Alcatraz Island was expanded to include the water area between the San Francisco waterfront and Treasure Island, replacing the traffic lanes in that area. A deep water route was established north of Harding Rock.

In 1993, the Coast Guard, with input from the Harbor Safety Committee of the San Francisco Bay Region, modified the voluntary traffic routing measures to better conform to International Maritime Organization (IMO) traffic routing standards. The 1993 modification added

this amendment contains no provisions

is approved by the Secretary. Similarly,

require approval by OMB under the

SOAP funds under the subsections listed

navigation safety in the San Francisco

standards. The 1993 modification added

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a Golden Gate precautionary area, a deep water traffic lane separation zone north of Harding Rock and an expanded Central Bay precautionary area. It eliminated the traffic lanes in the North Ship Channel and San Pablo Strait.

The presence of numerous recreational boats, windsurfers, and commercial fishing boats that transit the proposed RNAs poses a navigational hazard for vessels of 1600 or more gross tons which are constrained by their draft and maneuvering capabilities. By limiting or requiring the use of established traffic lanes, this rule will relieve congestion and promote safer transiting of the RNAs by vessels with restricted maneuverability. The rule makes the present voluntary traffic measures mandatory and requires vessels 1600 gross tons or more, or tugs with a two of 1600 gross tons or more, to follow traffic measures similar to those currently used on a voluntary basis. The regulation also defines precautionary areas and establishes overtaking, meeting, crossing and speed restrictions for certain vessels transiting specific channels within the RNAs.

The RNAs, which lie within the San Francisco VTS area (33 CFR 161.50), are as follows: San Francisco Bay RNA, North Ship Channel RNA, San Pablo Strait Channel RNA, Pinole Shoal Channel RNA, Southern Pacific Railroad Bridge RNA, Southampton Shoal/ Richmond Harbor RNA, and Oakland Harbor RNA.

General requirements for all RNAs. The depth of the water and geography of the San Francisco Bay Region, and the density of vessel traffic, which includes numerous ferries and recreational boats, severely constrain the ability of a vessel to maneuver in the event of an emergency. This regulation limits the maximum speed within the RNAs to 15 knots through the water for vessels 1600 gross tons or greater, or a tug with a tow of 1600 gross tons or greater, and requires those vessels to operate their engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time. Limiting vessel speeds to 15 knots or less through the water within the prescribed RNAs will reduce the risk of serious maritime accidents.

There may be situations where vessels would be unable to safely comply with the requirements of this regulation. In such cases, the Captain of the Port, or the Commanding Officer, VTS San Francisco, acting as a representative of the Captain of the Port, may allow a vessel to deviate from this regulation.

The RNAs defined in this rule are each considered to constitute a narrow channel or fairway. Therefore, Rule 9 of the Inland Navigation Rules (INRs) (33 U.S.C. 2009), in conjunction with the provisions of the associated INRs, is specifically made applicable within the defined RNAs and will be enforced.

Specific requirements for individual proposed RNAs. The geographic descriptions and proposed requirements specific to each RNA are as follows:

San Francisco Bay RNA. The San Francisco Bay RNA consists of the water area in the Golden Gate east of the COLREGS Demarcation Line (33 CFR 80.1142), the Central Bay including Raccoon Strait, and the existing charted precautionary area east of Alcatraz Island.

Because of the large number of vessels entering and departing San Francisco Bay, traffic lanes are established in the Golden Gate and the Central Bay to separate opposing traffic and reduce vessel congestion. The lanes are located where voluntary traffic lanes previously existed. Use of these lanes and adherence to the indicated direction of travel is required for vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, and recommended for all other vessels.

Due to the presence of shoals and rocks in the Central Bay, the Central Bay Two-way Deep Water Traffic Lane (DWTL), located north of Harding Rock, provides the best water depth safety margin for inbound vessels with a draft of 45 feet or greater, and for outbound vessels with a draft of 28 feet or greater. These deep draft vessels are required to use the DWTL. It is recommended that all other vessels use the Central Bay Traffic Lanes so that vessel traffic in the DWTL is kept to a minimum.

The DWTL is sufficiently narrow that meeting, crossing, and overtaking restrictions are necessary to reduce the likelihood of collision. The regulation provides that a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter the DWTL when another power-driven vessel of 1600 or more gross tons, or tug with a tow of 1600 or more gross tons, is navigating therein when either vessel is carrying certain dangerous cargo (as defined in 33 CFR 160.203), or bulk petroleum products, or is a tank vessel in ballast, if such entry could result in meeting, crossing, or overtaking the other vessel.

Since vessels are converging or crossing in such a manner that one-way traffic flow patterns, although desired, cannot be established, two precautionary areas are established in this RNA. They are: (1) the Golden Gate Precautionary Area, which encompasses the waters around the Golden Gate Bridge between the Golden Gate and the Central Traffic Lanes; and (2) the Central Bay Precautionary Area, which encompasses the large portion of the Central Bay and part of the Lower Bay. It is recommended that all vessels navigating in these precautionary areas be aware of the joining traffic lanes and DWTL so as to anticipate the movements of other vessels.

North Ship Channel RNA and San Pablo Strait Channel RNA. The North Ship Channel and San Pablo Strait Channel consist of the existing charted channels and delineate the only areas where the depths of water are sufficient to allow the safe transit of vessels of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons. The existence of strong tidal currents in these channels severely restrict the ability of vessels of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, to safely maneuver to avoid smaller vessels. These conditions create the need to apply the general regulations to these areas. Implementation of special regulations in these RNAs would have only a minimal impact on safety and is not justified at this time.

Pinole Shoal Channel RNA. The Pinole Shoal Channel RNA is a constricted waterway the use of which is currently restricted to vessels with a draft greater than 20 feet, or towboats with tows drawing more than 20 feet, as set forth in 33 CFR 162.205(a). Because of the narrow width of the channel and the draft of vessels using the channel, further meeting, crossing, and overtaking restrictions are necessary to reduce the likelihood of collision. This regulation provides that a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter the Pinole Shoal Channel RNA, which extends from approximately Light 7 to Light 13 of the Pinole Shoal Channel, when another power-driven vessel of 1600 or more gross tons, or tug with a tow of 1600 or more gross tons, is navigating therein and when either vessel is carrying certain dangerous cargo (as defined in 33 CFR 160.203) or bulk petroleum products, or is a tank vessel in ballast, if such entry would result in meeting, crossing, or overtaking the other vessel.

Southern Pacific Railroad Bridge RNA. The Southern Pacific Railroad Bridge RNA consists of a small circular area, 200 yards in radius, centered on the middle of the channel under the Southern Pacific Railroad Bridge. The limited horizontal clearance results in a greater chance of vessel allisions with

the bridge. This risk of allision is significantly increased when poor visibility conditions exist. The regulation precludes a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, from transiting the Southern Pacific Railroad Bridge RNA when visibility is less than 1000 yards.

Southhampton Shoal/Richmond Harbor RNA. Southampton Shoal/ Richmond Harbor RNA encompasses Southampton Shoal Channel, the Richmond Long Wharf Maneuvering Area, the Richmond Harbor Entrance Channel and Point Potrero Reach. These are dredged channels and areas within which maneuvering room is severely limited. Close-quarters situations between deep-draft vessels in these channels need to be eliminated to reduce the risk of groundings and collisions.

In addition, the Southampton Shoal Channel is transited by a high number of laden tank vessels and vessels carrying certain dangerous cargo (as defined in 33 CFR 160.203), or bulk petroleum. Because of the potential for loss of life or serious environmental consequences in a collision involving one or more of these vessels, control of traffic flow is necessary. The Richmond Long Wharf Maneuvering Area between the Richmond Harbor Entrance Channel and Southampton Shoal Channel, often has vessels operating at low speeds where maneuverability is restricted. The regulation precludes vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, from entering the RNA if meeting, crossing, or overtaking another vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, could result.

Oakland Harbor RNA. The Oakland Harbor RNA encompasses the Oakland Bar Channel, Oakland Outer Harbor Entrance, Middle Harbor and Inner Harbor Entrance Channels. The charted Limited Traffic Area (LTA), which recommends that vessels of 300 or more gross tons transit one at a time to avoid crossing or meeting situations, is replaced by the Oakland Harbor RNA. The northern boundary of the Oakland Harbor RNA differs slightly from the LTA in that it follows the northern boundary of the Oakland Bar and Outer Harbor Entrance channels and extends to the "E" tower of the San Francisco-Oakland Bay Bridge. This regulation restricts vessels of 1600 or more gross tons, or tugs with a tow of 1600 or more gross tons, from entering the RNA if meeting, crossing, or overtaking another vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, could result.

Paragraph (e)(2) of this rulemaking substantially duplicates those regulations currently enumerated in 33 CFR 162.205(a). Paragraph (a) of 33 CFR 162.205 is removed, the section heading revised, and the remaining paragraphs of 33 CFR 162.205 redesignated as paragraphs (a) through (c).

Discussion of Comments and Changes

Four respondents to the NPRM provided comments on the proposed regulations. This section discusses the comments received as well as the Coast Guard's responses and changes to the rule.

One respondent encouraged the Coast Guard to adopt a maximum speed throughout the RNAs lower than the proposed 15 knots through the water. The commenter felt a 10 knot maximum, or an upper limit in that range, would better achieve the safety improvements being sought through this rulemaking. Specifically, the commenter proposed that at 15 knots, certain vessels may find it impossible to operate their engines such that an immediate response to any engine order could be effected without delay; whereas, at a speed in the range of 10 knots there should be no problem in meeting this additional rule requirement. The Coast Guard encourages vessels to travel at a speed which maximizes safety, as long as vessels do not exceed 15 knots through the water. The concerns of the respondent are adequately addressed by subparagraph (d)(2) of this section in that if it were not possible to ensure an immediate response to any engine order at 15 knots, then the vessel would be required to reduce speed until immediate response is possible. The Coast Guard feels that a maximum limit of less than 15 knots, imposed regardless of conditions and other circumstances, would be unnecessarily restrictive.

Two respondents provided comments regarding vessel movements through the Central Bay traffic lanes. Three issues were raised: (1) A respondent sought confirmation that the Deep Water Traffic Lane (DWTL) is available for the use of inbound vessels at the option of the master, pilot, or person directing the movement of vessel if there is not opposing traffic. This understanding is correct. Due to the presence of shoals and rocks in the Central Bay, the DWTL provides the best water depth safety margin for inbound vessels with a draft of 45 feet or greater, and for outbound vessels with a draft of 28 feet or greater. These deep draft vessels are required to use the DWTL. Inbound vessels with drafts less than 45 feet and outbound vessels with drafts less that 28 feet are not precluded from using the DWTL; however, it is recommended that these vessels with lesser drafts use the appropriate Central Bay Traffic Lane and proceed in the general direction of traffic flow for that lane so that vessel traffic in the DWTL is kept to a minimum. (2) A respondent recommended that vessels of a draft of twenty-four feet or greater be allowed to use the Deep Water Traffic Lane (DWTL) when outbound. The respondent stated that negative tides of over one and a half feet reduce the underkeel clearance to an unsafe level for vessels of a draft of more than twenty-four feet navigating over Shag and Arch Rocks. Selection of the appropriate Central Bay traffic lane is dependent upon the height of the tide, among other factors. Although the RNA is written with the intent of requiring use of the DWTL by inbound vessels of greater than 45 feet draft and outbound vessels or greater than 28 feet draft, vessels of lesser draft are not precluded from using the DWTL. The Coast Guard has considered the depth clearances available in the Central Bay traffic lanes and has determined that the 28-foot draft threshold for mandatory use of the DWTL while westbound provides an adequate margin of safety. (3) A respondent sought confirmation that under special circumstances, *i.e.*, safety-related reasons, inbound vessels could transit the outbound traffic lane north of Alcatraz Island with proper meeting arrangements and notification to Vessel Traffic Service San Francisco. This understanding is correct in that deviations from both this section and the National Vessel Traffic Services Regulation (59 FR 36316, July 15, 1994) may be authorized provided the requested deviation is based on vessel handling characteristics, traffic density, radar contacts, environmental conditions, or other relevant conditions, and that such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

A respondent expressed concern at being unable to safely comply with the Southern Pacific Railroad Bridge RNA's restriction against low-visibility transit when transiting from east to west, due to lack of suitable anchorages immediately to the east of the RNA. A vessel transiting from west to east can comply with the regulation as proposed because a vessel is capable of anchoring immediately west of the bridge if visibility is less than 1000 yards. However, when transiting east to west, the nearest suitable anchorage site is

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tons, could result.

vessels with drafts less that 28 feet are

the nearest suitable anchorage site is

located approximately 14 miles from the bridge. Based on this distance and the limitations on maneuverability experienced in the westbound approach to the RNA, the Coast Guard has modified the regulation to reflect procedures to be followed when transiting from east to west. Under this modified procedure, the decision to not proceed will be made in time to permit anchoring until visibility improves.

A respondent suggested meeting, crossing, and overtaking should be allowed in the Richmond Long Wharf Maneuvering Area within the Southampton Shoal/Richmond Harbor RNA by vessels of 1600 or more gross tons or tugs with a tow of 1600 or more gross tons. Vessels currently meet, cross, and overtake in the Richmond Long Wharf Maneuvering Area to avoid doing so in Southampton Shoal Channel, Richmond Harbor Entrance Channel, and Point Potrero Reach; the commenter contends that safety would be reduced if meeting, crossing, and overtaking was restricted in the RNA, due to the consequent increase in vessel conflicts in other areas of the San Francisco Bay. By including the Richmond Long Wharf Maneuvering area as part of the no meeting, crossing, and overtaking zone within this RNA, the Coast Guard feels the potential for an oil spill or other marine casualty is significantly reduced in this area within which maneuvering room is severely limited. The Coast Guard does not feel that any degradation in vessel safety would result from requiring vessel meeting, crossing, and overtaking situations to take place outside this RNA, because impacted vessels bound for the Richmond Long Wharf or Richmond Inner Harbor currently coordinate their movements and if necessary slow their transit speed to avoid meeting in Southampton Shoal Channel, Richmond Entrance Channel, and Point Potrero Reach without any impact on vessel safety. The disadvantage connected with any delays that may be experienced by vessels transiting this RNA would be far outweighed by the advantage of gains in maritime safety.

A final commenter requested exemption from the requirements of the RNAs to cover the operations of a specified vessel. Other than registering a general endorsement of the rulemaking, that comment did not discuss or make recommendations regarding the NPRM; therefore, the request will be answered via separate correspondence.

Regulatory Evaluation

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures is unnecessary. At this time, covered vessels voluntarily comply with the majority of the procedures and restrictions contained in these regulations, and rarely if ever experience delays due to the high degree of coordination provided by the VTS. Formally mandating that mariners follow these previously voluntary requirements will not have more than a minimal impact on any party.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking would have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the economic impact of the regulation to be minimal on all entities since it makes mandatory the existing voluntary practices. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

A Consistency Determination under the Coastal Zone Management Act (14 U.S.C. 1451, *et seq.*), has been prepared and placed in the rulemaking docket

List of Subjects

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending parts 162 and 165 of title 33, Code of Federal Regulations, as follows:

PART 162—[AMENDED]

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 162.205 is amended by removing paragraph (a), by redesignating paragraphs (b) through (d) as paragraphs (a) though (c); and by revising the section heading to read as follows: "Suisun Bay, San Joaquin River, Sacramento River, and connecting waters, CA."

PART 165—[AMENDED]

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

4. A new § 165.1114 is added to read as follows:

§ 165.1114 San Francisco Bay Region, California—regulated navigation area.

(a) *Applicability.* This section applies to all vessels unless otherwise specified.

(b) *Deviations.* The Captain of the Port, San Francisco Bay, or the Commanding Officer, Vessel Traffic Service San Francisco, as a representative of the Captain of the Port, may authorize a deviation from the requirements of this regulation when it is deemed necessary in the interests of safety.

(c) *Regulated Navigation Areas.—(1) San Francisco Bay RNA.* (i) The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

27°47′18″N, 122°30′22″W; thence to 37°48′55″N, 122°31′41″W; thence along the shoreline to
37°50′38″N, 122°28′37″W; thence to
37°50′59″N, 122°28′00″W; thence to
37°51′45″N, 122°27′28″W; thence to
37°52′58″N, 122°26′06″W; thence to
37°51′53″N, 122°24′58″W; thence to
37°51′53″N, 122°24′00″W; thence to
37°51′40″N, 122°23′48″W; thence to
27°49′22″N, 122°23′48″W; thence to
37°48′20″N, 122°22′12″W; thence to
37°47′02″N, 122°21′33″W; thence to
37°47′02″N, 122°23′04″W; thence along the shoreline to the point of beginning.

Datum: NAD 83

(ii) The San Francisco Bay RNA consists of the following defined sub-areas:

(A) *Golden Gate Traffic Lanes.—(1) Westbound traffic lane:* Bounded by the Golden Gate precautionary area and the COLREGS Demarcation Line (33 CFR 80.1142), between the separation zone and a line connecting the following coordinates:
37°48′30″N, 122°31′22″W; thence to 37°49′03″N, 122°29′52″W.

Datum: NAD 83

(*2*) *Eastbound traffic lane.* Bounded by the COLREGS Demarcation Line (33 CFR 80.1142) and the Golden Gate precautionary area, between the separation zone and a line connecting the following coordinates:
37°47′50″ N, 122°30′48″ W; thence to 37°48′30″ N, 122°29′29″ W.

Datum: NAD 83

(*3*) *Golden Gate Separation Zone:* The area 75 yards each side of a line connecting the following coordinates:
37°48′08″ N, 122°31′05″ W; thence to 37°48′46″ N, 122°29′40″ W.

Datum: NAD 83

(B) *Golden Gate Precautionary Area:* An area bounded by a line connecting the following coordinates beginning at:
37°48′30″ N, 122°29′29″ W; thence to
37°48′52″ N, 122°28′41″ W; thence to
37°48′52″ N, 122°27′49″ W; thence to
37°49′36″ N, 122°27′46″ W; thence to
37°49′55″ N, 122°28′09″ W; thence to
37°49′28″ N, 122°28′45″ W; thence to
37°49′03″ N, 122°29′52″ W; thence returning to the point of beginning.

Datum: NAD 83

(C) *Central Bay Traffic Lanes.—(1)* Westbound traffic lane: Bounded by the Central Bay precautionary area and the Golden Gate precautionary area, between the Central Bay and the Deep Water Traffic Lane separation zones.

(2) *Eastbound traffic lane:* Bounded by the Golden Gate precautionary area and the Central Bay precautionary area, between the Central Bay Separation Zone and a line connecting the following coordinates, beginning at:
37°48′41″ N, 122°25′17″ W; thence to
37°48′50″ N, 122°26′14″ W; thence to
37°48′52″ N, 122°27′49″ W.

Datum: NAD 83

(*3*) *Deep Water (two-way) Traffic Lane:* Bounded by the Central Bay precautionary area and the Golden Gate precautionary area, between the Deep Water Traffic Lane and a line connecting the following coordinates, beginning at:
37°49′55″ N, 122°28′09″ W; thence to
37°50′36″ N, 122°27′12″ W; thence to
37°50′47″ N, 122°26′26″ W.

Datum: NAD 83

(D) *Central Bay Separation Zone:* The area 75 yards each side of a line connecting the following coordinates, beginning at:
37°49′17″ N, 122°27′47″ W; thence to
37°49′35″ N, 122°25′25″ W.

Datum: NAD 83

(E) *Deep Water Traffic Lane Separation Zone:* The area 75 yards each side of a line connecting the following coordinates, beginning at:
37°49′36″ N, 122°27′46″ W; thence to
37°50′22″ N, 122°26′49″ W; thence to
37°50′25″ N, 122°26′22″ W.

Datum: NAD 83

(F) *Central Bay Precautionary Area:* An area bounded by a line connecting the following coordinates, beginning at:
37°48′41″ N, 122°25′17″ W; thence to
37°49′32″ N, 122°25′13″ W; thence to
37°50′25″ N, 122°26′22″ W; thence to
37°50′47″ N, 122°26′26″ W; thence to
37°51′04″ N, 122°24′58″ W; thence to
37°51′53″ N, 122°24′58″ W; thence to
37°51′53″ N, 122°24′00″ W; thence to
37°51′40″ N, 122°23′48″ W; thence to
37°49′22″ N, 122°23′48″ W; thence to
37°48′20″ N, 122°22′12″ W; thence to
37°47′02″ N, 122°21′33″ W; thence to
37°47′02″ N, 122°23′04″W; thence to
37°47′02″ N, 122°23′04″ W; thence returning along the shoreline to the point of beginning.

Datum: NAD 83

(*2*) *North Ship Channel RNA.* The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:
37°51′53″ N, 122°24′58″ W; thence to
37°54′15″ N, 122°27′27″ W; thence to
37°56′06″ N, 122°26′49″ W; thence to
37°56′06″ N, 122°26′34″ W; thence to
37°54′48″ N, 122°26′42″ W; thence to
37°54′02″ N, 122°26′10″ W; thence to
37°51′53″ N, 122°24′00″ W; thence to returning to the point of beginning.

Datum: NAD 83

(*3*) *San Pablo Strait Channel RNA.* The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:
37°56′06″ N, 122°26′49″ W; thence to
37°57′26″ N, 122°27′21″ W; thence to
38°00′48″ N, 122°24′45″ W; thence to
38°01′54″ N, 122°22′24″ W; thence to
38°01′44″ N, 122°22′18″ W; thence to
37°57′37″ N, 122°26′23″ W; thence to
37°56′06″ N, 122°26′34″ W; thence returning to the point of beginning.

Datum: NAD 83

(*4*) *Pinole Shoal Channel RNA.* The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:
38°01′54″ N, 122°22′25″ W; thence to
38°03′13″ N, 122°19′50″ W; thence to
38°03′23″ N, 122°18′31″ W; thence to
38°03′23″ N, 122°18′29″ W; thence to
38°03′05″ N, 122°19′28″ W; thence to
38°01′44″ N, 122°22′18″ W; thence returning to the point of beginning.

Datum: NAD 83

(*5*) *Southern Pacific Railroad Bridge RNA.* The following is a regulated navigation area—The water area contained within a circle with a radius of 200 yards, centered on 38°02′18″ N, 122°07′17″ W.

Datum: NAD 83

(*6*) *Southampton Shoal Channel/ Richmond Harbor RNA:* The following, consisting of two distinct areas, is a regulated navigation area—

(i) The waters bounded by a line connecting the following coordinates, beginning at:
37°54′17″ N, 122°22′00″ W; thence to
37°54′08″ N, 122°22′00″ W; thence to
37°54′15″ N, 122°23′12″ W; thence to
37°54′30″ N, 122°23′09″ W; thence along the shoreline to the point of beginning.

Datum: NAD 83

(ii) The waters bounded by a line connecting the following coordinates, beginning at:
37°54′28″ N, 122°23′36″ W; thence to
37°54′20″ N, 122°23′38″ W; thence to
37°54′23″ N, 122°24′02″ W; thence to
37°54′57″ N, 122°24′51″ W; thence to
37°55′05″ N, 122°25′02″ W; thence to
37°54′57″ N, 122°25′22″ W; thence to

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37°54'00" N, 122°25'13" W; thence to 37°53'59" N, 122°25'22" W; thence to 37°55'30" N, 122°25'35" W; thence to 37°55'40" N, 122°25'10" W; thence to 37°54'54" N, 122°24'30" W; thence to 37°54'30" N, 122°24'00" W; thence returning to the point of beginning.

Datum: NAD 83.

(7) *Oakland Harbor RNA.* The following is a regulated navigation area—The waters bounded by a line connecting the following coordinates, beginning at:

37°48'40" N, 122°19'58" W; thence to 37°48'50" N, 122°20'02" W; thence to 37°48'20" N, 122°21'00" W; thence to 37°48'15" N, 122°21'30" W; thence to 37°48'20" N, 122°21'12" W; thence to 37°48'28" N, 122°21'45" W; thence to 37°47'55" N, 122°21'26" W; thence to 37°48'03" N, 122°21'00" W; thence to 37°47'48" N, 122°18'46" W; thence to 37°47'55" N, 122°18'43" W; thence returning along the shoreline to the point of the beginning.

Datum: NAD 83

(d) *General Regulations.* (1) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, navigating within the RNAs defined in paragraph (c) of this section, shall not exceed a speed of 15 knots through the water.

(2) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, navigating within the RNAs defined in paragraph (c) of this section, shall have its engine(s) ready for immediate maneuver and shall operate its engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time.

(3) The master, pilot or person directing the movement of a vessel within the RNAs defined in paragraph (c) of this regulation shall comply with Rule 9 of the Inland Navigation Rules (INRs) (33 U.S.C. 2009) in conjunction with the provisions of the associated INRs.

(e) *Specific Regulations.*—(1) *San Francisco Bay RNA:* (i) A vessel shall navigate with particular caution in a precautionary area, or in areas near the terminations of traffic lanes or channels, as described in this regulation.

(ii) A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall:

(A) use the appropriate traffic lane and proceed in the general direction of traffic flow for that lane;

(B) use the Central Bay Deep Water Traffic Lane if eastbound with a draft of 45 feet or greater or westbound with a draft of 28 feet or greater;

(C) not enter the Central Bay Deep Water Traffic Lane when another power-driven vessel of 1600 or more gross tons or tug with a tow of 1600 or more gross tons is navigating therein when either vessel is:

(*1*) carrying certain dangerous cargoes (as denoted in section 160.203 of this subchapter);

(*2*) carrying bulk petroleum products; or

(*3*) a tank vessel in ballast if such entry would result in meeting, crossing, or overtaking the other vessel.

(D) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side, shall do so at as small an angle to the general direction of traffic flow as practicable;

(E) so far as practicable keep clear of the Central Bay Separation Zone and the Deep Water Lane Separation Zone;

(F) not cross a traffic lane separation zone unless crossing, joining, or leaving a traffic lane.

(*2*) *Pinole Shoal Channel RNA:* (i) The use of Pinole Shoal Channel RNA is reserved for navigation of vessels with a draft greater than 20 feet or tugs with tows drawing more than 20 feet. Vessels drawing less than 20 feet are not permitted within this RNA and are prohibited from crossing it at any point.

(ii) A power-driven vessel of 1600 or more gross tons or a tug with a tow of 1600 or more gross tons shall not enter Pinole Shoal Channel RNA when another power-driven vessel of 1600 or more gross tons or tug with a tow of 1600 or more gross tons is navigating therein when either vessel is:

(A) carrying certain dangerous cargoes (as denoted in section 160.203 of this subchapter);

(B) carrying bulk petroleum products; or

(C) a tank vessel in ballast if such entry would result in meeting, crossing, or overtaking the other vessel.

(iii) Vessels permitted to use this channel shall proceed at a reasonable speed so as not to endanger other vessels or interfere with any work which may become necessary in maintaining, surveying, or buoying the channel, and they shall not anchor in the channel except in case of a deviation authorized under paragraph (b) of this section.

(iv) This paragraph shall not be construed as prohibiting any necessary use of the channel by any public vessels while engaged in official duties, or in emergencies by pilot boats.

(*3*) *Southern Pacific Railroad Bridge (RNA):* (i) When visibility is less than 1000 yards within the Southern Pacific Railroad Bridge RNA, a power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons:

(A) When eastbound, shall not transit through the RNA.

(B) When westbound:

(*1*) During periods of reduced visibility and immediately prior to passing New York Point, the master, pilot, or person directing the movement of a vessel shall obtain a report of visibility conditions within the RNA.

(*2*) If visibility within the RNA is less than 1000 yards, the vessel shall not transmit the RNA. Vessels prevented from transiting due to low visibility shall not proceed past Mallard Island until visibility improves to greater than 1000 yards within the RNA.

(*3*) If a transit between New York Point and the Southern Pacific Railroad Bridge has commenced, and the visibility subsequently should became less than 1000 yards, the master, pilot, or person directing the movement of a vessel shall comply with paragraph (b) of this section and may proceed, taking all further appropriate actions in the interest of safety.

(ii) Visibility is considered to be 1000 yards or greater when both the following geographical points can be seen from the Southern Pacific Railroad Bridge:

(A) The Port of Benecia Pier, and

(B) The Shell Martinez Pier.

(4) *Southampton Shoal/Richmond Harbor RNA:* A power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, shall not enter Southampton Shoal/Richmond Harbor RNA when another power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, is navigating therein, if such entry would result in meeting, crossing, or overtaking the other vessel.

(5) *Oakland Harbor RNA:* A power-driven vessel of 1600 or more gross tons or a tug with a tow of 1600 or more gross tons shall not enter the Oakland Harbor RNA when another power-driven vessel of 1600 or more gross tons, or a tug with a tow of 1600 or more gross tons, is navigating therein, if such entry would result in meeting, crossing, or overtaking the other vessel.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 95-8124 Filed 3-31-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 83-5-6889a; FRL-5165-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from organic liquid bulk plants and terminals, surface coating of miscellaneous metal parts and products, aerospace assembly and component coating operations, flexible and rigid disc manufacturing, gasoline bulk terminals, gasoline bulk plants, and gasoline delivery vehicles. One of the rules concerns the submittal of VOC and NO_x emissions data to the district. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on June 2, 1995 unless adverse or critical comments are received by May 3, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1199.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include the following BAAQMD rules: Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994, except for Rule 8.6, which was submitted on May 24, 1994, and Rule 2.1, Section 429, which was submitted October 19, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco-Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area is classified as moderate[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 24, 1994, September 28, 1994, and October 19, 1994, including the rules being acted on in this notice. This document addresses EPA's direct-final action for the BAAQMD rules cited above. BAAQMD adopted Rule 8.6 on February 2, 1994, Rule 8.19, Rule 8.38, and Rule 2.1, Section 429 on June 15, 1994, and Rule 8.29, Rule 8.33, and Rule 8.39 on June 1, 1994. These submitted rules were found to be complete on July 14, 1994 (Rule 8.6), on November 22, 1994 (Rules 8.19, 8.29, 8.33, 8.38, 8.39), and on December 1, 1994 (Rule 2.1, Section 429). These rules were found complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and are being finalized for approval into the SIP.

Rule 8.6 controls volatile organic compounds (VOC) emissions from transfer operations at non-gasoline organic liquid bulk plants and terminals. Rule 8.19 limits the VOC emissions from the coating of miscellaneous metal parts and products. Rule 8.29 limits the emission of VOCs from the surface preparation and coating of aerospace components and cleanup of aerospace coating equipment. Rule 8.33

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area has retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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controls VOC emissions from transfer operations at gasoline bulk terminals. Rule 8.38 limits the emission of VOCs from the manufacture of flexible and rigid magnetic data storage discs. Rule 8.39 controls VOC emissions from transfer operations at gasoline bulk plants. Rule 2.1, Section 429 requires certain VOC and NO_X facility owners to report VOC and oxides of nitrogen (NO_X) emissions data annually to the district. VOC and NO_X emissions contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the Bay Area's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8.19 is entitled "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products" [EPA–450/2–78–015]. The CTG entitled "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" [EPA–450/2–77–026] applies to Rule 8.6 and Rule 8.33. The CTG entitled "Control of Volatile Organic Emissions from Bulk Gasoline Plants" [EPA–450/2–77–035] applies to Rule 8.6 and Rule 8.39. The CTG entitled "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" [EPA–450/2–78–051] applies to Rule 8.33 and Rule 8.39. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1, and in "Model Volatile Organic Compound Rules for Reasonably Available Control Technology," Office of Air Quality Planning Standards, June 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants includes the following significant changes from the current SIP:

- The mass emission limit for bulk terminals was lowered from 0.65 lb/1000 gallons to 0.17 lb/1000 gallons,
- Mass emission limits were added for bulk plants (0.35 lb/1000 gallons) and for deliveries to storage tanks (0.17 lb/1000 gallons),
- The rule now covers liquids with vapor pressures greater than 0.5 psia.

BAAQMD's submitted Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products includes the following significant changes from the current SIP:

- Exemptions include compliant powder coatings and low usage coatings,
- Certain coatings with limits that exceed the VOC content limits in the CTG are allowed,[4]
- Petition requirements for low usage and specialty coatings are introduced,
- Emission reduction credits must be adjusted to reflect federal RACT.

BAAQMD's submitted Rule 8.29, Aerospace Assembly and Component Coating Operations includes the following significant changes from the current SIP:

- The low usage coating exemption is 200 gallons per facility per calendar year,
- Operations that use less than 20 gallons of coating in any calendar year are exempt from certain recordkeeping requirements,
- The abatement efficiency for control of emissions from non-compliant coatings must be at least 85%,
- Petition requirements for low usage coatings are introduced.

BAAQMD's submitted Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles includes the following significant changes from the current SIP:

- The emission limit for vapor recovery systems was lowered from 0.55 lb/1000 gallons to 0.08 lb/1000 gallons,
- Test methods were updated.

BAAQMD's submitted Rule 8.38, Flexible and Rigid Disc Manufacturing includes the following major elements:

- Total control efficiency must be at least 85% for disc coating and polishing lines,
- Coating mixing operation requirements specify dimensions and materials for the vats.

BAAQMD's submitted Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles includes the following significant changes from the current SIP:

- The emissions limit for vapor recovery systems was lowered from 0.55 lb/1000 gallons to 0.50 lb/1000 gallons,
- Test procedures were either added or updated.

BAAQMD's submitted Rule 2.1, Section 429, Emissions Statement includes the following major issue:

- Certain VOC and NO_X facility owners are required to report emissions data annually to the district.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 2, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000. SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 15, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (197)(i)(B), (199)(i)(A)(5), (202) introductory text, and (202)(i) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(197) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–6, adopted on February 2, 1994.

* * * * *

(199) * * *

(i) * * *

(A) * * *

(*5*) Rules 8–29, 8–33, and 8–39, adopted on June 1, 1994, and Rules 8–19 and 8–38, adopted on June 15, 1994.

* * * * *

(202) New and amended regulations for the following APCDs were submitted on October 19, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 2–1, adopted on June 15, 1994.

* * * * *

[FR Doc. 95–8042 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL104–1–6697a; FRL–5158–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On November 28, 1994, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for Marine Vessel Loading as part of the State's 15 percent (%) Rate of Progress (ROP) Plan control measures for Volatile Organic Matter (VOM) emissions. A final approval action is being taken because the submittal meets all pertinent Federal requirements. The control measures require marine terminals, from May 1 through September 15, to operate a vapor collection and control system which achieves a 95% control efficiency. This type of control is not required as Reasonably Available Control Technology (RACT) under the Clean Air Act, and is therefore not subject to the same RACT stringency. In the proposed rules section of this Federal Register, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule is effective June 2, 1995, unless an adverse comment is received by May 3, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne M. Lindsay at (312) 353–1151 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne M. Lindsay at (312) 353–1151.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 28, 1994, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision request which amends 35 Ill. Adm. Code Parts 218 and 219, to include control measures for the loading of marine vessels and, in addition, eliminates the

[4] EPA has determined that emissions resulting from the higher limits do not represent a significant difference from the allowable emissions under the applicable CTG standards and that they fall within the "5% Rule" in the Blue Book. The "5% Rule" allows states to depart from a CTG standard upon a demonstration that the departure results in "no significant difference" in emissions (i.e. less than 5% from the CTG allowable).

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applies to Rule 8.6 and Rule 8.39. The

5% from the CTG allowable).

document in this **Federal Register**

exemption for barge loading from the "non-control technique guideline" Subparts, for the Chicago and Metro-East "severe" and "moderate" ozone nonattainment areas. In doing so, IEPA believes that these control measures, in part, will reduce VOM emissions enough to meet the 15% ROP requirements. As required by section 182(b) of the Clean Air Act (the Act), affected States must submit a Plan to reduce 1990 VOM emissions by 15% by 1996.

Illinois estimates that the 15% reductions required for Chicago and the Metro-East are equivalent to 250 tons per day (TPD) and 27 TPD, respectively, of which controls from marine vessel loading will contribute 1.3 TPD (1%) and 11.82 TPD (44%), respectively.

II. Analysis of State Submittal

The requirements of the rule apply to sources (marine terminals) that load or are permitted to load gasoline or crude oil to marine vessels during the Illinois ozone season (May 1 through September 15). The rule does not apply to the fueling of marine vessels or the transfer of liquids from one marine vessel to another marine vessel.

The rule control requirements specify that, unless an owner or operator chooses an alternative control option (i.e., Section 218/219.762, subsection (c)), the owner/operator shall equip each terminal with a vapor collection and a control system that results in overall VOM reductions of at least 95 percent by weight during loading, is maintained to prevent leaks, odors, and fumes, and has been certified by the Coast Guard.

Further, subsection (b) requires that from May 1 through September 15, gasoline or crude oil cannot be loaded unless they are equipped with vapor collection equipment certified by the Coast Guard, are capable of being connected to the terminal's vapor collection system, and are vapor-tight. Vapor-tightness requires that the owner or operator of a marine vessel either present documentation, prior to loading to show that a leak test (Method 21, 40 CFR part 60, appendix A) was passed in the preceding 12 months, or be subject to a leak test during the last 20% of loading with documented results. Failing the test prohibits subsequent loading of the marine vessel until such time that the repair has been made and the documentation provided. Where loading of a marine vessel takes place with a vacuum-assisted vapor collection system (See 218/219.762, subsection (b)(3)A)), the marine vessel is not required to provide evidence of a leak test or be subject to one during loading.

In subsection (c), the rule lists three alternatives to the requirements under subsections (a) and (b): (1) Operation of the control system can be performed in accordance with Federal regulations pursuant to sections 112(d) or 183 (f) of the Clean Air Act; (2) reductions equivalent to those listed in appendix E of the rule, through a federally enforceable emission reduction plan; or (3) an alternative control plan approved by USEPA in a federally enforceable permit or as a SIP revision. Compliance with this rule is required by May 1, 1996.

Note: A federally enforceable emission reduction plan may include reductions from: (a) The shut down emission units and withdrawal of permits; (b) over-control of other emission units; or (c) prohibition of loading activity of gasoline or crude oil during the control period. Such provisions will be incorporated into a permit as federally enforceable conditions where applicable. Compliance with this rule is required by May 1, 1996.

All marine terminals, except those complying with alternative control requirements, are required to certify compliance upon initial start-up or upon a change in the compliance method. Testing and monitoring, recordkeeping and reporting procedures are also required and apply during the regulatory control period. Those sources with alternative control requirements must maintain daily throughput records. All records will be maintained for a period of 3 years.

The control requirements, compliance certifications, testing and monitoring, recordkeeping and reporting requirements specified in the rule, are appropriate as they apply to all sources that load gasoline or crude oil into marine vessels (i.e., there is no minimum threshold of applicability).

The Illinois rules in no way infringe upon the U.S. Coast Guards jurisdiction and regulations, and similarly, the U.S. Coast Guard requirements do not, in any way, relieve a marine terminal from obtaining the appropriate permits from IEPA, or restrict IEPA's authority to inspect or enforce. Further, the reductions required by these rules do not interfere with required reductions which result from compliance with any other Federal controls or measures included in the Illinois SIP.

III. Final Rulemaking Action

The USEPA has undertaken its analysis of the marine vessel loading revision request based on a review of the materials presented by IEPA and has determined that this SIP revision request is approvable. Because USEPA considers this action noncontroversial and routine, we are approving it today without prior proposal.

These rules, applicable to the Chicago and Metro-East St. Louis, amend 35 Ill. Adm. Code Part 211 Subpart B, amend Sections 218/219.101 and 218/219.106, add Subpart GG to Parts 218 and 219, including Appendix E, and amend Sections 218/219.920, 218/219.940, 218/219.960, and 218/219.980.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on June 2, 1995, unless adverse or critical comments are received by May 3, 1995.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference.

Dated: February 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(106) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(106) On November 23, 1994, the State submitted amended marine vessel loading rules which consisted of revised definitions, and revisions to the Ozone Control Plan for the Chicago and Metro-East St. Louis areas.

(i) *Incorporation by reference.*

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.3480 Loading Event and 211.3660 Marine Vessel added at 18 Ill. Reg. 166769, effective October 25, 1994; Sections 211.3650 Marine Terminal, and 211.6970 Vapor Collection System, and Section 211.6990 Vapor Control System amended at 18 Ill. Reg. 16769, effective October 25, 1994.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A; General Provisions, Sections 218.101 Savings Clause and 218.106 Compliance Dates amended at 18 Ill. Reg. 16392, effective October 25, 1994; Subpart GG: Marine Terminals, Sections 218.760 Applicability, 218.762 Control Requirements, 218.764 Compliance Certification, 218.766 Leaks, 218.768 Testing and Monitoring, and 218.770 Recordkeeping and Reporting added at 18 Ill. Reg. 16392, effective October 25, 1994; Appendix E: List of Affected Marine Terminals amended at 18 Ill. Reg. 16392, effective October 25, 1994.

(C) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart A; General Provisions, Sections 219.101 Savings Clause and 219.106 Compliance Dates amended at 18 Ill. Reg. 16415, effective October 25, 1994; Subpart GG: Marine Terminals, Sections 219.760 Applicability, 219.762 Control Requirements, 219.764 Compliance Certification, 219.766 Leaks, 219.768 Testing and Monitoring, and 219.770 Recordkeeping and Reporting added at 18 Ill. Reg. 16415, effective October 25, 1994.

[FR Doc. 95–8044 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL91–1–6279a; FRL–5169–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the site-specific State Implementation Plan (SIP) revision request submitted by the State of Illinois on January 25, 1994, for Quantum Chemical Corporation's (Quantum) facility located in Morris, Illinois. This site-specific SIP revision alters certain Reasonably Available Control Technology (RACT) regulations contained within 35 Illinois Administrative Code (IAC) Part 218 as they apply to specific units or plants within this facility. This approval is based upon sufficient demonstration that factors relating to this facility are substantially and significantly different from those relied upon in adopting 35 IAC Part 218, and that these factors warrant a corresponding adjustment of this facility's RACT requirements. The submittal was reviewed for completeness, and was found to be complete on March 21, 1994. The rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective June 2, 1995 unless notice is received by May 3, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the USEPA's technical analysis are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental

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Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of Submittal

On January 25, 1994, the Illinois Environmental Protection Agency (IEPA) submitted a site-specific SIP revision request for Quantum's Morris, Illinois facility. This site-specific SIP revision would relax the Volatile Organic Material (VOM) emission reduction requirements for the polymer manufacturing units and cooling water towers at this facility.

The Quantum facility is located in Aux Sable Township, Grundy County. Aux Sable Township was added to the Chicago ozone nonattainment area, with an effective date of January 6, 1992. The Chicago ozone nonattainment area is covered by the RACT requirements contained within 35 IAC Part 218. The site-specific SIP revision submitted on January 25, 1994, seeks relaxation of these requirements as they apply to specific units or plants within the Quantum facility.

The Quantum facility in Morris, Illinois is an integrated petroleum manufacturing complex that includes manufacturing operations classified as organic chemical manufacturing (Standard Industrial Code [SIC] 2869) and polymer manufacturing (SIC 2821). The site-specific SIP revision is confined to VOM (VOM, as defined by the State of Illinois is identical to "volatile organic compounds" [VOC], as defined by the USEPA) emission sources associated with polymer manufacturing and water cooling. In the polymer manufacturing processes, plastic resins are synthesized in closed, high pressure reactor units from feed stocks of ethane, propane, and butane. During the synthesis process, some of the VOM are entrained within the polymer resins. These entrained gases are emitted to the atmosphere with the conveying air at numerous exhaust points.

The site-specific SIP revision seeks an adjusted standard for three plants at the Quantum facility: the Low Density Polyethylene (LDPE) Plant; the Linear Low Density Polyethylene (LLDPE) Plant; and the Polypropylene Plant. The site-specific SIP revision also seeks an adjusted standard for six water cooling towers at the facility.

The site-specific SIP revision would alter application of regulations found within two sections of the Chicago area RACT rules. These are sections 218.966 and 218.986 of the 35 IAC. The rules in section 218.966 address miscellaneous organic chemical manufacturing processes (35 IAC: Subpart RR), and the rules in section 218.986 address "other" VOM emission sources (35 IAC: Subpart TT). The request for an adjusted standard from section 218.966 deals solely with the requirements found in subsections (a) and (b), which require a reduction of VOM emissions of at least 81 percent or an alternative control plan which has been approved by the IEPA and the USEPA. The request for an adjusted standard from section 218.986 deals with the requirements found in subsections (a), (b), and (c), which require an 81 percent reduction in uncontrolled VOM emissions, an independent requirement for coating lines (not applicable in this case), or an alternative control plan which has been approved by the IEPA and the USEPA.

The adjusted standard would pertain to VOM emission sources from Quantum's polymer plants' finishing and storage units with the affected units defined as follows:

(1) LDPE Plant:
(a) Spin Driers—total of 4 spin driers, one for each line;
(b) Blenders—total of 18 blenders, BL–1 through BL–18, and associated bagfilters;
(c) Storage and Car Loading—total of 17 silos, car loading facilities, and associated bagfilters;
(2) LLDPE Plant:
(a) Pellet Driers—total of 2 spin dryers, one for each line;
(b) Blenders—total of 12 blenders, 4 for line #5 (BL–13 through BL–16) and 8 for line #6 (BL–30 through BL–37), and associated bagfilters;
(c) Multipass Separators—total of 4 multipass separators, 2 at the booster blower and 2 at car loading facilities, and associated bagfilters;
(d) Scalperators and Hopper Cars—total of 4 scalperators and 2 bagfilters at car loading facilities;
(3) Polypropylene Plant:
(a) Pellet Driers—total of 4 spin dryers, one for each line;
(b) Blenders—total of 7 blenders and associated bagfilters; and
(c) Storage and Car Loading—total of 24 silos, car loading facilities, and associated bagfilters.

In addition, the adjusted standard would pertain to the following:
(1) Non-contact cooling water towers at the Ethylene Plant, LDPE Plant, Polypropylene Plant, Utilities Area, and Process Research Area; and
(2) Process cooling water tower at the Ethylene Oxide/Ethylene Glycol Plant.

The SIP revision defines the current operations at the sources listed above to be RACT with no additional VOM emission reduction needed to meet the requirements of 35 IAC sections 218.966 and 219.986.

In addition to the above, the SIP revision requires Quantum to comply with the following at the LDPE Plant:

(1) VOM concentrations from the LDPE finishing operations, measured at the discharge of the fabric filters (during normal operation in which two production lines are running through one bagfilter), may not exceed 250 parts per million by weight;

(2) VOM concentrations from LDPE spin dryers may not exceed 500 parts per million by weight;

(3) Quantum shall conduct testing in accordance with 35 IAC section 218.105 to determine VOM concentrations from the LDPE finishing operation and spin dryers upon written request by the IEPA or upon a significant change in LDPE product or operation that may increase VOM emissions; and

(4) Quantum shall maintain operation records, as specified in an operating permit, that identify any significant changes in LDPE product or operation that may increase VOM emissions.

The adjusted standards described above were adopted by the Illinois Pollution Control Board on October 7, 1993, and effective on October 7, 1993.

In support of the SIP revision and adjusted standard, Quantum and IEPA note that the particular type of polymer manufacturing employed at the Morris, Illinois facility was not considered during the promulgation of Part 218 of 35 IAC and was not reviewed by the USEPA in the preparation of the Control Technology Guideline (CTG) upon which RACT for the polymer manufacturing industry was based. It is noted, however, that the USEPA did review this type of polymer manufacturing during the development of the New Source Performance Standard (NSPS) for this source category. The NSPS for this source category exempts (40 CFR Part 60.560(g)) vent streams from controls where VOM concentrations are less than 0.1 percent by weight. The emission sources for which Quantum has requested an adjusted standard have vent stream VOM concentrations below 0.1 percent by weight.

Quantum commissioned a study to review possible emission control strategies and costs for the low-VOM concentration emission sources associated with the polymer manufacturing units. This study considered nine possible control technologies, including carbon adsorption, absorption, condensation, thermal incineration, catalytic incineration, regenerative thermal incineration, flaring, and use of a low pressure product separator or degassing extruder. The carbon adsorption, absorption, and condensation technologies were found to be technically infeasible. The remaining control technologies, although considered to be technically feasible, were found to be economically unacceptable, with costs ranging from $7,270 per VOM ton reduction for regenerative thermal incineration to $183,110 per VOM ton reduction for flaring. An additional drawback to the incineration technologies is the increased emission of oxides of nitrogen, which Quantum and the IEPA believe may add to the formation of downwind ozone.

Quantum and the IEPA agree that, under normal operating procedures, little or no VOM should be emitted from the non-contact cooling towers. In the case of the single contact cooling tower, which cools process water, the VOM emissions are contended to be negligible due to the high solubility and low vapor pressure (less than 1 millimeter Hg at ambient temperatures) of ethylene glycol, which is the primary VOM to be included in the cooled water. Water sampling has also shown a small concentration of ethylene oxide, with an expected emission rate of 3.4 tons per year under normal operating conditions. Therefore, total VOM emissions from the contact cooling tower are expected to be minimal.

II. USEPA Analysis of Submittal

Review of the emissions data provided in Attachment A and Exhibit E ("Economic Analysis and Technology Review For Control of VOM Emissions From Polyolefin Finishing and Storage Units") of the SIP revision submittal shows that the majority of the VOM emissions occur at the LDPE Plant. This plant accounts for 94.1 percent of the annual VOM emissions from the polymer manufacturing operations at this facility. At the LDPE Plant, nearly all VOM emissions are associated with vent emissions from spin dryer and blending operations, with the emissions from the blending operations dominating.

The IEPA and Quantum have correctly interpreted the implications of the emission limits specified for vent streams in the NSPS standard. Review of process flow and emissions data contained in Attachment A, Exhibit E, and Exhibit C ("LDPE Synthesis Simplified Process Flow Diagram") of the submittal show that most of the VOM emissions from the LDPE Plant occur at vent streams. Given the low density of VOM in the vent streams, less than 0.1 percent by weight, these emissions would be exempted if the NSPS is assumed to equivalent to RACT for this facility. It is the opinion of the USEPA that this is the case given the current nature of the NSPS for this source type and the lack of other VOM control analyses specificly representing RACT. It should be noted that the VOM emission limits adopted by the State for this source would limit emissions to levels below the NSPS cutoffs specified for vent streams.

The remaining emissions from storage and loading operations and from water cooling towers can not be exempted under the NSPS exemption specified by Quantum and the State. It is noted, however, that these emissions are expected to total to less than 10 tons VOM per year. Given the small total of these emissions and the high cost of control, in excess of $7,500 per ton of VOM controlled, the USEPA agrees that the current operations at this facility may be assumed to be RACT.

Based on the State's submittal, the USEPA approves this site-specific revision to the Illinois SIP.

Procedural Background

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial action and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on June 2, 1995, unless USEPA receives adverse or critical comments by May 3, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revision to the rulemaking based on any comments received in response to today's action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on June 2, 1995.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(108) to read as follows:

§ 52.720 Identification of plan.

(c)* * *

(108) On January 25, 1994, the State submitted a revision to its ozone State Implementation Plan (SIP) for Quantum Chemical Corporation's facility located in Morris, Aux Sable Township, Grundy County, Illinois. It grants an adjusted standard from Parts 35 Illinois Administration Code (IAC) 218.966 and 218.986 as they apply to specific units or plants within this facility.

(i) Incorporation by reference.

(A) Illinois Pollution Control Board Final Opinion and Order, AS 92–14, adopted on October 7, 1993, and effective on October 7, 1993.

[FR Doc. 95–8038 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–9–1 6878; FRL–5180–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the submission date for material submitted by the State of Missouri in the final rule published on August 24, 1994 which approved revisions to the Missouri State Implementation Plan. Missouri submitted administrative amendments to rule 10 CSR 10–6.030 which renumber and reorganize sections within that rule.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: In FR Doc. 94–20737 in the **Federal Register** of August 24, 1994 (59 FR 43480), the submission date in § 52.1320(c)(79) of "September 20, 1991," should have been "November 20, 1991."

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 3, 1995.

William Rice,

Acting Regional Administrator.

Correction of Publication

Accordingly, the regulations published at 59 FR 43480 on August 24, 1994, are corrected as follows:

§ 52.1320 [Corrected]

On page 43481, in the second column, in § 52.1320, in paragraph (c)(79) introductory text, in the last line, the date "September 20" is corrected to read "November 20".

[FR Doc. 95–7748 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–10–1–5223a; FRL–5171–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Texas SIP addressing visible emissions. The purpose of approving this revision is to enable the visible emissions provisions of Texas Regulation I to become federally enforceable.

DATES: This final rule will become effective on June 2, 1995, unless adverse or critical comments are received by May 3, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Mr. Bill Deese, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

Analysis of State Submissions

A. Procedural Background

The Clean Air Act (CAA) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a state under the CAA must be adopted by such state after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the CAA and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held public hearings on February 1–2, 1989, May 17, 1990, May 21–22, 1992, and on March 17, 1993, to entertain public comment on the proposed revisions to the visible emissions provisions in Texas Regulation I. Following the public hearings and consideration of hearing comments, the revisions were adopted by the State and submitted by the Governor to the EPA by cover letters dated August 21, 1989, January 29, 1991, October 15, 1992, and August 4, 1993. Each package has been deemed complete in accordance with 40 CFR part 51, appendix V.

B. Visible Emissions Requirements in Texas Regulation I

This action approves the visible emissions requirements of Texas Regulation I into the Texas SIP. The provisions of Regulation I being approved in this action regarding visible emissions set opacity limitations for grandfathered and new stationary vents, gas flares, motor vehicles, railroad locomotives, ships, structures and all other unspecified sources. Compliance test methods (e.g. test method 9 from 40 CFR part 60, appendix A) and recordkeeping requirements are also specified in the visible emissions provisions, including requirements for continuous emissions monitoring systems. In addition, this action approves certain requirements that must be met for the approval of alternate opacity limitations. For details regarding the visible emissions requirements being approved in this action, please refer to the Technical Support Document.

Final Action

This final action approves revisions to Texas Regulation I addressing visible emissions. These revisions update the Texas SIP and strengthen the provisions of Texas Regulation I. The revisions were submitted by the Governor to the EPA by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

The EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective June 2, 1995, unless adverse or critical comments are received by May 3, 1995.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 2, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. section 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 3, 1995.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(94) Revisions to the Texas SIP addressing visible emissions requirements were submitted by the Governor of Texas by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, "Requirements for Specified Sources;" Subsection 111.111(a)(first paragraph) under "Visible Emissions;" Subsections 111.111(a)(1)(first paragraph), 111.111(a)(1)(A), 111.111(a)(1)(B) and 111.111(a)(1)(E) under "Stationary Vents;" Subsection 111.111(b)(first paragraph) under "Compliance Determination Exclusions;" and Subsections 111.113(first paragraph), 111.113(1), 111.113(2), and 111.113(3) under "Alternate Opacity Limitations," as adopted by the TACB on June 16, 1989.

(B) TACB Board Order No. 89–03, as adopted by the TACB on June 16, 1989.

(C) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, "Requirements for Specified Sources;" Subsections 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) under "Railroad

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Locomotives or Ships;" Subsections 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) under "Structures;" and Subsections 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) under "Other Sources," as adopted by the TACB on October 12, 1990.

(D) TACB Board Order No. 90–12, as adopted by the TACB on October 12, 1990.

(E) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, "Requirements for Specified Sources;" Subsections 111.111(a)(1)(C), 111.111(a)(1)(D), 111.111(a)(1)(F)(first paragraph), 111.111(a)(1)(F)(i), 111.111(a)(1)(F)(ii), 111.111(a)(1)(F)(iii), 111.111(a)(1)(F)(iv), and 111.111(a)(1)(G) under "Stationary Vents;" Subsections 111.111(a)(2)(first paragraph), 111.111(a)(2)(A), 111.111(a)(2)(B), and 111.111(a)(2)(C) under "Sources Requiring Continuous Emissions Monitoring;" Subsection 111.111(a)(3)(first paragraph) under "Exemptions from Continuous Emissions Monitoring Requirements;" Subsection 111.111(a)(4), "Gas Flares," title only; Subsection 111.111(a)(5)(first paragraph) under "Motor Vehicles;" Subsections 111.111(a)(6)(A), 111.111(a)(6)(B)(first paragraph), 111.111(a)(6)(B)(i) and 111.111(a)(6)(B)(ii) under "Railroad Locomotives or Ships" (Important note, the language for 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) was formerly adopted as 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) on October 12, 1990); Subsections 111.111(a)(7)(A), 111.111(a)(7)(B)(first paragraph), 111.111(a)(7)(B)(i) and 111.111(a)(7)(B)(ii) under "Structures" (Important note, the language for 111.111(a)(7)(A) and 111.111(a)(7)(B)(i) was formerly adopted as 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) on October 12, 1990); and Subsections 111.111(a)(8)(A), 111.111(a)(8)(B)(first paragraph), 111.111(a)(8)(B)(i) and 111.111(a)(8)(B)(ii) under "Other Sources" (Important note, the language for 111.111(a)(8)(A) and 111.111(a)(8)(B)(i) was formerly adopted as 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) on October 12, 1990), as adopted by the TACB on September 18, 1992.

(F) TACB Board Order No. 92–19, as adopted by the TACB on September 18, 1992.

(G) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, "Requirements for Specified Sources;" Subsections 111.111(a)(4)(A)(first paragraph), 111.111(a)(4)(A)(i), 111.111(a)(4)(A)(ii), and 111.111(a)(4)(B) under "Gas Flares," as adopted by the TACB on June 18, 1993.

(H) TACB Board Order No. 93–06, as adopted by the TACB on June 18, 1993.

. (ii) Additional material.

(A) TACB certification letter dated July 27, 1989, and signed by Allen Eli Bell, Executive Director, TACB.

(B) TACB certification letter dated January 9, 1991, and signed by Steve Spaw, Executive Director, TACB.

(C) TACB certification letter dated October 1, 1992, and signed by William Campbell, Executive Director, TACB.

(D) TACB certification letter dated July 13, 1993, and signed by William Campbell, Executive Director, TACB.

[FR Doc. 95–8040 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5181–6]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Independent Nail Superfund site in Beaufort, South Carolina from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of South Carolina have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of South Carolina have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Terry L. Tanner, Remedial Project Manager, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–7791.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Independent Nail Superfund Site, Beaufort, South Carolina

A Notice of Intent to Delete for this site was published January 13, 1995 (60 FR 3189). The closing date for comments on the Notice of Intent to Delete was February 13, 1995. EPA received no comments during this period.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover cost associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: March 24, 1995.

John H. Hankinson,

Regional Administrator.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B [Amended]

2. Appendix B Part 300 is amended by removing the entry for Independent Nail Superfund Site, Beaufort, South Carolina.

[FR Doc. 95–8026 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1084

[Ex Parte No. MC–223]

Electronic Filing of Surety Bonds, Trust Fund Agreements, Insurance Certificates, and Cancellations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its regulations to permit the electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. The availability of electronic filing constitutes an additional option; insurers desiring to continue to file the prescribed printed forms may do so. The electronic filing option should assist insurers that make large numbers of filings and permit the Commission to process these filings more efficiently.

EFFECTIVE DATE: This rule is effective May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia A. Burke, (202) 927–5520, or James W. Greene (202) 927–5612. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPR) served December 6, 1994, and published at 59 FR 62705 (1994), we proposed rules to provide for the electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. Comments were received from 10 interested parties,[1] all of which generally favored the proposal.

While our proposal contemplated electronic filing as an additional option, we requested comments regarding whether electronic filing should be made mandatory. All of the commenters that addressed this issue stated that electronic filing should not be mandatory. They indicated that the cost to set up electronic filing procedures might be too high for low-volume filers, and that, if electronic filing were mandated, such filers might stop offering the affected coverages, which would reduce competition in the field. A voluntary system, on the other hand, would encourage competition and help hold down costs ultimately paid by the public, which commenters contend is consistent with legislative intent and sound public policy. Upon review of the comments, we have decided to make electronic filing optional, as envisioned in the proposed rule.

Minnesota and AIA suggest that the Commission consider a more sophisticated system. Minnesota would like to see a system using electronic data interchange (EDI) in which insurance providers would post insurance messages to a network where they could be pulled up by any interested party, including the Commission and state regulatory bodies. AIA suggests that a more interactive system, which could notify filers immediately when there is a problem with a filing, would allow problems to be corrected more quickly and would benefit the public, the Commission, motor carriers and insurers. We agree that additional functionality would be desirable; however, as pointed out in the NPR, our insurance data base is part of a much larger system, and our limited financial resources do not permit a larger development effort at this time. The system we propose will produce a number of immediate benefits and could facilitate the subsequent development of a more comprehensive system.

Certain of the enhancements for which these commenters indicate a need will be achieved, at least in part, with the system we propose. CLBI states that a report showing the number and type of transactions transmitted and received by the Commission is desirable at the time of transmission, and that the value of such information is significantly reduced if it is not available until the monthly billing cycle. The system we propose will give filers the option to request and receive a report showing all transactions received in each transmission.[2] While the report will not identify those transactions which have deficiencies that might result in their subsequent rejection, the process of identifying deficient transactions to the filers will be speeded up by eliminating the requirement to manually process the printed forms and enter the information on the data base.[3]

Surety requests that the surety company's bond number be included in the Commission's data base. The proposed rule contained a field for an insurance policy number, and we are modifying it to allow a bond number to be included in that field for surety bond filings. AIA expresses concern that we are mandating the disclosure of insurance policy numbers in the electronic filing system. The prescribed printed certificates currently contain a field for the insurance policy number, and we accept printed filings only if this field is completed. We will follow the same procedure for electronic filings.

Fireman's Fund requests that we allow filings on computer tapes or diskettes where telephone connections may not be feasible. We will not provide for such filings at this time. The dial-up connection contemplated in our proposed rule does not impose extensive equipment requirements, and we do not anticipate that it will impose a significant burden on insurers desiring to file electronically. Should experience indicate otherwise, we will consider additional options at a later date.[4]

We indicated in the NPR that we were considering the option of allowing insurers to establish prepaid accounts from which filing fees would automatically be deducted, as a way to reduce costs to both insurers and the Commission. Only two commenters addressed this issue: Fireman's Fund stated that if such accounts are established they should be voluntary, and that it was uncertain whether it would use them; and Northland stated that it would not favor such an arrangement because it raised serious concerns relating to the reconciliation of accounts. We will not take any action to establish such accounts at this time.[5]

We also indicated in the NPR that electronic filing would be done through the transmission of American Standard Code Information Interchange (ASCII) delimited files. After further analysis, however, we have determined that fixed field records will be preferable. We have determined that we will be able to accept transmissions up to 14400 baud, rather than the 2400 baud rate indicated in the NPR, and, given the relatively small volume of data to be transmitted in each session, we do not believe fixed field records will add appreciably to transmission time. We have added start field and end field columns to the description table contained in subsection 1043.12(c) to further explain the format.

AIA raises several questions regarding how the system will operate. We anticipate that electronic filings received before the close of a business day will be processed overnight.[6] During processing, error-free transactions will be accepted, transactions containing certain

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[1] American Insurance Association (AIA); Cargo Liability Bureau, Inc. (CLBI); Central Analysis Bureau, Inc. (Central); Continental Insurance (Continental); Fireman's Fund Insurance Company (Fireman's Fund); Great West Casualty Company (Great West); International Brotherhood of Teamsters (IBT); Minnesota Department of Transportation (Minnesota); Northland Insurance Companies (Northland); and The Surety Association of America (Surety).

[2] Northland indicates that it interprets our proposed rule as allowing insurers to file a "batch" of filings (i.e., multiple transactions in a single transmission) in one transmission. Northland is correct.

[3] AIA and Central indicate a need for more rapid notification of accepted filings. Electronic filing will be helpful in this regard by reducing the manual effort required to prepare statements.

[4] Fireman's Fund also suggests a transition period of not less than two years; however, since electronic filing will be voluntary, we see no need to impose a lengthy transition period.

[5] We would point out, however, that any insurer desiring to establish a prepaid account can do so, in any event, simply by prepaying its account. Where a credit balance exists, our billing system will apply the credit (or portion thereof) against current charges.

[6] Dial-up access to the system will allow filings to be made 24 hours a day, 7 days a week (except for scheduled maintenance).

June 18, 1993.

FR 3189). The closing date for

regulations to permit the electronic

Association of America (Surety).

manual effort required to prepare statements.

for scheduled maintenance).

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designated errors will be rejected, and questionable transactions will be queued for review by staff the next business day. During the review process, the questionable transactions will either be reviewed and accepted, modified and accepted, or rejected. Where a rejection is generated by the system, we anticipate that a rejection letter will be computer-generated the business day after the filing is received. Where a rejection is generated as a result of the staff review, we anticipate that it will generally be mailed to the filer by the third business day after the filing is received.[7] A listing of accepted filings will be transmitted to the filer with the monthly statement. Where changes are made to the filings, including cancellation notices, to make them acceptable, those changes will be indicated on the listing.

AIA indicates that at least one insurer desires billing to its branch offices when filings originate from those offices. This can be accomplished by establishing a separate account for each branch. In other instances, insurers apparently wish to be billed at their home offices regardless of which branch makes the filing. The system will support this procedure also, by providing for a two-position branch suffix in connection with the insurer's account number.

AIA and Central also are concerned that the relationship of the electronic filing program to the Single State Registration System (SSRS) is not clear. Central comments that its reading of the Commission's SSRS regulations finds no provision for the electronic receipt of insurance filings, in lieu of hard-copy filings, by the registration states, and that, therefore, it would appear that insurers would have to prepare a hard copy of the ICC filing or cancellation form, a process that would nullify many of the advantages to the insurance industry of the electronic filing system. Under 49 CFR 1023.4, a motor carrier is required to file or cause to be filed a copy of its proof of public liability security "submitted to and accepted by the Commission under 49 CFR part 1043 * * *" At the time the regulation was adopted, the Commission accepted only paper filings. While there may prove to be a need specifically to modify the SSRS regulations in the future, we believe that carriers can comply with the SSRS requirements by having their insurance company file either electronically with the registration state or file a "hard copy" of the electronic transaction, rather than completing a prescribed paper form. We remind insurance companies that, in any event, they must have the capability of producing duplicate originals of any filing made electronically.

While we are making the electronic filing regulations effective in 30 days, we do not anticipate being able to accept the first electronic filings until approximately August 1, 1995. Our staff is currently developing the system, and we expect to have the necessary instructions and materials available to potential users of the system by July 1, 1995. During July, we will work with filers to test the system prior to actual usage.

Persons desiring to utilize the Commission's electronic insurance filing capability should contact: Ms. Patricia A. Burke, Chief—Insurance, Section of Operations, Insurance and Tariffs, Office of Compliance and Enforcement, Interstate Commerce Commission, Washington, DC 20423.

[7] Filings reinstating insurance coverage will be handled in the same manner as new filings.

Regulatory Flexibility

This action merely provides filers with an optional way to satisfy existing regulatory requirements. It will not have a significant impact on a substantial number of small entities.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Decided: March 20, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1084 of the Code of Federal Regulations are amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. A new § 1043.12 is added to read as follows:

§ 1043.12 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the Commission. An individual account number and password for computer access will be issued to each registered insurer.

(c) All files to be transmitted must be in an ASCII fixed format, i.e., all records must have the same number of fields and same length. The record layouts for electronic filing transactions are as described in the following table:

ELECTRONIC INSURANCE FILING TRANSACTIONS

Field name	Number of positions	Description	Required F=filing C=cancel B=both	Start field	End field
Record type	1 Numeric	1=Filing 2=Cancellation	B	1	1
Insurer number	8 Text	ICC Assigned Insurer Number (Home Office) With Suffix (issuing Office), If Different, e.g. 12345–01.	B	2	9
Filing type	1 Numeric	1 = BI&PD 2 = Cargo 3 = Bond 4 = Trust Fund	B	10	10
ICC docket number	8 Text	ICC Assigned MC or FF Number, e.g., MC000045.	B	11	18
Insured legal name	120 Text	Legal Name	B	19	138
Insured d/b/a name	60 Text	Doing Business As Name If Different From Legal Name.	B	139	198
Insured address	35 Text	Either street or mailing address	B	199	233
Insured city	30 Text		B	234	263
Insured state	2 Text		B	264	265
Insured zip code	9 Numeric	(Do not include dash if using 9 digit code)	B	266	274
Insured country	2 Text	(Will default to US)	B	275	276
Form code	10 Text	BMC–91, BMC–91X, BMC–34, BMC–35, etc	B	277	286
Full, primary or excess coverage.	1 Text	If BMC–91X, P or E = indicator of primary or excess policy; 1 = Full under § 1043.2(b)(1); 2 = Full under § 1043.2(b)(2).	F	287	287
Limit of liability	5 Numeric	$ in Thousands	F	288	292
Underlying limit of liability	5 Numeric	$ in Thousands (will default to $000 if Primary).	F	293	297
Effective date	8 Text	MM/DD/YY Format for both Filing or Cancellation.	B	298	305
Policy number	25 Text	Surety companies may enter bond number .	B	306	330

(d) All registered insurers agree to furnish upon request to the Commission a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for part 1084 continues to read as follows:

Authority: 49 U.S.C. 10102, 10321 and 10927; 5 U.S.C. 553.

4. A new § 1084.10 is added to read as follows:

§ 1084.10 Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 1043.12, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[FR Doc. 95–8093 Filed 3–31–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 032295B]

Pacific Coast Groundfish Fishery; Thornyhead Trip Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces reductions in the cumulative vessel trip limits for longspine and shortspine thornyheads in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are intended to keep landings from exceeding the 1995 harvest guidelines for longspine thornyheads and the overfishing level for shortspine thornyheads, while extending the fishery as long as possible during the year.

DATES: Effective from 0001 hours (local time) April 1, 1995, until the effective date of the 1996 annual specifications and management measures, which will be published in the **Federal Register**. Comments will be accepted through April 18, 1995.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200,

Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: Dover sole, thornyheads, and trawl-caught sablefish (DTS) are managed collectively as the DTS complex because they are often caught together in the trawl fishery. Thornyheads include two species, shortspine and longspine, which also often are caught together. In 1995, the 1,500 metric ton (mt) harvest guideline for shortspine thornyheads was set higher than the 1,000–mt acceptable biological catch (ABC),

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largely because of uncertainty in the new stock assessment. The harvest guideline for shortspine thornyheads is near the level that would produce the maximum sustainable yield (MSY) and the overfishing level is about 1,800 mt. Longspine thornyheads are being fished down to the level that would produce MSY. However, in 1995, longspine thornyheads have a 6,000–mt harvest guideline, which is below its ABC of 7,000 mt, primarily to protect the fully exploited shortspine thornyheads.

On January 4, 1995, (60 FR 2331, January 9, 1995), the cumulative trip limit for both longspine and shortspine thornyheads combined was set at 20,000 lb (9,072 kg) per vessel per month, of which no more than 4,000 lb (1,814 kg) may be shortspine thornyheads. The catch of thornyheads is counted toward the cumulative trip limit for the DTS complex, which is 35,000 lb (15,876 kg) per vessel per month north of Cape Mendocino (40°30'00" N. lat.) and 50,000 lb (22,680 kg) per vessel per month south of Cape Mendocino. A cumulative trip limit is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

During the March 1995 meeting of the Pacific Fishery Management Council (Council), the Council was advised that at the current rate of harvest, the harvest guidelines for both longspine and shortspine thornyheads would be achieved well before the end of the year and the overfishing level for shortspine thornyheads would be exceeded. The Council, therefore, asked NMFS to convene an emergency teleconference with key members of the Council, its Groundfish Management Team (GMT) and Groundfish Advisory Subpanel, state fishery representatives, and the interested public to consider the issue and take action to reduce the harvest of thornyheads before the April 1995 Council meeting.

The best available information presented at the March 14, 1995, teleconference indicated that the catch of shortspine thornyheads through March 4, 1995, was 350 mt. The GMT projected that if the February rate continued to the end of the year, the total catch of shortspine thornyheads would be 2,251 mt, the harvest guideline would be exceeded by 50 percent, and the overfishing level would be exceeded by about 25 percent. The landings of longspine thornyheads through March 4, 1995, was 993 mt or 17 percent of the harvest guideline, and if the February rate continued, the total catch for the year would be 7,248 mt, and the harvest guideline would be exceeded by 21 percent. At the March 14, 1995, teleconference, the GMT recommended a 25 percent reduction to current trip limits for thornyheads to avoid exceeding the overfishing level for shortspine thornyheads and the harvest guideline for longspine thornyheads. The participating Council and state representatives all concurred. The reductions would bring the catch of shortspine thornyheads down to about 1,800 mt by the end of the year, near its overfishing level, and the catch of longspine thornyheads to just below its 6,000–mt harvest guideline. This provides flexibility to take later actions in June 1995, if necessary. Larger reductions of the trip limits were not recommended at this time because: (1) Discards may increase, (2) there is adequate time to adjust the trip limits later in the year, and (3) diversion to other fisheries in the spring may reduce the effort on thornyheads.

NMFS concurs with the GMT recommendation and is imposing an immediate 25 percent reduction in the cumulative trip limit for thornyheads. Beginning April 1, 1995, no more than 15,000 lb (6,804 kg) cumulative per month may be longspine and shortspine thornyheads combined (reduced from 20,000 lb (9,072 kg)), of which no more than 3,000 lb (1,361 kg) may be shortspine thornyheads (reduced from 4,000 lb (1,814 kg)). The north and south cumulative trip limits for DTS complex and the cumulative per trip limits for sablefish remain unchanged.

NMFS Action

NMFS hereby announces the following changes to the management measures for the DTS complex announced at paragraphs IV.E(b)(ii)(A) and (B) at 60 FR 2342, January 9, 1995:

(A) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit, no more than 6,000 lb (2,722 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(B) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit, no more than 6,000 lb (2,722 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region, (see **ADDRESSES**) during business hours.

Because any delay in the implementation of this action could result in exceeding the overfishing level for shortspine thornyheads, NMFS finds good cause to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

This action is taken under the authority of 50 CFR 663.23(c)(1)(i)(G), and is exempt from review under E.O. 12866.

Dated: March 28, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8058 Filed 3–29–95; 12:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 63

Monday, April 3, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–34–AD]

Airworthiness Directives; Airbus Model A300–B2 and –B4 Series Airplanes Equipped With General Electric CF6–50 Series Engines or Pratt & Whitney JT9D–59A Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–B2 and –B4 series airplanes. This proposal would require an inspection to detect discrepancies of a certain thrust reverser control lever spring, an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system, and either correction of discrepancies or deactivation of the associated thrust reverser. This proposal is prompted by a report indicating that, due to broken and deformed thrust reverser control lever springs, an uncommanded movement of the thrust reverser lever to the unlock position and a "reverser unlock" amber warning occurred on one airplane. The actions specified by the proposed AD are intended to detect such broken or deformed control lever springs before they can lead to uncommanded deployment of a thrust reverser subsequent reduced controllability of the airplane.

DATES: Comments must be received by April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–B2 and –B4 series airplanes equipped with General Electric CF6–50 series engines or Pratt & Whitney JT9D–59A engines. The DGAC advises that it has received a report indicating that, during a simulated engine failure, an uncommanded movement of the thrust reverser lever to the unlock position and a "reverser unlock" amber warning occurred. Investigation revealed that these failures were caused by broken and deformed (not in original shape) thrust reverser lever springs. This condition, if not corrected, could result in uncommanded deployment of a thrust reverser and subsequent reduced controllability of the airplane.

Airbus has issued All Operators Telex (AOT) 78–03, Revision 1, dated July 20, 1994, which describes procedures for:

1. Performing a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000;

2. Performing an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system;

3. Replacing the thrust reverser control lever spring with a new spring or deactivating the associated thrust reverser, if the control lever spring is found broken or out of tolerance; and

4. Determining the origin of the malfunction, if the flight inhibition circuit of the thrust reverser system fails the operational test; and correcting discrepancies or deactivating the associated thrust reverser.

The DGAC classified this All Operators Telex as mandatory and issued French airworthiness directive 94–205–166(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29)

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and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000, and an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system. It also requires the correction of discrepancies or deactivation of the associated thrust reverser. The actions are required to be accomplished in accordance with the All Operators Telex described previously.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $55 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,715, or $415 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Amendment 39–Docket 95–NM–34–AD.

Applicability: Model A300–B2 and –B4 series airplanes, equipped with General Electric CF6–50 series engines or Pratt & Whitney JT9D–59A engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the detection of broken or deformed thrust reverser control lever springs that could lead to uncommanded deployment of a thrust reverser and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a mechanical integrity inspection to detect discrepancies of the thrust reverser control lever spring having part number (P/N) A2791294520000, and an operational test to verify the integrity of the flight inhibition circuit of the thrust reverser system, in accordance with Airbus All Operators Telex AOT 78–03, Revision P, dated July 20, 1994.

(1) If no discrepancies are detected, no further action is required by this AD.

(2) If the control lever spring is found broken or out of tolerance, prior to further flight, replace it with a new control lever spring or deactivate the associated thrust reverser in accordance with the AOT.

(3) If the flight inhibition circuit of the thrust reverser system fails the operational test, prior to further flight, determine the origin of the malfunction, in accordance with the AOT.

(i) If the origin of the malfunction is identified, prior to further flight, repair the flight inhibition circuit in accordance with the AOT.

(ii) If the origin of the malfunction is not identified, prior to further flight, replace the relay having P/N 125GB or 124GB, and repeat the operational test, in accordance with the AOT. If the malfunction is still present, prior to further flight, inspect and repair the wiring in accordance with the AOT. If the malfunction is still present following the inspection and repair, prior to further flight, deactivate the associated thrust reverser in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8078 Filed 3–31–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–07–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires various modifications and terminating actions for the passenger door, and repair, if necessary. This action would require additional inspections, and replacement of certain parts, if necessary. This proposal is prompted by reports of excessive gaps between lockout cams and crank stops, which resulted in broken power assist triggers. The actions specified by this proposed AD are intended to prevent broken power assist triggers, which could result in an inoperative door opening system during an emergency evacuation.

DATES: Comments must be received by May 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 13, 1991, the FAA issued AD 91–07–09, amendment 39–6951 (56 FR 12111, March 22, 1991), applicable to certain Boeing Model 757 series airplanes, which requires various modifications and terminating actions for the passenger door, and repair, if necessary. That action was prompted by reports of fractured emergency power assist triggers. The requirements of that AD are intended to prevent an inoperative emergency power assist door opening system during an emergency evacuation.

Since the issuance of that AD, the FAA has received additional reports of broken power assist triggers. One broken power assist trigger was found on a door before the airplane was delivered to the operator. The FAA also has received reports of excessive gaps between lockout cams and crank stops. Investigation has revealed that when the crank stop is in the arm/engage position, excessive fore and aft clearance between the lockout cam and the crank stop can result in broken power assist triggers. This condition, if not detected and corrected, could result in an inoperative power assist system of the passenger door during an emergency evacuation.

Based on these findings, the FAA has determined that the distance between the lockout cam and the crank stop must be measured to ensure that gaps are not excessive. In addition, the FAA finds that inspections must be performed to detect damaged or cracked power assist triggers that may prevent the door opening systems from operating.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993, which describes procedures for repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn fittings, and replacement of any discrepant trigger. The alert service bulletin also describes procedures for repetitive measurement of the clearance between the lockout cam and the crank stop, and replacement of the lockout cam, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–07–09 to continue to require various inspections and modifications of certain mechanisms of the passenger doors, and replacement of certain parts, if necessary. This AD would require repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn triggers, and replacement, if necessary. This AD will also require repetitive measurements of the clearance between the lockout cam and the crank stop; and replacement of the lockout cams, if necessary. These actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 578 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 323 airplanes (6 passenger doors per airplane) of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours (2 work hours per door) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $232,560, or $720 per airplane ($120 per door), per inspection cycle.

Should an operator be required to accomplish the necessary replacement of power assist triggers, it would take approximately 18 work hours per

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economic impact, positive or negative,

effective date of this AD, perform a

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participate in the making of the

excessive fore and aft clearance between the lockout cam and the crank stop can

approximately 18 work hours per

airplane (3 work hours per passenger door) to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,800 per airplane ($300 per passenger door). Based on these figures, the total cost impact of any necessary replacement action is estimated to be $2,880 per airplane ($480 per passenger door).

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6951 (56 FR 12111, March 22, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–07–AD. Supersedes AD 91–07–09, Amendment 39–6951.

Applicability: Model 757 series airplanes, as listed in any of the following service bulletins: Boeing Service Bulletin 757–52–0042 dated March 30, 1989, Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the door opening system during an emergency evacuation, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with either service bulletin. Any interference or improper clearance detected during any inspections required by this paragraph must be repaired prior to further flight, in accordance with either service bulletin.

(1) Modify the forward right-hand passenger door.

(2) Inspect all passenger doors for evidence of interference between the trigger support housing and the upper hinge arm.

(3) Inspect all passenger doors for proper clearance between the power assist trigger and the door and fuselage skin.

(b) For all airplanes identified in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), and thereafter at intervals not to exceed 6 months, accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with either service bulletin. Any damage, improper adjustment, or improper operation detected during any of the inspections required by this paragraph must be repaired prior to further flight, in accordance with either service bulletin.

(1) Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

(2) Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

(3) Inspect trigger spring cylinders for proper operation.

(4) Inspect roller arms for damage.

(c) For all airplanes identified in Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990: Within 18 months after April 29, 1991 (the effective date of AD 91–07–09, amendment 39–6951), accomplish paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, in accordance with Section III, Part III, of the service bulletin. Any damage, defect, improper adjustment, or improper operation detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph (b) of this AD.

(1) On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.

(2) On all passenger doors, install the new trigger guard, and inspect the emergency power assist triggers for wear marks, damage, or fracture.

(3) On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.

(4) On all passenger doors, inspect roller arms for damage.

(d) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, perform an inspection to detect wear marks, damage, or cracking on the upper surface of the emergency power assist triggers at all passenger doors, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 6 months.

(1) If any wear mark is detected, prior to further flight, repair in accordance with the alert service bulletin.

(2) If any damage or cracking is detected, prior to further flight, replace the power assist triggers, in accordance with the alert service bulletin.

(e) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, measure the clearance between the lockout cam and the crank stop, in accordance with the alert service bulletin.

(1) If the clearance between the lockout cam and the crank stop is within the limits specified in the alert service bulletin, thereafter, repeat the measurement at intervals not to exceed 6 months.

(2) If the clearance between the lockout cam and the crank stop is beyond the limits specified in the alert service bulletin, prior to further flight, accomplish either paragraph (e)(2)(i) or (e)(2)(ii) of this AD. Thereafter, repeat the measurement at intervals not to exceed 6 months.

(i) Adjust the lockout cam until the correct clearance is obtained, in accordance with the alert service bulletin. Or

(ii) If correct clearance cannot be obtained by adjusting the lockout cam, replace the lockout cam, in accordance with the alert service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8079 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–08–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Over-Wing Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, that currently requires modification of the trailing edge panels and the aft flaps. That AD was prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. This action would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

DATES: Comments must be received by May 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–08–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorothy Lundy, Aerospace Engineer, ANM–120S, Airframe Branch, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2769; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 13, 1993, the FAA issued AD 93–25–06, amendment 39–8772 (58 FR 69221, December 30, 1993), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, to require modification of the trailing edge panels and the aft flaps. That action was prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. The actions required by that AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

Since the issuance of that AD, the FAA has received a report indicating that modification of the trailing edge panels and the aft flaps has not been accomplished in production on Model 767 series airplanes, equipped with over-wing escape slides, line positions 477 through 542 inclusive. In light of this, these additional airplanes are subject to the same unsafe condition addressed by AD 93–25–06.

The FAA has reviewed and approved Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995. The modification procedures described in this revision are identical to those described in Revision 2 of the service bulletin (which was referenced in AD 93–25–06). This revision only expands the effectivity listing to include additional airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would continue to require modification of the trailing edge panels and the aft flaps. The applicability of the proposed rule would be revised to include additional airplanes. The proposed actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may

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11.89.

bulletin. Any damage, improper adjustment, (e)(2)(i) or (e)(2)(ii) of this AD. Thereafter.

under inflation of the slide to a usable Docket Number 95–NM–08–AD." The that, in general, some operators may

misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 542 Model 767 series airplanes equipped with over-wing escape slides of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $427,200, or $2,400 per airplane.

However, approximately 166 U.S.-registered airplanes previously were required by AD 93–25–06 to accomplish the subject modification. This proposal would affect only 12 additional U.S.-registered airplanes. Therefore, the cost to modify these 12 newly added airplanes is estimated to be $28,800, or $2,400 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8772 (58 FR 69221, December 30, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–08–AD. Supersedes AD 93–25–06, Amendment 39–8772.

Applicability: Model 767 series airplanes, having line positions 1 through 542 inclusive, and equipped with over-wing escape slides; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation, accomplish the following:

(a) For airplanes having serial number 1 through 476 inclusive: Within 15 months after January 31, 1994 (the effective date of AD 93–25–06, amendment 39–8772), modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993; Revision 2, dated September 16, 1993; or Revision 3, dated February 2, 1995.

(b) For airplanes having serial numbers 477 through 542 inclusive: Within 15 months after the effective date of this AD, modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8077 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 165

[CGD01–95–025]

RIN 2115–AA97

Safety Zone: Annual "Fireworks on the Navesink" Fireworks Display, Navesink River, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual Independence Day "Fireworks on the Navesink" fireworks display located on the Navesink River, Red Bank, New Jersey. The safety zone would be in effect annually on the third day of July, from 8 p.m. until 11 p.m., with a raid date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters between the north and south shores of the Navesink River, including Red Bank Reach,

extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey.

DATES: Comments must be received on or before May 18, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 45 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–025) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, the Town of Red Bank, New Jersey, has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Navesink River. This regulation would establish an annual safety zone in the waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey, at or near 40°21′20″ N latitude, 074°04′10″ W longitude. The safety zone is bounded by the following points: 40°21′15″ N latitude, 074°03′57″ W longitude; to 40°21′43″ N latitude, 074°03′57″ W longitude; and 40°21′20″ N latitude, 074°04′25″ W longitude; to 40°21′30″ N latitude, 074°04′25″ W longitude. The safety zone would be effective on the third of July, from 8 p.m. until 11 p.m., with a raid date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting a portion of the Navesink River, from shore to shore, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This safety zone would close a portion of the Navesink River, from shore to shore, to all vessel traffic annually on the third of July, from 8 p.m. until 11 p.m., with a rain date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that the amount of traffic in this area is minimal; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is scheduled in the docket.

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List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 56.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.161 is added to read as follows:

§ 165.161 Safety Zone; Annual "Fireworks on the Navesink" Fireworks Display, Navesink River, Red Bank, New Jersey.

(a) *Location.* All waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey, at or near 42°21'20" N latitude, 074°04'10" W. The safety zone is bound by the following points: 40°21'15" N latitude, 074°03'57" W longitude; to 40°21'43" N latitude, 074°03'57" W longitude; and 40°21'20" N latitude, 074°04'25" W longitude; to 40°21'30" N latitude, 074°04'25" W longitude.

(b) *Effective period.* This safety zone is in effect annually on the third of July, from 8 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port New York. If the fireworks display is cancelled because of bad weather, this section is in effect on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 17, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 95–8127 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–010]

RIN 2115–AA97

Safety Zone: Annual South Street Seaport New Year's Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual South Street Seaport New Year's Eve fireworks display located in the East River, New York. The safety zone would be in effect annually on December 31 at 11:30 p.m. until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

DATES: Comments must be received on or before June 2, 1995.

ADDRESSES: Comments should be mailed to the U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice [CGD01–95–010) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment to receipt of comments should enclose a stamped, self-addressed postcard or envelop.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, South Street Seaport, Inc. has submitted an Application for Approval of Marine Event for a New Year's Eve fireworks program in the waters of the East River. This regulation would establish a safety zone annually in the waters of the East River at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. This safety zone would preclude all vessels from transiting south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the East River to all vessel traffic annually at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be make; that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. Appropriate environmental analysis of the South Street Seaport New Year's Eve fireworks will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act for issuance of a marine event permit will be completed prior to the event. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.174 is added to read as follows:

§ 165.174 Safety Zone: Annual South Street Seaport New Year's Eve Fireworks Display, East River, New York.

(a) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is in effect annually at 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard Captain of the Port, New York.

[FR Doc. 95–8125 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–011]

RIN 2115–AA97

Safety Zone: Annual Rensselaer Festival Fireworks Display, Hudson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual Rensselaer Festival fireworks display located in the Hudson River, Rensselaer, New York. The safety zone would be in effect annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the Hudson River, shore to shore, north of the 42°38'12" N line of latitude and south of the Dunn Memorial Bridge, Albany, New York.

DATES: Comments must be received on or before June 2, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (GCD01–95–011) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons

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wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under ADDRESSES. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, the City of Rensselaer has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Hudson River. This regulation would establish a safety zone in the waters of the Hudson River on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting a portion of the Hudson River, shore to shore, north of the 42°38'12" N line of latitude, and south of the Dunn Memorial Bridge, Albany, New York. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasters and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the Hudson River to all vessel traffic annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.167 is added to read as follows:

§ 165.167 Safety Zone; Annual Rensselaer Festival Fireworks Display, Hudson River, New York.

(a) *Location.* All waters of the Hudson River, shore to shore, north of the 42°38'12" N line of latitude, and south of the Dunn Memorial Bridge, Albany, New York.

(b) *Effective period.* This section is in effect annually on the third Saturday in September from 8:30 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–8126 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 83–5–6889b; FRL–5165–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic liquid bulk terminals and bulk plants, surface coating of miscellaneous metal parts and products, aerospace assembly and component coating operations, flexible and rigid disc manufacturing, gasoline bulk terminals, gasoline bulk plants, and gasoline delivery vehicles. One of the rules concerns the submittal of VOC and oxides of nitrogen (NO_x) emissions data to the district.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs and NOx in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 3, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District Rule 8.6, Organic Liquid Bulk Terminals and Bulk Plants, Rule 8.19, Surface Coating of Miscellaneous Metal Parts and Products, Rule 8.29, Aerospace Assembly and Component Coatings Operations, Rule 8.33, Gasoline Bulk Terminals and Gasoline Delivery Vehicles, Rule 8.38, Flexible and Rigid Disc Manufacturing, Rule 8.39, Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Rule 2.1, Section 429, Emissions Statement. These rules were all submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994, except for Rule 8.6, which was submitted on May 24, 1994, and Rule 2.1, Section 429, which was submitted on October 19, 1994. For further information, please see the information provided in the direct final action which is located in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 15, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–8043 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL91–1–6279b; FRL–5169–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the site-specific State Implementation Plan (SIP) revision request submitted by the State of Illinois on January 25, 1994, for Quantum Chemical Corporation's facility located in Morris, Illinois. This site-specific SIP revision alters certain Reasonably Available Control Technology (RACT) regulations contained within 35 Illinois Administrative Code (IAC) Part 218 as they apply to specific units or plants within this facility. This approval is based upon sufficient demonstration that factors relating to this facility are substantially and significantly different from those relied upon in adopting 35 IAC Part 218, and that these factors warrant a corresponding adjustment of its RACT requirements. In the final rules section of this Federal Register, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to the direct final rule. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 3, 1995. If no such comments are received, USEPA hereby advises the public that the direct final rule will be effective on June 2, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation

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proposal to be so minimal that a full

excluded from further environmental

BILLING CODE 4910-14-M

Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–8039 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL104–1–6697b; FRL–5158–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' November 28, 1994, request to amend the marine vessel loading rules for the Chicago and Metro-East areas as part of the State's 15 percent (%) Rate of Progress Plan control measures for Volatile Organic Matter emissions. The control measures require marine terminals, from May 1 through September 15, to operate a vapor collection and control system which achieves a 95% control efficiency. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 3, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–8045 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–20–1–6442; FRL–5181–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision by the state of Missouri that revises the Missouri Part D new source review (NSR) rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality, address emission statements under title I of the Clean Air Act Amendments (CAAA), and generally enhance the SIP.

This revision generally meets requirements of the Clean Air Act (CAA) as Amended in 1990 with regard to NSR in areas that have not attained the national ambient air quality standard (NAAQS). However, Missouri is required to make certain changes to the NSR rules, as outlined in this proposal, before EPA can grant final approval to this SIP revision. This implementation plan was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment NSR SIP for Missouri.

DATES: Comments must be received on or before May 3, 1995.

ADDRESSES: Comments may be mailed to Robert J. Lambrechts, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551–7846.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under part D, including those state submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in today's proposal and the supporting rationale.

The EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in parts C and D of title I of the Act. If EPA has not taken final action on the state's NSR submittals by the time the proposed rule is published for comment, EPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. Upon promulgation of the final regulations, EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

Prior to EPA approval of a state's NSR SIP submission, the state may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991, and September 3, 1992. As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent Title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period; or apply 40 CFR part 51, appendix S for newly

designated areas that did not previously have NSR SIP requirements.

II. Construction Permits Required—10 CSR 10–6.060

A. General Nonattainment New Source Review (NSR) Nonattainment Permit Requirements

The Act requires all states to have submitted the following nonattainment NSR provisions.

1. Offset Ratios

Federal Requirement: For moderate ozone nonattainment areas, the state must submit provisions to ensure that new or modified major stationary sources obtain offsets at a ratio of at least 1.15 to 1 in order to obtain an NSR permit.

State Response: 10 CSR 10–6.060(7)(B)1 requires that by the time the source is to commence operation, sufficient offsetting emissions reductions are to be obtained. The specific offset ratios for all nonattainment classifications are listed at 10 CSR 10–6.020(2)(O)1 and satisfy the requirement that volatile organic compound (VOC) and nitrogen oxides (NO_x) emissions in moderate nonattainment areas will require an offset ratio of actual emission reduction to new emissions of 1.15:1. Missouri has satisfied this Federal requirement.

2. Geographic Location of Offsets

Federal Requirement: New section 173(c)(1) stipulates that emissions offsets generally must be obtained by the same source or other existing sources in the same nonattainment area, except under narrow circumstances.

State Response: 10 CSR 10–6.060(7)(B)1 provides that offsetting emissions reductions are to be obtained from existing sources in the St. Louis nonattainment area. Missouri has satisfied this Federal requirement.

3. Timing of Offsets

Federal Requirement: New section 173(c)(1) also adds the condition that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be "by the time a new or modified source commences operation, in effect and enforceable * * *." The 1990 CAAA clarified the offset requirements in the preamended Act by requiring that the offsets be Federally enforceable before permit issuance. Accordingly, while it is possible for a state to issue a permit to construct once sufficient emissions offsets have been identified and made Federally enforceable, the state must also ensure that the required emissions reductions actually occur no later than the date on which the new source or modified source would commence operation.

State Response: The Missouri definition of "Federally enforceable" found at 10 CSR 10–6.020(2)(F)2 provides that requirements within any applicable state implementation plan, any permit requirement established pursuant to 40 CFR part 52.21, or under regulations pursuant to 40 CFR part 51 are Federally enforceable. Therefore, the requirement to obtain an emission offset will be Federally enforceable once approved into the SIP.

10 CSR 10–6.060(7)(B)1 provides that offsetting emissions reductions are to be obtained by the time the source is to commence operation. In addition, 10 CSR 10–6.060(12)(C)1.C provides that the owner or operator of the source from which offsets are obtained shall enter into a binding agreement to limit emissions of the offset pollutant at the source to the levels identified after the offset is applied. 10 CSR 10–6.060(12)(C)2 provides that it shall be a violation of the construction permits required rule (10 CSR 10–6.060) to operate a source from which offsets were obtained so as to emit the offset pollutant at levels greater than identified in the agreement referred to previously. Therefore, the commitment to obtain emission reductions is Federally enforceable at the time of permit issuance, and the Missouri regulation satisfies the CAAA section 173 mandate.

4. Actual Emissions Reductions

Federal Requirement: New section 173(c)(1) includes the provision that:

> * * * Total tonnage of increased emissions from the new or modified source shall be offset by an equal or greater amount, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

EPA's current regulation concerning the baseline for emissions offsets, as contained in the part 51 NSR nonattainment regulations, provides that the offset baseline is the emissions limit under the applicable SIP in effect at the time the permit application is filed, unless the state's demonstration of reasonable further progress (RFP) and NAAQS attainment is based on actual emissions, or the applicable SIP does not contain an emissions limitation for that particular source or source category. The new statutory requirement provides that emissions increases from the new or modified source must be offset by real reductions in actual emissions.

State Response: The nonattainment provisions for Missouri found at 10 CSR 10–6.060(7)(B)3 require that offsets be obtained in accordance with the offset procedures found in the offsets appendix of the construction permits rule at 10 CSR 10–6.060(12)(C). The appendix language requires the applicant to provide documentation satisfactory to the permitting authority showing that "* * * the level of emission of the offset pollutant at the offsetting source prior to and after the offset is applied." This language requires that offset calculations must take into account actual emissions as the reference is to the "level of emission * * * prior to and after the offset * * *." Therefore, Missouri satisfies the requirement that emissions increases from the new or modified source must be offset by real reductions in actual emissions.

5. NO_x Requirements

Federal Requirement: In addition to requirements for ozone nonattainment areas, section 182(f) of the CAAA states that requirements for major stationary sources of VOC shall apply to major stationary sources of NO_x unless the Administrator determines that net air quality benefits are greater in the absence of NO_x reductions from the sources concerned.

State Response: The Missouri construction rule at 10 CSR 10–6.060(7)(E) requires that for purposes of nonattainment area permits, any significant increase due to the levels of emission of NO_x shall be considered significant for ozone. The rule further provides that any installation with the potential to emit one hundred (100) tons per year of NO_x located within an area which is nonattainment for ozone must comply with the specific permit requirements of the nonattainment provisions of the Missouri construction permit rule. Missouri has satisfied this Federal requirement.

6. Creditable Reductions

Federal Requirement: Section 173(c)(2) prevents emissions reductions otherwise required by the Act from being credited for purposes of satisfying the Part D offset requirement. However, the statutory language does allow reductions that are achieved indirectly pursuant to a requirement of the CAAA (incidental emission reductions) to be credited if they meet the other criteria for offsets contained in section 173(c)(1).

State Response: 10 CSR 10–6.060(12)(C)4 provides that offset credit may not be taken for emission reductions required by state or local emission control rules or ordinances; state or Federal court order; or order of

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a Federal, state, or local air pollution control agency. MDNR will be modifying the language of this provision to address how offset credits will be impacted by Federal regulations and permit terms (see section I.D.4 of the Technical Support Document).

7. Prohibition on Old Growth Allowances

Federal Requirements: Section 173(b) expands the pre-1990 requirements by prohibiting the continued use of old growth allowances in any nonattainment area that either received a notice that the SIP was substantially inadequate under section 110(a)(2)(H)(ii) of the 1977 Act, or receives notice of inadequacy under new section 110(k)(1) of the amended Act.

State Response: MDNR deleted the reference to available growth increment previously found at 10 CSR 10–6.060(4)(B). Therefore, the growth allowance is no longer available for offsets. Missouri has satisfied this Federal requirement.

8. Analysis of Alternatives

Federal Requirements: New sources in nonattainment areas must undertake an analysis of alternatives prior to receiving a permit. The section 173(a)(5) analysis and demonstration are now prerequisites to the issuance of any permit for construction or modification of a major source in any nonattainment area. Prior to 1990, the analysis was required only for certain sources of carbon monoxide and ozone.

State Response: This requirement is satisfied by the language in 10 CSR 10–6.060(7)(C)4 which specifies that an applicant must provide an alternate site analysis before issuance of a permit for the construction or major modification of an installation with the potential to emit annually 100 tons or more of a nonattainment pollutant, or a permit for a modification with the potential to emit annually 100 tons or more of a nonattainment pollutant. MDNR defines "alternate site analysis" at 10 CSR 10–6.020(2)(A)23 as an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source which demonstrates that benefits of the proposed installation significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Missouri has satisfied this Federal requirement.

9. RFP

Federal Requirements: As required by section 173(a)(1)(A) of the CAAA, the permitting authority must be able to ensure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of RFP. The EPA interprets section 173(a)(1)(A) to ratify current EPA regulations requiring that the emissions baseline for offset purposes be calculated in a manner consistent with the emissions baseline used to demonstrate RFP. Regarding the amount of offsets necessary to show noninterference with RFP, EPA will presume that so long as a new source obtains offsets in an amount equal to or greater than the amount specified in the applicable offset ratio, the offsets will represent RFP.

State Response: Missouri utilizes 10 CSR 10–6.060(7)(B)1 to obtain reasonable further progress in new source permitting. A permit for construction or major modification of an installation with the potential to emit the nonattainment pollutants in amounts equal to or greater than the de minimis levels, shall not be issued unless the RFP requirements, among others set forth in 10 CSR 10–6.060, are met.

10. Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse Information

Federal Requirement: The 1990 CAAA added a new section 173(d), which requires states to submit to EPA control technology information from permits issued under section 173 for purposes of making such information available to other states and to the general public.

State Response: 10 CSR 10–6.060(12)(B)2.G provides that the permitting authority shall submit a copy of the final control technology determination to the Administrator. Therefore, Missouri has satisfied this Federal requirement.

11. Stationary Source Definition

Federal Requirement: The 1990 CAAA added a new definition of "stationary source" in section 302(z) of Title III of the Act, and amended the existing definition already contained in section 111(a)(3). The addition of the new definition appears to strengthen Congressional intent that certain internal combustion engines must be subject to control under state permit programs, while providing for the exclusion of those internal combustion engines which fall under the newly defined category of "nonroad engines."

State Response: Missouri uses the definition of "installation" at 10 CSR 10–6.020(2)(I)7 as its definition of "stationary source" under the Act. The "installation" definition encompasses all source operations including activities that result in fugitive emissions. MDNR interprets this definition to include stationary internal combustion engines and the fugitives such as reintrained road dust generated by nonroad machinery. However, it excludes the exhaust emissions of nonroad engines. Missouri has satisfied this Federal requirement. Finally, Missouri exempts from construction permitting requirements any equipment used for any mode of transportation as provided for at 10 CSR 10–6.060(1)(D)2.C.

B. Missouri Construction Permit Program Deficiencies

1. Particulate Matter

Federal Requirement: On June 3, 1993, EPA published in the **Federal Register** a revision to the maximum allowable increases for particulate matter (PM) under the requirements for PSD of air quality. As a result, the PSD increments and the NAAQS for PM will be measured by the same indicator for PM, namely PM_{10}.

State Response: PM_{10} increments were incorporated into 10 CSR 10–6.060 during the December 1993 rule adoption by the Missouri Air Conservation Commission. Missouri revised the Ambient Air Increment Table found at 10 CSR 10–6.060(11)(A) Table 1 to include the new PM_{10} ambient air increments for classes I through III, as set forth at 58 FR 31637. However, the Class I Variance table found at 10 CSR 10–6.060 (12)(H)2 does not reflect the revised PM_{10} numerical maximum allowable increases. Specifically, the table at 10 CSR 10–6.060 (12) (H)2 must include PM_{10} as a pollutant with numerical values at least as stringent as those found at 58 FR 31637. There is further discussion following in section II.B.4 regarding MDNR's efforts to incorporate these changes.

2. Waiver Policy

Federal Requirement: EPA major NSR rules require that permits be issued prior to construction of a major source or modification. The PSD rules provide that sources may not begin actual construction without a permit. 40 CFR 51.166(b)(11) and 51.166(i)(1). Section 51.165(a)(1)(xv) contains a definition of "begin actual construction."

State Response: The Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of "construction" at 10 CSR 10–6.020(2)(C)22, can be interpreted as allowing major sources to commence construction without a permit in contravention of the CAA and EPA regulations. The definition of "construction" allows for synthetic minor sources, those that are major in reality but which seek Federally enforceable limitations to limit their potential-to-emit, to submit a waiver request to MDNR allowing the source to commence limited and specified construction activities. The Missouri SIP submittal cannot be approved into the SIP in its present form. However, MDNR is currently pursuing a course of action that will amend the construction permit rule to allow for approval. This process is discussed below in section II.B.4 of this proposed rulemaking.

3. Offset Credits

A deficiency has also been discovered in the language of 10 CSR 10–6.060(12)(C)4. This provision addresses various situations where offset credits may not be taken. However, the rule lacks any reference to limits on taking offset credits for emission reductions which are required by Federal law or a Federally enforceable permit. MDNR intends to modify this provision by including language that disallows any offset credit for emission reductions required under the Federal CAA or the Missouri Air Conservation Law or regulations promulgated under either.

4. Correction Process

MDNR is aware of the deficiencies outlined above and has agreed to pursue an amendment to the 10 CSR 10–6.020 definition of "construction" and the provision in the construction rule at 10 CSR 10–6.060(12)(C)(4) addressing offset credits. By way of this **Federal Register** proposed rule action, EPA is providing notice that a deficiency exists with the MDNR Construction Permits Required rule (10 CSR 10–6.060). MDNR has committed to amend the language of these rules. EPA is proposing to take final action to approve the Construction Permits Required rule (10 CSR 10–6.060), if the change is made to prohibit major sources from beginning construction without a permit.

If the Missouri rule is not amended as described above, then the Construction Permits Required rule (10 CSR 10–6.060), along with specified definitions within 10 CSR 10–6.020, will be disapproved. MDNR has also committed to correct the deficiencies pertaining to the Impacts on Class I Variance table discussed above in section II.B.1., while pursuing corrections pertaining to the waiver policy and the offset credit provision

III. Update to Definitions Found in 10 CSR 10–6.020

There are many definitions which are being revised within the SIP or added to the SIP. Many of these definitions pertain to the title V and asbestos programs. These definitions are being approved into the SIP because they provide overall consistency in the use of terms in the air program. Because many of these terms do pertain to Title V, it is important to recognize that EPA approval into the SIP of these definitions does not constitute approval with respect to the title V submission. The reader is referred to the technical support document (TSD) for clarification on changes to definitions and additions to the list of definitions.

IV. Confidential Information 10 CSR 10–6.210

The SIP currently addresses confidential business information at 10 CSR 10–6.110(5) which EPA approved on April 17, 1986 (51 FR 13000). The December 1993 adoption of 10 CSR 10–6.210 served to transfer the provisions currently found in the SIP at 10 CSR 10–6.110(5) in their entirety to 10 CSR 10–6.210. Only minor adjustments were made to the rule at 10 CSR 10–6.210(4)(D). First, Missouri changed the number of days from 20 to 15 working days that the owner or operator will have from the receipt of the preliminary decision to deny the claim of confidentiality in which to submit further justification or comments to the director.

Second, 10 CSR 10–6.210(5)(D)1 modifies the number of days from 20, as previously set forth in 10 CSR 10–6.110, to 15 in which the owner or operator is given prior notice to obtain an order from a court of competent jurisdiction restraining or enjoining the disclosure to a local agency.

V. Emission Statement Rule 10 CSR 10–6.110

A. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the CAA, as amended by the 1990 CAAA. EPA has published a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the CAA, including those state submittals for ozone transport areas within the states (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_x Supplement to the General Preamble")).

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this Notice, entitled "Guidance on the Implementation of an Emission Statement Program" (July 1992). The Agency is also conducting a rulemaking process to modify part 51 of the CFR to consolidate the reporting requirements for annual statewide emission inventories, Periodic Ozone/Carbon Monoxide emission inventories, and the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the state each year emission statements showing actual emissions of VOC and NO_x. This section of the Act provides that the states are to submit a revision to their SIPs by November 15, 1992, establishing this emission statement program.

The states may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plantwide NO_x or VOC emissions in nonattainment areas, if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. Whatever minimum reporting level is established in a state emission statement program, if either VOC or NO_x is emitted at or above the designated level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires facilities to submit the first emission statement to the state within three years after November 15, 1990, and annually thereafter. EPA requests that the states submit the emission data to EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy, source identification information, operating schedule, emissions information (to include annual and typical ozone season day emissions), control

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equipment information, and process data. EPA developed emission statements data elements to be consistent with other source and state reporting requirements. This consistency is essential to assist states with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

In addition to the submission of the emission statement data to AIRS, states should provide EPA with a status report that outlines the degree of compliance with the emissions statement program. Beginning July 1, 1993, states should report quarterly to EPA the total number of sources affected by the emission statement provisions, the number that have complied with the provisions, and the number that have not. This status report should also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and noncorrected for rule effectiveness. States should include in their status report a list of sources that are delinquent in submitting their emission statement and that emit 500 tpy or more of VOC or 2500 tpy or more of NO_x. This report should be a quarterly submittal until all the regulated sources have complied for the reporting year. Suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

B. Description of the State Emission Statement Submittal—Procedural Background

The Act requires states to observe certain procedural requirements in developing their SIPs, of which the emission statement program will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[1] Section 110(l) similarly provides that each revision to an implementation plan submitted by a state under the CAAA must be adopted by such state after reasonable notice and public hearing.

The submittal was found to be complete and a letter dated June 17, 1994, was forwarded to the Governor's designee indicating the completeness of the submittal and the next steps to be taken in the review process.

C. Components of Emission Statement Program

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting by the sources and the state. In general, the program must include provisions for applicability, definitions, compliance provisions, and specific source requirements. In an August 4, 1993, policy memo from J. David Mobley, Chief of EPA's Emission Inventory Branch to the Regional Air Branch Chiefs, EPA defined the minimum essential elements of an emission statement rule. Missouri rule 10 CSR 6.110 meets or exceeds EPA's minimum guidelines.

D. Implementation

The state of Missouri's emission statement SIP will ensure that the requirements of section 182(a)(3)(B) and sections 184(b)(2) and 182(f) are adequately implemented. Once EPA completes the rulemaking process approving Missouri's Emission Statement program as part of the SIP, it will be Federally enforceable.

EPA has determined that the submittal made by the state of Missouri satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992), and the August 4, 1993, policy memo from J. David Mobley, Chief of EPA's Emission Inventory Branch to the Regional Branch Chiefs regarding "First Emission Statements Due to EPA/ Essential Emission Statement Rule Elements." EPA's detailed review of Missouri's Emission Statement Program is contained in a TSD which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of the notice.

EPA Action

EPA is proposing to approve a revision that revises the NSR rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter, and addresses emission statements under Title I of the CAAA.

However, for Missouri to receive final approval on this SIP revision the state must modify several rules. First, the class I Variance table found at 10 CSR 10–6.060(12)(H)2 does not reflect the revised PM_{10} numerical maximum allowable increases. Specifically, the table at 10 CSR 10–6.060(12)(H)2 must include PM_{10} as a pollutant with numerical values at least as stringent as those found at 58 FR 31637.

Second, the Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of "construction" at 10 CSR 10–6.020(2)(C)22, can be interpreted as allowing major sources to commence construction without a permit in contravention of the CAA. The definition of "construction" allows for synthetic minor sources (those that are major in reality but which seek Federally enforceable limitations to limit their potential-to-emit) to submit a waiver request to MDNR allowing the source to commence limited and specified construction activities. These Missouri rules cannot be approved into the SIP in their present form. As a result, MDNR is currently pursuing a course of action to amend the definitions rule to satisfy EPA concerns.

Finally, a deficiency has also been discovered in the construction permit rule at 10 CSR 10–6.060(12)(C)4. This provision addresses various situations where offset credits may not be taken. The Missouri rule lacks any reference to limits on taking offset credits which are required by Federal law or a Federally enforceable permit. Again, MDNR intends to modify this provision by including language that disallows any offset credit for emission reductions required under the Federal CAA or the Missouri Air Conservation Law, or regulations promulgated under either.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5. U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Lead, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–8082 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

[1] Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

40 CFR Part 52

[TX–10–1–5223b; FRL–5171–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the Texas SIP addressing visible emissions. The purpose of proposing to approve this revision is to enable the visible emissions provisions of Texas Regulation I to become federally enforceable. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 3, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Mr. Bill Deese, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: March 3, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95–8041 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5181–7]

Request for Approval of Section 112(l) Authority for the Lincoln-Lancaster County Health Department (LLCHD) Air Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 of the LLCHD'S program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources. When approved, state rules and applicable part 70 operating permit conditions would substitute for the applicable Federal requirements within a state or local jurisdiction.

DATES: Comments on this proposed action must be received in writing by May 3, 1995.

ADDRESSES: Comments should be addressed to Wayne Kaiser at the address indicated. Copies of the Lincoln-Lancaster submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the US EPA, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the 1990 Clean Air Act (CAA) enables the EPA to approve state (and local agency) air toxics programs to operate in place of the Federal air toxic program. Approval is granted by the EPA if the Agency finds that the state program or rule meets the criteria described in 40 CFR 63.91 (58 FR 62262). The LLCHD requested such approval for its part 70 sources in its part 70 program submittal. EPA published a notice proposing to approve the LLCHD's part 70 program and 112(l) authority for part 70 sources on January 31, 1995 (60 FR 5883).

On February 2, 1995, LLCHD submitted a letter to EPA requesting approval of its program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and requested delegation of existing standards under 40 CFR parts 61 and 63 for non-part 70 sources. The letter included information which addresses the approval criteria in 40 CFR 63.91. This includes adequate legal authority and resources, an expeditious implementation and compliance schedule, and adequate enforcement authorities.

II. Analysis of Submission

LLCHD demonstrated it has adequate legal and enforcement authority by referring to the County Attorney's opinion and its rules and regulations submitted with its Part 70 program submittal. This authority and the rules apply to all regulated sources. The LLCHD commits to expeditiously adopting and implementing all future section 112 requirements, whether for part 70 or non-Part 70 sources, after they are promulgated by EPA. The delegation mechanism which the LLCHD intends to use for future section 112 standards and programs is the adoption by reference mechanism.

The LLCHD has already adopted the dry cleaner maximum achievable control technology, subpart M, which applies primarily to non-Part 70 sources, and has adequate resources to

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implement it. It commits to providing EPA with future demonstrations of resource adequacy as necessary as new requirements become known.

The LLCHD submitted a schedule for implementing section 112 requirements in its part 70 program submittal. This schedule will apply to both part 70 and non-Part 70 sources, since adoption by reference of the standard will apply simultaneously to both types of sources.

Finally, the LLCHD has demonstrated that it has the legal authority to take civil and enforcement actions against any section 112 source for all CAA requirements, including the section 112 requirements.

The reader may consult the Technical Support Document, available from the contact above, for a more detailed explanation of these topics.

III. Proposed Action

EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the LLCHD's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated for both Part 70 and non-Part 70 sources. In addition, EPA proposes to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed notice. Copies of LLCHD's submittal and other information relied upon for this proposal are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all information submitted to, or otherwise considered by, EPA in the development of this proposal. The principle purposes of the docket are:

1. To allow interested parties a means to identify and locate documents so they can effectively participate in the approval process; and

2. To serve as the record in case of judicial review. EPA will consider any comments received by May 3, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations,, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 13, 1995.

William Rice,

Acting Regional Administrator.

[FR Doc. 95–8083 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400032A; FRL–4944–8]

RIN 2070–AC00

Ammonia; Ammonium Sulfate (Solution); Ammonium Nitrate (Solution); Water Dissociable Ammonium Salts; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended proposed rule.

SUMMARY: EPA is amending its March 30, 1990 proposal to grant a petition to delete ammonium sulfate (solution) from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The March 30, 1990 proposal was based on EPA's belief that releases of ammonium sulfate (solution) can be more effectively covered by the EPCRA section 313 ammonia listing. EPA is amending the proposed rule in order to allow the public to comment on data not available or included at the time of the original proposal. EPA is also expanding the proposal to include the deletion of ammonium nitrate (solution) as a separately listed toxic chemical on the EPCRA section 313 list because EPA believes that releases of ammonium nitrate (solution) are more effectively covered by the EPCRA section 313 listings for ammonia and the recently added water dissociable nitrate compounds category. In addition, EPA is proposing to modify the ammonia listing to make it clear that aqueous ammonia from all water dissociable ammonium salts is reportable under the EPCRA section 313 listing for ammonia. In the March 30, 1990 proposal, EPA discussed two options for the reporting of aqueous ammonia, as total ammonia or as some proportion of total ammonia. Today, EPA is proposing that 10 percent of total aqueous ammonia be reported under the ammonia listing.

DATES: Written comments must be received by May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information on this amended proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This amended proposal is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. EPA has added chemicals to and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement

clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

Facilities that manufacture, process, or otherwise use ammonia, ammonium sulfate (solution), ammonium nitrate (solution), and other water dissociable ammonium salts may be affected by this amended proposed rule if they meet the following criteria: (1) The facility has the equivalent of 10 or more full-time employees; and (2) the facility is included in Standard Industrial Classification (SIC) Codes 20 through 39; and (3) the facility manufactures (defined to include importing), processes, or otherwise uses the chemicals listed above in quantities equal to or greater than 25,000 pounds for manufacturing or processing and 10,000 pounds for otherwise using.

II. Description of Petition and Original Proposed Rule

A. Description of Petition

On January 23, 1989, EPA received a petition from Allied-Signal Inc. to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. The petition was based on Allied-Signal Inc.'s contention that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria for listing. Specifically, Allied-Signal Inc. claimed that: (1) Ammonium sulfate is not known to cause and cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases, (2) ammonium sulfate does not show potential for causing in humans cancer or teratogenic effects, serious or irreversible reproductive dysfunction, neurological disorders, heritable genetic mutations, or other chronic health effects, and (3) ammonium sulfate does not show potential for adverse effects on the environment due to toxicity, persistency in the environment, and/or tendency to bioaccumulate in the environment.

B. Review of Proposed Rule

On March 30, 1990, EPA issued a proposed rule in the **Federal Register** (55 FR 12144), proposing to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. This proposal, hereafter referred to as "the original proposal," was based on EPA's belief that the only concerns identified for ammonium sulfate (solution) were for the aqueous ammonia present in the solution and that this aqueous ammonia is more appropriately reported under the EPCRA section 313 listing for ammonia. Aqueous ammonia is coincidentally manufactured when ammonium salts that dissociate in water (such as ammonium sulfate) are dissolved in water. Therefore, releases of these ammonium salt solutions are environmentally equivalent to the release of aqueous ammonia generated by dissolving anhydrous ammonia in water.

The original proposal and the combined docket for the original proposal and this proposed amendment contain complete discussions and documentation of EPA's technical review of ammonium sulfate (solution), aqueous ammonia, and the options EPA has considered for resolving the reporting requirements under the ammonia listing. The following two sections summarize EPA's technical evaluation and options as discussed in the original proposal.

1. *Summary of technical review.* The chemistry of ammonia in water (i.e., aqueous ammonia) has been extensively studied and is well understood. When anhydrous ammonia or water dissociable ammonium salts (such as ammonium sulfate) are dissolved in water an equilibrium is reached between two forms of ammonia, the un-ionized form (NH_3) and the ionized form (NH_4^+). The term "total ammonia" refers to the sum of both the un-ionized and ionized forms of ammonia and is synonymous with the term "aqueous ammonia." The relative proportions of each form of ammonia are mainly dependent on the pH and temperature of the solution, with the amount of the un-ionized form increasing with both increased pH and increased temperature. These two forms rapidly interconvert and the relative proportions of each form change instantly with changes in the pH and temperature of the solution. The concentration of the un-ionized form of ammonia increases 10-fold with each one unit increase in pH and approximately doubles with every 10 °C increase in temperature. There are differences in the concentrations of the un-ionized form of ammonia between equimolar solutions of aqueous ammonia generated by dissolving dissociable ammonium salts versus anhydrous ammonia. These differences are due to the buffering effects (mainly reflected as pH differences) of the counter ions from the ammonium salts and disappear when both solutions are released to the environment.

EPA preliminarily concluded that there were no known significant human health effects associated with ammonium sulfate (solution). EPA also preliminarily concluded that the ecotoxicity concerns for ammonium sulfate (solution) were limited to the aqueous ammonia (i.e., total ammonia) present in these solutions and that the sulfate portion was not of concern. The toxicity of aqueous ammonia to aquatic organisms has been extensively studied and is well understood. The toxicity of aqueous ammonia solutions is primarily attributable to the un-ionized form of ammonia with the ionized form being relatively less toxic. Because both the toxicity of aqueous ammonia and the concentration of the un-ionized form of ammonia vary with the pH and temperature of the solution, aqueous ammonia toxicity cannot be represented solely by the concentration of unionized ammonia. Thus, the toxicity of an aqueous solution of ammonia cannot be represented by a single value but must be expressed as a function of pH and temperature. Since the un-ionized ammonia concentration changes with pH and temperature, it is necessary to calculate the total ammonia concentration in order to determine the toxicity of the solution as the pH and temperature conditions change.

EPA's Office of Water has conducted a detailed study of the toxicity of aqueous ammonia which is provided in the criteria document, *Ambient Water Quality Criteria for Ammonia - 1984.* No new information has become available to the Agency that has significantly changed the conclusions reached in this document. Therefore, this document remains the Agency's aquatic toxicity hazard assessment for aqueous ammonia. The criteria developed for this document were derived from toxicity tests conducted with several ammonium compounds, including ammonium sulfate. The criteria are estimates of the highest concentrations that should not cause toxicity to aquatic organisms and are expressed as a function of pH and temperature. The criteria are presented in terms of both the concentrations of the un-ionized form of ammonia and the concentration of total ammonia.

In the original proposal, EPA reported that the majority (95 percent) of the ammonium sulfate consumed in the U.S. is used as a fertilizer and that, based on reports submitted to the Toxic Release Inventory (TRI), in 1987, 90.2 million pounds of ammonium sulfate (solution) were released to water and/or publicly-owned treatment works (POTWs). EPA conducted a limited exposure assessment based on data obtained from the TRI. The assessment focused on releases to surface waters

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and POTWs since these releases will have a direct impact on aquatic ecosystems. EPA determined that 30 percent of the facilities reviewed were not being regulated through their State programs for discharges of ammonia.

2. *Summary of options in the original proposal.* EPA considered three options for responding to the petition:

(i) Deny the petition.

(ii) Grant the petition and propose to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals.

(iii) Grant the petition and propose to delete ammonium sulfate (solution) while at the same time, use the rulemaking to revise release reporting of ammonia.

EPA recognized that certain facilities might not be aware of the chemistry of aqueous solutions of ammonium salts. Therefore, under option (iii), EPA discussed three options concerning how to inform the regulated community of the technical determination that these solutions are equivalent to solutions of aqueous ammonia generated by dissolving anhydrous ammonia in water. The options considered were:

(a) Create an "ammonium salts" category to make the technical determination more explicit.

(b) Modify the ammonia listing to read as follows: ammonia (includes total ammonia resulting from solutions of water dissociable salts).

(c) Revise EPA's guidance for ammonia reporting.

EPA believed that creating an ammonium salts category would be confusing and could potentially cause problems concerning double reporting and reporting on salts that do not dissociate. EPA believed that modification of the ammonia listing was not necessary in order to capture releases of aqueous ammonium salt solutions and that it would reinforce the artificial distinction between releases of aqueous solutions of ammonia generated from anhydrous ammonia and those generated from water dissociable ammonium salts. EPA, therefore, issued technical guidance clarifying the reporting requirements under the ammonia listing.

In the same issue of the **Federal Register** in which the proposal was published, a notice of availability was published (55 FR 12148) notifying the public and the regulated community of the availability of a guidance document on the reporting of ammonia releases. The guidance document explained that manufacturing, processing, or otherwise using aqueous solutions of ammonium salts that dissociate in water is equivalent to manufacturing, processing, or otherwise using aqueous ammonia solutions generated by dissolving anhydrous ammonia (an EPCRA section 313 listed toxic chemical) in water. Therefore, those facilities that manufacture, process, or otherwise use aqueous solutions of ammonium salts that dissociate in water should make threshold determinations under EPCRA section 313 to assess whether reporting for releases under the ammonia listing is required.

In the original proposal, EPA also discussed two options for reporting releases of aqueous ammonia:

(1) Report releases of total ammonia; or

(2) Report a proportion of the releases of total ammonia.

In discussing the two options, EPA stated that reporting total ammonia would allow communities to determine the proportion of un-ionized ammonia and ionized ammonia present in the receiving stream based on the pH and temperature characteristics of the stream. This information allows communities to easily determine the un-ionized ammonia and ionized ammonia loading resulting from facility releases of aqueous ammonia. EPA stated that although the ionized form of ammonia is less toxic to aquatic organisms than the un-ionized form of ammonia, it is present in a higher proportion under environmental conditions and may present the greater hazard. EPA also stated that reporting releases as a proportion of the amount of un-ionized ammonia released would result in data that cannot be used as well since it must be extrapolated to determine the amount of total ammonia released.

EPA proposed the second option in recognition of the fact that the un-ionized form of ammonia is more toxic than the ionized form of ammonia and that under environmental conditions only a proportion of total ammonia contains un-ionized ammonia. EPA requested comment on whether a proportion, which would be the same for all facilities, of releases of total ammonia should be reported. EPA stated that this proportion would be a worst-case estimate of the proportion of the un-ionized form of ammonia present in processing waters reflecting an upper bound level of the amount of the un-ionized form of ammonia formed. EPA also requested comment on what proportion of total ammonia should be used as an estimate.

III. Rationale for Amending the Proposal

The issue of what forms of ammonia should be reportable under the ammonia listing has been the source of ongoing discussions between EPA and affected parties since the publication of the original proposal. This has resulted in a significant amount of additional information becoming available to EPA, and is one of the reasons EPA is amending the proposed rule. This information has been placed in the docket for this rulemaking. Also, due to the recent addition of a nitrate compounds category to the EPCRA section 313 list of toxic chemicals (59 FR 61439, November 30, 1994), EPA believes that it would be appropriate to expand the proposed rule to include the deletion of ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. Therefore, EPA decided to publish this amended proposal to allow for adequate public notice and comment.

The following sections discuss this additional information as well as the expansion of the proposal to include the deletion of ammonium nitrate (solution).

A. Additional Information

1. *Average pH and temperature of U.S. waters (Ref. 1).* Data concerning the pH and temperature of lakes, rivers, and streams in the U.S. were not discussed or provided in the original proposal. This information is important since the pH and temperature of these receiving bodies will determine the proportion of aqueous ammonia that will exist in the more toxic un-ionized form. EPA has analyzed data tabulated from the Agency's STORET data base for all 50 states and found that at the 50th percentile for pH and temperature in surface waters, approximately 1 percent of aqueous ammonia would exist in the un-ionized form, at the 90th percentile it would be 10 percent, and at the 95th percentile it would be 15 percent. This information suggests an upper boundary for the amount of the un-ionized form of ammonia that will be generated from the releases of aqueous ammonia.

2. *Toxicity data (Ref. 2).* Additional data concerning the toxicity of aqueous ammonia to one aquatic organism has become available since the original proposal was issued. This new data indicate that the amphipod *Hyalella azteca* shows no dependency towards pH and temperature with regards to chronic toxicity from aqueous ammonia. This suggests that, for this organism, aqueous ammonia toxicity is not due primarily to the un-ionized form of ammonia and that, for this organism, the ionized form may be equally as toxic as the un-ionized form.

3. *Environmental fate of aqueous ammonia (Ref. 3).* Aqueous ammonia does not persist or bioaccumulate in the environment as ammonia. In surface waters the important and competitive processes that remove aqueous ammonia are nitrification and volatilization. The rate of volatilization of ammonia from surface waters is highest at the sources of releases, while nitrification processes tend to be more significant in lakes, slow moving rivers, and estuaries. Nitrification, which is one process within the nitrogen cycle, involves two steps that yield metabolic energy for two specific microorganisms. In the first step, *Nitrosomonas* converts ammonia to nitrite and in the second step, *Nitrobacter* converts nitrite to nitrate. Because the nitrogen cycle is dynamic, industrial releases of aqueous ammonia should not result in dramatic buildups of ammonia in surface waters. Nitrification is responsive to high inputs of ammonia such as those from industrial releases. However, it should be noted that high nitrification may lead to low levels of dissolved oxygen and the eutrophication of a water body. This effect is typically limited to coastal waters and estuaries where nitrogen is the limiting nutrient. Aqueous ammonia may also be removed by adsorption to particles which then settle to the sediment where soil-type processes take over. The ionized form of ammonia is also assimilated by most plants.

4. *Additional exposure information (Ref. 4).* EPA has conducted an additional exposure analysis of releases of aqueous ammonia to surface waters. This exposure assessment analyzed the releases of ammonium sulfate (solution) and ammonium nitrate (solution) that were reported to the TRI for reporting year 1992. Releases of ammonia reported under the ammonia listing were not included since this data are a mixture of reports of total ammonia releases and un-ionized ammonia releases and EPA has no way to readily determine how a facility calculated its releases. Although this exposure assessment represents only a small portion of the aqueous ammonia released to surface waters, it was helpful in identifying facilities that might be releasing aqueous ammonia in concentrations that exceed water quality criteria. The results showed that not all facilities with significant releases of these ammonium salts are covered by permits that control releases of aqueous ammonia and for those that are covered by such permits violations of these permits occur.

EPA has recently clarified how exposure information is used in listing and delisting decisions under EPCRA section 313 (59 FR 61432, November 30, 1994). EPA does not consider exposure information when evaluating whether highly ecotoxic chemicals meet the EPCRA section 313(d)(2)(C) listing criteria. EPA believes that for highly ecotoxic chemicals it is sufficient to consider only hazard when determining whether a chemical meets the EPCRA section 313(d)(2)(C) listing criteria. EPA only considers exposure information when evaluating low or moderately ecotoxic chemicals. EPA considers the un-ionized form of ammonia to be highly toxic to aquatic organisms; therefore, EPA did not consider exposure information in evaluating whether aqueous ammonia from ammonium sulfate (solution) contributes to aquatic toxicity. The exposure information provided in this amended proposal and in the original proposal was not used as a basis for determining whether ammonium sulfate (solution) meets the EPCRA section 313(d)(2)(C) listing criteria, but was provided as additional information since many states issue permits that require monitoring or limitation of ammonia releases.

5. *Science Advisory Board review (Ref. 5).* In order to help resolve the scientific issues concerning the reporting of aqueous ammonia under the EPCRA section 313 ammonia listing, EPA asked the Agency's Science Advisory Board (SAB) to review the issues. The SAB assigned the review to the Toxics Reporting Subcommittee of the Ecological Processes and Effects Committee which met in Washington, DC on January 4, 1995, in a public meeting to discuss the issue. EPA submitted two questions for the subcommittee to respond to:

(i) What is the most appropriate way to report releases of aqueous ammonia under EPCRA section 313: as un-ionized ammonia or as total ammonia?

(ii) Does total ammonia meet the EPCRA section 313 listing criteria?

The SAB responded with a letter to the Agency dated February 2, 1995. In this letter the SAB concluded that the acute toxicity of the un-ionized form of ammonia to aquatic life is approximately 100 times greater than the ionized form of ammonia and that the toxicity of the two forms is approximately additive. With regard to what form of ammonia should be reported under EPCRA section 313, the SAB stated that, for aquatic toxicity, reporting concentrations of the un-ionized form of ammonia at a standard pH and temperature would address this endpoint. The SAB also stated that for other effects such as nitrogen nutrient enrichment, the specific forms of ammonia are not very relevant since both have the same nutrient enrichment properties. The SAB went on to conclude, "Thus, the question of whether to list or how to list ammonia or any of its forms is not a scientific issue but strictly a matter of policy for the Agency to decide."

With regard to whether total ammonia meets the EPCRA section 313 criteria, the SAB stated that, based on their evaluation of the criteria, total ammonia meets the EPCRA section 313 criteria only if, as stated in the statute, the Administrator determines that it causes a significant adverse effect on the environment of sufficient seriousness to warrant reporting.

B. Proposed Deletion of Ammonium Nitrate (solution)

Ammonium nitrate (solution) is a solution of aqueous ammonia and nitrate ions. On November 30, 1994 (59 FR 61432), EPA added a water dissociable nitrate compounds category to EPCRA section 313 . The addition of this category and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing obviate the need to have ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. EPA believes that the aqueous ammonia from ammonium nitrate (solution) is more appropriately reported under the EPCRA section 313 ammonia listing and that the nitrate portion of ammonium nitrate (solution) is more appropriately reported under the new water dissociable nitrate compounds category. Although EPA is proposing to delete ammonium nitrate (solution), this action would not result in any loss of information concerning releases of this material.

IV. Proposed Actions and Rationale

A. Proposed Actions

EPA is proposing to take the following four actions:

1. Delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals.

2. Require that threshold and release determinations for aqueous ammonia be based on 10 percent of the total ammonia present in aqueous solutions of ammonia.

3. Modify the ammonia listing by adding the following qualifier: ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing).

4. Delete ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals.

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B. Rationale for Proposed Actions

The rationale for proposing each of these actions is discussed below.

1. *Deletion of ammonium sulfate (solution).* EPA agrees with the petitioner's claim that ammonium sulfate (solution) does not meet the human health listing criteria under EPCRA section 313(d)(2)(A) and (B). However, EPA does not agree with the petitioner's claim that ammonium sulfate (solution) does not show potential for adverse effects on the environment because when a facility dissolves ammonium sulfate in water, that facility, in effect, manufactures aqueous ammonia. The un-ionized form of ammonia present in aqueous ammonia is highly toxic to aquatic organisms and therefore meets the EPCRA section 313(d)(2)(C) criteria for listing. An aqueous solution of ammonium sulfate is environmentally equivalent to aqueous ammonia generated from anhydrous ammonia because when each of these solutions is released to receiving waters the amount of un-ionized ammonia present is dependent upon environmental conditions. In fact, ammonium sulfate is one of the many ammonium salts used by researchers as a source of aqueous ammonia for aquatic toxicity studies.

EPA does not believe that the sulfate portion of ammonium sulfate (solution) meets the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has previously reviewed the toxicity of sodium sulfate (54 FR 7217 and 54 FR 25850) and concluded that sulfate from sodium sulfate did not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria.

EPA believes that the only component of ammonium sulfate (solution) that meets the EPCRA section 313 listing criteria is the aqueous ammonia present in this solution. EPA believes that this aqueous ammonia is more appropriately reported under the EPCRA section 313 ammonia listing, therefore it is appropriate to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. Ten percent of the ammonium portion of ammonium sulfate (solution) would remain reportable under the ammonia listing.

2. *Reporting 10 percent of total ammonia.* EPA has considered all data available to the Agency concerning the chemistry, toxicity, and environmental fate of aqueous ammonia and believes that: (1) Aqueous ammonia does not persist or bioaccumulate in the environment as ammonia, (2) the most toxic form of ammonia is the un-ionized form, (3) the un-ionized form of ammonia makes up a relatively small percentage of total ammonia under most environmental conditions, (4) reporting a percentage of total aqueous ammonia under the ammonia listing would adequately represent the toxicity of aqueous ammonia, and (5) reporting un-ionized ammonia without pH and temperature data would not provide sufficient information to quantify potential hazards from releases. EPA believes that reporting aqueous ammonia as 10 percent of total ammonia is appropriate since, based on the 90th percentile pH and temperature data for U.S. waters, releases of aqueous ammonia will consist of no more than approximately 10 percent of the un-ionized form of ammonia. Reporting aqueous ammonia as a percentage of total ammonia would also allow for easy determination of the amount of total ammonia released. The amount of total ammonia released, along with the site-specific pH and temperature data for the receiving body, are required in order to calculate the amount of un-ionized ammonia released to any one specific water body. Under this proposal, facilities would be required to include 10 percent of the total ammonia in aqueous solutions in all threshold and release determinations under the EPCRA section 313 listing for ammonia. The proposal to report 10 percent of total ammonia is consistent with the original proposal in which EPA asked for comment on whether a proportion of total ammonia, that would be the same for all facilities, should be reported. This proposal is also consistent with the SAB conclusion that reporting un-ionized ammonia under standard conditions adequately addresses the aquatic toxicity endpoint. Also, users of TRI data who wish to assess the contribution of ammonia to nitrogen loading in nitrogen limited waters could extrapolate from the reported data.

3. *Modification of the ammonia listing.* In the original proposal, EPA discussed three ways to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. One method considered was to add a modifier to the ammonia listing to read: ammonia (includes total ammonia resulting from solutions of water dissociable salts). EPA was concerned, however that such a modification would reinforce the artificial distinction between releases of aqueous solutions of ammonia generated from anhydrous ammonia and those generated from water dissociable ammonium salts, a distinction which is not present under environmental conditions. However, EPA is now concerned that without such a qualifier the regulated community might not realize that the aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA guidance in response to inquires concerning what is reportable under the ammonia listing has been that aqueous ammonia from water dissociable ammonium salts is reportable under the listing. However, even after publishing this guidance in 1990 (55 FR 12148), EPA has continued to receive numerous inquires regarding what should be reported. Therefore, EPA proposes to add a qualifier to the ammonia listing to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA believes that modification of the ammonia listing to specify that the listing includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources, would aid the regulated community in determining whether they are required to report and would eliminate any confusion over what is reportable under the ammonia listing. This modification would also include the proposal discussed above to limit reporting of aqueous ammonia to 10 percent of total aqueous ammonia. Upon finalization of this proposed rule, EPA will publish a revised guidance document for the ammonia listing.

4. *Deletion of ammonium nitrate (solution).* EPA is proposing to delete ammonium nitrate (solution) because the recent addition of the water dissociable nitrate compounds category (59 FR 61432, November 30, 1994) and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing negate the need for a separate listing for this chemical solution. EPA does not believe that this would be a significant change since the releases of ammonium nitrate (solution) would still be reported under the EPCRA section 313 listing for ammonia and the nitrate compounds category. Under the nitrate compounds category, the amount of ammonium nitrate in solution would be counted in threshold determinations for the category, but only the amount of nitrate ion would be counted in release and transfer determinations, therefore no double counting of releases would occur. This proposal would simply consolidate the reporting of ammonium nitrate (solution) under existing EPCRA section 313 listings. The original proposal discussed the reporting of water dissociable ammonium salts under the ammonia listing. Since ammonium nitrate is a water dissociable ammonium salt and since no loss of information would result from this deletion, EPA believes that it is appropriate to add this proposal to this rulemaking.

V. Effective Dates

The changes described in this amended proposal (with the exception of the deletion of ammonium nitrate (solution)) would be effective on the date of publication of the final rule, which EPA expects to occur prior to July 1, 1995. These changes would therefore be effective for the 1994 reporting year.

Section 313(d)(4) of EPCRA provides, "Any revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year." EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list; EPA may, at its discretion, make deletions from the list and amendments to listings immediately effective.

EPA believes that the purpose behind section 313(d)(4) is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time not to report releases of a delisted chemical. Moreover, where EPA has determined that a chemical does not satisfy the criteria of section 313(d)(2)(A) through (C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions. Thus, a reasonable construction of section 313(d)(4), given the overall purposes and structure of EPCRA—to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list — is to apply the delayed effective date requirement only to additions to the list. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list.

An immediately effective date for the actions in this amended proposal is also consistent with 5 U.S.C. 553(d)(1), since a deletion from the section 313 list relieves a regulatory burden. EPA believes the combined effect of the changes in this amended proposal would be to reduce the burden by clarifying what is reportable under the ammonia listing and by simplifying the reporting requirements for ammonia. In addition, the proposal to require facilities to include 10 percent of total ammonia in aqueous solutions in threshold determinations might relieve some facilities from the obligation to report for aqueous ammonia.

If EPA were to publish a final rule before July 1, 1995, the following effective dates and requirements would apply.

1. *Deletion of ammonium sulfate (solution).* The deletion of ammonium sulfate (solution) would be effective for the 1994 reporting year (reports due July 1, 1995).

2. *Deletion of ammonium nitrate (solution).* The deletion of ammonium nitrate (solution) would be effective for the 1995 reporting year (reports due July 1, 1996). EPA is proposing to delay the effective date of this provision to coincide with the effective date of the recently added water dissociable nitrate compounds category (59 FR 61432, November 30, 1994). The requirement that aqueous ammonia from ammonium nitrate (solution) be reported under the ammonia listing as 10 percent of total aqueous ammonia would also be effective for the 1995 reporting year.

3. *Reporting 10 percent of total aqueous ammonia.* The requirement that 10 percent of total aqueous ammonia be reported under the ammonia listing for aqueous ammonia from all water dissociable ammonium salts (except ammonium nitrate (solution)) would be effective for the 1994 reporting year. EPA believes that facilities that have been subject to record keeping requirements for ammonium sulfate (solution) already have the information needed to calculate threshold and release quantities for 10 percent total aqueous ammonia. Specifically, a facility would multiply the appropriate ammonium sulfate (solution) quantities by 2.7 percent, which represents 10 percent of the weight percent of aqueous ammonia from ammonium sulfate (solution).

Facilities that currently report or make threshold determinations for the aqueous ammonia from other water dissociable ammonium salts may not be keeping the kind of information in their records that would allow them to calculate 10 percent of total aqueous ammonia from their un-ionized ammonia data. EPA recognizes that issuance of the final rule may come so late in the reporting year that some of these facilities may not be able to comply with this requirement before the July 1, 1995 reporting date. Accordingly, for this one year, such facilities could continue to use the pH and temperature of their process and waste streams to estimate the quantities of un-ionized ammonia present for threshold and release determinations, respectively.

Facilities that had already reported under the current requirements at the time the final rule is issued would not be required to resubmit their reports under the new requirements. They could, however, withdraw their reports if they did not meet the threshold for ammonia under the revised ammonia listing.

VI. Request for Public Comment

EPA requests public comment on the actions discussed in this amended proposed rule. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received on or before May 3, 1995. In developing the final rule, EPA will consider comments submitted in response to this amended proposal and comments previously submitted on the original proposal.

VII. Rulemaking Record

The record supporting the original proposal and proposed amendment is contained in docket number OPPTS–400032. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VIII. References

(1) Data from EPA's STORET water quality data base as tabulated in, *Industry Comments for the U.S. EPA Science Advisory Board Ecological Processes and Effects Committee on Delisting of Ammonium Sulfate Under EPCRA Section 313 and Reporting of Ammonia Releases*, December 16, 1994, by BP Chemicals Inc., Monsanto, and Sterling Chemicals.

(2) Uwe Borgmann, *Chronic Toxicity of Ammonia to the Amphipod Hyalella azteca; Importance of Ammonium ion and Water Hardness*, Environmental Pollution, 86 (1994) 329–335.

(3) *Summary Review of Health Effects Associated with Ammonia*, U.S. EPA Office of Health and Environmental Assessment, EPA/600/8–89/052F June 1989.

(4) U.S. EPA, OPPT, EETD, EAB, *Water Quality Modeling of Ammonium Sulfate (solution) and Ammonium Nitrate (solution) Toxic Release*

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Inventory (TRI) Surface Water Releases and Transfers to POTWs, March 13, 1995.

(5) Letter of February 2, 1995 to Carol M. Browner, Administrator U.S. EPA from Dr. Genevieve Matanoski, Chair, Executive Committee, Science Advisory Board.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this amended proposed rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by a proposed rule. Because the amended proposed rule does not create any new requirements and consolidates other requirements, it would not significantly affect facilities, including small entities.

C. Paperwork Reduction Act

This amended proposed rule does not result in any new information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: March 29,1995.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances

Therefore it is proposed that, 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entire entry for ammonium sulfate (solution) and ammonium nitrate (solution) and by adding the following language to the ammonia listing "includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing" under paragraph (a) and removing the entire CAS No. entry for 7783–20–2 and 6484–52–2 under paragraph (b).

[FR Doc. 95–8202 Filed 3–30–95; 1:29 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–67; RM–8481]

Radio Broadcasting Services; Collegeville, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismissed a petition for rule making filed by Saint John's University requesting the allotment of Channel 260A to Collegeville, Minnesota, and reservation of the channel for noncommercial educational use. *See* 59 FR 35292, July 11, 1994. In reviewing this proceeding, we discovered that we erroneously proposed reservation of the channel at Collegeville. The *Notice* should only have proposed allotment of a channel to Collegeville. Saint John's proposal does not meet the established guidelines to reserve a channel in the commercial band. Since no comments were received expressing an intention to use the channel as a commercial station, we have terminated the proceeding without making an allotment. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94–67, adopted March 16, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Authority: Secs. 303, 48 Stat., as amended 1082; 47 U.S.C. 154, as amended.
Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7947 Filed 3–31–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD11

Endangered and Threatened Wildlife and Plants: Proposal To Determine Endangered Status for Three Wetland Species Found in Southern Arizona and Northern Sonora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for two plants, *Spiranthes delitescens* (Canelo Hills ladies'-tresses) and *Lilaeopsis schaffneriana* spp. *recurva* (Huachuca water umbel), and one amphibian, the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). These species occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, catastrophic floods, drought, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa are also threatened with stochastic extirpations or extinction due to small numbers of populations or individuals. This proposed rule, if made final, would extend the Act's protection to these three taxa.

DATES: Comments from all interested parties must be received by June 2, 1995. Public hearing requests must be received by May 18, 1995.

ADDRESSES: Comments and materials should be sent to the Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh at the above address (telephone 602/640–2720: facsimile 602/379–6629).

SUPPLEMENTARY INFORMATION:

Background

Cienegas are mid-elevation wetland communities often surrounded by relatively arid environments. They are typically associated with permanent perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as the three taxa in this proposed rule (Hendrickson and Minckley 1984, Lowe 1985, Minckley and Brown 1982, Ohmart and Anderson 1982). Although *Spiranthes delitescens (Spiranthes), Lilaeopsis schaffneriana* spp. *recurva* (*Lilaeopsis*), and Sonora tiger salamander typically occupy different microhabitats, they all occur in cienegas: *Lilaeopsis* also occurs along streams and rivers.

Cienegas and perennial streams and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total Arizona land area, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimates that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historic times. *Spiranthes*, *Lilaeopsis*, and the Sonora tiger salamander occupy small portions of these rare habitats.

Spiranthes delitescens (Canelo Hills ladies'-tresses). Spiranthes delitescens is a slender, erect, terrestrial orchid that when in bloom reaches approximately 50 centimeters (cm) 20 inches (in)) tall. Five to ten, linear-lanceolate, grass-like leaves, 18 cm (7.1 in) long and 1.5 cm (0.6 in) wide, grow basally on the stem. The fleshy swollen roots are approximately 5 millimeters (mm) (0.2 in) in diameter. The top of the flower stalk contains up to 40 small white flowers arranged in a spiral. The species is presumed to be perennial, but mature plants rarely flower in consecutive years and in some years have no visible aboveground structures (McClaren and Sundt 1992, Newman 1991).

P.S. Martin first collected *Spiranthes delitescens* in 1968 at a site in Santa Cruz County, Arizona (Sheviak 1990). This specimen was first identified as *Spiranthes graminea*, a related Mexican species. Sheviak (1990) found that the *Spiranthes* in Arizona, previously thought to be *S. graminea*, displayed a distinct set of morphological and cytological characteristics and named them *S. delitescens*.

This species is known from four cienegas at about 1,525 meters (m) (5,000 feet (ft)) elevation in the San Pedro River watershed in Santa Cruz and Cochise Counties, southern Arizona (Newman 1991). The total amount of occupied habitat is less than 81 hectares (ha) (200 acres (ac)). All populations are on private land less than 37 kilometers (km) (23 miles (mi)) north of the U.S./Mexico border.

Potential habitat in Sonora, Mexico, has been surveyed, but no *Spiranthes* populations have been found.

The dominant vegetation associated with *Spiranthes* includes grasses. *Carex* spp. (sedges), *Juncus* spp. (rushes), *Eleocharis* spp. (spike rushes), *Typha* spp. (cattails), and *Equisetum* spp. (horsetails) (Cross 1991, Warren *et al.* 1991). The surrounding vegetation is semidesert grassland or oak savannah.

All *Spiranthes* populations occur where scouring floods are very unlikely (Newman 1991). Soils supporting the populations are finely grained, highly organic, and seasonally or perennially saturated. Springs are the primary water source, but a creek near one population contributes near-surface groundwater (McClaran and Sundt 1992).

Some *Spiranthes* life history information has been gained from studies at one site. As with most terrestrial orchids, successful seedling establishment probably depends on the formation of endomycorhizae (a symbiotic association between plant root tissue and fungi) (McClaran and Sundt 1992). The time needed for subterranean structures to produce aboveground growth is unknown. Plants may remain dormant in a subterranean state or remain vegetative (nonflowering) for more than one consecutive year. Plants that flower one year can be dormant, vegetative, or reproductive the next (McClaran and Sundt 1992, Newman 1991). The saprophytic/autotrophic state of orchid plants may be determined by climatic fluctuations and edaphic factors such as pH level, temperature and soil moisture (Sheviak 1990).

Estimating *Spiranthes* population size and stability is difficult because nonflowering plants are very hard to find in the dense vegetation, and yearly counts underestimate the population because dormant plants are not counted. McClaran and Sundt (1992) monitored marked individuals in a *Spiranthes* population during two three-year periods. They concluded that the subpopulations at both monitored sites were stable between 1987 and 1989, although Newman (1991) later reported that one monitored site was reduced to one nonflowering plant in 1991. Due to the propensity of *Spiranthes* plants to enter and remain in a vegetative state and the lack of new flowering plants at one monitoring site. McClaran and Sundt (1992) also speculated that population numbers may be declining. Problems of experimental design acknowledged by the authors confounded McClaran and Sundt's (1992) conclusions about population stability; the Service believes additional long-term studies are needed to more accurately determine the stability of *Spiranthes* populations.

The fire ecology of this *Spiranthes* is unknown, but should be determined. Experts disagree about the role of fire in cienegas. Some believe upland lightning-caused fires spread into cienegas and burn at cool temperatures while others believe the wet, marsh-like habitats will not support fires. Determining the best method of managing healthy cienegas will depend in part, on resolving this controversy. Studies at one site have been inconclusive about the effect of fires on *Spiranthes* (Gori and Fishbein 1991, Fishbein and Gori 1992).

Lilaeopsis schaffneriana ssp. recurva (Huachuca water umbel). Lilaeopsis schaffneriana ssp. *recurva* is an herbaceous, semi-aquatic, perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow, and have septa (thin partitions) at regular intervals. The yellow-green or bright

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green leaves are generally 1–3 mm (0.04–0.12 in) in diameter and often 3–5 cm tall (1–2 in), but can reach up to 20 cm (8 in) tall under favorable conditions. Three to ten very small flowers are born on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually and from rhizomes asexually, the latter probably being the primary reproductive mode.

Lilaeopsis schaffneriana ssp. *recurva* was first described by A.W. Hill, based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

Lilaeopsis has been documented from 21 sites in Santa Cruz and Cochise Counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). Six of the 21 sites have been extirpated. The 15 extant sites occur in four major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148 and 2,133 m (3,500 and 6,500 ft) elevation..

Eight *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, the Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management (BLM)-Safford District. Two extirpated populations in the upper San Pedro watershed in Arizona occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats suitable for *Lilaeopsis* were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone.

The four *Lilaeopsis* populations in the Santa Cruz River watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem, about a 130–km (80–mi) reach, flowed perennially from the U.S./Mexico border north to the Tubac area then intermittently from Tubac north to the Tucson area (Davis 1986). In 1859, a traveler described the Santa Cruz River in the Tucson area as a "* * * rapid brook * * * clear as crystal, and full of aquatic plants, fish and tortoises of various kinds * * *" (in Humphrey 1958). This habitat and species assemblage no longer occurs in the Tucson area. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat still exists (Warren *et al.* 1991).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Deecken, pers. comm. 1994). The species remains in small areas (generally less than 1 square meter (m^2)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the *Lilaeopsis* population. A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not have scouring floods, *Lilaeopsis*occurs in microsites where interspecific plant competition is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. the types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz rivers when channel entrenchment occurred in the late 1800s.

In stream and river main channels, *Lilaeopsis* can occur in backwaters, side channels, and nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was observed at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again codominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991). The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of "refugia" where the species can escape the effects of scouring floods, a watershed with an unaltered hydrograph, and a healthy riparian community that stabilizes the channel.

Density of *Lilaeopsis* plants and size of populations fluctuates in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 m^2 (5,385 ft^2) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 m^2 (11–22 ft^2). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains the largest *Lilaeopsis* population, occupying about 57 percent of the 1,450 m (4,756 ft) perennial stream reach (Gori *et al.* 1990, J. Abbott, Forest Supervisor, Coronado National Forest, *in litt.* 1994). The Coronado National Forest plans to continue monitoring the populations in Scotia and Bear canyons.

While the extent of occupied habitat can be estimated, it is impossible to determine the number of individuals in each population because of the intermeshing creeping rhizomes. A population of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to have been successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (K. Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994, and P. Warren, pers. comm. 1993) that other species such as *Typha* sp. (cattails) will outcompete *Lilaeopsis*.

Other reintroductions are being considered. The Service has funded a project to reintroduce *Lilaeopsis* on the Santa Cruz River and tributaries, and the BLM (1993) plans to re-establish it along the San Pedro River.

Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). The Sonora tiger salamander is a large salamander with light-colored blotches or reticulation on a dark background. Snout-vent lengths of metamorphosed individuals range from approximately 6.7–12.5 cm (2.6–4.9 in) (Jones *et al.* 1988, Lowe 1954). Larval salamanders are aquatic with plume-like gills and well developed tail fins (Behler and King 1980). Larvae hatched in the spring are large enough to metamorphose into terrestrial salamanders from late July to early September, but only an estimated 17–40 percent metamorphose annually. Remaining larvae mature into branchiates (aquatic and larval-like, but sexually mature salamanders that remain in the breeding pond) or overwinter as larvae (Collins and Jones 1987); James Collins, Arizona State University, pers. comm. 1993).

The Sonora tiger salamander was discovered in 1949 at the J.F. Jones Ranch stock tank in Parker Canyon, San Rafael Valley, Arizona (Reed 1951). Based on color patterns of metamorphosed animals, Lowe (1954) described the Sonora tiger salamander from southern Santa Cruz County, Arizona, as the subspecies *stebbinsi* of the broad-ranging tiger salamander (*Ambystoma tigrinum*). However, again based on color patterns, Gehlbach (1965, 1967) synonomized *A. t. stebbinsi* and *A. t. utahense* (from the Rocky Mountains region) with *A. t. nebulosum* (from northern Arizona and New Mexico). Nevertheless, *A. t. stebbinsi* continued to be recognized in the scientific literature (Jones *et al.* 1988).

Jones *et al.* (1988) found Lowe's description of color patterns in *A. t. stebbinsi* was only accurate for recently metamorphosed individuals and that older metamorphosed adults exhibited either a distinctive reticulate pattern or large light-colored blotches on a dark background similar to *A. t. mavortium*, found in the central United States and adjacent portions of Mexico. Starch gel electrophoresis of 21 presumptive gene loci of *A. t. stebbinsi* were compared with gene loci of *A. rosaceum* (from Sonora), *A. t. mavortium*, and *A. t. nebulosum* (Jones *et al.* 1988). Based on this analysis, distinctive reticulate color patterns, low heterozygosity, and apparent geographic isolation, subspecific designation of *A. t. stebbinsi* was considered warranted by Collins and Jones (1987) and Jones *et al.* (1988). Further analysis of mitochondrial DNA reaffirmed subspecific designation and suggested that *A. t. stebbinsi* may have been derived from hybridization between *A. t. nebulosum* and *A. t. mavortium* (Collins *et al.* 1988).

The grassland community of the San Rafael Valley and surrounding hillsides, where all extant populations of *A. t. stebbinsi* occur, may represent a relictual grassland and a refugium for tiger salamander populations that became isolated and, over time, genetically distinct.

Based on color patterns and electrophoretic analysis, *Ambystoma* collected in Mexico at one site in Sonora and 17 sites in Chihuahua were all *A. rosaceum*, not *A. t. stebbinsi* (Jones *et al.* 1988). Reanalysis of reported *A. t. stebbinsi* collected in Sonora (Hansen and Tremper 1979) and at Yepomera, Chihuahua (Van Devender 1973) revealed that these specimens were actually *A. rosaceum* (Jones *et al.* 1988).

Collins *et al.* (1988) list 18 recorded sites for the Sonora tiger salamander. All of these sites are in the headwaters of the Santa Cruz River, including sites in the San Rafael Valley and adjacent foothills of the Patagonia and Huachuca Mountains and the Canelo Hills, in Santa Cruz and Cochise Counties, Arizona. The taxon is currently extant at 15 of these sites, where populations of mature branchiates range from approximately 50 to several hundred (Collins and Jones 1987). Populations of Sonora tiger salamanders also have been discovered recently in Scotia Canyon on the western slopes of the Huachuca Mountains (Jeff Howland, Arizona Game and Fish Department, pers. comm. 1993) and in Copper Canyon of the Huachuca Mountains (Russell Duncan, Southwestern Field Biologists, pers. comm. 1993). Salamanders tentatively identified as Sonora tiger salamander also have been found recently at Portrero del Alamo at the Los Fresnos cienega in the headwaters of the San Pedro River, San Rafael Valley, Sonora, Mexico (Sally Stefferud, U.S. Fish and Wildlife Service, pers. comm. 1993). In addition, a single terrestrial Sonora tiger salamander was found near Oak Spring in Copper Canyon of the Huachuca Mountains (J. Howland, pers. comm. 1993). This individual probably moved from the newly discovered aquatic population located approximately 1 km (0.6 mi) to the southwest. All historic and extant sites occur within 31 km (19 mi) of Lochiel, Arizona. The Los Fresnos and Oak Spring sites are springs or cienegas; all other sites are livestock tanks or impounded cienegas. Historically, the Sonora tiger salamander probably inhabited springs and cienegas where permanent or nearly permanent water allowed survival of mature branchiates.

Other potential localities have been surveyed in or near the San Rafael Valley, but no other Sonora tiger salamander populations have been found. *A. rosaceum* and *A. t. velasci* occur at localities in Sonora and Chihuahua to the south and east of the extant range of the Sonora tiger salamander (Collins 1979, Collins and Jones 1987, Van Devender and Lowe 1977). *A. t. mavortium* occurs at scattered localities to the east in the San Pedro, Sulphur Springs, and San Simon Valleys (Collins and Jones 1987), but at least some of these populations were introduced by anglers and bait collectors (Collins 1981, Lowe 1954, Nickerson and Mays 1969).

A variety of human activities threaten the Sonora tiger salamander. The species has been recently extirpated from at least three of the 18 localities described by Collins *et al.* (1988). Disease and predation by introduced nonnative fish and bullfrogs (*Rana catesbeiana*) have been implicated in the extirpation of these populations (Collins and Jones 1987). Tiger salamanders are also widely used as fishing bait in Arizona, and this use poses additional threats. Other subspecies of tiger salamander introduced into habitats of the Sonora tiger salamander for bait propagation could, through interbreeding, genetically swamp the distinct *A. t. stebbinsi* populations (Collins and Jones 1987). Collecting Sonora tiger salamanders for bait could also extirpate or greatly reduce populations. Additional threats include habitat destruction, reduced fitness resulting from low genetic heterozygosity, and the increased probability of stochastic extirpation characteristic of small populations.

Previous Federal Action

Federal government actions on *Spiranthes delitescens*, *Lilaeopsis schaffneriana* ssp. *recurva*, and Sonora tiger salamander began with their inclusion in various Service notices of taxa under review for listing as endangered or threatened species. Sonora tiger salamander was included as a category 2 candidate in the first notice of review of vertebrate wildlife (December 30, 1982; 47 FR 58454), and in subsequent notices published September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 candidates are those for which the Service has some evidence of vulnerability, but for which there is insufficient scientific and commercial information to support a proposed rule to list them as threatened or endangered. The most recent animal notice, published November 15, 1994 (59 FR 58982), included the Sonora tiger salamander in category 1. Category 1 includes those taxa for which the Service has sufficient information to

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support proposed rules to list the species as threatened or endangered.

Lilaeopsis schaffneriana ssp. *recurva*, then under the name *L. recurva*, was included as a category 2 candidate in the November 28, 1983 (45 FR 82480) and September 27, 1985 (50 FR 39526) plant notices. It was included under its present name as a category 1 candidate in the February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices.

Spiranthes delitescens was included for the first time in the September 30, 1993, plant notice. It was included in that notice as a category 1 candidate.

On June 3, 1993, the Department of the Interior, Washington, DC, received three petitions, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993). The petitioners requested the listing of *Spiranthes, Lilaeopsis*, and Sonora tiger salamander as endangered species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). On December 14, 1993, the Service published a notice of three 90-day findings that the petitions presented substantial information indicating that listing these three species may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

Section 4(b)(3)(B) of the Act requires the Secretary to reach a final decision on any petition accepted for review within 12 months of its receipt. Publication of this proposed rule constitutes the warranted findings for the petitioned actions.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes delitescens* Sheviak (Canelo Hills ladies'-tresses), *Lilaeopsis schaffneriana* spp. *recurva* (A.W. Hill) Affolter (Huachuca water umbel), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi* Lowe) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Humans have affected southwestern riparian systems over a period of several thousand years. From prehistoric or historic times, human settlement in southern Arizona has centered on oasis-like cienegas, streams, and rivers. Before the early 1800s, indigenous peoples and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence enterprises, including wood cutting, agriculture (including livestock grazing), and food and fiber harvesting. In the early 1800s, fur trappers nearly eliminated beaver from southern Arizona streams and rivers (Davis 1986) significantly changing stream morphology. In addition, human-caused fires and trails may have significantly altered riparian systems (Bahre 1991, Dobyns 1981).

There was a significant human population increase in southern Arizona and northern Sonora in the early to middle 1800s. New immigrants substantially increased subsistence and commercial livestock production and agriculture. By the late 1800s, many southern Arizona watersheds were in poor condition primarily due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Bahre 1991, Humphrey 1958, Martin 1975). The watershed degradation caused by these management practices led to widespread erosion and channel entrenchment when above average rainfall and flooding occurred in the late 1800s (Bahre 1991, Bryan 1925, Dobyns 1981, Hastings and Turner 1980, Hendrickson and Minckley 1984, Martin 1975, Sheridan 1986, Webb and Betancourt 1992). These events contributed to long-term cienega and riparian habitat degradation throughout southern Arizona and northern Mexico. Physical evidence of cienega and other riparian area changes can be found in the black organic soils of the drainage cut banks in the San Rafael Valley (Hendrickson and Minckley 1984), San Pedro River (Hereford 1992), Black Draw, and elsewhere. Although these changes took place nearly a century ago, the ecosystem has not fully recovered and, in some areas, may never recover.

Wetland habitat degradation and loss continues today. Human activities such as groundwater overdrafts, surface water diversions, impoundments, channelization, improper livestock grazing, chaining, agriculture, mining, road building, nonnative species introductions, urbanization, wood cutting, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona. The local and regional effects of these activities are expected to increase with increasing human population. Each threat is discussed in more detail below.

Growing water demand threatens the existence of southern Arizona perennial surface water and the species that depend on it. The North American Free Trade Agreement (NAFTA) will likely stimulate borderland development, with a concurrent water demand increase that could accelerate riparian area destruction and modification and increase threats to plants and animals dependent on surface water, including the species in this proposal.

The largest area currently available for recovery of *Lilaeopsis* is the San Pedro River along the perennial reach between Hereford and Fairbank. Whether or not the species can be recovered there depends largely on the future presence of perennial surface flows in the river and a natural unregulated hydrograph. Perennial flow in the San Pedro River between Hereford and Fairbank comes from a deep regional aquifer and a shallower floodplain (alluvial) aquifer (Arizona Department of Water Resources 1991, Arizona Department of Water Resources 1994, Jackson *et al.* 1987, Vionnet and Maddock 1992). Groundwater pumping from both the regional and floodplain aquifers has occurred for some time and threatens the base flow in the river (Jackson *et al.* 1987, University of Arizona San Pedro Interdisciplinary Team 1991). Pumping from wells used primarily for agriculture, particularly in the Palominas and Hereford area, is having the largest current effect on the floodplain aquifer (Arizona Department of Water Resources 1994, Jackson *et al.* 1987). A significant effect to the regional aquifer results from groundwater pumping from deeper wells that are the main sources of municipal, military, and industrial water for Sierra Vista, Fort Huachuca Military Reservation, and Huachuca City (Jackson *et al.* 1987, Arizona Department of Water Resources 1991 and 1994, Vionnet and Maddock 1992). Groundwater pumping from this deep regional aquifer has formed a cone of depression in the Sierra Vista/Fort Huachuca area intercepting mountain front flows that would have contributed to aquifer recharge (Arizona Department of Water Resources 1994, Jackson *et al.* 1987).

Groundwater pumping is expected to increase with human population growth. In anticipation of population growth, Fort Huachuca Military Reservation has filed a claim for 10,087 acre-feet (A–F) per year of tributary groundwater, more than three times the estimated 3,000 A–F currently used (Arizona Department of Water Resources 1991). Even if water conservation measures are employed, groundwater drafts and the capture of mountain front recharge are likely to adversely affect flows in the San Pedro River. If base flow in the river continues to decrease, the future existence of the riparian plant community is threatened (Arizona Department of Water Resources 1994, Jackson *et al.* 1987). If the groundwater drops below the elevation of the channel bed, the wetland plant (herb) association where *Lilaeopsis* is found will be the first plant association lost (Arizona Department of Water Resources 1994).

Fort Huachuca Military Reservation also relies on water from a well and springs in Garden Canyon (Arizona Department of Water Resources 1991). These diversions and pumping could dewater the stream and damage or destroy the *Lilaeopsis* population, particularly during below-average rainfall periods.

Flows in certain reaches of the Santa Cruz River remained perennial until groundwater pumping lowered the water table below the streambed. In 1908, the water table near Tucson was above the streambed, but from 1940–1969, the water table was 6.0–21.0 m (20–70 ft) below the streambed (De la Torre 1970). Recovery of perennial flow in the Santa Cruz River and of *Lilaeopsis* near Tucson is unlikely, given the importance of groundwater for the metropolitan area.

Groundwater pumping in Mexico threatens *Lilaeopsis* populations on both sides of the border. South of the San Bernardino National Wildlife Refuge, groundwater is being pumped to irrigate farmlands in Mexico, and this pumping threatens to dry up the springs and streams that support several listed endangered fish and a population of *Lilaeopsis*. The large copper mine at Cananea, Sonora, pumps groundwater for processing and support services. Although little is known about how groundwater pumping near Cananea may affect the spring at Ojo de Agua de Cananea, it is likely that overdrafts would decrease springflow or dewater the spring, extirpating the *Lilaeopsis* population. The spring at Ojo de Aqua de Cananea is also the main municipal water source for the town of Cananea. This water diversion, particularly if increased, may adversely affect *Lilaeopsis*.

Sections of many southern Arizona rivers and streams have been channelized for flood control, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization modifies the natural hydrograph above and below the channelized section, which may adversely affect *Lilaeopsis* and *Spiranthes*. Channelization will continue to contribute to riparian habitat decline. Additional channelization will accelerate the loss and/or degradation of *Lilaeopsis* and *Spiranthes* habitat.

Dredging extirpated the *Lilaeopsis* population in House Pond, near the extant population in Black Draw (Warren *et al.* 1991). The *Lilaeopsis* population at Zinn Pond in St. David near the San Pedro River was probably lost when the pond was dredged and deepened. This population was last documented in 1953 (Warren *et al.* 1991).

Livestock grazing potentially affects *Lilaeopsis* at the ecosystem, community, population, and individual levels. Cattle generally do not eat *Lilaeopsis* because the leaves are too close to the ground, but they can trample plants. *Lilaeopsis* is capable of rapidly expanding in disturbed sites and could recover quickly from light trampling by extending undisturbed rhizomes (Warren *et al.* 1991). Light trampling may also keep plant density low providing favorable *Lilaeopsis* microsites.

Poor livestock grazing management can destabilize stream channels and disturb cienega soils creating conditions unfavorable for *Lilaeopsis*, which requires stable stream channels and cienegas. Such management can also change riparian community structure and diversity causing a decline in watershed conditions. Poor livestock grazing management is widely believed to be one of the most significant factors contributing to regional stream channel entrenchment in the late 1800s.

Poor livestock grazing management in Mexico has severely degraded the riparian area along Black Draw and its watershed. The degraded habitat most likely contributed to the severity of a destructive scouring flood on San Bernardino Creek in 1988, which extirpated two patches of *Lilaeopsis*. Overgrazing is occurring immediately adjacent to the San Bernardino National Wildlife Refuge and has destabilized the channel of Black Draw. A headcut moving upstream threatens to undermine the riparian area recovery that has occurred since the refuge was acquired. The refuge is implementing management to avoid the destructive downstream grazing effects.

Well managed livestock grazing and *Lilaeopsis* are compatible. The fact that *Lilaeopsis* and its habitat occur in the upper Santa Cruz River system in the San Rafael Valley attests to the good land stewardship of the private landowner and of prior generations of the family.

The effect of livestock grazing on *Spiranthes* is unclear. A *Spiranthes* population growing at a site grazed for more than 100 years is larger and more vigorous than a population growing at a site ungrazed since 1969 (McClaran and Sundt 1992, Newman 1991). Sundt (pers. comm. in Newman 1991) has suggested differences in soil moisture and topography between the two sites could explain the differences in *Spiranthes* population size and vigor. Another explanation is that *S. delitescens*, like many species in the genus, shows an affinity for habitats with sparse herbaceous cover (McClaran and Sundt 1992). Further research is needed, but the Service's preliminary conclusion is that well managed livestock grazing does not harm *Spiranthes* populations.

Livestock often denude the vegetation around stock tanks. The impact of this effect on Sonora tiger salamander populations is unknown (Collins and Jones 1987), however, the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), a related endangered species from the central coast of California requires dense vegetation around breeding ponds and surrounding uplands used by mature metamorphs (U.S. Fish and Wildlife Service 1986). Aquatic, shoreline, and nearby terrestrial vegetation cover at Sonora tiger salamander breeding ponds likely conseals salamanders from predators and provides a forage base for invertebrates that make up a portion of the salamander's diet. In addition, livestock probably trample metamorphs, eggs, and possibly brachiate salamanders. Although Sonora tiger salamanders persist in stock tanks heavily used by cattle, the effects of grazing and trampling probably reduce the viability of these populations.

Sand and gravel mining along the San Pedro, Babocomari, and Santa Cruz Rivers in the United States has occurred, and probably will continue unless regulated, although no mining occurs within the San Pedro Riparian National Conservation Area. Sand and gravel mining removes riparian vegetation and destabilizes the ecosystem, which could cause *Spiranthes* or *Lilaeopsis* habitat or population losses upstream or downstream from the mining. These mines also pump groundwater for processing, and could locally affect groundwater reserves and perennial stream base flows. Since 1983, groundwater has been used to wash sand and gravel mined near the Babocomari River, 0.8 km (0.5 mi) west of highway 90 (Arizona Department of Water Resources 1991). This activity could affect at least one *Spiranthes* population.

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Rural and urban development, road building, chaining, agriculture, mining, and other land disturbances that degrade the watershed can adversely affect *Lilaeopsis*. These activities are common in the middle Santa Cruz basin, but much less prevalent in the San Pedro basin. For these reasons, conservation and recovery of the middle Santa Cruz River is unlikely, but may still be possible for the upper San Pedro watershed, given region-wide planning decisions favorable to good watershed management. Increased development in the upper San Pedro Valley, including the expansion of existing cities and increased rural development, will likely increase erosion and have other detrimental hydrologic effects.

There are few watershed-level disturbances in the upper Santa Cruz and Black Draw drainages. There were irrigated fields in the Black Draw watershed, but these were abandoned when the Service acquired the area as a refuge. The fields are returning to natural vegetation. The San Rafael Valley, which contains the upper Santa Cruz River, is privately owned, well managed, and currently undeveloped, with few watershed disturbing activities. However, there is potential for commercial development in the upper Santa Cruz basin and resulting watershed effects.

Riparian areas and cienegas offer oasis-like living and recreational opportunities for residents of southern Arizona and northern Sonora. Riparian areas and cienegas such as Sonoita Creek, the San Pedro River, Canelo Hills cienega, and the perennial creeks of the Huachuca Mountains receive substantial recreational visitation, and this is expected to increase with the increasing southern Arizona population. While well-managed recreation is unlikely to extirpate *Spiranthes* or *Lilaeopsis* populations, severe impacts in unmanaged areas can compact soils, destabilize steam banks, and decrease riparian plant density.

Stream headcutting threatens the *Lilaeopsis* and presumed Sonora tiger salamander populations at Los Fresnos cienega in Sonora. Erosion is occurring in Arroyo Los Fresnos downstream from the cienega and the headcut is moving upstream. The causes of this erosion are uncertain, but are presumably from livestock overgrazing and roads in this sparsely populated region. If the causes of this erosion are left unchecked and headcutting continues, it is likely the cienega habitat will be lost within the foreseeable future. The loss of Los Fresnos cienega may extirpate the *Lilaeopsis* and Sonora tiger salamander populations. If the salamanders at the Los Fresnos cienega are Sonora tiger salamanders, this would represent the only known natural cienega habitat occupied by an aquatic population of this species.

The 15 extant aquatic Sonora tiger salamander populations described by Collins *et al.* (1988) and the new localities in Scotia Canyon and Copper Canyon are all in stock tanks or impounded cienegas constructed to collect runoff for livestock. Most of these tanks likely date to the 1920s and 1930s when government subsidies were available to offset construction costs (Brown 1985). These stock tanks, to some degree, have created and replaced permanent or semi-permanent Sonora tiger salamander water sources.

Although the tanks provide relatively permanent aquatic habitats, current management and the dynamic nature of these artificial impoundments compromise their ability to support salamander populations in the long term. The tanks collect silt from upstream drainages and must be cleaned out periodically, typically with heavy earth moving equipment. This maintenance is done when stock tanks are dry or nearly dry at an average interval of about 15 years (L. Dupee. Coronado National Forest, Sierra Vista, Arizona, pers. comm. 1993). As the tanks dry out, aquatic salamanders typically metamorphose and migrate from the pond. However, if water is present during maintenance, some branchiate salamanders would likely be lost due to excavation of the remaining aquatic habitat. Any terrestrial metamorphs at the tank or in areas disturbed would also be lost during maintenance activities.

Flooding and drought pose additional threats to stock tank populations of Sonora tiger salamanders. The tanks are simple earthen impoundments without water control structures. Heavy flooding could erode and breach downstream berms resulting in aquatic habitat loss. Long-term drought could dry up the tanks.

Sonora tiger salamanders have persisted in stock tanks despite periodic maintenance, flooding, and drought. If the tanks refill soon after events that damage the aquatic habitat, they could presumably be recolonized through terrestrial metamorph reproduction. However, if a tank was dry for several years and isolated from other salamander populations, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize the stock tank. Potential grazing practice changes also threaten aquatic Sonora tiger salamander populations. Stock tanks could be abandoned or replaced by other watering facilities, such as windmills and troughs, which do not provide habitat for salamanders.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No commercial, recreational, or educational uses for *Lilaeopsis* are known. A limited amount of scientific collecting is likely, but is expected to pose no threat to the species.

Although no specific cases of commercial *Spiranthes delitescens* collecting have been documented, commercial dealers, hobbyists, and other collectors are widely known to significantly threaten some natural orchid populations. The commercial value of an orchid may increase after it is listed as threatened or endangered. To limit the possible adverse effects of illegal collecting, no specific *Spiranthes* population locations are discussed in this proposed rule, nor will critical habitat be designated. No recreational or educational uses for *Spiranthes* are currently known. The small amount of scientific collecting that has occurred is regulated by the Arizona Native Plant Law (A.R.S. Chapter 7, Article 1).

Collecting *Ambystoma* in the San Rafael Valley of Arizona is currently prohibited by Arizona Game and Fish Commission Order 41. Collins and Jones (1987) reported an illegal *Ambystoma* collection from the San Rafael Valley and suspected that bait collectors and anglers often move salamanders among stock tanks. The extent of this activity and its threat to populations is unknown. However, all Sonora tiger salamander populations are relatively small (Collins and Jones 1987). Collecting may significantly reduce the size of branchiate populations and increase the chance of extirpations.

C. *Disease or predation.* Neither *Lilaeopsis* nor *Spiranthes* are known to be threatened by disease or predation.

Sonora tiger salamanders are invariably eliminated through nonnative fish predation, particularly by sunfish and catfish (Collins and Jones 1987). Nonnative fish introductions were implicated in three recent Sonora tiger salamander extirpations from stock tanks (Collins *et al.* 1988). The effect of native fishes on salamander populations is unknown, but some native species may also prey on Sonora tiger salamanders.

Bullfrogs occur at some Sonora tiger salamander localities. These introduced predators likely prey on salamander eggs, larvae, and adults (Collins *et al.* 1988). They may also be a vector for a disease with symptoms similar to *Aeromonas* infection ("red leg") (Marcus 1981) that killed all branchiate salamanders at Huachuca Tank, Parker Canyon Tank #1, and Inez Tank in 1985 (Collins *et al.* 1988). The latter two tanks were recolonized within the next two years, presumably by reproducing terrestrial metamorphs that survived the disease. However, no recolonization of Huachuca Tank had occurred as of spring 1988 (Collins *et al.* 1988), and the species was not observed there during surveys in 1993 (J. Collins, pers. comm. 1993). Nonnative fish were also present at Huachuca Tank and likely contributed to this extirpation.

Surveys conducted in 1993 and 1994 revealed that nonnative fish and bullfrogs were recently introduced at several northern San Rafael Valley Sonora tiger salamander localities. Populations appear very low or are extirpated at several of these localities, particularly in the northwestern portion of the valley. Additional survey work in 1994 will clarify the status of these populations. In contrast, populations in the southeastern portion of the valley appear large and robust (J. Collins, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* Many Federal and State laws and regulations can protect these three species and their habitat. However, Federal and State agency discretion allowed under these laws still permits adverse affects on listed and rare species. Adding *Lilaeopsis*, *Spiranthes*, and the Sonora tiger salamander to the endangered species list will help reduce adverse affects to these species and will direct Federal agencies to work towards their recovery.

None of the taxa in this proposed rule are considered rare, threatened, or endangered by the Mexican government (Secretario de Desarrollo Urbano Y Ecologia 1991), nor do their habitats receive special protection in Mexico.

On July 1, 1975, all species in the Orchid family (including *Spiranthes delitescens*) were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting county before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade. CITES provides no protection to *Lilaeopsis* or the Sonora tiger salamander.

The Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, provides some protection for these three species. Under the Lacey Act it is prohibited to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State. Interstate transport of protected species occurs despite the Lacey Act because enforcement is difficult.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. The goals of the Coronado National Forest Plan (Plan) include a commitment to maintain viable populations of all native wildlife, fish, and plant species within the Forest's jurisdiction through improved habitat management (Coronado National Forest 1986a). The Plan provides a list of rare plants and animals found on the Forest, but gives only a very general description of programmatic-level management guidelines and expected effort (Coronado National Forest 1986a). The Coronado National Forest is committed to multiple use, and where the demands of various interest groups conflict, the Forest must make decisions that represent compromises among these interests (Coronado National Forest 1986b). These types of compromises have sometimes resulted in adverse effects to listed endangered and threatened species.

The Plan's endangered species program includes participation in reaching recovery plan objectives for listed species, habitat coordination and surveys for listed species, and habitat improvement (Coronado National Forest 1986b). After acknowledging budget constraints, the Plan states that studies of endangered plants will occur at approximately the 1980 funding level. The Coronado National Forest, which manages habitat for 10 of the 18 extant aquatic Sonora tiger salamander populations, considers the Sonora tiger salamander a sensitive species and a management indicator species, which receives special consideration in land management decisions (Coronado National Forest 1986a). The ability of the Forest Service to manage the three species addressed here is limited because many of the populations occur off Forest Service lands and/or require ecosystem-wide management largely beyond Forest Service control.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

All three species in this proposed rule inhabit wetlands that have varying protection under section 404 of the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended, and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). Cumulatively, these Federal regulations have been inadequate to halt population extirpations and habitat losses for the three proposed species.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Spiranthes delitescens* and *Lilaeopsis schaffneriana* spp. *recurva* as "highly safeguarded" species. A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect these species on public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living "highly safeguarded" native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State public agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat occur.

Collecting *Ambystoma* in the San Rafael Valley is prohibited under Arizona Game and Fish Commission Order 41, except under special permit. Nevertheless, illegal collecting occurs (Collins and Jones 1987). The species is listed by the State as endangered (Arizona Game and Fish Department 1988), however, this designation affords the species or its habitat no legal protection. Transport and stocking of live bullfrogs and fishing with live bait fish or *Ambystoma* within the range of this salamander in Arizona is prohibited

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tiger salamander populations. Stock

(Marcus 1981) that killed all branchiate

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by Arizona Game and Fish Commission Orders 41 and R12–4–316, respectively. However, bullfrogs and nonnative fish are present at several extant and historic Sonora tiger salamander localities and introductions continue (Collins and Jones 1987; James Collins, pers. comm. 1994). Furthermore, abandonment, modification, or breaching of stock tanks is allowed on either private or public lands. Such actions could eliminate Sonora tiger salamander populations.

State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for riparian resources restoration. Implementation of this regulation may ameliorate adverse effects of some State actions on the species in this rule.

E. *Other natural or manmade factors affecting its continued existence.* Arizona anglers and commercial bait dealers often introduce larval tiger salamanders into ponds for future bait collecting (Lowe 1954, Collins *et al.* 1988). Collins and Jones (1987) reported that tiger salamanders were illegally collected from the San Rafael Valley and transported to at least two tanks in the northern Patagonia Mountains. Bait dealers or others moving Sonora tiger salamanders to new locations could establish new populations. Collins and Jones (1987) suggest that moving of salamanders has greatly influenced their present distribution in the San Rafael Valley. Moving could also transmit disease and cause unintentional fish or bullfrog introductions, which would extirpate extant populations.

Moving poses an additional threat. *A. t. mavortium* is common in Arizona stock tanks and ponds to the east of the San Rafael Valley. Bait dealers and anglers introduced many of these populations (Collins 1981, Collins and Jones 1987). If *A. t. mavortium* is introduced into Sonora tiger salamander localities, populations could be lost due to genetic swamping by interbreeding of the two subspecies.

Two populations of *Lilaeopsis* have been lost due to unknown causes. Despite the presence of suitable habitat, no plans have been observed at Monkey Spring near Sonita Creek since 1965. *Lilaeopsis* collected in 1958 along the San Pedro River near St. David, but no longer exists there, nor is their suitable habitat.

Aggressive nonnative plants disrupt the native riparian plant community. The nonnative *Sorghum halepense* (Johnson grass) is invading one *Spiranthes* site (Gori *in litt.* 1993). This tall grass forms a dense monoculture, displacing less competitive native plants. If Johnson grass continues to spread, the *Spiranthes* population may be lost (Gori *in litt.* 1993). *Cynodon dactylon* (Bermuda grass) also displaces native riparian plants, including cottonwoods and willows that stabilize stream channels. Bermuda grass forms a thick sod in which many native plants are unable to establish. In certain microsites, Bermuda grass may directly compete with *Lilaeopsis* or *Spiranthes*. There are no known effective methods for eliminating Bermuda grass or Johnson grass from natural plant communities.

Rorippa nasturtium-aquaticum (watercress) is another nonnative plant now abundant along perennial streams in Arizona. It is successful in disturbed areas and can form dense monocultures that can outcompete *Lilaeopsis* populations.

The limited number of populations and individuals threatens all three taxa in this proposed rule with demographic and environmental stochastic extinction. The restriction of these three species to a relatively small area in southeastern Arizona and adjacent Sonora also increases the chance that a single environmental catastrophe, such as a severe tropical storm, could eliminate populations or cause extinction. This is of particular concern for Sonora tiger salamanders inhabiting stock tanks that could wash out during a storm. Furthermore, Sonora tiger salamander genetic heterozygosity is the lowest reported for any salamander (Jones *et al.* 1988). Low heterozygosity indicates low genetic variation, which increases demographic stochasticity and the chance of local extirpations (Shafer 1990).

Finding of a Sonora tiger salamander recently at Oak Spring, approximately 1.0 km (0.6 mi) from the nearest known aquatic population, provides evidence these animals are capable of at least that distance of overland dispersal. Seasonal movement to and from breeding ponds is a common phenomenon in amphibians. Distances of these seasonal movements are generally less than 0.5 km (0.3 mi), although movements of more than 11 km (7 mi) have been documented for the red-bellied newt (*Taricha rivularis*) (Zug 1993). The ability of Sonora tiger salamanders to move between populations is unknown, but arid grassland, savanna, or pine-oak woodland separates all populations and movement through these relatively dry landscapes is probably limited. Movement would be most likely during storms or where wet drainages are available as movement corridors. The distance between aquatic populations of Sonora tiger salamander is more than 2 km (1.2 mi) in most cases, and much greater distances separate many of the sites. Thus, even if these salamanders are capable of moving relatively long distances, some populations are probably effectively geographically isolated. Small isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. These three taxa are vulnerable to one or more of the following threats—habitat degradation and loss through groundwater pumping, livestock grazing, watershed degradation, flooding, drought, urbanization, and recreation; nonnative plant and vertebrate competition or predation; disease; and increased extirpation chance due to low genetic variation in the Sonora tiger salamander. The limited distributions of these taxa and the small size of most extant populations makes them particularly vulnerable to extinction from stochastic events.

Because *Spiranthes*, *Lilaeopsis*, and the Sonora tiger salamander are in danger of extinction throughout all or significant portions of their ranges, they fit the Act's definition of endangered. Based on the Service's evaluation of the status and threats facing these species, the preferred action is to propose *Spiranthes*, *Lilaeopsis*, and the Sonora tiger salamander as endangered. The Service believes that designation of critical habitat is prudent for the *Lilaeopsis* and the Sonora tiger salamander, but finds that critical habitat is not now determinable for these two species. Critical habitat designation would not be prudent for the *Spiranthes*. The rationales for these decisions are discussed in the following section of this proposal.

Critical Habitat

Critical habitat is defined in Section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon

a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spiranthes delitescens* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the "Summary of Factors Affecting the Species," *Spiranthes* is threatened by collecting. If it is listed, collecting of *Spiranthes* would be prohibited under the Act in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying *Spiranthes* in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Spiranthes* more vulnerable and increase enforcement problems. All involved parties and principal landowners are aware of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process and through the Section 7 provisions of the Act. Therefore it would not now be prudent to determine critical habitat for *Spiranthes delitescens*.

Lilaeopsis is not threatened by collecting and the Service knows of no circumstance where the species is threatened by vandalism. Therefore, critical habitat designation is prudent for this species.

Salamander collecting by bait dealers and anglers has been identified as a Sonora tiger salamander threat and publication of salamander localities rule could facilitate collecting. However, other subspecies of *A. tigrinum* are readily available from numerous less remote Arizona localities, collecting these other subspecies is legal, and State law prohibits collecting and stocking salamanders in the range of the Sonora tiger salamander. Thus, publication of critical habitat localities is unlikely to substantially increase threats to the Sonora tiger salamander. The Service finds the benefits of designating critical habitat outweigh any risk of increased collecting and determines that designation of critical habitat is prudent for the Sonora tiger salamander.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. Information concerning probable impacts that would be associated with designation of critical habitat for these two species has not yet been fully assessed or analyzed. Efforts aimed at gathering and analyzing such information are currently underway, but have not been completed. Regulations at 50 CFR 424.12(a)(2)(i) specify that critical habitat is not determinable when "Information sufficient to perform required analyses of the impacts of the designation is lacking * * *" The Service therefore finds that critical habitat for the Huachuca water umbel and the Sonora tiger salamander is not now determinable. When information becomes available and the review has been completed, the Service intends to propose designation of critical habitat for both species to the maximum extent prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. the Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of the taxa in this proposal, the Sonora tiger salamander and *Lilaeopsis*, occur on the Coronado National Forest. The latter species also occurs on the Fort Huachuca Military Reservation managed by the Department of Defense.

Examples of Federal actions that may affect the three species in this proposal include—issuing mining permits, managing recreation; road construction, livestock grazing, granting right-of-ways, stock tank development and maintenance, and military activities. These and other Federal actions would require formal section 7 consultation if the action agency determines that the proposed action may affect listed species. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. Private actions that are not Federally funded or permitted would require a section 10(a)(1)(B) permit if implementation would result in incidental take of Sonora tiger salamander.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain

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exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Lilaeopsis* or *Spiranthes* because these species are not common in cultivation or in the wild.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/766–3972; facsimile 505/766–8063).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning.

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject areas and their possible impacts on these species; and

Final promulgation of regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Request must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the State Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Arizona Ecological Services State Office (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Susan Rutman, formerly of the Service's Arizona Ecological Services State Office, and Jim Rorabaugh (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order, under "Amphibians," to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.		.	.
AMPHIBIANS							
.	.	.	.	.		.	.
Salamander, Sonora tiger.	*Ambystoma tigrinum stebbinsi.*	U.S.A. (AZ), Mexico	Entire	E		NA	NA
.	.	.	.	.		.	.

3. Section 17.12(h) is amended by adding the following two species in alphabetical order to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.		.	.
Lilaeopsis schaffneriana ssp. *recurva.*	Huachuca water umbel.	U.S.A. (AZ), Mexico	Apiaceae	E		NA	NA
.	.	.	.	.		.	.
Spiranthes delitescens.	Canelo Hills ladies'-tresses.	U.S.A. (AZ)	Orchidaceae	E		NA	NA
.	.	.	.	.		.	.

Dated: March 29, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–8176 Filed 3–31–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 63
Monday, April 3, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on May 90 and May 10, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9 a.m. and continue until 4:30 p.m. both days. Agenda items to be covered include: (1) Context of the Advisory Committee, including background on the President's Forest Plan; (2) introduction of members and orientation; (3) operating guidelines and ground rule; (4) mission and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on who they represent; and (7) Open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Bob Dunblazier, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3270.

Dated: March 24, 1995.

Dennis E. Bschor,

Forest Supervisor,

[FR Doc. 95–8072 Filed 3–31–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Northeast Regional Logbook Family of Forms.
Form Number: Agency: NOAA 88–30, 88–59, 88–140; OMB Number 0648–0212.
Type of Request: Extension of the expiration date.
Burden: 6,170 hours; 5,525 respondents with 68,550 responses; Avg. Hours Per Response ranges between 5 and 15 minutes depending on the requirement.
Needs and Uses: Logbooks are needed to obtain fishery dependent data on the fishing industry. Data are used for stock assessment, quota compliance, regulatory analyses, monitoring and resource management.
Affected Public: Businesses or other for-profit organizations.
Frequency: On occasion, weekly, monthly.
Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Albacore Fishing Operation Information.
Form Number: Agency: None; OMB Number 0648–0223.
Type of Request: Revision of a currently approved collection.
Burden: 100 hours; 50 respondents with 2 responses; Avg. Hours Per Response is 30 minutes.
Needs and Uses: Since the early 1970s, the National Marine Fisheries Service has contracted with the Pacific Marine Fisheries Commission to assemble and maintain an albacore database. Vessel captains voluntarily supply information on catches, fishing effort, sizes of fish caught, and other operational and environmental information. This information is used by U.S. negotiators in international, as well as domestic forums, to develop policy for the continued harvesting of Pacific albacore.
Affected Public: Businesses or other for-profit organizations.
Frequency: On occasion; annually.
Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: U.S. Fishermen Fishing in Russian Waters.
Form Number: Agency—None; OMB Number 0648–0228.
Type of Request: Extension of the expiration date.
Burden: 450 hours; 60 respondents for a total of 900 responses; Avg. Hours Per Response is approximately 30 minutes.
Needs and Uses: U.S. fishermen who wish to fish in the Russian Federation Economic Zone must apply for a Russian permit by submitting an application information to the National Marine Fisheries Service for transmittal to Russian authorities. Permit holders must provide information regarding their permits and must report on entering and exiting the U.S. Exclusive Economic Zone.
Frequency: Annually; on occasion.
Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Gerald Taché, (202)482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1995.

Gerald Taché,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 95–8112 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).
Title: Request for Duty Free Entry of Scientific Instruments or Apparatus.
Form Number: Agency: ITA–338P; OMB Number: 0625–0037.
Type of Request: Extension of the expiration date.
Burden: 600 hours; 150 respondents (300 responses); Avg. Hours Per Response is 2 hours.
Needs and Uses: The United States is a signatory to the Florence Agreement, a UNESCO sponsored Agreement on the importation of education, scientific, and cultural materials. Under the implementing statute, the Departments of Commerce and Treasury share the responsibility of determining whether or not institutions are entitled to duty-free treatment. This form is an application for such waiver and provides the information necessary for agency findings required by statute.
Affected Public: Not for-profit institutions; federal government; state, local or tribal governments.
Frequency: On occasion.
Obligation: Required to obtain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty.
Form Number: Agency: ITA–362P; OMB Number: 0625–0118.
Type of Request: Extension of the expiration date.
Burden: 417 hours; 390 respondents (5,000 responses); Avg. Hours Per Response is 5 minutes.
Needs and Uses: Congress, when it enacted legislation to implement the Nairobi Protocol the Florence Agreement, included a provision for the Departments of Treasury and Commerce to collect information on the import of articles for the handicapped. To ensure that these imports do not cost U.S. jobs, Congress established a safeguard mechanism under which the U.S. could modify its tariff treatment of such articles in the event domestic injury resulted. The data collected on this form assists the U.S. Government and domestic industry to assess injury.
Affected Public: Individuals; business or other for-profit organizations; not-for-profit institutions; federal government; and, state, local, or tribal governments.
Frequency: On occasion.
Obligation: Required to obtain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Forms Clearance Officer, Gerald Taché, (202) 483–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1995.

Gerald Taché,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 95–8111 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Notice of Closed Meeting

A meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held April 26, 1995, 3:00 p.m., in the Herbert C. Hoover Building, Room 4830, 14th Street and Pennsylvania Avenue, N.W., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

The Subcommittee will meet only in closed session to discuss matters that are properly classified under Executive Order 12356 and that pertain to the control of exports for national security, foreign policy, or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c) was approved November 1, 1993, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C.

For further information, contact Ms. Lee Ann Carpenter (202) 482–2583.

Dated: March 28, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–8113 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

President's Export Council: Meeting of the Subcommittee on Export Promotion and Support

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Subcommittee on Export Promotion and Support of the President's Export Council will hold an open meeting to discuss topics relating to export financing, export assistance for small business, and the promotion of Services' exports. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

DATES: April 21, 1995, from 9:30 a.m.–2:30 p.m.

ADDRESSES: Main Commerce Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Linda Breslau, President's Export Council, Room 2015B, Washington D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT:

Linda Breslau, President's Expert Council, Room 2015B, Washington, D.C. 20230.

Dated: March 29, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–8114 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–DR–P

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National Institute of Standards and Technology

[Docket No. 950314074–5074–01]

RIN 0693–AB39

Proposed Revision of Federal Information Proceeding Standard (FIPS) 128–1, Computer Graphics Metafile (CGM)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NIST is proposing a revision of FIPS PUB 128–1, CGM, to adopt voluntary industry specification American National Standards Institute/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1–4:1992[1994], and ISO 8632:1992/Amd. 1:1995, and to adopt three CGM profiles.

Prior to the submission of this proposed revision to FIPS 128–1 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views,

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standards; and (2) a specification section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications ANSI/ISO 8632.1–4:1992[1994] and CGM Amendment 1: Rules of Profiles, ISO 8632:1992/Amd. 1:1994 from the American National Standards Institute (ANSI), 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900. To obtain copies of the three proposed CGM profiles (ATA Specification 2100, Model Profile, and MIL–D–28003A), contact the Standards Processing Coordinator, National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed revision must be received on or before July 3, 1995.

ADDRESSES: Written comments concerning the adoption of this proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 128–1, CGM, Technology Building, Room B154, national Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3353.

Executive Order 12866: This FIPS notice has been determined to be "not significant" for purposes of E.O. 12866.

Dated: March 28, 1995.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 128–2

Date

Announcing the Standard for Computer Graphics Metafile (CGM)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administration Service Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Computer Graphics Metafile (CGM) (FIPS PUB 128–2).

2. Category of Standard. Software Standard, Graphics.

3. Explanation. This publication is a revision of FIPS PUB 128–

1. This revision supersedes FIPS PUB 128–1 is its entirety and modifies the standard by:

(1) Adopting the Computer Graphics Metafile standard designated, ANSI/ISO 8632.1–4: 1992[1994], and CGM Amendment 1: *Rules for Profiles*, ISO 8632:1992.Amd. 1:1994;

(2) Requiring the use of conforming profiles. Conformance of metafiles (i.e., date files) and implementations (i.e., generators and interpreters) is defined in terms of conformance to profiles; and

(3) Adopting several profiles, one of which is required for implementation of this FIPS PUB.

FIPS PUB 128–2 adopts the American National Standards Institute/International Organization for Standardization (ANSI/ISO) 8632.1–4:1992[1994], ISO 8632:1992/Amd. 1:1994, and the following profiles:

(1) Model Profile as contained in CGM Amendment 1;

(2) Air Transport Association (ATA) Specification 2100, Graphics Exchange for CGM;

(3) Continuous Acquisition and Life-Cycle Support (CALS), MIL–D–28003A.

CGM is a graphics data interchange standard which defines a neutual computer-interpretable representation of 2D graphical (pictorial) information in a manner that is independent from any particular application or system. The purpose of the standard is to facilitate the storage and retrieval of graphical information between applications, software systems, and/or devices. A CGM can contain:

—Vector graphics (e.g., polylines, ellipses, NURBS);
—Raster graphics (e.g., tile array); and
—Text,

The CGM standard defines three upward compatible versions. Each version provides additional functionality.

CGM Amendment 1 provides the rules for defining profiles of CGM and conformance requirements for profiles, metafiles, and implementations. Since a proliferation of CGM profiles is not desirable, only those profiles needed for Federal agency use have been added to the FIPS CGM. The exact specification is in Section 10 of this standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross index.

a. American National Standard/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1–4:1992 [1994] (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).

b. International Organization for Standardization (ISO) Computer Graphics Metafile (CGM), ISO 8632:1992/Amd. 1:1994.

c. Air Transport Association Specification 2100, Digital Data Standards for Aircraft Support, Graphics Exchange v2.1, October 1994.

d. Military Specification, Digital Representation of Illustration Data: CGM Application Profile (AP), MIL–D–28003A, November 15, 1991.

7. Related Documents. Related ISO documents are listed in the reference section of the CGM standard, ANSI/ISO 8632.1–4:1992 [1994].

a. Federal Information Processing Standards Publication (FIPS PUB) 29–3, Interpretation Procedures for FIPS Software.

b. Federal Information Processing Standards Publication (FIPS PUB) 120–1, Graphical Kernel System (GKS).

c. Federal Information Resources Management Regulations 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

d. NISTIR 5475, Validated Products List, J. Kalley and P. Himes, editors, republished quarterly.

e. NISTIR 5372, CGM: Procedures for NIST CGM Validation Test Service, L. Rosenthal and J. Schneider, February 1994.

f. ISO 10641–1992, Conformance Testing of Implementations of Graphics Standards.

8. Objectives. The primary objectives of this standard are:

—To reduce the overall life-cycle cost for digital systems by establishing a common exchange format for storing, transferring, and archiving graphical data across organizational boundaries and independent from any particular system.
—To promote the exchange of graphical information enabling applications to share data and reduce time spent recomputing in efforts to regenerate pictorial information.
—To specify application profiles which provide functional subsets of the CGM standard and maximize the probability of interchange between systems implementing the profile.
—To promote the use and development of conforming profiles and the harmonization of conformance testing efforts for metafiles, generators, and interpreters.

9. Applicability.

9.1 Applications acquired for government use which purport to create or read graphical pictures shall contain a conforming CGM generator or CGM interpreter. FIPS CGM enables the representation, transfer, and storage of graphical information between different software systems, graphics devices, and/or applications (e.g., word processing, publishing, drawing, spreadsheet, computer-aided design).

9.2 FIPS CGM shall be used when one or more of the following situations exist:

—Graphical information (e.g. illustrations, clip art) will be acquired for government use and incorporated into computer applications or documents.
—Computer applications, programs, systems, or devices will be acquired and used to create, modify, display, or render grapical information.
—Graphical information created by an application will be reviewed, modified, or incorporated into another application on the same or different computer systems.
—Graphical information will be used and maintained by other than the original designer.
—Graphical information will be used by multiple people, groups, or organizations within the Government or private sector.

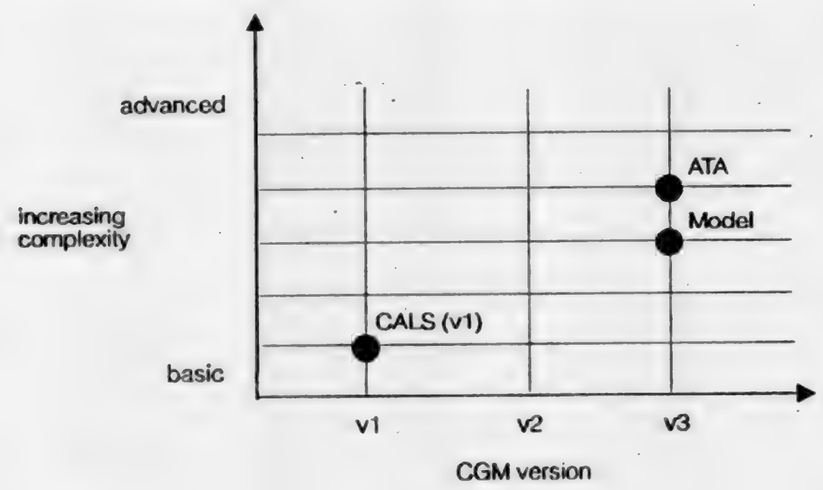
9.3 The use of a profile is required for all metafiles and implementations of CGM. A profile defines the options, elements, and parameters of ANSI/ISO 8632 necessary to accomplish a particular function and to maximize the probability of interchange between systems implementing the profile. A profile addresses metafile requirements as well as implementation requirements. The profiles added by this FIPS CGM are required for industry specific and Federal government applications.

—Model Profile: The Model Profile is appropriate for basic scientific and technical graphics (e.g., computer-aided design, mapping, earth sciences, cartography) and presentation, visualization, and publishing applications (graphics arts, high end desk top publishing). This is a general purpose profile which supports all three CGM encodings at the CGM version 3 functionality level. For FIPS CGM, if no profile is specified, the Model Profile will be assumed by default.
—ATA Specification 2100: The ATA profile is appropriate for presentation, visualization, and publishing applications (e.g., graphical arts, imaging, electronic review of documents, hypermedia, and multimedia documents). Although similar to the Model Profile, the ATA profile allows for symbol libraries and the use of intelligent graphics (i.e., graphics which contain application-specific information along with the information necessary to render a picture). This profile, developed by the Air Transport Association, supports the binary and clear text encodings at the CGM version 3 functionality level. Except for metafiles containing symbols or raster images, the ATA profile limits the number of pictures per metafiles to one.
—MIL–D–28003A: The CALS profile is appropriate for basic scientific and technical graphics, presentation and publishing applications (e.g., business presentation graphics, desktop publishing). In addition, this profile is appropriate for a basic level of general-purpose graphical interchange. This profile, developed by CALS, supports only the binary encoding and is limited (by this FIPS CGM) to the CGM version 1 functionality level.

The diagram illustrates the relationship between the profiles. The x-axis represents the level of functionality by CGM version; the y-axis represents the complexity of problems that can be solved.

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10. Specifications. ANSI/ISO 8632.1–4:1992[1994], Computer Graphics Metafile, defines the scope of the specifications, the syntax, and semantics of the CGM elements. The ANSI/ISO 8632 consists of four parts: (Part 1: Functional Specifications; Part 2: Character and Coding; Part 3: Binding and Coding; Part 4: Clear Text Encoding). ISO 8632:1994/Amd. 1 defines the rules for profiles, conformance, and the Model profile, an instance of a CGM profile. In addition, one of the following profiles shall be used when implementing FIPS CGM: the Model Profile as specified in ISO 8632:1992/Amd. 1:1994, the ATA Specification 2100 Graphics Exchange for CGM, or the Military Specification MIL–D–28003A.

All implementations claiming conformance to this FIPS CGM must adhere to the specific requirements defined in the "Conformance" clause of ISO 8632:1992/Amd. 1:1994 and the application profile.

11. Implementation. The implementation of this standard involves four areas of consideration: effective date, acquisition, interpretation, and validation.

11.1 Effective Date. This publication is effective six (6) months after date of publication upon final announcement in the **Federal Register**. A transition period of twelve (12) months, beginning on the effective date, allows industry to produce CGM implementations and CGM files conforming to this standard. Agencies are encouraged to use this standard for solicitation proposals during the transition period. This standard is mandatory for use in all solicitation proposals for CGM files and implementations (i.e., products or software containing CGM generators and/or interpreters) acquired twelve (12) months after the effective date.

11.2 Acquisition of CGM Files and Implementations. The use of one of the profiles specified in Section 9.3 is required for conformance to CGM. Agencies should specify a profile in all acquisitions.

Conformance to this standard shall be considered whether CGM files or implementations are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing agreement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS CGM is contained in the U.S. General Services Administration publication Federal ADP and Telecommunications Standards Index, Chapter 5, Part 1.

11.3 Interpretation of FIPS CGM. Resolution of questions regarding this standard will be provided by NIST. Procedures for interpretations are specified in FIPS PUB 29–3. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, Attn: CGM Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.4 Validation of CGM Files and Implementations. CGM files and implementations of FIPS CGM shall be validated in accordance with the NIST Computer Systems Laboratory (CSL) validation procedures for FIPS CGM, NISTIR 5372, Procedures for the NIST CGM Validation Test Service. Recommended procurement terminology for validation of FIPS CGM is contained in the U.S. General Services Administration publication Federal ADP and Telecommunications Standards Index, Chapter 5, Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of CGM products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

Metafiles and implementations shall be evaluated in terms of conformance to a particular profile of CGM, using the NIST CGM Test Service. If no profile is specified, the Model Profile will be used. The goal of the NIST CGM Test Service, is to assist users and vendors in determining compliance to FIPS PUB 128–2. The results of validation testing by the NIST CGM Validation Test Service are published on a quarterly basis in the Validated Products List, available from the National Technical Information Service (NTIS).

Current information about the NIST CGM Validation Test Service and validation procedures for FIPS CGM is available from: National Institute of Standards and Technology, Computer Systems Laboratory, Graphics Software Group, CGM Test Service, Building 225, Room A266, Gaithersburg, MD 20899, (301) 975–3265.

12. Waivers.

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, but amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 128–2 (FIPSPUB128–2), and title. Payment

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may be made by check, money order, or NTIS deposit account.

[FR Doc. 95–8069 Filed 3–31–95; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 950314073–5073–01]

RIN 0693–AB41

Proposed Revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange (EDI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange, is being proposed. The revision reflects changes in the development of voluntary industry standards for Electronic Data Interchange (EDI), including the planned alignment of the X12 and UN/EDIFACT families of standards, and provides updated guidance to Federal agencies in the selection of EDI standards. The revision also establishes a Federal EDI Standards Management Committee to harmonize the development of EDI transaction set and message standards among Federal agencies, and the setting of government-wide implementation conventions for EDI applications used by Federal agencies.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, local government, and private users prior to submission of this proposed revision to the Secretary of Commerce for review and approval.

The proposed revision consists of the following announcement, which provides information concerning the applicability, implementation, and maintenance of the standard. Interested parties may obtain copies of documents defining the EDI standards from Data Interchange Standards Association, Inc. (DISA), 1800 Diagonal Road, Suite 200, Alexandria, VA 22314–2852, telephone (703) 548–7005.

DATES: Comments on this proposed revision must be received on or before July 3, 1995.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 161–1, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Saltman, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3376.

EXECUTIVE ORDER 12866: This FIPS notice has been determined to be "not significant" for purposes of E.O. 12866.

Dated: March 28, 1995.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 161–2; Draft 1995 February 16; Draft Announcing the Standard for Electronic Data Interchange (EDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of Standard. Electronic Data Interchange (EDI) (FIPS PUB 161–2).

2. Category of Standard. Software Standard, Electronic Data Interchange.

3. Explanation. EDI is the computer-to-computer transmission of strictly formatted messages that represent documents; EDI is an essential component of electronic commerce (EC). EC is the use of documents in electronic form, rather than paper, for carrying out functions of business or government that require interchanges between organizations of information, obligations, or monetary value.

This publication adopts, as a Federal Information Processing Standard, recognized national and international standards for EDI. In EDI, data that would be traditionally conveyed on paper documents are transmitted or communicated electronically according to established rules and formats. The data that are associated with each type of functional document, such as a purchase order or invoice, are transmitted together as an electronic message. The formatted data may be transmitted from originator to recipient via telecommunications or physically transported on electronic storage media.

EDI typically implies a sequence of messages between two parties, for example, buyer and seller, either of whom may serve as originator or recipient. Messages from buyer to seller could include, for example, the data necessary for request for quotation (RFQ), purchase order, receiving advice, and payment advice; messages from seller to buyer could include similarly the data for response to RFQ, purchase order acknowledgment, shipping notice, and invoice. EDI is being used also for an increasingly diverse set of concerns, for example, for interchanges between healthcare providers and insurers, and for governmental regulatory, tax, and statistical reporting.

Implementation of EDI requires the use of a family of interrelated standards The family must include standards for types of messages (also called "transaction sets"), and for transmission envelopes, data elements, and short sequences of data elements called data segments. A message or transaction set standard defines the sequence of data segments that constitute that message or transaction set. The data segment directory lists all data segments, and defines the identifier and sequence of data elements constituting each. The data element directory (also called a "dictionary") provides specifications of all data elements. Transmission envelopes provide control information about the included messages to the carrying and receiving systems.

The standardization of message formats, and of data segments and elements within the messages, makes possible the assembling, disassembling, and processing of the messages by computer.

This FIPS PUB adopts, with specific conditions, the families of standards known as X12 and UN/EDIFACT. This FIPS PUB does not mandate the implementation of EDI systems within the Federal Government; rather it requires the use of X12 or UN/EDIFACT, subject to the conditions specified below, when Federal departments or agencies implement EDI systems. The X12 and UN/EDIFACT standards were originally developed respectively by Accredited Standards Committee X12 on Electronic Data Interchange (ASC X12), accredited by the American National Standards Institute (ANSI), and by the United Nations (UN) Economic Commission for Europe—Working Party (Four) on Facilitation of International Trade Procedures (UN/ECE/WP.4). Technical input from the United States in the development of UN/EDIFACT at the UN is through the Pan American EDIFACT Board (PAEB). The PAEB is separate from ASC X12, and it serves as the coordinating body for national

standards organizations of North, Central, and South America.

FIPS PUB 161–2 supersedes FIPS PUB 161–1 in its entirety. FIPS PUB 161–2 contains editorial changes, updated references to documents and organizations, and updated guidance to agencies on the selection of X12 and UN/EDIFACT standards and implementation conventions. This guidance is based on recent voluntary industry standards activities and on the Federal Government initiative that commenced with the Presidential Memorandum of October 26, 1993 entitled "Streamlining Procurement Through Electronic Commerce."

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

6. Cross Index and Related Documents.

6.1. Cross Index.

—FIPS PUB 113, Computer Data Authentication, May 1985.
—FIPS PUB 46–2, Data Encryption Standard, December 1993.
—FIPS PUB 186, Digital Signature Standard (DSS), May 1994.
—FIPS PUB 146–2, Profiles for Open Systems Internetworking Technologies, expected approval 1995.
—FIPS PUB 180–1, Secure Hash Standard, expected approval 1995.

6.2. Related Documents.

—NIST Special Publication 500–224, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 8, Edition 1, March 1995.
—NIST Special Publication 800–9, Good Security Practices for Electronic Commerce, Including Electronic Data Interchange, December 1993.
—ASC X12W/94–710, ASC X12 Plan for Technical Migration To And Administrative Alignment With UN/EDIFACT, approved by ASC X12 on January 13, 1995 and modified at the ASC X12 plenary meeting, February 6, 1995.
—NISTIR xxxx, Charter for Federal EDI Standards Management Committee, expected 1995.

6.3. Sources of Documents. For the source of cited NIST publications, including FIPS PUBS, see Section 13. For the source of X12 and UN/EDIFACT documents, see Subsection 10.1.

7. Objectives. The primary objectives of this standard are:

a. To promote the achievement of the benefits of EDI: reduced paperwork, fewer transcription errors, faster response time for procurement and customer needs, reduced inventory requirements, and more timely payment of vendors;

b. To ease the interchange of data sent via EDI by the use of standards for data formats and transmission envelopes;

c. To minimize the cost of EDI implementation by preventing duplication of effort.

8. Applicability.

8.1. Conditions of Application. EDI may be employed with any type of operational data representable as a sequence of data elements that is needed to be transmitted or received on a repetitive basis by a Federal agency in the course of its activities. This standard is applicable to the interchange of such data on a particular subject, between a Federal agency and another organization (which may be another Federal agency), if (1) the data are to be transmitted electronically using EDI, and (2) X12 transaction sets or UN/EDIFACT messages meeting the data requirements of the Federal agency for the subject of the interchange have been developed and approved, and are acceptable for use under the conditions set forth in this FIPS PUB.

8.2. Subject Matter. Examples of applications (not necessarily the subject of current standards) are:

a. Vendor search and selection: Price/sales catalogs, bids, proposals, requests for quotations, notices of contract solicitation, debarment data, trading partner profiles;

b. Contract award: Notices of award, purchase orders, purchase order acknowledgments, purchase order changes;

c. Product data: Specifications, manufacturing instructions, reports of test results, safety data;

d. Shipping, forwarding, and receiving: Shipping manifests, bills of lading, shipping status reports, receiving reports;

e. Customs: Release information; manifest update;

f. Payment information: Invoices, remittance advices, payment status inquiries, payment acknowledgments;

g. Inventory control: Stock level reports, resupply requests, warehouse activity reports;

h. Maintenance: Service schedules and activity, warranty data;

i. Tax-related data: Tax information and filings;

j. Insurance-related data: Health care claim; mortgage insurance application;

k. Other government activities: Communications license application; hazardous waste report; court conviction record.

9. Federal EDI Standards Development and Coordination.

9.1. Federal EDI Standards Management Committee. There is established a Federal EDI Standards Management Committee (FESMC). The goal of the FESMC is to assure a single Government face to industry, consistency among instances of an application across agencies, streamlined data, and coordinated Government representation at standards bodies. Functions of the committee include harmonization of development of EDI transaction set and message standards among Federal agencies, and the setting of Government-wide implementation conventions for each EDI application used by Federal agencies. Workgroups in subject areas such as finance, procurement, and transportation will be established under FESMC. Membership on the committee shall be from Federal agencies using or planning to use EDI; selection of the chair of the committee shall be approved by the Office of Management and Budget.

9.2. Agency Responsibilities.

9.2.1. Agencies already employing X12 or UN/EDIFACT standards or draft standards approved under this FIPS PUB shall submit their implementations to FESMC for coordination.

9.2.2. For the case in which X12 or UN/EDIFACT documents are available or under development for a needed subject area but do not meet agency requirements, agencies shall submit their requirements to FESMC to coordinate need changes, and shall submit their requirements to ASC X12 by following procedures specified in ASC X12 Standing Document (SD) 2, Operations Manual, and SD 6, Operations Manual (UN/EDIFACT Standards). These are available from Data Interchange Standards Association, Inc. (DISA) (see Subsection 10.1 for address and phone number).

9.2.3. For the case in which a subject area for which an agency wishes to use EDI has not yet been considered for standardization, agencies shall submit their requirements for standardization to FESMC and to ASC X12, as described in Subsection 9.2.2. Proposed implementations shall maximize use of existing X12 and/or UN/EDIFACT standards or draft standards to the extent possible. Use of already approved documents should minimize the administrative work involved in new development and in standards maintenance.

9.2.4. Agencies shall adopt the implementation conventions (ICs) established by FESMC. ICs shall be classified as Implementer's Agreements pursuant to this FIPS PUB, but are not themselves FIPS PUBS. Proposed ICs will be coordinated with industry. NIST

response to this notice will be made part

messages between two parties, for

the coordinating body for national

fewer transcription errors, faster

Development and Coordination.

will be coordinated with industry. NIST

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will publish ICs and maintain a registry of them.

10. Specifications. Documents are available that define the standard X12 transaction sets and UN/EDIFACT messages as well as the foundation standards for both families. Developments are continuing in both families of standards.

10.1 Source of Documents. Documents defining both the X12 and UN/EDIFACT families of standards, as well as ASC X12 and PAEB operational and procedural documents, are available from DISA or from a contractor named by DISA. DISA serves as the secretariat for ASC X12 and the PAEB: its address and phone number are: Address: Data Interchange Standards Association, Inc., 1800 Diagonal Road—Suite 200, Alexandria, VA 22314–2852, Phone: (703) 548–7005.

A list of available publications, as well as descriptive material, prices and ordering procedures, may be found in the most recent DISA Publications Catalog.

10.2. ASC X12 Documents.

10.2.1. X12 standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Draft Standards for Trial Use (DSTUs); these are fully approved by ASC X12, and are typically published as "releases" at one-year intervals. DSTU Version 3, Release 4, identified as 003040, was published in December 1993; Version 3, Release 5, identified as 003050, was published in December 1994. Two interim subreleases also are published annually. The 1994 subreleases were identified as 003041 and 003042.

(2) American National Standards (ANSs); these are fully approved by ASC X12 and by ANSI, and are typically published as "versions" at intervals of three to five years. ANS Version 3, published in March 1992, is functionally equivalent to DSTU Version 2, Release 4. It is expected that ANS Version 4, planned for 1997, will be functionally equivalent to DSTU Version 3, Release 7, identified as 003070.

10.2.2. A particular X12 standard is one of three types; it may be a "control and foundation standard," it may be a "transaction set" (which uses X12 syntax), or it may be an EDIFACT-syntax "message."

10.2.3. Control and foundation standards currently include the following:

Data Element Dictionary X12.3
Interchange Control Structure X12.5
Application Control Structure X12.6
Segment Directory X12.22
Interconnect Mailbag Control Structures X12.56
Security Structures X12.58
Implementation of EDI Structures—Semantic Impact X12.59

Standards X12.5 and X12.6 define the X12 syntax.

10.2.4. DSTU Version 3 Release 5 includes 225 transaction set standards and two EDIFACT-syntax message standards.

10.3 UN/EDIFACT Documents.

10.3.1. Un/EDIFACT standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Status 1, approved for trial use. A set of status 1 messages and directories is typically published yearly. The most recent set, identified as UN/EDIFACT Draft Messages and Directories, Version D94.B, was published in October 1994.

(2) Status 2, fully approved by UN/ECE/WP.4. These may be referred to as the UN Trade Data Interchange Directory (UNTDID).

Version S93.A was approved in March 1994, and Version S95.A is expected in September 1995.

10.3.2. The D94.B Status 1 Draft Messages and Directories include the following:

Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission (UNCID);
UN/EDIFACT Terminology;
United National Rules for EDIFACT
United Nationals Directories for EDIFACT
75 Messages of Status 1

The United Nations Rules for EDIFACT include sections on establishment of United Nations standard message types (UNSMs), syntax rules (see Subsection 10.3.4), syntax implementation guidelines, message design guidelines, and general introduction for UNSM descriptions. The United Nations Directories for EDIFACT include the standard message type directory, message, frameworks, segment directory, composite data element directory, data element directory, and code lists.

10.3.3. The S93.A Status 2 Messages and Directories (UNTDID) includes the same types of information provided in D94.B, excepting that approved messages of Status 2 instead of Status 1 are listed. Forty-two messages of Status 2 are specified.

10.3.4. A foundation standard used in UN/EDIFACT is approved by the International Organization for Standardization (ISO); it is entitled ISO 9735—UN/EDIFACT Application Level Syntax Rules. There are several versions: Version 1 (1988), Version 2 (1990), and Version 3 (Version 2 with Amendment 1 of December, 1992). Version 3 is included in D94.B. Version 4 is expected in March, 1995.

11. Implementation.

11.1 Schedule for Adoption. FIPS PUB 161 was effective on September 30, 1991. Federal agencies that are not using EDI for subject matter for which X12 or UN/EDIFACT standards have been approved and issued shall utilize only those standards in EDI systems that they procure or develop, subject to the qualifications of Subsections 11.3, 11.4 and 11.5. Agencies already using those standards continue to do so. Agencies that were using industry-specific standards for EDI on September 30, 1991 shall be governed by Subsection 11.6.

11.2. Acceptance of UN/EDIFACT. In January 1995, ASC X12, by a vote of its membership, approved the *ASC X12 Plan for Technical Migration To And Administrative Alignment with UN/EDIFACT*. This plan was modified at the February 1995 plenary meeting of ASC X12. Key features of the modified Alignment Plan are:

(1) Draft standards based on X12 syntax or on UN/EDIFACT syntax may be submitted by ASC X12 for processing as ANSs.

(2) X12 Release 003070 shall form the basis of Version 4 of draft proposed X12 American National Standards (ANSs).

(3) After the release of Version 4, ASC X12 shall continue for a period of time, in accordance with the plan, to develop, maintain, approve and publish X12-syntax transaction sets and supporting documents.

(4) An ASC X12 ballot shall be conducted in 1998 to determine if X12-syntax transaction set development should be terminated. If the ballot for termination is not approved, a three-year repeating cycle shall occur thereafter, until no new x12-syntax transaction sets are being developed.

11.3. Selection of X12 or UN/EDIFACT. X12 and UN/EDIFACT are separate although similar, families of standards. The existence of one does not preclude the other, and equivalent functionality may be obtained in either system. Software that assembles and disassembles messages and transaction sets called translation software, is available for both systems, often in the same package.

In selecting a family of standards, agencies should attempt to maximize economy and efficiency and to minimize the costs imposed on U.S. businesses.

11.3.1. For domestic interchanges, agencies may use, at this time, standards employing either X12 or UN/EDIFACT syntax or both. Selection of syntax for an interchange shall take into account the prevailing syntax used in the industry of the interchange partner. However, standards using UN/EDIFACT syntax shall be employed for new or significantly upgraded interchanges in the absence of demonstrably higher costs, or at the request of interchange partners providing a significant fraction of interchange traffic. Continued long-term use and maintenance of dual standards is unacceptably inefficient.

11.3.2. For internal interchanges, migration to standards using UN/EDIFACT syntax shall commence at this time if that syntax is not currently being used. A timetable for conversion to UN/EDIFACT of existing international implementations shall be set as applicable standards and software becomes available. New or significantly upgraded interchanges shall employ only standards using UN/EDIFACT syntax.

11.4. Use of Draft Standards. Both X12-syntax and EDIFACT-syntax standards approved and published by ASC X12, if not approved at a higher level are designated DSTUs for purposes of this FIPS PUB. Federal agencies shall use only the following two type of standards for EDI implementations: (1) Draft standards, i.e., UN/EDIFACT Status 1 standards or STUs from ASC X12, or (2) full standards, i.e., UN/EDIFACT Status 2 standards or ANSs submitted by ASC X12. Industry practice is to use draft standards; these represent the latest consensus and are available sooner than the corresponding full standards. Consequently, draft standards are preferred for use over full standards.

11.5. Age-Limitations on Acceptable Standards. Agencies, in their agreements with interchange partners, may not use any version of an acceptable standard specified in Subsections 11.3 and 11.4 that is more than four years old, unless it is the most recent version. Any version of an ISO standard may be used, e.g., ISO 9735, subject to the same age-limitation.

11.6. Continued Use of EDI Industry Standards. Federal agencies using industry-specific EDI standards on September 30, 1991 may continue to use those standards for five years from that date. However, such agencies shall, without delay, submit their standardization requirements as indicated in Subsections 9.2.2 and 9.2.3. Industry-specific EDI standards may be used beyond five years only if no equivalent X12 or UN/EDIFACT standards, as appropriate, have been approved and issued by September 30, 1995. If an equivalent X12 DSTU or UN/EDIFACT Status 1 standard, as appropriate, is approved and issued after September 30, 1995, Federal agencies using an industry-specific standard shall have one year to convert, following the first publication of the approved standard. Implementation shall be consistent with the requirements of Subsections 11.3 and 11.4.

11.7. Security and Authentication. Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations.

Optional tools and techniques for implementation of security and authentication may be provided by ASC X12 and UN/ECE/WP.4 for use in connection with their respective families of standards. Agencies may utilize these tools and techniques, and/or they may utilize other methods in systems supporting the EDI data interchange. Methods and procedures implemented shall be consistent with applicable FIPS PUBS and guidance documents issued by NIST.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S.Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as part of the notice of solicitation for officers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies of NIST Publications. Copies of this publication and NIST publications referenced in Section 6 are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161; phone (703) 487–4650. When ordering this publication, refer to Federal Information Processing Standards Publication 161–2 (FIPSPUB161–2), the title. Payment may be made by check, money, or NTIS deposit account.

[FR Doc. 95–8068 Filed 3–31–95; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 032395B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Amendment 1 to Permit 895 (P504D).

Notice is hereby given that on March 28, 1995, as authorized by the provisions of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222), NMFS issued Amendment 1 to Permit Number 895 held by the Army Corps of Engineers (P504D), to transport listed Snake River

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Application Control Structure X12.6 9735—UN/EDIFACT Application Level businesses.

equivalent X12 or UN/EDIFACT Room B-154; Gaithersburg, MD 20899. (P504D), to transport listed Snake River

chinook and sockeye salmon below the Bonneville Dam, subject to certain conditions set forth therein.

This Amendment is being issued to conform to guidelines in the Reinitiation of Consultation on 1994–1998 Operation of the Federal Columbia River Power System and Juvenile Transportation Program in 1995 and Future Years (FCRPS). All transportation activities conducted under this permit must comply with the guidelines of the FCRPS.

Issuance of this Amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This Amendment was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: March 28, 1995.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–8059 Filed 3–31–95; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Department of the Navy

Government Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/080,418: Thermal Insulation of Wet Shielded Metal Arc Welds; filed 18 June 1993.

Dated: March 27, 1995.

M.D. Schetzsle

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–8057 Filed 3–31–95; 8:45 am]

BILLING CODE 3810-AE-M

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Long Beach, CA (Los Angeles Parcels)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority established to plan the reuse of the former Naval Station, Long Beach, CA, (Los Angeles Parcels), the surplus property that is located at that base closure site, and the timely election by the redevelopment authorities to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Ms. Kimberly Kesler, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., Suite 507, San Diego, CA 92101–2404, telephone (619) 556–0771. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, condition, exact street address, etc.), contact Lieutenant Commander Kevin Barre, Base Transition Coordinator, Long Beach Naval Shipyard, Building 5, Long Beach, CA 90822–5080, telephone (310) 547–6875.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Long Beach, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. On October 8, 1993, and April 21, 1994, respectively, the Taper Avenue housing site and the Seaside Avenue parcel, both of which are described below, were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of surplus properties, and (b) homeless providers pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of the Act gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 19, 1994, the City of Los Angeles submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the former Naval Station, Long Beach, (Los Angeles Parcels), is published in the **Federal Register**:

Redevelopment Authorities

The redevelopment authority for the Taper Avenue housing and the Seaside Avenue parcel at the former Naval Station, Long Beach, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Los Angeles. The City has established a local community advisory committee to provide recommendations to the City concerning the redevelopment plan. This committee is known as the "San Pedro Area Reuse Committee (SPARC)." A cross section of community interests is represented on the committee. Day-to-day operations of the committee are handled by Ms. Nancy Scrivner. The address of the committee is Los Angeles City Planning Dept., Community Planning Bureau, 221 S. Figueroa Street, Room 310, Los Angeles, CA 90012, telephone (213) 485–6647 and facsimile (213) 485–8005.

Surplus Property Descriptions

The following is a listing of the land and facilities at the former Naval Station, Long Beach, CA, (Los Angeles Parcels) that were declared surplus to the federal government on October 8, 1993, and April 21, 1994.

Land

Approximately 27 acres of improved and unimproved fee simple land at the Taper Avenue housing of the former Naval Station, Long Beach, located in the City of Los Angeles, Los Angeles County. This area is currently available.

Approximately 14 acres of improved and unimproved fee simple land at the Seaside Avenue parcel of the former Naval Station, Long Beach, located in the City of Los Angeles, Los Angeles County. It is anticipated that this area will be available in August 1997 upon expiration of a proposed interim lease.

Buildings

The following is a summary of the facilities located at Taper Avenue housing which are currently available. Property numbers are available on request.

—Family housing units (24 duplex and 23 quadplex structures with 140 individual housing units). Comments: Approx. 187,380 square feet. All units are vacant.
—Vehicle carports (16 structures with 140 spaces). Comments: Approx. 22,304 square feet.
—Children's play yards (3 structures).

The following is a summary of the facilities located on the Seaside Avenue parcel. It is anticipated that this area will be available in August 1997 upon expiration of a proposed interim lease. Property numbers are available on request.

—Storage sheds (2 structures). Comments: Approx. 1,815 square feet.
—Administrative offices (2 structures). Comments: Approx. 1040 square feet.
—Truck scale (1 structure).

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former Naval Station, Long Beach, may submit to said redevelopment authorities (City of Los Angeles) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Los Angeles the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Los Angeles elected to proceed under the new statute, i.e., December 19, 1994.

Dated: March 28, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–8060 Filed 3–31–95; 8:45 am]

BILLING CODE 3810-FF-P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, New York, Staten Island, NY (off-site components)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of certain off-site components of the Naval Station, New York, Staten Island, NY, known as the Front Street properties, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Commander R.M. Pondelick, Caretaker Site Office, Naval Station, New York, 109 Mont Sec Avenue, Staten Island, NY 10305–5015, telephone (718) 816–1111.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Station, New York, Staten Island, NY, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. Pursuant to this designation, certain off-site components at this installation were on January 31, 1995, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 20, 1994, the City of New York, NY, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Station, New York, Staten Island, NY, is published in the **Federal Register**.

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Redevelopment Authority

The redevelopment authority for the Naval Station, New York, Staten Island, NY, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of New York, acting by and through its Mayor, Rudolph W. Giuliani. The City of New York has designated the New York City Economic Development Corporation (NYEDC), Christopher O. Ward, Senior Vice President, to serve as the City's representative for all purposes related to the Front Street properties. For further information contact Mr. Christopher O. Ward at the NYEDC, 110 William Street, New York, NY 10038, telephone (212) 312–3852 and facsimile (212) 312–3916.

Surplus Property Descriptions

The following is a listing of the off-site Front Street properties at the Naval Station, New York, Staten Island, NY, that were declared surplus to the federal government on January 31, 1995.

Land

Approximately 0.725 acres of improved and unimproved fee simple land at the U.S. Naval Station, New York, Staten Island, in the Borough of Staten Island, Richmond County, City and State of New York.

Buildings

The following is a summary of the facilities located on the above described land which are presently available. The station closed on August 31, 1994.

—Parcel 2, Sand Street near Front Street (Block 490, Lot 24), 0.069 acres of vacant land.
—Parcel 15, 44 Canal Street (Block 494, Lot 18), 0.063 acres of land improved with a two-story garage.
—Parcel 16, 42 Canal Street (Block 494, Lot 19), 0.056 acres of land improved with a one-story garage.
—Parcel 17, 36 Canal Street (Block 494, Lot 21), 0.116 acres of land improved with a one-story garage.
—Parcel 19, 150 Front Street (Block 494, Lot 30), 0.421 acres of land improved with a one-story industrial building.

Parcels 15, 16, 17, and 19 are contiguous.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station, New York, Staten Island, shall submit to the redevelopment authority (City of New York) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in New York, NY, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of New York elected to proceed under the new statute, i.e., December 20, 1994.

Dated: March 28, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–8064 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Realignment: Naval Air Warfare Center, Aircraft Division, Warminster, PA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Warfare Center, Aircraft Division, Warminster, PA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Joseph P. Cody, Base Transition Coordinator, Naval Air Warfare Center, Aircraft Division, Street and Jacksonville Roads, Warminster, PA 18974–5000, telephone (215) 441–3444.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Air Warfare Center, Aircraft Division, Warminster, PA was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

Pursuant to this designation, the excess land and facilities at this installation were on January 31, 1995, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the Bucks County (Commonwealth of Pennsylvania) Board of Commissioners submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Warfare Center, Aircraft Division, Warminster, PA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Air Warfare Center, Aircraft Division, Warminster, PA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Federal Lands Reuse Authority of Bucks County (FLRA–BC). A cross section of community interests is represented on the FLRA–BC. Chairman of the FLRA–BC is Robert Finley. For further information contact Ms. Sheila Bass, Acting Administrator, Federal Lands Reuse Authority of Bucks County, 622 Mary Street, Suite 1A, Warminster, PA 18974, telephone (215) 957–2310 and facsimile (215) 957–2322.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Warfare Center, Aircraft Division, Warminster, PA, that were declared surplus to the federal government on January 31, 1995.

Land

Approximately 727 acres of improved and unimproved fee simple land at the U.S. Naval Air Warfare Center, Aircraft Division, Warminster, in Warminster Township, Northampton Township, and Ivyland Borough, County of Bucks, PA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes in March 1997 unless otherwise indicated. Property numbers are available on request.

—Administrative/office/laboratory/communication/miscellaneous facilities (5 structures). Comments: Approx. 1,011,872 square feet.
—Aircraft operations/maintenance/support facilities (8 structures). Comments: Approx. 126,781 square feet.
—Ammunition storage facilities (4 structures). Comments: Approx. 996 square feet.
—Bachelor quarters housing (1 structure). Comments: Approx. 31,945 square feet.
—Community facilities (7 structures). Comments: Approx. 4,501 square feet.
—Family housing units (2 single family structures and 1 detached garage). Comments: Approx. 14,250 square feet.
—Fuel storage facilities (13 structures). Comments: Approx. 678 square feet in 2 structures and approx. 98,594 gallon storage capacity in other 11 structures.
—Hazardous storage facilities (3 structures). Comments: Approx. 9,865 square feet.
—Maintenance facilities (1 structure). Comments: Approx. 720 square feet.
—Medical clinic facilities (1 structure). Comments: Approx. 5,335 square feet.
—Miscellaneous facilities (9 structures). Comments: Measuring systems vary. Pedestrian bridges, flag poles, fencing, etc.
—Open storage area. Comments: Approx. 1,698 square yards.
—Paved areas. Comments: Approx. 557,160 square yards. Roads, parking areas, sidewalks, aprons, runways, taxiways, etc.
—Railroad trackage. Comments: Approx. 0.10 mile.
—Recreational facilities (16 structures). Comments: Approx. 88,267 square feet, includes hobby shop, clubs, picnic pavilions, outdoor swimming pool, playing courts, playing fields, etc.
—Utilities. Comments: Measuring systems vary. Telephone, electric, steam, sewage, storm sewer, water, and gas.
—Warehouse/storage facilities (5 structures). Comments: Approx. 12,229 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Warfare Center, Aircraft Division, Warminster, shall submit to the redevelopment authority (FLRA-BC) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Bucks County, PA, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Bucks County Board of Commissioners elected to proceed under the new statute, i.e., December 14, 1994.

Dated March 28, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate **Federal Register** Liaison Officer.

[FR Doc. 95–8062 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Reserve Center, Staunton, VA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Reserve Center, Staunton, VA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Patricia M. Hankins, Realty Specialist, Operations Branch A (Code 241PH), Real Estate Division, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699, telephone (804) 322–4928.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Reserve Center, Staunton, VA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the land and facility at this installation were on September 1, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (P...

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located in the vicinity of the Naval

Division, Naval Facilities Engineering

Warfare Center, Aircraft Division,

structures.

the Bucks County Board of

Homeless Assistance Act of 1994 (P...

L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 21, 1994, the City of Staunton, VA, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Reserve Center, Staunton, VA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Reserve Center, Staunton, VA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Staunton, VA. Day-to-day operations of the City of Staunton, VA redevelopment authority are handled by a professional staff. For further information contact Ms. Sharon Angle, Director of Planning, Department of Planning, City of Staunton, P.O. Box 58, Staunton, VA 24402, telephone (703) 332–3862 and facsimile (703) 332–3807.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Reserve Center, Staunton, VA, that were declared surplus to the federal government on September 1, 1994.

Land

Approximately 0.57 acres of improved fee simple land on the corner of Liberty Street and Nelson Street known as the Naval Reserve Center Staunton, City of Staunton, VA. One building and parking for 39 vehicles are located on the land.

Building

The following details the facility located on the above described land. The facility operationally closed on June 30, 1994. The property number is available on request.

—Administration/training building. Comments: The building is a former church which consists of a 9,306 square foot main building and 5,154 square foot attached addition for a total size of 14,460 square feet. The main building has two stories with a basement and the addition is two story.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Reserve Center, Staunton, shall submit to the redevelopment authority (City of Staunton) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Staunton, VA, the date by which expressions of interest must be submitted. Under section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Staunton Redevelopment Authority elected to proceed under the new statute, i.e., December 21, 1994.

Dated: March 28, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–8061 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–P

Record of Decision to Dispose Solid Waste Generated at Marine Corps Base, Camp Lejeune, NC

Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to dispose non-hazardous solid waste generated at Marine Corps Base (MCB), Camp Lejeune, North Carolina at an on-base facility that will comply with state and Federal Resource Conservation Recovery Act (RCRA) Subtitle D regulations on solid waste disposal. The new facility will be a multi-celled, double lined landfill with leachate collection. The location of the facility will be a 170 acre site located at MCB Camp Lejeune along the east side of Piney Green Road. The paving of Piney Green Road and the construction of an entrance road, operations building with scales, and waste transport truck steam wash building will provide the necessary support facilities for the landfill. A Material Recovery Facility to process and house recyclable solid waste, a smaller separate landfill for disposal of non-hazardous construction and demolition debris, and a composting facility for the processing of yard waste will also be constructed and operated as funding becomes available.

The landfill will be constructed and operated one cell at a time in order to minimize operational costs and maximize the ability to adjust landfill operations to changes in regulatory requirements. The landfill site will accommodate multiple cells based on projected cell size and regulatory requirements.

Alternatives evaluated during the solid waste disposal study process included no action; construction and operation of an on-base incinerator, construction and operation of an on-base energy plant; and hauling solid waste off-base for disposal in municipal or private facilities. Eleven on-base sites were evaluated for the placement of the on-base alternatives.

The no action alternative was rejected early in the study process due to the increased potential for adverse environmental impacts from the continued use of an unlined landfill and the violation of state and Federal laws associated with disposal of solid waste.

The on-base incinerator and waste to energy plant had the highest capital costs of the alternatives studied. Except for air quality and ash disposal, environmental impacts would be minor for these alternatives. Both air quality and ash disposal would increase operating cost of these alternatives. With the continuing efforts of MCB Camp Lejeune to reduce and recycle its waste stream, the cost per ton to operate these plants would continue to increase. The prospect of increasing annual operating costs, reduced waste stream, and the need for a hazardous waste landfill for ash disposal significantly reduced the viability of these alternatives and weighed heavily in the elimination of these alternatives from further consideration.

Off-base alternatives, such as private waste disposal facilities and municipal landfills, were rejected due to the long hauling distances involved, or because operators could not commit to accepting MCB Camp Lejeune solid waste for a sufficient period.

Sites for on-base landfill and associated construction were evaluated against engineering and environmental criteria for suitability. The Piney Green Road site was chosen as the preferred site due to ease of construction, isolation from population centers, and minimization of adverse environmental impacts.

The operation of the landfill and construction and demolition debris waste landfill at the Piney Green Road site will provide MCB Camp Lejeune with a system for non-hazardous solid waste disposal. As regulatory requirements demand more reduction and recycling of solid waste products, the life of this site will increase because less material will be placed in the landfill. The extension of the life of the landfill cannot be calculated at this time since changes in laws and regulations regarding solid waste are not known at this time. MCB Camp Lejeune currently has a program in place for source reduction of waste and recycling of waste materials. The recycling of waste materials could include the composting of wastewater sludge along with yard waste, wood waste, and other solid waste materials.

This action will have no impact on ambient air quality or noise levels. No cultural resources listed, or determined eligible for listing, on the National Register of Historic Places will be impacted by any facility constructed for this project. No impacts to state or Federally listed endangered or threatened plant or animal species are expected from construction and operation of the landfill.

Specific measures will be used to control soil movement from construction and operation activities. These measures will include fabric silt fencing, pervious barriers in drainage ways to reduce runoff velocities and retain sediments on site, and the seeding of open areas when construction activities have ceased at that location.

The terrestrial habitat displaced by these facilities is currently used in part for training. No significant adverse effects to environmentally important habitats will occur. These effects have been minimized by the siting decision made during site evaluation and various studies.

About two acres of wetlands are located on the 170 acre site, any impact to these wetlands will not occur until the need arises to open future cells of the landfill. Proper permits will be obtained and mitigation, as required, will be performed prior to disturbing these wetlands.

The proposed action has been evaluated with the respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as required by Executive Order 12989, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." The landfill is consistent with the goals and provisions of the Executive Order.

A Coastal Consistency Determination was prepared for this action and concluded that the action is being conducted in a manner consistent with the enforceable policies of the North Carolina Coastal Zone Management Plan. The North Carolina Division of Coastal Management concurs with this determination.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement was offered through a public announcement of the Notice of Intent to Prepare an Environmental Impact Statement. This Notice was published in the **Federal Register** on April 29, 1992. Scoping letters were sent to 70 addresses. The Notice was also published in the Jacksonville Daily News and the Wilmington Star News on October 11–12, 1992.

The Notice of Availability of the Draft Environmental Impact Statement was published in the **Federal Register** on October 15, 1993. This document was distributed to officials of Federal, state, and local government agencies, citizen groups and associations, public libraries, and other interested parties. The public review period on the Draft Environmental Impact Statement was from October 15, 1993 through November 29, 1993. A public hearing was held at the Jacksonville Senior High School, Jacksonville, North Carolina, on November 16, 1993. A small number of comments were received during the comment period. The comments centered on the alternative analysis, wetland impacts, and landfill design. These comments were addressed in the Final Environmental Impact Statement.

The Notice of Availability of the Final Environmental Impact Statement was published in the **Federal Register** on December 16, 1994. This document was also distributed to officials of Federal, state, and local government agencies, citizen groups and associations, public libraries, and other interested parties.

The Department of the Navy believes there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Robert Warren, Environmental Management Department, MCB Camp Lejeune, NC 28542, telephone (910) 451–5003.

March 27, 1995.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environmental and Safety).

[FR Doc. 95–8063 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet April 27-28, 1995, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct policy discussions to prepare a final briefing on naval warfare innovations in the areas of joint operations, information warfare, naval doctrine, and research and development. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: March 28, 1995

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–8056 Filed 3–31–95; 8:45 am]

BILLING CODE 3810–FF–F

30, 1994. The property number is available on request.

Camp Lejeune, North Carolina at an on-base facility that will comply with state

elimination of these alternatives from further consideration.

located on the 170 acre site, any impact

state, and local government agencies,

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecodary Education

Type of Review: Expedited
Title: Income Contingent Repayment Plan—Authorization to Release Information
Frequency: Annually
Affected Public: Individual or households
Reporting Burden:
Responses: 300,000
Burden Hours: 60,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by borrowers of defaulted student loans as a repayment option. This form will provide a five year consent to the Internal Revenue Service (IRS) to disclose certain tax information to the Department of Education and program contractors for the purposes of calculating the borrower's monthly repayment. Copies of this instrument can be obtained by calling (202) 260–1837.
Additional Information: Clearance for this information collection is requested by April 17, 1995. An expedited review is requested in order to meet the schedule of the program development process with the IRS. Without this expedited review, the schedule for finalized form will be delayed further.

[FR Doc. 95–8029 Filed 3–31–95; 8:45 am]

BILLING CODE 4000–01–M

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals With Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: April 20, 1995, from 1 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 703A/727A, 200 Independence Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, D.C. 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals With Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) update the membership on the White House Disability review; and (2) review the early intervention and preschool report from the field.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting-materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations

should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, D.C. 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–8023 Filed 3–31–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Nevada Test Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATE AND TIME: Wednesday, April 12, 1995: 5:30 p.m.–10 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197, fax 702–295–1810.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

Wednesday, April 12, 1995

5:30 p.m.—Call to Order, Review of Agenda, Minutes Acceptance, Financial Report, Correspondence, Reports from Committees, Delegates and Representatives, Unfinished Business, New Business, Evaluation of Board and Environmental Restoration and Waste Management Programs, Announcements
10 p.m. Adjournment.

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, April 12, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on March 29, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–8109 Filed 3–31–95; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Intent to Prepare an Environmental Impact Statement, Notice of Floodplain and Wetlands Involvement and Notice of Scoping Meetings for the Hood River Fisheries Restoration Project

AGENCY: Boneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS), and conduct scoping meetings and notice of floodplain and wetlands involvement.

SUMMARY: Today's notice announces BPA's intention to prepare an EIS on actions to protect and improve anadromous salmonid populations in the Hood River Basin. These actions are proposed to mitigate the losses of fish and wildlife associated with the construction and operation of Federal hydro-power facilities in the Columbia River Basin. These actions are expected to protect and improve the status of native stocks of salmonids in the Hood River and Columbia River Basin, establish a viable spring chinook population in the Hood River Basin, and protect, to the extent practicable, other aquatic and terrestrial resources in the Hood River Basin, consistent with tribal treaty rights, Federal environmental legislation, and the fish and wildlife management objectives of the confederated Tribes of the Warm Springs Indian Reservation (Tribes), and the State of Oregon. In addition to protecting and improving salmonid populations, these actions would also provide a sustainable Indian and non-Indian harvest of salmon and steelhead. The Tribes and the State of Oregon, Department of Fish and Wildlife, will be cooperating agencies and will participate in the development of the EIS. This action may involve floodplain and wetlands located in Hood River County, Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with NEPA.

DATES: BPA has established a 45-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments are due to the address below no later than May 2?, 1995.

Comments may also be made at an open house technical scoping meeting for Federal, State and interested parties on April 11, 1995, at the Bonneville Power Administration, 905 NE 11th, Room 106, Portland, Oregon, from 1:00 PM to 3:00 PM; an open house public-scoping meeting on April 12, 1995, at the Yaucoma Buildings, 902 Wasco, Hood River, Oregon, from 6:30 pm to 8:30 pm; and an open house scoping

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meeting on April 13, 1995, at the Warm Springs Community Center, Social Hall, 2200 Hollywood Blvd., Warm Springs, Oregon, from 6:00 pm to 8:00 pm. Written information also will be available, and BPA staff will answer questions and accept oral and written comments.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to the Public Involvement and Information Manager, Bonneville Power Administration-CKP, PO Box 12999, Portland, Oregon 97212. The phone number of the Public Involvement and Information Office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland.

FOR FURTHER INFORMATION CONTACT: Tom Morse-EWN, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3694, fax number 503–230–4564.

SUPPLEMENTARY INFORMATION

Proposed Action

BPA proposes to initiate actions to protect, enhance, and mitigate fish resources in the Hood River basin impacted by the construction and operation of Columbia River hydroelectric projects as defined by section 7.4L2 of the 1994 Columbia River Basin Fish and Wildlife Program in accordance with the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

Specific Goals of the Project Are

1. Re-establish a spring chinook population in the Hood River Basin.
2. Improve native winter and summer steelhead populations in the Hood River Basin.
3. Achieve goals 1 and 2 in a manner that protects and improves, where practicable, habitat for other aquatic and terrestrial species in the Hood River Basin.
4. Contribute to tribal and non-tribal fisheries, ocean fisheries, and the Northwest Power Planning Council's interim goal of doubling salmon runs.

Alternatives Proposed for Consideration

Most alternatives would use one or more of the following mitigation techniques:

(1) A hatchery program (continued planting of hatchery reared fish in a stream to provide harvest opportunities).

(2) A supplementation program (use of hatchery reared fish to maintain or increase natural production of target species where it is inadequate to meet management objectives, while protecting system diversity and genetic character of all populations).

(3) Habitat improvement (alteration of existing habitat to improve its ability to support fish).

Alternative #1: Re-establish, or re-build naturally sustaining anadromous salmonid runs in the Hood River Basin via a combination of hatchery (see #1 above), supplementation (see #2 above), and habitat improvement actions (see #3 above) that can provide Indian and non-Indian harvest of fish.

Alternative #2: Re-establish, or re-build and sustain populations of anadromous salmonids in the Hood River Basin via a hatchery program that can provide Indian and non-Indian harvest of fish.

Alternative #3: Re-establish, or re-build and sustain populations of anadromous salmonids in the Hood River Basin via a supplementation program that can provide Indian and non-Indian harvest of fish.

Alternative #4: Re-establish, or re-build and sustain populations of anadormonous salmonids in the Hood River Basin via a program of habitat improvements that can provide Indian and non-Indian harvest of fish.

Alternative #5: No Action.

Identification of Environmental Issues

The following issues have been identified to be addressed in this EIS:

1. Effectiveness of different fish management techniques.
   A. Supplementation and hatchery protocols.
   B. Use of out-of-basin stocks.
   C. Wild versus hatchery stocks.
   D. Disease prevention.
2. Effects on other species in Hood River Basin.
3. Effects on endangered species in Columbia and Hood River Basins.
4. Ability to measure program effects.
5. Indian cultural and treaty concerns.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on March 27, 1995.

Sue Hickey,

Chief Operating Officer.

[FR Doc. 95–8110 Filed 3–31–95; 8:45 am]

BILLING CODE 6545–01–P–M

Federal Energy Regulatory Commission

[Docket No. ER93–568–000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–568–000]

Take notice that on February 27, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing additional information concerning two agreements for the interconnection and delivery of energy between the JFK Cogeneration Project and the JFK International Airport.

Con Edison states that a copy of this filing has been served by mail upon KIAC Partners and the Port Authority of New York and New Jersey.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER94–1135–000]

Take notice that on March 6, 1995, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Union Electric Company

[Docket No. ER95–744–000]

Take notice that on March 15, 1995, Union Electric Company (UE), tendered for filing an Agreement dated March 10, 1995, between UE and the City of Sikeston, Missouri. UE asserts that the Agreement provides for the sale of Maintenance Energy by UE to the Department of Municipal Utilities, Sikeston, Missouri for the period March 17, 1995 to April 14, 1995.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Power Smart, Inc.

[Docket No. ER95–751–000]

Take notice that on March 15, 1995, Power Smart, Inc. (PSI) tendered for filing a Petition for Waivers, Blanket Approvals, Disclaimer of Jurisdiction and Order Approving Rate Schedule. PSI requests approval of its initial rate schedule, to be effective as soon as possible.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Marketing Corp.

[Docket No. ER95–755–000]

Take notice that on March 17, 1995, Duke Energy Marketing Corp. (DEMC), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995, and requested that the Commission waive certain of its regulations and grant blanket approval of future issuances of securities and assumptions of liabilities. DEMC is a subsidiary of Duke Power Company.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Duke/Louis Dreyfus L.L.C.

[Docket No. ER95–756–000]

Take notice that on March 17, 1995, Duke/Louis Dreyfus L.L.C. (DLD), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities.

DLD was formed by Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, and Louis Dreyfus Electric Power Inc.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas and Electric Corporation

[Docket No. ER95–757–000]

Take notice that on March 17, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for (Commission) between CHG&E and New York Power Authority. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Louis Dreyfus Electric Power Inc.

[Docket No. ER95–758–000]

Take notice that on March 17, 1995, Louis Dreyfus Electric Power Inc. (LDEP), tendered for filing revisions to its FERC Electric Rate Schedule No. 1 and notified the Commission of a change in status.

The revision and change in status result from the formation by LDEP and Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, of a joint venture to market power.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER95–759–000]

Take notice that on March 17, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Citizens Power and Light Corporation (CPL) dated January 25, 1995 providing for certain transmission services to CPL.

Copies of this filing were served upon CPL and the New York State Public Service Commission.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER95–760–000]

Take notice that on March 17, 1995, Duke Power Company, tendered for filing its FERC Electric Rate Schedule No. 1 to be effective May 16, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval of future issuances of securities and assumptions of liabilities.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER95–761–000]

Take notice that on March 17, 1995, New England Power Company (NEP), tendered service agreements with and certificates of concurrence from Maine Public Service under NEP's Tariff 5 and Tariff 6.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–762–000]

Take notice that on March 17, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W), jointly tender and request the Commission to accept two Transmission Services which provide for Limited and Interruptible Transmission Service to Wisconsin Public Service Corporation (WPS).

NSP requests that the Commission accept for filing both Transmission Service Agreements effective on April 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Massachusetts Electric Company

[Docket No. ER95–763–000]

Take notice that on March 17, 1995, Massachusetts Electric Company, tendered for filing an amendment and rate change to its FERC Electric Tariff, Original Volume No. 1 for borderline sales.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER95–764–000]

Take notice that on March 20, 1995, Illinois Power Company (IP or the Company), tendered for filing three transmission tariffs; a network integration service tariff; a firm point-to-point transmission service tariff; and a non-firm point-to-point transmission service tariff. The Company proposes that these three tariffs become effective upon acceptance by this Commission.

Copies of this filing have been served on the Illinois Commerce Commission and the current wholesale requirements customers of Illinois Power.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER95–765–000]

Take notice that on March 20, 1995, New England Power Company (NEP) submitted for filing various Amendments to its Service Agreements with Granite State Electric Company, New Hampshire Electric Cooperative, and the Town of Littleton, New Hampshire under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP requests waiver of the Commission's notice requirements so that the Amendments may become effective on varying dates.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Potomac Electric Power Company

[Docket No. ER95–776–000]

Take notice that on March 16, 1995, Potomac Electric Power Company

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submitted minor corrections and additions to Schedule 2 to PEPCO's As-Available Power Sales Tariff, increasing certain of the ceiling power sale rates by about 0.1 percent and decreasing others.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8095 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–574–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER95–574–000]

Take notice that on March 7, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Co.

[Docket No. ER95–729–000]

Take notice that on March 10, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Power Exchange Corporation

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Co.

[Docket No. ER95–730–000]

Take notice that on March 13, 1995, New England Power Company, tendered for filing a transmission contract for service to the Enron Power Marketing, Inc.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Power Service Co.

[Docket No. ER95–731–000]

Take notice that on March 13, 1995, Central Illinois Power Service Company (CIPS), submitted two Service Agreements, dated February 1, 1995 and February 22, 1995, establishing Electric Clearinghouse, Inc. and Wisconsin Electric Power Company, respectively, as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of March 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Electric Clearinghouse, Inc. and Wisconsin Electric Power Company and the Illinois Commerce Commission.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corp.

[Docket No. ER95–733–000]

Take notice that on March 13, 1995, Central Hudson Gas & Electric Corporation (Central Hudson), tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 28, 1995 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,340.42 to $3,228.08 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $5,605.21 to $4,235.78 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,769.50 to $4,931.66 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Section 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1995.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P. O. Box 3607, Binghamton, NY 13902–3607.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Maine Power Co.

[Docket No. ER95–735–000]

Take notice that on March 13, 1995, Central Maine Power Company (CMP), tendered for filing a Power Sales Agreement for firm requirements wholesale power service to Houlton Water Company, dated December 22, 1994.

CMP has served a copy of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power and Light Co.

[Docket No. ER95–736–000]

Take notice that on March 14, 1995, Wisconsin Power and Light Company (WP&L), submitted an abbreviated rate filing to amend WP&L's rates for coordination sales, as permitted by the Commission's "Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates" (Interim Rule). WP&L proposes to include the incremental cost of sulfur dioxide emission allowances in coordination rates for those rates which already provide for the recovery of other variable costs on an incremental basis.

As contemplated by the Interim Rule, WP&L requests an effective date of January 1, 1995 and, accordingly, requests waiver of the Commission's notice requirements. WP&L agrees that revenues collected with respect to allowance-related charges, assessed between January 1, 1995 and the date the Commission issues an order accepting this filing without investigation or hearing, will be subject to refund.

Copies of this filing have been served upon all of WP&L's coordination sales service customers and the Public Service Commission of Wisconsin.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER95–740–000]

Take notice that on March 10, 1995, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota), tendered for filing pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's regulations, Supplement No. 2 to Joint Transmission Facility Agreement between Montana-Dakota and Mid-Yellowstone Electric Cooperative, Inc. (Mid Yellowstone).

Montana-Dakota asserts that the filing has been served on Mid-Yellowstone and on interested state regulatory commissions.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Vermont Electric Power Co., Inc.

[Docket No. ER95–741–000]

Take notice that on March 14, 1995 Vermont Electric Power Company, Inc. (VELCO), tendered for filing a Supplement (the Supplement) to its 1991 Transmission Agreement, Rate Schedule No. 246. The Supplement defines interface and makes provision for access to uncommitted transmission capacity on limited interface available to all VTPs on a nondiscriminatory basis.

VELCO requests that the rate change become effective on May 1, 1995. VELCO states that it has served copies of its filing on the effected customers and the Vermont Department of Public Service.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Co.

[Docket No. ER95–742–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) tendered for filing a Service Agreement and Appendix A for Citizens Power & Light Corporation for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Co.

[Docket No. ER95–743–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) tendered for filing a Service Agreement and Appendix A for InterCoast Marketing Company for the sale and/or exchange of power from time to time pursuant to BECo's Elecric Tariff, Origional Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Co.

[Docket No. ER95–745–000]

Take notice that on March 15, 1995, Boston Edison Company (BECo) on March 15, 1995, tendered for filing a Service Agreement and Appendix A for Long Island Lighting Company for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on February 24, 1995.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Co.

[Docket No. ER95–746–000]

Take notice that on March 15, 1995, Montaup Electric Company filed an executed service agreement between itself and Rainbow Energy Marketing Corporation for transmission service under Montaup's FERC Electric Tariff, Original Volume No. II. The service agreement provides that it will become effective as of April 15, 1995. Montaup requests waiver of the 60-day notice requirement so that the agreement may become effective on that date.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Co.

[Docket No. ER95–752–000]

Take notice that on March 16, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, a Service Agreement with Electric Clearinghouse Inc. (ECI) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed ECI.

NUSCO requests that the Service Agreement become effective on March 1, 1995.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Atlantic City Electric Co.

[Docket No. ER95–753–000]

Take notice that on March 16, 1995, Atlantic City Electric Company (ACE) tendered for filing an amendment to its Interconnection Agreement with the City of Vineland, New Jersey (Vineland). ACE requests that the amendment be accepted to become effective as of March 17, 1995.

A copy of the filing has been served on Vineland and the New Jersey Board of Regulatory Commissioners.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corp.

[Docket No. ER95–754–000

Take notice that on March 16, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing as an initial rate schedule, an agreement with Green Mountain Power Corporation (GMPC). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to GMPC and GMPC will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on March 17, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and GMPC.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Texaco Refining and Marketing Inc.

[Docket No. QF95–19–000]

On January 17, 1995, and March 21, 1995, Texaco Refining and Marketing Inc. (Texaco) tendered for filing two supplements to its filing in this docket.

These supplements pertain to ownership, technical and operational aspects relating to the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

Arizona Corporation Commission.

were served upon: New York State

Act and Part 35 of the Commission's

at the end of this notice.

of Regulatory Commissioners.

must file a motion to intervene. Copies

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of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8035 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Project No. 9948–000]

Public Utility District No. 1 of Jefferson County, Washington, and City of Tacoma, Washington; Notice of Intent To Prepare An Environmental Impact Statement and Conduct Public Scoping Meetings

March 28, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application for license to construct the proposed Elkhorn Hydroelectric Project No. 9948. The project would be located in the Olympic National Forest on the Dosewallips River approximately 6 miles west of the City of Brinnon, Jefferson County, Washington.

The Commission's staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for the Elkhorn Hydroelectric Project in accordance with the National Environmental Policy Act.

The EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review to all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two scoping meetings will be conducted. A scoping meeting oriented toward the public will be conducted on May 3, 1995, from 7:00 p.m. to 10 p.m., at the Brinnon Elementary School, 46 Schoolhouse Road, Brinnon, Washington. The school is located just off the Dosewallips River Road near U.S. Highway 101. A scoping meeting oriented toward the resource agencies will be conducted on May 4, 1995, from 10:00 a.m. to 12:30 p.m., in the Willaby Room, 1835 Black Lake Boulevard, at the Olympia National Forest Headquarters, Olympia, Washington. The headquarters building is located just off U.S. Highway 101 at the Black Lake Boulevard exit.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussion at the meetings, scoping document 1 outlining subject areas to be addressed in the EIS will be mailed to agencies and interested individuals on the Commission's mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit all available information from the meeting participants, especially quantified data on site-specific and cumulative impacts on the resources at issue; and (5) listen to statements from experts and the public on issues that should be analyzed in the EIS.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Elkhorn Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants wishing to make oral comments at the public meetings are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until June 5, 1995.

All written correspondence should clearly show the following caption on the first page: Elkhorn Hydroelectric Project No. 9948.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

If you have any questions please contact Thomas Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8034 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–265–000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

March 24, 1995.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP95–265–000]

Take notice that on March 22, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–265–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) for authorization to construct and operate an interconnection which will allow a bi-directional flow of natural gas between ANR and the Egan Hub Partners, L.P. (Egan), in Acadia Parish, Louisiana, under the blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The interconnection ("Egan Interconnection") will be located in Section 37, T9S, R2W, Acadia Parish, Louisiana. The proposed Egan Interconnection will consist of two 12-inch hot taps into ANR's existing 26-inch mainlines; associated valves, controllers, and flanges; and approximately ten feet of 12-inch pipeline to tie into Egan's proposed facilities. ANR states that the proposed interconnection will allow Egan to transport natural gas from Egan's proposed natural gas storage facilities located at or near the Evangeline Field, Jennings Salt Dome, Acadia Parish, Louisiana. ANR states that, on February 3, 1994, Egan notified the Commission of its intention to construct facilities, relating to its proposed storage facility, pursuant to Section 311(a)(2) of the Natural Gas Policy Act.

The proposed interconnection will have a maximum capacity of 300 Mmcf/d. ANR states that it has been fully reimbursed for the costs of the facilities at approximately $144,000. ANR asserts that the addition of the interconnection will have no adverse impact on the peak day and annual entitlements of any of ANR's existing customers.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Koch Gateway Pipeline Co.

[Docket No. CP95–269–000]

Take notice that on March 17, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–269–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to modify an existing meter station located in Anderson County, Texas, to permit the delivery of natural gas instead of receipt, under Koch's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to reverse the flow at the meter station in order to serve Four Square Gas Company (Four Square) on behalf of DeSoto Pipeline Company (DeSoto). It is stated that Koch is authorized to provide a transportation service for DeSoto under the terms of an interruptible transportation agreement dated October 1, 1994, and pursuant to Koch's Rate Schedule ITS. It is asserted that the deliveries made at the revised delivery point would be within DeSoto's certificated entitlement from Koch. It is further asserted that the deliveries would have no impact on Koch's curtailment plan. Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the proposed modification of facilities. The cost of the modification is estimated at $5,200.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Co.

[Docket No. CP95–270–000]

Take notice that on March 17, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–270–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain compression, dehydration, and pipeline facilities, all located within Reeves, Pecos, and Ward Counties, Texas by sale to Mobil Producing Texas & New Mexico Inc. (Mobil), all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to sell approximately 39 miles of pipeline with diameters ranging between 8 inches and 24 inches, 3 lateral compressor stations, and 2 dehydration plants to Mobil, for $675,000. This sale would be made in accordance with the provisions of an Asset Purchase Agreement with Mobil dated January 31, 1995. Northern mentions that these facilities were constructed as gas supply facilities under authority granted in Docket Nos. CP67–10, CP68–122, CP74–24, CP76–477, CP81–33–001, CP81–509, and CP82–401.

Northern states that Mobil will be filing a petition for a declaratory order seeking a determination that the conveyed facilities are gathering facilities not subject to the Commission's jurisdiction pursuant to NGA Section 1(b).

Comment date: April 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Mobil Natural Gas Inc.

[Docket No. CP95–272–000]

Take notice that on March 17, 1995, Mobil Natural Gas Inc. (MNGI), 12450 Greenspoint Drive, Houston, Texas 77060–1991, filed a petition for a declaratory order in Docket No. CP95–272–000, requesting that the Commission declare that the facilities to be acquired from Northern Natural Gas Company are gathering facilities exempt from Commission jurisdiction under Section 1 (b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

MNGI states that it will purchase compression, purification, and pipeline facilities located in Reeves, Pecos, and Ward Counties, Texas. MNGI mentions that these facilities include approximately 39 miles of 8-inch to 24-inch pipeline and appurtenances.

In support of its claim that the primary function of the proposed facilities is gathering, MNGI states the following: (1) all of the facilities are located behind Mobil Corporation's Waha and Coyanosa gas processing plants, (2) these facilities will be used to improve the delivery of locally produced gas to these plants, (3) none of the gas that would flow through these facilities would have been treated or processed, (4) these pipelines are currently being operated at field gathering pressures of 235 pounds per square inch gauge (psig) or less and would be operated below 500 psig at maximum flow rate, (5) the 17 miles of 24-inch Reeves pipeline could be deemed gathering because it is a lateral line constructed solely to connect a gathering system to a mainline.

Comment date: April 14, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corp.

[Docket No. CP95–275–000]

Take notice that on March 20, 1995, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP95–275–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer approximately 45,361 feet of pipeline and associated appurtenances located in Panola County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon approximately 144 feet of 8⅝-inch pipeline and approximately 45,217 feet of 20-inch pipeline, along with associated appurtenances, originating at the Union Pacific Resources Company (UPRC) operated Carthage Compressor Station and extending to the UPRC operated East Texas Plant, located in Panola County, Texas (20-Inch Pipeline).

Texas Gas states that as a result of changes occurring in Texas Gas's supply arrangements, Texas Gas entered into a lease arrangement in 1972 with Champlin Petroleum Company (Champlin), UPRC's predecessor in interest, whereby Champlin, and ultimately UPRC, used the subject line to move gas received from various producers between UPRC's East Texas Plant and its Carthage Compressor

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Station for processing and redelivery to various purchasers.

Texas Gas states that recently, Texas Gas and UPRC have negotiated an agreement to terminate the above-described lease arrangement and, upon receipt of regulatory approval, transfer ownership of the 20–inch Pipeline from Texas Gas to the UPRC operated East Texas Gas Systems (the Carthage Hub) located at the tailgate of the UPRC East Texas Plant, contingent upon the Carthage Hub receiving a declaratory order from the Commission that such facilities, upon transfer, will constitute nonjurisdictional gathering facilities. Texas Gas states that an application requesting such a declaratory order is to be filed in the near future by the Carthage Hub, a Texas general partnership and an intrastate pipeline.

Comment date: April 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corp.

[Docket No. CP95–277–000]

Take notice that on March 22, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–277–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate eight new delivery points in West Virginia for its firm transportation customer, Mountaineer Gas Company (MGC), under the blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the new delivery points in Jackson County, Clay County, Kanawha County, Wayne County, and Lincoln County, West Virginia. Columbia states the facilities will be located on Columbia's existing right-of-way which will interconnect with meters MGC will install on the right-of-way to provide service to eight residential customers. Columbia states the firm transportation will be in accordance with Part 284 of the Commission's regulations and Columbia's Rate Schedules FTS and SST.

Columbia estimates the design day quantity will be 12.0 Dth, and the annual quantity will be 1,200 Dth. Columbia states that the quantities to be provided through the new delivery points will be within Columbia authorized level of service, and therefore, there will be no impact on Columbia's existing design day and annual obligations to its customers as a result of this request. Columbia estimates that the cost to install the new taps will be approximately $150 per tap which will be treated as an O&M Expense.

Columbia says it will comply with all of the environmental requirements of Section 157.206(d) of the Commission's regulations prior to the construction of any facilities. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8036 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL95–36–000]

Jersey Central Power & Light Company; Notice of Filing

March 28, 1995.

Take notice that on March 23, 1995, Jersey Central Power & Light Company (Jersey Central), filed a Petition for Declaratory Order requesting that the Commission declare invalid the New Jersey PURPA procedure pursuant to which Jersey Central contracted to purchase capacity and energy from the Freehold Cogeneration Associates, L.P. (Freehold) project and, further, declare that the contract is unlawful and void. The project is proposed as a 100 MW gas-fired cogeneration facility to be located in Freehold Township, New Jersey. The Nestle Beverage Company would be the steam host.

Copies of the Petition have been served on Freehold, on C.E. Freehold I, Inc., a general partner, on the New Jersey Board of Public Utilities, and on the New Jersey Division of Ratepayer Advocate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8094 Filed 3–31–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5180–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 3, 1995.

FOR FURTHER INFORMATION CONTACT: For further information or a copy call Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 1729.01.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Disposal of Polychlorinated Biphenyls; Proposed Amendments; Related Reporting & Recordkeeping Requirements. (ICR No: 1729.01). This is a request for the approval of burden hours for requirements under section 6(e) of the Toxic Substances Control Act (TSCA). This is a new collection.

Abstract: EPA is charged under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), to regulate the making, disposal, manufacturing, processing, distribution in commerce, and use of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. Under the current rulemaking, EPA proposes to amend the PCB regulations to: (1) Provide flexibility in disposal technologies and decontamination procedures; (2) ease the procedures for obtaining EPA approvals; (3) clarify existing regulations; (4) modify the requirements for the use/maintenance, distribution in commerce, and disposal of PCB equipment; and (5) address issues of notification and manifesting of PCB wastes and changes in the operation of commercial storage facilities.

Information required by this amendment includes both reporting and recordkeeping. Reporting includes notifications: to obtain an identification number, to register PCB transformers, to engage in research and development activities, to seek approval of PCB disposal activities, or to exceed the current 1-year storage limitation. Recordkeeping activities include monitoring and recording the transfer, storage and disposal of PCBs/PCB equipment; the processing and distribution in commerce of PCBs; and the decontamination of PCB items.

EPA uses this information to ensure PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations.

Burden Statement: The public burden for this collection of information is estimated to average 82 hours per respondent to provide data on the manufacture, processing, distribution in commerce, use and disposal of PCBs. Less than 2 percent of the total burden is recordkeeping. These reporting and recordkeeping requirements are needed by EPA to monitor and control the life cycle of PCBs.

Respondents: Owners or operators of public warehousing and storage; electric services; sanitary services (incinerators, landfills); steam supply (high-efficiency boilers); administration of environmental quality programs.

Estimated No. of Respondents: 100,000.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,200,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR # 1729.01) to:

Sandy Farmer, EPA ICR # 1729.01, U.S. Environmental Protection Agency, Information Policy Branch–2136, 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 27, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–8028 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–60–F

[FRL–5182–7]

Science Advisory Board; Notification of Three Public Advisory Committee Meeting(s) and Cancellation of One Previously Announced Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that three committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

1. Drinking Water Committee

The Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will meet from Thursday, April 20, 1995 through Friday, April 21, 1995 in Rooms 130/138 at the U.S. Environmental Protection Agency's Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, Telephone: (513) 569–7531. The meeting will convene at 9:00 a.m. and continue until 6:00 p.m. on Thursday, April 20. On Friday, April 21, 1995, the meeting will begin at 8:00 a.m. and adjourn no later than 4:00 p.m.

The purpose of the meeting is to review the Environmental Protection Agency's Five-Year Research Plan for Disinfection Byproducts. Presentations will be made by representatives from the agency's Office of Water and the Office of Research and Development. Background documents to be provided

authorized level of service, and

Commission or its designee on this

Jersey Board of Public Utilities, and on

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for this review are available from the program office and not the Science Advisory Board. These documents include:

(a) Draft Report on EPA's 5 year research plan to support DBP related rules;

(b) **Federal Register** Notices of proposed D/DBP rule, Enhanced Surface Water Treatment Rule (ESTWR), and Information Collection Rule (ICR);

(c) Workshop Report and Recommendations for Conducting Epidemiologic Research on Cancer and Exposure to Chlorinated Drinking Water; and

(d) Report of the Panel on Reproductive Effects of Disinfection Byproducts in Drinking Water.

In addition, the Drinking Water Committee will be briefed by the American Water Works Association Research Foundation on their "Report from Expert Workshop on Microbial and Disinfection By-Product Research Needs".

The draft charge to the Drinking Water Committee is as follows:

(a) Has EPA identified the correct issues that need to be addressed to support the development of the Enhanced Surface Water Treatment Rule and Stage 2 Disinfectants/Disinfectant Byproducts rule?

(b) Do the research topic areas underway or envisioned under the five year research plan appear to adequately address the issues? Should any other research topic area be funded in lieu of that which is ongoing or planned?

(c) Has EPA given appropriate priorities to the order by which research is to be conducted?

Single copies of the U.S. EPA review materials provided to the Committee may be obtained from Mr. Stig Regli, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4603), 401 M Street, S.W., Washington, D.C. 20460; Telephone: (202) 260–7379. Single copies of the American Water Works Association Research Foundation report may be obtained from, Mr. Richard J. Karlin, Deputy Executive Director, American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado, 80235–3098; Telephone: (303) 347–6100. There may be a fee for this document.

Copies of these documents are NOT available from the Science Advisory Board Staff. Members of the public desiring additional information about the meeting, including an agenda, should contact Mr. Thomas O. Miller, Designated Federal Official, Drinking Water Committee, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–2563/6552, fax at (202) 260–7118, or via The INTERNET at: Miller.Tom@EPAMAIL.EPA.GOV.

Members of the public wishing to make an oral presentation at the meeting must contact Mr. Miller no later than noon, Friday, April 14, 1995. The request should identify the name of the individual who will make the presentation, requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalk board, etc.), and an outline of the issues to be addressed. At least 35 copies of the presentation and 35 copies of the visual aids used at the meeting are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

2. Hazardous Air Pollutant Monitoring Subcommittee

The Hazardous Air Pollutant Monitoring Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet April 24–25, 1995 at the Environmental Protection Agency, Environmental Research Center, Conference Room M–130, Corner of Highways 54 and Alexander Drive, Research Triangle Park, NC. The meeting will begin each day at 9:00 a.m. and end no later than 5:00 p.m.

The Subcommittee will review the EPA Office of Research and Development's Proposed Program on Enhanced Monitoring. Copies of the documents to be reviewed are *not* available from the SAB. The March 2, 1995 memorandum containing the full charge and the review documents can be obtained from Dr. Rodney Midgett, Atmospheric Research and Exposure Assessment Laboratory, Environmental Research Center, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone (919) 541–2196. An abbreviated version of the three page tentative charge to this subcommittee follows.

(a) The "Ambient Air Monitoring Reference and Equivalent Methods" requirements are contained in 40 CFR, Part 53. The technical framework of the proposed Continuous Emissions Monitoring (CEM) verification may require more flexibility than is currently allowed under 40CFR53. In reviewing the proposed program on enhanced monitoring in light of 50CFR53, what would increase general applicability, modify technical concepts, or otherwise improve the documents?

(b) The field component of the CEM verification program should be conducted at a site which is representative of the industry conditions and over a period of time which adequately tests for process changes and instrument performance. The German TUV field verification program appears to accomplish this. EPA might arrive at a CEM verification program that combines the best features of the 40CFR53 equivalency program and the TUV field verification program. What variables need to be considered in developing the optimal CEM verification program?

(c) Method 301 of Title 40 CFR, Part 63 is a protocol for the "Field Validation of Pollutant Measurement Methods from Various Waste Media". Method 301 was written specifically for manual test methods where a discreet sample is collected, usually for analysis at a later time. Therefore, as currently written, the Method 301 Procedures are not applicable for use with CEM data. Thus, many of the concepts of Method 301 need to be modified so that a relationship can be established between the reference test method and the CEM results. The SAB is asked to comment on the nature of modifications that would be reasonable to use.

Any member of the public wishing further information, such as a proposed agenda should contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, telephone (202) 260–6552 or fax (202) 260–7118. Written comments of any length (at least 35 copies) may be provided up until the meeting. Members of the public who wish to make a brief oral presentation should contact the Designated Federal Official, Mrs. Kathleen Conway by phone (202) 260–2558, or internet CONWAY.KATHLEEN @epamail.epa.gov no later than noon (eastern time) Wednesday April 19 in order to have time reserved on the agenda.

3. Innovative Technology Subcommittee

The Innovative Technology Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet May 2–3, 1995 at the One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC. This meeting will also begin each day at 9:00 a.m. and end no later then 5:00 p.m.

The Subcommittee will discuss the Office of Research and Development's Environmental Technology Innovation and Commercialization Enhancement Program (EnTICE), a technology verification program. Copies of the March 13 draft charge for the review, plus the white paper and attachments describing optional models on which program development could be based are available from Ms. Crystal Robinson, Office of Environmental Engineering and Technology Demonstration (8301), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460. Telephone (202) 260–4073.

The draft charge is three pages long. Some background and the primary issues from the charge follow.

(a) EPA (ORD) is formulating a program to verify the cost and performance of innovative environmental technologies. The purpose is to bolster the credibility of deserving technologies to help them enter the marketplace. Credible 3rd party developed and EPA assured data and information is expected to inform the marketplace and the permitting arena so that decision-makers can choose innovative technologies with more confidence.

(b) EPA is interested in the views and advice of the Environmental Engineering Committee in all aspects of the program as planned currently.

(1) Is it practical to target each center to be self-supporting in approximately 3 years? Can industry bear the expense?

(2) How important is it that the verifications carry EPA's "seal of approval"? Would verifications that don't carry EPA's seal but just that of a 3rd party center have sufficient credibility to open doors in the marketplace and the permitting arena? How important is EPA's oversight in ensuring consistency and rigor across 3rd party centers?

Any member of the public wishing further information, such as a proposed agenda should contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, telephone (202) 260–6552 or fax (202) 260–7118. Written comments of any length (at least 35 copies) may be provided up until the meeting. Members of the public who wish to make a brief oral presentation should contact the Designated Federal Official, Mrs. Kathleen Conway by phone (202) 260–2558, or internet CONW-AY.KATHLEEN@epamail.epa.gov no later than noon (eastern time) Wednesday April 26 in order to have time reserved on the agenda.

4. Cancellation of the Environmental Economics Advisory Committee Meeting

The meeting of the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board which was scheduled to meet on April 27, 1995 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington D.C. 20007, has been cancelled. This meeting had been announced in the **Federal Register** on March 27, 1995. This meeting may be rescheduled at a later date. For further information, please contact Dr. Edward Bender, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260–2562, via Internet to bender.edward@epamail.epa.gov, or by facsimile to (202) 260–7118.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: March 28, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–8086 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5184–4]

Voluntary Environmental Self-Policing and Self-Disclosure Interim Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim policy statement and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) announces and requests comment on an interim policy to provide incentives for regulated entities that conduct voluntary compliance evaluations and also disclose and correct violations. These incentives include eliminating or substantially reducing the gravity component of civil penalties and not referring cases for criminal prosecution where specified conditions are met. The policy also states that EPA will not request voluntary audit reports to trigger enforcement investigations. This interim policy was developed in close consultation with EPA's regional offices and the Department of Justice, and will be applied uniformly by the Agency's enforcement programs.

DATES: This interim policy statement is effective as interim guidance 15 days after publication, in order to give the Agency time to coordinate implementation of the policy throughout EPA Headquarters and the Regions. EPA urges interested parties to comment on this interim policy in writing. Comments must be received by EPA at the address below by June 2, 1995.

ADDRESSES: Submit three copies of comments to the U.S. EPA Air Docket, Mail Code 6102, 401 M Street, SW, Washington, D.C. 20460, attention: Docket #C–94–01.

FOR FURTHER INFORMATION CONTACT: Additional documentation relating to the development of this interim policy is contained in the environmental auditing public docket. Documents from the docket may be requested by calling (202) 260–7548, requesting an index to docket #C–94–01, and faxing document requests to (202) 260–4400. Hours of operation are 8 a.m. to 5:30 p.m., Monday through Friday, except legal holidays. Additional contacts are Geoff Garver or Brian Riedel, at (202) 564–4187.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

One of the Environmental Protection Agency's most important responsibilities is obtaining compliance with federal laws that protect public health and safeguard the environment. That goal can be achieved only with the voluntary cooperation of thousands of businesses and other regulated entities subject to these requirements. Today, EPA is announcing incentives for those who take responsibility for voluntarily evaluating, disclosing and correcting violations. These incentives, developed after nine months of public meetings and empirical analysis, are set forth in detail below and take effect in 15 days. At the same time, EPA expects to continue a dialogue with stakeholders and consider further refinements to this interim policy. The incentives that EPA is offering fall into three distinct categories.

First, the Agency will completely eliminate gravity-based (or "punitive") penalties for companies or public agencies that voluntarily identify, disclose and correct violations according to the conditions outlined in this policy. EPA will also reduce punitive penalties by up to 75% for

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companies that meet most, but not all, of these conditions. Second, EPA will not recommend to the Department of Justice that criminal charges be brought against a company acting in good faith to identify, disclose, and correct violations, so long as no serious actual harm has occurred. Finally, the Agency will not request voluntary environmental audits to trigger enforcement investigations.

The incentives offered in this policy have been structured above all to protect human health and the environment. For example, even where the conditions for mitigated enforcement are met, EPA will reserve the right to collect full civil penalties for criminal conduct, violations that present an imminent and substantial endangerment or result in serious actual harm, or repeat violations. Sources will not be allowed to gain an economic advantage over their competitors by delaying their investment in compliance. Nor will EPA hesitate to bring a criminal action against individuals responsible for criminal conduct.

EPA is considering additional incentives for voluntary compliance beyond the benefits offered in the policy today. On April 7, 1995, the Agency will announce 12 Environmental Leadership Program (ELP) pilot projects with companies and public agencies to test criteria for auditing and certification of voluntary compliance programs. If successful, standards developed through Environmental Leadership could lead to reduced inspections and public recognition for companies or agencies with state-of-the-art compliance programs. In keeping with the President's announcement on March 16, 1995, EPA also will shortly be announcing additional compliance incentives for small businesses.

The Agency is especially interested in comments relating to whether this interim policy appropriately defines the criteria for determining whether a self-audit, self-evaluation or disclosure is voluntary; whether the interim policy adequately preserves the Agency's authority to assess a gravity penalty component in appropriate cases; and whether, and according to what criteria, the Agency should consider giving credit against the economic benefit component of a penalty for state-of-the-art environmental management systems.

B. Public Process

In May 1994, the Administrator asked the Office of Enforcement and Compliance Assurance to determine whether additional incentives are needed to encourage voluntary disclosure and correction of violations uncovered during environmental audits and self-evaluations.

In developing this interim policy, the Agency held a major two-day public meeting in July 1994 announced in the **Federal Register** on June 20, 1994 (59 FR 31914); published a Restatement of Policies Related to Environmental Auditing in the **Federal Register** on July 28, 1994 (59 FR 38455); considered over 80 written comments submitted to the environmental auditing policy docket; held a focus group meeting in San Francisco on January 19, 1995 with key stakeholders from industry, trade groups, State environmental commissions, State attorneys general offices, district attorneys' offices, environmental and public interest groups, and professional environmental auditing groups; and held a public comment session in San Francisco on January 20, 1995.

In addition to considering opinion from stakeholders, EPA conducted its own analysis of relevant facts. For example, the Agency considered EPA and other Federal policies relating to environmental auditing, self-disclosure, and correction, as well as incentives suggested by State and local policies and legislation, and by applications submitted for the ELP pilot program. The Agency also considered relevant surveys on auditing practices and incentives.

C. Purpose

This interim policy is intended to promote environmental compliance by providing greater certainty as to EPA's enforcement response to voluntary self-evaluations, and voluntary disclosure and prompt correction of violations. The policy further provides guidance for States and local authorities in encouraging this behavior among regulated entities.

Federal laws and regulations set minimum standards for protecting human health and achieving environmental protection goals such as clean air and clean water. EPA will continue to uphold these laws through vigorous enforcement actions that appropriately penalize violators. Penalties help ensure a level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary investment in compliance. Penalties also promote protection of the environment and public health by encouraging adoption of pollution prevention and recycling practices that limit exposure to liability for pollutant discharges and deterring future violations by the violator and others.

At the same time, the Agency recognizes that we cannot achieve maximum compliance without the cooperation of a regulated community willing to act responsibly by detecting, disclosing, and correcting violations. Already, regulated entities have many compelling incentives to implement environmental management/auditing systems, as noted in EPA's 1986 auditing policy. Indeed, recent surveys show that the vast majority of large companies engage in environmental auditing and/or have environmental management systems in place. Nonetheless, EPA has concluded that the additional incentives in this interim policy will further promote the regulated community's commitment to adopting systems for maximizing compliance.

D. Principles for Voluntary Compliance

The interim policy that EPA is announcing today is based on seven principles:

1. Self-policing by regulated entities can play a crucial role in finding, fixing and preventing violations.

2. Violations discovered through self-policing should be disclosed and promptly corrected.

3. Regulated entities that self-police and that voluntarily disclose and self-correct violations in accordance with this policy should be assessed penalties that are consistently and predictably lower than penalties for those who do not.

4. Regulated entities that self-police and voluntarily disclose and self-correct violations in accordance with this policy should also not be recommended for criminal prosecution.

5. Providing predictable incentives for voluntary disclosure and correction of violations identified through self-policing offers a positive alternative to across-the-board privileges and immunities that could be used to shield criminal misconduct, drive up litigation costs and create an atmosphere of distrust between regulators, industry and local communities.

6. EPA should not seek voluntary environmental audit information to trigger an investigation of a civil or criminal violation of environmental laws.

7. To preserve a level playing field, EPA should recover any economic benefit realized from violations of environmental law.

E. Relationship to Emerging Standards

EPA also recognizes the development of and growing reliance on international voluntary environmental management standards in the U.S. and other countries. These standards, if properly crafted and implemented, can provide a powerful tool for organizations to improve their overall compliance with environmental requirements and move beyond compliance through innovative approaches to pollution prevention. In addition to issuing this interim policy, EPA will continue to pursue a dialogue with interested parties and to pilot policy approaches through programs such as the ELP to determine how EPA can make use of and encourage these standards.

II. Interim Policy

A. Definitions

For purposes of this interim policy, the following definitions apply:

"Environmental auditing" has the definition given to it in EPA's 1986 policy on environmental auditing, i.e. "a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements."

"Environmental audit report" means all documentation of information relating to an environmental audit, but not including the factual information underlying or testimonial evidence relating to such information.

"Regulated entity" means any entity, including a federal, state, and municipal facility, regulated under the federal environmental laws that EPA administers.

"Self-evaluation" means an assessment, not necessarily meeting all the criteria of a full environmental audit, by a regulated entity of its compliance with one or more environmental requirements.

"Voluntary" means not required by statute, regulation, permit, order, or agreement.

B. Conditions

The conditions for reducing civil penalties and not making criminal referrals in accordance with Sections II.C. and II.D. of this interim policy are as follows:

1. *Voluntary self-policing.* The regulated entity discovers a violation through a voluntary environmental audit or voluntary self-evaluation appropriate to the size and nature of the regulated entity; and

2. *Voluntary disclosure.* The regulated entity fully and voluntarily discloses the violation in writing to all appropriate federal, state and local agencies as soon as it is discovered (including a reasonable time to determine that a violation exists), and prior to (1) the commencement of a federal, state or local agency inspection, investigation or information request; (2) notice of a citizen suit; (3) legal complaint by a third party; or (4) the regulated entity's knowledge that the discovery of the violation by a regulatory agency or third party was imminent; and

3. *Prompt correction.* The regulated entity corrects the violation either within 60 days of discovering the violation or, if more time is needed, as expeditiously as practicable; and

4. *Remediation of imminent and substantial endangerment.* The regulated entity expeditiously remedies any condition that has created or may create an imminent and substantial endangerment to human health or the environment; and

5. *Remediation of harm and prevention of repeat violations.* The regulated entity implements appropriate measures to remedy any environmental harm due to the violation and to prevent a recurrence of the violation; and

6. *No lack of appropriate preventive measures.* The violation does not indicate that the regulated entity has failed to take appropriate steps to avoid repeat or recurring violations; and

7. *Cooperation.* The regulated entity cooperates as required by EPA and provides such information as is reasonably necessary and required by EPA to determine applicability of this policy. Cooperation may include providing all requested documents and access to employees and assistance in any further investigations into the violation.

Where appropriate, EPA may require that to satisfy any of these conditions, a regulated entity must enter into a written agreement, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

C. Reduce Civil Penalties for Voluntarily Disclosed and Promptly Corrected Violations

1. Incentive

Regulated entities will be eligible for the following reductions in civil penalties:

a. EPA will eliminate all of the gravity component of the penalty for violations by regulated entities that meet conditions 1 through 7 outlined in Section II.B., except for violations involving (i) criminal conduct by the regulated entity or any of its employees, or (ii) an imminent and substantial endangerment, or serious actual harm, to human health or the environment.

b. EPA may mitigate up to 75% of the unadjusted gravity component of the penalty, taking into account any of conditions 1–7 in Section II.B. that are met, in the following cases:

(i) cases in which most but not all of the conditions in Section II.B. are met; or

(ii) cases involving an imminent and substantial endangerment, but not serious actual harm, in which all the conditions in Section II.B. are met; or

(iii) cases involving the disclosure of criminal conduct in which all the conditions in Section II.B. are met.

c. EPA will retain its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage through noncompliance. However, EPA may forgive the entire penalty for violations which meet conditions 1 through 7 outlined in Section II.B. and, in EPA's discretion, do not merit any penalty due to the insignificant amount of any economic benefit.

2. Discussion

a. Providing a clear and significant reduction in civil penalties for companies that assume responsibility for finding, disclosing and correcting violations will create a strong incentive for regulated entities to prevent or fix violations before EPA expends enforcement resources. The policy states clearly the conditions under which EPA will forgive all or part of the gravity component of a penalty for voluntary disclosure and correction;

b. The policy appropriately preserves the concept of recovering economic benefit, except where it is insignificant, as recommended by a broad spectrum of commenters, including industry commenters;

c. Retaining EPA's discretion to collect the gravity component of the penalty in appropriate cases, such as where a violation involves criminal conduct, or imminent and substantial endangerment, will help to deter the most egregious environmental violations. At the same time, by preserving flexibility to reduce the gravity element by up to 75% for good faith efforts to disclose and promptly comply even in those cases, the policy will retain an appropriate compliance incentive.

D. Limit Criminal Referrals for Voluntary Disclosure and Correction of Violations

1. Incentive

EPA will not recommend to the Department of Justice that criminal

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charges be brought against a regulated entity where EPA determines that conditions 1–7 in Section II.B. above for reduction of civil penalties are met, and the violation does not demonstrate or involve (1) a prevalent corporate management philosophy or practice that concealed or condoned environmental violations; (2) high-level corporate officials' or managers' conscious involvement in or willful blindness to the violation; or (3) serious actual harm to human health or the environment. This policy does not apply to criminal acts of individual managers or employees. Where EPA determines pursuant to this Section that a criminal referral to the Department of Justice is unwarranted, EPA may nonetheless proceed with civil enforcement in accordance with Section II.C. of this policy or other applicable enforcement response and penalty policies.

2. Discussion

The policy will promote candid and thorough self-policing by providing greater certainty as to how EPA will exercise its criminal investigative discretion to encourage voluntary disclosure and prompt correction by regulated entities.

E. Eliminate Routine Requests for Audit Reports in Pre-Enforcement Proceedings

1. Incentive

EPA will not request a voluntary environmental audit report to trigger a civil or criminal investigation. For example, EPA will not request an audit in routine inspections. Once the Agency has reason to believe a violation has been committed, EPA may seek through an investigation or enforcement action any information relevant to identifying violations or determining liability or extent of harm.

2. Discussion

a. This policy makes clear that EPA will not routinely request audit reports. At the same time, the policy in no way limits the right of regulated entities to claim common law privileges (e.g., attorney-client and work product) as appropriate. EPA believes that this clarification, along with the other incentives in this interim policy, should greatly reduce any perception that environmental audits may be used unfairly in environmental enforcement.

b. With respect to federal facilities, although federal facility environmental audit reports may be accessible to the public under the Freedom of Information Act (FOIA) in certain circumstances, EPA cannot utilize FOIA to request information from other federal agencies. Thus, EPA will apply this policy on requests for audit reports to federal (and state and municipal) facilities the same as it does for other regulated entities.

F. Applicability

This interim policy applies to violations under all of the federal environmental statutes that EPA administers and supersedes (unless otherwise noted) any conflicting or inconsistent provisions in the media-specific penalty or enforcement response policies and EPA's 1986 Environmental Auditing Policy Statement. Existing enforcement policies will continue to apply in conjunction with this interim policy, except where inconsistent with this policy. In addition, where appropriate, EPA's Supplemental Environmental Project Policy may at EPA's discretion be applied in conjunction with this policy.

III. Favor These Incentives Over Broad Privileges and Immunities

This interim policy offers a positive alternative to across-the-board privileges and immunities that could be used to shield criminal misconduct, drive up litigation costs and create an atmosphere of distrust between regulators, industry and local communities.

A. Discussion

1. Penalty immunity provisions for voluntary disclosures of violations can give lawbreakers an economic advantage over their law-abiding competitors. It makes sense to give substantial penalty reductions for those who come forward with their violations and promptly correct them, but to maintain a level playing field, the federal and state governments must be able to recoup the economic benefit of violations.

2. A principal rationale for environmental audit privileges and penalty immunities for voluntary disclosures is to reduce the exposure of regulated entities that conduct self-evaluations *and act on the findings by immediately correcting violations.* EPA has addressed this concern with the incentives for disclosure and correction outlined above.

3. Privilege runs counter to efforts to open up environmental decisionmaking and encourage public participation in matters that affect people's homes, workplaces and communities.

4. An environmental audit privilege could be misused to shield bad actors or to frustrate access to crucial factual information.

5. Environmental audit privileges and penalty immunities could encourage increased litigation as opposing lawyers battle over what is privileged or immune from penalties and what is not. Litigation over the scope of the privileges and immunities could burden our already taxed judicial system, drain government and private resources, and in some cases prevent quick action to address environmental emergencies.

6. The Supreme Court has noted, "privileges are not lightly created nor expansively construed for they are in derogation of the search for the truth." *United States* v. *Nixon*, 418 U.S. 683, 710 (1974). Moreover, the self-evaluation privilege has regularly and uniformly been rejected by the courts in cases where documents were sought by a governmental agency.

IV. Consequences for States

EPA recognizes that states are important partners in federal enforcement, and that it is desirable to create a climate in which states can be innovative. At the same time, EPA is required to establish a certain minimum consistency in federal enforcement, so that the sanctions a business faces for violating federal law do not depend on where the business is located.

Accordingly, to maintain national consistency:

A. EPA will scrutinize enforcement more closely in states with audit privilege and/or penalty immunity laws and may find it necessary to increase federal enforcement where environmental self-evaluation privileges or penalty immunities prevent a state from obtaining:

1. information needed to establish criminal liability;

2. facts needed to establish the nature and extent of a violation;

3. appropriate penalties for imminent and substantial endangerment or serious harm to human health or the environment, or from recovering economic benefit;

4. appropriate sanctions or penalties for criminal conduct and repeat violations; or

5. prompt correction of violations, and expeditious remediation of those that involve imminent and substantial endangerment to human health or the environment.

B. EPA will bring to the state's attention any provisions of state audit privilege and/or penalty immunity statutes that raise any of the concerns outlined above, and will work with the state to address those concerns and ensure that federal requirements are satisfied.

V. Limitations on Applicability of This Policy

This interim policy sets forth internal guidelines which amend EPA's penalty policies in situations involving voluntary self-policing, disclosure and correction. In conjunction with the applicable penalty policy, these guidelines will aid EPA personnel in proposing appropriate penalties or negotiating settlements in administrative and judicial enforcement actions. The interim policy also serves to structure the Agency's enforcement authority and states the Agency's view as to the proper allocation of its enforcement resources. Deviations from these guidelines, where merited, are authorized so long as the reasons for the deviations are documented.

This interim policy is not final agency action, but is intended solely as guidance. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this interim policy or to act at variance with the guidance based on analysis of case-specific facts and circumstances. Application of this policy to the facts of any individual case is at the sole discretion of EPA and is not subject to review by any court. In addition, the policy has no effect on the calculation of any cleanup costs, remedial costs, natural resources damages or emergency response costs associated with a violation. EPA reserves the right to change this interim policy at any time without public notice.

Dated: March 30, 1995.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 95–8218 Filed 3–31–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Extension of comment period on proposed revisions to Country Exposure Report (FFIEC 009).

SUMMARY: On March 16, 1995, the FDIC requested comment on proposed revisions to the Country Exposure Report (FFIEC 009). The Federal Financial Institutions Examination Council (FFIEC) proposed to implement the report as of March 31, 1995. However, the FFIEC has asked that the comment period be extended to give the public additional time to provide comment. In addition, the implementation date of the proposed revisions to the reporting form will be delayed until not earlier than September 30, 1995, to provide institutions with additional time to modify their systems and to resolve conceptual issues related to the report.

DATES: Comments must be received by April 21, 1995.

OMB REVIEWER: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0017, Washington, DC 20503.

FDIC CONTACT: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact identified above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact.

SUPPLEMENTARY INFORMATION: On March 16, 1995 (60 FR 14285), the FDIC invited comment on proposed revisions to the Country Exposure Report (FFIEC 009). The FFIEC has received a request to extend the comment period and delay the implementation date of the proposed revisions. In view of the significance of the new items that are proposed in the report, the FDIC is extending the comment period to April 21, 1995, and delaying the proposed implementation date to not earlier than September 30, 1995.

Dated: March 29, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–8106 Filed 3–31–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Minority Oral Health Study.

Dates: May 2–3, 1995.

Time: 9:00 a.m.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Research on Pulp Biology.

Dates: June 1–2, 1995.

Time: 9:00 a.m.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Dentist Scientist Award.

Dates: June 5–6, 1995.

Time: 9:00 a.m.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: March 28, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8119 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the

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to request information from other

information.

satisfied.

Council (FFIEC) proposed to implement

Special Emphasis Panel (SEP) meetings:

cancellation of one meeting of the

National Institute of Mental Health which was published in the **Federal Register** on March 3, 1995 (60 FR 11976): the Extramural Science Advisory Board, April 24–25, 1995, Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: March 28, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8120 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Notice of Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on May 1, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: March 28, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8121 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, May 8–9, 1995, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on May 8 to adjournment on May 9. The topics for the meeting will include, among others, the recommendations of the Clinical Research Study Group and the Survey of Science Workshop. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, Room 433, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 594–7265, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, Room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 594–7248, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: March 28, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8122 Filed 3–31–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS. (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance

testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917.

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.).

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath).

CORNING MetPath Clinical Laboratories, 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888, (formerly: MetPath, Inc.).

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.).

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science).

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT)).

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093.

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650, (formerly: HealthCare/Preferred Laboratories).

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., NE., Suite 107, Palm Bay, FL 32905, 407–726–9920.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051.

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835.

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213.

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199.

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon).

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512).

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.

National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100.

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250.

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.

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guidance of the public. Because the

two weeks in advance of the meeting.

participate in a quarterly performance

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272.
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400.
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986.
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory).
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263, (Formerly: CompuChem Laboratories, Inc.—Special Division).
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006, (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in March.

Richard Kopanda,

Acting Executive Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–8015 Filed 3–31–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT–800377]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: Loreen Allphin, Biology Department, University of Utah, Salt Lake City, Utah.

The applicant requests a permit to include collect fruits of the Sentry milk-vetch (*Astragalus cremnophalax var. cremnophalax*) and Mancos milk-vetch (*Astragalus humillimus*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8073 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–55–M

[PRT–800458]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicant: Mark D. Hovorka, Department of Biology, York University, North York, Ontario, Canada.

The applicant requests a permit to include take of the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8074 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–55–M

[PRT–798107]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*

Applicant: Kenneth J. Kingsley, SWCA, Inc., Tucson, Arizona.

The applicant request a permit amendment to include collection of vouchers specimens of Arizona hedgehog cactus (*Echinocereus triglochidiatus arizonicus*) from previously unknown populations for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.).

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8076 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 14, Block J, 9608 Leaning Rock Circle, Long Canyon, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice—Correction.

SUMMARY: Larry W. James (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–798674. The applicant has requested that the **Federal Register** notice published on March 16, 1995, be corrected to reflect the correct address. The construction of the one single-family residence will now occur at 9608 Leaning Rock Circle, Lot 14, Block J, Long Canyon, Austin, Travis County, Texas.

DATES: Written comments on the application and EA/HCP should be received at the Ecological Services Field Office, Austin, Texas, by no later than April 17, 1995.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8075 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirements and related explanatory material may be obtained by contacting Dennis Jones at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0090), Washington, DC 20503, telephone 202–395–7340.

Title: Royalty Rate Reduction Program for Federal Stripper Oil Properties.

OMB Approval Number: 1010–0090.

Abstract: To encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing less than 15 barrels of oil each well day, and to reduce operator's expenses, the Bureau of Land Management (BLM) has amended regulations at 43 CFR 3103.4–1 to establish the conditions under which an operator of stripper oil property can obtain a reduced royalty rate. Operators are required to provide the royalty rate for each property to the Minerals Management Service, Royalty Management Program (RMP) to ensure that the correct rate is used in RMP financial and production auditing systems.

Bureau Form Numbers: MMS–4377.

Frequency: Annually.

Description of Respondents: Operators of stripper oil properties on Federal lands.

Estimated Completion Time: 30 minutes.

Annual Responses: 800.

Annual Burden Hours: 1,000.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1101.

Dated: February 2, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–7997 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–64]

Fresh Winter Tomatoes

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

SUMMARY: Following receipt of a petition filed on March 29, 1995, on behalf of the Florida Tomato Exchange, Orlando, FL, and the constituent members thereof, (petitioner) the United States International Trade Commission instituted investigation No. TA–201–64 under section 202(b) of the Trade Act of 1974 to determine whether fresh winter tomatoes, provided for in subheadings 0702.00.20 and 0702.00.60 of the Harmonized Tariff Schedule of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[1]

Further, the petitioner, having indicated that the subject tomatoes are perishable agricultural products that have been the subject of Commission monitoring under section 332(g) of the

[1] For purposes of this investigation, "fresh winter tomatoes" is defined as fresh or chilled tomatoes (including but not limited to the varieties known scientifically as *Lycopersicon esculentum and Lycopersicon pyriforme*), excluding cherry tomatoes (*Lycopersicon cerasiforme*), if entered during the period from January 1 through April 30, inclusive, in any year.

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Tariff Act of 1930 for more than 90 days, has requested, pursuant to section 202(d) of the Act (19 U.S.C. 2252(d)), that provisional relief be provided through April 30, 1995. Accordingly, as provided for in section 202(d)(1)(C), the Commission will determine, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the above-described tomatoes are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, and whether either (1) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product, or (2) the serious injury cannot be timely prevented through investigation under section 202(b) and action under section 203. If the Commission makes an affirmative preliminary determination under section 202(d)(1)(C), section 202(d)(1)(E) requires that it find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Persons wishing to participate in the phase of this investigation regarding provisional relief must file an entry of appearance with the Secretary not later than two (2) days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Conference on provisional relief and hearings on injury and remedy.—A staff conference on the question of provisional relief will be held beginning at 9:30 a.m. on April 10, 1995, at the U.S. International Trade Commission Building. A subsequent hearing on injury will be held beginning at 9:30 a.m. on July 6, 1995. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on August 17, 1995. Requests to appear at the conference on provisional relief should be filed in writing with the Secretary to the Commission as far in advance of the conference date as is practicable. Requests to appear at the hearings on injury and remedy should be filed on or before June 19, 1995, and August 11, 1995, respectively.

With regard to the hearing on injury, all persons desiring to appear at the hearings and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 22, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing preconference briefs on provisional relief is April 6, 1995; the deadline for filing prehearing briefs on injury is June 29, 1995, and that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is August 10, 1995. The deadline for filing posthearing briefs on injury is July 12, 1995, and that for filing posthearing briefs on remedy is August 24, 1995. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of provisional relief on or before April 6, 1995, pertinent to the consideration of injury on or before July 12, 1995, and pertinent to the consideration of remedy on or before August 24, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the rules.

In accordance with section 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of CBI under an administrative protective order (APO) and CBI service list.—Except as provided below, the Secretary, pursuant to section 206.17(a) of the Commission's rules, will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Authorized applicants may have access to such information nothwithstanding any prior action taken in connection with the phase of this investigation regarding provisional relief. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Persons wishing to obtain confidential business information (CBI) gathered in connection with the provisional relief phase must file an application for APO with the Secretary not later than two (2) days after publication of this notice in the **Federal Register**.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974. This notice is published pursuant to section 206.3 of the Commission's rules.

Issued: March 30, 1995.

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8223 Filed 3–31–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7304 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a currently approved collection.

(1) Supplementary Homicide Report.
(2) I–704. Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to collect Age, Sex, Race, ethnic origin and relationship of murder victims; the weapon and motive. Summary statistics are published in the annual report "Crime in the United States."
(4) 23,616 annual respondents at 10 minutes per response.
(5) 3,936 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8051 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–02–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Request for Payment (COPS Revised H–3).
(2) COPS–006 Office of Community Oriented Policing Services, Office of the Associate Attorney General, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. The Request for Payment form is to be used by COPS grantees in seeking an advance or reimbursement from their grant for the hiring of new police officers.
(4) 48,000 annual respondents at .6 hours per response.
(5) 38,400 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8049 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your

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intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a currently approved collection.

(1) Number of Full-Time Law Enforcement Employees as of October 31.
(2) 1–711a (City=Green,) 1–711b (County=Blue), 1–711c (Red=Population Centers over 100,000). Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to determine the number of civilian and sworn full-time law enforcement employees in the United States. Summary statistics are published annual in "Crime in the United States."
(4) 192,000 annual respondents at 10 minutes per response.
(5) 32,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8050 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–02–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;
(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) who will be asked or required to respond, as well as a brief abstract;
(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) an estimate of the total public burden (in hours) associated with the collection; and,
(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 AND to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer AND the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) DNA Testing and Typing Capacity Survey: Included in the Solicitation for the Forensic DNA Laboratory Program.
(2) None. National Institute of Justice, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. This survey will be distributed to state and local governments as part of the solicitation for proposals to develop or improve the capability to analyze DNA in forensic laboratories.
(4) 203 annual respondents at 4 hours per response.
(5) 812 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8048 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the term(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of currently approved collection.

(1) Monthly Return of Arson Offenses Known to Law Enforcement.
(2) I–725. Federal Bureau of Investigation, United States Department of Justice.
(3) Primary=State, Local, or Tribal Government. Others=None. This document is needed to collect information on arson offenses known to law enforcement agencies. Summary statistics are published annually in "Crime in the United States".
(4) 192,000 annual respondents at 10 minutes per response.
(5) 32,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8052 Filed 3–31–95; 8:45 am]

BILLING CODE 4410–02–M

Office of the Assistant Attorney General for Civil Rights

Certification of Washington State Regulations for Barrier Free Design Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of certification.

SUMMARY: The Department of Justice has certified that the Washington State Regulations for Barrier Free Design meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

EFFECTIVE DATE: March 29, 1995.

ADDRESSES: Inquiries may be addressed to: John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

FOR FURTHER INFORMATION CONTACT: John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD)

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 through 36.608. Certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated January 27, 1992, the Washington State Building Code Council (Council) requested certification that the Washington State Regulations for Barrier Free Design (code) meets or exceeds the new construction and alterations requirements of title III of the ADA.

On May 20, 1993, after consulting with the Architectural and Transportation Barriers Compliance Board (Access Board), the Department provided technical assistance to the Council identifying issues that needed to be addressed before certification could be considered.

On August 20, 1993, the Council made a supplemental submission, providing its 1992 amendments to the code, newly-issued interpretations of the code, and comments responding to the Department's preliminary response. By letter dated March 23, 1994, the Council provided further supplementation of its submission.

On July 22, 1994, the Department responded to the supplemental submissions. On November 17, 1994, the Council adopted amendments to the code addressing the remaining issues raised by the Department. By letter dated November 28, 1994, the Council submitted those amendments as a supplement to its certification request.

The Department has analyzed the Washington code, as adopted on November 8, 1991, and amended on November 13, 1992, and November 17, 1994, and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated December 6, 1994, the Department notified the Council of its preliminary determination of equivalency.

On January 12, 1995, the Department published a notice in the **Federal Register** (60 FR 2986) announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on March 13, 1995. In addition, the Department held public hearings in Seattle, Washington on January 27, 1995, and in Washington, DC on March 27, 1995.

The Department received six written comments and 17 persons testified at the hearings. Comments and testimony were submitted by building officials, disability-rights advocates, design professionals, and interested individuals, including individuals with disabilities. The Department has read and analyzed each comment, as well as the testimony submitted at the hearings, and has consulted with the Access Board.

The vast majority of comments supported certification of the Washington code. One individual commented that he did not believe the Washington code was equivalent regarding regulation of maximum activating force for door and window hardware. However, close examination of the ADA Standards for Accessible Design reveals that they do not address maximum activating force for such elements. Therefore, the Washington code is, in fact, equivalent in this respect. All the remaining comments supported equivalency and certification.

Based on these comments, the Department has determined that the Washington code is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Washington code and has issued a seal of certification.

Limitations of Certification

The certification determination is limited to the version of the Washington code, including the amendments and interpretations, that has been submitted to the Department. The certification does not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

The certification does not apply to any elements or features not addressed in the Washington code. If a builder incorporates such elements, he or she will not be entitled to rely on the rebuttable evidence of ADA compliance provided by certification for those elements. Nor does the certification apply to the Appendix provisions of the Washington code, which are advisory only. Finally the certification does not apply to waivers granted under the Washington code by local building officials. Therefore, if a builder receives a waiver, modification, variance, or other exemption from the requirements of the Washington code for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Dated: March 29, 1995.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 95–8104 Filed 3–31–95; 8:45 am]

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POSTAL RATE COMMISSION

[Docket No. MC95–1 and Order No. 1049]

Mail Classification Schedule, 1995 Classification Reform I; Notice and Order on Filing of Major Revisions to the Domestic Mail Classification Schedule (With Related Postal Rate Changes)

(Issued March 28, 1995)

Notice is hereby given that on March 24, 1995, the United States Postal Service filed a request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act [39 U.S.C. 3623] for a recommended decision on proposed changes in the domestic mail classification schedule (DMCS). The proposed revisions also entail changes in rates. The Request includes several attachments and is supported by the testimony of 22 witnesses. It is on file in the Commission's docket room and is available for public inspection during regular business hours.

Nature and extent of proposed changes. The Service indicates that this proposal is the initial phase of a fundamental structural reform of the longstanding approach to mail classification. It asserts that an extensive review has shown that this type of reform is needed if it is to continue to meet its statutory obligations. Request at 1–2. In particular, the Service maintains that the requested amendments to the DMCS and its attendant rate schedules will further the general policies of efficient postal operations and reasonable rates enunciated in the Postal Reorganization Act, and conform to the criteria of 39 U.S.C. §§ 3622(b) and 3623(c). Id. at 9.

Mail users most directly affected by the revisions included in this phase of the proposed reform are current users of First-Class Mail, regular-rate second- and third-class mail. Also, the DMCS provisions relating to Express Mail and fourth class have been revised. Classification reforms affecting senders of nonprofit mail, parcels and Priority Mail are expected to be filed with the Commission at a later, unspecified time. Id. at 3–4. The proposed revisions entail numerous rate changes; however, the first ounce of First-Class Mail remains unchanged at 32 cents.

Service levels proposed as the basic criterion for mail classification. The Service proposes using the customer's choice of service level as the basic criterion for defining the classes of mail. These service levels, plus an independent grouping for periodicals, would supplant the existing classes of mail, as follows: Expedited Mail for Express Mail; Standard Mail for third- and fourth-class mail; and a Periodicals class for second class. First-Class Mail would continue to be known by that name, but would have two distinct subclasses, as noted below.

Mail preparation proposed as the criteria for subclasses. The Service proposes defining subclasses within the proposed new classes of mail on the basis of the type of mail preparation performed by the customer. Two types of preparation would be recognized under the new structure: that which facilitates the use of advanced technology to accept, process and deliver the mail, and that which allows what the Service refers to as "the bulk bypass" of postal operations. Under these criteria, Automation and Retail subclasses of First-Class Mail replace the current regular First-Class Mail and First-Class postal and post cards subclasses. Similarly, Regular, Automation, and Enhanced Carrier Route subclasses of Standard Mail replace the regular-rate bulk third-class mail subclass. Regular and Publications Service subclasses within the new Periodicals class replace the regular-rate second-class mail subclass. Expedited Mail, like the corresponding Express Mail it replaces, is not divided into subclasses.

Principles underlying classification reform proposals. The Service says it has developed seven guiding principles for use in designing specific classification reform proposals. These are: the creation of homogeneous cost- and market-based subclasses; the application of pricing in a more effective manner; the encouragement of low-cost mailstreams; the modernization and standardization of mail entry requirements; the reduction of the impact of mail content in classification; the elimination of unnecessary classifications; and the addition of classifications only where significant market or operational needs exist. Id. at 3.

Effect on postal costs, volumes and revenues; "contribution neutrality." The Service maintains that the proposed rates are designed to recover approximately the same FY 1995 institutional cost contribution from the reformed subclasses as was projected in the Commission's Docket No. R94–1 Opinion and Recommended Decision for their predecessor subclasses for FY 1995. It says that this "contribution neutral" approach was selected because this Request was not intended to be a revenue case, nor an opportunity to challenge, change or improve on the Commission's conclusions drawn from the record in Docket No. R94–1. The Service asserts that the rate changes included in this Request are solely for the purpose of applying the pricing factors of the Postal Reorganization Act to the reformed subclasses; it is not seeking to increase or decrease institutional cost contributions beyond the levels recommended by the Commission and approved by the Governors in Docket No. R94–1.

The Service notes that with two exceptions, it has made no methodological changes or departures from the Docket No. R94–1 Recommended Decision in this Request. The exceptions relate to estimates of the costs, volumes and revenues for the new subclasses and the city carrier single subclass stop issue. Id. at 6. With respect to the latter, the Service says that it has included only volume variable city carrier street time costs in the attributable cost base; it has included the remaining costs attributed in the Commission's Docket No. R94–1 Recommended Decision for each relevant existing subclass in the net revenue target for the pertinent group of reform subclasses. Id. The Service also notes that adjustments to the Docket No. R94–1 forecasts for First- and third-class prebarcoded flats have been adjusted, and the base for the prebarcode portion of First-Class letters and cards has been recast to incorporate additional information from mailing statements. Id.

Organizational and editorial changes in the DMCS. The Service also proposes conforming organizational changes in the DMCS. Pursuant to these changes, single-piece third-class mail and nonprofit third-class mail would be included in Standard Mail, as would Fourth-class Parcel Post, Bulk Parcel Post, Bound Printed Matter, Special and Library rate subclasses. The current second-class preferred rate classifications for Within County, Nonprofit, Classroom and Science of Agriculture publications would be included in the new Periodicals class. Priority Mail would remain a subclass in First-Class Mail. The Service maintains that no rate changes or substantive classification changes are requested for these existing classifications. The Postal Service also proposes a number of editorial changes to the Special Service Rate and Classification schedules to reflect changes in the names and organization of the restructured classes and subclasses. The Service also proposes consolidating and updating the General Definitions and General Terms and Conditions of the DMCS. *See generally* Request at 7–8.

In conjunction with the proposed classification reform and DMCS reorganization, the Service requests the Commission to recommend editorial changes included in the DMCS provisions and in the Rate Schedules set forth, respectively, as Attachments A and B of its Request. The rate schedules are also reproduced as an attachment to this order. The Service says these changes, designed to streamline and standardize the DMCS, include: renumbering to eliminate the current four-decimal place section numbering structure; standardization of the organizational structure so that related provisions are in the same numbered sections in each classification schedule; inclusion in the text of the reformed subclasses provisions not set forth in footnotes to the rate schedules; consolidation of small sections; elimination of redundant and obsolete material; and use of headings for all sections. Id. at 8–9.

Public hearings; intervention. The Commission intends to hold public hearings on the Service's proposed changes. Involvement in these hearings generally takes the form of either full intervention or limited participation. *See* Commission rules 20 and 20a [39 CFR § 3001.20 and 20a]. Commenter status is available for persons wishing to express their views informally, without incurring the obligations that attach to the two other forms of participation. *See* Commission rule 20b [39 CFR § 3001.20b]. Those wishing to be heard in this matter as either a full intervenor or limited participant are directed to file a written notice of intervention identifying the status they intend to assume and affirmatively stating how actively they expect to participate. Limited participants are advised to review recent revisions to Commission rules of practice clarifying their obligation to respond to discovery requests under certain circumstances.

Notices should be sent to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Washington, DC 20268–0001, on or before April 24, 1995. Commenter status does not require a notice of intervention.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates W. Gail Willette, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice [39 CFR § 30001.10(c)].

Special rules of practice. This proceeding will be conducted pursuant to special evidentiary rules of practice set forth as Attachment A. With the exceptions noted below, these special rules are essentially the same as those utilized in Docket No. R94–1. The Presiding Officer may alter these rules for good cause at any subsequent point during this proceeding. Participants are encouraged to carefully review the terms of all the rules, with special attention to the three noted below. Special Rule No. 2C retains the 14-day deadline for filing answers to discovery requests. The Commission notes that this deadline is applicable not only to intervenors and the OCA, but to the Service as well. Special Rule No. 3, relating to service of documents, has been changed to reflect the Commission's recent amendment of rule 12(b). The amendment imposes an affirmative duty upon participants to request service of certain documents. *See* 60 FR 12113 (March 6, 1995).

The text of Special Rule No. 1D relating to designations also has been revised by eliminating a reference that proved confusing in Docket No. R94–1. This revision is not intended to make any substantive change in the rule. In addition to this change, the Commission notes a larger concern based on experience with the rule in Docket No. R94–1. During the course of that proceeding, confusion over the scope and applicability of the designation rule gave rise to extensive counter-designations, motion practice and rulings. This seriously undermined one of the main purposes underlying use of the rule, which is to foster expedition. Absent a better understanding among participants about the purpose of designations and the proffer that must be made to support a motion for their acceptance, the Commission has serious reservations about the rule's continued efficacy. Given this concern, the Commission asks that participants be prepared to address the designation process at the prehearing conference.

Initial prehearing conference: date, location and agenda. The Commission will convene a prehearing conference at 9:30 a.m. on Tuesday, April 25, 1995. The conference will be held in the Commission's hearing room at 1333 H Street NW., Suite 300, in Washington, DC. The Commission expects persons attending the meeting to be prepared to discuss procedural and scheduling matters pertinent to the Service's filing, and other issues such as the potential for settlement of any issues or other opportunities for expedition.

In the interest of conducting a comprehensive conference, participants are directed to file a notice of issues they would like to raise for consideration no later than 7 days before the prehearing conference. Suggestions need not be limited to procedural matters, but may include substantive issues to the extent that considering them at this stage may contribute to expedition of the entire proceeding. A final agenda incorporating participants' suggestions will be distributed at the outset of the prehearing conference. The Presiding Officer may schedule additional prehearing conferences if circumstances warrant.

Other matters. The Commission intends to complete hearings on the Postal Service's filing and issue its recommended decision and opinion promptly. Although a firm procedural schedule has not been developed at this time, the Commission anticipates conducting hearings during the months of June and September. Parties are advised to plan their business and personal schedules accordingly. The Commission also encourages participants to use informal conferences to resolve as many technical questions about testimony, workpapers and exhibits as possible. In addition, the Commission strongly encourages participants to resolve disputes or concerns between or among themselves, reserving motions invoking the Presiding Officer's involvement (or that of the Commission) for only the most significant issues or intractable disagreements. In furtherance of this policy, the Presiding Officer may require participants to document their attempts at early and informal resolution as a condition of accepting motions for relief.

Docket room hours of operation. Documents may be filed with the Commission's docket section Monday through Friday between 8 a.m. to 5 p.m. Questions about docket room operations should be directed to Ms. Peggie Brown at 202–789–6845.

It is ordered:

1. The Commission will sit en banc in this proceeding.

2. Notices of intervention shall be filed no later than April 24, 1995.

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3. A prehearing conference will be held on Tuesday, April 25, 1995 at 9:30 a.m. in the Commission's hearing room.

4. Participants are directed to file notices of issues to be addressed at the prehearing conference not later than 7 days prior to the conference.

5. This proceeding will be conducted pursuant to the special rules of practice set out as Attachment A.

6. W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.

7. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Attachment A—Special Rules of Practice

1. Evidence

A. Case-in-chief

A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

B. Exhibits

Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-page exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

C. Motions to Strike

Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness. Responses to motions to strike are due within seven days.

D. Designation of Evidence from other Commission Dockets

Participants may request that official notice be taken of evidence received in other Commission proceedings. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. If requests for designations and counter-designations are granted, the moving participant must submit two copies of the approved material to the Secretary of the Commission for inclusion in the record.

Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days.

2. Discovery

A. General

Rules 25, 26 and 27 apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

B. Objections and Motions to Compel Responses to Discovery

Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel production of documents or items or compel an answer to an interrogatory or request for admissions if the objection is overruled. Motions to compel should be filed within 14 days of an objection to the discovery request.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

C. Answers to Interrogatories

Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, and set forth the participant who asked the question and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit discovery responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

Answers to discovery are to be filed within 14 days of the service of the discovery request. Participants are urged, but not required, to deliver discovery requests by hand to those who are subject to the 14-day deadline.

D. Follow-up Interrogatories

Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

E. Discovery to Obtain Information Available Only from the Postal Service

Rules 25 through 27 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, through actions by the presiding officer, discovery against a party is scheduled to end prior to the receipt into evidence of that party's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

3. Service

Interrogatories, objections and answers thereto should be served, in conformance with Rule 12, on the Commission, the OCA (three copies), on the complementary party, and on any other participant so requesting. Participants will be deemed to have requested service for purposes of these special rules unless they file a document to the contrary with the Commission.

Parties should include informative titles to identify the content of any filing. When possible, the relief requested or the issue addressed should be noted. Transmittal documents should identify the answers or other materials being provided.

4. Cross-examination

A. Written cross-examination

Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served three or more working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (July 1) as updated (July 21)." When a participant designates written cross-examination, two copies of the actual documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination, alphabetically by participant initially posing the question. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

B. Oral cross-examination

Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three or more working days before the announced appearance of a witness and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

5. General

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.

Attachment B

1. Amend Rate Schedules 500, 501, 502, 503 as follows:

EXPRESS MAIL RATE SCHEDULES 121, 122, AND 123*

[Dollars]

Schedule 121	Schedule 122	Schedule 123	
Same day airport service	Custom designed	Next day and second day PO to PO	Next day and second day PO to addressee
[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE SCHEDULES OTHER THAN THE ORGANIZATIONAL CHANGES NOTED ABOVE]			

2. Replace Rate Schedule 100 with proposed Rate Schedules 221 and 222.

FIRST-CLASS MAIL RATE SCHEDULE 221 RETAIL SUBCLASS

	Rate (cents)
First Ounce:	
Single Piece	32.0
Presort	30.0
Additional Ounce	23.0
Presort Discount for Pieces over 2 Ounces	4.6
Nonstandard Size Surcharge:	
Single Piece	11.0
Presort	5.0
Postal and Post Card Discount	11.0

FIRST-CLASS MAIL RATE SCHEDULE 222 AUTOMATION SUBCLASS

	Rate (cents)
First Ounce:	
Basic	27.0
Three-Digit	25.0
Five-Digit	23.5
Carrier Route	23.2
Basic Flats	29.0
3/5-Digit Flats	27.0
Additional Ounce	23.0
Presort Discount for Pieces over 2 Ounces	4.6
Nonstandard Size Surcharge	5.0
Post Card Discount	9.5

3. Amend Rate Schedule 103 as follows:

FIRST-CLASS MAIL RATE SCHEDULE 223 PRIORITY MAIL SUBCLASS*

[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THIS SCHEDULE OTHER THAN THE ORGANIZATIONAL CHANGES NOTED ABOVE]

4. Amend Rate Schedule 300 as follows:

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS

	Rate (cents)
Basic Rate:	
One ounce or less.	
Not more than two ounces.	
Not more than three ounces.	
Not more than four ounces.	
Not more than five ounces.	
Not more than six ounces.	
Not more than seven ounces.	
Not more than eight ounces.	
Not more than nine ounces.	
Not more than ten ounces.	
Not more than eleven ounces.	
Not more than thirteen ounces.	
More than thirteen But less than sixteen ounces.	

are due within seven days.

Answers will be considered

the complementary party, and on any

should include (1) specific references to

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS—Continued

	Rate (cents)
[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THIS SCHEDULE OTHER THAN THE ORGANIZATIONAL CHANGES NOTED WITHIN, INCLUDING THE RELOCATION OF THE FOOTNOTES TO THE CLASSIFICATION SCHEDULE]	
Nonstandard Surcharge	
Keys and identification devices:	
First 2 ounces	
Each additional 2 ounces	

5. Replace Rate Schedule 301 with proposed Rate Schedules 321.2, 321.3 and 321.4.

STANDARD MAIL RATE SCHEDULE 321.2 REGULAR SUBCLASS

	Rate (cents)
Letter Size:	
Piece Rate:	
Basic	26.1
3/5–Digit	21.9
Destination Entry Discount Per Piece:	
BMC	1.3
SCF	1.7
Non-Letter Size:	
Minimum Per Piece Rate:	
Basic	30.5
3/5–Digit	23.7
Destination Entry Discount Per Piece	
BMC	1.3
SCF	1.7
Pound Rate:	68.7
Plus Per Piece Rate:	
Basic	16.3
3/5–Digit	9.5
Destination Entry Discount Per Pound:	
BMC	6.1
SCF	8.1

STANDARD MAIL RATE SCHEDULE 321.3 AUTOMATION SUBCLASS

	Rate (cents)
Letter Size:	
Piece Rate:	
Basic Letter	17.5
3–Digit Letter	16.8
5–Digit Letter	15.0
Carrier Route Letter	14.1
Destination Entry Discount Per Piece:	
BMC	1.3
SCF	1.7
DDU	2.2

STANDARD MAIL RATE SCHEDULE 321.3 AUTOMATION SUBCLASS—Continued

	Rate (cents)
Flat Size:	
Minimum Per Piece Rate:	
Basic Flat	23.7
3/5–Digit Flat	19.0
Destination Entry Discount Per Piece:	
BMC	1.3
SCF	1.7
Pound Rate:	51.0
Plus Per Piece Rate Basic Flat	13.2
3/5–Digit Flat	8.5
Destination Entry Discount Per Pound:	
BMC	6.1
SCF	8.1

STANDARD MAIL RATE SCHEDULE 321.4 ENHANCED CARRIER ROUTE SUBCLASS

	Rate (cents)
Minimum Per Piece Rate:	
Basic	15.5
High Density	14.8
Saturation	13.5
Destination Entry Discount Per Piece:	
BMC	1.3
SCF	1.8
DDU	2.3
Pound Rate:	51.0
Plus Per Piece Rate	
Basic	5.0
High Density	4.3
Saturation	3.0
Destination Entry Discount Per Pound:	
BMC	6.4
SCF	8.5
DDU	11.1

6. Amend Rate Schedules 302, 400, 401, 402, 405, and 406 as follows:

Standard Mail Rate Schedule 321.5 Nonprofit Subclass [1]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedules 322.1A, 322.2A Parcel Post and Bulk Parcel Post Subclasses Basic Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedules 322.1B and 322.2B Parcel Post and Bulk Parcel Post Subclasses Destination BMC Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 322.3A Bound Printed Matter Subclass Single Piece Rates*

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 322.3B Bound Printed Matter Subclass Bulk and Carrier Route Presort Rates [1]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 323.1 Special Subclass

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Standard Mail Rate Schedule 323.2 Library Subclass

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

7. Replace Rate Schedule 200 with proposed Rate Schedules 421 and 422.

PERIODICALS RATE SCHEDULE 421 REGULAR SUBCLASS

	Rate (cents)
Per Pound:	
Nonadvertising portion	19.4
Advertising portion:	
DDU	21.8
SCF	23.9
Zone 1 & 2	25.9
3	25.8
4	29.4
5	33.2
6	37.2
7	42.0
8	46.2
Science of Agriculture:	
DDU, SCF, Zone 1 & 2: The Postal Service does not request any change in these rates	
Zone 1 & 2)IN THESE RATES]	
Per Piece: Less Nonadvertising Discount of 0.066 Cents for Each 1% of Nonadvertising Content:	
Basic	27.2
3/5-Digit	21.7
Carrier Route	16.6
Discounts:	
DDU	2.1
SCF	1.1
High Density	0.7
Saturation	2.0
Automation Discounts:	
From Basic:	
Barcoded Letter	4.6
Barcoded Flat	3.5
From 3/5-Digit:	
Barcoded Letter	2.9
Barcoded Flat	2.9

PERIODICALS RATE SCHEDULE 422 PUBLICATIONS SERVICE SUBCLASS

	Rate (cents)
Per Pound:	
DDU	10.8
SCF	12.9
Zone 1 & 2	15.0
3, 4 & 5	19.3
6, 7 & 8	31.1
Per Piece:	
Basic	14.7
Carrier Route	8.3
Discounts:	
DDU	2.1
SCF	1.1

8. Amend Rate Schedules 201, 202, and 203 as follows:

Periodicals Rate Schedule 423.2 Within County

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Periodicals Rate Schedule 423.3 Publications of Authorized Nonprofit Organizations [10]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

Periodicals Rate Schedule 423.4 Classroom Publications [10]

[The Postal Service does not request any change in this schedule other than the organizational changes noted above]

9. Amend Rate Schedules SS–4, SS–13 and 1000, by inserting the underlined text and deleting the text set off with brackets, as follows:

SCHEDULE SS–4: CERTIFICATES OF MAILING

	(Fee in addition to postage)
Individual pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES]
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and COD mail (each copy)	
Bulk pieces	
Identical pieces of [f]*First-Class* and [third-]*Single Piece, Regular, Automation, Enhanced Carrier Route, and Nonprofit Standard* [class m]Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	
Each additional 1,000 pieces or fraction Duplicate copy	

Schedule SS–13: Parcel Air Lift

Weight	*Fee* (In addition to [p]Parcel [p]Post postage)
Up to 2 pounds	[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES]
Over 2 up to 3 pounds	
Over 3 up to 4 pounds	
Over 4 pounds	

Schedule 1000—Fees

First-Class [p]*Presorted* [m]*Mailing* [f]*Fee*.	[THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES] $305.00 [THE POSTAL SERVICE DOES NOT REQUEST ANY CHANGE IN THESE FEES]
[Second-class]*Periodicals* [mailing] [f]*Fees*:.	
A. Original [e]*Entry*.	
B. Additional [e]*Entry*.	
C. Publications Service Entry.	
D. [Second-class] [r]*Re-entry* [fee].	
E. [Second-class] [r]*Registration* for [n]*News* [a]*Agents*.	
[Third-class]*Regular, Automation, Enhanced Carrier Route, and Nonprofit Standard Mail* [b]*Bulk* [m]*Mailing* [f]*Fee*.	
[Fourth-class p]*Parcel* [p]*Post*: [d]*Destination* BMC/[/ASF]	
[Fourth-class] [s]*Special Standard* [m]*Mail* [p]*Presorted* [m]*Mailing* [f]*Fee*	
Authorization to [u]*Use* [p]*Permit* [i]*Imprint*	
Merchandise [r]*Return* (per facility receiving merchandise return labels)	
Business [r]*Reply* [m]*Mail* [p]*Permit*	

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[FR Doc. 95-8107 Filed 3-31-95; 8:45 am]
BILLING CODE 7710-FW-P

[Docket No. A95-7; Order No. 1050]

Toronto, Iowa 52343-0066; (Deb Bartels, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued: March 29, 1995.

Docket Number: A95-7
Name of Affected Post Office: Toronto, Iowa 52343-0066
Name(s) of Petitioner(s): Deb Bartels, et al.
Type of Determination: Closing
Date of Filing of Appeal Papers: March 24, 1995
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by April 10, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.
Margaret P. Crenshaw,
Secretary.

March 24, 1995—Filing of Appeal letter
March 29, 1995—Commission Notice and Order of Filing of Appeal
April 18, 1995—Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
April 28, 1995—Petitioners' Participant Statements or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
May 18, 1995—Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
June 2, 1995—Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 C.F.R. § 3001.115(d)]
June 9, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
July 22, 1995—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 95-8108 Filed 3-31-95; 8:45 am]
BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35537; File No. SR-Amex-95-02]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Minimum Fractional Changes

March 27, 1995.

On January 31, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase from $5 to $10 the price level below which equity securities are traded in sixteenths.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35338 (February 7, 1995), 60 FR 8432 (February 14, 1995). No comments were received on the proposal.

The rule change amends Amex Rule 127 to allow the minimum fractional changes in sixteenths ($.0625) for all securities priced between $.25 and $10. Amex Rule 127 will continue to provide that the minimum fractional change for dealings in securities priced below $.25 will be in thirtyseconds ($.03125), and for securities priced above $10 the minimum fractional change will continue to be in eighths ($.125).[3]

At the time of publication of the Commission release noticing this proposal, the Intermarket Trading System ("ITS") was not equipped to accommodate trading in sixteenths for stocks priced above $5. However, at the February 1995 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for Tape B securities[4] priced under $10. The Amex represents that these system modifications have been made and that the system now is able to accommodate trading all Amex securities priced below $10 in sixteenths.[5]

The Commission finds that the proposed rule change to increase from $5 to $10 the price level below which equity securities are traded in sixteenths is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[6] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A, which requires the Commission to facilitate the establishment of a national market system. Pursuant to Section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

The Commission believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $10. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in stocks priced below $10.[7] The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations.

Furthermore, the Amex represents that approximately 60% of all equity securities presently traded on the Amex sell for under $10 per share.[8] The Commission believes that the tighter quotation resulting from trading these securities in sixteenths should provide customers with the most competitive market and the best possible execution of their transactions in securities priced below $10.

In addition, the Commission believes that the proposal should lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants will have the capability to trade in sixteenths in Amex-listed securities. By ensuring that all ITS participants can quote in sixteenths, customers should be able to receive a better, more competitive price in securities priced below $10.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-Amex-95-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-8089 Filed 3-31-95; 8:45 am]
BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b-4 (1994).
[3] In 1992, the Commission approved amendments to Amex Rule 127 to provide that securities selling between $.25 and $5 could be traded in sixteenths. *See* Securities Exchange Act Release No. 31118 (August 28, 1992), 57 FR 40484 (September 3, 1992).
[4] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. Amex-listed stocks and qualifying regional-listed stocks are reported on CTA Tape B.
[5] The Amex will verify that the other ITS participants have completed any necessary system modifications before trading securities priced between $5 and $10 in sixteenths. *See* letter from: Arne G. Michelson, Amex, to ITS Operating Committee, dated March 7, 1995.
[6] 15 U.S.C. 78f(b) and 78k-1 (1988).
[7] The rule change is consistent with the recommendation of the Division of Market Regulation (the "Division") in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. *See* Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments* (January 1994), at 18.
[8] The Amex estimates that the rule change will increase the number of securities traded in sixteenths from 362 securities (approximately 37% of Amex-listed securities) to 589 securities (approximately 60% of Amex-listed securities). These estimates were made by the Exchange as of February 3, 1995.
[9] 15 U.S.C. 78s(b)(2) (1988).
[10] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35538; File No. SR-CBOE-95-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Fractional Changes for Bids and Offers in Stocks Priced Below $10

March 27, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 6, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rule respecting the permissible fractional changes that may be made for bids and offers in stocks and related instruments that are priced below $10 per share.

The Exchange requests the Commission to find good cause, pursuant to section 19(b) (2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

1. Purpose

The proposed rule change increases from $1 to $10 the price level below which stocks or other designated instruments may be traded in sixteenths, *i.e.*, 1/16 of $1 ($.0625). CBOE Rule 30.33, Fractional Changes for Bids and Offers, currently requires bids and offers in stocks (and other instruments that may be traded on the Exchange pursuant to Chapter 30 of the CBOE Rules) with a price of $1 or less to be made at a variation of at least 1/8 of ($.125).[3] Currently, the rule only permits variations of as little as 1/16 of $1 for bids and offers in stocks and other instruments that have a price below $1 but above $.25 per share. Bids and offers in stocks with prices of less than $.25 per share may be varied by as little as 1/32 of $1 per share ($.03125).

The Exchange believes that by increasing the number of stocks and other instruments eligible to be traded in sixteenths, the Exchange will be better able to compete for listings in instruments, such as warrants. In fact, the Exchange's proposal is identical to a proposal of the American Stock Exchange ("Amex"), which recently was approved by the Commission.[4] The Exchange believes that trading in sixteenths will improve the market for securities trading under $10 by promoting greater liquidity and providing for superior executions of retail and professional orders. Also, the proposal is responsible to the recommendations of the Division of Market Regulation in its Market 2000 Study that the exchanges convert to a minimum variation of one-sixteenth as soon as possible.[5]

In 1992, participants of the Intermarket Trading System (ITS")[6] met to discuss the need to make changes to the ITS to accommodate increased trading of securities priced sixteenths. The Exchange anticipates that further

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b-4 (1994).
[3] The Commission notes that the CBOE currently does not trade any securities pursuant to Chapter 30 of the CBOE rules except for SuperShares, which are traded in thirtyseconds. Therefore, the Rule change will not impact any transactions presently effected on the Exchange.
[4] See Securities Exchange Act Release No. 35537 (March 27, 1995) (File No. SR-Amex-95-02) ("Amex Order").
[5] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18 ("Market 2000 Study").
[6] ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. § 78k-1 (1988). It facilities intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. For a discussion of ITS, see Market 2000 Study, *supra* note 2, at App. II. Participants of ITS include the Amex, Boston Stock Exchange, CBOE, Chicago Stock Exchange, Cincinnati Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers.

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consultations will be held between ITS participants to explain to each of them the necessity of making system changes to accommodate the trading through ITS of CBOE instruments priced under $10.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, and to protect investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Purpose of Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-18 and should be submitted by [insert date 21 days from date of publication].

[7] At the February 1995 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for Amex-listed securities priced under $10.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change to increase from $1 to $10 the price level below which equity securities may be traded in sixteenths, and at or above which equity securities may be traded in eighths, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[8] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A, which requires the Commission to facilitate the establishment of a national market system. Pursuant to Section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

Although the CBOE currently does not trade any securities that would be affected by the proposal, the rule change to allow trading in sixteenths for securities priced under $10 will make the CBOE's Rule consistent with the recently approved Amex Rule, and will allow the Exchange to trade any future equity listings in sixteenths.

The Commission generally believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $10. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in stocks priced below $10.[9] The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations.

In addition, the Commission believes that the proposal could lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants now have the capability to trade securities priced below $10 in sixteenths.[10] Should the CBOE begin trading equity securities, customers should be able to receive a better, more competitive price in securities priced below $10 if they are quoted in sixteenths.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the CBOE to permit equities priced below $10 to be traded in sixteenths. Further, the Amex proposal to allow trading in sixteenths for Amex-listed securities priced below $10 was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[11]

It Is Therefore Ordered, pursuant to Section 19(b)(2)[12] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-8090 Filed 3-31-95; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78f(b) and 78k-1 (1988).

[9] The rule change is consistent with the recommendation of the Division of Market Regulation (the "Division") in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder prices inside the prevailing quote. *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18.

[10] *See* Amex Order, *supra* note 4.

[11] See Securities Exchange Act Release No. 35338 (February 7, 1995), 60 FR 8432 (February 14, 1995) (File No. SR-Amex-95-02).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35544; File No. SR-MSRB-95-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business

March 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, notice is hereby given that on March 23, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G-37 on political contributions and prohibitions on municipal securities business. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to provide interpretative guidance concerning rule G-37 on political contributions and prohibitions on municipal securities business.[1] Proposed new language is in italics.

Rule G-37 Questions and Answers

* * * * *

1. Definition of Municipal Finance Professional: Solicitation of Municipal Securities Business (Rule G-37(g)(iv)(B))

Q: Any associated person who solicits municipal securities business is deemed a municipal finance professional under rule G-37. The Board previously noted that "solicitation" may encompass a number of activities, including, for example, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so (MSRB Reports, Vol. 14, No. 5 (Dec. 1994) at 8). If an associated person of a dealer attends a presentation by dealer personnel of public finance capabilities, would this also constitute "solicitation" under rule G-37?

A: Yes. If an associated person of a dealer attends such a presentation, then he or she is assumed to have solicited municipal securities business and therefore is deemed a municipal finance professional under rule G-37. Accordingly, any contributions given to issuer officials by that person within the last two years could subject the dealer to the rule's two-year prohibition on business with such issuers. For additional guidance in this area, please refer to Q&A number 4 in the June 1994 issue of MSRB Reports (Vol. 14, No. 3), CCH Manual paragraph 3681; and Q&A numbers 1, 2 and 3 in the December 1994 issue of MSRB Reports (Vol. 14, No. 5), CCH Manual paragraph 3681.

2. Definition of Municipal Finance Professional: Supervisors (Rule G-37(g)(iv)(C))

Q: A sales representative at a branch office solicits municipal securities business for the dealer. Such activity results in that person becoming a "municipal finance professional" under rule G-37(g)(iv)(B). Would that person's branch manager also be considered a municipal finance professional?

A: Yes. Rule G-37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (i.e., the branch manager) also is included within the definition of municipal finance professional. Prior to the most recent revision to this portion of the definition of municipal finance professional (which was approved on March 6, 1995 in Securities Exchange Act Release No. 34-35446), the definition included any "direct supervisor" of any associated person who solicited municipal securities business (or who was primarily engaged in municipal securities representative activities). Under both definitions, branch managers are included within the definition of municipal finance professional in the circumstances described above. For additional information in this area, please refer to MSRB Reports, Vol. 14, No. 4 (August 1994) at 28-29, CCH Manual paragraph 3681.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved Board rule G-37, concerning political contributions and prohibitions on municipal securities business.[2] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published three prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G-37.[3] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G-37, and, from time to time, will publish additional notices of interpretations, as necessary.[4] In light of questions recently received from market participants concerning certain provisions of the rule, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this fourth set of questions and answers which focuses on those provisions of the rule relating to: (1) solicitation of municipal securities business; and (2) the definition of municipal finance professional. As previously stated, the Board will continue to monitor the application of rule G-37, and, from time to time will publish additional notices of interpretations, as necessary.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that

[1] The Board plans to publish the interpretations in the April 1995 MSRB Reports (Vol. 15, no. 1).

[2] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[3] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Release No. 34683 (Aug. 25, 1994); 59 FR 45049 (Aug. 31, 1994); and Securities Exchange Act Release No. 35128 (Dec. 20, 1994); 59 FR 66389 (Dec. 29, 1994). *See also MSRB Reports* Vol. 14, No. 3 at 11-16 (June 1994); Vol. 14, No. 4 at 31-32 (August 1994); and Vol. 14, No. 5 at 8 (December 1994).

[4] File Nos. SR-MSRB-94-6, SR-MSRB-94-15 and SR-MSRB-94-16.

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the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–95–02 and should be submitted by April 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8088 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35542; File No. SR–PHLX–94–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a One Year Pilot Program for the Trading, Comparison, Clearing, Settling, Listing, and Delisting of Municipal Securities

March 28, 1995.

On December 20, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to establish a one year pilot program allowing the Exchange to list and trade municipal securities.

Notice of the proposal appeared in the **Federal Register** in Securities Exchange Act Release No. 35308 (January 31, 1995), 60 FR 7251 (February 7, 1995). No comments were received on the proposed rule change.[3]

The PHLX proposes to initiate a one year pilot program for the trading, comparison, clearance, settlement, listing and delisting of municipal securities. Specifically, the PHLX proposes to (1) Amend PHLX Rules 132, "Dealing Outside the Exchange in Securities Dealt in on the Exchange," 501, "Specialist Appointment," 803, "Criteria for Listing—Tier I," and 810, "Suspension and Delisting Policies Based on Exchange Findings;" and (2) add PHLX Rule 309, "Municipal Securities," to provide requirements for trading, comparison, settlement, clearing and listing and delisting of municipal securities.

To be eligible for listing on the Exchange, proposed PHLX Rule 803(c)(5) provides that a municipal debt security must: (1) Have an aggregate market value and principal amount outstanding of at least $20,000,000; (2) have at least 100 public beneficial holders of record; and (3) be rated as investment grade by at least one nationally recognized rating service.

Proposed PHLX Rule 810(b)(4)(d) allows the Exchange to delist a municipal debt security when the issue is (1) Not rated as investment grade by at least one nationally recognized rating service; (2) does not have at least a market value or principal amount outstanding of $500,000; or (3) is not held by at least 50 public beneficial holders of record.

The Exchange proposes to assign any municipal security it lists to a specialist[4] and to trade municipal securities in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that pursuant to proposed PHLX Rule 132(d)(17) municipal securities shall be exempt from the provisions of the Exchange's off-board trading rule. Under proposed PHLX Rule 309, municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB.

The PHLX believes that the proposed rule change is consistent with the requirements of section 6(b)(5) under the Act in that it is designed to promote the mechanism of a free and open market and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5),[5] in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities.

With regard to the listing standards for municipal securities proposed by the PHLX, the Commission notes that listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to issuers with sufficient investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity.

The Commission believes that the municipal securities listing and delisting criteria proposed by the PHLX are designed to protect investors and ensure the maintenance of fair and orderly markets in such listed securities. The PHLX's proposal provides that only municipal bond issuers that satisfy the criteria established in PHLX Rule 803(c)(5) will be considered for listing on the Exchange. Specifically, under PHLX Rule 803(c)(5) a municipal debt security must: (1) Have an aggregate market value and principal amount outstanding of at least $20,000,000; (2) have at least 100 public beneficial holders of record; and (3) be rated as investment grade by at least one nationally recognized rating service.

The Commission believes that these criteria, along with any other information relevant to determine whether the issue is appropriate for exchange trading, should help to ensure that only municipal issuers capable of meeting their financial obligation and whose bond issues can support a liquid trading market will be listed on the Exchange. The criteria will also alert municipal issuers seeking listing on the PHLX of the Exchange's specific listing standards.

The Commission notes that proposed PHLX Rule 810(b)(4)(d) allows the Exchange to delist a municipal debt security when the issue is (1) Not rated as investment grade by at least one nationally recognized rating service; (2) does not have at least a market value or principal amount outstanding of $500,000; or (3) is not held by at least 50 public beneficial holders of record. The Commission believes that the delisting standards should allow the Exchange to identify issuers that may have insufficient resources to meet their financial obligations or whose debt securities may lack sufficient trading depth and liquidity for a fair and orderly market.

Under the proposal, municipal securities will trade in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that municipal securities will be exempt from the provisions of the PHLX's off-board trading rule. Because municipal securities will trade under the PHLX's existing regulatory regime for equities, which includes specialist obligations and margin requirements, the Commission believes that adequate safeguards are in place to ensure the protection of investors in municipal securities.

Further, the Commission notes that the regulatory scheme in place for municipal securities will continue to apply to PHLX-listed municipal securities,[6] with the additional coverage of the PHLX surveillance program to the trading of listed municipal securities. The Commission believes that this regulatory framework will provide sufficient oversight of municipal securities trading on the Exchange.

The PHLX intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G–3 regarding municipal securities principals and representatives. The Commission notes that this requirement is consistent with the rules of the MSRB and, in addition, that it is important that any specialist selected by the PHLX for a listed municipal security be familiar with the characteristics of municipal securities.

Finally, the Commission notes that the PHLX's proposal to list and trade municipal securities is virtually identical to a proposal submitted by the Pacific Stock Exchange, Inc. ("PSE"), which was approved by the Commission.[7] Therefore, the Commission finds that the proposed rules are equally acceptable for the PHLX.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because Amendment No. 1 clarifies the proposal by indicating that the delisting standards for municipal securities apply solely to municipal securities and not to the debt of other non-listed issuers. Because Amendment No. 1 clarifies the Exchange's proposal and raises no new regulatory issues, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1995.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–94–69) relating to the pilot program for listing and trading municipal securities is approved until March 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8092 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20969; International Series Release No. 798/812–9354]

The Chase Manhattan Bank, N.A.; Notice of Application

March 28, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: The Chase Manhattan Bank, N.A., ("Chase").

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] On March 15, 1995, the PHLX amended its proposal to clarify the delisting standards for municipal securities. *See* Letter from Murray L. Ross, Secretary, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated March 14, 1995 ("Amendment No. 1"). Specifically, Amendment No. 1 indicates that PHLX Rule 810(b)(4)(d), as amended, will apply solely to municipal securities.

[4] The PHLX intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with the Municipal Securities Rulemaking Board ("MSRB") Rule G–3 regulations regarding municipal securities principals and representatives. The National Association of Securities Dealers ("NASD") has authority to enforce MSRB rules for listed municipal securities. The PHLX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] *See* note 4, *supra*.

[7] *See* Securities Exchange Act Release Nos. 33721 (March 7, 1994), 59 FR 11636 (order approving File No. SR–PSE–94–05) (establishes municipal bond trading pilot program through July 5, 1994); 34317 (July 5, 1994), 59 FR 35546 (July 12, 1994) (order approving File No. SR–PSE–94–21) (extends municipal bond trading pilot program through November 2, 1994); 34911 (October 27, 1994), 59 FR 55303 (November 4, 1994) (order approving File No. SR–PSE–94–32) (extends municipal bond trading pilot program through November 2, 1995).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

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RELEVANT ACT SECTIONS: Exemptions requested under section 6(c) from the provisions of section 17(f) of the Act.

SUMMARY OF APPLICATION: Chase seeks an order to enable it to maintain foreign securities and other assets of United States registered investment companies for which it serves as custodian or subcustodian in the custody of Chase Manhattan Bank International ("Chase-Russia").

FILING DATE: The application was filed on December 9, 1994, and amended on March 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Daniel L. Goelzer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations and Legal Analysis

1. Chase requests exemptive relief for itself, any management investment company registered under the Act, other than an investment company registered under section 7(d) of the Act (a "U.S. Investment Company") and any custodian for a U.S. Investment Company from section 17(f) of the Act to the extent necessary to permit Chase-Russia to qualify as an "Eligible Foreign Custodian" under rule 17f–5. The requested exemption would permit Chase, a U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, "Assets") in the custody of Chase-Russia, a wholly-owned, indirect subsidiary of Chase located in Russia.[1] For purposes of the application, the term "foreign securities" includes (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation of other organization incorporated or organized under the laws of any foreign country, and (b) securities issued or guaranteed by the Government of the United States, or by any state or any political subdivision thereof, or by any agency thereof, or by any entity organized under the laws of the United States, or of any state thereof which have been issued and sold primarily outside the United States.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities. Rule 17f–5 under the Act expands the group of entities located outside the United States that are permitted to serve as custodians for the Assets of registered management investment companies. Rule 17f–5 defines the term "Eligible Foreign Custodian" to include a majority-owned direct or indirect subsidiary of qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of county other than the United States and that has shareholders' equity in excess of $100,000,000 (U.S. $ equivalent or U.S. $). as of the close of its most recently completed fiscal year. The rule defines the term "Qualified U.S. Bank" to include a banking institution organized under the laws of the United States that has an aggregate capital, surplus, and undivided profit of not less than $550,000.

3. Chase is a national banking association and is regulated as such by the Comptroller of the Currency under the National Bank Act. At December 31, 1993, Chase has shareholders' equity in excess of $6.4 billion. Thus, Chase is a "Qualified U.S. Bank" as defined in rule 17f–5, since it is a banking institution organized under the laws of the United States, and has aggregate capital, surplus, and undivided profit substantially in excess of the $500,000 minimum required by the rule.

4. Chase is a subsidiary of The Chase Manhattan Corporation, a Delaware corporation that is one of the leading financial services providers in the world. Through its Global Securities Service division ("GSS"), Chase provides custody and related services to global institutional investors, including U.S. mutual funds. GSS currently has over $1.3 trillion in assets under custody worldwide.

5. Chase-Russia, a wholly-owned indirect subsidiary of Chase, was incorporated in Russia on October 26, 1993, under General License No. 2629. Chase-Russia is authorized to engage in the business of commercial banking in Russia, and is supervised by the Central Bank of the Russian Federation. Chase-Russia offers customers a wide range of retail and wholesale banking services; it also operates a custody department to support local and foreign investors.

6. Chase-Russia will satisfy the requirements of rule 17f–5 insofar as it is an indirect, wholly-owned subsidiary of Chase, and is incorporated and organized under the laws of Russia. Chase-Russia will not, however, meet the $100 million minimum shareholders' equity requirement of rule 17f–5. Accordingly, Chase-Russia will not qualify as an Eligible Foreign Custodian under the rule and, absent exemptive relief, could not serve as custodian for the Assets of U.S. Investment Companies.

7. Where custody services are required in Russia, Chase will hold the Assets of U.S. Investment Companies as custodian or subcustodian, and will deposit, or cause or permit the deposit of, the Assets with Chase-Russia in accordance with the arrngements described below. Before permitting Chase-Russia to act as a custodian for the Assets of a U.S. Investment Company, Chase will ensure that Chase-Russia is capable and well-qualified to provide custody and subcustody services to Chase, U.S. Investment Companies, and custodians for U.S. Investment Companies. Under the proposed foreign custody arrangements, the protection afforded the Assets of U.S. Investment Companies held by Chase-Russia will not be diminished from the protection afforded by rule 17f–5.[2]

[1] Russian clearing and custody procedures differ substantially from the procedures generally employed elsewhere. Other than the exemption requested from section 17(f) to permit Chase-Russia to qualify as an "eligible foreign custodian" under rule 17f–5, applicant is not requesting (and any order would not grant) an exemption from section 17(f) or rule 17f–5 for any aspect of the custody or clearing procedures employed in Russia. Moreover, applicant acknowledges that any order will not constitute a determination by the Commission that the Russian clearing and custody procedures comply with section 17(f) or the rules thereunder.

[2] Applicant notes that there are special risks associated with investing in securities in the Russian market including, among others, risks relating to the settlement of trades and the registration of securities in an environment characterized by multiple, unaffiliated registrar companies and non-authoritative paper share extract certificates. These risks, like other risks associated with foreign investment, would remain with the U.S. Investment Companies. Chase will be liable only to the same extent as if it had held the assets itself in Russia (*i.e.*, by opening a branch in Moscow). However, Chase's liability with respect to assets held in custody in Russia will not be reduced by Chase's causing such assets to be held in a subsidiary rather than directly by Chase. Chase's contracts with its customers will reflect this liability.

Applicant's Conditions

Chase agrees that any order of the SEC granting the requested relief may be conditioned upon the following:

1. The foreign custody arrangements proposed herein regarding Chase-Russia will satisfy the requirments of rule 17f–5 in all respects other than Chase-Russia's level of shareholders' equity.

2. Chase will deposit Assets with Chase-Russia only in accordance with the custody agreement and the subcustody agreement described below. The custody and subcustody agreements will remain in effect at all times during which Chase-Russia fails to satisfy the requirements of rule 17f–5.

a. The custody agreement will be between Chase and the U.S. Investment Company (or its custodian). In that agreement, Chase will undertake to provide custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize Chase to delegate to Chase-Russia such of Chase' duties and obligations as will be necessary to permit Chase-Russia to hold in custody in Russia the Assets of U.S. Investment Companies. The custody agreement will further provide that the delegation by Chase to Chase-Russia will not relieve Chase of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation, and that Chase will be liable for any loss or claim arising out of or in connection with the performance by Chase-Russia of the custody services to the same extent as if Chase had itself provided the custody services under the custody agreement.

b. A subcustody agreement will be executed between Chase and Chase-Russia. Pursuant to this agreement, Chase will delegate to Chase-Russia such of Chase's duties and obligations as would be necessary to permit Chase-Russia to hold Assets in custody in Russia. The subcustody agreement will provide that (i) Chase-Russia is acting as a foreign custodian for Assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC, and (ii) the U.S. Investment Company or its custodian (as the case may be) that has entered into a custody agreement will be entitled to enforce the terms of the subcustody agreement, and can seek relief directly against Chase-Russia. The subcustody agreement will provide that it will be governed by New York law.

3. Chase currently satisfies and will continue to satisfy the Qualified U.S. Bank requirement set forth in rule 17f–5(c)(3).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8027 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35543; File No. S7–27–93]

Consolidated Tape Association; Notice of Filing of Seventeenth Substantive Amendment to the Restated Consolidated Tape Association Plan and Twenty-First Substantive Amendment to the Consolidated Quotation Plan

March 28, 1995.

Pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on March 9, 1995, the Consolidated Tape Association ("CTA") and Consolidated Quotation ("CQ") Plan Participants filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

The amendments seek to change a procedure for allocating high speed line access fee revenues between "Network A" and "Network B" under each plan. The participants propose to apply "relative message usage percentages" to the allocation of high speed line revenues between networks retroactively, beginning with the period commencing January 1, 1994.

The amendments would also eliminate the requirements that the participants set the high speed line access fee at a level designed to recover the costs of making the high speed line available, and set indirect high speed line access fees at a level that equals one-half of the direct access fees. The actual fees, however, would not be changed at this time.

A. Allocation of High Speed Line Revenue

Currently, under each plan, the participants impose on subscribers, vendors, computer input users and others one combined high speed line access fee for access to both Network A and Network B market data. Under the proposed amendments, the participants wish to change the current methods set forth in the plans for allocating each plan's high speed line access revenues between the two networks. The participants feel that a more appropriate and equitable way to achieve that allocation would be to apply a measure that reflects each network's relative usage of the plans' systems.

To that end, the participants have selected each network's "relative message usage percentage". These percentages, in the participants' view, reflect a network's relative portion of the total number of messages[1] that the participants disseminate over the high speed line for a given period. Under the proposed amendments, a "relative message usage percentage" would equal the number of a network's messages reported over the high speed line divided by the sum of the numbers of both networks' messages that both networks report over the high speed line.[2] The participants have proposed to retroactively apply the "relative message usage percentage" to the allocation of high speed line revenues between networks commencing January 1, 1994.

If the instant amendments are approved, the participants will direct the Processor to calculate the allocation percentages on a monthly basis. Under the proposed amendments, the New York Stock Exchange ("NYSE") shall distribute to the Network B

[1] For purposes of such calculations, a message includes any message that a participant disseminates over the Consolidated Tape System, including, but not limited to, prices relating to Eligible Securities or concurrent use securities, administrative messages, index messages, corrections, cancellations, and error messages.

[2] For example, a month's relative message usage for CTA network A would be calculated as follows:

$$\text{CTA Network A Relative Message} \quad \frac{A}{A+B},$$

Where:

"A" represents the number of messages that CTA Network A participants disseminate over the CTA network A pursuant to the CTA plan during that month; and

"B" represents the number of messages that CTA Network B participants disseminate over the CTA Network B pursuant to the CTA plan during the month.

To determine a month's relative message usage for CQ Network A, substitute "CQ" where "CTA" appears in this footnote.

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administrator under each plan, a calendar quarter's high speed line revenues allocated to Network B under the plan as soon as the calculation becomes available for that quarter.

B. Determination of High Speed Line Access Fees

Both plans currently require participants: (a) to set high speed line access fees at levels that allow the participants to recover the operating expenses that the Processor incurs in making the high speed line available, and (b) to set indirect high speed line access fees at a level that equals one-half of the direct access fees. The proposed amendments would eliminate these two requirements and thereby alter the manner in which participants determine high speed line access fees.[3] The participants, however, are not proposing to amend the actual fees at this time.

II. Solicitation of Comments

Rule 11Aa3–2(c)(2) under the Act provides that the proposed amendment shall be approved by the Commission with such changes or subject to such conditions as the Commission may deem necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act within 120 days of the date of publication of notice of filing, or within such longer period as the Commission may designate up to 180 days of such date pursuant to Rule 11Aa3–2(c)(2).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA/CQ. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8091 Filed 3–31–95; 8:45 am]

BILLING CODE 8010–01–M

[3] The participants' reasons for requesting this amendment is that the above requirements were established over twenty years ago. Today's digital data feed and other technologies make high speed lines cheaper and easier to access.

[4] 17 CFR 200.30–3(a)(27) (1989).

SMALL BUSINESS ADMINISTRATION

Buffalo District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting on Thursday, April 27, 1995 at 2:00 p.m. at the Key Bank of New York, Key Center at Fountain Plaza, 16th floor conference room, Buffalo, New York to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 111 West Huron Street, Room 1311, Buffalo, New York 14201, (716) 846–4301.

Dated: March 27, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–8105 Filed 3–31–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD01–95–032]

Marine Inspection Office New York/ Captain of the Port New York Industry Day

AGENCY: Coast Guard DOT.

ACTION: Notice of meeting.

SUMMARY: Coast Guard Marine Inspection Office New York and Captain of the Port, New York are sponsoring an Industry Day to exchange information with the maritime community. The meeting will be open to the public.

DATES: The meeting will be held on April 11, 1995.

ADDRESSES: The meeting will be held at the State University of New York Maritime College at Fort Schuyler, New York.

FOR FURTHER INFORMATION CONTACT: LCDR James Candee, USCG Marine Inspection Office, Battery Park Building, New York, New York, 10004, telephone (212) 668–7850, facsimile (212) 668–7863.

SUPPLEMENTARY INFORMATION: Rear Admiral John L. Linnon, Commander, First Coast Guard District and Rear Admiral James C. Card, Chief, Office of Marine Safety, Security and Environmental Protection will be featured speakers. Topics to be addressed include President Clinton's "Presidential Regulation Reinvention Initiative," Port State Control, and the Alternative Compliance and Prevention through People Initiatives. Feedback received in the past from small passenger vessel owners and operators indicated a need to provide a separate Industry Day addressing their concerns. That was accomplished during Marine Inspection Office New York's small passenger vessel public forums. While small passenger vessel issues will not be specifically addressed during the April 11th meeting, small passenger vessel operators are still encouraged to attend. Attendance is open to the public. Advance registration is requested. Registration and agendas may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

Dated: March 22, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–8128 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program Report to Congress

The attached document, Automotive Fuel Economy Program, Nineteenth Annual Report to the Congress, was prepared pursuant to 49 U.S.C. 32916 which requires in pertinent part that "the Secretary shall submit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

B. Light Truck CAFE Standards
C. Low Volume Petitions
D. Enforcement
E. Partnership for a New Generation of Vehicles
F. Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions
G. General Agreement on Tariffs and Trade (GATT) Decision
Section IV: Use of Advanced Technology
A. New Models
B. Engine and Transmission Technology
C. Electronics
D. Materials
E. Summary

Section I: Introduction

The Nineteenth Annual Report to Congress on Automotive Fuel Economy Program summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1994, in accordance with 49 U.S.C. 32916 *et seq.*, which requires the submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1994 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

The Secretary of Transportation is required to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. Standards for light trucks were established by NHTSA for MYs 1979 through 1997. NHTSA set a combined standard of 20.7 mpg for light truck fuel economy standard for MYs 1996 and 1997. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1997 (IN MPG)

Model year	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Combined [2 3]
1978	[4] 18.0			
1979	[4] 19.0	17.2	15.8	
1980	[4] 20.0	16.0	14.0	[5]
1981	22.0	[6] 16.7	15.0	[5]
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[9] 26.0	21.0	19.5	20.5
1988	[9] 26.0	21.0	19.5	20.5
1989	[10] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2
1992	[4] 27.5			20.2
1993	[4] 27.5			20.4
1994	[4] 27.5			20.5
1995	[4] 27.5			20.6
1996	[4] 27.5			20.7
1997	[4] 27.5			20.7

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.
[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.
[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.
[4] Established by Congress in Title V of the Act.
[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.
[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

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lines cheaper and easier to access.

[17 CFR 200.30-3(a)(27) (1989).]

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1993 were updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the Eighteenth Annual Report to the Congress. These fuel economy achievements and current projected data for MY 1994 are listed in Tables II-1 and II-2.

Overall fleet fuel economy for passenger cars was 28.2 mpg in MY 1994, a decline of 0.2 mpg from the MY 1993 level. For MY 1994, CAFE values decreased below MY 1993 levels for 14 of 22 passenger car manufacturers' fleets. (See Table II-1). These 14 companies accounted for over 44 percent of the total MY 1994 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient models. For MY 1994, the overall domestic manufacturers' fleet average fuel economy was 27.3 mpg. For MY 1994, Chrysler, Ford, and Mazda domestic passenger car CAFE values fell 1.6 mpg, 0.7 mpg, and 0.6 mpg, respectively, from their 1993 levels, while GM remained at its MY 1993 level. Overall, the domestic manufacturers' combined CAFE declined 0.5 mpg below MY 1993 levels.

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER*

[Model Years 1993 and 1994]

Manufacturer	Model year cafe (mpg)	
	1993	1994
Domestic:		
Chrysler	27.8	26.2
Ford	28.3	27.6
GM	27.4	27.4
Mazda	29.7	29.1
Sales weighted average (domestic)	27.8	27.3
Imported:		
BMW	25.2	25.1
Chrysler Imports	31.0	31.3
Fiat	23.9	19.8
Ford Imports	26.7	25.7
GM Imports	30.5	24.6
Honda	32.5	32.5
Hyundai	31.3	32.5
Isuzu	33.0	.....
Kia	31.7	30.8
Mazda	31.0	31.2
Mercedes-Benz	22.9	23.8
Mitsubishi	29.4	28.9
Nissan	29.4	29.7
Porsche	22.5	22.0
Subaru	29.3	28.3
Suzuki	46.4	43.8
Toyota	29.1	29.0
Volvo	25.9	25.7
VW	27.2	28.1
Sales weighted average (imported)	29.6	29.6
Total fleet average	28.4	28.2
Fuel economy standards	27.5	27.5

*Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

Note: Some MY 1993 CAFE values differ from those used in the *Eighteenth Annual Report to the Congress* due to the use of final EPA calculations.

In MY 1994, the fleet average fuel economy for imported passenger cars remained at the MY 1993 CAFE level. Import CAFE was 29.6 mpg in MY 1994. Eleven of the 19 imported car manufacturers decreased their CAFE values between MYs 1993 and 1994, including 5 of the 9 Asian importers. Figure II-1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1994.

The total light truck fleet CAFE decreased 0.3 mpg below the MY 1993 CAFE level of 20.9 mpg. Figure II-2 illustrates the trends in total fleet CAFE from MY 1979 to MY 1994 for light trucks.

A number of passenger car and a few light truck manufacturers are projected to fail to achieve the levels of the MY 1994 CAFE standards. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1994 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1995. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model years 1993 and 1994]

Manufacturer	Model year cafe (mpg)	
	Combined	
	1993	1994
Captive Import:		
Chrysler Imports	24.3	.....
Others:		
Chrysler	21.2	20.5
Ford	20.9	20.8
GM	19.8	19.9
Isuzu	21.8	20.8
Mazda	23.6	21.2
Mitsubishi	21.3	22.0
Nissan	23.7	22.5
PAS	18.5	.....
Land Rover	15.5	16.4
Subaru	29.1	29.6
Suzuki	28.9	28.5
Toyota	22.3	22.0
UMC	18.8	18.5
VW	21.0	21.0
Total fleet average	20.9	20.6
Fuel economy standard	20.4	20.5

Note: Some MY 1993 CAFE values differ from those used in the *Eighteenth Annual Report to the Congress* due to the use of final EPA calculations.

Fleet average fuel economy for all MY 1994 passenger cars combined and for all light trucks combined exceeded the levels of the MY 1994 standards.

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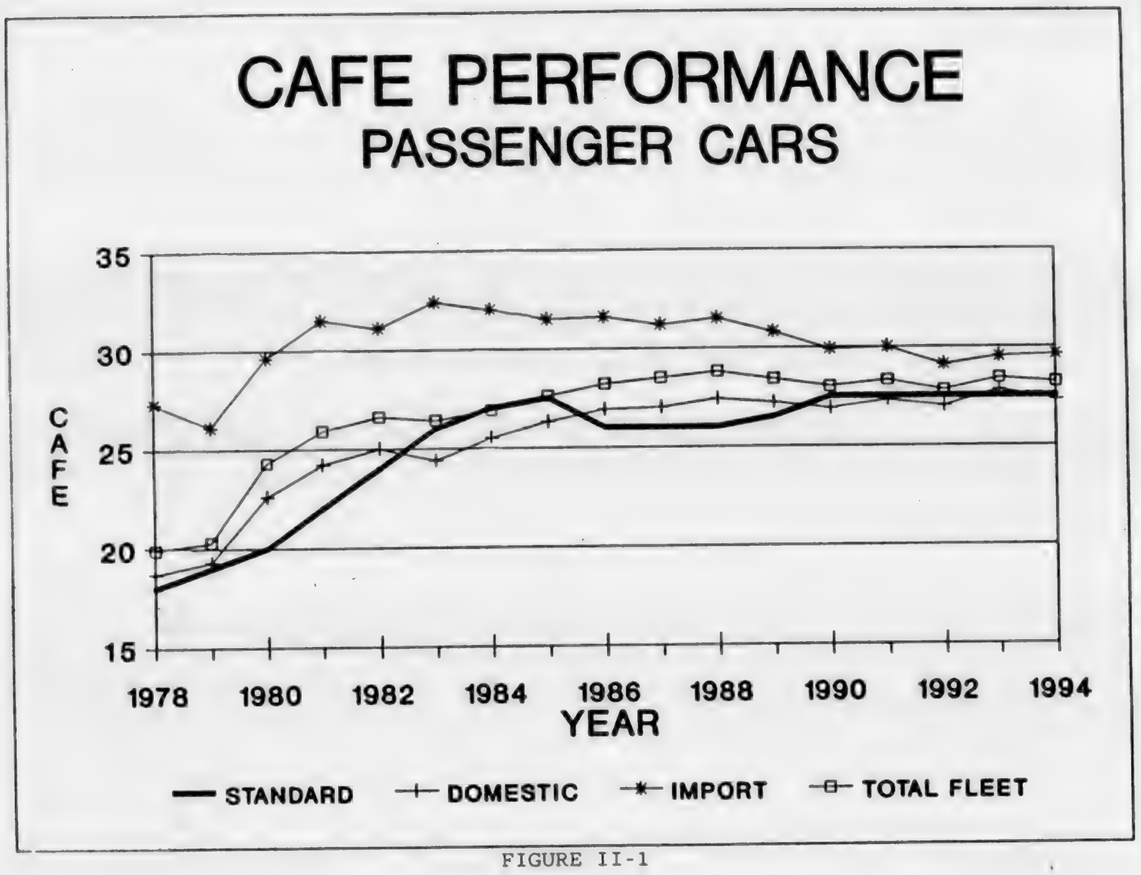


FIGURE II-1

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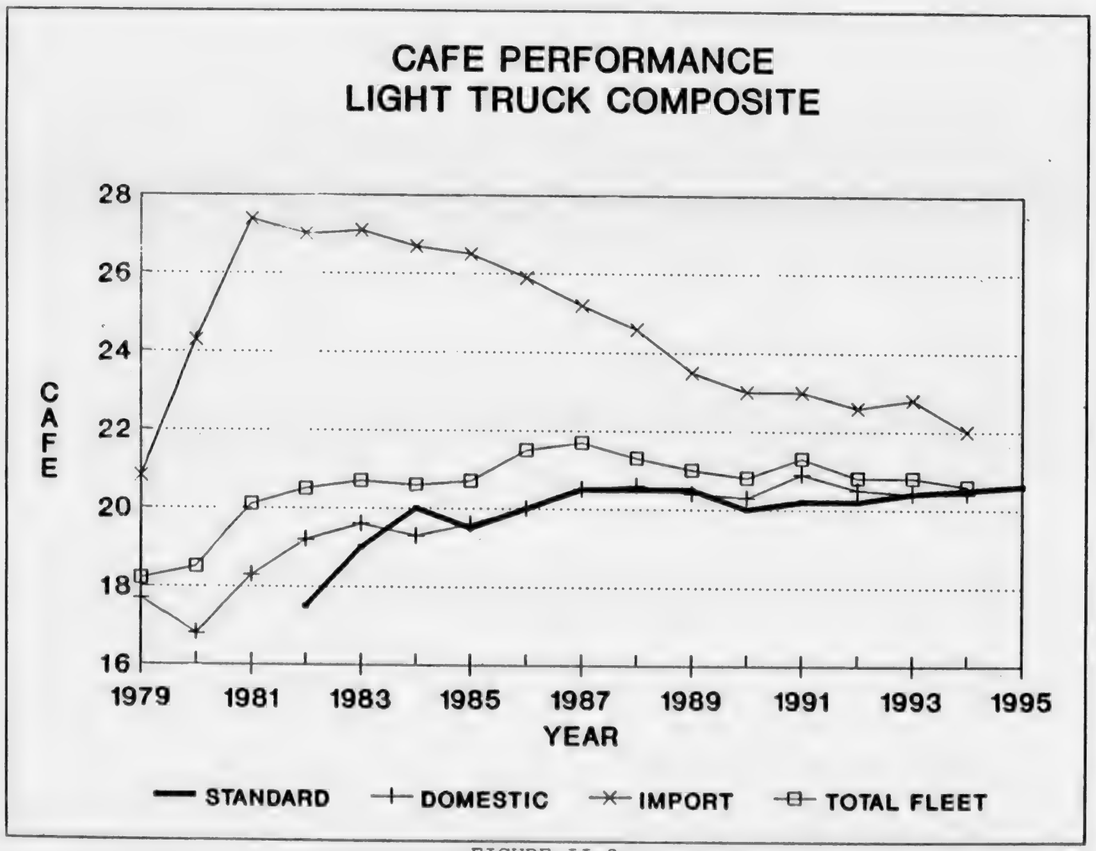


FIGURE II-2

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Isuzu terminated sales of its passenger cars in the United States after MY 1993; however, the manufacturer continues to sell its light trucks. Isuzu accumulated substantial CAFE credits during its 13-year marketing span of its passenger cars in the United States, but these vehicles sales reached such a low level that it apparently decided it was economically infeasible for their passenger cars to remain.

The characteristics of the MY 1994 passenger car fleet reflect a continuing trend toward increased consumer demand for higher performance cars. (See Table II–3.) From MY 1993 to MY 1994, horsepower/100 pounds, a measure of vehicle performance, increased from 4.56 to 4.79 for domestic passenger cars. However, it decreased slightly from 4.72 to 4.71 for imported passenger cars. The total fleet average for passenger cars increased from 4.62 in MY 1993 to 4.76 horsepower/100 pounds in MY 1994, the highest level in the 38 years for which the agency has data. Compared to MY 1993, the average curb weight for MY 1994 increased 52 pounds for the domestic fleet and 23 pounds for the imported fleet. The total new passenger car fleet is 41 pounds heavier than it was in MY 1993, primarily because of the larger share held by the domestic fleet. Average engine displacement increased from 184 to 188 cubic inches for domestic passenger cars and 136 to 137 cubic inches for imported passenger cars.

The 0.5 mpg fuel economy reduction for the MY 1994 domestic passenger car fleet may be attributed to increases in performance and average curb weight. Some of the weight increase reflects increased applications of safety features such as airbags, improved side impact protection, and antilock braking systems.

The size class breakdown shows an increased trend towards subcompact, compact, and large passenger cars and a decrease in two-seater, minicompact, and midsize passenger cars for the overall fleet. The domestic fleet shift is from midsize passenger cars to subcompact, compact, and large passenger cars. The shift of imported cars to compact size is particularly pronounced; compact cars increased to 41.6 percent of the imported fleet in MY 1994 from just 36.6 percent in MY 1993. The imported share of the passenger car market declined slightly in MY 1994. However, for the fifth consecutive year, imports exceeded 40 percent of the new passenger car fleet.

The domestic fleet had a dramatic decrease in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1993. Diesel engines were offered only on certain Mercedes models during MY 1994.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1993 AND 1994

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1993	1994	1993	1994	1993	1994
Fleet average fuel economy, mpg	28.4	28.2	27.8	27.3	29.6	29.6
Fleet average curb weight, lbs.	2971	3012	3046	3098	2861	2884
Fleet average engine displacement, cu. in.	164	167	184	188	136	137
Fleet average horsepower/weight ratio, hp/100 lbs.	4.62	4.76	4.56	4.79	4.72	4.71
Percent of fleet	100	100	59.4	59.8	40.6	40.2
Segmentation by EPA size class, Percent:						
Two-seater	1.4	1.2	0.5	0.5	2.8	2.1
Minicompact	1.0	0.3	0.0	0.0	2.4	0.7
Subcompact*	23.0	23.4	14.4	17.0	35.4	32.8
Compact*	33.7	36.0	31.7	32.2	36.6	41.6
Mid-size*	29.4	25.6	37.8	31.2	17.2	17.3
Large*	11.5	13.6	15.6	19.1	5.6	5.5
Percent diesel engines	0.04	0.01	0.0	0.0	0.9	0.02
Percent turbo or supercharged engines	1.1	0.9	0.5	0.4	1.9	1.7
Percent fuel injection	100	100	100	100	100	100
Percent front-wheel drive	84.4	83.9	86.0	83.6	82.1	84.4
Percent automatic transmissions	79.9	81.7	87.4	87.8	69.1	72.6
Percent automatic transmissions with lockup clutches	93.1	94.9	93.3	94.8	92.6	95.0
Percent automatic transmissions with four or more forward speeds	77.2	84.7	69.2	79.8	91.9	92.4

*Includes associated station wagons.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the passenger car fleet average curb weight stabilized around 2,800 pounds from MY 1982 to MY 1987, but has risen to approximately 3,000 pounds since then. Table II–4 shows that the MY 1994 passenger car fleet has nearly equal interior volume and higher performance, but with over 40 percent better fuel economy than the MY 1978 fleet. (See Figure II–3)

The characteristics of the MY 1994 light truck fleet are shown in Table II–5. Since light truck manufacturers are not required the divide their fleets into domestic and import fleets based on the 75-percent domestic content threshold used for passenger car fleets, the domestic and imported fleet characteristics in Table II–5 are estimated, based mainly on manufacturer name. The agency assumed that all products of foreign-based manufacturers would not meet the domestic content threshold, whether they were assembled in the United States of Canada, or in another country. The exception to this is the assumption that the import-badged products of a domestic manufacturer's assembly plant were "domestic" (Mazda Navajo and pickup and Nissan Quest)

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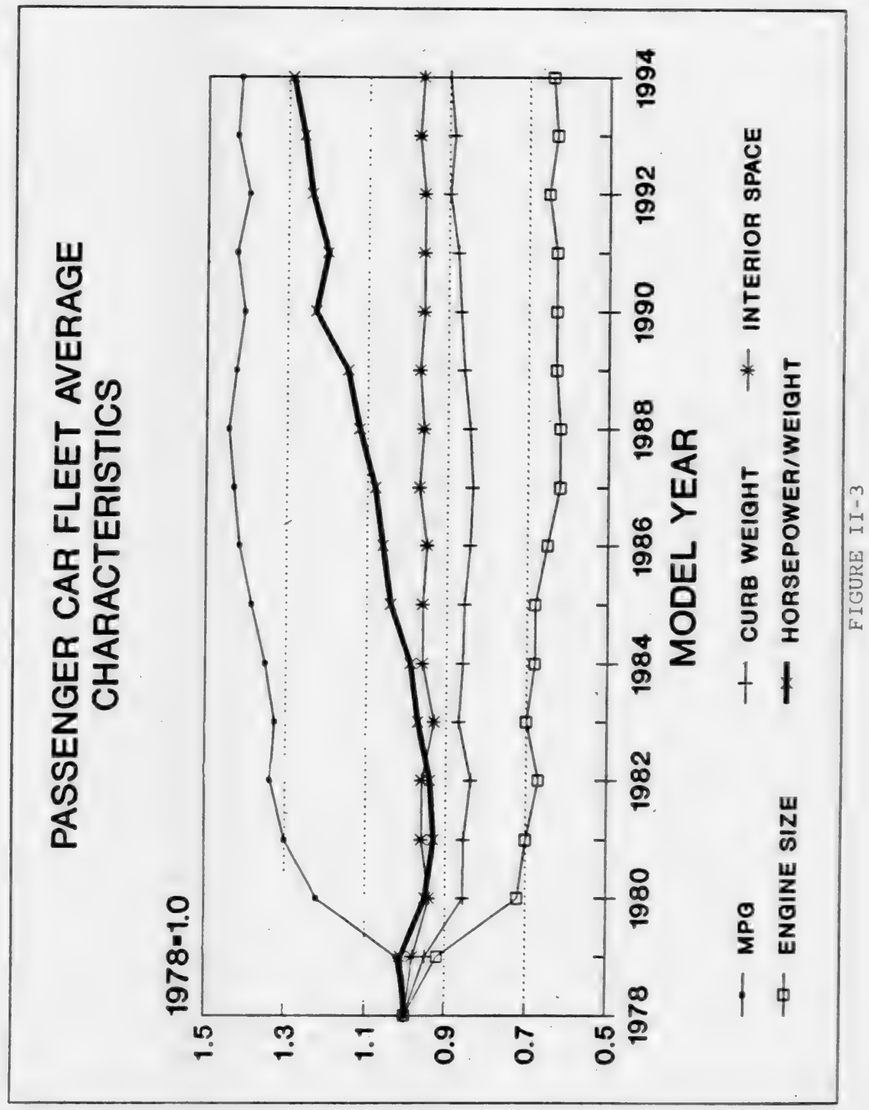


FIGURE II-3

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TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

[Model years 1978–1993]

Model year	Fuel economy (mpg)	Curb weight (lb.)	Interior space (cu. ft.)	Engine size (cu. in.)	Hosrepower/weight (hp/100 lb.)
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2867	105	187	3.51
1981	25.9	2883	108	182	3.43
1982	26.6	2808	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2875	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2906	108	163	4.53
1991	28.3	2934	108	164	4.42
1992	27.8	3007	108	169	4.56
1993	28.4	2971	109	164	4.62
1994	28.2	3012	108	167	4.76

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1993 AND 1994

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1993	1994	1993	1994	1993	1994
Fleet average fuel economy, mpg	20.9	20.6	20.6	20.4	22.7	22.0
Fleet average equivalent test weight, lbs	4,201	4,274	4,284	4,340	3,727	3,832
Fleet average engine displacement, cu. in	237	243	249	255	167	165
Fleet average horsepower/weight ratio, hp/100 lbs	3.89	3.86	3.97	3.89	3.47	3.65
Percent of fleet	100	100	85.1	87.0	14.9	13.0
Segmentation by type, percent:						
Passenger van:						
Compact	23.6	17.0	25.8	18.6	11.1	6.3
Large	0.3	0.5	0.4	0.6		
Cargo van:						
Compact	1.4	1.5	1.6	1.7		
Large	4.7	4.7	5.6	5.4		
Small pickup*	7.9	6.2	6.6	5.3	15.2	12.2
Large pickup*	34.3	40.0	33.4	40.5	39.8	36.8
Special purpose	27.8	30.0	26.7	27.8	33.9	44.7
Percent diesel engines	0.07	0.30	0.09	0.30		
Percent fuel injection	99.0	99.7	100	100	93.0	97.7
Percent automatic transmissions	76.2	77.3	82.5	82.5	39.9	45.7
Percent automatic transmissions with lockup clutches	98.6	98.3	99.1	98.5	92.3	94.0
Percent automatic transmissions with four forward speeds	90.5	92.1	89.9	91.6	97.1	98.9
Percent 4-wheel drive	33.7	36.1	32.3	34.1	41.2	49.5

* Including cab chassis.

The average test weight of the total light truck fleet increased by 73 pounds over that for MY 1993. Increased popularity of large pickups, special purpose vehicles, heavier, and higher performance trucks contributed to a 0.3 mpg fleet fuel economy decline for MY 1994, offsetting the small increase in the use of fuel injection and automatic transmissions with four forward speeds. Diesel engine usage increased in light truck to 0.30 percent in MY 1994 from 0.07 percent in MY 1993. The imported share of the MY 1994 light truck fleet decreased to 13.0 percent, 1.9 percent lower than MY 1993 and the lowest share since light truck fuel economy standards were established.

During MYs 1980 through 1994, CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MY 1988 through MY 1994, as average weight, engine size, and performance increased. During these years, light truck production increased from 1.9 million in MY 1980 to 4.7 million in MY 1994. Light trucks comprised 40 percent of the total light duty vehicle fleet production in MY 1994, more than double its share in MY 1980.

Figure II–4 illustrates that the light duty fleet (passenger cars and light trucks together) average fuel economy steadily increased to MY 1987, but subsequently has been below the MY 1987 level. (See Table II–6). Light truck average fuel economy declined, but the passenger car average fuel economy remained relatively constant for MYs 1987–1994. Thus, the overall decline illustrates the growing influence of light trucks in the light duty fleet.

While both passenger car and light truck fleet fuel economies decreased from MY 1993 to MY 1994 by 0.2 mpg and 0.3 mpg, respectively, the total fleet fuel economy for MY 1994 decreased 0.5 mpg over the MY 1993 level (25.1 mpg for MY 1993 and 24.6 mpg for MY 1994). This is attributed to increased sales of light trucks, since the total light truck fleet fuel economy is far less than that of passenger cars. The shift to light trucks for general transportation is an important trend in consumers' preference and has a significant fleet fuel consumption effect.

Domestic and imported passenger car fleet average fuel economies have improved since

MY 1978, although the increase is far more dramatic for the domestic fleet. In MY 1994, the domestic passenger car fleet average fuel economy decreased from the prior year to 27.3 mpg, and imported passenger car fleet average fuel economy remained at 29.6 mpg Compared to MY 1978, this reflects an increase of 8.6 mpg for domestic cars. For imported cars, the MY 1994 average fuel economy is only 2.3 mpg higher than that of MY 1978.

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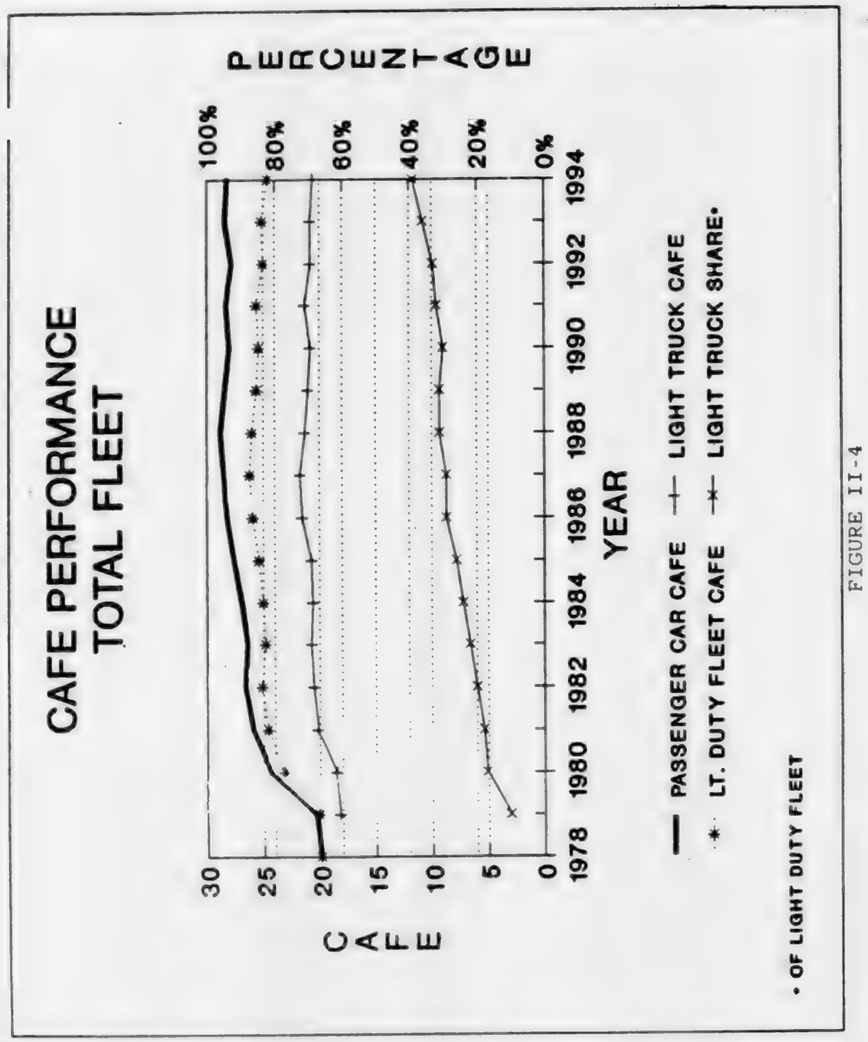


FIGURE II-4

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TABLE II-6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1994

(In MPG)

Model year	Domestic			Imported			Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined	
1978	18.7			27.3			
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	25.0
1983	24.4	19.6	23.0	32.4	27.1	31.5	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.8	25.9
1987	27.0	20.5	24.6	31.2	25.2	29.6	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	25.6
1990	26.9	20.3	23.9	29.9	23.0	28.5	25.4
1991	27.3	20.9	24.4	30.0	23.0	28.4	25.6
1992	27.0	20.5	23.8	29.1	22.6	27.8	25.0
1993	27.8	20.6	24.2	29.6	22.7	28.0	25.1
1994	27.3	20.4	23.5	29.6	22.0	27.8	24.6

Since MY 1980, the total light truck fleet average fuel economy and the average for domestic manufacturers have improved. However, the imported light truck average fuel economy has decreased significantly. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised 87.0 percent of the total light truck fleet. For MY 1994, the domestic light truck fleet has an average fuel economy 1.6 mpg lower than the imported light truck fleet. The imported light truck fleet fuel economy improved substantially up to MY 1981, but has been declining steadily since then. For MY 1994, the imported light truck fleet fuel economy decreased 0.7 mpg below MY 1993 to 22.0 mpg.

The gap between the average CAFEs of the imported and domestic manufacturers is smaller than in earlier years as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more 4-wheel drive light trucks.

Section III: 1994 Activities

A. Passenger Car CAFE Standards

The following synopsis describes recent litigation challenging NHTSA actions under the CAFE program.

Competitive Enterprise Institute v. *NHTSA*, D.C. Cir., No. 93–1210

This case challenges NHTSA's January 15, 1993, decision (D.C. Circuit's remand in Case No. 89–1422) to again terminate the rulemaking it commenced to consider amending the MY 1990 passenger car CAFE standard. The petition for review was filed on March 15, 1993. Briefs were filed between February and April 1994, and oral argument was held on May 16, 1994. To date, the Court has not issued a decision.

B. Light Truck CAFE Standards

NHTSA published a final rule establishing the MYs 1996 and 1997 light truck fuel economy standards on April 6, 1994, (59 FR 16312). The agency set a combined standard of 20.7 mpg for MYs 1996 and 1997.

In the final rule for MYs 1996 and 1997 light trucks, the agency determined that GM is the "least capable" manufacturer with a combined fuel economy capability of 20.7 mpg. The agency concluded upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above GM's capability would not justify the economic harm to the company and the economy as a whole. The agency projected that GM could not achieve a combined fuel economy level higher than 20.7 mpg for MYs 1966 and 1997. In contrast, NHTSA concluded that Chrysler and Ford can achieve CAFE levels somewhat above 20.7 mpg.

The agency selected 20.7 mpg for MYs 1996 and 1997 as the final combined standards because these values balance the potentially serious adverse economic consequences associated with market and technological risks for GM to further increase its fuel economy levels. Since GM produces more than 30 percent of all light trucks that are subject to the fuel economy standards, its capability significantly affects the industry's capability and, therefore, the level of the standard.

The agency issued an advance notice of proposed rulemaking for Light Truck Average Fuel Economy Standards for MYs 1998–2006 (59 FR 16324; April 6, 1994). The agency sought information that would help to assess the extent to which manufacturers can improve light truck fuel economy, the benefits and costs to consumers of improved fuel economy, the benefits to the Nation of reducing fuel consumption, and the number of model years that should be covered by the proposal.

C. Low Volume Petitions

Article 49 U.S.C. 32902 (d) provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. A low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

The agency acted on two low volume petitions in 1994, which were filed by Bugatti International Holding, SA (Bugatti International) and MedNet, Inc.

Bugatti International filed a joint low volume petition for Bugatti and Lotus high performance vehicles. Bugatti International requested alternative standards for its passenger cars for MYs 1994, 1995 and 1996. Another petitioner, MedNet, Inc., requested an alternative standard for its recently acquired Dutcher PTV vehicles for MYs 1995 1996, and 1997. NHTSA is reviewing these petitions and will respond in early 1995.

D. Enforcement

Article 49 U.S.C. 23912 (b) imposes a civil penalty for $5 for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacture in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With completion by EPA of final CAFE computations for MY 1993 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard.

Table III–1 shows the most recent CAFE fines paid by manufacturers.

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TABLE III–1.—CAFE FINES COLLECTED DURING FISCAL YEAR 1994

Model year and manufacturer	Amount fined	Date paid
1991:		
Land Rover	$520,520	10/93
Sterling	254,840	12/93
Porsche	1,871,470	02/94
Fiat (revised)	416,385	08/94
1992:		
Land Rover	607,620	10/93
Porsche	781,575	02/94
Volvo	5,361,515	04/94
BMW	12,888,750	05/94
Vector	1,740	05/94
Fiat (revised)*	(2,250)	08/94
1993:		
Volvo	5,764,800	06/94
Fiat	194,220	07/94
Panoz	3,080	07/94
Vector	870	07/94

*Fiat was refunded $2,250 after revised calculation of its CAFE.

E. Partnership for a New Generation of Vehicles (PNGV)

At a White House ceremony on September 29, 1993, President Clinton and Vice President Gore, together with the Chief Executive Officers of Chrysler, Ford, and General Motors, formally announced the Partnership for a New Generation of Vehicles (PNGV). PNGV (previously known as the "Clean Car Initiative") is a historic new partnership between the United States Government and the U.S. Council for Automotive Research (USCAR) which represents Chrysler, Ford, and General Motors. It is aimed at strengthening U.S. competitiveness by developing technologies for a new generation of vehicles.

PNGV focuses its research and development toward attaining three interrelated goals:

• Improve the productivity of the U.S. manufacturing base by significantly upgrading U.S. manufacturing technology, including the adoption of agile, flexible manufacturing and the reduction of cost and lead time, while reducing the environmental impact and improving quality.

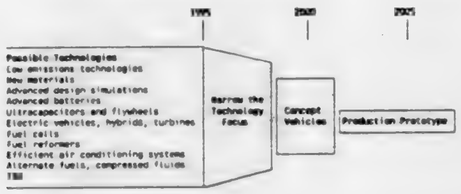
• Pursue advances in vehicles that can lead to improvements in fuel efficiency and emissions of standard vehicle designs, while pursuing safety advances to maintain safety performance. Research will focus on technologies that reduce the demand for energy from the engine and the drive train.

• Within a decade, achieve automotive fuel efficiency improvements up to three times that of the average 1994 Chrysler Concorde/Ford Taurus/Chevrolet Lumina with equivalent performance, size, and utility, and with customer purchase price comparable to today's sedans adjusted for economics, while also meeting all current and future safety and emissions requirements, and preserving in-use safety compared to the target cars.

The development of energy efficient, low emission vehicles is economically and environmentally critical. From an economic level, the introduction of a new generation of vehicles will preserve American jobs and improve the Nation's competitiveness. From an environmental level, a new generation of fuel efficient vehicles will produce less carbon dioxide (greenhouse gas emissions) and decrease American dependency on imported oil.

The following timetable illustrates probable goals the PNGV expects to achieve within five to ten years. PNGV anticipates a concept vehicle by year 2000 and a prototype vehicle by year 2005.

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NHTSA's PNGV Role

NHTSA's role in the PNGV initiative is to provide technical support to ensure that the selected PNGV vehicles meet existing and anticipated safety standards and to insure in-use safety equivalent to today's mid-size passenger cars. NHTSA will also ensure that the overall safety of the PNGV vehicles is not compromised.

NHTSA technical support includes:

• Develop advanced computer models of the PNGV platforms and selected vehicles which represent the fleet in order to evaluate the crashworthiness of conceptual designs and their safety compatibility with contemporary vehicles.

• Conduct and evaluate research of light weight materials such as advanced composites and develop new, unique material models for usage in the finite element model work.

• Provide require PNGV transportation infrastructure analyses.

• Provide peer review study of PNGV programs, including conceptual designs.

F. Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions

As part df the Administration's "Climate Change Action Plan," the White House formed an advisory committee to develop recommendations to reduce greenhouse gas emissions by light vehicles to the year 1990 level. The committee is comprised of a number of stakeholders, including environmental and public interest groups, automotive manufacturers, fuel suppliers, vehicle users, and representatives of state and local governments.

The goal of the committee is to develop policy options that will cost-effectively reduce greenhouse gas emissions from the use of light vehicles (cars and light trucks) to the 1990 level by years 2005, 2015, and 2025.

Policy options being considered encompass vehicle-miles-traveled (VMT) reductions, efficiency enhancement, and alternative fuels. These policies include:

• Vehicle technologies.

• Fuels with lower carbon content.

• Vehicle-based regulatory strategies such as CAFE.

• Vehicle taxes and/or rebates.

• Market-based actions to reduce VMT (fuel taxes, congestion pricing, and pay-at-the-pump insurance).

• Others approaches (e.g., changed land-use patterns, increased mass transit, telecommuting, Intelligent Vehicle-Highway Systems (IVHS), and increased carpooling).

The advisory group has conducted four meetings: September 28–29, October 19–20, November 14–15, and December 15–16, 1994. This project will run for approximately one year, and it is expected to contribute to a broad-based approach by the Administration to address light vehicle greenhouse gas emissions.

G. General Agreement on Tariffs and Trade (GATT) Decision

On September 30, 1994, a ruling by a panel under the General Agreement on Tariffs and Trade (GATT) upheld key provisions of the United States CAFE law, as well as the "gas guzzler" tax and luxury tax. The panel rejected a challenge under GATT by the European Union (EU) which alleged that the CAFE requirements, the gas guzzler tax, and the luxury tax discriminated against cars manufactured by Mercedes, BMW and other European luxury auto manufacturers. Those manufacturers have paid a large share of penalties and taxes under these laws. The panel agreed with EU complaints on one technical issue—the CAFE accounting rules that establish separate "domestic" and "import" fleets for determining overall fuel economy. Because these rules do not have any actual economic impact on EU auto manufacturers, and therefore no trade damage results from this requirement, U.S. Trade Representative Michael Kantor stated that the United States does not intend to make any changes in the CAFE rules.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238), which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1994.

A. New Models

The domestic automakers introduced and replaced several completely new cars models and, in addition, introduced updates and redesigns of many previous passenger car models. Chrysler introduced the New Yorker and the Chrysler LHS, two all-new luxury sedans, with an average fuel economy of 22 mpg each for MY 1994. Ford redesigned the Mustang, the first major redesign since MY 1979. The car is 4.1 inches longer and 200 pounds heavier than the model it replaced, and already meets some Federal rules of the newly issued emissions and safety standards which are being phased in for future years. Ford also redesigned the Lincoln Continental to include a rounded grille, suspension modifications, and a smaller bumper. The fuel economy of that model has improved 1 mpg for city driving. General Motors (GM) introduced two all-new vehicles, the Cadillac De Ville and the Cadillac De Ville Concours for MY 1994. The De Ville has a 4.9 liter (L) V–8 engine, a new automatic transmission, speed sensitive suspension and steering. The upscale Concours gets the 270-hp 4.6 L double-overhead cam (DOHC) Northstar V–8 engine and the electronically controlled 4T80–E transmission. Both models have an average fuel economy of 21 mpg.

Automobile importers also introduced a variety of new passenger cars and updates of their previous models for MY 1994. The BMW 325i convertible is powered by a 2.5 L DOHC I–6 engine and a 5-speed manual transmission and has improved its average fuel economy over last year's model by 3 mpg. The 5-series has three new models for MY 1994, the 530i sedan, Touring wagon and 540i sedan, all powered with a V–8 engine. The average fuel economy of the 530i and the 540i is 19.5 mpg and the Touring wagon is 21.5 mpg. The 535i model has been discontinued. BMW also has an all-new 840Ci model with a 4.0 L 32-valve all aluminum V–8 engine with average fuel economy of 19.5 mpg and a 850CSi model with a 5.6 L 292-horsepower (hp) V–12 engine with an average fuel economy of 16 mpg.

Honda completely redesigned the Accord with a 2.2L SOHC I–4 engine. The fuel economy has improved by 0.5 mpg over its MY 1993 counterpart. Honda's Acura division completely redesigned the Integra to include a 1.8L 142 hp DOHC I–4 engine on the RS and LS model and a 1.8 L 170 hp VTEC variable-valve-timing I–4 engine on the GS–R model. Acura also has a new top-of-the-line Legend sedan with a 230 hp single overhead cam (SOHC) V–6 engine and a six-speed manual transmission.

Kia Motor Corporation introduced its first U.S.-vehicle entries under the Kia badge. Kia has three compact models, front-wheel-drive 4-door sedans powered by a 1.6 L 88 hp SOHC I–4 engine with an average fuel economy of 30 mpg.

Mercedes-Benz introduced its new C-class sedan to the line, powered by a 2.2 L I–4 engine with an average fuel economy of 25 mpg. The C280 model has a new 2.8 L I–6 engine with an average fuel economy of 23 mpg.

Saab has two all-new hatchback 900 series models with a larger 4-cylinder engine and an optional V–6 engine for the first time. The Saab 900 moved from the EPA compact size class to the midsize class for MY 1994. The average fuel economy of this model is 21.5 mpg for MY 1994.

Toyota introduced a new 2-door Camry with a 3.0 L aluminum V–6 engine with a 4-speed electronic controlled automatic transmission and an average fuel economy of 21 mpg. Also Toyota has introduced a new liftback Celicia model with an all-new 110 hp 1.8 L engine and an average fuel economy of 30.5 mpg for MY 1994.

Volvo introduce an all front-wheel drive 850 wagon in both touring and turbo versions with a 2.4 L engine and a average fuel economy of 24 mpg. This model replaced the 240 wagon which also had a fuel economy of 24 mpg.

In the domestic light truck area, Chrysler introduced the full-sized T300 Ram pickup replacing a model which had been in production since MY 1972.

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The new model averages 16.8 mpg, the same as its predecessor despite being substantially larger and heavier. GM's GMC division completely redesigned the Sonoma's exterior and interior with a 2.2L I–4 engine and a 5-speed manual transmission. The Sonoma average fuel economy is 25.5 mpg an improvement of 0.5 mpg over MY 1993 light truck. GM also redesigned the companion Chevrolet S–10 pickup.

B. Engine and Transmission Technology

Some manufacturers made significant improvements in engine technology for model year 1994. GM has a new pushrod engine, which bears a close resemblance to familiar engines. The base Chevy Caprices gets a 4.3 L V–8 variant of the LT1 V–8 to replace the 5.0 L V–8. The 4.3 L engine produces 200 hp at 5200 revolutions per minute (rpm) (30 hp more than last year's 5.0 L) and 245-pound-feet of torque at 2400 rpm.

Ford introduced a more powerful engine controller called EEC–V on the MY 1994 Thunderbird, Cougar, and Mustang. Compared with EEC–IV, the new unit operates 20 percent faster and has 66 percent more memory. Developed in part through Ford's Fonnula 1 racing program, EEC–V features a "Flash Erasable Electrically Programmable Read Only Memory" chip (Flash-EEPROM) that allows service technicians to reprogram the computer, rather than replace it, when defects arise or upgrades becomes available.

Still in development at Ford is a new two-stroke gasoline engine. A major obstacle to two-stroke engine development in the United States is the Tier II emissions requirement of 0.2 grams per mile nitrogen oxide (NOx) which is, at best, marginally achievable with current lean-system two-stroke technology. According to *Ward's Automotive Yearbook 1994*, GM's two-stroke development program is winding down. GM preferred to proceed with development of its simpler dry-sump, roller-bearing version but reportedly was experiencing piston cooling and cylinder-bore distortion problems. Ford and Chrysler are moving ahead with two-stroke programs. Ford is field testing a two-stroke hybrid vehicle in Europe, and press reports indicate that Chrysler expects to show what it believes is a marketable wet-sump, externally scavenged engine some time in the near future.

C. Electronics

Applications of electronic components in vehicles continue to rise. Some of the applications include four-wheel steering, tire-pressure sensing, instrumentation, and in-car entertainment grouping. However, the main concentration is in engine management, powertrain management, antilock braking systems, air bags, air conditioning, and, increasingly, suspension control.

Electronic controllers are gradually being incorporated in all modern automatic transmissions, and this year Ford's 4R70W four-speed automatic truck transmission and GM's 4L60–E rear-drive four-speed automatic, both have electronic controls. The GM unit features a performance mode that provides quicker shifts and higher shift point speeds. In a quest for consistent shift quality, the controller alters shifting strategies at high altitudes, as components wear, and as temperatures rise.

D. Materials

For MY 1994, automakers chose aluminum, high strength steel, powder metal (P/M), and magnesium for a number of significant new component applications in their cars, and light trucks. The reduced weight of these components contributes to improved fuel economy of the models using them.

Aluminum usage has increased by five-eight pounds (lbs.) annually per vehicle since 1990 in North America, as reported in Ward's Automotive Yearbook 1994. Since 1990, the annual increase of plastic usage has been cut in half every year and is likely to increase only 0.5 lbs. per vehicle during MY 1994.

Even as the use of plastics and aluminum has grown, steel continue as the primary material in U.S.-built vehicles, comprising well over 50 percent of the weight of the average passenger car according to Ward's 1994 Automotive Yearbook. The amount of steel used in vehicles continues to grow, due mainly to redesigned vehicles that are longer, wider and/or taller than those they replaced. These models include the redesigned compact GMC Sonoma and Chevrolet S–10 pickup trucks, Cadillac's new Sedan De Ville and De Ville Concours, Chrysler's Dodge Ram pickup, and Ford's Mustang. The new Sonoma/S10 grew 10.6 inches and added 262 lbs. in MY 1994 over MY 1993. The long-box version of the truck gained 384 lbs. from the previous year. Ford added 200 lbs. to the Mustang, and Chrysler's new Dodge Ram full-size pickup has added 226 lbs.

New safety features added to vehicles also increase the amount of steel usage in todays vehicles. It is the material used for most door intrusion beams, roof reinforcements designed to protect occupants in crashes, rollovers and side impacts. The light-truck market has particularly shown an increase in steel usage as regulations and consumer demands force light truck manufacturers to incorporate the same safety features as cars. The GMC Jimmy, for instance, adds new side-door steel guard beams running the full length of the door. Steel intrusion beams also are standard in MY 1994 Ford's F-series pickups.

Other new applications include composite steel camshafts in GM's 3.1 L V–6s and 2.2 L 4-cylinder engines, and steel tubing on the Dodge Ram's radiator enclosure panels. Also the use of medium-strength steels, mostly bake-hardenable varieties, increased in MY 1994.

P/M makes up about 27 lbs. of weight of a typical family vehicle accordingly to Ward's Automotive Yearbook 1994. It continues to play an increasingly significant role because it can be used to make strong and lightweight parts that have very complex shapes. Applications for P/M have been growing steadily in recent years, and several new and expanded applications were introduced in MY 1994, including P/M bearing caps on GM's 3100 and 3800 series V–6 engines and P/M inserts in the bearing cap girdles for Ford's new aluminum 2.5 L and 3 L V–6 engines.

Magnesium use has risen every year since 1988 by 10 to 16 percent. Magnesium firsts in MY 1994 included knee-bolster retainers, steering wheel armatures, and seat pedestals, or stanchions. The knee-bolster retainers, the first large structural magnesium component application in the U.S. auto industry, debuted on several of GM's standard-size, front-drive cars, including the Buick Park Avenue. Ford replaced steel wheel armature subassemblies with magnesium on its Thunderbird, Cougar, Taurus, and Sable.

E. Summary

The stabilization of oil prices and supply has been a factor resulting in a shift of consumer demand in recent years to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted its production mix to somewhat larger cars. Still, there were some considerable technical gains, particularly in lightweight material usage, that contributed to improvements in fuel economy on some models in MY 1994.

[FR Doc. 95–7428 Filed 3–31–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 23, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–754
Regulation ID Number: LR–255–81 Final
Type of Review: Extension
Title: Substantiation of Charitable Contributions
Description: Congress intended that the IRS prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 26,000,000
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 2,158,000 hours

OMB Number: 1545–0763
Regulation ID Number: LR–200–76 Final
Type of Review: Extension
Title: Qualified Conservation Contributions
Description: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial in real property.
Respondents: Individuals or households, Business or other for-profit, Farms, Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Respondent: 1,000
Estimated Burden Hours Per Respondent: 1 hour, 15 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 1,250 hours

OMB Number: 1545–1117
ID Number: IRS Notice 89–61
Type of Review: Extension
Title: Imported Substances; Rules for Filing a Petition
Description: The Notice sets forth procedures to be followed in petitioning the Secretary to modify the list of taxable substances in section 4672(a)(3).
Respondents: Business or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 1 hour
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 95–8024 Filed 3–31–95; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

List of Foreign Entities Violating Textile Transshipment Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public that the list of foreign entities identified by Customs as having violated the textile transshipment rules—authorized to be published by section 333(a) of the Uruguay Round Agreements Act—will not be published for this semiannual period, because Customs has not identified any violators during this time period that clearly fall within the purview of this section.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Crichton, Textile Industry Team, (202) 927–0001 or 927–0162.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a new section 592A, which authorizes the Secretary of the Treasury to publish in the **Federal Register** a list of foreign entities, *i.e.*, the names of any producers, manufacturers, suppliers, sellers, exporters, or any other persons located outside the Customs territory of the United States, against whom Customs has issued a penalty claim under section 592 of the Tariff Act of 1930, as amended, citing a violation of the Customs textile transshipment rules. See, 19 U.S.C. 1592A(a)(2). The list is to be published semiannually not later than March 31 and September 30 of each year.

In reviewing all information available, Customs has found that no one clearly falls within the purview of this section during this time period. Accordingly, no list will be published for the period ending March 31, 1995.

Dated: March 30, 1995.

Stuart P. Seidel,
Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–8163 Filed 3–30–95; 12:01 pm]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Redomestication; Cumberland Casualty & Surety Company

Cumberland Casualty & Surety Company has redomesticated from the state of Texas to the state of Florida effective September 1, 1994. The company was last listed as an acceptable surety on Federal bonds at 59 FR 34151, July 1, 1994.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 revision, on page 34151 to reflect this change.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 874–6507.

Dated: March 27, 1995.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8101 Filed 3–31–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Financial Pacific Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company

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Some of the applications include four-

structures and undercarriage

BILLING CODE 4910-09-M

1,250 hours

entities, *i.e.*, the names of any

hereby issued to the following company

under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34155 to reflect this addition:

Financial Pacific Insurance Company. Business address: P.O. Box 292220, Sacramento, California, 95829–2220. Phone: (916) 381–8067. Underwriting Limitation *b/*: $589,000. Surety Licenses *c/*: CA. Incorporated in: California.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, telephone (202) 874–6765.

Dated: March 27, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8102 Filed 3–31–95; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 63
Monday, April 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, April 5, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Mid-Year Review

The staff will brief the Commission and the Commission will consider issues related to fiscal year 1995 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 30, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–8250 Filed 3–30–95; 3:37 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 27, 1995, 60 FR 15819.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 29, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company has been added on the Agenda scheduled for March 29, 1995:

Item No., Docket No., and Company

E–2—ER94–1561–000, Citizens Utilities Company

Lois D. Cashell,

Secretary.

[FR Doc. 95–8204 Filed 3–30–95; 3:03 pm]

BILLING CODE 6717-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–07]

TIME AND DATE: April 13, 1995 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–701 (Final) (Disposable Lighters from Thailand)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 30, 1995.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8235 Filed 3–30–95; 3:04 pm]

BILLING CODE 7020-02-P

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 3, 1995.

An open meeting will be held on Tuesday, April 4, 1995, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, April 6, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 4, 1995, at 10:00 a.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss a number of issues of mutual interest, including new developments in shareholder communications, the safe harbor concept release, the Section 16 proposals, shareholder proposals, the T+3/prospectus delivery proposals, and the security ratings proposals. For further information, please contact William Haseltine at (202) 942–2910.

The subject matter of the closed meeting scheduled for Thursday, April 6, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.
Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 29, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8142 Filed 3–29–95; 4:07 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 60, No. 63
Monday, April 3, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-190-5]

Animal Damage Control Program; Record of Decision Based on Final Environmental Impact Statement

Correction

In notice document 95- 6097 beginning on page 13399 in the issue of Monday, March 13, 1995 make the following corrections:

1. On page 13399, in the first column, in the **ADDRESSES** section, in the 16th line, "UDDA" should read "USDA".

2. On page 13401, in the first column, in the 27th line, "human" should read "humane" and in the 29th line, "Proving" should read "Providing".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-121-2]

Availability of Determination of Nonregulated Status for Genetically Engineered Potato Lines

Correction

In notice document 95-5993 beginning on page 13108 in the issue of Friday, March 10, 1995 make the following corrections:

1. On page 13108, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the 7th line, "designed" should read "designated".

2. On the same page, in the same column, in the first paragraph, in the 10th line, after "potato" insert "Beetle".

3. On the same page, in the third column, in the 14th line, "patato" should read "potato".

4. On the same page, in the same column, in the first full paragraph, in the 14th line from the bottom, "patato" should read "potato".

5. On page 13109, in the first column, in the first full paragraph, in the second line from the bottom, "patato" should read "potato".

6. On the same page, in the same column, in the second paragraph, in the 7th line, "patio" should read "potato" and in the 12th line "breading" should read "breeding".

7. On the same page, in the second column, in the 5th line, "from" should read "found".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal Plant Health Inspection Service

[Docket No. 93-026-2]

Introduction of Nonindigenous Organisms

Correction

Proposed rule document 95-6907 was inadvertently published in the Notices section of the issue of Tuesday, March 21, 1995, beginning on page 14928. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950207044-5044-01]
RIN 0651-AA71

Patent Appeal and Interference Practice

Correction

In rule document 95-6377 beginning on page 14488, in the issue of Friday, March 17, 1995, make the following corrections:

1. On page 14513, in the 2nd column, in the 21st line from the top, "ion" should read "in".

2. On the same page, in the 3rd column, in the 5th paragraph, in the 12th line, before the word "is" insert ", for example. When a next-business-day commercial courier".

BILLING CODE 1505-01-D

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5168-8]

RIN 2060-AD95

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions from the Printing and Publishing Industry

Correction

In proposed rule document 95-5983 beginning on page 13664, in the issue of Tuesday, March 14, 1995, make the following corrections:

1. On page 13665, in the first column, in the first full paragraph, in the eighth line, after the word "downloading" insert "on the".

2. On page 13680, in the second column, the heading after the first full paragraph should have been run-in to the last word of the first full paragraph and should have appeared as follows: section V. G. These records would be maintained in accordance with the requirements of §63.10 (b).

BILLING CODE 1505-01-D

Federal Register

Monday
April 3, 1995

Part II

Department of the Interior

Bureau of Reclamation

43 CFR Parts 426 and 427
Acreage Limitation and Water Conservation Rules and Regulations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Parts 426 and 427

RIN 1006–AA32

Acreage Limitation and Water Conservation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would retitle and revise the existing Rules and Regulations for Projects Governed by Federal Reclamation Law (Part 426) and add new Water Conservation Rules and Regulations (Part 427). These rules would replace and expand upon existing rules that pertain to the administration of the Reclamation Reform Act of 1982 (RRA) and are in partial fulfillment of the requirements of a Settlement Contract between the Department of the Interior, Department of Justice, and the Natural Resources Defense Council (NRDC).

DATES: Written comments on these proposed rules and regulations must be received by June 2, 1995.

ADDRESSES: Written comments should be mailed to the Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5010), Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Concerning part 426, contact Richard Rizzi, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5200), Denver, Colorado 80225, telephone (303) 236–1061 ext. 235; concerning part 427, contact Craig Phillips, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5300), Denver, Colorado 80225, telephone (303) 236–1061 ext. 265.

SUPPLEMENTARY INFORMATION: The RRA (43 U.S.C. 390aa, *et seq.*) was signed into law on October 12, 1982. It was the culmination of an effort to modernize Federal reclamation law. The RRA made a number of changes to prior Federal reclamation law while retaining the basic principle of limiting the amount of land in ownership which may receive water deliveries from Bureau of Reclamation (Reclamation) projects.

Rules and regulations for implementing the RRA were published in the **Federal Register** (43 FR 54768, Dec. 6, 1983) and became effective on January 5, 1984. In 1987, the rules and regulations were amended, primarily to implement Section 203(b) of the RRA, which was not addressed in the 1983 rulemaking. Revisions also were made to those provisions of the rules and regulations pertaining to submission of certification and reporting forms, trusts, non-resident aliens, water transfers, covenant restrictions, and religious and charitable organizations.

The 1987 rules and regulations and three alternatives were evaluated in an Environmental Assessment (EA) published by Reclamation in April 1987. The EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the natural environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1987 rulemaking was therefore issued by Reclamation on April 8, 1987. The final rules and regulations were published in the **Federal Register** (52 FR 11954, Apr. 13, 1987) and became effective on May 13, 1987.

The Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987, included amendments to the RRA. The amendments addressed revocable trust agreements, provisions for audits by Reclamation to confirm information from reporting procedures, application of full-cost water rates for lands under extendable recordable contracts, and interest on underpayments or nonpayments. Consequently, further proposed amendments to the rules and regulations were evaluated in a supplemental EA published by Reclamation in September 1988. The supplemental EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the natural environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1988 rulemaking was therefore issued by Reclamation on September 23, 1988. The final rules and regulations were published in the **Federal Register** (53 FR 50535, Dec. 16, 1988) and became effective on January 17, 1989.

Litigation Concerning the RRA Rules and Regulations

The NRDC and others filed a lawsuit challenging the validity of the 1987 and 1988 rules and regulations (*NRDC* v. *Underwood, No. Civ. S–88–375–LKK*). On July 26, 1991, the United States District Court for the Eastern District of California (Court) granted NRDC's partial motion for summary judgment. The Court ruled that Reclamation had not complied with the requirements of the National Environmental Policy Act (NEPA) and the regulations of the Council of Environmental Quality in preparing the EA and the Findings of No Significant Impact in the promulgation of the 1987 rules and regulations.

Reclamation appealed the District Court's decision to the Ninth Circuit Court of Appeals. In September 1993, while the appeal was still pending, the Department of the Interior (Interior), the Department of Justice, and NRDC entered into a Settlement Contract which requires Reclamation "to propose new rules and regulations implementing, on a westwide basis, the * * * (RRA) as part of a new rulemaking proceeding that comprehensively reexamines the implementation of the RRA." The Settlement Contract also requires Interior to prepare an environmental impact statement (EIS) considering the impact of the proposed rules and regulations and alternatives thereto. However, nothing in the contract requires Interior to adopt changes to the rules now in effect.

The required draft EIS has been published separately and notice of its availability will be published in the "notice" section of the **Federal Register**.

Public Scoping

A notice of intent regarding the EIS and a notice of intent regarding the rulemaking were both published in the **Federal Register** (58 FR 64277 and 58 FR 64336, Dec. 6, 1993). A press release was issued on December 29, 1993, and approximately 3,500 information packets were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, the media, and other interested parties. Public scoping meetings were held in January 1994 to receive public input regarding the issues and alternatives to be considered in the EIS and rulemaking. Scoping sessions were held in Billings, MT; Fresno, CA; Salt Lake City, UT; Phoenix, AZ; Boise, ID; Spokane, WA; Portland, OR; and Denver, CO. In addition to the oral comments received at the scoping sessions, approximately 150 letters were received.

Public comments generally focused on 5 areas: process, acreage limitations on receipt of project water, water conservation; the Settlement Contract, and EIS alternatives. Each comment was considered in the development of EIS alternatives, the EIS analysis, and these proposed rules and regulations.

Partnerships for Improved Resources Management

In December 1994, the Commissioner of Reclamation announced a new initiative to develop formal partnerships between Reclamation and water districts in a collaborative effort to improve the management of water and associated resources throughout the Western United States. The partnerships will address mutually desirable water resources management objectives and provide for public involvement to consider the broadest range of traditional and emerging societal needs and water resources management solutions.

Under this initiative, partnerships will be formed with one or more districts on a district basis, project basis, or watershed basis. Partnerships will involve agricultural water districts, municipal and industrial water districts, other Reclamation contractors, and other water suppliers and users throughout the 17 Western States. The initiative will also provide for State participation in the partnerships to assure compliance with State water law and consideration of State resources priorities.

These proposed regulations acknowledge this new partnership initiative. Certain requirements are modified if a formal partnership with a district achieves the same objectives through similar or alternative means. One section specifically allows for this type of flexibility: § 426.17 regarding landholder information requirements.

Description and Analysis of Part 426

Reclamation has taken advantage of the opportunity afforded by the NRDC settlement to rework part 426 in its entirety. The majority of the changes have been made for the sole purpose of improving the clarity of the regulation. Thus, the bulk of the changes do not represent new Reclamation policy regarding the RRA, but rather an attempt on Reclamation's part to resolve any uncertainty that may have been associated with the interpretation of the existing regulations. In some cases, these proposed regulations include Reclamation policies that have been in effect for some time, but which are not specifically covered in the existing regulations.

However, a number of substantive changes have been proposed. The key topics under which substantive changes have been made is summarized as follows:

- Reduction in certification and reporting burden
- Definition of *lease*
- Nonresident alien and foreign legal entity entitlements
- Types of contracts considered *additional and supplemental benefits*
- Application of the RRA to religious and charitable organizations
- Application of class 1 equivalency
- Involuntary acquisition and future operation of formerly excess land by excess land sellers
- Application of the compensation rate and administrative fees in cases of irrigation of ineligible excess land
- New procedures for administrative appeals of RRA-related determinations.

Also, a new ordering of the sections has been proposed with the objectives of grouping related topics and of attaining a more logical and progressive sequence. For example, §§ 426.4 through 426.6 would address how basic landholding entitlements are determined, followed by §§ 426.7 through 426.9, which would discuss the entitlements of particular types of landholders. Sections 426.10 through 426.14 would be generally categorized as addressing the status of land under acreage limitation laws, and the remaining sections would address administrative and miscellaneous provisions.

Finally, all examples would be deleted from the text of the regulations and would be instead included, if necessary, in the following section-by-section analysis. This change would make the rule more compact, and would promote our effort to improve precision in the text of the regulation.

Section-by-Section Analysis

Section 426.1. The proposed rule would change the title of this section from *Objectives* to *Purpose*, and the narrative would be rewritten to include a straightforward statement as to the purpose of these regulations.

Section 426.2. The existing section on applicability would be removed because it is not possible to write a concise, yet accurate, statement as to the applicability of these regulations. Because the rule's scope of effect is not the same for the various provisions of the regulations, Reclamation proposes that the best approach would be to have each section speak for itself as to its applicability.

The proposed § 426.2 defines terms used in the regulation and would replace § 426.4 from the existing regulation.

Numerous changes would be made to the definition section. The more significant of the proposed changes are discussed as follows in alphabetical order:

Acreage limitation entitlement, acreage limitation provisions, and acreage limitation status would be added to the proposed regulations to add precision and to replace the compound term *ownership limitation and pricing restrictions.*

Arable land would be deleted because the term's only use is within the definition of *irrigable land*. The term *arable land* is included in the existing rules because the definition of *irrigable land* is based on one more useful for formal land classification purposes It is suggested that a simpler definition of the term *irrigable land* would be appropriate for this regulation, and, therefore, a definition of the term *arable land* would be unnecessary.

Compensation rate would be newly defined in these proposed regulations to describe the full-cost charges applied to certain types of illegal irrigation water deliveries that are not discovered until after they have taken place.

For conciseness only, the two sentences in the definition of the term *contract* would be merged. In addition, the term agreement was added to broaden the definition to ensure all arrangements between Reclamation and water users that may be subject to application of the acreage limitation provisions are captured.

Contract rate would be changed to reflect awareness of the fact that many contracts do not include per acre or per acre-foot rates. For purposes of this part, however, *contract rate* would mean such a rate on a per acre or per-acre-foot basis.

Direct and *indirect* would be defined in this proposed regulation because they are used in the RRA and are frequently used in the text of the regulation. The terms apply in situations wherein land is held *directly* by a landowner or lessee, or indirectly by a party that has a beneficial interest in a legal entity that is a landowner or lessee (such as a stockholder, partner, or trust beneficiary).

Discretionary provisions of Title II would be deleted and would be replaced with the more concise *discretionary provisions.* Also, section 203(b) would be excepted from this definition, since it applies even to prior law districts and landholders. Finally, United States Code citations would be substituted, as they are more useful in locating the relevent statutes.

District would be changed to replace the phrase *eligible to contract* with *can potentially enter into a contract*, in order to avoid the use of the term *eligible*, which has its own specific meaning under part 426.

Eligible would be included to reflect its common meaning among those familiar with acreage limitation laws: the right to receive irrigation water without consideration of the price paid for that water. This definition can be compared with that of *ineligible.*

Exempt land would be replaced with the term *exempt* primarily because that term can be applied to districts and certain types of landholders (e.g.,

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to those provisions of the rules and

of the 1987 rules and regulations.

resources throughout the Western

trustees and government agencies), as well as to specific land parcels.

In the definition of the term *full cost, Secretary* would be changed to *Reclamation.*

Full-cost rate and *full-cost charge* are defined to differentiate between the two terms.

Indirect would be added. See the above discussion of the term *direct.*

The reference to the Internal Revenue Code would be deleted from the definition of *individual* because that concept is covered in the definition of *dependent.*

Ineligible would be added to reflect that term's common meaning among those familiar with acreage limitation laws: The lack of eligibility to receive irrigation water at any price. This definition can be compared with that of *eligible.*

Intermediate entity would be added to define a term used in these regulations.

Irrevocable election would be changed to delete both the reference to *Title II* and the second sentence which presently contains additional explanation that is redundant with that contained in the text of the existing rule.

Irrigable land would be changed to be more concise and understandable. The phrases from the existing regulation excluding permanent buildings, etc., would be transferred to the definition of *nonexempt land.*

Irrigation land would be modified primarily to exclude land exempt from acreage limitation laws. Also, the phrase *in a given water year* would be added to clarify that land which has received irrigation water retains *irrigation land* status for the entire water year, even if irrigation is not taking place at any particular time.

Landholder would be modified to delete the references to the terms *qualified recipient, limited recipient,* and *prior law recipient,* because not all landholders fall into these categories (i.e. government agencies, Native American tribes, etc.).

Landholding would be greatly simplified. The proposed definition is clearer, and takes advantage of the new term *nonexempt land.* It should be noted that involuntarily acquired land would be included within this definition of *landholding.*

Lease would be substantially modified. Under the existing regulation, one of the key elements in the definition of *lease* is the assumption of economic risk by the reputed lessee. This definition permits the development of arrangements under which an individual or legal entity is paid a fixed fee for operating a farming enterprise. Since the operator under these arrangements assumes no economic risk, Reclamation currently does not deem operator to be in a lease relationship. Therefore, under the existing rules, operators are not subject to full-cost irrigation water rates.

The new definition would make *possession* the singular element indicating the existence of a lease. The definition would eliminate economic interest as an essential element of a lease (although economic risk would remain a factor indicating the existence of a lease). Thus, under the proposed regulation, whenever someone other than the landowner has possession of nonexempt land, a lease would exist. Reclamation would consider *fixed-fee* operations leases and would subject the parties to full cost pricing if possession of the land has been transferred, and if nonfull-cost entitlements are exceeded.

The second and third sentences of the definition would address the situation where more than one party has some degree of possession; for example, a landowner may contract with a farm manager but may retain some decisionmaking authority.

Reclamation intends the proposed definition of the term *lease* to exclude arrangements between landholders and custom operators, employees, lenders, and other landholders with whom farm equipment is shared.

Legal entity would be broadened to include certain types of landholding arrangements whose status for acreage limitation purposes had been unclear under the existing regulation.

Nondiscretionary provisions would be modified to eliminate the reference to Title II, to include section 203(b), and to include the United States Code citation. The second sentence of the current definition has been eliminated because that concept is covered elsewhere in the regulations.

Nonexempt land would be newly defined in these proposed regulations to replace the compound term *irrigable and irrigation land. Nonexempt land* would be defined more precisely than *irrigable and irrigation land,* and would be used as a concise term to describe, generally, all land subject to the acreage limitation provisions of Federal reclamation law.

Nonfull-cost entitlement would be modified to enhance clarity by including the defined term *nonfull-cost rate.*

Nonresident alien entitlement would be eliminated because, under the proposed rules, nonresident aliens would be treated as prior law recipients, and their entitlements derived accordingly. This fact would be made clear in the definition of *prior law recipient.*

Operation and maintenance costs or O&M costs would be newly defined in order to clarify the types of activities that are included in the calculation of operation and maintenance costs.

Part owner would be added to define a term that is used in these regulations.

Prior law would be modified primarily to include United States Code citations.

Prior law recipient would be modified to include within the definition, nonresident aliens and legal entities not registered in the United States. Under the proposed regulations such persons and entities could only be prior law recipients. This conclusion results from the RRA's definitions of *qualified recipient* and *limited recipient.*

Public entity would be added to define a term that is used in these regulations.

Qualified recipient would be modified to include married couples in which only one spouse is a U.S. citizen or resident alien.

Reclamation fund would be modified to eliminate unnecessary language.

RRA would be added. This term would be used throughout the part as it is concise and well understood by most readers.

Title II would be eliminated in favor of a definition of the term *RRA* which would be used throughout the part.

Section 426.3. The section in the existing regulations, entitled *Authority,* would be removed because it is redundant with the authorities statement that immediately follows the table of contents.

The proposed § 426.3, *Conformance to the discretionary provisions,* would replace the existing § 426.5 and add a more precise description of the section's contents.

The section would be generally rewritten to eliminate redundancy with other sections and paragraphs within the section. Paragraph (a) categorically describes the conditions under which districts remain subject to prior law. These conditions are summarized in the following table:

If a district * * *	then * * *
Executes a new or renewed contract with Reclamation after October 12, 1982.	The discretionary provisions apply as of the execution date of the new or renewed contract.
Amends its contract to conform to the discretionary provisions (following the procedures specified in these regulations) and Reclamation amends the contract.	The district is subject to the discretionary provisions from the date it requests the amendment.
Amends its contract after October 12, 1982 to provide the district with additional or supplemental benefits (as described in these regulations) and the amendment includes the district's conformance to the discretionary provisions.	The discretionary provisions apply as of the date that the Secretary executes the contract amendment.

A new standard RRA contract article is included under paragraph (c) to clarify any misconceptions concerning the applicability of the Acreage Limitation Rules and Regulations and Reclamation's right to administer contracts.

Another substantial proposed change in the rule would involve specific contract actions that would be considered additional and supplemental benefits. Under this proposed regulation, Rehabilitation and Betterment Act and Small Reclamation Projects Act (SRPA) loans, which are not currently considered additional and supplemental benefits, would now be considered as such. Any district already subject to the acreage limitation provisions that obtains benefits under these programs would be required to conform to the discretionary provisions. Furthermore, Emergency Fund Act and Distribution Systems Loan Act contracts, whose treatment is not clearly established under the current rules and policy, would be considered additional and supplemental benefits under this proposal. The listing of types of contract amendments requiring district conformance to the discretionary provisions should not, however, be considered comprehensive.

Actions pursuant to the Reclamation Safety of Dams Act of 1978 would be added to the list of items not considered to provide additional and supplemental benefits, as provided by statute.

The following statement and table are being considered as an alternative to § 426.3(a)(3)(iv)(F) in the final rules :

(F) Transfer of water on an annual basis from one district to another if the parties to the transfer meet the conditions in the table below:

Party	Condition
Both districts	Must have contracts with the United States.
District receiving transferred water	Must pay a rate that: —is the higher of the applicable water rate for either district; —does not result in any increased operating losses to the United States above those that would have existed if there had not been a transfer; and —does not decrease the capital repayment to the United States below what it would have been if there had been no transfer.
Recipients of transferred water	Must pay a rate that is at least equal to the actual O&M costs or the full-cost rate if the recipients would have been subject to these costs in the absence of a transfer.

Paragraph (d), *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions,* of the proposed regulation has been rewritten for conciseness. The following examples illustrate the application of this paragraph:

Example (1). Assume Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. The irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

Example (2). Assume District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to conform to the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

Example (3). Assume District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agencies. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

Paragraph (e) is new that would explain the effect of a district's becoming subject to the discretionary provisions on a landholder's status. It would explain how certain indirect landholders in districts with an amended contract can conform to the discretionary provisions by simply submitting a certification form. The provision would also explain how Reclamation would treat direct and indirect landholdings of nonresident aliens and foreign entities in amended districts.

Paragraph (f) would expand on the current rules' discussion of individual elections to address the effects of elections by part owners on entities and vice versa.

Section 426.4 in the existing regulations, *Definitions,* would be renumbered § 426.2. The proposed new § 426.4, entitled *Attribution of land,* is intended to clarify how Reclamation would attribute land to indirect landholders, and to landholders who are

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part owners or are entities not wholly owned by an individual. It would also concisely summarize existing policy regarding on how land is attributed for entitlement purposes.

Paragraph (a) would establish the general rule that individuals and entities cannot enhance their entitlements or eligibility through the creation or acquisition of legal entities. For example, a prior law recipient could not increase his or her 160-acre ownership entitlement (see § 426.5) by creating or acquiring an interest in a qualified recipient legal entity. Such a prior law recipient would need to conform to the discretionary provisions (through district contract action or individual irrevocable election) in order to realize an increase in his or her entitlements.

Example (1). Corporation A, a limited recipient that did not receive water on or before October 1, 1981, and therefore is not entitled to receive irrigation water at a nonfull-cost rate (see § 426.6). Such an entity may not gain entitlement to receive irrigation water at a nonfull-cost rate by acquiring Corporation B, an entity that received water on or before that date. If the latter entity were so acquired, irrigation water could be delivered to the entities' landholding only at the appropriate full-cost rate.

The converse is also true. If the entities' roles in the preceding example were reversed (that is, if Corporation B acquired Corporation A), the landholding of Corporation A could be irrigated only at the appropriate full-cost rate as long as Corporation A continued to exist. In this case, it should be noted that Corporation B, which is eligible to receive irrigation water at a nonfull-cost rate, could potentially receive nonfull-cost irrigation water on other land in its holding that is not held through Corporation A; but any land held by or through Corporation A could be irrigated only at full cost.

Example (2). Corporation C is a qualified recipient which owns and irrigates 500 acres. Corporation C is subsequently acquired by Corporation D, a limited recipient which received irrigation water on or before October 1, 1981, but which currently has no landholdings other than Corporation C's 500 acres. On the date of acquisition, Corporation C becomes a limited recipient because it benefits all the stockholders of Corporation D. Thus, both Corporations C and D are entitled to own and irrigate 640 acres (see § 426.5), but only 320 acres at the nonfull-cost water rate (see § 426.6). Therefore, if all 500 acres are irrigated, the full-cost water rate must be paid for water delivered to 180 of those acres.

Example (3). The trustees of five irrevocable trusts, each of which have six natural persons as beneficiaries, form a partnership that holds land subject to the acreage limitation provisions in a discretionary district. In order to determine if that partnership is a limited or qualified recipient, it is necessary to ascertain how many natural persons will benefit from the partnership. In this case, 30 natural persons will benefit (none of the trust beneficiaries benefit from more than one trust) and, therefore, the partnership has the acreage limitation status of limited recipient. Although the five trusts are not limited in the amount of land they can hold and receive irrigation water at the nonfull-cost rate (other than through the entitlements of their beneficiaries) the acreage limitation status of the partnership will limit how much land can be held through that entity by the trusts and receive such water.

Paragraph (b) would establish that, for purposes of acreage limitation entitlements, owned land is attributed to each indirect landholder proportionally based on that landholder's interest. Paragraph (c) would establish that leased land counts against the entitlements of both the owner and the lessee. Paragraph (d) would establish that if a series of legal entities has ownership relationships with each other, Reclamation would proportionately attribute the land to each such entity.

Example (4). Assume Trust A has two beneficiaries, beneficiary A and beneficiary B. Beneficiary A has a 60 percent interest in the trust, and beneficiary B has a 40 percent interest. Trust A owns 800 acres of nonexempt land. Reclamation attributes 480 acres toward her ownership entitlement, and beneficiary B must attribute 320 acres toward his ownership entitlement.

Example (5). Assume Corporation C wholly owns Corporation D, and that Corporation D owns a 60 percent interest in Corporation E. Corporation E leases 500 acres of irrigation land. Reclamation will attribute to Corporation E all 500 acres toward the company's nonfull-cost entitlement, and Corporations C and D must each attribute 300 acres toward their nonfull-cost entitlements.

Example (6). Attribution to both owner and lessee is demonstrated by Farmer A who owns 400 acres of irrigation land which she leases to Farmer B. Farmer A must count all 400 acres toward her ownership and nonfull-cost entitlements, and Farmer B must count all 400 acres toward his nonfull-cost entitlement.

Paragraph (e) addresses how land that is owned by a landholder and then is indirectly leased by the same landholder will be counted by that landholder.

Example (7). Farmer A owns 60 acres and leases that land to Corporation XYZ that leases a total of 200 acres. Farmer A also owns 50 percent of Corporation XYZ. Farmer A would claim his 60 owned acres, but would not have to claim the entire 200 acres leased by Corporation XYZ. Instead, Farmer A would claim 70 acres leased by Corporation XYZ (200 acres minus the 60 owned acres times the 50 percent ownership interest). Accordingly, Farmer A would claim a total landholding of 130 acres. If Farmer B was the other part owner of Corporation XYZ and leased his 140 owned acres to that entity, his claimed landholding would be 170 acres (140 owned acres, plus 200 acres minus the 140 owned acres times the 50 percent ownership interest).

Paragraph (f) would establish that, for purposes of eligibility, land is attributed in its entirety to all direct and indirect landholders, unless they hold divided interests. The provision acknowledges that irrigation water cannot be delivered to a legal entity without benefiting all indirect owners of undivided interests in that entity; therefore, all such indirect owners must be eligible in order for the entity to be eligible.

If the interests of the entity's indirect owners are divided, however, then the district could deliver irrigation water to the entity without necessarily benefiting all such owners. In this situation, it may be possible to deliver irrigation water to the entity even if one or more of the entity's indirect owners is not eligible.

Example (8). Assume two qualified recipients, Farmer A and Farmer B, form a qualified recipient partnership with equal, undivided interests. Farmer A has no landholding outside the partnership, but Farmer B owns 960 acres of nonexempt and nonexcess land outside the partnership, and has therefore completed his ownership entitlement. The partnership has no remaining ownership entitlement, because any land irrigated by the partnership would cause Farmer B to exceed his ownership entitlement.

If, however, the partnership agreement in this example provided that the partners' interests were separable and alienable, the partnership could receive irrigation water on that land attributable to Farmer A. It would need to be shown that Farmer B does not benefit from the receipt of irrigation water by the partnership.

Section 426.5 in the existing regulations, *Contracts*, would be renamed and renumbered § 426.3. The proposed new § 426.5, *Ownership entitlement*, would replace § 426.6 of the existing regulations. This section would summarize the ownership entitlements of individuals and most types of entities, and would be generally rewritten for conciseness.

Paragraph (a) would be rewritten to achieve better organization and clarity. Moreover, the reference in the current language to the regulation on class 1 equivalency would be deleted because that topic is addressed in the discussion of qualified and limited recipient entitlement.

All descriptions of what constitutes qualified, limited, and prior law recipients would be deleted because they are redundant with the definitions found in § 426.2.

The trust discussion would be placed in a new § 426.7.

The following table summarizes the ownership entitlements specified in this section:

If the landowner is a:	The size of his or her ownership entitlement is:	Basis of computation
Qualified recipient	960 acres or class 1 equivalent	Westwide.
Limited recipient	640 acres westwide or class 1 equivalent	Westwide
Prior law recipient and is a(n):		
Individual	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Husband and wife who jointly own equal interest.	320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Surviving spouse	Up to 320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Child	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Joint tenancy or tenancy-in-common, if interests are equal.	160 acres per tenant	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Partnership if interests are: alienable, equal, and separable.	160 acres per partner	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Partnership if interests are: not alienable or not separable.	160 acres total	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Corporation	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.

The following examples illustrate the application of this section:

Example (1). Farmer A receives irrigation water on 160 acres owned in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. Farmer A automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

Example (2). Farmer B and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of nonexempt land. As a qualified recipient, they may irrigate the entire 960-acre landholding. However, they have completed their ownership entitlement.

Example (3). Farmer C and Farmer D are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer C and Farmer D as a married couple have reached the limits of their ownership entitlement as a qualified recipient.

Example (4). Farmer E is a citizen of Germany, but has taken up permanent residency in the United States. Farmer E owns 160 acres in District Y and desires to purchase an additional 800 acres. District Y has not amended its contract to conform to the discretionary provisions. Farmer E; however, decides to execute an irrevocable election. After the election, Farmer E becomes entitled to receive irrigation water on 960 acres of owned land. This entitlement as a qualified recipient remains in force so long as Farmer E, as a resident alien, maintains permanent residency in the United States. If Farmer E were to become a U.S. citizen, his eligibility as a qualified recipient would, of course, remain in force.

Example (5). Farmer F is a citizen and resident of Switzerland. Farmer F owns 160 acres of irrigation land in District X, a district subject to prior law. Subsequently, District X amends its contract to conform to the discretionary provisions. Farmer F, as a nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient. For that reason, and because he owned the irrigation land prior to the district's contract amendment, Farmer F may, as set forth in § 426.11(e), place the land under recordable contract and receive irrigation water at the nonfull-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer F not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer F qualifies as a resident alien in the United States.)

Example (6). ABC Farms is a general partnership comprised of four individuals who are qualified recipients and who own equal interests in the partnership's 960-acre landownership. The land is located in District Z, which is subject to the discretionary provisions. Therefore, ABC Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than ABC Farms.

Example (7). Six brothers who are citizens and residents of Canada form a family corporation registered in the State of Montana with each brother holding equal shares in the corporation. The corporation makes an irrevocable election and is therefore a qualified recipient entitled to receive irrigation water on 960 acres or less of owned land. The brothers cannot meet the requirements to be qualified recipients since none are citizens of the United States or residents aliens thereof. Therefore, each brother has completed his 160-acre ownership entitlement as a prior law recipient. In a district subject to the discretionary provisions, nonresident aliens may receive irrigation water only on lands held through legal entities (i.e., indirectly) and may not receive irrigation water on land they hold directly.

Example (8). Corporation A is a qualified recipient receiving irrigation water on a landownership of 960 acres. Farmer Brown is also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres of his directly owned land as excess.

Example (9). Corporation B and Corporation C, wholly owned subsidiaries of Corporation D, each own 500 acres in District Z which has amended its contract to conform to the discretionary provisions. All three corporations are qualified recipients. The landholdings of Corporations B and C are counted against the entitlement of the parent corporation, Corporation D. Therefore, Corporation D has exceeded its 960-acre ownership entitlement by 40 acres, and 40 acres must be declared excess.

Example (10). AAA Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District Y. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby AAA Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

Example (11). BBB Fertilizer Company is a corporation registered in Nebraska and owns 160 acres of nonexcess and 480 acres of excess land in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. BBB Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient with a 640-acre ownership entitlement. BBB Fertilizer Company may therefore redesignate the 480 excess acres as nonexcess.

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Example (12). CDE Development Company is a corporation, incorporated in the Greater Antilles, with more than 25 shareholders. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, unless and until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, it cannot meet the requirements to become a limited recipient, and none of its directly held land is eligible for irrigation water. Had CDE Development Company been receiving irrigation water on the 160 acres prior to the district's amendment, it could have placed the land under recordable contract as set forth in § 426.11(e)(3) and could have continued to receive irrigation water for 5 years.

Example (13). FGH Corporation is owned by more than 25 stockholders and is registered in France. IJK Corporation is registered in California and is a wholly-owned subsidiary of FGH Corporation. IJK owns 640 acres in a district subject to the discretionary provisions. IJK is a limited recipient that would normally be entitled to irrigate the entire 640-acre landownership; however, FGH cannot become a limited recipient because it is not registered in the United States. Therefore, FGH has only the 160-acre ownership entitlement of a prior law recipient. As a result, only 160 acres of IJK's owned land is eligible to receive irrigation water. The remaining 480 acres must be declared excess.

Example (14). Farmer G, a prior law recipient, owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer G owns land has amended its contract to conform to the discretionary provisions, and Farmer G held title to the land prior to December 6, 1979. Thus, Farmer G remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note: If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land, assuming the new landholder is a prior law recipient.

Example (15). Farmer H owns 160 acres in each of two prior law districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer H owned the land prior to December 6, 1979. On January 1, 1983, Farmer H purchased another 160 acres of nonexcess land which is located in a third prior law district. The land newly purchased in this district must be declared excess, except as provided for in § 426.11(d).

Example (16). Farmer I and his wife own 320 acres of irrigation land in each of two prior law districts, for a total of 640 acres. The couple purchased both parcels of land in 1976. Farmer I and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer I and his wife are entitled to receive irrigation water on all 640 acres. The couple has reached the limit of their ownership entitlement.

Example (17). Farmer J and Farmer K own equal interests in a tenancy-in-common which owns 320 acres of irrigation land in District Y. District Y has not amended its contract to become subject to the discretionary provisions. Both Farmers J and K own nonexempt land only through their interests in the tenancy; however, Farmer J wishes to purchase additional land in the district so he makes an irrevocable election. Since the tenancy remains subject to prior law, Farmers J and K may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer K have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer J may receive irrigation water on an additional 800 acres of owned land.

Example (18). Mr. and Mrs. L, who purchased all of their owned land prior to December 6, 1979, may receive Reclamation irrigation water on the 320 acres they jointly own as prior law recipients in District A and also on the 100 acres they own in District B. On July 1, 1991, Mr. and Mrs. L purchase an additional 40 acres in District B. Since the 40 acres were acquired after December 6, 1979, all 460 acres in their ownership must be taken into consideration to determine if the newly acquired land is within the couple's ownership entitlement. In this case, the total owned acres westwide (460 acres) exceeds the couple's maximum westwide entitlement as prior law recipients (320 acres). Therefore, the 40 newly acquired acres are considered to be excess land and ineligible to receive Reclamation irrigation water in the couple's landholding.

Example (19). EFG Farms, a partnership composed of four individuals who hold equal, separable, and alienable interests in the partnership, owns 960 acres of nonexempt land located in District Y. District Y has not amended its contract to become subject to the discretionary provisions. EFG Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither EFG Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of the EFG Farms' 960 acres are entitled to receive irrigation water; the remaining 320 acres must be declared excess. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

Example (20). Corporation GHI owns 320 acres in District Y, a prior law district. Corporation GHI's two shareholders, Farmer L and Farmer M, hold equal interests in the corporation. Both District Y and Farmer L are subject to prior law; however, Farmer M is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation GHI's 320 acres can be declared nonexcess. Eighty acres of the corporation's nonexcess ownership is attributed toward the ownership entitlement of each shareholder. As a prior law recipient, Farmer L may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer M may receive irrigation water on an additional 880 acres outside the corporation.

Example (21). Farmer N and Farmer O form a corporation in which Farmer N owns a 60 percent interest and Farmer O owns a 40 percent interest. Neither individual owns land outside the corporation. Farmer N and the corporation are qualified recipients, but Farmer O remains subject to prior law. The maximum nonexempt acreage that the corporation can own as nonexcess is 400 acres (160 divided by 40 percent). If the corporation owned more than 400 nonexempt acres, this would cause Farmer O to exceed his ownership entitlement.

Example (22). Farmer P, a qualified recipient, owns 1,400 nonexempt acres and has designated 960 acres as nonexcess and eligible to receive irrigation water. In 1995, Farmer P irrigates only 800 acres; however, the entire 960 nonexcess acres are still counted against his ownership entitlement.

Example (23). Farmer Q, a qualified recipient, owns 640 acres receiving irrigation water. Farmer Q also owns 320 acres which are not in a district, but Farmer Q has individually entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

Example (24). Farmer R, a prior law recipient, owns 160 nonexempt acres. However, only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer R installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of ownership entitlement under the RRA, all 160 acres must be counted.

Example (25). Farmer S remains under prior law. Farmer S irrigates 160 acres of owned land. Subsequently, Farmer S buys, in another prior law district, a 160-acre farm which is also receiving irrigation water. All the land newly purchased by Farmer S thereby becomes ineligible for service except as provided for in § 426.11(d). If the 160 acres which Farmer S purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer S could, as provided in § 426.11(d)(1)(ii) or (2)(ii), place the 160 acres under recordable contract when the facilities became available to serve the land.

Section 426.6 in the existing regulations, *Ownership entitlement*, would be renumbered § 426.5. The proposed new § 426.6, *Leasing and full-cost pricing*, would replace § 426.7 of the existing regulations. This section would describe the conditions under which full-cost charges would be applied (see examples 1 through 14), and would describe how full-cost rates are determined (see examples 15 through 21).

The paragraph in the existing regulation on what constitutes a lease would be deleted because it more properly belongs in the definition section.

Care has been taken to distinguish between the definition of a lease and the requirements of a lease. It is important to note that failure to meet the requirements of a lease does not mean failure to meet the definition of a lease. Thus, for example, it cannot be argued that an agreement does not constitute a lease because it is not in writing. Rather, a lease which is not written would not qualify for treatment as a lease for the purposes of the RRA, and therefore, the land associated with the lease would be ineligible to receive irrigation water.

In the discussion of nonfull-cost entitlements, the term *irrigation land* would be used liberally. The reference to exempt land would be deleted since use of the term *irrigation land* automatically excludes exempt land.

The citation regarding extended recordable contracts would be deleted because the paragraphs on extended recordable contracts are proposed for deletion from § 426.11 of the regulations. (This deletion will be addressed in the discussion of section 11.)

Under the discussion of nonfull-cost entitlements of qualified, limited, and prior law recipients, the sentences describing various types of land not subject to full cost would be deleted to eliminate redundancy with other sections. Land subject to recordable contracts is discussed in § 426.11; exempt land does not need discussion because it has been excluded through use of the term *irrigation land*; and involuntarily acquired land is addressed earlier in the section.

The paragraph on multidistrict landholdings would be deleted because it is redundant with the discussion of these topics in § 426.3.

The following table summarizes the nonfull-cost entitlements specified in this section:

If the landholder is a:	The landholder's nonfull-cost entitlement is computed on a westwide basis and is:
Qualified recipient	960 acres.
Limited recipient who acquired the land:	
Prior to or on October 1, 1981.	320 acres.
After October 1, 1981	0 acres.
Prior law recipient and is a(n):	
Individual	160 acres.
Husband and wife who jointly own equal interest.	320 acres.
Surviving spouse	Up to 320 acres.
Child	160 acres.
Joint tenancy or tenancy-in-common, if interests are equal.	160 acres per tenant.
Partnership if interests are: alienable, equal, and separable.	160 acres per partner.
Partnership if interests are: not alienable or not separable.	160 acres total.
Corporation	160 acres.

The application of § 426.6 is illustrated by the following examples:

Example (1). Farmer A, a qualified recipient, receives irrigation water on 900 of the 960 acres of nonexempt land in his ownership in District X. Farmer A leases and receives irrigation water on another 320 acres in District Y. Since Farmer A receives water on 260 acres over and above his nonfull-cost entitlement, he must select 260 acres of owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

Example (2). Farmer B, a qualified recipient, owns and receives irrigation water on 960 acres in District X. Farmer B decides to lease all 960 acres to another qualified recipient, Farmer C. Farmer C, however, already farms 960 acres receiving irrigation water. Therefore, Farmer C would be eligible for nonfull-cost rate irrigation water delivered to only 960 acres.

Example (3). Farmer D has made an irrevocable election and owns and receives irrigation water on 960 acres. Farmer E is subject to prior law and owns and receives water on 160 acres. Farmer D hires Farmer E to operate Farmer D's equipment in performance of all the physical farm work on Farmer D's 960 acres. Farmer E receives compensation for such services, which does not consist of a share of the crop and is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. Farmer D retains at all times the economic risk associated with both crop production and marketing from his 960 acres. Farmer D also makes all major decisions concerning the farming operation, and Farmer E merely carries out Farmer D's instructions. This arrangement between Farmer D and Farmer E does not constitute a lease because Farmer D has not transferred possession of his land to Farmer E.

Example (4). Assume the same facts as in example 3 of this section, except that Farmer E makes the major decisions concerning the farming operation. This arrangement between Farmer D and Farmer E constitutes a lease because possession of the land has transferred from Farmer D to Farmer E. Therefore, Farmer E has exceeded her nonfull-cost entitlement by 960 acres and must pay full cost for water delivered to 960 acres of her landholding.

Example (5). Landholder F, a qualified recipient, receives irrigation water on 960 acres of owned land in District X and 800 acres leased in District Y. At the beginning of the water year, Landholder F selects 360 owned acres plus 600 leased acres to receive irrigation water at the nonfull-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder F terminates the lease on the 600 acres of leased land which are part of his nonfull-cost entitlement. However, since nonfull-cost acreage is counted against one's entitlement on a cumulative basis during any 1 water year, Landholder F has already reached the limits of his nonfull-cost entitlement for this water year. Therefore, Landholder F may not replace in that water year those 600 nonfull-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder F also must pay the full-cost rate for irrigation water delivered to any new land he irrigates during that water year.

Example (6). Landholder G, a qualified recipient, owns and irrigates 1,200 acres, 400 of which are subject to a recordable contract. Landholder G also irrigates 300 acres leased from another party. All of Landholder G's landholding, a total of 1,500 acres, counts against his nonfull-cost entitlement; therefore, he is in excess of his nonfull-cost entitlement by 540 acres. However, the 400 acres under recordable contract are not subject to full-cost pricing, so Landholder G need select only 140 acres for full-cost pricing. The full-cost land may be selected from the nonexcess, recordable contract, or leased land in his holding.

Example (7). ABC Farms remains under prior law. It owns and was receiving irrigation water on 160 acres in District X prior to October 1, 1981. ABC Farms also owns and irrigates 480 acres in another prior law district which are subject to a recordable contract. ABC Farms may continue to receive irrigation water at the nonfull-cost rate on its entire landholding until the end of the recordable contract period. At that time, if ABC Farms remains under prior law, only 160 acres in District X may continue to receive irrigation water. If ABC Farms makes an irrevocable election prior to the maturity of the recordable contract, it may amend the recordable contract to allow it to own and receive irrigation water on all 640 acres owned. Upon electing, ABC Farms may receive irrigation water at the nonfull-cost rate on 320 acres, but it must pay the full-cost rate on the 320 acres by which it has exceeded its nonfull-cost entitlement.

Example (8). CDE Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and CDE Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for CDE Farms to receive irrigation water for any nonexempt land, it must pay the full-cost rate for that water.

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Example (9). FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District X. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the nonfull-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have to select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre nonfull-cost entitlement.

Example (10). The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the nonfull-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another landholder, the full-cost rate would still apply.

Example (11). Farmer H and her husband receive irrigation water on 320 owned acres of irrigation land and on 40 leased acres in District X. District X has not amended its contract to become subject to the discretionary provisions and Farmer H and her husband have not made an irrevocable election. Since Farmer H and her husband receive irrigation water on 40 acres in excess of their 320-acre nonfull-cost entitlement, the couple must select 40 acres in their landholding and pay the full-cost rate for water delivered to that land. If Farmer H and her husband make an irrevocable election or if District X amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a nonfull-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer H and her husband would be able to receive irrigation water at the nonfull-cost rate on all 360 acres.

Example (12). Farmer I and his wife lease 640 acres of irrigation land in District X and another 640 acres of irrigation land in District Y. Districts X and Y have not amended their contracts to become subject to the discretionary provisions and Farmer I and his wife have not made an irrevocable election. Since the couple has exceeded their 320-acre nonfull-cost entitlement by 960 acres, Farmer I and his wife must select 960 acres in their landholding and pay the full-cost rate for water delivered to that land.

Example 13. Four brothers hold equal, separable, and alienable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District X and also leases another 320 acres from another party in District Y. The partnership and both districts remain subject to prior law. Since the partnership's landholding is within its 640-acre nonfull-cost entitlement (160 times 4), no full-cost charges will be assessed to water delivered to any land in the holding.

Example (14). Farmer J, a prior law recipient, owns 5,000 acres of irrigation land in District X, 4,900 of which are under recordable contract. He also receives irrigation water on another 320 acres which he leases in this same district. Thus, Farmer J is receiving irrigation water on 5,160 acres (5,320 minus 160) in excess of his nonfull-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer J must select 260 acres (5,160 minus 4,900) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer J may, at his option, select part or all of the 260 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

Example (15). District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 million. As of October 12, 1982, the district's accumulated repayments are $174 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation ($66 million, or $733.33 per acre) in 11 years. The applicable interest rate is determined to be 7.5 percent; therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization procedures and is the annual payment necessary to retire a debt of $733.33 at a 7.5 percent rate of interest over 11 years. This full-cost charge will apply regardless of when District A amends its contract. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates.

Example (16). District B has a water service contract that establishes a rate of $6.50 per acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date.

As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million minus $15.5 million), and the applicable interest rate is determined to be 7.5 percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost charge of $1,384,016, or $15.36 per acre-foot. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates. Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Reclamation policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost charge would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost charge would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

Example (17). District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7.5 percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

Example (18). District D has a 40-year water service contract for 90,000 acre-feet of water per year. The District's current contract expires in 1997 and will be renewed for another 40-year term, resulting in an expiration date of 2036. Construction costs assigned to District D are $24 million, and such costs are to be repaid from irrigation water service revenues. As of October 12, 1982, the accumulated payments credited to construction costs are $15.5 million. The unpaid balance for full cost is $8.5 million and the applicable interest rate is determined to be 7.5 percent. Water service rates for this project are designed to completely repay applicable expenditures by the end of the authorized repayment period, which occurs in 2030. Amortizing the unpaid balance over the remaining authorized repayment period of 48 years results in an annual full-cost charge of $657,945 or $7.31 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. It should be noted that even though the contract renewal extends beyond 2030, the repayment period is limited to the authorized repayment period ending in 2030, with full-cost charges calculated accordingly.

Example (19). Farmer K, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer K also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5 per irrigable acre. Alpha Irrigation District's annual full-cost rate is calculated to be $15 per irrigable acre. Therefore, Farmer K's total water charge for that year is (960 acres times $5) plus (100 acres times $15), for a total of $6,300.

Example (20). Farmer L and his wife own 320 acres receiving irrigation water in Beta Irrigation District and lease another 320 acres receiving irrigation water in the same district. Farmer L, his wife, and Beta Irrigation District all remain subject to prior law. Beta Irrigation District's water service contract specifies a rate of $10 per acre-foot, and its full-cost rate is calculated to be $25 per acre-foot. Farmer L has a turnout and measuring device to the 320 acres he has selected to pay full cost, and a separate turnout and measuring device to the 320 acres receiving water at the contract rate. At the end of the water year, district records show that Farmer L received 1,000 acre-feet of water on his full-cost land, and 1,050 acre-feet of water on his nonfull-cost land. These measurements are judged to be accurate and reliable; therefore, Farmer L's water charges for that year are (1,000 acre-feet times $25) plus (1,050 acre-feet times $10) for a total of $35,500. If accurate records showing the amounts of water delivered to Farmer L's full-cost and nonfull-cost land had not been maintained, it would have been necessary to assume that equal amounts of water per acre had been delivered to both types of land. Without accurate water delivery records, Farmer L's water charges for that year would have been (1,025 acre-feet times $25) plus (1,025 acre-feet times $10) or $35,875.

Example (21). Farmer M, a qualified recipient, leases 1,000 acres in Gamma Irrigation District where the contract rate is $5 per acre-foot, and the full-cost rate is $15 per acre-foot. Farmer M applies irrigation water to 960 acres and irrigates the remaining 40 acres from a private well. In 1 particular year, Farmer M applied water to the land six times during the irrigation season; but in the final two applications, his well failed, so he chose to apply irrigation water to his entire landholding. Because there were no separate measuring devices for the 40 full-cost acres, it was necessarily assumed that equal amounts of water per acre were applied to the full-cost and nonfull-cost land during the final two applications of water. Gamma Irrigation District's record showed that 600 acre-feet were delivered to Farmer M during each of the first four applications, and 625 acre-feet during each of the last two applications. Farmer M's water charges for that year were calculated as follows: The first four applications did not include any full-cost water; therefore, the appropriate charge was (4 times 600 acre-feet × $5) or $12,000. The final two applications were 96 percent contract rate and 4 percent full cost. Thus, the appropriate charges were (2 times 625 acre-feet times .96 times $5) plus (2 times 625 times .04 times $15), or $6,750. Farmer M's total charge for the year was $12,000 for the first four applications plus $6,750 for the last two applications, for a total of $18,750.

Section 426.7 of the existing regulations, *Leasing and full-cost pricing*, would be renumbered § 426.6. The proposed new § 426.7, *Trusts*, would be a new section devoted to describing the requirements and entitlements of trusts. This new section would not alter existing Reclamation policy regarding trusts, but would include some existing policies that are not referenced in the current regulation.

Paragraph (a) would define the three categories of trusts. The effects of inclusion or absence of required elements of each category of trust would be described in paragraph (b)

Paragraph (b)(1) would establish that land held by an irrevocable trust would be attributed to the trust's beneficiaries, provided that the trust agreement is in writing, has been approved by Reclamation, and the beneficiaries and that their interests are identified. Otherwise, the land would be attributed to the trustee.

Paragraph (b)(2) would describe attribution of trusted land in the case of a revocable trust that provides for reversion of the trusted land to the grantor upon revocation. Land held by trusts in this situation would be attributed to the grantor(s) of the trust, conditioned on the facts immediately prior to the transfer of the land to the trust, if specified criteria are met.

Paragraph (b)(3) would describe attribution of trusted land for all types of revocable trusts other than those covered under paragraph (b)(2). Land held by trusts in this category would be attributed to either the beneficiaries or to the trustee, depending on whether specified criteria are met. If the revocable trust, however, does not specify its grantors, the conditions under which it may be revoked, or to whom the land would revert upon revocation, the trusted land would be ineligible to receive irrigation water until these issues were resolved.

Application of this section is illustrated by the following examples:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively, and all meet the criteria set forth in § 426.7(b)(1). All trust beneficiaries are qualified recipients, and none has any landholdings outside of the trusts. Since all the trusts' land is attributable to the trust beneficiaries, and Reclamation determines all the beneficiaries are within their ownership and nonfull-cost entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water.

Example (2). Farmer A, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his daughter upon his death. The trust meets the criteria set forth in § 426.7(b)(1). The land is located in a district which has amended its contract to conform to the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer A dies, and the testamentary trust he has established is activated. The trust's land is attributable to the daughter as the sole trust beneficiary. Therefore, the trust's land is eligible to receive irrigation water at the nonfull-cost rate, assuming the daughter has not exceeded her acreage limitation entitlements as a result of this action.

Example (3). Farmer B, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the discretionary provisions. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the life tenant. The trust agreement satisfies the criteria of § 426.7(b)(1). The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall be attributed to Farmer B as her parent or to the person who is acting as her guardian.

Example (4). ABC Corporation, a prior law recipient, establishes a grantor revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. The trust agreement satisfies all criteria of § 426.7(b)(2). Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust are attributed to the corporation and to the corporation's stockholders in proportion to their percent of stock held in the corporation.

Example (5). Assume the same facts as in Example 4 above, except that Corporation X, a legal entity fully independent of ABC Corporation, contributes the 160 acres to the trust created by ABC Corporation. In this example, the 160 acres are attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met, namely, the 160 acres will revert in 10 years to the trustor (ABC Corporation), not the grantor, and the grantor does not have the power to revoke the trust. As such the trust is in fact an otherwise revocable trust

Example (6). Farmer C, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement satisfies all criteria of § 426.7(b)(2) and (3). It provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y of which Farmer C is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer C upon termination of the trust, 48 acres (960 times 5 percent) of the trust land are attributed to Farmer C. The remaining 912 acres of trust land is attributable to the beneficiaries of the trust. If Farmer C's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer C will change accordingly.

Section 426.8 of the existing regulations, *Operation and Maintenance (O&M) charges*, would be renumbered § 426.22. The proposed new § 426.8, *Religious or charitable organizations*, would replace § 426.15 of the existing

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he leases in this same district. Thus, Farmer

contract, the unpaid balance for full cost

Irrigation District's annual full-cost rate is

would be a new section devoted to

brother, who is designated as trustee for the

would replace § 426.15 of the existing

regulations. This section would describe the entitlements of these types of organizations.

Paragraph (a) would define religious or charitable organizations for the purpose of this section. The titles of paragraphs (b) and (c) would be modified to reflect their application to both the ownership and nonfull-cost entitlements of religious and charitable organizations. This change would eliminate the need for paragraph (d) in the existing regulation.

A more significant modification would change the consequences of failure by a subdivision of a religious or charitable organization to satisfy the three criteria established by the RRA. Under the current rules, failure by such a subdivision to meet these criteria results in the entire organization being reduced to the entitlements of a single limited recipient. Under the proposed rules, only the subdivision in question would be affected by its failure to meet the criteria; the central organization and other subdivisions would be unaffected.

The new language would also establish that the qualified or limited recipient status of a subdivision which fails to meet the three criteria would be determined by counting the subdivision's membership. Thus, most subdivisions which fail to meet the criteria would be treated as limited recipients.

Paragraph (d) on leasing would be deleted as unnecessary. The provisions establishing that religious or charitable organizations are treated either as qualified or limited recipients would eliminate any need for a separate statement regarding leasing. The proposed paragraph (d) on affiliated farm management would replace the existing paragraph.

Section 426.9 in the existing regulations, *Class 1 equivalency*, would be renumbered § 426.10. The proposed new § 426.9, *Public entities*, would replace § 426.17 of the existing regulations. This section would describe the application of acreage limitation laws to public entities and would be rewritten for clarity and organization. Paragraph (a) would define the term public entities for purposes of this section. Paragraph (b) would be rewritten to show that public entities are exempt from certain acreage limitation provisions rather than the land. The rephrasing would more accurately state Reclamation policy, as the land can become subject to ownership limitations through the holding of a lessee. Also, the wording of paragraph (d) would be changed to state that land leased from a public entity would count toward the lessee's ownership entitlement, rather than being worded as a prohibition of leasing in excess of ownership entitlements.

Section 426.10 in the existing regulations, *Information requirements*, would be replaced by §§ 426.17, *Landholder information requirements*, 426.18, *District responsibilities*, and 426.24 *Reclamation audits*. The proposed new § 426.10, *Class 1 equivalency*, would replace § 426.9 of the existing regulations.

Substantial editorial and organizational changes would be made throughout this section. The only substantive change would be in § 426.10(g). Provisions to this paragraph would prohibit application of class 1 equivalency in cases where irrigation of the land would result in hazardous or toxic return flows. This rule would affect existing equivalency determinations only if the land is reclassified for some reason.

The wording of paragraph (b) would be changed to make clear that only districts, and not individual landholders, can make requests to Reclamation for class 1 equivalency determinations. Individual landholders must work through their districts to obtain class 1 equivalency.

The following examples illustrate the application of § 426.10:

Example (1). Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have been determined to be: Class 1 equals 1.0, class 2 equals 1.20, and class 3 equals 1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply

- Class 1: 800 acres divided by 1.0 equals 800 acres class 1 equivalent
- Class 2: 300 acres divided by 1.2 equals 250 acres class 1 equivalent
- Class 3: 200 acres divided by 1.5 equals 133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any combination of class 1, 2, and 3 land that achieves the necessary result. If Farmer X desires to maximize his actual nonexcess acreage, he would declare 223 acres of class 1 land as excess and designate 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in productive capacity. Or, he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2 equals 160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

Example (2). A district with an existing contract decides not to amend its contract to conform to the discretionary provisions. However, an individual landholder within the district makes an irrevocable election to conform to these provisions. The landholder requests equivalency through the district, and the district requests Reclamation to make the equivalency determination for the entire district. Under such conditions, the district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landholder and the district would be a district matter. The application of equivalency would be available only to the landholder(s) who exercise an irrevocable election.

Example (3). A district decides to amend its contract to conform to the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and Reclamation has acted upon that request.

Example (4). Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of class 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus her 960-acre nonfull-cost entitlement) if she continued to receive irrigation water on that land. Once the equivalency determinations had been completed, Landholder X would be entitled to lease the equivalent of 960 acres of class 1 land at the nonfull-cost rate (something greater than 960 acres). Landholder X would also be reimbursed for certain full-cost payments made for land which became nonfull-cost as a result of the equivalency determination.

Example (5). Corporation Y is a limited recipient that owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Corporation Y was not receiving irrigation water on or before October 1, 1981. Thus, even with equivalency, Corporation Y would be required to pay the full-cost water rate for all land served in its landholding. (If Corporation Y had been receiving irrigation water on or before October 1, 1981, it would have been entitled to receive irrigation water on the equivalent of 320 acres of class 1 land at the nonfull-cost rate. Deliveries on the remaining 440 acres or less, depending on application of class 1 equivalency, would be at the full-cost rate.)

Example (6). Farmer Jones is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A,

requests and receives an equivalency determination. From the equivalency determination, Farmer Jones is shown to own the equivalent of 240 acres of class 1 land in District A. Farmer Jones is therefore entitled to purchase and receive irrigation water on an additional 80 acres of irrigation land (or the class 1 equivalent thereof in District A) in any district. He could also lease 80 acres (class 1 equivalent thereof in District A) in any district and receive irrigation water on that land at the nonfull-cost rate.

Example (7). Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and 400 acres in District A as excess. She has placed the 400 acres of excess land under recordable contract so that it can be irrigated while still in her ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract and redesignate it as nonexcess to take advantage of District A's equivalency determination, as provided in § 426.11(b) and (j)(5), if an appraisal of the excess land has not already been performed. The maturity date as determined in the original recordable contract, however, would not change.

Section 426.11 would be generally rewritten for conciseness.

The *In general* section has been deleted because the first sentence contained a definition of *excess land* redundant with that found in § 426.2.

Paragraphs (d) (2) and (3) of the existing regulation would be merged in paragraph (d)(2) of the proposed regulation.

In the proposed paragraph (j)(4)(i), paragraph (e) of the existing regulation, the new language would make clear that land subject to a recordable contract can receive irrigation water at a less-than-full O&M rate only if both the owner and the lessee are subject to prior law. The sentence from the current rules allowing recordable contract land to be selected as full-cost land was deleted because that issue is addressed in § 426.6.

Paragraphs 426.11(g) and (i) of the current rules would be deleted. These paragraphs apply to only a very small number of landholders who have pre-1982 recordable contracts. Reclamation proposes to not retain paragraphs in the CFR that (1) currently apply to only a few landholders, and (2) are likely to become completely obsolete in the next few years. These few landholders' recordable contracts will continue to be administered as provided in the existing rule.

Paragraph 426.11(i) of the proposed regulation, which corresponds to paragraph 426.11(h) of the existing regulation, would add a new paragraph to the deed covenant language. The proposed language would provide that the covenant terms, which permit removal of the covenant and eliminate the requirement for sale price approval, would not apply if the acquiring party is the party who originally held the land as excess. It should be noted that the provisions of the deed covenant would apply only when title to the land is transferred. Thus, the deed covenant would apply only to direct landowners, and would not apply to the sale or purchase of an indirect interest in a legal entity that is the direct landholder.

In paragraph 426.11(e) of the proposed regulation, which corresponds to paragraph 426.11(k) of the current regulation, a new provision has been proposed. This language would permit direct landowners to place under recordable contract certain land indirectly held by nonresident aliens or legal entities not established under State or Federal law. If such land is not placed under a recordable contract it would become ineligible as a result of implementation of the proposed regulation.

The proposed regulation would add a new paragraph (g) which would promote the intent of statutes concerning the disposal of excess land by prohibiting excess land sellers from receiving irrigation water if they lease back or reacquire the land either voluntarily or involuntarily. Such *lease back* or reacquisition situations, however, would be grandfathered if the agreement or transaction transferring the land back to the excess land seller takes place prior to July 1, 1995.

The proposed regulation would also add a new paragraph (h) which would provide for assessment of the compensation rate (see § 426.2), which has been Reclamation policy, and an administrative fee (see § 426.19) if ineligible excess land is irrigated in violation of Federal reclamation law and regulations.

Application of the section is illustrated by the following examples:

Example (1). Landowner A owns 1,200 acres of irrigable land in District S. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner A, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With Reclamation approval, Landowner A may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

Example (2). Landowner B is a U.S. citizen and a qualified recipient by virtue of District T's contract amendment to conform to the discretionary provisions. Landowner B purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's contract amendment, Landowner B designates 960 acres of his land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner B's land is class 3 land, and in District T, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner B may irrigate 1,344 acres of class 3 land in District T. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner B sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

Example (3). Farmer C, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer D, a qualified recipient, at a Reclamation-approved price. Farmer D owns no other irrigable land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer D sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer D purchases the latter parcel at a Reclamation-approved price because the land was excess in the seller's holding. However, since Farmer D has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Reclamation-approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Reclamation-approved price. After Farmer D sells that land at a Reclamation-approved price, he may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

Example (4). Landowner E is a resident alien and owns 480 acres of irrigable land in District X, which is subject to prior law. Landowner E has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District X amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner E satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

Example (5). Landowner F and his wife own 1,200 acres of irrigable land in District Y which is subject to prior law. They owned this land even before District Y entered into a repayment contract with the United States. Landowner F and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired. Landowner F makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner F becomes a qualified recipient, and is therefore entitled to redesignate 640

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that land leased from a public entity would count toward the lessee's

could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres

recipient and owns 320 acres in each of three districts. One of those districts, District A,

paragraph 426.11(h) of the existing regulation, would add a new paragraph

T's contract amendment to conform to the discretionary provisions. Landowner B

Landowner F becomes a qualified recipient, and is therefore entitled to redesignate 640

additional acres as nonexcess. Landowner F's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of Reclamation, as nonexcess.

Example (6). Landowner G is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner G purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner G has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner G makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions, Landowner G may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

Example (7). In 1986, Landowner H bought 160 acres of irrigable land from excess status in District Z. Landowner H, however, failed to get sale price approval from Reclamation. This land is ineligible for service in his holding unless the sale is reformed at a Reclamation-approved price. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Reclamation-approved price in order to become eligible to receive irrigation water.

Example (8). In 1980, Landowner I, a U.S. citizen, buys 1,920 acres of land in District U. In addition to its own water supply, District U wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, all direct landholders in the district automatically become subject to the discretionary provisions. As a qualified recipient, Landowner I may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner I places the land under recordable contract, sells it to an eligible buyer at a price approved by Reclamation, or receives Reclamation approval to redesignate the land as nonexcess. If Landowner I had purchased the 1,920 acres from nonexcess status in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Reclamation-approved price, the sale is cancelled, or he receives Reclamation approval to redesignate the land as nonexcess. The excess acres could not have been placed under recordable contract unless irrigation water had not been physically available when the land was purchased.

Example (9). Landowner J is a qualified recipient and owns 1,400 acres of irrigable land in District Z. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the nonfull-cost rate on all owned land in the district. Subsequently, Landowner J leases the 440 acres under recordable contract to Landowner K who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder K does not affect other terms of the recordable contract.

Example (10). Farmer L owns 160 acres of irrigable land in District V and 1,000 acres in District W. Districts V and W are both subject to prior law, and both have fixed-rate water service contracts which no longer cover actual operation and maintenance costs. Farmer L has designated the 160 acres in District V as nonexcess and has placed the 1,000 acres in District W under recordable contract. This means that Farmer L is able to receive irrigation water at the contract rate on all her owned land. Subsequently, District V amends its contract to become subject to the discretionary provisions. As provided in § 426.11(b)(1), Farmer L withdraws 800 acres from under recordable contract and redesignates that land as part of her 960-acre entitlement as a qualified recipient. Since Farmer L is now a qualified recipient, she must pay the full operation and maintenance costs applicable in each district for all land in her landholding, including the 200 acres remaining under recordable contract.

Example (11). Landowner M and his wife are U.S. citizens and own 320 acres of irrigation land purchased on or prior to December 6, 1979, and designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner M purchased an additional 280 acres in District E. District A amends its contract to conform to the discretionary provisions. Landowner M and his wife automatically and without benefit of choice become a qualified recipient and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price, the sale is cancelled, or the land is redesignated with Reclamation approval. The remaining 320 acres acres, however, have been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner M either sells it to an eligible buyer or places the land under a 5-year recordable contract. In either case, Landowner M can sell the land at fair market value.

Example (12). ABC Corporation, which was established under the laws of Switzerland, is owned by two stockholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District X and has designated 160 acres as nonexcess and eligible to receive irrigation water, and the remaining 320 acres as excess and ineligible. District X subsequently amends its contract to conform to the discretionary provisions. Thereby, ABC Corporation becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

Example (13). Corporation N, a foreign corporation owned by two stockholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered into its first contract with the United States, thereby becoming subject to the discretionary provisions. Corporation N, however, is not eligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. Since Corporation N's land had never been subject to prior law, it does not fall under the purview of § 426.11(e)(2). However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water by placing the land under a recordable contract requiring Reclamation sale price approval, as provided in § 426.11(e)(3)(i).

Example (14). Landholder O, a nonresident alien, is the sole stockholder in Corporation P, a qualified recipient legal entity registered in Idaho. In 1990, Corporation P purchased 960 acres of nonexempt land in District B. This land was all designated nonexcess under the then-current regulations. However, on the effective date of these regulations, Landholder O's ownership entitlement decreases to 160 acres, even for indirectly held land. The remaining 800 acres that become excess can continue to receive irrigation water if Corporation P places the land under recordable contract, and the land can be sold at fair market value and remain eligible if sold to an eligible buyer.

Example (15). Landholder P sold 500 acres of excess land to Landholder Q, and financed the purchase, in 1996. In 1998, Landholder Q defaults and Landholder P forecloses and repossesses the land. Upon transfer of the land's title back to Landholder P, the land becomes ineligible to receive irrigation water because that transaction took place after the effective date of these regulations. Furthermore, Landholder P may not make any part of the land nonexcess in his holding. Thus, Landholder P must sell the land to an eligible landholder at a Reclamation-approved price if it is to be eligible to receive irrigation water.

Example (16). Landholder R sold 500 acres of excess land to Landholder S in 1993. In 1994, Corporation T, of which Landholder R is the sole stockholder, leases the land from Landholder S. The land remains eligible until the expiration or termination date of the lease. If Corporation T renews the lease after the effective date of these regulations, the land becomes ineligible while the renewed lease is in effect, because of Landholder R's interest in Corporation T and the renewed agreement took effect after the effective date of these regulations.

Section 426.12. Editorial changes would be made to the existing regulation.

Section 426.13 in the existing regulation, *Exemptions*, would be renumbered § 426.15. The proposed new § 426.13, *Involuntary acquisition of land*, would replace § 426.16 of the existing regulations.

Paragraph (a) would define involuntarily acquired land. A change would be made to paragraph (e) of this section to reflect the changes discussed in § 426.11 regarding the reacquisition of formerly excess land by the party that originally held the land as excess.

Section 426.14 in the existing regulations, *Residency*, would be deleted because residency has not been a provision of acreage limitation law since it was repealed by the RRA in 1982. The proposed new § 426.14, *Commingling*, would replace § 426.18 of the existing regulations. Editorial changes would be made to the existing regulation.

The following examples illustrate the application of this section:

Example (1). District A has a distribution system constructed without funds made available pursuant to Federal reclamation law and irrigates land therein with nonproject surface supplies and ground water distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water as specified in § 426.14(c)(1) are subject to reclamation law. The district is not restricted in its use of the nonproject surface water or ground water, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the Reclamation irrigation water supply.

Example (2). District A has a contract with Reclamation for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the ground-water resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that ground water shall not be deemed to be in violation of reclamation law.

Note: Example 2 also is applicable to the issue of unavoidable ground-water recharge and can also serve as an example in § 426.15.

Example (3). A district has nonproject water available to deliver to lands considered not eligible (ineligible) for irrigation water under provisions of Federal reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities constructed with funds made available pursuant to Federal reclamation law without the nonproject water being subject to Federal reclamation law and these regulations. If the district agrees, with prior Reclamation approval, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by Reclamation, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an appropriate share of the cost to the Federal Government, including interest, of providing the service.

Example (4). The State of Euphoria has a water supply it wishes to transport in the same direction and elevation as planned in the Federal reclamation project. If Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal reclamation law and these regulations.

Example (5). District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility, District B. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B, and the irrigation water is in turn delivered to District A. District A is not subject to Federal reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal reclamation law and these regulations since it is the beneficiary of the exchange, i.e. a water supply.

Section 426.15 in the existing regulation, *Religious and charitable organizations*, would be renumbered § 426.8. The proposed new § 426.15, *Exemptions and exclusions*, would replace § 426.13 of the existing regulation.

This section would be rewritten for editorial changes and clarification. Paragraph (f) would be added to make clear that the RRA is not applicable to Indian trust or restricted lands.

It should be noted that a given contract action could be considered an additional or supplemental benefit pursuant to § 426.3 of this proposed regulation even though it neither invokes nor extends the application of acreage limitation laws in general. For example, Rehabilitation and Betterment Act contracts are considered additional and supplemental benefits under § 426.3 even though they would neither extend nor reinstate the application of acreage limitations, as provided in § 426.15.

Section 426.16 in the existing regulation, *Involuntary acquisition of land*, would be renumbered § 426.13. The proposed new § 426.16, *Small reclamation projects*, would replace § 426.21 of the existing regulation.

The only substantive changes that would be made to this section are in paragraph (a). A phrase would be added to reflect the fact that Small Reclamation Projects Act loans would be considered additional and supplemental benefits as provided in § 426.3 of the new regulation. In addition, language has been added to reflect Title III of Pub. L. 99–546 and its effect of reducing the acreage limitation entitlements from 960 to 320 acres for districts that enter into a new SRPA contract or amend their SRPA contract after October 27, 1986.

Section 426.17 in the existing regulation, *Land held by governmental agencies*, would be renumbered § 426.9. The proposed new § 426.17, *Landholder information requirements*, would replace, in part, § 426.10 of the existing regulation.

This section would be rewritten to address only the certification and reporting requirements of landholders. A new definition paragraph and section regarding district responsibilities (§ 426.18) would be added. This section would clarify district certification and reporting requirements. In addition, a new section concerning Reclamation audits (§ 426.24) would be added.

References to the contents of the certification and reporting forms would be deleted because a comprehensive list of these contents would be too unwieldy for these regulations, and a partial list would be inappropriate.

A paragraph on eligibility would be added stating that landholders that have not filed the required forms are not eligible to receive irrigation water. The phrase *must not accept delivery of* would be added to make clear that the landholder, as well as the district, is responsible for water deliveries in the absence of the required forms.

Wholly-owned subsidiaries would be specifically exempted from forms requirements, provided the ultimate parent legal entity has met its forms requirement.

The 40-acre certification and reporting exemption threshold would be replaced with a new system which would permit higher exemption thresholds for landholders in districts that meet the following requirements:

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Subsequently, Landowner J leases the 440 ineligible to receive irrigation water as a of these regulations.

district conformance by contract with the discretionary provisions; the district's financial obligations are not delinquent; and the district has entered into a formal resources management partnership with Reclamation. Districts that meet the requirements would be granted Category 1 status. Category 1 districts would be allowed exemption thresholds as high as 240 acres for qualified recipients and 80 acres for some limited recipients. The specific threshold for a district would be determined and documented in the partnership agreement with the district, based on factors such as the resources management objectives of the partnership and the achievements of the district(s) under the partnership. Landholders in districts which have not formed formal partnerships with Reclamation or do not meet the other two criteria, would remain in Category 2 status. Such districts would be subject to an 80-acre exemption threshold for qualified recipients and a 5-acre threshold for all limited recipients. For both categories, the exemption threshold for prior law recipients remains set at 40 acres.

The following examples illustrate the application of this section:

Example (1). Landholder A failed to submit the required certification forms to District X in 1994 and 1995. District X delivered, and Landholder A accepted delivery of, irrigation water in those years. Landholder A submitted certification forms for 1996; however, Landholder A's landholding is not eligible to receive irrigation water until he submits the necessary forms for 1994 and 1995.

Example (2). Corporation A, which is registered in Venezuela, owns 100 percent of the stock of Corporation B, which is registered in Iowa. Corporation B, in turn, owns 100 percent of the stock in Corporations C and D, each of which are registered in Arizona and own and irrigate nonexempt land in two different Arizona irrigation districts. The landholdings exceed applicable certification and reporting exemption thresholds. Corporation A, as a prior law parent legal entity, must submit reporting forms to both Arizona districts. The forms must describe the corporate structure and Corporation A's entire landholding, including those of its subsidiaries. Furthermore, any stockholders of Corporation A that exceed applicable reporting thresholds must submit the necessary forms in order for the landholding to be eligible. Corporations B, C, and D are not required to file.

Example (3). In September 1996, the management of District A enters into a formal partnership agreement with Reclamation to improve resources management in the district. The district and Reclamation agree to develop an integrated resources management plan and develop and implement an incentive pricing mechanism for the district. As part of the close working relationship with the district and the information generated by the partnership, and the fact that the other two requirements specified in § 426.17(h) have been met, the Regional Director determines that a 240-acre reporting threshold would be appropriate for qualified recipients in the district and an 80-acre threshold would be appropriate for limited recipients who first received irrigation water on or before October 1, 1981. The partnership agreement establishes these thresholds as part of Category 1 status for the district.

Example (4). Landholder A is a qualified recipient who leases 120 acres in District X and 40 acres in District Y. For 1997, District X achieves Category 1 status, but District Y does not. Landholder A is therefore subject to Category 2 thresholds and must certify in both districts in 1997 because his total landholding exceeds the 80-acre qualified recipient threshold of Category 2.

Example (5). Bank Y is a limited recipient and has 12,000 acres of involuntarily acquired excess landholdings, some of which are located in Category 2 districts. Bank Y has also designated 500 acres as nonexcess. Stockholder A, a qualified recipient, owns a 15 percent interest in Bank Y. Thus, Stockholder A is attributed with 1,800 acres of involuntarily acquired excess land and 75 acres of nonexcess land. The fact that most of its landholdings are involuntarily acquired does not afford Bank Y with any exemption with respect to certification thresholds; therefore, Bank Y is subject to Category 2 thresholds and must file certification forms. Stockholder A need not consider the bank's involuntarily acquired excess land in determining whether she is required to certify, but she must consider the 75 acres of attributed nonexcess land. Because she has not exceeded the 80-acre threshold applicable to qualified recipients in Category 2 districts, she is not required to file. However, had Stockholder A exceeded a certification or reporting threshold, she would have been required to include all land attributed to her, including that land involuntarily acquired, on her RRA form(s).

Example (6). Corporation E leases 640 acres in a Category 1 district which has a partnership agreement with Reclamation specifying 80 acre and 200 acre thresholds for limited and qualified recipient, respectively. Corporation E is 90 percent owned by Corporation F, 5 percent owned by Corporation G, and 5 percent owned by Farmer B. Corporations E and F are limited recipients that did not receive irrigation water on or before October 1, 1981. Corporation G is a limited recipient that received irrigation water on or before October 1, 1981, but currently has no landholding outside of Corporation E. Farmer B is a qualified recipient who also directly owns 320 nonexempt acres in the same district. Corporations E and F must both file because both have exceeded the applicable 5-acre threshold, and because Corporation E is not wholly owned by Corporation F. Corporation G need not file because it is subject to an 80-acre threshold, as specified in the district's partnership agreement with Reclamation. Farmer B must file because he has exceeded the applicable 200-acre threshold also specified in the district's partnership agreement with Reclamation.

Example (7). Farmer C owns 440 acres in a Category 1 district. After the district's last delivery in 1996, Farmer C buys another 40-acre parcel in the same district. Farmer C need not submit new forms until the start of the next irrigation season.

Section 426.18 in the existing regulation, *Commingling*, would be renumbered § 426.14. The proposed new § 426.18, *District responsibilities*, would replace, in part, § 426.10 of the existing regulation. This new section would be added to clarify the role of irrigation contracting entities in RRA administration and enforcement. Because this issue has caused some confusion and controversy in the past, it is considered desirable to explicitly establish district responsibilities in these proposed regulations.

The proposed changes to provisions of this section would be nonsubstantive, except the number of years districts will be required to retain expired RRA forms will be increased from 3 to 6 years. Some existing Reclamation policy not contained in the existing regulation, however, would be included. The proposed section would be included to help prevent future misunderstandings about districts' roles in RRA administration.

The application of this rule is illustrated by the following examples:

Example (1). Landholder A submitted to District X a certification form in 1988, then filed verification forms each year through 1993. He then filed a new certification form in March 1994. District X must retain Landholder A's 1988 certification form through March 2000; thereafter, it may be destroyed by the district.

Example (2). Same facts as Example 1, except that in October 1999 a Reclamation audit team requests that Landholder A's 1988 certification form be retained until January 2001. The district must retain the form until that date.

Example (3). Landholder B submitted to District X a certification form in 1985, and has submitted verification forms each year thereafter. District X must retain Landholder B's 1985 certification form as long as he continues to verify each year and, if he submits a new certification form, for 6 years thereafter.

Example (4). District Y delivers 2,000 acre-feet of irrigation water to Farmer C in 1996 at the contract rate of $10 per acre-foot. It is subsequently found that Farmer C used 100 acre-feet of that water to irrigate excess land. Therefore, the payments made by District Y to the United States for the water used to irrigate the excess land ($1,000) must be deposited into the Reclamation fund and not credited toward any obligation of District Y to the United States.

Section 426.19 of the existing regulation, *Water conservation*, would be deleted as water conservation would be the topic of a new regulation, part 427. The proposed new § 426.19, *Assessment of administrative costs*, would replace § 426.24 of the existing regulation.

The only proposed substantive change from the existing regulation would be to add irrigation of ineligible excess land as a violation subject to assessment of an administrative fee. Reclamation will base any changes to the assessment amount on Reclamation's costs for field observation; information analysis; communication with district representatives and landholders regarding possible cases of irrigation of ineligible excess land, or obtaining missing or corrected forms; assistance to landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements; performance of onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms or that irrigated ineligible excess land; and performance of other activities necessary to address form and excess land violations.

The following examples illustrate the application of this section:

Example (1). ABC Corporation holds irrigable land in District Y and in District Z and has three shareholders (Farmers A, B, and C). In both 1992 and 1993, ABC Corporation and each shareholder filed certification forms prior to receiving irrigation water in these districts. However, in each year, Reclamation found several errors on the forms the three shareholders had submitted in each district. The districts were given 60-calendar days in which to have the forms corrected and returned to Reclamation. All the corrected forms were returned by the designated due date, except for Farmer C's. Districts Y and Z will each be assessed a fee of $520 ($260 for each of the 1992 and 1993 water years) because Farmer C's forms were not corrected and returned within the specified time period.

Example (2). Farmer X owns 560 acres and leases 400 acres in District A. Each year, Farmer X submitted certification forms to the district prior to receipt of irrigation water. However, Reclamation found that in 1992 and 1993, Farmer X had reported all of his owned land on his form but only 150 of his 400 leased acres. Reclamation determines that this omission of information is not an attempt to defraud the Federal Government. Accordingly, the district will be required to obtain a corrected form, and if this is not accomplished in 60-calendar days, it will be assessed a fee of $520 ($260 for 1992, and $260 for 1993.)

Example (3). Farmer X and his wife, who are prior law recipients, own 480 acres in District A. None of the 160 acres in excess of the couple's 320-acre ownership entitlement was under recordable contract, as set forth in § 426.11, or otherwise eligible to receive irrigation water. However, Reclamation found that irrigation water had been delivered to the 160 excess acres in both 1992 and 1993. For the irrigation water delivered in these 2 years, District A will be assessed the compensation rate as set forth in § 426.11(h). An additional fee of $520 will also be assessed to the district ($260 each for 1992 and 1993)

Section 426.20 of the existing regulation, *Public participation*, would be renumbered § 426.21. The proposed new § 426.20, *Interest on underpayments*, would replace § 426.23 of the existing regulation.

A definition of underpayment is proposed as paragraph (a), and other editorial changes from the existing regulation would be made for clarity and organization.

Section 426.21 of existing regulation, *Small reclamation projects*, would be renumbered § 426.16. The proposed new § 426.21, *Public participation*, would replace § 426.20 of the existing regulation.

The only substantive change made would be in paragraph (8) of the current rule, which would be replaced by paragraph (b) of the proposed rule, to delete the *60-day* public comment period. The existing provision reduces Reclamation's flexibility to base the comment period on specific circumstances and is not a statutory requirement.

Section 426.22 of the existing regulation, *Decisions and appeals*, would be renumbered § 426.23. The proposed new § 426.22, *Recovery of operation and maintenance (O&M) costs*, would replace § 426.8 of the existing regulation.

This section would be rewritten for clarity. The proposed language would contain no substantive changes to existing policy.

Section 426.23 of the existing regulation, *Severability*, would be renumbered § 426.25. The proposed new § 426.23, *Agency decisions and appeals*, would replace § 426.22 of the existing regulation.

This section would be rewritten to streamline the appeals process and to enhance the protection of parties who may be adversely affected by RRA-related decisions.

The proposed language would require the appropriate regional director to make initial agency decisions. It would provide flexibility to the regional director in establishing the effective date of the initial decision, and would protect landholders by providing for a 10 calendar day delay before deliveries of water are terminated. Furthermore, affected parties would be able to request reconsideration of the initial decision.

The proposed language would permit regional directors to notify potentially affected parties if appropriate, and would allow any impacted party to use the appeal process whether or not the regional director gave notice of the particular agency decision. Parties who were not notified would have a longer period of time to initiate the appeals process than would parties who were notified of an initial decision. The proposed rules would also allow affected parties to request a stay of the regional director's initial decision while it is being reconsidered.

Following reconsideration by the regional director, affected parties would have the opportunity to appeal the final agency action directly to the Department of the Interior's Office of Hearings and Appeals. This change would streamline the review process by eliminating the Commissioner level of review provided by the existing regulation.

The proposed language would also provide for retroactive application of decisions (which is current practice) and application of the compensation rate in cases of illegal irrigation water deliveries.

The proposed language would validate any decisions made under the existing appeals process, and provide that appeals pending as of the effective date of the new regulation would be processed under the existing regulation.

Completion of this administrative appeals process would be required before parties may file suit in court regarding final agency determinations pursuant to part 426.

Section 426.24. The proposed § 426.24, *Reclamation Audits*, would replace § 426.10(i) of the existing regulation.

Section 426.25. The proposed § 426.25, *Severability*, would replace § 426.24 of the existing regulations.

Description and Analysis of Part 427

Reclamation has a major responsibility, in partnership with water users, States, Indian tribes, and other interested parties, to help improve water management and the efficiency of water use in nearly every major river basin in the Western United States. Water conservation measures can improve reliability and reduce costs for water users, and under some circumstances yield water for additional agricultural, urban, or environmental needs.

Opportunities for additional water conservation and efficiency improvements vary from system to system depending on factors such as delivery and storage facilities, operational practices, existing conservation measures, and the use or destination of "non-conserved" water (i.e., downstream appropriators, riparian habitat, groundwater recharge, estuary inflow, evaporation, etc.). To be most

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effective, water conservation measures must be evaluated on a site-specific basis and must be tailored to the circumstances of each water system and its local environment.

Preparation and implementation of water conservation plans by recipients of Reclamation project water is one aspect of Reclamation's overall water conservation program. Improvements in water management on Federal projects can reduce overall operating costs, improve reliability of existing water supplies, postpone the need for new or expanded water supplies, and reduce the impacts of drought.

The RRA challenges those who contract for Federal project water supplies to develop water conservation plans that examine existing water management practices, evaluate alternative water management strategies, and implement appropriate water conservation measures. A thoughtfully developed water conservation plan represents an opportunity for every district to identify water management problems, evaluate opportunities, highlight accomplishments, and plan for improvements.

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

Section 427.1 explains the purpose of these rules and regulations, § 427.2 describes conservation plan requirements, and § 427.3 describes incentives for preparing adequate water conservation plans.

Section 427.4 references additional information that will be available from Reclamation in the form of Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

The Guidelines and Criteria are currently undergoing a public review that began on January 10, 1995 and will end on April 10, 1995. Upon completion of this review period, Reclamation intends to finalize the Guidelines and Criteria as guidance in the development and approval of water conservation plans.

Although the Guidelines and Criteria are not part of the proposed rules and regulations, they were included as part of the proposed rule alternative in the draft EIS. This allowed an evaluation of the proposed rules in combination with the Guidelines and Criteria. Although page 2–18 of the draft EIS states that the Guidelines and Criteria are included as an appendix to the rules, it was decided it was not necessary to print the Guidelines and Criteria with the proposed rules. A copy of the Guidelines and Criteria may be obtained by calling Mr. Craig Phillips at (303) 236–1061 ext. 265 or by contacting any Bureau of Reclamation Regional Office.

Public Comment

Public comment is solicited on all aspects of this proposed rulemaking. Reclamation will consider all comments received. All those wishing to make comments are advised that, pursuant to the Administrative Procedure Act (5 U.S.C. 551, 553), all information provided to Reclamation will be available for public inspection.

To assist Reclamation in compiling and analyzing comments, it is requested that comments be grouped according to the two separate parts (i.e. part 426 and 427) of the proposed rule. However, it is not required that comments be so organized.

Oral comments on the proposed rules will be accepted at public hearings which will be conducted in April 1995 on the proposed rules and regulations and on the draft EIS which evaluates these proposed rules and regulations. Hearings will be announced in a separate **Federal Register** notice.

National Environmental Policy Act

In compliance with the NEPA, a draft EIS has been prepared which analyzes the impacts of these proposed rules and regulations and alternatives thereto. The draft EIS includes a no action alternative, a preferred alternative (which is the proposed rule), and three additional alternatives encompassing a range of potential rules and regulations. The draft EIS is being published and distributed for public review concurrent with the publication of these proposed rules and regulations.

Environmental Compliance, Review, and Consultation Requirements

The EIS and related coordination activities described below will provide full compliance for the promulgation of final rules and regulations. However, any future actions taken pursuant to final rules and regulations by the Federal government or by contracting entities (e.g., irrigation districts, drainage districts, municipal and industrial water districts, etc.) shall be subject to the requirements of all applicable Federal environmental laws including, but not limited to, the NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Historic Preservation Act, and laws relating to Indian treaty and trust reponsibilities.

This EIS has been prepared concurrently with environmental review and consultation required by Federal environmental law other than NEPA, as required by 40 CFR 1502.25. Compliance with specific environmental review and consultation requirements is described below.

Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires Federal agencies to consult with the Fish and Wildlife Service, National Marine Fisheries Service (as applicable), and state wildlife agencies during the planning of new projects and for modifications to existing projects (e.g., whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever) so that wildlife resources receive equal consideration along with other project objectives and features.

Compliance with the FWCA requires: (1) Consultation, (2) opportunity for the Fish and Wildlife Service, the National Marine Fisheries Service, and the State wildlife agency to report, (3) consideration of FWCA report recommendations, (4) incorporation of justifiable wildlife features into a recommended plan or action, and (5) incorporation of the FWCA report as an integral part of the decision making package submitted to Congress or to any agency or person having the authority by administrative action to authorize construction of a project or modification of a previously authorized project.

In meetings and correspondence between Reclamation and the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies, it was agreed that a formal FWCA report would not be required for this rulemaking. Rather, coordination efforts with the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies were handled by those agencies providing technical assistance to

Reclamation, which assistance has been appropriately documented. Detailed FWCA coordination and formal reports will be accomplished for specific sites in the future as the need and opportunity arises (e.g., amendment or renewal of specific repayment or water service contracts which are subject to these regulations).

The EIS that accompanies this proposed rulemaking contains a description of the general FWCA compliance process and makes the commitment to deal with site-specific issues as they come up in the future when a site-specific Federal action is taken. The EIS does not satisfy the site-specific need for future compliance with the FWCA.

Endangered Species Act (16 U.S.C. 1521, et seq.)

The objective of the Endangered Species Act (ESA) is to provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such species. It is further stated in the ESA that it is the policy of the Congress "that all Federal Departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the Act." The ESA further states that "Federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species."

Section 7 of the ESA establishes the interagency cooperation program under which Federal agencies have their primary compliance responsibilities. In meetings between Reclamation and the Fish and Wildlife Service and National Marine Fisheries Service, it was agreed that the way to comply with the ESA for the purposes of this rulemaking would be to use section 7(a)(1) of the ESA and describe, in broad terms, the general effects of actions associated with new or revised regulations. Thus, Reclamation initiated informal ESA consultation on a broad spectrum basis and requested a list of federally proposed or listed threatened, endangered, and candidate species from the Fish and Wildlife Service and the National Marine Fisheries Service.

A tiering process will be used down to a level more appropriate to section 7(a)(2) of the ESA, whereby consultation will be initiated if and when site-specific analyses becomes necessary, such as with the amendment or renewal of specific repayment or water service contracts. The EIS indicates that if Reclamation consults under Section 7 of the ESA, individual landowners will not have to go through Section 10 compliance on their own.

National Historic Preservation Act (15 U.S.C. 470, et seq.)

The National Historic Preservation Act of 1966, (NHPA), as amended, is the basic Federal law governing preservation of cultural resources of national, regional, state, and local significance. Specifically, section 106 of the NHPA requires each Federal agency to consider the effect of its actions on "any district, site, building, structure or object that is included in or eligible for inclusion in the National Register". Furthermore, an agency must afford the Advisory Council on Historic Preservation, an independent Federal agency created by the National Historic Preservation Act, an opportunity to comment on any of the agency's undertakings that could affect historic properties. Procedures for meeting section 106 requirements are defined in Federal regulations 36 CFR part 800. Other Federal legislation further promotes and requires the protection of historic and archaeological resources by the Federal government. Among these laws are the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act.

Informal consultation with the Advisory Council on Historic Preservation to apprise them that this rulemaking has been initiated. The draft EIS will be sent to the Council and the 17 western State Historic Preservation Offices for official comment. Procedures prescribed in 36 CFR part 800 will be followed for future site-specific Federal actions pursuant to these rules that trigger compliance under NHPA.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that a regulatory flexibility analysis, describing the impact of regulations on small entities be prepared and published if proposed regulations will have a significant economic effect on a substantial number of small entities. It has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each landholder must certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the Act, and (2) districts must annually submit to Reclamation, in a form suitable to the Secretary, records and information necessary to implement the RRA. These requirements are presently promulgated in 43 CFR 426.10. To comply with these requirements, Reclamation provides forms for the landholders' and districts' use. The existing landholder forms have been approved by the Office of Management and Budget (OMB) under clearance number 1006–0005. This clearance expires on October 31, 1995. The district summary forms have been approved under clearance number 1006–0006; that clearance expires on July 31, 1995.

This proposed rulemaking contains a change to the existing § 426.10 that would reduce the reporting burden by raising the acreage threshold for which certification and reporting forms are required. The estimated average annual paperwork reduction which would occur if the proposed revisions to § 426.10 are made final is about 3100 hours per year westwide. It is estimated that the proposed rule's changes to the definition of what constitutes a lease will cause a slight increase of burden hours for farm operators who do not now have to complete forms. The net reduction would be approximately 3000 hours per year westwide and will reduce the paperwork burden by about 20 percent compared to current requirements, which are approximately 14,400 hours.

Section 427.2 of the proposed water conservation rules require that water districts and other entities prepare and submit water conservation plans Reclamation will be requesting OMB approval for collection of information contained in water conservation plans consistent with the requirements of the Paperwork Reduction Act

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this proposed rule is a significant regulatory action within the meaning of the Executive Order.

Executive Order 12612, Federalism

This rule has no significant impact on Federalism under Executive Order 12612. The regulations affect State/Federal relations in three ways, none of which are significant. First, while the

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rules involve state water, consistent with section 8 of the Reclamation Act of 1902, 43 U.S.C. 383, these regulations do not affect state control of irrigation water rights. Second, the rules relate extensively to state organized irrigation districts. However, these proposed regulations would serve to clarify the existing Reclamation-district relationship and would not affect a significant change in policy. Finally, while the regulations address the commingling of Reclamation and non-reclamation water, the rules do not change existing policy.

Executive Order 12630, Takings

This proposed rule has been reviewed under Executive Order 12630 to determine the takings implications of the proposed rule. Because districts and individual water users hold only contractual rights to services provided by Reclamation and the proposed rule would have only a de minimus impact on the value of any Constitutionally-protected property right if such right exists, it has been determined that this proposed rule does not present a significant risk of a taking.

Authorship: The primary authors of these proposed regulations are Gary Anderson, J. William McDonald, Richard Rizzi, and Rusty Schuster, Program Analysis Office, Bureau of Reclamation; however, much of the substance of the regulations was developed by RRA and water conservation experts throughout Reclamation.

List of Subjects in 43 CFR Part 426 and 43 CFR Part 427

Administrative practice and procedure, Irrigation, Reclamation, Reporting and record keeping requirements.

Dated: March 22, 1995.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, it is proposed that 43 CFR part 426 be revised as follows and that 43 CFR part 427 be added as follows:

Part 426 is revised to read as follows:

PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

Sec.

426.1 Purpose.
426.2 Definitions.
426.3 Conformance to the discretionary provisions.
426.4 Attribution of land.
426.5 Ownership entitlement.
426.6 Leasing and full-cost pricing.
426.7 Trusts.
426.8 Religious or charitable organizations.
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426.10 Class 1 equivalency.
426.11 Excess land.
426.12 Excess land appraisals.
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426.14 Commingling.
426.15 Exemptions and exclusions.
426.16 Small reclamation projects.
426.17 Landholder information requirements.
426.18 District responsibilities.
426.19 Assessment of administrative costs.
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426.21 Public participation.
426.22 Recovery of operation and maintenance (O&M) costs.
426.23 Agency decisions and appeals.
426.24 Reclamation audits.
426.25 Severability.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505; 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

§ 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects, the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

§ 426.2 Definitions.

As used in these rules:

Acreage limitation entitlements means the ownership and nonfull-cost entitlements.

Acreage limitation provisions means the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

Acreage limitation status means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

Commissioner means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

Compensation rate means a water rate applied, in certain situations, to water deliveries to ineligible land that are not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would otherwise apply to the landholder.

Contract means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

Contract rate means the assessment as set forth in a contract that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

Dependent means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

Direct when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

Discretionary provisions refers to sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982, (43 U.S.C. 390aa *et seq.*).

District means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

Eligible, except where otherwise provided, means permitted to receive an irrigation water supply from a Bureau of Reclamation project under applicable Federal reclamation law.

Entity, see definition of *legal entity*.

Excess land means nonexempt land that is in excess of the landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

Exempt, except where otherwise provided, means not subject to the acreage limitation provisions of Federal reclamation law.

Extended recordable contract means a recordable contract whose term was extended due to moratoriums on the sale of excess land that were established in 1976 and 1977.

Full cost or *full-cost rate* means an annual rate established by the Bureau of Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and

maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

Full-cost charge means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

Indirect, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations.

Individual means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

Ineligible, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

Intermediate entity means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

Involuntary acquisition means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

Irrevocable election means the legal instrument that a landholder executes to become subject to the discretionary provisions of Federal reclamation law.

Irrevocable elector means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

Irrigable land means land so classified by the Bureau of Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

Irrigation land means any land receiving irrigation water in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

Irrigation water means water made available for agricultural purposes from the operation of Reclamation project facilities.

Landholder means a party that directly or indirectly owns or leases nonexempt land.

Landholding means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

Lease means any arrangement between a landholder (the lessor) and another party (the lessee) under which possession of the lessor's land is partially or wholly transferred to the lessee. Possession means the authority to make, or prevent the lessor from making, decisions concerning the farming enterprise on the land; or the assumption of economic risk with respect to the farming enterprise on the land. In situations where possession has been partially transferred from a landholder to another party, a lease will be considered to exist if the majority of possession is not held by the potential lessor. In situations where possession has been transferred from a landholder to more than one other party, a lease will be considered to exist between the lessor and the party holding the greatest degree of possession.

Legal entity means, but is not limited to, corporations, partnerships, trusts, organizations, associations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common.

Limited recipient means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Nondiscretionary provisions means section 390cc(b) and 390hh through 390zz–1 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.).

Nonexempt land means irrigation land or irrigable land that is subject to the acreage limitation provisions of Federal reclamation law. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by that landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

Nonfull-cost entitlement means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

Nonfull-cost rate means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

Nonresident alien means any natural person who is neither a citizen nor a resident alien of the United States.

Operation and maintenance costs or *O&M costs* means all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

Ownership entitlement means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

Part owner means an individual or entity that has a beneficial interest in an entity, but does not own 100 percent of that entity.

Prior law means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), and as amended by the Reclamation Reform Act of 1982.

Prior law recipient means an individual or legal entity that has not become subject to the discretionary provisions. All nonresident aliens and legal entities not registered under State or Federal law will be considered prior law recipients, and shall have entitlement and eligibility only as prior law recipients.

Project means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through the Bureau of Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

Public entity means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

Qualified recipient means an individual who is a citizen or a resident alien of the United States or any legal

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providing for the payment to the United

service, including all operation and

provided or are planned to be provided.

corollary permanent structures such as

alien of the United States or any legal

entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation fund means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

Recordable contract means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

Resident alien means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

RRA means the Reclamation Reform Act of 1982, Public Law 97–293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

Secretary means Secretary of the Interior.

Standard certification or reporting forms means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

Westwide means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

§ 426.3 Conformance to the discretionary provisions.

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.15 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract solely to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and

(iii) If Reclamation amends the contract, the district becomes subject to the discretionary provisions from the date the district's request was made; or

(3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:

(i) The discretionary provisions apply as of the date that the Secretary executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions, Reclamation considers all contract amendments as providing additional or supplemental benefits, except as specified in paragraphs (a)(3)(iii) or (iv) of this section. This includes loans made under the following acts that require amendment of a district's existing contract:

(A) Rehabilitation and Betterment Act (43 U.S.C. 504);

(B) Small Reclamation Projects Act (43 U.S.C. 422);

(C) Distribution Systems Loan Act (43 U.S.C. 421); and

(D) Emergency Fund Act (43 U.S.C. 502);

(iii) for purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as not providing additional or supplemental benefits if that amendment:

(A) Does not require the United States to expend significant funds;

(B) Does not require the United States to commit significant additional water supplies; or

(C) Does not substantially modify contract payments due the United States; and

(iv) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:

(A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;

(B) Minor drainage and construction work contracted under an existing repayment or water service contract;

(C) Operation and maintenance (O&M) amendments;

(D) The deferral of payments provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.15(d);

(F) The transfer of water on an annual basis from one district to another, provided that;

(1) Both districts have contracts with the United States;

(2) The rate paid by the district receiving the transferred water:

(i) Is the higher of the applicable water rate for either district;

(ii) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and

(iii) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and

(3) The recipients of the transferred water pay a rate for the water that is at least equal to the actual operation and maintenance costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;

(G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or

(H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.

(b) *Districts that are subject to prior law.* Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remain subject to prior law unless and until the district:

(1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in § 426.3(a)(1);

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in § 426.3(a) (2) or (3); or

(3) Becomes exempt, as provided in § 426.15.

(c) *Standard RRA contract article.*

(1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions through the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract are subject to Federal reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

(2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions

after the effective date of these rules must include the following clause:

> The parties agree that the delivery of water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.
>
> The contracting officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State as they now or hereafter exist, and the rules and regulations promulgated by the Secretary of the Interior. These determinations shall be made in consultation with the contractor.

(d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions.* If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:

(1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

(2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.

(e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions.* If a district conforms to the discretionary provisions and the landholder is:

(1) Other than a nonresident alien or a legal entity that is not registered under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and that acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.

(2) A nonresident alien, or legal entity not registered under State or Federal law, and the landholder is:

(i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:

(A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and

(B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.11; or

(ii) An indirect landholder, then such a landholder, as a prior law recipient, may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, but such holdings cannot exceed the landholder's prior law entitlements.

(f) *Landholder actions to conform to the discretionary provisions.*

(1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:

(i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;

(ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

(iii) An irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity;

(iv) An irrevocable election by a member of a legal entity binds only the member making the election and not the entity or other members of the entity; and

(v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.

(2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:

(i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.17;

(ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;

(iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification or reporting forms(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;

(iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;

(v) The district(s) shall retain the forms; and

(vi) If the irrevocable election is disapproved, the landowner and the district will be advised by letter along with the reasons for disapproval.

(3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not registered under state or Federal law, may make an irrevocable election also by simply submitting a certification form. An election made in this manner is binding in all districts in which such elector holds land.

(g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an independent investigation of the information.

(h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective on April 12, 1987.

§ 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, landholders cannot increase acreage limitation entitlements or eligibility by acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.

(b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:

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(1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and

(2) Indirect landowners in proportion to the indirect beneficial interest they own in the entity that directly owns the land.

(c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in § 426.4 (b) and (d).

(d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.

(e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.

(f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, land will be attributed in its entirety to all direct and indirect landholders. If the interests in a legal entity are:

(1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or

(2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

§ 426.5 Ownership entitlement.

(a) *General.* Except as provided in §§ 426.11 and 426.13, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.9.

(b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt land, or the class 1 equivalent thereof. This entitlement applies on a westwide basis.

(c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the class 1 equivalent thereof. This entitlement applies on a westwide basis.

(d) *Prior law recipient ownership entitlement.*

(1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity as follows:

(i) Individuals subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;

(ii) Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;

(iii) Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres;

(iv) Children are each entitled to receive irrigation water on a maximum of 160 acres, regardless of whether they are independent or dependent;

(v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;

(vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and

(vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.

(2) Prior law recipient ownership entitlements, specified in this section, apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis. For any land acquired after that date, prior law ownership entitlements apply on a westwide basis.

§ 426.6 Leasing and full-cost pricing.

(a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements.

Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.

(1) The lease must be in writing;

(2) The lease includes the effective date and term of the lease, the length of which must be:

(i) 10 years or less, including any exercisable options; or

(ii) Equal to the average life of the perennial crop grown on the land, if the crop has a life longer than 10 years. In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description of the land subject to the lease;

(4) Signatures with signature dates of all parties to the lease are included;

(5) The lease includes the date(s) lease payments are due and the amounts of the payment required;

(6) The lease must be available for Reclamation's inspection and Reclamation must review and approve all leases for terms longer than 10 years; and

(7) if either the lessor or the lessee is subject to the discretionary provisions, the lease must provide for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land.

(b) *Nonfull-cost entitlements.*

(1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof.

(2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.

(3) The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be considered.

(c) *Application of the nonfull-cost and full-cost rates.*

(1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

(2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the amount of leased land that exceeds that entitlement.

(3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any eligible land that exceeds their nonfull-cost entitlement.

(d) *Types of lands that count against the nonfull-cost entitlement.*

(1) All directly and indirectly owned irrigation land and irrigation land leased for any period of time during one water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.11 and 426.13; and

(ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.

(2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:

(i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any one water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional land leased by that landholder in that water year may be irrigated only at the full-cost rate; and

(iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.

(e) *Selection of nonfull-cost land.*

(1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full cost rate. Selections for full-cost or nonfull-cost land may include:

(i) Leased land;

(ii) Nonexcess owned land;

(iii) Land under recordable contract, unless that land is already subject to application of the full cost rate under an extended recordable contract; or

(iv) A combination of all three.

(2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding for the remainder of that water year.

(f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

(g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.

(h) *Calculating full-cost rates.* Reclamation will calculate a district's full-cost rate using accepted accounting procedures and under the following conditions.

(1) The full-cost charge does not recover interest retroactively before October 12, 1982, but interest on the unpaid balance does accrue from October 12, 1982; where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.

(2) The full-cost rate will be determined:

(i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and

(ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.

(3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.

(4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.

(5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.

(6) In determining full-cost charges, the following factors will be considered:

(i) *Amortization period.* The amortization period for calculating the full-cost charge will be the remaining balance of:

(A) The contract repayment period as of October 12, 1982 for contracts entered into before October 12, 1982;

(B) The contract repayment period for contracts entered into on or after October 12, 1982;

(C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and

(D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;

(ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as

(A) Planning;

(B) Design;

(C) Land;

(D) Rights-of-way;

(E) Water-rights acquisitions;

(F) Construction expenditures;

(G) Interest during construction; and

(H) When appropriate, transfer costs associated with services provided from other projects;

(iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;

(iv) *Operation and maintenance deficits funded.* Operation and maintenance (O&M) deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;

(v) *Payments received.* In calculating the payments that have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:

(A) Direct repayment contract revenues;

(B) Net water service contract income,

(C) Contributions;

(D) Ad valorem taxes; and

(E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;

(vi) *Interest rates.* Interest rates to be used in calculating full cost charges will be determined by the Secretary of the Treasury as follows:

(A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the

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applies on a westwide basis.

meets the following requirements.

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bearing marketable issues sold by the

Treasury during the fiscal year the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:

(1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year the expenditures are made; and

(2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;

(B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined on the arithmetic average as follows, based on the average interest rates and yields during the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982:

(1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and

(2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.

(C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.

(i) *Direct and proportional charges for full-cost water.* In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:

(1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or

(2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(j) *Disposition of revenues obtained through full-cost water pricing.*

(1) *Legal deliveries.* If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:

(i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

(ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and

(iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law.

(2) *Illegal deliveries.* Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation or O&M account of the district or project.

§ 426.7 Trusts.

(a) *Definitions for purposes of this section:*

Irrevocable trust means a non-revocable trust that holds irrigable land or irrigation land.

Grantor revocable trust means a trust which holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated at a specified point in time, in such a manner that revocation results in reversion of the land to the grantor(s), either directly or indirectly.

Otherwise revocable trust means a trust that holds irrigable land or irrigation land and that is revokable or terminable by the terms prescribed by the trust, and the revocation or termination results in the title to the land held in trust reverting either directly or indirectly to a person or entity other than the grantor.

(b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed is determined according to §§ 426.5 and 426.6, and any other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust as follows:

(1) For land held in an *irrevocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the following criteria are met If the trust fails to meet any portion of the criteria listed in paragraph (b)(1) (i) or (ii) of this section then Reclamation attributes the land held in the trust to the trustee.

(i) The trust is in written form and approved by Reclamation; and

(ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

(2) For land held in a *grantor revocable trust*, the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the following criteria are met. If the trust fails to meet any portion of the criteria listed in paragraph (b)(2) (i), (ii), (iii), or (iv) of this section, then the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in § 426.7(b)(1);

(ii) The grantor(s) of all land held by the trust is identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is identified within the trust document.

(3) For land held in an *otherwise revocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in § 426.7(b)(1) and the trust meets the additional criteria specified in § 426.7(b)(2).

(i) If the trust fails to meet the criteria listed in § 426.7(b)(1), but does meet the additional criteria listed in § 426.7(b)(2), then the land is attributed to the trustee.

If the trust fails to meet the additional criteria listed in § 426.7(b)(2), then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in § 426.7(b)(2).

(c) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revised his or her grantor revocable trust that meets the criteria specified in § 426.7(b)(2), in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

§ 426.8 Religious or charitable organizations.

(a) *Definition for purposes of this section:*

Religious or charitable organization means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxation under section 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations which are subject to the discretionary provisions.*

(1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;

(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrue to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, then Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) Less than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.*

(1) Reclamation treats each congregation, chapter, parish, school, ward, or other subdivision of a religious or charitable organization as an individual, prior law corporation, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation must treat the entire organization, including all subdivisions, as a single prior law corporation if the central organization or any associated subdivisions do not meet the criteria specified in § 426.8(b)(1).

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of record of the land being operated.

§ 426.9 Public entities.

(a) *Definition of public entities.* For purposes of this section *public entities* means States, political subdivisions or agencies thereof, and agencies of the Federal government.

(b) *Application of the acreage limitation provisions to public entities.* Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.17.

(c) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell irrigable lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(d) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership entitlement.

§ 426.10 Class 1 equivalency.

(a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis the acreage of land with lower productive potential (classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(3) Once the class 1 equivalency determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to adjust, for acreage limitation entitlement purposes, their actual landholding acreage to its class 1 equivalent acreage.

(4) In a district subject to prior law, class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(b) *Who may request a class 1 equivalency determination?* Only districts may request class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of class 1 land.*

(1) Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

in use, to the satisfaction of Reclamation, to reasonably determine

trust are only limited by the acreage limitation entitlements of the trustees,

additional criteria listed in § 426.7(b)(2), then the land is attributed to the trustee.

criteria, only that subdivision and any

primarily for nonrevenue producing

that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.

(d) *Determination of land classes.* The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if the Commissioner determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the cost of all other studies inherent in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for class 1 equivalency determinations.* Economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(4) District requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(f) *Use of class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in § 426.10(d) using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, class 1 equivalency will not be applied until a final determination has been made by Reclamation on the district's request for equivalency.

(i) Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under this section and notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as

determined in the absence of class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(g) *Exception to use of class 1 equivalency factors.* Prior to the application of class 1 equivalency to any land not subject to class 1 equivalency on the effective date of these rules, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows. In addition, when any land subject to class 1 equivalency on the effective date of these rules is reclassified for any reason, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows.

(1) Reclamation will make reasonable efforts to specifically identify any land that could contribute to hazardous or toxic return flows.

(2) Increased acreage entitlements as a result of class 1 equivalency will not be permitted on land whose irrigation Reclamation finds could contribute to hazardous or toxic irrigation return flows.

(3) On land for which application of class 1 equivalency will be revoked as a result of this paragraph (g), such revocation will take place at the beginning of the irrigation season following Reclamation's determination.

(4) The cost of performing the analyses required by this paragraph (g) will be the responsibility of the requesting district.

(h) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.11 Excess land.

(a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess and nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(1) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30 calendar days of the notification;

(2) If the landowner fails to make the designation within 30 calendar days of notification, the district will make the designation within 30 calendar days thereafter; or

(3) If the district does not make the designation within its 30 calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt irrigable land or irrigation land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60 calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60 calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.*

(1) The designation of excess and nonexcess land must be filed with the district(s) in which the land is located and with Reclamation and is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in § 426.11(j)(5); or

(iii) The excess land becomes eligible to receive irrigation water as a result of equivalency determinations, as provided in § 426.10.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or class 1 equivalent acreage) through the redesignation.

(c) *Land that becomes excess when a district first contracts with Reclamation*

(1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(iii) Sells such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iv) Redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(ii) Sells such excess land to an eligible buyer in a sale or transfer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

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project development process since 1924. fulfill them expeditiously, priority will landholder's nonfull-cost entitlement as

(d) *Land acquired into excess after the district has already contracted with Reclamation.*

(1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(B) The landowner sells such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(ii) Irrigation water was physically not available when the landowner acquired the land, then the land is ineligible to receive water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in § 426.11(b)(1)(i);

(B) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled;

(D) The landowner places the land under recordable contract when water becomes available; or

(E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(2) If the landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed after October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:

(A) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:

(A) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law and regulations.*

(1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:

(i) If the landowner acquired such land before the date of the district's contract:

(A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or

(B) Sells the land to an eligible buyer subject to Reclamation sales price approval; or

(ii) If the landowner acquired such land after the date of the district's contract, the landowner sells such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before July 1, 1995, by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of these rules is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is transferred without approval or in violation of other requirements.*

(1) If a landowner purchases land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(i) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or

(ii) Such landowner sells the land to an eligible buyer at a price approved by Reclamation.

(2) If a landowner acquires land for which irrigation water is available and by that acquisition places himself or herself in an excess status, the land so acquired cannot be placed under recordable contract. The landowner must sell the land to an eligible buyer at a price approved by Reclamation, in order for such land to again be eligible.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not under any circumstances make available irrigation water to excess land of which a landholder disposes, if the landholder subsequently becomes a direct or indirect landholder of that land, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to July 1, 1995; or

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law.

(h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water

delivered to ineligible excess land in violation of Federal reclamation law and these regulations:

(1) The appropriate compensation rate for irrigation water delivered; and

(2) Any other applicable fees.

(i) *Deed covenants.*

(1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the purchaser in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97–293 (43 U.S.C. 390, *et seq.*). This covenant expires on (date). Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to section 46 of the Act entitled "an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes," enacted May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record; and

(v) Paragraphs (i) through (iv) above shall not apply if the acquiring party specified therein is the party whose excess ownership originally required the placement of this covenant. Furthermore, the party whose excess ownership originally required the placement of this covenant may not under any circumstances receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee.

Note: 1. Clause (v) of this covenant shall only be required on those covenants placed in deeds transferring land after the effective date of these regulations.

2. The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.

(3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

(4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then the deed covenant must be terminated by Reclamation upon the landholder's request.

(j) *Recordable Contracts.*

(1) *Qualifications for recordable contracts.* A landowner can make excess land eligible by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The landowner's water district's contract with Reclamation;

(ii) Federal reclamation law; and

(iii) These regulations.

(2) *Clauses to be included in recordable contracts.* A recordable contract must include:

(i) A clause whereby the landowner agrees to dispose of the excess land, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.12; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and

(ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.

(3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.

(4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

(i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance costs;

(ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, the annual operation and maintenance costs; or

(iii) If a lessee holds land under a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which full-cost will be charged for the delivery of irrigation water.

(5) *Amending a recordable contract to include less acreage.* Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(i) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(ii) Land becomes eligible by implementation of class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land

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landowner is cancelled; or

contract:

charge the following for irrigation water

under these rules within the period specified, whether Reclamation gives any needed final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to § 426.11(j)(4), to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) a qualified surveyor must make a land survey, as determined necessary by Reclamation. The United States will pay for the survey initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.12 of these regulations, to determine the appropriate sale price. The United States will pay for the appraisal initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land. The notices must state:

(A) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) that Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sale price; and

(C) the date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sale arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed restricting any further resale of the land, as specified in § 426.11(i).

§ 426.12 Excess land appraisals.

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in § 426.12(c)(1) as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.*

(1) The appraiser will consider nonproject water supply factors, where appropriate, including:

(i) Ground water pumping lift;

(ii) Surface water supply;

(iii) Water quality; and

(iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation may develop the nonproject water supply and trend information with the assistance of:

(i) The district in which the land is located, if the district desires to participate;

(ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and

(iii) Public meetings and forums, at the discretion of Reclamation.

(3) Data submitted may include:

(i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60 calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is an existing signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The excess land's first appraisal, the United States will initially pay the costs of appraising the excess land's value, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land; or

(2) Not the excess land's first appraisal, the landowner must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within § 426.12(g).

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one

designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in § 426.12(h).

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

(1) Technical accuracy and compliance with these rules and regulations;

(2) Applicable portions of the "Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973," as revised in 1992;

(3) Reclamation policy; and

(4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

§ 426.13 Involuntary acquisition of land.

(a) *Definitions.*

For purposes of this section *involuntarily acquired land* is land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, commencing when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.11(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract, if the landowner, to the extent the land continues to be excess in his or her landholding:

(1) Assumes the recordable contract; and

(2) Executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a new landowner through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sale price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sale price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.*

(1) Reclamation can make irrigation water available to a landowner for a period of 5 years if the landowner acquires land involuntarily and that land becomes excess in the involuntarily acquiring landowner's holding provided:

(i) The land was nonexcess to the previous owner; and

(ii) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract, except as provided for in § 426.11(g).

(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may remove a deed covenant as provided in § 426.11(i)(4), and may sell such land at any time without price approval and without the deed covenant;

(iv) Reclamation will not allow the involuntary acquiring landowner to redesignate the land as nonexcess after he or she designates the land as excess; and

(v) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer.

(f) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions.

(g) *Land acquired by inheritance or devise.* If the landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per § 426.13(e) begins on the date of the previous landowner's death.

§ 426.14 Commingling.

(a) *Definitions for purposes of this section:*

Commingled water means irrigation water and nonproject water that uses the same facilities.

Nonproject water means water from other sources as defined in the contract.

(b) *Application of Federal reclamation law and these regulations to existing commingling provisions in contracts.* If a district entered into its present contract with Reclamation prior to October 1, 1981, or renewed such a contract, and that contract has provisions addressing commingled water situations, those provisions stay in effect.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

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(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are constructed with funds made available pursuant to Federal reclamation law, nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through Reclamation program-funded facilities if those paragraphs are met.

(d) Federal reclamation law and these regulations do not apply to irrigation water from federally financed facilities that is acquired by an exchange and that results in no material benefit to the recipient of the water.

§ 426.15 Exemptions and exclusions.

(a) *Army Corps of Engineers projects.*

(1) If Reclamation determines that land receives its agricultural water from an Army Corps of Engineers (Corps) project Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

(b) *Repayment of construction obligations.* The acreage limitation provisions do not apply to districts that have repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for Reclamation facilities.

(1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.

(2) If a district has a contract with the United States providing for individual repayment of construction charges allocated to land, and the individual landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner may become exempt from the acreage limitation provisions.

(3) Upon exemption Reclamation will:

(i) Notify the district or individual landowner of the exemption from the acreage limitation provisions;

(ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to continue to pay, on an annual basis, O&M costs;

(iii) Allow the owner of land for which repayment has occurred, to request a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) No longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in § 426.15(b)(2); and

(v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.

(c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the R&B Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:

(1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;

(2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make project water available for delivery to such land; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitations in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitations will apply.

(d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short durations a district may request that Reclamation make such supplies available to excess land. If Reclamation determines that such water deliveries would not have an adverse effect on other authorized project purposes, upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:

(1) The contract for the temporary supply of water will be for 1 year or less;

(2) The acreage limitation provisions of Federal reclamation law will not be applicable to the temporary supply of water;

(3) An applicable price for the water, if any, will be established; and

(4) Such other conditions as Reclamation may include.

(e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land can be farmed economically only if included in a farming operation that already exceeds an acreage limitation entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law;

(2) Will count such land against the landowner's or any lessee's nonfull-cost entitlements; and

(3) Will assess the full-cost rate for any irrigation water delivered if the landowner or any lessee of the isolated tract exceeds applicable nonfull-cost entitlements.

(f) *Indian trust or restricted lands.* Indian trust or restricted lands are excluded from application of the RRA.

§ 426.16 Small Reclamation projects.

(a) *Affect of the RRA on loan contracts made under the Small Reclamation Project Act.*

(1) If a district entered into a loan contract under the Small Reclamation Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by section 223 of the RRA and as amended by Title III of Public Law 99–546.

(2) If a district entered into a SRPA loan contract prior to October 12, 1982, and the district:

(i) Did not amend the loan contract to conform to the SRPA, as amended by section 223 of the RRA, prior to October 27, 1986, then the provisions of the contract continue in effect.

(ii) Amended the loan contract to conform to the SRPA, as amended by section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.

(b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.16(d).

(c) *Affect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:

(1) In determining whether the district has discharged its construction cost obligation for the project facilities;

(2) As a basis for reinstating acreage limitation in a district that has completed payment of its construction cost obligation(s); or

(3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

(d) *Districts that have a SRPA loan contract and a contract as defined in § 426.2.* If a district has a SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

§ 426.17 Landholder information requirements.

(a) *Definitions for purposes of this section:*

Irrigation season means the period of time between the district's first and last water delivery in any water year.

Standard certification or reporting forms means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

(b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of reclamation law.

(c) *Required form submissions.*

(1) Landholders who are subject to the discretionary provisions must submit certification forms.

(2) Landholders who make an irrevocable election must submit the appropriate certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must submit reporting forms.

(4) Landholders who qualify under an exemption listed under paragraph (g) of this section need not submit any forms.

(d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all irrigable and irrigation land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.

(e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.

(f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.

(g) *Exemptions from submitting certification and reporting forms.*

(1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total landholding westwide is 240 acres or less as provided for in § 426.17(i);

(B) Limited recipient who first received any irrigation water:

(*1*) On or before October 1, 1981, and whose total direct and indirect landholding westwide is 80 acres or less as provided for in section 426.17(i); or

(*2*) After October 1, 1981, and whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(ii) The landholder's district has Category 2 status, as specified in § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total direct and indirect landholding westwide is 80 acres or less;

(B) Limited recipient whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(2) Wholly owned subsidiaries need not submit certification or reporting forms provided the ultimate parent legal entity has properly filed and has disclosed all direct and indirect landholdings of its subsidiaries as required on such forms.

(3) In determining whether certification or reporting is required under paragraph (g):

(i) Class 1 equivalency factors as determined in § 426.10 shall not be used; and

(ii) Landholders need not count involuntarily acquired excess acreage that they hold indirectly.

(h) *District categorization.* For purposes of this section each district has Category 2 status, unless the district applied for and the regional director granted the district Category 1 status. Category 1 districts must meet the following criteria:

(1) District conformance by contract with the discretionary provisions;

(2) The district must have entered into a partnership agreement with Reclamation which can include but is not limited to the development of integrated resources management plans, the development and implementation of specific water conservation standards for the district, or the development of specific measurable efficiencies for the district; and

(3) The district's financial obligations to the United States are not delinquent.

(i) *Application of Category 1 status.* The specific forms thresholds, up to the levels allowed in § 426.17(g)(1)(i), will be specified within the partnership agreement made between the district and Reclamation. The agreement will include a provision for periodic review of the achievements of the district under the partnership. The regional director may withdraw the Category 1 status at any time if the district fails to accomplish the specific actions stated within the partnership agreement.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a landholder's entire landholding.

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westwide, is not located in Category 1 districts, then the landholder must submit forms under the Category 2 certification or reporting requirements in all districts.

(k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:

(1) During the irrigation season, the landholder must:

(i) Notify the district office, either verbally or in writing within 15 calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 30 calendar days of the change.

(2) Outside of the irrigation season, then, the landholder must submit new certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water delivery following such changes.

(l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of the standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.

(m) *Actions that Reclamation takes if required submission(s) are not made.*

(1) If a landholder does not submit required certification or reporting form(s), then:

(i) The landholder is not eligible to receive and must not accept delivery of irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and

(ii) Eligibility will be regained only after all required certification or reporting forms are submitted to the district.

(2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:

(i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or

(ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.

(n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which is included in all certification and reporting forms:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

(o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0005 and 1006–0006. The information is being collected to comply with sections 206, 224(c) and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation. Completion of these forms is required to obtain the benefit of irrigation water.

(p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

§ 426.18 District responsibilities.

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

(a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;

(b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;

(c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's status, landholdings, and entitlements, and must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;

(d) Distribute, collect, and review landholder certification and reporting forms;

(e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:

(1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or

(2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.

(f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;

(g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;

(h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and

(i) Return to Reclamation, for deposi as a general credit to the Reclamation fund, all revenues received from the delivery of water to ineligible land.

§ 426.19 Assessment of administrative costs.

(a) *Assessment of administrative costs for delivery of water to ineligible land.* Reclamation will assess a district administrative costs as described in § 426.19(e) if the district delivers irrigation water to land that was

ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.17; or to ineligible excess land as provided in § 426.11.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.17, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in § 426.19(a) will be applied independently of the assessment specified in § 426.19(b).

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in § 426.19(e), unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the corrections within 60-calendar days, Reclamation will consider the requirements of § 426.17(b) satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in § 426.19(b) will be applied independently of the assessment specified in § 426.19(a).

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under § 426.19(a) and (b).

(d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under § 426.19(a) and (b).

(e) *Amount of the assessment.* The administrative costs assessment required under § 426.19(a) and (b) is set at $260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the **Federal Register** in December of the year the data are reviewed.

§ 426.20 Interest on underpayments.

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed under Federal reclamation law and what that landholder paid.

(b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.

(c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

§ 426.21 Public participation.

(a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:

(1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;

(2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and

(3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.

(b) *Notification if parties to contract negotiations modify a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:

(1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and

(2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:

(i) The significance of the impact(s) of the modification to possible affected parties; and

(ii) The interest expressed by the public over the course of contract negotiations.

(c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:

(1) A brief description of the proposed contract terms and conditions being negotiated;

(2) Date, time, and place of meetings, workshops, or hearings;

(3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and

(4) The period of time during which Reclamation will accept comments.

(d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.

(e) *Opportunities for public participation.*

(1) Reclamation can provide, as appropriate: Meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.

(2) Reclamation or the district can invite the public to observe any contract proceedings.

(3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if Reclamation determines that the contract action may or will have "significant" environmental effects.

(f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.

(g) *Agency use of comments submitted during the period provided for comment or made at hearings.*

(1) Reclamation will review and summarize for use by the contract approving authority testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.

(2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

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§ 426.22 Recovery of operation and maintenance (O&M) costs.

(a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.

(b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the O&M costs that Reclamation allocates to irrigation.

(c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following must be complied with:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.

(d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then each year the district must pay:

(1) All of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) Any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under an existing contract.* For a district whose existing contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless specifically provided to the contrary by the terms of the contract.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.*

(1) Regardless of any terms to the contrary within an existing contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district or districts in which the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and meet the following requirements:

(i) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In those districts subject to prior law if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

§ 426.23 Agency decisions and appeals.

(a) *Initial agency decisions.*

(1) Decisionmaker for initial agency decisions:

(i) The appropriate regional director makes any initial agency decision that these regulations require or authorize; or

(ii) If the initial agency decision is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that decision.

(2) *Notice to affected parties.* A regional director will notify parties, that are potentially affected by his or her initial decision, in writing.

(3) *Effective date for initial agency decisions.* A regional director's initial decision takes effect immediately, unless the regional director otherwise specifies, or the decision involves the termination of water deliveries. A decision to terminate water delivery can take effect no sooner than 10 calendar days after the regional director makes his or her initial decision.

(b) *Reconsideration of initial agency decision.*

(1) *Requests for reconsideration.* Any district or landholder whose rights and interests are directly affected by a regional director's initial decision can submit a written request for reconsideration of the regional director's decision. The regional director must receive requests for reconsideration of an initial decision from districts and landholders, who:

(i) Received notification of a regional director's decision by mail, within 30 calendar days from the date of the initial decision; or

(ii) Did not receive notification of the initial decision by mail, within 90 calendar days from the date of the initial decision.

(2) *Requests for stay of the initial agency decision pending reconsideration.*

(i) The regional director will stay his or her initial decision if the requesting party:

(A) Submits a request for stay in writing to the regional director, with, or in advance of, the request for reconsideration, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm which a district or landholder would suffer if the regional director does not grant the stay outweighs the interest of the United States in having the initial decision take effect pending reconsideration.

(ii) The initial decision will be automatically stayed pending the regional director's review of the initial agency decision, unless the regional director:

(A) Acts upon the request for a stay within 15 calendar days of the request; and

(B) Informs, by certified mail, the requesting party or parties of his or her decision within 1 business day after he or she rules on the request for a stay.

(iii) A regional director's decision on a request for a stay is not appealable.

(c) *Reclamation's final action.*

(1) *If no party requested a reconsideration of the initial decision.* If the regional director does not receive a request for reconsideration within the time frames specified in § 426.23(b)(1), the initial decision becomes Reclamation's final action on the 91st day after the date of the initial decision.

(2) *If a party requested reconsideration of the initial decision.* If the regional director receives a timely request for reconsideration, the regional director will make a ruling on a request for reconsideration of an initial agency decision within 30 calendar days of receipt of the request, and will inform the requesting parties of his or her ruling by certified mail. This ruling will constitute Reclamation's final action.

(i) The date of Reclamation's final action will be the date of mailing the regional director's ruling to the requesting party or parties.

(ii) The regional director will establish the effective date of Reclamation's final action.

(d) *Appeal of Reclamation's final actions.*

(1) *Reclamation's final actions that cannot be appealed.* An initial agency decision that becomes Reclamation's final action as a result of a failure by an affected party to request reconsideration as provided in § 426.23(b)(1) cannot be further appealed.

(2) *Reclamation's final actions that can be appealed.* A party that timely requested reconsideration of the agency's initial decision may appeal Reclamation's final action to the Secretary of the Interior by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of Reclamation's final action.

(3) *Rules that govern the appeal process.* Except for the authority of regional directors to grant stays of their determinations under § 426.23(d)(4), 43 CFR part 4, subpart G, and other provisions of 43 CFR part 4, where applicable, govern the appeal process.

(4) *Requests for stay of Reclamation's final action pending appeal.* An appellant can request that the regional director who was responsible for Reclamation's final action stay that action pending an appeal as specified in § 426.23(d)(2). The procedures and time frames set forth in § 426.23(b)(2) for requests for stays of initial agency decisions apply to requests for stays of final Reclamation actions. If the regional director fails to act on the appellant's stay within 15 calendar days of its receipt, then Reclamation's final action will automatically be stayed pending final action by OHA. A regional director's decision on a request for a stay cannot be appealed.

(e) *Effective date of an appealed decision.* Reclamation can apply decisions made by a regional director or by OHA under § 426.23 (c) and (d) as of the date of the initial agency decision. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(f) *Accrual of interest on underpayments during reconsideration or appeal.* Interest on any underpayments, as provided in § 426.20, continues to accrue during the reconsideration of an initial agency decision or an appeal of Reclamation's final action or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under § 426.23 (b)(2) or (d)(4).

(g) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

(h) *Addresses.* All requests for reconsideration, stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) *Regional directors,* at their current mailing addresses, which may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street NW., MS–7060–MIB, Washington, DC 20240, telephone (202) 208–4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236–3292.

(2) *Director, Office of Hearings and Appeals,* Department of the Interior, 4015 Wilson Boulevard, Room 1103, Ballston Tower No. 3, Arlington, VA 22203.

§ 426.24 Reclamation audits.

Reclamation has the authority to conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

(a) Water district reviews;

(b) In-depth reviews; and

(c) Audits.

§ 426.25 Severability.

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.

Part 427 is added as follows:

PART 427—WATER CONSERVATION RULES AND REGULATIONS

Sec.

427.1 Purpose.
427.2 Conservation Plan Requirements.
427.3 Incentives.
427.4 Technical Guidelines and Criteria.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y et seq.; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 390ww, 43 U.S.C. 422a et seq., and 43 U.S.C. 440.

§ 427.1 Purpose.

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

§ 427.2 Conservation Plan Requirements.

(a) *Submission requirements.* All water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act must submit water conservation plans for approval by the appropriate Regional

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director at least once every 5 years, except:

(1) Districts that receive only irrigation water and deliver the water to less than 2000 acres of land,

(2) Districts that receive only municipal and industrial water and deliver the water to fewer than 3,300 people,

(3) Districts that receive any combination of irrigation water, municipal and industrial water, or water for other uses and receive an average annual water supply of less than 2,000 acre-feet from all Federal reclamation projects combined,

(4) Districts whose only contract is a temporary contract of 1 year or less,

(5) The Central Utah Water Conservancy District, Utah, and each petitioner of Central Utah Project water, which must comply only with the requirements of section 207 of the Central Utah Project Completion Act (Titles II through III of Pub. L. 102–575, 106 Stat. 4605, 4616), provided the district and petitioners have met the requirements of section 207 of the Act. If the district or a petitioner of Central Utah Project water also receives water from any other Federal reclamation project, that entity is subject to the requirements of § 427.2 with respect to the non-Central Utah Project water,

(6) Districts receiving water from the Central Valley Project, California, so long as criteria for evaluating water conservation plans have been developed, published, and are in effect under section 3405(e) of the Central Valley Project Improvement Act (Title XXXIV of Pub. L. 102–575, 106 Stat. 4706, 4713), or

(7) Districts that have met the requirements of these regulations by meeting the alternative standards or performance requirements of a State or Federal water conservation program as approved and notified in writing by the regional director.

(b) *Required Elements of a Water Conservation Plan.* A water conservation plan must set forth definite goals for improvements in the management and efficient use of water. The plan must also identify those actions that are necessary and appropriate for achieving the plan's stated goals. The plan must establish a reasonable time schedule for implementing the identified actions and for meeting the plan's goals. The plan must also establish appropriate criteria for measuring progress toward meeting the plan's goals and include an assessment of progress achieved to date. At a minimum the plan must include the following actions:

(1) A water measurement and accounting system designed to measure and account for all water conveyed through the district's distribution system to water users. The system must include metering or measuring devices at each agricultural water delivery turnout and each municipal and industrial water delivery service connection;

(2) A water pricing structure for district water users designed to encourage increased efficiency of water use;

(3) An information/education program for water users designed to promote increased efficiency of water use; and

(4) Designation of a district water conservation coordinator.

§ 427.3 Incentives.

(a) Reclamation will provide technical and financial assistance to districts and entities developing and implementing water conservation plans, as funding and staff availability permits. Reclamation will also establish voluntary partnerships with districts and entities in a collaborative effort to improve the management of water and associated resources in the Western United States, and to assist districts and entities in achieving their water conservation goals. However, if Reclamation does not provide technical or financial assistance, for whatever reason, the district is not relieved of its responsibility for the development and implementation of an adequate water conservation plan.

(b) Reclamation will consider a district's progress in development and implementation of water conservation plans when prioritizing the allocation of future discretionary Reclamation program benefits. Except in unusual circumstances, future discretionary benefits will be unavailable to a district or entity that does not have an approved plan or is not adequately implementing an approved plan. These discretionary benefits may include:

(1) Discretionary funds including, but not limited to, drought relief funds, drought assistance, loans and/or grants under various statutory authorities, construction funding, and technical planning assistance;

(2) Discretionary programs or benefits including, but not limited to, temporary supplies of water under 43 U.S.C. 390oo, temporary or short-term contracts, and Warren Act contracts; and

(3) Facilitating water transfers to or by a district, accommodating changes in the place or type of use of water, or assisting in the identification of beneficiaries that may be willing to fund conservation activities.

§ 427.4 Technical Guidelines and Criteria.

(a) Reclamation has developed Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

(b) The Guidelines and Criteria may be obtained from any Bureau of Reclamation regional office. The addresses of the regional offices may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street N.W., MS–7060–MIB, Washington, D.C. 20240, telephone (202) 208–4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236–3292.

[FR Doc. 95–7524 Filed 3–31–95; 8:45 am]
BILLING CODE 4310–94–P

federal register

Monday
April 3, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 20

Protecting the Identities of Reporters of Adverse Events and Patients; Preemption of Disclosure Rules; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 93N-0334]

Protecting the Identities of Reporters of Adverse Events and Patients; Preemption of Disclosure Rules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to help ensure that the identities of those who report adverse events associated with human drugs, biologics, and medical devices, and the identities of patients are held in confidence and not disclosed by FDA or by manufacturers that possess these reports. This final rule preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that requires or permits disclosure of such identities. This action is being taken to maintain the agency's ability to collect information about safety risks of FDA-regulated products and is vital to the protection of the public health.

DATES: This final rule will become effective on July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 3, 1993 (58 FR 31596), FDA announced the availability of a new form for reporting adverse events and product problems associated with human drug products, biological products, medical devices, and other FDA-regulated products. The new form was part of MedWatch, FDA's new Medical Products Reporting Program, which is intended to facilitate the reporting of adverse events and product problems for all FDA-regulated products by the entire health care community (manufacturers, distributors, user facilities, and health care professionals).

The MedWatch program features two versions of the form for reporting adverse events and product problems. One version, FDA Form 3500A, is used by manufacturers, distributors, and user facilities to report adverse events as required under Federal statutes or FDA regulations. The other version, FDA Form 3500, is available for use by health professionals, such as physicians, physician assistants, pharmacists, and nurses, for voluntary reporting.

FDA uses adverse event reports from health professionals and industry to identify possible problems in marketed products. Based on the reports, the agency evaluates the seriousness of the health hazard, takes corrective action if necessary, and communicates that action to the health professional community. Corrective action can be in the form of labeling changes, such as the addition of new precautions, boxed warnings for serious hazards, and product recalls or withdrawals. FDA may also elect to notify health professionals, industry, and others of important information through Medical Alerts, Safety Alerts (for medical devices), the FDA Medical Bulletin, and "Dear Doctor" or "Dear Health Professional" letters.

The success of the MedWatch program depends in large part on voluntary reporting of adverse events from health professionals, either directly to the agency or to other entities who report to the agency. As stated in the preamble to the proposed rule of January 27, 1994 (59 FR 3944) (the January 1994 proposal), voluntary reporting has revealed significant adverse events and drug interactions associated with products that could not be identified during preapproval testing. For example, voluntary reporting contributed to the removal of the antibiotic temafloxacin (Omniflox) from the market and to the development of warning labeling for latex products. Voluntary reporting also led to research concerning the danger of concurrent use of the antihistamine terfenadine (Seldane) when taken with either the antifungal ketoconazole or the antibiotic erythromycin.

To ensure meaningful reporting under the MedWatch program, the agency proposed to enhance safeguards for protecting the identities of persons who voluntarily submit adverse event reports, as well as the identities of the patients experiencing those adverse events, to FDA and to manufacturers (59 FR 3944 at 3946 to 3947). The January 1994 proposal would also protect the voluntary reporting system through a regulation that preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that requires or permits disclosure of such identities.

This document makes final the requirements published in the January 1994 proposal.

II. Comments on the Proposed Rule

FDA received 31 comments on the January 1994 proposal. In general, the comments supported the proposed rule, although some comments suggested expanding the rule to include mandatory adverse event reports, and other comments sought additional protection from disclosure.

A. General Comments

1. Three comments suggested that FDA revise the rule to prevent persons who receive adverse event reports from disclosing those reports to other parties. The comments noted that the proposed rule was silent on such disclosures.

FDA declines to accept the comments' suggestion. The agency notes that, under the rule, persons receiving adverse event reports would be those who have obtained consent to disclosure under § 20.63(f)(1)(i) (21 CFR 20.63(f)(1)(i)), are engaged in medical malpractice litigation involving the voluntary reporter (§ 20.63(f)(1)(ii)), or have requested disclosure under § 20.63(f)(1)(iii). Consequently, a person receiving the adverse event report under this rule would either have obtained consent for the disclosure from both the voluntary reporter and subject, or, in the case of medical malpractice litigation, already would have disclosed, through court documents, information surrounding the adverse event.

FDA has amended the rule, however, to state that voluntary reports that are made available to the subject of an adverse event under § 20.63(f)(1)(iii) will not include the names of any other individuals, including that of the voluntary reporter. This change provides further protection against disclosure in the small number of circumstances where the voluntary reporter is not a physician or health care professional known to the patient. FDA believes this clarification will encourage adverse event reporting and does not deny critical information to the subject of the report because the subject will ordinarily know the name of the physician who has performed the procedure or prescribed medication.

2. One comment would revise the rule by adding a new paragraph to declare that the production of adverse event reports containing identifying information, during the discovery phase in litigation, does not constitute "disclosure" under the rule if all parties to the litigation agree that the party receiving the adverse event report will not record the identifying information, will not attempt to contact the persons identified in the report, and will remove identifying information from any adverse event report that the party copies.

FDA declines to amend the rule as suggested by the comment. The mechanism described by the comment would be inappropriate due to wide variations among state court procedures, and the resulting inconsistencies in applying such a mechanism would discourage, rather than encourage, health care professionals from reporting adverse events. The intent of the rule is to ensure that individuals who are not the reporters or other persons identified in the reports do not have access in any way to the identifying information, except in specifically described circumstances. Allowing such individuals to view the identifying information in the context of discovery would not achieve this purpose and would discourage voluntary reporting.

3. One comment said FDA should seek statutory changes to prevent the release of information in addition to issuing a rule.

The agency disagrees that statutory changes are necessary. As stated in the preamble to the January 1994 proposal and elsewhere in this document, FDA believes it has sufficient legal authority to preempt State and local laws, rules, regulations, and other requirements that would permit or require the disclosure of the identities of health care professionals who voluntarily report adverse events and the patients or other individuals named in those reports. Although Congress did not expressly preempt State law in this area, the agency finds Federal preemption to be appropriate because such State or local laws, rules, regulations, or other requirements would impede FDA's ability to monitor product safety after approval to ensure that human drug products, biologics, and medical devices are safe and effective for their intended uses. (See 59 FR 3944 at 3948 to 3949). Thus, under principles of preemption law, congressional intent to preempt State law can be inferred.

4. One comment focused on nuclear medicine and said that FDA should not disclose adverse event reports to the Nuclear Regulatory Commission (NRC) because NRC publishes reports of "misadventure," and such reports often include the physician's and patient's names. The comment said that FDA should assume sole jurisdiction over nuclear medicine.

FDA declines to accept the comment. The agency notes that current regulations (21 CFR 20.85) already establish conditions on disclosures to other Federal government departments and agencies and that "[a]ny disclosure * * * shall be pursuant to a written agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Food and Drug Administration." As for assuming sole jurisdiction over nuclear medicine, the issue of NRC and FDA jurisdiction goes beyond the scope of this rulemaking.

5. One comment asserted that the rule would actually make more information available to the public because it would make an entire adverse event report available. The comment claimed that such disclosure would be contrary to the goal of protecting confidentiality and recommended that FDA instead expand § 20.111 (21 CFR 20.111), pertaining to data and information submitted voluntarily to FDA, to protect adverse event reports held by manufacturers from disclosure and to preempt State and local laws and regulations.

FDA believes the comment misinterprets the rule. Section 20.111 describes the types of data and information submitted voluntarily to FDA that are available for public disclosure. In general, under § 20.111(c)(3), adverse reaction reports, product experience reports, consumer complaints, and "other similar data and information" shall be disclosed except for certain identifying information. The identifying information that is deleted from the record varies, depending on whether the information was submitted by a consumer, the product's manufacturer, or a third party. For example, if a consumer submitted the record, the agency would not disclose the identity of the consumer. If a manufacturer submitted the record, the agency would not disclose the identity of the person using the product or any third party involved in the report or the manufacturer's identity. (See § 20.111(c)(3)(i) through (c)(3)(iii)).

In contrast, § 20.63 establishes exemptions from disclosure requirements. These exemptions are to be read in conjunction with any conditions imposed under § 20.111. Specifically, § 20.63(f) would authorize the agency and manufacturers possessing adverse event reports to withhold the names of voluntary reporters and other persons identified in such reports, regardless of whether a consumer, manufacturer, or other party submitted a voluntary report.

Furthermore, § 20.63(f) permits identities to be disclosed under three limited exceptions: (1) The voluntary reporter and the person identified in the report (or the person's legal representative) consent, in writing, to disclosure; (2) a court orders disclosure during medical malpractice litigation involving the voluntary reporter and the person experiencing the adverse event; and (3) the individual who is the subject of the report requests the report. These exceptions are reasonable and practical because it would make little sense to withhold the identities of the parties named in an adverse event report if those same parties consent to disclosure or are engaged in litigation or, in cases where the party requesting the report was the subject of the report, must already be aware that he or she is identified in a report.

Thus, while the final rule arguably discloses more information (in the form of identifying information) than § 20.111, that additional information is disclosed to persons who either submitted the voluntary report, have consented to disclosure, or know that a report pertaining to their own adverse experience exists. Furthermore, while § 20.111 describes data and information that are available for disclosure, § 20.63(f) establishes exemptions to disclosure. A preemption provision, which essentially establishes another exception to disclosure, would be more appropriate in § 20.63.

6. The January 1994 proposal referred to voluntary reporters submitting adverse event reports. Proposed § 20.63(f) also stated that it did not affect disclosure of the identities of reporters required by statute or regulation to make adverse event reports and that disclosure of identities of such reporters would be "governed by the applicable statutes and regulations." Seven comments asked FDA to expand the rule to include mandatory adverse event reports required by the Safe Medical Devices Act or other statutes. The comments said that persons who are required to submit adverse event reports should enjoy the same protection offered by the rule to those who voluntarily submit reports. One comment even claimed that, under the rule, voluntary reports enjoyed greater protection than mandatory reports, and this difference could deter compliance with mandatory adverse event reporting requirements.

The agency does not believe it can or should expand the rule as requested by these comments. The policy and final rule are intended to protect voluntary reporting. FDA assumes that those subject to mandatory reporting requirements established by Congress or by Federal regulation comply with those requirements and will continue to do so. The agency also notes that different standards for treatment of disclosure of required and voluntary information is an established part of disclosure law.

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(See *Critical Mass Energy Project* v. *NRC*, 644 F.Supp. 344 (D.D.C. 1986), vacated and remanded, 830 F.2d 278 (D.C. Cir. 1987), summary judgment granted, 731 F.Supp. 554 (D.D.C. 1990), rev'd & remanded, 931 F.2d 939 (D.C. Cir. 1991), vacated & reh'g en banc granted, 942 F.2d 799 (D.C. Cir. 1991), vacated, 975 F.2d 871 (D.C. Cir. 1992) (en banc), cert. denied, 113 S.Ct. 1579 (1993).)

B. Comments on Specific Provisions in the Proposal

7. Proposed § 20.63(f) would prohibit disclosure of the names and any identifying information, including the reporter's address or the name or address of the reporter's institution, that would lead to the identification of the reporter or the persons named in a voluntary adverse event report, by FDA or by a manufacturer possessing such reports in response to any request.

Four comments would amend § 20.63(f) to prohibit adverse event reports from being admissible into evidence unless the facility, individual, or physician who made the report knew that the report contained false information. The comments said such a prohibition would be consistent with section 519(b)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(b)(3)) regarding mandatory reports from device user facilities.

The agency declines to accept the comments' suggestion. In general, § 20.63(f) is intended to protect against the disclosure of information that would identify a voluntary reporter or a person who may have experienced an adverse event. This policy is designed to encourage voluntary adverse event reporting by health care professionals and others. The agency's policy regarding disclosure of voluntarily submitted adverse event reports has been, and continues to be, that such reports are publicly available after deletion of identifying information. (See § 20.111(c); see also 39 FR 44602 at 44628 to 44629, December 24, 1974 (rejecting comments seeking to limit dissemination of adverse reaction reports and consumer complaints).) This is consistent with the agency's obligations under the Freedom of Information Act, and the agency, therefore, declines to revise the rule to limit disclosure of adverse event reports.

8. Two comments would expand § 20.63(f) to include demands and orders to disclose adverse event reports. The comments explained that a person seeking an adverse event report could do so by request to the agency or manufacturer or, in other contexts, demand or seek a judicial order requiring the agency or manufacturer to provide the reports.

FDA agrees and has modified the rule accordingly.

9. As noted earlier, proposed § 20.63(f) would not affect disclosure of the identities of reporters required by statute or regulation to make adverse event reports and expressly stated that disclosure of the identities of such reporters "is governed by the applicable statutes and regulations." Three comments suggested that FDA modify § 20.63(f) to refer to "federal statutes and regulations" because, as written, the rule could arguably be interpreted as being inapplicable to disclosures required by State law or regulation.

FDA agrees and has modified the rule accordingly.

10. One comment asked FDA to clarify the rule's relationship to existing FDA regulations governing information exchanges between the agency and manufacturers.

The rule does not affect information exchanges between FDA and manufacturers. Nor does the rule alter or diminish any regulatory requirements for manufacturers regarding submission of adverse event reports. The rule is directed to requests by third parties for adverse event reports.

11. The proposed rule created three exceptions to the policy against disclosing the identities of the voluntary reporter and the person who experienced the adverse event. Proposed § 20.63(f)(1)(i) contained the first exception and would allow the identities to be disclosed if both the voluntary reporter and the person identified in the report (or that person's legal representative) consented, in writing, to disclosure.

Two comments requested that FDA modify or delete the provision. The comments asserted that the provision could prompt third parties to request or demand that FDA or a manufacturer seek consent from the voluntary reporter or the person identified in the report because the agency and the manufacturer would know their identities. The comments would either delete the provision or modify the rule to contain a specific prohibition against courts and State agencies seeking to have FDA or manufacturers obtain consent from the voluntary reporter or patient.

In response to these comments, FDA has amended § 20.63(f)(1)(i) to state that the agency and manufacturers shall not be required to seek consent on behalf of requesters. As stated in § 20.63(f) and also in § 20.111, the identities of the voluntary reporter and any other person named in an adverse event report shall not be disclosed by FDA or by manufacturers except in limited situations. If third parties could request or demand that FDA or manufacturers seek consent from the voluntary reporter and/or person named in the report, the practical effect would be to eliminate the protection given by FDA's regulations. In addition, the administrative burden of such procedures, in response to third party requests, would detract from agency resources devoted to investigation and assessment of adverse event reports. Consequently, FDA has not in the past and will not entertain such requests, and the burden of seeking consent from the voluntary reporter and the person identified in the adverse event report will continue to rest on the party requesting the adverse event report and identifying information.

12. Proposed § 20.63(f)(1)(ii) would permit disclosure of the identities of the voluntary reporter and a person named in an adverse event report "pursuant to a court order in the course of medical malpractice litigation involving both the person who experienced the reported adverse event and the voluntary reporter."

Three comments would delete § 20.63(f)(1)(ii). According to the comments, the provision would encourage plaintiffs to name multiple defendants in medical malpractice cases in order to obtain the identities of persons in an adverse event report.

FDA declines to delete the provision as requested. The agency does not share the comments' underlying assumption that the possible existence of a voluntary adverse event report will prompt plaintiffs to bring a malpractice suit against every person who might have submitted a voluntary adverse event report, especially when the only information that the plaintiff would gain, under § 20.63(f)(1)(ii), would be his or her own name and the name of the voluntary reporter. If a plaintiff did engage in such tactics, some jurisdictions might consider it to constitute an abuse of process and impose sanctions against the plaintiff or the plaintiff's attorneys.

FDA also notes that if a plaintiff knew that a report specific to his or her adverse event existed, the plaintiff would obtain more substantive information regarding the adverse event under § 20.63(f)(1)(iii).

13. One comment would delete § 20.63(f)(1)(ii). The comment stated that § 20.63(f)(1)(ii) was unnecessary because a person who experienced an adverse event could obtain a copy of the

adverse event report under § 20.63(f)(1)(iii).

The agency disagrees with the comment. The two provisions serve different purposes. Many adverse event reports contain little or no identifying information about the person who experienced the reported adverse event, and the person who experienced the adverse event may be unaware that he or she had been the subject of an adverse event report. Thus, under § 20.63(f)(1)(ii), if a person who experienced an adverse event were engaged in medical malpractice litigation, he or she could seek a court order to obtain identifying information, and thus determine whether he or she had been the subject of an adverse event report. In contrast, § 20.63(f)(1)(iii) presumes that the individual requesting a report already knows that a report exists and that the individual is "the subject of the report."

14. Two comments sought clarification of § 20.63(f)(1)(ii), particularly the "identities" that would be disclosed. The comments indicated that § 20.63(f)(1)(ii) could be interpreted as permitting disclosure of the identities of all persons experiencing an adverse event who were named in a report by the voluntary reporter. The comments suggested revising the provision to limit disclosure to the identities of the voluntary reporter and the person experiencing the adverse report provided that both were parties in the malpractice litigation.

FDA agrees that the identities of persons who experienced an adverse event but are not parties to the medical malpractice litigation should not be disclosed and has revised the rule accordingly.

15. Proposed § 20.63(f)(1)(iii) would permit disclosure of a voluntarily-submitted adverse event report to an individual who is the subject of the report.

One comment would modify the provision to require notice to the voluntary reporter.

FDA believes that an individual who is the subject of an adverse event report should be entitled to the report without prior notice to the voluntary reporter. Additionally, providing notice to the voluntary reporter would confer little benefit because there is no mechanism to allow the voluntary reporter to withdraw or amend a voluntarily submitted adverse event report once it has been submitted. Furthermore, as stated above, the suggested change is unnecessary in light of the agency's revision to the rule, which clarifies that the report will be disclosed to the subject of the report without inclusion of any other names, including that of the voluntary reporter.

16. One comment would make reports inadmissible as evidence unless the facility or reporter knew that the information contained in the report was false. Another comment would revise § 20.63(f)(1)(iii) to state that, "The report shall be disclosed to the individual who is the subject of the report upon request in any litigation regarding the adverse event referred to in the report and in which the individual is a party." The comment asserted that manufacturers should not have to assume the burden of responding to a potentially large number of requests from patients for adverse event reports.

FDA disagrees with the comments. As stated above, the agency believes that an individual who is the subject of an adverse event report should be entitled to the report itself. Such access to the report should not be conditioned on the existence of false information in the report or on litigation.

17. One comment would revise § 20.63(f)(1)(iii) to state that, "The report, but not the identity of the voluntary reporter or of any other person named in the report, shall be disclosed to the individual who is the subject of the report upon request." The comment claimed that this change would be consistent with the protection of identities under § 20.63(f)(1)(i) and (f)(1)(ii).

The agency agrees with the comment and has amended the rule to state that the report will exclude the identities of other persons. As mentioned earlier, this additional protection for the voluntary reporter is unlikely to limit the information available to most subjects of adverse event reports because they are likely to know already the identity of the voluntary reporter. FDA agrees that the identities of any other persons named in the report should also be protected in order to maintain their privacy or preserve the confidentiality of any relationships between the voluntary reporter and other persons. Therefore, the agency has revised § 20.63(f)(1)(iii) to exclude the identities of any other person, aside from the person requesting the report, named in an adverse event report.

III. Description of the Final Rule

The final rule creates a new § 20.63(f) to prevent FDA and manufacturers of human drug products, biologics, or medical devices from disclosing the names and any information that would identify the voluntary reporter or any other person named in a voluntarily-submitted adverse event report. The rule interprets "information" as including "the name, address, institution, or any other information that would lead to the identities of the reporter or person identified in the report." The rule does not apply to the identities of reporters required by statutes (such as the Safe Medical Devices Act or the National Childhood Vaccine Injury Act) to submit reports to FDA and does not alter any disclosure requirements under those statutes.

The final rule also crestes three exceptions to the prohibition against disclosure. Under § 20.63(f)(1)(i), the identities may be disclosed to a third party if both the voluntary reporter and the person who is identified in the report consent, in writing, to disclosure. As stated above, persons who seek disclosure of such identities have the burden of obtaining consent; the agency will not seek such consent itself. Under § 20.63(f)(1)(ii), identities may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both the person who experienced the adverse event and the voluntary reporter. Section 20.63(f)(1)(iii) would make the report, except for the identities of any other persons identified in the report, available to the individual who is the subject of the report, upon request.

Section 20.63(f)(2) preempts the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report, except as otherwise provided by § 20.63(f)(1).

IV. Legal Authority

A. Principles of Preemption Law

Under the Supremacy Clause of the Constitution (U.S. Constitution, Art. VI, clause 2), State laws that interfere with or are contrary to Federal law are invalid. (See *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824).) Federal preemption can be express (stated by Congress in the statute) or implied.

Implied preemption can occur in several ways. Preemption may be found "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation" (*Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985), quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), or where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject" (*Rice* v. *Santa Fe Elevator*

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Corp., 331 U.S. 218, 230 (1947); see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)).

Federal preemption may also be found where Federal law conflicts with State law. Such conflict may be demonstrated either when "compliance with both federal and state [law] is a physical impossibility" (*Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–143 (1963)), or when State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Hines* v. *Davidowitz*, 312 U.S. at 67). State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477–478 (1984).)

Additionally, "'a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law" (*City of New York* v. *FCC*, 486 U.S. 57, 63–64 (1988) (quoting *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 368 (1986)). "Federal regulations have no less preemptive effect than federal statutes" (*Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982)).

When an agency's intent to preempt is clearly and unambiguously stated, a court's inquiry will be whether the preemptive action is within the scope of that agency's delegated authority (*Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 700 (1984); Fidelity Federal Savings, 458 U.S. at 154). If the agency's choice to preempt "represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute [the regulation will stand] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned ("*United States* v. *Shimer*, 367 U.S. 374, 383 (1961)). In *Hillsborough County*, the Supreme Court stated that FDA possessed the authority to promulgate regulations preempting local laws that compromise the supply of plasma and could do so (*Hillsborough County*, 471 U.S. at 721). FDA believes it has similar authority to preempt State and local laws, rules, regulations, and other requirements that compromise the adverse reporting systems that are essential to postmarketing surveillance and protection of the public health.

B. Conflicts Between State Disclosure Laws and Federal Law

Conflicts between State and local disclosure laws and Federal laws and regulations on adverse event reporting justify FDA's preemption of State and local law. Although Congress did not expressly preempt State law in this area, FDA finds preemption is appropriate because such State and local laws significantly interfere with the methods by which the Federal laws and regulations achieve their goals.

FDA is the Federal agency charged with protecting citizens by helping ensure that human drug products, biologics, and medical devices are safe and effective for their intended uses. To further this purpose, Congress established elaborate mechanisms for the Federal government to permit the marketing of new drugs, biologics, and medical devices and to monitor the safety of these products after their approval. (See 21 U.S.C. 355 and 360; 42 U.S.C. 262.) Pursuant to these statutory provisions, FDA has established an extensive regulatory scheme to monitor the safety and effectiveness of human drug products, biologics, and medical devices. (See 21 CFR 310.305, 314.80, 600.80, and 803.1 through 803.36.)

State and local rules of civil procedure, rules of evidence, and other laws and regulations that permit discovery or require disclosure of a voluntary reporter's or patient's identity hinder FDA's monitoring scheme. While other FDA regulations may preserve the confidentiality of some voluntary reporters and the patients identified in an adverse event report, the same report, when in a manufacturer's possession, may be subject to State and local disclosure laws. Such possible disclosure will deter voluntary reporting by health professionals directly to manufacturers. In addition, the threat of disclosure may chill the willingness of reporters to provide information to FDA because the agency may share details about a report with a manufacturer in order to investigate the report further. Thus, this final rule preempts State and local disclosure laws, rules, regulations, and other requirements in order to eliminate obstacles to increased and enhanced voluntary adverse event reporting by health professionals. FDA has determined that the public health value of such reporting outweighs the individual needs of plaintiffs to discover the identities of a voluntary reporter or a patient, other than the plaintiff, who is the subject of the report.

The final rule focuses solely on protecting the identities of the voluntary reporter, the patient, and any other person identified in the report. The final rule does not preempt State or local laws that require disclosure of the substance of adverse event reports. FDA does not believe that disclosure of the substance of adverse event reports will impede its ability to collect such information. Indeed, FDA routinely releases the full substance of all voluntary adverse event reports upon request after deleting identifying information. (See § 20.111(c)(3)(iii).) The final rule also does not affect an individual's ability to obtain specific information about reports concerning his or her own reaction to a product, particularly when the individual is a plaintiff in a medical malpractice lawsuit and a court grants discovery of the plaintiff's records.

C. Legal Authority for the Final Rule

As discussed in the preamble to the proposed rule, there are various statutory provisions that authorize FDA to collect information about regulated products after the products are being legally marketed. These statutory authorities establish FDA's mandate to obtain information about the safety and effectiveness of drugs, devices, and biological products in order to determine whether continued use of these products presents an unreasonable risk to consumers. Through preemption of conflicting State and local rules that permit or require disclosure of voluntary reporter and patient identities, this rule removes an obstacle to full and accurate reporting of adverse events, and enhances the agency's ability to implement the surveillance authorities assigned to FDA.

Under section 505(k) of the act (21 U.S.C. 355(k)), an applicant who has an approved new drug application (NDA) or abbreviated new drug application (ANDA) "shall establish and maintain such records, and make such reports * * * of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug" as required by regulations or order. Under section 505(e) of the act, failure to establish a system for adverse event reports or to make reports required by regulation or order constitutes grounds for withdrawing approval of the NDA or ANDA. Under these provisions of the act as well as others, such as the misbranding and adulteration provisions, FDA promulgated regulations requiring specified drug adverse event reporting (21 CFR 314.80, 310.305). (See 50 FR 11478, March 21, 1985). As stated in the proposed rule, the voluntary system of

adverse event reporting that generates and supplements these required submissions is critical to the agency's post-market monitoring capabilities.

For medical devices, section 519 of the act requires manufacturers, distributors, and device user facilities to submit certain adverse event reports to FDA and authorizes the agency to require, by regulation, reports to assure that a medical device is not adulterated or misbranded and "to otherwise assure its safety and effectiveness." As stated in the preamble to the proposed rule, in addition to reports required by the Safe Medical Devices Act, FDA maintains a voluntary device problem reporting program. (See 59 FR 3944 at 3945.) Voluntary medical device reports have been an important part of FDA's postmarketing surveillance system for medical devices and have prompted the agency to take action on several occasions. For example, in 1991, voluntary reports to FDA resulted in an alert to health professionals to potentially fatal hypersensitivity to latex products. A voluntary report from a physician about two patients who experienced blindness after the use of an ophthalmic device during eye surgery resulted in an FDA investigation and the recall and removal of the device from the market. This final rule is intended to ensure that such voluntary medical device reporting continues.

Furthermore, sections 505(k) and 519 of the act provide that regulations and orders issued with respect to postmarketing reporting requirements for drugs and devices "shall have due regard for the professional ethics of the medical profession and the interests of patients * * * " (21 U.S.C. 355(k) and 360i). The confidentiality of the physician-patient relationship is a basic tenet of medical ethics. The final rule, which protects both patient and reporter identities, is in furtherance of and consistent with these requirements of the act.

Additional authority to regulate adverse event reporting for biologics can be found in section 351 of the Public Health Service Act (the PHS act). Section 351 of the PHS act provides regulatory authority over biologics, and, pursuant to this section and other statutory authorities, the agency promulgated general adverse experience reporting requirements for licensed biological products, as well as requirements for manufacturers or collection facilities to report deaths related to complications in blood collection or transfusion. (See §§ 600.80 and 606.170(b) (21 CFR 600.80 and 606.170(b)); 59 FR 54034, October 27, 1994).)

The number and the quality of required reports that FDA receives from manufacturers and distributors ultimately depend upon voluntary reporting by health professionals. As FDA explained in the proposed rule, manufacturers and distributors cannot report adverse events if they do not find out about them from the health professionals who observed or were advised of the events. Disclosure of patient or reporter identities serves as a significant disincentive for voluntary reporting by health professionals; preemption of State and local disclosure rules that permit or require such disclosure eliminates an impediment to agency oversight of the postmarketing safety of products under its jurisdiction. The final rule, therefore, which is necessary to implement postmarketing surveillance statutory authorities, is also authorized under the general rulemaking authority set forth in section 701(a) of the act (21 U.S.C. 371(a)).

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Executive Order 12612: Federalism

FDA has examined the effects of this final rule on the relationship between the Federal government and the States, as required by Executive Order 12612 on "Federalism." The agency concludes that preemption of State or local rules that permit disclosure of the identities of the voluntary reporter or persons identified in an adverse event report for human drug products, biologics, and medical devices is consistent with this Executive Order.

Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope" (section 3(b)). The constitutional basis for FDA's authority to regulate the safety and efficacy of human drug products, biologics, and medical devices is the statutes created by Congress to regulate products affecting the public health. Congress's decision to vest FDA with the authority to establish a regulatory scheme to monitor the safety of these products demonstrates Congress' view that the safety of human drug products, biologics, and medical devices is a problem of national scope (21 U.S.C. 355(k) and 42 U.S.C. 262)).

Executive Order 12612 expressly contemplates preemption where there is a conflict of State and Federal authority under a Federal statute. (See section 4(a).) State and local rules of civil procedure, rules of evidence, and other rules and regulations that permit or require disclosure of the identities of those who report adverse events associated with human drug products, biologics, and medical devices impede FDA's ability to monitor the safety and efficacy of these products. The guarantee of confidentiality of the reporters' and patients' names is necessary to assure meaningful reporting of adverse events. Additionally, Congress specified that Federal regulations issued to monitor the safety of drug products "shall have due regard for the professional ethics of the medical profession and the interests of patients." (See 21 U.S.C. 355(k) and 360i.) State and local rules and regulations that permit or require disclosure of the identities conflict with this requirement by jeopardizing confidentiality and the physician-patient relationship.

Executive Order 12612 also requires that any Federal preemption be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated (section 4(c)). The final rule is narrowly drawn and focuses solely on protecting the identities of the reporter and patient and other individuals named in the report. The final rule does not preempt State and local laws that require disclosure of the substance of the adverse event reports.

As required by sections 3(a) and 4(e) of Executive Order 12612, FDA consulted the appropriate State officials and organizations and gave States an opportunity to participate in the proceedings to preempt State and local laws. This opportunity came through publication of the January 1994 proposal and through notice sent to each State's Attorney General. The agency received no comments from any State regarding the contents or the concepts expressed in the January 1994 proposal.

Thus, FDA concludes that the policy expressed in this final rule has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs or burdens on the States; and that this policy will not affect the States' ability

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to discharge traditional State governmental functions.

VII. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule would preempt the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement requiring or permitting disclosure of the identities of persons reporting adverse events associated with the use of human drugs, biological drug products, and medical devices and patients' identities. Thus, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.63 is amended by adding new paragraph (f) to read as follows:

§ 20.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

* * * * *

(f) The names and any information that would identify the voluntary reporter or any other person associated with an adverse event involving a human drug, biologic, or medical device product shall not be disclosed by the Food and Drug Administration or by a manufacturer in possession of such reports in response to a request, demand, or order. Information that would identify the voluntary reporter or persons identified in the report includes, but is not limited to, the name, address, institution, or any other information that would lead to the identities of the reporter or persons identified in a report. This provision does not affect disclosure of the identities of reporters required by a Federal statute or regulation to make adverse event reports. Disclosure of the identities of such reporters is governed by the applicable Federal statutes and regulations.

(1) *Exceptions.* (i) Identities may be disclosed if both the voluntary reporter and the person identified in an adverse event report or that person's legal representative consent in writing to disclosure, but neither FDA nor any manufacturer in possession of such reports shall be required to seek consent for disclosure from the voluntary reporter or the person identified in the adverse event report or that person's legal representative; or

(ii) Identities of the voluntary reporter and the person who experienced the reported adverse event may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both parties; or (iii) The report, excluding the identities of any other individuals, shall be disclosed to the person who is the subject of the report upon request.

(2) *Preemption.* No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report except as provided in this section.

Dated: March 24, 1995

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–8066 Filed 3–31–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Monday
April 3, 1995

Part IV

Office of Management and Budget

Security of Federal Automated Information; Notice

VOL
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ISS
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OFFICE OF MANAGEMENT AND BUDGET

Security of Federal Automated Information

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revision of OMB Circular No. A–130 Appendix III.

SUMMARY: The Office of Management and Budget (OMB) is proposing to revise Appendix III of Circular No. A–130, "Security of Federal Automated Information Systems." This is the third stage of revisions to Circular No. A–130, "Management of Federal Information Resources." The first stage addressed information management policy (Section 8a) and Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals" (June 25, 1993). That revision focussed on information exchanges with the public. The second revision addressed agency management practices for information systems and information technology (Section 8b) (July 25, 1994). That revision was intended to (1) promote agency investments in information technology that improve service delivery to the public, reduce burden on the public, and lower the cost of Federal programs administration, and (2) encourage agencies to use information technology as a strategic resource to improve Federal work processes and organization.

This proposal is intended to guide agencies in securing information as they increasingly rely on an open and interconnected National Information Infrastructure. It stresses management controls such as individual responsibility, awareness and training, and accountability, rather than technical controls. For example, it would require agencies to assure that risk-based rules of behavior are established, that employees are trained in them, and that the rules are enforced. The proposal would also better integrate security into program and mission goals, reduce the need for centralized reporting of paper security plans, emphasize the management of risk rather than its measurement and revise government-wide security responsibilities to be consistent with the Computer Security Act.

DATES: Persons who wish to comment on the proposed revision to OMB Circular No. A–130, Appendix III should submit their comments no later than June 2, 1995.

ADDRESSES: Comments should be addressed to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Electronic Availability and Comments. This document is available on the Internet via anonymous File Transfer Protocol (FTP) from the National Institute of Standards and Technology (NIST) Computer Security Resource Clearinghouse at csrc.ncsl.nist.gov as /pub/secplcy/a130app3.txt (do not use any capital letters in the file name) or via the World Wide Web from http://csrc.ncsl.nist.gov/secplcy as a130app3.txt. The clearinghouse can also be reached using dial-in access at 301–948–5717. For those who do not have file transfer capability, the document can be retrieved via mail query by sending an electronic mail message to docserver@csrc.ncsl.nist.gov with no subject and with send a130app3.txt as the first line of the body of the message. Comments may be sent via electronic mail to a130@a1.eop.gov (note that the address contains the number 1 not the letter L) and will be included as part of the official record. For assistance using FTP, mail query, or electronic mail, please contact your system administrator.

FOR FURTHER INFORMATION CONTACT: Ed Springer, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–3785.

SUPPLEMENTARY INFORMATION: Since December 30, 1985, Appendix III of Office of Management and Budget (OMB) Circular No. A–130, "Security of Federal Automated Information Systems," has defined a minimum set of controls for the security of Federal automated information systems. That Appendix, and its predecessor, Transmittal Memorandum No. 1 to OMB Circular No. A–71, (July 27, 1978), defined controls that were effective in a centralized processing environment which ran primarily custom-developed application software.

Today's computing environment is significantly different. It is characterized by open, widely distributed processing systems which frequently operate with commercial off-the-shelf software. This shift has increased both risks and vulnerabilities. Greater risks result from increasing quantities of valuable information being committed to Federal systems, and from agencies being critically dependent on those systems to perform their missions. Greater vulnerabilities exist because virtually every Federal employee has access to Federal systems, and because these systems now interconnect with outside systems.

In part because of these trends, Congress enacted the Computer Security Act of 1987. That Act requires agencies to improve the security of Federal computer systems, plan for the security of sensitive systems, and provide mandatory awareness and training in security for all individuals with access to computer systems.

To assist agencies in implementing the Computer Security Act, OMB issued Bulletin No. 88–16, "Guidance for Preparation and Submission of Security Plans for Federal Computer Systems Containing Sensitive Information" (July 6, 1988), and OMB Bulletin No. 90–08, "Guidance for Preparation of Security Plans for Federal Computer Systems That Contain Sensitive Information" (July 9, 1990). This proposed revision of Appendix III to OMB Circular A–130 incorporates and updates the policies set out in those Bulletins.

The report of the National Performance Review, "Creating a Government That Works Better and Costs Less: Reengineering Through Information Technology" (September 1993), recommends that Circular A–130 be revised to: (1) Require an information security plan to be part of each agency's strategic IT plan; (2) require that computer security be identified as a material weakness in the Federal Managers' Financial Integrity Act report, if security does not meet established thresholds; (3) require awareness and training of employees and contractors; (4) require that agencies improve planning for contingencies; and (5) establish and employ formal emergency response capabilities. Those recommendations are incorporated in this proposed revision.

Since its establishment by the Computer Security Act, the Computer System Security and Privacy Advisory Board has recommended changes in Circular A–130 to: (1) Require that agencies establish computer emergency response teams and (2) link oversight of Federal computer security activities more closely to the oversight established pursuant to the Federal Managers' Financial Integrity Act (FMFIA). The proposed Appendix incorporates both of those recommendations.

Subsequent to issuance of Bulletin 90–08, OMB, the National Institute of Standards and Technology (NIST), and the National Security Agency (NSA) met with 28 Federal departments and agencies to review their computer

security programs. In February 1993, the three agencies issued a report ("Observations of Agency Computer Security Practices and Implementation of OMB Bulletin No. 90–08") which summarized those meetings and proposed several changes in OMB Circular A–130 as next steps to improving the Federal computer security program. Those proposed changes are incorporated in the proposed Appendix.

Where an agency processes information which is controlled for national security reasons pursuant to an Executive Order or statute, security measures required by appropriate directives should be included in agency systems. Those policies, procedures and practices will be coordinated with the U.S. Security Policy Board as directed by the President.

The Proposed Appendix

The Appendix proposes to reorient the Federal computer security program to better respond to a rapidly changing technological environment. It establishes government-wide responsibilities for Federal computer security and requires Federal agencies to adopt a minimum set of management controls.

These management controls are directed at individual information technology users in order to reflect the distributed nature of today's technology. For security to be most effective, the controls must be part of day-to-day operations. This is best accomplished by planning for security not as a separate activity, but as part of overall planning.

"Adequate security" is defined as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information." This definition explicitly emphasizes the risk-based policy for cost-effective security established by the Computer Security Act.

The Appendix would no longer require the preparation of formal risk analyses. In the past, substantial resources have been expended doing complex analyses of risks to systems, with limited tangible benefit in terms of improved security for the systems. Rather than continue to try to precisely measure risk, security efforts are better served by generally assessing risks and taking actions to manage them. While complex risk analyses need not be performed, the need to determine adequate security will require that a risk-based approach be used. This approach should include a consideration of the major factors in risk management: the value of the system or application, threats, vulnerabilities, and the effectiveness of current or proposed safeguards.

Automated Information Security Programs

Agencies are required to establish controls to assure adequate security for all information processed, transmitted, or stored in Federal automated information systems. This proposal emphasizes management controls affecting individual users of information technology. Technical and operational controls are linked to management controls regarding user behavior. Four interrelated management controls are proposed: assigning responsibility for security, security planning, periodic review of security controls, and management authorization.

The Appendix requires that these management controls be applied in two areas of management responsibility: one for general support systems and one for major applications. The terms "general support system" and "major application" were used in OMB Bulletin Nos. 88–16 and 90–08. A general support system is "an interconnected set of information resources under the same direct management control which shares common functionality." Such a system can be, for example, a local area network (LAN) including smart terminals that support a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization. Normally, the purpose of a general support system is to provide processing or communications support.

A major application is a use of information and information technology to satisfy a specific set of user requirements that requires special management attention to security due to the risk and magnitude of harm resulting from the loss, misuse or unauthorized access to or modification of the information in the application. All Federal information requires some level of protection. However, certain applications, because of the information in them, require special management oversight and should be treated as major. Adequate security for other applications should be provided by security of the general support systems in which they operate.

The focus of OMB Bulletins No. 88–16 and 90–08 was on identifying and securing both general support systems and applications which contained sensitive information. The Appendix proposes to establish security controls in all general support systems, under the presumption that all contain some sensitive information, and focus extra security controls on a limited number of particularly high risk or major applications.

Discussion of the Appendix's Major Provisions.

The following discussion is provided to aid reviewers in understanding the changes in emphasis proposed in the Appendix.

a. *General Support Systems.* The following controls are required in all general support systems:

(1) *Assign Responsibility for Security.* For each system, an individual should be a focal point for assuring there is adequate security within the system, including ways to prevent, detect, and recover from security problems. That responsibility should be assigned to an official trained in the technology used in the system and in providing security for such technology.

(2) *Security Plan.* The Computer Security Act requires that security plans be developed for all Federal computer systems that contain sensitive information. Given the expansion of distributed processing since passage of the Act, the presumption in the Appendix is that all general support systems contain some sensitive information and therefore require security plans.

Current guidance on security planning is contained in OMB Bulletin 90–08. The Appendix will supersede Section 6 of Bulletin 90–08. The Appendix also expands the coverage of security plans to address rules of individual behavior as well as technical security. Consistent with OMB Bulletin 90–08, the Appendix directs NIST to update and expand security planning guidance and issue it as a Federal Information Processing Standard (FIPS). In the interim, agencies should continue to use OMB Bulletin No. 90–08 as guidance for the technical portion of their security plans.

The Appendix continues the requirement that independent advice and comment on the security plan for each system be sought. The intent of this requirement is to improve the plans, foster communication between managers of different systems, and promote the sharing of security expertise.

The following specific security controls should be included in the security plan for a general support system:

(a) *Rules.* An important new requirement for security plans is the establishment of a set of rules of

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behavior for individual users of each general support system. These rules should clearly delineate responsibilities of and expectations for all individuals with access to the system. In addition, they should state the consequences of non-compliance. The rules should be in writing and will form the basis for security awareness and training.

The development of rules for a system must take into consideration the needs of all parties who use the system. Rules should be as stringent as necessary to provide adequate security. Therefore, the acceptable level of risk for the system must be established and should form the basis for determining the rules.

Rules should cover such matters as work at home, dial-in access, connection to the Internet, use of copyrighted software, unofficial use of government equipment, the assignment and limitation of system privileges, and individual accountability. Often rules will address technical security controls in the system. For example, rules regarding password use should be consistent with technical password features in the system. In addition, the rules should specifically address restoration of service as a concern of all users of the system.

(b) *Awareness and Training.* The Computer Security Act requires mandatory periodic training for everyone with access to Federal computer systems. This includes contractors, employees of other agencies, and members of the public. The Appendix proposes to enforce such mandatory awareness and training by requiring its completion prior to granting access to the system. Each new user, in some sense, introduces a risk to all other users of a general support system. Therefore, each user should be versed in acceptable behavior—the rules of the system—before being allowed to use the system. Awareness and training should also inform the individual how to get help in the event of difficulty with using or security of the system.

Awareness and training should be tailored to what a user needs to know to use the system securely, given the nature of that use. Awareness and training may be presented in stages, for example as more access is granted. In some cases, the awareness and training should be in the form of classroom instruction. In other cases, interactive computer sessions or well-written and understandable brochures may be sufficient, depending on the risk and magnitude of harm.

Over time, attention to security tends to atrophy. In addition, changes to a system may necessitate a change in the rules or user procedures. Therefore, individuals should periodically have refresher training to assure that they continue to understand and abide by the applicable rules.

To assist agencies, the Appendix proposes that NIST, with assistance from the Office of Personnel Management (OPM), update its existing awareness and training guidance. It also proposes that OPM assure that its rules for computer security training for Federal civilian employees are effective.

(c) *Personnel Controls.* It has long been recognized that the greatest harm comes from authorized users engaged in improper activities, whether intentional or accidental. In every general support system, a number of technical, operational, and management controls are used to prevent and detect harm. Such controls include individual accountability, "least privilege," and separation of duties.

Individual accountability consists of holding someone responsible for his or her actions. In a general support system, accountability is normally accomplished by identifying and authenticating users of the system and subsequently tracing actions on the system to the user who initiated them.

Least privilege is the practice of restricting a user's access (to data files, to processing capability, or to peripherals) or type of access (read, write, execute, delete) to the minimum necessary to perform his or her job.

Separation of duties is the practice of dividing the steps in a critical function among different individuals. For example, one system programmer can create critical operating system code, while another authorizes its implementation. Such a control keeps a single individual from subverting a critical process.

Nevertheless, in some instances, individuals may be given the ability to bypass technical and operational controls in order to perform system administration and maintenance functions. Screening such individuals in positions of trust will supplement technical, operational, and management controls, particularly where the risk and magnitude of loss or harm is high.

(d) *Incident Response Capability.* Security incidents, whether caused by viruses, hackers, or software bugs, are becoming more common. When faced with a security incident, an agency should be able to respond in a manner that both protects its own information and helps to protect the information of others who might be affected by the incident. To address this concern, agencies should establish formal incident response mechanisms. Awareness and training for individuals with access to the system should include how to use the system's incident response capability.

To be fully effective, incident handling must also include sharing information concerning common vulnerabilities and threats with those in other systems. Agencies should coordinate assistance and sharing through the Forum of Incident Response & Security Teams (FIRST).

The Appendix also directs the Department of Justice to develop guidance on pursuing legal remedies in the case of serious incidents.

(e) *Continuity of Support.* Inevitably, there will be service interruptions. Agency plans should assure that there is an ability to recover and provide service sufficient to meet the minimal needs of users of the system. Moreover, manual procedures are generally NOT a viable back-up option. When automated support is not available, many functions of the organization will effectively cease. Therefore, it is important to take cost-effective steps to manage any disruption of service.

Decisions on the level of service needed at any particular time and on priorities in service restoration should be made in consultation with the users of the system and incorporated in the system rules. Experience has shown that recovery plans that are periodically tested are substantially more viable than those that are not. Moreover, untested plans may actually create a false sense of security.

(f) *Technical Security.* Agencies should assure that each system appropriately uses effective security products and techniques, consistent with standards and guidance from NIST. Often such techniques will correspond with system rules of behavior such as in the proper use of password protection.

The Appendix directs NIST to continue to issue computer security guidance to assist agencies in planning for and using technical security products and techniques. Until such guidance is issued, however, the planning guidance included in OMB Bulletin 90–08 can assist in determining techniques for effective security in a system and in addressing technical controls in the security plan.

(g) *System Interconnection.* In order for a community to effectively manage risk, it must control access to and from other systems. The degree of such control should be established in the rules of the system and all participants should be made aware of any limitations on outside access. Technical controls to accomplish this should be put in place in accordance with guidance issued by NIST.

There are varying degrees of how connected a system is. For example, some systems will choose to isolate themselves, others will restrict access such as allowing only e-mail connections or remote access only with advanced authentication, and others will be fully open. The management decision to interconnect should be based on the availability and use of technical and non-technical safeguards and consistent with the acceptable level of risk defined in the system rules.

(3) *Review of Security Controls.* The security of a system will degrade over time, as the technology evolves and as people and procedures change. Reviews should assure that management, operational, personnel, and technical controls are functioning effectively. Security controls may be reviewed by an independent audit or a self review. The type and rigor of review or audit should be commensurate with the acceptable level of risk that is established in the rules for the system and the likelihood of learning useful information to improve security. Technical tools such as virus scanners, vulnerability assessment products (which look for known security problems, configuration errors, and the installation of the latest patches), and penetration testing can assist in the on-going review of different facets of systems. However, these tools are no substitute for a formal management review at least every three years. Indeed, for some high-risk systems with rapidly changing technology, three years will be too long.

Depending upon the risk and magnitude of loss or harm that could result, weaknesses identified during the review of security controls should be reported as deficiencies in accordance with OMB Circular No. A–123, "Management Accountability and Control" and the Federal Managers' Financial Integrity Act. In particular, if a basic management control such as assignment of responsibility, a workable security plan, or management authorization are missing, then consideration should be given to identifying a deficiency.

(4) *Authorize Processing.* The authorization of a system to process information, granted by a management official, provides an important quality control. By authorizing processing in a system, a manager accepts the risk associated with it. Authorization is not a decision that should be made by the security staff. Some agencies refer to this authorization as an accreditation.

Both the security official and the authorizing management official have security responsibilities. In general, the security official is closer to the day-to-day operation of the system and will direct or perform security tasks. The authorizing official will normally have general responsibility for the organization supported by the system.

Management authorization should be based on an assessment of management, operational, and technical controls. Since the security plan establishes the security controls, it should form the basis for the authorization, supplemented by more specific studies as needed. In addition, the periodic review of controls should also contribute to future authorizations. Some agencies perform "certification reviews" of their systems periodically. These formal technical evaluations lead to a management accreditation, or "authorization to process." Such certifications (such as those using the methodology in FIPS Pub 102 "Guideline for Computer Security Certification and Accreditation") can provide useful information to assist management in authorizing a system, particularly when combined with a review of the broad behavioral controls envisioned in the security plan required by the Appendix.

b. *Controls in Major Applications.* Certain applications require special management attention due to the risk and magnitude of loss or harm that could occur. For such applications, the controls of the support system(s) in which they operate are likely to be insufficient. Therefore, additional controls specific to the application are required. Since the function of applications is the direct manipulation and use of information, controls for securing applications should emphasize protection of information and the way it is manipulated.

(1) *Assign Responsibility for Security.* By definition, major applications are high risk and require special management attention. Major applications usually support a single agency function and often are supported by more than one general support system. It is important, therefore, that an individual be assigned responsibility to assure that the particular application has adequate security. To be effective, this individual should be knowledgeable in the information processed by the application and in the management, operational, and technical controls used to protect the application.

(2) *Application Security Plans.* Security for each major application should be addressed by a security plan specific to the application. The plan should include controls specific to protecting information and should be developed from the application manager's perspective. To assist in assuring its viability, the plan should be shown to the manager of the primary support system which the application uses for advice and comment. This recognizes the critical dependence of the security of major applications on the underlying support systems they use.

(a) *Application Rules.* Rules of behavior should be established which delineate the responsibilities and expected behavior of all individuals with access to the application. The rules should state the consequences of inconsistent behavior. Such rules should include, for example, limitations on changing data, searching data bases, or divulging information.

(b) *Specialized Awareness and Training.* Awareness and training should vary depending on the type of access allowed and the risk that access represents to the security of information in the application. This training will be in addition to that required for access to a support system.

(c) *Personnel Security.* For most major applications, management controls such as individual accountability requirements, separation of duties enforced by access controls, or limitations on the processing privileges of individuals, are generally more cost-effective personnel security controls than background screening. If adequate audit or access controls (through both technical and non-technical methods) cannot be established, then it may be cost-effective to screen personnel.

(d) *Contingency Planning.* Normally the Federal mission supported by a major application is critically dependent on the application. Manual processing is generally NOT a viable back-up option. Managers should plan for how they will perform their mission and/or recover from the loss of existing application support in the event of an emergency. Experience has demonstrated that testing a contingency plan significantly improves its viability. Indeed, untested plans may create a false sense of ability to recover in a timely manner.

(e) *Technical Controls.* Technical security controls, for example software edits that limit data that can be entered into certain files, should be built into each application. Often these controls will correspond with the rules of behavior for the application. Under the current Appendix, application security is focused on the process by which sensitive, custom applications are developed. Given the increasing reliance on commercial off-the-shelf software, that process is not addressed in detail in this Appendix. However, some custom-developed applications will remain. For them the technical

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security controls defined in OMB Bulletin No. 90–08 will continue, until that guidance is replaced by NIST's security planning guidance.

(f) *Information Sharing.* Assure that information which is shared with Federal organizations, State and local governments, and the private sector is appropriately protected relative to the protection provided when the information is within the application. Controls on the information may stay the same or vary when the information is shared with another entity. For example, the primary user of the information may require a high level of availability while the secondary user does not, and can therefore relax some of the controls designed to maintain the availability of the information. At the same time, however, the information shared may require a level of confidentiality that should be extended to the secondary user. This may require agreements to protect such information prior to its being shared.

(g) *Public Access Controls.* Permitting public access to a Federal application is an important method of improving information exchange with the public. At the same time, it introduces risks to the Federal application. To mitigate these risks, additional controls should be in place as appropriate. These controls are in addition to controls such as "firewalls" that are put in place for security of the general support system.

In general, it is more difficult to apply conventional controls to public access systems, because many of the users of the system may not be subject to individual accountability policies. In addition, public access systems may be a target for mischief because of their higher visibility and published access methods.

Official records need to be protected against loss or alteration. Official records in electronic form are particularly susceptible since they can be relatively easy to change or destroy. Therefore, official records should be segregated from information made directly accessible to the public. There are different ways to segregate records. Some agencies and organizations are creating dedicated information dissemination systems (such as bulletin boards or World Wide Web servers) to support this function. These systems can be on the outside of secure gateways which protect internal agency records from outside access.

In order to secure applications that allow direct public access, conventional techniques such as least privilege (limiting the processing capability as well as access to data) and integrity assurances (such as checking for viruses, clearly labeling the age of data, or periodically spot checking data) should also be used. Additional guidance on securing public access systems is available from NIST Computer Systems Laboratory Bulletin "Security Issues in Public Access Systems" (May, 1993).

(3) *Review of Application Controls.* At least every three years, a review or audit of the security controls for each major application should be performed. Such reviews should verify that responsibility for the security of the application has been assigned, that a viable security plan for the application is in place, and that a manager has authorized the processing of the application. A deficiency in any of these controls should be considered a deficiency pursuant to the Federal Manager's Financial Integrity Act and OMB Circular No. A–123, "Management Accountability and Control."

The review envisioned here is different than the system test and certification process required in the current Appendix. That process, however, remains useful for assuring that technical security features are built into custom-developed software applications. While the controls in that process are not specifically called for in the new Appendix, they remain in Bulletin No. 90–08, and are recommended in appropriate circumstances as technical controls.

(4) *Authorize Processing.* A major application should be periodically authorized by the management official responsible for the function supported by the application. The intent of this requirement is to assure that the senior official whose mission will be adversely affected by security weaknesses in the application periodically assesses and accepts the risk of operating the application. The authorization should be based on the application security plan and any review(s) performed on the application. It should also take into account the risks from the general support systems used by the application.

4. *Assignment of Responsibilities.* The Appendix assigns government-wide responsibilities to agencies that are consistent with their missions and the Computer Security Act.

a. *Department of Commerce.* The Department of Commerce, through NIST, is assigned the following responsibilities consistent with the Computer Security Act.

(1) Develop and issue security standards and guidance.

(2) Review and update, with assistance from OPM, the guidelines for security awareness and training issued in 1988 pursuant to the Computer Security Act to assure they are effective.

(3) Replace and update the technical planning guidance in the appendix to OMB Bulletin 90–08.

(4) Provide agencies with guidance and assistance concerning effective controls for systems when interconnecting with other systems, including the Internet. Such guidance on, for example, so-called "firewalls" is becoming widely available and is critical to agencies as they consider how to interconnect their communications capabilities.

(5) Coordinate agency incident response activities. This is already underway through the Forum for Incident Response Teams (FIRST).

(6) Assess security vulnerabilities in new information technologies and apprise Federal agencies of such vulnerabilities. The intent of this new requirement is to help agencies understand the security implications of technology before they purchase and field it. In the past, there have been too many instances where agencies have acquired and implemented technology, then found out about vulnerabilities in the technology and had to retrofit security measures. This activity is intended to help avoid such difficulties in the future.

b. *Security Policy Board.* The Security Policy Board is assigned responsibility for national security policy coordination in accordance with appropriate Presidential directive.

c. *Department of Defense.* The Department, through the National Security Agency, should provide technical advice and assistance to NIST, including work products such as technical security guidelines, which NIST can draw upon for developing standards and guidelines for protecting sensitive information in Federal computers.

Also, the Department, through the National Security Agency, should assist NIST in evaluating vulnerabilities in emerging technologies. Such vulnerabilities may present a risk to national security information as well as to unclassified information.

d. *Office of Personnel Management.* In accordance with the Computer Security Act, the Office of Personnel Management should review its regulations concerning computer security training and assure that they are effective.

In addition, OPM should assist the Department of Commerce in the review and update of its computer security awareness and training guidelines. OPM worked closely with NIST in developing the current guidelines and should work with NIST in revising those guidelines.

e. *General Services Administration.* The General Services Administration should provide agencies guidance for addressing security considerations when acquiring information technology products or services. This continues the current requirement.

In addition, where cost-effective GSA should establish government-wide contract vehicles for agencies to use to acquire certain security services. Such vehicles already exist for providing system back-up support and conducting security analyses.

GSA should also provide appropriate security services to assist Federal agencies to the extent that provision of such services is cost-effective. This includes providing, in conjunction with the Department of Defense and the Department of Commerce, appropriate services which support Federal use of the National Information Infrastructure (e.g., use of digital signature technology).

f. *Department of Justice.* The Department of Justice should provide guidance to Federal agencies on legal remedies available to them when serious security incidents occur. Such guidance should include ways to report incidents and cooperate with law enforcement.

In addition, the Department should pursue appropriate legal actions on behalf of the Federal government when serious security incidents occur.

5. *Reports.* The Appendix requires agencies to provide two reports to OMB:

The first is a requirement that agencies report security deficiencies and material weaknesses within their FMFIA reporting mechanisms as defined by OMB Circular No. A–123, "Management Accountability and Control," and take corrective actions in accordance with that directive.

The second, defined by the Computer Security Act, requires that a summary of agency security plans be included in the five-year information resources management plan required by the Paperwork Reduction Act.

Accordingly, Appendix III of Circular A–130 is proposed to be revised to read as set forth below.

Sally Katzen.

Appendix III—To OMB Circular No. A–130, Security of Federal Automated Information

1. Purpose

This Appendix establishes a minimum set of controls to be included in Federal automated information security programs; assigns Federal agency responsibilities for the security of automated information; and links agency automated information security programs and agency management control systems established in accordance with OMB Circular No. A–123. The Appendix revises procedures formerly contained in Appendix III to OMB Circular No. A–130 (50 FR 52730; December 24, 1985), and incorporates requirements of the Computer Security Act of 1987 (P.L. 100–235) and responsibilities assigned in applicable national security directives.

2. Definitions

The term:

a. "adequate security" means security commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information. This includes assuring that systems and applications used by the agency operate effectively and provide appropriate confidentiality, integrity, and availability, through the use of cost-effective management, personnel, operational, and technical controls.

b. "application" means the use of information resources (information and information technology) to satisfy a specific set of user requirements.

c. "general support system" or "system" means an interconnected set of information resources under the same direct management control which share common functionality. A system normally includes hardware, software, information, data, applications, and people. A system can be, for example, a local area network (LAN) including smart terminals that supports a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization (IPSO).

d. "major application" means an application that requires special attention to security due to the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information in the application. Note: All Federal information requires some level of protection. Certain applications, because of the information in them, however, require special management oversight and should be treated as major. Adequate security for other applications should be provided by security of the systems in which they operate.

3. *Automated Information Security Programs.* Agencies should implement and maintain a program to assure that adequate security is provided for all agency information collected, processed, transmitted, stored, or disseminated in general support systems and major applications.

Each agency's program should implement policies, standards and procedures which are consistent with government-wide policies, standards, and procedures issued by the Office of Management and Budget, the Department of Commerce, the General Services Administration and the Office of Personnel Management (OPM). Different or more stringent requirements for securing national security information should be incorporated into agency programs as required by appropriate national security directives. At a minimum, agency programs should include the following controls in their general support systems and major applications:

a. Controls for general support systems.

(1) *Assign Responsibility for Security.* Assign responsibility for security in each system to an official knowledgeable in the information technology used in the system and in providing security for such technology.

(2) *System Security Plan.* Plan for the security of each general support system as part of the organization's information resources management (IRM) planning process. The security plan should be consistent with guidance issued by the National Institute of Standards and Technology (NIST). Independent advice and comment on the security plan should be solicited prior to the plan's implementation. A summary of the security plans should be incorporated into the 5-year IRM plan required by the Paperwork Reduction Act (44 U.S.C. Chapter 35) and Section 8(b) of this circular. Security plans should include:

(a) *Rules of the System.* Establish a set of rules of behavior concerning use of, security in, and the acceptable level of risk for the system. The rules should be based on the needs of the various users of the system. The security required by the rules should be only as stringent as necessary to provide adequate security for information in the system. Such rules should clearly delineate responsibilities and expected behavior of all individuals with access to the system. They should also include appropriate limits on interconnections to other systems and should define service provision and restoration priorities. Finally, they should be clear about the consequences of behavior not consistent with the rules.

(b) *Awareness and Training.* Ensure that all individuals are aware of their security responsibilities and trained in how to fulfill them before allowing them access to the system. Such awareness and training should assure that individuals are versed in the rules of the system, be consistent with guidance issued by NIST and OPM, and apprise individuals about availabie assistance and technical security products and techniques. Behavior consistent with the rules of the system and periodic refresher training should be required for continued access to the system.

(c) *Personnel Controls.* Screen all individuals who are authorized to bypass technical and operational security controls of the system (e.g., LAN administrators or system programmers) commensurate with the risk and magnitude of loss or harm they could cause. Such screening should occur prior to the individuals' being authorized to bypass controls and periodically thereafter.

(d) *Incident Response Capability.* Ensure that there is a capability to provide help to users when a security incident occurs in the system and to share information concerning common vulnerabilities and threats. This capability should coordinate with those in other organizations and should assist the agency in pursuing appropriate legal action, consistent with Department of Justice guidance.

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(e) *Continuity of Support.* Establish and periodically test the capability to continue providing service within a system based upon the needs and priorities of the participants of the system.

(f) *Technical Security.* Ensure that cost-effective security products and techniques are appropriately used within the system.

(g) *System Interconnection.* Obtain written management authorization based upon the acceptance of risk to the system prior to connecting with other systems. Where connection is authorized, controls should be established which are consistent with the rules of the system and in accordance with guidance from NIST.

(3) *Review of Security Controls.* Periodically review the security controls in each system commensurate with the acceptable level of risk for the system established in its rules, especially when significant modifications are made and at least every 3 years. Depending on the potential risk and magnitude of harm that could occur, consider identifying a deficiency pursuant to OMB Circular No. A–123, "Management Accountability and Control" and the Federal Managers' Financial Integrity Act (FMFIA), if there is no assignment of security responsibility, no security plan or no authorization to process in a system.

(4) *Authorize Processing.* Ensure that a management official authorizes in writing the use of each general support system based on implementation of its security plan before beginning or significantly changing processing in the system. Use of the system should be reauthorized at least every three years.

b. Controls for Major Applications.

(1) *Assign Responsibility for Security.* Assign responsibility for security of each major application to a management official knowledgeable in the nature of the information processed by the application and in the management, operational, and technical controls used to protect it. This official should assure that effective security products and techniques are appropriately used in the application and should be contacted when a security incident occurs concerning the application.

(2) *Application Security Plan.* Plan for the adequate security of each major application, taking into account the security of all systems in which the application will operate. The plan should be consistent with guidance issued by NIST. Advice and comment on the plan should be solicited from the official responsible for security in the primary system in which the application will operate prior to the plan's implementation. A summary of the security plans should be incorporated into the 5-year IRM plan required by the Paperwork Reduction Act. Application security plans should include:

(a) *Application Rules.* Establish a set of rules concerning use of and behavior within the application. The rules should be as stringent as necessary to provide adequate security for the application and the information in it. Such rules should clearly delineate responsibilities and expected behavior of all individuals with access to the application. In addition, the rules should be clear about the consequences of behavior not consistent with the rules.

(b) *Specialized Awareness and Training.* Before allowing individuals access to the application, ensure that all individuals receive specialized awareness and training focused on their responsibilities and the application rules. This may be in addition to the awareness and training required for access to a system. Such awareness and training may vary from a notification at the time of access (e.g., for members of the public using an information retrieval application) to formal training (e.g., for an employee that works with a high risk application).

(c) *Personnel Security.* Incorporate controls such as separation of duties, least privilege and individual accountability into the application as appropriate. In cases where such controls cannot adequately protect the application and information in it, screen individuals commensurate with the risk and magnitude of the harm they could cause. Such screening should be done prior to the individuals being authorized to access the application and periodically thereafter.

(d) *Contingency Planning.* Establish and periodically test the capability to perform the agency function supported by the application in the event of failure of its automated support.

(e) *Technical Controls.* Ensure that appropriate security controls are specified, designed into, tested, and accepted in accordance with guidance issued by NIST.

(f) *Information Sharing.* Ensure that information shared from the application is protected appropriately, relative to the protection provided when information is within the application.

(g) *Public Access Controls.* Where an agency's application promotes or permits public access, additional security controls should be added to protect the integrity of the application and the confidence the public has in the application. Such controls should include segregating information made directly accessible to the public from official agency records (e.g., by putting information onto a bulletin board).

(3) *Review of Application Controls.* Perform an independent review or audit of the security controls in each application at least every three years. Consider identifying a deficiency pursuant to the Federal Managers' Financial Integrity Act if there is no assignment of responsibility for security, no security plan, or no authorization to process for the application.

(4) *Authorize Processing.* Ensure that a management official authorizes in writing use of the application by confirming that its security plan as implemented adequately secures the application. Results of the most recent review or audit of controls should be a factor in management authorizations. The application should be authorized prior to operating and re-authorized at least every three years thereafter. Management authorization implies accepting the risk of each system used by the application.

4. Assignment of Responsibilities

a. *Department of Commerce.* The Secretary of Commerce should:

(1) Develop and issue appropriate standards and guidance for the security of sensitive information in Federal computer systems.

(2) Review and update guidelines for training in computer security awareness and accepted computer security practice, with assistance from OPM.

(3) Provide agencies guidance for security planning to assist in their development of application and system security plans.

(4) Provide guidance and assistance, as appropriate, to agencies concerning effective controls when interconnecting with other systems.

(5) Coordinate agency incident response activities to promote sharing of incident response information and related vulnerabilities.

(6) Evaluate new information technologies to assess their security vulnerabilities, with technical assistance from the Department of Defense, and apprise Federal agencies of such vulnerabilities as soon as they are known.

b. *Security Policy Board.* The Security Policy Board should:

(1) Act, in accordance with applicable national security directives, to coordinate the security activities of the Federal Government regarding the security of automated information systems that process national security information;

c. *Department of Defense.* The Secretary of Defense should:

(1) Provide appropriate technical advice and assistance (including work products) to the Department of Commerce.

(2) Assist the Department of Commerce in evaluating the vulnerabilities of emerging information technologies.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management should:

(1) Assure that its regulations concerning computer security training for Federal civilian employees are effective.

(2) Assist the Department of Commerce in updating and maintaining guidelines for training in computer security awareness and accepted computer security practice.

e. *General Services Administration.* The Administrator of General Services should:

(1) Assure that the Federal Information Resources Management Regulation provides guidance to agencies on addressing security considerations when acquiring automated data processing equipment (as defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949, as amended)

(2) Facilitate the development of contract vehicles for agencies to use in the acquisition of cost-effective security products and services (e.g., back-up services contract).

(3) Provide appropriate security services to meet the needs of Federal agencies to the extent that such services are cost-effective.

f. *Department of Justice.* The Attorney General should:

(1) Provide guidance to agencies on legal remedies regarding security incidents and ways to report and work with law enforcement concerning such incidents.

(2) Pursue appropriate legal actions when security incidents occur.

5. Correction of Deficiencies and Reports

a. *Correction of Deficiencies.* Agencies shall correct deficiencies which are identified through the reviews of security for systems and major applications described above.

b. *Reports on Deficiencies.* In accordance with OMB Circular No. A–123, if a deficiency in controls is judged by the agency head to be material when weighed against other agency deficiencies, it should be included in the annual FMFIA report. Less significant deficiencies should be reported and progress on corrective actions tracked at the appropriate agency level.

c. *Summaries of Security Plans.* Agencies shall include a summary of their system security plans and major application plans in the five-year plan required by the Paperwork Reduction Act (44 U.S.C. 3505).

[FR Doc. 95–8055 Filed 3–31–95; 8:45 am]
BILLING CODE 3110–01–P

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

CFR ISSUANCES 1995
January 1995 Editions and Projected April, 1995 Editions

This list sets out the CFR issuances for the January 1995 editions and projects the publication plans for the **April, 1995** quarter. A projected schedule that will include the **July, 1995** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1994–1995 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1995:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
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46–51
52
53–209
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300–399
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900–999
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1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
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51–199
200–399 (Cover only)
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500–End

11

12 Parts:
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200–219
220–299
300–499
500–599
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14 Parts:
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16 Parts:
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1000–End

Projected April 1, 1995 editions:

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200–239
240–End

18 Parts:
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150–279
280–399
400–End

19 Parts:
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141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
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100–169
170–199
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800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
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200–219
220–499
500–699
700–899
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1700–End

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26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1995

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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April 4	April 19	May 4	May 19	June 5	July 3
April 5	April 20	May 5	May 22	June 5	July 5
April 6	April 21	May 8	May 22	June 6	July 5
April 7	April 24	May 8	May 22	June 6	July 6
April 10	April 25	May 10	May 25	June 9	July 10
April 11	April 26	May 11	May 26	June 12	July 10
April 12	April 27	May 12	May 30	June 12	July 11
April 13	April 28	May 15	May 30	June 12	July 12
April 14	May 1	May 15	May 30	June 13	July 13
April 17	May 2	May 17	June 1	June 16	July 17
April 18	May 3	May 18	June 2	June 19	July 17
April 19	May 4	May 19	June 5	June 19	July 18
April 20	May 5	May 22	June 5	June 19	July 19
April 21	May 8	May 22	June 6	June 20	July 20
April 24	May 9	May 24	June 8	June 23	July 24
April 25	May 10	May 25	June 9	June 26	July 24
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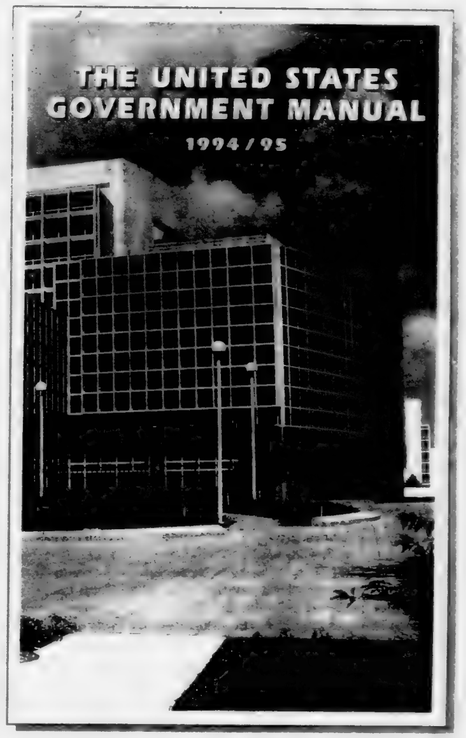
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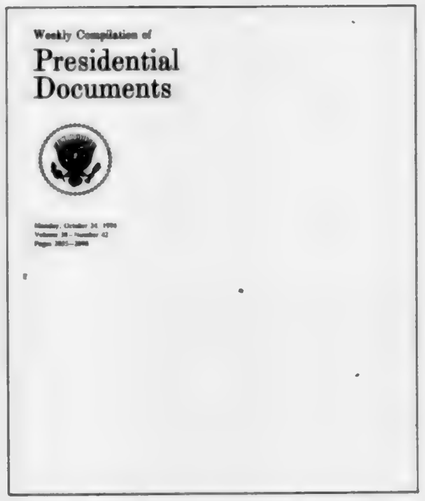
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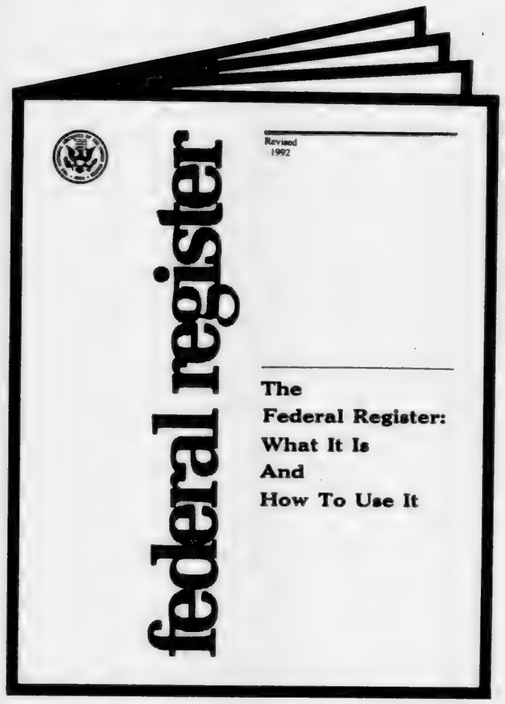
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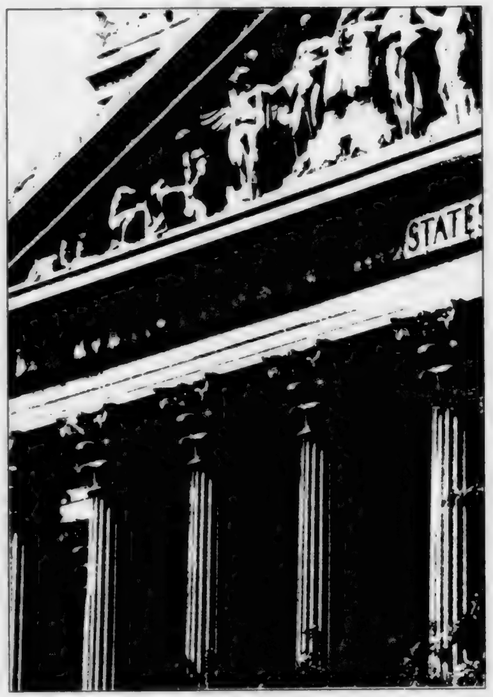
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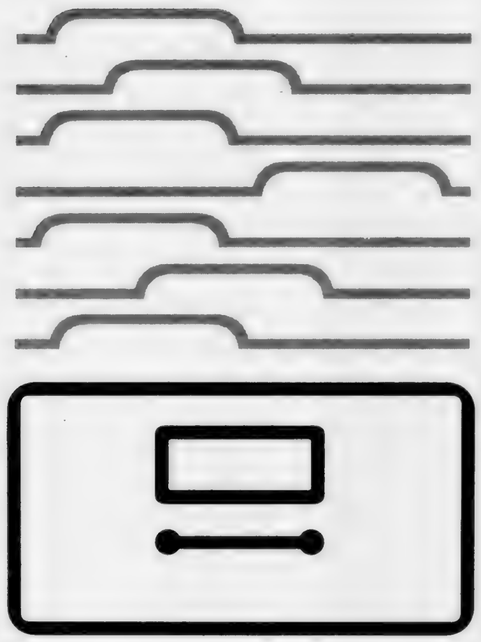
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Vol. 60 No. 64

federal register

Tuesday
April 4, 1995

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VOL
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4-4-95
Vol. 60 No. 64
Pages 16979–17190

federal register

Tuesday
April 4, 1995

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VOL
60
ISS
64
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 95–004–1]

Federal Seed Act Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Federal Seed Act regulations to remove the staining requirements for seed of alfalfa and red clover imported into the United States. The removal of the requirements is necessary to make the regulations conform to the amendment of the Federal Seed Act by the Uruguay Round Agreements Act. This action relieves a restriction on the importation of alfalfa and red clover seed into the United States.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, Operational Support, Plant Protection and Quarantine, APHIS, USDA, 4700 River Rd., Unit 133, Riverdale, MD 20737–1228, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

We are amending the Federal Seed Act Regulations in 7 CFR part 201 (referred to below as the regulations) by removing the provisions concerning staining of seed of alfalfa and red clover imported into the United States.

Legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade (referred to below as the Uruguay Round Agreements Act), Pub. L. 103–465, amended the Federal Seed Act by removing staining requirements in 7 U.S.C. 1581, 1582, 1585, and 1586 for seed imported into the United States. As a result, the Animal and Plant Health Inspection Service no longer has authority to require such staining under the regulations.

We are, therefore, amending the regulations by removing §§ 201.104 through 201.106, which contain provisions for staining. As a result of this action, no seeds of red clover and alfalfa imported into the United States for propagation will need to be stained prior to entry.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that good cause exists to publish this final rule without prior notice and opportunity for public comment.

The staining requirements for seed of alfalfa and red clover imported into the United States must be removed as a result of the statutory amendments discussed above.

This action relieves a restriction on the importation of alfalfa and red clover seed into the United States. Since prior notice and other public procedures with respect to this final rule are impracticable, unnecessary, and contrary to the public interest, and since this regulatory change is mandated by Congress, there is good cause under 5 U.S.C. 553 for making this final rule effective upon publication.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule removes the staining requirement for alfalfa and red clover seed that is imported into the United States. This action will save importers of alfalfa seed and red clover seed from certain countries the relatively small cost of staining the seed.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12278

This rule has been reviewed under executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

Accordingly, 7 CFR part 201 is amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1582.

PART 201—[AMENDED]

2. Part 201 is amended by removing §§ 201.104, 201.105, and 201.106, and redesignating §§ 201.107, 201.108, and 201.109 as §§ 201.104, 201.105, and 201.106, respectively.

Done in Washington, DC, this 28th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8096 Filed 4–3–95; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM95–5–000; Order No. 577]

Release of Firm Capacity on Interstate Natural Gas Pipelines

Issued March 29, 1995.

AGENCY: Federal Energy Regulatory Commission.

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ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its capacity release regulations to make the capacity release mechanism operate more efficiently and reduce burden. The existing regulations establish the provisions under which shippers can release capacity without having to comply with the Commission's advance posting and bidding requirements. The Commission is extending the exception from posting and bidding to one full calendar month as well as exempting transactions at the maximum rate from the posting and bidding requirements. The revisions also change the provision regarding roll-overs of exempted releases by changing the period in which shippers cannot re-release capacity to the same shipper from 30 days to 28 days.

EFFECTIVE DATE: The final rule becomes effective May 4, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington D.C. 20426.

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Under Federal Energy Regulatory Commission (Commission) regulations, firm holders of pipeline capacity can release that capacity to others. The Commission is modifying § 284.243(h) of its capacity release regulations.

The general rule under the regulations is that shippers must post their available capacity on the pipeline's Electronic Bulletin Board (EBB) for bidding by potential purchasers (replacement shippers). In § 284.243(h), the Commission permits an exception to the general rule by allowing shippers to release capacity for a period of less than one month without having to comply with the Commission's advance posting and bidding requirements. Shippers, however, cannot roll-over such releases and cannot re-release capacity to the same replacement shipper under the short-term release exception until 30 days after the first release period ends.

The Commission is revising § 284.243(h) to promote a more effective and efficient capacity release mechanism as well as reduce administrative burdens. The Commission is revising § 284.243(h)(1) to coordinate with the industry's monthly purchasing practices by extending to one full calendar month the exception from the advance posting and bidding requirements. The Commission also is exempting transactions at the maximum rate from the posting and bidding requirements.

The Commission is revising § 284.243(h)(2) to provide for a 28 (rather than a 30) day hiatus during which shippers that released capacity at less than the maximum rate under the exception cannot re-release that capacity to the same replacement shipper at less than the maximum tariff rate. This change accounts for the fact that February has only 28 days and will ensure that shippers entering into a full month's release in January will be able to begin another full month's release beginning March 1.

I. Reporting Requirements

The final rule affects the information required to be maintained on pipeline EBBs. The public reporting burden for EBBs is contained in the information requirement FERC–549(B), "Gas Pipeline Rates: Capacity Release Information." The rule will eliminate the need for the industry to continue the current practice of using two capacity release postings (a less-than-one month release coupled with a one-day release) to complete a full month release transaction. Under the rule, full month releases can be accomplished with only one such posting.

In the Notice of Proposed Rulemaking (NOPR), the Commission estimated that 1,500 paired release transactions occur per year and that the proposed rule would reduce burden by 1,500 hours. A survey conducted by INGAA and filed with their comments indicates there were 1,924 paired release transactions during the first three quarters of 1994. Both the staff estimate and the industry survey are based on historical data. However, the number of capacity release transactions has increased each quarter, as the industry has gained more experience with capacity release. Therefore, historical data are not an accurate indicator of the current level of capacity release activity.

The current rate of paired release transactions, when annualized, is about 3,500 per year. At one hour per transaction, the annual reduction in burden as a result of this rule is approximately 3,500 hours.

A copy of this final rule is being provided to the Office of Management and Budget (OMB). Interested persons may send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]. Comments on the requirements of this proposed rule may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

II. Background

Under the current capacity release regulations, promulgated in Order No. 636,[1] holders of firm capacity on pipelines can reassign that capacity in two ways.[2] The releasing shipper can choose to have the pipeline post the notice of release on the pipeline's EBB so other shippers can submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper can enter into a pre-arranged deal with a replacement shipper for the release of capacity.

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13,267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36,128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, United Distribution Companies, *et al.* v. FERC, No. 92–1485 (D.C. Cir. Feb. 8, 1995).

[2] 18 CFR 284.243(a)–(h).

The regulations establish different requirements for pre-arranged releases depending on the length of the release. For pre-arranged releases of one calendar month or more, the release must be posted on the pipeline's EBB to permit other shippers to bid for that capacity.[3]

For pre-arranged releases of less than one calendar month, § 284.243(h) permits shippers to consummate the transaction without complying with the posting and bidding requirements.[4] Releases under this provision must be posted no later than 48 hours after the release transaction begins. Section 284.243(h)(2) provides that shippers cannot roll-over or extend releases covered by this exception unless they comply with the requirements for prior notice and bidding and cannot re-release to the same replacement shipper until thirty days after the first release period has ended.[5]

The Commission adopted the less-than-one calendar month exception to the posting and bidding requirements to balance two objectives of the capacity release mechanism.[6] The exception was designed to ensure that parties could quickly and efficiently consummate short-term deals in emergency situations, such as a power plant outage resulting in excess capacity, without the administrative complications resulting from the advance posting and bidding requirements. On the other hand, the restriction to less-than-one calendar month was intended to ensure that normal monthly transactions would have to comply with the advance posting and bidding requirements to ensure open and non-discriminatory access to the capacity release market. The Commission thought that the pipelines could design capacity release procedures to efficiently handle full calendar month transactions.

The capacity release mechanism has now been in effect for over a year and the Commission has begun the process of evaluating the mechanism's operation. In the course of this review, the staff of the Commission has conducted informal discussions about the operation of the capacity release mechanism and possible changes or modifications to improve the mechanism with all major segments of the gas industry, including pipelines, local distribution companies, marketers, producers, end-users, and others interested in the capacity release market, such as companies developing third-party bulletin boards.

Based on comments made in these meetings, on January 12, 1995, the Commission issued the NOPR in this docket which proposed to extend to one full calendar month the period in which firm shippers can release firm capacity without having to comply with the posting and bidding requirements.[7] Due to the broad support for the revision amongst all the industry groups involved in the staff meetings, the Commission proposed to make this one revision so that it could be implemented quickly. The Commission stated, however, that further adjustments to the capacity release mechanisms were still under consideration.

Forty-five comments on the NOPR were received, all supporting the proposed revision.[8]

III. Discussion

The extension of the short-term exception to a full calendar month will promote a more effective capacity release market and eliminate administrative inefficiencies created by the less than one calendar month regulation. As the commenters point out, the change to a full calendar month better comports with the industry's purchasing practices. The industry generally conducts its gas purchases on a monthly basis, so that customers requiring capacity need to acquire a full month's capacity. Moreover, most monthly transactions occur during a very compressed time period known as bid week and this time pressure requires that shippers be able to obtain released capacity quickly with the certainty that the deal will go through as negotiated.

In addition, as the comments recognized, administrative burdens will be reduced significantly because the amendment will make unnecessary the previous industry practice of designing so-called "29/1 day" deals to arrive at full month releases. Under this practice, shippers release capacity under the § 284.243(h) exception for 29 days (or less than one calendar month) and then post a release offer for bidding for the remaining day of the month. This practice ensures that the designated replacement shipper can obtain a full month's capacity, since rarely do other shippers want to purchase capacity for one day or the one-day prearranged deal is posted at the maximum rate. While this procedure does permit full month releases, the practice is administratively cumbersome, doubling the administrative burden by requiring two EBB postings, two awards, two contracts, and two bills. According to INGAA, during the first three quarters of 1994, 14% of all capacity releases involved paired releases.[9]

The Commission's original reason for restricting the short-term exception to less-than-one calendar month deals was to limit the exception to emergency situations, so as to maximize the open bidding for capacity. However, the widespread use of 29/1 day deals demonstrates that bidding for one month deals is not taking place, and any attempt to limit or restrict the 29/1 practice in order to further promote bidding would seem only to create further inefficiencies. The commenters agree that, on balance, the increased speed and efficiency made possible by the extension of the short-term exception to a full calendar month outweighs any potential benefits from requiring bidding for monthly transactions. The commenters also point out that the Commission and the industry can still monitor one month deals for adherence to the Commission's policies against undue discrimination because all deals will be posted on the pipelines' EBBs within 48 hours.

Many commenters suggest that the Commission make changes in aspects of the capacity release regulations beyond this rule's limited focus on the short-term exception, such as elimination of bidding, removal of the maximum rate cap, and posting of pipeline interruptible deals, while others contend that such major structural

[3] If a shipper bids more than the pre-arranged release rate, the pre-arranged replacement shipper is given the opportunity to match that bid to retain the capacity.

[4] Releasing shippers, however, are free to post pre-arranged deals for less than one calendar month for bidding if they choose to do so. Section 284.243(h)(1), as originally promulgated, read: "A release of capacity by a firm shipper to a replacement shipper for any period of less than one calendar month need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences."

[5] Section 284.243(h)(2), as originally promulgated, read: "A firm shipper may not roll-over, extend, or in any way continue a release under this paragraph without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph until thirty days after the first release period has ended."

[6] *See* Order No. 636–A, III FERC Stats. & Regs. Preambles ¶ 30,950 at 30,553–54; Order No. 636–B, 61 FERC ¶ 61,272 at 61,994–95.

[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, 60 FR 3783 (Jan. 19, 1995), IV FERC Stats. & Regs. [Proposed Regulations] ¶ 32,513 (Jan. 12, 1995).

[8] The appendix lists all those filing comments.

[9] Northwest estimates that 80% of its transactions were paired releases.

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changes should not be made.[10] The Commission is committed to its review of the capacity release mechanism and will be considering these issues, along with others, as part of that process. The Commission will address here only those comments directly bearing upon the short-term exception.

IOGA–PA contends that to ensure open and non-discriminatory access to released capacity, the Commission should require the posting of certain details of one month transactions on the pipelines' EBBs. IOGA–PA specifically lists price, delivery points, receipt points, recall status, and order of curtailment as items that should be disclosed.[11]

The Commission finds no need to impose additional reporting requirements, because the information listed by IOGA–PA already must be posted on pipeline EBBs. The Commission's EBB rulemaking in Docket No. RM93–4–000 [12] requires pipelines to post price, location of releases (receipt and delivery points or pipeline segments), and the recall status of the release.[13] Pipelines must also include in their tariffs provisions setting forth their curtailment priority.[14]

MichCon requests clarification that the rule will apply to 31 day months and suggests that the regulation refer to releases of 31 days, rather than to a calendar month. MichCon suggests that this change also will permit releases of 31 days spanning two calendar months (i.e., January 15 to February 15). The term "calendar month," by definition, encompasses all months, including those of 31 days, and there is no need to substitute the phrase 31 days to add clarity. The term "calendar month" also better reflects the regulation's purpose, because it synchronizes the short-term exception with the industry's practice of purchasing gas and capacity during bid week when shippers need speed and certainty in their transactions. The substitution of the phrase 31 days is not needed to effectuate mid-month releases, as MichCon suggests. If shippers have an emergency requiring the release of capacity in the middle of a month, they can do so under the short-term exception for the remaining days in that month (i.e., January 15 to January 31), which will leave sufficient time to post the transaction for bidding for the next month.

Some commenters raise questions about the anti-rollover provision in § 284.243(h)(2). Louisville contends that the Commission should either improve the speed of the posting and bidding process, or, in the alternative, should permit roll-overs of one month deals. Natural similarly suggests that roll-overs of one month deals should be permitted.

The Commission is not removing the anti-rollover provision in this rule, because its removal could vitiate the bidding process for longer term releases; parties could effectuate long term releases simply by agreeing to a series of roll-overs of one month releases. The issue of whether bidding should be required for releases of more than one month is beyond the scope of this rule, but will be considered by the Commission in its continuing review of the capacity release mechanism.

If the anti-rollover provision is to be retained, PGT requests that the Commission clarify the criteria a pipeline should use to determine if a capacity release parcel falls within the roll-over provision. The provision now reads that a shipper "may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate during the calendar month after the month in which the first release ends." Thus, any subsequent re-release to the same replacement shipper during the next calendar month is prohibited.

ANR/CIG suggest that the Commission amend the anti-rollover provision to permit re-release of capacity to the same shipper after one calender month has passed, rather than the 30 days specified in the current regulation. ANR/CIG argue this change is consistent with the expansion of the short-term exception, in § 284.243(h)(1), to one calendar month and is more compatible with the month to month basis on which gas and capacity transactions take place.

The Commission will not modify the anti-rollover provision to one calendar month, because that could be more restrictive than the current regulation in certain circumstances. For example, under the current regulations, shippers entering into a one-week release under the short-term exception from January 1 to January 7 could enter into a second release under the exception beginning February 7. If, however, shippers had to allow a full calendar month to pass between releases, the second release could not begin until March 1.

The Commission, however, recognizes that the 30 day hiatus in the current regulations does not accord with monthly releases in one situation: because February has only 28 days, shippers entering into a full month's release ending January 31 cannot enter into a new release until March 2. To ensure that shippers can enter into full month releases in March, the Commission is amending § 284.243(h)(2) to permit re-releases to the same replacement shipper after 28 days.

FMA suggests that roll-overs should be permitted at the maximum rates without complying with the posting and bidding periods. In Order No. 636–B, the Commission clarified its policies regarding prearranged deals at the maximum rate.[15] The Commission required that pipelines adopt procedures so that bids at the maximum rate, meeting all the terms and conditions of the bid, would not be subject to the bidding procedures and would be implemented promptly. As the Commission found, when a prearranged deal is at the maximum rate, no other shipper can make a better bid for that capacity and, therefore, subjecting that release to the bidding requirements in the pipeline's tariff could unnecessarily delay implementation of the release. To ensure that the regulations reflect Commission policy, the Commission is modifying § 284.243(h)(1) to include all releases at the maximum rate, regardless of term, as releases that need not comply with the advance posting and bidding requirements.[16]

[10] Most commenters support and encourage the Commission's review of other aspects of the capacity release mechanism.

[11] Although IOGA–PA states it supports the rule as long as sufficient information about the deal is disclosed, it later states that it is of the opinion that all pre-arranged deals should be subject to bidding. Requiring bidding for all pre-arranged deals, however, would defeat the goal of the regulation by introducing the very delay and uncertainty into monthly transactions that the regulation is designed to eliminate.

[12] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[13] This information is to be posted on the pipelines' EBB sections dealing with capacity awards. *See* Standardized Data Sets and Communication Protocols, Version 1.2, Section III Firm Transportation and Storage Capacity Release Award Data Set, III.1, line 25 (recall indicator), Section III.1.1, lines 7–13 (price information), Section III.1.2, line 4 (location type indicator). These are all mandatory fields, meaning that all pipelines must provide the required information. This document is available at the Commission's Public Reference and Files Maintenance Branch.

[14] *See* 18 CFR 284.14(b) (requiring pipelines to include curtailment provisions in their filings to comply with Order No. 636).

[15] Order No. 636–B, 61 FERC at 61,994.

[16] In Order No. 636–B, the Commission stated that releases at the maximum rate must be posted immediately, rather than 48 hours after the transaction commences. Order No. 636–B, 61 FERC at 61,994. But there seems to be no need to continue that restriction. Posting within 48 hours is sufficient to provide the industry and the Commission with the ability to review and monitor transactions at the maximum rate.

Columbia requests that the Commission set an effective date for this rule that will provide sufficient time for pipelines to file revised tariff sheets and make computer programming changes to implement the change on their EBBs. The Commission wants to make this rule effective as soon as possible so that the industry can achieve the efficiencies from full month releases. The Commission concludes that making the rule effective 30 days from publication in the **Federal Register** should provide most pipelines with sufficient implementation time. If some pipelines need more time to make tariff filings to reflect the change, the Commission can waive the 30-day notice requirement to allow for consistent effective dates.[17] Columbia does not explain exactly what computer programming is needed to reflect this change. The Commission considers 30 days to be sufficient time in general to make whatever programming changes are needed to accommodate the minor change effected by this rule.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The action taken here falls within categorical exclusions provided in the Commission's regulations.[20] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Since the proposed regulations do not increase the burdens on any companies or entities, they will not have a significant impact on small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

VI. Information Collection Requirement

OMB regulations require approval of certain information collection requirements imposed by agency rules.[22] The information requirements affected by this proposed rule are in FERC–549B, "Gas Pipeline Rates: Capacity Release Information" (1902–0169). The Commission is issuing the final rule, including the information requirements, to carry out its regulatory responsibilities under the Natural Gas Act (NGA) and Natural Gas Policy Act (NGPA) to promote a more effective capacity release market as instituted by the Commission's Order No. 636. The Commission's Office of Pipeline Regulation uses the data to review/monitor capacity release transactions as well as firm and interruptible capacity made available by pipelines and to take appropriate action, where and when necessary. The collection of information is intended to be the minimum needed for posting on EBBs to provide information about the availability of service on interstate pipelines.

The Commission is submitting to the Office of Management and the Budget a notification of the revision to the FERC–549B collection of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol street, NE; Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], FAX (202) 208–2425. Comments on the requirements of this rule can be sent to OMB's Office of Information and Regulatory Affairs; Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

VII. Effective Date

The final rule will take effect May 4, 1995.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

[17] 15 U.S.C. § 717c(d); 18 CFR 154.22.

[18] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles

[19] 18 CFR 380.4.

[20] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[21] 5 U.S.C. 601–612.

[22] 5 CFR 1320.13.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.243, paragraph (h) is revised to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(h) (1) A release of capacity by a firm shipper to a replacement shipper for any period of one calendar month or less, or for any term at the maximum tariff rate applicable to the release, need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

(2) When a release under paragraph (h)(1) of this section is at less than the maximum tariff rate, a firm shipper may not roll-over, extend, or in any way continue the release at less than the maximum tariff rate without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate until twenty-eight days after the first release period has ended.

Note—The following appendix will not appear in the Code of Federal Regulations.

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APPENDIX—PARTIES FILING COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

[Docket No. RM95–5–000]

Commenter	Abbreviation
American Gas Association	AGA.
American Public Gas Association	APGA.
ANR Pipeline Company and Colorado Interstate Gas Company	ANR/CIG.
Associated Gas Distributors	AGD.
Atlanta Gas Light Company and Chattanooga Gas Company	Atlanta/Chattanooga.
Baltimore Gas and Electric Company	Baltimore.
Brooklyn Union Gas Company	Brooklyn Union.
City of Hamilton, Ohio	Hamilton.
Columbia Gas Distribution Companies	Columbia Distribution.
Columbia Gas Transmission Corporation and Columbia Gulf Gas Transmission Company	Columbia.
Consolidated Edison Company of New York	Con Edison.
Consolidated Natural Gas Company	Consolidated.
Consumers Power Company	CPCo.
EnerSoft Corporation and New York Mercantile Exchange	EnerSoft/NYMEX.
Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, Florida Gas Transmission Company, and Black Marlin Pipeline Company) and Enron Capital & Trade Resources Corporation.	Enron.
Fuel Managers Association	FMA.
Hadson Gas Systems, Inc	Hadson.
Illinois Power Company	Illinois Power.
Independent Oil and Gas Association of Pennsylvania	IOGA–PA.
Independent Petroleum Association of America	IPAA.
Interstate Natural Gas Association of America	INGAA.
JMC Power Projects (Altersco-Pittsfield, L.P., MASSPOWER, Ocean State Power, Ocean State Power II, and Selkirk Cogen Partners, L.P.	JMC Power Projects.
K N Interstate Gas Transmission Company	KNI.
Louisville Gas and Electric Company	Louisville.
Michigan Consolidated Gas Company	MichCon.
MidCon Gas Services Corporation	MidCon Gas Services.
Mississippi River Transmission Corporation	MRT.
Natural Gas Pipeline Company of America	Natural.
Natural Gas Supply Association	NGSA.
Northern Illinois Gas Company	NI–Gas.
Northern Indiana Public Service Company	Northern Indiana.
Northwest Pipeline Corporation	Northwest.
Orange and Rockland Utilities, Inc	Orange/Rockland.
Pacific Gas and Electric Company	PG&E.
Pacific Gas Transmission Company	PGT.
Peoples Gas Light and Coke Company and North Shore Gas Company	Peoples Gas/North Shore.
Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group	Industrials.
Sacramento Municipal Utility District	SMUD.
Sonat Marketing Company	Sonat Marketing.
Southern California Edison Company	Edison.
Southern California Gas Company	SoCalGas.
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Algonquin Gas Transmission Company, and Trunkline Gas Company.	PEC Pipeline Group.
Texas Gas Transmission Corporation	Texas Gas.
United Distribution Companies	UDC.
Wisconsin Distributor Group	WDG.

[FR Doc. 95–8224 Filed 4–3–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–95–1688; FR–3255–N–07]

Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Announcement of Availability of Software To Calculate Aggregate Accounting Adjustment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of availability of software.

SUMMARY: On October 26, 1994, HUD published a final rule establishing escrow accounting procedures under the Real Estate Settlement Procedures Act. In the October 26 final rule the Department indicated that it would make available computer software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD–1 and HUD–1A. This notice describes the availability of this software on Internet or by requesting a diskette by mail or telephone.

FOR FURTHER INFORMATION CONTACT: William Reid, Research Economist, Office of Policy Development and Research, Room 8212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–0421 or (202) 708–0770 (TDD).

SUPPLEMENTARY INFORMATION: On October 26, 1994 (59 FR 53890), the Department published a final rule establishing escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(g) and 2609 (RESPA). This final rule was corrected on December 19, 1994 (59 FR 65442), and augmented on February 15, 1995 (60 FR 8811; correction published March 1, 1995, 60 FR 11194) by a further final rule that included commentaries, corrections, and illustrations. The February 15, 1995, rule also established an effective date of May 24, 1995, for both the October 26 and February 15 rules.

In the October final rule, at page 53895, the Department said it would make available software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD–1 and HUD–1A. The software is available at no charge over Internet by accessing the "HUD Gopher" (see instructions below). Alternatively, a diskette containing the two files included on the Internet may be obtained by sending a request, with a check payable to HUD USER for $15 for each diskette ordered, to: HUD USER, P.O. Box 6091, Rockville, MD 20850. HUD USER also may be reached by telephone at 1–800–245–2691 to answer inquiries about this software or to order diskettes when the cost of the diskettes is being charged to a VISA or MasterCard account. All inquiries, whether by mail or telephone, should reference "Notice FR–3255, Escrow Accounting Software."

Access via Internet

To access the software using the HUD Gopher, follow these procedures:

- Access the Internet;
- Select the Gopher option from the Internet utilities menu;
- Type the address: "huduser.aspensys.com 73" (depending on the user's Gopher convention, the selection of port 73 may be signaled by typing a different character (such as an underline, colon, or backslash) instead of the space);
- At the main menu of options, select "Policy Development and Research Publications";
- Then select "Homeownership"; and
- Select the two Lotus 1–2–3 format files: "biweekly mortgage aggregate adjustment" and "monthly mortgage aggregate adjustment".

Dated: March 27, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–8148 Filed 4–3–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–111–FOR; Amendment 94–1]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions, a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Indiana's Surface Coal Mining and Reclamation Statutes concerning bond forfeiture procedures, underground mine subsidence control, permit revocation procedures, administrative orders and procedures, and conflict of interest. The amendment is intended to revise the Indiana Code (IC) to implement statutory changes.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated March 21, 1994 (Administrative Record Number IND–1341), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment consisting of three sets of changes to the Indiana program. The first set of changes involve statutes enacted by Indiana under SEA 408 from the 1994 Indiana Legislative Session. The amendments concern bond forfeiture procedures, underground mine subsidence control, and permit revocation procedures. The second set of amendments are contained in SEA 319 (Pub. L. 7–1987). These amendments primarily concern the substitution of the citation of the then-

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repealed IC 4–22–1 with IC 4–21.5 concerning administrative orders and procedures. The third amendment is contained in HEA 1516 (Pub. L. 13–1987). This amendment changes the Indiana conflict of interest provisions. OSM announced receipt of the proposed amendment in the April 18, 1994, **Federal Register** (59 FR 18330), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 18, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. IC 13–4.1–6–9 Forfeiture of Bond

Indiana is adding new subsection 9(b) to provide that an order issued under IC 13–4.1–6–9(a) is governed by IC 4–21.5–3–6 and becomes an effective and final order without a proceeding if a request for review of the order is not filed within 15 days after the order is served upon: (1) the permittee; and (2) the person that executed the permittee's bond or other performance guarantee, if the permittee filed a bond or other performance guarantee under IC 13–4.1–1.

The Director finds the proposed language is substantively identical to and no less effective than the Federal regulations at 30 CFR 800.50(b)(1) concerning forfeiture of bond.

2. IC 13–4.1–9–2.5 Subsidence—Repair or Compensation

This new section is added as a counterpart to SMCRA section 720 which was added by the Energy Policy Act of 1992 (Pub. L. 102–486 (H.R. 776); October 24, 1992). Subsection 2.5(a) provides that as used in subsection 2.5(d)(1), "repair" includes rehabilitation, restoration, or replacement. This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that repair of damage shall include rehabilitation, restoration, or replacement.

New subsection 2.5(b) provides that as used in subsection 2.5(d)(1), "compensate" means to provide compensation in an amount equal to the full amount of the diminution of value resulting from the subsidence referred to in subsection 2.5(d)(1). This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that compensation shall be provided in the full amount of the diminution in value resulting from the subsidence.

New subsection 2.5(c) provides that for the purposes of subsection 2.5(d)(1), compensation may be accomplished through the purchase, before the commencement of mining operations, of a noncancellable premium-prepaid insurance policy. This proposed language is substantively identical to SMCRA section 720(a)(1) which provides that compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

New subsection 2.5(d) provides that the operator of an underground coal mining operation conducted after June 30, 1994, shall do the following: (1) Promptly repair or compensate for material damage resulting from subsidence caused to: (A) any occupied residential dwelling and any structure related to the occupied residential dwelling; or (B) any noncommercial building; due to the operator's underground coal mining operation. (2) Promptly replace any drinking, domestic, or residential water supply from a well or spring that: (A) was in existence before the filing of the operator's application for a surface coal mining and reclamation permit; and (B) has been affected by contamination, diminution, or interruption resulting from the operator's underground coal mining operation. This proposed language is substantively identical to SMCRA section 720(a), except that the Indiana provision applies only to underground coal mining operations which occur after June 30, 1994. SMCRA section 720(a) provides that underground coal mining operations conducted after the date of enactment of new section 720 (October 24, 1992) shall comply with the requirements of section 720. Therefore, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994, the Director finds that IC 13–4.1–9–2.5 is no less stringent than SMCRA section 720(a).

The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994). The Federal subsidence regulations which will implement SMCRA section 720(a) have been finalized and will be published shortly. Within 120 days after the publication of the new Federal subsidence regulations, OSM intends to published for each State with a regulatory program, including Indiana, final rule notices concerning the enforcement of the provisions of the Energy Policy Act in those States.

3. IC 13–4.1–11–6 Suspension or Revocation of Permit

Indiana is amending subsection 6(a)(1)(B) by deleting the term "commission" and adding the words "adopted under IC 13–4.1–2–1." Indiana is also relating the words "the violations." As amended, IC 13–4.1–11–6(a)(1)(B) reads as follows: "the rules adopted under IC 13–4.1–2–1." Since IC 13–4.1–2–1 is the provision which establishes the authority for the Indiana Natural Resources Commission (the commission) to adopt rules, the change does not render the provision less effective. A similar amendment at subsection 6(a)(2)(A)(ii) also does not render the provision less effective.

Indiana is adding the words "permit conditions" at subsection 6(a)(2)(A)(iii) to provide a counterpart to SMCRA section 521(a)(4).

Subsection 6(a) is amended to provide that if the director of the IDNR determines that the criteria at subsections 6(a) (1) and (2) apply, the director shall issue an order of permit suspension or revocation and provide an opportunity for a public hearing. The provision formerly provided for an order "to the permittee to show cause why the permit should not be suspended or revoked." The amendment does not render the provision less stringent than SMCRA section 521(a)(4) because section 6 in its entirety still provides for a hearing at which the permittee could show cause why the permit should not be suspended or revoked.

Subsection 6(b) is amended by relocating the existing language to new subsection 6(e). New language is added to subsection 6(b) to provide that an order issued under the pattern of violations criteria at subsection 6(a) is governed by IC 4–21.5–3–6 concerning required notice, and becomes an effective and final order of the commission without a proceeding if a request for review of the order is not filed within 30 days after the order is served upon the permittee. The Director finds the revision to be no less stringent than SMCRA at section 521(a)(4).

Subsection 6(c) is amended by replacing a citation of "IC 4–21.5–3" with "IC 4–21.5." This change appropriately expands the citation to the entire Indiana administrative orders and procedures at IC 4–21.5. A block of

language concerning a written decision following the hearing is deleted from subsection 6(c) and added to new subsection 6(g).

New subsection 6(d) is added to provide that in a hearing requested under IC 4–21.5–3–7, the director of the IDNR has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The burden shall be satisfied if the director establishes a *prima facie* case that the criteria of subsection 6(a) have been met. This proposed language is consistent with and no less stringent than SMCRA at section 521(a)(4).

The language in new subsection (e) is relocated from subsection 6(b).

New subsection 6(f) provides that if the director of the IDNR determines in a hearing requested under IC 4–21.5–3–7 that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director of the IDNR. The Director finds that the proposed language is substantively identical to and no less stringent than SMCRA at section 521(a)(4).

New subsection 6(g) contains language deleted from subsection 6(c) and concerns the 60-day requirement to issue a final written decision following a hearing. The Director finds the proposed language is not inconsistent with SMCRA at section 521(a)(4) and is substantively identical to and no less effective than 30 CFR 843.13(c).

Based on the discussion above, the Director is approving the amendment to IC 13–4.1–11–6.

4. IC 13–4.1–2–4 Petition Procedures for Rules

This section is amended in two locations by deleting reference to IC 4–22–1 and adding in its place a reference to IC 4–21.5 concerning administrative orders and procedures. IC 4–21.5 is Indiana's current statute controlling administrative orders and procedures and replaces the repealed IC 4–22–1. The Director finds the change does not render the Indiana program less effective.

Indiana is making similar citation changes in several provisions. Most of these changes involve replacing reference to the repealed IC 4–22–1 with IC 4–21.5 concerning administrative orders and procedures. At IC 13–4.1–4–3 Indiana is deleting reference to IC 14–4–2 which was repealed by Indiana in 1986 by Pub. L. 115–1986, at section 22. The following provisions contain citation changes which do not render the Indiana program less stringent than SMCRA:

IC 13–4.1–2–4; IC 13–4.1–4–3; IC 13–4.1–4–5; IC 13–4.1–6–7; IC 13–4.1–11–6; IC 13–4.1–11–8; IC 13–4.1–11–12; IC 13–4.1–12–1; IC 12–4.1–13–1; and IC 13–4.1–15–9.

5. IC 13–4.1–2–3 Conflict of Interest

This provision is amended to provide that an employee of the IDNR who has any duty under IC 13–4.1 may not have a direct or indirect financial interest in any surface coal mining operation. A member of the commission who has such an interest shall file annually with the State Board of Accounts. Any person who knowingly violates this provision commits a Class A misdemeanor.

Upon review of this provision, the Director has determined that this version of IC 13–4.1–2–3 predates and is superseded by the version which was the subject of a finding by the Director published in the **Federal Register** on December 15, 1989 (54 FR 51388). In that finding, the Director determined that IC 13–4.1–2–3 is not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and did not approve the amendments (see Finding 1, pages 51388 and 51389 of the December 15, 1989, **Federal Register**). In addition, the Director required at 30 CFR 914.16(b) that Indiana amend IC 13–4.1–2–3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal regulations at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA. That requirement still stands. Therefore, the Director is not acting on this earlier, superseded version of IC 13–4.1–2–3.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received concerning the proposed amendments to the Indiana program.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the April 18, 1994, **Federal Register** (59 FR 18330). The comment period closed on May 18, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Mr. Rabb Emison, an attorney, submitted a comment on behalf of five operators of publicly regulated pipelines in Indiana which carry petroleum products and natural gas. The following comments were made.

The commenters welcomed the proposed language concerning subsidence but stated that the amendment is not complete. Specifically, the comment stated that the proposed language specifies certain surface structures for protection, but may be interpreted to deny equal protection to commercial structures such as pipelines. This, they asserted, would seem to limit the protection Congress intended in section 516(b)(1) of SMCRA.

The comment stressed that protection of pipelines from unplanned subsidence is needed to prevent rupture of the pipelines and potential damage to property and the environment and loss of life. Protection should be given to surface structures equally, they stated.

In response, the Director notes that the proposed language is substantively identical to the counterpart language in SMCRA at section 720. The language of section 720(a) of SMCRA provides for the repair or compensation for material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations.

In response to SMCRA section 720(b), OSM published proposed rules intended to implement SMCRA section 720(a) (58 FR 50174; September 24, 1993). In that notice, OSM specifically solicited comments on whether a need exists for nationwide rules that go beyond those required by SMCRA section 720(a). Comments received in response to that proposed rule are being reviewed:

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Number IND–1221). By letter dated June 21, 1994 (Administrative Record Number IND–1372), EPA concurred without comment.

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V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving the program amendment submitted by Indiana on March 21, 1994. As discussed in Finding 2, the Director is approving IC 13–4.1–9–2.5 to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. In addition, the Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994). As discussed above in Finding 5, the Director is not acting on IC 13–4.1–2–3.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1995.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 914.15, paragraph (ggg) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(ggg) The following amendment (Program Amendment Number 94–1) to the Indiana program as submitted to OSM on April 18, 1994, is approved, except as noted below, effective April 4, 1995:

IC 13–4.1–6–9 Forfeiture of bond

IC 13–4.1–9–2.5 Subsidence repair or compensation, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

IC 13–4.1–11–6 Suspension or revocation of permits

IC 13–4.1–2–4 Petition procedures for rules

IC 13–4.1–2–4 Rule petition procedures

IC 13–4.1–4–3 Necessary permit findings

IC 13–4.1–4–5 Hearing on permit approval/disapproval

IC 13–4.1–6–7 Release of bond or deposit

IC 13–4.1–11–6 Suspension or revocation of permit

IC 13–4.1–11–8 Temporary relief

IC 13–4.1–11–12 Hearings; intervention

IC 13–4.1–12–1 Civil penalties

IC 13–4.1–13–1 Review of action of the director/commission

IC 13–4.1–15–9 Hearings; use or disposition of acquired lands

The Director is not acting on IC 13–4.1–2–3, Conflict of interest.

[FR Doc. 95–8115 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–1–6680a; FRL–5175–2]

Approval and Promulgation of Air Quality Implementation Plans Ohio; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is giving full approval through a direct final procedure of the Vehicle Inspection and Maintenance (I/M) program as a revision of the State Implementation Plan (SIP) for ozone for the Cleveland-Akron-Lorain, the Dayton-Springfield, and Cincinnati moderate ozone nonattainment areas in the State of Ohio. The revision and subsequent related material was submitted by the State on November 12, 1993, March 15, 1994 and May 26, 1994. The SIP revision establishes and requires the implementation of an enhanced I/M program in three (3) nonattainment areas consisting of fourteen (14) counties in the State, and enables the development of a basic program in one (1) other area consisting of two (2) counties. The Cleveland-Akron-Lorain, the Dayton-Springfield, and Cincinnati areas are designated moderate nonattainment for ozone and have opted to implement enhanced I/M. The I/M program is designed to be contract operated, and the State has taken the necessary steps to get the program up and running within the timeframe required in the USEPA regulations. The Toledo area was also included as part of the I/M submittal. This area is undergoing review for redesignation to attainment for ozone. As such, the USEPA will take no action at this time regarding the submittal of an I/M program in the Toledo area. The USEPA is approving the legislation and rules for the Toledo area but will rulemake on the need for an I/M program in the Toledo area at a later date. This I/M SIP action is being taken under section 110 of the Clean Air Act (the Act).

In the proposed rules section of this **Federal Register**, USEPA is proposing approval of this I/M program and SIP revision and solicits public comments on the action. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule based on the proposed rule.

EFFECTIVE DATES: This action will be effective June 5, 1995 unless by May 4, 1995, someone submits adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents related to this action are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation, Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, S.W. Washington D.C., 20460.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Enforcement Branch (AE–17J), U. S. Environmental Protection Agency, Chicago, Illinois 60604 (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are a major contributor of volatile organic compounds (VOC), carbon monoxide (CO), and nitrogen oxide (NO_x) emissions. The motor vehicle inspection and maintenance program is an effective means of reducing these emissions. Despite improvements in emission control technology in past years, mobile sources in urban areas continue to remain responsible for roughly half of the emissions of VOC causing ozone, and most of the emissions of CO. They also emit substantial amounts of nitrogen oxides and air toxics. This is because the number of vehicle miles traveled has doubled in the last 20 years to 20×10^{12} (20 trillion) miles per year, offsetting much of the technological progress in vehicle emission control over the same period. Projections indicate that the steady growth in vehicle miles will continue.

Under the Act, the USEPA is pursuing a three-point strategy to achieve emission reductions from motor vehicles. The development and commercialization of cleaner vehicles and cleaner fuels represent the first two elements of the strategy. These developments will take many years before cleaner vehicles and fuels dominate the fleet and favorably impact the environment. This Notice deals with the third element of the strategy, inspection and maintenance, which is aimed at the reduction of emissions from the existing fleet by ensuring that vehicles are maintained to meet the emission standards established by USEPA. Properly functioning emission controls are necessary to keep pollution levels low. The driving public is often unable to detect a malfunction of the emission control system. While some minor malfunctions can increase emissions significantly, they do not affect drivability and may go unnoticed for a long period of time. Effective I/M programs can identify excessive emissions and assure repairs. The USEPA projects that sophisticated I/M programs such as the one being proposed in this rulemaking in Ohio will identify emission related problems and prompt the vehicle owner to obtain timely repairs thus reducing emissions.

The Act requires that polluted cities adopt either a "basic" or "enhanced" I/M program, depending on the severity of the pollution and the population of the area. Moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs in Census-defined urbanized areas, fall under the "basic" I/M requirements. Basic and enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" I/M program covers more vehicles in operation in the fleet, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired. The Act directed USEPA to establish a minimum performance standard for enhanced I/M programs. The standard is based on the performance achievable by annual inspections in a centralized test program. States have flexibility to design their own programs if they can show that their program is as effective as the model program used in the performance standard. Naturally, the more effective the program the more credit a State will get towards the emission reduction requirement. An effective program will help to offset growth in vehicle use and allow for industrial and/or commercial growth.

The USEPA and the States have learned a great deal about what makes an I/M program effective since the Clean Air Act of 1977 first required I/M programs for polluted areas. There are three major keys to an effective program:

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(1) Given the advanced state of current vehicle design and anticipated technology changes, the ability to accurately fail problem vehicles and pass clean ones requires improved test equipment and test procedures;

(2) Comprehensive quality control and aggressive enforcement is essential to assuring the testing is done properly;

(3) Skillful diagnostics and capable mechanics are important to assure that failed cars are fixed properly.

These three factors are missing in most older I/M programs. Specifically, the idle and 2500 RPM/idle short tests and anti-tamper inspections used in current I/M programs are not as effective in identifying and reducing in-use emissions from the types of vehicles in the current and future fleet. Also, covert audits by USEPA and State agencies typically discover improper inspection and testing 50 percent of the time in test-and-repair stations indicating poor quality control. Experience has shown that quality control at high-volume test-only stations is usually much better. And, finally, diagnostics and mechanics training are often poor or nonexistent.

On November 5, 1992 (57 FR 52950), USEPA established a high-tech emission test for high-tech cars. This I/M test, known as the IM240 test, is so effective that biennial test programs yield almost the same emission reduction benefits as annual programs. The test can also accurately measure NO_x emissions where NO_x is important to address an ozone problem. Adding the pressure and purge test increases the benefit even more resulting in lower testing costs and consumer time demands. The pressure test is designed to find leaks in the fuel system, and the purge test evaluates the functionality of the vapor control system.

II. Background

There are four (4) areas in the State of Ohio which are required to implement an I/M program. They are: the Cleveland-Akron-Lorain, the Dayton-Springfield, Cincinnati, and Toledo areas. All are classified moderate nonattainment for ozone.

On September 13, 1993, the State submitted a request for redesignation to attainment for the Toledo area. The State analysis shows that the ozone standard can be maintained in the Toledo area without an I/M program. This request is still pending. The USEPA will rulemake on this issue at a later date.

On November 12, 1993, December 12, 1993, March 15, 1994, and May 26, 1994, the State of Ohio submitted material which comprised the State's I/M SIP revision for the areas in the State required to implement basic I/M. The November 12, 1993, submittal contained the program plan, emission inventory, legislation, draft rules, and draft request for proposal (RFP) along with demographic material for the areas of concern. The December 12, 1993, I/M submittal contained the official request from the Director, Ohio Environmental Protection Agency (OEPA) asking USEPA for approval. On March 15, 1994, the State submitted the final RFP and additional support material for three (3) of the areas (referred to as "zones" in the State SIP) in which enhanced I/M will be implemented. The May 26, 1994, submittal contained final approved rules, public notice material, proceedings from the public hearings, written comments and certification materials. Finally, in a letter dated June 22, 1994, the Director provided assurances to the USEPA that the State has completed an RFP for the Toledo Metropolitan area which will be released promptly should the State's request for redesignation to attainment be disapproved.

On January 21, 1994, the USEPA notified the State that the November 12, 1993, I/M revision submittal was not complete and that the sanctions clock had started. Upon receipt of the additional material noted above on July 22, 1994, the USEPA notified the OEPA that the State's I/M implementation plan revision was complete and the sanctions clock started in January had been stopped for all of the affected areas. While the State did not issue a request for proposal (RFP) for the Toledo area, it did have an RFP ready to issue in the event the redesignation to attainment failed.

The program also included rules which give the Director of the OEPA authority to implement a centralized basic I/M program in any area designated moderate nonattainment. The USEPA considered the SIP submittal complete in part because it contained all the required authority to readily implement an I/M program without any additional action on the part of the State legislature.

The Ohio I/M program was enabled by Senate Bill 18, which was signed into law by Governor Voinovich on June 27, 1993, and became effective on September 27, 1993. The bill gives the Director of OEPA authority to implement the I/M program, and defines the geographic boundaries of the program in each nonattainment area based on county boundaries. The bill authorizes I/M for the following Ohio counties which have Census-defined urbanized areas: In the Cleveland-Akron-Lorain CMSA, the counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit; in the Dayton-Springfield CMSA, the counties of Clark, Greene, and Montgomery; in the Cincinnati CMSA, the counties of Butler, Clermont, Hamilton and Warren; and in the Toledo MSA, the counties of Lucas and Wood. Basic I/M is required in all Census-defined urbanized areas designated as moderate nonattainment. The legislation also established a process under which local governments in an area classified as moderate nonattainment can ask the Director of the OEPA to implement and supervise an enhanced I/M program instead of the required basic program. With the exception of the Toledo area, the other three nonattainment areas have opted, through the legislatively prescribed process, to implement enhanced I/M. The March 15, 1994, submittal contained the State's RFP which describes in detail the requirements for a contractor to develop and operate the enhanced I/M program in these three areas.

The USEPA has determined that the Ohio enhanced I/M program meets the requirements of USEPA's performance standard and other requirements contained in the Federal I/M rule promulgated on November 5, 1992 (57 FR 52950). The biennial, centralized, test only program, is required to begin testing in September 1995, two years after the legislation became effective. Testing will be conducted by a contractor and supervised by the Ohio EPA, Air Division. Additional aspects of the program include: IM240 testing of 1981 and newer vehicles; two-speed idle test of pre-1981 vehicles to 1975; pressure and purge testing; a test fee to ensure the State has adequate resources to supervise the program; enforcement by registration denial; opacity testing of diesel powered vehicles; waiver limits set at $100 for 1975–1980 model year, and $200, actual expenditures, for 1981 and later model year vehicles; compilation of a list of repair facilities which can repair a vehicle to pass the tailpipe inspection; data collection; repair effectiveness program; inspector training and certification; penalties for inspectors and contractors; and emission recall enforcement. In addition to the above, the Director of the Ohio EPA provided assurances in his letter of June 22, 1994, to the USEPA Regional Administrator that in the event the Toledo redesignation to attainment is not approved, the State will immediately obtain a contractor to operate a basic I/M program in that area. An analysis of how the Ohio program meets the Federal program requirements is provided below.

A. Applicability

Under the requirements of the Clean Air Act, basic inspection and maintenance programs are required in a number of areas classified as moderate nonattainment for ozone. These areas include: Cleveland-Akron-Lorain CMSA including the counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit; Dayton-Springfield CMSA including the counties of Clark, Greene, and Montgomery; Cincinnati CMSA including the counties of Butler, Clermont, Hamilton and Warren; and the Toledo MSA containing the counties of Lucas and Wood. The State excluded some smaller urbanized areas in the CMSAs based on population. However, because the I/M program is implemented on a county-wide basis, exclusion of these areas is offset by the inclusion of non-urban residents in the I/M counties. Ashtabula and Miami counties are excluded from the I/M testing program because these counties contain no urban areas. In the Cleveland-Akron-Lorain CMSA, 96.5 percent of the population is in the program. In the Dayton-Springfield CMSA, 90.3 percent of the population is in the program. All of the counties in the Cincinnati CMSA are included in the program.

B. Enhanced I/M Performance Standard

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard. The minimum performance standard in this case is a basic I/M program which is required in all four (4) moderate nonattainment areas of the State. Areas are required to meet the performance standard for the pollutants which cause them to be subject to I/M requirements. Emission levels are calculated using the most recent version of USEPA mobile source emission factor model. In Ohio the performance standard must be met for volatile organic compounds (VOC). The performance standard is established using the model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, and model I/M program parameters for the following: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. Ohio used the USEPA model known as MOBILE5a to calculate the emission levels from the program design. The Ohio I/M program target design includes: centralized test, 1983 start date, biennial frequency, 1970 and newer model year coverage, vehicle types include LDGV, LDGT1, LDGT2 and HDGV up to 10,000 pounds, IM240 for 1981 and newer vehicles, and a steady-state loaded test for pre-1981 vehicles, five (5) element visual inspection and pressure purge on all vehicles, stringency rate for all vehicles will be 20 percent, waiver rate will be 3 percent and a 96 percent compliance rate. The performance standard is based on a basic I/M program for all areas in the State because the areas are classified as moderate nonattainment areas and are required to implement a basic I/M program.

The emission levels achieved by the State were modeled using MOBILE5a. The demonstration was performed correctly, using local characteristics and shows that the program design will exceed the minimum required I/M performance standard. The State exempts a number of alternatively powered vehicles from the I/M program. The USEPA believes these exemptions for electric, hydrogen powered, compressed natural gas, methanol, ethanol and propane, which are intended to encourage the use of renewable and alternative energy sources, will have little or no impact on emissions in the immediate future.

C. Network Type and Program Evaluation

Three of the four Ohio ozone nonattainment areas are opting into the enhanced I/M program. In these enhanced areas a contractor will operate a test-only centralized network for inspections and reinspection. All vehicles included in the emission reduction demonstration will be tested by a contractor in centralized I/M test facilities. The contract specifies that the contractor is barred from involvement in motor vehicle-related business with the exception of vehicle testing equipment fabrication and sales. Authority for this program is established in Senate Bill 18. The Ohio legislation specifies inspections and reinspection under an enhanced program shall be conducted by a centralized contractor.

The Ohio I/M program plan calls for the Ohio EPA to institute an ongoing evaluation of the enhanced I/M program consistent with USEPA regulations to quantify the emissions reductions benefits of the program to verify that it is meeting the requirements of the Clean Air Act. The evaluation will consist of monitoring the performance of IM240 on a random, representative sample of at least 0.1 percent of the vehicles subject to inspection and covering a 25 model-year rolling window. Evaporative system purge (1981 and newer) and pressure tests (all model years) will be performed on those vehicles subject to the test requirements. The State program plan describes the manner in which the State will perform the evaluation: using Ohio EPA auditors, visiting each lane at every station, choosing vehicles at random at different times of the day, performing calibration checks, and ensuring the selected vehicles represent the fleet mix in the test area. The evaluation program includes surveys conducted by the State to assess the effectiveness of repairs performed on vehicles which fail any of the required tests. Tampering rates will be measured for changes during the life of the program, and deterrent effects will be evaluated. Ohio law prohibits the sale of any tampered vehicle in the State.

Lane inspectors employed by the contractor will be evaluated using undercover audit vehicles and State personnel. The mission of the auditors will be to conduct surveys for inspector effectiveness in identifying vehicles in need of repair. Ohio EPA will submit biennial reports on the results of the evaluations. The report will assess whether the program is meeting the emission reduction target.

D. Adequate Tools and Resources

The Federal regulation requires the State to demonstrate that there is adequate funding of the program functions including quality assurance, data analysis and reporting, holding hearings and adjudication of cases. The Ohio I/M program will be funded through a per-vehicle inspection fee which will be set following award of the centralized contracts in each of the ozone nonattainment areas. Legislation gives the director of the Ohio EPA the authority to establish an annual or biennial test fee sufficient to cover all costs associated with implementation, administration and operation of the program. The fee is capped in the State's legislation at twenty-five (25) dollars per test for an enhanced biennial program. Approximately $1.25 from each test will be paid to the Ohio EPA for administrative oversight activities. This will result in sufficient funding during the year for the State to administer the program and provide oversight, management, and enforcement. The Ohio EPA will use leased vehicles of a variety of makes and model years for the covert auditing program. Arrangements are made with the Ohio Bureau of Motor Vehicles (BMV) which provides cover registrations and license plates.

The contractor(s) selected to perform the testing will be required to provide administrative support for Ohio EPA

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staff at the three area headquarters, along with a supply of calibration gas and hardware to perform quality assurance audits. The Ohio BMV will provide program oversight of the registration denial portion of the enforcement program.

E. Test Frequency and Convenience

The Federal I/M rule requires test systems to be designed in such a way to provide convenient service. The Ohio enhanced program test frequency is biennial for all subject vehicles. New vehicles are not tested until two (2) years after the initial registration. In the biennial program even model years will be tested on the even calendar year and odd numbered model years will be tested in the odd numbered calendar year. The State will require that test facilities are located such that eighty (80) percent of all motorists in urban areas do not have to drive more than five (5) miles to a test facility, and one-hundred (100) percent in urban area will not have to drive more than ten (10) miles, and one-hundred (100) percent of the affected population in rural areas will be within 15 miles of a test facility. The State RFP specifies at least fifty-eight (58) hours of operation of a test facility per week.

F. Vehicle Coverage

The Federal rule for enhanced I/M programs assumes coverage of all 1968 and newer model year light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. The Ohio I/M program requires all gasoline and diesel powered light duty passenger cars, light duty trucks, and heavy duty vehicles up to 10,000 pounds, up to and including twenty-five (25) years old and newer are subject to the program. The BMV data available on the current fleet does not include vehicles owned by the U.S. General Services Administration or vehicles owned by the State BMV. These government vehicles are required to be tested but are not currently part of the State data base. The OEPA is working with these organizations to establish a testing routine and schedule for these vehicles, which are not presently licensed by the BMV. The State also exempts vehicles including historical vehicles (older than 25 years), licensed collectors vehicles (which have use restrictions), parade and exhibition vehicles (which receive temporary road permits), motor cycles, recreational vehicles over 10,000 pounds, and alternative fueled vehicles. The USEPA agrees with the State that these vehicles do not make up a significant portion of the total motor vehicle fleet in the tested area and most are not included in the modeling for the performance standard. Additional information and other statistical information regarding the fleet, required to manage the program, will become available following the first test cycle.

G. Test Procedures and Standards

Written test procedures and pass/fail standards are required to be established and followed for each model year and vehicle type included in the program. Federal test procedures and standards are found in 40 CFR 51.357 and in the draft USEPA document entitled "High-Tech I/M Test Procedures, Equipment Standards, Quality Control Requirements, and Equipment Specifications", EPA–AA–EPSD–IM–93–1, finalized in April 1994. The Director of OEPA has the authority to establish test procedures according to the needs of the program. The test procedures are listed in the Ohio EPA RFP and correspond to the USEPA procedures. The Ohio procedure for the evaporative system functional test uses non-invasive helium in place of nitrogen as called for in the USEPA procedure. The contractor will work with the USEPA to obtain approval for use of this gas. All vehicles will be tested in an as-received condition and vehicle owners will have an opportunity to view the test from an area at the test site that affords an unobstructed view. Each vehicle will be inspected prior to the emissions test and rejected from testing if any unsafe condition exists or if the exhaust is leaking or missing. In the event of an emission failure of any kind, all components are retested after repairs. The State will use the same emission standards set forth in section 85.2205(a) of the technical guidance published by USEPA in July 1993. The State also uses the evaporative test standards published in the same document, and a clause in the RFP allows the State to change the standards in the event emission cutpoints need to be changed to adjust failure rates in the program. The State has established a twenty-five (25) year "rolling window" for vehicles subject to the emission standards in the I/M program. This concept has been taken into account in the modeling the State performed to determine emission reduction benefits. A vehicle with a switched engine is required to meet the emission standards of the chassis model year as listed on the vehicle registration. If the engine is newer than the chassis, the State's tamper provisions apply and the vehicle will be evaluated on that basis. For the tamper inspection, such a vehicle must match a light-duty certified configuration of chassis model year or of a newer vehicle if it had originally been a light-duty configuration.

The State permanently exempts a number of vehicles. The State exempted alternatively-fueled vehicles in order to promote clean burning fuels. Dual-fueled vehicles are not subject to this exemption. Dual-fueled vehicles will be tested to meet the requirements of the program while being fueled with gasoline. Exempted vehicles fall into a select category defined as "limited use" and are not normally found in common use on the highway. These include historic, parade, and collector's vehicles, electric vehicles, vehicles over ten thousand (10,000) pounds, vehicles with salvage certificates, and any vehicle over twenty-five (25) years old. Temporary exemptions and extensions to the exemptions are also available for a range of criteria. Motor vehicles owned by military personnel stationed outside the State, out-of-State students, owner's with a temporary medical condition, and vehicles undergoing repair are eligible for temporary exemptions. Owners of these vehicles are required to submit documentation to prove status and are tracked in the State's data base to ensure the vehicle eventually gets tested.

H. Test Equipment

The Federal regulation requires computerized test systems for performing any measurement on subject vehicles. The Ohio EPA lists the details of the technical specification of the test equipment in the RFP, and make reference to the requirements of the Federal regulations and the technical guidance document. Computerized test systems are required for performing any measurements on subject vehicles. According to the requirements in the RFP, these systems must conform to Federal requirements. Each of the State's test lanes shall be equipped with a dynamometer, constant volume sampler, non-dispersive infrared analyzers to measure carbon monoxide, carbon dioxide, and hydrocarbons, and an analyzer for measuring NOx, and non-invasive helium pressure and purge test equipment. All of this equipment must pass an acceptance test before it is approved by the State. The State's contract will require the contractor(s) to update emission test equipment to accommodate new technology vehicles and any changes to the program. All test systems will be linked by a real-time data link in order to prevent unauthorized multiple initial tests on the same vehicle in the same test cycle.

I. Quality Control

Quality control measures will ensure that emission measurement equipment are calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. The Ohio EPA prepared the RFP to require the contractor to implement quality control procedures which comply with 40 CFR 51.359. The compliance document, the inspection certificate, that Ohio EPA will issue to motorists that comply with inspection requirements are only valid once a computer generated check redundancy code (CRC) is printed on each document. The CRC is analyzed by the Bureau of Motor Vehicles (BMV), and vehicle registration renewals can only be generated by the BMV computer if the code is valid. The CRC is only printed on a compliance document, which contains test results, once a vehicle passes all parts of the emission inspection. The security of compliance documents for the Ohio program focuses on the CRC rather than the number of compliance documents issued to inspection stations. However, inspection certificates shall be stored in a locked container at the inspection station at all times when not in use, and the contractor is held responsible for accountability of all certificates. The RFP states that the contractor's quality control procedures shall ensure that emission measurement equipment is properly calibrated and maintained. Analyzers will automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances that impact quality control.

J. Waivers and Compliance via Diagnostic Inspection

The I/M program allows the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria are met. The State program plan contains elements in this section which generally follow the waiver issuance criteria listed in the Federal I/M regulation. In modeling the emission reduction benefits, Ohio used MOBILE5a and assumed a maximum waiver rate of 2 percent for 1980 and older model year vehicles and 3 percent for 1981 and newer vehicles. In the event the actual waiver rate exceeds the planned maximum used for estimating the emission reduction benefit, the State has commited to remodel to assess the emission reduction benefits based on the actual waiver rate.

Legislation gives the Director of the Ohio EPA the authority to issue waivers, set and adjust cost limits, and administer the waiver system. Following a test failure, the subsequent reinspection must show a thirty (30) percent improvement in measured concentrations of each pollutant that exceeded the standards in the first test and the minimum waiver limit amount has been spent on emission related repairs. A vehicle is eligible for a waiver when proof is provided that the vehicle has received all repairs and adjustments for which it is eligible under any emissions performance warranty. The costs associated with repair of any tampering is not considered valid towards a waiver. When proof is provided to the inspection station manager that appropriate repairs have been performed on the vehicle, such vehicle will be eligible for a waiver. The inspection station manager is responsible for verifying repairs and reviewing repair receipts. The station manager, assistant manager or an Ohio EPA auditor are authorized to determine waiver eligibility. Waivers are valid for one (1) year and are not renewable. The minimum expenditure made on emission repairs is one-hundred ($100) dollars for 1980 and older vehicles and two-hundred ($200) dollars for 1981 and newer. While the Clean Air Act requires a minimum waiver repair expenditure for enhanced I/M programs of $450, basic areas such as in Ohio which are opting up to enhanced I/M do not have to meet this requirement.

The State allows exemptions to the inspection requirement and extensions if a vehicle is undergoing extensive repair at the time of its registration or registration renewal. The requirements for an extension or exemption are sufficient to allow the State full understanding of the need by the consumer for the extension or exemption, and places a burden on the consumer to prove to the State that such an extension or exemption is needed.

The Federal I/M rules also allow the use of compliance via diagnostic inspection following repairs after a test failure. The State of Ohio has chosen not to allow compliance via diagnostic repair.

K. Motorist Compliance Enforcement

The Federal regulations require the use of registration denial to ensure compliance with the requirements of the I/M program. The Ohio EPA, along with the Ohio Bureau of Motor Vehicles (BMV), will continue to implement a registration denial enforcement program. Vehicle owners who do not renew vehicle registrations, and continue to drive an unregistered vehicle in the State, will be subject to enforcement action by any law enforcement officer in the State. Local governments are responsible for establishing policies for the mandatory fines of all traffic violations including failing to comply with registration requirements. Owners of all vehicles registered in the State are required to affix a sticker to the lower right hand corner of the rear license plate. This sticker identifies the month and year of the registration renewal date. If an owner or driver fails to comply with I/M or registration requirements, he or she will be unable to legally drive that automobile and be subject to enforcement action. Vehicle owners who move their residence into an Ohio I/M testing area will be required to have an emission test prior to registering the vehicle in the area. Motorists are permitted thirty (30) days to register the vehicle after moving to a new address. Vehicle owners who fail to complete the registration process after relocating may be ticketed by law enforcement agencies for driving with a registration violation.

L. Motorist Compliance Enforcement Program Oversight

The Federal rule requires the State to audit the enforcement program on a regular basis and the State shall follow effective program management practices, including adjustments to improve operation when necessary. A quality assurance program shall be implemented to insure effective overall performance of the enforcement system. Ohio Senate Bill 18 authorizes the Director of Ohio EPA to promulgate, adopt, amend and rescind rules for motorist compliance with the I/M program. The contractors are responsible for in-house accounting of documents and compliance certificates. Documents in the Ohio I/M program are valid only if a CRC is present. Missing or unaccounted certificates do not pose a threat of fraudulent activity because each CRC is unique for each certificate at the time the certificate is issued.

The I/M contractor is held responsible for certificate accountability. In the event the contractor employees or inspectors tamper with the records or documents, the state will take action to have the employee terminated. Exemption records will be analyzed together with the registration database to determine changes in registration data. Where it is determined that an unusually high number of vehicles are unexplainably not in the registration area or not being tested, provisions will

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be made to identify and take action on the anomalous condition. The procedures may include methods for performing covert and overt audits, preparation of enforcement documents, I/M test equipment operation, public relation materials and other applicable information. The Bureau of Motor Vehicles (BMV) will issue material containing procedures for performing specific operations associated with I/M inspection and registration requirements. The BMV materials will be issued to the Deputy Registrars and will include information explaining the evaluation process. Each Deputy Registrar is evaluated biannually. In cases where enforcement personnel fail to follow established procedures, action may be taken to discipline, retrain, or remove the employee. In establishing an information base to be used in evaluating and enforcing the I/M program, the State uses actual vehicle population data obtained from the BMV and test results from I/M contractors.

The I/M contractors will have access to the BMV database, but in a "read only" format to prevent accidental or intentional data modifications.

Both the State and the contractors will be able to perform periodic audits of the testing database. Reports from these audits will be used to evaluate program effectiveness. Test data will be analyzed to determine if facilities are operating according to procedures. Outlying data will trigger investigations of the facilities. If necessary, enforcement action will be taken against test facilities found violating State or Federal regulations.

M. Quality Assurance

The USEPA rule requires an ongoing quality assurance program in order to discover, correct and prevent fraud, waste, and abuse, and to determine whether procedures being followed are adequate, whether equipment is measuring accurately, and whether other problems may exist which would impede program performance. The procedures shall be periodically evaluated to assess their effectiveness in achieving program goals. Scheduled State audits are to ensure that all facilities are randomly audited on a regular basis. Directed audits will be conducted to investigate specific situations. Any valid consumer complaint will trigger a directed audit of a centralized facility. If a problem appears to exist at a specific station, a directed audit will be conducted. Covert audits will be conducted annually by State staff and equal in number to the number of inspectors employed by the contractors. Vehicles presented for audit testing will be in a range of manufacturers, models and age to replicate the current fleet, and will be leased on a six month basis to ensure that a variety of vehicles are presented to the inspection process.

The covert audit will include a gas audit using gases of known concentrations that are as accurate as those used for routine quality control checks. The audit will include a check for tampering and general serviceability of equipment, critical flow in the constant volume sampler (CVS), CVS flow calibration, leak check and gas tolerances. There will be a functional check of the dynamometer for roll speed and distance, coast-down, inertia weight selection and power absorption. The pressure and purge equipment will also be checked. The OEPA auditors are expected to receive formal training in the use of analyzers, basics of air pollution control, basic engine repair, State administrative procedures, quality assurance practices, covert procedures and program rules and regulations.

N. Enforcement Against Contractors, Stations and Inspectors

The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. Senate Bill 18 of the Ohio Revised Code gives Ohio EPA authority to enter into a contract to implement and maintain an inspection and maintenance program. This contract allows the State to impose penalties when violations occur that adversely affect the operation of the inspection network. A penalty schedule, listing a variety of rules infractions, will be used for violations discovered at an inspection facility as a result of overt and covert audits conducted by Ohio EPA staff. Penalties range from 100 dollars up to 10,000 dollars to termination of employment and breech of contract. In cases of inspector incompetence, Ohio EPA will require the contractor retrain the inspector according to the requirements listed in the contract. Inspectors will be prevented from conducting tests until retraining is complete.

Ohio EPA will maintain field offices and employ auditors in each of the zones in which I/M is required to be implemented. The primary function of the auditors will be to conduct audits of the contractor facilities. These audits will determine the ability of the contractor and inspectors to conduct a proper inspection and identify cases of bribery or fraud. Funding for this enforcement program will come from a rotary fund established under section 3704.14 of the Ohio Revised Code.

O. Data Collection

In order to manage, evaluate and enforce the program requirements an effective I/M program requires accurate data collection. The Ohio I/M program RFP requires the contractor to design the program to include all of the elements of data collection listed in the Federal rule. The contractor is also required to conduct quality control checks and report data from those checks.

P. Data Analysis and Reporting

Data analysis and reporting are required in order to monitor and evaluate the program by the State and the USEPA. The Federal rule requires annual reports submitted to the USEPA following a performance period by a specific time. The Ohio I/M program requires the contractor to provide the information to the State in order to meet the submittal requirements of the Federal rule. The statistics required are consistent with those listed in the Federal rule and are expected to be submitted on time.

Q. Inspector Training and Licensing or Certification

The Federal rule requires all inspectors receive formal training and be licensed or certified to conduct inspections. Ohio Senate Bill 18 authorizes the Ohio EPA to develop rules which establish provisions for inspector training and certification requirements. The Ohio EPA requires the contractor to enter into an arrangement with local vocational schools, technical schools or training organizations to conduct inspector training. All trainees are required to pass a comprehensive hands-on and written examination which requires inspectors to demonstrate an understanding of Ohio's rules, regulations, test procedures, equipment usage, quality control procedures and safety and health issues as used in the enhanced test. The Ohio EPA has committed to evaluating and monitoring the development of the I/M inspector training program. Recertification is required on a biennial basis and inspectors are required to attend training for updated information and new program developments.

R. Public Information and Consumer Protection

The Ohio implementation plan must include a program for informing the public on an ongoing basis for the life of the program about the air quality,

requirements of State and Federal laws, the role of motor vehicles in the air quality problem, and the benefits of an I/M program. Information must be made available to the motorist, whose vehicle fails the test, to provide knowledge of repair facilities and the relative quality of repairs performed. The Ohio EPA assigned some public awareness efforts to the contractor with State oversight. These efforts include a toll-free hotline, sending reminder notices to motorists in advance of testing deadlines, producing brochures and participating in public speaking activities. The State will carry out its responsibilities by publishing fact sheets, issuing press releases, publishing a newsletter for the repair industry, and participating in special events. The Ohio I/M consumer protection plan will include components to protect the consumer from fraud and abuse. Both Ohio EPA and the contractors will perform quality assurance to ensure integrity of the inspection process. The State's approach in this regard will focus on the use of undercover audits of the inspection and test procedure. Consumers who believe their vehicles should not have failed will be able to appeal the test results directly to the Ohio EPA by scheduling an appeal inspection within 14 days of the initial test. Citizens who report incidents of fraud, theft or other violations are protected by the State which will grant confidentiality to encourage such disclosure. The contractor will operate a toll-free hotline to provide to motorists answers to questions about the program. The contractor is required by the State to swiftly resolve complaints over which the contractor has control or forward the complaint to the State for disposition. The State will periodically audit the process to ensure complaints are resolved. The State will also intervene on behalf of a consumer in the event of a conflict with an automobile dealer for warranty repairs for a vehicle which fails the I/M test.

S. Improving Repair Effectiveness

Inspection and maintenance program goals are achieved through effective repairs of vehicles which have failed the initial test. The State will provide the repair industry with information and assistance on vehicle inspection diagnosis and repair. Ohio EPA will provide technical assistance to repair facilities which are in the business of repairing emission failures.

These facilities will receive publications which include I/M test procedures, common problems with specific model year vehicles, diagnostic tips, training and other I/M related issues. A technician's hotline also will be available to respond to specific I/M repair questions. The State will monitor the performance of individual motor vehicle repair facilities, and provide to the public a summary of the performance of repair facilities so the consumer has a choice of locations to seek repairs. The repair statistics also will be available to the repair facilities. The State plans to evaluate the availability of repair technician training in the I/M areas. If sufficient training is not available the State commits to work with public and private automotive training institutions to develop a training program.

T. Compliance With Recall Notices

States are required to establish a method to ensure that vehicles subject to enhanced I/M and that are included in either a voluntary emissions recall as defined at 40 CFR 85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Act, receive the required repairs. The Ohio EPA, at the time of submittal, did not have a specific plan developed but included provisions in its RFP for the contractor to follow to ensure subject vehicles receive all required recall repairs. Emissions tests will not be conducted on a vehicle that has an unresolved recall notice until all of the work is done. Vehicles with unresolved recall work will be identified as noncomplying by the contractor's system. An owner is required to provide proof that the repairs have been performed before a test is allowed. The contractor shall have the ability to resolve situations where the repairs have been performed but the database has not yet been updated. The State OAC rule 3745–26–12 requires documented proof that the repairs have been performed. The cost of these repairs are not counted towards the amount needed for a waiver. Unresolved recall reports from the contractor to the State are required on an annual basis. The State requires the contractor to provide detailed information in the annual report sufficient for the State to inform the USEPA of the status of operations of the program.

U. On-Road Testing

On-road testing is required in enhanced I/M areas and is an option for basic I/M areas. The Ohio nonattainment areas at issue are all moderate areas requiring basic I/M. Since the enhanced I/M program is an option in the nonattainment areas of Ohio, on-road testing is not required. Accordingly, the State did not plan for conducting on-road testing.

V. State Implementation Plan Submission

The State submitted a committal SIP to USEPA on November 12, 1993. The committal included: a schedule of events leading up to the implementation of the I/M program, mobile modeling which shows that the program meets the performance standard, a description of the geographic area, a detailed discussion of the design elements, final copy of the legal authority, regulations, and funding and resources. Additional information was submitted through May 26, 1994. On July 22, 1994, the USEPA notified the State that the submittal was complete. This notification stopped the sanctions clock which was started on January 21, 1994, because at that time the State's submittal was not complete.

III. Comments and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision amendment and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on June 5, 1995, unless USEPA receives adverse or critical comments by May 4, 1995.

If USEPA receives comments adverse or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. The USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action.

Any parties interested in commenting on this action should do so at this time. If no comments are received, USEPA hereby advises the public that this action will be effective on June 5, 1995.

IV. The USEPA's Analysis of the Ohio I/M Program Submittal

A complete USEPA analysis of the program submittal is detailed in the Agency's technical support document (TSD) which is available in the docket. A copy of the TSD can be obtained by contacting the person listed in the **ADDRESSES** portion of this notice. The TSD summarizes the requirements of the Federal I/M regulations and address

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whether the elements of the State's submittal comply with the Federal rule. Interested parties are encouraged to examine the TSD for additional detailed information about the Ohio I/M program.

Final Action

The USEPA is approving the I/M SIP for the Cleveland-Akron-Lorain, Cincinnati, and Dayton-Springfield areas and takes no action on the I/M SIP for the Toledo area.

Precedential Effect

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA should prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This limited approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its final limited approval of Ohio's I/M on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1870 is amended as follows by adding paragraph (c)(101) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(101) On November 12, 1993 the Ohio Environmental Protection Agency submitted a vehicle inspection and maintenance program in accordance with section 110 of the Clean Air Act as amended in 1990. The new program replaces I/M programs in operation in the Cleveland and Cincinnati areas and establishes new programs in Dayton and any area designated moderate nonattainment or any area where local planning authorities have requested the State to implement a program.

(i) Incorporation by reference.

(A) Ohio Administrative Code Amended Rules 3745–26–01, 3754–26–02, 3745–26–10, and rules 3745–26–12, 3745–26–13, and 3745–26–14, all made effective on June 13, 1994.

(ii) Other material.

(A) Certification letter from the Director of the Ohio Environmental Protection Agency regarding the State process in developing the I/M rules and the I/M program.

(B) Letter dated June 22, 1994, from the Director of OEPA regarding implementation of an I/M program in the Toledo area in the event the State's request for redesignation to attainment for that area is not approved by USEPA.

* * * * *

[FR Doc. 95–8221 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[IL116–1–6792a; FRL–5182–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving a November 10, 1994 State Implementation Plan (SIP) revision request to redesignate two sulfur dioxide (SO_2) nonattainment areas in the State of Illinois to attainment and approving the accompanying maintenance plans as SIP revisions because they satisfy the requirements of the Clean Air Act (Act). The redesignation requests and maintenance plans were submitted by the Illinois Environmental Protection Agency (IEPA) for the following SO_2 nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The redesignation requests are based on ambient monitoring data and modeling demonstrations that show no violations of the SO_2 National Ambient Air Quality Standard (NAAQS). In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comments on these requested redesignations and SIP revisions. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Adverse comments received concerning a specific geographic area, Peoria or Tazewell Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

DATES: This final rule is effective June 5, 1995, unless notice is received by May 4, 1995, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Fayette Bright at (312) 886–6069 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6069.

SUPPLEMENTARY INFORMATION:

I. Background

The redesignation requests and maintenance plans considered in this rulemaking were submitted by IEPA on November 10, 1994 for the following SO_2 nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The following discussion represents a historical summary of Illinois' SO_2 SIP.

On March 3, 1978 (43 FR 8962), ten townships in Peoria and Tazewell Counties in Illinois were designated by USEPA as not in attainment of the primary SO_2 NAAQS. The determination, which included Hollis and Peoria Townships in Peoria County and Groveland Township in Tazewell County, was based on monitoring data furnished to USEPA by IEPA, and was to have included the entirety of both counties. However, an accompanying IEPA dispersion modeling demonstration justified limiting the nonattainment designation to ten townships.

Further, on January 30, 1980 (45 FR 6786) as a result of IEPA dispersion modeling studies, all ten townships were also designated as not in attainment of the secondary SO_2 NAAQS. Nine of these townships continued to be designated as not in attainment of the primary NAAQS.

Even before the 1978 nonattainment designation, Illinois had adopted regulations to control SO_2 emissions in the Peoria area; however, a 1974 decision of an Illinois Appellate Court invalidated Illinois' SO_2 emissions limitations for coal-fired boilers. Such boilers account for over ninety-five percent of the area's SO_2 emissions. Also, in 1977, the Illinois Air Pollution Control Board (Board) revalidated the SO_2 emission limitations for coal-fired boilers; however, the revalidations were also determined to be invalid by an Illinois Court, (Ashland Chemical vs. Illinois Pollution Control Board, 64 Ill. App. 3rd 169,.381 N.E. 2nd 56 (3d District. 1978)).

On March 28, 1983, most of the emission limits pertaining to Peoria were revalidated by the Board. These Board regulations were submitted to USEPA and incorporated into the Illinois SO_2 SIP on August 8, 1984 (49 FR 31685 and 49 FR 31587). This SIP revision redesignated all Peoria area Townships except Groveland, Hollis, and Peoria Townships to attainment for SO_2. (Hollis Township is classified as nonattainment of the primary and secondary standards).

On June 9, 1986, IEPA submitted Final Order R84–28 (35 Illinois Administrative Code 214 (35 IAC 214); Sulfur Limitations) as a SIP revision request revising the SO_2 emission limits for the remaining solid fuel emission sources in the Peoria and Tazewell areas. The SIP revision request could not be approved until the enforcement deficiencies were corrected. However, due to USEPA's approval of 35 IAC 214; Measurement Methods for the Emission of Sulfur Compounds dated June 26, 1992 (57 FR 28617), the enforcement deficiencies previously identified by USEPA were corrected. On September 2, 1992 (57 FR 40126), USEPA approved the June 9, 1986 SIP revision request completing the State's part D plan for the Peoria and Tazewell areas.

The State's part D plan as required by the Act must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment, or interfere with the maintenance of the NAAQS. Illinois' SIP includes a compliance test methodology which allows most sources to demonstrate compliance with their emission limits through either a stack test or a 2 month average of the sulfur content of their fuel supply.

II. USEPA Redesignation Policy

The Act's requirements for redesignation to attainment are contained in section 107(d)(3)(E) of the Act, and discussed in a September 4, 1992, memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions.

As outlined in this memorandum, section 107(d)(3)(E) of the Act requires that the following conditions be met for redesignation to attainment:

1. The USEPA must determine that the areas subject to the redesignation request have attained the NAAQS;
2. The USEPA must have fully approved the applicable SIP for the areas under section 110(k) of the Act;
3. The USEPA must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal air pollution control regulations, and other federally enforceable emission reductions;
4. The USEPA must have fully approved maintenance plans for the areas as meeting the requirements of section 175A of the Act. Section 175A of the Act sets forth the maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year maintenance period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of air quality problems that might develop; and,
5. The State must have met all requirements applicable to the areas under section 110 and part D of the Act.

III. Summary of State Submittal

The following discussion addresses Illinois' redesignation request for Peoria and Tazewell counties, how the State met the five Act requirements in section 107(d)(3)(E) listed above, and a more detailed discussion of USEPA policy.

A. Attainment of the NAAQS

USEPA has determined that the Peoria and Tazewell areas have attained the SO_2 NAAQS. The modeling analysis submitted by the state along with the SIP revision that USEPA approved on September 4, 1992, demonstrated attainment of the SO_2 NAAQS through air dispersion modeling. In addition to the modeled attainment demonstration, ambient air monitoring data shows that no violations have occurred since 1977 in Peoria and Tazewell Counties.

USEPA redesignation policy requires that at least eight consecutive quarters with no violations be achieved before an area can be redesignated to attainment. For SO_2, an area must show no more than one exceedance annually.

The most recent violation of any SO_2 standard in the Peoria and Tazewell

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areas occurred in 1977. 1988 was the most recent year in which a single exceedance of SO_2 occurred. This exceedance occurred at the monitoring station located at 272 Derby Street in Pekin in Tazewell County. Inasmuch as the area's other monitoring station, at Hurlburt and MacArthur Streets in Peoria, has no recorded exceedances or violations of the primary or secondary SO_2 NAAQS, Illinois has met the above requirement.

B. Fully Approved SIP

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. These requirements include new requirements added by the 1990 Act amendments. The State must meet all requirements of section 110 and part D of the Act that were applicable prior to the submittal of the complete, finally adopted redesignation request. (It should be noted that, based on section 175A of the Act, other requirements of part D of the Act remain in effect until the USEPA approves the maintenance plan and the redesignation to attainment). A SIP which meets the pre-redesignation request submittal requirements (the State's nonattainment SIP) must be fully approved by the USEPA prior to USEPA's approval of the redesignation of the area to attainment of the NAAQS. The requirements of Title I of the Act, which includes section 110 and part D of the Act, are discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992).

On May 31, 1972 (37 FR 10861), USEPA approved Illinois SO_2 Rule 204(c)(1)(A), which established a 1.8 lbs (pounds SO_2 per million British Thermal Units)/MMBTU emission limit for existing fuel combustion sources in the Peoria, East St. Louis, and Chicago major metropolitan areas. This rule was to serve as the State's part D SIP control strategy for the Peoria and Tazewell nonattainment areas. However, Rule 204(c)(1)(A) was invalidated by the Illinois Appellate Court on September 27, 1978. Through several SIP actions (see 47 FR 9479—March 5, 1983: 49 FR 31412, August 7, 1984; and 49 FR 31687, August 8, 1984), SO_2 emission limits have been reestablished for all sources in the Peoria area with the exception of six boilers.

On June 9, 1986, the State submitted Final Order R84–28 which revised emission limits contained in Part 214 Subpart C. The State submittal satisfied an outstanding condition related to federal approval of Illinois' part D SO_2 SIP for the Peoria and Tazewell nonattainment areas which reestablished emission limits for the remaining six sources mentioned above. As previously discussed, USEPA took rulemaking action on this SIP revision request on September 2, 1992 (57 FR 40126). This action was taken in light of the USEPA approval of a SIP revision request from IEPA revising the State's compliance methodology which satisfactorily corrected several defects in the 1972 SIP. The part D plan for the Peoria and Tazewell SO_2 nonattainment areas is now considered by USEPA to be complete and has been fully approved.

C. Permanent and Enforceable Air Quality Improvement

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.

Implementation of SO_2 emission controls in the Peoria and Tazewell areas which are contained in Illinois' part D SO_2 SIP has led to permanent, enforceable emission reductions in the ambient SO_2 levels in the Peoria and Tazewell areas. In addition, there are three source closures in Peoria County: Westinghouse Air Brake (WABCO); Celotex; and Midland Coal Mine. Although Bemis Company (Peoria County) is still operating, this source no longer emits SO_2; it only emits volatile organic compounds. Cilco-Wallace Station in Tazewell County has also closed. These sources can only be reopened under the State's Prevention of Significant Deterioration (PSD) program and the State must demonstrate that the sources will not violate the SO_2 NAAQS. Although there is a possibility that Midland Coal Mine may reopen, there will be no increase, in SO_2 emissions.

Actual SO_2 emissions in 1993 from point sources remained at less than twenty-three percent of the allowable emissions that were modeled in the attainment demonstration in the 1986 Illinois SIP submittal. The 1986 attainment demonstration and SIP revision showed that, if SO_2 emissions were low enough to meet the 24-hour primary attainment standard in both Peoria and Tazewell Counties, the 3-hour secondary standards as well as the annual primary standards would also be maintained.

In addition, there has been an overall reduction of thirty-two percent in allowable SO_2 emissions at the four Caterpillar plants attributable to the shut-down of various emission units. Thus, the emission reductions achieved are the result of the above mentioned federally enforceable rules and permanent source closures.

D. A Fully Approved Maintenance Plan

Section 175A of the Act sets forth the maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year maintenance period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of air quality problems that might develop.

There are five provisions that USEPA believes need to be considered in an acceptable maintenance plan. The following is a description of how the State's request has fulfilled each of these five requirements.

1. Attainment Inventory

The State is required to develop an attainment inventory to identify the level of emissions in the area at the time of attainment. The plan submitted by IEPA lists the actual emissions for the thirteen sources emitting 25 tons/year or more of SO_2 in the Peoria and Tazewell areas for 1989 through 1993. As previously discussed, the actual emissions in 1993 from point sources remained at less than twenty-three percent of the allowable emissions that were modeled in the attainment demonstration in the 1986 Illinois SIP revision request.

Further, actual emissions may decrease even more significantly should implementation of the Title IV, Act Acid Deposition Control Program reductions be employed by Commonwealth Edison at its Powerton electric generating station and by Central Illinois Light Company at its Edwards Station. Even small percentage reductions at these stations will result in large overall percentage reductions, as the two stations account for approximately sixty-eight percent of the nonattainment area's SO_2 emissions from stationary sources.

2. Maintenance Demonstration

The State is required to demonstrate future maintenance of the NAAQS by either showing that (a) future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or (b) by modeling, that the future mix of sources and emission rates will not cause a violation of the NAAQS. This demonstration will require the State to project emissions for the 10 year period following the redesignation.

Illinois' plan projects that the emissions will not change substantially from the attainment inventory within the next ten years. The modeling analysis submitted by IEPA with the 1986 SIP revision request sufficiently demonstrates maintenance of the NAAQS for 10 years following the redesignation. The actual emissions from point sources are less than twenty-three percent of allowable emissions modeled in the 1986 submittal and, emissions cannot increase due to the restrictions of 35 IAC part 214, Sulfur Limitations and Part 203, Major Stationary Source Construction Modification contained in the SIP. Also, Illinois predicts that, due to the implementation of Title IV of the Act, actual emissions are expected to decrease. Further, new stationary sources will be subject to the Prevention of Significant Deterioration (PSD) requirements. IEPA was delegated authority to administer the USEPA PSD regulations on January 29, 1981, at 46 FR 9584.

3. Ambient Monitoring

In accordance with 40 CFR part 58, once an area has been redesignated, the State must continue to operate an appropriate air quality network to verify the attainment status of the area.

The IEPA operates two National Air Monitoring Stations (NAMS) SO_2 monitors at two sites in the nonattainment areas. The Peoria monitoring station is located at Hurlburt and MacArthur Streets in Peoria County and the Tazewell County monitoring station is located at 272 Derby Street in Pekin in Tazewell County. Since their incorporation into the NAMS Network, these sites have been annually approved by USEPA in accordance with the requirements of 40 Code of Federal Registers (CFR) 58 Subpart D. Because of USEPA's SIP requirements regarding the maintenance of an adequate network, the IEPA will continue operation of these monitors and cannot shut down either monitor without USEPA concurrence of a revision to the NAMS program.

4. Verification of Continued Attainment

Each State must ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. IEPA has authority, through the Illinois Environmental Protection Act, to ascertain information from any air containment source which may cause or contribute to air pollution. In addition, IEPA developed administrative rules which require annual reporting of SO_2 emissions as well as all other regulated contaminants from all sources required to have permits (35 IAC Sections 254.204 and 254.403).

Illinois' primary means for updating the emissions inventory is the conducting of periodic source inspection by the IEPA's Field Operations Section (FOS). FOS inspects all major sources and many minor sources with a frequency that depends on the amount of emissions emitted by the source and its history of compliance with emission limitations. Major sources are inspected at least annually and all permitted sources at a lower frequency. If inspections indicate a need for enforcement or for more stringent emission limits, the IEPA refers such matters to the Board, which has the authority to execute enforcement actions.

Because of this ongoing procedure, the emission inventory is updated more frequently than annually. In fact, it is updated each time an inspection indicates the need for a revision and entered into the Aerometric Information Retrieval System (AIRS).

5. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are implemented expediently once they are triggered.

In Illinois, all SO_2 monitoring data are read daily, and IEPA continues its ongoing practice of routine source inspection for emission compliance status at a frequency determined by emissions magnitude, taking prompt actions should any exceedance, or near exceedance, i.e. ninety percent of the SO_2 NAAQS in the area. (The primary SO_2 NAAQS is 0.14 parts per million (ppm) and the secondary NAAQS is 0.50 ppm. These standards are not to be exceeded more than once per year.) These actions include a determination of the source(s) causing such an exceedance or near exceedance based on the meteorological conditions prevailing at the time of the exceedance or near exceedance. In such a case, the IEPA will immediately contact the affected source(s) to ascertain the possible causes, including whether malfunctions or other unusual operating conditions have occurred.

The results of such contact will dictate what further actions IEPA will then take, such as an inspection leading to enforcement action as authorized by Section 4 of the Illinois Environmental Protection Act, requiring stack testing as authorized by 35 IAC Section 201.282 and Measurement Methods in accordance with Section 201.282, or proposing to the Board that more stringent SO_2 emission limitations may be necessary.

E. SIP Meets Relevant Requirements Under Section 110 and Part D

Before the Peoria and Tazewell areas may be redesignated to attainment, they must have fulfilled the applicable requirements of section 110 and part D. USEPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation request. As the redesignation requests were submitted to USEPA in November 1994, requirements that came due prior to that time must be met for the request to be approved. Any requirements of the Act that come due subsequent to the submission of the redesignation requests continue to be applicable to the area (*see* section 175A(c)) and, if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

USEPA has determined that the State has met the requirements of section 110 and Part D that were applicable prior to submittal of the complete redesignation request.

i. *Part D Plan.* As noted above, in section III(b) of this document, USEPA approved the Illinois SO_2 SIP for the Peoria and Tazewell areas on September 2, 1992. As previously discussed, this action was approved after Illinois revised its compliance methodology satisfactorily correcting several defects in the 1972 SO_2 SIP (57 FR 2817, June 26, 1992). Illinois' SIP includes enforceable emission limitations and provides for the operation of air quality monitors and a program to provide for the enforcement of the emission limits. Approval of this plan also means that the State has a SIP satisfying the applicable requirements of section 110.

ii. *New Source Review.* Section 172(c)(5) of the Act requires the State to submit a SIP revision to require source permits in accordance with section 173 of the Act for the construction and operation of each new or modified major source.

Illinois has submitted a SIP revision request to comply with the requirements of section 172(c)(5). The USEPA has reviewed this SIP revision request and has proposed to approve it (September

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23, 1994, 59 FR 48839). Although the USEPA has not taken final rulemaking action on this SIP revision, it should be noted that USEPA does not consider compliance with these requirements to be a prerequisite to the redesignation of an area to attainment of the sulfur dioxide NAAQS.

USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. For more information, refer to the memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed above, the State of Illinois has demonstrated that the Peoria and Tazewell areas will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation requests for those areas.

iii. *Conformity*. Section 176(c) of the Act requires the States to revise their SIPs to establish criteria and procedures to ensure that before Federal actions are taken, they conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States be consistent with Federal conformity regulations that the Act required USEPA to promulgate. Congress provided for the State revisions to be submitted 1-year after the date for promulgation of final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed the States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557, April 16, 1992).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188). The transportation conformity regulations do not apply to the SO_2 pollutant because SO_2 is not emitted by transportation sources. However, the general conformity regulations do encompass SO_2 nonattainment and maintenance areas.

The USEPA promulgated final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity regulations require the States to adopt general conformity provisions in the SIPs for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.851 of the general conformity rule, the State of Illinois is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for this submittal did not become due until after the Peoria and Tazewell redesignation request (November 10, 1994), it is not an applicable requirement under section 107(d)(3)(E)(V) and, thus does not affect approval of the redesignation request. It should be noted, however, that regardless of the attainment status of Peoria and Tazewell Counties, Illinois is obligated under the general conformity rule to submit the conformity SIP revision, including covering Peoria and Tazewell Counties by the deadlines discussed here, because they will be maintenance areas. Therefore, the attainment status of Peoria and Tazewell Counties should not be an issue in this case. It is further noted that the Illinois redesignation request for Peoria and Tazewell Counties indicates that the State of Illinois will submit a SIP revision to meet USEPA's conformity requirements after Illinois has had sufficient time to review and act on USEPA's final conformity regulations.

IV. Final Rulemaking Action

The State of Illinois has met the requirements of the Act. The USEPA approves the redesignation of Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township) to attainment of the SO_2 primary and secondary NAAQS.

Because USEPA considers this action to be noncontroversial and routine, the USEPA is approving it without prior approval. This action will become effective on June 5, 1995. However, if the USEPA receives adverse comments by May 4, 1995, then the USEPA will publish a document that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

The comment period will not be extended or reopened. This withdrawal will be done on a geographic basis if the adverse comments received do not concern the two geographic areas.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Sulfur dioxide.

Dated: March 22, 1995.

David A. Ullrich,

Acting Regional Administrator.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7402–7671q.

Subpart O—Illinois

2. Section 52.724 is amended by adding paragraph (h) to read as follows:

§ 52.724 Control strategy: Sulfur dioxide.

* * * * *

(h) Approval—On November 10, 1994, the Illinois Environmental Protection Agency submitted a sulfur dioxide redesignation request and maintenance plan for Peoria and Hollis Townships in Peoria County and Groveland Township in Tazewell County to redesignate the townships to attainment for sulfur dioxide. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(d) of the Clean Air Act (Act) as amended in 1990.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7871q.

2. In § 81.314 the Illinois SO_2 table is amended by revising the entries for Peoria County and Tazewell County to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standard	Cannot be classified	Better than national standards
Peoria County				X
Tazewell County				X

* * * * *

[FR Doc. 95–8213 Filed 4–3–95; 8:45 am]

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40 CFR Part 260

[FRL–5183–5]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) for testing and monitoring activities. This amendment clarifies the temperature requirement for pH measurements of highly alkaline wastes and adds Method 9040B (pH Electrometric Measurement) and Method 9045C (Soil and Waste pH) to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. This amendment will provide a better and more complete analytical technology for RCRA testing in support of hazardous waste identification under the corrosivity characteristic (40 CFR 261.22).

EFFECTIVE DATE: April 4, 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of April 4, 1995.

ADDRESSES: The official record for this rulemaking (Docket No. F–95–W2TF–FFFFF) is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (room M–2616), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846 as amended by Updates I, II, IIA, and IIB are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. New subscriptions to SW–846 may be ordered from GPO at a cost of $319.00 (subject to change). There is a 25% surcharge for foreign subscriptions and renewals.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 920–9810; or, for hearing impaired, call TDD (800) 553–7672 or (703) 486–3323. For technical information, contact Oliver Fordham, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4761.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

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II. Background and Regulatory Framework Summary

EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Use of some of these methods is required by some of the hazardous waste regulations under subtitle C or RCRA. In other situations, SW–846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in satisfying RCRA-related sampling and analysis requirements. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Update IIB (Methods 9040B and 9045C) represents such an incorporation.

III. Overview of Proposal

On August 31, 1993 (58 FR 46052), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by adding Update II to SW–846 and incorporating the Third Edition as amended by Updates I and II, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA. In section III.D of the proposed rule, the Agency also proposed the addition of language to SW–846 Methods 9040A and 9045B to clarify regulatory requirements as to the temperature for pH measurements of highly alkaline wastes during corrosivity characteristic testing.

On January 13, 1995 (60 FR 3089), the Agency published a final rule which added Update II to SW–846. As noted in that final rule, the Agency was still responding to public comments regarding the pH temperature clarification issue and, therefore, took no action on that topic in the January 13, 1995 Final Rule. The Agency did not want to delay promulgation of Update II as a result of its ongoing deliberations on the temperature clarification. Therefore, Methods 9040A and 9045B were finalized as part of Update II without the technical clarification regarding temperature control during the pH measurement of highly alkaline materials.

IV. Public Comments Regarding Section III.D of the Proposed Rule

The majority of the commenters were in favor of specifying a temperature of 25±1 °C in Method 9040A instead of specifying that the pH test be performed at a temperature relevant to the waste management site temperature. Only one commenter supported a requirement that the testing temperature be relevant to the waste management site. A few commenters were against the addition of any temperature clarification at this time.

This section summarizes several of the most significant comments on the proposal, and EPA's responses. Detailed Agency responses to all significant comments are provided in the background document, entitled "Responses to Public Comments Submitted in Response to Section III.D, pH Testing, 58 FR 46054, August 31, 1993", which is located in the official record for this rulemaking (Docket No. F–95–W2TF–FFFFF).

One commenter argued that a scientific basis does not exist for a temperature clarification only for alkalinity determinations. The Agency believes that a valid scientific basis does exist to include a temperature clarification which applies only when pH approaches the upper corrosivity characteristic limit. An inverse, non-linear, relationship exists between temperature and pH whereby pH readings at the basic end significantly increase as temperature levels decrease. At high pH levels, a physical difference exists in relation to ion dissociation which cannot be compensated by pH meters, and which requires additional temperature control if the objective is to obtain an accurate, and comparable, pH measurement at that end of the scale.

The Agency did not propose a temperature clarification for acidic wastes because the temperature effect on pH is not sufficiently significant at the acidic end of the scale to warrant such a clarification. It is highly unlikely that a pH change at the low end of the scale due to temperature variation will affect the regulatory status of the waste. Therefore, a specification that wastes with pH levels at the acidic end of the scale must be analyzed at a standard temperature is unnecessary.

One commenter stated that, if a standard must be set, it should be 24 °C because that is the closest practical temperature which will yield a 0 to 14 pH scale (and a pK_w of 14.0). Another commenter claimed that 25 °C, and not 24 °C, is the closest practical temperature for a pH scale of 0 to 14 with a pK_w of 14.0. Both commenters referenced scientific literature in support of their position. [Note: Water must be present to measure pH, and water affects the pH measurement by ionizing into hydrogen (H+) and hydroxyl (OH−) ions. The "pK_w" is the negative log of the ionization constant (K_w) for this reaction: $pK_w = pH + pOH$. Neutral water has a pH of 7 and a pOH of 7, and thus a pK_w of 14.]

The Agency recognizes that some inconsistencies exist between some literature regarding whether 24 °C or 25 °C is the closest practical temperature for a pH scale of 0 to 14 with a pK_w of 14.0. However, based on public comment, it appears that 25 °C is the most accepted standard temperature for the pH scale of 0 to 14. Also, as explained in the background document [1] to this rule, based on certain calculations and a work published in 1981 on pH theory,[2] 25 °C and not 24 °C appears to be the closest practical temperature for a pK_w of 14.0.

One commenter claimed that the Agency always contemplated that pH be taken at environmental or field temperatures because Method 9040A employs language which refers to "field pH measurements". The commenter also claimed that Method 9040A endorses the common approach of pH testing at site temperatures because it requires that the temperature be noted at measurement.

The Agency agrees that pH testing in the field is common, but disagrees with any finding that EPA intended that all pH measurements in support of the corrosivity characteristic be taken at site temperatures just because Method 9040A refers to field measurements and the recording of temperature. By use of the phrase "field pH measurements", the Agency simply recognizes that pH measurements are often taken in the field, and that in most cases (e.g., all except those limited cases where the waste is both being tested for corrosivity and its pH is above 12.0), field test results are adequate. The field measurement reference in no way precludes laboratory pH measurements at a specific temperature, nor does it

[1] "Responses to Public Comments Submitted in Response to Section III.D, pH Testing, 58 FR 46054, August 31, 1993", located in the official record for this rulemaking (Docket No. F–95–W2TF–FFFFF).

[2] Marshall and Franck, "Ion Product of Water Substance, 0–1000 °C, 1–10,000 Bars: New International Formulation and its Background", *Journal of Physical and Chemical Reference Data, 10(2)*, pp. 295–304, 1981.

implicitly or otherwise mean that all measurements by the method must be done at site temperatures.

The Agency believes that a standard temperature of 25 °C offers a consistent way to measure pH and thus assures consistent environmental protection. Without a standard temperature for testing the pH of at least highly alkaline wastes, test data may not be directly comparable, because, as explained above, the effect of temperature on pH is particularly pronounced at the alkaline end of the scale.

V. Overview of Final Rule

Based on the public comments and the reasons summarized below, the Agency is adding the following language to section 7.1.2 of Method 9040A (now revised Method 9040B of Update IIB):

(* * * also, for corrosivity characterization, the sample must be measured at 25±1 °C if the pH of the waste is above 12.0)

The Agency believes that the addition of this language to Method 9040A is appropriate based on:

(1) A demonstrated need to clarify the analytical procedures for pH determinations of highly alkaline materials in order: To facilitate consistent application of the procedures during corrosivity characteristic determinations; and to remove any confusion on the part of the regulated community when making such determinations;

(2) Scientific facts regarding the effect of temperature on pH, including the effect of temperature on pH readings at the alkaline end of the pH scale;

(3) Agency actions during promulgation of the corrosivity characteristic, particularly with respect to the exclusion of otherwise nonhazardous lime wastes, and the public's interpretation of those actions based on the majority of the public comments; and

(4) Historical practices by the Agency during enforcement of the characteristic.

The Agency notes that the technical change in Method 9040B only applies to pH determinations for wastes with pH levels above 12.0 (which is explicit in the added language). To avoid imposing an unnecessary analytical burden, pH determinations for the corrosivity characteristic (when analysis is chosen by the generator) can be performed at a temperature other than 25±1 °C for wastes with pH levels less than 12.

Although Method 9045B (Soil and Waste pH) is not used for corrosivity characteristic determinations, it involves a pH measurement procedure similar to that found in Method 9040A. Therefore, the Agency is adding similar, although not identical, language to Method 9045B. Specifically, the Agency is adding the following language to section 7.1.2 of Method 9045B (now revised Method 9045C of Update IIB):

If an accurate pH reading based on the conventional pH scale [0 to 14 at 25 °C] is required, the analyst should control sample temperature at 25±1 °C when sample pH approaches the alkaline end of the scale (e.g., a pH of 11 or above).

This rule makes final the addition of Methods 9040B and 9045C as Update IIB to SW–846, and incorporates the Third Edition of SW–846 as amended by Updates I, II, IIA, and IIB into 40 CFR § 260.11(a) for use in complying with the requirements of subtitle C of RCRA.

VI. State Authority

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. See RCRA Section 3006. Therefore, this rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law. Procedures and deadlines for State program revisions are set forth in 40 CFR 271.21. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when, among other things, the Agency finds that the regulated community does not need six months to come into compliance. Since today's rule provides a clarification for the regulated community regarding the testing and monitoring of solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedure Act, 5 U.S.C. 553(d), for not delaying the effective date of this rule. Therefore, this rule is effective April 4, 1995.

VIII. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This regulation will not have an adverse economic impact on industry since its effect will be to provide clarification to all of the regulated community. This rule does not require the purchase of new instruments or equipment and does not require new reports beyond those presently required. Thus, this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. sections 601–612, Public

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Law 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide clarification to all of the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, the regulation does not require an RFA.

D. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: March 29, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference to read as follows:

§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), and IIB (January, 1995)]. The Third Edition of SW–846 and Updates I, II, IIA, and IIB (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

* * * * *

[FR Doc. 95–8207 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5182–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Wilson Concepts Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Wilson Concepts Superfund Site (the Site) in Pompano Beach, Florida, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Florida have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Olga Perry, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–2643, or Rose Jackson, Community Relations Coordinator, at the same address and phone number as noted above.

ADDRESSES: Comprehensive information on this Site is available at the following addresses:

EPA Region IV Public Docket, U.S. Environmental Protection, Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365,
and
Broward County Main Library, 100 South Andrews Ave., NE., Fort Lauderdale, Florida 33301.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Wilson Concepts Superfund Site, Pompano Beach, Florida.

A Notice of Intent to Delete for this Site was published February 10, 1995 (60 FR 7934). The closing date for comments on the Notice of Intent to Delete was March 13, 1995. EPA received no substantive letters or comments during the comment period which opposed the deletion of this Site from the NPL. A letter of support for the deletion was received and has been included in the EPA, Region IV, Deletion Docket for the Site.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Hazardous waste.

Dated: March 15, 1995.

Joe R. Franzmathes,

Acting Regional Administrator, USEPA Region 4.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351.

Appendix B to Part 300—[Amended]

2. Table 1 of Appendix B to part 300 is amended under Florida by removing the Site for "Wilson Concepts Site, Florida".

[FR Doc. 95–8087 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 720, 721, and 723

[OPPTS–50597; FRL–4947–1]

RIN 2070–AC14

Premanufacture Notification Rule Amendments; Notice of Seminar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules; Notice of seminar.

SUMMARY: EPA will hold a seminar on the final revisions of the Toxic Substances Control Act (TSCA) section 5 premanufacture notification (PMN) regulations, the expedited process to issue Significant New Use Rules (SNURs), the exemptions for chemicals manufactured in quantities of 10,000 kilograms or less and substances with low environmental releases and low human exposures, and the exemption for polymers, all of which were published in the **Federal Register** on March 29, 1995 (60 FR 16298–16351). EPA is conducting the seminar to provide an opportunity for interested persons to become familiar with the procedural and technical requirements of the regulations which will affect the manufacture of new chemical substances.

DATES: The procedural and technical seminar will be held on May 4, 1995 from 9:15 a.m. to 4:30 p.m. in Washington, DC.

ADDRESSEES: The seminar will be held at the Regional Office Building Auditorium, Room 1041, first floor, National Capital Region, General Services Administration, 7th and D St., SW., Washington, DC 20407. Persons wishing to attend the seminar should contact the TSCA Assistance Information Service as shown below.

FOR FURTHER INFORMATION CONTACT: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551. Persons wishing to attend the seminar should call (202) 554–1404 or fax to (202) 554–5603, and provide their name, organization, and a daytime phone number.

SUPPLEMENTARY INFORMATION: EPA published its final amendments to the PMN regulations (OPPTS–50593B), the exemptions for chemicals manufactured in quantities of 10,000 kilograms or less and substances with low environmental releases and low human exposures (OPPTS–50596B), the exemption for polymers (OPPTS–50594B), and an amendment to the expedited process for issuing SNURs (OPPTS–50595B), on March 29, 1995 (60 FR 16298–16351). EPA is conducting the seminar to provide an opportunity for interested persons to become familiar with the procedural and technical requirements of the regulations which will affect the manufacture of new chemical substances.

Dated: March 29, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–8212 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7614]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the

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communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Maine: Phillips, town of, Franklin County	230060	Oct. 23, 1975, Emerg.; June 18, 1980, Reg.; Apr. 17, 1995, Susp.	4–17–95	Apr. 17, 1995.
Region III				
Pennsylvania: Springhill, township of, Fayette County.	421639	June 15, 1976, Emerg.; March 18, 1991, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Region IV				
Mississippi: Coahoma County, unincorporated areas.	280038	Aug. 9, 1974, Emerg.; Feb. 1, 1980, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Tennessee: Ripley, town of, Lauderdale County	470100	Jan. 3, 1975, Emerg.; May 19, 1987, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Region V				
Minnesota:				
Dover, city of, Olmsted County	270556	Mar. 15, 1982, Emerg.; Apr. 15, 1982, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Eyota, city of, Olmsted County	270329	Dec. 3, 1981, Emerg.; Dec. 15, 1981, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Oronoco, city of, Olmsted County	270330	July 3, 1974, Emerg.; Nov. 4, 1981, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Stewartville, city of, Olmsted County	270332	May 7, 1975, Emerg.; Sept. 2, 1982, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Ohio: Richwood, village of, Union County	390549	July 11, 1975, Emerg.; Apr. 17, 1995, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Region VII				
Missouri:				
Clarkton, city of, Dunklin County	290126	May 6, 1975, Emerg.; Jan. 29, 1980, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.
Independence, city of, Clay & Jackson Counties.	290172	Oct. 15, 1971, Emerg.; Feb. 1, 1979, Reg.; Apr. 17, 1995, Susp.	4–17–95	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 27, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–8182 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Energy.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 F 19367, 3 CFR, 1979 Comp. p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Unorganized Borough (FEMA Docket No. 7117).	Municipality of Anchorage.	July 11, 1994, July 18, 1994, *Alaska Journal of Commerce.*	The Honorable Tom Fink, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519–6650.	June 17, 1994 ...	020005
Alaska: Unorganized Borough (FEMA Docket No. 7121).	City of Petersburg ...	July 21, 1994, July 28, 1994, *Petersburg Pilot.*	Ms. Linda Snow, City Manager, City of Petersburg, P.O. Box 329, Petersburg, Alaska 99833.	June 30, 1994 ...	020074
California: Contra Costa (FEMA Docket No. 7117).	City of Antioch	Sept. 22, 1994, Sept. 29, 1994, *Ledger-Post Dispatch.*	The Honorable Joel Keller, Mayor, City of Antioch, P.O. Box 130, Antioch, California 94509.	Sept. 9, 1994	060026

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Arapahoe (FEMA Docket No. 7121).	Unincorporated Areas.	Oct. 6, 1994, Oct. 13, 1994, *Little Sentinel Independent.*	The Honorable John J. Nicholl, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	Sept. 26, 1994 ..	080011
Colorado: El Paso (FEMA Docket No. 7121).	City of Colorado Springs.	Oct. 4, 1994, Oct. 11, 1994, *Gazette Telegraph.*	The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Sept. 7, 1994	080060
Colorado: El Paso (FEMA Docket No. 7121).	City of Colorado Springs.	Oct. 28, 1994, Nov. 4, 1994, *Gazette Telegraph.*	The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Oct. 20, 1994	080060
Colorado: Jefferson (FEMA Docket No. 7121).	Unincorporated Areas.	Nov. 15, 1994, Nov. 22, 1994, *Golden Transcript.*	The Honorable Betty J. Miller, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	Nov. 2, 1994	080087
Colorado: Boulder (FEMA Docket No. 7117).	City of Longmont	Oct. 6, 1994, Oct. 13, 1994, *Longmont Times Call.*	The Honorable Leona Stoecker, Mayor, City of Longmont, 829 Panorama Circle, Longmont, Colorado 80501.	Sept. 1, 1994	080027
Hawaii, Honolulu (FEMA Docket No. 7121).	City and County of Honolulu.	Nov. 15, 1994, Nov. 22, 1994, *Honolulu Advertiser.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, Office of the Mayor, 530 South King Street, Honolulu, Hawaii 96813.	Oct. 21, 1994	150001
Idaho: Ada (FEMA Docket No. 7117).	Unincorporated Areas.	Sept. 22, 1994, Sept. 29, 1994, *Valley News.*	The Honorable Vern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.	Sept. 15, 1994 ..	160001
Idaho: Ada (FEMA Docket No. 7117).	City of Meridian	Sept. 22, 1994, Sept. 29, 1994, *Valley News.*	The Honorable Grant P. Kingsford, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, Idaho 83642.	Sept. 15, 1994 ..	160180
Kansas: Johnson (FEMA Docket No. 7121).	City of Overland Park.	Oct. 19, 1994, Oct. 26, 1994, *Johnson County Sun.*	The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	Sept. 28, 1994 ..	200174
Kansas: Sedgwick (FEMA Docket No. 7121).	City of Wichita	Oct. 19, 1994, Oct. 26, 1994, *Wichita Eagle.*	The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	Oct. 6, 1994	200328
Oklahoma: Comanche (FEMA Docket No. 7121).	City of Lawton	Aug. 5, 1994, Aug. 12, 1994, *Lawton Constitution.*	The Honorable John T. Marley, Mayor, City of Lawton, City Hall, 103 SW 4th Street, Lawton, Oklahoma 73501.	July 13, 1994	400049
Texas: Montgomery (FEMA Docket No. 7117).	City of Conroe	Sept. 23, 1994, Sept. 30, 1994, *Conroe Courier.*	The Honorable Carter Moore, Mayor, City of Conroe, P.O. Box 3066, Conroe, Texas 77305.	Sept. 6, 1994	480484
Texas: Dallas (FEMA Docket No. 7121).	City of Dallas	Oct. 7, 1994, Oct. 14, 1994, *Dallas Commercial Record.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	Sept. 16, 1994 ..	480171
Texas: El Paso (FEMA Docket No. 7121).	City of El Paso	Nov. 4, 1994, Nov 11, 1994, *El Paso Times.*	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	Oct 14, 1994	480214
Texas: Tarrant (FEMA Docket No. 7117).	City of Fort Worth ...	Sept. 23, 1994, Sept. 30, 1994, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Sept. 6, 1994	480596
Texas: Dallas (FEMA Docket No. 7121).	City of Garland	Oct. 6, 1994, Oct. 13, 1994, *Garland News.*	The Honorable Jamie Ratcliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Sept. 16, 1994 ..	485471
Texas: Dallas (FEMA Docket No. 7121).	City of Garland	Nov. 10, 1994, Nov. 17, 1994, *Garland News.*	The Honorable Jamie Ratcliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Oct. 24, 1994	485471

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Harris (FEMA Docket No. 7121).	City of Houston	Oct. 28, 1994, Nov 4, 1994, *Houston Post.*	The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	Oct. 11, 1994	480296
Texas: Dallas (FEMA Docket No. 7121).	City of Mesquite	Oct. 27, 1994, Nov. 3, 1994, *Mesquite News.*	The Honorable Cathye Ray, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	Oct. 11, 1994	485490
Texas: Collin (FEMA Docket No. 7121).	City of McKinney	Oct. 21, 1994, Oct. 28, 1994, *Courier Gazette.*	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	Oct. 14, 1994	480135
Texas: Collin (FEMA Docket No. 7121).	City of McKinney	Oct. 26, 1994, Nov. 2, 1994, *Courier Gazette.*	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	Oct. 13, 1994	480135
Texas: Bexar (FEMA Docket No. 7121).	City of San Antonio .	Aug. 31, 1994, Sept. 7, 1994, *San Antonio Express News.*	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 21, 1994 ...	480045
Texas: Bexar (FEMA Docket No. 7121).	City of San Antonio .	Oct. 5, 1994, Oct. 12, 1994, *San Antonio Express News.*	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Sept. 9, 1994	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8181 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

[Docket No. FEMA–7133]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Contra Costa	Unincorporated Areas.	Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times.*	The Honorable Gayle Bishop, Chairperson, Contra Costa County Board of Supervisors, 651 Pine Street, Martinez, California 94553.	Jan. 27, 1995	060025
California: San Diego ...	City of Escondido	Mar. 1, 1995, Mar. 8, 1995, *Times Advocate.*	The Honorable Sid Hollins, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	Feb. 9, 1995	060290
California: Contra Costa	City of Lafayette	Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times.*	The Honorable Gayle Uilkema, Mayor, City of Lafayette, P.O. Box 1968, Lafayette, California 94549.	Jan. 27, 1995	065037
California: Merced	City of Merced	Mar. 1, 1995, Mar. 8, 1995, *Merced Sun Star.*	The Honorable Richard Bernasconi, Mayor, City of Merced, City Hall, 678 West 18th Street, Merced, California 95340.	Feb. 10, 1995 ...	060191
California: Merced	Unincorporated Areas.	Mar. 1, 1995, Mar. 8, 1995, *Merced Sun Star.*	Mr. Clark Channing, County Administrator, Merced County, 2222 M Street, Merced, California 95340.	Feb. 10, 1995 ...	060188
California: Contra Costa	City of Walnut Creek	Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times.*	The Honorable Ed Dimmick, Mayor, City of Walnut Creek, 1666 North Main Street, Walnut Creek, California 94596.	Jan. 27, 1995	065070
Iowa: Story	City of Ames	Feb. 21, 1995, Feb. 28, 1995, *Daily Tribune.*	The Honorable Larry R. Curtis, Mayor, City of Ames, P.O. Box 811, Ames, Iowa 50010.	Feb. 8, 1995	190254
Kansas: Coffey	City of Burlington	Feb. 1, 1995, Feb. 8, 1995, *Coffey County Today.*	The Honorable Rocky L. Alford, Mayor, City of Burlington, P.O. Box 207, Burlington, Kansas 66839.	Jan. 6, 1995	200063
Kansas: Sedgwick	Unincorporated Areas.	Mar. 16, 1995, Mar. 23, 1995, *Wichita Eagle.*	The Honorable Mark F. Schroeder, Chairman, Sedgwick County, Board of Commissioners, 525 North Main Street, Wichita, Kansas 67203.	Feb. 17, 1995 ...	200321
Kansas: Sedgwick	City of Wichita	Mar. 16, 1995, Mar. 23, 1995, *Wichita Eagle.*	The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	Feb. 17, 1995 ...	200328
Maryland: Montgomery	City of Gaithersburg	Feb. 1, 1995, Feb. 8, 1995, *Gaithersburg Gazette.*	The Honorable W. Edward Bohrer, Jr., Mayor, City of Gaithersburg, 31 South Summit Avenue, Gaithersburg, Maryland 20877–2098.	Jan. 13, 1995	240050

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Missouri: Pemiscot	City of Hayti	Feb. 16, 1995, Feb. 23, 1995, *Democrat Argus.*	The Honorable Herbert DeWeese, Mayor, City of Hayti, P.O. Box X, Hayti, Missouri 63851.	Jan. 31, 1995	290276
New Mexico: Bernalillo	Unincorporated Areas.	Feb. 15, 1995, Feb. 22, 1995, *Albuquerque Tribune.*	The Honorable Eugene M. Gilbert, Chairman; Bernalillo County, Board of Commissioners, One Civic Plaza, NW., Albuquerque, New Mexico 87102.	Jan. 26, 1995	350001
Texas: Dallas, Denton, Collin, Rockwall, and Kaufman.	City of Dallas	Feb. 24, 1995, Mar. 3, 1995, *Daily Commercial Record.*	The Honorable Steve Bartlett, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Room 5E, Dallas, Texas 75201.	Feb. 6, 1995	480171
Texas: Tarrant	City of Euless	Mar. 2, 1995, Mar. 9, 1995, *Mid Cities News.*	The Honorable Mary Lib Faleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039–3595.	Feb. 14, 1995 ...	480593
Texas: Gillespie	City of Fredericksburg.	Feb. 15, 1995, Feb. 22, 1995, *Fredericksburg Standard.*	The Honorable Linda Langerhans, Mayor, City of Fredericksburg, P.O. Box 111, Fredericksburg, Texas 78624.	Feb. 7, 1995	480252
Texas: Collin	City of Plano	Feb. 15, 1995, Feb. 22, 1995, *The Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Sept. 15, 1994 ..	480140

[Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance."]

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8180 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–05–P

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44 CFR Part 65

[Docket No. FEMA–7129]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

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Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Hartford County ..	Town of Berlin	Feb. 6, 1995, Feb. 13, 1995, *The Herald.*	The Honorable Robert J. Peters, Mayor of the Town of Berlin, 240 Kensington Road, Berlin, Connecticut 06037.	Jan. 30, 1995	090022 D
Tennessee: Shelby County	Unincorporated Areas.	Jan. 27, 1995, Feb. 3, 1995, *Daily News.*	Mr. James Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	Jan. 20, 1995	470214 E

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8179 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Unincorporated Areas (FEMA Docket No. 7115).	Pasco County	Aug. 19, 1994, Aug. 26, 1994, *West Pasco Press.*	Mr. John Gallagher, Pasco County Administrator, 7530 Little Road, New Port Richey, Florida 34654.	Aug. 12, 1994	120230 D
Maryland: Unincorporated Areas (FEMA Docket No. 7119).	Prince George's County.	May 13, 1994, May 31, 1994, *Prince George's Journal.*	Ms. Malinda Steward, M.E., Section Head, Flood Management Section, Division of Environmental Management, Prince George's County Department of Environmental Resources, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland 20785.	Nov. 16, 1994	245208 C
North Carolina: Haywood County (FEMA Docket No. 7119).	Town of Waynesville	Sept. 9, 1994, Sept. 16, 1994, *The Mountaineer.*	The Honorable Henry B. Foy, Mayor of the Town of Waynesville, 106 South Main Street, Waynesville, North Carolina 28786–0100.	Sept. 1, 1994	370124 B
North Carolina: Unincorporated Areas (FEMA Docket No. 7119).	Dare County	Sept. 20, 1994, Sept. 27, 1994, *The Coastland Times.*	Mr. Terry Wheeler, Dare County Manager, P.O. Box 1000, Manteo, North Carolina 27954.	Dec. 26, 1994	375348 C
Ohio: Fairfield & Franklin Counties (FEMA Docket No. 7115).	City of Columbus	Aug. 24, 1994, Aug. 31, 1994, *The Columbus Dispatch.*	The Honorable Greg S. Lashutka, Mayor of the City of Columbus, 99 North Front Street, Columbus, Ohio 43215–2838.	Feb. 16, 1995	390170 B
Ohio: Unincorporated Areas (FEMA Docket No. 7115).	Franklin County	Aug. 24, 1994, Aug. 31, 1994, *The Columbus Areas.*	Ms. Dorothy Teater, President of the Franklin County, Board of Commissioners, 373 South High Street, Columbus, Ohio 43215.	Feb. 16, 1995	390167 B
Virginia: Unincorporated Areas of Rockingham County (FEMA Docket No. 7111).	Rockingham County .	July 19, 1994, July 26, 1994, *Daily News Record.*	Mr. William G. O'Brien, Rockingham County Administrator, 20 East Gay Street, Harrisonburg, Virginia 22801.	July 12, 1994	510133 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8184 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has b een prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Poinsett County (unincorporated areas) (FEMA Docket No. 7122)	
Brushy Creek Ditch:	
Approximately 0.66 mile downstream of Swan Pound Road	*242
Approximately 1.06 miles upstream of Swan Pound Road	*245
Weiner Outlet Ditch:	
Approximately 1.0 mile downstream of Sewage Lagoon Road	*233
At White Slough Road	*236
Approximately 1.6 miles upstream of Sewage Lagoon Road	*241
Maps are available for inspection at Poinsett County Courthouse, 401 Market Street, Harrisburg, Arkansas.	
Weiner (city), Poinsett County (FEMA Docket No. 7122)	
Brushy Creek Ditch:	
Approximately 0.3 mile downstream of Swan Pound Road	*243
At Swan Pound Road	*244
Approximately 0.6 mile upstream of Swan Pound Road	*245
Weiner Outlet Ditch:	
At White Slough Road	*236
Approximately 0.2 mile upstream of White Slough Road	*237
Maps are available for inspection at the City of Weiner, 101 Washington, Weiner, Arkansas.	
CALIFORNIA	
Merced (city), Merced County (FEMA Docket No. 7070)	
Bear Creek (between levees):	
Downstream of U.S. Highway 99	*163
Maps are available for inspection at Merced City Hall, Department of Public Works, 678 West 18th Street, Merced, California.	
Merced County (unincorporated areas) (FEMA Docket No. 7070)	
Bear Creek (with levees):	
At the confluence of Black Rascal Creek	*163
Approximately 200 feet downstream of U.S. Highway 99	*163
Canal Creek (with levee):	
At the confluence with Black Rascal Slough	*150
At Landram Avenue	*150
At Elliot Avenue	*150
Black Rascal Slough (without levee):	
Southeast of the south levee and north of State Route 140 across from Buhach Road	*142
Shallow Flooding:	
South of Merced Municipal Airport and north of Mission Avenue	*#1
South of Childs Avenue and north of Mission Avenue between Coffee Avenue and State Route 59	*#1
Maps are available for inspection at the Merced County Planning Department, 2222 M Street, Merced, California.	
COLORADO	
Adams County (unincorporated areas) (FEMA Docket No. 7122)	
Gay Reservoir Channel North Tributary:	
Approximately 2,100 feet upstream of confluence with Gay Reservoir Channel	*5,321
Approximately 3,000 feet upstream of confluence with Gay Reservoir Channel	*5,345

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3,600 feet upstream of confluence with Gay Reservoir Channel	*5,346
Clear Creek:	
100 feet upstream of confluence with the South Platte River	*5,104
Approximately 80 feet upstream of Washington Street	*5,135
100 feet upstream of the Colorado and Southern Railroad	*5,190
Just upstream of Lowell Boulevard	*5,228
Just downstream of Sheridan Boulevard	* 5,225
Clear Creek Street Overflow:	
At confluence with Clear Creek	*5,120
At divergence from Clear Creek	*5,123
West Lake Channel:	
Approximately 1,900 feet upstream of Lowell Boulevard	*5,293
Approximately 2,270 feet upstream of Lowell Boulevard	*5,299
Gay Reservoir Channel:	
360 feet upstream of Lowell Boulevard	*5,255
200 feet upstream of the Tom Frost Reservoir Dam	*5,263
1,050 feet upstream of the Tom Frost Reservoir Dam	*5,264
Big Dry Creek:	
Just upstream of Huron Street	*5,170
60 feet downstream of West 128th Avenue	*5,185
Approximately 1,950 feet upstream of Zuni Street	*5,195
Approximately 2,900 feet downstream of confluence of Ranch Creek	*5,202
Maps are available for inspection at Adams County Planning Department, 450 South Fourth Avenue, Brighton, Colorado.	
Brighton (city), Adams County (FEMA Docket No. 7122)	
South Platte River:	
Approximately 200 feet upstream of Union Pacific Railroad	*4,955
Intersection of Brighton Street and Miller Avenue	*4,957
At the intersection of Miller Avenue and East 160th Avenue	*4,961
Maps are available for inspection at City Hall, 22 South Fourth Avenue, Brighton, Colorado.	
Englewood (city), Arapahoe County (FEMA Docket No. 7122)	
South Platte River:	
1,550 feet downstream of Dartmouth Avenue	*5,263
Just downstream of Dartmouth Avenue	*5,267
West Harvard Gulch:	
640 feet downstream of South Raritan Street	*5,288
10 feet upstream of South Tejon Street	*5,313
At centerline of South Zuni Street	*5,345
Maps are available for inspection at the City of Englewood, Engineering Services Department, 3400 South Elati Street, Englewood, Colorado.	
Thornton (city), Adams County (FEMA Docket No. 7122)	
Tanglewood Creek:	
Approximately 750 feet downstream of Interstate 25	*5,160
140 feet downstream of Interstate 25	*5,172
Maps are available for inspection at City Hall, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado.	
IDAHO	
Coeur d'Alene (city), Kootenai County (FEMA Docket No. 7118)	
French Gulch:	
Approximately 1,300 feet downstream of French Gulch Road	*2,163
Approximately 1,650 feet upstream of French Gulch Road	*2,172
Nettleton Gulch:	
At 15th Street downstream of Anne Avenue	*2,185
At 15th Street upstream of Anne Avenue	*2,187
Maps are available for inspection at the City of Coeur d'Alene, Engineering Department, 710 Mullan Street, Coeur d'Alene, Idaho.	
MISSOURI	
Black Jack (city), St. Louis County (FEMA Docket No. 7118)	
Coldwater Creek:	
At Old Jamestown Road	*480
900 feet upstream of Old Jamestown Road	*482
At Cleola Hills Circle	*482
300 feet downstream of Old Halls Ferry Road	*489
At Old Halls Ferry Road	*490
Maps are available for inspection at the Public Works Department, Third Floor, City of Columbia, 701 East Broadway, Columbia, Missouri.	
St. Louis County (unincorporated areas) (FEMA Docket No. 7118)	
Northeast Branch River Des Peres:	
At the intersection of Teal Avenue and Ruddy Lane	*541
Paddock Creek (Backwater from Coldwater Creek):	
700 feet downstream of Lindbergh Boulevard	*504
Shallow Flooding:	
Approximately 2,000 feet south along the City of Bridgeton corporate limits from its crossing of Cowmire Creek	#2
Maps are available for inspection at the St. Louis County Department of Planning, 41 South Central Avenue, Clayton, Missouri.	
Sunset Hills (city), St. Louis County (FEMA Docket No. 7118)	
Meramec River:	
1,000 feet upstream of Gravois Road	*422
Maps are available for inspection at City Hall, City of Black Jack, 4655 Parker Road, Black Jack, Missouri.	
Clayton (city), St. Louis County (FEMA Docket No. 7118)	
Black Creek:	
At centerline of Clayton Road	*484
200 feet upstream of Clayton Road	*488
Maps are available for inspection at City Hall, City of Clayton, 10th North Bemington, Clayton, Missouri.	
Columbia (city), Boone County (FEMA Docket No. 7122)	
Mill Creek:	
Approximately 2,000 feet downstream of Sinclair Street	*621
Approximately 1,000 feet upstream of Sinclair Street	*638
Approximately 3,300 feet upstream of Sinclair Street	*649
Approximately 2,750 feet downstream of Bethel Street	*680
Just downstream of Bethel Street	*697

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
500 feet upstream of State Highway 30	*423
800 feet upstream of Interstate Highway 44	*525
Maps are available for inspection at City Hall, City of Sunset Hills, 3939 South Lindbergh, Sunset Hills, Missouri.	
University City (city), St. Louis County (FEMA Docket No. 7118)	
Northeast Branch River Des Peres:	
800 feet downstream of Julian Avenue	*502
100 feet downstream of Julian Avenue	*503
500 feet upstream of Ferguson Avenue	*511
Maps are available for inspection at City Hall, City of University City, 6801 Delmar Boulevard, University City, Missouri.	
Wellston (city), St. Louis County (FEMA Docket No. 7118)	
Engelholm Creek:	
At the confluence with North Tributary of Engelholm Creek	*518
70 feet upstream of the St. Louis Belt and Terminal Railroad	*518
10 feet upstream of the Norfolk and Western Railway	*522
Maps are available for inspection at City Hall, City of Wellston, 1804 Kienlen Avenue, Wellston, Missouri.	
Winchester (city), St. Louis County (FEMA Docket No. 7118)	
Grand Glaize Creek:	
Just downstream of Manchester Road	*513
Maps are available for inspection at City Hall, City of Winchester, 109 Lindy Boulevard, Winchester, Missouri.	
NEBRASKA	
Blair (city), Washington County (FEMA Docket No. 7118)	
Caubie Creek:	
At confluence of Caubie Creek East Tributary	*1,033
Approximately 100 feet upstream of U.S. Highway 73	*1,063
Just downstream of College Drive	*1,064
Caubie Creek East Tributary:	
Approximately 930 feet upstream of confluence of Caubie Creek	*1,038
Approximately 30 feet upstream of Baronage Drive	*1,057
Approximately 60 feet upstream of College View Drive	*1,062
Maps are available for inspection at City Hall, City of Blair, 218 South 16th Street, Blair, Nebraska.	
NEVADA	
Clark County (unincorporated areas) (FEMA Docket No. 7118)	
Middle Branch Blue Diamond Wash:	
At the intersection of Pollock Drive and East Windmill Lane	#1
Just upstream of Bermuda Road	*2,178
At Giles Street	*2,231
100 feet upstream of Interstate 15	*2,266
At the intersection of Industrial Road and Blue Diamond Road	#1
At South Valley View Boulevard	#1
At South Decatur Boulevard	#1
At South Lindell Road	#2
Just downstream of the Union Pacific Railroad	#3
North Branch Blue Diamond Wash:	
At the intersection of Goldilocks Avenue and South Maryland Parkway	#1
Just downstream of Amigo Street	*2,135
At Rancho Destino Road	*2,205
Approximately 100 feet upstream of Interstate 15	*2,271
At the intersection of West Mesa Verde Lane and South Valley View Boulevard	#1
Approximately 350 feet south of the intersection of West Moberly Avenue and South Decatur Boulevard	#2
Just downstream of the Union Pacific Railroad	#3
Blue Diamond Fan:	
At the intersection of West Russell Road and Cameron Street	#1
At the intersection of South Rainbow Boulevard and West Robindale Road	#1
At the intersection of South Buffalo Drive and West Windmill Lane	#2
Approximately 1,000 feet north of the intersection of South Cimarron Road and West Camero Avenue	#4
Approximately 1,000 feet north of the intersection of Gagnier Boulevard and West Wigwam Avenue	#5
Central Branch Tropicana Wash:	
At confluence with Flamingo Wash	*2,001
Just upstream of East Harmon Avenue	*2,068
At Industrial Road	*2,155
Just upstream of West Hacienda Avenue	*2,241
At West Oquendo Road	*2,356
Approximately 500 feet downstream of South Rainbow Boulevard	*2,438
North Branch Tropicana Wash:	
At confluence with Central Branch Tropicana Wash	*2,234
At South Jones Boulevard	*2,312
At South Torrey Pines Drive	*2,346
Approximately 430 feet downstream of South Rainbow Boulevard	*2,381
South Branch Tropicana Wash:	
At confluence with Central Branch of Tropicana Wash	*2,274
At West Oquendo Road	*2,310
50 feet upstream of South Jones Boulevard	*2,371
Approximately 500 feet upstream of West Sunset Road	*2,405
Duck Creek:	
Approximately 200 feet upstream of East Pebble Road	*2,165
At South Las Vegas Boulevard	*2,252
Approximately 800 feet upstream of Interstate 15	*2,287
Duck Creek Tributary:	
At confluence with Duck Creek	*2,242
At South Las Vegas Boulevard	*2,255
Approximately 300 feet downstream of Interstate 15	*2,282
Duck Creek South Channel:	
At convergence with Duck Creek	*2,189
At divergence from Duck Creek	*2,231
Unnamed Fan:	
At the intersection of West Eldorado Lane and South Fort Apache Road	#1
Approximately 1,000 feet south of the intersection of South Fort Apache Road and West Eldorado Lane	#2
Hemenway Wash:	
Approximately 1,000 feet downstream of Pacific Way	*1,965
Approximately 700 feet downstream of Pacific Way	*1,979
Maps are available for inspection at the Office of the Director of Public Works, Clark County, Bridger Building, 225 East Bridger Avenue, Las Vegas, Nevada.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
North Las Vegas (city), Clark County (FEMA Docket No. 7118)	
Las Vegas Wash:	
At East Lake Mead Boulevard	*1,821
At North Las Vegas Boulevard	*1,848
Approximately 500 feet east of the intersection of East Evans Avenue and North Las Vegas Boulevard	#2
At East Cheyenne Avenue	*1,864
At East Gowan Road	*1,875
Just upstream of the Union Pacific Railroad	*1,913
Just upstream of East Lone Mountain Road	*1,940
Unnamed Channel:	
At confluence with Las Vegas Wash	*1,872
At East Gowan Road	*1,879
Just upstream of Berg Street	*1,890
Between Union Pacific Railroad and Interstate 15	*1,900
Union Pacific Railroad Overflow:	
Approximately 125 feet upstream of confluence with Unnamed Tributary to Las Vegas Wash	*1,901
At confluence with unnamed channel	*1,907
At divergence from Las Vegas Wash	*1,915
Maps are available for inspection at the Public Works Department, 2200 Civic Center Drive, North Las Vegas, Nevada.	
OKLAHOMA	
Goldsby (town), McClain County (FEMA Docket No. 7122)	
Canadian River:	
Approximately 23,200 feet downstream of Interstate 35 at the Town of Goldsby Corporate Limits	*1,085
At the intersection of State Highways 9 and 74	*1,105
Approximately 2,000 feet upstream of the intersection of State Highways 9 and 74, at the Town of Goldsby Corporate Limits	*1,107
Maps are available for inspection at Town Hall, Town of Goldsby, Route 1, near the intersection of Center Street and Main Street, Goldsby, Oklahoma.	
OREGON	
Fairview (city), Multnomah County (FEMA Docket No. 7114)	
Fairview Creek:	
Just upstream of Fairview Lake	*17
Just upstream of Sandy Boulevard	*42
Just upstream of Bridge Street	*125
Maps are available for inspection at City Hall, City of Fairview, Planning Department, 300 Harrison Street, Fairview, Oregon.	
TEXAS	
Comal County (unincorporated areas) (FEMA Docket No. 7118)	
Post Oak Creek:	
At confluence with Cibolo Creek	*1,260
Approximately 3,900 feet upstream of confluence with Cibolo Creek	*1,266
Cibolo Tributary:	
At confluence with Cibolo Creek	*1,250
Approximately 2,400 feet upstream of confluence with Cibolo Creek	*1,254
Kelley Creek:	
At confluence with Cibolo Creek	*1,115
At Bartels Road	*1,140
Cibolo-Kelley Creek Overflow:	
At convergence with Kelley Creek	*1,134
At divergence from Cibolo Creek	*1,155
Indian Creek:	
Approximately 200 feet upstream of confluence with Cibolo Creek	*1,074
Approximately 2,600 feet upstream of confluence with Indian Creek Tributary A	*1,092
Indian Creek Tributary A:	
Approximately 200 feet upstream of confluence with Indian Creek	*1,083
Approximately 900 feet upstream of confluence with Indian Creek	*1,085
Approximately 1,750 feet upstream of confluence with Indian Creek	*1,088
Indian Creek Tributary B:	
At confluence with Indian Creek	*1,083
Approximately 2,900 feet upstream of confluence with Indian Creek	*1,092
Approximately 4,000 feet upstream of confluence with Indian Creek	*1,094
Bracken Tributary:	
At confluence with Cibolo Creek	*771
Approximately 2,000 feet upstream of confluence with Cibolo Creek	*772
Garden Ridge Tributary:	
At confluence with Bracken Tributary	*772
Approximately 830 feet upstream of confluence with Bracken Tributary	*772
Cibolo Creek:	
Just upstream of Missouri-Kansas-Texas Railroad	*771
Approximately 21,000 feet upstream of Missouri-Pacific Railroad	*840
Approximately 35,000 feet upstream of Missouri-Pacific Railroad	*880
Approximately 14,800 feet downstream of F.M. 1864 (downstream crossing)	*930
Just downstream of F.M. 1863 (upstream crossing)	*965
At confluence of Lewis Creek	*994
Just upstream of Smithson Valley Road	*1,017
Just downstream of U.S. Route 281	*1,061
At confluence of Museback Creek	*1,104
At Blanco Road	*1,130
Approximately 16,900 feet upstream of confluence with Pleasant Valley Creek	*1,200
Approximately 8,900 feet downstream of confluence with Cibolo Tributary	*1,230
Approximately 200 feet upstream of Balcones Creek	*1,274
Maps are available for inspection at Comal County Road Department, 4931 State Highway 46 West, New Braunfels, Texas.	
Denison (city), Grayson County (FEMA Docket No. 7118)	
Shawnee Creek:	
At Randell Lake	*625
Approximately 950 feet downstream of U.S. Highway 84	*629
Approximately 1,850 feet upstream of U.S. Highway 84	*644
Approximately 3,000 feet downstream of County Road	*656
Iron Ore Creek:	
Approximately 500 feet downstream of Business U.S. Highway 75 northbound	*618
Approximately 1,500 feet downstream of Flowers Drive	*620
Approximately 2,600 feet upstream of Park Avenue	*627

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 5,000 feet upstream of Park Avenue	*631
Approximately 2,200 feet downstream of Spur 503 Access Ramp	*633
Approximately 1,400 feet downstream of Spur 503 Access Ramp	*636
Approximately 100 feet upstream of Spur 503 Access Ramp	*640
Approximately 600 feet upstream of Spur 503 Access Ramp	*643
Approximately 4,600 feet upstream of State Highway 131	*668
Loy Creek below Loy Lake:	
Approximately 900 feet downstream of Spur 503 Main Lane	*626
Approximately 400 feet downstream of Spur 503 Main Lane	*626
Approximately 100 feet downstream of Spur 503 Main Lane	*626
Approximately 2,800 feet upstream of Spur 503 Main Lane	*633
Approximately 800 feet downstream of Polaris Drive	*645
Just downstream of Polaris Drive	*668
Approximately 700 feet upstream of Loy Lake Road	*668
Loy Creek above Loy Lake:	
Approximately 300 feet downstream of Cathey Drive	*698
Just upstream of State Highway 131	*701
Approximately 300 feet upstream of State Highway 131	*703
Waterloo Creek:	
Approximately 8,200 feet downstream of Missouri, Kansas and Texas Railroad at the confluence with Iron Ore Creek	*620
Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad	*620
Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad	*621
At Missouri, Kansas and Texas Railroad	*645
Approximately 3,200 feet upstream of Missouri, Kansas and Texas Railroad	*661
Ellsworth Branch Tributary A:	
Approximately 40 feet upstream of Theresa Drive	*658
Just upstream of State Highway 691	*671

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the City of Denison, Planning and Zoning Department, 108 West Main, Denison, Texas.	
Grayson County (unincorporated areas) (FEMA Docket No. 7118)	
Shawnee Creek:	
Approximately 950 feet downstream of U.S. Highway 84	*629
Approximately 1,850 feet upstream of U.S. Highway 84	*644
Approximately 3,000 feet downstream of County Road	*656
At County Road	*676
Iron Ore Creek:	
Approximately 100 feet upstream of Interurban Road	*608
Approximately 500 feet downstream of Business U.S. Highway 75 northbound	*618
Approximately 1,500 feet downstream of Flowers Drive	*620
Approximately 200 feet upstream of Park Avenue	*624
Approximately 2,600 feet upstream of Park Avenue	*627
Approximately 5,000 feet upstream of Park Avenue	*631
Approximately 2,200 feet downstream of Spur 503 Access Ramp	*633
Approximately 1,400 feet downstream of Spur 503 Access Ramp	*636
Approximately 100 feet upstream of Spur 503 Access Ramp	*640
Approximately 600 feet upstream of Spur 503 Access Ramp	*643
At Loy Lake Road	*654
Approximately 4,600 feet upstream of State Highway 131	*668
Approximately 50 feet downstream of Preston Road	*677
Approximately 5,500 feet upstream of Preston Road	*695
Approximately 50 feet upstream of Davy Lane	*712
Loy Creek below Loy Lake:	
Approximately 900 feet downstream of Spur 503 Main Lane	*626
Approximately 400 feet downstream of Spur 503 Main Lane	*626
Approximately 800 feet downstream of Polaris Drive	*645
Just downstream of Polaris Drive	*668
Loy Creek above Loy Lake:	
Approximately 3,700 feet downstream of Cathey Drive	*678

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 300 feet downstream of Cathey Drive	*698
Ellsworth Branch:	
Approximately 9,800 feet downstream of State Highway 691 at the confluence with Iron Ore Creek	*626
Approximately 300 feet downstream of State Highway 691	*650
At County Road	*681
Approximately 7,500 feet upstream of County Road	*728
Ellsworth Branch Tributary A:	
Approximately 60 feet downstream of Missouri, Kansas and Texas Railroad	*643
Approximately 40 feet upstream of Theresa Drive	*658
Waterloo Creek:	
Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad	*620
Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad	*621
Post Oak Creek:	
Approximately 5,800 feet downstream of Sewer Plant Road	*625
At Sewer Plant Road	*631
Approximately 3,000 feet downstream of East Street	*640
Approximately 200 feet upstream of East Street	*649
Approximately 700 feet downstream of Travis Street	*657
Approximately 4,900 feet downstream of U.S. Highway 82	*721
Approximately 250 feet downstream of U.S. Highway 82	*741
Approximately 1,800 feet upstream of U.S. Highway 82	*752
Approximately 2,150 feet upstream of U.S. Highway 82	*752
Sand Creek:	
Approximately 2,500 feet downstream of Washington Avenue	*709
Approximately 1,950 feet upstream of Washington Avenue	*718
Approximately 6,750 feet upstream of Washington Avenue	*728
Approximately 11,550 feet upstream of Washington Avenue	*752
East Fork Post Oak Creek:	
Approximately 580 feet downstream of Pecan Street	*686
Approximately 130 feet upstream of Union Pacific Railroad	*697
Approximately 2,600 feet upstream of Union Pacific Railroad	*712

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 800 feet upstream of Taylor Street	*725
Approximately 700 feet upstream of McLain Drive	*745
Approximately 560 feet downstream of U.S. Highway 82 East Main Lane	*760
Approximately 1,250 feet upstream of Pecan Grove Road	*780
Approximately 900 feet upstream of Forest Creek Drive	*791
Choctow Creek Tributary A:	
Approximately 2,800 feet downstream of unnamed road	*636
Approximately 100 feet downstream of Southern Pacific Railroad	*653
Maps are available for inspection at Grayson County's Office, 100 West Houston, Sherman, Texas.	
Guadalupe County (unincorporated areas) (FEMA Docket No. 7122)	
Santa Clara Creek:	
At confluence with Cibolo Creek	*556
Approximately 6,500 feet upstream of confluence with Cibolo Creek	*559
Town Creek:	
Just downstream of Schaefer Road	*680
Approximately 4,600 feet upstream of FM 1103	*732
Approximately 2,050 feet upstream of County Road 376	*764
Just downstream of County Road 377	*790
Interstate Highway 10 Diversion:	
At convergence with Cibolo Creek	*594
Just downstream of Bolton Road	*615
Cibolo Creek:	
Approximately 3,600 feet upstream of confluence of Dry Hollow Creek	*483
Just downstream of confluence of Martinez Creek	*524
Approximately 6,900 feet downstream of Weir Road	*636
Approximately 9,100 feet upstream of Lower Seguin Road (County Road 318)	*666
Just upstream of Selma Road	*736
Elm Creek South:	
Just upstream of County Boundary	*465
Approximately 2,000 feet upstream of County Road 412D	*465

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at Guadalupe County Sanitation Office, 415 East Center Street, Seguin, Texas.	
Kendall County (unincorporated areas) (FEMA Docket No. 7118)	
Cibolo Creek (Lower Reach):	
Approximately 300 feet upstream of confluence of Balcones Creek	*1,274
Approximately 9,300 feet upstream of confluence of Balcones Creek	*1,300
Balcones Creek:	
Approximately 1,050 feet upstream of confluence with Cibolo Creek (Lower Reach)	*1,275
Approximately 3,200 feet upstream of confluence with Cibolo Creek (Lower Reach)	*1,278
Maps are available for inspection at Kendall County Tax Office, 211 East San Antonio Street, Boerne, Texas.	
La Vernia (city), Wilson County (FEMA Docket No. 7122)	
Dry Hollow Creek:	
Just upstream of confluence with Cibolo Creek	*479
Approximately 950 feet upstream of confluence with Cibolo Creek	*479
Cibolo Creek:	
Approximately 4,900 feet downstream of FM 775	*473
Just upstream of FM 775	*478
At confluence of Dry Hollow Creek	*479
Maps are available for inspection at City of La Vernia City Hall, 102 East Chihuahua, La Vernia, Texas.	
Schertz (city), Bexar, Comal, and Guadalupe Counties (FEMA Docket No. 7118)	
Cibolo Creek:	
At Lower Seguin Road	*650
Approximately 200 feet upstream of confluence with Dietz Creek	*687
Approximately 200 feet downstream of FM 78	*712
Approximately 7,400 feet upstream of Main Street	*723
Salitrillo Creek:	
At Martinez Creek Dam No. 6–A	*629
Maps are available for inspection at the City of Schertz, City Hall, 1400 Schertz Parkway, Schertz, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sherman (city), Grayson County (FEMA Docket No. 7118)	
Ellsworth Branch Tributary A:	
Just upstream of State Highway 691	*671
Approximately 1,750 feet upstream of State Highway 691	*671
Approximately 2,500 feet upstream of State Highway 691	*674
Approximately 1,200 feet upstream of Business Highway 75	*685
Approximately 60 feet upstream of Fallon Drive	*746
Post Oak Creek:	
Approximately 700 feet downstream of Travis Street	*657
Approximately 6,700 feet upstream of Highway 75 West Access Road	*674
At Hillcrest Street	*688
At McGee Street	*694
At Lambreth Street	*712
Approximately 4,900 feet downstream of U.S. Highway 82	*721
Appoximately 1,800 feet upstream of U.S. Highway 82	*752
Sand Creek:	
Approximately 2,800 feet downstream of Center Street	*674
Approximately 2,000 feet upstream of Center Street	*682
Approximately 100 feet upstream of Highway 56	*691
Approximately 2,400 feet downstream of Union Pacific Railroad	*701
Approximately 800 feet upstream of Union Pacific Railroad	*709
Choctaw Creek Tributary A:	
Approximately 100 feet downstream of Southern Pacific Railroad	*653
Approximately 2,100 feet upstream of Southern Pacific Railroad	*671
Approximately 200 feet upstream of Farm Road 1417	*714
Maps are available for inspection at the City of Sherman, City Engineer's Office, 400 North Rusk, Sherman, Texas.	
Wilson County (unincorporated areas) (FEMA Docket No. 7122)	
Dry Hollow Creek:	
Just upstream of confluence with Cibolo Creek	*479
Approximately 950 feet upstream of confluence with Cibolo Creek	*479

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cibolo Creek:	
Approximately 14,500 feet downstream of FM 775	*459
Elm Creek at confluence with Cibolo Creek	*464
Elm Creek at 10,700 feet upstream of confluence with Cibolo Creek	*465
Approximately 3,600 feet upstream of confluence of Dry Hollow Creek	*483
Just downstream of confluence of Martinez Creek	*524
Maps are available for inspection at Wilson County Courthouse, 1420 Third Street, Floresville, Texas.	
WASHINGTON	
Okanogan (city), Okanogan County (FEMA Docket No. 7118)	
Okanogan River:	
Approximately 1.3 miles upstream of Oak Street	*834
Approximately 2.5 miles upstream of Oak Street	*835
Maps are available for inspection at the City of Okanogan, Office of Planning, 237 4th Avenue North, Okanogan, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8183 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–05–P

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Energy.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Orange (town), New Haven County (FEMA Docket No. 7116)	
Race Brook:	
Approximately 0.14 mile upstream of Orange Center Road	*108
At upstream corporate limits (approximately 0.6 mile upstream of State Route 114)	*172
Maps available for inspection at the Department of Public Works, Town Hall, 617 Orange Center Road, Orange, Connecticut.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Bexley (city), Franklin County, (FEMA Docket No. 7097)	
Alum Creek:	
Approximately 1,000 feet upstream of downstream corporate limits	*749
Approximately 1,250 feet downstream of CONRAIL	*756
Maps available for inspection at the City Hall, 2242 East Main Street, Bexley, Ohio.	
Brice (village), Franklin County (FEMA Docket No. 7097)	
Powell Ditch:	
Approximately 600 feet downstream of Refugee Road	*776
Approximately 800 feet upstream of Refugee Road	*781
Maps available for inspection at the Village Municipal Building, 5990 Columbus Street, Brice, Ohio.	
Canal Winchester (village), Franklin County (FEMA Docket No. 7097)	
Georges Creek:	
Approximately 650 feet downstream of U.S. Route 33	*753
At downstream side of County Route 376 (Winchester Pike)	*758
Maps available for inspection at the Village Hall, 10 North High Street, Canal Winchester, Ohio.	
Columbus (city), Franklin County (FEMA Docket No. 7124)	
Barbee Ditch:	
At Chippewa Street	*801
Approximately 100 feet downstream of Trabue Road	*826
Barnes Ditch:	
At confluence with Scioto River	*737
At Wilson Road	*836
Blau Ditch:	
Approximately 0.42 mile upstream of confluence with Dry Run	*818
Approximately 1,160 feet upstream of Maclam Drive	*838
Snyder Run:	
At confluence with Barnes Ditch	*808
At Wilson Road	*843
Dry Run:	
At confluence with Scioto River	*731
Approximately 160 feet upstream of Ruth Court	*790
South Fork Dry Run:	
At downstream corporate limits	*786
Approximately 1,520 feet upstream of CONRAIL	*803
Turkey Run:	
Upstream side of State Route 315 culvert	*739
Approximately 1,850 feet upstream of Tillbury Avenue at the City of Columbus corporate limits	*781
Little Walnut Creek:	
Downstream corporate limits	*730
Upstream corporate limits	*731
Big Run:	
At upstream corporate limits (west of County Route 119)	*735
Utzinger Ditch:	
Approximately 200 feet downstream of Rose Hill Road	*882
At upstream corporate limits	*892
Tudor Ditch:	
Approximately 500 feet upstream of confluence with Scioto River	*768
Approximately 857 feet upstream of confluence with Scioto River	*780
Maps available for inspection at the Fairwood Complex, 1250 Fairwood Avenue, Columbus, Ohio.	
Dublin (city), Franklin County (FEMA Docket No. 7097)	
South Fork Indian Run:	
Approximately 1,400 feet upstream of Avery Road	*914
At upstream Dublin corporate limits	*940
Cosgray Ditch:	
Approximately 425 feet upstream of confluence with Scioto River	*775
Approximately 2,200 feet upstream of Wilcox Road	*921
Cramer Ditch:	
At upstream side of Dublin Road	*824
Approximately 2,500 feet upstream of Wilcox Road	*920
Tri-County Ditch:	
At confluence with South Fork Indian Run	*914
At county boundary	*917
Maps available for inspection at the Planning and Zoning Building, 5800 Shier-Rings Road, Dublin, Ohio.	
Franklin County (unincorporated areas) (FEMA Docket No. 7105)	
Blacklick Creek:	
At upstream side of Central College Road (County Route 18)	*1,084
Approximately 0.69 mile upstream of Walnut Street (County Route 19)	*1,119
Bishop Run:	
Approximately 1,000 feet upstream of confluence with Little Walnut Creek	*751
At Canal Winchester South Road	*780
Little Walnut Creek:	
At downstream county boundary	*722
Approximately 0.70 mile upstream of Hayes Road	*731
Lisle Ditch (formerly Big Run Tributary):	
At confluence with Big Run	*741
Approximately 100 feet downstream of Oregon Road	*756
Big Run:	
Approximately 0.90 mile upstream of confluence with Little Walnut Creek	*735
At downstream county boundary	*809
Georges Creek:	
At upstream side of C&O Railroad bridge	*747
Approximately 1,500 feet upstream of U.S. Route 33	*755
Spring Run:	
Approximately 350 feet upstream of County Route 82	*850
Approximately 0.4 mile upstream of County Route 82	*854
Unnamed Pounding Area:	
In the vicinity of the intersection of Corbett Road and Front Street	*733
Clover Groff Ditch:	
Approximately 1,060 feet downstream of Interstate Route 70	*929
Approximately 0.66 mile downstream of Elliot Road	*941
Dry Run:	
Approximately 160 feet downstream of the downstream CONRAIL	*764
Approximately 550 feet upstream of Hague Avenue	*796
Blau Ditch:	
At confluence with Dry Run	*796
Approximately 550 feet upstream of Maclam Drive	*834
Barbee Ditch:	
At confluence with Barnes Ditch	*786
At Trabue Road	*826
Barnes Ditch:	
At downstream corporate limits	*779
Approximately 1,500 feet upstream of confluence of Snyder Run	*824
Faust County Ditch:	
At Hayden Run Road	*935
Approximately 1.4 miles upstream of Hayden Run Road	*941
Hayden Run:	
At upstream side of CONRAIL	*907
At Hayden Run Road	*935
Snyder Run:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 800 feet upstream of Cross Creek Drive	*823
Approximately 1,700 feet upstream of Cross Creek Drive	*830
Molcomb Ditch:	
At confluence with Tudor Ditch	*820
Approximately 1,700 feet downstream of Interstate Route 270	*857
Tudor Ditch:	
Approximately 875 feet upstream of confluence with Scioto River	*780
Approximately 500 feet downstream of Fishinger Boulevard	*851
Cramer Ditch:	
Approximately 150 feet upstream of confluence with Scioto River	*773
At downstream side of Dublin Road	*773
Shallow Flooding Area:	
South of County Route 118 and north of C&O Railroad	#1
Between Big Run and Lisle Ditch (north of Berger Road and south of Hayes Road)	#1
Maps available for inspection at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio.	
Gahanna (city), Franklin County (FEMA Docket No. 7097)	
Utzinger Ditch:	
At downstream corporate limits (downstream of CONRAIL)	*893
Maps available for inspection at the City Hall, 200 S. Hamilton Road, Gahanna, Ohio.	
Glenford (village), Perry County (FEMA Docket No. 7112)	
Jonathan Creek:	
At downstream corporate limits, approximately 550 feet downstream of Main Street	*844
At upstream corporate limits, approximately 1,200 feet upstream of Main Street	*848
Maps available for inspection at the Village Clerk's Residence, 123 Mill Street, Glenford, Ohio.	
Groveport (village), Franklin County (FEMA Docket No. 7097)	
Little Walnut Creek:	
Approximately 0.47 mile upstream of Hayes Road	*730
Approximately 250 feet east of Crescent Drive and Delane Road intersection	*734
Maps available for inspection at the Municipal Building, 605 Cherry Street, Groveport, Ohio.	
Harrisburg (village), Franklin County (FEMA Docket No. 7097)	
Big Darby Creek:	
At downstream corporate limits	*768
At upstream corporate limits	*789
Maps available for inspection at the Village Hall, 1092 High Street, Harrisburg, Ohio.	
Hilliard (city), Franklin County (FEMA Docket No. 7097)	
Hayden Run:	
At upstream side of Avery Road	*909
Approximately 900 feet upstream of Avery Road	*910
Molcomb Ditch:	
Approximately 225 feet upstream of confluence with Tudor Ditch	*821
Approximately 200 feet downstream of Lyman Drive	*874
Tudor Ditch:	
Approximately 675 feet downstream of Fishinger Boulevard	*849
Approximately 140 feet downstream of Parkway Lane	*873
Clover Groff Ditch:	
At downstream corporate limits	*936
Approximately 0.66 mile downstream of Elliot Road	*941
Maps available for inspection at the City Hall, 3800 Municipal Way, Hilliard, Ohio.	
Malvern (village), Carroll County (FEMA Docket No. 7112)	
Big Sandy Creek:	
Approximately 600 feet downstream of downstream corporate limits	*994
Approximately 600 feet upstream of upstream corporate limits	*998
Maps available for inspection at the Village Hall, 116 West Main Street, Malvern, Ohio.	
Marble Cliff (village), Franklin County (FEMA Docket No. 7097)	
Scioto River:	
Approximately 1,950 feet downstream of Fifth Avenue	*737
At CONRAIL	*740
Maps available for inspection at the Village Hall, 1600 Fernwood Avenue, Columbus, Ohio (please contact Joan Klitch, Village Clerk at (614) 486–6993 to arrange for viewing).	
Riverlea (village), Franklin County (FEMA Docket No. 7097)	
Olentangy River:	
At downstream corporate limits	*746
At upstream corporate limits	*749
Maps available for inspection at the Clerk/Treasurer, 124 West Riverglen, Worthington, Ohio.	
Urbancrest (village), Franklin County (FEMA Docket No. 7097)	
Baumgardner Ditch:	
Approximately 100 feet downstream of CSX Transportation	*824
At upstream corporate limits	*848
Maps available for inspection at the City Hall, 3492 First Avenue, Urbancrest, Ohio.	
Upper Arlington (city), Franklin County (FEMA Docket No. 7097)	
Turkey Run:	
At downstream corporate limits of Upper Arlington	*781
Approximately 1,600 feet upstream of downstream corporate limits for Upper Arlington	*794
Maps available for inspection at the City Hall, 3600 Tremont Road, Upper Arlington, Ohio.	
Valleyview (village), Franklin County (FEMA Docket No. 7097)	
Dry Run:	
At downstream Village of Valleyview corporate limits	*767
At upstream Village of Valleyview corporate limits	*779
South Fork Dry Run:	
Approximately 600 feet upstream of confluence with Dry Run	*772
At upstream Village of Valleyview corporate limits	*786
Maps available for inspection at the Village Hall, 432 N. Richardson Avenue, Columbus, Ohio.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8186 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–144; RM–8554]

Radio Broadcasting Services; Dickeyville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266A to Dickeyville, Wisconsin, as that community's first local transmission service in response to a petition filed by James F. Munson. *See* 59 FR 65749, December 21, 1994. The coordinates for Channel 266A at Dickeyville are 42–37–38 and 90–35–31. With this action, this proceeding is terminated.

DATES: Effective May 12, 1995. The window period for filing applications for Channel 266A at Dickeyville, will open on May 12, 1995, and close on June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94–144, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Dickeyville, Channel 266A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7949 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–459; RM–7009, RM–7260, RM–7261, RM–7263, RM–7264]

Radio Broadcasting Services; LaGrange and Rollingwood, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies an Application for Review filed by Fayette Broadcasting Corporation, licensee of Station KBUK, Channel 285A, LaGrange, Texas, directed to a staff action denying its request to substitute Channel 285C2 for Channel 285A and reallot Channel 285C2 to Rollingwood, Texas. *See* 58 FR 12903, published March 8, 1993. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–459, adopted March 8, 1995, and released March 28, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription service, (202) 857–3800, 2100 M Street, NW, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8162 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

GENERAL SERVICES ADMINISTRATION

Board of Contract Appeals

48 CFR Part 6101

RIN Number 3090–AF62

Rules of Procedure of the General Services Administration Board of Contract Appeals

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board), which will govern all proceedings before the Board. The revisions implement certain provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA or Act) which have amended the Brooks Automatic Data Processing Act, under which the Board hears and decides protests of procurements involving automatic data processing (ADP) equipment, and the Contract Disputes Act of 1978, under which the Board hears and decides contract disputes. The revisions conform the Board's rules of procedure to the amendments made to its jurisdictional statutes.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Chief Counsel, GSA Board of Contract Appeals, (202) 501–0891.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The General Services Administration certifies that these revisions will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Dates

Pursuant to Sections 10001 and 10002 of the FASA, these rules (as well as Sections 1432–1434, 1436–1438, and 2351 (c)–(d) of the Act) are applicable to all proceedings filed on or after May 5, 1995. Section 1435 of the Act shall be applicable to cost applications where

Road intersection	*734

the underlying protest is filed on or after May 5, 1995.

D. Background

On December 2, 1994, the Board published a proposed rule with request for comments [59 FR 61861] containing revisions to the Board's rules of procedure. The background information accompanying the proposed rule explained that the revisions were necessitated by the amendment of the Board's jurisdictional statutes, the Contract Disputes Act of 1978 (41 U.S.C. 601–613) and the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), by the FASA. Interested persons were invited to submit comments by January 31, 1995, and the Board received comments from components of two federal agencies, two bar association groups, and one industry association. After consideration of these comments, the Board's members adopted the proposed rules, as revised, by majority vote.

The most significant changes made by the revisions to the Board's rules are highlighted in the next section of the preamble. Following that section, the preamble summarizes the more significant comments received by the Board during the comment period and indicates how these comments were addressed in preparing this final rule.

E. Highlights of Changes

Subtitle D of Title I of the FASA names and amends the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), under which the Board hears and decides protests. Subtitle D of Title II of the FASA amends the Contract Disputes Act of 1978 (41 U.S.C. 601–613), which gives the Board jurisdiction to hear and decide contract disputes.The revisions to the Board's rules contain changes necessitated by the amendment of both the Brooks Act and the Contract Disputes Act. In addition, Section 155 of the Energy Policy Act of 1992 (42 U.S.C. 8287) authorized the Board to review decisions regarding the qualification of firms to enter into energy savings contracts. The Foreword to the rules now includes a statement that, in conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable.

Definitions

A definition of "prevailing party" (§ 6101.1(b)(12)) has been added to the rules to conform to section 1435(b) of the FASA. In a protest, a "prevailing party" is one who has demonstrated that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority. Similarly, the definition of "protest" (§ 6101.1(b)(13)) has been changed to that specified in section 1438 of the Act. Finally, in order to conform to the language prescribed in section 1437 of the Act, the term "working day" (§ 6101.1(b)(16)) is now defined as any day other than a Saturday, Sunday, or "legal" (rather than "Federal") holiday.

Computing Time

Section 6101.2(c) has been revised to parallel the changes required by section 1433 of the FASA. This section provides that when a period of time prescribed or allowed in the rules is less than 11 days, intervening Saturdays, Sundays, and legal holidays are not counted; in other words, only working days are counted. When the time period is 11 days or more, intervening Saturdays, Sundays, and legal holidays are counted, i.e., all calendar days are counted. The revision states that the only exceptions are the 5-calendar-day period after a debriefing date and the 10-calendar-day period after contract award for filing a protest that requests a suspension hearing.

Three other sections relating to timing have also been revised: (1) Section 6101.19(a)(2) provides that a protest which requests a suspension hearing must be filed no later than 10 calendar days after contract award or 5 calendar days after the debriefing date; (2) § 6101.19(a)(3) provides that the hearing on the merits of a protest shall commence no later than 35 calendar days after the protest is filed (rather than 25 working days); (3) § 6101.29(b) provides that a decision on the merits of a protest shall be issued no later than 65 calendar days after the protest is filed (rather than 45 working days).

Small Claims and Accelerated Procedures

The small claims dollar threshold has been changed from $10,000 to $50,000 (§ 6101.13(a)), and the accelerated procedure dollar threshold has been changed from $50,000 to $100,000 (§ 6101.14(a)). These changes implement the amendments to sections 9(a) and 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. §§ 608(a), 607(f)) by subsections 2351 (c) and (d) of the FASA.

Dismissals; Sanctions

Section 6101.28(a)(2) has been added to conform to the language specified in Section 1434 of the FASA. The proposed rule provides that the Board may dismiss a protest that it determines is frivolous; has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Section 6101.18(b) has been amended to provide that the Board may impose appropriate sanctions if it expressly finds that (1) a protest or portion of a protest is frivolous or has been brought or pursued in bad faith; or (2) any person has willfully abused the Board's process during the course of a protest.

Suspension Hearing and Decision

Section 6101.19(a)(2) has been amended to change the timing of a protest suspension hearing in order to conform to Section 1433(a)(2) of the FASA. A protest suspension hearing is one in which the Board determines whether to suspend the Administrator's procurement authority or delegation of procurement authority until the protest can be decided. An interested party may request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. The Board must hold the suspension hearing within 5 working days after the date the protest was filed, or in the case of a request for debriefing, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

Section 6101.19(d) (Suspension decision) has been amended to include language specified by Section 1433(a)(1)(C) of the FASA. If a contract award has not been made, a suspension shall not preclude the Federal agency whose procurement authority has been suspended from continuing the procurement process up to but not including contract award, unless the Board determines such action is not in the best interests of the United States.

Settlement Agreements

A new paragraph has been added to Section 6101.28 (Dismissals) which incorporates the language specified by Section 1436 of the FASA. Section 6101.28(d) provides that any settlement agreement that dismisses a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and made part of the public record, subject to any protective order considered appropriate by the Board. If a Federal agency is a party to the agreement, the submission of the agreement to the Board must include a memorandum signed by the contracting officer that describes in detail the procurement, the grounds for protest, the Government's position regarding those grounds, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

Award of Costs

Section 6101.35(a) has been amended to conform to Section 1435 of the FASA by stating that an appropriate party applying for an award of costs must also be a prevailing party. Also, two additions are made to the application requirements in § 6101.35(c): (1) An applicant asserting that it is a qualifying small business must provide evidence of that fact in its cost application; and (2) an applicant requesting reimbursement of attorney fees that exceed the statutory rate must explain why such fees are justified. Finally, § 6101.35(d) now provides that if the Government contends that fees for consultants or expert witnesses for which reimbursement is sought exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or by the Federal Government (in protests), then it must include evidence of the relevant highest rate in the answer filed in response to the cost application.

F. Summary of Comments

The Board received written comments from five commentators: components of two federal agencies, two bar association groups, and one industry association. The majority of the comments focused on five of the rules. The Board carefully considered each comment and adopted some of the suggestions made. The more significant comments are discussed below in a section-by-section format.

Section 6101.2 (Time: Enlargement; Computation)

One commentator noted that the Board's proposed rules retained working days as the basis for calculating time periods that are less than 11 days, and suggested that using calendar days to calculate all time periods would be less confusing and more consistent with the FASA, which defines all time limits in calendar days. The Board last changed the method of calculating short time deadlines on January 3, 1994, when the Board rules were amended. At the same time, to reduce confusion, the rules were amended to specify working days or calendar days for each time frame given. Since then, litigants have become familiar with the current system of computing short time frames, and the Board determined that the advantages of leaving that system in place outweighed any advantage to be gained by making the suggested change.

Section 6101.18 (Sanctions and Other Proceedings)

As required by the FASA, Section 6106.18 has been amended to provide that the Board may impose appropriate sanctions if it finds that a protest is frivolous or has been brought or pursued in bad faith, or that a person has willfully abused the Board's process during a protest. One commentator suggested that it would be useful for the Board to provide advice in this summary as to the type of conduct that it is likely to view as frivolous or in bad faith. After careful consideration, the Board determined that such matters are more appropriately decided in the context of specific cases. The Board will look to the decisions of the United States Court of Appeals for the Federal Circuit and other case law in determining appropriate sanctions.

Section 6101.19 (Hearings; Scheduling; Notice; Unexcused Absences; Suspension Decision)

In order to conform to Section 1433(a)(2) of the FASA, the Board amended § 6101.19(a)(2) to permit an interested party to request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award; or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. According to two commentators, Congress intended to provide meaningful relief to a protester filing a protest within 5 calendar days of a required debriefing, and to obviate the protester's need to file a so-called "defensive" protest before receiving all information which the FASA requires the agency to provide. Current Board rules nevertheless require that protests be filed within 10 working days of the date on which the protester knew or should have known of the grounds for its protest (§ 6101.5(b)(3)(ii)). Thus, according to the commentators, for protests based on information known or constructively known at the time an award is announced, the 10-working-day period for filing a protest may expire before a required debriefing is held. Consequently, a protest filed after a required debriefing will be timely for purposes of a suspension hearing but untimely as a protest. The commentators suggest that the rules should provide that a protest (other than one based on information that was known or should have been known prior to contract award), will be considered timely if: (1) It is filed within 10 days after the protester knew (or should have known) of the basis of protest; or (2) it would trigger a suspension under Section 1433(a) of the FASA.

The Board disagrees with this interpretation of the FASA's intent. By providing for agency debriefings, the FASA seeks to remedy the situation in which a protester must file a protest before the basis is known, in order to timely request a suspension hearing. The Act does not change the requirement that a protest be filed within 10 working days of the date on which the basis for the protest is known. When information that serves as the basis for the protest was learned at the debriefing, if a protester files within 5 calendar days after a debriefing, that is also within 10 working days of knowing the basis for the protest. When information that serves as the basis for the protest was learned prior to the debriefing, however, making the change suggested by the commentators would allow the protester to delay its filing and thereby prolong the period of time before contract performance can proceed. The Board decided that to amend its rules for this purpose would be inconsistent with Congress' intent that protests not delay procurements unnecessarily.

Section 6106.19(d) (Proceedings) has been amended to conform to the FASA. It now provides that if contract award has not been made, a suspension shall not preclude an agency from continuing the procurement process up to but not including contract award unless the Board determines such action is not in the best interests of the United States. One commentator suggested that the Board include a "best interests" test in the rule to minimize the potential for factual disputes and evidentiary hearings. The Board believes, however, that "best interests" are more appropriately determined on a case-by-case basis.

Section 6101.29 (Decisions)

One commentator suggested that this rule include the requirement contained in Section 1433 of the FASA which provides that a protest amendment which adds a new ground of protest should be resolved, to the maximum extent possible, within the time limits established for resolving the initial protest. The Board agrees with this comment, and has added language to § 6101.29(b)(2) that reflects the statute.

Section 6106.35 (Award of Costs)

Section 1435 of the FASA permits a successful protester to recover reasonable consultant and expert witness fees, but limits such fees (except for small businesses) to the "highest rate

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of compensation for expert witnesses paid by the Federal Government." One commentator encouraged the Board to provide guidance in the rules on the manner in which this language will be implemented, for example, by publishing any uniform cap that it intends to impose on consultant fees. In addition, the commentator suggested that if consultant fee caps are to be determined on a case-by-case basis, the Board should indicate which party will have the burden of establishing the fee cap and the factors the Board will consider in determining the applicable cap. The commentator suggested that since the Government is in the best position to obtain the information, it should have the burden of providing evidence of "the highest rate of compensation for expert witnesses" paid by the Government. Finally, the commentator suggested that the Board's rules include procedures under which it will allow recovery of attorney fees at higher than the $150 per hour rate established by the FASA.

The Board carefully considered the suggestions made by this commentator and has incorporated several of them in the final rules. First, although the Board determined that it would consider requests for reimbursement of attorney fees that exceed the statutory rate on a case-by-case basis, it amended Rule 6101.35(c)(6) to specify that the applicant must show why such an increase is justified, e.g., an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved. Similarly, the Board added § 6101.35(c)(5), which provides that an applicant asserting that it is a qualifying small business (and thus exempt from the fee limitations) must include evidence thereof in its application.

The Board also determined that it would determine consultant fee caps on a case-by-case basis. However, § 6101.35(d)(1) now provides that if the Government contends that any consultant or expert witness fees claimed by the applicant exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or the Federal Government (in protests), it must include in the answer evidence of the relevant highest rate.

List of Subjects in 48 CFR Part 6101

Administrative practice and procedure, Government procurement.

For the reasons set out in the preamble, 41 CFR Part 6101 is amended as set forth below:

PART 6101—RULES OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

1. The authority citation for Part 6101 continues to read as follows:

Authority: 40 U.S.C. 759(f)(7); 41 U.S.C. 607(f).

2. Section 6101.0 is revised to read as follows:

§ 6101.0 Foreword.

The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States. The Board also hears and decides protests filed under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), which involve procurements subject to that Act, and conducts proceedings as required under other laws. (The Board also is empowered to review decisions regarding the qualification of firms to enter into energy savings contracts pursuant to 42 U.S.C. 8287. In conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable. The Board will act in accordance with these rules and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

3. In § 6101.1, paragraph (b)(2) is revised; paragraphs (b)(12) through (15) are redesignated as paragraphs (b)(13) through (16), respectively, and revised; and a new paragraph (b)(12) is added to read as follows:

§ 6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs [Rule 1].

* * * * *

(b) *Definitions.*

(1) * * *

(2) *Application; applicant.* The term "application" means a submission to the Board of a request for reimbursement of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, or the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f)(5)(C), pursuant to 6101.35. The term "applicant" means a party filing an application.

* * * * *

(12) *Prevailing party.* In a protest, a prevailing party is a party who has demonstrated that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority.

(13) *Protest; protester.* (i) The term "protest" means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for bids or proposals for a contract for the procurement of property or services;

(B) The cancellation of such a solicitation or other request;

(C) An award or proposed award of such a contract;

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(ii) The term "protester" means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(14) *Respondent.* The term "respondent" means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, petition, or application.

(15) *Working day.* The term "working day" means any day other than a Saturday, Sunday, or legal holiday.

(16) *Working hours.* The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

* * * * *

4. Section 6101.2 is amended by revising paragraph (c) to read as follows:

§ 6101.2 Time; enlargement; computation [Rule 2].

* * * * *

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this part or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted, unless that day is (1) a Saturday, a Sunday, or a legal holiday, or (2) a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph; when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or legal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, and in the cases of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest that requests a suspension hearing (both described in 6101.19(a)(2)), intervening Saturdays, Sundays, and legal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

5. Section 6101.13 is amended by revising the title and the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

§ 6101.13 Small claims procedure in appeals [Rule 13].

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $50,000 or less.

* * *

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $50,000, such that the election is inappropriate. * * *

* * * * *

6. Section 6101.14 is amended by revising the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

§ 6101.14 Acceleratd procedure in appeals [Rule 14].

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less.

* * *

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. * * *

* * * * *

7. Section 6101.18 is amended by revising paragraph (b) introductory text to read as follows:

§ 6101.18 Sanctions and other proceedings [Rule 18].

* * * * *

(b) *Sanctions.* If the Board expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith; or any person has willfully abused the Board's process during the course of a protest, the Board may impose appropriate sanctions. In any type of case, when a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions include:

* * * * *

8. Section 6101.19 is amended by revising paragraphs (a)(2), (a)(3), and (d) to read as follows:

§ 6101.19 Hearings; scheduling; notice; unexcused absences; suspension decisions [Rule 19].

(a) *Scheduling of hearings.*

(1) * * *

(2) *Protest suspension hearing.* The Board will, upon timely request by an interested party, hold a hearing to determine whether the Board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the Board can decide the protest. Such a request is timely if the underlying protest is filed by the later of (i) the tenth calendar day after the date of contract award; or (ii) the fifth calendar day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required. The Board will hold the requested hearing within 5 working days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of 10 U.S.C. 2305(b)(5), or 41 U.S.C. 253b, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

(3) *Protest hearing on merits.* Any hearing on the merits of a protest will commence no later than 35 calendar days after the filing of the protest.

* * * * *

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that: (1) Absent suspension, contract award, if not already made, is likely to occur within 30 calendar days; and (2) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board. If a contract award has not been made, a suspension shall not preclude the Federal agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines that such action is not in the best interests of the United States. The decision regarding suspension will be by order of the panel chairman and may be oral, to be reduced to writing as soon as practicable.

9. Section 6101.28 is amended by redesignating the three sentences of paragraph (a) as (a)(1) and adding new paragraphs (a)(2) and (d) to read as follows:

§ 6101.28 Dismissals [Rule 28].

(a) *Generally.*

(1) * * *

(2) *Protests.* The Board may also dismiss a protest that the Board determines (i) is frivolous; (ii) has been brought or pursued in bad faith; or (iii) does not state on its face a valid basis for protest.

* * * * *

(d) *Settlement agreements.* Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

10. Section 6101.29 is amended by revising paragraph (b) to read as follows:

§ 6101.29 Decisions [Rule 29].

* * * * *

(b) *Timing of protest decisions.* (1) A decision on the merits of a protest will be issued within 65 calendar days after the filing of the protest, unless the chairman of the Board determines that the specific and unique circumstances of the protest require a longer period. In that event, the Board shall issue a decision within the longer period determined by the chairman of the Board.

(2) In a protest, the Board will, to the maximum extent practicable within the 65-calendar-day period applicable to the original protest, decide all issues, including those raised by amendment or intervention, that are necessary to the resolution of the case. The Board will whenever possible notify the parties prior to the originally scheduled hearing date, or date for record submission, if it believes that because of a new ground of protest raised by an amendment or by an intervention, the protest might not be decided within the original 65-calendar-day period.

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11. Section 6101.35 is amended by revising the first sentence of paragraph (a), adding paragraphs (c)(5) and (c)(6), and adding a sentence of the end of paragraph (d)(1) to read as follows:

§ 6101.35 Award of costs [Rule 35].

(a) *Requests for costs.* An appropriate prevailing party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. * * * * * * * * *

(c) *Application requirements.* * * *

(5) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof.

(6) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings.*

(1) * * * If respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency (appeals), or by the Federal Government (protests), respondent shall include in the answer evidence of such highest rate.

* * * * * * *

12. Section 6101.36 is amended by revising the third sentence of paragraph (c) to read as follows:

§ 6101.36 Payment of Board awards [Rule 36].

* * * * * * *

(c) *Procedure for filing of certificates of finality.* * * * When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. * * * * * * * * *

13. In the appendix to part 6101, Form No. 4 (Government Certificate of Finality) and Form No. 5 (Appellant/Protester/Intervenor/Applicant Certificate of Finality) are revised to read as follows:

APPENDIX—FORM NOS. 1–5

* * * * * * *

Form 4—Board of Contract Appeals

General Services Administration,
Washington, DC 20405

GSBCA _____

_____

_____

_____

Contract/Solicitation No.

_____

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $_____

C. Agency address (regional office if other than central office):

D. Agency Certification.

_____

hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Date _____

Government Agency

By _____

Signature and Title

Note: This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

Form 5—Board of Contract Appeals

General Services Administration,
Washington, DC 20405

GSBCA _____

_____

_____

_____

Contract/Solicitation No.

_____

APPELLANT/PROTESTER/INTERVENOR/APPLICANT CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Protester/Intervenor/Applicant Certification

_____

hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Date _____

Appellant/Protester/Intervenor/Applicant

By _____

Signature and Title

Note: This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

Dated: March 23, 1995.

Stephen M. Daniels,

Chairman, GSA Board of Contract Appeals.

[FR Doc. 95–8135 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–RW–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 032995A]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the pollock roe season allowance of pollock for the inshore component in the Aleutian Islands subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 30, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the AI was established by the final 1995 initial groundfish specifications (60 FR 8479, February 14, 1995) as 16,838 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 15,838 mt after determining that 1,000 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8185 Filed 3–30–95; 3:55 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 64
Tuesday, April 4, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–255–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for cracking in the inboard strut-to-diagonal brace attach fittings and repair or replacement, if necessary. This action would require an additional inspection of those attach fittings, and additional inspections in an area beyond that specified in the existing AD. This action also would provide an optional terminating action for the required inspections, and would expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by reports of cracking and severing of the attach fittings. The actions specified by the proposed AD are intended to prevent failure of the strut and separation of an engine from the airplane due to cracking of the inboard strut-to-diagonal brace attach fittings.

DATES: Comments must be received by May 30, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–255–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–AD–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 13, 1979, the FAA issued AD 79–17–07, amendment 39–3533 (44 FR 50033, August 27, 1979), applicable to certain Boeing Model 747 series airplanes, to require repetitive visual inspections for cracking in the inboard strut-to-diagonal brace attach fittings, and repair or replacement, if necessary. That action was prompted by reports of cracking in the inboard strut-to-diagonal brace attach fittings. The requirements of that AD are intended to prevent structural failure of these attach fittings, and the consequent separation of an engine from the airplane.

Since the issuance of that AD, the FAA has received additional reports of cracking of inboard strut-to-diagonal brace attach fittings. On one airplane that had accumulated 14,151 landings, a 12-inch long crack was detected and, in another case, a severed fitting was reported on an airplane that had accumulated 15,323 landings. Investigation has revealed that the cracking was caused by fatigue. These airplanes had been inspected in accordance with AD 79–17–07. Cracking of the attach fittings, if not detected and corrected in a timely manner, could result in failure of the strut and separation of an engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, which describes the following:

1. Procedures for repetitive visual and high frequency eddy current (HFEC) inspections for cracking of the inboard strut-to-diagonal brace attach fittings;
2. Procedures for reinspections of certain attach fittings at decreased intervals; and
3. Procedures for replacement of certain attach fittings with serviceable fittings.

This service builetin also describes procedures for accomplishment of a modification that entails removing the aluminum attach fittings and replacing them with steel fittings. Accomplishment of this modification eliminates the need for inspections of the subject area. (This modification is part of the "Boeing Model 747 Strut and Wing Structural Modification Program," described in Boeing Service Bulletin 747–54A2159, dated November 3, 1994.)

Revision 7 of this service bulletin also describes additional action to be accomplished on airplanes on which the "terminating modification," as provided by AD 79–17–07, was previously installed. This additional action involves sealing a gap between the fitting and the existing closure web, which can be accomplished by either installing a new closure web, or fabricating and installing a new seal plate.

The manufacturer also has identified additional Model 747 series airplanes that are subject to the same cracking conditions addressed by AD 79–17–07; therefore, those additional airplanes are included in the effectivity listing of Revision 7 of the service bulletin.

Based on these data, the FAA has determined that, in addition to adding airplanes to the applicability of this AD, additional actions also are necessary on airplanes that have been inspected in accordance with AD 79–17–07. The FAA finds that repetitive visual inspections and repetitive surface HFEC inspections must be accomplished on the attach fittings. Additionally, the FAA finds that certain attach fittings with known cracking must be inspected at a decreased interval and the attach fitting must be replaced, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 79–17–07 to continue to require repetitive visual inspections to detect cracking of the inboard strut-to-diagonal brace attach fittings, and replacement or repair of the cracking, if necessary. This proposal would add repetitive HFEC inspections to detect cracks of the attach fittings. This proposal also would require that certain attach fittings with cracks be reinspected at decreased intervals, and would require subsequent replacement of the attach fittings of airplanes with certain known cracking. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Additionally, this proposal also would expand the applicability of the rule to include additional affected airplanes.

This proposal also provides for an optional terminating modification for the requirements of the proposed AD. This optional modification entails removing the aluminum attach fittings and replacing them with steel fittings. By a separate rulemaking action [refer to Notice of Proposed Rulemaking, Docket 94–NM–187–AD, (59 FR 65733, December 21, 1994)], the FAA is proposing to require the mandatory accomplishment of this modification (described in Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) as part of a "Strut and Wing Structural Modification Program" developed by Boeing. The intent of that program is to address the cracking condition and other items associated with the engine struts on Boeing Model 747 series airplanes.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 367 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 152 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $100,320, or $660 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the terminating modification that would be provided by this AD action, it would take approximately 176 work hours to accomplish it, at an average rate of $60 per work hour. The cost of required parts would be $4,752. Based on these figures, the total cost impact of the terminating modification would be $15,312 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3533 (44 FR 50033, August 27, 1979), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–255–AD. Supersedes AD 79–17–07, Amendment 39–3533.

Applicability: Model 747 series airplanes; as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe

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condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of an engine, accomplish the following:

Note 2: Paragraph (a) of this AD restates the requirements for initial and repetitive visual inspections contained in paragraphs A., and C., respectively, of AD 79–17–07, amendment 39–3583. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 79–17–07, paragraph (a) of this AD requires that the next scheduled inspection be performed within the intervals specified in (a)(1) or (a)(2), as applicable, after the last inspection performed in accordance with paragraph A. or C. of AD 79–17–07.

(a) For airplanes listed in Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Prior to the accumulation of 5,000 total landings on the airplane, or within 500 hours time-in-service after September 4, 1979 (the effective date of AD 79–17–07, Amendment 39–3533), whichever occurs later, perform a visual inspection of the forward lower diagonal brace fittings of the inboard pylon to detect cracking, in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979, or Revision 7, dated December 21, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. After the effective date of this AD, only Revision 7 of the service bulletin shall be used.

Note 3: Inspections performed prior to the effective date of this AD are considered in compliance with this paragraph if performed in accordance with Boeing Service Bulletin 747–54–2062, Revision 1, dated November 13, 1980; Revision 2, dated March 19, 1981; Revision 3, dated August 28, 1981; Revision 4, dated June 30, 1982; Revision 5, dated June 1, 1984; or Revision 6, dated October 2, 1986.

(1) If no cracking is detected, repeat the inspections at intervals not to exceed 1,000 landings until all affected fittings are replaced with steel fittings in accordance with Revision 7 of the service bulletin.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD until the inspections required by paragraph (b) of this AD are accomplished.

(i) Repair or replace the cracked fitting in accordance with the service bulletin; or

(ii) Rework the cracked fitting in accordance with the service bulletin as required by paragraph (b) of this AD. Thereafter, repeat the inspections at intervals not to exceed 250 landings until the reworked fitting is replaced with a serviceable fitting, or until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Perform a detailed visual inspection and a surface high frequency eddy current (HFEC) inspection to detect cracking of the inboard strut-to-diagonal brace attach fittings, in accordance with the service bulletin at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which a cracked fitting has been reworked in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Perform the inspections within 250 landings since the last inspection performed in accordance with paragraph (a)(2)(ii) of this AD.

(2) For airplanes other than those identified in paragraph (b)(1) of this AD: Perform the inspections at the earlier of the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the airplane, or within 1,000 landings after the effective date of this AD, whichever occurs later; or

(ii) Within 1,000 landings since the last inspection performed in accordance with paragraph (a) of this AD.

(c) If no cracking is detected during the inspections required by paragraph (b) of this AD, repeat the inspections thereafter at intervals not to exceed 1,000 landings.

(d) If more than one crack is found during any inspection required by this AD, or if any crack is detected that is beyond the limits specified in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(e) If any transverse or longitudinal crack is found during the inspection required by paragraph (b) of this AD, and that crack is within the limits specified by Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Prior to further flight, stop drill the crack in accordance with the service bulletin, and accomplish the requirements of either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For any transverse crack that is found, accomplish the following:

(i) Prior to further flight, remove the affected fastener and perform an open-hole HFEC inspection to detect cracking of the fastener hole, in accordance with the service bulletin. Thereafter, repeat this inspection within 125 landings.

(ii) Repeat the inspections required by paragraph (b) of this AD within 125 landings after performing them initially.

(iii) If any crack is found during the inspections required by this paragraph and the crack is beyond the limits specified in the service bulletin, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(iv) Prior to the accumulation of 250 landings following the detection of the transverse cracking, unless previously accomplished, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(2) For any longitudinal crack that is found, accomplish the following:

(i) Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 250 landings.

(ii) Prior to the accumulation of 1,000 landings following detection of the longitudinal cracking, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(f) Replacement of the attach fittings of the strut-to-diagonal brace with steel fittings, in accordance with Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8174 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR PART 248

Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") requests public comments on its Guides for the Beauty and Barber Equipment and Supplies Industry. The Commission is also requesting comments about the overall costs and benefits of the Guides for the Beauty and Barber Equipment and Supplies Industry and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 5, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Guides for the Beauty and Barber Equipment and Supplies Industry should be identified as "16 CFR Part 248—Comment."

FOR FURTHER INFORMATION CONTACT: Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1229.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recission.

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Beauty and Barber Equipment and Supplies Industry (the "Beauty/Barber Supplies Guides," or the "Guides").

The Beauty/Barber Supplies Guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the Beauty/Barber Supplies Guides may result in corrective action by the Commission under applicable statutory provisions. The Commission may decide to promulgate an industry guide "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Beauty/Barber Supplies Guides designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, "Industry Members" (as defined in § 248.0 of the Beauty/Barber Supplies Guides) such as barber shops, barber schools, beauty parlors, beauty salons, and beauty clinics. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments. The Beauty/Barber Supplies Guides include, among other things, guidance about the use of trade names, symbols, and depictions; the defamation of competitors or the false disparagement of their products; false invoicing; push money; advertising or promotional allowances, or services or facilities; commercial bribery; enticing away employees of competitors; inducing breach of contract; exclusive dealing arrangements; and price discrimination.

The Commission believes that certain sections of the Beauty/Barber Supplies Guides may not be so specific to the beauty and barber industry that they are warranted in light of general guidance available elsewhere. For example, the statement on discriminatory pricing may be in large part needlessly duplicative of sections (a) and (f) of the Robinson-Patman Act, and the statement on discriminatory promotional allowances and services may be duplicative of the so-called Fred Meyer Guides, which interpret sections (d) and (e) of the Robinson-Patman Act and section 5 of the Federal Trade Commission Act. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240. Similarly, other sections of the Beauty/Barber Supplies Guides describe general principles derived from the antitrust laws and consumer protection laws enforced by the Commission, but in ways that may not be especially specific to the beauty and barber equipment industry.

If the Commission elects to retain the Beauty/Barber Supplies Guides after conducting this review, it intends to update certain terms to reflect policy changes that have occurred since the Beauty/Barber Supplies Guides were last revised in 1968. The phrase "capacity and tendency or effect of misleading or deceiving," in §§ 248.1, 248.5, and 248.6, may be changed to conform with the language regarding deception that is set forth in *Cliffdale Associates, Inc.*, 103 F.T.C. 110 (1984), and subsequent cases.

The Commission also may provide updated notations to other Commission guides which supplement the Beauty/Barber Supplies Guides. Specifically, a notation may be appended after § 248.0 to advise that certain "Industry Members," such as beauty schools, beauty clinics, and barber schools, may refer to the Commission's Guides for Private Vocational and Home Study Schools, 16 CFR part 254, for additional guidance. A notation may be inserted following § 248.14 of the Beauty/Barber Supplies Guides to indicate that the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240, furnish detailed guidance regarding advertising or promotional allowances, or services or facilities, and should be considered as supplementing § 248.14.

In addition, the Beauty/Barber Supplies Guides currently include, in footnote 1 to § 248.1, a notation to the Commission's Guides Against Deceptive Advertising of Guarantees, 16 CFR part 239. A second notation following § 248.4 of the Guides refers to the Commission's Guides Against Deceptive Pricing, 16 CFR part 233. These notations may be modified so that the language contained therein will be consistent.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the Beauty/Barber Supplies Guides/

a. Do members of the beauty and barber equipment and supplies industry require these industry-specific guides for information about applicable legal standards, or can equally helpful guidance be obtained from more general sources such as the Fred Meyer guides, 16 CFR part 240?

b. What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

c. Have the Guides imposed costs on purchasers?

d. Do the Guides continue to address practices which are of concern to members of the beauty and barber equipment and supplies industry?

2. What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

a. How would these changes affect the costs the Guides impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?

a. Have the Guides provided benefits to such firms?

4. What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the Guides?

5. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 248

Advertising, Trade practices, Deceptive pricing, Price discrimination, Promotional allowances.

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–8189 Filed 4–3–95; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–1–6680b; FRL–5175–3]

Approval and Promulgation of Implementation Plans Ohio; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is taking action to approve, through a direct final procedure, the State implementation plan (SIP) revision submitted by the State of Ohio for the purpose of controlling the motor vehicle emissions of hydrocarbons. Emissions will be controlled by implementing an enhanced inspection and maintenance (I/M) program in areas classified as moderate nonattainment. The State currently operates I/M programs in the Cleveland and Cincinnati areas to achieve reductions in emissions of carbon monoxide and volatile organic compounds. The program proposed here calls for enhanced I/M in the metropolitan areas of Cleveland-Akron-Lorain, Cincinnati, and Dayton-Springfield which are moderate nonattainment areas for ozone. Moderate nonattainment areas are required to implement a basic I/M program. These areas have opted up to enhanced I/M because of the greater cost-effective emission reduction available compared to basic programs. The USEPA is approving the State's I/M SIP revision as a direct final rule without prior proposal because the USEPA views this as a noncontroversial action and anticipates no critical or adverse comments.

In the final rules section of this **Federal Register**, USEPA is approving the State's SIP revision request as a direct final rule without prior proposal because USEPA views the approval of the inspection and maintenance program as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to the direct final rule, no further activity is contemplated in regards to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received on or before May 4, 1995.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, at the above address or call (312) 886–6084.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671(q).

Dated: March 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–8222 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[IL116–1–6792b; FRL–5182–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a State Implementation Plan (SIP) revision request to redesignate two sulfur dioxide (SO_2) nonattainment areas in the State of Illinois to attainment. The USEPA is also approving their accompanying maintenance plans as SIP revisions. The redesignation requests and maintenance plans were submitted by the Illinois Environmental Protection Agency (IEPA) for the following SO_2 nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The State has met the requirements for redesignation contained in the Clean Air Act (the Act), as amended in 1990. The redesignation requests are based on ambient monitoring data that show no violations of the SO_2 National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation requests and the supporting maintenance plans as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time. Adverse comments received concerning a specific geographic area, Peoria or Tazewell Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

DATES: Comments on this proposed rule must be received on or before May 4, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Environmental Protection Specialist, Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: March 22, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–8214 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7130]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Payne (village), Paulding County	
Flatrock Creek:	
At Sitzler Road	*741
Approximately 0.9 mile upstream of Sitzler Road	*743
Maps available for inspection at the Village of Payne Water Plant, 211 North Laura Street, Payne, Ohio.	
Send comments to The Honorable Michael Brigner, Mayor of the Village of Payne, 131 North Main Street, Payne, Ohio 45880.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Bannockburn (Village) Lake County.	West Fork North Branch Chicago River.	Approximately 1,150 feet upstream of Duffy Lane.	*667	*666

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Middle Fork North Branch Chicago River.	Approximately 1,400 feet upstream of Duffy Lane.	*665	*664
			Approximately 650 feet upstream of Half Day Road.	*658	*659
			Approximately 0.81 mile downstream of Half Day Road (State Route 22).	*658	*659

Maps available for inspection at the Municipal Building, 2275 Telegraph Road, Bannockburn, Illinois.

Send comments to The Honorable William S. Truckenbord, President of the Village of Bannockburn, 2275 Telegraph Road, Bannockburn, Illinois 60015.

Illinois	Beach Park (Village) Lake County.	Lake Michigan	For the entire length within the community.	*584	*585

Maps available for inspection at the Municipal Building, 11270 Wadsworth Road, Beach Park, Illinois.

Send comments to The Honorable H. James Solomon, Major of the Village of Beach Park, 11270 Wadsworth Road, Beach Park, Illinois 60099.

Illinois	Buffalo Grove (Village) Lake County.	McDonald Creek	Approximately 160 feet upstream of Mill Creek Drive.	*694	*693
			At Mill Creek Drive	*694	*693

Maps available for inspection at the Municipal Building, 50 Raupp Boulevard, Buffalo Grove, Illinois.

Send comments to The Honorable Sidney Mathias, President of the Village of Buffalo Grove, 50 Raupp Boulevard, Buffalo Grove, Illinois 60089.

Illinois	Central City (Village) Marion County.	Crooked Creek	Approximately 1,400 feet downstream of Illinois Central Railroad.	*466	*465
			Approximately 2,700 feet upstream of new U.S. Route 51.	*471	*469

Maps available for inspection at the Village Hall, 141 North Harrison, Centralia, Illinois.

Send comments to The Honorable Kenneth Buchanan, Mayor of the Village of Central City, 141 North Harrison, Centralia, Illinois 62801.

Illinois	Deerfield (Village) Lake County.	Middle Fork North Chicago River.	At Lake-Cook Road (County boundary) ...	*650	*651
			Approximately 0.8 mile downstream of State Route 22 (Half Day Road).	*657	*658
		West Fork North Branch Chicago River.	At Interstate 94	*653	*651
			Approximately 100 feet upstream of Montgomery Road.	*665	*660

Maps available for inspection at the Municipal Building, 850 Waukegan Road, Deerfield, Illinois.

Send comments to The Honorable Bernard Forrest, Mayor of the Village of Deerfield, 850 Waukegan Road, Deefield, Illinois 60015.

Illinois	Elmhurst (City) DuPage County.	Unnamed Ponding Area ...	Located north of Van Buren Street, south of Madison Street, east of Hillside Avenue, and west of Bryan Avenue.	*664	*662
			Located north of Butterfield Road, south of Harrison Street, east of Spring Avenue, and west of Saylor Avenue.	*664	*661

Maps available for inspection at the Public Works Department, Elmhurst City Hall, 209 North York Street, Elmhurst, Illinois.

Send comments to The Honorable Thomas D. Marcucci, Mayor of the City of Elmhurst, 209 North York Street, Elmhurst, Illinois 60126–2759.

Illinois	Grayslake (Village) Lake County.	Mil Creek	At intersection of Bonnie Brae Avenue and Pierce Court.	*772	*773

Maps available for inspection at the Municipal Building, 33 South Whitney Street, Grayslake, Illinois.

Send comments to The Honorable Pat Carey, Mayor of the Village of Grayslake, 33 South Whitney Street, Grayslake, Illinois 60030.

Illinois	Green Oaks (Village) Lake County.	Tributary to Middle Fork North Branch Chicago River.	Entire shoreline within the community	None	*682

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Municipal Building, 2020 O'Plaine Road, Green Oaks, Illinois.

Send comments to The Honorable Thomas Adams, Mayor of the Village of Green Oaks, 2020 O'Plaine Road, Green Oaks, Illinois 60048.

Illinois	Gurnee (Village) Lake County.	South Fork Gurnee Tributary.	At Washington Street crossing	None	*687

Maps available for inspection at the Municipal Building, 325 North O'Plaine Road, Green Oaks, Illinois.

Send comments to The Honorable Richard Welton, Mayor of the Village of Green Oaks, 325 North O'Plaine Road, Green Oaks, Illinois 60031.

Illinois	Hawthorn Woods (Village) Lake County.	West Branch Indian Creek	Approximately 1,500 feet east of intersection of Midlothian Road and Marilyn Lane.	*789	*792

Maps available for inspection at the Municipal Building, 2 Lagoon Drive, Hawthorn Woods, Illinois.

Send comments to Mr. Doug Challos, President of the Village of Hawthorn Woods, 2 Lagoon Drive, Hawthorn Woods, Illinois 60047.

Illinois	Highland Park (City) Lake County.	Lake Michigan	Entire shoreline within the community	*584	*585
		Skokie River	At the county boundary (Lake Cook Road).	*632	*633
			At Old Elm Road	*651	*650
		Middle Fork North Branch Chicago River.	Approximately 1,100 feet upstream of Half Day Road.	*558	*559
			At Lake Cook Road (county boundary)	*650	*651

Maps available for inspection at the Municipal Building, 1707 St. John Avenue, Highland Park, Illinois.

Send comments to The Honorable Daniel Pierce, Mayor of the City of Highland Park, 1707 St. John Avenue, Highland Park, Illinois 60035.

Illinois	Highwood (City) Lake County.	Lake Michigan	Entire shoreline within community	None	*585

Maps available for inspection at the Municipal Building, 17 Highwood Avenue, Highwood, Illinois.

Send comments to The Honorable John Sirotti, Mayor of the City of Highwood, 17 Highwood Avenue, Highwood, Illinois 60040.

Illinois	Lake Bluff (Village) Lake County.	Lake Michigan	Entire shoreline within community	*584	*585
		Skokie River	Approximately 1,650 feet upstream of Metra Railroad bridge.	*669	*666
			Approximately 100 feet downstream of Elgin Joliet and Eastern Railroad.	*671	*670

Maps available for inspection at the Municipal Building, Village of Lake Bluff, 40 East Center Avenue, Lake Bluff, Illinois.

Send comments to The Honorable Fred G. Wacker III, President of the Village of Lake Bludd, 40 East Center Avenue, Lake Bluff, Illinois 60048.

Illinois	Lake County (Unincorporated Areas).	Timber Lake Drain	Approximately 125 feet downstream of State Route 59.	None	*750
			At downstream side of State Route 59	None	*750
		Lake Michigan	Entire shoreline within community	*584	*585
		Honey Lake Drain	Approximately 375 feet upstream of Pinewood Drive.	None	*830
			Approximately 650 feet upstream of Pinewood Drive.	None	*831
		North Flint Creek	Backwater area approximately 1,500 feet east of intersection of Miller Road and State Route 59.	None	*768
			Approximately 1,650 feet upstream of Echo Lake Road.	None	*852
		Diamond Lake	Entire shoreline within county	*742	*744
		Echo Lake	Entire shoreline within community	None	*844
		Flint Creek Tributary	Approximately 100 feet downstream of Elgin, Joliet, and Eastern Railroad.	None	*815
			Approximately 200 feet downstream of North Lake Shore Drive.	None	*816
		West Fork North Branch Chicago River.	Approximately 100 feet upstream of Montgomery Road.	*664	*660
			At Everett Road	None	*672

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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Tributary A to Buffalo Creek.	Approximately 800 feet upstream of confluence with Buffalo Creek.	*696	*697
			Approximately 1,600 feet upstream of confluence with Buffalo Creek.	None	*699
		Middle Fork North Branch Chicago River.	Approximately 1,350 feet downstream of Half Day Road (State Route 22).	*658	*659
			Approximately 100 feet downstream of Interstate 94.	None	*711
		Bruce Tributary	Approximately 500 feet north of North Bruce Circle.	None	*837
			Approximately 400 feet upstream of the upstream corporate limits.	None	*837
		Diamond Lake Drain	Approximately 100 feet downstream of Elgin, Joliet, and Eastern Railroad.	*725	*728
			Approximately 1,100 feet upstream of Elgin, Joliet, and Eastern Railroad.	*728	*731
		Skokie River	Approximately 300 feet upstream of Elgin, Joliet, and Eastern Railroad.	*673	*672
			Approximately 1,450 feet upstream of 29th Street.	None	*700
		Unnamed Ponding Area	Approximately 500 feet Northeast of the intersection of Belvidere Road and Darrell Road.	None	*752
		Tributary to Middle Fork North Branch Chicago River.	Entire length within the county	*682	*682

Maps available for inspection at the Lake County Planning and Zoning Department, 18 North County Street, Waukegan, Illinois.

Send comments to The Honorable Robert Depke, Chairman of the Lake County Board of Commissioners, 18 North County Street, Waukegan, Illinois 60085.

Illinois	Lake Forest (City) Lake County.	Lake Michigan	Entire shoreline within community	*584	*585
		Middle Fork North Branch Chicago River.	Approximately 1,450 feet upstream of State Route 22 (Half Day Road).	*660	*659
			Approximately 4,200 feet downstream of Wisconsin Central Limited Railroad crossing.	*670	*669
		Skokie River	Approximately 100 feet upstream of Old Elm Road.	*651	*652
			Approximately 1,650 feet upstream of Metro Railroad bridge.	*669	*666
		West Fork North Branch Chicago River.	Approximately 0.3 mile upstream of Half Day Road (State Route 22).	None	*668
			Approximately 0.3 mile downstream of Everett Road.	None	*671

Maps available for inspection at the Municipal Building, 220 East Deerpath Road, Lake Forest, Illinois.

Send comments to The Honorable Charles Clarke, Mayor of the City of Lake Forest, 220 Deerpath Road, Lake Forest, Illinois 60045.

Illinois	Libertyville (Village) Lake County.	Seavey Drain Ditch	Approximately 500 feet west of the intersection of Sylvan Drive and Dawes Street.	None	*701
		Bull Creek	Approximately 1,100 feet downstream of State Route 21.	None	*671
			Approximately 0.42 mile upstream of Butterfield Road.	None	*715
		Bull Creek Tributary	At confluence of Bull Creek	None	*676
			Approximately 1,850 feet upstream of confluence with Bull Creek.	None	*687

Maps available for inspection at the Municipal Building, 200 East Cook Avenue, Libertyville, Illinois.

Send comments to The Honorable Joan Eckman, Mayor of the Village of Libertyville, 200 East Cook Avenue, Libertyville, Illinois 60048.

Illinois	Lincolnshire (Village) Lake County.	West Fork North Branch Chicago River.	Approximately 1,500 feet upstream of Duffy Lane.	*667	*666
			Approximately 1.1 miles upstream of Half Day Road (State Route 22).	None	*671
		Aptahisic Creek	Approximately 2,750 feet upstream of Busch Road.	None	*657

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,400 feet upstream of Busch Road.	None	*658

Maps available for inspection at the Municipal Building, One Old Half Day Road, Lincolnshire, Illinois.

Send comments to the Honorable Barbara LaPiana, Mayor of the Village of Lincolnshire, One Old Half Day Road, Lincolnshire, Illinois 60069.

Illinois	North Barrington (Village) Lake County.	North Flint Creek	Approximately 400 feet upstream of Rugby Road.	None	*805
			Approximately 1,250 feet upstream of Rugby Road.	None	*808

Maps available for inspection at the Municipal Building, 111 North Old Barrington Road, North Barrington, Illinois.

Send comments to The Honorable Walter Clarke, President of the Village of North Barrington, 111 North Old Barrington Road, North Barrington, Illinois 60010.

Illinois	North Chicago (City) Lake County.	Lake Michigan	Entire shoreline within the community	*584	*585
		Skokie River	Approximately 100 feet downstream of Elgin, Joliet and Eastern Railroad.	None	*670
			Approximately 1,450 feet upstream of 29th Street.	None	*700
		Middle Fork North Branch Chicago River.	Approximately 250 feet downstream of Atkinson Road.	None	*679
			Approximately 350 feet upstream of Atkinson Road.	None	*682

Maps available for inspection at the Municipal Building, 1850 Lewis Avenue, North Chicago, Illinois.

Send comments to The Honorable Bobby Thompson, Mayor of the City of North Chicago, 1850 Lewis Avenue, North Chicago, Illinois 60064

Illinois	Oakwood (Village) Paulding County.	Auglaize River	Approximately 0.5 mile downstream of Norfolk and Southern Railroad.	None	*711
			Approximately 0.6 mile upstream of State Route 613.	None	*712

Maps available for inspection at the Village Hall, 228 North First Street, Oakwood, Ohio.

Send comments to The Honorable Martin W. Harmon, Mayor of the Village of Oakwood, P.O. Box 126, Oakwood, Ohio 45873.

Illinois	Park City (City) Lake County.	Skokie River	On downstream side of Washington Street bridge.	None	*700
			Approximately 0.4 mile upstream of 29th Street.	None	*700

Maps available for inspection at the Municipal Building, 3420 Kehm Boulevard, Park City, Illinois.

Send comments to The Honorable Robert Allen, Mayor of the City of Park City, 3420 Khm Boulevard, Park City, Illinois 60085.

Illinois	Riverwoods (Village) Lake County.	West Fork North Branch Chicago River.	At Interstate 94	*665	*664
			Approximately 0.4 mile upstream of Duffy Lane.	*667	*666

Maps available for inspection at the Municipal Building, 300 Portwine Road, Riverwoods, Illinois.

Send comments to The Honorable Charles Smith, President of the Village of Riverwoods, 300 Portwine Road, Riverwoods, Illinois 60015–3898.

Illinois	Vernon Hills (Village) Lake County.	Indian Creek	Ponding areas south of Westmoreland Drive east of intersection with State Highway 83.	None	*703
		Diamond Lake Drain	At State Route 83	*712	*721
			Approximately 1,000 feet upstream of State Route 83.	*715	*722

Maps available for inspection at the Municipal Building, 290 Evergreen Drive, Vernon Hills, Illinois.

Send comments to The Honorable Roger Byrne, Mayor of the Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.

Illinois	Waukegan (City) Lake County.	Lake Michigan	Entire shoreline within the community	*584	*585
		Irondale Creek	Approximately 0.49 mile upstream of Guerin Road.	None	*676

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.59 mile upstream of Guerin Road.	None	*679
		Skokie River	Just downstream of Washington Street	None	*700
			Approximately 500 feet upstream of 29th Street.	None	*700
		Middle Fork North Branch Chicago River.	Approximately 1,250 feet downstream of Wisconsin Central Limited Railroad.	None	*692
			Approximately 1,600 feet downstream of Interstate 94.	None	*704

Maps available for inspection at the Municipal Building, 410 Robert V. Sabonjian Place, Waukegan, Illinois.

Send comments to The Honorable William F. Durkin, Mayor of the City of Waukegan, 410 Robert V. Sabonjian Place, Waukegan, Illinois 60085.

Illinois	Winthrop Harbor (Village) Lake County.	Lake Michigan	Entire shoreline within the community	*584	*585
		Kellogg Ravine	Approximately 1,150 feet downstream of Metra Crossing.	None	*653
			Approximately 1,900 feet downstream of State Highway 173.	None	*664

Maps available for inspection at the Municipal Building, 830 Sheridan Road, Winthrop Harbor, Illinois.

Send comments to The Honorable Michael D. Lambert, Mayor of the Village of Winthrop Harbor, 830 Sheridan Road, Winthrop Harbor, Illinois 60096.

Illinois	Zion (City) Lake County.	Lake Michigan	Entire shoreline within the community	*584	*585
		Kellogg Ravine	Approximately 0.76 mile upstream of confluence with North Branch Kellogg Ravine.	None	*631
			Approximately 1.70 miles upstream of confluence with North Branch Kellogg Ravine.	None	*643

Maps available for inspection at the Municipal Building, 2828 Sheridan Road, Zion, Illinois.

Send comments to The Honorable Billy J. McCullough, Mayor of the City of Zion, 2828 Sheridan Road, Zion, Illinois 60099.

Michigan	Plymouth (Charter Township) Wayne County.	Middle River Rouge	Approximately 2,100 feet downstream of I–275 (At downstream corporate limits).	None	*667
			Approximately 1,000 feet upstream of Phoenix Dam (At upstream corporate limits).	None	*731

Maps available for inspection at the Township Hall, 42350 Ann Arbor Road, Plymouth, Michigan.

Send comments to Ms. Kathleen Keen-McCarthy, Charter Township of Plymouth Supervisor, 42350 Ann Arbor Road, Plymouth, Michigan 48170.

Michigan	Plymouth (City) Wayne County.	Middle River Rouge	Approximately 400 feet downstream of Edward Hines Drive (Downstream of corporate limits).	None	*671
			Approximately 600 feet upstream of Mill Street.	None	*709

Maps available for inspection at the City Hall, 201 South Main Street, Plymouth, Michigan.

Send comments to The Honorable Douglas Miller, Mayor of the City of Plymouth, 201 South Main Street, Plymouth, Michigan 48170–1688.

New Jersey	Cape May Point (Borough).	Atlantic Ocean	Approximately 100 feet southwest of the intersection of Harvard and Coral Avenues.	*10	*12
			Approximately 300 feet southwest of the intersection of Harvard and Coral Avenues.	*14	*15
			At the intersection of Pearl Avenue and Cape Avenue.	*None	*10

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Cape May Point Municipal Building, Cape May Point, New Jersey.

Send comments to The Honorable Malcolm Fraser, Mayor of the Borough of Cape May Point, P.O. Box 323, Cape May Point, New Jersey 08212.

New Jersey	Newark (City) Essex County.	Peddie Ditch	West of main Newark International Airport terminal.	*10	*9.5
		Port Newark Channel	Intersection of Import Street and Marsh Street.	*10	*9.5
		Newark Bay	At confluence of Port Newark Channel	*10	*9.5
		Elizabeth Channel	Entire length within the City of Newark	*10	*9.5

Maps available for inspection at the Newark City Hall, Department of Engineering, 920 Broad Street, Newark, New Jersey.

Send comments to The Honorable Sharpe James, Major of the City of Newark, 920 Broad Street, Newark, New Jersey 07102.

Ohio	Florida (Village) Henry County.	Maumee River	Approximately 0.57 mile downstream of the Henry Street bridge.	*None	*663
			Approximately 1,700 feet upstream of the Henry Street bridge.	*None	*665

Maps available for inspection at the Village of Florida Clerk's Office, East High Street, Route 2, Napoleon, Ohio.

Send comments to The Honorable Katherine Gessner, Mayor of the Village of Florida, 103 South Canal Street, Route 2, Napoleon, Ohio 43545.

Ohio	Henry County (Unincorporated Areas).	Maumee River	Approximately 1.9 miles downstream of the confluence of Big Creek.	None	*650
			Approximately 2 miles upstream of County Road 2 (Henry Street).	None	*667

Maps available for inspection at the Henry County Planning Office, 104 East Washington Street, Hahn Center, Suite 301, Napoleon, Ohio.

Send comments to Mr. Richard C. Bertz, President of the Henry County Board of Commissioners, P.O. Box 546, Napoleon, Ohio 43454.

Ohio	Louisville (City) Stark County.	Broad-Monter Creek	At State Route 44	*1104	*1102
			Approximately 500 feet upstream of Brookfield Avenue.	None	*1160
		North Chapel Creek	Approximately 660 feet upstream of the confluence with East Branch Nimishillen Creek.	*1103	*1104
			At upstream corporate limits	None	*1130

Maps available for inspection at the City of Louisville, Planning and Development, 215 South Mill Street, Louisville, Ohio.

Send comments to Mr. Robert Miller, Louisville City Manager, 215 South Mill Street, Louisville, Ohio 44641.

Ohio	Paulding County (Unincorporated Areas).	Maumee River	Approximately 0.6 mile downstream of downstream county boundary.	None	*695
			Approximately 0.2 mile upstream of upstream county boundary.	None	*724
		Auglaize River	Approximately 880 feet upstream of confluence at Flatrock Creek.	None	*704
			At upstream county boundary	None	*715
		Flatrock Creek/Auglaize River Overflow Channel.	At upstream of County Route 171	None	*704
			At diversion from Auglaize River	None	*706

Maps available for inspection at the Paulding County Commissioners Office, 115 North William Street, Paulding, Ohio.

Send comments to Mr. Carl Langham, 115 North William Street, Paulding, Ohio 45879.

Pennsylvania	Hampden (Township) Cumberland County.	Navy Ship Parts Control Center.	At the confluence with Trindle Spring Run	None	*378
		Drainage Channel	Approximately 0.4 mile upstream of the second Gabion Dam.	None	*417

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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Hampden Township Building, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania.					
Send comments to Mr. John E. Bradley, Jr., Hampden Township Manager, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania 17055–3097.					
Pennsylvania	Mount Holly Spring (Borough) Cumberland County.	Mountain Creek	Approximately 900 feet downstream of Conrail.	*536	*538
			Approximately 300 feet downstream of upstream corporate limits.	*600	*600
Maps available for inspection at the Mount Holly Springs Municipal Building, 200 Harmon Street, Mount Holly Springs, Pennsylvania.					
Send comments to Mr. James Collins II, Borough of Mount Holly Springs Council President, 200 Harmon Street, Mount Holly Springs, Pennsylvania 17065.					
Pennsylvania	Oneida (Township) Huntingdon County.	Juniata River	At the Borough of Huntingdon northern corporate limits.	None	*638
			Approximately 1,100 feet upstream of the northern corporate limits of the Borough of Huntingdon.	None	*639
		Standing Stone Creek	At the southern corporate limits of the Borough of Huntingdon.	None	*615
			Approximately 500 feet upstream of the southeastern corporate limits of the Borough of Huntingdon.	None	*615
Maps available for inspection at the Township of Oneida, Stone Creek Road, Oneida, Pennsylvania.					
Send comments to Mr. John A. Wagner, Chairman of the Township of Oneida, R.D. 2, Huntingdon, Pennsylvania 16652.					
Pennsylvania	Philadelphia (City) Philadelphia County.	Schuylkill River	Approximately 1,600 feet upstream of Passyunk Avenue.	*11	*10
			Approximately 1.4 miles upstream of Flat Rock Dam (At the upstream county boundary).	*57	*54
		Cobbs Creek	Approximately 1,275 feet upstream of Market Street.	*74	*73
			Approximately 0.3 mile downstream of confluence with Indian Creek.	*87	*86
		Byberry Creek	At confluence with Poquessing Creek	*28	*27
			At the downstream side of Knights Road	*28	*27
Maps available for inspection at the Philadelphia Planning Commission, 1515 Market Street, Philadelphia, Pennsylvania or the Department of Licenses and Inspection, 1600 Arch Street, Room 505, Philadelphia, Pennsylvania 19102.					
Send comments to Mr. Edward G. Rendell, Mayor of the City of Philadelphia, Room 215, City Hall, Philadelphia, Pennsylvania 19107.					
Pennsylvania	South Middleton (Township) Cumberland County.	Mountain Creek	Approximately 650 feet upstream of confluence with Yellow Breeches Creek.	*505	*506
			Approximately 1.1 miles upstream of the Borough of Mount Holly Springs southern corporate limits.	None	*613
Maps available for inspection at the Township Building, 520 Park Drive, Boiling Springs, Pennsylvania.					
Send comments to Mr. Duff Manweiler, Chairman of the Township of South Middleton Board of Supervisors, 520 Park Drive, Boiling Springs, Pennsylvania 17007.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8177 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

[Docket No. FEMA–7134]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Calhoun County (Unincorporated Areas).	Two Bayou Main Canal	Approximately 300 feet downstream of State Highway 4.	None	*113
			Just downstream of a railroad spur located approximately 2,000 feet upstream of Dogwood Creek.	None	*123
			Just downstream of State Highway 274	None	*127
			Approximately 200 feet upstream of divergence from Two Bayou Old Channel.	None	*135
			Approximately 900 feet downstream of State Highway 203 and East Camden and Highland Railroad.	None	*155
			Approximately 17,540 feet upstream of East Camden and Highland Railroad.	None	*185
		Two Bayou Old Channel	Approximately 300 feet downstream of State Highway 274.	None	*120
			At County Road	None	*128
			Approximately 1,000 feet downstream of divergence from Two Bayou Main Canal.	None	*134
		Dogwood Creek	Approximately 200 feet upstream of confluence with Two Bayou Main Canal.	None	*120
			Approximately 200 feet upstream of State Highway 274.	None	*135
			Approximately 200 feet upstream of State Highway 203.	None	*175
			Approximately 11,680 feet upstream of State Highway 203.	None	*205

ACTION: Proposed rule.

required either to adopt or to show

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Dogwood Creek Tributary .	Approximately 700 feet upstream of confluence with Dogwood Creek.	None	*145
			Just upstream of an unnamed road located approximately 8,240 feet above mouth.	None	*152

Maps are available for inspection at the Calhoun County Judge's Office, County Courthouse (in County Square), 2nd and Main Street, Hampton, Arkansas.

Send comments to The Honorable Arthur Jones, County Judge, Calhoun County, County Courthouse, P.O. Box 626, Hampton, Arkansas 71744.

Arkansas	East Camden (City) Ouachita County.	Two Bayou Old Channel ..	Approximately 650 feet upstream of Alley B extended.	None	*119
			Just downstream of State Highway 274 ...	None	*120

Maps are available for inspection at City Hall, City of East Camden, 100 North Womble, East Camden, Arkansas.

Send comments to The Honorable Jack Phar, Mayor, City of East Camden, P.O. Box 3046, East Camden, Arkansas 71701.

Arkansas	Ouachita County (Unincorporated Areas).	Two Bayou Main Canal	Approximately 300 feet downstream of State Highway 4.	None	*113
		Two Bayou Old Channel ..	Approximately 300 feet downstream of State Highway 274.	None	*120
			Approximately 1,700 feet downstream of State Highway 205.	None	*134
		Two Bayou Main Canal	Just upstream of State Highway 203	None	*160
			Approximately 350 feet downstream of an unnamed road located 5,300 feet upstream of State Highway 203.	None	*164
			Approximately 17,650 feet upstream of State Highway 203.	None	*185

Maps are available for inspection at the County Judge's Office, Court House, 145 Jefferson Street, Camden, Arkansas.

Send comments to The Honorable Paul Lucus, County Judge, Ouachita County, P.O. Box 644, Camden, Arkansas 71701.

Hawaii	Hawaii County (Unincorporated Areas).	Keopu Drainageway	Just upstream of Kuakini Highway	*36	*36
			Approximately 1,300 feet upstream of Kuakini Highway.	*114	*110
			Approximately 50 feet downstream of Hawaii Belt Road.	*220	*220
		Waiaha Drainageway Spillflow No. 2.	Just upstream of Hawaii Belt Road	*315	*315
			Approximately 1,200 feet upstream of Hawaii Belt Road.	*327	*372
			Approximately 500 feet downstream of Hualali Road.	*440	*440
			.....	.	.

Maps are available for inspection at the Hawaii Office Building, 25 Aupuni Street, Hilo, Hawaii.

Send comments to The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, Hawaii 96720.

Kansas	Independence (City) Montgomery County.	Elk River	Approximately 3,340 feet upstream of U.S. Highway 75/Kansas State Highway 96.	None	*765
			Approximately 5,080 feet upstream of U.S. Highway 75/Kansas State Highway 96.	None	*764

Maps are available for inspection at City Hall, 120 North Sixth Street, Independence, Kansas.

Send comments to The Honorable Mike Seller, Mayor, City of Independence, City Hall, 120 North Sixth Street, Independence, Kansas 67301.

Missouri	Sedalia (City) Pettis County.	Brushy Creek	At the corporate limits, approximately 640 feet downstream of West Main Street.	None	*793
			Approximately 200 feet upstream of West Main Street.	None	*798
			Just upstream of State Fair Boulevard, eastbound lane.	None	*820
			Just upstream of Barrett Avenue	None	*841
			Just downstream of 9th Street	None	*855

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Brushy Creek Tributary #1	At confluence with Brushy Creek	None	*794
			Just upstream of culvert at West Treatment Plant.	None	*800
			Approximately 200 feet upstream of State Fair Road.	None	*814
			Approximately 40 feet upstream of U.S. Highway 50.	None	*822
		Sewer Branch	At the north corporate limits, approximately 1,960 feet downstream of U.S. Highway 65.	None	*811
			Just upstream of William Parkhurst Drive	None	*824
			Approximately 100 feet upstream of Missouri Avenue.	None	*844
			Just downstream of Washington Avenue .	None	*861

Maps are available for inspection at the Engineering Department, City of Sedalia, City Hall, Second Floor, 200 South Osage Avenue, Sedalia, Missouri.

Send comments to The Honorable Jane Gray, Mayor, City of Sedalia, City Hall, Second Floor, 200 South Osage Avenue, Sedalia, Missouri 65301.

Oklahoma	Cleveland (County)	Canadian River	At lower limit of detailed study located approximately 7,000 feet downstream of confluence of Walnut Creek.	N/A	*1,020
	Lexington (City)		Just upstream of U.S. Highway 77	*1,034	*1,035
			Approximately 300 feet downstream of confluence of Chouteau Creek.	*1,042	*1,044
			Approximately 500 feet upstream of Atchison, Topeka, and Santa Fe Railroad.	*1,059	*1,062
	Noble (Town)		At Cemetery Road extended	*1,072	*1,072
	Norman (City)		Just downstream of U.S. Highway 35	*1,105	*1,107
			At intersection of Robinson Street and 60th Avenue.	*1,126	*1,126
			At intersection of Franklin Road and 60th Avenue.	*1,142	*1,140
	Oklahoma City (City).		Approximately 800 feet downstream of confluence of Canadian River Tributary 1.	*1,148	*1,147
			Just upstream of Interstate Highway 44 ...	*1,163	*1,165
			At Canadian County-Cleveland County line.	N/A	*1,180
	Slaughterville (Town).	Chouteau Creek	Approximately 2,000 feet downstream of State Highway 77.	N/A	*1,045
			Just upstream of State Highway 77	N/A	*1,055
			Approximately 200 feet downstream of Duffy Road.	N/A	*1,061
			Just downstream of Bryand Road	N/A	*1,071
	Moore (City)	Little River	Approximately 300 feet upstream of Olympic Street extended.	N/A	*1,246
			Just downstream of Garland Avenue	N/A	*1,259
			Approximately 60 feet upstream of Nail Parkway.	N/A	*1,267
		Kelly Creek	Approximately 600 feet downstream of NW 5th Street.	N/A	*1,124
			Approximately 50 feet upstream of Maxwell Avenue.	N/A	*1,240
			AT NW 20th Street	N/A	*1,268
			Just upstream of NW 22nd Street	N/A	*1,273
		Northmoore Creek	Just upstream of Bellaire Drive	N/A	*1,246
			At NE 18th Street	N/A	*1,254
			Approximately 100 feet downstream of NE 27th Street.	N/A	*1,280
			Approximately 1,600 feet upstream of NE 27th Street.	N/A	*1,292

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Office of County Commissioners, Cleveland County Courthouse, 201 South Jones, Norman, Oklahoma.					
Send comments to The Honorable Leroy Krohmer, Chairman, Cleveland County Board of Commissioners, County Courthouse, 201 South Jones, Norman, Oklahoma 73069–6099.					
Maps are available for inpsection at City Hall, 130 West Almond, Lexington, Oklahoma.					
Send comments to The Honorable Luther Dean, Mayor, City of Lexington, City Hall, 130 West Almond, Lexington, Oklahoma 73051–0997.					
Maps are available for inspection at City Hall, 304 South Main, Noble, Oklahoma.					
Send comments to The Honorable Dee Downer, Mayor, Town of Noble, City Hall, 304 South Main, Oklahoma 73068.					
Maps are available for inspection at City Hall, 201 West Gray, Norman, Oklahoma.					
Send comments to The Honorable Bill Nations, Mayor, City of Norman, City Hall, 201 West Gray, Norman, Oklahoma 73070.					
Maps are available for inspection at the Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, Oklahoma.					
Send comments to The Honorable Ronald Norick, Mayor, City of Oklahoma City, City Hall, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102					
Maps are available for inspection at City Hall, 12021 Slaughterville Road, Lexington, Oklahoma.					
Send comments to The Honorable Terry Childress, Mayor, Town of Slaughterville, City Hall, 12021 Slaughterveille Road, Lexington, Oklahoma 73051–0997					
Maps are available for inspection at City Hall, 301 North Broadway, Moore, Oklahoma					
Send comments to The Honorable Glenn Lewis, Mayor, City of Moore, City Hall, 301 North Broadway, Moore Oklahoma 73153.					
Oregon	Keizer (City) Marion County.	Willamette River	Approximately 900 feet downstream of Riverwood Drive extended, at the City of Keizer corporate limits.	*133	*135
			Approxiamtely 650 feet upstream of Cummings Lane extended.	*136	*136
			Approximately 1,000 feet upstream of Way Drive extended, at the City of Keizer corporate limits.	*137	*138
Maps are available for inspection at City Hall, 930 Chemawa Road, N.E., Keizer, Oregon.					
Send comments to The Honorable Dennis Kohol, Mayor, City of Keizer, City Hall, P.O. Box 21000, Keizer, Oregon 97307–1000.					
Oregon	Marion County (Unincorporated Areas).	Willamette River	Approximately 6.9 miles below State Highway 22 westbound (Marion Street Northeast).	*123	*124
			Approximately 4.2 miles below State Highway 22 westbound (Marion Street Northeast).	*133	*134
			Approximately 2 miles below State Highway 22 westbound (Marion Street Northeast).	*137	*137
			Approximately 0.6 mile above State Highway 22 westbound (Marion Street Northeast).	*142	*143
			Approximately 1 mile above State Highway 22 westbound (Marion Street Northeast).	*144	*144
Maps are available for inspection at the Marion County Courthouse, 100 High Street, N.E., Salem, Oregon.					
Send comments to The Honorable Ken Roudybush, Administration Officer, Marion County Board of Commissioners, Marion County Courthouse, 100 High Street, N.E., Salem, Oregon 97301.					
Oregon	Polk County (Unincorporated Areas).	Willamette River	Approximately 13,500 feet downstream of confluence of Glenn Creek.	*123	*124
			Approximately 500 feet downstream of confluence of Glenn Creek.	*132	*133
			Approximately 1,300 feet downstream of confluence of Glenn Creek.	*134	*135
			Approximately 3,100 feet downstream of Southern Pacific Railroad.	*140	*141
			At State Highway 22	*142	*142

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Community Development Department, Polk County Courthouse, 850 Main Street, Dallas, Oregon.					
Send comments to The Honorable Ron Dodge, Chairman, Polk County Board of Commissioners, Polk County Courthouse, 850 Main Street, Dallas, Oregon 97338.					
Oregon	Salam (City) Marion and Polk Counties.	Willamette River	Approximately 3.7 miles downstream of confluence with Mill Creek.	*133	*133
			Approximately 3.3 miles downstream of confluence with Mill Creek.	*134	*135
			Approximately 2.1 miles downstream of confluence with Mill Creek.	*136	*137
			Approximately 0.8 mile downstream of confluence with Mill Creek.	*139	*139
			Approximately 300 feet downstream of State Highway 22 eastbound Center Street Northeast).	*142	*142
Maps are available for inspection at 555 Liberty Street S.E., Salem, Oregon.					
Send comments to The Honorable R.G. Anderson-Wyckoff, Mayor, City of Salem, 555 Liberty Street S.E., Room 220, Salem, Oregon 97301.					
South Dakota	Pennington County (Unincorporated Areas).	Rapid Creek	Approximately 4,500 feet upstream of Jolly Lane (County Road 274).	*3,101	*3,101
			Approximately 1,250 feet downstream of Valley Drive.	*3,115	*3,114
			Approximately 2,350 feet upstream of Valley Drive.	*3,125	*3,125
			Approximately 4,300 feet upstream of Valley Drive.	*3,129	*3,129
			Approximately 5,500 feet downstream of East St. Patrick Street.	*3,133	*3,132
Maps are available for inspection at Pennington County Planning Division, 300 Sixth Street, Rapid City, South Dakota.					
Send comments to The Honorable Kathy Work, Chairperson, Pennington County Board of Commissioners, 315 St. Joseph Street, Rapid City, South Dakota 57701.					
South Dakota	Rapid City (City) Pennington County.	Rapid Creek	Approximately 4,500 feet upstream of Jolly Lane (County Road 274).	*3,101	*3,101
			Approximately 5,500 feet downstream of East St. Patrick Street.	*3,133	*3,132
			Approximately 4,500 feet upstream of Jolly Lane (County Road 274).	*3,101	*3,101
			Approximately 1,200 feet downstream of East St. Patrick Street.	*3,143	*3,141
			Approximately 1,500 feet upstream of East St. Patrick Street.	*3,149	*3,149
			Approximately 300 feet upstream of Creek Drive.	*3,158	*3,156
			Approximately 200 feet upstream of Campbell Avenue.	*3,166	*3,167
			Approximately 300 feet upstream of Cherry Avenue.	*3,172	*3,173
			Approximately 500 feet downstream of East Main Street.	*3,185	*3,186
			Approximately 500 feet upstream of Maple Avenue.	*3,204	*3,203
			Approximately 450 feet upstream of East Boulevard.	*3,207	*3,206
			Just upstream of Eighth Street	*3,226	*3,227
			Approximately 250 feet upstream of West Omaha Street.	*3,265	*3,262
			Approximately 150 feet downstream of Sheridan Lake Drive.	*3,282	*3,281
			Approximately 250 feet upstream of Jackson Boulevard.	*3,315	*3,314
			Approximately 550 feet downstream of Park Drive.	*3,344	*3,340

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,700 feet upstream of confluence of Rapid Creek with Red Rock Canyon.	*3,386	*3,386

Maps are available for inspection at Rapid City Engineering Division, 300 Sixth Street, Rapid City, South Dakota.

Send comments to The Honorable Edward McLaughlin, Mayor, City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701–2724.

Texas	Collin County (Unincorporated Areas).	Lake Ray Hubbard	From Collin County-Rockwall County boundary to State Highway 78.	None	*437

Maps are available for inspection at Collin County Courthouse, Department of Public Works, 210 South McDonald Street, McKinney, Texas.

Send comments to The Honorable Ron Harris, Collin County Judge, Country Courthouse, Suite 626, 210 South McDonald Street, McKinney, Texas 75069.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8178 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–33, RM–8597]

Radio Broadcasting Services; Fairbanks, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Northern Television, Inc. seeking the allotment of FM Channel 245C3 to Fairbanks, Alaska, as that community's sixth local FM broadcast service. Coordinates used for Channel 245C3 at Fairbanks are North Latitude 64–50–16 and West Longitude 147–42–59. Fairbanks is located with 320 kilometers (199 miles) of the United States-Canadian border, and therefore, the Commission must obtain concurrence of the Canadian government to this proposal.

DATES: Comments must be filed on or before May 22, 1995, and reply comments on or before June 6, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Northern Television, Inc., Attn: Henry H. Hove, President, Fairbanks Division, 3528 International Way, Fairbanks, AK 99701.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–33, adopted March 22, 1995, and released March 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–8133 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–34; RM–8600]

Radio Broadcasting Services; Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Conway Broadcasting proposing the allotment of Channel 222C at Rapid City, South Dakota, as the community's seventh local FM transmission service. Channel 222C can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 222C at Rapids City are North Latitude 44–04–50 and West Longitude 103–13–50.

DATES: Comments must be filed on or before May 22, 1995, and reply comments on or before June 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Fremont Ave., South, Minneapolis, Minnesota 55409 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–34, adopted March 22, 1995, and released March 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–8134 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Chapter I

[Docket No. HM–222; Notice No. 95–5]

Improving the Hazardous Materials Safety Program; Public Meetings and Request for Comments Related to Regulatory Review and Customer Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public meetings and request for comments.

SUMMARY: This notice announces a nationwide series of seven public meetings during April and May to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program.

DATES: *Meetings:* Public meetings will be held as follows:

(1) April 19, 1995, in San Francisco, California.
(2) April 20, 1995 in Chicago, Illinois.
(3) April 26, 1995 in Clearwater Beach, Florida.
(4) April 27, 1995 in Tampa, Florida.
(5) April 28, 1995 in Tampa, Florida.
(6) May 16, 1995 in Houston, Texas.
(7) May 18, 1995 in Minneapolis, Minnesota.

Comments: This notice invites comments on both regulatory reform and improved customer service. Participation in the meeting is not a prerequisite for the submission of written comments. Please submit comments before May 31, 1995.

ADDRESSES: *Meetings:* See Supplementary Information for specific times, locations and agendas.

Comments: Please address written comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments may also be faxed to (202)366–3753. Comments should identify the docket (Docket No. HM–222). The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. RSPA is reviewing the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), and associated procedural rules (49 CFR Parts 106 and 107), in response to the President's directive.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order requires continual reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from customers of its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

Conduct of Meetings

Meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer reserves the right to limit time allocated to speakers, if necessary, to ensure that all have an opportunity to speak. Conversely, meetings may conclude before the scheduled time if all persons wishing to participate have been heard.

Meeting Schedule and Agendas

The public meetings will be held as follows:

(1) April 19, 1995, from 9:00 a.m. to 4:00 p.m., in San Francisco, California, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, 1st floor conference rooms. This meeting will have an open agenda.

(2) April 20, 1995, from 9:00 a.m. to 4:00 p.m., in Chicago, Illinois, Banker's Building (Health and Human Services Facility), 105 West Adams Street, Chicago, Illinois 60603, Floor/Room: 10th/1015. This meeting will have an open agenda.

(3) April 26, 1995, from 1:00 p.m. to 4:00 p.m., in Clearwater Beach, Florida, Sheraton Sand Key Resort Hotel, 1160 Gulf Boulevard, Clearwater Beach, Florida 34630. This meeting, held immediately after a previously scheduled Compressed Gas Association meeting, will focus primarily on the manufacture, maintenance and testing of compressed gas cylinders.

(4) April 27, 1995, from 1:00 p.m. to 4:00 p.m., in Tampa, Florida, Crowne Plaza, Sabal Park, 10221 Princess Palm Avenue, Tampa, Florida 33610. This meeting will have an open agenda.

(5) April 28, 1995, from 9:00 a.m. to 12:00 p.m., in Tampa, Florida, Crowne Plaza, Sabal Park, 10221 Princess Palm Avenue, Tampa, Florida 33610. This meeting will focus primarily on pyrotechnics (fireworks) transportation issues.

(6) May 16, 1995, from 9:00 a.m. to 4:00 p.m., in Houston, Texas, Sheraton Crown Hotel & Conference Center, 15700 John F. Kennedy Boulevard, Houston, Texas 77032. This meeting will have an open agenda.

(7) May 18, 1995, from 1:00 p.m. to 4:00 p.m., in Minneapolis, Minnesota, Radisson Hôtel South & Plaza Tower, 7800 Normandie Boulevard, Minneapolis, Minnesota 55539. This meeting will have an open agenda.

Five of the seven meetings (April 19 in San Francisco, April 20 in Chicago,

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President, Fairbanks Division, 3528

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Reference Center (Room 239), 1919 M

(4) April 27, 1995 in Tampa, Florida.

to determine the kind and quality of

in San Francisco, April 20 in Chicago.

April 27 in Tampa, May 16 in Houston, and May 18 in Minneapolis) will have an open agenda, based on interests of the participants. Two meetings to be held in Florida will have focus areas as follows:

(1) April 26 in Clearwater Beach: This meeting, held in association with a Compressed Gas Association meeting, will focus primarily on the manufacture, maintenance and testing of compressed gas cylinders.

(2) April 28 in Tampa: This meeting, held with the cooperation of the American Pyrotechnics Association, will focus primarily on pyrotechnics (fireworks).

Even though these latter two meetings will have focus areas, they will be open to all interested persons and speakers may address any area pertinent to RSPA's hazardous materials safety program.

Areas of Regulatory Concern

In calling on agencies to cut obsolete regulations, the President directs each agency to consider the following issues in its review of the regulations:

- Is this regulation obsolete?
- Could its intended goal be achieved in more efficient, less intrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the States or local governments do the job, making Federal regulation unnecessary?

RSPA suggests that persons commenting on the hazardous materials safety program consider these issues.

The President's call for regulatory reform provides opportunities for eliminating or improving hazardous materials safety regulations. RSPA has undertaken a page-by-page review of the HMR and has identified certain sections of the HMR that are candidates for elimination, revision, clarification or relaxation. Although RSPA does not wish to imply that discussion is limited to these items, the items listed below are suggested as candidates for discussion at the public meetings:

(1) There appear to be jurisdictional issues that need resolution. For example, there is a question as to whether certain rail storage practices are "storage in transportation" and, thus, subject to the HMR, and whether the HMR should apply to rail tank car unloading operations, not involving rail carriers, which occur on private facilities. Other issues concern whether RSPA should continue to exercise jurisdiction in areas where other Federal agencies also exercise jurisdiction. For example, should RSPA remove regulatory provisions concerning hazardous waste manifests in deference to EPA requirements for manifesting? Should RSPA continue to regulate hazardous materials, such as fireworks, that are subject to regulations of the Consumer Product Safety Commission or the Bureau of Alcohol, Tobacco and Firearms? Should RSPA defer to the requirements of other agencies having occupational safety responsibilities which affect transportation, such as the Occupational Safety and Health Administration (OSHA), and OSHA agreement States? RSPA anticipates coordinating with other Federal agencies that regulate hazardous materials to resolve any multi-jurisdictional problems identified through the review.

(2) The modal-specific portions of the HMR—Part 174 for rail, Part 175 for air, Part 176 for water and Part 177 for highway—appear to contain a number of provisions that should be eliminated or revised. For example, many of the special handling requirements and accident response requirements appear obsolete.

(3) There may be opportunities for relaxing certain regulatory provisions without unduly impacting safety, such as by increasing the time interval for recurrent training or providing additional small quantity exceptions from incident reporting.

Improvements to Customer Service

RSPA is soliciting comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments to establish service standards and measure results against them; provide customers with choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide the means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications, and enforcement actions. Other customer services include conduct of multi-modal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and informational materials.

Issued in Washington, DC, on March 30, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–8165 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 60, No. 64

Tuesday, April 4, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Wild and Scenic River Suitability Study for Big Sheep Creek, East Eagle Creek, Five Points Creek, North Fork Catherine Creek, Swamp Creek, and Upper Grande Ronde River, Wallowa-Whitman National Forest, Baker, Union, and Wallowa Counties, OR; and Granite Creek and Sheep Creek, Payette and Nez Perce National Forests, Adams and Idaho Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare a legislative environmental impact statement (LEIS) and wild and scenic river study report to determine the eligibility and address the suitability of sections of Big Sheep Creek, East Eagle Creek, Five Points Creek, North Fork Catherine Creek, Swamp Creek, and the Upper Grande Ronde River within the Wallowa-Whitman National Forest boundary in Baker, Union, and Wallowa Counties, Oregon; and Granite and Sheep Creek within the Payette and Nez Perce National Forest boundaries (administrated by the Wallowa-Whitman National Forest) in Adams and Idaho Counties, Idaho for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on the suitability of these river sections. The agency gives notice of the environmental analysis and decision making process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

DATES: Comments concerning the study of these rivers should be received by May 15, 1995.

ADDRESSES: Send written comments and suggestions concerning the management of the river to Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft LEIS should be directed to Steve Davis, Wild & Scenic River Planning Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814; telephone (503) 523–1316.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service agreed to study the eligibility and suitability (if eligibility is confirmed) of Big Sheep Creek, East Eagle Creek, Five Points Creek, Granite Creek, North Fork of Catherine Creek, Sheep Creek, Swamp Creek, and Upper Grande Ronde River for possible inclusion in the National Wild and Scenic Rivers System. Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 (Public Law 90–542, 82 Stat. 906, as amended; 16 U.S.C. 1271–1287) allows for the study of new potential wild and scenic rivers not designated under Section 3(a) or designated for study under Section 5(a) of the Act. Section 5(d)(1) states "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national, wild, scenic, and recreational river areas." The study will consider within the Wallowa-Whitman National Forest boundary a 48-mile segment of Big Sheep Creek from its headwaters (including the North, Middle, and South Forks) to the Imnaha Wild and Scenic River boundary; a 15-mile segment of East Eagle Creek from its headwaters to the Eagle Wild and Scenic River boundary; a 12-mile segment of the mainstem of Five Points Creek from its headwaters, just north of the confluence with the Middle Fork of Five Points Creek, to the National Forest boundary; a 13.5-mile segment of the North Fork of Catherine Creek, from its headwaters to the National Forest boundary; a 16.5-mile segment of Swamp Creek from the National Forest boundary to the Joseph Creek Wild and Scenic River boundary; and a 27.5-mile segment of the Upper Grande Ronde River from its headwaters to the National Forest boundary. The study will also consider within the Payette and Nez Perce National Forest boundaries (administered by the Wallow-Whitman National Forest) a 12.5-mile segment of Granite Creek and a 15.5-mile segment of the East and West Forks of Sheep Creek from their headwaters to the Snake Wild and Scenic River boundary. The studies will include lands generally within ¼ mile from each stream bank. Preliminary alternatives include recommending wild and scenic designation for each segment and an alternative that recommends none of the segments for designation.

Robert M. Richmond, Forest Supervisor, Wallow-Whitman National Forest is the responsible official for preparing the suitability study. The Secretary of Agriculture, U.S. Department of Agriculture, room 200–A, Administration Building, Washington, DC 20250 is the responsible official for recommendations for wild and scenic river designation.

Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal State, and local agencies, affected Indian tribes, individuals and organizations who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft LEIS.

Initial scoping has occurred. Public meetings have been held and comments have been solicited by letters and newspaper articles, starting in May of 1994. Additional scoping meetings are planned. Federal, State, and local agencies as well as the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, user groups, and other organizations participated in scoping the issues that should be considered. Additional comments concerning the study of these rivers are encouraged.

The draft LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by June 1995. At that time, the EPA will publish a notice of availability of the draft LEIS in the **Federal Register**.

The comment period on the draft LEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of this river participate at that time. To be the most helpful, comments on the

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May 15, 1995.

Payette and Nez Perce National Forest

be the most helpful, comments on the

draft LEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft LEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft LEIS stage but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. City of *Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 f. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final study and environmental impact statement.

After the comment period ends on the draft LEIS, comments will be analyzed and considered by the Forest Service in preparing the final LEIS. In the final LEIS, the Forest Service will respond to comments received. The final LEIS is scheduled to be completed by October 1995. The Secretary will consider the comments, responses, and consequences discussed in the LEIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: March 24, 1995.

Sterling J. Wilcox,

Acting Associate Deputy Chief

[FR Doc. 95-8136 Filed 4-3-95; 8:45 am]

BILLING CODE 3411-10-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9-95]

Foreign-Trade Zone 93, Triangle J Council of Governments; Application for Subzone: AT&T/Custom Manufacturing Services (Telecommunication and Computer Products) Whitsett, NC (Greensboro area)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the telecommunication and computer products manufacturing plant of Custom Manufacturing Services (CMS), (subsidiary of AT&T Corporation) in Whitsett (Guilford County), North Carolina, adjacent to the Greensboro Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 27, 1995).

The CMS facility (3 buildings/210,000 sq. ft. on 19 acres) is located at 6537 Judge Adams Road, Whitsett, North Carolina, 10 miles east of Greensboro. The facility (400 employees) is used to produce a variety of telecommunications and computer products, components and subassemblies. Telecommunication products include encryption devices, speech compression devices, cellular handsets and network equipment, ATM and digital conferencing switches, optical and voice recognition circuit packs, teleconferencing bridges and routers, and power equipment for voice and data transmission. Computer products include signal processing computers, local-area network (LAN)/wide-area network (WAN) equipment, workstations, high resolution terminals, printers, portable copiers, optical disk drives, disk array controllers, and memory modules. Most of the products are manufactured under contract for other AT&T plants and for other telecommunication and computer product manufacturers.

Foreign components currently account for 15 percent of material used in production. Items sourced from abroad include cable assemblies, computer parts and subassemblies, dial pad assemblies, computer monitors and displays, sheet glass, semiconductors, integrated circuits, keypads, LCDs (liquid crystal displays), LEDs (light emitting diodes), microphones, power supplies, printed circuit assemblies, printed wiring boards, ringers, speakers, switches, rectifiers, resistors, transformers, transistors, capacitors, connectors, diodes, and hardware, including screws and bolts.

Zone procedures would exempt CMS from Customs duty payments on foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate that applies to the finished product (duty rates, duty-free to 8.5%). The duty rates on foreign components range from duty-free to 10 percent. The application indicates that zone procedures will improve the plant's international competitiveness and will help increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 5, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 18, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 400 West Market Street, Suite 400, Greensboro, North Carolina 27401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 28, 1995.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 95-8192 Filed 4-3-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1933)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than April 30, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping duty proceedings:	
Canada: Sugar and Syrups, (A-122-085)	04/01/94-03/31/95
France: Sorbitol, (A-427-001)	04/01/94-03/31/95
Greece: Electrolytic Manganese Dioxide, (A-484-801)	04/01/94-03/31/95
Japan: Calcium-Hypochlorite, (A-588-401)	04/01/94-03/31/95
Japan: Cyanuric Acid, (A-588-019)	04/01/94-03/31/95
Japan: Electrolytic Manganese Dioxide, (A-588-806)	04/01/94-03/31/95
Japan: Lenses, (A-588-819)	04/01/94-03/31/95
Japan: 3.5" Microdisks and Media Thereof, (A-588-802)	04/01/94-03/31/95
Japan: Roller Chain, other than Bicycle, (A-588-028)	04/01/94-03/31/95
Kazakhstan: Ferrosilicon, (A-823-804)	04/01/94-03/31/95
Kenya: Standard Carnations, (A-779-602)	04/01/94-03/31/95
Korea: Color Television Receivers, (A-580-008)	04/01/94-03/31/95
Mexico: Certain Fresh Cut Flowers, (A-201-601)	04/01/94-03/31/95
Norway: Fresh and Chilled Atlantic Salmon, (A-403-801)	04/01/94-03/31/95
Taiwan: Color Television Receivers, (A-583-009)	04/01/94-03/31/95
Ukraine: Ferrosilicon, (A-834-804)	04/01/94-03/31/95
Countervailing duty proceedings:	
Argentina: Wool, (C-357-002)	01/01/94-12/31/94
Argentina: Cold-Rolled Carbon Steel Flat-Rolled Products, (C-357-005)	01/01/94-12/31/94
Brazil: Pig Iron, (C-351-062)	01/01/94-12/31/94
Malaysia: Carbon Steel Wire Rod, (C-557-701)	01/01/94-12/31/94
Mexico: Leather Wearing Apparel, (C-201-001)	01/01/94-12/31/94
Norway: Fresh and Chilled Atlantic Salmon, (C-403-802)	01/01/94-12/31/94
Peru: Pompon Chrysanthemums, (C-333-601)	01/01/94-12/31/94
Thailand: Rice, (C-549-503)	01/01/94-12/31/94

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each county of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests of the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1995. If the Department does not receive, by April 30, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 29, 1995.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 95-8197 Filed 4-3-95; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-838, A-580-826, A-570-842, A-583-824]

Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol From Japan, the Republic of Korea, the People's Republic of China, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Louis Apple or John Brinkmann at (202) 482-1769 or (202) 482-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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emitting diodes), microphones, power

suspended investigation.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petition

On March 9, 1995, the Department of Commerce (the Department) received a petition filed in proper form by Air Products and Chemicals, Inc. (the petitioner), one of three U.S. producers of polyvinyl alcohol. Supplements to the petition were filed on March 21 and 24, 1995.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of polyvinyl alcohol from Japan, the Republic of Korea (Korea), the People's Republic of China (PRC), and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioner states that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petition

Section 732(c) of the Act, as amended by the URAA, requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets those minimum requirements if (1) domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) those domestic producers or workers expressing support account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner, one of three known domestic producers of the domestic like product, accounts for more than 25 percent of the total production of the domestic like product as defined in the petition. One producer has informed the Department that it takes no position regarding this antidumping petition. Although the petition identified only two U.S. producers of polyvinyl alcohol, on March 29, 1995, the Department received a statement from another company indicating that it is a producer of polyvinyl alcohol and that it opposes the petition. A review of production data reveals that the petitioner accounts for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. Accordingly, the Department determines that this petition is supported by the domestic industry.

Scope of the Investigations

The merchandise under investigation is polyvinyl alcohol. Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer, usually prepared by hydrolysis of polyvinyl acetate. This product includes polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid.

The merchandise under investigation is currently classifiable under item 3905.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Export Price and Normal Value

Japan

Export price was based on a price offered by a Japanese trading company in late September 1994. The petitioner adjusted the price for foreign inland and ocean freight, storage and handling, U.S. duties, and U.S. inland freight.

The petitioner based normal value on the low end of a range of prevailing domestic invoice pricing obtained from a Japanese trading company. The petitioner made adjustments to normal value for home market inland freight, trading company mark-ups and differences between home market and U.S. credit.

Based on a comparison of the export price to normal value, the calculated dumping margin is 77.49 percent.

Korea

Export price was based on the average c.i.f. unit value of U.S. imports from the Korea during November 1994. The petitioner adjusted this price for foreign inland and ocean freight expenses.

The home market price was based on a letter from a Korean producer to a home market customer, announcing an increase from the price in effect during the fourth quarter of 1994. The petitioner adjusted the price in effect prior to the increase for home market inland freight.

The petitioner based the normal value on constructed value (CV) because it asserts that the Korean home market price provided in the petition represented sales that were made below the cost of production (COP) and, therefore, was not an appropriate basis for calculating normal value.

The two components of COP are the cost of manufacture (COM) and selling, general and administrative expenses (SG&A). The petitioner calculated COM on the basis of its own cost and production experience and published prices in trade publications for certain chemical inputs, adjusted for known differences in Korean costs. For SG&A, including financial expenses, the petitioner relied upon the financial statements of the Korean producer of polyvinyl alcohol.

The allegation that the Korean producer is selling the foreign like product in its home market at prices below its COP is based upon a comparison of the adjusted home market price with the calculated COP Based on this information, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with 773(b)(2)(A)(i) of the Act. Accordingly, the Department will initiate a cost investigation with respect to Korea.

Therefore, for purposes of this initiation, in accordance with section 773(b)(1) of the Act, we are accepting the petitioner's estimate of CV as the appropriate basis for Korean normal value. The petitioner based CV on its COP methodology, adding an amount for profit and export packing to arrive at a total CV. Prior to the amendment of the Act by the URAA, the Department used the greater of actual profit or an eight percent minimum profit to calculate CV. The URAA eliminated the statutory minimum for profit. In the petition, therefore, profit was calculated on the basis of the Korean producer's financial statements, a method that is consistent with the URAA amendments. Packing was based upon the petitioner's own cost experience.

For Korea, based on comparisons of export price to CV, the calculated dumping margin is 187.43 percent.

People's Republic of China

Export price was based on the average c.i.f. unit value of U.S. imports from the PRC during November 1994 and on a sales call report from the same month. In both cases, the petitioner adjusted the starting prices for ocean freight and U.S. credit. Because this is an export price calculation, and because the Department does not deduct direct selling expenses

requests of the Office of Antidumping

from the export price, we have recalculated the petitioner's export price to remove the U.S. credit adjustment.

The petitioner asserts that the PRC is an NME within the meaning of sections 771(18)(A) and (C) of the Act and in accordance with section 773(c) of the Act. Accordingly, the normal value of the product should be based on the producer's factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that the PRC is an NME, and the presumption of NME status continues for the initiation of this investigation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Glycine from the People's Republic of China*, 60 FR 5620 (Jan. 30, 1995).

It is our practice in NME cases to construct normal value from the factors of production of those factories that produced polyvinyl alcohol sold to the United States during the period of investigation.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

With the exception of two raw materials, the petitioner based the factors of production (*i.e.*, raw materials, labor, and energy) on its own production process and usage experience. For the two exceptions, the petitioner made adjustments based on its knowledge of differences in the manufacturing processes in the PRC and estimated the raw material consumption and the amount of by-product based upon its knowledge of the production process of the other U.S. producer. Profit, SG&A, and factory overhead were based on rates calculated from a financial statement that included the chemical sector in India, published in the *Reserve Bank of India Bulletin* (September 1994).

The petitioner valued these factors, where possible, on publicly available published information from the surrogate country it selected. India was selected for the surrogate country because it is the only non-industrialized country listed in the *Directory of World Chemical Producers* (1995/1996 Standard Edition) that the petitioner knows is producing the merchandise subject to investigation. Further, India's gross domestic product is comparable to the PRC's.

Indian packing costs are not included in the valuation of the factors of production because the petitioner was unable to obtain the necessary information. Factory overhead, SG&A, and profit are based on the financial statement for Indian chemical producers, as published in the September 1994 *Reserve Bank of India Bulletin*.

Based on a comparison of the export price to the factors of production, the calculated dumping margins range from 139.82 to 183.72 percent.

Taiwan

Export price was based on the average c.i.f. unit value of U.S. imports from Taiwan during October 1994. The petitioner made adjustments for foreign inland and ocean freight expenses.

The home market price was based on a domestic invoice from a Taiwanese producer to a home market customer in October 1994. The petitioner adjusted this price for home market inland freight.

The petitioner based the normal value on CV because it asserts that the Taiwanese home market price provided in the petition represented sales that were made below the COP and, therefore, was not an appropriate basis for calculating normal value.

The components of COP are COM and SG&A. The petitioner calculated the COM on the basis of its own cost and production experience and published prices in trade publications for certain chemical inputs, adjusted for known cost differences in Taiwan. For SG&A, including financial expenses, the petitioner relied upon the financial statements of the Taiwanese producer of polyvinyl alcohol. This producer manufactures and sells products in multiple industries. Since the petitioner had submitted financial data for a Taiwanese chemical producer whose manufacturing activities are limited to the chemical sector, we recomputed SG&A using this data.

The allegation that the Taiwanese producer is selling the foreign like product in its home market at prices below its COP is based upon a comparison of the adjusted home market price with the calculated COP. Based on this information, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department will initiate a cost investigation with respect to Taiwan.

Therefore, for the purposes of this initiation, we are accepting the petitioner's estimate of CV, as adjusted by the Department, as the appropriate basis for Taiwanese normal value. The petitioner based CV on its COP methodology, described above, adding an amount for profit and packing to arrive at a total CV. The Department made the same adjustment to the petitioner's Taiwanese SG&A estimate as in the COP calculation. The petitioner calculated profit on the basis of financial data for three Taiwanese chemical producers, however only one of these chemical producers manufactured and sold solely chemical products. Therefore, the Department recomputed profit on the basis of the financial data for the one company whose operations were limited to chemicals. This treatment of profit is consistent with the URAA amendments. Packing costs were based on the petitioner's experience.

For Taiwan, based on comparisons of export prices to CV, the recalculated dumping margins are in a range from 82.23 to 91.83 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of polyvinyl alcohol from Japan, Korea, the PRC, and Taiwan are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available, we may review the calculations.

Initiation of Investigations

We have examined the petition on polyvinyl alcohol and have found that it meets the requirements of section 732 of the Act, including the requirements concerning the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of polyvinyl alcohol from the PRC, Japan, Korea, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by August 16, 1995.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the petition have been provided to the representatives of the PRC, Japan, Korea, and Taiwan. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition.

ITC Notification

We have notified the International Trade Commission (ITC) of our

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initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by April 24, 1995, whether there is a reasonable indication that imports of polyvinyl alcohol from Japan, Korea, the PRC, and Taiwan are causing material injury, or threaten to cause material injury to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: March 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8193 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

A–588–823

Professional Electric Cutting Tools From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On August 24, 1994, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39033) the notice of initiation of the administrative review of the antidumping duty order on professional electric cutting tools from Japan. This review has now been terminated as a result of the withdrawal by the petitioner of its request for review.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1994, Black and Decker, Inc., a U.S. manufacturer of professional electric cutting tools, as an interested party, requested an administrative review of the antidumping duty order on professional electric cutting tools from Japan, for the period January 4, 1993 through June 30, 1994, pursuant to 19 CFR 353.22(a)(2) (1994). On August 24, 1994, the Department published in the **Federal Register** (59 FR 43537) the notice of initiation of that administrative review.

Black and Decker timely withdrew its request for review on October 24, 1994, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–8194 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

University of Washington, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–153. *Applicant:* University of Washington, Seattle, WA 98195. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 7168, February 7, 1995. *Order Date:* April 30, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–8195 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Alaska and Northern Marianas Islands Coastal Zone Management Programs and the Old Woman Creek (Ohio) and South Slough (Oregon) National Estuarine Research Reserve Programs.

These evaluations will be conducted pursuant to Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal and estuarine management. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national coastal management objectives, adhered to its Coastal Program or Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Old Woman Creek National Estuarine Research Reserve in Ohio evaluation site visit will be from May 15–19, 1995. A public meeting will be held on Wednesday, May 17, 1995, at 7 p.m., at the Old Woman Creek Visitor's Center, 2514 Cleveland Road-East, Huron, OH.

The Commonwealth of the Northern Marianas Islands Coastal Zone Management Program evaluation site visit will be from June 5–9, 1995. A public meeting will be held on Wednesday, June 7, 1995 at 7:30 p.m., in Saipan.

The Alaska Coastal Zone Management Program evaluation site visit will be from June 19–23, 1995. A public meeting will be held on Monday, June 19, 1995, at 7 p.m., at the Anchorage Legislative Information Office, 716 W. 4th Avenue, Suite 200, Anchorage, AK. Teleconference connections to Legislative Information Offices will be provided between Anchorage and the coastal communities of Ketchikan, Sitka, Juneau, Cordova, Valdez, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow.

The South Slough National Estuarine Research Reserve in Oregon evaluation site visit will be from July 10–14, 1995. A public meeting will be held on Thursday, July 13, 1995, at 7 p.m., at Southwestern Oregon Community College, 1988 Newmark, Coos Bay, OR.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–8150 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 032495B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council), and its entities, will hold meetings from April 19–21, 1995, at the Rainmaker Hotel in Pago Pago, American Samoa.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: On April 19, the Council's Standing Committees will meet from 8:00 a.m. until 6:00 p.m. The full Council will convene for its 86th meeting on April 20–21, from 8:00 a.m. until 5:00 p.m. On April 20, from 8:00 a.m. until 9:00 a.m., the Council will hold a closed session to discuss personnel matters. The tentative Council meeting agenda will be:

1. Closed session to discuss personnel matters

2. Introduction

3. Approval of Agenda

4. Approval of 85th Council Minutes

5. Reports from the Council's State Territories and Commonwealth

6. Reports from the fishery agencies and organizations

7. Enforcement

a. US Coast Guard activities;
b. NMFS activities and status of proposed Pacific enforcement conference;
c. Status of violations;
d. Enforcement Committee recommendations;
e. Public comment; and
f. Council discussion and action

8. Ecosystems and Protected Resources

a. Longline observer quarterly report;
b. Longline/turtle workshop;
c. Justification for Main Hawaiian Islands (MHI) monk seal relocations;
d. Status of Hawaiian Islands humpback whale sanctuary;
e. Coral reef management needs, possibly including development of a coral reefs fishery management plan;
f. Scientific Standing Committee (SSC) recommendations;
g. Ecosystems and Habitat Committee recommendations;
h. Public comment; and
i. Council discussion and action.

9. Pelagics

a. Longline permit actions;
b. Status of fisheries;
c. Preliminary report on Pacific pelagic fisheries database review;
d. Status of request for single-council designation;
e. United Nations Conference on Straddling and Highly Migratory Fish Stocks;
f. Pelagic Fisheries Research Program;
g. Draft pelagic fisheries research plan;
h. Status of Small Boat Pelagic Fisheries Working Group;
i. SSC recommendations;
j. Pelagics Committee recommendations;
k. Public comment; and
l. Council discussion and action.

10. Bottomfish

a. Status of fisheries;
b. Status of MHI bottomfish management initiative;
c. NMFS report on Northwestern Hawaiian Islands (NWHI) catch reporting system;
d. SSC recommendations;
e. Bottomfish Committee recommendations;
f. Public comment; and
g. Council discussion and action.

11. Crustaceans

a. 1995 NWHI lobster quota;
b. Experimental fishing;
c. Status of stocks;
d. Status of NWHI lobster management review;
e. Consideration of alternative management program for NWHI;
f. SSC recommendations;
g. Crustaceans Committee recommendations;
h. Public comment; and
i. Council discussion and action.

12. Native Rights and Indigenous Fishing Issues

a. Status of Magnuson Act amendments/other Federal legislation;
b. Status of State of Hawaii's Molokai subsistence fishing demonstration project;
c. Status of Moomomi community-based subsistence fishing proposal;
d. Kahoolawe ocean management plan, Request for Proposals;
e. Native Rights Committee recommendations;
f. Public comment; and
g. Council discussion and action.

13. Program Planning

a. Status of proposed Hawaii ownership of unincorporated U.S. Pacific Islands;
b. Status of joint Interior-Commerce working group to review Federal policy in the Pacific;
c. Status of Midway Reuse Committee;
d. Saltonstall-Kennedy proposals for the region;

on professional electric cutting tools

BILLING CODE 3510-DS-F

e. Status of the Magnuson Act re-authorization;
f. Status of Western Pacific Fisheries Information Network;
g. Status of cooperative project to correlate El Niño-Southern Oscillation and island fishery data;
h. Council's public education outreach program;
i. Defining marine recreational and commercial fishing/fishermen;
j. SSC recommendations;
k. Budget and Program Committee recommendations;
l. Public comment; and
m. Council discussion and action.

14. Administrative Matters

a. Reports on meeting and workshops;
b. 1995–96 Advisory Panel selection;
c. Statement of organization, practices, and procedures revisions;
d. Recommendations of Executive and Budget and Program Committees;
e. Scheduling of 87th Council meeting;
f. Public comment; and
g. Council discussion and action.

15. Fishermen's Forum

16. Other Business

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8132 Filed 4–3–95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 031495C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 2 to scientific research permit no. 873 (P772#63).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 873 submitted by the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

SUPPLEMENTARY INFORMATION: On February 15, 1995, notice was published in the **Federal Register** (60 FR 8632) that a modification of permit no. 873, issued July 28, 1993 (58 FR 34038), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit no. 873 authorized the permit holder to biopsy several species of cetaceans off the Pacific and Southern Oceans, and to import biopsy tissues collected outside of U.S. waters. The permit has been modified to add several additional species to the permit authority, to import biopsy tissues from these additional species, to expand the study area to include the Indian Ocean, to biopsy gray whales (including animals accompanying calves), fin, sei, minke, and right whales, and to employ photo-identification and photogrammetry techniques to study both gray whales and the additional species mentioned above.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 21, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8169 Filed 4–3–95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing the Establishment and Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

March 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits for the new agreement year.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Memoranda of Understanding (MOUs) dated September 12, 1993 and April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limit for Categories 340/640 has been reduced for carryforward used during the previous agreement period.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Egypt becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Memoranda of Understanding (MOUs) dated September 12, 1993 and April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 5, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	83,191,888 square meters.
Sublevels in Fabric Group	
218	2,508,000 square meters.
219	19,573,194 square meters.
220	19,573,194 square meters.
224	19,573,194 square meters.
225	19,573,194 square meters.
226	19,573,194 square meters.
227	19,573,194 square meters.
313	35,941,995 square meters.
314	19,573,194 square meters.
315	22,984,979 square meters.
317	19,573,194 square meters.
326	2,508,000 square meters.
Levels not in a group	
300/301	7,681,216 kilograms of which not more than 2,409,100 kilograms shall be in Category 301.
338/339	2,226,000 dozen.
340/640	870,000 dozen.
369–S [2]	1,167,791 kilograms.
448	18,342 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Egypt become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8196 Filed 4–3–95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable Control Number: Defense FAR Supplement, Part 209, Contractor Qualifications, and related clause at 252.209; OMB Control No. 0704–0360
Type of Request: Revision of a currently approved collection
Average Burden Hours/Minutes Per Response: 40 hours
Responses Per Respondent: 1
Number of Respondents: 18
Annual Burden Hours: 720
Annual Responses: 18
Needs and Uses: The Defense FAR Supplement, Part 209, prescribes policies and procedures for, among other things, avoiding organizational conflicts of interest. The information required by this requirement will be used by the Government to determine if an actual or potential conflict of interest exists, and to determine the best course of action to avoid or mitigate such a conflict
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed revision to the information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

Dated: March 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8138 Filed 4–3–95; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable OMB Control Number: DOD FAR Supplement, Part 237.70, Mortuary Services, and the clause at 252.237–7011, Preparation History; OMB Control Number 0704–0231
Type of Request: Extension
Average Burden Hours Per Response: 1
Responses Per Respondent: 1
Number of Respondents: 500
Annual Burden Hours: 500
Annual Responses: 500
Needs and Uses: This information is used by (1) contracting officers to ensure that the contractor has properly prepared the body and (2) the common carrier so that the body can be shipped by that carrier

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appointment in the following offices:

designed to assist only in the

Affected Public: Business or other for-profit and Small Businesses or organizations
Frequency: On occasion
Respondents Obligation: Required to obtain or retain a benefit
Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302

Dated: March 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8139 Filed 4–3–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on April 20 and 21, 1995.

The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, April 2, 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that, accordingly, this meeting will be closed to the public.

Dated: March 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8137 Filed 4–3–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–21–002]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 29, 1995.

Take notice that on March 23, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the changes were made in compliance with the Commission's Order issued in this proceeding on February 15, 1995, which are intended to reflect the reallocation of SBA costs as provided in the SBA Settlement, filed on September 12, 1994.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 5, 1995. All protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8141 Filed 4–3–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5183–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR described the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 4, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1747.01.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Information Collection Request (ICR) for Report and Database on Ecosystem Research in the Pacific Northwest.

Abstract: This is a new information collection request to establish a database of ecosystem research activities in the Pacific Northwest. The establishment of the database is one of the tasks assigned under President Clinton's Forest Plan and associated Record of Decision (ROD) from U.S. District Court in Seattle. Specifically, the task requires the EPA to identify possible sources of research activities (State, federal, and university research programs) and compile this information into an EPA electronic database. The information is needed to: (1) Ensure that EPA and non-EPA research conducted in the Pacific Northwest is complementary, (2) help federal research organizations identify research needs or redundant projects, (3) serve as a basis for development of an interagency ecosystem research plan that is responsive to the requirements in the President's Forest Plan.

The information will be gathered through a voluntary mail survey that targets researchers working at various governmental and non-governmental institutions located within the Pacific Northwest. Respondents will be asked to provide information that includes: (1) Identification information (title, contact, and principal investigators), (2) project status (activities, funding), (3) descriptive information about the research (spatial scale, location, ecosystem, etc.), and (4) survey goals and objectives. Respondents shall also be asked to provide their opinion on the top five ecosystem research needs to support the President's Forest Plan. Following the distribution of the survey, the EPA will perform follow-up calls to track survey completion and answer

questions that respondents may have about the survey.

EPA will perform quality assurance checks on completed surveys and enter the information into an electronic database that shall be accessible to researchers. The information will be used by the EPA and research organizations to establish a baseline of information about research activities and encourage coordination among various research institutions.

Burden Statement: Public reporting burden for this collection of information is estimated to average 30 minutes for mail surveys, including time for reviewing instructions, gathering and compiling the information, and completing and reviewing the response.

Respondents: Researchers at federal, State and university institutions that maintain ecological research programs in the Pacific Northwest.

Estimated Number of Respondents: 500.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 250 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, EPA ICR #, 1747.01, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St., SW, Washington, DC 20460
and
Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503

Dated: March 30, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–8211 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–M

Office of Research and Development

[FRL–5183–4]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) that utilizes a measurement principle based on UV fluorescence. The new designated method is identified as follows:

EQSA–0495–100, "Advanced Pollution Instrumentation, Inc. Model 100A Sulfur Dioxide Analyzer," operated on any full scale range between 0–50 ppb* and 0–1000 ppb, at any temperature in the range of 5 to 40 degrees C, with a 5-micron TFE filter element installed in the filter assembly, with either the vendor-supplied internal pump or a user- or vender-supplied external vacuum pump capable of maintaining an absolute pressure of 35 cm (14 inches) of mercury (or less) at 1.0 standard liter per minute flow rate, with the following software settings:
Dynamic zero: OFF; Dynamic span: OFF; AutoCal: ON or OFF; Dual range: ON or OFF; Autorange: ON or OFF; Temp/pressure compensation: ON; dilution factor: 1.0; and with or without any of the following options:
Rack mount with chassis slides
Rack mount without slides, ears only
Fluorocarbon zero/span valves
Internal zero/span (IZS)
SO_2 Permeation tube, uncertified, 0.4 ppm @ 0.7 L/min
SO_2 Permeation tube, certified, 0.4 ppm @ 0.7 L/min
SO_2 Permeation tube, uncertified, 0.8 ppm @ 0.7 L/min
SO_2 Permeation tube, certified, 0.8 ppm @ 0.7 L/min
4–20 mA, isolated outputs
External pump
Rack mount for external pump with tray
Status outputs
RS–232 output

*Users should be aware that designation of this analyzer for operation on ranges less than 500 ppb is based on meeting the same absolute performance specifications required for the 0–500 ppb range. Thus, designation of lower ranges does not imply commensurably better performance than that obtained on the 0–500 ppb range.

Note: In addition to the U.S. electrical power voltage and frequency, this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency and any of the following voltage ranges: 200–242 Vac (220 volts nominal); 216–264 Vac (240 volts nominal).

This method is available from Advanced Pollution Instrumentation, Inc., 8815 Production Avenue, San Diego, California 92121–2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, January 9, 1995, page 2386.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such a analyzer has two or more selectable ranges, the label or sticker

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concerns matters listed in 5 U.S.C.

Agency (EPA).

track survey completion and answer

Pollution Instrumentation, Inc. Model

method should be designated as an

selectable ranges, the label or sticker

must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzers has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–8208 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; extension of comment period.

SUMMARY: On February 21, 1995, the Board requested comment on proposed revisions to the Country Exposure Report (FFIEC 009). The Federal Financial Institutions Examination Council (FFIEC) proposed to implement the report as of March 31, 1995. The Secretary of the Board, as requested by the FFIEC, has extended the comment period by 30 days to give the public additional time to provide comment. In addition the implementation date of the proposed revisions to the reporting form will be delayed until not earlier than September 30, 1995, to provide institutions with additional time to modify their systems and to resolve conceptual issues related to the report.

DATES: Comments must be received by April 21, 1995.

ADDRESSES: Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (OMB 83-I), supporting statement, instructions, and other documents that have been submitted to OMB for approval may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The FFIEC has received a request to extend the comment period and delay the implementation date of the proposed revisions to the Country Exposure Report (FFIEC 009). In view of the significance of the new items that are proposed in the reports, the Board is extending the comment period to April 21, 1995, and delaying the proposed implementation date to not earlier than September 30, 1995.

Board of Governors of the Federal Reserve System, March 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8159 Filed 4–3–95; 8:45am]

BILLING CODE 6210–01–F

Richard Lee Brown, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Richard Lee Brown, Fort Worth, Texas; Trustee of the M.L. Rhea Estate, Fort Worth, Texas, Trustee of the Fred D. Thompson, Jr. Trust, Fort Worth, Texas, Trustee of the John A. Thompson Trust, Fort Worth, Texas; to acquire an additional 20.94 percent, for a total of 24.86 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Frederick Dickson Thompson, Fort Worth, Texas, Trustee of the Cleaves Rhea Thompson Trust under will Louise R. & Floore, Fort Worth, Texas; Trustee

of the Frederick Dickson Thompson, Jr., Trust under Will Louise R. Floore, Fort Worth, Texas; Trustee of the John Andrew Thompson Trust under Will Louise R. Floore, Fort Worth, Texas; to acquire an additional 23.40 percent, for a total of 25.00 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Cleaves Rhea Thompson, Santa Clara, California; to acquire an additional 1.07 percent, for a total of 1.36 percent; Frederick Dickson Thompson, Jr., Fort Worth, Texas, to acquire an additional .94 percent, for a total of 1.30 percent; John Andrew Thompson, Fort Worth, Texas, to acquire an additional 1.25 percent, for a total of 6.17 percent; Kelly R. Thompson, Fort Worth, Texas, Executor of the 3 estates of Jimmie K. Thompson, Forth Worth, Texas, to acquire an additional .35 percent, for a total of .79 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, March 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8154 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

First Evanston Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Evanston Bancorp, Inc., Evanston, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Evanston Bank & Trust Company, Evanston, Illinois (in organization).

2. Northern Trust Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Tanglewood Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Tanglewood Bank, N.A., Houston, Texas.

3. Scott Bancshares, Inc., Bethany, Illinois; to acquire 100 percent of the voting shares of Maroa Bancshares, Inc., Maroa, Illinois, and thereby indirectly acquire Bank of Maroa, Maroa, Maroa, Illinois.

Board of Governors of the Federal Reserve System, March 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8153 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

First Commerce Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 28, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Corporation, New Orleans, Louisiana; to merge with Lakeside Bancshares, Inc., Lake Charles, Louisiana, and thereby indirectly acquire Lakeside National Bank of Lake Charles, Lake Charles, Louisiana.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CBOT Financial Corporation, New Waverly, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of CBOT Financial Corporation of Delaware, Wilmington, Delaware, and thereby indirectly acquire Citizens Bank of Texas, N.A., New Waverly, Texas.

In connection with this application, CBOT Financial Corporation of Delaware, Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Texas, N.A., New Waverly, Texas.

2. First Liberty National Bancshares, Inc., Liberty, Texas; to become a bank holding company by acquiring an additional 54 percent of the voting shares of First Liberty National Bank, Liberty, Texas.

In connection with this application, Applicant has applied to acquire FLNB Shares, Inc., Wilmington, Delaware, which will become a bank holding company by acquiring Bank.

Board of Governors of the Federal Reserve System, March 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8156 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

John Bigham Barnett, III; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been

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accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Bigham Barnett, III, Monroeville, Alabama; to retain 14 percent of the voting shares of First Monco Bancshares, Inc., Monroeville, Alabama, and thereby indirectly acquire The Monroe County Bank, Monroeville, Alabama.

Board of Governors of the Federal Reserve System, March 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8155 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

Mercantile Bancorporation Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 18, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire Plains Spirit Financial Corporation, Davenport, Iowa, and thereby indirectly acquire First Federal Savings Bank of Iowa, Davenport, Iowa, and engage in operating a savings association, whose activities include taking deposits and lending funds for residential, commercial, and consumer purposes, pursuant to § 225.23(b)(9) of the Board's Regulation Y; and in the sale of credit related insurance products, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire United Bancorp of Kentucky, Inc., Lexington, Kentucky, and thereby indirectly acquire its subsidiary, Computer Bank Services, Inc. Lexington, Kentucky, and engage in permissible data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. Upon consummation, the data processing operations of Computer Bank Services, Inc., will be consolidated with those of National City Corporation.

Board of Governors of the Federal Reserve System, March 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8157 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

Union-Calhoun Investments, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Union-Calhoun Investments, Ltd., Rockwell, City, Iowa; to acquire Keith Insurance, Rockwell City, Iowa, and thereby engage in insurance agency activities in a small town of less than 5,000 in population, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8152 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

Western Bancorporation, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Western Bancorporation, Inc., Duluth, Minnesota; to engage *de novo* through its subsidiary Premier Credit Corporation, Duluth, Minnesota, in industrial banking activities, and the purchase of dealer paper on both recourse and non-recourse bases, at a discount from automobile dealers and other merchants who sell at retail to the public, pursuant to § 225.25(b)(2) of the Board's Regulation Y. These activities will be conducted throughout the states of Minnesota and Wisconsin.

Board of Governors of the Federal Reserve System, March 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8158 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031395 AND 032495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Gibbs Oil Company Limited Partnership, The Circle K Corporation, Circle K Stores, Inc	95–1120	03/13/95
Howell Corporation, Exxon Corporation, Exxon Pipeline Company	95–1125	03/13/95
BanPonce Corporation, CS Holding, CS First Boston (Puerto Rico), Inc	95–1130	03/13/95
The Economist Newspaper Limited, Knight-Ridder, Inc., Journal of Commerce, Inc	95–1132	03/13/95
Lee Enterprises, Incorporated, J.C. Seacrest Trust, Journal-Star Printing Co	95–1140	03/13/95
Montedison S.p.A., American Maize-Products Company, American Maize-Products Company	95–1142	03/13/95
James T. McAfee, Jr., National Medical Enterprises, Inc., National Medical Enterprises, Inc	95–1143	03/13/95
Milk Marketing, Inc., Eastern Milk Producers Cooperative Association, Inc., Eastern Milk Producers Cooperative Association, Inc	95–1144	03/13/95
News Holdings Corp., Black & Decker Corp., PRC Realty Systems, Inc	95–1145	03/13/95
Settlement Dated 31st December 1985, Bausch & Lomb Incorporated, Bausch & Lomb Incorporated	95–1148	03/13/95
NationsBank Corporation, Tenneco Inc., Dixie Container Corporation	95–1149	03/13/95
Unitas Ltd., Kansallis-Osake-Pankki, Kansallis-Osake-Pankki	95–1150	03/13/95
General Electric Company, Atlantic Richfield Company, Lehndorff Windsor Square Associates Joint Venture	95–1154	03/13/95
Bob Marbut, Tak Communications, Inc., as debtor-in-possession, Tak Communications, Inc	95–1156	03/13/95
Hollywood Entertainment Corporation, Title Wave Stores, Inc., Title Wave Stores, Inc	95–1161	03/13/95
Gibraltar Steel Corporation, Albert Fruman, Wm. R. Hubbell Steel Corporation	95–1165	03/13/95
Merrill Lynch Capital Appreciation Ptnship No B—XXIV LP, Donald E. Tykeson, Telecomm Systems, Inc	95–1166	03/13/95
YPF Sociedad Anonima, Maxus Energy Corporation, Maxus Energy Corporation	95–1172	03/13/95
Roberts Pharmaceutical Corporation, SmithKline Beecham Pharmaceuticals, SmithKline Beecham Pharmaceuticals	95–1177	03/13/95
President and Fellows of Harvard College, TRST Tower Inc., Anatole Hotel-Tower	95–1194	03/13/95
President and Fellows of Harvard College, Dallas Market Center Development Co., Ltd., Anatole Hotel-Atria and Trinity Hall	95–1201	03/13/95
Schnitzer Steel Industries, Inc., Manufacturing Management, Inc., Manufacturing Management, Inc	95–0199	03/14/95
American Linen Supply Co., Walter B. Klyce, White Rose, Inc	95–1104	03/14/95
Health Management, Inc., Caremark International Inc., Clozaril Patient Management Business	95–1117	03/14/95
Blackstone Capital Partners II Merchant Banking Fund LP, People's Choice TV Corp., People's Choice TV Corp	95–1187	03/14/95
Glaxo plc, Wellcome plc, Wellcome plc	95–0931	03/15/95
Actel Corporation, Texas Instruments Incorporated, Texas Instruments Incorporated	95–1071	03/15/95
Richard Lee, Phillips-Van Heusen Corporation, Phillips-Van Heusen Corporation	95–1116	03/16/95
E.I. Dupont De Nemours and Company, Enron Corporation, Enron Oil & Gas Company	95–1153	03/16/95
Leonard S. Mandor, Milestone Properties, Inc., Milestone Properties, Inc	95–1181	03/16/95

reasons a written presentation would not suffice in lieu of a hearing.

control voting securities or assets of a company engaged in a nonbanking

Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Leonard S. Mandor, Milestone Properties, Inc., Milestone Properties, Inc 95–1181 03/16/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031395 AND 032495—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Time Warner Inc., American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd	95–1191	03/16/95
WHX Corporation, Mitsubishi Estate Company, Limited, Unimast Incorporated	95–1064	03/17/95
Motorola, Inc., Digital Equipment Corporation, Digital Equipment Corporation	95–1080	03/17/95
Helix Health System, Inc., Church Home and Hospital of the City of Baltimore, Church Home and Hospital of the City of Baltimore	95–1085	03/17/95
United States Shoe Corporation (The), Green Capital Investors, L.P., Opti-World, Inc	95–1160	03/17/95
Milestone Properties, Inc., Leonard S. Mandor, Concord Assets Group, Inc	95–1180	03/17/95
Consolidated Electrical Distributors, Inc., Eastern Enterprises, WaterPro Supplies Corporation	95–1193	03/17/95
Dresser Industries, Inc., Henry L. Hillman, Wellstream Company L.P	95–1196	03/17/95
Caremark International Inc., Vaicaitis, Schorr, Richards, et al., M.D., P.A., Vaicaitis, Schorr, Richards, et al., M.D., P.A	95–1208	03/17/95
The Rival Company, Noel T. Patton and Eva M. Patton, Patton Electric Company, Inc	95–1211	03/17/95
Praxair, Inc., Sam Wilson and Sonia Wilson, Wilson Oxygen & Supply Company	95–1215	03/17/95
Associated Wholesale Grocers, Inc., Homeland Holding Corporation, Homeland Stores, Inc	95–1219	03/17/95
Apollo Investment Fund, L.P., Ronald W. Burkle, DFF Holdings, Inc	95–1221	03/17/95
Welsh, Carson, Anderson & Stowe VI, L.P., Bridge Information Systems, Inc., Bridge Information Systems, Inc	95–1141	03/20/95
Pennzoil Company, Oryx Energy Company, Sun Operating Limited Partnership	95–1162	03/20/95
Mariner Health Group, Inc., Convalescent Services, Inc., Convalescent Services, Inc	95–1169	03/20/95
Samuel B. Kellett, Mariner Health Group, Inc., Mariner Health Group, Inc	95–1170	03/20/95
Stiles A. Kellett, Jr., Mariner Health Group, Inc., Mariner Health Group, Inc	95–1171	03/20/95
Cross Timbers Oil Company, Apache Corporation, Apache Corporation	95–1178	03/20/95
PennCorp Financial Group, Inc., Integon Life Partners L.P., Integon Life Corporation, Marketing One Financial Corp	95–1214	03/20/95
Coventry Corporation, HealthCare USA, Inc., HealthCare USA, Inc	95–1218	03/20/95
The Goldfarb Corporation, Allied Domecq PLC, Fleming Packaging Corporation	95–1222	03/20/95
Charter Oak Partners, Ewald Lehmann and Marvin R. Wollin, Wollin Products, Inc	95–1229	03/20/95
Kuhlman Corporation, Schwitzer, Inc., Schwitzer, Inc	95–1233	03/20/95
The Goldfarb Corporation, Bacardi Limited, Fleming Packaging Corporation	95–1238	03/20/95
Radex-Heraklith Industriebeteiligungs AG, VIAG AG, Didier-Werke AG	95–1107	03/21/95
GranCare, Inc., HealthTrust, Inc., Cornerstone Health Management Company	95–1163	03/21/95
Red Man Pipe & Supply Co., Estate of Charles A. Sammons, Vinson Supply Company	95–1175	03/21/95
LG&E Energy Corp., Santa Fe Energy Resources, Inc., Hadson Corporation	95–1205	03/21/95
Kwik-Wash Laundries, Inc., Broad Street Investment Fund I, L.P., Solon Automated Services, Inc	95–1216	03/21/95
Channel One Associates, L.P., Walter Industries, Inc., Walter Industries, Inc	95–1234	03/21/95
Noranda Inc., Pentair, Inc., Cross Pointe Paper Corporation	95–1178	03/22/95
Circus Circus Enterprises, Inc., Paul W. Lowden, Hacienda Hotel Resort and Casino	95–1212	03/22/95
Berwind Group Partners, Dennis Pobiak and Marilyn Pobiak, High-Tech Institute, Inc	95–1228	03/22/95
BankAmerica Corporation, Healthtrust, Inc.—The Hospital Company, Chesterfield General Hospital Inc	95–1155	03/23/95
PacifiCare Health Systems, Inc., Pacific Hospital Preservation and Development Authority, Pacific Health Plans	95–1213	03/23/95
De La Rue plc, Richard N. Groves and Margaret B. Groves, North American Video Corporation	95–1217	03/23/95
Sisters of St. Joseph of Nazareth, US Province/Congregation-Sisters of Bon Secours Paris, Bon Secours of Michigan Health Care System Inc	95–1243	03/23/95
Finaxa, The Long-Term Credit Bank of Japan, Ltd., Aventine Partners	95–1260	03/23/95
Western Wireless Corporation, Bachtel Cellular Liquidity, L.P., Bachtel KS–14, L.P	95–1188	03/24/95
Western Wireless Corporation, PriCellular Corporation, Cellular Information Systems, Inc	95–1189	03/24/95
PriCellular Corporation, Western Wireless Corporation, KETS Partnership	95–1190	03/24/95
Den norske stats oljeselskap a.s., Ralph Bradley, The Eastern Group, Inc	95–1204	03/24/95
Marriott International, Inc., William B. Johnson, William B. Johnson Properties, Inc	95–1233	03/24/95
US WEST, Inc., US WEST, Inc., San Juan Cellular Limited Partnership	95–1226	03/24/95
Rockwell International Corporation, Gerald W. Schwartz, Dura Automotive Systems, Inc	95–1241	03/24/95
Federal Express Corporation, Delford M. Smith, Evergreen International Airlines, Inc	95–1250	03/24/95
Healthsource, Inc., Provident Life and Accident Insurance Co. of America, Provident Life and Accident Insurance Company and	95–1256	03/24/95
General Electric Company, New World Development Co., Ltd., Renaissance Hotel Operating Company	95–1257	03/24/95
Kjell I. Rokke, Orkla A/S, Helly-Hansen A/S	95–1273	03/24/95

For Further Information Contact: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–8188 Filed 4–3–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Responsible Fatherhood Projects

AGENCY: Administration for Children and Families, (ACF), Department of Health and Human Services, (HHS).

ACTION: Announcement of the availability of funds and request for applications to demonstrate promising program interventions to encourage and increase responsible fatherhood.

SUMMARY: The Administration for Children and Families (ACF) announces the availability of Federal funding to demonstrate promising program interventions to encourage and increase responsible fatherhood. Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647).

DATES: The closing date for submission of applications is June 5, 1995.

MAILING ADDRESSES: William J. McCarron, Administration for Children and Families, Division of Discretionary Grants—Room 6C–462, 370 L'Enfant Promenade SW., Washington, DC 20447. For hand delivered applications, use: William J. McCarron, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Mark Fucello, Administration for Children and Families, Office of Policy and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone (202) 401–4538.

SUPPLEMENTARY INFORMATION: The Administration for Children and Families announces that competing applications are being accepted for Federal financial assistance to demonstrate promising program interventions to encourage and increase responsible fatherhood. Up to five awards will be made under this announcement for project periods of 24 months. Each successful recipient will receive a financial award for an initial budget period of 17 months. The second budget period, consisting of months 18 through 24, will be unfunded with Federal funds; applicants are encouraged to secure other sources of funding to cover these latter months of the project period. Each recipient will be expected to enter into a cooperative agreement with ACF which will outline the terms of ACF's interest and involvement in the project and the responsibilities of the recipient.

This program announcement consists of three parts. Part I describes the activities supported by this announcement and application requirements. Part II describes the application review process. Part III provides information and instructions for the development and submission of applications. The forms to be used for submitting an application follow Part III.

Part I.—Project Design

Purpose

The purpose of the announcement is to inform the public of the availability of Federal funding to demonstrate promising program interventions to encourage and increase responsible fatherhood. There is a growing body of evidence suggesting that the impact of fathers' participation on children's behavior is significant. Although research does not suggest a straightforward relationship between paternal participation in child rearing and child well-being, it can be reasonably assumed that children benefit emotionally and developmentally when fathers play a larger role in children's lives. According to this program announcement, ACF will provide funding to community programs designed to strengthen the role and parenting abilities of fathers and to enable fathers to relate positively to their children and their children's mothers. The target populations for these programs should encompass a wide range of fathers including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children.

The recipients will operate projects designed to create an environment where fathers are encouraged and supported in conduct that allows them to improve the quality of life for their families. Projects should provide comprehensive services designed to assist men and their families for the purpose of attempting to reverse the negative trends among adults and youth related to at-risk behaviors such as substance abuse, gang involvement, school failure, and unemployment. Beyond encouraging and increasing basic responsible acts such as establishing paternity and encouraging contact between father and children, programs should teach fathers:

- How to understand their children's development,
- How to understand and positively affect their children's behavior,
- How to be positive role models for their children, and
- How to work constructively with the children's mother for the benefit of the children regardless of whether both parents live in the same household as the children.

Eligible Applicants

Organizations eligible to apply for financial assistance under this announcement include States, local governments, and public or private nonprofit organizations. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ACF is interested in providing financial support to organizations: With experience in working with fathers and which are knowledgeable about the issues concerning fathers; with developed plans and methods to teach fathers how to act responsibly and to understand their children's development and positively affect their children's behavior; and which have significant, long-term financial support ensuring uninterrupted project operation beyond the projected period of federal assistance.

Minimum Requirements for Project Design

In order to compete successfully in response to this announcement, the applicant should develop an application which:

- Describes the applicant's experience in working with fathers. The description should highlight the applicant's experience in coordinating services from different providers or levels of government aimed at encouraging men to be responsible fathers and should describe the men whom the project has served. The types of services provided or to which clients are referred may include health and nutrition instruction, employment and career counseling, parenting education, peer support, and formal and informal mediation and dispute resolution with the children's mother, etc.
- Explains the applicant's methods to teach fathers how to act responsibly and to adopt behaviors which exemplify the following principles: Raising children requires an active commitment from both parents—financially and emotionally; employment is important to being a responsible father not only to provide financial support but also to be a good role model; and successful child-rearing depends on understanding how children develop. The application must explain in detail how the proposed project aims to enable fathers at risk of

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destructive behaviors to develop an achievement orientation from which they will be better able to act responsibly and to interact constructively with the children and the children's mother regardless of whether both parents live in the same household as the children.

• Identifies the typical settings or points in fathers' lives that the applicant first engages and enrolls individuals for program services, e.g., in-hospital recruitment of new fathers, community centers where neighborhood men gather, half-way houses, etc. ACF is interested in funding a group of programs which together engage men at various points in their lives and in various settings to help develop for the public a better understanding about how to structure programs and services for fathers.

• Includes assurance that the recipient will produce two major reports (in addition to regular quarterly progress reports) to be issued during the project. The initial major report, due mid-way into the project, should discuss program implementation and participation and activities of fathers, including a discussion of program approaches and activities, paternity establishment, level of employment among participating fathers, and level of contact of fathers with their children as well as with the children's mother. The final report, due at the end of the project (90 days after the end of the 24-month project period), should cover the topics discussed above with longer follow-up and more detailed discussion of the project's staffing structure; procedures for referrals to services and coordination with other public and private agencies; type and duration of services actually provided; procedures and criteria used in recruitment and training of staff; and recommendations for others seeking to establish similar projects. Recommendations should include a discussion of the project's contextual factors, such as the social, economic, and political forces that may have a bearing on the implementation of this type of project. These reports are intended to further the general knowledge of the public, community-based organizations, and social service departments regarding program interventions to increase responsible fatherhood. In addition regular quarterly progress reports must be submitted within 60 days of the end of each quarter of the 24-month project period.

• Includes assurance of the recipient's willingness and intention to participate in and cooperate with evaluability assessment activities to be funded by the Department of Health and Human Services, possibly leading to a full-scale program evaluation if determined to be feasible.

• Includes financial support for project activities in addition to Federal funding to ensure uninterrupted project operation over the project period. ACF will give preference to applicants who provide evidence of significant, long-term financial support ensuring uninterrupted project operation beyond the period of federal assistance. Applicants should provide evidence of funding commitments from organizations such as private foundations.

Also, the recipient must be prepared to enter into a cooperative agreement with ACF which will outline the terms of ACF's interest and involvement in the project and the responsibilities of the recipient. The cooperative agreement:

(a) Will provide that ACF retain authority for review of significant program design changes from the model proposed in the original application; (b) will provide that ACF maintain involvement in any evaluability assessment activities to be funded by the Department of Health and Human Services, and (c) will provide for ACF review of reports (other than quarterly progress reports) before publication.

Project Duration

This announcement is soliciting applications for project periods of 24 months. Awards, on a competitive basis, will be for an initial 17-month budget period, although project periods will be for 24 months, subject to availability of funds. Each recipient will receive an initial financial award for 17 months. The second budget period, consisting of months 18 through 24, will be unfunded with Federal funds; applicants are encouraged to secure other sources of funding to cover these latter months of the project period.

Federal Share of the Project

The maximum Federal share of each project is not to exceed $85,000 for the initial 17-month budget period, subject to the availability of funds.

Matching Requirement

Recipients must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by in-kind contributions from a third party or cash, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $85,000 in Federal funds must include a match of at least $21,250 (20 percent of total project cost).

If approved for funding, recipients will be held accountable for commitments of non-Federal resources; and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated number of Projects to be Funded

Five projects will be funded under this announcement. A single organization may apply on behalf of separate project sites operated by the same organization. If operated by the same organization, each project site which applies must submit a separate application.

Part II—The Review Process

A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications for review to other Federal or non-Federal entities when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working with fathers since such experience on the part of an applicant has the potential to substantially improve the theory and practice of increasing responsible behavior among fathers and improving the well-being of their children.

ACF may also give preference to applicants who make a greater financial commitment to the demonstration since a greater total financial investment than the minimum required in this announcement has the potential of producing a high benefit in furthering knowledge about policies and practice of working with fathers for a low Federal investment.

B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

Review Criteria

(1) *Organizational experience* (15 points) The application should provide evidence of organizational experience in working with fathers including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children. Evidence of this experience should include a complete description of past or current projects which serve fathers and are aimed at improving their understanding of their responsibilities to their children, their roles as fathers, and their children's development.

(2) *Staff skills and responsibilities* (15 points) The application should list each consultant or other key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff. Applicants are encouraged to discuss staff experience in working with fathers

(3) *Knowledge of issues concerning fathers* (15 points) The application should provide evidence of the applicant's understanding of the demographics and experiences of fathers, including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children. Evidence of this understanding should include (a) knowledge of key issues concerning fathers, any obstacles to effecting healthy levels of paternal involvement in their children's lives, and strengths and deficits of fathers in meeting their responsibilities to their children; and (b) if appropriate to the target population of fathers considered, familiarity with how men interact with child support enforcement systems, courts, employment and training programs, and social service agencies.

(4) *Approach and project design* (50 points) The application should describe how the organization will operate projects designed to create an environment where fathers are encouraged and supported in conduct that allows them to improve the quality of life for their families. The application should explain the applicant's methods to teach fathers how to act responsibly and to adopt behaviors which exemplify the following principles: Raising children requires an active commitment from both parents—financially and emotionally; employment is important to being a responsible father not only to provide financial support but also to be a good role model; and successful child-rearing depends on understanding how children develop. The application must explain in detail the typical settings or points in fathers' lives that the applicant first plans to engage and enroll individuals for program services, e.g., in-hospital, community centers, employment agency, etc. The application should explain how the project plans to increase basic responsible acts among fathers, such as establishing paternity and encouraging contact between father and children, but also, and more important, how programs will teach fathers to understand their children's development, to understand and positively affect their children's behavior, to be positive role models for their children, and to work constructively with the children and the children's mother regardless of whether both parents live in the same household as the children. The application should also describe the types of services to be provided or to which clients will be referred, e.g., health and nutrition instruction, employment and career counseling, parenting education, peer support, formal and informal mediation and dispute resolution with the children's mother, etc.

(5) *Budget Appropriateness* (5 points) The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A.

Part III. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this announcement along with a checklist for assembling an application package.

A. Required Notification of the State Single Point of Contact

This program announcement is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, South Dakota, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, Washington, DC. 20447.

B. Deadline for Submittal of Applications

Applications shall be considered as meeting an announced deadline if they are either:

1. Received on or before the deadline date at the receipt point specified in this program announcement, or

2. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private

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Metered postmarks shall not be acceptable as proof of timely mailing.

Late applications: Applications which do not meet the criteria in 1 and 2 above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it will not extend the deadline for any applicants.

C. Instructions for Preparing the Application

In order to assist applicants in completing the application, the Standard Forms 424 and 424A, required certifications, and a list of SPOCs have been included at the end of Part III of this announcement. Please reproduce single-sided copies of these forms from the reprinted forms and type your information onto the copies. Do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Item 1. "Type of Submission"—Non-Construction.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information" "Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—New.

Item 9. "Name of Federal Agency"—DHHS/ACF.

Item 10. "Catalog of Federal Domestic Assistance Number"—93.647.

Item 11. "Descriptive Title of Applicant's Project"—Responsible Fatherhood Project.

Item 12. "Areas Affected by Project"—Self-explanatory.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located.

Items 15 "Estimated Funding Levels"—In completing 15a through 15f, the dollar amounts entered should reflect the total amount requested for the initial 17-month budget period.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount available under this announcement for the initial 17-month budget period.

Items 15b–e Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds."

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process?—Check "Yes" if your State participates in the E.O. 12372 process. Enter the date the application was made available to the State for review. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process?—Check "No" if the program has not been selected by State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a-c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, and C are to be completed. Sections D, E and F do not need to be completed.

Section A—Budget Summary. Line 1:

Column (a): Enter "Responsible Fatherhood";

Column (b): Enter 93.647.

Columns (c) and (d): Leave blank.

Columns (e), (f) and (g): Enter the appropriate amounts needed to support the project for the budget period.

Section B—Budget Categories. This budget should include the Federal as well as non-Federal funding for the proposed project for the budget period.

The budget should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For grants governed by the administrative requirements of either 45 CFR Part 92 or 45 CFR Part 74, equipment is defined as tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." This line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

Justification: Enclose a copy of the indirect cost rate agreement, if applicable.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. On lines 8–11, list estimates for each projected budget period within the total project period (if an additional line is needed, use line 23 and label it appropriately). Enter total amounts on line 12.

In-kind contributions are defined in title 45 of the Code of Federal Regulations, § 74.2, as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. Not applicable

Section F—Other Budget Information. Not applicable.

3. Program Narrative Statement

The Program Narrative Statement should be clear, concise, and address the specific requirements mentioned under Part I. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Organizational Experience;*

(b) *Staff Skills and Responsibilities;*

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(c) *Knowledge of Issues Concerning Fathers;*

(d) *Approach and Project Design;*

(e) *Budget Appropriateness.*

The specific information to be included under each of these headings is described in section B of Part II—Evaluation Criteria.

The narrative should be typed double-spaced. All pages of the narrative (including charts, references, footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Organizational Experience." The length of the application, including the application forms and all attachments, should not exceed 50 pages.

4. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances and certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. A signature on the SF 424 indicates compliance with Drug-Free Workplace Requirements, Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original application, signed and dated, plus two copies.

—Complete application length should not exceed 60 pages.

—A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424);
- A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;
- Budget Information—Non-construction programs (SF 424A);
- Budget Justification for SF 424A Section B—Budget Categories;
- Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Program Narrative Statement (See Part II, Section C);
- Assurances—Non-construction programs (SF 424B); and
- Certification Regarding Lobbying.

E. Submitting the Application

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Dated: March 28, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

BILLING CODE 4184-01-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1 TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2 DATE SUBMITTED	Applicant Identifier
	3 DATE RECEIVED BY STATE	State Application Identifier
	4 DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a Applicant	b Project

15. ESTIMATED FUNDING:	
a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount request or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1		$	$	$	$	$
2						
3						
4						
5 TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a Personnel	$	$	$	$	$
b Fringe Benefits					
c Travel					
d Equipment					
e Supplies					
f Contractual					
g Construction					
h Other					
i Total Direct Charges (sum of 6a - 6h)					
j Indirect Charges					
k TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$			$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

BILLING CODE 4184-01-C

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6 a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section needs not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a

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purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of under ground sources of drinking water under the Safe Drinking Water Act of 1974; as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. will comply with the Laboratory Animal Welfare Act of 1996 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184-01-P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for deberment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at al tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-P

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable* _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive OFfice of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441.

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Action Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292-9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capital, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin, N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411 Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1204 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

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Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305 Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707 Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (617) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

[FR Doc. 95–8131 Filed 4–3–95; 8:45 am]

BILLING CODE 4184–01–P

Administration for Native Americans

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KE, Administration for Native Americans (ANA) (56 FR 42340), as last amended, August 27, 1991. Specifically, delete Chapter KE in its entirety, and replace it with the following:

KE.00 Mission. The Administration for Native Americans (ANA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to American Indians, Alaskan Natives, Native American Pacific Islanders and Native Hawaiians, hereinafter referred to as Native Americans. ANA represents the concerns of Native Americans and serves as the focal point in the Department on the full range of developmental, social and economic strategies that support Native American self-determination and self-sufficiency.

ANA administers grant programs to eligible Indian tribes and Native American organizations in urban and rural areas with funds authorized under the Native American Programs Act of 1974, as amended.

In conjunction with the Office of the Assistant Secretary for Children and Families, ANA serves as Departmental liaison with other federal agencies on Native American affairs, working to promote social and economic self-sufficiency for Native Americans. In concert with other components of ACF, it develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of Native Americans. Through its policy, liaison, and programmatic grant functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans, and ensures that information about Departmental services and benefits and eligibility criteria is available to Native Americans and fosters the opportunity for the exercise of self-determination by Native Americans and their operation of Native American programs and enterprises.

KE.10 Organization. The Administration for Native Americans is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KEA)
Intra-Departmental Council on Native American Affairs (KEB)
Planning and Support Staff (KEC)
Program Operations Division (KED)

KE.20 Functions. A. The Office of the Commissioner provides executive direction and management strategy for all components of ANA. The Commissioner serves as the effective and visible advocate on behalf of Native Americans within the Department, and with other departments and agencies of the Federal Government regarding all Federal policies affecting Native Americans. The Commissioner serves as advisor to the Assistant Secretary for Children and Families, the Secretary, and the heads of DHHS agencies administering programs which have a significant impact on Native Americans. On behalf of the Department, the Commissioner conducts liaison with and obtains advice from Indian tribes and Native American organizations. The Commissioner provides policy direction and guidance to the ACF regional offices with respect to programs for Urban Indians, off-reservation Indians, and other Native American projects in Hawaii and the Pacific Islands. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner. The Commissioner is Chairperson of the Intra-Departmental Council on Native American Affairs and shall advise the Secretary on all matters affecting Native Americans that involve the Department.

B. Intra-Departmental Council on Native American Affairs serves as the focal point within the Department for intra-agency activities related to Native American affairs and effect coordination, cooperation and complementary utilization of the Department's resources for Native Americans. It promotes consistent policies on Native American affairs for the entire Department and promotes the full and continuous application of these policies throughout the Department. The Commissioner is the Chairperson of the Council and advises the Secretary on Native American issues. Council staff provide support to the Commissioner of ANA/Council Chair.

The Council identifies administrative, legislative and regulatory changes or developments necessary for the applications of effective and consistent Federal Indian policy.

C. Planning and Support Staff plans, coordinates, and controls ANA policy, planning, and management activities, and manages the development of regulations, policies, and guidelines for ANA. It develops and recommends the implementation of policies in coordination and consultation with the Office of Policy and Evaluation.

In coordination with the Office of Policy and Evaluation and the Office of Financial Management in ACF, the staff directs the development of program plans consistent with the Department's requirements. It formulates budget and legislative plans consistent with Departmental and ANA requirements. It coordinates the reporting by ANA components to the ACF management information system including reports on short range initiatives.

The staff manages the ANA program management system to support ANA programming, planning and administration; provides a wide range of management administrative services in support of all ANA programs and activities; and initiates and monitors the progress of all personnel actions.

The staff serves as ANA Executive Secretariat, controlling the flow of correspondence. It is responsible for the receipt of Freedom of Information Act requests directed to ANA and coordinates responses to such requests; coordinates with appropriate ACF components in implementing administrative requirements and procedures; and oversees and administers the panel review process for grant applications within ANA.

D. Program Operations Division provides direct financial assistance to American Indian tribal governments, Native Hawaiian organizations, Native Pacific Island organizations, urban Indian groups, rural off-reservation Native American groups, other Native American groups and organizations including national, regional, statewide, local, and inter-tribal consortia groups throughout the lower 48 states, Alaska, Hawaii and the South Pacific Islands. The Division serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with projects of national significance, and carries out special projects and initiatives for the benefit of the ANA service population.

The Division provides information and program content for plans, budget information and policy development for activities authorized under the Native American Programs Act of 1974, as amended. In cooperation with the ANA Planning and Support Staff, it coordinates all matters pertaining to planning, overall ANA management, policy development and control, and program development.

Dated: March 28, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–8129 Filed 4–3–95; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3847; FR–3828–N–02]

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance: Clarification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Clarification of NOFA.

SUMMARY: On March 1, 1995, HUD announced the availability of $25 million for FY 1995 under the Public and Indian Housing Tenant Opportunities Program (TOP). This notice clarifies the eligibility requirements for National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs). The notice also clarifies that Indian housing RO/RMC applicants are not required to complete the certification of democratic election that is required of public housing RC/RMC applicants.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410; telephone: (202) 708–3611. All Indian Housing applicants may contact Charles Bell, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room B–133, Washington, D.C. 20410; telephone: (202) 755–0032. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 for information on the program. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In a Notice of Funding Availability (NOFA) published in the **Federal Register** on March 1, 1995 (60 FR 11222), the Department announced the availability of $25 million for the Public and Indian Housing Tenant Opportunities Program, of which $1 million is set aside for National Resident Organizations (NROs), Statewide Resident Organizations (SROs), and Regional Resident Organizations (RROs). To more clearly define the eligibility requirements for NROs/RROs/SROs, the Department is issuing the following clarifications. For further information about specific aspects of the NOFA and application requirements, please refer to the March 1, 1995, NOFA.

Accordingly, FR Doc. 95–4968, NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance, published on March 1, 1995 (60 FR 11222), is amended as follows:

1. On page 11223, column 1, two new sentences are added in parentheses at the end of paragraph (4) of Section I.C, "Key Features of this NOFA," to read as follows:

* * * (This certification is required only for public housing RCs/RMCs. Indian housing RO/RMC applicants are not required to provide this certification.)

* * * * *

2. On page 11224, in the third column, in Section I.F, "Definitions, the introductory text before the definition of "National Resident Organization (NRO)" is revised to read as follows:

The following definitions apply to NRO/RRO/SRO applicants. Note, however, that a NRO/RRO/SRO is eligible to apply for funding under this NOFA if the organization has submitted to the proper governmental agency the application and materials required to become an incorporated nonprofit organization or association. Before execution of the grant, an organization selected for funding must be incorporated or organized as an association in accordance with applicable State or Tribal law:

* * * * *

3. On page 11234, column 2, the paragraph following the heading "*Serves: Colorado, Montana, the Dakotas, Nebraska, Utah and Wyoming*", which sets out the name, address, and telephone number for Mr. Vernon Haragara, is revised to read as follows:

Mr. Vernon Haragara, Administrator, Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462

Authority: 42 U.S.C. 1427r; 42 U.S.C. 3535(d).

Dated: March 27, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–8147 Filed 4–3–95; 8:45 am]

BILLING CODE 4210–33–P

Statement of Organization, Functions, This notice amends Part K of the

KE.20 Functions. A. The Office of the Commissioner provides executive

directs the development of program plans consistent with the Department's

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant(s) has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–799103

Applicant: Mr. Don Blanton, Hicks and Company, Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–800611

Applicant: Mr. Steven D. Paulson, SWCA Incorporated, Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–800613

Applicant: Mr. Dwight Chapman, Southwest Research, Moab, Utah.

The applicant requests a permit to take the Mexican spotted owl (*Strix occidental lucida*) on U.S. Forest Service lands in Arizona and New Mexico for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Addresses: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See Addresses above.)

John Cross,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8168 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application(s) for Permit

The following applicant(s) has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.)

PRT–798998

Applicant: Mr. C. Lee Sherrod, Horizon Environmental Services Inc., Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas, primarily in Travis and Bastrop Counties, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Addresses: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See Addresses above.)

John Cross,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–8168 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delaware Water Gap National Recreation Area Citizens Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, May 13, 1995 at 9:00 a.m.

Address: Pinchot Institute (Grey Towers), Milford, PA 18337.

Meeting Date and Time: Thursday, September 14, 1995 at 7:00 p.m.

Address: Wayne Dumont Administration Building, Route 519, Belvidere, NJ 07823.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: By-Laws, Natural Resources, Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, as well as Special Committee Reports. Superintendent Roger K. Rector will give a report on various park issues. Immediately following the May 13, 1995 meeting, Park Archeologist John Wright will present a brief program highlighting archeology within the recreation area.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: March 24, 1995.

Marie Rust,

Regional Director, Mid-Atlantic Region.

[FR Doc. 95–8151 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 25, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 19, 1995.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Hot Spring County

Cabin No. 1 [Facilities Constructed by the CCC in Arkansas MPS], Cabin area access rd., Lake Catherine State Park, Shorewood Hills, 95000455

Prairie County

Prairie County Courthouse, Jct. of Magnolia and Prairie Sts., DeValls Bluff, 95000457

Washington County

Chi Omega Chapter House, 940 Maple St., Fayetteville, 95000456

COLORADO

El Paso County

Calhan Rock Island Railroad Depot, 252 ft. W of Denver St. on rock Island RR right-of-way, Calhan, 95000476

FLORIDA

Palm Beach County

Milton—Myers American Legion Post No. 65, 263 NE. 5th Ave., Delray Beach, 95000471

St. Lucie County

Frere, Jules, House [Hillsboro MPS], 2404 Sunrise Blvd., Fort Pierce, 95000467

ILLINOIS

Adams County

South Side German Historic District (Boundary Increase), Roughly bounded by Jefferson, S. 12th, Jackson and S. 5th Sts., Quincy, 95000481

Champaign County

Moultrie County Courthouse, 10 S. Main St., Sullivan, 95000489

Cook County

Bryn Mawr Avenue Historic District, Bryn Mawr Ave. from Sheridan Rd. to Broadway, Chicago, 95000482

Hamilton Park [Chicago Park District MPS], 513 W. 72nd St., Chicago, 95000487

Indian Boundary Park [Chicago Park District MPS], 2500 W. Lunt, Chicago, 95000485

Portage Park [Chicago Park District MPS], 4100 N. Long Ave., Chicago, 95000484

Riis, Jacob A., Park [Chicago Park District MPS], 6100 W. Fullerton Ave., Chicago, 95000483

Trumbull Park [Chicago Park District MPS], 2400 E. 105th St., Chicago, 95000486

Marion County

Jehle, Louis, House, 511 E. Fifth St., Pana, 95000490

Mercer County

Willits, Levi, House, 202 Main St., New Boston, 95000488

Woodford County

Schertz, Joseph, House, IL 116, 1 mi. W of city limits, Metamora vicinity, 95000491

KANSAS

Pawnee County

Babbitt—Doerr House, 423 W. 5th St., Larned, 95000477

LOUISIANA

Pointe Coupee Parish

Cherie Quarters Cabins, Major Ln., approximately ½ mi. from jct. with LA 1, Oscar vicinity 95000470

MICHIGAN

Huron County

Huron City Historic District, Pioneer Dr., Huron and Port Austin Townships, Huron City, 95000446

NEW MEXICO

Sierra County

Alert—Hatcher Building (Hillsboro MPS), Jct. of Second Ave. and Main St., SE corner, Hillsboro, 95000460

Bucher, William H., House (Hillsboro MPS), 300 W. Main St., Hillsboro, 95000461

Meyers House (Hillsboro MPS), Main St. N side between 4th and 5th Aves., Hillsboro 95000463

Miller, George Tambling and Ninette Stocker, House (Hillsboro MPS), Elenora St. S side, W of Union Church, Hillsboro 95000465

Robins, Will M., House (Hillsboro MPS), Jct. of Main St. and Fifth Ave., SW corner, Hillsboro 95000462

Sullivan, Cornelius, House (Hillsboro MPS), Jct. of Elenora and First Ave., SW corner, Hillsboro 95000459

Webster, John M., House (Hillsboro MPS), Jct. of Main St. and Fifth Ave., SE corner, Hillsboro 95000464

NEW YORK

Cayuga County

House at 15 East Cayuga Street (Moravia MPS), 15 E. Cayuga St., Moravia, 95000472

Essex County

Trudeau Sanatorium (Saranac Lake MPS), Trudeau Rd., Saranac Lake vicinity, 95000479

Niagara County

Bond, Col. William M. and Nancy Ralston, House, 143 Ontario St., Lockport, 95000475

Orange County

Hatch, Vermont, Hansion, Old Pleasant Hill Rd., Cornwall, 95000480

Oswego County

Woodruff Block, 17 W. Cayuga St., Oswego, 95000473

Rensselaer County

Trinity Church Lansingburgh, 585 Fourth Ave., Troy, 95000478

Tompkins County

St. Thomas' Episcopal Church, 2740 Slaterville Rd. (NY 79), Slaterville Springs, 95000458

Ulster County

Phoenicia Railroad Station, High St., Phoenicia, 95000474

NORTH DAKOTA

Grand Forks County

Beare, Harriett and Thomas, House, 420 Reeves Dr., Grand Forks, 95000469

St. Michael's Hospital and Nurses' Residence, 813 Lewis Blvd., Grand Forks, 95000468

OHIO

Fayette County

Sollars Farmstead, Address Restricted, Greenfield vicinity, 95000493

Franklin County

Groverport United Methodist Church, 512 Main St., Groveport, 95000494

Hamilton County

Cincinnati and Suburban Telephone Company Building, 209 W. Seventh St., Cincinnati, 95000495

Madison County

Price Corners, 7040 US 42 S. Plain City vicinity, 95000496

Miami County

Bradford Junction Interlocking Tower, 501 E. Main St., Bradford, 95000497

Stark County

Cook, George E., House, 1435 Market Ave N., Canton, 95000498

Summit County

Mason, Frank H., House, 615 Latham Ln., Franklin Township, Akron vicinity, 95000499

Raymond, Frank Mason, House, 655 Lathan Ln., Akron vicinity, 95000500

WISCONSIN

Ashland County

Wakefield Hall, 1409 Ellis Ave., Ashland, 95000466

[FR Doc. 95–8231 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–70–M

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INTERSTATE COMMERCE COMMISSION

[Docket No. AB–88 (Sub-No. 7X)]

Bessemer and Lake Erie Railroad Company; Abandonment Exemption; in Armstrong and Butler Counties, PA

Bessemer and Lake Erie Railroad Company (B&LE) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 3.13 miles of its line of railroad, known as the Western Allegheny Branch, extending from Station 2294+53 eastward to the end of the track at Station 2460+01, in Armstrong and Butler Counties, PA.[1]

B&LE has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 4, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by April 14, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 24, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert J. Koch, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&LE has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 7, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8190 Filed 4–3–95; 8:45 am]

BILLING CODE 7035–01–P

[1] By letter dated March 20, 1995, the Bradys Bend Corporation (BBC) filed a comment opposing the proposed abandonment and requests that we deny B&LE's exemption. BBC alleges that because of the potential for future traffic, it believes that B&LE's rail line should remain operational.

We do not normally consider comments prior to the publication of a notice of exemption under 49 CFR 1152.50(b). Here, BBC can file a petition to stay and/or a petition to reopen or revoke on or before the dates specified in this notice. BBC should clearly set out the relief it seeks and any supporting arguments for such relief. Speculation about future traffic is not sufficient basis upon which to deny an exemption.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

(2) DEA Form 357. Drug Enforcement Administration, United States Department of Justice.

(3) Primary = Business or other for-profit. Title 21, CFR 1312.12, requires any registrant who desires to import certain controlled substances into the United States to apply on DEA Form 357. Information is needed to determine the suitability for issuance of an Import Permit, ensure that import quotas are not exceeded, and provider the United Nations with information concerning legitimate traffic in narcotics.

(4) 267 annual respondents at .25 hours per response.

(5) 67 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8160 Filed 4–3–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collection Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Removal of Restriction on Employing Certain Individuals.

(2) None. Drug Enforcement Administration.

(3) Primary = Business or other for-profit. Others = Individuals and households, Not-for-profit institutions, Federal Government and State, Local, or Tribal Government. This collection is necessary to maintain a closed system of distribution by requiring notification from DEA registrants of their intent to employ persons who have been convicted of a felony offense.

(4) 100 annual respondents at ½ hour per response.

(5) 50 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8161 Filed 4–3–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Public Hearings

This document is a notice of public hearings to be held by the Department of Labor for the purpose of gathering factual information regarding child labor practices throughout the world. The hearing will be held on Friday, May 5, 1995, at the Department of Labor, room N–3437, beginning at 9 a.m. The hearing will be open to the public. The Department of Labor is now accepting requests from all sectors to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Individuals or organizations interested in testifying at the international child labor hearing, should call (202) 501–6068 to be put on the roster.

The Department of Labor is currently undertaking a second Congressionally-mandated review of international child labor practices (pursuant to the 1995 HHS/Department of Labor Appropriations Bill—Pub. L. 103–333). Information provided at the hearing will be considered by the Department of Labor in preparing its report to Congress. Testimony should be confined to the specific topic of the study. Specifically, the international child labor study of the Bureau of International Labor Affairs is seeking written and oral testimony on the topics noted below:

1. Use of child labor in commercial (i.e., non-subsistence) export-oriented agricultural enterprises. While we are not examining family or subsistence farming, we are seeking information on children in agricultural enterprises of all sizes, from plantations and estates to small-sized farms; in forest industries, ranching, and fishing (including shellfish) enterprises.

2. Forced or bonded child labor. We are seeking information on the incidence of forced and bonded labor in industries directly or indirectly contributing to exports.

3. Government efforts to deal with child labor. Any significant actions, progressive or regressive, taken by governments with respect to child labor laws, the enforcement of child labor laws, new programs or approaches for curtailing child labor, oversight efforts, or other relevant initiatives.

4. Non-Governmental efforts intended to reduce child labor. Private-sector programs or policies to reduce child labor, including codes of conduct, corporate efforts to develop guidelines for subcontractors, or the creation of schools, centers, organizations, studies, and other approaches to limit child labor.

5. Updates and new developments. Significant actions taken by the 19 countries reviewed in the first report, such as new laws, regulations, or enforcement efforts; educational, rehabilitational, or other programs initiated; and any significant public discussion or debate of the issue.

DATES: The hearing is scheduled for Friday, May 5, 1995. The deadline for being placed on the roster for oral testimony is 5 p.m., April 21, 1995. Presenters will be required to submit five (5) written copies of their oral testimony to the Child Labor Study office by 5 p.m., May 1. The record will be kept open for additional written testimony until 5 p.m., May 5, 1995.

ADDRESSES: Written testimony should be addressed to the International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210.

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FOR FURTHER INFORMATION CONTACT: Daniel Solomon, International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 501–6068; fax (202) 219–4923. Persons with disabilities who need special accommodations should contact Mr. Solomon by April 24, 1995.

Additional Information

The Senate Appropriations Committee report states:

Child labor is a silent and tragic emergency of our time. Few human rights abuses are so unanimously condemned, while being so universally practiced, as child labor. The number of children working, and the scale of their suffering, increases year by year. UNICEF and the International Labor Organization estimate that hundreds of millions of children are working today, many in servitude and under hazardous conditions.

Therefore, the Committee [directs the Secretary] to continue and expand efforts by the Department to identify foreign industries and their host countries that utilize child labor in the production of goods from industry, plantations, and mining exported to the United States.

The Secretary is directed to utilize all available information, including information made available by UNICEF, the International Labor Organization and human rights organizations and report his findings to the Committee no later than July 30, 1995.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC, this 29th day of March 1995.

Joaquin F. Otero,

Deputy Under Secretary.

[FR Doc. 95–8225 Filed 4–3–95; 8:45 am]

BILLING CODE 4510–28–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–339]

Virginia Electric and Power Co. (North Anna Power Station Unit No. 2); Exemptions

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. NPF–7, which authorizes operation of North Anna Power Station, Unit 2 (the facility or NA–2), at a steady-state reactor power level not in excess of 2893 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Louisa County, Virginia. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) of the primary containment, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection program.

Section IV.A of appendix J to 10 CFR part 50 requires that any modification, replacement of a component which is part of the primary reactor containment boundary, or resealing a seal-welded door, performed after the preoperational leakage rate test shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification.

III

By letter dated March 2, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 16 months (from the March 1995 steam generator replacement outage, to the October 1996 refueling outage).

The licensee's March 2, 1995, letter also requested temporary relief from the requirements to perform a type A test following a major modification or replacement of a component which is part of the primary reactor coolant boundary. Specifically, the post-modification exemption is requested from performing a Type A test due to the activities associated with the upcoming NA–2 steam generator replacement. The basis for the post-modification exemption request is that, in this case, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of Appendix J.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption to Section III.D.1.a of appendix J to 10 CFR part 50. The licensee points out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at NA–2 during the Type A tests conducted during the first 10-year inservice inspection interval (1984, 1989, and 1990), that considerable margin exists between the Type A tests and the Technical Specifications (TS) allowable leakage rate limit.

During operation, the NA–2 containment is maintained at a subatmospheric pressure (approximately 10.0 psia) which provides a good indication of the containment integrity. TS require the containment to be subatmospheric when in Modes 4, 3, 2, and 1. Containment air partial pressure is monitored in the control room to ensure TS compliance. If the containment air partial pressure increases above the established TS limit, the unit is required to shut down.

The licensee's request also cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption to Section IV.A of appendix J to 10 CFR part 50.

The NA–2 plant design incorporates a "closed system" for transferring steam from the steam generators inside of the primary containment to the main turbine-generators in the turbine building. The inside containment portion of this closed system consists of the main steam lines, the feedwater lines, and the secondary side of the steam generators. This closed system inside of containment forms a part of the primary reactor containment boundary.

The planned replacement of the NA–2 steam generators includes the following activities:

—Cutting and removing the mainsteam and feedwater lines from the steam generators.
—Cutting and removing the upper assemblies of the steam generators (steam domes).
—Cutting the reactor coolant piping and removing the steam generator lower assemblies (tube bundles).
—Installing the new steam generator lower assemblies and re-welding the reactor coolant piping.
—Re-installing the steam generator upper assemblies on the new lower assemblies.
—Re-installing and re-welding the main steam and feedwater lines.

The planned replacement of the NA–2 steam generators affects only this

closed piping system inside containment. The steam generator replacement activities do not affect the containment structure or the actual containment liner.

Section IV.A to Appendix J, Special Testing Requirements for Containment Modifications, requires that any major modification or replacement of a component which is part of the primary reactor containment boundary shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification. The Type C testing requirements of Appendix J apply to leakage testing of containment isolation valves. The planned replacement does not affect any containment isolation valves and, therefore, the Type C testing requirements are not applicable. The Type B testing requirements of appendix J apply to leakage testing of gasketed or sealed containment penetrations (e.g., electrical penetrations), air lock door seals, and other doors with resilient seals or gaskets. Although the secondary side of the steam generators have access manways with gaskets, the Type B testing requirements do not address the other areas of the containment boundary affected by the planned replacement, i.e., weld seams in the steam generator and in the main steam and feedwater piping. Hence, because the affected areas cannot be tested by Type B or Type C testing, Section IV.A of Appendix J would require that a Type A test be performed prior to startup following the planned steam generator replacement.

However, the affected area of the primary containment boundary is also part of the pressure boundary of an ASME Class 2 component/piping system and, as such, the planned replacement of the steam generators is subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Type A testing requirements of Appendix J. The acceptance criteria for ASME Section XI system pressure testing of welded joints is "zero leakage." In addition, the test pressure for the system pressure test will be in excess of 20 times that of a Type A test (1356 psig vs. 44.1 psig).

Therefore, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of appendix J.

IV

In the licensee's March 2, 1995, exemption request, the licensee stated that special circumstance 50.12(a)(2)(ii) is applicable to this situation, i.e., that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Appendix J states that the leakage test requirements provide for periodic verification by tests of the leak tight integrity of the primary reactor containment. Appendix J further states that the purpose of the tests "is to assure that leakage through the primary reactor containment shall not exceed the allowable leakage rate values as specified in the Technical Specifications or associated bases." Thus, the underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request from the requirements of Section III.D.1(a) of appendix J. The NRC staff has noted that the licensee's record of ensuring a leak-tight containment has verified containment integrity and, as noted previously, considerable margin exists between the Type A test results and the TS allowable leakage rate. The Type A tests performed in 1984, 1989, and 1990 have all successfully verified containment integrity. All "as-found" Type A test results since 1984 have been confirmatory of the Type B and C tests which will continue to be performed. The licensee will perform the general containment inspection although it is only required by appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NA–2 containment is of the subatmospheric design. During operation, the containment is maintained at a subatmospheric pressure (approximately 10 psia) which provides for constant monitoring of the containment integrity and further obviates the need for Type A testing at this time. If the containment air partial pressure exceeds the established TS limit, the unit must be shut down.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk-corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on those considerations, it is unlikely that an extension of one cycle for the performance of the appendix J, Type A test at NA–2 would result in significant degradation of the overall containment integrity. As a result, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that the application of the regulation in these particular circumstances is not needed to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to

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allow a one-time exemption to permit a schedular extension of one cycle for the performance of the appendix Type A test, provided that the general containment inspection is performed, to be acceptable.

Section IV.A of appendix J would normally require that a Type A test be performed prior to startup following a containment modification such as the planned steam generator replacement. However, in this case, the affected area of the primary containment boundary is also part of the pressure boundary of a ASME Class 2 component/piping system and, as such, the planned replacement of the steam generators is subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure testing requirements are more stringent than the Type A testing requirements of appendix J. The objective of the Type A test required by Section IV.A is to assure the leak-tight integrity of the containment area affected by the modification. The ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of appendix J. As a result, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that the application of the regulation in these particular circumstances is not needed to achieve the underlying purpose of the rule. Therefore, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption from Type A testing for modification of the primary containment boundary due to the forthcoming NA steam generator replacement to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these Exemptions will not have a significant impact on the environment (60 FR 15945).

The exemption from Section III.D.1.(a) of appendix J to 10 CFR part 50 is effective upon issuance and shall expire at the completion of the NA–2 1996 refueling outage.

The exemption from Section IV.A of appendix J to 10 CFR part 50 is effective upon issuance and shall expire at the completion of the NA–2 1995 steam generator replacement refueling outage.

For the Nuclear Regulatory Commission.
Dated at Rockville, MD, this 29th day of March 1995.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8166 Filed 4–3–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel on the Engineered Barrier System: Meeting and Tour of the Idaho National Engineering Laboratory

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a meeting on Tuesday, June 6, 1995, in Idaho Falls, Idaho, and a tour of the Idaho National Engineering Laboratory (INEL) site on Wednesday, June 7, 1995. The meeting will be held at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402; Tel (208) 523–0088; Fax (208) 522–7420. The meeting and tour are open to the public; however, space on the tour is limited and advance reservations are required.

The panel meeting on Tuesday will focus on three areas of interest to the Board: (1) government-owned spent nuclear fuel at INEL (its description and plans for its eventual permanent disposal), (2) contaminated scrap metal and greater-than-class-C waste activities managed by the Department of Energy's Idaho Operations Office that could have an impact on permanent disposal in a repository, and (3) dry storage of spent nuclear fuel, including current research and development activities at INEL for government-owned and commercial spent nuclear fuel. Panel members have invited the Department of Energy and its INEL contractors and INEL researchers to discuss these issues. The panel will also hear about the status of efforts to get INEL high-level defense wastes such as calcine and tank-stored liquids into appropriate forms for transportation to and disposal in a potential repository.

On Wednesday, June 7, the penal will participate in a tour of the INEL facilities discussed in the previous day's meeting. The Board makes every effort to ensure that the general public has access to all of its activities. To that end, the public is invited to attend the tour with the panel. Space is limited, however, and will be filled on a first-come, first-served basis. The tour will begin at the Shilo Inn in Idaho Falls at approximately 8 a.m. and return to the hotel at approximately 6 p.m.

All who wish to join the tour must provide the following information to Frank Randall, (703) 235–4473 or FAX (703) 235–4495.

1. Full name
2. Social security number
3. Date of birth
4. Daytime telephone number
5. Company or organization
6. Place of birth (city and state)
7. Country of citizenship (if non-U.S.)

U.S. citizens must call or fax their data to Mr. Randall by May 19, 1995. Non-U.S. citizens must call or fax their data to Mr. Randall by April 28, 1995. No one will be registered for the tour after the applicable cutoff date.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning July 24, 1995. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: March 29, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–8146 Filed 4–3–95; 8:45 am]

BILLING CODE 8925–AM–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

The Eighth Meeting of the President's Council on Sustainable Development (PCSD) in San Francisco, CA

SUMMARY: The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor and civil rights organizations, will convene its eighth meeting in San Francisco, California. Council members will further discuss the PCSD's role in developing recommendations to the President toward the integration of environmental and economic policy and, ultimately, establishing a long-term path toward a sustainable United States by the year 2040.

Council members will discuss at length the draft policy recommendations for a sustainable future, which have been developed by each of the PCSD's task forces. The task forces have generated these policy recommendations based on information gleaned from programs, initiatives, and efforts currently occurring around the United States and observations of what business and manufacturing practices are sustainable.

The Council will also report on PCSD initiatives, including the Vision and Principles, Challenge Statement, and Goals.

Dates/Times: Thursday, 27 April 1995: 1:00–5:30 p.m.; Friday, 28 April 1995: 9:00 a.m.–12:00 p.m.

Place: Officer's Club, Presidio of San Francisco, San Francisco, California.

Status: Open to the Public.

For Further Information Contact: Sarah McCourt, Director of Communications, 202–408–5296.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 95–8191 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–10–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, April 18–19, 1995 at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9:00 a.m. on April 18, 1995, and adjourn at approximately 5:00 p.m. On Wednesday, April 19, 1995, the meeting will convene at 9:00 a.m. and adjourn at noon. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 95–8341 Filed 4–3–95; 8:45 am]

BILLING CODE 8820–BW–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 27, and Friday, April 28, 1995, at the Washington Marriott, 1221 22nd Street NW., Washington, DC, in the Dupont Room. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. The Commission will review draft reports on access to care for Medicare beneficiaries. Setting volume performance standards and updating the Medicare Fee Schedule conversion factor for 1995, and Medicare beneficiary financial liability. Other topics for discussion could include graduate medical education, results from a Project HOPE/Commission study, and possible budget cut for the Medicare program. A final agenda will be available on Friday, April 21, 1995.

ADDRESSES: 2120 L Street, N.W., Suite 200; Washington D.C. 20037. The telephone number is 202/653–7200.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202/653–7200.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Friday, April 21, 1995, and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

Lauren LeRoy,

Acting Executive Director.

[FR Doc. 95–8140 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 20972; 813–136]

EIP Inc.; Second Notice of Application

March 29, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Second Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: EIP Inc.

RELEVANT ACT SECTIONS: Applicant seeks a conditional order under sections 6(b) and 6(e) granting an exemption from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order that would exempt employees' securities companies formed by applicant from the above-listed sections of the Act and rules thereunder. On March 2, 1995, a notice of the application was issued (the "Previous Notice").[1] Subsequent to the issuance of the Previous Notice, applicant filed an amendment to change a term of the application. Applicant had stated (and the Previous Notice indicated) that the general partner of each employees' securities company would be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). Applicant has amended the application so that it now provides that the general partner will register under the Advisers Act if required under applicable law.

FILING DATES: The application was filed on September 1, 1994, and amended on November 1, 1994, January 13, 1995, February 15, 1995, and March 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On March 2, 1995, the Previous Notice was issued with respect to applicant's request for an order under sections 6(b) and 6(e) of the Act that would exempt employees' securities companies formed by applicant from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder. After the issuance of the Previous Notice, applicant filed an amendment to change a term of the application. Applicant had stated (and the Previous Notice indicated) that the general partner of each employees' securities company would be registered under the

[1] Investment Company Act Release No. 20937 (Mar. 2, 1995).

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Investment Advisers Act of 1940 (the "Advisers Act").

2. Applicant has amended the application to provide that the general partner will register under the Advisers Act if required under applicable law. The amendment also states that the determination as to whether the general partner is required to register under the Advisers Act shall be made by the general partner and/or its affiliates, and that the application does not request relief as to that determination.

3. In all other respects, the amendment filed on March 23, 1995, is identical to the application as described in the Previous Notice. Accordingly, the Previous Notice sets forth the representations, legal analysis, and conditions of the application, save for the change discussed here.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8144 Filed 4–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26259]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 29, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 24, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power System, Inc. (70–8583)

Notice of Proposal to Amend Charter; Order Authorizing Solicitation of Proxies

Allegheny Power System, Inc. ("APS"), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

APS proposes to amend its charter and to make conforming changes to its by-laws to (1) eliminate cumulative voting provisions and (2) eliminate preemptive rights provisions. APS proposes to present these amendments for action by its shareholders at APS's annual meeting of shareholders to be held on May 11, 1995, and seeks authorization to solicit proxies from shareholders in connection with this meeting.

APS proposes to eliminate a provision in its charter that confers on holders of APS common stock preemptive rights in some circumstances. The charter states that shares of additional APS common stock or securities convertible into common stock may be issued without first being offered to shareholders if such shares are sold for money in a public offering, or to or through underwriters who agree to make a public offering, or in payment for property. In other cases, shareholders have preemptive rights. APS states that preemptive rights are of little significance to shareholders, since they can maintain their proportionate ownership percentage by purchasing shares on the open market or through the APS dividend reinvestment and stock purchase plan. APS also states that elimination of these rights will give APS greater flexibility and reduce the cost of financings.

APS also proposes to eliminate a provision in its charter that states that, at the election of directors, each share of common stock entitles the holder to as many votes as the number of shares held multiplied by the number of directors to be elected. APS states that elimination of cumulative voting will enable the holders of a majority of the shares of common stock entitled to vote to elect all of the directors. APS also states that elimination of cumulative voting may discourage a merger, tender offer or proxy contest, assumption of control by a holder of a large block of common stock, or removal of incumbent management.

APS proposes to submit the proposed amendments for action at its annual meeting of shareholders to be held May 11, 1995, and to solicit proxies from shareholders to approve the proposed amendments. APS states that adoption of each amendment requires the affirmative vote of two-thirds of the holders of outstanding shares of common stock entitled to vote at the annual meeting, and that proxies will be solicited by mail, by officers, directors and employees of APS personally, by telephone or by facsimile.

APS has filed with the Commission its proxy solicitation material and requests that its declaration with respect to the solicitation of proxies be permitted to become effective as provided in Rule 62(d).

It appearing to the Commission that APS's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, under Rule 62, and subject to the terms and conditions as prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8187 Filed 4–3–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 8⅞ percent for the fiscal quarter beginning April 1, 1995.

On a quarterly basis, the Small Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April–June quarter of FY 95, this rate will be 7⅞ percent.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 95–8149 Filed 4–3–95; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Company Computation of Alternative Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 limits maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate for computation of maximum cost of money pursuant to 13 CFR 107.302 is 7.84 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: March 29, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–8164 Filed 4–3–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–80; Notice 2]

Babyhood Manufacturing, Inc.; Mootness of Petition for Determination of Inconsequential Noncompliance

Babyhood Manufacturing, Inc. (Babyhood) of Shrewsbury, Massachusetts determined that some of its child safety seats failed to comply with the buckle release force requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports". Babyhood also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 4, 1993, and an opportunity afforded for comment (58 FR 58895). No comments were received on the petition. This notice announces that the petition has been mooted by Babyhood's decision to notify and remedy according to the statutory requirements.

Paragraph S5.4.3.5 of FMVSS No. 213 requires in pertinent part that

[A]ny buckle in a child restraint system belt assembly designed to restrain a child using the system shall: (a) when tested in accordance with S6.2.1 prior to the dynamic test * * * shall release when a force of not more than 14 pounds is applied;

(b) [A]fter the dynamic test of S6.1, when tested in accordance with S6.2.3, release when a force of not more than 16 pounds is applied.

Between January 31, 1992 and June 30, 1993, Babyhood produced approximately 3,100 child restraint seats, with shoulder harness straps that do not comply with the buckle release requirements of FMVSS No. 213. When four Babyhood child restraint seats were tested by the Calspan Corporation for NHTSA, two of the four units required forces of 14.3 and 15.9 pounds to release the buckle, thus failing the requirement specified in S5.4.3.5(a) of the standard. The other two complied. Babyhood performed subsequent tests on buckles it had in inventory and found that approximately 25 percent of the buckles required release forces of over 14 pounds. These belts all complied with the maximum release force requirement of 16 pounds after the test.

Subsequent to the close of the comment period on Babyhood's petition, Calspan conducted additional tests on the buckles in question. These showed pre- and post-impact release forces up to 16.8 and 18.2 pounds, far exceeding the 14 and 16 pound maxima Partial engagement tests of the buckle were conducted by Detroit Testing Laboratory, and the 5-pound maximum force limit was exceeded in these tests as well. Accordingly, on February 6, 1995, Babyhood submitted a further Part 573 Report in which it agreed to conduct a notification and remedy campaign covering the 3,100 seats in question. Thus, the Administrator has no reason to consider further Babyhood's prior request for exemption from the notification and remedy provisions, as Babyhood's action in filing the new Part 573 Report moots its earlier petition.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 28, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–8232 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–59–P

After said date, the application(s) and/

management.

BILLING CODE 6025-01-M

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Sunshine Act Meetings

Federal Register

Vol. 60, No. 64

Tuesday, April 4, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: April 19, 1995, 2:30 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507

STATUS: The Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Recommendations on Charge Processing will be heard by the Commission.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TDD) at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice issued March 30, 1995.

[FR Doc. 95-8262 Filed 3-30-95; 4:23 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: April 24, 1995, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801, "L" Street, N.W., Washington, D.C. 20507.

STATUS: The Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Recommendations on Relationships with Fair Employment Practices Agencies will be heard by the Commission.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

This Notice issued March 30, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95-8263 Filed 3-30-95; 4:23 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: April 25, 1995, 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: The Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Recommendations on Alternative Dispute Resolution will be heard by the Commission.

Note: Any matter discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

This Notice issued March 30, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95-8264 Filed 3-30-95; 4:23 pm]

BILLING CODE 6750-06-M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Wednesday, April 5, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, April 5, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Mass Media—Title: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations (MM Docket No. 983-48). Summary: The Commission will consider proposing modifications to its rules implementing the Children's Television Act of 1990.

2—Mass Media—Title: Review of the Syndication and Financial Interest Rules. Sections 73.659-73.663 of the Commission's Rules. Summary: The Commission will consider initiating review of the financial interest and syndication rules as called for by the Second Report and Order in MM Docket No. 90-162. 6 FCC Rcd 3094 (1991).

3—Mass Media—Title: Amendment of Part 73 of the Commission's Rules Concerning the Filing of Television Network Affiliation Contacts. Summary: The Commission will consider proposing changes to the current requirement for TV licensees to file broadcast television network affiliation agreements.

4—International—Title: Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems. Summary: The Commission proposes to modify policies governing U.S.-licensed geostationary fixed-satellites.

5—Cable Services—Title: Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92-264). Summary: The Commission will consider action on petitions for reconsideration regarding the number of cable channels that a cable operation can devote to video programming services in which the cable operator has an attributable interest.

6—Office of Engineering and Technology—Title: Amendment of Parts 15 and 90 of the Commission's Rules to Provide Additional Frequencies for Cordless Telephones (ET Docket No. 93-235, RM-8094). Summary: The Commission will consider action on its proposal to provide additional frequencies for cordless telephones.

7—Wireless Telecommunications—Title: Amendment of Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89-553); Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253); and Implementation of Sections 3(n) and 322 of the Communications Act—(GN Docket No. 93-252). Summary: The Commission will consider service, licensing, and auction rules for the licensing of the 900 MHz Specialized Mobile Radio (SMR) service.

8—Wireless Telecommunications—Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services. Summary: The Commission will consider action concerning interconnection, roaming, and resale obligations of commercial mobile radio service providers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418-0500.

Dated: March 29, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-8332 Filed 3-31-95; 11:32 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 6, 1995.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

MATTERS TO BE CONSIDERED: In Open session, the Commission will consider and act upon the following:

1. *Peabody Coal Co.*, Docket No. KENT 91-179-R. (Continuation of consideration of issues that include whether the judge correctly found that the deep cut ventilation requirement proposed by the Department of Labor's Mine Safety and Health Administration was suitable to Peabody's mine under 30 U.S.C. § 863(o).

2. *Steele Branch Mining*, Docket No. WEVA 92-953. (Continuation of consideration of issues that include whether the judge correctly concluded that Steele Branch Mining violated 30 C.F.R. § 77.404(a), and that the violation was significant and substantial.)

3. *Madison Branch Mgmt.*, Docket No. WEVA 93-218-R et seq. (Issues on interlocutory review include application of statutory penalty criteria in light of proferred settlement agreement.)

In closed session, the Commission will consider and act upon the following:

1. *Buck Creek Coal, Inc.*, Docket No. LAKE 94-72 (Issues on interlocutory review include whether relief from a judge's stay order should be granted.)

It was determined by a majority vote of the Commissioners that this matter be discussed in closed session.

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: March 30, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95-8393 Filed 3-31-95; 8:45 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Time Change/Date Change.

The closed meeting scheduled for Thursday, April 6, 1995, at 10:00 a.m., has been changed to Tuesday, April 4, 1995, following the 10:00 a.m. open meeting.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

Dated: March 31, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-8331 Filed 3-31-95; 11:31 am]

BILLING CODE 8010-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 10, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-8392 Filed 3-31-95; 3:27 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 3, 10, 17, and 24, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 3

Wednesday, April 5

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Edward Butcher, 301-415-3183)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Dr. James E. Bauer (Order Prohibiting Involvement in NRC-Licensed Activities) Petition for Review of Atomic Safety and Licensing Board's Order, LBP-94-40 (Tentative)
(Contact: Andrew Bates, 301-415-1963)

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

Wednesday, April 19

10:00 a.m.
Briefing on IPE Program and Severe Accident Research Program (Public Meeting)
(Contact: Themis Speis, 301-415-6802)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301-415-7380)

Friday, April 21

10:00 a.m.
Briefing on Commission Decision Tracking System (CDTS) (Public Meeting)
(Contact: Samuel Chilk, 301-415-1875)

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Week of April 24—Tentative

Tuesday, April 25

2:00 p.m.
Briefing on NRC Status of High-Level Waste Management Program (Public Meeting)
(Contact: Joseph Holonich, 301–415–6643)

Wednesday, April 26

10:00 a.m.
Briefing on Proposed Rule on Safety Equipment Reliability Data (Public Meeting)
(Contact: Charles Rossi, 301–415–7499)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, April 27

10:00 a.m.
Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)

Friday, April 28

10:00 a.m.
Briefing on Business Process Reengineering for Materials Licensing Area (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)

ADDITIONAL INFORMATION: Affirmation of "Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste" scheduled for March 29 was postponed.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: March 31, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–8372 Filed 3–31–95; 3:26 pm]

BILLING CODE 7590–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors has scheduled a meeting by telephone on April 11, 1995. The meeting will commence at 6:00 p.m. The Board may vote to cancel the meeting on short notice should Corporate business so require. Interested parties should call (202) 336–8855 for a recorded message regarding the status of the meeting. The recording will be updated daily through the close of business on April 11, 1995. In the event the meeting is held, members of the public wishing to participate may do so via telecommunications equipment at the location noted below.

PLACE: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Consider and Act on Issues Related to Appropriations and Reauthorization Legislation Affecting the Corporation.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: March 31, 1995.

Patricia D. Batie,

Corporate Secretary

[FR Doc. 95–8348 Filed 3–31–95; 3:24 pm]

BILLING CODE 7050–01–M

federal register

Tuesday
April 4, 1995

Part II

Environmental Protection Agency

40 CFR Part 9, et al.
Opting into the Acid Rain Program; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, 73, 74, 75, 77 and 78

[FRL–5178–5]

RIN 2060–AD43

Opting Into the Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under title IV of the Clean Air Act, Congress authorized the U.S. Environmental Protection Agency (EPA) to establish the Acid Rain Program. The principal goal of the program is to achieve significant environmental benefits through reductions in sulfur dioxide (SO_2) and nitrogen oxide (NO_x) emissions, the primary components of acid rain. Acid rain causes surface water acidification, damages trees at high elevations and accelerates the decay of building materials. In addition, air concentrations of SO_2 and NO_x degrade visibility in large parts of the country and acidic aerosols derived from these emissions may pose a risk to public health.

The Acid Rain Program departs from traditional regulatory methods by introducing an SO_2 allowance trading system that lowers the cost of reducing emissions by allowing electric utilities as a group to seek out the least costly methods of control. Utility units affected under title IV are allocated allowances based on their historic emissions and these units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual SO_2 emissions.

Today's action establishes an additional component to the Acid Rain Program called the Opt-in Program. The Opt-in Program allows sources not required to participate in the Acid Rain Program the opportunity to participate on a voluntary basis. Such sources, known as combustion sources, would include small utility units and industrial boilers. These rules detail how combustion sources participate in the allowance market by "opting in" to the Acid Rain Program, as provided under section 410 of the Act. Congress envisioned the Opt-in Program as a means of generating additional allowances and through which the compliance costs of acid rain control in the utility sector could be reduced, while still meeting overall emissions reductions goals.

EFFECTIVE DATE: These rules become effective on May 4, 1995.

ADDRESSES: *Docket.* Docket No. A–93–15, containing information considered during development of the promulgated rule, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket Section (6102), Waterside Mall, room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Background information document. The background information document containing responses to public comments on the proposed standards may be obtained from the docket. Please refer to "Final Opt-in Rule for Combustion Sources—Comment Response Document."

FOR FURTHER INFORMATION CONTACT: Acid Rain Hotline (202) 233–9620 or Adam Klinger (202) 233–9122, Acid Rain Division; mailing address, U.S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

A. Background and Summary
1. Background
2. The Opt-in Program
3. Summary of Final Rule
B. Major Changes Made to the Proposed Rule
1. Acceptable Data Sources
2. Allocation of Opt-in Allowances and Transfer Prohibition
3. Offering Opt-in Allowances on the Acid Rain Auction
4. Thermal Energy Exception
a. Definition of Thermal Energy
b. Emission Rate Used To Calculate Transferable Allowances
c. Methodology Revision for Calculating the Fuel Associated with Thermal Energy
C. Other Significant Changes Made to the Proposed Rule
1. Ineligibility of Non-operating and Retired Units
2. Interpretation of Shutdown, Modification and Reconstruction
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4. Expiration of a Non-Effective Opt-in Permit
5. Miscellaneous Issues
a. Opt-in Permitting
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D. Impact Analyses
1. Executive Order 12866 (Regulatory Impact Analysis)
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3. Paperwork Reduction Act

A. Background and Summary

1. Background

Acid deposition occurs when emissions of sulfur dioxide and oxides of nitrogen are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as wet deposition such as rain, fog, or snow, or dry deposition such as fine particles or gases. Acid deposition damages lakes and harms forests and buildings. SO_2 emissions damage ecosystems and materials, contribute to reduced visibility and, at current levels, are suspected of posing a threat to human health.

Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, directs EPA to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. Title IV targets the electric utility industry, which accounts for over two-thirds of SO_2 emissions and over one-third of NO_x emissions in the United States. Specifically, the Act mandates a national cap of 8.95 million tons per year on electric utility SO_2 emissions by the year 2010 (just over half of the 1980 electric utility SO_2 emissions), to be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting utility plants; these plants are specifically listed in the statute. Phase II will begin in 2000 and affects virtually all existing utility units with output capacity greater than 25 megawatts and most new utility units.

The centerpiece of the Acid Rain Program is a unique trading system in which allowances are bought and sold at prices determined in the marketplace. Each allowance authorizes the emission of up to one ton of SO_2 during or after a designated year. The majority of utility units—both existing and some new units—are allocated allowances based on their historic fuel use and the emissions limitations specified in the Act. Utility units are required to limit SO_2 emissions to the number of allowances they hold, but since allowances are fully transferrable, utilities may meet their emissions control requirements in the most cost-effective manner possible. For instance, a utility may decide to (1) switch to a lower sulfur fuel, (2) install flue gas desulfurization equipment (scrubbers) and bank unused allowances or sell them to other utilities/individuals, (3) forego emissions reductions and buy additional allowances (if necessary), or (4) implement energy efficiency measures. Other options and combinations of options are possible, providing an unusually high degree of flexibility for affected units to comply with the law. The procedures for transferring and tracking allowances are codified in 40 CFR part 73.

Each affected unit must have a permit in which the affected unit certifies that it will possess a sufficient number of allowances to cover its SO_2 emissions and specifies the source's compliance options. The permit regulation is codified in 40 CFR part 72.

To ensure that nationally mandated reductions in SO_2 and NO_x emissions are achieved, each affected unit must install a continuous emissions monitoring system and collect, record, and report emissions data. The continuous emissions monitoring rule is codified in 40 CFR part 75.

If an affected unit violates the Act by emitting more emissions than the allowances it holds, the Act requires that the affected unit pay penalties and submit a plan detailing how and when the excess SO_2 emissions will be offset. These requirements act as a strong incentive for compliance with the mandated emissions reductions of the Acid Rain Program. Excess emissions penalty requirements are codified in 40 CFR part 77.

Finally, 40 CFR part 78 contains administrative appeals procedures for resolving disputes over decisions by the Administrator regarding any aspect of the Acid Rain Program.

2. The Opt-in Program

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for SO_2-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate in the Acid Rain Program by "opting in."

The Opt-in Program is a voluntary economic incentive provision. Congress developed the Opt-in Program to reduce further the cost of complying with the Acid Rain Program. Combustion or process sources not otherwise required to reduce SO_2 emissions can opt in and make incremental, lower-cost reductions. Congress envisioned section 410 as a means of generating additional allowances to reduce compliance costs for affected utilities and to encourage combustion or process sources to consider cost-effective emission reduction opportunities:

> (Section 410) adds flexibility and can enlarge the universe of sources for which there are cost-effective reductions in emissions of SO_2 * * *. This section provides a useful additional source of reductions that can be made voluntarily by sources choosing to be affected by the provisions of this title. (Senate Committee Report, Report No. 101–228, December 20, 1989, p. 335.)

The reductions—in the form of acid rain allowances—can be transferred to meet mandatory reduction requirements in the utility sector and, thus, lower the overall cost of the Acid Rain Program. However, Congress also intended that this shifting of SO_2 emissions between opt-in sources and affected utility units not compromise the overall title IV SO_2 emissions reduction goals. Section 410 "is intended to further the objective of achieving true net reductions of SO_2 * * *." (*Id.* at 336.) The Opt-in Program has been designed to take advantage of lower cost reduction opportunities at non-affected sources consistent with the statutory requirements of section 410 of the Act and emissions reductions goals (i.e., the required 10 million ton reduction of SO_2) of title IV.

3. Summary of Final Rule

The final opt-in regulation for combustion sources details the process through which combustion sources can enter the Opt-in Program and the requirements they face while participating. The rule allows any stationary fossil fuel fired combustion device, i.e., any combustion source, to become an affected unit and receive allowances. This rule focuses on combustion sources. The treatment of process sources and specifically the application and monitoring requirements for process sources will be addressed in a subsequent rulemaking. The permitting process finalized in today's rule does pertain to both combustion and process sources.

Allowance allocations for opt-in sources, as for utility units, are based on operations during 1985, 1986, and 1987. Like utilities in the mandatory program, once a combustion source opts in, it must hold allowances to cover its emissions. Presumably, the opt-in source will reduce its emissions from its baseline level to generate excess allowances to sell to other affected units. Because opting in is voluntary, only combustion sources that would profit by selling excess allowances are expected to participate in the program. In addition, since all affected sources must also comply with the other applicable requirements of the Act, revenue generated by selling excess allowances could help opt-in sources to offset costs of compliance with other programs.

Although EPA has attempted to treat opt-in sources comparably to utility units in the mandatory Acid Rain Program, there are some situations where restrictions on opt-in sources are needed to protect the emission goals of the Act. In section 410(f), Congress expressly prohibits opt-in sources from transferring allowances that result when they reduce utilization or shut down. Without this prohibition, an individual opt-in source could increase overall emissions by shifting some or all of its production from the opt-in source to new or existing non-affected sources, accumulating the opt-in source's unused allowances, and then selling them to other affected sources.

In order to ensure the surrender of allowances in cases of reduced utilization and shutdown, EPA reserves the right to cancel allowances produced by reduced utilization or shutdown by removing them from any Allowance Tracking System (ATS) accounts into which they had been transferred. To facilitate this prospect of cancellation and to protect buyers of opt-in allowances, EPA is restricting the transfer of future year allowances. In the final rule, EPA continues to allocate allowances, in perpetuity, upon application, but is prohibiting the transfer of future year allowances from opt-in unit accounts in the ATS; only current year or earlier allowances can be transferred. This policy will eliminate the need to cancel future year allowances in cases where a unit shuts down and sells all its future year allowances. Trades involving future year allowances can still be made; however, delivery of future year allowances to the buyer must wait until the year for which those allowances are to be used for compliance.

Title IV contains one exception to the overall restriction on opt-in allowances generated by reduced utilization and shutdown. When a "replacement unit" replaces thermal energy formerly supplied by an opt-in source, then the opt-in source may transfer allowances to the replacement unit to the extent of that replacement, despite the reduction of utilization at the opt-in source. For purposes of this thermal energy exception, EPA defines thermal energy to be steam used in an industrial process, as distinct from steam used to generate electricity, and bases the calculation of transferable allowances on the fuel associated with the thermal energy and the allowable emissions rate at the replacement unit.

Eligible combustion sources may submit applications to EPA, as the permitting authority in the near term, and to a State or local permitting authority, once that permitting authority has an Opt-in Program in place under part 70. Upon receipt of the application, its evaluation proceeds on two parallel paths will commence: (1) The procedure for processing an opt-in permit; and (2) the procedure for evaluating the opt-in

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source's monitoring plan and certifying its monitoring systems. After both of these procedures have been successfully completed, the combustion source may enter the Opt-in Program.

B. Major Changes Made to the Proposed Rule

Although considerable changes have been made to the language and structure of the proposed opt-in regulation for combustion sources, the essential elements of the program remain unchanged and the final rule is consistent with the regulatory goals discussed in the proposed rule, which the Agency here reaffirms. The bulk of this preamble details the major changes that have been made:

1. Acceptable Data Sources

EPA continues to believe that there is no single reliable data base that would provide the Agency with quality information on operations and emissions of potential opt-in sources. Therefore, the Agency must rely on information supplied by the combustion source in an application process. In § 74.20(a)(2) of the proposed rule, EPA established a screen for ensuring that reliable data is submitted to the Agency, by requiring all data to have been previously submitted to a government agency.

Today's rule does not require the previous submission of data to a government agency as a precondition for combustion sources to apply to enter the Opt-in Program. Instead, EPA will conduct its own evaluation of the data submitted for the Opt-in Program using its best judgment, although the burden of proof regarding the data's accuracy will remain with the applying combustion source. Regardless of whether a state permitting program is in place and whether the State or EPA is the permitting authority, EPA will retain this data review authority consistent with its responsibility for all allowance-related activities, as discussed in the preamble to the proposed rule.

EPA will lead an evaluation process that brings in the expertise of state officials as well as other technical data experts. EPA will retain the authority, consistent with § 72.4 of part 72, to request any additional documentation, in addition to the formal opt-in permit application, that it believes is necessary to evaluate the combustion source's data. Previous submittals to government agencies that are in existence will be expected to accompany the application. In addition, EPA may request data for years outside the baseline period, both before and after, to verify that submitted baseline data does not represent an inexplicable spike in the combustion source's operations. EPA may also request additional supporting documentation (e.g., fuel purchasing records, production rates, throughputs, sampling protocols, etc.) that the Agency believes necessary to verify the information contained in the combustion source's opt-in permit application. EPA may, in addition, make inspections and examine records at the combustion source applying to enter the Opt-in Program.

Opt-in permit applications submitted by combustion sources with entries in the National Allowance Data Base (NADB) will still face scrutiny, and the data values within the NADB will not be accepted automatically. Such scrutiny and potential revisions are consistent with previous Agency assertions that the NADB version 2.11 was the final version to be used in the development of allocations for Phase II units (see 57 FR 30034 and 58 FR 15721). Combustion sources, by definition, cannot be Phase II units and were not automatically allocated allowances under section 405 of the Act. Therefore, the NADB data for these sources have not been reviewed by EPA to the same extent as Phase II unit data, and such review has not been precluded by previous regulatory actions.

The evaluation of data by EPA for the purposes of calculating allowances is not unprecedented. In developing Phase II unit data in the NADB, EPA compiled information from a number of sources that included the Energy Information Administration (EIA), the North American Electric Reliability Council (NERC), the affected sources, and, to a lesser extent, states. EPA expects the states to play a larger role in evaluating industrial operating and emissions data, because the states are often the best repository of such information and are aware of the detailed operations of such sources.

Both the applying combustion source and third parties will have access to and be able to assess the information EPA ultimately accepts in its allowance calculation. Both the combustion source and third parties will be able to scrutinize the baseline data and the number of allocated allowances during the public comment period associated with the draft opt-in permit. Furthermore, the combustion source has the opportunity to decline to opt in at any time prior to the effective date of the opt-in permit. The combustion source can also appeal its allowance allocation consistent with the procedures prescribed in part 78.

While the information for industrial opt-in sources will be less readily available, EPA sees no other workable alternative than to assume the responsibility of examining submitted data on a case-by-case basis. The Agency recognizes that some incentives will remain for the combustion source to overstate its baseline for the purposes of increasing its allowance allocation, but believes that such risks will be offset by Agency review of the data and supporting documents, the rejection of insufficiently supported data, and the threat of enforcement actions and penalties for falsely submitted data. Toward these ends, EPA will enhance the certification statements that designated representatives sign when submitting an opt-in permit application to assure that such submittals (1) are believed to be true, accurate, and complete; (2) are accompanied by all available documentation that the combustion source and its state regulatory agencies possess that are relevant to the accuracy of such data; and (3) are not adjusted in any way.

2. Allocation of Opt-in Allowances and Transfer Prohibition

In the proposed rule, EPA planned to allocate allowances on a one-time, in perpetuity basis and allowed for the transfer of current and future-year opt-in allowances from opt-in accounts into other accounts in the Allowance Tracking System (ATS). This policy was proposed to promote fungibility of opt-in allowances and provide combustion sources flexibility in their compliance planning. However, in order to uphold the requirements of section 410(f) of the Act, EPA also proposed in § 74.50 of the proposed rule to reserve the right to cancel, under certain circumstances, any allowances that were initially allocated to an opt-in source by removing allowances from any ATS accounts into which they had been transferred.

Under section 410(f), the Act restricts opt-in sources from transferring or banking allowances produced as a result of reduced utilization or shutdown, except as discussed in the proposed rule (58 FR 50103) and later in this preamble under the thermal energy exception. To uphold this restriction, EPA is requiring opt-in sources to surrender allowances generated by reduced utilization or shutdown. In the proposed rule, EPA maintained that in the case where an opt-in source has shut down, reduced its utilization or has excess emissions, *and* fails to supply the equivalent number of allowances owed to EPA (presumably because the opt-in source has sold all of its future-year allowances), EPA must recover and cancel the opt-in source's allowances in the required number from other ATS accounts into which they were transferred. Canceling opt-in allowances held in other accounts in the ATS was considered the only way to ensure that such allowances did not result in additional emissions and that the SO_2 emissions reduction goals of the Acid Rain Program were preserved. EPA maintained in the proposed rule that the allowance market would account for the risk of cancellation by asking lower prices for opt-in allowances and writing protective clauses into sales contracts.

In the final rule, EPA is choosing to allocate allowances, in perpetuity, at the time the combustion source becomes an affected unit, but, based on the comments received, is prohibiting the transfer of future-year opt-in allowances from opt-in source accounts in the Allowance Tracking System (ATS). Transfers of current-year opt-in allowances will only be recorded by EPA following the completion of the end-of-year reconciliation process for the previous compliance year, as set forth in § 73.34(a) of 40 CFR part 73. If an opt-in source is found to have excess emissions for a given year, that opt-in source will be prohibited from transferring the following year's allowances until an offset plan is approved and allowances have been deducted to offset its excess emissions.

When an opt-in source permanently shuts down, it may no longer retain allocated allowances and must surrender to EPA all of its opt-in allowances starting with the year in which the opt-in source shuts down. In the case of an opt-in source that has shut down, as opposed to an opt-in source that is still operating, EPA cannot draw upon future-year allowances to offset excess emissions because such allowances have already been surrendered. Therefore, EPA reserves the right to cancel opt-in allowances (specifically, allowances for the year for which the opt-in source has excess emissions and the year in which the opt-in source shuts down) from any ATS account into which such allowances have been transferred. Previous year opt-in allowances that had subsequently been transferred to other ATS accounts would not be canceled because such allowances were in excess of the number of allowances needed for compliance in previous years.

EPA retains the option of allowance cancellation to ensure that opt-in sources through their operations cannot increase emissions to the environment. EPA believes that the Opt-in Program must be self-enforcing and should not rely on possible future regulation to implement the 5.6 million ton cap for industrial sources because of the reasons discussed in the proposed rule: (1) The incomplete coverage of the Opt-in Program relative to the industrial sector; (2) the importance of achieving title IV emission reduction goals by maintaining the emissions neutrality of the Opt-in Program relative to historic emission levels (rather than future emission inventory levels); and (3) the aggregate nature of emission inventories and their lack of specificity to address emissions and allowance allocations of individual opt-in sources.

Furthermore, EPA agrees with commenters who believe that most trades of future-year opt-in allowances will take the form of "option contracts," e.g., the buyer and seller arrange today for the option to buy allowances at a future time at a quantity, price, and date set today. Buyers are more likely to enter into options contracts for future-year opt-in allowances because, if allowances are canceled, the buyer only loses the option to buy allowances and not the allowances themselves, as would be the case with other types of contracts. If these commenters are correct, then EPA's prohibition of the transfer of future-year opt-in allowances should not significantly alter expected market behavior and its treatment of opt-in allowances. In fact, current allowance market behavior in the utility sector suggests that, in many cases, a portion of the full price is paid now for future-year allowances, but the actual transfer of such allowances and payment of the remaining purchase price will not occur until the allowances become usable for compliance. Buyers are reluctant to pay full price now for allowances that cannot be used until a future date.

Although EPA is restricting the transfer of future-year opt-in allowances, it is allowing the transfer of current-year opt-in allowances as soon as the end-of-year reconciliation process for the previous year is completed. (EPA will allow, for the first current year, the transfer of current-year opt-in allowances upon entry into the Opt-in Program). EPA believes that current-year opt-in allowances may play a valuable role in assisting with compliance for the utility sector and must be available for transfer before the end of the current year. However, in order to uphold the requirements of section 410(f) of the Act, EPA reserves the right to cancel current-year opt-in allowances that have been allocated to the opt-in source in the event that an opt-in source has excess emissions and has shut down, been reconstructed, or become affected under § 72.6. EPA believes that restricting opt-in allowance transfers to current-year allowances will reduce the likelihood of having to cancel purchased opt-in allowances. Buyers of current-year opt-in allowances have a much better chance of accurately assessing the integrity, financial health, and future status of an opt-in source in a short time frame (i.e., within the current year) than they would in making an accurate assessment over a longer time frame (i.e., one extending as long as 31 years into the future). EPA considered not canceling current-year allowances, but instead using enforcement actions to try to recover excess opt-in allowances. EPA rejected this approach because of the concern that if enforcement actions were unsuccessful in the recovery of excess opt-in allowances, the clear direction of section 410(f) of the Act would be violated, and the emission reduction goals of title IV would be compromised.

3. Offering Opt-in Allowances on the Acid Rain Auction

In the proposed rule, EPA prohibited the trading of opt-in allowances in the Acid Rain auction. EPA is allowing, in the final rule, the offering of opt-in allowances in the spot auction, provided the compliance use date of the allowances offered is for a prior year. Prior year allowances are allowances dated a year or more prior to the spot auction year. Prior year opt-in allowances will have cleared the end-of-year compliance process including any possible allowance cancellations for reduced utilization, as discussed above. EPA is still prohibiting the submission of offers of current-year opt-in allowances in the Acid Rain auctions because these allowances have a possibility of being canceled by EPA in the future. Buyers of current-year opt-in allowances sold in the auctions have no protection against cancellation as they would if purchasing opt-in allowances through a private contract. EPA believes that if there is demand for an auction that includes current-year opt-in allowances, the private sector will develop such an outlet.

4. Thermal Energy Exception

Section 410(f) limits the transfer of opt-in allowances when opt-in sources reduce utilization or shutdown except when the reduced utilization or shutdown results from the replacement of thermal energy. EPA received numerous comments on implementing this thermal energy exception. This section discusses the three main issues associated with the thermal energy exception:

(a) The definition of thermal energy;

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(b) The calculation of transferrable allowances; and

(c) The methodology used to calculate the fuel associated with thermal energy.

a. Definition of Thermal Energy

In § 72.2 of the proposed rule, EPA defined thermal energy as the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity. EPA received 29 comments on the definition of thermal energy.

Seventeen commenters disagreed with the proposed definition and argued that the thermal energy definition should include electrical output in addition to steam output. Several commenters argued that EPA has no statutory basis in section 410(f) to define thermal energy to include only steam output because the statute does not specifically cite the Public Utility Regulatory Policies Act (PURPA) definition of thermal energy used by the Agency in the proposed rule. Commenters also maintained that the legislative history does not support a limited definition. Lastly, commenters pointed out that because section 410(f) refers to the term "unit" that by definition does not distinguish between facilities that produce steam for generating electrical energy and those that produce steam for direct sale, the definition of thermal energy should not make such a distinction.

One commenter argued that thermal energy means "heat" and that the facilities affected by the Act are combustion units that produce heat, which sometimes is used to drive a turbine to create electricity and sometimes is used to create steam. Several other commenters noted that the proposed definition fails to take into account the integrated nature of many industrial facilities and does not consider how difficult it may be to determine how the thermal energy is allocated between steam and electricity.

In addition, a number of commenters believed that in developing the thermal energy definition, EPA ignored the intent of Congress to allow small electric generating units the opportunity to opt in, retire their older units, and transfer allowances to replacement sources.

Four commenters stated that EPA's proposed opt-in rule is inconsistent with the views stated in the "Dover Letter," sent to SFT, Inc. on March 7, 1991. The commenters contended that a representative from EPA's Office of Atmospheric and Indoor Air Programs stated that the City of Dover would be allowed to opt in its exempt boilers used to generate electricity under section 410 of title IV and then transfer the allowances received to a new, replacement boiler. The commenters argued that EPA should uphold its original views and allow electric units to opt in. One commenter, however, recognized that this "Dover Letter" was not a legally enforceable, binding statement of law.

Three commenters supported EPA's definition of thermal energy based on the argument that if electricity is included in the definition, the total number of permanent allowances and associated emissions would increase above what is permitted under title IV. These commenters also argue that the Act draws a clear distinction between thermal energy and the energy used for the generation of electric power and thus, small electricity generators should not be considered beneficiaries of the thermal replacement energy exemption.

Response: As stated in the preamble to the proposed rule (58 FR 50087), EPA believes defining thermal energy as the steam output used directly as part of a manufacturing process but not used to produce electricity is consistent with the Congressional intent and goals of title IV and section 410. For the reasons set forth in the preamble to the proposed rule, the final rule retains the definition of thermal energy as proposed and limits thermal energy to the steam output used directly in a manufacturing process but not used to produce electricity.

EPA continues to believe that Congress selected the term thermal energy precisely to distinguish between electric energy and thermal energy used in manufacturing processes. If Congress had intended thermal energy to mean total energy, which includes electricity, then it would have had no need to use the term "thermal" at all. Furthermore, EPA disagrees with those commenters who claimed that because Congress did not specifically cite the PURPA definition of thermal energy in title IV it is inappropriate to use that definition. With no definition specifically provided in the statute, limited legislative history, and no evidence that Congress intended otherwise, EPA believes that using the PURPA definition is appropriate since it provides a long standing, accepted meaning of the term within the federal regulatory framework governing industrial steam production and electrical generation.

Some commenters argued that because section 410(f) uses the term "unit", Congress did not intend to distinguish between sources that produce steam for generating electricity and those that produce steam for direct sale. However, EPA believes that the term "unit" as used in section 410(f) provides no basis for defining "thermal energy", but rather the term "unit" is used in section 410(f) only to limit the transfer of allowances under the thermal energy exception to affected units (i.e., "any other unit or units subject to the requirements of this title.")

EPA stated in the so called "Dover Letter" that its response to the City of Dover was based on preliminary assessments of the language in title IV and was subject to modification in the final EPA regulations:

> Below are EPA's comments based on the language in Title IV of the Act. You should be aware, however, that the views expressed in this letter are based on our preliminary assessments and could be modified in the final EPA regulations. (March 7, 1991 letter from Eileen Claussen to Tom Fitzpatrick).

By its own terms, the March 7, 1991 letter did not provide guidance, much less a statutory interpretation or an applicability determination for the units in question, that could be relied upon. In fact, the March 7, 1991 letter indicated that this was a preliminary views based only on the statutory language itself and did not indicate that any other material relevant to statutory interpretation (such as legislative history) had been considered. Several months thereafter, EPA sent a retraction letter on January 7, 1992 to the City of Dover reiterating that EPA's response in the March 7, 1991 letter was preliminary and that the Agency was reconsidering the legal and analytic basis of the position it had taken in the March 7, 1991 letter.

Lastly, EPA recognizes the integrated nature of some industrial cogeneration facilities but maintains, as confirmed by historic industrial reporting, that steam and electrical outputs are observable and measurable quantities.

b. Emission Rate Used To Calculate Transferable Allowances

To calculate the number of allowances that can be transferred from the opt-in source to a replacement unit under the thermal energy exception, EPA proposed, under § 74.47(b)(4), to use the lesser of the federally enforceable allowable emission rate at the replacement unit or 1.2 lbs/mmBtu. EPA received eighteen comments on this issue with no commenters supporting the 1.2 lbs/mmBtu emission rate cap as proposed, and six commenters supporting the use of the replacement unit's emission rate. Two commenters contended that the proposed 1.2 lbs/mmBtu emission rate is excessively high given that emission rates at replacement units are likely to be much lower.

Fifteen commenters objected to EPA's proposal of a 1.2 lbs/mmBtu emission rate limit as too restrictive. These commenters argued that the use of the 1.2 lbs/mmBtu emission rate is arbitrary and not supported by the statute where the replacement unit's emission rate is higher. They also pointed out that the proposed restriction does not recognize all possible replacement units (e.g., existing units) and would unjustifiably restrict allowance transfer during Phase I when the emission rate could be 2.5 lbs/mmBtu.

Response: After further consideration, EPA is eliminating the 1.2 lbs/mmBtu emission rate restriction used to calculate the number of allowances that can be transferred to the replacement unit under the thermal energy exception. Today's rule uses the federally enforceable emission rate at the replacement unit to calculate the number of transferable allowances.

The rule was changed because EPA agrees with the comments that the use of the 1.2 lbs/mmBtu does not recognize the different emission rates at potential replacement units, some of which may be existing units. In the preamble to the proposed rule, EPA argued that applying a 1.2 lbs/mmBtu rate is consistent with the requirements for Phase II units. However, since a replacement unit can be any affected unit, the universe of replacement units would include Phase I units with 2.5 lbs/mmBtu rates and other opt-in sources with emission rates that could be even higher. Given that these potential replacement units could have higher rates and that the statute does not set a limit for the emission rate, EPA believes there is no basis for restricting the emission rate to 1.2 lbs/mmBtu.

c. Methodology Revision for Calculating the Fuel Associated with Thermal Energy

In § 74.47(b) of the proposed rule, EPA required that replacement units calculate the fuel associated with thermal energy by dividing the amount of qualifying thermal energy (that is, the replacement thermal energy) by the efficiency associated with the production of thermal energy. EPA received several comments related to this issue.

One commenter suggested that all units of fuel used should be attributable to a unit's steam output because it is not practical to identify a thermal energy fuel increment (used to determine the allowance transfer) and because there is no established method for doing so.

Several commenters offered alternative formulas for calculating the transferable allowances. One suggested that EPA calculate the number of transferable allowances as the product of the "useful thermal energy output" of the replacement unit, as defined under PURPA, and the difference between the opt-in source's emission factor and the replacement unit's emission factor. This commenter contended that this will encourage more efficient cogeneration applications. Another suggested that EPA compute the number of transferable allowances by evaluating the portion of an opt-in source's historic thermal energy that is replaced by a cogeneration facility, rather than the portion of the cogeneration facility's energy output that is thermal energy. Other commenters recommended that EPA include provisions that provide an incentive to undertake energy efficiency gains at the replacement unit. The number of transferable allowances should be based on the replacement unit's emission rate taking into consideration any efficiency differences in steam production at the opt-in source and at the replacement unit.

Response: Based on the comments received, EPA is changing the methodology for calculating the fuel associated with qualifying thermal energy as discussed under § 74.47. In today's rule, EPA allows opt-in sources to use an efficiency constant when calculating fuel input from thermal output to give them an incentive to make their production processes more efficient.

EPA has chosen to make the calculation of transferred allowances based on a constant value rather than having replacement units calculate fuel utilization each year because relying on actual fuel utilization would discourage improvements in efficiency. By using a constant, a replacement unit that increases its efficiency will use less fuel to produce the same amount of thermal output, but will still have transferred to it the same number of allowances as before the efficiency improvement. In contrast, calculating the fuel utilization each year would reduce the incentives for efficiency improvements. This will be true for either boilers or cogenerators.

The efficiency constants selected represent the fuel utilization of the boiler or cogenerator supplying the replacement steam. Fuel utilization represents the quotient of all energy outputs and the energy content of total fuel input. The Agency distinguishes between boilers and cogenerators in establishing these constants to recognize the greater energy requirements necessary to produce electricity as opposed to producing steam. It would be unfair to compare the efficiency of cogenerators producing electricity and/or steam with the efficiency of boilers producing only steam, because the production of electricity inherently requires more fuel. In today's rule, the Agency sets the efficiency constant for boilers to be 0.85 and the efficiency constant for cogenerators to be 0.80. These constants represent industry averages for modern equipment (see memorandum in the docket entitled, "Evaluation of EPA's Revised Methodology for Calculating the Transferred Allowances under the Thermal Energy Exception").

For boilers serving as replacement units, the attribution of fuel associated with thermal energy is straightforward. However, for cogenerators, it is very difficult to distinguish between the fuel going towards steam or electricity, because the production of the two is tightly linked. Using fuel utilization implies that both the fuel input and the efficiency losses associated with the production of each product is proportional to the amount of each product produced.

EPA specifically defines thermal energy to consist of only steam and this definition does not include electricity (see previous discussion of thermal energy definition). In calculating allowances transferred under the thermal energy exception, EPA must distinguish between the fuel used to produce electricity and the fuel used to produce thermal output. The former does not count toward the thermal energy exception, while the latter does. Therefore, EPA does not believe it is appropriate or consistent with the statutory provisions in section 410(f) to attribute all fuel input to steam production, where, in fact, both steam and electricity are being produced.

EPA believes its revised methodology addresses the concerns of commenters seeking to instill incentives for cogeneration and specifically relying on the amount of thermal energy replaced. The alternative suggestion of basing allowance calculations on energy output is inconsistent with all other allowance calculations found in the Acid Rain Program. Allowances for utility units in the Acid Rain Program are generally calculated as a product of a fuel input baseline, expressed in mmBtu, and an emission rate, expressed in lbs. per mmBtu of fuel input. An allowance calculation where emission rates, reflecting energy input, are multiplied by the thermal energy replaced, reflecting energy output, would be internally inconsistent. The revised methodology, therefore, remains

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consistent with allowance calculations in the core utility program.

C. Other Significant Changes Made to the Proposed Rule

1. Ineligibility of Non-operating and Retired Units

EPA continues to require that combustion sources seeking to enter the Opt-in Program be operating at the time of application. Combustion sources opting in under the thermal energy exception are also required to be in operation, although they can shut down upon entry into the program.

EPA seeks to restrict the allocation and use of opt-in allowances to instances in which real emissions reductions will take place, and not to award allowances in situations of reduced utilization and shut down. EPA believes that this requirement to be operating at the time of application is consistent with this principle. The provision establishing such a requirement provides a clear criteria for assessing whether a combustion source has reduced its utilization or shut down (i.e. is not operating) for the purposes of accepting the combustion source into the program and allocating allowances.

In the final rule, EPA establishes a definition of operating strictly for the purposes of the Opt-in Program. Operating is defined to mean the documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding application. This level of operating hours was selected because it serves as the upper bound of a peaking unit, that is, 20 percent capacity factor in any calendar year as defined in § 72.2. The Agency kept the 20 percent operating level, but shortened the period of time from one year to six months so that a combustion source could be idle at most approximately four and one half months, rather than twice that amount of time and still be eligible to opt in. EPA expects that combustion sources operating below the 20 percent level would have little interest in participating in the Opt-in Program because the number of allowances freed up from emission reductions would be small and unlikely to cover the costs of opt-in participation.

Whether or not they were operating at the time of application, combustion sources that operated in the 1985–1987 time period would have the necessary data to determine an allocation of opt-in allowances. However, a combustion source that was not operating at the time of application would have all or virtually all of its allowances deducted under the reduced utilization and shutdown provisions. EPA does not believe it is reasonable or administratively practical to grant those opt-in sources allowances and then, from the first year on, take virtually all of them away.

If a combustion source is shut down but plans to restart its operations, EPA believes that the combustion source should apply to opt in upon restart, that is where there is proof that the combustion source is now operating consistent with the above definition. Furthermore, the allowance allocation for opt-in sources that restart would be based on any current allowable SO_2 emissions rate in effect at the time of application.

As discussed under the thermal energy exception, non-operating opt-in sources may transfer allowances to replacement units, to the extent that such units can document the replacement of thermal energy. In allowing non-operating sources to participate in the thermal energy exception, but excluding non-operating sources from applying to opt in, the Agency requires that even combustion sources planning to shut down upon entry be operating upon application. The Agency believes a valid distinction exists between replacement arrangements made in response to the Opt-in Program and those that preceded the application to enter the program.

The reason why the combustion source is not operating at the time of application is not relevant to the Agency's determination of whether a retired or non-operating source should be permitted to opt into the Acid Rain Program. Allocating allowances to a retired or non-operating combustion source and allowing the source to trade such allowances would, in effect, allow another source to emit what the retired or non-operating combustion source was emitting before it ceased operations. These allowances would thus result in more pollution being released into the environment. As discussed in the preamble to the proposed rule, Congress expected the SO_2 emissions from non-utility sources to remain at a constant level and to reflect a dynamic balancing of emissions caused by fluctuations in economic activity, shutdowns, facility modernization, fuel switching, and cleanup. By granting sources not operating at the time of application the ability to opt-in and receive allowances, EPA would increase emissions above the presumed constant level of non-utility emissions.

2. Interpretation of Shutdown, Modification and Reconstruction

In the proposed rule, EPA sought to distinguish the modification of an opt-in source from its outright replacement. EPA recognizes that opt-in sources may need to make changes to their facilities in order to reduce emissions. Here, EPA attempts to address the extreme case in which such changes represent the construction of an essentially "new" facility. EPA proposed to consider an opt-in source "shut down" in the circumstance in which the opt-in source had been modified to such a large extent that the opt-in source no longer existed and a new one had been put in its place (in the extreme, the construction of a new facility within the shell of the old one). EPA chose as its test for replacement the reconstruction standard established in 40 CFR 60.15, as discussed in the preamble to the proposed rule.

EPA maintains that a new facility constructed in the shell of an older one should not retain the allowances allocated to the original opt-in source and should be removed from the Opt-in Program. Such restrictions are consistent with section 410(f) of the Act in implementing both the reduced utilization provisions as well as the thermal energy exception. The Agency believes its use of the regulatory term "reconstruction" and its threshold of 50 percent of what would be required to construct a new comparible facility is entirely appropriate in this context, and therefore the Agency applies this standard for reconstruction from 40 CFR 60.15 to opt-in sources. One commenter correctly acknowledged that the 50 percent criterion would apply to improvements to the facility as a whole; however, EPA disputes the notion that the level of investment would prohibit facility improvements to reduce emissions or would restrict alternatives to strictly end-of-pipe options. EPA believes that this level of expenditure is sufficiently high to allow sources great flexibility in their choice of control options.

EPA modifies in the final rule the regulatory language that would exclude reconstructed units from maintaining their status as opt-in sources. Instead of considering such units as "shutdown", the rule explicitly dismisses such units from the program in cases of reconstruction. The effect on sources undergoing modifications qualifying as reconstruction remains the same.

To exclude from consideration the reconstruction of any equipment with equipment that performs the same or similar function would circumvent the need to remove allowances from sources that are no longer in operation. As discussed previously, emissions from these sources are assumed to disappear, consistent with the Congressionally assumed constant level of industrial emissions, and opt-in allowances are assumed to be generated from emission reductions at the opt-in source. The Opt-in Program should not perpetuate emissions from old to new sources, or in this case, from old to reconstructed sources.

The increase in productive capacity at opt-in sources is relevant only to the extent that such investments would trigger a determination of reconstruction. Finally, the use of the definition of major modification to distinguish between reconstructed units and existing opt-in sources is also not appropriate. If a modification is a major modification because a source achieves a significant increase in a regulated pollutant, the source's permitting levels may change, but such changes would not affect its opt-in permit or its allowance levels, provided that such modifications do not also exceed the threshold for reconstruction.

In the context of the Opt-in Program, a reconstructed opt-in source will not be permitted to enter or remain in the Opt-in Program at its pre-reconstruction baseline and allowance allocation. Should the reconstructed and former opt-in source wish to enter the Opt-in Program, after modifications have been completed, it may do so, once it establishes a three-year alternative baseline. Other regulatory programs, including the non-attainment and Prevention of Significant Deterioration (PSD) programs, may or may not consider the reconstructed opt-in source as a "new" source; nevertheless, units undergoing reconstruction will have their allowances deducted and their opt-in permits terminated. Units that do not exceed the level of reconstruction and remain in the Opt-in Program may or may not be subject to New Source Review (NSR) or the New Source Performance Standards (NSPS) but applicability under these programs is independent from participation in the Opt-in Program.

3. Incorporation of Efficiency Measures

Under § 74.44 of the proposed regulation, the only efficiency improvements that would be credited toward utilization were improvements that reduced the demand for electricity or that made electricity generation more efficient. Improvements in the efficiency of steam production, measures to reduce steam load (i.e., steam conservation measures), and sulfur-free generation as defined in § 72.2 were not included.

The final rule allows for efficiency improvements to be incorporated in an opt-in source's annual utilization. Efficiency improvements include any expected reduction in the heat rate at the opt-in source, any expected improvement in the efficiency of steam production at the opt-in source, and any kilowatt hour savings or steam savings from demand side measures.

EPA agrees that improvements in the efficiency of steam generation should be encouraged. EPA believes that some restrictions are necessary, however, because cogeneration facilities could shift their output to steam while decreasing the efficiency of electricity generation. Such shifts from electricity to steam should not result in an adjusted increase in utilization and hence in allowances retained.

In order to prevent such shifts from occurring, today's rule requires that the heat rate at an opt-in source not increase in order to claim an efficiency improvement in steam production. If the heat rate increases, that is, if electricity generation becomes less efficient, no credit for gains in the efficiency of steam production will be given towards utilization. The methodology for quantifying this adjustment to utilization from efficiency increases in steam production will be developed by EPA, working with interested opt-in sources.

EPA also agrees that reductions in steam load created by demand side measures that improve the efficiency of steam consumption should be encouraged. EPA is concerned about the identification of such measures and their verifiable contribution towards using steam more efficiently. The burden for documenting such measures is on the opt-in source, which must be able to demonstrate that the reduction in utilization from a steam conservation measure is different than reductions in utilization not related to conservation improvements.

Finally, EPA also believes that opt-in sources should be encouraged to pursue opportunities to increase their use of sulfur-free technologies at their facilities. However, EPA maintains that such technologies are already included in the provisions providing credit for demand-side measures (see Appendix A, Section 1 of part 73 of this chapter which includes sulfur-free technologies in a list of examples of demand-side measures).

EPA does not include, however, a separate provision for "sulfur-free generation" in the utilization adjustment, because the term, as defined in § 72.2 of this chapter and used in § 72.91, includes all sulfur-free generators in the utility's system. For opt-in sources, EPA restricts adjustments to utilization for improved efficiency to measures performed at the opt-in source itself or by the "customers" of the opt-in source (i.e., electricity or steam users of the opt-in source). The Agency does not include "sulfur-free generation", because of concerns of replacing the opt-in source's utilization without any thermal energy transfer, as required by section 410(f).

4. Expiration of a Non-Effective Opt-in Permit

The proposed rule created an effective date for an opt-in permit to be the later of the issuance of the opt-in permit by the permitting authority or the completion of the certification of the combustion source's monitoring systems. However, no time period was specified regarding the length of time between the issuance of the opt-in permit and these certifications. One commenter requested clarification about this time period and whether or not the opt-in permit would expire before becoming effective.

Response: EPA establishes, in the final rule, an expiration date associated with a non-effective opt-in permit. An opt-in permit will expire 180 days after issuance, if it has not yet become effective. The length of 180 days was selected because the time period incorporates the duration of EPA's review of monitoring certification for the combustion source's CEM systems and two months for the combustion source to arrange testing, should the combustion source wish to wait to certify its monitors until the end of the permitting process.

EPA believes that an expiration date is important to prevent combustion sources from seeking a permit with no immediate intention to opt into the Acid Rain program. A combustion source might apply early to enter the Opt-in Program, but wait to make its permit effective in order to secure an allowance allocation based on its current emissions rate at the time of application. If the combustion source faced the possibility of an impending emission limit that would lower its allowable emissions rate, the combustion source could apply and then wait to install its monitors and undertake its emission reductions. In effect, the combustion source would be seeking to capitalize on emission reductions it would be required to make based on other regulatory requirements.

EPA sees no reason to allow for an extended period of time during which a

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combustion source can secure its allowance allocation and keep its application pending. EPA wants its applicants to be serious about entering the Opt-in Program and is concerned about behavior that would lead combustion sources to seek an opt-in permit and secure an allowance allocation because of the prospect of future, more stringent emission limitations. In addition, EPA does not want to waste administrative resources in reviewing applications and processing permits for combustion sources that are not ready to participate in the program and may or may not actually opt in. The Agency believes that the time period for the entire permit process plus the 180 days added here, a total of up to 24 months, is sufficiently long for the combustion source to install and certify its monitors considering that the combustion source must submit upon application a monitoring plan, detailing both the monitors' configuration and equipment. EPA may extend this time period of 180 days, if the applying combustion source can show that despite good faith effort towards certifying its monitors, it was unable to complete such certifications within this time frame.

5. Miscellaneous Issues

a. Opt-in Permitting

As discussed in the preamble to the proposed rule (58 FR 50096), the permitting procedures for opt-in sources had been designed to follow the approaches set forth at parts 70 and 72. EPA has found it necessary, however, to modify the permitting procedures in the proposed opt-in regulation to handle inconsistencies between the preposal and parts 70 and 72, some of which were noted by commenters or became evident in permitting Phase I units and establishing part 70 permitting programs. These relatively minor changes in the final rule make the permitting process conform better with the process used to permit utility units affected under the Acid Rain Program.

Of the changes made to improve the regulatory language implementing the opt-in permitting process, a few are worthy of further explanation. First, the roles of the Administrator and the permitting authority have been clarified. Although the Administrator retains an important role in developing an opt-in source's allowance allocation for the combustion source's opt-in permit, the permitting authority has a greater role in the final rule in developing the opt-in permit than was suggested in the proposed regulatory language. Secondly, the time frame under which the State as permitting authority has to process an opt-in permit has been made consistent with part 70. In the final rule, the State has 18 months from the receipt of a complete opt-in permit application or such lesser time as approved under part 70. The proposed regulatory language could have been interpreted to require a permitting decision within 12 months.

There are several other specific changes that relate to opt-in permitting. One concerns the submission of a compliance plan as provided under § 72.40. The opt-in compliance plan must include an explicit commitment on the part of the designated representative to hold allowances in the opt-in source's compliance subaccount equal to or greater than the amount of sulfur dioxide emissions emitted during that year. Another concerns the term of an opt-in permit. Opt-in permits issued prior to January 1, 2000 will expire on December 31, 1999. Opt-in permits issued after January 1, 2000 will have a term of 5 years. Further, a provision has been added to § 74.40 to facilitate the opening of opt-in unit accounts. The designated representative of an opt-in source shall request the opening of such an account in the Allowance Tracking System once its permit is final and effective. In addition, the rule language is clarified concerning the deduction of allowances in the circumstances of withdrawal, shutdown, reconstruction, or change in source's status as unaffected under the mandatory portion of the Acid Rain Program.

EPA neglected to explicitly discuss the permit revision and renewal procedures in the proposed opt-in regulations and includes such language in the final rule. Permit revision procedures follow procedures set forth in subpart H of part 72. The opt-in regulation, part 74, reserves for the permitting authority the preparation of permit revisions and the implementation of such revisions.

Opt-in sources may renew their opt-in permits through the same process in which the opt-in permits were initially issued, except that the permitting authority shall not alter an opt-in source's allowance allocation when issuing a renewal of an opt-in permit. EPA believes that assurance of a consistent stream of opt-in allowances is essential to a viable Opt-in Program. Without a consistent stream of allowances, opt-in sources are unable to plan for future-year compliance, and purchasers of opt-in allowances will be hesitant to enter into forward or futures contracts because of the risk that the allowances may not be available.

EPA also seeks to clarify the relationship of title V and a combustion source's ability to enter the Opt-in Program. Specifically, commenters inquired whether a combustion source must hold a title V permit to be an opt-in source. Another commenter explored the possibility for a mobile source, i.e. a locomotive, to be eligible to opt into the Acid Rain Program.

Consistent with title V of the 1990 Clean Air Act Amendments and regulations promulgated in part 70, all affected sources are considered part 70 sources and therefore are required to meet the permitting requirements under title V. The statute, under section 502(a), makes unlawful "the operation of an affected source (as provided in title IV) * * * except in compliance with a permit issued by a permitting authority under (title V)." Opt-in sources are electing to become affected units and, therefore, are included as affected sources under the Acid Rain Program and in title V (see 42 U.S.C. 7651a(1)). Therefore, all opt-in sources must obtain title V permits.

Particularly in light of the obligation for an affected unit to hold a title V permit, nonstationary sources are excluded from entering the Opt-in Program. Title V expressly applies only to stationary sources (see 42 U.S.C. 7402(a)). Consistent with this statutory provision, the Acid Rain regulations define "source" in a way that refers only to stationary sources: "Source means any * * * structure, installation, plant, building or facility * * *." Consequently, affected units, which must be located at affected sources, also must be stationary. Locomotives, therefore, will not be accepted as potential opt-in sources. EPA has modified the definition of the term "combustion source" to include the explicit requirement that combustion sources be stationary sources.

b. Clarification of Eligible Combustion Sources

The EPA will not require an official applicability determination, as discussed under § 72.6(c), for a combustion source applying to opt into the Acid Rain Program, but the Agency will affirm as part of its review of the opt-in permit application that the combustion source is indeed unaffected and therefore eligible to opt in. Combustion sources should be aware, as detailed in the recently published applicability guidance, "Do the Acid Rain SO_2 Regulations Apply to You?" (EPA 430–R–94–002), that units may be required to provide documentation supporting their unaffected status. Furthermore, that status may, in fact, change over time as certain unaffected units become affected under particular

operating or construction conditions. As stated in the final rule under § 74.50(a)(3), should an opt-in source become an affected unit, the Administrator will terminate the opt-in source's opt-in permit and deduct all of the allowances allocated under the Opt-in Program for current and future years.

It is the duty of the combustion source's owner and operator to meet the requirements of the Acid Rain Program if the combustion source becomes affected. For purposes of keeping combustion sources aware of their regulatory status, EPA will add certification statements both to the opt-in permit application and to an opt-in source's annual compliance certification report that will state that the opt-in source is only considered an affected unit under part 74 and not an affected utility unit under § 72.6.

Finally, commenters requested clarification on the eligibility of certain types of sources and sources located outside of the continental U.S. Although the proposed rule was ambiguous regarding the eligibility of unaffected municipal waste combustors, the final rule allows such combustors to be eligible to apply for the Opt-in Program provided that they qualify as a "unit" and burn some amount of fossil fuel. Combustion and process sources that are located outside the continental U.S. (e.g., in Alaska or Hawaii) are not eligible to opt in and the applicability provisions in § 74.2 have been modified to reflect this prohibition.

c. Modification to Utilization Calculation

As discussed in the proposed rule under § 74.44, EPA selected an average utilization to compare against the baseline for making determinations of reduced utilization. This average utilization was calculated as a rolling average of fuel input over three years.

Four commenters agreed with EPA's proposal to use a three-year rolling average for determining reduced utilization because such an approach would smooth out the peaks and valleys that may occur in steam generation from year to year. Two commenters disagreed with EPA's proposal. One suggests that EPA use a five- to eight-year averaging period in order to account for normal economic cycles. The second commenter believed that an average over multiple years would bias the determination of reduced utilization, awarding unnecessary allowances in individual years when emissions could be low or near zero. The commenter suggested that EPA should use annual data because annual SO_2 emissions are proportional to annual fuel use.

Response: EPA will keep its calculation of average utilization overall, but will modify its calculation for the first and second years in which the opt-in source participates in the program and for the first and second years in which the opt-in source is governed by a thermal energy plan. Average utilization for the first year will equal the fuel input of that year. Average utilization for the second year will equal the average of the first two years. Thereafter, average utilization will be as proposed and equal a rolling average of three years.

EPA believes the purpose of using a three-year rolling average to determine whether an opt-in source has reduced its utilization remains the same and remains valid: namely, as the commenters recognize, to smooth out small fluctuations in the operation of opt-in sources. The three-year interval is consistent with the baseline period and provides for a more accurate comparison with the baseline as a measure of utilization than would longer intervals.

EPA modifies its calculation of average utilization for the first two years described above to address possible bias. With regard to the calculation of average utilization outside the context of a thermal energy plan, the Agency notes that in the proposed rule (58 FR 50124), the average for the first two years was based on the baseline level of utilization rather than actual utilization of the opt-in source. With such a methodology, an opt-in source that consistently operates below its baseline level could calculate an artificially high average utilization for its first two years as an opt-in source and thereby avoid allowance surrender. EPA feels that such a windfall would be inappropriate and that the methodology could create the potential for abuse. Therefore, EPA bases average utilization in these first two years on actual utilization for the opt-in source in the first year and then the first two years.

With regard to the calculation of average utilization once an opt-in source becomes governed by a thermal energy plan, EPA believes that the use of a continuing three-year average for the first two years under the plan would distort the number of allowances retained by the opt-in source. The reasoning for modifying the average utilization calculation is similar. Rather than reflecting normal fluctuations in the operation of the opt-in source whose thermal energy has been replaced, the three-year average utilization calculated for the first two years under the plan would award allowances based on the opt-in source's prereplacement levels of utilization and could result in an allowance windfall. Therefore, EPA bases average utilization for the two years immediately after the thermal energy plan takes effect on the actual utilization for the first year and then the average for the first two years.

d. Efficiency Adjustments for an Opt-in Source Governed by a Thermal Energy Plan

EPA clarifies an ambiguity in the proposed rule regarding allowance holdings among an opt-in source and its replacement units if the opt-in source claims efficiency improvements as part of its annual utilization. If the opt-in source has estimated efficiency improvements in its annual utilization and these estimates prove to be incorrect, EPA could be placed in the position of adjusting not only the allowance holdings of the opt-in source, but also the holdings of all replacement units after the reconciliation process has ended (recall that annual compliance reports are submitted in March, while confirmation of energy efficiency estimates are not submitted until July). In order to avoid reassessing the compliance of perhaps multiple replacement units, EPA will consider the number of allowances transferred to replacement units fixed after the reconciliation process has ended and rely on the opt-in source to surrender any additional allowances needed to make the accounting consistent with the confirmed efficiency estimates. EPA maintains that it is reasonable for the opt-in source, which made the initial efficiency estimates, to bear the allowance consequences of correcting those estimates.

e. Definitions

EPA has found it useful to modify certain definitions and to explain certain terms applicable to the Opt-in Program to make its provisions clearer. Consistent with the procedures established in part 72 subpart B and referenced in § 74.4, the owners and operators of a combustion or process source seeking to opt into the Acid Rain Program must select a designated representative. This designated representative is charged with representing the combustion or process source with regards to all matters under the Acid Rain Program. However, during the opt-in permit application process, the combustion or process source is not yet an affected unit nor an affected source, and strictly speaking, may not have a designated representative under the existing definition in § 72.2.

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The Agency amends the definition of designated representative in § 72.2 to include a responsible person authorized by the owners and operators of a combustion or process source as a designated representative. This individual has the same role and responsibilities as designated representatives for units affected under the other provisions of title IV and must complete a Certification of Representation as specified in § 72.24. The Certification of Representation should be submitted prior to or concurrent with the opt-in permit application. Further, the definitions of owner and owner or operator have been modified to include the appropriate individuals at combustion and process sources.

In addition, the definition of affected unit has been clarified to include units covered under § 72.6 and part 74 of this chapter to be subject to the Acid Rain emissions reduction requirements or the Acid Rain emissions limitations. EPA also has clarified the usage of the terms "combustion source" and "opt-in source" because of confusion expressed by individual commenters on the proposed rule. Prior to entering the Opt-in Program, the entity wishing to opt-in is referred to, in the final rule, as a combustion source or a process source, as appropriate. Once in the Opt-in Program, the combustion source becomes an opt-in source and is referred to as such throughout the remainder of the rule. An opt-in source is an affected unit under the Acid Rain Program.

Finally, in the preamble to the proposed rule, Table 2 was in error regarding the definition of the opt-in source in various circumstances. The revised Table 2 is as follows:

TABLE 2.—OPT-IN SOURCE DEFINITIONS

Type of configuration at a single site	Single discrete entity?	What is the opt-in source?
Individual boiler emitting to multiple stacks.	Yes	Boiler and all stacks.
Multiple boilers sharing multiple stacks.	No	Each boiler and its appropriate ducts.*
Multiple boilers and affected units sharing single/multiple stacks.	No	Each unaffected boiler and its appropriate ducts.*

*—If the combustion sources wish to employ common stack monitoring they may do so according to the provisions of part 75 generally and § 75.16 in particular of the Acid Rain Program.

f. Other Items

Three other miscellaneous changes warrant mention. First, EPA has decided to allow submission of annual data as an alternative to monthly data for baseline calculations. The rule has been altered in several places accordingly. Second, EPA has modified a provision in part 77 to incorporate adjustments to allowance deductions due to differences between estimated and verified reductions in heat input due to conservation, improved electric efficiency, and improved steam production efficiency. Third, Appendix A, containing a draft opt-in permit application form, has been removed from the regulation. Forms will be issued during program implementation and will reflect, where appropriate, comments submitted.

EPA has also made revisions to parts 74 and 75 to better integrate the Opt-in Program with the rest of the Acid Rain Program. The bulk of the regulatory language relating to the monitoring of combustion sources has been moved from Subpart F in part 74 and integrated into part 75 to consolidate all monitoring requirements for all affected units in part 75.

EPA has retained general references to part 76, which is reserved for NO_x regulation, but removed specific references to sections within part 76 in the final rule. This reflects the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating part 76.

Finally, the proposed amendments to part 78 involving the exhaustion of administrative appeals as a necessary prerequisite to judicial review will not be finalized in this rulemaking. Final provisions concerning the exhaustion of administrative remedies will be addressed in a subsequent rulemaking.

g. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3) to make the amendments effective immediately.

D. Impact Analyses

1. Executive Order 12866 (Regulatory Impact Analysis)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are be documented in the public record.

EPA estimated the total cost savings of the opt-in regulations for the time period from 1994 through 2010. Cost savings are expected to accrue to both affected utilities and opt-in sources. The cost savings depend on the number of allowances sold by opt-in sources and the price of allowances. The estimates assume the use of 1985–87 baseline data, the use of the lesser of 1985 actual or allowable rate, or the current rate at the time the combustion source applies to opt in, reduced allowance allocations for reduced utilization, the transfer of allowances as a result of the replacement of thermal energy at the allowable emission rate at the replacement source, the installation and operation of continuous emissions monitoring systems, and opt-in sources are allowed to withdraw from the program. Given these assumptions, an estimated 408 combustion sources would opt in resulting in annual net cost savings of approximately $10 million. The analysis is contained in the Economic Impact Analysis (EIA) of the Opt-in Regulations, September, 1994, EPA, Office of Atmospheric Programs.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Because the Opt-in Program is a voluntary cost reducing component of the Acid Rain Program, it will not affect small entities adversely. Sources that will not benefit from their participation will choose not to participate. Based on this analysis and pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

3. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0258.

This collection of information has an estimated reporting burden averaging 80 hours per response and an estimated annual recordkeeping burden averaging 2 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 72

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric utilities, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 74

Environmental protection, Acid rain, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Environmental protection, Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 77

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Penalties, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 20, 1995.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. In part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding a new heading and entries in numerical order to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Sulfur Dioxide Opt-ins:	
74.12	2060–0258
74.14	2060–0258
74.16	2060–0258
74.18	2060–0258
74.20	2060–0258
74.22	2060–0258
74.24–74.25	2060–0258
74.41	2060–0258
74.43–74.44	2060–0258
74.46–74.47	2060–0258
74.60–74.64	2060–0258
* * * * *	

PART 72—PERMITS REGULATION

2. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601, 7651, et seq.

3. Section 72.2 is amended as follows:

a. By revising the introductory text;

b. By revising the term for "Acid Rain compliance option";

c. By revising paragrapb (1)(i) of the term "Acid Rain emissions limitation";

d. By revising the terms "Acid Rain Program", "Affected unit", "Allowable SO_2 emissions rate", "Allowance deduction", "Compensating unit", "Compliance certification", "Compliance plan; Designated Representative", "Owner", "Owner or Operator", "Phase I unit", "Phase II unit; and Reduced utilization"; and

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e. By adding the following terms in alphabetical order, "Combustion source", "Operating", "Opt-in", "Opt-in permit", "Opt-in source", "Replacement unit", and "Thermal energy".

§ 72.2 Definitions.

The terms used in this part, in parts 73, 74, 75, 76, 77 and 78 of this chapter shall have the meanings set forth in the Act, including sections 302 and 402 of the Act, and in this section as follows:

* * * * *

Acid Rain compliance option means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance plan submitted and approved in accordance with subpart D of this part, part 74 of this chapter or part 76 of this chapter.

Acid Rain emissions limitation means:

(1) For the purposes of sulfur dioxide emissions:

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1) and (a)(3) of the Act, the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

* * * * *

Acid Rain Program means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the Act, this part, and parts 73, 74, 75, 76, 77, and 78 of this chapter.

* * * * *

Affected unit means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation under § 72.6 or part 74 of this chapter.

* * * * *

Allowable SO_2 emissions rate means the most stringent federally enforceable emissions limitation for sulfur dioxide (in lb/mmBtu) applicable to the unit or combustion source for the specified calendar year, or for such subsequent year as determined by the Administrator where such a limitation does not exist for the specified year; provided that, if a Phase I or Phase II unit is listed in the NADB, the "1985 allowable SO_2 emissions rate" for the Phase I or Phase II unit shall be the rate specified by the Administrator in the NADB under the data field "1985 annualized boiler SO_2 emission limit."

* * * * *

Allowance deduction, or deduct when referring to allowances, means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount, or future year subaccount, to account for the number of tons of SO_2 emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in part 75 of this chapter, or for any other allowance surrender obligations of the Acid Rain Program.

* * * * *

Combustion source means a stationary fossil fuel fired boiler, turbine, or internal combustion engine that has submitted or intends to submit an opt-in permit application under § 74.14 of this chapter to enter the Opt-in Program.

* * * * *

Compensating unit means an affected unit that is not otherwise subject to Acid Rain emissions limitation or Acid Rain emissions reduction requirements during Phase I and that is designated as a Phase I unit in a reduced utilization plan under § 72.43; provided that an opt-in source shall not be a compensating unit.

* * * * *

Compliance certification means a submission to the Administrator or permitting authority, as appropriate, that is required by this part, by part 73, 74, 75, 76, 77, or 78 of this chapter, to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with subparts B and I of this part and the Acid Rain Program regulations generally.

* * * * *

Compliance plan, for the purposes of the Acid Rain Program, means the document submitted for an affected source in accordance with subpart C of this part or subpart E of part 74 of this chapter, or part 76 of this chapter, specifying the method(s) (including one or more Acid Rain compliance options as provided under subpart D of this part or subpart E of part 74 of this chapter, or part 76 of this chapter by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.

* * * * *

Designated representative means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with subpart B of this part, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in part 70 of this chapter, in any other regulations implementing title V of the Act, or in a State operating permit program, it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

* * * * *

Operating when referring to a combustion or process source seeking entry into the Opt-in Program, means that the source had documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding the submission of a combustion source's opt-in application under § 74.16(a) of this chapter.

* * * * *

Opt in or opt into means to elect to become an affected unit under the Acid Rain Program through the issuance of the final effective opt-in permit under § 74.14 of this chapter.

Opt-in permit means the legally binding written document that is contained within the Acid Rain permit and sets forth the requirements under part 74 of this chapter for a combustion source or a process source that opts into the Acid Rain Program.

Opt-in source means a combustion source or process source that has elected to become an affected unit under the Acid Rain Program and whose opt-in permit has been issued and is in effect

* * * * *

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in an affected unit or in a combustion source or process source; or

(2) Any holder of a leasehold interest in an affected unit or in a combustion source or process source; or

(3) Any purchaser of power from an affected unit or from a combustion source or process source under a life-of-the-unit, firm power contractual arrangement as the term is defined herein and used in section 408(i) of the Act. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

(4) With respect to any Allowance Tracking System general account, any person identified in the submission required by § 73.31(c) of this chapter that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

* * * * *

Owner or operator means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

* * * * *

Phase I unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitations beginning in Phase I.

* * * * *

Phase II unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation during Phase II only.

* * * * *

Reduced utilization means a reduction, during any calendar year in Phase I, in the heat input (expressed in mmBtu for the calendar year) at a Phase I unit below the unit's baseline, where such reduction subjects the unit to the requirement to submit a reduced utilization plan under § 72.43; or, in the case of an opt-in source, means a reduction in the average utilization, as specified in § 74.44 of this chapter, of an opt-in source below the opt-in source's baseline.

* * * * *

Replacement unit means an affected unit replacing the thermal energy provided by an opt-in source, where both the affected unit and the opt-in source are governed by a thermal energy plan.

* * * * *

Thermal energy means the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity.

* * * * *

4. Section 72.4 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 72.4 Federal authority.

(a) * * *

(1) Secure information needed for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter;

(2) Make inspections, conduct tests, examine records, and require an owner or operator of an affected unit to submit information reasonably required for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter.

* * * * *

5. Section 72.9 is amended by revising paragraphs (g)(6) and (g)(7) to read as follows:

§ 72.9 Standard requirements.

* * * * *

(g) * * *

(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under § 72.41 (substitution plans), § 72.42 (Phase I extension plans), § 72.43 (reduced utilization plans), § 72.44 (Phase II repowering extension plans), § 74.47 of this chapter (thermal energy plans), and part 76 of this chapter (NO_X averaging plans), and except with regard to the requirements applicable to units with a common stack under part 75 of this chapter (including §§ 75.16, 75.17 and 75.18 of this chapter), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(7) Each violation of a provision of this part, parts 73, 74, 75, 76, 77, and 78 of this chapter, by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

* * * * *

6. Section 72.21 is amended by revising paragraph (e) to read as follows:

§ 72.21 Submissions.

* * * * *

(e) The provisions of this section shall apply to a submission made under parts 73, 74, 75, 76, 77, and 78 of this chapter only if it is made or signed or required to be made or signed, in accordance with parts 73, 74, 75, 76, 77, and 78 of this chapter, by:

(1) The designated representative; or

(2) The authorized account representative or alternate authorized account representative of a unit account.

7. Section 72.30 is amended by revising paragraph (c) to read as follows:

§ 72.30 Requirement to apply.

* * * * *

(c) *Duty to reapply.* The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing the unit during Phase II or an opt-in permit governing an opt-in source or such longer time as may be approved under part 70 of this chapter that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

8. Section 72.40 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 72.40 General.

* * * * *

(b) *Multi-unit compliance options.* (1) A plan for a compliance option, under § 72.41, 72.42, 72.43, or 72.44 of this part, under § 74.47 of this chapter, or an NO_X averaging plan contained in part 76 of this chapter, that includes units at more than one affected source shall be complete only if:

* * * * *

9. Section 72.72 is amended by revising paragraph (b)(1) introductory text; and paragraphs (b)(1)(i) (A) and (B); (b)(1)(ii) (A) and (C), (b)(1)(v), (b)(1)(xiv); the first sentence of (b)(5)(i), and paragraph (b)(5)(vi) to read as follows:

§ 72.72 State permit program approval criteria.

* * * * *

(b) * * *

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application—*

(A) *Requirement to comply.*

(1) The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

(2) The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting

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authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain Permit Application.* A complete Acid Rain permit application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

* * * * *

(ii) *Draft permit.*

(A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part or, for a combustion or process source, subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

* * * * *

(C) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

* * * * *

(v) *Proposed Permit.* Following the public notice and comment period on a draft Acid Rain permit, the permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part or, for combustion or process sources, in accordance with subpart B of part 74 of this chapter or deny a proposed Acid Rain permit.

* * * * *

(xiv) Except as provided in § 72.73(b) and, with regard to combustion or process sources, in § 74.14(c)(6) of this chapter, the State permitting authority shall issue or deny an Acid Rain permit within 18 months of receiving a complete Acid Rain permit application submitted in accordance with § 72.21 or such lesser time approved under part 70 of this chapter.

* * * * *

(5) *Acid Rain appeal procedures.*

(i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part, parts 73, 74, 75, 76, 77 and 78 of this chapter, shall be conducted according to procedures established by the State under § 70.4(b)(3)(x) of this chapter. * * *

* * * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1)(i) or, with regard to combustion or process sources, § 74.14(c)(6) of this chapter shall be ground for filing an appeal.

* * * * *

10. Section 72.81 is amended by removing the word "and" from the end of paragraph (b)(3); by replacing the period with "; and" at the end of paragraph (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 72.81 Permit modifications.

* * * * *

(b) * * *

(5) Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

* * * * *

11. Section 72.83 is amended by revising paragraph (a)(6), (a)(11), and by adding paragraph (a)(12) to read as follows:

§ 72.83 Administrative permit amendment.

(a) * * *

(6)(i) Termination of a compliance option in the permit; provided that all requirements for termination under subpart D of this part are met and this procedure shall not be used to terminate a repowering plan after December 31, 1999 or a Phase I extension plan;

(ii) For opt-in sources, termination of a compliance option in the permit; provided that all requirements for termination under § 74.47 of this chapter are met.

* * * * *

(11) Changes in a thermal energy plan that do not result in the addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

(12) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (11) of this section.

* * * * *

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

12. The authority citation for part 73 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

13. Section 73.34 is amended by revising paragraphs (c)(2) and (c)(6) to read as follows:

§ 73.34 Recordation in accounts.

* * * * *

(c) * * *

(2) All allowances allocated or deducted pursuant to §§ 72.41, 72.42, 72.43, and 72.44 and part 74 of this chapter;

* * * * *

(6) All allowances deducted or returned pursuant to §§ 73.35(d), 72.91 and 72.92, part 74, and part 77 of this chapter.

* * * * *

14. Section 73.35 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 73.35 Compliance.

* * * * *

(b) *Deductions for compliance.* (1) Except as provided in paragraph (d) of this section, following the recordation of transfers submitted correctly for recordation in the compliance subaccount pursuant to paragraph (a) of this section and subpart D of this part, the Administrator will deduct allowances from each affected unit's compliance subaccount in accordance with the allowance deduction formula in § 72.95 of this chapter, or, for opt-in sources, the allowance deduction formula in § 74.49 of this chapter, and any correction made under § 72.96 of this chapter. (2) The Administrator will make deductions until either the number of allowances deducted is equal to the amount calculated in accordance with § 72.95 of this chapter, or, for opt-in sources, in accordance with § 74.49 of this chapter, as modified under § 72.96 of this chapter or until no more allowances remain in the compliance subaccount.

* * * * *

15. Section 73.52 is amended by revising paragraphs (a)(3) to read as follows:

§ 73.52 EPA recordation.

* * * * *

(a) * * *

(3) If the allowances identified by serial number specified pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation; and

* * * * *

16. Title 40 is amended by adding part 74 to read as follows:

PART 74—SULFUR DIOXIDE OPT-INS

Subpart A—Background and Summary

Sec.

74.1 Purpose and scope.
74.2 Applicability.
74.3 Relationship to the Acid Rain program requirements.
74.4 Designated representative.

Subpart B—Permitting Procedures

74.10 Roles—EPA and permitting authority.
74.12 Opt-in permit contents.
74.14 Opt-in permit process.
74.16 Application requirements for combustion sources.
74.17 Application requirements for process sources [Reserved]
74.18 Withdrawal.
74.19 Revision and renewal of opt-in permit.

Subpart C—Allowance Calculation for Combustion Sources

74.20 Data for baseline and alternative baseline.
74.22 Actual SO_2 emissions rate.
74.23 1985 Allowable SO_2 emissions rate.
74.24 Current allowable SO_2 emissions rate.
74.25 Current promulgated SO_2 emissions limit.
74.26 Allocation formula.
74.28 Allowance Allocation for combustion sources becoming opt-in sources on a date other than January 1.

Subpart D—Allowance Calculation for Process Sources [Reserved]

Subpart E—Allowance Tracking and Transfer and End of Year Compliance

74.40 Establishment of opt-in source allowance accounts.
74.41 Identifying allowances.
74.42 Prohibition of future year transfers.
74.43 Annual compliance certification report.
74.44 Reduced utilization for combustion sources.
74.45 Reduced utilization for process sources [Reserved].
74.46 Opt-in source shutdown, reconstruction or change in affected status.
74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.
74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved].
74.49 Calculation of deducting allowances.
74.50 Deducting opt-in source allowances from ATS accounts.

Subpart F—Monitoring Emissions: Combustion Sources

74.60 Monitoring requirements.
74.61 Monitoring plan.

Subpart G—Monitoring Emissions: Process Sources [Reserved]

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

Subpart A—Background and Summary

§ 74.1 Purpose and scope.

The purpose of this part is to establish the requirements and procedures for:

(a) The election of a combustion or process source that emits sulfur dioxide to become an affected unit under the Acid Rain Program, pursuant to section 410 of title IV of the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Public Law 101–549 (November 15, 1990); and

(b) Issuing and modifying operating permits; certifying monitors; and allocating, tracking, transferring, surrendering and deducting allowances for combustion or process sources electing to become affected units.

§ 74.2 Applicability.

Combustion or process sources that are not affected units under § 72.6 of this chapter and that are operating and are located in the 48 contiguous States or the District of Columbia may submit an opt-in permit application to become opt-in sources upon issuance of an opt-in permit. Units for which a written exemption under § 72.7 or § 72.8 of this chapter is in effect and combustion or process sources that are not operating are not eligible to submit an opt-in permit application to become opt-in sources.

§ 74.3 Relationship to the Acid Rain program requirements.

(a) *General.* (1) For purposes of applying parts 72, 73, 75, 77 and 78, each opt-in source shall be treated as an affected unit.

(2) Subpart A, B, G, and H of part 72 of this chapter, including §§ 72.2 (definitions), 72.3 (measurements, abbreviations, and acronyms), 72.4 (federal authority), 72.5 (State authority), 72.6 (applicability), 72.7 (New units exemption), 72.8 (Retired units exemption), 72.9 (Standard Requirements), 72.10 (availability of information), and 72.11 (computation of time), shall apply to this part.

(b) *Permits.* The permitting authority shall act in accordance with this part and parts 70 and 72 of this chapter in issuing or denying an opt-in permit and incorporating it into a combustion or process source's operating permit. To the extent that any requirements of this part, part 72, and part 78 of this chapter are inconsistent with the requirements of part 70 of this chapter, the requirements of this part, part 72, and part 78 of this chapter shall take precedence and shall govern the issuance, denials, revision, reopening, renewal, and appeal of the opt-in permit.

(c) *Appeals.* The procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

(d) *Allowances.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of subparts C and D of part 73 of this chapter.

(e) *Excess emissions.* A combustion or process source that becomes an affected unit under this part shall be subject to the requirements of part 77 of this chapter applicable to excess emissions of sulfur dioxide and shall not be subject to the requirements of part 77 of this chapter applicable to excess emissions of nitrogen oxides.

(f) *Monitoring.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of part 75, consistent with subparts F and G of this part.

§ 74.4 Designated representative.

(a) The provisions of subpart B of part 72 of this chapter shall apply to the designated representative of an opt-in source.

(b) If a combustion or process source is located at the same source as one or more affected units, the combustion or process source shall have the same designated representative as the other affected units at the source.

Subpart B—Permitting Procedures

§ 74.10 Roles—EPA and permitting authority.

(a) *Administrator responsibilities.* The Administrator shall be responsible for the following activities under the opt-in provisions of the Acid Rain Program:

(1) *Calculating* the baseline or alternative baseline and allowance allocation, and allocating allowances for combustion or process sources that become affected units under this part;

(2) Certifying or recertifying monitoring systems for combustion or process sources as provided under § 74.62;

(3) Establishing allowance accounts, tracking allowances, assessing end-of-year compliance, determining reduced utilization, approving thermal energy transfer and accounting for the replacement of thermal energy, closing accounts for opt-in sources that shut down, are reconstructed, become affected under § 72.6 of this chapter, or fail to renew their opt-in permit, and deducting allowances as provided under subpart E of this part; and

(4) Ensuring that the opt-in source meets all withdrawal conditions prior to withdrawal from the Acid Rain Program as provided under § 74.18; and

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revising paragraphs (c)(2) and (c)(6) to read as follows:

part 74 to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

permit.

as provided under § 74.18; and

(5) Approving and disapproving the request to withdraw from the Acid Rain Program.

(b) *Permitting authority responsibilities.* The permitting authority shall be responsible for the following activities:

(1) Issuing the draft and final opt-in permit;

(2) Revising and renewing the opt-in permit; and

(3) Terminating the opt-in permit for an opt-in source as provided in § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction or change in affected status) and § 74.50 (deducting allowances).

§ 74.12 Opt-in permit contents.

(a) The opt-in permit shall be included in the Acid Rain permit.

(b) *Scope.* The opt-in permit provisions shall apply only to the opt-in source and not to any other affected units.

(c) *Contents.* Each opt-in permit, including any draft or proposed opt-in permit, shall contain the following elements in a format specified by the Administrator:

(1) All elements required for a complete opt-in permit application as provided under § 74.16 for combustion sources or under § 74.17 for process sources or, if applicable, all elements required for a complete opt-in permit renewal application as provided in § 74.19 for combustion sources or under § 74.17 for process sources;

(2) The allowance allocation for the opt-in source as determined by the Administrator under subpart C of this part for combustion sources or subpart D of this part for process sources;

(3) The standard permit requirements as provided under § 72.9 of this chapter, except that the provisions in § 72.9(d) of this chapter shall not be included in the opt-in permit; and

(4) *Termination.* The provision that participation of a combustion or process source in the Acid Rain Program may be terminated only in accordance with § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction, or change in affected status), and § 74.50 (deducting allowances).

(d) Each opt-in permit is deemed to incorporate the definitions of terms under § 72.2 of this chapter.

(e) *Permit shield.* Each opt-in source operated in accordance with the opt-in permit that governs the opt-in source and that was issued in compliance with title IV of the Act, as provided in this part and parts 72, 73, 75, 77, and 78 of this chapter, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in § 72.9(g)(6) of this chapter.

(f) *Term of opt-in permit.* An opt-in permit shall be issued for a period of 5 years and may be renewed in accordance with § 74.19; provided

(1) If an opt-in permit is issued prior to January 1, 2000, then the opt-in permit may, at the option of the permitting authority, expire on December 31, 1999; and

(2) If an affected unit with an Acid Rain permit is located at the same source as the combustion source, the combustion source's opt-in permit may, at the option of the permitting authority, expire on the same date as the affected unit's Acid Rain permit expires.

§ 74.14 Opt-in permit process.

(a) *Submission.* The designated representative of a combustion or process source may submit an opt-in permit application and a monitoring plan to the Administrator at any time for any combustion or process source that is operating.

(b) *Issuance or denial of opt-in permits.* The permitting authority shall issue or deny opt-in permits or revisions of opt-in permits in accordance with the procedures in part 70 of this chapter and subparts F and G of part 72 of this chapter, except as provided in this section.

(1) *Supplemental information.* Regardless of whether the opt-in permit application is complete, the Administrator or the permitting authority may request submission of any additional information that the Administrator or the permitting authority determines to be necessary in order to review the opt-in permit application or to issue an opt-in permit.

(2) *Interim review of monitoring plan.* The Administrator will determine, on an interim basis, the sufficiency of the monitoring plan, accompanying the opt-in permit application. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that all SO_2 emissions, NO_x emissions, CO_2 emissions, and opacity of the combustion or process source are monitored and reported in accordance with part 75 of this chapter. This interim review of sufficiency shall not be construed as the approval or disapproval of the combustion or process source's monitoring system.

(3) *Issuance of draft opt-in permit.* After the Administrator determines whether the combustion or process source's monitoring plan is sufficient under paragraph (b)(2) of this section, the permitting authority shall serve the draft opt-in permit or the denial of a draft permit or the draft opt-in permit revisions or the denial of draft opt-in permit revisions on the designated representative of the combustion or process source submitting an opt-in permit application. A draft permit or draft opt-in permit revision shall not be served or issued if the monitoring plan is determined not to be sufficient.

(4) *Confirmation by source of intention to opt-in.* Within 21 calendar days from the date of service of the draft opt-in permit or the denial of the draft opt-in permit, the designated representative of a combustion or process source submitting an opt-in permit application must submit to the Administrator, in writing, a confirmation or recision of the source's intention to become an opt-in source under this part. The Administrator shall treat the failure to make a timely submission as a recision of the source's intention to become an opt-in source and as a withdrawal of the opt-in permit application.

(5) *Issuance of draft opt-in permit.* If the designated representative confirms the combustion or process source's intention to opt in under paragraph (b)(4) of this section, the permitting authority will give notice of the draft opt-in permit or denial of the draft opt-in permit and an opportunity for public comment, as provided under § 72.65 of this chapter with regard to a draft permit or denial of a draft permit if the Administrator is the permitting authority or as provided in accordance with part 70 of this chapter with regard to a draft permit or the denial of a draft permit if the State is the permitting authority.

(6) *Permit decision deadlines.* (i) If the Administrator is the permitting authority, an opt-in permit will be issued or denied within 12 months of receipt of a complete opt-in permit application.

(ii) If the State is the permitting authority, an opt-in permit will be issued or denied within 18 months of receipt of a complete opt-in permit application or such lesser time approved under part 70 of this chapter.

(7) *Withdrawal of opt-in permit application.* A combustion or process source may withdraw its opt-in permit application at any time prior to the issuance of the final opt-in permit. Once a combustion or process source withdraws its application, in order to re-apply, it must submit a new opt-in permit application in accordance with § 74.16 for combustion sources or § 74.17 for process sources.

(d) *Entry into Acid Rain Program.*—(1) *Effective date.* The effective date of the opt-in permit shall be the January 1, April 1, July 1, or October 1 for a combustion or process source providing

monthly data under § 74.20, or January 1 for a combustion or process source providing annual data under § 74.20, following the later of the issuance of the opt-in permit by the permitting authority or the completion of monitoring system certification, as provided in subpart F of this part for combustion sources or subpart G of this part for process sources. The combustion or process source shall become an opt-in source and an affected unit as of the effective date of the opt-in permit.

(2) *Allowance allocation.* After the opt-in permit becomes effective, the Administrator will allocate allowances to the opt-in source as provided in § 74.40. If the effective date of the opt-in permit is not January 1, allowances for the first year shall be pro-rated as provided in § 74.28.

(e) *Expiration of opt-in permit.* An opt-in permit that is issued before the completion of monitoring system certification under subpart F of this part for combustion sources or under subpart G of this part for process sources shall expire 180 days after the permitting authority serves the opt-in permit on the designated representative of the combustion or process source governed by the opt-in permit, unless such monitoring system certification is complete. The designated representative may petition the Administrator to extend this time period in which an opt-in permit expires and must explain in the petition why such an extension should be granted. The designated representative of a combustion source governed by an expired opt-in permit and that seeks to become an opt-in source must submit a new opt-in permit application.

§ 74.16 Application requirements for combustion sources.

(a) *Opt-in permit application.* Each complete opt-in permit application for a combustion source shall contain the following elements in a format prescribed by the Administrator:

(1) Identification of the combustion source, including company name, plant name, plant site address, mailing address, description of the combustion source, and information and diagrams on the combustion source's configuration;

(2) Identification of the designated representative, including name, address, telephone number, and facsimile number;

(3) The year and month the combustion source commenced operation;

(4) The number of hours the combustion source operated in the six months preceding the opt-in permit application and supporting documentation;

(5) The baseline or alternative baseline data under § 74.20;

(6) The actual SO_2 emissions rate under § 74.22;

(7) The allowable 1985 SO_2 emissions rate under § 74.23;

(8) The current allowable SO_2 emissions rate under § 74.24;

(9) The current promulgated SO_2 emissions rate under § 74.25;

(10) If the combustion source seeks to qualify for a transfer of allowances from the replacement of thermal energy, a thermal energy plan as provided in § 74.47 for combustion sources; and

(11) A statement whether the combustion source was previously an affected unit under this part;

(12) A statement that the combustion source is not an affected unit under § 72.6 of this chapter;

(13) A complete compliance plan for SO_2 under § 72.40 of this chapter; and

(14) The following statement signed by the designated representative of the combustion source: "I certify that the data submitted under subpart C of part 74 reflects actual operations of the combustion source and has not been adjusted in any way."

(b) *Accompanying documents.* The designated representative of the combustion source shall submit a monitoring plan in accordance with § 74.61.

§ 74.17 Application requirements for process sources [Reserved].

§ 74.18 Withdrawal.

(a) *Withdrawal through administrative amendment.* An opt-in source may request to withdraw from the Acid Rain Program by submitting an administrative amendment under § 72.83 of this chapter; provided that the amendment will be treated as received by the permitting authority upon issuance of the notification of the acceptance of the request to withdraw under paragraph (f)(1) of this section.

(b) *Requesting withdrawal.* To withdraw from the Acid Rain Program, the designated representative of an opt-in source shall submit to the Administrator and the permitting authority a request to withdraw effective January 1 of the year after the year in which the submission is made. The submission shall be made no later than December 1 of the calendar year preceding the effective date of withdrawal.

(c) *Conditions for withdrawal.* In order for an opt-in source to withdraw, the following conditions must be met:

(1) By no later than January 30 of the first calendar year in which the withdrawal is to be effective, the designated representative must submit to the Administrator an annual compliance certification report pursuant to § 74.43.

(2) If the opt-in source has excess emissions in the calendar year before the year for which the withdrawal is to be in effect, the designated representative must submit an offset plan for excess emissions, pursuant to part 77 of this chapter, that provides for immediate deduction of allowances.

(d) *Administrator's action on withdrawal.* After the opt-in source meets the requirements for withdrawal under paragraphs (b) and (c) of this section, the Administrator will deduct allowances required to be deducted under § 73.35 of this chapter and part 77 of this chapter and allowances equal in number to and with the same or earlier compliance use date as those allocated under § 74.40 for the first year for which the withdrawal is to be effective and all subsequent years. The Administrator will close the opt-in source's unit account and transfer any remaining allowances to a new general account as specified under § 74.46(c).

(e) *Opt-in source's prior violations.* An opt-in source that withdraws from the Acid Rain Program shall comply with all requirements under the Acid Rain Program concerning all years for which the opt-in source was an affected unit, even if such requirements arise, or must be complied with after the withdrawal takes effect. The withdrawal shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the withdrawal takes effect.

(f) *Notification.* (1) After the requirements for withdrawal under paragraphs (b) and (c) of this section are met and after the Administrator's action on withdrawal under paragraph (d) of this section is complete, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source of the acceptance of the opt-in source's request to withdraw.

(2) If the requirements for withdrawal under paragraphs (b) and (c) of this section are not met or the Administrator's action under paragraph (d) of this section cannot be completed, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source that the opt-in source's request to withdraw is denied. If the opt-in source's request to withdraw is denied, the opt-in source shall remain

§ 72.9(g)(6) of this chapter.

revisions or the denial of draft opt-in

combustion or process source providing

combustion source operated in the six

the following conditions must be met:

denied, the opt-in source shall remain

in the Opt-in Program and shall remain subject to the requirements for opt-in sources contained in this part.

(g) *Permit amendment.* (1) After the Administrator issues a notification under paragraph (f)(1) of this section that the requirements for withdrawal have been met (including the deduction of the full amount of allowances as required under paragraph (d) of this section), the permitting authority shall amend, in accordance with §§ 72.80 and 72.83 (administrative amendment) of this chapter, the opt-in source's Acid Rain permit to terminate the opt-in permit, not later than 60 days from the issuance of the notification under paragraph (f) of this section.

(2) The termination of the opt-in permit under paragraph (g)(1) of this section will be effective on January 1 of the year for which the withdrawal is requested. An opt-in source shall continue to be an affected unit until the effective date of the termination.

(h) *Reapplication upon failure to meet conditions of withdrawal.* If the Administrator denies the opt-in source's request to withdraw, the designated representative may submit another request to withdraw in accordance with paragraphs (b) and (c) of this section.

(i) *Ability to return to the Acid Rain Program.* Once a combustion or process source withdraws from the Acid Rain Program and its opt-in permit is terminated, a new opt-in permit application for the combustion or process source may not be submitted prior to the date that is four years after the date on which the opt-in permit became effective.

§ 74.19 Revision and renewal of opt-in permit.

(a) The designated representative of an opt-in source may submit revisions to its opt-in permit in accordance with subpart H of part 72 of this chapter.

(b) The designated representative of an opt-in source may renew its opt-in permit by meeting the following requirements:

(1)(i) In order to renew an opt-in permit if the Administrator is the permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the Administrator an opt-in permit application at least 6 months prior to the expiration of an existing opt-in permit.

(ii) In order to renew an opt-in permit if the State is the permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the permitting authority an opt-in permit application at least 18 months prior to the expiration of an existing opt-in permit or such shorter time as may be approved for operating permits under part 70 of this chapter.

(2) Each complete opt-in permit application submitted to renew an opt-in permit shall contain the following elements in a format prescribed by the Administrator:

(i) Elements contained in the opt-in source's initial opt-in permit application as specified under § 74.16(a)(1), (2), (10), (11), (12), and (13).

(ii) An updated monitoring plan, if applicable under § 75.53(b) of this chapter.

(c)(1) Upon receipt of an opt-in permit application submitted to renew an opt-in permit, the permitting authority shall issue or deny an opt-in permit in accordance with the requirements under subpart B of this part, except as provided in paragraph (c)(2) of this section.

(2) When issuing a renewed opt-in permit, the permitting authority shall not alter an opt-in source's allowance allocation as established, under subpart B and subpart C of this part for combustion sources and under subpart B and subpart D of this part for process sources, in the opt-in permit that is being renewed.

Subpart C—Allowance Calculations for Combustion Sources

§ 74.20 Data for baseline and alternative baseline.

(a) *Acceptable data.* (1) The designated representative of a combustion source shall submit either the data specified in this paragraph or alternative data under paragraph (c) of this section. The designated representative shall also submit the calculations under this section based on such data.

(2) The following data shall be submitted for the combustion source for the calendar year(s) under paragraph (a)(3) of this section:

(i) Monthly or annual quantity of each type of fuel consumed, expressed in thousands of tons for coal, thousands of barrels for oil, and million standard cubic feet (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(ii) Monthly or annual heat content of fuel consumed for each type of fuel consumed, expressed in British thermal units (Btu) per pound for coal, Btu per barrel for oil, and Btu per standard cubic foot (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(iii) Monthly or annual sulfur content of fuel consumed for each type of fuel consumed, expressed as a percentage by weight.

(3) *Calendar Years.* (i) For combustion sources that commenced operating prior to January 1, 1985, data under this section shall be submitted for 1985, 1986, and 1987.

(ii) For combustion sources that commenced operation after January 1, 1985, the data under this section shall be submitted for the first three consecutive calendar years during which the combustion source operated after December 31, 1985.

(b) *Calculation of baseline and alternative baseline.*

(1) For combustion sources that commenced operation prior to January 1, 1985, the baseline is the average annual quantity of fuel consumed during 1985, 1986, and 1987, expressed in mmBtu. The baseline shall be calculated as follows:

$$\text{baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{annual fuel consumption}}{3}$$

where,

(i) for a combustion source submitting monthly data,

$$\text{annual fuel consumption} = \sum_{\text{months}=\text{Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[\text{quantity of fuel consumed} \times \text{heat content} \times \text{unit conversion}\right]$$

and unit conversion
= 2 for coal
= 0.001 for oil
= 1 for gas
For other fuels, the combustion source must specify unit conversion; or

(ii) for a combustion source submitting annual data,

$$\text{annual fuel consumption} = \sum_{\text{Fuel Types}} \left[\text{quantity of fuel consumed} \times \text{heat content} \times \text{unit conversion}\right]$$

and unit conversion
= 2 for coal
= 0.001 for oil
= 1 for gas
For other fuels, the combustion source must specify unit conversion.

(2) For combustion sources that commenced operation after January 1, 1985, the alternative baseline is the average annual quantity of fuel consumed in the first three consecutive calendar years during which the combustion source operated after December 31, 1985, expressed in mmBtu. The alternative baseline shall be calculated as follows:

$$\text{alternative baseline} = \frac{\sum_{\text{First 3 consecutive years}} \text{annual fuel consumption}}{3}$$

where,

"annual fuel consumption" is as defined under paragraph (b)(1)(i) or (ii) of this section.

(c) *Alternative data.*

(1) For combustion sources for which any of the data under paragraph (b) of this section is not available due solely to a natural catastrophe, data as set forth in paragraph (a)(2) of this section for the first three consecutive calendar years for which data is available after December 31, 1985, may be submitted. The alternative baseline for these combustion sources shall be calculated using the equation for alternative baseline in paragraph (b)(2) of this section and the definition of annual fuel consumption in paragraphs (b)(1)(i) or (ii) of this section.

(2) Except as provided in paragraph (c)(1) of this section, no alternative data may be submitted. A combustion source that cannot submit all required data, in accordance with this section, shall not be eligible to submit an opt-in permit application.

(d) *Administrator's action.* The Administrator may accept in whole or in part or with changes as appropriate, request additional information, or reject data or alternative data submitted for a combustion source's baseline or alternative baseline.

§ 74.22 Actual SO_2 emissions rate.

(a) *Data requirements.* The designated representative of a combustion source shall submit the calculations under this section based on data submitted under § 74.20 for the following calendar year:

(1) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for calculating the actual SO_2 emissions rate shall be 1985.

(2) For combustion sources that commenced operation after January 1, 1985, the calendar year for calculating the actual SO_2 emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.20(b)(2).

(3) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the actual SO_2 emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *SO_2 emissions factor calculation.* The SO_2 emissions factor for each type of fuel consumed during the specified year, expressed in pounds per thousand tons for coal, pounds per thousand barrels for oil and pounds per million cubic feet (scf) for gas, shall be calculated as follows:

SO_2 Emissions Factor
= (average percent of sulfur by weight) x (k),
where,
average percent of sulfur by weight
= annual average, for a combustion source submitting annual data
= monthly average, for a combustion source submitting monthly data
k = 39,000 for bituminous coal or anthracite
= 35,000 for subbituminous coal
= 30,000 for lignite
= 5,964 for distillate (light) oil
= 6,594 for residual (heavy) oil
= 0.6 for natural gas
For other fuels, the combustion source must specify the SO_2 emissions factor.

(c) *Annual SO_2 emissions calculation.* Annual SO_2 Emissions for the specified calendar year, expressed in pounds, shall be calculated as follows:

(1) For a combustion source submitting monthly data,

$$\text{Annual } SO_2 \text{ Emissions} = \sum_{\text{months}=\text{Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[\begin{array}{c}\text{quantity of fuel consumed} \\ \times SO_2 \text{ emissions factor} \\ \times (1 - \text{control system efficiency}) \\ \times (1 - \text{fuel pre-treatment efficiency})\end{array}\right]$$

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(2) For a combustion source submitting annual data:

$$\text{Annual } SO_2 \text{ Emissions} = \sum_{\text{Fuel Types}} \left[\begin{array}{c} \text{quantity of fuel consumed} \\ \times SO_2 \text{ emissions factor} \\ \times (1 - \text{control system efficiency}) \\ \times (1 - \text{fuel pre-treatment efficiency}) \end{array} \right]$$

where,

"quantity of fuel consumed" is as defined under § 74.20(a)(2)(A);

"SO_2 emissions factor" is as defined under paragraph (b) of this section;

"control system efficiency" is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable; and

"fuel pre-treatment efficiency" is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable.

(d) *Annual fuel consumption calculation.* Annual fuel consumption for the specified calendar year, expressed in mmBtu, shall be calculated as defined under § 74.20(b)(1) (i) or (ii).

(e) *Actual SO_2 emissions rate calculation.* The actual SO_2 emissions rate for the specified calendar year, expressed in lbs/mmBtu, shall be calculated as follows:

$$\text{Actual } SO_2 \text{ Emissions Rate} = \frac{\text{Annual } SO_2 \text{ Emissions}}{\text{Annual Fuel Consumption}}$$

§ 74.23 1985 Allowable SO_2 emissions rate.

(a) *Data requirements.* (1) The designated representative of the combustion source shall submit the following data and the calculations under paragraph (b) of this section based on the submitted data:

(i) Allowable SO_2 emissions rate of the combustion source expressed in lbs/mmBtu as defined under § 72.2 of this chapter for the calendar year specified in paragraph (a)(2) of this section. If the allowable SO_2 emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the emissions rate by the appropriate factor as specified in Table 1 of this section.

TABLE 1.—FACTORS TO CONVERT EMISSION LIMITS TO POUNDS OF SO_2/mmBtu

Unit measurement	Bituminous coal	Subbituminous coal	Lignite coal	Oil
lbs Sulfur/mmBtu	2.0	2.0	2.0	2.0
% Sulfur in fuel	1.66	2.22	2.86	1.07
ppm SO_2	0.00287	0.00384	.....	0.00167
ppm Sulfur in fuel	.....	.....	.....	0.00334
tons SO_2/hour	2×8760/(annual fuel consumption for specified year [1]×10 ^{3})			
lbs SO_2/hour	8760/(annual fuel consumption for specified year [1]×10 ^{6})			

1 Annual fuel consumption as defined under § 74.20(b)(1) (i) or (ii); specified calendar year as defined under § 74.23(a)(2).

(ii) Citation of statute, regulations, and any other authority under which the allowable emissions rate under paragraph (a)(1) of this section is established as applicable to the combustion source;

(iii) Averaging time associated with the allowable emissions rate under paragraph (a)(1) of this section.

(iv) The annualization factor for the combustion source, based on the type of combustion source and the associated averaging time of the allowable emissions rate of the combustion source, as set forth in the Table 2 of this section:

TABLE 2.—ANNUALIZATION FACTORS FOR SO_2 Emission Rates

Type of combustion source	Annualization factor for scrubbed unit	Annualization factor for unscrubbed unit
Unit Combusting Oil, Gas, or some combination	1.00	1.00
Coal Unit with Averaging Time <= 1 day	0.93	0.89
Coal Unit with Averaging Time = 1 week	0.97	0.92
Coal Unit with Averaging Time = 30 days	1.00	0.96
Coal Unit with Averaging Time = 90 days	1.00	1.00
Coal Unit with Averaging Time = 1 year	1.00	1.00
Coal Unit with Federal Limit, but Averaging Time Not Specified	0.93	0.89

(2) *Calendar* Year.

(i) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for the allowable SO_2 emissions rate shall be 1985.

(ii) For combustion sources that commenced operation after January 1, 1985, the calendar year for the allowable SO_2 emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.23(a)(1)(i).

(iii) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the allowable SO_2 emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *1985 Allowable SO_2 emissions rate calculation.* The allowable SO_2 emissions rate for the specified calendar year shall be calculated as follows:

1985 Allowable SO_2 Emissions Rate = (Allowable SO_2 Emissions Rate) × (Annualization Factor)

§ 74.24 Current allowable SO_2 emissions rate.

The designated representative shall submit the following data:

(a) Current allowable SO_2 emissions rate of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit in effect as of the date of submission of the opt-in application. If the allowable SO_2 emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the allowable rate by the appropriate factor as specified in Table 1 in § 74.23(a)(1)(i).

(b) Citations of statute, regulation, and any other authority under which the allowable emissions rate under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the allowable emissions rate under paragraph (a) of this section.

§ 74.25 Current promulgated SO_2 emissions limit.

The designated representative shall submit the following data:

(a) Current promulgated SO_2 emissions limit of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit that has been promulgated as of the date of submission of the opt-in permit application and that either is in effect on that date or will take effect after that date. If the promulgated SO_2 emissions limit is not expressed in lbs/mmBtu, the limit shall be converted to lbs/mmBtu by multiplying the limit by the appropriate factor as specified in Table 1 of § 74.23(a)(1)(i).

(b) Citations of statute, regulation and any other authority under which the emissions limit under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the emissions limit under paragraph (a) of this section.

(d) Effective date of the emissions limit under paragraph (a) of this section.

§ 74.26 Allocation formula.

(a) The Administrator will calculate the annual allowance allocation for a combustion source based on the data, corrected as necessary, under § 74.20 through § 74.25 as follows:

(1) For combustion sources for which the current promulgated SO_2 emissions limit under § 74.25 is greater than or equal to the current allowable SO_2 emissions rate under § 74.24, the number of allowances allocated for each year equals:

$$\text{Allowances} = \frac{\left[\begin{array}{c} \text{baseline} \\ \text{or} \\ \text{alternative baseline} \end{array} \right] \times \text{the lesser of} \left[\begin{array}{c} \text{the actual } SO_2 \text{ emissions rate} \\ \text{or} \\ \text{the 1985 allowable } SO_2 \text{ emissions rate} \\ \text{or} \\ \text{the current allowable } SO_2 \text{ emissions rate} \end{array} \right]}{2000}$$

(2) For combustion sources in which the current promulgated SO_2 emissions limit under § 74.25 is less than the current allowable SO_2 emissions rate under § 74.24.

(i) The number of allowances for each year ending prior to the effective date of the promulgated SO_2 emissions limit equals:

$$\text{Allowances} = \frac{\left[\begin{array}{c} \text{baseline} \\ \text{or} \\ \text{alternative baseline} \end{array} \right] \times \text{the lesser of} \left[\begin{array}{c} \text{the actual } SO_2 \text{ emissions rate} \\ \text{or} \\ \text{the 1985 allowable } SO_2 \text{ emissions rate} \\ \text{or} \\ \text{the current allowable } SO_2 \text{ emissions rate} \end{array} \right]}{2000}$$

(ii) The number of allowances for the year that includes the effective date of the promulgated SO_2 emissions limit and for each year thereafter equals:

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$$\text{Allowances} = \frac{\left[\begin{array}{c}\text{baseline}\\ \text{or}\\ \text{alternative baseline}\end{array}\right] \times \text{the lesser of} \left[\begin{array}{c}\text{the actual } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the 1985 allowable } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the current promulgated } SO_2 \text{ emissions rate}\end{array}\right]}{2000}$$

§ 74.28 Allowance allocation for combustion sources becoming opt-in sources on a date other than January 1.

(a) *Dates of entry.* (1) If an opt-in source provided monthly data under § 74.20, the opt-in source's opt-in permit may become effective at the beginning of a calendar quarter as of January 1, April 1, July 1, or October 1.

(2) If an opt-in source provided annual data under § 74.20, the opt-in source's opt-in permit must become effective on January 1.

(b) *Prorating by Calendar Quarter.* Where a combustion source's opt-in permit becomes effective on April 1, July 1, or October 1 of a given year, the Administrator will prorate the allowance allocation for that first year by the calendar quarters remaining in the year as follows:

Allowances for the first year

$$= \left(\frac{\text{first year partial baseline}}{\text{baseline or alternative baseline}}\right) \times \text{annual allocation of allowances for the first year}$$

(1) For combustion sources that commenced operations before January 1, 1985,

$$\text{first year partial baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{fuel consumption for remaining calendar quarters}}{3}$$

(2) For combustion sources that commenced operations after January 1, 1985.

$$\text{first year partial baseline} = \sum_{\text{First 3 consecutive years}} \frac{\text{fuel consumption for the remaining calendar quarters}}{3}$$

(3) Under paragraphs (b) (1) and (2) of this section,

(i) "Remaining calendar quarters" shall be the calendar quarters in the first year for which the opt-in permit will be effective.

(ii) Fuel consumption for remaining calendar quarters =

$$\sum_{\text{months}=\text{Apr., Jul., or Oct.}}^{\text{Dec}} \sum_{\text{Fuel Types}} \text{quantity of fuel consumed} \times \text{heat content} \times \text{unit conversion}$$

where unit conversion
= 2 for coal
= 0.001 for oil
= 1 for gas

For other fuels, the combustion source must specify unit conversion;

and where starting month
= April, if effective date is April 1;
= July, if effective date is July 1; and
= October, if effective date is October 1.

Subpart D—Allowance Calculations for Process Sources—[Reserved]

Subpart E—Allowance Tracking and Transfer and End of Year Compliance

§ 74.40 Establishment of opt-in source allowance accounts.

(a) *Establishing accounts.* Not earlier than the date on which a combustion or process source becomes an affected unit under this part and upon receipt of a request for an opt-in account under paragraph (b) of this section, the Administrator will establish an account and allocate allowances in accordance with subpart C of this part for combustion sources or subpart D of this part for process sources. A separate unit account will be established for each opt-in source.

(b) *Request for opt-in account.* The designated representative of the opt-in source shall, on or after the effective date of the opt-in permit as specified in § 74.14(d), submit a letter requesting the opening of an allowance account in the Allowance Tracking System to the Administrator.

§ 74.41 Identifying allowances.

(a) *Identifying allowances.* Allowances allocated to an opt-in source will be assigned a serial number that identifies them as being allocated under an opt-in permit.

(b) *Submittal of opt-in allowances for auction.* (1) An authorized account representative may offer for sale in the spot auction under § 73.70 of this chapter allowances that are allocated to opt-in sources, if the allowances have a compliance use date earlier than the year in which the spot auction is to be held and if the Administrator has completed the deductions for compliance under § 73.35(b) for the compliance year corresponding to the compliance use date of the offered allowances.

(2) Authorized account representatives may not offer for sale in the advance auctions under § 73.70 of this chapter allowances allocated to opt-in sources.

§ 74.42 Prohibition on future year transfers.

(a) The Administrator will not record a transfer of opt-in allowances allocated to opt-in sources from a future year subaccount into any other future year subaccount in the Allowance Tracking System.

§ 74.43 Annual compliance certification report.

(a) *Applicability and deadline.* For each calendar year in which an opt-in source is subject to the Acid Rain emissions limitations, the designated representative of the opt-in source shall submit to the Administrator, no later than 60 days after the end of the calendar year, an annual compliance certification report for the opt-in source in lieu of any annual compliance certification report required under subpart I of part 72 of this chapter.

(b) *Contents of report.* The designated representative shall include in the annual compliance certification report the following elements, in a format prescribed by the Administrator, concerning the opt-in source and the calendar year covered by the report:

(1) Identification of the opt-in source;

(2) An opt-in utilization report in accordance with § 74.44 for combustion sources and § 74.45 for process sources;

(3) A thermal energy compliance report in accordance with § 74.47 for combustion sources and § 74.48 for process sources, if applicable;

(4) Shutdown or reconstruction information in accordance with § 74.46, if applicable;

(5) A statement that the opt-in source has not become an affected unit under § 72.6 of this chapter;

(6) At the designated representative's option, the total number of allowances to be deducted for the year, using the formula in § 74.49, and the serial numbers of the allowances that are to be deducted; and

(7) At the designated representative's option, for opt-in sources that share a common stack and whose emissions of sulfur dioxide are not monitored separately or apportioned in accordance with part 75 of this chapter, the percentage of the total number of allowances under paragraph (b)(6) of this section for all such affected units that is to be deducted from each affected unit's compliance subaccount; and

(8) The compliance certification under paragraph (c) of this section.

(c) *Annual compliance certification.* In the annual compliance certification report under paragraph (a) of this section, the designated representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the opt-in source in compliance with the Acid Rain Program, whether the opt-in source was operated during the calendar year covered by the report in compliance with the requirements of the Acid Rain Program applicable to the opt-in source, including:

(1) Whether the opt-in source was operated in compliance with applicable Acid Rain emissions limitations, including whether the opt-in source held allowances, as of the allowance transfer deadline, in its compliance subaccount (after accounting for any allowance deductions or other adjustments under § 73.34(c) of this chapter) not less than the opt-in source's total sulfur dioxide emissions during the calendar year covered by the annual report;

(2) Whether the monitoring plan that governs the opt-in source has been maintained to reflect the actual operation and monitoring of the opt-in source and contains all information necessary to attribute monitored emissions to the opt-in source;

(3) Whether all the emissions from the opt-in source or group of affected units (including the opt-in source) using a common stack were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports in accordance with part 75 of this chapter;

(4) Whether the facts that form the basis for certification of each monitor at the opt-in source or group of affected units (including the opt-in source) using a common stack or of an opt-in source's qualifications for using an Acid Rain Program excepted monitoring method or approved alternative monitoring method, if any, have changed;

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitoring recertification; and

(6) When applicable, whether the opt-in source was operating in compliance with its thermal energy plan as provided in § 74.47 for combustion sources and § 74.48 for process sources.

§ 74.44 Reduced utilization for combustion sources.

(a) *Calculation of Utilization.*

(1) *Annual utilization.* (i) Except as provided in paragraph (a)(1)(ii) of this section, annual utilization for the calendar year shall be calculated as follows:

Annual Utilization = Actual heat input + Reduction from improved efficiency

where,

(A) "Actual heat input" shall be the actual annual heat input (in mmBtu) of the opt-in source for the calendar year determined in accordance with Appendix F of part 75 of this chapter.

(B) "Reduction from improved efficiency" shall be the sum of the following four elements: Reduction from demand side measures that improve the efficiency of electricity consumption; reduction from demand side measures that improve the efficiency of steam consumption; reduction from improvements in the heat rate at the opt-in source; and reduction from improvement in the efficiency of steam production at the opt-in source. Qualified demand side measures applicable to the calculation of utilization for opt-in sources are listed in Appendix A, Section 1 of part 73 of this chapter.

(C) "Reduction from demand side measures that improve the efficiency of electricity consumption" shall be a good faith estimate of the expected kilowatt hour savings during the calendar year for such measures and the corresponding reduction in heat input (in mmBtu) resulting from those measures. The demand side measures shall be implemented at the opt-in source, in the residence or facility to which the opt-in source delivers electricity for consumption or in the residence or facility of a customer to whom the opt-in source's utility system

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sells electricity. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(D) "Reduction from demand side measures that improve the efficiency of steam consumption" shall be a good faith estimate of the expected steam savings (in mmBtu) from such measures during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of those measures. The demand side measures shall be implemented at the opt-in source or in the facility to which the opt-in source delivers steam for consumption. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(E) "Reduction from improvements in heat rate" shall be a good faith estimate of the expected reduction in heat rate during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved unit efficiency measures at the opt-in source and may include supply-side measures listed in Appendix A, section 2.1 of part 73 of this chapter. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(F) "Reduction from improvement in the efficiency of steam production at the opt-in source" shall be a good faith estimate of the expected improvement in the efficiency of steam production at the opt-in source during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved steam production efficiency measures. In order to claim improvements in the efficiency of steam production, the designated representative of the opt-in source must demonstrate to the satisfaction of the Administrator that the heat rate of the opt-in source has not increased. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(G) Notwithstanding paragraph (a)(1)(i)(B) of this section, where two or more opt-in sources, or two or more opt-in sources and Phase I units, include in their annual compliance certification reports their good faith estimate of kilowatt hour savings or steam savings from the same demand side measures that improve the efficiency of electricity or steam consumption:

(*1*) The designated representatives of all such opt-in sources and Phase I units shall submit with their annual compliance certification reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or steam savings among such opt-in sources and Phase I units.

(*2*) Each designated representative shall include in its annual compliance certification report only its share of kilowatt hour savings or steam savings.

(ii) For an opt-in source whose opt-in permit becomes effective on a date other than January 1, annual utilization for the first year shall be calculated as follows:

$$\text{Annual Utilization} = \frac{\text{Actual heat input}}{\text{for the remaining calendar quarters}} + \text{Reduction from improved efficiency for the remaining calendar quarters}$$

where "actual heat input" and "reduction from improved efficiency" are defined as set forth in paragraph (a)(1)(i) of this section but are restricted to data or estimates for the "remaining calendar quarters", which are the calendar quarters that begin on or after the date the opt-in permit becomes effective.

(2) *Average utilization.* Average utilization for the calendar year shall be defined as the average of the annual utilization calculated as follows:

(i) For the first two calendar years after the effective date of an opt-in permit taking effect on January 1 or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in accordance with § 74.47 of this chapter, average utilization will be calculated as follows:

(A) Average utilization for the first year = annual utilization$_{\text{year 1}}$

where "annual utilization$_{\text{year 1}}$" is as calculated under paragraph (a)(1)(i) of this section.

(B) Average utilization for the second year

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{2} \right)$$

where,

"revised annual utilization$_{\text{year 1}}$" is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section;

"annual utilization$_{\text{year 2}}$" is as calculated under paragraph (a)(1)(i) of this section.

(ii) For the first three calendar years after the effective date of the opt-in permit taking effect on a date other than January 1, average utilization will be calculated as follows:

(A) Average utilization for the first year after opt-in = annual utilization$_{\text{year 1}}$

where "annual utilization$_{\text{year 1}}$" is as calculated under paragraph (a)(1)(i) of this section.

(B) Average utilization for the second year after opt-in

where,

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{\left(\begin{array}{c}\text{Number of months} \\ \text{in year 1 and year 2 for which} \\ \text{the opt-in permit is effective}\end{array} \right)} \right) \times 12$$

"revised annual utilization$_{\text{year 1}}$" is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

"annual utilization$_{\text{year 2}}$" is as calculated under paragraph (a)(1)(ii) of this section.

(C) Average utilization for the third year after opt-in

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{revised annual utilization}_{\text{year 2}} + \text{annual utilization}_{\text{year 3}}}{\left(\begin{array}{c}\text{Number of months} \\ \text{in year 1, year 2, and year 3} \\ \text{for which the opt-in permit is effective}\end{array} \right)} \right) \times 12$$

where,

"revised annual utilization$_{\text{year 1}}$" is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

"revised annual utilization$_{\text{year 2}}$" is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

"annual utilization$_{\text{year 3}}$" is as calculated under paragraph (a)(1)(ii) of this section.

(iii) Except as provided in paragraphs (a)(2)(i) and (a)(2)(ii), average utilization shall be the sum of annual utilization for the calendar year and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted by the Administrator under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years divided by 3.

(b) *Determination of reduced utilization and calculation of allowances.*—

(1) *Determination of reduced utilization.* For a year during which its opt-in permit is effective, an opt-in source has reduced utilization if the opt-in source's average utilization for the calendar year, as calculated under paragraph (a) of this section, is less than its baseline.

(2) *Calculation of allowances deducted for reduced utilization.* If the Administrator determines that an opt-in source has reduced utilization for a calendar year during which the opt-in source's opt-in permit is in effect, the Administrator will deduct allowances, as calculated under paragraph (b)(2)(i) of this section, from the compliance subaccount of the opt-in source's Allowance Tracking System account.

(i) Allowances deducted for reduced utilization =

$$\text{Number of allowances allocated for the calendar year} \times \left(1 - \left(\frac{\text{average utilization}_{\text{calendar year}}}{\text{baseline}} \right) \right)$$

(ii) The allowances deducted shall have the same or an earlier compliance use date as those allocated under subpart C of this part for the calendar year for which the opt-in source has reduced utilization.

(c) *Compliance.*—(1) *Opt-in Utilization Report.* The designated representative for each opt-in source shall submit an opt-in utilization report for the calendar year, as part of its annual compliance certification report under § 74.43, that shall include the following elements in a format prescribed by the Administrator:

(i) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(ii) The opt-in source's account identification number in the Allowance Tracking System;

(iii) The opt-in source's annual utilization for the calendar year, as defined under paragraph (a)(1) of this section, and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years;

(iv) The opt-in source's average utilization for the calendar year, as defined under paragraph (a)(2) of this section;

(v) The difference between the opt-in source's average utilization and its baseline;

(vi) The number of allowances that shall be deducted, if any, using the formula in paragraph (b)(2)(i) of this section and the supporting calculations:

(2) *Confirmation report.* (i) If the annual compliance certification report for an opt-in source includes estimates of any reduction in heat input resulting from improved efficiency as defined under paragraph (a)(1)(i) of this section, the designated representative shall submit, by July 1 of the year in which the annual compliance certification report was submitted, a confirmation report, concerning the calendar year covered by the annual compliance certification report. The Administrator may grant, for good cause shown, an extension of the time to file the confirmation report. The confirmation

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report shall include the following elements in a format prescribed by the Administrator:

(A) *Verified reduction in heat input.* Any verified kwh savings or any verified steam savings from demand side measures that improve the efficiency of electricity or steam consumption, any verified reduction in the heat rate at the opt-in source, or any verified improvement in the efficiency of steam production at the opt-in source achieved and the verified corresponding reduction in heat input for the calendar year that resulted.

(B) *Revised annual utilization.* The opt-in source's annual utilization for the calendar year as provided under paragraph (c)(1)(iii) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(C) *Revised average utilization.* The opt-in source's average utilization as provided under paragraph (c)(1)(iv) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(D) *Recalculation of reduced utilization.* The difference between the opt-in source's recalculated average utilization and its baseline.

(E) *Allowance adjustment.* The number of allowances that should be credited or deducted using the formulas in paragraphs (c)(2)(iii)(C) and (D) of this section and the supporting calculations; and the number of adjusted allowances remaining using the formula in paragraph (c)(2)(iii)(E) of this section and the supporting calculations.

(ii) *Documentation.* (A) For all figures under paragraphs (c)(2)(i)(A) of this section, the opt-in source must provide as part of the confirmation report, documentation (which may follow the EPA Conservation Verification Protocol) verifying the figures to the satisfaction of the Administrator.

(B) Notwithstanding paragraph (c)(2)(i)(A) of this section, where two or more opt-in sources, or two or more opt-in sources and Phase I units include in the confirmation report under paragraph (c)(2) of this section or § 72.91(b) of this chapter the verified kilowatt hour savings or steam savings defined under paragraph (c)(2)(i)(A) of this section, for the calendar year, from the same specific measures:

(1) The designated representatives of all such opt-in sources and Phase I units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or steam savings as defined under paragraph (c)(2)(i)(A) of this section for the calendar year among such opt-in sources.

(2) Each designated representative shall include in the opt-in source's confirmation report only its share of the verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year under the certification under paragraph (c)(2)(ii)(B)(1) of this section.

(iii) *Determination of reduced utilization based on confirmation report.* (A) If an opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the Administrator, upon such submittal, will adjust his or her determination of reduced utilization for the calendar year for the opt-in source. Such adjustment will include the recalculation of both annual utilization and average utilization, using verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year instead of the previously estimated values.

(B) *Estimates confirmed.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input equals the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report a statement indicating that is true.

(C) *Underestimate.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input is greater than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be credited to the opt-in source's compliance subaccount calculated using the following formula:

Allowances credited for the calendar year in which the reduced utilization occurred=

$$\text{Number of allowances allocated for the calendar year} \times \left[\frac{\text{Average utilization}_{\text{Verified}} - \text{Average utilization}_{\text{Estimate}}}{\text{baseline}}\right]$$

where,

Average Utilization$_{\text{estimate}}$=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the estimated reduction in the opt-in source's heat input under (a)(1) of this section, and submitted in the annual compliance certification report for the calendar year.

Average Utilization$_{\text{verified}}$=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the verified reduction in the opt-in source's heat input as submitted under paragraph (c)(2)(i)(A) of this section by the designated representative in the confirmation report.

(D) *Overestimate.* If the total of the amounts of verified reduction in the opt-in source's heat input included in the confirmation report is less than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the opt-in source's compliance subaccount, which equals the absolute value of the result of the formula for allowances credited under paragraph (c)(2)(iii)(C) of this section.

(E) *Adjusted allowances remaining.* Unless paragraph (c)(2)(iii)(B) of this section applies, the designated representative shall include in the confirmation report the adjusted amount of allowances that would have been held in the opt-in source's compliance subaccount if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the opt-in source's heat input, calculated as follows:

$$\text{Adjusted amount of allowances} = \text{Allowances held after deduction} - \text{Excess emissions} + \text{Allowances credited} - \text{Allowances deducted}$$

where:

"Allowances held after deduction" shall be the amount of allowances held in the opt-in source's compliance subaccount after deduction of allowances was made under § 73.35(b) of this chapter based on the annual compliance certification report.

"Excess emissions" shall be the amount (if any) of excess emissions determined under § 73.35(d) for the calendar year based on the annual compliance certification report.

"Allowances credited" shall be the amount of allowances calculated under paragraph (c)(2)(iii)(C) of this section.

"Allowances deducted" shall be the amount of allowances calculated under paragraph (c)(2)(iii)(D) of this section.

(1) If the result of the formula for "adjusted amount of allowances" is negative, the absolute value of the result constitutes excess emissions of sulfur dioxide. If the result is positive, there are no excess emissions of sulfur dioxide.

(2) If the amount of excess emissions of sulfur dioxide calculated under "adjusted amount of allowances" differs from the amount of excess emissions of sulfur dioxide determined under § 73.35 of this chapter based on the annual compliance certification report, then the designated representative shall include in the confirmation report a demonstration of:

(i) The number of allowances that should be deducted to offset any increase in excess emissions or returned to the account for any decrease in excess emissions; and

(ii) The amount of the excess emissions penalty (excluding interest) that should be paid or returned to the account for the change in excess emissions.

(3) The Administrator will deduct immediately from the opt-in source's compliance subaccount the amount of allowances necessary to offset any increase in excess emissions or will return immediately to the opt-in source's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions.

(4) The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(c)(2) of this chapter and the identification of allowances returned will be at the Administrator's discretion.

(5) If the designated representative of an opt-in source fails to submit on a timely basis a confirmation report, in accordance with paragraph (c)(2) of this section, with regard to the estimate of reductions in heat input as defined under paragraph (c)(2)(i)(A) of this section, then the Administrator will reject such estimate and correct it to equal zero in the opt-in source's annual compliance certification report that includes that estimate. The Administrator will deduct immediately, on a first-in, first-out basis under § 73.35(c)(2) of this chapter, the amount of allowances that he or she determines is necessary to offset any increase in excess emissions of sulfur dioxide that results from the correction and will require the owners and operators of the opt-in source to pay an excess emission penalty in accordance with part 77 of this chapter.

(F) If the opt-in source is governed by an approved thermal energy plan under § 74.47 and if the opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the adjusted amount of allowances that should remain in the opt-in source's compliance subaccount shall be calculated as follows:

Adjusted amount of allowances =

$$\text{allowances allocated} - \text{tons emitted} - \text{the larger of} \left(\begin{array}{c}\text{allowances transferred}\\ \text{to all replacement units}\\ \text{or}\\ \text{allowances deducted}\\ \text{for reduced utilization}\end{array}\right)$$

where,

"Allowances allocated" shall be the original number of allowances allocated under section § 74.40 for the calendar year.

"Tons emitted" shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources.

"Allowances transferred to all replacement units" shall be the sum of allowances transferred to all replacement units under an approved thermal energy plan in accordance with § 74.47 and adjusted by the Administrator in accordance with § 74.47(d)(2).

"Allowances deducted for reduced utilization" shall be the total number of allowances deducted for reduced utilization as calculated in accordance with this section including any adjustments required under paragraph (c)(iii)(E) of this section.

§ 74.45 Reduced utilization for process sources. [Reserved]

§ 74.46 Opt-in source permanent shutdown, reconstruction, or change in affected status.

(a) *Notification.* (1) When an opt-in source has permanently shutdown during the calendar year, the designated representative shall notify the Administrator of the date of shutdown, within 30 days of such shutdown.

(2) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter, the designated representative shall notify the Administrator of the date of completion of the reconstruction, within 30 days of such completion.

(3) When an opt-in source becomes an affected unit under § 72.6 of this chapter, the designated representative shall notify the Administrator of such change in the opt-in source's affected status within 30 days of such change.

(b) *Administrator's action.* (1) The Administrator will terminate the opt-in source's opt-in permit and deduct allowances as provided below in the following circumstances:

(i) When an opt-in source has permanently shutdown. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the shut down occurs and for all future years following the year in which the shut down occurs; or

(ii) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the reconstruction is completed and all future years following

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the year in which the reconstruction is completed; or

(iii) When an opt-in source becomes an affected unit under § 72.6 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source becomes affected under § 72.6 of this chapter and all future years following the calendar year in which the opt-in source becomes affected under § 72.6; or

(iv) When an opt-in source does not renew its opt-in permit. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source's opt-in permit expires and all future years following the year in which the opt-in source's opt-in permit expires.

(2) After the allowance deductions under paragraph (b)(1) of this section are made, the Administrator will close the opt-in source's unit account in the Allowance Tracking System. If any allowances remain in the opt-in source's unit account after allowance deductions are made under paragraph (b)(1) of this section, and any deductions made under part 77 of this chapter, the Administrator will establish a general account for the opt-in source, and transfer any remaining allowances into this general account. The designated representative for the opt-in source shall become the authorized account representative for the general account.

§ 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.

(a) *Thermal energy plan.—(1) General provisions.* The designated representative of an opt-in source that seeks to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit shall submit a thermal energy plan subject to the requirements of § 72.40(b) of this chapter for multi-unit compliance options and this section. The effective period of the thermal energy plan shall begin from January 1 of the first full calendar year for which the plan is approved and end December 31 of the last full calendar year for which the opt-in permit containing the plan is in effect.

(2) *Applicability.* This section shall apply to any designated representative of an opt-in source and any designated representative of each replacement unit seeking to transfer allowances based on the replacement of thermal energy.

(3) *Contents.* Each thermal energy plan shall contain the following elements in a format prescribed by the Administrator:

(i) The calendar year that the thermal energy plan takes effect, which shall be the first year the replacement unit(s) will replace thermal energy of the opt-in source;

(ii) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(iii) The name, authorized account representative identification number, and telephone number of the designated representative of each replacement unit;

(iv) The opt-in source's account identification number in the Allowance Tracking System;

(v) Each replacement unit's account identification number in the Allowance Tracking System (ATS);

(vi) The type of fuel used by each replacement unit;

(vii) The allowable SO_2 emissions rate, expressed in lbs/mmBtu, of each replacement unit for the calendar year for which the plan will take effect. When a thermal energy plan is renewed in accordance with paragraph (a)(9) of this section, the allowable SO_2 emission rate at each replacement unit will be the most stringent federally enforceable allowable SO_2 emissions rate applicable at the time of renewal for the calendar year for which the renewal will take effect. This rate will not be annualized;

(viii) The estimated amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(ix) The estimated total thermal energy at each replacement unit for the year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(x) The estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(xi) The estimated amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(xii) Estimated total annual fuel input at each replacement unit after replacing thermal energy at the opt-in source;

(xiii) The number of allowances calculated under paragraph (b) of this section that the opt-in source will transfer to each replacement unit represented in the thermal energy plan.

(xiv) The estimated number of allowances to be deducted for reduced utilization under § 74.44;

(xv) Certification that each replacement unit has entered into a legally binding steam sales agreement to provide the thermal energy, as calculated under paragraph (a)(3)(xi) of this section, that it is replacing for the opt-in source. The designated representative of each replacement unit shall maintain and make available to the Administrator, at the Administrator's request, copies of documents demonstrating that the replacement unit is replacing the thermal energy at the opt-in source.

(4) *Submission.* The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than July 1 of the calendar year prior to the first calendar year for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

(5) *Retirement of opt-in source upon enactment of plan.* (i) If the opt-in source will be permanently retired as of the effective date of the thermal energy plan, the opt-in source shall not be required to monitor its emissions upon retirement, consistent with § 75.67 of this chapter, provided that the following requirements are met:

(A) The designated representative of the opt-in source shall include in the plan a request for an exemption from the requirements of part 75 in accordance with § 75.67 of this chapter and shall submit the following statement: "I certify that the opt-in source ("is" or "will be", as applicable) permanently retired on the date specified in this plan and will not emit any sulfur dioxide or nitrogen oxides after such date."

(B) The opt-in source shall not emit any sulfur dioxide or nitrogen oxides after the date specified in the plan.

(ii) Notwithstanding the monitoring exemption discussed in paragraph (a)(5)(i) of this section, the designated representative for the opt-in source shall submit the annual compliance certification report provided under paragraph (d) of this section.

(6) *Administrator's action.* If the permitting authority approves a thermal

energy plan, the Administrator will annually transfer allowances to the Allowance Tracking System account of each replacement unit, as provided in the approved plan.

(7) *Incorporation, modification and renewal of a thermal energy plan.* (i) An approved thermal energy plan, including any revised or renewed plan that is approved, shall be incorporated into both the opt-in permit for the opt-in source and the Acid Rain permit for each replacement unit governed by the plan. Upon approval, the thermal energy plan shall be incorporated into the Acid Rain permit for each replacement unit pursuant to the requirements for administrative permit amendments under § 72.83 of this chapter.

(ii) In order to revise an opt-in permit to add an approved thermal energy plan or to change an approved thermal energy plan, the designated representative of the opt-in source shall submit a plan or a revised plan under paragraph (a)(4) of this section and meet the requirements for permit revisions under § 72.80 and either § 72.81 or § 72.82 of this chapter.

(8) *Termination of plan.* (i) A thermal energy plan shall be in effect until the earlier of the expiration of the opt-in permit for the opt-in source or the year for which a termination of the plan takes effect under paragraph (a)(8)(ii) of this section.

(ii) *Termination of plan by opt-in source and replacement units.* A notification to terminate a thermal energy plan in accordance with § 72.40(d) of this chapter shall be submitted no later than December 1 of the calendar year for which the termination is to take effect.

(iii) If the requirements of paragraph (a)(8)(ii) of this section are met and upon revision of the opt-in permit of the opt-in source and the Acid Rain permit of each replacement unit governed by the thermal energy plan to terminate the plan pursuant to § 72.83 of this chapter, the Administrator will adjust the allowances for the opt-in source and the replacement units to reflect the transfer back to the opt-in source of the allowances transferred from the opt-in source under the plan for the year for which the termination of the plan takes effect.

(9) *Renewal of thermal energy plan.* The designated representative of an opt-in source may renew the thermal energy plan as part of its opt-in permit renewal in accordance with § 74.19.

(b) *Calculation of transferable allowances*—(1) *Qualifying thermal energy.* The amount of thermal energy credited towards the transfer of allowances based on the replacement of thermal energy shall equal the qualifying thermal energy and shall be calculated for each replacement unit as follows:

$$\text{Qualifying thermal energy} = \text{the estimated thermal energy at the replacement unit under paragraph (a)(3)(xi) of this section}$$

(2) *Fuel associated with qualifying thermal energy.* The fuel associated with the qualifying thermal energy at each replacement unit shall be calculated as follows:

$$\text{Fuel associated with Qualifying thermal energy} = \frac{\text{Qualifying thermal energy}}{\text{Efficiency constant}}$$

where,

"Qualifying thermal energy" for the replacement unit is as defined in paragraph (b)(1) of this section;

"Efficiency constant" for the replacement unit

= 0.85, where the replacement unit is a boiler

= 0.80, where the replacement unit is a cogenerator

(3) *Allowances transferable from the opt-in source to each replacement unit.* The number of allowances transferable from the opt-in source to each replacement unit for the replacement of thermal energy is calculated as follows:

$$\text{transferable allowances for the replacement unit} = \frac{\text{Fuel Associated with Qualifying thermal energy} \times \text{allowable } SO_2 \text{ emission rate}_{\text{replacement unit}} \text{ (in lb/mmBtu)}}{2000}$$

where,

"Allowable SO_2 emission rate" for the replacement unit is as defined in paragraph (a)(3)(vii) of this section;

"Fuel associated with qualifying thermal energy" is as defined in paragraph (b)(2) of this section;

(c) *Transfer prohibition.* The allowances transferred from the opt-in source to each replacement unit shall not be transferred from the unit account of the replacement unit to any other account in the Allowance Tracking System.

(d) *Compliance*—(1) *Annual compliance certification report.* (i) As required for all opt-in sources, the designated representative of the opt-in source covered by a thermal energy plan must submit an opt-in utilization report for the calendar year as part of its annual compliance certification report under § 74.44(c)(1).

(ii) The designated representative of an opt-in source must submit a thermal energy compliance report for the calendar year as part of the annual compliance certification report, which must include the following elements in a format prescribed by the Administrator:

(A) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(B) The name, authorized account representative identification number,

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the replacement of thermal energy.

thermal energy at the opt-in source;

permitting authority approves a thermal

of the replacement unit to any other

an opt-in source must submit a thermal

and telephone number of the designated representative of each replacement unit;

(C) The opt-in source's account identification number in the Allowance Tracking System (ATS);

(D) The account identification number in the Allowance Tracking System (ATS) for each replacement unit;

(E) The actual amount of total thermal energy reduced at the opt-in source during the calendar year, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(F) The actual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(G) The actual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(H) Actual total fuel input at each replacement unit as determined in accordance with part 75 of this chapter;

(I) Calculations of allowance adjustments to be performed by the Administrator in accordance with paragraph (d)(2) of this section.

(2) *Allowance adjustments by Administrator.* (i) The Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any changes between the estimated values submitted in the thermal energy plan pursuant to paragraph (a) of this section and the actual values submitted in the thermal energy compliance report pursuant to paragraph (d) of this section. The values to be considered for this adjustment include:

(A) The number of allowances transferable by the opt-in source to each replacement unit, calculated in paragraph (b) of this section using the actual, rather than estimated, thermal energy at the replacement unit replacing thermal energy at the opt-in source.

(B) The number of allowances deducted from the Allowance Tracking System account of the opt-in source, calculated under § 74.44(b)(2).

(ii) If the opt-in source includes in the opt-in utilization report under § 74.44 estimates for reductions in heat input, then the Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any differences between the estimated values submitted in the opt-in utilization report and the actual values submitted in the confirmation report pursuant to § 74.44(c)(2).

(3) *Liability.* The owners and operators of an opt-in source or a replacement unit governed by an approved thermal energy plan shall be liable for any violation of the plan or this section at that opt-in source or replacement unit that is governed by the thermal energy plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

§ 74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved]

§ 74.49 Calculation for deducting allowances.

(a) *Allowance deduction formula.* The following formula shall be used to determine the total number of allowances to be deducted for the calendar year from the allowances held in an opt-in source's compliance subaccount as of the allowance transfer deadline applicable to that year:

Total allowances deducted = Tons emitted + Allowances deducted for reduced utilization where:

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, "Tons emitted" shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(ii) If the effective date of the opt-in source's permit took effect on a date other than January 1, "Tons emitted" for the first calendar year shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar quarters for which the opt-in source's opt-in permit is effective, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(2) "Allowances deducted for reduced utilization" shall be the total number of allowances deducted for reduced utilization as calculated in accordance with § 74.44 for combustion sources or § 74.45 for process sources.

§ 74.50 Deducting opt-in source allowances from ATS accounts.

(a) *Deduction of allowances.* The Administrator may deduct any allowances that were allocated to an opt-in source under § 74.40 by removing, from any Allowance Tracking System accounts in which they are held, the allowances in an amount specified in paragraph (d) of this section, under the following circumstances:

(1) When the opt-in source has permanently shut down; or

(2) When the opt-in source has been reconstructed; or

(3) When the opt-in source becomes an affected unit under § 72.6 of this chapter; or

(4) When the opt-in source fails to renew its opt-in permit.

(b) *Method of deduction.* The Administrator will deduct allowances beginning with those allowances with the latest recorded date of transfer out of the opt-in source's unit account.

(c) *Notification of deduction.* When allowances are deducted, the Administrator will send a written notification to the authorized account representative of each Allowance Tracking System account from which allowances were deducted. The notification will state:

(1) The serial numbers of all allowances deducted from the account,

(2) The reason for deducting the allowances, and

(3) The date of deduction of the allowances.

(d) *Amount of deduction.* The Administrator may deduct allowances in accordance with paragraph (a) of this section in an amount required to offset any excess emissions in accordance with part 77 of this chapter and when an opt-in source does not hold allowances equal in number to and with the same or earlier compliance use date for the calendar years specified under § 74.46(b)(1) (i) through (iv) in an amount required to be deducted under § 74.46(b)(1) (i) through (iv).

Subpart F—Monitoring Emissions: Combustion Sources

§ 74.60 Monitoring requirements.

(a) *Monitoring requirements for combustion sources.* The owner or operator of each combustion source shall meet all of the requirements specified in part 75 of this chapter for the owners and operators of an affected unit to install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, or an approved alternative monitoring system in accordance with part 75 of this chapter.

(b) *Monitoring requirements for opt-in sources.* The owner or operator of each opt-in source shall install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, an approved alternative monitoring system in accordance with part 75 of this chapter.

§ 74.61 Monitoring plan.

(a) *Monitoring plan.* The designated representative of a combustion source shall meet all of the requirements specified under part 75 of this chapter for a designated representative of an affected unit to submit to the Administrator a monitoring plan that includes the information required in a monitoring plan under § 75.53 of this chapter. This monitoring plan shall be submitted as part of the combustion source's opt-in permit application under § 74.14 of this part.

(b) [Reserved].

Subpart G—Monitoring Emissions: Process Sources—[Reserved]

PART 75—CONTINUOUS EMISSION MONITORING

17. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7651, *et seq.*

18. Section 75.4 is amended by revising paragraph (a) introductory text, and by adding paragraph (a)(5) to read as follows:

§ 75.4 Compliance dates.

(a) The provisions of this part apply to each existing Phase I and Phase II unit on February 10, 1993. For substitution or compensating units that are so designated under the acid rain permit which governs the unit and contains the approved substitution or reduced utilization plan, pursuant to § 72.41 or § 72.43 of this chapter, the provisions of this part become applicable upon the issuance date of the acid rain permit. For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the provisions of this part become applicable upon the submission of an opt-in permit application in accordance with § 74.14 of this chapter. In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all certification tests for the required continuous emission monitoring systems and continuous opacity monitoring systems are completed not later than the following dates (except as provided in paragraphs (d) and (e) of this section):

* * * * *

(5) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the expiration date of a combustion source's opt-in permit under § 74.14(e) of this chapter.

* * * * *

19. Section 75.16 is amended by revising paragraph (a)(2)(ii)(A) and (b)(2)(ii)(A) to read as follows:

§ 75.16 Special provisions for monitoring emissions from common by-pass, and multiple stacks for SO_2 emissions and heat input determinations.

(a) * * *

(2) * * *

(ii) * * *

(A) Designate the Phase II units as substitution units according to the procedure in part 72 of this chapter and the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Designate the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

20. Section 75.20 is amended by revising the first sentence after the heading in paragraph (a)(3) to read as follows:

§ 75.20 Certification and recertification procedures.

(a) * * *

(3) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures for each continuous emission or opacity monitoring system or component thereof and subsequent submittal of a complete certification application in accordance with § 75.63, each continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification application; provided that no continuous emission or opacity monitoring systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified for use under the Acid Rain Program. * * *

* * * * *

21. Section 75.63 is amended by revising paragraph (a) and (b)(1) to read as follows:

§ 75.63 Certification or recertification application.

(a) *Submission.* The designated representative for an affected unit or a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall submit the request to the Administrator within 30 days after completing the certification test.

(b) * * *

(1) A copy of the monitoring plan (or any modifications to the monitoring plan) for the unit, or units, or combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter, if not previously submitted.

* * * * *

22. Section 75.67 is revised to read as follows:

§ 75.67 Retired units petitions.

(a) For units that will be permanently retired prior to January 1, 1995, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits a complete petition, as required in § 72.8 of this chapter, to the Administrator prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

(b) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter that will be permanently retired and governed upon entry into the Opt-in Program by a thermal energy plan in accordance with § 74.47 of this chapter, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits to the Administrator a petition for such an exemption prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

PART 77—EXCESS EMISSIONS

23. The authority citation for part 77 revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, et seq.

24. Section 77.6 is amended by revising paragraph (a) to read as follows:

§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a) If excess emissions of sulfur dioxide or nitrogen oxides occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

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Such payment shall be submitted to the Administrator no later than 60 days after the end of any year during which excess emissions occurred at an affected unit or, for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter, or § 74.44(c)(2) of this chapter, by July 31 of the year in which the adjustments are made.

* * * * *

PART 78—APPEALS PROCEDURES FOR ACID RAIN PROGRAM

25. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

26. Section 78.1 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 78.1 Purpose and scope.

(b) * * *

(3) Under part 74 of this chapter,

(i) The determination of incompleteness of an opt-in permit application;

(ii) The issuance or denial of an opt-in permit and approval or disapproval of the transfer of allowances for the replacement of thermal energy;

(iii) The approval or disapproval of a permit revision to an opt-in permit;

(iv) The decision on the deduction or return of allowances under subpart E of part 74 of this chapter;

(4) Under part 75 of this chapter,

(i) The decision on a petition for approval of an alternative monitoring system;

(ii) The approval or disapproval of a monitoring system certification or recertification;

(iii) The finalization of annual emissions data, including retroactive adjustment based on audit;

(iv) The determination of the percentage of emissions reduction achieved by qualifying Phase I technology; and

(v) The determination on the acceptability of parametric missing data procedures for a unit equipped with add-on controls for sulfur dioxide and nitrogen oxides in accordance with part 75 of this chapter.

(5) Under part 77 of this chapter, the determination of incompleteness of an offset plan and the approval or disapproval of an offset plan under § 77.4 of this chapter and the deduction of allowances under § 77.5(c) of this chapter.

* * * * *

27. Section 78.3 is amended by revising paragraph (a)(1) introductory text, and paragraph (d)(2) to read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a) of this part:

* * * * *

(d) * * *

(2) Any provision or requirement of parts 72, 73, 74, 75, 76, or 77 of this chapter, including any standard requirement under § 72.9 of this chapter and any emissions monitoring or reporting requirements under part 75 of this chapter;

* * * * *

[FR Doc. 95–7491 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
April 4, 1995

Part III

Department of Transportation

Coast Guard

33 CFR Parts 154 and 155
46 CFR Part 12, et al.
Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases; Interim Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

46 CFR Parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154

[CGD 79–116]

RIN 2115–AA03

Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Interim rule.

SUMMARY: The Coast Guard is issuing an interim rule that sets out qualifications for tankermen, and for persons in charge of, and assisting in, the handling, transfer, and transport of oil and certain hazardous liquid cargoes in bulk aboard vessels. It intends the establishment of training standards, of operational requirements, and of a certification procedure to ensure that these persons are competent to perform their duties even during emergencies. Implementation of this rule will improve the handling, transfer, and transport of these cargoes and reduce the risk and severity of spillage from tank vessels.

DATES: This interim rule is effective March 31, 1996. Comments must be received by June 30, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA–2, 3406) (CGD 79–116), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR David C. Paxton, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: Although this is a rule, not a notice, it is an interim rule; changes may be made, where warranted. Therefore, interested persons may participate in evaluating this rule by submitting written data, views, or arguments. Each written comment should include the name and address of the person making it, identify this rule (CGD 79–116) and the specific section of the rule to which the comment applies, and give a reason for the comment. Please submit two copies of each comment and attachment in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. A person desiring an acknowledgment that his or her comment has been received should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period before it decides whether to modify or confirm this rule.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

Drafting Information

The principal persons involved in drafting this document are LCDR David C. Paxton, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History

The Coast Guard published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM), on October 17, 1989: CGD 79–116 and CGD 79–116a (54 FR 42624), entitled, "Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations". The Coast Guard received 42 comments on this SNPRM. No public meeting was requested, nor was one held.

Before the SNPRM, the Coast Guard had published in the **Federal Register** two notices of proposed rulemaking (NPRMs), both on December 16, 1980: CGD 79–116 (45 FR 83290), with proposed rules for tankermen; and CGD 79–116a (45 FR 83268), with proposed rules for persons in charge of oil transfers. The Coast Guard combined these two rulemakings in the SNPRM, and withdrew docket 79–116a as a distinct rulemaking.

Background and Purpose

Since the early 1970s, a number of major marine casualties have occurred through human error and a lack of awareness on the part of personnel involved in the handling, transfer, and transport of dangerous liquids and liquefied gases as cargo on vessels. Among these were the explosions of the M/V VENUS in 1972 and of the SS SANSINENA in 1976.

In 1978 there occurred two events that established a legal framework for this interim rule. First, there was enacted the Port and Tanker Safety Act (PTSA) (codified as 46 U.S.C., Chapter 37) of that year, one of whose provisions required the Secretary of Transportation to prescribe regulations on, among other things, personnel qualifications and manning standards for tank vessels of the United States. (The NPRMs published in 1980, on tankermen (45 FR 83290) and on persons in charge of oil transfers (45 FR 83268), were intended to implement, in part, that statutory mandate.) Second, there was adopted the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, at a conference sponsored by the International Maritime Consultative Organization (IMCO; International Maritime Organization (IMO) since 1982). STCW and its associated resolutions contain a number of regulations and recommendations on training and qualifications for personnel with responsibilities related to the cargo and cargo equipment on tankers. During the 1980s the Coast Guard revised its rules on these in 46 CFR parts 10 and 15, to render them compatible with STCW.

IMO developed a number of revisions to STCW. Among these revisions was a set of amendments to Chapter V adding requirements for personnel on tankers. (The amendments were adopted by the Maritime Safety Committee in May 1994, and come into force in May 1995.) After these amendments come into force, Chapter V will contain more detailed requirements on training and qualifications than it does now; and Administrations will have to ensure either that an authorized document is issued to officers and rated personnel found qualified in accordance with the new requirements or that an appropriate existing document is endorsed. (Chapter V is undergoing a review along with the rest of STCW, which should be complete in 1995. Amendments adopted at that time will probably come into force in 1996 or 1997. If necessary, this interim rule will be revised to conform with any new requirements due to those amendments.)

Since the stranding of the M/V EXXON VALDEZ, Congress has enacted the Oil Pollution Act of 1990. This statute, too, concerns manning standards for tank vessels, including a requirement that the manning of each of these vessels take into account "the navigation, *cargo handling*, and maintenance functions of that vessel for protection of life, property, and the environment" (Subsection 4114(c), amending 46 U.S.C. 8101(a)(3); emphasis added). This statute gives new impetus to the development of rules for tankermen and for persons in charge of oil transfers.

In the last few years, the Coast Guard's Towing Safety Advisory Committee (TSAC) has considered many of the issues addressed in the SNPRM. TSAC has made valuable contributions to the development of these regulations.

Discussion of Comments

All of the 42 comments on the SNPRM supported the SNPRM in principle, and none recommended major changes. The Coast Guard takes this to indicate that the SNPRM addressed all of the significant issues raised by those who submitted comments on the NPRMs. The specific comments are summarized and discussed below.

1. Persons in Charge (PICs) Under 33 CFR Parts 154 and 155

One comment recommended that a definition for *Tankship* should be provided in part 154. The Coast Guard agrees and has added a definition in § 154.105.

One comment suggested that the wording of § 155.700 be revised to indicate that the person in charge (PIC) could be designated by name or by position in the crew. The Coast Guard agrees with this suggestion and has revised the wording of § 155.700.

Another comment urged that the reference to in *agent* §§ 155.700 and .710 be clarified. The Coast Guard agrees and has clarified the sections.

One comment said that § 155.710 should apply to any tankship "required to be" documented under the laws of the United States. The Coast Guard agrees and has added appropriate language to § 155.710(a).

Three comments stated that the wording of § 155.710(a)(1)(ii) was unclear, particularly with reference to Boundary Lines. The Coast Guard agrees, and has reworded the section and added a cross-reference to 46 CFR part 7, where specific Boundary Lines are described, to indicate that the Boundary Lines in that part apply to the rules in § 155.710.

One comment said the PIC should be required, under § 155.710, to be trained in and familiar with the emergency equipment aboard the vessel, the oil-transfer procedures for that vessel, and requirements and procedures for reporting spills. The Coast Guard agrees and has revised §§ 155.710(a)(1)(i), (b)(1)(i), (c)(1), and (d)(1).

One comment recommended that § 155.710(e)(1) be revised to clarify that the scope of the rule encompasses every vessel that must be operated by a licensed person and not just by a licensed officer. The Coast Guard agrees and has revised the section to refer to "licensed person."

2. Credentials of Personnel on Foreign-Flag Vessel Under 33 CFR Part 155

One comment stated that §§ 155.710(c) and (d) should be amended to allow qualifications for a PIC aboard a foreign tankship at a shipyard or tank-cleaning facility to be satisfied by a marine chemist's certificate issued from the National Fire Protection Association. The Coast Guard agrees in substance and has added the appropriate wording in § 155.710(g).

One comment recommended that § 155.710(c)(3) indicate that, for vessels of countries signatory to STCW, a Dangerous-Cargo Endorsement or Certificate issued by the flag state is sufficient to attest the holder's qualifications. The Coast Guard agrees and has revised §§ 155.710(c)(3) and (d)(2).

One comment recommended adding a paragraph to require the operator or agent to verify that the person designated as PIC of a transfer of fuel oil aboard a foreign vessel holds a license or certificate authorizing service as master, mate, pilot, or engineer. The Coast Guard agrees and has added a paragraph to § 155.710(e)(4).

3. Language of Crewmembers Under 33 CFR Part 155

Two comments wanted §§ 155.710(c)(4) and (d)(3) revised to clarify the required ability to communicate.

One comment stated that the rule should allow PICs to use any mutually-agreed-upon language as an alternative to English. This comment also urged that, if an interpreter is used, the interpreter be fluent in the terminology of ships and of transfers. The Coast Guard agrees and has incorporated these suggestions into §§ 155.710(c)(4) and (d)(3).

The other comment recommended adding a provision to require that the PIC on a foreign vessel be able to communicate effectively with all crewmembers involved in the transfer. If an interpreter is used, the interpreter should be fluent in the terminology of ships and of transfers. The Coast Guard agrees and has added §§ 155.710(c)(5) and (d)(4).

4. Certification of Tankerman, General (46 CFR Part 13, Subpart A)

One comment noted that the phrase "grades of cargo (dangerous liquids (DL), liquefied gases (LG), or specific products)" is not a technically precise term used throughout the shipping and pollution-prevention regulations, and at best describes categories of cargo. The Coast Guard doubts whether the lack of precision in any of these terms will result in any confusion or misinterpretation, so it has left them as they were.

One comment stated that the definition for *liquid cargo in bulk* should include a reference to portable tanks. The Coast Guard agrees and has augmented the definition in § 13.103 with a reference to portable tanks.

This comment also recommended revising the definition of *tank vessel*. The Coast Guard has revised the definition to make it consistent with the statutory definition in 46 U.S.C. 2101(39).

The Coast Guard has also added a definition of *transfer* as it applies in this rulemaking.

One comment questioned whether § 13.107(c) should require that a Tankerman-Assistant maintain contact with the PIC during a transfer. The Coast Guard agrees that it should and has added language requiring this.

Two comments recommended changes to the provision on the Tankerman-Engineer under § 13.107(d). One observed that the primary responsibility of a person with a Tankerman-Engineer endorsement on a tank vessel carrying DL or LG is to maintain the cargo systems and equipment for transfer of liquids aboard. The other urged a requirement that a licensed person serving as a chief engineer, first assistant engineer, or cargo engineer on an inspected tank vessel carrying liquid cargo in bulk or cargo residue hold the Tankerman-Engineer endorsement. The Coast Guard accepts both of these changes and has incorporated them in the revision of § 13.107(d).

One comment recommended that the rule clearly state that applicants for restricted endorsements may apply to Coast Guard Regional Examination Centers (RECs). The Coast Guard agrees and has revised § 13.111.

One comment suggested the replacement of the term *discharge* by the term *certificate of discharge*. The Coast Guard has accomplished this replacement in the appropriate paragraphs of § 13.113.

One comment stated that it would be inequitable to give full credit to a master or chief mate for service on a tankship and yet to give only half credit to second and third mates for such service. The Coast Guard agrees. Deck officers aboard tankships serve as PICs of transfers, and their names appear on Declarations of Inspection and in the deck logs upon relief of watches. The

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Coast Guard has revised § 13.113(c)(iii)(B).

This comment also expressed concern over silence of the proposed rule on second or third mates' qualifying for the DL or LG endorsements on the Tankerman-PIC. The Coast Guard agrees and has changed § 13.113(c) to reflect that masters and mates aboard tankships certificated to carry DL and LG may qualify for the appropriate endorsement.

Another comment said that a tankerman certified under prior regulations should have the option of passing a Coast Guard examination to earn an endorsement as Tankerman-PIC (Barge), just as a new applicant has the option of passing one under § 13.301(f). The Coast Guard has eliminated the option for an applicant to become a Tankerman-PIC (Barge) by passing a Coast Guard examination. This is an adverse change from the SNPRM, but both of the two reports—that of the Focus Group, "Licensing 2000 and Beyond", and that of the Coast Guard, "Review of Marine Safety Issues Related to Uninspected Towing Vessels"—urge more emphasis on formalized methods of training and less on passing a Coast Guard examination. The Coast Guard invites comments on the elimination of the option. The Coast Guard has left § 13.113(d)(1)(ii) as it was and has eliminated the examination option in § 13.301.

A number of comments expressed the view that requiring service to have occurred within three years of application to be valid under §§ 13.113(c)(1)(iii)(A)(1) and (d)(1)(iii) might penalize persons with service less recent. The Coast Guard agrees and has revised these sections, and §§ 13.115(a) and (b), allowing service to be valid if it has occurred within five years of application.

One comment rationalized that all engineers in service on LNG tankships should be grandfathered because of the requirements they must already meet. These engineers, however, should have no difficulty acquiring the endorsement without grandfathering, because of those very requirements. Therefore, the Coast Guard does not agree that grandfathering is necessary or appropriate for these engineers, and has left § 13.115 as it was.

Numerous comments urged that the tankerman endorsement be subject to an expiration date. The Coast Guard agrees with the intent of these comments. The Oil Pollution Act of 1990 (OPA 90) mandated that U.S. Merchant Mariners' Documents (MMDs) themselves be limited to five years' duration, and 46 CFR 12.02–29 (59 FR 49302 (September 27, 1994)) now limits endorsements on MMDs to the same duration. Therefore, the period of validity of the tankerman endorsement is tied to the term of the MMD in § 13.119. 46 CFR 12.02–27 now requires MMDs to expire after five years. To help manage the work load over the initial five-year renewal cycle, the Coast Guard will require individuals acting as "Tankerman-PIC", "Tankerman-PIC (Barge)", "Tankerman-Engineer", and "Tankerman-Assistant" with the first renewal date of their MMDs, under § 12.02–27, that occurs after March 31, 1997, to obtain their new tankerman endorsement. This change affects §§ 13.113(a), 13.113(b), 13.115, and 13.117. The phase-in period allows tankermen a minimum of two years to obtain a new endorsement, one year for the effective date of this publication and one year until commencing the five-year renewal cycle. A person who served as PIC for the transfer of liquid cargoes in bulk listed in subchapter O but who did not require a tankerman endorsement, because they were non-flammable or non-combustible liquids, may continue to act as a PIC for those liquid cargoes five years after the effective date of this rulemaking as discussed in the SNPRM. After that point, the PIC must have obtained his or her "Tankerman-PIC (Barge)" endorsement.

One comment suggested that licensed engineers and tankerman-assistants with service on tankships under prior rules should be able to invoke recency of service, too. The Coast Guard agrees that all applicants alike should be able to invoke recency of service for an original tankerman endorsement and has revised § 13.123 to let them; it has also revised the section to reflect that the service should occur within five, not just three, years immediately preceding application, keeping this section consistent with other sections concerning recency of service.

The Coast Guard has added § 13.127 as a general section on service, both to consolidate the requirements for a service letter and to determine the number and kinds of transfers.

5. "Tankerman-PIC" Endorsement (46 CFR Part 13, Subpart B)

One comment recommended that an applicant for an original Tankerman-PIC endorsement be capable of reading and writing English. The Coast Guard agrees that the PIC needs to be capable of understanding the information contained in Declarations of Inspection, vessel response plans, and Cargo Information Cards and it has added the requirement to §§ 13.201 and 13.301 for all PICs to demonstrate an ability to read and understand English found in these items.

A number of comments indicated that an applicant for a Tankerman-PIC endorsement should have participated in more than one commencement of loading and more than one of discharge, and in more than one completion of loading and more than one of discharge. The Coast Guard agrees and has increased the number of commencements and completions required to two each in §§ 13.203(b)(2) and (3). At the same time, however, it has left § 13.203(c) unchanged.

One comment recommended that an applicant for a Tankerman-PIC endorsement have to prove a working knowledge of a vessel's oil-transfer procedures, of its emergency procedures, and requirements for reporting oil spills. The Coast Guard agrees. Tankermen must become familiar with the relevant characteristics of each vessel, with the vessel's response plan, and with all appropriate procedures before commencing a transfer, relieving the watch or duty, or completing a transfer. The person certifying the service (signing the letter attesting the service) of an applicant for tankerman should be satisfied that the applicant is knowledgeable and able to manage liquid cargo before certifying the service.

One comment questioned whether it was necessary to require that an applicant be capable of calculating rates of loading and discharge. The Coast Guard considers the ability to calculate such rates on tankships an important aspect of ensuring safe transfers. It has required the ability to calculate rates of loading in § 13.127(a)(3)(vii). However, the corresponding ability for rates of discharge does not involve skills different in any significant way from those involved in the ability for rates of loading, so the Coast Guard has not explicitly required the ability for rates of discharge.

6. "Tankerman-PIC (Barge)" Endorsements (46 CFR Part 13, Subpart C)

One comment recommended that an applicant for an original "Tankerman-PIC (Barge)" endorsement be required both to take a training course and to pass a Coast Guard examination. The Coast Guard believes that a course, when coupled with the other standards under § 13.301, will provide satisfactory evidence that the applicant has qualified for the endorsement. The Coast Guard has eliminated the option for an applicant to become a Tankerman-PIC (Barge) by passing a Coast Guard examination or by using extended service. The Coast Guard has revised §§ 13.303 and .309 to require formal training.

Three comments stated that the Coast Guard should require its own examination whether or not an applicant completes a course. As above, both of the two reports—that of the Focus Group, "Licensing 2000 and Beyond", and that of the Coast Guard, "Review of Marine Safety Issues Related to Uninspected Towing Vessels"—urge more emphasis on formalized methods of training and less on passing a Coast Guard examination. The Coast Guard believes that formal training is the appropriate method without the need for an additional examination, while it effectively monitors approved training programs. The Coast Guard has revised § 13.309 to allow only formal training.

One comment suggested that the ability to read and write English should be required of each applicant for an original "Tankerman-PIC (Barge)" endorsement under § 13.301, and for an original restricted "Tankerman-PIC (Barge)" endorsement under § 13.111. The Coast Guard agrees that all PICs need to be capable of understanding the information in Declarations of Inspection, vessel response plans, and Cargo Information Cards and it has added the requirement to §§ 13.201 and .301 for all PICs to demonstrate an ability to read and understand English found in these items. It has revised § 13.111(d)(5) to require a similar ability respecting restricted "Tankerman-PIC (Barge)" endorsements.

All eight comments on service requirements indicated that a single commencement or completion of loading and a single commencement or completion of discharge was insufficient, and recommended that five commencements and five completions be required. While the Coast Guard agrees that every participation in these critical stages of a transfer enhances an individual's qualifications, it does not consider a large number of participations necessary to establish minimal qualification for a "Tankerman-PIC (Barge)" endorsement. Therefore, it has revised § 13.303(b)(2) to require at least two commencements and two completions of loading and § 13.303(b)(3) to require at least two commencements and two completions of discharge.

One comment urged that an applicant have to prove a working knowledge of a vessel's oil-transfer procedures, its emergency procedures, and requirements for reporting oil spills. As previously stated, the person certifying the service of an applicant for tankerman should be satisfied that the applicant is knowledgeable and able to manage liquid cargo before certifying the service.

Three comments expressed the view that it was unnecessary to require that an applicant for a "Tankerman-PIC (Barge)" endorsement be capable of calculating rates of loading or discharge. These comments said that a tankerman could monitor such rates on barges without calculating them. The Coast Guard agrees and has eliminated these requirements for "Tankerman-PIC (Barge)."

One comment stated that the use of the term "competent person" in these regulations might create confusion with regulations developed by the Occupational Safety and Health Administration (OSHA) and the National Fire Protection Association (NFPA), and recommended that the jurisdictional boundaries between OSHA and the Coast Guard in safety of personnel be clarified. The Coast Guard partly agrees, but believes that requiring a shipyard worker to be certified by OSHA as a "competent person" to supervise gas-freeing and tank-cleaning will cause no confusion. To eliminate any lingering confusion the Coast Guard has eliminated "competent person" from the title of the endorsement and renamed the restricted endorsement "Tankerman-PIC (Barge)" restricted to a tank-cleaning and gas-freeing facility. The Coast Guard doubts whether this rulemaking provides the appropriate forum for addressing jurisdictional boundaries between agencies.

Another comment suggested that a new subpart describe requirements for restricted "Tankerman-PIC (Barge)" endorsements. The Coast Guard does not agree that such a separate subpart is needed. It considers the use of restricted endorsements adequately addressed in § 13.111 and has combined all the restricted endorsements into this section.

7. "Tankerman Assistant" Endorsement (46 CFR Part 13, Subpart D)

One comment asserted that an applicant for an original "Tankerman Assistant" endorsement should be able to read and write English. Since the "Tankerman Assistant" is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers reading and writing non-essential to a safe transfer. It considers the requirement that an applicant be capable of clearly understanding and speaking all necessary instructions in English adequate for qualification and, therefore, it has not revised § 13.401(f).

One comment found the requirement of recency in training restrictive in that an applicant might have completed qualifying courses before the cutoffs imposed in these regulations and so might have to repeat the courses to satisfy the training. The Coast Guard partly agrees. If training facilities request, the Coast Guard will evaluate *bona fide* training courses in existence before the effective date of these regulations and may let the student's completion satisfy the training.

8. "Tankerman-Engineer" Endorsement (46 CFR Part 13, Subpart E)

One comment recommended that an applicant for a "Tankerman-Engineer" endorsement be capable of reading and writing English. Since the "Tankerman-Engineer" is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers reading and writing non-essential to a safe transfer. It considers the requirement that an applicant be capable of clearly understanding and speaking all necessary instructions in English adequate for qualification and, therefore, it has not revised § 13.501(g).

One comment noted the use of the term "cargo engineer" for both dangerous liquid and liquefied gas in § 13.503. The Coast Guard has included the definition of this term in § 13.103 to cover both dangerous-liquid and liquefied-gas tankships.

9. Manning-Requirements (46 CFR Part 15)

One comment stated that manning should depend on a vessel's deadweight tonnage, which relates directly to cargo capacity, rather than on gross tonnage. Because the statutes concerned with manning, and regulations like this derived from them, base manning on gross tonnage, the Coast Guard believes that it would be inappropriate to use another criterion here. Therefore, it has retained the criterion of gross tonnage in § 15.860.

One comment urged that ships in service on the Great Lakes be explicitly included in the provision relating to ships not certified for voyages beyond the Boundary Lines. The Coast Guard agrees and has revised § 15.860(d).

This comment also suggested that a table of manning-requirements would be useful and should be included in the final rule. The Coast Guard agrees and has prepared two tables. Table 15.860(a)(1) lists the minimal requirements for tankermen aboard manned tank vessels; Table 15.860(a)(2) lists the tankerman endorsements required for personnel aboard tankships.

One comment recommended a change to take into account that not every

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tankship need carry a cargo engineer. The Coast Guard agrees and has revised § 15.860(f)(2) to address this possibility.

One comment urged the Coast Guard to clarify that the PIC retains authority over those crewmembers assigned duties and responsibilities during a transfer though not directly supervised by the PIC. The Coast Guard agrees that greater clarity to this effect is both possible and desirable, and has revised § 15.860(f)(4).

10. Operations of Tank Vessels (46 CFR Part 35)

One comment suggested that the "owner and managing operator" not be assigned responsibility for certain matters relating to an unmanned tank barge, since only the master or PIC of a towing vessel can oversee these matters. While the Coast Guard recognizes that, in practice, the master, operator, or PIC must see to the matters associated with the responsibility, the owner should share responsibility for these matters. This will encourage shoreside management to maintain some superintendence of and involvement in the operation of these tank barges. The Coast Guard has left § 35.05–15(b)(1) substantially as it was.

One comment recommended distinguishing leakage of cargo into the water from leakage of water into tanks, and requiring checks for both. The Coast Guard considers this a good idea and has revised §§ 35.05–15(b)(1) (i) and (iii).

One comment argued that addressing persons on duty only for any documented tankship was too permissive; it urged addressing them also for any tankship "required to be documented". The Coast Guard agrees and has made this change to § 35.35–1(a).

The same comment argued that addressing persons on duty only for any inspected tank barge was too permissive; it urged addressing them also for any tank barge "required to be inspected". The Coast Guard agrees and has made this change to § 35.35–1(b).

One comment recommended that the Declaration of Inspection Before Transfer of Bulk Liquid Cargo contain a space for the PIC to identify the product or products for transfer, by classification and kind. The Coast Guard agrees and has added such a space to the form specified by § 35.35–30.

A rule instated since the SNPRM has established a requirement of familiarity with the vessel response plan. This interim rule adds an appropriate space to the form specified by § 35.35–30.

11. Cargoes at Elevated Temperatures (46 CFR Part 36)

One comment recommended that certain sections of part 36 be deleted as obsolete or as superseded by this interim rule. Because the SNPRM did not address this issue, the Coast Guard does not consider this rule the appropriate place to revise part 36.

12. Cargo Vessels and Miscellaneous Vessels (46 CFR Part 98)

One comment suggested requiring that the person designated as PIC, for the transfer of liquid cargo in bulk to or from a portable tank on a vessel subject to part 98, hold a license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel "when liquid cargo in bulk of grade D or E is carried in limited amounts." The Coast Guard agrees and has added this phrase to § 98.30–17(b)(3)(i).

13. Commercial Fishing Vessels Dispensing Petroleum Products (46 CFR Part 105)

One comment urged that the authority of the Coast Guard over fishing vessels under this part needs to be clearly stated by reference to 46 U.S.C. 4502 (the Commercial Fishing Industry Vessel Safety Act of 1988) in the citation of authority for the part. The Coast Guard agrees and has amended the citation of authority for that part to include the appropriate statutory citation. Although the Coast Guard will no longer regulate certain fishing vessels as tank vessels, it will still regulate them as fishing vessels.

14. Barges Carrying Cargoes of Liquid Hazardous Materials in Bulk (46 CFR Part 151)

Again, one comment recommended distinguishing leakage of cargo into the water from leakage of water into tanks, and requiring checks for both. The Coast Guard considers this a good idea and has revised §§ 151.45–2(f)(1) (i) and (iii).

15. Ships Carrying Hazardous Materials of Liquid, Liquefied Gas, or Compressed Gas in Bulk (46 CFR Part 153); and Safety Standards for Self-Propelled Vessels Carrying Liquefied Gases in Bulk (46 CFR Part 154)

One comment asked whether the Coast Guard meant that an operator should communicate with the Officer in Charge, Marine Inspection (OCMI), before each transfer to inform the OCMI that the PIC is competent. The Coast Guard neither means nor believes that an operator should so communicate. It has clarified the rule in §§ 153.957(b) and 154.1831(b) to indicate that the *documentary evidence*, to the effect that the person designated as PIC is fully trained and is competent to perform his or her duties, need be provided only when requested by the OCMI.

One comment recommended clarification of § 154.1831 to better describe the qualifications of PICs on tank vessels in LG service. The Coast Guard agrees and has modified this section to clarify the qualifications required to conduct transfers of, and preparation of tanks for, cargoes of LG.

16. Work Hours

The Coast Guard understands that the Oil Pollution Act (OPA) of 1990, section 4114, amends 46 U.S.C. 8104 as it limits hours of work for licensed persons or seamen on a tanker and limits hours of work for tankermen aboard tankers. No tankerman may perform work for more than 15 hours in any 24-hour period; or more than 36 hours in any 72-hour period, except in an emergency or a drill. The term "work" includes all administrative duties associated with the vessel whether performed aboard the vessel or ashore.

The Coast Guard is deliberating new work-hour limits due to OPA for foreign-flag vessels. These limits, under 46 U.S.C. Chapter 37, would apply to all personnel involved in transfers whatever flags the vessels fly. These limits would apply to any person serving as a tankerman during the transfer of oil and of certain hazardous liquid cargoes in bulk, when the transfer takes place in a port or other place subject to the jurisdiction of the United States. Among the issues to weigh are the definition of the class of personnel and the kind of transfer to cover; the practical difficulties of ensuring compliance with such limits in respect of a crewmember on a foreign vessel; and the cost of effectively extending the limits to vessels other than tankers. The Coast Guard invites comments on these issues and any others that bear on including such limits in the final rule that will follow from this interim rule.

17. Requirements for Training Courses

The outlines of curricula as printed in the SNPRM produced positive comments and therefore move into this interim rule. The format has changed to allow for easier reading and to reduce the length of this rule.

One comment recommended that awareness of safe entry into confined spaces be included in the curricula as acknowledgment of the hazards associated with the products being either carried in cargo tanks or transferred. The Coast Guard agrees with this recommendation and has included the subject in each course on cargo of DL or LG.

18. Training Courses, Approval

An organization seeking approval by the Coast Guard of a course required for a tankerman endorsement will have to apply in accordance with 46 CFR 10.302 and meet the general requirement of 46 CFR 10.303. The Coast Guard expects that the instructor of each course, except the firefighting course, will hold as a minimum an MMD with a tankerman endorsement appropriate for the course, or will establish equivalent qualifications to the satisfaction of the Coast Guard. The firefighting course for tank barges must include actual practice in extinguishing fires; all other courses may include field training or simulation instead. Satisfactory completion of an approved course will be evidenced by a certificate, issued by the organization and signed by the head of the organization or a designated representative.

The Coast Guard will evaluate courses including simulated transfer of cargo to determine the credit allowed towards meeting the proposed service requirements, and the certificates will reflect the credit granted. The Coast Guard maintains a list of organizations conducting approved courses. This information is available upon request by writing to Commandant (G–MVP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; or by calling (202) 267–0214.

The Coast Guard has expanded the curricula for courses on cargoes of DL and LG enough to cover vapor-control systems and to satisfy the training requirements listed in 33 CFR 154.840. The course-outlines reflect current efforts of the Coast Guard and marine industry on training in vapor-control systems and on requirements for vessel response plans, as mandated by subsection 311(j) of the Federal Water Pollution Control Act (FWPCA) as amended by OPA 90.

The Coast Guard has eliminated the familiarization courses and is requiring only four liquid-cargo courses and the firefighting course for tank barges. It will evaluate for approval courses submitted for transfer credit and refresher training.

The Coast Guard invites comments on the subjects of courses; the appropriate minimal amounts of instruction; and the advisability of substituting field training or simulations for actual practice.

Tankship: Dangerous Liquids. This course consists of a training program appropriate to the duties of the Tankerman-PIC responsible for loading and discharging and for care in transit of or handling cargo on oil and chemical tankers; the course covers safety of oil and chemical tankers, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. It is designed to take full account of STCW regulations V/1 and V/2. Successful completion of it will satisfy the training requirements of §§ 13.209, 13.309, 13.409, and 13.509 for dangerous liquids. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

Tankship: Liquefied Gases. This course consists of a training program appropriate to the duties of the Tankerman-PIC responsible for loading and discharging and for care in transit of or handling cargo on liquefied-gas tankers; the course covers safety of liquefied-gas tankers, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. It is designed to take full account of STCW regulation V/3. Successful completion of it will satisfy the training requirements of §§ 13.209, 13.309, 13.409, and 13.509 for liquefied gases. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

Tank barge: Dangerous Liquids. This course consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for loading and discharging and for care in transit of or handling cargo on oil and chemical tank barges; the course covers safety of oil and chemical tank barges, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. Successful completion of it will meet the training requirements of § 13.309 for dangerous liquids. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

Tank barge: Liquefied gases. This course consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for loading and discharging and for care in transit of or handling cargo on liquefied-gas tank barges; the course covers safety of liquefied-gas tank barges, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. Successful completion of it will meet the training requirements of § 13.309 for liquefied gases. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

Firefighting. The course in *tank-barge firefighting* consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for fire-safety training. The methods must include hands-on practice in extinguishing fires with portable fire extinguishers. Successful completion of it will meet the requirements of § 13.307 for fire-safety training. To adequately cover the required material, the Coast Guard reckons, the course must last 16 hours. Successful completion of a course approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", will satisfy the requirements for §§ 13.207, 13.407, and 13.507, as well as for § 13.307.

19. Other Comments

Several comments suggested changes of an editorial nature. Because these are not of a substantive nature, the Coast Guard has not discussed them in this preamble; but it has incorporated them throughout this interim rule.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget (OMB) under that Order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11040 (February 26, 1979)). In early 1980, the Coast Guard performed a Regulatory Evaluation (with an Environmental Impact Statement) on the proposed rule concerning qualifications of persons in charge of transfers of oil and hazardous material and concerning tankerman requirements and placed it in the rulemaking docket, where a full Regulatory Evaluation later joined it. They may be inspected or copied at the office of the Marine Safety Council (G–LRA) (CGD 79–116), Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, from 8 a.m to 3 p.m., weekdays except Federal holidays.

Although the Regulatory Evaluation was begun over 15 years ago, and was finished in August 1989, the conclusions (given some updating of the discount rates) remain valid. The costs associated with this rule arise primarily from the training of tankermen. This rule requires people serving as tankermen to obtain from the Coast Guard U.S. Merchant Mariners' Documents endorsed as "Tankerman-PIC", "Tankerman-PIC (Barge)", restricted "Tankerman-PIC", restricted "Tankerman-PIC (Barge)", "Tankerman-Assistant", or "Tankerman-Engineer". People serving as tankerman will have

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to meet standards for amounts of experience, for completion of training courses, and for physical fitness.

Almost all of the costs resulting from this rule would arise from the training of tankermen in firefighting and in transfers of liquid cargoes. Firefighting training became a requirement for a license from the Coast Guard in December 1988. For 92% of the licensed personnel affected by this rule, the cost of this training is a cost of holding a license, not of becoming a qualified tankerman. This training will mainly increase the cost for unlicensed personnel applying for tankerman endorsements. These personnel applying for these endorsements will have to complete a liquid-cargo course. An applicant restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like need only take the firefighting course. Expenses to complete the firefighting and liquid-cargo courses will vary, depending on their sources; in-house courses should cost less than courses offered by independent schools. Unless their employers offer the courses, tankermen likely will bear the expense for the training, and complete it on their own time. Tuition might cost $100.00 a day, with courses lasting up to five days. Miscellaneous expenses for travel, meals, and lodging will sometimes accrue, too, at $20.00 to $100.00 a day. Since the endorsement is valid for five years, the expense should spread over five years as well. If the average for tankerman is five days of training, the expense will be about $800.00 for the first five years, or about $160.00 a year. For subsequent five-year intervals the applicant need only show two transfers, not attend any other courses. So, for a tankerman serving 30 years, the expense will come to about $27.00 a year. Training 10,000 people at $27.00 a year costs $270,000.00 a year. Since about 800 new tankermen enter the calling each year (at $800.00 a head), $640,000.00 must also be added each year to arrive at the total expense for the industry—$910,000.00 a year. The public has recognized that there is a tremendous need for improving the qualification and training of personnel in transfer and in pollution prevention, to prevent accidents and pollution. This rule will go toward reducing the risks of accidents and pollution affecting the United States. Statistical research has shown that American society is willing to pay $2.6 million to save just one life. Hence, even if this rule saves only one life each year, the benefit outweighs the expense by about $1.7 million a year.

This rule will not increase manning, but will require personnel already in the calling to receive training and documentation related to their service. Most tank-vessel companies already require high standards of experience and training for people serving as tankermen. Since this rule does not require any large expenditures by the maritime industry, consumers, or Federal, State, or local governments, the Coast Guard does not expect it to have significant economic impact.

Small Entities

The Coast Guard certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule applies to U.S. Merchant Mariners' Documents endorsed as "Tankerman" issued to individuals only. The effect on training schools would be to formalize the requirements to attend such industry-specific training; now, such training is optional for individuals serving as tankermen at the discretion of the owner or operator. Therefore, the Coast Guard certifies under subsection 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], OMB reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This interim rule contains collection-of-information requirements in the following sections: 13.107, 13.109, 13.111, 13.113, 13.115, 13.117, 13.123, 13.201, 13.301, 13.401, 13.501. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–0514 and 2115–0111.

Administration: U.S. Coast Guard.

Title: Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases.

Need for Information: The Port and Tanker Safety Act (PTSA) [codified as 46 U.S.C., Chapter 37] required the Secretary of Transportation to prescribe regulations on, among other things, personnel qualifications and manning standards for tank vessels of the United States.

Proposed use of Information: This information is used by the Coast Guard licensing officer at an REC. It is used to determine the applicant's qualification to receive or continue to hold a tankerman's endorsement to an MMD.

Frequency of Response: Every five years.

Burden Estimate: The Coast Guard estimates the total annual burden on merchant mariners will be 8,900 hours.

Respondents: The regulatory impact will bear upon about 10,700 respondents.

Form(s): Application for Original, Supplemental, or Duplicate Merchant Mariner's Document, CG–719B.

Average Burden-Hours for Each Respondent: The average burden hours for each respondent is 0.83 hours (50 minutes).

The Coast Guard has submitted the requirements to OMB for review under subsection 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this interim rule in accordance with the principles and criteria contained in Executive Order 12612. It has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The overall effect of this interim rule will be to reduce the amount of oil entering the navigable waters of the United States. The adverse environmental effect of this rule will be nil. As far as the Coast Guard can determine, this rule neither accomplishes short-term environmental gains at the cost of long-term losses or the converse, nor forecloses any future options, nor entails any significant irreversible or irretrievable commitments of resources.

What little environmental impact this rule entails is positive. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 154

Environmental protection, Oil pollution, Facilities, Water pollution control, Vapor control.

33 CFR Part 155

Environmental protection, Oil pollution, Vessels, Water pollution control.

46 CFR Part 7

Boundary lines.

46 CFR Part 12

Seamen.

46 CFR Part 13

Seamen, Tank vessels, Barges.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 30

Administrative practice and procedure, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels, Barges.

46 CFR Part 31

Marine safety, Tank vessels, Barges, Law enforcement, Flammable materials.

46 CFR Part 35

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seamen.

46 CFR Part 78

Passenger vessels, Marine safety, Foreign trade, Treaties.

46 CFR Part 90

Cargo vessels, Marine safety, Administrative practice and procedure, Authority delegation.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum.

46 CFR Part 151

Hazardous materials transportation, Marine safety, Flammable material, Tank vessels, Barges.

46 CFR Part 153

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 154

Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 154 and 155, and 46 CFR parts 7, 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154, as set forth below:

Title 33—Navigation and Navigable Waters

SUBCHAPTER O—POLLUTION

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); Sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Section 154.105 is amended by adding definitions as follows:

§ 154.105 Definitions.

Boundary Line means the lines described in 46 CFR Part 7.

* * * * *

STCW means the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978.

* * * * *

Tankship means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

* * * * *

PART 155—PREVENTION OF POLLUTION BY OIL OR HAZARDOUS MATERIAL FROM VESSELS

3. The authority citation for Part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; Sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, and 155.1010 through 155.1070, are also issued under 33 U.S.C. 1903(b); and sections 155.1110 and 155.1150 are also issued under 33 U.S.C. 2735.

4. Section 155.700 is revised to read as follows:

§ 155.700 Designation of person in charge.

The operator or agent of each vessel with a capacity for 250 or more barrels of fuel oil, cargo oil, or hazardous material shall designate, either by name or by position in the crew, the person in charge (PIC) or PICs of each transfer to or from the vessel and of each tank-cleaning.

5. Section 155.710 is revised to read as follows:

§ 155.710 Qualifications of person in charge.

(a) On each tankship required to be documented under the laws of the United States, the operator or agent of the vessel, or the person who arranges and hires a person to be in charge either of a transfer of liquid cargo in bulk or of cargo-tank cleaning, shall verify to his or her satisfaction that each person designated as a PIC—

(1) Of a transfer of liquid cargo in bulk—

(i) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer;

(ii) Holds a license issued under 46 CFR part 10 authorizing service aboard a vessel certified for voyages beyond the Boundary Line, as described by 46 CFR part 7, except on tankships not certified for voyages beyond the Boundary Line; and

(iii) Holds a "Tankerman-PIC" endorsement issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of the particular cargo involved; and

(2) Of cargo-tank cleaning meets paragraph (a)(1) of this section, except-

(i) A Coast Guard license is not required; and

(ii) If the tankship is at a tank-cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" endorsement.

(b) On each tank barge required to be inspected under 46 U.S.C. 3703, the operator or agent of the vessel, or the person who arranges and hires a person to be in charge of a transfer of liquid cargo in bulk, shall verify to his or her satisfaction that each PIC—

(1) Of a transfer of liquid cargo in bulk—

(i) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer; and

(ii) Holds a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement

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issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of the particular cargo involved; and

(2) Of cargo-tank cleaning meets paragraph (b)(1) of this section, except that, if the tank barge is at a tank-cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement.

(c) On each foreign tankship, the operator or agent of the vessel shall verify to his or her satisfaction that each PIC either of a transfer of liquid cargo in bulk or of cargo-tank cleaning—

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct either a transfer of liquid cargo in bulk or cargo-tank cleaning;

(2) Holds a license or other document issued by the flag state or its authorized agent authorizing service as master, mate, pilot, engineer, or operator on that vessel;

(3) Holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC either of the transfer of oil, chemical, or liquefied gas or of cargo-tank cleaning, as appropriate to the cargo;

(4) Is capable of reading, speaking, and understanding in English, or a language mutually-agreed-upon with the shoreside PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of cargo, except that the use of an interpreter meets this requirement if the interpreter—

(i) Fluently speaks the language spoken by each PIC;

(ii) Is immediately available to the PIC on the tankship at all times during the transfer; and

(iii) Is knowledgeable about, and conversant with terminology of, ships and transfers; and

(5) Is capable of effectively communicating with all crew-members involved in the transfer, with or without an interpreter.

(d) On each foreign tank barge, the operator or agent of the vessel shall verify to his or her satisfaction that each PIC either of the transfer of liquid cargo in bulk or of cargo-tank cleaning—

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer;

(2) Holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC either of the transfer of oil, chemical, or liquefied gas or of cargo-tank cleaning, as appropriate to the cargo;

(3) Is capable of reading, speaking, and understanding, in English or a mutually-agreed-upon language with the PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of cargo, except that the use of an interpreter meets this requirement if the interpreter—

(i) Fluently speaks the language spoken by each PIC;

(ii) Is immediately available to the PIC on the tank barge at all times during the cargo transfer; and

(iii) Is knowledgeable about, and conversant with terminology of, ships and transfers; and

(4) Is capable of effectively communicating with all crew-members involved in the transfer, with or without an interpreter.

(e) The operator or agent of each vessel to which this section applies shall verify to his or her satisfaction that the PIC of the transfer of fuel oil—

(1) On each vessel required by 46 CFR chapter I to have a licensed person aboard, holds a valid license issued under 46 CFR part 10 authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel.

(2) On each uninspected vessel of 100 or more gross tons, has been instructed by the operator or agent of the vessel both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel.

(3) On each tank barge, for the vessel's own engine-driven pumps has been instructed both in his or her duties and in the Federal statutes and regulations on water pollution.

(4) On each foreign vessel, holds a license or certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the qualifications of the PIC to act as master, mate, pilot, operator, engineer, or tankerman aboard that vessel.

(f) The operator or agent of each vessel carrying oil or hazardous material in bulk other than a tank vessel shall verify to his or her satisfaction that the PIC either of the transfer of oil or hazardous material in bulk to or from a vessel or of cargo-tank cleaning—

(1) For cargo of grade D or E, holds a valid license or certificate authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel; and

(2) For either cargo of grade C or above, regulated under 46 CFR part 153, or liquefied gas, holds a valid license or certificate authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel and a "Tankerman-PIC" endorsement, or other documents acceptable to the Coast Guard attesting the holder's qualifications to act as the PIC for the cargo carried.

(g) The PIC of cargo-tank cleaning on a vessel at a tank-cleaning facility or shipyard need not hold any of the documents required in paragraphs (a) through (f) of this section, if he or she holds a marine chemist's certificate issued by the National Fire Protection Association.

Title 46—Shipping

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7701; 49 CFR 1.46.

§ 12.01–5 [Amended]

9. Paragraph (d) of § 12.01–5 is removed.

§§ 12.20–1, 12.20–3, and 12.20–5 (Subpart 12.20) [Removed]

10. Subpart 12.20, consisting of §§ 12.20–1, 12.20–3, and 12.20–5, is removed.

11. Part 13 is added to read as follows:

PART 13—CERTIFICATION OF TANKERMEN

Subpart A—General

Sec.

13.101 Purpose.
13.103 Definitions.
13.105 Paperwork approval.
13.107 Tankerman endorsement: General.
13.109 Tankerman endorsement: Authorized cargoes.
13.111 Restricted endorsement.
13.113 Tankerman certified under prior regulations.
13.115 Licensed engineer: Endorsement as Tankerman-Engineer based on service on tankships before March 31, 1996.
13.117 Any person: Endorsement as Tankerman-Assistant based on unlicensed deck service before March 31, 1996.
13.119 Expiration of endorsement.
13.120 Renewal of endorsement.
13.121 Courses for training tankerman.
13.123 Recency of service or experience for original tankerman endorsement.
13.125 Physical requirements.
13.127 Service requirements: General.
13.129 Quick-reference table for tankerman.

Subpart B—Requirements for "Tankerman-PIC" Endorsement

13.201 Original application for "Tankerman-PIC" endorsement.
13.203 Eligibility requirements: Experience.
13.305 Proof of service for "Tankerman-PIC" endorsement.
13.207 Eligibility requirements: Firefighting course.
13.209 Eligibility requirements: Cargo course.

Supart C—Requirements for "Tankerman-PIC (Barge)" Endorsement

13.301 Original application for "Tankerman-PIC (Barge)" endorsement.
13.303 Eligibility requirements: Experience.
13.305 Proof of service for "Tankerman-PIC (Barge)" endorsement.
13.307 Eligibility requirements: Firefighting course.
13.309 Eligibility requirements: Cargo course.

Subpart D—Requirements for "Tankerman-Assistant" Endorsement

13.401 Original application for "Tankerman-Assistant" endorsement.
13.403 Eligibility requirements: Experience.
13.405 Proof of service for "Tankerman-Assistant" endorsement.
13.407 Eligibility requirements: Firefighting course.
13.409 Eligibility requirements: Cargo course.

Subpart E—Requirements for "Tankerman-Engineer" Endorsement

13.501 Original application for "Tankerman-Engineer" endorsement.
13.503 Eligibility requirements: Experience.
13.505 Proof of service for "Tankerman-Engineer" endorsement.
13.507 Eligibility requirements: Firefighting course.
13.509 Eligibility requirements: Cargo course.

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; 49 CFR 1.46.

Subpart A—General

§ 13.101 Purpose.

This part describes the various tankerman endorsements issued by the Coast Guard and prescribes the requirements for obtaining an endorsement as a "Tankerman-PIC," "Tankerman-PIC (Barge)," "Tankerman-Assistant," or "Tankerman-Engineer" to a merchant mariner's document.

§ 13.103 Definitions.

As used in this part:

Cargo Engineer means a licensed person on a dangerous-liquid tankship or a liquefied-gas tankship whose primary responsibility is maintaining the cargo system and cargo-handling equipment.

Competent person means a person designated as such in accordance with 29 CFR 1915.7.

Dangerous liquid means a liquid listed in 46 CFR 153.40 that is not a liquefied gas as defined in this part. Liquid cargoes in bulk listed in 46 CFR Part 153, Table 2, are not dangerous-liquid cargoes when carried by non-oceangoing barges.

DL means dangerous liquid.

IMO means the International Maritime Organization.

Liquefied gas means a cargo that has a vapor pressure of 172 kPa (25 psia) or more at 37.8 C (100 F).

LG means liquefied gas.

Liquid cargo in bulk means a liquid or liquefied gas listed in 46 CFR 153.40 and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks.

Marine chemist means a person certificated by the National Fire Protection Association.

MMD means a merchant mariner's document issued by the Coast Guard.

Participation, when used with regard to the service on transfers required for tankerman by § 13.120, 13.203, or 13.303, means either actual participation in the transfers or close observation of how the transfers are conducted and supervised.

PIC means a person in charge.

Restricted Tankerman endorsement means a valid tankerman endorsement to an MMD restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like.

Simulated transfer means a transfer practiced in a course meeting the requirements of § 13.121 that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303.

Tank barge means a non-self-propelled tank vessel.

Tank vessel means a vessel constructed or adapted to carry, or a vessel that carries, oil or hazardous material in bulk as cargo or cargo residue.

Tankerman-Assistant means a person holding a valid "Tankerman-Assistant" endorsement to his or her MMD.

Tankerman-Engineer means a person holding a valid "Tankerman-Engineer" endorsement to his or her MMD.

Tankerman-PIC means a person holding a valid "Tankerman-PIC" endorsement to his or her MMD.

Tankerman-PIC (Barge) means a person holding a valid "Tankerman-PIC (Barge)" endorsement to his or her MMD.

Tankship means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

Transfer means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 describes what qualifies as participation in a creditable transfer.

§ 13.105 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 [Pub. L. 96–511] for the reporting and recordkeeping requirements in this part

(b) OMB has assigned the following control numbers to the sections indicated:

(1) OMB 2115–0514—46 CFR 13.113, 13.115, 13.117, 13.201, 13.203, 13.205, 13.301, 13.303, 13.305, 13.401, 13.403, 13.405, 13.501, 13.503, 13.505.

(2) OMB 2115–0111—46 CFR 13.121, 13.207, 13.209, 13.307, 13.309, 13.407, 13.409, 13.507, 13.509.

§ 13.107 Tankerman endorsement: General.

(a) If an applicant meets the requirements of subpart B of this part, the Officer in Charge, Marine Inspection (OCMI), at a Regional Examination Center (REC) may endorse his or her MMD as "Tankerman-PIC" with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(a) may act as a PIC of transfers of liquid cargo in bulk on either tankships or tank barges

(b) If an applicant meets the requirements of Subpart C of this part, the OCMI may endorse his or her MMD as "Tankerman-PIC (Barge)" with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(b) may act as a PIC of transfers of liquid cargo in bulk only on tank barges.

(c) If an applicant meets the requirements of subpart D of this part, the OCMI may endorse his or her MMD

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as "Tankerman-Assistant" with the appropriate cargo classification or classifications. No person holding this endorsement may act as a PIC of any transfer of liquid cargo in bulk unless he or she also holds an endorsement authorizing service as PIC. He or she may, however, perform duties relative to cargo and cargo-handling equipment assigned by the PIC of transfers of liquid cargo in bulk without being under the direct supervision of the PIC. When performing these duties, he or she shall maintain continuous two-way voice communications with the PIC.

(d) If an applicant meets the requirements of subpart E of this part, the OCMI may endorse his or her MMD as "Tankerman-Engineer." No person holding this endorsement may act as a PIC or "Tankerman-Assistant" of any transfer of liquid cargo in bulk unless he or she also holds an endorsement authorizing such service. A person holding this endorsement and acting in this capacity has the primary responsibility on tank vessels carrying dangerous liquids and liquefied gases for maintaining the cargo systems and equipment for transfer of liquids in bulk aboard and for bunkering. No person licensed under part 10 of this chapter may serve as a chief engineer, first assistant engineer, or cargo engineer aboard an inspected tankship when liquid cargo in bulk or cargo residue is carried unless he or she holds this endorsement.

(e) If an applicant meets the requirements of § 13.111 of this part, the OCMI may endorse his or her MMD as a "Tankerman-PIC" with a specific restriction or restrictions. A person holding this endorsement may act as Tankerman-PIC or Tankerman-PIC (Barge) for specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like.

(f) A tankerman wishing to obtain an endorsement that he or she does not hold shall apply at an REC listed in § 10.105 of this chapter. If he or she meets all requirements for the new endorsement, the REC may issue a new MMD including the endorsement.

§ 13.109 Tankerman endorsement: Authorized cargoes.

(a) Each tankerman endorsement described in § 13.107 will expressly limit the holder's service under it to transfers involving one or both of the following cargo classifications:

(1) Dangerous liquid (DL).

(2) Liquefied gas (LG).

(b) No tankerman endorsement is necessary to transfer the liquid cargoes in bulk listed in Table 2 of Part 153 of this chapter when those cargoes are carried on barges not certified for ocean service.

(c) A tankerman having qualified in one cargo classification and wishing to qualify in another shall apply at an REC listed in § 10.105 of this chapter. If he or she meets all requirements for the other, the REC may issue a new MMD including the endorsement.

§ 13.111 Restricted endorsement.

(a) An applicant may apply at an REC listed in 46 CFR 10.105 for a tankerman endorsement restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like. The OCMI will evaluate each application and may modify the applicable requirements for the endorsement, making allowance for special circumstances and for whichever restrictions the endorsement will state.

(b) To qualify for a restricted "Tankerman-PIC" endorsement, an applicant shall meet § 13.201, excluding paragraph (f).

(c) To qualify for a restricted "Tankerman-PIC (Barge)" endorsement, an applicant shall meet § 13.301, excluding paragraph (f).

(d) To qualify for a restricted "Tankerman-PIC (Barge)" endorsement restricted to a tank-cleaning and gas-freeing facility, an applicant shall—

(1) Be at least 18 years old;

(2) Apply on a Coast Guard form;

(3) Present evidence of passing a physical examination in accordance with § 13.125;

(4) Present evidence in the form of a letter on company letterhead from the operator of the facility stating that OSHA considers the applicant a "competent person" for the facility and that the applicant has the knowledge necessary to supervise tank-cleaning and gas-freeing; and

(5) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

(e) The restricted "Tankerman-PIC (Barge)" endorsement restricted to a tank-cleaning and gas-freeing facility is valid only while the applicant is employed by the operator of the facility that provided the letter of service required by paragraph (d)(4) of this section, and this and any other appropriate restrictions will appear in the endorsement.

§ 13.113 Tankerman certified under prior regulations.

(a) A person who holds a license issued under part 10 of this chapter, and who as a PIC transferred liquid cargoes in bulk before March 31, 1996, may continue to serve as a "Tankerman-PIC" under the license until the first renewal of his or her MMD under 12.02–27 of this chapter that occurs after March 31, 1997, as follows:

(1) A person holding a current license issued under part 10 of this chapter may act as a "Tankerman-PIC" if he or she can produce a letter on company letterhead from the owner, operator, master, or chief engineer of the vessel that proves his or her qualifying service as required by paragraph (d)(1)(iii) of this section.

(2) A person that cannot produce a letter to prove his or her qualifying service may submit relevant evidence to an REC for evaluation. If the OCMI determines that the person does qualify under paragraph (a) of this section, the OCMI will issue a letter of acknowledgment as a substitute for a letter of service.

(b) A person who holds a current "Tankerman" endorsement issued before March 31, 1996, may continue to serve as a Tankerman-PIC (Barge) until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997. If a person with such an endorsement qualifies for a non-tankerman endorsement that requires a new MMD, he or she may bring the tankerman endorsement forward onto the new MMD.

(c) A person who served as PIC for the transfer of liquid cargoes in bulk listed in subchapter O but who did not require a tankerman endorsement, because they were non-flammable or non-combustible liquids, may act as a "Tankerman-PIC (Barge)" for those liquid cargoes until March 31, 2001, if he or she produces a letter—on company letterhead, from the owner or operator of a terminal or of a tank barge or from the owner, operator, or master of a tankship that proves his or her qualifying service as required by paragraph (e)(1)(iii) of this section.

(d) A person that qualifies under paragraph (a) of this section by holding a current license may apply for a "Tankerman-PIC" endorsement under this subpart.

(1) To qualify for a "Tankerman-PIC" endorsement, a licensed officer shall present—

(i) A certificate of completion from a course in shipboard firefighting approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", or a firefighting course before March 31, 1996, that the OCMI finds in substantial compliance with that section;

(ii) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, or a certificate of completion from a liquid-cargo course in DL or LG up to ten years before March 31, 1996, that the OCMI finds acceptable under §§ 13.121(e) (1) and (2), appropriate to the endorsement applied for; and

(iii) Evidence of service as follows:

(A) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant—

(*1*) Acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for, on tankships before March 31, 1996, and has so acted within five years of the date of application; or

(*2*) Served at least 30 days as a master or mate on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so acted within five years of the date of application; or

(B) Certificates of Discharge proving at least 30 days of service as master or mate on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

(2) To qualify for a restricted "Tankerman-PIC" endorsement, based on his or her cargo-handling experience for the grades handled, an applicant shall meet paragraphs (d)(1) (i) and (iii) of this section.

(e) A person who qualifies under paragraph (b) of this section by holding a current "Tankerman" endorsement or under paragraph (c) of this section by having served as PIC for the transfer of liquid cargoes in bulk that are listed in subchapter O but that did not require a tankerman endorsement may apply for a "Tankerman-PIC (Barge)" endorsement under this subpart.

(1) To qualify for a "Tankerman-PIC (Barge)" endorsement, an applicant shall present—

(i) Evidence of training in firefighting in the form of—

(A) A certificate of completion from a course in shipboard firefighting approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", or a certificate of completion from such a course before March 31, 1996, that the OCMI finds in substantial compliance with that section;

(B) A certificate of completion from a training course meeting § 13.121 in tank-barge firefighting or a certificate of completion from a course in tank-barge firefighting before March 31, 1996, that the OCMI finds in substantial compliance with § 13.121; or

(C) A letter on company letterhead from the owner, operator, master, or chief engineer attesting that before March 31, 1996, the applicant received training in awareness of flammability hazards and in firefighting through a program, lecture, or seminar that included hands-on firefighting that the OCMI finds in substantial compliance with § 13.121;

(ii) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, or a certificate of completion from a liquid-cargo course in DL or LG up to ten years before March 31, 1996, that the OCMI determines substantially covers the material required by Table 13.121(f); and

(iii) Evidence of service on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant acted as the PIC of the transfer for DL or LG, appropriate to the endorsement applied for on tank vessels, before March 31, 1996, and has so acted within five years of the date of application.

(2) To qualify for a restricted "Tankerman-PIC (Barge)" endorsement, based on his or her cargo-handling experience for the grades handled, an applicant shall meet all the requirements of paragraphs (e)(1) (i) and (iii) of this section.

(f) Each person qualifying under this section shall obtain a tankerman endorsement at the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997.

(g) The following table relates the experience and training to the endorsement for tankerman certified under prior regulations. The section numbers on the table refer to the specific requirements applicable.

TABLE 13.113.—TANKERMAN CERTIFIED UNDER PRIOR REGULATIONS

Before effective date served as—	Service after effective date but before permanent endorsement:	Requirements for permanent endorsement to an MMD:	Requirements for RESTRICTED endorsement to an MMD:
Licensed Officer	May serve as: § 13.113(a) Tankerman-PIC. Limitations: None Allowed until: First renewal of MMD Service documentation: Service letter from company rep.	Tankerman-PIC § 13.113(d)(1) Service: Service letter from company rep as PIC of DL or LG cargo transfer, or 30 days' service as master or mate on tankships carrying DL or LG.. Courses: Liquid-cargo course in the appropriate cargo grade, & Firefighting.	Tankerman-PIC § 13.113(d)(2). Service: Service letter from company rep as PIC of DL or LG cargo transfer, or 30 days' service as master or mate on tankships carrying DL or LG. Course: Firefighting course.
MMD with a Tankerman's endorsement.	May serve as: § 13.113(b) Tankerman-PIC (Barge). Limitations: Grade of cargo on existing MMD. Until: First renewal of MMD Documentation: None	Tankerman-PIC (Barge) § 13.113(e)(1) Service: Service letter from company rep as Service letter PIC of DL or LG cargo transfer. Courses: Liquid-cargo course in the appropriate cargo grade, & Tank-barge firefighting.	Tankerman-PIC (Barge) § 13.113(e)(2). Service: Service letter from company rep as PIC of DL or LG cargo transfer. Course: Tank-barge firefighting.
PIC-Subchapter O Non-flammable and Non-combustible.	May serve as: § 13.113(c) Tankerman-PIC (Barge).	Tankerman-PIC (Barge) § 13.113(e)(1)	Tankerman-PIC (Barge) § 13.113(e)(2).

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TABLE 13.113.—TANKERMAN CERTIFIED UNDER PRIOR REGULATIONS—Continued

Before effective date served as—	Service after effective date but before permanent endorsement:	Requirements for permanent endorsement to an MMD:	Requirements for RESTRICTED endorsement to an MMD:
	Limited to: Subchapter-O products previously transferred. Until: 5 years after effective date Documentation: Service letter from company rep as PIC.	Service: Service letter from company rep as PIC of DL or LG cargo transfer. Courses: Liquid-cargo course in the appropriate cargo Tank-barge firefighting.	Service: Service letter from company rep as PIC of DL or LG cargo transfer Course: Tank-barge firefighting.

§ 13.115 Licensed engineer: Endorsement as Tankerman-Engineer based on service on tankships before March 31, 1996.

A licensed person with service as chief, first assistant, or cargo engineer on at least one tankship before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a "Tankerman-Engineer" endorsement under this subpart if he or she presents either—

(a) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant served at least 30 days as chief, first assistant, or cargo engineer on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so served within five years of the date of application; or

(b) Certificates of Discharge proving at least 30 days of service as chief, first assistant, or cargo engineer on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

§ 13.117 Any person: Endorsement as Tankerman-Assistant based on unlicensed deck service before March 31, 1996.

A person with unlicensed deck service on tankships before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a "Tankerman-Assistant" endorsement under this subpart if the applicant presents either—

(a) A letter on company letterhead from the owner, operator, or master of the vessel attesting that the applicant served at least 30 days of deck service on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so served within five years of the date of application; or

(b) Certificates of Discharge proving at least 30 days of deck service on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

§ 13.119 Expiration of endorsement.

An endorsement as tankerman is valid for the duration of the MMD.

§ 13.120 Renewal of endorsement.

An applicant wishing to renew a tankerman's endorsement shall meet the requirements of § 12.02–27 of this chapter for renewing an MMD and provide evidence of participation in at least two transfers during the past five years in accordance with § 13.127(b) or of completion of an approved course.

§ 13.121 Courses for training tankerman.

(a) This section prescribes the requirements, beyond those in §§ 10.203 and 10.303 of this chapter, applicable to schools offering courses required for a tankerman endorsement and courses that are a substitute for experience with transfers of liquid cargo in bulk required for the endorsement.

(b) Upon satisfactory completion of an approved course, each student shall receive a certificate, signed by the head of the school offering the course or by a designated representative, indicating the title of the course, the duration, and, if appropriate, credit allowed towards meeting the transfer requirements of this part.

(c) A course that uses simulated transfers to train students in loading and discharging tank vessels may replace a specific number of the transfers required for a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement. The letter from the Coast Guard approving the course will state the number and kind of transfers the course replaces.

(d) The course in liquid cargo required for an endorsement as—

(1) "Tankerman-PIC DL" is Tankship: Dangerous Liquids;

(2) "Tankerman-PIC (Barge) DL" is Tank Barge: Dangerous Liquids;

(3) "Tankerman-PIC LG" is Tankship: Liquefied Gases; and

(4) "Tankerman-PIC (Barge) LG" is Tank Barge: Liquefied Gases.

(e) The course in firefighting required for an endorsement as—

(1) "Tankerman-PIC (Barge)" is Tank Barge: Firefighting; and

(2) "Tankerman-PIC", "Tankerman-Assistant", and "Tankerman-Engineer" is a firefighting course that meets the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting".

(f) No school may issue a certificate unless the student has successfully completed an approved course with the appropriate curriculum outlined in Table 13.121(f).

(g) An organization with a course in DL or LG or a course in tank-barge firefighting taught before March 31, 1996, that substantially covered the material required by Table 13.121(f) for liquid cargoes and by Table 13.121(g) for firefighting may seek approval under § 10.302 of this chapter from the Coast Guard for any course taught up to ten years before March 31, 1996.

TABLE 13.121(F)

Course topics	1	2	3	4
General characteristics, compatibility, reaction, firefighting procedures, and safety precautions for the cargoes of:				
Bulk liquids defined as Dangerous Liquids in 46 CFR Part 13	x	x		
Bulk liquefied gases & their vapors defined as Liquefied Gases in 46 CFR Part 13			x	x
Physical phenomena of liquefied gas, including:				
Basic concept			x	x

TABLE 13.121(F)—Continued

Course topics	1	2	3	4
Compression & expansion			x	x
Mechanism of heat transfer			x	x
Potential hazards of liquefied gas, including:				
Chemical & physical properties			x	x
Combustion characteristics			x	x
Results of gas release to the atmosphere			x	x
Health hazards (skin contact, inhalation, & ingestion)			x	x
Control of flammability range with inert gas			x	x
Thermal stress in structure & piping of vessel			x	x
Cargo systems, including:				
Principles of containment systems	x	x	x	x
Construction, materials, coatings, & insulation of cargo tanks	x	x	x	x
General arrangement of cargo tanks	x	x	x	x
Venting & vapor-control systems	x	x	x	x
Cargo-handling systems, including:				
Piping systems, valves, pumps, & expansion systems	x	x	x	x
Operating characteristics	x	x	x	x
Instrumentation systems, including:				
Cargo-level indicators	x	x	x	x
Gas-detecting systems	x	x	x	x
Temperature-monitoring systems, cargo	x	x	x	x
Temperature-monitoring systems, hull	x	x	x	x
Automatic-shutdown systems	x	x	x	x
Auxiliary systems, including:				
Ventilation, inerting	x	x	x	x
Valves, including:				
Quick-closing	x	x	x	x
Remote-control	x	x	x	x
Pneumatic	x	x	x	x
Excess-flow	x	x	x	x
Safety-relief	x	x	x	x
Pressure-vacuum	x	x	x	x
Heating-systems: cofferdams & ballast tanks			x	x
Operations connected with loading & discharging of cargo, including:				
Lining up of cargo system and vapor-control system	x	x	x	x
Pre-transfer inspections	x	x	x	x
Pre-transfer conference and completion of the Declaration of Inspection	x	x	x	x
Hooking up of cargo hose, loading arms, and grounding-strap	x	x	x	x
Starting of liquid flow	x	x	x	x
Calculation of loading rates	x	x	x	x
Monitoring of loading rates	x	x	x	x
Discussion of loading	x	x	x	x
Ballasting & deballasting	x	x	x	x
Topping off of cargo tanks	x	x	x	x
Discussion of discharging	x	x	x	x
Stripping of cargo tanks	x	x	x	x
Monitoring of transfers	x	x	x	x
Gauging of cargo tanks	x	x	x	x
Disconnecting of cargo hoses or loading arms	x	x	x	x
Operating procedures & sequence for:				
Inerting of cargo tanks & void spaces	x	x	x	x
Cooldown & warmup of cargo tanks			x	x
Gas-freeing	x	x	x	x
Loaded or ballasted voyages	x	x	x	x
Testing of cargo-tank atmospheres for oxygen & cargo vapor	x	x	x	x
Load plan, stability, & stress connected with:				
Loading of cargo	x	x	x	x
Discharging of cargo	x	x	x	x
Ballasting & deballasting	x		x	
Loadline, draft, & trim	x	x	x	x
Disposal of boil-off, including:				
System design			x	x
Safety features			x	x
Stability-letter requirements	x	x	x	x
Rules (for tank barge & tankship, both international & Federal) pertaining to operational procedures & pollution prevention.	x	x	x	x
Pollution prevention, including:				
Procedures to prevent air & water pollution	x	x	x	x
Measures to take in event of spillage	x	x	x	x
Danger from drift of vapor cloud	x	x	x	x
Emergency procedures for the following, including notice to appropriate authorities:				
Fire	x	x	x	x

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TABLE 13.121(F)—Continued

Course topics	1	2	3	4
Collision	x	x	x	x
Grounding	x	x	x	x
Equipment failure	x	x	x	x
Leaks & spills	x	x	x	x
Structural failure	x	x	x	x
Emergency discharge of cargo	x	x	x	x
Entering of cargo tanks	x	x	x	x
Emergency shutdown of cargo-handling	x	x	x	x
Emergency systems for closing cargo tanks	x	x	x	x
Safety precautions relative to:				
Dangers of skin contact	x	x	.....	
Inhalation of vapors	x	x	.....	
Electricity & static electricity: hazards & precautions	x	x	.....	
Terminology of tankships for oil & chemicals	x		.....	
Terminology of tank barges for oil & chemicals	x	x	.....	
Terminology of tankships for liquefied gases	.....	.....	x	
Terminology of tank barges for liquefied gases	.....	.....	x	
Principles & procedures of Crude-Oil-Washing (COW) systems, including:				
Purpose	x	x	.....	
Equipment & design	x	x	.....	
Operations	x	x		
Safety precautions	x	x	.....	
Maintenance of plant & equipment	x	x	.....	
Principles & procedures of Inert-Gas Systems (IGS), including:				
Purpose	x	x	x	
Equipment & design	x	x	x	
Operations	x	x	x	
Safety precautions	x	x	x	
Maintenance of plant & equipment	x	x	x	
Cargo-tank cleaning: procuredures & precautions.	x	x	.....	
Principles & procedures of vapor-control recovery systems, including:				
Purpose	x	x	x	x
Principles	x	x	x	x
Components	x	x	x	x
Hazards	x	x	x	x
Coast Guard regulations	x	x	x	x
Operating procedures, including:				
Testing & inspection requirements	x	x	x	x
Pre-transfer procedures	x	x	x	x
Connecting sequence	x	x	x	x
Start-up procedures	x	x	x	x
Normal operations	x	x	x	x
Emergency procedures, including notice of release	x	x	x	x
Information systems on hazards of cargo	x	x	x	x
Safe entry into confined spaces, including:				
Definitions & hazards of confined spaces	x	x	x	x
Evaluation & assessment of risks & hazards	x	x	x	x
Safety precautions & procedures	x	x	x	x
Personal protective equipment (PPE)	x	x	x	x
Maintenance of PPE	x	x	x	x
Emergency procedures	x	x	x	x
Federal regulations, national standards, & industry guidelines	x	x	x	x
Inspections by marine chemists & competent persons, including hot-work permits & procedures.	x	x	x	x
Vessel Response Plans:				
Purpose, content, & location of information	x	x	x	x
Procedures for notice & mitigation of spills	x	x	x	x
Geographic-specific appendices	x	x	x	x
Vessel-specific appendices	x	x	x	x
Emergency-action checklist	x	x	x	x

(1) Tankerman-PIC DL.
(2) Tankerman-PIC (Barge) DL.
(3) Tankerman-PIC LG.
(4) Tankerman-PIC (Barge) LG.

TABLE 13.121(g)

Course topics	1	2
Elements of fire (Fire triangle):		
Fuel	x	x

TABLE 13.121(g)—Continued

Course topics	1	2
Source of ignition	x	x
Oxygen	x	x
Ignition sources (general):		
Chemical	.....	x
Biological	.....	x
Physical	.....	x
Ignition sources applicable to barges	x	.....
Definitions of flammability and combustibility:		
Flammability	.....	x
Ignition point	x	x
Burning temperature	x	x
Burning speed	.....	x
Thermal value	.....	x
Lower flammable limit	x	x
Upper flammable limit	x	x
Flammable range	x	x
Inerting	x	x
Static electricity	x	x
Flash point	x	x
Auto-ignition	x	x
Spread of fire:		
By radiation	x	x
By convection	x	x
By conduction	x	x
Reactivity	x	x
Fire classifications and applicable extinguishing agents	x	x
Main causes of fires:		
Oil leakage	x	x
Smoking	x	x
Overheating pumps	x	x
Galley appliances	.....	x
Spontaneous ignition	x	x
Hot work	x	x
Electrical apparatus	.....	x
Reaction, self-heating, and auto-ignition	.....	x
Fire prevention:		
General	x	x
Fire hazards of DL and LG	x	.....
Fire detection:		
Fire- and smoke-detection systems	.....	x
Automatic fire alarms	.....	x
Firefighting equipment:		
Fire mains, hydrants	.....	x
International shore-connection	.....	x
Smothering-installations, carbon dioxide (CO_2), foam...	.....	x
Halogenated hydrocarbons	.....	x
Pressure-water spray system in special-category spaces	.....	x
Automatic sprinkler system	.....	x
Emergency fire pump, emergency generator	.....	x
Chemical-powder applicants	.....	x
General outline of required and mobile apparatus	.....	x
Fireman's outfit, personal equipment	.....	x
Breathing apparatus	.....	x
Resuscitation apparatus	.....	x
Smoke helmet or mask	.....	x
Fireproof life-line and harness	.....	x
Fire hose, nozzles, connections, and fire axes	.....	x
Fire blankets	.....	x
Portable fire extinguishers	x	x
Limitations of portable and semiportable extinguishers	x	.....
Emergency procedures:		
Arrangements:		
Escape routes	x	x
Means of gas-freeing tanks	x	x
Class A, B, and C divisions	.....	x
Inert-gas system	.....	x
Ship firefighting organization:		
General alarms	.....	x
Fire-control plans, muster stations, and duties	.....	x
Communications	.....	x
Periodic shipboard drills	.....	x
Patrol system	.....	x

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TABLE 13.121(g)—Continued

Course topics	1	2
Basic firefighting techniques:		
Sounding alarm	X	X
Locating and isolating fires	X	X
Stopping leakage of cargo	X	
Jettisoning		X
Inhibiting		X
Cooling		X
Smothering		X
Sizing up situation	X	
Locating information on cargo	X	
Extinguishing		X
Extinguishing with portable units	X	
Setting reflash watch	X	X
Using additional personnel	X	
Firefighting extinguishing-agents:		
Water (solid jet, spray, fog, and flooding)		X
Foam (high, medium and low expansion)		X
Carbon dioxide (CO_2)	X	X
Halon		X
Aqueous-film-forming foam (AFFF)		X
Dry chemicals	X	X
Use of extinguisher on:		
Flammable and combustible liquids	X	
Manifold-flange fire	X	
Drip-pan fire	X	
Pump fire	X	
Drills for typical fires on barges	X	
Field exercises:		
Extinguish small fires using portable extinguishers:		
Electrical	X	X
Manifold-flange	X	X
Drip-pan	X	X
Pump	X	X
Use self-contained breathing apparatus		X
Extinguish extensive fires with water		X
Extinguish fires with foam, or chemical		X
Fight fire in smoke-filled enclosed space wearing SCBA		X
Extinguish fire with water fog in an enclosed space with heavy smoke		X
Extinguish oil fire with fog applicator and spray nozzles, dry-chemical, or foam applicators		X
Effect a rescue in a smoke-filled space while wearing breathing apparatus		X

(1) Course in tank-barge firefighting.
(2) From the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting".

§ 13.123 Recency of service or experience for original tankerman endorsement.

An applicant for an original tankerman endorsement in subpart B, C, D, or E of this part shall have obtained at least 25% of the qualifying service and, if the endorsement requires transfers, at least two of the qualifying transfers, within five years of the date of application.

§ 13.125 Physical requirements.

Each applicant for an original tankerman endorsement shall meet the physical requirements of § 10.205(d) of this chapter, excluding paragraph (d)(2) of that section.

§ 13.127 Service requirements: general.

(a) A service letter must specify—

(1) The classification of cargo (DL, LG, or, for a restricted endorsement, a specific product) handled while the applicant accumulated the service;

(2) The dates, the number and kinds of transfers the applicant has participated in, and the number of transfers that involved commencement or completion; and

(3) That the applicant has demonstrated to the satisfaction of the signer that he or she is fully capable of supervising transfers of liquid cargo, including

(i) Pre-transfer inspection;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading-arms;

(iv) Line-up of the cargo system for loading and discharge;

(v) Start of liquid flow during loading;

(vi) Start of cargo pump and increase of pressure to normal discharge pressure;

(vii) Calculation of loading-rates;

(viii) Monitoring;

(ix) Topping-off of cargo tanks during loading;

(x) Stripping of cargo tanks;

(xi) Ballasting and deballasting, if appropriate;

(xii) Disconnection of the cargo hoses or loading-arms; and

(xiii) Securing of cargo systems.

(b) In determining the numbers and kinds of transfers that the applicant has participated in under paragraph (a)(2) of this section, the following rules apply:

(1) A transfer must involve the loading or discharge from at least one of the vessel's cargo tanks to or from a shore facility or another vessel. A shift of cargo from one tank to another tank is not a transfer for this purpose.

(2) Regardless of how long the transfer lasts beyond four hours, it counts as only one transfer.

(3) A transfer must include both a commencement and a completion.

(4) Regardless of how many tanks or products are being loaded or discharged at the same time, a person may receive credit for only one transfer, one loading, and one discharge a watch.

(5) Credit for a transfer during a watch of less than four hours accrues only if the watch includes either the connection and the commencement of transfer or the completion of transfer and the disconnection.

(6) Credit for a commencement of loading accrues only if the applicant participates in the pre-transfer inspection, the pre-transfer conference including execution of the Declaration of Inspection, the connection of cargo hoses or loading-arms, the line-up of the cargo system for the loading, the start of liquid flow, and the calculation of loading-rates.

(7) Credit for a commencement of discharge accrues only if the applicant participates in the pre-transfer inspection, the pre-transfer conference including execution of the Declaration of Inspection, the connection of cargo hoses or loading-arms, the line-up of the cargo system for the discharge, the start of the cargo pump or pumps and increase of pressure to normal pressure for discharge, and the monitoring of discharge rates.

(8) Credit for a completion of transfer, whether loading or discharge, accrues only if the applicant participates in the topping-off at the loading port, or in the stripping of cargo tanks and the commencement of ballasting, if required by the vessel's transfer procedures, at the discharge port.

§ 13.129 Quick-reference table for tankerman.

Table 13.129 provides a guide to the requirements for various tankerman endorsements. Provisions in the reference sections are controlling.

TABLE 13.129

Category	Minimum age	Physical required	Service	Recency of service	Proof of service	Firefighting certificate	Course	English language
Tankerman PIC Subpart B.	18: 13.201(a)	Yes: 13.125	Yes: 13.203, 30 days licensed or 60 days unlicensed and 10 cargo transfers.	Yes: 13.123, 25% of service, 2 transfers within 5 yrs.	Yes: 13.205, Letter.	Yes: 13.207, Basic F/F*.	Yes: 13.209, DL or LG.	Yes: 13.201(g).
Tankerman PIC (Barge) Subpart C.	18: 13.301(a)	Yes: 13.125	Yes: 13.303, 60 days on T/Vs or 6 months on T/Bs and 10 cargo transfers.	Yes: 13.123, 25% of service, 2 transfers within 5 yrs.	Yes: 13.305, Letter.	Yes: 13.307, Basic F/F* or Tank-barge F/F.	Yes: 13.309, DL or LG.	Yes: 13.301(g).
Tankerman Assistant Subpart D.	18: 13.401(a)	Yes: 13.125	Yes: 13.403, 90 days on tankships or attend a cargo course.	Yes: 13.123, 25% of service, within 5 yrs.	Yes: 13.405, Letter.	Yes: 13.407, Basic F/F*.	Yes: 13.409, Cargo course or 90 days service.	Yes: 13.401(f).
Tankerman Engineer Subpart E.	18: 13.501(a)	Yes: 13.125	Yes: 13.503, 90 days licensed or 30 days licensed and completion of a DL or LG course or 60 days unlicensed and completion of a DL or LG course.	Yes: 13.123, 25% of service, within 5 yrs.	Yes: 13.505, Letter.	Yes: 13.507, Basic F/F*	Yes: 13.509, Cargo course or service requirements.	Yes: 13.501(g).
Restricted Tankerman PIC.	18: 13.111(b)	Yes: 13.111(b)	Yes: 13.111(b), 30 days licensed or 60 days unlicensed and 10 cargo transfers.	Yes: 13.111(b), 25% of service, 2 transfers within 5 yrs.	Yes: 3.111(b), Letter.	Yes: 13.111(b), Basic F/F*.	No	Yes: 13.111(b).
Restricted Tankerman PIC (Barge).	18: 13.111(c)	Yes: 13.111(c)	Yes. 13.111(c), 60 days on T/Vs or 6 months on T/Bs and 10 cargo transfers.	Yes: 13.111(c), 25% of service, 2 transfers within 5 yrs.	Yes: 13.111(c), Letter.	Yes: 13.111(c), Basic F/F* or Tank-barge F/F.	No	Yes: 13.111(c).
Restricted Tankerman PIC (Barge) facility.	18: 13.111(d)	Yes: 13.111(d)	Yes: 13.111(d)(4), "Competent Person" and knowledge of tank-cleaning, gas-freeing.	No	Yes: 13.111(d), Letter.	No	No	Yes: 13.111(d).

*From the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting".

Subpart B—Requirements for "Tankerman-PIC" Endorsement.

§ 13.201 Original application for "Tankerman-PIC" endorsement.

Each applicant for an original "Tankerman-PIC" endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.203;

(e) Meet the requirement of a course on firefighting in § 13.207;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.209; and

(g) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and be capable of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

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§ 13.203 Eligibility requirements: Experience.

Each applicant for a "Tankerman-PIC" endorsement for DL or LG shall meet the requirements of either paragraphs (a) and (b) or paragraph (c) of this section.

(a) Each applicant shall present evidence of—

(1) At least 30 days of service as a licensed deck officer or a licensed engineering officer on one or more tankships certified to carry DL or LG appropriate to the endorsement applied for;

(2) At least 60 days of unlicensed service on deck or in the engine department on one or more tankships certified to carry DL or LG appropriate to the endorsement applied for; or

(3) A mixture of licensed and unlicensed service on deck or in the engine department on tankships certified to carry DL or LG appropriate to the endorsement applied for equivalent to 30 days of licensed service, every 2 days of unlicensed service counting as 1 day of licensed service.

(b) Each applicant shall present evidence of participation, under the supervision of a "Tankerman-PIC," in at least ten transfers of liquid cargo in bulk of the classification desired on tankships, including at least—

(1) Five loadings and five discharges;

(2) Two commencements of loading and two completions of loading; and

(3) Two commencements of discharge and two completions of discharge.

(c) Each applicant already holding an MMD endorsed "Tankerman-PIC" for DL and seeking an endorsement for LG, or the converse, shall—

(1) Provide evidence of at least half the service required by paragraph (a) of this section; and

(2) Comply with paragraph (b) of this section, except that he or she need provide evidence of only three loadings and three discharges along with evidence of compliance with paragraphs (b)(2) and (3) of this section.

§ 13.205 Proof of service for "Tankerman-PIC" endorsement.

Service must be proved by a letter on company letterhead from the owner, operator, or master of the vessel on which the applicant obtained the service. The letter must contain the information described in § 13.127(a).

§ 13.207 Eligibility requirements: Firefighting course.

Each applicant for an original "Tankerman-PIC" endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or a tankerman endorsement.

§ 13.209 Eligibility requirements: Cargo course.

Each applicant for an original "Tankerman-PIC" endorsement shall present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

Subpart C—Requirements for "Tankerman-PIC (Barge)" Endorsement

§ 13.301 Original application for "Tankerman-PIC (Barge)" endorsement.

Each applicant for a "Tankerman-PIC (Barge)" endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tank vessels in accordance with § 13.303;

(e) Meet the requirement of a firefighting course in § 13.307;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.309; and

(g) Be capable of speaking, and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and be capable of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

§ 13.303 Eligibility requirements: Experience.

Each applicant for a "Tankerman-PIC (Barge)" endorsement for DL or LG shall meet the requirements of either paragraphs (a) and (b) or paragraph (c) of this section.

(a) Each applicant shall present evidence of—

(1) At least 60 days of service on one or more tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

(2) At least 6 months of closely related service directly involved with tank barges appropriate to the endorsement applied for; and

(b) Participation, under the supervision of a "Tankerman-PIC" or "Tankerman-PIC (Barge)," in at least ten transfers of liquid cargo in bulk of the classification desired on tankships or tank barges, including at least—

(1) Five loadings and five discharges;

(2) Two commencements of loading and two completions of loading; and

(3) Two commencements of discharge and two completions of discharge.

(c) Each applicant already holding an MMD endorsed "Tankerman-PIC (Barge)" for DL and seeking an endorsement for LG, or the converse, shall—

(1) Provide evidence of at least half the service required by paragraph (a) of this section; and

(2) Comply with paragraph (b) of this section, except that he or she need provide evidence of only three loadings and three discharges along with evidence of compliance with paragraphs (b)(2) and (3) of this section.

§ 13.305 Proof of service for "Tankerman-PIC (Barge)" endorsement.

Service must be proved by a letter on company letterhead from a terminal owner or operator; a tank barge owner or operator; or the owner, operator, or master of a tankship. The letter must contain the information required by § 13.127(a), excluding paragraph (a)(3)(vii).

§ 13.307 Eligibility requirements: Firefighting course.

Each applicant for a "Tankerman-PIC (Barge)" endorsement shall present a certificate of successful completion from—

(a) A course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or a tankerman endorsement;

(b) A course in tank-barge firefighting, approved by the Commandant and meeting § 13.121, completed within five years of the date of application for the endorsement.

§ 13.309 Eligibility requirements: Cargo course.

Each applicant for an original "Tankerman-PIC (Barge)" endorsement shall present a certificate of completion from a course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

Subpart D—Requirements for "Tankerman-Assistant" Endorsement

§ 13.401 Original application for "Tankerman-Assistant" endorsement.

Each applicant for a "Tankerman-Assistant" endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Meet the requirement of a firefighting course in § 13.407;

(e) (1) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.409; or

(2) Present evidence of service on tankships in accordance with § 13.403; and

(f) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo.

§ 13.403 Eligibility requirements: Experience.

(a) Each applicant for a "Tankerman-Assistant" endorsement shall present—

(1) Evidence of at least 90 days of deck service on tankships certified to carry DL or LG appropriate to the endorsement applied for; or

(2) A certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed in § 13.409.

(b) Each applicant already holding an MMD endorsed "Tankerman-Assistant" for DL and seeking one for LG, or the converse, shall—

(1) Provide evidence of at least half the service required in paragraph (a)(1) of this section; or

(2) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for as prescribed in § 13.409.

§ 13.405 Proof of service for "Tankerman-Assistant" endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, or master of a tankship. The letter must specify—

(1) The classification of cargo (DL or LG) carried while the applicant accumulated the service;

(2) The number of days of deck service the applicant accumulated on the tankship; and

(3) That the applicant has demonstrated an understanding of cargo transfer and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out duties respecting cargo transfer and transfer equipment assigned by the PIC of the transfer without direct supervision by the PIC; or

(b) Service must be proved by—

(1) Certificates of Discharge from tankships with the appropriate classification of cargo (DL, LG, or both); and

(2) A letter on company letterhead from the owner, operator, or master of one of the tankships stating that he or she has demonstrated—

(i) An understanding of cargo transfer; and

(ii) A sense of responsibility that, in the opinion of the signer, will allow him or her to safely carry out duties respecting cargo and its equipment assigned by the PIC of the transfer without direct supervision by the PIC.

§ 13.407 Eligibility requirements: Firefighting course.

Each applicant for a "Tankerman-Assistant" endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting", completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate from one of these courses for a license or endorsement.

§ 13.409 Eligibility requirements: Cargo course.

Each applicant for an original "Tankerman-Assistant" endorsement that has not presented the required service on tankships must present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

Subpart E—Requirements for "Tankerman-Engineer" Endorsement

§ 13.501 Original application for "Tankerman-Engineer" endorsement.

Each applicant for a "Tankerman-Engineer" endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.503;

(e) Meet the requirement of a firefighting course in § 13.507;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.509; and

(g) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo.

§ 13.503 Eligibility requirements: Experience.

(a) Each applicant for a "Tankerman-Engineer" endorsement shall present evidence of at least—

(1) 90 days of service as a licensed engineering officer on tankships certified to carry DL or LG appropriate to the endorsement applied for;

(2) 30 days of service as a licensed engineering officer on tankships certified to carry DL or LG appropriate to the endorsement applied for, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a); or

(3) 60 days of unlicensed service in the engine department on tankships certified to carry DL or LG appropriate to the endorsement applied for, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a).

(b) Each applicant already holding an MMD endorsed "Tankerman-Engineer" for DL and seeking one for LG, or the converse, shall provide evidence of at least half the service required by—

(1) Paragraph (a)(1) of this section; or

(2) Paragraph (a)(2) or (3) of this section, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a).

§ 13.505 Proof of service for "Tankerman-Engineer" endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, or master or chief engineer of a tankship. The letter must specify—

(1) The classification of cargo (DL, LG, or both) carried while the applicant accumulated the service; and

(2) The number of days of licensed and unlicensed service in the engine department on tankships; or

(b) Service must be proved by certificates of discharge from tankships with the appropriate classification of cargo (DL, LG, or both).

§ 13.507 Eligibility requirements: Firefighting course.

Each applicant for a "Tankerman-Engineer" endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), "Training of Crews in Fire Fighting",

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completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or tankerman endorsement.

§ 13.509 Eligibility requirements: Cargo course.

Each applicant for an original "Tankerman-Engineer" endorsement that has not presented service prescribed by § 13.503(a)(1) must present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

PART 15—MANNING REQUIREMENTS

12. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

13. Section 15.301 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d), to read as follows:

§ 15.301 Definitions of terms in this part.

(a) * * *

Tank barge means a non-self-propelled tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Tankship means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue and propelled by power or sail.

Transfer means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 of this chapter describes what qualifies as participation in a creditable transfer.

* * * * *

(c) The following ratings are established in part 12 of this chapter. When used in this part, terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(1) Able seaman.
(2) Ordinary seaman.
(3) Qualified member of the engine department.
(4) Lifeboatman.
(5) Wiper.
(6) Steward's department (F.H.).

(d) The following ratings are established in part 13 of this chapter. When used in this part, the terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(1) Tankerman-PIC.
(2) Tankerman-PIC (Barge).
(3) Restricted Tankerman-PIC.
(4) Restricted Tankerman-PIC (Barge).
(5) Tankerman-Assistant.
(6) Tankerman-Engineer.

14. Section 15.860 is added to subpart G, to read as follows:

§ 15.860 Tankerman.

(a) The Officer in Charge, Marine Inspection, enters on the Certificate of Inspection issued to each manned tank vessel subject to the regulations in this chapter the number of crewmembers required to hold valid merchant mariners' documents with the proper tankerman endorsement. Table 15.860(a)(1) provides the minimal requirements for tankermen aboard manned tank vessels; Table 15.860(a)(2) provides the tankerman endorsements required for personnel aboard tankships.

(b) For each tankship of more than 5,000 gross tons certified for voyages beyond the Boundary Line:

(1) The number of "Tankerman-PICs" or restricted "Tankerman-PICs" carried must be not fewer than two.

(2) The number of "Tankerman-Assistants" carried must be not fewer than three.

(3) The number of "Tankerman-Engineers" carried must be not fewer than two.

(c) For each tankship of 5,000 gross tons or less certified for voyages beyond the Boundary Line:

(1) The number of "Tankerman-PICs" or restricted "Tankerman-PICs" carried must be not fewer than two.

(2) The number of "Tankerman-Engineers" carried must be not fewer than two, unless only one engineer is required, in which case the number of "Tankerman-Engineers" carried may be just one.

(d) For each tankship not certified for voyages beyond the Boundary Line, if the total crew complement is:

(1) One or two, the number of "Tankerman-PICs" or restricted "Tankerman-PICs" carried may be just one.

(2) More than two, the number of "Tankerman-PICs" or restricted "Tankerman-PICs" carried must be not fewer than two.

(e) For each tank barge manned under § 31.15–5 of this chapter, if the total crew complement is:

(1) One or two, the number of "Tankerman-PICs", restricted "Tankerman-PICs", "Tankerman-PICs (Barge)", or restricted "Tankerman-PICs (Barge)" carried may be just one.

(2) More than two, the number of "Tankerman-PICs", restricted "Tankerman-PICs", "Tankerman-PICs (Barge)", or restricted "Tankerman-PICs (Barge)" carried must be not fewer than two.

(f) The following personnel aboard each tankship certified for voyages beyond the Boundary Line shall hold valid merchant mariners' documents, endorsed as follows:

(1) The master and chief mate shall each hold a "Tankerman-PIC" or restricted "Tankerman-PIC" endorsement.

(2) The chief, first assistant, and cargo engineers shall each hold a "Tankerman-Engineer" or "Tankerman (PIC)" endorsement.

(3) Each licensed person acting as the PIC of a transfer of liquid cargo in bulk shall hold a "Tankerman-PIC" or restricted "Tankerman-PIC" endorsement.

(4) Each licensed or unlicensed person, who is assigned by the PIC duties and responsibilities related to the cargo or cargo-handling equipment during a transfer of liquid cargo in bulk but is not directly supervised by the PIC, shall hold a "Tankerman-Assistant" endorsement.

(g) The endorsements required by this section must be for the classification of the liquid cargo in bulk or of the cargo residue being carried.

TABLE 15.860(a)(1).—MINIMAL REQUIREMENTS FOR TANKERMEN ABOARD MANNED TANK VESSELS

Tank vessels	Tankerman PIC	Tankerman assistant	Tankerman engineer	Tankerman PIC or tankerman PIC (barge)
Tankship Certified for Voyages Beyond Boundary Line:				
Over 5000 GT	2	3	2	.....
5000 GT or less	2	.....	*2	.....

TABLE 15.860(a)(1).—MINIMAL REQUIREMENTS FOR TANKERMEN ABOARD MANNED TANK VESSELS—Continued

Tank vessels	Tankerman PIC	Tankerman assistant	Tankerman engineer	Tankerman PIC or tankerman PIC (barge)
Tankship Not Certified for Voyages Beyond Boundary Line	**2	.....	.....	.....
Tank Barge Certified for Voyages Beyond Boundary Line	.....	.....	.....	***2

* If only one engineer is required, then only one Tankerman Engineer is required.
** If the total crew complement is one or two persons, then only one Tankerman PIC is required.
*** If the total crew complement is one or two persons, then only one Tankerman PIC or Tankerman PIC (Barge) is required.

TABLE 15.860(a)(2).—TANKERMEN ENDORSEMENTS REQUIRED FOR PERSONNEL ABOARD TANKSHIPS

[Endorsement for the Classification of the Bulk Liquid Cargo or Residues Carried]

Tankship certified for voyages beyond boundary line	Tankerman PIC		Tankerman engineer	Tankerman assistant
Master	✔			
Chief Mate	✔			
Chief Engineer	✔	or	✔	
First Assistant Engineer	✔	or	✔	
Cargo Engineer	✔	or	✔	
Licensed Person Acting as PIC of Transfer of Liquid Cargo in Bulk	✔			
Licensed or Unlicensed Person Not Directly Supervised by PIC	.....	.....	.....	✔

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

15. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

16. Section 30.10–71 is revised to read as follows:

§ 30.10–71 Tankerman—TB/ALL.

The following ratings are established in part 13 of this chapter. The terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.
(b) Tankerman-PIC (Barge).
(c) Restricted Tankerman-PIC.
(d) Restricted Tankerman-PIC (Barge).
(e) Tankerman-Assistant.
(f) Tankerman-Engineer.

PART 31—INSPECTION AND CERTIFICATION

17. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105, 9101, 9102; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

18. Section 31.15–1 is revised to read as follows:

§ 31.15–1 Licensed officers and crews—TB/ALL.

The Officer in Charge, Marine Inspection (OCMI), that inspects the vessel enters on the Certificate of Inspection (COI) for each tank vessel the complement of officers and crew that are required by statute and regulation and that in the judgment of the OCMI are necessary for its safe operation. The OCMI may change the complement from time to time by endorsement to the COI for changes in conditions of employment.

PART 35—OPERATIONS

19. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101, 9101, 9102; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 CFR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

20. Section 35.05–15 is amended by revising the section heading and paragraph (b)(1) to read as follows:

§ 35.05–15 Tank vessel security—TB/ALL.

* * * * *

(b) * * *

(1) The owner, managing operator, master, and person in charge of a vessel towing a tank barge that need not be manned, and each of them, shall be responsible for monitoring the security and integrity of the tank barge and for ensuring adherence to proper safety precautions. These responsibilities include, but are not limited to—

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing-ports and scuppers, if any, unobstructed; meets any loadline or freeboard requirements; and neither leaks cargo into the water, voids, or cofferdams nor leaks water into the tanks, voids, or cofferdams;

(ii) Ensuring that every tank barge in the tow is properly secured within the tow;

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage of cargo into the water, voids, or cofferdams and for leakage of water into the tanks, voids, or cofferdams;

(iv) Knowing the cargo of every tank barge in the tow, any hazards associated with the cargo, and what to do on discovery of a leak;

(v) Ensuring that the crew of the vessel know the cargo of every tank barge in the tow, any hazards associated with the cargo, and what to do on discovery of a leak;

(vi) Reporting to the Coast Guard any leaks from a tank barge in the tow into the water, as required by 33 CFR 151.15; and

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the proper safety precautions for tank vessels, and that no activity takes place in the vicinity of the barges that could create a hazard.

* * * * *

21. Section 35.35–1 is revised to read as follows:

§ 35.35–1 Persons on duty—TB/ALL.

(a) On each tankship required to be documented under the laws of the

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United States, the owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that—

(1) Enough "Tankerman-PICs" or restricted "Tankerman-PICs", and "Tankerman-Assistants", authorized for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a person qualified to be the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(b) On each United States tank barge subject to inspection—

(1) The owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155; and

(2) The person designated as the person in charge of the transfer shall ensure that—

(i) Enough qualified personnel are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(ii) The approved portable extinguishers required by Table 34.50–10(a) of this chapter are aboard and readily available before any transfer of liquid cargo in bulk or any operation of barge machinery or boilers.

(c) On each foreign tankship, the owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that—

(1) Enough personnel, qualified for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a qualified person designated as a person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(d) On each foreign tank barge—

(1) The owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(2) The person designated as the person in charge of the transfer shall ensure that enough qualified personnel are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks.

(e) The person in charge of the transfer of liquid cargo in bulk on the tank vessel shall be responsible for the safe loading and discharge of the liquid cargo in bulk.

(f) The person in charge of the transfer of liquid cargo in bulk on each United States tank vessel, when lightering to or from a foreign tank vessel, shall ensure that the person in charge on the foreign tank vessel, or his or her interpreter, is capable of reading, speaking, and understanding the English language well enough to allow a safe transfer.

22. Section 35.35–10 is revised to read as follows:

§ 35.35–10 Closing of freeing-ports, scuppers, and sea valves—TB/ALL.

The person in charge of each transfer of liquid cargo in bulk shall ensure that all freeing-ports and scuppers are properly plugged during the transfer except on tank vessels using water for cooling decks. Although under no circumstances may sea valves be secured by locks, the valves must be closed, and lashed or sealed, to indicate that they should not be opened during the transfer.

23. Section 35.35–15 is amended by revising paragraph (b) to read as follows:

§ 35.35–15 Connecting for cargo transfer—TB/ALL.

* * * * *

(b) When cargo connections are supported by ship's tackle, the person in charge of the transfer of liquid cargo in bulk shall determine the weights involved to ensure that adequate tackle is used.

* * * * *

24. The heading and introductory text of § 35.35–20 are revised to read as follows:

§ 35.35–20 Inspection before transfer of cargo—TB/ALL.

Before the transfer of liquid cargo in bulk, the person in charge of the transfer shall inspect the vessel to ensure the following:

* * * * *

25. Section 35.35–25 is revised to read as follows:

§ 35.35–25 Approval to start transfer of cargo—TB/ALL.

When the person in charge of the transfer of liquid cargo in bulk has ensured that the requirements of §§ 35.35–20 and 35.35–30 have been met, he or she may give approval to start the transfer.

26. Section 35.35–30 is amended by revising the first sentence of paragraph (a), the title and introductory text of the "Declaration of Inspection before Transfer of Liquid Cargo in Bulk" of paragraph (b), and by adding a new paragraph (13) to the "Declaration of Inspection " in paragraph (b) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tank vessel—TB/ALL.

(a) After an inspection under § 35.35–20 but before a transfer of cargo, the person in charge of the transfer shall prepare, in duplicate, a Declaration of Inspection * * *

(b) * * *

Declaration of Inspection Before Transfer of Liquid Cargo in Bulk

Date _____

Vessel _____

Port of _____

Product[s] being transferred—
(Classification[s] and Kind[s])

_____

_____

I, _____, the person in charge of the transfer of liquid cargo in bulk about to begin, do certify that I have personally inspected this vessel with reference to the following requirements set forth in 46 CFR 35.35–20, and that opposite each of the applicable items listed below I have indicated whether the vessel complies with all pertinent regulations.

* * *

(13) Have the applicable sections of the vessel response plan been reviewed before commencing transfer, and arrangements or contingencies made for implementation of the Plan should the need arise?

* * * * *

27. Section 35.35–35 is revised to read as follows:

§ 35.35–35 Duties of person in charge of transfer—TB/ALL.

The person in charge of the transfer of liquid cargo in bulk shall control the transfer as follows:

(a) Supervise the operations of cargo-system valves.

(b) Commence transfer of cargo at slow rate of cargo flow.

(c) Observe cargo connections for leakage.

(d) Observe pressure on cargo system.

(e) If transfer is loading (rather than discharging), observe rate of loading to avoid overflow of tanks.

28. Section 35.35–42 is revised to read as follows:

§ 35.35–42 Restrictions on vessels alongside a tank vessel loading or unloading cargo of Grade A, B, or C—TB/ALL.

(a) No vessel may come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading or unloading cargo of Grade A, B, or C without permission of the person in charge of the transfer on the tank vessel.

(b) No vessel may come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading or unloading cargo of Grade A, B, or C unless the conditions then prevailing are acceptable to the persons in charge of cargo-handling on both vessels.

29. Section 35.35–55 is amended by revising paragraph (a) to read as follows:

§ 35.35–55 Transfer of other cargo or stores on tank vessels—TB/ALL.

(a) No packaged goods, freight, or ship's stores may be loaded or unloaded during the loading or unloading of cargo of Grade A, B, or C except by permission of the person in charge of the transfer of liquid cargo in bulk. No explosives may be loaded, unloaded, or carried as cargo on any tank vessel containing cargo of Grade A, B, or C.

* * * * * *

SUBCHAPTER H—PASSENGER VESSELS

PART 78—OPERATIONS

30. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Subpart 78.95 consisting of § 78.95–1 is added to read as follows:

Subpart 78.95—Person in Charge of Transfer of Liquid Cargo in Bulk

§ 78.95–1 General.

A qualified person in charge of a transfer of liquid cargo in bulk shall be designated in accordance with subpart C of 33 CFR part 155.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

32. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

33. Section 90.10–42 is added to read as follows:

§ 90.10–42 Tankerman.

The following ratings are established in part 13 of this chapter. The terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.

(b) Tankerman-PIC (Barge).

(c) Restricted Tankerman-PIC.

(d) Restricted Tankerman-PIC (Barge)

(e) Tankerman-Assistant.

(f) Tankerman-Engineer.

PART 97—OPERATIONS

34. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

35. Subpart 97.95 consisting of § 97.95–1 is added to read as follows:

Subpart 97.95—Person in Charge of Transfer of Liquid Cargo in Bulk

§ 97.95–1 General.

A qualified person in charge of a transfer of liquid cargo in bulk shall be designated in accordance with subpart C of 33 CFR part 155.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

36. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37. Section 98.30–17 is revised to read as follows:

§ 98.30–17 Qualifications of person in charge.

(a) The operator or agent of each vessel shall designate the person in charge of a transfer of liquid cargo in bulk to or from a portable tank.

(b) Each person designated as person in charge of a transfer of liquid cargo in bulk to or from a portable tank shall—

(1) On a tank barge, hold a "Tankerman-PIC", restricted "Tankerman-PIC", "Tankerman-PIC (Barge)", or restricted "Tankerman-PIC (Barge)" merchant mariner's document authorizing transfer of the classification of cargo involved;

(2) On a self-propelled tank vessel, hold—

(i) A license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel; and

(ii) A "Tankerman-PIC" or restricted "Tankerman-PIC" merchant mariner's document authorizing transfer of the classification of cargo involved; and

(3) On a vessel other than a tank vessel required by this chapter to have a licensed individual aboard, hold—

(i) If the liquid cargo in bulk is of Grade D or E and is carried in limited amounts, a license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel; and

(ii) If the liquid cargo in bulk is of Grade C or above or is regulated under part 153 of this chapter, a "Tankerman-PIC" or restricted "Tankerman-PIC" merchant mariner's document authorizing transfer of the classification of cargo involved.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

38. The authority citation for part 105 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

39. Section 105.45–1 is revised to read as follows:

§ 105.45–1 Loading or dispensing petroleum products.

(a) A commercial fishing vessel must have aboard a letter of compliance valid under subpart 105.15 of this part and must be in compliance with the requirements in the letter while dispensing petroleum products. This letter of compliance issued to a vessel will state—

(1) The number of crewmembers required to hold documents endorsed as tankermen under part 13 of this chapter; and

(2) For each vessel of 200 gross tons or over, the complement of officers under Title 46 U.S.C. 8304.

(b) Each person in charge of a transfer of liquid cargo in bulk to or from a cargo tank shall hold—

(1) A valid merchant mariner's document endorsed as "Tankerman-PIC" or restricted "Tankerman-PIC" authorizing transfer of the classification of cargo involved; or

(2) A valid license authorizing service as master, mate, pilot, or engineer.

40. Subparts 105.50 consisting of §§ 105.50–1 and 105.50–5 and 105.60 consisting of §§ 105.60–1, 105.60–5, and 105.60–10 are removed.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

41. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

42. Section 151.03–53 is revised to read as follows:

§ 151.03–53 Tankerman.

The following ratings are established in part 13 of this chapter. The terms for

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the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.
(b) Tankerman-PIC (Barge).
(c) Restricted Tankerman-PIC.
(d) Restricted Tankerman-PIC (Barge).
(e) Tankerman-Assistant.
(f) Tankerman-Engineer.

43. Paragraph (f)(1) of § 151.45–2 is revised to read as follows:

§ 151.45–2 Special operating requirements.

* * * * *

(f) * * *

(1) The licensed operator, person in command, and mate of a vessel towing a tank barge that need not be manned, and each of them, shall be responsible for monitoring the security and integrity of the tank barge and for ensuring adherence to proper safety precautions. These responsibilities include, but are not limited to—

(i) Ensuring that every tank barge added to the tow has all tank openings properly secured; has its freeing-ports and scuppers, if any, unobstructed; meets any loadline or freeboard requirements; and neither leaks cargo into the water, voids, or cofferdams nor leaks water into the tanks, voids, or cofferdams;

(ii) Ensuring that every tank barge in the tow is properly secured within the tow;

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage of cargo into the water, voids, or cofferdams and for leakage of water into the tanks, voids, or cofferdams;

(iv) Knowing the cargo of every tank barge in the tow, all hazards associated with the cargo, and what to do on discovery of a leak;

(v) Ensuring that the crew of the vessel know the cargo of every tank barge in the tow, all hazards associated with the cargo, and what to do on discovery of a leak;

(vi) Reporting to the Coast Guard any leaks from a tank barge in the tow into the water, as required by 33 CFR 151.15; and

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the proper safety precautions for tank vessels, and that no activity takes place in the vicinity of the barges that could create a hazard.

* * * * *

44. Section 151.45–4 is amended by revising its heading and paragraph (a) to read as follows:

§ 151.45–4 Cargo-handling.

(a) On a United States tank barge subject to inspection—

(1) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under Subpart C of 33 CFR part 155.

(2) The person in charge of the transfer shall ensure that enough qualified personnel are on duty to safely transfer liquid cargo in bulk or to safely clean cargo tanks.

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

45. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

46. Section 153.957 is revised to read as follows:

§ 153.957 Persons in charge of transferring liquid cargo in bulk or cleaning cargo tanks.

(a) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that—

(1) Enough "Tankerman-PICs" or restricted "Tankerman-PICs", and "Tankerman-Assistants", authorized for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or to safely clean cargo tanks;

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a qualified person designated as a person in charge of the transfer or the cleaning under Subpart C of 33 CFR part 155;

(3) When cargo regulated under this part is due for transfer, the person in charge of the transfer has received special training in the particular hazards associated with the cargo and in all special procedures for its handling; and

(4) On each foreign vessel, the person in charge understands his or her responsibilities as described in this subchapter.

(b) Upon request by the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, the owner and operator of the vessel, and his or her agent, and each of them, shall provide documentary evidence that the person in charge has received the training specified by paragraph (a)(3) of this section and is capable of competently performing the procedures necessary for the cargo.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

47. The authority citation for part 154 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 CFR 1.46.

48. Section 154.1831 and is revised to read as follows:

§ 154.1831 Persons in charge of transferring liquid cargo in bulk or preparing cargo tanks.

(a) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that—

(1) Enough "Tankerman-PICs" or restricted "Tankerman-PICs", and "Tankerman-Assistants", authorized for the classification of cargo carried, are on duty to safely conduct a transfer of liquid cargo in bulk or a cool-down, warm-up, gas-free, or air-out of each cargo tank;

(2) Each transfer of liquid cargo in bulk, and each cool-down, warm-up, gas-free, or air-out of a cargo tank, is supervised by a person designated as a person in charge of the transfer that possesses the qualifications required by 33 CFR 155.710;

(3) On each foreign tankship, the person in charge of either a transfer of liquid cargo in bulk or a cool-down, warm-up, gas-free, or air-out of a cargo tank possesses the qualifications required by 33 CFR 155.710;

(4) When cargo regulated under this part is being transferred, the person in charge of the transfer has received special training in the particular hazards associated with the cargo and in all special procedures for its handling; and

(5) On each foreign vessel, the person in charge understands his or her responsibilities as described in this subchapter.

(b) Upon request by the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, the owner and operator of the vessel, and his or her agent, and each of them, shall provide documentary evidence that the person in charge has received the training specified by paragraph (a)(4) of this section and is capable of competently performing the procedures necessary for the cargo.

Dated: March 24, 1995.

J.C. Card,

Rear Admiral, Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–8123; Filed 4–3–95; 8:45 am]
BILLING CODE 4910–14–P

federal register

Tuesday
April 4, 1995

Part IV

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Technical Amendments; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-5162-7]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Technical amendments.

SUMMARY: This action under the Clean Water Act (CWA) section 304(h) amends 40 CFR Part 136 to add clarifying footnotes to the lists of approved test procedures, to update method citations in Tables IA, IB, IC, and ID, to amend the incorporation by reference section of the regulation accordingly, and to correct certain typographical errors and omissions in the Technical Amendments appearing in the **Federal Register** of January 31, 1994.

EFFECTIVE DATE: This amendment becomes effective on May 4, 1995. The incorporation by reference of the publications listed in this document are approved by the Director of Federal Register as of May 4, 1995.

FOR FURTHER INFORMATION CONTACT: James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Telephone Number: (513) 569-7308.

SUPPLEMENTARY INFORMATION:

I

These technical amendments update and/or correct errors and inadvertent omissions in the references to analytical methods already approved under section 304(h) to the current editions published by EPA, U.S. Geological Survey, Standard Methods for the Examination of Water and Wastewater (Standard Methods), the American Society for Testing and Materials (ASTM), and the Association of Official Analytical Chemists (AOAC) International. No new methods are introduced. EPA has carefully reviewed each approved method for substantive changes between the current editions and the previously approved editions. Methods cited in this amendment that were not previously cited are substantively the same as the approved EPA method and/or were derived from the EPA method.

II

References in Table IB, to the American Society for Testing and Materials (ASTM), have also been updated and corrected where appropriate to the 1994 edition. Several ASTM methods are no longer cited because they have been discontinued by ASTM and are not included in the 1994 Standards book.

III

The remaining amendments in this notice are very minor and are typographical or editorial in nature. The parts of Tables IA, IC and ID, and certain notes to Tables IB, IC, and ID where reference updates, corrections, and clarifications have been made are reprinted in this notice for the information and use of the regulated community. Table IB has been reprinted in its entirety for the convenience of the user.

Unless otherwise indicated in this notice, the methods contained in the Standard Methods 18th edition and the ASTM Standards 1994 edition are previously approved methods that were reballoted without technical change or were not reballoted. Any changes are editorial, typographical, or grammatical.

IV Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that these technical amendments are not major as they will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. These amendments simply specify analytical techniques which may be used by laboratories in measuring concentrations of certain analytes and, therefore, have no adverse economic impacts.

B. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553 (b)(B), authorizes an agency to forego notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. EPA believes that public comment on the foregoing technical amendments is unnecessary because the updates to method references do not change the methods contained therein. In publishing the new editions of their test protocols, ASTM and Standard Methods have balloted these methods for reapproval without technical change or the methods were republished as unballoted. Additionally, the typographical errors corrected in the CFR do not amend substantive requirements. Therefore, notice and public procedure is unnecessary and does not apply to this Technical Amendment Notice.

C. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) because it will not have a significant economic impact on a substantial number of small entities. The procedures cited in this rule give all laboratories the flexibility to use these procedures or already approved alternative procedures.

D. Paperwork Reduction Act

This rule contains no request for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: February 15, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development, U.S. Environmental Protection Agency.

40 CFR part 136 is amended as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95-217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended as follows:

a. In paragraph (a) by revising entries 1 and 2 of Table IA, Table IB, entries 33 and 37 and Notes 3 and 5[a] of Table IC, entries 8, 9, 10, and 22 and Note 5 of Table ID;

b. In paragraph (b) by revising Reference 10; and

c. In paragraph (e), in table II, under "Table IB-Inorganic Tests:" by revising entry 10 and under "Metals:" by revising entries "3, 5-8, 12, 13, 19, 20, 22, 26, 29, 30, 32-34, 36, 37, 45, 47, 51, 52, 58-60, 62, 63, 70-72, 74, 75. Metals.

except boron, chromium VI and mercury", 42 and 61, to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL TEST PROCEDURES

Parameter, units and method	Method[1]	Reference (method No. or page) EPA[2]	Standard methods 18th ed.	ASTM	USGS[3]
Bacteria:					
1. Coliform (fecal), number per 100 mL	Most Probable Number (MPN), 5 tube, 3 dilution.	p. 132	9221C and E.		
	Membrane filter (MF)[4], single step.	p. 124	9222D		B-0050-85
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution	p. 132	9221C and E.		
	MF[4], single step[5]	p. 124	9222D		

Table IA Notes:

[1] The method used must be specified when results are reported.

[2] Bordner, R.H., and J.A. Winter, eds. 1978. "Microbiological Methods for Monitoring the Environment, Water and Waste". Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency. EPA-600/8-78-017.

[3] Britton, L.J., and P.E. Greeson, P.E., eds., 1989. "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples," Techniques of Water Resources Investigations of the U.S. Geological Survey, Techniques of Water Resources Investigations, Book 5, Chapter A4, Laboratory Analysis, U.S. Geological Survey, U.S. Department of Interior, Reston, Virginia.

[4] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated, and to be free of extractables which could interfere with their growth.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page) EPA[1,35]	STD methods 18th ed.	ASTM	USGS[2]	Other
1. Acidity, as $CaCO_3$, mg/L:					
Electrometric endpoint or phenolphthalein endpoint.	305.1	2310 B(4a)	D1067-92		
2. Alkalinity, as $CaCO_3$, mg/L:					
Electrometric or Colorimetric titration to pH 4.5, manual or automated.	310.1 310.2	2320 B	D1067-92	I-1030-85 I-2030-85	973.43.[3]
3. Aluminum—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	202.1	3111 D		I-3051-85	
AA furnace	202.2	3113 B			
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES)[36].	[5]200.7	3120 B			
Direct Current Plasma (DCP)[36]			D4190-82(88)		Note 34.
Colorimetric (Eriochrome cyanine R).		3500-Al D			
4. Ammonia (as N), mg/L:					
Manual, distillation (at pH 9.5),[6] followed by.	350.2	4500-NH_3 B			973.49.[3]
Nesslerization	350.2	4500-NH_3 C	D1426-93(A)	I-3520-85	973.49.[3]
Titration	350.2	4500-NH_3 E			
Electrode	350.3	4500-NH_3 F or G	D1426-93(B)		
Automated phenate, or	350.1	4500-NH_3 H		I-4523-85	
Automated electrode					Note 7.
5. Antimony-Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	204.1	3111 B			
AA furnace	204.2	3113 B			
ICP/AES[36]	[5]200.7	3120 B			
6. Arsenic-Total,[4] mg/L:					
Digestion[4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d	D2972-93(B)	I-3062-85	
AA furnace	206.2	3113 B	D2972-93(C)		

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TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	STD methods 18th ed.	ASTM	USGS [2]	Other
ICP/AES,[36] or	[5]200.7	3120 B			
Colorimetric (SDDC)	206.4	3500–As C	D2972–93(A)	I–3060–85	
7. Barium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	208.1	3111 D		I–3084–85	
AA furnace	208.2	3113 B	D4382–91		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36]					Note 34.
8. Beryllium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	210.1	3111 D	D3645–93(B)(A)	I–3095–85	
AA furnace	210.2	3113 B	D3645–93(B)(B)		
ICP/AES	[5]200.7	3120 B			
DCP, or			D4190–82(88)		Note 34.
Colorimetric (aluminon)		3500–Be D			
9. Biochemical oxygen demand (BOD_5), mg/L:					
Dissolved Oxygen Depletion	405.1	5210 B		I–1578–78[6]	973.44,[3] p. 17.[9]
10. Boron[37]—Total, mg/L:					
Colorimetric (curcumin)	212.3	4500–B B		I–3112–85	
ICP/AES, or	[5]200.7	3120 B			
DCP			D4190–82(88)		Note 3.[4]
11. Bromide, mg/L:					
Titrimetric	320.1		D1246–82(88)(C)	I–1125–85	p. S44.[10]
12. Cadmium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	213.1	3111 B or C	D3557–90(A or B)	I–3135–85 or I–3136–85.	974.27,[3] p. 37.[9]
AA furnace	213.2	3113 B	D3557–90(D)		
ICP/AES[36]	[5]200.7	3120 B		I–1472–85	
DCP[36]			D4190–82(88)		Note 34.
Voltametry,[11] or			D3557–90(C)		
Colorimetric (Dithizone)		3500–Cd D			
13. Calcium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	215.1	3111 B	D511–93(B)	I–3152–85	
ICP/AES	[5]200.7	3120 B			
DCP, or					Note 34.
Titrimetric (EDTA)	215.2	3500–Ca D	D511–93(A)		
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L[12]:					
Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B			
15. Chemical oxygen demand (COD), mg/L; Titrimetric, or	410.1	5220 C	D1252–88(A)	I–3560–85	973.46,[3] p. 17.[9]
	410.2			I–3562–85	
	410.3				
Spectrophotometric, manual or automated.	410.4	5220 D	D1252–88(B)	I–3561–85	Notes 13 or 14.
16. Chloride, mg/L:					
Titrimetric (silver nitrate) or		4500–Cl⁻ B	D512–89(B)	I–1183–85	
(Mercuric nitrate)	325.3	4500–Cl⁻ C	D512–89(A)	I–1184–85	973.51.[3]
Colorimetric, manual or				I–1187–85	
Automated (Ferricyanide)	325.1 or 325.2	4500–Cl⁻ E		I–2187–85	
17. Chlorine—Total residual, mg/L; Titrimetric:					
Amperometric direct	330.1	4500–Cl D	D1253–86(92)		
Iodometric direct	330.3	4500–Cl B			
Back titration ether end- point[15] or	330.2	4500–Cl C			
DPD–FAS	330.4	4500–Cl F			
Spectrophotometric, DPD	330.5	4500–Cl G			
Or Electrode					Note 16.
18. Chromium VI dissolved, mg/L, 0.45 micron filtration followed by:					
AA chelation-extraction or	218.4	3111 C		I–1232–85	
Colorimetric (Diphenylcarbazide)		3500–Cr D	D1687–92(A)	I–1230–85	
19. Chromium—Total,[4] mg/L, Digestion[4] followed by:					
AA direct aspiration[36]	218.1	3111 B	D1687–92(B)	I–3236–85	974.27.[3]

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	STD methods 18th ed.	ASTM	USGS [2]	Other
AA chelation-extraction	218.3	3111 C			
AA furnace	218.2	3113 B	D1687–92(C)		
ICP/AES[36]	[5]200.7	3120 B			
DCP,[36] or			D4190–82(88)		Note 34.
Colorimetric (Diphenylcarbazide)		3500–Cr D			
20. Cobalt—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	219.1	3111 B or C	D3558–90(A or B)	I–3239–85	p. 37.[9]
AA furnace	219.2	3113 B	D3558–90(C)		
ICP/AES	[5]200.7	3120 B			
DCP			D4190–82(88)		Note 34.
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI), or	110.1	2120 E			Note 18.
(Platinum cobalt), or	110.2	2120 B		I–1250–85	
Spectrophotometric	110.3	2120 C			
22. Copper—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	220.1	3111 B or C	D1688–90(A or B)	I–3270–85 or I3271–85.	974.27[3] p. 37.[v]
AA furnace	220.2	3113 B	D1688–90(C)		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36] or			D4190–82(88)		Note 34.
Colorimetric (Neocuproine) or		3500–Cu D			
(Bicinchoninate)		Or E			Note 19.
23. Cyanide—Total, mg/L:					
Manual distillation with $MgCl_2$ followed by.		4500–CN C	D2036–91(A)		
Titrimetric, or		4500–CN D			p. 22.[v]
Spectrophotometric, manual or	[31]335.2	4500–CN E	D2036–91(A)	I–3300–85	
Automated[20]	[31]335.3				
24. Cyanide amenable to chlorination,mg/L:					
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500–CN G	D2036–91(B)		
25. Fluoride—Total, mg/L:					
Manual distillation[6] followed by		4500–F B			
Electrode, manual or	340.2	4500–F C	D1179–93(B)		
Automated				I–4327–85	
Colorimetric (SPADNS)	340.1	4500–F D	D1179–93(A)		
Or Automated complexone	340.3	4500–F E			
26. Gold—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	231.1	3111 B			
AA furnace, or	231.2				
DCP					Note 34.
27. Hardness—Total, as $CaCO_3$, mg/L					
Automated colorimetric,	130.1				
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33).	130.2	2340 B or C	D1126–86(92)	I–1338–85	973.52B.[3]
28. Hydrogen ion (pH), pH units					
Electrometric measurement, or	150.1	4500–H⁺ B	D1293–84(90)(A or B)	I–1586–85	973.41.[3]
Automated electrode					Note 21.
29. Iridium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration or	235.1	3111 B			
AA furnace	235.2				
30. Iron—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	236.1	3111 B or C	D1068–90(A or B)	I–3381–85	974.27.[3]
AA furnace	236.2	3113 B	D1068–90(C)		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36] or			D4190–82(88)		Note 34.
Colorimetric (Phenanthroline)		3500–Fe D	D1068–90(D)		Note 22.

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TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA[1,35]	STD methods 18th ed.	ASTM	USGS[2]	Other
31. Kjeldahl Nitrogen—Total, (as N), mg/L					
Digestion and distillation followed by.	351.3	4500–NH_3 B or C	D3590–89(A)		
Titration	351.3	4500–NH_3 E	D3590–89(A)		973.48.[3]
Nesslerization	351.3	4500–NH_3 C	D3590–89(A)		
Electrode	351.3	4500–NH_3 F or G			
Automated phenate colorimetric	351.1			I–4551–78[8]	
Semi-automated block digestor colorimetric, or.	351.2		D3590–89(B)		
Manual or block digestor Potentiometric.	351.4		D3590–89(A)		
32. Lead—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	239.1	3111 B or C	D3559–90(A or B)	I–3399–85	974.27.[3]
AA furnace	239.2	3113 B	D3559–90(D)		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36]			D4190–82(88)		Note 34.
Voltametry[11] or			D3559–90(C)		
Colorimetric (Dithizone)		3500–Pb D			
33. Magnesium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	242.1	3111 B	D511–93(B)	I–3447–85	974.27.[3]
ICP/AES	[5]200.7	3120 B			
DCP, or					Note 34.
Gravimetric		3500–Mg D			
34. Manganese—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	243.1	3111 B	D858–90(A or B)	I–3454–85	974.27.[3]
AA furnace	243.2	3113 B	D858–90(C)		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36] or			D4190–82(88)		Note 34.
Colorimetric (Persulfate), or		3500–Mn D			920.203.[3]
(Periodate)					Note 23.
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual or	245.1	3112 B	D3223–91	I–3462–85	977.22.[3]
Automated	245.2				
36. Molybdenum—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	246.1	3111 D		I–3490–85	
AA furnace	246.2	3113 B			
ICP/AES	[5]200.7	3120 B			
DCP					Note 34.
37. Nickel—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	249.1	3111 B or C	D1886–90(A or B)	I–3499–85	
AA furnace	249.2	3113 B	D1886–90(C)		
ICP/AES[36]	[5]200.7	3120 B			
DCP[36], or			D4190–82(88)		Note 34.
Colorimetric (heptoxime)		3500–Ni D			
38. Nitrate (as N), mg/L:					
Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).	352.1				973.50,[3] 419 D,[17] p. 28.[9]
39. Nitrate-nitrite (as N), mg/L:					
Cadmium reduction, Manual or	353.3	4500–NO_3– E	D3867–90(B)		
Automated, or	353.2	4500–NO_3– F	D3867–90(A)	I–4545–85	
Automated hydrazine	353.1	4500–NO_3– H			
40. Nitrite (as N), mg/L; Spectrophotometric:					
Manual or	354.1	4500–NO_2– B			Note 25.
Automated (Diazotization)				I–4540–85	
41 Oil and grease—Total recoverable, mg/L:					
Gravimetric (extraction)	413.1	5520 B[38]			
42. Organic carbon—Total (TOC), mg/L.					
Combustion or oxidation	415.1	5310 B, C, or D	D2579–93 (A or B)		973.47,[3] p. 14.[24]
43. Organic nitrogen (as N), mg/L					

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA[1,35]	STD methods 18th ed.	ASTM	USGS[2]	Other
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4)					
44. Orthophosphate (as P), mg/L; Ascorbic acid method:					
Automated, or	365.1	4500–P F		I–4601–85	973.56.[3]
Manual single reagent	365.2	4500–P E	D515–88(A)		973.55.[3]
Manual two reagent	365.3				
45. Osmium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	252.1	3111 D			
AA furnace	252.2				
46. Oxygen, dissolved, mg/L:					
Winkler (Azide modification), or	360.2	4500–O C	D888–92(A)	I–1575–78[8]	973.45B.[3]
Electrode	360.1	4500–O G	D888–92(B)	I–1576–78[8]	
47. Palladium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration, or	253.1	3111 B			p. S27.[10]
AA furnace	253.2				p. S28.[10]
DCP					Note 34.
48. Phenols, mg/L:					
Manual distillation[26]	420.1				Note 27.
Followed by:					
Colorimetric (4AAP) manual, or	420.1				Note 27.
Automated[19]	420.2				
49. Phosphorus (elemental), mg/L:					
Gas-liquid chromatography					Note 28.
50. Phosphorus—Total, mg/L:					
Persulfate digestion followed by	365.2	4500–P B,5			973.55.[3]
Manual or	365.2 or 365.3	4500–P E	D515–88(A)		
Automated ascorbic acid reduction	365.1	4500–P F		I–4600–85	973.56.[3]
Semi-automated block digestor	365.4		D515–88(B)		
51. Platinum—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	255.1	3111 B			
AA furnace	255.2				
DCP					Note 34.
52. Potassium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	258.1	3111 B		I–3630–85	973.53.[3]
ICP/AES	[5]200.7	3120 B			
Flame photometric, or		3500–K D			
Colorimetric					317 B.[17]
53. Residue—Total, mg/L:					
Gravimetric, 103–105°	160.3	2540 B		I–3750–85	
54. Residue—filterable, mg/L:					
Gravimetric, 180°	160.1	2540 C		I–1750–85	
55. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105° post washing of residue.	160.2	2540 D		I–3765–85	
56. Residue—settleable, mg/L:					
Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F			
57. Residue—Volatile, mg/L:					
Gravimetric, 550°	160.4			I–3753–85	
58. Rhodium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration, or	265.1	3111 B			
AA furnace	265.2				
59. Ruthenium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration, or	267.1	3111 B			
AA furnace	267.2				
60. Selenium—Total,[4] mg/L; Digestion[4] followed by:					
AA furnace	270.2	3113 B	D3859–93(B)		

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TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	STD methods 18th ed.	ASTM	USGS [2]	Other
ICP/AES,[36] or	[5]200.7	3120 B			
AA gaseous hydride		3114 B	D3859–93(A)	I–3667–85	
61. Silica[37]—Dissolved, mg/L; 0.45 micron filtration followed by:					
Colorimetric, Manual or	370.1	4500–Si D	D859–88	I–1700–85	
Automated (Molybdosilicate), or				I–2700–85	
ICP	[5]200.7	3120 B			
62. Silver—Total,[4] mg/L; Digestion [4,29] followed by:					
AA direct aspiration	272.1	3111 B or C		I–3720–85	974.27,[3] p. 37.[9]
AA furnace	272.2	3113 B			
ICP/AES	[5]200.7	3120 B			
DCP					Note 34.
63. Sodium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	273.1	3111 B		I–3735–85	973.54.[3]
ICP/AES	[5]200.7	3120 B			
DCP, or					Note 34.
Flame photometric		3500 Na D			
64. Specific conductance, micromhos/cm at 25 °C:					
Wheatstone bridge	120.1	2510 B	D1125–91(A)	I–1780–85	973.40.[3]
65. Sulfate (as SO_4), mg/L:					
Automated colorimetric (barium chloranilate).	375.1				
Gravimetric	375.3	4500–SO_4^{-2} C or D			925.54.[3]
Turbidimetric, or	375.4		D516–90		426C.[30]
66. Sulfide (as S), mg/L:					
Titrimetric (iodine), or	376.1	4500–S^{-2} E		I–3840–85	
Colorimetric (methylene blue)	376.2	4500–S^{-2} D			
67. Sulfite (as SO_3), mg/L:					
Titrimetric (iodine-iodate)	377.1	4500–SO_3^{-2} B			
68. Surfactants, mg/L:					
Colorimetric (methylene blue)	425.1	5540 C	D2330–88		
69. Temperature, °C:					
Thermometric	170.1	2550 B			Note 32.
70. Thallium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	279.1	3111 B			
AA furnace	279.2				
ICP/AES, or	[5]200.7	3120 B			
71. Tin—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	282.1	3111 B		I–3850–78 [8]	
AA furnace, or	282.2	3113 B			
ICP/AES	[5]200.7				
72. Titanium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	283.1	3111 D			
AA furnace	283.2				
DCP					Note 34.
73. Turbidity, NTU:					
Nephelometric	180.1	2130 B	D1889–88(A)	I–3860–85	
74. Vanadium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	286.1	3111 D			
AA furnace	286.2		D3373–93		
ICP/AES	[5]200.7	3120 B			
DCP, or			D4190–82(88)		Note 34.
Colorimetric (Gallic acid)		3500–V D			
75. Zinc—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 B or C	D1691–90 (A or B)	I–3900–85	974.27,[3] p. 37.[9]
AA furnace	289.2				
ICP/AES [36]	[5]200.7	3120 B			
DCP,[36] or			D4190–82(88)		Note 34.
Colorimetric (Dithizone) or		3500–Zn E			
(Zincon)		3500–Zn F			Note 33.

Table IB Notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE TO TABLE IB NOTE 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, (Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency", Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test which measures "total BOD". The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using the nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 ml 0.00281 N potassium iodate/100 ml solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, (Inc.) Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the mainfold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., et al, "Methods for Analysis of Organic Substances in Water," Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectophotometric procedure.

[28] R. F. Addison and R.G. Ackman, "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," Journal of Chromatography, vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., "Water Temperature—Influential Factors, Field Measurement and Data Presentation", Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

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[36] "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.
[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.
[38] Only the trichlorofluoromethane extraction solvent is approved.

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter[1]	EPA method number[2,7]			Standard methods 18th ed.	ASTM	Other
	GC	GC/MS	HPLC			
33. Dibenzo(a,h)anthracene	610	625, 1625	610	6410 B, 6440 B	D4657–92.	
37. 1,4-Dichlorobenzene	601, 602, 612	624, 625, 1625		6410 B, 6220 B, 6230 B.		

Table IC Notes:
[1] All parameters are expressed in micrograms per liter (µg/L).
[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit" of this Part 136.
[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.
[5a] 625, Screening only.
[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]

Parameter	Method	EPA[2,7]	Standard methods 18th ed.	ASTM	Other
8. α-BHC	GC	608	6630 B & C	D3086–90	Note 3, p. 7.
	GC/MS	[5]625	6410 B		
9. β-BHC	GC	608	6630	D3086–90	
	GC/MS	[5]625	6410 B		
10. δ-BHC	GC	608	6630 B & C	D3086–90	
	GC/MS	[5]625	6410 B		
22. Demeton-S	GC				Note 3, p. 25: Note 6, p. S51.

Table ID Notes:
[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.
[2] The full text of Methods 608 and 625 are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit", of this Part 136.
[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978. This EPA publication includes thin-layer chromatography (TLC) methods.
[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.
[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).
[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

(b) * * *

	References, Sources, Costs, and Table Citations	Technology, Section 11, Volumes 11.01 and 11.02, 1994 in 40 CFR 136.3, Tables IB, IC, ID and IE.
	(10) Annual Book of ASTM Standards, Water and Environmental	(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter	Container[1]	Preservation[2,3]	Maximum holding time[4]
Table IB—Inorganic Tests:			
10. Boron	P, PFTE, or Quartz	HNO_3 to pH<2	6 months.
Metals[7]			
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI and mercury.	P, G	HNO_3 to pH<2	6 months.
42. Organic Carbon	P, G	Cool to 4°C, HCl or H_2SO_4 or H_3PO_4, to pH<2	28 days.
61. Silica	P, PFTE, or Quartz	Cool, 4°C	28 days.

Table II—Notes:
[1] Polyethylene (P) or Glass (G).
[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.
[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and sodium-hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).
[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term "analyze immediately" usually means within 15 minutes or less of sample collection.
[7] Samples should be filtered immediately on-site before adding preservative for dissolved metals.

[FR Doc. 95–5022 Filed 4–3–95; 8:45 am]
BILLING CODE 6560–50–P

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federal register

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Part V

Securities and Exchange Commission

17 CFR Part 239 et al.
Improving Descriptions of Risk by Mutual Funds and Other Investment Companies; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7153; 34–35546; IC–20974; File No. S7–10–95]

RIN 3235–AG43

Improving Descriptions of Risk by Mutual Funds and Other Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission (the "SEC" or "Commission") is seeking comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies ("funds" or "investment companies"). In order to encourage individual investor comments and suggestions, the SEC is including in the Release an appendix directed to investors, which the SEC intends to reprint separately and distribute to investors.

DATES: The SEC requests comments on or before July 7, 1995.

ADDRESSES: Three copies of your comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comment letters should refer to File No. S7–10–95. All comments received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. If you are an individual investor and do not have access to a copier machine, you may send in one copy of your comments.

FOR FURTHER INFORMATION CONTACT: Susan Nash, Senior Special Counsel, (202) 942–0697, Paul B. Goldman, Chief Financial Analyst, (202) 942–0510, Roseanne Harford, Senior Counsel, (202) 942–0689, Martha H. Platt, Senior Counsel, (202) 942–0725, in the Division of Investment Management, or Craig McCann, Professional Fellow, (202) 942–8032, Office of Economic Analysis.

SUPPLEMENTARY INFORMATION:

Executive Summary

Today the SEC is continuing its efforts to enhance the information that investors in funds receive to assist them in making an informed investment decision. In recent years, the SEC has taken significant steps designed to improve the understandability and comparability of fund disclosure of performance and expenses.[1] The SEC is now requesting comment on how to improve risk disclosure for investment companies, including ways to increase the comparability of disclosure about funds' risk levels through quantitative measures or other means.[2]

Under existing SEC rules, a fund is required to discuss in its prospectus the principal risk factors associated with investing in the fund.[3] Funds typically describe the risks of investing in the fund by describing the risks of particular investment policies that the fund may use and investments that the fund may make.[4] Lengthy and highly technical descriptions of permissible policies and investments that are often used in meeting existing requirements may make it difficult for investors to understand the total risk level of a fund. The SEC staff has found that funds typically provide only the most general information on the risk level of the fund taken as a whole and has encouraged funds to modify their existing disclosure to enhance investor understanding of risks.[5] The SEC believes that it is now appropriate to explore whether SEC disclosure requirements should be revised in order to improve the communication of fund risks to investors and increase the likelihood that investors will readily grasp the risks of investing in a particular fund before they invest.

Several factors make it important that the SEC explore better ways of explaining fund risks to investors. First, average Americans are placing increasing reliance on funds to meet important financial needs, such as retirement and college expenses.[6] Understanding the risks of various investment products is one of the most important ingredients in creating an overall investment strategy or portfolio to meet these financial needs.[7] Second,

[1] See, *e.g.*, Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act of 1940 ("Investment Company Act") Rel. No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] (requiring mutual fund prospectuses or annual reports to discuss performance and provide line graph comparing fund performance to that of an appropriate market index over the last ten fiscal years; financial highlights table of prospectus revised to include total return information and generally to provide investors with information showing the performance of funds on a per share basis); Registration Form for Closed-End Management Investment Companies, Investment Company Act Rel. No. 19115 (Nov. 20, 1992) [57 FR 56826, 56829 (Dec. 1, 1992)] (improvements to financial highlights table for closed-end funds; fee table providing standard format for expense information required in closed-end fund prospectuses); Advertising by Investment Companies, Investment Company Act Rel. No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)] [hereinafter "Rel. 16245"] (mutual fund advertisements and sales literature containing performance data required to include uniformly computed performance data); Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)] (fee table required in mutual fund prospectuses).

[2] The SEC requested comment on methods for disclosing risk in 1993 when it proposed rule amendments that would have given investors the option of purchasing mutual fund shares based on a short form prospectus. Off-the-Page Prospectuses for Open-End Management Investment Companies, Investment Company Act Rel. No. 19342 (Mar. 19, 1993) [58 FR 16141, 16145 (Mar. 25, 1993)] [hereinafter "Rel. 19342"]. In particular, the SEC asked whether the short form prospectus should be required to contain a standardized presentation of the degree and kind of risk presented by a mutual fund relative to other mutual funds. A limited number of comments were received on this topic, with the comments being almost evenly divided whether standardized risk disclosure should be required. See Summary of Comment Letters Relating to Proposed Rule 482(g) Made in Response to Investment Company Act Release No. 19342, File No. S7–11–93, Jan. 27, 1994, at 17–18 [hereinafter "Summary of Comments: Rel. 19342"].

[3] Risk factors include those peculiar to the fund and those that apply generally to funds with similar investment policies and objectives or, in the case of closed-end funds, similar capital structures or trading markets. Item 4(c), Form N–1A, & Guide 21, Disclosure of Risk Factors, Guidelines for Form N–1A [17 CFR 239.15A & 274.11A] (mutual funds); Item 8.3.a., Form N–2 [17 CFR 239.14 & 274.11a-1] (closed-end funds).

[4] See Form N–1A, Item 4(a)(ii) (requires concise description of mutual fund investment objectives and policies and brief discussion of how the fund proposes to achieve such objectives, including description of the securities in which the fund will invest and special investment practices or techniques that will be employed); Form N–1A, Item 4(b) (requires discussion of types of investments, policies, and practices that will not constitute the "principal portfolio emphasis" of a mutual fund, but which place more than 5% of the fund's net assets at risk); Form N–2, Item 8.2. & 8.4. (similar requirements for closed-end funds).

[5] See Memorandum dated Sept. 26, 1994, from Division of Investment Management to Chairman Levitt regarding Mutual Funds and Derivative Instruments 11 [hereinafter "Derivatives Report"]; Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management 7 (Feb. 25, 1994) (both documents on file with the SEC's Public Reference Room).

[6] According to a June 1994 survey sponsored by the Investment Company Institute, 31% of United States households owned shares in a mutual fund, up from 6% of households in 1980. Investment Company Institute, Fundamentals (Sept. 1994); Investment Company Institute, 1994 Mutual Fund Fact Book 85 (34th ed. 1994) [hereinafter "1994 ICI Fact Book"]. Mutual funds held 14.9% of all household discretionary assets as of June 30, 1994, up from 7.0% at the end of 1982. Source: Investment Company Institute. Total mutual fund assets have grown from $292.9 billion at the end of 1983 to $2.16 trillion at the end of December 1994. 1994 ICI Fact Book, *supra*, at 26; Investment Company Institute Press Release, "December Mutual Fund Sales Total $39.9 Billion," Jan. 26, 1995, at 4.

By the end of 1993, retirement assets accounted for 23% of mutual fund assets (excluding variable annuities), and mutual funds held almost $284 billion of the approximately $857 billion invested in individual retirement accounts ("IRAs")—about 33% of total IRA assets. 1994 ICI Fact Book, *supra*, at 69.

[7] See, e.g., Burton G. Malkiel, A Random Walk Down Wall Street ch. 13 (1990) [hereinafter "Random Walk"]; Susan E. Kuhn, "What it Takes to Retire Today," Fortune, Dec. 26, 1994, at 113; Joshua Shapiro, "The Discipline of Saving for College," New York Times, Sept. 10, 1994, at 34.

new ways of describing risks may improve investor understanding of the risks associated with the use by some funds of increasingly complex instruments, such as derivatives.[8] Third, the number and types of funds have proliferated, increasing fund investors' need for information that will help them to compare and contrast alternatives.[9]

The importance of risk disclosure was underscored last year when some short-term government bond funds experienced losses as interest rates increased sharply.[10] Shareholders in these funds expressed surprise at the losses, and several shareholder lawsuits were filed.[11] Whatever the legal merits of the shareholder complaints may be, the SEC believes that these events highlight the importance of clear, concise disclosure of risks.

In this Release, the SEC requests that those submitting comments discuss the specific goals of, and various alternatives for, improving risk disclosure. Comments are requested on the relative merits of written and other presentations of risk, including quantitative or numerical measures, graphs, tables, and other pictorial representations.

The Release describes and requests comment on several specific quantitative measures of risk and risk-adjusted performance, including standard deviation, semi-variance, beta, duration, the Sharpe Ratio, the Treynor Ratio, and Jensen's Alpha. These measures of risk are potentially useful because they may give investors a tool for balancing the potential returns of a fund against the risks of the fund. For instance, if a fund has historical annual returns which are 2% above a market index, historical risk measures may provide some indication of the risks that were taken to produce the increased returns. Quantitative risk measurements may provide investors with tools to measure how funds have fared historically in the relationship between risk and return.

The Release also asks for comments addressing a number of general topics related to quantitative risk measures. These include:

- The benefits to be derived from quantitative measures versus the costs and burdens to the fund that must produce such information;
- Quantitative measures currently used by fund managers to assess risk, and whether such internally used measures should be disclosed to investors;
- Investor understanding of quantitative measures, and means to increase that understanding;
- Standardizing the ways in which funds calculate quantitative measures to assure comparability and the validity of any underlying assumptions; and
- Availability of quantitative risk information from third party providers (e.g., the financial press and rating services).

Comments are also requested on whether funds should be required to disclose a self-assessment of their risk level, using an SEC-created standard scale or some other method. In addition, comments are requested on whether funds should describe to investors the ways or strategies that fund managers use to manage, understand, and monitor the risks of their funds.

The SEC requests comments that address the specific questions posed in this Release as well as alternative risk disclosure methods and related matters. Where possible, please provide actual rule language that you believe would best express your recommendation.

To encourage individual investor comments and suggestions on this Release, the SEC for the first time has prepared a short summary specifically directed to individual investors. The summary, which appears as an appendix to the Release, will be reprinted in a format that leaves space for individual investors to tell the SEC about their concerns and ideas and distributed through investor groups and other means designed to reach individual investors.

I. The Goals of Risk Disclosure

The SEC's goal is to improve disclosure of fund risks so that investors will have the information they need to understand the risk of any particular fund investment. The best means for achieving this aim may depend, in part, on the specific goals of risk disclosure. The SEC therefore requests comment on the specific goals of risk disclosure, including the matters raised below.

The SEC asks persons submitting comments to define, as precisely as possible, what "risks" should be disclosed to investors. To what extent are investors concerned with the likelihood that they will lose principal, that their return will not exceed a specified benchmark (such as the Standard & Poor's ("S&P") 500), or with the variability of their returns (or the volatility of the value of their investment) over time? How should the relationship between risk and an investor's time horizon shape the disclosure that is provided to investors? For example, is the same risk information useful to an investor with an investment time horizon of less than one year and to an investor with an investment time horizon of twenty years?[12] How can the disclosure of risk help investors answer the fundamental questions—Is this investment suitable for me? If I have diversified my investments, how does this particular fund fit into my diversification strategy?

Comments are requested on the nature of risk comparisons that are useful to investors. For example, should risk disclosure facilitate comparison among a broad range of investment options, such as between funds and other investment products? Or is it sufficient to facilitate comparisons among all funds and fund types, both equity and fixed income? Or among all equity funds, on the one hand, and all fixed income funds, on the other? Or only within groups of funds with similar investment objectives and policies, such as short-term government bond funds?

Is improved disclosure of risks equally important for equity, fixed income, and balanced or asset allocation funds? Do recent derivatives-related losses by some fixed income funds, and the apparently greater use of derivatives by fixed income funds, suggest that the need for improved disclosure of risks is greater for fixed income funds?[13] In

[8] See Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Issues Affecting the Mutual Fund Industry, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives 18–19 (Sept. 27, 1994); Derivatives Report, supra note 5, at 11–12.

[9] See, e.g., 1994 ICI Fact Book, *supra* note 6, at 30–31 (increase from 564 mutual funds at the end of 1980 to 4,558 at the end of 1993; mutual funds classified according to 21 investment objectives).

[10] See, e.g., Leslie Eaton, "Paine Webber to Bail Out Fund Battered by Complex Investments," New York Times, July 23, 1994, at A1; Robert McGough, "Piper Jaffray Acts to Boost Battered Fund," Wall Street Journal, May 23, 1994, at C1.

[11] See, e.g., Karen Donovan, "Derivatives Slump; Losers Go to Court," National Law Journal, Nov. 7, 1994, at A1; G. Bruce Knecht, "Minneapolis Investors Are Hurt By Local Firm They Knew As Cautious," Wall Street Journal, Aug. 26, 1994, at A1; John Waggoner, "Mutual Fund Losses Anger Novice Investors," USA Today, June 16, 1994, at 1B.

[12] See Letter to Barry P. Barbash, Director, Division of Investment Management, from Paul Schott Stevens, General Counsel, Investment Company Institute 3–4 (Jan. 19, 1995) [hereinafter "ICI Letter"] (on file with the SEC's Public Reference Room) (discussing different concepts of risk); Paul A. Samuelson, "The Long-Term Case for Equities and How it Can be Oversold," Journal of Portfolio Management 15–24 (Fall 1994) (raising questions about common wisdom that, for long-term investor, stocks will outperform bonds or cash).

[13] See *supra* notes 10 and 11 and accompanying text. A recent industry survey of non-money market funds indicated that the level of derivatives use varied by fund type, with fixed income funds

Continued

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light of the substantive limits on permitted money market fund investments,[14] should risk disclosure requirements for money market funds be different from those applicable to other funds?[15]

Comments are also requested on the degree of detail regarding fund risk that ideally would be communicated to investors. In meeting existing disclosure requirements, funds often describe the purposes of using particular types of instruments and the risks associated with each type, but typically provide only the most general information on the risk level of the fund taken as a whole.[16] Should disclosure convey the risks of each particular type of instrument held by a fund, the risks of broader classes of instruments (for instance, derivatives as a group), the risks of the fund's portfolio as a whole, or some combination of the foregoing? Should the focus of disclosure be shifted from the characteristics of particular securities to the nature of the investment management services offered, including the objectives of a fund manager and the associated risks and rewards? Do investors need to understand separately the different types of risk, such as market, credit, legal, and operational risks, or is it the aggregate effect of different types of risk that is important to an investment decision?

II. Narrative and Non-Narrative Risk Disclosure Options

The SEC currently requires fund prospectuses to include narrative descriptions of risk,[17] and the SEC is interested in the potential for improving risk disclosure through changes to the narrative disclosure requirements and the use of non-narrative forms of disclosure. The SEC therefore asks persons submitting comments to discuss the contributions that both narrative and non-narrative forms of disclosure can make to investor understanding of risk and to provide the SEC with the findings of any relevant market research on the effective communication of risk.

At present, a number of funds voluntarily supplement narrative descriptions of risk through means such as quantitative measures, graphs, tables, and other pictorial representations. For example, some funds provide quantitative risk measures like those described in section III.A. of this Release. Another method used is a line graph that shows relative risk and return levels for the fund and some benchmark, such as Treasury bills or a market index such as the S&P 500. Another method is a bar graph that shows consistency of returns for the fund and a market index (as measured by monthly rates of return over the life of the fund). Finally, some fund families use pictures to show the relative risks of the various funds within the family.

The SEC believes that quantitative measures, graphs, tables, and other pictorial representations may assist investors in understanding and comparing funds. The SEC currently requires disclosure of quantitative information in tabular form in the areas of fund performance and expenses.[18] Recently, the SEC adopted rules that require graphic depictions of information to facilitate investor understanding of fund performance.[19] The SEC now requests comment on the relative merits and usefulness of various formats for investment company risk disclosure, including quantitative measures, graphs, tables, and other pictorial representations. To what extent should these methods be used to supplement, or replace, current narrative risk disclosure?

III. Quantitative Measures of Risk

A. Specific Historical Quantitative Measures of Risk and Risk-Adjusted Performance

This section of the Release discusses several historical quantitative measures of risk and risk-adjusted performance that could be used for fund disclosure, and the following section raises a number of general questions about quantitative measures. Comments are requested regarding whether the SEC should require fund disclosure of any one or a combination of the enumerated measures or any other measures. Persons submitting comments are also asked to consider each of the enumerated quantitative measures, and any other measures they may wish to suggest, in the context of the general questions raised in the following section.

Historical measures of risk and risk-adjusted performance are generally calculated from past portfolio returns and, in some cases, past market returns. There are two broad classes of historical risk measures, referred to in this Release as total risk measures and market risk measures. In addition, there is a third class of measures, risk-adjusted measures of performance. (Unless the context indicates otherwise, risk-adjusted measures of performance are included in "quantitative risk measures" and similar terms and phrases used in this Release.) These three classes of measures are described below, and examples of each are provided. Comments are requested on the relative advantages and disadvantages of the three classes of measures and of specific measures within each class.

1. Measures of Total Risk

Total risk measures, including standard deviation and semi-variance, quantify the total variability of a portfolio's returns around, or below, its average return.

• *Standard Deviation of Total Return.* The risk associated with a portfolio can be viewed as the volatility of its returns, measured by the standard deviation of those returns.[20] For example, a fund's historical risk could be measured by computing the standard deviation of its monthly total returns over some prior period, such as the past three years. The larger the standard deviation of monthly total returns, the more volatile, *i.e.*, spread out around the fund's average monthly total return, the fund's monthly total returns have been over the prior period. Standard deviation of total return can be calculated for funds with different objectives, ranging from equity funds to fixed income funds to balanced funds, and can be measured over different time frames. For example, a fund could calculate standard deviation of monthly returns over the prior three years or yearly returns over the prior ten years.

• *Semi-variance.* Standard deviation measures both "good" and "bad" outcomes, *i.e.*, the variability of returns both above and below the average return. To the individual investor, however, risk may be synonymous with "bad" outcomes.[21] Semi-variance, which can be used to measure the variability of returns below the average return, reflects this view of risk.[22] A fund with a larger semi-variance has returns that are more spread out below the average return.

2. Measures of Market Risk

Individual securities, and portfolios of securities, are generally subject to two sources of risk: (i) Risk attributable to firm-specific factors, including research and development, marketing, and quality of management; and (ii) risk attributable to general economic conditions, including the inflation rate, interest rates, and exchange rates.[23] According to academic literature in Finance, firm-specific risk can be reduced or eliminated through portfolio diversification, but the risk attributable to general economic conditions, so-called "market risk," cannot be eliminated through diversification.[24] Unlike standard deviation and variance, which measure portfolio risk from both sources, the measures described in this section are measures of market risk. The SEC requests comment on whether, given that most fund portfolios are diversified, it is appropriate to focus on market risk when measuring fund risks.

• *Beta.* Beta measures the sensitivity of a security's, or portfolio's, return to the market's return. The market's beta is by definition equal to 1. Portfolios with betas greater than 1 are more volatile than the market, and portfolios with betas less than 1 are less volatile than the market. For example, if a portfolio has a beta of 2, a 10% market return would result in a 20% portfolio return, and a 10% market loss would result in a 20% portfolio loss (excluding the effects of any firm-specific risk that has not been eliminated through diversification).[25]

The calculation of a fund's historical beta requires the selection of a benchmark market index, and persons supporting the use of beta are asked to address how the benchmark should be selected and whether a single benchmark should be used for all funds. If a single benchmark should be selected, what should it be? If a single benchmark is not used, how should the lack of comparability of betas for funds using different benchmarks be addressed? Beta is generally used in connection with equity securities, and persons submitting comments are asked to address whether or not the use of beta should be limited to equity funds.

• *Duration.*[26] Duration is a measure of the price sensitivity of a bond, or bond portfolio, to interest rate changes.[27] There are different types of duration,[28] and persons supporting the use of duration are asked to be specific regarding the duration measure that they support. Would so-called "modified duration," which can be interpreted as the percentage change in the price of a bond, or bond portfolio, for a 100 basis point change in yield, be particularly useful?[29]

The use of duration has several limitations, and persons submitting comments are asked to address each of these. First, duration is only meaningful for bonds and portfolios of bonds and therefore cannot be used to measure the risk of equity funds and has limited applicability to balanced funds. Second, duration measures interest rate risk only and not other risks to which bonds are subject, *e.g.*, credit risks and, in the case of non-dollar denominated bonds, currency risks. Third, duration is difficult to calculate precisely for bonds with prepayment options, *e.g.*, mortgage-backed securities, because the calculation requires assumptions about prepayment rates.[30] Fourth, bond value changes resulting from interest rate changes are sometimes poorly predicted by duration.[31]

The SEC staff takes the position that, for a fund with a name or investment objective that refers to the maturity of the fund's portfolio, such as "short-term" or "long-term," the dollar-weighted average portfolio maturity of the portfolio must reflect that characterization.[32] The SEC requests

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accounting for 84% of the total market value of all derivatives held by reporting funds and 62% of the total national amount. Investment Company Institute, Derivative Securities Survey 6 (Feb. 1994). Survey respondents included 52 fund complexes with 1,728 non-money market funds holding aggregate net assets of $958 billion (76% of industry assets in non-money market funds). *Id.* at 4.

[14] Mutual funds are prohibited from calling themselves money market funds unless they comply with the risk-limiting provisions of rule 2a–7 under the Investment Company Act. These provisions are designed to limit a fund's exposure to credit, interest rate, and currency risks. 17 CFR 270.2a–7(b), (c)(2)–(4), & (d).

[15] Losses in the value of certain adjustable rate notes held by some money market funds recently resulted in the funds' advisers electing to take actions designed to prevent the funds' per share net asset values from falling below $1.00; and one small, institutional money market fund liquidated and redeemed its shares at less than $1.00 as a result of such losses. See, e.g., "A History of Stepping up to the Plate," Fund Action, Sept. 12, 1994, at 9; Brett D. Fromson, "Losses on Derivatives Lead Money Fund to Liquidate," Washington Post, Sept. 28, 1994, at F1. These losses, however, raise concerns about the appropriateness of the funds' investments in some types of adjustable rate securities and not merely risk disclosure concerns. See Revisions to Rules Regulating Money Market Funds, Investment Company Act Rel. No. 19959, § II.D.2.d. (Dec. 17, 1993) [58 FR 68585, 68601–02 (Dec. 28, 1993)] [hereinafter "Rel. 19959"] (certain types of adjustable rate notes not appropriate investments for money market funds). See also Letter from Barry P. Barbash, Director, Division of Investment Management, to Paul Schott Stevens, General Counsel, Investment Company Institute (June 30, 1994) (on file with the SEC's Public Reference Room).

[16] See Derivatives Report, *supra* note 5, at 11.

[17] See *supra* notes 3 and 4 and accompanying text.

[18] For mutual funds, see Form N–1A, Items 2 (Synopsis), 3 (Condensed Financial Information), and 5A (Management's Discussion of Fund Performance). For closed-end funds, see Form N–2, Items 3 (Fee Table and Synopsis) and 4 (Financial Highlights). See also *supra* note 1 and accompanying text. A closed-end fund is also required to include in its prospectus a table quantifying the effects of leverage on returns to investors. Form N–2, Item 8.3.b.(3) (General Description of the Registrant, Risk Factors, Effects of Leverage).

[19] See *supra* note 1. The SEC also recently adopted rules requiring graphic depictions of issuer performance by public companies that are not investment companies. Executive Compensation Disclosure, Securities Exchange Act Rel. No. 31327 (Oct. 16, 1992) [57 FR 48126 (Oct. 21, 1992)].

[20] William F. Sharpe, Gordon J. Alexander, and Jeffery V. Bailey, Investments 178 (5th ed. 1995) [hereinafter "Sharpe, Alexander, & Bailey"]. If the returns earned by a portfolio are "normally" distributed, that is, in the shape of a bell curve, approximately 95% of the actual returns will fall within two standard deviations of the average return. Random Walk, *supra* note 7, at 219. For example, for a fund with an average monthly return of 1% and a standard deviation of 4%, 95% of the fund's monthly returns would fall between −7% (1% − (2×4%)) and 9% (1%+(2×4%)) if the returns were "normally" distributed. See Sharpe, Alexander, & Bailey, *supra*, at 177.

[21] See Sharpe, Alexander, & Bailey, *supra* note 20, at 176; Allan Flader, "Deviating from the Standard," Financial Planning, June 1994, at 148.

[22] Funds' risk levels would be ranked in the same order using semi-variance and standard deviation if the distribution of fund returns were symmetric. Sharpe, Alexander, & Bailey, *supra* note 20, at 176.

[23] Zvi Bodie, Alex Kane, and Alan J. Marcus, Investments 197 (2d ed. 1993) [hereinafter "Bodie, Kane, & Marcus"].

[24] Bodie, Kane, & Marcus, *supra* note 23, at 197–99; Sharpe, Alexander, & Bailey, *supra* note 20, at 212–17.

[25] Sharpe, Alexander, & Bailey, *supra* note 20, at 211; Frank J. Fabozzi and Franco Modigliani, Capital Markets: Institutions and Instruments 136–40 (1992) [hereinafter "Fabozzi & Modigliani"].

[26] The SEC previously requested comment on duration as a measure of interest rate risk for securities held by money market funds. See Rel. 19959, *supra* note 15, § II.D.2.d., 58 FR at 68602. In response to that request, several persons submitting comments expressed support for the use of duration or other price volatility tests; one person specifically opposed a duration requirement on the grounds that the costs funds would incur would outweigh benefits to investors. See Summary of Comment Letters on Proposed Amendments to Rules Regulating Money Market Funds Made in Response to Investment Company Act Rel. 19959, File No. S7–34–93, Nov. 10, 1994, at 63–64.

[27] Bodie, Kane, & Marcus, *supra* note 23, at 473–74. Duration measures the weighted average maturity of a bond's, or bond portfolio's, cash flows, *i.e.*, principal and interest payments. A zero-coupon bond's duration, for example, is the same as its maturity because its sole cash flow is the payment made at maturity. By contrast, a bond bearing interest payable periodically has a duration that is shorter than its maturity because the periodic interest payments reduce the weighted average maturity of the bond's cash flows below the final maturity of the bond. *Id.*

[28] For a discussion of the computation and interpretation of so-called "Macaulay duration" and "modified duration," see Bodie, Kane, & Marcus, *supra* note 23, at 473–75, and Fabozzi & Modigliani, *supra* note 25, at 393–98.

[29] Fabozzi & Modigliani, *supra* note 25, at 397. For example, if a bond portfolio has a modified duration of 7 and yield increases by 100 basis points, the estimated decrease in the value of the portfolio would be 7%.

[30] See James Hom and Gary Arne, Standard & Poor's, "Prepayments and Model Error in Fund Risk Ratings," CreditReview, Jan. 16, 1995, at 17–18; John Rekenthaler, Commentary: "Duration Arrives," Morningstar Mutual Funds, Jan. 21, 1994, at 1–2.

[31] Duration is less useful as a measure of interest rate risk when the following conditions are not met: (1) the yield curve is flat (*i.e.*, interest rates for all maturities of bonds are the same), (2) changes in yield are small, and (3) yield shifts are parallel (*i.e.*, the Treasury yields of all maturities change by equal numbers of basis points). See Fabozzi & Modigliani, *supra* note 25, at 396–401.

[32] See, *e.g.*, Form N–7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Rel. No. 15612 (Mar. 9, 1987) [52 FR 8268, 8301 (Mar. 17, 1987)] (guide to proposed registration form for unit investment trusts publishing staff position on portfolio maturity).

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comment on whether, separate and apart from duration's potential use as a quantitative risk measure, a fund's name or investment objective that refers to the maturity of its portfolio should be required to be consistent with the fund's duration.

3. Risk-Adjusted Measures of Performance[33]

Risk-adjusted measures of performance were developed in the 1960s to compare the quality of investment management. Three widely-used risk-adjusted measures are:

• *Sharpe Ratio.*[34] Also known as the Reward-to-Variability Ratio, this is the ratio of a fund's average return in excess of the risk-free rate of return ("average excess return")[35] to the standard deviation of the fund's excess returns. It measures the returns earned in excess of those that could have been earned on a riskless investment per unit of total risk assumed.

• *Treynor Ratio.*[36] Also known as the Reward-to-Volatility Ratio, this is the ratio of a fund's average excess return to the fund's beta. It measures the returns earned in excess of those that could have been earned on a riskless investment per unit of market risk assumed. Unlike the Sharpe Ratio, the Treynor Ratio uses market risk (beta), rather than total risk (standard deviation), as the measure of risk.

• *Jensen's Alpha.*[37] This is the difference between a fund's actual returns and those that could have been earned on a benchmark portfolio with the same amount of market risk, *i.e.*, the same beta, as the portfolio.[38] Jensen's Alpha measures the ability of active management to increase returns above those that are purely a reward for bearing market risk.

B. General Issues

This section of the Release raises a number of general questions about quantitative risk measures. Persons submitting comments are asked to address these questions, particularly in the context of specific quantitative measures.

1. Benefits of Quantitative Risk Measures

The SEC asks for comments on the potential benefits that could be derived from fund disclosure of quantitative risk measures. Comments are also requested on associated costs and burdens.

Would quantitative risk measures, including risk-adjusted measures of performance, help investors to evaluate historical performance and investment management expertise? The SEC requires that fund prospectuses include standardized return information,[39] even though past returns are not necessarily indicative of future returns. Persons submitting comments are asked to address whether quantitative disclosure of the risk level incurred to produce stated returns may provide investors with a better tool to understand past fund performance and management.[40] Historical data could, for example, help investors distinguish among funds that have achieved comparable rates of return with significantly different levels of risk. Would it be helpful to investors for funds to present one or more risk measures together with fund performance data in the financial highlights table?[41] Would a risk measure that covers the same periods currently required for reporting total returns in the financial highlights table in fund prospectuses or in mutual fund advertisements be useful to investors?[42]

Would quantitative risk measures be useful to investors as indicators or guides to future fund risk levels, enhancing investors' ability to compare risks assumed by investing in different funds? The SEC requests any research related to the degree of correlation between historical measures of a fund's risk and expected future levels of risk.

2. Risk Measures Currently Used by Investment Companies

The SEC requests comment on whether quantitative risk measures that are currently used by investment companies for internal purposes, such as portfolio management, evaluation or compensation of portfolio managers, and reports by management to the board of directors, could be adapted for disclosure purposes. This approach could have two potential advantages: first, the measures currently used by investment companies presumably have been determined to be the most useful by fund managers, who are in the best position to understand and analyze fund risk; and, second, use of these measures for disclosure purposes should impose relatively small additional costs on funds. The SEC therefore requests that persons submitting comments identify which quantitative risk measures funds use internally and for what purposes.

The SEC also asks persons submitting comments to discuss the extent to which quantitative risk measures used by investment companies for internal purposes would be useful to investors. If such measures would not be useful to investors, why not? How might internal measures be adapted to avoid or overcome these problems?

3. Investor Understanding of Quantitative Risk Measures

Persons submitting comments are asked to discuss the difficulties that investors would face in properly interpreting various quantitative risk measures, such as understanding what aspects of risk are measured, the limits on predictive utility of risk measures, and the importance of investment time horizon in determining how much risk to assume. Are the difficulties significantly greater than those associated with the proper interpretation of yield and return figures? Is there a potential problem of investor over-reliance on quantitative risk measures, and, if so, what could be done to protect against such over-reliance?

Comments are also requested regarding which quantitative risk measures would be easiest for investors to use properly and how quantitative measures can be made more understandable to investors. One possibility is to provide some form of interpretation of raw numbers. For example, standard deviations could be divided by the standard deviation for some benchmark such as the S&P 500. Another possibility is to convert raw numbers into a classification scale, such as one to ten or "very low" to "very high" risk. Another possibility would be to represent the level of fund volatility graphically, rather than through computation of standard deviation. Would it be helpful, for example, if funds were required to include a bar graph showing total returns for each of the last 10 years to provide investors a picture of the extent to which annual returns varied over that period and the frequency with which the returns were negative or below some benchmark? Would a chart like the following be helpful?

Using historical numbers, the following illustrates the fund's estimated variability of quarterly returns over the noted periods (*i.e.*, approximately 95% of the time, the fund's quarterly returns fell within these ranges).

10 year	5-year	3-year
−5% to 9%	−4% to 8%	−5% to 8%.

Are there narrative disclosures that can help investors to understand risk measures? Persons submitting comments are asked to report the results of any experience with, or research on, the relative effectiveness of alternative means of presenting quantitative information.

4. Historical Measures v. Portfolio-Based Measures v. Risk Objectives or Targets

There are three approaches to the use of quantitative risk measures: historical, portfolio-based, and risk objectives or targets. The SEC asks for comments on the relative merits and limitations of these three approaches.

The simple historical approach to quantitative risk measures is outlined in section III.A., above. This method generally uses actual past returns of a fund to compute a measure of risk for the fund. An alternative is a portfolio-based computation, which calculates a portfolio risk measure based on the particular securities in the portfolio as of a specified measurement date.[43] This method, too, is historical in that the computation (i) uses the portfolio composition as of a specified measurement date, and (ii) the computation is based on historical behavior of the securities in the portfolio.

There are at least two important limitations of using portfolio-based measures for fund disclosure: first, a fund may be invested in newly introduced financial instruments that have little or no history, and for which historical behavior must be estimated, and, second, portfolio-based measures, which are derived from portfolio composition on one particular date, may be less representative of the risk of a managed portfolio over time than a simple historical measure derived from fund returns over a period of time.

The SEC seeks comment on whether the SEC should require funds generally to disclose portfolio-based risk measures.[44] The SEC also asks for comments on whether such measures could be useful for new funds that do not have sufficient operating history to make use of a simple historical measure meaningful, funds that change their investment objectives or policies, funds that change investment advisers or portfolio managers, or merged funds comprised of different funds with different operating histories and different past risk levels.[45]

Another approach to risk measures is requiring funds to announce risk objectives or targets. Any of the risk and risk-adjusted performance measures could be used by funds in this manner. For example, a fund could announce its intention to follow a strategy that would yield a standard deviation of 10%–12% per year, a beta of 1.50–1.75 with respect to the S&P 500, or a duration of 7–9 years. Comments are requested regarding the relative merits of this approach as compared to the simple historical and portfolio-based approaches. Persons submitting comments are asked to address specifically the relative merits for funds with significant operating histories, new funds, funds that change their investment objectives or policies, funds that change investment advisers or portfolio managers, or merged funds comprised of different funds with different operating histories and different past risk levels. Persons supporting the use of simple historical measures by relatively new funds, funds that change their investment objectives or policies or their investment advisers or portfolio managers, or merged funds are also asked to address whether narrative disclosure should be required to explain the limits on the usefulness of the disclosure resulting from the funds' circumstances.

5. Computation Issues

Comments are requested on the following issues related to computation of quantitative risk measures and on any other relevant computation issues. What length of fund operating history is required to make particular historical risk measures useful? What requirements should be imposed on funds without this operating history? For example, if 18 months of operations are required to calculate a meaningful standard deviation figure, should funds that have been operating for less than 18 months be required to disclose the standard deviation of an appropriate market index or peer group of funds and explain any differences they expect between the fund's standard deviation and that of the index or peer group?

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[33] The SEC has solicited comment on risk-adjusted measures of performance on two prior occasions. In 1990, the SEC requested comment on whether mutual funds should be required to adjust performance figures to reflect risk for purposes of Item 5A of Form N–1A. See Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure, Investment Company Act Rel. No. 17294 (Jan. 8, 1990) [55 FR 1460, 1464 (Jan. 16, 1990)]. See also Summary of Comments on Proposed Amendments to Form N–1A, File S7–1–90, at 23–24 (summarizing views of the nine persons submitting comments who addressed risk adjustment of performance, all of whom opposed it).

In 1986, the SEC requested comment on how mutual funds could present risk-adjusted performance information in advertisements prepared in accordance with rule 482 under the Securities Act of 1933 [17 CFR 230.482]. See Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines, Investment Company Act Rel. No. 15315 (Sept. 17, 1986) [51 FR 34384, 34390 (Sept. 26, 1986)]. See also Summary of Comments on Mutual Fund Advertising Proposals, File No. S7–23–86, Mar. 31, 1987, at 60–70 (summarizing views of the thirteen persons submitting comments who addressed the issue, including nine who supported it and one who opposed it).

[34] See William F. Sharpe, "The Sharpe Ratio," 21 Journal of Portfolio Management 49–58 (Fall 1994); William F. Sharpe, "Mutual Fund Performance," 39 Journal of Business 119–38 (Jan. 1966); Sharpe, Alexander, & Bailey, *supra* note 20, at 935–37; Edwin J. Elton & Martin J. Gruber, Modern Portfolio Theory and Investment Analysis 648–52 (4th ed. 1991) [hereinafter "Elton & Gruber"].

[35] The yield on 90-day Treasury bills is often used as a proxy for the risk-free rate of return.

[36] See Jack L. Treynor, "How to Rate Management of Investment Funds," 43 Harvard Business Review 63–75 (Jan.-Feb. 1965); Sharpe, Alexander, & Bailey, *supra* note 20, at 934–35; Elton & Gruber, *supra* note 34, at 657–58.

[37] Michael C. Jensen, "The Performance of Mutual Funds in the Period 1945–1964," 23 Journal of Finance 389–416 (May 1968); Michael C. Jensen, "Risk, the Pricing of Capital Assets, and the Evaluation of Investment Portfolios," Journal of Business (Apr. 1969); Sharpe, Alexander, & Bailey, *supra* note 20, at 927–34.

[38] For an equity fund, the benchmark portfolio could be comprised of a market index, *e.g.*, the S&P 500, and a risk-free asset, *e.g.*, 90-day Treasury bills. Sharpe, Alexander, & Bailey, *supra* note 20, at 798.

[39] Form N–1A, Item 3; Form N–2, Item 4.

[40] For discussions of the importance of risk as a component of performance evaluation, see Sharpe, Alexander, & Bailey, *supra* note 20, at 917–49, and Bodie, Kane, & Marcus, *supra* note 23, at 796–826.

Funds are currently required to disclose historical returns for each of the last ten fiscal years (or, if less, the life of the fund). See Form N–1A, Item 3. This data shows variability of past annual returns and therefore provides some guidance regarding past risk.

[41] See Form N–1A, Item 3; Form N–2, Item 4 (financial highlights table).

[42] See Form N–1A, Item 3 & Form N–2, Item 4 (fund financial highlights tables cover each of last ten fiscal years); rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1] & rule 482(e)(3) under the Securities Act [17 CFR 230.482(e)(3)] (non-money market mutual fund advertisements and sales literature containing performance information required to contain average annual total return for one, five, and ten years).

[43] See, *e.g.*, Comptroller of the Currency, Risk Management of Financial Derivatives 49–53 (Oct. 1994); J.P. Morgan, Introduction to RiskMetrics™ (2d ed.) (Oct. 25, 1994); Group of Thirty, Derivatives: Practices and Principles 10–11 (July 1993).

[44] The Investment Company Institute has suggested that portfolio-based measures would be of limited relevance at best in an actively managed portfolio, would ignore the role of portfolio management, and would be burdensome to compute. *ICI Letter*, *supra* note 12, at 8 n.10.

[45] Issues have arisen with respect to fund advertisement of performance information in similar circumstances. See IDS Financial Corp. (pub. avail. Dec. 19, 1994) (acquisition of other funds' assets); North American Security Trust (pub. avail. Aug. 5, 1994) (combination of two funds); The Managers Core Trust (pub. avail. Jan. 28, 1993) (newly formed hub fund); Unified Funds (pub. avail. Apr. 23, 1991) (changed investment adviser); John Hancock Asset Allocation Trust (pub. avail. Jan. 3, 1991) (change from money market fund to asset allocation fund); Founders Funds, Inc. (pub. avail. Oct. 15, 1990) (change from unit investment trust to mutual fund); Zweig Series Trust (pub. avail. Jan. 10, 1990) (changed investment adviser); Philadelphia Fund, Inc. (pub. avail. Oct. 17, 1989) (changed investment adviser); Commonwealth Funds (pub. avail. June 14, 1989) (combination of two funds); Investment Trust of Boston Funds (pub. avail. Apr. 13, 1989) (changed investment adviser); The Fairmont Fund Trust (pub. avail. Dec. 9, 1988) (changed investment objective); and Growth Stock Outlook Trust, Inc. (pub. avail. Apr. 15, 1986) (new fund).

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For risk measures that require the use of a benchmark market index, what issues, if any, are associated with the selection of an appropriate benchmark? How should the SEC address the need to use assumptions to calculate certain risk measures, such as the prepayment assumptions that may be required to calculate duration? Can various quantitative risk measures be manipulated and how do the various measures differ in their susceptibility to manipulation? How can the potential for such manipulation be reduced or eliminated? For instance, is there some combination of risk measures the SEC could require that would not be susceptible to simultaneous manipulation?

Persons submitting comments are also asked to describe as specifically as possible the computation method they would recommend for any quantitative risk measure they favor. For example, persons favoring standard deviation should specify whether monthly returns, quarterly returns, or returns over some other periods should be used. As another example, persons favoring beta should describe the benchmark or benchmarks that should be used. Persons submitting comments are also asked to discuss the benefits and limitations associated with their recommended method of computation.

6. Effects on Portfolio Management

The SEC recognizes that requiring disclosure of a quantitative risk measure may affect portfolio management, *e.g.*, causing fund managers to adopt more conservative investment strategies. Comments are requested regarding whether, and how, disclosure of a quantitative risk measure might influence portfolio management and evaluating the associated benefits and detriments.

7. Third Party Providers of Quantitative Risk Information

The financial press and other third parties currently disseminate some quantitative information regarding fund risks. The available information includes measures such as those described in section III.A., including standard deviation, beta, and duration.[46] In addition, some organizations disseminate fund performance ratings that take risk into account [47] or fund risk ratings.[48] This data is made available either through reports and other documents published by the organizations that collect and calculate the measures or through periodicals and newspapers covering financial issues.

The SEC asks persons submitting comments to address the SEC's role with respect to disclosure of quantitative risk information in light of the availability of fund risk information from the financial press and other third parties. Is there, for example, helpful risk information that third party providers do not make available? Would SEC-required disclosure be important to ensure that all investors have access to some quantitative risk information and to help educate investors about the importance of such information? Would SEC-required disclosure be important to facilitate comparability among funds by ensuring that standardized quantitative risk information will be available for all funds? Would SEC-required disclosure of a quantitative risk measure be helpful wherever historic returns are reported to indicate to investors the risks incurred to generate those returns?

Persons submitting comments are also asked to address whether the SEC should take any steps to facilitate the provision of fund risk information by the financial press and other third parties. For example, should the SEC require more frequent disclosure of fund portfolio holdings or more detailed descriptions of fund portfolio holdings to facilitate third party risk analyses? If so, what information should the SEC require funds to make available and with what frequency? The SEC is currently authorized to require funds to file with the SEC "such information * * * as the SEC may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the [funds' Investment Company Act of 1940] registration statement[s] * * *."[49] Persons submitting comments are asked to address whether statutory amendments would be required to implement any recommendations they make in response to this paragraph.

Last year, the SEC requested comment regarding whether it should encourage or require disclosure of third party fund risk ratings in prospectuses, sales literature, and advertisements.[50] Persons who wish to address that issue in the context of today's broad inquiry into improved risk disclosure are invited to do so.

IV. Narrative Disclosure Options

The SEC asks for comment on the usefulness to investors of narrative risk disclosure currently found in prospectuses.[51] The SEC also asks persons submitting comments to describe ways of improving narrative risk disclosure that will not increase, and may reduce, technical information that may be of limited utility to investors. For example, should prospectus disclosure focus on the broad investment strategies of a fund rather than the particular investments used to implement the strategy?

Can disclosure of fund risks be improved through increased focus on the policies and investments actually used by a fund as opposed to all permissible policies and investments? For example, should a fund describe the policies and investments that have been used during some prior period, such as the preceding year, or that the fund intends to use during some future period, such as the following year, and simply list the other permitted policies and investments? Or should funds be required to provide a table or grid that indicates whether, and the extent to which, the policies and investments authorized to be used were used during some prior period, such as the preceding year? If a fund intends to alter the mix of policies and investments, should it be required to describe the projected change? In addressing the questions of this paragraph, persons submitting comments should consider the possibilities of placing various information in the prospectus,[52] annual report, and statement of additional information. For example, should the prospectus focus on the policies and investments the fund has actually made and that it may make in the reasonably foreseeable future, with the complete list of permissible investments and policies to be disclosed in the statement of additional information? As another example, should periodic reports be enhanced to include more information about what policies and investments the fund has, in fact, pursued and what risks were actually taken?

Can risks be accurately depicted through narrative disclosure apart from technical descriptions of particular types of investments? Would investors find it useful for funds to provide in their prospectuses a summary of the risk characteristics of the portfolio as a whole either in lieu of or in addition to disclosure of the characteristics of particular types of permissible investments? If a risk summary would be useful, what risks should it address? For example, should the SEC require a fund that invests a specified level, *e.g.*, 5% or 10% or 25%, of its net assets in a particular manner, *e.g.*, securities of non-U.S. companies, to discuss the related risks, *e.g.*, exchange rate fluctuations?[53]

A mutual fund's Management's Discussion of Fund Performance ("Management's Discussion"), contained in the prospectus or annual report, is currently required to discuss the factors, including the market conditions and the investment techniques and strategies, that materially affected the fund's performance during the previous fiscal year.[54] The SEC requests comments regarding whether narrative risk disclosure can be improved through amendments to the requirements for the Management's Discussion. Should the SEC, for example, explicitly require the Management's Discussion to address the risks assumed during the previous fiscal year and the effects of those risks on fund performance? Should the requirement for the Management's Discussion be extended to money market funds? If the Management's Discussion is a useful vehicle for risk disclosure, how should disclosure be accomplished for closed-end funds, which are not subject to the Management's Discussion requirements?

V. Self-Assessment of Risk

Another alternative upon which the SEC seeks comment is self-assessment by funds of their aggregate risk level. One approach might be to describe where the fund fits on a risk scale from low risk, for instance, a money market fund, to moderate risk, for instance, a growth and income fund investing in S&P 500 stocks and high quality bonds, to high risk, for instance, an emerging market fund.[55] Some fund complexes currently place various funds within the complex on a risk scale, and the SEC requests comment on whether such an approach would be useful for comparing funds from different complexes. If risk self-assessment is used, should the SEC create a standard scale? Persons supporting an SEC-created scale are asked to describe specifically what that scale should be, with particular attention to designing the scale to promote a high degree of uniformity in funds' self-assessments. Persons who favor a self-assessment approach but not an SEC-created scale are asked to address how the approach will foster meaningful investor comparisons among funds.

Comments are also requested on whether funds should be required to provide self-assessments of their exposures to various types of risk, with the results presented in chart or table format. Bond funds, for example, might rate their interest rate risk, credit risk, prepayment risk, and currency risk on a scale of low to medium to high.

VI. Risk Management Procedures

The disclosure options described in this Release have focused on improved disclosure of the level of risk incurred by a fund. Persons submitting comments are also asked to consider whether disclosure of fund risk management procedures should be required. Such disclosure could be narrative. For example, should funds be required to disclose the extent and nature of involvement by the board of directors in the risk management process? As another example, should funds describe the "stress-testing" they do to determine how the portfolio will behave in various market conditions? Alternately, such disclosure could be quantitative in format. For example, if the SEC requires disclosure of a quantitative risk objective or target, funds could be required to disclose the funds' actual risk level in subsequent periods and compare it with the previously-provided objective or target and explain the reasons for divergence.

VII. Liability Issues

Persons submitting comments are asked to address the appropriate scope of, and limits on, the liability of funds, investment advisers, and others for various risk disclosures. Persons submitting comments should specify any forms of risk disclosure that they believe raise particularly significant liability concerns, explain the concerns, and suggest means for mitigating the concerns.

VIII. Regulatory Flexibility Act

According to the SEC's rules and unless otherwise defined for a particular rulemaking proceeding, an investment company with net assets of $50 million or less at the end of its most recent fiscal year is a "small entity" for purposes of the Regulatory Flexibility Act.[56] The SEC requests persons submitting comments to describe and project fund costs to provide the various disclosures described in this Release, and any other disclosure that persons submitting comments may wish to discuss, and address whether requiring the disclosure would have a significant economic impact on small entities. If so, the SEC asks persons submitting comments to describe that impact specifically. Persons submitting comments also are asked to suggest methods for improving disclosure of fund risks without imposing significant costs on funds, specifically without having a significant economic impact on funds that are small entities.

IX. Conclusion

The SEC is seeking comments and suggestions on a number of specific issues related to fund disclosure of risks. Persons submitting comments are encouraged, however, to address any other matters that they believe merit examination.

Dated: March 29, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix—SEC Request for Investor Suggestions on How To Improve the Descriptions of Risk in Mutual Funds

The U.S. Securities and Exchange Commission ("the SEC"), the federal government agency that oversees mutual funds, wants to hear from investors on

[46] See, *e.g.*, CDA/Wiesenberger, Mutual Funds Update, Dec. 31, 1994; Morningstar Mutual Funds, Dec. 9, 1994; The Value Line Mutual Fund Survey, Part 2, Ratings & Reports, Feb. 21, 1995. Value Line also ranks mutual funds in five risk categories, based on historical standard deviation. How to Use The Value Line Mutual Fund Survey, A Subscriber's Guide (1994), at 4–5.

[47] See, *e.g.*, Business Week, Feb. 14, 1994, at 78–79; Forbes, Aug. 29, 1994, at 174; CDA/Wiesenberger, Investment Companies Yearbook 1994 441 (1994); Morningstar Mutual Fund Performance Report, Jan. 1995, at 3; How to Use The Value Line Mutual Fund Survey, A Subscriber's Guide (1994), at 4–5.

[48] These ratings are based on an analysis of factors such as currency, interest rate, liquidity, and mortgage prepayment risks; hedging; leverage; and the use of derivatives. *See* "Bond Fund Risks Revealed," Fitch Research Special Report, Oct. 17, 1994, at 1; Gary Arne, Standard & Poor's, CreditReview, Jan. 16, 1995, at 12.

[49] Investment Company Act § 30(b) [15 U.S.C. 80a–29(b)].

[50] Nationally Recognized Statistical Rating Organizations, Securities Act Rel. No. 7085 (Aug. 31, 1994) [59 FR 46314 (Sept. 7, 1994)]. The SEC is currently studying the comment letters received.

[51] See discussion *supra* notes 3–5 and accompanying text.

[52] Mutual funds generally offer their shares on a continuous basis and, as a result, are required to file periodic "post-effective" amendments to their registration statements in order to maintain a "current" prospectus required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]. Post-effective amendments also satisfy the requirement that mutual funds amend their Investment Company Act registration statements annually [17 CFR 270.8b–16]. Because closed-end funds do not generally offer their shares to the public on a continuous basis, they generally do not update their prospectuses periodically.

[53] *Cf.* Form N–1A, Item 4(b)(ii) (greater prospectus disclosure required for investment practices that place more than 5% of a fund's net assets at risk).

[54] Form N–1A, Item 5A.

[55] In Rel. 19342, *supra* note 2, the SEC requested comment on this approach and other formats for disclosing risk, including numerical scales and other visual or symbolic representations. A limited number of persons submitting comments addressed these specific methods for standardizing risk disclosure. Summary of Comments: Rel. 19342, *supra*, note 2, at 17–18.

[56] Investment Company Act rule 0–10 [17 CFR 270.0–10].

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how the descriptions of risk in mutual funds may be improved. When investors choose a mutual fund, they should understand the risks of the fund before they invest and not be surprised if the value of their investment rises and falls significantly.

The risks and potential rewards of investing in any mutual fund are explained in a written document provided by the mutual fund called a "prospectus." The prospectus contains information that is important to making an informed decision when choosing a mutual fund.

The SEC is concerned that the descriptions of risk in mutual fund prospectuses are not as helpful or as clear as they could be. The SEC is seeking ideas and suggestions on how these descriptions of risk may be improved. Your ideas and suggestions may shape how risks are explained in the future and help investors make better investment choices.

Here are a series of questions and examples on how the descriptions of risk may be improved. We urge you to respond, whether you answer one question or all, or just have general comments. Feel free to use this form or write a separate letter marked "File No. S7–10–95."

Please mail your comments to the SEC no later than July 7, 1995. Directions for sending your comments to the SEC are provided at the end of this document. The SEC will make your comments and other comments received by the SEC available to the public.

How do you learn about mutual fund risks? The SEC would like to know how you learn about the risks of a mutual fund before you invest in the fund.

• Do you learn about mutual fund risks from the fund prospectus, a broker or bank representative, an investment adviser, a family member or friend, magazines, newspapers, or other publications? If you use more than one of these sources, please list all of the sources that you use.

• What information do you find most useful in evaluating mutual fund risks? What can the SEC do to provide information about the risks of investing in mutual funds that other sources of information do not do?

How well do mutual fund prospectuses describe the risks of investing? The SEC would like to know if you find the way mutual fund prospectuses describe the risks of investing to be helpful.

• Do mutual fund prospectuses give you a good idea of the risks of investing? What do you like about the way mutual funds describe risk in their prospectuses and what would you like funds to do differently?

• Would you like all mutual fund prospectuses to contain a summary of the risks of investing in the fund? If so, what would you like to see in the summary?

• Provide copies of any mutual fund descriptions of risk that you believe are very helpful or unhelpful. Tell the SEC what you like or don't like about the descriptions.

What do you want to know about risk? Risk means different things to different people. The SEC would like to know how you define risk.

• Do you define risk as:

(1) the chance that you will lose part of your investment;

(2) the chance that your investment will earn less than a certain amount, for example, a fixed percentage, such as 5% per year, or the return on a no-risk investment, such as a bank CD or U.S. treasury bill, or the return on a stock or bond index, such as the Standard & Poor's 500 stock index; or

(3) the variability in your fund's return, that is, the month-to-month or year-to-year ups and downs in your fund's share price or its distributions?

Or do you define risk in some other way?

• In choosing a mutual fund, are you most interested in comparing the risks of investing in the fund to the risks of putting your money in:

(1) investments that are not mutual funds, for example, bank CDs or individual stocks and bonds;

(2) other mutual funds of all types;

(3) mutual funds of the same broad type, for example, stock funds or bond funds; or

(4) mutual funds with the same investment objective, for example, short-term bond funds?

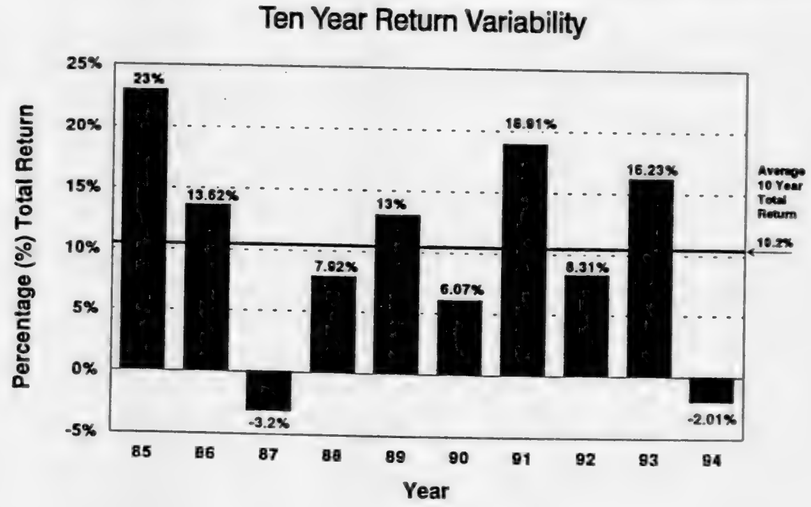
• Is your need for information about the risks of investing in mutual funds greater for stock funds or bond funds, or is your need for information about risk the same in both cases? Explain.

Would you like risk to be described with numbers, graphs, or tables? The SEC is looking at a variety of ways that mutual funds could tell investors about risk in addition to, or instead of, descriptions in words. The SEC would like your ideas and suggestions about which of those ways would be most helpful to you.

• Do you find information most helpful when it is in the form of written descriptions, numbers, graphs, tables, charts, pictures, or some other form?

Mutual funds today are required to provide investors with their annual returns for each of the past 10 years. By looking at these returns, investors can get an idea of how variable a fund's returns have been. This variability could be illustrated with a bar graph like the following.

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BILLING CODE 8010–01–C

• Would you find a bar graph like the above helpful in understanding the ups and downs in a mutual fund's annual returns? Would it increase your understanding of a fund's risk if the fund also provided you a bar graph of the returns of a market index, such as the Standard & Poor's 500 stock index?

The SEC is looking at the possibility of requiring mutual funds to use numbers to tell investors about the risks of investing. Examples of the numbers that the SEC is considering as required risk measures are:

• Standard Deviation of Total Return. This number measures how variable a fund's total returns have been, that is, how much they have gone up and down. The larger the standard deviation, the more variable a fund's total returns have been.

• Duration. This number measures how sensitive a bond fund's value is to changes in interest rates.

If you have ideas about what risk measurement numbers the SEC should ask mutual funds to give to investors, the SEC would like to hear those ideas.

• Should the SEC require funds to disclose standard deviation or duration or any other specific risk measures? Why or why not?

Should mutual funds rank their risk levels? The SEC is considering whether it would be useful and practical for mutual funds to rank various aspects of risk. For example, bond funds could be required to tell investors whether their exposures to interest rate changes, default risks, and currency fluctuations are low, medium, or high. This could be done in the form of a chart like the following.

RISK SUMMARY

Portfolio	Interest rate risk	Default risk	Currency risk
High-Yield Fund.	Medium	High	Low.
Global Bond Fund.	Medium	Medium	High.
Mortgage-Backed Security Fund.	High	Low	Low.

• Would it be useful for funds to rank various aspects of risk? Do you find the above chart helpful? Do you understand the types of risk referred to in the chart and the significance of those risks?

How to mail your ideas and suggestions to the SEC:

• This form can be mailed to the SEC by folding it in half, with the return address showing. Please staple or tape this form closed. No postage is necessary.

• If you do not wish to use this form, you can write a letter directly to the SEC. Mark your letter "File No. S7–10–95," and send it to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

• Remember to send your ideas and suggestions by July 7, 1995.

Do you want further information about what the SEC is considering?

• If you would like a copy of the complete SEC release that describes what the SEC is considering, write to Office of Consumer Affairs, Securities and Exchange Commission, Attn: Michael Strupp, Mail Stop 2–6, 450 Fifth Street, N.W., Washington, D.C. 20549.

Thank you for responding.

Your Name _____

Street Address _____

City _____

State _____

Zip _____

[FR Doc. 95–8143 Filed 4–3–95; 8:45 am]

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12 and 52
Federal Acquisition Regulation, Subcontracts for Commercial Items; Proposed Rule; Correction

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAR Case 94–791]

Federal Acquisition Regulation; Subcontracts for Commercial Items; Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule correction.

SUMMARY: In related actions Federal Acquisition Regulation (FAR) case 94–790 proposed to implement statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors and FAR case 94–791 proposed a complete list of laws determined to be inapplicable to Executive agency contracts and subcontracts for commercial items and clauses applicable to subcontracts for the acquisition of commercial items. Neither of these cases addressed the statutory authority for the Comptroller General to examine the records of contractors. This amendment corrects that omission.

DATES: Comments should be submitted on or before May 22, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–791 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Items Team Leader, at (703) 695–3858 in reference to this correction. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–791 correction.

SUPPLEMENTARY INFORMATION:

A. Background

FAR cases 94–790, Acquisition of Commercial Items, and 94–791, Subcontracts for Commercial Items, were published as proposed rules with request for comment at 60 FR 11198; March 1, 1995 and 60 FR 15220; March 22, 1995, respectively. In addition to these changes, the Federal Acquisition Streamlining Act (FASA) of 1994 also consolidated audit provisions and made other related revisions to the Government's authority to examine records of contractors by amending 10 U.S.C. 2313 (section 2201(a)) and by adding 41 U.S.C. 254d (section 2251(a)). These audit related sections were proposed to be implemented by FAR case 94–740 published at 59 FR 66408; December 23, 1994. The proposed language contained in FAR case 94–740 includes the authority for both the Comptroller General and Agency examination of records in a single clause. However, the clause will only be included in contracts for the acquisition of commercial items, when an exception to the requirement for cost or pricing data under FAR 15.804–1(a) does not apply. As a result, contracts for commercial items that qualify for the exception to the requirements for cost or pricing data will not contain language providing the Comptroller General the authority to examine records as required by 10 U.S.C. 2313(c) and 41 U.S.C. 254d(c). To remedy this oversight, we propose to make the following amendments to FAR case 94–791:

• Revise the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, by adding a new paragraph (d) to address the Comptroller General authority granted in the two statutes. The balance of the clause remains unchanged from that published in the **Federal Register** at 60 FR 11198. This revision will provide the Comptroller General the authority to examine records when:

(1) The contract was awarded by other than sealed bid;

(2) The contract is above the simplified acquisition threshold; and

(3) The clause at 52.215–2, Audit and Records—Negotiation, is not included in the contract. When cost or pricing data is required, the contracting officer will incorporate the appropriate Part 15 clauses, to include the clause proposed at 52.215–2, Audit and Records—Negotiation (see FAR Case 94–740). This clause provides for both the Comptroller General and Agency authority to examine records. The Commercial Items Team has chosen to revise the clause at 52.212–5 to add coverage for the Comptroller General specifically tailored to the acquisition of commercial items rather than cite the applicable portions of the clause at 52.215–2. This approach will clearly and more simply establish the Comptroller General's right to examine records for contracts for commercial items.

• Revise FAR 12.403, Applicability of certain laws to subcontracts for the acquisition of commercial items, to include 10 U.S.C. 2313(c) and 41 U.S.C. 254d(c) in the list of laws not applicable to subcontracts for commercial items. Paragraph (c) of these laws (which relate to the Comptroller General's authority) will not be applicable when the subcontractor is not required to submit cost or pricing data. When cost or pricing data is required, the clause at 52.215–2 will appear in both the prime and subcontract and authority to examine records of subcontractors will apply.

B. Corrections

1. At 60 FR 15221; March 22, 1995, in the third column section 12.403 is correctly revised to read as follows:

12.403 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see 48 CFR (FAR) part 19, subpart 19.2);

(2) 41 U.S.C. 43, Walsh-Healey Act (see 48 CFR (FAR) part 22, subpart 22.6);

(3) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see 48 CFR (FAR) part 27, subpart 27.4);

(4) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 48 CFR (FAR) part 3, subpart 3.4);

(5) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see (FAR) part 15, subpart 15.1);

(6) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 48 CFR (FAR) part 5, subpart 5.2);

(7) 41 U.S.C. 418a, Rights in Technical Data (see 48 CFR (FAR) part 27, subpart 27.4);

(8) 41 U.S.C. 701 *et seq.*, Drug-Free Workplace Act of 1988 (see 48 CFR (FAR) 23.5);

(9) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see 48 CFR (FAR) part 47, subpart 47.5);

(10) 49 U.S.C. 40118, Fly American provisions (see 48 CFR (FAR) part 47, subpart 47.4);

(11) Pub. L. 90–469, William Langer Jewel Bearing Plant Special Act (see 48 CFR (FAR) part 8, subpart 8.2);

(12) 10 U.S.C. 2301, note, as amended by Section 2091, Pub. L. 103–355, Payment Protections for Subcontractors and Suppliers (see 48 CFR (FAR) parts 28 and 32, subparts 28.1 and 32.1);

(13) 10 U.S.C. 2241, note (Pub. L. 102–396, Section 9005, as amended by Pub. L. 103–139, Section 8005), Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States (See 48 CFR (DFARS) part 225, subpart 225.70);

(14) 10 U.S.C. 2320, Rights in Technical Data (see 48 CFR (DFARS) part 227, subpart 227.4);

(15) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions. (see 48 CFR (DFARS) part 227, subpart 227.4);

(16) 10 U.S.C. 2327, note (Pub. L. 103–160, Section 843), Reporting Requirement Regarding Dealings with Terrorist Countries (see 48 CFR (DFARS) part 209, subpart 209.1);

(17) 10 U.S.C. 2391, note (Pub. L. 101–510, Section 4201(a)(1)(B)), Notification of Substantial Impact on Employment (see 48 CFR (DFARS) part 249, subpart 249.70);

(18) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors (see 48 CFR (DFARS) part 209, subpart 209.4);

(19) 10 U.S.C. 2501, note (Pub. L. 103–160, Section 1372), Notification of Proposed Program Termination (see 48 CFR (DFARS) part 249, subpart 249.70);

(20) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods other than United States Goods (see 48 CFR (DFARS) part 225, subparts 225.7004, 225.7007, 225.7010, and 225.7016);

(21) 10 U.S.C. 2631, Cargo Preference Act (see 48 CFR (DFARS) 247.5); and

(22) National Defense Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases as follows: Pub. L. 100–202, Section 8088, Polyacrylonitrile Based Carbon Fiber; Pub. L. 101–511, Section 8041, Anchor and Mooring Chain; Pub. L. 102–172, Section 8111, Carbon, Alloy and Armor Steel Plates; Pub. L. 102–396, Section 9108, Four Ton Dolly Jacks; Pub. L. 102–484, Section 832, Anti friction Bearings; Pub. L. 103–139, Section 8090, Aircraft Fuel Cells; Pub. L. 103–139, Section 8124, Totally Enclosed Lifeboat Survival Systems; Pub. L. 103–335, Section 8023, Supercomputers; Pub. L. 103–335, Section 8050, Multibeam Sonar Mapping Systems; Pub. L. 103–335, Section 8115, Ship Propellers; and Pub. L. 103–335, Section 8120, 120 mm Mortars and Ammunition.

(b) Certain requirements of the following laws have been eliminated for subcontracts under either a contract for the acquisition of commercial items or subcontract for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 48 CFR (FAR) part 23, subpart 23.1);

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 48 CFR (FAR) part 22, subpart 22.3);

(3) 41 U.S.C. 423e(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see 48 CFR (FAR) part 3, subpart 3.1); and

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 48 CFR (FAR) part 23, subpart 23.1).

(c) The applicability of the following laws have been modified in regards to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 48 CFR (FAR) part 3, subpart 3.5);

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 48 CFR (FAR) part 15, subpart 15.8); and

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR (FAR) part 99).

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

2. At 60 FR 15222; March 22, 1995, in the second column section 52.212–5 is correctly revised to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.302(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3));

(2) 52.222–3, Convict Labor (E.O. 11755); and

(3) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the following FAR and FIRMR clauses in this paragraph (b) that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

_____ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

_____ (3) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

_____ (4) 52.222–26, Equal Opportunity (E.O. 11246).

_____ (5) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012).

_____ (6) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

_____ (7) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012).

_____ (8) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

_____ (9) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

_____ (10) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

_____ (11) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

_____ (12) 52.225–19, European Community Sanctions for Services (E.O. 12849).

_____ (13) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).

_____ (14) 52.247–64, Preference for Privately Owned US Flagged Commercial Vessels (46 U.S.C. 1241).

_____ (15) 201–39.5202–3, Procurement Authority (FIRMR). (This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____).

(c) The Contractor agrees to comply with the following FAR clauses in this paragraph (c), applicable to commercial services, that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

_____ (1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

_____ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

_____ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

_____ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

_____ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor agrees to comply

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with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215–2, Audit and Records—Negotiation:

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(End of clause)

Dated: March 29, 1995.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–8145 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–34–P

federal register

Tuesday
April 4, 1995

Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 97

Plant Variety Protection Regulations, Amendments To Conform to Change in the Law and To Increase Certification Fees; Interim Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[SD–95–001]

RIN 0581–AB39

Plant Variety Protection Regulations; Amendments To Conform to Change in the Law and To Increase Certification Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the Plant Variety Protection Regulations to conform to changes made in the Plant Variety Protection Act (PVPA). The amendments to the PVPA become effective April 4, 1995. Fees are increased to recover the cost of administering the Act and to maintain the program as a fully user funded program.

DATES: Effective April 4, 1995; comments received by May 4, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Comments should be sent to Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, Room 500, National Agricultural Building, Beltsville, Maryland 20705–2351. Telephone (301) 504–5485. Comments will be available for public inspection at this location during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Telephone:(301)504–5518, FAX (301)504–5291

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866; Executive Order 12778

This interim final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Regulatory Flexibility Act

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). The fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which utilize Plant Variety Protection services.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements included in 7 CFR Part 97 have been approved previously by the Office of Management and Budget and have been assigned OMB control number 0581–0055.

IV. Background Information

The Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) (PVPA) authorizes the Secretary to issue Certificates of Plant Variety Protection which afford variety ownership rights similar to patent rights. As a member of the International Union for the Protection of New Varieties of Plants (UPOV) the United States participated in negotiations which resulted in the March 19, 1991 UPOV Convention. The PVPA was amended on October 6, 1994 to conform to the new UPOV Convention and the amendments will be effective on April 4, 1995. This interim final rule revises the regulations to conform to the amendments of the PVPA. The regulations must be revised so that they are in place when the amended Act becomes effective. It is also necessary that the program be maintained as a fully user-fee funded program. Therefore, pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

Section 97.1 (a general statement of the scope of the regulations) is revised in three respects. First, the phrase "novel varieties" is replaced by "new, distinct, uniform, and stable varieties" because the term "novel variety" is no longer used in the PVPA. Second, a reference to tuber reproduced plants is added to reflect the extension of the PVPA to tuber reproduced as well as sexually reproduced plant varieties. Third, the description of the rights afforded by a certificate is revised by adding conditioning and stocking as actions which require the authorization of the owner, as provided in the PVPA.

In § 97.2 (a list of definitions), the term "hybrid" is removed. The definition is no longer necessary because the PVPA now extends to hybrid varieties.

Section 97.5(a)(2) is revised to specify that the member states of UPOV include those countries which are members of an intergovernmental organization which is a UPOV member. This clarification is made because nationals of such countries would in any event be fully eligible for protection under section 97.5(a)(3).

Section 97.6(d), which deals with the requirement that the application must be accompanied by a seed sample, is revised by adding that, for a tuber propagated variety, the application be accompanied by "verification that a viable cell culture will be deposited in a public depository before the issuance of the certificate and will be maintained for the duration of the certificate." This reflects the extension of the PVPA to tuber propagated varieties where the reference to seeds would be inapplicable. Additionally, seed samples provide information on seed characteristics and demonstrate the uniformity of the deposit. No such information is gained from a cell culture.

Section 97.7 is removed. This section relates to the statements of the applicant in signing a completed application. It is unnecessary because the applicant in signing the application states what is stated on the completed application. Further, the provision mentions items which are no longer applicable because of the amendment of the PVPA.

Section 97.11(b), which relates to the length of time an incomplete or defective application will be held, is revised to provide for holding for three months rather than six months, to reflect a change in the statute.

The heading of § 97.15 is revised by removing the word "novel" so that it would read "Assigned varieties and certificates." As mentioned above, the amended PVPA no longer uses the term "novel variety."

Section 97.19 is revised by replacing the word "novel" with "distinctive" for the same reason. Similar changes would be made in §§ 97.100(b), 97.104(b), 97.105, 97.106, 97.130, 97.140, 97.141, 97.201(e), and 97.800.

Section 97.20, relating to abandonment for failure to respond to

requests for information, is revised by changing the time period from 6 months to 30 days to reflect the amendment of the PVPA. This only changes the automatic period of time provided; extensions may still be granted. In connection with this change, the reference in § 97.20(c) to a "shortened" period of 30 days is removed.

The amendments to the PVPA provide that certificates which have been granted and applications which are pending as of the effective date of the amendments will continue to be governed by the Act as it was prior to the amendments. There is an exception for applications which are withdrawn and refilled under the new amendments to the law. Section 97.23 (relating to the withdrawal of applications) is revised by adding a provision which simplifies the withdrawal of a pending application for the purpose of refiling under the amended PVPA. All that is required is written notice and payment of the application fee. Completion of a new application form would not be necessary.

Sections 97.140 and 97.141 (which relate to notice on the label that protection has been applied for or granted, respectively) are also revised to clarify that the notice may, where applicable, specify "PVPA–1994" so as to give notice that the variety is subject to the new infringement provisions.

Section 97.142 (which relates to notice accompanying seed released for testing or increase only) is revised so that it would also apply to tuber reproducing plants.

A footnote is added to the provisions relating to priority contests (beginning at § 97.205) stating that they apply only to varieties protected under the PVPA as it was prior to the 1994 amendments. The amendments removed the date of determination of a variety a deciding factor in eligibility for protection. The provisions are not removed, however, because there could be a possibility that there may be a priority contest involving applications under the PVPA prior to the 1994 amendments.

Similarly, §§ 97.303 and 97.500 (relating to appeals from the decisions of the Secretary) are revised to remove references to specific sections of the PVPA. These references are unnecessary and may be confusing because there is a possibility of an appeal from the decision of the Secretary which would be governed by the PVPA as it was prior to the 1994 amendments.

The fees set forth in § 97.175 are increased. The application fee is increased from $275 to $300, the search fee from $2,050 to $2,150, and the issuance fee from $275 to $300. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $275 to $300. The charge for granting an extension for responding to a request is set at $50. The hourly charge for any other service not specified is increased from $40 to $60. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,600 to $2,750.

These fee increases are necessary to maintain the program as a fully user funded program.

The Plant Variety Protection Advisory Board has been consulted on a fee increase on September 23, 1992. The fees were not increased at that time. The Board was also consulted and advised that the regulations should be revised to conform to any amendments made in the PVPA to conform to the new UPOV Convention. This interim final rule makes the minimum changes in the regulations to implement the PVPA and increase fees to maintain the program as a fee funded program.

List of Subjects in 7 CFR Part 97

Plants, Seeds.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 is revised to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 43, 56, 57, 91(c), Plant Variety Protection Act, as amended; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402b, 2403, 2426, 2427, 2501(c); Sec. 14, Plant Variety Protection Act amendments of 1994; 7 U.S.C. 2401 note; 29 FR 16210, as amended, 37 FR 6327, 6505.

§ 97.1 [Amended]

2. Section 97.1 is amended by removing the word "novel" and adding in its place "new, distinct, uniform, and stable"; adding "or tuber propagated" after the word "reproduced" and adding "conditioning it, stocking it," after the words "exporting it,".

§ 97.2 [Amended]

3. Section 97.2 is amended by removing the definition of "hybrid".

§ 97.5 [Amended]

4. Section 97.5(a)(2) is amended by adding the words "(including states which are members of an intergovernmental organization which is a UPOV member)" after the word "Plants".

§ 97.6 [Amended]

5. Section 97.6(d) is amended by adding the words "or with the application for a tuber propagated variety, verification that a viable cell culture will be deposited in a public depository before the issuance of the certificate and will be maintained for the duration of the certificate" after the word "variety".

§ 97.7 [Removed and Reserved]

6. Section 97.7 is removed and reserved.

§ 97.11 [Amended]

7. Section 97.11 (b) is amended by removing the number "6" and adding a "3" in its place.

§ 97.15 [Amended]

8. Section 97.15 heading is revised to read as follows: Assigned varieties and certificates.

§ 97.19 [Amended]

9. Section 97.19 is amended by removing the word "novel" from the undesignated paragraph at the end of the section and adding the word "distinctive" in its place.

§ 97.20 [Amended]

10. Section 97.20(a) is amended by removing the words "6 months" and adding the words "30 days" in their place; and paragraph (c) is amended by removing the word "shortened".

§ 97.23 [Amended]

11. Section 97.23 is amended by adding a new paragraph (d) as follows:

§ 97.23 Voluntary withdrawal and abandonment of an application.

* * * * *

(d) Transitional provision. An applicant whose application is pending on April 4, 1995, may notify the Plant Variety Protection Office in writing that he or she wishes to withdraw the application and refile it under the Plant Variety Protection Act as amended in 1994. Payment of the current application fee is required but no other formalities are necessary.

§ 97.100 [Amended]

12. Section 97.100(b) is amended by removing the word "novel" and adding the words "new, distinct, uniform, and stable" in its place.

§ 97.104 [Amended]

13. Section 97.104(b) is amended by removing the word "novel".

§ 97.105 [Amended]

14. Section 97.105(a) is amended by removing the word "novel" and adding the words "new, distinct, uniform, and stable" in its place and paragraph (b) is amended by removing the words "for want of novelty".

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§ 97.106 [Amended]

15. Section 97.106(b) is amended by removing the word "novelty" and adding "the variety being new, distinct, uniform, and stable" in its place; and (c) is amended by removing the word "novelty" and adding "the variety is new, distinct, uniform, and stable" in its place; and removing the word "novel" and adding "new, distinct, uniform, and stable" in its place.

§ 97.130 [Amended]

16. Section 97.130(c) through (d) are amended by removing the word "novel" at each occurrence.

§§ 97.140, 97.141 [Amended]

17. Sections 97.140 and 97.141 are amended by removing the word "novel" and adding a new sentence to the end of each section reading "Where applicable, "PVPA 1994" may be added to the notice.".

§ 97.142 [Amended]

18. Section 97.142 is amended by removing the words "other sexually" and "produced from seed" and adding the word "material" before the word "substantially".

§ 97.175 [Revised]

19. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing	$300
(b) Search or examination	2,150
(c) Allowance and issuance of certificate and notifying public of issuance	300
(d) Revive an abandoned application	300
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)	1
(f) Authentication (each page)	1
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(i) Copies of 8 x 10 photographs in color	25
(j) Additional fee for reconsideration	300
(k) Additional fee for late payment	25
(l) Additional fee for late replenishment of seed	25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)	2,750
(n) Granting of extension for responding to a request	50

(o) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $60 per employee-hour.

§ 97.201 [Amended]

20. Section 97.201(e) is amended by removing the word "novel" in the second sentence.

21. A footnote number 2 is added to the undesignated center heading "PRIORITY CONTEST" preceding section 97.205, as follows: "[2] All provisions relating to priority contests apply only to varieties protected under the Act as it was in force prior to April 4, 1995."

§ 97.303 [Amended]

22. Section 97.303(b) is amended by removing "sections 71, 72, or 73 of".

§ 97.500 [Amended]

23. Section 97.500 is amended by removing "sections 71, 72, and 73 of".

§ 97.800 [Amended]

24. Section 97.800 is amended by removing the word "novel" and adding "distinct, uniform, and stable" in its place.

Dated: March 29, 1995.

Lon S. Hatamiya,

Administrator.

[FR Doc. 95–8203 Filed 4–3–95; 8:45 am]

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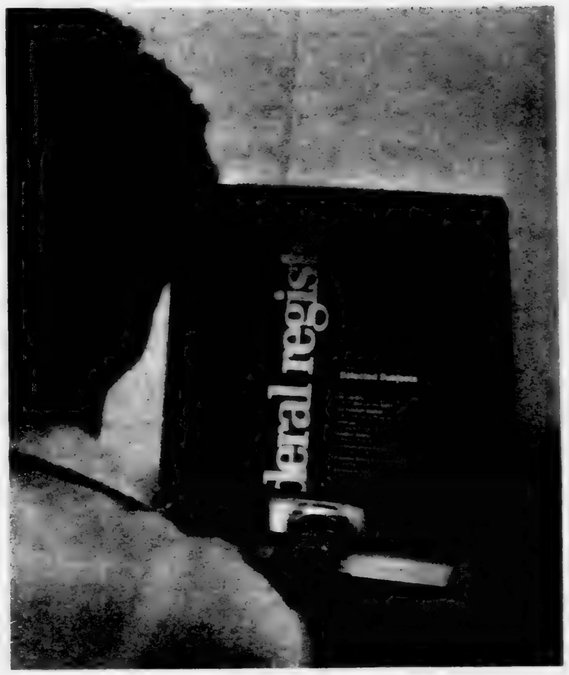
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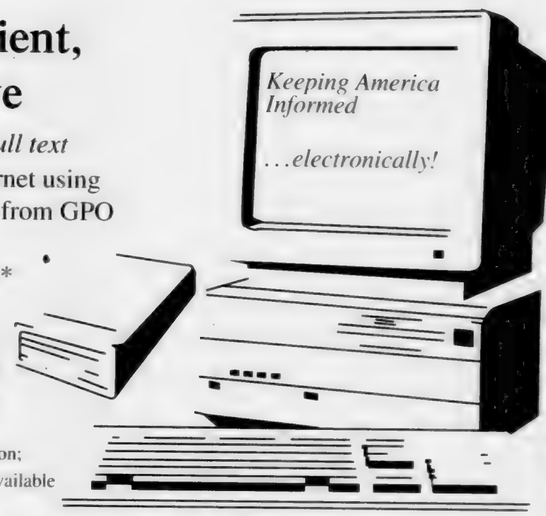
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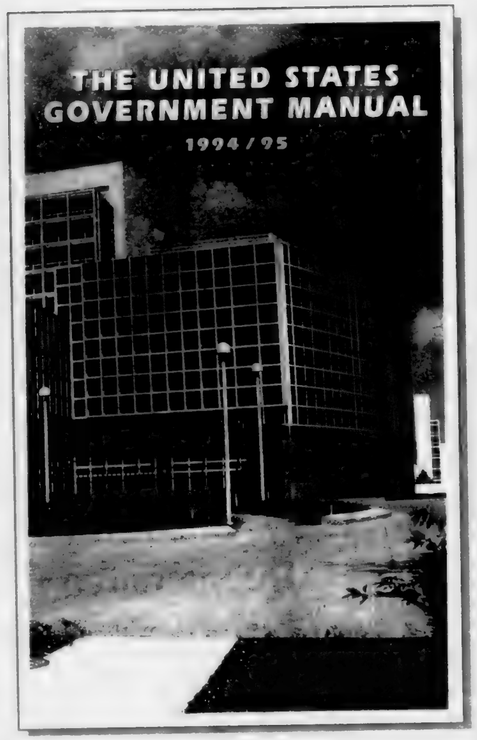
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Rules and Regulations

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Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA–95–12]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain provisions of the Texas Federal milk marketing order from March 1, 1995, through July 31, 1995. The suspension removes the diversion limitation applicable to cooperative associations. The suspension was requested by Associated Milk Producers, Inc., a cooperative association representing a substantial number of producers who supply milk to the market. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: March 1, 1995, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7465).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7465) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of March 1, 1995, through July 31, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1126.13, paragraph (e)(2).

Statement of Consideration

This rule suspends certain provisions of the producer milk definition in the Texas order for the months of March through July 1995. The suspension removes the limitation on the amount of producer milk that a cooperative may divert to a nonpool plant.

Currently the order permits a cooperative association to divert up to one-third of the amount of producer milk that the cooperative causes to be physically received during the month at handlers' pool plants to nonpool plants. The diversion provisions provide an efficient means to move milk that is in excess of fluid milk needs directly from farms to nonpool plants for manufacturing and still be priced under the order.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing a substantial number of producers who supply milk to the market, requested the suspension. AMPI stated that during recent months the cooperative had reached maximum pooling capability because of the diversion limitations to nonpool plants. AMPI contends that during the flush season (March through July) the cooperative will be adversely impacted as local production expands and the cooperative exceeds the one-third diversion limitation.

Current projections indicate that there will be ample supplies of milk to meet the fluid demand of the market during the months of March through July 1995. It is impractical to require that more milk be shipped by cooperative associations to other pool plants than is needed at such plants merely to gain eligibility for pooling and diversion status. Absent this suspension, costly and inefficient movements of milk will be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

Accordingly, it is appropriate to suspend the aforesaid provision beginning March 1, 1995, through July 31, 1995.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary

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and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1126, is amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.13 [Suspended in part]

2. In § 1126.13, paragraph (e)(2) is suspended for the months of March 1, 1995, through July 31, 1995.

Dated: March 27, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–8354 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1131

[DA–95–11]

Milk in the Central Arizona Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain provisions of the Central Arizona Federal milk marketing order beginning April 1, 1995, through March 31, 1996. The suspension eliminates the requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, requested the suspension. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: April 1, 1995, through March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7466).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Arizona marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7466) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that for the months of April 1, 1995, through March 31, 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1131.7(c), the words "50 percent or more of", "(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)" and "or the previous 12-month period ending with the current month."

Statement of Consideration

This rule suspends certain provisions of the Central Arizona order for the months of April 1995 through March 1996. The suspension removes the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Currently the order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

The suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the continued pool status of their manufacturing plant is threatened by an increase in milk production combined with a drop in Class I sales. UDA states that in 1994 its member production increased 17 percent over the previous year. In 1994, monthly deliveries to distributing plants also increased sufficiently to ensure UDA a safe margin over the minimum 50 percent shipping requirement to maintain pool status of its manufacturing plant.

One dairy farmer filed a comment opposing the suspension action. The dairy farmer opposed the action because it would allow for more milk to continue to be regulated under the order than would otherwise be the case. As a result, the dairy farmer asserted that he would receive a lower blend price than if the action were not taken because some milk would not qualify for regulation under the order.

During the past year, there has been an increase in the production of milk and an increase in distributing plant demand. Primarily, the increased demand is a result of a significant increase in Class I sales in Mexico by Central Arizona handlers. The recent collapse in value of the Mexican peso has curtailed these sales and thus reduced handler requirements for bulk milk deliveries; however, production has not declined. This general increase in production and decline in sales affects all producers in the market equally. If the action were not taken, some milk would not receive the benefits of the blend price resulting from regulation under the order. By taking this action, all producers who have historically supplied the market would continue to share equally in the benefits of regulation without costly and inefficient movements of milk simply to maintain their pool status.

The comment submitted by UDA in support of the proposed suspension clarified the specific order language that UDA requested be suspended. UDA did not intend for the words "its member producer milk" and "received at the pool plants of other handlers during the current month" to be included in the proposed suspension. Upon review of UDA's request and supporting comment, the order language in § 1131.7(c) to be suspended has been modified to exclude these specific words.

UDA also requested that the suspension be granted for an indefinite period beginning in March 1995. After reviewing the marketing conditions of the Central Arizona marketing area and their relationship with the uncertain value of the Mexican peso, this suspension will be for a one-year period. The marketing conditions indicate that the suspension should not begin until April 1995.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning April 1, 1995, through March 31, 1996.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1131, are amended as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1131.7 [Suspended in part]

2. In § 1131.7(c), the words "50 percent or more of", "(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)" and "or the previous 12-month period ending with the current month." are suspended for the months of April 1, 1995, through March 31, 1996.

Dated: March 27, 1995.

Patricia Jensen,

Acting Assistant Secretary. Marketing and Regulatory Programs.

[FR Doc. 95–8353 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1995–6]

11 CFR Parts 100, 104 and 113

Expenditures; Reports by Political Committees; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: On February 9, 1995, the Commission published the text of revised regulations governing the personal use of campaign funds. 60 FR 7862. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The Commission announces that the rules are effective as of April 5, 1995.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of its new regulations governing the personal use of campaign funds. The new rules insert a definition of personal use into the Commission's regulations. The rules also amend the definition of expenditure and the reporting requirements for authorized committees in the current regulations.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on February 3, 1995. Thirty legislative days expired in the House of Representatives on March 23, 1995. Thirty legislative days expired in the Senate on March 22, 1995.

Announcement of Effective Date: 11 CFR 100.8(b)(22), 104.3(b)(4)(i)(B),

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113.1(g) and 113.2(a), as published at 60 FR 7862 (February 9, 1995), are effective as of April 5, 1995.

Dated: March 31, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95-8310 Filed 4-4-95; 8:45 am]

BILLING CODE 4715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-105, Special Conditions No. 25-ANM-97]

Special Conditions: Saab Aircraft AB Model Saab 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Saab Aircraft AB Model Saab 2000 airplane. This airplane will have novel and unusual design features, relating to its electronic flight control system, when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Line Avenue SW, Renton, Washington 98055-4056; telephone (206) 227-2145, facsimile (206) 277-1320.

SUPPLEMENTARY INFORMATION

Background

Special conditions are prescribed under the provisions of § 21.16 of the FAR when the applicable regulations for type certification do not contain adequate or appropriate standards because of novel or unusual design features. The new Saab 2000 incorporates a number of such design features.

The Saab 2000, certificated on April 29, 1994, is a twin-engined, low-wing, pressurized turboprop aircraft that is configured for approximately 50 passengers. The airplane has two Allison Engine Company AE 2100A engines rated at 3650 shp. The propeller is a 6 bladed Dowty Rotol swept shaped propeller. A single lever controls each prop/engine combination. An Auxiliary Power Unit (APU) will be installed in the tail. The airplane has provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There is a forward and aft stowage compartment and an aft cargo compartment. The airplane has a maximum operating altitude of 31,000 feet.

The Saab 2000 has a fully hydraulically powered electronically controlled rudder and will have fully hydraulically powered electronically controlled elevators as a follow-on design modification. The Powered Elevator Control System (PECS) provides control and power actuation of the left and right elevator surfaces. The PECS also provides aircraft stability augmentation and trim functions.

The proposed elevator system is in many respects similar to the rudder design and is comprised of a mix of analog and digital circuitry and has no mechanical backup. Control columns are connected to Linear Variable Differential Transducers (LVDT), stick damper(s), auto pilot servo, linear springs with break-outs and are interconnected with an electronic disconnect unit.

The position transducers (LVDT), connected to the control columns, provide signals to two Powered Elevator Control Units (PECU). Each PECU controls two Elevator Servo Actuators (ESA) through two separate Servo Actuator Channels (SAC). Each SAC is subdivided into a primary control lane and a monitor lane. Two of the four ESAs, controlled by one PECU, positions one elevator side.

The ESAs have two modes of operation, active and damped. The active mode will result when mode control current from the PECU and hydraulic pressure are available. One active servo actuator is sufficient to operate the elevator surface.

Elevator Servo Actuators valve and actuator ram position feedback are provided by position transducers (LVDT). The PECUs are connected to one Flight Control Computer via the trim relay and two Digital Air Data Computers. The flight control computer also provides a signal to the auto pilot servo.

Stick to elevator gearing is a function of Indicated Airspeed (IAS). Trim and stability augmentation are based on IAS, vertical acceleration and flap position. Stick, trim and elevator position and status information are fed to the Engine Indicating and Crew Alerting System (EICAS).

Each PECU has built in Automatic Preflight Built in test (PBIT) and Continuous Built In Test (CBIT) circuitry and utilizing cross channel nomitoring.

The elevator's actuators are supplied by three hydraulic circuits that are physically separated, isolated, fused and located to minimize common cause failures. The Number 1 hydraulic circuit is powered by the left engine and a backup DC pump and accumulators. The Number 2 hydraulic circuit is powered by the right engine and a backup AC pump and accumulators. THe Number 3 hydraulic circuit is powered by an AC drive pump.

The Number 1 hydraulic circuit powers the left hand (LH) and right hand (RH) outboard servo actuators. The Number 2 hydraulic circuit powers the RH inboard servo actuator. the Number 3 hydraulic circuit powers the LH inboard servo actuator.

Hydraulic warnings and cautions in the event of hydraulic supply failure are provided by the EICAS.

The elevator system is electrically supported by two system sides, a LH and a RH side. The electrical system is normally powered by two AC generators, each driven by a propeller gear box. An APU equipped with a standby generator is installed. When only one of the three generators is working, it supplies power to both LH and RH sides.

Each LH and RH AC system side is connected via a Transformer Rectifier Unit (TRU) to a LH and RH DC system made up of a network of DC buses. A third center TRU is connected to a center circuit. The LH, RH and center buses can be supplied from batteries or from the TRUs. The center TRU will replace a failed RH or LH TRU. When only one TRU unit is working, the LH and RH buses are tied together with power being received from the remaining TRU.

Two DC feeders in addition to two AC feeders provide power aft of the debris zone. The LH side is routed through the ceiling and the RH side is routed through the floor.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 21.16, 21.17, 21.19, 21.29, and 21.101 of the FAR. Accordingly, based on the application date of June 9, 1989, and Saab Aircraft AB volunteering for certain later regulations, the TC basis for the Saab 2000 airplane is as follows:

Part 25 as amended by Amendments 25-1 through 25-71, except:

§ 25.361 Engine torque, as amended by Amendment 25-72.

§ 25.365 Pressurized compartment loads, as amended by Amendment 25-72.

§ 25.571 Damage tolerance and fatigue evaluation of structure, as amended by Amendment 25-72.

§ 25.772 Pilot compartment doors, as amended by Amendment 25-72.

§ 25.773 Pilot compartment view, as amended by Amendment 25-72.

§ 25.783(g) Doors, as amended by Amendment 25-72.

§ 25.905(d) Propellers, as amended by Amendment 25-72.

§ 25.933 Reversing systems, as amended by Amendment 25-72.

§§ 25.903 and 25.951 as amended by Amendment 25-73.

§§ 25.851 and 25.854 as amended by Amendment 25-74.

§ 25.729 as amended by Amendment 25-75.

§ 25.813 as amended by Amendment 25-76.

Part 34, as amended on the date of issuance of the type certificate.

Part 36, as amended on the date of issuance of the type certificate.

Special Conditions No. 25-ANM-66, dated 1/12/93, for Lightning and HIRF Protection.

Special Conditions No. 25-ANM-82, dated 3/11/94, for Interaction of Systems and Structure.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

Special Conditions No. 25-ANM-82 were written for the rudder and in anticipation of the installation of the powered elevator. However, as the Saab 2000 could be flown without rudder control during certain failure conditions, and the elevator system was not installed for initial certification, Special Conditions No. 25-ANM-82 were limited to requirements common to both the rudder and follow-on elevator. The Saab 2000, however, requires control and power to the elevator all the time for safe flight and landing. Therefore, these special conditions supplement Special Conditions No. 25-ANM-82 for the powered elevator. The proposed type design of the Saab 2000 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

Systems

1. *Operation Without Normal Electrical Power.* In the Saab 2000, a source of electrical power is required by the elevator electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the Saab 2000 must therefore be designed with standby or emergency electrical sources of sufficient reliability and capacity to power essential loads in the event of the loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition No. 1 is adopted as proposed.

2. *Command Signal Integrity.* Command and control of the control surfaces will be achieved by fly-by-wire systems that will utilize electronic (AC, DC, or digital) interfaces. These interfaces involve not only the commands to the control surfaces, but all the control feedback and sensor input signals as well. These signal paths, as well as the electronic equipment that manages them, can be susceptible to damage that may cause unacceptable or unwanted control responses. The damage may originate from electrical equipment failures, mechanical equipment failures or external damage. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. Similar to the conventional steel cable controls, positioning of the electrical control equipment and routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition No. 2 is adopted as proposed.

3. *Design Maneuver Requirements.* In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. In the Saab 2000, the pilot provides only one of several inputs to the control surfaces, and it is possible that the pilot control displacements specified in §§ 25.331(c)(1), 25.349(a), and 25.351 of the FAR may not result in the maximum displacement and rates of displacement of the elevator. The intent of these noted rules may not be satisfied if literally applied. Therefore, Special Condition No. 3 is adopted as proposed.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-95-1-NM for the Saab Aircraft AB Model Saab 2000 Series Airplanes was published in the **Federal Register** on February 2, 1995 (60 FR 6456). No comments were received.

Special conditions may be issued and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Under standard practice, the effective date of these special conditions would be 30 days after publication in the **Federal Register**. As the intended U.S. type certification date for the Saab 2000 is April 1, 1995, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplanes.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Saab Aircraft AB Model Saab 2000 series airplanes.

1. *Operations Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the

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engines and maintain flight for the maximum diversion time capability being certified.

Discussion: The Electronic Flight Control System installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the aircraft.

The Saab 2000 fly-by-wire control system requires a continuous source of electrical power in order to maintain the flight control system. The current § 25.1351(d), "Operation Without Normal Electrical Power," requires safe operation in visual flight rules (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure and was able to re-establish some of the electrical power generation capability.

In order to maintain the same level of safety associated with traditional designs, the Saab 2000 design must not be time limited in its operation without the normal source of engine generated electrical power. It should be noted that service experience has shown that the loss of all electrical power which is generated by the airplane's engines is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing with the use of its emergency electrical power systems (batteries, auxiliary power unit, etc.). This emergency electrical power system must be able to power loads that are essential for continued safe flight and landing. Also, the availability of emergency electrical power sources, including any credit taken for APU start reliability, must be validated in a manner acceptable to the FAA.

The emergency electrical power system must be designed to supply:

—electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system;

—electrical power required for continued safe-flight and landing;

—electrical power required to restart the engines.

For compliance purposes:

1. A test demonstration of the loss of normal engine generated power is to be established such that:

a. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

b. After the unrestorable loss of the source of normal electrical power, the airplane engines must be capable of being restarted and operations continued in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbine engine driven transport category airplanes will not have to remain in IMC for more than 30 minutes after experiencing the loss of normal electrical power).

c. After 30 minutes of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight and landing in VMC conditions. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

2. Since the availability of the emergency electrical power system operation is necessary for safe-flight, this system must be available before each flight.

3. The emergency electrical power system must be shown to be satisfactorily operational in all flight regimes.

2. *Command Signal Integrity.* In addition to compliance with § 25.671 of the FAR, it must be shown that for the elevator Electronic Flight Control System (EFCS):

(a) Signals cannot be altered unintentionally, or that the altered signal characteristics are such that the control authority characteristics will not be degraded to a level that will prevent continued safe-flight and landing; and

(b) Routing of wire EFCS wires and wire bundles must provide separation and redundancy to ensure maximum protection from damage due to common cause.

Discussion: The Saab 2000 will be using fly-by-wire (FBW) as a means to command and control the elevator surface actuators. In the FBW design being presented, command and control of the control surfaces will be achieved by electronic (AC, DC, or digital) interfaces. These interfaces involve not only the direct commands to the elevator control surfaces, but feedback and sensor signals as well.

Malfunctions could cause system instabilities, loss of functions or freeze-up of the control actuator. It is imperative that after failure at least one path of the command signal, that is capable of providing safe flight and landing, remains continuous and unaltered.

The current regulations, which primarily address hydro-mechanical flight control systems, §§ 25.671 and 25.672, make no specific or implied reference that command and control signals remain unaltered from external interferences. Present designs feature steel cables and pushrods as a means to control hydraulic surface actuators. These designs are easily identifiable relative to the understanding that they are necessary for safe flight and landing and thus should be protected and continually inspected. However, the FBW designs are not easily discernible from non-essential electronics where placement of equipment and wire runs is not critical. Therefore, FBW requires additional attention when locating the equipment and wire runs.

It should be noted that:

—The wording "signals cannot be altered unintentionally" is used in the Special Condition to emphasize the need for design measures to protect the FBW control system from the effects of the fluctuations in electrical power, accidental damage, environmental factors such as temperature, local fires, exposure to reactive fluids, etc. and any disruptions that may affect the command signals as they are being transmitted from their source of origin to the Power Control Actuators.

3. *Design Maneuver Requirements*

(a) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A1 within the maneuvering envelope of § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads which occur subsequent to the point at which the normal acceleration at the center of gravity exceeds the maximum positive limit maneuvering factor, n, need not be considered.

(b) In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

Issued in Renton, Washington, on March 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–8371 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AWA–5]

Modification of the Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Class C Airspace Areas and Establishment of the Pensacola Regional, FL, and Providence Theodore Francis Green State, RI, Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This action modifies the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational air traffic control tower

serviced by a radar approach control facility. The designated lateral boundaries and altitudes of these Class C airspace areas will remain as they currently exist. In addition, this action establishes Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports, when the associated radar approach control facility is not in operation.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, and to establish Class E airspace areas at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI (60 FR 14397).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This action modifies the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services.

The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. The designated lateral boundaries and altitudes of these Class C airspace areas will not change. In addition, this action establishes Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASO FL C Pensacola Regional Airport, FL (Revised)

Pensacola Regional Airport, FL
(Lat. 30°28'25" N., long. 87°11'12" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the 5-mile circle of the Pensacola NAS, FL, Class C airspace area. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO KY C Lexington, Blue Grass Airport, KY (Revised)

Lexington, Blue Grass Airport, KY
(Lat. 38°02'13" N., long. 84°36'19" W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Blue Grass Airport; and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the airport.

* * * * *

ASO NC C Fayetteville Regional/Grannis Field, NC, (Revised)

Fayetteville Regional/Grannis Field, NC
(Lat. 34°59'29" N., long. 78°52'48" W.)
Gray's Creek Airport
(Lat. 34°53'04" N., long. 78°50'08" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Regional/Grannis Field excluding that airspace below 1,400 feet MSL within a 1.5-mile radius of Gray's Creek Airport; and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active.

* * * * *

ASO NC C Pope AFB, NC (Revised)

Pope AFB, NC
(Lat. 35°10'16" N., long. 79°00'52" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB, excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Class D airspace area, and excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R–5311A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the

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airport clockwise to the northern boundaries of R–5311A, B and C, excluding that airspace contained in R–5311A, B and C when they are active and excluding that airspace contained in the Fayetteville Regional/Grannis Field Airport, NC, Class C airspace area.

* * * * *

ANE RI C Providence, Theodore Francis Green State Airport, RI (Revised)

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43'25" N., long. 71°25'36" W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 195° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 195° bearing from the airport clockwise to the 015° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Subpart E—Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO FL E2 Pensacola Regional Airport, FL (New)

Pensacola Regional Airport, FL
(Lat. 30°28'25' N., long. 87°11'12" W.)

Within a 5-mile radius of the Pensacola Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE RI E2 Providence, Theodore Francis Green State Airport, RI (New)

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43'25" N., long. 71°25'36" W.)

Within a 5-mile radius of the Theodore Francis Green State Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on March 29, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–8368 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28162; Amdt. No. 1656]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 25, 1995*

Dunnellon, FL, Dunnellon, VOR/DME RWY 23, Orig
Tampa, FL, Tampa Intl, LOC BC RWY 36R, Amdt 19B, Cancelled
Hampton, GA, Clayton County-Tara Field, VOR/DME–A, Orig
Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig
Oakley, KS, Oakley Muni, NDB OR GPS RWY 34, Amdt 2
Alexandria, LA, Alexandria Int'l, ILS/DME RWY 14, Amdt 1
Cambridge, NE, Cambridge Muni, NDB OR GPS RWY 14, Amdt 3
Cambridge, NE, Cambridge Muni, NDB OR GPS RWY 32, Amdt 3
McCook, NE, McCook Muni, VOR OR GPS RWY 12, Amdt 11
McCook, NE, McCook Muni, VOR OR GPS RWY 21, Amdt 4
McCook, NE, McCook Muni, VOR OR GPS RWY 30, Amdt 10
Buffalo, WY, Johnson County, VOR/DME OR GPS RWY 30, Amdt 5

Note: Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig, EFF 27 APR 95, published in TL95–06, is rescinded.

Note: Oakley, KS, Oakley Muni, NDB OR GPS RWY 34, Amdt 2, EFF 27 APR 95, published in TL95–06, is rescinded.

** * * Effective April 27, 1995*

Connersville, IN, Mettel Field, VOR–A, Orig
Connersville, IN, Mettel Field, VOR/DME or GPS–A, Amdt 5, Cancelled
Connersville, IN, Mettel Field, NDB RWY 18, Amdt 9, Cancelled
Connersville, IN, Mettel Field, NDB RWY 18, Orig
Connersville, IN, Mettel Field, ILS RWY 18, Orig
Connersville, IN, Mettel Field, RNAV or GPS RWY 18, Amdt 5, Cancelled
Davenport, IA, Davenport Muni, ILS RWY 15, Orig
Davenport, IA, Davenport Muni, LOC RWY 15, Amdt 3, Cancelled
Fort Scott, KS, Fort Scott Muni, NDB OR GPS RWY 17, Amdt 11

** * * Effective December 8, 1994*

Steamboat Springs, CO, Steamboat Springs/Bob Adams Field, VOR/DME–C, Amdt 1

** * * Effective Upon Publication*

Philadelphia, PA, Philadelphia Intl, ILS RWY 9L, Amdt 2

[FR Doc. 95–8364 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28163; Amdt. No. 1657]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form

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8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of changes considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective upon publication—

FDC date	State	City	Airport	FDC No.	SIAP
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1075	ILS Rwy 24 Amdt 6. This corrects Notam in TL 95–07.
03/09/95	MO	Perryville	Perryville Muni	FDC 5/1110	VOR/DME RNAV Rwy 19, Amdt 2.
03/13/95	NM	Santa Fe	Santa Fe County Muni	FDC 5/1152	ILS Rwy 2 Amdt 4.
03/20/95	AK	Nome	Nome	FDC 5/1230	NDB/DME OR GPS–1, Rwy 2, Orig B.

Nome

Nome

Alaska

NDB/DME OR GPS–1, RWY 2, ORIG B.
FDC Date: 03/20/95

FDC 5/1230/OME/ FI/P NOME, NOME, AK. NDB/DME OR GPS–1, RWY 2, ORIG B . . . MNM ALT BAIME TO OYN NDB/DME 5400 FEET. GAITS TO OYN NDB/DME 4000 FEET, OME VORTAC TO OYN NDB/DME 3200 FEET, FDV NDB TO OYN NDB/DME 3200 FEET, AND OYN NDB/DME TO OYN 212 BRG/5 DME 2900 FEET. THIS IS NDB/DME OR GPS–1, RWY 2, ORIG C.

Perryville

Perryville Muni

Missouri

VOR/DME RNAV RWY 19, AMDT 2.
FDC Date: 03/09/95

FDC 5/1110/K02/ FI/P PERRYVILLE MUNI, PERRYVILLE, MO. VOR/DME RNAV RWY 19, AMDT 2 . . . CHANGE ALL REFERENCE TO RWY 01/19 TO RWY 02/20. THIS BECOMES VOR/DME RNAV RWY 20, AMDT 2A.

Hickory

Hickory Regional

North Carolina

ILS RWY 24 AMDT 6.
FDC Date: 03/08/95
THIS CORRECTS NOTAM IN TL 95–07.

FDC 5/1075/HKY/ FI/P HICKORY REGIONAL, HICKORY, NC. ILS RWY 24 AMDT 6 . . . ADD NOTE . . . OBTAIN LCL ALSTG ON CTAF; WHEN NOT RECEIVED, USE WILKES COUNTY ALSTG AND INCREASE ALL DH/MDAS 300 FEET AND ALL VIS 1 MILE. THIS BECOMES ILS RWY 24 AMDT 6A.

Santa Fe

Santa Fe County Muni

New Mexico

ILS RWY 2 AMDT 4.
FDC Date: 03/13/95

FDC 5/1152/SAF/ FI/P SANTA FE COUNTY MUNI, SANTA FE, NM. ILS RWY 2 AMDT 4 . . . CHG NOTE TO READ . . . ADF REQUIRED.

[FR Doc. 95–8363 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–35548]

Establishment of Commission Quorum Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to specify the number of Commission members that constitute a quorum. The amendments are designed to promote flexibility, finality, and collegiality of agency decisionmaking.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Walter B. Stahr, Assistant General Counsel, or C. Hunter Jones, Special Counsel, Office of the General Counsel, at (202) 942–0888.

SUPPLEMENTARY INFORMATION: The Commission is modifying 17 CFR 200.40–200.42 to provide that three members constitute a quorum of the Commission, with two important exceptions. First, if the number of members in office is two or one, that number is sufficient for a quorum. Second, if the number of members in office minus the number disqualified with respect to a matter is two, two constitute a quorum for purposes of that matter.

The Securities Exchange Act of 1934 ("Exchange Act"), unlike many statutes that establish federal agencies, does not establish a quorum requirement for the Commission. In the past, the practice of the Commission has generally been that three members constitute a quorum. *See In re International Paper & Power Co.*, 2 SEC 792, 793 n.1 (1937), *rev'd on other grounds sub nom. Lawless* v. *SEC*, 105 F.2d 574 (1st Cir. 1939). This practice, however, has never been formally adopted as a policy or rule.

The Commission, which currently has only three members, has reconsidered its quorum practice. It has decided to adopt a general rule, with the exceptions discussed below, that three commissioners are required for a quorum. Although this rule may create difficulties when only three commissioners are in office, these difficulties are outweighed by the benefits of having all three commissioners deliberate and vote on matters.

Situations arise, however, in which only two members are able to participate in a matter. When three members are in office, for example, one member may recuse himself or herself from considering a matter. *See* 17 CFR 200.60. Similarly, it is possible that, at some point, there would be only two commissioners in office. In the past, the Commission has resorted to the duty officer procedure to deal with urgent matters as to which only two commissioners are available. *See* 17 CFR 200.42. The duty officer procedure, however, because it is a form of delegation, is not available for rulemaking. *See* Exchange Act Section 4A(a). Moreover, although a duty officer's action is Commission action unless and until the Commission directs otherwise, *see* 17 CFR 200.42(c)(3), the Commission cannot affirm the duty officer's action when only one other Commission member is available to consider the matter. Finally, and perhaps most importantly, it is more consistent with the collegial nature of the Commission to allow the two qualified members to address such matters as a Commission.

The Commission also believes that it would be appropriate to preserve the flexibility necessary to take effective action in the event, however unlikely, that there would be a period with only one commissioner in office. To provide adequate flexibility in this unlikely situation, the Commission is providing that one commissioner would constitute a quorum if no other commissioners are in office. The Commission does not believe it is necessary, at this time, to provide that one commissioner may constitute a quorum when disqualifications result in only one commissioner being available to deal with a particular matter.

Accordingly, the Commission is adopting a new rule, at 17 CFR 200.41, providing that three members constitute a quorum unless only two members or one member are in office, or unless, because of disqualifications, only two members are available to deal with a particular matter. The Commission is also amending 17 CFR 200.40 to clarify that it applies only to meetings that are subject to the Government in the Sunshine Act.

The Commission has determined that these amendments and additions to its procedural rules relate solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice and comment are not applicable. *See* 5 U.S.C. 553. Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other laws, are not applicable. *See* 5 U.S.C. 601–612.

Effects on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furthering the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2). The Commission has considered the changes adopted in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

The amendments to the Commission's rules are adopted pursuant to the authorities set forth therein.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendments

For the reasons set out in the preamble, title 17, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

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PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart B, is revised to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d–1 and 78w.

2. Section 200.40 is revised to read as follows:

§ 200.40 Joint disposition of business by Commission meeting.

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

§§ 200.41 and 200.42 [Redesignated as §§ 200.42 and 200.43]

3. Sections 200.41 and 200.42 are redesignated as §§ 200.42 and 200.43, and § 200.41 is added to read as follows:

§ 200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

§ 200.42 [Amended]

4. In newly redesignated § 200.42, in paragraph (a) the reference to "§ 200.42" is revised to read "§ 200.43" and in paragraph (b) the reference to "§ 200.41(a)" is revised to read "§ 200.42(a)".

§ 200.43 [Amended]

5. In newly redesignated § 200.43(c)(1), the reference to "§ 200.42(a)" is revised to read "§ 200.43(a)" and the reference to "§ 200.41" is revised to read "§ 200.42".

§ 200.401 [Amended]

6. In § 200.401(a), the reference to "§ 200.41 or § 200.42" is revised to read "§ 200.42 or § 200.43".

Dated: March 30, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8259 Filed 4–4–95; 8:45 am]

BILLING CODE 6019–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0283]

RIN 0905–AD89

Food Labeling; Placement of the Nutrition Label on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to provide increased flexibility in the placement of the nutrition label on packaged foods. In situations in which the principal display and information panels cannot accommodate all the required labeling information, and the package has a total surface area available to bear labeling of greater than 40 square inches (sq in), the amendment allows the nutrition label to be placed on any panel that can be readily seen by the consumer. This action is being taken in response to comments received on the final rule of January 6, 1993, entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments," (hereinafter "the implementation final rule"), and on the proposed rule of August 18, 1993, entitled "Food Labeling; Placement of the Nutrition Label on Food Packages."

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT:. Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5430.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Principal Display Panel and Information Panel

Under FDA's regulations (§ 101.1 (21 CFR 101.1)), the part of a label that is most likely to be displayed, presented, shown, or examined by a consumer under customary conditions of display for retail sale is called "the principal display panel." This panel must include the statement of identity for the product and its net weight. In addition, to provide consistency and uniformity in the presentation of label information to consumers, FDA has provided for a second display panel for information that must be included on the label but that is not required to appear on the principal display panel. This alternate panel is called "the information panel" (§ 101.2 (21 CFR 101.2)).

The information panel is defined in § 101.2(a) as that part of the label that is immediately contiguous and to the right of the principal display panel. Section 101.2(a)(1) specifies that if the first panel to the right of the principal display panel is too small to accommodate the necessary information, or is otherwise unusable label space, the panel immediately contiguous and to the right of that part of the label may be used as the information panel. Accordingly, FDA's regulations direct manufacturers to move the information required to appear on the information panel as a unit when the first available information panel will not accommodate all the required information. Pursuant to § 101.2(e), all information appearing on the information panel must be presented in one place without other intervening material.

Section 101.2(b) states that the ingredient listing; name and place of business of the manufacturer, packer, or distributor; and nutrition information must appear either on the principal display panel or on the information panel, unless otherwise specified by regulation. Section 101.2(d)(1) requires that all information required to appear on the principal display panel or the information panel appear on the same panel unless there is insufficient space, in which case it may be divided between the principal display panel and information panel in accordance with §§ 101.1 and 101.2. In determining the sufficiency of the available space, under § 101.2(d)(1), any vignettes, designs, and other nonmandatory label information are not to be considered.

B. Mandatory Nutrition Labeling

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079) (hereinafter referred to as "the mandatory nutrition labeling final rule"), which included provisions to require nutrition labeling on most foods that are regulated by FDA and to specify a new format for declaring nutrition labeling. FDA took this action, in part, to implement the Nutrition Labeling and

Education Act of 1990 (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act. Section 101.9(i) (21 CFR 101.9(i)), which FDA added to its regulations as part of the mandatory nutrition labeling final rule, states that, except as provided in § 101.9(j)(13), the location of the nutrition label must be in accordance with § 101.2.

In recognizing the demands for label space made by nutrition labeling, the agency included a provision in the mandatory nutrition labeling final rule that allows nutrition information to be presented on any label panel on packages that have a total surface area available to bear labeling of 40 sq in or less (see § 101.9(j)(13)(ii)(D)). The flexibility provided by this provision reflects the agency's recognition that it is more important that the nutrition information be presented on the immediate package than that it be presented in any particular place (58 FR 2079 at 2156). FDA stated that given the consistent appearance of the nutrition information that will be produced by the format elements that it adopted, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for, and be able to recognize, nutrition information, even if it is not presented to the right of the principal display panel. Section 101.9(j)(13)(ii)(D) does not provide an exception, however, for the placement of nutrition information on packages of more than 40 sq in when the principal display and information panels of those packages cannot accommodate all of the required information.

On January 6, 1993, the agency published, along with the mandatory nutrition labeling final rule and various other final rules, the implementation final rule (58 FR 2066). This document gave interested persons 30 days to comment on any technical issues that had not been raised in earlier comments. In response to this document, FDA received a number of comments that requested greater flexibility in the placement of the nutrition label because of the increased amount of space needed to meet the type size and spacing requirements of the new nutrition label. These comments included product labels that illustrated the difficulties presented in trying to place the required label information on the information panel.

In the **Federal Register** of August 18, 1993 (58 FR 44091), FDA published a proposed rule, entitled "Food Labeling; Placement of the Nutrition Label on Food Packages," to amend its regulations on the placement of nutrition information on packages having a total surface area for labeling of greater than 40 sq in. For such situations, the agency proposed to add § 101.9(j)(17). Under this provision, when the package cannot accommodate all information required by regulation on its principal display panel and information panel, the nutrition label may be moved to any alternate panel that can be readily seen by the consumer. Furthermore, under proposed § 101.9(j)(17), the space needed for vignettes, designs, and other nonmandatory label information may be considered when determining the sufficiency of available space on the principal display panel. FDA also proposed to revise: (1) § 101.9(i) to make reference to the exemption from § 101.2 for products covered by proposed § 101.9(j)(17), and (2) § 101.2(d)(1) to exclude from its coverage products that are exempt under § 101.9(j)(17). FDA also proposed to make a number of ancillary modifications to all of the regulations that pertain to relative nutrient content claims, specifically to those sections that require that the statement that compares the amount of the subject nutrient in the product per labeled serving with that in the reference food appear either adjacent to the most prominent claim or on the information panel. Under the proposed modification, the comparative quantitative information may be placed either adjacent to the most prominent claim or to the nutrition label, without regard to the panel on which the nutrition label appears. The agency proposed to make this modification to each regulation in part 101 (21 CFR part 101) that pertains to relative nutrient content claims (e.g., "more," "light").

In addition, in response to other comments that FDA received on the implementation final rule, the agency proposed to amend § 101.61(c)(2)(iii) to require that the statement "not a sodium free food" on foods that are not sodium free and yet whose label bears a claim of "unsalted" be placed adjacent to the nutrition label rather than on the information panel.

Interested persons were given until October 18, 1993, to comment on the proposal.

II. Comments and the Agency's Response

FDA received 19 letters, each containing 1 or more comments, in response to the proposal from trade associations, food manufacturers, a state government, and a foreign government. The comments unanimously supported the proposal. However, a few comments contained suggestions for clarifying the regulations and for modifying additional related sections that were not covered in the proposal. FDA is responding to these comments in this document. In addition, the agency received a few comments that addressed issues such as type size and leading (i.e., format) requirements and specific problems pertaining to the placement of the ingredient list on multi-packs of ready-to-eat cereals. These issues are outside the scope of the proposal, and therefore FDA will not address them in this document.

A. Flexibility in Placement

1. All the relevant comments supported FDA's proposal in § 101.9(j)(17) to allow consideration of the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel in deciding whether the space on that panel and the information panel is adequate for presentation of the nutrition label. One comment, however, objected to the agency's failure to provide for consideration of nonmandatory information on the information panel as part of the determination as to whether there is sufficient space available for the nutrition label. The comment stated that the agency's position that the nutrition facts box will be so recognizable that consumers will not have difficulty locating it regardless of where it appears on the label seems to support giving consideration to space needs for vignettes, designs, and other nonmandatory information on the information panel as well as on the principal display panel. The comment asked that the agency clarify its intent and permit nonmandatory label information on the information panel to be taken into account when deciding whether there is sufficient space on that panel for the nutrition facts box.

The agency's intent in this rulemaking was not to remove all constraints on the placement of the nutrition label but rather to provide added flexibility when needed by industry to facilitate placing the new nutrition label on food packages. In attempting to accomplish this purpose, the proposal did not address the issue of nonmandatory information on the information panel. The agency did not see a need to alter the current requirement in § 101.2(d)(1) that all required information (including the nutrition label; the ingredient list; the name and place of business of the manufacturer, packer, or distributor; and the percent juice declaration) be placed on the information panel, if not on the principal display panel, when there is sufficient space to do so.

In support of the proposal, FDA noted that the appearance of many packages

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could be significantly affected if regulations did not allow vignettes, designs, and other nonmandatory information on the principal display panel to be considered in calculating the amount of available label space. The agency also noted that current industry practice almost never places the nutrition label on the principal display panel unless there is no alternative panel on the package. These two factors, which were the impetus for the subject proposal, do not apply to vignettes, designs, and other nonmandatory information on the information panel. Thus, the interests of consumers will be served best by continuing to have this information appear together wherever possible. Moreover, having the nutrition label, the ingredient list, and the name and place of business of the manufacturer, packer, or distributor appear on the same panel simplifies the consumers' search for this information. The comment did not advance any arguments that suggested a countervailing benefit to the public from allowing nonmandatory label information to replace nutrition labeling on the information panel. Accordingly, the agency is not making the requested change.

2. One comment stated that the second sentence of proposed § 101.9(j)(17) needed to be clarified because there was confusion in trade publications about the significance of nonmandatory information on the information panel.

FDA agrees that it is necessary to clarify the differences in the agency's treatment of nonmandatory information on the principal display panel as opposed to on the information panel. Accordingly, the agency is revising § 101.9(j)(17) to add a sentence at the end of the subparagraph that reads: "Nonmandatory label information on the information panel shall not be considered in determining the sufficiency of available space for the placement of the nutrition label."

B. Statements of Ingredients, and Name and Place of Business

FDA did not propose to modify the requirement that manufacturers list ingredient information and the name and place of business of the manufacturer, packer, or distributor on the principal display panel or the information panel. Under § 101.9(j)(13) and proposed § 101.9(j)(17), only the nutrition label could be placed on another panel.

3. Three comments urged that the agency allow the ingredient statement (§ 101.4) and the name and place of business of the manufacturer, packer, or distributor (§ 101.5) to be presented adjacent to the nutrition label on any other label panel that can be readily seen by consumers when the information panel is too small to accommodate all the required information. They argued that, although consumers may now look for the ingredient list and the name and place of business statement on the principal display panel or information panel, it was likely that these statements would be seen if listed on the same panel as the nutrition information, which must be readily observable. Furthermore, the comments argued, consumers are accustomed to seeing all of this information on one panel, and manufacturers often incorporate the ingredient list, the name and place of business statement, and the nutrition label into one design.

Among these comments, one recommended revised wording in § 101.4(a)(1) to implement the change, i.e., to state that ingredients are to be listed on either the principal display panel, the information panel, or the label panel on which the mandatory nutrition information appears. The comment stated that because § 101.5(a) requires that the label of a food in package form specify conspicuously the name and address of the manufacturer, packer, or distributor, that regulation need not be amended because it allows manufacturers the option of placing such information in a place where the consumer will see it.

The agency has considered these comments and is not making the requested change because a change of the magnitude of that suggested was not foreshadowed by the proposal. The ingredient statement and the name and place of business statements have appeared on either the principal display or the information panels for nearly 20 years. Allowing the ingredient list and the name and place of business of the manufacturer, packer, or distributor to move off the information panel whenever there is insufficient space for them to appear with the nutrition label would represent a significant redefinition of what constitutes the information panel. While the portion of the food supply that would be affected is unknown, it could be substantial. Companies interested in pursuing this suggestion should submit a citizen petition under § 10.30 (21 CFR 10.30) that would address the possible ramifications of such a change on food packages and on consumers' use of the required label information.

It should be noted, however, that under § 101.2(a)(1), when there is insufficient space on the panel immediately contiguous and to the right of the principal display panel for all required components, the ingredient list; the name and place of business of the manufacturer, packer, or distributor; and the nutrition label may be moved as a unit to the next panel immediately contiguous and to the right of that panel.

C. Clarification

4. One comment requested that FDA allow for the placement of nutrition information on either side of a center-seamed back panel, such as on flexible film bags used for snack foods that do not have information printed on the sides, top, or bottom of the package. The comment argued that the bag is easily rotated from front to back, and that the full center-seamed back panel is in plain view.

Section 101.2(a) states that the "information panel" is that part of the label immediately contiguous and to the right of the principal display panel when observed facing the principal display panel. If the part of the label immediately contiguous and to the right of the principal display panel is too small to accommodate the necessary information, the next panel immediately contiguous and to the right of the fold may be used (see § 101.2(a)(1)). In the case of flexible film bags of snack foods with folded or pleated side panels that do not provide any additional usable label space, the back panel of the bag is the information panel. FDA interprets the back panel to be the full back panel of the flexible bag, regardless of the presence or absence of a seam. Therefore, the nutrition label may be located on any part of the back panel. Wherever it is placed, however, § 101.2(e) requires that there be no intervening material between it and the other pieces of required information.

III. Other Provisions

5. All comments addressing the aspect of the proposal on relative nutrient content claims supported the proposed requirement that the comparative quantitative information be positioned adjacent to the most prominent claim or to the nutrition label. However, in light of § 101.2(e), which states that all required information on the information panel appear in one place without other intervening material, the agency is concerned that the proposed codified language pertaining to relative claims in §§ 101.54, 101.56, 101.60, 101.61, and 101.62 that would require quantitative information to be "declared adjacent to the most prominent claim or to the nutrition label * * *" might be interpreted to mean that when the nutrition label remains on the information panel, the quantitative information has to be immediately adjacent to the nutrition label rather than being allowed to be placed elsewhere on the information panel in proximity with other required information, as is in fact the case. Such a literal interpretation of the words "adjacent to the nutrition label" could have the unintended effect of requiring current labels containing relative claims to be redesigned for the sole purpose of relocating the quantitative information. The same concern exists for § 101.61(c)(2)(iii), which addresses the placement of the statement "not a sodium free food" on foods that are not sodium free and yet whose label bears a claim of "unsalted."

To prevent such a misunderstanding, FDA is modifying the codified language pertaining to relative claims (i.e., "more" claims: § 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); "light" claims: § 101.56(b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); calorie claims: § 101.60(b)(5)(ii)(B), (b)(6)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); sodium claims: § 101.61(b)(6)(ii)(B) and (b)(7)(ii)(B); and fat, fatty acid, and cholesterol claims: § 101.62(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*)) and the general principles governing nutrient content claims in § 101.13(j)(2)(iv)(B) (21 CFR 101.13(j)(2)(iv)(B)) to state that the quantitative information "shall appear adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2." (For clarity, FDA is making a small change in the placement of the illustrative example in these regulations and, for consistency, is adding an example to § 101.62(d)(4)(i)(C)(*2*).) Likewise, the agency is modifying § 101.61(c)(2)(iii), which pertains to the placement of the statement "not a low sodium food," to state that the statement shall appear "adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2 of this chapter."

IV. Environmental Impact

The agency previously considered the environmental effects of this rule as announced in the proposed rule of August 18, 1993 (58 FR 44091). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule will allow for increased flexibility in complying with labeling rules, and therefore results in positive net benefits, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (5 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.2 is amended by revising paragraph (d)(1) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d)(1) Except as provided by § 101.9(j)(13) and (j)(17), all information required to appear on the principal display panel or on the information panel pursuant to this section shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as provided by § 101.9(j)(17), any vignettes, designs, and other nonmandatory label information shall not be considered. If there is insufficient space for all of this information to appear on a single panel, it may be divided between these two panels except that the information required pursuant to any given section or part shall all appear on the same panel. A food whose label is required to bear the ingredient statement on the principal display panel may bear all other information specified in paragraph (b) of this section on the information panel.

* * * * *

3. Section 101.9 is amended by revising paragraph (i) and by adding new paragraph (j)(17) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) Except as provided in paragraphs (j)(13) and (j)(17) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

(j) * * *

(17) Foods in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition label. The space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered in determining the sufficiency of available space on the principal display panel for the nutrition label. Nonmandatory label information on the information panel shall not be considered in determining the sufficiency of available space for the nutrition label.

* * * * *

4. Section 101.13 is amended by revising paragraph (j)(2)(iv)(B) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(j) * * *

(2) * * *

(iv) * * *

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information

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panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

5. Section 101.54 is amended by revising paragraphs (e)(1)(iii)(B) and (e)(2)(iii)(B) to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving with that of the reference food that it replaces (e.g., "Fiber content of white bread is 1 gram (g) per serving; (this product) 3.5 g per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., "The fiber content of 'X brand of product' is 2 g per 3 oz. This product contains 4.5 g per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

6. Section 101.56 is amended by revising paragraphs (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g) to read as follows:

§ 101.56 Nutrient content claims for "light" or "lite."

* * * * *

(b) * * *

(3) * * *

(ii) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces (e.g., "lite cheesecake—200 calories, 4 grams (g) fat per serving; regular cheesecake—300 calories, 8 g fat per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2; and

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food that it replaces (e.g., "lite soy sauce 500 milligrams (mg) sodium per serving; regular soy sauce 1,000 mg per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food that it replaces (e.g., "lite canned peas, 175 mg sodium per serving; regular canned peas 350 mg per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(g) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in § 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in § 101.61(b)(4), the statement "not a low sodium food," shall appear adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2 and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 101.13(j)(2).

7. Section 101.60 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient per labeled serving size with that of the reference food that it replaces (e.g., "Calorie content has been reduced from 150 to 100 calories per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., "Calorie content has been reduced from 108 calories per 3 oz to 83 calories per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sugar in the product per labeled serving with that of the reference food that it replaces (e.g., "Sugar content has been lowered from 8 g to 6 g per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., "Sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2 and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 101.13(j)(2).

8. Section 101.61 is amended by revising paragraphs (b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium in the product per labeled serving with that of the reference food that it replaces (e.g., "Sodium content has been lowered from 300 to 150 mg per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information

panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(7) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference food that it replaces (e.g., "Sodium content has been reduced from 217 mg per 3 oz to 150 mg per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(2) * * *

(iii) If the food is not sodium free, the statement, "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2.

* * * * *

9. Section 101.62 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per labeled serving with that of the reference food that it replaces (e.g., "Fat content has been reduced from 8 g to 4 g per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference food that it replaces (e.g., "Fat content has been reduced from 7.5 g per 3 oz to 5 g per 3 oz.") is declared adjacent to the most prominent claim, to the nutrition label, or, if the nutrition label is located on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving with that of the reference food that it replaces (e.g., "Saturated fat reduced from 3 g to 1.5 g per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference food that it replaces (e.g., "Saturated fat content has been reduced from 2.5 g per 3 oz to 1.7 g per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(F) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., "Contains no cholesterol compared with 30 mg cholesterol in one serving of butter. Contains 13 g of fat per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(iii) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., "Cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(iv) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., "Cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(4) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., "[labeled product] 50 mg cholesterol per serving; [reference product] 30 mg cholesterol per serving") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., "Cholesterol lowered from 55 mg to 30 mg per serving. Contains 13 g of fat per serving.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces (e.g., "Cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

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(ii) * * *
(D) * * *
(2) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces (e.g., "Cholesterol lowered from 30 mg to 22 mg per 3 oz of product.") is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

Dated: March 24, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–8067 Filed 3–31–95; 4:32 pm]

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21 CFR Part 876

[Docket No. 92N–0382]

Gastroenterology-Urology Devices; Effective Date of Requirement for Premarket Approval of Testicular Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the testicular prosthesis, a generic type of a surgically implanted medical device intended to simulate the presence of a testicle within the male scrotum. Commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the testicular prosthesis within 90 days of the effective date of this regulation. This regulation reflects FDA's exercise of its discretion to require a PMA or notice of completion of a PDP for preamendments devices.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 6, 1989 (54 FR 550), the agency identified the testicular prosthesis as one of the high-priority devices that would be subject to PMA or PDP requirements. This rulemaking is consistent with FDA's stated priorities and Congress' requirement that class III devices are to be regulated by FDA's premarket approval review. This action is being taken under the Medical Device Amendments of 1976 (Pub. L. 94–295). The preamble to this rule responds to comments received on the proposal to require the filing of a PMA or a notice of completion of a PDP.

This regulation is final upon publication and requires a PMA or a notice of completion of a PDP for all testicular prostheses classified under § 876.3750 (21 CFR 876.3750) and all devices that are substantially equivalent to them. A PMA or a notice of completion of a PDP for these devices must be filed with FDA within 90 days of the effective date of this regulation. (See section 501(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(f)(1)(A)).)

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53024), FDA issued a final rule classifying the testicular prosthesis into class III (premarket approval). Section 876.3750 of FDA's regulations setting forth the classification of the testicular prosthesis intended for medical use applies to: (1) Any testicular prosthesis that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to a testicular prosthesis in commercial distribution before May 28, 1976.

In the **Federal Register** of January 13, 1993 (58 FR 4116), FDA published a proposed rule to require the filing, under section 515(b) of the act (21 U.S.C. 360e(b)), of a PMA or notice of completion of a PDP for the classified testicular prosthesis and all substantially equivalent devices (hereinafter referred to as the January 1993 proposed rule). In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and (2) the benefits to the public from use of the device (58 FR 4116 at 4118).

The preamble to the January 1993 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings and, under section 515(b)(2)(B) of the act (21 U.S.C. 360e(b)(2)(B)), provided the opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the testicular prosthesis was required to be submitted by January 28, 1993. The comment period initially closed on March 15, 1993. Because of one request, FDA extended the comment period for 60 days to May 14, 1993, to ensure adequate time for preparation and submission of comments (58 FR 15119, March 19, 1993).

FDA did not receive any petitions requesting a change in the classification of the testicular prosthesis. The agency did receive a total of five comments in response to the January 1993 proposed rule. These represent comments from individuals, manufacturers, and professional societies. The comments primarily addressed issues relating to the significant risks associated with the use of testicular prostheses, and the preclinical and clinical data needed to support a future PMA application.

II. Summary and Analysis of Comments and FDA's Response

A. General Comments

1. One comment stated that it appears that FDA has chosen solid silicone elastomer testicular implants for disparate treatment from other silicone implants, even though the basic chemistry, ingredients, and many manufacturing steps are very similar to other class II implantable silicone products. The comment requested that FDA describe the differences between silicone gel-filled and solid silicone elastomer testicular implants, and between silicone gel-filled mammary prostheses and solid silicone elastomer testicular prostheses.

FDA disagrees with this comment. The testicular prosthesis was classified into class III in 1983 because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide this assurance. The possible risks identified at the time of classification included: (1) The possible migration of silicone gel from the interior of the prosthesis to adjacent tissue (with or without rupture of the silicone elastomer shell), and (2) possible long-term toxic effects of the silicone polymers from which the prosthesis is fabricated. Therefore, requiring premarket approval for the testicular prosthesis is consistent with the intent to regulate this device as a class III device even in 1983. FDA notes that no requests for a change in

classification based on new information relevant to the classification of the device were submitted in response to the January 1993 proposed rule.

While FDA recognizes that some of the risks of silicone gel testicular prostheses may not necessarily apply to the solid silicone elastomer testicular prosthesis, the requirement that PMA's be submitted applies to the generic class of device comprised of all testicular prostheses. In addition, while FDA recognizes that some of the risks of silicone gel mammary prostheses may not necessarily apply to solid or silicone gel-filled testicular prostheses, the testicular prosthesis is similar in materials and construction to the silicone gel-filled breast prosthesis and, therefore, many of the risks associated with the use of the silicone gel-filled breast prosthesis may also be associated with the solid silicone and silicone gel-filled testicular prosthesis.

2. One comment stated that FDA's inclusion of prospective clinical data requirements in the proposed rule has resulted in a timetable for ultimate PMA submission that appears unreasonable and creates an undue burden on manufacturers. The comment stated that, had firms initiated PMA studies prior to the publication of the proposed rule, they could not have anticipated the new requirements.

FDA disagrees with this comment. More than 10 years have passed since these devices were classified into class III by final regulation. Furthermore, the risks to health detailed in the proposed rule remain consistent with those identified at the time of classification. FDA believes that, consistent with congressional intent, manufacturers have had notice and ample opportunity to gather the information necessary to provide reasonable assurance of the safety and effectiveness of these devices. It is not responsible to suggest that Congress intended manufacturers to remain passive and not develop PMA's until a regulation became final. Indeed, the act specifically requires submissions 30 months after the final classification of a preamendments device or within 90 days of a final regulation, whichever is later. (See section 501(f)(2)(B) of the act). Thus, it is clear that Congress intended that manufacturers anticipate a final regulation and be prepared to submit appropriate applications or discontinue distribution of their devices.

3. One comment stated that FDA's treatment of ear and testicular prostheses (both cosmetic implants) is disparate, because no psychological data was required for ear prostheses, and suggested that the proposed requirement for psychological data is unprecedented in the regulation process.

FDA disagrees with this comment. Ear and testicular prostheses are different devices, and have been classified by different panels. Ear prostheses, which are class II devices, were classified by the General and Plastic Surgery Panel. The review of such plastic surgery prostheses, such as chin prostheses, takes into consideration the quality of life of the patient. FDA notes that psychological data is only part of the effectiveness evaluation outlined in the proposed rule. Moreover, the request for such data is not unprecedented. Such data also were required in PMA's for silicone gel breast implants.

4. One comment stated that FDA should recognize that the solid silicone elastomer testicular prostheses available today are much improved in quality and are implanted using refined surgical techniques that minimize many risks implicated with their early use.

FDA acknowledges that the design of certain testicular prostheses and surgical techniques have evolved over time. FDA believes that neither the literature nor other data currently available to FDA definitively describe differences in the incidence of problems attributable to device design and/or variations in surgical procedures. Sufficient information exists identifying the risks detailed in the proposed rule as risks to health associated with the testicular prosthesis. FDA is requiring the submission of PMA's for this device in order to determine whether these risks can be controlled to provide reasonable assurance of the safety and effectiveness of these devices for their intended use. Even a decline in the incidence of these risks would not be a sufficient reason to abandon the regulation to require PMA's for testicular prostheses, absent a clear delineation and understanding of those risks.

5. One comment stated that Congress never intended "old" (preamendments) devices to be subjected to the same scrutiny as "new" devices under the premarket approval requirements.

FDA disagrees with this comment. FDA does not believe that Congress intended to differentiate between "old" and "new" devices with respect to the requirement that valid scientific evidence support a PMA approval. Neither sections 513(a)(3) nor 515(d) of the act (21 U.S.C. 360c(a)(3)) makes any distinction between "old" and "new" devices with regard to the requirements for approval. However, FDA does expect that more retrospective data, which, by its historical character, is generally less detailed and rigorous than prospectively gathered data, would be available for use in supporting the approval of "old" as opposed to "new" devices. Scientific evidence, including retrospectively gathered data, is acceptable to support a PMA approval, as long as the data constitute valid scientific evidence within the meaning of § 860.7(c)(2) (21 CFR 860.7(c)(2)).

6. One comment stated that the proposed rule did not address how amendments to PMA's submitted prior to panel review will be handled, and requested that the agency clarify the administrative procedures applicable to such PMA amendments.

PMA amendments submitted prior to advisory panel review will be evaluated to determine whether the information is sufficiently substantive to be considered a "major" amendment. A major amendment may extend the review period for up to 180 days as outlined in 21 CFR 814.37(c)(1).

7. One comment stated that FDA should refrain from promulgating the final rule without the specific guidance documents defining certain preclinical and clinical testing requirements.

FDA disagrees with this comment. Section 515(b) of the act does not require FDA to provide guidance for tests for PMA's prior to issuing a call for PMA's. While FDA outlined numerous manufacturing, preclinical, and clinical studies that suggest the content of a PMA for a testicular prosthesis, and issued a detailed guidance document for such PMA's in March 1993, that was discussed at a public meeting of the Gastroenterology and Urology Devices Advisory Panel in April 1993, these tests were suggestive and not intended to bind a PMA applicant to any specific study or set of studies. FDA's "Draft Guidance for the Content of PMA Applications for Testicular Prostheses" is available upon request from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850.

8. One comment suggested that FDA should reopen the dialogue with industry, scientific, and medical communities in order to develop a consensus on the exact scope and nature of some of the preclinical, material, and clinical data requirements.

FDA agrees that the dialogue with industry and the scientific and medical communities should remain open regarding the information needed to support a PMA. FDA staff have been and continue to be accessible to discuss these requirements as requested.

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B. Risks

9. Two comments suggested that the list of risks do not represent "significant risks" of testicular prosthesis implantation. The contention was that FDA has not clearly differentiated between significant risks, potential risks, and potential adverse effects, and that FDA should limit identification of risks to those which have been reasonably shown to be significant risks. The comment noted that the potential effects may be divided into short-term effects and long-term effects.

FDA disagrees with this comment. The proposed rule clearly differentiated risks that have been observed with testicular prostheses from those that are potential risks. Erosion, extrusion, displacement, fibrous capsular contracture, infection, and silicone gel leakage are risks that have been reported specifically for the testicular prosthesis. Carcinogenicity, human reproductive and teratogenic effects, immune related connective tissue disorders (immunological sensitization), biological effects of silica, and degradation of polyurethane foam covering some implants were identified as potential risks that, based on review of all available information, FDA believes are relevant to the testicular prosthesis. While FDA agrees that the risks of any implant fall into the broad categories of short-term and long-term risks, FDA believes that many of the risks identified are both short and long-term in nature, rather than exclusively short or long-term.

10. One comment suggested that since erosion, extrusion, and/or displacement are readily correctable by medical intervention, and since revision surgery is possible if explant is necessary, they should not be considered significant risks. Furthermore, the comment suggested that displacement is not a commonly reported adverse event, nor can the prosthesis migrate to a variety of locations within the body.

FDA disagrees with this comment. Insufficient information is available to determine the frequency of these events or their effects. Furthermore, because these risks can necessitate revision surgery or explant, FDA believes they are appropriately identified as significant risks. However, FDA agrees that it was not accurate to state that the prosthesis can "migrate to a variety of locations within the body," but notes that the prosthesis can migrate to, in front of, or behind the contralateral testis or above the scrotum. The discussion of this risk has been modified accordingly.

11. Several comments stated that certain references cited in the proposed rule failed to demonstrate a causal relationship or a strong association between the implantation of a testicular prosthesis and the onset of risks, such as carcinogenicity, teratogenicity, and autoimmune diseases or connective tissue disorders.

FDA agrees that the references cited do not establish or refute the existence of a causal relationship between testicular prostheses and these risks. However, the literature cited by FDA provides evidence that these potential risks are associated with the device and are not trivial. Consequently, investigation of these risks in support of a PMA is necessary.

12. Two comments regarding the potential carcinogenicity of silicone were received. The comments make the contention that the animal studies reported are irrelevant because the observed sarcomas were solely due to physical (solid state) carcinogenesis and such risks are not applicable to humans.

FDA disagrees with these comments. Carcinogenicity is a putative risk secondary to implantation of any material. After review of all available information, the agency continues to believe that carcinogenicity is a potential risk that must be assessed in a PMA.

13. Three comments were on the subject of reproductive and teratogenic effects of the testicular prosthesis. These comments stated that, because the majority of prostheses are placed in middle-aged to elderly men who have had testicular removal as treatment for *prostatic cancer, the human* reproductive concern is irrelevant. These comments also stated that: (1) There are no reports of adverse effects of testicular prostheses on reproduction, or teratogenic effects on offspring of patients with such prostheses; (2) FDA misinterpreted the results of the literature cited; and (3) only silicone rubber or silicone gel products which contain or are synthesized from phenylmethyl silicones have potential effects on the male reproductive system.

FDA agrees with the comments that, to date, there are no published studies showing reproductive toxic effects or teratogenic effects associated with implantation of silicone materials. While some authors may have concluded that silicone is not a teratogen, FDA believes that there have been no well-designed studies using silicone testicular implants to determine potential human reproductive and teratogenic risks. FDA believes that information in the form of well-designed, single generation animal studies would be appropriate. Additionally, a PMA applicant may choose to submit appropriate human studies, or properly gathered and analyzed historical data, to establish the teratogenic potential of a silicone testicular prosthesis.

FDA agrees that the requirement for reproductive toxicity and teratogenicity information for PMA's should apply for those silicone rubber or silicone gel testicular prostheses which contain or are synthesized from phenylmethyl silicones, but the agency notes that this testing should also be conducted for other silicones until the reproductive and teratogenic profiles of these materials are established.

Finally, FDA agrees that the human reproductive concern may not apply to some testicular implant recipients. However, because a sizable portion of the implant population consists of young males, the concern is relevant. After reviewing all available data, FDA believes that the prolonged contact young males would have with the device presents a potential risk of reproductive effects and teratogenicity in humans.

14. Two comments stated that fibrous capsule formation is a normal wound healing process and, in the case of a testicular prosthesis, aids in keeping the implant in place and preventing migration to other parts of the body. The comments stated that this response occurs following implantation of almost any material and should not be considered a complication or adverse event associated with implantation of testicular prostheses. One comment stated that the incidence rate of fibrous capsular contracture is low, while the second stated that it has never been reported; both argued that it should not be listed as a significant risk.

FDA agrees that fibrous capsule formation is a normal wound healing process that can occur following implantation of almost any material. The agency disagrees, however, that fibrous capsular contracture is not a significant risk of the testicular prosthesis. Fibrous capsular contracture may result in excessive scrotal firmness, discomfort, pain, disfigurement, and displacement of the implant. Moreover, sufficient information exists to identify capsular contracture as a risk to health associated with the testicular implant. FDA believes that literature case reports and product complaints to the manufacturer do not necessarily capture all problems with medical devices.

15. Two comments suggested that the incidence of infection occurs at a rate consistent with other prosthetic implant surgeries and is seldom serious and, therefore, that infection should not be considered a significant risk.

FDA disagrees with this comment. While the incidence of infection may be similar to other prosthetic devices, data are needed to specifically quantify its incidence and effect. Infection often leads to surgical removal of the implant and, therefore, is a potentially serious adverse event. After review of all available information, FDA continues to believe that infection is a significant risk associated with the testicular prosthesis.

16. Several comments were received on the subject of immune related connective tissue disorders or immunological sensitization. The comments make the following contentions: (1) Silicone stimulates a cell-mediated response only when administered under extraordinary conditions with an adjuvant; (2) there is no evidence to date that hard silicone elastomer has immune system adjuvant properties; (3) recent surveys of populations of women with connective tissue disorders have demonstrated no increase in disease prevalence in women with silicone breast implants; and (4) since scientific studies of women with silicone mammary prostheses have not shown a risk for development of connective tissue disorders, implantees with silicone testicular implants, which have less than one thirtieth the volume of a breast implant, should also not be at risk of connective tissue disorders.

FDA disagrees with these comments. The adjuvant effect of silicone gel is established in animal studies (Ref. 1). A recent study (Ref. 2) suggests that some women with silicone gel-filled breast prostheses may develop atypical immunologic reactions. Therefore, the agency continues to believe that the potential risk of immune related connective tissue disorders or immunological sensitization to implanted silicone testicular prostheses must be assessed in a PMA.

17. One comment stated that, while the scientific evidence to date does not demonstrate any cause and effect relationship between the testicular silicone implant and the subsequent development of autoimmune diseases, additional research needs to be completed.

FDA agrees with this comment.

18. Two comments stated that fumed, amorphous silica is tightly incorporated into the silicone elastomer shell of the testicular prostheses and, as a result, has very different (and reduced) biological activity.

FDA does not believe that there is sufficient information available to conclude that amorphous (fumed) silica does not produce the same kind of biological effects as crystalline silica. Furthermore, while the silica reinforcer material may not be extractable, it can be potentially exposed or shed in the form of particles from the elastomer by the process of abrasive wear. Therefore, FDA believes it is necessary that data demonstrating the safety of amorphous silica should be submitted in PMA's.

C. Benefits

19. One comment stated that it is important to recognize the value of a psychological benefit to patients using these devices, and that although it is more difficult to document and quantify a psychological benefit than a physical benefit, the preponderance of evidence showing a psychological benefit should not be underestimated nor undervalued.

FDA agrees with this comment, and has outlined the data needed to demonstrate the psychological benefit of the testicular prosthesis.

D. Manufacturing

20. One comment stated that cooperation between manufacturers and raw materials suppliers is necessary in order to obtain the manufacturing data required in a PMA.

FDA agrees that a cooperative relationship between manufacturers and raw materials suppliers will make the manufacturing data requirements easier to complete, but the agency notes that much of the materials information needed is on the finished, sterilized device.

21. One comment suggested that the manufacturing information section should be revised to allow the referencing of master file submissions, with more limited chemical characterization (e.g., Fourier Transform Infrared Spectroscopy (FTIR)) to confirm chemical composition, and mechanical testing to establish criteria for lot to lot variability in the cured product.

FDA disagrees with this comment. While proprietary manufacturing information and, perhaps, testing results may be part of a master file, additional information beyond formulation data is needed to document the safety of the materials used to construct the device. The additional information must consist of testing that is more sensitive to process variation than routine FTIR and mechanical tests on the cured product. The chemical, physical, and mechanical properties of the final device are affected not only by the starting raw materials, but by the chemical reaction, processing, and subsequent sterilization of these raw materials to make the final device. Only the device manufacturer, not the raw material supplier, has control over these processes. Consequently, referral to a device master file is not, in itself, adequate to assess the safety of the final sterilized device.

22. One comment noted that the supply of silicone raw materials is in jeopardy due to market withdrawal by several manufacturers. This comment suggested that a guidance document is needed to determine acceptable equivalency and data requirements.

FDA agrees that market withdrawal of silicone raw materials by several manufacturers may limit their availability. In the **Federal Register** of July 6, 1993 (58 FR 36207), FDA published a notice of availability of a guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials." The guidance describes the testing procedures to be followed by manufacturers in determining the equivalency of the materials.

E. Extraction Testing

23. One comment stated that the concept of exhaustive extraction and identification and quantification of all chemicals is relatively recent and thus requires method development and validation tantamount to the creation of a new science.

FDA disagrees with this comment. Numerous literature references describe extraction, identification, and quantification of individual silicone components from a variety of matrices using a variety of extraction solvents. While more limited, references exist for supercritical fluid extraction of the low molecular weight components from silicone elastomers. This is not a new science. FDA recognizes the difficulty in quantifying the amount of more than 35 separate components possible given the materials of interest, however present state-of-the-art allows this to be done.

24. One comment stated that FDA's request for molecular characterization of elastomer intermediates, outer shell, patch, and other component parts is not possible since, with the exception of the internal gel component, the parts are composed of solid cured elastomeric material. Furthermore, the comment stated that FDA's request for determination of residual volatile and nonvolatile cyclic compounds is a duplication of the requirement for analysis of extractables set forth in the preclinical data section of the proposed rule.

FDA agrees that this section was unclear. Because only a limited amount of chemical characterization can be

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done on highly crosslinked polymers, it is important to characterize the immediate precursors to assure the quality of the base polymers and crosslinking agents. Regarding the determination of residual volatile and nonvolatile cyclic compounds, FDA agrees that this requirement should apply only to the individual structural components (outer shell, patch, internal gel, suture tab, polyurethane foam covering, and any other materials) as they are found in the final sterilized device as described in the preclinical data section, and should not apply to material intermediates and precursors.

25. One comment stated that the requirement of "complete identification and quantification of all chemicals" is untenable and unattainable, and should be modified to allow manufacturers to focus on identification and quantification of those substances whose presence in the finished device is known or reasonably anticipated based on composition of starting materials, known additives, reaction byproducts, and potential residues or contaminants from reagents used in processing.

FDA disagrees with this comment. Identification and quantification of the majority of chemicals below a molecular weight of 1,500 for silicones, as specified in the guidance, is possible. For other polymeric materials, different criteria may be acceptable and should be discussed with FDA on a case-by-case basis. While FDA agrees that knowledge of the formulation will assist in predicting what might be found in the final product, it will not delineate what or how much is actually in the final product nor assess how the manufacturing process will affect the final product. Knowledge of the formulation will also help in selecting the appropriate analytical methodology to be used for the analysis.

26. One comment stated that analysis of extractables and subsequent toxicity testing should be performed entirely on the final product, rather than separate structural components, and that FDA should establish threshold limits for extractives based on molecular characteristics.

FDA agrees with the first part of this comment, but notes that the analyst should be aware of the drawback to testing the final product in toto. For example, wide variation in the size of the structural components and their proximity to each other in the final device may result in erroneous conclusions being made regarding the chemical identity and source of extract components. Furthermore, the outside shell of an intact device may preclude exhaustive extraction of the interior gel within a reasonable period of time. Nor does testing of an intact device simulate a prosthesis that has ruptured in vivo. Separate testing of the individual components (materials/adhesives) of the final device is acceptable provided that the formulation of the test specimens is identical to the formulation of the materials used in the actual device and has been subjected to the same curing, post-curing, processing, and sterilization modes as the final whole device. Such testing would also allow an increase in specimen size to accommodate the collection of sufficient extract to perform any analytical and biocompatibility testing. Adjustment of the analytical results on a weight basis can then be calculated for the intact device. Regarding the establishment of threshold limits, FDA agrees in theory, but notes that present limited knowledge of toxicity based on molecular characteristics, especially with respect to siloxanes, makes the establishment of threshold limits impossible.

27. One comment stated that FDA should define what is meant by "exhaustive extraction".

FDA's "Draft Guidance for the Content of PMA Applications for Testicular Prostheses" provides detailed guidance on extraction for silicone implants. This guidance is available upon request from the Division of Small Manufacturers Assistance (HFZ–220) (see address above in section II A of this document).

F. Physical Testing

28. One comment stated that it seems unnecessary for FDA to require characterization of a physical or chemical property unless it is relevant to the intended use of the device.

FDA notes that no specific physical property tests were cited in the comment. FDA believes that all of the physical property tests identified in the proposed rule are relevant to the intended use of the device.

29. Two comments stated that the testicular prosthesis is too small to use the American Society for Testing and Materials (ASTM) test methods D412 and D624 as stated in the proposed rule, which specify specimen size and test methodology, based on a relationship between a ratio of thickness to area for a known coupon size and configuration. The comment suggested that the ASTM test methods can be used if slabs representing the device formulation are prepared for testing, according to both ASTM D412 and D624.

FDA agrees with this comment. The use of downsized dies for testing smaller samples obtained from finished sterilized devices may be employed. Test slabs mimicking the formulation of the materials used in the actual device and subjected to the same processing and sterilization modes could also be used. This would also apply to the samples used for testing of the integrity of adhered or fused joints. Evaluation of biodegradation effects on physical properties of elastomeric components could be accomplished by physical testing of test slabs explanted from animals.

30. One manufacturer noted that, in its experience, there has never been a case of a testicular implant failure from shell abrasion, and questioned the need for abrasion testing. The comment noted that only two explants had been received in the manufacturer's 9-year history with the device.

FDA disagrees with this comment. The fact that the manufacturer has received only two explanted devices in its 9-year history with the device is not a sufficient reason for dismissing abrasion as a potential failure mode for the device. In addition, other potential adverse effects are associated with abrasion, such as release of silica, inflammation, and granuloma formation.

G. Biocompatibility Testing

31. Two comments stated that mutagenicity and other toxicity testing be required to use mixtures of total extractables rather than individual components.

FDA agrees with this comment.

32. One comment noted that biodegradation testing may require miniature implants in animals, and suggested that the biodegradation studies should consist of microscopy studies, as well as chemical characterization which would be indicative of any degradation process.

FDA agrees with this comment.

33. One comment stated that histopathology should not be required for acute toxicity studies because the duration of the study is insufficient for developing tissue responses.

FDA agrees with this comment.

34. One comment stated that the preclinical requirements exceed the Tripartite Biocompatibility Guidance for Medical Devices (Ref. 3) and even the science of biocompatibility testing.

FDA disagrees with this comment. The agency notes that the biocompatibility requirements were based on the Tripartite Biocompatibility Guidance for Medical Devices.

35. One comment suggested that testing of nonpolar solvent extracts for a variety of biocompatibility tests is not relevant to the devices currently on the market.

FDA disagrees with this comment. The proposed rule suggests that, at a minimum, ethanol, ethanol/saline (1:9), and dichloromethane should be used. Solvents should be chosen that are expected to solubilize the low molecular weight migrants in a reasonable period of time, thus facilitating exhaustive extraction—not to mimic in vivo conditions. Inasmuch as the chemical nature of all the migrants is not known, it is advisable to use solvents with varying chemical characteristics.

36. One comment suggested that for extracts composed of substances possessing innocuous structures and having low potential exposures, either no testing or only minimal testing should be required.

FDA disagrees with this comment. There is currently limited knowledge of what is and what is not "innocuous" based solely on chemical structure. The potential exposure can only be based on the maximum amount found in the final product by analytical tests. However, since polysiloxanes contain many, perhaps more than 35, chemical components as a byproduct of the synthesis, FDA agrees that it is difficult to individually test all components found in the extract. Therefore, FDA will accept testing of the mixtures of total extractables rather than of individual components.

37. One comment stated that the pharmacokinetics testing outlined requires methodology that does not currently exist for solid elastomeric silicone.

FDA agrees in general with the comment regarding solid elastomeric silicone products. However, if the solid elastomers contain leachable components, FDA believes they should be subjected to pharmacokinetics testing.

H. Clinical Investigations

38. Several comments suggested that many of the safety and effectiveness questions raised in the proposed rule can be addressed by evaluation of the available published clinical data, collection and analysis of retrospective epidemiological data and, if necessary, initiation of postmarketing followup studies.

FDA agrees that long-term retrospective epidemiological data, if collected properly, can be very useful in identifying long-term issues pertaining to safety and effectiveness. However, FDA believes it is necessary to require randomized (if at all possible), prospective studies to establish the short-term (in this case, up to 5 years or until physical maturity of the subject) safety and effectiveness data of the testicular implant. Only prospective data collected under a well-designed protocol can adequately address issues of safety and effectiveness relevant to the current population of implant users.

39. One comment stated that FDA focused almost exclusively on "well-controlled studies" while ignoring other valid scientific evidence as defined in § 860.7(c)(2).

FDA disagrees with this comment. Although § 860.7(f) does allow valid scientific evidence other than well-controlled investigations, § 860.7(e)(2) notes that "The valid scientific evidence used to determine the effectiveness of a device shall consist *principally* [emphasis added] of well-controlled investigations." Therefore, well-controlled investigations are not only appropriate, but required, with other "valid scientific evidence" to be considered in a supporting role. In fact, FDA encourages the submission of all well-documented, valid retrospective data, which are presented in an organized manner.

40. One comment stated that FDA did not identify the duration of the clinical trial needed to establish safety and effectiveness, and suggested that while life-long data are ideally needed, some reduced amount of data should be identified to allow continued distribution of the testicular prosthesis.

FDA notes that the proposed rule suggested that 5-year clinical data, or data collected until the physical maturity of the subject (whichever occurs later) is needed, and that post-approval studies will be needed to address the various long-term issues identified.

41. Two comments requested clarification of what would constitute an adequate control, suggesting that the controls need to be tailored to the specific questions being asked, and that multiple control groups may therefore be necessary. One comment stated that meaningful control data may be either unimportant or impossible to obtain. One comment suggested that the patient should be his own control due to the difficulty in identifying and recruiting an appropriate control group for a male without one or both testicles.

FDA agrees that controls need to be tailored to the specific questions under investigation, and that multiple control groups may therefore be necessary. FDA strongly disagrees that "meaningful control data may be unimportant." However, if "meaningful control data may be * * * impossible to obtain", the sponsor must rigorously demonstrate this for the relevant hypothesis. FDA agrees that it may be very difficult or impractical to recruit an appropriate control group. If the sponsor can satisfactorily demonstrate this to be the case, the subject may serve as his own control.

42. One comment noted that epidemiological clinical testing would require many years of patient enrollment to address only hypothetical concerns.

FDA agrees in part with this comment. FDA's "Guidance to Manufacturers on the Development of Required Post-approval Epidemiologic Study Protocols for Testicular Implants" permits manufacturers to document whether conditions are too rare to detect in a reasonable study. It also emphasizes that valid case-control studies and retrospective cohort studies are welcome. The guidance is available upon request from the Division of Small Manufacturers Assistance (HFZ–220) (see address above in section II A of this document).

43. One comment suggested that two generation human testing would be needed for teratology testing.

FDA believes that single generation animal studies, properly gathered and analyzed historical clinical data, or other valid scientific evidence would also be appropriate in determining the teratogenic potential of the testicular prosthesis.

I. Need for Psychological Data

44. One comment stated that the psychological benefits of the testicular prosthesis do not need to be evaluated using standardized testing and quantification of benefits because: (1) Studies are available in which patient satisfaction with testicular prostheses has been assessed; (2) the notion that the absence of one or both testicles produces adverse psychological effects on boys and adult males appears to be universally accepted; (3) several anecdotal reports strongly support the use of testicular prostheses for patients with congenital or other absence of testes; and (4) manufacturers make no claims regarding the psychological benefit of the device.

FDA disagrees with these comments. The studies cited were either so small as to be considered anecdotal, did not describe the assessment tools used, used no systematic assessment of the psychological impact of the prostheses, or consisted of particular subpopulations whose applicability to the general population would be questionable. These shortcomings underscore the need for FDA's request for a systematic assessment using reliable and valid measures of the

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psychosocial consequences of testicular implants. Regardless of the actual claims made, it is clear that the testicular prosthesis is implanted for its psychosocial benefit to the implant recipient.

45. One comment stated that the intended use of the testicular prosthesis is to construct or reconstruct the size and contour of the male testicle, and that before and after size measurements would be sufficient to demonstrate effectiveness beyond any reasonable doubt. Furthermore, to expect manufacturers to conduct psychological testing in the absence of an FDA-recognized validated test instrument is not appropriate.

FDA disagrees with this comment. While before and after size measurements would be sufficient to show the anatomical effect of the implant, FDA believes that testicular prostheses are primarily used for the psychological benefit. FDA agrees with an earlier comment which stated that the psychological benefit should neither be underestimated nor undervalued. Finally, FDA notes that section 515(b) of the act does not require FDA to provide guidance for tests for PMA's prior to issuing a call for PMA's. While FDA outlined the principles of the psychological/psychosocial data needed in the proposed rule, in the "Draft Guidance for Preparation of PMA Applications for Testicular Prostheses," and at a public meeting of the Gastroenterology and Urology Devices Advisory Panel in April 1993, these tests were suggestive and not intended to bind a PMA applicant to any specific study or set of studies.

46. One comment stated that requiring documentation of psychological benefits through further well-controlled presurgical, immediate postsurgical, and long-term psychological studies using standardized, validated test instruments is inappropriate and would appear to fall outside the intent of the act. Congress intended that medical devices perform as intended, not that they necessarily produce therapeutic effects.

FDA disagrees with this comment. Section 860.7(e)(1) states that there is "reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device * * * will provide clinically significant results." FDA believes that it is necessary that a PMA demonstrate that the device has a beneficial therapeutic effect, rather than merely demonstrating that a device functions in accordance with its design.

47. One comment stated that psychological testing of the juvenile segment of the potential patient population is impractical and inappropriate, and that FDA should provide specific guidelines on any required psychological testing.

FDA agrees that it may not be feasible to effectively assess the psychosocial impact of testicular prosthesis implantation on children 12 years of age and younger. However, FDA believes that children over 12 years of age should be tested, since sexuality and the physical manifestations of sexuality are psychologically very important to pubescent and adolescent children. Manufacturers are encouraged to contact FDA regarding specific guidelines on this testing.

III. Findings With Respect to Risks and Benefits

A. Degree of Risk

1. *Extrusion/erosion of the testicular prosthesis.* Extrusion and erosion of the testicular implant through the scrotal wall are among the most common complications associated with the use of these devices. Prosthesis extrusion is usually associated with concurrent wound dehiscence in instances where the device was inserted through a scrotal incision. Skin erosion has been reported following implantation of the testicular prosthesis due to the presence of a Dacron suture tab, insertion of an oversized device, or aggressive dissection of the subdartos pocket, and could result in subsequent infection or device extrusion. It has been suggested that the rate of extrusion due to wound dehiscence is between 3 and 8 percent.

2. *Displacement of the testicular prosthesis.* Displacement, or migration, is another commonly reported adverse event. The prosthesis can migrate in front of or behind the contralateral testis or above the scrotum. Displacement can be caused by either inadequate scrotal distension prior to insertion or improper surgical placement/fixation.

3. *Fibrous capsular contracture.* Fibrous capsular contracture, the formation of a constricting fibrous layer around the prosthesis, has been associated with the presence of testicular implants. Capsular contracture may result in excessive scrotal firmness, discomfort, pain, disfigurement, and displacement of the implant.

Although the etiological factors of capsular contracture have not been reported with testicular implants, several factors have been suggested with the breast implant, including hematoma, infection, and foreign body reaction. Despite these reports, no single factor has been demonstrated to be the sole cause of contracture. The etiology of contracture is not understood.

4. *Infection.* Infection, a risk of any surgical implant procedure, is associated with the use of testicular implants. As in any implantation procedure, compromised device sterility and surgical techniques may be major contributing factors to this risk. Usually, the occurrence of infection necessitates the removal of the prosthesis. It has been suggested with the silicone gel-filled breast prosthesis that infection may also contribute to the early development of capsular contracture.

5. *Human carcinogenicity.* Carcinogenesis has been widely discussed as a reputed risk secondary to implantation of any material. Evidence from the literature indicates that, in animal studies, different forms of silicone have been associated with various types of cancer. Cases of several types of cancer in humans have been reported in association with various forms of implanted silicone.

6. *Human reproductive and teratogenic effects.* The effect of certain silicone compounds on the reproductive potential of the male is largely unknown. It has been reported that at least one form of organosiloxane, which is known to be present in some silicone gels, mimics estrogens in the male rat leading to rapid testicular atrophy.

Teratogenesis includes the origin or mode of production of a malformed fetus and the disturbed growth processes involved in the production of a malformed fetus. Studies using silicone fluid in animals have been minimal, and yield contradictory and inconclusive results. Prolonged contact with either the solid silicone device, or the silicone gel-filled membrane and its components, presents a potential risk of teratogenicity in humans. Additionally, the theoretical risk of abnormalities appearing later in life in normally appearing offspring also warrants investigation.

The risk of adverse reproductive and teratogenic effects from testicular implants exists only in the subset of patients who have a single prosthesis with a unilateral, functional testicle.

7. *Immune related connective tissue disorders—immunological sensitization.* Immunological sensitization may be a serious risk associated with the implantation of a testicular prosthesis. Immune related connective tissue disorders have been reported in women who have silicone gel-filled prostheses or who have had silicone injections in augmentation mammoplasty. There are clinical reports of several patients who

have undergone augmentation mammoplasty with silicone gel-filled breast prostheses and later presented with connective tissue disease-like syndromes. Because testicular prostheses consist of similar silicone elastomers and gels, further study of the potential risk of immune related connective tissue disorders in humans with these implants is warranted.

8. *Biological effects of silica.* Amorphous (fumed) silica is bound to the silicone in the elastomer of the testicular prosthesis, and may be fibrogenic and immunogenic. Fumed silica and the silicone shell each elicit cellular responses in rats. The biological effects of silica, particularly the immunologic component of these reactions, present a potential risk and need to be examined.

The following potential risk pertains only to the gel-filled silicone rubber testicular prosthesis:

9. *Silicone gel leakage and migration.* Silicone gel leakage and migration from the silicone elastomer envelope, either from rupture of the envelope or by leaking of the gel through the envelope (gel "bleed"), are also significant risks of silicone gel-filled testicular prostheses. Rupture of the envelope with gel leakage and subsequent migration may be secondary to surgical technique or mechanical stresses such as routine manual massage, trauma, and wear on the envelope, and necessitates removal of the prosthesis. In addition to the above, silicone gel-filled breast implants, which are similar to testicular implants in materials and construction, are reported to "bleed" micro amounts of silicone through the intact silicone elastomer shell into the surrounding tissues. Although diffusion of silicone gel through the elastomer shell has not specifically been measured in the testicular prosthesis, gel bleed continues to be a theoretical risk with this device and needs to be evaluated. Migration of the gel into the human body presents the potential for development of adverse effects such as granulomas or lymphadenopathy. The ultimate fate of migrating silicone gel within the body is currently not well understood.

The following potential risk is associated only with those testicular prostheses that are polyurethane foam covered:

10. *Degradation of polyurethane foam.* The polyurethane foam material that has been used to cover some testicular prostheses is known to degrade over time with a potential breakdown product of 2,4 diaminotoluene (TDA), a known carcinogen in animals. The fate of the degraded product in vivo is unknown to date, and the use of this material in testicular implants may have been discontinued. Case reports of the polyurethane foam covered silicone gel-filled breast implant indicate that there is greater difficulty with the removal of this type of prosthesis due to a fragmented polyurethane shell and/or capsular tissue ingrowth. Foreign body responses have been reported concurrent with the use of the polyurethane foam covered testicular prosthesis in humans.

B. Benefits of the Device

The testicular prosthesis is intended to simulate the presence of a testicle within the male scrotum, and is indicated in subjects who are missing one or both testes due to either congenital or acquired reasons. Testicular prosthesis implantation is a discretionary surgical procedure performed for psychological, rather than for other medical reasons.

Testicular prostheses are commonly used to correct congenital anomalies in young males who are born without one or both testicles (i.e., testicular agenesis or atrophy). Additionally, such devices are often implanted subsequent to removal of one or both testes for one of several reasons: Malignant cancer of the prostate, testicular cancer, testicular torsion, cryptorchidism, failed orchiopexy, epididymitis/orchitis, or testicular trauma.

Men facing orchiectomy (removal of the testicles) may experience depression that accompanies this degenerative change in body image. Such feelings of depression have been equated to the experiences of women who have undergone mastectomy or hysterectomy. Shame and feelings of inferiority are common, and can lead to anxiety, personality changes, changes in one's customary lifestyle, fear of sexual rejection, and psychogenic impotence. It has also been reported that a visible defect in a child's genital region may result in feelings of inferiority, leading to social isolation. Such occurrences may produce psychologic problems, and have an affect upon the child's emotional development and sexual identity. Implantation of a testicular prosthesis may help to alleviate such feelings in males of all ages, thereby improving quality of life. The studies which have been published indicate that recipients of testicular prostheses exhibit a high degree of satisfaction with their surgery.

IV. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the testicular prosthesis, by revising § 876.3750(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed with FDA within 90 days of the effective date of this regulation for any testicular prosthesis that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before the 90th day past the effective date of this regulation. An approved PMA or declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application. Any other testicular prosthesis that was not in commercial distribution before May 28, 1976, or that has not, on or before 90 days after the effective date of this regulation, been found by FDA to be substantially equivalent to a testicular prosthesis that was in commercial distribution before May 28, 1976, is required to have an approved PMA or declared completed PDP in effect before it may be marketed.

If a PMA or notice of completion of a PDP for a testicular prosthesis is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act, and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use if the requirements of the investigational device exemption (IDE) regulations (21 CFR part 812) are met.

Under § 812.2(d) (21 CFR 812.2(d)) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the testicular prosthesis. Further, FDA concludes that investigational testicular prostheses are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of § 876.3750(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a testicular prosthesis. For any testicular prosthesis that is not subject to a timely filed PMA or notice of completion of a PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device for investigational purposes must cease. FDA advises all persons presently sponsoring a clinical investigation involving the testicular prosthesis to submit an IDE application to FDA no later than 60 days after the effective date

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of this final rule to avoid the interruption of ongoing investigations.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the manufacturers of these devices have been aware for a long time, more than 10 years, of the need to prepare PMA's for these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857 and may be seen by interested persons between 9 a.m and 4 p.m. Monday through Friday.

1. Naim, J., and R.J. Lanzafame, "The Adjuvant Effect of Silicone Gel on Antibody Formation in Rats," *Immunological Investigations*, 22(2):151–161, 1993.

2. Bridges, A. J., C. Conley, G. Wang, D. E. Burns, and F. B. Vasey, "A Clinical and Immunologic Evaluation of Women With Silicone Breast Implants and Symptoms of Rheumatic Disease," *Annals of Internal Medicine*, 118(12):929–936, 1993.

3. Tripartite Biocompatibility Guidance for Medical Devices, Office of Device Evaluation General Program Memorandum #87–1, April 24, 1987.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 3601, 371).

2. Section 876.3750 is amended by revising paragraph (c) to read as follows:

§ 876.3750 Testicular prosthesis.

* * * * *

(c) *Date premarket approval application (PMA) or notice of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before July 5, 1995, for any testicular prosthesis that was in commercial distribution before May 28, 1976, or that has on or before July 5, 1995, been found to be substantially equivalent to a testicular prosthesis that was in commercial distribution before May 28, 1976. Any other testicular prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 13, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–8383 Filed 4–4–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8591]

RIN 1545–AT28

Valuation of Plan Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to employers in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution made in any form other than in certain nondecreasing annuity forms. These temporary regulations are issued to reflect changes to the applicable law made by the Retirement Protection Act of 1994 (RPA '94), which is part of the Uruguay Round Agreements Act of 1994. RPA '94 amended the law to change the interest rate, and to specify the mortality table, for the purposes described above. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective April 5, 1995.

These regulations apply to plan years beginning after December 31, 1994, except as provided in § 1.417(e)–1T(d)(8) and (9).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Short Description

The temporary regulations in this document set out rules for computing the amount of any benefit under a qualified defined benefit pension plan that is paid in any form other than certain annuity forms. These temporary regulations reflect changes made to the law in the Retirement Protection Act of 1994 (RPA '94) Pub. L. 103–465. Under the new law, if the annuity benefit an employee could receive under the plan is converted to a different form of benefit, the non-annuity benefit cannot be less than the value that would be determined using legally required assumptions regarding life expectancy (mortality table) and interest rate. This ensures that the non-annuity benefit will not be less valuable than the annuity benefit.

Under these temporary regulations, the mortality table used under the new law is the mortality table published by the IRS (currently a mortality table commonly used by state insurance commissioners). The interest rate used under the new law is the interest rate on 30-year Treasury securities, as published by the IRS. These temporary regulations allow an employer to choose a monthly, quarterly, or annual period during which the plan's interest rate remains constant, and allow an employer to determine the rate up to five months before the period begins.

These temporary regulations provide that, for most pension plans in place on December 7, 1994, the employer can choose to have the new law become effective any time between December 8, 1994, and the first day of the first plan year beginning after December 31, 1999. These temporary regulations also specify how employers can amend their pension plans to change the mortality table and interest rate used to compute the amount of a distribution, without causing any prohibited reduction in benefits.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 417(e). Section 417(e) was amended by RPA '94. These temporary regulations provide guidance related to the determination of the present value of an employee's benefit under a qualified defined benefit pension plan in accordance with the rules of section 417(e)(3).

The rules of section 417(e)(3) are also relevant to the application of section 411(a)(11) and section 415(b). Section 411(a)(11) provides that a participant's benefit with a present value that exceeds $3,500 can be immediately distributed to a participant only with the participant's consent. Under section 411(a)(11)(B), as amended by RPA '94, the present value of a participant's benefit is calculated using the rules of section 417(e)(3). Section 415(b) limits the maximum benefit that can be provided under a qualified defined benefit plan. Under section 415(b)(2)(E)(ii), as amended by RPA '94, the minimum interest rate permitted to be used for certain purposes to determine compliance with the limit under section 415(b) is the applicable interest rate as defined in section 417(e)(3). Because the rules of section 417(e)(3) affect the application of sections 411(a)(11)(B) and 415(b)(2)(E)(ii), the guidance provided by these temporary regulations is relevant to the application of those provisions.

Explanation of Provisions

Section 417(e) restricts the ability of certain qualified retirement plans to distribute a participant's benefit under the plan without the consent of the participant and, in many cases, the participant's spouse. The application of these restrictions is determined based on the present value of the participant's benefit. Prior to amendments made by RPA '94, section 417(e)(3) restricted the interest rate to be used under a plan to calculate the present value of a participant's benefit, but did not impose any restrictions on the mortality table to be used for that purpose.

Under § 1.417(e)–1(d), prior to amendment by these temporary regulations, the interest rate limitations of section 417(e)(3) were applied in determining whether participant or spousal consent to a distribution was necessary, in determining the present value of any accrued benefit, and in determining the amount of many types of distributions. Further, under those regulations, the present value of any optional form of benefit could not be less than the present value of the normal retirement benefit determined in accordance with the interest rate restrictions of section 417(e)(3). Section 767 of RPA '94 modified section 417(e)(3) to provide that the present value of a participant's benefit is not less than the present value calculated by using the applicable mortality table and the applicable interest rate.

Applicable Mortality Table

The applicable mortality table under section 417(e)(3) is defined as the table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)). Currently, the prevailing commissioners' standard table is the 1983 Group Annuity Mortality Table. See Rev. Rul. 92–19, 1992–1 C.B. 227. These temporary regulations provide that the applicable mortality table as described above is to be prescribed by the Commissioner in revenue rulings, notices or other documents of general applicability. That table is set forth in Rev. Rul. 95–6, 1995–4 I.R.B. 22.

Applicable Interest Rate

Under section 417(e)(3), the applicable interest rate is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These temporary regulations provide that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month. Currently, this interest rate is the interest rate published in Federal Reserve releases G.13 and H.15 as the average yield on 30-year Treasury Constant Maturities for the month. The interest rates for July 1994 through February 1995 are specified as follows: 7.58 percent for July 1994, 7.49 percent for August 1994, 7.71 percent for September 1994, 7.94 percent for October 1994, 8.08 percent for November 1994, 7.87 percent for December 1994 (see Notice 95–6, 1995–5 I.R.B. 47), 7.85 percent for January 1995 (see Notice 95–9, 1995–10 I.R.B. 10), and 7.61 percent for February 1995 (see Notice 95–11, 1995–13 I.R.B. 8). The Commissioner will continue to publish this interest rate for each month, shortly after the end of the month.

The interest rate on 30-year Treasury Constant Maturities published monthly in Federal Reserve releases G.13 and H.15 can also be obtained by telephone from the Public Information Department of the Federal Reserve Bank of New York at (212) 720–6130 (not a toll-free number). Information regarding subscriptions to Federal Reserve releases G.13 and H.15 can be obtained from the Publications Department of the Federal Reserve Board of Governors at (202) 452–3244 (not a toll-free number).

Time for Determining Applicable Interest Rate

Section 417(e)(3)(A)(ii)(II) provides that the applicable interest rate for distributions made during a month is the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These temporary regulations permit selection of a monthly, quarterly or annual period during which the applicable interest rate remains constant. Permitting selection of such a quarterly or annual stability period allows plans to offer greater benefit stability than is provided by the statutory rule, under which the applicable interest rate changes monthly.

These temporary regulations provide that the applicable interest rate for the stability period may be determined as the 30-year Treasury rate for any one of the five calendar months preceding the first day of the stability period. Permitting this "lookback" of up to five months provides added flexibility and gives plan administrators and participants more time to comply with applicable notice and election requirements using the actual interest rate (instead of an estimate).

Thus, a plan may change the applicable interest rate monthly, quarterly, or annually, and may determine the rate with reference to one of the five months preceding the month, quarter, or year. For example, if an employer with a calendar year plan wishes to use the same interest rate for

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all distributions in the plan year (i.e., the annual stability period) and wishes to provide 90 days for employee notices based on the actual interest rate, the plan can provide that the applicable interest rate for the entire plan year is the 30-year Treasury rate specified by the Commissioner for the prior August (i.e., five calendar months before January 1, the first day of the plan year).

Effective Dates

These temporary regulations are generally effective for plan years beginning after December 31, 1994.

Under section 417(e)(3)(B) and these temporary regulations, the general effective date for the RPA '94 rules is delayed for certain plans until the first plan year that begins after December 31, 1999, unless an employer takes earlier action. The delayed effective date applies to a plan adopted and in effect before December 8, 1994, if the provisions of the plan in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on December 7, 1994. For such a plan, the present value of a distribution made before the first day of the first plan year that begins after December 31, 1999, is calculated under the provisions of the plan in effect on December 7, 1994, if the annuity starting date for the distribution occurs before the date a plan amendment applying both the applicable mortality table and the applicable interest rate rules added by RPA '94 is adopted or, if later, is made effective.

These temporary regulations restate the rules applicable to plan years beginning before January 1, 1995, without substantive change. Those pre-1995 rules also apply to later plan years, to the extent that the application of the RPA '94 rules is delayed as described above.

In addition, section 767(d)(1) of RPA '94 permits an employer to elect to accelerate the effective date of the RPA '94 rules, and hence these temporary regulations, in order to apply the RPA '94 rules to distributions with annuity starting dates occurring after December 7, 1994, in plan years beginning before January 1, 1995. An employer that makes a plan amendment applying the applicable mortality table and the applicable interest rate rules of these regulations is treated as making this election as of the date the plan amendment is adopted or, if later, is made effective.

Relationship With Section 411(d)(6)

Section 411(d)(6) provides that a plan does not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. In general, a plan amendment that changes the interest rate or the mortality assumptions used for purposes of determining the amount of any accrued benefit is subject to section 411(d)(6). Consistent with regulations in effect prior to amendment by these temporary regulations, these temporary regulations provide limited section 411(d)(6) relief for certain plan amendments that change the time for determining the applicable interest rate. A plan amendment that changes the time for determining the applicable interest rate will not be treated as violating section 411(d)(6), if each distribution made until one year after the later of the amendment's effective date or the amendment's adoption date is calculated using the time for determining the applicable interest rate as provided before or after the amendment, whichever produces the larger benefit. For this purpose, all other plan provisions must be applied as in effect after the amendment.

For example, assume that a calendar year plan is amended in March 1995, effective July 1, 1995, to change the interest rate used to determine the present value of plan distributions from the PBGC interest rate determined as of January 1 of the plan year that contains the annuity starting date, to the 30-year Treasury security interest rate for August of the year before the plan year that contains the annuity starting date. The plan amendment will not be treated as violating section 411(d)(6) if each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for January of the plan year that contains the annuity starting date, whichever produces the larger benefit.

Section 767(d)(2) of RPA '94 provides that a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because the benefit is determined in accordance with the applicable interest rate rules and the applicable mortality table rules of section 417(e)(3)(A), as amended by RPA '94. These temporary regulations provide that an interest rate may be eliminated under this section 411(d)(6) relief rule if that interest rate is the PBGC interest rate or a rate based on the PBGC interest rate. The PBGC has advised the Service and Treasury that it has not made any decision at this time on whether it will continue to publish the relevant interest rates after the year 2000. Therefore, in amending plans to comply with these temporary regulations, employers should not rely on the continued publication of these rates by the PBGC beyond the year 2000.

These temporary regulations further provide that, where a plan provided for the use of an interest rate not based on the PBGC interest rate prescribed by section 417(e)(3) as in effect before amendments made by RPA '94, a plan amendment that eliminates the use of that interest rate and the associated mortality table may result in a reduction of a participant's accrued benefit, which would violate the requirements of section 411(d)(6). These temporary regulations provide examples of the application of section 411(d)(6) and the special rule of section 767(d)(2) of RPA '94, including an example illustrating the use of a phase-in that provides for a smoother transition from the plan's former terms to the new rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.417(e)–1T also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II).

Par. 2. In § 1.417(e)–1, paragraph (d) is revised to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement.* For rules regarding the present value of a participant's accrued benefit and related matters, see § 1.417(e)–1T(d).

* * * * *

Par. 3. § 1.417(e)–1T is added to read as follows:

§ 1.417(e)–1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 (Temporary).

(a) through (c) [Reserved].

(d) *Present value requirement*—(1) *General rule.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) *Applicable mortality table.* The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(3) *Applicable interest rate*—(i) *General rule.* The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Example.* This example illustrates the rules of this paragraph (d)(3):

Example. Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95–6, 1995–4 I.R.B. 22, and that the applicable interest rate for Plan A is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of $1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single sum received by P may not be less than $111,351.

(4) *Time for determining interest rate*—(i) *General rule.* The applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Stability period.* A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, or one plan year.

(iii) *Lookback month.* A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv) *Additional determination dates.* The Commissioner may prescribe, in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), other times that a plan may provide for determining the applicable interest rate.

(v) *Example.* This example illustrates the rules of this paragraph (d)(4).

Example. Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) *Use of alternative interest rate and mortality table.* If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit produced by using the applicable interest rate and the applicable mortality table. For example, where a plan provides for use of an interest rate of 7% and the UP–1984 Mortality Table (see § 1.401(a)(4)–12, *Standard mortality table*) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using this actuarial basis (i.e., 7% and the UP–1984 Mortality Table) and the single sum calculated using the applicable interest rate and the applicable mortality table.

(6) *Exceptions.* This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution under a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a QPSA, the life of the surviving spouse. A nondecreasing annuity includes a QJSA, QPSA and an annuity that decreases merely because of the cessation or reduction of Social Security supplements or qualified disability payments (as defined in section 411(a)(9)).

(7) *Defined contribution plans.* Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), even though it is subject to section 401(a)(11).

(8) *Effective date*—(i) *In general.* This paragraph (d) is effective for distributions with annuity starting dates in plan years beginning after December 31, 1994.

(ii) *Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94)(108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994.* For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the

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applicable mortality table and applicable interest rate under paragraphs (d) (2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) and § 1.417(e)–1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before January 1, 1995) apply in lieu of the rules of paragraphs (d) (2) through (4) of this section. The interest rate under the rules of paragraph (d)(9) of this section is determined under the provisions of the plan as in effect on December 7, 1994, reflecting the interest rate or rates published by the Pension Benefit Guaranty Corporation (PBGC) and the provisions of the plan for determining the date on which the interest rate is fixed. The above described interest rate or rates published by the PBGC are those determined by the PBGC (for the date determined under those plan provisions) pursuant to the PBGC's methodology under the regulations of the PBGC for determining the present value of a lump sum distribution on plan termination under 29 CFR Part 2619 that were in effect on September 1, 1993 (as contained in 29 CFR part 2619 revised July 1, 1994).

(iii) *Optional accelerated effective date of RPA '94 rules.* This paragraph (d) is also effective for a distribution with an annuity starting date after December 7, 1994, during a plan year beginning before January 1, 1995, if the employer elects, on or before the annuity starting date, to make the rules of this paragraph (d) effective with respect to the plan as of the optional accelerated effective date described in paragraph (d)(8)(iv) of this section. An employer is treated as making this election by making the plan amendments described in paragraph (d)(8)(iv) of this section.

(iv) *Determination of delayed or accelerated effective date by plan amendment adopting RPA '94 rules.* The optional delayed effective date of paragraph (d)(8)(ii) of this section, or the optional accelerated effective date of paragraph (d)(8)(iii) of this section, whichever is applicable, is the date plan amendments applying both the applicable mortality table of paragraph (d)(2) of this section and the applicable interest rate of paragraph (d)(3) of this section are adopted or, if later, are made effective.

(9) *Plan years beginning before January 1, 1995*—(i) *Interest rate.* (A) For distributions made in plan years beginning after December 31, 1986, and before January 1, 1995, the following interest rate described in paragraph (d)(9)(i)(A)(*1*) or (*2*) of this section, whichever applies, is substituted for the applicable interest rate for purposes of this section—

(*1*) The rate or rates that would be used by the PBGC for a trusteed single-employer plan to value the participant's (or beneficiary's) vested benefit (PBGC interest rate) if the present value of such benefit does not exceed $25,000; or

(*2*) 120 percent of the PBGC interest rate, as determined in accordance with paragraph (d)(9)(i)(A)(*1*) of this section, if such present value exceeds $25,000. In no event shall the present value determined by use of 120 percent of the PBGC interest rate result in a present value less than $25,000.

(B) The PBGC interest rate may be a series of interest rates for any given date. For example, the PBGC interest rate for immediate annuities for November 1994 is 6%, and the PBGC interest rates for the deferral period for that month are as follows: 5.25% for the first 7 years of the deferral period, 4% for the following 8 years of the deferral period, and 4% for the remainder of the deferral period. For November 1994, 120 percent of the PBGC interest rate is 7.2% (1.2 times 6%) for an immediate annuity, 6.3% (1.2 times 5.25%) for the first 7 years of the deferral period, 4.8% (1.2 times 4%) for the following 8 years of the deferral period, and 4.8% (1.2 times 4%) for the remainder of the deferral period. The PBGC interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trusteed single employer plan. Except as otherwise provided by the Commissioner, the PBGC interest rates are determined by PBGC regulations. See 29 CFR part 2619 for the applicable PBGC rates.

(ii) *Time for determining interest rate.* (A) Except as provided in paragraph (d)(9)(ii)(B) of this section, the PBGC interest rate or rates are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(B) The plan may provide for the use of any other time for determining the PBGC interest rate or rates provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(C) The Commissioner may, in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), prescribe other times for determining the PBGC interest rate or rates.

(iii) *No applicable mortality table.* In the case of a distribution to which this paragraph (d)(9) applies, the rules of this paragraph (d) are applied without regard to the applicable mortality table described in paragraph (d)(2) of this section.

(10) *Relationship with section 411(d)(6)*—(i) *In general.* Except as provided in this paragraph (d)(10), a plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section is subject to section 411(d)(6). But see § 1.411(d)-4, Q&A 2(b)(2)(v) (regarding plan amendments relating to involuntary distributions).

(ii) *Change in time for determining interest rate.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (including an indirect change as a result of a change in plan year), the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(10)(ii) are satisfied. Any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective (if the amendment is effective on or after the adoption date) must use the interest rate as provided under the terms of the plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

(iii) *Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94*—(A) *Replacement of PBGC interest rate.* A participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan (even if the amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules), if the following conditions are satisfied—

(*1*) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(*2*) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(B) *Replacement of non-PBGC interest rate.* The section 411(d)(6) relief provided in paragraph (d)(10)(iii)(A) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6). For purposes of paragraphs (d)(10)(iii)(A) and (B) of this section, an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC interest rate or as the PBGC interest rate minus a specified number of basis points.

(C) *Plan amendment providing for prior determination date or up to two months earlier.* If the special rule of paragraph (d)(10)(iii)(A) of this section would apply to a plan except that the applicable interest rate is determined for a month other than the first full calendar month preceding the calendar month that contains the annuity starting date, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) if the applicable interest rate is determined for the calendar month that contains the date as of which the PBGC interest rate was determined immediately before the amendment, or for one of the two calendar months immediately preceding that month, or if the plan amendment satisfies the conditions of paragraph (d)(10)(ii) of this section.

(D) *Examples.* The provisions of this paragraph (d)(10)(iii) are illustrated by the following examples:

Example 1. On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP–1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. This amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6).

Example 2. On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP–1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%. On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. The 6% interest rate provided for under the plan is not based on the PBGC interest rate. Therefore, to satisfy the requirements of section 411(d)(6), the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP–1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

Example 3. (a) Employer X maintains Plan C, a calendar year plan. As of December 7, 1994, Plan C provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than $25,000, and 120% of that interest rate (but not an interest rate producing a present value less than $25,000) for distributions over $25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3). On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan C to provide that single-sum distributions are determined as the sum of—

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the years 1996–99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this *Example 3.* The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) by reason of this plan amendment.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 15, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–8229 Filed 4–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 580

Civil Money Penalties—Procedures for Assessing and Contesting Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the address listed in § 580.6 of Regulations 29 CFR part 580, which is used for administrative hearing requests. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

EFFECTIVE DATE: This rule is effective April 5, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

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II. Background

Section 580.6 of the regulations requires that any person desiring to request an administrative hearing on a notice of determination issued by the Department of Labor (assessing civil money penalties for violations under section 12 of the FLSA relating to child labor, or repeated and willful violations of sections 6 and 7 relating to the minimum wage and overtime requirements of the FLSA) must do so in writing within 15 days after the date of receipt of the notice. Additionally, section 580.6 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are not to be made to the Wage and Hour official that issued the determination in care of the address of the office that originated the determination.

III. Summary of Rule

Section 580.6 of regulations, 29 CFR part 580, is amended to provide for a new address for purposes of requesting administrative hearings. Hearing requests are now directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Under the amended regulation, these requests will be directed to the Wage and Hour Division official who issued the determination, at the address appearing on the determination notice.

Executive Order 12866

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. The rule merely adopts a technical address change, which will facilitate the timeliness and handling of the hearing process. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). The rule simplifies the handling of hearing requests and will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This regulation is procedural in nature. Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3), that prior notice and public comment are unnecessary, impracticable, and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change which does not affect any substantive rights.

Document Preparation: This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR part 580 is amended as set forth below.

Signed at Washington, DC, on this 30th day of March, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

1. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13–71, 36 FR 8755; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101–157, 103 Stat. 938; sec. 3103, Pub. L. 101–508.

2. Paragraph (a) of § 580.6 is revised to read as follows:

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3 of this part. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail.

* * * * *

[FR Doc. 95–8335 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 94–107]

RIN 2115–AF00

Ninth District Marine Inspection and Captain of the Port Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the descriptions of several Marine Inspection and Captain of the Port zone boundaries in the Ninth Coast Guard District to reflect recent organizational changes. These changes will clarify Coast Guard responsibilities with the Ninth District. These changes will not impact the type or level of Coast Guard services performed.

EFFECTIVE DATE: May 5, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council, (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: ENS Harry E. George, Office of Marine Safety, Security and Environmental Protection (G–MPS–3), Room 1108, (202) 267–0491.

SUPPLEMENTARY INFORMATION:

Drafting Information: The principal persons involved in drafting this document are ENS Harry E. George, Project Manager, Port Safety and Security Division, and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

During 1994, the Coast Guard carried out three separate organizational changes that revised the Marine Inspection (MI) and Captain of the Port (COTP) zones of responsibility and consolidated and relocated MI and COTP offices for several units in the Ninth Coast Guard District. The Coast Guard is amending the descriptions of MI and COTP zone boundaries and offices in the Ninth Coast Guard District to reflect these recent organizational changes.

The Coast Guard is proceeding directly to a final rule under section 533(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), which excludes rulemakings relating to agency organization, procedure, or practice from the requirements of public notice and comment.

Discussion of Comments and Changes

Section 3.45–35, describing the Sturgeon Bay Marine Inspection Zone, and paragraph (c) of § 3.34–30, describing the Milwaukee Marine Inspection Zone, are being deleted. In February, 1994, the Sturgeon Bay Marine Inspection Zone was combined with the Milwaukee Inspection Zone and the Marine Inspection Office in Sturgeon Bay, Wisconsin was merged with the Marine Inspection Office in Milwaukee, Wisconsin. The new Milwaukee Marine Inspection Zone covers the same area and has the same boundaries as the Milwaukee Captain of the Port Zone, so the two zones and their offices can be described in a single CFR section. Paragraph (b) of § 3.45–30, therefore, is being revised to describe the boundaries and the office locations for both the new Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone.

Section 3.45–45 is being revised to change the name of the St. Ignace Marine Inspection Zone to the Sault Ste. Marie Marine Inspection Zone. In July, 1994, the Marine Inspection Office in St. Ignace, Michigan was closed and a new Marine Inspection Office was opened in Sault Ste. Marie, Michigan, colocated with the Sault Ste. Marie Captain of the Port Office. The St. Ignace Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone had the same boundaries, but each zone was named for the location of the office servicing it. The St. Ignace Marine Inspection Zone has therefore been renamed to Sault Ste. Marie Marine Inspection Zone, to reflect the change in office location, but with no change to the boundary description of the zone.

Sections 3.45–60, Chicago Captain of the Port Zone, and 3.45–80, Grand Haven Captain of the Port Zone, are being deleted. In July, 1994, Captain of the Port Zone Chicago and Captain of the Port Zone Grand Haven were combined into a single COTP zone, and the Captain of the Port Office in Grand Haven, Michigan was merged with the Captain of the Port Office in Chicago, Illinois. The area of the combined Chicago and Grand Haven COTP zones is now known as the Chicago Captain of the Port Zone and has the same boundaries as the Chicago Marine Inspection Zone. Section 3.45–15, describing the Chicago Marine Inspection Zone, therefore, is being revised to describe the boundaries and the office locations for both the Chicago Marine Inspection Zone and the new Chicago Captain of the Port Zone.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section of 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Department of Transportation Regulatory Policies and Procedures is unnecessary.

Small Entities

This regulation is administrative in nature and is not expected to have any economic impact on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule involves changes to names and descriptions of Marine Inspection and Captain of the Port zones of responsibility in the Ninth Coast Guard District and clearly does not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies). For the reasons set out in the preamble, the Coast Guard amends Title 33, part 3, of the Code of Federal Regulations as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.45–15 is revised to read as follows:

§ 3.45–15 Chicago Marine Inspection Zone and Captain of the Port Zone.

(a) The Chicago Marine Inspection Office and the Chicago Captain of the Port Office are located in Chicago, Illinois.

(b) The Chicago Marine Inspection Zone and the Chicago Captain of the Port Zone include those parts of Michigan, Indiana, Ohio, and Illinois within the following boundaries: From the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N., thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due east to longitude 84°30′ W.; thence due south to latitude 41° N.; thence due west to longitude 90° W.; thence due north to the starting point.

3. Section 3.45–30 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

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§ 3.45–30 Milwaukee Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone starts at the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N.; thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence due west to longitude 90° W.; thence due south to the starting point.

§ 3.45–35 [Removed]

4. Section 3.45–35 is removed.

5. Section 3.45–45 is revised to read as follows:

§ 3.45–45 Sault Ste. Marie Marine Inspection Zone and Captain of the Port Zone.

(a) The Sault Ste. Marie Marine Inspection Office and the Sault Ste. Marie Captain of the Port Office are located in Sault Ste. Marie, Michigan.

(b) The boundary of the Sault Ste. Marie Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone starts at the international boundary at latitude 44°43′ N.; thence due west to longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence northeasterly to the shore of Lake Superior at longitude 87°45′ W.; thence northerly to Manitou Island Light, located at latitude 47°25′ N., longitude 87°35′ W.; thence due north to the international boundary at longitude 87°35′ W.; thence southeasterly along the international boundary to the starting point.

§ 3.45–60 [Removed]

6. Section 3.45–60 is removed.

§ 3.45–80 [Removed]

7. Section 3.45–80 is removed.

Dated: February 8, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–8387 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 265

Demands for Testimony or Records in Certain Legal Proceedings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule establishes a procedure for Postal Service response to subpoenas or other demands for Postal Service employees to testify about, or produce records concerning, Postal Service matters in private litigation or other proceedings in which the United States is not a party.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Julie A. Holvik, Attorney, (312) 765–5230.

SUPPLEMENTARY INFORMATION: The rule provides that, in response to subpoenas or other demands for testimony or records concerning Postal Service matters in private litigation or other proceedings in which the United States is not a party, Postal Service employees may testify or produce records only if the General Counsel or the General Counsel's delegate authorizes compliance with the demand. In making this determination, the General Counsel or his or her delegate will consider whether compliance is in accordance with applicable laws, privileges, rules, authority, and regulations and would not be contrary to the interests of the United States.

On February 17, 1995, the Postal Service published a notice of proposed rulemaking (60 FR 8610–8612) with a 30-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons set out above, 39 CFR part 265 is amended as follows.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.12 is added to read as follows:

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act. 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact the Records Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260–1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) Procedures followed in response to a demand for testimony or records. (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel

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before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8226 Filed 4–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–31–01–6845a; A–1–FRL–5177–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled "U Restricted Emission Status," into the Massachusetts SIP. The intended effect of this action is to approve a SIP revision by the Commonwealth of Massachusetts to incorporate regulations for the issuance of federally enforceable operating permits which restrict sources' potential to emit criteria pollutants such that sources can avoid reasonably available control technology (RACT), title V operating permit requirements, or otherwise applicable requirements. This also extends federal enforceability of hazardous air pollutants (HAPs). This action is being taken in accordance with the Implementation Plans Section and the State Programs Section of the Clean Air Act.

DATES: This action will become effective June 5, 1995, unless notice is received May 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ida E. Walker, for criteria pollutants (617) 565–9168 or Janet Beloin, for HAPs (617) 565–2734.

SUPPLEMENTARY INFORMATION: On June 6, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP) to incorporate regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of 310 CMR 7.02(12), entitled "U Restricted Emission Status." The Commonwealth of Massachusetts adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also approving this regulation pursuant to section 112(l) of the Act.

Summary of SIP Revision

The Commonwealth of Massachusetts' principal purpose for adopting the operating permit regulations of 310 CMR 7.02(12) is to have a federally enforceable means of expeditiously restricting potential emissions such that sources can avoid RACT, title V operating permit requirements, or otherwise applicable requirements, as well as reduce annual compliance fees. The operating permit provisions in title V of the Clean Air Act Amendments of 1990 have created additional interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as "major" with respect to title V operating permit programs. A key mechanism for such limitations is the use of federally enforceable state operating permits (FESOPs). The EPA issued general guidance on FESOPs in the **Federal Register** on June 28, 1989 [54 FR 27274]. This rulemaking evaluates whether Massachusetts has satisfied the requirements for this type of federally enforceable limitation on potential to emit. Each of the five criteria, as specified in the **Federal Register** of June 28, 1989, for approval of a state's program for the issuance of FESOPs under its SIP and how the state's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On June 6, 1994, the Commonwealth of Massachusetts submitted an administratively and technically complete SIP revision request to EPA consisting of 310 CMR 7.02(12) "U Restricted Emission Status."

That SIP revision is the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA: 310 CMR 7.02(12)(f) requires sources to obtain permits to operate and authorizes Massachusetts to establish terms and conditions in these permits "assuring compliance with such limitations and controls." Additionally, the "Restricted emission status issued pursuant to 310 CMR 7.02(12) for the purpose of restricting federal potential emissions must be federally enforceable."

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under Sections 111 and 112 of the Clean Air Act): 310 CMR 7.02(12)(f)(2) contains regulatory provisions which state "All emission limitations, controls, and other requirements imposed by such restricted emission status must be at least as stringent as all other applicable limitations and requirements contained in the Massachusetts SIP . . . or *that are* otherwise federally enforceable." In addition, these rules contain no provisions authorizing terms and conditions any less stringent than these other applicable requirements, which remain federally enforceable.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter: 310 CMR 7.02(12)(f) (1) and (2) contain regulatory provisions which satisfy this criterion. In addition, these subparagraphs require that permit restrictions contain "per unit emission factors, production and/or operational limitations and controls, and monitoring, recordkeeping, and reporting requirements capable of assuring compliance with such limitations and controls."

Criterion 5. The state operating permits must be issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be "federally enforceable." This process must provide for an opportunity for public comment on the permit applications prior to issuance of the final permits: 310 CMR 7.02(12)(g)(2) (a), (b), (c) and (g) contain provisions which satisfy this criterion.

The Commonwealth of Massachusetts has also requested approval of its Restricted Emission Status program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAPs. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling *all* HAP emissions, regardless of their relationship to criteria pollutant controls.

The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112. The June 28, 1989 criteria are basic principles which are not unique to criteria pollutants. Therefore, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if the program: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit HAPs, in Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice. FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will be approved as meeting the criteria in EPA's June, 1989 notice. Therefore, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore proposing approval of Massachusetts' Restricted Emission Status Program now so that Massachusetts may begin to issue federally enforceable synthetic minor permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Massachusetts' Restricted Emission Status program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, that is, the program in 310 CMR 7.02(12)(f)(2) states that all requirements in the Restricted Emissions Status program must be at least as stringent as all other applicable federally enforceable requirements. Please note that a source which receives a Restricted Emission Status permit may still need a title V operating permit under 310 CMR 7.00 Appendix (C)(2)(a)(5) if EPA promulgates a MACT standard which requires non-major sources to obtain title V permits.

Regarding the requirement for adequate resources, the EPA believes Massachusetts has demonstrated that it can provide for adequate resources to support the Restricted Emission Status program through an annual compliance assurance fee and a restricted emissions permit fee. EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program. For more information

[1] The EPA issued guidance on January 25, 1995 addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

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regarding the fees program, refer to the Technical Support Document.

The EPA also believes that Massachusetts' Restricted Emission Status program provides for an expeditious schedule which assures compliance with section 112 requirements.

This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Massachusetts's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit. EPA has long recognized federally-enforceable emissions or operational limits as a means to stay below major source thresholds under the Act. This approval merely applies the source principles to another set of pollutants and regulatory requirements under the Act.

The EPA's review of this SIP revision indicates the criteria for approval as provided in the June 28, 1989 **Federal Register** notice [54 FR 27282] and in section 112(l)(5) of the Act have been satisfied.

During the development of this rule, EPA and Massachusetts have been asked whether permits the Commonwealth has issued pursuant to these regulations prior to today's action approving this program into the SIP are nevertheless federally enforceable. In the preamble to the regulations that EPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, EPA indicated that it would "consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program." 54 FR at 27284. The preamble went on to discuss options for securing EPA approval of previously issued permits. As EPA concluded in its approval of the Illinois FESOP program (57 FR 59931 (Dec. 17, 1992)), these options were not intended to be a complete list of alternatives. To avoid burdensome requirements to reprocess each previously issued permit, EPA will use the same approach announced in that Illinois approval for determining whether such permits are federally enforceable and for ratifying their status as enforceable under the approved SIP.

EPA today finds the existing Massachusetts regulations to be consistent with federal requirements. If the Commonwealth followed its own procedures, each permit issued under this regulation was subject to public notice and comment, with notice to EPA. Moreover, the regulation requires each permit to be enforceable as a practical matter. Therefore, EPA will consider all previously issued operating permits which were processed in a manner consistent with the State regulations federally enforceable with the promulgation of this rule, provided that any permits the State wishes to make federally enforceable are submitted to EPA and are accompanied by documentation that the procedures approved today were followed in issuing the permit.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 5, 1995.

Final Action

EPA is approving 310 CMR 7.02(12), "U Restricted Emission Status," effective in the Commonwealth of Massachusetts on February 25, 1994 under sections 110 and 112(l) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110, section 112(l), and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A., 427 U.S.* 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Hazardous air pollutants.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(105) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 6, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated June 6, 1994 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.02(12) "U Restricted Emission Status" effective in the Commonwealth of Massachusetts on February 25, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new state citations for 310 CMR 7.02(12) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

TABLE 52.1167—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Dated approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310CMR 7.02(12)	U Restricted Emission Status.	6/6/94	April 5, 1995	[Insert *FR* citation from published date].	105	This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits

[FR Doc. 95–8216 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL92–1–6336a; FRL–5165–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Illinois' February 7, 1994, request to incorporate smaller source permit rule amendments into the Illinois State Implementation Plan (SIP). The purpose of these smaller source amendments is to lessen the permitting burden on small sources and on the permitting authority by reducing the frequency and/or the requirement for operating permit renewal for sources emitting less than twenty-five tons per year total of regulated air pollutants. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule will be effective June 5, 1995 unless an adverse comment is received by May 5, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8 a.m. and 4:30 p.m., at the above address. A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 353–4761.

SUPPLEMENTARY INFORMATION:

The USEPA is approving the smaller source amendments to Title 35: Environmental Protection of the Illinois Administrative Code (35 IAC), Subtitle B: Air Pollution, Chapter I: Pollution Control Board Parts 201 and 211 as received on February 10, 1994, as a requested SIP revision. The purpose of the smaller source amendments is to lessen the permitting burden on small sources and the permitting authority by reducing the frequency and/or the requirement of operating permit renewal for sources emitting less than 25 tons per year total of regulated air pollutants. A permit obtained through the smaller source operating permit rules would not necessarily expire within a five year period as in other operating permit programs. The permit will continue as a legally binding State document until the source modifies its operations, withdraws its permit or becomes subject to a new applicable requirement. At that time, the Illinois Environmental Protection Agency (IEPA) will

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determine whether or not the smaller source permit rules are still a valid means of permitting the source and either issue a revised small source operating permit or direct the source in the appropriate permitting procedures. Small source operating permits are not exempt from any other permit requirements such as annual reporting and obtaining necessary construction permits. However, since these permits will not go through a public comment period nor be subjected to USEPA review, they will not be federally enforceable for the purpose of limiting a source's potential to emit. See 54 FR 27281 (June 28, 1989). Consequently, they cannot be used for exemption from the section 112, Title V Operating Permit Program or any other major source requirements of the Act. With an estimated 6,000 sources eligible for this program, much of the expense and administrative burden of the operating permit renewal process would be eliminated. The rationale for USEPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

The small source air permit program rules originated before the Illinois Pollution Control Board (IPCB) on April 2, 1993. Two public hearings were held: May 25, 1993 in Chicago and May 26, 1993 in DeKalb. On July 22, 1993, the IPCB adopted the amended proposal pursuant to comments received for first notice. On October 7, 1993, the IPCB adopted and submitted to the Joint Committee on Administrative Rules (JCAR) a second notice proposal. On November 16, 1993, JCAR stated they had no objections to the rules. The rules became effective on December 7, 1993.

The following sections of part 201 have been changed to accommodate the small source operating permit program.

Subpart D: Section 201.162 Duration

This section which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had stated that the duration of an operating permit is defined as being no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

Subpart D: Section 201.163 Joint Construction and Operating Permits

Section 201.163 which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had previously stated that in cases where the construction of a source or air pollution control equipment is sufficiently standard, the Illinois Environmental Protection Agency (IEPA) may issue a joint construction and operating permit valid for no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

The following rules have been added to Parts 201 and 211 to define the terms of the small source operating permit program.

Subpart E: Section 201.180 Applicability

Sources are eligible for small source operating permits if their total emissions of all regulated air pollutants are less than 25 tons per year and are not subject to the title V operating permits program under Section 39.5 of the Illinois Environmental Protection Act. Cases where sources may appear to be eligible for the small source operating permit program but are subject to title V include sources with the potential to emit 10 tons per year of any one or 25 tons per year of an aggregate of hazardous air pollutants as listed in Section 112(b) of the Clean Air Act of 1990 or 25 tons per year of volatile organic compounds or nitrous oxides in the severe ozone nonattainment areas, specifically McHenry, Lake, Kane, Cook, Du Page, Will Counties and Oswego Township in Kendall County and Aux Sable and Goose Lake Townships in Grundy County of Illinois. If the source's potential to emit is greater than the Act's major source thresholds such as those mentioned above but the source's actual emissions are lower than the thresholds, a federally enforceable limit on potential to emit would be required to avoid title V operating permit requirements. A small source operating permit is not federally enforceable for purposes of limiting potential to emit because a public comment period and USEPA review are not required and, therefore, the small source operating permit can not be used to limit a source's potential to emit.

If the source is eligible for a small source operating permit and its existing operating permit has not expired pursuant to a renewal request from IEPA then, the permit will remain in effect until the permit is superseded by a new or revised permit or it is withdrawn upon the request of the permittee.

Sources obtaining a small source operating permit must still comply with all rules in part 201 including, but not limited to, monitoring, recordkeeping and annual reporting unless otherwise stated. If a source modifies the method of operation or equipment or installs new emission units a construction permit must be obtained pursuant to Parts 201 and 203 of 35 Illinois Administrative Code.

Subpart E: Section 201.181 Expiration and Renewal

A small source operating permit will terminate if a revised permit is issued, if the permittee withdraws the permit or, 180 days after IEPA sends a request for renewal.

A request for renewal of an operating permit may be sent to a source in cases where there has been a change in requirements applicable to the source, verification of application accuracy, or suspicion of noncompliance. Renewal procedures will use the existing rules for air permit processing found in Subpart D and for revocation and revision rules found in Subpart F of 35 Illinois Administrative Code 201.

Appeals to the IPCB may only be made within 35 days of a final determination by IEPA. Final determinations include denial of a permit, issuance of a permit with conditions, or an incomplete application determination. A request for renewal notice is not grounds for an appeal.

Subpart E: Section 201.187 Requirement of a Revised Permit

The permittee has the obligation to obtain a new or revised permit prior to the operational changes. Changes are considered to be increases in emissions in excess of the permitted emissions, a modification as defined at 35 Illinois Administrative Code 201.102, changes in operations that violate an existing permit condition, or a change in ownership, company name, or address. If a revised permit is not obtained the source remains subject to the existing operating permit and may be in violation of the obligation to apply for a new or revised permit. If the operational changes remove the source from the applicability of the small source air permit program, the permittee shall apply for a revised permit under subpart D of part 201 or under section 39.5 of the Illinois Environmental Protection Act.

Subpart B: Section 211.5500 Regulated Air Pollutant

The definition of regulated air pollutant which was incorporated in the Illinois SIP at 40 CFR 52.720(c)(100) on September 9, 1994 (59 FR 46562) has been changed to reflect the definition in 40 CFR part 70. The definition of regulated air pollutant as it pertains to the applicability of a small source eligible for a small source operating permit has been changed to incorporate any air contaminant that is regulated by the air pollution subtitle.

When summing the source's emissions it is IEPA's intention to focus on the five criteria pollutants; nitrogen oxides, sulfur dioxides, particulate matter, volatile organic compounds, and carbon monoxides. This is to avoid double counting of pollutants which fall under both the hazardous air pollutant category and either the volatile organic compound or particulate matter category in the 25 ton per year applicability cut-off. This method of accounting for emissions does not relieve the source of the obligation of accounting for hazardous air pollutants emissions for title V applicability purposes.

Final Rulemaking Action

This permitting program was designed to alleviate the permitting burden on IEPA. Since it is IEPA's intention to permit all sources within the state, this program will allow IEPA more time to spend on the larger sources by greatly reducing the number of smaller source permits that must be renewed every five years. These permits can also be processed much faster without the public comment and USEPA review requirements. The trade-off for the faster processing time is that the small source operating permits can not be used for sources requiring federally enforceable permits for such things as limiting their potential to emit below the major source thresholds. This permitting program does not exempt sources from other permit requirements such as annual reporting and obtaining construction permits thus allowing IEPA to maintain oversight of the smaller sources. IEPA also has the authority to require a source to apply for renewal of its permit if there has been a change in requirements applicable to the source, IEPA wishes to verify application accuracy, or IEPA suspects noncompliance.

For the reasons stated above, USEPA is approving the State's request to incorporate small source permit rules into the Illinois SIP. The specific rules being approved are as follows: Sections 201.162 Duration, 201.163 Joint Construction and Operating Permits, 201.180 Applicability, 201.181 Expiration and Renewal and 211.5500 Regulated Air Pollutant.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 5, 1995.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(105) to read as follows:

§ 52.720 Identification of plan.

* * * * * *

(c)* * *

(105) On February 7, 1994, the State submitted revisions intended to create a permit program for small sources. The purpose of these revisions is to lessen the permitting burden on small sources and the permitting authority by reducing the frequency and/or the requirement of operating permit renewal for sources emitting a total of less than 25 tons per year of regulated air pollutants. A permit obtained through these procedures is intended to continue as a legally binding State document until the source modifies its operations, withdraws its permit or becomes subject to a new applicable requirement. At that time, the State will determine whether the small source procedures continue to be appropriate and issue a revised small source permit

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or direct the source in following the correct permit procedures. Since small source permits are not subject to a public comment period or review by USEPA, they are not federally enforceable and cannot be used to limit sources' potential to emit and thereby exempt them from the requirements of the title v operating permit program.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) Subchapter a: Permits and General Provisions, Part 201: Permits and General Provisions.

(1) Subpart D: Permit Applications and Review Process, Section 201.162 Duration and Section 201.163 Joint Construction and Operating Permits. Amended at 17 Ill. Reg., effective December 7, 1993.

(2) Subpart E: Special Provisions for Operating Permits for Certain Smaller Sources, Section 201.180 Applicability, Section 201.181 Expiration and Renewal and Section 201.187 Requirement for a Revised Permit Added at 17 Ill. Reg., effective December 7, 1993.

(B) Subchapter C: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.5500 Regulated Air Pollutant. Adopted at 17 Ill. Reg., effective December 7, 1993.

[FR Doc. 95–8219 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AK7–1–6588a; FRL–5171–5]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State Implementation Plan (SIP) revision submitted by the state of Alaska. This revision establishes and requires the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). The intended effect of this action is approval of a basic motor vehicle I/M program. This action is being taken under Section 110 of the Clean Air Act.

DATES: This final rule is effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, EPA, Air and Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAAA or Act), requires states to make changes to improve existing I/M programs or implement new ones. Section 187(a)(4) and section 182(a)(2)(B) requires any carbon monoxide (CO) nonattainment area which has been classified as "moderate" (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP whichever was more stringent.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The states were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, Subpart S, and requires states to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. The state of Alaska has met these requirements.

The EPA has designated two areas as CO nonattainment in the state of Alaska. The Anchorage CO nonattainment area, classified as Moderate greater than or equal to 12.7 ppm, is bounded by the Municipality of Anchorage (MOA) urban area. The Fairbanks CO nonattainment area, classified as Moderate less than or equal to 12.7 ppm, is bounded by the Fairbanks North Star Borough (FNSB) urban area. The nonattainment and boundary designations for CO were published in the **Federal Register** (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300–81.437. Based on these nonattainment designations, basic I/M programs are required in both the Anchorage and Fairbanks nonattainment areas.

By this action, the EPA is approving this submittal. The EPA has reviewed the state submittal against the statutory requirements and for consistency with the EPA regulations. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992 FR notice (57 FR 52950) or 40 CFR 51.350–51.373.

II. Background

On July 11, 1994 the state of Alaska submitted to EPA a SIP revision for a basic I/M program that had an adequate public notice and public hearing process (May 19, 1994) and was adopted on June 9, 1994. The Lieutenant Governor filed revisions to 18 AAC 52 on May 25, 1994, and the Air Quality Control Plan revisions on July 6, 1994, becoming effective on June 24, 1994 and August 5, 1994, respectively.

The July 11, 1994 SIP revision was reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittals were found to be complete and a letter dated July 15, 1994 was forwarded to the Governor of Alaska indicating the completeness of the submittal.

III. State Submittal

Both Anchorage and Fairbanks are classified as moderate CO nonattainment areas. Since the 1980 census population of each urbanized area was under 200,000, neither community is required to implement an enhanced I/M program. The state submittal provides for upgrading the existing I/M programs to EPA approved basic I/M programs in the Municipality of Anchorage (MOA) and Fairbanks North Star Borough (FNSB). Both the MOA and the FNSB programs will consist of annual, decentralized, test-and-repair which meets the requirements of EPA's performance standard and other requirements contained in the Federal I/M rule. All testing will be performed by certified stations or referee facilities. Other aspects of the Alaska I/M program include: an "Valley" I/M program for vehicles commuting into Anchorage from the Matanuska-Susitna (Mat-Su) borough, testing of 1968 and later vehicles in Anchorage and testing of 1975 and later vehicles in Fairbanks, a test fee to ensure the state has adequate resources to oversee the implementing agencies and implement the valley program, enforcement by registration denial, commitment to testing convenience, quality assurance, data collection and analysis, reporting, test equipment and test procedure specifications, commitment to ongoing public information, inspector training and certification, and penalties against inspector incompetence. An analysis of how the Alaska I/M program meets the Federal SIP requirements (by section of the Federal I/M rule) is provided below.

A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries.

The Alaska I/M program specified in 18 AAC 52 is divided into two programs (Anchorage and Fairbanks), based on the designated implementing agency. Both programs are locally implemented and operated, with the MOA and the FNSB having legal and administrative responsibility for their respective programs. The existing programs cover the entire MOA and FNSB. An additional I/M program, Matanuska-Susitna Valley (Valley) is not linked to a specific geographical area, but is aimed at vehicles that are regularly operated in but not registered in the Anchorage I/M program area. The Alaska Department of Environmental Conservation (ADEC) is responsible for administering the Valley I/M program. The state regulations establishing Alaska's I/M program requirements and boundaries are included in 18 AAC 52..

B. Basic I/M Performance Standard

The I/M programs provided for in the SIP are required to meet a performance standard for basic I/M for the pollutants that caused the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. The state has submitted a modeling demonstration using the EPA computer model, MOBILE 5a showing that the basic performance standard is met for both Anchorage and Fairbanks I/M programs.

C. Network Type

The SIP needs to include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration.

Alaska has chosen to implement decentralized, test-and-repair I/M programs which are managed and operated by MOA, FNSB and the state with a small amount of contractor support.

Legal authority contained in AS 46.03.020(10), 46.14.030 and 46.14.510; and 18 AAC 52.045 authorizes the state to implement this program.

D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, which includes: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment, and any other requirements discussed throughout, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The Alaska I/M program as stipulated in 18 AAC 52.020 is funded solely by collection of a ten dollar certificate of inspection fee assessed to each vehicle passing the I/M test. Legal authority contained in AS 44.46.025 authorizes the state to collect fees for this program. The MOA, FNSB and the state commit to providing the necessary administrative, personnel, and equipment resources to fully implement and maintain the Alaska I/M program. The I/M programs will be carried out under local or state oversight, with assistance from contractors. In the event that either the MOA or FNSB is unable or unwilling in the future to provide adequate tools or resources, the state commits to take over the administration of the program (18 AAC 52.030).

The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The MOA funds approximately 7.0 full-time employees (FTE), the FNSB funds 3.5 FTE and the state funds .25 FTE. The MOA and the state will utilize 3.0 FTE contractor personnel to support their programs.

Referee facilities in the MOA and FNSB provide public information and assistance, motorist and certified mechanic assistance, referee functions, and training and testing of inspectors and certified mechanics. The MOA program, which incorporates the Valley program, contracts out for referee facility services while the FNSB referee facility is operated by FNSB staff.

E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

The MOA and FNSB I/M programs require annual inspections for all subject motor vehicles (18 AAC 52.005). However, an implementing agency may, with approval from ADEC and the DMV, authorize the owner or lessee of a vehicle to obtain a biennial certificate of inspection during the first six years of vehicle life, if the failure rates of the designated categories of vehicles are below a minimum rate set by the implementing agency and approved by ADEC (18 AAC 52.035(e)). In addition the MOA exempts new vehicles from their first annual inspection.

Since the test-and-repair inspection program has been in operation since 1985 for both programs, no special start-up testing scheme is required. The network is satisfactorily addressed in the SIP.

Legal authority for registration and testing of used vehicles newly arriving into the I/M area is contained in AS 46.14.510 and 18 AAC 52.005.

F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are

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routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

In the MOA, program coverage includes all 1968 and newer model year light-duty cars and trucks and heavy-duty gasoline powered trucks, registered or required to be registered within the nonattainment areas. The FNSB program covers the above vehicles from 1975 and newer. Vehicles will be identified through the state of Alaska's Driver and Motor Vehicle Services database. In addition, any 1968 or newer model used to commute into MOA is subject to I/M testing through the Valley program.

Fleet vehicles are subject to the same program requirements and testing procedures as other vehicles. However, fleets are allowed to self-test, as long as they are certified as official test stations; they must use certified I/M mechanics; all tests and certificate issuance must be conducted using certified Alaska BAR–90 TAS; and they must comply with all other I/M program requirements. Fleet licenses can be removed if fleet operation does not meet standards.

The FNSB vehicles that obtain seasonal exemptions are subject to the program but prohibited from being driven during the winter CO season. Approximately 4,000 FNSB vehicles are in this category. Since they are not operated during the CO nonattainment period there is no discounting of those vehicles.

In addition to the required I/M programs, ADEC is now subjecting those vehicles registered outside the MOA but primarily operated within the MOA to a Mat-Su Valley I/M program. The Valley program has the same basic design features as the Anchorage program.

Further, vehicles registered in one AK I/M area but primarily operated in the other may be tested in either area, but must pass an annual I/M test.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The legal authority to establish test procedures and standards is contained in AS 46.03..020, 46.14.030 and 46.14.510. Written test procedures for a 2-speed idle test and pass/fail standards for all subject vehicles have been established. All vehicles are subject to the HC and CO emission cutpoints set forth in 18 AAC 52.050, and repairs must be made if a vehicle fails any of these cutpoints.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Alaska I/M SIP commits to meeting the California BAR 90 accuracy standards. The SIP addresses the requirements in 40 CFR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems in the submitted respective program design documents. The necessary test equipment, required features, and acceptance testing criteria are also contained in the SIP.

I. Quality Control

The SIP needs to include a description of quality control and recordkeeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Alaska I/M SIP narrative contains descriptions and requirements establishing quality control procedures which are similar but not identical to the Federal I/M rule. Alaska's program provides for less frequent calibration requirements than the federal I/M rule requires. However, the frequency requirements for gas calibrations and leak checks contained in the Alaska BAR–90 Test Analyzer Systems are identical to those contained in the current California BAR–90 specification. In addition, Alaska's program does not require ambient zero air to be drawn from outside the test bay due to the extreme weather conditions in Alaska. EPA believes there is adequate justification for these exceptions. Alaska's quality control procedures will help ensure that equipment calibrations are properly performed and recorded as well as maintaining compliance document security.

J. Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the state needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Legal authority to issue waivers and administer the waiver system is contained in AS 46.03.020, 46.14.030 and 46.14.510. Under 18 AAC 52.060 waivers may be issued in the Alaska I/M programs for the following reasons: repair cost exceedance, diesel engine, seasonal waiver, special circumstances that make it impractical to test a vehicle, modification to the dedicated use of an approved alternate fuel, out-of-area use, economic hardship, parts unavailability or grey market vehicle.

For the MOA and state programs, necessary emissions-related repairs must be made up to a maximum annual repair cost of $450 for non-tampering-related repairs. The FNSB program has a minimum annual repair cost of $350 for non-tampering-related repairs. For all programs a maximum annual repair cost of $500 exists for vehicles tampered with prior to July 1, 1985. If the least expensive repair would be in excess of $500, then one repair must be made regardless of cost. Vehicles that have been tampered with since July 1985 must be completely repaired, regardless of cost.

A waiver rate of 1% is assumed for both the MOA and FNSB. If the waiver rate for either program, as reported to EPA in the annual Alaska I/M report, is higher, the state will take corrective action to lower the applicable waiver rate by possibly requiring motorists that apply for a waiver to reduce initial emissions by a specified amount before a waiver may be issued or limiting the model years that are eligible for a waiver or limiting waivers on vehicles to only one inspection cycle. If any of the waiver rates cannot be lowered to the level committed to in the SIP, the state will revise the I/M emission reduction projections in the SIP and will implement other program changes as necessary to ensure the performance standard is met.

The seasonal waiver is issued to a vehicle owner who agrees that the vehicle will not be operated in an I/M area during the winter CO season. Vehicles which acquire such waivers are issued different colored license tabs, to make it easier to identify seasonally waived vehicles that are being operated illegally during winter months. If a motorist violates the seasonal waiver, no seasonal waiver may be issued in the future to any vehicle owned by that motorist.

K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The motorist compliance enforcement program will be implemented, primarily, by Alaska's Department of Motor Vehicle Services (DMV), which will ensure that owners of all subject vehicles are denied registration unless they provide valid proof of having received a certificate indicating they passed an emissions test or a valid I/M waiver, which was issued within a 90-day period prior to the registration renewal date. Owners of noncomplying vehicles operating illegally in I/M areas will be identified and issued notices of violation (NOV). A vehicle owner that is issued an NOV will have 30 days to provide proof of I/M compliance. The I/M programs will request DMV to revoke the vehicle's registration in cases of continued noncompliance. The Alaska State Troopers and local law enforcement agencies will provide on-road enforcement of the program.

In addition, the Department will identify program evaders and other noncomplying vehicles (e.g. out-of-area commuter vehicles) through interactive searches of several databases. Owners of vehicles identified in this manner will be notified by the Department of the need to obtain an annual inspection.

The following vehicle types are exempt from the Alaska I/M program: A vehicle not principally located or operated in an I/M area; a 1967 or older vehicle for the MOA program (1974 or older in the FNSB program); a new vehicle with less than 2,500 miles; a gasoline-powered vehicle that is 12,000 pounds unladen weight or heavier, a special test vehicle that has received a state exemption; a military tactical vehicle; motorcycles, golf carts, all-terrain vehicles, snow machines and mopeds; and a vehicle in Alaska for less that 30 days.

All fleet vehicles, including rental cars, are subject to the same program requirements and testing procedures as other vehicles. Leased vehicles and other vehicles subject to one of the Alaska programs but not necessarily registered in an I/M area must also comply with all applicable program requirements.

The state commits to the level of enforcement needed to ensure compliance rates of no less than 95 percent and 96 percent, in the MOA and FNSB respectively. The legal authority to implement and enforce the program is included in AS 46.03, 46.014 and 18 AAC 52.100.

L. Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

ADEC will audit the local I/M programs on a regular basis, and will implement a quality assurance program to ensure effective overall performance of the enforcement systems in both areas. ADEC will allow EPA to conduct regular audits of the I/M enforcement program. ADEC, MOA, and FNSB will also perform periodic parking lot surveys to assess the compliance rate of the in-use fleet.

M. Quality Assurance (QA)

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The Alaska I/M SIP includes a description of its quality assurance program. The ongoing QA program will be conducted to discover, correct and prevent fraud, waste, and abuse. The program includes quarterly performance audits following established written procedures, performed at certified I/M stations. The audits will include, at a minimum, checks for appropriate certificate security, recordkeeping practices, proper display of licenses and other required information, proper maintenance and calibration of the TAS, and ability of the certified mechanic to properly perform an I/M test.

In addition to the quarterly audit, overt and covert vehicle audits will be conducted on an unscheduled and as-needed basis. Alaska has proposed the following exceptions to the federal performance audit requirements provided under 40 CFR 51.363(a): the state will perform one quarterly audit per facility (i.e. four audits per station per year), plus at least one overt vehicle audit per station per year. EPA believes this to be adequate to ensure program quality and comply with the federal I/M rule. Alaska also believes that the remote covert auditing requirement is infeasible in Alaska due to the state's unique weather conditions, and resultant station design and operation. Unlike most other states, inspections in Alaska are conducted in enclosed test stations where remote covert observations are impossible, particularly during the wintertime. The state believes that other performance tracking and auditing tools dramatically reduce the need to use remote covert audits to maintain effective quality assurance and compliance enforcement programs against certified stations and mechanics. Given Alaska's unique circumstances EPA concurs.

Test records will be audited on a monthly basis, using established written procedures to assess individual certified mechanic and station performance. Equipment audits will be performed during each quarterly performance audit, using established written procedures, to ensure the accuracy and reliability of all required test equipment. Each I/M inspector will be formally

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trained and knowledgeable in all aspects of the I/M program. Ongoing training will be provided to I/M inspectors to insure that they maintain an adequate level of knowledge. The performance of each I/M inspector will be evaluated at least once annually to identify any possible problem areas.

N. Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

Under the Administrative Procedures Act (AS 44.62), the Department or other I/M implementing agency must provide notice and opportunity for hearing before suspending, revoking, or refusing to renew a station's or mechanic's certification issued under 18 AAC 52 or the MOA or FNSB local implementing ordinances. In addition, neither the Department nor the local I/M implementing agencies have citation powers under Alaska Statute. As a result of these factors, Alaska is unable to comply with requirements contained in 40 CFR 51.364 for the imposition of mandatory minimum penalties or the immediate suspension of station or mechanic certifications. If the Department files a civil action under AS 46.03.760, there are mandatory court imposed damages of $500 for the first day. Because of this, the state is proposing an alternative enforcement mechanism which will allow the I/M office to issue an NOV upon finding a violation of the I/M program requirements. A hearing will be held within three working days of the NOV which will allow penalties to be assessed depending on the nature and severity of the violation. If the hearing results support a serious violation the station or mechanic's certification will be suspended for a minimum of 6 months under the Department's emergency powers authority, if the criteria for an emergency exists as provided in AS 46.03.820. Continued violation of program requirements may result in permanent revocation of certification under 18 AAC 52, after notice and opportunity for hearing, or the filing of a civil or criminal action against a certified station or mechanic under AS 46.03.760 or 46.03.790. A finding of incompetence will result in mandatory training before inspection privileges are restored. EPA concludes that this satisfies federal requirements for enforcement against contractors and inspectors.

O. Data Analysis and Reporting

The SIP needs to describe the types of data to be collected. The SIP commits ADEC to submitting an annual report to EPA by July of each year, which will cover the preceding calendar year and contain statistics for the I/M test data, quality assurance results, quality control activities, and enforcement activities. In addition, the state commits to submitting a biennial report on the overall status of the Alaska I/M program to EPA. At a minimum, Alaska commits to address all of the data elements listed in 51.366 of the federal I/M rule.

P. Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

Under 18 AAC 52. and the MOA and FNSB I/M implementing ordinances, formal training and licensing is required for all inspectors (certified mechanics). The Alaska I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. Training will include all elements required by 51.367(a) of the EPA I/M rule. Certification is good for a period of two years, with passage of a refresher training course required for license renewal.

Q. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community.

The Alaska SIP commits the Department to working with MOA and FNSB to assist the motor vehicle industry in properly diagnosing and repairing emission-related defects. This assistance will include each program's establishment of a telephone hotline service to assist certified mechanics and other qualified technicians with specific repair problems. Mechanics newsletters will also be distributed to all certified mechanics on an as-needed basis, to inform them of program changes, training course schedules, common problems being experienced in the I/M program, and diagnostic tips.

PC-based I/M management software will be used to provide the I/M programs with station and mechanic specific estimates of repair effectiveness. Effectiveness estimates applicable to each certified station will be distributed by the I/M program to that station on at least an annual basis.

IV. This Action

The EPA is approving the Alaska I/M SIP (Section 3.1, OAR 340–24–300 through 340–24–355; and section 5.4) as meeting the requirements of the CAAA and the Federal I/M rule. All required SIP items have been adequately addressed as discussed in this **Federal Register** action.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 5, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 5, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the Implementation Plan for the state of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 2, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (21) to read as follows:

§ 52.70 Identification of plan.

* * * * * *

(c) * * *

(21) On July 11, 1994 ADEC submitted a SIP revision for a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB).

(i) Incorporation by reference.

(A) July 11, 1994 letter from the Governor of Alaska to the Regional Administrator of EPA submitting Alaska's amendments to the Air Quality Control Plan and to 18 AAC 52, Emissions Inspection and Maintenance Requirements for Motor Vehicles; the amendments to 18 AAC 52 (52.005, .015, .020, .030, .035, .040, .045, .050, .055, .060, .065, .070, .075, .080, .085, .090, .095, .100, .105, .400, .405, .410, .415, .420, .425, .430, .440, .445, .500, .505, .510, .515, .520, .525, .527, .530, .535, .540, .545, .550, and .990), effective February 1, 1994; and the State Air Quality Control Plan, Vol. II: Analysis of Problems, Control Actions, Modifications to Section I, June 9, 1994; Vol. II: Analysis of Problems, Control Actions, Modifications to Section I, II, III and V, adopted January 10, 1994; Vol. III: Appendices, Modifications to Section III.A, June 9, 1994; Vol. III: Appendices, Modifications to Section III.B, June 9, 1994; and Vol. III: Appendices, Modifications to Section III.C, June 9, 1994.

[FR Doc. 95–8313 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA42

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This action finalizes an interim final rule the Department published in response to the publication by the Office of Management and Budget (OMB) of revised OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

Agencies were required to adopt those standards which would be imposed on grantees in codified regulations within six months after publication in the **Federal Register**.

Over 200 comments were received by OMB from Federal agencies, non-profit organizations, professional organizations, and others in response to the notice published on August 27, 1992, (57 FR 39018) requesting comments on proposed revisions. The comments were considered in developing the final version. Consequently, the Department published an interim final rule because of the previous request for comment process used in the development of the Circular, the large number of comments already received and considered by OMB and the Federal agencies, and due to the limited flexibility to revise the rule provided by OMB.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208–6432.

SUPPLEMENTARY INFORMATION: OMB Circular A–110 (58 FR 62991) covers both grants made by Federal agencies and subgrants made by States to nongovernmental organizations.

Following the August 26, 1994, publication in the **Federal Register** (59 FR 44040), no public comments were received by the Department.

This final rule essentially adopts all the language in the Circular with two exceptions. At Section 12.904, language has been added to describe the procedure for handling requests for

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class deviations and case-by-case exceptions. At Section 12.915, the Department is revising the provision concerning use of the metric system of measurement. This revision indicates that the system should be used to the maximum extent possible and that both metric and inch-pound units (dual units) may be used if necessary during any transaction period(s).

The reference to the small purchase threshold currently being $25,000 in section 12.944(e)(2) has been changed to $100,000. This change is based on a provision of the Federal Acquisition Streamlining Act of 1994.

The Circular inadvertently misstates the applicability of the statute commonly known as the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352. The statute applies to organizations which apply or bid for an award exceeding $100,000, not $100,000 or more. We have made this correction in Appendix A.

Two other changes have been made to Appendix A because of recent changes brought about by the Federal Acquisition Streamlining Act of 1994. The threshold for the requirement to include a provision for compliance with the Copeland "Anti-Kickback Act" (18 U.S.C. 874) was raised from $2,000 to $100,000.

The threshold for the requirement to include the provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) was raised to $100,000.

Other minor editorial changes are being made to conform with language in the Circular.

The Department is amending 43 CFR part 12, by revising subpart F to implement these requirements.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This final rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and updates administrative and procedural requirements. This final rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

Dated: March 15, 1995.

Bonnie R. Cohen,

Assistant Secretary-Policy, Management and Budget.

For the reasons set forth in the preamble, Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; sec. 307, Pub. L. 103–332, 108 Stat. 2499; sec. 501, Pub. L. 103–316, 108 Stat. 1723; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

2. Part 12 is amended by revising subpart F to read as follows:

Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

General

Sec.
12.901 Purpose.
12.902 Definitions.
12.903 Effect on other issuances.
12.904 Deviations.
12.905 Subawards.

Pre-Award Requirements

12.910 Purpose.
12.911 Pre-award policies.
12.912 Forms for applying for Federal assistance.
12.913 Debarment and suspension.
12.914 Special award conditions.
12.915 Metric system of measurement.
12.916 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962).
12.917 Certifications and representations.

Post-Award Requirements

Financial and Program Management

12.920 Purpose of financial and program management.
12.921 Standards for financial management systems.
12.922 Payment.
12.923 Cost sharing or matching.
12.924 Program income.
12.925 Revision of budget and program plans.
12.926 Non-Federal audits.
12.927 Allowable costs.
12.928 Period of availability of funds.

Property Standards

12.930 Purpose of property standards.
12.931 Insurance coverage.
12.932 Real property.
12.933 Federally-owned and exempt property.
12.934 Equipment.
12.935 Supplies and other expendable property.
12.936 Intangible property.
12.937 Property trust relationship.

Procurement Standards

12.940 Purpose of procurement standards.
12.941 Recipient responsibilities.
12.942 Codes of conduct.
12.943 Competition.
12.944 Procurement procedures.
12.945 Cost and price analysis.
12.946 Procurement records.
12.947 Contract administration.
12.948 Contract provisions.

Reports and Records

12.950 Purpose of reports and records.
12.951 Monitoring and reporting program performance.
12.952 Financial reporting.
12.953 Retention and access requirements for records.

Termination and Enforcement

12.960 Purpose of termination and enforcement.
12.961 Termination.
12.962 Enforcement.

After-the-Award Requirements

12.970 Purpose.
12.971 Closeout procedures.
12.972 Subsequent adjustments and continuing responsibilities.
12.973 Collection of amounts due.

Appendix A to Subpart F—Contract Provisions

General

§ 12.901 Purpose.

This subpart establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

§ 12.902 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) goods and other tangible property received;

(2) services performed by employees, contractors, subrecipients, and other payees; and,

(3) other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) earnings during a given period from:

(i) services performed by the recipient, and

(ii) goods and other tangible property delivered to purchasers, and

(2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which a Federal agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any Federal awarding agency that, as determined by the Secretary, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of: cash disbursements for direct charges for goods and services; the amount of indirect expense incurred; the value of in-kind contributions applied; and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 12.924 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patients and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a

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recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, supplies, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include, at the discretion of the Federal awarding agency, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions.

(1) *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(2) *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under the Department of the Interior Regulations implementing E.O.'s 12549 and 12689, "Debarment and Suspension." See subpart D of 43 CFR part 12.

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of noncash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 12.903 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section 12.904.

§ 12.904 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. All requests for class deviations shall be processed through the Assistant Secretary-Policy, Management, and Budget. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies. Bureau/office application of less restrictive requirements when awarding small awards, except for those requirements which are statutory, as well as exceptions on a case-by-case basis, will be handled by designated officials identified in bureau/office procedures.

§ 12.905 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 43 CFR part 12.

Pre-Award Requirements

§ 12.910 Purpose.

Sections 12.011 through 12.917 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 12.911 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* Federal awarding agencies shall notify the public of their funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 12.912 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 43 CFR part 9).

(d) Federal awarding agencies that do not use the SF–424 form will indicate whether the application is subject to review by the State under E.O. 12372.

§ 12.913 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," subpart D of 43 CFR part 12. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 12.914 Special award conditions.

(a) Federal awarding agencies may impose additional requirements as needed, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Additional requirements may only be imposed provided that the applicant or recipient is notified in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 12.915 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies will follow the provisions of E.O. 12770, "Metric usage in Federal Government Programs." When applicable, the awarding agency shall request that measurement-sensitive information to be included as part of the application, be expressed in metric units. When required by the awarding agency, for grants to recipients, the following term and condition will be incorporated into the grant:

Provision

All progress and final reports, other reports, or

All progress and final reports, other reports, or publications produced under this award shall employ the metric system of measurements to the maximum extent practicable. Both metric and inch-pound units (dual units) may be used if necessary during any transition period(s). However, the recipient may use non-metric measurements to the extent that the recipient has supporting documentation that the use of metric measurements is impracticable or is likely to cause significant inefficiencies or loss of markets to the recipient, such as when foreign competitors are producing competing products in non-metric units.

End of Provision

§ 12.916 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962).

Under the Act, any State agency or agency of a political subdivision of a State that is using appropriated Federal funds must comply with section 6002 of RCRA. Section 6002 of RCRA requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education and hospitals that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of

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recycled products pursuant to the EPA guidelines.

§ 12.917 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Post-Award Requirements

Financial and Program Management

§ 12.920 Purpose of financial and program management.

Sections 12.921 through 12.928 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 12.921 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 12.952. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and . accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (31 U.S.C. 6501 note) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records, including cost accounting records, that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above in § 12.921 (c) and (d), the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 12.922 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain or demonstrate written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 12.921. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purposes of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (h)(2) of this section apply:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (2) or (3) apply:

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In keeping with Electronic Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs where electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 12.923 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this subpart, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) the current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated

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property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply:

(1) If the purpose of the award is to assist the recipient to acquire equipment, buildings, or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed their fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(2) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 12.924 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the following ways:

(1) added to funds committed to the project or program by the Federal awarding agency and recipient and used to further eligible project or program objectives;

(2) used to finance the non-Federal share of the project or program; or

(3) deducted from the total project or program allowable cost in determining the net allowable costs upon which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) If the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 12.914.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 12.930 through 12.937).

(h) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 12.925 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74, appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraph (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this subpart and OMB Circulars A–21 and A–122. Such waivers may include authorizating recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:

(i) the terms and conditions of award prohibit the extension;

(ii) the extension requires additional Federal funds; or

(iii) the extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e)(1) through (3) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of the transfer exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) No other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraph (h) (1), (2) or (3) of this section apply:

(1) the revision results from changes in the scope or the objective of the project or program;

(2) additional Federal funds are needed to complete the project; or

(3) the recipient requests a revision that involves specific costs for which prior written approval requirements may be imposed under § 12.927.

(i) No other prior approval requirements for specific items will be imposed unless OMB approves a deviation.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates that a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 12.926 Non-Federal audits.

Certain recipients and subrecipients shall be subject to non-Federal audits in accordance with the applicable directive from the table in this section.

Type of recipient	Applicable directive
Institution of higher education or other non-profit organization.	OMB Circular A–133.
State or local government	Single Audit Act 31 U.S.C. 7501–7507 and 43 CFR part 12, subpart B.
Hospital	OMB Circular A–133 or audit requirements of the Federal awarding agency.

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§ 12.927 Allowable costs.

Federal awarding agencies shall determine allowable costs in accordance with the type of entity incurring the costs, using the appropriate directive from the table below.

Entity incurring costs	Applicable directive
State, local, or Federally recognized Indian Tribe.	OMB Circular A–87, Cost Principles for State and Local Governments.
Non-profit organization	OMB Circular A–122, Cost Principles for Non-profit Organizations and 43 CFR 12.927(b).
Institution of Higher Education	OMB Circular A–21, Cost Principles for Educational Institutions.
Hospital	45 CFR part 74, appendix E, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.
Commercial organization or non-profit organization listed in Attachment C of OMB Circular A–122.	48 CFR part 31, Contract Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 12.928 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards

§ 12.930 Purpose of property standards.

Sections 12.931 through 12.937 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 12.931 through 12.937.

§ 12.931 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 12.932 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department of the Interior.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor. The Federal awarding agency will give one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 12.933 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually to the Federal awarding agency an inventory listing of federally-owned property in their custody. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 12.934 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds, and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency, then (2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(h) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. The transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with Federal funds and federally-owned equipment.

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If the Federal awarding agency fails to issue disposition instructions within the 120-calendar-day period, the recipient shall apply the standards of this section, as appropriate.

(3) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 12.935 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 12.936 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 12.934(g).

§ 12.937 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standard

§ 12.940 Purpose of procurement standards.

Sections 12.941 through 12.948 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 12.941 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 12.942 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 12.943 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bids or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 12.944 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to use small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension." See 43 CFR part 12.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review of procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 12.945 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 12.946 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 12.947 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and documents, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 12.948 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the provisions below in all contracts and subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid

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guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this subpart, as applicable.

Reports and Records

§ 12.950 Purpose of reports and records.

Sections 12.951 through 12.953 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 12.951 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 12.926.

(b) The Federal awarding agency shall prescribe the frequency of submission for performance reports. Except as provided in § 12.951(f), performance reports will not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) A final technical or performance report shall be required after completion of the project only if the awarding agency determines this to be appropriate.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 12.952 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) *SF–269 or SF–269A, Financial Status Report.*

(i) Each Federal awarding agency will require recipients to use either the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop accrual information through best estimates based upon an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request by the recipient.

(2) *SF–272, Report of Federal Cash Transactions.*

(i) When funds are advanced to recipients, the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 12.921, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such action expedites or contributes to the accuracy or reporting.

§ 12.953 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, etc., as specified in § 12.953(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) *Indirect cost rate proposals, cost allocation plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of the submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 12.960 Purpose of termination and enforcement.

Sections 12.961 and 12.962 set forth uniform suspension, termination and enforcement procedures.

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§ 12.961 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (a)(2) or (a)(3) of this section applies.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 12.971(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 12.962 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 12.914, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Federal awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c) (1) and (2) of this section apply:

(1) The costs result from obligations which are properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see 43 CFR part 12).

After-the-Award Requirements

§ 12.970 Purpose.

Sections 12.971 through 12.973 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 12.971 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 12.931 through 12.937.

(g) If a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 12.972 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 12.926.

(4) Property management requirements in §§ 12.931 through 12.937.

(5) Records retention as required in § 12.953.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 12.973(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 12.973 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraph (a) (1), (2) or (3) of this section:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR chapter II, "Federal Claims Collection Standards."

Appendix A to Subpart F—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contracts shall be made to parties listed on the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding their exclusion status and that of their principals.

[FR Doc. 95–8175 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–278; RM–8344]

Radio Broadcasting Services; Pequot Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Pequot Lakes, Minnesota, as that community's second FM broadcast service in response to a petition filed by Minnesota Christian Broadcasters, Inc. *See* 58 FR 62318, November 26, 1993. Canadian concurrence has been obtained for this allotment at coordinates 46–36–11 and 94–18–33 without a site restriction. With this action, this proceeding is terminated.

DATES: Effective May 12, 1995. The window period for filing applications for Channel 261A at Pequot Lakes will open on May 12, 1995, and close on June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 93–278, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Pequot Lakes, Channel 261A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7945 Filed 4–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 552, 554, 573, 576, and 577

[Docket No. 93–68; Notice 2]

RIN 2127–AD83

Petitions for Rulemaking, Defect and Noncompliance Orders; Standards Enforcement and Defect Investigations; Defect and Noncompliance Reports; Record Retention; and Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is amending several provisions of its regulations that pertain to its enforcement of the provisions of Chapter 301 of Title 49 of the United States Code (49 U.S.C. 30101–169, formerly the National Traffic and Motor Vehicle Safety Act), with respect to manufacturers' obligations to provide notification and remedy without charge to owners of motor vehicles or items of motor vehicle equipment that have been determined not to comply with a Federal motor vehicle safety standard or to contain a defect related to motor vehicle safety.

Some of the rules published today implement provisions added by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), regarding requirements for notification of certain vehicle lessees and for a second notification to owners of recalled vehicles and items of motor vehicle equipment in the event that NHTSA determines that the original notification has not resulted in an adequate number of vehicles or items of equipment being returned for remedy.

This rule also amends the regulation governing NHTSA's consideration of petitions for rulemaking or for an investigation of an alleged safety-related defect or a noncompliance with a Federal motor vehicle safety standard (49 CFR part 552) and NHTSA's procedures following an initial determination that a safety-related defect exists. 49 CFR part 554. The rule also makes several changes in the regulations governing the form and content of defect and noncompliance reports submitted to NHTSA by manufacturers (49 CFR part 573); and to the agency's record retention requirements. 49 CFR part 576. Finally, this rule amends various sections of 49 CFR part 577 regarding the requirements for notification to owners, purchasers, dealers and lessees of safety-related defects and noncompliances.

DATES: *Effective date:* The amendments made in this rule are effective May 5, 1995.

Any petitions for reconsideration must be received by NHTSA no later than May 5, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, room 5319, Washington, DC 20590; (202) 366–5227.

SUPPLEMENTARY INFORMATION: These amendments are being adopted by NHTSA after considering comments received from numerous sources in response to a Notice of Proposed Rulemaking (NPRM) published on September 27, 1993. 58 FR 50314. NHTSA received comments on some or all of the proposed amendments from the following: ABAS Marketing, Inc. (Strait Stop); American Honda Motor Company (Honda); American Automobile Manufacturers Association (AAMA); Association of International Automobile Manufacturers (AIAM); Advocates for Highway and Auto Safety (Advocates); AM General Corporation (AM General); Blue Bird Body Company (Blue Bird); CIMS; Center for Auto Safety (CAS); Fleetwood Enterprises, Inc. (Fleetwood); The Kelly-Springfield Tire Company (Kelly-Springfield); Motor and Equipment Manufacturers' Association (MEMA); Mack Trucks, Inc. (Mack); Midland-Grau Heavy Duty Systems, Inc. (a subsidiary of Echlin, Inc.) (Midland); Navistar International Transportation Corporation (Navistar); National Automobile Dealers Association (NADA); R.L. Polk & Company (Polk); Sierra Products, Inc. (Sierra); Truck Manufacturers; Toyota Motor Corporate Services of North America (Toyota); and Volkswagen of America, Inc (Volkswagen). The reasons for the proposals were fully discussed in the NPRM.

Not all of the amendments proposed in the NPRM are being adopted as final rules today. With respect to the proposed amendment of 49 CFR part 577 regarding the duty of manufacturers to notify dealers of defects and noncompliances that are determined to exist, discussed in the NPRM (see 58 FR at 50320), NHTSA has decided that it needs additional time to consider the appropriate action to take in light of the issues raised by some of the commenters. Since these issues do not affect the remaining proposed amendments, the agency has decided to issue a final rule with respect to those amendments while it resolves the issues relating to dealer notification.

The regulatory provisions amended by this final rule implement the National Traffic and Motor Vehicle Safety Act of 1966, as amended ("Act"), which was originally set out at 15 U.S.C. 1381 *et seq.* Recently, as part of a comprehensive codification of transportation laws, the Act was reenacted as Chapter 301 of Title 49 of the United States Code. Pub.L. 103–272 (July 5, 1994). Congress specified in section 6(a) of the statute that the codification is not to be construed as making any substantive changes, but changed the wording of almost every section. Some of these changes affect the wording of sections of NHTSA's regulations that are being amended in this final rule. The agency believes it is desirable that the language of its regulations be consistent with that used in the statute. Therefore, this rule also makes technical amendments to the regulations covered by this notice to make their wording conform to the language used in the recodification. Any such amendments will be noted in the appropriate section of the preamble. The agency emphasizes that, because

Congress did not intend the changes in terminology to be substantive, these amendments are technical only and do not alter the meaning of the regulations.

Amendments to Part 552—Petitions for Rulemaking and for Defect and Noncompliance Investigations

Part 552 implements the citizen petition provisions of 49 U.S.C. 30162 (formerly section 124 of the Act). This rule adopts the proposed amendments to 49 CFR 552.6 and 552.8 in order to remove any possible ambiguity with regard to the factors that NHTSA may consider when deciding whether to grant or deny a citizen petition. The new language of § 552.8 makes it clear that the regulation does not limit NHTSA's discretion to consider factors such as resource allocation, agency priorities, and likelihood of success in litigation which might arise from the order, when deciding whether to grant or deny petitions filed pursuant to the Act. The amendment also deletes the reference in § 552.6 to a determination by the Associate Administrator that there is a "reasonable possibility" that the requested order will be issued.

While the amended regulation lists some specific factors that the agency may consider in deciding whether to grant or deny the petition, the listing is not intended to be exhaustive. It does not preclude the agency from considering factors not listed. The rule does not require the agency to consider all factors listed, nor does it set an order of priority in which the factors must be considered.

Two commenters, CAS and Advocates, expressed the view that the proposed amendment is too broad or vague, that it should specify safety as the first factor that NHTSA should consider, and that it should list certain other specific factors that the agency must consider. While safety is certainly one factor that the agency will consider, these commenters fail to recognize that the regulation is intended to be consistent with the broad discretion given to NHTSA by the Act to grant or deny petitions. The United States Court of Appeals for the District of Columbia Circuit recognized the breadth of the discretion conferred by the Act in *Center for Auto Safety* v. *Dole*, 846 F.2d 1532 (D.C. Cir. 1988), *on rehearing, vacating* 828 F.2d 799 (1987). In that case, the court specifically rejected an argument by CAS that NHTSA could not consider factors other than safety in deciding whether to grant or deny a petition for a safety-related defect or noncompliance proceeding.

Amendments to Part 554—Safety Defect and Standards Noncompliance Decisions

NHTSA is also amending 49 CFR 554.10 and 554.11, which implement the provisions of the Act governing initial and final decisions of safety-related defect or noncompliance by the Secretary. 49 U.S.C. 30118(a) and (b) (formerly section 152 of the Act). Section 554.10 is amended by deleting subsection (e) in its entirety; and § 554.11 is amended by deleting subsection (c), which provides that if the Administrator decides that a failure to comply or a safety-related defect "does not exist," he or she will notify the manufacturer and publish "this finding" in the **Federal Register**.

As stated in the NPRM, the Act does not require a decision by NHTSA that a failure to comply or a safety-related defect does not exist. And, as a practical matter, the Administrator rarely if ever makes an affirmative decision that there is no failure to comply or no safety-related defect. Rather, if the Administrator believes that the information at his or her disposal does not warrant a final decision of defect or noncompliance, the investigation is closed, subject to its possible reopening if additional evidence is obtained.

To minimize the possibility that the public might be subject to confusing assertions by manufacturers that there has been a decision that a safety-related defect or noncompliance does not exist, the agency has decided to adopt the amendments proposed in the NPRM. The amended section will provide that if the Administrator elects, following an initial decision under 49 U.S.C. 30118(a), to close an investigation without making a final decision that a failure to comply or a safety-related defect exists, he or she will notify the manufacturer and will publish a notice of that closing in the **Federal Register**.

Honda commented that the regulation should give the agency the option of finding that a defect or noncompliance does not exist when it closes an investigation. Its rationale is that in the absence of such a decision, the public would be left in doubt about whether a vehicle did or did not have the defect or noncompliance. The agency has no reason to believe that the absence of such decisions in the past has been a source of confusion for the public. It sees no significant safety benefit to be gained from making such decisions; and continuing an investigation until proof of such a negative could be obtained would divert scarce resources from other areas.

NHTSA also will delete § 554.10(e), which provides that if the Administrator determines that a failure to comply or a safety-related defect "does not exist," he or she may, at his/her discretion, within 60 days invite interested persons to submit views on the investigation at a public meeting as superfluous. The agency has never held a public meeting following the closing of an investigation. However, if it should so choose, it may do so even in the absence of such a regulation. No commenter objected to this change.

Amendments to Part 573—Defect and Noncompliance Reports

NHTSA is amending several sections of 49 CFR part 573 regarding leased vehicles; the timing and duration of remedy campaigns; submission of draft owner notification letters to the agency; advance submission of schedules for notification and availability of remedy under certain circumstances; quarterly reports on the progress of recall campaigns; identification by vehicle manufacturers of suppliers of defective or noncompliant equipment; identification by equipment manufacturers of vehicle manufacturers that have been supplied with defective or noncompliant equipment; and requirements for submission of information regarding the scope of a recall campaign in certain instances.

Definitions

NHTSA is amending § 573.4, "Definitions," to include definitions of the terms "leased motor vehicle," "lessor," and "lessee," because those terms are not currently defined in part 573. (These definitions will also be added to part 577.) The definition of "leased motor vehicle" is identical to that which appears in 49 U.S.C. 30119(f)(1). The definitions of "lessor" and "lessee" in this amendment are consistent with the definition of "leased motor vehicle."

Under the definitions proposed in the NPRM, only lessors that leased five or more vehicles for a term of at least four months in the year preceding the date of the notification would be covered by these regulatory provisions. One commenter, NADA, suggested that the definition of "lessor" be changed to make clear that the lessor is the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall.

NHTSA believes that NADA's comment provides a useful clarification of the term "lessor," by adding the lessor is the owner as shown on the vehicle's title. It is also reasonable to

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limit the term "lessor" to those who have ownership at the time of the notification by the manufacturer of the recall, so that the obligations of lessors would not be imposed on those who no longer owned the recalled vehicle at that time.

NHTSA is also adopting an amendment to § 573.4 which defines the term "readable form," to mean a form that is either readable by the unassisted eye or by machine. As proposed, the definition required parties submitting information in machine readable form to obtain prior written approval from NHTSA's Office of Defects Investigation, confirming that equipment needed to read the information is readily available to NHTSA. Toyota commented that for all similar information responses, once a manufacturer has obtained approval for the original response in that form, it should not have to obtain approval for future submissions in the same form. NHTSA believes that one-time approval of a machine-readable format should suffice to ensure that the agency receives information in a form which makes it accessible to it. Requiring approval each time information is submitted would be duplicative and would unnecessarily reduce the efficiency of the recall notification process. Accordingly, the rule adopted today incorporates the changes suggested by Toyota.

NHTSA does not believe a system that permitted oral approval, as suggested by AAMA, would be workable. In the event that a question arose about the agency's approval of a particular format, it would be desirable to have a written record showing the scope of the approval.

Scope of Recall

The agency is amending 49 CFR 573.5(c)(2) to require, as part of the manufacturer's report to NHTSA of its defect or noncompliance decision, an explicit statement of how the population that will be covered by the recall was identified and of how the recall population differs from any similar vehicles or items of equipment that are not covered by the recall. If the information is not available to the manufacturer at the time of filing its part 573 report, it must so state in that report and furnish an estimated date when it expects it to be available. When there is such a delay, the manufacturer must furnish the information to NHTSA within five Federal government working days of when it becomes available.

Manufacturers often decide that a safety-related defect or noncompliance exists in only some portion of their production of a given model or item of equipment; for example, in vehicles or items of equipment manufactured between certain dates, or in certain locations, or with certain engines or options. On several occasions within the past few years, manufacturers have had to revise the scope of their recalls after they or NHTSA uncovered information indicating that additional vehicles or equipment items contained the defect or noncompliance.

Although some manufacturers have included information in their part 573 reports that explains the basis on which they selected the specific vehicles or equipment items that will be covered by a recall, NHTSA's current regulations do not explicitly require manufacturers to do so. NHTSA has found that when this information is not provided, it has been difficult to ascertain whether the scope of the recall proposed by the manufacturer is adequate. The amendment will ensure that the agency has the information it needs to ensure that the recall scope proposed by the manufacturer is correct.

AAMA and Blue Bird opposed the amendment on the ground that the agency already has the authority to request this information in individual cases as needed. AAMA also commented that requiring it in all cases will be unduly burdensome, and that NHTSA does not need this information for every recall. These were the only comments on this proposal.

The fact that NHTSA has authority to ask for this information in individual cases is not a reason for not requiring it across the board. Requiring it by regulation will make NHTSA's oversight of the recall process more efficient, because it will eliminate the need for the agency to decide in each case whether to ask for the information. Moreover, it will ensure that the information is available even in those instances in which NHTSA might fail to request the information because the need for it is not apparent at the time the manufacturer submits its defect or noncompliance report.

NHTSA does not believe it is unduly burdensome to require this information, which will ordinarily be readily available to the manufacturer at the time it files its part 573 report. In making a defect or noncompliance decision, the manufacturer is likely to have identified the particular vehicles or items of equipment covered by the recall, and it will, of necessity, have a basis for that identification. The amendment does permit later filing when a manufacturer does not have the information at the time the report is submitted.

NHTSA also disagrees with AAMA's contention that the agency does not "need" the information in every recall. Whenever the manufacturer is recalling fewer than all similar vehicles or items of equipment, the agency needs to know why the scope of the recall is limited in order to ensure that the recall campaign adequately covers the population affected by the defect or noncompliance. In the past, there have been instances in which a manufacturer expanded the scope of a recall after NHTSA obtained information showing that other vehicles or items of equipment had the same defect or noncompliance. The delay in the agency's learning about the additional defective or noncomplying vehicles or equipment items exposed members of the public to a safety risk that could have been avoided had the information explaining the scope of the recall been available to NHTSA when the manufacturer first notified NHTSA of its decision to recall.

Identification of Suppliers and Customers

NHTSA is amending § 573.5(c)(2) to require the manufacturer of a recalled vehicle or item of equipment to identify the supplier (if different from the vehicle manufacturer) of any component or assembly that contains the defect or noncompliance, and to require an equipment manufacturer that decides that a defect or non-compliance exists in its product to identify all manufacturers that purchased the defective or non-complying components for use in new motor vehicles or new items of equipment.

Both of these requirements will assist the agency in assuring at an early point in the recall process that a recall encompasses all vehicles and items of equipment that contain defective or noncomplying components rather than being inappropriately limited to a single manufacturer's production. Identification of the supplier will, at the outset of the campaign, permit the agency to contact the supplier promptly to ascertain whether the same component was distributed to other manufacturers or as replacement equipment. Likewise, early identification of the supplier's other customers (if any) will permit the agency to contact the affected manufacturers sooner to apprise them of their responsibilities under the Act once a defect or noncompliance in an item of equipment has been identified.

AAMA, AM General and Blue Bird expressed views about this proposal. AAMA and Blue Bird contended that such a requirement would be unduly burdensome for manufacturers. The agency disagrees. In many instances, manufacturers already provide this information to NHTSA when they are

conducting a recall. Moreover, in most if not all recalls, the manufacturer will know the particular component or components that caused the defect or noncompliance in the completed product, and will certainly be aware of the identity of the entity that supplied the component. If the manufacturer believes that the defect or noncompliance is not caused by a component or assembly from an outside supplier, it need not provide any information in response to this provision. Moreover, any burden is far outweighed by the safety benefit of allowing the agency to identify other vehicles or items of equipment with the same defective or noncompliant component.

Both Blue Bird and AAMA also noted that the agency already has the authority to request this information in individual recalls. While this statement is correct, it is not a reason for not adopting this provision. The information required by the amendment is obviously more accessible to the manufacturer than to the agency; the agency may not be able to identify all cases in which it is appropriate to request such information. Moreover, the amendment ensures that this type of information will be available to NHTSA at the beginning of the recall process. This will have the safety benefit of permitting earlier identification of other vehicles or items of equipment with the same defect or noncompliance, which will minimize the length of time that the public is exposed to a safety risk because it avoids unnecessary delay in making the remedy available to all affected owners.

Section 30102(b)(1) of Title 49 does not, as AAMA argues, prohibit the agency from requiring manufacturers to provide this information for components that are not replacement equipment as defined by that section. That section merely states that the vehicle manufacturer, and not the component manufacturer, is responsible for remedying a defect or noncompliance in a component installed in a vehicle as original equipment. It does not preclude NHTSA from obtaining information about the identity of the manufacturer or supplier of components used as original equipment. The agency does not intend to use the information to hold the component manufacturer responsible for remedying the defect or noncompliance. Its purpose is to learn from the latter whether any other vehicle manufacturer used the same component in its vehicles, so that the agency can then contact the manufacturer of those vehicles to ascertain whether additional recalls should be conducted.

AM General expressed a concern that this provision could have an adverse effect on suppliers whose components are identified by manufacturers as defective, in instances where further examination reveals that they are not in fact the cause of the defect or noncompliance. The number of instances in which such incorrect identification occurs is likely to be quite small because, in most instances, the cause of the problem has already been identified by the time the manufacturer makes its decision that there is a safety-related defect or noncompliance. If a manufacturer is still uncertain as to whether a defect or noncompliance is attributable to a component or assembly from an outside supplier when it files its defect or noncompliance report with NHTSA, the manufacturer's report should make that uncertainty clear. Any adverse publicity that does erroneously affect a supplier can be countered by publicizing the correct information when it becomes available. Finally, the safety benefit of having this information available to NHTSA, as described above, will far outweigh the risk that, in a few instances, a supplier might be incorrectly identified as the origin of a defective or noncomplying product.

Schedule for Notification Campaigns

Although many recalls are implemented within a reasonable time of the decision that a safety-related defect or noncompliance exists, NHTSA has noted an increase in the number of recalls in which there has been a significant delay between the manufacturer's decision that a defect or noncompliance exists and the commencement of the manufacturer's recall campaign. There have also been a limited number of instances in which the duration of the campaign was inordinately extended. The manufacturers in question have generally sought to justify these delays and extensions on the basis that needed parts and/or facilities were not available and it would therefore be pointless to notify owners of the defect or noncompliance.

While such unavailability may in certain cases justify some delay, it is important that the agency be aware of the manufacturer's anticipated schedule at the earliest possible time in order to assure that notification campaigns under the Act are commenced in a timely fashion and completed within an appropriate time period. In addition, in some instances, even if implementation of the remedy must be deferred (e.g., because needed parts are not available), it is appropriate for the manufacturer to send an interim notification to advise consumers of actions they should take prior to repairs being made. Finally, the agency needs to be able to respond to questions about the timing of the recall from the public and/or the media.

Therefore, NHTSA proposed to amend 49 CFR 573.5(c)(8) to require manufacturers to provide information about their schedule for owner notification, along with a description of any factors that they anticipated could interfere with the schedule. Under the proposal, schedules would have been required for all recalls. In addition, the NPRM proposed that if a manufacturer planned to begin the campaign more than 30 days after its defect or noncompliance decision, or planned to spread the notification campaign over more than 45 days, the manufacturer would have to identify the basis for such a delay. In addition, the NPRM proposed that if a manufacturer were unable to follow the schedule it had originally submitted, it would have to inform NHTSA promptly and submit a revised schedule.

AAMA opposed the proposal on several grounds: that it would make NHTSA a participant in, rather than an observer of, the recall process; that it would use manufacturer resources that would otherwise be devoted to implementing the recall campaign; that it is unneeded because most recall campaigns are implemented within a reasonable time; and that the requirement for a schedule would not speed up the remedy of vehicles because manufacturers would still need time to design and test parts, design and test the remedy, and train personnel.

NHTSA, as the agency charged by Congress with enforcement of the notification and remedy provisions of the Act, is of necessity a "participant" in the recall process. An integral part of this responsibility is to ensure that manufacturers carry out their recall obligations in a reasonable manner, which includes avoiding undue delay in sending owners notification of the defect or noncompliance.

The agency does not believe that the requirement will divert resources that would otherwise be used in the campaign; or that it will cause a delay in the implementation of recall campaigns, as Blue Bird commented. A manufacturer that determines that a recall is necessary will necessarily have to develop a schedule for implementing the recall. The proposal and the rule as adopted simply require that, for those relatively rare recalls for which a delay is anticipated, the schedule, along with

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an explanation thereof, be provided to NHTSA.

AIAM opposed the proposal because it did not believe that manufacturers should be required to explain normal design, production, and distribution delays. It argued that only unique delays in a particular recall campaign, or delays of more than 75 or 90 days in sending out notification, should have to be explained. Moreover, it noted that foreign-based manufacturers need more than 30 days to initiate notification and begin the remedy because of the need to be in contact with their headquarters, and that it often takes more than 30 days to get an updated owner list from R. L. Polk.

The purpose of this provision is to ensure that the recall campaign is initiated within a reasonable time after the defect or noncompliance determination. NHTSA is not concerned with whether the delay is due to ordinary or unique circumstances. Its interest is in whether it is *reasonable*. The information the amendment requires is intended to enable NHTSA to evaluate the reasonableness of the delay, and to provide for interim notification where appropriate.

NHTSA believes that most notification campaigns can be commenced within 30 days of a manufacturer's defect or noncompliance decision and completed within 45 after they are commenced. However, to eliminate any ambiguity in calculating time periods, and to provide manufacturers with slightly more time, NHTSA has revised the final rule so that the periods in question are calculated from the date of the notice to the agency of the defect or noncompliance decision.

Based on past experience, and given the availability of telefax and other rapid electronic means of communication, that time period should be sufficient to allow manufacturers to obtain the information they need, either from Polk or from parent companies or suppliers located overseas. Moreover, if more time is required, the manufacturer need only advise the agency and explain the basis for the delay. NHTSA will not disapprove reasonable schedules for recall campaigns.

Advocates supported the requirement for a schedule, but also suggested that manufacturers be required to notify all owners within 30 days of notifying NHTSA of the defect or noncompliance. Advocates explained that any delays in the availability of the remedy could be explained to owners in the notification letter. NHTSA believes that a 30-day requirement for notification under all circumstances is unnecessarily rigid. It prefers to have the flexibility to decide on a case-by-case basis whether a proposed schedule is unreasonable.

AM General opposed the proposal because it believed that the manufacturer would be bound by the schedule, which would limit its flexibility in conducting the recall campaign. It also expressed concern that NHTSA needed to define more clearly the circumstances under which it would take action against a manufacturer under this section and what the action would be. Finally, it commented that NHTSA normally is able to learn of problems with recall campaigns through its regular interaction with manufacturers, and that the agency already has sufficient means at its disposal to compel a manufacturer to act more quickly.

Contrary to AM General's contention, the amendment does not unreasonably limit manufacturer flexibility. The amendment clearly states that if unexpected circumstances arise, that would result in unanticipated delay, the manufacturer may submit a revised schedule. If there are valid reasons for the delay, there would be no agency action against the manufacturer.

Honda commented that a definition of the term "campaign" is needed, to clarify whether it means notification to owners or the availability of the remedy. The agency has revised the regulatory language to clarify that the time periods triggering the need to submit a schedule refer to owner notification. However, NHTSA has also added language to clarify that if the remedy will not be available at the time owners are notified of the defect or noncompliance, the manufacturer's report must state when the remedy will be provided. This requirement makes explicit what was already implicit in existing § 573.5(c)(8) (redesignated by this amendment as § 573.5(c)(8)(i)), which requires each manufacturer to include in its report "a description of its program for *remedying* the defect or noncompliance." (Emphasis added.)

Based on its consideration of the comments received on the NPRM, and on its experience in monitoring manufacturer compliance with the notification and remedy requirements of the Act, NHTSA now believes that it is not appropriate to require manufacturers to submit the detailed scheduling information such as that proposed in the NPRM for *every* recall campaign. Instead, the agency believes it is appropriate to focus on recalls in which the manufacturer intends to delay commencement or completion of the notification campaign to assure that such delays are not unreasonable.

For recalls in which the manufacturer intends to commence owner notification within 30 days, and to complete the notification campaign within 75 days of notifying NHTSA, it is unlikely that the agency would find that the schedule was unreasonable or would create a significant safety problem. Accordingly, the detailed scheduling information proposed in the NPRM will not be required for those recalls. (Of course, NHTSA has the authority to require manufacturers to provide scheduling and related information on a case-by-case basis, even apart from these general regulatory requirements.)

In those cases where the manufacturer intends to exceed the time periods set out in the amended final rule, there is a greater likelihood that the remedy will not be available within a reasonable time, as required by 49 U.S.C. 30120(c). Therefore, the amendment adopted today retains the requirement proposed in the NPRM for filing a schedule for the campaign and a detailed description of the factors on which the proposed schedule is based in such instances. Such factors will often include the time frame for development and testing of the specific remedy for the defect or noncompliance, the time frame for production of any necessary parts, and the anticipated date(s) for distribution of those parts to dealers and/or owners.

The final rule also retains the requirement that if a manufacturer becomes aware that circumstances will delay implementation of the recall, it must promptly inform NHTSA of the reasons for the delay and submit a new schedule. Such submission must also contain the basis for the new schedule, which shall also be subject to disapproval by the Administrator.

The preamble to the NPRM noted that a manufacturer that intended to seek an exemption from the recall requirements of the Act pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556 on the basis that the defect or noncompliance was "inconsequential as it relates to motor vehicle safety" would have to advise the agency of its intention to do so in its initial report under part 573. In its comments, AIAM suggested that the schedule requirement be waived when a manufacturer intends to file an inconsequentiality petition.

The agency agrees that it would not be appropriate to require a manufacturer that intends to petition for inconsequentiality to file a schedule at the time it notifies the agency of a defect or noncompliance, since no recall will take place if the petition is granted. However, this does not mean that the schedule requirement should be completely waived in such circumstances, since if the petition is denied, the manufacturer will have to conduct a recall within a reasonable time thereafter. Therefore, NHTSA has added a new § 573.5(c)(8)(v) to clarify that the time periods for filing a schedule for owner notification shall run from the date of the agency's denial of the petition, whether or not the manufacturer appeals that denial pursuant to 49 CFR 556.7.

The final rule also adds a new § 573.5(c)(8)(vi) to require that in the event a manufacturer that had informed NHTSA in its part 573 report that it intended to file a petition for an inconsequentiality exemption does not do so within the 30-day period established by 49 CFR 556.4(c), the time frame for filing a schedule specified in § 573.5(c)(8)(ii) would begin to run from the end of that 30-day period. If NHTSA finds that manufacturers are abusing this provision in order to avoid filing the required schedules, it will take appropriate action.

Submission of Proposed Owner Letters to the Agency

NHTSA is also amending 49 CFR 573.5(c) to add a requirement that manufacturers submit to the agency for review, copies of their proposed owner notification letters before, rather than after, the letter is sent to owners. (In the NPRM, this proposed amendment was added to paragraph (9) of § 573.5(c). However, for the sake of clarity the agency has decided that this requirement should be in a separate paragraph. Accordingly, in the final rule, the requirement for submission of proposed owner letters will be paragraph (10) of § 573.5(c). The paragraph on recall campaign numbers, designated as (10) in the NPRM will now be paragraph (11).) The final rule provides that the manufacturer must submit a proposed owner notification letter to the Office of Defects Investigation (ODI) at least five Federal government business days prior to the date it intends to begin mailing. As noted in the NPRM, the purpose of this requirement is to allow NHTSA to review a manufacturer's draft to ascertain whether it complies with all statutory and regulatory requirements before mailing, since sending a corrected letter *after* the first mailing causes unnecessary expense and could confuse owners.

AAMA asserted that NHTSA lacks the statutory authority to "dictate, edit or approve in advance" a manufacturer's notification to owners. The amendment does not purport to grant to the agency any authority to "dictate" the precise wording of owner notification letters. While NHTSA has the authority pursuant to 49 U.S.C. 30118(e) (formerly section 156 of the Act) to order manufacturers to take specified steps if it decides that they have not adequately carried out their notification responsibilities, this amendment is part of a more informal process. NHTSA's experience has been that when it identifies deficiencies in a proposed owner notification letter, most manufacturers are willing to make appropriate changes. In any event, the fact that the agency may not be able to compel a manufacturer legally to modify an owner notification letter at that stage does not mean that the agency cannot or should not take steps to try to convince manufacturers to make appropriate changes in an effort to maximize the response to recall campaigns.

AAMA's fear that the regulation will lead to NHTSA's "micromanaging" the form and content of letters simply is not warranted. The agency has neither the time nor the interest to get involved in the minute details of rewriting owner notification letters that meet statutory and regulatory requirements. The extent of its involvement will be to ensure to the maximum possible extent that those letters meet all such requirements.

Several commenters expressed concern that requiring such advance review could unduly delay the recall notification process. Some also suggested that the agency add a provision permitting a manufacturer to send the letter if it has not heard from NHTSA within a specified time. As noted above, this amendment does not provide NHTSA with the authority to force a manufacturer to delay its owner notification campaign until the agency approves the wording of the manufacturer's proposed owner letter. Thus, the amendment is unlikely to add any delay at all, since manufacturers almost always prepare drafts of owner notification letters well before the actual mailing begins. In any event, the amendment specifically authorizes the agency to waive this requirement where warranted by safety considerations or other appropriate factors.

Nevertheless, in order to ensure that the agency has adequate time to review the draft letter and contact the manufacturer to resolve any problems, the amendment requires the manufacturer to submit the proposed letter by a means which allows verification that the letter was received by ODI and indicates the date of receipt. The agency encourages manufacturers to send their draft notification letters to ODI by fax, at 202–366–7882 (primary) or 202–366–1767 (alternate). Other means that provide verification of receipt are overnight delivery (either by Express Mail or private delivery service) addressed to: Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319, Washington, DC 20590; and hand delivery to ODI at that address. Neither first-class mail nor certified mail would be acceptable because of lengthier delivery times and/or the absence of proof of receipt.

Two commenters, AAMA and Truck Manufacturers, support the present system, which requires manufacturers to submit copies of owner notification letters to NHTSA only *after* mailing to owners. AM General suggested amending the proposal to require sending copies of owner notification letters to NHTSA on the same day they are mailed to owners. AAMA states that there is no need for the amendment because most letters already meet the requirements of part 577 and because many manufacturers currently send draft copies of owner notification letters to NHTSA in advance of mailing.

The fact that many manufacturers already seek out NHTSA's advance approval is not an argument against the amendment. To the contrary, it shows that it is practicable and desirable. Similarly, the fact that most owner letters comply with regulatory requirements does not provide a basis for not trying to assure that even more letters fully comply.

As pointed out in the NPRM, NHTSA has had several experiences in which an owner notification letter has failed to comply with all of the requirements of part 577. In such instances, it would rarely be productive (and might be confusing and counterproductive) to require the manufacturer to send a second, corrected letter. The amendment will also increase the agency's ability to respond to questions about the recall from the public and/or the media by ensuring that the agency is informed about the specifics of the notification letter before the manufacturer actually initiates the recall.

Finally, the agency views as neither necessary nor desirable Toyota's suggestion that NHTSA incorporate in its regulations a provision allowing it to waive requirements for owner notification letters in certain instances, such as negotiated settlements. NHTSA's broad discretion to enter into negotiated settlements of enforcement matters has already been recognized by the courts. *See Center for Auto Safety* v. *Lewis*, 685 F.2d 1381 (D.C. Cir. 1982). In any event, the amendment as proposed and adopted specifically allows the agency to waive this requirement.

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Quarterly Reports

NHTSA is amending 49 CFR 573.6(a) to establish specific due dates for quarterly reports on the progress of ongoing recall campaigns. The NPRM proposed to amend this section by establishing due dates for quarterly reports on the twentieth calendar day after the close of each calendar quarter.

Most commenters favored the idea of amending this provision. The two that did not—Midland and Truck Manufacturers—favored maintaining the present system largely because the proposed schedule would not give enough time for some manufacturers (especially small companies that are not computerized) to submit their reports. AAMA favored amending the due dates, but also expressed the view that the dates in the proposal would not allow some companies enough time. Kelly-Springfield expressed the same view. The agency has decided to adopt the schedule suggested by AAMA, which sets definite calendar dates on which the reports would be due, but allows more time than the language proposed in the NPRM. Under the final rule, manufacturers must file their quarterly reports of recall campaign status no later than April 30 for the quarter ending March 31, July 30 for the quarter ending June 30, October 30 for the quarter ending September 30; and January 30 for the quarter ending December 31, unless the specified filing date falls on a weekend or Federal holiday. In such cases, the quarterly report would be due on the next day on which the Federal government is open for business.

NHTSA believes that this schedule allows a reasonable amount of time for all manufacturers, even those that are small and lack computer facilities. Since the date is always the same, i.e., the 30th of the given month, the agency believes it will be easier to keep track of than Kelly-Springfield's suggestion, which was the last business day of the month.

The NPRM also proposed to amend § 573.6(b) by adding a new paragraph (6) that would require both vehicle and equipment manufacturers to indicate separately in their quarterly reports the number of vehicles and items of equipment that are repaired and/or returned by dealers prior to their first sale to the public. AAMA, AM General, Blue Bird, and Truck Manufacturers opposed the proposal because of the added cost and time that would be needed to prepare the quarterly report. AAMA added that it saw no justification for such a requirement. No other commenter opposed the proposal, with Midland favoring it and Volkswagen taking a neutral position but giving information on the time and cost entailed in making the changes that would be needed to its computer system to track inventory return information separately.

After reviewing these comments, the agency has decided to make the requirement applicable only to equipment manufacturers, rather than to both vehicle and equipment manufacturers as proposed in the NPRM. Under 49 U.S.C. 30116, defective and noncompliant motor vehicles in dealer inventory must be, and usually are, repaired by the dealer prior to sale to the public; whereas that section requires the manufacturer of equipment to repurchase the defective or noncomplying items that are in inventory at the time of the defect or noncompliance decision. In addition, the agency believes that there is a greater need for the agency to keep track of whether defective or noncomplying equipment is being returned by dealers and retailers to manufacturers because of the greater number of items that are involved in equipment recalls, the higher percentage of items that are kept in the inventories of dealers and retailers at any given time, and the greater likelihood that dealer/retailer inventory will contain items subject to recall. In addition, the agency is clarifying that manufacturers should include in this category items returned prior to first sale to the public from all retailers, not just "dealers," as well as from distributors of the items in question.

Recordkeeping for Leased Vehicles

NHTSA is amending 49 CFR 573.7 to require manufacturers to maintain information concerning notification of owners of leased vehicles if the manufacturer knows that a vehicle is leased, and to require lessors of leased vehicles to maintain certain information concerning notifications they send to the lessees of those vehicles. The final rule adds a provision that was not in the NPRM: that the records with respect to notification of lessees must be maintained for one calendar year following the expiration of the lease. The agency added this provision because it was necessary to make clear to lessors and manufacturers how long these records must be maintained. The other record retention requirements in part 573 specify a length of time for which the records must be kept.

In the NPRM, NHTSA proposed to amend § 573.7(a) to require the manufacturer to identify those vehicles on its list of owners/purchasers receiving notification which it knows to be leased. The proposal would not have required a separate list of those vehicles that were leased, but would have required that leased vehicles be clearly identified as such. The agency also proposed to add a new § 573.7(d), which would have required each lessor notifying its lessees of a defect or noncompliance to maintain a list of the names and address of the lessees, to include the name and address of the lessee, the VIN, and the date the lessor sent the notification to the lessee. Based on the comments received on that proposal, which are summarized below, the agency has decided to adopt a final rule which differs in some respects from the original proposal.

AAMA, NADA, Polk, Truck Manufacturers and Toyota opposed the proposal in the NPRM. AIAM supported the proposal with modifications. AAMA, Truck Manufacturers and Toyota based their opposition on the difficulty that manufacturers would have identifying which vehicles in a recall are leased, and the cost and burden of developing a system that would enable a manufacturer to keep track of this information. Polk's opposition was based on the difficulty of ascertaining from state vehicle registration records whether or not a vehicle is leased.

The agency notes that the proposal in the NPRM would have required manufacturers to maintain records of notifications sent to "known lessors." This would not have required manufacturers to identify in its records leased vehicles other than those it already knew to be leased. However, because of the apparent misunderstanding of the extent of the manufacturer's obligation under the first proposal, NHTSA is implementing a revised and simplified version of this requirement, which is intended to make clear that the lists maintained by manufacturers under this section do not need to identify those vehicles that are leased except to the extent that the manufacturer already has that information at the time it sends the notification letter.

AAMA also noted that to assure that lessees receive notification of a recall, it would be necessary to include language in the notification letter directing lessors to notify lessees in all notification letters. Although the first NPRM did not propose such a requirement, the agency has decided, after considering comments on the proposed amendments to part 577 regarding notification of lessees, that the simplest and most effective way to ensure that lessees will be notified is to require manufacturers to include in all

notification letters sent to vehicle owners a statement that if the vehicle is leased, the lessor must send the notification letter (or a copy thereof) to the lessee. That amendment is discussed more fully elsewhere in this notice.

NADA opposed the proposal to require each lessor to maintain a list of the names and addresses of the lessees it has notified. NADA stated that if lessors are required to forward all recall notification letters to lessees, there is no need to require lessors to keep records of those lessees to which it sent the letters. It also commented that it would be unduly burdensome for small leasing companies to keep the "detailed" records that would be required by the proposal.

NHTSA notes that the obligation of lessors to keep records of all lessees who have been notified of a recall is analogous to the obligation of a manufacturer to keep records of those whom it has notified. It is, however, less complex because, unlike the manufacturer list, it does not need to be updated each quarter for status of the remedy, and requires only a one-time entry for the date on which the notification was sent to the lessee.

As stated in the NPRM, NHTSA has found the information maintained by manufacturers pursuant to § 573.7 to be useful in the agency's efforts to evaluate whether manufacturers' notification and remedy campaigns are adequate. Because Congress amended the Safety Act to require lessors to send recall notifications to lessees (see 49 U.S.C. 30119(f)), NHTSA needs the same type of information from lessors in order to evaluate whether lessors are adequately carrying out their obligations. While the agency recognizes that this recordkeeping may impose a burden on some lessors, that burden is outweighed by the safety benefit of having such information available.

Copies of Manufacturer Communications

NHTSA is also amending § 573.8 to clarify that the requirement that manufacturers furnish NHTSA with copies of "all notices, bulletins and other communications * * * sent to more than one manufacturer, distributor, dealer, or purchaser, regarding any defect in his vehicles or items of equipment * * * whether or not such defect is safety-related," applies to communications made by electronic means. It is making the same amendment to § 573.5(c)(9), which requires manufacturers to send to NHTSA "a representative copy of all notices, bulletins, and other communications that relate directly to the defect or noncompliance and are sent to more than one manufacturer, distributor, dealer or purchaser," within five days of sending them to the manufacturers, distributors, dealers or purchasers.

Only one commenter, AIAM, opposed this proposal. It stated that NHTSA lacks the authority under the Act to require this "additional" information from manufacturers. AIAM's objection is misplaced. The amendment does not increase the scope of the agency's existing authority to require manufacturers to submit certain types of information. It merely makes explicit a requirement that was already inherent in the regulations as previously written.

Recall Identification Numbers

In order to minimize confusion during NHTSA's monitoring of recall campaigns and to improve the agency's response to owners and prospective purchasers, NHTSA is adding a new provision to part 573 (§ 573.5(c)(11)), which requires manufacturers to provide the manufacturer's identification number for each recall if it is not identical to the campaign number assigned by the agency. In the NPRM, this amendment was designated § 573.5(c)(10). However, the agency has decided to redesignate it as § 573.5(c)(11) in the final rule because it has revised the numbering of the preceding paragraph. The amendment is otherwise identical to that proposed in the NPRM. No commenter raised any issues relating to this amendment.

Amendments to Part 576—Record Retention

NHTSA is amending 49 CFR 576.5 to provide that records concerning malfunctions that may be related to motor vehicle safety and that refer to a specific vehicle must be retained for eight years from the close of the model year during which the vehicle was manufactured (i.e., the date on which the last vehicle was produced for the model year). This amendment differs from that proposed in the NPRM. In the amendment as proposed, the eight-year time period began to run with the date the vehicle was sold, and retention would also have been required for records for five years after they were acquired or generated, if that was later than eight years after the date of sale.

NHTSA decided to change the language from that proposed in the NPRM after considering the comments of several manufacturers, whose objections to the proposal focused principally on the requirement that the eight years be counted from the date of sale. These manufacturers asserted that a requirement that records be kept according to sale date would be unworkable and unreasonably costly and burdensome. See comments of AAMA, AIAM, Chrysler, Navistar and Toyota. These commenters, as well as Blue Bird and Fleetwood, suggested that basing the record retention requirement on the model year of production would be more workable.

After careful consideration, NHTSA believes that the commenters have raised legitimate concerns. The suggested alternative would be more workable and less costly, and would not reduce the availability of relevant records.

The agency has also decided to eliminate the language in the NPRM that would have required manufacturers to maintain records for five years from the date they were acquired or generated, if that would be later than eight years from the date of sale. The number of records that would be retained beyond those that are generated within the first eight years after the model year of production is likely to be small. Moreover, the potential benefits would be slight, since most investigations of defects and noncompliances begin far earlier than eight years after production. However, notwithstanding this amendment, the agency retains the authority to require a manufacturer to retain records for vehicles more than eight years old if it has an open investigation of an alleged noncompliance or safety-related defect that includes such vehicles.

Amendments to Part 577—Defect and Noncompliance Notification

The agency is amending several sections of 49 CFR part 577 to revise the provisions regarding notification of safety-related defects and noncompliances with Federal motor vehicle safety standards.

Definitions

NHTSA is amending § 577.4, "Definitions," to add definitions of the terms "lessor," "lessee" and "leased motor vehicle." As was the case with the amendment of the definition section of part 573 to incorporate these terms, the amendment to this section is being made to implement 49 U.S.C. 30119(f), the statutory section that requires that lessees of motor vehicles receive notification of safety-related defects and noncompliances.

The definition of "lessor" adopted today is slightly different from that in the NPRM. This is necessary to make it consistent with the definition of the same term in part 573 as amended today. The agency decided to adopt a suggestion of a commenter, NADA, that

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defines the lessor as the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall. The definitions adopted today for the terms "lessee" and "leased motor vehicle" are the same as those in the NPRM. No commenter objected to the proposed changes in § 577.4.

Marking of Recall Notification Envelopes

The agency is amending § 577.5(a) to add a requirement for marking the envelope in which recall notification letters are sent by requiring that the envelope containing the notification bear, in all capital letters, the words "SAFETY," "RECALL" and "NOTICE," in any order. Other words may be included, and the type may be any size as long as it is larger than that used for the address. The language must be also be distinguishable from other wording on the front of the envelope in some manner other than size, such as by typeface (e.g., bold, italic), color, and/or underlining.

This amendment differs slightly from the proposal in the NPRM. The proposal would have required use of the phrase, "SAFETY RECALL NOTICE" in boldface capital letters. In response, several commenters suggested alternative wording. Others expressed the view that the current system works well enough, that the proposal did not give manufacturers enough flexibility, or that it would be too costly and/or burdensome to change the envelopes now in use.

NHTSA believes that the cost of adding new wording to recall notification envelopes will be relatively low, and will be outweighed by the safety benefit of making it more likely that the recipient will read the letter. Moreover, while the present system works well, in many cases there is need for improvement in the rate of owner response to recalls. Accordingly, the agency believes that it is appropriate to require manufacturers to mark the outside of recall notification envelopes to alert recipients to the importance of their contents.

However, there is merit to the view expressed in some comments that more flexibility should be allowed than would have been permitted under the proposal in the NPRM. The agency believes that the amendment adopted today should satisfy concerns about flexibility in envelope format while calling recipients' attention to the contents of the envelope. However, to ensure that envelopes comply with regulatory requirements, the amendment includes a requirement for one-time submission of envelope format to the agency. Once a given format is approved, the manufacturer need not submit its envelope format again before using it for other recalls, unless there are changes.

This review will, like the agency review of draft notification letters discussed earlier in this preamble, be limited to ensuring that the envelope markings comply with the minimum requirements of the regulations. The agency's experience with advance review of notification letters has been that it makes the notification process more efficient because it allows the manufacturer to correct any aspects of the material that do not comply with the regulations before undertaking the entire mailing. Advance review of envelope format would doubtless have the same effect.

Notification for Leased Vehicles

NHTSA is amending § 577.5 to add new subsections (h) and (i), which establish requirements for notification of lessees of leased vehicles concerning the existence of safety-related defects or noncompliances in their vehicles.

As proposed in the NPRM, subsection (h) would have required a manufacturer to send different notification letters, depending on whether or not the vehicle was leased. The proposal would have required the manufacturer to include language describing the lessor's duty to provide notification to the lessee only in letters sent by the manufacturer to a known lessor of a leased motor vehicle, and to provide the lessor with a copy of the notification to be sent to lessees.

A number of commenters noted that to the extent that the proposed amendment would require manufacturers to identify the vehicles in the recall population that are leased, it would present a problem because manufacturers often do not know which vehicles are leased and which are not. For example, Polk opposed the proposal on the grounds that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for notification purposes would be extremely difficult. AIAM and Honda made similar comments.

Other commenters objected to notifying lessors or lessees separately from other vehicle owners, or to the requirement that manufacturers include a separate copy of the notification letter for the lessee in the mailing to the lessor. See comments of NADA, Toyota and Truck Manufacturers. These commenters suggested including in all owner notification letters a statement of a lessor's obligation to notify a lessee of the recall campaign.

NHTSA believes that there is merit to the concerns these commenters have raised about this aspect of the proposal. In addition, to the extent that the language of the proposal would have meant that only owners of vehicles known by the manufacturer to be leased vehicles would have received a notification that informed them of their obligation to provide notification to lessees, it would have meant that lessees of vehicles not known by the manufacturer to be leased—a potentially large number—would not receive any notification of safety-related defects or noncompliances and the availability of a remedy without charge.

Accordingly, NHTSA has decided to modify subsection (h) to require manufacturers to include in *all* notification letters a statement of lessors' obligations regarding recall notification letters. If the manufacturer is sending the letter to a recipient that it knows to be a lessor of lessee of a leased vehicle it may use language that is not identical to that in letters sent to recipients whose vehicles are not known to be leased. However, in all cases, the letter must clearly state the lessor's obligation under Federal law to provide notification to lessees of its vehicles and to comply with regulations regarding retaining records of notifications sent to lessees. The amendment does not require the manufacturer to furnish the lessor with a separate copy of the notification letter to be sent to lessees.

The final rule adopts § 577.5(i) as proposed in the NPRM. That subsection restates the requirement of 49 U.S.C. 30119(f), which requires a lessor who receives notification of a safety-related defect or noncompliance in a leased motor vehicle to send a copy of the notification to the lessee of the vehicle. It adds to the statutory language requirements that the lessor send the notification to the lessee as prescribed by new § 577.7(a)(2)(iv), which requires that the notice be sent by first-class mail, and that it be sent to the lessee no more than 10 calendar days from the date the lessor received the notification from the manufacturer. Finally, it clarifies that the requirement applies to all notifications, both initial and follow-up, except where the manufacturer has notified all of a lessor's lessees directly.

Timing of Owner Notification Letters

The agency is amending § 577.7, "Time and Manner of Notification," with modifications from the language proposed in the NPRM. Those changes

are based on its consideration of the comments on the NPRM.

The NPRM proposed to amend § 577.7(a)(1) to give the agency authority to order a manufacturer to notify owners of a safety-related defect or noncompliance on a specific date, when it finds that such a letter would be in the public interest. A number of manufacturers objected to the original proposal because it did not contain any criteria upon which the decision would be based, and failed to require NHTSA to consult with the manufacturer before deciding to order notification on a specific date. The agency believes that it is desirable to provide a list of criteria to assure both manufacturers and the public that the decision is based on consideration of all appropriate and relevant factors. It is also desirable to allow the manufacturer to make its views known to the agency before the decision is made.

Accordingly, the agency has modified the proposed regulatory language by adding a list of factors that may be considered by the agency, and a requirement that the agency consult with the manufacturer before making the decision. The factors that may be considered include the severity of the risk to safety; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay. The agency may also consider other factors relevant to whether early notification would be in the interest of safety.

Several commenters objected to the proposed change on the grounds that the agency already has the authority to require owner notification on a specific date. NHTSA agrees with this statement, but does not agree that it is a reason for not adopting this provision. The agency believes that it is desirable to make this authority explicit because there have been instances when manufacturers have refused to notify owners of a safety-related defect or noncompliance in conformity with a NHTSA request. Having a regulation authorizing the agency to require notification on a date certain will make manufacturer compliance more certain.

AAMA and Chrysler commented that the change is unnecessary because the manufacturer, and not the agency, is in the best position to know when early notification (i.e., notification prior to the time a remedy is available) is warranted. NHTSA disagrees. As the agency charged by statute with enforcing the notification and remedy requirements of the Act, it is in the best position to consider objectively *all* of the factors, including the safety of the public, that need to be considered, and to give them appropriate weight. Based on some manufacturers' past history of undue reluctance to comply with NHTSA requests to notify owners of a defect or noncompliance prior to the availability of a remedy, the agency believes that it is unwise to entrust responsibility for making this judgment solely to the manufacturer. Moreover, the changes made in the NPRM language to give manufacturers the opportunity to submit their views should be adequate to address concerns expressed by some manufacturers that their concerns would not be considered.

The agency notes that it does not intend to exercise the authority to designate a date for owner notification letters except in cases where the commencement of the remedial campaign will be delayed substantially and there appear to be safety benefits associated with a prompt owner notification.

Advocates commented that all owners should be notified immediately after the agency is informed of the existence of the defect or noncompliance, so that they would be able to take measures to minimize the effect of the defect or noncompliance until the remedy is available. It proposes a two-step notification process for all recalls, with the first owner notification to be sent within 30 days of agency notification, and a second notice to be sent later regarding the remedy. CAS also supported a 30-day deadline for notification in all recalls.

As stated above in connection with the amendment to § 573.5(c)(8), the agency does not believe it would be productive to establish a 30-day deadline for all recalls, or to institute a mandatory two-step notification process for all recalls. Given that recalls can vary widely in such matters as the number of items, the severity of the hazard, the complexity of the remedy and the size and resources of the manufacturer, the agency believes that an approach that allows for flexibility in handling each recall individually is preferable. Further, the two-step notification process introduces the possibility of owner confusion. The agency believes that these factors, along with the increased cost of sending a second owner letter, will outweigh the safety benefit of such a process in most circumstances.

Timing of Notification to Lessees

The agency is also adding a new paragraph (iv) to subsection (a)(2) of § 577.7. The new paragraph requires that a lessor must send its lessees a copy of the manufacturer's notification letter by first-class mail within 10 days of receiving it. No commenter opposed this proposal.

Disclaimers

NHTSA is amending § 577.8, "Disclaimers," to make clear that that section's prohibition of disclaimers of the existence of a safety-related defect or noncompliance applies equally to follow-up notifications. The agency received no comments on this proposal.

Follow-up Notification

The final rule also adds a new § 577.10, which sets forth the criteria under which the agency will determine whether a manufacturer must conduct a follow-up notification campaign and the requirements applicable to such campaigns. This new section implements 49 U.S.C. 30119(e) (formerly section 153(d) of the Act), which authorizes NHTSA to require manufacturers to send a second notification of a defect or noncompliance, "in such manner as (NHTSA) may by regulation prescribe," where the agency determines that the initial notification campaign has not resulted in an adequate number of vehicles or items of equipment being returned for remedy. With minor changes, the final rule adopts the proposals in the NPRM.

New § 577.10(b) sets forth criteria that NHTSA may consider in making a determination under this provision. The criteria include, but are not limited to, the percentage of covered vehicles or items of equipment that have already been returned for remedy; the amount of time that has elapsed since the prior notification was sent; the likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy; the seriousness of the safety risk from the defect or noncompliance; and whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations.

The agency does not intend that this list of factors be exhaustive. Accordingly, paragraph (b)(6) makes it clear that NHTSA may consider additional factors as it deems appropriate.

Section 577.10(c) provides that a manufacturer is required to provide follow-up notification only with respect

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to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s). Pursuant to paragraph (d), the manufacturer is required to send the follow-up notification to all categories of recipients (i.e., owners, first purchasers, lessors, lessees, manufacturers, distributors, dealers, and retailers) that received the prior notification(s), except where the agency determines that a lesser scope is appropriate.

Paragraph (e) describes the required contents of the follow-up notification. The notice will have to include a statement that identifies it as a follow-up to an earlier notification, and must urge the recipient to present the vehicle or item of equipment for remedy. In addition, except where the agency determines otherwise, the notice must include the other information required to be included in an initial notification letter.

Paragraph (f) requires that the outside of the envelope or other communication containing the follow-up notification meet the same requirements as an envelope containing an initial notification, as set forth in 49 CFR 577.5(a). Unlike the NPRM, the final rule does not recite those requirements verbatim, but rather incorporates them by reference to the appropriate section of these regulations.

Paragraph (g) allows the agency to authorize use of postcards or other media rather than letters for follow-up notification where appropriate.

AAMA and Blue Bird commented that the regulation is not needed because manufacturers already send out follow-up notification, and that follow-up notifications are likely to cause owner confusion. These comments challenge the wisdom of the decision by Congress to authorize NHTSA to require follow-up notification, rather than the substantive merit of NHTSA's proposed regulation. Since Congress has decided that it is appropriate to give NHTSA this authority, and has authorized NHTSA to promulgate implementing regulations, these comments are not persuasive.

AIAM and Toyota commented that the regulation should mandate, rather than permit, NHTSA to consider the factors listed. The agency believes that mandatory language would be unwise because it would unduly restrict its discretion. Flexibility is essential to administration of the agency's recall program, given the highly varied nature of safety recalls. However, the agency will generally consider the enumerated factors, since they are relevant to the need for a follow-up notification.

The NPRM proposed that the scope, timing, form and content of the follow-up notification would be "designed by the Administrator, in consultation with the manufacturer." AIAM commented that the regulation should state that the follow-up notification letter will be "developed," rather than "designed" by the agency, and that the content of the letter should be a cooperative effort between NHTSA and the manufacturer. Toyota also commented that the agency should only be involved in "approving" the follow-up notification, not in "designing" it; and that if NHTSA has problems with a manufacturer's follow-up notification, it should consult with the manufacturer to work out the problem.

The agency interprets these comments to express reservations about the extent of NHTSA's control over follow-up notification letters. The agency believes that it must have such control, in order to carry out its statutory responsibility to maximize the effectiveness of recall campaigns. However, the agency has decided to change the word "designed" in § 577.10(a) to "established," to reflect the fact that the scope, timing, form, and content of the follow-up notification will result from consultation between NHTSA and the manufacturer, rather than from independent NHTSA action.

Advocates and CAS commented that evaluation of safety risk should not be a criterion equal to the others, since the existence of a recall indicates that there is a safety risk. While recalls under the Act are by their nature safety-related, some defects and noncompliances pose a much greater risk to safety than others, by virtue of such factors as the severity of the consequences and the likelihood that the problem will occur. NHTSA believes that it is entirely appropriate for it to consider the degree of the risk to safety as a factor in deciding whether to require a manufacturer to undertake a follow-up notification. However, the agency notes that it is not required to give equal weight to all of the listed criteria.

Advocates and CAS also favored setting a minimum permissible completion rate for all recalls, with follow-up notification for all recalls falling below that percentage. Midland commented that NHTSA should define what is considered to be an inadequate completion rate; and Navistar said NHTSA should set "guidelines" for when a follow-up notification would be required.

As previously stated, NHTSA believes that it is important for it to retain substantial discretion and flexibility in order to carry out the responsibility to maximize the effectiveness of recalls. Setting a minimum completion requirement for all recalls would seriously restrict this flexibility. Moreover, such a system would be neither fair nor workable, given the number of factors that affect the completion rate, such as the nature of the item (whether vehicle, tire or equipment), its age, the seriousness of the defect, and the means used to notify owners (e.g., individual notification letter or public notice).

CAS suggested that follow-up notification should be required for all recalls involving a defect or noncompliance that poses a significant safety risk. In addition to the difficulty of defining when a defect or noncompliance presents a "significant safety risk," the agency does not believe it would be reasonable to impose a requirement such as this, which fails to take into account whether a recall has achieved a high completion rate.

CAS also commented that the follow-up notification should be sent by certified mail, not post card. NHTSA continues to believe that it should retain discretion to decide what medium or media would be the most effective for follow-up notification in each individual case.

Mack Truck supported the follow-up notification regulation, noting that it has a practice of automatically sending a second notice if recall work has not been done on a vehicle by the end of the second calendar quarter of a recall campaign.

Navistar commented that the recall completion rate should be based on the number of vehicles in service, not the number produced. The agency assumes that this comment refers to one of the factors the NPRM listed for consideration by NHTSA in deciding whether to require follow-up notification: the percentage of vehicles or items of equipment that have been presented for remedy (proposed § 577.10(b)(1)). The agency believes it is reasonable to continue its practice of computing recall completion rates based on the number of recalled units produced, rather than the number in service as suggested by Navistar. The number of items produced is a definite number that is provided to NHTSA by the manufacturer when it reports its decision that there is a safety-related defect or noncompliance, whereas the number of items in service can never be more than a rough estimate. Having such a definite number makes it possible for NHTSA to compute recall completion rates with greater accuracy than would be possible using an estimate of how many items are in service.

Moreover, the number of items in service will change during the course of any recall, which would greatly complicate the task of arriving at precise completion rates. Moreover, the final rule specifically provides that recall completion rate is only one of several criteria upon which the agency will base a decision to require a follow-up notification. In deciding whether a recall completion rate is inadequate, the agency will consider the age of the recalled items and other factors which might significantly reduce the number of items in service at the time of the recall. It recognizes that a lower completion rate is to be expected where there has been significant attrition in the population of items in use by the time of the recall, or where the nature of the recalled item (e.g., something that is disposable or very inexpensive) makes it less likely that owners will respond to a recall.

Navistar also commented that NHTSA should only require a follow-up notification where it can be shown that it will significantly improve the completion rate. Such a standard is unworkable and is also inconsistent with the language Congress used in authorizing NHTSA to require follow-up notification. It would be difficult, if not impossible, to demonstrate in advance that a follow-up notification would result in a significant improvement of the recall completion rate. Moreover, the Navistar standard is inconsistent with 49 U.S.C. 30119(e), which authorizes the agency to order a second notification when "notification * * * has not resulted in an adequate number of vehicles or items of motor vehicle equipment being returned for remedy."

Navistar also expressed concern that unnecessary follow-up notices could result in customer confusion and wasted effort, especially when recalled vehicles are old and a significant number have been scrapped. The agency believes that the criteria to be considered by the agency will provide adequate protection against the "wasted effort" that Navistar fears.

Polk commented that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for renotification purpose would be extremely difficult. The agency has addressed these concerns in the sections of the final rule concerned with leased vehicle notification by requiring all notification letters to include a statement directing lessors to notify their lessees. See 49 CFR 577.5(i).

Toyota suggested adding another factor to be considered: the likelihood that the owner will experience the safety-related defect or noncompliance. NHTSA does not believe that this is an appropriate criterion. In the large majority of recalls, there is no way of predicting the likelihood that an owner will experience the defect or noncompliance. It would be inconsistent with the purpose of the Act, which is to prevent accidents, injuries and fatalities before they happen, to fail to notify an owner based on a prediction that the problem is not likely to occur in a particular vehicle. The final rule does take account of the fact that there may be instances in which the population that is appropriate for follow-up notification will be smaller than that covered by the original recall campaign. Section 577.10(d) allows NHTSA to narrow the scope of the population that will receive follow-up notification in appropriate instances.

Toyota also commented that a low completion rate should not be the only reason the agency uses to justify requiring renotification. In § 577.10(b), the final rule lists five specific factors, including but not limited to the completion rate, that the agency may consider. It also authorizes NHTSA to consider other factors that are consistent with the purpose of the Act.

NHTSA's Toll-Free Hotline

The agency is adopting a final rule amending § 577.5(g)(1)(vii) to state that the telephone number for its toll-free Auto Safety Hotline for calls originating in the Washington, D.C. area is (202) 366–0123. The agency received no comments on this proposed change.

Technical Amendments

NHTSA is adopting several technical amendments to 49 CFR Parts 552, 554, 573 and 577 that are needed to make these parts consistent with the new codification of the enabling statute as Chapter 301 of Title 49 of the United States Code (Pub. L. 103–272 (July 5, 1994)) and with the language of the amendments adopted today. These amendments did not appear in the NPRM, but do not require notice and comment because they are technical amendments only. They do not change the meaning of these regulations.

With respect to part 552, the technical amendments are as follows. Because the final rule amends the title of § 552.8 to replace "Determination whether to commence a proceeding" with "Notification of agency action on the petition," the contents to part 552 is amended to reflect this change. In addition, § 30162(a) of Title 49 of the United States Code now refers to a petition for a proceeding to *decide*, rather than to *determine*, whether to issue an order requiring a manufacturer to provide notification and remedy for a safety-related defect or noncompliance. Accordingly, § 552.1, Scope, is amended to change the word "determination" to "decision." Section 552.2, Purpose, is amended to change "determinations" to "decisions." Section 552.3, General, is amended to change "determine" to "decide." The first sentence of § 552.7, Public Meeting, is amended to change "determination" to "decision." Finally, § 552.9(b), Grant of Petition, is amended to change "determine" to "decide."

The agency is also adopting the following technical amendments to part 554. The contents section is amended to change the word "determinations" to "decisions" for the headings of §§ 554.10 and 554.11. Section 554.2, Purpose, is amended to change "National Traffic and Motor Vehicle Safety Act (the Act)" to "49 U.S.C. Chapter 301." Section 554.3, Application, is amended to change the statutory citations to reflect the new codification in Title 49. The headings of §§ 554.10 and 554.11 are amended to change the word "determinations" to "decisions," in order to be consistent with the new statutory language at 49 U.S.C. 30118. The text of these subsections is also amended to replace the words "determine[s]" or "determination" with "decide[s]" or "decision", respectively, wherever they appear.

The technical amendments to part 573 are as follows. Paragraphs (b)–(f) of § 573.3 are amended to change the words "determined to exist" to "decided to exist." The definition of "Act" in the first paragraph of § 573.4, Definitions, is amended to replace "the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381, *et seq.*)" with "49 U.S.C. Chapter 301." The agency is also amending the second sentence of § 573.5(c)(1) to replace "§ 110(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1399(e)" with "49 U.S.C. § 30164(a)." The latter two amendments are necessary because the July 1994 codification repealed the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and replaced it with a codification in Title 49 of the United States Code.

The agency is adopting the following technical amendments to part 577. The Contents to part 577 is amended by changing "Sec. 577.5 Notification pursuant to a manufacturer's determination" to "Sec. 577.5 Notification pursuant to a manufacturer's decision"; and by changing "Sec. 577.6 Notification pursuant to Administrator's

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determination" to "Sec. 577.6 Notification pursuant to Administrator's decision." Section 577.4, Definitions, is amended by changing the definition of the term "Act" from "the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1391 *et seq.*" to "49 U.S.C. Chapter 301."

The title of section 577.5 is changed from "Notification pursuant to a manufacturer's determination" to "Notification pursuant to a manufacturer's decision." The first sentence of § 577.5(a) is amended by changing "section 157 of the Act" to "49 U.S.C. 30118(e)." Paragraphs (1) and (2) of § 577.5(c) are amended to replace the word "determined" with "decided" in the text to be used by manufacturers in recall notification letters. Section 577.5(d) is amended by changing "determines" to "decides."

The title of § 577.6 is changed from "Notification pursuant to Administrator's determination" to "Notification pursuant to Administrator's decision." Section 577.6(a) is amended by changing "section 152 of the Act" to "49 U.S.C. section 30118(b)." Section 577.6(b) is amended by changing "determines" to "decides" in subsection (3); by changing "determination" to "decision" in subsection (5); by changing "determination" to "decision" in subsections (9)(i) (A) and (C); and by changing "determination" to "decision" in subsections (10)(iv) and (11). Section 577.6(c)(1) is amended by changing "determination" to "decision." Section 577.7, Time and manner of notification, is amended by revising subsection (a)(2)(ii)(B) by replacing "determined" by "decided," by replacing "necessary" with "required" and by replacing "determine" with "require."

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this final rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures.

The provisions of this final rule that would result in additional costs would be the one that extends from five to a maximum of eight years the period for which motor vehicle manufacturers must retain records concerning malfunctions that may be related to motor vehicle safety; and the one that authorizes NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to mail a follow-up notification of a safety-related defect or noncompliance if it determines that the number of vehicles or items of equipment that have received the remedy is inadequate.

Other provisions that will result in additional costs are the one that would require vehicle lessors to mail notification of safety-related defects or noncompliances with Federal motor vehicle safety standards to each lessee of a vehicle covered by the notification and remedy campaign and the requirement that lessors maintain lists of lessees to whom they send such notification.

The costs associated with requiring manufacturers to retain records for a longer period should be minimal if not negligible; and would be offset by the benefit that would result from the manufacturers' ability to determine the existence of safety-related defects and noncompliances with safety standards in a wider range of vehicles, as well as the enhancement of NHTSA's enforcement efforts, particularly with respect to latent defects and noncompliances. The cost of sending out a follow-up notification will be less than that incurred for an initial notification, as it will be required only in those cases in which the agency makes a determination that the response to the first notification is inadequate; and will only involve a fraction of the vehicles or items of equipment subject to the initial recall, i.e., those that have not yet been remedied. The cost of the follow-up notification will be outweighed by the benefit of increasing the number of noncompliant and defective vehicles and items of motor vehicle equipment that are remedied. In addition, the provisions relating to follow-up notification are required by the amendments added by ISTEA.

The cost of vehicle lessor notification of lessees is offset by the safety benefit that would result from the increased number of individuals who would return for remedy a vehicle or item of equipment that has a safety-related defect or does not comply with a Federal motor vehicle safety standard. In addition, this provision is required by the amendments added by ISTEA.

The cost of the requirement that vehicle lessors maintain lists of lessees of leased vehicles involved in notification and remedy campaigns is outweighed by the fact that these records will enable NHTSA to enforce the statutory requirement that lessees be notified of the existence of safety-related defects or standards noncompliances in their vehicles and of the availability of a remedy without charge for the defect or noncompliance. In addition, the information to be retained is minimal, consisting only of the identities of the vehicle, the lessee and the recall, and the date the lessor sent the notification to the lessee.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The regulations implementing the statutory amendment authorizing NHTSA to require a follow-up notification in instances where it determines that an initial notification has not resulted in the remedy of an adequate number of defective or non-complying vehicles or items of motor vehicle equipment will affect motor vehicle equipment manufacturers who are small businesses. However, the agency anticipates that the effect on those entities will not be significant because the proposed regulations implementing this provision allow flexibility in the amount of information that would be required for the second notification, and also permit reducing postage costs through the use of post-cards instead of first-class letters in appropriate circumstances.

The new provisions requiring lessors to notify lessees of safety-related defects or noncompliances in leased motor vehicles, which are being adopted pursuant to a statutory amendment requiring such notification, will also affect vehicle lessors who are small businesses. However, NHTSA anticipates that the effect of these amendments on these entities will be minimized by the exception to the requirement for notification by the lessor in cases where a lessor and a manufacturer have agreed that the manufacturer will notify lessees directly. In addition, the amendments provisions should result in a safety benefit as more leased vehicles will be returned for remedy of safety-related defects and noncompliances with Federal motor vehicle safety standards.

With respect to the additional recordkeeping requirements adopted for vehicle lessors, the amount of information required is small and should not place any significant cost burdens on the lessors. The information is essential to the agency's ability to enforce the new provisions requiring lessors to notify lessees of safety-related defects and noncompliances with Federal motor vehicle safety standards in their vehicles, and the economic impact will be outweighed by the benefit to safety from NHTSA's ability to enforce this provision effectively.

To the extent the above amendments do have an impact on small businesses, those impacts are minimal and would be offset by the safety benefits that they would provide.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has analyzed the environmental impacts of this rulemaking action and determined that implementation of this action will not have a significant impact on the quality of the human environment. The new record-keeping requirements will not introduce any new or harmful matter into the environment.

4. Paperwork Reduction Act

Certain provisions in the final rule that would require manufacturers to submit information to NHTSA, and to retain other information, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The provision in the rule that would require vehicle lessors to retain information is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this requirement has been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the proposed information collection requirements were solicited in the NPRM. No comments on these requirements were received by NHTSA.

5. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 552

Administrative practice and procedure; Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 554

Administrative practice and procedure; Motor vehicle safety.

49 CFR Part 573

Imports; Motor vehicle safety; Motor vehicles; Reporting and recordkeeping requirements; tires.

49 CFR Part 576

Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 577

Motor vehicle safety.

In consideration of the foregoing, parts 552, 554, 573, 576, and 577 of title 49 of the Code of Federal Regulations are amended as follows:

PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NONCOMPLIANCE ORDERS

1. The authority citation for Part 552 is revised to read as follows:

Authority: 49 U.S.C. 30111, 30118, 30162; delegation of authority at 49 CFR 1.50.

2.–3. Section 552.1 is revised to read as follows:

§ 552.1 Scope.

This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to 49 U.S.C. Chapters 301, 305, 321, 323, 325, 327, 329 and 331 to initiate rulemaking or to make a decision that a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety.

4. Section 552.2 is revised to read as follows:

§ 552.2 Purpose.

The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance decisions, and to inform the public of the procedures following in response to such petitions.

5. Section 552.3 is revised to read as follows:

§ 552.3 General.

Any interested person may file with the Administrator a petition requesting him:

(a) to commence a proceeding respecting the issuance, amendment or revocation of a motor vehicle safety standard, or

(b) to commence a proceeding to decide whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety.

6. Section 552.6 is revised to read as follows:

§ 552.6 Technical review.

The appropriate Associate Administrator conducts a technical review of the petition. The technical review may consist of an analysis of the material submitted, together with information already in the possession of the agency. It may also include the collection of additional information, or a public meeting in accordance with § 552.7.

7. Section 552.8 is revised to read as follows:

§ 552.8 Notification of agency action on the petition.

After considering the technical review conducted under § 552.6, and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities and the likelihood of success in litigation which might arise from the order, the Administrator will grant or deny the petition. NHTSA will notify the petitioner of the decision to grant or deny the petition within 120 days after its receipt of the petition.

PART 554—STANDARDS ENFORCEMENT AND DEFECT INVESTIGATIONS

8. The authority citation for part 554 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30111–112, 30117–121, 30162, 30165–67; delegation of authority at 49 CFR 1.50.

9.–10. Section 554.2 is revised to read as follows:

§ 554.2 Purpose.

The purpose of this part is to inform interested persons of the procedures followed by the National Highway Traffic Safety Administration in order more fairly and effectively to implement 49 U.S.C. Chapter 301.

11. Section 554.3 is revised to read as follows:

§ 554.3 Application.

This part applies to actions, investigations, and defect and noncompliance decisions of the National Highway traffic Safety Administration under 49 U.S.C. 30116, 30117, 30118, 30120 and 30165.

12. Section 554.10 is amended by revising paragraphs (a), (b), (c), introductory test, (c)(2) and (c)(4), and by removing paragraph (e), to read as follows:

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§ 554.10 Initial decisions and public meetings.

(a) An initial decision of failure to comply with safety standards or of a safety-related defect is made by the Administrator or his delegate based on the completed investigative file compiled by the appropriate office.

(b) The decision is communicated to the manufacturer in a letter which makes available all information on which the decision is based. The letter advises the manufacturer of his right to present information, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety. The letter also specifies the time and place of a public meeting for the presentation of arguments or sets a date by which written comments must be submitted. Submission of all information, whether at a public meeting or in written form, is normally scheduled about 30 days after the initial decision. The deadline for submission of information can be extended for good cause shown.

(c) Public notice of an initial decision is made in a **Federal Register** notice that—

* * * * *

(2) Summarizes the information on which the decision is based.

* * * * *

(4) States the time and place of a public meeting or the deadline for written submission in which the manufacturer and interested persons may present information, views, and arguments respecting the decision.

* * * * *

13. Section 554.11 is revised to read as follows:

§ 554.11 Final decisions.

(a) The Administrator bases his final decision on the completed investigative file and on information, views, and arguments submitted at the public meeting.

(b) If the Administrator decides that a failure to comply or a safety-related defect exists, he orders the manufacturer to furnish the notification specified in 49 U.S.C. 30118 and 30119 and to remedy the defect or failure to comply.

(c) If the Administrator closes an investigation following an initial determination, without making a final determination that a failure to comply or a safety-related defect exists, he or she will so notify the manufacturer and publish a notice of that closing in the **Federal Register**.

(d) A statement of the Administrator's final decision and the reasons for it appears in each completed public file.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

14. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

§ 573.3 [Amended]

15. Section 573.3 is amending by revising paragraphs (b) through (f) to read as follows:

* * * * *

(b) In the case of a defect or noncompliance decided to exist in a motor vehicle or equipment item imported into the United States, compliance with §§ 573.5 and 573.6 by either the fabricating manufacturer or the importer of the vehicle or equipment item shall be considered compliance by both.

(c) In the case of a defect or noncompliance decided to exist in a vehicle manufactured in two or more stages, compliance with §§ 573.5 and 573.6 by either the manufacturer of the incomplete vehicle or any subsequent manufacturer of the vehicle shall be considered compliance by all manufacturers.

(d) In the case of a defect or noncompliance decided to exist in an item of replacement equipment (except tires) compliance with §§ 573.5 and 573.6 by the brand name or trademark owner shall be considered compliance by the manufacturer. Tire brand name owners are considered manufacturers (49 U.S.C. 10102(b)(1)(E)) and have the same reporting requirements as manufacturers.

(e) In the case of a defect or noncompliance decided to exist in an item of original equipment used in the vehicles of only one vehicle manufacturer, compliance with §§ 573.5 and 573.6 by either the vehicle or equipment manufacturer shall be considered compliance by both.

(f) In the case of a defect or noncompliance decided to exist in original equipment installed in the vehicles of more than one manufacturer, compliance with § 573.5 is required of the equipment manufacturer as to the equipment item, and of each vehicle manufacturer as to the vehicles in which the equipment has been installed. Compliance with § 573.6 is required of the manufacturer who is conducting the recall campaign.

16. Section 573.4 is amended by revising the definition of "Act" and by adding the following definitions, in alphabetical order, to read as follows:

§ 573.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 301.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

Readable form means a form readable by the unassisted eye or readable by machine. If readable by machine, the submitting party must obtain written confirmation from the Office of Defects Investigation immediately prior to submission that the machine is readily available to NHTSA. For all similar information responses, once a manufacturer has obtained approval for the original response in that form, it will not have to obtain approval for future submissions in the same form. In addition, all coded information must be accompanied by an explanation of the codes used.

17. Section 573.5 is amended by revising the second sentence of paragraph (c)(1) and the introductory text of paragraph (c)(2), by adding paragraphs (c)(2)(iv) and (v), by redesignating paragraph (c)(8) as paragraph (c)(8)(i), by adding new paragraphs (c)(8)(ii)—(vi), and by adding new paragraphs (c)(10) and (c)(11), to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * * In the case of a defect or noncompliance decided to exist in an imported vehicle or item of equipment, the agency designated by the fabricating manufacturer pursuant to 49 U.S.C. section 30164(a) shall be also stated.

* * *

(2) Identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall.

* * * * *

(iv) In the case of motor vehicles or items of motor vehicle equipment in which the component that contains the defect or noncompliance was manufactured by a different manufacturer from the reporting manufacturer, the reporting manufacturer shall identify the component and the manufacturer of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the identity of the manufacturer of the component, it shall identify the entity from which it was obtained.

(v) In the case of items of motor vehicle equipment, the manufacturer of the equipment shall identify by name, business address, and business telephone number every manufacturer that purchases the defective or noncomplying component for use or installation in new motor vehicles or new items of motor vehicle equipment.

* * * * *

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. The manufacturer's program will be available for inspection in the public docket, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590.

(ii) If a manufacturer anticipates that its notification campaign will commence more than 30 days after it has notified NHTSA that a safety-related defect or noncompliance exists, or anticipates that the notification campaign will not be completed within 75 days after it has notified NHTSA of that decision, the manufacturer shall include with its report to NHTSA a proposed schedule for the notification campaign, from commencement through completion. If the remedy for the defect or noncompliance is not available at the time of the owner notification, the report shall state when the remedy will be provided to owners. The manufacturer shall also identify and describe in detail the factors on which the proposed schedule is based. The manufacturer's proposed schedule shall be subject to disapproval by the Administrator, if the Administrator determines that it will lead to unreasonable delays in the notification of and remedy for the defect or noncompliance.

(iii) The manufacturer shall describe any factors that it anticipates could interfere with its ability to adhere to the proposed schedule and state with specificity the likely effect of each such factor.

(iv) A manufacturer that is unable to conduct its notification campaign in accordance with the schedule submitted pursuant to paragraph (c)(8)(ii) of this section, or that is otherwise unable to complete owner notification within 75 days after notifying NHTSA of its defect or noncompliance decision, shall promptly advise NHTSA of its inability to do so and provide an explanation for such inability, along with a revised schedule, or a new schedule in those instances in which the manufacturer had not previously submitted a schedule. Such submission shall contain the basis for the new or revised schedule, which shall also be subject to disapproval by the Administrator.

(v) If a manufacturer intends to file a petition for an exemption from the recall requirements of the Act on the basis that a defect or noncompliance is inconsequential as it relates to motor vehicle safety, it shall notify NHTSA of that intention in its original report to NHTSA of the defect or noncompliance. If such a petition is filed and subsequently denied, the time period under which an owner notification schedule must be filed under paragraph (c)(8) of this section shall run from the date of the denial of the petition.

(vi) If a manufacturer advises NHTSA that it intends to file such a petition, and does not do so within the 30-day period established by 49 CFR 556.4(c), the time periods for ascertaining whether an owner notification schedule must be filed under this section shall run from the end of that 30-day period. Any such schedule must be filed no later than the fifth business day after that date.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter to the Office of Defects Investigation ("ODI") no fewer than five Federal government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

(11) The manufacturer's campaign number, if it is not identical to the identification number assigned by NHTSA.

18. Section 573.6 is amended by revising the first sentence of paragraph (a), adding a new paragraph (b)(6) and adding a new paragraph (d) to read as follows:

§ 573.6 Quarterly reports.

(a) Each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section. * * *

(b) * * *

(6) In reports by equipment manufacturers, the number of items of equipment repaired and/or returned by dealers, other retailers, and distributors to the manufacturer prior to their first sale to the public.

* * * * *

(d) The reports required by this section shall be submitted in accordance with the following schedule, except that if the due date specified below falls on a Saturday, Sunday or Federal holiday, the report shall be submitted on the next day that is a business day for the Federal government:

(1) For the first calendar quarter (January 1 through March 31), on or before April 30;

(2) For the second calendar quarter (April 1 through June 30), on or before July 30;

(3) For the third calendar quarter (July 1 through September 30), on or before October 30; and

(4) For the fourth calendar quarter (October 1 through December 31), on or before January 30.

19. Section 573.7 is amended by revising the heading of the section and by adding new paragraphs (d) and (e) to read as follows:

§ 573.7 Lists of purchasers, owners, lessors and lessees.

* * * * *

(d) If a manufacturer has in its possession at the time it sends notification of a safety-related defect or noncompliance information that a vehicle concerning which notification has been sent is a leased motor vehicle, the list(s) maintained by a manufacturer pursuant to paragraph (a) of this section shall identify the vehicle as a leased motor vehicle, and shall identify the person or entity to whom notification was sent as the lessor or lessee of the vehicle (as appropriate), if that information is known to the manufacturer. The manufacturer may also maintain a separate list which includes only leased vehicles, provided that it is clearly identified as such, and that it meets the other requirements for a list prepared pursuant to paragraph (a) of this section.

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(e) Each lessor of leased motor vehicles shall maintain, in a form suitable for inspection, such as computer information storage devices or card files, a list of the names and addresses of all lessees to which the lessor has provided notification of a defect or noncompliance pursuant to 49 CFR 577.5(i). The list shall also include the make, model, and vehicle identification number of each such leased vehicle, and either the date on which the lessor mailed notification of the defect or noncompliance to the lessee, or a statement that the manufacturer agreed on a specified date to mail the notification directly to the lessee. A manufacturer that provides notification directly to lessees shall maintain a list containing the same information as that required by this paragraph to be maintained by lessors sending notifications to lessees. The information required by this paragraph must be retained by the manufacturer or lessor (whichever sent the notification to the lessee) for one calendar year from the date the vehicle lease expires.

20. Section 573.8 is revised to read as follows:

§ 573.8 Notices, bulletins, and other communications.

Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiqués and product improvement bulletins), other than those required to be submitted pursuant to § 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.

PART 576—RECORD RETENTION

21. The authority citation for part 576 is revised to read as follows:

Authority: 49 U.S.C. 30112, 30115, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

22. Section 576.5 is revised to read as follows:

§ 576.5 Basic requirements.

Each manufacturer of motor vehicles shall retain as specified in § 576.7 every record described in § 576.6 for eight years from the last date of the model year in which the vehicle to which it relates was produced.

23. Section 576.6 is revised to read as follows:

§ 576.6 Records.

Records to be retained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under, or claims made under, warranties; service reports or similar documents, including electronic transmissions, from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of malfunctions that may be related to motor vehicle safety contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

24. The authority citation for part 577 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30115, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

25.–26. Section 577.4 is amended by revising the definition of "Act", and by adding the following definitions, in alphabetical order, to read as follows:

§ 577.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 30101–30169.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

* * * * *

27. Section 577.5 is amended by revising the heading of the section and the fourth sentence of paragraph (a), by adding a new fifth, sixth and seventh sentence to paragraph (a), by revising paragraphs (c)(1) and (2) and the parenthetical in paragraph (g)(1)(vii), and by adding new paragraphs (h) and (i), to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) * * * The information required by paragraphs (d) through (h) of this section may be presented in any order. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the words "SAFETY," RECALL," and "NOTICE," all in capital letters and in type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. Except where the format of the envelope has been previously approved by NHTSA, each manufacturer must submit the envelope format it intends to use to NHTSA at least 5 Federal government business days before mailing to owners, in the same manner as is required by § 573.5(c)(9) for owner notification letters.

* * * * *

(c) * * *

(1) "(Manufacturer's name or division) has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);" or

(2) "(Manufacturer's name or division) has decided that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard)."

(g) * * *

(1) * * *

(vii) * * * (Washington, DC area residents may call 202–366–0123) * * *

* * * * *

(h) A statement that describes a lessor's obligation under Federal law to provide a lessee of the vehicle to which the notification letter refers with a copy of the letter; and to maintain a record which identifies the lessee(s) to whom it sent a copy of the letter, the date it sent the letter, and the Vehicle Identification Number(s) of the vehicle(s) that it has leased to that lessee and to which the notification applies. The statement must also include the definition of "lessor" set forth in § 577.4 of this part. If the notification is being sent directly from a manufacturer to an individual or entity that the manufacturer knows to be a lessee, the manufacturer need not include a definition of lessor, but must state the requirement of Federal law regarding notification of lessees and that it is providing notification in place of the lessor.

(i) Any lessor who receives a notification of a determination of a safety-related defect or noncompliance pertaining to any leased motor vehicle shall send a copy of such notice to the lessee as prescribed by § 577.7(a)(2)(iv). This requirement applies to both initial and follow-up notifications, but does not apply where the manufacturer has notified a lessor's lessees directly.

28. Section 577.6 is amended by revising the heading of the section and paragraph (a), paragraphs (b)(2)(i) and (ii), (b)(3), and (b)(5), paragraphs (b)(9)(i)(A) and (C), and paragraphs (b)(10)(iv), (b)(11), and (c)(1), to read as follows:

§ 577.6 Notification pursuant to Administrator's decision.

(a) *Agency-ordered notification.* When a manufacturer is ordered pursuant to 49 U.S.C. 30118(b) to provide notification of a defect or noncompliance, he shall provide such notification in accordance with §§ 577.5 and 577.7, except that the statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator of the National Highway Traffic Safety Administration.

(b) * * *

(2) * * *

(i) "The Administrator of the National Highway Traffic Safety Administration has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a manufacturer of motor vehicles; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment);" or

(ii) "The Administrator of the National Highway Traffic Safety Administration has decided that (identified motor vehicles in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment) fail to conform to federal Motor Vehicle Safety Standard No. (number and title of standard)."

(3) When the Administrator decides that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, the manufacturer may include an additional statement to that effect.

* * * * *

(5) A clear description of the Administrator's stated basis for his decision, as provided in his order, including a brief summary of the evidence and reasoning that the Administrator relied upon in making his decision.

* * * * *

(9) * * *

(i) * * *

(A) A statement that the remedy will be provided without charge to the owner if the Court upholds the Administrator's decision;

* * * * *

(C) A statement that, if the Court upholds the Administrator's decision, he will reimburse the owner for any reasonable and necessary expenses that the owner incurs (not in excess of any amount specified by the Administrator) in repairing the defect or noncompliance following a date, specified by the manufacturer, which shall not be later than the date of the Administrator's order to issue this notification.

* * * * *

(10) * * *

* * * * *

(iv) The manufacturer's recommendations of service facilities where the owner could have the repairs performed, including (in the case of a manufacturer required to reimburse if the Administrator's decision is upheld in the court proceeding) at least one service facility for whose charges the owner will be fully reimbursed if the Administrator's decision is upheld.

(11) A statement that further notice will be mailed by the manufacturer to the owner if the Administrator's decision is upheld in the court proceeding.

* * * * *

(c) * * *

(1) The statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator and that his decision has been upheld in a proceeding in the Federal courts; and

* * * * *

29. Section 577.7 is amended by adding a new sentence at the end of paragraph (a)(1), by adding a new last sentence to paragraph (a)(2)(i), and by adding new paragraph (a)(2)(iv), and revising paragraph (a)(2)(ii)(B), to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) Be furnished within a reasonable time after the manufacturer first decides that either a defect that relates to motor vehicle safety or a noncompliance exists. The Administrator may order a manufacturer to send the notification to owners on a specific date where the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay.

(2) * * *

(i) * * * The manufacturer shall also provide notification to each lessee of a leased motor vehicle that is covered by an agreement between the manufacturer and a lessor under which the manufacturer is to notify lessees directly of safety-related defects and noncompliances.

(ii) * * *

* * * * *

(B) (Except in the case of a tire) if decided by the Administrator to be required for motor vehicle safety, by public notice in such manner as the Administrator may require after consultation with the manufacturer.

* * * * *

(iv) In the case of a notification to be sent by a lessor to a lessee of a leased motor vehicle, by first-class mail to the most recent lessee known to the lessor. Such notification shall be mailed within ten days of the lessor's receipt of the notification from the vehicle manufacturer.

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30. Section 577.8 is revised to read as follows:

§ 577.8 Disclaimers.

(a) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a defect which relates to motor vehicle safety shall not, except as specifically provided in this part, contain any statement or implication that there is no defect, that the defect does not relate to motor vehicle safety, or that the defect is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

(b) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a noncompliance with an applicable motor vehicle safety standard shall not, except as specifically provided in this part, contain any statement or implication that there is not a noncompliance, or that the noncompliance is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

31. A new § 577.10 is added to read as follows:

§ 577.10 Follow-up notification.

(a) If, based on quarterly reports submitted pursuant to § 573.6 of this part or other available information, the Administrator decides that a notification of a safety-related defect of a noncompliance with a Federal motor vehicle safety standard sent by a manufacturer has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Administrator may direct the manufacturer to send a follow-up notification in accordance with this section. The scope, timing, form, and content of such follow-up notification will be established by the Administrator, in consultation with the manufacturer, to maximize the number of owners, purchasers, and lessees who will present their vehicles or items of equipment for remedy.

(b) The Administrator may consider the following factors in deciding whether or not to require a manufacturer to undertake a follow-up notification campaign:

(1) The percentage of covered vehicles or items of equipment that have been presented for the remedy;

(2) The amount of time that has elapsed since the prior notification(s);

(3) The likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy;

(4) The seriousness of the safety risk from the defect or noncompliance;

(5) Whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations; and

(6) Such other factors as are consistent with the purpose of the statute.

(c) A manufacturer shall be required to provide a follow-up notification under this section only with respect to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s).

(d) Except where the Administrator determines otherwise, the follow-up notification shall be sent to the same categories of recipients that received the prior notification(s).

(e) A follow-up notification must include:

(1) A statement that identifies it as a follow-up to an earlier communication;

(2) A statement urging the recipient to present the vehicle or item of equipment for remedy; and

(3) Except as determined by the Administrator, the information required to be included in the initial notification.

(f) The manufacturer shall mark the outside of each envelope in which it sends a follow-up notification in a manner which meets the requirements of § 577.5(a) of this part.

(g) Notwithstanding any other provision of this Part, the Administrator may authorize the use of other media besides first-class mail for a follow-up notification.

Issued on: March 24, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–8130 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 950118017–5081–02; I.D. 122994A]

RIN 0648–AH52

Atlantic Sea Scallop Fishery; Framework Adjustment 4; Temporary Reduction in Crew Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment temporarily adjusts the maximum crew limit on certain vessels participating in the scallop fishery from nine to seven through February 29, 1996.

EFFECTIVE DATE: May 1, 1995.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 4 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with an effective date for most measures of March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock; (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days-at-sea. Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. The amendment also includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the New England Fishery Management Council (Council) recommended lowering the maximum crew size limit from nine to seven until December 31, 1994. NMFS concurred and through Framework Adjustment 1, which was published on July 19, 1994 (59 FR 36720), with an effective date of August 17, 1994, lowered the maximum crew size from nine to seven until December 31, 1994.

Because the conditions that justified lowering the maximum crew size limit to seven still exist, the Council recommended extending the maximum crew size limit of seven through the end of the 1995–96 scallop fishing year.

The adjustments being made through the framework process (§ 650.40) are within the scope of analyses contained in Amendment 4 and the final supplemental environmental impact statement. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 1 and 4 (see **ADDRESSES**).

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 650, subpart C. The Council followed this procedure, by developing and analyzing the actions over the span of at least two Council meetings, on October 26 and December 8, 1994. However, because the December 8, 1994, meeting was not announced as the second and final of the two required meetings, the Council recommended that the Director, Northeast Region, NMFS (Regional Director) publish the measures contained in Framework Adjustment 4 as a proposed rule to ensure that the public has been afforded sufficient opportunity for notice and comment.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its October 26, 1994, and December 8, 1994, meetings. The comments made at those meetings, as well as written comments received, were discussed in detail in the proposed rule (60 FR 8622, February 15, 1955) and are not repeated here.

No additional comments were received during the comment period that followed publication of the proposed rule, and the proposed rule is adopted as final without change.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

When this rule was proposed, the Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities because: (1) It would be unlikely to force vessels to cease or substantially modify operations, (2) many vessels already carried crew sizes of seven or less because of low stock abundance of sea scallops, and (3) short-term benefits of harvesting immature sea scallops in 1995 that have never produced young for future years would be greatly outweighed by longer-term benefits to small entities for the next several years. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: March 29, 1995.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 650.21, paragraph (c) is revised to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port through February 29, 1996, and nine people aboard when not docked or moored in port thereafter, including the operator, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

* * * * *

[FR Doc. 95–8249 Filed 3–30–95; 3:55 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. 94AMA-FV-956-1; FV93-956-1PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for Walla Walla Sweet Onions in southeast Washington and northeast Oregon and provides growers the opportunity to vote in a referendum to determine if they favor the proposed order. For the purposes of this document, the term "Walla Walla Sweet Onions" refers to sweet onions grown in the proposed production area, which consists of designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon. The proposed order and agreement would authorize production and marketing research and marketing development and promotion projects, including paid advertising, and would authorize container markings. The order would be administered by a ten-member committee consisting of six producer members, three handler members, and a public member. The order would be financed by assessments on handlers of Walla Walla Sweet Onions grown in the production area. A primary objective of this program would be to improve producer returns by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Walla Walla Sweet Onion producers would vote in a referendum to determine if they favor issuance of the proposed marketing order.

DATES: The referendum shall be conducted from April 7 through April 14, 1995. The representative period for the purpose of the referendum herein ordered is January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: 503–326–2724, FAX: 503–326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: 202–690–0464, FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued October 26, 1993, and published in the **Federal Register** on October 29, 1993 (58 FR 58105); Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order, issued November 3, 1994, and published in the **Federal Register** on November 10, 1994 (59 FR 56254).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This proposed marketing agreement and order was formulated on the record of a public hearing held at Walla Walla, Washington, on November 15, 1993, to consider a proposed marketing agreement and order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). Approximately 25 witnesses, including Walla Walla Sweet Onion producers, handlers, and a Washington State University researcher, testified in support of the order. Proponents emphasized that Walla Walla Sweet Onion producers need a Federal marketing order to effectively compete with other sweet onion producing areas. No one present at the hearing testified in opposition to the proposed order. At the close of the hearing, January 15, 1994, was established as the date by which briefs, statements, and proposed corrections to the transcript were due. No briefs were received.

The proponents testified that Walla Walla Sweet Onion producers, in order to remain competitive with other sweet onion producing areas, must conduct research and promotion programs to reduce production and marketing costs and increase sales. Such programs should include production and marketing research projects and promotion projects, including paid advertising.

Testimony indicated that voluntary research and development efforts by the Walla Walla Sweet Onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop is produced in the proposed production area in Walla Walla County, Washington, and Umatilla County, Oregon, and individual producers and handlers cannot implement an effective research, marketing development, and promotion program. By contrast, most other onion growing areas in the United States are large enough to convince private entities, such as seed companies, to conduct production research and developmental efforts with the result being new varieties specifically suited to those areas. Proponents believe that an industry-wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even two or three producers cannot marshal the resources necessary to conduct effective research, marketing, and promotion programs including paid advertising.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 3, 1994, filed with the Hearing Clerk, U. S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions Thereto by December 12, 1994.

One exception was received from Mr. David R. Darrington of Agri-Pack, Inc., Pasco, Washington. Mr. Darrington's exception concerned : (1) His belief that the proponent group's intent was to limit the production of Walla Walla Sweet Onions and competition among Walla Walla producers and handlers; (2) his belief that low producer returns in recent years were due to low quality onions; (3) the extent of sweet onion production in the State of Washington; (4) the sweetness of Walla Walla onions on a season to season basis; and (5) the soil type required to grow Walla Walla Sweet Onion varieties that can be marketed as Walla Walla Sweet Onions, and the size of the proposed production area. These points are discussed in the *Findings and Conclusions* below.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately nine handlers of Walla Walla Sweet Onions in the proposed production area and 50 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

During the 1992 season, commercial shipments of Walla Walla Sweet Onions totaled about 390,000 hundredweight at an average f.o.b. price of $16.60 per hundredweight for a total value of $6,474,000. An indeterminate volume, probably about 10 percent, was sold at roadside stands. While there is a great variance in the size of individual handlers' operations, the record indicates that nearly all of the handlers that would be regulated under this order would qualify as small firms under the SBA's definition. Witnesses testified that because most of the producers and handlers of Walla Walla Sweet Onions are small, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program would provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger production areas.

Acreage and supplies of Walla Walla Sweet Onions have declined in recent years, and proponents believe that the order would provide a much needed means of halting a drop in grower returns experienced in past seasons. This would be achieved by strengthening demand, developing new markets for existing supplies and encouraging increased production. Also, costs could be reduced through production research. Thus, the order would be expected to have a positive impact on producer returns.

The order would authorize the collection of assessments from handlers of Walla Walla Sweet Onions grown in designated parts of Walla Walla County, Washington, and Umatilla County, Oregon. Assessment funds would be used to finance production research projects that could reduce costs by reducing the occurrence of onion diseases, controlling plant pests, and developing varieties with more desirable flavor, quality, and size. Assessment funds could also be used to strengthen demand and expand markets for Walla Walla Sweet Onions through marketing research and development and product promotion programs, including paid advertising. Projects to develop better methods of handling, shipping or storing onions, to explore additional or alternative uses of onions, to check nutritive values, and similar research are some examples of marketing research. Examples of marketing development projects include exploring marketing possibilities, contacting buyers, distributing educational material relating to the handling and marketing of onions, and the dissemination of the results of current or past marketing research projects.

The order would be administered by a committee composed of Walla Walla Sweet Onion producers, handlers, and a public member nominated by growers and handlers and selected by the Secretary of Agriculture (Secretary). Daily administration of the order would be carried out by a staff hired by the committee. The order would not regulate the production of Walla Walla Sweet Onions and would place no restriction on the quality or quantities of Walla Walla Sweet Onions that could be handled.

The principal requirements of the order that would affect handlers would be the requirements that they pay assessments on fresh market shipments of Walla Walla Sweet Onions to fund research and promotion programs and that container markings could be regulated. The amount of the assessment rate is not specified in the proposed order, but witnesses at the hearing indicated that an appropriate rate might be five cents per 50-pound bag for administrative costs; research and promotion costs could require an additional five to seven cents per bag or more. Any assessment rate to cover committee expenses that may be established would be recommended by the committee to the Secretary for approval.

The order would also impose some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order have been submitted to OMB for approval. Those requirements would not become effective prior to OMB approval. Any requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour and a two year record retention requirement. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated nine handlers of Walla Walla Sweet Onions.

The Act requires that prior to the issuance of an order, a referendum be conducted of affected producers to determine if they favor issuance of the order. The ballot material that will be used in conducting the referendum will be submitted to and approved by OMB prior to use. It is estimated that it would take an average of 10 minutes for each of the approximately 50 Walla Walla Sweet Onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it would take approximately ten minutes for each of the nine handlers to complete the marketing agreement. In determining that the order would not have a significant economic impact on

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a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help to strengthen demand for Walla Walla Sweet Onions. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefitting handlers and producers alike. Accordingly, it is determined that the order would not have a significant economic impact on a substantial number of small handlers or producers.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 10, 1994, issue of the **Federal Register** (59 FR 56254) are hereby approved and adopted subject to the following additions and modifications:

In his exception, Mr. Darrington stated his support for research and promotion programs. However, he also stated that he believes the proponent group's intent is to limit production of Walla Walla Sweet Onions and competition among Walla Walla producers and handlers. The Act, which is the legislative authority for the proposed order, provides no authority to either limit the production of a commodity or restrict competition within an industry. The proposed production area has been recognized since the beginning of the twentieth century as having unique soil properties, properties the adjacent areas do not share, to the same degree. However, the production of Walla Walla Sweet Onions uses less than half of the acreage in the Walla Walla Valley; growers wishing to produce Walla Walla Sweet Onions could buy, lease, or rent acreage within the area. Therefore, the size of the production area would not adversely affect competition. The order, as proposed, would authorize research and development projects, including paid advertising. The order also would permit the committee, as representatives of the industry, to establish, with Secretarial approval, container labeling requirements. No other regulatory activity would be authorized.

Mr. Darrington stated that any low grower returns in recent years were due to poor quality onions, not poor market conditions. Poor market conditions can be the result of poor quality product sold on the market. However, poor market conditions can also be caused by excessive supplies of local product in the market place and excessive supplies of onions from other growing areas, or a combination of all of these factors. Although this part of Mr. Darrington's exception could have merit, it does not alter the findings of the Recommended Decision which addressed poor market conditions for Walla Walla Sweet Onions because poor market conditions often are a result of a poor quality commodity.

Mr. Darrington disagreed with the statement in the Recommended Decision that half or more of the non-storage onions grown in Washington came from the Walla Walla Valley and that half of all Walla Walla Sweet Onion acreage is outside the Walla Walla Valley. The exhibits and testimony presented at the hearing indicate that the Walla Walla Valley produces at least half of Washington State's non-storage onion crop. The evidence does not support Mr. Darrington's statement.

Mr. Darrington also stated that there are other areas in the nation that have marketing orders for their specific onions, but none of them are restricted to such a small area as proposed by this order. This is true. However, section 11 (B) of the Act states that orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy. The record indicates that the parts of Walla Walla and Umatilla Counties which are the proposed production area constitute the smallest practicable area.

Mr. Darrington stated that climate and variety are the major factors determining the sweetness of an onion; and that there are years when Walla Walla sweets are far from being sweet due to the growing conditions. This is probably true of all onions, but has no relevance on the findings of the recommended decision.

Mr. Darrington further states that the soil type in the proposed production area is not unique to that area. However, testimony was given to the contrary; witnesses stated that the unique growing conditions in the proposed production area, particularly the low sulfur content of the soil, yield a sweeter, milder onion than is grown elsewhere. Therefore, in order for an onion to be labeled as a Walla Walla Sweet, it would have to be produced in the proposed production area.

Mr. Darrington states that the proposed order allows any onion variety, other than a sweet Spanish hybrid, grown in the proposed production area to be called a Walla Walla Sweet Onion and that there are a number of varieties grown in the production area that are not sweet. Mr. Darrington states that the order would permit growers within the production area to grow whatever variety they wish and call it a Walla Walla Sweet Onion. As the order is proposed, the committee may, with the approval of the Secretary, exempt individual varieties from any regulations issued under the order. This would allow the committee to prevent onions that do not qualify as "sweet onions" from being marketed as Walla Walla Sweet Onions. Thus, it is the intent that the Walla Walla onion industry would have control over the varieties of onions marketed as Walla Walla Sweet Onions.

Mr. Darrington states that the order proposes that onion seeds not be regulated under the order, and that producers may sell seed onions grown within the production area wherever they wish outside of the area. Onions produced from any Walla Walla onion seed planted outside of the Walla Walla Sweet Onion production area do not qualify as Walla Walla Sweet Onions. For an onion to be assessed and marked as a Walla Walla Sweet Onion, it must be grown within the Walla Walla Sweet Onion production area established by the order and the variety must be recognized by the U.S. Department of Agriculture or recommended by the committee and approved by the Secretary as a sweet onion. Onions that do not meet these criteria may not be marketed as Walla Walla Sweet Onions and would not be assessed. Therefore, although Mr. Darrington's statement with respect to onion seeds is correct, it is not relevant to this discussion.

Mr. Darrington states that the proposed area appears to be very self-serving to the group that is supporting this order. This is true, inasmuch as marketing orders and agreements are self imposed instruments that provide industry members with a means to provide orderly marketing conditions. This proposed order would authorize production and marketing research and marketing development and promotion projects, including paid advertising, and would authorize container markings. This order would also prohibit onions grown outside of the proposed production area from being marketed as Walla Walla Sweets, thus improving returns to producers within the production area by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Thus, for the reasons stated, those parts of Mr. Darrington's exception that are relevant are denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et. seq.*) to determine whether the issuance of the annexed order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon is approved or favored by producers, as defined under the terms of the order, who, during the representative period were engaged in the production of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon.

The representative period for the conduct of such referendum is hereby determined to be January 1, 1994, through December 31, 1994.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland Oregon, 97204; telephone 503–326–2724, FAX 503–326–7440.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: March 30, 1995.

Patricia A. Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.[1]

Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of sweet onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Walla Walla Sweet Onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Walla Walla Sweet Onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on November 3, 1994, and published in the **Federal Register** on November 10, 1994 (59 FR 56254), shall be and are the terms and provisions of this order and are set forth in full herein. Sections 956.97 through 956.99 apply only to the proposed marketing agreement and not to the proposed order.

1. Title 7, Chapter IX is proposed to be amended by adding part 956 to read as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

Subpart—Order Regulating Handling

Definitions

Sec.
956.1 Secretary.
956.2 Act.
956.3 Person.
956.4 Production area.
956.5 Walla Walla Sweet Onions.
956.6 Handler.
956.7 Registered handler.
956.8 Handle.
956.9 Container.
956.10 Producer.
956.11 Varieties.
956.12 Committee.
956.13 Fiscal period.

Administrative Committee

956.20 Establishment and membership.
956.21 Term of office.
956.22 Nominations.
956.23 Selection.
956.24 Qualifications and acceptance.
956.25 Alternates.
956.26 Vacancies.
956.27 Failure to nominate.
956.28 Procedure.
956.29 Expenses.
956.30 Powers.
956.31 Duties.

Expenses and Assessments

956.40 Expenses.
956.41 Budget.
956.42 Assessments.
956.43 Accounting.
956.44 Excess funds.
956.45 Contributions.

Research and Development

956.50 Research and development.

Regulation

956.61 Recommendation for regulations.
956.62 Container markings.
956.63 Handling for specified purposes.
956.64 Minimum quantities.
956.65 Notification of regulations.
956.66 Safeguards.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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Reports

956.80 Reports and recordkeeping.

Miscellaneous Provisions

956.85 Termination or suspension.
956.87 Proceedings after termination.
956.88 Effect of termination or amendment.
956.89 Compliance.
956.90 Right of the Secretary.
956.91 Duration of immunities.
956.92 Agents.
956.93 Derogation.
956.94 Personal liability.
956.95 Separability.
956.96 Amendments.
956.97 Counterparts.
956.98 Additional parties.
956.99 Order with marketing agreement.

Authority: 7 U.S.C. 601–674.11

Definitions

§ 956.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 956.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 956.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 956.4 Production area.

Production area means a tract of land in Umatilla County, Oregon, and Walla Walla County, Washington, based on surveyors' maps, enclosed by the following boundaries: Commencing at the Southeast corner of Section 13, Township (Twp.) 5 North, Range (Rge.) 36 East, W.M.; thence Westerly along the South line of Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 36 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 35 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 34 East, Sections 13, 14, and 15 in Twp. 5 North, Rge. 33 East, W.M. to the East right of way line of the Northern Pacific Railway, as it runs Northwesterly through Vansyckle Canyon; thence Northwesterly along said Easterly right of way line to a point in the Northwest 1/4 of Section 20, Twp. 7 North, Rge. 32 East, W.M. where said line intersects the South right of way of the Union Pacific Railway, said intersection being commonly known as Zangar Junction; thence Easterly along said South right of way line of the Union Pacific Railway to a point in the Southwest 1/4 of Section 23, Twp. 7 North, Rge. 32 East where said line intersects the South right of way line of Washington State Highway No. 12; thence Easterly along said South right of way line to the intersection with the West line of Section 34, Twp. 7 North, Rge. 33 East, W.M.; thence North, along the West line of Sections 34, 27, 22, 15, 10, and 3 in Twp. 7 North, Rge. 33 East, W.M., and the West line of Sections 34, 27, and 22 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 22; thence East along the North line of said Section 22 to the Northeast corner thereof; thence North along the West line of Sections 14, 11, and 2 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 2; thence East along North lines of Sections 2 and 1 in Twp. 8 North, Rge. 33 East, W.M. and the North line of Section 6, Twp. 8 North, Rge. 34 East, W.M. to the centerline of the Touchet River; thence Northerly and Easterly along said centerline of the Touchet River as it runs through Twp. 9 North, Rge. 34 East, Twp. 9 North, Rge. 35 East, Twp. 10 North, Rge. 35 East, Twp. 10 North, Rge. 36 East, Twp. 9 North, Rge. 36 East, and Twp. 9 North, Rge. 37 East to a point on the East line of Section 11 in Twp. 9 North, Rge. 37 East, W.M., thence South along the East line of Sections 11, 14, 23, 26, and 35 in Twp. 9 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 8 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 7 North, Rge. 37 East, W.M., and the East lines of Sections 2, 11, and fractional Section 14 in Twp. 6 North, Rge. 37 East, W.M., to a point on the Washington-Oregon State line; thence West along said State Line to the closing corner on the West side of Section 18 in Twp. 6 North, Rge. 37 East, W.M.; thence South along the West line of Sections 18, 19, 30, and 31 in Twp. 6 North, Rge. 37 East, W.M. and the West line of Sections 6, 7, and 18 in Twp. 5 North, Rge. 37 East to the corner common to Sections 18 and 19 in Twp. 5 North, Rge. 37 East, W.M. and 13 and 24 in Twp. 5 North, Rge. 36 East, W.M., Being the True Point of Beginning of this Legal Description.

§ 956.5 Walla Walla Sweet Onions.

Walla Walla Sweet Onions means all varieties of *Allium cepa* grown within the production area, except Spanish hybrid varieties. The committee may, with the approval of the Secretary, exempt individual varieties from any or all regulations issued under this part.

§ 956.6 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier of Walla Walla Sweet Onions owned by another person) who handles Walla Walla Sweet Onions or causes Walla Walla Sweet Onions to be handled.

§ 956.7 Registered handler.

Registered handler means any person with adequate facilities for preparing Walla Walla Sweet Onions for commercial market, who has requested such registration and is so recorded by the committee, or any person who has access to such facilities and has recorded with the committee the ability and willingness to assume customary obligations of preparing Walla Walla Sweet Onions for commercial market. The committee may recommend, for approval of the Secretary, procedures with respect to handler registration.

§ 956.8 Handle.

Handle is synonymous with *ship* and means to package, load, sell, transport, or in any way place Walla Walla Sweet Onions or cause Walla Walla Sweet Onions to be placed in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of harvested Walla Walla Sweet Onions to a handler within the production area for the purpose of having such Walla Walla Sweet Onions prepared for market.

§ 956.9 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transporting, sale, shipment, or other handling of Walla Walla Sweet Onions.

§ 956.10 Producer.

Producer is synonymous with *grower* and means any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market.

§ 956.11 Varieties.

Varieties means and includes all classifications, subdivisions, or types of Walla Walla Sweet Onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 956.12 Committee.

Committee means the Walla Walla Sweet Onion Committee established pursuant to § 956.20.

§ 956.13 Fiscal period.

Fiscal period means the period beginning on June 1 and ending on May 31 of each year, or other such period as may be recommended by the committee and approved by the Secretary.

Administrative Committee

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

(b) A producer shall have three years of experience in producing onions in order to qualify for committee membership. At the time of selection, no more than two producer members may be affiliated with the same handler.

§ 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three fiscal periods beginning on June 1 or such other date as recommended by the committee and approved by the Secretary. The terms shall be determined so that one-third of the grower membership and one-third of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-third of the initial industry members and alternates shall serve for a one-year term, one-third shall serve for a two-year term, and one-third shall serve for a three-year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two three-year terms. There shall be no such limitation for alternate members.

§ 956.22 Nominations.

Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held, within the production area and prior to April 1 of each year or by such other date as may be specified by the Secretary, one or more meetings of producers and handlers for the purpose of designating one nominee for each of the member and alternate member positions which are vacant or will be vacant at the end of the fiscal period;

(b) In arranging for such meetings the committee may, if it deems such desirable, cooperate with existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be provided to the Secretary, in such manner and form as the Secretary may prescribe, not later than 30 days prior to the end of the fiscal period within which the current term of office expires;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer, but not both;

(f) Each person is entitled to cast only one vote on behalf of him or herself, his or her partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. An eligible producer's or handler's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each producer member and alternate member position to be filled or each handler member and alternate member position to be filled, but not both.

(g) Every three years, at the first meeting following selection, the committee shall nominate the public member and alternate for a three-year term of office.

(h) The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

§ 956.23 Selection.

The Secretary shall select members and alternate members of the committee from the nominations made pursuant to § 956.22 or from other qualified persons.

§ 956.24 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 956.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor to such member has qualified and is selected.

§ 956.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 956.22 from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 956.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 956.22 the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 956.20

§ 956.28 Procedure.

(a) Six members of the committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

(b) The committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 956.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 956.30 Powers.

The committee shall have the following powers:

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(a) To administer the provisions of this part in accordance with its terms;
(b) To make rules and regulations to effectuate the terms and provisions of this part;
(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and
(d) To recommend to the Secretary amendments to this part.

§ 956.31 Duties.

It shall be among the duties of the committee:
(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairperson and such other officers as may be necessary, to select subcommittees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;
(b) To act as intermediary between the Secretary and any producer or handler;
(c) To furnish to the Secretary such available information as the Secretary may request;
(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;
(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Walla Walla Sweet Onions and to engage in such research and service activities which relate to the production, handling, or marketing of Walla Walla Sweet Onions as may be approved by the Secretary;
(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative;
(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;
(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon, and a recommendation as to the rate of assessment for such period;
(i) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may require; the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary, and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers: *Provided*, that confidential information shall be removed from all copies made available to the public; and
(j) To consult, cooperate, and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

Expenses and Assessments

§ 956.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 956.42 and 956.45.

§ 956.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 956.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Walla Walla Sweet Onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.
(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.
(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase in the assessment rate shall be applicable to all Walla Walla Sweet Onions which were handled by each handler thereof during such fiscal period.
(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions of this part are suspended or become inoperative.
(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.
(f) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 956.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.
(b) The Secretary may at any time require the committee, its members and alternate members, employees, agents, and all other such persons associated with the committee to account for all receipts, disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member, alternate member, employee, or agent of the committee, such person shall account for all receipts, disbursements, funds, property, and records pertaining to the committee's activities for which such person was responsible, deliver all property and funds in such person's possession to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person pursuant to this part.
(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 956.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:
(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately two fiscal period's budgeted expenses. Such reserve funds may be used:
(1) To defray any expenses authorized under this part;
(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;
(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;
(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and
(5) To cover necessary expenses of liquidation in the event of termination of this part.
(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.
(c) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid as soon as practicable.

§ 956.45 Contributions.

The committee may accept voluntary contributions but these shall be used only to pay expenses incurred pursuant to § 956.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 956.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Any such project for the promotion and advertising of Walla Walla Sweet Onions may utilize an identifying mark, including but not limited to registered trademarks and logos, which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The committee may register such logos with the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office. The expense of such projects shall be paid from funds collected pursuant to §§ 956.42 and 956.45.
(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:
(1) The expected supply of Walla Walla Sweet Onions in relation to market requirements;
(2) The supply situation among competing onion areas and communities;
(3) The anticipated benefits from such projects in relation to their costs;
(4) The need for marketing research with respect to any market development activity; and
(5) Other relevant factors.
(c) If the committee concludes that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:
(1) Its recommendations as to the funds to be obtained pursuant to §§ 956.42 and 956.45;
(2) Its recommendations as to any research projects; and
(3) Its recommendations as to promotion activity and paid advertising.
(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.
(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:
(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark, or private trade name;
(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and
(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Regulation

§ 956.61 Recommendation for regulations.

The committee shall recommend regulations to the Secretary whenever it deems it advisable, as provided in § 956.62. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of Walla Walla Sweet Onions for the purposes authorized in § 956.63. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 956.62 Container markings.

The committee may, with the approval of the Secretary, provide a method, through rules and regulations issued pursuant to this part, for fixing the marking of containers which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof. Further, the committee may, with the approval of the Secretary, establish through rules and regulations such safeguards as may be necessary to ensure that such container marking requirements are in compliance with the rules and regulations.

§ 956.63 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 956.42 and 956.62 or any combination thereof, in order to facilitate the handling of onions for the following purposes:
(a) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions;
(b) Shipments of Walla Walla Sweet Onions for livestock feed;
(c) Shipments of Walla Walla Sweet Onions for planting and for plants;
(d) Shipments of Walla Walla Sweet Onions as salad onions;
(e) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;
(f) Shipments of Walla Walla Sweet Onions for disposal;
(g) Shipments of Walla Walla Sweet Onions for seed;

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(h) Shipments of Walla Walla Sweet Onions for packing or storing within the production area or outside the production area, but within specified locations in the States of Oregon and Washington; and

(i) Shipments of Walla Walla Sweet Onions for other purposes which may be specified.

§ 956.64 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

§ 956.65 Notification of regulations.

The Secretary shall notify the committee of each regulation issued and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 956.66 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent Walla Walla Sweet Onions shipped, pursuant to §§ 956.63 and 956.64, from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such Walla Walla Sweet Onions.

(2) Handlers shall pay the pro rata share of expenses provided by § 956.42 in connection with such Walla Walla Sweet Onions.

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege, to any handler if proof is obtained that Walla Walla Sweet Onions shipped by the handler for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary as requested, showing the number of applications for such certificates, the quantity of Walla Walla Sweet Onions covered by such applications, the number of such applications denied and certificates granted, the quantity of Walla Walla Sweet Onions handled under duly issued certificates, and such other information as may be requested.

Reports

§ 956.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The acreage of Walla Walla Sweet Onions grown;

(2) The quantities of Walla Walla Sweet Onions received by such handler;

(3) The quantities of Walla Walla Sweet Onions disposed of by such handler;

(4) The disposition date of such Walla Walla Sweet Onions;

(5) The manner of disposition of such Walla Walla Sweet Onions; and

(6) The identification of the carrier transporting such Walla Walla Sweet Onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that any information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Walla Walla Sweet Onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 956.85 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Walla Walla Sweet Onions: Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Walla Walla Sweet Onions produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the production for market of Walla Walla Sweet Onions in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 956.87 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 956.88 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; and

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 956.89 Compliance.

No handler shall handle Walla Walla Sweet Onions except in conformity to the provisions of this part.

§ 956.90 Right of the Secretary.

The members of the committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 956.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 956.92 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 956.93 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 956.94 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 956.95 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 956.96 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 956.97 Counterparts.

This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 956.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by the handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 956.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Walla Walla Sweet Onions in the same manner as is provided for in this agreement.

Note: This marketing agreement will not appear in the Code of Federal Regulations.

United States Department of Agriculture, Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Onions Grown in Walla Walla County, Washington, and Umatilla County, Oregon

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR, Part 900), desire to enter into this marketing agreement regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement.

The provisions of §§ 956.1 to 956.96, inclusive, of Marketing Order No. 956, (7 CFR, Part 956) of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein.

§ 956.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 956.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 956.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of onions in the same manner as is provided in this agreement.

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The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In Witness Whereof, the contracting parties, acting under the provisions of the act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

_____
(Firm Name)

_____
(Mailing Address)

_____
(City, State, and ZIP Code)

By: [1] _____
(Signature)

_____
(Title)

_____
(Date of Execution)

(Corporate Seal: if none, so state)

(For use by incorporated handlers)

Certification of Resolution

(Corporation Only)

At a duly convened meeting of the Board of Directors of

_____

held at _____

on the _____ day of _____ 19___.

Resolved, That _____ shall become a party of the marketing agreement regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon, which annexed to and made part of the decision of the Secretary of Agriculture, and it is further,

Resolved, That

_____
(Name)

_____
(Title)

and _____
(Name)

_____
(Title)

be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, _____

Secretary of _____

do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

_____
(Signature)

_____
(Address of Firm)

(Corporate Seal: if none, so state)

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Note: Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, ORM, AG Box 7630, Administration Building, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, regarding OMB No. 0581–0089. When replying, refer to the OMB Number and Form Number in your letter.

[FR Doc. 95–8428 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–7]

Proposed Modification of the Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport CA, Class C Airspace Areas and Proposed Establishment of the Cedar Rapids Municipal Airport, IA, Class E Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. These areas would be modified to reflect the radar approach control facility's hours of operation. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 94–AWA–7, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped, postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWA–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. Class C airspace areas are predicated on an operational ATCT serviced by a radar approach control facility. These areas would be modified to reflect the radar approach control facility's hours of operation. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ACE IA C Cedar Rapids Municipal Airport, IA (Revised)

Cedar Rapids Municipal Airport, IA
(lat. 41°53'05" N., long. 91°42'40" W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Cedar Rapids Municipal Airport and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of Cedar Rapids Municipal Airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX C Corpus Christi International Airport, TX (Revised)

Corpus Christi International Airport, TX
(lat. 27°46'13" N., long. 97°30'04" W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Corpus Christi International Airport, and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 287° bearing from the airport clockwise to the 197° bearing from the airport, and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 197° bearing from the airport clockwise to the 287° bearing from the airport.

* * * * *

ASW TX C Harlingen, TX (Revised)

Rio Grande Valley International Airport, TX
(lat. 26°13'42" N., long. 97°39'16" W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Rio Grande Valley International Airport, excluding that airspace east of Arroyo Colorado that is north of the Southern Pacific Railroad; and that airspace extending upward from 2,000 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from Farm Road 1420 and Arroyo Colorado clockwise to the Southern Pacific Railroad; and that airspace extending upward from 1,300 feet MSL to 4,000 feet MSL to the 10-mile radius of the airport from the Southern Pacific Railroad clockwise to U.S. Highway 83 (Business Route); and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL from U.S. Highway 83 (Business Route) clockwise to U.S. Highway 77 (Business Route); and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL from U.S. Highway 77 (Business Route) clockwise to Farm Road 1420. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX C Abilene Regional Airport, TX (Revised)

Abilene Regional Airport, TX
(lat. 32°24'40" N., long. 99°40'55" W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of the Abilene Regional Airport, excluding that airspace from the surface to 3,600 feet MSL east of long. 99°39'00" W., and north of the Abilene VORTAC 103°/283° radial within 5 miles of the airport; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport north of the Abilene VORTAC 103°/283° radial; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport south of the Abilene VORTAC 103°/283° radial.

* * * * *

ASW TX C Dyess AFB, TX (Revised)

Dyess AFB, TX
(lat. 32°25'12" N., long. 99°51'25" W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of Dyess AFB; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of Dyess AFB north of the Abilene VORTAC 103°/283° radials; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the Dyess AFB and south of the Abilene VORTAC 103°/283° radials. This Class C airspace area excludes any

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airspace included within the Abilene Regional Airport, TX, Class C airspace area.

* * * * *

AWP CA C Santa Barbara Municipal Airport, CA (Revised)

Santa Barbara Municipal Airport, CA
(lat. 34°25'34" N., long. 119°50'28" W.)

That airspace within a 5-mile radius of the Santa Barbara Municipal Airport extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295° bearing from the airport, between the 5- and 10-mile radius, clockwise to the 090° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ACE IA E2 Cedar Rapids Municipal Airport, IA (New) Cedar Rapids Municipal Airport, IA

(lat. 41°53'05" N., long. 91°42'40" W.)

Within a 4.2-mile radius of the Cedar Rapids Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on March 29, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95-8370 Filed 4-4-95; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-12-95]

RIN 1545-AT27

Valuation of Plan Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to employers in determining the present value of an employee's benefit in a qualified defined benefit pension plan, for purposes of determining the amount of a distribution made in any form other than a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 5, 1995. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, July 25, 1995, at 10 a.m. must be received by July 7, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE-12-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE-12-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622-4606; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 417. The temporary regulations provide guidance to employers in determining the present value of an employee's benefit in a qualified defined benefit pension plan. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, July 25, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 5, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 7, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.417(e)-1 also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II).

§ 1.417 [Amended]

Par. 2. Paragraph (d) of § 1.417(e)-1 is revised to read as follows:

[The text of proposed paragraph (d) is the same as the text of § 1.417(e)-1T(d) published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95-8230 Filed 4-4-95; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95-029]

33 CFR Chapter I

46 CFR Chapter I

Regulatory Reinvention Public Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: As part of the President's Regulatory Reinvention Initiative, the Coast Guard will conduct several public meetings outside the Washington, DC area. The meetings are intended to open additional lines of communication between the Coast Guard and the regulated public. Each meeting will be attended by a senior Coast Guard official, and will be open to the public.

DATES: The meetings will be held April 11, 1995 in New York, NY; April 12, 1995 in Boston, MA; and April 21 in Seattle, WA. Times for each meeting are provided below under **SUMMARY**. Written comments should be received by June 5, 1995.

ADDRESSES: The meetings will be held at the following locations: New York, NY—University of New York Maritime College, Fort Schuyler, Throgs Neck Station, New York; Boston, MA—Black Falcon Passenger Terminal, Massachusetts Port Authority, 1 Black Falcon Ave., Boston, MA 02210; Seattle, WA—Thirteenth Coast Guard District, 915 2nd Ave., Seattle, WA. Written comments may be mailed to the Executive Secretary, Marine Safety Council, Commandant (G-LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Thomas Cahill, Executive Secretary, Marine Safety Council, Commandant (G-LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-0132.

SUPPLEMENTARY INFORMATION: Over the past eighteen months, the Coast Guard conducted a comprehensive review of its regulatory process. This review included meetings with members of regulated communities and advisory committees. Although the Coast Guard is proud of its frequent and ongoing interaction with the regulated community, the need for additional public involvement in the regulatory process was an area specifically identified for improvement. It is only through keeping in touch with those affected that the Coast Guard can truly judge if its regulatory and compliance efforts are effective and efficient. As a result, the Coast Guard's new regulatory procedures manual requires regulatory project managers to provide opportunities for public involvement at the earliest stages of a regulatory project. Additionally, the Coast Guard's ongoing Maritime Regulatory Reform effort is intended to remove unnecessary regulatory burdens on the maritime industry.

In his memorandum of March 4, 1995, President Clinton directed the heads of all Federal departments and agencies to make regulatory reinvention a top priority. He identified four steps to be taken. These steps are: (1) Cut obsolete regulations; (2) reward results, not red tape; (3) get out of Washington and create grassroots partnerships; and (4) negotiate, don't dictate. The Coast Guard is taking a number of additional actions to achieve the President's goals of reducing the regulatory burden and improving compliance through cooperation.

One of these actions is to conduct a number of public meetings during the month of April to discuss regulatory reinvention. The meetings are intended to allow members of the regulated community the opportunity to talk directly with senior Coast Guard officials involved in the regulatory process, and raise concerns with current regulatory and enforcement policies. The senior Coast Guard officials identified below currently plan to attend the meetings listed below. Rear Admiral Gregory Penington, Chief of the Office of Navigation Safety and Waterway Services at Coast Guard Headquarters, will attend the meeting of the Navigation Safety Advisory Council in Seattle, WA on April 21, 1995. This meeting will begin at 8 a.m. Rear Admiral James Card, Chief of the Office of Marine Safety, Security, and Environmental Protection at Coast Guard Headquarters, will attend an "Industry Day" meeting in New York, NY on April 11, 1995. This meeting will begin at 9 a.m. Rear Admiral John Shkor, Chief Counsel of the Coast Guard and Chairman of the Marine Safety Council, the Coast Guard's regulatory oversight body, will attend an "Industry Day" meeting in Boston, MA on April 12, 1995. This meeting will begin at 9 a.m., with registration beginning at 8:30 a.m. The locations for these meetings are listed above under **ADDRESSES**.

In addition to the above meetings, a number of other "Industry Day" meetings are scheduled in Portland, OR; Warren, RI; Valdez, AK; Cape Cod, MA; Milwaukee, WI; Anchorage, AK; Alameda, CA; Hampton Roads, VA; Tampa, FL; Mobile, AL; and Agana, Guam. These meetings will be hosted by the local Coast Guard Captain of the Port, and regulatory reinvention will be a key topic. The Coast Guard Captain of the Port for each area can provide additional details on the date and time for each meeting. Additionally, on April 20, 1995, the Coast Guard will hold a public meeting in Washington, DC to discuss regulatory reform. The details of this meeting will be announced by a separate notice in the **Federal Register**.

Persons affected by or interested in Coast Guard regulatory actions are also invited to submit written comments as indicated under **ADDRESSES** above.

Dated: March 24, 1995.

John E. Shkor,

Rear Admiral, U.S. Coast Guard Chief Counsel.

[FR Doc. 95-8389 Filed 4-4-95; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Service Property

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Postal Service property regulations by providing that when conduct that is a violation of Federal or State criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations, and that the fine and/or imprisonment penalties of 39 CFR 232.1(p) may be imposed for the proscribed conduct when Federal and State prosecution of the criminal law violation are declined.

DATES: Comments must be received on or before May 5, 1995.

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ADDRESSES: Written comments should be mailed or delivered to the Counsel, Postal Inspection Service, 475 L'Enfant Plaza SW., Room 3411, Washington, DC 20260–2181.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Counsel, Postal Inspection Service, (202) 268–4415.

SUPPLEMENTARY INFORMATION: Postal Service regulations on conduct on postal property are published in title 39 of the Code of Federal Regulations (CFR) as § 232.1. One purpose of this proposed rule is to clarify that prohibited conduct on postal property includes violations of: (1) State, Territory, Possession, and District criminal laws assimilated onto exclusive Federal property under 18 U.S.C. 13, Assimilated Crimes Act; and (2) Federal, State, Territory, Possession, and/or District criminal laws that apply to the geographic areas in which nonexclusive properties owned or leased by the Postal Service are located.

Another purpose of this proposed rule is to provide that when conduct that is a violation of Federal, State, Territory, Possession, and/or District criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations. Persons committing such prohibited conduct are subject to the penalty provisions of 39 CFR 232.1(p) (i.e., a fine of not more than $50 and/or imprisonment of not more than 30 days), when prosecution of the criminal law violation is declined by Federal, State, Territory, Possession, or District prosecutors.

List of Subjects in 39 CFR Part 232

Federal buildings and facilities, Penalties, Postal Service.

Accordingly, 39 CFR part 232 is proposed to be amended as set forth below.

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 continues to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102–141. 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by adding a new paragraph (r) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(r) *Other prohibited conduct.* (1) The regulations in this section for conduct on Postal Service property also include:

(i) State, Territory, Possession, and District criminal laws assimilated onto exclusive Federal property under 18 U.S.C. 13, Assimilated Crimes Act; and

(ii) Federal, State, Territory, Possession, and/or District criminal laws that apply to the geographic areas in which nonexclusive properties owned or leased by the Postal Service are located.

(2) When a violation of a Federal, State, Territory, Possession, or District criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations and is therefore subject to the penalty provisions of paragraph (p) of this section when prosecution of the criminal law violation is declined by Federal, State, Territory, Possession, or District prosecutors.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8227 Filed 4–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5185–2]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting—negotiated rulemaking on small nonroad engine regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the draft structure of the emissions standard.

DATES: The committee will meet on April 18, 1995 from 10 a.m. to 6 p.m., and on April 19, 1995 from 8 a.m. to 4 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snap, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: March 31, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–8502 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[MA–31–01–6845b; A–1–FRL–5177–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled "U Restricted Emission Status," into the Massachusetts SIP. EPA is also proposing to extend the federal enforceability of this regulation to hazardous air pollutants. In the Final Rules Section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ida E. Walker, for criteria pollutants (617) 565–9168 or Janet Beloin, for HAPS (617) 565–2734.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–8217 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 52

[IL92–1–6336b; FRL–5165–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' February 7, 1994, request to incorporate smaller source permit rule amendments into the Illinois State Implementation Plan (SIP). The purpose of these smaller source amendments is to lessen the permitting burden on small sources and on the permitting authority by reducing the frequency and/or the requirement for operating permit renewal for sources emitting less than twenty-five tons per year of regulated air pollutants. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 5, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–8220 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AK7–1–6588b; FRL–5171–6]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Alaska for the purpose of reducing the National Air Quality Standards (NAAQS) for carbon monoxide (CO). The SIP revision was submitted by the state to satisfy certain federal Clean Air Act requirements for a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage and the Fairbanks Northstar Borough area. In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice.

DATES: Comments on this proposed rule must be received in writing by May 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The State of Alaska Department of Environmental Conservation; 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 2, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–8314 Filed 4–4–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–040]

RIN 2115–AE85

Vessel Rebuilt Determinations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its rules regarding rebuilt determinations to provide guidelines to clarify the standard for determining when work on a vessel constitutes a rebuilding of that vessel. The rebuilt standard has been criticized as too subjective to provide guidance to vessel owners, who often must make critical business planning decisions with the outcome of a potential rebuilt determination by the Coast Guard in mind. The proposed guidelines, if adopted, would establish clear upper and lower thresholds relevant to rebuilt determinations and would provide for greater certainty to vessel owners making business decisions regarding work to be performed on their vessels.

DATES: Comments must be received on or before July 5, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–040), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch; (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–040) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: The principal persons involved in drafting this document are Ms. Laura Burley, Project Manager; Lieutenant Commander Don M. Wrye, Attorney Advisor, Vessel Documentation and Tonnage Survey Branch; and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

When Congress enacted the Merchant Marine Act, 1920, popularly referred to as the "Jones Act," it included a provision to provide for a protected cabotage trade. Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. 883), generally prohibited the transportation of merchandise in the coastwise trade except in vessels built in and documented under the laws of the United States and owned by citizens of the United States. In 1956, Congress amended Section 27 by enacting what is known as the "Second Proviso." Under the proviso, as enacted, a vessel of more than 500 gross tons entitled to engage in the coastwise trade which is then rebuilt outside the United States permanently loses the right to engage in the coastwise trade. Further, the proviso required owners of vessels of more than 500 gross tons documented in the United States which are rebuilt outside the United States to make a report of the circumstances of the rebuilding to the Secretary.

As originally proposed, the proviso contained a definition of "rebuilt." However, the definition was determined to be problematic and was deleted. The legislative history noted that a "generally accepted" definition of the term as applied to vessels may be found in the case of *United States* v. *The Grace Meade*, 25 F. Cas. 1387 (E.D. Va. 1876) (No. 15,243). That definition is that "a vessel is considered rebuilt if any considerable part of the hull of the vessel in its intact condition, without being broken up, is built upon." Further, the legislative history noted, the definition had been adopted by the Supreme Court in *New Bedford Dry Dock Co.* v. *Purdy* (The Jack-O'Lantern), 258 U.S. 96 (1922), and had been incorporated into the regulations of the Bureau of Customs, which then administered the vessel documentation program, as a regulatory standard.

In 1960, Congress amended the Second Proviso. (Pub. L. 86–583.) The 1960 amendment closed a loophole which permitted foreign-built midbodies to be towed to the United States and then incorporated into the domestic rebuilding of an existing vessel in an operation known as "jumboizing." As amended, the Second Proviso provided that a vessel of more than 500 gross tons eligible to engage in the coastwise trade which was then rebuilt permanently lost the right to engage in the coastwise trade unless the "entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel," was effected within the United States.

In 1988, the Second Proviso was once again amended to eliminate the 500 gross ton parameter for vessels rebuilt outside the United States. (Pub. L. 100–239.) Now, any vessel which has acquired the lawful right to engage in the coastwise trade which is later rebuilt outside the United States permanently loses coastwise trading privileges.

The Second Proviso is implemented by the Coast Guard primarily by regulations at 46 CFR § 67.177. The regulatory standard in § 67.177 states that a vessel is rebuilt when "any considerable part of its hull or superstructure is built upon or substantially altered." While the wording of the regulatory standard has remained stable over the years, the Coast Guard's administration of the standard has changed.

Prior to September 1989, the Coast Guard evaluated whether work performed on a vessel constituted a rebuilding under the regulatory standard by focusing on whether the nature of the work was structural or nonstructural. In September 1989, the Coast Guard issued a rebuilt determination for work performed on the vessel *Monterey*. The *Monterey* determination explained that application of the Coast Guard's regulatory standard involves a two-step process. The first step is to identify work which involves building upon or alteration of the hull or superstructure. Once the relevant work has been identified, the second step is to determine whether that work involves a considerable part of the hull or superstructure. If it does, then the vessel has been rebuilt.

As a result of the regulatory requirement, the Coast Guard frequently receives applications for preliminary determinations whether work to be performed on a vessel outside the United States would constitute a rebuilding. In support of an application for a preliminary rebuilt determination, the applicant will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials lists. The applicant then attempts to show that the work will not build upon or "substantially" alter "any considerable part" of the vessel's hull or superstructure. Often, comparisons are made between the before and after area of the hull and superstructure; the weight of steel to be replaced or added to the vessel's total steelweight; or the cost of the planned work to the overall value of the vessel.

Sometimes, the vessel representative does not submit an application for a rebuilt determination or any supporting documentation until after the work is performed. While this approach is permissible, it assumes the risk that the Coast Guard may determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination. In any event, following completion of the work, if the quantum of work involved raises a reasonable belief that the vessel has been rebuilt, the vessel representative must apply for a final rebuilt determination. Because of the wording of the standard and the unique nature of each vessel, every rebuilt determination is evaluated on a case-by-case basis.

Because the regulatory standard contains a number of undefined terms which could be problematic, the Coast Guard decided to seek public input on the advisability of engaging in a rulemaking. Two public meetings were held, both preceded by a notice in the **Federal Register**. The first meeting was on November 16, 1993 (58 FR 51298), and the second on February 15, 1994 (59 FR 725). The stated purpose of the public meetings was to obtain public input concerning whether the Coast Guard should undertake rulemaking to develop clearer standards for vessel rebuilt determinations, whether a negotiated rulemaking procedure would be appropriate, and to discuss problems encountered under existing procedures and possible solutions.

On May 10, 1994, the Coast Guard published a policy statement in the **Federal Register** (CGD 93–063; 59 FR 24060) announcing that it was planning to undertake rulemaking regarding vessel rebuilt determinations. Also, the policy statement concluded that, based on a review of its rebuilt determinations since the *Monterey* determination, work performed on a vessel which involved five percent or less of the vessel's steelweight has never been determined to constitute a rebuilding.

Discussion of Proposed Rules

The Coast Guard proposes to revise 46 CFR 67.177 regarding vessel rebuilt determinations. Section 67.177 would first restate the existing standard that a vessel is rebuilt "when any considerable part of its hull or superstructure is built upon or substantially altered." Application of that standard would remain essentially a two-step process.

The standard, by its terms, encompasses only work which involves building upon or substantial alteration of a considerable part of the hull or superstructure of the vessel. Therefore, the first step in applying the standard must be to identify hull and superstructure work as distinguished from other work on the vessel. Once the relevant work has been identified, the second step in applying the standard is to determine whether that work results in a "considerable part" of the hull or superstructure being built upon or substantially altered. If it does, the vessel will be deemed to have been rebuilt.

To identify work constituting building upon or a substantial alteration of the hull or superstructure of a vessel, the hull and superstructure must be defined. Both terms are defined in 46 CFR 67.3. The hull is the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations. The superstructure includes the main deck and any other structural part of the vessel above the main deck. Parts of the hull or superstructure include the shell plating, keel, decks, supporting bulkheads, beams, frames, girders, stringers, and other structural items.

On the other hand, the delivery, installation aboard the vessel, and modification or overhaul of inventory, equipment, furnishings, and stores are not included as parts of the hull or superstructure. Such inventory, equipment, furnishings, and stores include: Office inventory and equipment; medical stores and equipment; charts and flags; navigation and signaling equipment; portable VHS radio sets and rechargers; radio equipment; automatic telephone system; office amplifiers and loudspeakers; public address system; spare parts; mooring lines, towing lines, and manually operated rope storage wheels; lifeboats and liferafts; lifesaving equipment; firefighting equipment; CO2 systems; workshop tools and equipment; galley, pantry, and bar equipment; plates, crockery, cutlery, and glassware; games, gambling tables, and entertainment equipment; musical instruments; jacuzzis; print shop, photo laboratory and projector room equipment; bedding; table linens; window curtains; baggage handling equipment; steel storage shelves; deck furniture; cabin pictures and works of art; and furnishings for crew cabins, messes, recreation rooms, passenger cabins, lounges, public spaces, and service rooms.

Also, the installation and modification or overhaul of machinery, including foundations, that could be removed without affecting the structural integrity of the vessel are not included as part of the hull or superstructure. Among items of this type are: anchor windlass; steering machinery; bow thruster (the bow thruster tunnel must be constructed in the United States); elevator machinery; water systems evaporators and pumps; ventilation and air conditioning system units, motors, and compressors; garbage disposal system incinerator and compactor; steam turbine alternators, transformers, and electric motors; oily bilge separator; and sludge discharge pump.

Finally, many items involved in outfitting and maintaining the vessel that could be performed without affecting the structural and watertight integrity of the vessel are also not included as parts of the hull or superstructure. Among items of this type are: installation of windows and portholes; installation of partitions for interior spaces; installation of interior stairs (stairway trunks constructed in the United States); renewal of exterior stairways; renewal of handrails on passenger decks; installation of glass panes; repairs of exterior non-watertight steel doors; renewal of exterior fire hose lockers; overhaul of existing side gates, portholes, or watertight doors; cleaning and painting of the chain locker; sandblasting and painting of anchor chain; reinstallation of radar masts and modification of radar foundations;

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overhaul of sound-powered telephone system; installation of new navigation consoles; extension of general and fire alarm system; installation of heat detectors; installation of new lifeboat davits or the reinstallation of repaired lifeboat davits and winches; installation of life-jacket lockers; installation or modification of interior spaces such as cabins, lounges, and restrooms; sandblasting, painting, or coating of decks; general sandblasting and painting; renewal of drain pipes and gratings; installation of scuppers; installation and extension of piping systems; installation of insulation, linings, ceiling panels, floor coverings, and interior doors; installation of prefabricated bathroom modules; installation of signs, funnel marks, and name plates; overhaul of external cathodic protection system; installation of electrical distribution and lighting systems; and installation and overhaul of electrical cables.

To determine whether any "considerable part" of the hull or superstructure, as defined, has been built upon or altered, the relevant work must be viewed in relation to the hull or superstructure of the vessel as a whole. Generally, the weight of the material involved in the relevant work is compared to the steelweight of the vessel as a whole. In cases where steelweights are not readily determined, as for work on a wooden or fiberglass vessel for example, the surface area of the relevant work is compared to the surface area of the vessel as a whole and, to the maximum extent practicable, a comparable steelweight is determined for the work performed and for the vessel as a whole. The term "steelweight" is generically used in the proposed rule relative to the construction material of the vessel.

Paragraph (a) of proposed § 67.177 would address the statutory provision that a vessel, regardless of its material of construction, is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

Paragraph (b) of proposed § 67.177 would establish numerical parameters for rebuilt determinations for vessels of which the hull and superstructure are constructed of steel or aluminum. A vessel would be deemed rebuilt if the relevant work performed constitutes more than 10 percent of the vessel's steelweight. Thus, 10 percent of the vessel's steelweight would be set as the upper parameter, beyond which a rebuilding would occur in every case.

A vessel may or may not be deemed rebuilt if the relevant work performed constitutes more than 5 percent but not more than 10 percent of the vessel's steelweight. In this case, the vessel owner bears the burden to demonstrate that the nature of the work performed, its scope in relation to the vessel as a whole, its cost as compared to the cost of the vessel, or other such factors, justify a conclusion that the vessel has not been rebuilt.

A vessel would not be considered rebuilt if the relevant work performed constitutes 5 percent or less of the vessel's steelweight. Thus, 5 percent of the vessel's steelweight would be set as the lower parameter, at or below which a rebuilding would be deemed to not have occurred in any case.

Paragraph (c) of proposed § 67.177 would establish numerical parameters for rebuilt determinations for vessels of which the hull and superstructure are constructed of a material other than steel or aluminum. The numerical parameters would be the same as those used in paragraph (b). However, for the parameters to work for vessels of which the hull and superstructure are constructed of a material other than steel or aluminum, the concept of comparability is introduced.

The comparability concept requires that the applicant for a rebuilt determination evaluate the vessel and, based on its overall size, class, configuration, or other such factors, calculate to the maximum extent practicable what the steelweight of the vessel as a whole would be if it were constructed of steel or aluminum. The applicant would also be required to evaluate the quantum of work performed on the vessel and, based on its scope, area or square footage of sideshell, decks, or bulkheads involved compared to the area or square footage of similar surfaces on the entire vessel, or other such factors, calculate to the maximum extent practicable what the steelweight of the work performed would be if the material used was steel or aluminum. The Coast Guard particularly solicits comment from vessel owners, shipyards, repair facilities, and other interested parties concerning the feasibility and practicality of the comparability concept.

Vessels of mixed construction, for example, a vessel the hull of which is constructed of steel or aluminum and the superstructure of which is constructed of fiberglass, would be addressed by paragraph (d) of proposed § 67.177. The applicant for a rebuilt determination would, using the comparability concept, calculate to the maximum extent practicable the total steelweight of the vessel and the steelweight of the work performed on the non-steel/aluminum portion of the vessel. The comparable steelweight of the work performed on the non-steel/aluminum portion of the vessel would then be aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The same numerical parameters used in paragraph (b) would then be applied to the aggregate of the work performed on the vessel to determine whether the vessel had been rebuilt.

Pursuant to paragraph (e) of proposed § 67.177, an application for a rebuilt determination, where required, would have to be filed within 30 days following completion of the work or redelivery of the vessel, whichever occurs first. An application for a rebuilt determination would be required if the work was performed outside of the United States and it is determined to constitute or be comparable to more than 5 percent of the vessel's steelweight, or if a major component of the hull or superstructure which was not built in the United States was added to the vessel. In addition, paragraph (e) would state the items required to be submitted with an application for a rebuilt determination. Generally, these materials consist of a statement applying for the determination, a detailed statement of the work performed and naming the place or places where the work was performed, applicable steelweight calculations, sketches or blueprints of the work performed, and any other material the Coast Guard may request in support of the determination.

Paragraph (f) of proposed § 67.177 would provide an alternative under which a vessel owner may submit a written statement to the Commandant declaring a vessel rebuilt outside the United States. By using this alternative, the owner who intends to forgo the restricted trading privileges may avoid submitting the detailed materials required for a rebuilt determination. A note would be added at the end of the proposed section explaining that a statement submitted in accordance with paragraph (f) does not constitute an application for a rebuilt determination and, therefore, does not require payment of a fee.

Lastly, the materials required to be submitted for a preliminary rebuilt determination would be specified in paragraph (g) of proposed § 67.177. Generally, these materials consist of a statement applying for the preliminary determination, a detailed statement of the work to be performed and naming the place or places where the work is to be performed, projected applicable steelweight calculations, sketches or blueprints of the planned work, and any other material the Coast Guard may request in support of the preliminary determination.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. However, it is considered significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) due to the interests expressed by a segment of the maritime industry and the Canadian Government. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal would, if adopted, merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the proposed changes would be administrative in nature and provide better guidance to vessel owners planning for work to be performed on their vessels. In fact, by providing clearer guidance, the proposal, if adopted, would help vessel owners to avoid costs associated with an unexpected, and unintended, determination that their vessel has been rebuilt.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the economic impact of this proposal to be minimal because this proposal would, if adopted, merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the proposed changes would be administrative in nature and would provide better guidance to vessel owners planning for work to be performed on their vessel. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains collection-of-information requirements in 46 CFR § 67.177. However, these collection-of-information requirements are the same as those contained in the existing regulations which have been previously approved by OMB and assigned Control No. 2115–0110. This proposal would add no new or additional collection-of-information requirements. The proposed changes, if adopted, may even reduce paperwork submissions by providing sufficiently clear guidance that many of the applications for preliminary rebuilt determinations may become unnecessary.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal has been determined to be categorically excluded because the changes proposed are administrative in nature and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701, 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. Section 67.177 is revised to read as follows:

§ 67.177 Application for rebuilt determination.

A vessel is rebuilt when any considerable part of its hull or superstructure is built upon or substantially altered. In determining whether a vessel is rebuilt, the following parameters apply.

(a) Regardless of its material of construction, a vessel is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

(b) For a vessel of which the hull and superstructure is constructed of steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes more than 10 percent of the vessel's steelweight.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 5 percent but not more than 10 percent of the vessel's steelweight.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes 5 percent or less of the vessel's steelweight.

(c) For a vessel of which the hull and superstructure is constructed of material other than steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 10 percent of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 5 percent but not more than 10 percent of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to 5 percent or less of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(d) For a vessel of mixed construction, such as a vessel the hull of which is constructed of steel or aluminum and the superstructure of which is

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constructed of fibrous reinforced plastic, the steelweight of the work performed on the portion of the vessel constructed of a material other than steel or aluminum will be determined, to the maximum extent practicable, and aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The numerical parameters described in paragraph (b) of this section will then be applied to the aggregate of the work performed on the vessel compared to the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum, to determine whether the vessel has been rebuilt.

(e) The owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements which is altered outside the United States and the work performed is determined to constitute or be comparable to more than 5 percent of the vessel's steelweight, or which has a major component of the hull or superstructure not built in the United States added, must file the following information with the Commandant within 30 days following the earlier of completion of the work or redelivery of the vessel to the owner or owner's representative:

(1) A written statement applying for a rebuilt determination, outlining in detail the work performed and naming the place(s) where the work was performed;

(2) Calculations showing the actual or comparable steelweight of the work performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the work performed to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the work performed; and

(4) Any further submissions requested by the Commandant.

(f) Regardless of the extent of actual work performed, the owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements may, as an alternative to filing the items listed in paragraph (e) of this section, submit a written statement to the Commandant declaring the vessel rebuilt outside the United States. The vessel will then be deemed to have been rebuilt outside the United States with loss of trading privileges.

(g) A vessel owner may apply for a preliminary rebuilt determination by submitting:

(1) A written statement applying for a preliminary rebuilt determination, outlining in detail the work planned and naming the place(s) where the work is to be performed;

(2) Calculations showing the actual or comparable steelweight of work to be performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the planned work to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the planned work; and

(4) Any further submissions requested by the Commandant.

Note: A statement submitted in accordance with paragraph (f) of this section does not constitute an application for a rebuilt determination and does not require payment of a fee.

Dated: October 21, 1994.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95-6386 Filed 4-4-95; 8:45 am]

BILLING CODE 4910-14-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 95-21; DA 95-490]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission previously adopted a notice of proposed rulemaking proposing to amend its regulations concerning ex parte presentations in Commission proceedings. (See 60 FR 8995, Feb. 16, 1995.) By order of the General Counsel the comment and reply dates have been extended four weeks. The intended effect of this action is to give members of the public additional time to comment on the Commission's proposal.

DATES: Comments must be filed on or before April 13, 1995; reply comments must be filed on or before April 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington DC. 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418-1760.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 13, 1995; Released: March 15, 1995.

1. Under consideration by the Commission is a Motion to Extend Time in Which to File Comments and Replies filed March 8, 1995 by the Federal Communications Bar Association (FCBA).

2. The FCBA requests that the time for filing comments and reply comments in this proceeding be extended until June 14, and June 29, 1995, respectively. It asserts that this additional time is required to afford it an opportunity to ascertain the thinking of its members and prepare effective comments following both an April 25, 1995 seminar, to be held in conjunction with the FCBA's Continuing Legal Education Committee, which will address the issues raised in this proceeding, and consideration of the views expressed there by the FCBA's Executive Committee at its regularly scheduled meeting on May 23, 1995. It appears that immediate action on this Motion is warranted, pursuant to 47 CFR 1.45(e), so that all interested parties will have prompt notice of the pertinent filing deadlines.

3. After careful consideration of the Motion, we have determined that the FCBA has not made a showing that would warrant extending the time to the full extent requested. Given the fact that the primary purpose of this proceeding is to proceed without undue delay to improve the public's ability to communicate with the Commission in a manner that comports with fundamental principles of fairness, the public interest will be best served by a four week extension of time for the filing of comments and reply comments.

4. Accordingly, *it is ordered*, Pursuant to the authority delegated under 47 CFR 0.251(b) that the Motion to Extend Time in Which to File Comments and Replies filed March 8, 1995 by the Federal Communications Bar Association is granted in part and is denied in part and that the time for filing comments and reply comments is extended to April 13, 1995 and April 28, 1995.

Federal Communications Commission.

William E. Kennard,

General Counsel.

[FR Doc. 95-8338 Filed 4-4-95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 16, and 52

[FAR Case 94-711]

Federal Acquisition Regulation; Task and Delivery Order Contracts Public Meeting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of change of location of public meeting on FAR case 94-711.

SUMMARY: At 60 FR 14346, March 16, 1995, a proposed rule was published amending the Federal Acquisition Streamlining Act, proposed an amendment to the Federal Acquisition Regulation (FAR) to implement statutory requirements of the Act with regard to task and delivery order contracts. A public meeting on this matter was scheduled to be held at the GSA Auditorium. That location is no longer available and this notice is to announce a new location for the meeting. The time and date of the meeting have not changed, only the location.

DATES: The Task and Delivery Order Contracts meeting will be held on April 13, 1995, at 1:00 p.m.

ADDRESSES: The public meeting will now be held at the Department of Interior Auditorium, 1849 C Street, NW., First Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, General Services Administration, 18th and F Streets, NW., Washington, DC 20405. Telephone: (202) 501-4755.

Dated: March 30, 1995.

Edward Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994

[FR Doc. 95-8300 Filed 4-4-95; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190-199

[Docket No. PS-139; Notice No. 1]

Improving the Pipeline Safety Program; Public Meetings and Request for Comments Related to Regulatory Review and Customer Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public meetings and request for comments.

SUMMARY: This notice announces a nationwide series of three public meetings during April and May to seek information from the public on regulatory reform and improved customer service for RSPA's pipeline safety program.

DATES: Meetings: Public meetings will be held as follows:

(1) April 25, 1995, in Dallas, Texas.
(2) April 27, 1995, in Lakewood, Colorado.
(3) May 15, 1995, in Houston, Texas.

Comments: This notice invites comments on both regulatory reform and improved customer service. Participation in the meeting is not a prerequisite for the submission of written comments. Please submit comments before May 31, 1995.

ADDRESSES: Meetings: See **SUPPLEMENTARY INFORMATION** for specific times, locations and agendas.

Comments: Please address written comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments may also be faxed to (202) 366-4566. Comments should identify the docket (Docket No. PS-139). The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366-0918 regarding the subject matter of this notice; or the Dockets Unit (202) 366-4900; RSPA, Department of Transportation, Washington, DC 20590-0001. Any person wishing to speak should notify Jenny Donohue at (202) 366-4046 with an estimate of the time required for their statement.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. RSPA is reviewing the Pipeline Safety Regulations (49 CFR Parts 190-199) in response to the President's directive.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order requires continual reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from customers of its pipeline safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

Conduct of Meetings

Meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the pipeline safety programs regulations and customer services. The meeting officer reserves the right to limit time allocated to speakers, if necessary, to ensure that all have an opportunity to speak. Other individuals will have an opportunity to present their comments after scheduled speakers complete their comments, subject to the approval of the presiding officer. Conversely, meetings may conclude before the scheduled time if all persons wishing to participate have been heard.

Meeting Schedule

The public meetings will be held as follows:

(1) April 25, 1995, from 4:30 p.m. to 6:00 p.m., in Dallas, Texas, at Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, TX. 75207, in the "Emerald Room". This meeting will be held concurrently with the American Petroleum Institute's 46th Annual Pipeline Conference.

(2) April 27, 1995, from 9:00 a.m to 4:00 p.m., in Lakewood, Colorado, Denver Federal Center, U.S. Geological Survey, Building 25, Lecture Hall A & B (first floor), Lakewood, CO.

(3) May 15, 1995, from 9:00 a.m to 4:00 p.m., in Houston, Texas, Sheraton Crown Hotel & Conference Center, 15700 John F. Kennedy Boulevard, Houston, Texas 77032.

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Areas of Regulatory Concern

In calling on agencies to cut obsolete regulations, the President directs each agency to consider the following issues in its review of the regulations:

- Is this regulation obsolete?
- Could its intended goal be achieved in more efficient, less intrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the States or local governments do the job, making Federal regulation unnecessary?

RSPA suggests that persons commenting on the pipeline safety program consider these issues.

The President's call for regulatory reform provides opportunities for eliminating or improving pipeline safety regulations. RSPA is undertaking a page-by-page review of the Pipeline Safety Regulations and is identifying certain sections of the regulations that are candidates for elimination, revision, clarification or relaxation.

Improvements to Customer Service

RSPA is soliciting comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the pipeline safety program. RSPA will use the comments to establish service standards and measure results against them; provide customers with choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide the means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the Pipeline Safety Regulations and processing exemptions, approvals, registrations, grant applications, and enforcement actions. Other customer services include conduct of pipeline safety seminars, and the development and dissemination of training and informational materials.

Issued in Washington, DC on March 31, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–8362 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD 22

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for Woundfin, Virgin River Chub, and Virgin Spinedace and Notice of Public Hearing

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) proposes to designate critical habitat for the Virgin River chub (*Gila seminuda = G. robusta seminuda*), the Virgin spinedace (*Lepidomeda mollispinis mollispinis*), and the woundfin (*Plagopterus argentissimus*). The Virgin River chub and wouldfin are listed as endangered; the Virgin spinedace has been proposed for listing as threatened (May 18, 1994), but the listing has not been finalized as yet. There is considerable overlap in critical habitat proposed for the three species, the proposed designation includes 330.8 km (206.8 mi) of the Virgin River and its tributaries in portions of Utah, Arizona, and Nevada. The Service proposes 151.7 km (94.8 mi) of critical habitat for the woundfin (approximately 13.5 percent of its historical range); 151.7 km (94.8 mi) for the Virgin River chub (70.8 percent of its historical range, excluding the chub occupying the Muddy River); and 201.9 km (126.2 mi) for the Virgin spinedace (87.3 percent of its historical range). The majority of the land to be designated as critical habitat is under Federal or private ownership.

All three fish species are endemic to the Virgin River Basin of southwestern Utah, northwestern Arizona, and southeastern Nevada. The proposed critical habitat designation includes portions of the mainstem Virgin River and its tributaries, including the 100-year floodplain. This proposed critical habitat would result in additional review requirements under section 7 of the Act with regard to Federal agency actions. Section 4 of the Act requires the Service to consider economic costs and benefits prior to making a final decision on the size and scope of critical habitat.

DATES: Comments will be accepted until June 5, 1995.

A public hearing will be held from 5 p.m. to 9 p.m., with registration beginning at 4:30 p.m., on Monday, May 8, 1995. Requests for additional public hearings must be received by May 22, 1995.

ADDRESSES: Requests for additional public hearings or comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Salt Lake City Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The public hearing will be in the Garden Room at the St. George Hilton Inn, 1450 South Hilton Drive, St. George, Utah. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. Copies of comments and materials received also will be available for public inspection at the Washington County Public Library in St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor, Salt Lake City Field Office, at the above address, (801) 524–5001.

SUPPLEMENTARY INFORMATION:

Background

The woundfin (*Plagopterus argentissimus*) and Virgin River chub (*Gila seminuda =G. robusta seminuda*) are presently listed as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Virgin spinedace (*Lepidomeda mollispinis mollispinis*) was proposed for listing on May 18, 1994, as threatened under the Act. In the subsequent text, all three species of fish are referred to as "listed fishes" even though the Virgin spinedace has only been proposed for listing at this time. These three fishes are all endemic to the Virgin River Basin. The Virgin River flows generally along the Hurricane Fault, which forms the boundary between the Colorado Plateau and the Great Basin. These two geologic provinces are quite dissimilar. The Colorado Plateau is characterized by horizontal-lying strata eroded into canyons, plateaus, and mesas. Long, isolated mountain ranges separated by broad alluvial valleys typify the Great Basin province. The Virgin River originates in south-central Utah, running in a southwest direction from Utah to northwestern Arizona, and southeastern Nevada for approximately 320 kilometers (km) (200 miles (mi)) before emptying into Lake Mead. Prior to the completion of Boulder (Hoover) Dam in 1935, the Muddy River in southeastern Nevada joined the Virgin River before the latter emptied into the Colorado River. These two rivers now flow separately into the Overton Arm of Lake Mead.

These Virgin River fishes have declined in numbers due to the cumulative effects of environmental impacts which include dewatering from numerous diversion projects; proliferation of nonnative fishes; and alterations to natural flow, temperature, and sediment regimes.

Woundfin

Based on early records, the original range of the woundfin extended from near the junction of the Salt and Verde Rivers at Tempe, Arizona, to the mouth of the Gila River at Yuma, Arizona (Gilbert and Scofield 1898, Minckley 1973). Woundfin were also found in the mainstem Colorado River from Yuma (Jordan and Evermann 1896, Meek 1904, Follett 1961) upstream to the Virgin River in Nevada, Arizona, and Utah and into La Verkin Creek, a tributary of the Virgin River in Utah (Gilbert and Scofield 1898, Snyder 1915, Miller and Hubbs 1960, Cross 1975). However, there is reason to believe that the woundfin occurred further upstream in the Verde, Salt, and Gila Rivers in Arizona.

Except for the mainstem of the Virgin River, woundfin were extirpated from most of their historical range. Woundfin presently range from Pah Tempe Springs (also called La Verkin Springs) on the mainstem of the Virgin River and the lower portion of La Verkin Creek in Utah, downstream to Lake Mead. A single specimen was taken from the middle Muddy (Moapa) River, Clark County, Nevada, in the late 1960's and since that time no additional specimens have been collected (Deacon and Bradley 1972).

Adult and juvenile woundfin inhabit runs and quiet waters adjacent to riffles with sand and sand/gravel substrates. Adults are generally found in habitats with water depths between 0.15 and 0.43 meters (m) (0.5 and 1.4 feet (ft)) with velocities between 0.24 and 0.49 meters per second (m/s) (0.8 and 1.6 feet per second ft/s)). Juveniles select areas with slower and deeper water, while fry are found in backwaters and stream margins which are often associated with growths of filamentous algae. Spawning takes place during the period of declining spring flows.

Virgin River Chub

The Virgin River chub was described as a full species (*Gila seminuda*) in 1875 (Cope and Yarrow 1875) and it was thought to be restricted to the Virgin River between Hurricane, Utah, and its confluence with the Colorado River. However, Ellis (1914) considered this chub to be an intermediate between the roundtail chub (*G. robusta*) and bonytail chub (*G. elegans*), and reduced it to a subspecies (*G. robusta seminuda*) of the roundtail chub.

Until recently, the Fish and Wildlife Service (Service) and other authorities (Holden and Stalnaker 1970, Minckley 1973, Smith et al. 1977) have treated the chub in the Muddy River as a separate, unnamed subspecies of roundtail chub (Moapa roundtail chub = *G. robusta* ssp.). Since 1982, the Service has considered this chub to be a Category 2 candidate species (47 FR 58455, 54 FR 556, 56 FR 58804).

In a recent taxonomic study of the genus *Gila*, DeMarais et al. (1992) asserted that full species status (*G. seminuda*) was warranted for the Virgin River chub. The Muddy River form is included in *G. seminuda*, although it is a separate population. *Gila seminuda* most likely arose through hybridization involving *G. robusta* and *G. elegans*. These taxonomic revisions were recently accepted by the Service, American Fisheries Society, and the American Society of Ichthyologists and Herpetologists Fish Names Committee (Mr. Joseph S. Nelson, American Fish Society, *in litt.* 1993). This proposal to designate critical habitat does not include the Muddy River form of the Virgin River chub. However, the Service will review the status of the Muddy River population of the Virgin River chub.

The Virgin River chub was first collected in the 1870's from the Virgin River near Washington, Utah. Historically, it was collected from the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to the confluence with the Colorado River in Nevada (Cope and Yarrow 1875, Cross 1975). Presently, the Virgin River chub occurs within the mainstem Virgin River from Pah Tempe Springs downstream to at least the Mesquite Diversion.

Adult and juvenile Virgin River chub select deep runs or pools with slow to moderate velocities containing boulders or other instream cover over a sand substrate. Generally, larger fish occupy deeper habitats; however, there is no apparent correlation with velocity. Chub are generally found in velocities ranging up to 0.76 m/s (2.5 ft/s).

Virgin Spinedace

The historical distribution of the Virgin spinedace is not well known. Holden (1977) speculated that the species occurred in most of the clear water tributaries and in several mainstem reaches of the Virgin River in southwestern Utah, northwestern Arizona, and southeastern Nevada. Museum records and species survey information support this historic distribution (Rinne 1971, Cross 1975, Valdez et al. 1991, Addley and Hardy 1993).

Over the last 50 years, there has been a decline in the range of the species with about a 37–40 percent (83 km, 52 mi) habitat loss due to human impacts (Valdez et al. 1991, Addley and Hardy 1993). Stream reaches that once contained spinedace (but are now dewatered) include portions of the East Fork of Beaver Dam Wash, the Santa Clara River downstream Gunlock Reservoir, Mogatsu Creek, Ash Creek near Toquerville, Leeds Creek, and the mainstem Virgin River between Quail Creek Diversion and Pah Tempe Springs. Current distribution of the spinedace includes portions of the mainstem Virgin River and 11 of its tributaries and subtributaries including the East Fork Virgin River, Shunes Creek, North Fork Virgin River, North Creek, La Verkin Creek, Ash Creek, Santa Clara River, Beaver Dam Wash, Coal Pits Wash, Moody Wash, and Mogatsu Creek.

Virgin spinedace are found in runs or pools in clear streams. The presence of cover either in the form of vegetation, boulders, debris, or undercut banks is also characteristic. Substrates in occupied habitats include rubble/cobble, gravel, sand, and silt. Spinedace are found in streams at depths of 0.1 to 0.9 m (0.3 to 2.9 ft) and with current velocities between 0.1 and 1.0 m/s (0.3 to 3.2 ft/s).

Importance of the Virgin River Floodplain

Components of the river system include the mainstem channel in which water is maintained most or all of the year and the upland habitats which are inundated during spring flows. These seasonally flooded habitats contribute to the biological productivity of the river system by providing nutrients (allochthonous energy) and terrestrial food sources to aquatic organisms (Hesse and Sheets 1993). Additionally, Hynes (1970) reported that streams with higher percentages of vegetation contained higher densities of aquatic invertebrates. The Virgin River contains little aquatic vegetation and produces a minimum of autochthonous (indigenous) organic matter. Thus, the fauna of the Virgin River is dependent on allochthonous energy inputs from the floodplain that provide much of the food base.

Studies of the major floodplain rivers of the world have documented the value of flooded bottomlands and uplands for fish production (Welcomme 1979). Due to their mobility, many species of fishes

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are able to take advantage of food sources from flooded lands. Indeed, many fishes have developed migratory strategies that allow them to utilize inundated areas as spawning, nursery, and foraging areas (Lowe-McConnel 1975, Welcomme 1979). In this context, a rich food source of terrestrial origin may enhance fish growth, fecundity, and/or survival. Use of these inundated floodplains increases the energy available for spawning and is necessary for reproductive success in some species (Finger and Stewart 1987). In many cyprinid fishes, including these Virgin River natives, spawning is associated with seasonal rains and flooding of rivers. Flood-related changes in the river environment not only induce spawning for many species, but these changes comprise the ultimate factors limiting the survival of eggs, larvae, or young fish (Hontela and Stacey 1990).

Loss of floodplain habitats in the Missouri River Basin has reduced fish biomass production as much as 98 percent (Karr and Schlosser 1978). Inundation of floodplain habitats during spring flows also provides areas with warmer water temperatures, low velocity resting habitat, and cover from predation. Recent studies in the Colorado River system show that the life histories and welfare of native riverine fishes are linked to the maintenance of a natural or historic flow regimen (i.e., hydrological pattern of high spring and low autumn-winter flows that vary in magnitude and duration depending on annual precipitation patterns and runoff from snowmelt) (Tyus and Karp 1989, 1990). Minckley and Meffe (1987) suggest that loss of flooding will result in extirpation of many of the native fish species in the Colorado River system.

Previous Federal Actions

The woundfin was listed as endangered on October 13, 1970 (35 FR 16047), and critical habitat was proposed on November 2, 1997 (42 FR 57329). However, on March 6, 1979, the proposal for critical habitat was withdrawn (44 FR 12382) due to the 1978 amendments to the Act, which required proposals to be withdrawn if not finalized within 2 years. A Woundfin Recovery Plan was originally approved in July 1979 and subsequently revised on March 1, 1984. On July 24, 1985, the Service proposed the reintroduction of the woundfin into the Gila River drainage in Arizona and determined this population to be "nonessential experimental" in accordance with section 10(j) of the Act (50 FR 30188).

On August 23, 1978, the Service proposed the listing as endangered and the designation of critical habitat for the Virgin River chub (43 FR 37668). This proposal was also withdrawn (45 FR 64853; September 30, 1980), due to the 1978 amendments to the Act. The Virgin River chub was later listed as endangered on August 24, 1989 (54 FR 35305). Critical habitat was proposed on June 24, 1988 (51 FR 22849); however, the final determination was postponed. When the Virgin River chub was listed, the Muddy River form was omitted due to the uncertainty of its taxonomy. The Virgin River Fishes Recovery Plan, which is under final preparation, includes the woundfin and Virgin River chub (but not the Muddy River form).

The Virgin spinedace was proposed for listing as a threatened species on May 18, 1994 (59 FR 25875). A proposal to designate critical habitat for the spinedace was delayed because the Service felt that the three fish species would receive greater protection if critical habitat was designated simultaneously.

On March 18, 1994, the U.S. District Court, Colorado (Court) ordered the Service to designate critical habitat for the Virgin River chub, woundfin, and Virgin spinedace (if listed before December 31, 1994). The Court ordered that critical habitat be proposed no later than April 1, 1995, and be finalized by December 1, 1995.

Although the listing of the Virgin spinedace has not been finalized, the designation of critical habitat is being proposed for it, in order to allow for public comment on all three species. The final rule for critical habitat designation will also reflect the listed status of the Virgin spinedace as of that date.

Definition of Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is now proposed for the woundfin, Virgin River chub, and Virgin spinedace.

Role of Critical Habitat in Species Conservation

The designation of critical habitat is one of several measures available to assist in the conservation and recovery of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not the areas are currently occupied by the listed species. Such designations alert Federal agencies, States, the public, and other organizations to the areas' importance to the conservation and recovery of the species. Critical habitat also identifies areas that may require special management or protection considerations. Areas designated as critical habitat receive protection under section 7 of the Act. This is in regards to actions carried out, funded, or authorized by a Federal agency that are likely to adversely modify or destroy critical habitat. Section 7 requires that Federal agencies consult with the Service on actions that may destroy or adversely modify critical habitat.

Designation of critical habitat only affects Federal actions that occur in the areas and does not automatically prohibit certain actions or create a management plan for a listed species. Such designation does not have a direct effect on habitat not specified as critical habitat. Critical habitat designation may increase protection of designated areas and assists in the recovery of species. Areas outside of critical habitat, containing one or more of the primary constituent elements, serve to maintain ecosystem integrity, thereby indirectly contributing to recovery.

Relationship of Critical Habitat to Recovery Plan

Recovery plans, developed in accordance with section 4(f) of the Act, address the steps needed to recover a species throughout its range and provide guidance, that may include population goals and identification of areas in need of protection or special management. In developing a recovery plan, the relationships between critical habitat and other current planning efforts should be evaluated. Recovery plans should recommend actions for managing designated critical habitat on Federal lands, as well as critical habitat under other landownership.

Primary Constituent Elements

In determining areas for designation as critical habitat, the Service considers those physical and biological features that are essential for the conservation of the species. Such physical and biological features (in 50 CFR 424.12) include, but are not limited to, the following items:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In addition, the Act stipulates that areas containing these elements may require special management considerations or protection.

In determining critical habitat for the Virgin River fishes, the Service focused on the primary physical and biological elements essential to the conservation of each species. The Service is required to list these elements together with a description of the designated critical habitat.

The primary constituent elements determined necessary for the survival and recovery of these Virgin River fishes include, but are not limited to:

Water—A quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species.

Physical Habitat—Areas of the Virgin River Basin that are inhabited or potentially habitable by fish for use in spawning, nursing, feeding, and rearing, or corridors between such areas. In addition to river channels, these areas also include side channels, secondary channels, backwaters, springs, and other areas which provide spawning, nursery, feeding, or rearing habitats, or access to these habitats.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, may be out of balance due to nonnative fish species in many areas.

Habitat requirements for the listed fishes vary. In designating an area as critical habitat for more than one of the species, the Service assessed the area for all applicable constituent elements. Specific information on primary constituent elements for each of these fish species is given in the following section.

Proposed Critical Habitat Designation

Woundfin—The proposed designation of critical habitat for the woundfin is the mainstem Virgin River, extending from the confluence of Ash-La Verkin Creeks to above Lake Mead. The Virgin River was divided into five distinct reaches (due to its current functions hydrologically) and these reaches total 151.7 km (94.8 mi) as measures along the center line of each reach (Table 1). This represents approximately 13.5 percent of the woundfin's historical habitat. Due to the lack of historical data on the distribution of the woundfin in Arizona, this number is only an estimate. These proposed reaches flow through both public and private lands (Table 2).

Virgin River Chub—The proposed designation of critical habitat for the Virgin River chub is the mainstem Virgin River, extending from the confluence of Ash-La Verkin Creeks to above Lake Mead. Due to the hydrological current functions of the Virgin River, it was divided into five distinct reaches (Table 1) and these reaches total 151.7 km (94.8 mi). This represents approximately 70.8 percent of the historical habitat within the Virgin River Basin, excluding the range historically occupied by the Muddy River chub population. These reaches flow through both public and private land (Table 2).

Virgin Spinedace—The Service proposes 16 reaches within the Virgin River Basin as critical habitat for the Virgin spinedace (Table 1) and these reaches total 201.9 km (126.2 mi). This represents approximately 87.7 percent of the historical habitat for this species (230.2 km or 143.9 mi) (Valdez et al. 1991). Critical habitat is being proposed for the mainstem Virgin River, the East and North Forks of the Virgin River, Beaver Dam Wash, Shunes Creek, Moody Wash, Mogatsu Creek, the Santa Clara River, Ash Creek, La Verkin Creek, and North Creek. These reaches flow through both public and private lands (Table 2).

TABLE 1.—PROPOSED CRITICAL HABITAT IN KILOMETERS (MILES) FOR VIRGIN RIVER LISTED FISHES

State	Woundfin	Virgin River Chub	Virgin Spinedace	State Totals[a]
Arizona	50.6 (31.6)	50.6 (31.6)	1.3 (0.8)	51.9 (32.4)
Nevada	41.5 (25.9)	41.5 (25.9	.....	41.5 (25.9
Utah	59.6 (37.3)	59.6 (37.3)	200.6 (125.4)	237.4 (148.4)
Total	151.7 (94.8)	151.7 (94.8)	201.9 (126.2)	330.8 (206.8)

[a] State totals do not equal the cumulative totals of the three species due to considerable overlap of proposed critical habitat among species.

TABLE 2.—SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF PROPOSED CRITICAL HABITAT FOR VIRGIN RIVER LISTED FISHES[a]

Ownership	Woundfin	Virgin River Chub	Virgin Spinedace
Federal[b]	85.2 (53.3)	85.2 (53.3)	76.8 (48.0)
State	7.5 (4.8)	7.5 (4.8)	2.8 (1.8)
Tribal	.....	.....	9.7 (6.1)
Private	59.0 (36.8)	59.0 (36.8)	112.6 (70.4)

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TABLE 2.—SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF PROPOSED CRITICAL HABITAT FOR VIRGIN RIVER LISTED FISHES[a]—Continued

Ownership	Woundfin	Virgin River Chub	Virgin Spinedace
Total	151.7 (94.8	151.7 (94.8)	201.9 (126.2)

[a] Landownership was typically the same on both riverbanks. However, in several reaches (1.5 km or less) the river formed a boundary between Federal and private lands. Based upon the location of the channel, these reaches were identified as either Federal or private, not both. Therefore, distances may be doubled to represent ownership along both riverbanks.
[b] Federal lands include those managed by the Bureau of Land Management, Forest Service, and National Park Service.

Virgin River Floodplain

The riparian zone within the 100-year floodplain of the Virgin River reaches is being proposed as critical habitat, but only those portions of the 100-year floodplain that contain constituent elements are being designated for critical habitat. Developed lands not considered critical habitat within the 100-year floodplain boundary include, but are not limited to, existing paved roads, bridges, parking lots, dikes, levees, railroad tracks, railroad trestles, water diversion canals outside of natural stream channels, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. These developed areas do not contain primary constituent elements and will not contribute to the species' recovery.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires that activities Federal agencies authorize, fund, or carry out do not destroy or adversely modify designated critical habitat. This is in addition to the requirement of section 7(a)(2) that Federal agencies insure that their actions do not jeopardize the continued existence of a listed species. A Federal agency must consult with the Service if a proposed action of theirs affects a listed species or its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified in 50 CFR part 402.

Once critical habitat is designated, section 7(a)(4) of the Act and implementing regulations (50 CFR 402.10) require that Federal agencies confer with the Service on any action which will destroy or adversely modify the designated areas. Conference reports provide advisory conservation recommendations to assist a Federal agency in identifying and resolving conflicts that may be caused by the proposed action.

If a Federal agency requests consultation under section 7 of the Act, and the Service concurs, a formal conference report may then be issued. Formal conference reports on proposed critical habitat contain an opinion prepared in accordance with formal consultation procedures as if the critical habitat were already designated. Such a formal conference report is adopted as the biological opinion pursuant to 50 CFR 402.10(d) when the critical habitat is designated, provided no significant information or changes in the action occur that would alter the content of the opinion.

Designation of critical habitat focuses on the primary constituent elements within the defined reaches and their contribution to the species recovery, and includes consideration of the species' biological needs and factors that will contribute to its recovery (i.e., distribution, numbers, reproduction, and viability). In evaluating Federal actions, the Service will consider the action's impact on factors used to determine critical habitat of the Virgin River listed fishes. These factors include the primary constituent elements of water, physical habitat, and biological environment. The ability of an area to provide these constituent elements into the future and the reaches' capability to contribute to the recovery of the species will also be considered. The potential level of allowable impacts or habitat reduction in critical habitat reaches will be determined on a case-by-case basis during section 7 consultation.

For species with multiple critical habitat reaches, each reach has local and rangewide roles in contributing to the conservation of the species. The loss of a single reach may not jeopardize the continued existence of the species, but it could significantly reduce the critical habitat's contribution to recovery of a species. In some cases, the destruction of a reach proposed as critical habitat could result in the loss of an entire population, thereby precluding any recovery and reducing the likelihood of survival of the species. The proposed critical habitat reaches in the Virgin River Fishes Recovery Plan include areas important for recovery of these fishes.

Examples of Proposed Actions

Section 4(b)(8) requires for any proposed or final regulation; designation of critical habitat, a brief description and evaluation of those activities that may adversely modify or destroy such habitat or those activities that may be affected by such designation. Destruction or adverse modification of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of a listed species. Some activities disturb or remove the primary constituent elements within designated critical habitat for the Virgin River fishes. These activities include actions that reduce the volume and timing of water flows, destroy or eliminate access to spawning and nursery habitat, prevent recruitment, impact food sources, contaminate the river, or increase predation and competition by nonnative fishes. In contrast, other activities such as recreation (i.e., boating, hiking, hunting, etc.), some types of farming and ranching, may not adversely modify critical habitat.

Areas designated as critical habitat for the Virgin River listed fishes support a number of proposed and existing commercial and noncommercial activities. Some activities that will affect critical habitat include construction and operation of hydroelectric facilities, irrigation, flood control, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, municipal water supplies, and resort facilities. Federal activities include the Sandstone Reservoir, Pah Tempe Pipeline, Halfway Wash Project, Lake Powell Pipeline, water wheeling, water leasing, Washington Fields Pumpback, and dewatering of springs for municipal and industrial purposes. Commercial activities that will not destroy or adversely modify critical habitat include river float trips and guided sport fishing. Noncommercial activities such as boating, fishing, and various activities associated with nature appreciation are largely associated with private recreation and most likely will not affect critical habitat. Section 7 of the Act only applies to Federal actions (i.e., projects, permits, loans, etc.) and each Federal action must be evaluated on a case-by-case basis.

Consideration of Economic and Other Factors

Section 4(b)(2) of the Act considers economic and other relevant impacts in determining whether to exclude any proposed areas from the final designation of critical habitat. The Service may exclude areas from critical habitat designation when the costs or impacts outweigh the benefits, provided that exclusion will not result in extinction of a species. An economic analysis was conducted on the costs of the proposed critical habitat designation (Brookshire et al. 1995). The study area for the economic analysis encompassed portions of the Virgin River Basin in Utah, Arizona, and Nevada.

The biological requirements for the recovery of these listed fishes and regional economic activities were assessed and form the basis of the economic analysis. The biological requirements include adjustments in water diversions in the Virgin River Basin and/or mitigation of nonflow-related activities within the 100-year floodplain. The effects of recovery efforts on future water depletions in the basin also were taken into consideration. The impacts of these possible changes on current and prospective economic activities were estimated using input-output models for each county and region in the Virgin River Basin. Direct and indirect impacts on employment, wages, and State and Federal revenues derived from business and personal income taxes were also factored into the exclusion process. The results of these models are found in the economic analysis document prepared for determining critical habitat for these particular fish species (Brookshire et al. 1995). This complete economic analysis is part of the administrative record which is available to the public upon request.

Economic Analysis Methodology

The economic analysis provides insights into the reallocation of resources from the perspectives of both economic efficiency and distribution or equity. The efficiency criterion determines whether designating areas as critical habitat produces any net gains to society. The equity criterion looks at the resulting distribution of gains and losses. The study region for which the economic analysis was conducted includes Washington and Iron Counties in Utah, Clark County in Nevada, and the portion of Mohave County in Arizona located north of the Colorado River. The time frame chosen for the study encompasses a 45-year period (1995 through 2040) projected to recover the listed fishes.

Washington County, Utah, and Clark County, Nevada are two counties that will be directly affected by any actions taken by the Service on behalf of the listed fishes. Presently, these counties are among the fastest growing areas in the United States. From 1980 to 1990, Washington County's population grew by 52 percent, while Clark County's grew by 62.5 percent. The Virgin River also flows through a portion of Mohave County in Arizona. This area has a very small population and a modest economic base. Iron County, Utah, (lies north of Washington County) is a rapidly growing area that is economically closely linked to Washington County. Although the Virgin River does not flow through Iron County, any economic impacts on Washington County would be felt in Iron County as well.

The linkage between the biological requirements for the survival and recovery of the listed fishes and economic activities in the region formed the basis for the economic analysis. As an index of these biological requirements, adjustments made in the operations of the Quail Creek Reservoir and agricultural diversions on the Virgin River were included. The effects of recovery efforts on projected future water development and delivery projects were taken into consideration. The direct effects on the agencies responsible for water development and delivery also were taken into consideration. The direct and indirect impacts of these possible changes on current and prospective economic activities were then estimated for each county and regional economy.

One cannot predict the outcome of future section 7 consultations involving listed fishes in the region. Economic impacts associated with the critical habitat designation depends on the time required for the recovery of the listed fishes. County and regional economic impacts are of interest when considering the effects of critical habitat designations. County economic impacts are the direct and indirect impacts of the critical habitat designations on specific geographic areas. County economic impacts were analyzed using input-output (I–O) models that organize the basic accounting relationships that describe the production section of the economy (Brookshire et al. 1995). The I–O model is based on the assumption that all sectors of the economy are related, and the production of a good or service can be described by a recipe whose ingredients are the outputs from other sectors of the economy. The primary inputs are labor, capital, and other raw resources. Through its multiplier analysis, the I–O model is capable of generating estimates of the changes in output for economic sectors, changes in employment, and changes in income due to the critical habitat designation. The models report total impacts resulting from interactions among the different sectors of the economy.

Regional economic efficiency impacts refer to the overall net impacts on the regional economy after accounting for the effects of intercounty transfers. The goal of a regional efficiency analysis is to determine whether an action would have an overall positive or negative impact on the regional economy.

A separate I–O model was developed for each county and focused on the direct and indirect impacts generated by the critical habitat designation (Brookshire et al. 1995). In most cases, impacts on a given county generated impacts on neighboring counties. Thus, it was necessary to investigate potential offsetting impacts. As a result, an I–O model was constructed that investigated the impacts for an entire region (all four counties).

Economic activity for the models was estimated using Impact Analysis for Planning (IMPLAN) 1990 data sets that were updated and projected through the year 2040, using data from the Bureau of Economic Analysis of the U.S. Department of Commerce. The IMPLAN data set contains 528 economic sectors that were aggregated to 16 sectors (Brookshire et al. 1995).

The I–O models used in this study are essentially demand-side models. The conventional way to introduce impacts into such models is through a vector of changes in final demands. That is, the impacts reduce the regional demand for the output of the sector that experiences a direct impact. However, this method is not logical for determining effects on the agricultural sector because these effects are generated by converting agricultural sectors to municipal and industrial (M&I) uses. This conversion effectively reduces the quantity of output in the agricultural sectors by restricting the supply of a key input. For this reason, a mixed modeling approach was used, in which the agricultural impacts are represented as a supply-side shock used to generate an exogenous level of output in the agricultural sectors. The direct impacts in the remaining sectors are modeled as more typical changes in final demand.

The study utilized three scenarios to explore the impacts of preserving the listed fishes upon the water needs of the projected human population. Projected

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economic activity to the year 2040 in the Virgin River Basin, if no flows and habitat are protected to preserve the listed fishes, is compared to projected economic activity if flows and habitat are preserved for the fish. The baseline scenario represents a "without fish" projection of economic growth that is then compared to two "with fish" projections. All of the scenarios used the same population projection.

The baseline "without fish" scenario (WOFBA) is based upon the water development plans of water districts in the Virgin River Basin: the Washington County Water Conservation District (WCWCD) and the Las Vegas Valley Water District. The "without fish" scenario determines how much water will be needed for municipal and industrial development in order to satisfy the population projections. This scenario accepts the Boyle (1994) water need projections under a limited conservation assumption. Thus, the water needs of the expanding population base are determined by a gallons-per-day-per-capita value, which assumes a level of conservation above the existing consumption observed in the region.

The "with fish" structural scenario (WFST) asks the same questions as in the baseline scenario. The fundamental differences are—(1) Given the water needs associated with preserving the listed fishes, the structural water development projects must be brought on line at an earlier time, and (2) winter flows below Quail Creek Diversion remain at 2.4 cubic meters per second (86 cubic feet per second) rather than 1.4 cubic meters per second (50 cubic feet per second) as in the "without fish" scenario. Generally, the volume of water available from each new project is not directly affected by the actions taken on behalf of the listed fishes. However, the maintenance of the 86 cfs instream flow for the listed fishes results in less available water for municipal use. Therefore, water projects are required to come on line sooner to meet the projected demand. In addition, the agricultural retirement program must begin earlier. In this scenario, the per-capita consumption of water is the same as in the baseline.

The "with fish" conservation scenario (WFCO) addresses the water needs of the growing population and the listed fishes through a combination of conservation and agricultural retirements. Conservation requires that per-capita consumption should fall. This is achieved through water-saving technologies incorporated into new homes and industrial facilities.

All of the scenarios utilize the reallocation of agricultural water to urban and industrial uses and/or to habitat preservation for the listed fishes. Whether habitat is preserved for fish, water must be reallocated as the human population continues to grow. The impacts of critical habitat designation affect the timing of the reallocation of resources, and not the quantity of water that must be reallocated. The "with fish" agricultural scenario produces three sets of direct impacts which are outlined below.

(1) Agriculture—The conversion of use will occur earlier than under the baseline scenario, with the result that agricultural output is projected to decline under the "with fish" scenario. The method if incorporating this impact into the I–O models is to introduce a reduction in the allocation of water to the affected agricultural sectors. This translates directly into a specified reduction in the dollar value of the output of the agriculture sector. This mechanism was used to generate the decline in agricultural output in the baseline (WOFBA) projection. Water was pulled from agriculture to meet the needs of the growing M&I sectors. The growth in the nonagricultural sectors of the economy, reported in the WOFBA projection, is predicated on the conversion of water to M&I uses.

(2) Water Delivery Projects—To meet the baseline growth projection for Washington County, several water delivery projects are under consideration. Supplying instream water for the fishes will require these projects to be built earlier than in the "without fish" baseline. This may result in an increased cost of water delivery. This cost increase is driven by increased user cost of the funds devoted to the projects. The increased cost of each accelerated project is incorporated as an increase in the weighted average cost per acre-foot of water delivered to the users. Thus, a new delivery project could increase in the user's total "water bill." A cost increase for a basic input is incorporated into the I–O models as an equiproportionate reduction in the level of expenditure in each sector of the economy.

(3) Electric Power—WCWCD runs two small hydroelectric power facilities and sells the power to the local grid. As a result of diversions that put water into the Virgin River to meet fish needs, power production may decline. For electricity users in the area, there is no impact as a result of this change because the amount of power produced is small and seasonal and the decline will be made up through load shifting. For the WCWCD, however, the change in the operation of the river would result in loss of revenue that must be made up through higher revenues from the sale of water. In this model, the impact is treated as a cost increase across all sectors in proportion to their level of economic activity. The motivation for the argument is identical to that presented in the previous section.

To these three direct impacts, the "with fish" conservation scenario adds another class of direct impacts.

(1) Conservation Expenditures—Expenditures for low-water-using appliances, landscaping changes, and other water-saving equipment (i.e., timed sprinklers) in new structures only. These expenditures are modeled as being offset by reductions elsewhere in the construction sector. For example, costs due to the installation of low-water-using appliances are offset through lower expenses elsewhere in the construction budget. To ensure that the analysis errs on the side of overstating the impacts, all conservation-related expenditures are assumed to be made outside the region, and all offsetting reductions in expenditures are assumed to be incurred by local suppliers. Thus, conservation-related expenditures are introduced into the I–O models as a negative impact for the region.

It should be emphasized that the water delivery projects mentioned in these scenarios are necessary in any case to support the water needs of the region's growing population. Actions taken to preserve and restore the listed fish species in the Virgin River will affect only the timing of these projects. They are not the primary reason for why these projects must be built. The same is true for the agricultural conversions that are required to satisfy the region's growing municipal and industrial water needs. Using some Virgin River water to meet the listed fishes' requirements may affect the timing of agricultural retirements. However, it is not the root cause for the retirements nor will it involve condemnation of any agricultural lands. Agricultural conversions will continue to be voluntary market transactions.

Actions taken on behalf of the listed fishes result in two types of direct impacts to the affected economies. The instream flows for the fishes require that the conversion of agricultural water to M&I uses take place earlier than without the fish consideration. It is important to note that actions taken on behalf of the fishes affect only the timing of this conversion.

Setting aside instream flows for the listed fishes requires the timing of some planned water delivery projects to be

altered. Actions taken on behalf of the fishes affect only the timing of water delivery projects that are required to support the growing human population.

Results of the Economic Analysis

The Virgin River Basin has an economy that is service-oriented, thus reflecting the popularity of the region as a retirement and recreation area. Employment, earnings, and tax revenues are reported for each of the sectors analyzed in the I–O models, as well as for the regional economy. The three scenarios investigated in this study are based on the assumption of sustained regional population growth rates during the 45-year study period, even though a decline is expected as desirable building sites become scarce. The growing population's water needs will be met by constructing a series of dams to increase the region's water supply for municipal and industrial uses. This will also improve water quality in the Virgin River. In addition, retirement of agricultural land is expected when water and agricultural land are used for other purposes.

The Act requires that the economic effects of designating critical habitat be computed separately from the total economic effects of listing and critical habitat designation. Table 3 summarizes the effects of critical habitat designation under the WFST and WFCO impact scenarios. These effects are reported for the entire Virgin River region, including Washington County and Clark Counties.

TABLE 3.—COUNTY AND REGIONAL-LEVEL PRESENT VALUE AND ANNUALIZED INCREMENTAL CRITICAL HABITAT IMPACTS (1990 $ MILLIONS) (3 PERCENT DISCOUNT RATE)

	Output	Employment	Earnings	Tax revenues
WFST vs WOFBA:				
Washington:				
Present Value	−47.496		−13.617	−6.182
Percent Deviation from WOFBA	−0.0016	−0.0019	−0.0016	−0.0016
Annualized Values	−1.947	−26	−0.558	−0.253
Clark:				
Present Value	−10.63		−0.827	−0.632
Percent Deviation from WOFBA	−0.00001	−0.0001	0	0
Annualized Values	−0.428	−1	−0.034	−0.026
Region:				
Present Value	−59.818		−14.961	−6.283
Percent Deviation from WOFBA	−0.0001	−0.0001	0	−0.00001
Annualized Values	−2.453	−30	−0.613	−0.256
WFCO vs. WOFBA:	Output	Employment	Earnings	Tax Revenues
Washington:				
Present Value	−13.742		−2.065	−0.133
Percent Deviation form WOFBA	−0.00046	−0.00011	−0.00024	−0.00003
Annualized Values	−0.563	4	−0.085	−0.005
Region:				
Present Value	−20.938		−1.12	−1.476
Percent Deviation from WOFBA	0	0	0	0
Annualized values	−0.858	4	−0.046	−0.061

Under the WFST scenario, the present value of output changes in the Washington County economy due to critical habitat designation is −$1.95 million annually. This constitutes 0.0016 percent of the present value of the baseline stream of output (WOFBA). Employment and earnings effects are presented in the report and are similar to that of the output effects.

For Clark County, the output effects of the critical habitat designation are −$0.43 million annually. The baseline economy of Clark County is much larger than that of Washington County. Consequently, the effects of the designation of critical habitat on the economy are smaller. The cumulative output effects represent only 0.00001 percent of the baseline level of economic activity. Both the earnings and tax revenue effects are too small to be reliably reported as deviations from the baseline level of economic activity.

For the region as a whole, the output effect of designating critical habitat is −$2.45 million annually (0.0001 percent). The other aggregate effects are of similar relative magnitudes.

Water use conservation can significantly mitigate the effects of designating critical habitat for these listed fishes. This is also true for the critical habitat effects alone. Under the WFCO scenario, the present value of the output changes in Washington County is −$13.7 million, 0.00046 percent of the baseline level of activity. For the region as a whole, the output effects of designating critical habitat are −$20.9 million, an amount too small to calculate as a percentage of the baseline. There are no conservation scenario impacts for Clark County for reasons discussed later.

National Efficiency Effects

To obtain true measures of national efficiency impacts, exact welfare changes must be computed. These are calculated as changes in aggregate household utility. In general, I–O models are not capable of producing such values because they lack a fully modeled household sector. However, reasonable approximations may be obtained through aggregate factor payments. These omit surplus measures (producer and consumer) and hence understate the aggregate changes in national efficiency. They do, however, provide a reasonable approximation under certain assumptions.

In many applications of I–O analysis for use as inputs to a cost-benefit analysis, aggregate factor payments (value added) are used to represent the national efficiency effect of a policy change or action. This measure is correct only for cases in which the value-added change can be attributed solely to the policy change or action undertaken. In the case of the listed fishes, this assumption is reasonable because all changes in resource allocation can be attributed to actions taken on behalf of the fishes by virtue of the methodology followed in this study.

Including secondary effects in computing national efficiency impacts is valid because these effects are technological in nature rather than pure

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transfers. That is, the linkages in the economy between productive sectors arise from the basic production functions in the economy. Thus, a direct impact occurring in one sector of the economy will generate ripple effects throughout the economy. Such effects are solely attributable to the initial direct impact.

The I–O model permits computation of this factor income, and it may be used to measure the national efficiency effects of various changes in the economy, such as those introduced by actions taken on behalf of the listed fishes. Aggregate factor payments are computed for the baseline (WOFBA) scenario and for the "with fish" scenarios (WFST and WFCO).

The factor payments capture the value added from the production side of the local economy. Because some of the output change is captured through leakages to the rest of the world (principally the United States), the total factor payments changes will be smaller than the total output changes.

Based on these results, it is not surprising that the effects of the factor payments are small for the county-level and regional analysis. Under the WFST scenario, the efficiency losses to the nation are a $32.2 million reduction in value added. The annualized value of this reduction is −$1.32 million. With water conservation measures, the cumulative change (over the 45-year period) in value added is −$10.68 million (−$0.438 million as an annualized value). Water conservation mitigates most of the impacts associated with the critical habitat designation.

For Washington County, the present value of the cumulative changes (over the 45-year period) in value added is −$24.62 million for the WFST scenario. With the inclusion of water conservation measures, this value falls to −$8.153 million (annualized value −$0.764 million).

For Clark County, the present value of the cumulative changes (over the 45-year period) is −$4.649 million (annualized value is −$0.191 million).

Conclusions of the Economic Analysis

The three described impact scenarios were analyzed and it is useful to distinguish them in summarizing the economic effects of actions taken on behalf of the listed fishes. The baseline scenario (WOFBA) represents the way in which the county-level and regional economies would grow over the 45-year study period if no actions were taken to protect the listed species. The entire region is projected to experience population growth at rates well above the national average. Projected population growth and economic development will lead to shifts in resource use. Consequently, agricultural water will be converted to M&I uses resulting in a decline in agricultural output. At the same time, several required water delivery projects are planned to provide water to sustain the projected growth levels.

The WFST scenario takes the baseline regional projection and introduces measures designed to protect and recover the listed fishes. These measures result in more rapid conversion of agricultural water and the acceleration of some water delivery projects. Thus, agricultural production declines more quickly under the WFST scenario. Water costs also rise as a result of the earlier development of these projects, and the effect is a reduced level of final demand in all sectors.

In summary, all of the economic effects of the WFST scenario indicate that preserving and recovering the listed fishes will have a relatively small impact on the overall economy. Some sectors will experience greater declines than others, but the overall decline in economic activity is projected to be small.

Since water usage rates in Washington County are high compared to other southwestern cities, a conservation scenario (WFCO) was analyzed. In this scenario, consumption levels were reduced through the use of water-conserving appliances, fixtures, and landscaping, applied to new construction only. Conservation is not without some cost. These costs were introduced into the models in the form of crowding-out other expenditures. Thus, construction costs were projected to increase. Offsetting this cost increase are the savings that will result from delaying the planned construction of new water delivery facilities. A further offset is provided because agricultural water is converted to M&I uses at a slower pace.

The overall effect of conservation is an almost complete mitigation of the economic effects associated with actions undertaken on behalf of the listed fishes. In fact, by the latter part of the study period, there are negative effects only in the agriculture and construction sectors. However, latter effects are likely overstated in the analysis due to the extreme nature of the complete crowding-out assumption.

The Service has prepared detailed documents further explaining the biology of each fish species (Maddux et al. 1995) and the economic analysis process used to determine critical habitat (Brookshire et al. 1995). These documents are available to supplement this notice and for public review. Copies may be obtained by contacting the field office (see **ADDRESSES** section).

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

The Act mandates the conservation of listed species through various mechanisms, such as section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat), section 9 (prohibition of taking of listed species), section 10 (research permits and habitat conservation plans), section 6 (cooperative State and Federal grants), land acquisition, and research. The section 7 requirement that Federal agencies consult with the Service if their actions may impact critical habitat enables the Service to assess Federal activities that may impair survival and recovery potential, thus ensuring that such actions are considered in relation to the goals and recommendations of the recovery plan.

Public Comments Solicited

The Service finds that any final action resulting from this proposal be accurate and effective as possible. Therefore, the Service requests comments or suggestions from the public, other concerned government agencies, Indian Nations, the scientific community, commercial interests, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The location and reasons why any Federal or non-Federal lands (either proposed critical habitat or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current and planned activities in the vicinity of proposed critical habitat areas and their possible impacts on proposed critical habitat;

(3) Other physical and biological features that are essential to the conservation of the species and in need of special management or protection;

(4) Specific information on the scale, location, and distribution of primary constituent elements on all ownership and land designations;

(5) Information concerning health of the ecosystems on which the woundfin, Virgin River chub, and Virgin spinedace depend;

(6) Information on the economic benefits and costs that would result from this proposed designation of critical habitat;

(7) Data and information relevant to determining whether the benefits of excluding a particular area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(8) The methods and thresholds the Service might use in determining whether the costs of designating an area outweigh the benefits of designation;

(9) Methods of analysis useful in evaluating economic and other relevant impacts;

(10) Information regarding the suitability or unsuitability of critical habitat boundaries of the 100-year floodplain (as defined on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs));

(11) Information about areas of land or water located within the outer boundaries of the proposed critical habitat, but that do not provide primary constituent elements and thus can be excluded. Of particular interest are means to describe these areas of land within specific limits using reference points and lines as found on standard topographical maps.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act provides for at least one public hearing on this proposal, if requested within 45 days from date of publication of this proposal in the **Federal Register**. Requests for a hearing must be made in writing and addressed to the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section). The Service has arranged for a public hearing to be held on May 8, 1995, from 5 p.m. to 9 p.m., with registration beginning at 4:30 p.m., at the St. George Hilton Inn, 1450 South Hilton Drive, St. George, Utah.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule was reviewed under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the proposed critical habitat, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require a federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

A complete list of all references cited is available upon request from the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section).

Authors

The primary authors of this proposal are Henry R. Maddux and Janet A. Mizzi of the Service's Salt Lake City Field Office; Selena J. Werdon of the Service's Nevada State Office; and Lesley A. Fitzpatrick of the Service's Arizona State Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Chub, Virgin River" and "Woundfin" under Fishes, to read "17.95(e)".

3. It is proposed to amend § 17.95(e) by adding critical habitat of the Virgin River chub (*Gila robusta seminuda=G. seminuda*) and woundfin (*Plagopterus argentissimus*) in the same alphabetical order as these species occur in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

Virgin River Chub (*Gila seminuda*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 Bureau of Land Management (BLM) maps (Surface Management Status 30×60 Minute Quadrangle). Legal descriptions for Overton (Nevada-Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30×60 Minute Quadrangle). Critical habitat areas proposed for the Virgin River chub in each State are as follows:

Utah, Washington County. The Virgin River from its confluence with Ash-La Verkin Creeks in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian) to Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian) to the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian) to the Arizona-Utah border in T.43S., R.17W., Sec. 36 (Salt Lake Base and Meridian).

Arizona, Mohave County. The Virgin River from the Arizona-Utah border in T.42N., R.13W., Sec. 33 (Salt Lake Base and Meridian) to the Arizona-Nevada border in T.39N., R.16W., Sec. 2 (Salt Lake Base and Meridian).

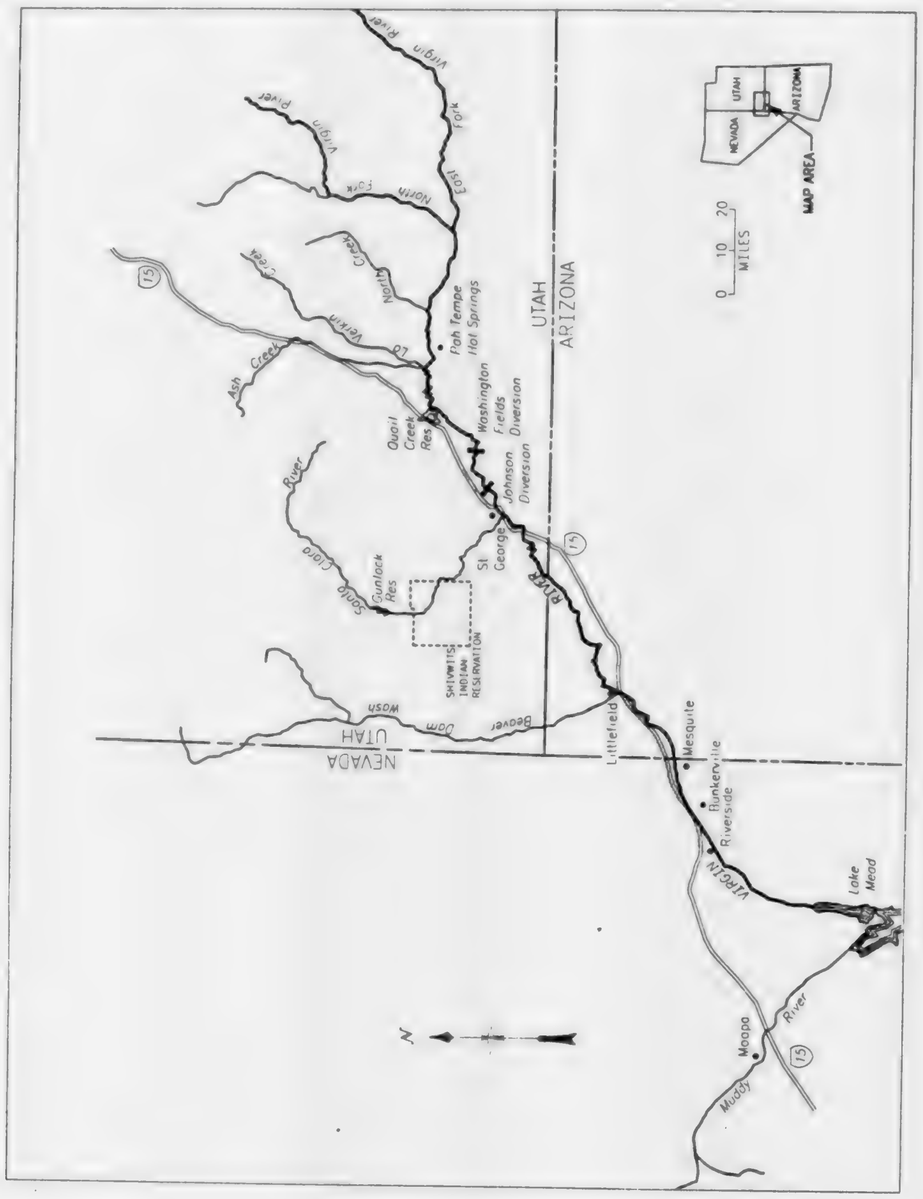
Nevada, Clark County. The Virgin River from the Arizona-Nevada border in T.13S., R.71E., Sec. 15 (Salt Lake Base and Meridian) to the highwater level of Lake Mead in T.16S., R.68E., Sec. 1 (Salt Lake Base and Meridian).

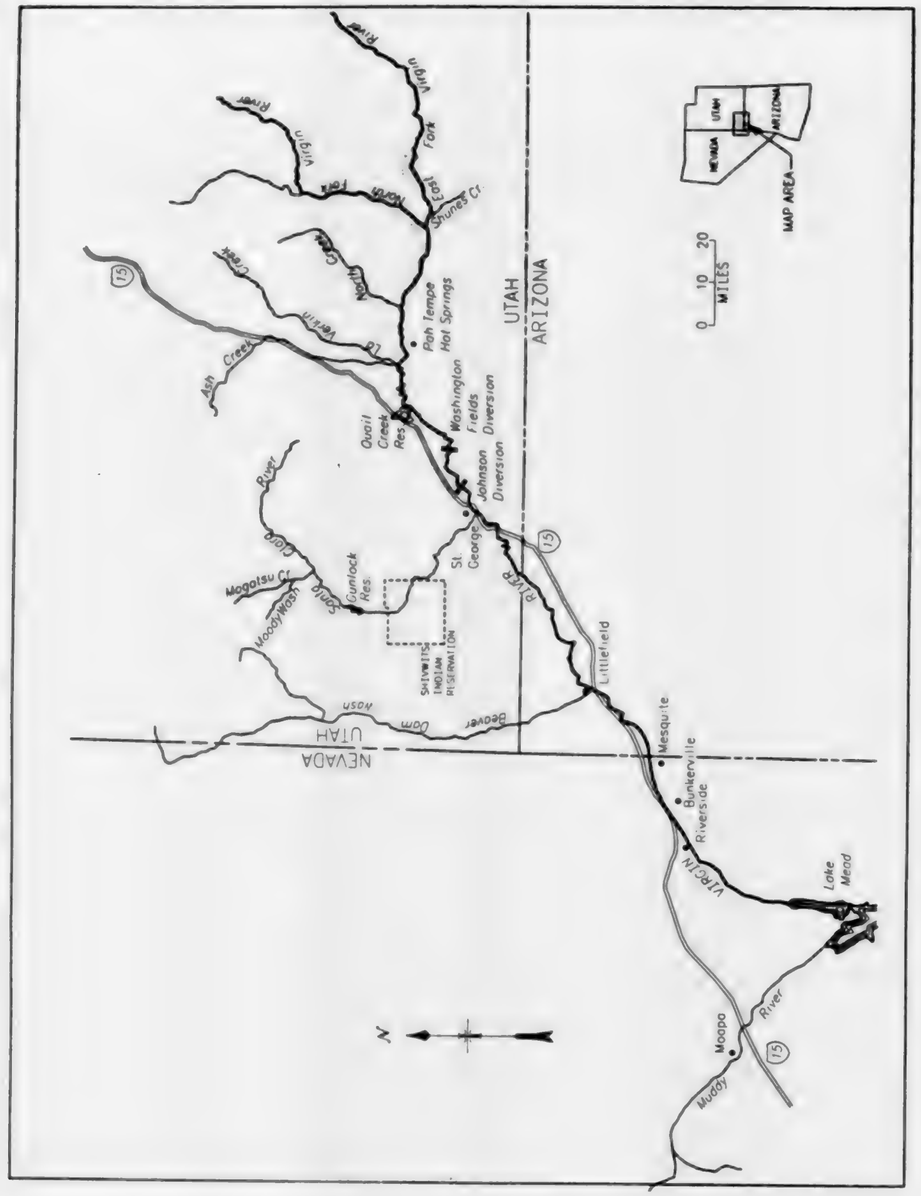
Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

Note: Map follows.

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Virgin River
Virgin River
North Creek
North Creek
Ash Creek
Quail Creek Res
Washington Fields Diversion
Johnson Diversion
Santa Clara River
Gunlock Res
St George
Toquerville
Hurricane
Leeds
Silver Reef
Pah Tempe Hot Springs
Dixie
Hurricane Cliffs
Hurricane Fault
Hurricane Fault
Hurricane Fault



BILLING CODE 4310-55-C

4. The proposed rule published in the **Federal Register** of May 18, 1994, pages 25875–25880, adding the Virgin spinedace to § 17.11(h) is amended by revising the critical habitat entry for "Spinedace, Virgin" to read "17.95(e)".

5. The proposed rule published in the **Federal Register** of May 18, 1994, pages 25875–25880, adding the Virgin spinedace to § 17.11(h) is further amended by adding critical habitat of the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) to § 17.95(e) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

* * * * * *

Virgin Spinedace (*Lepidomeda mollispinis mollispinis*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 BLM maps (Surface Management Status 30 × 60 Minute Quadrangles). Legal descriptions for Kanab (Utah-Arizona) were obtained from the 1983 BLM maps (Surface Management Status 30 × 60 Minute Quadrangles). Critical habitat areas proposed for the Virgin spinedace in each State are as follows:

Arizona, Mohave County. Beaver Dam Wash from the confluence with the Virgin River in T.40N., R.15W., Sec. 4 (Salt Lake Base and Meridian) upstream 1.3 km (0.8 mi) in T.40N., R15W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Kane County. The East Fork of the Virgin River from the falls in Parunuweap Canyon in T.42S., R.9W., Sec. 5 (Salt Lake Base and Meridian) to its confluence with the North Fork of the Virgin River in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Kane County. Shunes Creek from the Second Creek confluence in T.42S., R.10W., Sec. 11 (Salt Lake Base and Meridian) to its confluence with the East Fork of the Virgin River in T.42S., R.10W., Sec. 4 (Salt Lake Base and Meridian).

Utah, Washington County. Beaver Dam Wash from the Narrows in T.39S., R.20W., Sec. 1 (Salt Lake Base and Meridian) to 0.4 km (0.25 mi) upstream of the confluence with East Bunker Peak Wash in T.40S., R.19W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Washington County. Beaver Dam Wash from Horse Canyon in T.41S., R.19W., Sec. 31 (Salt Lake Base and Meridian) downstream through Lytle Ranch downstream to Iverson Ranch in T.42S., R.20W., Sec. 13 (Salt Lake Base and Meridian).

Utah, Washington County. Moody Wash from the lower end of Racer Canyon in T.38S., R.17W. Sec. 33 (Salt Lake Base and Meridian) to just below the Dixie National Forest Boundary in T.39S., R.17W., Sec. 26 (Salt Lake Base and Meridian).

Utah, Washington County. Mogatsu Creek from the falls downstream of Bingham Ranch in T.39S., R.16W., Sec. 30 (Salt Lake Base and Meridian) to its confluence with the Santa Clara River in T.40S., R.17W., Sec. 14 (Salt Lake Base and Meridian).

Uath, Washington County. Santa Clara River from Veyo Hot Springs in T.39S., R.16W., Sec. 32 (Salt Lake Base and Meridian) to the upstream end of Gunlock Reservoir in T.40S., R.17W., Sec. 29 (Salt Lake Base and Meridian).

Utah, Washington County. Santa Clara River from downstream of the dam forming Gunlock Reservoir in T.41S., R.17W., Sec. 5 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.43S., R.15W., Sec. 6 (Salt Lake Base and Meridian).

Utah, Washington County. Ash Creek from Toquerville Springs in T.40S., R.13W., Sec. 35 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. La Verkin Creek from Chute Falls in T.40S., R.12W., Sec. 30 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. North Creek from the confluence of the Left and Right Forks in T.40S., R.11W., Sec. 33 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.12W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the confluence of Ash-La Verkin Creeks in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian) to the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian).

Utah, Washington County. The North Fork of the Virgin River from the Narrows in T.40S., R10W., Sec. 34 (Salt Lake Base and Meridian) to its confluence with the East Fork of the Virgin River in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the confluence of the East and North Forks in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian) to the Quail Creek Diversion in T.41S., R.14W., Sec. 36 (Salt Lake Base and Meridian).

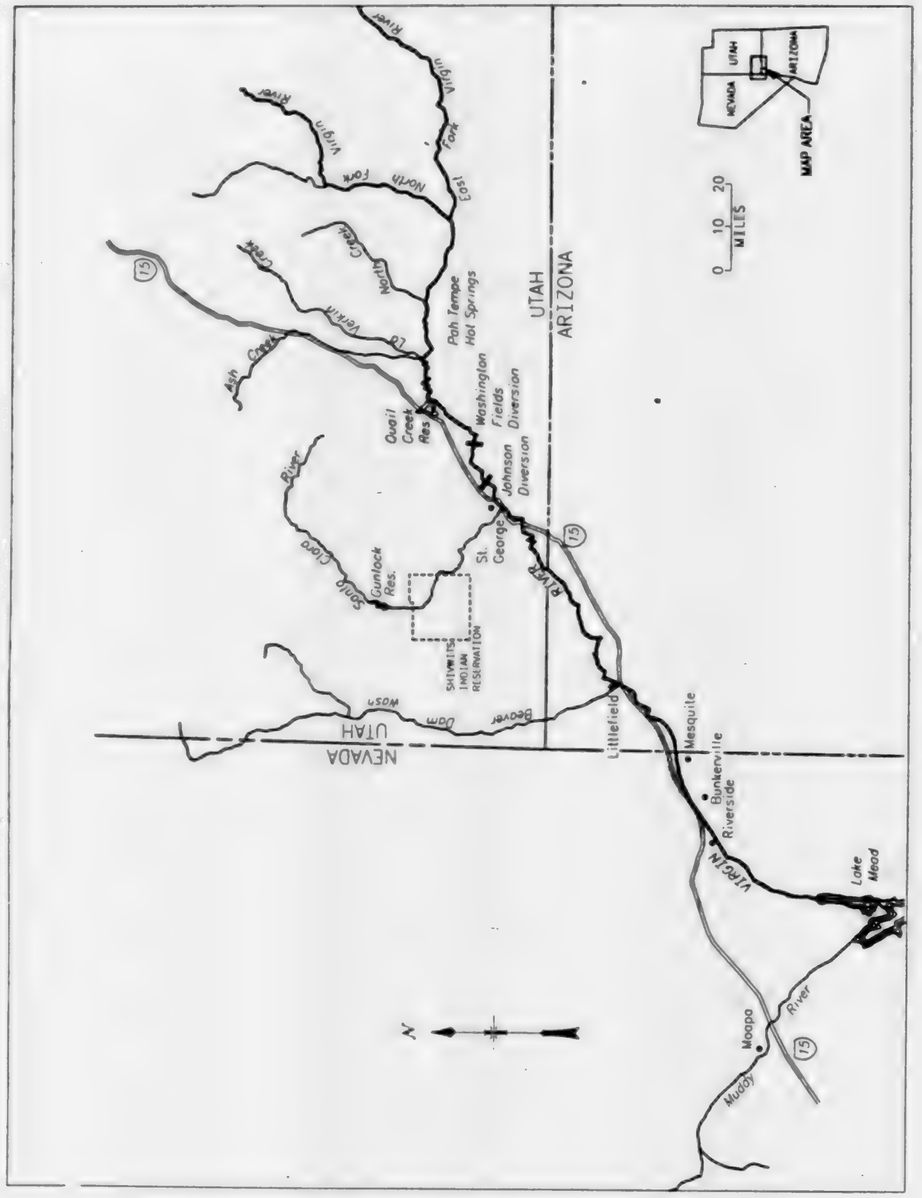
Utah, Washington County. The Virgin River from the Quail Creek Diversion in T.41S., R.12W., Sec. 30 (Salt Lake Base and Meridian) to the confluence of Ash-La Verkin Creeks in T.41S., R.13W, Sec. 23) (Salt Lake Base and Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

Note: Map follows.

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BILLING CODE 4310-55-C

Dated: March 29, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–8301 Filed 3–31–95; 2:53 pm]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States.

DATES: Wednesday, April 12, 1995, at 1:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Governmental Processes will meet to continue discussion of when federal government lawyers and other government employees may participate in voluntary public service activities. There are possible restrictions in conflict of interest statutes, and both government-wide and agency-specific regulations governing employee participation in outside activities, ethics laws, and the use of government property.

Dated: March 31, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–8474 Filed 4–4–95; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Supplemental Environmental Impact Statement, Central Prince of Wales Project, Tongass National Forest, Ketchikan Area, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Tongass National Forest—Ketchikan Area proposes to review and analyze information on "falldown" and to calculate its effect, if any, on "sustainable" timber harvest in the Central Prince of Wales project area covered in the previous environmental impact statement and record of decision issued August 6, 1993. The proposed action is to provide approximately 290 million board feet of timber in support of the Ketchikan Pulp Company Long-Term Timber Sale Contract, Contract Number A10fs–1042.

ADDRESSES: Send written comments to Forest Supervisor, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed analysis and supplemental environmental impact statement should be directed to Pete Griffin, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901, phone: (907) 225–3101.

SUPPLEMENTARY INFORMATION: The purpose of the project is to provide approximately 290 million board feet of timber in support of the Ketchikan Pulp Company Long-Term Timber Sale Contract, Contract Number A10fs–1042. The purpose of the supplement is to evaluate information available to the Forest Service with regard to falldown. The effects of falldown as related to sustainable harvest levels will also be analyzed. Factors related to falldown include economic, biological, and physical.

Alternatives to be analyzed will include those alternatives as described in the CPOW FEIS including the no action alternative.

The following issues have been identified:

1. Falldown.
2. Sustainability.

Scoping was completed for the CPOW project in 1992. Council on Environmental Quality regulations (40 CFR 1502.9(c)(4)) do not require scoping for a supplement. Additional public scoping meetings are not planned. Public comment during the analysis is welcome and the public will have an opportunity to comment on the draft supplement when issued.

The draft supplemental environmental impact statement is expected to be issued in May 1995. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v *NRDC, 435 U.S. 519, 553, (1978).*

Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Issuance of the final supplemental environmental impact statement is projected in September 1995. The responsible official for the decision is the Forest Supervisor, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901.

Dated: March 28, 1995.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 95–8323 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on April 25, 1995 in the Campbell's Conference Center, 104 W Wooden, Chelan, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) The President's Forest Plan and background leading up to the advisory committee; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) charter and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on the reason for their interest in committee membership; and (7) Open public forum. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attain.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: March 30, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–8321 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on April 26, 1995 in the Hal Holmes Conference Center, 201 N. Ruby, Ellensburg, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) The President's Forest Plan, and background leading up to the advisory committee; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) charter and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on the reason for their interest in committee membership; and (7) open public forum. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington, 98807, 509–662–4335.

Dated: March 30, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–8322 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Food Safety and Inspection Service

[Docket No. 95–012N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on April 17 and 18, 1995, at the Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203, (703) 528–6000. The meetings will be held from 1:00 PM to 5:00 PM on April 17 and from 8:00 AM to 5:00 PM on April 18.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been produced using good manufacturing practices. The meeting will include discussion of the following topics as time permits:

I. Ethics Training
II. Raw Poultry Labeled Fresh
III. Generic HACCP for Broiler Chickens
IV. Future Topics
V. Public Comments

Notice is hereby given on the members appointed to the Committee. The members are: Dr. Gary Acuff, Texas A&M, College Station, TX; Dr. Robert Buchanan, Food Safety and Inspection Service, Washington, DC; Col. H. Wayne Derstine, U.S. Army, Ft. Sam Houston, TX; Dr. Michael Doyle, University of Georgia, Athens, GA; Dr. David Dreesen, University of Georgia, Athens, GA; Dr. Robert Gravani, Cornell University, Ithaca, NY; Dr. Michael Jahncke, National Marine Fisheries Service, Pascagoula, MS; Dr. Marilyn Kilgen, Nicholls State University, Thiboidaux, LA; Dr. Jong Lee, Oregon State University, Corvallis, OR; Dr. Joseph Madden, Center for Food Safety and Applied Nutrition, Washington, DC; Dr. Ann Marie McNamara, Food Safety and Inspection Service, Washington, DC; Dr. Michael Osterholm, State of Minnesota, Minneapolis, MN; Dr. Merle Pierson, Virginia Polytechnic and State University, Blacksburg, VA; Dr. Morris Potter, Centers for Disease Control, Atlanta, GA; Dr. Philip Roane, Howard University, Washington, DC; Dr. Mark Tamplin, University of Florida, Gainesville, FL; Dr. Donn Ward, North Carolina State University, Raleigh, NC.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments before and after the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street NW., Washington, DC 20250–3700. Background materials and the meeting agenda are available for inspection by contacting Mr. Fedchock on (202) 254–2517.

Done at Washington, DC, on: March 28, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–8237 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–DM–P

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DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Technical Information Service (NTIS).
Title: Telecommunications Planning.
Form Number(s): NA.
Agency Approval Number: None.
Type of Request: New collection—Expedited Review.
Burden: 500 hours.
Number of Respondents: 10,000.
Avg Time Per Response: 3 minutes.
Needs and Uses: FedWorld began as a pilot in FY 1993, and became the electronic hub for public access to U.S. and foreign Government documents directories, and information services. The system now needs a major expansion to provide its customers with cost-effective, state-of-the-art telecommunications access to the growing libraries and database services. To obtain the vital information essential to the establishment of a state-of-the-art telecommunications system, NTIS will mount a one-time survey on FedWorld for a period of 6–12 months. The data will be captured electronically and analyzed by the FedWorld Program Manager.
Affected Public: Businesses or other for-profit institutions, individuals or households, not-for-profit institutions, and Federal Government, state, local or tribal governments.
Frequency: One time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503.

Memorandum

Questionnaire: Telecommunications Planning (10 questions)
Announcement: FedWorld is planning to upgrade its telecommunications services. Our goal is to provide FedWorld customers with cost-effective, state-of-the-art telecommunications access to our growing libraries and database services. You can help FedWorld plan efficiently by responding to our 10-question Telecommunications Questionnaire. Thank you for your assistance.

Question 1:

How do you primarily access FedWorld?
a. Local telephone call via Modem (Metropolitan, Washington, DC area)
b. Long-Distance Dial via Modem—direct connect
c. Long-Distance Dial via Modem to Internet/Telnet
d. Direct Connect via Internet/Telnet
e. Direct Connect via Internet/Web
f. Other

Question 2: [ask only if response to question 1 was answered b].

Would you subscribe to a new FedWorld access service if you could potentially save up to 50% on your long-distance charges?
a. Yes
b. No

Question 3: [ask only if response to question 1 was answered b]

Are your current long-distance charges a deterrent to using FedWorld?
a. Yes
b. No

Question 4: [ask only if response to question 1 was answered b]

Would you use FedWorld more often if your long-distance charges were lower?
a. Much more
b. Somewhat more
c. About the same

Question 5:

From what location do you usually connect to FedWorld?

United States Regions

a. Northeastern/New England—(ME, VT, NH, NY, MA, CT RI)
b. Mid-Atlantic—(PA, NJ, DE, MD, DC, VA, WV)
c. Southeastern—(NC, SC, GA, FL, TN, AL, MS, PR)
d. Greater Southwest—(TX, LA, AK, OK, NM)
e. Heartland/Mid-West—(MO, IA, NE, KS)
f. Great Lakes—(MN, MI, IL, WI, IN, OH, KY)
g. Rocky Mountain—(CO, WY, UT, ND, SD, MT)
h. Pacific—(CA, NV, AZ, HI)
i. Northwest/Artic—(OR, WA, ID, AK)

International Regions

j. Canada
k. Latin America/Caribbean
l. Western Europe
m. Central/Eastern Europe
n. Russia and Independent States
o. Near East/South Asia
p. Africa
q. Southeast Asia
r. East Asia
s. Japan
t. Australia/New Zealand

Question 6:

How many times (on average) do you connect to FedWorld per week?
a. Less than 1
b. 1–5
c. 6–10
d. 11–20
e. More than 20

Question 7:

How much time do you spend on FedWorld per session (on average)?
a. Less than 5 minutes
b. 5–10 minutes
c. 11–15 minutes
d. 16–20 minutes
e. 21–30 minutes
f. Over 30 minutes

Question 8:

If you use a modem to connect to FedWorld, at what modem speed (baud) do you connect?
a. 300/1200
b. 2400
c. 4800
d. 9600
e. 9600 (capable of 14.4)
f. 9600 (capable of 28.8)
g. Do not connect via modem (Internet direct connect)

Question 9:

Would there be any additional value to you if FedWorld were accessible through other information services such as CompuServe, Dialog, America Online, Prodigy, etc.?
a. CompuServe
b. Dialog
c. America Online
d. Prodigy
e. Other Online Service
f. No additional value

Question 10:

Is your primary use of FedWorld done on behalf of one of the following?
a. Federal Government
b. Private Industry—Large Business
c. Private Industry—Small Business
d. Private Industry—Certified 8(a) Minority/Disadvantage Business
e. Consultant
f. Educational Institution
g. State/Local Government
h. Personal Interests
i. Other Reasons.

Dated: March 30, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–8256 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

President's Export Council: Meeting of the Subcommittee on Europe, Japan, and the Newly Independent States

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council Subcommittee on Europe, Japan, and the Newly Independent States will hold an open meeting to discuss topics related to impediments to U.S. exports and commercial opportunities in the above regions. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

DATES: April 13, 1995, from 9:30 a.m.–3:00 p.m.

ADDRESSES: Main Commerce Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Vince Bonner, President's Export Council, Room 2015B, Washington, D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Vince Bonner, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: March 28, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–8278 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

[I.D. 032495E]

Endangered Species; Permits

On December 23, 1994, notice was published (59 FR 66296) that an application had been filed by Boyd Kynard of the National Biological Survey, to take listed shortnose sturgeon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on March 29, 1995, as authorized by the provisions of the ESA, NMFS issued Permit Number 944 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: March 30, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–8251 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032395A]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P586).

SUMMARY: Notice is hereby given that Continental Shelf Associates, Inc. (principal investigator: Stephen Viada), has applied in due form for a permit to take the marine mammals and sea turtles listed below for the purpose of scientific research.

DATES: Written comments must be received on or before May 5, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250);

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR parts 217-227).

The applicant seeks authorization to take by harassment an unspecified number of Atlantic bottlenose dolphins, (*Tursiops truncatus*), common dolphins (*Delphinus delphis*), striped dolphin (*Stenella coeruleoalba*), Atlantic spotted dolphins (*Stenella frontalis*), harbor porpoise (*phocoena*), Risso's dolphins (*Grampus griseus*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), rough-toothed dolphins (*Steno bredanensis*), long-finned pilot whales (*Globicephala melaena*), short-finned pilot whales (*Globicephala macrorhynchus*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Cuvier's beaked whales (*Ziphius cavirostris*), dense-beaked

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whales (*Mesoplodon densirostris*), Antillean beaked whales (*Mesoplodon europaeus*), true's beaked whales (*Mesoplodon mirus*), white whales (*Delphinapterus leucas*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), minke whales (*Balaenoptera acutorostrata*), blue whales (*Balaenoptera musculus*), sei whales (*Balaenoptera borealis*), humpback whales (*Megaptera novaeangliae*), Northern right whales (*Eubalaena glacialis*), killer whales (*Orcinus orca*), Bryde's whales (*Balaenoptera edeni*), and pygmy killer whales (*Feresa attenuata*). In addition, the applicant seeks authorization to take annually by harassment 180 leatherback sea turtles (*Dermochelys coriacea*) and 270 loggerhead sea turtles (*Caretta caretta*). Proposed taking will be by close approach (within 650 feet) of a fixed-wing aircraft at a speed of 80–140 mph to document the presence, density, and distribution of marine mammals. Surveys will be conducted from April 1995 through October 1996 in Norfolk, Virginia, and Mayport, Florida, and will encompass the continental shelf edge (300–600 feet depth contours). The results of the aerial survey will provide an adequate biological assessment of the two proposed survey areas with respect to habitat utilization by marine mammals and aid in selecting a candidate site for shock testing the SEAWOLF submarine.

Dated: March 30, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8252 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031795B]

Endangered Species; Permits

On February 13, 1995, an application was filed by the Idaho Department of Fish and Game (IDFG) for a modification to their scientific research and enhancement Permit 795 (P503A). Permit 795, issued on July 29, 1992, allows IDFG to carry out scientific research and enhancement activities, including a captive broodstock program, with endangered Snake River sockeye salmon (*Oncorhynchus nerka*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

To reduce risks, some aspects of the endangered Snake River sockeye salmon captive broodstock program have been divided between IDFG and NMFS's Northwest Fisheries Science Center (NWFSC). Eggs taken from the only female sockeye that returned to Redfish Lake in 1991 were transferred from Idaho to the University of Washington's Big Beef Creek Hatchery in Seattle, under the responsibility of NMFS, as authorized by Permit 795. These eggs were reared to maturity and spawned with the major complication being the incidence of Bacterial Kidney Disease (BKD). The degree of BKD infection was recorded based on the optical density (O.D.) of samples as determined by Enzyme-linked Immunosorbent Assay (ELISA).

The eggs with O.D.'s of less than 0.2 have been transferred back to Idaho for final rearing. Idaho will not accept eggs with higher BKD levels. The higher BKD level eggs are being held and hatched at Big Beef Creek Hatchery rather than culled. The capability to raise these fish to smolt size does not exist at Big Beef Creek Hatchery. The health and well-being of these listed fish is in jeopardy because they will have to be killed if they are not transferred to an adequate rearing facility. IDFG, in coordination with NWFSC, applied for a modification to Permit 795 to allow the transfer of these listed fish to the Oregon Department of Fish and Wildlife (ODFW) Mitchell Act funded rearing facility at Bonneville Hatchery for final rearing. ODFW will rear the fish at Bonneville Hatchery in accordance with the guidelines recommended by the Integrated Hatchery Oversight Team. ODFW employs these hatchery practices in their other fishery production programs. ODFW will be acting as an agent of IDFG under the terms and conditions of Permit 795 in the care and maintenance of these fish until a separate ESA Section 10 permit is issued to NWFSC authorizing the release of these fish, which is expected to occur in the spring of 1996. The release locations and other aspects of the release strategy will be determined by the results of a joint technical meeting on this issue, to be held later this year among the involved agencies and Tribes.

Notice is hereby given that on March 29, 1995, as authorized by the provisions of the ESA, NMFS issued an amendment of Modification 4 to Permit 795 for the above take, subject to certain conditions set forth therein.

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for Modification 6 to scientific research and enhancement Permit 795 (P503A) to take listed species as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

For Modification 6 to Permit 795, IDFG requests authorization to: (1) release broodyear (BY) 1994 juvenile sockeye progeny of listed adults directly into Redfish Lake or into net pens in Redfish Lake in July and directly into the lake in October, 1995; (2) release BY 1994 juvenile sockeye progeny of listed adults directly into Pettit Lake in June, 1995; and (3) modify a condition in the permit requiring that an auxiliary water supply must accompany any vehicle used to transport listed sockeye salmon to pertain to the transport of listed adults only. The releases of listed sockeye broodstock into Pettit Lake has previously been denied by NMFS since the lake is stocked annually with rainbow trout for recreational fishing, under the authority of Permit 908. NMFS is concerned about possible interactions between stocked rainbow trout and listed sockeye salmon in the lake, primarily diet overlap and predation. Permit 795 expires on July 31, 1997.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 29, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–8254 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032195A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 2 to scientific research permit no. 789 (P135C).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 789 submitted by Dr. James H.W. Hain, NMFS, NOAA, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA, 02543–1026, has been granted.

ADDRESSES: The modified permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

SUPPLEMENTARY INFORMATION: On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 789, issued August 24, 1992 (57 FR 39672), and modified January 14, 1993 (58 FR 6116), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The modification authorized the holder to take 5 blue whales (*Balaenoptera musculus*), 25 sei whales (*Balaenoptera borealis*), 25 killer whales (*Orcinus orca*), 25 Mesoplodont beaked whales (*Mesoplodon spp.*), 500 saddleback dolphins (*Delphinus delphis*), 250 Atlantic white-sided dolphins (*Lagenorhynchus albirostris*), 100 Risso's dolphins (*Grampus griseus*), 250 harbor porpoise (*Phocoena phocoena*), 1,000 harbor seals (*Phoca vitulina*), and 500 gray seals (*Halichoerus grypus*) annually for photo-identification and observational purposes.

Issuance of this modification, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 30, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8253 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Bahrain, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated April 4, 1993 and June 9, 1993, between the Governments of the United States and Bahrain.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated April 4, 1993 and June 9, 1993, between the Governments of the United States and Bahrain.

Category	Twelve-month restraint limit [1]
Group I	
237, 239, 330–336, 338, 339, 340–342, 345, 347, 348–354, 359, 431–436, 438–440, 442–448, 459, 630–636, 638, 639, 640–647, 648, 649, 650–654, 659, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	34,185,000 square meters equivalent.
Sublevels in Group I	
338/339	475,007 dozen.

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Category	Twelve-month restraint limit [1]
340/640	227,900 dozen of which not more than 170,925 dozen shall be in Categories 340–Y/640–Y [2]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8286 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Federative Republic of Brazil is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the Uruguay Round Textiles Monitoring Body (TMB) contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on April 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995. The limits for Categories 218, 219, 225, 300/301, 338/339/638/639, 347/348, 350 and 369–D for the April 1, 1994 through December 31, 1994 period have been adjusted, variously, for swing, carryforward and carryover. The 1995 limits for Categories 219, 225 and 350 have been reduced for carryforward used during the April 1, 1994 through December 31, 1994 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 13308, published on March 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1994 and extends through March 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the restraint period to end on December 31, 1994 at the limits listed below These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

Category	Nine-month restraint limit [1]
Aggregate Limit 200–239, 300–369, 400–469 and 600–670, as a group.	289,042,868 square meters equivalent.
Sublevels in the aggregate	
218	4,163,080 square meters.
219	13,351,805 square meters.
225	6,974,048 square meters.
300/301	5,646,093 kilograms.
313	28,985,329 square meters.
314	4,892,509 square meters.
315	14,677,526 square meters.
317/326	13,343,204 square meters.
334/335	95,749 dozen.
336	53,195 dozen.
338/339/638/639	1,120,275 dozen.
342/642	281,930 dozen.
347/348	809,089 dozen.
350	113,722 dozen.
361	723,445 numbers.
363	15,440,057 numbers.
369–D [2]	403,475 kilograms.
410/624	7,116,377 square meters of which not more than 1,930,456 square meters shall be in Category 410.
433	13,400 dozen

Category	Nine-month restraint limit [1]
445/446	52,496 dozen.
604	337,800 kilograms of which not more than 258,176 kilograms shall be in Category 604–A [3].
607	3,136,720 kilograms.
647/648	319,167 dozen.
669–P [4]	1,149,503 kilograms.

[1] The limits have not been adjusted to account for any goods exported after March 31, 1993.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 7, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

Category	Twelve-month restraint limit [1]
Aggregate Limit 200–239, 300–369, 400–469 and 600–670, as a group.	406,380,457 square meters equivalent.
Sublevels in the aggregate	
218	5,002,642 square meters.
219	17,457,739 square meters.
225	8,381,013 square meters.
300/301	6,784,733 kilograms.
313	42,013,307 square meters.
314	6,878,634 square meters.
315	20,635,901 square meters.
317/326	18,759,908 square meters.
334/335	134,618 dozen.
336	74,789 dozen.
338/339/638/639	1,346,200 dozen.
342/642	396,380 dozen.
347/348	972,256 dozen.
350	144,400 dozen.
361	1,017,129 numbers.
363	21,707,981 numbers.
369–D [2]	484,843 kilograms.
410/624	10,005,285 square meters of which not more than 2,597,354 square meters shall be in Category 410.
433	18,030 dozen.
445/446	70,632 dozen.
604	474,931 kilograms of which not more than 362,984 kilograms shall be in Category 604–A [3].
607	4,410,078 kilograms.
647/648	448,734 dozen.
669–P [4]	1,616,145 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period April 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the 1995 levels set forth in this directive.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8290 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limit for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated November 18, 1994 between the Governments of the United States and the Republic of Colombia establishes limits for textile products in Categories 315 and 443 for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Colombia becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to a Memorandum of Understanding (MOU) dated November 18, 1994 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21,

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1995, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels:

Category	Twelve-month limit [1]
315	18,460,748 square meters.
443	122,412 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to the category limits for the period January 1, 1994 through December 31, 1994, shall be charged against that levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Colombia become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8281 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs revising limits pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Costa Rica, as notified to the Uruguay Round Textiles Monitoring Body (TMB) are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Since Costa Rica is now a member of the World Trade Organization (WTO), the limits published in the **Federal Register** on December 6, 1994 (60 FR 62715) are being amended. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated December 23, 1993 between the Governments of the United States and Costa Rica. The guaranteed access levels remain unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62715, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase the levels for the following categories, these limits supersede those contained in the Memorandum of Understanding dated December 23, 1993 between the Governments of the United States and Costa Rica.

Category	Twelve-month limit [1]
340/640	827,190 dozen.
342/642	305,362 dozen.
347/348	1,393,997 dozen.
443	206,570 numbers.
447	11,138 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangement notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8289 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Czech Republic is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the Uruguay Round Textiles Monitoring Body (TMB) contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on June 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in the Czech Republic and exported during the twelve-month period which began on June 1, 1994 and extends through May 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the current restraint period to end on December 31, 1994 at the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

Category	Seven-month restraint limit [1]
410	883,750 square meters.
433	3,471 dozen.
435	2,284 dozen.
443	42,311 numbers.
624	927,500 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 7, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

Category	Twelve-month restraint limit [1]
410	1,527,609 square meters.
433	6,000 dozen.
435	3,948 dozen.
443	73,137 numbers.
624	1,668,938 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8291 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Dominican Republic, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated November 15, 1994, between the Governments of the United States and the Dominican Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits and guaranteed access levels for 1995. The limit for Category 448 has been reduced for carryforward used during 1994.

A description of the textile and apparel categories in terms of HTS

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numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding (MOU) dated November 15, 1994, between the Governments of the United States and the Dominican Republic.

Category	Restraint limit
338/638	686,208 dozen.
339/639	816,588 dozen.
340/640	706,414 dozen.
342/642	497,120 dozen.
347/348/647/648	1,691,018 dozen of which not more than 893,366 shall be in Categories 647/648.
351/651	846,870 dozen.
433	20,875 dozen.
442	70,875 dozen.
443	129,666 numbers.
444	70,875 numbers.
448	32,185 dozen.
633	103,652 dozen.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994 and December 1, 1994 through December 31, 1994 (Categories 442 and 444) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on April 14, 1995, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the period January 1, 1995 through December 31, 1995:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-8296 Filed 4-4-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Hong Kong, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs), dated July 29, 1992, August 18, 1992 and November 23, 1992, between the Governments of the United States and Hong Kong.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 20, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated July 29, 1992, August 18, 1992 and November 23, 1992, between the Governments of the United States and Hong Kong.

Category	Twelve-month restraint limit[1]
Group I:	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	220,381,584 square meters equivalent.
Sublevels in Group I:	
219	35,321,104 square meters.
218/225/317/326	64,700,379 square meters.
611	5,568,848 square meters.
617	3,513,522 square meters.
Group I Subgroup:	
200, 226/313, 314, 315, 369(1) and 604, as a group	98,987,150 square meters equivalent.
Within Group I Subgroup:	
200	304,525 kilograms.
226/313	63,358,475 square meters.
314	17,087,020 square meters.
315	8,447,881 square meters.
369(1)[2] (shoptowels)	694,245 kilograms.
604	209,036 kilograms.
Group II:	
237, 239, 330–359, 431–459, 630–659, 843 and 844, as a group	802,205,145 square meters equivalent.
Sublevels in Group II:	
237	1,021,391 dozen.
239	4,682,189 kilograms.
331	3,847,971 dozen pairs.
333/334	267,671 dozen.
335	316,221 dozen.
338/339[3] (shirts and blouses other than tank tops and tops, knit)	2,687,784 dozen.
338/339(1)[4] (tank tops and knit tops)	2,019,346 dozen.
340	2,573,837 dozen.
345	407,169 dozen.
347/348	6,152,226 dozen of which not more than 6,152,226 dozen shall be in Categories 347–W/348–W[5]; not more than 4,662,390 dozen shall be in Category 348–W; not more than 3,027,891 dozen shall be in Category 347 (other than W); not more than 4,662,390 dozen shall be in Category 348 (other than W).
352	6,007,683 dozen.
359(1)[6] (coveralls, overalls and jumpsuits)	537,469 kilograms.
359(2)[7] (outer vests)	1,120,195 kilograms.
433	9,287 dozen.
434	9,970 dozen.
435	70,758 dozen.
436	92,157 dozen.
438	756,881 dozen.
442	82,379 dozen.
443	58,146 numbers.
444	37,301 numbers.
445/446	1,251,023 dozen.
447/448	62,914 dozen.
631	566,886 dozen pairs.
633/634/635	1,200,639 dozen of which not more than 449,065 dozen shall be in Categories 633/634 and not more than 921,956 dozen shall be in Category 635.
638/639	4,512,233 dozen.
641	779,695 dozen.
644	38,450 numbers.
645/646	1,297,341 dozen.
647	471,574 dozen.
648	997,558 dozen of which not more than 997,558 dozen shall be in Category 648–W[8].

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Category	Twelve-month restraint limit[1]
649	726,035 dozen.
650	150,141 dozen.
652	4,325,207 dozen.
659(1)[9] (coveralls, overalls and jumpsuits)	594,043 kilograms.
659(2) [10] (swimsuits)	239,756 kilograms.
Group II Subgroup:	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group	147,327,497 square meters equivalent.
Within Group II Subgroup:	
336	197,271 dozen.
341	2,605,315 dozen.
342	497,713 dozen
350	122,956 dozen.
351	1,100,368 dozen.
636	265,493 dozen.
640	836,995 dozen.
642	211,130 dozen.
651	287,523 dozen.
Group III:	
831–842 and 847–859, as a group	44,619,970 square meters equivalent.
Sublevels in Group III:	
834	10,805 dozen.
835	103,325 dozen.
836	144,383 dozen.
840	613,759 dozen.
842	231,750 dozen.
847	329,610 dozen.
Limits not in a group:	
845(1) [11] (sweaters made in Hong Kong)	1,103,156 dozen.
845(2) [12] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,640,536 dozen.
846(1) [13] (sweaters made in Hong Kong	178,391 dozen.
846(2) [14] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	429,854 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.
[2] Category 369(1): only HTS number 6307.10.2005.
[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010
[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[5] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.
[6] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.
[7] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.
[8] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.
[9] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
[10] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[11] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.
[12] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.
[13] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.
[14] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)[1].

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8295 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

Establishing and Amending Import Restraint Limits and Amending a Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing directives to the Commissioner of Customs establishing and amending limits and amending a restraint period.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Indonesia, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period January 1, 1995 through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memoranda of Understanding (MOUs) dated September 23, 1994 and February 24, 1995 between the Governments of the United States and Indonesia.

In the letters published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period for Category 435 and establish new limits for the period beginning on July 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 55834, published on November 9, 1994; and 60 FR 5655, published on January 30, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 12, 1995, you are directed to no longer count imports of textile products in Categories 600, 669–P [1] and 670–L [2], produced or manufactured in Indonesia and exported during the period January 1, 1995 through December 31, 1995 (see directive dated December 13, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 12, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memoranda of Understanding dated September 23, 1994 and February 24, 1995 between the Governments of the United States and Indonesia.

Category	Twelve-month restraint limit[a]
Levels in Group I	
200	675,564 kilograms.
219	7,504,437 square meters.
225	5,255,052 square meters.
300/301	3,211,421 kilograms.
313	13,616,722 square meters.
314	47,546,185 square meters.
315	21,604,102 square meters.
317/617/326	20,866,447 square meters of which not more than 3,083,244 square meters shall be in Category 326.
331/631	1,916,182 dozen pairs.
334/335	175,593 dozen.
336/636	490,473 dozen.
338/339	948,245 dozen.
340/640	1,167,789 dozen.
341	702,369 dozen.
342/642	291,947 dozen.
345	339,589 dozen.
347/348	1,284,568 dozen.
350/650	134,881 dozen.
351/651	379,532 dozen.
359–C/659–C[b]	1,109,400 kilograms.
359–S/659–S[c]	1,167,789 kilograms.
360	1,039,328 numbers.
361	1,039,328 numbers.
369–S[d]	716,840 kilograms.
433	11,073 dozen.
443	82,146 numbers.
445/446	55,045 dozen.
447	16,429 dozen.
448	20,232 dozen.
604–A[e]	557,538 kilograms.
611	4,951,774 square meters.
613/614/615	19,794,028 square meters.
618	4,671,157 square meters.
619/620	7,240,294 square meters.
625/626/627/628/629.	22,154,954 square meters.
634/635	233,558 dozen.
638/639	1,214,502 dozen.
641	1,780,531 dozen.
643	259,833 numbers.
644	363,765 numbers.
645/646	614,574 dozen.
647/648	2,546,091 dozen.
847	321,692 dozen.
Group II 201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352–354, 359–O[f], 362, 363, 369–O[g], 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, 603, 604–O[h], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652–654, 659–O[i], 665, 666, 669–O[j], 670–O[k], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	71,373,272 square meters equivalent.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.
[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

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Category	Twelve-month restraint limit [a]
Subgroup in Group II 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	2,900,000 square meters equivalent.
In Group II subgroup 435	45,522 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[d] Category 369–S: only HTS number 6307.10.2005.

[e] Category 604–A: only HTS number 5509.32.0000.

[f] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S).

[g] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[h] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[i] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[j] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[k] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period July 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the six-month period beginning on July 1, 1994 and extending through December 31, 1994. This directive also amends the directive issued to you on January 13, 1995 concerning textile products in Category 435, produced or manufactured in Indonesia and exported during the period December 29, 1994 through March 28, 1995.

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, you are directed, effective on April 12, 1995, to remove Categories 433, 447 and 448 from coverage in Group II and the Group II subgroup. These categories will no longer be subject to a group limit. The import charges already made to Categories 433, 447 and 448 shall be retained. The limits established in the November 3, 1994 directive for Categories 433 and 447 for the period July 1, 1994 through December 31, 1994 shall remain the same.

Also, you are directed to amend the restraint period for Category 435 to begin on July 1, 1994 and extend through December 31, 1994. Category 435 shall remain subject to the levels for Group II and the Subgroup in Group II. You are directed to amend and establish limits for the July 1, 1994 through December 31, 1994 period as follows. These limits supersede those contained in the Memorandum of Understanding dated February 24, 1995, between the Governments of the United States and Indonesia.

Category	Six-month limit [a]
Levels in Group I 448	10,000 dozen.
Subgroup in Group II 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	1,433,373 square meters equivalent.
In Group II subgroup 435	22,500 dozen.

[a] The limits have not been adjusted to account for any imports exported after June 30, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8287 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Elimination of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and eliminating limits pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Jamaica, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Since Jamaica is now a member of the World Trade Organization (WTO), the limits published in the **Federal Register** on December 6, 1994 (60 FR 62717) are being amended. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool, Man-Made Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1983 between the Governments of the United States and Jamaica.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on April 10, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase the limits for the categories listed below. Also, you are directed to eliminate the limits and import charges for Categories 336/636, 342/642 and 447. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1983 between the Governments of the United States and Jamaica.

Category	Twelve-month restraint limit [1]
331/631	537,500 dozen pairs.
338/339/638/639	1,059,810 dozen.
340/640	495,594 dozen of which not more than 419,350 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [2].
341/641	622,315 dozen.
345/845	153,558 dozen.
347/348/647/648	1,143,932 dozen.
352/652	1,709,250 dozen.
445/446	51,020 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment in the future according to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8288 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Kenya, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 23, 1994 and October 25, 1994, between the Governments of the United States and the Republic of Kenya.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede

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those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 23, 1994 and October 25, 1994, between the Governments of the United States and the Republic of Kenya.

Category	Twelve-month restraint limit [1]
340/640	387,000 dozen.
360	2,795,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8299 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Korea, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish import restraint limits for the period beginning on January 1, 1995 and extending throughout December 31, 1995. Pursuant to the ATC, these limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531 published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

Category	Twelve-month restraint limit [1]
Group I:	
200–223, 224–V [2], 224–O [3], 225–229, 300–326, 360–363, 369–O [4], 400–414, 464–469, 600–629, 665–669, and 670–O [5], as a group.	400,928,648 square meters equivalent.
Sublevels with in Group I:	
200	420,254 kilograms.
201	1,755,449 kilograms.
218	8,518,676 square meters.
219	7,756,843 square meters.
224–V	9,778,688 square meters.
300/301	2,857,574 kilograms.
313	46,568,763 square meters.
314	25,964,699 square meters.
315	17,277,301 square meters.
317/326	17,306,163 square meters.
363	997,309 numbers.

Category	Twelve-month restraint limit [1]
410	3,421,192 square meters.
604	347,912 kilograms.
607	1,022,242 kilograms.
611	3,407,471 square meters.
613/614	5,679,117 square meters.
617	4,709,512 square meters.
619/620	91,056,389 square meters.
624	8,310,904 square meters.
625/626/627/628/629	14,538,540 square meters.
669–P [6]	2,091,164 kilograms.
Group II:	
237, 239, 330–359, 431–459 and 630–659, as a group	572,231,408 square meters equivalent.
Sublevels within Group II:	
237	56,513 dozen.
239	943,861 kilograms.
333/334/335	255,561 dozen of which not more than 130,620 dozen shall be in Category 335.
336	54,007 dozen.
338/339	1,135,824 dozen.
340	590,629 dozen of which not more than 306,673 dozen shall be in Category 340–D [7].
341	172,774 dozen.
342/642	205,408 dozen.
345	110,343 dozen.
347/348	420,254 dozen.
350	15,707 dozen.
351/651	215,786 dozen.
352	167,919 dozen.
353/354/653/654	255,464 dozen.
359–H [8]	2,419,045 kilograms.
433	13,676 dozen.
434	7,014 dozen.
435	33,934 dozen.
436	14,365 dozen.
438	57,594 dozen.
440	194,953 dozen.
442	48,546 dozen.
443	322,056 numbers.
444	52,900 numbers.
445/446	51,304 dozen.
447	87,529 dozen.
448	34,152 dozen.
459–W [9]	92,383 kilograms.
631	283,530 dozen pairs.
632	1,501,973 dozen pairs.
633/634/635	1,343,372 dozen of which not more than 152,336 dozen shall be in Category 633 and not more than 567,707 dozen shall be in Category 635.
636	256,716 dozen.
638/639	5,230,216 dozen.
640–D [10]	3,078,202 dozen.
640–O [11]	2,565,168 dozen
641	1,030,164 dozen of which not more than 38,912 dozen shall be in Category 641–Y [12].
643	763,195 numbers.
644	1,148,195 numbers.
645/646	3,526,045 dozen.
647/648	1,279,175 dozen.
650	22,986 dozen.
659–H [13]	1,267,397 kilograms.
659–S [14]	169,042 kilograms.
Group III:	
831–844 and 847–859, as a group	18,160,219 square meters equivalent.
Sublevel within Group III:	
835	28,262 dozen.
Group IV:	
845	2,315,056 dozen.
846	815,708 dozen.
Group VI:	
369–L/670–L/870 [15]	66,639,071 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.
[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.
[3] Category 224–O: all remaining HTS numbers in Category 224.

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[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 5601.21.0090.
[5] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).
[6] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.
[7] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.
[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.
[9] Category 459–W: only HTS number 6505.90.4090.
[10] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.
[11] Category 640–O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030 (Category 640–D).
[12] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.
[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.
[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6111.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[15] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified by the Textiles Monitoring Body.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8294 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the State of Kuwait, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limit for Category 361 is zero. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated May 10, 1994 between the Governments of the United States and the State of Kuwait.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding dated May 10, 1994 between the Governments of the United States and the State of Kuwait.

Category	Twelve-month restraint limit [1]
340/640	215,000 dozen.
341/641	118,250 dozen.
361	—0—

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged to those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8283 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Macau, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB and contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated March 29, 1994 and May 21, 1994, between the Governments of the United States and Macau.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 10, 1995, you are directed to no longer count imports of textile products in Categories 237, 331/831, 631, 652/852, 670 and 845/846, produced or manufactured in Macau and exported during the period January 1, 1995 through December 31, 1995 (see directive dated December 12, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1993 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau.

Category	Twelve-month restraint limit [1]
Levels in Group I	
219	2,520,000 square meters.
225	8,820,000 square meters.
313	6,300,000 square meters.
314	1,050,000 square meters.
315	3,150,000 square meters.
317	6,300,000 square meters.
326	2,520,000 square meters.
333/334/335/833/834/835.	227,432 dozen of which not more than 119,802 dozen shall be in Categories 333/335/833/835.
336/836	53,906 dozen.
338	292,781 dozen.
339	1,226,359 dozen.
340	277,118 dozen.
341	178,735 dozen.
342	80,859 dozen.
345	49,443 dozen.
347/348/847	693,007 dozen.
350/850	53,906 dozen.
351/851	64,688 dozen.
359–C/659–C [2]	323,438 kilograms.
359–V [3]	107,813 kilograms.
611	2,520,000 square meters.
625/626/627/628/629.	6,300,000 square meters.
633/634/635	481,605 dozen.
638/639/838	1,499,730 dozen.
640	106,632 dozen.
641/840	183,273 dozen.
642/842	106,776 dozen.
645/646	249,956 dozen.
647/648	504,237 dozen.
659–S [4]	107,813 kilograms.
Group II	
400–469, as a group	1,466,122 square meters equivalent.
Sublevel in Group II	
445/446	79,041 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

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[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factor (square meters equivalent/category unit) for Categories 445/446 is 12.4.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8285 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Malaysia, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated November 3, 1994 between the Governments of the United States and Malaysia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 28, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding (MOU) dated November 3, 1994 between the Governments of the United States and Malaysia.

Category	Twelve-month restraint limit [1]
Fabric Group 218, 219, 220, 225–227, 313–315, 317, 326, 611, 613/614/615/617, 619 and 620, as a group.	99,498,680 square meters.
Sublevels within the group	
218	5,708,757 square meters.
219	27,655,755 square meters.
220	27,655,755 square meters.
225	27,655,755 square meters.
226	27,655,755 square meters.
227	27,655,755 square meters.
313	32,983,928 square meters.
314	39,682,160 square meters.
315	27,655,755 square meters.
317	27,655,755 square meters.
326	5,348,000 square meters.
611	3,208,800 square meters.
613/614/615/617	31,745,728 square meters.
619	4,278,400 square meters.
620	5,348,000 square meters.
Other Specific Limits	
200	240,736 kilograms.
237	323,908 dozen.
300/301	2,553,268 kilograms.
331/631	1,753,036 dozen pairs.
333/334/335/835	201,037 dozen of which not more than 120,622 dozen shall be in Category 333 and not more than 120,622 dozen shall be in Category 835.
336/636	390,315 dozen.
338/339	967,685 dozen.
340/640	1,127,165 dozen.
341/641	1,460,848 dozen of which not more than 521,158 dozen shall be in Category 341.
342/642/842	349,905 dozen.
345	134,176 dozen.
347/348	410,107 dozen.
350/650	126,189 dozen.
351/651	217,118 dozen.
363	3,401,328 numbers.
435	14,871 dozen.
438–W [2]	12,170 dozen.
442	18,123 dozen.
445/446	28,767 dozen.
604	1,119,551 kilograms.
634/635	681,820 dozen.
638/639	401,644 dozen.
645/646	307,202 dozen.

Category	Twelve-month restraint limit [1]
647/648	1,445,654 dozen of which not more than 1,011,957 dozen shall be in Category 647–K [3] and not more than 1,011,957 dozen shall be in Category 648–K [4].
Group II 201, 222–224, 229, 239, 330, 332, 349, 352–354, 359–362, 369, 400–434, 436, 438–O [5], 439, 440, 443, 444, 447, 448, 459, 464–469, 600–603, 606, 607, 618, 621, 622, 624–630, 632, 633, 643, 644, 649, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group.	38,884,834 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8293 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Mauritius, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated October 2 and 5, 1981, as amended and extended, between the Governments of the United States and Mauritius.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 28, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following lilmits. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated October 2 and 5, 1981, as amended and extended, between the Governments of the United States and Mauritius.

Category	Twelve-month restraint limit [1]
Knit group 345, 438, 445, 446, 645 and 646, as a group.	143,604 dozen.
Levels not in a group	
237	185,185 dozen.
335/835	73,612 dozen.
336	86,624 dozen.
338/339	346,790 dozen.
340/640	564,375 dozen of which not more than 343,549 dozen shall be in Categories 340–Y/640–Y [2].
341/641	390,955 dozen.
347/348	729,977 dozen.
351/651	171,681 dozen.

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Category	Twelve-month restraint limit[1]
352/652	1,455,855 dozen of which not more than 1,237,478 dozen shall be in Category 352.
442	11,510 dozen.
604–A[3]	343,201 kilograms.
638/639	398,809 dozen.
647/648/847	537,769 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 604–A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8298 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Philippines, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 6, 1995, you are directed to no longer count imports of textile products in Categories 669–P[1] and 670–L[2], produced or manufactured in the Philippines and exported during the period beginning on January 1, 1995 and extending through December 31, 1995 (see directive dated December 13, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 6, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those limits contained in the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

Category	Twelve-month restraint limit[a]
Levels in Group I	
237	1,430,328 dozen.
239	8,630,179 kilograms.
331/631	4,631,855 dozen pairs.
333/334	224,063 dozen of which not more than 32,166 dozen shall be in Category 333.
335	145,842 dozen.
336	530,733 dozen.
338/339	1,903,813 dozen.
340/640	845,404 dozen.
341/641	762,870 dozen.
342/642	459,058 dozen.
345	136,706 dozen.
347/348	1,608,284 dozen.
350	121,022 dozen.
351/651	500,693 dozen.
352/652	1,966,353 dozen.
359–C/659–C[b]	680,266 kilograms.
361	1,528,693 numbers.
369–S[c]	346,516 kilograms.
431	164,313 dozen pairs.
433	3,235 dozen.
443	39,122 numbers.
445/446	26,721 dozen.
447	7,430 dozen.
611	4,587,729 square meters.
633	29,579 dozen.
634	366,999 dozen.
635	322,346 dozen.
636	1,383,123 dozen.
638/639	1,955,735 dozen.
643	706,523 numbers.
645/646	628,616 dozen.
647/648	970,423 dozen.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000

[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Category	Twelve-month restraint limit[a]
649	6,343,947 dozen.
650	86,619 dozen.
659–H[d]	1,139,676 kilograms.
847	755,926 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O[e], 360, 362, 363, 369–O[f], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O[g], 665, 666, 669–O[h], 670–O[i], 831–845 and 850–859, as a group.	127,763,555 square meter equivalent.
Sublevel in Group II	
604	1,620,705 kilograms.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–S: only HTS number 6307.10.2005.

[d] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[e] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[f] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[g] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[h] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[i] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8279 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Singapore, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 10, 1995, you are directed to no longer count imports of textile products in Categories 200–220, 223–229, 300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436, 438, 439, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 643, 644, 649, 650, 659–S[1], 659–V[2], 659–O[3] and 665–670, produced or manufactured in Singapore and exported during the period beginning on January 1, 1995 and extending through December 31, 1995 (see directive dated November 29, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of

[1] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112 41.0010, 6112.41.0020, 6112.41.0030, 6112 41.0040, 6211 11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[2] Category 659–V: only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.9052, 6110.90.9054, 6201.93.2020, 6202.93.2020, 6211.33.0054 and 6211 43.0076

[3] Category 659–O: all HTS numbers except 6112.31.0010, 6112.31.0020, 6112 41.0010, 6112.41.0020, 6112.41.0030, 6112 41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.9052, 6110.90.9054, 6201.93.2020, 6202.93.2020, 6211.33.0054 and 6211.43.0076 (Category 659–V).

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March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore.

Category	Twelve-month restraint limit [1]
222	405,104 kilograms.
237	241,890 dozen.
239	466,257 kilograms.
331	429,621 dozen pairs.
334	67,047 dozen.
335	201,679 dozen.
338/339	1,154,742 dozen of which not more than 674,842 dozen shall be in Category 338 and not more than 750,340 dozen shall be in Category 339.
340	808,149 dozen.
341	203,210 dozen.
342	125,051 dozen.
347/348	943,814 dozen of which not more than 589,884 dozen shall be in Category 347 and not more than 458,799 dozen shall be in Category 348.
435	6,658 dozen.
604	844,322 kilograms.
631	468,945 dozen pairs.
634	255,974 dozen.
635	261,948 dozen.
638	940,151 dozen.
639	3,299,258 dozen.
640	172,290 dozen.
641	281,023 dozen.
642	266,382 dozen.
645/646	144,194 dozen.
647	542,852 dozen.
648	1,494,911 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-8284 Filed 4-4-95; 8:45 am]

BILLING CODE 3510-DR-F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Slovak Republic is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on June 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995. The base limits for the new restraint periods have been adjusted to reflect previous adjustments made to the June 1, 1994 through May 31, 1995 limits. The 1995 limit for Category 443 has been reduced for carryforward used during 1994. The limits for Categories 433 and 443 for the June 1, 1994 through December 31, 1994 period will be filled upon opening. Goods shipped in excess of these limits will be charged to the corresponding categories for the 1995 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1 1994 and extends through May 31, 1995.

Effective on April 21, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the current restraint period to end on December 31, 1994 at the limits listed below. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic.

Category	Seven-month restraint limit [1]
410	216,612 square meters.
433	6,446 dozen.
435	9,736 dozen.
443	61,390 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic.

Category	Twelve-month restraint limit [1]
410	398,928 square meters.
433	11,143 dozen.
435	16,830 dozen.
443	89,313 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-8292 Filed 4-4-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Thailand, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Bilateral Textile Agreement of September 3, 1991, as amended and extended, between the Governments of the United States and Thailand.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 11, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement of September 3, 1991 between the Governments of the United States and Thailand.

Category	Twelve-month restraint limit [1]
239	5,027,120 kilograms
Levels in Group I	
200	955,433 kilograms.
218	15,870,000 square meters.
219	5,095,643 square meters.
300	3,821,732 kilograms
301-P [2]	3,821,732 kilograms
301-O [3]	764,347 kilograms.
313	17,834,750 square meters.
314	40,765,143 square meters.
315	25,478,214 square meters.
317/326	10,696,000 square meters.
363	16,560,839 numbers
369-D [4]	182,170 kilograms.
369-S [5]	254,782 kilograms.
604	596,104 kilograms of which not more than 382,173 kilograms shall be in Category 604-A [6]
607	2,547,821 kilograms.
611	12,507,030 square meters.

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Category	Twelve-month restraint limit [1]
613/614/615	38,505,600 square meters of which not more than 22,420,829 square meters shall be in Categories 613/615 and not more than 22,420,829 square meters shall be in Category 614.
617	13,904,800 square meters.
619	5,732,598 square meters.
620	5,732,598 square meters.
625/626/627/628/629.	11,230,800 square meters of which not more than 8,917,375 square meters shall be in Category 625.
669–P [7]	5,373,563 kilograms.
Group II	
237, 330–359, 431–459, 630–659 and 831–859, as a group.	235,721,528 square meters equivalent.
Sublevels in Group II	
331/631	1,390,619 dozen pairs.
334/634	496,825 dozen.
335/635/835	394,912 dozen.
336/636	254,782 dozen.
338/339	1,647,881 dozen.
340	229,304 dozen.
341/641	541,412 dozen.
342/642	471,347 dozen.
345	242,043 dozen.
347/348/847	665,618 dozen.
351/651 [5]	191,086 dozen.
359–H/659–H [8]	1,117,749 kilograms.
433	9,267 dozen.
434	11,464 dozen.
435	52,097 dozen.
438	17,197 dozen.
442	19,970 dozen.
638/639	1,942,146 dozen.
640	420,390 dozen.
645/646	254,782 dozen.
647/648	907,024 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 301–P: only HTS numbers 5205.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8282 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Turkey, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, as amended, and the Memorandum of Understanding (MOU) dated October 5, 1994 between the Governments of the United States and the Republic of Turkey.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on , entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, as amended and extended, and the Memorandum of Understanding dated October 5, 1994 between the Governments of the United States and the Republic of Turkey.

Category	Twelve-month restraint limit [1]
Fabric Group 219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	141,404,089 square meters of which not more than 32,313,717 square meters shall be in 219; 39,494,543 square meters shall be in 313; 22,978,643 square meters shall be in 314; 30,877,553 square meters shall be in 315; 32,313,717 square meters shall be in 317; 3,590,412 square meters shall be in 326; 21,542,479 square meters shall be in 617.
Sublevel in Fabric Group 625/626/627/628/629.	14,546,560 square meters of which not more than 5,818,624 square meters shall be in 625; 5,818,624 square meters shall be in 626; 5,818,624 square meters shall be in 627; 5,818,624 square meters shall be in 628; and 5,818,624 square meters shall be in 629.
Limits not in group	
200	1,363,441 kilograms.
300/301	6,638,496 kilograms.
335	286,630 dozen.
336/636	675,172 dozen.
338/339/638/639	4,203,906 dozen of which not more than 2,606,422 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].
340/640	1,353,617 dozen of which not more than 384,987 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [3].
341/641	1,336,760 dozen of which not more than 467,866 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341–Y/641–Y [4].
342/642	751,607 dozen.
347/348	4,089,253 dozen of which not more than 1,422,420 dozen shall be in trousers in Categories 347–T/348–T [5].
350	426,276 dozen.
351/651	681,543 dozen.
361	1,433,150 numbers.
369–S [6]	1,481,604 kilograms.
410/624	1,063,098 square meters of which not more than 687,887 square meters shall be in Category 410.
448	36,479 dozen.
604	1,710,206 kilograms.
611	42,784,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[5] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994 and July 1, 1994 through December 31, 1994 (Category 611) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8280 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits Certain Cotton, Man-Made Fiber Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

March 30, 1995

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated January 26, 1991 and February 5, 1991, as amended and extended, between the Governments of the United States and the United Arab Emirates establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limits for Categories 226/313, 326, 334/634, 335/635/835, 351/651, 363, 369–O, 369–S and 647/648 have been reduced for carryforward used during 1994.

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These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that the United Arab Emirates becomes a member of the World Trade Organization.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1995 limits. The 1995 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated January 26, 1991 and February 5, 1991, as amended and extended, between the Governments of the United States and the United Arab Emirates; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended and extended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
219	984,967 square meters.
226/313	1,509,052 square meters.
315	-0-.
317	27,171,497 square meters.
326	1,483,973 square meters.
334/634	189,372 dozen.
335/635/835	128,611 dozen.
336/636	173,969 dozen.
338/339	496,482 dozen of which not more than 330,987 dozen shall be in Categories 338–S/339–S [2].
340/640	307,792 dozen.
341/641	269,519 dozen.
342/642	214,117 dozen.
347/348	368,815 dozen of which not more than 184,407 dozen shall be in Categories 347–T/348–T [3].
351/651	145,185 dozen.
352	283,704 dozen.
361	-0-.
363	5,000,000 numbers.
369–O [4]	500,572 kilograms.
369–S [5]	68,857 kilograms.
638/639	200,734 dozen.
647/648	271,433 dozen.
847	180,660 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[5] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods December 27, 1992 through December 31, 1994 (Category 219), March 1, 1993 through December 31, 1994 (Categories 226/313), July 28, 1993 through December 31, 1994 (Category 317), October 28, 1993 through December 31, 1994 (Categories 326, 335/635/835 and 369–S), and January 1, 1994 and extending through December 31, 1994 (remaining categories) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should the United Arab Emirates become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8297 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program

ACTION: Notice.

The FY 1995 Strategic Investment Plan of the Strategic Environmental Research and Development Program (SERDP) is available for public review for a period of 30 days.

This document is available for public review at 2200 Clarendon Boulevard, Suite 900, Arlington, VA 22201. To schedule an appointment, contact Mr. Blake Henke at 703 525–5300 extension 546.

Dated: March 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8238 Filed 4–4–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Directed Energy Panel will meet on 21 April 1995 at Kirtland Air Force Base, New Mexico from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and have discussions concerning Directed Energy.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8375 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Space Technology Panel and Space Applications will meet on 22–23 June 1995 at the Aerospace Corporation, El Segundo, CA from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and have discussions concerning Space Technology.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8376 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Space Technology Panel will meet on 10–12 May 1995 at Lincoln Laboratory, MA from 8 a.m. to 5 p.m. The purpose of the meeting is to receive briefings and have discussions concerning Space Technology.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8377 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Spring General Membership Meeting (New World Vistas Workshop) will meet on 2–5 May 1995 at Maxwell AFB, AL from 0800 to 5 p.m.

The purpose of the meeting is to fulfill the yearly Spring general membership requirement and to provide information and insight into the challenging agenda issues as set forth in Spacecast 20/20 and New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8378 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25–27 April 1995.

Time of Meeting: 0800–1700, 25 & 26 April 1995; 0800–1730, 27 April 1995.

Place: Arlington, VA.

Agenda: The Army Science Board's Logistics and Sustainability Subgroup will meet for discussions focused on current doctrine, missions, functions, force structures and modules, and technologies reference Army Logistical Support to Military Operations Other Than War. Briefings will be provided covering logistics perspectives in UN policies, NGOs, PVOs, medical logistics, MOOTW and Reserve and National Guard elements and lessons learned from Haiti. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–8246 Filed 4–4–95; 8:45 am]

BILLING CODE 3710–08–M

Intent to Supplement the December 1991 Joint EIS/EIR (Environmental Impact Statement/Environmental Impact Report) for the ARWI (American River Watershed Investigation) Originally Filed With EPA in January 1992 With a Joint DSEIS/SDEIR (Draft Supplemental Environmental Impact Statement/Supplemental Draft Environmental Impact Report) on the ARWI

AGENCIES: U.S. Army Corps of Engineers, DOD, in cooperation with the State of California, The Reclamation Board, and with the Sacramento Area Flood Control Agency.

ACTION: Notice of intent to prepare a joint DSEIS/SDEIR.

SUMMARY: The reevaluation of the ARWI includes a DSEIS/SDEIR identifying and assessing new flood control alternatives and reanalyzing measures presented in the December 1991 EIS/EIR. When complete, this document will become part of the SIR (Supplemental Information Report). The DSEIS/SDEIR will describe the significance of the impacts of potential alternatives on the area's natural and cultural resources and mitigation requirements for the alternatives evaluated. The study area includes lands within the American River watershed and the Deer Creek area of the Cosumnes River basin. These alternatives examined in detail include construction of a peak flow detention dam, with various outlet configurations, near Auburn on the North Fork, American River; modifications to Folsom Dam; levee improvements on the lower American River; and increasing the flood storage allocation space in Folsom Reservoir.

FOR FURTHER INFORMATION: Please address comments and/or questions regarding this DSEIS/SDEIR to Colonel John N. Reese, District Engineer, ATTN: Mr. Michael Welsh, Planning Division, Environmental Planning Section, CESPK–PD–R, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone area code (916) 557–6718.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

A DSEIS/SDEIR prepared by the Corps of Engineers, the State of California, The Reclamation Board and Department of Water Resources, and SAFCA (the Sacramento Area Flood Control Agency) will expand upon the ARWI feasibility report approved by the Board of Engineers for Rivers and Harbors in June 1992. This supplemental investigation will identify and assess new flood control measures

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and reevaluate previously studied measures using new baseline conditions.

The Defense Appropriations Act of 1993 authorized the Natomas portion of the project, subject to certain conditions being complied with. Since that time, SAFCA has applied for, and received, a Department of the Army Permit pursuant to Section 404(b)(1) of the Clean Water Act to construct the levees described in the 1991 EIS/EIR. As part of the permit review process, SAFCA prepared and circulated a separate NEPA/CEQA (National Environmental Policy Act, and the California Environmental Quality Act) document describing the Natomas levee work. Work was initiated on the local project in 1994, and is expected to be completed in 1997. The Bureau of Reclamation and SAFCA have entered into an interim agreement to reoperate Folsom Reservoir to remove the Sacramento area from flooding from storm events having a one percent chance of occurring in any given year. This agreement is for a five year period, and may be extended an additional five year period, if mutually agreed upon.

The Defense Appropriations Act of 1993 also authorized this reevaluation of the ARWI. This reevaluation analyzes the American River watershed for its contribution to Sacramento area flooding. The DSEIS/SDEIR will fulfill requirements of NEPA and CEQA. The document will discuss alternatives and plan features and impacts on the American River watershed areas natural resources. The results of the investigations will be presented in a final SIR/EIS/EIR combined report submitted to Corps headquarters for approval and eventual submission for congressional consideration in mid 1996.

2. Alternatives

The SIR and accompanying DSEIS/SDEIR will reassess flood control plans that consider improvements within the American River watershed and the Deer Creek area to increase protection to the Sacramento area from flooding on the American River. In addition to the alternatives discussed in the 1991 Feasibility Report and a no action alternative, this DSEIS/SDEIR will analyze the following major alternatives:

Increase Folsom Reservoir Storage—This alternative includes modifying the outlets and spillway at Folsom Dam, and requiring that between 495,000 and 670,000 acre-feet of space be reserved in the reservoir each year, depending on the amount of water contained in the private reservoirs on the north and middle forks of the American River.

Folsom Storage/Step Release Alternative—This alternative includes modifying the spillway and outlets at Folsom Dam, requiring that between 400,000 and 670,000 acre-feet of space be reserved in the reservoir each year, modify the levees along the lower American River to accommodate an objective release of 145,000 cfs with a maximum step release of 180,000 cfs, and lengthen and modify the Sacramento Weir and bypass and modify the levees along Yolo Bypass to accommodate the increased flows.

Maximum Objective Release Alternative—This alternative includes modifying the spillway and outlets at Folsom Dam, requiring that between 425,000 and 670,000 acre-feet of space be reserved in the reservoir each year, modify the levees along the lower American River to accommodate an objective release of 180,000 cfs, and lengthen and modify the Sacramento Weir and bypass and modify the levees along Yolo Bypass to accommodate the increased flows.

Flood Detention Dam Alternative—This alternative consists of a 498-foot high concrete gravity dam constructed using roller compacted concrete. This dam would be constructed on the North Fork American River near Auburn, and would be able to temporarily detain approximately 894,000 acre-feet of water during a major storm event. The dam would have 20 operable gates and 2 ungated sluices to control the drawdown rate and minimize the affects of inundation during inundation events. The operation of Folsom Reservoir would be returned to a fixed space requirement of 400,000 acre-feet of storage. The objective releases from Folsom Dam would remain at 115,000 cfs.

The DSEIS/SDEIR will analyze impacts and mitigation requirements, which them becomes part of the project's mitigation commitment in compliance with Federal and State statutes.

3. Public Involvement

a. A notice outlining the ARWI and tentatively proposed alternatives was sent to public agencies, organizations, and individuals in the study area prior to the first public forum conducted in November 1993. Additional public forums, meetings, and workshops were conducted during the remainder of 1993, and throughout 1994. The initial notice and subsequent public meetings provided the public an opportunity to identify their concerns on area flooding and on significant natural resources in the area. Responses to the notice and public hearings helped develop an environmental inventory for use in preparing the DSEIS/SDEIR.

b. The feasibility report was completed in December 1991. Prior to its completion, comments were received from the public concerning the flood control alternatives and environmental impacts of those alternatives. Numerous public workshops and coordinating meetings were held to assist the State and SAFCA to determine a preferred flood control plan. For the restudy of the ARWI this process will continue with a final SEIS/EIR and SIR scheduled for December 1995. Coordination has been maintained with Federal, State and local agencies, concerned individuals and organizations. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate in this reevaluation.

c. Significant issues discussed in the public meetings include the degree of protection offered by the alternatives, hydrology of the area, planning objectives, alternatives analysis, impacts on fish and wildlife resources, recreation, endangered species, vegetation, esthetics, cumulative impacts, cultural resources and, hazardous and toxic waste; and the mitigation requirements to compensate for impacts to significant resources.

d. Other agency review and consultation for this DSEIS/SDEIR will occur with the U.S. Fish and Wildlife Service who will provide a Fish and Wildlife Coordination Act Report under authority of the Fish and Wildlife Coordination Act. The National Marine Fisheries Service will provide information on the anadromous fishery of both the American and Sacramento rivers under the Anadromous Fish Conservation Act. In addition, both agencies will provide information and opinions on how best to avoid impacts to species protected under the Endangered Species Act under their jurisdictions. Coordination on cultural resources will be accomplished through the State Historic Preservation Office in accordance with the National Historic Preservation Act. Water quality issues will be addressed by an updated evaluation conducted pursuant to Section 404(b)(1) of the Clean Water Act, and will include coordination with the California Regional Water Quality Control Board and the United States Environmental Protection Agency. All resource agency input, including recommendations on avoiding or minimizing impacts to natural resources, becomes part of the final ARWI SEIS/EIR.

4. Availability

The DSEIS/SDEIR is scheduled to be distributed for public review and comment in August 1995. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DSEIS/SDEIR public involvement process.

Dated: March 24, 1995.

Michael P. Stuhr,

LTC, EN, Colonel, Corps of Engineers Deputy District Engineer.

[FR Doc. 95–8241 Filed 4–4–95; 8:45 am]

BILLING CODE 3000–BF–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On March 20, 1995, the Department of Education published in the **Federal Register** a notice inviting applications under the Magnet Schools Assistance Program. On page 14869, in the first column, next to the last paragraph, the date applicants must submit proof to the Department of Education of approval of all modifications to their plans should be changed from April 17, 1995 to June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue SW., Portals Room 4509, Washington, D.C. 20202–6140. Telephone (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 30, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–8255 Filed 4–4–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursements in fiscal year 1995.

SUMMARY: This Notice announces the Department of Energy's acceptance of claims for reimbursement and the availability of approximately $41.7 million in funds for fiscal year 1995 for reimbursements of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. The Department of Energy anticipates that claims submitted by licensees in fiscal year 1995 together with outstanding approved claims from fiscal year 1994 will exceed $41.7 million and would therefore be subject to prorated payment. In addition, the Department of Energy is announcing an adjustment for inflation to the statutory per dry short ton limit on reimbursement to uranium licensees and the aggregate limit on reimbursement to uranium and thorium licensees. Lastly, the Department of Energy is announcing changes in the quantity of Federal-related or total dry short tons of byproduct material and Federal reimbursement ratio for the Western Nuclear Incorporated, Split Rock mill site, in Jeffrey City, Wyoming, and the American Nuclear Corporation, Gas Hills mill site, in Gas Hills, Wyoming, and the preliminary per dry short ton limit on reimbursement to uranium licensees.

DATES: The closing date for the submission of claims for reimbursement in fiscal year 1995 is June 16, 1995.

ADDRESSES: Claims may be mailed to the Environmental Restoration Division, U.S. Department of Energy, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110. All claims should be addressed to the attention of James B. Coffey and sent by registered or certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: James Coffey, Environmental Restoration Division, U.S. Department of Energy, (505) 845–4628.

SUPPLEMENTARY INFORMATION: The Department of Energy published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994 (59 FR 26714) to implement the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Section 1001(b)(2) of the Energy Policy Act of 1992 limits the amount of reimbursement paid to any one licensee of an active uranium site to an amount not to exceed $5.50, as adjusted annually for inflation, multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at the active uranium processing sites shall not exceed $270 million, as adjusted annually for inflation. Total reimbursement for work performed at the active thorium processing site shall not exceed $40 million, as adjusted annually for inflation, and is limited to costs incurred for offsite disposal. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

To make the inflation adjustments indicated above, the Department of Energy is required by 10 CFR 765.12 to apply the Consumer Price Index-Urban (CPI-U) annually, beginning in 1994, using the CPI-U as published by the Bureau of Labor Statistics within the Department of Commerce for the preceding calendar year. The CPI-U for 1993 was 1.030. Therefore, the adjusted values of the $5.50 per dry short ton, $270 million, and $40 million statutory ceilings in 1994 were $5.67 per dry short ton, $278.1 million, and $41.2 million, respectively (i.e., $5.50, $270 million, and $40 million multiplied by 1.030 equals $5.67, $278.1 million, and

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$41.2 million, respectively). In 1994, the Department of Energy issued the first reimbursements to uranium and thorium licensees totaling $33,368,448.46 and $7,000,351.53, respectively. Subsequently, the total remaining reimbursement ceiling for uranium and thorium licensees in 1994 was $244,731,551.54 and $34,199,648.47. The CPI-U for 1994 was 1.027. Therefore, the adjusted values of the per dry short ton ceiling and the total remaining reimbursement ceiling for uranium and thorium licensees for 1995 are $5.82, $251,339,303.43, and $35,123,038.98. These amounts were determined by multiplying the ceiling values for 1994 by 1.027.

The Department of Energy published its determination on the Federal-related and total dry short tons of byproduct material and Federal reimbursement ratio for each eligible active uranium processing site in the May 23, 1994, **Federal Register** (59 FR 26714). Since then, additional records were made available to the Department of Energy on the quantities of dry short tons of byproduct material at the Western Nuclear Incorporated, Split Rock mill site in Jeffrey City, Wyoming, and the American Nuclear Corporation, Gas Hills mill site, in Gas Hills, Wyoming. After reviewing these records, the Department of Energy is revising the quantity of Federal-related or total dry short tons of byproduct material and Federal reimbursement ratio for these two uranium processing sites. The Department of Energy has determined that the quantity of Federal-related and total dry short tons of byproduct material at the Western Nuclear Incorporated site as of October 24, 1992, is 3.626 million dry short tons and 8.2 million dry short tons, respectively; and the quantity of Federal-related dry short tons of byproduct material at the American Nuclear Corporation site as of October 24, 1992, is 2.202 million dry short tons. The total quantity of dry short tons of byproduct material for the American Nuclear Corporation site, however, remains at 6.0 million dry short tons. Because of these quantity increases, the Federal reimbursement ratio for the Western Nuclear Incorporated and American Nuclear Corporation sites is also being revised to 0.442 and 0.367, respectively (i.e., 3.626 million dry short tons divided by 8.2 million dry short tons equals 0.442 and 2.202 million dry short tons divided by 6.0 million dry short tons equals 0.367). The Department of Energy's reports on these revisions are available upon written request to the Environmental Restoration Division, U.S. Department of Energy, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110. Because of these quantity increases, the total amount of Federal-related dry short tons of byproduct material at all eligible active uranium processing sites is 56.521 million dry short tons.

In the May 23, 1994, **Federal Register** (59 FR 26714), the Department of Energy announced that it was establishing a preliminary per dry short ton limit of $4.80 on reimbursement to licensees of eligible uranium processing sites. This was necessary because the $270 million statutory ceiling would not support the maximum allowable reimbursement of $5.50 per dry short ton, as established by Title X, if remedial action costs at all of the eligible uranium processing sites reach or approach this per dry short ton limit. Because of the above quantity revisions to the Western Nuclear Incorporated and American Nuclear Corporation sites, the preliminary per dry short ton limit on reimbursement is $4.78 (i.e., $270 million divided by the total amount of Federal-related dry short tons of byproduct material present at all eligible active uranium processing sites, 56.521 million dry short tons, equals $4.78). The Department of Energy is adjusting the $4.78 preliminary per dry short ton limit to account for inflation using the CPI-U values discussed above. The adjusted per dry short ton limit in 1994 was $4.92 (i.e., $4.78 multiplied by 1.030 equals $4.92). The adjusted per dry short ton limit in 1995 is $5.05 (i.e., $4.92 multiplied by 1.027 equals $5.05). The Department of Energy will further adjust the preliminary per dry short ton limit on reimbursement annually for inflation or if other circumstances, as determined by the Department of Energy, require an adjustment.

Authority: Section 1001–1004 of Pub. L. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*)

Issued in Washington D.C. on this 29th of March, 1995.

David E. Mathes,

Director, Offsite Program Division, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 95–8360 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Long-Term Storage and Disposition of Weapons-Usable Fissile Materials

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: On June 21, 1994, the Department of Energy (DOE) published a Notice of Intent to prepare a PEIS for the Long-Term Storage and Disposition of Weapons-Usable Fissile Materials (59 FR 31985). By this notice of an amendment, DOE is amending the scope of the PEIS by removing the disposition of all surplus HEU from the PEIS. Instead, DOE will address the disposition of surplus HEU in a separate EIS. This action is based on the need to move forward on a rapid path for neutralizing the proliferation threat of surplus HEU and to demonstrate to other nations the United States' nonproliferation commitment. The disposition of HEU will involve different time frames, technologies, facilities and personnel than those required for the disposition of plutonium. Therefore, the decisions on surplus HEU disposition do not affect or preclude other decisions to be made on the long-term storage and disposition of other weapons-usable fissile materials, can proceed regardless of decisions pursuant to the PEIS, and are independently justified. The scope of the PEIS will continue to include the long-term storage of non-surplus weapons-usable fissile materials, including HEU, and the disposition of plutonium and other fissile materials. The EIS on the disposition of surplus HEU is scheduled for completion in early 1996. To ensure consideration of comments in the Draft EIS, written comments must be postmarked by May 1, 1995. Late comments will be considered to the extent practical.

ADDRESSES: Written requests for the Implementation Plan, the Draft EIS, and Final EIS on the disposition of surplus HEU should be sent to: Office of Fissile Materials Disposition (MD–1), Attention: HEUEIS, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Written requests for the Implementation Plan, the Draft PEIS, and Final PEIS on the long-term storage and disposition of weapons-usable fissile materials should be sent to: Office of Fissile Materials Disposition (MD–1), Attention: PEIS, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE National Environmental Policy Act (NEPA) process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom can be reached at (202) 586–4600. Comments and questions about the NEPA process can also be left on the DOE NEPA hotline, 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In the aftermath of the Cold War, significant quantities of HEU, a material used in nuclear weapons, have become surplus to national defense needs in both the United States and Russia. This surplus material could pose a danger to national and international security. The dangers exist not only in the potential proliferation of nuclear weapons but in the potential for environment, safety, and health consequences if these materials are not properly managed. For further background information on the storage and disposition of fissile materials, please refer to the original June 21, 1994, Notice of Intent (59 FR 31985).

In the course of the PEIS public scoping process, comments suggested that it would be more appropriate to analyze the impact of HEU disposition in a separate EIS. The Department held a public meeting on November 10, 1994, to obtain comments on preparing a separate environmental analysis for the disposition of surplus HEU. While many views were expressed at this meeting, there was substantial support for proceeding with a separate EIS. A separate action is the most rapid path for neutralizing the proliferation threat of surplus HEU, is consistent with the President's nonproliferation policy, would demonstrate the U.S. nonproliferation commitment to other nations, and is consistent with the course of action now underway in Russia to reduce Russian HEU stockpiles. In addition, the disposition of HEU could use existing technologies and facilities in the United States, in contrast to the disposition of plutonium.

The disposition of HEU will involve different time frames, technologies, facilities and personnel than those required for the disposition of plutonium. Further, the decisions on surplus HEU will not impact or preclude other decisions which may be made regarding the disposition of surplus plutonium and other weapons-usable fissile materials, can proceed regardless of decisions on these other issues pursuant to the PEIS, and are independently justified.

Three alternatives have been evaluated as reasonable for the disposition of surplus HEU: (1) Continued long-term storage (no action alternative), (2) blending down of HEU into low enriched uranium, and (3) blending down for disposal as waste. These alternatives are based upon technical studies, public input, and evaluation by a DOE Screening Committee.

The purpose of this amendment notice is to inform the public of DOE's intention to prepare a separate EIS for disposition of surplus HEU. Because the issues related to the disposition of surplus HEU were included in the Long-Term Storage and Disposition of Weapons-Usable Fissile Materials Notice of Intent and the public scoping process for the PEIS, no additional scoping activities are anticipated. The Department will prepare an Implementation Plan, a Draft EIS, and a Final EIS. The Implementation Plan will briefly describe the scope of the EIS, public input and comments received on the scope and alternatives, the alternatives that will be analyzed, the schedule for completing the EIS, and the EIS work plan. The results of the environmental analysis in the Final EIS, along with information from technical and economic evaluations and national policy objectives, will form the basis for the Record of Decision on the disposition of surplus HEU.

The Department is planning to issue the EIS Implementation Plan in June 1995, to issue the Draft EIS in late Summer 1995 with public meetings in that same time period, and to issue the Final EIS in late 1995 or early 1996.

Note: Some of the technical terms used in this document are defined in a section at the end of the notice.

Classified Material

DOE plans to prepare the HEU EIS in an unclassified form; however, DOE may review classified material while preparing the document. In the event that any classified material is included in the EIS, such material will be placed in a classified appendix which will not be available for general public review. This material will be considered by DOE in reaching a decision on the disposition of surplus HEU. DOE will provide as much information as possible in unclassified form to assist public understanding of the proposed action and environmental impacts.

Other DOE NEPA Documents

There are several other NEPA documents in preparation by the DOE that will analyze proposals that are related to the proposed action described above. These are:

The Oak Ridge Interim Storage of Enriched Uranium Environmental Assessment (EA)

This document addresses the expansion of interim storage capacity for enriched uranium at Oak Ridge. This interim storage will involve materials, quantities, and forms for which long-term storage and disposition will be implemented.

The Environmental Management PEIS

This document addresses the programmatic level decisions for treatment, storage, and disposal of waste within the DOE complex. If any action to dispose of HEU results in a waste form, these waste forms will be treated, stored, and disposed of in accordance with the decisions resulting from the Environmental Management PEIS.

Other EISs and EAs

Other environmental documents involving weapons-usable fissile materials are being, or will be, prepared as required, for the purpose of establishing the interim storage conditions for HEU. These other environmental documents include site-wide EISs and an EA on the disposition of HEU from the Republic of Kazahkstan.

Definitions

As used in this Notice of an Amendment, the following definitions apply:

Disposition is a process of use or disposal of material that results in the remaining material being converted to a form that is substantially and inherently more proliferation-resistant than the original form.

Highly Enriched Uranium (HEU) is uranium which has an isotopic content of uranium-235 of 20 percent or more.

Low Enriched Uranium is uranium which has an isotopic content of uranium-235 of less than 20 percent. Most commercial reactor fuel is enriched to about 4 to 5 percent uranium-235.

Weapons-Usable Fissile Materials refers to a specific set of nuclear materials that may be utilized in making a nuclear explosive or weapon. Weapons-usable fissile materials include uranium with uranium-235 isotopic content of 20 percent or more, plutonium of any isotopic composition, and other isotopes such as uranium-233, and americium-241, which have been separated from spent nuclear fuel or irradiated targets. The term weapons-usable fissile materials does not include the fissile materials present in spent nuclear fuel or irradiated targets from reactors.

Invitation to Comment

The DOE invites comments on the intention to prepare an EIS for the disposition of surplus HEU, including suggestions on significant environmental issues, from all interested parties, including affected Federal, State, and local agencies and Indian tribes. To ensure consideration of comments in the Draft EIS, written

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comments must be postmarked by May 1, 1995. Late comments will be considered to the extent practical. Written comments should be sent to the Office of Fissile Materials Disposition at the address given above. Comments can also be provided via the Office of Fissile Materials Disposition's Electronic Bulletin Board. The bulletin board can be accessed via modem by dialing (800)–783–3349. Access to the bulletin board is also available via the Internet. The telnet address is telnet fedix.fie.com; the gopher space address is gopher to gopher.fie.com; the world wide web address is url=http://web.fie.com/.

Signed in Washington, DC, this 29th day of March 1995, for the United States Department of Energy

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health

[FR Doc. 95–8361 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Fernald Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald Site.

DATES: Saturday, April 8, 1995: 8:30 a.m.–12:30 p.m. (public comment session, 11:30 p.m.–11:45 p.m.)

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, April 8, 1995

8:30 a.m.—Task Force Administration (Call to order; Approval of Minutes; Chair's Remarks)
8:50 a.m.—Review of Past Resolutions; Review of New Information
9:45 a.m.—Break
10:00 a.m.—Presentation of Options
10:15 a.m.—Discussion and Draft Resolutions
11:30 p.m.—Public Comment
11:45 p.m.—Vote on Resolutions
12:00 p.m.—Review Table of Contents for Final Report
12:15 p.m.—Wrap Up
12:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, April 8, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on March 30, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 95–8358 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Environmental Management; Proposed Site Treatment Plans

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: Today's notice announces the availability of the Department of Energy's (DOE) Proposed Site Treatment Plans (Proposed Plans) for treating its mixed radioactive and hazardous waste (mixed waste). As required by the Federal Facility Compliance Act of 1992 (FFCAct or the Act), DOE prepared Proposed Plans for 40 sites in 20 States where DOE stores or generates mixed waste. The Proposed Plans identify the proposed treatment option and related schedule for development of the option for each type of mixed waste. Each DOE site is submitting its Proposed Plan to either its State regulators, or as appropriate, the U.S. Environmental Protection Agency (U.S. EPA). DOE faces increasingly tight funding in the near-term, and anticipates that funding will continue to be constrained in the future. The schedules in the Proposed Plans reflect those constraints. DOE expects, that for some sites, further discussion with the State or Federal regulators concerning priorities will result in modified schedules in the approved Plans. The Proposed Plans are available at each site for review by the public. Public comments on the Proposed Plans will be considered by the appropriate regulatory agency in reviewing the plan. Additional opportunities for public involvement in the FFCAct process will be offered at many sites by the DOE and State or Federal regulators.

DATES: Written comments on the Proposed Plans should be sent to the recipients identified in Table 1 by July 6, 1995. Written comments received on or before July 6, 1995, will be considered by the State/Federal regulators in reviewing the Proposed Plans.

ADDRESSES: Table 1 lists the recipient to which written comments should be sent on each of the Proposed Plans. Section V of Supplementary Information lists the Reading Rooms where the Proposed Plans may be reviewed.

FOR FURTHER INFORMATION CONTACT: To obtain general information on a site's Proposed Plan or for the address of a Reading Room where Proposed Plans may be viewed, contact the Center for Environmental Management Information at 1–800–7EM-DATA (1–800–736–3282).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3021(b) of the Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act of 1992 (FFCAct or the Act), requires the DOE to prepare Site Treatment Plans for developing treatment capacities and technologies for mixed waste at each site where the DOE stores or generates mixed waste. Mixed waste is defined by the FFCAct as waste contaihing both hazardous

waste subject to RCRA, and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. DOE must submit the Site Treatment Plans to the State or U.S. EPA, as appropriate, for approval, disapproval, or approval with modification.

The FFCAct allows for a six month period during which the regulatory agency reviews the Proposed Plan, makes it available to the public, and approves, disapproves, or modifies the Proposed Plan. Upon approval, the regulatory agency is to issue an Order requiring compliance with the Proposed Plan. Sites that are in compliance with approved Plans and Orders by October 6, 1995, are not subject to fines and penalties related to the storage prohibition of section 3004(j) of RCRA as long as they continue to comply with their Plan and Order.

After consultation with State and Federal regulators, the DOE published a **Federal Register** Notice on April 6, 1993 (58 FR 17875), which announced the DOE's plan to submit the Site Treatment Plans in three stages. In the first stage, Conceptual Site Treatment Plans describing a wide range of possible treatment alternatives for each mixed waste at each site were submitted in October 1993. Draft Site Treatment Plans (Draft Plans) narrowing the list of options to one or two identified by each site, with input from the State and Federal regulators, were submitted and announced in the **Federal Register** on August 31, 1994, (59 FR 44979). The DOE planned to submit Proposed Site Treatment Plans containing the DOE's preferred option for treatment of each mixed waste to the appropriate regulatory agency in February 1995. However, after consultation with the States and U.S. EPA, DOE announced in the **Federal Register** on February 28, 1995 (60 FR 10840) that the date for submitting the Proposed Plans was revised to no later than April 6, 1995, to allow additional time for further discussions on schedules for developing treatment capacity in light of anticipated funding limitations.

II. Proposed Site Treatment Plans

After submission of the Draft Plans in August 1994, the DOE, with input from the State and Federal regulators, evaluated the treatment options listed in the Draft Plans for the mixed waste at each site. The goal of this evaluation was to gain a better understanding of the appropriate configuration of treatment systems across the DOE complex, and to eliminate redundancies and inefficiencies among the Draft Plans. Discussions with the regulators led to further refinement of the treatment configuration. The Proposed Plans reflect the results of this evaluation and present the DOE's proposed option for treating each site's mixed waste. The Proposed Plans follow a common format, consisting of a Background Volume and a Compliance Plan Volume. The Background Volume describes the site's treatment options, including the associated technical uncertainties and funding constraints, to the extent they are known. The Compliance Plan Volume identifies the preferred treatment option(s) and associated schedules, and broadly describes provisions for implementing and updating the Proposed Plan once it is approved. The Compliance Plan Volume is intended to contain requirements that will ultimately be enforced through a Consent or Compliance Order. In addition to identifying treatment options, DOE is also evaluating options for disposal of treatment residuals at the request of the States. The Background Volume of each Proposed Plan contains a description of the process for evaluating disposal options.

DOE will prepare a National Summary of the Proposed Site Treatment Plans that compiles the information contained in the individual site Proposed Plans and discusses the complex-wide treatment configuration. The National Summary Report will describe the process used to develop the Proposed Plans, the treatment options for each mixed waste, technology development activities, and other related topics. The National Summary Report is expected to be available to the public by the end of June 1995.

III. Activities Occurring Between Submission of the Draft Plans and Preparation of the Proposed Plans

In February 1995, between submission of the Draft Plans and preparation of the Proposed Plans, the DOE, the State and Federal regulators, and Tribal representatives met to discuss future funding of DOE's Environmental Management Program, its Site Treatment Plans, and strategies for working cooperatively to address anticipated funding limitations.

Because of recent changes in funding projections, the schedules in the Proposed Plans have not yet been fully integrated with those of other DOE sites from a complex-wide perspective. Based on discussions concerning its Fiscal Year 1997 Budget, the DOE anticipates that funding will continue to be constrained. Accordingly, DOE anticipates that after submission of the Proposed Plans and before Proposed Plans and schedules are approved discussions will continue with regulatory agencies and the public concerning the priority of mixed waste treatment and other activities.

IV. Sites No Longer Preparing Proposed Site Treatment Plans

DOE has prepared Proposed Plans for 40 sites in 20 States. However, because two of the Proposed Plans each address more than one site, only 37 Proposed Plans have been submitted for approval. The Idaho National Engineering Laboratory and the Argonne Laboratory-West are located on a single federally-owned reservation near Idaho Falls, Idaho, and both are addressed within the Proposed Plan submitted by the U.S. DOE Idaho Operations Office. The Oak Ridge National Laboratory, K–25 Site, and Y–12 Plant are all located within the federally-owned Oak Ridge Reservation near Oak Ridge, Tennessee, and are addressed within the Proposed Plan submitted by the U.S. DOE Oak Ridge Operations Office. Additionally, eight sites that initially developed Conceptual or Draft Site Treatment Plans have not submitted Proposed Plans for approval. These sites are: (1) General Electric, Vallecitos Nuclear Center, Vallecitos, California; (2) Sandia National Laboratory, Livermore, California; (3) Pinellas Plant, Largo, Florida; (4) Site A/Plot M Palos Forest Preserve, Cook County, Illinois; (5) Kansas City Plant, Kansas City, Missouri; (6) Middlesex Sampling Plant, Middlesex, New Jersey; (7) Princeton Plasma Physics Laboratory, Princeton, New Jersey; and (8) the Inhalation Toxicology Research Institute, Albuquerque, New Mexico. These sites are not submitting Proposed Plans for one or more of the following reasons: (1) The site is not generating or storing mixed waste at this time; (2) the site no longer has mixed waste because the waste has been consolidated at another site or has been treated; (3) the site can already treat the waste it generates on a routine basis in compliance with RCRA; or (4) it has not yet been determined through the environmental restoration process whether mixed waste subject to RCRA land disposal restrictions will be generated.

These eight sites have submitted and will update information on their mixed waste compliance to the regulatory agencies as needed. In the future, if any of these sites generate mixed waste that cannot be treated in compliance with RCRA, the site will propose a Plan for approval that meets the requirements of the Act. In addition, the Hanford Site in Richland, Washington, has signed an agreement with the State of Washington that addresses mixed waste treatment as

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specified in the FFCAct. Therefore, the Hanford site is not required to prepare a Site Treatment Plan; however, the Hanford Site and its State regulators are actively participating in the FFCAct discussions.

V. Availability of Proposed Site Treatment Plans and Opportunity for Comment

The Proposed Site Treatment Plans for all DOE sites subject to the FFCAct will be available for review at the site's public reading room or at nearby locations by mid-April 1995. To review or request information on a specific Proposed Plan, contact the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282). Full sets of the Proposed Plans from the 40 sites will also be available for review by mid-April 1995 at the following locations:

U.S. Department of Energy Headquarters Reading Room, Room TE–100, 3900 Independence Avenue, SW., Washington, D.C. 20585, 202/586–6025

Center for Environmental Management Information, 470 L'Enfant Plaza East, SW., Suite 7110, Washington, D.C. 20024, 800/736–3282

Albuquerque Operations Office, National Atomic Museum, P.O. Box 5400, Kirtland Air Force Base, Albuquerque, NM 87185–5400, 505/845–6670

Hanford Site, U.S. DOE Reading Room, Washington State University, Tri-Cities, 100 Sprout Road, Room 130, Richland, WA 99352, 509/376–8583

Idaho National Engineering Laboratory, INEL Technical Library, 1776 Science Center Drive, P.O. Box 1625, Idaho Falls, ID 83415–2300, 208/526–1185

Lawrence Livermore National Laboratory, DOE Reading Room, 1301 Clay Street, Oakland, CA 94612, 510/637–1762

Mound Plant, Miamisburg Senior Adult Center Public Reading Room, 305 Central Ave., Miamisburg, OH 45343, 513/866–8999

Nevada Test Site, Nevada Test Site Reading Room, 3084 South Highland Drive, Las Vegas, NV 89109, 702/295–3521

Oak Ridge Reservation, DOE Public Reading Room, 35 Jefferson Circle, Oak Ridge, TN 37831, 615/576–1216

Rocky Flats Plant, Rocky Flats Environmental Technology Site Reading Room, Front Range Community College Library, 3645 West 112th Ave., Westminster, CO 80030, 303/469–4453

Savannah River Site, Gregg-Cantteville Library, University of South Caroline-Aiken, 171 University Parkway, Aiken, SC 29801, 803/641–3465

Opportunities for public involvement in the FFCAct process will be offered at many sites. To obtain information about these opportunities contact the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282). Persons interested in receiving the National Summary of the Proposed Site Treatment Plans when available, or other information on the development of the Site Treatment Plans and related activities, should contact the Center for Environmental Management Information. Information about the FFCAct may also be obtained electronically through the FFCAct Bulletin Board on the Internet at http://eagle.haz.ornl.gov/ffcabb/ffcamain.html.

Issued in Washington, DC on March 30, 1995.

Stephen Cowan,

Acting Deputy Assistant Secretary for Waste Management, Environmental Management

TABLE 1.—SITES PREPARING SITE TREATMENT PLANS AND COMMENT RECIPIENTS

State	Facility/locabon	Reviewing agency recipient of comments
California	Energy Technology Engineering Center; Canoga Park.	Ohet Kawashige, California Department of Toxic Substances Control, P.O. Box 806, Mail Code HQ–18, Sacramento, CA 95812–0806.
	General Atomics; San Diego	
	Lawrence Livermore National Laboratory; Livermore.	
	Lawrence Berkeley Laboratory; Berkeley	
	Laboratory for Energy-Related Health Research; Davis.	
	Mare Island Naval Shipyard; Vallejo	
Colorado	Grand Junction Project Office; Grand Junction.	Jacqueline Hernandez-Berardini, Director, Environmental Integration Group, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, OE-EIG-B2, Denver, CO 80222–1530.
	Rocky Flats Environmental Technology Site; Golden	
Connecticut	Knolls Atomic Power Laboratory; Windsor.	Fred Schauntzel, Air Monitoring and Radiation, Department of Environmental Protection, 79 Elm Street, 6th Floor, Hartford, CT 06106–5127
Hawaii	Pearl Harbor Naval Shipyard; Honolulu	Tony Terrell, U.S. EPA (H41), Region 9, 75 Hawthorne Street, San Francisco, CA 94105.
Idaho	Argonne National Laboratory-West; Idaho Falls.	Brian Monson, Bureau Chief, DEQ, 1410 North Hilton Street, Boise, ID 83706–1290.
	Idaho National Engineering Laboratory; Idaho Falls	
Illinois	Argonne National Laboratory-East; Argonne.	Richard Allen, Manager, Office of Environmental Safety, Department of Nuclear Safety, 1034 Outer Park Drive, 5th floor, Springfield, IL 62704.
Iowa	Ames Laboratory; Ames	Ken Herstowki, U.S. EPA (Iowa Section), Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.
Kentucky	Paducah Gaseous Diffusion Plant; Paducah.	Caroline P. Haight, Director of Division of Waste Management, 14 Rally Road—OMEGA Bldg., Frankfort, KY 40601.
Maine	Portsmouth Naval Shipyard; Kittery	Joan Serra, U.S. EPA (HRR–CNN3), Region 1, JFK Federal Building, Boston, MA 02203.
Missouri	Weldon Spring Site Remedial Action Project; St. Charles County.	Dan Tschirgi, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102–0176.
	University of Missouri; Columbia	
Nevada	Nevada Test Site; Mercury	Paul Liebendorfer, Bureau Chief, Bureau of Federal Facilities, Division of Environmental Protection, 123 W. Nye Lane, Carson City, NV 89710.
New Mexico	Los Alamos National Laboratory; Los Alamos.	Jim Seubert, Environmental Specialist 525 Camino, De Los Marquez, Santa Fe, NM 87502.
	Sandia National Laboratory—New Mexico; Albuquerque	

TABLE 1.—SITES PREPARING SITE TREATMENT PLANS AND COMMENT RECIPIENTS—Continued

State	Facility/location	Reviewing agency recipient of comments
New York	Brookhaven National Laboratory; Upton	Norm Drapeau, Environmental Engineer III, 50 Wolf Road, Albany, NY 12233.
	Colonie Interim Storage Site; Colonie	
	Knolls Atomic Power Laboratory—Kesselring; West Milton.	
	Knolls Atomic Power Laboratory—Schenectady; Niskayuna.	
	West Valley Demonstration Project; West Valley	
Ohio	Battelle Columbus Laboratories Decommissioning Project; Columbus.	Thomas Crepeau, Manager, Data Management Section, Division of Hazardous Waste Management, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216–1049.
	Fernald Environmental Management Project; Fernald.	
	Mound Plant; Miamisburg	
	Portsmouth Gaseous Diffusion Plant; Portsmouth.	
	RMI Titanium Inc.; Ashtabula	
Pennsylvania	Bettis Atomic Power Laboratory; West Mifflin.	David Friedman, U.S. EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107.
South Carolina	Charleston Naval Shipyard; Charleston	David Wilson, Jr., Assistant Bureau Chief, 8901 Farrow Road, Columbia, SC 29223.
	Savannah River Site; Aiken	
Tennessee	K–25 Site, Y–12 Plant and Oak Ridge National Laboratory; Oak Ridge Reservation; Oak Ridge.	Earl Leming, Tennessee Department of Environment and Conservation, DOE Oversight Office, 761 Emory Road, Oak Ridge, TN 37830.
Texas	Pantex Plant; Amarillo	Dan Pearson, Executive Director, Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.
Virginia	Norfolk Naval Shipyard; Norfolk	David Friedman, U.S. EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107
Washington	Puget Sound Naval Shipyard; Bremerton	Jeff Breckel, Washington-Oregon Interstate Liaison, Nuclear and Mixed Waste Management Program, Washington Department of Ecology, P.O. Box 47600, 300 Desmond Drive SE, Lacey, WA 98503.

[FR Doc. 95–8359 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–261–000, et al.]

Questar Pipeline Company, et al.; Natural Gas Certificate Filings

March 29, 1995.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP95–261–000]

Take notice that on March 13, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–261–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by removal a 3-inch meter run and appurtenant facilities located in Sweetwater County, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar states that the meter run was installed by Questar's predecessor, Mountain Fuel Resources, Inc. (Mountain Fuel), at the Steamboat Mountain Meter & Regulating Station to receive natural gas from NGC Energy Resources, L.P. (NGC), for transportation on Mountain Fuel's system, which was subsequently acquired by Questar. It is stated that the facilities were installed under the automatic authorization provisions of Mountain Fuel's blanket certificate in Docket No. CP82–491–000. Questar states that the meter run is obsolete because it can no longer measure the increasing volumes flowing from the Steamboat Mountain producing area. It is asserted that there is an existing 6-inch meter run adjacent to the 3-inch meter run which can accurately measure the increasing volumes. It is further asserted that the proposed abandonment would have no impact on Questar's transportation for NGC and no impact on the average daily design capacity or operation of Questar's system.

Comment date: April 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP95–274–000]

Take notice that on March 20, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–274–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to upgrade its existing Olympia Meter Station and to install looping facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to partially abandon and upgrade its Olympia Meter Station and to construct and operate approximately 3.73 miles of 12-inch pipeline loop, valves and a loop tie-in on its existing Olympia lateral at the existing Rainier Meter Station, all in Thurston County, Washington. Northwest states that the upgraded station would consist of two 6-inch turbine meters, two 4-inch regulators, valves and appurtenances. Northwest explains that the loop would parallel the existing Olympia Lateral, beginning at the Ignacio-to-Sumas gas transmission mainline and terminating about 2,700 feet southeast of the Fort Lewis Military Reservation boundary. Northwest states that these proposed facilities would increase Northwest's delivery capacity to Washington Natural Gas Company (Washington Natural) at various meter stations on the Olympia and Shelton laterals by approximately 13,370 Dth

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per day and would allow increased contractual delivery pressures at the Olympia Meter Station under existing transportation agreements with Washington Natural, a local distribution company.

Northwest states that the expanded facilities at the Olympia Meter Station would provide for a design capacity of 34,541 Dth per day of service (at a delivery pressure of 400 psig). Northwest also states that the proposed lateral loop line would increase the capacity of the Olympia lateral from approximately 64,540 to approximately 77,910 Dth per day at 637 psig inlet pressure from Northwest's mainline. Northwest explains that the increased volumes and delivery pressure would be utilized to enhance service to Washington Natural under an existing firm Rate Schedule TF–1 transportation agreement dated August 15, 1994, or under any other duly authorized firm transportation agreement. Northwest states that the total costs to remove the undersized metering facilities and to construct the proposed upgraded metering facilities, lateral loop line, valves and loop tie-in are estimated at approximately $2,559,300. Northwest further states that the costs would be reimbursed by Washington Natural in the form of a Facility Cost-of-Service Charge over 9 years.

Comment date: May 15, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Interstate Utilities Company, a Division of Gasco Distribution Systems

[Docket No. CP95–278–000]

Take notice that on March 22, 1995, Interstate Utilities Company, a division of Gasco Distribution Systems, Inc. (IUC), 1435 East Pike, Zanesville, Ohio 43701, filed in Docket No. CP95–278–000 an application requesting a service area determination pursuant to Section 7(f) of the Natural Gas Act (NGA), all as more fully set forth in the application on file with the Commission and open to public inspection.

IUC states that it is a small local distribution company (LDC) serving 480 customers in Mason County, West Virginia. It is stated that IUC receives natural gas service from Columbia Gas Transmission Corporation in Meigs County, Ohio, and transports the gas a distance of 1.5 miles across the Ohio River. It is further stated that IUC then distributes the gas to its retail customers in West Virginia and provides no service to customers in Ohio. It is asserted that IUC makes no sales for resale. It is explained that IUC's operations are regulated by the Public Service Commission of West Virginia.

IUC requests that the service area determination consist of Mason County, West Virginia, and Meigs County, Ohio, and IUC's rights-of-way interconnecting the two counties. IUC requests a declaration that it qualifies as an LDC in the service area to be determined for purposes of Section 311 of the Natural Gas Policy Act (NGPA). IUC also requests a waiver of the regulatory requirements, including reporting and accounting requirements, ordinarily applicable to a natural gas company under the NGA and the NGPA.

Comment date: April 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8273 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–266–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

March 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP95–266–000]

Take notice that on March 17, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–266–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a delivery point to Chevron U.S.A. Inc. (Chevron) in Perth Amboy, New Jersey, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install a 4-inch check valve on its line in Middlesex County, New Jersey to make deliveries of up to 10,000 Dth/d to Chevron's Perth Amboy Refinery. Chevron would reimburse Texas Eastern for the $28,000 cost of such tap.

Comment date: May 12, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Koch Gateway Pipeline Company

[Docket No. CP95–281–000]

Take notice that on March 24, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–281–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove a 550 horsepower compressor unit located at its Jackson Storage Compressor Station, Rankin County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

Koch Gateway proposes to remove its Unit No. 5 compressor from service at the Jackson Storage Compressor Station site. Koch Gateway states that the Unit No. 5 compressor has not been used in the past two years and Koch Gateway does not anticipate needing the compressor unit at its present location for the foreseeable future. Koch Gateway states that it proposes to place the skid-mounted unit in warehouse inventory until such time the unit is returned to service.

Koch Gateway states that the proposed abandonment is in the public interest and will have no effect on its existing customers.

Comment date: April 18, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–283–000]

Take notice that on March 24, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–283–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for a new point of delivery to Orwell Natural Gas (Orwell) located in Trumbull County, Ohio under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 2-inch tap and gas sampler on Columbia's Line FV–354 to provide a new point of delivery in order to provide firm transportation service for up to 250 dekatherms (dth) per day and up to 35,000 dth annually, for residential use, for Orwell in Trumbull County, Ohio under Columbia's Rate Schedule GTS or from capacity released by other shippers within certificated entitlements. Columbia states that there is no impact on Columbia's existing peak day obligations to its other customers as a result of the construction and operation of these facilities. Columbia states that Orwell would reimburse Columbia for the cost of these facilities estimated to be $35,415.

Comment date: May 12, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8272 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11422–001 Idaho]

Dike Hydroelectric Partners, Inc.; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Dike Hydroelectric Partners, Inc., permittee for the Dike Project No. 11422, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11422 was issued January 10, 1994, and would have expired December 31, 1996. The project would have been located on the Snake River, Elmore County, Idaho.

The Permittee filed the request on March 16, 1995, and the preliminary permit for Project No. 11422 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8267 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11415–001 Washington]

Rock Creek Hydroelectric Co.; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Rock Creek Hydroelectric Company, permittee for the Rock Creek Project No. 11415, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11415 was issued July 30, 1993, and would have expired June 30, 1996. The project would have been located on Rock Creek, Cowlitz County, Washington.

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The Permittee filed the request on March 14, 1995, and the preliminary permit for Project No. 11415 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8266 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11399–001 Oregon]

Tumalo Irrigation District; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Tumalo Irrigation District, permittee for the Bend Canal Project No. 11399, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11399 was issued December 28, 1993, and would have expired November 30, 1996. The project would have been located on the Deschutes River, Deschutes County, Oregon.

The Permittee filed the request on March 17, 1995, and the preliminary permit for Project No. 11399 shall remain in effect through the thirtieth day after issuance of this notice unless that day is on a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois Cashell,

Secretary.

[FR Doc. 95–8265 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–213–000]

Mississippi River Transmission Corp.; Notice of Proposed Change in FERC Gas Tariff

March 30, 1995.

Take notice that on March 28, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 9, proposed to be effective April 1, 1995.

MRT states that the purpose of the filing is to retire Substitute First Revised Sheet No. 9 which provided for the disposition of Account Nos. 191 and 858 costs, and reserve Sheet No. 9 for future use.

MRT states that a copy of the filing has been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8270 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–004]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

March 30, 1995.

Take notice that on March 27, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, effective March 11, 1995:

Substitute First Revised Sheet No. 263A

Northern states that such tariff sheet is being submitted in compliance with the Commission's Order issued March 10, 1995, in Docket No. RP93–206–003, to revise the termination date of the Carlton Resolution to October 31, 1995.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before April 6, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8268 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–325–000]

Panhandle Eastern Pipe Line Co.; Notice of Informal Settlement Conference

March 30, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, April 6, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Carmen Gastilo at (202) 208–2182 or Kathleen Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8269 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–280–000]

Williams Natural Gas Co.; Notice of Request Under Blanket Authorization

March 30, 1995.

Take notice that on March 23, 1995, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–280–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon pipeline, construct pipeline, relocate domestic customers, and uprate the pressure of pipeline under William's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the commission and open to public inspection.

Williams states that it proposes (1) to abandon approximately 15.8 miles of 10-inch pipeline and construct approximately 15.8 miles of 8-inch replacement pipeline, (2) to relocate 11 domestic customers, and (3) to uprate 2.2 miles of existing 8-inch pipeline, located in Labette and Montgomery Counties, Kansas.

Williams states further that the construction cost is estimated to be $2,270,810, the reclaim cost is estimated to be $[illegible],470, and the salvage value is estimated to be $43,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8261 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–644–000, et al.]

Oklahoma Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER95–644–000]

Take notice that on March 21, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing amendments to its February 24, 1995, filing to the Supplemental Power Purchase Agreement with the Oklahoma Municipal Power Authority (OMPA). OG&E also file a Notice of Cancellation effective September 30, 1995, as to the Supplemental Power Purchase Agreement.

Copies of this filing have been sent to OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: April 11, 1995, *in* accordance with Standard Paragraph E at the end of this notice.

2. Coastal Technology Dominicana, S.A.

[Docket No. EG95–37–000]

On March 21, 1995, Coastal Technology Dominicana, S.A. ("Applicant"), c/o Messina & Messina, Calle Pantino Falco No. 55, Santa Domingo, Dominican Republic, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Dominican Republic corporation intends to operate and maintain all or part of certain generating facilities in Dominican Republic. These facilities will consist of two diesel electric generating facilities located in Puerto Plata, Dominican Republic.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. El Paso Electric Company

[Docket No. ER95–423–000]

Take notice that on March 3, 1995, El Paso Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Power Marketing Inc.

[Docket No. ER95–609–000]

Take notice that on March 13, 1995, Enron Power Marketing, Inc. tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER95–647–000]

Take notice that on March 6, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, an Interchange Agreement (Agreement) between SDG&E and LG&E Power Marketing Inc. (LPM).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st day of May, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and LPM.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ES95–26–000]

Take notice that on March 20, 1995, Citizens Utilities Company (Citizens), filed an application requesting an order from the Commission:

(1) Disclaiming jurisdiction, under § 204 of the Federal Power Act, over Citizens' periodic stock dividend program, or

(2) Alternatively, authorizing Citizens' quarterly stock dividend program without limitation of time.

Comment date: April 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Dianna L. Green

[Docket No. ID–2873–000]

Take notice that on March 21, 1995, Dianna L. Green (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Officer—Duquesne Light Company
Outside Director—PNC Bank Corp.

Comment date: April 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Stuart Heydt

[Docket No. ID–2874–000]

Take notice that on March 21, 1995, Stuart Heydt (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company
Director—PNC Bank, N.A.

Comment date: April 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–8271 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30384; FRL–4944–9]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by May 5, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30384] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8709; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register the pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 68230–E. Applicant: Biospherics Incorporation, 12051 Indian Creek Court, Beltsville, MD 20705. Product name: Wingdinger H_2O. Biochemical Insecticide. Active ingredient: Xylitol at 40 percent. Proposed classification/Use: None. For control of houseflies indoors.

2. File Symbol: 68230–R. Applicant: Biospherics Inc. Product name: Wingdinger Gel. Biochemical Insecticide. Active ingredient: Xylitol at 40 percent. Proposed classification/Use: None. For control of houseflies indoors.

3. File Symbol: 4822–URO. Applicant: S. C. Johnson, Incorporation, 1525 Howe St., Racine, WI 53403. Product name: Off! Moth Proofer 1. Insecticide/Miticide. Active ingredient: Cedarleaf oil at 85 percent. Proposed classification/Use: None. For moth repellency and control.

4. File Symbol: 4822–URI. Applicant: S. C. Johnson, Inc. Product name: Off! Moth Proofer 2. Insecticide/Miticide. Active ingredient: Cedarleaf oil at 90 percent. Proposed classification/Use: None. For moth repellency and control.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 24, 1995.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–8085 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64026; FRL 4943–8]

Methomyl; Request to Delete Certain Outdoor and All Indoor Non-Food Uses, DuPont Agricultural Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136 d(f)(1), EPA is issuing this notice of receipt of request by DuPont to delete certain outdoor and all indoor non-food uses, including but not limited to, fur-bearing animal units, poultry houses, commercial, industrial and institutional areas (outdoor), meat and poultry processing plants, and garbage areas from their manufacturing use registrations for methomyl. The public is invited to submit comments within 30 days of this notice regarding the appropriateness of EPA granting this request.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses (7 U.S.C. 136 d (f)(1)). The Act further provides that, before acting on the request, EPA must publish in the **Federal Register** a notice of the receipt of the request and allow 30 days (or 90 days for minor agricultural uses) for public comment. Thereafter, the Administrator may approve such a request. EPA may waive the comment period if requested to do so by the registrant, or if continued use would pose an unreasonable adverse effect on the environment.

II. Intent to Delete Uses

This notice announces receipt by the Agency of an application by DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038, to delete certain outdoor and all indoor non-food uses for the two methomyl registrations listed below in Table 1. These registrations are identified by registration number, product names, active ingredient, and the specific uses deleted. Users of these products who desire the continuation of the subject uses may wish to contact the registrant within 30 days after the publication of this notice, to discuss withdrawal of the applications for deletions or possible transfer of the registrations.

The registrant is requesting, and EPA is providing a 30–day comment period because the Agency, has been informed by the registrant that it contacted all registrants of methomyl fly baits last year of its decision not to support that use, and has not been selling the product to fly bait formulators since December 31, 1993. Also, because the deletions are being requested in accord with an EPA request that the registrant propose risk mitigation measures to address the Agency's methomyl worker safety concerns, the Agency considers a 30-day comment period to be appropriate in length.

TABLE 1. — REGISTRATIONS SUBJECT TO DELETION REQUESTS

EPA Registration No.	Product Name	Active Ingredient(s)	Delete From Label
352–366	DuPont Methomyl Technical	Methomyl	All indoor non-food uses such as dog kennels, fur-bearing animal units, farm buildings, poultry houses, commercial, industrial and institutional areas (outdoor), eating establishments (outdoor), food processing, handling and storage plants/areas (outdoor), garbage areas, garbage cans, trash bins, meat processing plants (nonfood areas), poultry processing plants (nonfood areas).
352–361	DuPont Composition	Methomyl	All indoor, non-food uses such as dog kennels, fur-bearing animal units, farm buildings, poultry houses, commercial, industrial and institutional areas (outdoor), eating establishments (outdoor), food processing, handling and storage plants/areas (outdoor), garbage areas, garbage cans, trash bins, meat processing plants (nonfood areas), poultry processing plants (nonfood areas).

III. Existing Stocks Provisions

The Agency intends to authorize registrants to sell or distribute existing stocks of product under the previously approved labeling for a period of 18 months after approval of the deletion requests, subject to the imposition of other restrictions resulting from, e.g. special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–7958 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–623; FRL–4945–1]

Miles, Inc.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Miles, Inc., petitions to establish pesticide tolerances for phostebupirim and cyfluthrin in or on various corn commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM 14), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6600; e-mail: Forrest.Robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Miles, Inc., P.O. Box 4913, Kansas City, MO 64120, notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the the following pesticide petitions to amend 40 CFR part 180 to establish tolerances for certain pesticide in or on various corn commodities.

1. *PP 1F4025.* Miles, Inc., has proposed amending 40 CFR part 180 to establish tolerances for phostebupirim, *O*-[2-(1,1-dimethylethyl-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl) phosphorothioate, in or on the following raw agricultural commodities: corn, fresh at 0.01 part per million (ppm);

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corn, grain, field and pop at 0.01 ppm; and corn forage and fodder, field, pop, and sweet at 0.01 ppm. The proposed analytical method for determining residues is gas-liquid chromatography.

2. *PP 1F4026.* Miles, Inc., has proposed amending 40 CFR 180.436 to establish tolerances for cyfluthrin, cyano (4-fluoro-2-phenoxyphenyl)methyl-3-(2,2-dichloroethyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities: corn, fresh at 0.01 part per million (ppm); corn, grain, field and pop at 0.01 ppm; and corn forage and fodder, field, pop, and sweet at 0.01 ppm. The proposed analytical method for determining residues is gas-liquid chromatography

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: March 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. 95–8084 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30329A; FRL–4940–8]

Rohm and Haas Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Rohm and Haas Company, to conditionally register the pesticide products Enable 2F, RH-7592 Technical, and Indar WSP containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 5, 1992 (57 FR 4490), which announced that Rohm and Haas Co., 100 Independence Mall West, Philadelphia, PA 19106, had submitted applications to conditionally register the pesticide products Indar 2F (now known as Enable 2F) and RH-7592 Technical (EPA File Symbols 707–EGR and 707–EGN), containing the active ingredient fenbuconazole alpha-[2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile at 22.8 and 98.3 percent respectively, an active ingredient not included in any previously registered products.

EPA later received an application from the company to register the product Indar 75WSP (EPA File Symbol 707–EGO), containing the active ingredient fenbuconazole at 75 percent. However, since the notice of receipt of application was not published in Federal Register, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only.

The applications were approved on February 15, 1995, for one technical and two end-use products listed below:

1. RH-7592 Technical for formulation and manufacture of fungicides only (EPA Registration Number 707–230).
2. Enable 2F for disease control on pecans (EPA Registration Number 707–231).
3. Indar 75WSP for use to to control diseases on apricots, cherries, nectarines, and peaches (EPA Registration Number 707–239).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of fenbuconazole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fenbuconazole during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e). The terms of the conditional registrations will require Rohm and Haas Company to submit the following studies:

1. Fish Life Cycle (Guideline Reference Number 72–5).
2. Growth and Reproduction of Aquatic Plants - Tier 2 (123–2).
3. Droplet Size Spectrum (201–1).
4. Drift Field Evaluation (202–1).
5. Storage Stability of Fenbuconazole Reflecting a 49-month Storage Period (171–4(e)).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on fenbuconazole.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7959 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–624; FRL–4948–2]

Rohm & Haas Co.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rohm & Haas Co. petitions to establish pesticide tolerances for benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, in or on apples and walnuts.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rick Keigwin, Product Manager (PM-10), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-7618; e-mail: keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petitions (PP) 4E4375 and 4F4280 to amend 40 CFR part 180 to establish tolerances for benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, in or on the raw agricultural commodities apples at 1.0 part per million (ppm) (PP 4E4375) and walnuts at 0.1 ppm (PP 4F4280). The proposed analytical method for determining residues is HPLC separation with UV detection.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: March 30, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–8345 Filed 3–31–95; 1:06 pm]

BILLING CODE 6560–50–F

[OPP–66209; FRL–4943–4]

Mevinphos; Amendment to Cancellation Order and FIFRA Section 6(g) Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of amended cancellation order.

SUMMARY: On June 30, 1994, Amvac Chemical Corporation (Amvac) of Los Angeles, California, requested voluntary cancellation of all registrations containing mevinphos (2-carbomethoxy-1-methylvinyl dimethyl phosphate, alpha and beta isomers, trade name Phosdrin). Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA canceled all mevinphos registrations on July 1, 1994. The Cancellation Order contained certain limitations upon the distribution, sale, and use of existing stocks of canceled pesticide products containing mevinphos. EPA has modified the existing stocks provision of the Cancellation Order to extend the period for sale, distribution, and use of existing stocks of certain canceled products containing mevinphos through November 30, 1995. At the end of this period, all product in the channels-of-trade, including product in the hands of growers, will be subject to a recall which has some provisions for reimbursement. Product sold after February 27, 1995, will be labelled with additional protective requirements. This notice also amends the timeframe for reporting the possession of canceled mevinphos products as required under section 6(g) of FIFRA.

DATES: The amended cancellation order became effective January 13, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Dumas, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8015.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On June 30, 1994, Amvac requested voluntary cancellation of all pesticide product registrations containing mevinphos as an active ingredient. On July 1, 1994, EPA issued a Cancellation Order for all mevinphos registrations pursuant to FIFRA section 6(f)(1). In the Federal Register of August 1, 1994 (59 FR 38973), EPA issued a Notice announcing receipt of the request for cancellation, the Cancellation Order, and the FIFRA section 6(g) notification requirements. The Cancellation Order prohibited the distribution and sale of existing stocks of canceled pesticide products containing mevinphos after December 31, 1994, and prohibited the use of existing stocks after February 28, 1995. Existing stocks refer to those stocks of previously-registered mevinphos products which were in the United States and were packaged, labeled, and released for shipment prior to the cancellation on July 1, 1994. Also, the Order required Amvac to develop and implement an acceptable Recall Plan for the recall of mevinphos products that were in the hands of dealers and distributors after December 31, 1994.

On December 28, 1994, EPA amended the Cancellation Order by extending distribution and sale of existing stocks of canceled mevinphos products through January 14, 1995, to facilitate work on a pending agreement between EPA and Amvac. On January 13, 1995, EPA entered into an agreement with Amvac and issued a new amendment to the Cancellation Order which changed the existing stocks provisions in the amended Cancellation Order by extending the period for distribution, sale, and use of mevinphos, established new use restrictions, and ordered the recall of mevinphos products.

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The EPA registration numbers canceled by the Cancellation Order are: 5481–113, 5481–114, 5481–161, 5481–248, 5481–411, 5481–412, 5481–425, CA80001800, CA81000300, CA86006300, CA86007300 and any supplemental registrations of the registrations listed above.

B. Restrictions on Distribution, Sale, and Use

The Cancellation Order, as amended on December 28, 1994, provided that no person may distribute or sell mevinphos products after January 14, 1995, and that no person may use mevinphos products after February 28, 1995. The Amended Cancellation Order and Recall Order, issued January 13, 1995, prohibits all distribution, sale, and use of mevinphos products after November 30, 1995. The extension of the date for use, sale, and distribution does not affect the registration of mevinphos products in any way. All mevinphos registrations remain canceled, and will not be considered for registration. Moreover, all production of mevinphos products for use in the United States ceased July 1, 1994.

C. Relabeling Requirements and Additional Restrictions on Use of Mevinphos Products

Because of the risks that mevinphos poses to workers, the Cancellation Order as amended requires Amvac to relabel mevinphos products in the hands of dealers and distributors to reflect additional use restrictions. The additional required use restrictions are as follows: (1) Use of hand-held application equipment and air blast sprayers is prohibited; (2) applicators and other handlers must wear a respirator with either an organic vapor removing (O/V) cartridge with a prefilter approved for pesticides (MSHA/NIOSH) approval number prefix (TC-230), or a canister with a prefilter approved for pesticides (MSHA/NIOSH) approval number prefix (TC-14G); (3) applicators and other handlers must use protective eyewear; (4) applicators and other handlers must wear: coverall over long shirt and long pants; chemical-resistant apron (for mixing/loading and cleaning equipment); chemical-resistant gloves, such as Barrier Laminate, Butyl Rubber, Nitrile, Neoprene Rubber, Polyvinyl Chloride, or Viton; chemical-resistant footwear plus socks; and chemical-resistant headgear for overhead exposure; (5) use of protective measures described in 2, 3, and 4 apply even when a closed loading system is used; and (6) all applications in greenhouses and on grapes are prohibited.

New labelling also must contain information on the recall and last legal date for distribution, sale, and use. The specific language required on new labelling is as follows:

This product may not be sold, distributed, or used after November 30, 1995. Any product remaining after that date may be returned to Amvac Chemical Corporation which will arrange for storage and transportation. You may obtain reimbursement for the purchase price of any unopened containers in accordance with the terms of the Recall Plan. To obtain information on storage, return, and the reimbursement process, call 1–800–205–5330. If you dispose of this product, you must comply with applicable requirements for hazardous waste under federal and state law.

The additional use restrictions, recall information, and the November 30, 1995 deadline for legal distribution, sale, and use are contained in a Notice that will become a part of labelling for all mevinphos product sold or distributed after February 27, 1995. All mevinphos products sold and distributed after February 27, 1995, must have a one-inch-by-two-inch sticker affixed to each container directing users to read the Notice containing new labelling requirements. The Notice must accompany each container sold after February 27, 1995. Amvac is relabeling at its own cost. Amvac reports that it initiated the restickering program immediately after reaching agreement with the Agency and that the program is now completed.

D. Recall

When the Agency reached its agreement with Amvac on June 30, 1994, Amvac agreed to develop and implement an acceptable recall plan covering existing stocks of mevinphos in the hands of dealers and distributors. As part of the agreement between Amvac and EPA reached on January 13, 1995, Amvac submitted to EPA a proposed recall plan for the recall of existing stocks of mevinphos product. EPA has accepted Amvac's proposed plan and has ordered Amvac to begin implementing the recall plan on December 1, 1995. Amvac's recall plan, which is exemplary, includes provisions for recall of all mevinphos products down through the end-user, including opened and partially filled containers. Additionally, holders of unopened containers of Amvac product or those products that are supplemental registrations of Amvac products will be reimbursed for the purchase price. Reimbursement will go through the distribution chain, where dealers reimburse end-users, distributors reimburse dealers, and Amvac reimburses distributors. Reimbursement to all holders provides a strong incentive to return mevinphos products. Finally, Amvac is assuming all costs associated with transportation, collection, and storage of mevinphos products that are being recalled.

The mevinphos registrations subject to the recall and reimbursement are: 5481–113, 5481–114, 5481–161, 5481–248, 5481–411, 5481–412, 5481–425, CA80001800, CA81000300, CA86006300, CA86007300, and supplemental registrations 5481–161–34704, 5481–114–34704, and 5481-412-34704. Mevinphos products that are not Amvac products or its supplemental registrations are subject to this recall, but they are not eligible for reimbursement. For example, products produced by Shell, Dupont, and Helena may not be eligible for reimbursement, but are subject to the recall.

E. Modified Reporting Schedule Under Section 6(g)

In the July 1, 1994 Cancellation Order, any person holding canceled mevinphos product was required to report holdings under section 6(g) of FIFRA. Producers, exporters, applicants for a registration, applicants or holders of an experimental use permit, dealers, distributors, and retailers were to report by January 31, 1995. Commercial applicators were to report by March 28, 1995. All persons must now report by December 31, 1995.

II. Agency Rationale for Amendment

On July 1, 1994, when the Agency accepted the voluntary cancellation and allowed the use of existing stocks through February 28, 1995, there were many reasons to accept the voluntary cancellation rather than issuing a notice of intent to suspend notice as the Agency was prepared to do to resolve the risks posed by mevinphos. Had the Agency issued the suspension and Amvac contested the suspension and requested an administrative hearing, production and distribution could have continued throughout the legal proceedings. This outcome could have resulted in significantly greater use and almost certainly a larger volume of potential hazardous waste at all levels of the channels-of-trade (particularly, at the grower level) than would have occurred had the Agency not agreed to a voluntary cancellation that allowed existing stocks. Mevinphos would have become a hazardous waste only when it was intended for disposal and not when it would be returned under the recall program. Moreover, even if the Agency had prevailed in an administrative hearing, Amvac could have appealed the decision and further production and use might have been allowed during the appeal process. In addition, Amvac had agreed to conduct a recall of mevinphos products in the hands of dealers and distributors. If the Agency had to mandate a recall rather than utilize a voluntary recall, it would have had to do so through a rulemaking process which can take more time to implement than the voluntary program agreed to by Amvac. Finally, the Agency anticipated that a safer alternative, NTN, would be registered by end of 1994 that would have mitigated the economic impact on growers from the loss of mevinphos. Weighing the risk and benefit outlined above, the Agency believed that it was in the public's interest to enter into the agreement with Amvac that is reflected in the July 1, 1994 Cancellation Order.

On June 29, 1994, California imposed some additional restrictions on mevinphos use. The specific restrictions were not known to the Agency at the time it came to agreement with Amvac. It is now the Agency's understanding that these restrictions possibly along with other factors such as low pest pressure lead to significantly less use of mevinphos during the rest of 1994. Consequently, there was significantly more mevinphos product in the hands of growers, dealers, and distributors than originally anticipated by the Agency on July 1, 1994. Because of the quantity of existing stocks in the channels-of-trade, Amvac indicated there were substantial difficulties and costs associated with the recall program and it expressed reluctance to undertake such an extensive recall. If the product was not recalled in a timely manner pursuant to a voluntary recall, then the potential for illegal use and risk associated with possession of a potential hazardous waste would be greater than expected. In addition, the safer alternative that the Agency expected to be available by the end of 1994 has yet to be registered. Consequently, the economic impact of enforcing the existing stocks provisions of the July 1, 1994 Cancellation Order would have been greater than originally anticipated. The potential for greater existing stocks at all levels in the channels-of-trade for a longer time and greater potential economic impacts than originally anticipated were considerations for the Agency extending the last date for distribution, sale, and use of existing stocks on January 13, 1995.

In addition to extending the use of existing stocks, the Agency also required that additional protective measures for the use of mevinphos, a relabelling program, and an expanded recall of mevinphos products be carried out by Amvac. The protective measures are intended to reduce exposure during the extended use period. Product in the hands of dealers and distributors will be relabelled to include the new protective measures, information on the recall, including an 800 number, and the last legal use date. Amvac has agreed to recall and reimburse any person possessing any unopened mevinphos product produced by Amvac or by supplemental registrants, even stocks held by growers, to accept mevinphos products produced by other companies including Dupont, Shell, and Helena and to accept opened containers of mevinphos product. A voluntary recall that includes opened and partially filled containers and goes down through the end-user is unprecedented. Because of the recall which includes reimbursement provisions, growers are less likely to have a potential hazardous waste for an extended period. This plan reduces potential accidental poisonings and the opportunity for illegal use in the future. The minimization of the holding of hazardous waste, accidental poisonings, and illegal use along with the imposition of additional protective measures for workers were important benefits contributing to the Agency's decision.

The Agency believes that the amount of mevinphos product used by November 30, 1995, will likely be no more than the amount originally anticipated when the Agency entered into the agreement with Amvac on July 1, 1994. This level of use combined with the requirement for additional protective measures for those using the product during the extended use period leads the Agency to believe that exposure to agricultural workers from the continued use of mevinphos will be no greater, and likely less, than the Agency anticipated in July of 1994.

An additional benefit associated with the new arrangement is that it allows the Agency to avoid the uncertainty associated with litigation over the cancellation and recall.

The Agency has considered the risks and benefits of extending the distribution, sale, and use of existing stocks of products containing mevinphos. When the risk of continued use through November 30, 1995, is weighed against the benefits, both economic and in terms of risk reduction, the Agency believes that the agreement signed on January 13, 1995, was in the best interest of the public.

Dated: March 27, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–8344 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1046–DR]

(California); Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated March 12, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 12, 1995:

Alameda, Alpine, Calaveras, Contra Costa, Merced, San Francisco, San Joaquin, and San Mateo Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–8248 Filed 4–4–95; 8:45 am]

BILLING CODE 6718–02–M

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: May 5, 1995.

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ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: March 28, 1995.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 20, 1995 UPDATE

Index property name	PO Box/Rt No. street address	City	State/Zip	Telephone
Additions				
Arizona:				
AR0081 Motel 6	1105 Hwy. 65 N	Conway	AR 72032	(501)327–6623
AR0083 Motel 6	6001 Rogers Ave	Ft. Smith	AR 72903	(501)484–0576
AR0082 Motel 6	2300 S. Caraway Rd	Jonesboro	AR 72401	(501)932–1050
AR0077 Amevi Suites	10920 Financial Center Pkwy	Little Rock	AR 72211	(501)225–1075
AR0076 Comfort Inn Airport	3200 Bankhead	Little Rock	AR 72206	(501)490–2010
AR0084 Motel 6	9525 I–30	Little Rock	AR 72209	(501)565–1388
AR0080 Motel 6	215 S. W. Birch St	Russellville	AR 72801	(501)968–3666
AR0079 Motel 6	900 Realtor Ave	Texarkana	AR 75502	(501)772–0678
AR0078 Motel 6	2501 S. Service Rd	West Memphis	AR 72301	(501)735–0100
Iowa:				
IA0149 Hampton Inn Cedar Rapids	3265 6th Street SW	Cedar Rapids	IA 52404	(319)364–8144
IA0150 Council Bluffs Fairfield	520 30th Avenue	Council Bluffs	IA 51501	(712)366–1330
IA0148 Wellington Bed & Breakfast	800 W. 4th Street	Waterloo	IA 507022149	(319)234–2993
Maryland:				
MD0283 Super 8 Motel	1008 Beard Hill Rd	Aberdeen	MD 21001	(410)272–5420
MD0284 Super 8 Motel	9290 Three Notch Rd	California	MD 20619	(301)862–9822
MD0285 Super 8 Motel College Park.	9150 Baltimore Ave	College Park	MD 20740	(301)474–0894
MD0286 Super 8 Motel	98 Stemmers Run Rd	Essex	MD 21221	(410)780–0030
MD0282 The Aspen Institute	2010 Carmichael Rd	Queenstown	MD 21658	(410)820–5341
MD0287 Super 8 Motel	300 Tippin Dr	Thurmont	MD 21788	(301)271–7888
MD0288 Super 8 Motel	3550 Crain Hwy	Waldorf	MD 20602	(301)932–8957
Minneapolis:				
MN0294 Bloomington Fairfield Inn	2401 East 80th Street	Bloomington	MN 55420	(612)858–8780
MN0293 Duluth Fairfield Inn	901 Joshua Avenue	Duluth	MN 55811	(218)723–8607
North Carolina:				
NC0358 Radisson Prince Charles Hotel and Suites.	450 Hay Street	Fayetteville	NC 28301	(910)433–4444
NC0359 Best Western Mountainbrook Inn.	1021 Soco Road	Maggie Valley	NC 28751	(704)926–3962
North Dakota:				
ND0079 Wagon Wheel Inn	455 Winter Show Rd	Valley City	ND 58072	(701)845–5333
South Carolina:				
SC0218 Sheraton Hotel and Conference Center.	2100 Bush River Rd	Columbia	SC 29210	(803)731–0300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 20, 1995 UPDATE—Continued

Index property name	PO Box/Rt No. street address	City	State/Zip	Telephone
South Dakota:				
SD0090 Circle H Motel	South Hi-Way 18	Lake Andes	SD 57356	(605)487–7652
Tennessee:				
TN0269 Budget Host Inn	395 Main Street	Kimball	TN 37347	(615)837–7185
TN0268 Clubhouse Inn and Conference Center.	920 Broadway	Nashville	TN 37203	(615)244–0150
Texas:				
TX0632 Quality Inn Airport	909 E. Koenig Lane	Austin	TX 78751	(512)452–4200
TX0634 Corpus Christi Fairfield Inn	5217 Blanche Moore Drive	Corpus Christi	TX 78411	(512)485–8393
TX0635 Days Inn/NASA	2020 NASA Rd 1	Houston	TX 77058	(713)333–0308
TX0633 Quality Inn North	10811 IH 35 N	San Antonio	TX 78233	(512)590–4646
Virginia:				
VA0616 Ramada Inn	4641 Kenmore Ave	Alexandria	VA 22304	(703)751–4510
VA0612 Super 8 Motel—Appomattox.	Rt 4, Box 100	Appamattox	VA 24522	(804)352–2339
VA0614 Super 8 Motel—Bristol	2139 Lee Hwy	Bristol	VA 24201	(703)466–8800
VA0628 Super 8 Motel—Churchland	3216 Churchland Blvd	Chesapeake	VA 23321	(804)686–8888
VA0604 Super 8 Motel, Inc.—Christiansburg.	55 Laurel St	Christiansburg	VA 24073	(703)382–5813
VA0609 Super 8 Motel—Culpeper	889 Willis Ln	Culpeper	VA 22701	(703)825–8088
VA0605 Super 8 Motel—Danville	2385 Riverside Dr	Danville	VA 24541	(804)799–5845
VA0618 Holiday Inn—Fair Oaks	11787 Lee Jackson Mem Hwy	Fairfax	VA 22033	(703)352–2525
VA0613 Super 8 Motel—Farmville	6 Box 1755, Hwy 15 S	Farmville	VA 23901	(804)392–8196
VA0620 Super 8 Motel—Franklin	1599 Armory Dr	Franklin	VA 23851	(804)562–2888
VA0611 Super 8 Motel—Fredericksburg.	3002 Mall Ct	Fredericksburg	VA 22401	(703)786–8881
VA0621 Super 8 Motel—Hampton	1330 Thomas St	Hampton	VA 23669	(703)723–2888
VA0606 Super 8 Motel—Martinsville	960 N Memorial Blvd	Martinsville	VA 24114	(703)666–8888
VA0622 Super 8 Motel—Clyde Morris.	945 J. Clyde Morris Blvd	Newport News	VA 23601	(804)595–8888
VA0623 Super 8 Motel—Jefferson	6105 Jefferson Ave	Newport News	VA 23605	(804)825–1422
VA0624 Super 8 Motel—Portsmouth	925 London Blvd	Portsmouth	VA 23704	(804)398–0612
VA0607 Super 8 Motel—Radford	1600 Tyler Ave	Radford	VA 24141	(703)731–9355
VA0625 Super 8 Motel—Airport	5110 Williamsburg Rd	Richmond	VA 23231	(804)222–8008
VA0627 Super 8 Motel—Chamberlayne.	5615 Chamberlayne Rd	Richmond	VA 23227	(804)262–8880
VA0626 Super 8 Motel—Midlothian	8250 Midlothian Turnpike	Richmond	VA 23235	(804)320–2823
VA0608 Super 8 Motel—South Boston.	1040 Bill Tuck Hwy	South Boston	VA 24592	(804)572–8868
VA0629 Super 8 Motel—Suffolk	633 N. Main St	Suffolk	VA 23434	(804)925–0992
VA0610 Super 8 Motel—Tappahannock.	PO Box 1748	Tappahannock	VA 22560	(804)443–3888
West Virginia:				
WV0203 Morgantown USR Center	RR9 Box 228, 300th Chemical Company.	Morgantown	WV 265059809	(304)292–1608
Changes/Corrections				
California:				
CA0795 Wyndahm Garden Hotel—Culver City.	5990 Green Valley Circle	Culver City	CA 90230	(310)641–7740
Kansas City:				
KS0075 Holiday Inn Express	1401 West Hwy 54	Pratt	KS 67124	(316)672–9433
Maryland:				
MD0022 Wyndham Garden Hotel Annapolis.	173 Jennifer Rd	Annapolis	MD 21401	(410)266–3131
MD0160 Doubletree Guest Suites at BWI.	1300 Concourse Dr	Linthicum	MD 21090	(410)850–0747
Pennsylvania:				
PA0217 Doubletree Club Hotel—Harrisburg.	815 Eisenhower Blvd	Middletown	PA 17057	(717)939–1600
South Dakota:				
SD0042 Sioux Falls Thriftlodge	809 W. Ave. N	Sioux Falls	SD 571045719	(605)336–0230
Texas:				
TX0033 Wyndham Austin at Southpark.	4140 Governor's Row	Austin	TX 78744	(512)448–2222
Deletions				
District of Columbia:				
DC0037 Comfort Inn Downtown	500 H St. NW	Washington	DC 20001	(202)289–5959
Texas				
TX0001 Sheraton Hotel Corpus Christi.	707 N. Shoreline Blvd	Corpus Christi	TX 78401	(512)882–1700

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[FR Doc. 95–P247 Filed 4–4–95; 8:45 am]
BILLING CODE 6715–25–P

FEDERAL RESERVE SYSTEM

American State Bank ESOP, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 28, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American State Bank ESOP, Broken Bow, Oklahoma; to become a bank holding company by acquiring 37.04 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire American State Bank, Broken Bow, Oklahoma.

2. Mountain Parks Financial Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Financial Holdings, Inc., Louisville, Colorado, and thereby indirectly acquire Boulder Valley Bank and Trust, Boulder, Colorado, and The Bank of Louisville, Louisville, Colorado.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. InterWest Bancorp., Inc., Oak Harbor, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of InterWest Savings Bank, Oak Harbor, Washington.

Board of Governors of the Federal Reserve System, March 30, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8258 Filed 4–4–95; 8:45 am]
BILLING CODE 6210–01–F

Union National Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Union National Financial Corporation, Mount Joy, Pennsylvania; to engage *de novo* through its subsidiary Nissley Chocolate Factory Apartments Limited Partnership, Mount Joy, Pennsylvania, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. P&W Bancshares, Inc., Little Rock, Arkansas; to engage *de novo* through its subsidiary Central Bank & Trust, Little Rock, Arkansas, in acquiring single family first real estate mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 30, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8257 Filed 4–4–95; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Review of proposed protocol for the study: "Epidemiologic Evaluation of Back Belts for Prevention of Low Back Injury in Material Handling Workers."

Time and Date: 1 p.m.–5 p.m., April 25, 1995.

Place: NIOSH, CDC, Suncrest Facility, Large Conference Room, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to obtain guidance regarding the technical and scientific merits of the study "Epidemiology Evaluation of Back Belts for Prevention of Low Back Injury in Material Handling Workers" (workers whose jobs require lifting), being conducted by NIOSH. The proposed research will determine whether back belts are effective in reducing first-time or recurring injury among workers who wear them.

Participants will review the proposed study protocol, provide individual recommendations for scientific changes, and provide individual advice to NIOSH on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will be part of the review and should be received by the contact person listed below no later than Tuesday, April 18, 1995, to ensure consideration.

Contact Person for Additional Information: Lytt I. Gardner, Ph.D., NIOSH, CDC, 1095 Willowdale Road, Mailstop P04/1133, Morgantown, West Virginia 26505, telephone 304/285–5913.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8317 Filed 4–4–95; 8:45 am]
BILLING CODE 4163–19–M

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., April 26, 1995; 8:30 a.m.–1 p.m., April 27, 1995.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Tuberculosis in foreign-born persons; ACET Strategic Plan to Eliminate Tuberculosis Progress Report; future priorities and direction for ACET; Tuberculosis Morbidity Update; funding issues and block grants; respiratory protection for tuberculosis infection control; and an update on issues related to surveillance for tuberculosis and HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Samuel W. Dooley, Jr., M.D., Acting Associate Director for Science, National Center for Prevention Services, CDC, and Acting Executive Secretary, ACET, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–8006.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8318 Filed 4–4–95; 8:45 am]
BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Disability and Long-Term Care Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Disability and Long-Term Care Statistics.

Time and date: 9 a.m.–5 p.m., April 25, 1995.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss current uses and data issues in two surveys: Medicare Current Beneficiary Survey and National Nursing Home Survey.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8316 Filed 4–4–95; 8:45 am]
BILLING CODE 4163–18–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month April 1995:

Name: Council on Graduate Medical Education

Time: April 26, 1995, 1:00 p.m.–5:00 p.m.; April 27, 1995, 8:30 a.m.–4:00 p.m.

Place: Ramada Plaza Hotel, 10 Thomas Circle & Massachusetts, & Vermont Avenues NW., Washington, DC 20005.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The agenda will include a panel of congressional staff to discuss physician workforce activities in the Congress; a discussion of an options paper on GME workforce financing policy, discussion and action on the draft COGME report, "Managed Care Impact on the Physician Workforce and Medical Education," and an update on current COGME activities.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: March 31, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–8384 Filed 4–4–95; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–4210–05; NMNM93535]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Otero County, New Mexico has been examined and found suitable for classification for lease or conveyance to the Alamogordo Public School District under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). The Alamogordo Public School District proposes to use the land for a school site.

T. 16 S., R. 10 E., NMPM
Sec. 5, lot 23.
Containing 39.54 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before May 8, 1995.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las

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Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine J. Salas at the address above or at (505) 525–4388.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Reserving those rights for water pipeline purposes granted to the City of Alamogordo by Right-of-Way NMNM030504.

4. Reserving those rights for water pipeline purposes granted to the City of Alamogordo by Right-of-Way NMNM32867.

5. Reserving those rights for flood control purposes granted to the City of Alamogordo by Right-of-Way NMNM90667.

6. Those rights for a Buried Fiber Optic Cable granted to U.S. West Communications by Right-of-Way NMNM61210.

7. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

8. Upon determination by the authorized officer that the project has successfully been completed in accordance with the approved plan of development and management, the subject parcel will be conveyed. The mineral estate will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

9. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico, 88005.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested persons may submit comments on or before May 8, 1995 regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proposed administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school site.

Dated: March 24, 1995.

Richard T. Watts,

Acting District Manager.

[FR Doc. 95–8319 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–800460

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 25 blood and serum samples from each of three species of cranes: Siberian crane (*Grus leucogeranus*), red-crowned crane (*Grus japonensis*), and white-naped crane (*Grus vipio*) for enhancement of the species through scientific research.

PRT–800170

Applicant: Field Museum of Natural History, Chicago, IL.

The applicant requests renewal of their permit to export and reimport endangered and threatened specimens already accessioned into the permittee's collection for scientific research. Permittee also requests authorization to salvage dead endangered and threatened specimens found in the field.

PRT–800409

Applicant: Joanne Dixon, Oroville, WA

The applicant requests a permit to import one male sport-hunted bontebok (*Damaliscus dorcas dorcas*) culled from the captive, pure-bred herd maintained by the Shamwari Game Reserve for enhancement of the species.

PRT–800654

Applicant: African Lion Safari, Cambridge, Ontario, Canada.

The applicant requests a permit to import and reexport two female Asian elephants (*Elephas maximus*) in and out of the United States for the purpose of enhancement of the species through conservation education.

PRT–800714

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI.

The applicant requests a permit to import two female captive-born brush-tailed rat-kangaroo (bettong) (*Bettongia penicillata*) from Metro Toronto Zoo for the purpose of enhancement of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203; Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 31, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–8351 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of Draft Recovery Plan Revision for the Florida Manatee for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to extend the public comment period for a technical/agency draft recovery plan: the second revision of the Florida manatee (*Trichechus manatus latirostris*) Recovery Plan.

The Service solicits additional review and comment from the public on this plan. During the previous comment period (December 27, 1994–February 27, 1995), there was some concern expressed that certain individuals and/or groups were not adequately informed of the availability of the draft for public review.

DATES: Comments on the draft recovery plan revision must be received on or before June 5, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 South Point Dr., South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580). Written comments and materials regarding the plan should be addressed to David J. Wesley, Field Supervisor, at the above Jacksonville, Florida address. Comments and materials received are available upon request for public inspection, by appointment, and during normal business hours at the above Jacksonville, Florida address.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner, Manatee Coordinator, at the Jacksonville, Florida, address (Telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Florida Manatee, a subspecies of the West Indian manatee, was originally listed under the Endangered Species Act on March 11, 1967. The Service developed an initial recovery plan for manatees in 1980. The 1980 plan focused primarily, but not exclusively, on manatees in Florida. In 1986 the Service adopted a separate Recovery Plan for manatees in Puerto Rico. To reflect new information and planning needs for manatees in Florida, the Service revised the original plan in 1989 focusing exclusively on Florida's manatees. The revised plan covered a five-year planning period ending in Fiscal Year 1994. In view of progress since 1989 and planning needs beyond 1994, the Service is once again updating and revising the plan.

Public Comments Solicited

The Service solicits written comments on the revised recovery plan described. All comments received by the date specified will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 27, 1995.

David J. Wesley,

Field Supervisor.

[FR Doc. 95–8245 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. Using this Criteria, Reclamation evaluated the adequacy of all water conservation plans developed by project contractors, including those required by the Reclamation Reform Act of 1982. The Criteria was developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by Central Valley Project (CVP) contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each CVP contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is ongoing; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by May 5, 1995.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Betsy Reifsnider, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Betsy Reifsnider or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information:

1. Coordinate with other agencies and the public
2. Describe the district
3. Inventory water resources
4. Review the past water conservation plan and activities
5. Identify best management practices to be implemented
6. Develop schedules, budgets and projected results
7. Review, evaluate, and adopt the water conservation plan

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8. Implement, monitor and update the water conservation plan

The CVP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Arvin Edison Water Shortage District.
- Bella Vista Water District.
- Colusa County Water District.
- Corning Water District.
- Dunnigan Water District.
- Gravelly Ford Water District.
- Monterey County Water Resources Agency.
- Proberta Water District.
- San Juan Water District.
- Santa Barbara, City of.
- Santa Barbara, County of.
- Tea Pot Dome Water District.
- The West Side Irrigation District.
- Thomes Creek Water District.
- Westside Water District.

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's Mid Pacific (MP) Region Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Reifsnider to find the office nearest you.

Dated: March 28, 1995.

Franklin E. Dimick,

Assistant Regional Director.

[FR Doc. 95-8320 Filed 4-4-95; 8:45 am]

BILLING CODE 4310-94-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice of Commission Decision to Review Portions of an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) and Order No. 52 issued by the presiding administrative law judge (ALJ) on February 2, 1995, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of U.S. Letters Patent 4,438,035 ('035 patent) was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the '035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions. In that order, he stated that because there is a Commission preference for decisions on the merits based on all the evidence adduced, and because he believes that the same conclusions of law regarding infringement would be appropriate whether or not the sanctions of Order No. 52 are applied, he was imposing sanctions on complainants only as alternate relief, i.e., only if the Commission determines based on all the evidence of record that respondents have infringed claim 1 of the '035 patent.

On February 21, 1995, complainants filed a petition for review of the ALJ's final ID. They also filed a separate petition for review of Order No. 52. On the same day, the Commission investigative attorneys (IAs) filed a petition for review of the ALJ's finding that a domestic industry exists.

On March 6, 1995, the IAs, the Fermion respondents, and the Profarmaco respondents filed oppositions to complainants' petition for review. Respondent Gyma Laboratories also filed an opposition to petition for review indicating that it principally relies on and concurs in the response filed by the Profarmaco respondents.

Having examined the record in this investigation, including the ID and Order No. 52, the Commission has determined to review the issues of (1) claim interpretation, (2) whether claim 1 of the '035 patent is infringed by respondents' processes; (3) whether claim 1 of the '035 patent is invalid as obvious under 35 U.S.C. § 103; (4) whether the '035 patent is unenforceable; and (5) Order No. 52. The Commission has determined not to review the remainder of the ID. The Commission regards the ID as including Order No. 52. The Commission has also denied complainants' motion for leave to file the affidavit of James Gambrell, and denied complainants' request for an oral hearing. With regard to the Gambrell affidavit, the Commission believes that reopening the record to accept the affidavit at this late stage of the investigation would not be appropriate.

On review, the Commission is particularly interested in answers to the following questions:

(1) Is claim 1 of the '035 patent entitled to any range of equivalents? If not, why not? If so, does the range of equivalents cover (1) use of methyl ethyl ketone, the next higher homolog of acetone, as a solvent when used with potassium hydroxide as a base, or (2) use of potassium carbonate and toluene as the base-solvent combination? Why?

(2) What is the status of the Abic group of respondents? Have they settled their differences with complainants? If so, will a motion to terminate the Abic group of respondents from the investigation be forthcoming?

(3) Is there any suggestion or motivation in the prior art references as a whole applied in the ID to combine those references so as to render obvious under 35 U.S.C. 103 the invention claimed in claim 1 of the '035 patent?

(4) Was there a sale in the United States of the product produced by the Tanabe trade secret KOH/DMSO process within the meaning of 35 U.S.C. 102(b)? Is there applicable case law relevant to complainants' contention that sales of a product for the sole purpose of FDA approval do not constitute an "on sale" bar within the meaning of 35 U.S.C. 102(b)? The Commission is interested in an analysis, based on the evidence of record, of whether sales made solely for purposes of FDA approval constitute an "on sale" bar, taking into account the analysis set forth by the Federal Circuit in considering whether a prior use or sale is a statutory bar in, *e.g., Fennwalt Corp.* v. *Akzona Inc.* (and cases cited therein) 740 F.2d 1573 (Fed. Cir. 1984). The Commission is also interested in any evidence of record relevant to complainants' contention that the only sales in the United States of Tanabe's trade secret KOH/DMSO process were for purposes of FDA approval. If the Tanabe KOH/DMSO process is found to be prior art, what suggestion or motivation, if any, is there in the prior art that the use of DMSO as a solvent would have rendered the solvents of claim 1 of the '035 patent obvious under 35 U.S.C. 103? Finally, assuming that the Tanabe KOH/DMSO process is prior art, was it more pertinent than the references before the examiner during the reexamination proceedings?

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on April 13, 1995. Reply submissions must be filed no later than the close of business on April 20, 1995. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.54-.55 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.54-.55).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: March 30, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-8356 Filed 4-4-95; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 159X)]

Norfolk and Western Railway Company—Abandonment Exemption—Between Ferguson Junction and Glen Echo, MO

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon its 2.56-mile line of railroad between milepost UD-9.94 at Glen Echo and milepost UD-12.50 at Ferguson Junction in St. Louis County, MO.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the

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formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions[4] will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8315 Filed 4–4–95; 8:45 am]

BILLING CODE 7035–01–P

Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[4] The Gateway Trailnet, Inc. seeks issuance of a notice of interim trail use/railbanking (NITU) under 16 U.S.C. 1247(d) and a 180-day public use condition under 49 U.S.C. 10906. A copy of the request does not appear to have been served on NW as required at 49 CFR 1104.12(a). Gateway is directed to serve a copy of the request on NW. Accordingly, the requests will be handled in a subsequent decision.

[Docket No. AB–443X]

Danbury Terminal Railroad Company—Discontinuance Exemption —Westchester, Putnam, and Dutchess Counties, NY

Danbury Terminal Railroad Company (DTRR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over two segments of the rail line known as the Harlem Line. The first line segment is located between milepost 55.2, in Dykemans, and milepost 81.6, in Wassaic, a distance of approximately 26.4 miles in Dutchess and Putnam Counties, NY. The second line segment is located between milepost 22.0, in White Plains, and milepost 43.4, in Golden's Bridge, a distance of approximately 21.4 miles in Westchester County, NY.

The Harlem Line, except between mileposts 77.0 and 81.1, is owned by American Premier Underwriters, Inc., a noncarrier, and leased by the Metropolitan Transportation Authority (MTA). MTA's subsidiary, Metro North Commuter Railroad Company (MNCR) provides commuter passenger rail service over the entire Harlem Line, except between milepost 77.0 and milepost 81.1. That portion is owned by the New York and Harlem Railroad Company and is the subject of acquisition negotiations with MNCR, which, when completed, will enable MNCR to extend its commuter passenger service to Wassaic. In addition, Consolidated Rail Corporation (Conrail) provides freight service over the line under an unspecified operating arrangement with the owners and lessee. DTRR acquired the rights at issue here from Conrail.[1] Thus, freight and passenger service will still be provided after the discontinuance.

DTRR has certified that: (1) No local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued operations has been received, this exemption will be effective on May 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[2] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[3] must be filed by April 17, 1995. Petitions to reopen must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert A. Wimbish, Suite 420, 1920 N Street, N.W., Washington, D.C. 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: March 31, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8355 Filed 4–4–95; 8:45 am]

BILLING CODE 7035–01–P

[1] In *Danbury Terminal Railroad Company and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation*, Finance Docket No. 32180 (Sub-No. 1) (ICC served Dec. 29, 1992), DTRR obtained operating and freight rights over the Harlem Line, between milepost 22.0, in White Plains and milepost 81.6, in Wassaic. Following the proposed discontinuance, DTRR will continue to operate between mileposts 43.4 and 55.2.

[2] The Commission's Section of Environmental Analysis will not conduct an independent investigation because no environmental effects are expected in cases where service on the line will continue. A stay will be issued routinely by the Commission if an informed decision on environmental issues raised by a party cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service-Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Procurement Quota for Controlled Substances.

(2) DEA Form 250. Drug Enforcement Administration, United States Department of Justice.

(3) Primary = Business or other for-profit. Title 21, CFR 1303.12, requires registered dosage from manufactures who wish to purchase controlled substances in Schedule II to apply on DEA Form 250 for procurement quotas which purchase quantities. The information collected is used for establishing quotas and controlling procurement thereof.

(4) 493 annual respondents at 1 hour per response.

(5) 493 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 30, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8277 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on March 16, 1995, a proposed Amendment to a previously-entered partial consent decree and judgment in *United States, et al.* v. *Thomas Solvent, et al.*, Civil Action No. K86–164 CA8 and K86–167 CA8, was lodged with the United States District Court for the Western District of Michigan. This Amendment is, among other things, a partial resolution of judgments previously entered against Thomas Solvent Company and Richard Thomas in connection with civil actions taken against them under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), in connection with costs incurred by the United States and the State of Michigan in responding to releases of hazardous substances at and about the Verona Well Field, located in Battle Creek, Michigan.

Under the Amendment, Thomas Solvent would cause several payments to be made out of the proceeds of its settlement with an insurance carrier. Among those payments would be one for $2.665 million to the United States and another for $0.585 million to the State of Michigan, in partial reimbursement of government response costs for which Thomas Solvent is liable under the previously-entered partial consent decree and judgment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amendment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *Thomas Solvent, et al.*, D.J. Ref. 90–11–2–140.

The proposed Amendment may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan St., NW., Grand Rapids, Michigan, and at U.S. EPA Region 5, Office of Regional Counsel, 200 West Adams, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 95–8242 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ADBAC Joint Venture

Notice is hereby given that, on January 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Huntington Laboratories, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the parties to the ADBAC Joint Venture ("Joint Venture") The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Ethyl Corporation spun-off its specialty chemicals group into a separate and independent publicly traded company know as Albermarle Corporation, Baton Rouge, LA. In addition, the ADBAC products of Mazer Chemical, a division of PPG, were acquired by Lonaz, Inc., Fair Lawn, NJ.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this group research project remains open, and ADBAC intend to file additional written

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notification disclosing any changes in membership.

On September 6, 1986, the Huntington Laboratories, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 7, 1986 [51 FR 35706].

The last notification was filed with the Department on June 28, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 1993 [58 FR 43376].

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–8244 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PERF Project 93–20 Bench Scale Valve Research Forum

Notice is hereby given that, on December 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project 93–20, titled "Bench Scale Valve Emission Study" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Texaco, Incorporated, Port Arthur, TX; Phillips Petroleum Company, Bartlesville, OK; Amoco Oil Company, Naperville, IL; Chevron Research & Technology, Richmond, CA; Mobil Research and Development Corporation, Pennington, NJ; Velan, Incorporated, Grandy, Quebec-CANADA; Kitz Corporation of America, Houston, TX; Grinnell Corporation, Cranston, RI; B.P. Research, Cleveland, OH; Garlock, Palmyra, NY; and Grove Valve & Regulatory Company, Oakland, CA.

The nature and objectives of the research program include the reduction of costs associated with the meeting of valve fugitive emissions regulations by optimizing valve mechanical specifications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–8243 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than April 17, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 17, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Anzona Public Service Corporation (Wkrs).	Phoenix, AZ	03/27/95	03/09/95	30,847	Electricity.
Halo Lightng/Div-Cooper Lighting (IBEW).	Elk Grove Village, IL.	03/27/95	03/07/95	30,848	Lighting fixtures.
Voyager Emblems, Inc. (USWA).	Sanborn, NY	03/27/95	03/06/95	30,849	Embroidered emblems and insignias.
Robstown Manufacturing Co. (Co).	Robstown, TX	03/27/95	03/16/95	30,850	Men's slacks.
Diamond Pacific Milling & Dry Kilns (Wkrs).	Salem, OR	03/27/95	02/20/95	30,851	Softwood dimensional lumber.
Hancock Lumber, Inc. (Wkrs)	Salem, OR	03/27/95	02/20/95	30,852	Softwood dimensional lumber.
C & L Supply Co. (Wkrs)	Kermit, TX	03/27/95	03/01/95	30,853	Oil field supply.
Reed Travel Group—Airline Div. (Wrks).	Oak Brook, IL	03/27/95	03/13/95	30,854	Airline guides.
Brown Group Inc. (Wrks)	Fredericktown, MO	03/27/95	03/13/95	30,855	Warehouse and dist.—footwear
Reliance Electric (Wrks)	Ashtabula, OH	03/27/95	03/14/95	30,856	AC motors.
APC Corporation (SMWU)	Hawthorne, NJ	03/27/95	03/15/95	30,857	Fabricate skylights.
Teledyne Fluid Systems (CO&IAM).	Palisades Park, NJ	03/27/95	03/09/95	30,858	Safety relief valves.
Edgecomb Manufacturing Co (Co).	Tarboro, NC	03/27/95	03/13/95	30,859	Ladies and childrens apparel
Wilson Apparel (Co)	Wilson, NC	03/27/95	03/13/95	30,860	Ladies and childrens apparel.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Chris-Craft Industrial Products (ACTWU).	Waterford, NY	03/27/95	03/17/95	30,861	Automotive padding, insulation.
Bourns, Inc.—Pressure Products (Wrks).	Riverside, CA	03/27/95	03/09/95	30,862	Pressure transducers.
Johnson Controls, Inc. (UAW).	Garland, TX	03/27/95	03/15/95	30,863	Automobile batteries.
Bridgestone/Firestone, Inc. (URW).	Decatur, IL	03/27/95	02/17/95	30,864	Tires—auto, light truck
Ohio Coil Service (IUE)	Newcomerstown, OH.	03/27/95	03/15/95	30,865	High voltage formed coils.
BASF Corporation (UTWA)	Lowland, TN	03/27/95	03/14/95	30,866	Nylon staple fibers.
Butterick Co. (Wrks)	New York, NY	03/27/95	03/16/95	30,867	Patterns for home sewing.
Kodalux Processing Services (Co).	Findlay, OH	03/27/95	03/15/95	30,868	Photographic prints.
Ochoco Lumber Co. (IAMAW).	Prineville, OR	03/27/95	03/15/95	30,869	Pine dimensional lumber.
Philips Components (Co)	Saugerties, NY	03/27/95	03/20/95	30,870	Electronic components.

[FR Doc. 95–8326 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,820]

General Electric Capital Corporation, G.E. Electronic Rental and Repair, Erie, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1995 in response to a worker petition which was filed on behalf of workers and former workers at G.E. Electronic Rental and Repair, a subdivision of General Electric Capital Corporation, Erie, Pennsylvania (TA–W–30,820).

The Department of Labor has verified that the three petitioners were not employed by the above subject firm or its subdivision, and that each worker represented a separate firm. Consequently, this is not a valid petition and the Department of Labor cannot make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974.

Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8325 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,743]

IBM Corporation, Poughkeepsie, New York; Notice of Revised Determination on Reconsideration

On October 3, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the **Federal Register** on October 14, 1994 (59 FR 52193).

The Department expanded its investigation to include the entire Large Scale Computing Division (LSCD) at Poughkeepsie, New York where mainframe computers are produced.

Investigation findings show that sales of computer hardware declined in FY 1993 compared to FY 1992 and in the year to date 3rd quarter of 1994 compared to the same period in 1993. The findings on reconsideration show substantial worker separations in 1993 and in 1994.

Other findings on reconsideration show that IBM lost market share of mainframe processors and processor subassemblies and components in 1994.

U.S. imports of automatic data processing equipment and parts increased in the latest 12 month period ending in February 1994 compared to the same period in 1993.

Other IBM certifications are for workers at Rochester, Minnesota (TA–W–29,026) computer storage equipment; (TA–W–30,176) computers; at Endicott, New York (TA–W–30,258) mainframe computer hardware and software and (TA–W–30,397) printed circuit boards and at Hopewell Junction, New York (TA–W–29,752) computer chips.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at IBM Poughkeepsie, New York were adversely affected by increased imports of articles that are like or directly competitive with the LSCD mainframes produced at Poughkeepsie, New York. In accordance with the provisions of the Act, I make the following revised determination for workers of IBM Corporation, Poughkeepsie, New York.

All workers of IBM Corporation in Poughkeepsie, New York who became totally or partially separated from employment on or after March 31, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of March, 1995.

Victor J. Trunzo,

Program Manger, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8329 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 551 and TA–W–30, 552]

Notice of Negative Determination Regarding Application for Reconsideration

In the matter of Mac Tools, Inc., Washington Court House, Ohio; and Mac Tools, Inc., Sabina, Ohio.

By an application dated February 28, 1995, the petitioners with Congressional support requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on February 9, 1995 and published in the **Federal Register** on March 1, 1995 (60 FR 11120).

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Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce mechanics' hand tools.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Both plants will close in April 1995 because of a corporate decision to consolidate operations at other domestic corporate facilities. A domestic transfer of production would not form a basis for a worker group certification. Further, the findings show increased sales and production of mechanics' hand tools at the subject plants in the first nine months of 1994 compared to the same period in 1993.

Other findings show that neither the subject plants nor its parent, Stanley Works in Connecticut, imported hand tools from China in the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8328 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,592]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Santa Fe Minerals, Inc., Dallas, Texas, and Santa Fe Minerals, Inc., operating in the Gulf of Mexico and at various locations in the following states: Arkansas, TA–W–30,592A, Louisiana, TA–W–30,592B, Oklahoma, TA–W–30,592C, California, TA–W–30,592D, Texas, exc. Dallas, TA–W–30,592E.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification was issued on February 17, 1995 and published in the **Federal Register** on March 10, 1995 (60 FR 13177).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at various locations in the states of California and Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Santa Fe Minerals, Inc., Dallas, Texas and operating in the Gulf of Mexico and at various locations in Arkansas, Louisiana, Oklahoma, California and Texas who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–30,592 is hereby issued as follows:

All workers of Santa Fe Minerals, Inc., Dallas, Texas and operating in the Gulf of Mexico and at various locations in the states of Arkansas, Louisiana, Oklahoma, California and Texas, except Dallas who had become totally or partially separated from employment on or after December 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8327 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,345 and TA–W–30, 345A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Tobin-Hamilton Company, Inc. Mansfield, Missouri, and Tobin-Hamilton Company, Inc. New Balance for kids Division West Bridgewater, Massachusetts.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 30, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on December 16, 1994 (59 FR 65077).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show worker separations in 1994 at the subject firm's sales division in West Bridgewater, Massachusetts.

Accordingly, the Department is amending the certification to include the subject firm's workers at West Bridgewater, Massachusetts.

The amended notice applicable to TA–W–30,345 is hereby issued as follows:

All workers of Tobin-Hamilton Company Inc., Mansfield, Missouri and New Balance for Kids Division, West Bridgewater, Massachusetts who became totally or partially separated from employment on or after September 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 23rd day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8324 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,815]

Tobin-Hamilton Company, Inc., New Balance for Kids Division, West Bridgewater, Massachusetts; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1995 in response to a worker petition which was filed on behalf of workers at Tobin-Hamilton Company, Inc., New Balance for Kids Division, West Bridgewater, Massachusetts.

An active certification covering the petitioning group of workers remains in effect (TA–W–30,345). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8330 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,740]

Wirekraft Industries, Incorporated, Marion, Ohio; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on February 14, 1995 and filed on behalf of workers at Wirekraft Industries, Incorporated, Marion, Ohio. The workers produced wire harnesses.

The investigation revealed that a major customer of the subject firm increased their imports of electrical wire harnesses during the relevant period under investigation and is transferring production formerly supplied by the subject firm to foreign sources.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with wire harnesses produced at Wirekraft Industries, Incorporated, Marion, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Wirekraft Industries, Incorporated, Marion, Ohio engaged in employment related to the production of wire harnesses who became totally or partially separated from employment on or after February 9, 1994 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8333 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (the licensee), for operation of the Oyster Creek Nuclear Generating Station (OCNGS), located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Technical Specification (TS) to allow 2645 fuel assemblies to be stored in the fuel pool. This is an increase of 45 fuel assemblies from the current limit of 2600 contained in TS 5.3.1.E. The 45 additional storage locations exist in racks in the fuel pool.

The proposed action is in accordance with the licensee's application for amendment dated November 25, 1994, as supplemented by letter dated February 15, 1995.

Background

During the spent fuel pool expansion project in 1983, the licensee designed and installed 10 free standing high density spent fuel racks in the spent fuel pool to increase the spent fuel storage capacity from 1800 to 2645 spent fuel assemblies. However, the licensee elected to impose a TS limit of 2600 spent fuel assemblies (approved by the staff in License Amendment No. 76, dated September 17, 1984) to be stored in the spent fuel pool at the time. The increased capacity from 1800 to 2600 spent fuel assemblies would meet anticipated spent fuel storage requirements through 1992. An Environmental Assessment and Finding of No Significant Impact supporting this action was issued on September 13, 1984. The additional 45 fuel assembly storage locations were not licensed with License Amendment No. 76 because it was believed that they would not be needed for spent fuel storage. (It was anticipated that an off-site spent fuel storage facility would be available after 1992.) These additional storage locations were, therefore, used for the storage of miscellaneous equipment such as fuel channels.

As the result of the recent refueling (Cycle 15R) which took place in December 1994 and the present unavailability of an off-site spent fuel storage facility, OCNGS has lost the capability to completely offload the reactor core. The licensee is in the process of installing a dry storage facility on-site which is scheduled to be operational in 1996. This provision of a dry storage facility on-site will allow full core offload beyond the current operating cycle (Cycle 15) until such time as an off-site spent fuel storage facility is available. The OCNGS on-site spent fuel storage facility is presently under construction. Consequently, the licensee proposed to use the additional 45 fuel assembly storage locations for spent fuel storage.

The Need for the Proposed Action

The proposed action is required should a full core offload be necessary during Cycle 15 with the proposed dry spent fuel storage facility not yet in service. Without the ability to fully offload the core, any inspection or repair activity will most likely result in higher personnel exposure and schedular delays. Full core offload capability, in particular, would facilitate any in-vessel repair which requires draining of the vessel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that based on its review, the licensee's proposal to increase the spent fuel pool capacity to 2645 fuel assemblies is acceptable. In addition, the staff has determined that the conclusions reached in the staff's SE dated September 17, 1984, supporting Amendment No. 76, and the Environmental Assessment and Finding of No Significant Impact—Spent Fuel Pool Expansion dated September 13, 1994 remains applicable.

Radiological Environmental Impacts

In the staff's Environmental Assessment dated September 13, 1984, regarding increasing the spent fuel pool capability from 1800 to 2600 spent fuel assemblies, the staff concluded that the potential radiological environmental impacts associated with the expansion of the spent fuel storage capacity were evaluated and determined to be environmentally insignificant. The basis for the staff's conclusions were determined by the staff's evaluation of (1) radioactive materials released to the atmosphere, (2) solid radioactive wastes, (3) liquid radioactive waste, and (4) the staff's radiological assessment.

Considering the small incremental addition to the licensed storage

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capacity, the environmental radiological conclusions stated in the staff's Environmental Assessment dated September 13, 1984, are not altered by the storage of 45 additional spent fuel assemblies.

Nonradiological Assessment

In the staff's Environmental Assessment dated September 13, 1984, the staff also concluded that the nonradiological impacts of the OCNGS as designed, were considered in the Final Environmental Statement (FES) issued in December 1974 and that the OCNGS spent fuel pool expansion will not result in nonradiological environmental effects significantly greater or different from those already reviewed and analyzed in the FES.

Considering the smaller incremental addition to the licensed storage capacity, the environmental nonradiological conclusions stated in the staff's Environmental Assessment dated September 13, 1984, are not altered by the storage of 45 additional spent fuel assemblies.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would likely result in higher personnel exposure and schedular delays. As discussed previously the licensee is constructing an on-site spent fuel storage facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 25, 1994, as supplemented by letter dated February 15, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 29th day of March 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8311 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station—Unit 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 2 (NMP–2) located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 9, 1995. The proposed action would exempt the licensee from: (1) The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to permit a one-time interval extension between the first and second Type A test (containment integrated leak rate test) for approximately 24 months from the 1995 refueling outage to the 1997 refueling outage.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the 1995 refueling outage to the 1997 refueling outage, thereby deferring the cost of performing the tests and eliminating the time required to perform the test from the critical path schedule during the upcoming spring 1995 refueling outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the one-time interval extension between the first and second Type A tests would not increase the probability or consequences of accidents previously analyzed and the proposed exemptions would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at NMP–2 to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Nine Mile Point Nuclear Station, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the New York State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 9, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 29th day of March 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8312 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its June 23, 1994, application for proposed amendment to Facility Operating License No. DPR–21 for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment would have reworded Technical Specification 3.7, "Containment Systems," to permit operation with one of the two circuits of the reactor building ventilation logic temporarily inoperable. In addition, Section 3.7.C.1.b would have been reworded to prohibit movement of irradiated fuel, or movement of any loads over irradiated fuel, without secondary containment integrity.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on August 31, 1994 (59 FR 45029). However, by letter dated March 15, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 23, 1994, and the licensee's letter dated March 15, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 27th day of March 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–8309 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35547; File No. SR–CHX–95–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Order Execution Guarantees

March 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 2, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 to add a new subsection (d) thereunder. The text of the proposed rule change is as follows [new text is italicized]:

Article XX

Rule 37*(d) Notwithstanding anything herein to the contrary, a specialist may voluntarily provide order execution guarantees more favorable than those required pursuant to this Rule 37 (i.e., greater size, better price, limitations on partial executions, etc.). At the request of a specialist, the Exchange may provide for automatic execution of orders in accordance with such guarantees upon such terms and conditions as the Exchange shall determine. In either event, failure of a specialist to honor a promised guarantee shall be deemed a violation of Exchange rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Besis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to give specialists on the Exchange the ability to provide order execution guarantees that are more favorable than those required under the BEST Rule [1] through the Exchange's automated execution system ("MAX").[2]

[1] *See Chicago Stock Exchange Guide*, Article XX, Rule 37(a), (CCH) ¶ 1714.

[2] The Exchange has indicated to the Commission that this proposed rule change will have the effect of an "enabling rule" whereby specialists may provide better guarantees than currently is required under the Rules through the Exchange's Midwest Automated Execution System ("MAX"). The Exchange expects modifications to the parameters of the automated execution system to be on a per stock basis and the specific execution programs that are necessary to implement these guarantees will be filed in the future under Section 19(b)(3)(A). Telephone conversation with Craig Long and David Rusoff, Foley & Lardner, and Julie Mojica, Susan Lee, and Jennifer Choi, SEC, on March 10, 1995. The Exchange has indicated that the number of parameters for the automated executions will be limited. The Exchange anticipates that the options would include: a system allowing thirty-second order exposure, the automated execution system within MAX in which a Specialist may voluntarily choose to participate on a stock by stock basis ("SuperMAX"), and the enhanced version of SuperMAX ("Enhanced SuperMAX"), which is

Continued

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The automatic execution of these orders sent over the MAX System would only occur if a specialist requests it, and then, only on those terms and conditions set forth by the Exchange.[3]

The BEST Rule requires specialists to execute agency market orders of 2099 shares or less in Dual Trading System issues[4] or NASDAQ/NMS Securities at the national best bid or best offer ("NBBO")[5] if certain conditions are satisfied. Orders greater than 2099 shares, however, are not subject to the rule. Under this proposed rule change, a specialist could, for example, increase the size of the guarantee, be more flexible in providing partial executions, or obligate itself to provide price improvement under certain circumstances.

Although nothing in the proposed rule change requires a specialist to give more favorable guarantees, if such guarantees are provided through the MAX System, the specialist must honor the more favorable guarantee. Failure of a specialist to honor the more favorable guarantee will be deemed to be a violation of Exchange Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

available to CHX specialists as an addition or an alternative to SuperMAX. The Exchange also has stated that a specialist will be permitted to switch from one set of parameters to another once a month Telephone conversation with David Rusoff, Foley & Lardner and Jennifer Choi, SEC, on March 20, 1995

[3] The Exchange has indicated that the "terms and conditions" provision will provide the Exchange with veto power over a specialists's particular request. Telephone conversation with Craig Long and David Rusoff, Foley & Lardner, and Julio Mojica, Susan Lee, and Jennifer Choi, SEC, on March 10, 1995.

[4] The Dual Trading System of the Exchange allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the exchange and listed on either the New York Stock Exchange or the American Stock Exchange.

[5] The term national best bid or best offer is defined under SEC Rule 11Ac1–2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1–1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of NASDAQ.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it find such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–08 and should be submitted by April 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8260 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35550; File No. SR–CHX–95–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposal Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change Relating to Reporting and Disclosure Requirements

March 30, 1995.

On February 6, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various Exchange Rules regarding reporting and disclosure requirements. Specifically, the rule change proposed to (1) Amend Article VI, Rule 5 and add an interpretation thereto to require that members and member organizations maintain written procedures to ensure compliance with the securities laws (and SEC regulations promulgated thereunder) and the Rules of the Exchange; (2) amend Article XI, Rule 4 to provide the Exchange with the authority to require any member or member organization to have an accounting firm audit its books and to clarify that all members and member organizations are required to comply with the disclosure requirements of Rule 17a–5; and (3) add Article XI, Rule 9 to require that floor brokers who do not clear their own trades procure a letter of guarantee prior to trading. On February 14, 1995 and March 30, 1995, the Exchange submitted to the Commission Amendments No. 1 and No. 2, respectively, to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35394 (February 17, 1995), 60 FR 10620 (February 27, 1995). No comments were received on the proposal. This order approves the proposed rule changes.

I. Proposal

Currently, Article VI, Rule 5(c) requires each member organization that does business with the public to establish procedures, and a system for applying such procedures, to assure that its registered representatives and other

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Amendments No. 1 and No. 2 made non-substantive, clarifying changes to the proposal. *See* Letters from Jay O. Wright, Esq., Foley & Lardner, to Elisa Metzger, Senior Counsel, SEC, dated February 14, 1995 and March 30, 1995.

employees are adequately and closely supervised. Rule 5(c) further states that a system will be deemed adequate only if it is reasonably designed to prevent and detect violations of the applicable securities laws, the rules and regulations thereunder, and the CHX Constitution and Rules. The CHX is proposing to amend Article VI, Rule 5 and add an interpretation thereto to require that such procedures and systems be in writing. The CHX believes that requiring written procedures allows the CHX to more easily verify the existence of such procedures and that such a requirement facilitates the CHX's verification of the content of the procedures. The CHX also believes that the visibility of such written procedures will remind members and member organizations of their obligations to comply with the securities laws, SEC rules, and the CHX's rules, thus enhancing compliance.

The CHX is also proposing amendments to Article XI, Rule 4. Article XI, Rule 4 requires certain member organizations to have an audit as required by SEC Rule 17a–5 and any other additional audits that the Exchange may require for good cause.[4] The additional audits must be made by an independent public accountant, acceptable to the CHX and be conducted in accordance with the requirements of SEC Rule 17a–5. The CHX is amending the rule to provide the Exchange with the authority to require any member or member organization to have an accounting firm audit its books and have the member or member organization file a statement with the Exchange to the effect that such additional audits have been made. In addition, the CHX's purpose for amending Article XI, Rule 4(c) is to clarify that all CHX members and member organizations are required to file monthly and quarterly Focus Reports with the CHX in accordance with SEC Rule 17a–5 unless the member or member organization is exempt.

Finally, the CHX proposes to add a new rule, Article XI, Rule 9, which would require floor brokers who do not clear their own trades to procure a letter of guarantee prior to trading. The CHX's purpose for adding Article XI, Rule 9 is to enhance the safety and soundness of the clearing system by ensuring that Floor Brokers have sufficient financial resources to stand behind their trades As a result, fewer disruptions due to the financial distress of a floor broker are likely to occur.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(1) requirement that the exchange have the capacity to enforce compliance by its members and persons associated with its members, of the federal securities laws, rules and regulations thereunder and the rules of the exchange. The CHX proposal will permit the CHX to verify the existence and content of procedures and systems that require compliance with the federal securities laws, rules and regulations thereunder and the CHX rules. In addition, the Exchange's proposed amendments to Article XI, Rule 4, clarify that all members and member organizations are required to comply with the disclosure requirements of SEC Rule 17a–5.

The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public. Specifically, the proposed amendments to Article VI, Rule 5 which require written procedures that ensure compliance with applicable rules and laws, will prevent fraudulent acts and practices and protect investors and the public by enforcing compliance with the federal securities laws, SEC rules and CHX rules. Similarly, the Commission believes that the proposal to provide the Exchange with the authority to require any member or member organization to have an accounting firm audit its books and to clarify that all members and member organizations must comply with SEC Rule 17a–5, is consistent with the Section 6(b)(5) requirements. These proposals will enable the CHX to investigate any concerns it has with respect to potential financial problems of its members or member organizations. Accordingly, the Exchange's awareness of any financial problems in advance could limit the impact of that member's financial condition on the market.

The Commission also believes that the proposal to add Article XI, Rule 9 to require that floor brokers who do not clear their own trades procure a letter of guarantee prior to trading is consistent with the Section 6(b)(5) requirements. The Commission agrees with the Exchange that the proposed rule will ensure the safety and soundness of the clearing system by ensuring that floor brokers have sufficient financial resources to stand behind their trades. The proposed rule will improve the reliability of the clearing system because fewer disruptions due to the financial distress of a floor broker are likely to occur.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 makes non-substantive, technical changes to the proposal. The Commission believes that these technical changes are not material changes that raise regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–03 and should be submitted by April 26, 1995.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act[6] that the

[4] Article XI, Rule 4 excepts out of the rule, member organizations that are self-clearing and member organizations that do a securities business only with other members of a national securities exchange.

[5] 15 U.S.C. 78f(b) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

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proposed rule change (SR–CHX–95–03), as amended is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8340 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35549; File No. SR–PCC–94–01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Order Approving a Proposed Rule Change Making Corrections and Clarifications to Certain Provisions of the PCC's Rules, Participant Agreement, and Clearing Fund Agreement

March 30, 1995.

On November 28, 1994, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to correct certain typographical errors in PCC's rules and to clarify certain provisions regarding specialist post capital in PCC's participant agreement and clearing fund agreement.[1] Notice of the proposal was published in the **Federal Register** on February 7, 1995.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will correct typographical errors in certain provisions of PCC's rules and will clarify certain provisions of PCC's standard participant agreement and clearing fund agreement relating to specialist post capital. Specifically, PCC corrects typographical errors to the Table of Contents; PCC Rule 1.2(f), defining the term "long position"; PCC Rules 2.1(c) and 2.1(d), addressing membership qualifications and approval; and PCC Rule 9.3(c)(iii) addressing specialist post termination procedures. In addition, PCC is amending PCC Rule 5.2 to clarify that any reductions to excess post capital or a member's clearing fund deposit cannot be made for amounts that would reduce the member's post capital or clearing fund deposit below the minimum requirement.

The proposal also amends certain paragraphs of PCC's participant agreement that relate to post capital. Paragraph 3.1(e)(iii) is amended to clarify that it refers to the monitoring of post capital rather than net capital. Paragraph 4.5 of the participant agreement is amended to distinguish post capital from net capital. Net capital, which is specified by PSE Rule 2.1 and Rule 15c3–1 of the Act, remains constant for a firm regardless of the number of specialist posts it operates. In contrast, post capital varies because it represents the amount of capital required to be maintained by a firm based on the number of specialist posts it operates. Paragraph 4.9 of the participant agreement is modified to clarify that reductions to excess post capital and to the clearing fund deposit cannot be made in amounts that would reduce these sums below their respective minimum requirements. Paragraph 4.9 of the participant agreement also is amended to clarify that losses on a trial balance are due on the fifteenth day of the month following the month for which the trial balance was issued.

Similarly, the clearing fund agreement is clarified such that the minimum contribution, as defined in paragraph 5 of the clearing fund agreement, made by a member firm backing a specialist post will be applied towards meeting the post capital requirement. Prior to this clarification, the clearing fund agreement stated that contributions were to be credited towards the net capital requirement.

II. Discussion

The Commission believes that the PCC's proposed rule change is consistent with the requirements of Section 17A of the Act[3] and in particular with Sections 17A(b)(3) (A) and (F) of the Act.[4] Sections 17A(b)(3) (A) and (F) require, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds within its possession or control or for which it is responsible. The clarifications regarding specialist post capital and net capital will assist PCC in safeguarding the securities and funds which are in PCC's custody or control or for which PCC is responsible. Furthermore, the technical corrections to PCC's rules will clarify these rules and thereby advance the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–PCC–94–01), be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8339 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35313 (February 1, 1994), 59 FR 5644 [File No. SR–PCC–94–01].

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–030]

Chemical Transportation Advisory Committee, Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to continue reviewing tank vessel cleaning facility operations and evaluate proposed recommendations for safety standards for use of a vapor control system at these facilities. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, May 9, 1995, from 9 a.m. to 5 p.m. Written material should be submitted no later than May 2, 1995.

ADDRESSES: The meeting will be held at the Wyndham Hotel, 12400 Greenspoint Drive, Houston, TX 77060. Personnel attending the meeting should report to the main floor reception area for direction to the conference room. Written material should be submitted to Lieutenant Commander Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 *et seq.*

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires states to achieve and maintain a 15% reduction in their Volatile Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual states. States are presently developing methods to achieve required compliance levels. One state has recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the state at the tank vessel cleaning facility. It is anticipated other states will develop similar regulations as a means of complying with the CAA Amendments for their states.

The Chemical Transportation Advisory Committee Subcommittee on Marine Vapor Control Systems has been conducting a detailed review of tank vessel cleaning facility gas-freeing and tank cleaning operations, and has been evaluating the hazards associated with the use of marine vapor control systems at these facilities.

At the last Subcommittee meeting in January 1995, a working group was formed to develop a draft set of recommendations for proposed safety standards for use of a vapor control system at tank vessel cleaning facilities. The purpose of this meeting will be to discuss the working group's draft recommendations and develop final proposed safety standards for submission to the Chemical Transportation Advisory Committee at their June 1995 meeting.

Dated: March 29, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 95–8388 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[AC No. 145–XX]

Proposed Advisory Circular (AC) on Repair Station Internal Evaluation Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed AC for Repair Station Internal Evaluation Programs.

SUMMARY: The proposed AC is intended to provide information and guidance material that may be used by repair station certificate holders to design and implement an Internal Evaluation Program operating under Federal Aviation Regulations Part 145.

DATES: Comments must be received on or before June 5, 1995.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Aircraft Maintenance Division (Attention: AFS–350, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Glen Kinney, AFS–350, at the above address; telephone: (202) 267–3781 (8:30 a.m. to 5 p.m. EST).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects the material that may be used by repair station certificate holders to design and implement an Internal Evaluation Program.

Issued in Washington, DC, on February 10, 1995.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 95–8366 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Approval Noise Compatibility Program for McCarran International Airport, Las Vegas, Nevada

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on Revision No. 2 to the Approved Noise Compatibility Program submitted by Clark County, Nevada for McCarran International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non federal responsibilities in Senate Report No. 96–52 (1980). On February 15, 1995, the Associate Administrator for Airports approved the Noise Compatibility Program for McCarran International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program is February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elisha Novak, Senior Airport Planner, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, CA 94010–1303, Telephone: (415) 876–2528.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of the Noise Compatibility Program for McCarran International Airport, effective February 15, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non compatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control

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responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an Airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required. An FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

Clark County, Nevada submitted to the FAA on March 9, 1994, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from January 1992 through December 1992. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on August 19, 1994. Notice of this determination was published in the **Federal Register** on August 31, 1994.

The study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1999. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on August 19, 1994 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of flight procedures for noise control). The Noise Compatibility Program was approved by the FAA on February 15, 1995. Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such program.

The submitted revision to the approved program contained twenty two proposed actions for noise mitigation on and off the airport. The FAA completed its review and determination that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program was approved by the Assistant Administrator for Airports effective February 15, 1995.

Outright approval was granted for twenty (20) of the specific program measures. Two (2) measures were disapproved pending receipt of additional information. The approved measures included existing flight track policies, existing runway use programs, public information programs, acquisition of property or aviation easements in noise exposure areas of 65–75 dB DNL, establish soundproofing programs, and continue redevelopment programs with County, State and other Federal agencies. The two measures disapproved pending receipt of additional information consisted of (1) use of North Las Vegas Air Terminal for general aviation and (2) analyze revising the Oasis Standard Instrument Departure (SID) procedure.

This determination is set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on February 15, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Aviation Department, Clark County, Nevada.

Issued in Hawthorne, California on March 23, 1995.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 95–8365 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Subcommittee on Aircraft Safety

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Aircraft Safety of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Tuesday, April 18, 10 a.m. to 5 p.m. The meeting will take place at the FAA/AANC NDI Validation Center, 3260 University SE, Access Road B, Albuquerque, New Mexico.

The agenda for this meeting will be to plan subcommittee objectives and activities for the upcoming year including a review of FAA and NASA research activities in the aircraft safety area.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Mr. Dan Salvano, AIR–101, 800 Independence Avenue, SW, Washington, DC, at (202) 267–9554, the FAA Designated Federal Official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on March 30, 1995

Andres G. Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–8369 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: In Notice document 95–6517 beginning on page 14316, in the Thursday, March 16, 1995 issue, make the following correction: On page 14317 in the first column, under proposed charge expiration date, July 15, 1995, should read May 15, 1998.

FOR FURTHER INFORMATION ON THIS CORRECTION CONTACT: Priscilla Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 95–8367 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Extension of comment period for information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending the comment period on proposed revisions to the Country Exposure Report and the Country Exposure Information Report (FFIEC 009 and 009a) submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

DATES: Comments on this information collection are welcome and should be submitted by April 24, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the OCC published a notice in the **Federal Register** (60 FR 12027) advising that it had sent to the Office of Management and Budget, for review under the Paperwork Reduction Act of 1980, proposed revisions to the Country Exposure Report and Country Exposure Information Report (FFIEC 009 and 009a). The notice requested public comment by March 23, 1995.

The Board of Governors of the Federal Reserve System (Board of Governors) also utilizes the FFIEC 009. An interested party has requested extension of the public comment period until April 24, 1995. The OCC believes that allowing additional time for public comment is warranted, and is extending the public comment period.

Additionally, the OCC expects to delay the implementation date of the proposed revisions to the reporting form until at least September 30, 1995, to provide national banks with sufficient time to modify their systems and to resolve conceptual issues related to the report.

Type of Review: Regular

Title: (MA)—Country Exposure Report and Disclosure (12 CFR 20)

Description: The Country Exposure Report and Country Exposure Information Report require national banks to report quarterly their exposure in foreign countries. This information is critical in determining and monitoring the soundness of banks

Form Number: FFIEC 009 and 009a

OMB Number: 1557–0100

Respondents: Businesses or other for-profit

Number of Respondents: 150

Frequency of Response: Quarterly

Total Annual Responses: 1,200

Average Hours Per Response: 27 hours, 30 minutes

Total Annual Burden Hours: 33,000

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0100, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0100), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 30, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–8352 Filed 4–4–95; 8:45 am]

BILLING CODE 4810–33–P

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1994

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1994 as required by section 29 of the Internal Revenue Code (26 U.S.C. 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATES: The 1994 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1994.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1994 is 1.9207.

CREDIT: The nonconventional source fuel credit for calendar year 1994 is $5.76 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1994 is $13.19. Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, CP:R:R:AR:E, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 874-0585 (not a toll-free number).

For the reference price—David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 622-3110 (not a toll-free number).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 95–8373 Filed 4–4–95; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Drawings From The Albertina: Landscape in the Age of Rembrandt" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The Drawing Center, New York, NY, from on or about April 20, 1995, to on or about June 3, 1995, and at the Kimbell Art Museum, Fort Worth, TX, from on or about July 2, 1995, to on or about September 3, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 31, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–8350 Filed 4–4–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained in contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547

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DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 23, 1995

By direction of the Secretary

Donald L. Neilson,
Director, Information Management Service

Revision

1. Mortgage Loan Information, VA Form 26–8982
2. The form will be used to collect social security numbers as part of the accounting information required by credit reporting agencies on delinquent borrowers
3. Individuals or households—Federal Government
4. 250 hours
5. 5 minutes
6. On occasion
7. 3,000 respondents

Extension

1. Financial Counseling Statement, VA Form 26–8844
2. This form is completed by VA loan service representatives in counseling veteran-borrowers who are seriously delinquent on guaranteed VA home loans. The form solicits information necessary for the loan service representative to make recommendations to the veteran-borrower in an effort to help cure the default status of the loan
3. Individuals or households
4. 3,750 hours
5. 45 minutes
6. On occasion
7. 5,000 respondents

Extension

1. Application for Change of Permanent Plan—Medical, VA Form 29–1549
2. The form is used by the insured to apply for a change of insurance plan from a higher reserve value to one with a lower reserve value. The information is used to determine eligibility of the applicant for the purpose of the change
3. Individuals or households
4. 14 hours
5. 30 minutes
6. On occasion
7. 28 respondents

Extension

1. Application for Ordinary Life Insurance (Age 70), VA Form 29–8485a, and Information About Modified Life Insurance Reduction and Replacement Features (Age 70), VA Form 29–8701
2. The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70
3. Individuals or households
4. 642 hours
5. 5 minutes
6. On occasion
7. 7,000 respondents

Extension

1. Veterans Mortgage Life Insurance Statement, VA Form 29–8636
2. The form is used by veterans who have received Specially Adapted Housing Grants to decline Veterans Mortgage Life Insurance or to provide information upon which the insurance premiums can be based
3. Individuals or households
4. 113 hours
5. 15 minutes
6. On-occasion
7. 450 respondents

Extension

1. Customer Service Survey, VA Form 26–0185, and Lender Survey, VA Form 26–0186
2. The surveys are used by VA to determine how effectively and efficiently the agency is delivering home loan guaranty benefits to eligible veterans. This information will further be used to assess areas of weakness and how best to improve VA home loan guaranty program
3. Individuals or households—Business or other for-profit
4. Estimated Total Annual Reporting Hours—1,054 hours
   a. VA Form 26–0185—642 hours
   b. VA Form 26–0186—412—hours
5. 19 minutes average (15 minutes for VA Form 26–0185 and 30 minutes for VA Form 26–0186)
6. On occasion
7. 2,803 respondents (2,568 for VA Form 26–0185 and 823 for VA Form 26–0186)

Reinstatement

1. Claim for One Sum Payment—Government Life Insurance, VA Form 29–4125, Claim for Government Life Insurance Policy, VA Form Letters 29–764, Claim for Monthly Payments—National Service Life Insurance, VA Form 29–4125A, and Claim for Monthly Payments—United States Government Life Insurance, VA Form 29–4125K
2. The forms are used by beneficiaries applying for the proceeds of Government Life Insurance policies
3. Individuals or households
4. 13,867 hours
5. 8 minutes
6. On occasion
7. 104,000 respondents

Reinstatement

1. Application for Reinstatement, VA Form 29–353
2. The form is used by veterans to reinstate their Government life insurance and/or the total disability income provision within six months from the date of lapse. The information is used to determine eligibility for the purpose of reinstatement
3. Individuals or households
4. 375 hours
5. 15 minutes
6. On occasion
7. 1,500 respondents

Reinstatement

1. Insurance Deduction Application, VA Form 29–888
2. The form is used by the insured to authorize VA to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance. The information is used to process the insured's request
3. Individuals or households
4. 622 hours
5. 10 minutes

6. On occasion
7. 3,732 respondents

Reinstatement

1. Notice of Lapse, VA Forms 29–389 and 29–389–1
2. The forms are used by the policyholder to reinstate a lapsed life insurance policy. The information is used by VA to determine the insured's eligibility
3. Individuals or households
4. 3,892 hours
5. 10 minutes
6. On occasion
7. 23,352 respondents

[FR Doc. 95–8274 Filed 4–4–95; 8:45 am]
BILLING CODE 8320–01–P

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the Westin Peachtree Plaza, Tower Room #14, Atlanta, GA, on May 3 and 4, 1995.

The meeting will convene at 8:30 a.m. (EST) on May 3 to conduct routine business and will adjourn at 1:00 p.m. (EST) May 4. The meeting will be open to the public up to the seating capacity which is about 15 persons. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, National Cemetery System, (phone (202) 273–5235) not later than 12 noon, EST April 15, 1995.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon EST April 15, 1995. Oral statements will be heard only between 8:30 a.m. and 11:00 a.m. EST, May 4, 1995.

Dated: March 22, 1995.

By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer

[FR Doc. 95–8276 Filed 4–4–95; 8:45 am]
BILLING CODE 8320–01–M

A Child Development Center at the VAMC Hampton, VA

AGENCY: Department of Veterans Affairs.
ACTION: Notice of Designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Hampton, VA, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all aspects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233–3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department and the lease will enhance the property. This project meets these requirements

Approved: March 21, 1995.

Jesse Brown,
Secretary of Veterans Affairs.

[FR Doc. 95–8275 Filed 4–4–95; 8:45 am]
BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 27, 1995.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Meeting.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–8464 Filed 4–3–95; 1:16 pm]
BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 60, No. 54, March 21, 1995.

PREVIOUSLY ANNOUNCED DATE OF MEETINGS: March 29–31, 1995.

PLACE: United States Court of Appeals for the Federal Circuit ("Federal Circuit"), Courtroom No. 1, 717 Madison Place, N.W., Washington, D.C.; and Room 6005, 1730 K Street, N.W., Washington, D.C. ("1730 K Street").

STATUS: Open and Closed.

CHANGES: The Commission CANCELLED the oral argument in this proceeding previously scheduled to be held in open session on Thursday, March 30, 1995, at the Federal Circuit in *In Re: Contests of Respirable Dust Sample Alteration Citations*, and *Keystone Coal Mining Corp.*, Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. ("*Dust Cases*"). The Commission also changed the decisional meetings in the *Dust Cases*, originally scheduled for March 29–31, 1995, to March 30, 1995 at 10:00 a.m., held in closed session, as previously announced, at 1730 K Street.

It was determined by a unanimous vote of participating Commissioners that the meeting of March 30, 1995, be held in closed session pursuant to 5 U.S.C. § 552(b)(c)(10), and that no earlier announcement of the schedule changes was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629.

Dated: March 31, 1995.

Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 95–8504 Filed 4–3–95; 2:56 pm]
BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10:00 a.m., Friday, April 7, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT:
Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,
Secretary of the Board.
[FR Doc. 95–8478 Filed 4–3–95; 2:56 pm]
BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in St. Louis, Missouri: Aviation Accident

In connection with its investigation of the runway incursion at Lambert St. Louis International Airport and collision between Trans World Airlines MD–82 and Superior Aviation Cessna 441, St. Louis, Missouri, November 22, 1994, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (edt.), on April 19, 1995, in the Plaza Ballroom at the Doubletree Hotel National Airport, located at 300 Army Navy Drive, Arlington, Virginia, 22202. For more information, contact Alan Pollock, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: April 3, 1995.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 95–8461 Filed 4–3–95; 1:17 pm]
BILLING CODE 7533–01–P

Corrections

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35511; File No. SR-Amex-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the Morgan Stanley REIT Index

Correction

In notice document 95–7136 beginning on page 15316 in the issue of Thursday, March 23, 1995, make the following correction:

On page 15318, in the third column, insert the following before the FR Doc. line:

Margaret McFarland,
Deputy Director.
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35533; File No. SR-NASD-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Interpretation of the Board of Governors-Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice

Correction

In notice document 95–7837 beginning on page 16521 in the issue of Thursday, March 30, 1995, make the following correction:

On page 16523, in the second column, insert the following before the FR Doc. line:

Margaret McFarland,
Deputy Director.
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-06-AD]

Airworthiness Directives; Boeing Model 747 SP, SR, -100, -200, and -300 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D-70 Engines)

Correction

In proposed rule document 95–7781 beginning on page 16392 in the issue of Thursday, March 30, 1995 make the following correction:

On page 16395, in the first column, in the third full paragraph, "May" should read "March".

BILLING CODE 1505–01–D

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Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 215, et al.
Combined Income and Rent; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, 905, and 913

[Docket No. R–95–1713; FR–3324–I–01]

RIN 2501–AB61

Combined Income and Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's current regulations governing public housing, Indian housing and assisted housing programs by adding nine exclusions to the definition of annual income. With regard to the first eight exclusions, the Department has concluded that, for policy reasons, these payments should not be considered when determining a family's income in the housing assistance programs involved. In contrast, the last exclusion is a statutorily required exclusion to the definition of annual income.

This interim rule also adds a statutory change to the definition of adjusted income for the Indian housing program, and makes two technical corrections to the existing regulations.

DATES: Effective Date: This interim rule is effective on May 5, 1995.

Sunset Provision: Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15); §§ 905.102(2)(ii), (2)(vi), (2)(viii)(D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income*; and §§ 913.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: June 5, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address. Comments sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: For Public Housing: Bruce Vincent, Room 4206, telephone number (202) 708–0744; For Native American Programs: Dominic A. Nessi, Room 4140, telephone number (202) 708–1015; For Housing: Barbara D. Hunter, Room 6180, telephone number (202) 708–3944; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; (TDD: (202) 708–0850). Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises HUD's current regulations for public housing, Indian housing, Section 8 housing and other assisted housing programs by excluding from annual income the following: (1) Resident service stipends, (2) adoption assistance payments, (3) student financial assistance (4) earned income of full-time students, (5) adult foster care payments, (6) compensation from State or local job training programs and training of resident management staff, (7) property tax rebates, (8) homecare payments for developmentally disabled children or adult family members, and (9) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum.

This interim rule also amends the definition of adjusted income for Indian Housing programs by allowing a deduction for both child care expenses and excessive travel expenses, as required by section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1993; hereafter referred to as "1992 HCD Act").

Finally, this interim rule makes two technical corrections to existing regulations (see preamble discussion in section I(D).)

A. Discretionary Income Exclusions

By adding the first eight exclusions to the definition of income in the public housing, Indian housing, section 8 housing, and other assisted housing programs, the Secretary is merely exercising the discretion conferred upon him to define family income by section 3(b)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(4)), section 101(c)(2) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(c)(2)), and section 236(m) of the National Housing Act (12 U.S.C. 1715z–1(m)). The eight "discretionary" income exclusions will affect the approximately 1.3 million families currently residing in public and Indian housing developments, the approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and the approximately 2 million families in privately owned assisted housing projects under the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-aside and Property Disposition Set-aside programs, the Section 236 Interest Reduction and Rental Assistance Payments Program, and the Section 215 Rent Supplement Payments program.

The Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, HUD believes that the costs of these additional exclusions will be offset by long–term future savings because the exclusions will increase the number of economically self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

The eight "discretionary" exclusions to annual income are:

1. *Resident Service Stipends.* This exclusion exempts from annual income resident service stipends, but only if the resident service stipend does not exceed $200 per month. A resident service stipend is a modest amount (i.e. $200 or less per month) received by a resident for performing a service for the housing authority or owner, on a part-time basis, that enhances the quality of life in the assisted housing development. Such services include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and resident management.

The Department wants to emphasize that if a housing authority or owner pays a resident more than $200 per month, then the entire amount received as a "stipend" does not qualify as a resident service stipend under this interim rule. For example, suppose a housing authority pays a resident $150 per month for part-time services that enhance the quality of public housing. That $150 payment would not be counted in determining the annual income of the resident. Suppose, however, instead of $150 per month, the housing authority pays the resident $400 per month. In this latter situation, the housing authority may not exclude up to $200 per month (the maximum stipend amount); rather, the entire amount of the payment (i.e. $400) is included in annual income.

If a resident receives more than $200 per month, even if the payment is characterized as a "stipend", the payment does not qualify as a resident service stipend under this interim rule. The Department wishes to point out that there is no limit to the number of stipends a family may receive. However, each family member may only exclude one stipend at a time.

On August 24, 1994 (59 FR 43622), the Department published a final rule which added a resident service stipend exclusion for resident council officers in the public and Indian Housing programs. The Department wants to emphasize that today's interim rule expands the resident service stipend exclusion to all assisted housing programs, and makes all residents eligible for the resident service stipend exclusion, regardless of whether the resident is an officer of the resident council.

2. *Adoption Assistance Payments.* This exclusion removes from annual income payments received for the care of adopted children to the extent that the payments exceed $480 per adopted child. Currently, payments for the care of foster children are excluded, but similar payments for the care of adopted children are not. (Although, when determining adjusted income, adopted children qualify for a $480 deduction, while foster children do not.)

3. *Full Amount of Student Financial Assistance.* This exclusion exempts from annual income all amounts received from student financial assistance. Student financial assistance is interpreted broadly to include various scholarships, educational entitlements, grants, work-study programs and financial aid packages. Currently, the portion of an educational scholarship available for general living expenses is included in annual income.

4. *Earned Income of Full-Time Students.* This exclusion exempts earnings in excess of $480 for each full-time student 18 years old or older (except the head of household and spouse). The exemption only applies to earnings in excess of $480 since the family already receives a $480 deduction from income for any full-time student.

5. *Adult Foster Care Payments.* This exclusion removes from the computation of annual income payments for the care of foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone). Currently, only payments for the care of foster children are excluded from annual income. In adding this exclusion, the Department is not requiring that housing authorities or owners permit foster adults in assisted housing. As before, each housing authority or owner will continue to adopt its own policies, subject to current HUD requirements.

6. *State or local employment training programs and training of resident management staff.* This exclusion exempts compensation received from qualifying employment training programs and training of resident management staff. To qualify under this exclusion, the compensation received must be a component of a state or local employment training program with clearly defined goals and objectives. Moreover, only the compensation received incident to the training program is excluded (i.e. any additional income received during the training program, such as welfare benefits, will continue to be counted as income).

In addition, this exclusion only covers compensation received while the resident participates in the employment training program, and the duration of participation must be for a limited period determined in advance. An example of compensation which falls under this exclusion is compensation received from on-the-job training and during apprenticeship programs.

7. *State tax rent credits and rebates.* This provision excludes state rent credits and rebates for property taxes paid on a dwelling unit. The Department is adding this exclusion because the Department believes that this exclusion will support state efforts to assist low income persons.

8. *Homecare payments.* This exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family members living at home. States that provide families with homecare payments do so to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution. Since families that strive to avoid institutionalization should be encouraged, and not punished, the Department is adding this additional exclusion to income. The Department wishes to point out that today's interim rule does not define "developmentally disabled" since whether a family member qualifies as developmentally disabled, and is therefore eligible for homecare assistance, is determined by each individual State.

B. Exclusion of Deferred Periodic Payments of SSI and Social Security Received in Lump Sum

Section 103(a)(1) of the 1992 HCD Act amended section 3(b)(4) of the U.S. Housing Act of 1937 to exclude from annual income, "any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)." Section 1613(a)(7) of the Social Security Act covers deferred periodic payments received in a lump sum from supplemental security income (SSI) and social security benefits.

Section 103(a)(3) of the 1992 HCD Act, however, limits implementation of the lump sum exclusion unless appropriations are provided in advance to cover any additional costs resulting from implementation of the exclusion. The Department has determined that implementing section 103(a)(1) will not result in any additional costs to the Department. Accordingly, no additional appropriations are required to implement section 103(a)(1).

Section 2 of the 1992 HCD Act makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. Because HUD determined that the exclusion of deferred periodic payments of SSI and social security benefits from annual income is effective as of October 28, 1992, and to limit the number of retroactive adjustments, the Department previously implemented this exclusion by HUD interim notice, PHA 93–11, issued March 16, 1993. That notice implemented section 103(a)(1) with respect to public and Indian Housing programs, and all section 8 programs.

Finally, while section 103(a)(1) does not apply to the Section 215 Rent Supplement Payments program, or the Section 236 Interest Reduction and Rental Assistance Payments Program, it is a long standing Departmental policy to use the same definition of annual income for all of the Department's subsidized housing programs. Accordingly, in today's interim rule, the Department is extending the exclusion of deferred periodic payments of SSI and social security benefits from annual income to the Section 215 Rent Supplement Payments program and the Section 236 Interest Reduction and Rental Assistance Payments Program. However, because the Department is adding this exclusion as a matter of agency discretion, the exclusion is effective as of the effective date of this interim rule.

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C. Change in Definition of Adjusted Income for Indian Housing Authorities

Section 103(a)(2) of the 1992 HCD Act amended section 3(b)(5) of the U.S. Housing Act of 1937 to change the definition of adjusted income for families assisted by an IHA. As amended, section 3(b)(5) provides a deduction from adjusted income for both child care expenses (to the extent necessary to enable another member of the family to be employed or to further his or her education); *and* excessive travel expenses (not to exceed $25 per family per week for employment or education-related travel). (Prior to this amendment, a family was allowed a deduction from adjusted income for either child care expenses *or* excessive travel expenses.)

Section 103(a)(3) of the 1992 HCD Act requires that appropriations be provided in advance if section 103(a)(2) results in any additional costs to the Department. The Department has determined that there are no additional costs associated with the implementation of Section 103(a)(2).

Section 2 of the HCD Act of 1992 makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. HUD has determined that the change to the definition of adjusted income is effective as of October 28, 1992.

Finally, to limit the number of retroactive adjustments, the Department previously implemented this exclusion by a HUD interim notice, PHA 93–23, issued May 19, 1993.

D. Technical Corrections

Finally, this interim rule contains two technical corrections. First, this interim rule removes the following parenthetical in § 913.106(c)(11): "[t]his provision does not apply to residents participating in the Family Self-Sufficiency [FSS] Program who are utilizing the escrow account." When the Department implemented section 515(b) of the National Affordable Housing Act of 1990 (Pub.L. 101–625) (NAHA) in the final rule published on August 24, 1994 (59 FR 43622), it inadvertently added the above parenthetical to the rule text. Because section 515(b) of NAHA covers all public housing residents, without regard to whether a resident participates in the FSS program, this technical correction is necessary.

The second technical correction amends § 236.72. Currently, § 236.72 incorrectly references "adjusted income" rather than "annual income." This interim rule changes the reference in § 236.72 to "annual income."

II. Other Matters

A. Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this interim rule will not have federalism implications and, thus, are not subject to review under that Order. Specifically, the interim rule adds additional exclusions to the definition of income in the assisted housing programs. As such, the interim rule will not impinge upon the relationship between the Federal Government and State and local governments, and the interim rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule has potential for significant impact on family formation, maintenance, and general well-being. Families will benefit from this interim rule by being allowed additional exclusions from annual income. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. With regard to the lump sum exclusion, the number of lump sum exclusions in any one project will be minor, and will not significantly impact any HA. With regard to the remaining income exclusions, since HUD will supplement any lost rental income from the added exclusions, the exclusions will not have an economic impact on housing authorities.

F. Regulatory Agenda

This interim rule was listed as item number 1748 in the Department's Semiannual Agenda of Regulations published on November 14, 1994, (59 FR 57632, 57646) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number(s) are 14.146, 14.147, 14.850 and 15.141.

H. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because the interim rule adds nine exclusions to the definition of annual income, which will benefit residents and tenants, without adversely affecting any other group. The first eight exclusions will affect approximately 1.3 million families currently residing in public and Indian housing developments, approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and approximately 2 million families in private-owned assisted housing projects under certain HUD programs.

As stated earlier in this preamble, the Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, the Department believes that the costs of these additional exclusions will be offset by long term future savings because the exclusions will increase the number of economically self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

For these reasons, the Department believes that delaying implementation would be contrary to public interest.

I. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire on the twelve-month anniversary date of the effective date of this interim rule unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the twelve-month anniversary date of the effective date of this interim rule.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 215, 236, 813 905, and 915 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. A new § 215.2 is added to subpart A to read as follows:

§ 215.2 Effective date of regulation.

Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

3. Section 215.21 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 215.21 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 215.1·

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and

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equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s). A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

4. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

5. Section 236.3 is amended by revising the section heading, paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 236.3 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 236.2;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 236 of the National Housing Act. A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

6. A new § 236.6 is added to subpart A to read as follows:

§ 236.6 Effective date.

Sections 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

7. Section 236.72 is amended by revising paragraph (a) and the first sentence in paragraph (b) introductory text, to read as follows:

§ 236.72 Guidelines for assisted admission.

(a) *Maximum income.* The annual income of an applicant shall not exceed the maximum income limits established by the Secretary.

(b) *Ability to pay rent.* The project owner or the owner's managing agent may, in its discretion, admit an applicant for assisted admission whose annual income meets the requirement in paragraph (a) of this section if, in its discretion, the applicant has an adequate income to pay the basic monthly rental charge. * * *

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

8. The authority citation for 24 CFR part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

9. A new § 813.1 is added to read as follows:

§ 813.1 Effective date.

Sections 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

10. Section 813.106 is amended by revising paragraphs (b)(4), (b)(5), and (c), to read as follows:

§ 813.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in Aide, as defined in § 813.102;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

11. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee; and 3535(d).

12. In § 905.102, the definition for "Adjusted income" is amended by revising paragraph (5) and by adding a new paragraph (6) to the definition, and the definition for "Annual income" is amended by revising paragraphs (1)(iv), (1)(v), and (2) of the definition, to read as follows:

§ 905.102 Definitions.

* * * * *

Adjusted income. * * *

* * * * *

(5) Child care expenses, as defined in this definition; and

(6) Excessive travel expenses, not to exceed $25 per family per week, for employment or education-related travel.

* * * * *

Annual income. * * *

(1) * * *

(iv) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (2)(xiv) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (2)(iii) of this definition);

* * * * *

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under

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health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a Live-in Aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(C) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(D) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in Indian housing. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(E) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance by the IHA;

(ix) Temporary, nonrecurring or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xii) Adoption assistance payments in excess of $480 per adopted child;

(xiii) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xiii) of this definition, the following definitions apply.

(A) *Comparable Federal, State, Tribal or local law* means a program providing employment training and supportive services that:

(*1*) Is authorized by a Federal, State, Tribal or local law;

(*2*) Is funded by the Federal, State, Tribal or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this definition, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xiv) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(xv) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes on the dwelling unit;

(xvi) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

13. A new § 905.103 is added to subpart A to read as follows:

§ 905.103 Effective date.

In §§ 905.102, paragraphs (2)(ii), (2)(vi), (2)(viii) (D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income* shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

14. The authority citation for 24 CFR part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

15. A new § 913.1 is added to read as follows:

§ 913.1 Effective date.

Sections 913.106 (c)(2), (c)(6), (c)(8) (iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

16. Section 913.106 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 913.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in Aide, as defined in § 913.102;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) *A resident service stipend.* A resident service stipend is a modest amount (not to exceed $200 per month) received by a public housing resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in public housing. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance by the PHA;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(A) Is authorized by a Federal, State or local law;

(B) Is funded by the Federal, State or local government;

(C) Is operated or administered by a public agency; and

(D) Has as its objective to assist participants in acquiring employment skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(15) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Dated: January 26, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–8081 Filed 4–4–95; 8:45 am]

BILLING CODE 4210–32–P

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Federal Register

Wednesday
April 5, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 173, 178, and 180
Cargo Tanks; Miscellaneous Requirements; Revisions and Response to Petitions for Reconsideration; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 178 and 180

[Docket No. HM–183C; Amdt. Nos. 173–240, 178–105 and 180–7]

RIN 2137–AC37

Cargo Tanks; Miscellaneous Requirements; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document amends a final rule published on November 3, 1994, and concerns manufacture, qualification, and maintenance of DOT specification cargo tank motor vehicles. In response to petitions for reconsideration, RSPA is revising design loading requirements for MC 331 cargo tank motor vehicles and making other minor editorial and technical changes for clarity. The changes made in this document are intended to ease certain regulatory requirements where there will be no adverse effect on safety.

DATES: *Effective:* May 22, 1995.

Compliance date: Compliance with the regulations, as amended herein, is authorized as of April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On November 3, 1994, RSPA published in the **Federal Register** a final rule, under Docket No. HM–183C (59 FR 55162), amending certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. Changes were made to relax the requirements for structural integrity, accident damage protection, welding and design quality control procedures, and pressure relief based on comments from industry. Changes were also made to require facilities repairing cargo tanks stamped as meeting the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) to have a Certificate of Authorization for use of an "R" stamp from the National Board of Boiler and Pressure Vessel Inspectors (National Board) Code.

RSPA received five petitions for reconsideration of certain aspects of the final rule. These petitions were submitted by the Cargo Tank Manufacturers Association (CTMA), Cargo Tank Concepts, Ltd. (CTCL), Truck Trailer Manufacturers Association (TTMA), National Propane Gas Association (NPGA), and the Compressed Gas Association, Inc. (CGA).

CTMA opposed several provisions adopted in the final rule. First, CTMA petitioned RSPA to reconsider its position on how the design stress calculations, in 49 CFR 178.345–3(c), should be applied to cargo tank loading conditions. Except for the loadings prescribed in paragraph (c)(i), CTMA stated:

> [T]he loads are extreme loads that will be experienced rarely if at all during the life of a cargo tank and [the] ASME Code allowable stresses should be based on the stress increase allowed for wind and seismic loads which are also experienced rarely if at all in the life of stationary vessels. Per UG–23 of the ASME Code, this increase is 20 percent. CTMA believes that the loads specified in building codes [are] applicable to pressure vessels in the same manner. Using ASME allowable stresses for these load conditions is too conservative since margins of safety are pyramided if rarely occurring extreme loads cannot be resisted by emergency stresses as recommended by CTMA.

As noted by RSPA in the preamble to the final rule (59 FR 55165), discussions have been ongoing for a number of years on how to combine the loadings in calculating the structural integrity requirements. The concept of separating structural loadings into two categories, *normal operating loading* and *extreme dynamic loading*, was proposed by several cargo tank motor vehicle designers at a public meeting in February 1994 and more fully developed later. *In normal* operations, a cargo tank can be expected to routinely experience relatively low dynamic forces; these forces are to be considered to occur simultaneously. Under *extreme dynamic* loadings, the cargo tank experiences relatively high forces which occur rarely, if at all, during the life of a cargo tank; these forces are considered to act independently, one at a time. This approach has received wide acceptance and is the foundation for new recommended practices under development by a TTMA engineering committee.

RSPA does not believe the calculations for "stress increase" referred to by CTMA necessarily apply to dynamic loads experienced either in normal operations or in extreme loading conditions experienced by cargo tank motor vehicles. Two provisions for increased allowable stresses are prescribed in the ASME Code, Section VIII, Division 1, UG–23. In paragraph (c) of UG–23, a factor of 1.5 is discussed for "combined maximum primary membrane stress plus primary bending stress across the thickness." Evidently, the 20 percent factor referred to by CTMA is associated with the factor discussed in paragraph (d) for the "combination of earthquake loading, or wind loading with other loadings in UG–22," with the stipulation that earthquake and wind loadings need not be considered to act simultaneously. RSPA believes the many years of experience accumulated by cargo tank motor vehicle manufacturers support the approach adopted in the final rule. The reference in the CTMA petition to other "loads specified in building codes" may or may not pertain to this matter. CTMA did not identify those codes and provided no information on whether or how they have any application to cargo tank structural integrity or accident damage protection. Therefore, CTMA's request is denied.

Second, CTMA opposed the 2 "g" design load for rollover damage protection devices specified in § 178.345–8(c)(1). CTMA stated that the loads on rollover devices, in the case of longitudinal sliding, would be limited by the coefficient of sliding friction of the metal rollover devices on the ground or pavement and, in the case of lateral rollover, would be limited even further by the lateral force leading to continued overturn of the tank. RSPA discussed commenters' requests to reduce the 2 "g" design load for rollover protection at length in the preamble of the final rule (59 FR 55166). RSPA recognizes that new designs may be necessary to gain significant benefits in safety.

RSPA also recognizes that the amount of force currently imposed in the horizontal plane is a simplification of many potential variables which can come into play during an overturn accident. Many scenarios are possible: the impact surface may be smooth or rough, horizontal or sloping, as hard as concrete or as soft as sand or damp earth; the vehicle may roll over an obstacle such as a guard rail; the cargo tank may receive an impact over its entire length or on only a small part of its exposed surface; etc. CTMA's comments on use of the coefficient of sliding friction might be appropriate for overturn on a smooth, hard highway surface, but would impose relatively moderate loads in comparison to other rollover scenarios. Accident scenarios where the rollover damage protection devices plow through earth or strike roadside obstacles impose much greater loadings on the devices. Therefore, CTMA's petition for a reduction in the safety performance of rollover damage protection is denied.

Third, CTMA repeated its position that it is difficult to design rear-end protection devices in compliance with the loads prescribed in § 178.345–8(d), particularly devices which are offset from the load path. CTMA repeated its belief previously expressed in comments that the intent of the regulation is for the loads to be transmitted to the tank structure and absorbed without exceeding the permitted stresses anywhere along the load path. CTMA offered no new information to support this position. The revised requirements were discussed in the preamble of the final rule (59 FR 55167). RSPA believes that the revised requirements for the DOT 400-series cargo tanks allow engineers more freedom in the design of rear-end protection, including approaches involving energy dissipation and dampening. Therefore, CTMA's petition is denied.

Finally, CTMA commented on the suitability of applying ASME Code standards to the cargo tank industry while not recognizing other "alternative quality control program(s)." This issue was fully discussed in the preamble of the final rule (59 FR 55162). In addition, this subject was addressed in previous notices and public meetings under Docket HM–183 extending over a period of nearly ten years. CTMA provided no additional data or information to support changing the final rule. Therefore, RSPA's position remains unchanged and requirements for using procedures established under the ASME Code and the National Board of Boiler and Pressure Vessel Inspectors (National Board) Code are retained, and CTMA's petition is denied.

CTCL petitioned RSPA to reconsider amendments allowing a small release of certain types of ladings from the pressure relief system, in overturn accidents, before reclosing to a leak-tight position. CTCL stated that it has designed a vent which releases vapors instead of lading in an overturn accident situation, and that this information was not presented RSPA earlier because the technology had not yet been developed. RSPA welcomes the development by industry of improved valve designs. RSPA solicited information during the HM–183C rulemaking proceeding on the existence of reclosing pressure relief devices capable of reseating with no loss of lading and not subject to clogging and sticking during field service. However, RSPA believes CTCL has not provided sufficient information to support excluding the use of other valve designs at this time, and CTCL's petition is denied.

TTMA petitioned RSPA to continue allowing a cargo tank manufacturer holding an ASME "U" stamp to make repairs to ASME stamped cargo tanks. TTMA stated that an ASME "U" stamp holder should not be required to obtain an "R" stamp from the National Board and there is no reason why the National Board cannot continue to inspect repairs made by a "U" stamp holder. Furthermore, the National Board Inspection Code allows repairs to be made on ASME stamped cargo tanks by a facility holding an "R" stamp or by a facility working within an individual governmental jurisdiction where that jurisdiction has issued authorization for the facility to perform repairs.

RSPA explained in the preambles of the notice of proposed rulemaking (March 3, 1993; 58 FR 12316) and the final rule (59 FR 55170) that the National Board has control over the quality of work performed by an "R" stamp holder. Jurisdictional authorization is recognized only within the governmental boundaries where the repair facility is located. This type of authorization may be appropriate for work performed on stationary vessels, but not for mobile systems such as cargo tank motor vehicles. RSPA believes it is essential to apply a nationally recognized consensus standard in a uniform manner regardless of jurisdiction. Therefore, the requirement that repairs on DOT specification cargo tanks certified to the ASME Code must be performed only by a facility holding a valid "R" stamp is retained and TTMA's petition is denied.

CGA petitioned RSPA to remove the word "internal" in the first sentence in § 178.338–11(c) specifying that each filling and discharge line for liquids must be provided with a remotely controlled internal self-closing stop valve. CGA pointed out that the word "internal" did not appear in the provision in the notice of proposed rulemaking and that requiring internal valves would bring the cryogenic flammable lading industry to a standstill because of the inner tank/outer jacket configuration of these cargo tanks. RSPA agrees. It was not RSPA's intent to require an "internal" self-closing valve on these tanks, but to broaden the requirement to include all flammable ladings. Therefore, the word "internal" is removed.

NPGA asked RSPA to reconsider its decision in the final rule that a future rulemaking would address design loading requirements for MC 331 specification cargo tanks. The preamble to the final rule (59 FR 55163) noted NPGA's recommendation for uniformity in design loading requirements for all DOT specification cargo tanks. In its petitions, NPGA asked RSPA to extend, until March 1, 1997, the compliance date for construction of MC 331 cargo tank motor vehicles conforming to the structural integrity requirements contained in § 178.337–3. It also urged RSPA to make resolution of stress analysis a priority project.

RSPA has reviewed the report previously submitted by NPGA and found that NPGA's proposed loadings for the MC 331 cargo tank are very similar to the loadings adopted for the DOT 400-series cargo tanks. This supports NPGA's position that cargo tank motor vehicles encounter similar loadings regardless of whether the cargo tank is used to transport a liquid or gas lading. Therefore, for greater consistency, RSPA is amending the structural integrity requirements in § 178.337–3 by adopting the same loadings as specified for the DOT 400-series cargo tank specifications. In view of this change, a new paragraph (f) is added in § 178.23 to provide for a MC 331 specification cargo tank conforming to the structural integrity requirements contained in § 178.337–3 or to the corresponding requirements in effect at the time of manufacture. However, the material thickness may not be less than that required by the ASME Code.

Based on comments received from CGA that design loadings specified for MC 338 cargo tanks should not be revised for consistency with the MC 331 specification, RSPA is not making any change to § 178.338–3. CGA has advised it is developing a document to provide additional guidance to its members on the design and construction of MC 338 cargo tanks.

The amendment to § 178.337–3 eliminates any need for a delay in the compliance date for construction of MC 331 cargo tank motor vehicles conforming to the structural integrity requirements, and this part of NPGA's petition is denied.

Additionally, CGA petitioned RSPA to allow modifications on cryogenic cargo tanks originally authorized by exemption prior to introduction of the MC 338 specification. In accordance with § 180.405(d), such cargo tanks must be marked "DOT MC 338–E" followed by the exemption number. CGA contends that modifications such as adding a manhole may require removal of the outer jacket and installation of a new shell course to the inner vessel; only local reinforcement of the inner vessel was required

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previously. After further consideration, RSPA agrees with CGA. In establishing the MC 338 specification, the final rule (June 16, 1983; 48 FR 27674) stated "[T]his grandfathering of existing tanks is necessary to avoid potential severe economic consequences to some exemption holders and can be justified from a safety point of view because of the thorough technical review involved in the exemption process, notwithstanding the fact that certain aspects of certain exemptions may differ from this final rule." Nothing in subsequent rulemakings has changed this premise. Therefore, in this final rule, in § 180.413, in paragraph (d)(3), the introductory text is revised, and a new paragraph (v) is added to allow MC 338 cargo tanks authorized under § 180.405(d) to be structurally modified provided that no reduction in structural integrity is incurred and that any modification is in accordance with the ASME Code or with the MC 338 specification.

Finally, RSPA has made the following editorial revisions for clarity: In § 178.345–3, in paragraphs (c)(1)(iii)(B) and (c)(2)(iii)(B), in the second sentence, the wording "horizontal pivot of the tractor" is revised to read "horizontal pivot of the truck tractor". In § 178.345–14, in paragraph (b)(3), the wording "Tank MAWP" is revised to read "Tank maximum allowable working pressure (MAWP)". In § 180.403, a sentence is added to the definition of modification. In § 180.405, in paragraph (h)(2), reference to 40 CFR 60.601 is deleted. In § 180.407, in the table in paragraph (c), under the subheading "Thickness Test" in the first column, the wording "in corrosive service, except" is revised to read "transporting lading corrosive to the tank, except"; and paragraphs (d)(1)(i) and (ii) are revised to remove duplicative language. In § 180.413, paragraphs (b)(6) and (d)(10) are revised to clarify that a repair or modification affecting the structural integrity of a pressure cargo tank, with respect to pressure, must be determined by testing required by the specification or by § 180.407(g)(1)(iv).

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This amendment imposes no new requirements on affected persons. The final regulatory evaluation for the November 1994 final rule is available for review in the docket. Changes in this final rule did not warrant revision of the regulatory evaluation.

2. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the design, manufacturing, and certain other requirements for packages represented as qualified for use in the transportation of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier that the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be July 5, 1995.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to manufacturers, shippers, carriers, and owners of cargo tanks, some of which are small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

4. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

5. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127. 49 CFR 1.53.

2. In § 173.23, a new paragraph (f) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(f) An MC 331 cargo tank motor vehicle must conform to structural integrity requirements in § 178.337–3 or to corresponding requirements in effect at the time of manufacture.

PART 178—SPECIFICATIONS FOR PACKAGINGS

3. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127. 49 CFR 1.53.

4. In § 178.337–3, paragraph (c) is revised to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(c) *Shell design.* Shell stresses resulting from static or dynamic loadings, or combinations thereof, are not uniform throughout the cargo tank motor vehicle. The vertical, longitudinal, and lateral normal operating loadings can occur simultaneously and must be combined. The vertical, longitudinal and lateral extreme dynamic loadings occur separately and need not be combined.

(1) *Normal operating loadings.* The following procedure addresses stress in the tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under the combination of static and normal operating loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by the MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = The following net longitudinal stress generated by the following static and normal operating loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The tensile or compressive stress resulting from normal operating longitudinal acceleration or deceleration. In each case, the forces applied must be 0.35 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the truck tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from normal operating vertical accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by the following static and normal operating loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by a normal operating accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by a normal operating lateral accelerative force equal to 0.2 times the vertical reaction at each suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(1)(iv)(C) of this section.

(2) *Extreme dynamic loadings.* The following procedure addresses stress in the tank shell resulting from extreme dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under a combination of static and extreme dynamic loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = the following net longitudinal stress generated by the following static and extreme dynamic loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the tank wall;

(B) The tensile or compressive stress resulting from extreme longitudinal acceleration or deceleration. In each case the forces applied must be 0.7 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the truck tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or the anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

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(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or the anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by static and extreme dynamic loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by an extreme lateral accelerative force equal to 0.4 times the vertical reaction at the suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(2)(iv)(C) of this section.

* * * * *

§ 178.338–11 [Amended]

5. In § 178.338–11, in paragraph (c) introductory text, in the first sentence, the wording "remotely controlled internal self-closing stop valve" is revised to read "remotely controlled self-closing shut-off valve".

§ 178.345–3 [Amended]

6. In § 178.345–3, in paragraphs (c)(1)(iii)(B) and (c)(2)(iii)(B), in the second sentence, the wording "horizontal pivot of the tractor" is revised to read "horizontal pivot of the truck tractor".

§ 178.345–14 [Amended]

7. In § 178.345–14, in paragraph (b)(3), the wording "Tank (MAWP)" is revised to read "Tank maximum allowable working pressure (MAWP)"

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

8. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

9. In § 180.403, the introductory text in the definition for "modification" is revised to read as follows:

§ 180.403 Definitions.

* * * * *

Modification means any change to the original design and construction of a cargo tank or a cargo tank motor vehicle which affects its structural integrity or lading retention capability. Any modification which involves welding on the cargo tank wall also must meet all requirements for "Repair" as defined in this section. * * *

* * * * *

§ 180.405 [Amended]

10. In § 180.407, in paragraph (h)(2), in the second sentence, the reference "40 CFR 60.501 and 60.601" is revised to read "40 CFR 60.501".

11. In § 180.407, paragraphs (d)(1)(i) and (ii) are revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * *

(1) * * *

(i) Visual inspection is precluded by internal lining or coating, or

(ii) The cargo tank is not equipped with a manhole or inspection opening.

* * * * *

§ 180.407 [Amended]

11a. In addition, in § 180.407, in the table in paragraph (c), under the subheading "Thickness Test" in the first column, the wording "in corrosive service, except" is revised to read "transporting material corrosive to the tank, except".

12. In § 180.413, paragraphs (b)(6), ((d)(3) introductory text and (d)(10) are revised, and a new paragraph (d)(3)(v) is added to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * * * *

(b) * * *

(6) The suitability of any repair affecting the structural integrity of the cargo tank must be determined by the testing required either in the applicable manufacturing specification, or in § 180.407(g)(1)(iv).

* * * * *

(d) * * *

(3) Except as provided in paragraph (d)(3)(v) in this section, all new material and equipment, and equipment affected by modification, stretching or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and must meet the applicable structural integrity requirements (§§ 178.337–3, 178.338–3, or 178.345–3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

* * * * *

(v) For Specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

* * * * *

(10) The suitability of any modification affecting the structural integrity of the cargo tank, with respect to pressure, must be determined by the testing required either in the applicable manufacturing specification, or in § 180.407(g)(1)(iv).

* * * * *

§ 180.413 [Amended]

13. In addition, in § 180.413, the following changes are made:

a. In paragraph (d)(3)(iii), at the end of the paragraph, the word "and" is removed.

b. In paragraph (d)(3)(iv), at the end of the paragraph, the period is removed and "; and" is added in its place.

Issued in Washington, DC on March 30, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–8349 Filed 4–4–95; 8:45 am]

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Wednesday
April 5, 1995

Part IV

Department of Education

Assessment Development and Evaluation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

CFDA No: 84.279–A

Assessment Development and Evaluation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of the Program: To provide grants to help defray the cost of developing, testing, and evaluating State assessments, including assessments in languages other than English, and assessments for students with disabilities.

Eligible Applicants: State educational agencies, local educational agencies, and consortia of such agencies are eligible.

Deadline for Transmittal of Applications: June 5, 1995.

Deadline for Intergovernmental Review: August 5, 1995.

Available Funds: $5,000,000.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 16 awards.

Project Period: Up to 48 months.

Budget Period: 12 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in—

(1) 34 CFR Part 98 (Student Rights in Research, Experimental Programs, and Testing); and

(2) 34 CFR Part 99 (Family Educational Rights and Privacy).

Description of the Program: The Assessment Development and Evaluation Grants Program is authorized by section 220 of the Goals 2000: Educate America Act (Public Law 103–227). Under this program, the Secretary provides grants to help defray the cost of developing, field-testing, and evaluating State assessments aligned to State content standards certified by the National Education Standards and Improvement Council. The Secretary is required to reserve a portion of the available funds for purposes of developing such assessments in languages other than English and developing such assessments for students with disabilities. Therefore, the Secretary has established three absolute priorities for this competition as outlined below. Under priority (a), the Secretary will support the development of State assessments for all students that are aligned with State content standards. Under priorities (b) and (c), the Secretary will support the modification of State assessments for all students necessary to facilitate their use with students of limited-English proficiency or students with disabilities. The Secretary anticipates that assessments developed under this program will serve as models for other States and, therefore, expects that grantees will carefully document their efforts to develop and evaluate assessments.

Absolute Priorities: Under this competition, the Secretary will consider applications that address one or more of the following priorities:

(a) Projects to develop, field-test, and evaluate State assessments for all students that are aligned to State content standards.

(b) Projects to modify, field-test, and evaluate State assessments in languages other than English. The State assessments to be modified must be those developed under priority (a) or similar State assessments developed for all students and aligned to State content standards.

(c) Projects to modify, field-test, and evaluate State assessments for students with disabilities. The State assessments to be modified must be those developed under priority (a) or similar State assessments developed for all students and aligned to State content standards.

Purposes of the Assessments

Grants awarded under this competition may be used only for the development, field-testing, and evaluation of State assessments to be used for some or all of the following purposes:

(a) Informing students, parents, teachers, and related services personnel about the progress of all students toward the State's content standards;

(b) Improving classroom instruction and improving the learning outcomes for all students;

(c) Exemplifying for students, parents, and teachers the kinds and levels of achievement that should be expected of all students, including the identification of State student performance standards;

(d) Measuring and motivating individual students, schools, districts, States, and the Nation to improve educational performance; and

(e) Assisting education policymakers in making decisions about education programs.

Council Certification of Content Standards

This program supports the development and evaluation of State assessments that are aligned to State content standards certified by the National Education Standards and Improvement Council (NESIC). Because NESIC has not yet been established and States cannot yet seek certification of State content standards, an applicant for a grant under this competition must demonstrate in its application that the proposed project is designed to ensure the likelihood that the assessments to be developed and evaluated will be aligned to State content standards certified by NESIC. This demonstration must include an assurance by the State that it intends to seek NESIC certification of the State content standards to which the assessments will be aligned.

Other Requirements

The recipient of a grant awarded under this competition must:

(a) Examine the validity and reliability of the State assessment for the particular purposes for which such assessment was developed;

(b) Ensure that the State assessment is consistent with relevant, nationally recognized professional and technical standards for assessments; and

(c) Devote special attention to how a State assessment treats all students, especially with regard to the race, gender, ethnicity, disability, and language proficiency of such students.

Use of Assessments

A State assessment developed and evaluated with a grant awarded under this competition may not be used for decisions about individual students

relating to program placement, promotion or retention, graduation, or employment for a period of 5 years from the enactment of the Goals 2000: Educate America Act on March 31, 1994.

Selection Criteria: (a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The *criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Assessment Development and Evaluation Grants Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on June 10, 1994 (59 FR 30214).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.279–A, U.S. Department of Education, Room 6213, 600 Independence Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the dated indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.279–A, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.279–A, Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

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(1) A private metered postmark.
(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 30 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form 524) and instructions.

Special Budget Instructions: The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance Review urged the Department to "eliminate the continuation application process for budget years within the project period" and replace it with "yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery." The Department is implementing this recommendation for as many programs as possible beginning in fiscal year 1995. This will require all applicants for multi-year awards to provide detailed budget information for the total cooperative agreement period. The Department will negotiate at the time of the initial award the funding levels for each year of the cooperative agreement award. A new generic budget form, included in this package, requests the information needed to implement this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of the continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

Part III: Application Narrative.
Additional Materials:
Estimated Public Reporting Burden.
Assurances—Non-Construction Programs (Standard Form 424B).
Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).
Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dr. David Sweet, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, N.W., Washington, DC 20208–5573. Telephone 202–219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 5850.

Dated: March 31, 1995.

Sharon P. Robinson,

Assistant Secretary, Educational Research and Improvement.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (*give city, county, state, and zip code*) | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): –

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A State H Independent School Dist.
B County I. State Controlled Institution of Higher Learning
C Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F Intermunicipal M. Profit Organization
G Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 7 9
TITLE: Assessment Development and Evaluation Grants Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

BILLING CODE 4000-01-C

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Instructions for Part III—Application Narrative

In order to be considered for funding you must submit an *original* and two copies (and *in order to expedite the review and award process, it is strongly suggested that you voluntarily submit one additional copy*) of the following:

1. Federal Assistance Form (Standard Form 424)
2. Priority Identification Sheet
3. Project Summary (abstract)
4. Proposal Narrative
5. Budget Information—Non-Construction Programs (ED Form 524)
6. Resume(s) for the key personnel
7. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
8. Disclosure of Lobbying Activities

Specific Instructions for Application Items

Item 3. Project Summary (abstract). Applicants are required to provide a 250 word abstract. This summary serves an important function in the proposal review process, and so applicants are encouraged to be sure that the summary provides an accurate, intelligible and succinct description of the project.

Item 4. Proposal Narrative. Applicants must provide a proposal narrative addressing each of the selection criteria which serve as the sole basis for reviewers to evaluate the applications. For the *Budget and cost effectiveness* criterion applicants must include a budget narrative that explains the line item figures included in Section B of Form 424A. Applicants responding to more than one of the three absolute priorities must disaggregate costs associated with each priority area (to meet the congressional reporting requirements of the Department).

The applicant must limit the Proposal Narrative (including all attachments and appendices, but excluding a table of contents) to no more than 25 double spaced pages, typed on 8½" x 11" pages (on one side only) with at least one inch margins on all sides (including top and bottom of pages). Single spacing is only permitted for those attachments or appendices where single-spacing is the standard convention, e.g. letters of support and commitment, and the bibliographic reference section. The applicant must use no smaller than 12 point type. The instructions printed on this page are printed in the appropriate type size. *Note: proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed this limit, will not be considered for funding.*

Item 6. Resume(s) for the key personnel. Each resume must be five pages or less in length.

Item 7. Certifications. An original signature is required on one copy of the application.

Item 8. Disclosure of Lobbying. An original signature is required on one copy of the application.

ASSESSMENT DEVELOPMENT AND EVALUATION GRANTS PROGRAM ABSOLUTE PRIORITY IDENTIFICATION SHEET

The Secretary has identified three absolute priorities for this competition. Please identify the priority(ies) to be addressed by marking the appropriate box(es).

Note that addressing at least one of the absolute priorities is a requirement for receiving a grant under this competition.

[ ] *Absolute Priority #1*
Projects to develop, field-test, and evaluate State assessments aligned to State content standards.

[ ] *Absolute Priority #2*
Projects to develop, field-test, and evaluate such State assessments in languages other than English.

[ ] *Absolute Priority #3*
Projects to develop, field-test, and evaluate such State assessments for students with disabilities.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0710, Washington, D.C. 20503.

(Information collection approved under OMB control number 1850–0710. Expiration date: September 31, 1998.)

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89, ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $	
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):	
(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)		
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11: (attach Continuation Sheet(s) SF-LLL-A, *if necessary*)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

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0348-0046

Reporting Entity: _____ Page ____ of ____

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[FR Doc. 95-8357 Filed 4-4-95; 8:45 am]
BILLING CODE 4000-01-C

federal register

Wednesday
April 5, 1995

Part V

Department of Education

34 CFR Part 350, et al.
National Institute on Disability
Reahabilitation Research; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 350, 351, 352, 353, and 356

RIN 1820–AB01

National Institute on Disability Rehabilitation Research

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations for certain programs administered by the National Institute on Disability and Rehabilitation Research (NIDRR). These amendments result primarily from the Rehabilitation Act Amendments of 1992 (the Amendments). The regulations add new definitions and program activities consistent with the Amendments and reflect new statutory requirements.

EFFECTIVE DATE: These regulations take effect on May 5, 1995.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, SW., Mary E. Switzer Building, Room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: These regulations primarily implement statutory changes made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569). Some of the changes conform terminology of the regulations with terminology in the Act, specifically in the use of "individual with a disability," "children with disabilities," "individual with a mental disability," and similar phrases to replace phrases using the word "handicapped," "handicapped individual," or "disabled individual."

The regulation in § 350.1 has been revised to include improving the cost-effectiveness of services under the Act in the list of purposes of the activities supported by NIDRR.

The regulation in § 350.4 includes new statutory definitions for many of the terms used in section 7 of the Rehabilitation Act, as amended (the Act), including the definitions of such key terms as "disability," "individual with a disability," "rehabilitation technology" and "rehabilitation engineering," and "research utilization." The regulation further reflects new statements in the statute about the purpose of each of the programs and the activities authorized within them.

The regulation in § 350.20 describes the conditions under which applicants must send copies of their applications to the Vocational Rehabilitation agencies in their States, as required by statute. This provision clarifies Sections 204(c) and 306(i) of the current law and preexisting regulations by describing the context in which transmittal of these applications would be appropriate.

The regulation in § 350.21 implements section 21(b)(6) of the Act, which states that, where appropriate, applicants must demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. If the Secretary determines that this requirement is not appropriate for a particular grant competition, the Secretary will indicate this in a notice announcing a priority or in the notice inviting applications. If the Secretary does not make this determination, but an applicant believes that this determination is appropriate, the applicant will indicate this and set forth a justification in its application. In response to the many inquiries that NIDRR receives from applicants seeking suggestions for methods to meet this requirement, the regulation includes a list of methods that an applicant may choose to propose.

The regulation in § 350.41 implements section 20 of the Act, which requires all projects that provide services to individuals with disabilities to advise those individuals who are applicants for or recipients of services under the Act, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act, and to provide information on the means of seeking assistance under the CAP.

The regulations in §§ 352.33 and 353.33 include the new statutory standard 60-month grant periods for RRTCs in section 204(b)(2)(L) and RERCs in section 204(b)(3)(E), and specify conditions under which awards of lesser duration are appropriate under the law.

The regulation in § 353.41 states that certain RERCs must have an advisory board, of which the majority of the members must be individuals with disabilities, their parents, family members, guardians, advocates, or authorized representatives. This requirement is based on the new statutory requirement in section 204(b)(3)(D)(ii) of the Act.

The regulations support the National Education Goal that, by the year 2000, every adult American—including individuals with disabilities—will possess the skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On August 10, 1994, the Secretary published a notice of proposed rulemaking in the **Federal Register** (59 FR 41176).

Analysis of Comments and Changes

In response to the Secretary's invitation in the Notice of Proposed Rulemaking (NPRM), 12 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject under appropriate sections of the regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Additional Changes

The final regulations include changes from the proposed regulations that reflect the Department's recently developed Principles for Regulating. The Principles state that the Department will regulate only to improve the quality of services to our customers, only when absolutely necessary, and then in the most flexible, equitable, and least burdensome way possible.

The proposed regulations included new selection criteria addressing the requirement that applicants address the needs of individuals with disabilities from minority backgrounds. The final regulations do not include these new selection criteria.

The proposed regulations for part 352 included target audiences for dissemination activities in the selection criteria that were not included in the dissemination requirements of part 352. In the final regulations, the selection criteria for dissemination activities conform to the dissemination requirements of part 352.

The proposed regulations included a requirement that RRTCs disseminate information and provide technical assistance to administrators, policymakers, and representatives of public and private organizations whose activities affect the productivity, independence, and community integration of individuals with disabilities. The proposed regulations also included these groups in the selection criteria applicable to

dissemination and technical assistance. The final regulations encourage RRTCs to undertake these activities and do not include these groups in the selection criteria.

The proposed regulations included advisory committee requirements for all RRTCs and RERCs. The final regulations, reflecting the statute, include advisory committee requirements for certain RERCs. The proposed regulations included the RERC advisory committee requirements in § 353.40 in addition to two general requirements. Revising the advisory committee requirements to apply to certain RERCs necessitated separating the advisory committee requirements from the two general requirements that apply to all RERCs. In the final regulations, the two general requirements are contained in § 353.40, and the advisory committee requirements are contained in § 353.41.

The proposed regulations broadened the requirements for Institutional Review Boards. The final regulations maintain the current requirements. In addition, the regulations have been amended to incorporate by reference portions of 34 CFR part 97 that had been repeated in parts 350 and 356.

Part 350—Disability and Rehabilitation Research: General Provisions

Section 350.1 What are the purposes of activities supported under the disability and rehabilitation research program?

Comment: Two commenters recommended including improving cost-effectiveness of services under the Act in the list of purposes of activities supported by NIDRR.

Discussion: The Secretary agrees that improving the cost-effectiveness of services under the Act is an important purpose for activities supported by NIDRR.

Changes: Section 350.1 has been revised to include improving the cost-effectiveness of services under the Act in the list of purposes of the activities supported by NIDRR.

Comment: Two commenters recommended that the special emphasis placed on individuals with disabilities from minority backgrounds should be broadened to include all persons who do not have equitable access to rehabilitation.

Discussion: The special emphasis placed on individuals with disabilities from minority backgrounds is a statutory requirement contained in section 21 of the Act. The Secretary points out that applicants may propose to emphasize the needs of individuals with disabilities who have inequitable access to rehabilitation services. However, the Secretary declines to require all applicants to propose such an emphasis.

Changes: None.

Comment: Two commenters recommended that the special emphasis placed on individuals with disabilities from minority backgrounds should be broadened to include women with disabilities.

Discussion: As indicated above, the special emphasis placed on individuals with disabilities from minority backgrounds is based on a statutory requirement. The Secretary believes that women with disabilities have unique needs that should be addressed in NIDRR's research agenda. The Secretary believes that the appropriate approach to addressing the unique needs of women with disabilities in NIDRR's research agenda is through the issuance of absolute priorities on specific issues.

Changes: None.

Comment: One commenter recommended adding that one of the purposes of NIDRR's activities is to ensure that consumers are able to make informed choices regarding their employment outcomes.

Discussion: The Secretary points out that § 350.1(a)(1) states, in part, that one of the purposes of NIDRR's research is to address rehabilitation problems such as physical restoration, vocational rehabilitation, independent living, and community integration. The Secretary believes that research addressing the ability to make personal decisions related to employment is included in the purpose set forth in § 350.1(a)(1). The Secretary does not believe any further clarification is necessary.

Changes: None.

Comment: One commenter recommended requiring applicants to address one or more of the approaches that are set forth in § 350.21 as examples of what an applicant may do to meet this section's requirements to demonstrate how the project will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Discussion: The Secretary does not intend for the approaches set forth in § 350.21 to be exhaustive. The Secretary recognizes that there are activities not included in this section that meet the requirements of the law. The Secretary believes that applicants should have the discretion to propose other activities that meet these requirements.

Changes: None.

Section 350.3 What regulations apply to these programs?

Comment: One commenter recommended revising the part of § 350.3(d)(2) that requires an IRB that regularly reviews another vulnerable category of subjects such as children who do not have disabilities, prisoners, pregnant women, or adults with disabilities to consider including one or more individuals who are knowledgeable about the experience in working with these subjects. The commenter recommended mandating the inclusion of such an individual.

Discussion: The IRB requirements that apply to many of the Department's programs are contained in 34 CFR part 97, which is incorporated by reference in part 350. These regulations are currently under review. If changes are made to the IRB requirements, the Secretary prefers to make them in part 97. The commenter's recommendation will be considered as part of the Department's review of the IRB requirements in part 97.

Changes: While no changes have been made to the IRB requirements as a result of the comment, as indicated previously, the regulations include a technical revision that incorporates by reference portions of part 97 that have been repeated in parts 350 and 356.

Part 351—Disability and Rehabilitation Research: Research and Demonstration Projects

Section 351.1 What is the research and demonstration projects program?

Comment: One commenter recommended adding "respite" to the term "family support" in this section.

Discussion: The Secretary recognizes that respite is an important part of family support. However, respite is one of many aspects of family support. The Secretary declines to list all of the aspects of this, or other terms, in this section.

Changes: None.

Section 351.10 What types of projects are authorized under this program?

Comment: One commenter recommended substituting a term such as "homebased" for "homebound" because the latter term has negative connotations.

Discussion: The Secretary recognizes the pejorative connotation of the term "homebound." However, the term "homebound" appears in the 1992 amendments to the Rehabilitation Act.

Changes: None.

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Part 352—Disability and Rehabilitation Research: Rehabilitation Research and Training Centers

Section 352.41 What is the advisory committee requirement for a grantee under this program?

Comment: One commenter recommended revising the regulations to encourage applicants to include persons with disabilities from minority backgrounds on advisory councils, where applicable.

Discussion: The Secretary believes that the regulations clearly encourage applicants to involve persons with disabilities from minority backgrounds in all phases of their activities. The Secretary does not believe any further encouragement is necessary.

Changes: None.

Part 353—Disability and Rehabilitation Research: Rehabilitation Engineering Research Centers

Section 353.10 What types of activities are authorized under this program?

Comment: One commenter pointed out that the word "medical" does not appear in this section and recommended including medical sciences research among the types of authorized activities.

Discussion: The Secretary points out that § 353.10 is taken directly from the 1992 amendments to the Rehabilitation Act. The Secretary recognizes that medical sciences research frequently is involved in the development of devices and services to improve functioning and independence. The Secretary does not believe that any revision is necessary.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of the regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small public and private agencies applying for Federal funds under these programs. However, the regulations will not have a significant economic impact on the entities affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Administrative practice and procedure, Education, Educational research, Grant program—education, Individuals with disabilities.

34 CFR Part 351

Education, Educational research, Grant program—education, Individuals with disabilities, Intergovernmental relations, Vocational rehabilitation.

34 CFR Part 352

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

34 CFR Part 353

Education, Educational research, Grant program—education, Individuals with disabilities, Intergovernmental relations, Rehabilitation engineering research, Technical assistance, Vocational rehabilitation.

34 CFR Part 356

Education, Educational research, Grant program—education, Individuals with disabilities, Vocational rehabilitation.

Dated: March 30, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute on Disability and Rehabilitation Research)

The Secretary amends parts 350, 351, 352, 353, and 356 of Title 34 of the Code of Federal Regulations as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

1. The authority citation for part 350 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

2. Section 350.1 is amended by revising the heading and paragraphs (a) and (b)(3) to read as follows:

§ 350.1 What are the purposes of activities supported under the disability and rehabilitation research program?

(a) The activities funded by the Institute—

(1) Support the conduct of research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages, with particular emphasis on improving the effectiveness, including the cost-effectiveness, of services authorized under the Act;

(2) Provide for a comprehensive and coordinated approach to the support and conduct of research, demonstration projects, training, and related activities, and to ensure that the approach is in accordance with the long-range plan for research developed by the Institute;

(3) Promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects relating to—

(i) The procurement process for the purchase of rehabilitation technology;

(ii) The utilization of rehabilitation technology on a national basis; and

(iii) Specific adaptations or customizations of products to enable individuals with disabilities to live more independently;

(4) Ensure the widespread distribution to rehabilitation professionals, individuals with disabilities, and other interested parties, in usable formats, of practical scientific and technological information that is generated by research, demonstration projects, training and related activities;

(5) Ensure the widespread dissemination to rehabilitation

professionals, individuals with disabilities, and other interested parties, in usable formats, of new knowledge about disabilities, including state-of-the-art practices and improvements in the services authorized under the Act;

(6) Identify effective strategies that enhance the opportunities for individuals with disabilities to engage in productive work; and

(7) Increase the opportunities for researchers who are individuals with disabilities or members of minority groups or other traditionally underserved populations.

(b) * * *

(3) Research grants for the establishment and operation of rehabilitation engineering research centers (34 CFR part 353).

* * * * *

3. Section 350.2 is amended by revising the undesignated introductory text to read as follows:

§ 350.2 Who is eligible for assistance under these programs?

The following agencies and organizations are eligible for grants or contracts as appropriate under these programs, except for programs described in 34 CFR Parts 352, 353, 356, and 360.

* * * * *

4. Section 350.3(d) is amended by revising paragraph (d) to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(d)(1) Subject to the additional requirement in paragraph (d)(2) of this section, 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects.

5. Section 350.4 is amended by revising the definitions and authority citations in paragraph (b) for "Individual with handicaps," "Individual with severe handicaps," "Rehabilitation engineering," "Research utilization," and "Supported employment," and adding new definitions of "Assistive technology device," "Assistive technology service," "Disability," and "Personal assistance services," to read as follows:

§ 350.4 What definitions apply to these programs?

* * * * *

(b) * * *

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(Authority: Sec. 7(23); 29 U.S.C. 706(23)

* * * * *

Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(Authority: Sec. 7(24); 29 U.S.C. 706(24))

* * * * *

Disability means a physical or mental impairment that substantially limits one or more major life activities.

(Authority: Sec. 7(26)(B); 29 U.S.C. 706(26)(B))

* * * * *

Individual with a disability means any individual who:

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: Sec.7(8)(B); 29 U.S.C. 706(8)(B))

* * * * *

Individual with a severe disability means an individual with a disability—

(1)(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or

(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(Authority: Sec. 7(15)(C); 29 U.S.C. 706(15)(C))

* * * * *

Personal assistance services means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities, on or off the job, that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: Sec. 7(11); 29 U.S.C. 706(11))

* * * * *

Rehabilitation engineering means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with

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disabilities in such functional areas as mobility, communications, hearing, vision, cognition and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sec. 12(c); 29 U.S.C. 711(c))

* * * * *

Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Sec. 7(13); 29 U.S.C. 706(13))

* * * * *

Research utilization means activities seeking to link research findings to practical applications in planning, policymaking, program administration, and service practice in the delivery of services to individuals with disabilities.

(Authority: Sec. 12(c); 29 U.S.C. 711(c))

* * * * *

Supported employment means competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of the nature and severity of their disability, need intensive supported employment services and extended services after transition in order to perform that work. The term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

(Authority: Sec. 7(18); 29 U.S.C. 706(18))

* * * * *

6. Section 350.20 is revised to read as follows:

§ 350.20 What are the application procedures under these programs?

An applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 whose application is to conduct research, demonstrations, or related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques, shall follow the requirements in EDGAR §§ 75.155–75.159, including—

(a) Submitting a copy of its application for comment to the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities; and

(b) Including in its application copies of transmittal letters to the appropriate State agency or agencies indicating that the necessary copies were transmitted on or before the due date for transmittal of the application to the Department.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

7. A new § 350.21 is added to read as follows:

§ 350.21 What is required of each applicant relative to the needs of individuals with disabilities from minority backgrounds?

Unless the Secretary indicates otherwise, an applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 must demonstrate how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. The approaches an applicant may take to meet this requirement, in whole or in part, may include one or more of the following:

(a) Proposing project objectives concerning minorities with disabilities.

(b) Demonstrating that its application addresses a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(c) Demonstrating that minority individuals will be included in study samples in sufficient numbers to generate information pertinent to minority individuals with disabilities.

(d) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(e) Providing rehabilitation services, clinical care, or training to minority individuals with disabilities.

(f) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 12(c) and 21(b)(6); 29 U.S.C. 711(c) and 718b(b)(6))

8. Section 350.34 is amended by adding new paragraphs (b)(5) and (c)(14); removing the word "and" at the end of paragraphs (b)(3) and (c)(12); removing the period and adding, in its place,"; and" at the end of paragraphs (b)(4) and (c)(13); and adding an OMB control number following the section to read as follows:

§ 350.34 What selection criteria does the Secretary use in reviewing applications under parts 351, 354, or 355?

* * * * *

(b) * * *

(5) There is likely to be widespread dissemination of the results, in a usable and effective manner, to all appropriate target populations, including individuals with disabilities and their family members.

(c) * * *

(14) The materials to be used in the project and the materials to be disseminated are likely to be in formats that are accessible to the appropriate populations.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

9. Section 350.40 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 350.40 What are the matching requirements?

* * * * *

(b)(1) * * *

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of children with disabilities and older individuals with disabilities, (including American Indians), attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassettes to individuals who are deaf, and innovative methods for providing services for children with disabilities and their parents.

* * * * *

10. A new § 350.41 is added to read as follows:

§ 350.41 What are the requirements of a grantee relative to the Client Assistance Program?

All projects that provide services to individuals with disabilities with funds awarded under these programs must advise those individuals who are applicants for or recipients of services under the Act, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act, and must provide information on the means of seeking assistance under the CAP.

(Authority: Sec. 20; 29 U.S.C. 718a)

PART 351—DISABILITY AND REHABILITATION RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

11. The authority citation for part 351 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

12. Section 351.1 is revised to read as follows:

§ 351.1 What is the research and demonstration projects program?

This program is designed to support—

(a) Discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities; and

(b) Discrete research, demonstration, and training projects that specifically address the implementation of Titles I, III, VI, VII, and VIII of the Act, with emphasis on projects to improve the effectiveness of these programs and to meet the needs described in State Plans submitted to the Rehabilitation Services Administration by State vocational rehabilitation agencies.

(Authority: Sec. 204(a); 29 U.S.C. 761 and 762)

13. Section 351.10 is amended by revising paragraphs (a) and (b)(3) through (7) and (9); adding a new paragraph (b)(10); and revising the authority citation to read as follows:

§ 351.10 What types of projects are authorized under this program?

* * * * *

(a)(1) Studies and analyses of medical rehabilitation and restorative techniques, rehabilitation techniques or services, industrial, vocational, social, recreational, psychiatric, psychological, economic, and other factors affecting rehabilitation of individuals with disabilities;

(2) Studies and analyses of special problems of individuals who are homebound and individuals who are institutionalized;

(3) Studies, analyses, and demonstrations of architectural and engineering design—including universal design—adapted to meet the special needs of individuals with disabilities;

(4) Studies, analyses, and other activities related to supported employment; and

(5) Related activities that hold promise of increasing knowledge and improving the rehabilitation of individuals with disabilities, particularly those with the most severe disabilities and those who are members of populations that are unserved or underserved by programs under this Act.

(b) * * *

(3) International research, demonstration, training, and technical assistance projects, and exchange of experts;

(4) Joint projects with other Federal agencies and private industry in areas of joint interest involving rehabilitation;

(5) Research related to the rehabilitation of children or older individuals with disabilities, including older American Indian individuals with disabilities;

(6) Projects to develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of individuals with disabilities, including individuals with severe disabilities;

(7) Research and demonstration projects on the provision of services for children through the age of five with disabilities;

* * * * *

(9) Research concerning the use of existing telecommunication systems to improve services to individuals with disabilities; and

(10) Demonstration projects to provide incentives for the development, manufacture, and marketing of orphan technological devices to enable individuals with disabilities to achieve independence and access to gainful employment.

(Authority: Secs. 202(b)(8), 204(a), and 204(b)(4)–(10), (12), (15), and (16); 29 U.S.C. 761a(b)(8), 762(a), and 762(b)(4)–(10), (12), (15), and (16))

PART 352—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

14. The authority citation for Part 352 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

15. Section 352.1 is revised to read as follows:

§ 352.1 What is the Rehabilitation Research and Training Centers program?

This program supports Rehabilitation Research and Training Centers for the purpose of—

(a) Conducting coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities;

(b) Providing training to service providers at the preservice, inservice, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services;

(c) Providing advanced research training to individuals, including individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation; and

(d) Serving as national and regional technical assistance resources, and providing training for service providers, individuals with disabilities and their families and representatives, and rehabilitation researchers.

(Authority: Sec. 204(b)(2); 29 U.S.C. 762(b)(2))

16. Section 352.2 is revised to read as follows:

§ 352.2 Who is eligible for assistance under this program?

Under this program, awards may be made to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, that—

(a) Are of sufficient size, scope and quality to carry out effectively the activities in an efficient manner consistent with appropriate State and Federal law;

(b) Demonstrate the ability to carry out the training activities, either directly or through another entity that can provide that training; and

(c) Demonstrate that the Center will be operated in collaboration with an institution of higher education or provider of rehabilitation or other appropriate services.

(Authority: Secs. 204(a) and 204(b)(2)(A)(i) and (K); 29 U.S.C. 762(a) and 762(b)(2)(A)(i) and (K))

17. Section 352.10 is revised to read as follows:

§ 352.10 What activities are authorized under this program?

(a) Rehabilitation Research and Training Centers shall conduct research activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Basic or applied medical rehabilitation research.

(2) Research regarding the psychological and social aspects of rehabilitation.

(3) Research regarding disability policy.

(4) Research related to vocational rehabilitation.

(5) Research that promotes the social, emotional, functional, and educational growth of children who have disabilities.

(6) Research to develop and evaluate interventions, policies, and services that

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support families of children and adults who have disabilities.

(7) Research that will support the improvement of services and policies to foster the productivity, independence, and social integration of individuals with disabilities of all types, to live in their communities.

(b) Rehabilitation Research and Training Centers shall conduct training activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Training of students preparing to be rehabilitation personnel.

(2) Training at the preservice, inservice, and graduate levels to assist individuals to provide rehabilitation services more effectively.

(3) Training at graduate, preservice, and inservice levels for rehabilitation research personnel.

(4) In-service training for individuals with disabilities and their family members, guardians, advocates, or authorized representatives.

(5) Faculty support for teaching rehabilitation-related courses of study for credit and other courses offered by the Center.

(c) Rehabilitation Research and Training Centers shall disseminate information and provide technical assistance, which must be accessible to and usable by individuals with disabilities, through conferences, workshops, public education programs, inservice training programs, publications, and similar activities, to—

(1) Providers of rehabilitation and other relevant services to individuals with disabilities;

(2) Individuals with disabilities;

(3) Family members of individuals with disabilities; and

(4) Other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families.

(d) Rehabilitation Research and Training Centers may use part of their funds to provide services connected with their research and training activities to individuals with disabilities.

(e) Rehabilitation Research and Training Centers are encouraged—

(1) To develop practical applications for the findings of their research; and

(2) To disseminate information and provide technical assistance to administrators, policymakers, and representatives of public and private organizations whose activities affect the productivity, independence, and community integration of individuals with disabilities.

(Authority: Sec. 204(b)(2)(A)(ii),(B)–(D), and (F)–(I); 29 U.S.C. 762(b)(2)(A)(ii), (B)–(D), and (F)–(I))

18. Section 352.31 revising paragraph (c)(2)(iii); adding (c)(2)(vi) and (vii); removing the word "and" at the end of paragraph (c)(2)(iv); removing the period, and adding in its place a semicolon at the end of paragraph (c)(2)(v); republishing the OMB control number; and revising the authority citation to read as follows:

§ 352.31 What selection criteria are used under this program?

* * * * *

(c) * * *

(2) * * *

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

* * * * *

(vi) Widespread dissemination of findings and other appropriate materials to providers of rehabilitation and other relevant services to individuals with disabilities, individuals with disabilities, family members of individuals with disabilities, and other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families; and

(vii) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(2); 29 U.S.C. 761a(e) and 762(b)(2))

19. Section 352.33 is revised to read as follows:

§ 352.33 What is the project period of a Rehabilitation Research and Training Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(2)(L); 29 U.S.C. 762(b)(2)(L))

20. A new § 352.34 is added to read as follows:

§ 352.34 What other factors does the Secretary consider in making an award under this program?

In making an award under this program, the Secretary takes into consideration the location of any proposed Center and the appropriate geographic and regional allocation of all Centers.

(Authority: Sec. 204(b)(2)(J); 29 U.S.C. 762(b)(2)(J))

21. The authority citation in § 352.40 is revised to read as follows:

(Authority: Section 204(b)(2); 29 U.S.C. 762(b)(2))

22. The heading of part 353 is revised to read as follows:

PART 353—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION ENGINEERING RESEARCH CENTERS

23. The authority citation for part 353 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(3), unless otherwise noted.

24. Section 353.1 is revised to read as follows:

§ 353.1 What is the Rehabilitation Engineering Research Centers program?

Rehabilitation Engineering Research Centers conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

25. Section 353.2 is revised to read as follows:

§ 353.2 Who is eligible for assistance under this program?

A public or private entity, including an Indian tribe or tribal organization, is eligible to receive an award under this program if the entity demonstrates that the Center will be operated by, or in collaboration with, an institution of higher education or a nonprofit organization.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

26. Section 353.10 is revised to read as follows:

§ 353.10 What types of activities are authorized under this program?

(a) Rehabilitation Engineering Research Centers shall carry out research and demonstration activities through—

(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—

(i) Planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and

(ii) Studying and evaluating the effectiveness and benefits of new or emerging technologies, products, or environments.

(2) Demonstrating and disseminating—

(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that will promote the use of assistive technology services; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—

(i) Consumer-responsive and individual and-family-centered innovative models for the delivery to both rural and urban areas of innovative, cost-effective rehabilitation technology services that promote utilization of rehabilitation devices; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities.

(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, the Rehabilitation Engineering Research Centers shall carry out research, training, and information dissemination activities by—

(1) Cooperating with programs established under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407), and other regional and local programs, to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to increase awareness and understanding of how rehabilitation technology can address their needs, and the range of options, programs, services, and resources available, including financing options for the technology and services covered by the area of focus of the Center;

(2) Providing training to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology; and

(c) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the area of focus of the Center.

(Authority: Secs. 204(b)(3); 29 U.S.C. 762(b)(3))

27. Section 353.31 is amended by adding a new paragraph (c)(4); replacing the colon at the end of paragraph (b)(2)(vi) with a period; removing the "and" at the end of paragraph (c)(2)(iv); removing the period at the end of paragraph (c)(3) and adding, in its place "; and"; republishing the OMB control number; and revising the authority citation to read as follows:

§ 353.31 What selection criteria are used under this program?

* * * * *

(c) * * *

(4) The plan provides for effective cooperation with appropriate State, local, and regional organizations and projects to provide information to individuals with disabilities and their family members, advocates, and representatives, about the potential uses and benefits, and resources for obtaining, rehabilitation technology.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(3); 29 U.S.C. 761a(e) and 762(b)(3))

28. A new § 353.33 is added to read as follows:

§ 353.33 What is the project period of a Rehabilitation Engineering Research Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(3)(E); 29 U.S.C. 762(b)(3)(E))

29. A new § 353.40 is added to read as follows:

§ 353.40 What additional requirements must be met by a grantee under this program?

(a) A Rehabilitation Engineering Research Center shall cooperate with State rehabilitation agencies, and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended.

(b) A Rehabilitation Engineering Research Center funded under this program shall prepare and submit to the Secretary, either as part of an application for continuation of a grant or as part of a final report, a report that documents the short- and long-term impact of the center's program and program outcomes on the lives of individuals with disabilities, and such other information as the Secretary may request.

(Authority: Sec. 204(b)(3)(G); 29 U.S.C. 762(b)(3)(G))

30. A new § 353.41 is added to read as follows:

§ 353.41 What is the advisory committee requirement for a grantee under this program?

A Rehabilitation Engineering Research Center that conducts research or demonstration activities that facilitate service delivery systems change shall have an advisory committee of which the majority of the members are individuals with disabilities who are users of rehabilitation technology, or the parents, family members, guardians, advocates, or authorized representatives of users of assistive technology.

(Authority: Secs. 204(b)(3)(D)(ii); 29 U.S.C. 762(b)(3)(D)(ii))

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

31. Section 356.3(c) is amended by revising paragraph (c) to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least

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one person primarily concerned with the welfare of these research subjects.

[FR Doc. 95–8342 Filed 4–4–95; 8:45 am]
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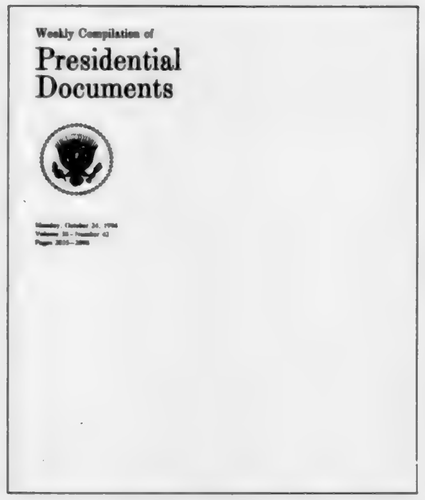
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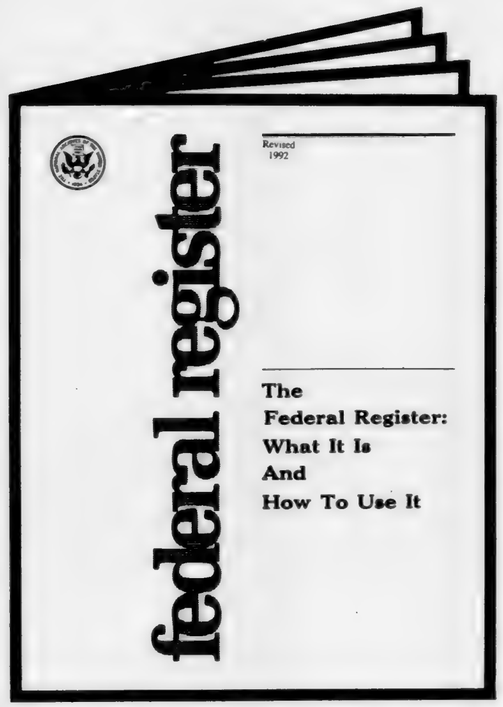
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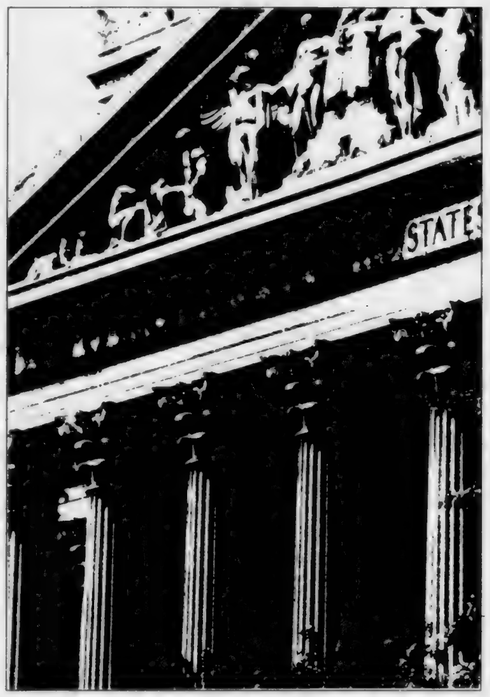
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV95-946-1IFR]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 946 for the 1995–96 fiscal period. Authorization of this budget enables the State of Washington Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by May 8, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Washington potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1995–96 fiscal period, which begins July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of Washington potatoes under this marketing order, and approximately 50 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the State of Washington Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met February 22, 1995, and unanimously recommended a 1995–96 budget of $42,300, $4,200 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Miscellaneous, $2,000 ($1,500), audit, $1,500 ($1,000), and compliance audits, $6,000 ($5,200).

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The Committee also recommended workman's compensation tax expenses of $400 for which no funding was recommended last year and $17,400 for an agreement with the Washington State Potato Commission to provide certain services to the Committee as specified in the agreement. Included in the $17,400 for this year are salaries and salary expenses which were budgeted separately last year at $11,200 and $1,800 and other expenses which were $2,400 for last year. In this year's budget, these items are included under the Commission agreement.

The Committee also unanimously recommended an assessment rate of $0.003 per hundredweight, $0.002 less than last season. This rate, when applied to anticipated shipments of 9 million hundredweight, will yield $27,000 in assessment income. This, along with $15,300 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve as of January 31, 1995, were $75,025, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other budget rules issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 946.247 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 946.247 Expenses and assessment rate.

Expenses of $42,300 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.003 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: March 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8425 Filed 4–5–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[FV95–985–2IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: April 6, 1995; comments received by May 8, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which ends on May 31, 1995. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which ends on May 31, 1995. This rule increases the salable quantity from 1,287,680 pounds to 1,358,404 pounds and the allotment percentage from 66 percent to 70 percent for Native spearmint oil for the 1994–95 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year were recommended by the Committee at its October 6, 1993, meeting. The Committee recommended salable quantities of 723,326 pounds and 897,388 pounds, and allotment percentages of 41 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 21, 1993, issue of the **Federal Register** (58 FR 67378). Comments on the proposed rule were solicited from interested persons until January 20, 1994. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year was published in the March 16, 1994, issue of the **Federal Register** (59 FR 12151).

At its June 14, 1994, teleconference meeting, the Committee recommended that the salable quantity and allotment percentage for Native spearmint oil for the 1994–95 marketing year be increased. The Committee recommended that the Native spearmint oil salable quantity be increased from 897,388 pounds to 1,092,577 pounds, and that the allotment percentage, based on a revised total allotment base of 1,951,032 pounds, be increased from 46 to 56 percent resulting in a 195,189 pound increase in the salable quantity.

An interim final rule was published in the August 26, 1994, **Federal Register** (59 FR 44028). Comments on the interim rule were solicited from interested persons until September 26, 1994. No comments were received.

At its October 5, 1994, meeting, the Committee recommended that the salable quantities for Scotch and Native spearmint oils for the 1994–95 marketing year be increased from 723,326 pounds to 811,516 pounds, and from 1,092,577 pounds to 1,287,680 pounds, respectively. Based on a revised total allotment base of 1,763,795 pounds, the Committee recommended that the allotment percentage for Scotch spearmint oil be increased from 41 percent to 46 percent, resulting in an 88,190 pound increase in the salable quantity. Further, based on the revised total allotment base published in the August 26, 1994, **Federal Register** (59 FR 44028), the Committee recommended that the allotment percentage for Native spearmint oil be increased from 56 percent to 66 percent, resulting in a 195,103 pound increase in the salable quantity.

An interim final rule amending the August 26, 1994, rule was published in the October 31, 1994, **Federal Register** (59 FR 54376). Comments on the interim rule were solicited from interested persons until November 30, 1994. No comments were received.

Accordingly, based upon an analysis of available information, a final rule finalizing the 1994–95 salable quantities and allotment percentages was published in the February 2, 1995, **Federal Register** (60 FR 6392).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its February 22, 1995, meeting, the Committee recommended, with one member voting in opposition, that the salable quantity for Native spearmint oil for the 1994–95 marketing year be increased from 1,287,680 pounds to 1,358,404 pounds. The member voting in opposition favored the establishment of a lower salable quantity that would have resulted in a lower allotment percentage. Based on the revised total allotment base of 1,951,032 pounds, the allotment percentage for Native spearmint oil is increased from 66 percent to 70 percent, resulting in a 70,724 pound increase in the salable quantity.

Native Spearmint Oil Recommendations

(1) Salable Quantity

October 6, 1993	897,388 pounds
June 14, 1994	1,092,577 pounds
October 5, 1994	1,287,680 pounds

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February 22, 1995 .....1,358,404 pounds
(2) Total Allotment Base
October 6, 1993 .....1,950,843 pounds
June 14, 1994.....1,951,032 pounds
October 5, 1994 .....1,951,032 pounds
February 22, 1995 .....1,951,032 pounds
(3) Allotment Percentage
October 6, 1993 .....46 percent
June 14, 1994.....56 percent
October 5, 1994 .....66 percent
February 22, 1995 .....70 percent

In making this latest recommendation the Committee considered all available information on supply and demand.

As of February 22, 1995, the Committee reports that of the 1994–95 marketing year Scotch and Native spearmint oil salable quantities of 811,516 pounds and 1,287,680 pounds, respectively, 154,375 pounds and 70,840 pounds remained available for handling. Handlers have indicated that the available supply of Scotch spearmint oil is adequate to meet anticipated demand through May 31, 1995. However, handlers have indicated that demand for Native spearmint oil may be as high as 100,000 pounds for the remainder of this marketing year. This level of demand was not anticipated by the Committee when it made its initial recommendation for the establishment of the Scotch and Native spearmint oil salable quantities and allotment percentages for the 1994–95 marketing year, nor was it foreseen when the Committee made its June 14 and October 5, 1994, recommendations for increasing the Native spearmint oil salable quantity and allotment percentage.

The recommended salable quantity of 1,358,404 pounds of Native spearmint oil (an increase of 70,724 pounds), combined with the June 1, 1994, carry-in of 19,139 pounds, results in a revised 1994–95 available supply of 1,377,543 pounds. The revised available supply of Native spearmint oil is approximately 300,000 pounds higher than the annual average of sales for the past five years. The Committee anticipates that foreseeable demand for Native spearmint oil will be adequately met for the remainder of the 1994–95 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 70 percent should be established for Native spearmint oil for the 1994–95 marketing year. This percentage will provide an increased salable quantity of 1,358,404 pounds of Native spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed, final, and interim final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.213 (60 FR 6392) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This interim final rule increases the quantity of Native spearmint oil that may be marketed immediately; (2) Handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native spearmint oil contained in this interim final rule; and (3) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.213 is amended by revising the introductory text and paragraph (b) to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.213 Salable quantities and allotment percentages—1994–95 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1994, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,358,404 pounds and an allotment percentage of 70 percent.

Dated: March 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8426 Filed 4–5–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0873]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; interpretation.

SUMMARY: The Board is issuing an interpretation of the provisions of its Regulation H, Membership of State Banking Institutions in the Federal Reserve System, concerning the establishment of loan production offices and "back office" facilities by state member banks. The interpretation provides that a state member bank may establish a back office facility that is not accessible to the public without such a facility being considered to be a branch. The interpretation also provides that loans originated by a loan production office may be approved at a back office location, rather than at the main office or a branch of the bank, without the loan production office being considered to be a branch, if the proceeds of loans originated by the loan production office are received by customers at locations other than a loan production office or back office facility. This interpretation is intended to provide parity between state member banks and national banks with respect to the establishment of loan production offices and back office facilities.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Lawranne Stewart, Senior Attorney (202/452–3513), Legal Division. For the hearing impaired *only:*, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: In connection with the acquisition of a mortgage company by a state member bank, the Board has been asked to consider two issues with respect to the types of facilities that a state member bank may establish to engage in activities related to lending at locations that are not approved branches: (1) Whether a state member bank may establish a "back office" facility that is not accessible to the public without such a facility being considered to be a branch of the bank; and (2) whether a loan production office will be considered to be a branch of the bank if it takes loan applications and performs related functions, but the loans are approved at locations other than an approved branch or main office of the bank. Under the Board's prior interpretation concerning loan production offices, published at 12 CFR 250.141, an office that engaged in loan origination activities was not considered to be a branch when the loans were approved and funds disbursed at the head office or a branch of the bank. "Back office" facilities that are not accessible to the public were not addressed in the prior interpretation.

State member banks are subject to the same limitations on branching as national banks.[1] Under the McFadden Act, national banks may establish branches only at locations at which a state bank would be permitted to establish a branch.[2] Interpreting the branching restrictions of the McFadden Act, the Supreme Court has stated that the purpose of the McFadden Act was to maintain competitive equality between national and state banks, and that the determination as to whether a facility was a branch must be based on the convenience of the customer, rather than on the technical or legal relationship between the customer and the bank.[3] In later cases addressing automated teller machines, the courts generally have rejected arguments that money is lent at the time and place where a loan or line of credit is approved, and instead found that money is lent for the purposes of the McFadden Act when the customer actually receives the funds and interest begins to run on the loan.[4]

[1] Federal Reserve Act, section 9, paragraph 3 (12 U.S.C. 321); Regulation H, § 208.9 (12 CFR 208.9).

[2] 12 U.S.C. 36(c). Under the McFadden Act, "branch" is defined to include "any branch bank, branch office, branch agency, additional office, or any branch place of business . . . at which deposits are received, or checks are paid, or money lent." 12 U.S.C. 36(f).

[3] *First National Bank of Plant City v. Dickinson*, 396 U.S. 122 (1969).

[4] *E.g., IBAA v. Smith*, 534 F.2d 921 (D.C. Cir. 1976); *Colorado ex rel. State Bank Brd. v. First Nat'l Bank*, 540 F. 2d 497 (10th Cir. 1976); *Illinois v. Continental Illinois NT&SA*, 409 F. Supp. 1167 (N.D. Ill. 1975), aff'd in relevant part, 536 F.2d 176 (7th Cir. 1976), cert. denied, 429 U.S. 871 (1976). Only one federal district court case stands in which the court concluded that a loan is made at the time that the bank and its customer reach agreement on the terms of the loan, and not at a location where only the proceeds of the loan are disbursed. *See Oklahoma ex. rel. State Banking Board v. Utica Nat'l Bank and Trust*, 409 F. Supp. 71 (N.D. Okla. 1975). This decision was criticized in each of the appellate court opinions that have addressed this issue.

The Board previously had determined that an office engaged in preliminary or servicing functions, such as soliciting loan applications and assembling credit information, is not lending money and therefore is not a "branch" for the purposes of the McFadden Act if the loans originated by the office are approved and the funds disbursed at the main office or an approved branch of the bank.[5] Whether a loan production office should be considered to be a branch if loans originated by the office are approved at locations other than the main office or a branch of the bank therefore depends on whether the location where loan approval takes place enhances the convenience to the customer and therefore provides a competitive advantage to the bank.

Back office facilities that are not accessible to the public are not visited by customers and do not appear to provide customers of the bank with any greater level of convenience. From the point of view of a customer whose loan has been originated at a loan production office, there does not appear to be any difference in the convenience based on whether the loan is approved at the back office facility or at a branch of a bank, as it is unlikely that the customer will visit either location.

Accordingly, the Board has concluded that, insofar as federal law is concerned, a state member bank may establish a back office facility without such a facility being considered to be a branch. The Board also has determined that loans originated by a loan production office may be approved at a back office location, rather than at the main office or a branch of the bank, without the loan production office being considered to be a branch under federal law, if the proceeds of loans originated by the loan production office are received by the customer at locations other than a loan production office or back office facility. This interpretation supersedes those portions of the Board's prior interpretation, published at 12 CFR 250.141, that concern loan production offices.

Administrative Procedures and Regulatory Flexibility Acts

The provisions of the Administrative Procedures Act concerning notice and comment are not applicable to interpretative rules. 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, a statement concerning the effects of the rule on small entities is also not required under the Regulatory Flexibility Act. 5 U.S.C. 604. The Board notes, however, that the interpretation provides greater flexibility to state member banks of all sizes in structuring their activities.

[5] 12 CFR 250.141

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 12 CFR part 208 is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and w; 31 U.S.C. 5318.

2. In Subpart E, § 208.123 is added in numerical order to read as follows:

§ 208.123 Loan production offices and "back office" facilities.

(a) *Scope.* The Board has considered two issues:

(1) Whether a state member bank may establish a "back office" facility that is not accessible to the public and is not visited by customers without such a facility being considered to be a branch of the bank; and

(2) Whether a loan production office will be considered to be a branch of the bank if it takes loan applications and performs related functions, but the loans are approved at locations other than an approved branch or main office of the bank and funds are not disbursed at the loan production office.

(b) *Authority.* State member banks are subject to the same limitations on branching as national banks. Federal Reserve Act, section 9, paragraph 3 (12 U.S.C. 321). Under the McFadden Act (44 Stat. 1228), national banks may establish branches within a state only at locations at which a state bank would be permitted to establish a branch. 12 U.S.C. 36(c). For the purposes of the McFadden Act, "branch" is defined to include "any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks are paid, or money lent." 12 U.S.C. 36(f). Interpreting the branching restrictions of the McFadden Act, the Supreme Court has stated that the purpose of the McFadden Act was to

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maintain competitive equality between national and state banks, and that the determination as to whether a facility was a branch must be based on the convenience of the customer, rather than on the technical or legal relationship between the customer and the bank. In later cases addressing automated teller machines, the courts generally have rejected arguments that money is lent at the time and place where a loan or line of credit is approved, and instead found that money is lent for the purposes of the McFadden Act when the customer actually receives the funds and interest begins to run on the loan. *See, e.g., IBAA* v. *Smith*, 534 F.2d 921 (D.C. Cir. 1976).

(c) *Interpretation.* The Board previously had determined that an office engaged in preliminary or servicing functions is not lending money and therefore is not a "branch" for the purposes of the McFadden Act if the loans originated by the office are approved and the funds disbursed at the main office or an approved branch of the bank. *See* 12 CFR 250.141. Whether a loan production office should be considered to be a branch if loans originated by the office are approved at locations other than the main office or a branch of the bank depends on whether the location where loan approval takes place enhances the convenience to the customer and therefore provides a competitive advantage to the bank. Back office facilities that are not accessible to the public are not visited by customers and do not appear to provide customers of the bank with any greater level of convenience. From the point of view of a customer whose loan has been originated at a loan production office, there does not appear to be any difference in the convenience based on whether the loan is approved at the back office facility or at a branch of a bank, as it is unlikely that the customer will visit either location. Based on this analysis, the Board has concluded that a state member bank may establish a back office facility without such a facility being considered to be a branch for the purposes of the McFadden Act. The Board also has determined that loans originated by a loan production office may be approved at a back office location, rather than at the main office or a branch of the bank, without the loan production office being considered to be a branch, provided that the proceeds of loans originated by the loan production office are received by the customer at locations other than a loan production office or back office facility. This interpretation supersedes the Board's prior interpretation, published at 12 CFR 250.141, as it applies to loan production offices.

By order of the Board of Governors of the Federal Reserve System, March 31, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8404 Filed 4–5–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Accounting and Financial Reporting Standards

AGENCY: Small Business Administration.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: On February 7, 1995, the Small Business Administration (SBA) published an interim final rule which updated the standards for accounting and financial reporting by Small Business Investment Companies (SBICs), as well as the guidelines for independent public accountants performing audits of SBIC financial statements. The interim final rule established a final date for comments to be submitted to SBA of March 9, 1995. SBA is reopening that comment period until April 30, 1995.

DATES: Written comments must be received on or before April 30, 1995.

ADDRESSES: Written comments should be sent to Robert D. Stillman, Associate Administrator for Investment, Small Business Administration, Suite 6300, 409 3rd Street SW., 6th floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Program Support; telephone no. (202) 205–7559.

SUPPLEMENTARY INFORMATION: SBA published an interim final rule on February 7, 1995 (60 FR 7392) which updated and reorganized the accounting standards for the SBIC program. The purpose of the revisions was to reflect recent changes in the SBIC program mandated by the Small Business Investment Act of 1958, as amended, as well as changes in generally accepted accounting principles.

The publication of the interim final rule took place at a time when many SBICs were in the midst of preparing their audited year end financial statements. Thus, a number of SBICs and their independent public accountants may not have had sufficient time to review the rule and to prepare and submit comments to SBA. Therefore, the comment period is hereby reopened and SBA will accept comments on the interim final rule until April 30, 1995.

Dated: March 31, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–8475 Filed 4–5–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–32–AD; Amendment 39–9185; AD 95–06–51]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–06–51 that was sent previously to all known U.S. owners and operators of Lockheed Model L–1011–385 series airplanes by individual telegrams. This AD requires inspection to detect corrosion, severed braided strands, or fuel leakage of the fuel feed line hose assembly on engine number two; and subsequent inspection or replacement of the fuel hose with a serviceable part, if necessary. This AD also requires treatment of the ends of the fuel hose and modification of the heat-shrunk plastic cover and steel identification band area. This amendment is prompted by a report of failure of an aluminum-braided flexible fuel hose on a Model L–1011–385 series airplane due to corrosion. The actions specified by this AD are intended to prevent failure of a flexible fuel hose, which could result in failure of an engine, loss of fuel, and a resultant fire.

DATES: Effective April 21, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–06–51, issued March 9, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maddie Miguel, Aerospace Engineer, Propulsion Branch, ACE–115A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7372; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On March 9, 1995, the FAA issued telegraphic AD T95–06–51, which is applicable to certain Lockheed Model L–1011–385 series airplanes. That action was prompted by a report of failure of an aluminum-braided flexible fuel hose on a Model L–1011–385 series airplane due to corrosion. This condition, if not corrected, could result in failure of an engine, loss of fuel, and a resultant fire.

The FAA received a report of failure of an aluminum-braided flexible fuel hose located immediately aft of the fuselage rear pressure bulkhead on a Model L–1011–385 series airplane. Ground maintenance personnel found a fuel leak when the airplane arrived at the gate after landing.

The operator performed a preliminary investigation of the fuel hose, and discovered that it was about 75 percent severed at a point approximately 7.0 inches from the inboard end. Inspection of the aluminum braiding in the area of the failure revealed that the braided strands were corroded and brittle. The corrosion occurred in an area of the stainless steel identification band, which has a translucent heat-shrunk plastic cover. The operator conducted subsequent inspections of its fleet and found two airplanes (out of a fleet of five airplanes) having corroded braided material in the area of the identification band. The cause of this corrosion has not been determined.

The FAA has reviewed and approved Lockheed Service Bulletin 093–28–A091, dated March 8, 1995, which describes procedures for a visual inspection to detect corrosion, severed braided strands, or fuel leakage of the fuel feed line hose assembly on engine number two; and inspections to detect ballooning of the fuel hose, or replacement of the fuel hose with a serviceable part, if necessary. The service bulletin also describes procedures for treatment of the ends of the hose, and modification of the heat-shrunk plastic cover and steel identification band area.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T95–06–51. The AD requires an inspection to detect corrosion, severed braided strands, or fuel leakage of the fuel feed line hose assembly on engine number two; and inspections to detect ballooning of the fuel hose, or replacement of the fuel hose with a serviceable part, if necessary. The AD also requires treatment of the ends of the fuel hose; and modification of the heat-shrunk plastic cover and steel identification band area. Replacement of the fuel hose with a serviceable part, if accomplished, terminates the requirements of this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on March 9, 1995, to all known U.S. owners and operators of Lockheed Model L–1011–385 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–32–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation

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that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–51 Lockheed Aeronautical Systems Company: Amendment 39–9185. Docket 95–NM–32–AD.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Service Bulletin 093–28–A091, dated March 8, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a flexible fuel hose, accomplish the following:

(a) Within 100 hours time-in-service or 10 days after the effective date of this AD, whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Lockheed Service Bulletin 093–28–A091, dated March 8, 1995.

(1) Perform a visual inspection to detect corrosion, severed braided strands, or fuel leakage of the fuel feed line hose assembly, part number (P/N) 96715–107 (Lockheed P/N 740970–107), on engine number two. And

(2) Treat the ends of the fuel hose where the collars are clamped to the braided strands, and modify the heat-shrunk plastic cover and steel identification band area.

(b) If no discrepancy is found during the inspection required by paragraph (a) of this AD: Following accomplishment of the actions required by paragraph (a)(2) of this AD, no further action is required by this AD.

(c) If any corrosion is found during any inspection required by this AD: Prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with Lockheed Service Bulletin 093–28–A091, dated March 8, 1995.

(1) Replace the fuel hose with a serviceable part. Or

(2) Inspect the fuel hose thereafter on a daily basis to detect ballooning of the hose. If any ballooning is found, prior to further flight, replace the fuel hose with a serviceable part.

(d) If any severed braided strand or any fuel leak is found during any inspection required by this AD: Prior to further flight, replace the fuel hose with a serviceable part in accordance with Lockheed Service Bulletin 093–28–A091, dated March 8, 1995.

(e) Replacement of the fuel hose assembly with a fuel hose assembly having P/N 740970–113 or P/N 96715–107 (Lockheed P/N 740970–107) constitutes terminating action for the requirements of this AD.

Note 2: The preferred replacement fuel hose assembly is P/N 740970–113.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Lockheed Service Bulletin 093–28–A091, dated March 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 21, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–06–51, issued on March 9, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8080 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–33–AD; Amendment 39–9189; AD 95–06–52]

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–06–52 that was sent previously to all known U.S. owners and operators of certain Dornier Model 328–100 series airplanes by individual telegrams. This AD requires removal of the bypass outlet plates from the lower cowlings of both engines. This amendment is prompted by reports of engine power rollback/flameout due to ingestion of ice into an engine. The actions specified by this AD are intended to prevent ingestion of ice into an engine, which could result in engine power rollback/flameout.

DATES: Effective April 21, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–06–52, issued on March 10, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Daimler-Benz Aerospace, Dornier, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On March 10, 1994, the FAA issued telegraphic AD T95–06–52, which is applicable to certain Dornier Model 328–100 series airplanes.

That AD was prompted by a report from the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, which advised the FAA of four incidents of engine power rollback/flameout. The cause of these incidents is still under investigation; however, the ingestion of ice into the engine has been identified as a contributing factor.

Certain Dornier Model 328–100 series airplanes are equipped with a plate that partially covers the bypass duct outlet port on the lower cowling of the air intake for both engines. This plate reduces air flow into the bypass duct, thereby reducing the effectiveness of the inertial separator. (The inertial separator consists of a sharp bend in the inlet duct that leads to the engine, and a bypass duct positioned in a straight line with the air intake ducting. Ice and other foreign matter is unable to travel around the bend in the ducting and thereby reach the engine due to the inertia of the foreign matter; such matter is swept overboard through the bypass duct.) Reduced effectiveness of the inertial separator would permit ice ingestion into the engine. The FAA has determined that removal of the bypass outlet plate on the lower cowlings of the engines reduces the possibility of ice ingestion into the engine.

Ingestion of ice into an engine, if not reduced to an acceptable level, could result in engine power rollback/flameout.

Dornier has issued Service Bulletin SB–328–71–086, dated March 6, 1995, which describes procedures for removal of the bypass outlet plates from the lower cowlings of both engines. Accomplishment of this modification will increase the bypass ratio of the engine inlet duct to prevent ingestion of ice into an engine and possible engine flameout. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 95–156, dated March 8, 1995, in order to assure the continued airworthiness of these airplanes in the Federal Republic of Germany.

This airplane model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T95–06–52, to require removal of the bypass outlet plates from the lower cowlings of both engines. The actions are required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on March 10, 1995, to all known U.S. owners and operators of certain Dornier Model 328–100 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–33–AD." The postcard will be date stamped and returned to the commenter.

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The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–52 Dornier: Amendment 39–9189. Docket 95–NM–33–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3033 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent ingestion of ice into an engine, which could result in engine power rollback/flameout, accomplish the following:

(a) Prior to further flight into known or forecast icing conditions, remove the bypass outlet plate having part number (P/N) 001A716A2002000 or P/N 001A716E2012000 from the lower cowlings of the engines, in accordance with Dornier Service Bulletin SB–328–71–086, dated March 6, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal shall be done in accordance with Dornier Service Bulletin SB–328–71–086, dated March 6, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Daimler-Benz Aerospace, Dornier, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 21, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–06–52, issued on March 10, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8447 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ANM–1]

Amend Class E Airspace; North Bend, OR

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at North Bend, Oregon, to encompass a new Standard Instrument Approach Procedure (SIAP) at North Bend Municipal Airport, Oregon. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–1, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the North Bend, OR, Class E airspace (59 FR 62361). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the North Bend, OR, Class E airspace by enlarging portions of the class E airspace to encompass new instrument procedures for aircraft operations within controlled airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace area designated as a surface area for an airport

* * * * *

ANM OR E2 North Bend, OR [Revised]

North Bend Municipal Airport, OR
(lat. 43°25′02″ N, long. 124°14′46″ W)
North Bend VORTAC
(lat. 43°24′56″ N, long. 124°10′06″ W)
Empire, LOM/NDB
(lat. 43°23′41″ N, long. 124°18′37″ W)

Within a 4.2-mile radius of the North Bend Municipal Aiport, and within 1.8 miles each side of the North Bend VORTAC 044° radial extending from the 4.2-mile radius to 5.7 miles northeast of the VORTAC, and within 3.7 miles each side of the North Bend VORTAC 092° radial extending from the 4.2-mile radius to 7.5 miles east of the VORTAC, and within 2.7 miles each side of the 241° bearing from the Empire LOM/NDB extending from the 4.2-mile radius to 6.1 miles southwest of the LOM/NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM OR E5 North Bend, OR [Revised]

North Bend VORTAC
(Lat. 43°24′56″ N, long. 124°10′06″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the North Bend VORTAC from the 142° radial CW to the 352° radial, and within a 14-mile radius of the VORTAC from the 352° radial CW to the 142° radial, and within 2.7 miles north of the North Bend VORTAC 268° radial extending from the 8-mile radius to 11 miles west of the VORTAC, and within 1.8 miles south and 5.7 miles north of the VORTAC 241° radial extending from the 8-mile radius to 14.8 miles southwest; that airspace extending upward from 1,200 feet above the surface within a 19.2-mile radius of the North Bend VORTAC extending clockwise from the west edge of V–27 south of the VORTAC, to the west edge of V–287 north of the VORTAC, and within 2.2 miles southeast and 10.1 miles northwest of the North Bend VORTAC 241° radial, extending from the VORTAC to 22.2 miles southwest.

* * * * *

Issued in Seattle, Washington, on March 17, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–8507 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD72

Computing Benefit Amounts, Disposing of Underpayments, Resolving Overpayments, and Payment Restriction

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are revising our rules on computation of benefits to define the term "first becomes eligible" as it relates to a pension based on noncovered employment. We are also revising the computation rules to provide that we will consider all government service used by a pension-paying agency when we determine whether an individual first became eligible before 1986 for a pension based on noncovered employment. Further, we are also revising our rule on determining fault regarding overpayments to state that benefit deductions because of net earnings from self-employment are not applicable after an individual attains age 70. Additionally, we are revising our rules on underpayments to clarify a misleading cross-reference. Finally, we are updating the list of countries to which benefit payments are withheld because of Treasury Department restrictions.

DATES: These regulations are effective April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 215(a)(7) of the Social Security Act (the Act) requires us to use a modified formula for computing the primary insurance amount (the basic benefit amount) of an individual's old-age or disability insurance benefit if the individual first becomes eligible after 1985 for such a benefit and for a monthly periodic payment based on noncovered employment. The modified formula applies to individuals who are concurrently entitled to such a monthly periodic payment and to old-age or disability benefits under title II of the Act. It results in a lower primary insurance amount than would have been computed if the monthly periodic payment had not been considered. However, neither the Act nor our regulations at 20 CFR 404.213 define the phrase "first becomes eligible."

In defining "first becomes eligible," we have identified two interpretations which pertain to the date creditable service is acquired. One interpretation is that an individual first becomes eligible when he or she has currently acquired enough service to qualify for a pension. The other interpretation is that an individual first becomes eligible when he or she has acquired enough service to qualify for a pension, regardless of when the service was acquired.

We recently became aware that some individuals have purchased credit for prior service, e.g., military service, which could affect their eligibility date and allow them to become eligible before 1986 for a monthly pension based on noncovered employment. Such an individual would thus be excluded from the modified computation because he or she first became eligible for the monthly pension before 1986. There is no restriction in the Act which precludes using purchased credit to establish eligibility before 1986 for a monthly pension based on noncovered

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employment and we see no reason not to consider purchased credits when deciding whether the modified computation applies.

We have adopted the interpretation that we will consider all applicable service used by the pension-paying agency, regardless of when the service was acquired. Under this interpretation, an individual "first become eligible" for a monthly periodic payment for the first month (including a past month) that the individual meets all the requirements for the payment except stopping work or applying for the payment. We are, therefore, amending § 404.213(a) to include the definition of "first becomes eligible" and our policy on applicable service.

Regarding underpayments, the current § 404.503(b), which reflects section 204(d) of the Act, provides that if an individual dies before receiving a title II benefit payment, the underpayment so created is payable to a person or persons in an order of priority as specified in that section. Paragraph (3) of § 404.503(b) provides that if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) entitled to a monthly benefit on the basis of the same earnings record as was the deceased individual" in the month of death. Under paragraph (6) of § 404.503(b), if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) who do not qualify under paragraph (b)(3)."

Section 404.374 defines "parent" as the natural, adoptive, or stepparent of an *insured* person and is based on the statutory requirements for eligibility for benefits as the parent of an insured worker. However, these stringent criteria are not required for purposes of receiving an underpayment. Section 204(d) (3) and (6) of the Act require only that the individual be the parent of the deceased underpaid beneficiary. The cross reference to § 404.374 in § 404.503(b) (3) and (6) results in an unduly restrictive definition of a parent who is eligible for an underpayment. We are, therefore, revising § 404.503(b) (3) and (6) so that for purposes of eligibility for an underpayment, the definition of "parent" in § 404.374 is extended to a parent of any deceased individual who was entitled to social security benefits.

Regarding overpayments, we are amending § 404.510, which lists the situations where an individual may be considered to be "without fault" for accepting an incorrect benefit payment. Paragraph (l) of that section explains that the overpaid individual may be "without fault" in causing the overpayment if he or she reasonably believed that net earnings from self-employment after attaining age 72 in a taxable year would not be cause for deductions from benefits for months in the year of attaining age 72 that are before the month of attainment. For months after 1982, the age at which social security beneficiaries are no longer subject to an earnings test has been reduced from age 72 to age 70. This reduction from age 72 to 70 is based on section 302 of Pub. L. 95–216 (the Social Security Amendments of 1977) which became effective for months after December 1982, as provided in section 2204 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981). We are, therefore, revising § 404.510(l) to change age 72 to age 70 for months after December 1982.

Our final amendment in these regulations is to delete Albania and the German Democratic Republic from the list in § 404.460 of countries to which the Department of the Treasury will not send benefit checks. On November 7, 1991, the Department of the Treasury removed the German Democratic Republic from the Withheld Check List set out in 31 CFR 211.1 by publishing final rules in the **Federal Register** at 56 FR 56931. On September 30, 1992, the Department removed Albania from the list by publishing final rules in the **Federal Register** at 57 FR 44998.

On July 20, 1994, we published proposed rules in the **Federal Register** at 59 FR 37000 with a 60-day comment period. We received no comments on those proposed rules. We are, therefore, publishing the proposed rules essentially unchanged as final rules.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance).

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits, Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Approved: March 30, 1995.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending subparts C, E, and F of part 404 of 20 CFR chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.213 is amended by adding two sentences after the first sentence of paragraph (a)(3) to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) * * *

(3) * * *

We consider you to first become eligible for a monthly pension in the first month for which you met all requirements for the pension except that you were working or had not yet applied. In determining whether you are eligible for a pension before 1986, we consider all applicable service used by the pension-paying agency. * * *

* * * * * *

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.460 is amended by revising the list of countries in paragraph (c)(3) to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * * *

(c) * * *

(3) * * *

Cuba

Democratic Kampuchea (formerly Cambodia)

North Korea

Vietnam

* * * * * *

5. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 404(a)–(d), 405(a), and 1302.

6. Section 404.503 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 404.503 Underpayments.

* * * * * *

(b) * * *

(3) The parent or parents of the deceased individual, entitled to a monthly benefit on the basis of the same earnings record as was the deceased individual for the month in which such individual died (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * * *

(6) The parent or parents of the deceased individual, who do not qualify under paragraph (b)(3) of this section (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * * *

7. Section 404.510 is amended by revising paragraph (l) to read as follows:

§ 404.510 When an individual is "without fault" in a deduction overpayment.

* * * * * *

(l) Reasonable belief, with respect to earnings activity for months after December 1982, that net earnings from self-employment after attainment of age 70 (age 72 for months after December 1972 and before January 1983) in the taxable year in which such age was attained would not cause deductions (see § 404.430(a)) with respect to benefits payable for months in that taxable year prior to the attainment of such age.

* * * * * *

[FR Doc. 95–8399 Filed 4–5–95; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–95–1729; FR–3474–F–03]

RIN 2506–AB53

Community Development Block Grant Program Economic Development Guidelines; Final Rule and Guidelines; Technical Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule and guidelines; technical amendments.

SUMMARY: The Department published in the **Federal Register**, a final rule and guidelines that established guidelines to assist Community Development Block Grant (CDBG) recipients in evaluating and selecting economic development activities for assistance with CDBG funds. The purpose of this document is to make certain clarifying technical amendments to that final rule.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Office of Block Grant Assistance, Room 7286, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3587; TDD: (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

§ 570.200 [Amended]

2. In § 570.200, paragraph (f)(2) is amended by removing the word "subrecipients", and by adding in its place the word "entities".

3. Section 570.208 is amended by revising paragraph (a)(1)(v), to read as follows:

§ 570.208 Criteria for national objectives.

(a) * * *

(1) * * *

(v) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

* * * * * *

§ 570.208 [Amended]

4. In § 570.208, paragraph (a)(4)(vi)(B) is amended by removing the phrase "a subrecipient", and by adding in its place the phrase "an entity".

5. In § 570.208, paragraph (a)(4)(vi)(F)(*2*) is amended by removing the cross-reference to "paragraph (a)(4)(v)(C)(*1*) of this section", and by adding in its place the cross-reference to "paragraph (a)(4)(vi)(F)(*1*) of this section".

§ 570.209 [Amended]

6. In § 570.209, paragraph (b) introductory text is amended by removing the cross-reference to "§ 570.208(a)(4)(vi)(D)(*2*)", and by adding in its place the cross-reference to "§ 570.208(a)(4)(vi)(F)(*2*)".

§ 570.483 [Amended]

7. In § 570.483, paragraph (b)(4)(vi)(B) is amended by removing the phrase "a subrecipient", and by adding in its place the phrase "an entity".

8. In § 570.483, paragraph (b)(4)(vi)(F)(*2*) is amended by removing the cross-reference to "paragraph (b)(4)(iii)(C)(*1*) of this section", and by adding in its place the cross-reference to "paragraph (b)(4)(vi)(F)(*1*) of this section".

9. Section 570.500 is amended by:

a. Amending paragraph (a)(4)(ii) by removing the period from the end of the

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fourth sentence that begins with "Amounts generated by activities financed with loans", and by adding in its place a comma and a phrase to the end of the fourth sentence; and

b. Amending paragraph (c) by removing the period from the end of the second sentence that begins with "The term excludes", and by adding in its place a comma and a phrase to the end of the second sentence, to read as follows:

§ 570.500 Definitions.

(a) * * *

(4) * * *

(ii) * * *, except that the use of such funds shall be limited to activities that are located in a revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to § 91.215(e) of this title. * * *

* * * * *

(c) * * *, unless the grantee explicitly designates it as a subrecipient.

* * *

Dated: March 30, 1995.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–8439 Filed 4–5–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55, 72, 178, and 179

[T.D. ATF–363; 94F–022P]

RIN 1512–AB35

Implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994. These regulations implement the law by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. Regulations are also prescribed with regard to reports of theft or loss of firearms from a licensee's inventory or collection, new requirements for Federal firearms licensing, responses by firearms licensees to requests for gun trace information, and possession of firearms by persons subject to restraining orders. The temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective on April 6, 1995, except for the provisions in § 178.92 (a)(2), (c)(i)(ii)(B) and (c)(i)(iii), which will be effective on July 5, 1995.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1994, Public Law 103–322 (108 Stat. 1796) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44), and Title XI of the Organized Crime Control Act of 1970, as amended (18 U.S.C. Chapter 40). The provisions of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (hereafter, "the Act"), became effective upon the date of enactment. Some of the new statutory provisions and the regulation changes necessitated by the law are as follows:

(1) *Restriction on Manufacture, Transfer, and Possession of Certain Semiautomatic Assault Weapons.* This amendment to the GCA prohibits the manufacture, transfer, and possession of semiautomatic assault weapons, with certain exceptions. The amendment bans 19 weapons by name, as well as any copies or duplicates of such firearms, and semiautomatic rifles, semiautomatic pistols, and semiautomatic shotguns which have 2 or more of the features specified in the law. The amendment "grandfathers" all semiautomatic assault weapons lawfully possessed on the date of enactment, i.e., September 13, 1994. Thus, semiautomatic assault weapons held in inventory by Federal firearms licensees (FFLs) on that date can continue to be possessed and transferred. Nonlicensed individuals in lawful possession of such weapons on the date of enactment may also continue to possess and transfer the weapons in accordance with applicable Federal and State law. The law also requires that the serial number of any semiautomatic assault weapon manufactured after September 13, 1994, clearly show that the weapon was manufactured after that date.

Rather than requiring manufacturers and importers to specify the actual date that such weapons were made, the temporary regulations provide that semiautomatic assault weapons manufactured after September 13, 1994, must be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY." This marking clearly provides notice that these weapons may only be lawfully possessed by government agencies and law enforcement personnel. As with other firearms, variances from the marking requirements may be requested. The Director may authorize other means of identification of the licensed manufacturer or importer upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of the regulations.

The temporary regulations permit manufacturers and dealers in semiautomatic assault weapons to stockpile such weapons for future sales to law enforcement agencies and law enforcement officers. Manufacturers of semiautomatic assault weapons, manufactured after September 13, 1994, will be permitted to transfer such weapons to any FFL upon obtaining evidence that the weapons will only be disposed of to law enforcement agencies and law enforcement officers. Examples of acceptable evidence are provided in the regulations. In the case of semiautomatic assault weapons imported after September 13, 1994, the existing controls on the importation of nonsporting weapons would continue to be imposed on importers of semiautomatic assault weapons. Thus, applications to import such weapons would be approved only if the importer submits a purchase order from a governmental entity.

The regulations will permit licensed dealers to possess semiautomatic assault weapons for sale to law enforcement agencies and law enforcement officers for official use. Dealers must retain evidence that their inventory of weapons is for sale to law enforcement agencies and law enforcement officers. Dealers are required to retain records of disposition indicating that the weapons were sold only to law enforcement agencies and law enforcement officers.

When any licensed manufacturer, importer, or dealer transfers a semiautomatic assault weapon to a law

enforcement officer, the regulations require that the licensee obtain written statements, under penalty of perjury, from the purchasing officer and a supervisory officer, stating that the weapon is for use in official duties and is not being acquired for resale. The purpose of these statements is to prevent the introduction of semiautomatic assault weapons into commercial channels.

(2) *Ban of Large Capacity Ammunition Feeding Devices.* This amendment to the GCA makes it unlawful to transfer or possess large capacity ammunition feeding devices. Exceptions are provided for devices lawfully possessed on the date of enactment and devices manufactured and sold to governmental entities. The Act defines a large capacity ammunition feeding device as a magazine, belt, feed strip or similar device manufactured after the date of enactment that has a capacity of, or can be readily restored or converted to accept more than 10 rounds of ammunition. The definition does not include an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition. The regulations also specifically exempt fixed magazines for manually operated firearms and firearms listed in the Appendix to 18 U.S.C. 922 from the definition of "large capacity ammunition feeding device." This exemption is based on the fact that manually operated firearms and firearms listed in the Appendix are specifically exempted from the prohibitions applicable to semiautomatic assault weapons. Unless the assault weapon exemptions apply to the fixed magazines for these weapons, the Act would effectively ban firearms expressly exempted from the assault weapon provisions. Accordingly, ATF interprets the definition of "large capacity ammunition feeding device" as being inapplicable to fixed magazines for manually operated firearms and firearms listed in the Appendix to 18 U.S.C. 922.

The law also provides that large capacity ammunition feeding devices manufactured after September 13, 1994, shall be identified by a serial number which clearly shows that the device was manufactured or imported after that date and such other markings as the Director may prescribe. The temporary regulations provide that a manufacturer or importer may use the same serial number for all large capacity ammunition feeding devices produced or imported. Prior to enactment of the Act, ammunition feeding devices were generally not marked with a serial number. Thus, the fact that these devices are marked with a serial number indicates that they were produced or imported after the effective date of the ban. Additionally, domestically made large capacity ammunition feeding devices must be marked with the name and address of the manufacturer, and imported large capacity ammunition feeding devices must be marked with the name of the manufacturer, country of origin, and the name and address of the importer. Further, large capacity ammunition feeding devices manufactured or imported after September 13, 1994, must be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY." This marking clearly provides notice that the magazines may only be lawfully possessed by government agencies and law enforcement personnel. The regulations also provide that manufacturers and importers of metallic links for use in the assembly of belted ammunition are only required to place the identification marks on the containers used for the packaging of the links. Finally, the regulations provide that the Director may authorize other means of identification of the manufacturer or importer under certain circumstances.

The regulations permit persons who manufacture, import, and deal in large capacity ammunition feeding devices to stockpile such devices for future sales to law enforcement agencies and law enforcement officers for official use. The regulations provide that possession and transfer of such devices by these persons will be presumed to be lawful if such persons maintain evidence establishing that the devices are possessed and transferred for sale to law enforcement agencies and law enforcement officers.

(3) *Firearms Licensure and Registration to Require a Photograph and Fingerprints.* The Act amended the GCA and the National Firearms Act (NFA) to require individual applicants for Federal firearms licenses and NFA special (occupational) tax stamps to provide a photograph and a set of fingerprints along with the application. Conforming changes to the regulations have been made in §§ 178.44(a) and 179.34(e) to implement these requirements.

(4) *Compliance with State and Local Law as a Condition to Licensure.* The Act amended the licensing standards of the GCA to require that an applicant for a Federal firearms license certify that the firearms business to be conducted under the license is not prohibited by State and local law, and will in fact be conducted in compliance with State and local law. Further, the applicant must certify that the chief law enforcement officer (CLEO) of the locality in which the premises are located has been notified that the applicant intends to apply for a Federal firearms license.

This provision has necessitated an amendment of the existing regulations regarding licensees who move their business to a new location during the term of an existing license. The regulations require a licensee, 30 days prior to such move, to file an application for amended license with the Chief, Firearms and Explosives Licensing Center. The purpose of the application is to ensure that the firearms business at the new location will comply with State and local law. The application also requires applicants for an amended license to notify the CLEO in the locality where the new premises are located of the intent to apply for an amended license.

The regulations have also been amended to require the certificate of compliance with State and local law to be executed upon license renewal. This is necessary due to changes which may have occurred in State and local law during the 3 year term of the license.

(5) *Action on Firearms License Application.* The Act amended the GCA to extend the period allowed for ATF to process Federal firearms license applications from 45 to 60 days. Section 178.47 (c) and (d) of the regulations has been amended to reflect this change.

(6) *Inspection of Firearms Licensees' Inventory and Records.* The Act amended section 923(g) of the GCA relating to inspection of Federal firearms licensees' records and inventory by ATF. Prior to amendment, the inventory and records of a licensee could only be examined once a year for ensuring compliance with GCA recordkeeping requirements. The amendment retains the annual inspection and also permits an FFL's records and inventory to be inspected or examined at any time with respect to a firearm involved in a criminal investigation that is traced to the licensee. Conforming changes have been made to the regulations in § 178.23(b)(2) to implement this requirement.

(7) *Reports of Theft or Loss of Firearms.* The Act amends the GCA to require FFLs to report any theft or loss of firearms from the licensee's inventory or collection to ATF and to the appropriate local authorities. The report must be made, both orally and in writing, within 48 hours after the theft or loss is discovered. FFLs must also retain a copy of the written report as part of their permanent records for 5 years. Conforming changes have been

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made to the regulations in §§ 178.39a and 178.129(b) to implement this requirement.

(8) *Responses to Requests for Information.* The Act amends the GCA to require FFLs to respond orally or in writing, as the Director may require, to firearms trace requests from ATF no later than 24 hours after receipt of the request. In addition, the law requires that the Director implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed and authorized by ATF to request such information. The regulations, § 178.25a, provide that the requested information shall be given orally to an ATF officer at the National Tracing Center. Verification of the identity and employment of National Tracing Center personnel requesting information may be established at the time the requested information is provided by telephoning the toll free number 1–800–788–7132 or using the toll free facsimile (FAX) number 1–800–578–7223.

(9) *Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Are Subject to Restraining Orders.* The Act amends the GCA to expand the list of persons who may not lawfully receive or possess firearms to include persons who are subject to a court order that restrains such person from harassing, stalking, or threatening an "intimate partner" or child of such intimate partner of the person. It is unlawful for persons who are subject to such orders to receive or possess firearms and it is unlawful for any person to sell or dispose of firearms to such persons, knowing or having reasonable cause to believe such persons are subject to such an order. The term "intimate partner" is defined as a spouse, former spouse, an individual who is a parent of a child of the person or an individual who cohabitates or has cohabitated with the person. Conforming changes have been made to the regulations in §§ 178.11, 178.32(a)(8), (d)(8), and 178.99(c)(8) to implement this provision of the law.

(10) *Possession of Explosives by Felons and Others.* The Act amends the Federal explosives laws to make it unlawful for felons and certain other prohibited persons to possess explosives. Prior to amendment, the law prohibited shipment, transportation, and receipt of explosives by prohibited persons, but did not prohibit possession. Conforming changes have been made to the regulations in § 55.26(b) to implement this provision of the law.

(11) *Summary Destruction of Explosives Subject to Forfeiture.* The Act amends the Federal explosives laws to provide for the immediate destruction of seized explosives materials by ATF where it is impractical or unsafe to remove or store the explosives. The regulations incorporate by reference ATF's existing procedures for seizure and forfeiture of property seized for violation of the law.

(12) *Prohibition Against Transactions Involving Stolen Firearms or Ammunition Which Have Moved in Interstate or Foreign Commerce.* The Act amends the GCA to make a technical amendment to section 922(j), relating to stolen firearms, to make it unlawful to possess stolen firearms. Prior to amendment this provision made it unlawful to receive, conceal, store, barter, sell, or dispose of stolen firearms, but did not prohibit possession. Language was also added to clarify the interstate commerce element of the statute. Conforming amendments to the regulations are prescribed in § 178.33.

(13) *Receipt of Firearms by Nonresident.* The Act amends the GCA to provide that it is unlawful for any person, other than an FFL, who does not reside in any State to receive firearms unless such receipt is for lawful sporting purposes. Conforming amendments to the regulations are prescribed in § 178.29a.

(14) *Disposing of Explosives to Prohibited Persons.* The Act amends the Federal explosives laws to make it unlawful for any person to sell or otherwise dispose of explosives to felons and other prohibited persons. Prior to amendment this provision prohibited such dispositions by licensees only. Conforming amendments to the regulations are prescribed in § 55.26(c).

(15) *Definition of Armor Piercing Ammunition.* The definition of "armor piercing ammunition" in the GCA has been amended by the Act to include full jacketed projectiles larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. Conforming amendments to the regulations are prescribed in § 178.11.

(16) *Exemption From Brady Background Check Requirement of Return of Handgun to Owner.* The Act amends the GCA to exempt transactions involving the return of a handgun to the person from whom it was received from the waiting period and background check requirements imposed by the Brady Handgun Violence Prevention Act. Regulations implementing this provision of the Act were published in T.D. ATF–361, published in the **Federal Register** on February 27, 1995 (60 FR 10782).

Miscellaneous

ATF is amending § 178.127 to reflect the new address of the ATF Out-of-Business Records Center located in Falling Waters, West Virginia. The regulation is also being amended to provide that where a licensed business is discontinued and succeeded by a new licensee, the licensee's records may be delivered to either the successor or to ATF.

In addition, ATF is making a technical amendment to § 178.45 to clarify that ATF Form 7CR is the correct form to file with ATF when a person desires to obtain a license as a collector of curios or relics under the GCA.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0526. The estimated average annual burden associated with the collection of

information in this regulation is 2.52 hours per respondent or recordkeeper. Other collections of information contained in this temporary rule have been approved under control numbers: 1512–0017, 1512–0018, and 1512–0019 (§ 178.119); 1512–0522 and 1512–0523 (§ 178.47); 1512–0524 (§ 178.39a); and 1512–0525 (§ 178.52).

For further information concerning the collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Part 72

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, and Surety bonds.

Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR parts 55, 72, 178, and 179 are amended as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.1(a) is revised to read as follows:

§ 55.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), and Pub. L. 103–322 (108 Stat. 1796).

* * * * *

Par. 3. Section 55.26 is amended by revising the title of the section, by revising paragraph (b), and by adding paragraph (c) to read as follows:

§ 55.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

* * * * *

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in interstate or foreign commerce who:

(1) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(4) Has been adjudicated as a mental defective or has been committed to a mental institution.

(c) No person shall knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age,

(2) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,

(3) Is a fugitive from justice,

(4) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(5) Has been adjudicated as a mental defective or has been committed to a mental institution.

Par. 4. Section 55.166 is amended by adding a sentence at the end of the section to read as follows:

§ 55.166 Seizure or forfeiture.

* * * (See § 72.27 of this title for regulations on summary destruction of explosive materials which are impracticable or unsafe to remove to a place of storage.)

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

Par. 5. The authority citation for 27 CFR Part 72 continues to read as follows:

Authority: 18 U.S.C. 921, 1261; 19 U.S.C. 1607, 1610, 1612, 1613, 1618; 26 U.S.C. 7101, 7322–7325, 7326, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 40 U.S.C. 304(k); 49 U.S.C. 784, 788.

Par. 6. Section 72.21(c) is revised to read as follows:

§ 72.21 Personal property and carriers subject to seizure.

* * * * *

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which such person is subject, firearms or ammunition seized or relinquished under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

Par. 7. Section 72.27 is added to Subpart C to read as follows:

§ 72.27 Summary destruction of explosives subject to forfeiture.

(a) Notwithstanding the provisions of § 55.166 of this Title, in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness.

(b) Within 60 days after any destruction made pursuant to paragraph (a) of this section, the owner of the property and any other persons having an interest in the property so destroyed may make application to the Director for reimbursement of the value of the property in accordance with the instructions contained in ATF

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Publication 1850.1 (9–93), Information to Claimants. ATF P 1850.1 is available at no cost upon request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950. The Director shall make an allowance to the claimant not exceeding the value of the property destroyed, if the claimant establishes to the satisfaction of the Director that—

(1) The property has not been used or involved in a violation of law; or

(2) Any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness.

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Par. 8. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 9. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), and Pub. L. 103–322 (108 Stat. 1796).

* * * * *

Par. 10. Section 178.11 is amended by revising the definition for "armor piercing ammunition," and by adding definitions for "intimate partner," "large capacity ammunition feeding device," "permanently inoperable," "semiautomatic assault weapon," "semiautomatic pistol," and "semiautomatic shotgun" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Armor piercing ammunition. Projectiles or projectile cores which may be used in a handgun and which are constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or full jacketed projectiles larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, projectiles which the Director finds are primarily intended to be used for sporting purposes, or any other projectiles or projectile cores which the Director finds are intended to be used for industrial purposes, including charges used in oil and gas well perforating devices.

* * * * *

Intimate partner. With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

Large capacity ammunition feeding device. A magazine, belt, drum, feed strip, or similar device for a firearm manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

* * * * *

Permanently inoperable. A firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition. An acceptable method of rendering most firearms permanently inoperable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearm permanently inoperable. Contact ATF for instructions.

* * * * *

Semiautomatic assault weapon. (a) Any of the firearms, or copies or duplicates of the firearms in any caliber, known as:

(1) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

(2) Action Arms Israeli Military Industries UZI and Galil,

(3) Beretta Ar70 (SC–70),

(4) Colt AR–15,

(5) Fabrique National FN/FAL, FN/LAR, and FNC,

(6) SWD M–10, M–11, M–11/9, and M–12,

(7) Steyr AUG,

(8) INTRATEC TEC–9, TEC–DC9 and TEC–22, and

(9) Revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(b) A semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A bayonet mount,

(4) A flash suppressor or threaded barrel designed to accommodate a flash suppressor, and

(5) A grenade launcher;

(c) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(1) An ammunition magazine that attaches to the pistol outside of the pistol grip,

(2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer,

(3) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned,

(4) A manufactured weight of 50 ounces or more when the pistol is unloaded, and

(5) A semiautomatic version of an automatic firearm; and

(d) A semiautomatic shotgun that has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A fixed magazine capacity in excess of 5 rounds, and

(4) An ability to accept a detachable magazine.

Semiautomatic pistol. Any repeating pistol which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

* * * * *

Semiautomatic shotgun. Any repeating shotgun which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

* * * * *

Par. 11. Section 178.23(b)(2) is revised to read as follows:

§ 178.23 Right of entry and examination.

* * * * *

(b) * * *

(2) For insuring compliance with the recordkeeping requirements of this part:

(i) Not more than once during any 12-month period, or

(ii) At any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee, or

* * * * *

Par. 12. Section 178.25a is added to Subpart C to read as follows:

§ 178.25a Responses to requests for information.

Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by an ATF officer at the National Tracing Center for information contained in the records required to be kept by this part for determining the disposition of one or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally to the ATF officer. Verification of the identity and employment of National Tracing Center personnel requesting information may be established at the time the requested information is provided by telephoning the toll-free number 1–800–788–7132 or using the toll-free facsimile (FAX) number 1–800–578–7223.

Par. 13. Section 178.29a is added to Subpart C to read as follows:

§ 178.29a Acquisition of firearms by nonresidents.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State shall receive any firearms unless such receipt is for lawful sporting purposes.

Par. 14. Section 178.32 is amended by revising paragraphs (a)(6), (a)(7), (d)(6), and (d)(7), and by adding paragraphs (a)(8) and (d)(8) to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(6) Has been discharged from the Armed Forces under dishonorable conditions,

(7) Having been a citizen of the United States, has renounced citizenship, or

(8) Is subject to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(ii) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(iii) (A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

* * * * *

(d) * * *

(6) Has been discharged from the Armed Forces under dishonorable conditions,

(7) Having been a citizen of the United States, has renounced citizenship, or

(8) Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child: *Provided,* That the provisions of this paragraph shall only apply to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii) (A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Par. 15. Section 178.33 is revised to read as follows:

§ 178.33 Stolen firearms and ammunition.

No person shall transport or ship in interstate or foreign commerce any stolen firearm or stolen ammunition knowing or having reasonable cause to believe that the firearm or ammunition was stolen, and no person shall receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

Par. 16. Section 178.39a is added to Subpart C to read as follows:

§ 178.39a Reporting theft or loss of firearms.

Each licensee shall report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered. Licensees shall report thefts or losses by telephoning 1–800–800–3855 (nationwide toll free number) and by preparing ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report, in accordance with the instructions on the form. The original of the report shall be forwarded to the office specified thereon, and Copy 1 shall be retained by the licensee as part of the licensee's permanent records. Theft or loss of any firearm shall also be reported to the appropriate local authorities.

(Approved by the Office of Management and Budget under control number 1512–0524)

Par. 17. Sections 178.40 and 178.40a are added to Subpart C to read as follows:

§ 178.40 Manufacture, transfer, and possession of semiautomatic assault weapons.

(a) *Prohibition.* No person shall manufacture, transfer, or possess a semiautomatic assault weapon.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply to:

(1) The possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed in the United States under Federal law on September 13, 1994;

(2) Any of the firearms, or replicas or duplicates of the firearms, specified in 18 U.S.C. 922, Appendix A, as such firearms existed on October 1, 1993;

(3) Any firearm that—

(i) Is manually operated by bolt, pump, lever, or slide action;

(ii) Has been rendered permanently inoperable; or

(iii) Is an antique firearm;

(4) Any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition;

(5) Any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine;

(6) The manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by

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a law enforcement officer employed by such an entity for purposes of law enforcement;

(7) The transfer to a licensee under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(8) The possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement;

(9) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation as authorized by the Director under the provisions of § 178.153; or

(10) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer for the purpose of exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778).

(c) *Manufacture and dealing in semiautomatic assault weapons.* Subject to compliance with the provisions of this part, licensed manufacturers and licensed dealers in semiautomatic assault weapons may manufacture and deal in such weapons manufactured after September 13, 1994: *Provided,* The licensee obtains evidence that the weapons will be disposed of in accordance with paragraph (b) of this section. Examples of acceptable evidence include the following:

(1) Contracts between the manufacturer and dealers stating that the weapons may only be sold to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section;

(2) Copies of purchase orders submitted to the manufacturer or dealer by law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(3) Copies of letters submitted to the manufacturer or dealer by government agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section expressing an interest in purchasing the semiautomatic assault weapons;

(4) Letters from dealers to the manufacturer stating that sales will only be made to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section; and

(5) Letters from law enforcement officers purchasing in accordance with paragraph (b)(6) of this section and § 178.132.

(Paragraph (c) approved by the Office of Management and Budget under control number 1512–0526)

§ 178.40a Transfer and possession of large capacity ammunition feeding devices.

(a) *Prohibition.* No person shall transfer or possess a large capacity ammunition feeding device.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply to:

(1) The possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed in the United States on September 13, 1994;

(2) The manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement;

(3) The transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(4) The possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement;

(5) The manufacture, transfer, or possession of any large capacity ammunition feeding device by a manufacturer or importer for the purposes of testing or experimentation in accordance with § 178.153; or

(6) The manufacture, transfer, or possession of any large capacity ammunition feeding device by a manufacturer or importer for the purpose of exportation in accordance with the Arms Export Control Act (22 U.S.C. 2778).

(c) *Importation, manufacture, and dealing in large capacity ammunition feeding devices.* Possession and transfer of large capacity ammunition feeding devices by persons who manufacture, import, or deal in such devices will be presumed to be lawful if such persons maintain evidence establishing that the devices are possessed and transferred for sale to purchasers specified in paragraph (b) of this section. Examples of acceptable evidence include the following:

(1) Contracts between persons who import or manufacture such devices and persons who deal in such devices stating that the devices may only be sold to law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(2) Copies of purchase orders submitted to persons who manufacture, import, or deal in such devices by law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(3) Copies of letters submitted to persons who manufacture, import, or deal in such devices by government agencies or other purchasers specified in paragraph (b) of this section expressing an interest in purchasing the devices;

(4) Letters from persons who deal in such devices to persons who import or manufacture such devices stating that sales will only be made to law enforcement agencies or other purchasers specified in paragraph (b) of this section; and

(5) Letters from law enforcement officers purchasing in accordance with paragraph (b)(2) of this section and § 178.132.

(Paragraph (c) approved by the Office of Management and Budget under control number 1512–0526)

Par. 18. Section 178.44 is revised to read as follows:

§ 178.44 Original license.

(a) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall include a photograph and fingerprints as required in the instructions on the form. The application shall be accompanied by a completed ATF Form 5300.37 (Certification of Compliance with State and Local Law) and ATF Form 5300.36 (Notification of Intent to Apply for a Federal Firearms License), and shall include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(b) Any person who desires to obtain a license as a collector under the Act and this part, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application, ATF Form 7CR (Curios and Relics), with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by a completed ATF Form 5300.37 and ATF Form 5300.36 and shall include the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7CR (Curios and Relics), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

Par. 19. Section 178.45 is revised to read as follows:

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, the licensee shall, unless otherwise notified in writing by the Chief, Firearms and Explosives Licensing Center, execute and file with ATF prior to the expiration of the license an application for a license renewal, ATF Form 8 Part II, accompanied by a completed ATF Form 5300.37 and ATF Form 5300.36, in accordance with the instructions on the forms, and the required fee. The Chief, Firearms and Explosives Licensing Center, may, in writing, require the applicant for license renewal to also file completed ATF Form 7 or ATF Form 7CR in the manner required by § 178.44. In the event the licensee does not timely file an ATF Form 8 Part II, the licensee must file an ATF Form 7 or ATF Form 7CR as required by § 178.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 Part II is not timely received through the mails, the licensee should so notify the Chief, Firearms and Explosives Licensing Center.

Par. 20. Section 178.47 is amended by adding "ATF Form 7CR," after "ATF Form 7," in paragraph (a) and the introductory text of paragraph (b), by adding new paragraph (b)(6), by removing "45-day" in paragraphs (c) and (d) and adding, in its place, "60-day," and by adding a parenthetical text at the end of the section to read as follows:

§ 178.47 Issuance of license.

(a) * * *

(b) * * *

(6) The applicant has filed an ATF Form 5300.37 (Certification of Compliance with State and Local Law) with ATF in accordance with the instructions on the form certifying under the penalties of perjury that—

(i) The business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises are located;

(ii) Within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of business;

(iii) The business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iv) The applicant has completed and sent or delivered ATF F 5300.36 (Notification of Intent to Apply for a Federal Firearms License) to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license. For purposes of this paragraph, the "chief law enforcement officer" is the chief of police, the sheriff, or an equivalent officer.

* * * * *

(Paragraph (b)(6) approved by the Office of Management and Budget under control numbers 1512–0522 and 1512–0523)

Par. 21. Section 178.52 is revised to read as follows:

§ 178.52 Change of address.

(a) Licensees may during the term of their current license remove their business or activity to a new location at which they intend regularly to carry on such business or activity by filing an Application for an Amended Federal Firearms License, ATF Form 5300.38, in duplicate, not less than 30 days prior to such removal with the Chief, Firearms and Explosives Licensing Center. The ATF Form 5300.38 shall be completed in accordance with the instructions on the form. The application must be executed under the penalties of perjury and penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the licensee's original license. The Chief, Firearms and Explosives Licensing Center, may, in writing, require the applicant for an amended license to also file completed ATF Form 7 or ATF Form 7CR, or portions thereof, in the manner required by § 178.44.

(b) Upon receipt of a properly executed application for an amended license, the Chief, Firearms and Explosives Licensing Center, shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is qualified at the new location, issue the amended license, and return it to the applicant. The license shall be valid for the remainder of the term of the original license. The Chief, Firearms and Explosives Licensing Center, shall, if the applicant is not qualified, refer the application for amended license to the regional director (compliance) for denial in accordance with § 178.71.

(Approved by the Office of Management and Budget under control number 1512–0525)

Par. 22. Section 178.57 is amended by designating the existing paragraph as (a) and by adding paragraphs (b) and (c) to read as follows:

§ 178.57 Discontinuance of business.

* * * * *

(b) Since section 922(v), Title 18, U.S.C., makes it unlawful to transfer or possess a semiautomatic assault weapon, except as provided in the law, any licensed manufacturer, licensed importer, or licensed dealer intending to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any semiautomatic assault weapon manufactured or imported after September 13, 1994, to a person specified in § 178.40(b), or, subject to the provisions of §§ 178.40(c) and 178.132, a licensed manufacturer, a licensed importer, or a licensed dealer.

(c) Since section 922(w), Title 18, U.S.C., makes it unlawful to transfer or possess a large capacity ammunition feeding device, except as provided in the law, any person who manufactures, imports, or deals in such devices and who intends to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any large capacity ammunition feeding device manufactured or imported after September 13, 1994, to a person specified in § 178.40a(b), or, subject to the provisions of §§ 178.40a(c) and 178.132, a person who manufactures, imports, or deals in such devices.

Par. 23. Section 178.92 is amended by revising the title of the section, by revising paragraph (a), and by adding paragraph (c) to read as follows:

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§ 178.92 Identification of firearms, armor piercing ammunition, and large capacity ammunition feeding devices.

(a) (1) *Firearms.* Each licensed manufacturer or licensed importer of any firearm manufactured or imported shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer; in the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) wherein the licensed manufacturer maintains its place of business; and in the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) of the importer.

(2) *Special markings for semiautomatic assault weapons, effective July 5, 1995.* In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the frame or receiver shall be marked "RESTRICTED LAW ENFORCEMENT/ GOVERNMENT USE ONLY" or, in the case of weapons manufactured for export, "FOR EXPORT ONLY," in the manner prescribed in paragraph (a)(1) of this section.

(3) *Exceptions.*

(i) *Alternate means of identification.* The Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application, in duplicate, from the licensed manufacturer or licensed importer showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(iii) *Machine guns, silencers, and parts.* A firearm frame or receiver, or any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a licensed manufacturer or licensed importer, shall be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(b) * * *

(c) *Large capacity ammunition feeding devices manufactured after September 13, 1994.* (1) Each person who manufactures or imports any large capacity ammunition feeding device manufactured or imported after September 13, 1994, shall legibly identify each such device with a serial number. Such person may use the same serial number for all large capacity ammunition feeding devices produced or imported.

(i) Additionally, in the case of a domestically made large capacity ammunition feeding device, such device shall be marked with the name, city and State (or recognized abbreviation thereof) of the manufacturer;

(ii) And in the case of an imported large capacity ammunition feeding device, such device shall be marked:

(A) With the name of the manufacturer, country of origin, and,

(B) Effective July 5, 1995, the name, city and State (or recognized abbreviation thereof) of the importer.

(iii) Further, large capacity ammunition feeding devices manufactured or imported after September 13, 1994, shall be marked "RESTRICTED LAW ENFORCEMENT/ GOVERNMENT USE ONLY" or, in the case of devices manufactured for export, effective July 5, 1995, "FOR EXPORT ONLY."

(2) All markings required by this paragraph (c) shall be cast, stamped, or engraved on the exterior of the device. In the case of a magazine, the markings shall be placed on the magazine body.

(3) *Exceptions.*

(i) *Metallic links.* Persons who manufacture or import metallic links for use in the assembly of belted ammunition are only required to place the identification marks prescribed in paragraph (c)(1) of this section on the containers used for the packaging of the links.

(ii) *Alternate means of identification.* The Director may authorize other means of identifying large capacity ammunition feeding devices upon receipt of a letter application, in duplicate, from the manufacturer or importer showing that such other identification is reasonable and will not hinder the effective administration of this part.

Par. 24. Section 178.99(c) is amended by removing the word "or" at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and replacing it with "; or", and by adding paragraph (c)(8) to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(8) Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii) (A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

* * * * *

Par. 25. Section 178.119 is added to Subpart G to read as follows:

§ 178.119 Importation of large capacity ammunition feeding devices manufactured after September 13, 1994.

(a) No large capacity ammunition feeding device manufactured after September 13, 1994, shall be imported or brought into the United States unless the Director has authorized the importation of such device.

(b) An application for a permit, ATF Form 6, to import or bring a large capacity ammunition feeding device into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name and address of the person importing the device,

(2) A description of the device to be imported, including model, caliber, size, country of manufacture, and name of the manufacturer,

(3) The unit cost of the device to be imported,

(4) The country from which to be imported,

(5) The name and address of the foreign seller and the foreign shipper,

(6) Verification that such device will be marked as required by this part, and

(7) A statement by the importer that the device is being imported for sale to purchasers specified in § 178.40a(b).

(c) If the Director approves the application, such approved application shall serve as the permit to import the device described therein, and importation of such devices may continue to be made by the person importing such devices under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the person importing such devices shall be notified of the basis for the disapproval.

(d) A large capacity ammunition feeding device imported or brought into the United States by a person importing such a device may be released from Customs custody to the person importing such a device upon showing that such person has obtained a permit from the Director for the importation of the device to be released. In obtaining the release from Customs custody of such a device authorized by this section to be imported through use of a permit, the person importing such a device shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the device. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of the person importing the device, the name of the manufacturer of the device, the country of manufacture, the type, model, caliber, size, and the number of devices released.

(e) Within 15 days of the date of release from Customs custody, the person importing such a device shall:

(1) Forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, and

(2) Pursuant to § 178.92, place all required identification data on each imported device if same did not bear such identification data at the time of its release from Customs custody.

(Paragraphs (a), (b), and (c) approved by the Office of Management and Budget under control numbers 1512–0017 and 1512–0018; paragraphs (d) and (e) approved by the Office of Management and Budget under control number 1512–0019)

Par. 26. Section 178.127 is amended by revising the second sentence to read as follows:

§ 178.127 Discontinuance of business.

* * * Where discontinuance of the business is absolute, the records shall be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center, Spring Mills Office Park, 2029 Stonewall Jackson Drive, Falling Waters, West Virginia 25419, or to any ATF office in the region in which the business was located: *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority: *Provided further,* That where a licensed business is discontinued and succeeded by a new licensee, the records may be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center or to any ATF office in the region in which the business was located.

Par. 27. Section 178.129 is amended by revising paragraph (b), by adding paragraph (e), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record, statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer. Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

* * * * *

(e) *Retention of records of transactions in semiautomatic assault weapons.* The documentation required by §§ 178.40(c) and 178.132 shall be retained in the licensee's permanent records for a period of not less than 5 years after the date of sale or other disposition.

(Paragraph (b) approved by the Office of Management and Budget under control numbers 1512–0520, 1512–0006, and 1512–0524; Paragraph (e) approved by the Office of Management and Budget under control number 1512–0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

Par. 28. Sections 178.132 and 178.133 are added to Subpart H to read as follows:

§ 178.132 Dispositions of semiautomatic assault weapons and large capacity ammunition feeding devices to law enforcement officers for official use.

Licensed manufacturers, licensed importers, and licensed dealers in semiautomatic assault weapons, as well as persons who manufacture, import, or deal in large capacity ammunition feeding devices, may transfer such weapons and devices manufactured after September 13, 1994, to law enforcement officers with the following documentation:

(a) A written statement from the purchasing officer, under penalty of perjury, stating that the weapon is being purchased for use in performing official duties and that the weapon is not being acquired for personal use or for purposes of transfer or resale; and

(b) A written statement from a supervisor of the purchasing officer, under penalty of perjury, stating that the purchasing officer is acquiring the weapon for use in official duties, that the firearm is suitable for use in performing official duties, and that the weapon is not being acquired for personal use or for purposes of transfer or resale.

(Approved by the Office of Management and Budget under control number 1512–0526)

§ 178.133 Records of transactions in semiautomatic assault weapons.

The evidence specified in § 178.40(c), relating to transactions in semiautomatic assault weapons, shall be retained in the permanent records of the manufacturer or dealer and in the records of the licensee to whom the weapons are transferred.

(Approved by the Office of Management and Budget under control number 1512–0526)

Par. 29. Section 178.152(a) is revised to read as follows:

§ 178.152 Seizure and forfeiture.

(a) Any firearm or ammunition involved in or used in any knowing

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violation of subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 of the Act, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) of the Act, or knowing violation of section 924 of the Act, or willful violation of any other provision of the Act or of this part, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or the delegate of the owner or possessor in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within 120 days of such seizure.

* * * * *

Par. 30. Section 178.153 is added to Subpart I to read as follows:

§ 178.153 Semiautomatic assault weapons and large capacity ammunition feeding devices manufactured or imported for the purposes of testing or experimentation.

The provisions of § 178.40 with respect to the manufacture, transfer, or possession of a semiautomatic assault weapon, and § 178.40a with respect to large capacity ammunition feeding devices, shall not apply to the manufacture, transfer, or possession of such weapons or devices by a manufacturer or importer for the purposes of testing or experimentation as authorized by the Director. A person desiring such authorization shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and addresses of the persons directing or controlling, directly or indirectly, the policies and management of the applicant, the nature or purpose of the testing or experimentation, a description of the weapons or devices to be manufactured or imported, and the source of the weapons or devices. The approved application shall be retained as part of the records required by Subpart H of this part.

Par. 31. Section 178.171 is amended by revising the last sentence to read as follows:

§ 178.171 Exportation.

* * * Licensed manufacturers and licensed importers exporting armor piercing ammunition and semiautomatic assault weapons manufactured after September 13, 1994, shall maintain records showing the name and address of the foreign consignee and the date the armor piercing ammunition or semiautomatic assault weapons were exported.

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 32. The authority citation for 27 CFR part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

§§ 179.34, 179.36, 179.42, 179.46, 179.47, and 179.50 [Amended]

Par. 33. Sections 179.34, 179.36, 179.42, 179.46, 179.47, and 179.50 are amended by removing "5630.5" wherever it occurs and, adding in its place, "5630.7."

Par. 34. Section 179.34(e) is added to read as follows:

§ 179.34 Special tax registration and return.

* * * * *

(e) *Identification of taxpayer.* If the taxpayer is an individual, with the initial return such person shall securely attach to Form 5630.7 a photograph of the individual 2 × 2 inches in size, clearly showing a full front view of the features of the individual with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 6 months prior to the date of completion of the return. The individual shall also attach to the return a properly completed FBI Form FD–258 (Fingerprint Card). The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them: *Provided*, That the provisions of this paragraph shall not apply to individuals who have filed with ATF a properly executed Application for License under 18 U.S.C. Chapter 44, Firearms, ATF Form 7 (5310.12) (12–93 edition), as specified in § 178.44(a).

Signed: February 10, 1995.

Daniel R. Black,

Acting Director.

Approved: February 27, 1995.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–8233 Filed 4–3–95; 4:18 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Civil Division Directive No. 14–95]

Redelegation by Civil Division of Authority to Compromise Civil Claims

AGENCY: Department of Justice, Civil Division.

ACTION: Final rule.

SUMMARY: This Directive implements a recent Attorney General order that increased settlement and compromise authority that the Assistant Attorneys General of the litigating divisions may redelegate to United States Attorneys in civil matters. This Directive, which supersedes Civil Division Directive 176–91, is being promulgated in order to increase Department efficiency.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Robert M. Hollis, Assistant Director, Commercial Litigation Branch, Civil Division, Department of Justice, room 11022, 550 11th Street NW., Washington, DC 20530; (202) 307–1100.

SUPPLEMENTARY INFORMATION: This Directive implements on behalf of the Civil Division the increase in the dollar amount of settlement authority which the Assistant Attorneys General may redelegate to United States Attorneys in civil matters. This increase in United States Attorney authority will further the efficient operation of the Department of Justice.

As a regulation related to internal Department of Justice management, this rule may become effective without provision for public comment pursuant to 5 U.S.C. § 553(b)(A). This Directive is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it has not been reviewed by the Office of Management and Budget. Pursuant to 5 U.S.C. § 605(b), the Assistant Attorney General for the Civil Division certifies that because the effect of this Directive is internal to the Department of Justice it will not have a significant adverse economic impact on a substantial number of small business entities.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. § 301, 28 U.S.C. §§ 509, 510, 515–519.

2. In the Appendix to Subpart Y, Civil Division Directive No. 176–91 is removed and Civil Division Directive 14–95 is added in its place to read as follows:

Appendix to Subpart Y—Redelegations of Authority To Compromise and Close Civil Claims

* * * * *

[Directive No. 14–95]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.160, 0.164, and 0.168, it is hereby ordered as follows:

Section 1. Authority To Compromise or Close Cases and to File Suits and Claims

(a) Delegation to Deputy Assistant Attorneys General. The Deputy Assistant Attorneys General are authorized to act for, and to exercise the authority of, the Assistant Attorney General in charge of the Civil Division with respect to the institution of suits, the acceptance or rejection of compromise offers, and the closing of claims or cases, unless any such authority is required by law to be exercised by the Assistant Attorney General personally or has been specifically delegated to another Department official.

(b) Delegation to United States Attorneys, Branch, Office and Staff Directors and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by 28 CFR 0.160(c), and 0.164(a) and section 4(c) of this directive, and the authority of the Solicitor General set forth in 28 CFR 0.163,

(1) Branch, Office, and Staff Directors, and Attorneys-in-Charge of Field Offices with respect to matters assigned or delegated to their respective components are hereby delegated the authority to:

(a) Accept offers in compromise of claims on behalf of the United States;

(i) In all cases in which the gross amount of the original claim did not exceed $500,000; and,

(ii) In all cases in which the gross amount of the original claim was between $500,000 and $5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed $500,000 or 15 percent of the original claim, whichever is greater;

(b) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed $500,000; and,

(c) Reject any offers.

(2) United States Attorneys with respect to matters assigned or delegated to their respective components are hereby delegated the authority to:

(a) Accept offers in compromise of claims on behalf of the United States;

(i) In all cases in which the gross amount of the original claim did not exceed $1,000,000 and,

(ii) In all cases in which the gross amount of the original claim does not exceed $5,000,000, and in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $1,000,000;

(b) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed $1,000,000 and,

(c) Reject any offers.

(3) With respect to claims asserted in bankruptcy proceedings, the term *gross amount of the original claim* in (1) (a) and (b), and (2) (a) and (b) above means liquidation value. *Liquidation value* is the forced sale value of the collateral, if any, securing the claim(s) plus the dividend likely to be paid for the unsecured portion of the claim(s) in an actual or hypothetical liquidation of the bankruptcy estate.

(c) Subject to the limitations imposed by sections 1(e) and 4(c) of this directive, United States Attorneys, Directors, and Attorneys-in-Charge are authorized to file suits, counterclaims, and cross-claims, to close, or to take any other action necessary to protect the interests of the United States in all routine nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the original claim does not exceed $500,000, or in the case of United States Attorneys, $1,000,000. Such actions in nonmonetary cases which are other than routine will be submitted for the approval of the Assistant Attorney General, Civil Division.

(d) United States Attorneys may redelegate in writing the above-conferred compromise and suit authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(e) Limitations on delegations. The authority to compromise cases, file suits, counter-claims, and cross-claims, to close cases, or take any other action necessary to protect the interests of the United States, delegated by paragraphs (a) and (b) of this section, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Civil Division, when:

(1) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs.

(2) Because a novel question of law or a question of policy is presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Civil Division.

(3) The agency or agencies involved are opposed to the proposed action. The views of an agency must be solicited with respect to any significant proposed action if it is a party, if it has asked to be consulted with respect to any such proposed action, or if such proposed action in a case would adversely affect any of its policies.

(4) The U.S. Attorney involved is opposed to the proposed action and requests that the matter be submitted to the Assistant Attorney General for decision.

(5) The case is on appeal, except as determined by the Director of the Appellate Staff.

Section 2. Action Memoranda

(a) Whenever an official of the Civil Division or a United States Attorney accepts a compromise, closes a claim or files a suit or claim pursuant to the authority delegated by this Directive, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file. In the case of matters compromised, closed, or filed by United States Attorneys, a copy of the memorandum must be sent to the appropriate Branch or Office of the Civil Division.

(b) The compromising of cases or closing of claims or the filing of suits for claims, which a United States Attorney is not authorized to approve, shall be referred to the appropriate Branch or Office within the Civil Division, for decision by the Assistant Attorney General or the appropriate authorized person within the Civil Division. The referral memorandum should contain a detailed description of the matter, the United States Attorney's recommendation, the agency's recommendation where applicable, and a full statement of the reasons therefor.

Section 3. Return of Civil Judgment Cases to Agencies

Claims arising out of judgments in favor of the United States which cannot be permanently closed as uncollectible may be returned to the referring Federal agency for servicing and surveillance whenever all conditions set forth in USAM 4–2.230 have been met.

Section 4. Authority for Direct Reference and Delegation of Civil Division Cases to United States Attorneys

(a) Direct reference to United States Attorneys by agencies. The following civil actions under the jurisdiction of the Assistant Attorney General, Civil Division, may be referred by the agency concerned directly to the appropriate United States Attorney for

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handling in trial courts, subject to the limitations imposed by paragraph (c) of this section. United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representations, subject to the limitations set forth in section 1(e) of this directive. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States, except claims involving penalties and forfeitures, where the gross amount of the original claim does not exceed $1,000,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Veterans Administration and the Farmers Home Administration.

(3) Suits to enjoin violations of, and to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376, the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a, the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d), the Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*, the Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.*, the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 *et seq.*, the Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 *et seq.*

(5) Social Security disability suits under 42 U.S.C. 423 *et seq.*

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 *et seq.*

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments and actions for general debt, 5 U.S.C. 5520a.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b).

(12) Cases referred by the Interstate Commerce Commission to enforce orders of the Interstate Commerce Commission or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 *et seq.*

(b) Delegation to United States Attorneys. Upon the recommendation of the appropriate Director, the Assistant Attorney General, Civil Division may delegate to United States Attorneys suit authority involving any claims or suits where the gross amount of the original claim does not exceed $5,000,000 where the circumstances warrant such delegations. United States Attorneys may compromise any case redelegated under this subsection in which the gross amount of the original claim does not exceed $5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed $1,000,000. United States Attorneys may close cases redelegated to them under this subsection only upon the authorization of the appropriate authorized person within the Department of Justice. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(e) of this directive also remain applicable in any case or claim delegated hereunder.

(c) Cases not covered. Regardless of the amount in controversy, the following matters normally will not be delegated to United States Attorneys for handling but will be personally or jointly handled or monitored by the appropriate Branch or Office within the Civil Division:

(1) Civil actions in the Court of Federal Claims.

(2) Cases within the jurisdiction of the Commercial Litigation Branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office.

(5) Any fraud or False Claims Act case where the amount of single damages, plus civil penalties, if any, exceeds $1,000,000.

(6) Any case involving vessel-caused pollution in navigable waters.

(7) Cases on appeal, except as determined by the Director of the Appellate Staff.

(8) Any case involving litigation in a foreign court.

(9) Criminal proceedings arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Office of Consumer Litigation.

(10) Nonmonetary civil cases, including injunction suits, declaratory judgment actions, and applications for inspection warrants, and cases seeking civil penalties including but not limited to those arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Office of Consumer Litigation.

(11) Administrative claims arising under the Federal Tort Claims Act.

Section 5. Adverse Decisions

All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult title 2 of the United States Attorney's Manual for procedures and time limitations. An appeal cannot be taken without approval of the Solicitor General. Until the Solicitor General has made a decision whether an appeal will be taken, the Government attorney handling the case must take all necessary procedural actions to preserve the Government's right to take an appeal, including filing a protective notice of appeal when the time to file a notice of appeal is about to expire and the Solicitor General has not yet made a decision. Nothing in the foregoing directive affects this obligation.

Section 6. Supersession

This directive supersedes Civil Division Directive No. 176–91 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to Branch Directors, heads of offices and United States Attorneys.

Section 7. Applicability

This directive applies to all cases pending as of the date of this directive and is effective immediately.

Approved: March 27, 1995.

Frank W. Hunger,

Assistant Attorney General, Civil Division.

Dated March 27, 1995.

John R. Schmidt,

Associate Attorney General.

[FR Doc. 95–8482 Filed 4–5–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Iowa regulatory program (hereinafter referred to as the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposed revisions to rules pertaining to rulemaking petitions, definitions, permit processing, permit revisions, bonding, backfilling and grading, alternative enforcement, and individual civil penalties. The amendment is intended to revise the Iowa program to be consistent with the corresponding Federal standards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

II. Proposed Amendment

By letter dated April 13, 1994, Iowa submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. IA–397). Iowa submitted the proposed amendment with the intent of satisfying the required program amendments codified at 30 CFR 915.6 (a) and (b), and at Iowa's own initiative to improve the operation of its program. The provisions of the Iowa Administrative Code (IAC) that Iowa proposed to revise were: IAC 27–40.3(207), 27–40.4(9), 27–40.31(14), 27–40.32(207), 27–40.51(7), 27–40.63(2), 27–40.74(3), and 27–40.75(2).

OSM announced receipt of the proposed amendment in the May 5, 1994, **Federal Register** (59 FR 23177), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. IA–402). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 6, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of IAC 27–40.32 (permit revisions), 27–40.51(7) (application for bond release), and 27–40.75(2) (individual civil penalties). OSM notified Iowa of the concerns by issue letter dated October 3, 1994 (Administrative Record No. IA–407).

Iowa responded in a letter dated November 8, 1994, by submitting a revised amendment (Administrative Record No. IA–408). Iowa proposed additional revisions to IAC 27–40.32 (permit revisions), 27–40.51(7) (bond release application), and 27–40.75(2) (individual civil penalties).

Based upon the revisions to the proposed program amendment submitted by Iowa, OSM reopened the public comment period in the November 23, 1994, **Federal Register** (59 FR 60341; Administrative Record No. IA–410). The public comment period ended on December 8, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Iowa on April 13, 1994, and as revised by it on November 8, 1994, is no less effective than the corresponding Federal regulations in meeting SMCRA's requirements. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Iowa's Rules

Iowa proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

IAC 27–40.32(3)a. 3. & 4. (no corresponding Federal provisions), requirements for permit amendment or revision;

IAC 27–40.32(5) (30 CFR 773.11(a)), permit renewal not required when only Phase III bond liability remains on the permit area;

IAC 27–40.32(6) (no corresponding Federal provision, additions to the Federal requirements at 30 CFR 774.15(b)), contents of permit renewal application; and

IAC 27–40.32(7) (no corresponding Federal provision), modification of the incorporation of Federal regulations by reference so that they cite the correct regulatory authority.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed revisions to the Iowa rules are no less effective than the Federal regulations in meeting SMCRA's requirements, and approves these proposed revisions.

2. Substantive Revisions to Iowa's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Iowa proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

IAC 27–40.4(9) (30 CFR 701.5, definition of "previously mined area").

IAC 27–40.32(3)a. (introductory text) (30 CFR 774.13(a)), permittee right to submit application for permit revision/amendment.

IAC 27–40.32(3)a.2. (30 CFR 774.11 (b) & (c)), right of regulatory authority to order permit revision/amendment, and administrative and judicial review of such orders.

Because these proposed Iowa rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations in meeting SMCRA's requirements and approves these proposed revisions.

The Director further notes that the revision to IAC 27–40.4(9) (definition of "previously mined area") satisfies a required program amendment codified at 30 CFR 915.16(a)(1) that was imposed on November 6, 1991 (56 FR 56578, 56594), and is removing this requirement.

3. IAC 27–40.3(207). General Provisions of Regulatory Program

Iowa proposes to add a new paragraph providing that "[i]n lieu of the regulations deleted at 30 CFR 700.12 concerning 'Petitions to initiate rulemaking,' rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, 'Petitions for Rulemaking' shall serve as the basis for submitting petitions to initiative rulemaking."

Iowa had previously submitted the referenced rules as part of an earlier program amendment, and OSM found them to be no less effective than the Federal regulations at 30 CFR 700.12 that Iowa chose not to incorporate by reference in its program. However, in that earlier amendment Iowa was required to further amend its program to include a clear reference to these State rules within its regulatory program (see 59 FR 5709, 5712; February 8, 1994; Finding No. 8). The Director finds that Iowa's current proposed program amendment clearly informs the public of where to locate the procedures and requirements for petitions for rulemaking under the Iowa regulatory program, and approves the proposal. Additionally, the proposal satisfies a required program amendment codified at 30 CFR 915.16(b)(1) that was imposed on February 8, 1994 (59 FR 5709, 5723); therefore the Director is removing this requirement.

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4. IAC 27–40.31(14). Requirements for Permits and Permit Processing

Iowa proposes to delete and reserve this subrule, which adds to Iowa's incorporation by reference of 30 CFR 773.15(a)(2) the words "[i]n case willful suppressing or falsifying of any facts or data is identified, the division may require the applicant to reapply for the same area." OSM notes that 30 CFR 773.15(a)(2) provides that in the review of applications for permits or permit revisions, the applicant has the burden of proof that the application is in compliance with all requirements of the regulatory program.

Iowa previously proposed this added language in a program amendment, but OSM found that under SMCRA Section 510(b)(1) and 30 CFR 773.15(c)(1) (Iowa counterpart provisions at Iowa Code 207.9(2)(a) and (IAC 27–40.31), if such willful suppressing or falsification of any facts or data in a permit application is identified, the regulatory authority would have no discretion and would be required to deny the permit. OSM thus found this Iowa subrule to conflict with SMCRA and the Federal regulations, and did not approve this subrule (see 59 FR 5709, 5714; February 8, 1994; Finding No. 13b). Iowa, in response, is now proposing to delete this unapproved language. OSM notes that the Iowa program, in the general incorporation by reference at IAC 27–40.31(207) of the Federal regulations at 30 CFR Part 773, continues to incorporate 30 CFR 773.15(a)(2) by reference. For the reasons specified in the February 8, 1994, **Federal Register**, the Director finds that the proposed deletion of this added language is not inconsistent with SMCRA or the Federal regulations, and is approving the deletion.

5. IAC 27–40.32(207). Permit Revision/ Amendment, Renewal, Transfer

Iowa proposes to delete its incorporation by reference of the Federal regulations at 30 CFR Part 774, as in effect on July 1, 1992 (with some exceptions and additions), and to add a new incorporation by reference of those same Federal regulations, but with a different set of exceptions and additions. Some of these new exceptions and additions are substantively the same as the old exceptions and additions, and have been addressed in Finding No. 1 above; others of the new additions are substantively the same as certain Federal regulatory provisions, and have been addressed in Finding No. 2 above; and the remainder of the exceptions and additions are discussed below.

a. IAC 27–40.32(1) Permit Revision/ Amendment Orders

Iowa proposes at IAC 27–40.32(1) not to incorporate into its program by reference the Federal requirements at 30 CFR 774.11 (b) and (c). However, as noted in Funding No. 2 above, Iowa is also proposing to add at IAC 27–40.32(3)a.2. requirements that are substantively the same as these Federal requirements. Therefore the Director approves the proposal at IAC 27–40.32(1) to delete 30 CFR 774.11 (b) and (c) from the new incorporation by reference.

b. IAC 27–40.32(2) Revisions Versus Amendments

Iowa proposes to use the term "revision"; to describe changes to permits that constitute significant departures from the approved permit, and to use the term "amendment" to describe changes that do not constitute significant departures. Iowa further proposes that significant departures shall be any change in permit area, mining method or reclamation procedure which would, in the opinion of the Iowa regulatory authority, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment. Finally, Iowa proposes to delete the incorporation by reference of the Federal regulations at 30 CFR 774.13 (permit revisions), except that the notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b), and 778.21 would apply to all "revisions" (i.e., to all significant departures). A related requirement at proposed IAC 227–40.32(3)c. would require that any application for either revision or amendment must provide replacement documentation fully describing the proposed changes, in the same detail as required in the original permit.

The Federal regulations at 30 CFR 774.13(b)(2) require regulatory authorities to establish guidelines which establish the scale or extent of permit revisions for which all of the permit application information requirements and permit application procedures of the Federal regulations (including the notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) & (3), and 778.21) shall apply, with the proviso that such requirements and procedures must apply at a minimum to all significant revisions.

The Director finds that Iowa, by (1) defining "revision" and "amendment," (2) requiring that the specified procedural requirements (notice, public participation, etc.) apply to all "revisions," and (3) requiring that revision and amendment applications contain replacement documentations in the same detail as the original permit, has established guidelines as required by 30 CFR 774.13(b)(2). Further, Iowa's proposed definitions assure that these requirements and procedures requirements will apply to all significant permit changes, as required by the proviso in that Federal regulation.

Regarding Iowa's proposal to delete the incorporation by reference of the Federal regulations at 30 CFR 774.13, OSM has reviewed Iowa's proposal and has determined that it incorporates counterpart requirements for each of the provisions of § 774.13 other than the one specifically discussed above (§ 774.13(b)(2)). As discussed in Finding No. 2 above and Finding No. 5c below, counterparts of those Federal provisions are incorporated in Iowa's proposed rules as follows (proposed IAC counterparts in parentheses): § 774.13(a) (IAC 27–40.32(3)a, introductory text); § 774.13(b)(1) (IAC 27–40.32(3)b.); § 774.13(c) (IAC 27–40.32(3)d.); and § 774.13(d) (IAC 27–40.32(3)e.). Based on the discussion in Finding Nos. 2 and 5c regarding these provisions, the Director finds that Iowa's proposal at IAC 27–40.32(2) not to incorporate 30 CFR 774.13 does not render the Iowa program less effective than § 774.13 in meeting SMCRA's requirements.

In summary, the Director finds Iowa's definitions of "revision" and "amendment" to be in accordance with the Federal regulations at 30 CFR 774.13(b)(2), and the deletion of the incorporation by reference of most of 30 CFR 774.13 to be no less effective than the Federal regulations in meeting SMCRA's requirements; the Director is therefore approving proposed IAC 27–40.32(2). Additionally, the proposal satisfies a required program amendment, codified at 30 CFR 915.16(a)(5), that was imposed on November 6, 1991 (56 FR 56578, 56594), and later modified on February 8, 1994 (59 FR 5709, 5723); the Director is therefore removing this requirement.

c. IAC 27–40.32(3) Requirements for Revisions and Amendments

1. *Permit changes that require either a permit revision or a permit amendment.* Iowa proposes at IAC 27–40.32(3)a.1. that either a revision or an amendment is required for any change in the approved permit; further, all information related to approved revisions or amendments must be updated in all public copies of the permit.

The Federal regulations at 30 CFR 774.13 do not directly address this issue. However, in the preamble to the Federal regulations at 30 CFR 774.13(b)(2), dated September 28, 1993 (48 FR 44344, 44377), OSM clarified its interpretation of these regulations that all changes must be approved and incorporated into the permit:

> Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to that document. The permit and all public copies of it should reflect all revisions approved by the regulatory authority so that all interested persons, including inspectors, the operator, and the public, will have an accurate copy of the permit. The permit is the document which authorizes the operator to mine and must be accurate.

The Director finds Iowa's proposal to be consistent with this interpretation and is approving the proposal.

2. *Timeframes for decisions on applications.* Iowa proposes at IAC 27–40.32(3)b. that applications for permit revisions will be approved or disapproved within 90 days following a determination of completeness, and that an application for an amendment will be approved or disapproved within 60 days of submittal of the application.

The Federal regulations at 30 CFR 774.13(b)(1) do not specify timeframes for action on revision applications, but rather require regulatory authorities to establish time periods for such approvals or disapprovals. The Director finds that Iowa's proposal establishes such time periods and that the time periods will ensure that operators receive timely decisions. Therefore the Director is approving the proposal.

3. *Administrative and judicial review.* Iowa proposes at IAC 27–40.32(3)c. that: "[a]ny application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules * * *." OSM notes that Part 9 of Iowa's rules contains, among other things, the requirements for administrative and judicial review of Iowa permit actions; it thus contains the Iowa program counterparts to 30 CFR Part 775 (administrative and judicial review of permit decisions).

The Federal regulations at 30 CFR 775.11(a) provide that decisions on applications for any permit revision (whether significant or insignificant) are subject to administrative review; under section 775.13(a), any administrative review decision (including administrative review of any permit revision application decision) is subject to judicial review. The Director finds that Iowa's proposal is consistent with these requirements and is approving the proposal.

4. *Criteria for approval.* Iowa proposes to add at IAC 27–40.32(3)d. three criteria for the approval of applications for permit revisions and amendments. The criteria proposed are: (1) That no such application shall be approved unless the application demonstrates, and the Iowa regulatory authority finds, that the reclamation as required by Iowa's Act and the regulatory program can be accomplished; (2) that the application complies with all requirements of the Act and the regulatory program; and (3) that "any applicable requirements of written findings for the permit have also been met."

The Federal regulations at 30 CFR 774.13(c) require that no application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds: (1) That reclamation as required by SMCRA and the regulatory program can be accomplished; (2) that the application complies with all requirements of SMCRA and the regulatory program; and (3) that "applicable requirements under section 773.15(c) which are pertinent to the revision are met." The cited rule, 30 CFR 773.15(c), specifies written findings for application approval, and, as applied to an application for a significant revision, requires that the application not be approved unless the application affirmatively demonstrates, and the regulatory authority finds in writing, that several specified requirements, where applicable, have been met.

The first two of Iowa's proposed criteria are substantively the same as those specified in the Federal regulations. The third criterion, written findings, is in one way more stringent than the Federal requirement because it is applied to both revision and amendment applications, whereas under the Federal regulations this criterion is applied only to applications for significant revisions. Under SMCRA section 505(b) and 30 CFR 730.11(b), no State regulation which provides for more stringent regulation of surface coal mining and reclamation operations than do the Federal regulations shall be construed to be inconsistent with SMCRA or with the Federal regulations.

OSM does not find, however, that this proposed third criterion ("and any applicable requirements of written findings for the permit have also been met") clearly requires that new findings be written (if applicable) for approval of the amendment or revision. Instead, Iowa's proposed language could be interpreted to be limited to requiring consistency of the revision/amendment application with the written findings of the original permit approval; such an interpretation would be less effective than the third criterion of the Federal regulation. However, OSM notes that Iowa added this criterion in its revised amendment of November 8, 1994 (Administrative Record No. IA–408), which responded to OSM's letter of October 3, 1994 (Administrative Record No. IA–407); in that letter, OSM had indicated to Iowa that its initial submittal was deficient in not containing a counterpart to OSM's criterion for written findings. In its revised amendment of November 8, 1994, Iowa indicates that this proposed language was intended to address that deficiency. OSM therefore concludes that Iowa intends its language to be interpreted in accordance with the requirements of the Federal regulation criterion; i.e., that Iowa intends that new written findings are required, if applicable, prior to approving an application for permit amendment or revision. Based on this understanding, the Director finds Iowa's proposal at IAC 27–40.32(3)d. to be no less effective than 30 CFR 774.13(c) in meeting SMCRA's requirements, and the Director is approving the proposal.

5. *Additions of area.* Iowa proposes at IAC 27–40.32(3)e. that any increase in permit area, except incidental boundary revisions (hereinafter, "IBR's"), shall not be approved under "this subrule" (i.e., neither as a permit revision nor as an amendment), but rather "shall be treated as" a new permit application. Iowa additionally proposes that IBR's are considered as significant departures and hence shall be treated as revisions;' that a total of 20 acres of IBR's would be allowed over the life of the permit, with individual increments subject to approval by Iowa (presumably under other criteria for determining "incidental"); and lastly, that applications for IBR's shall include a demonstration that the proposed additional permit area is contiguous to the approved permit.

OSM interprets Iowa's proposed language that increases in permit area (other than IBR's) "shall be treated as a new permit application" to mean that any application for increased area (unless it meets the criteria for an IBR) will be subjected to all the entire procedural and substantive requirements for a new permit application under IAC 27–40.31(207, 27–40.33(207), 27–40.34(207), 40–27.35 or .37(207), 27–40.36 or .38(207), and

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27–40.39(207). Under IAC 27–40.4(207) and 27–40.31(207), this would include the requirement that increases in permit area (other than IBR's) be made by means of an "administratively complete application."

The Federal regulations at 30 CFR 774.13(d) provide that any extension to the permit area, except IBR's, shall be made by application for a new permit. The Federal regulations provide no guidance as to what constitutes an "incidental" boundary revision.

Iowa's proposal, under OSM's interpretation stated above, would require additions other than IBR's to be made by application for a new permit. It places an upper limit on the amount of area that may be added by IBR's and requires that IBR's be contiguous to the permit; these proposed requirements add specificity to aid Iowa in determining what constitutes an "incidental" boundary revision. For these reasons the Director finds proposed IAC 27–40.32(3)e. to be consistent with the Federal regulations at 30 CFR 774.13(d) in meeting SMCRA's requirements, and is approving the proposal.

6. IAC 27–40.51(7). Time Requirements for Processing of Bond Release Applications

At IAC 27–40.51(7), Iowa previously proposed to modify 30 CFR 800.40(a)(2) (as incorporated by reference) by requiring the regulatory authority to determine that an application for bond release is complete before the bond release application is advertised. OSM did not approve that proposal because it would create conflicts with other required time frames in the processing of bond release applications (see 59 FR 5709, 5718; February 8, 1994; Finding No. 22).

Iowa now proposes to delete that unapproved modification of 30 CFR 800.40(a)(2); thus, under IAC 27–40.51(207), 30 CFR 800.40(a)(2) would be incorporated without modification. Iowa further proposes to add a new rule at IAC 27–40.51(7) which would provide that an application for bond release will not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by Iowa, and would further provide that Iowa will make a determination of completeness within 30 days of receipt.

Under the Federal regulations at 30 CFR 800.40, the starting point for all time requirements related to processing bond release applications is the date a bond release application is "filed;" but no clarification is provided regarding whether an application must be found to be complete before being considered "filed."

In the absence of any contrary indication in the Federal regulations, the concept of requiring a determination of completeness before considering a bond release application "filed" would not be considered inconsistent with those Federal regulations, providing other aspects of the bond release process are not adversely affected. One such aspect to be considered is the procedural protection afforded operators by assuring them of timely decisions on bond release applications. Iowa's proposal, by providing a maximum of 30 days for Iowa to make a determination of completeness, provides assurance that decisions on bond release applications will not be unduly delayed.

Further, OSM believes that this proposal will assist Iowa in the efficient administration of its program, and may also serve the interests of operators in obtaining bond releases: if incomplete applications are entered into the strict time frames of these procedures, there may not be sufficient time to resolve all problems before a decision must be rendered, resulting in the automatic denial of the application. This would require the operator to file a new application, which would delay the potential bond release and create an additional unnecessary workload for both the regulatory authority and the operator.

Based on the above discussion, the Director finds that Iowa's proposal at IAC 27–40.51(7) is not inconsistent with the Federal regulations at 30 CFR 800.40, and is approving the proposal.

7. IAC 27–40.63(2). Backfilling & Grading: Time and Distance Requirements

Iowa proposes to incorporate by reference 30 CFR 816.100 and delete the incorporation by reference of 816.101 (both as in effect on July 1, 1992), and add that the following shall apply: rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked (spoil from the active pit constituting the first ridge); except that Iowa may extend the time allowed for the entire permit area or for a specified portion of it if the permittee demonstrates (in accordance with IAC 27–40.36 [30 CFR 780.18(b)(3)]) that additional time is necessary. Iowa adds in a narrative note to the submittal that it intends to adopt time and distance standards only for area mining.

OSM's time and distance requirements at 30 CFR 816.101 were suspended on July 31, 1992 (57 FR 33874). Therefore OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of 30 CFR 816.100. This regulation requires that all reclamation efforts (including backfilling, grading, topsoil replacement, and revegetation) on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations (except when variances are granted for concurrent surface and underground mining activities).

As noted above, Iowa's proposal incorporates the general contemporaneous reclamation requirement of 30 CFR 816.100 by reference. The additional proposed time and distance requirements provide additional specificity to one aspect of the general requirement and is not inconsistent with the general requirement. Regarding Iowa's intention to specify time and distance standards only for area mining, OSM is aware that all recent coal mining in Iowa has been area mining, and because of the geology and geography of Iowa's coal fields it is likely that only area mining will occur in the near future. Should any other type of surface mining occur, it would still be subject to the general requirement of 30 CFR 816.100, which is consistent with the current Federal regulations (given that § 816.101 is suspended).

Based on the above discussion, the Director finds Iowa's proposal at IAC 27–40.63(2) to be consistent with the Federal regulations at 30 CFR 816.100, and is approving the proposal. The Director further notes that the incorporation by reference of 30 CFR 816.100 requires that topsoil replacement occur as contemporaneously as practicable with mining operations, and thus satisfies the required amendment codified at 30 CFR 915.16(b)(2) that was imposed on February 8, 1994 (59 FR 5709, 5723). Therefore the Director is removing this requirement.

8. IAC 27–40.74(3). Alternate Enforcement

Iowa proposes to revise existing incorrect cross-references to the Iowa Code that in this rule replace the cross-references to SMCRA in Iowa's incorporation by reference of 30 CFR 845.15(b)(2). Specifically, Iowa proposes to replace (in its incorporation of 30 CFR 845.15(b)(2) by reference) SMCRA Section 518(e) with Iowa Code Section 207.15(6), SMCRA Section 518(f) with Iowa Code Section 207.15(7), SMCRA Section 521(a)(4) with Iowa Code Section 207.14(3), and SMCRA Section 521(c) with Iowa Code Section 207.14(8).

The Director finds that Iowa has cited the correct Iowa Code counterparts to the cited SMCRA Sections, and that the proposal is thus no less effective than 30 CFR 845.15(b)(2) in meeting SMCRA's requirements, and is approving the proposal. The Director further notes that this approval fulfills the required amendment codified at 30 CFR 915.16(b)(3) that was imposed on February 8, 1994 (59 FR 5709, 5723). Therefore the Director is removing this requirement.

9. IAC 27–40.75(2). Definition of "Violation, Failure, or Refusal"

Iowa proposes to replace the definition of "violation, failure, or refusal" in the Federal regulations at 30 CFR 846.5 with a new definition that is substantively the same as the Federal definition, with one exception. The second part of the Federal definition includes failure or refusal to comply with certain orders, but excludes orders issued under SMCRA Sections 518(b) or 703. Iowa's corresponding statutory provisions (Iowa Code sections 207.15 and 207.28, respectively) do not specifically refer to the issuance of "orders." Therefore in this proposed definition, Iowa has replaced citations to its statute with citations to its implementing rules (IAC 27–40.74(7) and 27–40.7(207)), since these implementing rules do specifically refer to orders issued by Iowa. This replacement of statutory citations with regulatory citations renders Iowa's proposed definition substantively the same as the Federal definition. Therefore the Director is approving the proposal.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

In response to OSM's invitation of public comments, the State Historical Society of Iowa responded on June 17, 1994, with a suggestion that Iowa's proposed definition of "significant departure" (at proposed IAC 27–40.32(2)) be revised to include any change in the permit area, mining method, or reclamation procedure which would, in the opinion of the regulatory authority, significantly change the effect that mining operations would have on cultural resources (Administrative Record No. IA–404). OSM forwarded the suggestion to Iowa in the issue letter dated October 3, 1994 (Administrative Record No. IA–407).

Iowa included this suggestion in its revised amendment dated November 8, 1994 (Administrative Record No. IA–408). The Director is approving this proposed definition, as discussed in Finding No. 5.b above.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Iowa program. No comments were received.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IA–400). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IA–400). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Iowa's proposed amendment as submitted on April 13, 1994, and as revised on November 8, 1994.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 915.16 that, within 60 days of the publication of this final rule, Iowa must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Iowa's established administrative or legislative procedures.

The Director approves the rules as proposed by Iowa with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 915, codifying decisions concerning the Iowa program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 915—IOWA

11. The authority citation for Part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.15 is amended by revising the heading and by adding paragraph (k) to read as follows:

§ 915.15 Approval of amendments to the Iowa regulatory program.

* * * * *

(k) Revisions to and/or addition of the following rules, as submitted to OSM on April 13, 1994, and as revised on November 8, 1994, are approved effective April 6, 1995:

IAC 27–40.3(207), general provisions of regulatory program; 27–40.4(9), definition of "previously mined area;" 27–40.31(14), requirements for permits and permit processing; 27–40.32(207), revisions, amendment, renewal, transfer, sale, assignment of permit; 27–40.51(7), bond release applications; 27–40.63(20), backfilling and grading, time and distance requirements; 27–40.74(3), alternate enforcement; and 27–40.75(2), definition of "violation, failure, or refusal."

3. Section 915.16 is revised to read as follows:

§ 915.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Iowa is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Iowa's established administrative or legislative procedures.

[FR Doc. 95–8465 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 950118018–5083–02; I.D. 111494E]

RIN 0648–XX02

Atlantic Mackerel, Squid, and Butterfish Fisheries; Final 1995 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1995 Atlantic mackerel, squid, and butterfish fisheries.

SUMMARY: NMFS issues the final specifications for the 1995 fishing year for Atlantic mackerel, squid, and butterfish. This action complies with the regulations governing this fishery, which require NMFS to publish annual specifications.

EFFECTIVE DATE: April 5, 1995.

ADDRESSES: Copies of the Environmental Assessment are available from the Northeast Regional Office, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council appear at 50 CFR part 655. These regulations require NMFS to publish a document specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found in § 655.22.

These specifications are unchanged from the proposed specifications that were published in the **Federal Register** on January 26, 1995 (60 FR 5162). No public comments were received concerning the proposed specifications. After consideration of all relevant data, NMFS has made a final determination of the initial amounts for each species. The following table contains the final 1995 initial specifications for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish.

FINAL INITIAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1995 (MT)

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY[1]	44,000	30,000	[2] N/A	16,000
ABC[3]	36,000	30,000	850,000	16,000
IOY	36,000	30,000	[4] 100,000	10,000
DAH	36,000	30,000	[5] 100,000	10,000
DAP	36,000	30,000	50,000	10,000
JVP	0	0	35,000	0
TALFF	0	0	0	0

[1] Max OY as stated in the FMP.
[2] Not applicable; see the FMP.
[3] IOY can rise to this amount.
[4] This specification may be increased to 134,000 mt, the long-term potential catch for the Atlantic mackerel fishery.
[5] Contains 15,000 mt projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

NMFS also announces the four special conditions put forth for public comment that would affect any foreign joint venture fishery for Atlantic mackerel, should one occur in 1995: (1) River herring bycatch south of 37°30′ N. lat. may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Director, Northeast Region, NMFS (Regional Director) should do everything within his power to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fisheries; (3) IOY may be increased during the year, but the total should not exceed 134,000 mt; and (4) applications from any given nation for a joint venture for 1995 will not be decided on until the Regional Director determines, based on an evaluation of performances, that the nation's purchase obligations for previous years have been fulfilled. There were no comments received regarding these conditions.

Classification

This action is authorized by 50 CFR part 655.

These final specifications are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1995.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–8499 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 033195A]

Groundfish of the Gulf of Alaska; Prohibit Retention of Pacific Cod

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA) for processing by the inshore component. NMFS is requiring that catches of Pacific cod by these vessels in the Western Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of Pacific cod specified for the inshore component in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 31, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod total allowable catch (TAC) for the inshore component in the Western Regulatory Area, GOA, was established by the final 1995 specifications of groundfish (60 FR 8470, February 14, 1995), as 18,090 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the allocation of Pacific cod TAC specified for the inshore component in the Western Regulatory Area, GOA, has been reached. Therefore, NMFS is requiring that further catches of Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area in the GOA, be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8390 Filed 3–31–95; 4:09 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 66
Thursday, April 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket Nos. AO–214–A7; FV93–981–1]

Almonds Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order No. 981

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for almonds grown in the State of California. The proposed amendments would: Amend five existing definitions in the order; revise board representation, nomination procedures, terms of office, quorum and qualification procedures, voting and tenure requirements; modify creditable advertising provisions; revise volume control procedures; require handlers to maintain records in the State of California; authorize interest or late payment charges on assessments paid late; provide for periodic continuance referenda; authorize exemptions for organic almonds from certain program requirements; and make necessary conforming changes. These proposed amendments are designed to improve the administration, operation and functioning of the California almond marketing order program.

DATES: Written exceptions must be filed by May 8, 1995.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1079–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, D.C. 20250–0200; telephone: (202) 720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In -Charge, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the August 17, 1993, issue of the **Federal Register** (58 FR 43565).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Order No. 981, regulating the handling of almonds grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Kathleen M. Finn or Martin Engeler whose addresses are listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of Marketing Agreement and Order No. 981 is based on the record of a public hearing held in Modesto, California, on November 3, 4 and 5, 1993. Notice of this hearing was published in the **Federal Register** on August 17, 1993. The notice of hearing contained several proposals submitted by the Almond Board of California (Board), which locally administers the order, and other interested parties.

The Board's proposed amendments would: (1) Increase its membership by two positions and change Board nomination, selection, and operation procedures; (2) change the term of office of its members from one to three years, and limit the tenure of Board members; (3) change the definitions of "cooperative handler," "to handle," "settlement weight," "crop year" and "trade demand"; (4) require handlers of California almonds to maintain program records in the State of California; (5) change its advertising assessment credit program to allow credit for certain advertising costs incurred by handlers not previously authorized; (6) require handlers to pay interest and/or late payment charges for past due assessments; (7) provide for continuance referenda every five years; (8) require handlers to submit grower lists; and (9) allow multi-year contracting.

Five persons submitted additional proposals related to continuance referenda, Board composition and nomination procedures, organic almonds, regulatory provisions, advertising and promotion, assessments, compliance audits, the definition of grower, and research and reserve operations.

At the hearing, Mr. Brian C. Leighton, on behalf of Cal-Almond, Inc., withdrew five of his proposals that were listed as proposal numbers 27, 30, 32, 33, and 38 in the Notice of Hearing. In addition, there was no evidence provided with respect to proposal numbers 42, 43, and 45 as listed in the Notice of Hearing. Therefore, these proposals are not included in this Recommended Decision.

The Notice of Hearing also included proposals by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, to make such changes as are necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. The Department also proposed that continuance referenda be conducted on a periodic basis consistent with the Department's policy guidelines.

At the conclusion of the hearing the Administrative Law Judge fixed February 28, 1994, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The following persons submitted documents: Mr. Robert J. Crockett, Attorney for the Board; Ms. Suzanne Vaupel, Attorney representing several organic almond growers; and Mr. Steven W. Easter, Vice President of Blue Diamond Growers.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1993–94 crop year, approximately 115 handlers were regulated under Marketing Order No. 981. In addition, there were about 7,000 producers of almonds in the production area. The Act requires the application of uniform rules on regulated handlers. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the marketing agreement and order include changes to five definitions in the marketing order. These definitions are cooperative handler, to handle, settlement weight, crop year, and trade demand. The changes that are proposed to the definitions are intended to make them consistent with current industry practices. The proposed changes to the definitions are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

The proposed amendment to revise Board representation would increase the Board's size by allowing two additional grower members to serve on the Board. This would increase grower representation on the Board from five to seven and allow more grower input into Board decisions. The quorum size would also be increased to correspond with the increase in Board size. The change to the nomination procedures would require Board nominees to be nominated by January 20 rather than April 20 as currently provided. This would ensure that the new Board is seated prior to meetings where important decisions are made for the following crop year. These proposed amendments are designed to improve grower representation on the Board and allow the Board to function more efficiently.

The proposed amendment to change the Board members' term of office from one-year to three-year staggered terms would allow more continuity on the Board. This would allow the Board to focus more on long-term strategic goals and develop long-term approaches to problems in the industry.

The proposed amendment to require those persons nominated to the Board to qualify prior to their selection to the Board is an administrative change. This change would allow the selection process to take place in a more timely manner. The proposed amendment to add tenure requirements for Board members would allow more persons the opportunity to serve as members on the Board. It would provide opportunity for new ideas and approaches to issues that the Board addresses each year.

The proposed amendment to the creditable advertising provisions would provide for expansion of the promotional activities for which handlers may receive credit-back from their assessments. This would allow the Board to increase program flexibility for participating handlers.

The proposed amendment to allow the settlement weight for unshelled almonds to be determined on the basis of representative samples would be more consistent with current industry practices. There would be no increase in burden on handlers expected from this proposed amendment.

The proposed amendment to require handlers to maintain records in the State of California would improve the Board's administration of the program. It would also allow the Board to have the records available to them for compliance purposes. It is not expected that any additional costs would be incurred by handlers to comply with this amendment.

The proposed amendment to add interest or late payment charges on assessments paid late would encourage handlers to pay their assessments on time. Assessments not paid promptly add an undue burden on the Board because the Board has ongoing projects and programs funded by assessments that are functioning throughout the year. The addition of such a penalty is consistent with standard business practices.

The proposed amendment to provide for periodic continuance referenda would allow growers the opportunity to vote on whether to continue the operation of the almond marketing order.

The proposed amendment to allow handlers to sell their reserve almonds and the accompanying reserve obligation to other handlers would help facilitate the operation of the reserve program by providing handlers more flexibility.

The proposed amendment to exempt organic almonds from certain program requirements would provide the organic segment of the industry more flexibility in marketing and selling their product. The proposed amendment would authorize organic almond handlers to be exempt from reserve requirements and advertising assessments. Organic growers and handlers demonstrated at the hearing that certain current marketing order provisions do not take into account marketing differences between certified organic almonds and conventional almonds.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, the Administrator of AMS has determined that the proposed revisions of the order would not have a significant economic impact on handlers and growers.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection

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with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to revise the existing definition for "cooperative handler";

(2) Whether to revise the existing definition for "to handle";

(3) Whether to revise the existing definition for "settlement weight";

(4) Whether to revise the existing definition for "crop year" and to change the date that handler carryover and reserve inventory is reported to the Secretary to be used in fixing the salable and reserve percentages;

(5) Whether to revise the existing definition for "trade demand";

(6) Whether to increase membership representation on the Board, revise quorum requirements, allow voting by facsimile machines, only require the participation of 10 members when voting by facsimile machines, telegram or mail, increase the number of votes needed for Board actions, and increase the number of affirmative votes needed to make recommendations on reserve policies;

(7) Whether to change the date for submitting nominees for Board membership to the Secretary;

(8) Whether to revise the terms of office and add tenure requirements for members and alternates;

(9) Whether to require a written acceptance with the background statement from nominees;

(10) Whether to expand activities for which handlers may receive credit under the credit-back advertising and promotion provisions;

(11) Whether to revise the provisions regarding the determination and redetermination of kernelweight for unshelled almonds and whether to eliminate the shelling ratios for unshelled almonds;

(12) Whether to change the deadline date for disposition of reserve almonds;

(13) Whether to delete the authority for the creditable advertising provisions and to modify the generic advertising and promotion program;

(14) Whether to authorize the Board, with the approval of the Secretary, to reapportion grower and/or handler member representation on the Board based on the proportionate amounts of almonds handled by different segments of the industry;

(15) Whether additional eligibility requirements should be added for grower members on the Board;

(16) Whether to require handlers to maintain records in the State of California;

(17) Whether to provide handlers advance notice before an audit or inspection is performed;

(18) Whether to require handlers to submit to the Board a complete list of growers who have delivered almonds to that handler during that crop year;

(19) Whether to authorize the imposition of interest and/or late payment charges for assessments that are paid late;

(20) Whether to authorize payment of interest in the event a suit or administrative petition on payment of assessments is successful;

(21) Whether to amend the definition of almonds to exempt certified organic almonds entirely from the marketing order;

(22) Whether to exempt certified organic almonds from advertising and promotion assessments;

(23) Whether to require that a minimum of 25 percent of funds collected for production research projects be spent on research and development of production methods which reduce or eliminate the use of synthetic chemicals in the production and handling of almonds;

(24) Whether to require that almonds grown and sold as "certified organic almonds" be exempt from the reserve provisions;

(25) Whether to authorize the Board to enter into contracts for periods up to five years for services, goods or other reasonable expenses;

(26) Whether to require that continuance referenda be conducted on a periodic basis;

(27) Whether to modify the reserve provisions of the order by eliminating the authority requiring reserve almonds to be sold in secondary or market development outlets and by authorizing handlers to sell reserve almonds and the reserve obligation to other handlers;

(28) Whether to require that the first 250,000 pounds of almonds handled by a handler be exempt from reserve provisions; and

(29) Whether to require incoming inspections be conducted no later than the last day of February during the then current crop year.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1

The term "cooperative handler" should be amended by referencing the California Food and Agricultural Code (California Code) in section 981.14 so that cooperative handler would be more clearly defined in the marketing order.

Currently, section 981.14 defines cooperative handler as any handler which is a cooperative marketing association of growers regardless of where or under what laws it may be organized. This definition is used for Board membership purposes only. Proponents testified that this definition needs to be amended to eliminate any misinterpretations or misunderstandings by the industry. Therefore, the proponents stated that the definition should reference the California Code which specifically defines a cooperative. Record evidence supported that the term "cooperative handler" should be defined in § 981.14 to mean any handler as defined in section 981.13 (Handler), and which qualifies for treatment as a non-profit cooperative association as defined in section 54001, et seq. of the California Code. Under this new definition, organizations would be unable to identify themselves as cooperatives under the almond marketing order unless they meet the specific criteria contained in the California Code.

At the hearing, there was concern about future modifications to the California Code which may be unacceptable to the almond industry. Record testimony indicated that it was more important to develop a concise definition that would help to alleviate current problems the industry is experiencing with misunderstandings under the current cooperative definition than to be concerned that the State may develop an unsatisfactory definition of cooperative at some future date. If the definition of cooperative was amended by the State and the amendment rendered the definition unsatisfactory to the Board, it would become necessary to amend the marketing order definition again. In the event the State definition changed but remained satisfactory for marketing order purposes, a change in the State's legal citation would still require a change in the order. Therefore, a provision is recommended to be added to the amendatory language to allow the Board, with the approval of the Secretary, to modify the definition through informal rulemaking if the cooperative handler definition is changed by California. This would allow the Board to change the definition without going through the formal rulemaking process. This proposed amendment is therefore recommended with the above modifications.

Material Issue Number 2

The term "to handle" in § 981.16 should be amended to mean to commercially use almonds of own production or to sell, consign, transport or ship or in any other way to put almonds grown in the area of production into any channel of trade for human consumption worldwide.

Currently, § 981.16 defines "to handle" to mean "to use almonds commercially of own production or to sell, consign, transport, ship (except as a common carrier of almonds owned by another person) or in any other way to put into channels of trade, either within the area of production or from such area to points outside thereof, or to receive as the first receiver thereof at any point of entry in the United States and Puerto Rico, almonds which have been exported therefrom and are submitted for reentry or are reentered free of duty * * *".

At the hearing, proponents testified that the current definition should be amended to conform to the present state of the industry and to ensure that some entities not normally considered handlers who may sell almonds to channels of human consumption are subject to regulation.

This proposed amendment intends to clarify the current definition to insure that entities whose primary function is to remove hulls and shells from almonds (hullers and shellers) who retain some of the growers' almonds and sell them into human consumption channels are subject to marketing order regulations for those almonds sold to human consumption channels. These hullers and shellers are currently performing a handling function by taking title to the almonds and are covered under the current definition. However, the proponents believed that further clarification to the definition is needed in order to insure that hullers and shellers that perform handling functions are regulated. Proponents testified that modifying the definition would ensure that high quality almonds are shipped into human consumption outlets. Proponents testified that because the new definition would be clear, certain hullers and shellers would be aware that they are subject to regulation under the marketing order. Because of this, the number of almond handlers regulated under the marketing order may be increased by this amendment, but the increase is not expected to be significant. This proposal is not intended to bring all hullers-shellers under the authority of the marketing order, but only those that perform handling functions by placing almonds into human consumption outlets.

The proponents also intended that growers not be considered handlers unless they prepare the almonds into a form ready for human consumption. In cases where growers deliver field run almonds to another entity, the Board wants to clarify that the entities that receive such almonds from growers and sell those almonds into human consumption channels are considered handlers under the marketing order. This proposed amendment is recommended.

Material Issue Number 3

The definition of the term "settlement weight" should be amended in § 981.18 to allow adjustments in settlement weight for inedible kernels.

The current section defines settlement weight as the actual gross weight of any lot of almonds received for the handler's own account, less adjustments for weight of containers, for excess moisture, and for trash or other foreign material of any kind. There is no adjustment specified for inedible kernels.

Handlers report to the Board the almonds they receive from growers in terms of settlement weight. If settlement is made on shelled almonds, the settlement weight equals the kernelweight. If settlement is made on unshelled almonds, the settlement weight is converted to a kernelweight basis in accordance with § 981.60 of the order. Volume regulations and other order obligations are imposed on handlers on the basis of kernelweight. Thus, the settlement weight of almonds received impacts a handler's reserve obligations. Such obligations do not accrue on those items deducted from the actual gross weight of the almonds received (e.g., trash and other foreign material).

Evidence at the hearing indicated that almond production has dramatically increased since the inception of the marketing order. Therefore, the number of inedible kernels has also increased and the disposition of inedible kernels has become a major issue for the industry. Inedible kernel percentages are not currently deducted from the gross weight in determining settlement weight. This amendment is intended to allow handlers to deduct inedible kernels in settlement weight calculations and thereby, more accurately reflect the marketable quantity of almonds purchased by handlers.

This proposed amendment is recommended.

Material Issue Number 4

In § 981.19, the term "crop year" should be amended from "July 1 through June 30" to "August 1 through July 31" in order to more accurately reflect industry harvesting and marketing activities. This change should also be made for handler recordkeeping purposes.

If this proposal becomes effective, the proponents suggest having one 13-month fiscal year in the first year after implementation of the amendment to provide for a smooth transition of the modification. Almonds are normally harvested and received by handlers between August and November. Record evidence indicated that there was concern that, in the past, almonds were occasionally harvested as early as July. The Board representatives were questioned as to what effects early crop almonds would have on the change in fiscal year. For example, if a reserve was anticipated for the following crop year, a handler may wish to have July almonds apply to the previous crop year to avoid subjecting those almonds to reserve requirements. The same situation could apply if the assessment rate was raised. A handler could have July almonds apply to the previous crop year to avoid paying a higher assessment.

A statistical table submitted by the Department showed that for the past 12 years, no almond receipts were listed in July, even in a year where almonds were harvested in July. A Board representative stated that, in those situations, the almonds were held in a handler's plant and not inspected until August, so therefore they were not reported as received until August. This representative stated that, in the rare instance that almonds would be harvested in July, the almonds should be considered new crop almonds and held until August. However, it also was stated that under the proposed order amendment, July almonds would be

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considered as applying to the current crop year and handlers could use that to their advantage by processing almonds in July and not subjecting them to a reserve if a reserve was recommended for the next crop year. It was stated that there was nothing in the proposal to prevent that situation from occurring. One independent handler's representative stated that his client would be the first to report almonds in July if it meant being able to avoid a reserve. Record evidence indicated that the amendatory language proposed by the Board should be modified to correct the potential for problems relating to this situation. Although the record indicated no almonds have been reported in July for several years, the amendatory language has been modified to correct this potential problem by adding a sentence to the definition which states that any new crop year almonds harvested prior to August 1 would be applied to the next crop year for purposes of assessments, quality control provisions and volume regulations. This proposed amendment is recommended.

Conforming changes are also necessary to the regulations to conform with the change in crop year. There were three proposals relating to conforming changes in reference to the crop year. One was withdrawn (Proposal No. 22) because it proposed changing § 981.441. Since the publication of these proposals in the **Federal Register**, this section has been completely modified and no longer references any dates relating to the crop year. It was proposed to amend § 981.467 by making a date change to conform with the change in the crop year (Proposal No. 23). It was proposed to amend § 981.472 by modifying the reporting periods for reports of almonds received to be consistent with the new crop year calendar (Proposal No. 24). This proposal was modified at the hearing to correct an error which appeared when published. Specifically, at the hearing, the proposal was clarified to amend paragraph (a) of § 981.472 by removing the dates "July 1 to August 31" and adding in their place "August 1 to August 31" and removing the dates "April 1 to June 30" and adding in their place the dates "April 1 to July 31".

A conforming change is also necessary to section 981.73 of the marketing order regarding the filing of periodic reports. Testimony confirmed the intent would be to change the July 15 reporting date to August 15 and the June 30th reporting date to July 31. In addition, § 981.49(b) should be amended by changing the date through which estimates of handler carryover and reserve inventory must be calculated from July 1 to July 31. The above modifications have been made by the Department.

Material Issue Number 5

The definition of "trade demand" should be amended in § 981.21 to remove the option of not including exports as part of the trade demand.

Currently, the term "trade demand" means the quantity of almonds which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in the United States, Puerto Rico, and the Canal Zone, provided that in recommending the salable and reserve percentages for any crop year, the Board may include, with the approval of the Secretary, export outlets for almonds. Testimony indicated that, because of the growth of export markets, they should be recognized as an integral part of the trade demand for California almonds and that this proposal would more accurately reflect the true worldwide nature of today's almond industry. Statistics presented at the hearing confirmed the growth of the export market. Record evidence also indicated that conforming changes would be necessary to §§ 981.47 and 981.66 to correspond with this proposal by deleting phrases relating to trade demand including either domestic or domestic plus export. Paragraph (f) of § 981.49 should be deleted as it relates to the percentage of reserve almonds that may be exported. By making export almonds part of trade demand, the Board's ability to establish an export percentage is not necessary. This proposed amendment is recommended.

Material Issue Number 6

Sections 981.30 and 981.31 should be amended to increase Board representation from 10 to 12 members to strengthen the influence of growers on the Board. Section 981.30 establishes the number of representatives on the Board and § 981.31 sets forth the representation of the members.

Current Board representation consists of two members representing cooperative handlers, two members representing handlers other than cooperative handlers (independent handlers), two members representing growers who market their almonds through cooperative handlers, two members representing growers who market their almonds through independent handlers, one member representing handlers (cooperative or independent handlers) who through March 31 of the then current crop year handled more than 50 percent of the crop, and one member representing growers whose almonds were handled through the handler group that handled more than 50 percent of the crop.

Record evidence indicated that adding one additional grower representing cooperative handlers and one additional grower representing independent handlers would increase grower representation on the Board. This would allow additional grower input in Board decisions.

The date for computing the percentage of the crop handled by the entities who handled more than 50 percent of the crop is also being amended from March 31 to December 31 of the then current crop year to allow more adequate time for the election process. The election process for independent member and alternate member positions on the Board requires that candidates submit their names for inclusion on a ballot to be mailed prior to a specified date (currently April 20). Handlers then vote for handler members and alternates. Each handler vote is weighted by the quantity of almonds handled in a prior period. Growers vote for grower members, with each vote equal in weight.

Record testimony and statistical evidence indicated that at least 95 percent of the crop is harvested by December 31 and modifying the date in this section would have little or no impact on the percentages computed in determining which group handled more than 50 percent of the crop for that year.

Section 981.40 should be amended by revising paragraphs (b) and (c) and amending paragraph (e) by removing the word "seven" and adding in its place the word "eight." This proposal would change the quorum size and the number of votes required to recommend certain activities. Specifically, the proposal intends that all Board decisions shall be as follows: If eight or nine members are present, six affirmative votes will be needed to pass an action; if 10 members are present, seven affirmative votes will be needed to pass an action; if 11 or 12 members are present, eight affirmative votes will be needed to pass an action.

Currently, § 981.40 provides for a quorum size of six members and a majority vote of the members present to pass Board recommendations. In addition, § 981.40(e) provides that seven affirmative votes are required for Board recommendations with respect to projects pursuant to § 981.41 involving production research, marketing research and development projects, and marketing promotion including paid advertising and crediting the pro rata expense assessment obligation of handlers with such portion of their direct expenditures for marketing promotion including paid advertising.

Witnesses testified at the hearing that the change in the quorum size and number of votes needed to pass Board recommendations including those under § 981.41 would be needed if the Board is increased from 10 to 12 members. With the increase in membership from 10 to 12 members, the Board believes that more stringent quorum size requirements would ensure that the almond industry is well represented at Board meetings.

An opponent testified that the two-thirds majority component is undemocratic because it allows the minority to effectively have veto power over a majority of elected representatives. Another opponent testified that because the cooperative segment will always have a minimum of five votes, it has the ability to block Board actions. This witness stated that although the independent segment has the same ability, history has shown that it is rare for the independent segment to vote in unison. This witness testified that since 1950, the cooperative segment voted together on every occasion, except two.

The proponent testified that a two-thirds requirement would help increase industry cohesion and harmony on important issues that come before the Board. The proponent also believes that the almond industry would become stronger as a result of this change as all industry factions would work together to find common ground. Witnesses testified that industry unity is a major factor when the Secretary reviews recommendations submitted to the Department for action or approval.

Although the independent and cooperative segments have the ability to block Board actions by voting in unison, neither could alone carry enough votes to pass a recommended action under this proposal's voting requirements. With the two-thirds majority, voting in unison by one segment of the industry could keep an action from passing. However, under a simple majority, one segment of the industry would be in a position to actually pass a Board action with its seven votes. This could allow Board actions and recommendations to be approved with only the support of one industry segment.

Record evidence supports the quorum size being increased to a two-thirds majority. Although there was testimony in opposition to increasing the number of votes required to pass Board recommendations from a simple majority to an approximate two-thirds majority, the testimony in favor of this proposal by the Board, the Processors and Hullers Association and the Almond Growers Council strongly supports this proposal. As stated previously, this proposed amendment will allow for more diverse support for Board activities and is, therefore, recommended as proposed.

Record evidence indicated that the two-thirds voting requirement has been used by the Board's public relations and advertising committee and has been successful. The general belief of the committee members is that the requirement has been very beneficial in helping them reach consensus on major issues.

Section 981.49 should also be amended to increase the required number of votes when recommending saleable and reserve percentages to the Secretary.

Record evidence indicates that the number of affirmative votes required to recommend saleable and reserve percentages should be increased from six to eight. This change would require more stringent voting requirements for reserve recommendations than those for other Board actions in some cases. Such requirements would ensure that broad industry support exists for such recommendations. This proposal was unanimously supported by the Board and was supported by the Almond Growers Council. No opposition testimony was presented at the hearing.

Additionally, this proposal addresses the issue of voting by methods other than at assembled meetings. Currently, § 981.40 states that votes conducted by mail or telegram must be unanimous to pass an action. Thus, even one negative vote would cause an action to fail. The proposal would add facsimile machines as a method of voting, and would require 10 affirmative votes out of a possible 12 votes on an issue when voting by facsimile machine, telegram or mail for an issue to pass. Record evidence indicated that, in the past, important Board business was sometimes delayed by a member failing to respond by telegram or mail for an issue to pass. The recommended change would alleviate this problem and would increase the Board's options in voting outside of assembled meetings.

These proposed amendments are recommended.

Material Issue Number 7

Section 981.32 should be amended to change the nomination deadline for Board nominees from April 20 to January 20 and to change the deadline for presenting the nominees for selection with the Secretary from May 20 to February 20. Section 981.33 should also be amended to change the beginning of the term of office from June 20 to March 1. These proposals are intended to ensure that the new Board members and alternates are seated prior to meetings where important decisions are made for the following crop year. These issues could relate to setting assessment rates, adopting budgets, approving production research or advertising programs or setting a reserve. Testimony showed that this proposal would allow new Board members and alternates to be seated by March 1, which would help alleviate this problem as most of these decisions are made after March 1 but before June 20.

The above proposed amendments are recommended.

Material Issue Number 8

Section 981.33 should be amended to change the Board members' terms of office from one year to three year staggered terms to provide continuity of operation. This section should also be amended to limit these terms to six consecutive years. Currently, Board members serve for a term of one year with no limitations on the number of terms members can serve. The intent of one-year terms was to have a Board that reflected the current interests and wishes of the almond industry.

Because of the many complex issues facing the almond industry today, testimony indicated that more emphasis should be placed on long-term strategic goals. Three year terms for some Board members would allow the Board the opportunity to work together on industry issues and develop long-term approaches. This would also provide continuity on the Board from one year to the next year. The two new grower positions proposed to be established under this formal rulemaking process under § 981.31(c) would remain at one-year terms. The record evidence indicated that these two positions are swing positions, which means that they would be subject to change each year depending on whether the independent handlers or the cooperative handled the majority of the tonnage.

With this proposal, it is intended that each year the terms of office of three of the members would expire, except every third year when the term of office for four of those members would expire. To accomplish this, initially, three members would serve for a term of one year, three members would serve for a term of two years and four members would serve for a term of three years. At the time of nomination the Board shall

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make this designation by lot. To the extent practicable, the designations should be equitable between grower and handler positions and between cooperative and independent positions. The two new grower positions would always be for a period of one year. Nominees for each respective member and alternate position would be chosen by ballot delivered to the Board.

The modification to section 981.32 also stated that "each year the terms of office of one third of the Board shall expire, except in 1994, when all terms of office shall expire, except where otherwise provided." Record testimony revealed that it was not mathematically feasible for one-third of the Board terms to expire since 10 members serve 3 year terms and 2 members serve 1 year terms. A brief filed by Mr. Robert J. Crockett, Attorney for the Board, provided a modification to the amendatory language correcting the mathematical error as stated above as well as the reference to 1994.

Proponents also testified that section 981.33 should be amended to require a term limitation of nine years for Board members. Record evidence indicated that alternate members' terms of office would not be subject to the nine year term limitation.

It is the Department's view that a limit on tenure for Board members would improve representation on the Board by allowing for different and more contemporary ideas, and that such a limit would be beneficial to the Board's operations. The Department's policy is that a Board member's consecutive service be limited to a total of six years.

At the hearing, proponents for the nine year tenure limitation testified that nine years was the Board's proposal, however, the testimony indicated that the proponents would not be opposed to a six year tenure requirement. Further, proponents testified that the Board would not be opposed to the Secretary extending the term of office limitation for a member if another qualified candidate was unable to be found willing to serve.

Thus, in conformance with the above policy, the Board's proposal for a tenure limitation of nine years for Board members should be modified to six years. Therefore, it is proposed that the order be amended to limit the tenure of members to six years. Tenure would not apply to alternates. The proposal intended that a person who has served less than the term amount may not be nominated to a new term if the total consecutive years on the Board at the end of that new term would exceed the tenure. For example, a member could serve for a two-year term and may then be elected to serve in a position that has a three-year term. That member could not then be nominated to another three-year term because the length of service (eight years) would exceed the term limitation of six years.

Any member would become ineligible to serve on the Board after having served six consecutive years. Such individuals could again become eligible to serve on the Board by not serving on the Board for one full year as a member. Since there is no term limitation on alternate members, a member having served for six consecutive years could serve as a alternate member for a year and be eligible to serve again as a member. This limitation on tenure shall not include service on the Board prior to implementation of this amendment.

These proposed amendments are recommended.

Material Issue Number 9

Section 981.34 should be amended to require those persons nominated as Board members or alternate members to qualify prior to their selection by the Secretary by stating that they agree to serve in the capacity for which they were nominated.

Currently, any person selected to be a member or alternate member on the Board is required to qualify by filing a written acceptance with the Secretary after such selection is made.

At the hearing, proponents testified that the proposal is designed to remove the possibility that a person who is unwilling to serve is appointed by the Secretary to the Board. This would be accomplished simply by requiring that the prospective candidate provide background information and at the same time advise the Secretary that he or she agrees to serve in the position for which nominated. All this information would be provided to the Department prior to the selection process. This proposal would allow candidates to be selected to the Board in a more timely manner.

Section 981.34 should also be amended to clarify who is eligible to serve in Board positions. Proponents testified that the eligibility requirements for member and alternate members on the Board should be clarified to more specifically state that grower members and alternates must be growers or employees of growers and handler members and alternates must be handlers or employees of handlers. Section 981.34 currently states only provisions relative to these persons ceasing to be growers, handlers or employees of growers and handlers.

There was further discussion at the hearing that the intent of the proposal would be to change the word "may" to "shall". This would require that only such persons can serve in the grower and handler positions. This change has been made to amendatory language.

These proposed amendments are recommended.

Material Issue Number 10

Section 981.41(c) should be amended by revising the last sentence to allow the Board to expand the range of paid advertising activities for which handlers may receive credit-back from their advertising assessments. Section 981.41(c) should be amended by removing all text following the words "15 percent" in the last sentence and removing the colon after "15 percent" and adding in its place a period.

Currently, this provision lists activities that are not eligible for credit against a handler's assessment obligation. These activities include advertising production costs, preparation expenses, travel allowances, other expenses not directly connected with paid space or time, costs relating to pretesting of advertising, test marketing, directory advertising, point of sales materials, premiums and trade promotion allowances.

Hearing testimony indicated that by expanding the range of activities for which handlers may receive credit back from their assessments, the effectiveness of the industry's market development efforts will be improved. The proposal complements actions taken by the Board through informal rulemaking to replace a creditable advertising program with an expanded credit-back program. The proposal is intended to allow for a wider range of activities available for credit, thereby, providing handlers, especially those with no brand name, with additional opportunities.

Testimony against the proposal indicated that the new Credit-Back program compels handlers to advertise their products and directs handlers where and when to advertise almonds.

The marketing order does not compel handlers to advertise. The Credit-Back program is a voluntary program that allows handlers to receive credit-back from their advertising assessment if they engage in certain types of promotional activities. The proposed amendment would provide authority to expand upon an existing program by allowing the Board additional flexibility in recommending modifications to the regulations. Therefore, the proposed amendment is recommended.

Material Issue Number 11

Sections 981.60(b) and 981.61 should be amended and § 981.62 removed to allow the settlement weight for unshelled almonds to be determined on the basis of representative samples of unshelled almonds reduced to shelled weight.

Currently, § 981.60(b) provides that unshelled almonds for which settlement is made on the basis of shelled weight shall be included in the total kernelweight for any handler at the settlement weight of such unshelled almonds multiplied by the shelling ratios in § 981.62. Settlement weight is the weight of almonds that handlers pay growers for upon delivery. Record evidence indicated that using a representative sample for determining kernelweight is a common industry practice. This practice would provide handlers with more accurate kernelweight figures. Current procedure under this section requires that shelling ratios be applied to the weight of unshelled almonds to arrive at a kernelweight. Shelling ratios are established by variety.

Proponents testified that representative samples would be taken by handlers on almonds received at the handler's premise under the supervision of the Department's inspection service or by the inspectors themselves. A sampling plan would be developed by the Board each year and would prescribe the size of the sample to be taken dependent on the actual weight of the load. For example, the plan would consist of sampling procedures for each handler to use that would coincide with the quality of the almond crop for that particular year. Evidence supported an appeal process if any handler disagreed with the actual representative sample taken. The appeal process would begin with the complaint being brought before the quality control committee (a subcommittee of the Board). If a handler did not receive satisfaction through the quality control committee, the handler could then take the complaint to the full Board.

Evidence also supported amending § 981.61 of the marketing order. Currently, § 981.61 provides that, three times during the crop year, the Board redetermine the kernelweight of almonds received for the purposes of computing each handler's reserve obligation. Section 981.61 further provides that the weights used in such computations for redetermining the kernelweight for unshelled almonds be computed by application of shelling ratios authorized pursuant to § 981.62.

Proponents testified that this is a companion proposal to the issue of determining settlement weight for unshelled almonds. Therefore, § 981.61 should be amended to allow the Board to redetermine the kernelweight of unshelled almonds by using a representative sample reduced to shelled weight. Record evidence indicated that this amendment would provide that the best and most common practices are being used for redetermining kernelweight.

Finally, the record evidence supported removing § 981.62 from the marketing order. Currently, § 981.62 contains a table of shelling ratios for each variety of almonds. These varietal shelling ratios are used for computing kernelweight for unshelled almonds. Record evidence indicated that these shelling ratios are no longer necessary to compute the kernelweight for unshelled almonds since the proponents have recommended using representative samples to compute such weight. Also, the shelling ratios are outdated because new varieties of almonds have been developed since the marketing order's promulgation.

Proponents testified that the amendments to §§ 981.60, 981.61 and 981.62 are intended to reflect the industry's current practices and provide a more accurate kernelweight figure.

These proposed amendments are recommended.

Material Issue Number 12

Sections 981.66(e) and 981.67 should be amended by changing the disposition date for reserve almonds from September 1 to December 31. Currently, these sections require reserve almonds to be disposed of by handlers by September 1 of the following crop year. If any reserve is remaining after that date, the Board is required to dispose of the reserve through the most readily available reserve outlets. The order also provides that the September 1 date may be extended by the Board to a later date, if necessary.

Record evidence indicated that a December 31 date is a much more practicable deadline date than the current date. When the order was first promulgated, the almond industry was much smaller and the majority of the crop was sold in the fall. At that time, there was little need for storage and storage techniques did not allow the product to be stored for a long period of time.

Proponents testified that the almond crop today is much larger and storage capabilities allow handlers to store almonds for a year or more. The last two times that an almond reserve was in effect, the Board recommended that the September 1 disposition date be extended to December 31. The record evidence showed that a December 31 disposition date is a more realistic deadline for the industry based on current industry practices. This proposal would also provide that the December 31 disposition date may be extended by the Board to a later date, if necessary, with the Department's approval.

The proposed amendment is recommended.

Material Issue Number 13

Sections 981.40 and 981.41 should not be amended to delete the authority for the Credit-Back advertising program under the almond marketing order and to modify the generic program. In addition, § 981.81 should not be amended to conform with the proposal to amend §§ 981.40 and 981.41. A proponent of this proposed amendment testified that the program is unconstitutional and a waste of the growers' money. The program also requires several office hours and many hours to complete forms to participate in the program. Further, the proponent testified that by the time handlers get done wasting their money on the current regulations, they have no funds left to advertise almonds in the way they would prefer.

The proponent testified that other areas of the Credit-Back program are burdensome and wasteful to the handlers. One area is that handlers only receive credit-back for that portion of the product weight represented by almonds or the handler's actual payment, whichever is less. The proponent testified that this area of the Credit-Back program is unfair because handlers should be paid back for all their advertising since they moved a lot of almonds into the marketplace. Further, the almond is used as an ingredient product and many handlers sell almonds into that market. The proponent testified that the Board should not care where the almonds are sold (e.g., cereals, candy, ice cream, etc.). The Board should only be concerned about moving California almonds into the marketplace.

Another area of concern expressed by the proponent was that the government can dictate to handlers where to advertise and where not to advertise, where they can get credit and where they cannot get credit.

The proponent testified that it is not opposed to the generic advertising program. However, the witness proposed that the Board should not be allowed to engage in promotion directed solely at snack almonds nor should the primary purpose of any Board advertising or promotion be directed for the consumption or sale of snack almonds. The proponent testified that 95 to 98 percent of the entire almond

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production is for ingredient uses and not for snack almonds. Therefore, the witness testified that Board funds for the generic program should be spent on ingredient use.

Testimony from the opponents at the hearing indicated that actions have been taken and additional recommendations are being made to improve and expand the promotional activities for which handlers may receive credit-back from their assessments. The Credit-Back program is an example of an action which made the program more flexible. Another example is the proposal in this proceeding to further expand the range of activities for which handlers could get credit-back by amending Section 981.41(c), thus increasing program flexibility for those participating.

The opponents further testified that wide-spread industry support exists for the creditable advertising provisions and the authority should remain in the order. Opponents stated that this proposal eliminates handler choice and severely handicaps the industry in developing creative advertising and promotional activities. Regarding the portion of the proposal to prohibit promotion of snack almonds, opponents testified that problems would exist with attempting to define a specific type of almond as "snack." Opponents stated this part of the proposal is arbitrary and capricious because the size of the package, method of sale, product form or shape or other criteria do not define almonds as snack. The witness testified that snacking is a form of consumption rather than a form of product. Opponents believe that all forms of almond sales can and do benefit the industry.

On August 17, 1993, the Department issued an interim final rule (58 FR 43500) which implemented a new Credit-Back advertising and promotion program. The new Credit-Back program substantially revised the creditable advertising program whereby handlers may receive credit against their assessment obligation for their individual promotional activities, in lieu of contributing entirely to a generic promotion program administered by the Board.

Although the new Credit-Back program allows credit for the percentage of almonds in other products, the program is designed to promote the sale of almonds and almonds in products, not the products that contain almonds. The Credit-Back program was recommended to the Department by the Board which is comprised of independent and cooperative members which represent the almond industry. The Credit-Back program is a voluntary program that allows handlers to receive credit-back from their advertising assessment if they engage in any of a broad range of promotional activities.

Research studies show that promotional programs conducted under the almond marketing order have been effective and are a good investment of industry funds. The Credit-Back program combined with the Board's generic program is a proven method of promoting almonds. The combined generic and Credit-Back program administered by the Board recognizes the positive aspects of both forms of promotion and has been proven to be successful and responsive to changing needs and desires of the industry over time.

We agree with the view that the marketing order promotion and advertising provisions should remain as flexible as possible and provide choices for the Board in determining how best to promote almonds. Removing authority for a Credit-Back program would reduce the options available to the industry for promoting its product. Maintaining that authority does not mandate use of such a program, it merely preserves an available tool.

It is determined that this variety of options can only benefit the industry. It is also determined that restricting the generic program by not allowing promotions for snack almonds also would unnecessarily limit choices for the Board and would not serve any useful purpose.

Accordingly, the record evidence does not support the amendment to eliminate the creditable advertising provisions or to modify the provisions as recommended in this proposal. Therefore, this proposed amendment is not recommended.

Material Issue Number 14

Section 981.32 should be amended to authorize the Board, with the approval of the Secretary, to reapportion grower and/or handler member representation on the Board based on the proportionate amounts of almonds handled by different segments of the industry.

A proposal was submitted and testimony received at the hearing which would require that cooperative representation on the Board not exceed the percentage of the industry tonnage handled by the cooperative in the immediately preceding crop year. However, no specific amendatory language was provided by the proponent.

At the hearing, the proponent testified that the industry's major cooperative marketing association, Blue Diamond Growers, Inc. (Blue Diamond), should not be guaranteed five of the 12 seats on the Board. The proponent testified that it is no longer democratic to provide Blue Diamond with five seats on the Board since the industry percentage of almonds handled by Blue Diamond has decreased. The proponent provided the following example of how the proposal would work: If Blue Diamond handled from 45 to 55 percent of the industry tonnage, Blue Diamond would have five seats; 35 to 44.9 percent, Blue Diamond would have four seats; 25 to 34.9 percent, Blue Diamond would have two to three seats. The proponent stated that this would prevent a single entity, such as Blue Diamond, from bloc voting on Board proposals. The proponent further stated that, currently, Blue Diamond has an unfair advantage by being allowed to always have five seats on the Board.

Opponents to this proposal testified that the Board's proposal to increase the number of members from 10 to 12 would provide additional grower representation on the Board. The proposal to increase the number of Board members represents the overwhelming sentiment of the industry. Opponents also testified that, in the past, the cooperative was able to have a majority of the Board's membership because of the amount of tonnage it handled. However, that is not the situation that exists today, as independent growers and handlers currently hold a majority of the Board's member positions.

Another opponent testified that, even with the decline in the percent of total crop handled by Blue Diamond, their membership exceeds 50 percent of the total number of California almond growers. Further, other opponents testified that the proposal is directed at only one organization, and fails to take into account that, even at 30 percent of the crop handled, the cooperative would still represent over 50 percent of the total number of almond growers in the State of California.

The proponent testified that, without obtaining a list of the cooperative's growers, it is not possible to determine if, in fact, the cooperative does represent over 50 percent of the total number of growers in the State of California. The proponent further testified that Board representation should be based on tonnage in all circumstances.

An opponent testified that if, in ten years, the cooperative represented ten percent of the industry, the cooperative should not have five seats on the Board. Another opponent testified that he would prefer the whole industry to operate on a tonnage basis.

Record evidence indicates that currently, there is strong industry

support to maintain Board membership representation with the cooperative and independent segments being authorized to hold the specified numbers of seats proposed in Material Issue Number 6. However, in the event the industry structure changes in future years, there may be a need to further modify the structure of member representation.

Record evidence does not support amending the marketing order as the proponent recommended. The evidence does support, however, authorizing the Board, with the approval of the Secretary, to modify the membership representation requirements in the future if the industry structure changes.

This would allow the Board, with the approval of the Secretary, to recommend modifications to the representation requirements, if necessary, through informal rulemaking procedures. This would provide additional flexibility in the program by providing and ensuring that the Board continues to fairly represent all segments of the industry.

Therefore, this proposal is recommended, in part, by authorizing the Board, subject to the approval of the Secretary, to reapportion the grower and/or handler member representation among the 12 member positions, of any group listed in the proposed § 981.31 (a) through (c) to be nominated as a Board representative. This proposal does not intend that the Board may increase or decrease the number of members on the Board. The Board may reapportion the positions within the 12 member Board. A new paragraph (d) has been added to § 981.31 to set forth this recommendation.

Material Issue Number 15

The proposed amendment to section 981.12 would have revised the definition of grower. At the hearing, the proponents for this amendment revised the amendatory language that was published in the Notice of Hearing as follows: For the purpose of holding a grower seat on the Board, a grower would be required to have over 50 percent of his or her involvement and income in the almond industry derived from growing almonds. A grower wishing to run for a seat would certify to this criterion on the nominating petition.

Proponents testified that, in the past, some grower seats have been occupied by persons who were basically handlers. It was perceived by growers that they consistently represented a handler point of view at the expense of the grower. The proposal is intended to ensure that the grower seats on the Board are represented by growers and the growers' interests are reflected and represented. The proposal would only apply to independent growers who are nominated to become members or alternate members on the Board because its purpose relates to nominations for Board positions.

At the hearing, proponents testified that the grower would sign a certification that over 50 percent of his or her involvement and income in the almond industry was derived from growing almonds and would make that known to all growers when running for a Board position. If an opponent had signed the certification and it was well known that the opponent was basically a handler, the grower could raise that issue during the campaign. Proponents also testified that the grower would be making the determination as to the 50 percent involvement and income, and there would be no penalty for falsifying the certification. In addition, if a grower refused to sign the certification, the grower would be ineligible to serve on the Board.

Record evidence indicated that although certifications by growers could be signed during the nomination process, there is no procedure to verify such certifications, nor is there a penalty for a false certification. Therefore, the intent of this proposal would not be served.

The proposal has been modified by revising § 981.32, rather than § 981.12 as proposed by the proponents. Record evidence supported that the intent of the proposal is to only modify the definition of grower with respect to nominations of growers to the Board. It would not be appropriate to modify the grower definition under § 981.12 since this definition applies to the use of grower throughout the marketing order.

It is therefore proposed that a new paragraph be added under § 981.34 to further define grower for nomination purposes. The record evidence supports a grower definition that would allow growers to be nominated to the Board that would truly represent grower interests. However, the proponent's amendment would not be enforceable as proposed and would not accomplish the intent of the amendment. Therefore, the Department proposes that the Board be provided the authority, with the approval of the Secretary, to make recommendations to establish additional eligibility requirements for growers, for nomination purposes, through informal rulemaking. This would allow the Board to further explore avenues to accomplish the intent of the proposed amendment. The amendatory language therefore has been modified to add such authority.

Material Issue Number 16

Section 981.70 should be amended to require handlers to maintain records in California to provide Board auditors with reasonable access and improve program management. Currently, § 981.70 only requires that the handler's premises be accessible to Board auditors for records to be examined and audited.

At the hearing, proponents testified that Board auditors should not have to travel out of state to examine handler records. It is an economic burden on the Board, and therefore the almond industry, to pay travel expenses for Board auditors to travel out of state. In addition, it is necessary to have immediate access to handlers' records if compliance issues arise.

An opponent testified that handlers could be burdened by being required to maintain all records in California. He stated that some needed records could be the buyers' or the shipping company records. In addition, the witness testified that the terms "as well as other pertinent information regarding his or her operations" could lead to abuse if the person determining what is "pertinent" selects some unreasonable records such as tax returns to be maintained in California.

The purpose of this proposal is to keep handlers from maintaining all their records in a different state making it difficult for the Board to effectively audit handler's records. It is not intended that handlers maintain records in the state that would not normally be maintained, such as buyers' or shipping company records. This proposal does not intend to add any undue hardship on handlers and the proposal, as written, does not make unnecessary or unreasonable requirements on handlers. The language which would require different types of records than those specified, if necessary ("other pertinent information"), is necessary to account for the many different recordkeeping systems maintained by handlers.

Maintenance of records within the State of California would assure that the benefits from marketing order compliance activities exceed related costs. It is not expected that any additional costs would be incurred by handlers to comply with this amendment. Therefore, this amendment is recommended as proposed.

Material Issue Number 17

The proposed amendment to section 981.70 would have required that the Board provide handlers with 24 hours advance notice before they conduct audits of records and inspections of reserve almonds. In addition, handlers

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would not have been required to provide any labor or equipment to the Board to facilitate inspections.

Currently, § 981.70 provides that each handler's premises shall be accessible to authorized representatives of the Board and the Secretary for examination and audit of handler records and for inspection and observation of reserve almonds. The Board shall make such checks of almonds or audits of each handler's records as it deems appropriate or as requested by the Secretary to insure that accurate information as required in this part is being furnished by the handlers.

A proponent testified that handlers may be busy with almond buyers and may not have time to show all the records that Board auditors need to examine during an audit visit. The proponent testified that handlers should be made aware of the audit visit in order to make preparations to have the records made available for the audit. Further, the proponent stated that handlers should be treated like businesses and not as if they are under constant suspicion of violating the marketing order. In addition, the proponent testified that if a handler does not desire to assist and aid the Board in conducting the audit, the handler should not be required to furnish labor and equipment to do it. The handler should not be required to bear the expense or the liability of conducting handler audits.

The record evidence indicated that the almond industry is subject to Federal regulations under a marketing order. Regulated industries that choose to participate in a Federal program are subject to inspection of records. The marketing order currently contains authority to allow the Board to conduct checks of almonds or audits of each handler's records. Testimony indicated that the Board has the authority to make these visits without prior notice. The record evidence supports this provision remaining in order to properly carry out the regulatory aspects of the order.

At the hearing, additional testimony in opposition to the proposal indicated that Board staff usually schedules appointments with handlers ahead of time to maintain a positive and courteous relationship between the Board and the handlers. However, the reality remains that all handlers do not comply with the provisions of the marketing order. Opponents testified that removal of the authority to make unannounced visits to audit handlers would remove an important compliance tool from the Board and the Secretary. A handler with something to hide would have plenty of time to conceal vital documents from scrutiny by authorized Board personnel.

Opponents further testified that most handlers prefer to conduct any movement of product by using their own personnel and equipment at their premises. Handler personnel would also be familiar with the location of reserve almonds that would need to be examined.

Accordingly, the record evidence does not support the amendment to require the Board to provide handlers with 24 hours advance notice before it conducts audits and inspections or for handlers to not be required to furnish any labor or equipment to the Board to facilitate inspections. Therefore, this proposed amendment is not recommended.

Material Issue Number 18

The proposed amendments regarding §§ 981.76 and 981.90 would each require handlers to submit to the Board a list of growers who have delivered almonds to such handler during the crop year. Because these proposals would provide for essentially the same recommendation, they will be discussed as one material issue.

The proposed § 981.76 would require each handler to submit to the Board, no later than December 31 of each year, a complete list of growers who have delivered almonds to such handler during the crop year. The proposed amendment to § 981.90 would require each handler to submit to the Board, no later than January 31 of each year, a list of names and addresses of all growers from whom such handler received almond production for the then current crop year.

Currently, the marketing order does not require such information to be submitted to the Board under any section. Such information is submitted to the Board by most handlers on a voluntary basis for nomination purposes.

Proponents testified that the proposals are intended to help the Board be more efficient in conducting elections for Board members and alternate members. Since the list is currently submitted to the Board on a voluntary basis, the Board is not assured that it has a complete and accurate list of growers to use in conducting the election of Board members. In order for the Board to operate efficiently, it is necessary for the Board to reach as many growers as possible. Mandatory submission of grower lists would help accomplish this goal. The proponents testified that the amendment would help provide the widest possible participation by growers in the election process.

The proponents stated that this requirement would respect the private business relationship between a grower and handler. The proprietary nature of the relationship would be respected by the Board and that information would not be divulged by the Board.

A proponent testified that the list would be used for annual elections of Board members and for periodic continuance referenda. The list would not reveal a grower's handler affiliation. This proposal would further provide that the Board could charge handlers and growers who request the list for photocopying and mailing.

A witness testified that the cooperative grower list is needed when periodic continuance referenda are conducted because other interested parties to a referendum have a right to know who those growers are so they are in a position to provide them information which may influence their vote. This witness further testified that the Board should know who these 4,000 growers are so they are aware if any of these growers become handlers.

The opponents to the amendment testified that it is a well-established fact that lists of members of agricultural cooperatives are considered proprietary information. The witness testified that there are no other programs in which cooperatives are required to release such a list and the Department has long recognized that cooperatives are not required to reveal the names of their members. Many farmers who belong to agricultural cooperatives do not want their names and addresses used for purposes other than those needed by the cooperative to properly perform its business functions. The opponents further testified that the only reason for a requirement for handlers to submit grower lists is for the use in the election of Board members representing those marketing through independent handlers.

Opponents testified that Board elections have been conducted with wide publicity and all growers have an opportunity to participate. The cooperative informs all its members when elections do take place even though Board members are nominated by the cooperative's board of directors.

An opponent testified that the release of such information would be controlled directly by the Department, which in turn is controlled by the Administrative Procedure Act, the Freedom of Information Act, and the Privacy Act, as well as court interpretations. By including the proposed language in the marketing order, the Board could face a situation in which the marketing order mandates release of information while

the Department and the courts or both may require that the information not be released. Therefore, the question of release of information should be left to the Department.

A brief filed by Mr. Steven W. Easter of Blue Diamond Growers stated that the two similar proposals discussed at the hearing were worded slightly differently but they essentially provide for the same thing. Both proposals are directed at requiring Blue Diamond Growers to turn over its cooperative membership list to the Board. Both proposals represent an effort by independent handlers and growers to obtain the membership list of their principal competitor, Blue Diamond Growers.

Mr. Easter stated that there is no other proposed amendment nor any current provision that requires a cooperative, including Blue Diamond, to furnish its membership list to the Board. It is well established that growers may contact the Board directly to be placed on the Board's mailing list. Mr. Easter also stated that Blue Diamond provides notice of all elections to its members directly. This satisfies Blue Diamond's contractual obligations with its members and the Board's desire to have all members of the industry notified of elections. The witness stated that this system has worked for 43 years.

Mr. Easter further provided in his brief that Blue Diamond's membership list contains the names and addresses of all of its grower/supplier members and is, in that sense, its customer list. Under California law, customer lists have been protected as trade secrets under the Trade Secrets Act so long as they meet the definition set out in California Corporations Code. In conclusion, Mr. Easter stated that elections to the Board and referenda on proposed amendments and continuation have taken place since 1950 successfully. The guidance provided by the Board has enabled the industry to move forward in a beneficial manner. Mr. Easter requested that the proposal be rejected.

The record evidence indicates that it would benefit the Board to have a list of independent growers' names and addresses. Board elections would be conducted in a more efficient manner and there would be greater assurance that all growers are informed regarding activities centered on Board elections. The record evidence supported that it is not necessary for the Board to obtain the names and addresses of cooperative growers for nomination purposes since those Board members are selected by the cooperative's board of directors. Although grower lists not revealing handler affiliation can be obtained by requesting the list from the Department under the Freedom of Information Act, the Board is responsible for confidentiality of handler information and does not release a complete growers' list.

When continuance referenda are conducted, a method to ensure that ballots are provided to all cooperative growers would have to be derived. For example, one method would be for the Department to provide the ballots to the cooperative and obtain a sworn statement from a representative of the cooperative attesting that all growers were sent ballots. It would be in the best interest of the cooperative to ensure that all of its growers vote in referenda and USDA will ensure that a satisfactory method has been established when continuance referenda are conducted.

In the event a cooperative chooses to bloc vote for all its members in a referendum, the Department would require the cooperative to submit a grower list to verify that none of those members also voted individually. However, this is not sufficient reason to require the cooperative to submit a grower list to the Board on an annual basis since the Board does not need that list to conduct its operations.

Regarding the testimony that the Board needs to know the cooperative growers in case any of them become handlers, this does not appear to be sufficient reason to require this list from the cooperative. The Board has an established compliance program to address compliance issues and needs. Also, if a grower list is desired, such a list can be obtained from other sources. Testimony indicated there are alternative sources for that information.

For the above stated reasons, the proposed amendment is modified to allow the Board to request from independent handlers their growers' names and addresses for purposes of elections. The lists would be submitted no later than December 31 of each year to facilitate Board administration. The proposed amendment, as modified, is therefore recommended.

Material Issue Number 19

Section 981.81 should be amended to add authority to require handlers to pay interest and/or late payment charges in order to discourage late payment of assessments.

Currently, § 981.81 requires handlers to pay to the Board on demand assessments on almonds received by the handler for the handler's own account. There is no provision for a late payment or interest charge.

The proponents testified at the hearing that the Board's experiences with collection of assessments for administration, research and generic promotion have been frustrating. At the present time, about 90 percent or more of the handlers promptly pay the assessments when due, others are at times slow to pay. As of June 30, 1993, the Board was owed past due assessments totaling several million dollars. If these amounts had been paid promptly, the funds received could have been utilized for Board programs. The proponents do not believe that it is equitable for late paying handlers to benefit from the wide variety of Board programs financed by handlers who pay on time. Significant industry support is necessary in order for the marketing order to be successful.

An opponent to the proposal testified that handlers who challenge the assessment rate would be penalized if they pay the assessment in order to avoid the late charges because they would not recoup the assessments paid if they prevail in their challenge. This position is discussed in detail in Material Issue Number 20 which deals with another proposal to authorize payment of interest in the event a suit or administrative petition regarding payment of assessments is successful.

This witness further testified that if this proposal is authorized and regulations are implemented, it would be better to require that the payment be postmarked within 30 days from the invoice date rather than received in the Board office within 30 days.

The proponents testified that the Board envisioned implementing the specifics of the late payment and/or interest charges through informal rulemaking with the Secretary's approval. This would allow the Board to remain flexible with the establishment of the interest and/or late payment charge. The Board proposed language for the regulations in this proceeding. However, USDA has determined that this would be better accomplished by the Board recommending to the Secretary an informal rulemaking action at a later date if this provision is implemented.

The suggestion that payments be postmarked within 30 days of invoice to be considered timely does have merit. When assessing interest charges for late payment, it would appear reasonable that handlers be allowed 30 days from invoice to mail these charges to the Board. The Board should consider this suggestion when making a recommendation to the Secretary to implement the regulations regarding late payment and/or interest charges.

The record evidence supports this proposed amendment and therefore, it is recommended.

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Material Issue Number 20

This proposed amendment to the order would have required refunds plus payment of interest to a handler in the event a suit or administrative petition filed by such handler challenging the payment of assessments is successful. No specific amendatory language was provided.

The proponent testified that there have been several challenges to the almond, orange and tree fruit marketing orders. In these cases, the proponent stated that the Judicial Officer of USDA did not authorize the prevailing handler to recoup the assessments paid. The proponent also testified that the Agricultural Marketing Agreement Act permits handlers to challenge provisions of federal marketing orders, including the establishment of assessment rates. The Board's proposal to add an interest and/or late payment charge would penalize handlers that challenge the assessment rate since they would have to pay the assessment to avoid the late charges but would not receive the assessment back if they prevail. In addition, the Department argued in court that the Board would have to vote for a prevailing handler to have assessments returned and the funds would have to be approved in the Board's budget.

The proponent further testified that it is better to address the issue at this time by putting the provision in the marketing order than to wait for the Department to tell the Board they have to pay the handler back their assessments plus interest. It was discussed at the hearing where the money should come from to pay back the handler, and the proponent testified that such money should come from the Department. If not from the Department, the money should come from the industry. The witness testified that the Department continues to approve every proposed rule for assessments over the proponent's objections, therefore, they should pay the money back to the prevailing handler.

Opponents to the proposal testified that they are opposed for three reasons. First, there was no language specified to analyze the proposal, therefore, their understanding of the subject was vague and undefined. Second, the proposal refers to the legal rate of interest which is not compatible with the Board's proposal. Third, the term "successful" is not defined to differentiate between an administrative ruling before a law judge or the final review by the Judicial Officer. The opponents further testified that such rulings may be reviewed by the District Court, therefore, this proposal must be opposed because it does not clearly state at what point a handler could claim a refund of assessment and the accompanying interest. Also, depending on the timing of such refund, the Board may not have funds available to make the refund.

The proponent responded to the opposition by stating that he has no qualms with stating that the interest rate be the same as what the Board established. Also, that within 30 days of a final non-appealable decision being made, the Board should make the refund. Finally, if the Board does not pay back the prevailing handler in 30 days, the Board would be required to pay a five percent penalty.

The record evidence does not support this proposed amendment. Section 610b(2)(ii) of the Act provides that handlers regulated by marketing orders pay their pro rata share of such expenses as the Secretary may find are reasonable and likely to be incurred during a specified period for the maintenance and functioning of the marketing order. Section 608c(15)(A) of the Act provides a method for challenging marketing order provisions, including the requirement to pay assessments, through administrative petitions. In addition, several of the issues which this proposal raises are currently being appealed to the Ninth Circuit.

Therefore, this proposed amendment is not recommended.

Material Issue Number 21

The proposed amendment to section 981.4 would have amended the definition of "almonds" to exempt certified organic almonds from the entire marketing order.

Currently, the marketing order does not differentiate between almonds that are organically grown and those that are not.

The proponents for this amendment testified that the markets for organic almonds are totally separate from those for conventionally grown almonds. The organic tonnage of almonds in the industry is very small. The proponent testified that he empathizes with the organic growers since they do not want their money spent on Board programs that do not benefit organic almond growers and handlers. The proponent stated that the California Department of Food and Agriculture has strict requirements for certified organic commodities and penalties if growers violate them.

Opponents testified that it would be difficult to determine if an almond has truly been organically grown. While it is true there are voluminous regulations on organic products, once the almonds reach the market place, it is impossible to discern organically-grown almonds from those that are not organically grown. In addition, the opponent testified that organic growers currently benefit from the various programs conducted by the Board. The Board is pursuing a very active program of promoting almonds. Organic growers benefit from the perceived value of almonds that result from such aggressive promotion programs. There are also many production research programs sponsored by the Board that benefit organic growers as well as other almond growers. They include crop irrigation management, bud failure, nematode infestation, integrated pest management and problems from Africanized honey bees. The opponent further testified that all segments of the industry are interested in finding the most cost-effective, reliable method of increasing production and delivering a high-value, safe product to the consumer. In addition, the opponent stated that the Board is committed to working with organic growers to ensure that their interests are considered in making Board recommendations.

Several organic growers and handlers submitted proposals for differential treatment under the almond marketing order, but did not propose the organic community be entirely exempt.

Accordingly, the record evidence does not support the amendment to exempt organic almonds entirely from the marketing order. Record evidence shows that organic growers do reap some benefits from the order and its programs, which include certain research activities and the new Credit-Back advertising program. Therefore, this proposed amendment is not recommended.

Material Issue Number 22

The proposed amendment to § 981.41 would require that handlers not be assessed for marketing promotion, including advertising for the number of pounds of certified organic almonds handled. Currently, there is no provision in the marketing order to exclude organic almonds from the marketing promotion program.

The proponents for this amendment testified that the proposal is intended to provide an exemption for certified organic almonds from the advertising assessments since advertising for conventional almonds is not relevant to the market for certified organic almonds. The market for organic almonds is not yet well developed and does not benefit from generic advertising of almonds. The market is a niche market, made up of consumers who are seeking a guaranteed organic product. Any effective advertising must be geared to that market. The proponents testified that there are strict penalties for violating the certified organic regulations. Under Federal law, it is a violation to sell anything as organic that is not certified organic, and there is a fine of up to $10,000. In addition, any person found to have violated the law can be prohibited from organic certification for five years.

The proponents stated that buyers of certified organic almonds include natural food stores, consumers through mail order, roadside stands, certified farmers markets and specialty health food distributors. The end user is a consumer looking for an organic product first. If the consumer cannot find organic almonds, the consumer is more likely to substitute a different organic product rather than conventional almonds. Under the current assessment program, even if the certified organic handlers fully participate in the credit-back program, 50 percent of their assessment would still support generic advertising which is not relevant to their market. This proposal would have a positive benefit on growers and handlers of certified organic almonds, most of whom are small businesses.

Another proponent testified that certified organic almond handlers need relief from the burdens and restrictions imposed by the Board. Certified organic almonds have very little in common with commercial almonds. Promotion and advertising requires a different direction and a totally different target market which is not acknowledged by the Board.

Testimony in opposition to the amendment indicated that organic almonds should continue to fall under the marketing order and be assessed for marketing promotion. The opponent testified that all almonds benefit from generic advertising and promotion campaigns conducted by the Board. This includes growers that grow the Mission variety of almonds that appeals to the candy manufacturers. However, the opponent testified that Mission variety growers are not asking to be exempt from the order. The witness further stated that pooling industry resources can stimulate industry growth for the benefit of everyone. The opponent stated that the Board has made an effort to reach out to the organic growers and establish dialogue on key issues. The witness testified that there is a lot of common ground and that the industry can continue to build on that common purpose and interest by working together rather than working apart.

The record evidence supports that the organic market is a separate and distinct market. Although testimony indicated that generic advertising for conventional almonds could have a limited effect on organic consumers, the organic industry may not benefit directly from the Board's generic advertising program. However, the evidence did show that organic handlers could derive some benefit from the Board's new Credit-Back advertising program. The Board has stated that it wants to work with the organic segment of the industry and recognize them as an important part of the industry. Therefore, the Department is modifying the amendment to provide that the Board may, with approval of the Secretary, exempt certified organic almond handlers from the advertising assessment through further informal rulemaking. This would provide the Board and the organic segment of the industry with the flexibility of exempting handlers of certified organic almonds from the advertising assessment. It would also provide for development of a framework to implement and verify compliance with such an exemption. Therefore, the proposed amendment is recommended as modified.

Material Issue Number 23

The proposed amendment to § 981.41 would require that a minimum of 25 percent of funds collected for projects involving production research shall be spent on research and development of production methods which reduce or eliminate the use of synthetic chemicals in the production and handling of almonds. Under the current marketing order, there is no requirement that a minimum amount be spent in any certain area.

The proponents testified that this amendment is intended to benefit all almond growers by finding ways to reduce and eliminate the use of synthetic chemicals. This effort is especially important in light of the restrictions on continuing availability and use of certain agricultural chemicals. Record evidence indicated that this research activity would be coordinated by the production research committee of the Board. The proponent recommended the appointment of one or more growers of certified organic almonds to the production research committee. The committee would issue a request for proposals that contribute to finding new production techniques which reduce or eliminate the use of synthetic chemicals. The committee would then allocate a minimum of 25 percent of funds, earmarked for research, for such proposals.

The proponents further testified that the amendment would require a positive effort to seek out and fund proposals that investigate ways to reduce chemical use. Such a pro-active policy by the Board would send a signal to the research community to generate these proposals. It would also send a message to the public that the Board is taking steps to improve the environment through reducing the use of synthetic chemicals. This effort is important to the future of the industry for two reasons: (1) Various agricultural chemicals commonly used by almond growers are being phased out and will be taken off the market by government regulations; (2) very little research is currently being conducted on non-synthetic alternatives for almond growers and handlers. The proponent testified that she is aware of only one Board research project in this area.

The proponent testified that this proposal would help all almond growers and handlers face the challenges of decreasing availability of agricultural chemicals and increasing pressure from environmental groups. Developing such alternatives would protect growers and handlers from potential large crop losses and would satisfy consumer demand for reduced chemical usage. The proposal would also have a positive effect on small businesses since most growers and handlers of organic almonds are small businesses.

At the hearing, opponents did not believe that one tenth of one percent of the industry should be in a position to dictate to the other 99.9 percent of the industry how to spend its funds, especially considering that this small segment is attempting to be exempt from certain major areas of the order. The proponent testified that the organic community believes that this proposal would be beneficial to the whole almond industry. Every grower is under pressure to reduce chemical use. The proposal would give the industry the tools to meet production needs and to reduce pest and diseases without using chemicals. It was further discussed that organic almond growers have not brought forth any research projects to the production research committee. Also, the proponent was not aware of any such research projects being turned down by that committee.

It was also discussed that the marketing order currently contains authority to accomplish the proponents' goal. If the proponents attended the production research meetings and provided information on the needed

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research in those areas, they could possibly convince the Board to fund projects in the proposed area. In addition, testimony was offered that the Board may not be able to find within the research community projects to reach the 25 percent minimum that is proposed. The proponents testified that if a bona fide effort was made by the Board to obtain such projects, funding a lesser percentage would not be a problem. A bona fide effort by the Board would include: (1) Prepare a request for proposals that specified the type of research that is desired by the Board; (2) clarify the amount of money that is being set aside for that type of proposal; and (3) distribute widely to the universities, the extension service and to other known researchers, notice of the opportunities to conduct this type of research.

Another proponent of the amendment testified that some of the areas that need immediate attention are the study of soil biology, fungus control, climatic and economic thresholds, understanding the value of beneficial organisms, developing environmentally sound methods of production, wildlife habitat enhancement, etc. The proponent further testified that if the Board is spending its money, it should be on projects that directly benefit the organic farmer as well as the community at large.

The opponents testified that the Board has a very strong commitment to production research. Currently, the Board has budgeted $500,000 for various research projects. The benefits of these studies are shared throughout the industry. The Board invites members of the organic almond community to participate at the production research committee meetings and take part in the process which determines which studies will be funded. The witness testified that the process of open committee meetings in which there can be active dialogue best lends itself to achieve the goal of this proposal. The witness testified that a bad precedent would be established by having a marketing order amendment to guarantee funding for one particular research project, no matter how well intentioned. Such action would leave the door wide open for a long line of groups demanding the order be amended to accommodate their needs. The witness testified that the framework exists which can be used by the organic community to make its case for funding projects as proposed.

The opponent also testified at the hearing that the Board is currently funding such type of projects. For example, one project is to find ways to reduce the use of chemicals in controlling the navel orangeworm, which is one of the worst pests in the almond industry. Through the project, the Board has been instrumental in reducing such chemical usage, but their use has not been eliminated yet.

The record evidence does not support this proposed amendment. The authority is currently in the order for such projects as proposed to be conducted. In addition, the Board is currently funding projects which are intended to reduce the use of synthetic chemicals. Record evidence indicates that the Board wants to work with the organic almond community to recognize them as an important faction in the industry. If the organic almond community works with the Board and takes an active part in the process of determining the expenditure of production research funds, they will make their voice heard and assist the Board in making expenditure decisions that will help to benefit the whole almond industry.

The record evidence also supported that there may not be enough sources of research to obtain the proposed 25 percent of the production research funds and this proposal would be too restrictive for the Board. Therefore, for the above reasons, the proposed amendment is not recommended.

Material Issue Number 24

Sections 981.47 and 981.50 should be amended to require that the Secretary shall exempt from any reserve, that part of the crop which is sold as "certified organic almonds" under standards established by the Organic Foods Act of 1990 and the California Organic Foods Act of 1990. The Board may propose regulations to assure procedures to implement this section.

Currently, there is no requirement in the marketing order to exempt certified organic almonds from the reserve provisions.

The proponents testified that they are proposing the exemption because certified organic almonds are a distinct and different product from conventional almonds. There are many laws and requirements for a farmer to become certified as organic. First, the California Organic Foods Act of 1990 requires that any foods sold as organic are grown without the use of prohibited materials. Prohibited materials are all synthetic products. No prohibited materials can be used in the soil for at least one year prior to the season in which the crop is grown. Handlers are also restricted from using any prohibited materials. California law requires extensive recordkeeping by organic growers and handlers. California law also requires that each grower and handler of foods sold as organic must be registered annually with the State. The State intends to strictly enforce provisions of the organic program. Two growers have been recently fined $7,000 or more for violations. The certification process is quite lengthy and costly.

The proponent testified at the hearing that certified almonds are a distinct product from conventional almonds. They are sold into a different market than conventional almonds. The price for certified organic almonds is significantly higher, approximately 30 to 44 percent higher than for conventional almonds. Certified organic almonds only comprise about one-tenth of one percent of the total almond industry. A 1992 report by the University of California Cooperative Extension Service states that, "At present, no bulk commodity market exists for organically grown almonds. Because of this, market fluctuations and pricing of conventionally-grown almonds do not directly affect the market for organically-grown almonds". Certified almonds are sold in a niche market to consumers whose first concern is purchasing an organic product. If organic almonds are not available, the consumer will be more likely to substitute another organic product instead of conventional almonds. Many wholesalers and retailers of organic almonds do not purchase conventional almonds.

At the hearing, the proponent testified that a reserve requirement for certified organic almonds disrupts the market and is contrary to the intent of the provision. The market for certified organic almonds is chronically under-supplied. Therefore, a reserve which removes product from the market disrupts the flow of supply to the market.

The proponent testified that organic almonds are more difficult to store since most fumigation practices are prohibited. Although methods have been developed to store organic almonds, the normal marketing season of organic almonds is not as long as that for conventional almonds. Many organic growers therefore, use cold storage which can be quite expensive. When a reserve is implemented, handlers keep a percentage of certified organic almonds off the market and are unable to meet market demand. In addition, handlers have been unable to fill buyer orders even though they have certified organic almonds in reserve.

The proponent further testified that the proposal would have a positive impact on small businesses since most organic almond growers and handlers are small businesses.

At the hearing, it was discussed that there is an extensive audit trail from the organic grower to the handler so there would be no confusion as to which almonds would be organic or conventional. Testimony was also offered that if a conventional lot and certified organic lot were commingled, the almonds could no longer be sold as certified organic almonds. Also, containers that include certified organic almonds have to be extensively identified.

Opponents at the hearing testified that certified organic growers do benefit from many programs under the almond marketing order. The reserve program is one such program that needs participation by all members of the almond industry. By excluding organic almonds from the reserve, a two-tiered system would be implemented creating dissension within the industry and in the long run would act against the organic growers' best interests by alienating them from the industry. The Board is supportive of attempts to include the interests of organic growers on all policy matters discussed by the Board. In the testimony by the proponents, they indicated that many of the regulations governing organic farming are just now being developed. The Board addressed this issue when the 1990 reserve was established. At that time, organic growers requested that the Board exclude or declare organic production a reserve outlet. That request was denied by the Board. It was thought at that time that the organic program was not fully developed and there could be a lack of a reliable system of certification and tracking. The opponent testified that there is now a complete system in place and given the information the Board now knows the Board could make a decision to use organic almonds as an outlet for reserve almonds. The witness testified that the marketing order currently contains language to accomplish what the organic community wants without this amendment. The organic almond production could be evaluated on a yearly basis to determine if certified organic almonds should be part of the reserve.

The record evidence supports the merits of this amendment. The proponents have presented a compelling case that certified organic almonds are unique and are sold into different markets. During a reserve year, handlers of organic almonds are unable to supply all of their buyers with certified organic almonds. The certified almond growers and handlers must follow strict regulations to ensure that they are selling certified organic almonds in the marketplace. Certified organic almonds can be traced by a paper trail to the retail level. If commingling occurs with non-organic almonds, they are no longer considered certified organic. There are State and Federal laws regulating the practices of certification of organic products. Storing organic almonds is problematic because most fumigation practices are prohibited. Certified organic almonds currently comprise only one-tenth of one percent of the almond industry.

Certified organic almonds can currently be exempted from reserve provisions by designating them as an authorized reserve outlet under an agency agreement recommended by the Board and approved by the Secretary. This can be done on a yearly basis when a reserve is recommended. However, record testimony has shown that the imposition of a reserve on certified organic handlers in any year could be unnecessarily detrimental to this segment of the industry with no proven benefit to the industry as a whole. Therefore, the proposed amendment is recommended.

Material Issue Number 25

The proposed amendment to section 981.80 would have allowed the Board to contract for periods of five years for services, goods or other reasonable expenses.

Currently, section 981.80 specifies that the Board is authorized to incur expenses during each crop year. The recommendation of the Board for their expenses each year must be submitted to the Secretary on or before August 1 of the crop year. Expenditures are then incurred on a yearly basis.

Proponents testified at the hearing that the Board has been handicapped in the areas of research and marketing by the inability to enter into multi-year contracts. The Board is required to do business on a year-to-year basis. Some contracting parties become disillusioned because a concept may take several years to develop and implement and they are restricted to contracting for only a year at a time. The contracting parties may find that it is not economically feasible to enter into a contract without a commitment of more than one year. This often results in lost opportunities for the Board in being forced to negotiate for a one year contract that may be more expensive and less desirable than a contract covering more than one year.

At the hearing, the proponents stated that the California Agricultural Statistics Service (CASS) was asked to deliver a proposal for an acreage survey. The cost of the survey was considered to be too high for a single year's budget. The CASS then suggested a two year proposal in which they would survey one half the crop one year and the other half the next year. Record evidence indicated that the Board contracted to survey one-half this year, but will be prohibited from committing to the project's completion. A new Board next year may change its mind which could lead to development of a survey for one half of the crop. This would not be a desirable use of Board's funds.

The proponents further testified that the adoption of this amendment would have a positive economic impact. The Board does not anticipate that all or most future business activities would take the form of a multi-year contract. However, where needed and cost effective, the proponents testified that the ability to enter into such agreements should be available.

At the hearing, further discussions focused on the proposal to have three-year terms of office for Board members and how this would affect five-year contracts that could be in effect. Proponents testified that this particular situation occurs everyday in businesses and corporations where the directors that are there could very well be turned over and not be there when the contract comes to a conclusion. The proponents further testified that they envision that such multi-year contracts could be used for a building lease or the development of a new almond product.

The record evidence shows that marketing order committees have already been given permission, on a case-by-case basis, to enter into multi-year contracts, although such contracts are contingent on the marketing order remaining in effect. Also, some of the Board's research and promotion projects are currently four or five year projects. Proponents, however, testified that these projects have been funded only on a yearly basis. The record evidence showed that funding a project on a year-by-year basis would allow the Board to evaluate the progress of the project and decide if it should be continued. The marketing order is designed to operate on an annual basis and to be evaluated by the Secretary on an annual basis. The record evidence also showed that the Department has given permission to marketing order boards and committees, on a case-by-case basis, to enter into multi-year contracts.

The Act provides that marketing order committees establish budgets and assessment rates on a periodic basis. The marketing order requires that the

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expenses and assessment rate be established for each crop year. This allows for evaluation by the Board and the Secretary of Board activities on an annual basis. The Secretary is responsible for oversight of Board activities and believes that this proposal could limit the annual reviews as well as restrict the activities of future Boards. It is acknowledged, however, that multi-year contracts, in some instances, could benefit the Board by allowing for long-range, cost-effective planning. It is preferred that these situations be handled on a case-by-case basis.

Accordingly, the record evidence does not support the amendment for the Board to be allowed to enter into multi-year contracts. Therefore, this proposed amendment is not recommended.

Material Issue Number 26

Two proposed amendments to section 981.90 would require that continuance referenda be conducted. One proposal would have required that continuance referenda be conducted every five years beginning July 31, 1999, to determine grower support for continuation of the marketing order for almonds. Another proposal would have required that continuance referenda be conducted every four years with the first to be held in 1996.

Currently, there is no provision in the marketing order that provides for periodic continuance referenda.

The proponents for five-year referenda testified that the growers should have the ability to vote for continuance or termination of the marketing order. These referenda would allow growers to have a voice as to the value of the almond marketing order. The proponents testified that they realize that circumstances change over time, and therefore believe that a time period of five years would allow for a timely debate as to the merits of continuing or terminating the marketing order.

The proponents' proposal for five-year referenda also contained language regarding termination of the marketing order that is already contained in the order. The proponents testified that they would agree to the criteria which the Secretary may use in determining whether the marketing order should continue.

The order currently provides that the Secretary shall terminate the order if a majority of all growers favor termination and such majority produced more than 50 percent of the almonds for market within the State of California. Since less than 50 percent of all growers usually participate in a referendum, it is difficult to determine grower support for termination of an order.

Another way of assessing whether growers favor the continuation of an order would be to hold a continuance referendum using the same criteria as set forth in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing agreement and order. This section of the Act requires approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of the production voted during a representative period. This is a reasonable and appropriate basis for determining whether almond growers favor continuation of the order.

In the event that the requisite majority of growers, by number or volume of production represented in the referendum, do not approve continuation of the order, the Secretary may consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary would not only consider the results of the continuance referendum, but also would consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. The proponents testified at the hearing that in evaluating the merits of continuing the order, they would like to see the Secretary not only consider the results of the continuance referendum but also consider information relative to the operation of the marketing order.

Proponents of the proposal for four-year continuance referenda testified that a vote for continuance should be held in 1996. They testified that two years of operating under the new amendments should be adequate time for the growers to make a well-informed decision as to whether the program is effective.

Proponents in favor of the four-year referenda proposal testified that because of the lack of referenda in the past (the only continuance referendum on the almond marketing order was conducted in 1989), it is appropriate to have a continuance referendum every four years.

Based on evidence and testimony submitted at the hearing relative to periodic referenda, the order should be amended to require that such referenda be conducted.

It is USDA's preference to provide for periodic referenda at least every six years to allow growers an opportunity to indicate their support for or rejection of the order. The record evidence demonstrates that the proposal for referenda every five years is reasonable and has widespread industry support. A referendum every five years would allow growers an opportunity to vote in favor or in opposition to the order as changes occur in the industry yet would not be wasteful of the Board's resources. For the above reasons, the order should be amended to provide for periodic referenda every five years beginning two years from the year these amendments are finalized. Conducting a continuance referendum two years after the implementation of the proposed amendments would allow the industry sufficient time to evaluate the new amendments and determine if the marketing order should continue in effect. Therefore, the proposed amendment, as modified, is recommended.

Material Issue Number 27

Sections 981.51, 981.54, 981.55, and 981.66, which relate to certain reserve provisions, should not be deleted from the marketing order. In addition, §§ 981.52 and 981.67, also relating to the reserve, should not be amended as proposed. Section 981.55 should be amended to clarify that handlers may be authorized to transfer reserve almonds to another handler.

Extensive record testimony indicated this proposal had three basic purposes. One purpose was to eliminate authority in the marketing order that requires reserve almonds to be sold in secondary or market development outlets. Another purpose was to allow handlers to sell their reserve almonds and the accompanying reserve obligation to another handler. The remainder of the proposal was to make conforming changes in the order language to coincide with the two aforementioned purposes.

The proponent of this proposal testified that reserve almonds should not be required to be sold to secondary outlets (where the return is significantly lower). The proponent believed that this was not economically sound, and explained that, if reserves are established, the reserve almonds should ultimately be sold in normal competitive outlets at some point in the future. The proponent testified that reserve almonds could be carried forward for several years to augment short supplies in the event of a crop failure.

Opponent's testimony indicated that the option of having reserves in effect for consecutive years already exists in the marketing order. The proposal would maintain that option, but would eliminate the order's flexibility to require disposition in non-competitive outlets. The proponent failed to offer any economic analysis in support of carrying reserve product forward indefinitely, as opposed to diverting the product.

The proponent also testified that the reserve program had been manipulated in the past by the Board in that Board members were aware of Board decisions well in advance of the rest of the industry, thus, placing them at an advantage over the remainder of the industry.

No evidence was presented at the hearing indicating that Board members are aware of final Board recommendations prior to the voting process. To the contrary, it was testified that many Board members act independently. Further, Board members are elected through a democratic process and, therefore, risk not being renominated if they do not fairly represent their constituency.

The proponent testified that handlers should be able to sell their reserve almonds and accompanying reserve obligation to other handlers. A large number of handlers in the industry handle a relatively small proportion of the crop and operate for only a few months each year. Other larger handlers operate on a year-round basis. The proponent testified that the smaller handlers, who would normally cease their handling operation, are forced to maintain, at an additional cost to them, the required inventory in good condition in storage. If these small handlers do not want to incur the additional costs, the proponent stated the only other option available is disposition to approved reserve outlets at significantly lower prices. The proponent stated that handlers that dispose of their reserve almonds in secondary outlets could be financially disadvantaged in the event the reserve is released to the saleable category after their disposition.

Opponents stated that the proposal contained several provisions and eliminations of provisions that appeared to be in conflict with one another. Therefore, it was not clearly understood what exactly the proposal in its entirety was attempting to accomplish. Additional rationale against the proposal was a general difference in philosophy regarding eliminating tools of the marketing order currently available to the industry.

As previously stated, the proposal contained three basic purposes. The first purpose involved eliminating the authority to require reserve almonds to be sold in secondary outlets. We agree with the position that there is authority in the marketing order to release all of the reserve, making it unnecessary to sell reserve almonds in non-competitive outlets, if recommended by the Board. Removing the Board's authority to recommend to the Secretary that reserve almonds be sold in these outlets would remove an option available to the Board that may be considered necessary and in the best interest of the industry under certain circumstances. It is determined that the Board should retain flexibility in this regard and that this portion of the proposal would place an unnecessary restriction on the Board in making recommendations to the Secretary regarding the reserve. For this reason, this part of the proposal is not recommended.

Record evidence supports the merits of the second portion of this proposal dealing with selling reserve almonds and transferring reserve obligations to another handler. The overall intent of the reserve program could still be met as long as the same total quantity of product was held off the market. Providing handlers the additional authority to transfer any or all of their reserve obligations to other handlers in the industry could help facilitate the operation of the reserve program by providing more flexibility. In order to ensure such a provision is administered properly, it would be necessary for the Board, with the approval of the Secretary, to implement regulations to effectuate such a provision.

The third purpose of the proposal involved eliminating certain sections of the order to correspond with the other purposes of this proposal. However, it is not necessary to delete these sections of the marketing order as proposed to accomplish that portion of the proposal that is being accepted and recommended herein.

For the aforementioned reasons, this proposed amendment is recommended, in part, by modifying § 981.55 to provide the authority for the Board, with the approval of the Secretary, to allow handlers to transfer their reserve obligation to other handlers.

Material Issue Number 28

The proposed amendment to § 981.50 would have required that, when a reserve is established, the first 250,000 pounds of almonds handled by a handler would be exempt from the reserve percentage. In addition, the exemption would not apply to a handler who has not been a handler and paid assessments for each of the two previous crop years and/or to one who has been associated or under contract with or is a director, controller, shareholder, owner, or partner in any other handler facility taking advantage of the exemption.

Currently, § 981.50 provides that each handler shall withhold from handling a quantity of almonds equal to the reserve percentage of the kernelweight of all almonds such handler receives for his/her own account during the crop year. There is no quantity reserve exemption in the marketing order at this time.

The proponent testified that the purpose of this amendment is to benefit small handlers. A small handler's cost per pound to operate is much greater than that of a larger handler. The small handler, defined as one who handles less than 250,000 pounds annually, would probably close such facility after the handling season, but must remain open to maintain the reserve almonds. Record evidence indicated that small handlers that handle less than 250,000 pounds would be treated differently since there would be a differential impact of reserve requirements on such handlers.

The proponent testified that the conditions for the exemption are there to prevent people from becoming handlers during the year of regulation to take advantage of the 250,000 pound reserve exemption. The condition for the exemption would prevent people from anticipating that a reserve is going to be established.

At the hearing, it was discussed that possibly a creative attorney could breakdown a single business into separate entities so that each one would handle less than 250,000 pounds to take advantage of the exemption. However, the proponent testified that he did not see that as a problem under this proposal because of the criteria for eligibility written into the proposal.

Opponents testified that the proposal would create two classes of handlers, those who have to participate in the reserve and those who do not. The proposal is also based on an arbitrary level of 250,000 pounds. Record evidence stated that the strength of the marketing order is that all members of the industry participate in the order and the rules and regulations apply to everyone across the board. The exemption would only serve to cut the industry into very small segments that would dilute the strength of the order. This proposal would create an opportunity for those inclined to take advantage of any loopholes and benefit from them. Opponents further testified that by eliminating a proportion of handlers from the reserve, the burden

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would fall on fewer handlers causing them financial hardship.

The record evidence indicated that the Act provides that reserve provisions should be applied uniformly throughout the entire industry. While all handlers would have the same exemption under this proposal, those handlers that handled over 250,000 pounds would be regulated and those who handled less than that amount would not be regulated. The Department disagrees with the proponent's assertion that administering this proposal would not be problematic. It would be difficult to implement this proposal and develop equitable regulations covering all situations that could occur. The record evidence also indicated that this proposal could potentially have an effect on the market if there were many handlers that handled less than 250,000 pounds of almonds. This in turn would place more of a burden on those regulated handlers that handled more than 250,000 pounds of almonds.

Accordingly, the record evidence does not support the proposal to require that when a reserve is established, the first 250,000 pounds handled by a handler would be exempt from the reserve percentage. Therefore, this proposed amendment is not recommended.

Material Issue Number 29

The proposed amendment to § 981.71 would have required incoming inspections to be conducted no later than the last day of February during the then current crop year.

Section 981.71, which provides for furnishing statistical information to the Board for purposes of establishing the reserve obligation, was suspended indefinitely in 1975. Section 981.42 provides that handlers shall obtain incoming inspection through the Federal-State inspection service to determine the amount of inedible kernels in each variety and report the determination to the Board.

A proponent at the hearing testified that the incoming inspection is needed in order to determine the size of the industry's total crop. The industry needs to know no later than the end of February of each year, the quantity of almonds received by handlers for election purposes, Board statistical use, reserve calculations, and assessment calculations. The proponent testified that the longer inspection is delayed, the longer payment of assessments is also delayed. If the Board is going to receive the assessment money, they would prefer to receive it earlier. If a handler receives almonds after the February date, the handler should assume a penalty or completely reject the almonds for delivery.

Statistics presented at the hearing indicate, however, that since 1980 almonds received by handlers through the month of February in any given year have exceeded 97 percent of the total almonds received for the entire crop year. In most years, the receipts through February exceeded 99 percent of the total. Based on this information, there would be no appreciable difference in the estimated crop size at that point of the season if all almonds were required to be inspected by February 28 of each year. In addition, there would be no appreciable difference in handlers' share of the crop handled for election purposes.

Handlers are currently required to report to the Board all almonds received for their account during several prescribed periods. This information is combined with other information reported to the Board to determine handlers' assessment and reserve obligations. Inspection certificates are used to verify information reported to the Board and for determining inedible obligations. They are not necessary for the Board to make assessment billings and determine reserve obligations.

If implemented, this proposal may subject handlers to civil or criminal penalties for having product inspected after February 28. It would also have the effect of dictating to growers when they have to sell and deliver their product to a handler. It is conceivable that for financial reasons, a grower may choose to store his or her product until late in the season before selling it to a handler. This proposed amendment would, in effect, prohibit such a practice.

While the proposed amendment could, in some instances, serve to facilitate the operations of the Board, the positive aspects of such a proposal are outweighed by the negative. Regulating the industry in this regard would place an undue burden on both growers and handlers which is not necessary for the functioning and administration of the program.

For the reasons stated above, this proposed amendment is not recommended.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of almonds grown in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of almonds grown in California as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.14 is revised to read as follows:

§ 981.14 Cooperative handler.

Cooperative handler means any handler as defined in § 981.13 of this subpart which qualifies for treatment as a nonprofit cooperative association as defined in Section 54001, *et seq.* of the California Food and Agricultural Code. The Board, with the approval of the Secretary, may modify this definition, if necessary.

3. Section 981.16 is revised to read as follows:

§ 981.16 To handle.

To handle means to use almonds commercially of own production or to sell, consign, transport, ship (except as a common carrier of almonds owned by another) or in any other way to put almonds grown in the area of production into any channel of trade for human consumption worldwide, either within the area of production or by transfer from the area of production to points outside or by receipt as first receiver at any point of entry in the United States or Puerto Rico of almonds grown in the area of production, exported therefrom and submitted for reentry or which are reentered free of duty. However, sales or deliveries by a grower to handlers, hullers or other processors within the area of production shall not, in itself, be considered as handling by a grower.

4. Section 981.18 is amended by removing the word "and" at the end of paragraph (b); removing the period and adding ", and" at the end of paragraph (c); and adding a new paragraph (d) to read as follows:

§ 981.18 Settlement weight.

* * * * *

(d) For inedible kernels as defined in § 981.8.

5. Section 981.19 is revised to read as follows:

§ 981.19 Crop year.

Crop year means the twelve month period from August 1 to the following July 31, inclusive. Any new crop almonds harvested or received prior to August 1 will be applied to the next crop year for marketing order purposes. The first crop year after the implementation of this amendment shall be a 13-month period.

6. Section 981.21 is revised to read as follows:

§ 981.21 Trade demand.

Trade demand means the quantity of almonds (kernelweight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution worldwide.

7. Sections 981.30 and 981.31 are revised to read as follows:

§ 981.30 Establishment.

The Almond Board shall consist of twelve members, each with an alternate member.

§ 981.31 Membership representation.

Membership of the Board will be determined in the following manner:

(a) Three members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a)(1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Those growers who market their almonds through cooperative handlers; and

(2) Those growers who market their almonds through other than cooperative handlers.

(b) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (b)(1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Cooperative handlers; and

(2) All handlers, other than cooperative handlers.

(c) One member and an alternate shall be selected from nominees submitted by each of the following groups designated in paragraphs (c)(1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) The group of cooperative handlers or the group of handlers other than cooperative handlers, whichever received for their account more than 50 percent of the almonds delivered by all growers as determined by December 31 of the then current crop year; and

(2) Those growers whose almonds were marketed through the handler group identified in paragraph (c)(1) of this section.

(d) The Secretary, upon recommendation of the Board, or other information, may reapportion within the 12-member Board, the number of grower members or handler members, or both, of any group listed in § 981.31 (a) through (c), to be nominated pursuant to § 981.32. Any such change shall be based, insofar as practicable, upon the proportionate amounts of almonds handled within any group.

8. Section 981.32 is amended by revising paragraph (a) and amending paragraph (b)(2) by removing the date "March 31" and adding in its place the date "December 31" to read as follows:

§ 981.32 Nominations.

(a) *Method.* (1) Each year the terms of office of three of the members elected pursuant to Section 981.31(a) and (b) shall expire, except every third year when the term of office for four of those members shall expire. Nominees for each respective member and alternate member shall be chosen by ballot delivered to the Board. Nominees chosen by the Board in this manner shall be submitted by the Board to the Secretary on or before February 20 of each year together with such information as the Secretary may require. If a nomination for any Board member or alternate is not received by the Secretary on or before February 20, the Secretary may select such member or alternate from persons belonging to the group to be represented without nomination. The Board shall mail to all handlers and growers, other than the cooperative(s) of record, the required ballots with all necessary voting information including the names of incumbents willing to accept renomination, and, to such growers, the name of any person proposed for nomination in a petition signed by at least 15 such growers and filed with the Board on or before January 20. Distribution of ballots shall be announced by press release, furnishing pertinent information on balloting, issued by the Board through newspapers and other publications having general circulation in the almond producing areas.

(2) Nominees for the positions described in § 981.31(c) shall be handled in the same manner as described in paragraph (a)(1) of this section except that those terms of office shall expire annually.

* * * * *

9. Section 981.33 is revised to read as follows:

§ 981.33 Selection and term of office.

(a) Members and their respective alternates for positions open on the Board shall be selected by the Secretary from persons nominated pursuant to § 981.32, or, at the discretion of the Secretary, from other qualified persons, for a term of office beginning March 1. Members and alternates shall continue to serve until their respective successors are selected and qualified.

(b) The term of office of members of the Board shall be for a period of three years beginning on March 1 of the years selected except where otherwise provided. However, for the initial ten members of the Board selected pursuant

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to this section and to paragraphs (a) and (b) of § 981.31, three members shall serve for a term of one year; three members shall serve for a term of two years; and four members shall serve for a term of three years. For the initial terms of office, at the time of nomination under § 981.32, the Board shall make this designation by lot. The term of office for the two members selected under paragraph (c) of § 981.31 shall always be for a period of one year.

(c) Board members may serve for a total of six consecutive years. Members who have served for six consecutive years must leave the Board for at least one year before becoming eligible to serve again. A person who has served less than six consecutive years on the Board may not be nominated to a new three year term if his or her total consecutive years on the Board at the end of that new term would exceed six years. This limitation on tenure shall not include service on the Board prior to implementation of this amendment and shall not apply to alternate members.

10. Section 981.34 is revised to read as follows:

§ 981.34 Qualification and acceptance.

(a) Any person to be selected as a member or alternate of the Board shall, prior to such selection, qualify by providing such background information as necessary and by advising the Secretary that he/she agrees to serve in the position for which nominated. Grower members and alternates shall be growers or employees of growers, and handler members and alternates shall be handlers or employees of handlers. In the event any member or alternate ceases to be qualified for the position for which selected, that position shall be deemed vacant.

(b) The Board, with approval of the Secretary, may establish additional eligibility requirements for grower members on the Board.

11. Section 981.40 is amended by revising paragraphs (b) and (c) and amending paragraph (e) by removing the word "seven" and adding in its place the word "eight" to read as follows:

§ 981.40 Procedure.

* * * * *

(b) *Quorum.* The presence of eight members shall be required to constitute a quorum. All decisions of the Board shall be as follows except where otherwise specifically provided: 8 or 9 members present, 6 votes; 10 members present, 7 votes; 11 or 12 members present, 8 votes.

(c) *Voting by mail, telegram or fax.* The Board may vote by mail, telegram or fax upon written notice to all members, or alternates acting in their place, including in the notice a statement of a reasonable time, not to exceed 10 days, in which a vote by mail, telegram or fax must be received by the Board for counting. Voting by mail, telegram or fax shall not be permitted at any assembled meeting of the Board. When a proposition is submitted for vote by mail, telegram or fax, at least ten members of the Board must vote in favor of its passage or the proposition shall be defeated.

* * * * *

12. In § 981.41, paragraph (c) is amended by removing the colon and all text following the words "15 percent" in the last sentence and adding in its place a period and by amending paragraph (a) by adding a sentence at the end of the paragraph to read as follows:

§ 981.41 Research and development.

(a) * * * Notwithstanding the foregoing, certified organic almonds may be exempt from assessments for marketing promotion, including paid advertising, upon recommendation of the Board and approval of the Secretary.

* * * * *

13. Section 981.47 is amended by designating the existing paragraph as (a), removing the words "either domestic or" in the third sentence of paragraph (a), and adding a new paragraph (b) to read as follows:

§ 981.47 Method of establishing salable and reserve percentages.

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary shall exempt from any reserve that is established that part of the crop which is sold as "certified organic" under standards established by the Organic Foods Production Act of 1990, (7 U.S.C. 2101 *et seq.*) and the California Organic Foods Act of 1990, as amended. The Board may propose regulations to assure procedures to implement this section.

14. In § 981.49, the introductory paragraph is amended by removing the word "six" and adding in its place the word "eight", by removing "; and" in paragraph (e) and adding a period in its place, by adding "and" at the end of paragraph (d); by removing paragraph (f) and by revising paragraph (b) to read as follows:

§ 981.49 Board estimates and recommendations.

* * * * *

(b) The estimated handler carryover and the estimated reserve inventory as of July 31;

* * * * *

§ 981.50 [Amended]

15. Amend § 981.50 by adding after the words "into oil", the words "or sold as certified organic."

16. Amend § 981.55 by designating the existing paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 981.55 Interhandler transfers.

* * * * *

(b) When saleable and reserve percentages are in effect, any handler may transfer reserve withholding obligation to other handlers. Terms and conditions implementing this provision must be recommended by the Board and approved by the Secretary.

17. Section 981.60 is amended by revising paragraph (b) to read as follows:

§ 981.60 Determination of kernel weight.

* * * * *

(b) *Almonds for which settlement is made on unshelled weight.* The settlement weight for unshelled almonds shall be determined on the basis of representative samples of unshelled almonds reduced to shelled weight.

18. Section 981.61 is amended by revising the last sentence to read as follows:

§ 981.61 Redetermination of kernel weight.

* * * Weights used in such computations for various classifications of almonds shall be:

(a) For unshelled almonds, the kernelweight based on representative samples reduced to shelled weight;

(b) For shelled almonds, the net weight; and

(c) For shelled almonds used in production of almond products, the net weight of such almonds.

§ 981.62 [Removed]

19. Section 981.62 is removed.

§ 981.66 [Amended]

20. Section 981.66 is amended by removing paragraphs (b) and (d), redesignating paragraph (c) as paragraph (b), redesignating paragraph (e) as paragraph (c), redesignating paragraphs (f) and (g) as paragraphs (d) and (e), and by amending newly designated paragraph (c) by removing all references to the date "September 1" and adding in each place "December 31".

§ 981.67 [Amended]

21. Section 981.67 is amended by removing all references to the date "September 1" and adding in each place "December 31".

22. Section 981.70 is amended by revising the first sentence to read as follows:

§ 981.70 Records and verification.

Each handler shall keep records which will clearly show the details of his or her receipts of almonds, withholdings, sales, shipments, inventories, reserve disposition, advertising and promotion activities, as well as other pertinent information regarding his or her operation pursuant to the provisions of this part: *Provided,* that, such records shall be kept in the State of California. * * *

23. A new § 981.76 is added before the undesignated center heading "Expenses and Assessments" to read as follows:

§ 981.76 Handler List of Growers.

No later than December 31 of each crop year, each handler other than a cooperative handler (hereinafter, referred to as independent handler) governed by this subpart shall, upon request, submit to the Board a complete list of growers who have delivered almonds to such independent handler during that crop year.

24. Section 981.81 is amended by adding a new paragraph (e) to read as follows:

§ 981.81 Assessment.

* * * * *

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

25. Section 981.90 is amended redesignating paragraph (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and by amending newly designated paragraph (b)(3) by removing the date "June 1" and adding in its place "July 1" and adding a new (b)(2), to read as follows:

§ 981.90 Effective time, suspension, or termination.

* * * * *

(b) * * *

(2) The Secretary shall conduct a referendum as soon as practical after the end of the fiscal year ending two years after implementation of this amendment, and at such time every fifth year thereafter, to ascertain whether continuation of the order is favored by growers who have been engaged in the production of almonds for market within the State of California during the current crop year.

* * * * *

§ 981.467 [Amended]

26. In § 981.467, paragraph (a) is amended by removing the date "July 1" and adding in its place "August 1" and by removing the words "export or" and "or both," from the second sentence in paragraph (a).

§ 981.462 [Amended]

27. In § 981.472, paragraph (a) is amended by removing the dates "July 1 to August 31" and adding in its place "August 1 to August 31."

Dated: March 22, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–8205 Filed 4–5–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–10]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. This proposal would require an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if the side links are found cracked. This proposal would also require a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. This proposal is prompted by four reports of cracked side links detected during routine engine shop visits. The actions specified by the proposed AD are intended to prevent a side link fracture, which could result in the failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–10, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–10." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the

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Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–10, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to the General Electric Company (GE) CF6–45/–50 series turbofan engines. The Federal Aviation Administration (FAA) has received four reports of cracked side links of the five-link forward mount assembly. These cracks were detected during routine engine shop visits. Metallurgical analysis performed on the fractured side links indicate that the cracking is the result of stress corrosion. Stress corrosion cracking occurs when the protective coating is locally missing, allowing corrosive materials to come in contact with the base material of the side link. Preliminary analysis conducted with a simulated side link failure indicates that the second side link, or the pylon attachment bolts depending on the type of aircraft, may not be capable of withstanding the resulting loads in this configuration. A shop-level refurbishment procedure exists which enhances the durability of the side links' protective coating, therefore reducing the chance of cracks due to stress corrosion. This condition, if not corrected, could result in a side link fracture, which could result in the failure of the second side link or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft. The requirements of this AD have been reviewed by the Transport Airplane Directorate.

The FAA has reviewed and approved the technical contents of GE Aircraft Engines CF6–50 Service Bulletin No. 72–1092, dated November 18, 1994, that describes procedures for the initial and repetitive on-wing visual inspection and side link refurbishment.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if side links are found cracked. This proposal would also require a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program.

The FAA estimates that 220 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 7.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The FAA has estimated that only a small percentage of parts will actually require replacement as a result of this AD, and therefore, has determined the parts cost to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 95–ANE–10.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a side link fracture, which could result in failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft, accomplish the following:

(a) Inspect left-hand side links, Part Numbers (P/N) 9204M94P01, 9204M94P03, and 9346M99P01, and right-hand side links, P/N's 9204M94P02, 9204M94P04, and 9346M99P02, that have *not* had the side link refurbishment done in accordance with GE CF6–50 Task Numbered Shop Manual, GEK 50481, Chapter 72–23–11, including Temporary Revision No. 72–0821 and 72–0822, both dated November 1, 1994, as follows:

(1) For side links that have *not* been previously inspected in accordance with GE Aircraft Engines (GEAE) CF6–50 Service Bulletin (SB) No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 cycles in service (CIS), or 750 hours time in service (TIS), after the effective date of this AD, whichever occurs earlier.

(2) For side links that have been previously inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 CIS, or 750 hours TIS since inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, whichever occurs earlier.

(3) Thereafter, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, at intervals not to exceed 350 CIS, or 750 hours TIS since the last inspection, whichever occurs earlier.

(4) If side links are found cracked, replace the cracked side links and pylon attachment bolts with serviceable parts, and inspect the fail-safe bolt and platform lug in accordance with paragraph 2.B of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to further flight.

(b) Refurbish the left-hand and right-hand side links identified in paragraph (a) of this AD at the next engine shop visit after the effective date of this AD in accordance with paragraph 2.C of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994. Refurbishment of side links in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of the fan and core modules.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternate methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on March 22, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–8444 Filed 4–3–95; 1:31 pm]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–20–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; that currently requires visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. That AD was prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. This action would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Comments must be received by May 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Augusto Coo, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5225; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–20–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On December 9, 1992, the FAA issued AD 92–27–07, amendment 39–8441 (57 FR 60116, December 18, 1992), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes. That AD requires visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. That action was prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The actions required by that AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

Since the issuance of AD 92–27–07, the manufacturer has advised the FAA that several additional airplanes have been identified that are subject to the same type of cracking of the rudder pedals adjust hub assembly as addressed by that AD. These airplanes were inadvertently omitted from the effectivity listing of McDonnell Douglas DC–9 Alert Service Bulletin A27–235, Revision 1, dated February 3, 1992. AD 92–27–07 referenced that specific listing of airplanes as those subject to the requirements of that AD. In light of this, the FAA has determined that those additional airplanes are subject to the same unsafe condition addressed by AD 92–27–07.

The FAA has reviewed and approved McDonnell DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1994. This revised service bulletin is essentially identical to the original version, which was cited in AD 92–27–07 as the appropriate source of service

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information, but revises the effectivity listing to include additional airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–27–07 to continue to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary. This proposal also would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 909 Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 561 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $180 per airplane.

The actions specified in this proposed rule previously were required by AD 92–27–07, which was applicable to approximately 373 airplanes. Based on the figures discussed above, the total cost impact of the current requirements of that AD on U.S. operators is estimated to be $67,140. In consideration of the compliance time and effective date of AD 92–27–07, the FAA assumes that operators of the 373 airplanes subject to that AD have already initiated the required actions. The proposed AD action would add no new costs associated with those airplanes.

This proposed action would be applicable to approximately 188 additional airplanes. Based on the figures discussed above, the total new costs to U.S. operators that would be imposed by this AD are estimated to be $33,840. This figure is based on assumptions that no operator of these additional airplanes has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8441 (57 FR 60116, December 18, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–07–AD. Supersedes AD 92–27–07, Amendment 39–8441.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC 9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes; Model MD–88 airplanes; and Model C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) For airplanes listed in McDonnell Douglas Service Bulletin, Revision 1, dated February 3, 1993: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92-27–07, amendment 39–8441), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(b) For airplanes listed in McDonnell Douglas Service Bulletin Revision 2, dated January 27, 1995, and not subject to paragraph (a) of this AD: Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8448 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 409

Request for Comments Concerning Rule Concerning Incandescent Lamp (Light Bulb) Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of a systematic review of all its current[1] regulations and guides, is requesting public comments about the overall costs and benefits, as well as the overall regulatory and economic impact, of the Rule Concerning Incandescent Lamp (Light Bulb) Industry ("the Light Bulb Rule" or "the Rule"). All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this review of the Rule.

DATES: Written comments will be accepted until June 6, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580. Comments about the Light Bulb Rule should be identified as "16 CFR Part 409—Comment."

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle or Kent C. Howerton, Attorneys, Federal Trade Commission, Washington, DC 20580, (202) 326–3016 or (202) 326–3013.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review periodically all its rules and guides. The information obtained in such reviews assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission decided to schedule its regulatory review of the Light Bulb Rule for 1995 when, pursuant to a directive of the Energy Policy Act of 1992, the Commission in April 1994 amended the Appliance Labeling Rule, 16 CFR Part 305, to add incandescent and fluorescent lamps as covered products. Although there are no contradictions between the two rules, the Commission scheduled review of the Light Bulb Rule for this year so it could consider whether to retain, revise or delete any of its provisions that might overlap the amended Appliance Labeling Rule.[1]

A. Background

The Rule was promulgated by the Commission in 1970.[2] The Light Bulb Rule makes it an unfair method of competition and an unfair and deceptive act or practice, in connection with the sale in commerce of general service incandescent electric lamps (light bulbs) to:

(1) Fail to disclose clearly and conspicuously on the containers of such lamps (or, if there are no containers, on the bulbs themselves) their average initial wattage, average initial lumens and average laboratory life;

(2) Fail to disclose clearly and conspicuously on the bulbs themselves their average initial wattage and design voltage;

(3) Represent or imply energy savings resulting from a lamp's life expectancy or light output unless in computing such savings the following factors are taken into account and disclosed clearly and conspicuously for the lamp being sold and also (unless the comparison is only of initial purchase price between lamps of identical wattage, lumens and laboratory life) the lamp with which the comparison is being made: lamp cost, electrical power cost, labor cost for lamp replacement (if any), actual light output in average initial lumens, and average laboratory life in hours;

(4) Represent or imply that a lamp will give more light, maintain brightness longer or furnish longer life without clearly and conspicuously disclosing, for both the lamp being sold and the lamp with which the comparison is being made the average initial wattage, the laboratory life in hours, the average initial light output in lumens, and (if there is a claim the lamp maintains brightness longer) the light output in lumens at 70% of the lamp's rated life.

Four notes at the end of the Rule define terms used in the Rule or require certain procedures or tests to be used in making disclosures required by the Rule. Specifically, these notes: (1) State how manufacturers are to determine the

[1] The two Rules both cover A-type incandescent lamps and require on their labels disclosure of certain performance ratings and other information. Specifically, both rules require disclosures of light output, wattage and laboratory life ratings. The Appliance Labeling Rule specifies that these disclosures must appear together, in that order and worded in a certain way (*i.e.*, as "Light Output: _____ Lumens; Energy Used: _____ Watts; Life: _____ Hours") on the label's principal display panel. The Light Bulb Rule, however, does not specify any order or wording for its required rating disclosures, but simply specifies that the three ratings be disclosed in terms of lumens, watts and hours and appear together on at least two side panels of the label and, additionally, on any other panel on which a lumen, wattage or hours of life claim is made.

The Appliance Labeling Rule requires the lumens, watts and hours disclosures to appear with equal conspicuousness, but does not specify any particular type style or size. The Light Bulb Rule specifies that the lumens and hours disclosures must both be in a medium- or bold-face type that is at least two-fifths the height of the watts disclosure on the same panel or three-sixteenths of an inch, whichever is larger.

The Appliance Labeling Rule requires that energy saving or operating cost claims take into consideration, and clearly and conspicuously disclose in close proximity to the claims, all the assumptions upon which the claims are based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use. The Light Bulb Rule, because it covers not only energy saving and operating cost claims, but also all comparative lamp life, light output and lamp cost claims, specifies additional factors (*e.g.*, labor costs for replacement, light output, life expectancy) that, depending on the particular claim being made, must be taken into consideration and clearly and conspicuously disclosed.

[2] 35 FR 11784 (July 23, 1970).

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wattage, lumen and life rating disclosures required by the Rule, (2) require for the year 1970–71 all lamp labels to explain the meaning of the word "lumen" whenever it is used, (3) define the term "general service incandescent lamp" to mean all A-type bulbs and all other incandescent bulbs substantially the same as A-type bulbs, and (4) define the meaning of the Rule's term "clear and conspicuous" with respect to the minimum type sizes necessary for required disclosures and the minimum number of times the required disclosures must be made on lamps and/or their labels.

B. Issues for Comment

At this time, the Commission solicits written public comments on the following questions:

1. Is there a continuing need for the Rule?

a. What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

b. Has the Rule imposed costs on purchasers?

c. Does the light Bulb Rule provide any benefits not provided by the provisions of the Appliance Labeling Rule relating to lamps?

2. What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

a. How would these changes affect the costs the Rule imposes on firms subject to its requirements?

3. What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

a. Has the Rule provided benefits to such firms?

4. What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the Rule?

5. Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

7. Should the Commission retain, or modify in any way, the particular provisions of the existing Rule that define the term "clear and conspicuous" to mean certain minimum sizes for required disclosures and certain minimum numbers of times that those required disclosures must be made on lamps and/or their labels?

8. Should the Commission retain, or modify in any way, the particular provisions of the existing Rule that require all comparative energy consumption or operating cost claims, all comparative light output claims, and all comparative life expectancy claims to be accompanied by clear and conspicuous disclosures of particular comparison data for both the lamps being sold and the lamps with which the comparison is being made?

9. Should the Commission retain, or modify in any way, those provisions of the existing Rule that duplicate or overlap provisions in the Appliance Labeling Rule pertaining to lamps?

10. The Light Bulb Rule requires wattage, light output and life expectancy ratings to be disclosed at the bulbs' design voltage whereas the Appliance Labeling Rule requires the disclosures at 120 Volts regardless of the bulbs' design voltage.

a. For general service incandescent bulbs with design voltage other than 120 Volts, should the Commission continue to require ratings disclosures at both 120 Volts and design voltage?

b. What percentage of the total quantity of general service incandescent lamps sold in this country is comprised of lamps with design voltages other than 120 Volts?

(1) Describe how, for such lamps, the light output, wattage and expected life ratings differ when the lamp is used at 120 Volts from when used at the design voltage.

(2) In what areas of the country are lamps with design voltages other than 120 Volts routinely sold and in what proportions compared with lamps with design voltages of 120 Volts?

(3) To whom are lamps with design voltages other than 120 Volts sold and for what uses?

(4) Do purchasers of such lamps also routinely purchase lamps with design voltages of 120 Volts and, if so, what are the percentages of their lamp purchases for each category?

(5) How might the market for lamps with design voltages other than 120 Volts be expected to change in the future?

c. At what line voltages is electricity delivered in the United States? What areas receive electricity at voltages other than 120 Volts? Describe. Are there any private electricity delivery systems (*e.g.*, industrial plants), that provide electricity internally at voltages other than 120 volts? Describe.

List of Subjects in 16 CFR Part 409

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–8472 Filed 4–5–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 460

Trade Regulation Rule; Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments about the overall costs and benefits and the continuing need for its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (the "R-value Rule" or "Rule"), 16 CFR part 460, as well as whether the Rule, if retained, should be amended to include new test procedures or specific requirements for new products, as a part of its systematic review of all current Commission regulations and guides. In addition, the Commission seeks comments on whether to adopt a non-substantive amendment to the Rule that would permit the use of an additional test procedure to determine the R-values of home insulation products. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning the Commission's review of the R-value Rule and the proposed non-substantive amendment.

DATES: Written comments will be accepted until June 6, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580. Comments about the R-value Rule should be identified as "R-value Rule, 16 CFR part 460—Comment."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Room S–4631, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580, telephone (202) 326–3013, FAX (202) 326–3259.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission requests public comments about the overall costs and benefits of the R-value Rule, and its overall regulatory and economic impact, as well as whether the Rule should be updated to included new test procedures or specific requirements for

new products, as a part of it systematic review of all current Commission regulations and guides. In addition, the Commission proposes adopting a non-substantive amendment to the Rule that would allow use of an additional test procedure to determine the R-value of home insulation products. The Commission also solicits comments concerning the proposed non-substantive amendment.

II. Background

The Commission promulgated the R-value Rule under Section 18 of the FTC Act in 1979. The Rule became effective on September 30, 1980. Among other things, the Rule requires that manufacturers disclosed the R-value ("thermal performance") of each one insulation product, based on tests conducted according to one of four specified American Society of Testing and Materials ("ASTM") test procedures.[1] When the Commission promulgated the Rule, it determined that ASTM R-value test procedures C–177, C–236, and C–518 were highly accurate and reproducible steady-state methods for determining the R-values of home insulation products. 44 FR 50218, at 50226 note 189. In the original Rule, the Commission stated that it also would accept the use of C–976 once it was adopted as an ASTM test procedure. ASTM adopted C–976 in 1982. The Rule, therefore, now officially recognizes tests using any of these four test procedures.

The Commission conducted a review of the rule under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, in 1984. During the review, the Commission solicited comments on whether the Rule had had a significant economic impact (costs and benefits) on a substantial number of small businesses, whether there was a continuing need for the Rule, and what changes, if any, should be made to the Rule to minimize the economic effect on small entities. 49 FR 22104 (1984). Based upon the comments submitted, the Commission determined that it had no basis to conclude that the R-value Rule had a significant economic impact upon a substantial number of small entities. The Commission determined not to amend the Rule following the Regulatory Flexibility Act review. 50 FR 13246, at 13247 (1985).

Since the Rule was promulgated, the Commission has brought 12 actions to enforce its provisions.[2] The Commission also has granted three partial or conditional exemptions relating to specific provisions, issued one Advisory Opinion allowing use of an alternative testing procedure, and adopted three non-substantive amendments (one that allowed manufactures to add to their insulation fact sheets specific information required by other government agencies; a second, in response to an industry request, that adopted a revised settled density test procedure for loose-fill cellulose insulation; and a third that adopted revised versions of the ASTM R-value test procedures).

III. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the R-value Rule, possible conflict between the Rule and state, local or other federal laws, and the effect on the Rule of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the Rule should be inferred from this request for comments.

IV. Non-Substantive Amendment

The Commission has received a petition from Mr. Ronald S. Graves, Research Staff Member, Materials Analysis Group, at Martin Marietta Energy Systems, Inc. ("Petition").[3] The petition requests that the Commission include an additional (fifth) ASTM R-value test procedure (" ASTM Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus," ASTM C–1114–92), as an approved test method for compliance with Section 460.5(a) of the R-value Rule.[4] The test method is under the jurisdiction of ASTM Committee C–16 on Thermal Measurements (which is the Committee responsible for the other R-value test procedures required by the R-value Rule), and is the direct responsibility of Subcommittee C16.30 on Thermal Measurements. Mr. Graves is the Chairman of the Thin Heater Task Group within C16.30 that meets semiannually to maintain and keep C–1114 current.

According to the Petition, tests conducted in 1983 and 1990 on two standard reference materials ("SRMs") obtained from the National Institute of Standards and Technology show apparent thermal conductivity values for the SRMs to be within the most probable uncertainty of ±1.2 percent between 25 °C (77 °F) and 50 °C (132 °F). The Petition states that results with single-sided heat flow up or down and double-sided heat flow agreed to ±0.2 percent. It asserts that these test results at ORNL[5] demonstrate that ASTM C–1114–92 is an appropriate test procedure for obtaining accurate apparent thermal conductivity values on insulation products.

The accuracy of the ASTM C–1114–92 test procedure, therefore, appears to rate favorably compared to the accuracy of the other ASTM R-value test procedures the Commission has adopted under the R-value Rule. Evidence in the original rulemaking proceeding demonstrated that, if properly performed: (1) Measurements under C–177 could achieve results within ±2 percent of the specimen's actual thermal value, and a precision of one percent or better is normally attained; (2) measurements under C–518 should come within at least ±5 percent of absolute accuracy, with a reproducibility rate of ±2 percent; and (3) measurements under C–236 can measure thermal resistance values within ±2 percent of absolute accuracy See 44 FR 50218, at 50226 note 189.

Thus, the Commission is considering adopting a non-substantive amendment to § 460.5 of the Rule, 16 CFR 460.5(a), to include ASTM C–1114–92 as an optional, but not required, test procedure for determining the R-values of home insulation products. Because the amendment would not impose any new obligations upon parties covered by the Rule (but merely would recognize the use of an additional, optional, R-value test procedure), and because the apparent accuracy of the test procedure

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[1] The test procedures are ASTM C–177 and ASTM C–518 (which use hot and cold "plates" to determine R-values for homogeneous "mass" insulation products, like fiberglass batts and loose-fill cellulose), and ASTM C–236 and ASTM C–976 (which use "hot boxes" to determine R-values for heterogeneous insulation systems, like multi-panel aluminum foil products and insulation systems).

[2] The Commission has brought seven civil penalty actions against manufacturers, one against a testing laboratory, and three against retailers. It also has brought one consumer redress action against a professional installer.

[3] Martin Marietta Energy Systems, Inc., operates Oak Ridge National Laboratory ("ORNL") as a contractor for the U.S. Department of Energy.

[4] The Petition, plus attachments, have been placed on the public record of the R-value Rule and can be inspected at the Commission's Public Reference Room, room 130, Sixth and Pennsylvania Ave., NW, Washington, DC.

[5] The testing apparatus used at ORNL is referred to as the Unguarded Thin Heater Apparatus ("UTHA").

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compares favorably to the test procedures already required by the Rule (so the amendment likely would not lessen consumer protection),[6] the proposed amendment appears to be non-substantive under Section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B). Because the amendment appears to be non-substantive, the Commission believes that it does not need to solicit public comment or follow the lengthy rulemaking proceedings that would be required for a substantive amendment to the rule. On the other hand, because the Commission is soliciting comments as part of its regulatory review of the Rule, the Commission has determined in its discretion to solicit comments on the proposed amendment.

IV. Solicitation of Comments

A. Regulatory Review

As part of its on-going regulatory review program for all its rules and guides, the Commission solicits public comments on the following questions:

(1) Is there a continuing need for the R-value Rule?
  (a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?
  (b) Has the Rule imposed costs on purchasers?
(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?
  (a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?
(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?
  (a) Has the Rule provided benefits to such firms?
(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?
  (a) How would these changes affect the benefits provided by the Rule?
(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?
(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

In addition to the questions raised above, the Commission solicits comments on the following issues. First, should the Rule be revised to require the use of different test procedures or specifications than those currently specified for certain types of products? In addition to specifying R-value test procedures, the Rule currently specifies procedures that must be followed in preparing specimens of certain types and forms of home insulation for testing under the R-value test procedures.[7] The Rule also contains specific requirements for determining the R-values of reflective home insulation products (which perform as thermal insulation only when installed as a system with one or more air spaces).[8] The Commission thus solicits comments concerning whether the Rule should be amended to specify different or additional test procedures or specifications for insulation products specifically addressed in the Rule.

Second, are the insulation products for which the Rule does not sufficiently address product-specific issues relating to testing or preparation of test specimens? As noted, in some instances the Rule provides particular procedures to be followed in preparing specimens for R-value testing where the Commission found there was post-installation effects (e.g., settling of loose-fill insulation products, aging of certain cellular plastics insulation products) that need to be considered. During the period since the Commission promulgated the Rule, additional home insulation products designed to slow down heat flow have been developed and automatically have been covered by the Rule. However, because these products did not exist when the Rule was issued, the Rule currently contains no specific test specimen preparation provisions for these new products. The Commission, therefore, solicits comments on whether the Rule should be revised to specify the manner in which specimens of new products should be prepared for R-value testing to ensure that R-values and related information are accurate and based on uniform standards.

B. Non-Substantive Amendment

The Commission solicits comments concerning the Petition and the Commission's proposal to adopt a non-substantive amendment to the Rule that would recognize ASTM C–1114–92 as an acceptable test method for determining the R-value of home insulation products under Section 460.5 of the R-value Rule, 16 CFR 460.5. Interested parties are invited to submit any data or other information relevant to whether the Commission should adopt the proposed amendment.

List of Subjects in 16 CFR Part 460

Advertising, Incorporation by reference, Insulation, Labeling, Trade practices.

Authority: 15 U.S.C. 41 *et seq.*

By the direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 95–8471 Filed 4–5–95; 8:45 am]

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[6] The test procedure already is recognized by the industry as an accurate and appropriate test procedure, having been adopted as an official ASTM procedure after going through ASTM's consensus approval process.

[7] For loose-fill cellulose insulation, the R-value tests must be conducted on test specimens prepared at the product's long-term, or settled, density, determined according to paragraph 8 of ASTM C–739–88 ("Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation," approved Oct. 25, 1988, published April 1989). For loose-fill mineral wool insulation, the R-value tests must be conducted on test specimens that fully reflect the effect of settling on the product's R-value. For polyurethane, polyisocyanurate, and extruded polystyrene insulation, the R-value tests must be conducted on test specimens that fully reflect the effect of aging on the product's *R*-value, for example, specimens aged according to the procedure in paragraph 4.0.4 of General Services Administration (GSA) Specification HH–I–530A, or another reliable procedure.

[8] For single sheet reflective foil home insulations, the Rule allows manufacturers to determine R-value according to two options: By conducting R-value tests according to ASTM C–236–87 or ASTM C–976–82; or by measuring the emissivity (reflectivity) of the product according to ASTM E–408 (or another test method that provides comparable results), and then determining the *R*-value for the measured emissivity level, and the air space and direction of heat flow for the intended application, using the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) handbook (using the *R*-value shown for 50 °F, with a temperature differential of 30 °F).

DEPARTMENT OF THE TREASURY

27 CFR Parts 55, 72, 178, and 179

[Notice No. 807]

RIN 1512–AB35

Implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (94F–022P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994. These regulations implement the law by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. Regulations are also prescribed with regard to reports of theft or loss of firearms from a licensee's inventory or collection, new requirements for Federal firearms licensing, responses by firearms licensees to requests for gun trace information, and possession of firearms by persons subject to restraining orders. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before July 5, 1995.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn.: Notice No. 807.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The collections of information contained in this notice have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1512–0526, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this proposed regulation are in 27 CFR 178.40(c), 178.40a(c), 178.129(e), 178.132, and 178.133. This information is required by ATF to ensure compliance with the provisions of Pub. L. 103–322 (108 Stat. 1796). The likely respondents and recordkeepers are individuals and businesses. Estimated total annual reporting and recordkeeping burden: 2.52 hours. Estimated number of respondents and recordkeepers: 2,206,555. Total annual hours requested: 699,863. Additional collections of information contained in this proposed regulation which have approved control numbers are in §§ 178.39a (OMB No. 1512–0524), 178.47 (OMB Nos. 1512–0522 and 1512–0523), 178.52 (OMB No. 1512–0525), and 178.119 (OMB Nos. 1512–0017, 1512–0018, and 1512–0019).

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Parts 55, 72, 178, and 179. For the text of the temporary regulations, see T.D. ATF–363 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: February 10,1995.

Daniel R. Black,

Acting Director.

Approved: February 27, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–8234 Filed 4–3–95; 4:18 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 902, 926, 934, and 950

Alaska, Montana, North Dakota, and Wyoming Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM). Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Alaska, Montana, North Dakota, and Wyoming underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Alaska, Montana, North Dakota, and Wyoming regulatory programs (hereinafter referred to as the "Alaska, Montana, North Dakota, and Wyoming programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Alaska, Montana, North Dakota, and Wyoming and consideration of public comments.

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OSM will decide whether initial enforcement in Alaska, Montana, North Dakota, and Wyoming will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., m.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsistence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Alaska, Montana, North Dakota, and Wyoming. Requests to speak at the hearing must be received by 4:00 p.m., m d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Guy Padgett, Director, Casper Field Office at the address listed below.

Copies of the applicable parts of the Alaska, Montana, North Dakota, and Wyoming programs, SMCRA, the implementing Federal regulations, information provided by Alaska, Montana, North Dakota, and Wyoming concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Guy Padgett, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 E "B" Street, Room 2128, Casper, Wyoming 82601, Telephone: (307) 261–5776.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817 121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817 121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817 121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817 121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817 121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817 121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Alaska

By letter to Alaska dated December 15, 1994, OSM requested information from Alaska that would help OSM decide which approach to take in Alaska to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Alaska program provisions (Administrative Record No. AK–F–01). By letter dated January 27, 1995, Alaska responded to OSM's request (Administrative Record No. AK–F–02).

Alaska stated that no underground coal mines were operating in Alaska after October 24, 1992.

Alaska stated that its program does not contain or authorize enforcement of the structural damage repair and water supply replacement requirements of section 720(a) of SMCRA. To be no less stringent than SMCRA, Alaska indicated that it would have to amend section 27.21.220 of the Alaska Surface Coal Mining Control and Reclamation Act to add subsection (c) to require prompt repair or compensation for material damage resulting subsidence, and prompt replacement of water supplies affected by underground coal mining operations. It indicated that it realistically believed that this statutory change could be made in the spring of 1996.

Alaska concluded that it did not believe that it has the statutory authority to investigate complaints of structural damage or water loss caused by under coal mining operations after October 24. 1992.

D. Enforcement in Montana

By letter to Montana dated December 15, 1994, OSM requested information from Montana that would help OSM decide which approach to take in Montana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Montana program provisions (Administrative Record No. MT–13–01). By letter dated March 6, 1995, Montana responded to OSM's request (Administrative Record No. MT–13–02).

Montana stated that one underground coal mines was active in Montana after October 24, 1992. Montana stated that its program does not fully authorize enforcement of the structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations.

Specifically, Montana indicated that (1) Administrative Rules of Montana 26.4.911(5), which address compensation for structural damage resulting from subsidence, are not clearly authorized by the subsidence prevention provisions of section 82–4–231(10)(f) of the Montana Strip and Underground Mine Reclamation Act (MSUMRA); (2) section 82–4–253(2) of MSUMRA excepts water derived from "a subterranean stream having a permanent, distinct, and known channel" from the requirement for underground coal miners to promptly replace drinking, domestic, or residential water supplies affected underground coal mining, and (3) the procedural requirements of section 82–4–253(2) of MSUMRA would not, in Montana's opinion, result in "prompt" replacement of water supplies adversely affected by underground coal mining.

Montana has stated that statutory changes to address these issues will need to be sought in the next legislative session in January 1997, and subsequent rule changes would follow adoption of statute changes. OSM has determined that Montana has not received or investigated any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

E. Enforcement in North Dakota

By letter to North Dakota dated . December 15, 1994, OSM requested information from North Dakota that would help OSM decide which approach to take in North Dakota to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart North Dakota program provisions (Administrative Record No. ND–W–01). By letter dated December 21, 1994, North Dakota responded to OSM's request (Administrative Record No. ND–W–02).

North Dakota stated that no underground coal mines were operating in North Dakota after October 24, 1992. North Dakota's regulatory program does not allow underground mining at the present time. In the event that North Dakota received an application for underground mining, North Dakota would have to revise its program to incorporate counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

F. Enforcement in Wyoming

By letter to Wyoming dated December 15, 1994, OSM requested information from Wyoming that would help OSM decide which approach to take in Wyoming to implement the requirements of section 720(a) of SMCRA, the implementing Federal

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regulations, and/or the counterpart Wyoming program provisions (Administrative Record No. WY–29–01). By letter dated January 19, 1995, Wyoming responded to OSM's request (Administrative Record No. WY–29–02).

Wyoming stated that three underground coal mines were active in Wyoming after October 24, 1992. Wyoming indicated that existing State program provision at Wyoming Statutes 35–11–102 (policy and purpose); 35–11–406 (permit applications); 35–11–416 (surface owner protection); and 35–11–428 (in situ mining permit applications); and Wyoming Coal Rules and Regulations at chapter VI, section 2 (general environmental performance standards); chapter VII, sections 1 through 4 (underground mining permit applications, environmental protection performance standards, public notice, and surface owner protection); and chapter XVIII, section 3 (in situ mining permit applications) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations.

Wyoming explained that it will enforce these State program provisions in accordance with the enforcement provisions that were in effect October 24, 1992. Wyoming has investigated one citizen complaint alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. This complaint concerned subsidence damage to a reclaimed reservoir. This is a unique situation in that the alleged damage occurred within the permit area of an adjacent surface coal mine. The two mine operators have mutually agreed upon corrective measures and have not requested the State of Wyoming to intervene.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Alaska, Montana, North Dakota, and Wyoming to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Alaska, Montana, North Dakota, and Wyoming should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–8467 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 904, 918, 936, and 943

Arkansas, Louisiana, Oklahoma, and Texas Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Arkansas, Louisiana, Oklahoma, and Texas underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations, require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Arkansas, Louisiana, Oklahoma, and Texas regulatory programs (hereinafter referred to as the "States programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Arkansas, Louisiana, Oklahoma, and Texas and consideration of public comments, OSM will decide whether initial enforcement in Arkansas, Louisiana, Oklahoma, and Texas will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Arkansas, Louisiana, Oklahoma, and Texas. Requests to speak at the hearing must be received by 4 p.m., c.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to James H. Moncrief, Director, Tulsa Field Office at the address listed below.

Copies of the applicable parts of the State programs, SMCRA, the implementing Federal regulations, information provided by Arkansas, Louisiana, Oklahoma, and Texas concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135–6547, Telephone: (918) 581–5430.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817 41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to

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the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(C)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Arkansas

By letter to Arkansas dated December 15, 1994, OSM requested information from Arkansas that would help OSM decide which approach to take in Arkansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Arkansas program provisions (Administrative Record No. AR–542). By letter dated January 30, 1995, Arkansas responded to OSM's request (Administrative Record No. AR–453).

Arkansas stated that one underground coal mine was active in Arkansas after October 24, 1992. Arkansas indicated that its existing State law and its regulations at Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) Sections 779.17, 780.21(e), 783.17, 784.14, 784.20(c) 816.54, and 816.124–U(b) and (c) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Arkansas did not indicate when the existing State counterpart provisions went into effect. However, Arkansas did indicate that it had not received any citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

D. Enforcement in Louisiana

By letter to Louisiana dated January 23, 1995, OSM requested information from Louisiana that would help OSM decide which approach to take in Louisiana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Louisiana program provisions (Administrative Record No. LA–352). By letter dated February 7, 1995, Louisiana responded to OSM's request (Administrative Record No. LA–353).

Louisiana stated that no underground coal mines were operating in Louisiana after October 24, 1992. Louisiana's regulatory program does not allow underground mining at the present time. In the event that Louisiana received an application for underground mining, Louisiana would have to revise its program to incorporate counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

E. Enforcement in Oklahoma

By letter to Oklahoma dated January 23, 1995, OSM requested information from Oklahoma that would help OSM decide which approach to take in Oklahoma to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or counterpart Oklahoma program provisions (Administrative Record No. OK–965). By letter dated February 8, 1995, Oklahoma responded to OSM's request (Administrative Record No. OK–966).

Oklahoma stated that one underground coal mine was active after October 24, 1992, and one underground mine was constructing surface facilities as of February 8, 1995.

Oklahoma indicated that the State regulation at OAC 460:20–45–47(c) (previously codified as section 817.121(c)) addresses repair or compensation of subsidence-related material damage to structures and replacement of water supplies contaminated or diminished due to subsidence.

However, Oklahoma indicated that this regulation "is not as clearly written" as the new Federal regulations and that it includes "vague statements * * * regarding structures, facilities, and any drinking, domestic or residential water supplies" that will be clarified once the regulation is revised in accordance with the new Federal regulations.

Oklahoma did not indicate when the State counterpart provisions went into effect. However, Oklahoma stated that it had investigated one citizen complaint alleging subsidence-related damage for underground mining operations conducted after October 24, 1992, and it issued a violation notice as a result of the complaint. OSM has determined that the citizen complaint did not involve structural damage or water supply loss or contamination.

F. Enforcement in Texas

By letter to Texas dated January 23, 1995, OSM requested information from Texas that would help OSM decide which approach to take in Texas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Texas program provisions (Administrative Record No. TX–587). By letter dated January 26, 1995, Texas responded to OSM's request (Administrative Record No. TX–588).

Texas stated that no underground coal mines were operating in Texas after October 24, 1992.

Texas stated that the Texas Surface Coal Mining and Reclamation Act currently has no counterpart to section 720 of SMCRA, and its regulations at section 817.564, regarding repair and compensation for damages occurring to buildings and other structures, and at section 817.521, regarding replacement of water supplies, have no direct counterparts to OSM's proposed regulations at 30 CFR 817.121(c) and 817.41(k).

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Arkansas, Louisiana, Oklahoma, and Texas to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Arkansas, Louisiana, Oklahoma, and Texas should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–8469 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Annoucement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Colorado, New Mexico, and Utah underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments of SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Colorado, New Mexico, and Utah regulatory programs (herein after referred to as the "State programs" currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM will decide whether initial enforcement in each of these States will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., m.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Colorado, New Mexico, and Utah. Requests to speak at the hearing must be received by 4:00 p.m., m.d.t. on **April 21**, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Thomas E. Ehmett, Acting Director, Albuquerque Field Office at the address listed below.

Copies of the applicable parts of the Colorado, New Mexico, and Utah programs, SMCRA, the implementing Federal regulations, information provided by Colorado, New Mexico, and Utah concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., Suite 1200, Telephone: (505) 766–1486.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with

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these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSDM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after same date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO–652). By letter dated February 23, 1995, Colorado responded to OSM's request [Administrative Record No. CO–661].

Colorado stated that permits were issued for 25 underground coal mines after October 24, 1992, and 11 of those mines actually mined coal after October 24, 1992.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407–2, Rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's "Sunset Law." The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill is to amend section 34–33–121(2)(a) to provide specific statutory support for Rule 4.20.3(2). Colorado has not yet formally submitted this amendment to OSM for review under 30 CFR 732.17.

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to "* * * replace the water supply of any owner of a *vested* water right which is 'proximately injured as a result of the mining activities in a manner consistent with applicable *State* law" (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging subsidence-related water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging subsidence-related water supply loss or contamination was withdrawn, and the second is currently under investigation by Colorado.

D. Enforcement in New Mexico

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM–725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM–726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that, because its existing provision at Coal Surface Mining Commission (CSMC) Rule 80–1–20–124 does not include requirements no less stringent than section 720 of SMCRA, it intended to revise this rule to read as follows:

> Each person who conducts underground mining which results in subsidence shall:
>
> (a) Promptly repair, or compensate for, material damage resulting subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged structures.
>
> Compensation shall be provided to the owner and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to underground mining which results in damage of the structures, of a noncancellable premium-prepaid insurance policy.
>
> (b) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

New Mexico did not indicate whether it currently has the authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico has not received any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

E. Enforcement in Utah

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT–1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT–1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1994 (Administrative Record Nos. UT–917 and UT–997), Utah proposed subsidence material damage provisions at Utah Code Annotated 40–10–18(4) that were intended to be counterparts to the provisions to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule **Federal Register** notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but it also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy

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II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Colorado, New Mexico, and Utah to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mst on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Colorado, New Mexico, or Utah should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center

[FR Doc. 95–8468 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Iowa, Kansas, and Missouri underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if Iowa's, Kansas', and Missouri's regulatory programs (hereinafter referred to as the "Iowa, Kansas, and Missouri programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM will decide whether initial enforcement in Iowa, Kansas, and Missouri will be accomplished through the State Program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Iowa, Kansas, and Missouri. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Michael C. Wolfrom, Acting Director, Kansas City Field Office at the address listed below.

Copies of the applicable parts of the Iowa, Kansas, and Missouri programs, SMCRA, the implementing Federal regulations, information provided by Iowa, Kansas, and Missouri concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a0(2) requires

prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If thee State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(20 that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Iowa

By letter to Iowa dated December 14, 1994, OSM requested information from Iowa that would help OSM decide which approach to take in Iowa to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Iowa program requirements (Administrative Record No. IA–413). As of March 21, 1995, Iowa had not responded to OSM's request.

OSM has determined that no underground coal mines were operating in Iowa after October 24, 1992.

OSM's review of Iowa's program indicates that Iowa has not revised its

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statute to incorporate counterparts to the requirements of section 720 of SMCRA. Also OSM's review indicates that (1) at Iowa Administrative Code (IAC) 27–40.64(207), Iowa incorporated 30 CFR 817.41 as it existed on July 1, 1992, and (2) at IAC 27–40.64(6), Iowa incorporated 30 CFR 817.121(c)(2) as it existed on July 1, 1992, except the phrase "To the extent required under applicable provisions of State law."

D. Enforcement in Kansas

By letter to Kansas dated December 14, 1994, OSM requested information from Kansas that would help OSM decide which approach to take in Kansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Kansas program requirements (Administrative Record No. KS–594). By letter dated February 3, 1995, Kansas responded to OSM's request (Administrative Record No. KS–595).

Kansas stated that no underground coal mines were operating in Kansas after October 24, 1992.

Kansas indicated that at Kansas Administrative Regulations (KAR) 47–9–1(d)(40), it adopted 30 CFR 817.121 as it existed on July 1, 1990, and is in the process of promulgating regulations adopting 30 CFR 817.121 as it was written on July 1, 1992. Kansas stated that this revised regulation will authorize the repair of structural damage caused by subsidence in accordance with section 720(a)(1) of SMCRA as it existed on December 31, 1993.

Kansas further indicated that it has the authority to investigate complaints concerning water loss through the material damage criteria of KAR 47–9–1(d)(40, which adopts by reference 30 CFR 817.121(a), and through its hydrologic balance regulations at KAR 47–9–1(d)(7), which adopts by reference 30 CFR 817.41. It further stated that any drinking domestic, or residential water supply, or other beneficial use as defined by the Kansas Water Appropriations Act, which is impaired by diversion or is otherwise impaired, would have to be replaced according to Kansas Statutes Annotated (KSA) 82a–706b. Lastly, Kansas stated that any waters of the state whose quality is adversely impacted will have to be cleaned up at the owner's expense as provided for in KSA 65–171 *et seq.*

Kansas concluded that the above-discussed regulations and statutes adequately encompass the requirements of section 720(a) of SMCRA.

E. Enforcement in Missouri

By letter to Missouri dated December 14, 1994, OSM requested information from Missouri that would help OSM decide which approach to take in Missouri to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Missouri program provisions (Administrative Record No. MO–619. By letter dated February 16, 1995, Missouri responded to OSM's request (Administrative Record No. MO–620).

OSM determined that no underground coal mines were operating in Missouri after October 24, 1992.

Missouri stated that the subsidence plan permitting requirements at 10 Missouri Code of State Regulations (CSR) 40–6.120(11) and the performance standards for subsidence control at 10 CSR 40–3.280 generally correspond to the requirements of section 720(a)(1) of SMCRA. In these regulations, Missouri requires the permit applicant to submit a plan detailing steps to prevent subsidence damage or mitigate effects of that damage to "structure or renewable resource lands." Missouri interprets "structures to broadly mean any building, whether occupied or unoccupied, and it defines "renewable resource lands" as "aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silviculture production for food and fiber, and grazing lands."

Missouri also stated that the underground mining permit requirements for alternate water supply at 10 CSR 40–6.110(8) and protection of hydrologic balance requirements at 10 CSR 40–6.120(5)(b)3., together with the performance requirements for water rights replacement at 10 CSR 40–3.200(14), generally correspond to section 720(a)(2) of SMCRA.

Missouri indicated that all of the above-discussed regulations have effective dates preceding October 24, 1992, and appear to provide Missouri authority to enforce the provisions of section 720 of SMCRA.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Iowa, Kansas, and Missouri to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Iowa, Kansas, and Missouri should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–8466 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 63

Former Spouse Payments From Retired Pay

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule; amendment.

SUMMARY: This proposed rule amends part 63 of title 32 of the Code of Federal Regulations to reflect amendments to the Uniformed Services Former Spouses' Protection Act and to clarify the language in § 63.6(c)(8) concerning court orders that provide for a division of retired pay by means of a formula. Guidance implementing the amendments have been incorporated into Volume 7, Part B of the DoD Financial Management Regulation, DoD 7000.14–R, but has not been previously published in the **Federal Register**.

DATES: Comments must be received June 6, 1995:

ADDRESSES: Interested parties should submit written comments to: Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291, Attention: Military Pay Directorate.

FOR FURTHER INFORMATION CONTACT: Mr. Fiti Malufau, (703) 602–5279.

SUPPLEMENTARY INFORMATION: Because of the large number of comments anticipated, we do not plan to acknowledge or respond to individual comments but will address the comments, as appropriate, in the preamble of the final rule.

To avoid undue hardship on those seeking to enforce support orders providing for a division of retired pay, the Department of Defense will continue to follow its current implementing guidance with regard to the amendments to the Uniformed Services Former Spouses' Protection Act and, effective April 1, 1995, will accept court orders containing formulas that are consistent with the proposed rule until a final rule is issued.

Executive Order 12866, "Regulatory Planning and Review"

The Under Secretary of Defense (Comptroller) has determined that 32 CFR part 63 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act of 1980" (5 U.S.C. 601–612)

The Under Secretary of Defense (Comptroller) has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) because it affects only certain military members and their former spouses.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. 3501–3520)

The Under Secretary of Defense (Comptroller) has certified that this amendment of 32 CFR part 63 does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 63

Alimony, Child support, Retirement, Uniformed Services, Payments to former spouses, Military retired pay.

Accordingly, 32 CFR part 63 is proposed to be amended as follows:

PART 63—FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1. The authority citation for part 63 continues to read as follows:

Authority: 10 USC 1408.

2. Section 63.6 is proposed to be amended by adding the word "certified" after the word "A" in paragraph (b)(1)(ii), by revising paragraphs (b)(5), (c)(8) and (e), and by adding a new paragraph (h)(13) to read as follows:

§ 63.6 Procedures.

* * * * *

(b) * * *

(5) The designated agent for each uniformed service is:

(i) Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service, Cleveland Center (Code LF), PO Box 998002, Cleveland, OH 44199–8002.

(ii) Coast Guard: United States Coast Guard, Commanding Officer (L), Pay and Personnel Center, 444 Quincy Street, Topeka, KS 66683–3591.

(iii) Public Health Service: Office of General Counsel, Department of Health and Human Service, Room 5362, 330 Independence Avenue, SW, Washington, DC 20201.

* * * * *

(c) * * *

(8) The court order shall require payment of child support or alimony or, in the case of a division of property, provide for the payment of an amount of disposable retired or retainer pay, expressed as a dollar amount or as a percentage. Court orders specifying a percentage or fraction of disposable retired pay shall be construed as a percentage or a fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court. For orders served on or after April 1, 1995, an exception to requiring such a clarifying order will be made only if in accordance with (c)(8) (i), (ii) and (iii) of this section:

(i) The order otherwise qualifies for direct payment but the parties are divorced when the member is on active duty. In that situation, where the pertinent court order is expressed in terms of a formula and the element missing from that formula is the member's years of service, then the designated agent will supply the member's years of service in terms of whole months to arrive at a percentage of disposable pay due the former spouse. Partial months of service will be dropped. The member's service that is creditable for retirement percentage multiplier purposes (See Chapter 1, Section C of DoD Financial Management Regulation, DoD 7000.14–R, Volume 7, Part B [1]) will be used in all formulas. In the case of reserve members, points earned during the member's marriage must be contained in the court order. The designated agent will supply total retirement points earned by a reservist

[1] Copies may be obtained from the Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, Virginia 22240–5291, Attention: Military Pay Directorate.

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if that element is missing from the formula. The formula will be computed based on the member's service for retirement multiplier or points and carried out to four decimal places.

(ii) The order otherwise qualifies for direct payment but the parties are divorced when the member is on active duty and the pertinent court order awarding the former spouse a portion of the member's retired/retainer pay is expressed in terms of a hypothetical retired pay amount—one that is conditional or based upon the occurrence of certain facts and/or events. No application will be processed by the designated agent in the absence of a clarifying order where the hypothetical retired pay amount is to be based upon retired/retainer pay due the member at the time of divorce and the divorce occurs prior to the member's retirement eligibility (at least 15 or 20 years of service) unless the hypothetical retired pay amount is contained in the order or is based on 15 or 20 years of service. All hypothetical awards will be computed on the basis of the member's retired pay at the time of retirement (as explained in paragraph (c)(8)(iii) of this section) and, if the order also provides for the same percentage of cost-of-living adjustments, will be converted to a percentage of current disposable pay. If the hypothetical contained in the court order does not provide for the same percentage of cost-of-living adjustments, then payments will be made in a fixed dollar amount only. As noted in this section, the formula will be carried out to four decimal places.

(iii) *Example.* A court order awards the former spouse 25% of the member's monthly retired/retainer pay of a retired rank of Captain with 20 years of service to include the same percentage of cost-of-living increases. The member later retires after 25 years of service as a Major. The monthly retired pay of a Captain with 20 years of service equals $1,000.00 and the monthly retired pay of a Major with 25 years of service is $1,100; $1,000.00 divided by $1,100.00 equals .909091. This amount (.909091) multiplied by 25% (amount of former spouse award) is .2272. This 22.72% award is proportionately the same share as the 25% award in the court order except it is expressed in terms of the member's actual rather than hypothetical retirement pension.

(iv) Except for years of service or date of retirement, as well as hypothetical retired pay amounts mentioned in paragraphs (c)(8) (i) and (ii) of this section, in order to be honored without the necessity of obtaining a subsequent clarifying order from the court, pertinent court orders must contain a fixed dollar amount or a percentage of disposable pay that can be computed using the qualifying court order alone without reference to any facts or values external to the court order dividing the member's retired/retainer pay.

* * * * *

(e) *Limitations.* (1) Divorces, dissolutions of marriage, annulments, and legal separations that became effective before February 3, 1991. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

(i) Fifty percent of disposable retired pay for all court orders and garnishments paid under this part.

(ii) Sixty-five percent of disposable retired pay for all court orders and garnishment actions paid under this part and garnishments paid under 42 U.S.C. 659.

(2) Divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

(i) Fifty percent of disposable retired pay for all court orders and garnishment actions paid under this part.

(ii) Sixty-five percent of the remuneration for employment as defined under 42 U.S.C. 659 and 662 for all court orders and garnishments under this part and garnishments paid under 42 U.S.C. 659.

(3) *Disposable retired pay.* Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include annuitant payments under 10 U.S.C. Chapter 73. For court orders issued on or before November 14, 1986, (or amendments to such court orders), disposable retired pay does not include retired pay of a member retired for disability under 10 U.S.C. Chapter 61. The authorized deductions are:

(i) For divorces, dissolutions of marriage, annulments, and legal separations that become effective before February 3, 1991:

(A) Amounts owed to the United States.

(B) Amounts required by law to be deducted from member's pay.

(C) Fines and forfeitures ordered by a court-martial.

(D) Amounts waived in order to receive compensation under Title 5 or 38 of the United States Code.

(E) Federal employment taxes and income withheld to the extent that the amount is consistent with member's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(i) when the member presents evidence to the satisfaction of a designated agent that supports such withholding. State employment taxes and income taxes when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have an agreement with the State concerned for withholding from retired pay.

(F) Premiums paid as a result of an election under 10 U.S.C. Chapter 73, to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this part.

(G) The amount of the member's retired pay under 10 U.S.C. Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list), for court orders issued after November 14, 1986.

(ii) For divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991:

(A) Amounts owed to the United States for previous overpayment of retired pay and for recoupment required by law resulting from entitlement to retired pay.

(B) Forfeitures of retired pay ordered by court-martial.

(C) Amounts waived in order to receive compensation under Title 5 or 38 of United States Code.

(D) Premiums paid as a result of an election under 10 U.S.C. Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this part.

(E) The amount of member's retired pay under 10 U.S.C. Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list).

* * * * *

(h) * * *

(13) For divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991, payments to a former spouse for a division of property are excluded in determining a member's gross wages concerning retired pay.

* * * * *

Dated: March 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8408 Filed 4–5–95; 8:45 am]

BILLING CODE 5000–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 58

[AD–FRL–5183–2]

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Proposal of Part 51 and Part 58 Implementation Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of the public hearing and notice of availability.

SUMMARY: The EPA is announcing the public hearing on the proposal of the implementation options for the national ambient air quality standard (NAAQS) for sulfur oxides (sulfur dioxide) (SO_2) published on March 7, 1995. The EPA is also announcing the availability of a supplement to the Regulatory Impact Analysis (RIA) for the proposed changes to the NAAQS for SO_2. The supplement includes additional analysis on the costs of the section 303 option in the previous proposal.

DATES: Written comments must be received on or before June 5, 1995, and a public hearing on the proposed rule will be held on May 16, 1995 beginning at 9:00 a.m.

ADDRESSES: Submit written comments on the proposed action on 40 CFR parts 51 and 58 (duplicate copies preferred) to the Air and Radiation Docket Information Center (6102), Room M–1500, U.S. Environmental Protection Agency, Attn: Docket No. A–94–55, 401 M Street SW., Washington, DC 20460. This docket contains supporting information used in developing the proposed rule, and is located in the Air and Radiation Docket Information Center of the U.S. Environmental Protection Agency, South Conference Center, Room M–1500, 401 M Street SW., Washington DC 20460. The docket may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

The public hearing will be held at the U.S. Environmental Protection Agency's Environmental Research Center Auditorium, 86 T.W. Alexander Drive, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Part 51 Notice—Laura D. McKelvey, Air Quality Strategies and Standards Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5497. Part 58 Notice—David Lutz, Emissions Monitoring and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5476. The supplemental RIA—Allyson Siwik, Air Quality Strategies and Standards Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–7775.

SUPPLEMENTARY INFORMATION: On November 15, 1994, at 59 FR 58958, EPA proposed three options for changes to the NAAQS for SO_2. On March 7, 1995, at 60 FR 12492, EPA proposed in the **Federal Register** the requirements for implementing the alternative measures and changes in the SO_2 ambient air surveillance network. That document requires that written comments on the proposed options for changes to parts 51 and 58 to implement changes in the SO_2 standard be submitted to EPA by June 5, 1995. Today's action announces the availability of the supplement to the RIA for the changes to the SO_2 NAAQS and the public hearing on the implementation plan and ambient air quality surveillance network for April 13, 1995.

Individuals planning to make oral presentations at the hearing should notify Laura D. McKelvey at the above address at least 7 days prior to the date of the hearing. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements (duplicate copies preferred) should be submitted to the appropriate docket at the above address.

A verbatim transcript of the hearing and written statements will be available for copying during normal working hours at the Air and Radiation Docket Information Center (6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 51

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

List of Subjects in 40 CFR Part 58

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–8206 Filed 4–5–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 86

[FRL–5185–1]

RIN 2060–AE27

Revisions to the Federal Test Procedure for Emissions From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On April 19 and 20, 1995, the Environmental Protection Agency (EPA) will hold a public hearing in Ann Arbor, Michigan, to receive comments from interested parties on the Proposed Regulations for Revisions to the Federal Test Procedure for Emissions from Motor Vehicles, published in the **Federal Register** on February 7, 1995 (60 FR 7404).

DATES: Comments on the published proposal (60 FR 7404) will be accepted through May 20, 1995. The public hearing will be held on April 19, 1995, from 10:00 a.m. until 5:00 p.m. and on April 20, 1995, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–64, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Materials relevant to this notice have been placed in Docket No. A–92–64. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

The public hearing will be held at the Towsley Auditorium, Morris Lawrence Building, Washtenaw Community College, 4800 East Huron River Drive, Ann Arbor, Michigan. This facility can be reached from exit no. 39 on U.S. Route 23 by going east on Geddes Rd., then south on Dixboro Rd., then east on Huron River Drive. A map is available by mail or fax by calling the EPA at (313) 668–4384.

FOR FURTHER INFORMATION CONTACT: Jim Markey, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann

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Arbor, Michigan, 48105. Telephone (313) 668–4534. Fax (313) 741–7880.

SUPPLEMENTARY INFORMATION:

I. Background

On February 7, 1995, EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** that proposed additions and revisions to the tailpipe emissions portions of the Federal Test Procedure (FTP) for light-duty vehicles and light-duty trucks (60 FR 7404). Interested parties should consult that notice and/or the public docket for a detailed description and background of the proposal. The primary element of that NPRM was a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the current FTP in the representation of aggressive driving behavior (high speed and/or high acceleration), rapid speed fluctuations, driving behavior following startup, air conditioning, and intermediate-duration periods where the engine is turned off. An element of the proposed SFTP that also would affect the conventional FTP is a new set of requirements designed to more accurately reflect real road forces on the test dynamometer. The Agency also proposed emission standards for the new control areas with a specified phase-in period for these standards.

II. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–92–64 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information "Confidential Business Information" and
- Sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket.

If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a non-confidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that multiple copies of the statement or material to be presented be brought to the hearing for distribution to EPA and members of the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed in this notice.

The official records of the hearing will be kept open for 30 days following the hearing to allow submissions of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–92–64 (see **ADDRESSES**).

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made and a copy thereof placed in the public docket. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

Dated: March 29, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–8503 Filed 4–5–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 761

[OPPTS–66009B; FRL–4945–1]

RIN 2070–AC01

Disposal of Polychlorinated Biphenyls (PCBs); Extension of Comment Period and Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period and rescheduling of informal hearing.

SUMMARY: EPA is extending the comment period for a proposed rule to amend its rules under the Toxic Substances Control Act (TSCA) for polychlorinated biphenyls (PCBs), which was published in the **Federal Register** on December 6, 1994 [59 FR 62788]. As a result of this extension, EPA is also rescheduling the public hearing for this same rule.

DATES: Written comments must be received or postmarked by May 5, 1995. The informal public hearing will take place on Tuesday, June 6, 1995, from 9:00 a.m. to 5:00 p.m. If necessary, the hearing will be extended to 9:30 p.m., and it may also be continued the following day, Wednesday, June 7, 1995, beginning at 9:00 a.m. Written requests to participate in the hearing must be received or postmarked by May 15, 1995.

ADDRESSES: All comments should be identified with the document control number (OPPTS–66009A), and submitted in triplicate to TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. The hearing will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (703) 486–1111. Requests to participate in the informal public hearing should be sent to: Record and Hearing Clerk, Operations Branch, Mail Code 7404, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See **SUPPLEMENTARY INFORMATION** for the type of information that must be included in the request and who may participate. Requests for a waiver to participate in the informal hearing by those organizations that did not file main comments must be sent to the Record and Hearing Clerk.

FOR FURTHER INFORMATION CONTACT: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone:

(202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule [59 FR 62788] to amend its rules under TSCA for PCBs. Changes proposed by EPA would affect the disposal, marking, storage, use, reporting and recordkeeping requirements for PCBs. Written comments on the proposed rule were to be received on or before April 6, 1995. EPA received a request seeking a 30–day extension of the public comment period because the length and complexity of the proposal required additional time to develop comments. EPA believes that providing an additional 30 days to prepare written comments is reasonable, and is granting the request. Written comments must now be received by EPA or postmarked on or before May 5, 1995. EPA is requesting comment on the proposed rule only to the extent that it would amend or change existing regulations. EPA is not soliciting comment on provisions of existing regulations that would not be changed by this proposal. Unit V of the preamble to the proposed rule [59 FR 62788] explains how commenters may make claims of business confidentiality for information included in comments. In the March 10, 1995, **Federal Register** [60 FR 13095] EPA announced that an informal public hearing on the proposed rule would be held on May 2 and 3, 1995. As a result of the extension of the written comment period, EPA must reschedule this hearing. Provisions at 40 CFR part 750 require the informal hearing for main comments to be held at least 2 weeks after the close of the written comment period. Accordingly, EPA has rescheduled the hearing for June 6 and 7, 1995.

Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the Record and Hearing Clerk (see **ADDRESSES** above). The request shall be received on or before May 15, 1995. Persons or organizations that have already submitted requests to participate in response to the March 10 notice are assumed by EPA to want to participate at the rescheduled hearing, and they need not resubmit their requests.

The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required (not to exceed 15 minutes); and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Due to the expected number of speakers, comments must be limited to 15 minutes. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Record and Hearing Clerk (see **ADDRESSES** above) or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.6(a)). The complete procedures for this informal hearing are identified in 40 CFR part 750, subpart A, and are summarized in the March 10, 1995 [60 FR 13095] hearing notice.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 31, 1995.

Joseph S. Carra,

Direction, Office of Pollution Prevention and Toxics.

[FR Doc. 95–8501 Filed 4–5–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 032295C]

Reef Fish Fishery of the Gulf of Mexico; Public Hearings on Draft Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene 10 public hearings on Draft Amendment 11 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Draft Amendment 11 will address a variety of reef fish management measures.

DATES: Written comments on Draft Amendment 11 will be accepted until May 3, 1995. Public hearings will be held in April. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Written comments should be sent to, and copies of the draft amendment are available from, Mr. Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609 (FAX: 813–225–7015). Public hearings will be held in Florida, Texas, Alabama, Mississippi, and Louisiana. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 813–228–2815.

SUPPLEMENTARY INFORMATION: Issues that will be addressed in Draft Amendment 11 include: Proposed modifications of the FMP regulatory framework procedure for the annual specification of total allowable catch (including changes in procedures), the definition of optimum yield, and the criteria for specifying the length of a stock recovery program for overfished reef fish species; permitting issues (including dealer and vessel permit conditions), transferability provisions, implementation of a new vessel permit moratorium for the fishery, and permits for charter vessels and headboats; allowing hook-and-line harvest of reef fish by shrimp vessels; issues related to enforceability of reef fish regulations; changes to amberjack size and bag limits and a commercial seasonal closure; changes to gag/black grouper and red snapper size limits; and an aggregate bag limit for reef fish.

The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Monday, April 17, 1995—NMFS Panama City Laboratory, Conference Room, 3500 Delwood Beach Road, Panama City, FL 32408;
2. Monday, April 17, 1995—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040;
3. Tuesday, April 18, 1995—Our Lady Star of the Sea, Parish Hall, 705 Longoria, Port Isabel, TX 78578;
4. Tuesday, April 18, 1995—Orange Beach Community Center, 27301 Canal Road, Orange Beach, AL 36561;
5. Tuesday, April 18, 1995—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609;
6. Wednesday, April 19, 1995—University of Texas, Visitor's Center Auditorium, 750 Channel View Drive, Port Aransas, TX 78373;
7. Wednesday, April 19, 1995—J. L. Scott Marine Education Center & Auditorium, 115 East Beach Boulevard (U.S. Highway 90), Biloxi, MS 39530;
8. Thursday, April 20, 1995—Holiday Inn on the Beach, 5002 Seawall Boulevard, Galveston, TX 77551;
9. Monday, April 24, 1995—Venice Fire House, Highway 23, Venice, LA 70091; and

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10. Tuesday, April 25, 1995—Larose Regional Park, Versailles Room, 2001 East 5th Street, Larose, LA 70373.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see ADDRESSES) by April 10, 1995.

Dated: March 31, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8396 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

[I.D. 033095A]

Groundfish of the Bering Sea and Aleutian Island Area; Chum Salmon Savings Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 35 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see ADDRESSES).

DATES: Comments on the FMP amendment should be submitted on or before May 30, 1995.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 35 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone, 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

If approved, Amendment 35 would establish an area closed to fishing with trawl gear from August 1 through August 31, and after August 31, upon attainment of a 42,000 nonchinook salmon limit, through October 14. This area, the Chum Salmon Savings Area, is in the Bristol Bay area of the Bering Sea. It is intended to reduce nonchinook (chum) salmon bycatch in the Bering Sea nonroe pollock fishery.

Authority: 16 U.S.C. 1801 *et seq*

Dated: March 31, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8391 Filed 3–31–95; 4:09 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 66

Thursday, April 6, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 31, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- Consolidated Farm Service Agency

Supplemental Qualifications Statement
FAS–1010
Individuals or households; 252 responses; 1,008 hours
Patricia A. Carter, (202) 720–5267

- Food and Consumer Service

WIC Farmer's Market Nutrition Program (FMNP) Annual Financial Report, FMNP Recipient Report, and FMNP Regulation
FNS–683 (Financial Report), FNS–203 (Recipient Report) State, Local or Tribal Government; 1,126 responses; 5,952 hours
Debra Utting (703) 305–2998

- Rural Economic & Community Development

7 CFR 1945–A, Disaster Assistance (General)
Business or other for-profit; Farms; State, Local, or Tribal Government; 1,000 responses; 783 hours
Jack Holston, (202) 720–9736

Extension

- Animal & Plant Health Inspection Service

Domestic Quarantines
PPQ Forms 527, 530, 537, 540, 543, 586
Individuals or households; Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government; 1,005,331 responses; 98,910 hours
Sid Cousins, (301) 734–8247

- Rural Economic & Community Development

7 CFR 1940–G, Environmental Program
FmHA 1940–20
Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government; 5,380 responses; 57,120 hours
Jack Holston, (202) 720–9736

- Rural Economic & Community Development

7 CFR 1980–G, Nonprofit National Corporations Loan and Grant Program
FmHA 1980–60–61, and 63
Business or other for-profit; Non-for-profit institutions; State, Local or Tribal Government; 354 responses; 487 hours
Jack Holston, (202) 720–9736

New Collection

- Office of Communications

Team USDA AmeriCorps National Service Participant Application
AD–1099
Individuals or households; 4,000 responses; 2,000 hours
Ronald N. De Munbrun, (202) 690–3894

Reinstatement

- Rural Utilities Service

Report of Compliance and Participation
RUS Form 268
Individual or households; Business or other for-profit; Not-for-profit institutions; 3,680 responses; 1,233 hours
Regina Claiborne, (202) 720–9507.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–8423 Filed 4–5–95; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[No. LS–95–005]

Notice of Upcoming Soybean Producer Poll

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing a producer poll to be held on July 26, 1995, to determine if soybean producers support the conducting of a refund referendum on whether refunds should continue under the Soybean Promotion, Research, and Consumer Information Program.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, Room 2624–S; P.O. Box 96456; Washington, D.C. 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 6301 et. seq.), the U.S. Department of Agriculture is conducting the required producer poll on July 26, 1995.

Both registration and signing of the poll to request a refund referendum will be held on July 26, 1995, at Consolidated Farm Service Agency (CFSA) (formerly the Agricultural Stabilization and Conservation Service (ASCS)) county offices.

Absentee forms may be requested by mail or in person from June 19 through July 14, 1995, from county CFSA offices located in or serving the county where the producer resides. Completed forms must be postmarked or returned in person no later than July 14, 1995.

Producers who certify that they produced soybeans between September 1, 1991, and June 1, 1995, are eligible to request a refund referendum by participating in the producer poll. Only those producers who want to request that a refund referendum be held are asked to participate.

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The purpose of the poll is to determine whether eligible producers favor the conducting of a refund referendum on the continuance of payments of refunds under the Soybean Promotion and Research Order. If at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers nationwide participate in the poll, a refund referendum will be held within 1 year from that determination. Refunds would continue until the referendum is held. If results of the poll indicate that a referendum is not supported, refunds would be discontinued upon that determination.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements made in connection with the producer poll have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093.

Authority: 7 U.S.C. 6301–6311.

Dated: March 31, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–8427 Filed 4–5–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Joseph Jeno Nandory

In the **Federal Register** of Thursday, March 23, 1995, the Bureau of Export Administration published an Order at 15285. This notice is being published to provide the address of the respondent in that order. The address is as follows: Joseph Jeno Nandory, 5178 Ganado Drive, Las Vegas, Nevada 89103.

Dated: March 30, 1995.

John Despres,

Assistant Secretary of Export Enforcement.

[FR Doc. 95–8487 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 10–95]

Foreign-Trade Zone 143, Sacramento, CA; Application for Subzone Status C. Ceronix, Inc. (Video Monitors), Auburn, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Sacramento, grantee of FTZ 143, requesting special-purpose subzone status at the gaming/recreational machine video monitor manufacturing plant of C. Ceronix, Inc. (Ceronix), in Auburn, California (Sacramento Customs port of entry area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 28, 1995.

The Ceronix plant (45,000 sq. ft. on 3.6 acres) is located at 12265 Locksley Lane, Auburn, California, some 35 miles east of Sacramento. The facility (46 employees) is used to manufacture hi-resolution (VGA) video monitors for electronic gaming and recreational machines (e.g., bowling tallies, lottery, poker). Foreign-sourced components (approx. 60% of product value) include printed circuit boards, transformers, capacitors, resistors, semiconductor devices, integrated circuits, certain cathode ray tubes, conductors, fasteners and miscellaneous items for gaming/recreational machines. The cathode ray tubes are limited to those classified under HTS 8540.30 (duty rate—5.4%). The finished products are classified under HTS headings for gaming/recreational machines (HTS 9504—duty free) or data processing machines (HTS 8471—duty rates: 0–4.4%). Some 30 percent of the finished products are exported.

Zone procedures will exempt Ceronix from Customs duty payment on materials used for its export production. On its domestic sales, the company would be able to choose the duty rate applicable to finished products (0–4.4%) rather than the rates otherwise applicable to components (duty rates: 0–9.8%). The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 6, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 20, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Enforcement Office, P.O. Box 214666, Sacramento, CA 95821

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 30, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–8512 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–838]

Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Karla Whalen, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–4136 or (202) 482–6309, respectively.

POSTPONEMENT OF FINAL DETERMINATION: The China Chamber of Commerce for Foodstuffs, Native Produce and Animal By-products Importers and Exporters (the Chamber), and 28 individual Chinese exporters, respondents in this proceeding, represent a significant proportion of exports of honey from the PRC to the United States. On March 17, 1995, the Chamber and the 28 individual Chinese exporters requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Such is the case with the respondents in this investigation. Accordingly, we are postponing our final determination as to whether sales of honey from the PRC have been made at less than fair value until not later than August 2, 1995.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: March 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8509 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–100–002]

Notice of Price Determination, Uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section IV.C.1. of the antidumping suspension agreements on uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan, the Department calculated a price for uranium of $12.06/lb. On the basis of this price, the export quota for uranium pursuant to Section IV.A. of the Uzbek and Kyrgyz agreements is zero. The export quota for uranium pursuant to Section IV.A. of the Kazakhstani agreement, as amended on March 27, 1995, is 500,000 lbs. for the period April 1, through September 30, 1995. Exports pursuant to other provisions of the agreements are not affected by this price.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Beth Chalecki, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–2312, respectively.

PRICE CALCULATION:

Background

Section IV.C.1. of each agreement specifies that the Department of Commerce (DOC) will issue its observed market price on April 1, 1995, and use it to determine the quota applicable to exports from the various republics during the period April 1, 1995 to September 30, 1995.

Calculation Summary

Section IV.C.1. of each agreement specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the weighted average long-term price as determined by the Department on the basis of information provided by market participants and a simple average of the UPIS Base Price for the months in which there were new contracts reported.

Our letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 2.65 percent, which was derived from a rolling average of the annual GNP Implicit Price Deflator index from the past four years. The Department used the base quantities reported on the summary sheet for the purpose of weight-averaging the prices of the long-term contracts submitted by market participants. We then calculated a simple average of the UPIS Base Price and the longer-term price determined by the Department.

Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA), to weight the spot and long-term components of the observed price. In this instance, we have used purchase data from the period 1989–1992, as in the previous determination. During this period, the spot market accounted for 31.39 percent of total purchases, and the long-term market for 68.61 percent. We were not able to include data from the 1993 EIA Uranium Industry Annual because it has been withheld due to its proprietary nature.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $12.06. This reflects an average spot market price of $9.57, weighted at 31.39 percent, and an average long-term contract price of $13.19, weighted at 68.61 percent. Since this price is below the $13.00/lb. minimum expressed in Appendix A of the Uzbek and Kyrgyz agreements, there will be no quota under Section IV.A. of the agreements available to these republics for the period April 1, 1995 to September 30, 1995. However, since this price is above the $12.00/lb. minimum expressed in Appendix A of the amended Kazakhstani agreement, Kazakhstan receives a quota of 500,000 lbs. for the period April 1, 1995 to September 30, 1995.

Comments

Consistent with the Department's letters of interpretation dated February 22, 1993, we provided interested parties our preliminary price determination on March 10, 1994. We received no comments.

We have determined that the observed market price for uranium is $12.06/lb. The Department invites parties to provide pricing information for use in the next price determination. Any such information should be provided for the record and should be submitted to the Department by September 5, 1995.

Dated: March 30, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–8510 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–557–806]

Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 8, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on extruded rubber thread from Malaysia. We have now completed this review and determine the bounty or grant during the period January 1, 1992 through December 31, 1992 to be 3.30 percent *ad valorem* for all companies.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Chris Jimenez, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1994, the Department published in the **Federal**

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Register (59 FR 46392) the preliminary results of its administrative review of the countervailing duty order on extruded rubber thread from Malaysia (57 FR 38472; August 25, 1992). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. We received written comments from the Government of Malaysia (GOM), respondent, and North American Rubber Thread, petitioner.

The period of review is January 1, 1992 through December 31, 1992 and affects entries made on or after March 31, 1992 and before April 28, 1992, and all entries made on or after August 25, 1992 through December 31, 1992. For an explanation of entries covered, see the "Final Results of Review" section of this notice.

This review involves four companies: Heveafil Sdn. Bhd. (Heveafil), Filmax Sdn. Bhd. (Filmax), Rubberflex Sdn. Bhd. (Rubberflex), and Filati Lastex Elastofibre Sdn. Bhd. (Filati). The review covers the following programs:

(1) Pioneer Status.
(2) Export Credit Refinancing (ECR).
(3) Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales.
(4) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports.
(5) Industrial Building Allowance.
(6) Double Deduction for Export Promotion Expenses.
(7) Rubber Discount Scheme.
(8) Investment Tax Allowance.
(9) Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
(10) Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.
(11) Double Deduction of Export Credit Insurance Payments.
(12) Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
(13) Preferential Financing for Bumiputras.

After consideration of the GOM's comments on the preliminary results of review, the Department has recalculated the cash deposit to account for the elimination of the Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports Program. In addition, the Department recalculated the post-shipment financing benefits to account for its inadvertent omission of certain transactions. Accordingly, the Department determines the total bounty or grant from all programs under review to be 3.30 percent *ad valorem* for all companies.

Scope of Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. During the review period, such merchandise was classifiable under item number 4007.00.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation of Country-Wide Rate

We calculated the bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the bounty or grant received by each company using as the weight its share of total Malaysian extruded rubber thread exports to the United States, including all companies, even those with *de minimis* or zero bounties or grants. We then summed the individual companies' weight-averaged bounties or grants to determine the bounty or grant from all programs benefitting extruded rubber thread exports to the United States. Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the total bounty or grant calculated for each company to determine whether individual company bounty or grant differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). In calculating the individual company rates described above, only one rate was calculated for Heveafil and Filmax because Heveafil and Filmax were related parties.

None of the companies received aggregate bounties or grants which were significantly different within the meaning of 19 CFR 355.22(d)(3)(i). Therefore, the country-wide rate is based on the weighted-average aggregate bounties or grants received by the companies subject to this review.

Analysis of Comments

Comment 1: The GOM alleges that the Department initiated the original investigation pursuant to Section 303(a)(2) of the Act, and, therefore, the Department can impose countervailing duties under this section only if there is an injury determination by the International Trade Commission (ITC). (The ITC discontinued its injury determination under Section 303(a)(2) because the duty-free status of rubber thread from Malaysia was terminated.) The GOM contends that without an injury determination, the Department had no authority to issue a countervailing duty order and to require the bonds or cash deposits. The GOM further maintains that the Department cannot simply transfer the jurisdiction for an investigation from Section 303(a)(2) to Section 303(a)(1) without issuing a public notice that it intends to proceed with the investigation under a different statutory provision. *See, Certain Textile Mill Products and Apparel from Turkey* (50 FR 9817; March 12, 1987); *Certain Textile Mill Products and Apparel from the Philippines* (50 FR 1195; March 26, 1985) and *Certain Textile Mill Products and Apparel from Indonesia* (50 FR 9861; March 12, 1985). Furthermore, because there was no initiation notice or a preliminary determination under section 303(a)(1), a final determination under that section was not appropriate. If Commerce wanted to proceed with the investigation, it was required to re-initiate under the appropriate provision.

Petitioner argues that the Department has previously rejected the GOM's claims and, therefore, they merit no more consideration.

Department's Position: The GOM's challenge to the Department's authority to issue the order is untimely. Challenges to the issuance of an order must be filed within 30 days of the date the order is published. The countervailing duty order on extruded rubber thread from Malaysia was published on August 25, 1992. The GOM voluntarily withdrew a timely-filed complaint challenging the order on these same grounds. The GOM's attempt to reverse that challenge in this proceeding is untimely.

Comment 2: The GOM contends that the Department overstated the benefit received under the ECR program in its administrative review. The GOM argues that the Department must use the "cost of funds" to the government as the benchmark as required by item "k" of the Illustrative List of Export Subsidies annexed to the Subsidies Code, and the appropriate "cost of funds" is the 90-day rate for government bonds. The GOM asserts that if the Department instead uses the cost to the recipient as a benchmark, it should continue its past practice and use the bankers' acceptances (BA) rates because they are identical to ECR financing in terms of risk, maturity and purpose. The GOM further contends that the Department should interpret the "predominant" form of financing as the most comparable form of financing. It asserts that it makes no sense to compare trade financing to other financing such as short-term loans and overdrafts. Furthermore, if the Department uses the weighted-average of commercial rates, it should account for the differences in the terms of financing.

Petitioner argues that it is the Department's practice to use the national average short-term borrowing rate. It further argues that companies cannot borrow at the government borrowing rate; therefore, "cost of funds" to the government is an improper benchmark.

Department's Position: We disagree with the GOM. The Illustrative List identifies common forms of export subsidies but does not necessarily instruct the Department how to value them. The Department has a longstanding practice of valuing the benefit to the recipient rather than the cost to the government for the purpose of calculating countervailing duty rates.

The Department's practice is to use the rate for the predominant form of short-term financing in the country under review as the benchmark for short-term loans. *See, Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (59 FR 23380; May 31, 1989) (*Proposed Rules*). Where there is no single predominant source of short-term financing in the country in question, the Department may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question. *See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand* (56 FR 46299; September 11, 1991). BAs constitute an extremely small percentage of short-term financing in Malaysia and, therefore, it would be inappropriate to use the BA rates as a benchmark.

At verification, the GOM provided the *Bank Negara Malaysia Quarterly Bulletin*, which lists the commercial bank base lending (BLR) rates prevailing during the review period. The rates ranged from 9.97 percent to 10.29 percent. According to commercial bank officials, the banks add a 1.00 to 2.00 percent spread to the BLR.

Therefore, we have determined that it is appropriate to continue to use the average of the commercial BLR rates published in *Bank Negara Malaysia Quarterly Bulletin*, plus an average 1.5 percent spread, as a benchmark, in accordance with section 355.44(b)(3)(i) of the Department's *Proposed Rules*.

Comment 3: The GOM argues that both Heveafil and Filmax specifically excluded U.S. exports from the calculation of eligibility for the pre-shipment export financing. In addition, the GOM claims that the two companies did not use funds from exports to the United States to repay any of the pre-shipment loans. The GOM claims that in a similar situation, the Department concluded that exports to the United States did not receive benefits from short-term financing. *See, Suspension of Countervailing Duty Investigation; Certain Forged Steel Crankshafts from Brazil* (52 FR 28177, 28179; July 28, 1987) (*Brazilian Crankshafts Suspension Agreement*). Therefore, the GOM maintains that the companies received no benefit with regard to U.S. shipments.

Petitioner argues that the exclusion of U.S. exports from the eligibility calculation did not affect benefits received and, therefore, the Department should dismiss the GOM's claim.

Department's Position: The GOM provides ECR financing based on export performance. The explicit purpose of this program is to promote the export of manufactured and approved agricultural products. Two types of ECR financing are available: pre-shipment and post-shipment financing. There is no evidence that the GOM limits these ECR loans to increase exports to markets other than the United States, nor is there any evidence of a provision that prevents exporters from receiving ECR loans for exports to the United States. In fact, at verification we found that Heveafil received an ECR post-shipment loan for a U.S. export during the review period.

During the review period, both Heveafil and Filmax applied for and used pre-shipment financing based on certificates of performance (CP). Pre-shipment financing based on CPs is a line of credit based on previous exports and cannot be tied to specific sales in specific markets. Because pre-shipment loans were not shipment specific, we included all loans in calculating the country-wide duty rate. By excluding exports to the United States from their application for export financing, the companies merely reduced the amount of financing they received. In addition, at verification, company officials at the Heveafil and Filmax rubber factories could not tie the rubber latex purchased with the pre-shipment loans to products exported to destinations other than the United States. The GOM incorrectly claims that, in a similar situation in the *Brazilian Crankshafts Suspension Agreement*, the Department concluded that no subsidy from the CACEX short-term financing was provided on exports to the United States because exporters agreed not to use that portion of any outstanding CACEX pre-shipment loans certificates which were based on merchandise exported to the United States. In fact, in the final determination of *Brazilian Crankshafts*, the Department found the CACEX export financing program to be countervailable. *See, Final Countervailing Duty Determination; Certain Forged Steel Crankshafts From Brazil* (52 FR 28254, 28255; October 15, 1987). Therefore, we affirm that pre-shipment financing benefits all exports, including those to the United States.

Comment 4: The GOM argues that in calculating the benefit from the post-shipment program the Department used the incorrect interest rates for certain transactions made by Filmax and Rubberflex. Since interest paid for such financing was broken out by interest rates charged by specific banks, the Department should recalculate the benefit using the applicable rates.

Department's Position: We agree and have made the adjustments accordingly. In addition, we are including certain transactions made by Rubberflex that we inadvertently omitted in our calculation of post-shipment financing benefits. These changes increase the benefit from this program from 0.0003 percent *ad valorem* to 0.11 percent ad valorem.

Comment 5: The GOM argues that in calculating the export abatement benefit the Department should consider the actual tax savings in a particular year. Therefore, the Department should consider the non-countervailable deductions. If those non-countervailable deductions equal the tax liability, then there is no benefit in the year in question.

Petitioner argues that the GOM's claim ignores the fact that the subsidy's existence permits tax benefits to be carried forward to other years. Hence, the Malaysians do benefit from the export abatement subsidy. Further, petitioner believes that it is reasonable to assume that the Malaysians will take advantage of subsidy tax deductions.

Department's Position: Essentially the GOM has asked us to assume that the non-countervailable allowances are used first, even if the non-countervailable allowances can be carried forward, while the export allowance cannot be carried forward. As we stated in the final determination in the investigation, given this distinction, it is more reasonable to assume that the

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export abatement is used first. *See, Malaysian Final Determination.* Therefore, we continue to treat the export abatement as fully countervailable based on the tax return filed in the year under review.

Comment 6: The GOM argues that since Heveafil and Filmax eliminated U.S. exports from their application for the tax deduction under the export abatement program, the Department cannot attribute any of the tax abatement program to such exports. Citing section 355.47(a) of the *Proposed Rules*, the GOM argues that the Department cannot find a program countervailable unless its benefits are tied to the subject merchandise.

Petitioner argues that the GOM's method of exclusion was illusory, as it did not affect the benefits received.

Department's Position: In calculating the ratio of total exports to total sales, Heveafil, the only company that claimed the abatement on its income tax return filed in the review period, deducted the amount of U.S. exports from both the numerator and denominator. In essence, the companies merely prorated the benefit (*i.e.* adjusted downward using the ratio of U.S. exports to total exports), since its calculation did not significantly change the ratio applied to adjusted income to determine its export abatement. The calculation methodology used by Heveafil in its tax return did not eliminate the benefit attributable to sales of U.S. exports. Therefore, we confirm our preliminary determination that this program provides a countervailable benefit with respect to exports of the subject merchandise.

Comment 7: The GOM argues that the Department assumed that the entire deduction for all other export tax programs resulted in cash savings in the year under investigation. Moreover, these programs are unlike the export abatement in that they can be carried forward.

Department's Position: The companies under review earned several types of allowances which may be used to offset taxable income. Each year, the company calculates the total value of allowances to which it is entitled. It then draws from this total the amount needed to eliminate any tax liability in that year. If anything remains in the pool, it can be carried forward to offset taxable income in future years.

The specific allowances drawn from the pool in any given year are not identified on the tax form. Therefore, it was necessary to develop a methodology for estimating the portion of the allowance used in a given year that is attributable to countervailable programs, and the portion that is attributable to non-countervailable programs in order to calculate the net bounty or grant.

As we did in the investigation, we assumed during this review that the countervailable programs would be used first. Our rationale was to consider that a central purpose of the countervailing duty law is to encourage foreign governments not to provide countervailable subsidies. In this review, this purpose can best be served by selecting the remaining countervailable allowances before selecting any of the non-countervailable allowances available to the companies.

In addition, if we treat a portion of the countervailable allowances as having been used, other portions carried forward for future use would also be countervailable when used. This means that we would have to track allowances carried forward and trace from year to year what portion of the allowances carried forward is countervailable. To avoid an unadministerable system of tracking and tracing, we have treated the countervailable portions as having been used in the year under review.

Comment 8: The GOM argues that the Department previously found the Pioneer Status Program not countervailable. *See Carbon Steel Wire Rod from Malaysia; Final Results of Countervailing Duty Administrative Review (Wire Rod from Malaysia)* (56 FR 14927; April 12, 1991). The GOM asserts that it is not countervailable because tax benefits under this program are not limited to any sector or region of the Malaysian economy, nor is the program exclusively available to exporting companies. The GOM contends that the Department confirmed at verification, both the *de jure* and *de facto* availability of this program to the entire Malaysian economy, and that pioneer status tax benefits are not targeted to specific industries or companies in a discriminatory manner. Furthermore, the Department verified that the internal guidelines used to grant pioneer status are characterized by neutral criteria unrelated to exports, location or any other factors that could require a determination that the program is countervailable.

The GOM further argues that the Department verified that the GOM does not require export commitments, or view them as preponderant, in evaluating applications; that export potential is merely one of 12 factors considered in granting status; and that a product will not be accepted based on export potential alone. Furthermore, the GOM argues that the Department verified that the Malaysian Government commonly approves companies who do not make export commitments as well as some who do make them. Therefore, market destination is irrelevant to granting pioneer status.

Department's Position: In *Wire Rod from Malaysia*, we concluded that no industry or group of industries used the program disproportionately and found the program not to be countervailable. That determination, however, did not specifically address situations where companies had a specific export condition attached to their pioneer status approval. In the *Wire Rod* investigation, petitioner raised the issue of an export requirement. Although the requirement *per se* is not new, it was not at issue with the companies investigated at the time.

As stated in the *Malaysian Final Determination*, we continue to view the "domestic" side of the Pioneer Status Program to be not countervailable. However, in this instance recipients of the tax benefits conferred by this program can be divided into two categories: industries and activities that will find market opportunities in Malaysia and elsewhere, and those that face a saturated domestic market. At verification, we established that an export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers. The extruded rubber thread industry is among these industries.

The combination of the necessary export orientation of the industry due to lack of domestic market opportunities and the explicit export condition attached to pioneer status approval in the rubber thread industry lead us to conclude that the "export" side of the Pioneer Status Program constitutes an export subsidy to the rubber thread industry. Whether or not the commitment was voluntary, as the GOM suggests, the company has obligated itself to export a very large portion of its production, and that commitment appears to have been an important condition for approval of benefits. For further information, *see Malaysian Final Determination.*

Comment 9: The GOM argues that the Department overstated the benefit from the Pioneer Status Program because it fails to deduct normal capital allowances that would have been allowed if the program had not been used. The GOM claims that Rubberflex and Filmax, in fact, received no cash benefits from this program. Furthermore, the Department incorrectly allocated pioneer status tax benefits over only export sales even though pioneer status tax benefits are also applicable to profits on domestic

sales. According to the GOM, this is consistent with the Department's practice to allocate benefits over total sales to which they are "tied."

Petitioner argues that pioneer status tax benefits are for the exports of the subject product. Thus, they are countervailable and properly allocated only over export sales.

Department's Position: We have not overstated the benefit from the Pioneer Status Program. When a company receives pioneer status, it is allowed to stockpile normal capital allowances for use in future years. Therefore, these allowances should not be used to offset current benefits. Moreover, export sales should form the denominator because receipt of pioneer status tax benefits for the companies under review is contingent upon exportation. *See* section 355.47(a)(2) of the *Proposed Rules.*

Comment 10: The GOM argues that the Rubber Discount Program ended on December 31, 1991 and that exports on or after January 1, 1992 were no longer eligible for rubber discount benefits. The GOM further argues that in the original investigation, the Department determined that the benefit from this program occurs at the time of export (not at the time of receipt of the cash).

Therefore, exports after December 31, 1991 did not receive benefits.

Petitioner, on the other hand, argues that the benefit from the program occurs at the time of receipt of the funds, as only then does the company have the money to use.

Department's Position: We agree with respondent. In the preliminary results, the Department determined that the benefits were conferred at the time of export. Since the program was terminated effective January 1, 1992, and the last date exports were eligible for rebates was December 30, 1991, no benefits were received from this program during the review period. Our position remains unchanged from our preliminary results.

Comment 11: The GOM contends that we should adjust the cash deposit to reflect program-wide changes affecting future benefits: the reduction in the abatement of income for exports, the elimination of the development tax and the reduction of the corporate tax.

Petitioner argues that cash deppsit should not differ from the subsidy found in the review period, because the actual benefit is not known until after the full investigation of the level of subsidization.

Department's Position: According to 19 CFR 355.50(a), the cash deposit rate will be adjusted for program-wide changes (1) which occur after the review period, but before the preliminary results are published, and (2) which can be measured. The benefits of certain types of programs are not always measurable. For example, in cases of certain loan programs, there may be many factors affecting the subsidy rate, not all of which can be quantified in advance. *See, e.g., Certain Textile Mill Products from Thailand*, 52 FR 7636 (1987); and *Textile Mill Products from Mexico*, 50 FR 10824 (1985); *see, also, Live Swine From Canada*, 53 FR 22189 (1988).

In the instant review, the reduction of the corporate tax and the elimination of the development tax are not program-wide changes, but changes in one factor of the benefit calculation. In *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore Final Results of Countervailing Duty Administrative Review* (56 FR 26384, 26386; June 7, 1991), regarding the reduction of the corporate tax rate, we stated that "there are a number of factors other than the corporate tax rate which affect the benefit calculations (*i.e.*, total sales, total exports, adjusted profits, and investment allowances). Since changes in these factors can offset one another, a * * * reduction in the tax rate does not warrant a reduction in the cash deposit rate." While the reduction in the corporate tax rate and the elimination of the development tax may change the level of benefits found for a tax program, these changes in the tax rates do not constitute a program-wide change in a subsidy program under section 355.50 of the *Proposed Rules.*

The GOM also changed the abatement of income from exports programs by reducing the abatement rates. While the reduction in the abatement rates meets the definition of a "program-wide change" under section 355.50(b) of the *Proposed Rules*, that change cannot be measured. Companies earn several types of general tax allowances which are not under review and which may be used to offset taxable income. Each year, the companies calculate the total value of allowances to which they are entitled. They draw from the total allowances the amount needed to eliminate any tax liability in that year. If anything remains in the pool, it can be carried forward to offset taxable income in future years. *See, Department's Position* to *Comment 7.* It is not known what deductions companies have taken until the tax returns are filed, and it is inappropriate to assume that the adjusted income would remain constant in the year(s) subsequent to our review period. We do not have information regarding the companies' current income and the consequences of the adjusted income, and it would be inappropriate to gather such information because that would, in essence, constitute a new review. Therefore, we have not adjusted the cash deposit.

Unlike the above changes, we verified that the GOM has eliminated the Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports Program. We consider this program to be a program-wide change because it occurred before we published the preliminary results and the change can be measured. We also verified that there are no residual benefits. As such, we have adjusted the cash deposit rate to reflect this change.

Comment 12: The GOM claims that Section 707 of the Act prohibits the Department from ordering the collection of countervailing duties on entries made on or after April 28, 1992 and before August 25, 1992.

Department's Position: We agree. See the "Final Results of Review" section of this notice.

Final Results of Review

After considering all comments received, we determine the bounty or grant to be 3.30 percent *ad valorem* for the period January 1, 1992 through December 31, 1992.

The Department issued the its preliminary affirmative countervailable duty determination in the investigation on December 30, 1991 (56 FR 67276). However, the ITC terminated its injury determination on Malaysian extruded rubber thread in light of the revocation of duty-free status under the Generalized System of Preferences, effective March 31, 1992. Therefore, as a result of the ITC determination, the Department issued instructions to Customs to liquidate entries of the subject merchandise entered, or withdrawn from warehouse, for consumption prior to March 31, 1992, without the imposition of countervailing duties. (*See Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread from Malaysia* (58 FR 41084; August 2, 1993)).

In accordance with 705(a)(1) of the Act, the final determination in the investigation was extended to coincide with the final antidumping determination involving the same product from Malaysia (57 FR 38472; August 25, 1992). Pursuant to section 705 of the Act and Article 5.3 of the GATT Subsidies Code, we cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order.

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Therefore, the Department instructed Customs to terminate the suspension of liquidation on the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 28, 1992. The Department reinstated suspension of liquidation and required cash deposits of estimated countervailing duties of entries made on or after August 25, 1992, the date of publication of the countervailing duty order (57 FR 38472). As such, merchandise entered on or after April 28, 1992 and before August 25, 1992 is to be liquidated without regard to countervailing duties.

The Department will instruct the Customs Service to assess countervailing duties of 3.30 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after March 31, 1992 and before April 28, 1992, and on all shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after August 25, 1992 and exported on or before December 31, 1992.

The elimination of the Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports Program reduces the total estimated duty deposit to 3.18 percent *ad valorem*. Therefore, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 3.18 percent *ad valorem* of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 355.22.

Dated: March 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8513 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DS–P

Rutgers, The State University of New Jersey, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–146. *Applicant:* Rutgers, The State University of New Jersey, Piscataway, NJ 08855-0909. *Instrument:* Test Frame with Accessories. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 442, January 4, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–8508 Filed 4–5–95; 8:45 am]

BILLING CODE 3510–DS–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Service Leadership Training Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Availability of Funds.

SUMMARY: The Presidio Leadership Center (PLC) of the Corporation for National Service (the Corporation) announces its intention to make available approximately $200,000 to support one or more new cooperative agreements that would assist the PLC in developing and providing a leadership development and training program for approximately 180 leaders of Corporation-funded programs and other service programs, over a twelve to sixteen month period. The delivery of the program by applicants must include a "training of trainers" approach and preparing the PLC staff and selected individuals to continue portions of the training on a larger scale after the cooperative agreement ends.

DATES: All applications must be received by 3:30 p.m. PST, May 8, 1995.

ADDRESSES: Applications may be obtained from and must be submitted to the Corporation at the following address: Corporation for National Service, Presidio Leadership Center, Attention: Ms. Pipo Bui, Building 386, Moraga Avenue, The Presidio of San Francisco, CA 94129.

FOR FURTHER INFORMATION CONTACT: This notice is an abbreviated version of information that is contained in the application materials. For further information and to obtain application materials, please contact Ms. Pipo Bui at the Presidio Leadership Center, by facsimile at (415) 561–5955, or by phone at (415) 561–5950. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation for National Service is a government organization created by the National and Community Service Act of 1990, as amended, 42 U.S.C. § 12501 et seq. ["the Act"]. The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the nation's education, human, public safety, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

The Act authorizes the Corporation to conduct, directly or by grant or contract, training programs to promote leadership development in national service programs. The Presidio Leadership Center was established in 1995 by the Corporation with the purpose of developing leadership for community service. The Center is working to:

- Create a sense of professional identity and shared purpose among leaders working at all levels in national service;
- Help leaders and potential leaders increase their effectiveness in accomplishing the goals of their programs and of national service;
- Create opportunities for new leadership to emerge, strengthening the diversity, richness, and energy of those who guide national service;
- Encourage leaders to weave community service into the fabric of the way that every community approaches its challenges.

The leadership development program described in this notice, primarily targeted at executives and senior managers in service programs, has been tentatively named the Presidio Leadership Fellowship Program (PLFP). It is the first initiative of the PLC. This program is subject to availability of

funds. We expect to offer a number of other leadership development programs serving various kinds of leaders in the service field. In addition, we expect to offer conferences, seminars, and other opportunities for leaders in national and community service to exchange ideas and best practices, and develop innovative ways to serve the American people.

A. Expected Outcomes

The leaders we hope to serve through the PLFP include executive directors, site directors, and senior staff of AmeriCorps* USA programs, AmeriCorps*VISTA programs, Learn and Serve programs, National Senior Service Corps programs, leaders within the AmeriCorps* National Civilian Community Corps, executive directors of state commissions, and others. We expect to achieve the following outcomes:

- PLFP participants, or Fellows, improve their performance over time, on specific, measurable objectives they set for themselves as demonstrated through even greater effectiveness of their programs.
- Fellows report a significant increase in the amount and quality of regular peer to peer exchange of information and practices, sharing of lessons learned, and support among leaders of service programs.
- There is a growing cadre of trained facilitators, trainers, and coaches who will work with the PLC and other community service programs to implement leadership training programs.
- Rates of retention and promotion of Fellows in the field are higher than those of peers who do not participate in this program.
- Fellows report high levels of satisfaction with this program.

B. Approach

The Presidio Leadership Fellowship is a new program that supports national and community service and looks to use the most innovative and effective tools, methods, and techniques in doing so. Substantial involvement is expected between the PLC and the successful applicants when carrying out the program. The PLC is looking for organizations who can work with us to develop an outstanding leadership development program as well as a "train-the-trainer" process (for both participants and staff) to continue and expand the program in the future.

1. Learning Goals of the PLFP

The PLC will help leaders develop skills and personal leadership approaches that will enable them to succeed in leading programs that provide excellent service to American communities. We expect to help leaders develop within three skill areas, which we have designated as 'learning goals'. They are: (a) building and maintaining a high quality service organization; (b) strategic thinking; (c) personal dimensions of leadership. We expect that leaders will grow significantly in these areas as a result of participation in the Fellowship.

2. Basic Structure of the PLFP

The PLC expects the program to follow the outlined structure. Applicants are invited to suggest alternatives to components of this structure, but in the application should offer a program that fits this structure as well as any alternatives, and the rationale for those alternatives.

- Program Components.

The PLFP will be a year-long leadership development experience for leaders of community service programs. The specific components of the program are set forth in section IIA.

- Diverse participants.

Each class of approximately 30 participants will include executive directors or other high- level managers of community service programs, the majority of whom have funding from the Corporation. A summary of Corporation-funded programs will be provided in the application materials. Most of the program directors have responsibility for planning, fundraising, managing staff, budgets, mastering and complying with government regulations, working with community boards, forming community partnerships, drawing strength from a diverse staff, community, and group of AmeriCorps members, and relating to government agencies at the local, state, and federal level. They are managing in an environment of ambitious expectations and limited resources, as well as specific and demanding policies and requirements of the Corporation.

- Three-year phased implementation.
- Recruitment and selection of participants
- Tuition
- Following effective practice in adult learning.

C. PLC Involvement

The PLC will be involved in all activities undertaken as part of this cooperative agreement. PLC involvement may include but is not limited to:

- Participation by PLC staff or consultants in the planning and management of the program, and provision of general monitoring and oversight to ensure high program quality;
- Selection of participants;
- Provision of guidance in the process of assessment of needs and interests of leaders in the service field to be addressed through the PLFP;
- Participation in the development of schedules, curriculum and materials for trainings and other activities;
- Attendance at and participation in delivery of all activities contained in the cooperative agreement; and delivery of certain portions of the training (for example, teaching a case study during the five-day seminar);
- Coordination of activities between providers of services to the PLC through cooperative agreement(s), and with Corporation-funded programs and the Corporation for National Service.
- Analysis of evaluation information collected by providers and/or the PLC staff concerning the PLFP.
- Assistance in accessing available information and technical assistance from Government sources, within available resources and as determined by the Executive Director of the PLC. This shall include data from the Corporation's database or any other resources within the government that may be of use in supporting this program.

II. Work To Be Accomplished Through This Cooperative Agreement

These are the activities for which the PLC seeks assistance through this cooperative agreement. Section IIA, "Program design and delivery activities," describes components of the program to be delivered. Applicants can apply to design and conduct all or some of the components outlined in section IIA. Section IIB, "Required project activities", describes tasks that must be accomplished as part of the cooperative agreement. These tasks include forming an effective working partnership with PLC and Corporation staff; collaborating with other organizations or individuals to design and deliver the program; engaging in evaluation and continuous improvement of the program; providing a conceptual framework for leadership development or incorporating the applicant's services into a framework selected by the PLC; and others.

A. Program Design and Delivery Activities

In order to have an impact and improve the leadership skills of the Fellows, we believe that the ideal program will work with the Fellows over a period of time and not just be a "one shot" training experience.

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However, cost will be a factor. The following activities are the components of an "ideal" program:

1. Preparation (high priority)
2. Presidio five-day intensive seminar (high priority)
3. Network teams/action learning during six months after intensive seminar
4. Next steps seminar one year after intensive seminar (Optional—depending on cost)
5. Leader grants (small grants ranging from $100 to $5,000 to Fellows who agree to provide special services to other Corporation-funded programs)
6. Evaluation

B. Required Project Activities

Applicants must demonstrate their commitment to completing the following tasks and explain how they will accomplish them.

1. Formation of an effective working partnership with PLC and Corporation staff.
2. Collaboration with other organizations or individuals to design and deliver the program.
3. Evaluation and continuous improvement of the program.
4. Provision of a powerful conceptual framework for leadership development or incorporating the applicant's services into a framework selected by the PLC.
5. Demonstration that the applicant will bring a truly diverse team of trainers and facilitators (and coaches if applicable) to the project, and that the applicant is prepared to integrate and train individuals provided by the PLC in such roles.

III. Application Requirements

A. Eligibility Requirements

To be eligible to participate in this cooperative agreement program, applicants must be a non-profit organization, an educational institution, or a for-profit business organization. Regardless of the type of organization applying for Federal funding assistance, no fee or profit will be allowed.

B. Period of Support

The cooperative agreement will cover a period of between 12 and 16 months, beginning on or about June 1, 1995, with the possibility of renewal based on performance, need, and availability of funds at the discretion of the Corporation. However, there are no assurances for such continuation.

C. Application Procedure

Each applicant must submit one original and three copies of its application package. Only complete application packages received on or before 3:30 p.m. PST May 8 will be considered.

D. Application Contents

1. Forms and Certifications. All pre-printed application forms must be completed and, where required for certification, signed.

2. Narrative Statement. Maximum 10 single-sided pages double-spaced in 12-point font (excluding any attachments described in the application materials).

3. Budget and Other Required Information. Applicants will be required to provide budget information as described in the application materials and comply with (1) applicable Office of Management and Budget Circulars; (2) certification requirements concerning debarment, suspension, other responsibility matters, drug-free workplace, and lobbying restrictions; and (3) appropriate assurances pertaining to recipients of federal funding. Further information about these requirements will be included in the application materials.

E. Application Review

Initially all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application complies with the application instructions and contains all the information required by the Application Contents section of the application packet. Each complete application from an eligible applicant will then be evaluated by a Technical Evaluation Panel. The PLC may request that those applicants selected as finalists provide a range of references; provide various training materials, videos, or other materials for review; and/or be interviewed by phone or in person. The following criteria will be used to evaluate proposals. Percentage weights are given for the importance of each criterion in evaluating the applications.

30% Quality of program and implementation plan.
30% Organizational capacity.
20% Cost effectiveness.
20% Quality and experience of training staff.

Dated: April 3, 1995.

Terry Russell,

General Counsel Corporation for National Service.

[FR Doc. 95–8514 Filed 4–5–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Customer Satisfaction Survey—Generic Clearance Request.

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**.

Number of Respondents: 27,000.

Responses per Respondent: 1.

Annual Responses: 27,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 6,610.

Needs and Uses: The Defense Finance and Accounting Service (DFAS) intends to conduct a number of surveys designed to determine the kind and quality of service their customers want and expect, as well as their satisfaction with DFAS's existing services. The information collected thereby, will be used by DFAS to determine where and to what extent services are satisfactory, as well as to identify areas in which service can be improved.

Affected Public: Individuals or households; Businesses or other for-profit; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8409 Filed 4–5–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team scheduled for April 4–5, 1995 as published in the **Federal Register** (Vol. 60, No. 57, Page 15538, Friday, March 24, 1995, FR Doc 95–7222) was cancelled.

Dated: March 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8410 Filed 4–5–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Reservation Only Meeting

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of meeting.

SUMMARY: The Military Traffic Management Command (MTMC) will host twelve meetings with industry to discuss Reengineering the Personal Property Program. The purpose of these meetings is to provide a forum where we can brief the concept and hear industry comments and concerns. We are interested in meeting with all carriers and agents, large, small, and/or minority or anyone interested in participating in the Personal Property Program.

DATES: Meetings will be held on April 21, May 1, 3, 5, 8, 10, 12, 15, 17, 19, 31, and June 2 from 8:30 a.m.–12:30 p.m. The attendance will be by reservation only.

ADDRESSES: Headquarters, Military Management Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Conna Jack, MTOP–QEC, (703) 756–1292.

SUPPLEMENTARY INFORMATION: Reservations may be made by contacting your association or contacting HQMTMC. When we receive the request, we will try to accommodate your requested attendance date, however, if we have more than 25 people for a specific meeting, we may need to change your date. Requests will be filed on a first come first serve basis. We will send confirmation letters providing service basis. We will send confirmation letters providing directors, maps and parking information.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–8413 Filed 4–5–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 20 and 21 April 1995.

Time of Meeting: 0900–1600, 20 April 1995; 0900–1200, 21 April 1995.

Place: Alexandria, VA.

Agenda: The Army Science Board (ASB) Independent Assessment Panel on "Army Family Housing" will hold a meeting to review current Army Family Housing policies and issues and to examine new business and privatization alternatives. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–8481 Filed 4–5–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability of draft environmental impact statement (EIS) and notice of public hearings.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of a Draft EIS entitled "Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina" (DOE/EIS–0220D). The Draft EIS assesses the potential environmental impacts of managing nuclear materials that are currently stored in various facilities and conditions at the Savannah River Site.

An Environmental Protection Agency **Federal Register** notice of availability for the subject Draft EIS was published March 17, 1995 (60 FR 14433), initiating the public review and comment period. The public review and comment period extends through May 1, 1995.

The Department of Energy provided direct notice to over 2000 individuals and organizations on the availability of the Draft EIS; copies of the Draft EIS were distributed to several hundred of these individuals or groups. Additional copies of the Draft EIS can be obtained or reviewed as indicated below.

DOE invites public comments on the Draft EIS and will hold public hearings on the document.

DATES: The public comment period for the Draft EIS ends on Monday, May 1, 1995. Written comments regarding the document should be postmarked by Monday, May 1, 1995, to ensure consideration in preparation of the Final Environmental Impact Statement. Comments sent after that date will be considered to the extent practicable. Two public hearings (which will also serve as informational meetings) will be held on the Draft EIS: Tuesday, April 11, 1995, in Savannah, Georgia; and Thursday, April 13, 1995, in North Augusta, South Carolina. The locations for these meetings are identified below.

ADDRESSES: Combined information meetings and public hearings on the Draft EIS have been scheduled. Addresses for the public meeting locations are as follows:

Tuesday, April 11, 1995, from 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m.: Coastal Georgia Center for Continuing Education 305 Martin Luther King, Jr. Boulevard Savannah, Georgia 31412

Thursday, April 13, 1995, from 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m.: North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29841.

The public is invited to provide comments on the Draft EIS to DOE representatives at the hearings. Written and verbal comments will be given equal weight. Written comments on the Draft EIS, requests for copies of the document, and requests for further information should be directed to: Mr. A. B. Gould, Jr., NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P. O. Box 5031, Aiken, South Carolina 29804–5031, Attention: "Interim Management of Nuclear Materials EIS". Telephone: Information Line (800) 242–8269.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone:

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(202) 586–4600 or leave a message at (800) 472–2756.

Issued in Washington, DC, on April 3, 1995.

Eugene C. Schmitt,

Director, Office of Integration and Assessment, Office of Environmental Management.

[FR Doc. 95–8498 Filed 4–5–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Community Outreach; Pre-Application Conference and Notice of Availability of Financial Assistance To Establish and Support a Water Resources Center

AGENCY: Department of Energy (DOE), Savannah River Operations Office (SR).

ACTION: Notice of Pre-Application Conference and Availability of Financial Assistance Application.

SUMMARY: SR is announcing a Pre-Application Conference for organizations wishing to be considered as the entity to establish and support a Water Resources Center for the Central Savannah River Area (CSRA). The conference is scheduled for Tuesday, April 18, 1995, at the Savannah River Site (SRS), Aiken, SC, commencing at 8:30 a.m. and completing by 5:00 p.m. In addition to discussion regarding the objectives of the Water Resources Center and the criteria which will be used to select the applicant, the conference will also offer a tour of the Savannah River Technology Center whereby participants will have an opportunity to become familiar with available technologies. A solicitation for the Water Resources Center will be made available on or about March 31, 1995.

SUPPLEMENTARY INFORMATION: The Water Resources Center is intended to be a private sector developed and operated project. Government interest in this project is in stimulating the economic development of the region surrounding federal facilities by providing initial financial assistance and access to technology developed at federal facilities using federal funding. The intent is to encourage development of a Water Resources Center that brings together and deploys capabilities and technologies from industry, academia, federal, and private research facilities and organizations. the proposed center will be located in the CSRA in one of the following counties: Aiken, Barnwell, Allendale in South Carolina; or Columbia, Richmond in Georgia. The designated location of this center is to facilitate development of a partnership between SRS, the Savannah River Technology Center, and industry in the area of water resources.

The SR Office of Technology Development has agreed to provide financial assistance to initiate establishment of a Water Resources Center. Funding for this initiative will be in the form of a Grant as provided by the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95224). Authority for funding this project is found in Section 3135 of the FY 1994 National Defense Authorization Act, Public Law 103–160, November 1993.

The estimated federal funding for the Water Resources Center is $1.5 million, and funding response to this solicitation must include matching funding at a minimum. Those who submitted and Expression of Interest (EOI) in response to SR's Commerce Business Daily announcement of November 14, 1994, will automatically receive a copy of the solicitation. Notification to attend the conference and/or requests for copies of the solicitation should be received in writing or be transmitted via facsimile to (803) 725–8573 no later than close of business (5:00 p.m. Eastern Standard Time) on April 14, 1995. Please identify in the notifications the name, citizenship, social security number, and birthdate for all attendees. This is required in order to process access authorizations for SRS. Requests or notifications should be sent to Scott D. Stephenson, Contracts Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephonic requests will not be accepted.

Issued in Aiken, SC, on March 13, 1995.

Robert E. Lynch,

Head of Contracting, Activity Designee, Contracts Division, Savannah River Operations Office.

[FR Doc. 95–8497 Filed 4–5–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–1143–001, et al.]

Interstate Power Company, et al. Electric Rate and Corporate Regulation Filings

March 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. ER94–1143–001]

Take notice that on March 14, 1995, Interstate Power Company tendered for filing its compliance report in the above-referenced docket.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado

[Docket No. ER95–585–000]

Take notice that on March 14, 1995, Public Service Company of Colorado (Public Service), tendered for filing an amendment in the above-referenced docket.

Copies of the filing were served upon Western, Tri-State, PRPA, Basin and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Hydro-Electric Company

[Docket No. ER95–722–000]

Take notice that on March 9, 1995, Bangor Hydro-Electric Company tendered for filing its Second Amendment to the Power Sales Agreement between Bangor Hydro-Electric Company and UNITIL Power Corporation.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER95–728–000]

Take notice that on March 10, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Transmission Service Agreements with City of Bountiful, Utah (Bountiful), Rainbow Power Marketing Corporation (Rainbow) and InterCoast Power Marketing Company (InterCoast) under, PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedule TS–5.

Copies of this filing were supplied to Bountiful, Rainbow, InterCoast, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER95–732–000]

Take notice that on March 13, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Power Exchange Corporation (PXC).

SDG&E requests that the Commission allow the Agreement to become effective on the 15th day of May, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and PXC.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER95–734–000]

Take notice that on March 13, 1995, Portland General Electric Company (PGE), tendered for filing revisions to PGE's FERC Electric Tariff, Original Volume No. 2 (PGE–2), and twenty-three (23) new unsigned Service Agreements under PGE–2 with:

City of Azusa Light & Water Department
AES Power Inc.
Arizona Power Pooling Association
Ashton Energy Corporation
CRSS Power Marketing, Inc.
Eclipse Energy, Inc.
El Paso Electric Company
Engelhard Power Marketing, Inc.
Equitable Power Services Co.
Gulfstream Energy, LLC
Heartland Energy Services, Inc.
Howell Power Systems, Inc.
Imperial Irrigation District
InterCoast Power Marketing Co.
National Electric Associates
Nevada Power Company
NorAm Energy Services, Inc.
Plains Electric Generation & Transmission Cooperative, Inc.
Public Service Company of Colorado
Public Service Company of New Mexico
Rainbow Energy Marketing Corporation
Tucson Electric Power Co.
Vesta Energy Alternatives Co.

Pursuant to 18 CFR 35.11, and the Commission's Order in *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992), PGE has requested that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the revised tariff, PGE–2, to become effective March 13, 1995.

Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER95–738–000]

Take notice that on March 14, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Electric Clearinghouse, Inc. (ECI). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to ECI and ECI will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective March 15, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and ECI.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER95–739–000]

Take notice that on March 14, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Burlington Electric Department (BED). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to BED and BED will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on March 15, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and BED.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Yankee Atomic Power Company

[Docket No. ER95–747–000]

Take notice that Maine Yankee Atomic Power Company, on March 15, 1995 tendered for filing a limited Section 205 filing solely for approval of earnings on Construction Work In Progress balances for the year 1994 that were included in rates subject to refund. Total earnings on CWIP for 1994 were $239,750 or 0.14 percent of total billings. The represents a decrease of $240,901 from the 1993 CWIP billings of $480,651.000.

Copies of the limited Section 205 filing were served upon Maine Yankee's jurisdictional customers, secondary customers, and Massachusetts Department of Public Utilities, Vermont Public Service Board, Connecticut Public Utilities Control Authority, Maine Public Utilities Commission, New Hampshire Public Utilities Commission and Office of the Public Advocate, State of Maine.

Comment date: April 10, 1995, in accordance with Standard Paragraph E at the end of this notice

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8432 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11402–000 Michigan]

City of Crystal Falls, MI; Notice of Availability of Draft Environmental Assessment

March 31, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Crystal Falls Hydroelectric Project, located in Iron County, Michigan, and has prepared a Draft Environmental

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Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing unlicensed project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix "Crystal Falls Hydroelectric Project No. 11402" to all comments. For further information, please contact Tom Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8430 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2290–006–CA]

Southern California Edison Company; Renotice of Availability of Draft Environmental Assessment

March 31, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for an existing licensed hydropower project on the Kern River owned and operated by the Southern California Edison Company: the Kern River No. 3 Project No. 2290, located in Kern and Tulare Counties, California. Subsequently, the Commission's staff prepared a Draft Environmental Assessment (DEA) that discusses the relicensing of the project.

In the DEA, staff evaluates the potential environmental impacts that would result from the continued operation of the project. Staff concludes that relicensing the project with appropriate enhancement measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2290 to the first page of all comments.

For further information, please contact Kathleen Sherman, Environmental Coordinator, at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8470 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–214–000]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

March 31, 1995.

Take notice that on March 28, 1995, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FER Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 1995:

First Revised Sheet No. 369A
First Revised Sheet No. 369B

CIG states that the above-referenced tariff sheets are being filed to reflect that all Buyers have paid in full for obligations pursuant to Docket Nos. RP94–85 and RP94–130. (Docket Nos. RP94–85 and RP94–130 are the latest dockets where CIG has sought recovery of take-or-pay "buyout" or "buydown" costs pursuant to the Commission's Order No. 528.)

CIG states that copies of this filing were served upon all parties in this proceeding and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before April 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8433 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–7–23–001]

Eastern Shore Natural Gas Company; Notice of Filing of Corrected Tariff Sheets

March 31, 1995.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on March 28, 1995 certain substitute revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective April 1, 1995.

On March 14, 1995, ESNG filed revised tariff sheets in Docket No. TM95–7–23–000 to track changes in Transco's fuel retention percentages and ESNG's pipeline suppliers' storage service rates, both to be effective April 1, 1995.

ESNG has since discovered on its Schedule D1, Text ID 9, Working Paper #1, Page 2, Note 2, that when calculating its PS/FT Demand Charge the TBO Unit Rate of $0.0165 and the Zone 3 Electric Power Unit Rate of $0.0118 (from Transco's Firm Transportation Service Rates, 9th Revised Second Revised Sheet No. 40) were used twice, and therefore, the PS/FT Demand Charge was overstated by $0.0283. The substitute tariff sheets correct this overstatement.

Additionally, ESNG is refiling its Fifth Revised Sheet No. 7 due on the final tariff sheet. ESNG on its redlined copy of Fifth Revised Sheet 7, in its original filing, changed from Fourth Revised Sheet No. 7 to Fifth Revised No. 7, but failed to change the pagination number on its final tariff sheet. Included in this filing is a properly paginated Sheet No. 7.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8435 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–282–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 31, 1995.

Take notice that on March 24, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–282–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade a delivery point and to abandon a delivery point both located in Pinal County, Arizona under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to upgrade the J. A. Roberts (S–25) Meter Station (Roberts Station). Southwest informed El Paso that the upgrade of the Roberts Station was necessary since the gas demand on its distribution system has increased and additional continued growth is anticipated. The Roberts Station is located near milepost 3.3 (Section 10, Township 6 South, Range 7 East) on El Paso's 6" O.D. Superior Line and currently delivers natural gas to Southwest for residential and commercial usages. As part of the upgrading, Southwest will construct approximately 2,700 feet of 4½" O.D. pipe and regulation equipment on the existing, previously disturbed right-of-way for connecting a segment of its distribution system to the Roberts Station. El Paso will replace the existing 2" O.D. senior orifice meter run with a 2" O.D. turbine meter run with appurtenances, thereby making the Roberts Station capable of a wider range of measurement capability.

As a result of upgrading the Roberts Station, El Paso proposes to abandon by removal the Evaristo Cabanillas (S–23) Tap (Cabanillas Tap). The Cabanillas Tap is located near milepost 3.9 (Section 10, Township 6 South, Range 7 East) on El Paso's 6" O.D. Superior Line and provides service to Southwest for residential and commercial usages. Metering and distribution services are provided by Southwest from the Cabanillas tap. Southwest has rendered the Cabanillas Tap as unnecessary since the Roberts Station upgrading will provide sufficient gas volumes to serve the Cabanillas Tap customers. El Paso will abandon the Cabanillas Tap by removing one 1" O.D. tap and valve assembly with appurtenances and regulation equipment. All salvageable materials will be reused and all abandonment and removal activities will be limited to the existing, previously disturbed right-of-way.

El Paso stated that providing gas service from only the proposed upgraded Roberts Station would simplify operations for both Southwest and El Paso and would result in a savings in operation and maintenance expenses but still maintain throughput requirements. The total estimated cost for upgrading plus respective overhead and contingency fees is $48,500, but Southwest has agreed to reimburse El Paso.

With the upgrading of the Roberts Station, Southwest will be able to consolidate its receipt of natural gas from El Paso at a point where deliveries are needed the most, and in turn, permit abandonment of the unnecessary Cabanillas Tap. Southwest will use the gas to satisfy residential and residential space heating requirements, and commercial and commercial space heating requirements in the Central Arizona College area and in the City of Coolidge, Arizona and environs.

El Paso states that the proposed firm delivery of natural gas to Southwest at the Roberts Station is within certificated entitlement and will not have a negligible effect upon El Paso's peak day and annual deliveries and will be done without detriment or disadvantage to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8434 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–159–001]

Florida Gas Transmission Company; Notice of Compliance Filing

March 31, 1995.

Take notice that on March 29, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute Original Sheet No. 125A

On February 10, 1995, FGT filed a tariff sheet containing provisions for the disposition of Unauthorized Gas delivered to its system. Subsequently, on March 14, 1995 the Commission issued its Order Conditionally Accepting Tariff Sheet (March 14 Order) subject to FGT making revisions to (1) provide a minimum of 24-hours notice to shippers prior to assessing a penalty and to allow shippers to correct the unauthorized tender before becoming subject to the penalty of losing the gas; (2) delete language applying Unauthorized Gas provisions retroactively; (3) specifically state the disposition of Unauthorized Gas revenues and (4) state that Unauthorized Gas will not encompass imbalance volumes and that Unauthorized Gas is any volume of gas received at a point for which there is no transportation nomination by any shipper and that, if any volume is nominated at a point, then Unauthorized Gas provisions do not apply. FGT states that the instant filing is made in compliance with the March 14 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8436 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

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[Project Nos. 2318, 2482, 2616, 2539, 2554, 2385]

Niagara Mohawk Power Corp., et al.; Notice of Public Scoping Meetings

March 31, 1995.

The Federal Energy Regulatory Commission (Commission) has received applications for new licenses (relicenses) for the existing projects operated by the Niagara Mohawk Power Corporation (NiMo), Moreau Manufacturing Corporation, and Finch Pruyn, Incorporated in the Hudson River Basin in New York. The projects include eight developments. The projects and developments are: School Street Project No. 2539; Hoosic Project No. 2616 (Schaghticoke and Johnsonville developments); Hudson River Project No. 2482 (Sherman Island and Spier Falls developments); Glens Falls Project No. 2385; Feeder Dam Project No. 2554; and E.J. West Project No. 2318.

Upon review of the applications, supplemental filings, agency comments and intervenor submittals, the Commission staff concluded that, given the location and interaction of the projects, we will proceed with scoping for a Multiple Project Environmental Impact Statement (MEIS) on the Hudson River. If determined appropriate after scoping, we will prepare separate Environmental Assessments (Eas) for the School Street and the Hoosic (Schaghticoke and Johnsonville developments) projects and a MEIS for the remaining E.J. West, Hudson River (Sherman Island and Spier Falls developments), Glens Falls, and Feeder Dam projects, that describe and evaluate the probable impacts of the applicant's proposals and alternative for the projects.

One element of the National Environmental Policy Act (NEPA) process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the documents;
- Identify significant environmental issues related to the operation of the existing projects;
- Determine the depth of analysis for issues that will be discussed in the documents; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis.

Scoping Meetings

Commission staff will conduct four public meetings for the Hudson River Multiple Project EIS (MEIS). All interested individuals, organizations, and agencies are invited to attend either or all of the planned meetings and help staff identify the scope of environmental issues that should be analyzed in the NEPA documents.

The first scoping meeting, primmarily for agencies and covering all projects, will be held at 9:00 AM on Tuesday, April 25, 1995, at the William K. Sanford Town Library, 629 Albany Shaker Road, Loudonville, New York.

The first evening scoping meeting, primarily for the public and directed at the School Street Project, will be conducted at 7:00 PM on Tuesday, April 25, 1995, at Cohoes High School, Tiger Circle, Cohoes, New York.

The second evening meeting, directed at the Hoosic Project, will be held at 7:00 PM on Wednesday, April 26, 1995, at Mechanicville High School, Kniskern Avenue, Mechanicville, New York.

The third evening meeting, directed at the Glens Falls, Feeder Dam, Hudson, and E.J. West projects, will be held at 7:00 PM on Thursday, April 27, 1995, at Glens Falls Senior High School, 10 Quade Street, Glens Falls, New York.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the MEIS. Individuals presenting statements at the meeting need to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to speak during the public meetings. Speaking time allowed for individuals will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At each scoping meeting, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the documents;
- Identify resource issues that the staff believes are of lesser importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the NEPA documents.

Information Requested

Federal and state resource agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the projects. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the projects.
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than 60 days after the date of this notice. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page:

FERC No. 2318, 2482, 2554, 2385, 2616, and 2539
Hudson River Multiple Project EIS and Eas

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding.

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8431 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–215–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 31, 1995.

Take notice that on March 29, 1995, Texas Gas Transmission Corporation (Texas Gas), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 30, 1995:

Original Sheet No. 226J
Original Sheet No. 226K
Original Sheet No. 226L
Original Sheet No. 226M
Original Sheet No. 226N
Original Sheet No. 226O

Texas Gas states that the tariff sheets are being filed as a limited Section 4(e) filing to effectuate direct billing of Texas Gas's Account No. 191 balance pursuant to § 33.2 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. The filing reflects activity affecting Texas Gas's pre-November 1, 1993, unrecovered purchased gas costs, which were actually paid between the period August 1, 1994, through March 31, 1995, resulting in a balance of approximately $6.5 million. Texas Gas requests that the tariff sheets become effective April 30, 1995.

Texas Gas states that the copies of the revised tariff sheets are being mailed to Texas Gas's affected former jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before April 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8437 Filed 4–5–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 29, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0395.
Expiration Date: 03/31/98.
Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22.
FCC Form No.: FCC Report 43–02.
Estimated Annual Burden: 48,000 total annual hours; 899 hours per response.
Description: ARMIS is needed to administer the Commission's accounting, jurisdictional separations, access charges, and joint cost rules and rules to analyze revenue requirements, and rate of return, service quality and infrastructure development. It collects financial and operational data from all Tier 1, Class A local exchange carriers with annual revenues over $100 million and carriers who elect incentive regulation. The Common Carrier Bureau, under delegated authority, released an Order on February 2, 1995 that modified FCC Report 43–02. FCC Report 43–02 provides the annual financial operating results of the carriers' activities for every account in Part 32, Uniform System of Accounts for Telecommunications Companies. The Common Carrier Bureau, under delegated authority, released an Order on February 2, 1995 that modified FCC Report 43–02. FCC Report 43–02 is revised to: increase the number of rows for reporting data for certain accounts in Table 1–7, Donations or Payments for Services Rendered by Persons Other than Employees; (2) add three new tax accounts to Table B–1, Balance Sheet Accounts; and (3) make a number of additional content and format revisions. Copies of the revised report are available upon request.

OMB Control No.: 3060–0513.
Expiration Date: 03/31/98.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Estimated Annual Burden: 30,000 total annual hours; 200 hours per response.
Description: FCC Report 43–03 contains financial and operating data. The Commission uses it to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues. The Common Carrier Bureau, under delegated authority, revised the FCC Report 43–03 on February 2, 1995 to delete the "N/A" in all columns for Account 5230, Directory revenues, to allow carriers to report nonregulated revenues. Copies of the revised report are available upon request.

OMB Control No.: 3060–0536.
Expiration Date: 02/29/96.
Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.
FCC Form No.: FCC 431.
Description: FCC Form 431 is used in implementing the shared-funding program for the recovery of interstate telecommunications relay services (TRS) costs. All common carriers must contribute to the TRS Fund and complete FCC 431 form. The information is used to administer the program. The 1995 edition of the form is being printed. A Public Notice will be issued when the form is available for public use.

OMB Control No.: 3060–0411.
Expiration Date: 03/31/98.
Title: Formal Complaints Against Common Carriers—Sections 1.720–1.735.
Estimated Annual Burden: 7,600 total annual hours; 10 hours per response.
Description: Section 208 of the Communications Act of 1934, 47 U.S.C. Section 208, provides that any person may file a complaint with the FCC regarding acts or omissions of common carriers subject to the Communications Act. Information filed pursuant to 47 CFR 1.720 et. seq. is provided either with or in response to a formal complaint. The information is used to resolve a complaint and determine whether a violation of the Communications Act or the Commission's rules has occurred. Affected respondents are complainants and defendant common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8400 Filed 4–5–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirements Being Reviewed By The Federal Communications Commission For Extension Under Delegated Authority 5 CFR 1320.9

March 30, 1995.

The Federal Communications Commission is reviewing the following information collection requirement for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission by the Office of Management and Budget (OMB) on October 6, 1994. This collection was previously approved by

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OMB and is unchanged. Public comments are invited on this collection for a period ending [thirty days from the date of publication in the Federal Register.] Persons wishing to comment on this information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street NW, Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0430.

Title: Section 1.1206 non-restricted proceedings, ex parte presentations generally permissible but subject to disclosure.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 300 responses; 30 minutes burden per response; 400 hours total annual burden.

Needs and Uses: In accordance with the Commission's current ex parte rules, certain presentations made to decision-making personnel in non-restricted proceedings must be made available for viewing by all the parties to the proceeding. The parties in non-restricted proceedings use information regarding ex parte presentations to prepare responses to the matters raised in the documents. The availability of ex parte materials ensures that the Commission's decisional processes are fair, impartial and comport with the concept of due process in that all parties can know of and respond to the arguments made to decision-making officials.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8401 Filed 4–5–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 31, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0332.

Title: Section 76.614 Cable television system regular monitoring.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 561,200 annual responses; .017 hours burden per response; 11,638 hours total annual burden.

Needs and Uses: Section 76.614 requires that cable television systems operating on aeronautical frequencies which were requested or granted for use after November 30, 1994, provide for a program of regular monitoring for signal leakage and maintain a log showing the date and location of each leakage source identified, the date on which the leak was repaired and the probable cause of the leak.

OMB Number: 3060–0089.

Title: Application for Land Radio Station Authorization in the Maritime Services.

Form No.: FCC Form 503.

Action: Extension of a currently approved collection.

Respondents: Individual or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,926 annual responses; 45 minutes burden per response; 2,195 hours total annual burden.

Needs and Uses: FCC rules require that applicants file FCC Form 503 when applying for a new station or when modifying an existing land radio station in the Maritime Mobile Service or an Alaska Public Fixed Station. The data is necessary to evaluate a request for station authorization in the Maritime Services or an Alaska Public Fixed Station, to issue the licenses, and to update the database.

OMB Number: 3060–0149.

Title: Part 63 - Section 214 Application and Supplemental Information Requirements (Sections 63.01–63.601).

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 510 annual responses; 13.37 hours burden per response; 6,280 hours total annual burden.

Needs and Uses: Section 214 requires that the FCC review the establishment, lease, operations, and extension of channels of communications by interstate common carriers. These carriers earn a rate of return based on their plant and facilities investments. The more they invest in plant and facilities the greater their revenue requirement. Thus, one of the major reasons Section 214 was enacted was to ensure against unnecessary duplication of plant and facilities. The other reason for Section 214 was to regulate which entities should be allowed to provide common carrier services and which services should be allowed to be terminated. The information in applications by dominate carriers is used by the Commission to determine if the facilities are needed. The information in the semi-annual reports of the non-dominant carriers is used to monitor the growth of the networks and the availability of common carrier services in this segment of the telecommunications market.

OMB Number: 3060–0128.

Title: Application for General Mobile Radio Service and Interactive Video Data Service.

Form No.: FCC Form 574.

Action: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,970 responses; 30 minutes burden per response; 1,485 hours total annual burden.

Needs and Uses: This form is filed by applicants in the General Radio Service and Interactive Video Data Service to request an authorization or to modify an existing one. This data is used to determine eligibility, for rule making proceedings, enforcement purposes and for resolving treaty obligations. Data is vital to maintain database and issue authorizations.

OMB Number: 3060–0064.

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service.

Form No.: FCC Form 402.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: On Occasion.

Estimated Annual Burden: 7,619 responses: 6 hours and 10 minutes burden per response; 46,978 hours total annual burden.

Needs and Uses: FCC Form 402 is used to apply for a new, modified or renewed station authorization for Private Operational Fixed Microwave stations. The technical data is necessary to evaluate a request for Microwave station authorization, to coordinate that request, and to provide interference protection if the request is granted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8459 Filed 4–5–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of amendment to an existing system of records—"Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records System".

SUMMARY: As part of an ongoing examination of the FDIC's systems of records, the "Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records System" has been reviewed for compliance with the Privacy Act, 5 U.S.C. 552a. Numerous minor amendments have been made that will clarify and/or more accurately describe the following elements in this system of records: System location, storage, retrievability, safeguards, and system manager(s) and address.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, Office of the Executive Secretary, FDIC, 550–17th Street NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records System" is being amended to clarify and/or more accurately describe its contents. These modifications update language in the system location and the system manager(s) and address elements to reflect organizational changes within the FDIC. Additionally, since records are no longer stored in computerized files maintained on a contract basis with the National Association of Securities Dealers, Inc., that reference is deleted from the system location and retrievability elements. The language of the storage element is reworded to accommodate system maintenance on a mainframe computer system instead of a PC-based system. The retrievability element adds the use of dealer registration numbers and FDIC bank certificate numbers to facilitate retrieval of records in this system. Lastly, the safeguards element is amended to clarify that computerized records are accessed only by authorized personnel with password access.

Accordingly, the FDIC amends the "Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records System" to read as follows:

FDIC 30–64–0016

SYSTEM NAME:

Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records System. (Complete text appears at 53 FR 7399, March 8, 1988).

SYSTEM LOCATION:

Capital Markets and Administration Branch, Division of Supervision, FDIC, 550–17th Street, NW., Washington, DC 20429.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in electronic media.

RETRIEVABILITY:

Indexed by name, social security number, and dealer registration number or FDIC bank certificate number.

SAFEGUARDS:

File folders are stored in lockable metal file cabinets; computerized records are accessed only by authorized personnel with password access.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Capital Markets and Administration Branch, Division of Supervision, FDIC, 550–17th Street, NW., Washington, DC 20429.

* * * * *

Dated at Washington, DC, this 3rd day of April 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–8460 Filed 4–5–95; 8:45 am]

BILLING CODE 6714–01–P

Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of amendment to an existing system of records—"Secondary Marketing Asset Prospect System" (formerly "Prospective Investor System").

SUMMARY: As part of an ongoing examination of the FDIC's systems of records, the "Prospective Investor System" has been reviewed for compliance with the Privacy Act of 1974, 5 U.S.C. 552a. Numerous minor amendments have been made that will clarify and/or more accurately describe the following elements in this system of records: System name, system location, categories of individuals covered by the system, categories of records in the system, retention and disposal, and system manager(s) and address.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, Office of the Executive Secretary, FDIC, 550–17th Street NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Prospective Investor System" is being amended to clarify and/or more accurately describe its contents. These modifications include changing the system name to the "Secondary Marketing Asset Prospect System," and updating descriptions in the system location as well as in the system manager(s) and address elements to reflect organizational changes within the FDIC. Additionally, since system coverage only includes individuals who have submitted written notice (not oral notice) of an interest in purchasing (not an intent to purchase) assets, and since there is no qualification requirement for

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individuals to be included in the system, existing language identifying categories of individuals covered by the system is amended to reflect those facts. In a similar vein, the description of categories of records in the system is amended to clarify that the system contains information identifying the general geographic location of loans or owned real estate that individuals may be interested in purchasing; that it also contains information relating to whether bids have been submitted on loan sales (but not owned real estate sales); and that it does not include additional information relating to actual bids. Lastly, the retention and disposal element is amended to clarify that backup tapes are maintained in off-line storage and that obsolete data is deleted or destroyed after 15 months.

Accordingly, the FDIC amends the "Prospective Investor System" to read as follows:

FDIC 30–64–0019

SYSTEM NAME:

Secondary Marketing Asset Prospect System. (Complete text appears at 52 FR 23602, June 23, 1987).

SYSTEM LOCATION:

Division of Depositor and Asset Services, FDIC, 550–17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted written notice of an interest in purchasing loans or owned real estate from the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, address, and telephone number; information as to the kind or category and general geographic location of loans or owned real estate that the individual may be interested in purchasing; and information relating to whether any bids have been submitted on loan sales.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are generally maintained in computer discs and tapes in an on-line capacity until needed. Backup tapes are maintained in off-line storage. All records, including those in printout form, are periodically updated to reflect changes and maintained as long as needed. Obsolete data is deleted or destroyed after 15 months.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Depositor and Asset Services, FDIC, 550–17th Street NW., Washington, DC 20429.

* * * * *

Dated at Washington, DC, this 3rd day of April, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–8449 Filed 4–5–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 4 CFR part 540, as amended: Radisson Seven Seas Cruises, Inc., and Diamond Cruise, Inc., 600 Corporate Drive, Fort Lauderdale, Florida 33334.

Vessel: Radisson Diamond.

Dated: April 3, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–8458 Filed 4–5–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public in Demnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Radison Seven Seas Cruises, Inc. and Diamond Cruise, Inc., 600 Corporate Drive, Fort Lauderdale, Florida 33334.

Vessel: Radison Diamond.

Dated: April 3, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–8457 Filed 4–5–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2881

Name: T.G. International, Inc.

Address: 950 Threadneedle, Ste. 140, Houston, TX 77079

Date Revoked: March 8, 1995

Reason: Failed to furnish a valid surety bond.

License Number: 3365

Name: Jacky Maeder Ltd.

Address: 1414 Calcon Hook Rd, #204, Sharon Hill, PA 19079

Date Revoked: March 10, 1995

Reason: Surrendered license voluntarily.

License Number: 1241

Name: Randy International, Ltd.

Address: 590 Belleville Turnpike, #26, Kearny, NJ 07032

Date Revoked: March 10, 1995

Reason: Surrendered license voluntarily.

License Number: 3822

Name: Freight Brokers International, Inc.

Address: 1235 North Loop West, Ste. 601, Houston, TX 77008

Date Revoked: March 15, 1995

Reason: Failed to furnish a valid surety bond.

License Number: 3422

Name: The Myers Group (U.S.), Inc.

Address: 72 Lake Street, Rouses Point, New York 12979

Date Revoked: March 17, 1995

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–8456 Filed 4–5–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Bank of New York Company Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 19, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company Inc., New York, New York; to acquire Related Guaranteed Corporate Partners, L.P., New York, New York, and thereby engage in making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, services or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Union-Calhoun Investments, Ltd., Rockwell City, Iowa; to acquire Keith Insurance, Rockwell City, Iowa, and thereby engage in insurance agency activities in towns of less than 5,000 and tax preparation, pursuant to § 225.25(b)(8)(iii) and (b)(21) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New Era Bancorporation, Inc., Fredericktown, Missouri; to acquire up to an additional 6.54 percent (for a total of 9.99 percent) of the voting shares of St. Francois County Financial Corp., Farmington, Missouri, and thereby acquire St. Francois County Savings and Loan Association, Farmington, Missouri, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and in the sale as agent of credit-related insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 31, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8405 Filed 4–5–95; 8:45 am]

BILLING CODE 6210–01–F

Gerauld Blaylock, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Gerauld, Donna, William, and Margaret Hopkins, and Amy (Hopkins) Blaylock, Downers Grove, Illinois; to acquire an additional 22.39 percent (for a total of 24.96 percent) of the voting shares of Finest Financial Corporation, Pelham, New Hampshire, and thereby indirectly acquire Pelham Bank and Trust, Pelham, New Hampshire.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hope Harris Johnson, Slocomb, Alabama; to acquire 62.9 percent of the voting shares of Wiregrass Bancorporation, Inc., Ashford, Alabama, and thereby indirectly acquire Barbour County Bank, Eufaula, Alabama.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Douglas L. and Rebecca McClure, Colorado Springs, Colorado; to acquire an additional 4.66 percent (for a total of 25.23 percent) of the voting shares of First Flo Corporation, Florence, Colorado, and thereby indirectly acquire Rocky Mountain Bank & Trust, Florence, Colorado.

Board of Governors of the Federal Reserve System, March 31, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8406 Filed 4–5–95; 8:45 am]

BILLING CODE 6210–01–F

Buerge Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an

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application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 1, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Buerge Bancshares, Inc., Joplin, Missouri; to acquire 100 percent of the voting shares of Peoples State Bank, Claremore, Oklahoma.

Board of Governors of the Federal Reserve System, March 31, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95-8407 Filed 4-5-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Proposed Port of Entry, Located at Pacific Highway, Blaine, Whatcom County, WA; Notice of Availability for a Draft Environmental Impact Statement

The general Services Administration (GSA) hereby gives notice a Draft Enviro nental Impact Statement (DEIS) has be n prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. The DEIS was prepared for the proposed expansion of the Port of Entry located at Pacific Highway, Blaine, Whatcom County, Washington. The DEIS is being made available March 31, 1995. GSA is the lead Federal agency for the preparation of the EIS. The DEIS evaluates the proposed action, the no-action, and three (3) design alternatives.

Written comments should be as specific as possible and may address the adequacy of the EIS, the merits of the alternatives discussed, the impacts identified, and/or mitigation measures recommended and be sent no later than May 15, 1995 to GSA's EIS subconsultant, Berger/ABAM, at the following address: 33301 Ninth Avenue South, Federal Way, WA 98003.

Comments will also be accepted at a public meeting to be held on April 19, 1995, at the Blaine Senior Center, 763 "G" Street, Blaine, Washington 98230. The meeting will be held from 5:30 p.m. to 7:30 p.m.

Representatives of GSA and Berger/ABAM will receive comments from interested parties regarding the proposed project, the environmental analysis, and proposed mitigation measures. All comments received will be made a part of the administrative record for the DEIS and will be evaluated as part of the Final EIS review process.

For further information contact Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, Public Buildings Service (10PL), 400 15th Street SW., Auburn, Washington 98001-6599, or at (206) 931-7675.

Dated: March 24, 1995.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 95-8414 Filed 4-5-95; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14⅛ percent for the quarter ended March 31, 1995. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: March 30, 1995.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 95-8397 Filed 4-5-95; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 95N-0082]

Animal Drug Export; Deslorelin Acetate Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Peptide Technology Ltd. has filed an application requesting approval for the export of the animal drug Ovuplant™ (deslorelin acetate) to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Peptide Technology Ltd., 4-10 Inman Rd., Dee Why 2099, Australia, has filed application number 8019 requesting approval for the export of the animal drug Ovuplant™ (2.1 milligrams of deslorelin per implant, as the acetate) to Canada. The drug is a subcutaneous implant providing sustained release of a gonadotropin releasing hormone analog. It is indicated for inducing ovulation in the oestrus mare. The application was received and filed in the Center for Veterinary Medicine on March 20, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 17, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: March 24, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95-8451 Filed 4-5-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95D-0052]

Changes To Be Reported for Product and Establishment License Applications; Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a guidance document entitled "Changes to be Reported for Product and Establishment License Applications; Guidance." The guidance document is intended to provide manufacturers of licensed biological products guidance on changes in manufacturing procedures and establishments which may be implemented with and without prior approval by the Director, Center for Biologics Evaluation and Research (CBER). This document does not apply to manufacturers of Whole Blood, blood components, Source Leukocytes, and Source Plasma, and it does not address labeling changes. By following this guidance document, manufacturers of licensed biologicals may, in some instances, reduce their reporting burden and facilitate implementation of certain changes.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Two copies of any comments are to be submitted except that individuals may submit one copy. A copy of the guidance document and received comments are available in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

SUPPLEMENTARY INFORMATION: Under § 601.12 *Changes to be reported* (21 CFR 601.12), manufacturers are required to report important proposed changes in location, equipment, management and responsible personnel, or in manufacturing methods and labeling, of any product for which a license is in effect or for which an application for license is pending, to the Director, CBER. Such reports are to be filed by the manufacturer not less than 30 days in advance of the time that such changes are intended to be made except in case of an emergency. Proposed changes in manufacturing methods and labeling may not become effective until notification of acceptance is received from the Director, CBER.

Reporting changes under § 601.12 represents a significant workload for the industry and the agency. In addition, regulated industry has expressed concern about delays in implementing changes and inconsistencies in reporting requirements for product license applications (PLA's), establishment license applications (ELA's), and new drug applications (NDA's). To reduce the reporting burden on manufacturers of biological products and to facilitate the approval process, FDA is issuing this guidance document, which describes CBER's current interpretation of § 601.12(a) and (b).

The guidance document is not intended to affect the reporting requirements currently specified in § 601.12, but to provide clarifying descriptions of the types of changes that are currently considered to be "important" within the meaning of that section. In addition, the document clarifies the types of changes which may be implemented 30 days after submission of a supplement and those which must await approval of a supplement prior to implementation. Thus, the guidance document outlines three categories for reporting changes, based on the importance and nature of the changes. The document lists examples of changes that would fall into each category.

This document does not apply to changes in manufacturing processes and facilities associated with the manufacture of Whole Blood, blood components, Source Leukocytes, or Source Plasma. CBER is currently evaluating reporting requirements in those areas. In addition, the guidance document does not address labeling changes. However, in the **Federal Register** of August 3, 1994 (59 FR 39570), FDA published a notice of availability for the revised Office of Establishment Licensing and Product Surveillance Advertising and Promotional Labeling Staff (APLS) Procedural Guidance Document. The APLS Procedural Guidance document details the approach that manufacturers and distributors should follow in submitting advertising and promotional material for review by CBER. The APLS Procedural Guidance Document also provides guidance on CBER's current interpretation of § 601.12 as it applies to reporting important proposed changes in labeling; specifically, promotional labeling of biological products for which a license is in effect or for which an application for a license is pending.

As with other guidance documents, FDA does not intend this document to be all inclusive. The document is intended to provide information and does not set forth requirements. Manufacturers may follow the guidance or may choose to use alternative procedures even though they are not provided in this document. If a manufacturer chooses to use alternative procedures, that manufacturer may wish to discuss the matter further with CBER to prevent expenditure of resources on activities that FDA may later determine to be unacceptable.

This guidance document is not binding on either FDA or licensed manufacturers of biological products and does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance document. Received comments will be considered to determine if further revision to the guidance document is necessary.

The text of the guidance document follows:

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Food and Drug Administration, Center for Biologics Evaluation and Research (CBER), Changes to be Reported for Product and Establishment License Applications; Guidance

I. Introduction and Background

A significant number of supplements to approved biological product and establishment license applications submitted to CBER during an average year involve changes which fall under § 601.12 *Changes to be reported* (21 CFR 601.12).

Under this regulation, important proposed changes in location, equipment, management and responsible personnel, or in manufacturing methods and labeling, are required to be reported to CBER not less than 30 days in advance of the time such changes are intended to be made (§ 601.12(a)). Proposed changes in manufacturing methods and labeling may not become effective until notification of acceptance is received from the Director, CBER (§ 601.12(b)).

This document is not intended to affect the reporting requirements in § 601.12, but to provide clarifying descriptions of those requirements. This guidance does not apply to manufacturers of Whole Blood, blood components, Source Leukocytes, and Source Plasma. Guidance on reporting requirements in those areas is currently under evaluation within CBER. In addition, this document does not address labeling changes. For guidance on the submission of advertising and promotional material, see the Office of Establishment Licensing and Product Surveillance Advertising and Promotional Labeling Staff (APLS) Procedural Guidance Document (August 1994).

To facilitate the approval process, CBER performed a review of the types of changes being reported and assessed the relative impact of each change on product purity, potency, and safety. Results of this analysis have provided CBER the rationale for describing three categories of changes based on potential effect on product safety, purity, and potency, with each category associated with a different notification mechanism. In general, the types of changes for which CBER recommends less stringent reporting represent changes which, for the most part, have not been associated with demonstrable effects on product purity, potency, or safety, and/or which are readily amenable to on-site scrutiny during inspection of the production facility. In many instances, manufacturers will need to evaluate changes addressed in the three categories using validated standard operating procedures (SOP's) or specifications.

Regardless of whether a supplement is required to be filed, the manufacturer in making such changes must conform to the current good manufacturing practice (CGMP) requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)) and the regulations in 21 CFR parts 210 and 211. Changes affecting the method of manufacture require validation under the CGMP regulations. In addition, manufacturers must comply with the recordkeeping requirements under the CGMP regulations and ensure that relevant records are readily available for FDA inspection.

This document identifies and categorizes the types of changes in manufacturing processes and establishments which may be implemented with and without prior approval by CBER.

This guidance document is not binding on either FDA or licensed manufacturers of biological products and does not create or confer any rights, privileges, or benefits for or on any person. It does, however, describe CBER's current interpretation of § 601.12. Where this document reiterates a requirement imposed by statute or regulation, the force and effect as law of the requirement is not changed in any way by virtue of its inclusion in this document.

Section A of this document contains general definitions of each category of change as it pertains to notification or reporting requirements outlined in § 601.12(a) and (b). This section also defines a Periodic Report for Category I changes. Section B of this document provides instruction on sending submissions to CBER. Section C of this document augments these definitions with selected examples of modifications appropriately falling under each category. Section D of this document contains guidance on categorizing proposed changes which may not be listed in section C. Section E of this document discusses the kind of information the agency is asking manufacturers to submit in a Periodic Report.

II. Guidance and Rationale

A. Definitions

General definitions of each category of reporting changes are as follows:

1. Category I—Change(s) for Which No Supplement Submission is Required and Which May be Described in a Periodic Report

This category includes modifications to procedures, process parameters, components, manufacturing methods, reagents, equipment and facilities which do not rise to the level of the "important" changes required to be reported under § 601.12. These are changes that are designed to tighten control on the production process, or have not been associated with adverse impact on product safety, purity or potency. Manufacturers should qualify and, as necessary, validate such changes before implementing them. These changes should be shown not to affect the integrity of the product. For this category, the manufacturer generates and retains all relevant data defining (and, as necessary, validating) changes which are implemented. In order to expedite the agency's review of changes, such data should be readily accessible for FDA-establishment inspections. The agency recommends that the firm notify CBER in a Periodic Report (see description below) of the changes and dates of implementation.

2. Category II—Change(s) Requiring a Supplement Submission and Which May be Implemented Prior to CBER Approval

This category includes modifications to location, equipment, management, and personnel that do not change manufacturing methods, but have the potential to adversely affect product safety, purity, and potency. For these changes, the manufacturer should submit a standard supplement, accompanied by all relevant supporting data, with a request to implement not less than 30 days following the supplement's receipt by CBER's Document Control Center. Such supplements should be clearly marked "Category II Supplement, Changes to be Implemented" at the top of the cover letter. CBER will confirm the submission and its receipt date in the reference number assignment letter. CBER intends to follow relevant application review policies in assigning supplement review.

CBER will process Category II changes as establishment or product license application supplements and will take official action on such supplements on, before, or after this 30-day period. If CBER officials do not contact the sponsor via telephone or written correspondence within 30 days following the documented receipt date to question or reject the "Category II" status, the manufacturer may implement the change. CBER may communicate with the firm during this 30 day period for clarification or to advise that the change is considered to be a Category III supplement (see description below).

Manufacturers should be aware that Category II changes are implemented subject to agency approval. The agency may refuse to approve a supplement for a change that has already been implemented. In assessing a manufacturer's plans to correct a problem, the agency intends to consider the manufacturer's reasons for making the change and the alternatives available to the manufacturer, among other things. If the circumstances warrant, the agency may require the change to be immediately discontinued. When circumstances permit, it is FDA's intent to allow manufacturers to correct a problem with minimal expense and without unnecessary waste.

3. Category III—Change(s) Which Require CBER Approval Prior to Implementation

This category includes changes in manufacturing methods and requires manufactures to submit all relevant supporting documentation and await CBER's approval prior to implementation. As with Category II submissions, CBER intends to follow relevant application review policies in assigning supplement review.

4. Periodic Reports

A Periodic Report is a voluntary written report submitted every 6 months listing and briefly describing Category I changes and providing the date of implementation of such changes. Reports should include separate descriptions of EACH change affecting a licensed product and should identify for each change the specific establishment location involved. (See section E of this document for requested information.)

B. Where to Submit Supplements and Periodic Reports

Three copies of all supplements and periodic reports should be submitted to the Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448

C. Selected Examples

1. Category I

CBER currently considers the following examples to be changes that will not ordinarily rise to the level of the "important" changes required to be reported under § 601.12. These changes need not be submitted to CBER prior to implementation and may be submitted in a periodic report as "Category I changes." This listing provides representative samples of Category I changes and is not all inclusive.

i. Change in purchasing source of approved final fill components (stoppers, vials, seals) that meet established specifications. This does not include change(s) in composition of such components or suppliers of ancillary chemicals and drug products such as diluents.

ii. Change in harvesting and/or pooling procedures which does not affect method of manufacture, recovery, storage conditions, sensitivity of detection of adventitious agents, or production scale; e.g., collection in smaller quantities to improve process efficiency.

iii. Changes in cell inoculum; e.g, mode of expansion (attached versus suspension; bioreactor versus spinner), cell density, staging of culture. This excludes viral products; e.g., vaccines and in vitro diagnostic kits.

iv. Change in storage conditions of reference standard or panel based on stability data generated with an FDA-approved protocol.

v. Extension of dating period for in-house reference standards, based on real-time data, according to an FDA-approved protocol.

vi. Replacement of inhouse reference standard or reference panel (or panel member) according to FDA-approved standard operating procedures (SOP's) and specifications.

vii. Tightening of specifications for reference standard or lot release analyses.

viii. Establishment of new Working Cell Bank derived from previously approved Master Cell Bank according to an FDA-approved SOP.

ix. Narrowing (tightening) of specifications for intermediates and endproducts to provide greater assurance of product purity and potency.

x. Use of alternative storage containers for intermediates, with no change in sterility, depyrogenation status, or composition of container.

xi. Change in storage conditions of inprocess intermediates based on data from an FDA-approved stability protocol (labeling not affected).

xii. Change in bulk pool size for formulation without process scale-up.

xiii. Batch size changes for ancillary components (specimen diluents, positive and/or negative controls, substrate buffers, etc.) where all equipment contact surfaces remain chemically identical to approved equipment.

xiv. Change in the number of vials per fill with no scale-up or impact on parameters defined in the environmental assessment.

xv. Change in shipping conditions (e.g., temperature, packaging, custody) based upon data derived from studies following an FDA-approved protocol.

xvi. Rework of biologic product which has failed final release testing using FDA-approved rework protocol. Note: Any lot of product subject to rework should be so noted on the product release protocol.

xvii. Change in stability test protocol to include more stringent parameters; e.g., additional assays, tightened specifications, etc.

xviii. Replacement of equipment with that of identical design and operating principle involving no change in process parameters.

xix. The following modifications of areas not used for production or storage of intermediate or finished product (such as testing laboratories, materials storage, warehouse, employee break areas, etc.):

(a) Addition of outside areas that do not adversely affect the product manufacturing area or utility systems;

(b) Expansion or reorganization of off-site support space that does not affect the product manufacturing areas;

(c) Modification to or relocation of support space within a product manufacturing facility that does not affect plant utility systems and flow patterns, or adversely affect product purity or environmental conditions (e.g., addition of half partitions or benches).

xx. The relocation of equipment within appropriate areas of approved facilities, not increasing risk to product purity or integrity of testing (e.g., relocation of fermentor in fermentation suite).

xxi. Upgrade in air quality, material, or personnel flow where product specifications remain unchanged. Involves no change in equipment or physical structure of production area.

xxii. Changes in personnel other than the Responsible Head (21 CFR 600.10) or individuals serving in a capacity of alternative or temporary Responsible Head.

2. Category II

CBER currently considers the following examples to be "important" proposed changes in location, equipment, management and responsible personnel. These changes must be reported pursuant to § 601.12(a) and meet the definition of a "Category II Supplement." This listing provides representative samples of Category II changes and is not all inclusive.

i. Addition of back-up systems for manufacturing processes which are identical to the primary system and serve as an alternate resource (not expansion of capacity) within an approved production area.

ii. Upgrade to production air handling or water systems using like equipment and not affecting established specifications; e.g., removal of dead legs in water for injection (WFI) system. (Does not include replacement of parts or routine repair and maintenance (Category I).)

iii. Replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology.

iv. Expansion of existing manufacturing support systems (WFI, heating, ventilation, and air-conditioning (HVAC)); e.g., adding an additional WFI loop.

v. Relocation of operations within the same production area of an approved facility with no change in equipment or room classification.

vi. Modification of an approved manufacturing area which does not adversely affect safety, purity or potency of product; e.g., adding new interior partitions or walls to increase control over the environment and replacing or adding new surfaces to enhance cleaning.

vii. Change in Responsible Head (21 CFR 600.10) or individuals serving in a capacity of alternative or temporary Responsible Head.

3. Category III.

CBER currently considers the following examples to be "important" proposed changes in manufacturing methods. These changes require CBER approval before they may be implemented under § 601.12(b), and meet the definition of a "Category III Supplement." This listing provides representative samples of Category III changes and is not all inclusive.

i. Establishment of new Master Cell Bank.

ii. Change in inhouse reference standard or reference panel (panel member) resulting in modification of reference specifications.

iii. Establishment of alternate test method for reference standards, release panels, product intermediates, or endproduct.

iv. Replacement of existing test method with new procedure or method; e.g., change from radioimmunoassay (RIA) to enzyme-linked immunosorbent assay (ELISA).

v. Change in process parameters; e.g., growth cycle, chromatographic medium, process time and/or temperature, filtration process.

vi. Change in sequence of processing steps, including addition of processing step; e.g., viral removal or inactivation.

vii. Change in production scale (up or down) involving changes in equipment, process parameters, or process methodology.

viii. Change in chemistry or formulation of solutions used during processing.

ix. Changes in conjugation chemistry or process.

x. Change in composition of the biological product or ancillary components.

xi. Change in dosage form.

xii. Any change which results in detectable relaxing of product specifications and modification in potency, sensitivity, or specificity.

xiii. Change in fill volume (per vial) from an approved production batch size and/or scale.

xiv. Reprocessing of product without a previously approved reprocessing protocol.

xv. Change in stability testing program; e.g., substitution of analytical methods or potency assay, broadening of acceptance criteria, change in storage temperature, change in test algorithm.

xvi. Extension of dating period for intermediate or endproduct.

xvii. Change in storage conditions for licensed final product or intermediate based on real-time data from FDA-approved stability protocol (labeling affected).

xviii. The following changes in manufacturing location that affect process

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conditions and thereby have the potential to affect product safety, purity, or potency:

(a) Use of a previously unapproved manufacturing area or facility;

(b) Change in air quality, water quality, material, or personnel flow for licensed product manufacturing areas.

(c) Change from single product manufacturing to multiple product manufacturing using same equipment and/or personnel.

(d) Renovation to physical structure that alters product, material, and/or personnel flow.

xix. Addition to or replacement of an FDA-approved manufacturing step performed under contract to a second facility.

D. Categorization of Proposed Changes

Before implementing a change which is not identified above or does not clearly fit into one of the defined categories, manufacturers should discuss the proposed change with CBER. If guidance is not sought, the change should be reported in the form of a Category III supplement, subject to CBER approval prior to implementation.

Requests for information regarding categorization of proposed changes not included in the above categories may be addressed to the Director of the appropriate applications Division within the Office with assigned product, or establishment, responsibility at the Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

E. Information Requested for Category I Periodic Reports

FDA requests that manufacturers submit the following information for each Category I change in the order shown: (1) Name of the manufacturer; (2) the establishment license number; (3) the report dates (time period covered by the report); (4) the product(s) affected (list each one); (5) the change implemented, including: (a) A brief description and reason for the change and/or modification, (b) the establishment location involved, (c) the date the change was implemented, and (d) a cross-reference to the Approved Validation Protocol or Standard Operating Procedure, if applicable; and (6) the signature of the Responsible Head and the date signed.

Dated: March 31, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–8382 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0201]

Asahi Denka Kogyo K. K.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4378) proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food to include the use at temperatures up to and including retort conditions.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 29, 1993 (58 FR 40656), FDA announced that a food additive petition (FAP 3B4378) had been filed by Asahi Denka Kogyo K. K., c/o Japan Technical Information Center, Inc., 1002 Pennsylvania Ave. SE., Washington, DC 20003. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food to include the use at temperatures up to and including retort conditions. Asahi Denka Kogyo K. K. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7)

Dated: March 22, 1995.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–8515 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0121]

BASF Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4384) proposing that the food additive regulations be amended to provide for the safe use of hydroxypropyl acrylate and butanediol diacrylate as monomers in the production of acrylic polymers intended for use in food packaging adhesives.

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 25, 1994 (59 FR 19730), FDA announced that a food additive petition (FAP 3B4384) had been filed by BASF Corp., 9401 Arrow Point Blvd., suite 200, Charlotte, NC 28273. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of hydroxypropyl acrylate and butanediol diacrylate as monomers in the production of acrylic polymers intended for use in food packaging adhesives. BASF Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 22, 1995.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–8516 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–130–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Fourth Quarter 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during October, November, and December of 1994 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe. We are also providing the content of revisions to the Medicare Coverage Issues Manual published between October 1 and December 31, 1994. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT: Margaret Cotton, (410) 966–5255 (For Medicare instruction information); Pat Prete, (410) 966–3246 (For Medicaid instruction information); Michael Robinson, (410) 966–5633 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from October 1 through December 31, 1994.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of December 31, 1994. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the Federal Register citation, the title of the regulation, the parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

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IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, Attn: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1993. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendix M (Interpretative Guidelines for Hospices). Copies of this appendix may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 2—Program Administration (HCFA-Pub. 14–2) transmittal entitled "Files Maintenance Program General", use the Superintendent of Documents No. HE 22.8/6–2 and the HCFA transmittal number 127.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Issuances Staff, Bureau of Program Operations, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5255.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–3246.

Questions concerning all other information may be addressed to Michael Robinson, Office of Regulations, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5633.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 23, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. For a complete listing, please refer to the listing in the January 3, 1995 quarterly notice (60 FR 132).

March 17, 1994 (59 FR 12610)

August 5, 1994 (59 FR 40038)

November 14, 1994 (59 FR 56501)

January 3, 1995 (60 FR 132)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October Through December 1994]

Trans. No.		Manual/Subject/Publication Number
		Intermediary Manual **Part 2—Audits, Reimbursement** **Program Administration (HCFA–Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–1)**
400	•	Files Maintenance Program—General. Records Retention and Disposal Schedule. Retention of Claims Files Materials. Microfilming of Files Material. Intermediary—Federal Records Center Relations. Location of Federal Records Centers. Procedures for Transfer of Material to Federal Records Centers. Requesting Forms for Transfer and Return of Material from Federal Records Centers. Report of Medicare Records—Form HCFA–2556. Exhibits.
401	•	Location of Federal Records Centers.
		Intermediary Manual **Part 3—Claims Process (HCFA–13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1636	•	Responsibility for Medicare Secondary Payer Outreach Program. Quarterly Supplement to Intermediary Workload Report (Form HCFA–1566A) General. Completing Quarterly Supplement to the Intermediary Workload Report, HCFA–1566A, Pages 1 and 2. Completing Quarterly Supplement to the Intermediary Workload Report, HCFA–1566A, Page 3. Completing Quarterly Periodic Interim Payment Report, HCFA–1566C—General.
1637	•	Reporting Outpatient Surgery and Other Services. PPS Pricer Program. Provider-Specific Data Record Layout and Description.
1638	•	Mammography Screening. Mammography Quality Standards Act.
1639	•	Disallowance Form Letters HCFA–1954 and HCFA–1955. Explanation of Medicare Benefits Notice Specifications.
1640	•	General Effect of Liability Insurance on Medicare Payment. Appeals Procedures for MSP Liability Overpayments.
1641	•	Mammography Screening.
		Carriers Manual **Part 2—Program Administration (HCFA–14–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
127	•	Files Maintenance Program—General. Records Retention and Disposal Schedule. Retention of Claims Files Materials. Microfilming of Files Materials. Report of Medicare Records—Form HCFA–2556. Location of Federal Records Centers. Procedures for Transfer of Material to Federal Records Centers. Requesting Forms for Transfer and Return of Material from Federal Records Centers. Exhibits.
128	•	Location of Federal Records Centers.
		Carriers Manual **Part 4—Professional Relations (HCFA-Pub. 14–4)** **(Superintendent of Documents No. HE 22.8/7–4)**
9	•	Responsibility in the Medicare Secondary Payer Outreach Program.
10	•	National Registry of Physicians/Health Care Practitioners/Group Practices-Medicare Provider Identifier (UPIN). Ongoing Data Collection On Physicians/Health Care Practitioners/Group Applications. Physicians/Health Care Practitioners/Group Practices Record-Required Information and Format. Maintaining Physicians/Health Care Practitioner/Group Practice Membership. Validation of Physicians/Health Care Practitioners/Group Practices Credentials, Certifications, Sanction and License Information for Prior Practice. • UPIN Cross Referral Requirement. Maintenance of The Registry. Update Records. Rejections. Exceptions. Carrier Record Requirements. UPIN Carrier Record Layout.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
		List of Medical School Codes.
		Carriers Manual **Part 3—Claims Process (HCFA-Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1501	•	Quarterly Supplements to the Carrier Performance Report (Forms HCFA–1565A, HCFA–1565B, HCFA–1565C, and HCFA–1565D)—General. Completing Form HCFA–1565A. Completion of Items on Form HCFA–1565A. Completing Medicare Fraud Unit Quarterly Workload Status Report, HCFA–1565B—General. Completing Form HCFA–1565C. Completion of Items on Form HCFA–1565C. Completing Comprehensive Limiting Charge Compliance Program Quarterly Report HCFA–1565D—General. Completing Medicare Fraud Unit Quarterly Status Report, Form HCFA–1565B. Completing Carrier Limiting Charge Compliance Program Quarterly Report, Form HCFA–1565D.
1502	•	Chiropractors. Manual Manipulation. Verification of Chiropractor's Qualifications.
1503	•	Part B Provider Access to Limited Eligibility Data. Eligibility Data Available. Contractor Implementation. Data Format. Part B Eligibility Data Security Requirements. HCFA Standard Part B Eligibility Data Security Requirements. HCFA Standard Part B Eligibility Inquiry Flat File Specifications. HCFA Standard Part B Eligibility Response Flat File Specifications.
1504	•	Type of Service.
1505	•	Self-Administering of Drug or Biological.
1506	•	List of Covered Surgical Procedures.
1507	•	Rebundling of CPT–4 Codes.
		Program Memorandum **Intermediaries (HCFA–Pub. 60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–94–8	•	Revised Wages Indexes for Ambulatory Surgical Centers—Pricer for 7.0 and 8.0.
A–94–9	•	FY 1995 Prospective Payment System and Other Bill Processing Changes.
A–94–10	•	Ambulatory Surgical Center—Pricer 9.0.
		Program Memorandum **Carriers (HCFA–Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–94–6	•	1995 Physician, Practitioner and Supplier Participation Enrollment and Fee Schedule Disclosure.
B–94–7	•	1995 Physician, Practitioner and Supplier Participation Enrollment and Fee Schedule Disclosure.
B–94–8	•	Split Billing for Professional and Technical Components of Services.
		Program Memorandum **Intermediaries/Carriers (HCFA–Pub. 60AB)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–94–8	•	Revised Codes for Part B Ground Ambulance Services.
		Program Memorandum **Medicaid State Agencies (HCFA–Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
94–8	•	Title XIX, Social Security Act, Vaccines for Children Program.
94–9	•	Title XIX, Social Security Act, Personal Care Services Provided in a Home or Other Location.
		Regional Office Manual **Standards and Certification (HCFA–Pub. 23–4)** **(Superintendent of Documents No. HE 22.28/5:90–1)**
55	•	Developing the Budget Approval. Submittal of Budget Approval. Distribution of Approved Funds. Disbursement of Authorized Funds.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October Through December 1994]

Trans. No.		Manual/Subject/Publication Number
		The Budget Call. Monitoring State Agency Fiscal Budgets.
56	•	Approval Procedures for Hospitals in the 50–99 Bed Category.
		Peer Review Organization Manual **(HCFA–Pub. 19)** **(Superintendent of Documents No. HE 22.8/15)**
40	•	Introduction. MOA with State Agencies Responsible for Licensing/Certification of Providers/Practitioners. Model Memorandum of Agreement.
41	•	Complaints to be Reviewed. Disposition of Complaints. Disclosing Information. Monitoring Hospital-Issued Notices of Noncoverage. Beneficiary Liability. Model Hospital-Issued Notice of Noncoverage Continued Stay—Swing Bed Only.
42	•	DRG Validation Review.
43	•	Training.
		Hospital Manual **(HCFA–Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
673	•	Billing for Mammography Screening. Mammography Quality Standards Act.
674	•	Billing for Mammography Screening.
		Skilled Nursing Facility **(HCFA–Pub. 12)** **(Superintendent of Documents No. HE 22.8/3)**
332	•	Billing for Mammography Screening. Mammography Quality Standards Act.
333	•	Billing for Mammography Screening.
		State Medicaid Manual **Part 3—Eligibility (HCFA–Pub. 45–3)** **(Superintendent of Documents No. HE 22.8/10)**
64	•	Transfers of Assets for Less Than Fair Market Value. Treatment of Trusts.
		State Medicaid Manual **Part 6—Payment for Services (HCFA–Pub. 45–6)** **(Superintendent of Documents No. HE 22.8/10)**
26	•	Listing of Multiple Source Drugs.
		State Medicaid Manual **Part 7—Quality Control (HCFA–Pub. 45–7)** **(Superintendent of Documents No. HE 22.8/10)**
52	•	Computations of Financial Eligibility. Verification Guide—Coverage Code 02 for OASDI Recipients. Verification Guide—Coverage Code 01 or 03. Verification Guide—Coverage Code 18 for QDWI Individuals. Verification Guide—Coverage Code 25 for Individuals Whose Eligibility for Medicaid Has Otherwise Ceased. Verification Guide—Coverage Code 26 for Individuals Whose Eligibility for Medicaid Has Otherwise Ceased. Verification Guide—Coverage Code 29 for Individuals Receiving Home and Community-Based Services and Other Waiver Services. Verification Guide—Coverage Code 31. Verification Guide—Coverage Code 40 for AFDC Families.
		Coverage Issues Manual **(HCFA–Pub. 6)** **(Superintendent of Documents No. HE 22.8/14)**
72	•	Blood Transfusions.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
73	•	Hydrophilic Contact Lens for Corneal Bandage.
		Home Health Agency Manual (HCFA–Pub. 11) (Superintendent of Documents No. HE 22.8/5)
273	•	Home Health Certification and Plan of Care.
		State Operations Manual Provider Certification (HCFA–Pub. 7) (Superintendent of Documents No. HE 22.8/12)
265	•	Hospice Regulations and Non-Medicare Patients. Operation of a Hospice Across State Lines. Compliance with Advance Directives. Hospice—Citations and Description. Hospice Multiple Locations. Election of Hospice Benefit by Resident of a Skilled Nursing Facility, Nursing Facility, Intermediate Care Facility for the Mentally Retarded, or Non-Certified Facility. Hospice Inpatient Services Furnished Directly or Furnished Under Arrangements. Hospice Home Visit Procedures. Model Consent for Hospice Home Visit Form. Hospice Survey and Deficiencies Report. Interpretive Guidelines—Hospices.
		Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
16	•	Billing for Mammography Screening by Rural Health Clinic and Federally Qualified Health Centers. Mammography Qualified Standards Act.
17	•	Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers.
		Medicare/Medicaid Sanction—Reinstatement Report
94–13	•	Report of Physician/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
94–14	•	Report of Physician/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.

Addendum IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 72; section 45–27 Blood Transfusions NEW IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For services performed on or after 12–08–94.

Section 45–27, Blood Transfusions.—This section has been added to clarify the coverage and payment policies for blood transfusions.

45–27 BLOOD TRANSFUSIONS

Blood transfusions are used to restore blood volume after hemorrhage, to improve the oxygen carrying capacity of blood in severe anemia, and to combat shock in acute hemolytic anemia.

A. Definitions.—

1. Homologous Blood Transfusion.—Homologous blood transfusion is the infusion of blood or blood components that have been collected from the general public.

2. Autologous Blood Transfusion.—An autologous blood transfusion is the precollection and subsequent infusion of a patient's own blood.

3. Donor Directed Blood Transfusion.—A donor directed blood transfusion is the infusion of blood or blood components that have been precollected from a specific individual(s) other than the patient and subsequently infused into the specific patient for whom the blood is designated. For example, patient B's brother predeposits his blood for use by patient B during upcoming surgery.

4. Perioperative Blood Salvage.—Perioperative blood salvage is the collection and reinfusion of blood lost during and immediately after surgery.

B. Policy Governing Transfusions.—For Medicare coverage purposes, it is important to distinguish between a transfusion itself and preoperative blood services; e.g., collection, processing, storage. Medically necessary transfusion of blood, regardless of the type, may generally be a covered service under both Part A and Part B of Medicare. Coverage does not make a distinction between the transfusion of homologous, autologous, or donor-directed blood. With respect to the coverage of the services associated with the preoperative collection, processing, and storage of autologous and donor-directed blood, the following policies apply.

1. Hospital Part A and B Coverage and Payment.—Under § 1862(a)(14) of the Act, nonphysician services furnished to hospital patients are covered and paid for as hospital services. The inclusion of services provided to hospital patients by an outside supplier as part of hospital services is referred to as "bundling." In a situation where a hospital obtains either autologous or donor-directed blood from an independent supplier, the supplier collects, processes, and stores the blood and, typically, delivers it to the hospital. The hospital is responsible for paying the supplier.

Part A payment, as specified in § 1814(b) of the Act, and Part B payment, as specified in § 1833(a) of the Act, relate to reasonable cost as defined in § 1861(v) of the Act. Under this system, when a hospital obtains autologous or donor-directed blood from an independent blood bank, Medicare recognizes only a processing fee charged to the hospital by the independent blood bank because the blood has been replaced, albeit in advance. The processing fee is recorded by the hospital in the blood storing, processing, and transfusion cost center. This cost center also includes any costs the hospital itself incurs to process and administer the blood after it has been procured. This includes the cost of such activities as storing, type crossmatching, and transfusing the blood, as well as the cost of spoiled or defective blood. The hospital may generate a charge for these costs (except for spoiled or defective blood) and, under cost reimbursement, Medicare picks up its share of the costs through cost apportionment. As provided in § 1886 of the Act, under the prospective payment system (PPS), the diagnosis related group (DRG) payment to the hospital includes all covered blood and blood processing expenses, whether or not the blood is eventually used.

In a situation where the hospital operates its own blood collection activities, rather than using an independent blood supplier, the costs incurred to collect autologous or donor-directed blood are recorded in the whole blood and packed red blood cells cost center. Because the blood has been replaced, Medicare does not recognize a charge for the blood itself. Therefore, under cost reimbursement, these costs are shared by all patients through cost apportionment. The costs incurred by the hospital to store, process, and transfuse the blood, as well as the cost of spoiled or defective blood, are recorded in the blood storing, processing, and transfusion cost center. The hospital may generate a charge for these costs (except for the cost of spoiled or defective blood) and, under cost reimbursement, Medicare picks up its share of these costs through cost apportionment. Under PPS, the DRG payment is intended to pay for all covered blood and blood services, whether or not the blood is eventually used.

Under its provider agreement, a hospital is required to furnish or arrange for all covered services furnished to hospital patients. Medicare payment is made to the hospital, under PPS or cost reimbursement, for covered inpatient and outpatient services, and it is intended to reflect payment for all costs of furnishing those services.

2. Nonhospital Part B Coverage.—Under Part B, to be eligible for separate coverage, a service must fit the definition of one of the services authorized by § 1832 of the Act. These services are defined in 42 CFR 410.10 and do not include a separate category for a supplier's services associated with blood donation services, either autologous or donor-directed. That is, the collection, processing, and storage of blood for later transfusion into the beneficiary is not recognized as a separate service under Part B. Therefore, there is no avenue through which a blood supplier can receive, direct payment under Part B for blood donation services.

C. Perioperative Blood Salvage.—When the perioperative blood salvage process is used in surgery on a hospital patient, payment made to the hospital (under PPS or through cost reimbursement) for the procedure in which that process is used is intended to encompass payment for all costs relating to that process.

Transmittal No. 73; Section 45–7, Hydrophilic Contact Lens for Corneal Bandage. CLARIFICATION—EFFECTIVE DATE: Not Applicable.

Section 45–7, Hydrophilic Contact Lens for Corneal Bandage.—This section has been revised to explain how payment is provided for hydrophilic contact lenses when they are furnished incident to a physician's services. Payment for the lenses is bundled into the payment for the physician service to which it is incident. If the lenses are covered as other than incident to a physician's service, they are not paid under the physicians' fee schedule and would be covered prosthetic devices, which follow other payment provisions of the Act.

45–7 HYDROPHILIC CONTACT LENS FOR CORNEAL BANDAGE

Some hydrophilic contact lenses are used as moist corneal bandages for the treatment of acute or chronic corneal pathology, such as bullous keratopathy, dry eyes, corneal ulcers and erosion, keratitis, corneal edema, descemetocele, corneal ectasis, Mooren's ulcer, anterior corneal dystrophy, neurotrophic keratoconjunctivitis, and for other therapeutic reasons.

Payment may be made under § 1861(s)(2) of the Act for a hydrophilic contact lens approved by the Food and Drug Administration (FDA) and used as a supply incident to a physician's service. Payment for the lens is included in the payment for the physician's service to which the lens is incident. Contractors are authorized to accept an FDA letter of approval or other FDA published material as evidence of FDA approval. (See § 65–1 for coverage of a hydrophilic contact lens as a prosthetic device.) See Intermediary Manual, § 3112.4 and Carriers Manual, §§ 2050.1 and 15010.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR page numbers	CFR part	File code*	Regulation title	End of comment period	Effective date
10/03/94	50235–50240		MB–084–NC	Medicaid Program; Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program.		10/01/94
10/03/94	50246–50253		ORD–068–N	Medicare and Medicaid Programs; Small Business Innovation Research Grants for Fiscal Year 1995.		10/03/94
10/07/94	51125–51130	403	OBS–001–FC	Medicare Program; Information, Counseling, and Assistance Grants Program	12/06/94	10/07/94

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Publication date	FR page numbers	CFR part	File code*	Regulation title	End of comment period	Effective date
10/13/94	51989		MB–084–CN	Medicaid Program; Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program Correction.	12/12/94	10/01/94
10/14/94	52129–52132	418	BPD–820–N	Hospice Services Under Medicare Program; Intent To Form Negotiated Rulemaking Committee.	11/14/94	10/14/94
10/19/94	52862	488 489	BPD–393–IFC	Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care OFR Correction.	06/22/94	07/22/94
10/20/94	52968–52971		HSQ–220–N	CLIA Program; Approval of the American Society for Histocompatibility and Immunogenetics for the Specialty of Histocompatibility.		10/20/94
10/20/94	52971–52972		OPL–002–N	Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council.		10/20/94
10/21/94	53187–53193		BPO–124–PN	Medicare Program; Data, Standards, and Methodology Used to Establish Fiscal Year 1995 Budgets for Fiscal Intermediaries and Carriers.	12/20/94	
11/10/94	56116–56252	401 431 435 440 441 442 447 483 488 489 498	HSQ–156–F	Medicare and Medicaid Programs, Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities.		07/01/95
11/14/94	56501–56510		BPO–127–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Covered Decisions-Second Quarter 1994.		11/14/94
11/16/94	59241–61629		BPO–128–N	Medicare and Medicaid Programs; Delay in Implementation of the Medicare-Medicaid Coverage Data Bank Requirements.		11/16/94
11/17/94	59624		MB–060–P	Medicaid Program; Inpatient Psychiatric Services for Individuals Under Age 21.	01/17/94	
11/21/94	59933–59943	417	OMC–008–F	Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans.		12/21/94
11/22/94	60109–60156	205	MB–092–P	Aid to Families With Dependent Children; National Voter Registration Act of 1993; Implementation.	01/23/95	
11/23/94	60365		OPL–003–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.		11/23/94
12/01/94	61629–61628		OACT–046–N	Medicare Program; Part A Premium for 1995 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.		01/01/95
12/01/94	61629–61633		OACT–047–N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1995.		01/01/95
12/01/94	61628–61633		OACT–048–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1995.		01/01/95

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR page numbers	CFR part	File code*	Regulation title	End of comment period	Effective date
12/06/94	62606–62609	493	HSQ–217–FC	Medicare, Medicaid and CLIA Programs; Extension of Certain Effective Dates for Clinical Laboratory Requirements and Personnel Requirements for Cytologists.	02/06/95	12/06/94
12/08/94	63410–63635	410 414	BPD–789–FC	Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under The Physician Fee Schedule for Calender Year 1995, and the 5–Year Refinement of RVUs.	02/06/95	01/01/95
12/08/94	63638–63646		BPD–807–FN	Physician Fee Schedule Update for Calendar Year 1995 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1995.		01/01/95
12/13/94	64141–64153	405 482	BPD–421–F	Medicare and Medicaid Programs; Revisions to Conditions of Participation for Hospitals.		01/12/95
12/13/94	64153–64156	412 413	BPD–802–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Systems and Fiscal Year 1995 Rates; Correction.		10/01/94
12/20/94	64482–65498	409 413 418 484	BPD–469–F	Medicare Program; Medicare Coverage of Home Health Services, Medicare Conditions of Participation, and Home Health Aide Supervision.		02/21/95
12/23/94	66314–66316		HSQ–221–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Exemption of Laboratories Licensed by the State of Washington.		12/29/94
12/29/94	67264–67265		BPD–822–N	Medicare Program; Hospice Wage Index.		12/29/94
12/29/94	67265		BPD–823–N	Medicare Program; Hospice Wage Index.		12/29/94

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling.

[FR Doc. 95–8398 Filed 4–5–95; 8:45 am]
BILLING CODE 4120–01–P

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for Fiscal Year (FY) 1995: Cancellation/Changes of Cycle for Certain Grants and Cooperative Agreements; Extension of Certain Application Deadline Dates

Notice of Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for fiscal year (FY) 1995, section 502(a), title V of the Social Security Act, was published on February 13, 1995, at 60 FR 8244. Section 4.1.2.1. of this notice announced the availability of funds for 4–6 grants in the Maternal, Infant, Child and Adolescent Health subcategory priority identified as "Adolescent Health Resource Center." Section 4.1.2.3. of this notice announced the availability of funds for 5 grants in the Data Utilization subcategory.

Since publication of this notice, it has been determined that amounts allocated for grants under Section 4.1.2.1. are insufficient to permit the award of 4–6 grants in the "Adolescent Health Resource Center" priority for FY 1995. As a result, this competition will award one grant in FY 1995 of $200,000 per year for up to 5 years. The programmatic and technical information contact for this competition is Juanita Evans, M.S.W., telephone: (301) 443–4026. Additionally, it has been determined that amounts allocated for grants under Section 4.1.2.2. are insufficient to permit the award of 3 grants in the "Mental Health Resource Grants" priority for FY 1995. As a result, this competition will award 2 grants in FY 1995 of $500,000 each per year for up to 5 years. Finally, it has been determined that amounts allocated for grants under Section 4.1.2.3. are insufficient to permit the award of 5 grants in FY 1995 of $100,000 each per year for 3 years. As a result, this competition will award up to 5 grants totalling up to $200,000 in FY 1995, with awards ranging between $25,000 to $100,000 each per year for up to 3 years.

Three of the deadline dates announced in the February 13 Notice of

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Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Health Improvement Projects for fiscal year (FY) 1995, are being extended. The deadline date for the remaining grant announced under Section 4.1.2.1. is hereby extended to May 25, 1995. Additionally, the deadline date for School Health Program grants under Section 4.1.2.2. is hereby extended to May 25, 1995. Finally, the deadline date for cooperative agreements for Partnership for Information and Communication announced under Section 4.2.2. is hereby extended to May 25, 1995.

The rest of the notice remains as published.

An additional notice announcing other cancellation/changes or extension of application due dates was published on March 20, 1995 at 60 FR 14762 entitled Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for Fiscal Year (FY) 1995: Cancellation of Cycle for Certain Grants and Cooperative Agreements; Extension of Certain Application Deadline Dates.

Dated: April 3, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–8450 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 62406–62407, dated December 5, 1994) is amended to reflect the realignment of functions within the Office of the Director, Office of Program Support, Centers for Disease Control and Prevention (CDC).

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the Office of Program Support (HCA5), Office of the Director (HCA5A), delete the title and functional statement for the Management Review Activity (HCA5A1) in its entirety.

Revise the functional statement for the Information Resources Management Office (HCA54) by adding "IRMO" to item 10 before the words "information security programs."

Revise the functional statement for the Office of the Director (HCA541), Information Resources Management Office HCA54) by adding "IRMO" to item (11) before the words "information security programs."

Revise the functional statement for the Human Resources Management Office (HCA57), by deleting items (9) through (12) and inserting the following items: (9) conducts CDC's personnel security and substance abuse programs; (10) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses of CDC personnel and staffing to CDC management and employees; (11) maintains liaison with PHS, HHS, and the U.S. Office of Personnel Management in the area of human resources management; (12) administers the National Performance Rview (NPR) and Human Resources initiatives to meet current and future requirements.

Revise the functional statement for the Office of the Director (HCA571), Human Resources Management Office (HCA57) be deleting items (3) through (5) and inserting the following items: (3) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees; (4) advises the Director, CDC, and other CDC management staff on all matters relating to human resources management; (5) administers the National Performance Review (NPR) and Human Resources initiatives.

Revise the functional statement for the Work Force Relations Branch (HCA572), Human Resources Management Office, (HCA57), by deleting items (3) through (5) and inserting the following items: (3) serves as liaison with the Office of Health and Safety and other CDC staff for personnel matters relating to substance abuse and other employee assistance programs; (4) coordinates the Fair Share and Dependent Care programs.

Delete the title and functional statement for the Committee Management and Personnel Security Section (HCA5722) in their entirety.

Revise the functional statement for the Operations Branch (HCA575) by adding the following item: (8) conducts the personnel security program.

Revise the functional statement for the Technical Services Section (HCA5757) by adding the following items: (7) conducts personnel security and position sensitivity programs; (8) provides assistance in the implementation of HHS Plan for a Drug Free Workplace.

Delete the functional statement for the Management Analysis and Services Office (HCA59) in its entirety and insert the following: (1) Plans, coordinates, and provides CDC-wide administrative, technical, management, and information services in the following areas: Studies and surveys, delegations of authorities, organization and functions, information security, Privacy Act, policy and procedures, records management, printing procurement and reproduction, correspondence, forms design, publications distribution, issuances, mail services, public inquiries, reports and committee management; (2) develops and implements policies and procedures in these areas; (3) conducts management control reviews and coordinates IG/GAO audits; (4) maintains liaison with HHS, PHS, General Services Administration, the Government Printing Office, National Archives and Records Administration, and other Government and private agencies.

Revise the functional statement for the Office of the Director (HCA591), Management Analysis and Services Office (HCA59), by deleting items (2) and (3).

Delete in its entirety the title and functional statement for the Records Management Activity (HCA5913).

After the functional statement for the Administrative Services Activity (HCA5912), Management Analysis and Services Office (HCA59), insert the following:

Committee Management and Program Panels Activity (HCA592). (1) Develops and manages, in conjunction with CDC's grants management requirements, A CDC-wide special emphasis panel that is the primary review mechanism for assuring scientific and programmatic review of applications for grant support; (2) coordinates committee management activities, including Federal advisory committees, for CDC; (3) receives and reviews requests received from the public for information and publications, and responds to the requests or forwards to the appropriate CDC program for action; (4) prepares and/or selects, and plans for materials to respond to public inquiries from various audiences; (5) coordinates the production and maintenance of the Resource Index.

Delete in its entirety the functional statement for the Management Analysis Branch (HCA597) and insert the following: (1) Provides consultation and assistance to CDC program officials on the establishment, modification, or abolishment of organizational structures and functions; reviews and analyzes organizational changes; and develops documents for approval by appropriate CDC, PHS, or HHS officials; (2) conducts management and operational studies for CDC to improve the effectiveness and efficiency of management and administrative systems techniques, policies, and organizational structures; (3) interprets, analyzes, and makes recommendations concerning delegations and redelegations of program and administrative authorities, and develops appropriate delegating documents; (4) develops and coordinates the implementation and conduct of CDC-wide information security programs; (5) conducts a CDC-wide records management program, including provision of technical assistance in the development and conduct of electronic records management activities; (6) coordinates IG/GAO audit activities; (7) plans, directs, and coordinates requirements of OMB Circulars A–76 and A–123 to conduct management review activities and to determine whether certain Agency functions might be more appropriately carried out through or by commercial sources; (8) plans, develops, and implements policies and procedures in these areas, as appropriate.

Delete in its entirety the functional statement for the Management Services Branch (HCA598) and insert the following: (1) Plans and conducts a publications management program, including development, production, procurement, distribution, and storage of CDC publications; (2) plans, directs, coordinates, and implements CDC-wide information distribution services and mail and messenger services, including the establishment and maintenance of mailing lists; (3) maintains liaison with contract suppliers, HHS, PHS, the Government Printing Office, and other Government agencies on matters pertaining to printing, copy preparation, reproduction, and procurement of printing; (4) serves as the focal point for recommending polices and establishing procedures for matters pertaining to energy conservation and recycling; (5) plans, develops, and implements policies and procedures in these areas, as appropriate.

After the functional statement for the Office of the Chief (HCA5981), Management Services Branch (HCA598), delete the following titles and functional statements in their entirety:

Public Inquiries Activity (HCA59812).

Publications Management Section (HCA5982).

Publications Planning and Procurement Unit (HCA59822).

Publications Graphics Unit (HCA59823).

Information Distribution Section (HCA5983).

Publications Distribution Unit (HCA9832).

Publications Inventory Unit (HCA59833).

Mail Management Unit (HCA59834).

Dated: March 28, 1995.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 95–8412 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration; Section 1892 of the Social Security Act, as amended; Offset of Medicare Payments to Individuals to Collect Past-Due Obligations Arising From Breach of Scholarship or Loan Contract; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 31, 1995, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, certain authorities under Section 1892 of the Social Security Act, as amended hereafter, pertaining to Offset of Medicare Payments to Individuals to Collect Past-Due Obligations arising from Breach of Scholarship or Loan Contract.

The authorities hereby delegated are (1) the authority to negotiate, approve, and sign Medicare Offset Agreements, and (2) the authority to inform the Attorney General and the Inspector General of the Department of Health and Human Services when a scholarship or loan obligor has refused to enter into, or has breached, a Medicare Offset Agreement. All other authorities under Section 1892 have been delegated to, and remain with, the Administrator, Health Care Financing Administration.

I provided for the ratification of all actions taken by any Public Health Service officials, with respect to Medicare offsets, prior to the effective date of this delegation.

The above delegation was effective on March 28, 1995.

Dated: March 28, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–8385 Filed 4–5–95; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3902; FR–3888–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received by ten (10) days following the publication of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a guide format which specifies the components of an application for approval by the Department of a national, regional, or multi-state housing agency in connection with the operation of a housing counseling program for renters, first-time homebuyers, and homeowners experiencing financial difficulty. Guide formats for applications for local housing counseling agencies, associated with HUD Handbook 7610.1, had

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previous OMB approval under approval number 2502–0261. However, new formats adapted to the character of national, regional and multi-state organizations are needed to allow them to obtain HUD approval as counseling agencies.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35);

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Housing Counseling Program and Recordkeeping Requirements.

Office: Office of Housing—Federal Housing Commissioner.

Description of the Need for the Information and its Proposed Use

Section 106 of the Housing and Urban Development Act, authorizes HUD to approve organizations with knowledge and experience in housing counseling for the purpose of providing housing counseling services to renters, first-time homebuyers and homeowners experiencing financial difficulty. HUD recruits, trains, and approves mostly community-based nonprofit organizations for the delivery of housing counseling services. In FY 1995, national, regional and multi-state organizations will be eligible to participate for the first time.

The tabulation sheet lists the collections of information required. All are required to administer the program in accordance with statutory and regulatory requirements. The collection of information is necessary for:

- Meeting the requirements of the housing counseling grant agreement.
- Obtaining data needed to prepare and support the housing counseling invoices.
- Obtaining recommendations from grantees for improving the program and reducing the burden.
- Monitoring the agencies to determine whether they should be decertified, and their housing counseling grant agreement terminated.

Form Numbers

A. Preliminary Application for Approval as a Housing Counseling Agency: (HUD–9900–A)—Used to collect data for a preliminary application for approval as a Housing Counseling Agency for local non-profits or public agencies.

B. Final Application for Approval as a Housing Counseling Agency: (HUD–9900–B)—Used to collect data for final approval as a Housing Counseling Agency for local non-profits or public agencies.

C. Preliminary Application for Approval as a Housing Counseling Agency: (HUD–9900–C)—Used to collect data for a preliminary application for approval as a Housing Counseling Agency for multi-state, regional and national organizations.

D. Final Application for Approval as a Housing Counseling Agency: (HUD–9900–D)—Used to collect data for final approval as a Housing Counseling Agency for multi-state, regional and national organizations.

E. Housing Counseling Agency Fiscal Year Activity Report: (HUD–9902)—Used to collect data from Housing Counseling Agencies on their yearly counseling activity.

F. Housing Counseling Client Survey (HUD–9908)—Used to collect data from clients regarding the quality of service provided by the Housing Counseling Agency.

G. Housing Counseling Activity and Unit Log (HUD–9921)—Used by the Housing Counseling Agencies to record information on their clients. (With HUD approval the agencies may substitute their own version of this form.)

Respondents: Local housing counseling agencies and national, regional, and multi-state housing counseling organizations.

Frequency of Submission: Annual.

Reporting Burden:

	No. of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
A.	75		1		2		150
B.	75		1		8		600
C.	10		1		2		20
D.	10		1		8		80
E.	650		1		1.17		761
F.	300		1		.25		75
G.	431		200		.25		21,550
Total estimated burden hours:							23,236

Status: Reinstatement, with change, of a previously approved collection for which approval has expired.

Contact: Joseph F. Lackey, Jr. OMB (202) 395–6880; Bonnie Adkins HUD (202) 708–0614, ext. 2034.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 16, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Supporting Statement—Housing Counseling Program and Recordkeeping Requirements

A. Justification for the Collection of Information

1. Why the Collection of Information is Necessary

Section 106 of the Housing and Urban Development Act, authorizes HUD to approve organizations with knowledge and experience in housing counseling for the purpose of providing housing counseling services to renters, first-time homebuyers and homeowners experiencing financial difficulty. HUD recruits, trains, and approves mostly community-based nonprofit organizations for the delivery of housing counseling services. In FY 1995, national, regional and multi-state organizations will be eligible to participate for the first time.

The collection of information is necessary for:

- Meeting the requirements of the housing counseling grant agreement.
- Obtaining data needed to prepare and support the housing counseling invoices.
- Obtaining data needed to prepare and support the housing counseling invoices.
- Monitoring the agencies to determine whether they should be decertified, and their housing counseling grant agreement terminated.

a. Description of Current Funding

Funding for the Housing Counseling Program has been provided by the Congress for the fiscal year 95 in the amount of $50,000,000.

2. Use and Need of Information Collected

The tabulation sheet lists the collections of information required. All are required to administer the program in accordance with statutory and regulatory requirements.

Actual Use of the Forms

A. Preliminary Application as a Housing Counseling Agency (HUD–9900–A)—Used to collect data for a preliminary application for approval as a Housing Counseling Agency for local non-profits or public agencies.

B. Final Application for Approval as a Housing Counseling Agency (HUD–9900–B)—Used to collect data for final approval as a Housing Counseling Agency for local non-profits or public agencies.

C. Preliminary Application as a Housing Counseling Agency (HUD–9900–C)—Used to collect data for a preliminary application for approval as a Housing Counseling Agency for multi-state, regional and national organizations.

D. Final Application for Approval as a Housing Counseling Agency (HUD–9900–D)—Used to collect data for final approval as a Housing Counseling Agency for Multi-state, regional and national organizations.

E. Housing Counseling Agency Fiscal Year Activity Report (HUD–9902)—Used to collect data from Housing Counseling Agencies on their yearly counseling activity.

F. Housing Counseling Client Survey (HUD–9908)—Used to collect data from clients regarding the quality of service provided by the Housing Counseling Agency.

G. Housing Counseling Activity and Unit Log (HUD–9921)—Used by the Housing Counseling Agencies to record information on their clients. (With HUD approval the agencies may substitute their own version of this form.)

3. Use of Modern Technology

There is no available technology to reduce the information collection burden.

4. Efforts to Identify Duplication

We have carefully reviewed the forms and their uses, and find no duplication of information.

5. Impact on Small Business

Not applicable.

6. Consequence to Federal Programs

The burden involved is considered to be the minimum amount consistent with statutory and regulatory requirements.

7. Special Circumstances for Collection of Information Inconsistent with the Guidelines in 5 CFR 1320.6

Not applicable.

8. Consulting With Persons Outside of HUD Concerning Collection of Information

We consulted with the following HUD-approved housing counseling agencies who have received counseling grants:

TULC Non-Profit Housing Corp., 3901 Grand River Avenue, Detroit, MI 48208, Mrs. Marguerite Evans, Executive Director, Tel. (313) 964–4207

Housing Opportunities, Inc., 133 Seventh Street, McKeesport, PA 15219, Mr. James P. Butler, President, Tel. (412) 664–1590.

There were no major problems that could not be resolved.

Other public contact was made with the following: Mortgage Bankers Association of America, 1125 15th Street NW., Washington, DC 20005, Tel. (202) 861–6500.

9. Assurance of Confidentiality for Respondents

To assure that the information provided to respondents by individuals and families is kept confidential, we require that the counseling records of each client be kept in a locked file or secured room with access limited to staff housing counselors using the files.

10. Additional Justification for Questions of a Sensitive Nature

We do not have any questions of a sensitive nature such as sexual preference or religious belief. However, in order to collect data on the type of clients being counseled, and to ensure that all clients are served equitably, the HUD-approved housing counseling agencies (respondents) must obtain information from their clients on the family composition, race, ethnicity, sex, ages, income, expenses, debts incurred and other related data.

Annualized Cost to the Federal Government

The estimate of annualized cost per respondent will vary depending on their respective capabilities. However, we estimate the annual cost to be $15.00 per hour × 21.67 burden hours, or $325.

The annualized cost to the federal government for all collections will be 69 Field Office staff at $18.00 per staff hour × 2 hours and 15 minutes processing time, or $2,691.

12. Burden of Collection of Information

See attached tabulation sheet.

13. Changes in Burden

The increase in burden hours is due to an increase in the number of agencies

in the program and also reflects a policy change to include national or regional entities. This change in policy is the direct result of the Department being approached by several national organizations wishing to play a more active role in the program. In addition, the Department wants to take advantage of a more efficient approach to administering the program. For example, nearly 40% of local counseling agencies currently participating could be managed through one national membership group, which would vastly reduce the number of individual grantees that HUD now must serve directly. This approach will also save HUD staff time.

14. Publishing and Collecting of Information for Statistical Use

Not applicable.

BILLING CODE 4210-27-M

TABULATION OF REPORTING BURDEN
THE HOUSING COUNSELING PROGRAM

	Description of information Collection Requirement	Number of Respondents	Number of Responses Per Respondent	Total Annual Response	Hours per Response	Total Hours
1	Preliminary Application for Approval as a Housing Counseling Agency	75	1	75	2	150
2	Final Application for Approval as a Housing Counseling Agency	75	1	75	8	600
3	Preliminary Application for Approval as a Housing Counseling Agency (Multi-state, Regional, National)	10	1	10	2	20
4	Final Application for Approval as a Housing Counseling Agency (Multi-state, Regional, National)	10	1	10	8	80
5	Housing Counseling Agency Fiscal Year Activity Report	650	1	650	1.17	761
6	Housing Counseling Client Survey	300	1	300	0.25	75
7	Housing Counseling Activity and Unit Log	431	200	86,200	0.25	21,550
Totals		1,551	206	87,320	22	23,236

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Preliminary Application for Approval as a Housing Counseling Agency

Housing Counseling Program

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261 (Exp 08/31/93)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0261), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Instructions

1. Send the signed original and one signed copy of form HUD-9900-A, Preliminary Application, to the HUD office that services the area in which your organization is located. Attach the submissions required by these instructions. Retain these instructions and a copy of form HUD-9900-A.

2. **Do not** complete or send the Final Application until HUD requests it after a satisfactory conference with your organization.

3. For all requested attachments, send reproduced copies, not orginals.

4. **Legal Status.** Attach a copy of the document that supports your claim to be a nonprofit organization. The attachment must include, among other facts, the official name, address, and telephone number of the legal authority that granted nonprofit status.

5. **Charter.** Attach a copy of the document (charter, by-laws, etc.) that authorizes your organization to provide housing counseling.

6. **Local Government.** Attach a copy of the document that authorizes you to provide housing counseling if you are a unit of local, county, or State government.

7. **Community Base**

a. Attach a description of your organization's experience and record of achievement in providing housing counseling or other similar services to the community in which you plan to provide housing counseling services.

b. ZIP Codes and Map:

(1) List the U.S. Postal Service ZIP code areas served by your agency. Include only those ZIP code areas from which your agency received "clients" during the 12-month period immediately prior to the date of your application for HUD approval.

(2) On a map, indicate the location of your counseling facility(ies). On the map, outline and identify by number each of the individual ZIP code areas you now serve as you indicated under subparagraph (1) above. Indicate the locations and give the names of all other housing counseling agencies within the ZIP code areas you serve. Attach the map to Section B.

c. Attach evidence that you have staff who fluently speak your clients' native language if you plan to provide housing counseling to nonEnglish-speaking persons.

8. **Audit Report.** Attach a copy of your audit report for an audit conducted within the 12-month period prior to the date of your application. See paragraph 2-1 of Handbook 7610.1.

Assurances: The applicant assures HUD that the applicant complies with the following items and will, as a HUD-approved housing counseling agency:

1. Administer its housing counseling in accordance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

2. Provide its housing counseling services without subagreements with other agencies for the delivery of all or any part of the services in the applicant's counseling plan as approved by HUD.

3. Represent its clients without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook 7610.1.

4. Meet all local, State, and Federal requirements necessary to provide the applicant's housing counseling services, including debt management and liquidation services if the applicant provides such services.

5. Comply with the fee guidelines set forth in Handbook 7610.1 if the applicant plans to charge counseling fees.

1. Official Name of Applicant Organization	3. Address of Main Office (If the applicant plans to use locations other than the main office, list them on a separate sheet and attach it to this sheet.)
2. Acronym, if any, for Official Name	
4. Main Office Telephone Number	5. Executive Director's Name & Title
6. Counseling Program Administrator's Name & Title	7. Name, Title, Date, & Signature of Person Authorized by the Applicant's Governing Body to Submit this Application

Replaces HUD-9900, Which is Obsolete

form HUD-9900-A (8/93)
ref Handbook 7610.1

Final Application for Approval as a Housing Counseling Agency

Housing Counseling Program

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261 (Exp 08/31/93)

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0261), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Instructions

1. Submit your completed Final Application only when HUD requests you to do so. This happens after HUD approves your Preliminary Application and you complete a satisfactory conference with HUD. HUD will not review Final Applications it has not requested from an applicant.

2. This Final Application consists of four related sections: (1) the target area and population you propose to serve, (2) the housing needs and housing problems you have documented and propose to address, (3) the resources you possess or will obtain to carry out your counseling plan, and (4) your housing counseling plan.

3. Your counseling plan must be reasonable in relation to the target population and their housing needs/problems and the resources you have to implement the plan. HUD seeks to approve counseling plans that an applicant can carry out with available resources. HUD will not approve a well-meaning but ill-conceived plan that lacks the necessary resources. It behooves every applicant to write a counseling plan that meshes the needs/problems with the resources. A small, workable plan is acceptable, but a large plan that exceeds the resources to implement it is bound not to be approved by HUD. You may limit your plan to a specialized area of housing counseling such as default counseling.

4. Please prepare your plan in a logical and orderly manner, using the outline of sections set forth below in the Final Application section. Your submission should also meet these requirements.

a. Typewritten or other form of word processing with letter-quality or near-letter-quality printing
b. Letter-size 8 1/2 x 11" paper (For identification purposes, place your organization's name or acronym and city and State on the top of each page.)
c. Outline format, as below
d. Detailed but concise
e. One copy
f. Use short paragraphs in narrative sections.

5. After you complete the parts of the Final Application, prepare a **one-page single-spaced** summary cover sheet on your letterhead. Entitle the sheet "Final Application for HUD Approval as a Housing Counseling Agency—Summary Sheet."

The summary must tell HUD how your housing counseling plan meets the housing needs and problems of the target population and how your resources and the community's resources will enable you to implement the plan. Include the name and telephone number of the person whom HUD may contact regarding the application.

This summary should serve the HUD reviewer as an introduction to your Final Application. The person authorized to submit the application must sign the summary and enter the date of the signing.

A transmittal letter to HUD is not necessary.

I. Target Area.

Consists of the ZIP code areas you entered on the map as part of your Preliminary Application. Submit the following items:

A. **A concise but detailed description of the target area** you propose to service with housing counseling. The description must include but is not limited to such items as: size of the population, racial and ethnic make-up of the population, socio-economic factors, age and condition of housing. Please do not exceed two single-spaced typewritten letter-size pages.

B. **A brief statement of your reason for selecting the target area.** Include a statement regarding why you believe your organization can service the area. Please do not exceed one single-spaced letter-size page.

D. **A justification for selecting the target area** if other housing counseling agencies exist in or near your target area.

4. **A revised map** that locates your offices, the target area, **and the location of other housing counseling agencies, only** if the HUD office requests it after review of your Preliminary Application.

II. Housing Needs and Problems. Submit the following.

A. **A narrative description of the housing needs and problems** of the target population. Before writing this item, see HUD Handbook 7610.1 for a definition of "housing need" and "housing problem."

B. **Be specific! Cite sources from which you obtained your data.** Include special needs and problems, such as those related to low income or poverty, homelessness, language, ethnic, minority, and racial factors.

III. Resources.

For the purpose of this Final Application, HUD considers two major types of resources.

A. **Applicant.** These are "on-hand" resources of staff, facilities, and funding possessed by the applicant, regardless of their source, that the applicant can use to deliver housing counseling. Funds the applicant has on hand or has a **written commitment** to receive from any source fall into this category. **Submit a detailed** narrative statement of these resources that are "on hand" as of the date of your Final Application. Break the statement out into the above three categories—staff, facilities, and funding. **Do not** include unsupported projections of what you hope to receive or plan to seek.

1. **Staff**

a. Include a brief dossier for each person who will supervise or perform counseling, or support counseling with clerical work.

b. Indicate each staff person's position title, duties, and whether the position is full-time or part-time, is paid or volunteer.

Replaces HUD-9900, Which is Obsolete

form HUD-9900-B (8/93)
ref Handbook 7610.1

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PRELIMINARY APPLICATION FOR APPROVAL AS A HOUSING COUNSELING AGENCY
Housing Counseling Program

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 2502-0261 (Exp. 00/00/00)

MULTI-STATE, REGIONAL, AND NATIONAL ORGANIZATIONS

INSTRUCTIONS

1. Send the signed original and one SIGNED copy of Section B of this Preliminary Application to:

   Emelda P. Johnson, Deputy Assistant Secretary
   for Single Family Housing
   Room 9282
   U.S. Department of Housing and Urban Development
   Washington, D.C. 20410

   Attach to Section B the submissions required under Section A. Retain Section A and a copy of Section B in your file.

2. DO NOT complete or send the Final Application until HUD requests it after a satisfactory conference with your organization.

3. For all requested attachments, send reproduced copies, NOT originals.

Preliminary Application - Section A - Applicant Information

1. TYPE OF ORGANIZATION. Check and complete one of the items below.

   a. [ ] national organization (A national organization need not function in all 50 States but should have branches or affiliates that cover more than one regional area of the country.)

      (1) enter the number of States in which your organization will provide housing counseling: _____

      (2) enter the number of offices (main, branch or affiliate) where your organization will provide housing counseling: _____

   b. [ ] regional organization (A regional organization serves a regional area such as the Southwest or the Northeast. The organization's operational boundaries need not conform precisely to what might be accepted as a definition, for example, of the Southwest of the United States. A reasonable approximation of boundaries suffices.)

      (1) enter the regional name of the area where your organization will provide housing counseling: _____

      (2) enter the number of States included in the region you will serve:_____

      (3) enter the number of offices (mail, branch or affiliate) where you organization will provide housing counseling:_____

   c. [ ] multi-State organization (A multi-State organization serves three or more States. The States may be contiguous or noncontiguous. The organization's operational boundaries need not conform precisely to the State boundaries to satisfy this definition. A reasonable approximation of boundaries suffices.)

      (1) enter the names of the States where your organization will provide housing counseling: _____

      (2) enter under each State name the number of offices (mail, branch or affiliate) where you organization will provide housing counseling:_____

2. LEGAL STATUS. Attach to Section B a copy of the document that supports your claim to be a nonprofit organization. The attachment must include, among other facts, the official name, address, and telephone number of the legal authority that granted nonprofit status. HUD assumes and the applicant assures that its branches or affiliate are also nonprofit entities.

3. CHARTER. Attach To Section B a copy of the document (charter, by-laws, governing body meeting minutes, etc.) that authorizes your organization to provide housing counseling.

4. LOCAL GOVERNMENT. If you are a unit of local, county, or

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state government, attach to Section B a copy of the document that authorizes you to provide housing counseling.

5. COMMUNITY BASE

a. Attach to Section B a description of your organization's experience and record of achievement during the past three years in providing housing counseling or other similar services to the communities in which you plan to provide housing counseling services.

b. Branches or Affiliates. Provide a list of your organization's main office and branch offices or affiliates. Include the following information for your main office and each branch or affiliate.

(1) Official name

(2) Address, including ZIP Code

(3) Mailing address if different from address on line 2 above

(4) Telephone Number(s): include toll-free number, if available

(5) Name, title, and telephone number of the person in charge of the housing counseling program

c. If you plan to provide housing counseling to non-English-speaking persons, attach to Section B evidence that you have staff who fluently speak your clients' native language.

6. Audit Report. Attach to Section B a copy of your audit report for an audit conducted within the 12-month period prior to the date of your application. See paragraph 2-1 of this handbook. HUD assumes and the applicant assures that its branches or affiliates have had an audit conducted within the 12-month period prior to the date of this application.

Preliminary Application - Section B - Assurances and Signatures

The applicant assures HUD that it complies with the following items and will, as a HUD-approved housing counseling agency:

1. Administer its housing counseling in accordance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063,

Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

2. Provide its housing counseling services without subagreements with agencies other than the applicant's branches or affiliates or HUD-approved housing counseling agencies for the delivery of all or any part of the services in the applicant's counseling plan as approved by HUD.

3. Represent its clients without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook 7610.1 REV-3, para. 5-1.

4. Meet all local, state, and federal requirements necessary to provide the applicant's housing counseling services, including debt management and liquidation services if the applicant provides such services.

5. Comply with the fee guidelines set forth in chapter 6 of Handbook 7610.1 REV-3 if the applicant plans to charge counseling fees as described in that chapter.

Complete the following items. Detach this Section B from Section A and send it to HUD with all items set forth in Section A.

1. Official Name of Applicant Organization

2. Acronym, if any, for official name:

3. Address of Main Office (If the applicant plans to use locations other than the main office, list them on a separate sheet and attach it to this sheet.)

4. Main Office Telephone Number

5. Executive Director's Name and Title

6. Counseling Program Administrator's Name and Title

7. Name, Title, Date, and Signature of Person Authorized

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by the Applicant's Governing Body to Submit this Application.

file: APPLICAT.X1

Public Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0261), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

FINAL APPLICATION FOR APPROVAL
AS A HOUSING COUNSELING AGENCY
Housing Counseling Program

U.S. Department of Housing
and Urban Development
Office of Housing
OMB Approval No. 2502-0261

INSTRUCTIONS

I. Submit your completed Final Application only when HUD requests you to do so. This happens after HUD approves your Preliminary Application and you complete a satisfactory conference with HUD. HUD will not review Final Applications it has not requested from an applicant.

II. This Final Application consists of four related sections: (1) the target area and population you propose to serve, (2) the housing needs and housing problems you have documented and propose to address, (3) the resources you possess or will obtain to carry out your counseling plan, and (4) your housing counseling plan.

III. Your counseling plan must be reasonable in relation to the target population and their housing needs/problems and the resources you have to implement the plan. HUD seeks to approve counseling plans that an applicant can carry out with available resources. HUD will not approve a well-meaning but ill-conceived plan that lacks the necessary resources. It behooves every applicant to write a counseling plan that meshes the needs/problems with the resources. A small, workable plan is acceptable, but a large plan that exceeds the resources to implement it is bound not to be approved by HUD.

IV. Please prepare your plan in a logical and orderly manner, using the outline of sections set forth below in the Final Application section. Your submission should also meet these requirements.

A. Typewritten or other form of word processing with letter-quality or near-letter-quality printing

B. Letter-size 8 1/2 X 11" paper (For identification purposes, place your organization's name or acronym and city and state on the top or bottom of each page.)

C. Outline format, as below

D. Detailed but concise

E. One copy

F. Use short paragraphs in narrative sections.

V. After you complete the parts of the Final Application, prepare a one-page single-spaced summary cover sheet on your letterhead. Entitle the sheet "Final Application for HUD Approval as a Housing Counseling

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item, see para. 1-7A of HUD Handbook 7610.1 REV-3, for a definition of "housing need" and "housing problem."

BE SPECIFIC!

Include special needs and problems, such as those related to available housing stock, low income or poverty, homelessness, language, ethnic, minority, and racial factors.

III. RESOURCES. For the purpose of this Final Application, HUD considers two major types of resources.

A. Applicant. These are "on-hand" resources of STAFF, FACILITIES, and FUNDING possessed by the applicant, regardless of their source, that the applicant can use to deliver housing counseling. Funds the applicant has on hand or has a written commitment to receive from any source fall into this category.

Submit a detailed narrative statement of these resources that are "on hand" as of the date of your Final Application. Break the statement out into the above three categories--staff, facilities, and funding.

DO NOT include unsupported projections of what you hope to receive or plan to seek.

1. Staff

a. Include a brief resume for each person who will oversee the housing counseling program at the headquarters of the applicant organization.

b. For each resume under para. a. immediately above, indicate each staff person's position title and duties.

2. Facilities. Do NOT provide information for each branch or affiliate. Instead, provide a general description of the facilities, but DO address the matters of PRIVACY and ACCESS BY HANDICAPPED PERSONS by including a statement to the effect that these needs are or are not met at each counseling location. Privacy and handicap access are required at each location.

a. Describe the facilities available for counseling, including privacy and access by handicapped persons. If access by handicapped persons is not present, indicate its absence and how, if at all, you would provide counseling to handicapped persons.

b. Indicate whether public transportation is within a

15-minute walk of the each counseling location.

3. Funding

a. List the sources and amounts of funds from those sources that you have "on hand." "On hand" means you possess the cash or written commitments for receipt of the funds within the initial 12-month period of your work as a HUD-approved housing counseling agency.

b. Submit a copy of your current housing counseling budget and indicate the sources of the funds for the budget.

c. If you plan to charge counseling fees, see para. 6-2, COUNSELING FEES, in chapter 6 of HUD Handbook 7610.1 REV-3. Submit a statement that you are in compliance with para. 6-2, and include copies of all items required under that paragraph.

B. Community Resources

1. These consist of the types of local, state, and federal public and private agencies with whom the applicant expects its branch or affiliates to have firm working relations for the provision of various kinds of assistance to the applicant's clients.

2. List the names of the types of community resources from which you expect your branches or affiliates to receive services or other forms of assistance for clients either at your facilities or those of the resource.

3. Community resources include HUD-approved counseling agencies with which the applicant and its branches or affiliates will work cooperatively

IV. HOUSING COUNSELING PLAN. HUD considers an acceptable housing counseling plan to be a reasonable interlocking of the needs and housing problems of the target areas with the resources available to the applicant to address those needs and problems successfully on behalf of clients.

Using the facts about your previously identified types of target areas, their housing needs and problems, and the resources on-hand or available to you, describe in detail the comprehensive housing counseling you, through your branches or affiliates, will provide as a HUD-approved housing counseling agency.

Your plan must reflect an understanding of HUD's concept of housing counseling as set forth in HUD Handbook 7610.1 REV-3. EXAMPLES: HUD

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uses the term "client" in a specific manner throughout the handbook. Also, in the handbook HUD sets specific parameters for "housing counseling."

When HUD reviews a Final Application, it does so against the provisions of the handbook. While HUD urges applicants to be resourceful and innovative in developing their counseling plans, equal stress is placed upon the plan's compliance with HUD's conceot of comprehensive housing counseling.

file: APPLICAT.X2

Public Reporting Burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0261), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Form HUD-9900D (03/95)
ref Handbook 7610.1

Housing Counseling Agency Fiscal Year Activity Report

Read the instructions on the back of this form.

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261 (exp. 8/31/93)

Counseling agency name & address.

☐ Check here if this is a new address

Reporting Year:
from Oct 1, 19__
to Sep 30, 19__

			All Counseling Activities	HUD/Grant Activities
Number of Clients Counseled This Report Period	1.	Homeowners (mortgage paid off)		
	2.	Mortgagors (own property covered by mortgage)		
	3.	Potential Mortgagors (want to purchase housing)		
	4.	Renters (occupy rental property)		
	5.	Potential Renters (want to rent housing)		
	6.	Homeless		
	7	Other		
	8	Total		
Race/Ethnicity*	a.	American Indian / Alaskan Native		
	b.	Asian / Pacific Islander		
	c.	Black Non-Hispanic		
	d.	Hispanic		
	e.	White Non-Hispanic		
Results of Counseling				
Homeowners	9	Obtained a Home Equity Conversion Mort.(HECM)		
	10.	Other		
	11.	Total		
Mortgagors	12.	Obtained a HECM		
	13.	Brought mortgage current		
	14.	Forbearance agreement		
	15.	Mortgage assigned to HUD		
	16	Executed a deed-in-lieu		
	17	Sold their property		
	18	Mortgage foreclosed		
	19	Rented alternative housing		
	20	Other		
	21	Total		
Potential Mortgagors	22.	Purchased housing		
	23.	Decided not to purchase		
	24.	Other		
	25.	Total		
Renters	26.	Purchased housing		
	27.	Rented alt. housing		
	28.	Other		
	29	Total		
Potential Renters	30	Purchased housing		
	31.	Rented alt. housing		
	32.	Other		
	33.	Total		
Homeless	34	Occupied "transitional" housing		
	35.	Occupied "emergency shelter"		
	36	Occupied permanent hsg. for handicapped		
	37.	Entered public or prvt. section traditional hsg.		
	38.	Other		
	39.	Total		

proof

Name, Title, & Signature of Person Authorized to Sign this Report

Date

* Previous editions are obsolete

form HUD-9902 (3/95)
ref Handbook 7610.1

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Housing Counseling Client Survey

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261 (Exp. 08/31/93)

Public Reporting Burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0261), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Counseling Agency Name & Address. (completed by HUD office)

1. When you first went to the counseling agency, what kind of client were you? Check as many boxes as apply to you.
   - ☐ was renting housing ☐ behind on rent payments
   - ☐ wanted to rent housing ☐ current on rent payments
   - ☐ landlord problem ☐ being evicted
   - ☐ employed ☐ unemployed
   - ☐ wanted to buy housing ☐ buying a house or condominium
   - ☐ mortgage was current ☐ mortgage payments delinquent

2. Who interviewed you when you first went to the agency?
   - ☐ a receptionist ☐ a counselor

3. Did the person who counseled you do any of the following to help you. Check as many boxes as apply to you.
   - ☐ told you how they could help you
   - ☐ suggested that you join a group counseling session
   - ☐ referred you to other community agencies who could help you
   - ☐ made recommendations to you about what you could do to solve your housing problem
   - ☐ got in touch with your landlord or mortgage company to work out a plan for you to pay your back rent or past due mortgage payment
   - ☐ got in touch with your creditors to work out a plan for you to pay your debts

4. If you own your house and are delinquent on your mortgage payments, did the agency do or recommend any of the following actions?
   - ☐ a forebearance agreement with your mortgage company
   - ☐ a deed-in-lieu of a foreclosure of your mortgage
   - ☐ that you sell your house and obtain rental housing
   - ☐ have you apply to your mortgage company for the assignment of your mortgage to HUD

5. Did your counselor impress you as a person who knew what he or she was doing?
   - ☐ Yes ☐ No

6. Was the setting in which the counseling was conducted a private one so that other persons could not hear your conversation?
   - ☐ Yes ☐ No

7. If you wanted rental housing, did the counselor discuss HUD rental housing programs for which you might be eligible?
   - ☐ Yes ☐ No

8. Did the agency charge you for their services?
   - ☐ Yes ☐ No

   If "Yes," did the counselor explain that the charge would be based on a sliding scale and determined by your income?
   - ☐ Yes ☐ No

   If "Yes," did you consider the charge to be:
   - ☐ reasonable ☐ too high

9. Did you participate in any group counseling sessions?
   - ☐ Yes ☐ No

   If "Yes," did you find the sessions helpful?
   - ☐ Yes ☐ No

10. Was the counseling agency open during hours when it was convenient for you to obtain counseling?
    - ☐ Yes ☐ No

    If you answered "No," please indicate the hours when the agency was open to assist you.

Opened	Closed

11. If you want further counseling, will you:
    - ☐ go back to the same agency ☐ go to another agency

    If you checked "go to another agency," please tell us why

Previous edition is obsolete

form HUD-9908 (5/91)
ref Handbook 7610.1

Housing Counseling Activity and Unit Log

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261 (exp. 7/31/93)

Public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0250), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Instructions. The grantee must use this format or one on which the grantee records at least the same information. Obtain HUD approval for use of an alternative format. **Grantees must follow the Grant Instructions regarding Client No. and Unit Claim.** If more space is needed, use more forms and attach them to the first one. Non-grant agencies may use this form at their option.

Proof

Interviewing Counselor's Name	Client's Name and Address (street, city, State, zip code)
FHA Case No. (if any)	
Interview Date	
Date Counseling Terminated	Client Number

Client Type: (check the box that indicates the status of the client when the client entered your workload via a screening interview. These client types correspond to those on form HUD-9902, Counseling Agency Activity Report.)

- ☐ Homeowner (mortgage paid off) ☐ Mortgagor (mortgage on property) ☐ Potential Mortgagor (wants to buy)
- ☐ Renter (occupies rental property) ☐ Potential Renter (wants to rent) ☐ Homeless
- ☐ Other (specify)

Results of Counseling: (check the applicable box(es) at the time each result occurs. These results correspond to those on form HUD-9902. You may achieve more than one result for the same client.)

- ☐ Obtained a HECM ☐ Brought mortgage current ☐ Forbearance Agreement
- ☐ Mortgage assigned to HUD ☐ Executed Deed-in-Lieu ☐ Sold their property
- ☐ Mortgage foreclosed ☐ Rented alternative housing ☐ Purchased housing
- ☐ Decided not to purchase ☐ Occupied "transitional housing" ☐ Occupied "emergency shelter"
- ☐ Occupied permanent housing for handicapped ☐ Entered public or private sector traditional housing
- ☐ Other (specify)

Interviewer's Notes

Race Ethnicity
- ☐ American Indian / Alaskan Native
- ☐ Asian / Pacifica Islander
- ☐ Black Non-Hispanic
- ☐ Hispanic
- ☐ White Non-Hispanic

Previous editions are obsolete

form HUD-9921 (3/95)
ref Handbook 7610.1

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Housing Counseling Activity and Unit Log Page No

Use as much space as necessary to record the counseling activity. Begin each new activity in a separate "activity" block

Client's Name | Client No

Date | Time Start | Time End

Counselor's Initials | Activity

Unit Claim

Date | Time Start | Time End

Counselor's Initials | Activity

Unit Claim

Date | Time Start | Time End

Counselor's Initials | Activity

Unit Claim

Date | Time Start | Time End

Counselor's Initials | Activity

Unit Claim

Date | Time Start | Time End

Counselor's Initials | Activity

Unit Claim

Previous editions are obsolete form HUD-9921 (3/95) ref Handbook 7610.1

[FR Doc. 95-8438 Filed 4-5-95; 8:45am]
BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-05-1320-01; WYW128322]

Environmental Statements; Availability, etc.; Antelope Coal Co., WY; Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the draft Environmental Assessment (EA) for the Antelope Coal Lease Application (WYW128322) and Notice of Public Hearing.

SUMMARY: This notice announces the availability of the draft EA for a coal lease application filed by Antelope Coal Company. The EA was prepared to assist the BLM in making a decision on the proposed lease. In addition, notice is also given that a public hearing will be held on April 26, 1995, to solicit public comment on the EA, the proposed sale, and the Fair Market Value (FMV) and Maximum Economic Recovery (MER) of the proposed lease tract.

DATES: The public hearing will be held at 6:30 p.m., MDT, on Wednesday, April 26, 1995, at the Holiday Inn, 1450 Riverbend Drive, Douglas, Wyoming. There will be an informal question and answer session starting at 6 p.m. MDT, before the formal hearing proceedings begin to answer questions regarding the Antelope coal lease application, or the leasing process. The EA is scheduled for release to the public in early April, 1995. The public comment period will end on Tuesday, May 30, 1995.

ADDRESSES: Comments, concerns, and requests for copies of the EA should be addressed to Casper District Office, BLM, Attn: Nancy Doelger, 1701 East "E" Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs, 307-261-7600, FAX 307-234-1525, or contact the address listed above.

SUPPLEMENTARY INFORMATION: Antelope Coal Company filed a coal lease application on December 29, 1992, with the BLM pursuant to provisions of 43 CFR 3425.1 as a lease by application (LBA) for the following lands:

T. 41 N., R. 70 W., 6th P.M. Converse County, Wyoming
Sec. 30: Lots 15-18;
T. 41 N., R. 71 W., 6th P.M. Converse County, Wyoming
Sec. 25: Lots 5-8, 13, 14;
Sec. 26: Lots 9-11, 14, 15;
Total (applied for) 617.2 acres more or less.

The BLM is also considering two alternate tract configurations, which are discussed in the draft EA. The first alternate tract configuration would increase the size of the tract by adding the following lands to it:

T. 40 N., R. 71 W., 6th P.M., Wyoming
Section 34: Lot 1;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Section 26: Lots 12 and 13;
Section 27: Lots 13 and 16;
Total added to lease: 205.63 acres
Total under this alternative: 822.83 acres

The second alternate tract configuration would reduce the size of the tract by removing the following lands:

T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 26: Lots 10, 11, 14 and 15.
Total subtracted from lease: 161.77 acres
Total under this alternative: 455.43 acres.

It is estimated that the tract as applied for by Antelope Coal Company contains approximately 57 million tons of recoverable coal. The lease application area is north of and contiguous with the existing Antelope Mine, operated by the Antelope Coal Company. The company applied to lease the proposed Antelope tract as a maintenance tract for the Antelope Mine. Written comments will be accepted from the date of publication of this Notice in the **Federal Register** through May 30, 1995. Comments may be submitted to the address listed above in writing, or expressed verbally at the hearing.

Alan R. Pierson,
State Director.
[FR Doc. 95-8443 Filed 4-5-95; 8:45 am]
BILLING CODE 4310-22-M

[ES-020-05-1430-00]

Planning and Environmental Analysis, Newton County, Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: At this time the Bureau of Land Management (BLM), Eastern States, Jackson District, announces that a planning analysis and environmental assessment will be completed for the following described land.

Choctaw Meridian, Newton County, Mississippi

T. 6 N., R. 12 E.,
Sec. 21, SE¼ NE¼.

This planning and environmental analysis is being prepared to determine the suitability of the above tract of land for disposal under authority of the Color-of-Title Act of December 22, 1928 (amended by 67 Stat. 227; 43 U.S.C. 1068, 1068a).

DATES: The Bureau of Land Management is asking the public for comments on issues which relate to the preparation of the planning analysis with respect to the above described land. Anyone wishing to comment has until May 17, 1995 to send remarks to the address given below.

FOR FURTHER INFORMATION CONTACT: Mark H. Davis, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, telephone number: 601-977-5400.

SUPPLEMENTARY INFORMATION: This planning and environmental analysis will be prepared in accordance with section 202 of the Federal Land Policy and Management Act of 1976 and 43 CFR 1610.8(b).

The planning analysis and environmental assessment will be prepared by an interdisciplinary team of specialists. Records concerning preparation of the document will be available at the Jackson District Office.

Dated: March 28, 1995.

Robert V. Abbey,
District Manager.
[FR Doc. 95-8480 Filed 4-5-95; 8:45 am]
BILLING CODE 4310-GJ-M

[MT-020-1610-00]

Notice of Intent to Plan

AGENCY: Bureau of Land Management (BLM), Montana/Dakotas, Interior.

ACTION: Notice.

SUMMARY: An environmental document will be prepared for proposed areas of critical environmental concern (ACECs) in the South Dakota Resource Area, Dakotas District, North Dakota; and the Powder River and Billings Resource Areas, Miles City District, Montana. The document will amend three resource management plans (RMPs): the Billings RMP (1983), the Powder River RMP (1984) and the South Dakota RMP (1985). It will be based on the existing statutory requirements and will meet the requirements of the Federal Land Policy and Management Act of 1976. The document will guide future management decisions for areas designated ACEC and is scheduled for completion by September 1996.

DATES: Any nominations, issues, concerns or alternatives should be submitted to BLM on or before May 15, 1995.

ADDRESSES: All submissions should be sent to the following address: BLM, Mary Bloom, Team Leader, Miles City Plaza, Miles City, Montana 59301.

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FOR FURTHER INFORMATION CONTACT: Mary Bloom, Team Leader, (406) 232–7000.

SUPPLEMENTARY INFORMATION: An ACEC is an area within the public lands where special management attention is required to protect important historic, cultural or scenic values, fish and wildlife resources or other natural systems, or to protect life and safety from natural hazards.

In 1992, during the public participation phase on BLM's Draft Miles City District Oil and Gas RMP/EIS Amendment, the Sierra Club and The Wilderness Society proposed six areas for ACEC designation: Fossil Cycad, Pryor Mountains, Pompeys Pillar, Bridger Fossil-Red Dome, Finger Buttes, and Deadhorse Badlands. When the Record of Decision (1994) for the document was issued, it was decided that these areas and two additional areas presented in the document: Meeteetse Spires and Weatherman Draw, would be analyzed in a separate Plan Amendment.

The planning area for this Plan Amendment consists of BLM-administered lands in proposed ACECs within the Billings, Powder River and South Dakota Resource Areas. The purpose and need, analysis process and request for nominations are included below to solicit your participation in this process.

The proposed action is to establish areas that have special values and require special management attention as Areas of Critical Environmental Concern and to protect and enhance these areas to provide opportunities for scientific research and recreation for the public. The Federal Land Policy and Management Act (FLPMA) requires that priority be given to designation and protection of ACECs. The ACEC designation indicates to the public that BLM recognizes the area as having significant values and has established special management measures to protect those values. Designation also serves as a reminder that significant values or resources exist which must be accommodated in future management actions or land use proposals in or near the ACEC.

The public is asked to assist BLM in identification of ACECs. Nominations must meet both the relevance and importance criteria under the Code of Federal Regulations: 43 CFR 1610.7–2(a) to be considered as a potential ACEC.

The following are the nominations already received by BLM and the groups' reasons for the nomination. These areas have not yet been evaluated by BLM for the areas' relevance and importance. The Pryor Mountains (75,000 public surface acres, Billings resource Area, Carbon County, Montana) are proposed for ACEC designation for the significant cultural values, sensitive plants and animals, exceptional scenic values, nationally significant examples of natural processes and nominated National Natural Landmarks. The Red Dome-Bridger Fossil Area (3,528 public surface acres, Billings Resource Area, Carbon County, Montana) is proposed for ACEC designation because of paleontological phenomena, scenic values, and landforms that exemplify a natural system or process. A proposed and a designated National Natural Landmark located within the area indicate national importance. Pompeys Pillar (431 public surface acres, Billings Resource Area, Yellowstone County, Montana) is proposed for ACEC designation because of significant cultural values and national importance. Deadhorse Badlands (40,000 public surface acres, Powder River Resource Area, Carter County, Montana) is proposed for ACEC designation because of scenic values, naturalness, fragile and irreplaceable badlands features, and size. Finger Buttes (3,600 public surface acres, Powder River Resource Area, Carter County, Montana) is proposed for ACEC designation because of scenic values and a rare plant species. The Fossil Cycad Area (320 public surface acres, South Dakota Resource Area, Fall River County, South Dakota) was formerly a national monument. It is proposed for ACEC designation because of the significant paleontological resource and national importance.

The BLM previously nominated Meeteetse Spires and Weatherman Draw. Meeteetse Spires (960 public surface acres, Billings Resource Area, Carbon County, Montana) contains two rare plants: Shoshonea pulvinata and Townsendian spathulata. It is enjoyed by the recreating public because of the spectacular scenery. The BLM would manage this scenic area to protect the rare plants while allowing recreational use by the public. Weatherman Draw (2,250 public surface acres, Billings Resource Area, Carbon County, Montana) contains a unique cultural resource important for scientific research and of sacred value to Native Americans. The BLM would manage the area to preserve the site, and make it available for scientific research and for public interpretation.

The public is also requested to assist the BLM in the identification of issues. Examples of potential issues (problems, concerns) are: mineral development, recreational use and economics. Alternatives will be developed to present a range of feasible management actions. The "No Action Alternative" will be included in accordance with 43 CFR 1502.14(d) and represent the continuation of current management.

Meetings for the areas proposed for ACEC designation are not yet scheduled. If meetings are scheduled, the public will be notified through local news releases.

The documentation on BLM's evaluations of relevance and importance will be made available at the BLM Powder River, Billings and South Dakota Resource Area offices.

Development of this document will require involvement of professionals from these disciplines: archaeology, economics, forestry, geology, land use planning, minerals, range management, recreation, realty, soil science and wildlife management. The public will be provided the opportunity to review and comment on issues and ACECs developed by BLM and to identify new issues and potential ACECs. A mailing list is being developed and will be used to communicate with and solicit comments from local, state and federal agencies, Native American tribes, the Sierra Club, The Wilderness Society, and the public at large which may be affected by the plan. As the planning process proceeds, these publics will be encouraged to participate.

The BLM is seeking information from individuals, organizations, and agencies who may be interested or affected by the proposals. Specifically, we request any nominations, issues, concerns or alternatives that should be addressed in the plan.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs.

Darrel Pistorius,

Acting District Manager.

[FR Doc. 95–8489 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–DN–P

[CA–930–5410–00–B047; CACA 33365]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 40.00 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 979–2858. Serial No. CACA 33365.

T. 12 S., R. 3 W., San Bernardino Meridian,
Sec. 29, SE¼NE¼.
County—San Diego.
Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the Federal Register as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated: March 27, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–8417 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–932–4310–00; COC–55323]

Amendment to Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to amend their withdrawal application for the Grand Junction Archaeological Sites to include an additional 360 acres for the Fruita Paleontological site. This notice also proposes to increase the term for the entire withdrawal from 20 years to 50 years. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before July 5, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood Colorado, 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 239–3706.

SUPPLEMENTARY INFORMATION: On March 21, 1995, the Secretary approved the petition to allow the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Grand Junction Archaeological Sites Ute Principal Meridian Fruita Paleontological Site

T. 1 N., R. 3 W.,
Sec. 13, SW¼SE¼ and S½SW¼;
Sec. 24, W½NE¼ and NW¼.

The area described contains approximately 360 acres of public land in Mesa County.

The purpose of this withdrawal is to protect sites containing archaeological, paleontological, and cultural values.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this withdrawal amendment. If the authorized officer determines that a meeting should be held, the meeting will be scheduled in accordance with 43 CFR 2310.3–1(c)(2).

Any persons who desire to submit comments, suggestions, or objections or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land herein described shall be segregated from operation of the public land laws as specified above, unless the application is denied or cancelled or the withdrawal is made prior to that date.

This land will continue to be managed by the Bureau of Land Management.

Jenny L. Saunders,

Chief, Branch of Realty.

[FR Doc. 95–8488 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–JB–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Meeting of the FGDC Coordination Group

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to invite public participation in a meeting of the FGDC Coordination Group. Major topics for the meeting include fostering partnerships to promote the development of the National Spatial Data Infrastructure (NSDI), and devising strategies to effectively involve the broad geospatial data community in the actions and decisions of the FGDC.

TIME AND PLACE: May 10, 1995, from 1:30 p.m. until 4 p.m. The meeting will be held in Room Potomac 5, the Hyatt Regency, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Jennifer Snyder, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–5514; facsimile (703) 648–5755; Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal agencies engaged in geospatial data activities. The FGDC Coordination Group oversees the FGDC subcommittees and working groups that address the establishment of standards for data content, quality, and transfer; encourages the exchange of information and the transfer of data; and organizes the collection of geographic data to reduce duplication of effort. This meeting of the FGDC Coordination Group will follow the 1995 National GeoData Forum being held at the same location. A primary focus of the Forum is to involve the entire geospatial data community in building partnerships for the development of the NSDI.

Dated: March 28, 1995.

James R. Plasker,

Associate Chief, National Mapping Division.

[FR Doc. 95–8416 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–31–M

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National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. (PST) on Friday, April 28, 1995 at the County of Inyo Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Mr. William Michael, Acting Chairperson
Mr. Ronald Izumita
Ms. Sue Embrey
Mr. Mas Okui
Mr. Keith Bright
Mr. Glenn Singley
Mr. Richard Stewart
Mr. Vernon Miller
Mr. Gann Matsuda
Ms. Rose Ochi
Ms. Martha Davis

The main agenda items at this initial meeting of the Commission will include the following:

(1) Review of the provisions of the charter establishing the Commission.
(2) Designation by the members of the Commission of a Chairperson.
(3) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.
(4) Review of the draft park General Management Plan.
(5) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

This meeting is open to the public. It will be recorded for documentation, and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after May 30, 1995. For a copy of the minutes contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: March 24, 1995.

Ross R. Hopkins,

Superintendent, Manzanar National Park.

[FR Doc. 95–8420 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Nebraska and Kansas in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provision of the Native American Graves Protection and Repatriation Act, 25 U.S. C. 3003(d), of the completion of an inventory of Native American human remains and associated funerary objects from forty-six (46) sites in Nebraska currently in the possession of the Nebraska State Historical Society, Lincoln, NE.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by the Nebraska State Historical Society professional curatorial, archeological staff, and outside specialists in physical anthropology, in consultation with representatives of the Pawnee Tribe of Oklahoma and twenty-nine (29) other tribes.

In 1990 and 1991, the Nebraska State Historical Society repatriated human remains representing over 550 individuals and over 33,000 associated funerary objects from thirty-three (33) sites to the Pawnee Tribe of Oklahoma. Additional human remains and cultural objects from twelve (12) of these sites have since been discovered as part of the inventory process. These include: 25BU1 (the Linwood site) in Butler County, NE, 2 bone fragments representing 2 individuals previously repatriated; 25HM2 (the Burial Ridge One site) in Hamilton County, NE, 5 bone fragments from one previously repatriated individual; 25MK14 in Merrick County, NE, 2 funerary objects formerly associated with a previously repatriated burial; 25NC3 (the Wright site) in Nance County, NE, 22 bone fragments from two previously repatriated individuals; 25NC11 (the Vogel site) in Nance County, NE, a bone fragment from one previously repatriated individual; 25NC20 (the Genoa Village site) in Nance County, NE, bone fragments and 13 funerary objects from one previously repatriated individual; 25NC23 in Nance County, NE, 47 bone fragments and one funerary object formerly associated with two previously repatriated individuals; 25PK1 (the Clarks site) in Polk County, NE, 2 bone fragments representing two individuals and 98 funerary objects formerly associated with three previously repatriated burials; 25PT1 (the Larson site) in Platte County, NE, isolated bone fragments and one bone fragment representing one individual; 25PT31 (the Christman site) in Platte County, NE, an isolated bone fragment representing one individual; 25SD2 (the Leshara site) in Saunders County, NE, 2 bone fragments from one previously repatriated individual; and 25WT1 (Pike Pawnee or the Hill Farm site) in Webster, NE, 4 bone fragments and 129 funerary objects formerly associated with three individuals. Each of these twelve (12) sites have been identified as Pawnee (1750–1876) occupations based upon historic written records, cultural continuities, and geographical coincidence with identified Pawnee sites.

The Nebraska State Historical Society also intends to repatriate human remains representing a minimum of 71 individuals and 84 funerary objects from eighteen (18) sites identified as Central Plains tradition. These include: 14SA1 (the Whiteford Ossuary) Saline County, Kansas, 1 individual; 25CC1 (the Ashland site) Cass County, NE, 16 individuals with 74 funerary objects; 25CC17 (the Theodore Davis site) Cass County, NE, 1 individual; 25CC29 (the Kunkel Ossuary) Cass County, NE, 13 individuals with 3 funerary objects; 25CC214, Cass County, NE, 1 individual; 25CD3 (the Wiseman site), Cedar County, NE, 2 individuals; 25DO3 (the Bexten site) Douglas County, NE, 1 individual; 25FT4 (the Medicine Creek site) Frontier County, NE, 1 individual; 25GY2 (the Wittwer site) Greeley County, NE, 1 individual; 25JF4 in Jefferson County, NE, 1 individual with 4 funerary objects; 25MD3 in Madison County, NE, 1 individual; 25NC12 (the Elmer Cunningham site) Nance County, NE, 1 individual; 25NH1 (the Heywood site) in Nance County, NE, 12 individuals; 25SD28 in Saunders County, NE, 1 individual; 25SY1 (the Farnsworth or Fremont I site) in Sarpy County, NE, 4 individuals; 25SY11 (the Sieh site) in Sarpy County, NE, 1 individual; 25WN3 (the Kelly site) in Washington County, NE, 12 individuals; and 25WN5 (the Renne site) in Washington County, NE, 1 individual with 3 funerary objects. Each of these sites have been identified as

representing Central Plains tradition (A.D. 1000—1400) components based on the presence of previously defined diagnostic traits involving: ceramic decoration, stone tool form and function, architecture, chronology, mortuary custom, subsistence pattern, settlement pattern and geographic location.

The Central Plains tradition is recognized by many anthropologists, based on a preponderance of the evidence, as ancestral to the present-day Pawnee/Arikara, and possibly the Wichita, through recognition of broad similarities and continuity in material culture, geography, and architecture. In addition, Pawnee and Arikara oral traditions conform to anthropologically-based evidence showing cultural affiliation between these groups and the Central Plains tradition. The Wichita and Arikara have agreed to allow the Pawnee to claim these remains.

The Nebraska State Historical Society also intends to repatriate other human remains representing a minimum of 28 individuals and 228 funerary objects from sixteen (16) sites within the Pawnee aboriginal lands. These include: 25AP54 part of the Elkhorn Valley Project in Antelope County, NE, 1 individual; 25BF15 in Buffalo County, NE, 1 individual with 1 funerary object; 25BF26 in Buffalo County, NE, 1 individual; 25BU1 in Butler County, NE, 1 individual with 14 funerary objects; 25BU11 in Butler County, NE, 1 individual; 25CU1 (the Forsythe site) in Custer County, NE, 2 individuals; 25FR32 (the West Bloomington Ossuary) in Franklin County, NE, 1 individual with 151 funerary objects; 25GY0 in Greeley County, NE, 1 individual; 25HN0 in Harlan County, NE, 3 individuals with 3 funerary objects; 25HN2 (the Stevenson site) in Harlan County, 9 individuals with 58 funerary objects; 25HT14 in Holt County, NE, 1 individual; 25HW00 in Holt County, NE, 1 individual; 25HW9 (the Bert Mortensen site) in Howard County, NE, 1 individual; 25NC0 in Nance County, NE, 1 individual; 25SM16 in Sherman County, NE, 1 individual; and 25VY0 in Valley County, NE, 1 individual with 4 funerary objects.

The unrebutted evidence is that each of these sites is located within Pawnee aboriginal lands as adjudicated by the Indian Claims Commission. These lands were occupied historically by the Pawnee Tribe to the exclusion of other tribes, as adjudicated by the Indian Claims Commission; and the Pawnee Tribe has a strong attachment to and affiliation with its aboriginal homeland by virtue of its long occupation spanning centuries. Thus, the totality of these circumstances establish a Pawnee cultural affiliation with these sites by a preponderance of the evidence in the opinion of the Nebraska State Historical Society. Moreover, this opinion and finding of cultural affiliation is bolstered by a careful evaluation of these remains by Nebraska State Historical Society staff and other experts, mentioned in paragraph two of this Notice, which determined that the remains from these sites cannot be assigned to any other tribal group or other defined archeological context. On the basis of all of the foregoing types of evidence, these remains are reasonably believed by the Nebraska State Historical Society to be culturally affiliated with the Pawnee Tribe.

Based on the above mentioned information, officials of the Nebraska State Historical Society have determined that pursuant to 25 U.S. C. 3001 (2), there is a relationship of shared group identify which can be reasonably traced between these human remains and funerary objects and the Pawnee Tribe of Oklahoma. All of the objects are reasonably believed to have been placed with or near individual Native American human remains either at the time of death or later as part of a death rite or ceremony.

Inventory of the human remains and funerary objects and review of accompanying documentation from the forty-six (46) sites listed above indicate that no known individuals were identifiable.

The notice has been sent to officials of the Pawnee Tribe of Oklahoma, the Three Affiliated Tribes, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and funerary objects should contact Gail DeBuse Potter, Senior Museum Curator, Nebraska State Historical Society, PO Box 82554, Lincoln, NE 68501, telephone (402) 471–4759, fax: (402) 471–3314, on or before May 22, 1995. Repatriation of the objects of the Pawnee Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: March 24, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 95–8419; Filed 4–5–95; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in Re Eagle-Picher Industries, Inc.

Notice is hereby given that a proposed Settlement Agreement among the United States, the States of Michigan, Oklahoma, and Arizona and Debtor Eagle-Picher Industries, Inc. and certain of its subsidiaries was lodged on March 28, 1995, with the United States Bankruptcy Court for the Southern District of Ohio in *In re Eagle-Picher Industries, Inc.*, No. 1–91–00100. Under the Agreement, the Debtors agree to an allowed general unsecured claim for the United States of $41,016,000 in the Debtors' bankruptcy proceeding for response costs and natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, at the following twenty-three (23) sites: The Albion Sheridan Site in Albion, Michigan; the Auto-Ion Site in Kalamazoo, Michigan; the Carver Scrap Salvage Site in Carterville, Missouri; the Cedartown Site in Cedartown, Georgia; the Cemetery Site in Oakland County, Michigan; the Cherokee County Site in Cherokee County, Kansas; the Fisher-Calo Site in Kingsbury, Indiana; the Ft. Wayne Reduction Site in Ft. Wayne, Indiana; the Great Lakes Asphalt Site in Boone County, Indiana; the Howe Valley Site in Elizabethtown, Kentucky; the Laskin/Poplar Site in Jefferson, Ohio; the Northside Sanitary Landfill Site in Zionville, Indiana; the Oronogo-Duenweg Mining Belt (Jasper County) Site in Jasper County, Missouri; the Rasmussen Dump Site in Livingston County, Michigan; the Rose Township Site in Oakland County, Michigan; the Solvents Recovery Site in Southington, Connecticut; the Springfield Township Site in Oakland County, Michigan; the Tar Creek Site in Ottawa County, Oklahoma; the Thermo-Chem Site in Muskegon, Michigan; the Transicoil Site in Worcester, Pennsylvania; the Verona Wellfield/Thomas Solvent Site in Battle Creek, Michigan; the Wayne Waste Oil/Wayne Reclamation Site in Columbia City, Indiana; and the Xtron Site in Blandings, Utah. The Settlement Agreement includes a covenant not to sue for these sites as described in the Agreement under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The Settlement Agreement also provides that certain obligations and liabilities arising from prepetition acts, omissions, or conduct of Eagle-Picher at any

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of the minutes contact the

NE, bone fragments and 13 funerary

sites have been identified as

Additional Sites not owned by the debtors will be discharged under the bankruptcy laws but will be liquidated and satisfied as general unsecured claims if and when the United States or the States undertake enforcement activities in the ordinary course. Finally, the Settlement Agreement provides the United States with an allowed claim of $1,176,000 for civil penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, at an Eagle-Picher facility in Joplin, Missouri.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Eagle-Picher Industries, Inc., et al.*, D.J. Ref. No. 90–11–3–747. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the Southern District of Ohio, U.S. Post Office & Courthouse, 5th & Walnut Streets, Room 220, Cincinnati, Ohio 45202; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of $13.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Settlement Agreement with attachments, please enclose a check in the amount of $33.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–8484 Filed 4–5–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Fort Morgan*, Civil Action No. 94–C–492, was lodged on March 21, 1995 in the United States District Court for the District of Colorado. The consent decree settles an action brought under the Clean Water Act (the "Act"), 33 U.S.C. 1251 et seq. seeking an injunction and civil penalties for the City of Fort Morgan's violations of the Act and for violations of the General Pretreatment Regulations, 40 CFR Part 403. Pursuant to the consent decree, the City has agreed to pay a civil penalty of $268,000 and agreed to institute a comprehensive compliance program to bring the City into compliance with all requirements of the pretreatment regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Fort Morgan*, DOJ Ref. #90–5–1–1–4041.

The proposed consent decree may be examined at the office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado 80294; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–8483 Filed 4–5–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum ("PERF") Project No. 92–25

Notice is hereby given that, on December 16, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Conoco Inc., acting on behalf of the participants in the PERF Project No. 93–25, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Oil Co., Naperville, IL; BP Oil Co., Cleveland, OH; Conoco Inc., Houston, TX; Gas Research Institute, Chicago, IL; Oryx Energy, Dallas, TX; Texaco Inc., Port Arthur, TX; ANR Pipeline, Detroit, MI; Chevron Research & Technology, Richmond, CA; Exxon Research & Engineering Co., Florham Park, NJ; Mobil Inc., Princeton, NJ; Shell Development C., Houston, TX; and Union Oil Company of California, Brea, CA.

The nature and objectives of the research program performed in accordance with PERF Project No. 93–25 are to perform remediation studies of contaminated groundwater via air sparging, biosparging, or other innovative delivery systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–8485 Filed 4–5–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–51]

Frank's Corner Pharmacy; Revocation of Registration

On June 4, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Frank's Corner Pharmacy (Respondent), of Detroit, Michigan, proposing to revoke its DEA Certificate of Registration, BF1175466, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

On July 23, 1993, Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Detroit, Michigan on May 3 and 4, 1994. On August 29, 1994, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling

recommending that Respondent's registration be suspended for a period not exceeding six months. The Government filed exceptions to Judge Tenney's opinion on September 19, 1994. Respondent filed its exceptions to Judge Tenney's opinion and its response to the Government's exceptions on September 30, 1994, and filed corrections to those exceptions on October 11, 1994.

On October 14, 1994, the administrative law judge transmitted the record of these proceedings, including the exceptions, to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety and hereby issues his final order pursuant to 21 CFR 1316.67, based upon the findings of fact and conclusions of law as set forth herein.

The administrative law judge found that, in September 1986, Alvin Goldstein, R.Ph (Mr. Goldstein), a pharmacist licensed by the State of Michigan, became a 50% stockholder owner of Respondent, a pharmacy licensed and operated in the State of Michigan. From September 1987 onward, Respondent's principal stockholder and operator has been Mr. Goldstein.

On October 5, 1989, the Michigan Board of Pharmacy (the Board) filed an administrative complaint charging Respondent and Mr. Goldstein with violations of Michigan regulations pertaining to controlled substance recordkeeping and shortages of controlled substances based upon an audit conducted by the Board on June 29, 1988. The Board's initial order was appealed to the Michigan Circuit Court for the County of Oakland where it was affirmed in part, and reversed in part, on January 14, 1994. The circuit court affirmed the Board's order to the extent it found that Respondent and Mr. Goldstein: (1) Were responsible for shortages of controlled substances (including Darvocet, Tylenol with codeine #4, and Valium); (2) were negligent in the practice of pharmacy; (3) were incompetent under applicable Michigan State law based upon a 14% shortage of Darvocet; (4) failed to comply with a state administrative subpoena by not supplying the state investigators with records required to be kept pursuant to Michigan law; and (5) failed to produce drug utilization reports as required under Michigan law.

The circuit court remanded the case back to the Board which issued its Amended Final Order on Remand on April 22, 1994. The amended order suspended Respondent's controlled substances license for a period of three months. Mr. Goldstein was ordered to pay a $5,000 fine and placed on probation for one year and Respondent pharmacy also was placed on probation for one year.

On February 28, 1991, DEA conducted an audit of four controlled substances covering the period June 6, 1990 through February 28, 1991, following reports of excessive purchases of controlled substances by Respondent from local drug distributors. The audit revealed a shortage of 1,870 dosage units of Valium 10 milligram tablets.

Respondent's computer dispensing records for the period covering February 2, 1990 through February 7, 1991, revealed that 78 entries lacked corresponding paper prescriptions which should have been retained by Respondent. Mr. Goldstein subsequently found, and produced at the hearing, a number of prescriptions which he maintained had been accidentally placed at his home with other prescriptions for non-controlled substances. Judge Tenney found that Mr. Goldstein was responsible for the unaccounted prescriptions.

In addition, the investigation revealed that Respondent dispensed a combination of glutethimide (brand name "Doriden") and Tylenol #4, a combination known to have a high abuse potential and which typically is not prescribed for a legitimate medical purpose. Mr. Goldstein testified that he did not agree with manufacturers' guidelines with respect to glutethimide because new studies may refute those guidelines. He also testified that he did not receive any information from the State of Michigan, the DEA or any other source notifying him that glutethimide in combination with Tylenol #4 is dangerous or should not be prescribed in excess of seven dosage units.

Judge Tenney found that Mr. Goldstein knew or should have known of the dangers of combining the controlled substances and chose to "shut his eyes" while filling prescriptions. He further found that the prescriptions were not issued in the usual course of professional treatment.

On several occasions Respondent dispensed two prescriptions of the same or similar controlled substance to the same individual within days of dispensing the original prescription. The prescriptions in question typically were issued by different physicians. In one such example, a physician issued an individual a prescription for 30 dosage units of Tylenol #3 on January 24, 1990, which was dispensed by Respondent on January 25, 1990. On January 29, 1990, a second physician issued a 30 dosage unit prescription for Tylenol #4 to the same individual, which was dispensed by Respondent on the same date-four days after the initial prescription was dispensed.

This patter continued approximately every two months through February 1991, with the individual obtaining two or more prescriptions for Tylenol #3 and #4, from a combination of four physicians, which Respondent would subsequently dispense within days of each prescription. At the hearing on this matter, Mr. Goldstein testified that he had contacted each of the prescribing physicians who indicated that, although the individual was a drug addict, Mr. Goldstein should not be concerned about the prescriptions.

Prescriptins written for two other individuals were filled under similar circumstances. Respondent received a prescription issued to one individual for 30 dosage units of Tylenol #3 on June 4, 1990, which was dispensed the same day. Respondent then dispensed another prescription for Tylenol #3 written to the same person by a second physician on June 7, 1990. Under the instructions of the first prescription, this individual should not have finished the prescription for seven days. Respondent dispensed the second prescription only three days after the first.

On January 10, 1990, a third individual was issued a prescription for 30 dosage units of Tylenol #4 with one refill. This prescription was dispensed by Respondent on January 15, 1990. Two days later, Respondent dispensed a second prescription for 30 dosage units of Tylenol #4 to the individual based on the prescription of a different physician. Throughout 1990, this individual received two prescriptions for Tylenol # approximately every two months, from two different physicians. The prescriptions were dispensed by Respondent within days of each other. One physician informed Mr. Goldstein that this individual was a codeine addict.

The DEA investigator, who testified at the hearing, placed some reliance on the number of days set forth in Respondent's computer records as to the amount of days that should pass prior to refilling prescriptions. In response, Mr. Goldstein testified that his computer record of the number of days that should pass prior to refiling a prescription is an arbitrary number and does not represent the number of days that should pass before a prescription is refilled. Judge Tenney, while accepting Mr. Goldstein's explanation of the numbers, found that the practice of dispensing prescriptions for the same controlled substances to one patient, from several doctors, over an excessive

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period of time to be in violation of 21 CFR 1306.04.

The computer printout of prescriptions from Respondent obtained through the audit revealed that one individual was dispensed 40 Tylenol #3 tablets two times on January 17, 1990, based on one prescription. On April 5, 1990, a "double entry" also was noted for a prescription for Valium to the same person. Mr. Goldstein testified that the individual required two separate identification numbers for insurance billing purposes, so that Respondent could bill the insurance carrier for the cost of the prescription and Medicaid for the co-payment. Mr. Goldstein offered the same explanation for the "double dispensing' of Tylenol #3 to another individual on November 26, 1990.

The administrative law judge also found persuasive evidence of other recordkeeping and dispensing violations, including dispensing a prescription without a DEA registration number on the prescription; dispensing three refills of Tylenol #3 to an individual without authorization from the prescribing physician; and dispensing a prescription that was not signed by the issuing physician.

Judge Tenney noted several possible mitigating factors. First, Respondent is located in a low social economic area where many patients are Medicaid recipients. Second, Mr. Goldstein's contentions that he was not informed that glutethimide had been reclassified from a Schedule III to a Schedule II controlled substance, nor was he put on notice as to any potential danger concerning glutathimide. Third, Mr. Goldstein testified, as evidence toward his care in dispensing controlled substances, that he would confiscate prescriptions that he felt were not legitimate.

In determining whether Respondent's continued registration by DEA would be inconsistent with public interest, as that term is used under 21 U.S.C. 823 and 824, the Deputy Administrator considers the following factors set forth in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing, of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances; and

(5) Such other conduct which may threaten public health and safety.

The Deputy Administrator is not required to make findings with respect to each of the above enumerated factors, but, instead, has the discretion to give each factor the weight he deems appropriate, depending on the facts and circumstances of each case. *See, Henry J. Schwartz, Jr., M.D.*, 54 16422 (1989).

The administrative law judge found that the Government had met its burden of proof with respect to factors (1), (2), (4), and (5) as set forth under 21 U.S.C. 823(f). Factor (1) was met based upon the Michigan Board of Pharmacy proceedings taken against Respondent and Mr. Goldstein. The ultimate findings established significant shortages for several controlled substances pursuant to an audit completed in 1989, and also encompassed other recordkeeping violations.

Judge Tenney found that the DEA had met its burden of proof with respect to Factor (2) based upon indications from Respondent's records that Respondent had dispensed unauthorized prescriptions as reflected in the fact that Respondent could not account for 19 paper copies of prescriptions. Additionally, Respondent, on numerous occasions, dispensed a prescription refill before the prior prescription could have been completely consumed by the patient, as determined by the prescribing physician's directions or based on the estimates Respondent had placed in its dispensing records, and that on many occasions the original and the refills were issued by different physicians. Judge Tenney noted that a pharmacy may be found in violation of the public interest where the pharmacy dispensed controlled substances before the prior expiration period had expired and based upon evidence that the pharmacy had accepted many prescriptions from various physicians for the same substance and patient. *See Ralph J. Bertolino's Pharmacy*, 55 FR 4729 (1990). Additionally, where Respondent knowingly dispensed these refills to individuals who were characterized by their physicians as "addicts", Respondent's actions pose a threat to public health and safety.

The administrative law judge found factor (4) was met by evidence that Respondent dispensed a prescription without a physician's signature and dispensed another prescription without a DEA registration number in violation of 21 CFR 1306.04(a). Further, the shortages in Respondent's controlled substance inventory, as revealed by the DEA audit, constitute a violation of 21 U.S.C. 842(a)(5).

Finally, concerning factor (5), and with regard to Mr. Goldstein's testimony that the glutethimide and Tylenol prescriptions were "legal" and therefore he was not concerned about dispensing combinations of these drugs, Judge Tenney found that a pharmacy has a responsibility, with respect to controlled substances, to do more than merely fill prescriptions as written by a physician. A pharmacy is obligated to refuse to fill a prescription if it knows, or has reason to know that the prescription was not written for a legitimate medical purpose. *Medic-Aid Pharmacy*, 55 FR 30043 (1989). Indications that a prescription is not for legitimate medical use include filling prescriptions for customers who received controlled substances in quantities far exceeding those recommended by the Physician's Desk Reference, too frequently and for excessive periods of time. *Id.* Verification of the prescription with the prescribing doctor is not necessarily enough. *See United States* v. *Hayes*, 595 F. 2d 258, 260 (5th Cir. 1989). Judge Tenney found that Mr. Goldstein purposely ignored suspicious prescribing practices by dispensing prescriptions clearly not issued for a legitimate medical purpose by presuming that the prescriptions were legal because the physicians' signatures did not appear to be forged.

Judge Tenney recommended that Respondent's registration be suspended for a period not to exceed six months. He based this recommendation on the fact that the Michigan Board of Pharmacy previously had suspended Respondent's license for three months and had placed Mr. Goldstein on probation for a year and ordered payment of a fine of $5,000, and, therefore, had exacted "full and fair retribution" for Respondent's actions. *Charles A. Buscemo, M.D.*, 59 FR 42857 (1994).

The Deputy Administrator has carefully reviewed the entire record and adopts all of the administrative law judge's findings of fact, with the exception of the following: (1) Mr. Goldstein's testimony concerning the arbitrary nature of his computer records pertaining to the number of days that should pass before a prescription is refilled; (2) Mr. Goldstein's testimony regarding instances of creating double computer entries for each dispensed prescription as his method of accounting for insurance billing purposes. The Deputy Administrator also concurs with Judge Tenney's conclusion that the Government has met its burden with respect to public interest factors (1), (2), (4), and (5) under 21 U.S.C. 823(f).

The Deputy Administrator, concurring with the Government's exceptions, does not agree with Judge Tenney's finding that Respondent's location in a low socio-economic area constitutes a mitigating factor for Respondent's numerous violations of the laws and regulations relating to controlled substances. The Deputy Administrator similarly rejects as a mitigating factor, Respondent's plea of good faith ignorance in that he was not actually informed of the reclassification of glutethimide from a Schedule III to a Schedule II controlled substance.

The Deputy Administrator disagrees with, and declines to follow, Judge Tenney's proposed suspension of Respondent's registration. Judge Tenney's reliance on *Buscema* is not applicable to the facts in the instant case. In *Buscema*, Judge Tenney found that Respondent's actions in failing to account for the disposition of Schedule II controlled substances and his subsequent guilty plea to a felony charge of falsifying records concerning controlled substances, occurred over a limited period of time and was motivated by his desire to protect his wife, an employee of his office and a subsequently rehabilitated drug addict suspected of diverting the missing drugs for her own use. In finding that the State of New York had exacted "full and fair" retribution and recommending that Dr Buscema's registration not be revoked Judge Tenney found, and the Deputy Administrator concurred, that Dr Buscema had served his probationary sentence, had been discharged from probation two and one-half years early and had accepted responsibility for his conduct and failures regarding his wife's chemical dependency.

The Deputy Administrator finds that the leniency exercised in *Buscema* should not similarly be extended to Respondent in this proceeding. Respondent's numerous recordkeeping violations have resulted in the diversion of large quantities of controlled substances to a number of individuals including drug addicts. Further, these violations were ongoing while previous violations by the State of Michigan were being appealed, and, therefore, the State of Michigan cannot be found to have exacted its "retribution" against Respondent for violations which it never had the opportunity to address. Additionally, as noted in Judge Tenney's thorough Findings of Fact, even aside from the numerous recordkeeping violations, Respondent also diverted large amounts of Tylenol with codeine and glutethimide for no legitimate medical purpose. Finally, contrary to Dr. Buscema's acceptance of responsibility for his actions, Mr. Goldstein, owner of Respondent pharmacy, continues to deny any misconduct, including those State violations upheld on appeal.

The Deputy Administrator finds merit in all of the Government's exceptions and further finds that Respondent's ongoing violations of Federal and State controlled substance rules and regulations strongly indicate that his continued registration with DEA would not be consistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 hereby orders that DEA Certificate of Registration, BF1175466, issued to Frank's Corner Pharmacy, be and it hereby is, revoked, and that any pending applications for registration be denied.

This order is effective May 5, 1995.

Dated: March 30, 1995.

Stephen H. Greene,

Deputy Administrator

[FR Doc. 95-8402 Filed 4-5-95; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 93-46]

Ellis Turk, M.D.; Revocation of Registration

On April 15, 1993, the Deputy Assistant Administrator (then Director) Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ellis Turk, M.D. (Respondent), of Baltimore, Maryland, proposing to revoke his DEA Certificate of Registration, AT2444711 and deny any pending applications for renewal of such registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 11, 1993, Respondent voluntarily discharged his counsel and continued *pro se*.

Following prehearing procedures, a hearing was held before Judge Bittner in Arlington, Virginia on November 22, 1993. On February 16, 1994, after the Government submitted its post-hearing brief, Respondent filed Response of Ellis Turk, M.D. to Government's Proposed Findings of Fact, Conclusions of Law and Argument (the "Respondent's Response"). The Government filed a Motion to Strike Respondent's Response on February 18, 1994, on the grounds that the rules governing DEA administrative hearings (specifically 21 CFR 1316.64) do not permit such a responsive pleading. The Respondent filed a Response to Motion to Strike Respondent's Response on March 9, 1994.

On June 7, 1994, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that Respondent's DEA registration be revoked and any pending applications be denied. As part of the opinion, Judge Bittner allowed the Government's motion and struck Respondent's Response. Additionally, she allowed the Government's motion to strike specific exhibits filed by Respondent with his post-hearing brief. No exceptions to the Opinion were filed by either party even after an extension of time to ensure service of the opinion on the Respondent.

On July 8, 1994, the administrative law judge transmitted the record to the Deputy Administrator, including the Respondent's Response and the exhibits struck by Judge Bittner. On September 28, 1994, Respondent, through newly retained counsel, filed a Motion to Remand and Open the Record to Hear New Evidence with the Deputy Administrator of the DEA. The Government filed its opposition to Respondent's motion on October 13, 1994.

The Deputy Administrator has considered the record in its entirety, and, enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein. The Deputy Administrator, concurring with the administrative law judge in her decision to strike Respondent's Response and exhibits filed post-hearing, did not consider those documents in rendering his final order.

The administrative law judge found that, in 1987, DEA received approximately ten reports from drug distributors that Respondent had purchased excessive quantities of the controlled substances phentermine and phendimetrazine. On two occasions in December 1985, DEA and Maryland State drug inspectors, pursuant to an administrative inspection warrant, conducted an accountability audit of controlled substances at Respondent's office, covering the period from

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December 29, 1987 through December 12, 1988. the audit revealed shortages in the Respondent's accountability of controlled substances. These audit results were confirmed by a second audit conducted by DEA in 1989.

On November 22, 1989, a civil complaint was filed in the United States District Court for the District of Maryland against Respondent, based on the findings of the 1988 investigation. Following a bench trial on June 15 and 16, 1992, the court found that Respondent failed to comply with recordkeeping requirements of the Controlled Substances Act. On June 23, 1992, the court found Respondent liable for civil penalties in the amount of $24,000 for violations of 21 U.S.C. 827(a)(3) and 21 U.S.C. 842(a)(5). The court's decision was upheld by the U.S. Court of Appeals for the Fourth Circuit on February 18, 1993.

In her opinion of June 7, 1994, Judge Bittner noted that the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration if he determines that the continued registration would be inconsistent with the public interest pursuant to the following factors set forth in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten public health and safety.

Judge Bittner stated, as a threshold matter, the Deputy Administrator may properly rely on any one or a combination of the five factors set forth in Section 823(f) and give each factor the weight he deems appropriate. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). She further stated that all five factors under 21 U.S.C. 823(f) were relevant in determining whether Respondent's continued registration would be inconsistent with the public interest.

Judge Bittner held that the evidence provided by the Government clearly established the shortages in Respondent's accountability of controlled substances, and that, although Respondent offered various documents into evidence, none of them offered any plausible or coherent explanation for the discrepancies found in the investigation. She further found that the Respondent, throughout the course of his previous litigation, as well as the instant case, continuously had been defensive, hostile, and uncooperative and had insisted on clouding the issues with tangential arguments and rhetorical allegations of political wrongdoing. Judge Bittner concluded that Respondent currently was not in a position to properly discharge the obligations of a DEA registrant, and, therefore, Respondent's continued registration would not be in the public interest. The administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications should be denied.

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Respondent's Motion to Remand and Reopen the Record is denied. During the course of this administrative hearing, Respondent put forth extensive argument, raised countless objections, and submitted numerous motions in full support of his cause. The Deputy Administrator does not find any support for Respondent's contention, as outlined in his motion, that his medical condition had a deleterious effect on Respondent's ability to represent himself throughout the course of this proceeding. This matter has been fully and fairly litigated and there is no need to relitigate this case.

Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority invested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104 hereby orders that DEA Certificate of Registration AT2444711, previously issued to Ellis Turk, M.D. be, and it hereby is, revoked, and that any pending applications for registration be denied. This orders is effective May 8, 1995.

Dated: March 30, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–8403 Filed 4–5–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Dropout Prevention

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: All the information required to submit a proposal is contained in the announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of funds for demonstration projects to replicate and formally evaluate a successful model by the Ford Foundation, known as the Quantum Opportunities Project (QOP). The U.S. Department of Education may also provide funds for this demonstration. The project is directed specifically toward at-risk youth entering the ninth grade. The objectives of the project are to enable participants to complete high school, and to improve their rate of entering and succeeding in post-secondary education.

Initial grants of $200,000 will be made to five local areas. Pending availability of funds, these grants will be renewed at the same level for three additional years to cover the four years of high school of participating students. To receive these funds, local sites will need to agree to participate in an evaluation in which eligible youth will be randomly assigned to receive or not to receive QOP services.

These grants will be limited to service delivery areas (SDAs) under the Job Training Partnership Act (JTPA). To apply for these grants, SDAs will need to have the local public school district as a co-applicant, and identify a community-based organization (CBO) to operate the demonstration. Matching funds in the amount of $200,000 a year will be required to operate a Quantum Opportunity Project. Additionally, local sites will need to commit to provide summer jobs for QOP participants for the three summers in which the participants are in the program. This demonstration is aimed at schools with high dropout rates. Target schools will need to have at least 40 percent fewer graduating seniors in June of 1994 than entering ninth graders in September of 1990 (For example, if a school had 300 entering ninth graders in September 1990, the graduating class in June of 1994 must have been 180 or fewer).

DATES: The closing date for receipt of applications will be May 15, 1995 at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Brenda M. Banks, Reference: SGA/DAA 95–005, Room S–4203, 200 Constitution Avenue N.W., Washington D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Brenda Banks (202–219–7300) in the Division of Acquisition and Assistance. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This announcement consists of four parts and appendices. Part I describes the authority and purpose of this demonstration. Part II is the Statement of Work (responsibilities of grantees). Part III describes the application process and guidelines for applying for these grants. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Appendix No. 1 provides a more detailed description of the QOP program. *There is no separate application package.*

Part I. Background

A. Authority

Section 452 of the Job Training Partnership Act authorizes the Secretary of Labor to establish pilot and demonstration programs.

B. Purpose of this Demonstration

There is a large and growing gap in this country between the employment and earnings of these individuals who have dropped out of high school, those that have graduated from high school but have not gone on to college, and those that have graduated from college. In many inner-city high schools today, over 50 percent of entering ninth graders drop out of school prior to graduation. Further, the proportion of students from inner-city high schools who go on to post-secondary education remains very low.

The Ford Foundation has recently announced the results of its Quantum Opportunities Project (QOP) demonstration. In this demonstration, 100 entering ninth graders in inner-city high schools were joined together in groups of 25 at four sites and assigned to the same adult coordinator. The students stayed with the same group and adult counselor throughout their four years of high school, receiving basic skills remediation, participating in group community service activities and cultural enrichment and youth development activities, visiting college campuses, and "job shadowing" professionals. The students earned two sets of stipends—one in cash and the second reserved in an "opportunity account" to be used for post-secondary education.

Entering ninth graders were randomly assigned to the QOP program, and a control group was also followed. The Ford Foundation evaluation of the program showed that QOP had been able to cut dropout rates in half and double the college entrance rate of participants.

Ideally, the development of new approaches to serving youth occurs in several stages—(1) an idea or model is developed; (2) the idea is put into practice at one site, and then perhaps at a second site with some modifications; (3) the model program is then pilot-tested at several sites; (4) the model program then enters a demonstration stage in which it is formally evaluated using random assignment of program applicants at several sites; and (5) if the random-assignment evaluation results come out positive, the model program is replicated widely across the country. This grant is part of stage (4) of this process.

C. Demonstration Policy

1. Eligible Applicants. Eligible applicants under this solicitation are Service Delivery Areas (SDAs) under the Job Training Partnership Act.

2. Funding. DOL expects to make approximately five awards. It is anticipated that individual grant awards will be $200,000 for the first year of the project.

3. Matching Requirements. In order to receive a grant award, an applicant must include a 100% match. These matching funds can come from JTPA Title II-C, Education for the Disadvantaged School-Wide Programs (ESEA Title I), general school district funds, local foundations and private corporations, or other sources.

4. Period of Performance/Options. The period of performance for these Grants will be twelve months from the date of execution by the Government. Pending satisfactory performance and availability of funds, these awards will be extended for an additional three years (three one-year options). The idea is to cover the entire four years of high school of students served.

5. Eligible Participants. All entering ninth graders who rank in the bottom half of their class according to the previous year's grades will be eligible for the QOP program, and then will be randomly assigned to receive or not receive QOP services.

6. Allowable activities. Grantees will conduct activities consistent with the QOP program described below.

7. Cost limitations. Demonstration grants are not subject to the cost limitations in JTPA Title II. However, $50,000 to be used for the overall program coordinator at each site should be considered the administrative costs for this demonstration.

Part II. Statement of Work (Responsibilities of Grantees)

Applicants should take into account the responsibilities listed below. The local school system will be responsible for identifying the target high schools and students; the CBO will be responsible for hiring the adult coordinators; and the SDA will be responsible for administering the Grant and providing summer jobs for the youth.

A. *Identification of target high schools.* Target high schools should have a rate of at least 40 percent of entering ninth graders dropping out before graduation to qualify for this grant—that is, if the graduating class in June of 1994 was 180 then the entering 9th grade class in September 1990 must have been 300 or more. The target high schools can be small or large, but they should have a combined expected enrollment of at least 560 entering ninth graders this coming fall in order to divide the class in half by grades from the previous year, and then to provide for two groups of 140 from the bottom half for non-treatment and QOP participation. The school district will need to identify during the summer the bottom half of the entering ninth graders at these schools, as ranked by grades.

B. *Develop and implement the QOP model.* The local QOP project shall be comprised of the following features:

—Groups of 20 entering ninth graders will be assigned to two half-time adult counselors. Students will stay with the same group and the same counselors throughout their time in high school.

—The QOP counselors will have office space at the high schools.

—Each site will hire an overall coordinator overseeing each of the QOP counselors.

—QOP activities will include each year 250 hours educational enrichment: 250 hours of cultural and development activities, including visits to college campuses; and 250 hours of community service activities. The educational enrichment activities can occur either at the school or at a separate CBO site.

—QOP students will be able to receive up to $500 a year in stipends based on attendance at program activities. Counselors are responsible for tracking and recording stipend-related activities for those individuals in their charge. The stipends for QOP participants are to be put into a bank account to used only for post-secondary educational expenses once the individual completes (or leaves) the QOP program.

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—QOP students will receive summer jobs during their three summers in high schools. Offerors should be able to identify the person within the SDA who will be in charge of linking school to summer work activities and ensuring that each participant is employed during the summer. The jobs can be provided through JTPA Title II–B if the students are eligible for JTPA and if Congress continues the Title II–B program; otherwise summer jobs will need to be found for the students. Preferably, jobs provided to QOP participants should be at the same worksite each summer, with increasing levels of responsibility each new year.

—The salaries of QOP counselors and the overall site coordinator will include incentives for keeping students in the QOP program.

—Group cohesion will be emphasized throughout the program. Students cannot be dropped from the program, even for non-attendance. An inactive student can return to the group at any time. Replacement students will not be added.

C. *Coordination of evaluation activities.* In conjunction with the Department's evaluation contractor, the eligible entering ninth graders will be randomly assigned during the first week of school in September to one of two groups, those who "enter" or "do not enter" the QOP program. For example, City A selects two high schools as its target schools for this demonstration. Each target high school has had a recent dropout rate of over 40 percent, and each is expecting an entering enrollment of 300 ninth graders—a combined total of 600 entering ninth graders. The school district will identify the bottom half of these entering ninth graders, or 300 youth. In turn, the school district will work with the Department's evaluation contractor to randomly select 140 of the eligible youth who report the first week of school to be part of the QOP program. There will be no eligibility requirement for the QOP program other than being ranked in the bottom half of the entering ninth grade class.

D. *Use of funds and matching commitments.* Grantees are required to provide a $200,000 local match for each year of the project. The $200,000 grant and $200,000 matching funds are expected to be sufficient to serve 140 youth at each site. These funds will allow for hiring fourteen half-time adult coordinators at $17,500 (salaries plus fringe benefits included); stipends of $500 a year to each youth; an overall coordinator at $50,000 (salary plus fringe benefits); with some funds left over for other project activities. Matching funds cannot be in-kind to simply use existing school counselors. JTPA Title II–C funds, Education for the Disadvantaged School-Wide Programs (ESEA, Title I) funds, local foundations, and local corporations are all appropriate sources for matching funds. Compensatory education funds outside of school-wide projects may not be an appropriate source of matching funds, because of possible conflict between random assignment and statutory requirements in these compensatory education funds.

Applicants will note that there are some differences between the QOP model that will be implemented in this demonstration and the original QOP pilot project described in the Appendix No. 1. The model that will be implemented under this demonstration will have 20 rather than 25 youth in each group; it will not be restricted to minority youth or youth in families receiving welfare; and it does not include cash stipends. Additional funds may be made available to grantees at a later time to provide cash.

E. *Project Description.* 1. Describe the need for the QOP project in the target high school or schools. What percentage of youth who entered the 9th grade in September of 1990 in these schools have dropped out prior to graduation? (You can simply show the number of entering 9th graders in September of 1990 and the number of students graduating in June of 1994). How many students are expected to enter the 9th grade at these schools this coming September? What is the poverty rate of the neighborhoods served by the schools? You may also discuss other factors that may reflect need, for example, teen pregnancy rates and crime rates in the neighborhoods served by the schools.

2. Describe your plan for implementing the QOP program this coming September. How will the 140 QOP slots be apportioned among the target high schools that have been identified? When during the summer will you be able to provide a list of entering ninth graders who rank in the bottom half of their class? Who in the school system will be responsible for providing this list, and what is their telephone number during the summer? What community-based organization (CBO) will carry out the QOP program? How was this CBO selected? What is the hiring plan of the CBO to make sure that the overall coordinator and 14 half-time counselors will be hired by September? Can you provide examples of likely candidates for these positions? What physical space will be provided to the counselors at the target high schools? Who in the school system will be responsible for overseeing the QOP program? How will the school system and the CBO coordinate services provided under QOP? Describe the SDA's plans for providing summer jobs for the youth.

3. Describe the matching funds that will be provided.

Part III. Application Process

A. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

1. Cost Proposal. Part I shall contain the cost proposal, consisting of the following items: Standard Form SF 424, "Application for Federal Assistance" (Appendix No. 2) and the "Budget Information" sheet (Appendix No. 3). Also, the budget shall include on separate page(s) a detailed breakout of each line item on the budget sheet. The Budget should provide for $200,000 in grant funds and $200,000 in matching funds.

2. Technical Proposal. The technical proposal shall be limited to *ten pages* (single-sided, single spaced). It should include the "assurance" provided below signed by the SDA director and the superintendent of schools, and answers to the three sets of questions and requirements included under Part II, Section E.

The following "assurance" should be signed by the local SDA director and superintendent of schools and included in the technical proposal: "The service delivery area (SDA) and school district of _____ are applying for a $200,000 a year grant under the Department of Labor's Quantum Opportunities Project (QOP) demonstration for entering ninth graders. We understand that pending availability of funds the demonstration will continue throughout the 4 years of high school of participating students. We also understand that $200,000 a year in matching funds are required for the project, and QOP students will be provided summer jobs for their three summers in high school. We also understand that participating in a random assignment evaluation of the program is a condition of award, and that eligible entering ninth graders will be randomly assigned to participate or not participate in QOP."

_____
SDA Director

_____
School District Superintendent

B. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

C. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 5th of May must have been mailed by the 1st of May); or

(2) was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

F. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before a grant award is executed.

Part IV. Rating Criteria for Award

Applicants are advised that the selection of grantees for awards is to be made after careful review by a panel. Applicants are advised that discussions may be necessary in order to clarify and inconsistencies in their application. The panel results are advisory in nature to the Grant Officer. The Grant Officer will make final awards based on what is in the best interests of the Government as determined by the Grant Officer. The rating criteria for award are the following:

1. *Need in Target High Schools.* This corresponds to questions and requirements raised in Part II, Section E.1. The proposal should provide information on the high schools, including the overall enrollment at the schools and the proportion of entering ninth graders who graduate from the school. The neighborhoods served by the schools should be described. (30 points).

2. *Development and Implementation Plan.* This corresponds to questions and requirements raised in Section E.2 and 3. This criteria covers plans for recruiting and hiring of the QOP counselors and overall coordinator; the availability of office space in the target high schools for QOP coordinators; the summer jobs that will be made available to QOP students through JTPA Title II–B; how jobs will be provided to QOP students not income-eligible for JTPA; the experience of the CBO in operating programs for at-risk youth; and the availability of matching funds. (70 points).

Signed at Washington, D.C., this 31st day of March, 1995.

Janice E. Perry,

ETA Grant Officer.

Appendix 1 Description of Original QOP Program

(**Note:** This Appendix is provided as background information on the original QOP program which the Ford Foundation funded. As discussed above, the QOP model that sites will be implementing under this grant announcement differs in slight ways from the original QOP program. Where differences occur, applicants should follow the model described in the main text of the grant announcement rather than in this Appendix).

Quantum Opportunities Program: An Overview

Background

The Quantum Opportunities Program (QOP) was initiated as an experiment to test whether impoverished young people could make a "quantum leap" up the ladder of opportunity if an intensive array of coordinated services, coupled with a sustained relationship with a peer group and a caring adult, were offered to them over their four years of high school.

The program also tested a system of incentive payments for participants, staff and delivery organizations to encourage participation and retention in the program and to provide some money for college, technical training or other education upon completion.

The program designer recognized that a variety of education, training, employment, development and service opportunities were already available to poor teenage youth through programs of government agencies and nonprofit organizations. These, however, were neither coordinated nor sequenced in a continuum that recognized the developmental needs of maturing youth. Lacking coordination and continuity, their cumulative impact was diluted.

The Quantum Opportunities Program adopted an investment mentality. It tested whether comprehensive services could be sequenced effectively, whether a single coordinator could broker services efficiently, whether eligible youth would participate if such opportunities were offered, and whether this approach and these investments would have a positive effect on the youth's life chances.

Purpose

The program's aim was to assist minority youth from solo-parent, welfare families in poverty neighborhoods *graduate* from high school and *attend college*. The Quantum Opportunities Programs sought to rewrite the future for these-at-risk teens.

Sites

The multi-faceted QOP model was successfully implemented in four of the five demonstration sites: Oklahoma City, Philadelphia, Saginaw and San Antonio. The delivery organizations were OIC affiliates—community organizations offering a variety of education, training and self-sufficiency programs. Each also operated a "Learning

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Opportunity Center" equipped with computers, books and audiovisual equipment and materials for self-paced and competency-based learning in academic, employability and life skills.

There was variation among the four sites as to how each operated the program. Two negotiated with their local high schools to schedule time in the school day. In one case, a *daily* class period for participating students was set up in each of the four school years. This school time was used for group meetings, discussions and development activities; other program activities took place outside of the school day in the community organization. In the second site, the local school provided a space for the program and released students for daily meetings. Two sites conducted the program entirely outside of school hours and facilities.

Youth Eligibility

Participating students, the "Opportunity Associates" were each:

- entering the 9th grade,
- attending a public high school in a poverty neighborhood;
- a member of a racial minority; and
- from a solo-parent family receiving welfare payments.

Recruitment

Each site enrolled 25 participants at the start of the 1989–1990 school year:

1. The participating public high school produced a list of all entering freshman meeting the eligibility criteria.
2. From the list, 25 students were selected at random for invitation to participate in the program. Another 25 students were selected, also at random, as a control group.
3. Selected students were contacted through mailings, school counselors and teachers, orientation meetings with parents and students, home visits and peers.
4. All contacted students were automatically enrolled. There was no screening out or special selection.

Program Design

A youth developmental model was tested in the Quantum Opportunities Program. The program was organized in four cycles spanning the four high school years, including summers.

In *each* yearly cycle, the Opportunity Associates attended high school *and* participated in three activity components of up to 250 hours each for a maximum of 750 hours per yearly cycle.

These activity components were organized by an Opportunity Coordinator at each site. The Coordinator both brokered and directly delivered services in the three activity components, which were:

Learning Opportunities—250 hours per year of self-paced and competency based basic skills and enrichment study outside of regular school hours. Reading, writing, math, science, and social studies were covered. Opportunity Associates completed these extra hours of learning in the existing OIC Learning Opportunity Center in their community.

Development Opportunities—250 hours per year of cultural enrichment and personal development. Students attended plays and concerts, explored the visual arts, visited museums and new locations, read and discussed current affairs and the Great Books, learned about their own rich history and culture, dined in restaurants, and "job shadowed" with professionals. Each Opportunity Associate received a personal subscription to Time Magazine. They learned how to set goals, manage their time, and choose behavior appropriate for varying situations. They developed life skills needed in the home, at work and in the marketplace. They learned about themselves and how to get along with others.

Service Opportunities—250 hours per year of community service connected Opportunity Associates to their communities and provided opportunities to develop many of the skills needed for work—reliability, following through on tasks, and working cooperatively. Service projects ranged from tutoring elementary students, to neighborhood cleanup, to volunteer work in hospitals, nursing homes, libraries and human service agencies.

Key Features

The critical elements of Quantum Opportunities Program design were:

- Group cohesion—By design, each group of 25 Opportunity Associates remained constant through the four high school years. Students could not be dropped from the group, even for non-attendance. An inactive student could return to the group at any time over the four years; the promise of opportunity was never withdrawn. New students were not admitted to the group.
- Continuity with a caring adult—at each site, the same Opportunity Coordinator was to stay with the group for the four years. (There was turnover in some test sites.)
- "Front line" accountability—Each Opportunity Coordinator was responsible for recruiting students, encouraging active participation, brokering all service activities, counseling students, communicating with families, assisting with college financial aid applications, and tracking activities.

Incentives

Financial incentives were structured to encourage participation, completion and long range planning. Opportunity Associates received:

- an hourly stipend of $1.33 for each hour of participation in the education, development and service activities,
- a completion bonus of $100 for *each activity component* completed *during each of the four yearly cycles*, for a possible total of $300 in bonuses, and;
- an Opportunity Account, created by *matching*, on a dollar basis, all hourly stipend and bonuses earned by the Associate over the four years of the program. At the end of the four years, the funds accrued in Opportunity Accounts, including interest earned, were available to Associates for approved college, job and technical training or continuing education.

The Coordinator's incentive payments, as well as those to the OIC affiliate, were also tied directly to participation hours and completion rates. QOP Coordinators received the same amount, and the delivery organization received double the amount, of the stipends and bonuses of their Opportunity Associates.

Research

Brandeis University is evaluating the program using a random assignment, control group methodology. Progress during the school years and post-program outcomes are being compared for Opportunity Associates and a matched group of people who did not participate.

Early results are quite positive. The year after expected high school graduation, Opportunity Associates were more likely to have graduated from high school, to have enrolled in four-year colleges, to have enrolled in any post-secondary education and to still plan college completion. They were less likely to have dropped out, to have become a solo parent or to have been arrested.

Cost

The average cost per participant—covering all costs—was $11,250 for the four years (half the annual costs of prison). Two-fifths of this cost was in direct payments to participants in the form of stipends, bonuses and the Opportunity Account.

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Appendix No. 2

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; M. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 17.249
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Appendix No. 3

BUDGET INFORMATION - Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget		
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL	
1.	$	$	$	$	
2.	$	$	$	$	

COST CATEGORY	FEDERAL FUNDING		NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL					
(B) FRINGE BENEFITS					
(C) TRAVEL & PER DIEM					
(D) EQUIPMENT					
(E) SUPPLIES					
(F) CONTRACTUAL					
(G) OTHER					
TOTAL DIRECT COST					
INDIRECT COST					
TOTAL ESTIMATED COST					

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 95-8477 Filed 4-5-95; 8:45 am]

BILLING CODE 4130-36-C

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Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–26; Exemption Application No. D–9741, et al.]

Grant of Individual Exemptions; Dillon, Read & Co. Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Dillon, Read & Co. Inc. (Dillon) Located in New York, New York

[Prohibited Transaction Exemption 95–26; Application No. D–9741]

Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan. [1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or assets contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity. [2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust. [3] Notwithstanding the foregoing,

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) for which Dillon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1); [4]

[4] The Department wishes to take the opportunity to clarify its view that the definition of Trust contained in III.B.(1)(a) through (e) includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and

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(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1). Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Dillon;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dillon; or

(3) any member of an underwriting syndicate or selling group of which Dillon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services assets contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services assets contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5720.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PACCAR Inc Savings Investment Plan (the Plan) Located in Bellevue, Washington

[Prohibited Transaction Exemption 95–27; Exemption Application No. D–09855]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the guarantee by PACCAR Inc (the Employer), the sponsor of the Plan, of the Plan's investment in a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation Life), including the potential extensions of credit to the Plan by the Employer (the Advances) pursuant to the Guarantee; and (2) the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(B) The Repayments are made only from GIC Proceeds, defined as the amounts actually received by the Plan (1) From Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or (2) from the sale or transfer of the GIC to unrelated third parties;

(C) The Repayments will be made only after the Plan has recovered, through the Advances plus GIC Proceeds, the amount guaranteed by the Employer with respect to the GIC; and

(D) To the extent the Advances exceed GIC Proceeds, Repayment of the difference will be waived.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on February 10, 1995 at 60 FR 8088.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing. The comment was submitted by Plan participants who expressed support for the proposed exemption. After careful consideration of the entire record, the Department has determined to grant the exemption

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Manke Lumber Company, Inc. Profit Sharing Plan (the Plan) Located in Tacoma, Washington

[Prohibited Transaction Exemption 95–28; Application No. D–09897]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Manke Family Resources, Limited Partnership.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the greater of: (a) the fair market value of the Property on the date of the Sale; or (b) the Plan's aggregate costs of acquiring and holding the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 10, 1995 at 60 FR 8090.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Virginia Fibre Corporation Employees Retirement Savings Plan (the Plan) Located in Amherst, Virginia

[Prohibited Transaction Exemption 95–29; Exemption Application No. D–09901]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 1, 1995, to (1) the purchase from the Plan (the Purchase) by the Virginia Fibre Corporation (the Employer), the sponsor of the Plan, of a guaranteed investment contract (the GIC) issued by the Confederation Life Insurance Company (Confederation Life); or, in the alternative, (2) the interest-free loan to the Plan by the Employer (the Loan) with respect to the GIC, including repayment of the Loan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) In the event of the Purchase, the Plan receives a cash purchase price which is no less than the greater of (1) the fair market value of the GIC as of the sale date, or (2) the GIC's Maturity Payment, as described in the Notice of Proposed Exemption;

(C) In the event of the Loan: (1) The Loan is in the amount of the GIC's Maturity Payment, as described in the Notice of Proposed Exemption; (2) the Loan is repaid only from GIC Proceeds, defined as the amounts paid by or on behalf of Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the GIC; (3) the Plan incurs no expenses or interest with respect to the Loan; and (4) repayment of the Loan is waived to the extent the Loan exceeds the GIC Proceeds.

EFFECTIVE DATE: This exemption is effective as of February 1, 1995.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on February 10, 1995 at 60 FR 8091.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

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interests evidenced by other certificates issued by the first trust.

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Employee Benefit Capital Preservation Fund of Central Fidelity National Bank (the Fund) Located in Richmond, Virginia

[Prohibited Transaction Exemption 95–30; Exemption Application No. D–09905]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the past sale by the Fund of three Guaranteed Income Contracts (the GICs) of Confederation Life Insurance Company to Central Fidelity Bank, Inc., a party in interest with respect to the Fund, provided the following conditions are satisfied: (1) the sale was a one-time transaction for cash; (2) the Fund received no less than the fair market value of the GICs at the time of the transaction; (3) the purchase price was not less than the GICs' accumulated book values (defined as total deposits plus interest accrued but unpaid at the GICs' stated rates of interest through the date of sale, less withdrawals) as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5730.

EFFECTIVE DATE: This exemption is effective on December 29, 1994.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 31st day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–8394 Filed 4–5–95; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–374]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–18, issued to Commonwealth Edison Company (the licensee), for operation of the LaSalle County Station, Unit 2, located in LaSalle County, Illinois.

The proposed amendment would revise the safety/relief valve (SRV) safety function lift setting allowable tolerance band from (−3% to +1%) to (−3% to +3%) and include as-left SRV lift setting tolerances of (−1% to +1%).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations specifies that the Commission may, where exigent circumstances exist, allow less than the 30 days for public comment. Exigent circumstances have been found to exist for this proposed amendment. On March 18, 1995, with LaSalle Unit 2 in a shutdown condition for the current refueling outage, the licensee learned that two of the six SRVs tested had lift settings that were not within the current tolerance band allowed by the technical specifications. This resulted in three additional SRVs being tested and two additional SRVs found to lift at pressures slightly outside the existing tolerance band. The remaining nine SRVs are required to be tested based on the current technical specifications. This testing would involve a significant financial cost, the collection of approximately 11 person-rem of radiation exposure by plant workers, and a delay in the restart of Unit 2. The history of the safety relief value testing at LaSalle is such that the licensee did not anticipate the immediate need for an increased tolerance band. However, as part of a longer range plan to reduce the number of SRVs and increase the allowable lift setting tolerances, the licensee had performed much of the analyses required to justify the proposed amendment request. On March 27, 1995, the licensee decided to expedite the SRV lift setting technical specification change for LaSalle Unit 2. The licensee completed the review and submitted the request on March 31, 1995. To avoid the radiation exposures and restart delays associated with testing the remaining nine SRVs, the proposed amendment would need to be issued before April 22, 1995, and therefore the request does not afford the normal 30-day comment period.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysts of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not increase as a result of this change, because the only change are the tolerances for the SRV opening setpoints and the speed of the reactor core isolation cooling system (RCIC) turbine and pump. Changing the maximum allowable opening setpoint for the SRVs does not cause any accident previously evaluated to occur, or degrade valve or system performance in any way so as to cause an accident to occur with an increased frequency. In addition, the increased speed of the RCIC turbine and pump are within the design limits of the system. RCIC operability and failure probabilities are not impacted by this change.

The consequences of an ASME overpressurization event are not significantly increased and do not exceed the previously accepted licensing criteria for this event. GE has calculated the revised peak vessel pressure for LaSalle Station to be 1341 psig, which is well below the 1375 psig criterion of the ASME Code for upset conditions, referenced in Section 5.2.2, Overpressurization Protection, of the Updated Final Safety Analysis Report (UFSAR), and NUREG–0519 (Safety Evaluation Report related to the operation of LaSalle County Station, Units 1 and 2, March 1981), and Section 15.2–4, Closure of Main Steam Isolation Valves (BWR) of NUREG–0800 (Standard Review Plan).

GE has also performed an analysis of the limiting anticipated transient without scram (ATWS) event, which is the main steam isolation valve (MSIV) closure event. This analysis calculated the peak vessel pressure to be 1457 psig, which is well below the 1500 psig criterion of the ASME Code for emergency conditions.

Per NUREG–0519, listed above, Section 5.4.1 and Technical Specification 4.7.3.b, the RCIC pump is required to develop flow greater than or equal to 600 gpm in the test flow path with a system head corresponding to reactor vessel operating pressure when steam is supplied to the turbine at 1000 +20, −80 psig. Increasing the turbine and pump speed ensures these criteria will still be met and the consequences of an accident will not increase.

Therefore, there is not a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The only physical changes are to increase the allowable tolerances for SRV opening setpoints and to increase the RCIC pump and turbine speeds. These changes do not result in any changed component interactions. The SRVs and RCIC will still provide the functions for which they were designed. Since all of the systems evaluated will continue to function as intended, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

While the calculated peak vessel pressures for the ASME overpressurization event and the MSIV closure ATWS event are larger than that previously calculated without the proposed setpoint tolerance increases, the new peak pressures remain far below the respective licensing acceptance limits associated with these events. These licensing acceptance limits have been previously evaluated as providing a sufficient margin of safety. For other accidents and transients, the increased setpoint tolerances have a negligible, if any, effect on the results, so the margin of safety is preserved.

Based on the this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 8, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

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prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra, Director, Project Directorate III–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Espire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 31, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 4th day of April 1995.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8575 Filed 4–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Entergy Operations, Inc. (Grand Gulf Nuclear Station Unit 1); Exemption

I

Entergy Operations, Inc., (the licensee) is the holder of Facility Operating License No. NPF–29, which authorizes operation of the Grand Gulf Nuclear Station, Unit 1. The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site in Claiborne County, Mississippi.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated October 24, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, employee and contractor identification badges, coupled with their associated access control cards, are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Grand Gulf site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Grand Gulf Nuclear Station, Unit 1 since the operating license was issued. Security personnel retain each identification badge, as well as the associated access control card, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card and an individual access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, enters a personal identification number (PIN), and passes through the turnstile which unlocks if the preset criteria are met. Once inside the station, the individual's PIN is not required in order to further utilize the access authorization card.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badges in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges coupled with their associated access control cards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy Operations, Inc. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 16683). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

Elinor Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8452 Filed 4–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York, (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit

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No. 3 (IP3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Westchester County, New York.

II

By letter dated March 15, 1995, the licensee requested to modify an existing exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.J which had been issued by the NRC on January [illegible], 1987. Section III.J specifies emergency lighting requirements for operation of safe shutdown equipment and in access and egress routes thereto. The January 17, 1987, exemption allowed use of permanently installed security lighting, in place of emergency lighting as specified in Section III.J, for access and egress to the Appendix R diesel generator which is located in the outside yard area.

During a programmatic review of the Appendix R, compliance strategy at IP3 the licensee identified that certain operator actions, which had not be included in the previous Appendix R compliance strategy, were needed. These additional operator actions were in the outside yard area at the condensate storage tank (CST), refueling water storage tank (RWST), and backup service water pump platform. Thus, in accordance with Appendix R, Section III.J, emergency lighting would be required for these additional areas. As such, the licensee's March 15, 1995 letter requested modification of the January 7, 1987, exemption to extend the use of security lighting in the outside yard area to include the CST, RWST, and backup service water platform.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present as set forth in 10 CFR 50.12(a)(2).

Section III.J of 10 CFR Part 50, Appendix R, requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. By letter dated June 14, 1985, the licensee applied for an exemption to the requirements of Section III.J, to allow use of permanently installed security lighting for providing an illuminated access and egress route to the Appendix R diesel generator which is located in the outside yard.

As justification, the licensee indicated that the yard area lighting for access and egress to the Appendix R diesel generator was already part of the security lighting system. As such, illumination is provided in accordance with 10 CFR 73.55(e)(5). The security lighting system is powered by a dedicated propane powered generator which operates in the event of a loss of power to the security system and this generator is physically separated from the plant; therefore, an Appendix R fire scenario will not affect operation of the security backup generator supply. In addition, the security backup generator has a sufficient capacity and fuel supply to power the outside yard lighting for the requisite 8-hour time period. The licensee concluded that the security lighting system was highly reliable and as such, installation of the battery-powered lights, as required by Section III.J, would not enhance the safe shutdown capability at IP3.

The NRC staff agreed with the technical justification presented in the licensee's June 14, 1985, letter, and issued an Exemption from the requirement of Section III.J, for access and egress to the Appendix R diesel generator. In the licensee's March 15, 1995, letter, the same technical justification is presented for use of permanently installed security lighting in lieu of battery-powered lights, as required by Section III.J, for three additional areas in the outside yard. These additional areas were a result of a reassessment of the IP3 Appendix R compliance strategy. The areas and the operator actions needed in each area are as follows.

(1) Condensate Storage Tank. The operators would verify tank level at the local indicator and during sub-freezing weather might need to place portable heaters in the area to maintain level indicator operable.

(2) Refueling Water Storage Tank. The operators would verify tank level at the local indicator and during sub-freezing weather might need to place portable heaters in the area to maintain level indicator operable.

(3) Backup Service Water Pumps: The operators would manually backflush the strainers.

The licensee has confirmed that the technical justification, which was also the basis for the January 17, 1987, exemption is still valid. The licensee has also confirmed that the security lighting system still achieves the underlying purpose of the rule in that it provides adequate illumination to perform all Appendix R required activities in the outside yard for a period of at least 8 hours and is not impacted by fires in other areas of the plant for which Appendix R fires need to be considered.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12 that (1) the Modified Exemption as described in Section III is authorized by law, will not endanger life or property and is otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(ii), in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the Commission hereby grants the following Modification to our Exemption of January 17, 1987:

(1) The Exemption from the requirement of 10 CFR Part 50, Appendix J, Section III.J, issued to the Power Authority of the State of New York on January 17, 1987, remains in effect. The Power Authority of the State of New York is also exempt from the requirement of 10 CFR Part 50 Appendix J, Section III.J, to the extent that security lighting in the outside yard area can be used in lieu of the emergency lighting as specified in Section III.J, at the following additional locations in the outside yard area:

—The Condensate Storage Tank Area

—The Refueling Water Storage Tank Area

—The Backup Service Water Pump Strainer Area

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Modified Exemption will have no significant impact on the quality of the human environment (60 FR 15944).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of March 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95-8453 Filed 4-5-95; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Country Allocation of the Tariff-Rate Quota for Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the tariff-rate quota for certain imported sugars, syrups, and molasses established for the period January 1, 1995, through September 30, 1995. The new allocations replace the allocations previously made for the period of August 1, 1994, through September 30, 1995.

EFFECTIVE DATE: January 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Hushek, Senior Economist, Office of Agricultural Affairs (Room 421), or to Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel (Room 223); Office of the United States Trade Representative, 600 Seventeenth Street, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Tom Hushek, Office of Agricultural Affairs, 202-395-6127, or Daniel Brinza, Office of the General Counsel, 202-395-7305.

SUPPLEMENTARY INFORMATION:

Presidential Proclamation No. 6763 of December 23, 1994 established a tariff-rate quota for certain sugars, syrups, and molasses effective January 1, 1995, to implement the Uruguay Round Agreements approved by the Congress in the Uruguay Round Agreements Act (URAA) (P.L. 103-465). This tariff-rate quota replaced the tariff-rate quota that had been in effect previously. Presidential Proclamation No. 6763 also provided an additional amount under the tariff-rate quota for the period January 1 through September 30, 1995, of 8,000 metric tons, raw value, of refined sugars originating in Canada.

Presidential Proclamation No. 6763 also delegated to the United States Trade Representative (USTR) the President's authority under section 404(d)(3) of the URAA (19 U.S.C. 3601) to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate.

Since the tariff-rate quota established by Presidential Proclamation No. 6763 replaced the previous tariff-rate quota, USTR is providing notice of the allocation of the new tariff-rate quota for the quota period January 1, 1995, through September 30, 1995.

Notice

The in-quota quantity of the tariff-rate quota for sugars, syrups and molasses entered under subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44 for the period of January 1 through September 30, 1995, is allocated to each of the following countries and customs areas in an amount equal to the remaining quantity available, if any, from the allocation for that country or area for the quota period that began October 1, 1992, plus the remaining quantity available, if any, from its allocation for the quota period which began on August 1, 1994:

Argentina, Australia, Barbados, Belize, Bolivia, Brazil, Columbia, Congo, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Jamaica, Madagascar, Malawi, Mauritius, Mexico, Mozambique, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, Philippines, St. Kitts and Nevis, South Africa, Swaziland, Taiwan, Thailand, Trinidad and Tobago, Uruguay, and Zimbabwe.

The allocations for the quota period that began October 1, 1992, were announced by USTR on August 27, 1992, and adjusted by USTR as announced on July 1, 1993. The allocations for the quota period which began on August 1, 1994, were announced by USTR on August 11, 1994.

Signed at Washington, DC, on March 24, 1995.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95-8476 Filed 4-5-95; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35556; File No. SR-CHX-94-22]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to Proposed Rule Change Relating to Exclusive Issues

March 31, 1995.

I. Introduction

On November 10, 1994, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ["Act"][1] and Rule 19b-4 thereunder,[2] a proposed rule change to impose additional requirements and prohibitions on specialists, and others associated with specialists units, registered in exclusive issues. On January 4, and 9, 1995, the Exchange submitted, respectively, Amendments Nos. 1 and 2 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35233 (Jan. 18, 1995), 60 FR 4651 (Jan. 24, 1995). No comments were received on the proposal. On March 29, 1995, the Exchange submitted to the Commission Amendment No. 3 to the proposed rule change.[4] This order approves the proposed rule change, including Amendment No. 3, on an accelerated basis.

II. Description of the Proposal

Currently, the Exchange Rules impose only a general prohibition on specialists, who are prohibited from effecting purchases or sales of any security in which the specialist is registered, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market.[5] The Exchange proposes a new rule, Article XXX, Rule 23, to impose additional requirements and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] *See* letters from David Rusoff, Foley & Lardner, to Amy Bilbija, SEC, dated December 29, 1994; and to Glen Barrentine, SEC, dated January 5, 1995. Amendment Nos. 1 and 2 made non-substantive changes to the proposal.

[4] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, SEC, dated March 28, 1995. *See* infra note 6 for a description of Amendment No. 3.

[5] *See Chicago Stock Exchange Guide*, Article XXX, Rule 9, (CCH) ¶ 1929.

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prohibitions on specialists, and certain others, where specialists are registered in exclusive issues.[6] Specifically, the proposed rule prohibits specialists, co-specialists, or other associated persons, officer, directors, partners, or employees of specialist units registered in an exclusive issue from engaging in any business transaction with the issuer of the exclusive issue.[7]

The proposed rule also prohibits certain specific dealings by specialists in exclusive issues without the prior approval of the floor officials. For example, a purchase at a price above the last sale in the same session or a proposed transaction involving a price movement of ½ point or more are not to be effected except with the prior approval of two floor officials. Moreover, the proposed rules makes the "equalizing" exemption in paragraph (e)(5) of SEC Rule 10a–1 unavailable for specialists and market makers when selling short an exclusive issue.[8]

Finally, the Exchange will provide specialists who are registered in issues that are not traded on the New York or American Stock Exchanges or Nasdaq/NMS with a statistical report on a monthly basis containing data for trade and share volume of each issue. The specialists, therefore, will be able to determine whether additional requirements and prohibitions of Rule 23 have been triggered.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the rule change will benefit investors by eliminating a potential conflict of interest between specialists registered in exclusive issues and issuers of such securities. Because business transactions between specialists and issuers may exert an improper influence over specialists, the proposed rule explicitly prohibits these types of transactions as to specialists registered in exclusive issues. The Commission believes that the proposed rule would be in the interest of the investing public because it sets a standard higher than the Exchange Rules currently provide for specialists, and others associated with specialist units, registered in exclusive issues.[10]

At the present time, the Commission believes that the limitation of the proposed rule's prohibition to exclusive issues is appropriate. Exclusive issues, as defined by the proposed rule, would exclude only those issues that are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), or Nasdaq/NMS, or where the Exchange is making a de minimis market for the security. Where the Exchange is the primary market for an issue, the Exchange specialists would have more of an opportunity to manipulate the market for the security and abuse the specialist position. Such a situation is less likely to occur in an issue that is also trading on the NYSE, Amex, or Nasdaq/NMS, or where the Exchange specialist is making a de minimis market for a security.[11]

Moreover, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[12] Amendment No. 3 alters the definition of an exclusive issue. Under the amended definition, the Exchange must have executed 15% or more of the volume in a particular issue during the three previous months for a security to qualify as an exclusive issue rather than 25% or more of the transactions as originally proposed. The Commission believes that a threshold based upon the volume of shares executed rather than upon the number of transactions is unlikely to alter the number of specialists affected by the proposed rule. Moreover, to the extent a threshold based upon volume would have such an effect, the Commission believes that the lower numerical percentage is likely to provide a sufficient cushion to offset any decrease in the number of specialists that otherwise would be affected by the proposed rule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–94–22 and should be submitted by April 27, 1995.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CHX–94–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8491 Filed 4–5–95; 8:45 am]

BILLING CODE 8010–01–M

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[6] An "exclusive issue" is defined in the proposed rule as the stock of any company traded on the Exchange not otherwise traded on the New York or American Stock Exchanges or Nasdaq/MNS, and, where there exists another market for such issue the Exchange has executed 15% or more of the volume in the issue during the three previous months. Amendment No. 3 amended the definition of "exclusive issue," to include issues where the Exchange has executed *15% or more of the volume* in the issue during the three previous months rather than 25% or more of the transactions in the issue. In Amendment No. 3, the Exchange noted that, currently, 14 issues that are not traded on the New York or American Stock Exchanges or Nasdaq/NMS are traded on the Exchange and assigned to specialists. Of these 14 issues, the Exchange trades more than 25% of the volume of 7 issues and less than 4% in 7 issues. See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, SEC, dated March 28, 1995.

[7] The term "business transaction" is intended to be interpreted broadly to include: loans, purchase of assets from the issuer, and acquisition of any beneficial ownership of shares of such issuer.

[8] 17 CFR 240.10a–1(e)(5). Rule 10a–1 generally prohibits persons from effecting a short sale or a registered security (a) below the price of the last sale, or (b) at such price if it is lower than the last sale at a different price. The exception provided for in paragraph (e)(5) permits registered specialists or registered exchange market maker (or a third market maker for its own account over-the-counter) to effect, for their own account, a sale (a) at a price equal to or above the last sale, or (b) at a price equal to the most recent offer communicated for the security by such registered person if such offer, when communicated, was equal to or above the last sale. In addition, the Rule expressly provides that an exchange may prohibit its registered specialists and market makers from availing themselves of the exemption if the exchange determines that such action is necessary or appropriate in its market, in the public interest, or for the protection of investors.

[9] 15 U.S.C. 78f(b) (1988).

[10] The Commission's review of the rules of the regional exchanges indicates that only the Boston Stock Exchange, Inc. ("BSE") has a similar business transaction prohibition on equity specialists. *See Boston Stock Exchange Guide*, Chapter XV, Section 11, (CCH) ¶ 2149. The Rules of the Philadelphia Stock Exchange, Inc. ("Phlx") prohibit only option specialists from conducting business transactions with an issuer of a security underlying an option in which the specialist is registered. *See Philadelphia Stock Exchange Guide*, rule 1023(a), (CCH) ¶ 3023.

[11] The Commission, however, does not dismiss the possibility that there may arise a situation in the future where it would be appropriate to extend the prohibition of the proposed rule to all specialists regardless of the issues in which they are registered. Although the 15% threshold provides a benchmark for determining when the Exchange is a primary market for a security, it may become appropriate at some point to impose the prohibition on all specialists because of the difficulties with monitoring exclusive issues through the use of historical data and the potential manipulating the volume of trading to avoid the prohibition.

[12] *See* Securities Exchange Act Release No. 35233 (Jan. 18, 1995), 60 FR 4651 (Jan. 24, 1995).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35554; File No. SR–CHX–94–26]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 31, 1995.

On November 30, 1994, the Chicago Stock Exchange, Incorporated ("CHX") filed a proposed rule change (File No. SR–CHX–94–26) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On December 14, 1994, CHX filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on January 4, 1995, to solicit comments from interested persons.[3] The Commission received one written comment.[4] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[5] The rule establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. Several of the CHX's rules are interrelated with settlement timeframes. The purpose of the proposed rule change is to amend CHX's rules consistent with a T+3 settlement standard for securities transactions.

Article XX, Rule 9 will define regular way transactions as requiring delivery on the third business day after the trade date. Seller's option trades will settle not less than four business days nor more than sixty days following the day of the contract. Trades made for "next day" may include delivery on the first or second business day following the day of the contract. The proposed rule change also will eliminate references to the fourth and fifth full business day preceding the final day for subscription contained in Rule 9.

Article XXVII, Rule 1 will provide that stock transactions shall be ex-dividend or ex-rights two business days preceding the record date. With respect to record dates on other than a business day, stock transactions will be ex-dividend or ex-rights three business days preceding the record date.

Article XXVII, Rule 2 will require stock transactions to be ex-warrant on the second business day preceding the date of expiration of the warrants. When warrant expiration occurs on other than a business day, the ex-warrant period will begin on the third business day preceding the expiration date.

Article XXX, Rule 15 will require all claims involving erroneous comparisons to be made within two business days of the original trade date. Claims which concern the omission of a report will need to be made within two business days of the date the order should have been executed. Claims relative to a lack of comparison of a reported transaction will need to be made within two business days of the original trade.

CHX has requested that the proposed rule change become effective on the same date as Rule 15c6–1. Rule 15c6–1 is scheduled to become effective on June 7, 1995. The transition from T+5 settlement to T+3 settlement will occur over a four day period.[6]

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.[7] Thomson believes that the CHX should amend Article XV, Rule 5 which requires the use of the facilities of a securities depository for confirmation and acknowledgement of all depository-eligible transactions.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[8] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. The CHX rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6–1. As a result, the CHX's current rule establishing a T+5 settlement cycle will be inconsistent with the Commission rules. This proposal will amend the CHX's rules to harmonize them with a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[9]

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[1] 15 U.S.C. 78s(b)(2) (1988).

[2] Letter From David Rusoff, Foley & Lardner, to Christine Sibille, Senior Attorney, Office of Securities Processing, Division of Market Regulation, Commission (December 16, 1994).

[3] Securities Exchange Act Release No. 35155 (December 27, 1994), 60 FR 517.

[4] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 25, 1995).

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

[6] Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[7] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 25, 1995).

[8] 15 U.S.C. 78f (1988).

[9] The adopting release stated, "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing

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While the Thomson letter supports the CHX's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the CHX should amend Article XV, Rule 5, which requires the use of the facilities of a securities depository for the confirmation and acknowledgement of all depository-eligible transactions whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, DTC, and the Securities Industry Association. The Commission will continue to work with the industry to address Thomson's concerns. However, if the proposed rule change is not approved prior to the June 7, 1995, effective date of Rule 15c6–1, the CHX rules will conflict with the Commission Rule 15c6–1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Article XV, Rule 5 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that the anticompetitive effects pointed to by Thomson, if in fact there are any anticompetitive effects, are not caused by the proposed rule change approved by this order but rather by an existing CHX rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that CHX's proposal is consistent with Section 6 of the Act.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CHX–94–26) be and hereby is approved, effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8494 Filed 4–5–95; 8:45 am]

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corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[10] 15 U.S.C. 78f (1988).

[11] 15 U.S.C. 78s(b)(2) (1988)

[12] 17 CFR 200.30(a)(12) (1994).

[Release No. 34–35557; File No. SR–GSCC–94–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementing a Comparison Service for Repurchase and Reverse Repurchase Transactions Involving Government Securities as the Underlying Instrument

March 31, 1995.

On December 30, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–94–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on February 2, 1995.[2] No comment letters were received regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

GSCC is amending its rules to provide comparison services for repurchase and reverse repurchase transactions involving government securities as the underlying instrument ("repos"). GSCC ultimately intends to provide comparison, netting, and risk management services for the opening ("on") and closing ("off") legs of all overnight repos (also referred to as next-day repos), term repos (also referred to as forward settling repos), and open repos, including the same-day settling aspects of those repos.[3]

GSCC will offer its repo services in three phases. The first phase will involve the provision of comparison and netting services. The pending proposal would authorize GSCC to implement the initial stage of the first phase, which is the provision of comparison services for overnight and term repos whether or not the on leg occurs before, on, or after the submission date.[4] GSCC will accept and compare data on all of the components of a repo transaction, including information on the on and off legs of a repo, with members providing such data via a single input. The second implementation phase of GSCC's planned repo services will focus on the provision of comparison, netting, and risk management services for open repos. The last phase of GSCC's planned implementation of repo services will focus on providing intraday netting and risk management services for the same-day settling aspects of repo transactions, including settlement of same-day settling start legs and close-outs of open repos.

The Phase 1 comparison process for repos is substantially similar to the comparison process offered by GSCC today. Each party to a repo will submit its transaction data to GSCC.[5] As is the case now for non-repo transactions, comparison of a repo trade will occur immediately upon the receipt by GSCC from two members of matching data. If all mandatory data fields that are required to match do in fact match, GSCC will generate a comparison.[6]

If the data on a repo remains uncompared at end-of-day, the submitter of the repo data will receive a report of an uncompared trade, and the participant being submitted against will receive an advisory. If a repo transaction has not yet been compared, it may be unilaterally canceled, and the submitter will receive notification of the cancellation. To cancel a repo that has been compared, bilateral agreement is required. GSCC will delete trade data on repo transactions that remain uncompared from GSCC's comparison system the later of (1) the processing cycle after the second business day after the repo start date or (2) the processing cycle after the second business day after the date of submission of such data.

GSCC comparison output will continue to be available on an on-line basis. To be eligible for comparison, both submitting members must be deemed eligible for repo comparison processing by GSCC. GSCC will make such a determination based on the demonstration by a member of its ability to submit designated input to and receive designated output from GSCC.

The implementation of Phase 1 comparison services for repos requires certain modifications to GSCC's comparison processes. The "transaction type" data field will be expanded to include two additional transaction types: "repo" (designating the side of the repo transaction that is borrowing funds and lending securities) and "revr" (designating the side of the repo transaction that is lending funds and borrowing securities). Repos and reverse repos will compare only with each other and not with buy and sell activity. Two optional data fields have been added to bolster the comparison process for repos, the give-up broker field and the secondary reference number field. Dealer members may use the give-up broker field to identify the broker, if any, used to conduct the repo. GSCC will provide members with a standardized list of brokers for this purpose. The secondary reference number field may be used by dealers to provide additional identification information on the repos.

Two new mandatory match items for repo transactions will be introduced: start date and start amount. The repo start date will indicate the settlement date for the start leg of the repo. The repo start amount will contain the contract value for the start leg of the repo. Initially, a $1 per repo transaction tolerance for start amount will be established.

The repo rate will be a required submission field but will not be matched. If a participating member does not submit the settlement amount, GSCC will calculate it using the start amount, repo rate, and the number of days from start date to settlement date. Initially, a $1 per $1 million tolerance will be established for settlement amount. When the settlement amounts differ, but the difference falls within the tolerance, GSCC will generate the comparison based upon the amount submitted by the broker (for brokered trades) or upon the amount submitted by the deliverer of the repo close leg.

GSCC currently permits transactions that do not match in a few selected fields to compare in a process referred to as "phased comparison." This program allows those transactions that do not match during real-time comparison to be compared at the end of the day based upon assumptions regarding which party submitted the correct data. Phased comparison of par summarization, settlement amount, and trade date will not apply to repo transactions.[7] Par summarization is the comparison of a trade based on a match of either the total of the par amounts on two or more buy sides equaling the par amounts on one or more sell sides or the total of the par amounts on two or more sell sides equaling the par amounts on one or more buy sides. The phased comparison tolerance of $40 per $1 million for unmatched settlement amounts on buy/sell trades will not apply to repo transactions. This tolerance is used by GSCC in its phased comparison process to account for commission differences.[8]

Phased comparison of the executing firm field and the contra party field will apply to repo transactions. Under phased comparison of the executing firm field, GSCC will compare trades having unmatched executing firm data based upon a match between the participant numbers of the two submitting members. Under phased comparison of the contra party field, GSCC may compare a trade if all details match except the contra party field, and the contra party affiliate submits the matching detail.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[9] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The initiation of comparison services for overnight and term repos will begin the process whereby GSCC will provide the benefits of centralized, automated comparison to a broader segment of government securities transactions.

Encompassing repos in CSCC's automated comparison process will provide industry participants with many benefits, including: (1) Elimination of the need for physical confirmations, (2) timely comparison of repo trade data, (3) enhanced ability for identification and correction of errors, (4) easier recordkeeping, (5) easier access to audit trail information, and (6) on-line inquiry capabilities. The proposal thus enhances the prompt and accurate clearance of repo transactions.

The proposed rule change also will implement a recommendation of the Joint Report on the Government Securities Market.[10] The Joint Report indicated that the market for repurchase and reverse repurchase agreements could benefit from automated comparison. Moreover, the Joint Report noted that automated comparison could enable regulators to obtain data on repos as necessary for surveillance purposes at little or no cost to market participants.[11]

GSCC noted in its filing that it has two physically-remote data processing sites with redundant hardware configuration. Further GSCC has run a pilot program whereby it collected live data to assess the impact of repo processing on its existing systems. The Commission believes that GSCC's automated facilities are sufficient to implement the comparison services for repos that are approved in this order, and the addition of these services will not diminish GSCC's ability to provide its current services for non-repo transactions in a safe, efficient, and timely manner.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Section 17A(b)(3)(F) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–94–10) be, and hereby is approved.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35288 (January 27, 1995), 60 FR 6580.

[3] GSCC also intends to include such services as the tracking of rate changes and open repo interest, the provision to the funds borrower of coupon protection, the provision to all parties of a comprehensive audit trail for their repo activity, and the monitoring and facilitation of collateral substitutions.

[4] GSCC will file proposed rule changes for the authority to implement both the next stage of the first phase of repro services, which is the provision of netting and risk management services for the non-same-day settling aspects of next-day and forward settling repo transactions, and future phases of repo services.

[5] The proposed rule change establishes a new schedule of required data submission items applicable to all trades. In addition to the items on the schedule of required match data, a member must submit the broker reference number, contra submitting member's executing firm, executing firm, external reference number, price (rate), pricing method, and trade date. These fields are not matched.

[6] The following items must match for a trade to compare: (1) Contra member identifying information, (2) CUSIP number, (3) member's identifying number, (4) par amount (quantity), (5) settlement amount, (6) settlement date, and (7) transaction type (*i.e.*, buy, sell, repo, or reverse). In addition, these required match data items must match only for repo transactions: (1) start amount (*i.e.*, the contract value for the start leg of the repo transaction) and (2) start date (*i.e.*, the settlement date for the start leg of a repo transaction).

[7] Phased comparison of trade date does not apply to repos because trade date is not a mandatory input field for repo comparison.

[8] However, as noted above, a $1 per $1 million tolerance will be applied to settlement amounts during real-time comparison.

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] See, Joint Report on the Government Securities Market (January 1992) ("Joint Report"), prepared by the Department of the Treasury, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System.

[11] *Id.* at 31. Activity in the government securities repo market is sizable. Centralized repo processing may give regulators a truer picture not only of the government securities market but also of each market participant's total risk profile, enabling GSCC, other clearing agencies, and regulators to refine their risk reduction policies.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-8453 Filed 4-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35552; File No. SR-OCC-94-11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 30, 1995

On December 30, 1994, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-94-11) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on February 2, 1995, to solicit comments from interested persons.[2] As discussed below, this order approves the proposed rule change.

I. Description

The proposed rule change will conform OCC's rules effective June 7, 1995, to Rule 15c6-1 under the Act. That rule establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most transactions in securities that underlie many OCC issued options. Rule 15c6-1 will become effective June 7, 1995.[3] As described below, OCC is revising several of OCC's rules that include references to underlying securities settlement time frames.

Under Rule 902, the assigned clearing member of an exercised call option contract or the exercising clearing member of an exercised put option contract will be required to deliver the underlying securities on the third business day following the day on which the exercise notice was given to OCC. Rule 2207 will provide that the settlement date for a stock loan will be three business days after the date on which the lending clearing member initiates the termination by notifying OCC. Rule 2208(b) will provide that if the lending clearing member initiates the termination of a stock loan and does not receive the loaned stock in its securities depository account within three business days, the stock loan shall be completed when (1) OCC has transferred the stock to the lending clearing member's account after OCC has received the securities from the borrowing member or (2) the lending clearing member has executed a buy-in Rule 2208(b) also will provide that the lending clearing member may execute a buy-in three business days after initiating the termination or at any time thereafter if the lending clearing member has not received the loaned stock by such date.

OCC has requested that the proposed rule change become effective on the same date as Rule 15c6-1. Rule 15c6-1 is scheduled to become effective on June 7, 1995.[4]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.[5] Specifically, Section 17A(b)(3)(F)[6] states that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in OCC's custody and control or for which OCC is responsible, and to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions. Several of OCC rules are based on a five day time frame for settlement of securities transactions. On June 7, 1995 the new settlement cycle or T+3 will be established, as mandated by the Commission's Rule 15c6-1. As a result the OCC's current rule establishing a T+5 settlement cycle will be inconsistent with Commission rules. This proposal will amend the OCC's rules to harmonize them with a T+3 settlement cycle. Further, as discussed in the release adopting Rule 15c6-1, a shorter settlement time frame could encourage greater efficiency in clearing agencies and broker-dealer operations. Thus, the proposed rule change should enhance the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with Section 17A of the Act.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR-OCC-94-11) be and hereby is approved and will become effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-8421 Filed 4-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20879; 812-9444]

Van Kampen Merritt Equity Opportunity Trust, Series, 7, et al.; Notice of Application

March 30, 1995

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Equity Opportunity Trust, Series 7 and Van Kampen American Capital Distributors Inc. ("Van Kampen American").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATES: The application was filed on January 25, 1995 and amended on March 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, c/o Van Kampen Merritt Inc., One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Van Kampen Equity Opportunity Trust (the "Trust") is a unit investment trust registered under the Act that will consist of a series (each a "Trust Series" or "Series") of unit investment trusts. Van Kampen American is the sponsor and depositor for each Trust Series. Applicants request that the relief sought herein apply to future similar Series of the Trust.

2. Each Trust Series will contain a portfolio of equity securities that represents a portion of a specific index (an "Index"). The investment objective of each Trust Series is to seek a greater total return than that achieved by the stocks comprising the entire related Index over the life of the Trust Series. To achieve this objective, each Trust Series will consist of a specified number of the highest dividend yielding stocks in the Series' respective Index. The sponsor of the Series intends that, as each Series terminates, a new Series based on the appropriate Index will be offered for the next period.

3. Each Trust Series has or will have a contemplated date (a "Rollover Date") on which holders of units in that Trust Series (a "Rollover Trust Series") may at their option redeem their units in the Rollover Trust Series and receive in return units of a subsequent Series of the same type (a "New Trust Series"). The New Trust Series will be created on or about the Rollover Date, and have a portfolio that contains securities ("Equity Securities") that are (i) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (a "Exchange") which is either (a) a national securities exchange that meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange that meets the qualifications set out in the proposed amendment to rule 12d3-1(d)(6) under the Act as proposed by the SEC and that releases daily closing prices, and (ii) included in a published Index.

4. There is normally some overlap from year to year in the stocks having the highest dividend yields in an Index and, therefore, between the portfolios of each Rollover Trust Series and the New Trust Series. For example, of the ten securities selected for inclusion in United States Portfolio, Series 1 on April 1, 1994, nine are still among the top ten dividend yielding stocks as of the date of the application. Upon termination, each United States Portfolio Rollover Trust Series will sell all of its portfolio securities on the New York Stock Exchange as quickly as practicable. Similarly, a New Trust Series will acquire its portfolio securities in purchase transactions on the New York Stock Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Trust Series and the New Trust Series. Applicants, therefore, request an order to permit any Rollover Trust Series to sell portfolio securities to a New Trust Series.

5. In order to minimize the possibilities of overreaching in these transactions, the applicants agree that Van Kampen American will certify to the trustee, within five days of each sale from a Rollover Trust Series to a New Trust Series, (a) that the transaction is consistent with the policy of both the Rollover Trust Series and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs Van Kampen American orally of any such disagreement and returns the certificate within five days to Van Kampen American with corrections duly noted. Upon Van Kampen American's receipt of a corrected certificate, if Van Kampen American can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, Van Kampen American will ensure that the price of units of the New Trust Series, and distributions to holders of the Rollover Trust Series with regard to redemption of their units or termination of the Rollover Trust Series, accurately reflect the corrected price. To the extent that Van Kampen American disagrees with the trustee's corrected price, Van Kampen American and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control are affiliates of one another. Each Trust Series will have an identical or common Sponsor that may be considered to control each Trust Series.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a-7 under the Act permits registered investment companies that are affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of the Trust, as only securities that otherwise would be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is

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[10] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35256 (January 23, 1995), 60 FR 8543.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52897 (adoption of Rule 15c6-1) and 34962 (November 6, 1994), 59 FR 59137 (changing effective date from June 7, 1995 to June 7, 1995).

[4] The transition from T+5 settlement to T+3 settlement will occur over a four day period. Friday June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[5] 15 U.S.C. 78q-1 (1988).

[6] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[7] 15 U.S.C. 78f (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30(a)(12) (1994).

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therefore contrary to the general purposes of the Act. In order to minimize the possibility of overreaching, applicants have agreed to comply with the conditions discussed below.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the securities sold on the applicable Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, it any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Trust Series and New Trust Series.

3. The trustee of each Rollover Trust Series and New Trust Series will (a) review the procedures relating to the sale of securities from a Rollover Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management under delegated, authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8422 Filed 4–5–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2767]

Pennsylvania; Declaration of Disaster Loan Area

Montgomery County and the contiguous counties of Berks, Bucks, Chester, Delaware, Lehigh, and Philadelphia in the State of Pennsylvania constitute a disaster area as a result of damages caused by a fire which occurred on March 7, 1995 in Norristown Borough. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on May 30, 1995, and for economic injury until the close of business on January 2, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276705 and for economic injury the number is 849800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 30, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–8455 Filed 4–5–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2185]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Committee Meeting on Thursday, June 15, 1995 at 9:30 a.m. in Conference Room 1408, Department of State Building, 2201 C Street, NW., Washington, DC The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, DC 20522–2902, telephone 703–875–7800, prior to May 18, 1995. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: March 24, 1995.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 95–8418 Filed 4–5–95; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2186]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 A.M. on Wednesday, May 3, 1995, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to finalize preparations for the 65th Session of the Maritime Safety Committee (MSC 65), and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 9–17, 1995 at IMO Headquarters in London. At the meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. RO/RO ferry safety
b. Bulk carrier safety
c. Role of the human element
d. Existing ship safety standards
e. Strategy for ship/port interface, and
f. Report of eight subcommittees, Bulk Chemicals, Radio Communications, Ship Design and Equipment, Training and Watchkeeping, Flag State Implementation, Stability, Loadlines and Fishing Vessels, Containers and Cargoes, and Lifesaving, Search and Rescue

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, U.S. Coast Guard Headquarters (G–MI), 2100 Second Street, SW., Room 2408 Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: March 22, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–8490 Filed 4–5–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Downeast Flying Service, Inc.

AGENCY: Department of Transportation

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 95–3–59, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Downeast Flying Service, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738 (see former section 419(e) of the Federal Aviation Act).

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, S.W., Room 6401, Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: March 31, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8505 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Commens on petitions received must identify the petition docket number involved and must be received on or before April 21, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. 28179, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 31, 1995.

Donald B. Byrne,

Assistant Chief Counsel, Regulations Division.

Petitions for Exemption

Docket No.: 8179.

Petitioner: The Federal Aviation Administration (FAA), Washington Flight Program (Hangar 6).

Sections of the FAR Affected: 14 CFR 135.251 and 135.255(a).

Description of Relief Sought/Disposition: To permit all Federal Aviation Administration Washington Flight Program (Hangar 6) management, pilot, and maintenance personnel, already included in the Department of Transportation (DOT) internal drug and alcohol testing program (DOT Order 3910.1C), to utilize that program (The Drug and Alcohol-Free Departmental Workplace) in lieu of these sections.

[FR Doc. 95–8411 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mammoth Lakes Airport, Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Mammoth Lakes Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and 14 CFR Part 158.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Lawndale, CA. 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bill Manning, Airport Manager of the Mammoth Lakes Airport, at the following address: The Town of Mammoth Lakes, P.O. Box 1609, Mammoth Lakes, California 93546. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Mammoth Lakes under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mammoth Lakes Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

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On March 22, 1995, the FAA determined that the application to impose and use a PFC submitted by the Town of Mammoth Lakes was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 21, 1995.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: August 1, 1995.

Proposed charge expiration date: August 1, 2002.

Total estimated PFC revenue: $166,826.00.

Brief description of the proposed projects: Environmental Assessment Study, Property Boundary Surveys, Airport Master Plan Update, Acquire Airport Land for the Town of Mammoth Lakes, Purchase Snowblower Equipment, Saw and Seal Runway and Taxiway Pavements, Installation of Airfield Signage, Airfield Markings, Upgrade AWOS 1 to AWOS 3, and Acquisition of Radios for Airport Emergency and Operations Equipment, and Construct Terminal Parking Lot.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Town of Mammoth Lakes, CA.

Issued in Hawthorne, California, on March 27, 1995.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–8506 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement, Dallas County; the Cities of Carrollton, Farmers Branch, and Irving, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Dallas County, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dimpsey, Environmental Coordinator, Federal Highway Administration, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701, or Mr. James W. Griffin, Executive Director, Texas Turnpike Authority, P.O. Box 190369, Dallas, Texas 75219.

SUPPLEMENTARY INFORMATION: The proposed project is the construction of a limited access highway on new right-of-way which would connect the planned S.H. 190 at I.H. 35E in the city of Carrollton with the planned S.H. 161 at I.H. 635 in the City of Irving, Texas. The study segment is slightly more than five miles in length. If feasible, the proposed facility will be constructed as a toll road with provision for multi-modal operation. When constructed, the facility will be an integral part of the regional transportation plan, relieving the already congested I.H. 35E (Stemmons Freeway) corridor and provide an additional outer loop through Dallas County.

Alternatives under consideration include (1) do nothing, (2) constructing a limited access highway, (3) construct a limited access highway with provisions for high occupancy vehicle (HOV) lanes or transit, and (4) alternative alignments.

Scoping meetings will be held to provide other federal and State agencies and the general public opportunities to review the proposed project and to provide early input with regard to areas of concern. The draft EIS and other pertinent materials will be made available for public and agency review and comment prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: March 30, 1995.

Peter A. Lombard,

Director, Office of Planning and Program Development, Fort Worth, Texas.

[FR Doc. 95–8479 Filed 4–5–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Testing sessions to measure effectiveness of comprehensibility scoring formula methodology.

Description: To further its corporate goal of reducing taxpayer burden, the IRS is conducting research to evaluate a methodology for improving the comprehensibility of tax forms. Testing sessions are necessary to provide quantitative evaluation. Subjects will include 1040 and 1040A tax filers. IRS will use the results to improve tax forms and publications.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,600.

Estimated Burden Hours Per Respondent: 2 hours, 10 minutes.

Frequency of Response: Other (one-time testing sessions).

Estimated Total Reporting Burden: 3,267 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–8462 Filed 4–5–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

March 28, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the satisfaction survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by March 31, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432

Survey Project Number: IRS PC:V 95–006–G

Type of Review: Revision

Title: Sacramento Info California (InfoCal) Kiosk Survey

Description: Recently, the State of California deployed a computer-based, touch-screen, multi-media kiosk system—called Info California (InfoCal)—that offers the public a wide range of government services and assistance. InfoCal is designed to offer customers a "one-stop" opportunity to transact whatever governmental services and assistance they need regardless of whether it is at the federal, state or local government level. This survey will provide qualitative information from customers who have had a need to visit a kiosk. Specifically, IRS will collect data regarding what topics customers want on the kiosk which are presently absent, as well as valuable feedback about the nature and adequacy of current topics and ease of kiosk use.

Respondents: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 17 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–8463 Filed 4–5–95; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Announcement of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct the first of at least two prototype tests regarding remote location filing. This notice invites public comments concerning any aspect of the planned test, informs interested members of the public of the eligibility requirements for voluntary participation in the testing of the first prototype, and describes the basis on which Customs will select participants.

EFFECTIVE DATE: The test of the first prototype will commence no earlier than June 1, 1995, and will run for approximately six months. Comments concerning the methodology of the first remote filing prototype must be received on or before May 8, 1995. To participate in the first prototype test, the necessary information, as outlined in this notice, must be filed with Customs on or before May 8, 1995.

ADDRESSES: Written comments regarding this notice and information submitted to be considered for voluntary participation on the first prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 1322, Washington, D.C. 20229–0001.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Russ Lanouette (202) 927–0322, or Jackie Jegels (202) 927–0201.

For operational or policy issues: Linda LeBaron (202) 927–0424.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (RLF) (section 414). Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

I. Description of Proposed Test

The Concept of Remote Location Filing

Remote Location Filing (RLF) will allow a program participant to file electronically an entry of merchandise with Customs from a location within the United States other than at the port of arrival or location of examination. Due to the nature of this prototype test, certain Customs Regulations pertaining to brokers permits, surety bonds, and the entry of merchandise will be suspended.

Since June of 1994, the Customs Remote Team has shared Customs RLF concept through many public meetings and concept papers, and other information on RLF has been distributed on the Customs Electronic Bulletin Board and the Customs Administrative Message System.

Customs intends to conduct at least two prototypes of the RLF component of the NCAP. These tests will determine the system and operational design of the RLF, which will allow all filers to participate in this type of entry process at a national level. At this time, how the final RLF program will operate is unknown. Prototype participants must recognize that these are true prototypes to test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program. It is important to note that time and money spent on these prototypes may not carry forward to the final program.

Description of RLF Program

Customs plans to implement RLF are based on blending the experiences of the planned remote prototypes with other Customs initiatives such as the Reorganization, ACS Redesign (ACE), and Trade Compliance Process

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Improvement. The Customs RLF team's objectives are:

(1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct and evaluation of a limited prototype test of RLF;

(2) To obtain experience through prototype tests of remote location filing for use in the design of operational procedures, automated systems, and regulations that are supportive and compatible with the Customs Reorganization, the Trade Compliance Process Improvement, and the ACE redesign; and

(3) To implement RLF on a national level after the completion of the Reorganization, the Trade Compliance Process Improvement, and the ACE Redesign.

The first RLF prototype (Prototype One) will commence no sooner than June 1, 1995, and is scheduled to run for approximately six months. Prototype One will be conducted with a very limited number of participants at limited locations. This is due to the fact that this prototype will be conducted with minimal system changes thereby requiring Customs to intervene manually in tracking and processing. All procedures and processes will be closely coordinated with all selected and affected parties. The intent of this prototype is to test such operational issues as communication, cargo movement and release, and service to and from remote locations. This prototype will also test features such as filing from a remote location, alternate exam location, and possibly entry summary workload distribution.

The second remote prototype (Prototype Two) is tentatively scheduled to commence no sooner than June 1, 1996. Prototype Two will continue to evaluate operational impact and procedures, and begin addressing additional systemic needs. The work completed by Customs Trade Compliance process improvement teams and the Automated Commercial Environment (ACE or the ACS Redesign), and experience gained from Prototype One will be incorporated into this prototype.

Regulatory Provisions Suspended

Certain provisions in Part 111, pertaining to Customs brokers, Part 113, pertaining to Customs bonds, and Part 141, pertaining to the entry of merchandise, of the Customs Regulations (19 CFR Parts 111, 113, and 141) will be suspended during this prototype test to allow remote filings by brokers in districts where they currently do not hold permits, and to allow for the movement of cargo from its port of arrival to a designated examination site.

II. Eligibility Criteria

Note that participation in this testing will not constitute confidential information and that lists of participants will be made available to the public upon written request.

In order to qualify for filing from a remote location, a program participant in the prototype must have the capability to provide, on an entry-by-entry basis, the electronic entry of merchandise; the electronic entry summary of required information; the electronic transmission of invoice information (ABI/AII or EDIFACT); and the electronic payment of duties fees, and taxes (ACH). Other requirements and conditions are as follows:

1. Participants and requested Customs locations must have operational experience with the Customs Electronic Invoice Program (EIP) with either ABI/AII or EDIFACT. Locations available for prototype participation are those ports currently operating with EIP release and summary processing. It is possible that additional ports may be available when the first prototype commences. The following are locations currently operational with EIP. (S/P indicates summary processing location and R/P indicates release processing location).

DDPP location	Electronic processing status
0101 Portland ME	S/P.
0106 Houlton ME	R/P, S/P done in 0101.
0115 Calais ME	R/P, S/P done in 0101.
0401 Boston	R/P.
0901 Buffalo	S/P.
0903 Rochester	R/P, S/P done in 0901.
1001 New York Seaport.	R/P, S/P.
1101 Philadelphia	R/P, S/P.
1102 Chester PA	R/P, S/P done in 1101.
1103 Wilmington DE	R/P, S/P done in 1101.
1108 Philadelphia Airport.	R/P, S/P done in 1101.
1303 Baltimore Seaport.	R/P, S/P.
1401 Norfolk	R/P.
1601 Charleston	R/P.
1703 Savannah	R/P.
1803 Jacksonville	R/P.
2002 New Orleans	R/P.
2304 Laredo	R/P, S/P.
2704 Los Angeles	R/P, S/P done in Terminal Island, CA.
2809 San Francisco	R/P.
3001 Seattle	R/P.
3701 Milwaukee	R/P.
3801 Detroit	R/P.
3901 Chicago	R/P.
4101 Cleveland	S/P.
4102 Cincinnati	R/P, S/P done in 4101.
41## Louisville	R/P, S/P done in 4101.
4601 Newark	R/P, S/P.
4701 JFK	R/P, S/P.
5201 Miami	R/P, S/P.
5203 Port Everglades	R/P, S/P done in 5201.
5206 Miami Airport	R/P, S/P done in 5201.
5301 Houston	R/P.

2. Participants must be operational on the Automated Clearing House (ACH) 30 days before Prototype One commences;

3. Only entry types 01 (consumption) and 11 (informal) will be accepted;

4. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #5;

5. Participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border (essentially 19 CFR 142.21(a)) with use of paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). Submission of all line items at the time of release will be required of northern border filers, if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival with the use of paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (EI transaction) with electronic invoice must be transmitted;

6. Participants will not be allowed to file an RLF against cargo that has been moved in-bond;

7. Participants will be required to use OGA interfaces where they are available; and

8. If an examination is determined necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested designated examination site which would be a Customs port which is at or nearest the final destination. This movement of cargo to a designated examination port will be under the importer's bond.

9. A participant must maintain an average of 1–2 entries per day throughout the testing of the prototype.

Customs will work with participants to ensure that:

(1) Customs contacts and problem solving teams are established.

(2) Procedures for remote entry and entry summary processing are prepared.

(3) Notification to the participant's contact person of the examination site is arranged.

Prototype One Application

This notice requests importers or brokers on behalf of importers to voluntarily apply for participation in Prototype One by submitting the following information to the Remote Filing Team, U.S. Customs Service, 1301 Constitution Avenue, N.W. Room 1322, Washington, D.C. 20229–0001 on or before the date set forth in the effective date paragraph at the beginning of this notice:

1. Importer name and, if applicable, broker name, address, and filer code.
2. Supplier name, address, and manufacturer's number.
3. Types of commodities to be imported.
4. Other agency requirements.
5. Port(s) of arrival.
6. Designated examination site(s) (location nearest the final destination).
7. Monthly volume anticipated.
8. Requested entry summary processing location(s), if different from the port of arrival.
9. Electronic Invoicing Program status and projected start date.
10. Electronic Payment (ACH) status and projected start date.
11. Main contact person and telephone number for participation questions.
12. Any comments on prototype participation.

Basis for Participant Selection

Eligible importers or importers with brokers will be considered for selection as participants in Prototype One. Customs is looking for a variety of circumstances and participants in this first prototype; however, only a small number of participants will be selected. We stress that those not selected for participation will be invited to comment on the design, conduct, and evaluation of this prototype. Selection will be based on EIP operational experience, volume anticipated, electronic abilities, and available electronic interfaces with other agencies import requirements. Participants selected will be notified by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System.

III. Test evaluation criteria

Once participants are selected, Customs and the participants will meet to review all public comments received concerning any aspect of the test program or procedures, finalize procedures in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. At 90 days and 180 days after commencement, evaluations of the prototype will be conducted, with the final results published in the **Federal Register** as required by § 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements will be established through dataqueries and questionnaires.
2. Reports will be run through use of dataquery throughout the prototype.
3. Questionnaires will be conducted before, during, and after the prototype period.

Preliminary ideas for evaluation criteria for Customs and other government agencies are workload impact (workload shifts, cycletime, etc.), policy and procedural accommodation, trade compliance impact, alternate exam site issues (workload shift, coordination/communication, etc.), problem solving, system efficiency, and the collection of statistics. Criteria ideas for the trade are service in cargo clearance and problem resolution, cost benefits, system efficiency, operational efficiency, and other items identified by the participant group.

In conclusion, it is emphasized that if a company is interested in filing remotely, they must first be operational with the Electronic Invoicing Program (EIP). For information on the Electronic Invoicing Program (EIP), please contact your ABI Client Representative.

Dated: March 30, 1995.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 95–8429 Filed 4–5–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–25]

Country of Origin Marking of Products From the West Bank and Gaza

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of Policy.

SUMMARY: This document notifies the public that, for country of origin marking purposes, goods which are produced in the West Bank and Gaza Strip shall be properly marked as "West Bank," "Gaza" or "Gaza Strip" and shall not contain the words "Israel," "Made in Israel," "Occupied Territories-Israel," or words of similar meaning.

EFFECTIVE DATE: For those persons whose ruling is revoked, the position set forth in this document is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 19, 1995; for all other persons, this document is effective on April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Special Classification and Marking Branch (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 shall result in the levy of a duty of ten percent *ad valorem*. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Past Policy

In the past, Customs has taken the position that in order for the country of origin marking of a good which is produced in the West Bank or Gaza Strip to be considered acceptable, it must be marked with the words "Israel," "Product of Israel," or "Israeli-Occupied West Bank (or Gaza)," or words of similar meaning. In all such instances, Customs required that the word "Israel" must appear in the marking designation. For instance, in HRL 718329 dated December 21, 1981, Customs held that it is acceptable to mark goods which were produced on the West Bank of the Jordan River with the phrase "Israeli-Occupied West Bank," "Made in Israel," or "Israel" and to indicate such marking designation on the Certificate of Origin Form A for purposes of the Generalized System of Preferences (GSP). In another case concerning goods produced on the West Bank of the Jordan River (HRL 718125 dated November 12, 1981), Customs held that these goods must be marked with the designators "Israeli-Occupied West Bank", "Made in Israel", or "Israel" for purposes of indicating the country of origin of the merchandise pursuant to 19 U.S.C. 1304. In addition, in HRL 730094 dated January 30, 1987, Customs held that the proper country of origin marking designation for soap which is produced in the West Bank is "Israeli-occupied West Bank" or simply "Israel". Finally, in HRL 734609 dated May 26, 1992, which concerned the

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proper country of origin marking of fruits and vegetables imported into the U.S. from the Gaza Strip, Customs held that the designation "West Bank" is not an acceptable country of origin marking because the United States does not recognize the West Bank territory as an independent political entity. Consequently, Customs stated in HRL 734609 that as the Gaza Strip has a similar status as the West Bank, the country of origin markings, "Israel-Occupied Gaza," "Made in Israel," or "Israel" but not simply the word "Gaza" can be used on goods which are produced in Gaza.

Recognition of West Bank and Gaza Strip

The Department of State has advised that in accordance with the Israeli-PLO Declaration of Principles on Interim Self-Government Arrangements ("the DOP"), which was signed in Washington, D.C. on September 13, 1993, Israel has agreed to transfer certain powers and responsibilities to the Palestinian Authority. Under this Agreement, Israel has also consented to make a similar transfer to a superseding, elected Palestinian Council, as part of interim self-governing arrangements in the West Bank and Gaza Strip. As part of this Agreement, the Palestinian Authority has agreed to administer its own tariff revenue collection and other customs matters. The Palestinian Authority also acceded to set its own tax policy under the terms of an implementing agreement which was concluded in Cairo on May 4, 1994. In view of these recent developments, the U.S. Department of the State has advised the U.S. Department of the Treasury by letter dated October 24, 1994, that, in their view, the primary purpose of 19 U.S.C. 1304 would be best served if goods which are produced in the West Bank and Gaza Strip are permitted to be marked "West Bank" or "Gaza Strip." The Department of State believes that labeling goods as coming from the "West Bank" or "Gaza" will provide American purchasers with important information indicating their origin, which is the primary purpose of 19 U.S.C. 1304.

Reliance Upon Advice From State Department

Customs has previously relied upon advice received from the U.S. Department of State in making determinations regarding the "country of origin" of a good for marking purposes. In T.D. 49743 dated November 10, 1938, the question was whether products imported from German-occupied territories were regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930, and for determining applicable rates of duty. Based upon instructions given by the U.S. Department of State, Customs held that as a result of a change in jurisdiction from Czechoslovak to German in the Sudeten areas which were under German occupation, products which were manufactured in those areas and were exported on or after the date of German occupation were considered products of Germany for purposes of country of origin marking.

In *United States v. Friedlaender & Co., Inc.*, C.C.P.A. (February 26, 1940), the issue involved the proper country of origin marking of imported merchandise which was wholly manufactured in Czechoslovakia, except at the time the goods were exported, the territory in which the goods were manufactured was under German occupation. Customs held that marking the goods as products of Czechoslovakia was not acceptable, based upon instructions set forth in T.D. 49743. The court agreed with Customs and held that as the goods were exported at a time when that part of Czechoslovakia in which the goods were manufactured was under German occupation, the marking "Czechoslovakia" was not in compliance with the requirements of the marking statute, and the goods should be marked to indicate "Germany" as the country of origin. However, in a later Treasury Decision (T.D. 51360 dated November 30, 1945), the position taken by Customs in T.D. 49743 was rescinded. In T.D. 51360, Customs stated that the U.S. Department of State advised that the boundaries of Czechoslovakia had been reestablished as they existed prior to the date of the occupation by Germany, and that the United States recognized Czechoslovakia as an independent state. Based upon this information, Customs reversed the position taken in T.D. 49743, and concluded that articles which were manufactured or produced in Czechoslovakia after May 8, 1945, should be regarded as products of Czechoslovakia for purposes of the marking provisions of the Tariff Act of 1930.

Accordingly, consistent with prior Customs decisions, Customs is relying upon advice from the Department of State for purposes of defining the term "Country" within the meaning of section 134.1(a), Customs Regulations (19 CFR 134.1(a)).

Revocation of Prior Rulings

On November 23, 1994, Customs issued telex 6327071, which stated that Customs was proposing to change its position regarding the country of origin marking requirements for goods made in the West Bank and Gaza Strip. In the telex, Customs stated that effective immediately merchandise which is produced in the West Bank or Gaza Strip may be properly marked with the words "West Bank," "Gaza," or "Gaza Strip," without the words "Israel," "Product of Israel," or "Israeli-Occupied West Bank," or words of similar meaning, also appearing in the marking designation. The telex further stated that Customs would publish a notice in the *Customs Bulletin* requesting public comment on the modification or revocation of prior rulings concerning this matter. However, it was further noted in the telex that until such modification or revocation is effected, the prior rulings concerning the proper marking of goods made in the West Bank or Gaza Strip would remain valid and goods may continue to be marked in accordance with them.

On February 8, 1995, Customs published a notice in the *Customs Bulletin* (Volume 29, Number 6), proposing to revoke Headquarters Ruling Letters (HRL—s) 718329, 718125, 730094, and 734609, to reflect the position that goods which are produced in the West Bank or Gaza Strip shall be regarded as a product of the West Bank or Gaza Strip in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134, and shall be marked as "West Bank," "Gaza" or "Gaza Strip," and shall not contain the words "Israel," "Made in Israel," "Occupied Territories-Israel," or words of similar meaning.

Two comments received in response to the February 8, 1995, *Customs Bulletin* notice both of which were favorable to the Customs proposal. One commenter, however, suggested that Customs expand the proposed position by allowing goods which are produced in the West Bank or Gaza Strip to be marked as "West Bank," "Gaza," "Palestine," "West Bank, Palestine," or "Gaza, Palestine." The U.S. Department of State has not identified the area within the West Bank or Gaza Strip as one that should be recognized as "Palestine." Therefore, articles which are produced in the West Bank or Gaza Strip may not be marked as products of "Palestine."

New Position

This document notifies the public that unless excepted from marking, goods which are produced in the territorial areas known as the West Bank or Gaza Strip shall be marked as "West Bank," "Gaza," or "Gaza Strip" in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134, and shall not contain the words "Israel," "Made in Israel," "Occupied Territories-Israel," or words of similar meaning. This document also revokes prior ruling letters (HRL's 718329, 718125, 730094, and 734609) regarding the country of origin marking requirements for goods which are produced in the West Bank and Gaza Strip. For those persons whose ruling is revoked, the position stated in this document is effective for merchandise which is entered or withdrawn from warehouse for consumption on or after 60 days from the date this document is published in the *Customs Bulletin;* for all other persons, this document is effective on the date of publication in the **Federal Register**.

Dated: April 3, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–8454 Filed 4–5–95; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds, American Reliable Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34144 to reflect this addition:

American Reliable Insurance Company. Business Address: 8655 East Via De Ventura, Scottsdale, Arizona, 85258. Phone: (602) 483–8666. Underwriting Limitation b/: $1,899,000. Surety Licenses c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, HH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. Incorporated in: Arizona.

Certificates of authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CF part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, telephone (202) 874–7116.

Dated: March 29, 1995.

Charles F. Schwan,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8496 Filed 4–5–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994 Rev., Supp. No. 18]

Surety Companies Acceptable on Federal Bonds; Reliance Insurance Company of Illinois

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34174 to reflect this addition:

Reliance Insurance Company of Illinois. Business Address: 4 Penn Center Plaza, Philadelphia, PA 19103. Phone: (215) 864–4000. Underwriting limitation *b:* $1,464,000. Surety License *c/:* IL Incorporated in: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, telephone (202) 874–6507.

Dated: March 29, 1995.

Charles F. Schwan,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8495 Filed 4–5–95; 8:45 am]

BILLING CODE 4810–35–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 66
Thursday, April 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine o'clock a.m. on Tuesday, March 27, 1995 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide five appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Six Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent J. Fechtel, Jr., John R. Simpson, and Michael J. Gaines.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: March 3, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–8596 Filed 4–4–95; 11:45 am]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 60, No. 66
Thursday, April 6, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 77N-334S]
RIN 0905-AA06

Topical Drug Products for Over-the-Counter Human Use; Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears; Final Rule

Correction

In rule document 95–3803 beginning on page 8916 in the issue of Wednesday, February 15, 1995, make the following correction:

On page 8918, in the third column, in the second full paragraph, in the sixth line from the bottom, "≤" should read ">".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 94N-0380]

Gastroenterology-Urology Devices; Effective Date of the Requirement for Premarket Approval of the Implanted Mechnical/Hydraulic Urinary Continence Device

Correction

In proposed rule document 95–3805 beginning on page 8595 in the issue of Wednesday, February 15, 1995, make the following correction:

On page 8607, in the second column, in Reference 29., in the fourth line, "*Hospital Medicine,*" should read "*Urology,*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-080-1430-01; UTU-71261]

Notice of Realty Action

Correction

In notice document 95–6694 beginning on page 15152 in the issue of Wednesday, March 22, 1995, make the following corrections:

1. On page 15153, in the table, in Parcel No. 14, in the land description, the first line should read "T. 3 S., R. 20 E.,".

2. On page 15154, in the table, in Parcel No. 39, in the land description, the second line should read "Sec. 15: NW¼NE¼.".

BILLING CODE 1505-01-D

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Part II

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Federated Coast Miwork, c/o Greg Sarris, 2062 No. Sycamore Avenue, Los Angeles, California 90068; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on February 8, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8306 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9 (a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Cowasuck Band-Abenaki People, c/o Paul W. Pouliot, 160 Dailey Drive, Franklin, Massachusetts 02038–2951; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 23, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8302 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Catalla-Chilkat Tlingit Tribe of Alaska, c/o Gary C. Patton, 1001 Boniface Parkway, Suite 45p, anchorage, Alaska 99504; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on February 2, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8303 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Pee Dee Indian Association, Inc., c/o David C. Locklear, P.O. Box 557, McColl, South Carolina 29570; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 30, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8307 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Amonsoquath Tribe of Cherokee, c/o Martin Wilson, P.O. Box 296, Deering, Missouri 63840–0296; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on February 17, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8305 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Pocasset Wampanoag Indian Tribe, Fall River Massachusetts, c/o Mr. Robert Page, 900 Milldale Road, Cheshire, Connecticut 06410; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 23, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (formerly § 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's position. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: March 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–8304 Filed 4–5–95; 8:45 am]

BILLING CODE 4310–02–M

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Part III

Department of Defense

Department of the Army

Problems in Tender Filing: New Policy; Notice

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DEPARTMENT OF DEFENSE

Department of the Army

Problems in Tender Filing—New Policy

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of New Policy.

SUMMARY: MTMC is establishing a policy governing carrier's responsibility for tender filings. This policy gives MTMC authority to reject and correct mistakes in rate tender filings, and provides carriers with rate filing procedures for correcting mistakes in rate. This policy was published 59 FR 55460, 7 November 1994, for comments by December 15, 1994. No comments were received.

DATES: The new policy will be effective May 15, 1995, in all new MTMC Non-Guaranteed Traffic (GT) solicitations and all new GT solicitations advertised in the Commerce Business Daily.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–T–ND, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, MTOP–T–ND, (703) 756–1103.

SUPPLEMENTARY INFORMATION: The policy will be included as an enclosure to all future MTMC Guaranteed and Non GT freight solicitations after May 15, 1995.

Problems in Tender Filings

1. *Authority.* As indicated in the solicitation, the Assistant Deputy Chief of Staff for Operations-Transportation Services retains the authority to reject and correct mistakes in rate tender filings.

2. *Procedures for Filing Tenders.*

a. *General.*

(1) Carriers are solely responsible to ensure tender submissions are legible and typed. Handwritten or illegibly typed submissions or submissions having typed strikeovers will be returned as being nonresponsive.

(2) If a rate(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive.

(3) If a minimum charge(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive. If a carrier does not want to make a minimum charge, if applicable, that carrier must insert a "0". Tender submission will be returned as being nonresponsive for failure of carrier to insert a "0".

(4) Tenders containing material alterations shall be rejected as nonresponsive and shall be returned to the carrier.

b. *Carrier Responsibility for Tender Filings.* Carriers are solely responsible for the proper preparation, accuracy, and timely submission of their tenders. Carriers are responsible for establishing quality control procedures that will include review of tenders prior to their submission to Headquarters, Military Traffic Management Command. Tenders found to contain errors such as typographical may be granted relief based on justification in support of alleged errors.

c. *Administrative Errors.* Administrative errors which can be corrected include, but are not limited to, mistakes in the following:

(1) Carrier street address and Standard Carrier Alpha Code.

(2) Carrier telephone number.

(3) Mode, if applicable.

(4) Tender number or series.

(5) Interstate Commerce Commission, and/or intrastate operating authority certificate number.

(6) Typed name of company official authorized to submit rates, address, and telephone number. Tender submission will be returned as being nonresponsive for failure of a carrier to sign its tender.

(7) Tender and rate sheet not corresponding that can be evaluated on an equal basis with other carriers. If a rate sheet varies the material terms (e.g., change in rate qualifier, mileage groups, or minimum weights) of the solicitation so that the rates cannot be evaluated on an equal basis with other carriers, the tender submission will be returned as being nonresponsive.

(8) Failure to submit the required number of original signature copies of the rate tender.

(9) Failure of the carrier to submit a properly signed and executed Certificate of Independent Pricing with tender submission.

3. *Mistakes in Rate Filing Procedures (MIRF).*

a. *General.*

(1) Carriers discovering a mistake(s) before bid closing time can correct such mistake(s) by submission of a new tender prior to closing. The last tender received before closing governs. Identification of a rate error(s) in a bid submission after opening may be initiated by either HQMTMC or in writing by the carrier. After opening, carriers may either withdraw or seek to correct rate error(s).

(2) Correction is allowed for clerical error(s) where the intended rate is obvious from the bid submission itself, as in the case of misplaced decimal.

(3) Correction is allowed in other cases (except in the case of a downward correction which would displace a low bidder) only if the carrier proves the mistake and the rate actually intended by providing HQMTMC (MTOP–T–N) clear and convincing written evidence. If the evidence supports the existence of the mistake, but not the rate actually intended, the carrier will be permitted to withdraw its tender (or MTMC will reject it). Carriers must submit evidence to arrive HQMTMC (MTOP–T–N) within a reasonable time after notification by MTMC of a suspected mistake.

(4) Where a downward correction would displace a low bidder, it is permitted only if the mistake and the intended rate can be determined from the solicitation and the tender itself.

b. *Evidence.* The following evidence must, at a minimum, be submitted by the carrier when the carrier seeks to correct a mistake in rate other than a clerical error(s):

(1) Original source documents pertinent to the error, including, but not limited to, working papers, spread sheets, transcription sheets, adding machine tapes, tariffs, cost data sheets, memorandum for records, written procedural guidance in determining rate levels, internal rate printouts, and other such papers which will provide a clear audit trail for tracing the mistake.

(2) Other documents deemed by the carrier to be relevant to error validation can also be used as evidence.

(3) To protect their interests, carriers are encouraged to retain original source data until it is certain that no further use for it exists.

4. *Rate Errors.* Rate regression mistakes may be considered for relief under the MIRF procedure. Correction of rate regression mistakes cannot affect other rates already in normal regression. Two examples of correctable rate regression mistakes are shown below:

Example 1:

Mileage	Minimum weights				
	1,000	2,000	5,000	10,000	20,000
100 or less	$9.60	$4.80	$1.92	$1.20	$.90
101 to 200	9.60	4.80	1.92	1.20	.90
201 to 300	14.30	7.15	2.86	3.00	1.50
301 to 400	21.90	10.95	4.38	3.09	1.55

The error in the above example is the underlined rate which is not in proper rate regression for the higher minimum weight. It can be corrected without affecting the regression for the mileage groups. If the carrier intended a different rate, the carrier may seek correction under the MIRF procedure, provided that the intended rate itself falls within normal regression.

Example 2:

Mileage	Minimum weights				
	200	500	1,000	2,000	5,000
400 or less	$400	$160	$100	$30	$24
401 to 500	400	160	100	30	24
501 to 600	4	160	100	30	24
601 to 700	400	160	100	30	24

The error in the above example is the underlined rate which is not in proper rate regression for lower distance. It can be corrected without affecting the regression for the minimum weight groups.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–8441 Filed 4–5–95; 8:45 am]

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federal register

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April 6, 1995

Part IV

Department of Commerce

International Trade Administration

Commerce Trade Fair Privatization; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 950327078–5078–01]

Commerce Trade Fair Privatization: Private Sector Organization and Management of Overseas Trade Fairs; Selection and Recruitment

AGENCY: International Trade Administration, Commerce.

ACTION: Requesting proposals from qualified U.S. firms (organizers) to assume U.S. pavilion recruitment, promotion, organization and management functions in selected overseas trade fairs and announcing selection of firms and events for the pilot round of privatization initiated in June 1994.

SUMMARY: This notice sets forth the objectives, applicant criteria, and procedures for qualified U.S. firms, associations or American Chambers of Commerce abroad to assume the responsibility for recruiting, promoting, organizing, and managing a U.S. exhibitor presence abroad in selected overseas trade fairs which previously have been organized and managed by Commerce. In this context and throughout this notice, this transfer of responsibilities is referred to as "privatization."

In order to submit an application, per the preceding paragraph, qualified entities must refer to the June 24, 1994, **Federal Register**, 59 FR 32678–32683, and submit an application per the instructions stated therein, as well as in this notice.

This notice also provides the names of firms, associations, or American Chambers of Commerce selected by the Department of Commerce (Commerce) to assume the responsibility for recruiting, promoting, organizing, and managing a U.S. exhibitor presence abroad in select overseas trade fairs which previously have been organized and managed by Commerce. The subject events were previously announced in the June 24, 1994, **Federal Register**, 59 FR 32678–32683.

DATES: These revised administrative procedures are effective on April 6, 1995. The deadline for receipt of applications from U.S. firms wishing to assume responsibility for recruitment, promotion, and management of a U.S. pavilion or grouping of U.S. exhibitors varies according to each individual show as specified in this notice.

ADDRESSES: Trade Fair Certification Program, Room 2116, Export Promotion Services, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Paul Bucher, U.S. Department of Commerce, Room 2116, 14th and Constitution Avenue, N.W., Washington, DC 20230. Tel: (202) 482–2525 Fax: (202) 482–0115 (for communication purposes only; facsimile applications will not be accepted).

SUPPLEMENTARY INFORMATION: Based on the experience with the pilot round of privatization announced June 24, 1994, there are some modifications to the criteria contained in the referenced **Federal Register** notice. Unless otherwise noted or superseded by this announcement, all applicant eligibility criteria and Conditions of Participation specified in the June 24, 1994, **Federal Register** notice still apply. The changes are as follows:

- In order to qualify, all applications must be received no later than 400 days prior to the first day of the subject show. (Since some show dates are not yet fixed, applicant should contact the event proprietor listed for each event to determine the specific dates of the subject event, and submit an application within the specified time frame.)
- Trade association applicants may not restrict their U.S. exhibitor recruitment campaign to association members only. Such applicants must acknowledge and agree to this condition. This information must be included in the response to Question 10 (Form of Application), as found in the June 24, 1994, **Federal Register** notice.
- For events listed as TFOs (trade fair recruited by overseas' U.S. embassy staff), Commerce cannot guarantee that the foreign trade fair proprietor will agree to privatization of the U.S. pavilion in the subject event. Commerce will assist the selected U.S. pavilion organizer in its discussions with the foreign event proprietor, but it is the foreign event proprietor's decision to grant the necessary lease for exhibit space.
- Within 60 days notice of selection, the U.S. pavilion organizer must submit the necessary lease documentation.
- Prior to selection of the U.S. pavilion organizer, Commerce reserves the right to withdraw an event from the privatization process if circumstances warrant Commerce's retention of the event. Also, following selection of the U.S. pavilion organizer, Commerce may withdraw its support of the U.S. pavilion organizer if Commerce determines that the U.S. pavilion organizer has not complied with the provisions outlined in the **Federal Register** notice of June 24, 1994, and of this notice. Commerce also retains the option to directly organize and manage a pavilion of exhibitors under these circumstances.
- While the foreign event proprietor will be encouraged to offer the selected U.S. pavilion organizer leased space under the same conditions and rates that would be offered to Commerce, Commerce cannot guarantee it.
- Pavilion organizers should note that the foreign event proprietor may opt to select its own agent in advance of Commerce's selection of a U.S. pavilion organizer. In such cases, Commerce will continue to offer its support to the U.S. pavilion organizer and event, but via the standard Trade Fair Certification Program, as prescribed in the **Federal Register** notice dated April 30, 1993, 58 FR 26116.

Applicants Sought

Applicants should contact the relevant trade fair authority about event specifics and logistics. The appropriate Commerce Senior Commercial Officer should be contacted to discuss Commerce's activities and responsibilities as they relate to the U.S. pavilion. Commerce seeks applications from qualified firms, associations, or American Chambers of Commerce abroad to assume U.S. pavilion recruitment, promotion, organization and management functions in the following overseas trade fairs:

Type	Event name	Industry	Ex. No.	Show date	City/country	FRE
TFO	FIEPAG, Randolph Haynes, Alcantara Machado Feiras e Promocoes Ltda., Rua Brasilio Machado 60, 01230–905, Sao Paulo, Brazil, Tel: 55–11–826–9111, Fax: 55–11–673–626.	PGA	20	May 1996, Richard Ades, Senior Commercial Officer, US&FCS Rua Estados Unidos, 1812, Sao Paulo, S.P., Brazil, Tel: 55–11–853–2011, Fax: 55–11–853–2744.	Sao Paulo, Brazil	B
SFO	EXPO USA (contact post directly), Robert Bucalo, Senior Commercial Officer, US&FCS, Unit 5500, APA AA 34041, Tel: 809–541–2171, Fax: 809–688–4636.	GIE	60	June 1996	Santo Domingo, Dominican Rep.	A
TFO	Computex (contact post directly), Ying Price, Senior Commercial Officer, American Trade Center, Room 3207 International Trade Building, Taipei World Trade Center, 333 Keelung Road, Section 1, Taipei 10548, Taiwan, Tel: 886–2–720–1550, Fax: 886–2–757–7162.	CPT/CSF	30	June 1996	Taipei, Taiwan	A
TFO	Santa Cruz, Luis Alberto Pacheco or Eric Weise M arquez, Feria Exposicion de Santa Cruz, Av. Roca y Coronado s/n, Casilla 116, Santa Cruz, Bolivia, Tel: 591–3–533–535, Fax: 591–3–530–881.	GIE	30	Sept. 1996, Paul Larsen, Economic/Commercial Officer, American Embassy, APO AA 34032, Tel: 591–2–350–251, Fax: 591–2–359–875.	Santa Cruz, Bolivia	B

In order to receive the necessary details about Commerce's current and previous involvement with the subject event, applicants should contact Commerce's Senior Commercial Officer in the country where the show is being held. If contact information for these officers is required, refer to "For Further Information" at the beginning of this notice.

Type
- TFO—Trade Fair recruited by overseas post
- SFO—Trade Fair for U.S. products/services only (recruited by overseas post)

Frequency
- A—Annual
- B—Biennial

Show Industry Codes
- CPT—Computers and Peripherals
- CSF—Computer Software
- GIE—General Industrial Equipment
- PGA—Printing and Graphic Arts Equipment

Selected Shows and Applicants

As part of the pilot round of trade event privatization announced in the June 24, 1994, **Federal Register** notice, the following shows and U.S. pavilion organizers/managers were selected:

Show name/date	Applicant
Rural Ex, July 12–31, 1995, Buenos Aires, Argentina.	William Warnes, VP International, CMC—International Division, 200 N. Glebe Road, Suite 900, Arlington, VA 22203, Tel: (703) 527–8000, Fax: (703) 527–8006.
Seoul Instrument, Sept. 1995, Seoul, Korea	Kathy Donnelly, Managing Dir., Concord Expo Group, P.O. Box 677, Concord, MA 01742–2101, Tel: (508) 371–2203, Fax: (508) 371–7121.
Offshore Europe, Sept. 5–8, 1995, Aberdeen, Scotland.	Jolanta Mazewski-Dryden, Dir. of Conferences and Exhibitions, International Exhibitions, Inc., 1635 W. Alabama, Houston, TX 77006, Tel: (713) 529–1616, Fax: (713) 529–0936.
Plovdiv Int'l Fair, Sept. 26–Oct. 2, 1995, Plovdiv, Bulgaria.	John D. Liakatos, Via Expo Ltd., P.O. Box 630196, Bronx, NY 10463, Tel: (718) 548–4747, Fax: (718) 548–8197.
Expo Salud, Oct. 3–7, 1995, Santiago, Chile	William Warnes, VP International, CMC—International Division, 200 N. Glebe Road, Suite 900, Arlington, VA 22203, Tel: (703) 527–8000, Fax: (703) 527–8006.
Polagra Int'l Fair, Oct. 6–11, 1995, Poznan, Poland.	Jeff Malley, Dir. Int'l Sales and Marketing, Comtek International, 43 Danbury Road, Wilton, CT 06897, Tel: (203) 834–1122, Fax: (203) 762–0773.
Aimex, Oct. 16–20, 1995, Sydney, Australia	Peter Vlahos, International Concrete and Aggregates Group, 900 Spring Street, Silver Spring, MD 20910, Tel: (301) 587–1400, Fax: (301) 587–4260.
Mineria, Oct. 18–22, 1995, Acapulco, Mexico	William Warnes, VP International, CMC—International Division, 200 N. Glebe Road, Suite 900, Arlington, VA 22203, Tel: (703) 527–8000, Fax: (703) 527–8006.
Fisa, Oct. 25–Nov. 5, 1995, Santiago, Chile	Catherine Doerr, President, ShoWorks, Inc., 702 S. Washington, Spokane, WA 99204–2524, Tel: (509) 838–8755, Fax: (509) 838–2838.
Pacific Int'l Fair, November 1995, Lima, Peru	William Warnes, VP International, CMC—International Division, 200 N. Glebe Road, Suite 900, Arlington, VA 22203, Tel: (703) 527–8000, Fax: (703) 527–8006.
Taipei Int'l Book Fair, January 1996, Taipei, Taiwan.	Kathy Donnelly, Managing Dir., Concord Expo Group, P.O. Box 677, Concord, MA 01742–2101, Tel: (508) 371–2203, Fax: (508) 371–7121.
Expocomer, March 6–11, 1996, Panama City, Panama.	Dan Chambers, DC Commerce International, 3021 South Hill Street, Arlington, VA 22202, Tel: (703) 941–3460, Fax: (703) 941–2642.

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Show name/date	Applicant
Inpoco, April 1996, Seoul, Korea	Kathy Donnelly, Managing Dir., Concord Expo Group, P.O. Box 677, Concord, MA 01742–2101, Tel: (508) 371–2203, Fax: (508) 371–7121.
Interclean '96, April 1996, Amsterdam, Netherlands.	Ellen Glew, President, E. Glew International, Ten Tower Office Park Dr., Woburn, MA 01801, Tel: (617) 933–9055, Fax: (617) 933–8744.
Technotron, April 1996, Lima, Peru	William Wames, VP International, CMC—International Division, 200 N. Glebe Road, Suite 900, Arlington, VA 22203, Tel: (703) 527–8000, Fax: (703) 527–8006.
Telexpo, April 14–22, 1996, Sao Paulo, Brazil	James M. Forlenza, Vice President, Industrial Group, EJ Krause and Assoc., Inc., 7315 Wisconsin Ave., Suite 450 N, Bethesda, MD 20814, Tel: (301) 986–7800, Fax: (301) 986–4538.
Interzoo, May 1996, Nuremberg, Germany	Kathy Donnelly, Managing Director, Concord Expo Group, P.O. Box 677, Concord, MA 01742–2101, Tel: (508) 371–2203, Fax: (508) 371–7121.
Expomin '96, May 14–18, 1996, Santiago, Chile	Joseph Lema, Acting Vice President, Manufacturing, National Mining Association, 1130 17th Street, NW., Washington, DC 20036, Tel: (202) 463–2625, Fax: (202) 833–1965.
Eurosatory '96, June 24–29, 1996, Paris, France.	Joseph P. Hollis, Director, Industry Affairs, Association of the U.S. Army, 2425 Wilson Blvd., Suite 657, Arlington, VA 22201, Tel: (703) 841–4300, ext. 660, Fax: (703) 243–2589.
Bogota Int'l Fair, July, 1996, Bogota, Colombia	Joseph A. Finnin, Exec. Dir., Colombian-American Chamber, of Commerce, Calle 35 No. 6–16, Bogota, Colombia, South America, Tel: (571) 288–1306, (571) 285–7800, Fax: (571) 288–6434.

Dated: March 30, 1995.

Mary Fran Kirchner,

Chairman, Trade Events Board, International Trade Administration, Department of Commerce.

[FR Doc. 95–8442 Filed 4–5–95; 8:45 am]

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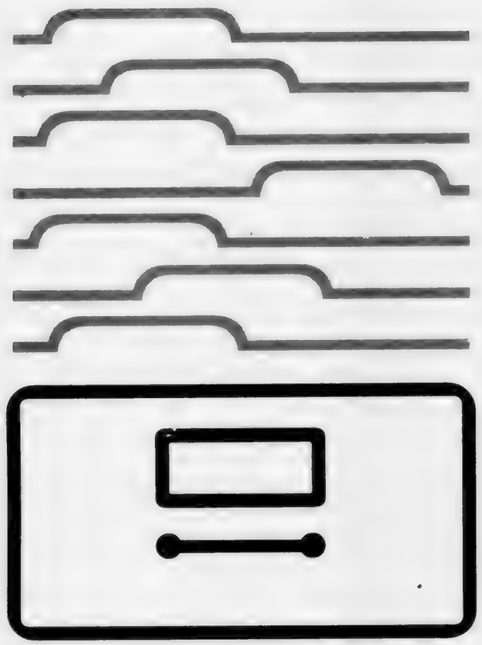
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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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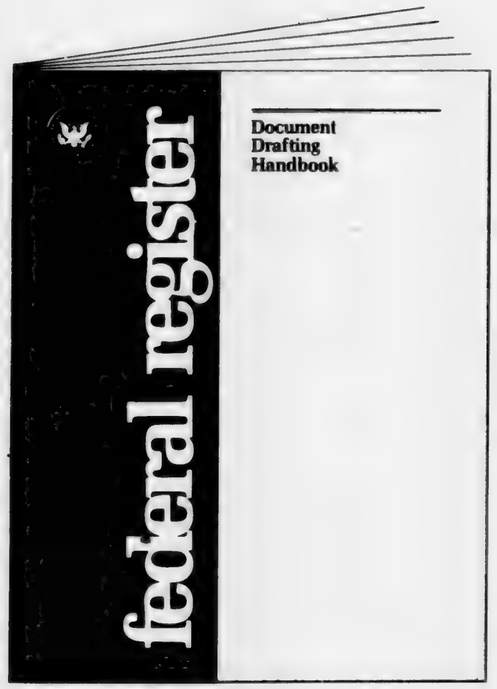
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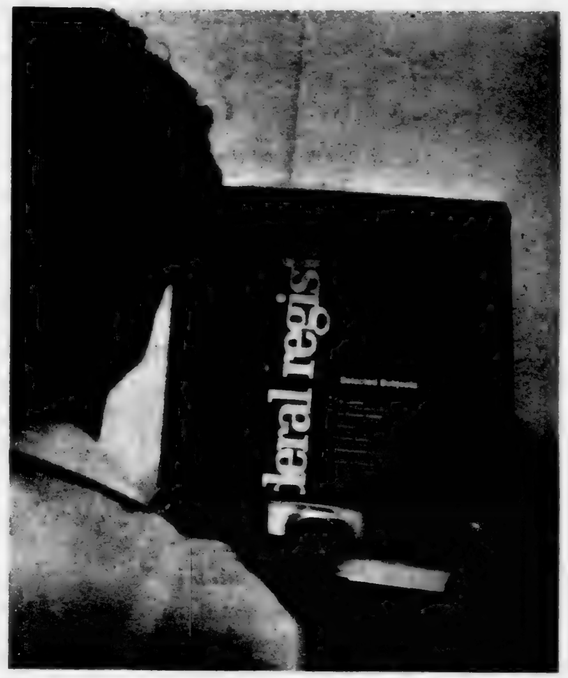
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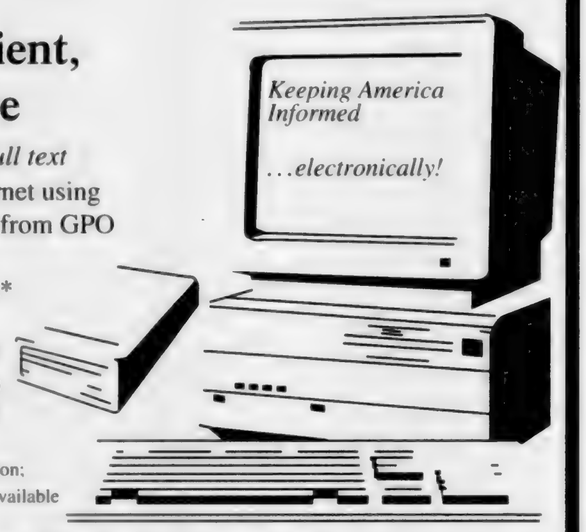
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EXPORT-IMPORT BANK OF THE UNITED STATES

5 CFR Chapter LII

12 CFR Part 400

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Export-Import Bank of the United States

AGENCY: Export-Import Bank of the United States (Eximbank).

ACTION: Interim rule with request for comments.

SUMMARY: The Export-Import Bank of the United States, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of Eximbank that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental rules prohibit certain Eximbank employees and their spouses and minor children from owning securities in any of the entities designated as having the most substantial dealings with Eximbank and require Eximbank employees, other than special Government employees, to obtain prior approval to engage in outside employment.

Eximbank is also repealing its existing regulations setting forth agency standards of ethical conduct which have been substantially superseded by the executive branch-wide Standards of Ethical Conduct and by the executive branch-wide financial disclosure regulations issued by OGE. In place of the existing Eximbank regulations in 12 CFR part 400, Eximbank is substituting a cross-reference to the new executive branch-wide regulations and to these supplemental regulations.

DATES: Interim rule effective April 7, 1995. Comments are invited and must be received on or before May 22, 1995.

ADDRESSES: Send comments to the Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, DC 20571, Attention: Mr. Paul W. Boyer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. McKinsey, Export-Import Bank of the United States, Office of The General Counsel, telephone (202) 565–3452.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

5 CFR 2635.105 authorizes an executive branch agency to issue, with OGE's concurrence, agency-specific supplemental regulations that are necessary to implement effectively its ethics program. Eximbank, with OGE's concurrence, has determined that the following supplemental rules, being codified in new 5 CFR chapter LII, are necessary for the successful implementation of Eximbank's ethics program, in light of Eximbank's operations.

II. Analysis of the Regulations

Section 6201.101 General

Section 6201.101 explains that the regulations contained in the interim rule apply to employees of Eximbank and are supplemental to the executive branch standards.

Section 6201.102 Prohibited Financial Interests

The Standards, at 5 CFR 2635.403(a), specifically recognize that an individual agency may find it necessary or desirable to issue a supplemental regulation prohibiting or restricting the acquisition or holding of a financial interest or a class of financial interests by its employees, or any category of its employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Eximbank has made such a determination with respect to certain holdings by those employees, other than special Government employees, who are required to file public or confidential disclosure statements. With respect to the spouses and minor children of these Eximbank employees, Eximbank has made an additional determination that there is a direct and appropriate nexus between the prohibition on holding certain financial interests as applied to spouses and minor children and the efficiency of the service provided by Eximbank. To help ensure public confidence in the integrity of Eximbank's programs and operations, this interim rule, for codification at 5 CFR 6201.102, will prohibit covered employees of Eximbank and their spouses and minor children from owning securities of any of the entities designated by Eximbank as having the most substantial dealings with Eximbank.

Section 6201.103 Prior Approval of Outside Employment

The Standards, at 5 CFR 2635.803, also specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees to obtain approval before engaging in outside employment or activities. The Eximbank standards of conduct regulations have long required employees to obtain written permission prior to engaging in outside employment. Eximbank has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, Eximbank has determined that it is necessary to the administration of its ethics program to continue to require such prior approval. This interim rule, for codification at 5 CFR 6201.103, will require employees of Eximbank, other than special Government employees, who desire to engage in outside employment to obtain prior approval of such employment from their immediate supervisor and from Eximbank's Designated Agency Ethics Official.

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Repeal of Eximbank Standards of Conduct

Eximbank is repealing its existing standards of ethical conduct regulations codified at 12 CFR part 400 which have been largely superseded by the executive branch-wide Standards at 5 CFR part 2635 or the executive branch financial disclosure regulations at 5 CFR part 2634. In place of its old standards at 12 CFR part 400, Eximbank is issuing a residual cross-reference provision at new 12 CFR 400.101 to refer both to the executive branch-wide Standards and financial disclosure regulations and to Eximbank's new supplemental standards regulations.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of Eximbank, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from Eximbank's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to Eximbank organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Export-Import Bank of the United States will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

As General Counsel of Eximbank, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only Eximbank employees and their immediate families.

Paperwork Reduction Act

As General Counsel of Eximbank, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6201

Conflict of interests, Government employees.

12 CFR Part 400

Conflict of interests, Government employees.

Dated: March 1, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

Approved: March 15, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Export-Import Bank of the United States, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter IV, of the Code of Federal Regulations as follows:

1. A new Chapter LII, consisting of part 6201, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LII—EXPORT-IMPORT BANK OF THE UNITED STATES

PART 6201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.

6201.101 General.
6201.102 Prohibited financial interests.
6201.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803.

§ 6201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Export-Import Bank of the United States (Bank) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees of the Bank are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6201.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (f) of this section, no covered employee or covered family member shall own securities issued by an exporter or lending institution appearing on the List of Designated Entities under paragraph (b) of this section.

(b) *List of Designated Entities*—(1) *Compilation of list of designated entities.* Once each fiscal year, the designated agency ethics official (DAEO) shall compile a List of Designated Entities based upon the following criteria:

(i) All exporters that, during the preceding two fiscal years, exported an aggregate dollar volume of goods and services supported by the Bank in excess of four hundred million dollars ($400,000,000);

(ii) All exporters that, during the preceding two fiscal years, had seven (7) or more aggregate export transactions supported by the Bank;

(iii) All lending institutions that, during the preceding two fiscal years, financed an aggregate dollar volume of export transactions supported by the Bank in excess of one hundred fifty million dollars ($150,000,000); and

(iv) All lending institutions that, during the preceding two fiscal years, financed twenty (20) or more aggregate export transactions supported by the Bank.

(2) *Distribution of list of designated entities.* The DAEO shall distribute the List of Designated Entities to all covered employees promptly after it is compiled, and shall ensure that each new covered employee receives a copy of the current List of Designated Entities promptly after becoming a covered employee.

(c) *Definitions.* For purposes of this section:

(1) *Covered employee* means an employee of the Bank, other than a special Government employee, who is required to file a public or a confidential financial disclosure report (Form SF 278 or SF 450) under 5 CFR part 2634.

(2) *Covered family member* means the spouse or minor child of a covered employee.

(3) *Securities* means all financial interests evidenced by debt or equity instruments. The term includes, without limitation, bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both present and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto. It does not include:

(i) An investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund, provided that the fund does not invest more than ten percent (10%) of the value of its portfolio in securities of any one entity on the List of Designated Entities and the covered employee or covered family member neither exercises control over nor has the ability to exercise control over the financial interests held in the fund; or

(ii) Certificates of deposit, checking accounts, savings accounts and other deposit accounts.

(4) *Support by the Bank* means:

(i) Direct loans made by the Bank;

(ii) Guarantees by the Bank of loans from lending institutions; or

(iii) Insurance policies issued by the Bank under any of its insurance programs.

(d) *Restrictions arising from third party relationships.* If a covered employee has knowledge that any of the entities described in paragraphs (d)(1) through (d)(6) of this section own any security that a covered employee or covered family member would be prohibited from owning by paragraph (a) of this section, the covered employee shall promptly report such interests to the DAEO. The DAEO may require the covered employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or of this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the covered employee or covered family member is a general partner;

(2) Partnership in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent limited partnership interest;

(3) Closely held corporation in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest;

(4) Trust in which the covered employee or covered family member has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee or covered family member and others; or

(6) Other entity if the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest.

(e) *Period to Divest.* Unless a waiver is granted pursuant to paragraph (f) of this section, a covered employee or covered family member who owns securities of a designated entity as of the date that the initial List of Designated Entities is circulated to covered employees, the date that a revised List of Designated Entities is circulated to covered employees, or the first day that an individual becomes a covered employee, shall divest the securities within six (6) months of such date. The DAEO may, in certain cases of unusual hardship, grant a written extension of up to an additional six (6) months within which a covered employee or covered family member must divest securities of a designated entity. Notwithstanding the grant of an extension, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502. A covered employee or covered family member who must divest securities pursuant to this section should refer to section 1043 of the Internal Revenue Code and to the regulations of subpart J of 5 CFR part 2634 under which the covered employee or covered family member may be eligible to defer the recognition of taxable gain on the sale or other divestiture.

(f) *Waivers.* The DAEO may grant a written waiver from the securities prohibition contained in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Bank programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(g) *Agency determinations of substantial conflict.* Nothing in this section prevents the Bank from prohibiting or restricting an individual Bank employee from acquiring or holding a financial interest or a class of financial interests based upon the Bank's determination of substantial conflict pursuant to 5 CFR 2635.403(b).

§ 6201.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain the written approval of the employee's immediate supervisor and the DAEO. Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation (including 5 CFR part 2635). In the case of an employee who wishes to practice a profession involving a fiduciary relationship, as defined in 5 CFR 2636.305(b), approval will be granted only for each individual matter in the course of practicing such profession.

(c) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

12 CFR CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES

2. Part 400 of 12 CFR chapter IV is revised to read as follows:

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PART 400—EMPLOYEE FINANCIAL DISCLOSURE AND ETHICAL CONDUCT STANDARDS REGULATIONS

§ 400.101 Cross-reference to employee financial disclosure and ethical conduct standards regulations.

Employees of the Export-Import Bank of the United States (Bank) should refer to:

(a) The executive branch-wide financial disclosure regulations at 5 CFR part 2634;

(b) The executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; and

(c) The Bank regulations at 5 CFR part 6201 which supplement the executive branch-wide standards.

Authority: 5 U.S.C. 7301.

[FR Doc. 95–8593 Filed 4–6–95; 8:45 am]

BILLING CODE 6690-01-P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584–AB78

Food Stamp Program: Medical Expense Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rulemaking published on October 3, 1994. The interim rulemaking amended food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

DATES: The amendments to § 272.1(g)(138), § 273.10(d)(4), and § 273.21(f)(2)(iv), § 273.21(i) and § 273.21(j)(3)(ii)(C) are effective May 8, 1995 and must be implemented no later than September 5, 1995. The remaining provisions of the interim rule which are being adopted as final without change, were effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Under Secretary for Food, Nutrition, and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On October 3, 1994, the Department published an interim rule at 59 FR 50153 (interim regulation) amending the food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses. Comments were solicited on the provisions of the interim rule through December 2, 1994. This final action addresses the commenters' concerns. Readers are referred to the interim rule for a more complete understanding of this final action.

The Department received 5 comments on the interim rule. Two of the commenters supported the interim rule, believing that it benefitted households and State agencies alike by eliminating unnecessary reporting requirements. Four of the five commenters raised issues which are addressed below.

Budgeting of Medical Expenses

A commenter noted that, although the interim regulations require State agencies to allow households to estimate, prospectively, recurring medical expenses, they do not explicitly prohibit retrospective budgeting of those expenses. Such retrospective budgeting is prohibited by section 5(e) of the Food Stamp Act of 1977, as amended, 7 USC 2014(e) (Act). Since only households in which all members are elderly or disabled with no earned income are amongst those groups of households exempt from retrospective budgeting, the interim rule's failure to explicitly prohibit the retrospective budgeting of medical expenses leaves open the possibility that some households' medical expenses would be budgeted in that manner.

The Department agrees with the commenter that the interim regulations failed to explicitly prohibit the retrospective budgeting of medical expenses. Therefore, the Department is amending current regulations at 7 CFR 273.21(f)(2)(iv) to require that State agencies prospectively budget recurring medical expenses.

Verification of Medical Expenses

The same commenter requested clarification of the procedures for State agency action on a household's voluntary report of a change in medical expenses. Although reporting of changes in medical expenses during the certification period was not required by the interim rule, the household was given the option of voluntarily reporting any changes in medical expenses it incurred between certifications. If the household voluntarily reported a change in its medical expenses, the interim rule required the State agency to act on the change in accordance with current regulations at 7 CFR 273.12(c).

The commenter felt that the reference was unclear and that further clarification was necessary. The commenter was particularly concerned about instances in which a household voluntarily reports a change in medical expenses that would cause a decrease in the household's allotment. Under current regulations at 7 CFR 273.12(c), the State agency may act on a reported change that would decrease the household's allotment or make the household ineligible without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification. The commenter felt that it should be clear in the regulatory language at 7 CFR 273.2, that if the household voluntarily reports a change in its recurring medical expenses that would decrease its allotment, the State agency should act on the change without requiring the household to verify it.

The Department agrees with the commenter that, with respect to State agency action on a household's voluntary report of changes in medical expenses, additional clarification of the requirements is desirable. Therefore, the Department is amending 7 CFR 273.10(d)(4) and 7 CFR 273.21(i) and (j)(iii)(C) to describe the procedures for acting on a household's voluntary report of changes in its medical expenses. The State agency is required to verify reported changes that would increase a household's allotment. The State agency has the option of either requiring verification prior to acting on the changes, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification.

Restored Benefits

A commenter stated that the interim rule should have provided for restoration of benefits back to October 1, 1991; the effective date of section 1717 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (1990 Leland Act), Title XVII, Public Law 101–624. The commenter argued that, because the Department failed to issue regulations in connection with section 1717 of the 1990 Leland Act, elderly and disabled households were wrongfully denied allotments based on recurring medical expenses during the period beginning October 1, 1991 (the effective date of section 1717 of the 1990 Leland Act) to October 1, 1994 (the effective date of the October 3, 1994 interim rule). The commenter believed that the interim regulations should permit these households to receive restored benefits back to October 1, 1991.

Another commenter, however, questioned the need for the restoration of benefits under the interim rule. The commenter noted that under previous regulations, eligible households were receiving allowable medical expense deductions and that the interim rule merely simplified the process through which households can claim that deduction. Since eligible households were already receiving a deduction, the commenter asked in what case would a household be entitled to restored benefits.

The Department agrees with the second commenter that restored benefits are not necessary in connection with the interim rule. The provisions of the interim rule did not change eligibility requirements for the medical deduction, but only simplified reporting procedures for claiming the deduction. Households that claimed the deduction under the previous rules should have received a benefit similar to that received under current rules.

It could be argued that some eligible households may have refrained from claiming the medical deduction under the old rules because they felt that the former reporting requirements were too exacting, and that if the simplification provisions of the October 3, 1994 interim regulation had been published by the effective date of the 1990 Leland Act, those households would have claimed the medical deduction. However, restored benefits would not be appropriate for such households since the Department's former reporting requirements were consistent with the statute and within the Department's discretion. Therefore, such households could not argue they were wrongfully denied benefits.

At the time the 1990 Leland Act was enacted, the Department believed that its then existing regulations adequately addressed the intent of section 1717. This claim was made in a proposed rule (Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act, June 28, 1991, 56 FR 29594), and no comment was received to the contrary. After learning that some States may have been confused and were misapplying the reporting requirements, the Department first issued regional memoranda and then exercised its discretion to revise and simplify its rules in a way designed to ease the reporting burden on both households and State agencies.

The Department maintains that its old rules satisfied the requirements of section 1717 of the 1991 Leland Act. Under the rules that existed at that time, a household's medical expense deduction for the certification period was still based on the household's prospectively estimated recurring medical expenses and there was no change in the procedures that occur at the time of certification or recertification. Households were, however, required to report unanticipated changes of $25 or more which occurred during the certification period.

The major simplification provision of the interim rule was the elimination of the household's requirement to report unanticipated changes of $25 or more in its medical expenses that it experienced during the certification period. The Department believes that this simplification was not required by section 1717 of the 1990 Leland Act but was within the discretion of the Department to further simplify medical deduction reporting procedures for households and beleaguered State agencies alike.

The Department disagrees with the commenter that households eligible for the medical deduction should be issued restored benefits. First, the provisions of the interim rule merely simplified discretionary reporting requirements and did not alter eligibility requirements. Households eligible for the medical deduction would have received essentially the same benefit under the old rules as they did under the interim regulations. Second, though some households may have refrained from claiming the medical expense deduction because of the reporting requirements connected with the deduction, the Department contends that since the regulations in effect prior to the interim rule were reasonably within the Department's discretion when implementing the medical expense provisions of the 1990 Leland Act, no household was wrongly denied benefits.

Consistent with the above, the Department is not amending the interim regulations to provide for the restoration

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of benefits back to October 1, 1991 for households eligible for the medical expense deduction. The Department, however, is amending the interim regulations at 7 CFR 272.1(g)(138) to eliminate the requirement that restored benefits be issued back to October 1, 1994, the effective date of the interim rule, for households converted to the interim rule's procedures after the effective date. As noted by the second commenter, households eligible for the medical expense deduction were receiving correct deductions under prior regulations, and thus restored benefits are not necessary. If the household properly reported and verified its allowable medical expenses, it should have received the correct amount of benefits.

On a related issue, a commenter wrote that State agencies should be required to notify eligible households immediately of the provisions of the interim rule. The interim rule required State agencies to implement the changes in medical deduction policy on October 1, 1994, and all households that newly apply for Program benefits on or after October 1, 1994 would be subject to the interim rule procedures. For households participating prior to October 1, 1994, the interim rule required that they be subject to the new provisions at their request, at the time of recertification, or when their case is next reviewed, whichever occurs first. The State agency is required to provide restored benefits to such households back to the required implementation date or the date of application, whichever is later.

The commenter felt that since households are unlikely to know about the changes in medical deduction policy required by the October 3, 1994 interim rule and, therefore, are unlikely to request benefit conversion to the new policy, State agencies should be required to notify households of the provisions of the interim rule immediately and not wait until the household's next recertification or case review. The commenter noted that households with elderly or disabled persons are likely to have longer certification periods, perhaps up to 24 months. Therefore, waiting until a household's next recertification could delay implementation of the interim rule's provisions for several years. The commenter also contended that restored benefits are insufficient because they force vulnerable, hungry households to go without benefits during the certification period when they most need the assistance.

The provisions of the interim rule simplify the means by which households with elderly and disabled members can claim the medical deduction. Those provisions benefit both eligible households and State agencies by reducing the reporting burden associated with the deduction. The Department agrees with the commenter, therefore, that it is in the best interest of both households and State agencies for eligible households to be made aware of the interim rule's procedures as soon as possible. Therefore, the Department is revising the implementation regulations of the interim rule at 7 CFR 272.1(g)(138) to require that State agencies notify all households eligible for the medical expense deduction of the change in medical deduction reporting procedures and of their right to be converted to those new procedures immediately. The method of notification is being left up to the State agencies.

Another commenter requested clarification of a State agency's obligation to establish claims or provide supplemental benefits to households as a result of the changes in medical deduction policy. As noted above, a household's medical deduction is based on expenses reported at certification and changes in those expenses that can be reasonably anticipated. The household does not have to report any changes in its medical expenses during the certification period. The State agency would learn of any difference between the deduction and actual costs at the household's next recertification, when the household would be required to report and verify all of its current medical expenses. However, the State agency would not be allowed to apply this information to the previous (i.e., ending) certification period.

Because of the change in policy regarding the reporting of medical expenses during the certification period, the State agency shall not issue supplements to or establish claims against households that choose not to report and/or verify changes in medical expenses when they occur during the certification period. The Department is amending the interim regulations at 7 CFR 273.10(d)(4) to clarify this requirement.

Implementation

Under the interim rule, the provisions addressed in this final rule were effective October 1, 1994. The Department received one comment criticizing the short implementation time of the interim rule. The commenter wrote that State agencies are put in an awkward position whenever regulatory changes are made effective prior to the date of release of a regulation. This anomaly, the commenter noted, usually results because of the statutory implementation date of a provision. The provisions of the October 3, 1994 interim rule, however, were discretionary, and the commenter felt that the Department could have afforded State agencies a reasonable period of time for implementation.

The Department understands the difficulties State agencies encounter when the effective date of a rule precedes its publication date. However, the Department felt that, due to apparent misapplication of the reporting requirements by some State agencies, the provisions of the interim rule were important enough to warrant a retroactive implementation date. In addition, in the Spring of 1994, the Department informed State agencies through its regional offices of the likelihood of a change in regulations regarding the medical expense deduction, thus giving State agencies the opportunity to do advanced planning in regard to implementing the rule. No change in the interim rule's effective date is being made in this final rule.

The provisions of this final action which adopt as final without change provisions of the interim rule were effective as of October 1, 1994. The provisions of this final action which require alteration of State procedures are to be effective May 8, 1995 and must be implemented no later than September 5, 1995.

Any variance resulting from the implementation of the provisions of this final rule shall be excluded from quality control error analysis for 120 days from the required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs–social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security.

Accordingly, the interim rule amending 7 CFR 272 and 273 which was published at 59 FR 50153 on October 3, 1994, is adopted as a final rule with the following changes:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(138) is revised to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(138) *Amendment No. 359* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 275.12(d)(2)(vii) of this chapter. The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. State agencies must notify households eligible for the deduction of the change in medical deduction reporting requirements and the right of the household to be converted to those new procedures immediately. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10, the eighth sentence of paragraph (d)(4) is removed, and three new sentences are added to the end of paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification.

* * * * *

4. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding the words ", except medical expenses," after the words "prorated over two or more months" in the first sentence, and by adding a new sentence after the first sentence.

b. The third sentence of paragraph (i) is revised and a fourth sentence is added.

c. Paragraph (j)(3)(iii)(C) is revised.

The revisions and addition read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * Medical expenses shall be budgeted prospectively. * * *

* * * * *

(i) *Verification.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports.*

* * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

* * * * *

Dated: March 30, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–8492 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 95–003–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by removing and adding commuted traveltime allowances for travel between various locations in Oregon, Washington, and Wyoming. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Resource Management Staff, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 130, Riverdale, MD 20737–1228; (301) 734–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as

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nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for travel between various locations in Oregon, Washington, and Wyoming. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Just Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Remove]			
Oregon:			
Astoria	Longview, WA.	1	3
Coos Bay (including North Bend).		1	

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Newport	Coos Bay		5
Port Westward.		Astoria	2
Portland	Longview, WA.		3
Westport	Astoria		2
Washington:			
Grays Harbor.	Astoria, OR.		3
Kalama	Longview		2
Longview	Astoria or Portland, OR.		3
Longview	Longview	2	
Raymond	Astoria, OR.		2
Vancouver	Longview		3
Willapa Bay.	Astoria, OR.		2
Undesignated Ports.	Astoria or Portland, Oregon, Tacoma, Seattle.		3
[Add]			
Washington:			
Longview	Portland, OR.		3
Undesignated Ports.	Portland, OR, Tacoma, Seattle.		3
Wyoming: Cheyenne.		1	

Done in Washington, DC, this 3rd day of April 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8616 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV95–918–1]

Suspension of Provisions of Marketing Order 918; Fresh Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This rule is a continuation of a suspension order that suspends, for two additional fiscal years, effective March 1, 1995, through February 28, 1997, all provisions of Federal Marketing Order No. 918 for fresh peaches grown in Georgia (order), and the rules and regulations issued thereunder. This rule is the result of a recommendation for continued suspension made by trustees of the Georgia Peach Industry Committee (trustees). The trustees' recommendation was based upon the belief that a State program, which is currently active in market promotion and merchandising for the Georgia peach industry, could provide the quality, maturity, and size regulations that were in effect under the Federal order, and would result in more efficient use of industry funds. The trustees believe more time is needed to study changes in the industry, and any new developments which could affect the need for, or status of, the order.

EFFECTIVE DATE: March 1, 1995, through February 28, 1997.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, 301 3rd St., NW., suite 201, Winter Haven, Florida 33883–2276, telephone 813–299–4770, or Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 918 (7 CFR part 918) regulating the handling of peaches grown in Georgia. The marketing agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is a continuation of a suspension order than suspends, effective March 1, 1995, through February 28, 1997, all provisions of the marketing order and the rules and regulations issued thereunder. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has as his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Georgia peaches and approximately 150 peach producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

Marketing Order 918 has been in effect since 1942. The order provides for the establishment of grade, size, quality, maturity, container and inspection requirements. In addition, the order authorizes production research and marketing research and development projects. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from early March through late July.

The Georgia Peach Industry Committee members met on November 14, 1992, and unanimously recommended suspension of the marketing order at the end of the 1992–93 fiscal period. The recommendation was made to eliminate the expense of administering the marketing order. The members' recommendation was based on the belief that the quality, maturity, and size standards that were in effect under the order could be implemented under a State program that concurrently conducted market promotion activities for the Georgia peach industry. The members believed that by transferring all functions to a single program, industry funds would be used more efficiently. While the Federal order authorizes marketing research and development projects, these activities had been carried out under the authority of the State program for several years. The order also authorizes container requirements and production research, but these provisions had been inactive for many years.

The committee members recommended suspension, not termination, of the marketing order to allow the industry an opportunity to review the effectiveness of operating under only a State program. If problems developed, the committee members wanted the industry to have the alternative of reactivating the Federal marketing order.

During the suspension period, all nine committee members (not including alternates) served as trustees for the Georgia Peach Industry Committee.

The trustees met on November 17, 1994, and unanimously recommended extending the suspension of the marketing order for two additional years. The trustees' recommendation was based on the belief that extending the suspension for two more years will provide the industry with further opportunity to study changes and any new developments which could affect

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the need for, or status of, the current order.

The trustees also voted for suspension rather than termination, because they wanted to avoid the complexity of putting together a completely new marketing order; as opposed to amending the existing marketing order should the industry find it in its interest to resume the program.

In addition, the suspension will lower the administrative and inspection costs under the marketing order.

The industry will have the opportunity to continue monitoring the effectiveness of the State program, without Federal marketing order regulations in effect, an additional two marketing seasons. A meeting will be held prior to January 1997 to again discuss reactivating or terminating the marketing order. The current trustees will continue to serve in their capacity during the suspension.

Thus, it is determined that Federal Marketing Order N. 918, and the rules and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This rule suspends, from March 1, 1995, through February 28, 1997, provisions of Federal Marketing Order No. 918, and the rules and regulations issued thereunder, including, but not limited to, the:

(1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;

(2) The quality, size, maturity, and inspection requirements;

(3) The administrative rules and regulations related to exempt shipments; and

(4) Information collection and reporting requirements [In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such requirements have been approved by the Office of Management and Budget and assigned OMB Control No. 0581–0135].

The Secretary has determined that, during the suspension period, those persons serving as committee members prior to the suspension (not including alternates) will continue to serve as trustees to oversee the administrative affairs of the order. The trustees are responsible for safeguarding program assets and holding committee records. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are Mr. Robert Dickey III, Mr. Jeff Wainwright, Mr. W.H. Davidson III, Mr. Al Pearson, Mr. Bobby Lane, Mr. Emory Alexander, Mr. William W. Drew, Mr. Howard Lawson, and Mr. Stephen C. Meyers. The trustees shall continue in their capacity until discharged by the Secretary.

When a final determination is made regarding the order, any remaining funds will be used or disbursed in accord with the appropriate order provisions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends restrictions on handlers by continuing the suspension of the requirements regulating the handling of peaches pursuant to Marketing Order No. 918; (2) handlers are aware of this action, which was discussed and recommended at a public meeting held by the trustees; and (3) no useful purpose would be served by delaying the continued suspension of the marketing order.

List of Subjects in 7 CFR Part 918

Marketing Agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601–674 (7 CFR Part 918), and all provisions therein, is suspended effective March 1, 1995, through February 28, 1997.

Dated: March 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–8615 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–014–2]

Horses From the United Arab Emirates; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove the United Arab Emirates from the list of countries in which African horse sickness exists. We have determined that the United Arab Emirates is free of African horse sickness, and that restrictions on the importation of horses from the United Arab Emirates to prevent the spread of African horse sickness into the United States are no longer necessary. This action relieves unnecessary restrictions on the importation of horses from the United Arab Emirates.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 40, Riverdale, MD 20737–1228.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) state the provisions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS, a fatal equine viral disease, is not known to exist in the United States. Section 92.308(a)(2) of the regulations lists countries that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS, and sets forth specific requirements for horses which are imported from those countries. APHIS requires horses intended for importation from any of the countries listed, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days.

On March 15, 1995, we published in the **Federal Register** (60 FR 13929–13930, Docket No. 94–014–1) a proposal to amend the regulations by removing the United Arab Emirates (UAE) from the list of countries in § 92.308(a)(2), which APHIS considers affected with AHS.

We solicited comments concerning our proposal for 15 days ending March 30, 1995. We received three supportive comments by that date. They were from a horse transport company, a horse industry association, and a thoroughbred farm.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions which require horses imported from the UAE to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and reduces the quarantine period to an average of three days to meet the quarantine and testing requirements specified in § 92.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective on the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The primary impact of this rule will be on U.S. importers of horses from the UAE. The horses imported from the UAE tend to be higher-valued, purebred horses. These horses are worth 10 to 20 times more than the average price per horse from the rest of the world. Few, if any, of these importers can be considered a small entity. These importers will no longer be required to quarantine horses from the UAE for 60 days at the New York Animal Import Center in Newburgh, NY. This rule will allow horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and will reduce the quarantine and testing period to an average of three days to meet quarantine requirements specified in § 92.308.

While no horses are reported in the "Foreign Agricultural Trade of the United States" as being imported directly from the UAE, we believe that each year an average of 10 to 20 horses are imported indirectly from the UAE through Europe. Removing the requirement for a 60-day quarantine at the New York Animal Import Center in Newburgh, NY, for horses from the UAE will make the importation of these horses less expensive and logistically easier. We anticipate that the number of horses imported from the UAE may slightly increase. We estimate approximately 50 to 100 horses may be imported per year, though some of these horses will only be temporarily imported to the United States for particular events, and then transported back to the UAE. With the very small number of horses imported from the UAE, we anticipate the overall economic impact on businesses and individuals will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing "the United Arab Emirates,".

Done in Washington, DC, this 31st day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8617 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0874]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement a recent amendment to section 22(g) of the Federal Reserve Act, contained in the Riegle Community Development and Regulatory Improvement Act of 1994. The revision provides that prior approval of the board of directors is not required before a member bank may make a loan to an executive officer that is secured by a first lien on the executive officer's residence.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION

Background

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDR Act), Pub. L. 103–325, 108 Stat. 2160 (1994), effective September 23, 1994, amended section 22(g) of the Federal Reserve Act, 12 U.S.C. 375a, to eliminate the requirement that prior approval of the board of directors be granted before a member bank may make a loan to an executive officer of the member bank that is secured by a first lien on the executive officer's residence. Such loans remain subject to the general requirement for prior approval under section 22(h) of the Federal Reserve Act. See 12 U.S.C. 375b(3); 12 CFR 215.4(b). The Board is revising Regulation O (12 CFR Part 215), effective April 7, 1995, to conform to the amendment.

Need for Final Rule Without Comment

The elimination of the prior approval requirement for loans to an executive officer secured by a first lien on the executive officer's residence was effective immediately upon enactment of the CDR Act, and required no action on the part of the Board to take effect. The Board therefore finds that it is

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necessary to revise Regulation O in order to eliminate a requirement that is superseded by the CDR Act, and to clarify that member banks may take advantage of the recent amendment to section 22(g) of the Federal Reserve Act.

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds under 5 U.S.C. 553(d)(1) that the final rule is a substantive rule that relieves a restriction on lending and therefore is making the final rule effective on April 7, 1995, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis at the time it promulgates a final rule. One of the requirements of a final regulatory flexibility analysis, a succinct statement of the need for, and objectives of, the final rule (5 U.S.C. 604(a)(1)), is contained in the supplementary information above. For the reasons stated above concerning the need for public comment, the Board has not sought public comment on the final rule, and the Board has not considered any alternatives to the final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the Board, under authority delegated by the Office of Management and Budget, has reviewed its amendments to Regulation O. The Board has determined that its final rule imposes no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The final rule will apply to all member banks, regardless of size. The final rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 215, as set forth below:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. In § 215.5, paragraph (c)(2) introductory text is revised to read as follows:

§ 215.5 Additional restrictions on loans to executive officers of member banks.

* * * * *

(c) * * *

(2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided:

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 3, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8578 Filed 4–6–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA No. 122F]

RIN 1117–AA25

Contents of Records and Reports

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The interim rule published by the Deputy Administrator of the Drug Enforcement Administration (DEA) to clarify what records shall be adequate to satisfy recordkeeping requirements for Listed Chemical transactions under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA) is adopted without change. Specifically, the amendment clarifies that for prescription drug products, prescription and hospital records shall be adequate to satisfy recordkeeping requirements. In addition, this final rule clarifies that for the distribution of these products to hospitals, pharmacies and other entities, normal business records shall be considered adequate if they meet the requirements of 21 CFR 1310.06 (a) and (b).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On October 11, 1994, the Acting Administrator of the DEA published an interim rule (59 FR 51364) which clarified what records shall be adequate to satisfy recordkeeping requirements for listed chemical transactions under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Specifically, this interim rule clarified that for prescription drug products, prescription and hospital records kept in the normal course of medical treatment are adequate to meet the recordkeeping requirements for each record required under 21 CFR 1310.03. However, the interim notice stated that reports as specified in 21 CFR 1310.05 and notification requirements as set forth in 21 CFR 1313 must still be satisfied for these products. Interested parties had until November 10, 1994 to submit comments and objections.

In response to the October 11, 1994 interim rule, one comment was submitted by Abbott Laboratories. In this comment Abbott requested that records for the distribution of prescription ephedrine injectable products, which are kept in the normal course of business, be considered adequate to satisfy the recordkeeping requirements, just as prescription and hospital records kept in the normal course of medical treatment shall be considered adequate. Abbott further stated that normal business records contain (1) the name and address of both parties to the transaction; (2) the date of the regulated transaction; (3) the name and quantity of the prescription drug product; (4) the method of transfer; and (5) an Abbott customer identification number.

Upon review of Abbott's comment, DEA has determined that no further amendment to the regulations are required. Existing provisions of 21 CFR 1310.06 (which detail the sufficiency of records kept in the normal course of business) are broad enough to enable businesses to meet the requirements pertaining to injectable ephedrine products without any new burden. Therefore, the interim rule (59 FR 51364) is herein finalized without change.

The contents of records required for regulated transactions are stated in 21 CFR 1310.06. Specifically, 21 CFR 1310.06(a)(5) provides that each record shall include the type of identification used by the purchaser and any unique number on that identification. It is the responsibility of the regulated person who engages in a regulated transaction to identify the other party to the transaction and verify the existence and apparent validity of a business entity ordering a listed chemical in compliance with 21 CFR 1310.07. If the assignment of a company customer identification number is based upon meeting all requirements as specified in 21 CFR 1310.07, and this customer identification number can be cross-referenced with the type of identification used to verify the existence and apparent validity of the purchaser and any unique number on that identification, then a customer identification number will be deemed adequate to meet the requirements of 21 CFR 1310.06(a)(5).

Further, 21 CFR 1310.06(b) states that normal business records shall be considered adequate if they contain the information listed in 21 CFR 1310.06(a) and are readily retrievable from other business records of the regulated person. Thus, if these records are readily retrievable and meet all the requirements of 21 CFR 1310.06(a) then these records shall be deemed adequate. However, it is the responsibility of each regulated person to ensure that all requirements of 21 CFR 1310.06 are adequately met if relying on normal business records to satisfy the recordkeeping requirements of 21 CFR 1310.03.

The products in question are prescription products which are already subject to strict Federal and state controls. This final rule modifies 21 CFR 1310.06(b) to reflect that for purposes of this section, prescription and hospital records kept in the normal course of medical treatment shall be adequate to meet recordkeeping requirements.

This rule has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. The Deputy Administrator has determined that this rule is not a significant regulatory action under Executive Order 12866 Section 3(f), Regulatory Planning and Review. This action allows relief from regulatory requirements by permitting the use of normal business records for these prescription products rather than requiring the creation of separate records of transactions. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Deputy Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

Accordingly, the interim rule amending 21 CFR part 1310 which was published at 59 FR 51364 on October 11, 1994, is adopted as a final rule without change.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–8592 Filed 4–6–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–121; Amendment 94–7]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Coal Mining rules pertaining to the backfilling and grading of surface coal mining and reclamation operations. The amendment is intended to provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, OSM, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204. Telephone: (317) 232–1547.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 29, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated January 31, 1995, (Administrative Record No. IND–1420) Indiana submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Indiana proposed to revise 310 IAC 12–5–54.1—Surface Mining: Backfilling and Grading, Timing Limitations.

OSM announced receipt of the proposed amendment in the February 17, 1995, **Federal Register** (60 FR 9313), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

310 IAC 12–5–54.1—Surface Mining: Backfilling and Grading, Timing Limitations

Indiana is revising subsection (a) to make several nonsubstantive wording changes. At subsection (a)(1), Indiana is requiring that backfilling and grading in

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mining operations that involve spoil ridges be accomplished in 180 days of deposition, provided that no more than four spoil ridges remain at any one time. The current regulations specify that no more than an average of four spoil ridges by length remain.

Indiana is revising subsection (b) to make two nonsubstantive wording changes and to correct a cross-reference.

Indiana is revising subsection (c) to make two nonsubstantive wording changes and to delete the requirement that requests for an extension of the timing limitation for more than one year be approved by the Natural Resources Commission.

The corresponding Federal regulations at 30 CFR 816.101 were suspended effective August 31, 1992 (57 FR 33875). Therefore, States may adopt backfilling and grading time and distance standards which result in contemporaneous mining and reclamation as required by 30 CFR 816.100. The Director finds the proposed revisions at 310 IAC 12–5–54.1 no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and 817.100.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interests in the Indiana program. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above finding, the Director approves the proposed amendment as submitted by Indiana on January 31, 1995.

The Federal regulations at 30 CFR part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the national Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 30, 1995.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (hhh) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(hhh) The following amendment (Program Amendment Number 94–7) as submitted to OSM on January 31, 1995 is approved effective April 7, 1995: 310 IAC 12–5–54.1 concerning timing limitations for backfilling and grading of surface coal mining and reclamation operations.

[FR Doc. 95–8583 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

RIN 1024–AC14

National Capital Region Parks; Special Regulations

AGENCY: National Park Service, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the National Capital Region Parks regulations to limit sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers, and to set standards for sites, stands and structures used in such sales. By this amendment, the National Park Service (NPS) also rescinds a sales enforcement guideline that allowed the sales of T-shirts that contained a message directly related to a cause or activity. This final rule is adopted because such sales have adversely impacted Federal park land in ways described further below, resulting in discordant commercialism and creating a "flea market" atmosphere in the National Parks of the National Capital Region. Finally, pursuant to Public Law 103–279, the NPS no longer has operating responsibilities for the John F. Kennedy Center for the Performing Arts. Accordingly, this final rule removes reference to the Center from the sales regulation.

DATES: The final rule becomes effective May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, telephone (202) 619–7223; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone: (202) 208–4338.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1994, the NPS proposed a rule that would limit sales to books, newspapers, leaflets and pamphlets on park land of the National Capital Region (59 FR 25855). Copies of the proposed rule have been distributed to demonstration and special event applicants, posted and handed out in the National Capital Region's permit office. Copies were also mailed to past and current demonstration and special event applicants and other interested parties. In addition, the proposed regulation has also received media coverage in stories about the problems caused by sales activities.

Prior to this proposed rulemaking, the majority of applicants who sought to engage in demonstrations or special events on park land within the National Capital Region requested permission to engage in sales activities related to their event. As detailed in the proposed rule dated May 18, 1994, the National Capital Region of the NPS adopted an enforcement guideline reflecting an administrative determination that the term "newspapers, leaflets, and pamphlets" under 36 CFR 7.96(k) may cover certain other designated written material. Specifically, under the guideline (a copy of which routinely has been made available to all applicants), allowable materials have included books, bumper stickers, buttons, posters and T-shirts which display a message directly related to the cause or activity. The sale of patches, jewelry, hats, license plates, coffee mugs, flags, records, tapes, pictures, decals and lapel pins has not been permitted under the enforcement guideline.

Adverse park impacts generated by the sale of T-shirts under the enforcement guideline caused the NPS to propose an amendment to the sales regulation. Since then, the amount of T-shirt sales activities on park land in the National Capital Region has increased significantly, and the adverse impacts associated with such sales decidedly worsened.

For example, during calendar year 1994, 4,771 permits were granted for demonstrations or special events and the majority of these involved requests for associated T-shirt sales. After publication of the proposed regulations in May 1994, the Service received 976 T-shirt applications during the remainder of 1994. In 1992, the Service received 3,232 demonstration and special event applications, and, in 1993, there were 3,323. Through March 8, 1995, the NPS had received 3,092 applications, 90% of which sought T-shirt sales opportunities. For the same period of 1994, the NPS had received 2,884 applications, an increase of more than 200 applications.

Application numbers alone do not tell the whole story because many applications apply for multiple dates and sites. For example, on February 28, 1995, the Region received 50 demonstration/special event applications. All sought T-shirt sales permission. Thirty-one of these applications requested single T-shirt sales locations, and 19 applied for multiple locations. The total number of sites applied for in the 50 applications was 112.

For the past several years, the NPS has routinely issued permits for demonstrations and associated sales near the Vietnam Veterans Memorial. But particularly throughout the past year, applicants have sought and gained permission to sell message-bearing T-shirts for repeated demonstration activities for a number of very general causes such as "conservation of the environment," "to promote and broadcast cultural and environmental messages," "environment protection," "promote the salvation of the environment," "Washington DC statehood," and, ironically, "Preserve National Parks."

The demonstrator/vendors sales, which began near the Vietnam Veterans Memorial, have now spread throughout Washington's Monumental Core. As explained in the preamble to the proposed regulation, the increase in applications for demonstration/sales sites on the limited amount of park land available near the Vietnam Veterans Memorial forced the NPS to designate additional demonstration/sales sites. Facing ever-increasing numbers of applicants for sales activities, the NPS designated additional sites adjacent to the popular memorials, monuments and museums on the National Mall, Washington Monument grounds and at the Jefferson Memorial.

A fundamental consideration in this rulemaking is the impact of sales activities on the park land of the National Capital Region. This park land enjoys a rich diversity of uses. Located at the seat of the Federal Government, it hosts a wide variety of demonstration activities, ranging from the lone protester to hundreds of thousands of participants championing and opposing all manner of causes.

Visitors are also drawn to the great monuments of the Nation's Capital—most notably, the Lincoln Memorial, Jefferson Memorial, the Vietnam Veterans Memorial and the Washington Monument—which together with the Capitol, the National Mall and the White House area, form Washington's Monumental Core. The National Mall is an integral part of the original L'Enfant Plan for the City of Washington. It is the single most significant public park and open space, providing an unencumbered greensward between the U.S. Capitol to the Washington Monument and the Lincoln Memorial, a distance of 21 blocks. Visited by millions of citizens and international travelers, the National Mall provides a formal work of landscape architecture of monumental proportions and provides the unifying element for the carefully placed, diverse architectural symbols,

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repositories and shrines of the heritage of our democracy on and along its length. As part of Washington's Monumental Core, it is unquestionably the most significant park area in the Nation's Capital. Visitors to the National Mall are drawn by its proximity to the great monuments of the Nation's Capital as well as by its vistas and natural beauty. Visitors may enjoy the sights and activities of Washington, or they may seek time for quiet reflection in the midst of this great park.

Flanking this core are world-recognized museums such as the National Air and Space Museum, the National Museum of American History, the National Museum of Natural History, the Freer Gallery, the National Museum of African Art, the Arts and Industries Building, the Arthur M. Sackler Gallery, the Hirshhorn Museum and Sculpture Garden, the West and East Wings of the National Gallery of Art, and the United States Botanic Garden.

These monuments, memorials and museums, together with the commanding vistas and natural beauty, draw several million visitors annually. In 1994, for example, visitation at the Vietnam Veterans Memorial was 1,475,044, for the Washington Monument 1,000,270, and for the Jefferson Memorial 522,339. The Smithsonian's National Air and Space Museum had 8,494,193 visitors, while its Museum of National History had 5,756,861.

Many other parks located throughout the National Capital Region draw hundreds of thousands of visitors. They accommodate recreational activities including picnics, softball, and field hockey. Park visitors may enjoy the sights and activities of Washington and its environs and also seek time for quiet reflection in all of these areas.

Generally, applicants for demonstrations or special events who also seek to engage in T-shirt sales submit applications in twenty-one day increments (the maximum number of days authorized by NPS regulation). See 36 CFR 7.96(g)(5)(iv)(B). Many applicants routinely submit successive applications in twenty-one day increments for periods of several months; one group submitted applications to sell T-shirts on park land through the end of 1996.

The sales that first occurred under the enforcement guideline several years ago were made in the context of large scale, one-day demonstrations. The sales activities, like the demonstrations, lasted but a single day and the T-shirts left with the demonstrators. The current T-shirt sales are far different.

Vendors sell their wares day-in and day-out. The sales occur not between organizers and participants at demonstrations, but between commercial vendors seeking customers from among non-demonstrating visitors at adjacent national monuments.

The consequence of this system of administration has been the proliferation of T-shirt sales throughout the park land of the National Capital Region. It is now commonplace to see large quantities of T-shirts displayed and stored on park land at various demonstration/sales sites, not only near the Vietnam Veterans Memorial where the practice first arose, but also on park land the entire length of Washington's Monumental Core. T-shirt stands now confront park visitors as they approach many of the Nation's monuments, memorials and museums. They are located at the base of the Washington Monument, in front of the Jefferson Memorial, near the National Holocaust Memorial Museum, and on the Mall adjacent to the Museum of Natural History, the Smithsonian Castle and the Smithsonian Metro station. Increasing commercialization within the sales sites has been marked by the use of life-size torso mannequins and commercial clothing racks. As the Smithsonian Institution observed in its comments on the proposed regulation:

> [T]he number of vendors on the Mall increase[d] dramatically especially within the last two years. Rather than occasionally observing vendors associated with demonstrations or special events, we note that vending near Smithsonian museums is now constant activity, [and the] selling of products is done mostly by the same groups.

Analysis of and Response to Comments and Rationale for Final Regulation

A. Overview

The NPS received 4,626 written comments (some accompanied by photographs) regarding the proposed rule. Most were from individuals not indicating a particular affiliation or interest. Of the others, 25 were from veterans organizations, seven from other organizations, 73 were from veterans or relatives of veterans, four from representatives of the legal community, and one from a past Director of the NPS. The Department appreciates the time and effort expended on these comments.

606 comments supported the proposed rule as drafted. Among these were four different preprinted signed letters from 170 individuals as well as one petition signed by 170 individuals. Another 1,438 identical, unsigned letters were received bearing the names and addresses of different persons purporting to support the proposed rule as drafted. The organization responsible for submitting the letters has requested that the NPS disregard all of these unsigned letters because it failed to obtain the consent of the persons named. Accordingly, the NPS has not given these unsigned letters any weight in its decision making.

2,582 comments opposed the proposed rule as drafted. Among these were 2,415 identical, preprinted, signed post cards. (A sampling of 298 of these revealed that 43, or 14%, were duplicate submissions.) One petition in opposition to the proposed rule was signed by 130 individuals. One comment opposed the proposed regulation as drafted because it was "exceptionally lenient and generous"; another recommended an outright ban on all sales.

There was one request for a public hearing. Given the large number of responses received as well as their breadth and scope, however, the NPS does not believe a public hearing would add to the range of views and solutions considered.

B. Comments in Support of the Proposed Rule Based Upon Degradation of the Park Visitation Experience and Impact on Park Physical Environment

Many of the 606 comments in support of the proposed rule agreed with the NPS's assessment of the damages to park land caused by sales activities. Comments frequently used words such as "honky-tonk," "open air market," "flea market," "shopping mall," "bazaar," "circus," "carnival," "eye sore," "national embarrassment," and "disgraceful" to describe park land being used for T-shirt and other sales activities. One comment, by a professor of urban design, stated:

> Your characterization of the current situation at those sites as having resulted in "discordant commercialization, creating a 'flea market' atmosphere on park land" resonates the feelings of all concerned with the dignity and elegance of memorial statements in the public domain.

The Smithsonian Institution, National Park Foundation, National Capital Planning Commission, Commission of Fine Arts , National Gallery of Art and National Park Hospitality Association wrote in support of the proposed regulation. The President of the National Park Foundation stated:

> As a resident of the District of Columbia and someone who cares about the Parks, I find the increased commercialism, especially in the National Capital Region, to be exceedingly offensive * * *. Visits to public land/Park land should be visits to uncluttered, noncommercial areas. The law provides ways for individuals representing

causes to get their messages across and leave open ample opportunities for channels of communication of information. It was not intended to create a supermarket for clothing, hats, banners, pins, and other aggressive sales of similar items which rob and deny a visitor the opportunity to see these places as they were intended to be.

One comment describes the area of Washington's Monumental Core as an unsightly "virtual sea of T-shirt vendors." Another lamented that these vendors have made it difficult to enjoy the beauty of the Mall, forcing park visitors to play "dodge the vendors."

Sales activities on the Mall adjacent to the National Air and Space Museum are particularly pronounced. Pursuant to the court's order in *ISKCON of Potomac, Inc.* v. *Ridenour*, 830 F. Supp. 1, 4 (D.D.C. 1993) (appeal pending), NPS regulations regarding sales and solicitation may not be enforced at all in "the area of the Mall adjacent to the Air and Space Museum." With no regulatory enforcement mechanism possible under this court order, T-shirt sales tables on park land have multiplied. Displays have stretched to extraordinary lengths; e.g., vendors now occupy all of both sides of a 139 foot north-south walkway just north of the National Air and Space Museum.

One comment, by a Smithsonian Institution employee, described the area now as having "shirts hung out in the breeze" creating "a distracting visual clamor which totally destroyed the [Mall's] grand design." Another, noting sales of T-shirts inscribed with such insignia as "Beavis and Butthead," asked whether it is "the Park Service's objective to turn the National Mall into a shopping mall?" Another protested:

> I went to enjoy the beauty of the Mall and the Museums. Instead, every where I turned I saw and heard vendors, vendors, and more vendors. Are we allowing our beautiful Capital to be turned into a gigantic outdoor flea market?

One comment, while regretting that the Boy Scouts of America itself had not been allowed by the NPS to sell its memorabilia on the Washington Monument grounds, nevertheless supported the proposed regulation, stating "that we have come to a sad state of affairs when commercial vendors, masquerading under the guise of saving the whales are allowed to exploit our National showcase park areas."

Former National Park Service Director James Ridenour wrote in support of the proposed regulation as necessary to control "the carnival atmosphere that erodes the dignity of our national capital parks and memorial." As to the sales occurring near the Vietnam Veterans Memorial, Ridenour, a Vietnam veteran, wrote that he was:

> [O]ffended by the business that has continued to expand in that area. These shanty businesses have become big businesses. This is not some highly sacred freedom of speech issue—this is the despoiling of our nation's greatest treasures and a commercialization that goes beyond what previous administrations ever envisioned.

A number of national veterans groups, including AMVETS, Veterans of Foreign Wars of the United States, Vietnam Veterans of America, Inc. and the Vietnam Veterans Memorial Fund, wrote in support of the proposed regulation and expressed concern that sales activities have caused a commercialized condition of park land around the Vietnam Veterans Memorial. (As explained more fully in the next section, however, other groups, including the Friends of the Vietnam Veterans Memorial, the National Alliance of Families and other local veterans groups oppose the proposed regulation, complaining that it would adversely impact on sales activities by vigil groups near the Vietnam Veterans Memorial).

In summary, the commenters supporting the regulation generally concurred with the judgment of the NPS that the T-shirt displays and hawking, occurring on a daily basis near frequently visited memorials, substantially diminish and impair the park visitors' experience. In addition to the general "flea market" atmosphere, the NPS has observed that sites are occupying ever-larger areas of park land, mostly located near or on walkways close to frequently visited memorials. As a result, visitor circulation has been adversely impacted. Sales operations have also interfered with NPS interpretative programs. Some commenters complained that they have been unable to photograph national landmarks without also capturing demonstration/sales sites in the same picture.

The presence of money within park areas has always been a law enforcement concern of the U.S. Park Police. Sales sites have already experienced several criminal related offenses. Also, in an effort by permittees to reserve "premium" sales sites adjacent to popular memorials, a number of permittees have hired homeless people or have even physically assaulted one another to preserve and occupy their sales site locations.

Increasing T-shirt sales activities have also brought increasing pedestrian and vehicle congestion. This has resulted in damage to turf, trees and shrubbery. At or near T-shirt sales sites, only mud and compacted soil remain where grass once grew. Soil compaction in these areas is so severe that the NPS has found no horticultural technique which permits the restoration of plants without excluding all activity from the injured sites for a period of several months.

C. Comments in Opposition to the Proposed Rule

Of the 2,582 comments opposed to the proposed rule, all but five focused solely on the sales activities on park land around the Vietnam Veterans Memorial. 2,415 preprinted postcards were submitted opposing the proposed regulation on the ground that it would:

> [R]emove the best opportunity I have to publicly show my support for the organizations and causes represented near the Memorial. Further, the presence of these groups and the sale of *all* of their products is beneficial to the visitors * * *. (emphasis in original).

Forty-six comments voiced concern that if the proposed regulation is implemented, one demonstration vigil now under permit near the Vietnam Veterans Memorial would be forced to "close down." In his comment, the Executive Director of this particular demonstration described the proposed regulation as aimed specifically against his vigil; specifically:

> [A] smoke screen designed to conceal the Park Service's real agenda[,] which is part of a long term political effort to remove the POW/MIA activists from the area near the Vietnam Veterans Memorial. It is the result of the combined efforts of career bureaucrats, who can't stand the thought of a handful of veterans, activists, and POW/MIA family members using the First Amendment to raise enough funds through the sale of POW/MIA related T-shirts to continue opposing a failed U.S. government POW/MIA policy.

The proposed rule is content neutral and is not intended to harass, much less "close down," any demonstration. In proposing the regulation, the National Park Service recognizes the important function park land serves for the "purposes of assembly, communicating thought between citizens, and discussing public questions." *Hague* v. *CIO*, 307 U.S. 496, 516 (1939). The rule is designed to regulate the time, place, and manner of sales activities to protect the parks and the visitor experience without seriously interfering with the achievement of those essential purposes.

This same commenter challenged the accuracy of NPS's assertion, in the preamble to the proposed rule, that one demonstrator "had gross earnings of $1,849,683 from the sale of all T-shirts

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in 1989–91." See 59 FR 25857. This quotation was taken directly from the Court's order in *Hart* v. *Sampley*, Civil No. 91–3068 (D.D.C. December 10, 1992).

An attorney commenting on behalf of several nonprofit organizations accused the NPS of "deliberately seeking to create a condition on the Mall whereby it can justify a complete ban on the sale [of] message-bearing merchandise." The NPS rejects this characterization. It has not created the adverse consequences caused by sales activities on park land in order to justify sales restrictions. Rather, as detailed in the proposed sales regulation, it has permitted groups and individuals to sell message-bearing T-shirts, but that fact was not widely known until fairly recently. When the NPS sought public comment on the proposed sales regulations, more persons and groups became aware of the rules. The current proliferation of sales applicants is likely to be simply indicative of the actual number of persons and groups who would like to sell T-shirts on National Capital Parks land.

The NPS has attempted to fairly and even handedly process applications for demonstration/sales activities on park land in accordance with current regulations and guidelines. The applications requesting use of park land, and the permits authorizing such use, are a matter of public record and review. Persons who identify themselves as merely interested in selling T-shirts with no cause related to a demonstration have been turned away. The NPS has also attempted to fairly and even handedly monitor permittees' compliance with the terms of their permits at their demonstration/sales sites. The NPS proposed to amend its sales regulation because of the adverse consequences caused by some of the sales activities under the sales enforcement guideline.

The balance of the other comments that focused on sales activities near the Vietnam Veterans Memorial did not challenge the NPS's motivation, but opposed the proposed rule because it would adversely impact veterans groups' ability to raise money for their cause. One commenter, from a Vietnam veterans organization, wrote that:

> In seven years of experience at the [Vietnam Veterans] Memorial, the Friends have concluded that the presence of t-shirt and other sales plays a significant role in the experience for tens of thousands of visitors. Guestbooks which have been maintained near the Memorial by the FVVM show overwhelmingly that the presence of our group has been positive.

While the NPS does not question the sincerity of this commenter's assertion that its presence on park land contributes positively to the park visitor experience, only two of the 5,716 entries in the commenter's guestbooks expressed views on sales activities. One wrote of her appreciation for the opportunity to buy items near the Memorial, but the other wrote: "This merchandise is out of place and degrades the dignity of this shrine."

The Friends also submitted a "Vietnam Veterans Memorial Attitudinal Study." The study, prepared by a marketing research consultant, consisted of interviews of 329 visitors who were "randomly-intercepted in the area of the [Vietnam Veterans] Memorial" over a three-day period. Contrary to the commenter's assertion that sales play a "significant role" in the visitor experience at the Vietnam Veterans Memorial, the study shows more than two-thirds of the respondents did not stop at any demonstration/sales location. Moreover, the study focused solely on the park land adjacent to the Vietnam Veterans Memorial, while the NPS is concerned with the negative impact of sales activities on park land throughout the National Capital Region and cannot legitimately distinguish between T-shirt sales in one area or one cause and such sales in another area or for another cause.

One demonstrator who participated in the first vigil or "booth" near the Vietnam Veterans Memorial in 1987 commented that he was closing down his own operation in part because he "did not have the manpower or the money to pay someone to stay in the parking lot of the NCR building overnight so that we could be 'first in line' when the permit office opened and turn in 14 or so permits applications every day." He opposed the proposed rule, however, "because the [Vietnam Veterans Memorial] Wall is unique * * * [and] vendors should stay at least until the healing of all Vietnam Veterans is complete." He believed that vendors help provide a "chance to talk with a fellow veteran to let out your feelings, to rid oneself of the hurt, and to find out about other veteran related programs, organizations and problems." Under the new regulation, demonstrators will remain free to talk with the visiting veterans and provide oral or written information regarding veteran-related programs, organizations and problems. The only difference is that they cannot sell T-shirts at the same time.

Finally, one commenter indicated that the NPS should not be worrying about T-shirt and other sales because "this money is certainly being used for a wonderful and well needed cause." The role of T-shirt sales in financing demonstration activity is considered in the next section.

D. Commenters' Objections on Constitutional Grounds

Some commenters argued that if demonstrators could not sell such merchandise they would be unable to finance their demonstration activities. The American Civil Liberties Union for the National Capital Area (ACLU), wrote that T-shirts, buttons or lapel pins worn on a person are an integral and prominent part of demonstrations because they "are unusually cheap and convenient forms of communication that convey distinct messages because they connect the message with the speaker."

1. T-Shirts Versus Other Forms of Communication

After careful consideration, the NPS has concluded that the basic problem of commercialization and attendant adverse impacts on park values is caused by T-shirt sales. It has also concluded that the problem cannot be abated by other than a ban on such sales on park land.

The NPS acknowledges that lines must be drawn in deciding the types of such merchandise that may be sold on park land in connection with demonstrations, to allow both demonstrators and park visitors an opportunity to use park land and still preserve the park values operative in the area. In general, the NPS wants to permit the maximum amount of communicative conduct that is consistent with the protection of the core park values in the area. It recognizes that a total ban on all sales in connection with demonstrations would arguably be most protective of the parks, and that a credible legal argument might be made for such a resolution. But the NPS desires to accommodate the sale of message-bearing materials in connection with demonstrations to the extent it does not unreasonably impinge on other park values.

By rescinding its enforcement guideline and amending 36 CFR 7.96(k) so as to permit only the sales of books, newspapers, leaflets, pamphlets, buttons and bumper stickers, the NPS believes park resources, the visitor experience, and the desirability of free expression will all be protected and enhanced.

The NPS has found that the sale of traditional written material in the form of newspapers, leaflets and pamphlets has not presented the problems that the sale of T-shirts and of other merchandise has caused. The NPS also believes books constitute a larger and logical variant of the newspapers, leaflets and pamphlets that are currently permitted.

The NPS has also, upon reexamination since the proposed regulation was published, concluded that buttons and bumper stickers should be permitted to be sold in connection with demonstrations. The sales of these items have not caused the same problems of commercialization and negative effects on other park values as those caused by T-shirt sales. Accordingly, the NPS has decided to continue to allow the sale of buttons and bumper stickers on park land.

While the Service has decided to prohibit T-shirt sales on park land, it will of course not restrict or otherwise regulate the wearing of communicative T-shirts. More generally, persons and groups remain free to express their views on park land, in long-standing demonstration vigils as well as shorter-term demonstrations. They may continue to use park land to speak, display signs and banners, march, hold vigils, sell and distribute literature, communicative buttons and bumper stickers, and otherwise communicate their views. At the same time, non-demonstrating visitors will still be able to come to the parks to pursue communicative, inspirational, educational and recreational activities.

For these reasons, the NPS believes that compliance with the sales regulation will not place an unreasonable limitation on First Amendment activity. A wide range of permissible activities remains available to persons who wish to engage in demonstrations and associated sales activities. Ample alternative avenues of communication are preserved. Demonstrators will still be able to sell other merchandise either on property within the District of Columbia's jurisdiction or through the books, newspapers, leaflets, and pamphlets sold or distributed on park land. These areas under District of Columbia jurisdiction are convenient to park visitors and are located adjacent to Washington's Monumental Core. Constitution and Independence Avenues east of 15th Street, NW and all of the north-south streets north of Constitution Avenue and south of Independence Avenue are controlled by the District of Columbia. For many years, demonstration groups have used these areas to sell items not permitted to be sold on NPS areas. Further, the vast majority of park visitors must pass these District streets and sidewalks on their way to the NPS areas.

Finally, in this connection, the NPS is concerned that if it continues to allow sales of T-shirts, it will face ever more difficult line-drawing decisions. Even with T-shirt sales now permitted, the NPS continues to receive requests for permission to sell other types of merchandise, such as coffee mugs, sweat shirts, hats, patches, jewelry, flags, records, audio tapes, video tapes, pictures, and decals—all complete with self-described "First Amendment messages" affixed to each item. Some demonstrator/vendor applicants argue that a First Amendment message is implicit in the merchandise itself. For example, in the past one demonstration group, advocating the protection of endangered rain forests, requested permission to sell candy on park land and argued that the candy possessed communicative protection because its ingredients came from the ecologically sound harvesting of nuts from rain forests. Others have urged the NPS to permit the sale of audio tapes. In addition to posing the same impacts as T-shirts, NPS personnel would need recorders to determine whether the tape related to the demonstration and visitors would need a like machine to determine what message was being expressed.

Plainly, a line has to be drawn somewhere if the National Capital Parks are not to be wholly given over to merchandising with a connection to free expression. The NPS believes an appropriate line is reflected in these regulations.

2. T-Shirt Sales as Underwriting the Expenses of First Amendment Expression

The NPS acknowledges the possibility that T-shirt sales on park land improves the financial ability of some demonstrators to engage in demonstration activities. Nevertheless, the NPS does not believe that the First Amendment requires it, as a general rule, to facilitate fund raising by groups or individuals seeking to express their views. Such facilitative conduct is, rather, protected by the First Amendment "only insofar as its restriction imposes burdens on expression itself." *White House Vigil for the ERA Comm.* v. *Clark*, 746 F.2d 1518, 1540 (D.C. Cir. 1984).

One commenter suggested, as a partial alternative to a sales ban, that the NPS "require all vendors to put on public display a quarterly Statement of Accounts, as well as yearly Statement of Earnings, stating where all the money taken in goes." The NPS questions whether it could legally require demonstrators to publicly display how much money they receive or how it is spent. *Cf. Riley* v. *National Fed'n of the Blind*, 487 U.S. 781 (1988). In any event, such an approach does not address the impacts on the parks and the visitor experience that have given rise to this rulemaking.

3. Off-Park, Nearby Locations for T-Shirt Sales

The park land which comprises Washington's Monumental Core, and nearly all other park land in the National Capital Region, is located adjacent to other public property under the jurisdiction of the District of Columbia or the states of Maryland and Virginia. These other governments, particularly the District of Columbia, have generally allowed persons and groups to sell items on sidewalks and along streets in these areas that are prohibited from sale on park land. The NPS does not and is not proposing to regulate such sales or any other sales of merchandise on property outside its jurisdiction. As explained earlier, these areas provide an opportunity for demonstration groups to sell items in close proximity to park areas.

4. Other Alternatives

Commenters suggested several alternatives to the proposed regulation, including allowing only certain types of groups to sell items, more narrowly defining what constitutes message-related T-shirts, and restricting the placement and/or types of structures vendors could use. For example, while the ACLU agreed in its comments that "the Constitution does not require the National Mall to be turned into a flea market," it contended that the NPS must first adopt restrictions regarding vendors' structures and against "purely commercial vendors with a tenuous facade," before considering a sales restriction. It also stated that "only if narrower measures are tried and do not succeed will the consideration of broader measures be appropriate."

As explained in more detail in what follows, the NPS has strived hard to arrive at a solution that protects park values and the visitor experience while minimizing any burdens on communicative conduct. It has carefully considered, and in some cases tried, the kinds of alternatives suggested. Some of the alternatives the NPS has tried include: Discussing whether an applicant would voluntarily limit the number of sites; imposing site size restrictions; requiring that sites be attended at all times; confiscating unattended structures; imposing safety standards on site equipment; requiring sanitation measures, including placement of receptacles; rotating site

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areas; and seeding and sodding of areas. These measures have fallen short of providing adequate protection to park values in the area. Its extensive experience in managing park land and its consideration of the comments on this proposed regulation have led the NPS to conclude that no alternatives exist that would adequately abate or ameliorate the problems caused by sales activities.

The basic problem is a pronounced commercialization of National Capital Park land with its unique monuments and memorials attracting millions of visitors annually. These sales activities on park land threaten to destroy that distinctive atmosphere. T-shirt sales activities, which include intense competition among permittees to get the attention and money of park visitors, have had a profoundly negative impact on the park experience. T-shirt sales have introduced a relatively constant, intrusive and intimidating air to what was previously, for the most part, a relatively peaceful, inspirational, and contemplative scene. Vibrant and spirited demonstration speech conduct sometimes found in the National Capital Parks is more episodic and has not created such a constant negative impact.

Several Justices of the Supreme Court have recognized the difference between more typical demonstration conduct and sales activities. In *United States* v. *Kokinda*, 479 U.S. 720 (1990), Justice O'Connor recently stated:

> [C]onfrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information. One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation. Solicitors can achieve their goal only by "stopping [passersby] momentarily or for longer periods as money is given or exchanged for literature" or other items.

Id., at 724 (plurality opinion)(quoting *Heffron* v. *International Soc'y for Krishna Consciousness*, 452 U.S. 640, at 653 (1981)); see also id. at 738–39 (Kennedy, J., concurring in judgment).

a. Limiting T-shirt sales to nonprofit or other particular kinds of groups. Some commenters suggested that only certain types of groups should be allowed to continue to sell message-bearing merchandise. The commenters have widely differing views, however, as to what type of groups should qualify. One comment suggested the NPS allow sales only by "real Vietnam Veterans' organizations that have had displays at the Wall for years." Another comment called for the NPS to "cull the for-profit business concessions, yet maintain the integrity of those who truly hold vigils in exercise of their 1st Amendment rights." The sponsors of one ethnic celebration, agreeing that only a limited range of merchandise sales should be allowed on park land "to prevent it [sic] being destroyed by vendors," suggested that only organizations who hold "large demonstration/cultural activities" should be allowed to engage in sales. A local non-profit track and field organization, while "sympathetic with the overall goals of preserving the non-commercial character of NPS lands," nevertheless asked that it be allowed to collect fees and distribute T-shirts to participants who race on park land. Another local running club asked for a similar exception.

Another commenter advocated that only tax-exempt nonprofit organizations who provide supporting documentation should be allowed to engage in sales activities. The comment, from an attorney representing several nonprofit organizations who have been permitted to sell message-bearing T-shirts, complained that "commercial vendors were (and are) permitted to sell souvenir merchandise on the Mall. These vendors are not tax-exempt; nor do their activities have a noncommercial purpose. Rather, *their only purpose* is to make money for the proprietors * * *." (emphasis in original).

The NPS's decision to grant a permit to use park land does not turn on the organizational or tax status of the applicant. NPS regulations do not provide for inquiries into an applicant's tax status or how proceeds may be dispersed. Nor do such inquiries form any part of the basis in approving permits. While one commenter did cite an example of such an inquiry by the NPS in a national park in California, the NPS has determined that the California park unit had done so erroneously.

In fashioning a solution to the problems caused by T-shirt sales in the National Capital Parks, the NPS believes it cannot carve out special exceptions for any category of group. Just as it would be impermissible to preclude all but long-standing "real Vietnam Veterans organizations," it would likewise be improper to preclude all but tax-exempt nonprofit groups. To allow only certain types of groups to engage in sales would disenfranchise individuals and unincorporated groups completely. Other organizations not qualified by circumstance or choice for tax-exempt status, such as for-profit corporations and labor unions, would be likewise excluded. More generally, such an approach would rest access to park land for sales upon the manner in which a group seeks to organize itself legally. Such a matter ought not be of central concern to the NPS.

The adverse impacts upon park land are the same, irrespective of the nature of the demonstrator/vendor's tax status. In short, the NPS believes it would be unreasonable to require citizens concerned about current issues to incorporate and gain tax-exempt status in order to engage in demonstration/sales activities within the parks. Such a requirement is unrelated to the protection of park resources and would unreasonably discriminate against a wide range of individuals and groups. Moreover, a large number of the demonstrator/vendors currently using park land for T-shirt sales activities are in fact tax-exempt organizations. Despite their tax status, the impact on the park is unacceptable.

b. Limiting T-shirt sales to very short-term demonstrations. The ACLU commented that "persons applying for permits for short-term demonstrations [should] be given permission to sell demonstration-related communicative materials from portable card tables that, as in the past, will 'le[ave] with the demonstrators.'" The NPS's experience is that this type of restriction, while conceptually attractive, is practically impossible to implement. The majority of groups and individuals selling T-shirts as a part of their activity seek to do so for long periods of time. The NPS has found, on several occasions, the same group signing up under different names and individual sponsors for successive weeks. This "gaming" of the permit system results in a long-term demonstration by successive short-term individuals or causes.

The NPS does not believe it may reasonably or practically limit a group or individual to demonstrations lasting only one week or day or so per year. By regulation, applications to use park land are generally limited to 21-day increments. They may be extended for additional 21-day increments, subject only to being "bumped" if another applicant submits an application for the same park site and the park area does not reasonably permit multiple occupancy. If the park site does not permit multiple occupancy, the NPS is obligated to propose an alternative park site for the use of the second applicant. 36 CFR 7.96(g)(4)(iii)(A).

This system is grounded in the NPS's belief that, in general, if park land is not being utilized for an ongoing activity, it is available to groups for First Amendment conduct. To turn down a group because they have exhausted their "allotted" days of speech would fly in

the face of that principle. Moreover, the NPS has neither the expertise nor the manpower to develop the investigative and enforcement staff to avoid the inevitable "gaming" that would result as groups and individuals tried to obtain access for additional days and sites.

c. Adopting standards for the message's relationship to the merchandise being sold. Some commenters suggested that the NPS impose "merchandise standards" to ensure, in the words of one commenter, that T-shirts being sold contain "a religious, philosophical, political, or ideological message that is inextricably intertwined with the Permittee's nonprofit purposes and activities." This commenter continued:

> Many vendors sell purely commercial or souvenir T-shirts that do not contain any message whatsoever. Other vendors take an otherwise commercial or souvenir T-shirt, stamp a small logo on it, or the phrase Washington, DC, and sell that item, although the message is barely visible and/or lacks intellectual content * * *.

Except where a court order (now on appeal) has prohibited it from doing so on the Mall near the National Air and Space Museum, the NPS has for many years prohibited demonstrator/permittees from selling T-shirts that lack any message related to the permittee's cause or activity. It monitors demonstration/sales sites to ensure compliance. If warnings to violators are not immediately heeded, citation and revocation of the permit occur. Between July 6, 1994 and August 13, 1994, for example, the U.S. Park Police revoked twelve permits for violating the requirement that T-shirts have a message related to the permittee's cause. Even with this limitation, sales activities have continued to proliferate to the detriment of the parks and the visitors' experience within the parks. The limitation itself raises troublesome questions; e.g., should the NPS set standards as to how large or permanent or sophisticated the message on the T-shirt must be? How direct must be its relationship with the cause being demonstrated for? How strongly must participants hold their views?

Many T-shirts being sold on park land by permittees appear identical to the T-shirts sold by District of Columbia street vendors, except for the presence of an added message. The message often consists of something as cryptic as "Preserve our Natural Environment" or "DC Statehood." The comment from the Smithsonian Institution notes that:

> [A] vendor of wildlife T-shirts from a folding table was the only visible 'demonstration' engaged in by an alleged environmental group. Other than the name of the group in small letters on the T-shirt depicting wild animals, the salesman knew nothing about the group or its activities and was unable and/or unwilling to discuss with a visitor whether the proceeds of the T-shirt sales were being dedicated to a non-profit purpose.

In describing demonstration/sales activities on the Mall, the Washington Post on July 6, 1994, reported:

> The guise of a demonstration at some of the new stands is pretty thin. Vendors have used a rubber stamp to mark souvenir T-shirts and sweat shirts with "D.C Statehood" or "Save the Environment."
>
> Among those selling shirts marked with an inked stamp this week was Merlyn Eda, of Fort Washington. She sat beneath a sign that advocated statehood for the District, and her permit said she was demonstrating for making the District a state, but she said she wasn't much interested in the issue.
>
> "It's a reason to be out here," she said as she straightened stacks of shirts showing the Capitol. "I'd like a better cause, and I'm thinking about one."
>
> Susan Griffin, chairwoman of the D.C. Statehood Party, said neither the party nor the Citizens for a New Columbia have sanctioned the sale of T-shirts to promote their cause.
>
> A man who would only identify himself as Isac was selling T-shirts with pictures of the monuments and the stamped message for the environment.
>
> He said that he didn't know anything about environmental issues and he was working as a salesman on the Mall eight hours a day in exchange for free room and board.
>
> The number of vendors setting up stands in close proximity of each other has set off a price war along the walkway on the Mall where seven sellers, most with identical designs, vie for customers.
>
> Christopher Sullivan, a volunteer for Earth Friends, Inc. said his group initiated the price reductions because it is concerned not about making money but about promoting environmental awareness.
>
> "It looks like hell around here," Sullivan said. "I feel my rights as a legitimate demonstrator have been violated because of these other stands."

As this comment suggests, many customers of T-shirt vendors may be deceived as to whether they are genuinely supporting a "cause" by their purchase. One permittee, purporting to "educate the general public about the importance of environmental protection," has sold T-shirts which depict a cow jumping over the Capitol and which bear a "First Amendment message," ink-stamped and barely discernible (and in at least one case upside down): "PRESERVE NATIONAL PARKS Earth Friends." Two other permittees have sold identical cow T shirts, although with different "First Amendment messages": one an ink-stamped "DC FOR STATEHOOD, WASHINGTON DC," another with "PRESERVE THE NATURAL ENVIRONMENT." A demonstrator/vendor was overheard advising one park visitor not to be concerned with the "message," because the ink stamp would "wash out in the first washing."

Since the Washington Post article appeared, the NPS has noticed that most, but not all, of the "First Amendment messages" are no longer ink-stamped, but silk-screened. Though many of these message activities lack sophistication, verve or impact, the NPS is rightly extremely uncomfortable basing its decisions regarding access to park land upon the quality or sincerity of a person's message or belief. Once the NPS has satisfied itself that there is some nexus between the cause and the message, it has felt that no further inquiry is legitimate or warranted. In the circumstances, enforcement of this requirement has not lessened the negative impacts from those sales activities significantly, if at all. In these circumstances, the NPS has concluded that the best solution is to steer clear of these delicate questions of regulating the message, by instead going at the heart of the commercialization issue, which is T-shirt sales.

d. Restricting structures and other sales facilities. Some commenters advocated restricting the structures from which permittees sell their items. One suggested that trailers and "ostentatious booths" be banned, that only booths which could be set up within twenty minutes be allowed, and that they be removed after 7 p.m. except for important Federal holidays. The ACLU commented that it could "see no reason to prohibit the sale of communicative materials when it is done without the aid of stands or structures." It suggested that, "since the perceived problem arises from the use of long-term, semi-permanent structures, we believe such structures are the appropriate focus of regulation," including "their number, size, location, appearance, and duration of placement."

The attorney representing nonprofit organizations likewise suggested that the NPS impose signage restrictions, with merchandise being displayed on table tops only in a neat and orderly fashion, not exceeding two feet in height. He also suggested that umbrellas, chairs, and other decorative devices employed to amplify the presentation of the permittee's message be permitted only in connection with the sale of message-bearing merchandise, that structures, such as merchandise display racks, be prohibited and that all other materials, such as inventory, storage boxes, transport devices, and the like, be

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required to be stored underneath the table.

The NPS has seriously considered these suggestions. As the ACLU noted, the NPS is quite familiar with the regulation of structures. In the National Capital Region, for example, the Service has found it necessary to ban structures from Lafayette Park and the White House sidewalk in order to address security and aesthetic concerns.

Based on its years of experience in managing the Federal park land and dealing with a full range of sales activities, the NPS does not believe that size or structure restrictions adequately address the problems caused by T-shirt sales activities on park land. As explained further below, the NPS already regulates the size of sales areas permitted to each permittee. The problems of commercialization and attendant adverse impacts are caused by the T-shirt sales themselves and the sheer number of demonstration/vendors interested in engaging in such sales activities. Moreover, an outright ban on structures for sales activities would likely create a mobile and potentially even more intrusive commercialization of park land and degradation of the visitor experience. In short, seeking to control the size of structures and area to be used by each permittee would not directly address the commercialization and attendant adverse impacts.

The NPS has long required demonstration vendors to conform to restrictions on site dimensions. Near the Vietnam Veterans Memorial, the NPS has restricted vendors to sites 6 feet by 15 feet. This area permits the storage of substantial amounts of written materials on site. If additional written material is needed, it can be brought to the site as needed. Further, this size both maximizes the numbers of sites as well as allows each permittee sufficient space to present his or her message to the visiting public. In response to the dramatic increase of demonstration T-shirt sales activities on Washington's Monumental Core, the NPS has established the same size dimensions for sales sites in that area as well.

These restrictions alone have not proven adequate to address the problems sought to be ameliorated by this regulation. However, the NPS has decided that the site dimension standard is important and ought to be included in the regulation. A restriction on the size of structures within such sales sites is also adopted. Accordingly, the final regulation incorporates permissible dimensions of sales sites, stands and structures used in sales. Specifically, the final regulation limits sales sites to dimensions of 6 feet wide by 15 feet long by 6 feet high. Within a site, tables will be limited to one per site, no larger than 2½ feet by 8 feet or 4 feet by 4 feet.

The NPS reviewed the demonstration sales sites currently under permit. Demonstration/sales stands and structures generally consist of tables with dimensions of 2½ feet by 8 feet or, less frequently, dimensions of 4 feet by 4 feet. Both sizes have fully afforded permittees the ability to present their message as well as display their materials. The tables and associated sales activities were generally able to be fully accommodated within dimensions of 6 feet by 15 feet. In fact, the NPS has been imposing the particular sales site limitation since September 1994.

The NPS believes that a height restriction on tables and their appendages is also warranted. It has determined that a height restriction of 6 feet on sales sites will allow groups to display and sell printed materials while reducing the commercial atmosphere on park land.

e. Zoning the park land to set aside particular areas for sale activities. Some commenters suggested that the NPS permit T-shirt sales only in certain park areas, preferably located away from the historic monuments and memorials. One commenter suggested that the NPS should design and construct a limited number of lightweight portable booths "in the vicinity of the Memorial, but out of the main flow of the tourist traffic."

Its extensive experience in administering permits has convinced the NPS that it could not designate an adequate amount of park land to handle the number of applicants who have been and will likely seek to engage in T-shirt sales activities without creating the same adverse impacts now being felt. On park land adjacent to the Vietnam Veterans Memorial, for example, the NPS has been unsuccessful in limiting fixed portions of park land for demonstration/vendors. Each of the applicants, whose numbers are steadily increasing, demands access to park visitors near the Memorial. With existing sites already under permit, the NPS has been forced to permit the additional applicants to use other available park land.

Demonstration activities near the Vietnam Veterans Memorial are typically limited to issues related to the war and its casualties. The remainder of the Monumental Core, including the Mall, has been described as "the Nation's front yard," and as such has traditionally been the focal point of demonstrations on a full range of issues and causes—both domestic and international. Having been unsuccessful in designating limited areas around the Vietnam Veterans Memorial for demonstration/vendor activities, the NPS does not believe it possible to designate limited areas within the Monumental Core.

The statistics bear out this conclusion. In November 1994, for example, notwithstanding cold weather and a decrease in park visitors, the NPS had to designate 260 sites in the Monumental Core, along with 23 sites near the Vietnam Veterans Memorial, to accommodate those who sought demonstration/sales permits. With the advent of better weather and an increase in park visitors, the NPS expects many more applications this spring. In fact, through March 8, 1995, the National Capital Region received 3,092 applications for demonstrations and special events. Ninety percent (90%) of these seek permission to vend T-shirts in the Monumental Core area. By way of comparison, during this same period in 1994, the Region received 2,884 demonstration and special event permit requests, an increase of over 200 applications.

The proliferation of T-shirt sales among demonstrator/vendors has led the NPS to conclude that it would be impossible to reasonably accommodate the demand for demonstration/sales of T-shirts within any limited "sales zones." If a zoning system were attempted, either the NPS would have to devise some method or standards to choose among applicants or designate ever-expanding sales zones. Furthermore, the current first-come, first-served system would not likely result in a fair distribution of very scarce sites and would require a much more intensely managed system.

As noted earlier, applications for 21-day T-shirt demonstration/sales permits are now routinely being submitted a full year in advance and are ever-growing in number. If "sales zones" were so limited as to reduce the adverse impacts on National Capital Parks to more acceptable levels, only a very limited number of applicants would be able to engage in such sales activities. In these circumstances, the NPS believes that allowing all applicants to engage in demonstration/sales activities that do not involve T-shirt sales ultimately imposes less restriction on free expression, as well as being fairer and better for the National Capital Parks and their visitors, than to allow a small number of applicants to engage in T-shirt sales on limited amounts of designated park land.

The NPS is mindful that it has not fared well in the courts in imposing numerical restrictions on demonstrators. In *A Quaker Action Group* v. *Morton*, 516 F.2d 717 (D.C. Cir. 1975), for example, the court struck down the NPS's attempt to limit a demonstration in the seven-acre Lafayette Park, a small fraction of the acreage of the Monumental Core, to 500 people. The court found it had a carrying capacity allowing up to 50,000 people to engage in demonstrations at any one time.

More importantly, the NPS believes that a "sales zones" scheme would not satisfactorily control the adverse impact on the parks. The NPS's experience at the Vietnam Veterans Memorial shows that, even when sales are confined to a designated area, unacceptable impacts on park values result.

Defining the precise location of park areas to be set aside for such activity would also be difficult. Permittees engaging in demonstration/sales activities do not congregate at any single locale, but spread out to locations adjacent to popular park features to maximize their visitor exposure. The NPS would continue to be faced with requests for designated sales zones adjacent to most, if not all, of the monuments, memorials, and museums.

Even with the creation of even a modest number of zones scattered throughout areas of the National Mall, the NPS and the nation would effectively lose those areas completely and permanently to commercial activities. The experience of the last year or so suggests that competition for those limited zones would be intense. The zones would likely be occupied 365 days a year, effectively removing them from park use. Not only would perpetual "mini-bazaars" be created, but the physical impact would create scars that would not heal.

For all of these reasons, based on its experience in managing the Federal park land and dealing with a full range of sales activities, the NPS does not believe that the designation of sales zones is a viable or adequate alternative.

D. T-Shirt Sales and the Activities of the Authorized Concessioner for the National Mall

The NPS's concessioner for the National Mall commented in support of the proposed regulation, stating that "the large number of commercial vendors operating on the National Mall * * * are disrupting the historical, aesthetic, and traditional values of our National Capital parks." The comment also advised that the concessioner was experiencing an adverse economic impact in lost sales due to demonstrator/vendors. Some of the concessioner's employees also submitted comments expressing concern that sales by demonstrator/vendors could threaten their jobs.

While the NPS agrees with the concessioner about the adverse aesthetic impact caused by sales on Federal park land, the alleged adverse financial impact on the concessioner and its employees has played no role in the NPS's decision on the sales regulation.

Two comments opposed to the proposed rule described the activities of the NPS's concessioner on the National Mall as an "unsightly, inappropriate, and unwelcomed [sic] commercial intrusion," and concluded that "any commercialization of the Mall that has occurred is as much attributable to the NPS as to any specific First Amendment activity." One of these commenters stated:

> I personally observed dozens of licensed mobile ice cream and popcorn vendors on all parts of the Mall. In one particular instance, Earth Friends was ordered to move its location across from the Museum of Natural History [because] their presence at that location was purportedly causing pedestrian traffic congestion. Yet, the same location was quickly occupied by an ice cream vendor that attracts twice as many people as did Earth Friend's T-shirt sales.
>
> Additionally, I note that the Park Service maintains (or authorizes) two permanent refreshment stands on the Mall that sell a variety of products, including beer, and several souvenir booths that sell film, maps, books, and other souvenir products. In addition to the merry-go-round, I observed permanent, unsightly refreshment stands directly in front of the Air and Space Museum, the American History Museum, and the Natural History Museum. These refreshment facilities attracted far greater crowds, and pedestrian congestion, than any of the T-shirt operations that I observed.

This description is incomplete and partially incorrect. Most of the vendors mentioned are not on park land. Rather, they are located on the grounds of the Smithsonian Institution or on streets under the jurisdiction of the District of Columbia. The NPS has not licensed popcorn vendors on the Mall.

The NPS regulates concession activities on park land with a principal objective of precluding unwarranted commercialization and adverse impacts on park land. The relevant guidance from Congress, the Concessions Policy Act of 1965, 16 U.S.C. 20, is:

> [T]hat the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Consistent with this mandate, the NPS maintains concession activity on the federal park land of the National Capital Region under carefully designed safeguards. Concessions are limited only to those facilities and services necessary and appropriate for the convenience of the public. They are carefully designed, sited, and otherwise controlled so as to cause the least damage to park values and the park experience.

To serve the millions of visitors to park land between the Lincoln Memorial and the east end of the National Mall, the NPS's concessioner operates nine food and five retail operations from fixed locations. During the peak visitation period, from April through September, these fixed facilities are supplemented by fourteen ice cream carts that operate on the National Mall. The temporary and fixed facilities were designed to be the minimum size and number needed to serve only the immediate needs of the park visitors already drawn to the area. They are carefully located in areas capable of withstanding the attendant impact; many are confined within buildings. The NPS regularly inspects them to maintain requisite standards of physical appearance and operations. The NPS also controls the nature, type, quality, and price of items offered for sale by the concessioner to the park visitor. It routinely evaluates the concessioner's quality of services, requires insurance and indemnification, charges a franchise fee, and annually reviews its financial records. None of these controls has ever been applied to demonstration/vendors, and the NPS believes at least some, if not all, would be inappropriate to impose on persons or groups expressing First Amendment rights.

While some commenters compared concessions accommodations with demonstration/sales booths, none suggested that the NPS impose on permittees the same conditions it has imposed on its concessioner. In any event, for the reasons expressed earlier, the NPS believes that it would be a very delicate matter at best, and more likely inappropriate, for it to try to impose such conditions on the exercise of free expression attendant to demonstration/vendors. More broadly, comparing the purpose and regulation of concessions designed to meet the needs of park visitors with sales activities associated

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with demonstrations is like comparing apples and oranges.

The NPS concedes that it sometimes encounters unauthorized food and ice cream vendors on the Mall. It devotes considerable enforcement efforts against such illegal activities. It regularly monitors park land for unauthorized vendors, and when it detects them, it either warns them or cites them and orders them to leave park land immediately. Between July 6, 1994 and August 13, 1994, for example, the U.S. Park Police issued seventeen citations against unauthorized food or beverage vendors found on the Mall.

The proliferation of demonstration/vendors of T-shirts in the last few years has complicated this enforcement problem significantly. As the Smithsonian Institution comment noted:

> [M]any illegal [that is, non-permit-holding] vendors, encouraged by potential profits and perhaps hoping to get lost among the increased number of vendors on the Mall, are joining their permit holding counterparts in increasing numbers. We have seen many more illegal ice cream and food vendors, vendors of key chains, hats, umbrellas, and even a photographer who takes visitor pictures with cardboard cut-outs of celebrities on parkland.

The NPS remains committed to eliminating illegal vendors as well as addressing the unacceptable impacts by the demonstrator/vendors.

E. Other Matters Addressed in the Final Regulation

In its comments, the Smithsonian Institution expressed concern that the language of the proposed sales regulation might create some misunderstanding as to what would be allowed to be sold on park land, with or without a permit. The NPS obviously desires to prevent any such misunderstandings, and therefore reaffirms its intention that only books, newspapers, leaflets, pamphlets, buttons and bumper stickers may be sold under the revised sales regulations. Attempts to offer or sell items, whether directly or by the use of an artifice, other than books, newspapers, leaflets, pamphlets, buttons and bumper stickers on park land are prohibited. For example, restricted merchandise cannot be "given away" and a "donation accepted" or one item "given away" in return for the purchase of another item; such transactions amount to sales. To prevent any misunderstanding, the NPS has changed the language that appeared in the proposed sales regulation.

Finally, in the draft regulations, the NPS had proposed to make two minor numbering corrections in 36 CFR 7.96(k)(3)(vii), (ix) due to the redesignation of paragraph (k) (57 FR 4574). Pursuant to Public Law 103–279, the NPS no longer has operating responsibilities for the John F. Kennedy Center for the Performing Arts. As a result, the minor numbering corrections suggested in the proposed rule are no longer necessary. Instead, the final rule removes reference to the Center by eliminating 36 CFR 7.96(k)(3).

3. Summary/Conclusion

For all of the foregoing reasons, the NPS believes that the display and hawking of T-shirts, clothing and similar items in connection with authorized demonstrations has had an unacceptable impact on the National Capital Parks and the visitor experience. Its extensive experience in monitoring sales activities permitted under the current sales enforcement guideline has led the NPS to the firm conclusion that those activities have brought discordant and excessive commercialism to federal park land. Such sales have degraded aesthetic values, visitor circulation and contemplation, interpretive programs and historic scenes and have inhibited the conservation of park property. It also believes that no reasonable alternative is available to the action here announced. Therefore, the NPS believes it is necessary to rescind the enforcement guideline and to amend the sales regulation to limit permissible sales to books, newspapers, leaflets, pamphlets, buttons and bumper stickers.

In the considered judgment of the NPS, other measures have been found inadequate to the problem and do not provide a satisfactory level of protection for park value resources in the areas. When such sales activities have so negatively impacted park land and the park visitor, by turning the National Mall, the "Nation's front yard," into a flea market, the NPS believes it is obligated to abate the problems caused by such sales activities.

The NPS believes that limiting sales activities to newspapers, leaflets, pamphlets, books, buttons and bumper stickers is a reasonable time, place, and manner restriction. The restriction is clearly content-neutral in that it applies irrespective of the nature of the message presented. It leaves open ample alternative channels for communication of the information. It also preserves the integrity of park resources and provides for the public enjoyment of our national parks while leaving park resources unimpaired for future generations. As such, it constitutes a restriction which is "narrowly tailored to serve a significant government interest."

Drafting Information

The following persons participated in the writing of this rule: John D. Leshy, Solicitor, Richard G. Robbins and Randolph J. Myers, Office of the Solicitor, U.S. Department of the Interior.

Compliance with Other Laws

This rule was reviewed under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*) because general sales are already prohibited in this area, and individuals and groups seeking to sell as a part of a demonstration or special event are free to sell prohibited merchandise on adjacent non NPS lands.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental guidelines in 516 DM 6 (49 FR 21438), neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The NPS has reviewed this final rule as directed by Executive Order 12630 and has determined that the regulation does not have taking implications.

The Department of the Interior has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:

§ 7.96 National Capital Region Parks.

* * * * *

(k) * * *

(1) * * *

(2) No merchandise may be sold during the conduct of special events or demonstrations except for books, newspapers, leaflets, pamphlets, buttons and bumper stickers. A permit is required for the sale or distribution of permitted merchandise when done with the aid of a stand or structure. Such stand or structure may consist of one table per site, which may be no larger than 2½ feet by 8 feet or 4 feet by 4 feet. The dimensions of a sales site may not exceed 6 feet wide by 15 feet long by 6 feet high. With or without a permit, such sale or distribution is prohibited in the following areas:

* * * * *

3. Section 7.96 paragraph (k)(3) is removed.

4. Section 7.96 paragraph (k)(4) is redesignated as paragraph (k)(3).

Dated: March 14, 1995.

George T. Frampton, Jr.,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 95–8599 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5186–1]

RIN 2050–AE27

Financial Assurance Effective Date for Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending the criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, by delaying the effective date of the Financial Assurance Criteria set out at 40 CFR part 258, subpart G, until April 9, 1997. The extension applies to any size MSWLF, including remote, very small landfills as defined at 40 CFR 258.1(f)(1), and delays the compliance date for MSWLFs by two years, from April 9, 1995 until April 9, 1997 (for remote, very small landfills by 18 months, from October 9, 1995 until April 9, 1997).

EFFECTIVE DATE: The amendments in this final rule are effective March 31, 1995. The effective date of subpart G of part 258 (§§ 258.70 through 258.74) which was added at 56 FR 51016 is delayed until April 9, 1997.

ADDRESSES: The docket for this rulemaking is available for public inspection at Room M–2616, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The docket number is F–95–FADF-FFFFF. Call (202) 260–9327 to make an appointment with the docket clerk. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll free at (800) 424–9346 or in Washington, D.C. at (703) 412–9810, from 8:30 a.m. to 7:30 p.m. EST, Monday through Friday, excluding holidays; or Nancy Hunt, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (703) 308–8762.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority.
II. Background.
III. Response to Comments and Analysis of Issues.
  A. Support for Extension.
  B. Opposition to Extension.
  C. Local Governments.
  D. Remote/Very Small Landfills.
  E. Unfunded Mandate.
IV. Effective Date.
V. Economic and Regulatory Impacts.
  A. Executive Order 12866.
  B. Regulatory Flexibility Act.
  C. Paperwork Reduction Act.

I. Authority

These amendments to Title 40, part 258, of the Code of Federal Regulations are promulgated under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Background

The Agency proposed revised criteria for municipal solid waste landfills (MSWLFs), including financial assurance requirements, on August 30, 1988 (see 53 FR 33314). The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and corrective action associated with MSWLFs.

In the August 30, 1988 proposal, rather than proposing specific financial assurance mechanisms, the Agency proposed a financial assurance performance standard. The Agency solicited public comment on this performance standard approach and, at the same time, requested comment on whether the Agency should develop financial test mechanisms for use by local governments and corporations.

In response to comment, the Agency promulgated several specific financial mechanisms in the October 9, 1991 final rule on MSWLF criteria (56 FR 50978), in addition to the financial assurance performance standard of section 258.74, which allows approved States to use any State-approved mechanism that meets that performance standard. Commenters on the August 30, 1988 proposal also supported the development of financial tests for local governments and for corporations to demonstrate that they can satisfy the goals of financial assurance on their own, without the need to produce a third-party instrument to assure that the obligations associated with their landfill will be met. The Agency agreed with commenters and in the October 9, 1991 preamble, announced its intention to develop both a local government and corporate financial test in advance of the effective date of the financial assurance provisions.

The Agency has delayed the effective date of the financial responsibility provisions until April 9, 1995 (see 58 FR 51536) in order to provide adequate time to promulgate a financial test for local governments and another for corporations before the effective date of the financial assurance provisions. The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and to obtain a guarantor or an alternate instrument, if necessary. The Agency also recognized that local governments, in particular, require notice of the requirements in order to plan their budgets for the upcoming year.

The Agency proposed a local government financial test and a corporate financial test on December 27, 1993 (see 58 FR 68353) and October 12,

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1994 (see 59 FR 51523), respectively. The Agency expects to promulgate the local government test in the fall of 1995 and the corporate test in the spring of 1996. The Agency, therefore, proposed an additional extension on October 18, 1994 to delay the current April 9, 1995 effective date for subtitle D financial assurance requirements by one year until April 9, 1996 (see 59 FR 52498) to allow MSWLF owners and operators that qualify to demonstrate financial assurance for their closure, post-closure, and corrective action obligations through the use of a financial test. Owners and operators who meet the requirements of the financial tests will not be required to obtain a third-party financial assurance instrument [1] for these obligations.

III. Response to Comments and Analysis of Issues

This section summarizes and addresses the major comments out of a total of 139 comments received on the October 18, 1994 proposal. A discussion of, and response to, all comments can be found in the docket for this rulemaking.

A. Support for Extension

Most commenters support the proposal to extend the effective date of the financial assurance requirements. Many commenters, however, expressed concern that the proposed one-year extension until April 9, 1996 would not be enough time for MSWLF owners and operators to meet the financial assurance requirements by using the local government and corporate financial tests. Not only have the financial tests not been promulgated yet, but States will need time to incorporate the financial tests into their regulations and MSWLF owners and operators will then need time to comply with the recordkeeping and reporting requirements of the financial test (or with the requirements of an alternate financial assurance instrument).

The Agency agrees that one year may not be enough time to take advantage of a financial test and, accordingly, has decided to extend the effective date of the financial assurance requirements for MSWLF owners and operators by two years from April 9, 1995 until April 9, 1997 (for landfill owners and operators of remote, very small landfills by 18 months, from October 9, 1995 until April 9, 1997). Although the Agency would like to implement the financial assurance requirements as soon as possible, the Agency must also balance the goals of ensuring protection of human health and the environment and minimizing the costs of regulatory compliance to owners and operators of MSWLFs. The Agency believes that the potential cost savings to MSWLF owners and operators of complying with financial assurance requirements through the use of a financial test outweigh the risks of delaying their implementation. The Agency does not believe that delaying the effective date of the financial assurance requirements by a temporary extension will result in a significant threat to human health and the environment. The purpose of the financial assurance requirements is to ensure that funds will be available to cover the costs of closure and post-closure care if the owner or operator is unable to cover these costs when they occur. The delay in implementing the financial assurance requirements, however, does not in any way affect the owner or operator's existing obligation to conduct closure and post-closure care at the facility when required in a manner consistent with the Subtitle D criteria, and to pay the costs incurred in conducting those activities. Like other future business expenses, the Agency anticipates that most owners and operators have prepared or are currently preparing to meet these expenses. Thus, it is unlikely that a delay in implementing the financial responsibility requirements will result in significant numbers of unfunded closure and post-closure care activities.

The Agency believes that the two-year extension adopted in this rule can be fairly characterized as the logical outgrowth of the October 18, 1994 proposal. Although the proposed rule contemplated a one-year extension, the point was to provide notice of the need for additional time for MSWLF owners and operators to meet the financial assurance requirements through the use of a financial test. In light of the comments received, the Agency is now persuaded that a two-year, not a one-year, extension is necessary for MSWLF owners and operators to meet the financial assurance requirements through the use of a financial test.

B. Opposition to Extension

Four commenters out of a total of 139 commenters oppose extending the time for MSWLFs to comply with financial assurance requirements.

One commenter argues that MSWLF owners and operators could comply at this time using currently available financial assurance mechanisms, such as a trust fund, letter of credit or surety bond, and that an extension would only serve to delay closure of MSWLFs that could not meet financial assurance requirements. A related comment argues that repeated delays undermine the credibility of the financial assurance program; that the use of a trust fund is preferable to a financial test; and that any additional delay in implementing the financial assurance requirements for local governments should be no more than eight months after the April 1995 effective date.

Although many MSWLF owners and operators could comply with financial assurance requirements using currently available alternatives, the Agency is committed to developing a local government and corporate financial test as an alternative to third party financial mechanisms for the reasons discussed above. The Agency, therefore, believes that MSWLF owners and operators should not have to select a financial assurance mechanism until all the financial assurance alternatives are available, including the financial tests, so that MSWLF owners and operators can assess all the alternatives to determine which one will best serve their needs.

The Agency disagrees that delaying the effective date will only serve to delay closure of facilities than cannot meet the financial assurance criteria. MSWLFs are already subject to design and operating requirements that are more extensive, and significantly more expensive, than the financial assurance criteria. MSWLFs that were unable to meet Federal minimum design and operating requirements have already closed.

The State of Missouri argues that a delay in implementing Federal financial assurance requirements would place MSWLF owners and operators in States that already require financial assurance at a competitive disadvantage with MSWLF owners and operators in States that do not currently require financial assurance, as well as place States with existing or planned financial assurance programs in the position of having to spend valuable time and effort to delay their own programs.

The Agency does not believe that an additional two years to comply with Federal financial assurance requirements would create a competitive disadvantage between MSWLF owners and operators in States with different financial assurance requirements. The available evidence suggests that the costs of transporting waste—even between adjacent States—will more than offset the additional costs of disposing of waste in a State with financial assurance requirements. Further, since waste disposal contracts are generally written to cover several years, the Agency believes it is unlikely waste generators will shift disposal to a different MSWLF during a temporary extension period.

Furthermore, in the absence of a significant competitive disadvantage among States as a result of the delay there is, arguably, no need for States with existing or planned financial assurance programs to change their own requirements. States can adopt requirements under State law that are more stringent than the Federal requirements and, therefore, do not need to delay implementing their own financial assurance requirements. Indeed, States that adopt responsible financial assurance requirements over the next two years will be better able to cover unanticipated MSWLF closure or post-closure costs. If, however, a State chose to delay its own financial assurance requirements, the commenter has not shown that it would be prohibitively expensive or difficult to implement such an extension.

A commenter from the insurance and surety industry argues that delaying the effective date of the financial assurance requirements to allow the use of a financial test would ultimately undermine the purpose of the financial assurance requirements and force States to incur the costs of closing, and remediating releases from, MSWLFs that cannot meet financial assurance requirements. The argument is that the use of a financial test would mean that only the least financially able MSWLF owners and operators would purchase third-party financial assurance instruments, which would discourage the continued development of alternate financial assurance instruments in the insurance and surety industry, thereby, making it more expensive and more difficult to obtain third-party financial assurance instruments. Financially weaker MSWLF owners and operators would, therefore, be unable to meet financial assurance requirements and would seek to further reduce the requirements necessary to meet a financial test. Inevitably, States would be burdened with the closure and response costs of financially weak MSWLF owners and operators that are either unable to obtain third-party financial assurance instruments or that are allowed to continue to operate as a result of a devalued financial test.

This comment is more appropriately addressed to the proposed financial tests themselves, rather than to a delay in implementing the financial assurance requirements. At this time it is difficult, if not impossible, to predict how many MSWLFs will or will not be able to meet a financial test, because the local government and corporate financial tests have not yet been promulgated or otherwise finalized. Accordingly, the Agency will address this issue more fully in the financial test rulemakings. Even if, however, insurance and surety mechanisms become expensive and difficult to obtain due to underwriting considerations, owners and operators still have the option of obtaining a guarantee, a letter of credit, or of establishing a trust fund to comply with financial assurance obligations. Trust funds, in particular, are available to all owners and operators regardless of corporate affiliation or prevailing market conditions, because creating a trust fund does not present a financial risk.

In any event, the Agency does not believe that a temporary delay in implementing the Subtitle D financial assurance requirements in anticipation of the development of a financial test will cause financial services firms to abandon the market for, or otherwise limit their development of, third-party financial assurance instruments. First, it is the Agency's understanding that providers of financial assurance mechanisms make decisions regarding potential markets and the desirability of entering those markets based on evaluations of long-term market demand; arguably, a two-year delay should not have a significant effect on this long term decision-making. Second, an extensive market for financial assurance mechanisms, which is sufficient to maintain the infrastructure of the market for such mechanisms, already exists independent of the RCRA Subtitle D financial assurance requirements. For example, owners and operators of hazardous waste treatment, storage and disposal facilities (TSDFs), underground storage tanks, and PCB commercial storage facilities must meet financial assurance requirements, which include third-party mechanisms that are essentially the same as those provided for in the Subtitle D criteria.

C. Local Governments

Some commenters argue that local governments as a class should be exempt from meeting financial assurance requirements for MSWLFs, because unlike private MSWLFs owners and operators, local governments do not go out of business or otherwise disappear. Today's rule and the October 18, 1994 proposal, however, only address the issue of extending the effective date for meeting the financial assurance requirements for MSWLFs; they do not raise the issue of whether certain classes of MSWLF owners and operators, such as local governments, should be exempt from the financial assurance requirements. The Agency previously addressed this issue in the October 9, 1991 rule that revised the minimum Federal standards, including financial assurance criteria, for MSWLFs (see 56 FR 50978). At that time, the Agency determined that local governments should not be exempt from financial assurance requirements because local governments may be unable to obtain the immediate funds necessary to meet closure and/or corrective action obligations at MSWLFs so as to ensure protection of human health and the environment. Local governments, for example, often have relatively limited resources, limited flexibility in their annual budgets and a limited ability to quickly obtain traditional sources of financing or revenues, such as bond issues, taxes and intergovernmental transfers.

D. Remote/Very Small Landfills

Today's rule extends the effective date of the financial assurance requirements for all MSWLF owners and operators, including remote, very small (less than 20 tons per day) landfills as defined at 40 CFR § 258.1(f)(1), until April 9, 1997. Although the proposed rule contemplated extending the effective date of the financial assurance requirements for all MSWLFs, this was apparently unclear to several commenters who suggested that the Agency extend the deadline for the remote, very small landfills as well as for the general class of MSWLFs. Remote/very-small landfills had been subject to different deadlines for meeting the MSWLF criteria than the general class of MSWLFs; until today's rule the effective date of the financial assurance requirements for owners and operators of remote, very small landfills was October 9, 1995 (see 58 FR 51536).

E. Unfunded Mandate

A few commenters assert that the financial assurance requirements contained in the October 9, 1991 final rule on MSWLF Criteria (56 FR 50978) constitute a Federal unfunded mandate on local governments. Today's rule, however, provides regulatory relief by extending for two years the effective date by which MSWLF owners and operators (including local government owners and operators) must meet those financial assurance requirements. Moreover, the purpose of the extension provided by this rule is to allow the Agency sufficient time to promulgate a rule to give MSWLF owners and operators additional flexibility to meet the financial assurance requirements. That rule will allow owners and

[1] For a description of the third-party instruments available to MSWLF owners and operators see 56 FR 50978.

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operators to use a financial test instead of a more expensive third-party instrument to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and corrective action associated with MSWLFs.

IV. Effective Date

Today's rule is effective immediately. Section 3010(b) of RCRA provides that regulations respecting requirements applicable to the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) of RCRA allows the Agency to set a shorter effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

The regulated community does not need six months to come into compliance with today's rule, because the provisions of this rule delays the regulatory requirements of financial responsibility and allows the Agency time to develop additional, more flexible, methods for MSWLF owners and operators to comply with the regulations. Today's rule, therefore, is immediately effective under section 553(d) of the Administrative Procedure Act.

V. Economic and Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (see 58 FR 51735), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency believes that this final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis, and today's final rule is not subject to review by the Office of Management and Budget (OMB) based upon Executive Order 12886.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act [5 U.S.C. 601 et seq.] at the time an Agency publishes a proposed or final rule, it generally must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The effect of this final rule is to provide small entities with additional time to meet the financial assurance requirements of subtitle D regarding closure and post-closure costs. Therefore, pursuant to 5 U.S.C. 605b, the Agency believes that this final rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I, of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and 1345(e).

2. § 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1997.

3. § 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

4. § 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * *

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

[FR Doc. 95–8605 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–20

[FPMR Amendment D–93]

RIN 3090–AF50

Energy Conservation

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This rule eliminates the General Services Administration's existing operating standards and allows for the maintenance of building temperatures in a manner satisfactory to users and consistent with local commercial practices. In addition, it deletes the minimum ventilation rate and replaces it with the ventilation standards specified by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE Standard 62 Ventilation for Acceptable Indoor Air Quality).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Carelock, Office of Property Management, Washington, DC 20405, (202) 501–1430.

SUPPLEMENTARY INFORMATION: Executive Order 12862, Setting Customer Service Standards, states that in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. GSA, in an effort to become more customer driven, seeks to improve customer satisfaction, by changing regulations that have direct effect on three areas of low customer satisfaction. GSA's customers, building tenants have indicated by their responses to customer surveys that they have very low satisfaction levels for the following: ventilation, 42 percent satisfied; indoor air quality, 44 percent satisfied; summer temperature, 53 percent satisfied; and winter temperature, 56 percent satisfied.

The two sections of the Federal Property Management Regulations (FPMR) addressed in this regulation mandate space temperatures and ventilation rates that contribute to low customer satisfaction. These changes will permit the Buildings Managers to control building temperatures and mandate adherence to the latest air ventilation guidelines. The proposed regulation was published in the **Federal Register** on September 13, 1994, for comment (59 FR 46951). No comments were received during the comment period.

Executive Order 12866

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

GSA has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

For the reasons set out in the preamble, 41 CFR Part 101–20 is amended as follows:

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for Part 101–20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–20.1—Building Operations, Maintenance, Protection, and Alterations

2. Section 101–20.107 is amended by revising paragraph (c)(1) and paragraph (e) to read as follows:

§ 101–20.107 Energy conservation.

* * * * *

(c) * * *

(1) Temperatures will be maintained to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices. GSA will seek to minimize energy use while operating its buildings in this manner. During non-working hours, heating temperatures shall be set no higher than 55 degrees Fahrenheit and air-conditioning will not be provided except as necessary to return space temperatures to a suitable level for the beginning of working hours.

* * * * *

(e) During working hours in periods of heating and cooling, provide ventilation in accordance with ASHRAE Standard 62, *Ventilation for Acceptable Indoor Air Quality* where physically practical. Where not physically practical, provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329–2305.

* * * * *

Dated: March 24, 1995.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95–8486 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 040395D]

Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Yellowfin Sole Fishery in Zone 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species catch (PSC) allowance of *C. bairdi* Tanner crab apportioned to the trawl yellowfin sole fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 4, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 PSC allowance of *C. bairdi* Tanner crab in Zone 1 for the trawl yellowfin sole fishery category, which is described at § 675.21(b)(1)(iii)(B)(*1*), was established as 225,000 crabs in Table 7 on page 8485 of the 1995 specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the PSC allowance

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of *C. bairdi* Tanner crab for the trawl yellowfin sole fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8621 Filed 4–4–95; 4:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 67
Friday, April 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AG 62

Bringing Nonpermanent Excepted Positions Into the Competitive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This would avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

DATES: Comments must be received on or before June 6, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

SUPPLEMENTARY INFORMATION: Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which "a person who occupies a permanent position when it is placed in the competitive service * * * or is otherwise made subject to competitive examination" may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702. Those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less.

When the regulations were written, almost all nonpermanent positions inside and outside the Federal Government were filled by such temporary appointments. Giving those employees temporary appointments in the competitive service permitted them to continue serving, with no change in employment conditions, until they completed the work for which they were hired. That is still generally true when positions are brought into the service from outside the Federal Government.

In the Federal excepted service, however, an increasing number of excepted positions are filled under appointments with time limits longer than 1 year (comparable to term appointments in the competitive service). Those positions may be brought into the competitive service by revocation of a statutory appointing authority or an exception under Schedule A, B, or C, or by an OPM determination that the authority no longer covers the positions.

Employees whose excepted appointments have limits longer than 1 year are eligible for within-grade increases, promotions and reassignments, and retirement and insurance benefits that are not available to temporary employees in the competitive service. The logical way to allow those employees to complete their work with no change in employment conditions would be to retain them under term appointments. The proposed regulations would add provision for such term appointments. The regulations would also make editorial changes and would remove obsolete references to the Federal Personnel Manual.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by the Government.

* * * * *

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency may convert that employee's appointment to career or career-conditional under § 315.701.

* * * * *

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established

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under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

* * * * *

[FR Doc. 95–8597 Filed 4–6–95; 8:45 am]

BILLING CODE 4325–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Request for Comments Concerning Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Franchise Rule" or "the Rule"). The Commission is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. The Commission also is requesting comment on whether the Rule should be modified to: Replace the Rule's disclosure requirements with those set forth in the revised Uniform Franchise Offering Circular Guidelines, approved by the Commission on December 30, 1993; modify the scope of disclosure requirements for business opportunity ventures; clarify the applicability of the Rule to trade show promoters; and require the disclosure of earnings information. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments will be accepted on or before August 11, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Franchise Rule should be identified as "16 CFR Part 436—Comment."

Notification of interest in the Public Workshop-Conference should be submitted in writing to Myra Howard, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, or Myra Howard, (202) 326–2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review Rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying Rules and guides that warrant modification or rescission.

The Commission is currently seeking comment on several issues specific to the Franchise Rule. The Commission recognizes that there have been changes in the franchise industry since the Rule was promulgated in 1978. Among these changes is the modification of the Uniform Franchise Offering Circular ("UFOC") Guidelines by the North American Securities Administrators Association ("NASAA"). In 1986, NASAA revised Item 19 of the Guidelines to require franchisors who make earnings claims to have a reasonable basis for such claims. On April 25, 1993, NASAA revised the entire UFOC Guidelines. The Commission approved the revised UFOC Guidelines on December 30, 1993. The Commission now seeks comment on the desirability of replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines. The Commission also seeks comment on the desirability of modifying the scope of the Rule as it pertains to the sale of business opportunities. In addition, the Commission seeks comment on whether it should revoke the current conditional exemption for trade show promoters and whether it should modify the Rule to add specific disclosure requirements or prohibitions concerning trade show promoters. Finally, there has been considerable discussion in the franchise industry and among franchise regulators about requiring the disclosure of earnings information to prospective investors. The Commission solicits comment on the desirability of modifying the Rule to require the disclosure of earnings information, and if so, what form those disclosures should take.

A. Background

The Franchise Rule was promulgated by the Commission on December 21, 1978. 43 Fed. Reg. 59,614. The Rule makes it an unfair or deceptive act or practice for franchisors and franchise brokers to fail to disclose to prospective franchisees specific information about the franchisor, franchise business, and terms of the franchise agreement. Franchisors and franchise brokers must disclose additional information if they make any claim about actual or potential earnings to prospective franchisees or to the media. The Rule sets forth both the form and content of the required disclosures. Franchisors must provide prospective franchisees with the required disclosures before any sale is made.

B. Issues for Comment

1. The Revised UFOC

The Franchise Rule sets forth the content and form of the required disclosures. 16 CFR 436.1(a)–(e). In lieu of the Rule's format, the Commission has accepted the UFOC Guidelines originally adopted by the Midwest Securities Commissioners Association on September 5, 1975. 44 FR 49,966, 49,970, and as subsequently amended by NASAA on November 27, 1986. 52 FR 22,686. Most recently, NASAA petitioned the Commission to approve new amendments to the UFOC Guidelines, which NASAA adopted on April 25, 1993. *See* Extra Edition, Bus. Fran. Guide (CCH), Rpt. No. 161 (May 25, 1993). The Commission approved the use of the new UFOC on December 30, 1993. 58 FR 69,224. The new amendments are the product of a comprehensive revision of the UFOC Guidelines. The Commission is concerned about costs and other potential disadvantages to franchisors and franchisees that may result from a lack of uniformity between federal and state regulations. Accordingly, the Commission solicits comments on whether it is desirable to revise the Rule by replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines.

2. The Application of the Franchise Rule to Business Opportunities

The Franchise Rule applies to both franchises and business opportunities. The Rule currently does not provide a specific definition of the term "business opportunity." Rather, the Rule's definition of the term "franchise" includes some forms of business opportunities. Specifically, if the following three conditions are met, a business opportunity will be deemed a franchise:

(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(1) Supplied by another person (hereinafter "franchisor"), or

(2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

(1) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations * * *; and

(C) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay [at least $500 within the first six months of operation] to the franchisor, or to a person affiliated with the franchisor. 16 CFR 436.2(a)(1)(ii)(A)–(B) and (a)(2).

Accordingly, the Commission seeks comment on the desirability of modifying the Rule to include a specific definition of the term "business opportunity." The Commission also seeks comment on whether such a definition should include other business opportunity formats that are currently not covered by the Rule, such as multi-level marketing, seller assisted market plans, work-at-home plans, and certain distributorships and licenses.

The Commission is also concerned that the Rule's disclosure requirements may not be well suited to the sale of business opportunities and may impose unnecessary costs on both business opportunity sellers and buyers. Accordingly, the Commission seeks comment on whether to modify the Rule to require different disclosures for the sale of business opportunities. Specifically, the Commission seeks comment on what disclosures are most relevant to business opportunity purchasers. The Commission asks whether certain Rule disclosures should be eliminated and if any additional disclosures should be required.

3. Trade Show Promoter Liability

The Franchise Rule applies to franchisors and franchise brokers. Franchise brokers are jointly and severally liable for violations of the Franchise Rule. 16 CFR 436.1, 436.2(j). In 1981, the Commission advised trade show promoters that they would be exempt from Rule coverage as brokers if they provided trade show attendees with a specific consumer education notice. The notice advises consumers that the Commission's Franchise Rule grants them rights to receive certain information about a franchise investment prior to signing agreements. See 46 FR 52327 (October 27, 1981). The exemption requires trade show promoters to give trade show attendees the required notice upon their first entry to the show. Trade show promoters who fail to distribute the required consumer education notice may be held jointly and severally liable for all participating franchisors' Rule violations that may occur at the shows.

Since the Commission issued this conditional exemption in 1981, the sale of franchises and business opportunities at trade shows has increased significantly. In 1994, the Commission settled charges of Rule violations against two trade show promoters who allegedly failed to provide the required consumer education notices at their respective shows. The Commission solicits comments on the desirability of revoking the conditional exemption for trade show promoters. In addition, the Commission seeks comment on whether the Rule should be revised to provide separate disclosure requirements and prohibitions for trade show promoters.

4. Earnings Disclosure Requirements

Franchisors making claims about actual or potential sales, profits, or earnings must provide detailed disclosures mandated by § 436.1(b)–(e) of the Rule. Section 436.1(b) enumerates the substantiation requirements for claims based on projections or forecasts; § 436.1(c), for claims based on actual operating results; and § 436.1(e), for claims that appear in media advertising. The franchisor must have a "reasonable basis" for all such claims; they must be "geographically relevant" to the potential franchisee's market area; and, if they are based on operating results, must be prepared in accordance with generally accepted accounting principles.

The franchisor must also give a separate earnings claim disclosure document to any potential investor to whom such a claim is made. The earnings claim document must contain a cover page specified by § 436.1(d); a full statement of the basis and assumptions for the claim; prescribed cautionary language; a notice that substantiating material is available for inspection by investors; a disclosure of the number and percentage of the franchisor's outlets that have achieved the same or better results; and various additional information, depending on the type of claim made.

The Franchise Rule does not mandate the disclosure of actual or projected earnings information. The NASAA Franchise Committee and some members of its Industry Advisory Committee, however, have proposed that franchisors and promoters of business opportunities be required to disclose and provide substantiation for some form of earnings information to potential investors. They are concerned that, in the absence of required earnings disclosures, prospective investors seeking information about potential earnings may receive unsubstantiated, misleading, deceptive, and possibly false earnings information. The Commission shares this concern. Over the past five years, allegations of false and deceptive earnings claims have been the most common allegation set forth in Commission complaints filed against franchisors and business opportunity promoters. Therefore, the Commission seeks comments on the desirability of modifying the Rule to include a mandatory earnings disclosure. In particular, the Commission seeks comments on the specific benefits of such disclosures to prospective investors as well as the potential for mandated earnings disclosures to mislead prospective investors. In addition, the Commission requests comment on potential burdens and compliance costs that such Rule modification might impose on prospective franchisees and franchisors. The Commission specifically requests commentors to submit statistical information, including survey data, or other report materials, in support of their comments.

C. Request for Comment

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) To what extent do franchisors use the Commission's Franchise Rule format?

(b) What benefits has the Rule provided to purchasers of franchises and business opportunities?

(c) Has the Rule imposed costs on purchasers? Explain.

(2) What changes, if any, should be made to the Rule to increase the benefit of the Rule to purchasers?

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(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms? Explain.

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other Federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology, economic conditions, and industry practices had on the Rule?

The Revised UFOC Guidelines

(7) Would it be in the public interest for the Commission to establish one national franchise disclosure standard?

(8) Should the Commission revise the Rule by replacing the Rule's required disclosures with those set forth in the revised UFOC Guidelines, approved by the Commission on December 31, 1993? Explain.

(a) What would be the costs and benefits of such a revised Rule on sellers of franchises and business opportunities?

(b) What would be the costs and benefits of such a revised Rule on purchasers of franchises and business opportunities?

The Applicability of the Rule to Business Opportunities

(9) To what extent do business opportunity sellers currently comply with the Rule?

(10) What are the costs and benefits of the Rule to business opportunity sellers subject to the Rule's disclosure requirements?

(11) What are the costs and benefits of the Rule to prospective purchasers of business opportunities?

(12) To what extent do purchasers of business opportunities obtain relevant and material information from the required disclosures? Explain.

(13) Should the Commission clarify the Rule by adding a separate definition of the term "business opportunity?" Explain.

(a) Should such a definition of "business opportunity" be expanded beyond the current definition of a "business opportunity" franchise? Explain.

(b) Should such a definition include the sale of other business arrangements such as multi-level marketing, seller assisted marketing plans, work-at-home plans, and certain distributorships and licenses? Explain.

(14) Should the Commission revise the Rule's disclosure requirements for sellers of business opportunities? Explain.

(a) Should the Commission require a different disclosure document for business opportunities?

(b) What information do purchasers of business opportunities need that is not currently required by the Rule?

(c) What disclosures currently required by the Rule should be eliminated?

(15) What would be the costs and benefits to firms that would be subject to such revised disclosure requirements?

(16) What would be the costs and benefits of such revised disclosure requirements to purchasers of business opportunities?

Trade Show Promoter Liability

(17) Should the Commission revoke the current conditional exemption to the Rule for trade show promoters? Explain.

(a) To what extent do consumers purchase franchises or business opportunities as a result of attending franchise trade shows?

(b) To what extent do exhibitors at trade shows violate the Rule in their presentations to consumers? What is the nature of any such violations?

(c) What would be the costs and benefits of revoking the conditional exemption to the Rule?

(18) Should the Commission revise the Rule to include separate disclosures and prohibitions for trade show promoters? Explain.

(a) What disclosures should trade show promoters be required to make to show attendees?

(b) What conduct should the Rule prohibit trade show promoters from engaging in?

(c) What would be the costs and benefits of such a revised Rule?

Earnings Information

Background

(19) To what extent do prospective franchisees want information about (a) actual earnings and (b) projected earnings?

(20) To what extent do prospective franchisees receive pre-sale written or oral earnings information?

(a) To what extent do franchisees receive historical earnings information?

(b) To what extent do franchisees receive earnings projections or other earnings claims?

(c) To what extent do franchisees receive substantiation for such earnings information or earnings projections?

(21) To what extent do franchisors currently provide earnings disclosures to prospective franchisees?

(a) To what extent do franchisors provide historical earnings information?

(b) To what extent do franchisors provide earnings projections or other earnings claims?

(c) To what extent do franchisors substantiate such earnings information or earnings projections?

(22) For those franchisors that do provide earnings information:

(a) In what industries are these franchisors engaged?

(b) What is their size (e.g., number of franchisees and gross revenues of the franchise system)?

(c) Does the franchisor use the UFOC or FTC disclosure document format?

(23) To what extent do (a) the Rule requirements and (b) the UFOC requirements inhibit franchisors from providing historical earnings information or earnings projections to prospective franchisees? Explain.

(24) In the absence of earnings disclosures under the Rule or UFOC, is earnings information available to prospective franchisees from other sources? Explain.

(a) What are the costs to prospective franchisees to obtain such information?

(b) To what extent is such information accurate and reliable?

Financial Data Currently Available to Franchisors

(25) To what extent do franchisors routinely receive financial and/or other operating performance information from franchisees?

(a) What types of information do franchisors receive?

(b) Do franchisees give the information voluntarily or by contractual requirements?

(c) How often do franchisors receive such information?

(d) How long is such information retained by franchisors?

(26) Are the financial data currently submitted by franchisees sufficient to enable franchisors to provide prospective franchisees with an accurate appraisal of the financial risks of investing in a franchise? Explain.

(a) If the data are insufficient to provide such information, what additional information would correct the deficiency?

(b) What would be the additional costs and benefits of obtaining and providing this additional information to prospective franchisees?

(27) To what extent do franchisors conduct periodic audits of franchisee financial operations? Explain.

(28) To what extent do franchisors require franchisees to use particular accounting formats? Explain.

Possible Required Earnings Disclosures

(29) Would it be in the public interest for the Commission to establish one national earnings claims disclosure requirement? Explain.

(30) What types of earnings data, or other measures of franchisee operating performance, would be most useful to prospective franchisees (e.g., revenues, royalties, net income before income taxes, break-even sales volume, time to reach a break-even point, return on investment)? Describe.

(31) Are there industries for which traditional financial measures of operating performance are either irrelevant or inadequate to provide prospective franchisees with useful earnings information?

(a) What are these industries?

(b) What supplemental information could these industry franchisors provide to ensure that prospective franchisees receive useful earnings information?

(32) Should the Rule be revised to require franchisors to disclose information about franchisee success rates? If so, which measure of success (e.g., failures, turnover, or longevity in a franchise system) would most help franchisees gauge the financial success of the system? Explain.

(a) How should a franchisee failure be defined? Explain.

(b) What type of franchisee failure data (number of failures, failure rates, or longevity of franchisees who fail) would be most useful to prospective franchisees?

(c) How should franchisee turnover be defined? Explain.

(d) What type of franchisee turnover data (number of failures, terminations, cancellations, or transfers) would be most useful to prospective franchisees?

(e) Should information about franchisee longevity in a franchise system, regardless of reasons for departure, be disclosed to prospective franchisees? Explain.

(f) What are the costs and benefits of requiring franchisors to disclose information about franchisee failures, turnover, or longevity in a franchise system?

(33) Is it possible to have a uniform earnings disclosure requirement for all franchise systems? Explain.

(34) How can an earnings disclosure requirement be configured to assure relevancy to the market location being considered? What types of earnings information would be relevant? Explain.

(35) How can an earnings disclosure requirement be configured to reflect differences in the length of franchisees' operating experience? Explain.

(36) How frequently should earnings disclosures be updated?

(37) How long should prospective franchisees be given to review required earnings disclosures before signing a contract? Is the Rule's ten-day minimum review period sufficient? Explain.

(38) If the Commission requires earnings disclosures, should franchisors be prohibited from making earnings disclosures other than those mandated by the revised Rule? Explain.

(39) In what ways might a mandatory earnings disclosure be misleading or deceptive to prospective franchisees? Explain the specific form of earnings disclosure (e.g., gross sales, profit and loss statements, average net income) and why it may be misleading or deceptive.

Possible Exemptions and Special Circumstances

(40) What kind of meaningful earnings information can new franchise systems provide to prospective franchisees? Explain.

(a) Should a new franchise system be exempt from an earnings disclosure requirement?

(b) What would be an appropriate exemption period?

(c) Should a new franchisor be required to provide a negative disclosure cautioning prospective franchisees that its franchise system has not been in business long enough to provide an accurate earnings history?

(41) What kind of meaningful earnings information can a small franchise system provide to prospective franchisees? Explain.

(a) How should the term "small franchise system" be defined?

(b) Would compliance with an earnings disclosure requirement impose significant burdens and costs on small franchise systems?

(c) Should a small franchise system be exempt from an earnings disclosure requirement? If so, should a qualifying small franchise system be required to provide a negative disclosure cautioning prospective franchisees that its franchise system cannot provide accurate and reliable earnings information?

(42) Should the Commission consider exemptions to an earnings disclosure requirement for other circumstances? Explain.

Additional Considerations

(43) What concerns do franchisors have about being required to provide earnings information to prospective franchise purchasers? How can the Commission address these concerns?

(44) If the Commission adopts a mandatory earnings disclosure requirement, franchisors might be compelled to collect financial data from franchisees. What concerns do franchisees have about: (a) revealing financial data to their franchisors; and (b) franchisors' use of their financial data to comply with an earnings disclosure requirement? How can the Commission address these concerns?

(45) To what extent do franchisors' contractual agreements with franchisees prevent franchisees from disclosing information about their own operating performance to prospective franchisees? How should the Commission address this concern?

D. Invitation to Comment

In reviewing the Franchise Rule, Commission staff will consider all comments submitted by August 11, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

E. Public Workshop Conference

The FTC staff will conduct a Public Workshop Conference to discuss written comments received in response to this Request for Comments. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised during the rule review, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the review of the Franchise Rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the Rule Review. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of

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the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the Rule Review. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

The conference will be held in the early fall over the course of two consecutive days. A forthcoming announcement will provide the exact dates and location. Parties interested in participating must notify Commission staff by August 11, 1995.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–8619 Filed 4–6–95; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Iron-Containing Dietary Supplement Powders

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to exempt from child-resistant packaging requirements those dietary supplement powders that have no more than the equivalent of 0.12 percent weight-to-weight elemental iron. The Commission proposes this exemption because there are no known poisoning incidents with these products, and the dry powdered form deters children from ingesting them in harmful amounts.

DATES: Comments on the proposed rule must be received by the Commission no later than June 21, 1995.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0470.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

A. Background

Although iron is essential for good health, in large doses it can be toxic. For this reason, in 1978, the Consumer Product Safety Commission ("the Commission") required child-resistant packaging ("CRP") for drugs and dietary supplements that contain iron. 16 CFR 1700.14(a)(12) and (13). The Commission issued these rules under the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–1476, which authorizes the Commission to require CRP to protect children under 5 years of age from poisoning hazards posed by harmful household substances.

Specifically, CRP is required for dietary supplements "that contain an equivalent of 250 milligrams or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids." 16 CFR 1700.14(a)(13). This requirement does not apply if iron is present only as a colorant. *Id.*

On May 11, 1994, Nutritech, Inc., petitioned the Commission to exempt unflavored, unsweetened iron powders from CRP requirements for dietary supplements containing iron. Nutritech manufactures an unsweetened, unflavored vitamin, mineral, and amino acid powder intended to be mixed with fruit juice. The petitioner stated that CRP is unnecessary for this dietary supplement because: (i) The substance alone is unpalatable; (ii) due to the powder consistency of this substance, a child would not consume a toxic amount without gagging; and (iii) to Nutritech's knowledge, there have been no poisoning incidents involving this product in its 22 year history.(1)[1] The Commission published a notice in the **Federal Register** soliciting comments on the petition, 59 FR 39747, and has received no responses.

B. Toxicity Data

The minimum toxic and lethal doses of iron are not well defined. Generally, doses of elemental iron from 20 to 60 milligrams per kilogram of body weight ("mg/kg") may produce mild symptoms of poisoning, 60 mg/kg is the minimal dose for serious toxicity, and approximately 180 to 250 mg/kg is considered a lethal dose. However, fatalities of young children have been reported at lower doses.(2)(3)

According to the relevant scientific and medical literature, where information on the formulation was available, the majority of pediatric poisoning incidents involved solid iron—in the form of tablets or capsules—with the remaining cases involving liquid preparations. Among the reported ingestion incidents, fatalities and serious cases of toxicity usually involve ingestion of adult preparations (such as prenatal vitamins) that contain 60 mg or more of elemental iron per tablet. The literature search did not identify a single case of pediatric poisoning involving powdered iron formulations.(2)(3)

Recently, the Food and Drug Administration ("FDA") published proposed labeling and packaging requirements for iron-containing dietary supplements and drugs. 59 FR 51030 (October 6, 1994). Based on its review of iron poisonings involving children under 6 years of age, the FDA decided to limit its proposed rules to products in solid oral dosage forms (capsules and tablets) and not include liquid or powder products.(2)

The Commission's own 1994 study of pediatric iron poisonings and fatalities found that the majority of serious outcomes involved products in solid or capsule forms. The report showed that all 36 of the in-depth investigations of iron ingestion deaths of children under 5 years old occurring between 1986 and 1993 involved solid capsule or tablet formulations. In 1993, 57 hospital emergency room cases documented through NEISS involved ingestion of iron capsules or tablets by children under 5 years old, and one involved liquid iron. As noted, there were no known pediatric poisonings that involved powdered formulations. This study was based on data from the Commission's National Electronic Injury Surveillance System ("NEISS"), in-depth investigations, the National Center for Health Statistics ("NCHS") and the American Association of Poison Control Centers ("AAPCC").(2)

[1] Numbers in parentheses identify documents listed at the end of this notice.

Due to the subcategories that AAPCC uses to classify iron ingestion incidents, the data do not specifically address powdered iron-containing formulations. However, for these AAPCC cases, powdered formulations can be ruled out of all iron related fatalities involving children under 5 years old, and 98.4 percent of cases with serious symptoms, that were reported to the AAPCC between 1989 and 1992. (The remaining 1.2% of cases did not specify the physical form of the ingested product.) The formulations of the iron-containing products involved in pediatric deaths is unavailable from NCHS death certificate data.(2)

For powdered dietary supplements containing 18 mg of elemental iron per tablespoon (0.12% weight-to-weight), a 10 kg child would have to consume 11, 33, and 100 tablespoons to reach the respective minimal (20mg/kg), serious (60mg/kg), and lethal (180 mg/kg) toxicity levels. This assumes none of the product is spilled during consumption.(2)

C. Human Factors Data

Poisoning incidents involving ingestion of large amounts of any powdered substance are relatively rare. Rather, children are more likely to ingest large quantities in the form of liquids or solids, such as tablets and capsules. One reason for this distinction is the physical difficulty children have handling and swallowing powders. Eating a dry powder is difficult and time-consuming. Only small amounts can be eaten at a time to allow the powder to absorb sufficient saliva so the powder can be swallowed. Attempts to swallow too much at once or to swallow too soon will likely result in aspirating the powder and stimulate coughing, which would limit the amount ingested. Because of the time it takes to ingest a powder, it is questionable that a young child could eat a full tablespoon of powder at one time. The length of time required to successfully ingest powders may increase the opportunity for an adult to intervene.(2)(3)

Children's motivation is also a factor in poisoning incidents. Curiosity is the most common motivation among young children. Those less than 3 years old explore through manipulative and oral activity. The youngest at-risk children (less than 24 months) reportedly ingest substances like dirt or powdered detergent by grasping a handful of the substance and then opening their hands and using their palms to push the substance into their mouths. This often results in spilling much of the substance.(3)

Exploratory behavior among children 3 to 4 years old may be somewhat more controlled than for younger children. For example, in a study examining powdered aspirin, children 42 to 51 months of age had difficulty picking up the fine aspirin powder, and when asked to taste it, they did so by putting their fingers in the powder and licking their fingers or by licking the powder directly on the table. This behavior may tend to limit the amount ingested.(3)

In role-playing activities, children may use a powdered substance in imitation of adult behavior. They may mix it with a liquid and drink it or use the powder to substitute for some other food item (e.g., cake mix). However, incomplete mixing of the product will result in a grainy or lumpy mixture which may cause gagging. Repeated ingestion is unlikely following such an experience. It is unlikely that a child could effectively dissolve and ingest toxic amounts of powder with 0.12 percent weight-to-weight iron.(3)

Hunger is another potential motivation. The primary risk of poisoning from these iron-containing supplements would be to a starved, unattended child with no other available source of nutrition. However, it is unlikely that a child would have the time and perseverance to ingest a quantity of iron (11 tablespoons) that would be potentially toxic (20 mg/kg). This is especially true since these products are expensive, purchased by a select population of nutrition enthusiasts, and are probably stored near other foods that would be more appealing to children.(3)

The relative palatability of a substance may influence toxic ingestions. Although flavor plays little or no role in determining whether a product is ingested, it does influence the quantity ingested. The unpleasant taste of the petitioner's product may deter ingestion of toxic levels. Flavored products may pose a somewhat greater risk. However, the other factors discussed above would likely limit the toxic dose ingested of both flavored and unflavored powdered iron supplements.(3)

D. Economic Data

According to the Food and Drug Administration, a dietary supplement is "a food, not in conventional form, that supplies a component to supplement the diet by increasing the total dietary intake of that component," Dietary Supplement Health and Education Act of 1994, Public Law 103–417. These are distinct from fortified foods, such as infant formulas and meal replacements, which are intended to serve as the sole item of a meal. The ingredients in dietary supplements and fortified foods may be similar, but the marketing emphasis and health claims are different.(4)

The petitioner markets two unsweetened, unflavored protein powder supplements that are sold in individual serving packets or in canisters. Each recommended serving of 1 tablespoon contains 18 mg of iron and is mixed with juice for consumption. The following table shows the available container sizes and the total iron content of each.

Size	Servings	Total iron content (mg)
5.29 oz.	10	180.
15.9 oz.	30	540.
2.2 lb.	55	1188.
25 packets	25	450 (18 mg per packet).

Sweetened or flavored supplements make up the major part of the powder dietary supplement market. Many are marketed as "sports nutritionals" for fitness enthusiasts. These products are packaged in cartons, canisters, packets, jugs, and pails in various sizes and strengths of iron. Unit and dollar sales of powdered nutritional products are not available. A spokesperson for the Council for Responsible Nutrition ("CRN"), an industry group, estimates the retail market for protein powders (including both supplements and fortified foods) at $2 billion. CRN attributes the larger market share (percent unknown) to flavored powders marketed as sports nutritionals and diet supplements.(4)

D. Action on the Petition

As discussed above, the relevant literature and data show no cases of child poisonings due to iron-containing powders. In addition, it is unlikely that young children would ingest toxic

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amounts of iron-containing supplement powders which are difficult for children to handle without spilling or to swallow without gagging. A child would have to ingest approximately 11 tablespoons of petitioner's product (20 mg/kg in a 10 kg child) in order to produce a minimally toxic dose. Approximately 100 tablespoons would be required for a lethal dose. Most of the factors that make toxic ingestions of petitioner's unflavored product unlikely would also apply to flavored supplement powders.

After considering the available information, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of dietary supplement powders with no more than the equivalent of 0.12 percent weight-to-weight elemental iron are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, or ingesting such substance. Accordingly, the Commission voted to grant the petition and proposes to amend 16 CFR 1700.14(a)(13) to exempt from requirements for child resistant packaging those dietary supplement powders with no more than the equivalent of 0.12 percent weight to-weight-elemental iron.

E. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601 *et seq.*), when an agency issues proposed and final rules, it must examine the rules' potential impact on small businesses. The Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis if a proposed rule would have a significant impact on a substantial number of small businesses, small organizations, and small governmental jurisdictions.

The exemption proposed below, to exempt powdered iron-containing dietary supplements from CRP requirements, will give manufacturers of these products the option of packaging products using any packaging they choose. As far as CPSC is aware, powdered iron-containing dietary supplements are not currently packaged in CRP. The Commission's Compliance staff is exercising its enforcement discretion regarding these products pending completion of this rulemaking. Thus, the proposed exemption will bring no change in the current packaging of products subject to the exemption. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules exempting products from child-resistant packaging requirements under the PPPA normally have little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding this proposed rule. Therefore, exempting these products from the PPPA requirements will have little or no effect on the human environment. For this reason, the Commission concludes that no environmental assessment or impact statement is required in this proceeding.

G. Effective Date

Since the proposed rule provides for an exemption, no delay in the effective date is required. 5 U.S.C. 553(d)(1). Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1700

Consumer protection, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670, 15 U.S.C. 1471–76, Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a)(13) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(13) *Dietary supplements containing iron.* Dietary supplements, as defined in § 1700.1(a)(3), that contain an equivalent of 250 mg or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids (e.g., powders, granules, tablets, capsules, wafers, gels, viscous products, such as pastes and ointments, etc.) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

(i) Preparations in which iron is present solely as a colorant; and

(ii) Powdered preparations with no more than the equivalent of 0.12 percent weight-to-weight elemental iron.

* * * * *

Dated: April 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. Briefing Memorandum with attached briefing package, March 14, 1995.
2. Memorandum from Sandra E. Inkster, Ph.D., HSPS, to Jacqueline N. Ferrante, Ph.D., HSPS, "Review of Iron Toxicity: Relevance to a Petition Requesting Exemption for Powdered, Iron-Containing Dietary Supplements," February 15, 1995.
3. Memorandum from Catherine A. Sedney, EPHF, to Jacqueline N. Ferrante, Ph.D., HSPS, "Petition to Exempt Iron-Containing Supplement Powders from PPPA Requirements," February 16, 1995.
4. Memorandum from Marcia P. Robins, EPSS, to Jacqueline N. Ferrante, Ph.D., HSPS, "Preliminary Market Information: Petition for Exemption from Child-Resistant Packaging Requirements for Powdered Iron-Containing Dietary Supplements," March 10, 1995.

[FR Doc. 95–8522 Filed 4–6–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

March 29, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking and supplemental notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to require that public utilities owning and/or controlling facilities used for the transmission of electric energy in interstate commerce have on file tariffs providing for non-discriminatory open access transmission services. The Commission is also proposing to permit public utilities and transmitting utilities to recover legitimate and verifiable stranded costs. The Commission's goal is to encourage lower electricity rates by structuring an orderly transition to competitive bulk power markets. The Commission is seeking public comment on its proposals.

DATES: Written comments must be received by the Commission by August 7, 1995. Reply comments must be received by the Commission by October 4, 1995.

FOR FURTHER INFORMATION CONTACT:

David D. Withnell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, telephone: (202) 208–2063, (Docket No. RM95–8–000—legal issues).

Deborah B. Leahy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, telephone: (202) 208–2039, (Docket No. RM94–7–001—legal issues).

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, telephone: (202) 208–1236, (technical issues).

ADDRESSES: Send comments to: Office of the Secretary Federal Energy Regulatory Commission 825 North Capitol Street, N.E. Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3401, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities

Docket No: RM95–8–000

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Docket No. RM94–7–001

Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

March 29, 1995.

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I. Introduction

The electric power industry is today an industry in transition. In response to changes in the law, technology, and markets, competitive pressures are steadily building in the industry. Once the primary domain of large, vertically integrated utilities providing power at regulated rates, the industry now includes companies selling "unbundled" power at rates set by competitive markets. New generating facilities are being built at costs well below the average costs of some vertically integrated utilities. In this environment, more competition will mean lower rates for wholesale customers and, ultimately, for consumers.

The Commission's goal is to encourage lower electricity rates by structuring an orderly transition to competitive bulk power markets. Development of such markets is certain. The questions are when and how. Experience has shown that competitive pressures cannot be contained for long without serious economic distortions. Competition will, we are confident, result in lower rates. But experience has also shown that a measured transition from regulated to competitive markets is absolutely essential.

Moving to competitive generation markets will fundamentally change long-standing regulatory relationships. Utilities have invested billions of dollars in order to meet their obligations. Those investments have been made under a "regulatory compact" whereby utilities—and their shareholders—expect to recover prudently incurred costs. With the advent of competition, even prudent investments may become stranded. Reliance on past contractual and regulatory practices must be recognized and past investments must be protected to assure an orderly, fair transition to competition.

The focus of our proposal today is to facilitate competitive wholesale electric power markets. The key to competitive bulk power markets is opening up transmission services. Transmission is the vital link between sellers and buyers. To achieve the benefits of robust, competitive bulk power markets, all wholesale buyers and sellers must have equal access to the transmission

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grid. Otherwise, efficient trades cannot take place and ratepayers will bear unnecessary costs. Thus, market power through control of transmission is the single greatest impediment to competition. Unquestionably, this market power is still being used today, or can be used, discriminatorily to block competition.

The Commission has an obligation to prevent unduly discriminatory practices in transmission access. In current circumstances, the absence of tariffs offering open access, non-discriminatory transmission services by each public utility impedes the transition to competitive markets greatly enough to be unduly discriminatory under section 206 of the Federal Power Act (FPA). Proceeding as we have in the past, case-by-case, would delay unreasonably the transition to competitive markets. A patchwork of transmission systems—some open and some not—would also lead to unfair practices and inequitable burdens.

At the same time, while fulfilling our duty under section 206 of the FPA to cure undue discrimination, we see no need now to abrogate existing contractual relationships. Rather, we propose to provide a transition to a competitive generation industry that allows for the recovery of legitimate, prudent and verifiable costs lawfully incurred to serve customers under the terms of existing contracts. In the context of today's electric industry, the goals of increased competition and lower bulk power rates are best pursued through a structured transition rather than through abrogating all existing contracts.

In short, at this crossroad for the industry, it is critical to take the regulatory steps now to facilitate the transition to competitive bulk power markets in an orderly manner. The most important of these steps are to ensure non-discriminatory access to the transmission grid for all wholesale buyers and sellers of electric energy in interstate commerce, and to address the transition costs associated with open transmission access. The Commission will take these steps in a manner consistent with maintaining the reliability of the interstate transmission grid.

In this proceeding, the Commission pursuant to its authority under sections 205 and 206:

- proposes to require all public utilities owning or controlling facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs;
- proposes to require the utilities to take transmission service (including ancillary services) for their own wholesale sales and purchases of electric energy under the open access tariffs;
- issues a supplemental proposed rule to permit the recovery of legitimate and verifiable stranded costs associated with requiring open access tariffs; and
- proposes regulations to implement the filing of the open access tariffs and the initial rates under these tariffs.

The open access tariffs—to be offered to all sellers and buyers of electric energy sold at wholesale in interstate commerce—must offer wholesale transmission services (network and point-to-point), including ancillary services, on a non-discriminatory basis to third parties.[1] In addition, the public utility must price separately all wholesale generation and transmission services (including ancillary services) and take wholesale transmission service under its own tariff, *i.e.*, "functionally unbundle" its wholesale generation and transmission services. The proposed rule does not mandate the corporate separation of generation, transmission, and distribution functions.

The proposed rule proposes *pro forma* tariffs for network and point-to-point services, defines non-discriminatory open access to include access to ancillary services, and requires that tariffs include a reciprocity provision requiring any user or agent of the user of the tariff that owns and/or controls transmission facilities to provide non-discriminatory access to the tariff provider.

To assure that the open access tariffs promote competition and do not operate in an unduly discriminatory manner, the proposed rule would require public utilities to provide all actual or potential transmission users the same access to information as the public utility enjoys. The Commission is proposing to develop industry-wide real-time information networks in a separate Notice of Technical Conference that is being issued concurrently with this proposed rule.[2]

Not all transmitting utilities are public utilities subject to the Commission's jurisdiction under section 206 of the FPA.[3] The Commission cannot pursuant to section 206 require non-public utilities to file open access tariffs . Therefore, the proposed rule would encourage the broad application of section 211 as an additional means of achieving the goal in the Energy Policy Act of 1992 of promoting increased wholesale competition. Without broader application of section 211, wholesale bulk power market participants could be denied access to more competitive generation sources to the detriment of consumers.

We presently do not find it necessary to use our authority under section 206 of the FPA to reform public utilities' existing requirements contracts or any other contracts to eliminate undue discrimination or attain more competitive bulk power markets. However, we seek information about existing requirements contracts, including the remaining life and notice provision in each such contract, and whether it would be in the public interest to modify any existing contracts.

The Commission believes that the open access requirement will eliminate the transmission market power of public utilities by ensuring that all participants in wholesale power markets will have non-discriminatory open access to the transmission systems of public utilities. This market power has been the Commission's primary concern in recent years in analyzing requests for market-based generation rates. We therefore seek comments on the effect of industry-wide non-discriminatory open access on the Commission's criteria for authorizing power sales at market-based rates.

The Commission's market-rate criteria also have included other aspects of market power, such as generation dominance. In particular, we note the Commission's recent *KCP&L* decision, in which we dropped the generation dominance standard for market-based sales from new capacity.[4] This rule proposes to codify that decision, and seeks comment on whether the generation dominance standard should also be dropped for market-based sales from existing capacity.

In issuing this proposed rule, we are particularly concerned with its possible effect on stranded costs. It is important to couple our open access rule with a rule ensuring recovery of all legitimate transition costs, consistent with the guidelines established herein. Accordingly, we are making preliminary findings with respect to the Stranded Cost NOPR issued on June 29, 1994, seeking additional comments, and consolidating the Stranded Cost NOPR[5] with this proposed rule.

Because of the benefits associated with the transition to a competitive regime, it is important to have the open access tariffs in place as soon as possible. Thus, we propose a two-stage procedure to accomplish that goal. In Stage One, we would place generic open access tariffs in effect simultaneously on a date certain for every public utility that owns and/or controls transmission facilities[6] and would establish rates for each public utility based on the most current Form No. 1 data available. In Stage Two, utilities would be free to propose changes to the rates, terms, and conditions in the generic tariffs and customers and others would be free to file complaints seeking changes in the rates, terms, and conditions. However, Stage Two tariffs must contain at least the non-price tariff terms and conditions contained in the *pro forma* tariffs.

Comments of all interested persons should be filed pursuant to the procedures set out below.

II. Public Reporting Burden

A. Docket No. RM95–8–000

The proposed rule specifies filing requirements to be followed by public utilities in making non-discriminatory open access tariff filings. The information collection requirements of the proposed rule are attributable to FERC–516 "Electric Rate Filings." The current total annual reporting burden for FERC–516 is 784,488 hours.

The proposed rule requires public utilities filing non-discriminatory open access tariffs to provide certain information to the Commission. The public reporting burden for the information collection requirements contained in the proposed rule is estimated to average 300 hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 137 of these utilities own or control facilities used for the transmission of electric energy in interstate commerce and will respond to the information collection. The respondents would be all public utilities required to file non-discriminatory open access tariffs. These are the public utilities that are also transmitting utilities and either file Form 715 or have it filed on their behalf. The information will be provided with each filing by a respondent. Accordingly, the public reporting burden is estimated to be 41,100 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–3087].

B. Docket No. RM94–7–001

The initially proposed rule would require public utilities seeking to recover stranded costs to provide certain information to the Commission. The Commission estimated that the public reporting burden for the information collection requirements contained in the initially proposed rule would be 50 hours per response. The Commission also estimated that there would be ten respondents to the information collection annually.

Under the proposed rule contained in this supplemental notice of proposed rulemaking, the information that public utilities will be required to file is not substantially different from that required by the initially proposed rule. The Commission also believes that the average filing burden and frequency of filing will be approximately the same as under the initially proposed rule. Therefore, the Commission estimates that there will be no additional public filing burden associated with the proposed rule.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–3087].

III. Discussion

A. Summary of Authority and Findings

The primary purposes of the Federal Power Act are to curb abusive practices by public utility companies and to protect consumers from excessive rates and charges. To achieve these ends, section 205 of the FPA requires that no public utility shall "make or grant any undue preference or advantage to any person or subject any person to any undue preference or disadvantage," with respect to the transmission of electric energy in interstate commerce or the sale for resale of electric energy in interstate commerce. [7] Section 206 of the FPA authorizes the Commission to investigate and remedy unduly discriminatory or preferential rules, regulations, practices or contracts affecting public utility rates for transmission in interstate commerce or for sales for resale in interstate commerce.

The significant technological, structural, statutory, and regulatory changes over the past twenty years have affected the electric utility industry such that competitive bulk power markets are now emerging. This transition has expanded what the Commission must consider to be undue discrimination in the rates, terms, and conditions offered by public utilities. We find that utilities owning or controlling transmission facilities possess substantial market power; that, as profit maximizing firms, they have and will continue to exercise that market power in order to maintain and increase market share, and will thus deny their wholesale customers access to competitively priced electric generation; and that these unduly discriminatory practices will deny consumers the substantial benefits of lower electricity prices. We propose to prevent this discrimination by requiring all public utilities owning and/or controlling transmission facilities to offer non-discriminatory open access transmission services.

At the same time, we see no need now to abrogate existing contractual relationships. Instead, contracts should

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[1] Throughout this NOPR this requirement will be referred to as the "non-discriminatory open access" requirement.

[2] Notice of Technical Conference and Request for Comments, Docket No. RM95–9–000.

[3] Section 206 of the FPA applies to public utilities, whereas section 211 applies to transmitting utilities. A public utility is defined under section 201(e) of the FPA as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of sections 210, 211, or 212)." A transmitting utility is defined under section 3(23) of the FPA as "any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." Not all transmitting utilities are public utilities. For instance, a municipally-owned electric utility that owns transmission facilities that are used for the sale of electric energy at wholesale is a transmitting utility, but is not a public utility.

[4] See Kansas City Power & Light Company, 67 FERC ¶ 61,183 at 61,557 (1994) (*KCP&L*).

[5] See Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, 59 FR 35274 (July 11, 1994), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,507 (Stranded Cost NOPR).

[6] Because power pools raise complex issues, we seek comments on how to implement the NOPR for power pools.

[7] 16 U.S.C. 824d(b) and 824(d).

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be permitted to run their course. Additionally, we believe that recovery of legitimate stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service utility industry to an open access, competitively priced power industry.

The requirement of open access coupled with the recovery of legitimate stranded costs furthers the Congressional purposes embodied in the Federal Power Act and the Energy Policy Act of 1992 of protecting consumers, ensuring reasonable rates, and encouraging competition.

Below, we set out the Commission's legal authority to require non-discriminatory open access, the relevant historical developments in the electric industry, and the need for regulatory reform.[8]

B. Legal Authority

1. Undue Discrimination/ Anticompetitive Effects

The Commission has authority to remedy undue discrimination. That is clear. Some may argue that case law under the FPA limits our authority to order wheeling. We have carefully analyzed relevant cases examining our wheeling authority. We conclude that we have authority to require wheeling, or non-discriminatory open access, as a remedy for undue discrimination. Our analysis of the case law is set forth below.

In upholding the Commission's order requiring non-discriminatory open access in the natural gas industry, the court in *Associated Gas Distributors* v. *FERC* stated that the Natural Gas Act "fairly bristles" with concern for undue discrimination.[9] The same is true of the FPA. The Commission has a mandate under sections 205 and 206 of the FPA to ensure that, with respect to any transmission in interstate commerce or any sale of electric energy for resale in interstate commerce by a public utility, no person is subject to any undue prejudice or disadvantage. We must determine whether any rule, regulation, practice or contract affecting rates for such transmission or sale for resale is unduly discriminatory or preferential, and must prevent those contracts and practices that do not meet this standard. As discussed below, *AGD* demonstrates that our remedial power is very broad and includes the ability to order industry-wide non-discriminatory open access as a remedy for undue discrimination. Moreover, the Commission's power under the FPA "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] sections 202 and 203, and under like directives contained in sections 205, 206, and 207."[10]

Based on the mandates of sections 205 and 206 of the FPA and the case law interpreting the Commission's authority over transmission in interstate commerce, we conclude that we have ample legal authority—indeed, a responsibility—under section 206 of the FPA to order the filing of non-discriminatory open access transmission tariffs if we find such order necessary as a remedy for undue discrimination or anticompetitive effects.[11] We discuss below the primary court decisions that touch on our wheeling authority under sections 205 and 206.

The Commission's authority to order access as a remedy for undue discrimination under the NGA was upheld and discussed in detail in *AGD*. In *AGD*, the court upheld in relevant part the Commission's Order No. 436.[12] That order found the prevailing natural gas company practices to be "unduly discriminatory" within the meaning of section 5 of the NGA (the parallel to section 206 of the FPA) and held that if pipelines wanted blanket certification for their transportation services, they must commit to transport gas for others on a non-discriminatory basis; in other words, they must provide non-discriminatory open access.

In upholding the Commission's authority to require open access, the court first noted that the opponents' arguments against such authority were "uphill." The statute contains no language forbidding the Commission to impose common carrier status on pipelines, let alone forbidding the Commission to impose "a specific duty that happens to be a typical or even core component of such status." The court found that the legislative history cited by the opponents came nowhere near overcoming this statutory silence. Rather, the legislative history supported only the proposition that Congress itself declined to impose common carrier status.[13] Emphasizing Congress' deep concern with undue discrimination, the court found that the Commission had ample authority to "stamp out" such discrimination:

> The issue seems to come down to this: Although Congress explicitly gave the Commission the power and the duty to achieve one of the prime goals of common carriage regulation (the eradication of undue discrimination), the Commission's attempted exercise of that power is invalid because Congress in 1906 and 1914 and 1935 and 1938 itself refrained from affixing common carrier status directly onto the pipelines and from authorizing the Commission to do so. And this proposition is said to control no matter how sound the Order may be as a response to the facts before the Commission. We think this turns statutory construction upside down, letting the failure to grant a general power prevail over the affirmative grant of a specific one.[14]

The *AGD* court found that court decisions under the FPA did not support the view that the Commission's authority to "stamp out" undue discrimination is hamstrung by an inability to require non-discriminatory open access as a remedy. These decisions are discussed below.

One of the earliest cases on wheeling is *Otter Tail Power Company* v. *United States (Otter Tail)*[15] That case was a civil antitrust suit against an electric utility. The Court rejected the argument that the District Court could not order wheeling because to do so would conflict with the Federal Power Commission's (FPC) purported wheeling authority.[16] It pointed out that Congress had decided not to impose a common carrier obligation on the electric power industry and noted that the Commission was not at that time granted power to order wheeling. The *Otter Tail* case, however, did not address whether the Commission can require transmission in fulfillment of its duty to remedy undue discrimination.

Richmond Power & Light Company v. *FERC (Richmond)*[17] also did not involve

[8] On February 16, 1995, the Coalition for a Competitive Electric Market filed a petition for a rulemaking on comparability. The Industrial Consumers and the Transmission Access Policy Study Group filed comments in support of the petition. The Commission will not separately notice the Coalition's petition, but seeks comment on that pleading, and the supporting pleadings, in this notice of proposed rulemaking.

[9] *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 998 (D.C.Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988) (*AGD*).

[10] See *Gulf States Utilities Company* v. *FPC*, 411 U.S. 747, 758–59 (1973).

[11] In most situations, discrimination that precludes transmission access or gives inferior access will have at least potential anticompetitive effects because it limits access to generation markets and thereby limits competition in generation. Similarly, it is probable that any transmission provision that has anticompetitive effects would also be found to be unduly discriminatory or preferential because the anticompetitive provision would most likely favor the transmission owner *vis-a-vis* others.

[12] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, III FERC Stats. & Regs., Regulations Preambles ¶ 30,665 (1985).

[13] *AGD, supra*, 824 F.2d at 997.

[14] *Id.* at 998.

[15] 410 U.S. 366 (1974).

[16] *Id.* at 375–76.

[17] 574 F.2d 610 (D.C. Cir. 1978).

requiring wheeling to remedy undue discrimination. In that case, the FPC, in reaction to the 1973 oil embargo, was attempting to reduce dependence on oil. The FPC requested that utilities with excess capacity wheel power to the New England Power Pool (NEPOOL). In response, several suppliers and transmission owners filed rate schedules with the FPC that provided for voluntary wheeling. Richmond Power & Light Company (Richmond) objected to these filings, claiming that they were unreasonable because they did not guarantee transmission access. The FPC refused to compel the utilities to wheel Richmond's power, stating that it did not have the authority to order a public utility to act as a common carrier.

The D.C. Circuit upheld the Commission. It acknowledged that Richmond's argument was persuasive in some respects, but stated that any conditions the Commission might impose could not contravene the FPA. The court examined the legislative history of the FPA and stated that "[i]f Congress had intended that utilities could inadvertently bootstrap themselves into common-carrier status by filing rates for voluntary service, it would not have bothered to reject mandatory wheeling * * *."[18]

However, the D.C. Circuit in no way indicated that the Commission was foreclosed from ordering transmission as a remedy for undue discrimination. Richmond also had argued that the alleged refusal of the American Electric Power Company (AEP) and its affiliate, Indiana & Michigan Electric Company (Indiana), to wheel Richmond's excess energy was unlawful discrimination because AEP and Indiana wheeled higher-priced electricity from other AEP affiliates. The court acknowledged that Richmond's claim of unlawful discrimination was theoretically valid, but found that Richmond had failed to prove its case. It noted that if Richmond had argued that the rates were unjustifiably discriminatory, or that Indiana's failure to use its transmission capability fully or to purchase less expensive electricity for wheeling resulted in unnecessarily high rates, a different case would be before the court.[19] The case thus does not in any way limit the Commission's authority to remedy undue discrimination.

In *Central Iowa Power Cooperative* v. *FERC*,[20] the FPC[21] reviewed the terms of the Mid-Continent Area Power Pool (MAPP) Agreement under its section 205 and 206 authority. The agreement contained two membership limitations. First, the agreement established two classes of membership, with one class being entitled to more privileges than the other. Second, the agreement excluded non-generating distribution systems from pool services. The FPC found the first limitation on membership—the two-class system—to be unduly discriminatory and not reasonably related to MAPP's objectives. The FPC conditioned approval of the agreement under section 206 on the removal of the unduly discriminatory provision. The FPC found that the second limitation, the exclusion of non-generating distribution systems, was not anticompetitive and did not render the agreement inconsistent with the public interest.

On appeal, the D.C. Circuit affirmed the FPC's decision. The court found that the FPC did have authority to order changes in the scope of the MAPP agreement, *if* the agreement was unjust, unreasonable, unduly discriminatory or preferential under section 206 of the FPA. The court stated:

> The Commission had authority, * * * under section 206 of the Act, * * * to order changes in the limited scope of the Agreement, including the addition of pool services, if, in the absence of such modifications, the Agreement presented "any rule, regulation, practice or contract [that was] unjust, unreasonable, unduly discriminatory or preferential." [22]

However, the court agreed with the FPC's conclusion that the limited scope of MAPP was not unjust, unreasonable, or unduly discriminatory. The court recognized that a pool was not invalid under section 206 merely because a more comprehensive arrangement was possible.

The D.C. Circuit upheld the Commission's refusal to eliminate the second limitation on membership by ordering MAPP participants to wheel to non-generating electric systems.[23] However, neither the Commission nor the court was presented with the argument that wheeling was necessary as a remedy for undue discrimination.

In *Florida Power & Light Company* v. *FERC (Florida)*,[24] the Commission ordered Florida Power & Light Company (FP&L) to file a tariff setting forth FP&L's policy relating to the availability of transmission service.[25] FP&L objected to including such a policy statement in its tariff and argued that the filing of such a policy would convert FP&L into a common carrier by obligating it to offer service to all customers.[26] There was no finding that the action ordered was necessary to remedy undue discrimination.

The Fifth Circuit Court of Appeals agreed with FP&L that the mandatory filing of the policy statement would require FP&L to provide transmission service beyond its voluntary commitment because such a requirement would change its duties and liabilities.[27] The Commission order would impose common carrier status on FP&L, the court found.[28] The court noted that the Commission did not rely on a finding of anticompetitive behavior and therefore the court did not address the Commission's power to remedy antitrust violations.[29]

The *AGD* court explicitly rejected the claim that the above line of cases establishes that the Commission lacks authority to require non-discriminatory open access.[30] Opponents of the Commission's order argued in *AGD* that *Richmond* and *Florida, supra*, stand for the proposition that the Commission cannot indirectly do what it allegedly cannot do directly, that is, impose common carriage. The *AGD* court rejected these arguments, stating that

[18] *Id.* at 620.

[19] *Id.* at 623, nn. 53 and 57.

[20] 606 F.2d 1156 (D.C. Cir. 1979).

[21] While *Central Iowa* was pending, certain of the functions of the FPC were transferred to the FERC under the DOE Organization Act. Accordingly, the FERC was substituted for the FPC as the respondent in the case.

[22] 606 F.2d at 1168.

[23] *Id.* at 1169; see also *Municipalities of Groton* v. *FERC*, 587 F.2d 1296 (D.C. Cir. 1978).

[24] 660 F.2d 668 (5th Cir. 1981), *cert. denied sub nom. Fort Pierce Utilities Authority* v. *FERC*, 459 U.S. 1156 (1983).

[25] FP&L provided transmission service when four conditions were met: (1) The specific potential seller and buyer were contractually identified; (2) the magnitude, time and duration of the transaction were specified prior to the commencement of the transmission; (3) it could be determined that the transmission capacity would be available for the term of the contract; and (4) the rate was sufficient to cover FP&L's costs.

[26] All utilities requesting wheeling services, subject to availability, would be entitled to receive transmission service under the filed terms. Any changes to a filed rate must be filed with the Commission. This is the so-called "filed rate doctrine." See Northwestern Public Service Company v. Montana-Dakota Utilities Company, 181 F.2d 19, 22 (8th Cir. 1980), *aff'd*, 341 U.S. 246 (1951).

[27] Under the filed rate doctrine, a refusal to wheel would be unduly discriminatory under section 206 of the FPA. As the court acknowledged, a customer refused service could petition the Commission to find that FP&L's policy of availability was unduly discriminatory under section 206(a) of the FPA. The court said that in the absence of a tariff on file, a utility refused wheeling services would be unable to claim discrimination under section 206(a) of the FPA. 660 F.2d at 675 (expressing "serious doubts that such a petition would be successful in the absence of a tariff").

[28] *Id.* at 676.

[29] *Id.* at 678.

[30] The *AGD* court did not address *New York State Electric & Gas Corporation* v. *FERC*, 638 F.2d 388 (2d Cir. 1980), *cert. denied*, 454 U.S. 821 (1981) (*NYSEG*), presumably because that case did not concern whether the Commission could order wheeling as a remedy for undue discrimination.

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the petitioners read the electric cases far too broadly:

> [n]either *Richmond* nor *Florida* comes anywhere near stating that the Commission is barred from imposing an open-access condition in all circumstances. [31]

The court noted that the *Florida* case had expressly left open the question of whether the Commission would be entitled to use an open access condition as a remedy for anticompetitive conduct, and that in *Richmond* the D.C. Circuit had said little more than that unwillingness to transmit for all could not be automatically deemed undue discrimination. The court also noted the *Central Iowa* case, *supra*, in which it had upheld a Commission order that found a power pooling agreement discriminatory on its face because the agreement gave one class of membership privileged status over another. The court stated that the *Central Iowa* case "upholds the power of the Commission to subject approval of a set of voluntary transactions to a condition that providers open up the class of permissible users." [32] The court added that it refused to "turn statutory construction upside down" by letting Congress' failure to grant a general power of common carriage prevail over the affirmative grant of the specific power to eradicate undue discrimination.[33]

We conclude that *AGD*'s analysis of undue discrimination under sections 4 and 5 of the Natural Gas Act is equally applicable to an undue discrimination analysis under sections 205 and 206 of the FPA. The Commission and courts have long recognized that the NGA was patterned after the FPA and that the two statutes should be interpreted in the same manner.[34] Thus, we conclude that we have the authority to remedy undue discrimination and anticompetitive effects by requiring all public utilities that own and/or control transmission facilities to file non-discriminatory open access transmission tariffs.

2. Section 211 Services

In concluding that we must invoke our section 206 authority to remedy undue discrimination and anticompetitive actions in the electric industry, we have carefully considered the goals of Title VII of the Energy Policy Act, and whether section 211, by itself, is sufficient to remedy undue discrimination in public utility transmission services.[35] Title VII of the Energy Policy Act, which amended section 211 of the FPA, reflects the intent of Congress to encourage competitive wholesale electric markets. Section 211 provides a means for wholesale power sellers and buyers to obtain transmission services necessary to compete in, or to reach, competitive markets, and is a valuable tool to encourage competitive markets. However, as discussed below, reliance on section 211 alone in some circumstances can result in the perpetuation of, rather than the elimination of, undue discrimination and anticompetitive effects.

First, there are inherent delays in the procedures for obtaining service under section 211. However, for competitive reasons, many transactions must be negotiated relatively quickly. Many competitive opportunities will be lost by the time the Commission can issue a final order under section 211. While we interpret section 211 to permit a customer or group of customers to seek broad tariff-like arrangements,[36] case-by-case section 211 proceedings are not a substitute for tariffs of general applicability that permit timely, non-discriminatory access on request.

Second, discrimination is inherent in the current industry environment in which some customers and sellers are served by open access systems, and others have to rely on negotiated bilateral arrangements or the mandatory section 211 process. The end result is discrimination in the ability to obtain transmission services, as well as in the quality and prices of the services. This national patchwork of open and closed transmission systems cannot be cured effectively through section 211.

The Commission believes that its actions under sections 205 and 206 will complement the section 211 procedures in achieving the goals of creating more competitive bulk power markets and lower rates for consumers, while avoiding many years of costly and unnecessary litigation. Section 211 will be particularly important for developing non-discriminatory access by non-public utilities.

C. Background

1. Structure of the Electric Industry at Enactment of Federal Power Act

The Federal Power Act was enacted in an age of mostly self-sufficient, vertically integrated electric utilities, in which generation, transmission, and distribution facilities were owned by a single entity and sold as part of a bundled service (delivered electric energy) to wholesale and retail customers. Most electric utilities built their own power plants and transmission systems, entered into interconnection and coordination arrangements with neighboring utilities, and entered into long-term contracts to make wholesale requirements sales (bundled sales of generation and transmission) to municipal, cooperative, and other investor-owned utilities (IOUs) connected to each utility's transmission system. Each system covered limited service areas. This structure of separate systems arose naturally due primarily to the cost and technological limitations on the distance over which electricity could be transmitted.

Through much of the 1960s, utilities were able to avoid price increases, but still achieve increased profits, because of substantial increases in scale economies, technological improvements, and only moderate increases in input prices.[37] Thus, there was no pressure on regulatory commissions to use regulation to affect the structure of the industry.[38]

2. Significant Changes in the Electric Industry

In the late 1960s and throughout the 1970s, a number of significant events occurred in the electric industry that changed the perceptions of utilities and began a shift to a more competitive marketplace for wholesale power.[39] This was the beginning of periods of rapid inflation, higher nominal interest rates, and higher electricity rates.[40] During this time, consumers became concerned about higher electricity rates and questioned any price increases filed by utilities.[41]

During this same time frame, the construction of nuclear and other capital-intensive baseload facilities—actively encouraged by federal and some state governments—contributed to the continuing cost increases and uncertainties in the industry.[42] These investments were made based on the assumptions that there would be steady increases in the demand for electricity and continued large increases in the price of oil.[43] However, due to conservation and economic downturns, the expected demand increases did not materialize. Load growth virtually disappeared in some areas, and many utilities unexpectedly found themselves with excess capacity.[44] In addition, by the 1980s, the oil cartel collapsed, with a resulting glut of low-priced oil.[45] At the same time, inflation substantially increased the costs of these large baseload generating plants.[46] Surging interest rates further increased the cost of the capital needed to finance and capitalize these projects and completion schedules were significantly extended by, in part, more stringent safety and environmental requirements.[47]

As a result, expensive large baseload plants came onto the market or were in the process of being constructed, for which there was little or no demand. Accordingly, between 1970 and 1985, average residential electricity prices more than tripled in nominal terms, and increased by 25% after adjusting for general inflation.[48] Moreover, average electricity prices for industrial customers more than quadrupled in nominal terms over the same period and increased 86% after adjusting for inflation.[49] The rapidly increasing rates for electric power during this period, together with the opportunities provided by the Public Utility Regulatory Policies Act of 1978 (PURPA) (discussed *infra*), also prompted some industrial customers to bypass utilities by constructing their own generation facilities. This further exacerbated rate increases for remaining customers—primarily residential and commercial customers.

Consumers responded to these "rate shocks" by exerting pressure on regulatory bodies to investigate the prudence of management decisions to build generating plants, especially when construction resulted in cost overruns, excess capacity, or both. Between 1985 and 1992, writeoffs of nuclear power plants totalled $22.4 billion.[50] These writeoffs significantly reduced the earnings of the affected utilities.[51] Delays in obtaining rate increases to reflect the effects of inflation further reduced investor returns. Thus, many utilities became reluctant to commit capital to long-term construction decisions involving large scale generating plants.[52]

In addition to economic changes in the industry, significant technological changes in both generation and transmission have occurred since 1935. Through the 1960s, bigger was cheaper in the generation sector and the industry was able to capitalize on economies of scale to produce power at lower per-unit costs from larger and larger plants.[53] As a result, large utility companies that could finance and manage construction projects of larger scale had a price advantage over smaller utility companies and customers who might otherwise have considered building their own generating units. Scale economies encouraged power generation by large vertically-integrated utility companies that also transmitted and distributed power. Beginning in the 1970s, however, additional economies of scale in generation were no longer being achieved.[54] A significant factor was that larger generation units were found to need relatively greater maintenance and experience longer downtimes.[55] The electric industry faced the situation "where the price of each incremental unit of electric power exceeded the average cost." [56] Bigger was no longer better.

Further dictating against larger generation units were advances in technologies that allowed scale economies to be exploited by smaller size units, thereby allowing smaller new plants to be brought on line at costs below those of the large plants of the 1970s and earlier. Such new technologies include combined cycle units and conventional steam units that use circulating fluidized bed boilers.[57]

The combined cycle generating plants generally use natural gas as their primary fuel. This technology has been made possible by the development of more efficient gas turbines, shorter construction lead times, lower capital costs, increased reliability, and relatively minimal environmental impacts.[58] Similarly, the circulating fluidized bed combustion boilers, fueled by coal and other conventional fuels, provide a more efficient and less polluting resource.

Today, "the optimum size [of generation plants] has shifted from [more than 500 MW] (10-year lead time) to smaller units (one-year lead time) [in the 50- to 150-MW range]." [59]

Indeed, smaller and more efficient gas-fired combined-cycle generation facilities can produce power on the grid at a cost between 3 and 5 cents per

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[31] 824 F.2d at 999.

[32] *Id.* at 999.

[33] *Id.* at 1006.

[34] *See, e.g., FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348, 353 (1956); *Arkansas Louisiana Gas Company* v. *Hall*, 453 U.S. 571, 577 n.7 (1981); and *Kentucky Utilities Company* v. *FERC*, 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985). Section 206 of the FPA was recently revised and now differs from section 5 of the NGA, but not in a manner significant to our discussion here. See 16 U.S.C. 824e(b) and (c).

[35] In amending section 211 Congress left unaltered the authorities and obligations of the Commission under sections 205 and 206 (similar to our authorities and obligations under sections 4 and 5 of the Natural Gas Act) to remedy undue discrimination.

[36] See *El Paso Electric Company and Central and South West Services Inc.*, 68 FERC ¶ 61,181 at 61,916 (1994) (*CSW*), *reh'g pending*.

[37] Paul L. Joskow, Inflation and Environmental Concern: Structural Change in the Process of Public Utility Regulation, 17 J. Law & Econ. 291, 312 (1974); see also Charles F. Phillips, Jr., The Regulation of Public Utilities 11 (1988).

[38] See Joskow, *supra* note 37, at 312; see also Phillips, *supra* note 37, at 12.

[39] See Joskow, *supra* note 37, at 312; see also Phillips, *supra* note 37, at 12–13.

[40] See Joskow, *supra* note 37, at 312–13; see also Phillips, *supra* note 37, at 13. The Arab oil embargo resulted in significantly higher oil prices through the 1970s. See Richard J. Pierce, Jr., The Regulatory Treatment of Mistakes in Retrospect: Canceled Plants and Excess Capacity, 132 U. Pa. L. Rev. 497, 501 (1984).

[41] See Joskow, *supra* note 37, at 313; see also Phillips, *supra* note 37, at 13.

[42] See generally *Jersey Central Power & Light Company* v. *FERC*, 810 F.2d 1168, 1171 (D.C. Cir. 1987).

[43] *Id.*

[44] See Pierce, *supra* note 40, at 503. By 1983, the Department of Energy had estimated that the sunk costs for canceled nuclear plants alone amounted to $10 billion. *Id.* at 498.

[45] *Id.*

[46] See Bernard S. Black & Richard J. Pierce, Jr., The Choice Between Markets and Central Planning in Regulating the U.S. Electricity Industry, 93 Col. L. Rev. 1339, 1346 (1993) ("Actual costs of nuclear power plants vastly exceeded estimates, sometimes by as much as 1000%.").

[47] See Phillips, *supra* note 37, at 13. Fossil fuel-fired plants became subject to increased regulation as a result of the Clean Air Act of 1970, and its 1977 amendments. 42 U.S.C. 7401–7642. In 1971, nuclear plant licensing became subject to the environmental impact statement requirements of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. Following the 1979 accident at the Three Mile Island nuclear plant, nuclear plants also became subject to additional safety regulations, resulting in higher costs. See Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 35. Between 1976 and 1980, most states and many localities instituted laws governing power plant siting.

[48] Based on retail prices reported in Energy Information Administration (EIA), Monthly Energy Review, January 1995, Table 9.9 (Prices adjusted for inflation using the GDP Deflator (1987 = 100)).

[49] *Id.*

[50] See Black & Pierce, *supra* note 46, at 1346 (These writeoffs were "about 17% of the book value of total 1992 utility investment.").

[51] *Id.*

[52] *Id.* ("The high perceived risk of future disallowances reversed utilities' incentives to overinvest, and made utilities extremely reluctant to build new power plants.").

[53] *See* Preston Michie, Billing Credits for Conservation, Renewable, and Other Electric Power Resources: an Alternative to Marginal-Cost-Based Power Rates in the Pacific Northwest, 13 Environmental Law 963, 964–65 (1983).

[54] *Id.* at 965.

[55] Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 37 ("As larger units were constructed, however, utilities discovered that downtime was as much as 5 times greater for units larger than 600 megawatts than for units in the 100-megawatt range.")

[56] *Id.*; see also George A. Perrault, Downsizing Generation: Utility Plans for the 1990s, Pub. Util. Fort. 15–16 (Sept. 27, 1990) ("The large base-load generating units that form the backbone of utility systems are almost totally absent from capacity plans for the 1990s.").

[57] "From 1982 through 1991, the average capacity of fluidized-bed units increased rapidly to 72 megawatts for 4 units in 1991. The average capacity for the 19 units planned to begin operating in 1992 through 1995 increases to 83 megawatts." Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 38.

[58] See Charles E. Bayless, Less is More: Why Gas Turbines Will Transform Electric Utilities, Pub. Util. Fort. (Dec. 1, 1994) 21.

[59] *Id.* at 24.

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kWh.[60] This is significantly less than the costs for large plants constructed and installed by utilities over the last decade, which were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents for nuclear plants.[61]

Significant changes have also occurred in the transmission sector of the industry. Technological advances in transmission have made possible the economic transmission of electric power over long distances at higher voltages.[62] This has made it technically feasible for utilities with lower cost generation sources to reach previously isolated systems where customers had been captive to higher cost generation. In addition, the nature and magnitude of coordination transactions[63] have changed dramatically since enactment of the FPA, allowing increased coordinated operations and reduced reserve margins. Substantial amounts of electricity now move between regions, as well as between utilities in the same region. Physically isolated systems have become a thing of the past.

3. The Public Utility Regulatory Policies Act and the Growth of Competition

In enacting PURPA,[64] Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.[65] To lessen dependence on expensive foreign oil, avoid repetition of the 1977 natural gas shortage, and control consumer costs, Congress sought to encourage electric utilities to conserve oil and natural gas.[66] In particular, Congress sanctioned the development of alternative generation sources designated as "qualifying facilities" (QFs) as a means of reducing the demand for traditional fossil fuels.[67] PURPA required utilities to purchase power from QFs at a price not to exceed the utility's avoided costs and to sell backup power to QFs.[68]

PURPA specifically set forth limitations on who, and what, could qualify as QFs. In addition to technological and size criteria, PURPA set limits on who could own QFs.[69] Notwithstanding these limitations, QFs proliferated. In 1989, there were 576 QF facilities. By 1993, there were more than 1,200 such facilities.[70] For the same time period, installed QF capacity increased from 27,429 megawatts to 47,774 megawatts.[71] The rapid expansion and performance of the QF industry demonstrated that traditional, vertically integrated public utilities need not be the only sources of reliable power.

During this period, the profile of generation investment began to change, and a market for non-traditional power supply beyond the purchases required by PURPA began to emerge. QFs were limited to cogenerators and small power producers.[72] However, other non-traditional power producers who could not meet the QF criteria began to build new capacity to compete in bulk power markets, without such PURPA benefits as the mandatory purchase requirements. These producers, known as independent power producers (IPPs), were predominantly single-asset generation companies that did not own any transmission or distribution facilities. While traditional utilities were generally reluctant at that time to invest in new generating facilities under cost of service regulation, utilities increasingly became interested in participating in this new generation sector. They organized affiliated power producers (APPs), with assets not included in utility rate base, and sought to sell power in their own service territories and the territories of other utilities. At the same time, power marketers arose. These entities—owning no transmission or generation—buy and sell power.[73]

There were two major impediments to the development of IPPs and APPs. First, the ownership restrictions of the Public Utility Holding Company Act (PUHCA)[74] severely inhibited these new entities from entering the generation business.[75] Second, these entities needed transmission service in order to compete in electricity markets.

While the Commission had no authority to remove PUHCA restrictions,[76] it encouraged the development of IPPs and APPs, as well as emerging power marketers, by authorizing market-based rates for their power sales on a case-by-case basis and by encouraging more widely available transmission access. From 1989 through 1993, facilities owned by IPPs and other non-traditional generators (other than QFs) increased from 249 to 634 and their installed capacity increased from 9,216 megawatts to 13,004 megawatts.[77] Indeed, "[i]n 1992, for the first time, generating capacity added by independent producers exceeded capacity added by utilities."[78]

Market-based rates helped to develop competitive bulk power markets. A generating utility allowed to sell its power at market-based rates could move more quickly to take advantage of short-term or even long-term market opportunities than those laboring under traditional cost-of-service tariffs, which entail procedural delays in achieving tariff approvals and changes.

In approving these market-based rates, the Commission required, inter alia, that the seller and any of its affiliates lack market power or mitigate any market power that they may have possessed.[79] The major concern of the Commission was whether the seller or its affiliates could limit competition and thereby drive up prices. A key inquiry became whether the seller or its affiliates owned or controlled transmission facilities in the relevant service area and therefore, by denying access or imposing discriminatory terms or conditions on transmission service, could foreclose other generators from competing.[80] As we have previously explained:

> The most likely route to market power in today's electric utility industry lies through ownership or control of transmission facilities. Usually, the source of market power is dominant or exclusive ownership of the facilities. However, market power also may be gained without ownership. Contracts can confer the same rights of control. Entities with contractual control over transmission facilities can withhold supply and extract monopoly prices just as effectively as those who control facilities through ownership.[81]

As entry into wholesale power generation markets increased, the ability of customers to gain access to the transmission services necessary to reach competing suppliers became increasingly important.[82] In addition, beginning in the late 1980s, public utilities seeking Commission approval of mergers or consolidations under section 203 of the FPA or Commission authorization for blanket approval of market-based rates for generation services under section 205 of the FPA, filed "open access" transmission tariffs of general applicability to mitigate their market power to meet Commission conditions.[83] The Commission applied its market rate analysis to IOUs, as well as IPPs, APPs, and marketers, and allowed IOUs to sell at market-based rates only if they opened their transmission systems to competitors.[84] The Commission also approved proposed mergers on the condition that the merging companies remedy anticompetitive effects potentially caused by the merger by filing "open access" tariffs. These early "open access" tariffs required only that the companies provide point-to-point transmission services, which is a much narrower requirement than that being proposed in this rule. However, only 21 public utilities have any form of open access transmission; the vast majority of IOUs still do not provide any form of "open access" transmission over their transmission systems.

The economic and technological changes in the transmission and generation sectors helped give impetus to the many new entrants in the generating markets who could sell electric energy profitably with smaller scale technology at a lower price than many utilities selling from their existing generation facilities at rates reflecting cost. However, the advantages of these technological advances can be achieved only if more efficient generating plants can obtain access to the regional transmission grids. Because the traditional vertically integrated utilities still favor their own generation if and when they provide transmission access to third parties, barriers continue to exist to cheaper, more efficient generation sources.

4. The Energy Policy Act

In response to the competitive developments following PURPA, and the fact that PUHCA and lack of transmission access[85] remained major barriers to new generators, Congress enacted Title VII of the Energy Policy Act of 1992 (Energy Policy Act).[86] A goal of the Energy Policy Act was to promote greater competition in bulk power markets by encouraging new generation entrants, known as exempt wholesale generators (EWGs), and by expanding the Commission's authority under sections 211 and 212 of the FPA to approve applications for transmission services.[87]

An EWG is defined as

> any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in [PUHCA] section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.[88]

If the Commission, upon an application, determines that a person is an EWG, that person will be exempt from PUHCA.[89] This provision removed a significant impediment to the development of IPPs and APPs by

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[60] FERC staff calculations based in part on combined-cycle plant cost data reported in 1993 FERC Form No. 1 for a sample of units placed in service during 1990–92. Costs vary with regional fuel and construction costs, among other reasons.

[61] Coal and Nuclear plant cost data reported in 1993 FERC Form No. 1 and the EIA report, Electric Plant Cost and Power Production Expenses 1991, 1993 DOE/EIA–0455 (91), for plants placed in service during 1986–93; see also The 1994 Electric Executives' Forum, Bakke (President and CEO of the AES Corporation), Pub. Util. Fort. (June 1, 1994) 45 ("New generation can be built at about 3 cents per kilowatt-hour (U.S. average). Old generation costs about twice that * * *").

[62] See Black & Pierce, *supra* note 46, at 1345 (In the late 1960s and 1970s, improved transmission efficiency and development of regional transmission networks "made it possible to build power plants up to 1000 miles from power users.").

[63] Coordination transactions are voluntary sales or exchanges of specialized electricity services that allow buyers to realize cost savings or reliability gains that are not attainable if they rely solely on their own resources. For sellers, these transactions provide opportunities to earn additional revenue, and to lower customer rates, from capacity that is temporarily excess to native load capacity requirements.

[64] Pub. L. 95–617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42, and 43).

[65] See generally *FERC* v. *Mississippi*, 456 U.S. 742, 745–46 (1982).

[66] The Power Plant and Industrial Fuel Use Act of 1978. Pub. L. 95–617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42, and 43).

[67] QFs include certain cogenerators and small power producers. PURPA also added sections 210, 211 and 212 to the FPA, providing the Commission with authority to approve applications for interconnections and, in limited circumstances, wheeling. However, under section 211, as enacted in PURPA, the Commission could approve an application for wheeling only if it found, *inter alia*, that the order "would reasonably preserve existing competitive relationships." Because of this and other limitations in sections 211 and 212 as originally enacted, the provision was virtually ineffective. Only one section 211 order was ever issued pursuant to the original provision, and it was pursuant to a settlement. See Public Service Company of Oklahoma, 38 FERC ¶61,050 (1987). As discussed *infra*, section 211 was subsequently revised by the Energy Policy Act of 1992.

[68] 456 U.S. at 750. Congress recognized that encouragement was needed in part because utilities had been reluctant to purchase electric power from, and sell power to, nonutility generators. *Id.* at 750–51.

[69] For example, PURPA provided that a cogeneration facility or small power production facility could not be owned by a person primarily engaged in the generation or sale of electric power (other than from cogeneration or small power production facilities). See 16 U.S.C. 796 (17) and (18).

[70] Energy Information Administration, Electric Power Annual 1993 (December 1994) 124 (Table 77).

[71] *Id.* EIA data for 1989 through 1991 was for facilities of 5 megawatts or more and for 1992 and 1993 was for facilities of 1 megawatt or more. A comparison with Table 74 on page 121 for the years 1992 and 1993 reveals that this mixing of data bases is likely of minimal effect.

[72] Generally, the law has imposed an 80 MW cap on small power producers. A limited exception enacted in 1990 permitted small power facilities that could exceed 80 MW and still qualify as QFs under PURPA. This exception was limited to certain solar, wind, waste, and geothermal small power production facilities and only covered applications for certification of facilities as qualifying small power production facilities that were submitted no later than December 31, 1994 and for which construction commences no later than December 31, 1999. See Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. 101–575, 104 Stat. 2834 (1990), *amended*, Pub. L. 102–46, 105 Stat. 249 (1991).

[73] The first power marketer in the electric industry was Citizens Energy Corporation. See Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986). Power marketers take title to electric energy. Power brokers, on the other hand, do not take title and are limited to a matchmaking role.

[74] 15 U.S.C. 79 *et seq.*

[75] As discussed *infra*, Congress eventually provided a means to avoid the PUHCA restrictions by creating exempt wholesale generators (EWGs) in the Energy Policy Act.

[76] The industry was successful to some extent in developing ownership structures that permitted such investment. See, e.g., Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 at 62,240 and n.20 (1990).

[77] Energy Information Administration, Electric Power Annual 1993 (December 1994) 124 (Table 77).

[78] Black & Pierce, supra note 46, at 1349 n.25. possessed.

[79] See, e.g., Ocean State Power, 44 FERC ¶ 61,261 (1988); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); Citizens Power & Light Company, 48 FERC ¶ 61,210 (1989); Orange and Rockland Utilities, Inc., 42 FERC ¶ 61,012 (1988); Doswell Limited Partnership, 50 FERC ¶ 61,251 (1990) (Doswell); and Dartmouth Power Associates Limited Partnership, 53 FERC ¶ 61,117 (1990).

[80] See, e.g., Doswell, 50 FERC at 61,757.

[81] Citizens Power & Light Corporation, 48 FERC ¶ 61,210 at 61,777 (1989) (emphasis in original); see also Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation, 45 FERC ¶ 61,095 at 61,287–89 (1988), *order on reh'g*, 47 FERC ¶ 61,209, *order on reh'g*, 48 FERC ¶ 61,035 (1989), *remanded in part sub nom. Environmental Action, Inc.* v. *FERC*, 939 F.2d 1057 (D.C. Cir. 1991), *order on remand*, 57 FERC ¶ 61,363 (1991).

[82] In earlier years, a few customers were able to obtain access as a result of litigation, beginning with the Supreme Court's decision in *Otter Tail*, 410 U.S. 366 (1973). Additionally, some customers gained access by virtue of Nuclear Regulatory Commission license conditions and voluntary preference power transmission arrangements associated with federal power marketing agencies. See, *e.g.*, Consumers Power Company, 6 NRC 887, 1036–44 (1977) and The Toledo Edison Company and Cleveland Electric Illuminating Company, 10 NRC 265, 327–34 (1979). See *Florida Municipal Power Agency* v. *Florida Power and Light Company*, 839 F. Supp. 1563 (M.D. Fla. 1993). See also Electricity Transmission: Realities, Theory and Policy Alternatives, The Transmission Task Force Report to the Commission, October 1989, 197.

[83] *See, e.g.*, Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993); Utah Power & Light Company, *et al.*, Opinion No. 318, 45 FERC ¶ 61,095 (1988), *order on reh'g*, Opinion No. 318–A, 47 FERC ¶ 61,209 (1989), *order on reh'g*, Opinion No. 318–B, 48 FERC ¶ 61,035 (1989), *aff'd in relevant part sub nom. Environmental Action Inc.* v. *FERC*, 939 F.2d 1057 (D.C. Cir. 1991); Northeast Utilities Service Company (Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070, *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,089 (1992), *affirmed in relevant part sub nom. Northeast Utilities Service Company* v. *FERC*, 993 F.2d 937 (1st Cir. 1993).

[84] See, *e.g.*, Public Service of Indiana, Inc., 51 FERC ¶ 61,367 (1990), *reh'g denied*, 52 FERC ¶ 61,260 (1990), *appeal dismissed sub nom. Northern Indiana Public Service Company* v. *FERC*, 954 F.2d 736 (D.C.Cir. 1992).

[85] See infra sections III.D.1 and 2.

[86] Pub. L. 102–486, 106 Stat. 2776 (1992)

[87] See El Paso Electric Company and Central and South West Services Inc., 68 FERC ¶ 61,181 at 61,914 (1994); see also Paul Kemezis, FERC's Competitive Muscle: The Comparability Standard, Electrical World 45 (Jan. 1995) ("In EPAct, Congress made it clear that the electric-power industry was to move toward a fully competitive market system, but left most of the implementation to FERC.").

[88] 15 U.S.C. 79z–5a.

[89] 15 U.S.C. 79z–5a(e).

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allowing them to develop projects as EWGs free from the strictures of PUHCA or the QF PURPA limitations.

While sections 211 and 212, as enacted by PURPA, were intended to provide greater access to the transmission grid, the limitations placed on these sections made them unusable in most circumstances.[90] However, as amended by the Energy Policy Act, these sections now give the Commission broader authority to order transmitting utilities to provide wholesale transmission services, upon application, to any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.

The Energy Policy Act also added section 213 to the FPA. Section 213(a) requires a transmitting utility that does not agree to provide wholesale transmission service in accordance with a good faith request to provide a written explanation of its proposed rates, terms, and conditions and its analysis of any physical or other constraints.[91] Section 213(b) required the Commission to enact a rule requiring transmitting utilities to submit annual information concerning potentially available transmission capacity and known constraints.[92]

5. The Present Competitive Environment

Following the Energy Policy Act, the Commission established rules: (1) for certain generators to obtain EWG status and thus an exemption from PUHCA;[93] and (2) that required transmission information availability. The Commission also pursued a number of initiatives aimed at fostering the development of more competitive bulk power markets, including aggressive implementation of section 211, a new look at undue discrimination under the FPA, easing of market entry for sellers of generation from new facilities, and initiation of a number of industry-wide reforms. As stated by the Commission, in recognition of the Congressional goal in the Energy Policy Act of creating competitive bulk power markets:

> Our goal is to facilitate the development of competitively priced generation supply options, and to ensure that wholesale purchasers of electric energy can reach alternative power suppliers and vice versa.[94]

a. Use of Sections 211 and 212 to Obtain Transmission Access. The Commission has aggressively implemented sections 211 and 212 of the FPA, as amended by the Energy Policy Act, in order to promote competitive markets.[95] When wheeling requests under sections 211 and 212 have been made, the Commission has required wheeling in almost all of the requests it has processed. To date, the Commission has issued orders requiring wheeling in 9 of the 10 cases it has acted on, including 3 proposed orders and 6 final orders.[96]

As a general matter, section 211 has permitted some inroads to be made by customers in obtaining transmission service from public utilities that historically have declined to provide access to their systems, or have offered service only on a discriminatory basis. Under section 211, the Commission has granted requests for the broader type of service that most utilities historically have refused to provide—network service. Although transmission owners have provided limited amounts of unbundled point-to-point transmission service, third-party customers have not been able to obtain the flexibility of service that transmission owners enjoy.

In *Florida Municipal*, a section 211 case, the Commission ordered "network," rather than the narrower "point-to-point," service.[97] Network service permits the applicant to fully integrate load and resources on an instantaneous basis in a manner similar to the transmission owner's integration of its own load and resources. At the same time, the Commission made the generic finding that the availability of transmission service will enhance competition in the market for power supplies and lead to lower costs for consumers. The Commission explained that as long as the transmitting utility is fully and fairly compensated and there is no unreasonable impairment of reliability, transmission service is in the public interest.[98]

As discussed in more detail above, however, our preliminary conclusion is that section 211 alone is not enough to eliminate undue discrimination. The significant time delays involved in filing an individual service request for bilateral service under section 211 places the customer at a severe disadvantage compared to the transmission owner and can result in discriminatory treatment in the use of the transmission system. It is an inadequate procedural substitute for readily available service under a filed non-discriminatory open access tariff. As the Commission noted in *Hermiston Generating Company*, "[t]he ability to spend time and resources litigating the rates, terms and conditions of transmission access is not equivalent to an enforceable voluntary offer to provide comparable service under known rates, terms and conditions."[99]

b. Commission's Comparability Standard. In the Spring of 1994, the Commission began to address the problem of the disparity in transmission service that utilities provided to third parties in comparison to their own uses of the transmission system. In the seminal case in this area, American Electric Power Service Corporation (AEP), the company voluntarily proposed a tariff of general applicability that would offer firm, point-to-point

[90] See supra note 67.

[91] See Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992, 58 FR 38964 (July 21, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,975 (1993) (Policy Statement Regarding Good Faith Requests for Transmission Services).

[92] See Order No. 558, New Reporting Requirements Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714, III FERC Stats. & Regs., Regulations Preambles ¶ 30,980, *reh'g denied*, Order No. 558–A, 65 FERC ¶ 61,324 (1993), *regulations modified*, 59 FR 15333 (April 1, 1994), III FERC Stats. & Regs., Regulations Preambles ¶ 30,993.

[93] See Order No. 550, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, 58 FR 8897 (February 18, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,964, *order on reh'g*, Order No. 550–A, 58 FR 21250 (April 20, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,969 (1993). As recognized by Congress and the Commission, availability of transmission information is critical in developing competitive markets. See *supra* notes 91 and 92. This opened the "black box" of information that previously was available only to transmission owners.

[94] See Stranded Cost NOPR at 32,866; American Electric Power Service Corporation, 67 FERC ¶ 61,168, *clarified*, 67 FERC ¶ 61,317 (1994).

[95] 16 U.S.C.A. 824j–824k (West 1985 and Supp. 1994).

[96] See, e.g., final orders issued in City of Bedford, 68 FERC ¶ 61,003 (1994), *reh'g pending*; *Florida Municipal Power Agency v. Florida Power & Light Company*, 67 FERC ¶ 61,167 (1994), *reh'g pending*; Minnesota Municipal Power Agency, 68 FERC ¶ 61,060 (1994); and Tex-La Electric Cooperative of Texas, 69 FERC ¶ 61,269 (1994); see also *supra* note 168.

[97] See *Florida Municipal Power Agency v. Florida Power & Light Company*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *reh'g pending*. The Commission has "characterized point-to-point service as involving designated points of entry into and exit from the transmitting utility's system, with a designated amount of transfer capability at each point." *El Paso Electric Company v. Southwestern Public Service Company*, 68 FERC ¶ 61,182 at 61,926 n.9 (1994) (citing Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,768 (1993), *reh'g dismissed*, 68 FERC ¶ 61,399 (1994)). Network service allows more flexibility by allowing a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay multiple charges for each resource-load pairing.

[98] *Florida Municipal*, 67 FERC at 61,477.

[99] 69 FERC ¶ 61,035 at 61,165 (1994), *reh'g pending*; *see also* Southwest Regional Transmission Association, 69 FERC ¶ 61,100 at 61,398 (1994) (SWRTA).

transmission service for a minimum of one month.[100] The Commission accepted the proposed transmission tariff for filing and suspended its effectiveness for one day, subject to refund.[101] Rehearing requests challenged the Commission's summary approval of the restriction of service to point-to-point as being discriminatory and anticompetitive.[102] The rehearing requests argued that the tariff should be expanded to include network services such as those used by the transmission owner. On rehearing, the Commission announced a new standard for evaluating claims of undue discrimination.

The Commission found that a voluntarily offered, new open access transmission tariff that did not provide for services comparable to those that the transmission owner provided itself was unduly discriminatory and anticompetitive.[103] In reaching that conclusion, the Commission broadened its undue discrimination analysis (which traditionally had focused on the rates, terms, and conditions faced by similarly situated third-party customers) to include a focus on the rates, terms, and conditions of a utility's own uses of the transmission system:

> [A]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system.[104]

Refocusing the analysis was necessitated by the changing conditions in the electric utility industry, including the emergence of non-traditional suppliers and greater competition in bulk power markets. Because a transmission provider may use its system in different ways (*e.g.*, to integrate load and resources when serving retail native load, to make off-system sales or purchases, or to serve wholesale requirements customers), the Commission set for hearing the factual issues associated with identifying those uses, as well as any potential impediments or consequences to providing comparable services to third parties.[105]

After *AEP*, the Commission applied this comparability standard to a proposed open access transmission tariff that was filed by Kansas City Power & Light Company in support of a proposal to sell generation at market-based rates.[106] The Commission explained that, in light of *AEP*, the utility's proposed open access transmission tariff (which provided only for point-to-point service) did not adequately mitigate its transmission market power so as to justify allowing the requested market-based rates. KCP&L could charge market-based rates for sales only if it modified its proposed transmission tariff to reflect the *AEP* comparability standard.

Since then, the Commission has required comparable service in a variety of contexts, and has set for hearing the factual issues associated with comparable service. For example, the Commission found that market power can be adequately mitigated only if a merged company offers transmission services in accordance with the *AEP* comparability standard.[107] The Commission further held that, even if a merger does not result in an increase in market power, the merger would not be consistent with the public interest under section 203 of the FPA unless the merged company offers comparable transmission services, as defined in *AEP*.[108] The Commission therefore announced a transmission comparability requirement for all new mergers:

> Given the transition of the electric utility industry as a whole, we conclude that, absent other compelling public interest considerations, coordination in the public interest can best be secured only if merging utilities offer comparable transmission services.[109]

In *Heartland Energy Services, Inc.*,[110] the Commission applied its comparability standard to an affiliated electric power marketer seeking blanket authorization to sell electricity at market-based rates. The Commission explained that

> for all future cases involving blanket approval of market-based rates an offer of comparable transmission services will be required before the Commission will be able to find that transmission market power has been adequately mitigated. In the context of an affiliated power marketer, this means that all of its affiliated utilities must have a comparable transmission tariff on file.[111]

The Commission also denied a request by a company affiliated with a transmission-owning utility seeking permission to sell power at market-based rates to a particular customer. The denial was without prejudice to refiling such a request in a new section 205 proceeding, but only after the affiliated transmission-owning utility filed a comparable transmission service tariff.[112] The Commission added that it

> will require comparability in any situation in which a seller seeking market-based rates is affiliated with an owner or controller of transmission facilities.[113]

The Commission has also stated that "it will henceforth apply the transmission comparability standard announced in the *AEP* case to all transmitting utility members of an RTG."[114] The Commission further declared that comparable services must be provided through "open access" tariffs rather than only on a contract-by-contract basis:

> [T]ariffs are essential to the provision of comparable services. Tariffs set out the services that are available and the terms and

[100] 64 FERC ¶ 61,279 (1993), *reh'g granted*, 67 FERC ¶ 61,168, *clarified*, 67 FERC ¶ 61,317 (1994).

[101] The Commission explained that AEP could limit the service it was offering because it was "providing the service voluntarily under a tariff of general applicability." 64 FERC at 62,978.

[102] *AEP*, 67 FERC at 61,489.

[103] With respect to anticompetitive effects, the Commission explained that it has "adhered to the Supreme Court's determination that the Commission's 'important and broad regulatory power * * * carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to sections 202 and 203, and under like directives contained in sections 205, 206 and 207.' *Gulf States Utilities Company v. FPC*, 411 U.S. 747, 758–59 (1972)." *Id.* at 61,490 (footnote omitted). The Commission reaffirmed that it would examine how best to fulfill this responsibility, as well as its responsibility to prevent undue discrimination, in light of the changing conditions in the electric utility industry. *Id.*

[104] *Id.* at 61,490.

[105] *Id.* at 61,490–91.

[106] See *Kansas City Power & Light Company*, 67 FERC ¶ 61,183 (1994), *reh'g pending*.

[107] *E.g.*, *CSW*, *supra* 68 FERC at 61,914.

[108] *Id.*

[109] *Id.* at 915 (footnote omitted).

[110] 68 FERC] 61,223 (1994).

[111] *Id.* at 62,060. In InterCoast Power Marketing Company, 68 FERC ¶ 61,248, *clarified*, 68 FERC ¶ 61,324 (1994), the Commission rejected an affiliated marketer's proposal to sell at market rates without its affiliate utility offering comparable transmission services. The Commission stated that the only way to ensure that InterCoast does not have transmission market power is to require its affiliated public utility to offer comparable transmission services. See also LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,120–21 (1994). The Commission added that this is consistent with encouraging competitive bulk power markets as envisioned by the Energy Policy Act of 1992. *Id.* at 62,132.

[112] See *Hermiston Generating Company*, 69 FERC ¶ 61,035 at 61,164 (1994), *reh'g pending*. The Commission subsequently accepted the rates on a cost basis. See Letter Order dated November 10, 1994.

[113] *Id.* at 61,165.

[114] See *SWRTA*, 69 FERC at 61,397; *see also* PacifiCorp, the California Municipal Utilities Association, and the Independent Energy Producers (on behalf of Western Regional Transmission Association), 69 FERC ¶ 61,099, *order on reh'g*, 69 FERC ¶ 61,352 (1994) (*WRTA*). An RTG is a regional transmission group. It is defined as "a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and inter-regional." Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (August 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 at 30,870 n.4 (RTG Policy Statement).

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conditions under which those services will be made available " " ". [In contrast], a negotiation process creates uncertainty and imposes on customers delay and other transaction costs that the transmitting utility members of an RTG do not incur when using the transmission for their own benefit. Moreover, the ability to execute separate transmission agreements with different but similarly situated customers is the ability to unduly discriminate among them. A tariff ensures against such discrimination in the RTG.[115]

Thus, the Commission required the RTGs to amend their bylaws to commit all transmitting utility members to offer comparable transmission services to other RTG members pursuant to a transmission tariff or tariffs.

Most recently, the Commission has set for hearing whether transmission tariffs meet the *AEP* comparability standard in Commonwealth Edison Company,[116] Wisconsin Electric Power Company,[117] and Wisconsin Public Service Corporation.[118] In all three cases, the company agreed in principle to provide comparable service, but issues arose as to what constitutes such service.

c. *Lack of Market Power in New Generation.* In *KCP&L*, discussed in the prior section, the Commission continued to recognize that transmission remains a natural monopoly. However, it found that, in light of the industry and statutory changes that now allow ease of market entry, no wholesale seller of generation has market power in generation from new facilities.[119] In particular, the Commission explained that it had previously noted in *Entergy Services, Inc.* that

> there was significant evidence that non-traditional power project developers, including qualifying facilities and independent power projects, are becoming viable competitors in long-run markets.[120]

The Commission further explained that since *Entergy*, Congress had enacted the Energy Policy Act, which had lowered barriers to the entry of new suppliers by creating a new class of power suppliers—EWGs—that are exempt from the provisions of PUHCA.[121] The Commission concluded that, in considering market-based rate proposals for generation sales, it need only focus on market power in transmission, generation market power in short-run markets, and other barriers to entry.[122]

d. *Further Commission Action Addressing a More Competitive Electric Industry.* To address the fact that the electric industry is becoming more competitive, and to remove barriers that might inhibit a more competitive industry, the Commission has initiated a number of additional proceedings: (1) Stranded Cost Notice of Proposed Rulemaking,[123] (2) Transmission Pricing Policy Statement,[124] (3) Pooling Notice of Inquiry,[125] and (4) Regional Transmission Group (RTG) Policy Statement.[126]

In the Stranded Cost NOPR the Commission recognized that the trend toward greater transmission access and the transition to a fully competitive bulk power market could cause some utilities to incur stranded costs as wholesale requirements customers (or retail customers) use their supplier's transmission to purchase power elsewhere. As the Commission noted, a utility may have built facilities or entered into long-term fuel or purchased power supply contracts with the reasonable expectation that its customers would renew their contracts and would pay their share of long-term investments and other incurred costs. If the customer obtains another power supplier, the utility may have stranded costs. If the utility cannot locate an alternative buyer or somehow mitigate the stranded costs, the Commission explained that "the costs must be recovered from either the departing customer or the remaining customers or borne by the utility's shareholders."[127] Accordingly, the Commission proposed to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities.[128]

In the Transmission Pricing Policy Statement, the Commission announced a new policy providing greater flexibility in the pricing of transmission services provided by public utilities and transmitting utilities. The Commission traditionally had allowed only postage-stamp, contract-path pricing.[129] Under the new policy, it will permit a variety of proposals, including distance sensitive and flow-based pricing,[130] which may be more suitable for competitive wholesale power markets. The Commission explained that this "[g]reater pricing flexibility is appropriate in light of the significant competitive changes occurring in wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992."[131] However, the Commission explained that any new transmission pricing proposal must meet the Commission's AEP comparability standard. The Commission further explained that comparability of service applies to price as well as to terms and conditions.[132]

The Commission issued the Pooling Notice of Inquiry to receive comments on traditional power pools and on alternative power pooling institutions that are being explored in today's more competitive environment. The Commission expressed concern that

> [g]iven the ongoing changes in the competitive environment of the electric utility industry—in particular, the potential for substantially increased access to transmission—we must consider whether we are appropriately balancing our dual objectives of promoting coordination and competition.[133]

Accordingly, the Commission explained that it wished to look at alternative power pooling institutions and to re-examine the role of more traditional power pools in today's environment of increased competition. In particular the Commission expressed its intent to ensure that its policies "are consistent with the development of a competitive bulk power market."[134]

In the RTG Policy Statement, the Commission announced a policy encouraging the development of RTGs. The Commission explained that a primary purpose of RTGs is to facilitate transmission access for potential users and voluntarily resolve disputes over such service. The Commission has recently conditionally approved the formation of two RTGs.[135] One of the conditions is that each RTG member must offer comparable transmission services by tariff to other RTG members.

In addition to the Commission's actions, a number of states have initiated proceedings concerning retail wheeling or proposed legislation for retail wheeling, that is, for ultimate consumers to choose their supplier of power.[136]

D. Need for Reform

The many changes discussed above have converged to create a situation in which new generating capacity can be built and operated at prices substantially lower than many utilities' embedded costs of generation. As discussed above, new generation facilities can produce power on the grid at a cost of 3 to 5 cents per kWh, yet the costs for large plants constructed and installed over the last decade were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents for nuclear plants. Non-traditional generators are taking advantage of this opportunity to compete. Indeed, the non-traditional generators' share of total U.S. electricity generation increased from 4 percent in 1985 to 10 percent in 1993.[137] Much of this increased share of generation is the result of competitive bidding for new generation resources that has occurred in 37 states. Since 1984, almost 4,000 projects, representing over 400,000 MW, have been offered in response to requests. Over 350 projects have been selected to supply 20,000 MW, and, of these, 126 are now online producing almost 7,800 MW of power.[138] In addition, the cost of utility-generated electricity differs widely across the major regions of the United States. Average utility rates range from 3 to 5 cents in the Northwest to 9 to 11 cents in California.[139] Electricity consumers are demanding access to lower cost supplies available in other regions of the United States, and access to the newer, lower cost generation resources. It is also important that the non-traditional generators of cheaper power be able to gain access to the transmission grid on a non-discriminatory open access basis.

The Commission's goal is to ensure that customers have the benefits of competitively priced generation. However, we must do so without abandoning our traditional obligation to ensure that utilities have a fair opportunity to recover prudently incurred costs and that they maintain power supply reliability. As well, the benefits of competition should not come at the expense of other customers. The Commission believes that requiring utilities to provide non-discriminatory open access transmission tariffs, while simultaneously resolving the extremely difficult issue of recovery of transition costs (discussed infra), is the key to reconciling these competing demands.

Non-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition.[140] Transmitting utilities own the transportation system over which bulk power competition occurs and transmission service continues to be a natural monopoly. Denials of access (whether they are blatant or subtle), and the potential for future denials of access, require the Commission to revisit and reform its regulation of transmission in interstate commerce. Such action is required by the FPA's mandate that the Commission remedy undue discrimination.

1. Market Power

Unlike new generating capacity (*see* prior discussion of *KCP&L*), transmission remains and is expected to remain a natural monopoly. The Commission has addressed the natural monopoly character of transmission in the major cases summarized above and in the Commission's recent Transmission Pricing Policy Statement. The monopoly characteristic exists in part because entry into the transmission market is restricted or difficult.[141] In addition, as unit costs are less for larger lines and networks, transmission facilities still exhibit scale economies. From an economic, environmental, and aesthetic viewpoint, it is often better for a single owner (or group of owners) to build a single large transmission line rather than for many transmission owners to build smaller parallel lines on a non-coordinated basis.

Further, effective competition among owners of parallel transmission lines is unlikely, and often impossible, with existing practices and technology. For example, on an alternating current (AC) electric system, electricity flows on parallel paths based on the impedance of each path. With two electric systems providing parallel contract paths, a share of the actual power flows would occur on each system according to the physical characteristics of the system. Thus, each of the two transmission service providers would have the incentive to underbid the other because the winner would receive all of the transmission revenues, but only incur a fraction of the costs. The loser, on the other hand, would incur the remaining costs, but would receive no revenues.

In today's electric industry, which is dominated by vertically integrated utilities, an owner or controller of transmission service can exclude generation competitors from the market, thereby favoring the transmission

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[115] *SWRTA*, 69 FERC at 61,398.

[116] 70 FERC ¶ 61,204 (1995).

[117] 70 FERC ¶ 61,074 (1995).

[118] 70 FERC ¶ 61,075 (1995).

[119] KCP&L, 67 FERC ¶ 61,183 (1994).

[120] *Id.* at 61,557 (citing Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,756 and nn.63 and 65 (*Entergy*)).

[121] *Id.* The Commission added that "after examining generation dominance in many different cases over the years, we have yet to find an instance of generation dominance in long-run bulk power markets." *Id.*

[122] *Id.* In *KCP&L*, the Commission declined to dismiss the possibility of market power in generation associated with sales out of *existing* capacity. As noted, however, we here seek comments on whether, and if so under what conditions, to drop the generation dominance standard in short-run markets, *i.e.*, for sales from existing capacity.

[123] See supra note 5.

[124] See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 59 FR 55031 (November 3, 1994), III FERC Stats. & Regs., Regulations Preambles ¶ 31,005 (Transmission Pricing Policy Statement).

[125] See Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, 59 FR 54851 (October 26, 1994), IV FERC Stats. & Regs., Notices ¶ 35,529 (1995) (Pooling Notice of Inquiry).

[126] See Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (August 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 (RTG Policy Statement).

[127] Stranded Cost NOPR at 32,864.

[128] The Commission herein is making preliminary findings on stranded costs and issuing a supplemental Stranded Cost NOPR, seeking comments on the impact of our proposed open access NOPR on stranded costs.

[129] Most transmission contracts set a single price for energy flow over a utility's transmission system. This single-price policy is called "postage stamp" pricing because the rate does not depend on how far the power moves within a company's transmission system. If power flows through several companies, traditional industry practice is to specify that power flows along a "contract path" consisting of the transmission-owning utilities between the ultimate receipt and delivery points. See *infra* discussion of Indiana Michigan Power Company, 64 FERC ¶ 61,184.

[130] Unlike with postage stamp pricing, with distance-sensitive pricing the cost of moving power through a company depends on how far the power moves within the company. In contrast to contract path pricing, flow-based pricing establishes a price based on the costs of the various parallel paths actually used when the power flows. Because flow-based pricing can account for all parallel paths used by the transaction, all transmission owners with facilities on any of the parallel paths would be compensated for the transaction.

[131] Transmission Pricing Policy Statement at 31,136.

[132] *Id.* at 31,142.

[133] Pooling Notice of Inquiry at 35,715.

[134] *Id.* at 35,714.

[135] *See WRTA* and *SWRTA*, *supra*.

[136] The Energy Information Administration recently indicated that at least nine states—California, Connecticut, Illinois, Michigan, Nevada, Ohio, Texas, Utah, and Vermont have proposals or legislation for retail wheeling. EIA, Performance Issues for a Changing Electricity Power Industry, January 1995 19–22. Most prominent among the recent state proposals are the California Public Utility Commission's "Blue Book" proposal (Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, R. 94–04–031; Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, I. 94–04–032) and the Michigan Public Service Commission's proposal (Interim Order on Experimental Retail Wheeling Program, Case No. U–10143/U–10176 (April 11, 1994)).

[137] Energy Information Administration, Performance Issues for a Changing Electric Power Industry (January 1995) 10 and (Figure 5).

[138] Current Competition, November 1994, Vol. 5, No. 8, at 8.

[139] See map attached as Appendix A. This Appendix will not appear in the **Federal Register**.

[140] As discussed above, only a minimal number of public utilities have any form of an "open access" tariff on file with the Commission and no public utility has on file a non-discriminatory open access tariff as defined by this rule.

[141] An example of this is that, except in the limited case of licensed hydroelectric projects under Part I of the FPA, there is no Federal right of eminent domain available to assist in acquiring rights of way for new transmission lines. In addition, the regulatory requirements to build a transmission line vary from state to state. In all states, siting new transmission lines is getting harder.

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owner's own generation. This can occur through outright denial of transmission access, or, as is more likely, through access that is discriminatory as to rates, terms or conditions of service.[142] Thus, in the absence of non-discriminatory open access tariffs, the development of fully competitive bulk power markets cannot occur, and consumers will be deprived of the benefits that would be expected from such a competitive market.

2. Discriminatory Access

Some transmission-owning utilities have voluntarily begun to offer unbundled transmission tariff services to third-party suppliers and purchasers of wholesale power, though none have done so to the extent proposed by this proposed rule.[143] However, because utilities are naturally profit maximizers and monopoly suppliers to their native load, the vast majority of transmission-owning utilities have not agreed to give up their market power voluntarily. Transmission-owning utilities have an incentive to deny access either by not filing any open access tariff or by filing a tariff that offers services inferior to those used by the transmission owner. This is particularly true for those utilities that emerged from the recent decades of technological and legal changes as high-cost generation companies. Open access transmission places their existing generation at risk because their wholesale customers may seek alternative lower price suppliers. It is in their self-interest to maintain and use market power to retain (or expand) market share for their existing generation facilities, at least until they can get their generation costs in line with current market prices. Because generating units are usually depreciated over a 30- to 50-year physical life, many high cost companies may attempt to exercise transmission market power for decades to preserve the value of past generation investments.

Unless all public utilities are required to provide non-discriminatory open access transmission, the ability to achieve full wholesale power competition, and resulting consumer benefits, will be jeopardized. If utilities are allowed to discriminate in favor of their own generation resources at the expense of providing access to others' lower cost generation resources by not providing open access on fair terms, the transmission grid will be a patchwork of open access transmission systems, systems with bilaterally negotiated arrangements, and systems with transmission ordered under section 211. Under such a patchwork of transmission systems, sellers will not have access to transmission on an equal basis, and some sellers will benefit at the expense of others. The ultimate loser in such a regime is the consumer.

A patchwork of transmission systems will also result in inefficiencies across the Nation's transmission grids. Because of the physical properties of the transmission system, electric power moves over parallel transmission lines from generator to load, without regard to whether a line is part of a system providing open access or not.[144] However, today the industry develops transmission contracts as if power flowed along one series of lines belonging to specific owners, which is called the "contract path." Thus, transmission users will search for contract paths through open access systems to take advantage of the non-discriminatory open access tariffs. Because open access transmission tariffs include an obligation to expand when necessary to accommodate third-party requirements for service, transmitting companies offering open access services across their systems could end up constructing a disproportionate share of new transmission facilities.

Expansion cannot be efficient under such a patchwork of open access transmission systems. Not only would this misallocate cost burdens to open access companies, but it is unlikely that the optimal transmission development will always be within their service territories. Expansion on closed systems, instead of open systems, may in some cases be the more efficient way to relieve constraints. Thus, a patchwork of open access systems will not result in the least cost expansion of the Nation's transmission grids. In addition, states with open access utilities may refuse to site new lines if their closed access neighbors are not doing their share.[145]

A discriminatory, patchwork system also works against pricing parallel power flows on a sensible regional basis. The formation of effective regional transmission groups, which the Commission strongly encourages, would be fostered if all utilities in a region offered non-discriminatory open access.[146] In fact, optimal cooperative regional action would involve all transmission systems in the region offering non-discriminatory open access to all wholesale customers.

A transmission-owning utility may deny access to third parties not only to avoid losing its own generation sales, but also to maintain other trading gains. For example, a company can buy low cost power for its own use from a neighbor at a low price if other buyers cannot reach that neighbor to bid up the price. Furthermore, if it does not need the energy, it can market that power by buying low and selling high.

In the past, transmission-owning utilities have discriminated against others seeking transmission access. Transmission-owning utilities have denied access by outright refusals to deal. While such actions tend to be rare, likely because transmission owners fear they may trigger antitrust action,[147] they have occurred.[148] More often, however, discrimination is likely to be manifested more subtly and indirectly.[149] One such

[142] See, *e.g.*, David W. Penn, A Municipal Perspective on Electric Transmission Access Questions, Pub. Util. Fort. 18–19 (Feb. 6, 1986).

[143] The majority have offered only point-to-point services. However, a few utilities have sought to comply with the non-discrimination (comparability) standard announced in *AEP*. For example, Kansas City Power & Light Company (KCP&L) and Louisville Gas & Electric Company (LG&E) recently filed settlements to this effect. KCP&L, Docket No. ER94–1045 (settlement filed February 14, 1995) and *LG&E*, Docket No. ER94–1380 (settlement filed February 10, 1995).

[144] In Indiana Michigan Power Company, 64 FERC ¶ 61,184 (1993), the Commission explained loop flows and parallel power flows:

> In general, utilities transact with one another based on a contract path concept. For pricing purposes, parties assume that power flows are confined to a specified sequence of interconnected utilities that are located on a designated contract path. However, in reality power flows are rarely confined to a designated contract path. Rather, power flows over multiple parallel paths that may be owned by several utilities that are not on the contract path. The actual power flow is controlled by the laws of physics which cause power being transmitted from one utility to another to travel along multiple parallel paths and divide itself among those paths along the lines of least resistance. This parallel path flow is sometimes called "loop flow."

Id. at 62,545.

[145] The Commission partially addressed this concern by allowing reciprocity provisions in open access transmission tariffs. See, *e.g.*, Southwestern Electric Power Company and Public Service Company of Oklahoma, 65 FERC ¶ 61,212 at 61,981–82 (1993), *order on reh'g*, 66 FERC ¶ 61,099 (1994).

[146] While the Commission has conditioned its approval of RTGs to achieve this same result, the formation of RTGs is voluntary. By contrast, compliance with the final rules adopted in this proceeding will be required.

[147] See, *e.g.*, Penn, *supra* note 142, at 18.

[148] Otter Tail Power Company refused to wheel power for the village of Elbow Lake. The Supreme Court ultimately ruled against Otter Tail on antitrust grounds. Otter Tail Power Company, 410 U.S. 366 (1974). The Commission has also found that Utah Power & Light Company consistently refused to permit the wheeling of low-cost power across its system in order to use its strategically located bottleneck transmission system to extract monopoly prices. Utah Power & Light Company, *supra*, 45 FERC at 61,287 and n.137 (1988).

[149] See, *e.g.*, Penn, *supra* note 142, at 18–19 (discussion of methods used to deny access). Penn also noted in his 1986 article that the American Public Power Association had conducted a survey of its members in which about 25% indicated a

way would be for transmission owners to adopt a negotiating strategy that involves a sequence of informational and other requirements over a protracted period of time. By the time all of the requirements are finally satisfied, the window for the customer's trade opportunity has closed.[150] Another way of frustrating access is to substantially change the terms of negotiated agreements through protracted delay, including filings with regulatory agencies.[151]

Another way for transmission-owning utilities to frustrate access and competition is to allow access, but only on non-comparable or unsupportable terms and conditions that are inferior to the conditions under which the transmission owners themselves use or could use the transmission grid or on terms and conditions that have no operational or financial basis. Discrimination can be exercised this way in the following areas:

(1) *Network Service.* Network service allows a transmission customer to distribute a given amount of transmission usage between specified resources and specified loads without having to pay multiple charges for each resource-load pairing. Transmission owners can refuse to provide service on these terms and instead insist on charges that are a function of the number of resource load pairings.[152] This can dramatically increase the cost of such service. Such treatment does not reflect the way transmission owners' costs are allocated to their own native load customers.

(2) *Pricing.* Transmission service can be made unattractive to third-party customers by pricing such service on a basis that is different from that used by the transmission owner and that results in higher rates. One example would be charging third-party customers distance-sensitive rates, while pricing all similar transmission bundled with power services on a postage stamp basis.[153]

(3) *Service Priority.* The priority of transmission service is a critical service factor. The transmission provider could disadvantage third-party transmission customers by making firm transmission service to them subordinate to the transmission utility's native load service.[154]

(4) *Scheduling and Balancing Provisions.* A transmission owner could hold transmission customers to unnecessarily long lead times to change power schedules. In some cases, scheduling could be required as much as a month ahead of time.[155] This precludes transmission customers from using their service for short-term trading. Transmitting utilities may also insist that customers keep strict adherence to scheduling and balancing provisions by requiring them to get back on schedule quickly or face stiff penalties.[156] One example of a stiff penalty for failure to schedule sufficient power would be to assess shortfalls based on a partial requirements rate with an 11-month ratchet.[157] In contrast, transmitting utilities may have access to less costly balancing alternatives, such as substituting resources without notice or borrowing capacity from neighboring utilities and settling the imbalance by returning energy in-kind within a much longer time period than allowed to customers.[158]

(5) *Use of Firm Transmission Capacity.* Transmission owners can unnecessarily restrict the firm transmission capacity made available to transmission customers. One way to restrict service would be to prohibit the customer from reassigning such capacity when it is not needed.[159] This restricts the customer's ability to manage the risk of long-term capacity purchases and to compete as a seller in the transmission service market. Another example would be that the transmission owner could restrict a customer's use of transmission capacity by allowing sales only from the customer's generating resources that are temporarily in excess of actual load needs.[160] Transmission owners do not face these restrictions in their own use of transmission capacity.

(6) *Ancillary Services.* A transmitting utility may offer to a transmission customer ancillary services (e.g., scheduling) that are inferior to the services it provides for itself. Transmission owners may be free to choose whether to supply some of these services to themselves or contract for them if available more cheaply elsewhere.[161] Third-party transmission customers do not always have this option on a comparable basis.

(7) *Creditworthiness and Security Deposits.* Customers are sometimes required to make onerous deposits in order to obtain service.[162]

(8) *Reciprocity Double Payments.* Transmission agreements often require reciprocity. Non-transmission owners could be required to contract with, and pay, third-party transmitting utilities to provide the required reciprocal service.[163] Transmission owners do not face such obstacles in using their own systems.

Finally, an additional way for transmission-owning utilities to frustrate access and competition is by granting each other superior rights and lower rates—compared to those available to non-transmission owning customers—in pools, interconnection agreements, and other protocols.[164] For example, pool-wide transmission service can be made available to members at rates less than those that each member would separately propose under traditional rate methods. This could disadvantage non-transmission owners if pool membership is restricted or if it requires excessive or vaguely stated transmission contributions that could be difficult to meet.[165]

Section 211 is not always a sufficient remedy for this discriminatory behavior. Third parties may seek non-discriminatory transmission under section 211, but they will not be able to compete if the sale or purchase

problem in securing transmission in effecting coordination services and about an equal amount had reported being denied transmission access in the recent past. *Id.* at 18. See also Pacific Gas & Electric Company, 51 FPC 1030, 1031–32, *reh'g denied*, 51 FPC 1543 (1974) (parties alleged that public utility proposed "a wholesale rate so high that its wholesale customers would be unable to compete with PG&E for large industrial retail loads" and entered into restrictive and anticompetitive contracts that strengthened public utility's monopoly).

[150] Members of the Coalition for a Competitive Electricity Market alleged that they have encountered this strategy. Coalition Petition at 13, n.19.

[151] An example of this tactic is evident in the history of Pacific Gas and Electric Company's (PG&E) attempt to avoid its commitments made to the California owners of the California-Oregon Transmission Project (COTP). The owners had originally planned the COTP to have its southern terminus at the Midway station with Southern California Edison. PG&E convinced them to terminate the project instead at PG&E's Tesla station and indicated that PG&E would provide transmission service the rest of the way south to Midway. PG&E promised this service in 1989 (in what came to be known as the South of Tesla Principles). PG&E spent the next four years filing substitute provisions for what it had promised in the Principles. See Pacific Gas and Electric Company, 65 FERC ¶ 61,312 at 62,428–30 and n.22, *remanded on other grounds*, Pacific Gas & Electric Company v. FERC, No. 94–70037 (9th Cir. June 23, 1994) (unpublished opinion), *order on remand*, 69 FERC ¶ 61,006 (1994).

[152] See Pacific Gas and Electric Company, 52 FERC ¶ 61,347 at 62,375–76 (1990) (proposal to charge a base demand and a flexibility adder for an integrating transmission service). PG&E eventually withdrew the proposal. 56 FERC ¶ 61,373 at 62,429 (1991); see also Florida Municipal Power Agency v. Florida Power & Light Company, 65 FERC ¶ 61,125 (1993) (Federal Municipal Power Agency requested a section 211 order directing network service); Tex-La Electric Cooperative of Texas, 67 FERC ¶ 61,019 at 61,057 (1994) (Tex-La requested a section 211 order directing network service).

[153] See notes 129 and 130, *supra*; see also *Tex-La Electric Cooperative of Texas*, 69 FERC ¶ 61,269 at 62,034–35 (1994), in which the Commission found this practice to be unduly discriminatory.

[154] See AEP, 64 FERC at 62,971–72.

[155] Id.

[156] See Coalition Petition at 20–21.

[157] See Borough of Zelienople, 70 FERC ¶ 61,073 at 61,184 (1995) (load exceeding schedule by 1 MW would be filled at a partial requirements rate using a 60% demand ratchet for 11 months, i.e., 1 MW times 60% times $9.30 per kW times 11, for a total of $61,380).

[158] See Coalition Petition at 20–21.

[159] See, *e.g.*, Pacific Gas and Electric Company, 53 FERC ¶ 61,145 at 61,505 (1990) (utility proposed a reassignment prohibition on the use of Reserve Transmission Service available to the Sacramento Municipal Utility District under a proposed Interconnection Agreement).

[160] *Id.* at 61,504–05 (utility proposed an export restriction on the use of Reserve Transmission Service available to the Sacramento Municipal Utility District under a proposed Interconnection Agreement).

[161] See Coalition Petition at 28–29 and 32.

[162] For example, it is reported that one customer was told that a $13 million line of credit would be required to ensure creditworthiness for a request of only one MW of transmission capacity for a coordination trade. See Coalition Petition at 30.

[163] See Coalition Petition at 25; see also AES Power, Inc., 69 FERC ¶ 61,345 at 62,295 and 62,301 (1994) (*AES*).

[164] See Coalition Petition at 13–14.

[165] See Mid-Continent Area Power Pool, 69 FERC ¶ 61,347 at 62,308 (1994).

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opportunity is gone before a final order can be obtained under section 211. This could be the case in many situations because of the procedural requirements of sections 211 and 212.[166] Indeed, to date, the Commission has received eighteen section 211 transmission requests,[167–168] which it has tried to process expeditiously within the procedural constraints contained in sections 211 and 212. As to the seven requests that have received a final order, the average elapsed time from date of filing to the date of a final order was 9 months. The remaining ten requests have been pending, on average, more than 6 months.

The following sets forth the status of the section 211 cases filed with the Commission:

Docket No.	Date of application	Status	Months pending
TX93–1 ..	01/19/93	Final Order-7/29/93.	5
TX93–2 ..	06/18/93	Final Order-7/1/94.	12
TX93–3 ..	06/30/93	Withdrew-9/10/93.	2
TX93–4 ..	07/02/93	Final Order-5/11/94.	10
TX94–1 ..	10/21/93	Final Order-7/6/94.	9
TX94–2 ..	11/04/93	Pending[a]	16
TX94–3 ..	11/09/93	Final Order-7/13/94.	11
TX94–4 ..	12/15/93	Final Order-12/1/94.	11
TX94–5 ..	04/15/94	Final Order-3/23/95.	11
TX94–6 ..	07/05/94	Pending	8
TX94–7 ..	07/15/94	Pending[a]	8
TX94–8 ..	08/05/94	Pending	7
TX94–9 ..	09/09/94	Pending[a]	6
TX94–10	09/16/94	Pending	6
TX95–1 ..	10/11/94	Pending	5
TX95–2 ..	10/17/94	Pending	5
TX95–3 ..	01/19/95	Pending	2
TX95–4 ..	01/24/95	Pending	2

[a]A proposed order has been issued.

As the wholesale power markets become more competitive, delayed access becomes a matter of increasing concern. Not only have long-term purchases from non-traditional generators become more important, but short-term firm and non-firm power sales and purchases create significant profit or cost-saving opportunities for utilities, marketers, and their customers. As a result, market participants are exploring various ways to reduce their costs through trading. These include poolcos, changes to existing pools, short-term trading systems, and futures contracts.[169] We do not see how such options will work unless all parties have non-discriminatory transmission access rights and hour-to-hour access without having to go through a regulatory proceeding for each trade.

In today's emerging competitive wholesale power markets, the practices of some transmission-owning utilities are unduly discriminatory and anticompetitive. These practices produce market distortions today, undermine the goal of the Energy Policy Act to create competitive bulk power markets, and will continue if this Commission does not take action. Most important, they can harm consumers by denying them the benefits of competitively priced power. We seek additional specific examples of such practices.

3. Analogies to the Natural Gas Industry

The electric industry today is analogous in many ways to the natural gas industry before the Commission issued Order Nos. 436 and 636.[170] Then, natural gas pipelines were primarily merchants offering a bundled sales service, which provided gas to customers at the city-gate from the pipelines' own system supplies. In addition, pipelines moved a relatively small amount of third-party gas under a separate transportation service. To meet their sales service obligations, pipelines purchased most of their system supply from third-party producers under long-term contracts. In the early 1980s, due to changing market conditions, the prices under many of these contracts ended up being higher than those available in the then evolving spot market. Because of the long-term contracts and the resulting higher cost gas, system supply gas tended to be more costly than gas that the customers could buy in the competitive spot market. At the same time, the transportation service bundled with a pipeline's sales service was usually superior to the transportation service third parties could obtain. Essentially, the pipeline would provide itself service that had much greater flexibility and often promised greater reliability than that available to third-party shippers. Pipelines had a considerable incentive to maintain this difference in transportation service quality to make their own, more expensive gas more attractive.

A similar situation exists today in the electric industry. Traditional public utilities deliver bundled service—generation and transmission—to most of their wholesale customers. They have monopoly control over transmission facilities and thus control access to their customers. The lack of non-discriminatory access to transmission services raises the same general concerns that were prevalent in the gas industry. Accordingly, unless similar regulatory measures are undertaken, the Commission expects the same type of discriminatory and anticompetitive behavior will continue in the electric industry as was present in the gas industry, because denying non-discriminatory access will continue to be in the economic self-interest of transmission monopolists, absent regulatory changes.[171]

In its regulation of interstate pipelines under the Natural Gas Act (NGA) the Commission initially addressed the problem of undue discrimination in Order No. 436, finding natural gas pipeline practices to be unduly

[166] For example, an applicant must make a request for transmission service to the transmitting utility at least 60 days before filing an application with the Commission for an order to provide transmission. The Commission must first issue a proposed order and allow the parties a reasonable time to negotiate agreeable terms and conditions before it can issue a final order. Moreover, a final order faces possible rehearing and a court appeal.

[167–168] One request was withdrawn.

[169] We note that NEPOOL and MAPP are currently exploring ways to modify their pool structures to accommodate competitive power markets. As noted in the Pooling Notice of Inquiry, *supra*, the poolco concept basically involves an independent entity that would control the operation of all transmission facilities and some or all generating facilities in a region. It would be open and would provide transmission service to all generators. Thus, the poolco would create a spot market for power in the region.

[170] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Regulations Preambles ¶ 30,665 (1985); Order 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs., Regulations Preambles ¶ 30,939 (Order No. 636), *appeal pending*.

[171] See *AGD*, *supra*, 824 F.2d at 1008 ("Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.").-The ongoing discriminatory behavior by owners or controllers of transmission in the electric industry is detailed *supra*.

discriminatory under the NGA [172] and effectuating "open access" transportation. The Commission in that order sought to make transportation available to third parties on a non-discriminatory basis. The Commission provided that, if a pipeline held itself out as a transporter of gas for others, it must provide that service to all shippers without discrimination. At the same time, the Commission allowed pipelines and their customers to retain the traditional bundled sales and transportation services under existing certificate authority.

As a result of Order No. 436, pipelines became primarily transporters of natural gas. However, in Order No. 636, the Commission noted that pipelines were still providing, albeit at a reduced level, a bundled, city gate, sales service in competition with third-party sales and transportation, and concluded that the competition was not occurring on an equal basis. The Commission also noted that pipelines' natural gas sales prices exceeded those of their competitors, much as electric utilities' embedded costs can exceed the cost of new generating capacity and excess generating capacity of others. In this regard, the Commission determined that the transportation service bundled with pipelines' sales service was superior to that made available to third parties and that pipelines and unregulated competitors were not selling the same product.[173] Accordingly, in Order No. 636, the Commission found this behavior anticompetitive and required pipelines to "unbundle" their sales services from their transportation services and to provide open access transportation service that is equal in quality for all gas supplies whether purchased from the pipeline or some other supplier.[174]

Our experience in the gas area influences our decision that, at a minimum, functional unbundling of wholesale services is necessary in order to obtain non-discriminatory open access and to avoid anticompetitive behavior in wholesale electricity markets.

[172] In this regard, sections 4 and 5 of the NGA are virtually identical to sections 205 and 206 of the FPA.

[173] Order No. 636 at 30,402. The Commission explained that pipelines were selling a regulated bundled sales and transportation service, but that their competitors were generally selling only the gas commodity. The Commission also recognized that pipelines were at a competitive disadvantage due to their certificate and contractual obligations to their firm sales customers. *Id.* at 30,403.

[174] Order No. 636 at 30,393–94.

4. Coordination Rates

In finding a need for non-discriminatory open access transmission, the Commission has considered the structure of the coordination market, *i.e.*, the market for wholesale sales to a public utility's non-requirements customers. Utilities now engage in coordination trades primarily under rates no lower than the seller's variable cost and no higher than that variable cost plus 100% contribution to the fixed costs of the production unit used to price energy and the relevant transmission facilities. This rate flexibility allows the buyer and seller to negotiate a price reflecting the market at the time of the sale, including the number of buyers and sellers, the relative incremental and decremental variable costs, and the amount of savings attainable by transacting. Thus, while the seller's ceiling rate reflects some measure of fixed and variable costs, the actual transaction price is set, to a certain extent, by the marketplace. This marketplace, however, may be skewed by the general lack of transmission access, and the resulting price may be considerably above prices in a fully competitive market.

Some utilities transact under a split-savings rate that generally sets the price halfway between the seller's incremental variable cost and the buyer's decremental variable cost. Here again, price is a function of the alternatives reachable through the transmission grid at the time of the transaction. This rate form is primarily used today to distribute the savings derived from the central dispatch of power pools on an after-the-fact basis.

The Commission believes that unless the participants in coordination markets mitigate their transmission market power, market-driven prices for coordination trades may no longer be just and reasonable. Thus, our preliminary conclusion is that current coordination pricing is no longer justified in the absence of a tariff offer of non-discriminatory open access transmission services by the seller (owning or controlling transmission) in a coordination transaction.[175] The Commission's past practice of allowing such pricing for coordination trades appears to be inconsistent with emerging competitive markets unless those who benefit from such trading offer access to other, lower-priced trading opportunities. We seek comments on this issue.

[175] As discussed *infra*, sellers must also meet the Commission's other requirements to obtain market-based rates.

E. The Proposed Regulations

The goals of the proposed regulations are two-fold: (1) To facilitate the development of competitive wholesale bulk power markets by ensuring that wholesale purchasers of electric energy and wholesale sellers of electricity can reach each other by eliminating anticompetitive practices and undue discrimination in transmission services; and (2) to address the transition costs associated with the development of competitive wholesale markets. This section addresses the elimination of undue discrimination. Transition costs are addressed below in Section F.

Non-discriminatory open access transmission is critical to the ability of sellers to compete on a fair basis and the ability of purchasers to reach the lowest priced generation options. Thus far, the Commission has developed an open access comparability requirement on a case-by-case basis. We have directed our administrative law judges, to whom the various cases have been referred, to examine the factual circumstances surrounding a utility's use of its own system *vis-a-vis* the type of service provided to third parties. Nonetheless, it has now become evident to us that it is necessary for the Commission to define the parameters of a non-discriminatory open access tariff much more precisely.

Until now, we have been applying the new standard of what constitutes undue discrimination only to new voluntary tariff filings. We now no longer believe it is appropriate to apply this standard so narrowly; therefore, we are proposing to require all public utilities to offer non-discriminatory open access services in accord with the proposed rule and the attached tariffs. This broad application is consistent with our determination that undue discrimination by jurisdictional public utilities must be prevented or remedied. It is also consistent with our desire to bring further efficiencies to the provision of electric service by encouraging competitive bulk power markets.

1. Non-discriminatory Open Access Tariff Requirement

Transmission owners can discriminate by restricting access to, or restricting expansion of, transmission facilities, or by restricting access to the ancillary services that control the generation resources on the transmission grid.[176] To ensure that all

[176] Examples of ancillary services (which include control area services) are: Scheduling service between control areas, and various services that facilitate power movements within control areas,

Continued

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participants in wholesale electricity markets have non-discriminatory open access to the transmission network, transmission owners must offer non-discriminatory open access transmission and ancillary services to wholesale sellers and purchasers of electric energy in interstate commerce.[177] This will require tariffs that offer point-to-point and network transmission services, including ancillary services. All of these services must be non-discriminatory as to price as well as to non-price terms and conditions. Services must be available to any entity that could obtain transmission services under section 211.

In our *AEP* rehearing order and in several subsequent cases,[178] we set for hearing the following issues:

1. The different uses that a transmission owner makes of its transmission system and whether there are any operational differences between any particular use that the owner makes of the system and the use third parties might need, and in particular, the degree of flexibility the transmission owner accords itself in using its transmission system for different purposes.

2. Any potential impediments or consequences to providing a particular service to third-party transmission customers which is the same or comparable to service that the transmission owner provides itself.

3. The costs that the transmission owner incurs in providing transmission associated with its use of the system, and whether the costs to provide such service or comparable service to third parties would be different.

Based on what we have learned in the past year, the Commission proposes to address these issues generically. Concurrently with this order, the Commission is issuing a separate order on how a final rule would apply to pending cases.[179] We believe that the parties and the administrative law judges in the individual pending proceedings should continue their efforts, but in doing so should take into account the principles announced in this proposed rule. This will permit any fine tuning of the broader principles announced here and set forth in the *pro forma* tariffs that may be necessary to recognize the individual circumstances of particular systems.

With regard to the first issue, the Commission believes that all utilities use their own systems in two basic ways: to provide themselves point-to-point transmission service that supports coordination sales, and to provide themselves network transmission service that supports the economic dispatch of their own generation units and purchased power resources (integrating their resources to meet their internal loads).[180] This network transmission service is bundled as part of retail service and as part of wholesale requirements service, and is the fundamental support of a utility's dispatch that underlies its trading in the wholesale coordination market.[181]

The Commission has preliminarily concluded that third parties may need one or both of these basic uses in order to obtain competitively priced generation or to have the opportunity to be competitive sellers of power. The Commission therefore proposes that all public utilities must offer both firm and non-firm point-to-point transmission service and firm network transmission service on a non-discriminatory open access basis in accord with the proposed rule and the attached tariffs. The Commission believes that a utility's tariff must offer to provide any point-to-point transmission service and network transmission service that customers need, even though the utility may not provide itself the specific service requested. For example, a utility may not provide itself "wheeling-through" service,[182] which is a specific form of point-to-point service. However, because "wheeling-through" service is merely a subset of basic point-to-point service, which the utility does provide to itself, the Commission will require a utility to provide such service.[183] Similarly, a utility may contend that it does not provide non-firm point-to-point service to itself because all of its transmission investment results in firm entitlements. Nonetheless, the utility provides itself with the functional equivalent of non-firm service when it uses, subject to curtailment or interruption, capacity that is temporarily unused by other firm reservation holders. Therefore, it must offer non-firm point-to-point service.

We will not allow transmission providers to define terms or specify transmission uses to erect barriers to fair and equal competition in power markets, or to engage in undue discrimination.

On the second issue set for hearing in *AEP, et al.* (potential impediments to providing a particular service), we believe there are none, except for impediments to siting. However, any impediments to siting are the same whether the utility is providing service to itself or to a third party.

On the third issue set for hearing *AEP, et al.* (the costs of providing comparable service), we believe there is no difference in the costs incurred by a transmission provider in providing transmission to itself or to a third party. Thus, the transmission owner must charge itself and third parties the same rates for the use of its system.

All electricity trade is supported and facilitated in one way or another by ancillary services, and transmission services may be comprised of many different combinations of ancillary services. Therefore, the Commission will require that such ancillary services be offered separately through open access tariffs. These are discussed in detail *infra*.

Public utilities that are transmission-only companies or transcos, *i.e.*, companies that do not own or control generation, do not use their own transmission systems to sell their own power. However, a public utility transco would be required to offer open access transmission services as well as ancillary services. It would also have to provide a real-time information network, as discussed below. The Commission is also announcing certain quality-of-service guidelines to aid in evaluating the quality of transmission service that must be provided by public utilities. These are described *infra* and are reflected in proposed *pro forma* point-to-point and network tariffs

e.g., dispatch service, load following service, imbalance resolution service, reactive power support, and operating reserves. We invite comment on definitions of these terms and their component parts. Regardless, the proposed rule would require that all ancillary services be offered on a non-discriminatory basis.

[177] See generally William W. Hogan, Reshaping the Electricity Industry, Prepared for the Federal Energy Bar Conference, "Turmoil for the Utilities," 5 Washington, D.C. (Nov. 17, 1994):

Commercial functions must facilitate non-discriminatory, comparable open access and support market operations in the competitive sectors. The EPAct requirements and the FERC implementation emphasize the need to obtain market access under terms and conditions that support competition. Everyone should have equal access to and use of essential facilities, particularly transmission, with the rights of ownership limited to compensation consistent with opportunity costs in a competitive market.

[178] See, *e.g.*, *AEP*, 67 FERC at 61,491.

[179] Order Providing Guidance Concerning Pending and Future Proceedings involving Non-discriminatory Open Access Transmission Services, Docket Nos. ER93-540-000, *et al.*

[180] While there may be any number of specific services used by a particular customer, we have concluded, after analyzing the historical types of transmission service tariffs on file, as well as the tariffs filed in the ongoing comparability proceedings, that all transmission services generally fall within these two categories.

[181] A utility's own coordination purchases may involve hourly scheduled transfers of fixed blocks of power. These schedules are supported by the utility's own network transmission service used for its economic dispatch. Consequently, network service is covered by the proposed rule because it supports a utility's coordination purchases, regardless of whether or not the utility has any requirements customers that also would use network service.

[182] "Wheeling through" refers to transmittal of electric energy through a transmitting utility's grid, *i.e.*, entering at one point of interconnection and leaving at another.

[183] This would be true of other services as well.

attached to this notice of proposed rulemaking. Our preliminary conclusion is that the provisions contained in the *pro forma* tariffs are the minimum provisions necessary to meet the requirement of non-discriminatory open access. We seek comments on these tariffs.

2. Implementing Non-Discriminatory Open Access: Functional Unbundling

The Commission's preliminary view is that functional unbundling of wholesale services is necessary to implement non-discriminatory open access. Accordingly, the proposed rule requires that a public utility's uses of its own transmission system for the purpose of engaging in wholesale sales and purchases of electric energy must be separated from other activities, and that transmission services (including ancillary services) must be taken under the filed transmission tariff of general applicability. The proposed rule does not require corporate unbundling (selling off assets to a non-affiliate, or establishing a separate corporate affiliate to manage a utility's transmission assets) in any form, although some utilities may ultimately choose such a course of action. The proposed rule accommodates corporate unbundling, but does not require it.

Functional unbundling means three things. First, it means that a public utility must take transmission services (including ancillary services) for all of its new wholesale sales and purchases of energy under the same tariff of general applicability under which others take service. New wholesale sales and purchases are those under any contracts executed on or after the open access tariffs required by this proposed rule become effective. Non-discriminatory service requires that the utility charge itself the same price for these services that it charges its third-party wholesale transmission customers. We seek comment as to the appropriate means to enforce this requirement, such as a revenue crediting mechanism.

Second, functional unbundling means that a transmission owner must include in its open access tariffs separately stated rates for the transmission and ancillary service components of each transmission service it provides.[184] The rates must satisfy the Commission's Transmission Pricing Policy Statement.

Third, functional unbundling means that the public utility, in order to provide non-discriminatory open access to transmission and ancillary services information, must rely upon the same electronic network that its transmission customers rely upon to obtain transmission information about its system when buying or selling power.

For example, the proposed rule requires that a public utility unbundle its new wholesale requirements service contracts, and its new wholesale coordination purchase transactions, and take the firm network transmission component of those services under its own firm network transmission tariff. Similarly, the proposed rule requires that a public utility unbundle any new wholesale coordination sales transactions and take the point-to-point transmission component of that service under its own point-to-point transmission tariff. Finally, the proposed rule requires that a utility unbundle ancillary services and take these services under its network and point-to-point tariffs.

Public utilities also must authorize their power pool agents to offer any transmission service available under power pool arrangements to all transmission customers. In addition, public utilities that participate in a power pool that acts as a control area must authorize the power pool's control center to offer ancillary services under a filed tariff, and must take all of their control area services from that tariff.[185] A public utility must take dispatch service and other ancillary transmission services on the same terms and conditions as those offered to its transmission customers.[186]

The requirement to provide ancillary services and to take those services under a tariff is not intended to mandate any federal rules that would prescribe the actual merit order of dispatch. Rather, it is a requirement that public utilities ensure that dispatch practices and procedures applicable to them are also applied to third-party transmission customers.

The proposed requirement that a public utility take transmission service used for wholesale requirements service and wholesale coordination transactions under its own filed tariff means that all wholesale trade, both that of the public utility and its competitors, would be taken under a single wholesale transmission tariff. Our preliminary view is that such a requirement places the correct incentives on the public utility to file a fair tariff since it must live under those terms for wholesale purposes. The Commission invites comment on its approach to functional unbundling. Will it provide strong enough incentives for non-discriminatory access without some form of corporate restructuring? If utilities restructure, how will our proposed rules apply to different types of corporate structures?

While this approach to unbundling creates good incentives with respect to wholesale service, it omits retail service. In other words, it does not require the transmission owner to take unbundled transmission service under the same tariff as third parties in order to serve its retail customers. This will result in service under two separate arrangements—an explicit wholesale transmission tariff filed at the Commission and an implicit retail transmission tariff governed by a state regulatory body. It also raises the possibility that the quality of transmission service for retail purposes will be superior to the quality of transmission service offered for wholesale purposes.

We seek comment on how this bifurcated approach would affect the public utility's incentives to provide non-discriminatory open access wholesale transmission service. For example, will planning of incremental transmission facilities be comparable or will the transmission provider's retail customers retain an advantage from having expansion costs placed on third parties? What would be the benefits of an approach that required the transmission provider to take unbundled transmission service for both wholesale and retail purposes under the same tariff used by third-party transmission customers? Is such an approach necessary to ensure that all participants have the same incentives to achieve non-discriminatory open access transmission service and competitive power markets? What would be the disadvantages, if any, of such an approach?

The Commission recognizes that the unbundling of transmission for retail purposes would intrude upon matters that state commissions have traditionally regulated. One possible approach that would unify service standards for wholesale and retail

[184] This means that a customer who buys both generation and transmission services from the utility will have a separately stated rate for the generation, transmission, and ancillary services that it purchases. The rates for transmission and ancillary services would be stated in the open access tariff. The rates for the generation service would be under a separate rate schedule.

[185] Similarly, public utilities that own transmission, but get their ancillary services from another entity must authorize that entity to provide ancillary services under a filed tariff and must take their ancillary services from that tariff.

[186] The Commission recognizes that the proposal here overlaps with the pending Pooling Notice of Inquiry. However, the fundamental non-discrimination requirements of the FPA, and therefore the basic requirements of the proposed rule, must be applied to power pools in which public utilities participate. This issue is discussed further in the Implementation Section, *infra*.

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service would be for each vertically integrated utility to establish a distribution function that would be responsible for obtaining transmission service on behalf of retail customers. This distribution function then could be treated just as any other wholesale customer. The distribution function of the utility would take service under the single Commission filed tariff. This could change the traditional approach of state-federal allocation of transmission costs. The Commission seeks comment on the merits of such an approach. How could the Commission cooperate with state commissions if it were to adopt such an approach?

Finally, we address a specific type of retail service that we believe to be "bundled" retail service in name only: a so-called "buy-sell" transaction in which an end user arranges for the purchase of generation from a third-party supplier and a public utility transmits that energy in interstate commerce and re-sells it as part of a "bundled" retail sale to the end user. We have determined that in these types of transactions the retail "bundled" sale is actually the functional equivalent of two unbundled retail sales: (1) A voluntary sale of unbundled transmission at retail in interstate commerce, subject to our exclusive jurisdiction; [187] and (2) a sale of unbundled generation at retail, subject to the state's jurisdiction.[188] For these types of sales, public utilities will have to provide the voluntary retail transmission component of the sale under a FERC-filed tariff consistent with the substantive requirements of this proposed rule.

We are aware that some public utilities are already contemplating initiating this type of "buy-sell" service. Similar services occurred in the natural gas area, but the Commission did not address the jurisdictional issue until a substantial number of transactions had been negotiated and implemented. When the Commission ultimately addressed the natural gas buy-sell programs, we concluded that we have jurisdiction over buy-sell transactions since such agreements utilize interstate transportation.[189] We were concerned then, just as we are concerned now, that interstate and intrastate programs operate together in an appropriately integrated way.[190] It is our preliminary view that the interstate transmission aspect of the buy-sell program must take place under a FERC-filed tariff.

In imposing this requirement we wish to stress that the state has jurisdiction to determine which group of retail customers may participate in such a program. We also recognize that state regulatory commissions will be called upon to determine whether they have jurisdiction under state law over retail wheeling or direct access programs and, if so, whether to authorize such programs.[191] However, the rates, terms, and conditions for the interstate transmission aspects of the program are jurisdictional to this Commission.

The Commission did not address this jurisdictional issue at an early state in the evolution of competition in the natural gas market. Consequently, when we finally acted we chose to grandfather ongoing programs so that energy supply arrangements would not be disrupted.[192] We do not want to face that difficulty again. Thus, we are addressing the issue at an early stage so that public utilities and their customers will be on notice of the jurisdictional implications of their actions, and can make plans accordingly.

3. Real-Time Information Networks

With this proposed rule, the Commission is issuing a Notice of Technical Conference and Request for Comments on a proposal to require that public utilities provide all transmission users, including the transmission owner or controller, simultaneous access to transmission and ancillary services information through real-time information networks that would operate under industry-wide standards. Based upon the lessons we have learned from our experience with gas pipeline EBBs, we believe the proposed approach is necessary and can work.

4. Non-Discriminatory Open Access Tariff Provisions

It is important that the tariffs filed to meet the non-discriminatory open access service requirement contain terms and conditions necessary to ensure a certain minimum level of service quality and to provide a level of certainty to both customers and transmission service providers as to procedures and obligations. The discussion in this section is intended to give guidance about our proposed non-discriminatory open access requirements. The terms and conditions discussed here are reflected in the *pro forma* tariffs in Appendices B and C.[193]

We note at the outset two basic principles proposed to be used when evaluating tariff terms. First, the terms and conditions governing service should be clear and specific. Vague or general tariff terms introduce uncertainty, controversy and delay. In many situations, delaying access or increasing the transaction cost of access is, for all practical purposes, denying access. Second, any restrictions or limitations on service or procedures must be limited to technical or operational needs that can be verified, and they must be the least restrictive way to meet those needs.[194]

The Commission invites comment on the terms and conditions proposed as well as whether others may be necessary.

a. *Customer eligibility.* A non-discriminatory open-access tariff must be available to any entity that can request transmission services under section 211.[195]

b. *Expansion obligation.* A public utility must offer to enlarge its transmission capacity (or expand its ancillary service facilities) if necessary to provide transmission services. This provision is necessary to mitigate the utility's transmission market power that could be exercised by restricting capacity. The customer must agree to reasonable terms, conditions and prices, including the financial responsibility for its share of the incremental expansion costs.[196]

The Commission recognizes that a utility may not be able to enlarge transmission capacity because it cannot obtain the necessary approvals or property rights under applicable Federal, state and local laws. If the utility has failed after making and documenting a good faith effort to obtain the necessary approvals or property rights, it can request to be relieved of its expansion obligation by an appropriate filing at the Commission.[197] This will result in consistent treatment under FPA sections 205 and 206 and FPA section 211.

c. *Service obligation.* The transmission tariff must offer non-discriminatory transmission services (including related ancillary services that the utility can provide) to eligible transmission customers. For example, a tariff should make available both flexible (*i.e.*, firm and non-firm) point-to-point transmission service and network transmission service, as well as those ancillary services necessary to accomplish such transmission services.

(1) Network Transmission Service. Network transmission service allows a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay a separate charge for each resource-load pairing. Such service allows a transmission customer to integrate, plan, commit, economically dispatch, and regulate its resources to serve its consolidated load. Network service provides the customer with the same flexible network usage needed to optimize its resources to meet its customers' needs that transmission owners have to optimize their resources to meet their customers' needs. Network service includes the ability to import power from other control areas to economically and reliably serve the customers' load. Non-discrimination requires that network service be made available in an open access tariff.

Network service would be valuable to customers such as municipals, cooperatives, and municipal joint action agencies that supply the long-term firm power needs of members with multiple loads that are wholly or partly within a single transmission system. Indeed, network service is essential for the resource integration that is needed for efficient operation. For example, a generation and transmission cooperative whose generating facilities and member cooperatives are widely dispersed may not own all of the transmission facilities needed to link the generators with the members' distribution systems. In this case, the cooperative must rely on a transmission-owning utility to provide network service. Without such service, the cooperative would have difficulty supplying reliable, efficient power to its own members.

(2) Flexible Point-to-Point Service. The second required service in a non-discriminatory open access tariff is point-to-point transmission service. Both firm and non-firm service must be available on a point-to-point basis. Under firm point-to-point service, the transmission owner would provide firm deliveries of power from designated points of receipt to designated points of delivery. Each point of receipt would be set forth in a service agreement along with a corresponding capacity reservation for that point of receipt. Each point of delivery would be set forth in the service agreement along with a corresponding capacity reservation for that point of delivery. The greater of (1) the sum of the capacity reservations at the point(s) of receipt, or (2) the sum of the capacity reservations at the point(s) of delivery would be the firm capacity reservation for which the transmission customer would be charged.

However, firm point-to-point service must have the same flexibility in use as that available to the transmission provider and obligate the transmission provider to supply non-firm transmission service, if available, over non-designated receipt and delivery points (or over designated receipt and delivery points in excess of its firm reservation at those points) without incurring any additional charges (or executing a new service agreement) so long as the customer's use does not exceed its total firm capacity reservation. Any use by a customer in excess of its firm capacity reservation at each point of receipt or point of delivery will be on an as-available basis and will be treated as non-firm service. A customer may also request non-firm point-to-point transmission service on a stand-alone basis.

Transmission customers may be willing to trade off the higher risk of interruption with non-firm service for the lower non-firm transmission rate. Customers should be able to make that choice, which will depend on their own balancing of the risk of transmission service interruption with the interruptibility of, and trade gains associated with, the power resource. It is important that the customer, not the transmission provider, make this choice. The tariff should not restrict non-firm transmission service to the transporting of only non-firm power transactions.[198]

Tariffs should offer flexible point-to-point transmission service for transactions that involve power flows into, out of, within or through the control areas. Whether or not a transmission provider actually undertakes such specific services on its own behalf, it has the flexibility to do so. Therefore, if service to third parties is to be non-discriminatory, they, too, must have such flexibility. In addition, tariff restrictions on receipt and delivery points should not preclude particular types of transactions. For example, a transmission provider should not limit receipt and delivery points to points of interconnection with other transmission systems because such a restriction may preclude transactions that originate or terminate with generation or particular loads within a transmission provider's control area.

(3) Ancillary Services. Ancillary services are those services necessary to support the transmission of electric power from seller to purchaser given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system. Basic transmission service without ancillary services may be of little or no value to prospective customers. A variety of ancillary services is needed in conjunction with providing basic transmission service to a customer. These services range from actions taken to effect the transaction (such as scheduling and dispatching services) to services that are necessary to maintain the integrity of the transmission system (such as load following, reactive power support, and system protection services). Other ancillary services are needed to correct for the effects associated with undertaking a transaction (such as loss compensation and energy imbalance services). Due to the nature of certain ancillary services (such as scheduling and dispatching service), the transmission provider may be uniquely positioned to provide these services. However, for other ancillary services (such as loss compensation service), the customer may wish to provide the service itself or purchase the service from a party other than the transmission owner or its agent.

If the transmission provider provides the ancillary services for its own use of the transmission system, the public utility should offer in the tariff to provide ancillary services for transmission customers. Tariffs should

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[187] As discussed *infra*, there would be a component of local distribution in such a transaction, subject to the state's jurisdiction.

[188] This determination is consistent with our findings regarding similar types of transactions in the natural gas area. See *El Paso Natural Gas Company*, 59 FERC ¶ 61,031 (1992), *dismissed sub nom. Windward Energy and Marketing Company* v. *FERC*, No. 92–1208 (D.C. Feb. 2, 1994).

[189] *Id.*

[190] 56 FERC ¶ 61,289 at 62,133 (1991).

[191] This Commission does not have authority to order retail wheeling. Section 212(h) of the Federal Power Act, as amended by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776.

[192] 59 FERC ¶ 61,031 (1992); *reh'g denied*, 60 FERC ¶ 61,117 (1992).

[193] These Appendices will not appear in the **Federal Register**.

[194] However, as discussed *infra*, in determining the level of capacity that must be made available for new transmission service requests, we have proposed that capacity needed to meet current and reasonably forecasted native load and to meet existing contractual obligations may be excluded from capacity made available for new transmission service requests.

[195] Under section 211, any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale may request transmission services under section 211.

[196] *See, e.g.*, Northeast Utilities Service Company, 56 FERC ¶ 61,269 at 62,022 (1991), *order on reh'g*, 58 FERC ¶ 61,070, *reh'g denied*, 59 FERC ¶ 61,042 (1992), remanded, 993 F.2d 937 (1st Cir. 1993), *order on remand*, 66 FERC ¶ 61,332 (1994) (*Northeast Utilities*) (wheeling customer must provide reasonable financial assurance before the public utility undertakes substantial investments in new facilities for that customer).

[197] However, we have previously noted that a utility may bear a heavy burden in demonstrating that it cannot enlarge its transmission capacity to meet a new transmission request. See *Northeast Utilities*, 58 FERC at 61,209.

[198] See Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,767, *order on reh'g*, 60 FERC ¶ 61,168 (1992), *rev'd on other grounds sub nom. Cajun Electric Power Cooperative, Inc.* v. *FERC*, 28 F.3d 173 (D.C. Cir. 1994).

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commit to provide specific ancillary services at specific prices or under specific compensation methods that are clearly described.

If the transmission provider obtains ancillary services from a third party, *e.g.*, does not operate its own control area or obtains ancillary services from a pool, the transmission provider should offer in the tariff to secure ancillary services for transmission customers from that third party. Examples of such third-party arrangements may include a public utility obtaining ancillary services from a power pool or from a control area operator.

.Based on our experience to date, we propose that the following ancillary services should be offered in the tariff:

1. Reactive Power/Voltage Control Service

In order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits, transmission facilities and some or all generation facilities (in the service area where the transmission provider's transmission facilities are located) are operated to produce (or absorb) reactive power. Thus, the need for reactive power/voltage control service must be considered for each transaction on the transmission provider's transmission facilities. The amount of reactive power/voltage control service that must be supplied with respect to the transmission customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the transmission provider.

The transmission provider will be responsible for providing the necessary transmission-related reactive power support. A transmission customer may elect (or arrange through a third party) to supply some or all of the necessary generation-related reactive power/voltage control support to the extent that it (or the third party) has the ability to supply such reactive power. If the transmission customer elects (or arranges through a third party) to provide reactive power/voltage control support, such service must be coordinated with the transmission provider (or the entity that is responsible for the operation of the transmission provider's transmission facilities). Alternatively, the transmission provider will supply the necessary generation-related reactive power/voltage control support.

2. Loss Compensation Service

Capacity and energy losses occur when a transmission provider delivers electricity across its transmission facilities for a transmission customer. A transmission customer may elect to (1) supply the capacity and/or energy necessary to compensate the transmission provider for such losses, (2) receive an amount of electricity at delivery points that is reduced by the amount of losses incurred by the transmission provider, or (3) have the transmission provider supply the capacity and/or energy necessary to compensate for such losses.

3. Scheduling and Dispatching Services

Scheduling is the control room procedure to establish a pre-determined (before-the-fact) use of generation resources and transmission facilities to meet anticipated load (including interchange). Dispatching is the control room operation of all generation resources and transmission facilities on a real-time basis to meet load within the transmission provider's designated service area (or other larger area of coordinated dispatch operation). Scheduling and dispatching services are to be provided by the transmission provider or other entity that performs scheduling and dispatching for the transmission provider's service territory.

In certain regions, dynamic scheduling is also allowed. Dynamic scheduling involves responding to load changes or controlling generation within one transmission provider's service territory (or other larger area of coordinated dispatch operation) through the real-time control and dispatch of another transmission provider. Under dynamic scheduling, the operator of an area of coordinated dispatch (control area) agrees to assign certain customer load or generation to another area of coordinated dispatch, and to send the associated control signals to the respective control center of that area. Dynamic scheduling is implemented through the use of special telemetry and control equipment. The transmission customer must be allowed to use dynamic scheduling when it is feasible and reliable.

4. Load Following Service

Load following service is necessary to provide for the continuous balancing of resources (generation and interchange) with load under the control of the transmission provider (or other entity that performs this function for the transmission provider). Load following service is accomplished by increasing or decreasing the output of on-line generation (predominantly through the use of automatic generating control equipment) to match moment-to-moment load changes. The obligation to maintain this balance between resources and load lies with the transmission provider (or other entity that performs this function for the transmission provider). Because of the nature of this service, the transmission provider (or other entity that performs this function for the transmission provider's facilities) may be uniquely positioned to provide load following service. Therefore, unless the transmission customer is able to obtain such service from its own generation or from third-party generation that is capable of supplying such service in accordance with conditions generally accepted in the region and consistently adhered to by the transmission provider, the transmission provider will supply load following service.

5. System Protection Service

A transmission provider must have adequate operating reserves or other system protection facilities available in order to maintain the integrity of its transmission facilities in the event of (1) unscheduled outages of a portion of its transmission facilities or facilities connected to the transmission provider's service territory or (2) unscheduled interruption of energy deliveries to the transmission provider's transmission facilities. The amount of system protection service that must be supplied with respect to the transmission customer's transaction will be determined based on operating reserve margins or other relevant criteria that are generally accepted in the region and consistently adhered to by the transmission provider.

The transmission customer may elect or arrange through a third party to provide resources that are sufficient to satisfy the system protection needs of the transmission provider. Operation and dispatch of such resources must be coordinated with the transmission provider or other entity that maintains operating reserves and other system protection facilities for the transmission provider's service territory.

6. Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the hourly scheduled amount and the hourly metered (actual delivered) amount associated with a transaction. Typically, an energy imbalance is eliminated during a future period by returning energy in-kind under conditions similar to those when the initial energy was delivered.

The transmission provider shall establish a deviation band (e.g., +/−1.5 percent of the scheduled transaction) to be applied hourly to any energy imbalance that occurs as a result of the transmission customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within 30 days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the transmission provider. If an energy imbalance is not corrected within 30 days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the transmission provider, the transmission customer will compensate the transmission provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the transmission provider. To the extent another entity performs this service for the transmission provider, charges to the transmission customer are to reflect only a pass-through of the costs charged to the transmission provider by that entity.

We seek comment on our proposed treatment of ancillary services. Are there alternative ways to ensure the non-discriminatory provision of ancillary services? We also seek comment on the above-described ancillary services. Are they the appropriate ancillary services for the needs of entities seeking transmission service? Are the descriptions of the ancillary services appropriate? Should any of the described services not be offered, and if so, why? Are there other ancillary services that should be offered? Should all ancillary services be offered as discrete services with separate prices, or should certain ancillary services be offered as a package? Additionally, we seek comment on whether the additional complexity of obtaining ancillary service externally from the host control area with the use of dynamic scheduling is the appropriate course to follow.

d. *Service Periods.* The duration of service reservations should not be unduly limited. Non-discriminatory service requires any such limits on third-party service to be the same as those the transmission provider or controller faces. In particular, the tariff should allow firm service contracts to extend at least for the life of a customer's power plant or purchase contract. Power developers are unlikely to build new plants if they cannot secure firm transmission services for the plant's life. Integrated transmission owners plan their transmission systems to ensure capacity to deliver the output of their own planned generation units. Non-discriminatory service requires the same for transmission-only customers. Likewise, the minimum duration for service should be the same as the minimum scheduling period of the transmission owner. All minimum or maximum restrictions must be justified on a technical or operational basis.

e. *Reassignment Rights.* A tariff must explicitly permit reassignment of firm service entitlements. Capacity reassignment rights can have a number of benefits. First, reassignment rights are important in helping transmission users manage the financial risk associated with long-term commitments to take transmission service. A robust reassignment market would aid, among others, customers who can get or must take transmission capacity now but do not actually need it until some time in the future, and customers whose need for capacity they have under contract is intermittent or suddenly declines. Transmission owners have the flexibility to manage this sort of risk by offering transmission capacity to others. Non-discriminatory service demands that non-owner holders of rights to transmission capacity have the same flexibility to manage their risk as owners have.

Second, capacity reassignment, combined with assured access to firm transmission service, reduces the transmission provider's market power by enabling transmission customers to compete with the owner to some extent in the firm transmission market. To promote competition in such a secondary market, firm service rights should be defined as broadly as possible, consistent with reliable operation of the system. In particular, using firm transmission capacity to deliver non-firm power or repackaging firm transmission capacity for sale as non-firm capacity should not be unduly restricted.

Third, the ability to reassign capacity rights can also improve capacity allocation. When capacity is constrained and some market participants value capacity more than current capacity holders, the current holders may be willing to reassign their capacity rights at rates below the opportunity costs of the transmission provider, thereby lowering rates to the new customer. We note that the prices of reassignments are currently capped at the price the public utility sold the transmission.[199] The Commission invites comments on whether the current price cap on resale should be modified or eliminated.

In addition, the service agreement must state clearly the respective obligations of the original right holder and any subsequent purchaser of the right. In particular, it should state the conditions, if any, under which the original right holder can be released from its obligations under the service agreement if the right is reassigned or sold. Any reassignments must be done in a not unduly discriminatory manner. We invite comment on these reassignment issues.

Given the current specification of basic transmission services (network, flexible point-to-point, and ancillary), some services may be more reassignable than others. The ease with which rights can be reassigned depends on two factors: the ability of ensuring operational feasibility and the specificity of contract rights. Point-to-point service involves a well-specified right to transfer a given amount of power between specific points or across an interface under certain conditions. The transmission provider is operationally indifferent as to who wants to transfer the power that flows between those points. Thus, point-to-point service is well-suited to reassignment.

Network service, as currently defined, is idiosyncratic because it is unique to the transmission user receiving the service. This service is purchased to integrate a set of resources into a set of loads given specific dispatch parameters and load profiles. The transmission provider has to plan and operate its system for this specific service. It is not clear that such service could be of any value to an entity other than the original buyer. It is also not clear precisely what would be resold because network customers do not have rights to a specific amount of transmission capacity, but have rights only to a varying amount of capacity needed to integrate load with their dispersed power resources.[200] Such indeterminate rights may not be amenable to reassignment. We seek comments on reassigning network service. Can network service be structured such that

[199] See *Florida Power & Light Company*, 66 FERC ¶61,227 at 61,524 (1994), *order on reh'g*, 70 FERC ¶61,150 (1995). The Commission has required a similar cap for released pipeline capacity. See Order No. 636–A, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol and Order Denying Rehearing in Part, Granting Rehearing in Part, and Clarifying Order No. 636, Ferc Stats. & Regs. ¶30,950 at 30,560 (1992), *appeal pending*.

[200] In *FP&L*, the Commission approved network service billing based on a load ratio method of cost allocation, instead of on contract demand.

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capacity rights could be specified and reassigned?

Ancillary services also may not be suitable for reassignment. We seek comments on these reassignment issues.

e. *Reciprocity provision.* The Commission proposes to require that transmission tariffs contain a reciprocity provision.[201] The purpose of this provision is to ensure that a public utility offering transmission access to others can obtain similar service from its transmission customers. It is important that public utilities that are required to have on file tariffs be able to obtain service from transmitting utilities that are not public utilities, such as municipal power authorities or the federal power marketing administrations that receive transmission service under a public utility's tariff.

f. *Available Transmission Capacity (ATC).* ATC is capacity that must be made available for new firm transmission service requests. Basically, it is the capacity not committed to other firm uses during the scheduling interval(s) for which service is requested. The tariff must clearly specify the other uses for which capacity will be excluded from ATC. Acceptable other uses may include:

- A requirement to meet generally applicable reliability criteria.
- Meeting current and reasonably forecasted load (retail customers and network transmission customers) on the transmission provider's system. The term "reasonably forecasted" should be defined in terms of the utility's current planning horizon. Capacity needed to serve reasonably forecasted load must be made available until the forecasted load develops.
- Fulfilling the transmission provider's current firm power and firm transmission contracts.
- Meeting pending firm transmission service requests.

In the tariff, the utility must commit to provide an index of other holders of firm transmission entitlements and describe the method used to estimate ATC in sufficient detail to allow others to do the same analysis. The utility must make all data used in calculating the ATC publicly available. The methodology and the data used to develop the ATC must be consistent with the information submitted in the FERC Form No. 715, Annual Transmission Planning and Evaluation Report.[202]

Capacity can be withheld from ATC only if it is to be used during the scheduling period for which service is requested. For example, if a customer requests firm service for ten years and the utility needs that capacity to serve native load during years six to ten, the utility must provide service using the existing capacity for the first five years and then use expanded capacity or some other alternative arrangement for the third-party service during the remainder of the term.

Under the proposed rule, ATC information will be required to be made available in the public utility's information system. The nature of the ATC information to be made available and the manner in which it is made available will be the subject of the real-time information networks technical conference that we are concurrently initiating.

g. *Procedures for obtaining service.* This section must clearly describe all notice and response requirements, including deadlines for each step in the process, the information required in a valid request for service, the procedure for obtaining service from existing capacity and the additional steps to follow when capacity expansion is required. The discussion below highlights some particularly important aspects of procedures for obtaining service.

The tariff must specify minimum notice periods. Notice for accepting requests for short-term service is particularly important. Because market opportunities may be short-lived, the advance notice required for short-term service should be as brief as possible and should be able to be secured through the real-time information network. Similarly, the tariff also should specify the minimum time needed to accommodate customers' needs to plan and construct new generating units or to enter into long-term power supply contracts.

A tariff must specify the information that must accompany a service request. This information should generally track that specified in the Commission's Policy Statement Regarding Good Faith Requests for Transmission Services.[203] The tariff should require only information that is clearly necessary to determine whether capacity is available, the price for the service requested and other information necessary to process the service request.

A tariff may require scheduling of receipt and delivery points and amounts of energy flows but not require disclosure of power contract terms as part of the request process. While the Commission has accepted such a requirement in some tariffs, our preliminary view is that there are less intrusive and less ambiguous ways of dealing with transmission owner concerns. If the concern is the need to know intended power flows, the needed information of the anticipated transaction can be specified in a service request.

The concern may be that a customer will reserve scarce capacity and then hold it without using it (for whatever reason). While reservation holders as well as transmission providers should not be allowed to withhold capacity, there are less restrictive options for dealing with this concern. One is to allow the transmission provider to use or sell the capacity for so long as the reservation holder is not using it. Another is to have a pool that clears the short-term market. Of course, the reservation holder would be compensated. Another option is to require the customer to begin using the capacity within some period or lose its reservation rights for that capacity. Any of these alternatives can allay legitimate concerns without forcing customers to reveal unnecessary details of the transaction. The Commission requests comments on these and other approaches. Could pooling help address these issues? In particular, how would a use-it-or-lose-it rule work? How would a utility know which reservation holder to compensate with non-firm revenues if network service customers hold no reservation rights? Non-firm revenues could be shared among load-ratio customers and reservation customers on the basis of the non-use of the firm entitlements.

With respect to network service, our preliminary view is somewhat different. Because network service is billed on a load ratio basis, customers would have the incentive to specify unlimited generation resources to be integrated into their load without any commensurate financial obligation. The transmission provider would nevertheless have to plan its system to dispatch those resources. Thus, network customers, when designating their network resources, must show that they own or have contracted for those resources. We seek comment on this issue. Are there alternative ways of dealing with this problem for network service?

[201] The Commission previously accepted tariffs that contain reciprocity provisions. See, *e.g., El Paso Electric Company and Central and South West Services Inc.*, 68 FERC ¶61,181 at 61,916 (1994), *reh'g pending; Southwestern Electric Power Company and Public Service Company of Oklahoma*, 65 FERC ¶61,212 at 61,981–82 (1993), *reh'g denied*, 66 FERC ¶61,099 (1994).

[202] See Order Nos. 558 and 558–A, *supra* note 92.

[203] See *supra* note 91.

The tariff should provide that, if service can be provided using existing capacity, a service agreement will be tendered in time for the customer to execute it so that service can begin at the time requested. The tariff should clearly state the applicable rates for service from existing capacity. In addition, the tariff should contain provisions, as well as rates, for reserving capacity now for use at a later time. Also, the tariff should contain a standardized service agreement that applies to all service provided from existing capacity.

When existing capacity is not adequate to provide additional firm service, the tariff should require the transmission provider to prepare, if needed, an engineering study of options for expanding capacity, including the costs of each option, within a specified period. The customer should be required to pay the reasonable costs of performing the study. If the customer elects to take service after reviewing the engineering study and cost estimates, including supporting documentation, the transmission provider may require the customer to enter into a contract, provide a security deposit, and agree to take service at rates calculated in accordance with the pricing provisions of the tariff.[204] The tariff should allow the customer to specify the contract term.

h. *Service priority.* Service priority becomes important when capacity is constrained (*i.e.*, demand exceeds supply). This, in turn, has two aspects: when new service requests are considered and when, after service has begun, interruptions are required.

(1) *Considering new service requests.* A tariff should specify a reasonable basis upon which service requests will be considered. As long as transmission capacity is available for all requests, they can all be accommodated. When capacity is short, however, the priority of requests is important because the determination as to which requests are met from existing capacity and which require expanded facilities will affect pricing. However, firm service requests should always receive priority over non-firm service requests, and firm service requests from third-party transmission customers should have the same priority as new transmission services for the public utility's native load.

The industry currently operates under a contract rights regime whereby customers are given contract rights for a specific period at a set price. Under this regime, requests are generally processed under a first-in-time rule. Capacity is allocated in the order in which the requests were made. If available transmission capacity is exhausted, a requester may be required to pay the incremental cost of relieving the constraint. Incremental cost could be either the redispatch cost of unloading a line or the cost of expanding capacity. Thus, the position of the requester in the queue may affect price and possibly determine when service is provided. Alternatively, all requesters during a given period could be treated as making one request for a large increment of capacity and pay the same average incremental cost. We seek comments on appropriate ways to process requests.

(2) *Allocating interruptions.* After service has begun, priority is important if capacity becomes unexpectedly constrained and service must be interrupted.[205] Contracts must spell out the obligations and priorities in dealing with operating and reliability procedures. Priorities will affect the order in which services are interrupted. A tariff must specify that firm transmission service always has priority over non-firm transmission service. Non-discriminatory service requires that firm transmission customers have the same assurance of uninterrupted use of the grid, within their contractual commitments and obligations, as the transmission provider. That is, the public utility's personnel who trade wholesale power should have the same firm transmission service as does a firm transmission customer. Both have the same standing when the control area operator deals with emergencies. That is, both must recognize that the operator is authorized to interrupt scheduled power transfers as needed in order to maintain reliability. Operators must be allowed to maintain safe and reliable service on the overall system.

Generally, interruption of firm transmission service should occur only because of: (1) Emergencies or *force majeure;* or (2) the need to maintain overall reliability or to protect equipment as prescribed in industry operating guidelines. The specific reasons for interruptions will have to be determined in accordance with the characteristics of each transmission provider's system. The tariff should require the provider to notify all customers in a timely manner of any scheduled interruptions, while recognizing the right to take appropriate actions under operating procedures to deal with unscheduled emergency conditions.

i. *Security deposits and creditworthiness.* A tariff may require that a reasonable, returnable deposit accompany the request for service, and that the customer demonstrate basic creditworthiness. A creditworthiness investigation (including a security deposit requirement) must be applied on a non-discriminatory basis.

j. *Short-term and interruptible service agreements.* A copy of standard transmission service agreements for short-term and interruptible transmission services must be included in the tariff in order to expedite service and limit the possibility of undue discrimination or other abuse. The tariff must list all information needed from the customer.

k. *Dispute resolution.* The tariff must clearly set forth the steps to be followed to resolve disputes. Procedures should be designed to resolve conflicts quickly. This suggests the use of some type of alternative dispute resolution (ADR) process, such as mediation or arbitration. ADR would be especially useful when the dispute is over response times, capacity additions, a highly technical matter, or any matter that applies, but does not extend, existing Commission policy. The tariff should specify which types of disputes must go to ADR and which disputes must be taken directly to this Commission.

A tariff should provide that capacity expansion proceed while cost disputes are pending, provided the customer agrees to pay the costs actually incurred and the rate ultimately determined by the Commission. This is needed to minimize delays when the customer wants the service but disputes the cost. Such a provision would require the transmission owner to proceed with whatever steps are necessary to provide service to the customer, as long as the customer agrees to furnish a deposit and state in writing that it will take service at the rates, terms and conditions that are ultimately found just and reasonable by the Commission, or to pay all out-of-pocket costs incurred in processing the request up to the date of cancellation of the request.

l. *Pricing.* Transmission pricing must be consistent with the Commission's Transmission Pricing Policy

[204] See Energy Services, Inc., 58 FERC ¶ 61,234 at 61,766 and 61,768 (1992) (security deposit or some other form of assurance permitted; approval of provision requiring transmission customers to have "suitable interconnection agreement" with transmission-owning utility).

[205] Of course, the utility always may curtail if necessary to maintain the reliability of the system. For example, if a major transmission line fails, the utility may quickly have to interrupt transactions without regard to priority of service in order to stabilize the system. Once the system is stabilized, however, the utility should allocate remaining capacity on the basis of contractual priorities.

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Statement.[206] We especially note that the transmission public utility must charge itself the same price for transmission services that it charges its third-party wholesale transmission customers.

5. Pro Forma Tariffs

Appendices B and C to this proposed rulemaking contain *pro forma* tariffs that contain the minimally acceptable terms and conditions of service for point-to-point and network transmission services. They contain tariff language that assures acceptable levels of service quality for non-price terms and conditions. For the most part, we have avoided specifying pricing provisions. The *pro forma* tariff provisions would of course be subject to case specific scrutiny to ensure that services are provided on a non-discriminatory open access basis. We seek comment on whether these tariffs provide a good basis for defining the minimum acceptable non-price terms and conditions of service.

6. Broader Use of Section 211

The Commission intends to exercise its authority under sections 205 and 206, as described in this proposed rule, in a complementary manner with its authority under section 211. Requiring all public utilities to file non-discriminatory open access tariffs, as set forth in this NOPR, will not alone ensure competitive bulk power markets in all regions of the United States. Many utilities providing transmission services are not public utilities subject to our full jurisdiction.[207]

Section 211, however, permits entities to seek open access to all transmission facilities, including those owned by non-public utilities. Thus, to further eliminate unduly discriminatory practices in the industry, the proposed rule encourages the broad use of section 211.

While the Commission cannot order transmission *sua sponte* under section 211, nothing in section 211 prohibits groups of qualified applicants from simultaneously or jointly filing applications for the same service. [208] Such group or joint action would permit the Commission to order tariffs of broader applicability.

Moreover, sections 211 and 212 require that applicants specify only rates, terms, and conditions of service, not specific transactions. Thus, applicants can file requests for tariffs to accommodate future, currently unspecified, short-notice transactions, similar to the type of tariff filed by many utilities seeking approval of market-based rates or mergers.[209]

Section 211 bars the Commission from ordering service that would unreasonably impair the continued reliability of electric systems affected by the order. To meet this requirement, the transmission owner and the applicant (or the Commission if necessary) can craft provisions in the general tariffs discussed above to assure that service will comply with standard industry operating practices and, thus, not have an unreasonable impact on reliability.

Finally, section 211 permits an opportunity for an evidentiary hearing.[210]

Section 211 does not preclude applicants from lodging the record from a section 205 undue discrimination case involving the same service, nor does it preclude the Commission from incorporating and relying on the record and findings in a section 205 proceeding if the section 211 applicant, the transmitting utility, and the service requested are the same. In sum, sections 211 and 212 provide the Commission and the electric industry a much broader means to attain wider transmission access than has been achieved so far. In this regard, the Commission invites comment on further avenues the Commission can pursue to facilitate and expedite 211 applications.

Section 211 also complements our section 205 and 206 authority in that it allows customers to request unique services not available in the non-discriminatory open access tariff. While our objective in this proposed rule is to implement a very broad service commitment in the non-discriminatory open access tariff, customers may have unique service needs that are not contemplated in the open access tariff.

7. Status of Existing Contracts

There are three general types of existing wholesale contracts that could be affected by the proposed rule: (1) Requirements and other firm service contracts under which customers take bundled transmission and generation services; (2) coordination contracts for purchases or sales of economy energy; and (3) transmission-only contracts. The Commission believes that it can eliminate unduly discriminatory practices and achieve more competitive bulk power markets without abrogating existing contracts. Accordingly, as discussed *supra*, we have proposed to apply the unbundling requirement only to transmission services under new requirements contracts and new coordination transactions. In addition, although the open access tariffs must be open to all entities that could request transmission service under section 211, *i.e.*, all non-sham wholesale purchasers, we are not proposing to abrogate any existing power or transmission contracts. However, there may be situations in which it would be contrary to the public interest to allow existing wholesale power or transmission contracts to remain in effect. Accordingly, we invite comment on whether it would be contrary to the public interest to allow all or some of the above types of existing contracts to remain in effect.

8. Effect of Proposed Rule on Commission's Criteria for Market-Based Rates

As stated above, one of the primary reasons for this rulemaking is to foster increased wholesale competition, in order to reduce prices for consumers. Moreover, the increased competition allowed by non-discriminatory open access may allow lighthanded regulation of wholesale sales for many more transactions and perhaps throughout many regions.

The Commission's standards for allowing market-based rates for wholesale power sales require an applicant and its affiliates to demonstrate that they lack or have mitigated market power in generation and transmission, that they cannot erect other barriers to entry,[211] and that there is no affiliate abuse or reciprocal dealing. In *KCP&L*,[212] the Commission determined that it no longer needed to examine generation dominance in analyzing market-based rate proposals for sales from new generation facilities. However, the Commission has continued to evaluate generation dominance in analyzing market-based rate proposals for sales from existing generation capacity.[213]

If this rulemaking achieves the Commission's goals, and competition fueled by open access increases in the wholesale bulk power markets to the extent we expect, the increased competition may reduce or even eliminate generation-related market power in the short-term market. Increased wholesale competition could reduce the need for cost-based regulation of bulk power sales and allow broader use of market-based rates. For example, more competitive markets may allow us at some point to drop the generation dominance standard for existing capacity. We believe that the increased competition expected to result from this rulemaking may allow us to consider innovative approaches to authorizing market-based rates for generation. One suggestion in this regard has been that the Commission ought to consider filings made pursuant to section 205 seeking authorization of market-based rates for all sellers in a defined region. For example, such a region conceivably could be defined by the boundaries of an RTG, a power pool, a reliability council, or the less formal boundaries of an economic market. However, before proceeding to consider this suggestion, or any other innovative proposal for dealing with market-based rates for existing wholesale generation, the Commission must address certain threshold questions. Therefore, the Commission solicits comments on the following questions:

(1) Assuming that a final rule in this proceeding mandates that all public utilities must file generally applicable non-discriminatory open access tariffs, would wholesale sellers of generation from existing generating facilities still possess market power?

(a) Can we eliminate our generation dominance standard based on before-the-fact predictions of changes to come from our rulemaking, or must we rely on after-the-fact evidence of the changes that did occur?

(2) For purposes of assessing whether existing wholesale generators still possess market power, how ought the relevant market be defined in an open access transmission environment? To what extent do the boundaries of a regional transmission group, a power pool, or a reliability council lend themselves to being used to define the relevant market in an open access environment?

(3) Should it be determined that, notwithstanding non-discriminatory open access transmission, existing generators still possess market power, can such market power be mitigated effectively to permit market-based rates for existing generation? And, if so, what are the Commission's options? For example:

(a) Ought the Commission rely on rules of conduct, market mechanisms intended to ensure competition in wholesale power sales (such as bidding procedures) and monitoring as the means to curb such market power; or

(b) Ought the Commission rely on structural reforms as the means to curb such market power?

(4) Once the Commission has determined how to define the relevant market in an open access environment, ought the Commission entertain requests that all wholesale sellers within such a market be authorized to charge market-based rates?

9. Effect of Proposed Rule on Regional Transmission Groups

In the Commission's Policy Statement Regarding Regional Transmission Groups (RTGs) we expressed support for the development of voluntary transmission associations and encouraged their formation. We believe that RTGs can speed the development of competitive markets, increase the efficiency of the operation of transmission systems, provide a framework for coordination of regional planning of the system and reduce the administrative burden on the Commission and on members of RTGs by providing for voluntary resolution of disputes.

Since the issuance of the Policy Statement, the Commission has given conditional approval to the bylaws of two RTGs.[214] Both approvals were conditioned on the members agreeing to offer comparable transmission services at least to other members, through either individual transmission tariffs or a generic regional tariff. For public utilities, that condition would be superseded by fulfillment of the requirements of the proposed rule.

To the extent public utilities view the comparability requirement in our two RTG orders as a disincentive to joining an RTG, that disincentive would be mooted. All such utilities will be required to file tariffs. Moreover, we will continue to provide substantial latitude for innovative pricing proposals by an RTG, as indicated in the Transmission Pricing Policy Statement.

Some transmission users might conclude that the availability of comparability tariffs makes membership in an RTG less necessary. But, this conclusion would ignore the comparative benefit of a member having its needs planned for on a region-wide basis under an RTG instead of on a system-by-system basis. Coordination of planning that results in a more efficient system creates economies for both transmitting utilities and users.

Also, the reduction in administrative burden for all parties involved in an RTG would remain. RTG members can work out their own disputes without incurring the substantial costs and delays involved in litigating at the Commission or in the courts. This fact alone makes for more flexible and responsive markets and reduces costs. Moreover, the Commission has stated its willingness to give deference to decisions resolved through RTG dispute resolution procedures.

In short, RTGs are still a valuable tool in promoting wholesale competition and in achieving other Commission goals. RTGs are structures to reflect the interests of all of the grid's users, not just some. RTGs allow for consensual solutions to local or regional issues, instead of solutions imposed by FERC. RTGs can function as regional laboratories for experimentation on transmission issues. And, RTGs will provide a regional forum, a necessary predicate to regional cooperation. The potential benefits of RTGs would in no way be undermined by the rules proposed in this Open Access NOPR.

F. Stranded Costs and Other Transition Costs

1. Supplemental Notice of Proposed Rulemaking on Stranded Costs by Public Utilities and Transmitting Utilities

a. Introduction. The Commission's Open Access NOPR would impose significant new requirements on public utilities—requirements that would help us to achieve the goal of robust competitive wholesale power markets, and that would result in a new way of doing business for utilities. The Open Access NOPR would give a utility's historical wholesale customers enhanced opportunities to reach new suppliers and, therefore, would affect the way in which utilities traditionally have recovered costs. We believe it is essential to address the transition issues associated with the move toward competition responsibly. The most significant of these issues is stranded cost recovery.

The recovery of legitimate and verifiable stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service industry to an open

[206] *See supra* note 124.

[207] For example, there are approximately 56 electric utilities operating control areas in the United States that are not public utilities.

[208] This assumes, of course, that all have made the requisite request to the transmitting utility 60 days prior to filing. FMPA, for example, filed on behalf of numerous Florida municipals in the *FP&L* section 211 case. See *Florida Municipal Power Agency* v. *Florida Power & Light Company*, 65 FERC ¶ 61,125 (1993).

[209] See *CSW*, *supra*, 68 FERC at 61,916. Section 211 bars the Commission from ordering service that would unreasonably impair the continued reliability of electric systems affected by the order. To meet this requirement, the transmission owner and the applicant (or the Commission if necessary) can craft provisions in the general tariffs discussed above to assure that service will comply with standard industry operating practices and, thus, not have an unreasonable impact on reliability.

[210] Such a hearing is required only if there are material issues of fact in dispute. See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

[211] For applicants with transmission market power, the Commission has required the mitigation of such power through the filing of a non-discriminatory open access tariff. The Commission also has examined an applicant's control over potential barriers to entry, *e.g.*, ownership or control of sites for generation facilities, generation equipment, or pipelines for supplying fuel.

[212] 67 FERC at 61,557.

[213] See *Entergy Services Inc.*, 58 FERC ¶61,234 at 61,755 (1992).

[214] See *SWRTA* and *WRTA*, supra.

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transmission access, competitively priced industry. Public utilities have invested billions of dollars in facilities built under a regulatory regime in which they have been permitted to recover all prudently incurred costs, plus the opportunity to earn a reasonable rate of return on their investment. [215] At the wholesale level (and in some instances the retail level), they are now entering a regulatory era in which they will have to compete to supply electric service. We believe that utilities should be allowed to recover the costs incurred under the old regulatory regime according to the expectations of cost recovery established under that regime.

The primary goal of the Open Access NOPR is to promote competitive wholesale markets by assuring that all wholesale sellers of generation have the opportunity to compete on a fair basis and that all wholesale purchasers can reach alternative sellers. Ultimately, this should result in lowering electricity prices for the Nation's consumers. In the meantime, however, if a wholesale customer is able to leave its existing generation supplier to shop for power elsewhere, we do not believe the existing supplier's shareholders or its remaining customers should have to bear costs that were prudently incurred under the old regulatory system to serve the departing customer.

We cannot successfully and fairly encourage the development of competitive wholesale markets as envisioned by the Open Access NOPR until we have made provision for electricity suppliers to seek recovery of existing uneconomic costs (primarily generation) which they already have incurred (*i.e.*, those that could not earn a reasonable return in a competitive market). Recovery of legitimate and verifiable transition costs will permit all sellers, including the utilities who prudently incurred these costs, to compete on a more equal footing in competitive bulk power markets. In addition, while stranded cost recovery may delay some of the benefits of competitive bulk power markets for some customers, the Commission learned from its experience in the restructuring of the natural gas industry that these types of transition costs must be addressed at an early stage if we are to fulfill our regulatory responsibilities in moving to competitive markets. [216]

The Commission believes that the approach proposed in the Stranded Cost NOPR issued on June 29, 1994 [217] should adequately cover most, if not all, costs that could be stranded in an environment where transmission access is more widely available, including the access environment that the Commission expects if the provisions of the Open Access NOPR are adopted. Some of the mechanisms proposed in the initial NOPR have been revised in this Supplemental NOPR to reflect submitted comments. In addition, there may be implementation or other issues raised by the open access requirements that were not contemplated when the Stranded Cost NOPR was originally proposed. Accordingly, we are issuing a Supplemental Notice of Proposed Rulemaking on Stranded Costs. In this Supplemental NOPR, we make preliminary determinations [218] on certain issues and seek additional comments limited to the new matters proposed in this document, including the proposed open access requirements. We also propose to permit public utilities and transmitting utilities to seek recovery through transmission rates of stranded costs associated with a discrete set of existing wholesale requirements contracts.

b. Summary of Major Preliminary Determinations. In response to the June 29 Stranded Cost NOPR, the Commission received initial and/or reply comments from 128 entities, representing a broad cross-section of parties that participate in, or are affected by, the electric utility industry.[219] The Commission has carefully reviewed all of the comments, and made several preliminary determinations. First, we have determined that recovery of legitimate and verifiable stranded costs should be allowed, and that direct assignment of stranded costs to departing customers, as proposed in the Stranded Cost NOPR, is the appropriate method for recovery.[220]

Second, with respect to stranded costs associated with new wholesale requirements contracts, [221] we reaffirm our proposal that a public utility may not seek recovery of such costs except in accordance with an exit fee or other explicit provision contained in the contract. The public utility may seek recovery in accordance with the contract. However, no public utility or transmitting utility may seek recovery of stranded costs associated with new requirements contracts through any transmission rate under section 205, 206 or 211.[222]

Third, with respect to stranded costs associated with existing wholesale requirements contracts [223] that are not renewed and that do not contain exit fees or other stranded cost provisions, if the seller can demonstrate that it had a reasonable expectation that the contract would be renewed and can meet other evidentiary criteria, we believe that stranded cost recovery should be allowed. We encourage the parties to such contracts to attempt to negotiate a mutually agreeable stranded cost amendment. We have determined, however, that the three-year negotiation period proposed in the initial Stranded Cost NOPR should be abandoned. We propose instead that: (1) A public utility or its customer under the contract may, at any time prior to the expiration of the contract, file a proposed stranded cost amendment to the contract under section 205 or section 206; or (2) a public utility may, at any time prior to the expiration of the contract, file a proposal to recover stranded costs through transmission rates for a departing customer.[224] We believe it is

[215] Many also have committed millions of dollars to purchase power under long-term power supply contracts.

[216] See AGD, supra note 9, 824 F.2d at 1021–30. However, our mechanisms for addressing stranded costs in the electric industry differ from those used in the gas industry for the reasons discussed below.

[217] See supra note 5.

[218] If we were not issuing the Open Access NOPR, we would be inclined to adopt a final rule on stranded costs at this time. However, we are concerned that the Stranded Cost NOPR might not provide appropriate mechanisms to address transition costs that could result from the open access environment envisioned by this NOPR. Accordingly, our findings here are interlocutory in nature, and rehearing does not lie.

[219] A list of commenters is attached as Appendix D.

[220] As discussed *infra*, section III.F.1.c(13), however, this does not foreclose case-specific proposals for dealing with stranded costs in the context of voluntary corporate restructuring proceedings.

[221] For recovery of wholesale stranded costs, the proposed rule distinguishes between stranded costs associated with wholesale requirements contracts executed after July 11, 1994, the date the proposed rule was published in the **Federal Register** ("new" contracts) and stranded costs associated with wholesale requirements contracts executed on or before that date ("existing" contracts). Stranded Cost NOPR at 32,860.

[222] As we indicated in the Stranded Cost NOPR, if the seller under a new wholesale requirements contract is a transmitting utility subject to the Commission's jurisdiction under section 211 of the FPA, but not also a public utility subject to the Commission's section 205–206 jurisdiction, there will be no Commission forum for addressing wholesale stranded costs associated with the new contract. Such utilities will not be able to seek recovery of wholesale stranded costs associated with such new contracts through rates for transmission services ordered under section 211, and the Commission does not have jurisdiction over their power sales contracts. Therefore, these utilities must address recovery of stranded costs through their new wholesale requirements contracts subject to the appropriate regulatory authority approval. Stranded Cost NOPR at 32,860–61.

[223] Existing wholesale power sales contracts are those contracts executed on or before July 11, 1994. Stranded Cost NOPR at 32,860, 32,881.

[224] If the selling utility under the existing contract is a transmitting utility that is not also a public utility, its wholesale requirements contracts are not subject to this Commission's jurisdiction. Nevertheless, we do encourage such a transmitting utility to attempt to negotiate a mutually agreeable stranded cost amendment with its customer. In addition, we will allow such a transmitting utility to file a request to recover stranded costs in transmission rates under FPA sections 211–212. However, such transmitting utility would be required to make the same evidentiary demonstration as that required of public utilities seeking extra-contractual stranded cost recovery.

[225] The customer's maximum possible stranded cost exposure without mitigation would be the revenues that the utility would have received from the customer had the customer continued to take service from the utility. This is the amount from which the competitive market value of the power that the customer would have purchased would be deducted to compute the amount of recoverable stranded costs (using the "revenues lost" approach for calculating stranded costs that this rule proposes to adopt (see section III.F.1.c(8) infra)). The utility will be required to make every effort to mitigate the amount of the stranded cost charge. See section III.F.1.c(9).

in the public interest to permit public utilities to seek recovery of stranded costs associated with existing contracts that do not explicitly address stranded costs, and that they be permitted to do so either through transmission rates or through amendment to the existing power sales contracts. However, for a utility to be eligible for stranded cost recovery, it must meet the evidentiary demonstration required by this rule.

In examining proposals to recover stranded costs, we propose to apply a "reasonable expectation" standard and a rebuttable presumption that if contracts contain notice provisions, the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision. We further propose to retain the requirement in the initial Stranded Cost NOPR that utilities attempt to mitigate stranded costs. In addition, we are proposing that public utilities be required to follow certain procedures specified herein that permit a customer to obtain advance notice of its maximum possible stranded cost exposure without mitigation.[225]

Fourth, with respect to costs stranded as a result of retail wheeling, or as a result of wholesale wheeling obtained by a retail-turned-wholesale customer, the Stranded Cost NOPR explored the issue of whether we should assume some responsibility for addressing such costs. The vast majority of those commenting on our proposed rule urged us not to get involved or otherwise assume responsibility for those types of stranded costs, except in certain very limited circumstances. At this juncture, we have concluded that it is appropriate to leave it to state regulatory authorities to assume the responsibility for any stranded costs occasioned by retail wheeling, except in the narrow circumstance in which the state regulatory authority does not have authority under state law, at the time retail wheeling is required, to address recovery of such costs. The Commission holds the strong expectation that states will provide procedures for, and the full recovery of, legitimate and verifiable stranded costs.

We also have determined that this Commission should be the primary forum for public utilities to seek recovery, through FERC jurisdictional transmission rates, of stranded costs resulting from wholesale wheeling for newly created wholesale customers who leave their franchised utility's supply system (e.g., through municipalization).[226]

In deciding that states are the more appropriate entities to address stranded costs resulting from retail wheeling, we are relying on assurances from our state colleagues, as evidenced, for example, in NARUC's comments on the proposed rule, that they will address and resolve this difficult issue. We continue to be of the opinion that utilities are entitled, from both a legal and policy perspective, to an opportunity to recover their past prudently incurred costs, including costs incurred to serve retail customers who obtain retail wheeling in interstate commerce. We emphasize that we will not allow states to use rates for transmission in interstate commerce as the vehicle for passing through any stranded costs resulting from retail wheeling, except in the narrow circumstance described. Thus, these costs must be recovered in rates in a manner that does not involve "transmission of electric energy in interstate commerce" as that phrase is used in the FPA.[227] This approach ensures that the wholesale market will not be burdened by retail costs. It also ensures that one state will not be able to place costs stranded by its ordering of retail wheeling[228] on customers in another state.

As discussed *infra*, we believe the states have a number of mechanisms to provide for recovery of retail stranded costs in retail rates. One of those mechanisms is a surcharge to state-jurisdictional rates for local distribution. Accordingly, we are proposing to define "facilities used in local distribution" under section 201(b) of the FPA.[229] We believe states may impose retail stranded costs on facilities or services falling under this definition.[230]

We set out our preliminary findings here for the limited purpose of reopening the comment period of the Stranded Cost NOPR as to whether the requirements proposed in the Open Access NOPR raise additional implementation or other issues pertaining to stranded cost recovery that were not addressed in the initial Stranded Cost NOPR and, if so, whether the mechanisms we propose based on our preliminary determinations are adequate to allow recovery of stranded costs. Additional issues on which we seek comment are delineated below.

c. The Proposed Regulations. (1) Justification for Allowing Recovery of Stranded Costs and Estimates of the Magnitude of Stranded Costs. (a) *Comments*

Virtually all of the investor-owned utility commenters support the NOPR's basic assumption that stranded costs can be created when a customer switches suppliers. Many commenters, including Electric Generation Association and Public Power Council, applaud the Commission for timely "addressing the difficult and controversial stranded cost issue and for recognizing that this issue must be resolved in order for all parties to harvest fully the benefits of a competitive electric industry."[231] Edison Electric Institute (EEI) strongly endorses the recovery of stranded costs.

A number of commenters, primarily representing customer groups, disagree that the risk that a utility could lose customers (and thereby incur stranded costs) is a new phenomenon created by regulatory and statutory initiatives that utilities could not anticipate. These commenters argue that utilities have long been aware that they risk losing customers to competition and that utilities should have planned for this eventuality.

In support of this argument, American Forest and Paper Association (American Forest) and others argue that utilities have known for some time that wholesale customers can—and in the

[226] Although the Commission's June 29 NOPR characterized these types of stranded costs as "retail" stranded costs, we believe they are more appropriately characterized as "wholesale" stranded costs, since it is not only state or local authority that permits the costs to be stranded, but also the availability of wholesale transmission that causes the costs to be stranded.

[227] See 16 U.S.C. § 824(c).

[228] We do not address whether states have the lawful authority to order retail wheeling in interstate commerce.

[229] 16 U.S.C. 824(b).

[230] States may also use their jurisdiction over local distribution facilities to address potential "stranded benefits," e.g., environmental benefits associated with conservation, load management, and other demand side management (DSM) programs. See NARUC Resolution on Competition, the Public Interest, and Potentially Stranded Benefits, November 16, 1994 (Appendix C to NARUC's comments).

[231] Electric Generation Association comments at 1.

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general course of business, in fact, do—leave utilities' systems for other suppliers without being obligated to pay for stranded costs. Several commenters also argue that Congress put the industry on notice through PURPA and then EPAct that utilities are at risk of losing customers as a result of the pro-competitive provisions of these statutes. Numerous parties[232] note that the courts and the Commission have, in various cases, provided notice that, as a result of competitive forces in the industry, utilities have had no reasonable expectation that customers will remain on their systems after contract expiration. Commenters cite, among other cases, the Supreme Court's 1973 decision in *Otter Tail*[233] (in which the Court held that the refusal to wheel power could place a utility at risk of antitrust liability), the Commission's 1968 decision in *Village of Elbow Lake* v. *Otter Tail Power Company*[234] (in which utilities were alerted to the threat of municipalization), and the Commission's 1983 decision in *Kentucky Utilities Co.*[235] (in which a notice of termination provision was deemed to constitute the extent of the utility's protection of its investment incurred to support the contract service).

Some commenters[236] argue that the Stranded Cost NOPR incorrectly assumes the existence of a wholesale service obligation. These commenters argue that the NOPR improperly assumes that a utility has had an obligation to serve a wholesale requirements customer beyond the term set forth in the contract unless the contract contained a notice of termination provision or other more explicit stranded cost provisions. According to these commenters, the wholesale service obligation is purely contractual, and utilities could not reasonably have expected to continue to provide service after the expiration of a particular contract.

Some state commissions (*e.g.*, Illinois Commission) also find the NOPR's notion of wholesale stranded costs to be misplaced. These state commission commenters note that competition and notice provisions have existed for decades and that a customer leaving the system for another supplier is no different from a customer leaving due to an economic downturn (*e.g.*, a plant closing or relocation). Under the latter circumstance, they note that the costs are allocated among the remaining customers, or, in some instances, shareholders. A number of other state commissions (*e.g.*, Indiana Utility Regulatory Commission (Indiana Commission)) urge that stranded cost recovery exclude costs associated with normal business risk, such as poor planning, customer relocation, self-generation, or cogeneration.

With regard to the magnitude of the level of total industry stranded costs, while estimates vary widely, most commenters agree that the level of potential wholesale stranded costs is small relative to that of retail stranded costs. Several state commissions and customer groups (*e.g.*, Florida Public Service Commission (Florida Commission), APPA, Industrial Consumers, Illinois Commission, and SCOOP) argue that the potential level of wholesale stranded costs is largely exaggerated. For example, SCOOP claims that "[s]eparating out only the wholesale exposure to stranded costs, and critically analyzing the extent of that exposure, will permit the Commission to recognize that wholesale stranded costs are little more than the 'flea on the tail of the dog' and not the dog itself."[237] Many of these commenters, including the Illinois Commission, note that wholesale stranded costs are likely to be minimal because wholesale requirements sales for major investor-owned utilities account for roughly 6 percent of their total net energy generated and received. Furthermore, these commenters contend that it is ridiculous to suggest that all of the generation assets associated with serving this wholesale load suddenly would become stranded. In fact, some commenters expect the investor-owned utilities with lower-cost generation to benefit from increased competition.

Additionally, the Environmental Action Foundation (Environmental Action) notes that some industry estimates assume a zero asset (or salvage) value for any stranded assets. Environmental Action claims that this assumption grossly overestimates the claimed industry level of stranded costs by failing to recognize that a utility with a stranded generating asset will likely lower its power prices to market levels to mitigate the total level of stranded costs. Accordingly, Environmental Action suggests that estimated levels of potential wholesale stranded costs may, in fact, be lower after accounting for costs recovered by the utility as a result of aggressively marketing any stranded generating assets.

EEI indicates that, based on an informal survey of its members, the number of cases likely to be filed at the Commission seeking to recover stranded costs from wholesale requirements customers under existing contracts will be far less than those filed during restructuring of the natural gas pipeline industry.[238] However, EEI states that, while the number of filings may be relatively small, the dollar amounts and the significance to the parties are great. EEI indicates that the magnitude of potential wholesale and retail stranded cost liability to the industry is in the upper range of the NOPR's tens of billions of dollars to $200 billion estimate.

(b) Preliminary Findings. The electric utility industry has billions of dollars invested in utility assets and contracts that, in today's markets, may become uneconomic.[239] If wholesale or retail customers leave their utilities' systems without paying a share of these costs, the costs will become stranded unless they can be recovered either from the departing customers or other customers. These are very real costs that, as previously discussed, were incurred under a regulatory system that imposed an obligation to serve on utilities (an explicit obligation at retail and arguably an implicit obligation at wholesale)[240]

[232] *E.g.*, American Power Association (APPA), Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative (Florida and Michigan Municipals), the Illinois Commerce Commission (Illinois Commission), Electricity Consumers Resource Council, the American Iron and Steel Institute an the Chemical Manufacturers Association (Industrial Consumers), and TDU Customers.

[233] See *Otter Tail*, *supra* note 15.

[234] *Village of Elbow Lake* v. *Otter Tail Power Company*, 40 FPC 1262 (1968).

[235] Kentucky Utilities Co., Opinion No. 169, 23 FERC §61,317, *aff'd on reh'g in relevant part*, 25 FERC §61,205 (1983), *reversed on other grounds*, 766 F.2d 239 (6th Cir. 1985).

[236] *E.g.*, American Forest, Industrial Consumers, the Municipal Resale Service Customers of Ohio, and the Stranded Cost Order Opponent Parties (SCOOP). SCOOP consists of Delaware Municipal Electric Corporation, Village of Freeport, New York, City of Jamestown, New York, Town of Massena, New York, Modesto Irrigation District, M–S–R Public Power Agency, City of Santa Clara, California, and Southern Maryland Electric Cooperative, Inc.

[237] SCOOP comments at 2.

[238] For example, a number of utilities (*e.g.*, Allegheny Power Service Corporation (Allegheny Power), Consumers Power Company, and Wisconsin Power & Light Company (Wisconsin Power)) indicate that their total potential wholesale exposure is minimal.

[239] As discussed in section III.C.2 *supra*, new generation facilities can produce power on the grid at a cost of 3 to 5 cents per kWh, yet the costs for large plants constructed and installed over the last decade were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents per kWh for nuclear plants.

[240] The Commission has never determined whether there is an actual obligation in the FPA to serve requirements customers. Construction Work In Progress, Order No. 474, III FERC Stats. & Regs. ¶30,751 at 30,718 (1987). The Commission's regulations, however, do require a rate filing to terminate a jurisdictional contract. 18 C.F.R. § 35.15 (1994). Moreover, in a few cases, the Commission has required service beyond the contract term. *E.g.*, Tapoco, Inc., *et al.*, 39 FERC ¶61,363 (1987); Florida Power & Light Company, 8 FERC ¶61,121, *reh'g denied*, 9 FERC ¶61,015 (1979)).

[241] The costs of gas supply contracts in the gas industry can be viewed as somewhat analogous to the costs of generation resources in the electric industry.

[242] Order No. 436, *supra* note 12 at 31,492–93; see also *AGD*, *supra* note 9, 824 F.2d at 1026.

and also permits recovery of all prudently incurred costs. Moreover, while we recognize that there has always been some risk of a utility losing a customer, that risk has been greatly increased by significant statutory, regulatory, technological, and structural changes, including this rule, that utilities may not have reasonably foreseen at the time their investments were made.

As discussed in the introduction of this document, the wholesale bulk power segment of the electric industry is undergoing a fundamental transformation from a monopolistic industry regulated on a cost-of-service basis to an open access, competitively priced industry. The transformation will accelerate if the Commission adopts the open access transmission requirements it is proposing in Docket No. RM95–8–000. We do not believe that utilities that made large capital expenditures or long-term contractual commitments to buy power many years ago should now be held responsible for failing to foresee such fundamental changes in the industry. The Commission will not ignore the effects of regulatory and statutory changes on the past investment decisions of utilities. We believe that equity requires that utilities have an opportunity to recover legitimate and verifiable stranded costs associated with the development of competitive wholesale markets.

This belief is bolstered by our experience during the restructuring of the natural gas industry. During the 1980s and early 1990s, the Commission undertook a series of actions that eventually led to the restructuring of the gas pipeline industry. The restructuring of the industry and the introduction of competitive forces in the gas supply market left many pipelines holding uneconomic take-or-pay contracts with gas producers.[241]

In Order No. 436, the Commission declined to take direct action to alleviate the burden that the uneconomic take-or-pay contracts placed on pipelines. The Commission based its decision on a number of considerations, including its concern "regarding the ability of private parties in the gas production industry to rely on private contracts as a tool for structuring basic economic relationships."[242]

However, in *AGD*, the U.S. Court of Appeals for the District of Columbia Circuit noted that the pipelines were "caught in an unusual transition" as a result of regulatory changes beyond the pipelines' control.[243] The court faulted the Commission for failing to take direct action to address the effect of such regulatory changes on the uneconomic take-or-pay contracts.[244]

The court's reasoning in *AGD* concerning the restructuring of the gas industry is also applicable to the current move to competitive bulk power markets in the electric industry. Once again, a regulated industry is faced with an "unusual transition" to a more competitive market. Once again, one result of the transition is the possibility that utilities will be left with large unrecoverable costs. In these circumstances, we believe that we must directly address the costs of the transition to a competitive industry by allowing utilities to recover their legitimate and verifiable stranded costs, and that we must do so simultaneously with any final rule we adopt concerning open access transmission.

(2) The D.C. Circuit Court of Appeals Decision in *Cajun Electric Power Cooperative, Inc.* v. *FERC*. In the *Cajun* case,[245] the D.C. Circuit found that the Commission should have held an evidentiary hearing to determine whether the recovery of stranded investment costs, as permitted in an open access transmission tariff approved by the Commission, was anticompetitive and would preclude mitigation of Entergy Corporation's (Entergy) market power. The transmission tariff under review in that case was intended to mitigate Entergy's market power by providing open access to its transmission system.[246] The open access transmission tariff provided that Entergy's subsidiaries could seek to recover their stranded investments from a departing generation customer by including in the departing customer's transmission rate the cost of Entergy's generation capacity that was stranded when the former customer switched suppliers. The court expressed concern that this provision might constitute a tying arrangement whose purpose is to "cabin" Entergy's market power, stating: "If a company can charge a former customer for the fixed costs of its product whether or not the customer wants that product, and can tie this cost to the delivery of a bottleneck monopoly product that the customer must purchase, the products are as effectively tied as they would be in a traditional tying arrangement."[247]

The court noted that central to the Commission's approval of Entergy's open access transmission tariff was the Commission's finding that Entergy's market power would be mitigated upon the implementation of the tariff.[248] However, the court suggested that permitting a transmission monopolist such as Entergy to impose generation-related charges on competitors who only seek transmission services might serve to increase, not mitigate, Entergy's market power because "Entergy can compete for generation sales outside its transmission grid without concern for a stranded investment charge [but] Entergy's competitors cannot compete for the customers on its transmission system on the same basis."[249] Thus, the court held that "[t]he Commission must address whether the [transmission tariff's] provision of a process for recovery of stranded investment costs * * * precludes genuine open access to Entergy's transmission system. In short, the question that must be asked now is whether the [transmission tariff] allows for 'meaningful access to alternative suppliers.'"[250] The court went on to identify other provisions of the transmission tariff (in addition to the stranded cost provision) that might lessen the mitigation of Entergy's market power, including Entergy's retention of sole discretion to determine the amount of transmission capability available for its competitors' use; the point-to-point service limitation; the failure to impose reasonable time limits on Entergy's response to requests for transmission service; and Entergy's reservation of the right to cancel service in certain instances even where a customer has

[243] 824 F.2d at 1027.

[244] *Id.* at 1021.

[245] *Cajun Electric Power Cooperative, Inc.* v. *FERC*, 28 F.3d 173 (D.C. Cir. 1994) (*Cajun*).

[246] The two other electric power tariffs under review in that case provided for the sale of wholesale power by various Entergy public utility subsidiaries at negotiated, market-based rates. As the court indicated, these tariffs, in combination with the open access transmission tariff, "were designed to permit Entergy—a monopolist of transmission services in the relevant market—to engage in market-based pricing in the generation market, while simultaneously introducing competition to that market through the unbundling of generation sales from transmission services." *Id.* at 175.

[247] *Id.* at 178.

[248] The court noted that although the Commission suggested that the stranded investment provision is necessary to lure Entergy into competition and provides an equitable recovery of costs from the parties for whom the costs were incurred, this is irrelevant if the Entergy tariffs do not sufficiently mitigate Entergy's market power. *Id.* at 180.

[249] *Id.*

[250] *Id.* at 179 (emphasis in original).

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paid for transmission system modifications.[251]

The court concluded that the transmission tariff as a whole "seems to provide Entergy with the means to stifle the very competition it purports to create."[252] The court determined that the Commission erred in approving Entergy's tariffs without conducting hearings on whether, notwithstanding the purpose of the transmission tariff to mitigate market power, Entergy might retain market power. Significantly, however, the court did not hold that stranded cost recovery could not be justified; its objection was to the Commission's procedures in that particular case and lack of explanation for its substantive decision to approve the stranded cost provision.

(a) Comments. Most customer groups and many state representatives (e.g., APPA, Blue Ridge,[253] National Association of Regulatory Utility Commissioners (NARUC) and the Vermont Department of Public Service (Vermont Department)) contend that the *Cajun* decision either prevents the Commission from allowing the recovery of stranded costs through transmission charges, or, at best, raises questions concerning the scope of the Commission's legal authority to do so. In light of *Cajun*, some commenters, such as the National Rural Electric Cooperative Association (NRECA), urge the Commission to terminate the NOPR.

Environmental Action contends that a transmission adder does not by itself constitute tying or leveraging. It submits that if the transmission adder consists of costs that a customer is obligated to pay in any event, the adder merely holds the customer to its existing bargain. Environmental Action argues that in *Cajun*, however, the transmission adder was not being used to recover costs for which the transmission customer was already obligated, but had the effect of penalizing the customer for entering into a new obligation. According to Environmental Action, the NOPR "makes the same error" to the extent that the costs proposed to be recovered in the transmission adder are not part of the contractual quid pro quo.[254]

All of the investor-owned utility commenters, except Wisconsin Power & Light Company (Wisconsin Power), argue that the *Cajun* decision is not a bar to recovery of stranded costs through transmission rates.[255] These commenters (e.g., EEI and Duke) argue that the *Cajun* decision was based on procedural grounds and merely stands for the proposition that the Commission should have held an evidentiary hearing in that case to resolve anticompetitive concerns. These commenters also argue that the portion of the *Cajun* decision relied on by the customer commenters is only *dictum*.

Some commenters further contend that allowing the recovery of stranded costs through a transmission surcharge does not constitute an unlawful tying arrangement. EEI notes, as an initial matter, that the courts no longer view every bundling of products or services as a tying arrangement that is *per se* unlawful under the antitrust laws. Moreover, EEI submits that in a tie-in, a seller of one product requires its purchasers to buy the tied product by bundling the products together to promote sales in related markets that it could not achieve under competitive circumstances, effectively foreclosing the purchaser from obtaining the second product from competitors even if it could do so at a lower cost. EEI argues that a stranded cost surcharge, in contrast, would include only part of the former price of the power (the mark-up above its marginal cost included in the price approved by regulators), and would thereby allow the purchaser to obtain bulk power from competitive suppliers with the lowest marginal costs.

With regard to the potential anticompetitive effects of allowing stranded cost recovery, some commenters contend that stranded cost recovery would inhibit the movement toward competition, distort price signals, result in inefficient decisionmaking, and unfairly reward the least efficient utilities.

For example, APPA argues that charges for stranded costs are anticompetitive and hinder the development of a competitive market by, among other things: (1) Distorting transmission prices and erecting artificial barriers to new suppliers; (2) giving the host utility a paid-off asset with which to compete unfairly; and (3) slowing the introduction of new technology. APPA argues that the disallowance of stranded costs would encourage all utilities to strive for greater efficiencies and to compete for sales on the basis of price and service.

The Ad Hoc Coalition on Environmental and Consumer Protection (Ad Hoc Coalition) argues that stranded cost recovery will amount to a government-ordered subsidy for electric generation from older, less efficient units that will further environmental degradation and stifle the move toward greater competition. It claims that the stranded costs that utilities primarily will be seeking to recover are uneconomical nuclear generation assets, and that the NOPR thus offers a new subsidy for nuclear power by shifting cost responsibility for nuclear assets from shareholders to ratepayers. The Ad Hoc Coalition believes that such a subsidy could affect investment decisions for the next generation of nuclear power plants if investors believe that they will be allowed to recover their costs as long as a "reasonable expectation" existed at the time the decision to build was made. Thus, the Ad Hoc Coalition argues that the NOPR will send an improper signal to utility managers and investors that generation investments remain safe investments, even when they do not pass the tests of a competitive market. According to the Ad Hoc Coalition, such a policy perpetuates the continued reliance on older, less efficient generating units that harm the environment.

American Forest asserts that blanket assurances of stranded cost recovery are anticompetitive and create no incentive for utilities to lower their operating costs and mitigate any uneconomic costs. According to American Forest, stranded costs create enormous uncertainty that may make financing of competitors' plants impossible at any cost, thus killing the very competitive market the Commission seeks to foster.

The Illinois Commission believes that stranded cost recovery produces an incorrect competitive result because such action effectively "props up" the least efficient (high-cost and high-price) utilities. The Illinois Commission argues that stranded cost recovery mechanisms effectively punish the more efficient suppliers that have paid attention to changing realities and have assumed a more competitive market-sensitive posture.

In sharp contrast to the commenters that argue stranded cost recovery would hinder competition, commenters such as EEI, the United States Department of Energy (DOE), the Coalition for Economic Competition,[256] and the Conservation Law Foundation (CLF)[257] contend that stranded cost recovery can promote a quicker transition to competition and can be used to enhance efficiency. Some commenters (*e.g.*, DOE, Industrial Consumers, Enron Power Marketing, Inc. (Enron), CLF, and the Competitive Electric Market Working Group (Competitive Working Group)[258]) suggest linking the recovery of stranded costs to utility actions that will further wholesale competition, such as the filing of an open access transmission tariff or membership in a regional transmission group (RTG).

Commenters representing the financial community (e.g., Utility Investors and Analysts, American Society of Utility Investors, United Utility Shareholders Association of America) strongly support recovery of stranded costs so that the financial stability of the electric utility industry will be protected. These commenters argue that the amount of potential stranded costs exceeds the amount of equity investment in electric utilities. According to these commenters, investors have not made their current investment decisions with the rigors of competition in mind, nor have rate of return hearings included testimony concerning competitive risk. Without full recovery of stranded costs, financial community commenters argue, financial integrity will deteriorate, and utilities will be unable to attract capital. Due to the capital-intensive nature of the electric utility industry, these commenters note that lack of access to capital markets at reasonable rates will prevent utilities from keeping costs down.

(b) Preliminary Findings. We do not interpret the *Cajun* court decision as barring the recovery of stranded costs. Rather, the *Cajun* court remanded the case because the Commission failed to hold an evidentiary hearing concerning whether the inclusion of a stranded cost recovery provision in Entergy's transmission tariff precluded the mitigation of Entergy's market power. As previously discussed, the court also found the Commission's substantive decision flawed because the Commission failed to explain adequately its approval of the stranded cost provision, among others. In this consolidated proceeding (*i.e.*, the Stranded Cost NOPR, the Supplemental Stranded Cost NOPR, and the Open Access NOPR), we are providing the evidentiary record for addressing all of the court's concerns on a generic basis, and the opportunity for all participants in the electric industry to present evidence and arguments. We are also providing a full explanation of why the recovery of legitimate stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service industry to an open transmission access, competitive industry that will drive down the prices of electricity to consumers.

The court in *Cajun* was concerned about whether Entergy's tariff allowed "meaningful" access to alternative suppliers. In this regard, the court stated that the Commission must address not only whether the stranded cost provision allowed for meaningful access, but also whether other provisions in the tariff might lessen the utility's market power. In the Open Access NOPR, the Commission is attempting to mitigate the core of market power not only for Entergy, but for all traditional public utilities: control over transmission access. The Commission is generically addressing all aspects of transmission market power, including those specifically identified by the *Cajun* court (*e.g.*, point-to-point service limitations). Indeed, a fundamental purpose of the Open Access NOPR is to ensure the meaningful access to alternative suppliers that was identified by the *Cajun* court.[259] The Open Access NOPR includes the specific terms and conditions of access (contained in the pro-forma tariffs) that we believe are the minimum necessary to mitigate transmission market power.[260] Of utmost importance in mitigating market power is the Commission's non-discrimination (comparability) requirement, a requirement that had not been articulated at the time of the Commission's order under review in *Cajun*, and that is proposed to be codified in the Open Access NOPR proceeding.

With regard to the *Cajun* court's concern about stranded cost provisions, the Commission in *Entergy* failed to articulate the transition that the industry is experiencing, the fundamental fact that full competition is not yet a reality, and that stranded costs are a temporary but serious phenomenon that must be addressed if we are to successfully move from one regulatory regime to another, thereby creating fully competitive bulk power markets. In this regard, the Open Access NOPR provides a detailed explanation of the fundamental industry and regulatory changes that have given rise to the potential for stranded costs. In addition, in the Stranded Cost NOPR and the Supplemental Stranded Cost NOPR, we have gathered (and are continuing to gather) information concerning the magnitude of potential stranded costs; we have provided an explanation of the transitional nature of stranded costs; and we have explained the critical need to deal with these costs in order to reach competitive wholesale markets. We have also explained existing disparities in electricity rates and the consumer benefits that can accrue if we achieve fully competitive markets.[261]

Failure to deal with the stranded cost problem would likely delay and would certainly complicate the transition to fully competitive bulk power markets. For example, stranded costs would then be borne by the utilities' shareholders, which could threaten the stability of the industry and the service it provides, or be reallocated to remaining customers, raising the price to such customers. An additional consideration is the fact that the *AGD* court instructed the Commission that it must consider the transition costs borne by regulated utilities when the Commission changes the regulatory rules of the game.

We conclude that stranded cost recovery as proposed in this rulemaking is not a tying arrangement, as discussed by the *Cajun* court, and that the proposed cost recovery procedure will not "cabin" market power.[262] Rather, the stranded cost recovery procedure is

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[251] *Id.* at 179–80.

[252] *Id.* at 180.

[253] Blue Ridge consists of Blue Ridge Power Agency, Northeast Texas Electric Cooperative, Sam Rayburn G & T Electric Cooperative and Tex-La Electric Cooperative.

[254] Environmental Action comments at 79.

[255] Wisconsin Power argues that stranded costs should be recovered, but not through transmission rates.

[256] The Coalition for Economic Competition consists of the following New York investor-owned utilities: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas & Electric Company.

[257] CLF is a non-profit environmental law organization that represents approximately 10,000 members in the six New England states.

[258] The Competitive Working Group consists of Electric Clearinghouse, Inc., Enron Power Marketing, Inc., and Destec Power Services, Inc.

[259] See *Cajun*, 28 F.3d at 179.

[260] In seeking comment in the Open Access NOPR on the adequacy of these terms and conditions, we seek specific comment on the terms and conditions that were of concern to the *Cajun* court. See discussion *supra* Section III.E.4. For example, the *Cajun* court expressed concern that the point-to-point service limitation in Entergy's transmission tariff might restrain competition. However, under the Open Access NOPR, service will not be limited to point-to-point. Instead, customers will be allowed to choose between point-to-point and network service.

[261] There is a wide disparity in consumer electricity prices across the United States. Some consumers pay more than 10 cents per kilowatt-hour on average, while others pay about one-third as much. While some of this price disparity is due to regional cost differentials, some of it may also be due to ineffective access to new power supplies. We believe that all consumers will benefit from changes that allow their suppliers greater access to lower-cost power supplies. This greater access can best be achieved by ensuring that non-discriminatory open access transmission service is available to all potential users of the transmission grid. The result will be greater trading opportunities among suppliers, and also more investment opportunities for new entrants in generating markets. All of this should serve the interests of consumers by lowering electricity prices.

[262] *Cajun*, 28 F.3d at 177–78.

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being prescribed to enable utilities, during a transitional period, to recover costs prudently incurred under a different regulatory regime.

Finally, the financial community argues strongly and plausibly that recovery of legitimate and verifiable stranded costs at this critical stage in the industry's move toward competition is needed to protect the financial stability of the electric industry. They confirm that the prospect of not recovering stranded costs could erode a utility's ability to attract capital, which, in turn, could impede the long-term goal of achieving competitive wholesale markets.

(3) Responsibility for Wholesale Stranded Costs (Whether to Adopt Direct Assignment to Departing Customers). In the initial NOPR, the Commission proposed to allow utilities to seek to assign stranded costs associated with the departure of a given wholesale customer directly to that departing wholesale customer.[263] We noted, however, that an alternative might be to assign stranded costs more broadly by, for example, requiring all transmission customers (including native load which takes bundled service) to pay a higher rate for use of the transmission system. We invited comments on the direct assignment and alternative methods of stranded cost recovery.[264]

(a) Comments. Many parties (representing all constituencies) support the direct assignment of stranded costs to the departing customer as proposed in the initial NOPR. Most commenters contend that the cost causation principle supports this approach. These parties argue that utilities undertake obligations on a customer's behalf and that, by leaving the system, the departing customer avoids paying for its fair share of these obligations. They further argue that general fairness requires that customers remaining on the system should not have to pay for a departing customer's obligations; they allege that this could lead to more customers leaving the system and the eventual bankruptcy of the utility.

Nevertheless, other commenters suggest a framework for stranded cost recovery that is different from the direct assignment method suggested in the NOPR. According to some commenters (*e.g.*, South Carolina Electric & Gas Company), stranded costs should be allocated to all customers and shareholders because everyone will benefit from the transition to competitive generation markets. In this manner, they contend that the overall burden would be reduced, because stranded costs would be spread among a greater number of parties. Commenters that support spreading the costs to all customers argue that requiring the departing customer to shoulder all stranded costs will result in few customers going off-system due to the economic inefficiency of paying two suppliers. Several commenters (*e.g.*, Indiana Commission, Rhode Island Division of Public Utilities and Carriers, Department of Water and Power of the City of Los Angeles, and Fuel Managers Association) suggest that some shareholder liability for stranded cost recovery should be required, arguing that it would provide utilities with a greater incentive to mitigate stranded costs.

Some commenters support the recovery of stranded costs through a transmission surcharge applicable to all transmission customers.[265]

Other commenters oppose a general surcharge on all transmission customers, arguing that existing transmission customers, including native load, should not be allocated any stranded costs because they did not cause any costs to be stranded in the first place. Washington Water Power Company and Wisconsin Electric Power Company oppose a transmission surcharge on the basis that it makes an otherwise competitive supplier less marketable due to higher wheeling rates. Others allege that a transmission surcharge is inconsistent with the unbundling of transmission service and would slow the restructuring (disaggregation) of vertically-integrated utilities. Thus, according to some commenters, the use of a transmission surcharge would slow the move to competitive markets because the surcharge sends the wrong price signal, involves cross-subsidization by native load, penalizes competitive alternatives, and awards monopoly rents to the utility. Some commenters also note that, where the departing customer does not take transmission service from its former supplier, the departing customer escapes all responsibility for the stranded costs.

Some commenters contend that the *Cajun* decision prohibits the use of a transmission surcharge. Still others argue that generation costs should not be assigned to transmission users because utilities would then have an incentive to shift costs to transmission in order to make their generation more competitive. SCOOP argues that the shifting of generation costs to transmission rates violates the Commission's policy prohibiting costs unrelated to the transmission function from being included in transmission charges.[266]

The Public Utility Commission of Texas (Texas Commission) proposes a hybrid approach whereby a portion of stranded costs would be directly assigned to the departing customer and the remainder allocated through a general surcharge to all wholesale market participants. However, if a general surcharge on transmission customers is adopted, the Texas Commission supports the pooling of all stranded costs and the creation of an industry-wide surcharge. The Texas Commission does not explain how such a pool would be administered.[267]

Commenters that represent shareholder interests (American Society of Utility Investors, United Utility Shareholders Association of America, and Utility Investors and Analysts) argue against allocation of any stranded costs to shareholders because the rates of return granted to utilities in the past have not included any compensation for the risk of competition. They submit that fairness dictates that those placed at risk by a sudden change in the rules not be penalized. Tennessee Valley Authority (TVA), which as a Federal corporation has no shareholders to absorb stranded costs, shares this view.

(b) Preliminary Findings. After careful consideration of the various comments, we believe that direct assignment of stranded costs to the departing wholesale customer, as proposed in the initial NOPR, is the appropriate method for recovery of such costs.[268] This method is consistent with the cost causation principle.[269] As discussed in greater detail below, as part of the evidentiary demonstration necessary for stranded cost recovery associated with certain departing wholesale requirements customers,[270] retail-turned-wholesale transmission customers, or unbundled retail transmission customers, a utility must show that the costs are not more than the customer would have contributed to the utility had the customer continued to take generation service from that utility. We believe it only appropriate that the departing customer, and not the remaining customers (or shareholders), bear its fair share of the legitimate and prudent obligations that the utility undertook on that customer's behalf.

The Commission recognizes that the direct assignment approach for addressing stranded costs for the electric industry differs from the approach eventually taken for the natural gas industry. In Order No. 636, which involved the restructuring of the gas industry, the Commission determined that it was appropriate to spread the majority of the remaining transition costs associated with take-or-pay and other contracts to all customers (existing and new) using the interstate natural gas transportation system.[271] However, unlike the situation facing the electric utility industry today, by the time the Commission issued Order No. 636, changes in the natural gas industry had progressed to such a point that it was not possible for the Commission to use a strict cost causation approach. Many natural gas customers had already left their historical pipeline suppliers' systems. Others had converted from sales and transportation customers to transportation-only customers. Others were in a transition stage having had opportunities to lower their contract demands or otherwise become partial service customers. Significant take-or-pay and other costs had accumulated. In contrast, in the electric area, the Commission (and the states) will be better able to address the transition cost issue up front, and to address stranded cost recovery *before* customers leave their suppliers' systems. This, in effect, will prevent the accumulation of unrecovered costs and will comport with our past policy of assigning costs to customers who caused the costs to be incurred.

In addition, allowing direct assignment of stranded costs will ensure that there are no stranded costs left to be borne by the remaining customer base or by the shareholders. This, in turn, will ensure that the financial health of the industry is not placed in jeopardy. If some customers are permitted to leave their suppliers without paying for costs incurred to serve them, this may cause an excessive burden on the remaining customers (such as residentials) who cannot leave and therefore may have to bear those costs. Moreover, the prospect or lack thereof for recovering such costs from ratepayers could erode a utility's access to capital markets or significantly increase the utility's cost of capital. This higher cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun.

The alternatives to direct assignment of stranded costs are to do nothing or to assess stranded costs more broadly through some type of general surcharge on all customers. As discussed above, to do nothing would mean that the Commission would have to reallocate stranded costs to shareholders or to remaining customers. Those customers that caused the costs to be stranded would not have to pay. This would violate the cost causation principle which has been fundamental to the Commission's regulation since 1935. The other alternative, to assess costs more broadly, also violates this principle. Moreover, there appears to be no strong countervailing reason to assess costs broadly in the electric utility industry.

(4) Recovery of Stranded Costs Associated With New Wholesale Power Sales Contracts. The NOPR proposed that public utilities and transmitting utilities would not be permitted to seek extra-contractual recovery of stranded costs associated with "new" contracts, *i.e.*, contracts executed after July 11, 1994, through transmission rates for section 205 or 211 transmission services. For new contracts, the NOPR proposed that stranded cost recovery would be allowed only if explicit stranded cost provisions are contained in the contract accepted by the Commission.[272] We also stated our preliminary view that it is not appropriate in this new regime to impose on wholesale requirements suppliers any regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. However, we invited comment on the extent to which there should be such an obligation. We also sought comment concerning whether section 35.15 of the Commission's regulations, concerning notice of termination, should be deleted.

(a) Comments. Some of the commenters dispute the Commission's belief that there should not be a future regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract. SCOOP argues that the FPA imposes an obligation on a public utility to continue wholesale service beyond the term of the contract when such service is required by the public interest, and that the Commission does not have the power to abrogate this authority. Sunflower Electric Power Corporation (Sunflower) submits that, for stability reasons, a utility's obligation to serve requirements customers should run beyond the end of the contract term.

Some commenters (*e.g.*, SCOOP, Sunflower, Illinois Commission) generally support Commission retention of its section 35.15 notice of termination filing requirement, arguing that such filing requirement is reasonable and/or necessary to ensure that any termination in service is not contrary to the public interest.

Other commenters support the Commission's position that there should not be a future regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract and support modification or elimination of section 35.15. These

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[263] Methods of direct assignment include a lump sum payable when the customer leaves the system. Such an exit fee could also be recovered over time in monthly installments. Presumably the utility would charge interest on the unamortized balance if the customer selected a delayed payment approach.

[264] Stranded Cost NOPR at 32,867–68.

[265] Some commenters (*e.g.*, Allegheny Power) distinguish between transmission surcharges imposed on transmission-only customers as opposed to all customers. In the former case, only those customers taking transmission-only service from the utility would be assessed stranded costs; customers taking bundled service would not be assessed such costs. Allegheny Power indicates that it would support such an approach only if the Commission decides not to fully assign stranded costs to departing customers.

[266] SCOOP comments at 38 (citing Northern States Power Company, Opinion No. 383, 64 FERC ¶ 61,324 at 63,377 (1993)).

[267] Trigen Energy Corporation advocates that Congress impose a "sunset" energy tax on all electricity used in order to pay off stranded costs.

[268] Because we are also proposing to entertain requests for recovery of stranded costs attributable to retail-wheeling customers in certain limited circumstances, our determinations and rationale regarding direct assignment also apply to those situations.

[269] Contrary to arguments made by SCOOP, the shifting of generation costs to transmission rates does not violate Commission policy. The *Northern States* case cited by SCOOP deals with the Commission's bright line functionalization policy, pursuant to which the Commission, largely as a matter of administrative convenience, has attempted to maintain a boundary between generation and transmission functions. In that case, we found that refunctionalization is not *per se* improper or contrary to Commission policy, and we suggested that strict application of the traditional bright line approach may need to be reexamined in light of changes taking place in the electric industry. 64 FERC at 63,379. Significantly, we stated that the "*fundamental* theory of Commission ratemaking is that costs should be recovered in the rates of those customers who utilize the facilities and thus cause the costs to be incurred." *Id.* (emphasis in original).

This is exactly what we propose to do in the Stranded Cost NOPR and the Supplemental Stranded Cost NOPR. The customer that caused the costs to be incurred and stranded will continue to pay the costs. The only difference is that in some instances the customer will pay the costs through an adder to its transmission rate instead of through a generation rate.

[270] *I.e.*, departing wholesale requirements customers under contracts entered into on or before July 11, 1994, who will use the utility's transmission system to reach other suppliers and whose contracts do not explicitly address stranded costs.

[271] Order No. 636 at 30,457–62.

[272] Under the proposed regulations, a public utility may seek recovery of such costs in accordance with the contract. However, if wholesale stranded costs are associated with a new wholesale requirements contract and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs. See Stranded Cost NOPR at 32,882.

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commenters argue that if contracts are to govern future requirements relationships in the electric industry, the Commission should allow the contracts to terminate on their own terms, without the need for a filing and Commission approval. New England Power Company submits that continuation of such a filing requirement would add uncertainty to the parties' mutually agreed upon termination date and, in turn, promote inequitable and asymmetrical risk/benefit allocations and ineffective resource planning. EEI asks the Commission to make a finding that it is in the public interest to end the regulation of the termination of bulk power contracts. EEI suggests that the Commission could (1) grant a blanket waiver of the regulations requiring notice of termination for new contracts; (2) amend section 35.15 to pre-grant waiver of notice of termination; or (3) amend the regulations to pre-grant waiver of notice of termination in all bulk power contracts signed after the Commission makes its public interest finding to end the regulation of contract terminations.

(b) Preliminary Findings. The Commission believes that future wholesale contracts should explicitly address the mutual obligations of the seller and buyer, including the seller's obligation to continue to serve the buyer, if any, and the buyer's obligation, if any, if it changes suppliers. Now that utilities have been placed on explicit notice that the risk of losing customers through increased wholesale competition must be addressed through contractual means only, they must address stranded cost issues when negotiating new contracts or be held strictly accountable for the failure to do so. Accordingly, public utilities and transmitting utilities will be allowed stranded cost recovery associated with new contracts (executed after July 11, 1994) only if explicit stranded cost provisions are contained in the contract. Recovery of wholesale stranded costs associated with any new requirements contract (executed after July 11, 1994) will not be allowed unless such recovery is provided for in the contract.

Further, to ensure that the rights and obligations of sellers and buyers are symmetrical in the new competitive era, we do not believe that it is appropriate to impose on wholesale requirements suppliers a regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. A requirements customer thus will be responsible for planning to meet its power needs beyond the end of the contract term. In this regard, it may sign a new contract with its existing supplier, or it may contract with new suppliers in conjunction with obtaining transmission service under its existing supplier's open access transmission tariff.

We believe that the section 35.15 filing requirement should be retained for all contracts required to be filed under sections 205 and 206 of the FPA that were executed prior to the effective date of the generic tariffs that we discuss herein.[273] With regard to any power sale contract executed on or after that date,[274] we propose to no longer require prior notice of termination pursuant to the provisions of section 35.15. However, for administrative reasons, we will require written notification of the termination of such contract within 30 days after the date termination takes place.

(5) Recovery of Stranded Costs Associated With Existing Wholesale Power Sales Contracts. In the initial Stranded Cost NOPR (and again in this Supplemental NOPR) we stated that stranded costs are a transitional problem and that neglecting their recovery could delay the realization of fully competitive bulk power markets. We stated that it is thus important to set a date beyond which the Commission will no longer permit extra-contractual recovery of stranded costs that result from existing requirements contracts. To that end, we proposed a three-year transition period during which public utilities must attempt and non-public utilities are encouraged to attempt to renegotiate certain existing wholesale requirements contracts (*i.e.*, those that do not explicitly address stranded costs through an exit fee or other stranded cost provision), and during which they may seek recovery of stranded costs. However, if an existing wholesale requirements contract explicitly addresses stranded costs through an exit fee or other stranded cost provision, the initial NOPR would require the utility to recover such costs only as specified in the contract; it would not permit unilateral filings to change stranded cost provisions and would not permit the utility to seek recovery through transmission rates of stranded costs associated with that contract. Under the initial NOPR, existing contracts that prohibit stranded cost recovery, or explicitly prohibit renegotiation of an existing stranded cost or exit fee provision, or that prohibit renegotiation until after the three-year period has expired would not be subject to the obligation to renegotiate.[275]

Where an existing contract does not contain a stranded cost provision and the parties to the contract are unable to negotiate a stranded cost amendment, and the selling utility is a public utility, the initial NOPR proposed to permit the public utility to unilaterally file under section 205 or 206 of the FPA prior to the end of the three-year period a proposed stranded cost provision as an amendment to the existing contract. The NOPR also proposed to permit the selling public or transmitting utility to seek to recover stranded costs through jurisdictional transmission rates if, prior to the end of the three-year transition period, the customer under the existing wholesale requirements contract gives notice pursuant to the contract that it will no longer purchase all or part of its requirements from the selling utility, but instead will purchase unbundled section 205 or section 211 transmission services from the selling utility that will begin prior to the end of the three-year period.

Under the initial NOPR, if a contract does not include an exit fee or other explicit stranded cost provision, but does contain a notice provision, the Commission proposed that there be a rebuttable presumption that the selling utility had no reasonable expectation of continuing to serve the customer beyond the period provided in the notice provision. We proposed to apply such presumption when the public utility proposed a unilateral amendment to the contract to change the notice provision and/or add an exit fee provision, or if the public utility or transmitting utility sought stranded cost recovery through transmission rates.[276]

The Commission recognized that some utilities' existing contracts may not provide for unilateral rate changes. We noted that although under the *Mobile-Sierra* doctrine[277] a customer may waive its right to challenge the contract and/or the utility may waive its right to make unilateral rate changes, the parties may not waive the indefeasible right of the Commission to alter rates that are contrary to the public interest. We went on to explain why we believe that it is in the public interest to permit public utilities with *Mobile-Sierra* contracts a limited opportunity to propose contract changes unilaterally to address stranded costs if their contracts do not already explicitly do so.

In the NOPR, the Commission invited comments regarding, among other things, whether there should be a transition period during which utilities may renegotiate existing contracts, the appropriate length for such a transition period, whether utilities or customers with contracts that do not provide for unilateral amendments should be able to make unilateral filings or file complaints, whether the Commission should make a *Mobile-Sierra* public interest finding based on company-specific findings instead of generic industry-wide findings, the types of contractual provisions that might demonstrate a sufficient meeting of the minds between the parties so that requiring renegotiation would be inappropriate, whether to apply the rules regarding existing contracts only to contracts between unaffiliated entities, and whether the rebuttable presumption should also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though the contract does not contain an exit fee or other explicit stranded cost provision or a notice provision.

(a) Comments. (i) Contract Renegotiation. Investor-owned utilities, EEI, and the majority of state commissions generally favor renegotiation of requirements contracts.[278] These commenters argue that the transition to a competitive market should not preclude utilities from recovering costs prudently incurred to serve customers who may wish to leave the system that was planned and built to serve the customers' needs.

Commenters representing cooperatives, municipal, industrial customers, and independent power producers generally oppose renegotiation. These commenters suggest that the framework established in the NOPR, requiring good faith renegotiation of contracts and permitting the unilateral filing of revised contracts to provide for recovery of stranded costs (where renegotiation fails), will result in a violation of the *Mobile-Sierra* doctrine. Numerous commenters argue that contracts should stand on their own, and that there is no factual record upon which the Commission can make a generic public interest finding, as required by *Mobile-Sierra*, that contracts should be modified. These commenters maintain that "assumed" threats to the financial stability of the industry do not meet the extremely heavy *Mobile-Sierra* burden of proof that is required to release a public utility from a contract. They argue that it is not the Commission's place to relieve utilities of improvident bargains. Many customer group commenters argue that requiring contract renegotiation improperly shifts the burden of proof from the utility to the customer. These commenters further argue that permitting contract renegotiation implies that customers should pay for a utility's failure to protect itself from business risk.

Some commenters, such as American Forest, argue that the NOPR would, in essence, rewrite the law of contracts. These commenters state that there is no legal (or logical) basis for the NOPR's suggestion that wholesale customers with existing contracts containing valid notice of termination provisions can be forced to renegotiate such contracts to allow stranded cost recovery. Many of these commenters cite *Boston Edison Company* [279] and *Arizona Public Service Company* [280] for the proposition that notice provisions have been allowed and enforced. Many commenters contend that contract renegotiation is unfair because the policy would make the terms of existing contracts binding on only one party, while letting the other party unilaterally revise contract terms.

Some commenters, including the Electric Generation Association and the Iowa Utilities Board, generally oppose renegotiation, but would allow it in certain situations. They state that a utility's right to recover stranded costs should depend on the terms for which the parties have bargained. However, they recognize that there may be situations in which the parties' intent is not clearly defined. Accordingly, these commenters support renegotiation to supply missing terms to an ambiguous contract. Some commenters such as the Iowa Utilities Board maintain that companies should always be free to renegotiate contracts; however, they oppose allowing utilities to make unilateral filings to amend contracts that do not provide for unilateral amendment.

With regard to whether the renegotiation proposal should apply only to contracts between unaffiliated entities, some commenters (*e.g.*, Wisconsin Power, Sunflower) support the application of the renegotiation policy to both affiliated and non-affiliated entities alike. However, other commenters (*e.g.*, the Ohio Office of the Consumers' Counsel) recommend that the Commission not apply the proposed renegotiation rule to affiliated entities. They note that due to the mutual interest of affiliates, negotiations between them may not be arm's-length. These commenters urge the Commission to review all stranded investment agreements between affiliates to prevent cross-subsidization and to prevent interference with competition.

(ii) Three-Year Transition Period. With regard to the proposed transition period, although some commenters argue against permitting contract renegotiation, commenters generally raise no serious objections to three years as the period for contract negotiation. However, several commenters suggest that it is undesirable and unnecessary to delay the movement to competition for three years while contract renegotiations take place. For example, the Competitive Working Group argues that there is no assurance that stranded cost recovery will be resolved during the three-year period proposed in the initial notice. It suggests that the Commission could shorten the transition to competition while still providing for recovery of stranded costs by requiring that eligibility for recovery be conditioned on utilities agreeing to: (1) Grant wholesale customers the right to reduce or terminate purchase obligations under preexisting contracts and to convert to transmission-only service; (2) file comparable open-access transmission tariffs; and (3) mitigate the level of stranded assets by either divestiture or auction. The Competitive Working Group claims that these measures would ensure the move to competitive wholesale power markets.

DOE, Industrial Consumers, Enron and CLF also suggest linking the recovery of stranded costs to utility actions that will further wholesale competition. These commenters suggest linking the recovery of stranded costs to the filing of an open access transmission tariff or membership in an RTG. CLF notes that environmental as well as economic benefits may be achieved by linking the recovery of stranded costs to the retirement of environmentally unsuitable electric generating plants or initiatives that encourage the development and deployment of renewable and clean energy technologies.

Detroit Edison Company (Detroit Edison) suggests that the renegotiation period be the greater of (1) three years,

[273] We also propose to retain the section 35.15 filing requirement for any unexecuted contracts that were filed prior to the effective date of the generic tariffs proposed herein.

[274] We request comments on whether this proposal should also be applied to transmission contracts.

[275] The parties, of course, could always voluntarily renegotiate the contract.

[276] Stranded Cost NOPR at 32,861; 32,869–70.

[277] See *United Gas Pipeline Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956).

[278] Notable exceptions to this general observation include Southern California Edison Company, which opposes renegotiation of *Mobile-Sierra* contracts, and the Pennsylvania Public Utility Commission (Pennsylvania Commission) and the Vermont Department, which favor upholding the sanctity of contracts.

[279] 56 FPC 3414 (1976).

[280] 18 FERC ¶ 61,197 (1982).

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(2) the term of any existing contract, or (3) the period of any moratorium on changes in rates established in existing settlement agreements. According to Detroit Edison, adoption of this provision would allow utilities that already have established long-term contracts or that have agreed to a moratorium on rate changes to honor previously negotiated agreements.

(b) Preliminary Findings. We reaffirm our proposal to permit the recovery of legitimate and verifiable stranded costs for a limited set of existing wholesale contracts, namely, contracts executed on or before July 11, 1994 that do not already contain exit fees or other explicit stranded cost provisions. We further reaffirm our desire that utilities and their customers attempt to renegotiate such contracts promptly to specify the rights and obligations of the parties. To that end, we encourage the parties to existing contracts that do not address stranded costs to reach a mutually agreeable resolution. If the parties negotiate such a provision and the seller is a public utility, the utility must file the provision with the Commission as an amendment to the existing requirements contract. Of course, in some cases, the parties may disagree in good faith about whether the utility's expectations that the customer would continue taking service were reasonable. If so, negotiations may prove unsuccessful.

In place of the three-year transition period proposed in the initial NOPR, we propose that, if an existing requirements contract does not contain an exit fee or other explicit stranded cost provision and is not mutually renegotiated to add such a provision: (1) A public utility or its customer may, at any time prior to the expiration of the contract, file a proposed stranded cost amendment to the contract under section 205 or 206; or (2) a public utility or transmitting utility may, at any time prior to the expiration of the contract, file a proposal to recover, through its transmission rates for a customer that uses the utility's transmission system to reach another generation supplier, stranded costs associated with any such existing contract. However, for a utility to be eligible for recovery of stranded costs, it must meet the evidentiary and procedural criteria discussed *infra*.

Consistent with the initial NOPR, if an existing contract includes an explicit provision for payment of stranded costs or an exit fee, we will assume that the parties intended the contract to cover the contingency of the buyer leaving the system. As proposed in the initial Stranded Cost NOPR and reaffirmed here, we will reject a stranded cost amendment to an existing contract that already contains an exit fee or stranded cost provision, unless the contract permits renegotiation of the existing stranded cost provision or the parties to the contract mutually agree to renegotiate the contract.

However, if a contract does not contain an exit fee or other explicit stranded cost provision, and the contract permits the seller and/or buyer to seek an amendment to the contract, the authorized party may seek an amendment to add a stranded cost provision. In addition, even if the contract contains an explicit *Mobile-Sierra* provision, the Commission reaffirms its preliminary determination that it is in the public interest to permit public utilities to seek unilateral amendments to add stranded cost provisions if the contracts do not already contain exit fees or other explicit stranded cost provisions. If a utility demonstrates that it has met the standards for recovery outlined in this Supplemental NOPR, we believe that its recovery of stranded costs will be in the public interest.

If neither of the parties to such a contract seeks and obtains acceptance or approval of an explicit stranded cost amendment, the Commission proposes to permit the public utility to seek recovery of stranded costs through its wholesale transmission rates. We also propose to establish procedures to provide an existing wholesale requirements customer who is contemplating switching suppliers, and using its existing supplier's transmission system in order to reach a new supplier, advance notice of how the utility would propose to calculate costs that the utility claims would be stranded by the customer's departure. We believe that the following procedures would enable such a customer to make an informed decision whether or not to switch suppliers:

(1) A customer may, at any time prior to the termination date specified in its existing wholesale requirements contract, request the public utility to either: (i) Calculate the customer's maximum possible stranded cost exposure without mitigation, as of the date set forth in the customer's request; or (ii) provide the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation, to enable the customer to assess whether to contract for new generation service from another supplier. The customer should specify in its request, to the extent possible, pursuant to its rights under the power sales agreement with the seller, the date on which the customer would substitute alternative generation for the requirements purchase and the amount of the substitution. Any remaining requirements purchased from the existing supplier after this date should be clearly indicated. The customer may seek further information on how the stranded cost charge would vary as a result of choosing different dates or different amounts of substitute purchases. The customer also should indicate its preferred payment method(s) (*e.g.*, a monthly or annual adder to its transmission rate or an up-front lump-sum payment).

(2) The utility shall, within thirty days of receipt of the request, or other mutually agreed upon period, provide the customer: (i) The customer's maximum possible stranded cost exposure without mitigation; or (ii) the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation. The utility's response should indicate the period over which the utility proposes to charge the departing customer. There should be appropriate support for each element in the calculation or formula to enable the customer to understand the basis for the element. The utility should provide a detailed rationale for its proposal as to how long the utility reasonably expected to keep the customer. The utility also should address how it intends to mitigate stranded costs.

(3) If the customer believes that the utility has failed to establish that it had a reasonable expectation of continuing to serve the customer beyond the contract term or that the proposed maximum stranded cost charge without mitigation (or formula) is unreasonable, it will have thirty days in which to respond to the utility explaining why it disagrees with the charge. The parties should then attempt to reach a mutually-agreeable charge for stranded costs within a reasonable period.

(4) If the parties are unable to resolve the matter pursuant to the procedures specified in (1)–(3) above, the customer may either: (a) File a complaint with the Commission under section 206 of the FPA to seek a Commission determination whether the utility has met the reasonable expectation standard and, if so, whether the proposed maximum stranded cost charge (or formula) satisfies the other evidentiary standards set forth in this rule;[281] or (b) wait until the proposed stranded cost charge is filed under section 205 of the FPA, and contest it at that time.[282] In either case, *i.e.*, a section 205 or 206 proceeding, the utility would only be able to seek stranded cost recovery according to the formula and other terms identified in its earlier discussions with the customer.

The above-described procedure would provide a customer an opportunity to know its maximum possible exposure as far in advance of its decision to change suppliers as the customer chooses (*i.e.*, the customer can file its request for a stranded cost computation at any time). If the customer decides to contest the proposed stranded cost charge, in either a section 206 or 205 proceeding, it will know its exact exposure once the Commission has completed its review of the proposed charge. This procedure attempts to address the *Cajun* court's concern that exposure to an unknown stranded cost fee will discourage customers from looking at other suppliers. At the same time, this procedure will permit recovery of legitimate stranded costs as set forth herein.

We strongly encourage utilities and their existing customers to attempt to resolve stranded cost issues through a mutually-agreeable exit fee or other stranded cost amendment to existing contracts that do not address stranded cost recovery.

We invite comments on our proposal to drop the three-year negotiation requirement originally proposed in the Stranded Cost NOPR, and instead to permit amendments to certain existing requirements contracts at any time prior to the expiration of the contracts, or to permit utilities to seek recovery through a departing customer's transmission rates at any time prior to the expiration of the power sales contracts. We also invite comments on our proposal to establish a procedure whereby a wholesale requirements customer with an existing contract that does not explicitly address stranded costs can obtain its maximum stranded cost exposure without mitigation from the utility and can seek Commission review of the utility's reasonable expectation claim and the utility's proposed stranded cost charge or formula.

(6) Filing Requirements for Wholesale Stranded Cost Recovery. The Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations to establish filing requirements for public utilities (as defined in FPA section 201(e)) and transmitting utilities (as defined in FPA section 3(23)) that seek stranded cost recovery. We reaffirm our view that the only circumstance in which transmitting utilities that are not also public utilities may seek stranded cost recovery from this Commission is through customer-specific surcharges to rates for transmission services under FPA sections 211 and 212, and that those surcharges may only apply to costs associated with existing contracts.

The proposed regulations define "wholesale stranded cost" as "any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to: (i) a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility, or (ii) a retail customer, or a newly created wholesale power sales customer, that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility."

We seek comment on whether the proposed definition of "wholesale stranded cost" should encompass the situation where a wholesale requirements customer ceases to purchase power from the utility that had been making wholesale requirements sales to such customer, and the customer does not thereafter become an unbundled transmission services customer of that utility. This situation might occur, for example, in a situation where the former requirements customer was in a non-contiguous service area and does not need unbundled transmission service from the former seller in order to purchase power from a replacement supplier.

Consistent with the initial Stranded Cost NOPR, the proposed regulations would permit a public utility or transmitting utility to seek recovery of wholesale stranded costs as follows. First, for stranded costs associated with new wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed after July 11, 1994), the proposed regulations would allow recovery of stranded costs only if the contract explicitly provides for recovery of stranded costs.

Second, for existing wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed on or before July 11, 1994), the proposed regulations would specify that a utility may not recover stranded costs associated with such contract if recovery is explicitly prohibited by the contract (including associated settlements) or by any power sales or transmission tariff on file with the Commission.

Third, for existing wholesale requirements contracts that do not address stranded costs through exit fee or other explicit stranded cost provisions, the proposed rule would allow a public utility to seek recovery of stranded costs only as follows: (1) if the parties to the existing contract renegotiate the contract in accordance with this rule and file a mutually agreeable amendment dealing with stranded costs, and the Commission accepts or approves the amendment; (2) if either or both parties seeks an amendment to the existing contract under sections 205 or 206 of the FPA, prior to the date the contract expires, and the Commission accepts or approves an amendment permitting stranded cost recovery; or (3) if the public utility files a request, prior to the date the contract expires, to recover stranded costs through an adder to a departing customer's transmission rates under FPA sections 205–206, or 211–212.

Fourth, if the selling utility under an existing wholesale requirements contract is a transmitting utility but not also a public utility, and the contract does not address stranded costs through an explicit exit fee or other stranded cost provision, the transmitting utility may seek to recover stranded costs through an adder to a departing customer's transmission rates under FPA sections 211–212. Such utility may not seek recovery of stranded costs through a section 211–212 transmission rate if the existing contract does contain an explicit exit fee or other stranded cost provision.

Fifth, for a retail-turned-wholesale customer, the proposed rule would allow a public utility or transmitting utility to file a request to recover stranded costs from the newly created wholesale customer through an adder to that customer's transmission rate.

Sixth, for customers who obtain retail wheeling, a public utility or transmitting utility may seek recovery through transmission rates only if the state regulatory authority has no authority under state law at the time retail wheeling is required to address stranded costs.

(7) Evidentiary Demonstration Necessary—Reasonable Expectation Standard.—In the Stranded Cost NOPR, we proposed, as part of the evidentiary demonstration that a public utility or transmitting utility must make to recover stranded costs in wholesale transmission rates, or through a unilateral amendment to the power sales contract, that the utility must show

[281] If a complaint is filed, neither the customer nor the utility could raise issues not identified in their earlier discussions. The burden of proof would be on the utility to satisfy the evidentiary standards related to stranded cost recovery.

[282] As discussed in section III.F.1.c(10) *infra*, retail customers contemplating becoming wholesale customers may use the same procedures.

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that it incurred costs based on a reasonable expectation when the costs were incurred that the applicable contract would be extended.[283] We indicated that, in these situations, the question of whether a utility had a reasonable expectation of continuing to serve a customer is a factual matter that will depend on the evidence produced in each case. We further proposed that a notice provision in a contract would create a rebuttable presumption that the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. We invited comments with regard to these proposals and also asked whether we should adopt a minimum notice period that would create a presumption that the utility had no reasonable expectation of continuing to provide service beyond such period (e.g., a five-year notice period).[284]

(a) Comments. Commenters express a variety of views on the reasonable expectation standard for extra-contractual cost recovery. Some commenters (*e.g.*, the Transmission Access Policy Study Group) do not believe there is a legal basis to permit the claimed expectation of indefinite renewal of a contract to override a customer's express contractual termination rights. These commenters argue that there has never been any assurance that utilities will be allowed to recover all of their costs, no matter how incurred. These commenters assert that utilities have been on notice for years that customers may try to exercise their contractual right to terminate service when their contracts end, and that utilities would not be entitled to any contract extensions or other relief. These commenters state that the reasonable expectation test is an inadequate basis for denying customers their contractual termination rights.

Other commenters (*e.g.*, Environmental Action) state that if reasonable expectations (as opposed to contract language) are relevant, one must determine both the utility's and the customer's reasonable expectations. These commenters support the concept of contract symmetry; if there is no obligation to serve beyond the contract term, imposing an obligation to pay beyond the contract term is asymmetrical.

With regard to the Commission's proposal that a notice provision in an existing contract creates a rebuttable presumption that there is no reasonable expectation that the contract will be renewed, many investor-owned utility commenters, as well as the Florida Commission and the Texas Commission, question whether a notice provision constitutes sufficient grounds for such an assumption. Because of the obligation to serve and the long lead time needed to construct new base-load generating units, they argue that a utility could have been found to be imprudent if it did not plan for and build sufficient generating capacity to meet its service obligations. These commenters maintain that it would have been unreasonable for a utility to assume that a customer that is served under a contract with a notice provision that has been repeatedly renewed would not again renew the contract. These commenters maintain that a notice provision is not sufficient to demonstrate a "meeting of the minds" on this issue.

TVA states that the notice provisions in its contracts in no way lessen its intention to serve its customers. TVA states that its legislative provisions, planning process, and history all support the assumption that it will continue serving its wholesale customers indefinitely.

Certain customer groups, such as the TDU Customers and the Wisconsin Wholesale Customers (Wisconsin Customers), believe that the Commission should make the rebuttable presumption stronger, *i.e.*, that contracts with notice provisions should absolutely preclude stranded cost recovery. Wisconsin Customers state that there should be no opportunity for renegotiation to include stranded cost provisions in contracts with reasonable notice provisions.

(b) Preliminary Findings. We believe we should retain a reasonable expectation standard as part of the evidentiary demonstration that a public utility or transmitting utility must make. Whether a utility had a reasonable expectation of continuing to serve a customer, and for how long, will be determined on a case-by-case basis. Depending on all of the facts and circumstances, a reasonable expectation that a contract would be extended could be established, for example, by: (1) Whether the customer had access to alternative suppliers; (2) a showing that the parties' actual conduct or course of dealing has been to renew the contract upon its scheduled expiration; (3) evidence that a utility has recovered construction-work-in-progress (for projects that would enter service after the scheduled contract expiration) from a particular customer without the customer's objection; or (4) communications between supplier and customer concerning system planning, such as an indication by a buyer that the seller should continue to include the buyer's load in the seller's resource planning beyond the contract term.[285]

In addition, as proposed in the initial NOPR, we believe that the existence of a notice provision in a contract should create a rebuttable presumption that the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. Of course, evidence that a contract with a notice provision has been repeatedly renewed (the scenario described by commenters opposing the creation of a rebuttable presumption) may, depending on the particular case, be sufficient to rebut the presumption that the utility had no reasonable expectation of contract renewal.

Further, we will not adopt a minimum notice period for purposes of applying the reasonable expectation rebuttable presumption. We believe that whether a utility had a reasonable expectation of continuing to serve a customer, and for how long, including whether there is sufficient evidence to rebut the presumption that no such expectation existed beyond the notice provision in the contract, will depend on the facts of each case. In these circumstances, we do not believe that a generic minimum notice period would be appropriate.

In addition, a contract that is extended or renegotiated for an effective date after July 11, 1994 becomes a new contract for which stranded cost recovery will be allowed only if explicitly provided for in the contract.

We seek further comment on the following specific aspect of the reasonable expectation standard: Should the reasonable expectation standard apply in a case where a utility has been making wholesale requirements sales to a customer in a non-contiguous service territory and where, in order to make such a sale possible, transmission service has been rendered by an intervening utility or utilities? Should the Commission take this as conclusive evidence that the customer had a choice of wholesale suppliers and, therefore, that the seller had no reasonable expectation that the contract would be extended? In the alternative, should the Commission choose to provide the seller with an opportunity to prove that it had a reasonable expectation, what weight should be given to the fact that transmission service was rendered by the intervening utility or utilities? Finally, in the event that the seller establishes that it had a reasonable expectation, and the former wholesale customer does not take unbundled transmission service from the former seller, what means ought to be available for the collection of stranded costs?

(8) Identification of Recoverable Wholesale Stranded Costs. The Stranded Cost NOPR proposed, as part of the evidentiary demonstration necessary for wholesale stranded cost recovery, that a utility show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility. We invited comments in the initial NOPR on what would constitute reasonable compensation for stranded costs and on how to determine the amount of stranded costs that the departing customer may be liable to pay. For example, we asked whether it would be reasonable to limit the annual amount of stranded costs to what the departing customer would have contributed to the utility's capital (customer revenues minus variable costs), or whether an alternative concept would be appropriate. We also requested comments as to what would constitute a "reasonable compensation period" over which to determine a customer's liability for stranded costs (*e.g.*, five years, ten years, or some other period). We indicated that the present value of the customer's liability could be the discounted value of an annual amount for such reasonable compensation period and that this total amount could be paid in a lump sum or over any mutually agreeable period.[286]

We also assumed in the NOPR that stranded costs will be dominated by generating capacity, but stated that it is appropriate to consider stranded costs more broadly, including the possibility that fuel supply costs, purchased power costs (including QF costs), nuclear decommissioning costs, regulatory assets, and possibly other utility obligations may be stranded. Accordingly, we invited public comment on what categories of costs, in addition to investment costs, should be eligible for stranded cost recovery.[287]

(a) Comments. (i) Acceptable Calculation Methods. Most commenters were not very specific regarding how to calculate the level of recoverable wholesale stranded costs. However, commenters that address this issue generally fall into three groups.

The first group reflects the position of EEI and most investor-owned utility commenters. This group proposes an asset-by-asset review of stranded investments (including contractual liabilities, regulatory assets, and certain social program costs) to develop a total company estimate of stranded costs that need to be recovered. These costs could then be allocated among customers to determine a hypothetical cost-of-service measure of stranded cost liability. From this amount, the utility would subtract wheeling service revenues and any revenues from mitigation measures taken. As explained in more detail below in the discussion of allowable cost categories, investor-owned utility commenters argue for inclusion of a broad number of investments, expenses and future costs in the revenue requirement calculation of recoverable stranded costs. Commenters that support this approach also suggest that costs are properly included in the calculation (*i.e.*, are recoverable wholesale stranded costs) to the extent that such costs have been ruled to be prudently incurred in a state determination.

Some commenters, however, oppose a hypothetical cost-of-service calculation approach to determining recoverable stranded costs arguing that it will engender litigation. These commenters note that generating units are not built, and specific costs are not generally incurred, on behalf of individual customers. According to these commenters, attempting to define specific components of stranded costs associated with a specific departing customer is inconsistent with utility investment planning and historical cost incurrence.

A second approach for determining recoverable wholesale stranded costs is based on "revenues lost" as a result of a customer switching suppliers. Most non-investor-owned utility commenters (*e.g.*, state commissions and customers) and some investor-owned utilities (*e.g.*, Commonwealth Edison Company (Commonwealth Edison), Utility Working Group (UWG)[288]) support this method of calculation. Commenters that support this approach argue that the calculation is less complex than a hypothetical cost-of-service approach and avoids an asset-by-asset review with its attendant accounting and tracking complexities.

Many commenters note that the revenues lost approach recognizes that utilities that made multiple investment decisions under the prior regulatory scheme compact expected a revenue stream from their customers to cover the costs of those investments. Under this approach, the measure of recoverable stranded costs is the difference between revenues expected from a customer under traditional regulation and the expected revenues in a competitive market. Some commenters suggest further limitations on the revenue stream calculation, *i.e.*, calculating revenues on a present value basis, or using current revenues as the ceiling for utility expected revenues under the prior regulatory regime. According to commenters, these limitations serve at least two purposes: (1) Simplifying the calculation; and (2) creating incentives for utilities to mitigate stranded costs, which will shorten the transition period to a competitive market.

Some commenters, including Public Service Electric and Gas Company (Public Service Electric), also point out that this approach is consistent with resource acquisition. These commenters note that specific investment decisions are not made on a retail/wholesale or customer-by-customer basis, but rather on the basis of resources needed to meet load, *i.e.*, generation plant additions are made based on an analysis of total system needs. Commenters also note that under a revenues lost approach, specific investments/assets do not need to be assigned (or tracked) to a particular event causing stranded costs.

A few commenters (*e.g.*, APPA, Electric Generation Association, Illinois Commission) advocate a third method of calculating the level of recoverable wholesale stranded costs. Under this method, which is a "netting" or "market analysis" approach, recoverable stranded costs would be determined based on the difference between embedded capital costs and the market value of stranded assets. While this approach is not dissimilar to a "revenues lost" approach, the level of stranded costs is generally determined only after a future action with respect to the stranded costs, *i.e.*, auction, divestiture or other future disposition of assets. Other commenters (*e.g.*, Central Vermont Public Service Corporation, Long Island Lighting Company (Long Island Lighting)) suggest variations of this "netting" approach, such as comparing the utility's revenues with some measure of the utility's marginal cost of requirements service. Commenters claim that, in a competitive market, the marginal cost would equal the market price. Thus, under this

[283] Stranded Cost NOPR at 32,873–74.
[284] *Id.* at 32,874.
[285] See *id.* at 32,874.
[286] *Id.* at 32,874–75.
[287] *Id.* at 32,867.
[288] The Utility Working Group members participating in UWG's comments in this proceeding are Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Niagara Mohawk Power Corporation, Northern States Power Company, Pacific Gas and Electric Company, Portland General Electric Company, Public Service Electric and Gas Company, San Diego Gas & Electric Company, Southern California Edison Company, and Wisconsin Electric Power Company.

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approach, recoverable stranded costs are the excess above market value of the stranded assets. Duke Power Company notes that mitigation measures would be unnecessary if this method were used to calculate recoverable stranded costs because the utility's marginal cost (not just its variable expenses), *i.e.*, the market price of the stranded assets, is used as the "offsetting" value in the calculation.

(ii) Reasonable Compensation Period (how long utility could reasonably expect to keep customer). Commenters support a wide range of time periods as appropriate for determining a customer's stranded cost liability. Almost all of the commenters, however, request that the Commission provide flexibility in this regard and not establish a generic recovery period so that a variety of recovery mechanisms can be accommodated.

Some state commission commenters (*e.g.*, Illinois Commission) support a limited time period for determining a customer's stranded cost liability as an incentive for utilities to mitigate stranded costs. According to the Illinois Commission, limiting the time period over which a customer's stranded cost liability is to be determined should encourage utilities to "fervently re-market the services produced by the potentially stranded resources."[289] Utility customer commenters (*e.g.*, city of Las Cruces, TDU Customers) also support a limitation on the period over which stranded costs would be determined. These commenters propose limiting the reasonable compensation period to the lesser of the contractual notice period; the remaining portion of the stated term of a contract; a five-year period (as a maximum reasonable time to plan for mitigation measures); or the utility's planning horizon.

Some investor-owned utility commenters (*e.g.*, EEI, Centerior Energy Corporation), on the other hand, oppose limiting the period over which a customer's stranded cost liability would be determined. EEI, for example, states that as a general rule, the departing customer should be responsible for its regulated rate less the utility's marginal cost and mitigating revenue. It contends that the period of such responsibility should continue until the utility needs the capacity freed up by the departing customer to meet retail load growth or firm wholesale obligations. In effect, these commenters support an open-ended opportunity to recoup wholesale stranded costs. They argue that the recovery period should continue as long as possible to ensure that native load customers are held harmless.

(iii) Allowable Cost Categories. Almost all commenters agree that stranded costs should not include variable expenses. The majority of customer commenters either: (1) Support the Commission's proposed categories; or (2) do not express an opinion regarding cost categories that are appropriate for recovery because they support the use of some type of "revenues lost" approach for determining recoverable costs, which does not require the identification of specific utility investments or expenses.

Many investor-owned utility commenters, however, contend that, in addition to the items identified in the NOPR, recoverable stranded costs should include a broad number of other investments, expenses and future costs. These commenters propose that the additional items that are eligible for recovery should include, but not be limited to:

- Construction work in progress;
- Regulatory assets, such as phase-in plans for new generation plant, and accrual accounting requirements (*e.g.*, income tax normalization, accounting for pension and PBOP costs);
- Actual nuclear decommissioning costs as well as a utility's pro rata obligation to dismantle and decontaminate DOE's uranium enrichment facilities;
- All fuel costs pending recovery via fuel adjustment mechanisms;
- Mandatory social program costs including DSM, low-income assistance, environmental clean-up and various R&D projects;
- Clean Air Act compliance costs;
- Storm damage expenses; and
- Other unknown future liabilities.

In addition, EEI states that before 1992, *i.e.*, pre-EPAct, no regulatory commission explicitly authorized a rate of return that compensated a utility for the risk of future retail competition. EEI notes that after EPAct only four regulatory commission decisions have addressed this issue. Because the risks of the new competitive market were neither contemplated by investors nor compensated by regulators under existing ratemaking, EEI argues that the cost of such risk must also be included as a category of costs eligible for stranded cost recovery.

Public Power Council suggests that there are two dangers in creating lists of eligible and ineligible costs: (1) Wasteful regulatory battles are likely; and (2) utility managers will have the incentive to reduce ineligible costs, while ignoring opportunities to reduce eligible costs.

(b) Preliminary Findings. The Commission preliminarily concludes that the determination of recoverable stranded costs should be based on a "revenues lost" approach rather than a hypothetical cost-of-service approach. The Commission believes that this approach has greater benefits than a hypothetical cost-of-service approach. A "revenues lost" approach avoids the asset-by-asset review that is required by alternative cost-of-service approaches in order to calculate recoverable stranded costs. Cost allocation procedures are also minimized. Moreover, the Commission believes that this approach will be easier to apply, thereby minimizing the cost of administering stranded cost recovery.

The Commission's experience in the natural gas industry is relevant here. Certain pipelines faced with take-or-pay obligations under uneconomic natural gas supply contracts have developed a "pricing differential" mechanism that has enabled them to honor existing take-or-pay obligations, while attempting to renegotiate the contracts.[290] Under this mechanism, the pipeline continues to meet its contractual purchase obligation and continues to market the gas purchased through its separate marketing operation. The "differential" or "revenues lost" between the purchase price and the sales price is passed through as a transition cost.[291]

Under the revenues lost method that we propose here, the utility would calculate a customer's stranded cost liability by subtracting the competitive market value of the power the customer would have purchased from the utility (and the basic revenues from the transmission service) had the customer continued to take service under its contract from the revenues that the customer would have paid the utility. As discussed in section III.F.1.c(9) *infra*, the utility must attempt to mitigate stranded costs by marketing stranded power supplies.

The Commission seeks further comments on the revenues lost approach. In particular, what would be the appropriate method to calculate what the utility's revenue stream would have been had the customer continued service (*e.g.*, current revenues based on current service levels, or should projection and adjustments reflecting changes in the revenue stream be permitted)? The Commission also seeks comments on the appropriate method to calculate the revenues that the utility would receive in a competitive market for the stranded assets. Should the Commission require the utility to track the actual selling price of the power over time, or should it require the utility to use an up-front approach, such as an estimate of the forecasted market value of the power for the period during which the customer would have taken service? Should the Commission allow prices in futures markets or forward markets to be used in an up-front approach, assuming such financial instruments become available? In addition, how should revenues received as a result of mitigation measures be reflected in the determination of the amount of recoverable stranded costs? What special accounts, if any, should be created to track revenue liability for specific customers, revenues from mitigation measures, and other revenues received by the utility that offset the stranded cost liability? Once determined, should any adjustment be permitted to the revenues that the utility claims will be realized in a competitive market for its stranded assets, and if so, how often and under what circumstances?

With regard to establishing a reasonable compensation period (*i.e.*, setting a limit on how long the utility could have reasonably expected to keep the customers), we do not believe that a one-size-fits-all approach is appropriate. A particular customer's stranded cost liability will depend, in each instance, on such case-specific factors as whether the utility can demonstrate that it had a reasonable expectation of continuing to serve the customer beyond the term of the contract and, if so, for how long. Therefore, we believe it appropriate to permit utilities and their customers some flexibility with regard to the period over which a customer's stranded cost liability would be determined. However, we will not allow an open-ended opportunity to recoup wholesale stranded costs. Although our preliminary finding is that a one-size-fits-all approach is not appropriate, we seek further comment with respect to whether the Commission ought to establish presumptions or, in the alternative, absolute limits on a customer's maximum liability in those situations where a utility establishes that it had a reasonable expectation that the contract would be extended. For instance, would it be appropriate to pick an outer limit equal to the revenues that the utility would lose during the length of one additional contract extension period, or during the length of the utility's planning horizon? What other events or criteria might the Commission use to establish either presumptions or absolute limits on the time period over which the customer's liability for stranded costs would be determined?

Our decision to adopt a revenues lost approach for determining recoverable stranded costs, which avoids an asset-by-asset review, in effect eliminates the need to enumerate specific categories of costs that may be recovered. However, there may be special categories of costs that are properly allocated to departing customers and that are not captured in the revenues lost approach. For example, nuclear decommissioning costs may not be reflected, or may not be fully reflected, in current requirements rates. To the extent this is true, a departing customer may be "escaping" from costs that it caused as a result of taking power service from its supplier during the time that the nuclear plant was operating. We seek comments on whether there are special costs that warrant some special consideration in the determination of stranded cost liability under a revenues lost approach, and if so, how they should be treated. We also solicit comments as to whether the Open Access NOPR raises any additional implementation or other issues affecting stranded cost recovery as proposed here.

(9) Mitigation Measures. As part of the evidentiary demonstration that a utility must make in order to recover stranded costs, the Stranded Cost NOPR would require the utility to show that it has taken and will take reasonable and prudent measures to mitigate stranded costs. The Commission proposed in the initial NOPR that adequate mitigation measures might include: (1) Evidence that the utility has tried to market the asset or assets, market the generating capacity, reconfigure or delay investment in or purchase of new generating capacity, or reform fuel supply contracts that form the basis for the stranded costs charge, and that such measures to mitigate stranded costs will continue for the entire period for which the stranded costs charge will be paid; or (2) the utility has given the customer the option to market the generating capacity or supply of fuel or purchased power that forms the basis for the stranded cost charge in order to afford the customer an opportunity to lower its stranded costs charge. We invited comment on the mitigation requirement and what reasonable measures to mitigate may include.

(a) Comments. Although there is nearly unanimous support for requiring that mitigation measures be taken, commenters raise several issues regarding how mitigation should be implemented and the effectiveness of such a requirement.

As noted above, many investor-owned utility commenters argue that stranded costs should be defined to include costs other than capital investment in utility property. According to these commenters, stranded costs also may include environmental clean-up costs, decommissioning costs, and regulatory assets resulting from cost recovery deferrals. Unlike capacity, these costs cannot be "marketed." Therefore, mitigation measures cannot be taken with respect to these costs. Thus, according to some commenters, there is a category of "unmarketable" stranded costs for which mitigation efforts to reduce the level of the costs are not possible.

Many commenters (*e.g.*, Texas Commission, TDU Customers) contend that a mitigation requirement will be more effective if incentives to mitigate are created. These commenters suggest several options, including:

- Limiting recovery of stranded costs to current rate levels (no projections of increases in stranded costs for future periods);
- Requiring shareholders to shoulder some cost responsibility (to ensure that mitigation measures will be aggressively pursued); and
- Requiring any stranded investment to be offered for sale, either with the departing customer permitted to "sell" the stranded investment, or through some form of auction.

Other commenters suggested that effective mitigation would require auctioning off stranded assets or some type of general divestiture of assets by the utility that is allowed to recover stranded costs.

Many commenters acknowledge that revenues from mitigation measures should reduce the amount of wholesale stranded costs. An issue is raised, however, regarding how revenues associated with mitigation measures should be credited. Given the overall preference by commenters supporting stranded cost recovery for direct assignment of stranded costs to a departing customer, explicit crediting mechanisms and accounting requirements—and perhaps new accounts or subaccounts—would be needed to keep track of amounts owed by those assessed wholesale stranded costs. Consequently, these commenters contend that decisions regarding who should pay (and how) for wholesale stranded costs must be coordinated with decisions regarding the implementation of required mitigation measures so that parties receive appropriate credits.

[289] Illinois Commission comments at 61–62.

[290] Texas Eastern Transmission Corporation, 63 FERC ¶61,100 at 61,507 (1993).

[291] For details on the mechanics of this program, see Texas Eastern Transmission Corporation, 63 FERC at 61,507–08; Texas Eastern Transmission Corporation, 64 FERC ¶61,378 (1994).

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(b) Preliminary Findings. We note that the revenues lost approach for determining recoverable stranded costs encompasses mitigation measures because it reduces the amount of stranded costs recoverable by a utility by the market price of the power that the customer no longer takes under its contract. Thus, our suggestion in the initial NOPR that revenues associated with mitigation measures be credited to the departing customer through reductions to that customer's surcharge is in effect accomplished by adoption of the revenues lost approach. This is particularly so if mitigation is reflected through a one-time, up-front estimate of the future market value of the power, and is not trued-up over time. Nonetheless, we emphasize that mitigation as a general matter remains important, and seek comment regarding implementation of a mitigation requirement. For example, if mitigation is trued-up over time, how should the Commission ensure that the utility takes all reasonable steps to mitigate its own costs so as to minimize what the customer would have paid? How should the Commission ensure that the utility does its best to sell the power at its highest possible value so as to mitigate the customer's stranded cost liability? Are there other mitigation measures that should be taken into account (*e.g.*, efficiency improvements that a utility would have undertaken regardless of whether the particular customer continued to take power under its contract, or cost savings resulting from the buy-out of a fuel contract made possible by the customer's departure)?

(10) Federal Forum for "Retail" Stranded Cost Recovery and Proposed New Definition of "Wholesale" Stranded Costs. In the initial NOPR, the Commission described two general ways in which retail stranded costs are likely to occur: (1) A retail franchise customer or group of such customers may, through state or local government action, become a wholesale customer that can then obtain unbundled transmission services in order to reach a new power supplier; and (2) a retail franchise customer may obtain voluntary unbundled retail transmission services from its existing power supplier in order to reach a new power supplier, or there may be a State or local government action that results in the existing supplier providing such retail transmission services. The Commission requested comments concerning the extent to which the Commission should provide a forum for resolving retail stranded cost issues. The Commission proposed two alternatives for addressing this issue. Under the first alternative, the Commission proposed that it would not entertain a request for retail stranded cost recovery if, in a specific circumstance, an appropriate state authority explicitly considers and deals with retail stranded costs and there is no conflict within or among state regulatory bodies regarding a state's disposition of the issue. However, in the absence of a clear expression by an appropriate state authority that it has dealt with the issue, or in the event of a conflict between states or among state officials within a single state, the Commission proposed to entertain requests to recover retail stranded costs. Under the second alternative, the Commission proposed not to entertain any request for recovery of retail stranded costs. Under this alternative, we proposed that state or local authorities would be the only forum for addressing the issue.[292]

(a) Comments. Most of the state commissions comment that the Commission should not provide a forum for addressing retail stranded cost issues. The Massachusetts Department of Public Utilities suggests Commission involvement only if a conflict arises through disparate stranded cost treatment by different states that the states are unable or unwilling to resolve. The Pennsylvania Commission suggests Commission involvement in retail stranded cost issues only if states have lost jurisdiction (for instance, due to municipalization). Most of the state commissions argue that retail costs are subject to exclusive state jurisdiction and that action or inaction by a state or any differences between state actions are matters to be resolved by the courts, not the Commission. Many of these commenters (*e.g.*, NARUC) note that numerous differences in ratemaking currently exist among states and that the Commission has not attempted to resolve those differences; they see no distinction with regard to retail stranded cost recovery. Some state commissions also argue that the possibility of Commission involvement in retail stranded cost recovery could introduce "forum shopping."

The New York State Public Service Commission (New York Commission) suggests that the Commission provide a backstop to the states only if a state has taken no action regarding retail stranded costs. The Ohio Public Utilities Commission (Ohio Commission) and the Wyoming Public Service Commission suggest that the Commission become involved in retail stranded costs only at the request or petition of a state.

Commenters representing investor-owned utilities, on the other hand, overwhelmingly agree that the Commission should provide a forum for resolving retail stranded cost issues. They propose a broad range of scenarios in which Commission involvement in retail stranded cost recovery is appropriate.

EEI, Commonwealth Edison, Florida Power and Northern States Power Company argue that the Commission should act as a backstop to state commissions with authority to address retail stranded cost issues: (1) To address yet undefined questions; (2) when no state commission action is taken; or (3) when state commission action is not taken in a fair and timely manner or results in the confiscation of utility property.

Allegheny Power, Arizona Public Service Company and Virginia Electric and Power Company argue that the Commission should provide a forum to address situations in which states allegedly have no authority to address retail stranded cost issues (primarily municipalization).

The Coalition for Economic Competition, Entergy, Utility Working Group, and the Nuclear Energy Institute urge the Commission to address situations in which state policy is inconsistent with Commission policy. In fact, many investor-owned utilities advocate the establishment of uniform national guidelines for stranded cost recovery that will be applicable to both wholesale and retail stranded costs. These commenters contend that the Commission is the only body capable of fulfilling this role.

Houston Lighting & Power Company urges the Commission to address retail stranded costs whenever retail stranded costs have a substantial adverse impact on interstate transmission.

Two investor-owned utilities support Commission involvement in retail stranded cost issues only in limited circumstances. Entergy contends that Commission involvement is necessary only if state jurisdiction is evaded (*i.e.*, certain cases of municipalization). Public Service Electric states that Commission oversight is needed to ensure that final results are consistent with Commission guidelines and are pro-competitive.

Commenters representing small customer interests, such as Electric Consumers' Alliance and the National Black Caucus of State Legislators, support Commission involvement in retail stranded cost issues in order to ensure that large customers that leave the system do not evade their fair share of stranded costs to the detriment of residential and other small customers.

Commenters representing municipal and electric cooperatives (such as APPA, TAPS and SCOOP), commenters representing independent power producers (such as the National Independent Energy Producers), commenters representing industrial customers, some customer advocacy group commenters (such as Industrial Consumers, American Forest, and the National Association of State Utility Consumer Advocates (NASUCA)), and commenters representing environmental groups (such as CLF) generally oppose Commission involvement in retail stranded cost issues.

DOE agrees with the Commission that retail stranded cost recovery is primarily a state issue. However, DOE states that the Commission has correctly determined that it has authority to regulate the rates, terms and conditions of retail transmission service. Accordingly, DOE supports Commission involvement in retail stranded cost issues.

DOE notes that states may decide to make retail competition contingent upon the recovery of stranded costs by their jurisdictional utilities. DOE states that the Commission does not appear to have considered the possibility that a utility may seek recovery of retail-related stranded costs through a retail transmission tariff filed with this Commission that has the support of the state commission. DOE submits that the Commission, as a matter of policy, should allow utilities to file tariffs for retail transmission service that recover stranded retail costs when such filings have the support of the affected state commissions. However, DOE states that the Commission should not give deference to tariffs for retail transmission service that contain a provision for stranded cost recovery if the tariff is opposed by any state commission that has a material interest in the filing.

Public Service Electric states that due to the vertical integration of electric utilities, the distinction between wholesale and retail stranded costs is merely a matter of cost allocation. It contends that utilities generally do not have specific generating facilities in place to serve strictly wholesale customers, but rather include wholesale customer loads into their planning models as if they were retail customers. Public Service Electric thus concludes that no distinction between wholesale and retail stranded costs is necessary for purposes of evaluating stranded cost recovery.

In contrast, other commenters contend that there are inherent differences between retail and wholesale stranded costs, resulting primarily from the different regulatory regimes in place. These commenters state that, at the state level, a utility provides retail service pursuant to a "regulatory compact" under which the utility undertakes an obligation to serve retail customers in exchange for an exclusive service franchise. In contrast, they submit that the utility's obligation to serve a customer at the wholesale level is established through contract. Some commenters conclude that these differences necessitate different approaches for recovery of wholesale and retail stranded costs.

Several commenters (*e.g.*, Duke, Entergy, Long Island Lighting, Nuclear Energy Institute,[293] Public Service Electric, Coalition for Economic Competition, Utility Working Group) request that the Commission issue a uniform national set of standards to govern the treatment of all stranded investment (both retail and wholesale), irrespective of jurisdiction with respect to retail stranded costs.

In contrast, several of the state commission commenters emphasize a need for flexibility in dealing with retail stranded costs in lieu of a one-size-fits-all solution, which they argue may fail to address important differences between states. Accordingly, several of the state commission commenters, including the Alabama, California, Indiana, Michigan, and New York Commissions, urge that the Commission develop in cooperation with the state commissions a flexible approach to retail stranded cost recovery through various means such as joint boards or through more informal conferences or other joint forums.

With respect to the issue of stranded costs caused by retail-turned-wholesale customers, EEI and several investor-owned utilities (particularly those in Michigan, New York and California) maintain that the most important stranded cost issue before the Commission at this time is the formation of new municipal utilities. These commenters urge Commission involvement in the recovery of stranded costs resulting from this action. EEI notes that most states have constitutions or laws that permit municipalization, through which groups of retail customers may, in effect, become wholesale customers and thereby transfer primary regulatory responsibility for regulating sales to such entities from a state commission to the Commission.

EEI argues that in most instances the Commission will be the regulatory body that will have to consider stranded cost recovery issues resulting from municipalization. EEI states that in approximately 28 states, there is virtually no limitation on the ability of municipalities to form utilities or to oust current suppliers;[294] these states will be unable to protect their utilities from stranded costs. According to EEI, only 14 state commissions have some jurisdiction over the creation or expansion of municipal utilities,[295] and only a few states require reimbursement for stranded generation or for lost earnings. Moreover, EEI notes that condemnation proceedings based on eminent domain principles often do not consider regulatory policies regarding stranded cost assignment and recovery.

NARUC, on the other hand, argues that states and/or state commissions have the ability to address all retail stranded cost issues. From NARUC's perspective, the recovery of stranded costs due to municipalization is a matter to be addressed by state authorities. Appendix D to NARUC's comments contains information regarding state practices and policies in the areas of municipalization and newly-municipalized service territory (*i.e.*, annexation). While policies do vary among the states, NARUC as well as most state commission commenters (*e.g.*, Iowa Commission) maintain that state authorities (commissions, courts and legislative bodies) clearly have the ability to impose stranded asset payments on new municipal utilities. NARUC contends that resolution by state authorities is mandated by the legal authority of the states to act, and does not depend upon Commission deference to the states. NARUC also cautions the Commission against becoming an appellate body for reviewing state determinations that allegedly overrecover or underrecover stranded costs.

However, NARUC suggests two situations where Commission involvement with stranded cost recovery in a municipalization scenario

[292] Stranded Cost NOPR at 32,878–79.

[293] Nuclear Energy Institute's utility members operate all (109) of the nuclear power plants in the United States.

[294] EEI states that these states are Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington and Wyoming.

[295] EEI states that these states are Alaska, Arkansas, Iowa, Indiana, Maryland, Massachusetts, North Carolina, New Hampshire, South Carolina, South Dakota, Texas, Vermont, West Virginia and Wisconsin.

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is reasonable. The first case is when a state determines that the appropriate cost recovery mechanism would involve a wholesale transmission rate beyond the state's jurisdiction. The second case is when the sequence of events or the timing of the transaction creates some ambiguity regarding the retail or wholesale character of the costs (*e.g.*, the Massachusetts Bay Transit Authority case cited in the NOPR).

Some commenters (*e.g.*, Florida Commission) request joint federal/state consultation on the issue of municipalization. The Florida Commission also requests that the Commission delay the effectiveness of wholesale contracts resulting from municipalization until retail stranded cost issues are resolved.

(b) Preliminary Findings. As discussed in the initial NOPR, as a general matter we believe that both this Commission and state commissions have the legal authority to address stranded costs that result from retail customers becoming wholesale customers who then obtain wholesale wheeling, or from retail customers who obtain retail wheeling, in order to reach a different generation supplier. Based on an analysis of all the comments received, we propose to exercise our authority to address stranded costs as follows.

Because the vast majority of commenters have urged the Commission not to assume responsibility for retail stranded costs, except in certain circumstances, we have concluded that it is appropriate to leave it to state regulatory authorities to deal with any stranded costs occasioned by retail wheeling. The circumstances under which we will entertain requests to recover stranded costs caused by retail wheeling are when the state regulatory authority does not have authority under state law to address stranded costs at the time the retail wheeling is required. We continue to believe that utilities are entitled, from both a legal and policy perspective, to an opportunity to recover all of their prudently incurred costs. In addition, as discussed further below, we believe the Commission should be the primary forum for addressing recovery of stranded costs caused by retail-turned-wholesale customers.

With regard to stranded costs caused by retail wheeling, we emphasize that we will not allow states to use the interstate transmission grid as a vehicle for passing through any retail stranded costs, with the limited exception discussed above. Only if the state regulatory authority does not have authority under state law at the time the retail wheeling is required to resolve the retail stranded cost issue will we permit a utility to seek a customer-specific surcharge to be added to an unbundled transmission rate. We have accepted the view that stranded costs caused by retail wheeling are primarily a matter of local or state concern. Thus, these costs generally must be passed through in a manner that does not involve "transmission of electric energy in interstate commerce" as that phrase is used in the FPA. We are proposing to prohibit the pass-through of these costs on interstate transmission facilities except in the limited circumstance described. As discussed in section III.F.1.c(11), we believe that most states have a number of mechanisms for addressing stranded costs caused by retail wheeling, as well as retail-turned-wholesale customers. In addition, as further discussed in section III.F.1.c(12), we are proposing to define "facilities used in local distribution" under section 201(b)(1) of the FPA. Rates for services using such facilities to make a retail sale are state-jurisdictional. States therefore will be free to impose stranded costs caused by retail wheeling on facilities or services used in local distribution.

At this juncture, the Commission is comfortable with this approach and our hope is that a federal forum for recovery of retail stranded costs ultimately will not be necessary. When states address retail stranded costs caused by retail wheeling, the Commission holds the strong expectation that states will provide procedures for, and the full recovery of, legitimate and verifiable stranded costs. This is the same standard we set out for wholesale stranded costs. We do so as part of our goal to assure a smooth and orderly industry transition to competition that is fair to all affected parties. In this proposal we also set out procedures that all parties can use to seek equitable treatment of stranded cost recovery. Again, we expect a state providing for direct access to provide similar procedures. We know that states are aware and concerned about the impacts of providing direct access as shown by many state comments. Based on this awareness and concern, we anticipate state approaches to retail stranded costs not unlike our approach to wholesale stranded costs. Although our hope is that a federal forum will not be necessary, we will watch with interest the states' efforts to address the retail stranded cost problem.

We believe this approach represents an appropriate balance between federal and state interests. It ensures that the wholesale market, except in a narrow circumstance, will not be burdened by retail costs. It also helps to ensure that one state will not be able to burden customers in another state with stranded costs due to retail wheeling.

We have a different view with regard to stranded costs caused by retail-turned-wholesale customers. If a retail customer becomes a legitimate wholesale customer, *e.g.*, through municipalization, it would thereby become eligible to use the non-discriminatory open access tariffs we are proposing to require public utilities to provide. If costs are stranded as a result of this wholesale transmission access, we believe that these costs should be viewed as "wholesale stranded costs." But for the ability of the new wholesale entity to reach another generation supplier through the FERC-filed open access transmission tariff, such costs would not be stranded. While the stranded costs likely would derive primarily from generation investments that previously were in retail rate base, we note that utilities generally build generating facilities and incur other costs to serve their entire load, both retail and wholesale. We believe that costs stranded by the departure of a retail-turned-wholesale customer could and should be considered FERC-jurisdictional stranded costs once the new wholesale customer begins taking wholesale transmission services. They are identifiable economic costs that were incurred by the jurisdictional transmitting utility, and they do not disappear simply because the identity of the customer changes from retail to wholesale. There is a clear nexus between the FERC-jurisdictional transmission and the exposure to non-recovery of prudently incurred costs. Accordingly, we believe this Commission should be the primary forum for addressing recovery of such costs. To avoid forum shopping and duplicative litigation of the issue, we expect parties to raise claims before this Commission in the first instance.

To implement this policy, we propose to change the definition of "wholesale stranded costs" that was contained in the initial NOPR, and to propose a definition that includes stranded costs resulting from unbundled wholesale transmission for newly created wholesale customers. We seek comment on this proposed change.

We propose to require the same evidentiary demonstration for recovery of stranded costs from a retail-turned-wholesale customer or a retail customer that obtains retail wheeling as that required when wholesale requirements customers leave a utility's system. In this regard, we no longer propose to adopt the proposal in the initial NOPR that the "reasonable expectation" test should not apply in the case of retail-turned-wholesale customers or retail customers that obtain retail wheeling.[296] We propose that the utility must demonstrate that it incurred stranded costs based on a reasonable expectation that the customers would continue to receive bundled retail service. We expect that the reasonable expectation test would be easily met in those instances in which state law awards exclusive service territories and imposes a mandatory obligation to serve.[297] We solicit comments on this proposed change.

We reaffirm our proposal in the initial NOPR that utilities will have to make an evidentiary showing that the stranded costs are not more than the net revenues that retail-turned-wholesale customers or retail customers that obtain retail wheeling would have contributed to the utility had they remained retail customers of the utility, and that it has taken and will take reasonable steps to mitigate stranded costs. If the state has permitted any recovery from departing retail-turned-wholesale customers, we will deduct that amount from what we determine to be legitimate stranded costs for which we will allow recovery.

The procedures that we propose for a wholesale customer to file with the public utility when it requests computation of its stranded cost exposure will apply with equal force to a retail customer contemplating becoming a wholesale transmission customer (*e.g.*, through municipalization). In particular:

(1) Such a retail customer or group of customers may, at any time, request the public utility to either: (i) Calculate its maximum possible stranded cost exposure without mitigation, as of the date set forth in the customer's request; or (ii) provide the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation, to enable the customer to assess whether to become a wholesale transmission customer. The customer should specify in its request, to the extent possible, the date on which the customer would become a wholesale transmission customer of the utility and the amount of generation, if any, it will continue to purchase from its existing supplier. The customer may seek further information on how the stranded cost charge would vary as a result of choosing different dates or different amounts of substitute purchases. The customer also should indicate its preferred payment method(s) (*e.g.*, a monthly or annual adder to its transmission rate or an up-front lump-sum payment).

(2) The utility shall, within thirty days of receipt of the request, or other mutually agreed upon period, provide to the customer: (i) The customer's maximum possible stranded cost exposure without mitigation; or (ii) the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation. The utility's response should indicate the period over which the utility proposes to charge the departing customer. There should be appropriate support for each element in the calculation or formula to enable the customer to understand the basis for the element. The utility should provide a detailed rationale for its proposal as to how long the utility reasonably expected to keep the customer. The utility also should address how it intends to mitigate stranded costs.

(3) If the customer believes that the utility has failed to establish that it had a reasonable expectation of continuing to serve the customer or that the proposed maximum stranded cost charge without mitigation (or formula) is unreasonable, it will have thirty days in which to respond to the utility explaining why it disagrees with the charge. The parties should then attempt to reach a mutually-agreeable charge for stranded costs within a reasonable period.

(4) If the parties are unable to resolve the matter pursuant to the procedures specified in (1)–(3) above, the customer may either: (a) File a complaint with the Commission under section 206 of the FPA to seek a Commission determination whether the utility has met the reasonable expectation standard and, if so, whether the proposed maximum stranded cost charge (or formula) satisfies the other evidentiary standards set forth in this rule;[298] or (b) wait until the proposed stranded cost charge is filed under section 205 of the FPA, and contest it at that time. In either case, *i.e.*, a section 205 or 206 proceeding, the utility would only be able to seek stranded cost recovery according to the formula and other terms identified in its earlier discussions with the customer.

(11) State Mechanisms to Address Stranded Costs Caused By Retail Wheeling. The initial NOPR set forth a number of mechanisms that the Commission believes states can use to address stranded costs caused by retail wheeling and retail-turned-wholesale customers. We suggested that a state that permits a retail franchise customer to become a wholesale entity may consider whether to impose an exit fee prior to, or as a condition of, creating the wholesale entity.[299] We also suggested that a state may consider whether to require payment of an exit fee prior to a franchise customer being permitted to obtain unbundled retail wheeling. We noted that, in situations in which local distribution facilities are used by a retail wheeling customer, the state may consider whether to allow recovery of stranded costs through rates for local distribution services. Further, if a state decides not to impose an exit fee, or a surcharge through distribution rates, it may consider whether to allow recovery of stranded costs from remaining retail customers or whether shareholders should bear all or part of those costs.

We further suggested the possibility that state condemnation proceedings will provide a forum for a utility to seek recovery of any stranded costs where a new wholesale entity obtains ownership or control of a franchise utility's transmission or distribution facilities. The Commission solicited comments on other mechanisms that states can use to determine whether to allow stranded cost recovery, and from whom to allow recovery, and whether those mechanisms are adequate to deal with retail stranded costs.

(a) Comments. We note, as an initial matter, that many of the state commission commenters did not specifically respond to our questions concerning mechanisms available to the states for addressing stranded costs. Those that did, such as NARUC, the Texas Commission and the Vermont Department, however, agree that the states have a variety of mechanisms available to deal with stranded costs. In addition to the mechanisms that we identified in the initial NOPR (*i.e.*, imposing an exit fee prior to, or as a condition of, creating the wholesale entity; requiring an exit fee before a franchise customer is permitted to obtain unbundled retail wheeling; imposing a surcharge on local distribution rates; or state condemnation proceedings), these commenters identified the following: (1) Avoiding stranded costs in the first instance by seeking to preserve the integrity of the

[296] Stranded Cost NOPR at 32,879.

[297] We note, however, that certain states do not have service territories or have non-exclusive service territories (*e.g.*, Louisiana).

[298] If a complaint is filed, neither the customer nor the utility could raise issues not identified in their earlier discussions.

[299] Stranded Cost NOPR at 32,878.

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utility's franchised service territory;[300] (2) seeking to reduce the burden of uneconomic costs through accelerated depreciation, revaluing of assets, or adjusting returns during the transition period; (3) allowing utilities to charge discounted rates (*i.e.*, below embedded cost but above marginal cost) or reforming retail rates through new rate methodologies such as performance-based pricing or price caps; (4) charging access fees to generating entities seeking to enter retail markets; (5) adopting tax-based solutions, such as credits or deductions; (6) requiring utility write-offs of uneconomic costs; (7) establishing a stranded cost recovery fund to be funded through a broad-based surcharge or a tax on retail market participants; (8) encouraging research and development of more efficient end-use electrical technologies; and (9) not guaranteeing service to a departing customer that seeks to resume retail service if capacity is unavailable when the customer seeks to return. NARUC suggests that these options are not mutually-exclusive, but instead could be used in combination with others depending on the particular circumstances.

In response to our question whether these mechanisms are adequate to deal with retail stranded costs, NARUC submits that the states have adequate legal authority to impose any existing regulatory mechanisms or to enact new mechanisms that may be needed to address stranded cost issues. NARUC further states that whether these mechanisms are adequate to provide utilities firm assurance that stranded costs will be recovered is not relevant to the Commission's inquiry. It argues that whether a utility in a particular case recovers all or part of what it identifies as stranded retail costs should be a fact-based determination made by the appropriate state commission(s).

(b) Preliminary Findings. We are satisfied that the states do have a number of mechanisms available to them to address stranded costs that result from retail customers who obtain retail wheeling, in order to reach a different generation supplier.[301] We encourage the states to use the mechanisms available to them in whatever way they deem appropriate to address stranded costs.

(12) Commission Authority to Regulate Transmission Rates, Terms, and Conditions for Unbundled Retail Transactions and Definition of State Jurisdictional Local Distribution. In the NOPR, the Commission stated that it has exclusive jurisdiction over the rates, terms and conditions of unbundled retail interstate transmission services. We based our conclusion in that regard on the plain meaning of the FPA and noted that there is nothing in the statute, the legislative history, or the case law to indicate that the Commission's jurisdiction over the rates, terms and conditions of transmission in interstate commerce extends only to wholesale transmission and not to retail transmission.[302] In the initial NOPR, we left open the question of the jurisdictional line between Commission- jurisdictional "transmission" and state-jurisdictional "local distribution." However, as discussed, we believe it is appropriate to set forth our views in this document on the demarcation of our respective authorities in this regard.

(a) Comments. Some commenters note that the Commission's authority to regulate sales for resale and transmission of electric energy in interstate commerce is premised on Congressional intent to fill the "Attleboro gap." These commenters note that Congress enacted the FPA to complement, not diminish, state authority. In light of this complementary jurisdictional posture, several commenters believe the Commission must explain how an unbundled retail sale is different from a bundled retail sale, which state commissions have regulated and will continue to regulate.

Various non-investor-owned utility commenters, including the Illinois Commission and NASUCA, maintain that the Commission does not have jurisdiction over transmission service for an unbundled retail transaction. NARUC maintains that the issue is, at the very least, unsettled. Therefore, before addressing the question of whether and how the Commission has jurisdiction over retail stranded costs, these commenters argue that the Commission should first re-examine whether its jurisdictional premise is correct, or simply convenient. Investor-owned utility commenters, on the other hand, generally concur with the conclusions in the NOPR regarding Commission jurisdiction.

The Illinois Commission maintains that this Commission's jurisdiction extends only to the transmission of electricity between utility systems. It fails to see how "unbundling" of generation service from transmission/distribution services, in order to effectuate "retail wheeling," changes the basic intrastate nature of such services. The Illinois Commission states that if unbundled retail transmission is within the scope of federal jurisdiction, then one may question why the retail transmission portion of bundled services would not also be subject to Commission jurisdiction. It maintains that there is no legal or policy foundation supporting Commission jurisdiction over either bundled or unbundled retail electric services.

The Illinois Commission further argues that the case law relied upon in the NOPR fails to establish that the Commission has retail wheeling ratemaking authority. The Illinois Commission contends that each of the cases cited by the Commission (as well as the FPA itself) all predate the issues of retail wheeling and retail stranded costs. Thus, according to the Illinois Commission, the courts have never contemplated retail wheeling or the effects that retail wheeling would have in terms of stranded costs for public utilities or transmission carriers. The Illinois Commission argues that, because section 201(a) of the FPA prohibits infringement of Federal regulation on matters subject to regulation by the states and because states currently regulate bundled retail transmission, the Commission is necessarily precluded by the FPA from regulating retail transmission.

The Illinois Commission notes that under the Natural Gas Act, the states, and not the Commission, determine the rates, terms, and conditions of unbundled retail transportation services provided by local distribution companies. The Illinois Commission recommends that the Commission apply to the electric industry the same policy that it has adopted concerning its regulation of the gas industry and leave unbundled retail service regulation to state authorities.

Notwithstanding the jurisdictional debate, other state commission commenters such as the Ohio Commission contend that Commission assertion of jurisdiction may chill state willingness to undertake competitive reform at a retail level.[303] These

[300] The Texas Commission suggests, for example, that a state might limit certain forms of retail competition, such as retail wheeling or multiple certification in utility service areas.

[301] As discussed above, we have determined that we will address stranded costs caused by retail-turned-wholesale customers.

[302] Stranded Cost NOPR at 32,876–77.

[303] The Ohio Commission proposes a model for drawing the line of demarcation between federal and state jurisdiction whereby the states would have rate jurisdiction over the wheeling-in portion of unbundled retail service (*i.e.*, the point at which retail power enters the system of the last entity who redelivers the power to the end-use customer) and this Commission would retain jurisdiction over the wheeling-out and wheeling-through portions of a transaction. It contends that retention of jurisdiction over a portion of wheeling is necessary for states to be able to assess retail stranded costs.

commenters further contend that Commission intervention in retail ratemaking will undermine a state's ability to address retail issues without being "second guessed." Commenters view this regulatory uncertainty as an unwarranted and unnecessary result of the Commission's purported invalid assumption of jurisdiction.

(b) Commission Ruling. We reaffirm our legal conclusion that the Commission has jurisdiction over the rates, terms and conditions of unbundled interstate transmission services by public utilities to retail customers, and that we have the authority to address retail stranded costs through our jurisdiction over such services.

However, we also believe the States have authority to address retail stranded costs through their jurisdiction over facilities used in local distribution.[304] It is therefore important to define what we believe to be the legal demarcation between "transmission in interstate commerce" and "local distribution," as used in the FPA. In addition, this demarcation is important because of the consequences it will have for the public utility facilities that will be affected by the open access requirements being proposed. We set forth below our jurisdictional analysis, and technical factors, for determining what constitutes "facilities used in local distribution."

(13) Stranded Costs in the Context of Voluntary Restructuring. As we note in the Open Access NOPR, the functional unbundling of wholesale services that we are proposing does not require corporate unbundling (disposition of assets to a non-affiliate, or establishing a separate corporate affiliate to manage a utility's transmission assets) in any form. At the same time, we recognize that some utilities may ultimately choose such a course of action. The Commission is willing to consider case-specific proposals for dealing with stranded costs in the context of any restructuring proceedings that may be instituted by individual utilities.

G. Transmission/Local Distribution

In light of the proposals in both the Open Access NOPR and the Stranded Cost Supplemental NOPR, the Commission believes it is important to express its views on the distinction between Commission-jurisdictional transmission in interstate commerce, and state-jurisdictional local distribution, in the context of unbundled wheeling by public utilities.[305] The distinction is important for three reasons. First, facilities that can be used for wholesale transmission in interstate commerce would be subject to the Commission's open access requirements. It is important that public utilities and their customers have a good understanding of which facilities will be subject to such requirements. Such understanding will be crucial to appropriate planning as we enter into the competitive regime. It is also important that utilities not be able to shield themselves from the Commission's open access requirements by claiming that the facilities necessary to deliver power to a wholesale purchaser are non-jurisdictional "local distribution" facilities.

Second, as discussed *supra*, states may, through their jurisdiction over facilities used in local distribution, impose a surcharge on local distribution that will permit recovery of stranded costs resulting from retail wheeling or retail-turned-wholesale customers. Providing guidance on the demarcation between transmission and local distribution should assure States that they have the ability to assess stranded costs on the departing customers. This should result in more realistic economic evaluations by retail customers contemplating leaving via retail wheeling and/or municipalization.

Third, as the structure of the electric industry continues to change dramatically, particularly with the wide availability of unbundled wholesale (and perhaps retail) services to deliver power and the potential for various forms of voluntary corporate unbundling, utilities need to know which regulator has jurisdiction over which facilities in order to meet State and Federal statutory filing requirements.

Two specific circumstances are addressed:

First, what facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier to a purchaser who will then re-sell the energy to an end user?

Second, what facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier directly to an end user?

Based on an analysis of the relevant legislative history and case law under the FPA, the Commission reaches the following conclusions. With respect to the first circumstance, the Commission concludes that a public utility's facilities used to deliver electric energy to a wholesale purchaser, whether labeled "transmission," "distribution," or "local distribution" are subject to the Commission's exclusive jurisdiction under sections 205 and 206, and that a public utility's facilities used to deliver electric energy from the wholesale purchaser to the ultimate consumer are "local distribution" facilities subject to the rate jurisdiction of the state.[306]

With respect to the second circumstance, the Commission believes that, based on the particular facts of the case, some of the public utility's facilities used to deliver electric energy to an end-user may be FERC-jurisdictional transmission facilities, while some of the facilities used may be state-jurisdictional local distribution facilities.

We set forth below the relevant legislative history and case law, our legal conclusions, and the factors which we believe are indicative of whether facilities are used in "local distribution" or "transmission in interstate commerce," as those terms are used in the FPA.

1. Relevant Federal Power Act (FPA) Provisions

The Commission's jurisdiction is set forth in section 201 of the FPA.[307] Section 201(b)(1) provides in pertinent part:

> The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce * * *. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction * * * over *facilities used in local distribution* or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.[308]

Section 201(c) provides that:

[304] States also have the authority to address so-called "stranded benefits" (*e.g.*, environmental benefits associated with conservation, load management and other DSM programs) through their jurisdiction over local distribution.

[305] The term "wheeling" is intended to cover any delivery of electric energy from a supplier to a purchaser, *i.e.*, transmission, distribution, and/or local distribution. The Commission also has jurisdiction to order wholesale transmission services in either interstate or intrastate commerce by transmitting utilities that are not also public utilities. See *Tex La Electric Cooperative of Texas, Inc.*, 67 FERC ¶ 61,019 (1994), *reh'g pending.*

[306] There are, of course, facilities that are used to provide delivery to both wholesale purchasers and end users. In those situations, we believe that the Commission and the States have jurisdiction to set rates for the services that are within their respective jurisdictions. That facilities are used to serve resale and retail customers does not, however, necessarily mean that the facilities are local distribution facilities.

[307] 16 U.S.C. 824.

[308] 16 U.S.C. 824(b) (emphasis added).

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electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.[309]

Some of the court decisions that construe jurisdictional facilities under section 201 also construe the Commission's jurisdiction under section 203. Section 203(a) provides, in relevant part:

No public utility shall sell, lease, or otherwise dispose of the whole of its *facilities subject to the jurisdiction of the Commission*, * * * or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person * * * without first having secured an order of the Commission to do so.[310]

In addition, section 206(d) concerns facilities "under the jurisdiction of the Commission":

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of *facilities under the jurisdiction of the Commission* in cases where the Commission has no authority to establish a rate governing the sale of such energy.[311]

2. Legislative History of the FPA

The relevant legislative history of the general purposes of Title II of the FPA, and of section 201 in particular, focuses primarily on bundled sales of electric energy and does not directly address the issue of what constitutes local distribution as opposed to transmission in interstate commerce.

In discussing the general purposes of Title II of the House bill, the House Report states:

Title II * * * establishes for the first time regulation of electric utility companies transmitting energy in interstate commerce.

* * * * *

* * * Under the decision of the Supreme Court of the United States in *Public Utilities Commission* v. *Attleboro Steam & E. Co.* (273 U.S. 83 [(1927)]) [(*Attleboro*)], the rates charged in interstate wholesale transactions may not be regulated by the States. Part II gives the Federal Power Commission jurisdiction to regulate these rates. A "wholesale" transaction is defined to mean the sale of electric energy for resale and the Commission is given no jurisdiction over local rates even where the electric energy moves in interstate commerce.[312]

In its analysis of section 201, the House Report states:

As in the Senate bill no jurisdiction is given over local distribution of electric energy, and the authority of States to fix local rates is not disturbed even in those cases where the energy is brought in from another State.[313]

The Senate Report's discussion of the general purposes of the FPA states:

The decision of the Supreme Court in [*Attleboro*] placed the interstate wholesale transactions of the electric utilities entirely beyond the reach of the States. Other features of this interstate utility business are equally immune from State control either legally or practically.[314]

In discussing material differences between the final version of the Senate bill and the original version, the Senate Report states:

Subsection (b), formerly (a), which states the subject matter to which the part relates, has been clarified to make plain that it includes interstate transmission where there is no sale and excludes all facilities used only for production of transmission in intrastate commerce or in local distribution.[315]

In discussing section 201 of the Senate bill, the Senate Report further states:

The rate-making powers of the Commission are confined to those wholesale transactions which the Supreme Court held in [*Attleboro*] to be beyond the reach of the States. Jurisdiction is asserted also over all interstate transmission lines whether or not there is sale of the energy carried by those lines and over the generating facilities which produce energy for interstate transmission and sale. It is obvious that no steps can be taken to secure the planned coordination of this industry on a regional scale unless all of the facilities, other than those used solely for retail distribution, are made subject to the jurisdiction of the Commission. Facilities used only for intrastate commerce or local distribution are expressly excluded from the operation of the act.[316]

The Conference Report adds little description regarding jurisdictional facilities. In reference to section 201(b) it states that:

[T]he language of the House amendment has been followed with a clarifying phrase added to remove any doubt as to the Commission's jurisdiction over facilities used for the generation and local distribution of electric energy to the extent provided in other sections of this part and the part next following.[317]

In addition to the above statements pertaining to section 201 of the FPA, Congress referenced distribution of energy in the legislative history of section 206(d). Section 206(d) was originally enacted as section 206(b) of the FPA. Under the Regulatory Fairness Act of 1988,[318] section 206(b) was redesignated as section 206(d).

The Conference Report on the original FPA does not address section 206(b). The Senate Report on the FPA bill states in pertinent part:

Subsection (b) authorizes the Commission to investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy * * *. Since the rate-making powers granted to the Commission apply only to the wholesale rates of energy sold in interstate commerce, this last subsection should be of great benefit in removing the practical difficulty which the States may encounter in regulating the *interstate distribution rates* which are left under their control. Such rate regulation involves the examination and valuation of property *outside* the State. The task is one requiring an agency with a jurisdiction broader than that of a single State. The authority of the Federal Commission is to render assistance to the State commissions in a way which would preserve and make more effective the jurisdiction which is thus left to the States.[319]

The House Report discusses section 206(b) as follows:

This subsection reaches those situations where electric energy is transmitted in interstate commerce *by the same company which distributes it locally*, and will greatly aid State commissions in fixing reasonable rates in such cases.[320]

Thus, the discussions in the two reports do not appear to contemplate a situation in which the transmitter and seller of electric energy are different, and neither is a "local" distributor. The House Report expressly refers to the same company being the transmitter and seller of electric energy. The Senate Report by its terms addresses the regulation of interstate distribution rates.[321]

[309] 16 U.S.C. 824(c).

[310] 16 U.S.C. 824b (emphasis added).

[311] 16 U.S.C. 824e(d) (emphasis added).

[312] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 7–8 (1935).

[313] *Id.* at 27.

[314] S. Rep. No. 621, 74th Cong., 1st Sess. at 17 (1935). See *id.* at 18 ("The revision [between the original and final versions of the Senate bill] has also removed every encroachment upon the authority of the States. The revised bill would impose Federal regulation only over those matters which cannot effectively be controlled by the States.")

[315] *Id.* at 19.

[316] *Id.* at 48. The provisions of the Senate bill regarding federal jurisdiction over generating facilities were eliminated from the final version of the bill.

[317] H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 74 (1935).

[318] Pub. L. 100–473, 102 Stat. 2299 (1988).

[319] S. Rep. No. 621, 74th Cong., 1st Sess. 51 (1935) (emphasis added).

[320] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 29 (1935) (emphasis added).

[321] The Senate Report states that interstate distribution rates are left in the States' control. Obviously, the Senate drew a distinction between interstate distribution (left in the States' control) and interstate transmission (given to the FPC). *Compare* S. Rep. No. 621 at 49 with H.R. Rep. No. 1318 at 51.

The above legislative history on sections 201 and 206(b) does not provide any definitive answers to the questions raised. We therefore turn to the case law under the FPA.

3. Case Law under the FPA

Jersey Central Power & Light Company v. *Federal Power Commission (Jersey Central)*[322] was the first of the major FPC jurisdictional cases considered by the Supreme Court. The case involved the acquisition by New Jersey Power and Light Company (New Jersey Power) of certain securities of Jersey Central Power & Light Company (Jersey Central) without the Commission's prior approval. The question before the Court was whether Jersey Central was a "public utility" under section 201(e)[323] of the FPA so that the Commission's prior approval of the stock acquisition was necessary under section 203 of the FPA.

Jersey Central owned transmission facilities that connected to facilities that Public Service Electric & Gas Company (Public Service) owned. The interconnection of these transmission facilities was in New Jersey. Public Service's facilities in turn connected to the facilities of the Staten Island Edison Corporation (Staten Island Edison), a New York utility, at the mid-channel of Kill van Kull, a body of water separating New Jersey and New York. Jersey Central delivered energy to and received energy from Public Service under contract, and Public Service delivered energy to and received energy from Staten Island Edison under contract.[324]

The Court found that, although Jersey Central generated and received electricity only in New Jersey, some of the electric energy that it dispatched to Public Service "was instantaneously transmitted to New York."[325] The Court held that "[t]his evidence * * * furnishes substantial basis for the conclusion of the Commission that facilities of Jersey Central are utilized for the transmission of electric energy across state lines."[326] Therefore, the Court found that Jersey Central was a public utility within the meaning of section 201(e).[327] The

The Court cited *Attleboro*, in which the Court found that the sale of locally produced electric energy for use in another state resulted in the transmission of electric energy in interstate commerce, even though title passed at the state line.[328] In *Jersey Central*, the Court explained the rationale for federal jurisdiction as follows:

[Section 201(c) of the FPA] defines the electric energy in commerce as that "transmitted from a State and consumed at any point outside thereof." There was no change in this definition in the various drafts of the bill. The definition was used to "lend precision to the scope of the bill." It is impossible for us to conclude that this definition means less than it says. * * * The purpose of this act was primarily to regulate the rates and charges of the interstate energy.[329]

The Court in *Jersey Central* thus interpreted the FPA as placing within the federal province regulation of wholesale sales of electric energy that, in any manner, flows in interstate commerce. The language quoted above and the citation to section 201(c) of the FPA, to be relied upon in subsequent Supreme Court cases, strongly suggested that the Commission's jurisdiction was not based on whether there was a sale by the utility, but rather on the flow of electric energy either into or out of a state, so long as the energy crosses state lines.

Connecticut Light & Power Company v. *Federal Power Commission (CL&P)*,[330] which was decided two years after *Jersey Central*, is the leading case interpreting the section 201(b) local distribution proviso. In *CL&P*, the Commission sought to regulate the accounting practices of Connecticut Light & Power Company (*CL&P*).[331] At issue was whether *CL&P* was a "public utility" under the FPA. The utility's system encompassed an area solely within a single state (Connecticut)[332] and did not interconnect with any other company that operated out of state.[333] "Its purchases and sales, its receipts and deliveries of power, [were] all within the state."[334] However, CL&P did purchase energy from companies that had, in turn, purchased energy from Massachusetts. The company also sold energy to a municipality that exported a portion of that energy to Fishers Island, located off the coast of Connecticut but "territory of New York."[335] The Commission based its jurisdiction on these few transactions.[336]

The Court of Appeals affirmed the Commission, holding that the Commission's jurisdiction extended to "electric distribution systems which normally would operate as interstate businesses." The Court of Appeals found that:

whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as "local" is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, "local" or otherwise, are used for the transmission of electric energy from a point in one state to a point in another.[337]

The Supreme Court reversed. It held that the statutory language in section 201(b) of the FPA providing that the Commission "shall not have jurisdiction * * * over facilities used in local distribution" is a limitation upon Commission jurisdiction that "the Commission must observe and the courts must enforce."[338] In analyzing the statute, the Court stated:

It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line.

* * * * *

But whatever reason or combination of reasons led Congress to put the provision in the Act, we think it meant what it said by the words "but shall not have jurisdiction * * * over facilities used in local distribution." Congress by these terms plainly was trying to reconcile the claims of federal and local authorities and to apportion federal and state jurisdiction over the industry.[339]

The Court decided that this limitation on jurisdiction was "a legal standard that must be given effect in this case in addition to the technological transmission test."[340]

The Court stated that whether or not local distribution facilities carried out-of-state electric energy was irrelevant. Whatever the origin of the electric energy they carried, so long as the utility used the lines for local

[322] 319 U.S. 61 (1943) (*Jersey Central*).

[323] Section 201(e) defines a "public utility" as "any person who owns or operates facilities subject to the jurisdiction under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212)." 16 U.S.C. 824(e). The section as adopted in 1935 did not contain the parenthetical, which was adopted in 1978 as part of the Public Utility Regulatory Policies Act.

[324] *Jersey Central*, 319 U.S. at 63–65.

[325] *Id.* at 66.

[326] *Id.* at 67 (citation omitted).

[327] *Id.* at 73.

[328] 273 U.S. at 86, 89–90.

[329] 319 U.S. at 71 (footnote omitted).

[330] 324 U.S. 515 (1945) (*CL&P*).

[331] *Id.* at 517.

[332] *Id.* at 518.

[333] *Id.* at 521.

[334] *Id.* at 522.

[335] *Id.* at 519–21.

[336] *Id.*

[337] *Id.* at 522, quoting *Connecticut Light & Power Co.* v. *FPC*, 141 F.2d 14, 18 (D.C. Cir. 1944).

[338] 324 U.S. at 529.

[339] *Id.* at 529–31.

[340] *Id.* at 531.

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distribution,[341] they were exempt from federal jurisdiction. [342] In fact, the Court stated that local distribution facilities "may carry no energy except extra-state energy and still be exempt under the Act." *Id.* at 531. The Court concluded that the Commission's order:

> Must stand or fall on whether this company owned facilities that were used in transmission of interstate power and which were not facilities used in local distribution.[343]

Upon reversing the Court of Appeals, the Court commented, in dictum, on the evidence the Commission had relied upon in finding that the facilities in question were used for transmission. It noted that the Commission had relied upon certain gas transportation cases in concluding that transmission extends from the generator to the point where the function of conveyance in bulk over distance is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of "local distribution," is begun. The Court cautioned:

> But a holding that distributing gas at low pressure to consumers is a local business is not a holding that the process of reducing it from high to low pressure is not also part of such local business. In so far as the Commission found in these cases a rule of law which excluded from the business of local distribution the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers, the Commission has misread the decisions of this Court. No such rule of law has been laid down.[344]

The Court also noted in its dictum, however, that once a company is properly found to be a "public utility" under the Act, the fact that a local commission may also have jurisdiction does not preclude exercise of the Commission's functions. *Id.* at 533.[345]

[341] It appears that while the Company received power (at one location) at 66 kV, it primarily owned facilities at 13.8 kV and below.

[342] 324 U.S. at 531.

[343] *Id.* at 531 (emphasis added).

[344] *Id.* at 534.

[345] See *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, 316 (1953) (Public Utilities Commission):

> Certainly the concrete fact of resale of some portion of the electricity transmitted from a state to a point outside thereof invokes federal jurisdiction at the outset, despite the fact that the power thus used traveled along its interstate route "commingled" with other power sold by the same seller and eventually directly consumed by the same purchaser-distributor.

See also *Arkansas Power & Light Co.* v. *FPC*, 368 F.2d 376, 383 (8th Cir. 1966) ("Where a company is in fact a public utility, all wholesale sales for resale in interstate commerce are subject to the provisions of sections 205 and 206 of the [FPA], regardless of the facilities used."). The Eighth Circuit further noted that the section 201(b) exemption applies to a company's status as a public utility and not to the Commission's jurisdiction over sales in interstate commerce for resale. *Id.*, citing *Public Utilities Commission, Colton, infra*, and *Wisconsin-Michigan, infra*.

The Court instructed the lower court to remand the case to the Commission for a finding regarding whether the facilities in question were used in local distribution.[346]

The *CL&P* case was ultimately disposed of without the Commission having made a finding that the facilities were used in local distribution. While the Commission found that it was "extremely doubtful" that it could find that the facilities in question were not local distribution facilities, 6 FPC 104, 106 (1947), the Commission did not articulate a definition of local distribution facilities.

In *Wisconsin-Michigan Power Co.* v. *Federal Power Commission*,[347] the Seventh Circuit held that a utility was a jurisdictional public utility where it operated two divisions in Wisconsin and Michigan in a coordinated manner such that electric energy from one state was transmitted to the other, and vice versa, "in appreciable amounts by the power company and by it commingled with energy generated in the two respective districts and then delivered to the [wholesale] customers.* * *" [348] The court also rejected the notion that the energy changed its form or character when it was stepped down in voltage before it reached the wholesale purchasers.[349]

The court in *Wisconsin-Michigan* distinguished between transmission and local distribution by focusing on wholesale sales of electric energy versus retail sales ("local rates") of electric energy. It cited the House Report on the FPA, and characterized the legislative history as follows:

> The legislative history, [H.R. Rep. No. 1318], 74th Cong., 1st Sess. pages 7, 8 and 27 [(1935)], discloses that the Congressional Committee intended that *the provisions of the [FPA] should apply to the transmission of electric energy in interstate commerce, i.e., the sale of energy at wholesale in interstate commerce, but not to the retail sale of any such energy in local distribution;* that the [FPA] left to the state the authority to fix local rates where the energy is brought in from other states, and that the rate making power of the [FPC] was to be confined to those *wholesale transmissions* which the Supreme Court had held in [*Attleboro*] to be beyond the reach of the state. Under that decision, said the committee, the rates charged in interstate wholesale transactions could not be regulated by the states. It defined a wholesale transaction as the sale of electric energy for resale.[350]

The Seventh Circuit's characterization of the House Report seems to equate transmission of electric energy in interstate commerce with the sale of energy at wholesale in interstate commerce. However, this interpretation is at odds with both the plain words of the statute as well as the language of the House Report, both of which refer to transmission in interstate commerce separately from sales for resale in interstate commerce.[351] In addition, the Senate Report, which the Seventh Circuit did not mention, clearly recognized jurisdiction over all interstate transmission lines, whether or not a sale of energy is carried by those lines.[352]

The *Wisconsin-Michigan* court also cited analogous natural gas cases, stating that "[t]he question is essentially, when does interstate commerce transportation end and where does the local distribution facilities first become operative."[353] The court further stated that:

> [U]pon delivery to [the wholesaler] local distribution begins when he resells. His sales and distribution at retail are clearly local in character, and constitute only local distribution; but at no point before delivery to him has been completed, has interstate transmission terminated. In other words, "facilities used in local distribution" means facilities used for making resale and distribution to consumers, jurisdiction over which is left to the states. It was only because of this conclusion that the Supreme Court said, [citation omitted], the Act "cut(s) sharply and cleanly between sales for resale and direct sales for consumptive uses." We think there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who resells at retail is reached. [354]

The Seventh Circuit concluded that the sales for resale were made in interstate commerce; that local distribution had not begun; that the interstate character of the transmission persisted until delivery to the wholesaler; that, up to that point, no

[346] 197 F.2d at 476 (emphasis added).

[347] See H.R. Rep. No. 1318 at 27. ("Subsection (b) confers jurisdiction upon the Commission over the transmission of electric energy in interstate commerce and the sale of electric energy in wholesale in interstate commerce* * *" emphasis added).

[348] See S. Rep. No. 621 at 48 ("Jurisdiction is asserted over all interstate transmission lines whether or not there is a sale of the energy carried by those lines * * *").

[349] 197 F.2d at 477.

[350] *Id.*, citing *FPC* v. *East Ohio Gas Co.*, 338 U.S. 464 (1950) (East Ohio).

local distribution facilities were in operation and that, therefore, the sales were subject to Commission regulation.

In *Federal Power Commission* v. *Southern California Edison Company* (the *Colton* case),[355] the Supreme Court held that the FPA provides a clear line of demarcation between jurisdictional transactions and non-jurisdictional transactions. However, this case, too, involved bundled sales of electric energy. In the facts of the case, Southern California Edison Company (Edison) admitted that it was a public utility by virtue of owning two interstate transmission lines.[356] At issue was whether its sales of electric energy to the City of Colton, California, for resale to Colton's retail customers, were jurisdictional. Included in the electric energy that Edison sold to Colton was out-of-state electric energy from Hoover Dam.[357] The Commission ruled that the sale to Colton was a sale of electric energy at wholesale in interstate commerce subject to regulation under the FPA.[358] In upholding the Commission, the Court held that Edison's importation of out-of-state electricity for resale to Colton sufficed to confer Federal jurisdiction.

The Court, citing an earlier Supreme Court case,[359] characterized Congressional intent in the FPA:

> [W]hat Congress did was to adopt the test developed in the *Attleboro* line which denied state power to regulate a sale "at wholesale to local distributing companies" and allowed state regulation of a sale at "local retail rates to ultimate consumers." [360]

The Court rejected the argument that FPC jurisdiction was confined to those interstate wholesale sales constitutionally beyond the power of State regulation by force of the Commerce Clause, and was to be determined on a case-by-case analysis of the impact of state regulation upon the national interest. The Court stated that in the FPA:

> [C]ongress meant to draw a bright-line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis. This was done in the Power Act by making FPC jurisdiction plenary and extend[ed] it to all wholesale sales in interstate commerce except those which Congress has made explicitly subject to regulation by the States. [361]

The Court held that "[t]here is no such exception covering the Edison-Colton sale." [362]

Parties in the Colton case had raised the question of whether jurisdiction over the Colton sale was prevented by the "local distribution" proviso of section 201(b). The Court stated that whether facilities are local distribution facilities is a matter for the Commission to decide in the first instance. Citing *CL&P, supra*, it stated:

> Whether facilities are used in local distribution—although a limitation on FPC jurisdiction and a legal standard that must be given effect in addition to the technological transmission test . . .—involves a question of fact to be decided by the FPC as an original matter. [363]

The Court cited evidentiary support and the Commission's expertise in such matters in upholding the Commission's determination that certain facilities owned by Edison were used exclusively to effect the wholesale sale to Colton and not for local distribution. Such facilities included 12 kV lines that served an industrial customer, several lighted highway signs, a residence and a railroad section house before they reached the transformers in the Colton substation. The FPC had held that those uses prior to the lines reaching the Colton substation did not transform the lines into local distribution facilities.[364]

In *Duke Power Company* v. *Federal Power Commission (Duke)*,[365] the D.C. Circuit held that a public utility's acquisition of facilities used solely in local distribution, and which would continue to be used for local distribution, was beyond the Commission's jurisdiction under section 203. The case involved Duke Power Company's (Duke's) proposed acquisition of facilities owned by Clemson University (Clemson), which were used to distribute electricity off-campus to customers (primarily university personnel) in two South Carolina counties. Clemson purchased the power at wholesale from Duke. No one appeared to contest the conclusion that the 7 miles of distribution line and 418 service connections owned by Clemson were "local distribution" facilities.[366] Rather, the case turned on interpreting section 203 and whether it was intended to affect only acquisitions of jurisdictional facilities, or also to affect acquisitions of non-jurisdictional facilities. In interpreting section 203, however, the D.C. Circuit extensively analyzed and discussed the fundamental jurisdictional lines that Congress drew in section 201.

Citing to the CL&P case, the court in Duke stated:

> The Act, as we have seen, effectuated federal control over the transmission and the sale at wholesale of electric energy in interstate commerce, and established the Commission's regulatory power over public utilities engaging in either of these pursuits.[367]

However, quoting *CL&P*, the court further stated:

> The expression "facilities used in local distribution" is one of relative generality. But as used in this Act it is not a meaningless generality in the light of our history and the structure of our government. We hold the phrase to be a limitation on jurisdiction and a legal standard that must be given effect in this case in addition to the technological transmission test.[368]

The court further rejected the Commission's concept that, in order to determine whether jurisdiction over any particular acquisition existed, the impact of local supervision be measured on a case-by-case basis. Quoting from *Colton*, the court stated:

> [T]his "flexible approach"—involving as it does the consideration, inter alia, of "the effect of the regulation upon the national interest in the commerce"—has been flatly rejected as a technique for resolving jurisdictional conflicts between the Commission and state bodies * * * We think that like the line "[i]t cut sharply and cleanly between sales for resale and direct sales for consumptive uses" to facilitate jurisdictional determinations in rate regulation, "Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis," in distributing regulatory power over the acquisition of facilities.[369]

The court rejected the Commission's argument that jurisdiction over the merger or consolidation of jurisdictional facilities with those of any other "person" under section 203 gave the Commission jurisdiction over Duke's acquisition. The court stated that the FPA reflects a policy "'that matters largely of a local nature, even though

[355] 376 U.S. 205 (1964) (*Colton*).

[356] The Supreme Court noted that Edison's status as a public utility did not decide the question of whether the FPC could assert jurisdiction over the rates for the Edison-Colton sale. *Id.* at 208 n.3.

[357] *Id.* at 208, 209 & n.5.

[358] *Id.* at 208. See *Arkansas Electric Cooperative Corp.* v. *Arkansas Public Service Commission*, 461 U.S. 375, 380 (1983) ("[Colton] held, among other things, that * * * a California utility that received some of its power from out-of-State was subject to Federal and not State regulation in its sales of electricity to a California municipality that resold the bulk of the power to others.").

[359] *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498, 504 (1942).

[360] 376 U.S. at 214.

[361] *Id.* at 215–216.

[362] *Id.* at 216 (footnote omitted).

[363] *Id.* at 210 n.6 (citation omitted).

[364] *Id.* at 210 n.6.

[365] 401 F.2d 930 (D.C. Cir. 1968) (*Duke*).

[366] Duke delivered power to Clemson at a distribution voltage of 4,160 volts. The step-down transformers by which the voltage was reduced, and the substations at which the delivery was effected, were owned by Duke. 401 F.2d at 931, n.8.

[367] 401 F.2d at 938–39 (emphasis added, footnotes omitted).

[368] Id. (footnote omitted).

[369] *Id.* at 949 (footnotes omitted).

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interstate in character, should be handled locally and should receive the consideration of local [officials] familiar with the local conditions in the communities involved."[370]

Federal Power Commission v. *Florida Power & Light Company* [371] is the last major court case to address the Commission's transmission jurisdiction. In this case, the Commission sought to impose its accounting rules upon Florida Power & Light Company (Florida Power & Light). The company's system lay solely within the borders of Florida and did not directly connect with any out-of-state utility.[372] The Commission held that Florida Power & Light did own facilities that transmitted electric energy in interstate commerce, but the Court of Appeals for the Fifth Circuit ruled that the Commission did not have substantial evidence to support its finding.

The Supreme Court reversed. The Supreme Court noted that Florida Power & Light was a member of the Florida Power Pool along with Florida Power Corporation (Florida Power Corp.).[373] In turn, Florida Power Corp. connected with Georgia Power Company (Georgia Power) at a "bus" [374] south of the Georgia-Florida border.[375] Florida Power Corp. regularly exchanged power with Georgia Power.[376] In many instances, Florida Power Corp. transferred power to Florida Power & Light instantly after receiving power from Georgia Power, and transferred power to Georgia Power immediately after receiving power from Florida Power & Light.[377] The Supreme Court found that power commingled in the bus moved across state lines, and concluded that Florida Power & Light engaged in transmission in interstate commerce. The Court held that, to establish jurisdiction, the Commission need only show that "some [Florida Power & Light] power goes out of State."[378] The Court further explained that "[i]f any [Florida Power & Light] power has reached Georgia, or [if Florida Power & Light] makes use of any Georgia power * * * FPC jurisdiction will attach * * *."[379]

There is also a line of cases that address, among other things, what constitutes a Commission jurisdictional "sale of electric energy at wholesale" [380] under section 201 of the FPA.[381] These cases all concerned bundled sales. While the issues posed above involve unbundled wheeling, the "resale" cases are helpful to the extent they suggest that local distribution takes place only after power is subdivided. See, *e.g.*, 345 U.S. at 316 ("the facilities supplied 'local distribution' only after the current was subdivided for individual consumers.").

4. Natural Gas Act

The Natural Gas Act (NGA) was adopted in 1938. Like the FPA, the NGA contains language limiting the Commission's jurisdiction in situations involving local distribution.[382]

Section 1(b) of the NGA provides:

> The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, *but shall not apply* to any other transportation or sale of natural gas or *to the local distribution of natural gas or to the facilities used for such distribution* or to the production or gathering of natural.[383]

There is similarity in many respects between the House and Senate Reports on the FPA and the NGA with respect to the jurisdiction given the Commission. For example, all four reports mention *Attleboro* as placing interstate wholesale transactions beyond the reach of the States. As indicated in the House Report on the NGA, the States could "regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation." (See H.R. Rep. No. 709, 75th Cong., 1st Sess. 1). However, the House and Senate Reports on the NGA contain identical language not found in the reports on the FPA:

> In view of the importance of section 1(b), which states the scope of the act, it seems advisable to comment on certain provisions appearing therein. It will be noted that this subsection of the bill, after affirmatively stating the matters to which the act is to apply, contains a provision specifying what the act is not to apply to, as follows:
>
> But shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> *The quoted words are not actually necessary*, as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission, but similar language was in previous bills, and, rather than invite the contention, however unfounded, that the elimination of the negative language would broaden the scope of the act, the committee has included it in this bill. *That part of the negative declaration stating that the act shall not apply to "the local distribution of natural gas" is surplusage by reason of the fact that distribution is made only to consumers in connection with sales, and since no jurisdiction is given to the Commission to regulate sales to consumers the Commission would have no authority over distribution, whether or not local in character.* (Emphasis added). [384]

As a result of this language it can be argued that Congress considered distribution (and local distribution) only in the context of bundled retail sales of natural gas. In fact, it appears that all of the court cases affirming the states' right to regulate local distribution of gas have involved bundled retail sales. See *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329 (1951) *(Panhandle)*. There the Court, in affirming the State of Michigan's right to regulate an interstate pipeline's proposed bundled retail sales of gas to industrial consumers, noted that the pipeline company proposed to lay pipeline in "the streets and alleys of Detroit" and ignored the local distribution company's request for additional gas to meet the increased needs of the industrial consumers. *Id.* at 333. While the Court based its holding on a state's authority to regulate direct (retail) sales to an end-user, rather than on the basis of the section 1(b) local distribution provision, it also found that the proposed sales were "primarily of local interest" and "emphasized the need for local regulation." *Id.* Two years before *Panhandle*, the Supreme Court issued its decision in *FPC* v. *East Ohio Gas Co.*, 338 U.S. 465 (1949) *(East Ohio)*. East Ohio Gas Company owned and operated a natural gas business wholly within the State of Ohio. The company sold gas only to Ohio customers but most of the gas was transported to Ohio from other states by interstate pipelines. These interstate pipelines connected inside Ohio with East Ohio's large high pressure lines. The gas then was transported over 100 miles through East Ohio's system to its local distribution system. East Ohio argued that it was exempt from Commission jurisdiction because all of its facilities were local distribution.

The Court disagreed, finding the Commission's jurisdiction extends over the transportation of gas in interstate commerce through high-pressure transmission lines and that distribution did not begin until the point where pressure is reduced and gas enters local mains. The Court stated that: "[w]hat Congress must have meant by 'facilities' for 'local distribution' was equipment for distributing gas among customers within a particular local community, not the high-pressure pipelines transporting the gas to the local mains."[385]

The Commission relied in part on *East Ohio's* high pressure/low pressure distinction in a recent NGA section 7 certificate case which authorized construction of facilities to bypass the local distribution company.[386] On appeal, the California Commission argued that under section 1(b) it should at least have "jurisdiction over the 'taps, meters and other tie-in facilities' that link the pipeline to end users."[387] The court disagreed:

> While as a matter of ordinary English 'local distribution' might be understood to encompass any delivery to an end user, that is hardly the only or even more plausible reading. Distribution conjures up receiving a large quantity of some good and parcelling it out among many takers.[388]

After reviewing the report language discussed above, the court also stated:

> Insofar as congressional committees spoke to the matter * * * they appear to have viewed distribution as confined to its parcelling out function and (probably) even more narrowly, to parcelling out *accompanied by* retail sales.[389]

In *Cascade Natural Gas Corporation* v. *FERC, et al. (Cascade)*, the court affirmed the Commission's authorizing an interstate pipeline under section 7 of the NGA "to construct a tap and meter facility that would allow it to deliver natural gas directly to two industrial consumers * * *."[390] To reach the interstate pipeline, the industrials constructed a nine-mile pipeline. Together, the facilities bypassed the local distribution company.[391]

The court rejected arguments that section 1(b) deprived the Commission of jurisdiction holding that:

> "Local distribution," as Congress viewed the term, involves two components: the retail sale of natural gas and its local delivery, normally through a network of branch lines designed to supply local consumers.[392]

5. Analysis

a. What facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier to a purchaser who will then re-sell the energy to an end user? The case law supports the conclusion that any facilities of a public utility used to deliver electric energy in interstate commerce to a wholesale purchaser, whether such facilities are labeled "transmission," "distribution" or "local distribution," are subject to the Commission's jurisdiction under sections 205 and 206.

This conclusion is supported by *Public Utilities Commission, supra*, in which the Supreme Court, in the section of its opinion addressing the section 201(b) local distribution provision, held that local distribution facilities began "only after the current was subdivided for individual consumers."[393] *Wisconsin-Michigan, supra*, in which the Seventh Circuit held that there is no local distribution until the wholesaler who re-sells at retail is reached, is to like effect.

This conclusion, which results in a "functional" line being drawn to determine Commission jurisdiction, is not only consistent with the case law under section 201, but is also consistent with our interpretation of the line drawn under newly amended FPA sections 211 and 212. As long as electric energy is being sold to a legitimate wholesale purchaser, we believe the Commission has jurisdiction under sections 201, 205, and 206 of the FPA over the public utility's facilities used to deliver electric energy to that purchaser.

b. What facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier directly to an end user? In analyzing jurisdiction over unbundled retail wheeling, we believe it is important to distinguish between unbundled wheeling provided by the public utility who previously provided bundled retail service to the end user, and unbundled wheeling provided by other public utilities to the end user. For example, a former bundled retail customer may need unbundled wheeling services from its previous public utility generation supplier, as well as unbundled wheeling from one or more intervening public utilities, in order to reach a distant generation supplier. In this scenario, the Commission believes it would have jurisdiction over all of the facilities used for the unbundled wheeling provided by the intervening public utilities.[394] The more difficult issue is whether some portion of the facilities used to transmit energy from the transmitting utility in closest proximity to the end user (the former supplier of the bundled product) is local distribution facilities. We believe that in most, if not all circumstances, some portion will be local distribution facilities.

The case law is replete with statements that the local distribution provision of section 201 must be given effect. However, the Supreme Court in both *CL&P* and *Colton, supra*, has stated that whether facilities are used in local distribution is a question of fact to be decided by the Commission as an original matter. Thus, there is no clear case law on a "bright line" between transmission and local distribution. In addition, regardless of the details of the chain of delivery services necessary to move electric energy from the generator to the end user, in most cases the last public utility in the chain will use facilities that historically were considered local distribution facilities. Accordingly, unlike the situation involving unbundled wholesale wheeling, for which the case law clearly supports a "functional" test, the Commission believes the case law and practical realities of a changing industry support an analysis of local distribution facilities based on the facilities' functional as well as technical characteristics.

While it would be preferable to draw an absolutely "bright" line (*e.g.*, based on technical characteristics such as voltage), this does not appear to be

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370 *Id.* at 936 (quoting from Hearings on H.R. 5423 before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. 393 (1935) (testimony of then-FPC Commissioner Seavey)).

371 404 U.S. 453, *reh'g denied*, 405 U.S. 948 (1972) (*Florida Power & Light*).

372 404 U.S. at 456.

373 *Id.* at 456.

374 A "bus" is a connector or group of connectors that serves as a common connection for two or more circuits.

375 404 U.S. at 457.

376 *Id.*

377 *Id.* at 457 & n.8.

378 *Id.* at 461. (emphasis omitted).

379 *Id.* at 461 n.10. (emphasis added).

380 *See* Section 201(d), 16 U.S.C. § 824(d) (1988).

381 *Public Utilities Commission, supra* note 345; City of Oakland, *California* v. *FERC*, 754 F.2d 1378 (9th Cir. 1985) (*Oakland*). See also *Alexander* v. *FERC*, 609 F.2d 543 (D.C. Cir. 1979) (*Alexander*).

382 Courts often rely on cases construing the NGA when interpreting the FPA, and vice versa. *E.g.*, *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 n.7 (1981).

383 15 U.S.C. 717(b) (emphasis added).

384 H.R. Rep. No. 709, 75th Cong., 1st Sess. 3 (1937); S. Rep. No. 1162, 75th Cong., 1st Sess. 3 (1937).

385 338 U.S. at 469–70.

386 See Mojave Pipeline Company, 35 FERC ¶ 61,199 (1986), *reh'g denied*, 41 FERC ¶ 61,040 (1987), *reh'g denied*, 42 FERC ¶ 61,351 (1988); *see also* Mojave Pipeline Company, 66 FERC ¶ 61,194 (1994), *reh'g pending*.

387 See *Public Utilities Commission of the State of California* v. *FERC, et al.*, 900 F.2d 269, 273 (D.C. Cir. 1990) (footnote omitted) (*WyCal*).

388 *Id.* at 276.

389 *Id.* (emphasis in original).

390 955 F.2d 1412, 1414 (10th Cir. 1992).

391 Unlike the situation in *WyCal* where the pipeline made direct sales to end users, in *Cascade* the pipeline transported gas purchased from third parties. See Northwest Pipeline Corporation, 51 FERC ¶ 61,289 at 61,909 (1990).

392 *Cascade*, 955 F.2d at 1421.

393 345 U.S. at 316 (footnote omitted).

394 The Commission would not have jurisdiction over the rates for the sale of generation by the distant supplier because the transaction would be a retail sale of electric energy.

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required by the case law and, importantly, would not be a workable approach in all cases because of the variety of circumstances that may arise and because utilities themselves classify facilities differently (*e.g.*, one utility may classify a 69 kV facility as transmission; another may classify it as distribution).

There are several indicators that we propose to evaluate in determining whether particular facilities are transmission or local distribution in the case of vertically integrated transmission and distribution utilities.[395]

- Local distribution facilities are normally in close proximity to retail customers.
- Local distribution facilities are primarily radial in character.
- Power flows into local distribution systems, it rarely, if ever, flows out.
- When power enters a local distribution system, it is not reconsigned or transported on to some other market.
- Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
- Local distribution systems will be of reduced voltage.[396]

In summary, for unbundled wholesale wheeling we will apply a functional test. The only definitive question will be whether the entity to whom the power is delivered is a lawful wholesaler.

For unbundled retail wheeling we will apply a combination functional-technical test that will take into account technical characteristics of the facilities used for the wheeling. In most, if not all, circumstances in this situation, we expect there to be local distribution facilities. To assist states in dealing with stranded costs resulting from retail wheeling, we will make every attempt to expedite a decision if a state requests clarification concerning whether certain facilities are local distribution facilities.

By clarifying the tests the Commission will apply to determine if facilities used to deliver unbundled electric energy are FERC-jurisdictional or state-jurisdictional, we believe we have facilitated the ability of this Commission and, importantly, state commissions to assess legitimate stranded costs to customers who leave their existing suppliers' systems. The application of these tests means that states will be able to address stranded costs by imposing an exit fee on departing retail customers, or including an adder in the retail customers' local distribution rates.

H. Implementation

Because the proposed requirements in the Open Access NOPR are aimed at eliminating undue discrimination in the provision of transmission services in interstate commerce, and at achieving competitive bulk power markets for the benefit of electricity consumers, our preliminary view is that open access tariffs should be in place as soon as possible. Very simply, we would not want to delay a program which we expect to produce significant ratepayer benefits over time. We also would want to provide procedures and guidance for stranded cost recovery as soon as possible in order to complete the transition from a tightly-controlled cost-of-service regulatory regime to the competitive regime we expect in the very near future.

To those ends, we propose implementation procedures that the Commission currently believes will be appropriate for non-discriminatory open access transmission and stranded (transition) cost recovery. These proposed implementation procedures attempt to balance the goals of: Placing good open access tariffs into effect as soon as possible; supporting the transmission pricing flexibility permitted by our Transmission Pricing Policy Statement; and providing for implementation that is administratively feasible for utilities, customers, and the Commission.

With respect to open access, we currently estimate that about 137 public utilities would be required to have on file non-discriminatory open access tariffs if the Commission adopts a final rule.

If the Commission were to employ traditional filing procedures in implementing an open access regime, we could attempt to streamline the process by, for example, relying, where appropriate, on paper hearing procedures and technical conferences and summarily disposing of the maximum number of issues possible. Nevertheless, we would still expect delays (and attendant uncertainty) measured in years.[397] As a result, we propose a two-stage procedure to put in place without delay basic open access tariffs. We believe this procedure will ensure non-discriminatory open access transmission services that would: (1) Satisfy most utilities and customers; and (2) provide a framework for utilities to subsequently submit novel proposals that they believe to be better tailored to their individual circumstances. We request comments on all aspects of the proposed procedure, including the proposed generic tariffs discussed *infra*.

1. Two-Stage Implementation Process

Stage One

The Commission proposes to put into effect (not subject to refund) for every public utility that owns and/or controls transmission facilities, pursuant to section 206 of the FPA, generic tariffs providing network transmission services, firm and non-firm point-to-point transmission services, and ancillary services necessary to effect network and point-to-point service.[398] The Commission proposes to specify the rates, terms, and conditions in the final rule and to put all such tariffs into effect simultaneously on a date certain—12:00 midnight 60 days after the effective date of the final rule.

The proposed network and point-to-point tariffs contained in Appendices B and C establish the minimum terms and conditions which we believe are necessary to eliminate undue discrimination in the transmission of electric energy in interstate commerce. We propose to place these terms and conditions into effect for each affected public utility.

Although the proposed generic tariffs contain the minimum terms and conditions of service that is not unduly discriminatory, they do not contain specific rates. However, section 206(a) of the FPA requires the Commission to fix by order the just and reasonable rate.[399] We therefore propose to establish and set forth in the final rule, for each affected public utility, just and reasonable rates for network service, point-to-point service, and six identified ancillary services. We propose to

[395] In the case of a distribution-only utility, which is franchised by a State or local government and sells only at retail, all of the circuits (and related wires, transformers, towers, and rights of way) which it owns or operates (regardless of voltage) would be local distribution facilities.

[396] The Commission has analyzed utilities' filings required by the Commission's regulations. These filings are made on FERC Form No. 1. While there is no uniform breakpoint between transmission and distribution, it appears that utilities account for facilities operated at greater than 30 kV as transmission and that distribution facilities are usually less than 40 kV.

[397] Such uncertainty could adversely impact on utilities' cost of capital. Moreover, case-by-case implementation would result in a patchwork of open access around the country until the process is complete. This patchwork of conflicting requirements could inhibit the timely transition to competitive markets—a result directly at odds with the objectives of this proceeding.

[398] As noted *infra*, we will address in a separate document the application of the proposed rule to public utilities who have open access proceedings pending before the Commission.

[399] *Electrical District No. 1, et al.* v. *FERC*, 774 F.2d 490 (D.C. Cir. 1985).

establish such rates using the most current Form No. 1 data available for each public utility, and to incorporate them into the generic tariffs for each affected public utility.

While the rates we will calculate using Form No. 1 data will be postage stamp rates, we wish to emphasize that utilities are free in Stage Two to propose immediately and support non-traditional conforming, as well as non-conforming, transmission pricing proposals consistent with the Commission's Transmission Pricing Policy Statement. The proposed calculation of these rates is discussed in detail *infra*.

Customers will be able to rely on existing contracts for transmission service until such contracts expire or are otherwise terminated. While customers will be able to use the generic tariffs and any revised tariffs established in Stage Two for new or additional services, we do not propose to allow customers to seek termination of their existing transmission arrangements in order to use the generic or subsequently revised tariffs, unless such filings are contractually authorized or shown to be in the public interest. Of course, to the extent that such filings are contractually authorized, the Commission must still determine whether the termination of such existing transmission arrangements is just and reasonable, based upon the circumstances presented.

The above procedures would apply to individual public utility open access tariffs. However, many public utilities transact under jurisdictional power pooling agreements. As discussed herein, power pools would have to comply with the non-discrimination requirements of the Open Access NOPR by making power pool transmission services available to all wholesale transmission customers and offering services at rates, terms, and conditions that are not unduly discriminatory. However, power pools raise complex issues and the Commission cannot at this time develop compliance tariffs for power pools. Therefore, we seek comments on how to implement the NOPR for power pools. After we have received comments on this matter, and before a final rule is adopted, we intend to hold technical conferences with power pools to discuss implementation issues. After holding these technical conferences, and taking into account the comments received in the Open Access NOPR proceeding as well as in our pending Notice of Inquiry on Alternative Power Pooling Institutions, we will issue a supplemental order directing compliance for power pools.

Stage Two

The Commission proposes that Stage Two begin 61 days after the date the final rule becomes effective. On and after that date, public utilities may propose changes to the rates, terms, and conditions in the generic tariffs pursuant to section 205 of the FPA and Part 35 of the regulations. In addition, customers and others may file complaints pursuant to section 206 of the FPA seeking changes in the rates, terms, and conditions in the generic tariffs. We note, however, that Stage Two tariffs must contain at least the non-price tariff terms and conditions contained in the *pro forma* tariffs. Moreover, customers (or potential customers) dissatisfied with the generic tariffs may file section 211 applications at any time (*i.e.*, before Stage Two).

We are hopeful that the generic tariffs will initially be acceptable to large numbers of utilities and their customers. Because we expect our Stage One tariffs to be satisfactory for the immediate needs of many transmission providers and customers, we would expect Stage Two proposals to be staggered somewhat, permitting us to process and reach final decisions more quickly on subsequent proposals to revise the generic tariffs.

We propose to require any utility seeking to modify the generic tariffs in Stage Two to file, in addition to the other requirements specified in the regulations, an original and 14 copies of the revised tariffs showing any changes proposed by means of highlighting and striking out. In addition, we propose that the utilities also file two copies of such changes on diskette in ASCII format.

2. Calculations of Stage One Rates

Because most utilities currently use embedded cost pricing for the transmission component of their own power sales and purchases, and because the Commission's Transmission Pricing Policy Statement requires comparability between transmission rates and the transmission pricing component of those power sales and purchases, the Commission proposes to establish rates for the generic tariffs based on embedded cost principles. However, these tariffs will include a provision that allows the transmission provider to file unilateral changes in all rates, terms, and conditions any time after the effective date of the generic tariffs (Stage Two filings). However, as we noted above, the minimally acceptable tariff terms and conditions in Stage Two will be the terms and conditions established in Stage One.

We emphasize that utilities and customers have discretion under the Commission's Transmission Pricing Policy Statement to pursue other types of rate treatments, and that they may file a proposal any time after the generic tariffs become effective. For example, Stage Two filings could include:

- A filing by the public utility under section 205 amending the generic tariff in a limited respect, such as a change in the loss factor, a change in the embedded cost unit charge, implementing an option to charge an incremental cost rate, including opportunity cost, when capacity is constrained, or the addition of another ancillary service.
- A filing by the public utility under section 205 proposing an entirely new rate method such as a zone or distance based transmission rate. The generic tariff would constitute a conforming open access transmission tariff, but revised tariff filings could also include nonconforming proposals.
- A complaint by a customer (or potential customer) under section 206 seeking limited changes to the generic tariff, such as a change in the loss factor, a change in the embedded cost unit charge, or the addition of another ancillary service.
- A complaint by a customer (or potential customer) under section 206 proposing an entirely new rate method.

We expect that, for many transmission providers and customers, the Stage One tariffs will satisfy their immediate needs. For example, a customer might believe that it could demonstrate in a section 206 proceeding that a lower rate is appropriate, but decide the monetary impact is not sufficient to justify the filing of a complaint because its current needs are small or because the expected rate reduction is slight. In this situation, the customer may delay raising objections to the Stage One tariffs until the company files its next general rate case. Also, a company might believe that it could demonstrate that a higher rate is reasonable, but decide that its resources are best spent comprehensively designing a Stage Two non-traditional tariff, such as, a distance sensitive rate, a non-conforming proposal, or a spin-off of transmission assets into a separate company. Similarly, companies negotiating regional transmission tariffs may decide to devote their resources to that project rather than fine tuning their company specific rates.

If we had not proposed this two-stage process and simply directed the filing of company specific tariffs, utilities and customers would have been forced to proceed on an inflexible schedule. In

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addition, parties may have felt pressured to file proposals prematurely out of concern that a failure to do so would prejudice their ability to initiate them later. We believe that industry participants are better served by a process that, in addition to avoiding the delay inherent in a series of separate section 206 compliance filings, allows affected parties to raise these complex issues when it best meets their needs and after taking whatever time is necessary to evaluate non-traditional alternatives.

The Commission proposes to establish the rates for Stage One tariffs as follows:

Derivation of the Embedded Cost Transmission Charge for Point-to-Point Service

To establish firm point-to-point transmission charges, the Commission proposes to use the fixed charge methodology that it uses to evaluate rate schedule filings. This methodology is available to the public on the Commission's Electric Power Data Bulletin Board and has been referenced in various proceedings before the Commission.[400]

Form No. 1 data are used to develop the cost relationship between fixed transmission costs and transmission plant investment (a fixed charge rate). The unit charge is calculated by: (1) Dividing plant investment by capability, using the annual system peak as a proxy for capability;[401] and (2) multiplying the result by the fixed charge rate. All data would be taken from the Form No. 1 except the return on equity.

For the equity return, the Commission proposes to use an industry-wide return calculated using the Commission's standard discounted cash flow (DCF) analysis of company specific dividend yields and an industry average constant growth rate.[402] As an alternative, the Commission could use its DCF method to compute company specific equity returns. However, this is not likely to change materially the Stage One rates (*e.g.*, a 1% change in the equity return would change the monthly charge by about $.08/kW/month, equivalent to an hourly charge of 0.1 mill/kWh). We invite comments on this issue.

We also propose an alternative rate treatment and we ask for comment on which we should adopt for all affected public utilities. The alternative is a variation of our fixed charge rate method. Under our alternative proposal, the Commission would multiply an industry-wide transmission fixed charge rate by the company-specific investment cost per kW from the Form No. 1.[403] This would simplify the process. In our experience, differences in unit charges among companies are due primarily to differences in investment cost per kW of capability and not the fixed charge rate. We note that we adopted a similar approach in developing cost-based ceiling rates for the WSPP, although we developed a single composite rate for WSPP services.

The following illustrates the computation of a specific Stage One point-to-point transmission charge for three utilities using the alternative proposal and 1993 Form No. 1 data, Dayton Power & Light Company (Dayton), Louisville Gas & Electric Company (LGE), and Minnesota Power & Light Company (MPL):

(1) Company	(2) Transmission plant in service (000)	(3) System peak MW	(4) Annual charge (2)/(3)×17.5%
(1) Dayton	$247,186	2,765	$15.64/kW
(2) LGE	173,836	2,239	13.59/kW
(3) MPL	162,656	1,252	22.74/kW

Under either alternative, the final rule would establish specific unit charges. Charges for shorter term services would be derived from the annual charge using standard Commission methods:

Monthly Charge = Annual Charge/12

Weekly Charge = Annual Charge/52

Daily Charge = Weekly Charge/5

Hourly Charge = Daily Charge/16

Revenues for daily and hourly service would be capped at the equivalent weekly and daily rates pursuant to our standard requirements.[404]

[400] See, *e.g.*, Western Systems Power Pool (*WSPP*), 55 FERC ¶ 61,099 (1991); Jersey Central Power & Light Company, 38 FERC ¶ 61,275 (1987); and UtiliCorp United Inc., 70 FERC ¶ 61,149 (1995).

[401] The Commission consistently requires this method for non-customer specific rates such as this. See, *e.g.*, American Electric Power Service Company, 67 FERC ¶ 61,168 (1994); Kentucky Utilities Company, 67 FERC ¶ 61,189 (1994).

[402] An industry-wide return on equity calculated using this method would currently yield a return of about 11%.

[403] Based on analyses prepared by the Commission's staff to support acceptance of filings tendered by utilities during the last two years, a representative transmission fixed charge rate is 17.5%. The Form No. 1 data used to compute a company specific investment cost per kW of load is found at Page 207, line 69, column g (end of year plant transmission plant in service) and Page 401, column D (system peak load) of the Form No. 1.

[404] See Appalachian Power Company, *et al.*, 39 FERC ¶ 61,296 at 61,965 (1987); *WSPP*, *supra*, 55 FERC at 61,321.

We propose to establish ceiling rates for non-firm service equal to the firm rates, consistent with industry practice. As a practical matter, there is generally a charge for non-firm service only in the hours when energy is scheduled and, therefore, non-firm service is provided at a discount from firm service, which is generally subject to a charge based on reservations without regard to actual usage. As we have emphasized in the past, we expect that a rate for firm service will be higher than a rate for another service that differs only in the degree of firmness.[405] We also expect that such discounts will be offered on a non-discriminatory basis to all customers and that customers will have sufficient information about the availability of discounts (*e.g.*, through an information network).

[405] Commonwealth Edison Company, 64 FERC ¶ 61,253 (1993).

Derivation of Embedded Cost Charge for Network Service

To establish network transmission charges, the Commission proposes to adopt the load ratio method we approved in *Florida Municipal Power Agency*.[406] Under this approach, the company's annual transmission costs (the product of column (2) in the table above for point-to-point service and the same fixed charge rate used to develop the point-to-point rates) are multiplied by a load ratio percentage. The load ratio reflects the average of the 12 monthly customer coincident peaks divided by the average of the 12 monthly total system peaks. Total monthly system peaks for this calculation would reflect all firm uses of the transmission system, including the transmission owners' own long term firm and unit power sales. We shall specify the annual revenue requirement in the generic tariff and direct the transmission provider to insert the load ratio computation into the service agreement when filed after a request for service is accepted by the utility.

[406] See *supra*, 67 FERC at 61,481.

Derivation of the Charges for Ancillary Services

Loss Compensation

The Commission proposes to establish a loss factor of 3% and a charge for energy losses equal to 110% of seller's incremental cost. A 3% loss factor is representative of those in transmission agreements on file and a loss compensation charge based on the seller's incremental cost is also common.

Energy Imbalances

The Commission proposes to establish an hourly deviation band of +/- 1.5% with a minimum of 1 MW per hour and imbalances within this band would be returned in kind or subject to a charge equal to seller's incremental cost (or a payment equal to decremental cost if the public utility transmission provider receives too much energy and must compensate the transmission customer). Energy imbalances outside this band would be subject to a charge of 100 mills/kWh, the standard industry rate for emergency service. We propose the emergency service charge for this purpose because, as with emergency service, the rate should provide an incentive to minimize energy imbalances. We seek comment on the size of the deviation band and size of the imbalance charge.

Scheduling & Dispatching Charges

The Commission's fixed charge rate methodology which will be used to establish the transmission charge includes Account No. 566, where the costs of transmission related scheduling and dispatching are booked. Accordingly, the generic tariffs would include no separate charge for scheduling and dispatching. This should be adequate for most transmission services because most customers are likely to require this scheduling and dispatching service. If a customer does not require this service, it may propose a different rate treatment by filing a complaint at Stage Two.

Other Charges

The other ancillary services—Load Following, System Protection, and Reactive Power—have a common attribute. They all involve the cost incurred by the transmission provider as a result of using generation facilities to support the transmission service. In the past, some or all of these services were often provided at a rate reflecting embedded transmission costs, *i.e.*, without a separate charge reflecting the cost of generation facilities. However, the Commission has allowed a 1 mill/kWh charge for difficult to quantify costs that served to compensate transmission providers for costs like these. We propose, for purposes of the Stage One tariffs, to maintain a ceiling of 1 mill/kWh as the charge for these three ancillary services on a combined basis. We would expect that the parties would negotiate charges below this ceiling if the customer can provide some or all of these ancillary services and that this would be filed as a change in Stage Two. We emphasize that, if a utility believes that a 1 mill/kWh charge is unsatisfactory, it may file to revise the charge under section 205 in Stage Two. Similarly, if a customer finds a 1 mill/kWh charge unsatisfactory, it may file a complaint in Stage Two.

Questions

We invite comments on which of the methodologies we should adopt. For example, we are interested in commenters' preference for the first alternative, which uses company specific Form No. 1 data for all inputs, or the second alternative, which uses company specific Form No. 1 data only for investment and load. With respect to the first alternative, we seek comments on our proposal to use an industry-wide equity return for each affected public utility and, with respect to the second alternative, we seek comments on our proposed uniform 17.5% transmission fixed charge rate. We also seek comments as to whether a more specific definition of the load ratio should be adopted, and whether this ratio can be used fairly in all situations. We also invite comments on our proposals for ancillary service charges. All comments should take into account our intention to immediately put in place generic tariffs so that there will be no delay in the availability of nondiscriminatory open access transmission services.

3. Ongoing Proceedings

There are currently a number of ongoing proceedings in which the Commission is investigating utilities' open access tariff filings. Concurrently with this order, the Commission is issuing a separate order concerning those cases.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[407] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities or a certification that the rule will not have a substantial economic effect on a substantial number of small entities. Because the entities that would be required to comply with the proposed rule are public utilities and transmitting utilities that do not fall within the RFA's definition of small entities,[408] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

V. Environmental Statement

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[409] The proposed rule falls within the categorical exemption provided in the Commission's regulations for electric rate filings submitted by public utilities under sections 205 and 206 of the FPA.[410] Consequently, neither an environmental assessment nor an environmental impact statement is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[411] require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed regulations are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096). The Commission uses the data collected in this information collection to carry out its responsibilities under Part II of the FPA. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The data enable the Commission to examine and evaluate the utility's costs and rate of return.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain

[407] 5 U.S.C. 601–612.

[408] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[409] 18 CFR Part 380.

[410] 18 CFR 380.4(a)(15).

[411] 5 CFR 1320.13.

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information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than August 7, 1995.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should be submitted no later than October 4, 1995.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket Nos. RM95–8–000 and RM94–7–001.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC, 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioner Massey concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by revising § 35.15, by redesignating § 35.28 as § 35.29, and by adding new §§ 35.26, 35.27, and 35.28 to read as follows:

§ 35.15 Notices of cancellation or termination.

(a) General rule

When a rate schedule or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or part thereof is to be filed in its place, each party required to file the schedule shall notify the Commission of the proposed cancellation or termination on the form indicated in § 131.53 of this chapter at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purchasers to whom the notice has been mailed. For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.

(b) Applicability

(1) The provisions of paragraph (a) of this section shall apply to all contracts for unbundled transmission service and all power sale contracts:

(i) Executed prior to [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**]; or

(ii) If unexecuted, filed with the Commission prior to [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

(2) Any power sales contract executed on or after [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] shall not be subject to the provisions of paragraph (a) of this section.

(c) Notice

Any public utility providing jurisdictional services under a power sales contract that is not subject to the provisions of paragraph (a) of this section shall notify the Commission of the date of the cancellation or termination of such contract within 30 days after such cancellation or termination takes place.

§ 35.26 Recovery of stranded costs by public utilities and transmitting utilities.

(a) Purpose

This section establishes the standards that a public utility or transmitting utility must satisfy in order to recover stranded costs.

(b) Definitions

(1) *Wholesale stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to:

(i) A wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility; or

(ii) A retail customer, or a newly created wholesale power sales customer, that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility.

(2) *Wholesale requirements customer* means a customer for whom a public utility or transmitting utility provides by contract any portion of its bundled wholesale power requirements.

(3) *Wholesale transmission services* has the same meaning as provided in section 3(24) of the Federal Power Act: the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(4) *Wholesale requirements contract* means a contract under which a public utility or transmitting utility provides any portion of a customer's bundled wholesale power requirements.

(5) *Retail stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a retail customer that subsequently becomes, in whole or in part, an unbundled retail transmission services customer of that public utility or transmitting utility.

(6) *Retail transmission services* means the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

(7) *New contract* means any contract executed after July 11, 1994, or extended or renegotiated to be effective after July 11, 1994.

(8) *Existing contract* means any contract executed on or before July 11, 1994.

(c) Recovery of Wholesale Stranded Costs

(1) *General requirement.* A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:

(i) No public utility or transmitting utility may seek recovery of wholesale stranded costs if such recovery is explicitly prohibited by a contract or settlement agreement, or by any power sales or transmission rate schedule or tariff.

(ii) If wholesale stranded costs are associated with a new wholesale requirements contract containing an exit fee or other explicit stranded cost provision, and the seller under the contract is a public utility, the public utility may seek recovery of such costs, in accordance with the contract, through rates for electric energy under sections 205 through 206 of the FPA. The public utility may not seek recovery of such costs through any transmission rate for section 205 or 211 transmission services.

(iii) If wholesale stranded costs are associated with a new wholesale requirements contract, and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs.

(iv) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the public utility may seek recovery of stranded costs only as follows:

(A) If either party to the existing contract seeks a stranded cost amendment pursuant to a section 205 or section 206 filing made prior to the expiration of the contract, and the Commission accepts or approves an amendment permitting recovery of stranded costs, the public utility may seek recovery of such costs through section 205 rates for electric energy.

(B) If the existing contract is not amended to permit recovery of stranded costs as described in paragraph (c)(1)(iv)(A) of this section, the public utility may file a proposal, prior to the expiration of the contract, to recover stranded costs through section 205 or section 211 through 212 rates for wholesale transmission services to the customer.

(v) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a transmitting utility but not also a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the transmitting utility may seek recovery of stranded costs through section 211 through 212 transmission rates.

(vi) If a retail customer becomes a legitimate wholesale transmission customer of a public utility or transmitting utility, *e.g.*, through municipalization, and costs are stranded as a result of the retail-turned-wholesale customer's access to wholesale transmission, the utility may seek recovery of such costs through section 205 or section 211 through 212 rates for wholesale transmission services to that customer.

(2) *Evidentiary Demonstration for Wholesale Stranded Cost Recovery.* A public utility or transmitting utility seeking to recover wholesale stranded costs in accordance with paragraphs (c)(1)(iv) through (vi) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of its wholesale requirements customer or retail customer based on a reasonable expectation that the utility would continue to serve the customer;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility, or, in the case of a retail-turned-wholesale customer, had the customer remained a retail customer of utility; and

(iii) it has taken and will take reasonable measures to mitigate stranded costs.

(3) *Rebuttable Presumption.* If a public utility or transmitting utility seeks recovery of wholesale stranded costs associated with an existing contract, as permitted in paragraph (c)(1) of this section, and the existing contract contains a notice provision, there will be a rebuttable presumption that the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision.

(d) Recovery of Retail Stranded Costs

(1) *General requirement.* A public utility may seek to recover retail stranded costs through rates for retail transmission services only if the state regulatory authority does not have authority under state law to address stranded costs at the time the retail wheeling is required.

(2) *Evidentiary Demonstration Necessary for Retail Stranded Cost Recovery.* A public utility seeking to recover retail stranded costs in accordance with paragraph (d)(1) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of a retail customer that obtains retail wheeling based on a reasonable expectation that the utility would continue to serve the customer;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a retail customer of the utility; and

(iii) it has taken and will take reasonable measures to mitigate stranded costs.

§ 35.27 Power sales at market-based rates.

Notwithstanding any other requirements, any public utility seeking authorization to engage in sales for resale of electric energy at market-based rates shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity first placed in service on or after [INSERT DATE 30 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

§ 35.28 Non-discriminatory open access transmission tariffs.

(a) Every public utility owning and/or controlling facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission no later than [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] tariffs of generally applicability for transmission services, including ancillary services, over these facilities on both a point-to-point basis and network basis consistent with the requirements of Order No. _____ (Final Order on Open Access and Stranded Costs).

(b) Every public utility owning and/or controlling facilities used for the transmission of electric energy in interstate commerce, but not in existence on [INSERT DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], must file tariffs of generally applicability for transmission services, including ancillary services, over these facilities on both a point-to-point basis and network basis consistent with the requirements of Order No. _____ (Final Rule on Open Access and Stranded Costs) no later than the date any agreement under which such public utility would engage in a sale of electric

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energy at wholesale in interstate commerce or the transmission of electric energy in interstate commerce is accepted for filing by the Commission.

(c) Any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce, and that uses those facilities to engage in wholesale sales and/or purchases of electric energy, must take transmission service for such sales and/or purchases under the tariffs filed pursuant to paragraph (a) or (b) of this section.

Note: Appendix D and Commissioner Massey's statement will not appear in the *Code of Federal Regulations.*

Appendix D—Docket No. RM94–7–000, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities List of Commenters

1. Ad Hoc Coalition on Environmental and Consumer Protection (Ad Hoc Coalition), consisting of Environmental Action Foundation, Citizen Action, Consumer Federation of America, Greenpeace, Toward Utility Rate Normalization, Public Citizen, Sierra Club, Nuclear Information & Resource Service, Economic Opportunity Research Institute, and U.S. Public Interest Research Group
2. Alabama Public Service Commission
3. Allegheny Electric Cooperative, Inc.
4. Allegheny Power Service Corporation (Allegheny Power)
5. American Forest & Paper Association (American Forest)
6. American Public Power Association (APPA)
7. American Society of Utility Investors
8. Arizona Public Service Company
9. Arkansas Public Service Commission
10. Atlantic City Electric Company
11. Blue Ridge Power Agency, Northeast Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative and Tex-La Electric Cooperative (Blue Ridge)
12. California Public Utilities Commission
13. Centerior Energy Corporation
14. Central Maine Power Company
15. Central Vermont Public Service Corporation
16. Cities of Anaheim, Azusa, Banning, Colton and Riverside, California
17. City of Las Cruces, New Mexico
18. Coalition For Economic Competition, consisting of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas & Electric Company
19. Coalition of California Utility Employees
20. Colorado Association of Municipal Utilities
21. Colorado Office of Consumer Counsel
22. Colorado Public Utilities Commission
23. Commonwealth Edison Company (Commonwealth Edison)
24. Competitive Electric Market Working Group (Competitive Working Group), consisting of Electric Clearinghouse, Inc., Enron Power Marketing, Inc., and Destec Power Services, Inc.
25. Conservation Law Foundation
26. Consumer-Owned Utilities in Maine, consisting of Eastern Maine Electric Cooperative, Inc., Fox Islands Electric Cooperative, Inc., Houlton Water Company, Isle au Haut Electric Power Co., Kennebunk Light & Power District, Madison Electric Works, Swans Island Electric Cooperative, Inc., Union River Electric Cooperative, Inc., and Van Buren Light & Power District
27. Consumers Power Company
28. Dairyland Power Cooperative
29. Department of Water and Power of the City of Los Angeles
30. Detroit Edison Company (Detroit Edison)
31. Direct Action For Rights and Equality
32. District of Columbia Public Service Commission
33. Duke Power Company
34. Duquesne Light Company
35. Edison Electric Institute (EEI)
36. Electric Consumers' Alliance
37. Electric Generation Association
38. Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association (Industrial Consumers)
39. El Paso Electric Company
40. Enron Power Marketing, Inc. (Enron)
41. Entergy Services, Inc. (Entergy)
42. Environmental Action Foundation (Environmental Action)
43. Environmental Law and Policy Center of the Midwest
44. Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative (Florida and Michigan Municipals)
45. Florida Power Corporation
46. Florida Public Service Commission (Florida Commission)
47. Fuel Managers Association
48. Houston Lighting & Power Company (Houston Lighting & Power)
49. Idaho Public Utilities Commission
50. Illinois Commerce Commission (Illinois Commission)
51. Illinois Power Company
52. Indiana Office of Utility Consumer Counselor
53. Indiana Utility Regulatory Commission (Indiana Commission)
54. Iowa Utilities Board
55. Irrigation and Electrical Districts' Association of Arizona
56. Land and Water Fund of the Rockies
57. Large Public Power Council
58. Long Island Lighting Company (Long Island Lighting)
59. Louisiana Energy and Power Authority
60. Maryland Public Service Commission
61. Massachusetts Department of Public Utilities
62. Metropolitan Edison Company, Pennsylvania Electric Company and Jersey Central Power & Light Company
63. Michigan Public Service Commission Staff
64. Mid-Atlantic Energy Project
65. Municipal Resale Service Customers of Ohio Power Company
66. National Association of Regulatory Utility Commissioners (NARUC)
67. National Association of State Utility Consumer Advocates (NASUCA)
68. National Black Caucus of State Legislators
69. National Independent Energy Producers (NIEP)
70. National Rural Electric Cooperative Association
71. New England Power Company
72. New York Mercantile Exchange
73. New York State Electric & Gas Corporation
74. New York State Public Service Commission (New York Commission)
75. North Carolina Electric Membership Corporation
76. North Dakota Public Service Commission
77. Northern States Power Company
78. Nuclear Energy Institute
79. Oglethorpe Power Corporation
80. Ohio Office of the Consumers' Counsel
81. Ohio Public Utilities Commission (Ohio Commission)
82. Older Women's League
83. Omaha Public Power District
84. Pace Energy Project
85. Pacific Gas and Electric Company
86. Pacific Gas and Electric Company and Natural Resources Defense Council
87. PECO Energy Company
88. Pennsylvania and Massachusetts Municipals
89. Pennsylvania Power & Light Company
90. Pennsylvania Public Utility Commission (Pennsylvania Commission)
91. Public Power Council.
92. Public Service Company of New Mexico
93. Public Service Electric and Gas Company (Public Service Electric)
94. Rhode Island Division of Public Utilities and Carriers and Jeffrey B. Pine, Attorney General of the State of Rhode Island
95. Rural Utilities Service
96. Sacramento Municipal Utility District
97. San Diego Gas & Electric Company
98. Sierra Pacific Power Company
99. South Carolina Electric & Gas Company
100. Southern California Edison Company
101. Southern Company Services, Inc.
102. Stranded Cost Order Opponent Parties, consisting of the Delaware Municipal Electric Corporation, Village of Freeport, New York, City of Jamestown, New York, Town of Massena, New York, Modesto Irrigation District, M–S–R Public Power Agency, City of Santa Clara, California, and Southern Maryland Electric Cooperative, Inc. (SCOOP)
103. Suffolk County Electrical Agency
104. Sunflower Electric Power Corporation (Sunflower)
105. Tampa Electric Company
106. Tennessee Valley Authority (TVA)
107. Public Utility Commission of Texas (Texas Commission)
108. Texas Utilities Electric Company
109. Transmission Access Policy Study Group (TAPS)
110. TDU Customers, consisting of Chicopee Municipal Lighting Plant of the City of Chicopee, Massachusetts, Golden Spread Electric Cooperative, Inc., Holy Cross Electric Association, Inc., Kansas Electric Power Cooperative, Inc., Old Dominion Electric Cooperative, Seminole Electric Cooperative, Inc., South Hadley Electric Light Department of the Town of South Hadley, Massachusetts, and Westfield Gas and Electric Department of the City of Westfield, Massachusetts
111. Trigen Energy Corporation
112. United Illuminating Company
113. United States Department of Defense
114. United States Department of Energy (DOE)
115. United Utility Shareholders Association of America
116. Utility Investors and Analysts
117. Utility Working Group (consisting of Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Niagara Mohawk Power Corporation, Northern States Power Company, Pacific Gas and Electric Company, Portland General Electric Company, Public Service Electric and Gas Company, San Diego Gas & Electric Company, Southern California Edison Company, and Wisconsin Electric Power Company)
118. Vermont Department of Public Service (Vermont Department)
119. Virginia Electric and Power Company
120. Virginia State Corporation Commission
121. Washington Utilities and Transportation Commission
122. Washington Water Power Company
123. Wheeled Electric Power Company
124. Wisconsin Electric Power Company
125. Wisconsin Power & Light Company (Wisconsin Power)
126. Wisconsin Public Service Commission
127. Wisconsin Wholesale Customers
128. Wyoming Public Service Commission

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities

Docket No. RM95–8–000

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Docket No. RM94–7–001

Issued March 29, 1995.

Massey, Commissioner, *concurring in part and dissenting in part:*

I. Concurring Opinion

Today, the Commission takes the logical next step—a bold, aggressive and historic step—toward full and robust competition in the electric power industry. Our proposal will change fundamentally the nature of this industry, and the relationships among transmission-owning utilities, their customers and competing power suppliers.

Why now? An uninformed observer might think it somewhat startling, at the very least counterintuitive, that in the current political climate, at the very same time Congress is debating a regulatory moratorium, this Commission issues the most profound regulatory proposal for the electric utility industry since the New Deal legislation. Why now?

There are several compelling reasons. First, *now* is always the best time to end undue discrimination. Federal law "bristles" with concern about undue discrimination. The Federal Power Act does not allow this Commission to tolerate it. There will never be a better time than now to stop it.

Second, now is also an appropriate time to eliminate the industry's uncertainty over our policy directions. Uncertainty is deeply unsettling for this industry. Instead of focusing on how to beat the competition, industry participants must first speculate about the future rules of the competition. This is intolerable in the long term and, in the short-term, stifles creativity, initiative and investment. We believe industry participants will applaud efforts to end the uncertainty now.

Third, this Commission wants to move boldly toward customer choice and light-handed regulation of wholesale generation. We believe it will bring lower rates. But we are limited greatly by transmission market power. We cannot move forcefully in these directions if transmission owners are able to skew the market and eliminate competition by denying or delaying transmission access, or by offering inferior terms and conditions for transmission service. The current patchwork of transmission access impedes competition. We must move beyond voluntary open access tariffs and time-consuming and expensive case-by-case rulings on wheeling requests. Now is the time to eliminate the transmission market power of the utilities over which we have jurisdiction. How can there be truly robust competition if buyers and sellers can't reach each other? Those who believe in competition and lower rates will applaud this step.

And, fourth, we cannot move to new rules without assuring utilities that they will recover the costs they prudently incurred under the old rules. That is a fundamental principle of our NOPR. We must strive to eliminate the uncertainty in the industry over the way in which this Commission will address stranded cost issues. Now is the time to speak clearly on this critical issue.

For these reasons, now is not only an appropriate time, but may indeed be the best time to take this bold step toward truly robust competition. It is my fervent hope that the market-based solutions this proposal portends, and the giant step it takes toward eliminating industry uncertainty over policy directions and stranded cost recovery, will strike a responsive chord among lawmakers, other policy makers, and others who care about the future of this important industry.

I strongly support virtually all of this NOPR. The NOPR addresses dozens of open access and stranded cost issues in ways that have my wholehearted support.

For example, I agree strongly with the proposed requirements of open access tariffs. It is one thing to state somewhat blithely that we favor the golden rule of transmission access. That is about all we have said so far. It is another thing entirely, and much more valuable to industry participants, to put real meat on the bones of comparability. The extensive text of the order accomplishes this objective, with unparalleled clarity. In fact, this entire document is a persuasive, compelling, technically brilliant work.

Let me highlight three specific issues. First is the issue of the NOPR's effect on regional transmission groups. Some in the industry may erroneously conclude that this rulemaking will lessen the value of, and need for, RTGs. The order emphatically disagrees. As the order states:

RTGs are structures to reflect the interest of all of the grid's users, not just some. RTGs allow for consensual solutions to local or regional issues, instead of solutions imposed by FERC. RTGs can function as regional laboratories for experimentation on transmission issues. And, RTGs will provide a regional forum, a necessary predicate to regional cooperation.

In short, RTGs remain a key part of our vision of the future of this industry.

Second, the NOPR requires the new tariffs to include a reciprocity provision. This provision would ensure that a public utility offering transmission access to others can obtain similar service from its transmission customers. If customers want access on a public utility's transmission wires, they must be willing to offer access for the utility on their own transmission wires. That is only fair.

Third, the NOPR would require functional unbundling of public utilities' jurisdictional services. That is, utilities would be required to take transmission service (including ancillary services) for new wholesale sales and purchases of electric energy under the open access tariffs. The tariffs also must state separately the rates for each type of transmission or ancillary service. This requirement of functional unbundling will give public utilities the incentive to offer service on fair terms and conditions, since the public utility will have to live with the same terms and conditions it proposes for others.

Now let me turn to an issue involving symmetry of rights between customers and utilities. Today's order makes an explicit generic finding that it is in the public interest to allow utilities to make filings at FERC for the recovery of stranded costs even if their contracts contain so-called *Mobile-Sierra* restrictions that would bar such filings.[1] I fully agree with this conclusion. I believe the policy rationale justifying the recovery of stranded costs is so strong that the public interest test is met and such a generic finding is necessary.

I have some concern, however, about the fact that today's order does not sufficiently explore making that same type of public interest finding on behalf of customers. The order spends many pages making a persuasive case that the current environment, in which no more than a handful of utilities have filed open access tariffs, is rife with undue discrimination and can no longer be tolerated. This is the fundamental philosophical and legal underpinning for the order's new open access requirements.

[1] *United Gas Pipeline Co.* v. *Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC* v. *Sierra Pacific Power Co.,* 350 U.S. 348 (1956).

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But if the order's perception of undue discrimination is accurate, and I believe it is, would it not suggest that some power supply contracts negotiated in that environment were infected with undue discrimination and therefore unlawful? Would it not be appropriate, and more symmetrical, to allow such customers the right to make a filing asking the Commission to determine whether their current contract is unduly discriminatory, unjust or unreasonable? We would not, of course, allow such customers to escape their stranded cost responsibility in any event. Even if we allowed customers to make such filings, they would remain fully responsible for the costs reasonably incurred on their behalf.

A more symmetrical approach to customers and utilities during the transition to competitive markets would be consistent with the Commission's Order 636. There, the Commission granted all pipeline "sales" customers the right to choose other gas suppliers but granted all pipelines 100 percent recovery of their eligible and prudent transition costs. In granting "conversion rights" to pipeline sales customers, the Commission found that continued enforcement of customers' existing purchase obligations, entered into when pipelines provided bundled service and had a virtual monopoly over certain aspects of interstate service, was contrary to the requirements of the Natural Gas Act.

I am not suggesting today that we mirror precisely the natural gas model by granting all customers, regardless of contracts, the right to choose other suppliers. I am suggesting, however, that during the comment period we give full and fair consideration to the argument that power customers with contracts lacking explicit stranded cost recovery provisions should have the same right we grant utilities to make filings seeking contract modifications regardless of *Mobile-Sierra* restrictions. I am confident that commenters will give us the benefit of their thinking on this issue.

II. Dissenting Opinion

Finally, let me turn briefly to the sole issue on which I will be dissenting in part from an otherwise exceptionally strong order. That issue involves this Commission's role and relationship with the states in making determinations with respect to stranded costs arising from retail competition and from municipalizations.

There have been full and vigorous discussions at the Commission about how to handle this issue. My goal, which the entire Commission shares, is to strike an appropriate balance that ensures the recovery of stranded costs, and ensures that the legitimate rights of states are respected. We have all struggled with these issues in good faith. I simply disagree with the majority in certain respects about how to accomplish these goals.

First, I will address retail competition. Under the NOPR, this Commission would allow filings seeking recovery of stranded costs related to retail competition only when the state regulatory commission does not have authority under state law to address stranded costs at the time retail wheeling is required.

I find this approach too narrow. I would allow such filings when the state commission lacks authority to decide the issue or when the state commission has authority but does not decide the issue. I would not second-guess the state decision, but I would not allow retail stranded costs to "fall through the cracks" merely because the state commission has, but does not use, authority to decide the issue.

On municipalization, the NOPR proposes making this Commission the primary forum for seeking recovery of stranded costs. The NOPR says that, if a state has allowed recovery of any stranded costs from municipalized customers, this Commission will deduct that amount from the amount we determine to be recoverable. In other words, even when states have and exercise the authority to decide the recoverability of stranded costs related to municipalization, this Commission would take over and federalize the issue.

I cannot support this approach. The Federal Power Act does not constitute this Commission as the court of appeals to challenge unsatisfactory state decisions. It is not this Commission's role to stand in judgment of policy choices and decisions lawfully made by our state counterparts.

In my judgment, the following principles should govern this Commission's approach to stranded costs arising from either retail competition or municipalization. In either case, utilities are entitled to a decision on the recoverability of such costs. It would be unfair, and would unduly jeopardize the financial health of utilities, for stranded costs to slip through because no regulatory commission provides a forum and decides the issue.

For either retail competition or municipalization, when the state commission has authority to address the issue, and uses such authority to decide the recoverability of the stranded costs, the state's decision should not be second-guessed by this Commission. However, when a state commission does not have the authority to decide the recoverability of stranded costs, or has authority but does not use it, this Commission should act on requests for stranded cost recovery.

My approach would assure utilities of getting a decision on the merits of their claim. Costs would not be stranded for lack of a regulatory decision. At the same time, this Commission would allow states to make decisions, when they have authority, on issues of critical concern to their local utilities and ratepayers. Only if states lack, or fail to use, such authority would this Commission step in to assure the utility of receiving a decision on the merits.

My views on how we should handle stranded costs arising from municipalization are influenced by the fact that, according to commenters, roughly 14 states have municipalization statutes that do in fact authorize states to deal with stranded cost issues. Arkansas, for example, has a statute enacted in 1987 that appears to give the Arkansas Public Service Commission full authority to deal with the stranded cost issue in a way that protects both the remaining customers and shareholders. It is an extensive, thoughtful statute that deals with a wide range of issues. It is, apparently, the will of the sovereign state of Arkansas that this state statute be enforced. I see no reason to yank this issue from the Arkansas Commission, or from any other state commission that has statutory authority to act.

In that vein, if this Commission were to decide the recoverability of stranded costs for either retail competition or municipalization (because the state lacked authority or did not decide the issue), I believe we should adopt procedures allowing the affected state commissions to participate in our proceeding in a meaningful way. Specifically, I propose allowing state participation through one of the procedures specified in section 209 of the Federal Power Act.[2] These include joint state boards, joint hearings, concurrent hearings and technical conferences. I have no views at this time on which of these tools could or should be used in particular cases. The decision on which of these tools to use can be made in individual cases, as they arise. But, clearly, they are useful mechanisms for obtaining state input in proceedings involving retail competition and municipalization.

For all of these reasons, I will concur in part and dissent in part. In virtually all respects, this is an excellent order; except as I have noted, it has my wholehearted support.

William L. Massey,

Commissioner.

[FR Doc. 95–8534 Filed 4–6–95; 8:45 am]

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18 CFR Parts 141 and 388

[Docket No. RM95–9–000]

Real-Time Information Networks; Notice of Technical Conference and Request for Comments

March 29, 1995

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission), is issuing this notice to announce a technical conference to be scheduled at a later date, and, in preparation for that conference, to request comments on: whether real-time information networks (RINs) or some other option is the best method to ensure that potential purchasers of transmission services receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce; and what standards should be adopted if the Commission requires such public utilities to institute RINs systems.

DATES: Comments must be received on or before June 6, 1995.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Gary D. Cohen (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–0321

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–1283

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104 at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and Wordperfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction

The Commission is considering requiring each public utility (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce to create a real-time information network (RIN) to ensure that potential purchasers of transmission services have access to information to enable them to obtain open access transmission services on a non-discriminatory basis from the public utility. This initiative is being taken in conjunction with the Commission's proposed rules, [1] today being issued, that would require public utilities to provide open access non-discriminatory transmission services (Open Access NOPR) and would permit the recovery of legitimate and verifiable stranded costs in certain circumstances.

The Commission's goal in this proceeding is to establish uniform requirements for a RIN or other communications device at the same time that the Commission adopts a rule requiring open access non-discriminatory transmission services. To accomplish this objective, the Commission invites interested persons to file comments and to participate in a Technical Conference in which they can make presentations on their positions. Thereafter, the Commission expects to hold informal conferences, enlisting working groups to reach consensus on any remaining issues.

We expect that input from the Technical Conference and informal conferences will be the basis for subsequent procedures. This notice sets a timetable to be followed so that requirements on RINS can be in place no later than the effective date of an open access rule.

Background

In the Open Access NOPR, the Commission is inviting comments on a proposed rule that would require any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce to have on file an open access transmission tariff.

To be effective, however, non-discriminatory open access transmission service requires transmission customers to be able to compete effectively with the public utility that owns or controls the transmission. Customers must have simultaneous access to the same information available to the transmission owner. Thus, in this proceeding, the Commission expects to require RINs or other options to ensure that potential and actual transmission service customers receive access to information so that they can obtain service comparable to that provided by transmission owners (or controllers) to themselves.

Discussion

A. Objectives

As noted above, the Commission expects to undertake further procedures in this docket after the Technical Conference and informal conferences are held and input from those conferences is evaluated. Nevertheless, to help participants focus on the issues, the Commission here sets out its preliminary views. Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions.

This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements in their comments and in their presentations at the Technical Conference and informal conferences.

RINs should operate under industry-wide standards; otherwise, each RIN could contain different information, have different file formats, or use different means to transfer information between utilities and customers. We are concerned that some customers (those who need transmission service across utility boundaries) might be forced to obtain information in different and perhaps incompatible environments. Efficient wholesale power markets

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[1] See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities & Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, Docket Nos. RM95–8–000 & RM94–7–001 (1995).

[2] 16 U.S.C. 824h (1988).

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require that information formats not impede the ability of parties to make trades in a timely manner within and across utility boundaries. Such impediments should be eliminated, or at a minimum, reduced to the maximum extent possible.

In addition, we request comments on the following questions:

Information availability: What information should be available on a RIN? Possibilities include transmission availability data, scheduling information, information on economic dispatch, system reliability conditions, service interruptions, and other information that parties might suggest. Would a RIN be appropriate, not only to report transactions, but to conduct the transactions themselves? If so, for what kinds of transactions would this be appropriate?

RINs standards: What standard formats would be appropriate for transferring files containing specific information? What are appropriate communication protocols? How can a RIN be designed to accommodate not only today's needs, but also those in the future, such as an ability to trade power and have real-time price signals?

Attached to this notice is a Staff Discussion Paper that gives Staff's preliminary views on some of the issues that need to be addressed in this proceeding. We have attached this document to help the parties focus on pertinent issues as early in the process as possible.

B. Timetable for Comments, Technical Conference, and Informal Conferences

The Commission's experience with Order No. 636[2] and electronic bulletin boards (EBBs) in the natural gas industry[3] has taught us that when industry standards are needed, they should be established as early as possible. We wish to avoid systems being developed, and expenses being incurred, before consensus can be reached on the best way to proceed.

These same considerations also persuade us that a case-by-case approach to setting standards for electronic information transfer is inappropriate. Public utilities should not be required to invest extensive capital in a RIN or EBB that might be obsolete in the near future.[4]

We intend, therefore, to have requirements in place no later than the date when we issue any final rules on open access transmission. In this way, we hope to avoid unnecessary expenditures by public utilities.

At the Technical Conference, the Commission will focus on determining exactly what information must be made available to transmission customers and what standards are needed as to the transfer of this information on a real-time basis from transmission operators to their customers, including the public utility itself for its wholesale transactions.

The Technical Conference will be open to all interested persons. The exact date, time, and location of the Technical Conference will be announced in a subsequent notice.

To better organize the Technical Conference, interested persons are invited to submit written comments. Comments must be received on or before [insert a date 60 days following the **Federal Register** publication date]. The comments should be no more than 25 pages in length, double spaced on 8½" x 11" paper, with standard margins. Parties must submit fourteen (14) written copies of their comments. In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette, formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version in which it was generated (*i.e.*, MS Word, Wordperfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS-DOS machines. The comments must be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and their caption should refer to Docket No. RM95–9–000.

All written comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room (Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426), during normal business hours. The Commission also will make all comments publicly available on its EBB.

Following the Technical Conference, the Commission's Staff will promptly schedule a series of informal conferences using, as appropriate, working groups enlisting the participants at the Technical Conference.[5] The informal conferences are intended to narrow or resolve issues and to help the Commission determine what information must be made available, and what standards are needed, for the delivery of pertinent information on a real-time basis from transmission operators to their customers, including the public utility itself.

Staff will designate what working groups are to be formed, when they will meet, and what topics they will consider. Staff will work with these working groups as needed.[6] The working groups will be invited to reach consensus on the issues and report that consensus to the Commission. The working group reports should identify issues where no consensus is possible so that the Commission may take appropriate action to resolve all remaining technical issues.

By direction of the Commission.

Lois D. Cashell,

Secretary.

Staff Discussion Paper Electronic Bulletin Boards and Real-Time Information Networks

Introduction

The Commission has issued a Notice of Proposed Rulemaking, proposing non-discriminatory open access transmission services. The NOPR proposes that public utilities provide all potential wholesale transmission users, including the wholesale power marketing department of the transmission owner, simultaneous access to transmission and ancillary services. Potential customers' access to information on transmission capacity and other matters pertaining to transmission services must be made comparable to the information access

[2] Pipeline Service Obligations and Revisions Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶30,939 (April 8, 1992); order on reh'g, Order No. 636–A, 57 Fed. Reg. 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶30,950 (August 3, 1992).

[3] See Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994); III FERC Stats. and Regs., Regulations Preambles ¶30,988 (1993), order on reh'g, Order No. 563–A, 59 FR 23,624 (May 9, 1994); III FERC Stats. and Regs., Regulations Preambles ¶30,994, reh'g denied, Order No. 563–B, 68 FERC ¶61,002, Order No. 563–C, order accepting modifications, Order No. 563–C, 68 FERC ¶61,362 (1994).

[4] We note that there is an extensive network already in place to conduct intercompany transactions reliably. To the maximum extent possible, we intend to build on the existing institutional arrangements and ongoing efforts to help better schedule, monitor, and model transactions involving multiple control areas.

[5] The Commission made use of working groups in drafting the Commission's standards for EBBs. *See, e.g.*, Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, *Final Rule*, Order No. 563–A, 59 FR 23624 (May 9, 1994); III FERC Stats. & Regs., Regulations Preambles ¶30,994 (1994).

[6] To promote candor and productivity, Staff will set up and sponsor these meetings, but, where appropriate, will not attend the meetings while the parties discuss the issues. The parties are instructed, however, to brief Staff fully on their progress at any such meetings.

available to the power marketing department of the transmission owner and its affiliates. Staff believes that electronic communication is critical to achieving comparable access to information, which in turn is a cornerstone of comparable access to transmission service. Comparable access by customers to information as it becomes available is the key to both a successful comparable access program and competitive power markets for electricity. Rapid transfer of information between a transmitting utility's computers and those of its potential wholesale competitors is necessary to achieve these goals.

The technical conference begins the process of determining what information and procedures will be required to achieve comparable access to information. We request comments or concrete proposals that address the issues and questions raised in this paper. Areas that need to be addressed include:

- *Information Needs.* What specific information is required to ensure that all eligible parties (including the transmission owner) have comparable access to information needed to conduct wholesale power transactions over the transmission system?
- *Type of Information System.* What types of information systems are available to communicate transmission information, and which of these are most appropriate to achieve comparable access to information?
- *Standards and Systems Development.* What standard record formats should be developed to exchange information? What protocols are needed? Should regional systems, or a national system, be developed?

This paper provides short discussions of Staff's understanding of the major issues and options in these areas. Each discussion is followed by a list of questions intended to guide comments.

Information Needed for Comparability

Comparability requires that wholesale transmission customers be provided with the same information that the transmission owner or controller has about the availability and price of transmission services, and that the information be provided at the same time and cost. A customer, when making wholesale power transactions using transmission services, should have the same information the transmission owner has available to make wholesale power transactions. This includes, but is not necessarily limited to, the following types of information:

- Availability of firm and non-firm transmission services (including ancillary services), rates for these services and the amount and terms of any available rate discounts.
- Information on the opportunity costs on constrained paths and the incremental cost of expansion, if known.
- Hourly transfer capacities with other interfacing control areas on a time interval corresponding to the interval that a transmission owner uses in committing its own units. For example, if the interval is weekly, hourly transfer capacities should be provided each week as the transmission owner commits its own units.
- Hourly amounts of firm and non-firm power scheduled over each of the owner's interfaces with other control areas. These quantities should be the amounts scheduled over the following hour. They should be provided at some short interval before the start of each hour (e.g., 15 minutes).
- Transmission outages, or planned and forced unit outages that may affect trans-mission availability, as they become known, as well as anticipated and actual interruptions of services.
- Load flow data that would allow customers to do their own preliminary review of incremental transfer capability to accommodate long-term transfers. Updates to load flow information should be made available to customers whenever the transmission owner updates its load flow information.
- Transaction specific information on all requests for transmission service (including requests by the transmission owner's wholesale power marketing personnel). This information should be sufficient to permit customers to evaluate the current state of transmission requests on the system and to monitor potential discrimination. This information should be provided when requests are received and updated when the status of a request changes.
- Transmission capacity available for resale by customers seeking to resell their rights to transmission service, and announcements by prospective buyers who are seeking to acquire rights to transmission service. These requests should be made available when received.

Staff believes that transmission-owning utilities have such information available in the normal course of business under today's current industry practices. We also believe this information is important for any parties using transmission services to perform wholesale power transactions. Accordingly, comparability requires that such information be made available to prospective customers and to the transmission owner's wholesale power marketing department on the same basis. However, the list is provided only as an example of our current understanding of the information. We invite comment on additional information that is needed, but not included in the list, as well as information in the list that is not needed.

Current industry practice should not be the sole standard for judging what information to consider for inclusion in information networks. Consideration should be given to likely future industry developments, and how these might affect information needs. In particular, the role of electronic information in the dispatch function may change significantly as power markets change. Future networks may need to provide for the electronic trading of power. The design of current systems should retain sufficient flexibility to accommodate these types of future developments. We invite comment on what developments might affect the design of a current information network, and how consideration of such developments might be considered in the design of today's systems.

Questions Regarding Information Needed for Comparability

1. What information about capacity availability is needed? Is this information needed with respect to interfaces with other control areas and within a single control area?

2. How often does information on available capacity need to be updated? What other information is necessary? In designing RINs requirements, what consideration should the Commission give to NERC's interest in improving and communicating the calculation of transfer capability in real-time.[1]

3. What information about transmission constraints should be included? Is it possible to develop information about anticipated constraints and their associated opportunity cost? Could information on interruptions be conveyed after a constraint has occurred?

4. Should the information include requests for transmission capacity, offers of transmission capacity (from utility and third party entitlement holders), rates and an index of entitlement holders? How often does information need to be updated? What other information is necessary to facilitate the development of a

[1] See Report on Electric Utilities' Response to the Cold Wave of January 1994, Report by NERC Blue Ribbon Task Force at 10 (Apr. 11, 1994).

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secondary market for transmission capacity?

5. Can requests for transmission service be submitted electronically, through an EBB or an information network, rather than by telephone or FAX? What specific information is needed for electronic submission of transmission requests?

Systems for Communicating Transmission Information

Many kinds of information systems could support electronic exchange of transmission information between a transmission-owning public utility and its customers, potential customers, and the transmission owner's wholesale marketing department. But there is a tradeoff between the cost of a system and the capabilities it offers. We would like comment on the capabilities needed in a system to communicate transmission information and what type of system will best meet those needs. In order to provide technical background for this discussion, we offer the following three categories as general system types, from the simple to the more complex:

• *Electronic Bulletin Board (EBB).* One simple method of electronically communicating information is to use EBB displays. A user of this type of EBB simply connects to (logs onto) the EBB and sees the information displayed. We believe this simple type of EBB should also permit a user to post information, such as a transmission request, to the EBB.

This type of information system may be adequate for small customers who are not very active in the transmission market and who have only an occasional need for small amounts of timely information. However, as information needs increase, the method of EBB displays may become inadequate. A major disadvantage is that displayed information cannot be processed directly by the receiving party's own computer. Thus, if the receiving party wants to use this information in its own computer displays or as part of an analysis, it must enter it again. Reentering information is slow, error-prone and costly, particularly for users who need large amounts of information from several different EBBs. For this reason, even the simplest form of EBB should provide a capability that permits users to capture the information presented in the display on their computer systems.

• *EBBs with Standardized File Transfer.* A second method of communicating information is to allow users to transfer files between the EBB and the user's computer system. Downloading (transferring the file from the EBB to the user's computer system) eliminates the need to reenter information into a user's computer system when it is already present on the EBB. Uploading (transferring a file from the user's system to the EBB) permits information already present in a file on a user's computer to be sent to the EBB without manual reentry. Therefore, the capability of transferring files containing relevant information between the EBB and its users solves the data reentry problem for large and more sophisticated users.

File transfer capability also makes possible efficient processing of information from several different EBBs. Computer software can be programmed to dial each EBB automatically and to transfer files from (or to) each EBB. The user can then choose how to display the information, or process it directly in a computer program. Third parties can aggregate transmission information from multiple EBBs to provide an information service for customers who prefer to use a single EBB. Standard file formats and protocols for the transfer of information are essential for the efficient transfer of this information. Without standard formats and transfer protocols, a user must develop separate methods and programs for transferring files to and from each EBB.

• *Real-time Information Network (RIN) Connection.* This type of network permits a continuous information connection between the transmission-owning public utility and users of the transmission network. In contrast, displays and downloads are means of distributing information to users who connect intermittently to an EBB specifically to request information. Continuous connection permits a user to have all new information as soon as it becomes available, without needing to make specific requests. A user can directly monitor all new information, or use a computer program to monitor new information selectively as it becomes available. The computer program can then identify time critical information as soon as it is available and alert key company staff of the need to take action.

To a customer, a RIN means the immediate receipt of information when it becomes available. Only some customers may need information immediately, and even these customers will not need all information immediately. We believe, however, that some customers will need this type of information connection, and that the number of these customers will increase over time as markets develop and expand.

RINs would need standardized formats for information and protocols for its transfer. Such standards may be different, and more complex, than standards for file downloads and uploads. However, the development of a RIN could eliminate the need to develop separate file transfer capabilities through EBB uploads and downloads. Such networks could be designed to support both continuous connection and intermittent access using the same formats and transfer protocols.

Questions Regarding the Means of Communicating Information

6. What information is sufficiently time sensitive to require real-time transmission and receipt? What information is sufficiently unchanging and time insensitive to permit efficient transmission by request? Should the amount and timing of real-time information provided be a user option?

7. Is an EBB requirement necessary at all if transmission-owning public utilities are required to provide information to, and receive information and requests from, an information network? Would EBBs be developed voluntarily, either by utilities or third parties, if data were available through an information network?

8. What is the minimum acceptable transfer time for the network? Should it be measured in milli-seconds, seconds or minutes? Should the transfer time be a function of the information transferred?

9. Should EBBs and/or RINs be developed in several phases? If so, what phases and timing are appropriate?

10. How can the development of EBBs and RINs be made flexible enough to accommodate future information needs?

11. Should the network be developed using lines leased or can it use existing Value Added Networks (VANs)?

Standards and System Development

Standardization of information, record formats, and protocols for the exchange of information are crucial to computer-to-computer transfer of information. Without standards, each utility could develop its own file formats and protocols to govern the transfer of information. As experience with the development of EBBs in the gas industry has shown, different formats and communication methods impose significant costs on using information and provide barriers to trade across multiple companies. Moreover, once companies design their own information systems, they understandably tend to resist the imposition of generic standards. It is therefore especially important to reach consensus on what standards should govern the operation of electronic information systems and how information systems should be developed in accordance with those standards. We would also like comment on how the cost of system development and use should be recovered.

Questions Regarding Standards and System Development

12. What standard information should be included in the datasets to be exchanged electronically? What standard definitions and units should be used for this information?

13. What standard record formats and identification codes are needed to exchange the information associated with comparable access?

14. What standard codes should be used to identify facilities, interconnection points, and other locations?

15. What standard protocol(s) should be developed to download and upload files, or to exchange information across the information network?

16. Should a regional or national information system be developed?

17. If some regional development of information systems is desirable, what regional entities should develop and maintain the system? Do these entities currently exist? If they do not exist, how should they be developed?

18. What system development and usage costs should be borne by all transmission users, and what costs should be paid for only by users of the information system?

[FR Doc. 95–8553 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Chapter III

Review of Social Security Administration Regulations

AGENCY: Social Security Administration.

ACTION: Notice with Request for Comments.

SUMMARY: In accordance with President Clinton's memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative, we are soliciting comments on Social Security Administration (SSA) regulations which mandate burdens on States, other governmental agencies or the private sector and suggestions to reduce or eliminate any such mandated burden.

DATES: To be sure your comments are considered, we must receive them no later than May 8, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 965–1762.

SUPPLEMENTARY INFORMATION: The Regulatory Reinvention Initiative announced by the President on March 4, 1995 is designed to provide to all Americans the benefits of effective regulation while minimizing burdens on States and members of the public. The initiative is aimed primarily at regulatory agencies which impose mandatory burdens on States, other governmental entities and the private sector as part of their core business processes.

While SSA is not generally regarded as a "regulatory agency," SSA does issue regulations. However, SSA regulations usually serve only to amplify Congressional direction in administering the social insurance and assistance programs for which we are responsible. While we have some program rules which may create a burden on the public in terms of forms completion or other activities concerning information collection, we generally do not impose mandatory burdens on States, other governmental entities or the private sector.

We recognize that members of the public may have a very different view of the burdens imposed by SSA regulations than the views of those who administer the programs. In the hope of obtaining the widest possible span of viewpoints, we issue this invitation for public comments on any SSA regulations which mandate actions by States, other governmental entities, or the private sector. We are requesting that the public assist us in identifying any SSA regulation which creates such a burden, along with suggested changes to lessen or eliminate the burden. We request further that commenters provide specific details regarding the regulation which imposes the burden, the nature of the burden, and the recommended solution.

We do not consider as part of this initiative SSA regulations which provide the rules we use to determine entitlement to retirement, survivors, disability insurance or supplemental security income benefits since they do not, by their very nature, impose mandatory burdens. Also, we view as outside the scope of this initiative our internal operating procedures in which members of the public do not have a direct role, including the statutory relationship under which State Disability Determination Services make disability determinations on behalf of SSA.

We do consider "burdens" on individuals and other segments of the public as needing our attention. However, in accord with the principles of the National Performance Review we initiated a process that allows customers to provide input on such matters. By means of focus groups, customer surveys, comment cards, and other means, we have in place a process for determining the needs of the public we serve. We will address burdens on individuals through a separate initiative to provide "world class service" to the public. This is a long-term project related to one of the Agency's major goals. Accordingly, we are restricting this request for comments to those SSA regulations which appear to impose mandatory burdens on States, other governmental entities, or the private sector.

Dated: April 4, 1995.

Shirley Chater,

Commissioner of Social Security.

[FR Doc. 95–8751 Filed 4–6–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–33–94]

RIN 1545–AS76

Debt Instruments with Original Issue Discount; Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the

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federal income tax treatment of annuity contracts not issued by insurance companies. Under the proposed regulations, certain annuity contracts are taxed as debt instruments for purposes of the original issue discount provisions of the Internal Revenue Code. The proposed regulations provide guidance to sellers and buyers of these contracts. This document also provides a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by Tuesday, July 18, 1995. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for Tuesday, August 8, 1995, at 10 a.m. also must be received by Tuesday, July 18, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–33–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI–33–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. A public hearing has been scheduled for Tuesday, August 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Andrew C. Kittler, (202) 622–3940, or Jeffrey W. Maddrey, (202) 622–3940; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code of 1986 (Code) provide rules for the treatment of debt instruments that have original issue discount (OID). On February 2, 1994, the IRS published in the **Federal Register** final regulations under these sections (59 FR 4799). This document contains proposed amendments to § 1.1275–1(d) relating to the definition of a debt instrument for purposes of the OID provisions of the Code.

Explanation of Provisions

Section 1275(a)(1)(A) provides that the term debt instrument means a bond, debenture, note, or certificate or other evidence of indebtedness. Under § 1.1275–1(d), the term debt instrument means any instrument or contractual arrangement that constitutes indebtedness under general principles of federal income tax law (including, for example, a certificate of deposit or a loan).

Certain annuity contracts, however, are excluded from the definition of a debt instrument for purposes of the OID provisions. Under section 1275(a)(1)(B)(ii), an annuity contract to which section 72 applies and which is issued by an insurance company is generally excluded from the definition of debt instrument if the circumstances of its issuance meet certain broad statutory requirements. By contrast, section 1275(a)(1)(B)(i) provides a more limited exception from the definition of debt instrument for an annuity contract to which section 72 applies and which is not issued by an insurance company. The section 1275(a)(1)(B)(i) exception applies if the annuity contract depends (in whole or in substantial part) on the life expectancy of one or more individuals. Thus, if a contract is both a debt instrument and an annuity contract not issued by an insurance company, it is subject to taxation as a debt instrument under the OID provisions rather than as an annuity contract under section 72, unless it qualifies for the exception provided in section 1275(a)(1)(B)(i).

If a debt instrument has OID, section 1272 generally requires the holder of the debt instrument to include OID in income currently on a constant yield basis, regardless of the holder's overall method of accounting. This mandatory accrual is intended, in part, to provide an economically accurate reflection of income and to prevent a mismatch of issuer deductions and holder inclusions. In the case of a debt instrument that does not pay interest on a current basis, this mismatch would occur if the holder were allowed to defer including OID in income until the year in which it is actually paid. See H.R. Rep. No. 413 (Part I), 91st Cong., 1st Sess. 109 (1969); H.R. Rep. No. 432 (Part II), 98th Cong., 2d Sess. 1242–43 (1984).

By contrast, the holder of an annuity contract to which section 72 applies is allowed to defer including economically earned income until distributions on the contract are made. Generally, under section 72(b), the holder of an annuity contract includes the earnings on the contract in income on a pro rata basis as distributions are made.

The disparity between the tax treatment of debt instruments and that of annuity contracts is most pronounced in the case of an annuity contract that provides for distributions to commence significantly after the date of initial investment. In that case, a substantial portion of the value of the annuity contract when distributions begin may be attributable to income economically earned prior to that time. If the contract is taxed as an annuity contract under section 72, the income economically earned prior to the commencement of distributions is not taxed to the holder until distributions are made. If the same contract, instead, is taxed under the OID provisions as a debt instrument, income is taxed to the holder in the year it is earned, regardless of when distributions are made.

Differences between the tax treatment of debt instruments and annuity contracts also exist when an annuity contract provides for distributions commencing on or near the date of initial investment. Although the holder of the contract has income inclusions over the entire term of the contract, the rate of inclusion under section 72 is different from that under the OID provisions. In general, the rules of section 72 provide a less economically accurate recognition of income than the OID provisions. The difference in the rate of inclusion, however, is most significant in the case of an annuity contract that has deferred payments or payments that increase in amount over the life of the contract.

The IRS has determined that the exception contained in section 1275(a)(1)(B)(i) does not apply to annuity contracts that provide for significant deferral of income, that is, those contracts that provide for no distributions, or for relatively small distributions, in the early years of the contract. Since 1969, when Congress first required current inclusion of OID by holders, one of the principal purposes of the OID rules has been to provide a more economically accurate reflection of income. See H.R. Rep. No. 413 (Part I), 91st Cong., 1st Sess. 109 (1969); H.R. Rep. No. 432 (Part II), 98th Cong., 2d Sess. 1242–43 (1984). Given the well-established Congressional preference for current inclusion, it would be inappropriate to interpret the exception in section 1275(a)(1)(B)(i) as permitting section 72 rather than the OID provisions to govern the holder's tax treatment of annuity contracts that provide for significant deferral.

The proposed regulations provide that an annuity contract qualifies for the exception described in section 1275(a)(1)(B)(i) only if all payments under the contract are periodic payments that (1) are made at least annually for the life (or lives) of one or more individuals, (2) do not increase at any time during the term of the contract, and (3) are part of a series of payments that begins within one year of the date of the initial investment in the contract.

The proposed regulations further provide that an annuity contract that is otherwise described in the preceding sentence does not fail to qualify for the section 1275(a)(1)(B)(i) exception merely because it also provides for a payment (or payments) made by reason of the death of one or more individuals.

The proposed regulations only apply to annuity contracts that are also debt instruments under general principles of federal income tax law. An annuity contract that is not a debt instrument for federal income tax purposes is not subject to the OID provisions. See the general rule of section 1275(a)(1)(A). It is, therefore, unnecessary to inquire whether such an annuity contract is described in section 1275(a)(1)(B). For example, an annuity contract under which payments are wholly contingent on the continued life of an individual generally is not a debt instrument for federal income tax purposes. As a result, such a contract will continue to be taxed as an annuity contract under section 72. No inference is intended under the proposed regulations as to whether a particular annuity contract constitutes a debt instrument for federal income tax purposes.

Although the proposed regulations do not apply to an annuity contract that is not a debt instrument because it does not provide for a guaranteed return, the OID provisions nevertheless may apply if a return is guaranteed by another instrument. Thus, for example, it is anticipated that the Commissioner's anti-abuse authority under § 1.1275–2T would be invoked to apply the OID provisions to the combination of an annuity contract that is not a debt instrument and a life insurance contract that, together, effectively provide for a guaranteed return.

Comments are requested on whether certain annuity contracts other than those described in the proposed regulations should qualify for the section 1275(a)(1)(B)(i) exception.

Proposed Effective Date

The proposed regulations are proposed to be effective for annuity contracts held on or after the date that is 30 days after final regulations are published in the **Federal Register**. However, the proposed regulations will not apply to an annuity contract that is purchased prior to April 7, 1995. For purposes of the proposed regulations, any additional investment in a contract made on or after April 7, 1995, will be treated as the purchase of a contract after April 7, 1995, unless the investment is required to be made under a binding contractual obligation that was entered into prior to April 7, 1995.

If an annuity contract purchased before the effective date of the regulations is subject to the OID provisions, after the effective date the holder of the contract may account for pre- effective date accruals on the contract, on a prospective basis, in any reasonable manner.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, August 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments, an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, July 18, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Jeffrey W. Maddrey, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1275–1 is amended by:

1. Redesignating the text of paragraph (d) following the heading as paragraph (d)(1) and adding a heading for newly designated paragraph (d)(1).

2. Adding paragraph (d)(2).

The additions read as follows:

§ 1.1275–1 Definitions.

* * * * *

(d) *Debt instrument*—(1) *In general.* * * *

(2) *Certain annuity contracts*—(i) *General rule.* An annuity contract qualifies for the exception described in section 1275(a)(1)(B)(i) only if all payments under the contract are periodic payments that—

(A) Are made at least annually for the life (or lives) of one or more individuals;

(B) Do not increase at any time during the term of the contract; and

(C) Are part of a series of payments that begins within one year of the date of the initial investment in the contract.

(ii) *Certain death benefits permissible.* An annuity contract that is otherwise described in paragraph (d)(2)(i) of this section does not fail to be described in that paragraph merely because it also provides for a payment (or payments) made by reason of the death of one or more individuals.

(iii) *Effective date.* This paragraph (d)(2) is effective for annuity contracts held on or after the date that is 30 days after final regulations are published in the **Federal Register**. However, this paragraph (d)(2) does not apply to an annuity contract that is purchased prior to April 7, 1995. For purposes of this paragraph (d)(2)(iii), any additional investment in a contract made on or after April 7, 1995, is treated as the purchase of a contract after April 7, 1995, unless the investment is required to be made under a binding contractual

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obligation that was entered into prior to April 7, 1995.

* * * * *

Michael P. Dolan,

Commissioner of Internal Revenue.

[FR Doc. 95–8523 Filed 4–6 –95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Illinois underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Illinois regulatory program (hereinafter referred to as the "Illinois program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Illinois and consideration of public comments, OSM will decide whether initial enforcement in Illinois will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., C.S.T. on May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Illinois. Requests to speak at the hearing must be received by 4 p.m., C.S.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to James F. Fulton, Director, Springfield Field Office at the address listed below.

Copies of the applicable parts of the Illinois program, SMCRA, the implementing Federal regulations, information provided by Illinois concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised

Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the States after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Illinois

By letter to Illinois dated December 14, 1994, OSM requested information from Illinois that would help OSM decide which approach to take in Illinois to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. IL–1530). By letter dated February 7, 1995, Illinois responded to this OSM request (Administrative Record No. IL–1531).

Illinois stated that 25 underground coal mines were active in Illinois after October 24, 1992. Illinois stated that the Illinois program does not fully authorize enforcement of the new structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations. Specifically, Illinois indicated that the State program excludes water supplies, and Illinois believes no authority exists to retroactively apply a state regulation. Illinois has no formal regulation or policy on water replacement due to diminution or contamination from mine subsidence. Illinois also stated that it does not have authority to investigate citizen complaints of water loss caused by underground mining operations conducted after October 24, 1992.

Nevertheless, in the few instances where water loss was part of a citizen complaint, Illinois has investigated and worked with the citizen and company to address allegations of water loss or contamination if attributed to mine subsidence. Illinois has investigated two citizen complaints alleging subsidence-related water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992: (1) Complaint No. 1 alleged that a spring fed stream went dry, and the stream served the land owner by watering cattle. The mining may or may not have occurred after October 24, 1992. The spring fed stream crosses both pre- and post- October 24, 1992, mining panels. The coal company immediately provided a trough and trucked water for continued cattle watering. The coal company has since installed a waterline to a cattle watering device to maintain the water supply. (2) Complaint No. 2 alleged well water developed odor and different taste as a result of mining adjacent to but not under the well. Illinois sampled the water and found no quality problems that could be attributable to mining. This land owner is also connected to a public water supply in addition to the private well.

On February 3, 1995, Illinois proposed water replacement regulations.

Proposed 62 Ill. Adm. C 1817.121(c)(3) requires the operator to:

> Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, dimuntion, or interruption resulting from underground coal mining operations.

Once passed and a date is established, the application form will be revised appropriately. Illinois' current rulemaking package should be finalized in a year or less. In addition to proposed

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62 Ill. Adm. Code 1817.121(c)(3), an inventory of all drinking, domestic and residential water supplies in place at the time of permitting will be necessary to fully implement section 720(a)(2) of SMCRA. Based on this information, Illinois may require pre- and post-mining monitoring of certain planned subsidence operations. This will be determined on a case by case basis.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Illinois to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Illinois should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8639 Filed 4–6–95; 8:45 am]

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30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Indiana underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Indiana regulatory program (hereinafter referred to as the "Indiana program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Indiana and consideration of public comments, OSM will decide whether initial enforcement in Indiana will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.S.T. on May 8, 1995. If requested, OSM will hold a public hearing on concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Indiana. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the address listed below.

Copies of the applicable parts of the Indiana program, SMCRA, the implementing Federal regulations, information provided by Indiana concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the

full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, materials damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j) and 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

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C. Enforcement in Indiana

By letter to Indiana dated December 13, 1994, OSM requested information from Indiana that would help OSM decide which approach to take in Indiana to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. IND–1428). By letter dated February [*sic*] 20, 1995, Indiana responded to this OSM request (Administrative Record No. IND–1429) (the letter was misdated; the correct date is January 20, 1995).

Indiana stated that six underground coal mines were active in Indiana between October 24, 1992, and July 1, 1994. Indiana also stated that Indiana statute IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA. Indiana noted that IC 13–4.1–9–2.5's requirements are expressly limited to operations conducted after June 30, 1994. Therefore, the Indiana Division of Reclamation (DOR) may not require structural repair (or compensation) or water replacement under the authority of IC 13–4.1–9–2.5 with respect to surface coal mining operations conducted on or before June 30, 1994. However, Indiana stated that pre-existing Indiana program provisions provide the DR with sufficient authority to impose the Energy Policy Act of 1992 requirements with respect to underground mining operations conducted on or before June 30, 1994.

With respect to structural damage caused by underground mine subsidence, Indiana cited the following provisions of Indiana's approved program as requiring the substantive equivalent of the Energy Policy Act of 1992 provisions:

IC 13–4.1–9–1 concerning the surface effect of underground coal mining operations. Based upon this broad grant of rulemaking authority, Indiana stated, Indiana adopted 310 IAC 12–3–87 and 12–5–130 through 133, each of which pertain to the control of underground mine subsidence and the protection of surface owners from the harms caused therefrom.

310 IAC 12–3–87 concerning underground mining permit applications—reclamation plan—subsidence control plan. This provision provides that if the [operator's premining] survey shows structures or renewable resource lands exist, or that subsidence could cause material damage to or foreseeable use of the land, or if the director determines that this damage could occur, the application shall include a subsidence control plan which contains the following information:

A detailed description of the measures to be taken to mitigate the effects of any material damage to foreseeable use of lands which may occur, including one or more of the following as required by 310 IAC 12–5–132:

Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.

Replacement of structures destroyed by subsidence.

Purchase of structures prior to mining * * *

Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

310 IAC 12–5–132 concerning underground mining—subsidence control—surface owner protection. 310 IAC 12–5–132 provides that:

Each person who conducts underground mining activities shall use all measures approved by the commission under 310 IAC 12–3–87 to * * * mitigate the effect of any damage or reduction [in value] which may occur.

Each person who conducts underground mining activities will complete the following:

Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence by purchase prior to mining of a noncancellable premium prepaid insurance policy or other means approved by the commission as assurance before mining begins that payment will occur.

Indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence.

To the extent technologically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

These provisions, Indiana stated, have been in operation in their present form since June of 1990, and provide coverage for the period between October 24, 1992, and June 30, 1994. Indiana concluded that Indiana SMCRA is no less effective than the Federal SMCRA with respect to structural repair and/or compensation caused by underground mine subsidence.

With respect to water replacement, Indiana stated, such obligations are set forth under 310 IAC 12–5–94 concerning underground mining—hydrologic balance—water rights and replacement. The question of water rights and water replacement obligations under 310 IAC 12–5–29 (hydrologic balance—water rights and replacement) was addressed by the Indiana Supreme Court in *Nat. Res. Comm'n* v. *AMAX* (1994), Ind. 638 N.E.2d 418. The Indiana Supreme Court held that the DOR was authorized under Indiana-SMCRA to mandate the replacement of water supplies adversely affected by surface coal mining operations. Indiana also stated that because the requirements of 310 IAC 12–5–94 are substantively identical to the provision affirmed by the Indiana Supreme Court, the result is identical: the DOR may require replacement of water supplies adversely affected by underground coal mining operations.

Indiana has received five citizen complaints alleging subsidence-caused structural damage as a result of underground mining operations conducted between October 24, 1992, and July 1, 1994. Indiana stated that three of the five complaints were not formal complaints. Of the two formal complaints, one involved no structural damage or water well complaint and the DOR issued a notice of violation for not mining according to plan. With the other formal complaint, the resolution process followed by the coal company is being monitored by the DOR to assure that appropriate mitigation measures are taken.

Indiana explained its enforcement procedures as follows:

Upon notification of subsidence related damages to structures and/or water supply alleged as a result of underground mining operations, an inspection of the area is conducted by the assigned reclamation specialist. Notifications of such damage may come from affected landowners, mine operators, industries in the area, or other sources. If imminent danger is found to inhabitants of the area, the Director shall suspend underground operations as required by 310 IAC 12–5–133(e). The mine plan as required by 310 IAC 12–5–133(f) is then examined by the operator and the Division specialists to determine compliance with the approved plan. Specific complaints with respect to the subsidence event are investigated on a case-by-case basis as received. In the event that problems arise with respect to water supplies as a result of the underground mining activities, the operator must act to replace such supply as required by 310 IAC 12–5–94. In addition, as required by 310 IAC 12–5–132, the operator is required to "correct or compensate" for damages which result from such subsidence.

After consulting with the affected parties in the area, and the operator, if the requirements of these sections are being met, the DOR acts as a mediator between the affected parties and operator with respect to any problem which may arise. Enforcement action may be taken in the event that certain of these regulations are not followed.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Indiana to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Indiana should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated; March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8635 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Kentucky underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Kentucky and consideration of public comments, OSM will decide whether initial enforcement in Kentucky will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., e.s.t. on May 8, 1955. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Kentucky. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to William J. Kovacic, Director, Lexington Field Office at the address listed below.

Copies of the applicable parts of the Kentucky program, SMCRA, the implementing Federal regulations, information provided by Kentucky concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: William J. Kovacic, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Telephone: (606) 233–2894.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington, Field Office, Telephone: (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage include rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those

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supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> Permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation or subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structure related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Kentucky

By letter to Kentucky dated December 14, 1994, OSM requested information from Kentucky that would help OSM decide which approach to take in Kentucky to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. KY–1336. By letter dated January 31, 1995, Kentucky responded to this OSM request (Administrative Record No. KY–1337).

Kentucky stated that 410 underground coal mines were active in Kentucky after October 24, 1992. Kentucky indicated that existing State program provisions at 405 Kentucky Administrative Regulations (KAR) 18:210 section 3 are adequate State counterparts to section 720(a)(1) of SMCRA and the implementing Federal regulations. Section 720(a)(1) of SMCRA requires prompt repair or compensation to the owner for subsidence-related material damage to non-commercial buildings or occupied dwellings and related structures. Kentucky explained that it will enforce this State program provision in accordance with 405 KAR 18:210 section 3.

Kentucky stated that the Kentucky program does not fully authorize enforcement of the new water replacement requirements of section 720(a)(2) of SMCRA and the implementing Federal regulations. Kentucky submitted a program amendment to OSM dated April 29, 1994, (Administrative Record No. KY–1279) which will modify language at Kentucky Revised Statutes (KRS) 350.421. KRS 350.421, as modified, will require replacement of water loss caused by underground mining operations. OSM is currently reviewing the Kentucky program amendment. Kentucky has stated that the effective date of the program amendment, when approved, will be July 16, 1994. Kentucky also stated that it does not have authority to issue enforcement actions for water loss caused by underground mining operations conducted after October 24, 1992, and before July 16, 1994.

Kentucky has investigated 115 citizen complaints alleging water supply loss or contaminations as a result of underground mining operations conducted after October 14, 1992, and before July 16, 1994. Of the 115 citizens complaints, 30 are pending resolution of currently outstanding ten-day notices; 29 have been satisfactorily resolved; and 47 will require further investigation.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Kentucky to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Kentucky should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8638 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Ohio underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Ohio regulatory program (hereinafter referred to as the "Ohio program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Ohio and consideration of public comments, OSM will decide whether initial enforcement in Ohio will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Ohio. Requests to speak at the hearing must be

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received by 4:00 p.m., E.D.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert H. Mooney, Acting Director, Columbus Field Office at the address listed below.

Copies of the applicable parts of the Ohio program SMCRA, the implementing Federal regulations, information provided by Ohio concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Robert H. Mooney, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, 2nd Floor, Columbus, Ohio 43232. Telephone: 614–866–0578

FOR FURTHER INFORMATION CONTACT: Robert H. Mooney, Acting Director, Columbus Field Office, Telephone: 614–866–0578

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damage structures as a result of subsidence. Section 702(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions require prompt repair or compensation for damage to structure, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751.

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817. 41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (b) above, OSM would directly enforce

in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any under ground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Ohio

By letter to Ohio dated December 15, 1994, OSM requested information from Ohio that would help OSM decide which approach to take in Ohio to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. OH–2073). By letter dated January 18, 1995, Ohio responded to his OSM request (Administrative Record No. OH–2085).

Ohio provided a list of permitted underground coal mining operations. There are currently eight underground coal mines that are producing coal. The number of coal producing underground coal mines in Ohio has been less than fifteen at any given time since October 24, 1992. Ohio indicated that existing State program provisions at the Ohio Revised Code section 1513.152 and the Ohio Administrative Code sections 1501:13–1–02(S); 1501:13–9–04(P); and 1501:13–12–03(C), (D), (E), (F), (H), (I) are adequate State counterparts to section 720 of SMCRA and the implementing Federal regulations. Ohio explained that it has enforced these State program provisions requiring replacement of water supplies impacted by underground mining operations since 1977 and enforced State program provisions requiring repair or compensation for subsidence related structural damage since 1988. Ohio has investigated 26 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Ohio has made a determination on six of the complaints that water loss was not mining related and on six of the complaints that water loss was mining related. Fourteen complaints are still being investigated. Twelve of the 14 are related to water supplies associated with one underground coal mining operation and are not subsidence related.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Ohio to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbia Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [Eastern Time zone] on April 15, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public hearing, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Ohio should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8636 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement OSM), Interior.

ACTION: Announcement of; public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Virginia underground coal mine subsidence control and water replacement provisions of the Surface Mining

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Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Virginia regulatory program (hereinafter referred to as the "Virginia program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Virginia and consideration of public comments, OSM will decide whether initial enforcement in Virginia will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., e.s.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Virginia. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

Copies of the applicable parts of the Virginia program, SMCRA, the implementing Federal regulations, information provided by Virginia concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCA (60 FR 16722-16751).

30 CFR 817.121 (c)(2) requires in part that:

> The permitted must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provide that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.42(j) 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permitee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j) and 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Virginia

By letter to Virginia dated December 14, 1994, OSM requested information from Virginia that would help OSM decide which approach to take in Virginia to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. VA–850. By letter dated January 13, 1995, Virginia responded to this OSM request (Administrative Record No. VA–851).

Virginia indicated that existing State program provisions at Sections 45.1–243 and 45.1–258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990. OSM records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations. As of January 13, 1995, Virginia had found that no violation of the Act existed on 202 of the complaints, violations existed on 35 of the complaints, and technical reports and a final decision were pending on 25 complaints.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Virginia to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. om April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Virginia should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

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ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Easter Support Center.

[FR Doc. 95–8637 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA36–1–6922; FRL–5185–7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia: Non-CTG Reasonably Available Control Technology for Philip Morris, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the Philip Morris, Inc, (Philip Morris), Manufacturing Center, in Richmond, Virginia, which is part of the Richmond ozone nonattainment area. The SIP revision requires Philip Morris to meet RACT by installing thermal incinerators on process units that use ethanol-based flavorings. An exemption from this requirement is provided if the company eliminates use of ethanol-based flavorings and there is no net increase in VOC emissions. The intended effect of this action is to propose approval of the SIP revision on the condition that deficiencies in the exemption requirements are corrected and submitted within one year of this approval. If the State fails to do so, this approval will convert to a disapproval. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On September 28, 1994, the Commonwealth of Virginia submitted a revision to its State Implementation Plan (SIP). The SIP revision consists of a Consent Order and Agreement (the Order) between the Department of Environmental Quality (DEQ) of the Commonwealth of Virginia and Philip Morris, Inc.. The Order was signed by Philip Morris' Senior Vice President of Manufacturing on June 14, 1994 and the Director of DEQ on June 27, 1994. The Order became effective on June 27, 1994.

In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide in Virginia and that a SIP call would be issued. (See 52 FR 45044). On May 26, 1988, the Regional Administrator of EPA Region III notified the Governor of Virginia that the Commonwealth's SIP was substantially inadequate to achieve the ozone and carbon monoxide NAAQS for certain areas in Virginia, including Henrico County in the Richmond-Petersburg metropolitan statistical area, and therefore required a SIP revision. As prescribed by the SIP call, Virginia is required to develop reasonably available control technology (RACT) regulations in all its nonattainment areas for all VOC sources with the potential to emit 100 tons per year (TPY) or more for which EPA has not issued a Control Techniques Guidelines (CTG) document. Such sources are known as non-CTG sources. One of the non-CTG sources identified as requiring RACT is Philip Morris, Inc.'s Manufacturing Center in Richmond, Virginia. The City of Richmond is located in the Richmond area, which is currently designated nonattainment for ozone. Therefore, Virginia is submitting this Order as a SIP revision to fulfill part of its SIP call obligation.

In addition, this SIP revision serves to fulfill one of the RACT fix-up requirements of the Virginia SIP required by section 182(a)(2)(A) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. Areas classified as marginal nonattainment areas for ozone pursuant to section 181(a) of the Clean Air Act, as amended, are required to meet the RACT fix-up requirements. Under section 182(a)(2)(A), a state is required to submit, within six months of such classification, a SIP revision to correct requirements in (or add requirements to) the plan concerning RACT, as interpreted in guidance issued by the Administrator under section 108 of the Act before November 15, 1990.

Summary of SIP Revision

The Philip Morris Manufacturing Center processes, flavors and blends various types of tobacco for the production of cigarettes. The operations include moisture addition, preflavoring, blending, cutting, flavoring and cigarette-making. VOC emissions result primarily from the application and evaporation of flavorings, particularly ethanol-based flavorings. Total uncontrolled stack and fugitive VOC emissions are estimated to be 1259 tons per year, based on 1990 throughput data.

To accommodate the number and diversity of stack emissions at the Manufacturing Center, RACT was determined by grouping exhaust streams in various combinations and evaluating the feasibility and cost of installing control technology on the combined exhaust streams. Virginia has determined that the only grouping amenable to control technology is the combination of exhausts from the unit processes associated with ethanol-based flavorings. These combined waste streams comprise 48% of the uncontrolled stack emissions from the Manufacturing Center and are made up of emissions from burley casing cylinders #1 and #2, aftercut flavor cylinders #1 through #8, and aftercut dryers #1 through #4.

The Order establishes RACT for these units as the installation and operation of two (2) 10,000 standard cubic feet per minute (scfm) thermal oxidation units having a VOC destruction efficiency of at least 95% on a mass basis. The thermal oxidation units are required to be operated at the three-hour average minimum temperature that demonstrates 95% destruction efficiency as determined by performance testing. Thermal oxidation units must be interlocked with process equipment and exhaust fans such that tobacco cannot be processed and VOC laden exhaust air cannot flow to the incineration units until the minimum temperature is achieved. In addition, the Order requires that a negative pressure be maintained in the exhaust system as demonstrated by continuous pressure monitors and reported as three-hour

rolling averages. Based on 1990 throughput data, stack emissions from the process lines using ethanol-based flavorings and aftercut dryers will be reduced from 606 tons/year to 30 tons per year.

The Order allows an exemption from meeting these control requirements if Philip Morris replaces the existing ethanol-based flavorings with non-ethanol-based flavorings, provided that the change does not result in a net increase in VOC emissions.

Virginia has determined that RACT for all other tobacco processing operations shall be the use of low-VOC, non-ethanol based flavorings.

For more information on Virginia's RACT determination and the specific provisions of the Order, please refer to the Technical Support Document (TSD) prepared for this notice. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the Addresses section of this notice.

EPA's review of this material indicates that the requirements to install, operate and maintain thermal oxidation units on the burley case flavoring cylinders, the aftercut flavoring cylinders and the aftercut dryers, and the use of low VOC flavorings on other tobacco processes established by the Consent Order and Agreement between the Virginia DEQ and Philip Morris, Inc. constitutes RACT for the facility's VOC emitting processes. EPA has also determined that the exemption from meeting the requirements of add-on controls through the use of non-ethanol based flavorings does not impose enforceable conditions that would ensure that there shall be no net increase in emissions above the level established by RACT.

EPA is proposing to conditionally approve the non-CTG RACT SIP revision for the Philip Morris Manufacturing Center pending corrections to the exemption provided in the Order that allows the use of reformulated flavorings in lieu of operating emission control technology. RACT has been defined for burley casing cylinders #1 and #2, aftercut flavor cylinders #1 through #8, and aftercut dryers #1 through #4 as 95% destruction efficiency of VOCs on a mass basis over a three hour averaging period. Alternatively, the exemption from operating add-on controls through the use of reformulated flavorings requires that there shall be no net increase in VOC emissions. The Order is deficient in that it does not require the facility to monitor or report emissions from the affected units when non-ethanol-based flavorings are used and the facility is exempt from operating the thermal incinerators. The Order also fails to require a baseline to be established for the purpose of measuring net increases or decreases in emissions. Consequently, the requirement that there be no net increase in emissions from the substitution of reformulated flavorings for add-on control is unenforceable and does not impose the same level of control that would be imposed by the Order as RACT without the exemption.

In order to correct this deficiency, Virginia must amend and resubmit the Order within one year of this conditional approval in one of the following ways: (1) eliminate the exemption to use non-ethanol-based flavorings in lieu of add-on controls; (2) restrict the applicability of the exemption to the use of non-VOC based flavorings; or (3) impose monitoring and reporting requirements sufficient to determine net increases or decreases in emissions on a mass basis relative to the emissions that would have occurred using add-on controls on an average not to exceed thirty days. If Virginia fails to revise and resubmit the Order within one year, the conditional approval will convert to a disapproval.

Proposed Action

Pursuant to section 110(k)(4) of the CAA, EPA is proposing to conditionally approve the Virginia SIP revision for the Philip Morris Manufacturing Center, which was submitted on September 28, 1994. Virginia must amend the Consent Order and Agreement with Philip Morris, Inc, according to one of the three options described in this notice and resubmit the Order to EPA. If Virginia fails to do so within one year of the final conditional approval, the approval will convert to a disapproval. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

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List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 22, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–8607 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 55

[FRL–5185–8]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations being updated pertain to the operating permit requirements for OCS sources for which the Ventura County Air Pollution Control District (Ventura County APCD) is the designated COA. The OCS requirements for the above District, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before May 8, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section VIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section VIII). This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section VIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–6102), Attn: Air Docket No. A–93–16 Section VIII, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of Part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of part 70 permit rules by a local air pollution control agency.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as Part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

On November 22, 1994 (59 FR 60104), EPA proposed interim approval of the Ventura County APCD Operating Permits Program (part 70 permits). EPA is now proposing to update 40 CFR part 55 by incorporating the requirements of this program, in response to Ventura County APCD's request and to maintain consistency with onshore requirements. These proposed requirements will apply to the extent that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, that they are applicable to OCS sources, and that they do not solely regulate pollutants or precursors to pollutants for which there is no Federal or State ambient air quality standard. These proposed Ventura County APCD part 70 permit requirements applicable to OCS sources will not be finalized in part 55 until EPA takes final action granting full or interim approval to the Ventura County APCD Operating Permits Program.

The following Ventura County APCD part 70 permit requirement were submitted for inclusion in part 55:

Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

B. Regulatory Flexibility Act

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore part 70 permit requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the OCS rule. Because this action does not create any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 1995.

Felicia Marcus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to part 55 is proposed to be amended by revising paragraph (b)(8) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 3/22/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/10/93)
Appendix II-A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II-B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 6/8/93)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 72 New Source Performance Standards (NSPS) (Adopted 7/13/93)

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Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV-A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

[FR Doc. 95–8604 Filed 4–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[LA–001; FRL–5185–4]

Clean Air Act Proposed Full Approval of Operating Permits Program; Louisiana Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to rescind the proposed interim approval of the Louisiana Operating Permits Program published in the **Federal Register** (see 59 FR 43797, August 25, 1994) (hereafter Interim Approval Notice) and propose full approval of the Operating Permits Program as revised by the State's November 16, 1994, submittal. The proposed interim approval in the Interim Approval Notice was based upon the Operating Permits Program submitted by the Governor of Louisiana for the Louisiana Department of Environmental Quality (LDEQ) and received by the EPA on November 15, 1993. On November 16, 1994, the State submitted material revisions adequately addressing the issues raised by the EPA in the Interim Approval Notice and adding insignificant activities criteria to the Louisiana Operating Permits Program. This revised Operating Permits Program will provide for the issuance of operating permits to all major stationary sources and to certain other sources with the exception of sources on Indian Lands, in compliance with the Federal requirements.

DATES: Comments on this proposed action must be received in writing by May 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, P.O. Box 82135, Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Joyce P. Stanton, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7218.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act as amended on November 15, 1990 ("the Act"), the EPA has promulgated rules which define the minimum elements of an approvable State Operating Permits Program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State Operating Permits Program (see 57 **Federal Register** 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these Operating Permits Programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each Operating Permits Program within one year after receiving the submittal. The EPA's Operating Permits Program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. The EPA proposed interim approval in the Interim Approval Notice on August 25, 1994, for the Operating Permits Program submitted by the LDEQ on November 15, 1993. However, 40 CFR 70.4(e)(2) allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the one-year review period. This additional review period may not extend beyond one year following receipt of the revised submission. On November 16, 1994, the EPA received material changes to Louisiana's Operating Permits Program from the Governor of Louisiana on behalf of the LDEQ. These changes included regulations adopted to add insignificant activities criteria, and to address issues raised in the Interim Approval Notice. The EPA will act expeditiously to promulgate a final notice on the State's revised Operating Permits Program within one year of the November 16, 1994, revised submittal. The publication of this proposal allows the public the opportunity to review and comment on the changes contained in the revised submittal.

At this time, the EPA proposes to rescind the interim approval proposed in the Interim Approval Notice and instead proposes full approval of the Operating Permits Program as revised by the November 16, 1994, submittal. The Interim Approval Notice had a 30-day comment period which was extended an additional 30 days to October 26, 1994 (see 59 FR 50537, October 4, 1994). The comments received on issues discussed in the Interim Approval Notice during that comment period are discussed in this notice together with a discussion of the revisions to the State's Operating Permits Program received on November 16, 1994.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Confidentiality Provisions. In the Interim Approval Notice, the EPA stated that, while the State statute provided that certain environmental information such as air emissions data may not be held confidential, it was not clear whether these confidentiality provisions could be interpreted to protect the contents of the permit itself from disclosure. The Interim Approval Notice stated that the LDEQ must either submit an Attorney General's Opinion demonstrating that the State's statute is interpreted not to allow any portion of a permit to be held confidential, consistent with section 503(e) of the Act, or revise Louisiana Administrative Code (LAC) 33:III.Chapter 5, section 517.F (permit regulations) to clarify that no portion of the permit may be held confidential. In response to this statement in the Interim Approval Notice, the LDEQ commented that it did not currently protect from disclosure as confidential any permit issued under LAC 33.III.Chapter 5, and that the LDEQ has adopted a conservative policy in interpreting the reference to "emissions data" in a manner which limits the grant of confidentiality under the Louisiana statute. The LDEQ stated, however, that in the interest of cooperation, it would revise its regulations. The November 16, 1994, submittal contained a revision to LAC 33:III.517.F which requires that no permit or portion of a permit issued to a source in accordance with Louisiana's Operating Permits Program shall be held confidential. This regulatory revision has adequately addressed the EPA's concern regarding confidentiality and is no longer an interim approval issue.

2. Requirement that No Major Source be Exempt from Part 70 Requirements Because a Research and Development (R&D) Facility is Co-located with the Source. In the Interim Approval Notice, the EPA explained that LAC 33:III.501.B.7 allows the permitting authority to consider a certain complex within a facility as a source separate from the facility with which it is co-located, provided that the complex is used solely for R&D of new processes and/or products, and is not engaged in the manufacture of products for commercial sale. The EPA noted that this regulation was inconsistent with 40 CFR 70.3 which requires that a State's Operating Permits Program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

The Interim Approval Notice explained that 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping, to be considered as the same source. The EPA concluded that the Louisiana permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same Standard Industrial Classification (SIC) code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure that all part 70 requirements for those sources are met.

The Interim Approval Notice went on to state that for full part 70 approval, the LDEQ would be required to revise its permit regulations and demonstrate that no source, or portion of a source, which would be defined as major under 40 CFR 70.2 would be exempted from part 70 requirements because an R&D facility is co-located with the source.

One commenter objected to the EPA's proposed action related to the R&D issue and stated that by limiting the scope of the exemption to R&D facilities with different SIC codes, the EPA has virtually eliminated any relief for R&D facilities. The commenter stated that, since R&D activities are so limited in time, scale, and actual production, subjecting these activities to the Operating Permits Program requirements unnecessarily burdened research by companies as well as the State's Operating Permits Programs. This commenter also requested that any guidance concerning R&D facilities be published for public comment as part of future part 70 rulemakings. The EPA's position continues to be that 40 CFR part 70 allows R&D facilities to be treated separately in cases where the R&D facility has a different two-digit SIC code and is not a support facility.

The LDEQ commented that its regulatory provision cited as deficient on this point had been incorporated into the State's Operating Permits Program based on the State's understanding of guidance provided by the EPA in the preamble to the part 70 regulations. In the Interim Approval Notice, the EPA explained that the preamble language was intended to clarify the flexibility in 40 CFR part 70 for allowing R&D facilities to be treated separately from the manufacturing facilities with which they are co-located where the R&D facility has a different two-digit SIC code and is not a support facility. This approach is consistent with the treatment of R&D facilities in the New Source Review program. In response to the Interim Approval Notice and in an effort to receive full approval of Louisiana's Operating Permits Program, the LDEQ has revised LAC 33:III.501.B.7 to include a provision that an R&D facility may be considered separately provided the facility has a different two-digit SIC code from, and is not a support facility of, the source with which it is co-located. This revision was included in the November 16, 1994, submittal. This change adequately addresses the EPA's concern and the State's treatment of R&D facilities is no longer an interim approval issue.

3. Acid Rain Application Deadlines. In the Interim Approval Notice, the EPA discussed LAC 33.III.507.C.1.b which contained the deadlines for submittal of acid rain permit applications. Although this section purported to cover all relevant dates for submittal of acid rain permit applications, this section did not contain the deadlines required by 40 CFR 72.30(b)(2)(iii) for new units and for units that did not serve a generator with a name plate capacity greater than 25 Megawatts electrical on November 15, 1990, but which served such a generator after November 15, 1990. In the Interim Approval Notice, the EPA noted that LAC 33:III.505.D.2 contains the deadlines for submittal of acid rain permit applications consistent with those required by title IV of the Act, but that it contradicted LAC 33.III.507.C.1.b. The Interim Approval Notice explained that, even though LAC 33.III.505.A.4 provides that Federal acid rain requirements applicable to an affected source shall supersede LAC 33:III.Chapter 5 of the Louisiana Regulations where the two are inconsistent, the inconsistency between LAC 33.III.505.D.2, 507.C.1.b and the Federal acid rain regulations created a lack of clarity and should be eliminated. The Interim Approval Notice required that, for full part 70 approval, LAC 33.III.507.C.1.b be revised to require the

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affected sources to conform with the deadlines in LAC 33.III.505.D.2.

The LDEQ commented that the provisions of LAC 33.III.507.C.1.b cited by the EPA in the Interim Approval Notice as creating an interim approval issue were incorporated by the LDEQ in response to an earlier EPA comment on the LDEQ's proposed Air Quality regulations. The State responded by stating that, despite the error in LAC 33.III.507.C.1.b, LAC 33.III.505.A.4 and 505.D.2 would still require sources to comply with all Federal acid rain deadlines. However, the November 16, 1994, Operating Permits Program submittal included a revision to LAC 33.III.507.C.1.b to clarify the acid rain permit application submittal deadlines as requested by the EPA. This revision adequately addresses the EPA's concern and, therefore, this is no longer an interim approval issue.

4. Provision for Administrative Amendments. In the Interim Approval Notice, the EPA stated its concern that LAC 33.III.521.A.6 could be interpreted to allow administrative amendments to permits to incorporate changes authorized by 40 CFR 70.4(b)(14). These "off-permit" changes, which are not addressed or prohibited by the permit, may be made under part 70 without permit revisions. However, the Interim Approval Notice explained that the part 70 rule contains no authority for such changes to be incorporated into operating permits except through the appropriate part 70 permit procedures for minor or significant modifications. In the Interim Approval Notice, the EPA stated that, for full part 70 approval, section 521.A.6 of the permit regulations must be revised to eliminate administrative amendments for this type of change.

LAC 33.III.521.A.6 also allows changes to be made to operating permits by administrative amendment where the State's permitting authority has determined they are similar to the changes listed in LAC 33.III.521.A. The Interim Approval Notice explained that part 70 allows changes submitted as part of a State's part 70 program, in addition to those specified in 40 CFR 70.7(d)(1), to be made as administrative amendments where the EPA Administrator determines those changes to be similar to the changes listed in 40 CFR 70.7(d)(1)(i)–(iv). However, no such proposed changes were submitted by the State as part of its Operating Permits Program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.7(d)(1)(vi). The Interim Approval Notice required that, for full part 70 approval, this defect in LAC 33.III.521.A.6 of the permit regulations must be corrected.

The LDEQ commented that the cited provision was intended by the State to allow the LDEQ discretion in revising permits for terms and conditions altogether outside the scope of 40 CFR part 70 and would not circumscribe 40 CFR part 70. However, to receive full approval, LAC 33.III.521.A.6 has been revised to clarify that this provision can be used solely for State-only changes involving terms and conditions which are not federally enforceable. These revisions were included in the November 16, 1994, submittal and adequately address the EPA's concerns. Therefore, this is no longer an interim approval issue.

5. Requirement to Keep Records for Five Years. In the Interim Approval Notice, the EPA cited the 40 CFR 70.8(a)(3) requirement that each State permitting authority keep for five years such records as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act and 40 CFR part 70. While 44 Louisiana Revised Statute (L.R.S.) section 1 contains a very broad definition of "public records," 44 L.R.S. section 36 requires the records to be kept for only three years unless a longer formal retention schedule has been developed. The Interim Approval Notice required as a condition of full part 70 approval, a statutory change or a supplemental Attorney General's Opinion demonstrating how the current statute ensures that the required records will be kept for at least five years.

The LDEQ commented that it intended to keep records for five years, and that it believed that 40 CFR part 70 did not require a permit rule ensuring that records be retained for five years. It remains the EPA's position that because the language in the Louisiana Statute does not appear to ensure that records be retained for five years, 40 CFR 70.8(a)(3) requires either an Attorney General's Opinion demonstrating how this statute ensures a five-year retention of these records or a statutory or regulatory change. In the interest of obtaining full approval, the LDEQ revised LAC 33.III.533.B.5. As revised, LAC 33.III.533.B.5 provides that the permitting authority shall keep for five years such records and submit to the EPA such information as the Administrator may reasonably require to ascertain whether the State Operating Permits Program complies with the requirements of part 70 and the Act. This revision, which was included in the November 16, 1994, submittal, adequately addresses the EPA's concern, and records retention is no longer an interim approval issue.

6. Significant Modification Procedures. In the Interim Approval Notice the EPA stated its concern about the lack of clarity of LAC 33.III.527.A.3. This provision allowed certain changes that rendered existing compliance terms irrelevant to be incorporated through minor modification procedures. The changes cited appeared to be of the type described in 40 CFR 70.4(b)(14), "off-permit" changes. However, the State's provision was unclear, and the Interim Approval Notice explained that, to remedy this ambiguity, the State should add language clarifying that the modification is one which would qualify as a change under 40 CFR 70.4(b)(14), because it is not addressed or prohibited by the permit and would otherwise qualify for treatment as a minor modification under 40 CFR 70.7(e)(2)(i)(A).

The LDEQ commented that the cited State provision was meant only to clarify that obsolete compliance measures could be removed from the permit without requiring a significant permit modification. In the interest of obtaining full approval, however, the LDEQ deleted LAC 33.III.527.A.3 in its entirety. This revision, which was included in the November 16, 1994, submittal, has adequately addressed the EPA's concern, and the previously noted ambiguity is no longer an interim approval issue.

7. Permit Conditions. In the Interim Approval Notice, the EPA explained that even though the permit content requirements of 40 CFR 70.6(a) are met by the model permit submitted in Volume III of the State's original part 70 submittal, 40 CFR 70.4(b)(16) also requires regulatory provisions in the State's program to implement the requirements of 40 CFR 70.6 and 70.7. The EPA noted that LAC 33.III.501.C.5 and 6 speak generally to permit terms and conditions, but do not set out all requirements for each operating permit as required.

Specifically, the EPA noted that these State provisions did not include a requirement that the permit specify the origin of and reference the authority for each term or condition, nor did they identify differences in form from the applicable requirements upon which the terms were based or contain various other elements required by 40 CFR 70.6. The Interim Approval Notice explained that 40 CFR 70.6(a) includes requirements for emission limitations, monitoring, and recordkeeping, and specifies that the regulation must state that no permit revision shall be required under any approved economic incentive, marketable permits, or similar program. The Interim Approval Notice stated that a severability clause is also required to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit. The EPA stated that these elements must be addressed in the permit regulations in order to afford citizens the opportunity to legally challenge permits. The Interim Approval Notice stated that, although some of these elements are contained in the State's model operating permit, one condition of full part 70 approval would be that the permit regulations be revised to require that all permit elements of 40 CFR 70.6(a) be included in each permit.

In its comments, the LDEQ stated its belief that the model permit forms and applications submitted with the original Operating Permits Program submittal adequately addressed this issue. However, in an effort to obtain full approval, the LDEQ has revised LAC 33.III.507.B.2 to incorporate by reference the provisions of 40 CFR 70.6 as in effect on July 21, 1992. This revision was submitted with the November 16, 1994, submittal and adequately addresses the EPA's concern. Therefore, this is no longer an interim approval issue.

8. Title I Modifications and Case-by-case Determinations. In the Interim Approval Notice, the EPA discussed the State's definition of the phrase "title I modification." At the time of the Interim Approval Notice, the EPA believed that for a State's program to be fully approvable, it would be necessary for the State's definition of "title I modification" to be interpreted to include literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants established pursuant to section 112 of the Act prior to the 1990 amendments. LAC 33.III.502 defines "title I modification" as a change at a site that qualifies as a modification under section 111 of the Act or section 112(g) of the Act, or that results in a significant net emissions increase under part C or part D of the Act. In the Interim Approval Notice, the EPA required that the LDEQ revise the definition of "title I modification" in order to receive full approval.

The LDEQ commented that it believed the part 70 regulations clearly allowed "minor" preconstruction changes to be processed as minor permit modifications under part 70. The LDEQ further stated its belief that States which allowed minor preconstruction changes to be processed as minor operating permit modifications should be approved, and to do otherwise, would cause the States to suffer significant negative impact.

The American Forest and Paper Association (AF & PA) stated that the EPA's interpretation set out in the Interim Approval Notice was without legal basis, and that such an interpretation failed to take into account the numbers of additional source modifications which would be required to be processed under the significant modification procedures of title V of the Act. The AF & PA stated its belief that such an interpretation would further have potentially devastating consequences on the AF & PA's members doing business in Louisiana.

The Louisiana Chemical Association disagreed with the EPA's position that Louisiana's definition of "title I modification" must be revised for full approval, and provided legislative history excerpts in support of its interpretation of the term "title I modification."

On August 29, 1994, the EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to allow State Operating Permits Programs with a narrower definition of "title I modification" to receive interim approval (See 59 FR 44572, August 29, 1994). Following is a discussion of points noted in that publication.

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking action on part 70 Operating Permits Programs submitted by the States. However, publication of the proposed revision was delayed until August 29, 1994, and several requests to the EPA to extend the public comment period further delayed final action on the revisions. Given the importance of the issues in that rulemaking to States, sources, and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122, October 14, 1994). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs that were submitted on or before November 15, 1993. The EPA believes it would be inappropriate to delay action on these States' Operating Permits Programs until final action is taken on the interim approval revisions. The EPA also believes it would be inappropriate to grant interim approval to Louisiana's Operating Permits Program on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(d) in a manner which would provide a legal basis for such an interim approval. Prior to the EPA's final promulgation of interim approval criteria, Louisiana may maintain and implement the narrower definition of "title I modification." Upon the EPA's final decision of what constitutes a "title I modification," if the EPA's definition differs from Louisiana's current definition, the State will be required to revise its definition in accordance with the EPA's final definition.

The EPA is allowing this approach to "title I modification" for a number of reasons. First, the EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994, FR notice, and the EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, the EPA believes that the Louisiana Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving Operating Permits Programs from States such as Louisiana that submitted their Operating Permits Program to the EPA on or before the November 15, 1993, statutory deadline could lead to the unfair result that States which were late in submitting Operating Permits Programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to the EPA. Finally, disapproval for a State's Operating Permits Program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, the EPA is approving the Louisiana Operating Permits Program's use of a narrower definition of "title I modification" at this time. However, should the EPA in the interim approval criteria rulemaking make the final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on

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Louisiana's Operating Permits Program so that the State's definition of "title I modification" could become grounds for interim approval. A State Operating Permits Program like the one in Louisiana, which receives full approval of its narrower definition pending completion of the EPA's rulemaking, must ultimately be placed on an equal footing with States which receive interim approval in later months under revised interim approval criteria based on the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking will avoid this inequity. The EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

Questions have been raised on a national level concerning whether the 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting minor modifications for changes in "case-by-case" determinations would apply in the instance of a preconstruction permit in which the permitting authority, through a minor modification procedure, changes a source-specific control technology requirement not required under part C or D or section 111 or 112 of the Act, or an emission limitation determination established on a source-specific basis. At the time of the Interim Approval Notice, the EPA believed the better interpretation of 40 CFR 70.7(e)(2)(i)(A)(3) required that any requirement imposed on a source-specific basis, such as one in which the permitting authority has discretion in setting the requirement for the particular source, must be considered to be a "case-by-case" determination. Therefore, the EPA believed that a change involving a source-specific requirement in a preconstruction permit would be considered a "case-by-case determination of an emission limitation" under 40 CFR 70.7(e)(2)(i)(A)(3), ineligible for processing as a minor permit modification.

LAC 33.III.525.A.2.d allows the use of minor modification procedures for some changes which would be considered "case-by-case" emission limits under the EPA's narrower interpretation. The EPA is taking comment on whether a less narrow interpretation of "case-by-case" is acceptable.

Therefore, the EPA will not at this time construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Louisiana from allowing minor preconstruction changes to be processed as minor permit modifications. Should the EPA's final interpretation be inconsistent with Louisiana's current regulations, the definition of "case-by-case" will also be an interim approval issue. The EPA anticipates that an action to convert the full approval on the "case-by-case" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

9. Insignificant Activities. As the Interim Approval Notice indicated, provisions to determine insignificant activities were not included with the State's original submittal. The State's later, November 16, 1994, submittal contained a list of insignificant activities and criteria for determining which activities were sufficiently insignificant to be exempt from the requirement to obtain a permit, or from inclusion in a permit (for a part 70 source engaged in other activities which must appear in permits), unless the LDEQ determines on a site-specific basis that such exemption is not appropriate. These insignificant activities were divided into four categories. The first category consisted of activities based on size or production rate that were required to be included in the application but not the permit. This is consistent with 40 CFR 70.5(c) which provides that, if approved by the EPA, a list of insignificant activities based on size or production rate may be exempted from inclusion in a part 70 permit, although they must still be included in the application. LAC 33.III.501.B.5 provides that any activity to which a State or Federal applicable requirement applies is not insignificant even if the activity meets the criteria of the "Insignificant Activities List." Therefore such an activity must be included in the permit. The LDEQ has clarified in a letter that insignificant activities may not be exempted from major source applicability determinations. This is consistent with 40 CFR 70.3(c) and 70.5(c) which requires that the permitting authority include in the permit all applicable requirements for all relevant emissions units.

As allowed by 40 CFR 70.5(c), LAC 33.III.501.B.5 contains a second category based on activities that do not need to be included in a permit application. This list includes activities such as maintenance of grounds, general repairs, lawn care, steam cleaning, certain painting activities, use of adhesives, office activities, vehicle emissions, etc. The third category of insignificant activities is based on type of pollutant. LAC 33.III.501.B.5 allows water vapor, oxygen, carbon dioxide, nitrogen, and hydrogen to be exempt from the permit application.

The last category of insignificant activities is based on emissions levels. In order to use this category, the source must receive prior approval from the LDEQ, and all of the criteria must be met. These criteria include: (a) The emissions unit emits and has the potential to emit no more than five tons per year of any regulated air pollutant; (b) the emissions unit emits and has the potential to emit less than the minimum emission rate listed in Table 51.1, LAC 33.III.Chapter 51, for each Louisiana toxic air pollutant; (c) the emissions unit emits and has the potential to emit less than the de minimis rate established pursuant to section 112(g) of the Federal Act for each hazardous air pollutant; and (d) no enforceable permit conditions are necessary to ensure compliance with any applicable requirement.

The EPA believes that these insignificant criteria are sufficient to ensure that every application contains the information needed to determine the applicability of, and to impose, any applicable requirement, or to evaluate the fee amount as required by 40 CFR 70.5(c). The list and its criteria meet the requirements of 40 CFR part 70 and therefore are approvable. The EPA will accept comments on the insignificant activities discussed herein, as well as other provisions of the State's revised submittal.

B. Discussion of Other Comments

1. Section 112(g) Comments. Louisiana Mid-Continent Oil and Gas Association (LAMOGA) was concerned that the Louisiana Operating Permits Program was being approved prior to the finalization of Federal requirements regarding section 112(g) of the Act on modification of sources of hazardous air pollutants. The AF & PA commented that it believes the EPA's delegation to Louisiana of section 112(g) authority is unlawful and confusing to the regulated community, because the EPA has not issued any regulation to implement this statutory language and does not expect to finally adopt such a regulation for many months. The AF & PA opposes the approval of the Louisiana preconstruction permit rules for the implementation of section 112(g), because it believes that these rules were never intended to define or otherwise address issues such as "de minimis" and offsets. The AF & PA is concerned that sources would have no way to determine whether and when they are subject to the program until a final

Federal section 112(g) rule is promulgated.

In the Interim Approval Notice, the EPA also proposed to approve Louisiana's preconstruction program for the purpose of implementing section 112(g) during the transition period before a Federal rule had been promulgated implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the Operating Permits Program, regardless whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice. The EPA's new position of not requiring the implementation of section 112(g) until the Federal 112(g) rule is promulgated renders moot the AF & PA comment regarding section 112(g).

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

2. Natural Resources Defense Council (NRDC) Comments. The NRDC objected to the approval of the Louisiana Operating Permits Program for the same reasons the NRDC objected to the EPA's part 70 regulation upon which the approval was based. The NRDC's earlier comments on the national proposed part 70 rulemaking were attached to its comments on the proposed approval of the Louisiana Operating Permits Program. The EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule in the D.C. Circuit Court of Appeals; therefore, those part 70 comments will not be addressed in this notice. Unless and until the part 70 rule is revised, the EPA must evaluate proposed part 70 programs according to the rule currently in effect.

3. Enhanced Monitoring. The LAMOGA expressed concern that the Louisiana Operating Permits Program was being approved prior to the finalization of Federal enhanced monitoring requirements. The LDEQ will implement the enhanced monitoring requirements of the Act and provide appropriate permit conditions after the Federal enhanced monitoring rules are finalized. The EPA will not delay approval of Louisiana's Operating Permits Program based on the fact that the Federal enhanced monitoring rule is not yet finalized.

4. General Comments. The EPA received comments from Citizens for a Clean Environment and some comments from LAMOGA favorable to the Louisiana Operating Permits Program and requesting full approval for the program.

C. Provisions Implementing the Requirements of Other Titles of the Act

By submitting the State's Operating Permits Program for approval, Louisiana commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112, and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Federal section 112 standards as they apply to part 70 sources. The State of Louisiana acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources.

Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this proposal for full approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations. After this approval is made final, in cases where the State utilizes the mechanism of incorporation by reference, no additional Federal public comment period will occur prior to the transfer of authority for unchanged section 112 standards to the State. This approval for delegation of unchanged Federal section 112 standards applies to existing and future standards as they apply to sources covered by the part 70 program. The State retains the option at any time to promulgate the full text of the Federal standard unchanged or to request delegation of section 112 standards in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA instead of using the mechanism of incorporation by reference. If the State chooses either of these options, an approval under 40 CFR part 63 subpart E will be required.

D. Summary

The State of Louisiana submitted to the EPA, under cover letters from the Governor dated November 4, 1993, and November 10, 1994, the State's Operating Permits Program and the State's revised Operating Permits Program, respectively. The original and revised submittals have been reviewed for adequacy under the requirements of title V of the Act and the 40 CFR part 70 regulations which together outline criteria for approval and disapproval. The results of this review are included in the technical support document. The EPA believes that the LDEQ, in its revised submittal, has adequately addressed all issues discussed in the Interim Approval Notice which proposed interim approval. The EPA believes the insignificant activities list and criteria are fully approvable. Therefore, at this time the EPA is proposing to grant full approval to the Louisiana Operating Permits Program. The EPA is soliciting comments on all aspects of this proposed full-approval.

E. Options for Approval/Disapproval

The EPA proposes to withdraw the proposed interim approval announced in the Interim Approval Notice and to fully approve the Operating Permits Program submitted to the EPA from the State of Louisiana on November 15, 1993, and revised on November 16, 1994. Louisiana has demonstrated that the program meets the minimum elements of a State Operating Permits Program as specified in 40 CFR part 70.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on Louisiana's revised submittal as discussed in this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the

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information submitted to, or otherwise considered by, the EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by May 8, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address Operating Permits Programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Operating permits, Administrative practice and procedure, Reporting and recordkeeping requirements.

V. Miscellaneous

A. Proposed Full Approval

Proposed full approval of the part 70 Operating Permits Program for the State of Louisiana.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 30, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–8608 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–55–P

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40 CFR Part 81

[NM–25–1–6908; FRL–5185–5]

Designation of Area for Air Quality Planning Purposes; New Mexico; Designation of Sunland Park Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), as amended in 1990, the EPA is authorized to promulgate new designations of areas (or portions thereof) as nonattainment for the ozone National Ambient Air Quality Standards (NAAQS). In this action, the EPA is proposing to revise the ozone designation for a portion of Dona Ana County, New Mexico (i.e. the Sunland Park area). Previously, consistent with the CAA, the EPA notified the Governor of New Mexico that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for ozone. The redesignation is based upon violations of the ozone NAAQS which were monitored from 1992–1994.

DATES: All written comments must be received by May 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch (6T–A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

SUPPLEMENTARY INFORMATION:

Background

By operation of law upon enactment of the 1990 amendments to the CAA (Public Law 101–549, 104 Statute 2399), all areas of the country were designated either nonattainment or unclassifiable/attainment for the ozone NAAQS [see section 107(d)(4)(A) of the CAA; 56 FR 56694–56858 (November 6, 1991), 57 FR 56762–56778 (November 30, 1992), and 59 FR 18967–18971 (April 21, 1994)]. The amended CAA also authorizes the EPA to revise the designation of current ozone areas from unclassifiable/attainment to nonattainment on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA deems appropriate [see section 107(d)(3) of the CAA].

Following the process outlined in section 107(d)(3), on December 16, 1994, the Regional Administrator of the EPA Region 6 notified the Governor of New Mexico that the EPA believed the Sunland Park area should be redesignated as nonattainment for ozone. Under section 107(d)(3)(B) of the CAA, the Governor of New Mexico was required to submit to the EPA the designation considered appropriate for the Sunland Park area within 120 days after the EPA's notification. The EPA received the State's response for the Sunland Park area on February 6, 1995 (letter dated January 30, 1995). Now, the EPA must promulgate the redesignation that it deems necessary and appropriate, consistent with section 107(d)(3)(C) of the CAA.

Based upon the EPA's review of the State's January 30, 1995, letter for the Sunland Park area, the EPA is proposing a redesignation to nonattainment which is consistent with the request submitted by the Governor of New Mexico. The EPA is requesting comments on this action and will consider any relevant comments before taking final action.

Section 107(d)(1)(A) of the CAA sets out definitions of nonattainment, attainment, and unclassifiable. The EPA has proposed that the Sunland Park area in Dona Ana County, New Mexico, addressed in this action, be redesignated nonattainment for the ozone NAAQS. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for ozone [see section 107(d)(1)(A)(i) of the CAA].[1] Thus, in determining the appropriate boundaries for the nonattainment area proposed in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

Proposed Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured exceedances of the ozone NAAQS have been recorded at the monitoring site, ranging from a low of .126 parts per million (ppm) to a high of .140 ppm. The seven exceedances represent a violation of the ozone NAAQS [see 40 Code of Federal Regulations (CFR) 50.9]. Since less than three years of data have been collected at the Sunland Park monitoring site, the EPA design value (used to determine ozone attainment status) for the site is the third highest ozone value recorded—.136 ppm. Therefore, the Sunland Park ozone nonattainment area would be classified as a marginal ozone nonattainment area according to the classification scheme set forth in section 181 of the CAA. Due to the marginal classification, the attainment date for the Sunland Park ozone nonattainment area would be three years from the effective date of the **Federal Register** final action establishing the nonattainment designation and classification.

In response to the EPA's December 16, 1994, letter, on January 30, 1995, the Governor of New Mexico concurred with the EPA that a small area of southern Dona Ana County, including Sunland Park, be redesignated as nonattainment for the ozone NAAQS. However, the Governor did not concur with the proposed nonattainment boundaries in one respect, proposing an alternate western boundary for the nonattainment area. Based on the information provided by the Governor, including monitoring data, the EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The table below indicates how the EPA is proposing to revise the ozone designation for a portion of Dona Ana County, New Mexico in 40 CFR 81.332 from unclassifiable/attainment to nonattainment.

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

NEW MEXICO—OZONE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Dona Ana County (part)—The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.	Proposing	Nonattainment	Proposing	Marginal.

The technical information supporting the redesignation request and the boundary selections are available for public review at the address indicated above.

Significance of Proposed Action for the Sunland Park Area, New Mexico

If the Sunland Park area of southern Dona Ana County, New Mexico, is redesignated nonattainment, such area will be classified as a marginal ozone nonattainment area at the time of the designation (see section 181(b)(1) of the CAA). Within 24 months after the effective date of the final action on this proposal of the nonattainment redesignation, New Mexico must submit an implementation plan meeting the requirements of part D, title I of the CAA (see section 182(a) of the CAA).

The CAA provides that the plan for the area must contain, among other things, the following items:

1. A comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) of the CAA, in accordance with guidance provided by the EPA. The pollutants inventoried must include volatile organic compounds (VOC), nitrogen oxides (NO_x) and carbon monoxide. No later than the end of each three year period after submission of the initial inventory, until the area is redesignated to attainment, the State must submit a revised inventory meeting all EPA requirements (see section 182(a)(1) of the CAA).

2. Requirements that the owner or operator of each stationary source of NO_x or VOC provide the State with a statement, in such form as the EPA may prescribe, for classes or categories of sources, showing the actual emissions of NO_x and VOC from that source. The first such statement must be submitted to the State within three years after the date of publication of the action establishing the nonattainment designation. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The State may waive the emission statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NO_x, if the State, in its initial and periodic emission inventories, provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the EPA, or other methods acceptable to the EPA (see section 182(a)(3)(B) of the CAA).

3. A revised nonattainment new source review permitting program meeting the requirements of sections 172(c)(5) and 173 of the CAA, including the requirement that the ratio of total emission reductions of VOC to total increased emissions of such air pollutant shall be at least 1.1 to 1 (see section 182(a)(4) of the CAA).

4. Revised conformity rules (Regulations 20 NMAC 2.98 and 20 NMAC 2.99) if necessary (see sections 176 and 182 of the CAA).

Request for Public Comments

The EPA is, by this action, proposing that the ozone designation for a portion of Dona Ana County, New Mexico, be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designation and the scope of the proposed boundaries. Public comments must be submitted to the EPA at the address identified in **ADDRESSES** by May 8, 1995.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not, in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review, as

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appropriate, the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: March 30, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95–8603 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

RIN 3067–AC34

Standard Hazard Determination Form

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: FEMA is developing a standard form for determining whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

DATES: We invite your comments on this proposed form, which should be submitted on or before May 8, 1995.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756, or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: Section 102(b) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (NFIRA) (42 U.S.C. 4012a(b)), requires that federally regulated lending institutions and federal agency lenders review the National Flood Insurance Program map for the community in which they are contemplating making, increasing, extending, or renewing any loan secured by improved real estate to determine whether the property is located in an identified Special Flood Hazard Area, and if so, require the purchase of flood insurance for the building or mobile home. Section 528 of the NFIRA (42 U.S.C. 1365(a)) directs that FEMA "shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director [of FEMA] as an area having special flood hazards and in which flood insurance under this title is available." The purpose of the form is to determine whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

Section 528(c) of the NFIRA (42 U.S.C. 1365(c)) requires that federal entities for lending regulation shall by regulation require the use of this form by regulated lending institutions. Each federal agency lender shall also, by regulation, provide for the use of the form with respect to any loan made by such federal agency lender. The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. Rules specifying the use of this form will be published separately by these federal agencies. However, as required by the NFIRA, FEMA is presenting the form itself in this proposed rule to provide an opportunity for review and comment.

The NFIRA also directs FEMA to consult with representatives of the mortgage and lending industry, the federal entities for lending regulation, the federal agency lenders and any other appropriate individuals in developing this form. Before publishing this proposed rule, FEMA held an informal 30-day review period. We provided a copy of a two-page draft standard hazard determination form to over 400 individuals, agencies and groups representing the following interests: Federal entities for lending regulation, federal agency lenders, government-sponsored enterprises for housing, lenders, insurance agents, flood zone determination companies, attorneys, trade associations, professional surveyors and engineers, and floodplain managers. We received a total of 74 comments by February 16, 1995. The breakdown of respondents is as follows: Seven federal entities for lending regulation, federal agency lenders, and government-sponsored entities for housing; 10 lenders; 14 insurance agents; 12 flood zone determination companies; nine associations representing bankers, credit unions, floodplain managers, and surveyors; one engineering firm; one software corporation; five state/local floodplain managers; and 15 other individuals.

There were several recurring themes in the comments, which have been addressed in the current version of the form. The focus of the form has been significantly narrowed. Much extraneous information has been deleted and the form has been shortened to one page. We prepared a one-page set of instructions to accompany the form. The instructions refer to the source for obtaining information needed to complete the form. All references to "property" have been replaced with "building/mobile home." An entry for the amount of flood insurance required by the lender has been included. The amount of space available for the property address has been enlarged. The sections of the form have been streamlined, and the lender information is clearly separated from the determination section. Some sections of the form may be left blank, depending on the determination. Additional space was provided for comments and for the preparer's information.

We received many comments regarding the availability of the form in an electronic format. The NFIRA states that the form may be used in a printed, computerized, or electronic manner. Once finalized, the form will be made available by FEMA in an electronic format. We anticipate that a standard format common to all potential users will be employed for this electronic version.

Some of the questions we received during the informal review period related to use of the form, for example: will the form content be mandatory or will the use of the form be mandatory? Section 528(c) of the NFIRA (42 U.S.C. 1365(c)) mandates that

"Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities." The federal entities for lending regulation, federal agency lenders, and government-sponsored entities for housing will establish the regulations and guidelines regarding the use of the form later.

We also received comments regarding review of determinations by FEMA, outlined in Section 524 of the NFIRA. We anticipate publishing a proposed rule for these procedures soon.

National Environmental Policy Act

This proposed rule would be categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it would not be expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. Moreover, establishing the Standard Hazard Determination Form is required by the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4012a. A regulatory flexibility analysis has not been prepared.

Regulatory Planning and Review

This proposed rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this proposed rule adheres to the principles of regulation as set forth in Executive Order 12866. This proposed rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Executive Order 12612, Federalism

This proposed rule would involve no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987. Executive Order 12778, Civil Justice Reform. This proposed rule would meet the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is proposed to be amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for Part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.16 is added to read as follows:

§ 65.16 Standard Hazard Determination (Flood Hazards) Form and Instructions.

Section 528 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 1365(a)) directs that FEMA "shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available." The purpose of the form is to determine whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements. The Standard Hazard Determination (Flood Hazards) form and accompanying instructions are found below in Appendix A to Part 65.

3. Appendix A to Part 65 is added at the end of Part 65 as follows:

Appendix A to Part 65—Federal Emergency Management Agency, Standard Hazard Determination (Flood Hazards) Form and Instructions.

BILLING CODE 6718–03–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY
STANDARD HAZARD DETERMINATION (FLOOD HAZARDS)

See The Reverse Side For Instructions

O.M.B. No. 3067-XXXX Expires

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 20 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676- XXXX), Washington, DC 20503.

SAMPLE FORM

NOTE: This form meets the requirements of Section 1365 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4012a. Exceptions: This form is not required for loans for which either the outstanding principal balance or the value of the building is $5000 or less, and the repayment term is 1 year or less.

SECTION I - TO BE COMPLETED BY LENDER

1. LENDER NAME	2. LENDER ID. NO.	3. LOAN NO.	4. DATE OF LOAN

5. COLLATERAL *(Building/Mobile Home)* PROPERTY ADDRESS OR LEGAL DESCRIPTION	6. AMOUNT OF REQUIRED FLOOD INSURANCE *(The lesser of the principal balance of the loan or the value of the building)*

SECTION II - TO BE COMPLETED BY PERSON MAKING DETERMINATION

A. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES BEGINNING WITH LETTERS "A" OR "V")? ☐ YES ☐ NO

If yes, flood insurance may be required by the Flood Disaster Protection Act of 1973. Parts B-F must be completed.
If no, flood insurance is not required. Parts B, C, F must be completed.

B. COMMUNITY JURISDICTION

Community Name	County(ies)	State	Community Number

C. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

Map Number or Community-Panel Number (Community name, if not the same as "B")	Map Panel Effective/Revised Date	LOMA/LOMR	Flood Zone	No NFIP Map
		___ Yes ___ No Date:		

SAMPLE FORM

D. FEDERAL FLOOD INSURANCE AVAILABILITY

☐ Federal Flood insurance is available *(community participates in NFIP)*.
☐ Federal Flood insurance is not available because
☐ Community is not participating in the NFIP
☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) and was built or substantially improved after the CBRA designation date.

E. COMMENTS *(Optional)*.

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information affecting this building as necessary to locate the building/mobile home on the NFIP map.

F. PREPARER'S INFORMATION

DETERMINATION PERFORMED BY	DATE PREPARED
COMPANY NAME AND ADDRESS	TELEPHONE NUMBER

FEMA Form 81-93, FEB 95

BILLING CODE 6718-03-C

Standard Hazard Determination (Flood Hazards) Instructions

Section I

2. Lender ID. No.: FDIC-ensured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number.

5. The lender should attach legal property description only if space provided is insufficient. Describe the property in sufficient detail to locate the specific building or mobile home accurately; a postal address in a rural area may be sufficient.

Section II

A. Determination: Self-explanatory.

B. Community Jurisdiction. The 6-digit National Flood Insurance Program (NFIP) community number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained by calling 1-800-xxx-xxxx. For areas that may have been annexed by one community but are shown on another community's NFIP map, the Community Number for the community with land-use jurisdiction over the area should be used.

C. NFIP Data Affecting Building/Mobile Home. The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. If no NFIP map exists, check the box under "No NFIP Map".

NFIP Maps. The current NFIP map, and a pamphlet titled "Guide to Flood Maps" (FEMA-258) may be obtained by calling 1-800-xxx-xxxx.

LOMAs and LOMRs. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, check "no". Information on LOMAs and LOMRs is available from the following sources:

1. The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.

2. For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the **Federal Register**; a subscription service providing actual copies of these letters semi-monthly is also available. To inquire about these two services, all 1-800-xxx-xxxx.

3. Information about most LOMAs and LOMRs issued since 1983 nationwide is contained in FEMA's Community Information System. An electronic listing may be requested, and may be limited to specific communities or states, if desired. For information on this service, call 1-800-xxx-xxxx.

D. Federal Flood Insurance Availability. To obtain Federal flood insurance, provide a copy of this completed form to an insurance agent. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book. Federal flood insurance is prohibited in designed Coastal Barrier Resources Areas (CBRAs) for buildings or mobile homes built or substantially improved after the date of the CBRA designation. An information sheet explaining CBRAs may be obtained by calling 1-800-xxx-xxxx.

E. Comments. This form only requires a determination regarding a single building's or mobile home's relation to a specific Flood Hazard Area. If the person making the determination wishes to add additional information regarding flood hazards (such as the property's location with respect to floodways, etc.), he or she may do here.

F. Preparer's Information. Self-explanatory.

Other Information

Multiple Buildings. Use a separate form for each building or mobile home. A separate flood insurance policy is required for each building or mobile home.

Guarantees regarding information. Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

Dated: March 30, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95-8343 Filed 4-6-95; 8:45 am]

BILLING CODE 6718-03-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2544

Solicitation and Acceptance of Donated Property and Services

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corporation for National Service (the Corporation) is issuing uniform rules and regulations regarding the solicitation and acceptance or rejection of property and services. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation has the authority to solicit and accept donations. The Corporation is adopting these rules and regulations to eliminate the possibility of confusion for individuals who wish to donate property or services to the Corporation. In addition, the Corporation wants to insure that no situations arise involving a real or apparent conflict of interest with respect to a donation or an individual or group who offers a donation.

DATES: Comments on the proposed regulations must be received no later than May 8, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Stewart Davis, Office of the General Counsel, The Corporation for National Service, 1201 New York Ave., N.W., Washington D.C., 20525

FOR FURTHER INFORMATION CONTACT: Stewart Davis, Office of the General Counsel, The Corporation for National Service, 1201 New York Ave., N.W., Washington D.C., 20525. (202) 606-5000 x. 265.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

The Corporation invites written comments on the text of the proposed regulations and requests that the comments identify the specific regulatory provisions to which they relate.

Miscellaneous Requirements

The Corporation has determined that this is not a "significant regulatory action" within the meaning of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Because this rule does not involve collection of information or impose record keeping requirements, the Paperwork Reduction Act of 1980 does not apply. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. In addition, the Agency has determined that implementation of this action will not have any significant impact on the quality of the human environment pursuant to the National Environmental Policy Act.

List of Subjects in 45 CFR Part 2544

Administrative practice and procedure, Gifts to government, Government property.

Dated: April 3, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

Accordingly, as set forth in the preamble, the Corporation proposes to amend title 45, chapter XXV of the Code of Federal Regulations by adding part 2544 to read as follows:

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PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS

Sec.

2544.100 What is the purpose of this part?
2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?
2544.110 What definitions apply to terms used in this part?
2544.115 Who may offer a donation?
2544.120 What personal services from a volunteer may be solicited and accepted?
2544.125 Who has the authority to solicit and accept or reject a donation?
2544.130 How will the Corporation determine whether to solicit or accept a donation?
2544.135 How should an offer of a donation be made?
2544.140 How will the Corporation accept or reject an offer?
2544.145 What will be done with property that is not accepted?
2544.150 How will accepted donations be recorded and used?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2544.100 What is the purpose of this part?

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

§ 2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

§ 2544.110 What definitions apply to terms used in this part?

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

§ 2544.115 Who may offer a donation?

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

§ 2544.120 What personal services from a volunteer may be solicited and accepted?

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

§ 2544.125 Who has the authority to solicit and accept or reject a donation?

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?

(a) The Corporation will solicit and accept a donation only for the purpose of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d) (1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

§ 2544.135 How should an offer of a donation be made?

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

§ 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

§ 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations or given to local charities determined by the Corporation.

§ 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125(a).

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified, or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125(a).

[FR Doc. 95–8517 Filed 4–6–95; 8:45 am]
BILLING CODE 6050–28–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Chapter II

[Docket No. R–159]

Presidential Review of Regulations

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Maritime Administration (MARAD) will conduct two public meetings, in New Orleans, Louisiana, and Norfolk, Virginia, to provide the public an opportunity to comment on MARAD's regulations and regulatory process. Comments are sought concerning proposed changes to MARAD's regulations that would make them more precise, less burdensome or more flexible.

DATES: The meeting in New Orleans will be held on April 26, 1995, from 1:00 p.m. to 4:00 p.m. The meeting in Norfolk will be held on April 27, 1995, from 1:00 p.m. to 4:00 p.m. Written material may be submitted either at the meeting or at a later date. Anyone wishing to submit material prior to either meeting, for discussion at that meeting, should deliver that material to MARAD no later than three days before the meeting. Written comments must, in any event, be submitted not later than April 27, 1995.

ADDRESSES: The New Orleans, Louisiana, meeting will be held in the Elmwood Tower, Room 115, Elmwood Park Boulevard, Jefferson, LA. The Norfolk, Virginia, meeting will be held in the Virginia Port Authority, Board Room, 600 World Trade Center, 6th Floor. Written comments may be mailed to the Secretary, Maritime Administration, Department of Transportation, Room 7210, 400 7th Street, S.W., Washington, DC 20590, or may be delivered to the same address between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments will become part of this Docket and will be available for inspection or copying at the above address during the specified time period.

FOR FURTHER INFORMATION CONTACT: Joan M. Bandareff, Chief Counsel, Maritime Administration, Department of Transportation, Room 7230, 400 7th Street, S.W., Washington, DC 20590. Telephone Number: (202) 366–5711.

SUPPLEMENTARY INFORMATION: The President recently announced a Regulatory Reinvention initiative. Under this initiative, agencies are directed to review their regulations, improve their enforcement efforts to focus on results, not punishment; meet with the people affected by their regulations; and substantially increase their efforts to promote consensual rulemaking.

In reviewing its existing regulations, MARAD will be focusing primarily on regulations implementing the administration of its financial assistance and other promotional programs to identify those that may be obsolete, require clarification or should be revised to reduce the economic impact on the affected public, while allowing MARAD to effectuate the intended purpose of the programs in the most efficient manner. Attendance at each meeting is open to the public, who may make oral presentations during the meeting.

Dated: April 4, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95–8663 Filed 4–6–95; 8:45 am]
BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 94–259]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Public Notice seeking comment in connection with the Fourth Further Notice of Proposed Rulemaking.

SUMMARY: In a Public Notice in Common Carrier Docket 87–266, the Common Carrier Bureau and the Cable Services Bureau requested information and comment on the possible grant of blanket Section 214 authorizations.

DATES: Comments must be submitted on or before April 21, 1995. Reply comments are due on May 1, 1995.

ADDRESSES: Comments and reply comments may be mailed to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. A copy of each filing should also be filed with Peggy Reitzel of the Common Carrier Bureau, and James Yancey of the Cable Services Bureau.

FOR FURTHER INFORMATION CONTACT: Mindy J. Ginsburg, (202) 418–1591, Common Carrier Bureau, Policy and Program Planning Division, and Larry

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Walke, (202) 416–0847, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is Public Notice, DA 95–665, in Common Carrier Docket 87–266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, released April 3, 1995. The complete text of this Public Notice is available for inspection and copying, Monday through Friday, 9:00 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street NW., Washington, D.C. 20554. The complete text of the Public Notice may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington D.C. 20037, (202) 857–3800.

Supplemental Comments Sought on Possible Grant of Blanket Section 214 Authorization

Released: April 3, 1995.

As announced on March 17, 1995, any telephone company against whom the Commission is not enforcing the cable television/telephone company cross-ownership ban need not obtain a waiver of the ban from the Commission in order to construct or acquire a cable television system within its local service area. See Public Notice, DA 95–520, March 17, 1995; and Correction, DA 95–722, April 3, 1995. See also 47 U.S.C. 533(b). A telephone company must, however, continue to obtain from the Commission a certificate of public convenience and necessity under Section 214 of the Communications Act before constructing or acquiring a cable television system within its local service area. See C.F.R. §§ 63.01, 63.08, and 63.09. See generally *General Telephone Company of the Southwest* v. *United States*, 449 F.2d 846 (5th Cir. 1971).

This Public Notice seeks supplemental comments to assist the Commission in reviewing the record in response to the Fourth Further Notice of Proposed Rulemaking, FCC 95–20, CC Docket No. 87–266 (released January 20, 1995) (60 FR 8996, February 16, 1995). By this Public Notice, the Common Carrier Bureau and the Cable Services Bureau seek supplemental comment on whether any telephone company against whom the Commission is not enforcing the cable television/telephone company cross-ownership ban should be granted blanket Section 214 authorization to construct or acquire a cable television system within its local service area, and, if so, how the relevant rules should be amended. The Bureaus also seek supplemental comment on whether such blanket Section 214 authorization should apply both when the cable television facility is used also to provide telephone services, and when the facility is used to provide only cable television services. Furthermore, comment is sought on what, if any, other circumstances warrant granting consideration of such blanket Section 214 authorization when a telephone company provides video programming in its service area, on any other methods for streamlining the Section 214 applications process, and on how the relevant rules should be amended. See, e.g., Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and Other Non-Common Carrier Services Outside its Telephone Service Area, 49 FR. 21333 (1984). While comments may already have been filed on these issues, we believe that the record would be enhanced by providing an opportunity for supplemental comment.

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. 1.415 and 1.419, inserted parties may file comments on or before April 21, 1995 and reply comments on or before May 1, 1995. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings, one with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and the other with the Policy and Rules Division, Cable Services Bureau, Room 408C, 2033 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202/857–3800). Comments and reply comments will be available for public inspection regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C.

By the Chief, Common Carrier Bureau, and Chief, Cable Services Bureau.

For further information contact: Mindy J. Ginsburg (202) 418–1580 (Common Carrier Bureau) or Larry Walke (202) 416–0800 (Cable Services Bureau).

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–8701 Filed 4–6–95; 8:45 am]
BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AF65

Implementation Plan for Section 1555 of the Federal Acquisition Streamlining Act of 1994; Cooperative Purchasing

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice and request for comments.

SUMMARY: The General Services Administration (GSA) requests comments on its proposed plan for implementing Section 1555 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) which deals with Cooperative Purchasing. GSA is particularly interested in receiving comments on the level of interest on the part of State and local governments in using Federal supply schedules and in identifying the schedules which are of greatest interest. Any comments on or suggestions regarding the determination not to make FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies available for use by non-Federal users or other aspects of the proposed implementation plan are also welcome. Section 1555 amends subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481) to authorize the Administrator of General Services to provide for use of Federal supply schedules of the GSA upon request by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian tribe (as defined in section 4(e) of the Indian self-determined and Education Assistance Act (25 U.S.C. 450b(e)). The Administrator is also authorized to require the authorized entities to reimburse the Federal Government for any administrative costs of using the schedules.

DATES: Comments on the proposed implementation plan shall be submitted June 6, 1995, to be considered in the formulation of the final implementation plan.

ADDRESSES: Interested parties should submit written comments to Ms. Marjorie Ashby, General Services Administration, Office of GSA Acquisition Policy, 18th and F Streets N.W., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Les Davison, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Proposed Cooperative Purchasing Program Implementation Plan

1. *Purpose.* This plan outlines the General Services Administration's plan for implementing Section 1555 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) which authorizes cooperative purchasing.

2. *Background.* Section 1555 amends subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481) to authorize the Administrator of General Services to provide for use of Federal supply schedules of the GSA upon request by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian Tribe (as defined in section 4(e) of the Indian self-determination and Education Assistance Act (25 U.S.C. 450b(e)). The Administrator is also authorized to require the authorized entities to reimburse the Federal Government for any administrative costs of using the schedules.

The Federal supply schedule program, which is directed and managed by GSA, provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining discounts associated with volume buying. Using competitive procedures, indefinite delivery contracts are awarded under the program to commercial firms to provide supplies and services at stated prices for given periods of time. The contracting office makes publications entitled Federal supply schedules available in either printed or electronic form. These schedules contain the information needed by ordering activities for obtaining catalogs and price lists from contractors and placing orders with the contractors. Contractors publish and distribute contract pricelists to ordering activities that contain detailed marketing information regarding the products or services offered by the contractor, ordering information, service, warranties, etc. Under the schedules program, ordering activities issue delivery orders directly to the contractors, receive shipments, and provide contract administration on their individual orders. Although GSA awards most Federal supply schedule contracts, GSA may authorize other agencies to award schedule contracts and publish schedules; e.g., the Department of Veterans Affairs awards schedule contracts for certain medical and non-perishable subsistence items.

3. *Definition.* "Federal supply schedule", as used in this plan, means both single award and multiple award schedules awarded by GSA's Federal Supply Service and Information Technology Service as well as schedules awarded by other Federal agencies pursuant to a delegation of authority from GSA (e.g., Department of Veterans Affairs).

4. *Description of various types of schedules.*

a. *Single-award schedules.* These schedules cover specific products at stated prices under contracts with one supplier for delivery to a geographical area as defined in the schedule. The majority of items included in this type of schedule are commercial items described by Federal specifications or Commercial Item Descriptions. Most of these schedules contain all information necessary for placing orders. Some specify that contractors prepare brochures containing additional ordering information, usually dealing with choices of fabric, colors, and similar variables.

b. *Multiple-award schedules.* These schedules cover contracts awarded to more than one supplier for the same generic types of supplies or services at varying prices, terms and conditions for delivery directly to the ordering activity. Schedule users are provided the opportunity to fill their requirements with the item having the features which meet their needs and that represents the best value at the lowest overall cost. Many of the schedules are established for a multi-year period. All multiple award schedule contractors are required to prepare and distribute catalogs/price lists which must be used with the schedule when preparing orders.

Multiple award schedules are awarded in accordance with the Competition in Contracting Act and are competitive in that participation in the program has been open to all responsible sources. Orders are placed under contracts using procedures designed to result in the acquisition of the lowest overall cost alternative to meet the users needs.

5. *Supplies and services available through Federal supply schedule program.* A wide variety of commercial items are available on Federal supply schedules. Federal agencies place approximately 1.9 million orders valued at approximately $5.4 billion under approximately 7,000 schedule contracts each year. While many of the largest corporations hold schedule contracts, 75 percent of the schedule contracts are with small business concerns. Exhibit 1 provides a listing which identifies current Federal supply schedules and states whether the schedule is a single or multiple award schedule.

6. *Policy.* The General Services Administration intends to make schedules (except FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets) available for use by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) upon their request unless a determination is made by the Contracting Officer responsible for the applicable schedule that it is not appropriate to do so. Schedule contracts will only be established to meet the needs of Federal agencies. To the extent that eligible non-Federal users have a need for the same items or services, they will be authorized to use the schedule contracts. Individual schedule contractors will be able to elect whether or not to make the products or services on schedule available to non-Federal users such as State and local governments.

The Administrator of General Services has made a determination that it would not be in the interest of the Federal Government to make FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets, available for use by non-Federal users. Certain unique statutory requirements (Pub. L. 102–585, Veterans Health Care Act of 1992) impacting the pricing and availability of products apply to FSC 65 I B and FSC 65 VII. These unique statutory requirements when combined with the cooperative purchasing provisions would have the unintended effect of increasing costs to the Federal users of the schedules. Therefore, these schedules will not be made available to non-Federal users.

7. *Procedure for requesting authorization to use Federal supply schedules.* GSA will ask each State and the Commonwealth of Puerto Rico to establish a point of contact for local

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governments to work through in requesting authorization to use schedule contracts. This contact will serve as a clearinghouse to verify that the entity making the request is indeed either a department or agency of the State or Commonwealth or a political subdivision of the State (including local governments) or Commonwealth. GSA will use the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs which is published pursuant to 25 CFR part 83 to confirm eligibility of Indian tribes for purposes of providing authorization to use schedule contracts. (See 58 FR 54364–54369, October 21, 1993, for the list of entities.)

8. *Conditions for use of Federal supply schedules.* Organizations that are authorized to use schedule contracts will be required to agree to comply with all terms and conditions of the applicable schedule contract.

9. *Ordering.* Initially, authorized ordering activities will place orders directly with schedule contractors in accordance with ordering instructions provided in the schedule. In the future (within the next 3–5 years), GSA envisions all ordering activities, including State and local governments, placing orders electronically through an on-line system that will provide an electronic catalog of available products and prices and permit schedule users to actually place orders once they have selected the item(s) to be acquired. GSA will then electronically transmit the orders to schedule contracts with direct delivery of the items to the ordering activity.

10. *Standard terms and conditions of Federal supply schedule contracts.* GSA does not intend to establish special terms and conditions for individual States or local governments. The terms and conditions currently used in schedule contracts will only be revised to the extent necessary to recognize the potential for State and local governments, the Commonwealth of Puerto Rico and Indian tribes to use the schedule contracts. Use of schedule contracts will be optional for eligible non-Federal users. Interested parties may obtain a copy of typical terms and conditions included in schedule contracts by contacting the Office of GSA Acquisition Policy on (202) 501–1224 or submitting a written request to the address identified above. In addition, ordering activities should note that there may be some variations among the terms and conditions of different schedule contracts, to address concerns or issues that are unique to a particular schedule or an individual contract.

11. *Disputes.* All contracts under GSA's schedule program are subject to the Contract Disputes Act of 1978. Therefore, any disputes regarding orders placed by non-Federal entities will ultimately have to be resolved and/or litigated by the Federal agency awarding the schedule contract. In order to promote resolution of disputes early and without litigation, GSA intends to include a provision in schedule contracts that will require authorized ordering activities to agree to (a) attempt to use Alternative Dispute Resolution (ADR) procedures to resolve disputes with schedule contractors before referring the matter to the responsible Schedule Contracting Officer for issuance of a final decision which may be appealed to either the GSA Board of Contract Appeals or the U.S. Court of Federal Claims, (b) reimburse the GSA for any payments made on behalf of authorized users, whether by settlement agreement or by judgment, and (c) set-off against other Federal funds due to the non-federal entity to reimburse GSA for payments made to the permanent indefinite judgment fund.

Should GSA, for whatever reason, find itself in a position where a non-Federal entity will not pay GSA, GSA has additional controls. The first such control is the right of setoff. GSA would issue several demand letters to the non-Federal entity. If the entity refuses to pay GSA after the demand letters GSA would forward the matter to its finance office which would determine if GSA had other assets owing to the non-Federal entity. If so, GSA would offset the other amounts owed to the entity. If GSA did not have other funds owing to the non-Federal entity GSA would request other Federal entities to offset the amount owed GSA from the amount, for example, at the Department of Transportation (DOT) would owe the non-Federal entity. If the other agency, i.e., DOT was not willing to offset such funds, GSA could request that the General Accounting Office (GAO) look into the matter to determine whether GSA is correct and GAO would direct the Treasury Department's Financial Management Service to reprogram the funds accordingly.

If setoff is not a viable option, GSA will require, as a condition of a non-Federal entity's use of the schedule program, that the non-Federal entity agree to reimburse GSA for losses incurred by the entity or its subordinate entities. The effect of this agreement would be that the entity would in effect "confess judgment" for any amounts found by our Board of Contract Appeals (or the Court of Federal Claims or a settlement agreement) to be owing a contractor, including the cost of litigation. GSA would then press a collection action in state court based upon its agreement with the non-Federal plus the relevant board or court decision or settlement agreement. Pursuit of a collection/indemnification action in the State Claims Court would be performed by attorneys from the U.S. Department of Justice, or by GSA counsel, properly appointed as special assistants under the authority of 28 U.S.C. 515 and 543.

Both setoff and the "confessed judgment" arrangement would require that GSA have an agreement with the non-Federal entity to reimburse GSA for any costs incurred by GSA in trying, settling, or defending a case brought against GSA for breach of the terms of the schedule contract (such as payment of the contractor) caused by the non-Federal entity.

12. *Administrative fee for use of Schedules.* The Federal Acquisition Streamlining Act of 1994 authorizes the Administrator of GSA to require the authorized non-federal users of the schedule contracts reimburse GSA for any administrative cost for using the schedules. GSA is in the process of converting the Federal Supply Schedule Program which is currently funded through Congressional appropriations to an industrially funded operation. GSA will be converting all schedules to a full cost recovery program within the next 3 years. As schedules are converted to industrial funding the contracts will provide for recovery of an administrative charge or industrial funding fee. Schedule contractors price lists will reflect the administrative fee.

13. *Providing information on Cooperative Purchasing and on use of Federal supply schedules.* GSA will make information available for State and local governments interested in Cooperative Purchasing, and will work with professional associations to ensure widespread dissemination of that information. Training classes at the GSA Interagency Training Center will be available for employees of State and local governments to learn more about the GSA schedule program.

14. *Implementation dates.* Necessary changes in the GSA Acquisition Regulations (48 CFR Chapter 5) regarding the award of schedule contracts will also be made after notice and public comment. Existing schedule contracts will only be modified by mutual agreement of the parties to permit state and local governments and other authorized entities to begin placing orders. The necessary changes will be made and implementing regulations will be in place no later than October 1, 1995, and may be issued earlier. GSA is also considering a phased implementation process which would bring the newly authorized non-Federal users on in stages. This will allow GSA to better manage the process to ensure a smooth transition for both schedule contractors and for the newly authorized users. GSA would welcome comments and/or suggestions on approaches to phasing the implementation process.

Dated: February 28, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

EXHIBIT 1

Schedule identification	Schedule title	Type of schedule
19 I	Small craft and marine equipment and floating marine barriers—boats, motors, and accessories	Multiple Award.
26 II A	Pneumatic highway tires, new and retread—passenger, emergency/pursuit, light truck, truck-bus	Single Award.
32 & 34	Woodworking and metalworking machinery and equipment—electric	Multiple Award.
36 II	Special industry machinery—lithographic printing plates, solutions and masters; printing, duplicating, and book-binding equipment; pulverizing, pulping, and shredding machines.	Multiple Award.
36 IV	Special Industry Machinery—copying equipment, supplies and services	Multiple Award.
37 II A	Lawn and garden equipment & cattle guards—lawn mowers, shredders, edgers, trimmers, rototillers, broadcasters, spreaders, sprayers, vacuums, sweepers, tractors, snow blowers/snow throwers, accessories, cattle guards.	Multiple Award.
38 I A	Road maintenance—clearing and cleaning equipment	Multiple Award.
39 II A	Material handling equipment—conveyors, hand-lift trucks and carts, warehouse trucks and tractors, pallets and pallet stacking frames.	Multiple Award.
39 II B	Material handling equipment—forklifts: electric, gasoline, diesel	Multiple Award.
42 I B	Fire fighting and rescue equipment—urban and wild land	Multiple Award.
42 IV	Fire fighting vehicles and waste disposal vehicles	Multiple Award.
49 I B	Maintenance and repair shop equipment—motor vehicle and miscellaneous maintenance and specialized repair shop equipment.	Multiple Award.
49 II	Maintenance and repair shop equipment—cleaning equipment	Multiple Award.
54 II A	Scaffolding, work and service platforms	Multiple Award.
56 IV A	Construction and building materials—stripdoors, wall covering, roof coverings, and storm windows	Multiple Award.
58 III B	Communications equipment—recording and reproducing video and audio equipment purchase, repair parts and repair service.	Multiple Award.
58 V A	ADP/telecommunications media supplies—video and audio recording tape, electronic data tape, magnetic cards, cassettes and cartridges, diskettes, disk packs, and disk cartridges.	Multiple Award.
58 VI & VII	Telephone equipment, videoconferencing equipment, facsimile equipment, pagers, non-tactical two-way radio transmitters, radio receivers and antennas.	Multiple Award.
58 IX	Telecommunications equipment—telemetry, underwater sound radar (except airborne), visible and invisible light communications, signal data, night vision.	Multiple Award.
61 III	Batteries—dry cell and heavy duty electric storage, stationary, marine, railway, alkaline, and nickle cadmium.	Multiple Award.
61 V A	Portable generators and generator sets, electrical power and distribution equipment load banks and load bank accessories.	Multiple Award.
61 V B	Power and distribution equipment—non-rotating battery chargers, and surge suppression devices	Multiple Award.
62 I	Lighting fixtures and lamps—household and quarters use	Multiple Award.
62 II	Energy efficient products—lighting sensors (switches), solar electric power systems, fluorescent lighting fixtures, lighting reflectors, lighting louvers, and lighting ballasts.	Multiple Award.
63 I	Alarm and signal systems/facility management systems—miscellaneous alarms and systems, facility management/energy management systems.	Multiple Award.
65 I B	Drugs and Pharmaceutical products	Multiple Award.
65 I C	Antiseptic liquid skin cleansing detergents & soaps	Multiple Award.
65 II B	Medical and veterinary equipment—supplies surgical instruments and supplies	Multiple Award.
65 II C	Dental equipment and supplies—operator and laboratory	Multiple Award.
65 II D	Medical equipment and supplies—medical equipment supplies, and replacement parts	Multiple Award.
65 II E	Mecical equipment—pacemakers and related analyzing systems	Multiple Award.
65 II F	Medical equipment and supplies—wheel-chairs, manual (including sports) and powered; motorized three-wheeled scooters.	Multiple Award.
65 III A	Medical equipment and supplies—soap, stretcher, and sphygmomanometers	Single Award.
65 V A	Medical X-ray equipment supplies—including medical and dental x-ray film	Multiple Award.
65 VII	Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets	Multiple Award.
65 IX	Chemical and chemical products—bulk oxygen	Single Award.
65 II A	Laboratory instruments and equipment	Multiple Award.
66 II B	Instruments and laboratory supplies—glass, plastic, ceramic, metal and other laboratory ware; support apparatus; laboratory distillation and demineralization apparatus, waste solvent recovery systems; tissue culture apparatus.	Multiple Award.
66 II C	Clinical and biological equipment—microscopes, centrifuges, PH meters, microtomes, stirrers, titrators/titration systems.	Multiple Award.
65 II E	Instruments and laboratory equipment—laboratory balances, precision scales and accessories	Multiple Award.
66 II G	Instruments and laboratory equipment—graphic recording instruments	Multiple Award.
66 II H	Instruments and laboratory equipment—electrical and electronic components and test equipment	Multiple Award.
66 II J	Instruments and laboratory equipment—electronic signal, communication, and component test and analysis instruments (oscilloscopes, analyzers, generators, testers, counters, meters and bridges).	Multiple Award.

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EXHIBIT 1—Continued

Schedule identification	Schedule title	Type of schedule
66 II L	Instruments and laboratory equipment—transducers; transducer amplifiers, and panel meters; temperature/heat instruments; material and machine (vibration) testing equipment; cable/pipe locators; and accessories.	Multiple Award.
66 II M	Instruments and laboratory equipment—spectrophotometers, spectrometers, densito-meters, liquid scintillation systems, multichannel pulse height analyzers, photo-meter, and polarograph analysis equipment, various options/accessories and maintenance and repair service.	Multiple Award.
66 II N	Instruments and laboratory equipment—analyzers, chromatographs, colony counters, blood analysis systems, dilutors, pipettes, electrophoresis equipment, and image analysis systems.	Multiple Award.
66 II O	Instruments and laboratory equipment—animal cages, bath, dryers (glassware), environmental and plant growth chambers, freeze drying equipment, fume hoods, furnaces, incubators, membrane bacterial filter, ovens, pumps, refrigerators and freezers, sterilizers, thermoneters, washers.	Multiple Award.
66 II P	Laboratory/pharmacy furniture	Multiple Award.
66 II Q	Instruments and laboratory equipment—environmental analysis equipment, oceanographic, weather and water quality.	Multiple Award.
66 II R	Instruments and laboratory equipment—environmental analysis, pollution control, air hazard detecting equipment; liquid or gas flow/level and water velocity measuring instruments and accessories.	Multiple Award.
66 II T	Biological safety cabinets—vertical, laminar airflow cabinetry	Multiple Award.
66 III	Cost per test—clinical analyzers, laboratory, chemistry, hematology, coagulation urinalysis, microbiology.	Multiple Award.
67 II & III	Photographic equipment and supplies—camera, projectors, developing and finishing equipment, rear screen projectors, photographic paper and miscellaneous supplies.	Multiple Award.
67 IV B	Microphotograph equipment and supplies—cameras, projectors, and printers, developing and duplicating equipment, and chemicals, film, and paper.	Multiple Award.
68 I A	Chemical and chemical products—calcium chloride, deicing compounds, sodium chloride and bulk sodium chloride.	Single Award.
68 III C	Chemical and chemical products—dry ice	Single Award.
68 III D	Chemical and chemical products—propane	Single Award.
68 III E	Chemical and chemical products—sulphur hexaflouride	Single Award.
68 III F	Chemical and chemical products—refrigerant fluorocarbons	Single Award.
68 III G	Chemical and chemical products—helium	Single Award.
68 III K	Chemical and chemical products—oxygen: aviator's breathing	Single Award.
68 III L	Chemical and chemical products—industrial gases in high pressure cylinders	Single Award.
68 III M	Chemical and chemical products—industrial gases, liquid, in bulk and in low-pressure cylinders	Single Award.
68 III N	Chemical and chemical products—industrial gases, chlorine and ammonia	Single Award.
68 V B & C	Chemical and chemical products—water treatment chemicals for heating and cooling systems, and boiler fuel oil additives.	Multiple Award.
68 VI A	Chemical and chemical products—disinfectants	Multiple Award.
68 VI B	Chemical and chemical products—deodorants	Multiple Award.
69	Training aids and devices—programmed learning materials	Multiple Award.
70 I A	General purpose commercial automatic data processing equipment (used primarily on-line) and software.	Multiple Award.
70 I B & C	General purpose commercial automatic data processing equipment, end-user computers (normally microcomputers) and equipment used primarily off-line, and software.	Multiple Award.
71 I E	Household and quarters furniture—upholstered (performance tested) furniture	Multiple Award.
71 I H	Household and quarters furniture—wall units, loft groups and unaccompanied personnel furniture	Multiple Award.
71 II E	Furniture systems—systems and modular furniture, workstations clusters, leased furniture systems and clusters.	Multiple Award.
71 III A	Miscellaneous furniture—classroom, auditorium and theater seating	Multiple Award.
71 III B	Miscellaneous furniture—library, wood or metal	Multiple Award.
71 III C	Miscellaneous furniture—storage cabinets for forms and flammable liquids	Multiple Award.
71 III D	Miscellaneous furniture—mail sorting and distribution equipment, modular storage cabinets, and molded plastic/corrugated storage bins.	Multiple Award.
71 III E	Miscellaneous furniture—safes, vault doors, map and plan files and accessories, COMSEC containers, and special access control containers.	Multiple Award.
71 III F	Miscellaneous furniture—hospital patient room furniture	Multiple Award.
71 III H	Miscellaneous furniture—multipurpose seating, rotary ergonomic chairs, clothing lockers, drafting stools and intensive use task chairs.	Multiple Award.
71 III J	Miscellaneous furniture—vertical blue-print filing cabinets, roll drawing files, and high density movable shelf filing cabinet systems.	Multiple Award.
71 III L	Miscellaneous furniture— cafeteria and food service	Multiple Award.
71 III M	Miscellaneous furniture—acoustical partitions, speech privacy partitions, and vertical surface panels.	Multiple Award.
71 III N	ADP furniture—storage and transportation items	Multiple Award.
71 III T	Display and communication boards	Multiple Award.
71 III Y	Special purpose furniture—drafting stools, clothing lockers, and locker benches	Multiple Award.
71 III Z	Miscellaneous furniture—partitions	Single Award.
71 X	Miscellaneous tables—conference room and multi-purpose tables	Multiple Award.
71 XIV B	Industrial furniture—tables, benches, and cabinets	Multiple Award.
72 I A	Household and commercial furnishing—carpet, rugs, carpet tiles, and carpet cushions	Multiple Award.
72 I B	Resilient flooring—vinyl and rubber tile and sheet goods	Multiple Award.

EXHIBIT 1—Continued

Schedule identification	Schedule title	Type of schedule
72 I E	Household and commercial furnishings—mats and matting (with and without logos)	Multiple Award.
72 V	Household and commercial furnishings—draperies, coordinating bedspreads, and drapery hardware, cubical curtains, cubicle hardware, venetian blinds, window shades, and measuring and installation.	Multiple Award.
72 VIII B	Recycling collection containers & specialty waste receptacles	Multiple Award.
72 VIII	Household and office accessories—wall art, artificial trees, plants, planters, ash urns, and smoking stands.	Multiple Award.
73 III	Food service, handling, refrigeration and storage equipment—cooking equipment, dish-washing equipment, food preparation equipment, food service equipment, refrigeration and other miscellaneous items.	Multiple Award.
74 I A	Office machines—anti-theft devices, electronic typewriters, visual display preparation devices, sound reduction enclosures, central dictation systems, rental, repair and maintenance.	Multiple Award.
74 II & III	Office machines—adding, calculating, cash registers, time measuring instruments, and miscellaneous office machines.	Multiple Award.
74 IV	Visible record equipment—frames for pockets and cards, posting and ledger trays, cabinets and tub files.	Multiple Award.
75 I D	Office supplies—plotting, facsimile, chart, recording paper and supplies	Multiple Award.
75 II A	Office supplies—drawing pencils, label marking and identification tape, chart supplies, desk sorters (plastic and metal), typewriter correction material, price marking equipment, data and loose leaf binders, computer printout ruler, typist copy holder, adhesive backed note pads and roll, fine tip markers, printwheels, typing elements, ribbons for: typewriters, computers, word processors, calculators, time recorders, and time stamps, electronic cash registers, ink rolls for electronic calculators and electronic cash registers.	Multiple Award.
75 V	Office supplies—envelopes: mailing, printed and plain	Single Award.
75 VIII A	Office supplies—cards: tabulating, aperture, and copy	Single Award.
75 XI	Office supplies—xerographic paper and thermal copy paper	Multiple Award.
76 I	Publications—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	Multiple Award.
76 II	Publications—law books, tax and reporting periodicals, and microfilmed library systems	Multiple Award.
77 II N	Musical instruments—instruments, amplifiers, accessories, and spare parts	Multiple Award.
77 III	Audio and video equipment—televisions, radios, phonographs, and VCR/VCP	Multiple Award.
78 I A	Athletic and recreational equipment—outdoor equipment	Multiple Award.
78 I C	Park and outdoor recreational equipment—outdoor recreational equipment	Multiple Award.
79 I B	Cleaning equipment and supplies—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	Multiple Award.
79 II A	Ware washing compounds and laundry detergent—liquid and powdered dish washing compounds (contractor's standard commercial supplies of detergents, rinse additives, and related supplies) with contractor supplied, installed, and maintained accessory dispensing systems.	Multiple Award.
79 V	Sorbents—marine and non-marine	Multiple Award.
80 VI A	Latex base paint (interior & exterior)—latex paint, gloss, semi-gloss, and flat, tint bases and ready mixed colors and latex primer sealer.	Multiple Award.
81 I B	Shipping, packaging & packing supplies—bags, sacks, boxes, cartons, crates, packaging and packing bulk materials.	Multiple Award.
84 II B	Clothing and furnishings—special purpose clothing	Multiple Award.
84 V A	Clothing and footwear—athetic and recreational	Multiple Award.
84 VI A	Law enforcement equipment—personal, canine, vehicle, and related items	Multiple Award.
89 I	Subsistence—cereals, cookies, crackers, individual condiments and granola snacks	Multiple Award.
89 II	Subsistence—dietary supplement, therapeutic	Multiple Award.
99 IV A	Signs—signs, display systems, traffic, road and boundary signs, markers and related components and fixtures.	Multiple Award.
99 V A	Services—recruiting aid promotional material	Multiple Award.
99 VI A	Trophies and awards—trophies, awards, plaques, pins and ribbons	Multiple Award.
553	Nationwide Government relocation services	Single Award.
732 I A	Factual data reports—consumer and commercial credit	Multiple Award.
732 I B	Professional debt collection services	Single Award.
738 X	Investigation of discrimination complaints and preparation of investigative reports	Single Award.
751 II	Automobiles and light truck vehicles—closed-end lease, without maintenance	Single Award.
751 III	Leasing of surveillance and law enforcement vehicles	Single Award.
781 I & II	Professional film processing and videotape processing services—motion picture, filmstrips, slides, audio tapes, and related materials.	Multiple Award.
782	Distribution of audiovisual materials (free loan)—motion picture films, video tapes, cassettes, filmstrips, slides, audio tapes, and related materials.	Multiple Award.
823	Services—lending library	Multiple Award.
872	Prepayment audit of Government transportation billing documents	Single Award.
874	Total quality management implementation—service—consulting services, conducted formal training and training aids and materials for agency training purposes.	Multiple Award.

[FR Doc. 95–8473 Filed 4–6–95; 8:45 am]
BILLING CODE 6820–01–M

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–6; Notice No. 2]

RIN 2130–AA92

Selection and Installation of Grade Crossing Warning Systems; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Change of hearing date.

SUMMARY: On March 2, 1995, FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) (60 FR 11649) regarding the selection and installation of grade crossing warning systems. A public hearing was scheduled for May 9, 1995.

Due to scheduling constraints, FRA must change the date of the public hearing. As a consequence, FRA is rescheduling the public hearing to April 24, 1995. The hearing location remains the same and will be held in room 2230 of the Nassif Building, DOT Headquarters Building, 400 Seventh Street, S.W., Washington, DC. We apologize for any inconvenience this rescheduling may cause.

DATES: A public hearing will be held at 9:30 a.m. on April 24, 1995.

ADDRESSES: A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. Persons desiring to speak at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT:

Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

Issued in Washington, DC on March 31, 1995.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 95–8627 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 950316075–5075–01; I.D. 022895C]

RIN 0648–AH86

Golden Crab Fishery off the Southern Atlantic States; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose management measures in the golden crab fishery in the exclusive economic zone (EEZ) off the southern Atlantic states, and if there is a need, what management measures should be imposed. If it is determined that there is a need to impose management measures, the Council may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the fishery. If a limited entry program is established, the Council is considering April 7, 1995, as a possible control date. Consideration of a control date is intended to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by May 8, 1995.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The golden crab fishery is not currently managed under a fishery management plan (FMP) prepared under the authority of the Magnuson Fishery Conservation and Management Act. However, there is a small scale trap fishery for golden crabs (*Chaceon fenneri*) in the EEZ off the southern Atlantic states. The fishery is prosecuted primarily in depths of 110 to 220 fathoms (approximately 200 to 400 m) on sand, mud, and clay bottoms. The fishery has operated sporadically off North and South Carolina and off the east coast of Florida. The fishery is currently operating 8 to 10 miles (15 to 19 km) off Miami, FL. Information on the fishery is limited—the number of fishermen, number of traps, and current production are unknown.

In February 1995, the Council held a scoping meeting to solicit input from the industry and public on the need for management of the golden crab fishery. Based on the results of the meeting, the Council began development of management options for the fishery. The range of options the Council will consider include data collection, area restrictions, seasons, size limits, trap escape panel requirements, prohibition on harvest of females, and limited entry or access. Implementation of any management measures for the fishery would require preparation by the Council of a new FMP or amendment to an existing FMP to include golden crab. The Council will discuss these issues at its April 10–14, 1995, meeting in Savannah, GA. In either event, publication of a proposed rule with a public comment period, NMFS' approval of the FMP or amendment, and publication of a final rule would be required.

As the Council considers management options, including limited entry or access-controlled management regimes, some fishermen who do not currently harvest golden crab, and have never done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of golden crab. When management authorities begin to consider use of a limited access management regime, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants. If management measures to limit participation or effort in the fishery are determined to be necessary, the Council is considering April 7, 1995 as the control date. After that date, anyone entering the fishery may not be assured of future participation in the fishery if a management regime is developed and implemented that limits the number of participants in the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the golden crab fishery. Fishermen are not guaranteed future participation in the golden crab fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date under consideration. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. Other qualifying criteria, such as documentation of commercial landings and sales, may be applied for entry. The Council may choose also to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–8623 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 60, No. 67
Friday, April 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine Creek EIS, Vegetation Management Analysis; Clearwater National Forest, Benewah and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Clearwater National Forest, will prepare an environmental impact statement (EIS) to disclose effects of alternative decisions it may make to manage vegetation, restore watersheds, and analyze access management in the vicinity of White Pine, Blakes Fork and Meadow Creek drainages. The area is located approximately 25 miles northeast of the town of Potlatch Idaho, near North-South Ski Bowl. The purpose of the project is to implement the Clearwater Forest Plan within the context of ecosystem management principles; conserve biological diversity and integrity; restore fire's role within fire dependent communities; reduce the chance of spread of large fires; and, provide timber from suitable lands in response to human demands for wood products.

This project will tier to the Clearwater National Forest Environmental Impact Statement Land and Resource Management Plan and Forest Plan (1987), which provides overall guidance of land management activities on the Clearwater National Forest. Analysis will also be conducted in compliance with the Stipulation of Dismissal agreed to in the settlement of the lawsuit between the Forest Service and the Sierra Club, et. al. (Signed September 13, 1993).

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Written comments concerning the scope of the analysis should be received on or before May 22, 1995.

ADDRESSES: Send written comments to Carmine Lockwood, District Ranger, Palouse Ranger District, Route 2, Box 4, Potlatch, Idaho 83855.

FOR FURTHER INFORMATION CONTACT: Suzanne Lay, Team Leader, at the same address, (208) 875–1131.

SUPPLEMENTARY INFORMATION: The proposed action is designed to restore terrestrial and aquatic ecosystem health and to provide benefits to people within the capabilities of ecosystems. A significant factor in the decline of the health of the White Pine Creek project area ecosystem is the reduction of western white pine abundance caused by white pine blister rust. The blister rust has created large areas with heavy concentrations of standing dead and down fuels. Vegetation treatments designed to reintroduce western white pine in the forest cover type will be analyzed. Regeneration and intermediate harvest treatments intended to improve the structure composition and function of the forest matrix will be analyzed, along with the use of prescribed fire and mechanical methods to treat excessive fuel loadings. Intermediate treatments will be designed to improve forest health conditions by treating overstocked stressed sites while maintaining desirable seral species such as western white pine, ponderosa pine and western larch. These overstocked stands are highly susceptible to root rot pathogens, bark beetles, defoliators, and dwarf mistletoe. Restoration of the aquatic component will focus on eliminating sediment delivery sources to aquatic and riparian habitats, as well as improving the structural components in riparian areas by installing large woody debris where it is lacking. Other fish habitat improvement projects are also included in this analysis.

The Clearwater National Forest Plan provides guidance to management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management direction. The areas of proposed timber harvest and reforestation would occur only on suitable timber land, Management Areas E1, A4, A5 and M2. Below is a brief description of applicable management direction.

Management Area E1—Timber Management—Provide optimum sustained production of timber products in a cost effective manner while protecting soil and water quality.

Management Area A4—Visual Travel Corridor—Maintain or enhance an aesthetically pleasing, natural appearing Forest setting surrounding designated roads, trails, and other areas considered important for recreational travel use.

Management Area M5—Developed Recreation Sites—Manage developed recreation sites to meet public demands for facilities for camping and picnicking.

Management Area M2—Riparian Areas—Manage as areas of special consideration with distinctive values, and integrate with adjacent management areas to the extent that water and other riparian resources are protected.

The White Pine Creek study area lies along the divide between the Palouse River drainage and the Spokane River drainage. It is a roaded area with intermingled ownership on the interface between forest and farmland in the panhandle of Idaho. The planning area consists of approximately 8,000 acres located in T.42N., R.3W, T.43N., R3W., and T.44N., R.3W. The decision to be made is what, if anything, should be done in the White Pine Creek project area to (1) Restore terrestrial and aquatic ecosystem components, (2) provide multiple benefits to people within the capabilities of ecosystems. An environmental assessment for the White Pine Creek project area was prepared in 1994, and a Decision Notice and Finding of No Significant Impact was signed in July of 1994. This Decision was appealed and reversed back to the District in October of 1994 with instructions to prepare an EIS if the project were to proceed. The recommendations included in the reversal related to: (a) cumulative effects for water and wildlife, (b) old growth, and (c) range of alternatives considered. All of these issues will be analyzed in the proposed EIS with an ecosystem management approach.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce and Coeur D'Alene Tribes,and other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing the EIS. Interested individuals and organizations should contact the Palouse Ranger District and request to be placed on the project mailing list. Those doing so will receive future newsletters related to this project and notification of public meetings. Scoping will include: inviting participation, determining the project's scope and potential issues, eliminating from detailed study those issues which are not significant, and determining potential cooperating agencies and task assignments. The public will also be invited to participate in developing alternatives, and identifying and/or reviewing the potential environmental effects of the proposed action and its alternatives.

Public meetings will be held in the Potlatch Idaho area in the spring of 1995. Field trips will also be available if the public requests them. The exact dates and locations of these meetings will be published in local newspapers at least two weeks in advance.

Preliminary issues highlight the need to maintain biodiversity and biological integrity by providing habitat for a broad range of terrestrial and aquatic species. Management activities, primarily logging and road building and the introduction of white pine blister rust, have changed some of the natural disturbance processes such as insect and disease outbreaks and have altered the ecosystem composition, structure, and resiliency in the White Pine Creek project area. Management activities have affected the function and productivity of some riparian systems in the Meadow Creek area.

Aquatic ecosystem issues include sediment, temperature and peak flows. Human needs and desires and their effects on the ecosystem will also be a driving factor in the formulation of issues. The need for shelter, employment, aesthetics recreation, cultural, and spiritual revitalization all play a major role in the forest ecosystem. The direct, indirect, cumulative, short-term, and long-term, aspects of impacts on national forest lands and resources, and those of connected or related effects off-site, will be fully disclosed.

Preliminary alternatives will likely include a range from a more passive approach of managing non-consumptive uses to a more active consumptive use approach to meet social demands. All alternatives will focus on maintaining or restoring ecological functions. This will involve proposals with and without roads, different intensities and types of timber harvest, and various approaches to access management including motorized and non-motorized recreation. Most action alternatives will analyze riparian and aquatic habitat improvement.

Permits and licenses required to implement the proposed action may include the following: consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Threatened & Endangered Species Act; a permit from the Idaho Department of Water Resources for water removal for dust abatement; and clearance from the Idaho State Historic Preservation Office.

The Forest Service predicts the Draft EIS will be filed in August of 1995 and the Final EIS in December of 1995.

The Forest Service will seek comments on the Draft EIS for a period of 45 days after its publication. Comments will then be summarized and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action or the effects disclosure, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

As Forest Supervisor, I am the Responsible Official for this project. My address is Clearwater National Forest, 12730 U.S. Highway 12, Orofino, ID 83544 (208–476–4541).

Dated: March 28, 1995.

James L. Caswell,

Forest Supervisor.

[FR Doc. 95–8530 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the dates and location of the meetings of its ADAAG Review Advisory Committee.

DATES: The ADAAG Review Advisory Committee will meet on April 26, 27, 28, and 29, 1995. The schedule of events is as follows:

Wednesday, April 26, 1995

9:00 a.m.–3:00 p.m.—Communications Subcommittee
4:00 p.m.–6:00 p.m.—Editorial Subcommittee

Thursday, April 27, 1995

9:00 a.m.–3:00 p.m.—Plumbing Subcommittee
4:00 p.m.–8:00 p.m.—Accessible Routes Subcommittee

Friday, April 28, 1995

9:00 a.m.–11:00 a.m.—Accessible Routes Subcommittee
12 Noon–6:00 p.m.—Special Occupancies Subcommittee

Saturday, April 29, 1995

9:00 a.m.–12 Noon—Full Committee

ADDRESSES: The meetings on April 26, 27, and 28, 1995 will be held at the Paralyzed Veterans of America, 801 18th Street, NW., Washington, DC. The meeting on April 29, 1995 will be held at the Washington Vista Hotel, 1400 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Marsha Mazz,

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Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice); (202) 272–5449 ext. 21 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: The Access Board has established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The advisory committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-art document which is generally consistent with technological developments and changes in national standards and model codes, and meets the needs of individuals with disabilities. The advisory committee is composed of organizations representing individuals with disabilities, model code organizations, professional associations, State and local governments, building owners and operators, and other organizations.

The advisory committee has formed the following subcommittees to assist in its work: Editorial, Accessible Routes, Plumbing, Communications, and Special Occupancies.

Subcommittee and full committee meetings are open to the public. The meeting sites are accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–8573 Filed 4–6–95; 8:45 am]

BILLING CODE 8155–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–809]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2815 or 482–0167, respectively.

Amended Final Determination

We are amending the final determination of sales at less than fair value of certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand to reflect the correction of ministerial errors made in the margin calculation in the final determination.

Case History

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on February 27, 1995, the Department of Commerce (the Department) published its final determination that pipe fittings from Thailand were being sold at less than fair value (60 FR 10552). On March 13, 1995, respondent, Awaji Sangyo (Thailand) Co., Ltd. (AST), alleged that the Department made several clerical errors in its final determination regarding the margin calculations and requested that the Department correct these errors.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed of forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Amended Final Determination

On March 13, 1995, respondent alleged that the Department had made three ministerial errors in the final calculations performed to determine the dumping margin for AST in accordance with section 353.28 of the Department's regulations. Each alleged error is discussed below.

Comment 1

Upon exportation of finished pipe fitting, AST received drawback of import duties on imported pipe used to produce the pipe fittings. AST alleges that the Department incorrectly added the drawback amount to the foreign market value (FMV), rather than to the United States price (USP).

DOC Position

We agree with respondent. Section 772(d)(1)(B) of the Act provides that the U.S. price shall be increased by the amount of any import duties imposed in the country of exportation which have been rebated, or not collected, by reason of exportation of the merchandise to the United States. In the final determination, we inadvertently added drawback to FMV rather than to USP. We have recalculated FMV and USP to correct this error.

Comment 2

AST alleges that in allocating indirect selling expenses to the home market, the Department used an incorrect value for home market shipments during the period of investigation (POI).

DOC Position

We agree with respondent. We have now reallocated home market selling expenses using the correct value.

Comment 3

AST alleges the Department erroneously included a quantity of seamless pipe in its calculation of total welded pipe consumed. AST contends that this quantity of seamless pipe should be excluded from the Department's welded pipe consumption calculation.

DOC Position

We agree with AST that the Department erroneously included some seamless pipe quantities in its calculation of per unit welded pipe consumed. We intended to include only welded pipe in our welded pipe consumption calculation. Thus, we have recomputed per unit welded pipe consumed based solely on AST's welded pipe consumption.

Accordingly, pursuant to section 735(e) of the Act, we have corrected the ministerial errors in the final determination of sales at less than fair value. The final estimated margin changes from 38.41 percent to 17.13 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of AST's subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The amended weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Margin percent	Deposit percent
Awaji Sangyo (Thailand) Co., Ltd.	17.13	16.39

We did not determine an "all others" rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumping duty order on this merchandise, which was published in the **Federal Register** on July 6, 1992 (57 FR 29702).

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Because antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Countervailing Duty Administrative Review, (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 16.39 percent for AST.

This amended final determination is published in accordance with section 735(e) of the Act and 19 CFR 353.21.

Dated: March 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8629 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–WS–M

National Oceanic and Atmospheric Administration

[I.D. 033195B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team and Advisory Subpanel will hold a public meeting on April 27, 1995, beginning at 10 a.m. at the NMFS Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Jim Morgan, NMFS Southwest Regional Office at (310) 980–4036, or Larry Jacobson, NMFS Southwest Fisheries Science Center at (619) 546-7117.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the draft Coastal Pelagic Species Fishery Management Plan (FMP), compile the preferred alternatives into a more concise document, review any problems identified at the Council's March 1995 meeting, and address any new concerns identified during the interim. The Council has scheduled final action on the draft FMP for its June 1995 meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8622 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 8, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 3, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 6702) of proposed addition to the Procurement List.

Comments were received from a cup manufacturer which has not been a Government contractor for the cup at issue in this addition to the Procurement List. The commenter indicated that it considered the cup not to be suitable for production by blind individuals because it requires visual inspection during production and allowing blind people to work in close proximity to high speed machinery would be dangerous. The commenter also indicated that the Committee should meet its goal of creating employment for people with severe disabilities by giving private manufacturers an opportunity to hire such people rather than by adding commodities to the Procurement List. The commenter stated that the Committee's method of assessing impact on contractors is biased against larger companies because it looks at impact on the total company rather than a single plant or product line. The commenter indicated that the Committee should not add items to the Procurement List on an open-ended basis, but should allow occasional competitive bidding to ensure that the nonprofit agencies maintain their ability to produce effectively.

The Committee's determination that the nonprofit agency is capable of producing this cup was based on capability determinations by the Government agency which procures the

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cup and the central nonprofit agency concerned in this action. The Government agency performed an extensive inspection of the nonprofit agency's plant and plans and concluded that it is fully capable of performing in accordance with all specifications, drawings, terms, and conditions of the contract. The Government agency specifically approved, among other things, the production and inspection arrangements that will be used.

The nonprofit agency is one of the largest manufacturers participating in the Committee's program. It produces, among other things, several other paper and plastic utensils which involve high speed or otherwise dangerous machinery, and has taken steps to structure its use of blind labor and to provide safeguards on its machinery to avoid the dangers which the commenter implies blind people would face. While the Committee requires the use of a high percentage of blind direct labor in the production of the cup, the requirement does not extend to indirect labor, such as inspection, which may be performed by sighted individuals.

The Committee appreciates the commenter's assertion that private manufacturers should be encouraged to hire people who are blind or have other severe disabilities, however, it does not believe that such encouragement should replace the Committee's mandatory source procurement program as a way of creating jobs. The Committee's program guarantees Federal contracts and requires that people with severe disabilities perform the majority of the direct labor on those contracts. This approach is intended to assure stable work for such individuals. Private manufacturers have no such guarantees of Federal (or other) business and no requirement to use people with severe disabilities on whatever work they do have. The Committee also notes that the majority of the individuals working on contracts under its program are not currently capable of competitive employment. Consequently, many would not be able to hold jobs with private manufacturers even if positions were available. For those who are capable, the Committee encourages them to seek jobs in the competitive marketplace by requiring that participating nonprofit agencies help them do so. In many cases, this help includes working with private firms to develop employment opportunities. Thus, the commenter's proposed alternative to Procurement List additions does not represent an acceptable alternative and, where possible, is already being accomplished.

The Committee does not agree that its method of assessing contractor impact is biased against large companies. Such companies are usually free to allocate their resources in a way that will alleviate impact on a single facility, if the companies desire, in a way that smaller companies are not. The Committee accordingly believes that its method of treating all contractors equally, by assessing impact based on all factors relevant to the contractor's business as a whole, is the fairest method of assessing the impact of a Procurement List addition.

Nonprofit agencies producing for the Committee's program are required to continue to produce efficiently because their goods must be sold to the Government at a fair market price. If a nonprofit agency is unable to produce efficiently enough to meet Government requirements, the Committee can transfer production authority to another nonprofit agency, suspend the mandatory source requirement, or take the item in question off the Procurement List.

Accordingly, there is no need to allow competitive procurements of items in the Committee's program to keep nonprofit agency production standards on a par with competitive industry.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a substantial impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Cup, Disposable, Paper
7350–01–359–9524

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–8587 Filed 4–6–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 8, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 24, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 10373) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial
Jack Brooks Federal Building, U.S. Post Office and Courthouse
Willow and Broadway Streets
Beaumont, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–8588 Filed 4–6–95; 8:45 am]
BILLING CODE 6820–33–P

Proposed Additions to the Procurement List; Correction

In the document appearing on page 11958, F.R. Doc. 95–5290, in the issue of March 3, 1995, in the second column, the NSN shown as 6515–01–225–8497 should read 6515–01–135–8497.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–8589 Filed 4–6–95; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Chairman's Roundtable on Past Performance Disclosure

This is to give notice that the Chairman of the Commodity Futures Trading Commission will conduct a public meeting on Tuesday, April 25, 1995 from 2:00 p.m. to 5:00 p.m. in the lower-level hearing room of the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. The agenda will consist of:

Roundtable—Rethinking Past Performance Disclosure

A. Opening Statement—Mary L. Schapiro, Chairman
B. Presentation by CFTC Staff
Past performance disclosure—current and proposed regulations
C. Tour De Table—Potential Issues for Discussion
- What are the purposes for requiring past performance disclosure?
—information as to competence of CTA
—information as to program
—volatility
—leverage
—rate of return
—costs
—ability to compare CTAs, types of investments
—other
- How is it used by:
—customers; and,
—CTAs?
- What are the problems with using past performance disclosure to evaluate CTA performance?
- What customer protection considerations are addressed or raised by past performance disclosure?
- How can current performance presentations be made more meaningful?

D. Identification of Specific Proposals for Discussion
What are the implications of the answers to the above questions on:
—Presentation of partially-funded ("national") programs
—Benchmarking performance
—Proprietary performance
—Hypothetical performance
—Multimedia investments

The purpose of the meeting is to explore performance issues with a diverse group of industry experts, regulators, academics and market users toward the goal of more meaningful performance disclosures.

The meeting is open to the public. The Chairman of the Commodity Futures Trading Commission, Mary L. Schapiro, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business.

Issued in Washington, DC on April 4, 1995.

Andrea M. Corcoran,
Director, Division of Trading & Markets.

[FR Doc. 95–8647 Filed 4–6–95; 8:45 am]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0008]

Toy Wonders, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Toy Wonders, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 24, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 3, 1995.

Sadye E. Dunn,
Secretary.

Settlement Agreement and Order

1. Toy Wonders, Inc. (hereinafter, "Toy Wonders"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof, certain banned hazardous toys and misbranded hazardous art materials, in violation of sections 4 (a) and (c) of the Federal Hazardous Substances Act. 15 U.S.C. 1263 (a) and (c).

I. Jurisdiction

2. The Commission has jurisdiction over Toy Wonders and the subject matter of this Settlement Agreement pursuant to sections 3(a)(1) and 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2051(a)(1) and 2079(a); and sections 2 (f)(1)(D), and (q)(1)(A), 3(b), 4 (a) and (c) 5(c), and 23(a) of the Federal Hazardous Substances Act (hereinafter, "FHSA"). 15 U.S.C. 1261 (f)(1)(D) and (q)(1)(A), 1262(b), 1263 (a) and (c), 1264(c), and 1277(a).

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II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Toy Wonders is a corporation organized and existing under the laws of the State of New York, since 1983, with its principal corporate offices located at 234 Moonachie Road, Moonachie, NJ 07074. Toy Wonders is an importer and distributor of toys.

III. Allegations of the Staff

A Toys

5. On six occasions between September 8, 1991, and January 13, 1994, Toy Wonders introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, 11 kinds of toys (36,693 units) intended for use by children under 3 years of age. These toys are identified and described below:

Sample No.	Product	Collect. date* entry date	Expt./Mfg.	Quantity
M–800–8664	Cartoon Police Car	09/08/91	Chiang Kiang Trading Co	1,200
M–800–8665	Cartoon Train	09/08/91	Chiang Kiang Trading Co	1,200
M–800–8666	Cartoon Car	09/08/91	Chiang Kiang Trading Co	1,200
R–800–1031	Musical Instruments	*06/16/93	Lian Huat Hang	1,920
R–800–1032	Action Sound Instruments	*06/16/93	Lian Huat Hang	2,160
R–800–1033	Musical Set	*06/16/93	Lian Huat Hang	1,440
R–800–1034	Alphabet Frame	*06/16/93	Lian Huat Hang	5,133
R–800–1035	Alphabet Frame	*06/16/93	Lian Huat Hang	11,592
R–800–3050	Riding Pets	*01/22/93	Toy Wonders	7,200
R–800–1122	(Bear and Cat)	*07/27/93		
S–800–2504	Elephant Piano	10/03/93	Ching Enterprises	1,200
S–800–1017	Airplane	01/13/94	Unknown	2,448

6. The toys identified in paragraph 5 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 5 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph 5 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 5 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance; and because it presents a mechanical hazard as described in paragraph 7 above.

10. Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery therof for pay or otherwise, the aforesaid banned hazardous toys, identified in paragraph 5 above, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c), for which a civil penalty may be imposed pursuant to section 5(c)(1) of the FHSA, 15 U.S.C. 1264(c)(1).

B. Art Materials

11. On two occasions between June 16, 1993, and January 13, 1994, Toy Wonders introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, two different types of art materials (4,020 units). These art materials are identified and described below:

Sample No.	Product	Collect. date* entry date	Expt./Mfg.	Quantity
R–800–1036	Paint and Crayon Set	*06/16/93	Lian Huat Hang	2,580
S–800–1016	Stationary Gift	*01/13/94	Unknown	1,440

12. The art materials identified in paragraph 11 above are subject to, but failed to comply with the requirements for the Labeling of Art Materials Act in that (a) Toy Wonders did not submit those art materials for review by a toxicologist as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)(C)(1); and (b) those art materials did not bear the statement of conformance with ASTM D–4236, as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)(C)(7).

13. Each of these art materials identified in paragraph 11 above is a "misbranded hazardous substance pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(8)(C) (1) and (7).

14. Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid misbranded hazardous art materials identified in paragraph 11 above, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c), for which a civil penalty may be imposed pursuant to section 5(c)(1) of the FHSA, 15 U.S.C. 1264(c)(1).

IV. Response of Toy Wonders, Inc.

15. Toy Wonders denies the allegations of the staff set forth in paragraphs 5 through 14 above that it has knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys and misbranded hazardous art materials, identified in paragraphs 5 and 11 above, in violation of the FHSA.

V. Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over Toy Wonders and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

17 Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by this reference.

18. The Commission does not make any determination that Toy Wonders knowingly violated the FHSA. The Commission and Toy Wonders agree that this Agreement is entered into for the purposes of settlement only

19. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Toy Wonders knowingly, voluntarily and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Toy Wonders failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

20. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of the Settlement Agreement and Order.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

22. The parties further agree that the Commission shall issue the attached Order; and that a violation of the Order shall subject Toy Wonders to appropriate legal action.

23. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

24. The provisions of the Settlement Agreement and Order shall apply to Toy Wonders, Inc. and each of its successors and assigns.

Respondent Toy Wonders, Inc

Dated March 16, 1995

Samuel Su,

President Toy Wonders, Inc.

Dated: March 16, 1995.

Lu Su,

Manager, Toy Wonders, Inc

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: March 17, 1995.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated March 17, 1995.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Under consideration of the Settlement Agreement entered into between respondent Toy Wonders, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Toy Wonders, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Toy Wonders, Inc. shall pay to the Commission a civil penalty in the amount of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) in three payments consisting of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) each. The first payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be due within twenty (20) days after service of the Final Order accepting the Settlement Agreement and Order (hereinafter, the anniversary date). The second payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be paid within one year of the anniversary date. The third payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be paid within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 14 of the Settlement Agreement and Order that Toy Wonders, Inc. violated the FHSA. Upon failure by Toy Wonders, Inc. to make payment or upon the making of a late payment by Toy Wonders, Inc. (a) The entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of April, 1995.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–8521 Filed 4–6–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notification of Proposed Terminations or Substantial Reductions of Major Defense Programs

Section 4471 of the FY93 Defense Authorization Act, as amended by section 1372 of the FY94 Defense Authorization Act and section 1142 of the FY95 Defense Authorization Act, requires that each prime contractor under a major defense program be notified if the program is proposed for substantial reductions or terminations as forwarded to Congress in the Presidents Budget.

The following Air Force prime contractor is hereby notified the program listed below has been proposed to be terminated by the Fiscal Year 96 President's budget:

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Program	Prime Contractor	Contract No.
EF–111A System Improvement Program	Grumman Aerospace Corporation, 609 South Oyster Bay Rd Bethpage, NY 11714–3582.	F33657–90–C–0001

Note: This is not a notice of termination, but a notice of proposed termination that was submitted in the FY96 President Budget to Congress.

The Air Force point of contact for this notice is Maj Pete Knudsen. He can be contacted at (703)695–2656.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 95–8586 Filed 4–6–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: May 24–26, 1995, 8:00 a.m. until 5:00 p.m.

ADDRESS: The Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Carol F Sperry, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 600 Independence Avenue, SW., room 3905, ROB 3, Washington, DC 20202–7592. Telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, the eligibility and certification process for institutions of higher education under Title IV, HEA, and the functions of the Secretary under subpart 1 part H of Title IV, HEA, relating to the State Postsecondary Review Program. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

Agenda

The meeting on May 24–26, 1995 is open to the public. The Advisory Committee will review petitions of accrediting and State approval bodies relative to initial or continued recognition by the Secretary of Education. It also will review a petition by a Federal agency for bachelor's degree-granting authority. In addition, the Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard.

The following petitions are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Academy for Liberal Education (requested scope of recognition: The accreditation and preaccreditation of institutions and programs in the liberal arts).
2. Montessori Accreditation Council for Teacher Education (requested scope of recognition: The accreditation of institutions and programs for Montessori teacher education).

Petitions for Renewal of Recognition

1. American Academy of Microbiology, Committee on Postdoctoral Educational Programs (requested scope of recognition: The accreditation of postdoctoral programs in medical and public health laboratory microbiology).
2. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Education (requested scope of recognition: The accreditation of graduate degree programs and clinical training programs in marriage and family therapy education).
3. Accrediting Commission on Education for Health Services Administration (requested scope of recognition: The accreditation of graduate programs in health services administration).
4. American Osteopathic Association, Bureau of Professional Education (requested scope of recognition: The accreditation and preaccreditation of programs leading to the D.O. degree).
5. American Podiatric Medical Association, Council on Podiatric Medical Education (requested scope of recognition: The accreditation and preaccreditation of colleges of podiatric medicine, including first professional and graduate degree programs).
6. Association of Theological Schools in the United States and Canada, Commission on Accrediting (requested scope of recognition: The accreditation and preaccreditation of freestanding schools, as well as schools affiliated with larger institutions, offering graduate professional education for ministry and graduate study of theology).
7. Council on Naturopathic Medical Education, Commission on Accreditation (requested scope of recognition: The accreditation and preaccreditation of programs leading to the N.D. or N.M.D. degree).
8. National Accrediting Commission for Schools and Colleges of Acupuncture and Oriental Medicine (requested scope of recognition: The accreditation of first professional master's degree and professional master's-level certificate and diploma programs in acupuncture and oriental medicine).
9. National Council for Accreditation of Teacher Education (requested scope of recognition: The accreditation of professional education units that provide baccalaureate and graduate programs for the preparation of teachers and other professional personnel for elementary and secondary schools).
10. New York Board of Regents (requested scope of recognition: The registration [accreditation] of collegiate degree-granting programs or curricula offered by institutions of higher education and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education).
11. Commission on Occupational Education Institutions of the Council on Occupational Education [formerly the Southern Association of Colleges and Schools, Commission on Occupational Education Institutions] (requested scope of recognition: The accreditation and preaccreditation ["candidate for accreditation"] of postsecondary, prebaccalaureate [degree-granting and nondegree-granting], vocational education institutions).

(The above scope incorporates the agency's request to expand its current geographic scope of recognition from regional to national, and its request to expand its current scope of recognition to include degree-granting (prebaccalaureate] institutions.)

12. Transitional Association of Christian Colleges and Schools, Accrediting Commission (requested scope of recognition: The accreditation and preaccreditation [as Candidate] of postsecondary institutions which offer certificates, diplomas, and associate, baccalaureate, and graduate degrees).
13. Western Association of Schools and Colleges, Accrediting Commission for Schools (requested scope of recognition: The accreditation of adult and postsecondary schools that offer non-degree programs located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands).
14. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (requested scope of recognition: The accreditation of senior colleges and universities located in California, Hawaii, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Missouri State Board of Education
2. New York Board of Regents

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Missouri State Board of Nursing
2. New Hampshire State Board of Nursing
3. New York Board of Regents (Nursing Education)

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Bachelor's Degree—Granting Authority

1 Joint Military Intelligence College (formerly the Defense Intelligence College), Washington, DC (request to award a bachelor's degree in Intelligence Studies).

A request for comments on all agencies whose petitions, and request for degree-granting authority are being reviewed during this meeting was published in the **Federal Register** on December 22, 1994.

Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. Sperry at the address above by May 3, 1995. Requests should include the names of all persons seeking an appearance, the organization they represent, the purpose for which the presentation is requested, and a brief summary of the principal points to be made during the oral presentation. Any written materials presenters may wish to give to the Advisory Committee must be submitted to Ms. Sperry by May 3, 1995 (one original and 25 copies). Only documents submitted by that date will be considered by the Advisory Committee. Presenters are requested not to distribute written materials at the meeting.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the Committee briefly on issues pertaining to the functions of the Committee, as identified in the section above on Supplementary Information. Participants interested in making such comments should inform Ms. Sperry before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Street, SW., room 3905, ROB 3, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays

Authority: 5 U.S.C.A. Appendix 2.

Dated: March 31, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–8633 Filed 4–6–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1475–000, et al.]

Illinova Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 31, 1995.

Take notice that the following filings have been made with the Commission:

1. Illinova Power Marketing, Inc.

[Docket No. ER94–1475–000]

Take notice that on March 20, 1995, Illinova Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Catex Vitol Electric, L.L.C. [Catex Vitol Electric, Inc.]

[Docket No. ER94–155–006]

Take notice that on March 2, 1995, Catex Vitol Electric, L.L.C. tendered for filing a Notice of Change In Status.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. KCS Power Marketing, Inc.

[Docket No. ER95–208–001]

Take notice that on March 16, 1995, KCS Power Marketing, Inc. tendered for filing a Notice of Succession as it relates to their new corporate name, KCS Power Marketing, Inc.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Tennessee Power Company

[Docket No. ER95–581–000]

Take notice that on March 14, 1995, Tennessee Power Company tendered for

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filing additional information in the above-referenced docket.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER95–602–000]

Take notice that on March 27, 1995, Central Illinois Light Company (CILCO), tendered for filing with the Commission a substitute tariff for the Coordination Sales Tariff filed on February 15, 1995. This substitute tariff has been filed for the purpose of reflecting maximum weekly prices for certain service, a change in the late payment and arbitration provisions, and to remove a load factor limitation.

CILCO is requesting a waiver of the notice period to allow the revised tariff to be effective on April 3, 1995.

Copies of the filing were served on all parties and the Illinois Commerce Commission.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER95–660–000]

Take notice that on March 22, 1995, Southwestern Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Electric Power Company

[Docket No. ER95–737–000]

Take notice that on March 14, 1995, Southwestern Electric Power Company (SWEPCO), submitted a Service Agreement, dated February 21, 1995, establishing the City of Ruston, Lincoln Parish, Louisiana (the City of Ruston) as a customer under the terms of SWEPCO's Coordination Sales Tariff CST–1)(CST–1 Tariff).

SWEPCO requests an effective date of March 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the City of Ruston and the Louisiana Public Service Commission.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER95–760–000]

Take notice that on March 17, 1995, Duke Power Company (Duke), filed an application to sell up to 2500 MW of capacity and energy from its owned generation assets at negotiated rates, including Rate Schedule MR providing for sales by Duke of both firm and non-firm power. In support of its application, Duke, on its own behalf and as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, filed a Comparable Access Transmission Tariff, Offering Network Firm Transmission Service, Point to Point Firm Transmission Service, Point to Point Limited Transmission Service and Point to Point Non-Firm Transmission Service, including pro forma transmission service agreements. Duke requests that Rate Schedule MR and Duke's Comparable Access Transmission Tariff take effect on May 16, 1995.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Prairie Wind Energy Partners

[Docket No. QF95–198–00]

On March 23, 1995, Prairie Wind Energy Partners (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Comment date: April 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8541 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 6939–059 West Virginia]

City of Jackson, Ohio and Certain Ohio Municipalities; Notice of Availability of Final Environmental Assessment

April 3, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Belleville Hydroelectric Project, No. 6939–059. The Belleville Hydroelectric Project is located on the Ohio River in Wood County, West Virginia. The application is to relocate a transmission line to connect the project to a substation near Rutland, Ohio. The final environmental assessment (FEA) finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Rebecca Martin at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8537 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–286–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

April 3, 1995.

Take notice that on March 28, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–286–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate approximately 5 miles of 12-inch pipeline including one meter station and appurtenant facilities, all located in Mobile County, Alabama, to permit the delivery of natural gas to Bay Gas Storage Company (Bay Gas) and Clarke-Mobile Utilities (Clarke-Mobile), under Koch's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to install the pipeline and appurtenant facilities to accommodate two delivery taps for service to Bay Gas, an intrastate storage company, and Clarke-Mobile, a local distribution company. Koch states that the tap for Bay Gas will provide a connection to Bay Gas' facilities and the tap for Clarke-Mobile will permit deliveries at a higher pressure than is available from the existing interconnection with Clarke-Mobile.

It is stated that Koch would use the delivery taps for the delivery of up to 73,000 Mcf of gas on a peak day to Bay Gas and up to 30,000 Mcf of gas on a peak day to Clarke-Mobile. It is stated that these volumes are within both customers' existing daily entitlements. It is asserted that deliveries to both Bay Gas and Clarke-Mobile would be made under Koch's ITS and FTS rate schedules. It is further asserted that the tap proposed for Bay Gas would be bi-directional and would be used for the receipt by Koch of up to 202,000 Mcf of gas on a peak day from Bay Gas.

The total construction cost is estimated at $1.68 million, of which Koch will receive $1 million as contribution-in-aid of construction. Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the addition of delivery taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8535 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–287–000]

Mojave Pipeline Company; Request Under Blanket Authorization

April 3, 1995.

Take notice that on March 28, 1995, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Bakersfield, California 93309, filed in Docket No. CP95–287–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) to construct and operate a sale tap under Mojave's blanket certificate issued in Docket Nos. CP89–1–000 and CP89–2–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave proposes to construct a sales tap and metering and appurtenant facilities onto its existing 42-inch line in Kern County, California to transport natural gas on behalf of Tehachapi-Cummings County Water District (Tehachapi-Cummings). Mojave states these facilities would be used to transport up to 3,000 MMBtu per day on behalf of Tehachapi-Cummings pursuant to Mojave's FT–1 and IT–1 rate schedules. Mojave states that the service rendered to Tehachapi-Cummings through the proposed facilities will have no material impact on Mojave's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8536 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–251–003]

National Fuel Gas Supply Corporation; Request for Waiver

April 3, 1995.

Take notice that on March 29, 1995, National Fuel Gas Supply Corporation (National) tendered for filing a request for an extension of a waiver granted by the Commission related to Section 21.1(a) of its FERC Gas Tariff.

National states that on June 16, 1994, the Commission issued a Letter Order in the above-referenced docket granting waiver of Section 21.1(a) of its tariff to allow National to file a report on or before June 1, 1995, to reflect the balances of its Account Nos. 191, 858 and 186 related to the flowthrough of costs by Columbia Gas Transmission Corporation (Columbia) and CNG Transmission Corporation.

National states that it is filing to extend the waiver of Section 21.1(a) of its tariff to the extent the Commission grants Columbia an extension of the close-out period for its Account No. 191, as requested by Columbia in Docket No. RP94–273–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before April 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8538 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–88–001, RP95–112–006, RP93–148–004, RP95–62–000, RP95–63–000, RP95–64–000, and RP95–90–000]

Tennessee Gas Pipeline Co.; Notice of Proposed Tariff Revisions

April 3, 1995.

Take notice that on March 30, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing proposed tariff revisions in response to various rate and tariff issues discussed at a March 6–9, 1995 technical conference convened by the Commission in the above-referenced dockets. Tennessee further states that the filing contains (1) A response to

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customer objections with regards to certain operational costs included in Tennessee's rate case filing in Docket No. RP95–112–000; and (2) a number of revisions to the tariff sheets filed in Docket Nos. RP95–88–000 and RP95–112–000 resulting from discussions with both customers and Commission Staff at the Technical Conference.

Comments to this filing by parties to this proceeding should be made in conjunction with the comments following the technical conference in Docket No. RP93–148–004, *et al.* These comments are due on April 13, 1995, with reply comments due April 20, 1995.

Any person who has not previously intervened in any of the above referenced dockets and desires to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before April 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary

Appendix A

Substitute Second Revised Sheet No. 25
Substitute First Revised Sheet No. 27
Substitute First Revised Sheet No. 28
Substitute Second Revised Sheet No. 95A
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 99
Substitute 2nd Revised Sheet No. 100
Original Sheet No. 100A
First Revised Sheet No. 104
Substitute First Revised Sheet No. 105
Substitute First Revised Sheet No. 106
Substitute First Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute Original Sheet No. 108A
Substitute First Revised Sheet No. 110
Substitute First Revised Sheet No. 115
Substitute Original Sheet No. 115A
Substitute First Revised Sheet No. 121
Substitute First Revised Sheet No. 122
Substitute Third Revised Sheet No. 127
Substitute Third Revised Sheet No. 153
Substitute Second Revised Sheet No. 154
Substitute Second Revised Sheet No. 155C
Substitute First Revised Sheet No. 155E
Substitute First Revised Sheet No. 157
Substitute Third Revised Sheet No. 159
Substitute Original Sheet No. 159A
Substitute First Revised Sheet No. 160
Substitute Second Revised Sheet No. 161
Substitute Second Revised Sheet No. 162
Substitute Original Sheet No. 162A
Substitute First Revised Sheet No. 163
Substitute First Revised Sheet No. 165
Substitute Original Sheet No. 165A
Substitute First Revised Sheet No. 166
Substitute Second Revised Sheet No. 167
Substitute Second Revised Sheet No. 168
Substitute First Revised Sheet No. 170
Substitute First Revised Sheet No. 171
Substitute Second Revised Sheet No. 172
Substitute First Revised Sheet No. 173
Substitute Second Revised Sheet No. 174
Substitute Second Revised Sheet No. 176
Substitute Original Sheet No. 176A
Fourth Revised Sheet No. 178
Substitute First Revised Sheet No. 204
Substitute Third Revised Sheet No. 205
Substitute First Revised Sheet No. 205A
Substitute First Revised Sheet No. 206
Substitute First Revised Sheet No. 207
Substitute Original Sheet No. 207A
Substitute Original Sheet No. 207B
Substitute First Revised Sheet No. 208
Substitute First Revised Sheet No. 209
Original Sheet No. 209A
Substitute First Revised Sheet No. 211
Substitute Original Sheet No. 211A
Substitute Second Revised Sheet No. 212
Substitute First Revised Sheet No. 213
Substitute First Revised Sheet No. 214
Substitute First Revised Sheet No. 215
Substitute Original Sheet No. 215A
Substitute Original Sheet No. 215B
Substitute First Revised Sheet No. 216
Substitute First Revised Sheet No. 217
Substitute First Revised Sheet No. 218
Sheet No. 218A (Reserved for Future Use)
First Revised Sheet No. 220
Substitute First Revised Sheet No. 224
Substitute First Revised Sheet No. 226
Substitute First Revised Sheet No. 227
Substitute First Revised Sheet No. 305
Substitute First Revised Sheet No. 308
Substitute First Revised Sheet No. 312
Substitute Second Revised Sheet No. 313
Substitute Second Revised Sheet No. 317
Original Sheet No. 317A
Substitute Third Revised Sheet No. 319B
Substitute Second Revised Sheet No. 319C
Substitute First Revised Sheet No. 328
Substitute First Revised Sheet No. 332
First Revised Sheet No. 333
Substitute First Revised Sheet No. 334
Substitute First Revised Sheet No. 335
Substitute First Revised Sheet No. 336
Substitute 2nd Revised Sheet No. 337
Substitute Original Sheet No. 337A
First Revised Sheet No. 339
Substitute Original Sheet No. 339A
Substitute First Revised Sheet No. 345
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Substitute First Revised Sheet No. 347
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First Revised Sheet No. 360
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Substitute First Revised Sheet No. 363
Substitute Original Sheet No. 363A
Substitute Second Revised Sheet No. 364
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Substitute Second Revised Sheet No. 401
Substitute First Revised Sheet No. 401A
Substitute 2nd Revised Sheet No. 406
Substitute Second Revised Sheet No. 509
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Substitute First Revised Sheet No. 601
Substitute Second Revised Sheet No. 605
Substitute First Revised Sheet No. 621
Substitute First Revised Sheet No. 655
Substitute First Revised Sheet No. 659E
Substitute First Revised Sheet No. 660
Original Sheet No. 660A
Original Sheet No. 660B
Substitute First Revised Sheet No. 661
Substitute First Revised Sheet No. 662
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Substitute First Revised Sheet No. 663
Substitute First Revised Sheet No. 664
Original Sheet No. 664A
Substitute First Revised Sheet No. 665
Original Sheet No. 665A
Substitute First Revised Sheet No. 666
Original Sheet No. 666A
Substitute First Revised Sheet No. 667
Original Sheet No. 667A
Substitute First Revised Sheet No. 668
Original Sheet No. 668A
Substitute First Revised Sheet No. 669
Original Sheet No. 669A
Substitute First Revised Sheet No. 670
Original Sheet No. 670A
Substitute First Revised Sheet No. 671
Original Sheet No. 671A
Substitute First Revised Sheet No. 672
Original Sheet No. 672A
Substitute First Revised Sheet No. 673
Original Sheet No. 673A
Substitute First Revised Sheet No. 674
Original Sheet No. 674A
Substitute First Revised Sheet No. 675
Original Sheet No. 675A
Substitute Original Sheet No. 676

[FR Doc. 95–8539 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–216–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1995.

Take notice that on March 30, 1995, Tennessee Gas Pipeline Company filed a limited application pursuant to Section 4 of the Natural Gas Act, and the rules and regulations of the Federal Energy Regulatory Commission promulgated thereunder, to recover gas supply realignment costs (GSR costs) paid, or known and measurable, at the time of the filing.

Tennessee proposes that the filing be made effective May 1, 1995. Tennessee states that the tariff sheets identified below set forth Tennessee's GSR-related charges:

First Revised Second Revised Sheet No. 21A
First Revised Second Revised Sheet No. 22
First Revised Second Revised Sheet No. 22A
First Revised Second Revised Sheet No. 24
Twelfth Revised Sheet No. 30

Tennessee states that copies of the filing were posted in conformance with Section 154.16 of the Commission's Regulations and mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8540 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—5185–6]

Access to Confidential Business Information by TechLaw, Inc. and its Team Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA awarded Region I Enforcement Support Services (ESS) Contract 68–W4–0019 to prime contractor, TechLaw, Inc. EPA has authorized TechLaw, including its team subcontractors, CDM Federal Programs Corporation, Financial Investigations & Services, Inc., Blake Investigative Agency, Barber Associates, Life Systems, Inc., Science Applications International Corporation, ISSI, Inc., and HydroGeoLogic, Inc., access to information in Region I Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments should be submitted to EPA within five working days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary H. Grealish, Project Officer, U.S. Environmental Protection Agency, (HPC–CAN), JFK Federal Building, Boston, MA 02203–2211. Telephone (617) 223–5507.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W4–0019, TechLaw provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, TechLaw employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which TechLaw has access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that TechLaw requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

TechLaw is required by contract to protect confidential information. When TechLaw's need for the documents is completed, TechLaw will return them to EPA.

Dated: March 28, 1995.

John P. DeVillars,

Regional Administrator

[FR Doc. 95–8612 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5185–9]

Public Water Supervision Program: Program Revisions for the Commonwealth of Massachusetts

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts is revising it's approved State Public Water Supervision Primacy Program. Massachusetts has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals, and Inorganic Chemicals (known as Phase II, IIB, and V) in drinking water that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 8, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 8, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective May 8, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Massachusetts Department of Environmental Protection, Division of Water Supply—9th Floor, One Winter Street, Boston, MA 02108
and
U.S. Environmental Protection Agency—New England, Water Management Division, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Kevin Reilly, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply

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Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3619.

Authority: Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: March 24, 1995.

John P. DeVillars,

Regional Administrator

[FR Doc. 95–8614 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4721–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 6, 1995 through March 10, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EU—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts

EO—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–BLM–J03022–WY Rating EC2, Greater Wamsutter Area II Natural Gas Development Project, Approvals and Permits Issuance, Carbon and Sweetwater Counties, WY.

SUMMARY: EPA expressed environmental concerns regarding the plugging program and possible ground water degradation. EPA requested additional information on these issues, as well as, a discussion to reduce the projected disturbance of 5 acres (per well) pad.

ERP No. D–NPS–E65048–TN Rating EC2, Foothills Parkway Section 8D, Construction, between Wear Valley Road (US 321) and Gatlinburg Pigeon Forge Spur (US 441/321), Right-of-Way and COE Section 404 Permits, Great Smoky Mountain National Park, Blount, Sevier and Cocke Counties, TN.

Summary: EPA expressed environmental concern regarding potential acid drainage and requested that the final EIS discuss possible secondary or backup mitigation plans should the proposed strategies fail. ERP No. D–USA–K11058–CA Rating EC2, San Onofre Area Sewage Effluent Compliance Project, Cease and Desist Orders, Camp Pendleton Marine Corps Base, San Diego and Orange Counties, CA.

Summary: EPA expressed environmental concerns regarding impacts to wetlands, biological resources and water quality. Additional information is requested for the project description and its alternatives analysis.

Final EISs

ERP No. F–FTA–L54003–OR, New Eugene Transfer Station, Site Selection and Construction, Funding, McDonald Site or IHOP Site, Lane County, OR.

Summary: Review of the Final EIS has been completed and no environmental concerns with the project were identified. No formal comment letter was sent to the preparing agency.

Dated: April 4, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 95–8609 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4721–8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075 Weekly receipt of Environmental Impact Statements Filed March 27, 1995 Through March 31, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950116, DRAFT EIS, USA, CA, Hamilton Army Airfield Disposal and Reuse, Implementation, City of Novato, Marin County, CA, Due: May 22, 1995, Contact: Robert Koenigs (916) 557–6712.

EIS No. 950117, DRAFT EIS, AFS, CA, Snowy Trail Off-Highway Vehicle Re-Route, Smith Fork Parcel of Los Padres National Forest, Approval and Implementation, Mount Pinos Ranger District, Ventura County, CA, Due: May 22, 1995, Contact: Mark Bethke (805) 245–3731.

EIS No. 950118, DRAFT EIS, IBR, WA, ND, OR, ID, NV, MT, SD, WY, NB, UT, CO, CA, NM, OK, KS, AZ, TX, Acreage Limitation and Water Conservation Rules and Regulations, Revised and/or New Rules for Replacement and Expansion of Existing Rules pertaining to the Administration of the Reclamation Reform Act of 1982, Implementation in Seventeen Western States, Due: May 31, 1995, Contact: Ronald J. Schuster (303) 236–9336.

EIS No. 950119, LEGISLATIVE DRAFT EIS, AFS, ID, White Sand Creek and a Two-Mile Segment of the Upper Lochsa River Wild and Scenic River Suitability Study for Designation or Nondesignation in the Wild and Scenic Rivers System, Clearwater National Forest, Idaho County, ID, Due: June 6, 1995, Contact: Dennis Elliott (208) 942–3113.

EIS No. 950120, FINAL EIS, FHW, NY, I–26 Mohawk River Crossing connecting NYS Thruway Interchange 26, I–890, NYS–5S and NYS–5 Construction, Funding, US Coast Guard Permits and COE Section 404 Permit, Towns of Rotterdam and Glenville, Schenectady County, NY, Due: May 8, 1995, Contact: Harold J. Brown (518) 472–3616.

EIS No. 950121, FINAL EIS, BOP, MA, Fort Devens, Massachusetts Federal Medical Center Complex (FMCC) and Federal Prison Camp, Construction and Operation, Worcester and Middlesex Counties, MA, Due: May 10, 1995, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 950122, DRAFT EIS, FTA, IL, St. Clair County Corridor Transit Improvements, Funding, St. Clair County, IL, Due: May 22, 1995, Contact: Lee Waddleton (816) 523–0204.

Amended Notices

EIS No. 940530, DRAFT EIS, BLM, WY, Grass Creek Resource Management Plan, Implementation, Big Horn, Washakie, Hot Springs and Park Counties, WY, Due: May 7, 1995, Contact: Joe Patty (307) 775–6101. Published FR 2–3–95 Review period extended.

Dated: April 4, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–8610 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5186–2]

Annual Conference on Analysis of Pollutants in the Environment and Trace Metals Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference and training workshop.

SUMMARY: The Office of Science and Technology and the Water Environment Federation, co-sponsors, will hold the "18th Annual Conference on Analysis of Pollutants in the Environment" to discuss all aspects of environmental measurement. The conference is open to the public. A Workshop on Trace Metals sampling and analysis will precede the conference. This workshop is designed for state and regional authorities.

DATES: The conference will be held on May 3–4, 1995. On May 3, 1995, the conference will begin at 8:45 am and last until 5:15 pm; on May 4, 1995, the conference will begin at 8:45 am and adjourn at 4:30 pm. The Workshop on Trace Metals will be held on May 2, 1995, from 12:30 pm to 5:30 pm.

ADDRESSES: The conference will be held at the Norfolk Waterside Marriott, Norfolk, Virginia. The Trace Metals Workshop will be held at the Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: Conference arrangements are being coordinated by the Water Environment Federation. For information on registration, hotel rates, transportation, social events and reservations call the Water Environment Federation Conference Service Line at (800) 666–0206. If you have technical questions regarding the conference program please contact William Telliard, Office of Science and Technology (Mail Code 4303), telephone (202) 260–7120, fax (202) 260–7185.

For Information on the Trace Metals Workshop registration requirements or technical program, call Cindy Simbanin, DynCorp Environmental, at (703) 519–1386.

SUPPLEMENTARY INFORMATION: EPA's 18th Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, state and Federal regulators, and environmental consultants and contractors to discuss all aspects of environmental measurement with a particular focus on analytical methods and related regulatory issues.

A Workshop on Trace Metals Sampling and Analysis for state and regional authorities will precede the full conference and focus on cutting edge issues in the determination of trace metals in ambient waters. The session on trace metals determinations will cover EPA's recent work on sampling and analysis of metals at water quality criteria levels, discussions of clean and ultra-clean techniques, a case study on a project to determine trace metals and to establish chemical translator ratios for the City of Danville, Virginia, and presentation of methods under development for the determination of arsenic, selenium, and mercury at EPA and state ambient water quality criteria levels. The program for the conference follows:

18th Annual EPA Conference on Analysis of Pollutants in the Environment

Wednesday, May 3, 1995

8:45 am Opening Remarks
William Telliard, Director, Analytical Methods Staff, Office of Science and Technology, Office of Water, USEPA

9:00 am Introductory Remarks
Mike Pollen, Water Environment Federation

9:15 am Welcome
James Hanlon, Deputy Office Director, Office of Science and Technology, USEPA

Trace Metals

9:30 am Implementing EPA's Metals Criteria
Elizabeth Southerland, Director, Standards and Applied Sciences Division, Office of Water, USEPA

10:00 am Establishing Trace Metal Clean Facilities in Existing Laboratories
Russell Flegal, University of California at Santa Cruz

10:30–10:45 am Break

10:45 am Determination of Arsenic at Ultra-Trace Levels Using Vapor Generation-Atomic Fluorescence Spectrometry
Reshan Fernando, Research Triangle Institute

11:15 am Temporal Variability in Dissolved Trace Metals in the Houston Ship Channel, Texas
Paul Boothe, Texas A&M University

11:45–1:00 pm Lunch

1:00 pm Trace Mercury Analysis of Biological Fluids
Conrad Naleway and Hwai-Nan Chou, American Dental Association

1:30 pm Analytical Methods for Arsenic in Water with an MDL of 2 ng/L
Eric Crecelius, Chuck Apts, and Steve Kiesser, Battelle Marine Sciences Laboratory

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Wednesday, May 3, 1995

Cyanide Methods

2:00 pm Present and Future of "Free Cyanide" Determinations
Emil Milosavljevic, University of Nevada, Reno

2:30 pm Effects of Metals, Ligands, and Oxidants on Cyanide Analysis; Gold Mining Waste Case Study
Margaret Goldberg, Research Triangle Institute

3:00–3:15 pm Break

3:15 pm Approaches to the Determination of Total and Available Cyanide in Solid Samples
Ed Heithmar, Environmental Monitoring Systems Laboratory, Las Vegas

3:45 pm The Determination of Cyanide in a Chemical Plant's Waste Water Using Ion Chromatography
Susan Gantz Matz, Quantum USI Division

Analysis Protocols—I

4:15 pm EPA's Sediment Toxicity Testing Methods
Teresa Norberg-King, USEPA Environmental Research Laboratory, Duluth and Elizabeth Southerland, Director, Standards and Applied Sciences Division, Office of Water, USEPA

4:45 pm Microscale Solvent Extraction Methods for Organic Compound Analyses
David Mauro, META Environmental, Inc.

5:15 pm Adjourn

Thursday, May 4, 1995

Quality Control

8:45 am Statistical Properties of Low Concentration Measurements and Wastewater Effluent Limitations
Chuck White and Henry Kahn, U.S. Environmental Protection Agency

9:15 am Compliance Monitoring Detection and Quantitation Levels for EPA Method 1653
Larry LaFleur, NCASI

9:45 am Seeing the Light From a Blind PE Sample: Rocky Mountain Arsenal's Analytical Laboratory Performance Evaluation System
Angela Barnard-Hatmaker, Martin Marietta Energy Systems, Inc.

10:15–10:30 am Break

10:30 am Selecting Kinds and Numbers of QC Samples for More Defensible Environmental Analyses
Larry Keith, Radian Corporation

11:00 am Approaches to Quality Control of Non-Linear Calibration Relationships for SW–846 Methods
Harry McCarty, SAIC

Sampling Protocols

11:30 am VOA Compositing Study
Dale Rushneck, Interface

12:00–1:15 pm Lunch

1:15 pm The Evaluation and Application of a Large Volume In-Situ Resin Sampler for Monitoring Trace Organic Compounds in Ambient Water
Hans Biberhofer, Environment Canada

1:45 pm Practical Application of Clean Metals Sampling Protocols to NPDES Monitoring
Will Hunley, Hampton-Roads Sanitation District

2:15 pm Residential Environmental Sampling Protocols for Human Exposure Assessment of Lawn Pesticides
Marielle Brinkman, Battelle Columbus

Thursday, May 4, 1995

2:45–3:00 pm Break

Analysis Protocols—II

3:00 pm Solid-Phase Microextraction for the Analysis of Industrial Wastewaters
Bruce Colby, Pacific Analytical, Inc.

3:30 pm Field Analysis: An Effective Approach to Site Assessment and Remediation
Ileana Rhodes, Shell Development Company

4:00 pm Determination of N-Nitrosodimethylamine (NDMA) at Part-per-Trillion Levels in Drinking Waters and Contaminated Groundwaters
Bruce Tomkins, Wayne H. Griest, and Cecil E. Higgins, Oak Ridge National Laboratory

4:30 pm Adjourn

Trace Metals Training Workshop Agenda

Tuesday, May 2, 1995.

12:00 noon

Introductory Remarks: William A. Telliard, USEPA

Mr. Telliard will provide an overview of the WQC levels for trace metals determinations and the topics to be discussed in the workshop to aid attendees in resolving the problems associated with the sampling and analysis of trace metals, including the difficulty in precluding contamination.

Requirements for Determination of Trace Metals: James A. Hanlon, USEPA

Mr. Hanlon will give a background on the need for the determination of trace metals at WQC levels as required by the Clean Water Act and will discuss the detection and quantitation limits necessary to ensure reliable determination of trace metals at these levels.

Overview of the Sampling and Analysis Process for Trace Metals Determinations: Carlton Hunt, Battelle Ocean Sciences

Dr. Hunt will explain how to organize and manage a project for sampling, analysis, data validation, and quality control to ensure that reliable trace metals determinations are made.

Field Sampling for Trace Metals: William A. Telliard, USEPA

Mr. Telliard will discuss "clean-hands/dirty-hands" sampling techniques, the use of protective gloves and clothing to prevent contamination, and the processing of equipment blanks to ensure reliable sampling. Videos of sampling will be used to supplement this presentation.

Laboratory Determinations of Trace Metals: Russell Flegal, University of California at Santa Cruz

Dr. Flegal will describe the set-up and operation of a trace metals laboratory, including the clean room, clean benches, and the equipment and analytical techniques required for determination of each metal.

Quality Assurance, Quality Control, and Data Reliability: Dale Rushneck, Interface, Inc.

Mr. Rushneck will discuss the inter-relationship between quality control testing and the production of reliable data of defensible quality.

Verification and Validation of Trace Metals Data: Lynn Riddick, DynCorp Environmental

Ms. Riddick will provide examples of data review checklists that can be used to determine the reliability of trace metals results. These checklists outline the summary level quality control data required by the analytical methods.

Case Study for Compliance and Determination of Translators: John N. Leonard, Hazen and Sawyer

Dr. Leonard will present the requirements, criteria, background, sampling, analysis, and outcome of a project to determine trace metals and establish chemical translator ratios for the city of Danville, Virginia.

5:30 pm Adjourn

Dated: March 30, 1995.

James A. Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 95–8611 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5185–4]

Revocation of Sulfide Waiver Granted on April 17, 1986, to W.B. Place Tannery Discharging to City of Hartford Subject to Pretreatment Standards Under 40 CFR Part 425

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The City of Hartford (hereinafter referred to as "Hartford"), Wisconsin, operates a publicly owned treatment works (POTW) which accepts wastewater from a leather tanning and finishing facility which is subject to pretreatment standards at 40 CFR part 425. Pursuant to 40 CFR 425.04(c) Hartford certified to the U.S. Environmental Protection Agency (U.S. EPA) on April 11, 1984, that discharge of sulfide from the tannery would not interfere with the operation of the POTW. On April 17, 1986, U.S. EPA placed notice at 51 FR 13092–13093 stating that, pursuant to 40 CFR part 425, the following tannery would not be subject to the categorical sulfide pretreatment standard: W.B. Place Tannery, 368 West Summer Street, Hartford, Wisconsin.

On August 31, 1994, Hartford requested that U.S. EPA rescind the categorical sulfide pretreatment waiver granted to W.B. Place Tannery The affected tannery was informed of Hartford's intention.

Pursuant to 40 CFR 425.04(d) and in consideration of the representations and information provided by Hartford, I hereby, rescind the April 17, 1986, waiver of the sulfide requirements set forth in the Leather Tanning and Finishing Pretreatment Standards for the delineated tannery in Hartford, Wisconsin. As provided in 40 CFR 425.04(d)(2), the affected tannery must comply with the categorical sulfide standards no later than 18 months following the publication of this notice or at an earlier date established by the City.

DATES: This action is effective as of April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Gluckman, Pretreatment Coordinator, Permits Section, Water Quality Branch, U.S. EPA—Region 5, at (312) 886–6089.

Dated: March 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–8613 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 31-February 1, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 31-February 1, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a strong further rise in economic activity during the closing months of 1994. Nonfarm payroll employment was up considerably further in December after a sharp increase in November, and the civilian unemployment rate declined to 5.4 percent. Industrial production registered another large advance in December and capacity utilization continued to move up from already high levels. Current estimates indicate little change in retail sales over November and December, while housing starts posted sizable gains on balance over the two months. Orders for nondefense capital goods point to a continued strong expansion in spending on business equipment; permits for nonresidential construction have been trending appreciably higher. The nominal deficit on U.S. trade in goods and services widened somewhat in October-November from its average rate in the third quarter. Prices of many materials have continued to move up rapidly, but broad indexes of prices for consumer goods and services have increased moderately on average over recent months.

Most market interest rates have declined slightly on balance since the Committee meeting on December 20, 1994. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has declined somewhat over the intermeeting period. The Mexican peso has depreciated sharply against the dollar.

Growth of M2 and M3 strengthened in December and January. From the fourth quarter of 1993 to the fourth quarter of 1994, M2 grew at a rate at the bottom of the Committee's range for 1994 and M3 at a rate in the lower half of its range for the year. Total domestic nonfinancial debt has continued to expand at a moderate rate in recent months, and for the year 1994 it grew at a rate in the lower half of its monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee anticipated that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was lowered to 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase somewhat the existing degree of pressure on reserve positions, taking account of a possible increase in the discount rate. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, April 3, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95-8579 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of January 31-February 1, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Banco de Sabadell, S.A.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 1995.

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A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Banco de Sabadell, S.A., Sabadell, Spain; to retain 50 percent of the voting shares of PRS International Investment Advisory Services, Inc., and PRS International Brokerage, Inc., both of Miami, Florida, and thereby continue to engage in providing institutional and retail customers portfolio investment advice general economic information and advice, and general economical statistical forecasting services and industry studies, pursuant to § 225.25(b)(4) of the Board's Regulation Y; providing to institutional and real customers securities services, related securities credit activities, pursuant to Regulation T, and incidental activities such as custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and acting as an introducing broker for institutional and retail customers in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, other money market instruments, pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-8580 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

Commonwealth Holdings, LLC, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 1, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Commonwealth Holdings, LLC, Burlington, Kentucky; to become a bank holding company by acquiring 31.75 percent of the voting shares of Heritage Bancorp, Inc., Burlington, Kentucky, and thereby indirectly acquire Heritage Bank, Inc., Burlington, Kentucky.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Georgia, Inc., Roswell, Georgia; to merge with Southern Bank Group, Inc., Roswell, Georgia, and thereby indirectly acquire Northside Bank & Trust Company, Roswell, Georgia.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-8581 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

Steven L. Ohs, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Steven L. Ohs, Glendive, Montana; to acquire 20 percent of the voting shares of Community First Bancorp, Glendive, Montana, and thereby indirectly acquire Community First Bancorp, Glendive, Montana, Glendive Bancorporation, Inc., Glendive, Montana, and First Fidelity Bank, Glendive, Montana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Dr. Joel W. Kovner, Malibu, California; to retain up to 27.93 percent of the voting shares of Professional Bancorp, Inc., Santa Monica, California, and thereby indirectly retain First Professional Bank, N.A., Santa Monica, California.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-8582 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of May 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: May 5, 1995, 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Conference Room TBA, Chevy Chase, MD 20815.

Open May 5, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting

Purpose: This Panel is charged with conducting review of competing continuation of grant applications for MEDTEP Research Centers on Minority Populations.

Agenda: The open session of the meeting on May 5 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing competing continuation of grant applications for MEDTEP Research Centers on Minority Populations. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, telephone (301) 594-1438.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 31, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95-8577 Filed 4-6-95; 8:45 am]

BILLING CODE 4160-90-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Utah State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 17, 1995 in Room 578, 1961 Stout Street, Denver, Colorado to reconsider our decision to disapprove Utah SPA 93-033.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Utah State plan amendment (SPA) number 93-033.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The State of Utah submitted SPA 93-033 which proposed changes in an asset test for poverty level pregnant women. Specifically, Utah's amendment required certain poverty level pregnant women who did not meet the resource test to make a one-time payment equal to 4 percent of the individual's total non-exempt resources. In addition, Utah's amendment would waive this requirement for high risk pregnant women.

The issues in this matter are whether Utah SPA 93-033 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act) section 1902(l) and section 1902(a)(17).

Section 1902(a)(14) of the Act specifies that enrollment fees, premiums, deductions, cost sharing, or similar charges may be imposed *only* as provided in section 1916. Section 1916(a)(1) prohibits the application of any enrollment fee with respect to the categorically needy. It restricts States from charging a premium for Medicaid for the categorically needy. An exception is made regarding poverty level pregnant women with income at or above 150 percent of the Federal Poverty Level. For these women, the amount of that premium is restricted to 10 percent of the amount by which the family income (less expense for care of a dependent child) exceeds 150 percent of the poverty level. In addition, section 1916(a)(2)(B) prohibits States from imposing any deduction, cost sharing or similar charge with respect to services furnished to pregnant women, provided the services relate to the pregnancy or a complicating condition. HCFA disapproved Utah's amendment finding contrary to the statute's prohibition on imposing premiums (other than those authorized in section 1916(c) of the Act) enrollment fees, or similar charges on categorically needy individuals.

Utah believes its proposed policy to waive the resource spenddown for pregnant women determined to be in the high risk category is supported by section 1902(1)(3) of the Act. Utah believes this is the only statutory authority over resource standards and methodologies for poverty level pregnant women. Utah also claims that section 1902(a)(17) explicitly exempts pregnant women from all requirements in that section. HCFA did not agree with Utah's interpretation of the statute that section 1902(l) exempts this group from the comparability requirements in section 1902(a)(17).

While HCFA acknowledges that subsection (l)(3) exempts the States from using a resource test for high-risk pregnant women, this exemption does not override the remainder of section 1902 (a)(17) which requires comparability of services to all such women. Utah cites the phrase, "except as provided in subsections (l)(3), (m)(3), and (m)(4) include reasonable standards (which shall be comparable for all groups * * *)" as a rationale for this assertion. However, section 1902(1)(3) applies only in cases in which its application would be inconsistent with the requirements of subsection (a)(17). HCFA believed that subsection (l)(3) authorizes States to establish a more liberal resource standard or to drop the resource test for all section 1902(l)(A) pregnant women, but not to adopt either of these approaches for a specific segment of that group. While the goal of removing barriers to ensure positive birth outcomes is a shared one, HCFA did not approve foregoing a resource test exclusively for high-risk pregnant women because they are not a separate group described in section 1902(l).

Utah points out that subsection (l)(3) prescribes that a resource standard or methodology may not be more restrictive than applied under Title XVI. Utah also believes that exclusion of all resources based upon the level of medical risk factors is less restrictive than Title XVI, and is also reasonable. However, HCFA believed that section 1902(a)(17) is explicitly meant to be inclusive of whole eligibility groups and not portions of groups. HCFA contended it cannot authorize a State to single out any part of an eligibility group for preferential treatment. HCFA's position was, in order to drop the resource test for high risk pregnant women, the State must do so for the entire poverty level group of pregnant women.

The notice to Utah announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Rod L. Betit,

Executive Director, Utah Department of Health, 288 North 1460 West, P.O. Box 16700, Salt Lake City, Utah 84116-0700.

Dear Mr. Betit: I am responding to your request for reconsideration of the decision to disapprove Utah State Plan Amendment (SPA) 93-033.

The State of Utah submitted SPA 93-33 which proposed changes in an asset test for poverty level pregnant women. Specifically, Utah proposed policy regarding a one-time payment equal to 4 percent of the individual's total non-exempt resources if

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they are equal to or exceed $5,000. In addition, Utah proposed to waive this payment requirement for high risk pregnant women.

The issues in this matter are whether Utah SPA 93–033 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act), section 1902(l) and section 1902(a)(17).

I am scheduling a hearing on your request for reconsideration to be held on May 17, 1995, in Room 578, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–8524 Filed 4–6–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69696, October 20, 1980, as amended most recently at 59 FR 63406–62407, dated December 5, 1994) is amended to reflect the transfer of the Division of HIV/AIDS, excluding the Hematologic Diseases Branch, Immunology Branch, and Laboratory Investigations Branch, from the National Center for Infectious Diseases to the National Center for Prevention Services.

Section HC–B, *Organization and Functions*, is hereby amended as follows:

Delete in its entirety the title and functional statement for the *Division of HIV/AIDS (HCRK).*

Following the functional statement for the *Division of Oral Health (HCM6), Office of the Director (HCM61),* insert the following:

Division of HIV/AID (HCM7). (1) Conducts national surveillance of infectious diseases and other illnesses associated with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and sentinel surveillance of HIV infection; (2) conducts national and international surveillance, epidemiologic investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (3) develops recommendations and guidelines on the prevention and control of HIV/AIDS; (4) evaluates prevention and control activities in collaboration with other CDC components; (5) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance for HIV/AIDS surveillance activities to State and local health departments; (6) provides consultation to other PHS agencies, medical institutions, and private physicians; (7) provides information to the scientific community through publications and presentations; (8) works closely with NCID on HIV/AIDS surveillance activities and epidemiologic studies that require laboratory support and collaboration.

Office of the Director (HCM71). (1) Plans, directs, and coordinates the activities of the Division; (2) develops goals and objectives and provides leadership, policy formulation, and guidance in program planning and development; (3) provides program management and administrative support services for HIV/AIDS activities, both domestic and international.

International Activity (HCM712). (1) Designs and executes epidemiologic studies of HIV infection in developing nations of Africa and other continents; (2) develops and conducts epidemiologic studies of risk factors for AIDS and HIV transmission; (3) provides technical assistance to developing nations to develop AIDS case surveillance systems; (4) assists foreign governments in carrying out seroprevalence studies and surveys; (5) implements strategies to protect the blood supply in developing countries; (6) assists in the design, implementation, and evaluation of AIDS prevention and control activities; (7) performs epidemiologic studies of HIV/AIDS interventions in foreign countries; (8) coordinates with other CIOs in CDC that have similar international responsibilities; (9) provides consultation to WHO, USAID, and AIDSTECH, and other organizations whose mission is to prevent and control HIV infection and related outcomes.

Technical Information Activity (HCM713). (1) Provides scientific information, in cooperation with other CDC organizations, to health-care professionals, public health officials, and the general public; handles controlled and general correspondence and prepares responses to Freedom of Information Act requests; (2) coordinates preparation of responses and provision of material requested by Congress; (3) coordinates preparation of documents for annual program review with the Directors of NCPS and CDC; (4) prepares HIV/AIDS briefing reports for Director, CDC, and the Assistant Secretary for Health; (5) prepares printed and audiovisual materials on HIV/AIDS in cooperation with other CDC organizations; (6) assists in preparing guidelines for prevention of HIV infection; (7) maintains library of HIV/AIDS reprints and MMWR articles and distributes on request; (8) coordinates requests for presentations at scientific, medical, and public health meetings; (9) assists in preparing, editing, and clearing manuscripts; (10) plans and arranges for HIV/AIDS conferences and scientific meetings sponsored by CDC.

Epidemiology Branch (HCM72). (1) Designs and conducts epidemiologic studies to determine risk factors, co-factors, and modes of transmission for AIDS and HIV infection; (2) conducts epidemic aid investigations of HIV infection, infectious disease, and other illnesses associated with HIV/AIDS; (3) conducts technical reviews of proposals submitted for epidemiologic studies, arranges for ad hoc panel reviews, and recommends funding levels; (4) provides epidemiologic consultation to State and local health departments, other PHS agencies, and other groups and individuals investigating the syndrome; (5) responds to inquiries from physicians and other health providers for information on the medical and epidemiologic aspects of HIV/AIDS.

Pediatric and Family Studies Section (HCM722). (1) Designs and conducts epidemiologic studies of AIDS and HIV infection that examine risk factors, modes of transmission, and the natural history of disease in children, adolescents, mothers, and other family members; (2) develops guidelines and recommendations to reduce transmission in these populations, particularly aspects related to transmission from mother to child and the effects of pregnancy on infected women; (3) conducts epidemic investigations of infectious diseases and other illnesses associated with AIDS and HIV infection related to these populations; (4) provides technical assistance to medical professionals, health departments, the mass media, and the public on various issues concerning the HIV/AIDS epidemic and its effect on these population groups.

Social and Behavioral Studies Section (HCM723). (1) Designs and conducts social, psychological, and behavioral studies of AIDS and HIV infection that examine cognitive, social, and environmental influences on behaviors associated with the transmission of HIV and development of life-threatening disease; (2) develops guidelines and recommendations to reduce transmission of HIV and the development of AIDS; (3) assists biomedical and epidemiologic researchers in investigations of infectious diseases associated with AIDS and HIV infection; (4) provides technical assistance to social, behavioral, and biomedical scientists, health departments, universities, the mass media, and the public on social and behavioral aspects of the HIV/AIDS epidemic.

Special Studies Section (HCM724). (1) Designs and conducts epidemiologic studies examining the natural history of HIV infection and AIDS and the efficiency of, and risk factors for, the transmission of HIV by homosexual, heterosexual, or bloodborne routes (i.e., transfusion, organ transplantation, or needle-sharing); (2) conducts epidemic investigations of infectious diseases and other illnesses associated with AIDS and HIV infection in these risk groups; (3) develops guidelines and recommendations to reduce HIV transmission in these affected populations; (4) provides technical assistance to medical professionals, health departments, the mass media, and the public on various issues concerning the HIV/AIDS epidemic in these populations; (5) develops and maintains systems for the laboratory monitoring of specimens for human immunodeficiency virus type 2 (HIV–2) infection in the United States and conducts epidemiologic investigations of identified cases.

Field Services Branch (HCM73). (1) Serves as the focus for the Division of HIV/AIDS in carrying out field initiatives and programs with State and local health departments; (2) assists the Surveillance, HIV Seroepidemiology, and Statistics and Data Management Branches in implementing and maintaining HIV/AIDS surveillance activities and HIV seroprevalence surveys and studies at the State and local level; (3) administers and tracks the surveillance and seroprevalence components of combined AIDS Prevention and Surveillance cooperative agreements with State and local health departments; (4) works with the Office of the Division Director and the Procurement and Grants Office in processing cooperative agreements and contracts; (5) negotiates field assignments of public health advisors with State and local health officials and provides supervision and training for the advisors; (6) provides training, technical assistance, and consultation to State and local health departments; (7) consults and collaborates with other CDC organizations to assure efficient and effective utilization of available resources.

Consultation Section (HCM732). (1) Assists the Surveillance, HIV Seroepidemiology, and Statistics and Data Management Branches in implementing projects related to HIV/AIDS surveillance and serosurveys; (2) coordinates, reviews, and conducts program negotiations and participates in budget negotiations for HIV/AIDS surveillance and seroprevalence cooperative agreement applications; (3) serves as the Division focal point for communications with State and local health departments and the PHS Regional Offices regarding HIV/AIDS surveillance and seroprevalence surveys and studies; (4) works closely with the medical epidemiologists of the Surveillance and HIV Seroepidemiology Branches to ensure local adherence to surveillance and serosurvey protocols and program guidelines; (5) identifies projects needing on-site epidemiologic assistance from the Surveillance and HIV Seroepidemiology Branches and provides coordination of required on-site visits; (6) monitors, maintains, and follows surveillance and seroprevalence activities (including no identified risk cases) conducted by recipients of HIV/AIDS cooperative agreement funds in collaboration with the Surveillance and HIV Seroepidemiology Branches; (7) negotiates field assignments of public health advisors with State and local health officials, provides support and supervision of field assignees, and conducts site reviews and evaluations of State and local HIV/AIDS surveillance and seroprevalence programs to identify and assist in resolving problems.

Training Section (HCM733). (1) Serves as Division resource in conducting meetings, conferences, and workshops; (2) plans, conducts, and evaluates training and development of public health advisor field assignees; (3) determines training needs and plans, and conducts and coordinates surveillance and seroprevalence training courses for State and local health department staff; (4) develops surveillance and seroprevalence training and operational manuals and guidelines for State and local personnel.

HIV Seroepidemiology Branch (HCM74). (1) Plans, develops, and coordinates HIV clinic and special surveys and population studies in selected geographic areas; (2) provides data and serves as the focus for information about the extent of HIV prevalence and incidence in the U.S.; (3) collaborates and provides technical assistance to public and private organizations regarding HIV seroprevalence; (4) works closely with other CDC organizations in applying prevalence and incidence data to target and evaluate HIV prevention programs; (5) works with the Surveillance Branch and the Statistics and Data Management Branch to evaluate HIV/AIDS trends in incidence and prevalence projections; (6) collaborates and works closely with the Field Services branch to effectively implement and evaluate CDC-funded HIV seroprevalence surveys.

Clinic and Special Surveys Section (HCM742). (1) Designs, monitors, and evaluates HIV seroepidemiologic surveys and studies in health care sites such as sexually transmitted disease, tuberculosis, drug treatment, and women's health clinics, and in additional selected populations; (2) provides guidance, technical-assistance, and consultation to the Field Services Branch and State and local health departments in implementing clinic and special surveys and studies; (3) ensures the collection and analysis of HIV prevalence data; (4) prepares MMWR and other scientific articles and report related to HIV prevalence and trends of HIV infection in selected health care facilities; (5) provides technical assistance to and coordination with CDC organizations in interpreting and utilizing seroprevalence data to implement and evaluate HIV prevention programs.

Population Studies Section (HCM743). (1) Designs, implements, monitors, and evaluates seroepidemiologic surveys and studies among populations such as childbearing women, hospital clients, blood donors, civilian applicants for military services, Job Corps entrants, patients of family practitioners, and Native Americans; (2) ensures the analysis of HIV prevalence data in these populations; (3) coordinates, reviews, and participates in budget and program negotiations of HIV seroprevalence cooperative agreement

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applications and contract proposals; (4) provides on-site technical assistance and consultation to grantees and contractors, including State and local health departments, hospitals, universities, blood centers, and private organizations, and other Federal agencies such as the Departments of Defense and Labor, and the Indian Health Service; (5) administers cooperative agreements and contracts for HIV seroprevalence and studies; (6) prepares MMWR and scientific articles and reports related to the incidence and prevalence of HIV infection among selected populations; (7) provides technical assistance and consultation to the Field Services Branch and to other CDC organizations and other agencies interpreting and utilizing seroprevalence data to implement and evaluate HIV prevention programs.

Statistics and Data Management Branch (HCM75). (1) Manages, directs, and coordinates the activities of the Statistics and Data Management Branch; (2) provides leadership in the development of Branch planning, policy, implementation, and evaluation; (3) provides data management and statistical support for AIDS/HIV surveillance, HIV serosurveys, and epidemiologic studies; (4) develops, negotiates, monitors, and evaluates projects to construct mathematical models of the spread of AIDS and HIV infection; (5) creates mathematical models to project the incidence of AIDS and HIV infection; (6) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS; (7) responds to inquiries from medical professionals, health departments, the media, and the public about AIDS epidemic statistical issues, including projections of the number of AIDS cases and estimates of persons infected with HIV.

Seroepidemiology Support Section (HCM752). (1) Provides data management support for the HIV Family of Surveys, including receipt and acknowledgment of electronically transmitted data, entry of hard copy data, editing, uploading, and producing standard data analyses; (2) coordinates, in collaboration with the HIV Seroepidemiology Branch, the development and operation of data management systems for HIV surveys and studies; (3) designs and develops microcomputer-based software for clinics, hospitals, State laboratories and health departments to use in managing data collected from a variety of HIV prevalence surveys; (4) provides consultation and computer programming assistance to project officers in analyzing data from their respective surveys and studies; (5) assists the HIV Seroepidemiology Branch and Section Chiefs in preparing summaries of analyses and reports of Family of Surveys data; (6) recommends mainframe and microcomputer hardware and software that will be required to support the National HIV Seroprevalence Surveys data management.

Statistics Section (HCM753). (1) Provides statistical support in the design and analysis of data from epidemiologic studies; (2) provides statistical support in estimating the prevalence of HIV infection in a variety of survey populations; (3) develops statistical models describing changes in the prevalence of HIV infection over time; (4) assists the Surveillance Branch in the analysis of trends in HIV/AIDS surveillance data by different demographic and patient risk characteristics; (5) supplies a large number of statistical services to division components, including the review of statistical methods in manuscripts, production of standardized statistical reports and additional data analysis; (5) creates mathematical models to project the incidence of AIDS and HIV infection; (7) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS.

Surveillance Support Section (HCM754). (1) Coordinates, in collaboration with the Surveillance Branch, the development and operation of data management systems for HIV surveys and studies; (2) designs and develops microcomputer-based data management software used by State and local health departments for collecting and reporting HIV/AIDS surveillance data; (3) provides user manuals and telephone support to health department personnel using CDC-developed software; (4) designs, implements, and supports mainframe data systems for HIV/AIDS epidemiologic and surveillance studies; (5) provides consultation and computer programming assistance to project officers in analyzing data from their respective surveys and studies; (6) prepares, distributes, and supports public information data sets containing HIV/AIDS surveillance and epidemiologic statistical findings for the world research community; (7) recommends hardware and software packages that will be required to support the national AIDS/HIV surveillance.

Systems and Hardware Support Section (HCM755). (1) Designs, implements, and supports data systems for HIV/AIDS epidemiologic and laboratory studies, both in the United States and in overseas sites; (2) creates and maintains data entry and management systems for use by collaborating health departments and research organizations; (3) codes and enters data collected from HIV/AIDS research studies into CDC's computers; (4) supports office automation hardware and software; (5) recommends and supports hardware and software used for data management, data analysis, networking, word processing, and desktop publishing.

Surveillance Branch (HCM76). (1) Conducts national surveillance of AIDS cases in coordination with State/local health departments; (2) maintains national confidential registry of cases; (3) monitors adult and pediatrics HIV-related mortality and morbidity and AIDS risk-group trends; (4) develops additional methods of surveillance of HIV and HIV-related disease; (5) evaluates surveillance systems for HIV-related disease and modifies surveillance and methodologies as needed to meet changing needs of AIDS programs at the national, State, and local levels; (6) provides consultation and technical assistance on surveillance activities to State and local health departments; (7) provides international consultation on surveillance and epidemiology of HIV/AIDS.

Reporting and Analysis Section (HCM762). (1) Conducts national surveillance of HIV/AIDS; (2) develops and distributes surveillance guidelines, case definitions, and case report forms in coordination with State/local health departments; (3) maintains national confidential registry of cases; (4) conducts routine analysis of surveillance data and disseminates information on morbidity, mortality, and AIDS risk-group trends, and survival trends; (5) collaborates with the Statistics and Data Management Branch in the projection of HIV/AIDS trends through mathematical modeling; (6) in collaborating with other NCPs programs, evaluates State and local case reporting systems for HIV-related disease, including impact of State laws on reporting and modifications in reporting criteria; (7) assists with responses to public inquiries; (8) provides technical direction to the HIV Seroepidemiology Branch in monitoring surveillance programs at the State level.

Special Projects Section (HCM763). (1) Develops alternative methods of surveillance for spectrum of HIV-related disease; (2) conducts selected analyses of HIV-related morbidity and mortality data to determine at-risk populations, risk factors, survival trends, etc., and disseminates results through publications and presentations; (3) updates criteria for reporting pediatric and adult cases; (4) assists the Reporting and Analysis Section with studies to evaluate the completeness, timeliness, and other aspects of reporting; (5) collaborates with other NCPS programs in the epidemiologic investigations of atypical or unusual HIV/AIDS cases.

Effective Date: March 28, 1995.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 95–8634 Filed 4–6–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–05–1430–00; AZA 29060]

Arizona: Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease or conveyance until at least 60 days after the date of publication of this notice in the **Federal Register**. The lands described below have been developed by the Arizona State Parks Department (State Parks) for park purposes, and are currently in use for that purpose. The lands are currently leased to State Parks by the United States pursuant to Reclamation lease authority, and particularly pursuant to the Acts of June 17, 1902, (32 Stat. 388) and August 4, 1939, (53 Stat. 1187, 1196), as amended by the Act of August 18, 1950, (64 Stat. 463). This action will allow lease or conveyance of lands to State Parks under current and more appropriate R&PP Act authority. All legal descriptions are within the Gila and Salt River Meridian, Arizona. The following lands are hereby classified suitable for lease to State Parks:

1. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 18 acres);
T. 12 N., R. 19 W.,
Sec. 25, lots 1, 2 & 3, NE¼NE¼ (136.82 acres).
Containing 154.82 acres, more or less.

2. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lots 2 & 3, E½SW¼, W½W½SE¼, SE¼NW¼SE¼, E½SW¼SE¼, SE¼SE¼.
Containing 239.39 acres, more or less.

Total lands classified suitable for lease is 394.21 acres, more or less. The following public lands are hereby classified suitable for conveyance to State Parks:

1. Buckskin Mountain State Park

T. 11 N., R. 18 W.,
Sec. 32, All, excepting that portion of the SW¼ lying west of Arizona State Highway 95 as rerouted (approximately 400 acres);
Sec. 33, lots 10, 11, and 12, S½NW¼, S½ (507.38 acres).
Containing 907.38 acres, more or less.

2. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, All excepting that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 600 acres);
Sec. 20, W½, excepting that portion east of Arizona State Highway 95 (approximately 200 acres);
Sec. 29, All, excepting that portion east of Arizona State Highway 95 (approximately 500 acres);
Sec. 30, All (481.42 acres);
T. 12 N., R. 19 W.,
Sec. 24, All (628.20 acres).
Containing 2409.62 acres, more or less.

3. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lot 5, NE¼SE¼, NE¼NW¼SE¼ (61.33 acres);
Sec. 26, lots 1–4, NE¼ (290.93 acres).
Containing 352.26 acres, more or less.

Total lands classified suitable for conveyance is 3669.26 acres, more or less. Total lands classified for lease or conveyance is 4063.47, more or less.

The final lease or patent documents will reflect resurvey and revised descriptions of certain parcels. The lands are not needed for Federal purposes. Lease or conveyance conforms to the Yuma District Resource Management Plan and would be in the public interest.

Leases or patents, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All prior and existing rights.

5. All lands adjacent to Lake Havasu below 450 feet above mean sea level are excepted and reserved to the United States for the operation of Parker Dam and Lake Havasu.

6. An inundation easement is reserved to the United States for all parcels adjacent to Lake Havasu for those lands between 450 and 455 feet above mean sea level for the operation of Parker Dam and Lake Havasu.

7. An inundation easement is reserved to the United States for those lands adjacent to the Colorado River downstream from Parker Dam for the operation of Parker and Headgate Dams.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments on the suitability of the lands for park purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs. Any adverse comments will be reviewed by the Arizona State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not

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directly related to the suitability of the land for park purposes.

FOR FURTHER INFORMATION CONTACT: Joe Liebhauser, Yuma District, Havasu Resource Area Office, at the address above, or by telephone at (520) 855–8017.

Dated: March 28, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–8529 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–7130–00–7660]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., March 29, 1995.

The supplemental plats of T. 48 N., R. 3 E. and T. 49 N., R. 5 E., Boise, Meridian, Idaho, prepared to amend lots in sections 13 and 23, and section 32, respectively, were accepted, March 29, 1995.

The supplemental plats of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on May 10, 1995.

The supplemental plats (2) of partially unsurveyed T. 48 N., R. 5 E., Boise Meridian, Idaho, prepared to create tracts 48–53 and tracts 54–59 respectively, were accepted, March 29, 1995.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: March 29, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–8527 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–930–1430–01; AZA–29042]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On March 14, 1995, the Forest Service, U.S. Department of Agriculture, filed application AZA–29042 to withdraw approximately 4.50 acres of national forest land to protect it from potential mineral location pending completion of studies concerning possible future disposal of the parcel. The land is located in the Coronado National Forest in Cochise County. The proposed withdrawal is from mineral entry or location under the mining laws only.

DATES: Comments and requests for a meeting should be received on or before July 6, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director. Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–650–0518.

SUPPLEMENTARY INFORMATION: On March 14, 1995, the Forest Service, U.S. Department of Agriculture, filed application AZA–29042 to withdraw the following described national forest land from location and entry under the United States mining laws only, subject to valid existing rights. Legal description of the land proposed for withdrawal is as follows:

Gila and Salt River Meridian

T. 16 S., R. 30 E.,
Sec. 33, lot 1, except that portion of Silver No. 2, Lode Mining Claim, Mineral Survey No. 4541.

The area described aggregates 4.50 acres, more or less, of national forest land in Cochise County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Herman L. Kast,

Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 95–8525 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–930–1430–01, AR–030451]

Notice of Case Closure, Cancellation of Application to Withdraw Certain Public Lands in Graham and Greenlee Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By letter, dated February 24, 1995, the Department of the Army, Corps of Engineers requested the withdrawal of pending application AR–030451. The application was for the withdrawal of public lands for the Camelsback Dam Flood Control Project which has since been deauthorized. Need for the land for project purposes is now nonexistent and the lands opened to filings, as listed below, subject to valid existing rights. The segregative effect resulting from AR–030451 was terminated by statute on October 20, 1991.

On February 27, 1961, the U.S. Army, Corps of Engineers, filed application AR–030451 to withdraw approximately 13,232.43 acres of public land and minerals. Additionally, the application requested the withdrawal of Federal minerals under the non-public surface.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 28 E.,
* Sec. 36, SE¼.

T. 6 S., R. 28 E.,
* Sec. 1, Lots 1 and 2, S½NE¼, W½, and SE¼;
* Sec. 2, S½;
* Sec. 11, N½;
* Sec. 12, N½NE¼, NW¼, and N½SW¼.

T. 5 S., R. 29 E.,
Sec. 7, W½E½, E½W½, and SW¼NW¼;
Sec. 11, E½NE¼, S½SW¼, and SE¼;
Sec. 12, Lots 1, 5–16 inclusive, NW¼NW¼, S½NW¼, SW¼, and patented Mineral Survey 1029 B to 1033 B, inclusive;
Sec. 13, NW¼NW¼;
Sec. 14, SW¼NE¼, N½NE¼, and W½;
Sec. 15, E½NE¼, S½SW¼, and SE¼;
Sec. 16, SE¼SE¼;
Sec. 18, N½, E½SW¼, and SE¼;
Sec. 19, W½E½, and E½W½;

T. 5 S., R. 29 E., (continued)
* Sec. 21, NE¼, E½SW¼, and SE¼;
* Sec. 22, N½, NW¼SW¼, and S½S½;
* Sec. 25, Lots 2, 3, 5–16, inclusive, S½NW¼, and SW¼;

* Sec. 26, All;
* Sec. 27, N½, N½N½SW¼, and SE¼;
* Sec. 28, N½N½;
* Sec. 29, NE¼, S½NW¼, W½SW¼, and N½SE¼;
* Sec. 30, All;
* Sec. 31, N½NE¼, W½;
* Sec. 32, NW¼NW¼,
* Sec. 35, N½N½;
* Sec. 36, Lots 1 and 2

T 6 S., R. 29 E.,
Sec. 6, NW¼, and W½SW¼;
Sec. 7, NW¼NW¼

T 5 S., R. 30 E.,
Sec. 6, Lots 3–6, 8, 9, 12–17, 19, 20, 23 and 24, and Mineral Survey 1654 B;
Sec. 7, Lots 1–4, and NE¼NW¼;
Sec. 30, Lots 2–4, SE¼NW¼, and E½SW¼;
Sec. 31, Lot 1, NW¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 32, S½NW¼, and SW¼;
Sec. 33, SE¼NE¼, and S½;
Sec. 34, SW¼NW¼, and W½SW¼;

T. 6 S., R. 30 E.,
Sec. 1, Lots 5–12;
Sec. 2, Lots 1–12;
Sec. 3, Lots 1–7;
Sec. 4, Lots 1–6, N 9.44 acres of Lot 7, SE¼NW¼, and the Gila River between the meander line of said lots of secs. 1, 2, 3, and 4.

* Land descriptions following the asterisk are located wholly or partially within the boundaries of the Gila Box Riparian National Conservation Area.

The areas described, include both public and non-public lands in the application and aggregate 13,232.43 acres, more or less, in Graham and Greenlee Counties.

Under Title II of Public Law 101–628, (Arizona Desert Wilderness Act), a portion of the subject land was afforded continued protection by virtue of designation as the Gila Box Riparian National Conservation Area (NCA). This action withdrew all Federal lands within the NCA from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto. This action negates any need to further withdraw the land.

As a result of designation as the Gila Box Riparian NCA and deauthorization of the Camelsback Dam project, the Corps of Engineers requested withdrawal application AR–030451 be rescinded. All public land located outside the boundaries of the NCA are open to filings under the public land laws and the mining laws. It was opened to mineral leasing on February 28, 1982, (FR Vol. 47, No. 17, page 3623, January 26, 1982). Subsequent actions are subject to valid existing rights, and on lands along the Gila and San Francisco Rivers, decisions are pending concerning the wild and scenic rivers designation as recommended in the Final Arizona Statewide Wild and Scenic Rivers Legislative Environmental Impact Statement, approved December 1994. Upon publication in the **Federal Register**, application AR–030451 will be cancelled and the records of the Bureau of Land Management appropriately noted. Casefile AR–030451 will be closed.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640–0518.

Herman L. Kast,

Deputy State Director, Resource Planning, Use & Protection.

[FR Doc. 95–8526 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–P

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 152—Final

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356), and the regulations issued thereunder (30 CFR part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico OCS Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m. Tuesday, May 9, 1995. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, May 10, 1995. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m. Tuesday, May 9, 1995. Bid Opening Time will be 9 a.m., Wednesday, May 10, 1995, at the Radisson Hotel (formerly the Clarion Hotel), 1500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 60 FR 14777, published on March 20, 1995.

3. *Method of Bidding.*

(a) *Submission of Bids.*

A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 152, not to be opened until 9 a.m., c.s.t., Wednesday, May 10, 1995" must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviation acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of Statement Regarding Certain Geophysical Data.*

Each company submitting a bid, or participating as a joint bidder in such a bid, shall submit, prior to the Bid Submission Deadline specified in Paragraph 2 of this Notice, a statement or statements identifying any processed or reprocessed pre and post stack depth migrated geophysical data in their possession or control pertaining to each and every block on which they are participating as a bidder. The existence, extent, and type of such data must be clearly identified. In addition, the statement shall certify that no such data is in their possession for any other blocks on which they participate as a bidder. The statement shall be submitted in an envelope separate from those containing bids and shall be clearly marked; an example of a preferred format for the statement and the envelope is included in the document titled "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico" Only one statement

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per bidder is required for each sale, but more than one may be submitted if desired, provided that all tracts bid on by that company are covered in the one or more statements.

Paragraph 14(l), *Information to Lessees*, contains additional information pertaining to this requirement.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25.00 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale.

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater; this area is shown on the Stipulations, Lease Terms, and Bidding Systems map applicable to this Notice (see paragraph 13). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see aforementioned map). Leases issued on the blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the Gulf of Mexico regional office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See **Federal Register** at 58 FR 45255, published August 27, 1993.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf (OCS) Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 30 maps which sells for $32.

Note: On January 13, 1995, it was announced (60 FR 3258) that two new maps, LA–6 (South Timbalier Area) and LA–6C (Bay Marchand Area), have replaced one old map LA–6 (South Timbalier and Bay Marchand Areas). No changes were made to the leasing areas nor to any of the blocks within. The only effect of the map replacement is that the Bay Marchand Area is now known as map LA–6C. The South Timbalier Area remains map LA–6. These two new maps are available separately for $2.00 each. The new map designation for the Bay Marchand Area (LA–6C) must be used when preparing bids.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NH 15–12 Ewing Bank (rev. 12/02/76)
NH 16–4 Mobile (rev. 02/23/93)
NH 16–7 Viosca Knoll (rev. 12/02/76)
NH 16–10 Mississippi Canyon (rev. 12/02/76)
NG 15–3 Green Canyon (rev. 12/02/76)
NG 15–6 Walker Ridge (rev. 12/02/76)
NG 15–9 (No Name) (rev. 04/27/89)
NG 16–1 Atwater Valley (rev. 11/10/83)
NG 16–4 Lund (rev. 08/22/86)
NG 16–7 (No Name) (rev. 04/27/89)

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office and also included with this Notice:

Central Gulf of Mexico Lease Sale 152—Final—Unleased Split Blocks and Unleased Acreages of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks which have recently become available for leasing since January 30, 1995:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. This update list reflects blocks which have become available since the publication of the Preliminary Final Notice of Sale 152. Any questions on this may be directed to Ms. Patricia Bryars, phone (504) 736–2763.

Update List: West Cameron Area blocks 241 and 247; West Cameron Area, South Addition, block 619; East Cameron Area block 39; Eugene Island Area, South Addition, blocks 326 and 336; and Green Canyon Area blocks 128 and 354.

(c) *Blocks not available for leasing due to appeals:* The lease status of the following blocks are currently under appeal and therefore these blocks are unavailable for leasing in this sale: South Marsh Island Area, South Addition, blocks 165, 168, 169, 179, 180, 181, 185, and 186; and Main Pass Area, South and East Addition, blocks 253 and 254.

(d) *Blocks currently leased and not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a) and (b), except for those blocks or partial blocks already under lease, as listed at the end of this Notice.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms, and Bidding Systems Map applicable to this Notice and will be on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the map described in paragraph 13(a) and as supplemented by references in this Notice.

Stipulation No. 1—Topographic Features.

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice which is available from the Gulf of Mexico regional office (see paragraph 14(a)).)

The banks that cause this stipulation to be applied to blocks of the Central Gulf are:

Bank name	No activity zone defined by isobath (meters)
McGrail Bank	85
Bouma Bank	85
Rezak Bank	85
Sidner Bank	85
Rankin Bank	85
Sackett Bank[2]	85
Ewing Bank	85
Diaphus Bank[2]	85
Parker Bank	85
Jakkula Bank	85
Sweet Bank[1]	85
Bright Bank	85
Geyer Bank[3]	85
MacNeil Bank[3]	82
Alderdice Bank	80
Fishnet Bank[2]	76
29 Fathom Bank	64
Sonnier Bank	55

[1] Only paragraph (a) of the stipulation applies.
[2] Only paragraphs (a) and (b) apply.
[3] Western Gulf of Mexico bank with a portion of its "3-Mile Zone" in the Central Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 2—Live Bottoms

(To be included only on leases in the following blocks: Main Pass Area, South and East Addition, Blocks 190, 194, 198, 219–226, 244–266, 276–290; Viosca Knoll, Blocks 473–476, 521, 522, 564, 565, 566, 609, 610, 654, 692–698, 734, 778.)

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared utilizing remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

If it is determined that the live bottoms might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the pinnacle area. These measures may include, but are not limited to, the following:

(a) the relocation of operations; and

(b) the monitoring to assess the impact of the activity on the live bottoms.

Stipulation No. 3—Military Areas

(This stipulation will be included in leases located within the Warning Areas and Eglin Water Test Areas 1 and 3, as shown on the map described in paragraph 13(a)).

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the United States Government, its contractors or subcontractors, or any of its officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in Section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the

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aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

W–155A and B (For Agreement)—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100 telephone: (512) 939–3862/2621

W–155A and B (For Operational Control)—Fleet Area Control & Surveillance Facility (FACSFAC), Operations, Naval Air Station, Pensacola, Florida 32508, telephone: (904) 452–2735/4671

W–92—Naval Air Station, Air Operations Department, Air Traffic Division/Code 52, New Orleans, Louisiana 70146–5000, telephone: (504) 393–3100/3101

W–453—Air National Guard—CRTC, Gulfport/ACMI, Scheduling Office, Gulfport, Mississippi 39507, Telephone: (601) 867–2433

Eglin Water Test Areas 1 and 3—Air Force Development Test Center, Plans and Programs Department, Requirement Directorate, 101 West "D" Avenue, Suite 125, Eglin AFB, Florida 32542–5495, Telephone: (904) 882–3899/4188

14. *Information to Lessees*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200–GULF. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended, and the Deepwater Port Act (33 U.S.C. 1501–1524). Bidders are advised that the U.S. Coast Guard published a notice of final rulemaking expanding the existing safety zone around the Louisiana Offshore Oil Port (LOOP) (59 FR 17480 published on April 13, 1994).

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589–6901. For COE information, prospective bidders should contact Mr. Ron Ventola CELMN-OD-S, Post Office Box 60267, New Orleans, Louisiana 70160–0267, (504) 862–2255.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect. Bidders are referred to 30 CFR 256.37 and the MMS Gulf of Mexico OCS Region Letter to Lessees of February 13, 1995.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown quantity and composition. Water depths range from approximately 750 to 1,525 meters. Bottom sediments in both areas are soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

(g) *Communications Towers.* The Department of Defense, U.S. Air Force, has installed seven military communications towers in the Chandeleur/Mobile/Viosca Knoll area which support Air Combat Maneuvering Instrumentation (ACMI). This project may impose certain restrictions on oil and gas activities in that area since no activity can take place within 500 feet of a tower site, and unobstructed lines of sight must be maintained between towers. The seven towers are located within Mobile, Blocks 769, 819, and 990; Viosca Knoll, Block 116; Chandeleur Area, Blocks 33 and 61; and Chandeleur Area, East Addition, Block 39. Information and maps of the specific locations and line of sight crossings for ACMI towers may be obtained from Mr. Wallace Williams, Minerals Management Service, (504) 736–2772.

(h) *Archaeological Resources.* Bidders are advised that a Final Rule regarding archaeological resources was published in the **Federal Register** on October 21, 1994 (59 FR 53091), granting specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250, 256, 260, and 281) and the submission of these reports to the Regional Director prior to exploration, development and production, or installation of lease-term or right-of-way pipelines. MMS Notice To Lessees (NTL) 91–02 (Outer Continental Shelf Archaeological Resources Requirements for the Gulf of Mexico OCS Region) published in the **Federal Register** on December 20, 1991 (56 FR 66076) effective February 17, 1992, specifies survey methodology, linespacing, and archaeological report writing requirements for lessees and operators in the Gulf of Mexico Region.

Two additional documents are available from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)):

"List of Lease Blocks Within The High-Probability Area For Historic Period Shipwrecks On The OCS" dated January 30, 1995. This list supersedes the list promulgated by the MMS Letter to Lessees (LTL) of November 30, 1990.

"List of Lease Blocks Within The High-Probability Area For Pre-Historic Archaeological Resources On The OCS" dated January 30, 1995.

Implementation of this Final Rule and NTL 91–02 obviates the need for the Protection of Archaeological Resources Stipulation required in previous leases.

(i) *Proposed Rigs to Reefs.* Bidders are advised that there are OCS artificial reef sites and planning areas for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship through the following State Coordinators:

Alabama Mr. Walter M. Tatum, (205) 968–7577

Louisiana Mr. Rick Kasprzac, (504) 765–2375

Mississippi Mr. Mike Buchanan, (601) 385–5860

Texas Ms. Jan Coulbertson, (713) 474–2811

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(j) *Right of Use and Easement for Chandeleur Blocks 27 and 30.* Bidders are advised that a right of use and easement has been granted for portions of Chandeleur Area Blocks 27 and 30 for gas storage purposes. The area is generally on the southernmost quarter of the federal portion of Chandeleur Area, Block 27 and the W1/2 NW1/4; NW1/4 SW1/4 portion of Chandeleur Area, Block 30. For additional information, contact the MMS Gulf of Mexico Regional Supervisor for Production and Development at (504) 736–2675.

(k) *Proposed Lightering Zones.* Bidders are advised that the U.S. Coast Guard has proposed designating certain areas of the Gulf of Mexico (60 FR 1958 of January 5, 1995), as lightering zones for the purpose of permitting single hull vessels to off-load oil within the U.S. Exclusive Economic Zone. Such designation may have implications for oil and gas operations in the areas. Additional information may be obtained from Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267–6740.

(l) *Statement Regarding Certain Geophysical Data.* Pursuant to Sections 18 and 26 of the OCS Lands Act as amended, and the regulations issued thereunder, MMS has a right of access to certain geophysical data and information obtained or developed as a result of operations on the OCS. MMS is sensitive to the concerns expressed by industry regarding the confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS pertaining to the existence and availability of these types of reprocessed geophysical data. To resolve the concerns of both industry and MMS with respect to such cases, MMS has worked with industry to develop the requirements contained within paragraph 3(b) *Method of Bidding* above. These requirements are being imposed on a trial basis to determine their effectiveness and are subject to modification in future sales.

The details of this requirement are specified in the document "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico", which is provided in the Sale Notice package and which is available upon request from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)). In brief, these requirements include:

1. In the period for ninety (90) days after the sale, bidders will allow MMS to inspect such data within seven (7) days of a written request from MMS, and upon further written request will transmit to MMS, within ten (10) working days, such data. After this ninety day period, a response time of thirty (30) days following an MMS written request will be considered adequate.

2. Successful bidders must retain such data for three (3) years after the sale, and unsuccessful bidders must retain such data for six (6) months after the sale, for possible acquisition by MMS.

For the six (6) month period after the sale, based on a review of the allowable cost of data reproduction to MMS for three-dimensional and two-dimensional data sets, the company providing the reprocessed data will be reimbursed at a rate of $480 per block or part thereof for three-dimensional data and $2 per line mile for two-dimensional data. Afterwards, reimbursement will be subject to the terms and conditions of 30 CFR 251.13(a).

All geophysical data and information obtained and reviewed by MMS pursuant to these procedures shall be held in the strictest confidence and treated as proprietary in accordance with the applicable terms of 30 CFR 251.14.

For additional information, contact the MMS Gulf of Mexico Regional Office of Resource Evaluation at (504) 736–2720.

Dated: April 4, 1995.

Carolita U. Kallaur,

Acting Deputy Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

Central Gulf of Mexico Leased Lands

March 20, 1995

Description of blocks listed represent all Federal acreage leased unless otherwise noted.

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Ewing Bank

305, 306, 347, 438, 481, 526, 570, 658, 701, 702, 743, 744, 745, 746, 784, 788, 789, 790, 826, 828, 829, 830, 833, 867, 871, 872, 873, 874, 878, 879, 903, 908, 910, 911, 912, 913, 914, 915, 916, 917, 918, 920, 921, 938, 944, 947, 948, 952, 954, 955, 958, 959, 962, 963, 964, 965, 966, 967, 975, 983, 985, 986, 988, 989, 991, 994, 995, 996, 1000, 1001, 1002, 1003, 1005, 1006, 1007, 1010, 1011

Mississippi Canyon

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Green Canyon

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Atwater Valley

1, 7, 8, 11, 12, 13, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 51, 52, 55, 56, 57, 58, 59, 60, 61, 63, 64, 66, 67, 68, 70, 71, 90, 91, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 112, 113, 114, 115, 116, 117, 118, 119, 127, 135, 136, 137, 141, 142, 143, 145, 146, 150, 151, 152, 153, 157, 158, 160, 161, 163, 180, 181, 182, 189, 190, 223, 224, 225, 226, 233, 234, 266, 267, 268, 276, 277, 284, 310, 311, 312, 313, 321, 327, 334, 370, 371, 377, 378, 379, 414, 415, 441, 457, 573, 574, 575, 617, 618

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Walker Ridge

22, 45, 46, 66, 120, 121, 164, 197, 198, 678, 723, 766

[FR Doc. 95–8625 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf Central Gulf of Mexico; Notice of Leasing System, Sale 152

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register:**

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 152, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1): (a) Bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more regards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for Central Gulf of Mexico (GOM) (Sale 152) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production in comparison to shallow-water blocks. Department of the Interior analyses indicated that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on the "Stipulations, Lease Terms, and Bidding Systems Map" for Central GOM Lease Sale 152. This map is available from the Minerals Management Service, GOM Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: April 4, 1995.

Carolita U. Kallaur,

Acting Deputy Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–8624 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Glacier National Park General Management Plan/Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of Intent to prepare Environmental Impact Statement for the General Management Plan, Glacier National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Glacier National park. This statement will be approved by John Cook, Regional Director for the Rocky Mountain Region. The purpose of this federal action is to facilitate management of visitor use, natural and cultural resources, development, and operation of Glacier National Park according to the enabling legislation and other laws and regulations affecting management of this National Park area. The general management plan (GMP) and implementation plans that result from this process will guide the management of Glacier National Park for the next 10 to 15 years. The GMP will replace an existing master plan that has been guiding management of the park since 1977 and contains actions that have either been completed or are no longer appropriate to do. All previously approved development concept and implementation plans will be reviewed and assessed to insure that their proposals are appropriate in light of the new general management plan.

Major issues that will be addressed in the plan include ecosystem management, visitor experience and resource protection, role and management of historic structures and other cultural resources, the Secretary of Interior's trust responsibilities to Native americans and relationships with Native americans and park resources, land protection strategies for private lands within the park to insure protection of park resources, administrative facilities and the concept of sustainability as it relates to park infrastructure and visitor use.

A scoping brochure is being prepared that explains, in more detail, the issues identified to date and outlines the public involvement for this planning effort. Copies of this brochure will be available in mid April and can be obtained by writing GMP/EIS Project, Glacier National Park, West Glacier, Mt 59936 (406) 888–5441

The National Park Service is seeking information and comments from individuals and organizations who may be interested in, or affected by the proposed action, as well as Federal, State and local agencies. Scoping will include the following: a scoping brochure that will be mailed out to interested individuals, groups and federal, state and local agencies asking for comments, identification of issues, concerns to interested and potentially affected individuals, groups, Federal, State, and local governments; newsletters, public meetings; and news releases.

The first set of public meetings were held as Open Houses, during early March. Open houses were held in Missoula, Kalispell, Helena, West Glacier, Browning, St. Mary and Great Falls Montana, and in Lethbridge and Fernie Canada. A summary of issues identified to date is being compiled following those meetings.

FOR FURTHER INFORMATION CONTACT: Requests for information and to be added to the General Management Plan mailing list should be directed to GMP/EIS Project, Glacier National Park. Comments on the General Management Plan should be sent to David A. Mihalic, Superintendent, Glacier National Park, West Glacier, MT 59936–0128, telephone (406) 888–5441.

Dated: March 30, 1995.

David A. Mihalic,

Superintendent, Glacier National Park

[FR Doc. 95–8640 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Privacy Act of 1974—Notice of Establishment of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records to be maintained by the Bureau of Reclamation. The system, entitled "Lower Colorado River Well Inventory—Interior, BOR–48," will include information pertaining to individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. The information contained in this system will be used to protect and manage water entitlement holders' rights to use Colorado River water in the lower Colorado River basin. The notice is published in its entirety below

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Reform and Oversight have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045, fax (202) 208–7971 Comments received within 40 days of publication in the **Federal Register** (May 17, 1995) will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: March 28, 1995

Albert C. Camacho,

Director, Office of Administrative Services

INTERIOR/BOR–48

SYSTEM NAME:

Lower Colorado River Well Inventory—Interior, BOR–48.

SYSTEM LOCATION:

Bureau of Reclamation, Division of Water, Land, and Power, Lower Colorado Region, Boulder City, Nevada 89006–1470.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. **Note:** This system also contains records pertaining to corporations and other public entities. Only those records relating to individuals are covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, and telephone numbers of covered individuals; Assessor Parcel Numbers; contract numbers; categories of uses to which the water is put; methods of disposal of unconsumed portions of water pumped; volumes of water pumped; physical characteristics and locations of wells; water purveyor, municipal, or other administrative boundaries within which wells are located; and water levels of wells located in hydraulically connected areas adjacent to the floodplain.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 391), as amended and supplemented; the Colorado River Front Work and Levee System Adjacent to Yuma Project Act of March 3, 1925 (Pub. L. 79–469, 43 Stat. 1186, 1198), as amended and supplemented; the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented; the Reclamation Project Act of August 4, 1939 (53 Stat. 1187, 43 U.S.C. 485); the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885); the Reclamation Reform Act of October 12, 1982 (96 Stat. 1261, 43 U.S.C. 390); and the Supreme Court opinion rendered June 3, 1963 (373 U.S. 546), and Decrees entered March 9, 1964 (376 U.S. 340), January 9, 1979 (439 U.S. 419), and April 16, 1984 (466 U.S. 144), in *Arizona* v *California et al.*

PURPOSE(S):

The primary purposes of the records are: (a) To assist in the administration and negotiation of water use contracts with individual landowners, lessees, or other classes of water users; and (b) to support the annual compilation and publication of records of consumptive use of mainstream Colorado River water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made: (1) To the States of Arizona, California, and Nevada to assist them in administering their apportionments of mainstream Colorado River water; (2) to the U.S Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to a congressional office in response to an inquiry the individual has made to the congressional office; (4) to appropriate Federal, State, tribal, territorial, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement, of information indicating a violation or potential violation of a statute, rule, regulation, program, facility, order, lease, license, contract, grant or other agreement will be disclosed; (5) to interested parties upon written request, of data pertaining to volumes of water pumped, consumptive uses of water, and points of diversion.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in automated form on computer databases and in manual form in file folders.

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RETRIEVABILITY:

Records stored in computer databases will be retrievable by any record category. Records stored in manual files will be retrievable by name of property owner or contract holder.

SAFEGUARDS:

Data will be maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules, records will be retained in the Bureau of Reclamation for 10 years, relocated to the Federal Records Center and retained there for an additional 75 years, and then transferred to the National Archives and Records Administration for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Bureau of Reclamation, Lower Colorado Regional Office, Regional Supervisor of Water, Land, and Power, P.O. Box 61470, Boulder City, Nevada 89006–1470.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, state and county well permits, land ownership and water use records and databases, and the U.S. Geological Survey Ground Water Site Inventory database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–8415 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Commission Decision To Extend by Fifteen Days the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has extended by 15 days, *i.e.*, from May 8, 1995, to May 23, 1995, the deadline by which it must determine whether to review the presiding administrative law judge's final initial determination (ID) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On March 23, 1994, the presiding administrative law judge (ALJ) issued her final ID in this investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 in the importation or sale of certain products containing microsphere adhesives. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on May 8, 1995, unless review were ordered or the review deadline were extended.

On March 29, 1995, complainant Minnesota Mining and Manufacturing Co. and respondents Taiwan Hopax Chemicals Manufacturing, Co., Yuen Foong Paper Co., Ltd., Beautone Specialties Co., Ltd., and Beautone Specialties Co., submitted a joint motion requesting a ten-day extension of time—from April 5 to April 17, 1995—to file petitions for review of the ID. The parties also requested that the deadline for filing responses to any petitions be extended from April 12 to April 27, 1995. The Commission investigative attorney did not oppose the joint motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h) (19 C.F.R. 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: April 3, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8618 Filed 4–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 163X)]

Central of Georgia Railway Company—Abandonment Exemption—In Atlanta, GA

Central of Georgia Railway Company (Central) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.3-mile portion of its line of railroad between milepost S-294.14 and milepost S-294.44, in Atlanta, GA.

Central has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Central has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 12, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8591 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its Independent Investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32661]

Norfolk Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant approximately 11.8 miles of overhead trackage rights between St. Louis, MO, and Berkeley, MO, to Norfolk Southern Railway Company (NS). The trackage extends between milepost SL–6.2 at Luther Yard, in the city of St. Louis and milepost SL–18.0 at Berkeley, in St. Louis County, MO. The proposed transaction will allow NS to expedite the movement of auto parts trains to the Ford Motor Company plant in Berkeley The transaction was scheduled to be consummated on March 28, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8590 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32679]

Union Pacific Corporation—Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11301 the issuance, by Union Pacific Corporation, of certain securities in a principal amount not to exceed $2.3 billion.

DATES: This exemption will be effective on April 10, 1995. Petitions to reopen must be filed by April 27, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32679 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Carl W von Bernuth, Esq., Senior Vice President and General Counsel, Union Pacific Corporation, Eighth and Eaton Avenues, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 31, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary

[FR Doc. 95–8620 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

April 3, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of

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Management and Budget, Room 10102, Washington, DC 20503 (202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday through Friday.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Gear Certification.
OMB Number: 1218–0003.
Frequency: Recordkeeping.
Affected Public: Businesses or other for-profit.
Number of Respondents: 120.
Estimated Time Per Respondent: 2.1 average hours.
Total Burden Hours: 18,305.
Description: The Occupational Safety and Health Administration is requiring this information to be collected by accredited agencies to determine the condition of certain cargo handling gear and other material handling devices to ensure the safety of those employees working in the maritime industry while using such equipment.

Type of Review: Revision.
Agency: Veterans' Employment and Training Service.
Title: Eligibility Data Form for Requesting Assistance in Obtaining Veterans' Reemployment Rights.
OMB Number: 1293–0002.
Agency Number: VETS/USERRA 1010.
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 2,000.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 500.
Description: The information is needed to determine eligibility of veteran complaints for reemployment rights they are seeking as well as to state alleged violations by employers of the pertinent statutes and to request assistance in obtaining appropriate reemployment benefits.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 95–8632 Filed 4–6–95; 8:45 am]
BILLING CODE 4510–25–M

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. MO950054, MO950055, MO950057, MO950071, MO950073, and MO950079 dated Feb. 10, 1995.

Agencies with construction projects pending, to which Wage Decisions MO950054, MO950055, MO950057, MO950071, and MO950073 would have been applicable, should utilize Wage Decision MO950049. Agencies with construction projects pending to which Wage Decision MO950079 would have been applicable, should utilize Wage Decision MO950048. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume VI
California
CA950028 (Apr. 07, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
Massachusetts
MA950001 (Feb. 10, 1995)
MA950002 (Feb. 10, 1995)
MA950005 (Feb. 10, 1995)
MA950007 (Feb. 10, 1995)
MA950012 (Feb. 10, 1995)
MA950017 (Feb. 10, 1995)
MA950018 (Feb. 10, 1995)
MA950019 (Feb. 10, 1995)
New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
NJ950015 (Feb. 10, 1995)
New York
NY950003 (Feb. 10, 1995)

Volume II
Pennsylvanaia
PA950042 (Feb. 10, 1995)

Volume III
Tennessee
TN950016 (Feb. 10, 1995)
TN950017 (Feb. 10, 1995)
TN950057 (Feb. 10, 1995)
TN950059 (Feb. 10, 1995)

Volume IV
Illinois
IL950001 (Feb. 10, 1995)
IL950002 (Feb. 10, 1995)
IL950004 (Feb. 10, 1995)
IL950011 (Feb. 10, 1995)
IL950013 (Feb. 10, 1995)
IL950015 (Feb. 10, 1995)
IL950016 (Feb. 10, 1995)
IL950018 (Feb. 10, 1995)
IL950021 (Feb. 10, 1995)
IL950026 (Feb. 10, 1995)
IL950028 (Feb. 10, 1995)
IL950034 (Feb. 10, 1995)
IL950058 (Feb. 10, 1995)
IL950060 (Feb. 10, 1995)
IL950062 (Feb. 10, 1995)
IL950063 (Feb. 10, 1995)
IL950064 (Feb. 10, 1995)
IL950067 (Feb. 10, 1995)
IL950068 (Feb. 10, 1995)
IL950070 (Feb. 10, 1995)
IL950077 (Feb. 10, 1995)
IL950084 (Feb. 10, 1995)
IL950091 (Feb. 10, 1995)
IL950092 (Feb. 10, 1995)
IL950095 (Feb. 10, 1995)
Michigan
MI950001 (Feb. 10, 1995)
MI950002 (Feb. 10, 1995)
MI950003 (Feb. 10, 1995)
MI950005 (Feb. 10, 1995)
MI950007 (Feb. 10, 1995)
MI950012 (Feb. 10, 1995)
MI950031 (Feb. 10, 1995)
MI950046 (Feb. 10, 1995)
MI950047 (Feb. 10, 1995)

Volume V
Kansas
KS950012 (Feb. 10, 1995)
KS950022 (Feb. 10, 1995)
KS950028 (Feb. 10, 1995)
Missouri
MO950002 (Feb. 10, 1995)
MO950048 (Feb. 10, 1995)
MO950049 (Feb. 10, 1995)
MO950050 (Feb. 10, 1995)
Nebraska
NE950001 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)
Oklahoma
OK950035 (Feb. 10, 1995)
Texas
TX950100 (Feb. 10, 1995)
TX950114 (Feb. 10, 1995)

Volume VI
Alaska
AK950001 (Feb. 10, 1995)
California
CA950001 (Feb. 10, 1995)
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
Idaho
ID950001 (Feb. 10, 1995)
ID950003 (Feb. 10, 1995)
Montana
MT950006 (Feb. 10, 1995)
MT950008 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
OR950004 (Feb. 10, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 10, 1995)
WA950003 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950006 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)
WA950010 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (Feb. 10, 1995)
Wyoming
WY950009 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 30th day of March, 1995.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 95–8440 Filed 4–6–95; 8:45 am]
BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–9511, et al.]

Proposed Exemptions; Bank of America Illinois, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three

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copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bank of America Illinois, Located in Chicago, IL

[Exemption Application Nos. D–9511, D–9512 and D–9513]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—Exemption for Purchases and Sales

If the exemption is granted, effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase and sale by employee benefit plans (the Plans), to which the Bank serves as fiduciary, of shares in the Prime Fund, the Government Securities Fund, and the Treasury Fund, three open-end money market mutual fund portfolios (collectively referred to as the Funds), to which the Bank of America Illinois, and its affiliates (the Bank) provide investment advisory and other services, in connection with the Supplemental Sweep Service (as defined in paragraph (a) of section IV below), provided that the conditions of Section III are met.

Section II—Exemption for Receipt of Fees

If the exemption is granted, effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the receipt of fees by the Bank from the Funds for providing investment advisory and other services to the Funds, in connection with the investment of the assets of the Plans in the Funds, for which the Bank provides investment advisory and other services, provided that the conditions of Section III are met.

Section III—Conditions

(a) The Bank does not have investment discretion or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the Plan assets invested in the Funds pursuant to this proposed exemption

(b) No sales commissions or redemption fees are paid by the Plans in connection with the purchase or sale of shares in the Funds.

(c) The Bank does not receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees) in connection with the transactions.

(d) The price paid or received by a Plan for shares in a Fund is the net asset value per share on the date of the transaction, as defined in section IV(a), and is the same price which would have been paid or received for the shares by any other investor on that date.

(e) Prior to the Bank's receipt of fees paid by each Fund with respect to Plan assets invested therein, each Plan receives a credit of such Plan's proportionate share of all fees charged to the Fund by the Bank.

(f) The Plans are not employee benefit plans sponsored or maintained by the Bank.

(g) A second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund(s), including but not limited to:

(1) A current prospectus for each fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, and all other fees to be charged to or paid by the Plan or the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reason why the Bank may consider such investment to be appropriate for the Plan; and

(4) Upon request of the Second fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted once such documents become available.

(h) On the basis of the information described above in paragraph (g) of section III, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by the Fund and the Plan to the Bank, and the credit to the Plan of fees received by the Bank from the Funds for investment advisory and other services, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of Title I of the Act.

(i) The Second Fiduciary referred to in paragraph (g) of section III, or any successor thereto, is notified of any change in the rates of the fees referred to in paragraph (g) of section III and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(j) The Bank provides annually, written disclosures to the Second Fiduciary which are provided to all shareholders of the Fund(s), which establish the rate of return of the Fund(s) absent the credit paid to the Plans for fees paid by the Funds to the Bank.

(k) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess

of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings between the Funds and other shareholders of the Funds.

(m) The Bank shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) below to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(l) of the Act, or the taxes imposed by section 4975(a) and (b) or the code, if the records are not available for examination as required by section (n) below;

(n) (1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in any of the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (k)(1)(B) through (D) shall be authorized to examine the trade secrets of the Bank's commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) Supplemental Sweep Service means the transfer of shares in the Funds between the Bank and the Plans by means of the Banks's internal accounting procedures at the end of the Supplemental Sweep Period, in connection with Plan orders to purchase shares in the Funds that the Bank is otherwise unable to settle prior to the Supplemental Sweep Period, and Plan orders to purchase or redeem shares in the Funds that are received by the Bank during the Supplemental Sweep Period. A Plan order to purchase or redeem shares in the Fund(s) pursuant to the Supplemental Sweep Service occurs solely as a result of investment decisions, deposits or withdrawals, directed by an independent Second Fiduciary.

(b) Supplemental Sweep Period means the period of time on each business day after the Funds stop accepting orders for the purchase or redemption of shares in the Funds and before the Bank's close of business.

(c) The term "net asset value" means the amount for purposes of pricing all purchase and sale of shares in the Funds calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or fund, by the number of outstanding shares.

(d) An "affiliate" of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control, with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(g) A fiduciary will not be deemed to be an independent fiduciary with respect to the Bank and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Bank or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then paragraph (g)(2) of section III above, shall not apply.

The availability of this proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Summary of Facts and Representations

1. The Bank, which is comprised of Bank of America Illinois, and its wholly owned subsidiary, Continental Trust Company, provides a full range of fiduciary services to qualified employee benefit plans, welfare plans, and governmental retirement plans. Such services include trustee and custodial services, discretionary and directed investment of plan assets, and all related securities processing activities, domestic and foreign. As of December 31, 1994, the Bank provided investment management and custodial services with respect to total assets of approximately $179 billion.

The Plans are comprised of retirement plans qualified under section 401(a) of the Code, pension plans that meet the definition of pension plan set forth in section 3(2) of the Act and section 4975(e)(1) of the Code, with respect to which the Bank serves as a trustee, or investment fiduciary. In addition, the Bank states that it may offer the Funds, under the arrangement described herein, to welfare plans.

2. The Bank provides the Plans with the opportunity to purchase shares in the Funds, to which the Bank provides investment advisory and other services, in connection with existing and expanded cash management sweep services. The Bank states that it currently invests certain assets of the Plans in a short term collective investment fund (the Collective Fund) maintained by the Bank in connection with the provision of sweep services. In this regard, the Bank represents that the addition of the Funds as short term

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investment alternatives will result in greater investment choice, greater diversification and reduced risk for the Plans.[1]

3. The Funds are comprised of the Prime Fund, the Government Securities Fund and the Treasury Fund, each of which is a money market mutual fund portfolio of the 231 Funds, an open-end management investment company organized as a Massachusetts business trust (the Trust). The Trust is organized under the Investment Company Act of 1940, as amended. Fund shares offered by the Trust are registered under the Securities Act of 1933.

The assets of the Prime Fund are invested in a diversified portfolio of U.S. Dollar denominated money market instruments, including: Obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, bank obligations, including certificates of deposits, time deposits, bankers' acceptances and debt securities issued or supported by domestic banks or domestic branches of foreign banks; short-term corporate obligations including commercial loan participations, commercial paper, corporate bonds, privately placed commercial paper, and participation interests in trusts or special purpose vehicles backed by consumer or commercial credit receivables; and municipal securities including taxable and tax-exempt general obligations, revenue obligations, private activity and industrial development bonds.

The assets of the Government Securities Fund are invested exclusively in obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; receipts evidencing separately traded interest and principal components of U.S. Government obligations (including TIGRs and CATS); and repurchase agreements collateralized by government obligations.

The Treasury Fund invests its assets exclusively in obligations issued by the U.S. Treasury, and repurchase agreements relating to such Treasury obligations.

4. The Bank states that the Plans pay a short term cash management fee (Cash Management Fee) of 12 percent of average daily assets to the Bank in connection with Plan investments in the short term collective investment fund maintained by the Bank. In addition, each Plan pays a trustee fee to the Bank of between .01 percent and .15 percent of all Plan assets under the Bank's custody. The Bank negotiates its trustee fees with each Plan individually. The Bank represents that Plan assets are invested in the Funds as an alternative to the short term collective investment fund.[2] In order to avoid charging double fees with respect to Plan assets invested in the Funds, the Bank credits all fees attributable to Plan assets invested therein, payable to the Bank by the Funds, to the Plans. In this regard, the Bank states that its crediting to the Plans of all fees to be paid by the Funds to the Bank results in no additional cost to any of the Plans with respect to Plan assets invested in shares in the Funds.

The fees payable to the Bank by the Funds are accrued daily and paid to the Bank on the first day of the following month, in arrears. On the same day, the Bank credits to the Plans their proportionate shares of all fees to be paid by the Funds to the Bank with respect to Plan assets invested therein.

The Bank states that it discloses annually in writing to the Plans: The total rate of return earned on their shares in the Fund(s) which includes the amounts received by the Plan from the Bank as a credit of the fees paid by the Fund(s) to the Bank in connection with Plan assets invested therein; and the portion of the rate of return which is attributable to the amounts credited by the Bank to the Plans. In addition, the Bank represents that it discloses to the Second Fiduciary annually in writing the rate of return earned on shares in the Fund(s) held by investors other than the Plans.

5. The Bank states that it does not have investment discretion with respect to Plan assets involved in the purchase or sale of shares in the Funds for which relief is requested.[3] Purchases and redemptions of shares in the Funds are solely the result of investment directions from a Second Fiduciary. The Bank represents that only liquid Plan assets awaiting distribution, or investment, are used to purchase shares in the Funds. The Bank states that it has no discretion with respect to the amount of liquid assets available for investment in the funds. The liquid assets of the Plans are always the proceeds of other assets which have been liquidated, or new assets transferred to the Bank, at the direction of a Second Fiduciary

The Bank states that it has no discretion with respect to how liquid assets of the Plans are invested. The Bank represents that the investment of the liquid assets of a Plan in the Funds is either specifically directed by a Second Fiduciary, or pursuant to standing orders by a Second Fiduciary to invest any daily cash balances in the Fund absent the Bank's receipt of any other investment directions.

6. The Bank states that share purchases and redemption requests communicated by the Bank to the Funds are transmitted each business day prior to the time established by the Fund (currently expected to be 2:00 P.M. Central Standard Time) (the Cutoff Time) for same-day processing and payment of transaction requests. If a transaction triggering a purchase or redemption of Fund shares is processed by the Bank prior to the Cutoff Time, the Bank, in turn, transmits the purchase or redemption request to the Fund, which executes the request that same day.

The Bank states that additions to customer accounts (including additions made to cover Fund purchase requests placed prior to the Cutoff Time) and withdrawals from customer accounts may occur subsequent to the Cutoff Time but prior to the close of business for the Bank (the Posting Time). The Bank represents that in order to provide additional opportunities for same-day processing of Plan purchase and redemption requests with respect to shares in the Funds, it offers a Supplemental Sweep Service. The Supplemental Sweep Service provides for the settlement of deposits and withdrawals late each business day subsequent to the Cutoff Time but prior to the Posting Time (the Supplemental Sweep Period).

The Bank represents that the Supplemental Sweep Service assures the overnight investment of any Plan assets to which it applies in order to maximize the return to the Plans by providing an additional period during which the Plan's otherwise idle assets would be invested. In addition, the Bank represents that the Supplemental Sweep Service helps to meet the liquidity needs of the Plans by providing an opportunity for the Plans to, in effect, redeem shares in the Funds and withdraw assets during the Supplemental Sweep Period.

The Bank states that the Supplemental Sweep Service is for selected institutional customers, primarily Plans, and is effective for purchase orders which cannot be settled prior to the Supplemental Sweep Period and for purchase and withdrawal orders received during the Supplemental Sweep Period each business day.

7. The Bank represents that shares acquired by the Plans through the Supplemental Sweep Service are, in some cases, first acquired by the Bank and subsequently allocated to customers which have assets available to be swept as of the Posting Time on that same day. In addition, in order to facilitate prompt redemption of customer shares on the same day that the customer wishes to redeem them, the Bank processes the customer redemption requests received during the Supplemental Sweep Period internally by previding immediate credit to the customer for the Fund Shares.

The Bank represents that the price paid, or received by, a Plan for shares in a Fund purchased, or redeemed, pursuant to the Supplemental Sweep Service is the net asset value per share for all other purchases and redemptions of shares in the Fund on that date.

8. The Bank represents that its acquisition of shares from the Funds through the Supplemental Sweep Service is based on estimates of the prospective purchase and sale of shares in the Funds by the Plans during the Supplemental Sweep Period.

Immediately prior to the Supplemental Sweep Period on each business day, the Bank estimates the approximate number of shares of each fund which its customers will require as of the Posting Time later that same day (in addition to the number of shares needed to cover net customer purchase and sale orders placed prior to the Cutoff Time). The Bank then purchases that number of shares of each Fund prior to the Cutoff time as trustee, nominee or in some other capacity for its customers. The books of the Fund's transfer agent carry only one account for all purchases and redemptions of Fund shares by the Bank, and reflect the Bank as the owner of all Fund shares purchased. The Bank's books, however, reflect its purchase of shares in the Funds as trustee, nominee, or other capacity for its customer accounts, or as principal, on a provisional basis.

Later in the day, at the end of the Supplemental Sweep Period, the Bank determines the precise number of each Fund's shares needed by its customers. Based on its determination, the Bank adjusts the provisional purchase entries previously made on its books to reflect the net purchase or redemption of Fund shares by each customer account (or by the Bank in its own name) in the amount necessary to satisfy the net purchase needs of its customers at the end of the Supplemental Sweep Period. Appropriate final entries are made in the Bank's trust and corporate accounting systems to reflect the previous day's transaction activity and the respective ownership positions of the Bank and its customers as of the previous day's Cutoff Time. The books of the transfer agent of the respective Fund, however reflect no net change (i.e., change in number of shares outstanding) in the record ownership position of the Bank as a result of the Bank's adjustments; all adjustments of Fund shares among the Bank and its various customers would be internal bookkeeping adjustments made by the Bank.

In the event that the Bank, on a given business day, underestimated the number of any Fund's shares which were required by its customers, the Bank allocates any shares the Bank had previously purchased to customer accounts which purchased Fund shares between the Posting Time and the Cutoff Time on a pro rata basis by reflecting on the Bank's books the redemption of Fund shares owned or purchased by the Bank and the simultaneous purchase by its customers, from the Fund, of the corresponding number of fund shares. The balance of each customer's funds that was intended to be invested in the Funds during the Supplemental Sweep Period which remain uninvested after this adjustment process are temporarily invested in the Bank's deposits paying a rate of interest equivalent to the net return on Fund shares for that day (subject to certain regulatory requirements) and subsequently are invested in Fund shares the next business day.[4] The Bank represents that each customer including the Plans realizes an equivalent return on its invested funds for the day.

However, if the Bank overestimated the number of Fund shares required by its customers on a given business day, any excess Fund shares are placed in the Bank's investment portfolio or trading account.

The Bank represents that, in any event, customers who redeem Fund Shares during the Supplemental Sweep Period pursuant to the Supplemental Sweep Service are provided with immediate provisional credit for the value of Fund shares. Such redemptions ultimately are reflected on the Bank's books as having occurred as of the Cutoff Time in the manner described above. Accordingly, such shares are allocated to other customer accounts or to the Bank's own investment or trading account, through the netting procedures. The Bank states that all such entries are made on its own internal accounting systems effective as of the previous day's Cutoff Time, and result in no net change in the transfer agent's records reflecting the Bank's record ownership of Fund shares. The Bank represents that in effect, the Bank is acting functionally as a sub-transfer agent to effect post-Cutoff redemptions by the Fund.

9. In summary, the Bank represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because: (a) The Funds provide the Plans with a more effective investment vehicle than the Collective Fund

[1] The Bank represents that it invests the assets of plans covering its employees in the Funds on terms that are identical to the terms of the proposed exemption set forth herein. In this regard, the Bank states that this arrangement meets the terms and conditions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). The Department expresses no opinion as to whether PTE 77–3 provides relief for the purchase or sale of shares in the Funds by plans covering employees of the Bank pursuant to the arrangement described herein.

[2] The Bank represents that it invests cash collateral provided to the Plans by borrowers of securities in connection with securities lending transactions (the Collateral), in the Funds. The Bank states that it receives a securities lending fee which is part of the Plans' net return from the investment of the Collateral. In this regard, The Bank represents that the securities lending service is separate from the cash management service. According to the Bank, no Cash Management Fee, or investment management fee, is paid by the Plans to the Bank with respect to the management of the Collateral.

The Bank states that it is relying on the relief provided by PTEs 81–6 (46 FR 7527, January 23, 1961) and 82–63 (47 FR 14804, April 6, 1982) for the securities lending transactions and its receipt of fees in connection therewith. In addition, The Bank represents that it is relying on PTE 77–4 (42 FR 18732, April 8, 1977) for relief for the investment of the Collateral in the Funds.

The Bank is not requesting, and the Department is not providing, any relief with regard to the investment of the Collateral in the Funds. In this regard, the Department expresses no opinion as to the availability of the relief provided by PTE's 81–6 and 82–63 for the Plan's securities lending activities and securities lending fees paid by the Plan in connection therewith, nor the availability of PTE 77–4 for the investment of the Collateral in shares of the Funds.

Nevertheless, the Department notes that the relief provided by PTE 77–4 is predicated on, among other things, avoiding the payment of double investment management, investment advisory or similar fees by a plan to a fiduciary of the plan, or any affiliate, which also serves as investment advisor to the mutual fund company. In this regard, it is the Department's view that whether a particular service constitutes the provision of investment advisory services or similar services depends on the particular facts and circumstances of each case. The Department emphasizes that, regardless of whether an administrative exemption may be applicable, it expects the plan fiduciary with investment management responsibility to consider the totality of fees to be paid by the plan directly, and/or indirectly, prior to entering into the arrangement in order to determine that the fees to be paid by the plan do not exceed reasonable compensation for the particular advisory service offered.

[3] The Bank represents that it invests plan assets with respect to which it has investment discretion in the Funds. In this regard, the Bank represents that such transactions meet the terms and conditions of PTE 77–4. The Department expresses no opinion as to the availability of the relief provided by PTE 77–4 for such transactions

[4] The Bank represents that it intends to rely on section 408(b)(4) of the Act with regard to the investment of Plan assets in deposits of the Bank. The Department expresses no opinion as to whether the relief provided by section 408(b)(4) of the Act is available for the investment of Plan assets in deposits of the Bank pursuant to the arrangement described herein.

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currently maintained by the Banks without any increase in fees paid to the Bank; (b) a Second Fiduciary must authorize in writing the investment of Plan assets in the Funds and the payment of any fees to the Bank by the Plans and the Funds, after receiving full written disclosure, including a prospectus for the Funds and a statement describing the fee structure; (c) no sales fees or redemption fees are paid by the Plans in connection with the acquisition or sale of shares of the Funds; and (d) all dealings between the Plans and the Funds, the Bank, or any affiliated person, are on a basis no less favorable to the Plans than such dealings are with the other shareholders.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Mellon Bank, N.A. (Mellon) and Its Affiliates Located in Pittsburgh, Pennsylvania

[Application No. D–9724]

Proposed Exemption

Section I—Exemption for Cross-Trading Between Certain Accounts

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to (1) the purchase and sale of securities (including the stock of Mellon Bank Corporation (MBC)) between Indexed Accounts, as defined in Section IV(a); and (2) the purchase and sale of securities, including the common stock of MBC, between Indexed Accounts and various large accounts (the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts; provided that the following conditions and the General Conditions of Section III are met:

(a) The Indexed Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Mellon and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Mellon or its affiliates.

(b) The price for the securities is set at the current market value for the securities on the date of the transactions. For equity securities, the price shall be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion. For debt securities, the price shall be the fair market value determined as of the close of the day of trading pursuant to Rule 17a–7(b) issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(c) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade opportunity. A triggering event is defined as:

(1) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index;

(2) A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's regularly scheduled opening date; provided, however, that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any employee benefit plan maintained by Mellon or its affiliates (the Mellon Plans) for which Mellon has investment discretion; or

(3) A declaration by Mellon (recorded on Mellon's records) that a "triggering event" has occurred, which will be made upon an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the Indexed Account's total value.

(d) With respect to any Indexed Account that is model-driven, no cross-trades are engaged in by the Account for 10 business days subsequent to any change made by Mellon to the model underlying the Account.

(e) In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all of the Indexed Accounts or Large Accounts propose to buy, or vice versa, the direct cross-trade opportunity must be allocated by Mellon among potential buyers or sellers of the security on a pro rata basis.

(f) An Indexed Account does not participate in a cross-trade if more than 10 percent of the assets of the Indexed Account at the time of the proposed cross-trade are comprised of assets of Mellon Plans for which Mellon exercises investment discretion.

(g) Prior to any proposed cross-trading by an Indexed Account or a Large Account, Mellon provides to each employee benefit plan invested in the Account information which describes the existence of the cross-trading program, the "triggering events" which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account shall be provided the same information prior to or immediately after the plan's initial investment in the Account.

(h) With respect to cross-trade transactions involving a Large Account:

(1) Total assets of the Large Account are in excess of $50 million.

(2) Fiduciaries or other appropriate decisionmakers of the Large Account who are independent of Mellon are, prior to any cross-trade transactions, fully informed of the cross-trade technique and provide advance written approval of the cross-trade transactions. Such authorization shall be terminable at will by the Large Account upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization, with instructions on the use of the form, must be supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Mellon of written notice from the authorizing Large Account fiduciary; and

(ii) Failure to return the termination form will result in the continued authorization of Mellon to engage in cross-trade transactions on behalf of the Large Account.

(3) Within 45 days of the completion of the Large Account's portfolio restructuring program, the Large Account's fiduciaries shall be fully appraised in writing of the transaction

results. However, if the program takes longer than three months to complete, interim reports of the transaction results will be made within 30 days of the end of each three month period.

(4) The Large Account transactions occur only in situations where Mellon has been authorized to restructure all or a portion of the Large Account's portfolio into an Indexed Account (including a separate account based on an index or computer model) or to act as a "trading adviser" in carrying out a Large Account-initiated liquidation or restructuring of its portfolio.

(i) Mellon receives no additional direct or indirect compensation as a result of any cross-trade transactions.

(j) Mellon does not purchase or sell any debt securities issued by Mellon or an affiliate for the Indexed Accounts.

Section II—Exemption for the Acquisition, Holding and Disposition of MBC Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of MBC (the MBC Stock) by Indexed Accounts, if the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of the MBC stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

(b) In the event that MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than cross-trade transactions meeting the conditions of Section I, shall comply with Rule 10b–18 of the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, including the limitations regarding the price paid for such stock.

(c) Subsequent to acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, all aggregate daily purchases of MBC stock, other than cross-trade purchases meeting the conditions of Section I, shall not constitute more than the greater of: (1) 15 percent of the stock's average daily trading volume for the previous five days; or (2) 15 percent of the stock's trading volume on the date of the transaction.

(d) If the necessary number of shares of MBC stock cannot be acquired within 10 business days from the date of the event which causes the particular Indexed Account to require MBC stock, Mellon shall appoint a fiduciary which is independent of Mellon and its affiliates to design acquisition procedures and monitor Mellon's compliance with such procedures.

(e) All purchases and sales of MBC stock, other than cross-trades meeting the conditions of Section I, shall be executed on the national exchange on which MBC stock is primarily traded.

(f) No transactions shall involve purchases from, or sales to, Mellon or any affiliate, officer, director or employee of Mellon or any party in interest with respect to a plan which has invested in an Indexed Account. This requirement does not preclude purchases and sales of MBC stock in cross-trade transactions meeting the conditions of Section I, provided that the Indexed Accounts are not maintained by Mellon primarily for the investment of assets of Mellon or any affiliate, including officers, directors or employees of Mellon other than in connection with a Mellon Plan.

(g) No more than five (5) percent of the total amount of MBC stock issued and outstanding at any time shall be held in the aggregate by the Indexed Accounts which hold plan assets.

(h) MBC stock shall constitute no more than two (2) percent of the value of any independent third-party index on which the investments of an Indexed Account are based.

(i) A plan fiduciary independent of Mellon authorizes the investment of such plan's assets in an Indexed Account which purchases and/or holds MBC stock.

(j) A fiduciary independent of Mellon and its affiliates shall direct the voting of the MBC stock held by an Indexed Account on any matter in which shareholders of MBC stock are required or permitted to vote.

Section III—General Conditions

(a) Mellon maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Indexed Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Indexed Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Indexed Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of Mellon, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) Indexed Account—Any Index Fund or Model-Driven Fund.

(b) Index Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate in which one or more investors invest that is designed to replicate the capitalization-weighted composition of an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(c) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(d) Opening date—The regularly-scheduled date on which investments in

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or withdrawals from an Indexed Account may be made.

(e) Large Account—An account of an investor that is either: (1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets; or (2) an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund), such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code, that has total assets in excess of $50 million. As noted in Section I(g)(4), a "Large Account" shall only be an account to which Mellon has been authorized to restructure all or a portion of the portfolio for such account into an Indexed Account or to which Mellon has been authorized to act as a "trading adviser" (as defined below) in connection with a specific liquidation or restructuring program for the account.

(f) Trading adviser—A person whose role is limited to arranging a Large Account-initiated liquidation or restructuring of an equity or debt portfolio within a stated period of time so as to minimize transaction costs. The person must not be a fiduciary with investment discretion for any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions.

(g) Affiliate—Any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or is under common control with Mellon (except Mellon/McMahon Real Estate Advisors, Inc.).

Summary of Facts and Representations

1. Mellon is a national bank and a subsidiary of MBC, which is the twenty-third largest bank holding company in the U.S. with assets of approximately $37 billion. Mellon is licensed to operate a trust department, which is regulated by the Office of the Comptroller of the Currency. Within the trust department, Mellon provides a variety of fiduciary services, including acting as trustee of employee benefit plans subject to the Act. Currently, Mellon acts as fiduciary of institutional accounts, including employee benefit plans, with assets totaling approximately $481 billion. Additionally, certain affiliates of Mellon provide trust or investment management services to various employee benefit plans. Mellon and its affiliates are, to the extent of the provision of such services, fiduciaries of these plans. For purposes of this proposed exemption, Mellon does not include Mellon/McMahon Real Estate Advisors, Inc., as an "affiliate" because that entity is being sold.

2. In its capacity as fiduciary of an employee benefit plan, Mellon may be either directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which Mellon manages the investments, Mellon represents that it does not exercise any discretionary authority over whether an employee benefit plan invests in particular Funds, such as the Mellon S&P 500 Index Funds, except for a relatively small number of plans which subscribe to Mellon's Portfolio Management in Funds (PMF) services (as discussed below in Paragraph 13).

Mellon manages the different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds (the Funds) are two examples of the Bank's collective investment funds which include plan investors.

Index and Model-Driven Funds

3. An Index Fund may be an individual or collective investment fund, the objective of which is the replication of the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments.

4. A Model-Driven Fund may be an individual or collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which "transforms" an index, making investments according to a computer model which uses such data as the following: (a) Earnings, dividends and price-earning ratios for common stocks included in the index; (b) current yields on corporate bonds and money market instruments; (c) the duration, maturity structure, yield and sector/quality weights for bonds included in the index; and (d) historical standard deviations and correlations between asset classes.

Mellon represents that the process for the establishment and operation of all Indexed Accounts which are model-driven is very disciplined. Clear-cut rules are established for each model. Since the Model-Driven Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently. However, to the extent that there is any change made by Mellon to a model underlying an Indexed Account, no cross-trades will be engaged in by the Account for 10 business days subsequent to such change. Thereafter, an Indexed Account that is model-driven will engage in cross-trade transactions if the cross-trade opportunity results from any "triggering event" described herein (see Paragraph 5 below).

Mellon currently offers more than 60 collective investment funds that are invested according to the criteria of various third-party indexes or are model-driven based on such indexes. For example, some Funds track the Russell 2000 Index,[5] while other Funds track the Standard & Poors 500 Composite Stock Price Index (the S&P 500 Index).[6] Most of the Funds track stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indices.[7]

In addition to Funds that are collective investment funds, Mellon has investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third-party index. Such individual investment funds and collective investment funds are referred to herein as Indexed Accounts (see Paragraph 6 below). Mellon states that the ability of all Indexed Accounts to cross-trade securities with each other, or to invest in MBC Stock when the stock is included in an index, would improve Mellon's tracking of such indexes.

Cross Trades

5. Mellon represents that cross-trades will be made within three business days of the "triggering event" giving rise to the cross-trade opportunity. A "triggering event" is limited to: (i) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index; (ii) a change in the overall investments in an Indexed Account as a result of a net investment or withdrawal on the Account's regularly-scheduled opening date (provided that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any Mellon Plans for which Mellon has investment discretion); and (iii) a declaration by Mellon that a "triggering event" has occurred upon an accumulation in the Indexed Account of cash attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the value of the Indexed Account.

Mellon states that frequent purchases and sales of securities by the Indexed Accounts are required to accomplish portfolio balances that conform with the particular indexes. In addition, some securities transactions may be prompted by a client plan's request to add funds to, or withdraw funds from, an Indexed Account. Under any of these circumstances, Mellon's disposition of a particular security for one Indexed Account may involve a security which may be needed by another Account, thus presenting an opportunity to save substantial commissions for both the liquidating Account and the acquiring Account. This saving is enabled by a cross-trade transaction, which involves matching Mellon's sell orders for a particular day with its buy orders for the same day, and the execution of trades between the Accounts in off-market transactions. Under current procedures, all securities transactions, including cross-trades between Indexed Accounts maintained by Mellon, are executed by a broker on behalf of a purchasing or selling Account at the direction of Mellon, dealing with a second broker acting on behalf of the other purchasing or selling party.

6. Mellon proposes to take advantage of opportunities to direct the cross-trading of securities directly between various Indexed Accounts. Such Indexed Accounts will include: (i) Collective investment funds for employee benefit plans, (ii) separate employee benefit plan trust accounts that are not commingled in a collective fund, (iii) other large fiduciary accounts such as governmental plans, university endowment funds, charitable foundation funds and personal trusts, (iv) common or collective trust funds containing assets of governmental plans, university endowments, charitable foundations or personal trusts, and (v) mutual funds and other institutional accounts for which Mellon or an affiliate serves as an investment manager or investment advisor.

Mellon represents that by participating in its cross-trading program, the Accounts will benefit by not incurring the transaction costs involved in dealing with a broker-dealer or "market maker" for the particular securities to effect the transactions. Such transaction costs include brokerage commissions and/or the market-maker's bid/offer spread on prices for such securities. Mellon maintains that transactions involving equity securities on the open market between unrelated parties require brokerage commissions equal to at least two cents per share for each sale or purchase transaction. However, the brokerage commissions that would be paid for each proposed cross trade of equity securities would be equal to approximately .05 cents per share, reflecting only the necessary record-keeping costs for the brokers. For debt securities, Mellon states that cross-trades would produce transactions cost savings by eliminating the bid/offer spread that normally would be paid to a broker-dealer to acquire or sell such securities. Mellon also represents that participation in the cross-trading program may enable the Accounts to obtain earlier opportunities to acquire or sell certain securities. The applicant represents that all brokers used in cross trade transactions would be unrelated to and independent of Mellon and its affiliates.

Mellon states that the price for the securities involved in any cross-trade will be set at the current market value for the securities on the date of the transactions.

For equity securities, the price will be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion.

Mellon will use independent pricing services to value all equity securities which are cross-traded by the Indexed Accounts. The primary service currently used by Mellon for pricing domestic equity securities is Interactive Data Corporation, a subsidiary of Dunn & Bradstreet Corporation. For pricing foreign equity securities, Mellon uses Morgan Stanley & Co. or Vestek Systems. The applicable independent pricing service provides the price in local currency rates and, if that currency is other than U.S. dollars, also provides the U.S. Dollar exchange rate. The equity securities are valued at the close of the day, and thus equity security cross-trades would in all cases be executed at the closing price received by Mellon from the relevant independent pricing service. In addition, the same independent pricing service will be employed to value any given equity security for both the buy and sell sides of all cross-trades involving that equity security. The identity of the applicable independent pricing service for each equity security will be recorded on Mellon's records and will be made available to any participant in the cross-trading program upon request. If the independent pricing service for any particular equity security is changed, a single new independent pricing service will be selected for future pricings of that equity security

For debt securities, the price will be the fair market value determined as of the close of the day of trading pursuant to SEC Rule 17a–7(b) under the Investment Company Act of 1940. SEC Rule 17a–7(b) contains four possible means of determining "current market" value for either debt or equity securities depending on such factors as whether the security is a reported security and whether its principal market is an exchange. Mellon states that all debt securities that are not a reported

[5] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of Mellon. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly traded stocks of U.S. domiciled corporations, as identified by the Frank Russell Company, and includes large, medium and small stocks. The Russell 3000 Index represents approximately 98% of the total market capitalization of all U.S. stocks that trade on the New York and American Stock Exchanges and in the NASDAQ over-the-counter market. The Russell 2000 Index consists of approximately 2,000 of the smallest stocks within the Russell 3000 Index, and is therefore a broadly diversified index of small capitalization stocks, representing less than 10 percent of the U.S. equity market in total capitalization.

[6] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange, American Stock Exchange, and the NASDAQ National Market System. The S&P 500 is a market value-weighted index (i.e. shares outstanding times stock price) in which each company's influence on the Index's performance is directly proportional to its market value

[7] The indexes of debt securities used by Mellon for the Funds, such as the Lehman Brothers Bond Indices, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. Mellon currently has approximately 14 debt Index Funds.

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security or traded on an exchange would be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the cross-trade. Such prices would be determined in accordance with Rule 17a–7(b)(4) on the basis of reasonable inquiry from at least three sources that are broker-dealers or market-makers independent of Mellon, except in those circumstances where fewer than three independent sources exist to price a certain debt security (in which event closing price quotations will be obtained from all available sources).

Mellon intends that the requested exemption for cross-trade transactions would apply, in addition to existing Indexed Accounts currently maintained, to all Indexed Accounts which it may create in the future which satisfy the conditions of the exemption, if granted.

7. Mellon proposes to engage in cross-trade transactions between the Indexed Accounts and various Large Accounts that have total assets in excess of $50 million. Mellon states that a Large Account could be either: (i) An employee benefit plan within the meaning of section 3(3) of the Act; or (ii) a portfolio of an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund), such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code.

Cross-trades between an Indexed Account and a Large Account would occur only when the fiduciary or other appropriate decision-maker for the Large Account, which is independent of Mellon and its affiliates, is fully informed of the cross-trade technique, provides advance written approval of such transactions, and is fully apprised of the transaction results. Further, cross trades involving a Large Account will be limited to those situations where Mellon has been authorized to restructure all or a portion of the Large Account's assets into an Indexed Account, or where Mellon is otherwise acting as a trading adviser for a Large Account portfolio restructuring. Such restructurings generally occur in connection with a Large Account decision to invest in one of Mellon's Index or Model-Driven Funds, but they may also involve requests for Mellon to carry out a restructuring program independent of future investments in any of the Funds. In the latter instance, Mellon's only role is that of a trading adviser, carrying out a Large Account-initiated liquidation or restructuring. When a Large Account engages Mellon to invest in a collective investment fund that is index or model-driven or to arrange its own passively-managed individual portfolio, the Large Account's assets must be transformed into a portfolio that tracks a third-party index. In implementing the transformation, Mellon is limited to recreating the required portfolio and is not involved in any active investment management decisions. The impetus for the investment comes from the independent fiduciaries or other independent decision-makers for these Large Accounts. By performing cross-trades with existing Index Accounts where possible, Mellon would reduce the overall transactions costs by both parties to the cross-trade. Mellon would have a similar lack of discretion in the case of Large Accounts which request Mellon or an affiliate to restructure a specific portfolio by liquidation. Mellon would act as the trading advisor to the Large Account, arranging for the securities transactions within a stated time so as to minimize transaction costs. The opportunity to engage in cross-trades with Index Accounts occurs only when those Accounts are required to purchase the same securities which the Large Account is selling.

8. Mellon represents that its cross-trading program will be effected pursuant to a proportional allocation system which will ensure that no Indexed Account or Large Account will be favored over any other such Account. In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all such Accounts propose to buy, or vice versa, the direct cross-trade opportunity would be allocated among all potential buyers or sellers of the security on a pro rata basis. Thus, all of the Indexed Accounts or Large Accounts participating in its cross-trade program will have opportunities to participate on a proportional basis in any cross-trade transactions during the operation of the program. This aspect of the proposed cross-trading program would be part of the information disclosed in writing to the fiduciaries or other decisionmakers of the Large Accounts and to all employee benefit plans which invest in the Index or Model-Driven Funds that are collective investment funds maintained by Mellon or to all such plans that invest in any other Indexed Account. In this regard, Mellon states that prior to any cross-trading by an Indexed Account or a Large Account, each employee benefit plan invested in the Account will be provided information which describes the existence of the cross-trading program, the "triggering events" which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account will also be provided the same information prior to or immediately after the plan's initial investment in the Account.

Acquisition, Holding and Disposition of MBC Stock

9. Mellon is also proposing that each Indexed Account be permitted to invest in the MBC Stock if such stock is included among the securities listed in the index utilized by the Indexed Account.[8] For example, MBC Stock is one of the stocks included in the S&P 500. Because of the prohibitions of section 406 and 407 of the Act, the Mellon S&P 500 Index Funds and other Indexed Accounts holding plan assets which track the S&P 500 Index currently are not permitted to invest in MBC stock. Mellon states that the exclusion of MBC Stock from such Index Funds or other Indexed Accounts creates tracking error. To correct the tracking error, Mellon proposes to purchase on the open market, and hold, on behalf of all Indexed Accounts which hold plan assets, the number of shares of MBC Stock necessary to replicate correctly the weighting of MBC Stock in the portfolio relative to the S&P 500 Index.[9]

Mellon represents that when MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of an Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than through cross-trade transactions meeting the conditions of Section I, will comply with the SEC Rule 10b–18, including the limitations regarding the price paid for such stock. Such acquisitions of

[8] While certain of the debt indexes used by Mellon for the Indexed Accounts may include debt securities issued by Mellon or an affiliate (Mellon Debt), Mellon states that it does not acquire Mellon Debt for any of its Indexed Accounts. Therefore, Mellon is not requesting relief for any transactions involving Mellon Debt.

[9] In this regard, Mellon is not requesting any relief from section 407(a) of the Act in connection with the acquisition and holding of MBC Stock by the Mellon Plans which invest in the Mellon S&P 500 Index Funds.

MBC Stock would occur when an Indexed Account is first able to hold MBC Stock, such as purchases that will occur for all Indexed Accounts that track the S&P 500 Index, or when MBC Stock is added to an Indexed Account's portfolio as a result of the stock being added to another underlying index used by the Account. SEC Rule 10b–18 provides a "safe harbor" for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

Mellon states that the conditions imposed by SEC Rule 10b–18 for purchases of MBC Stock would be as follows: (a) All purchases would be made from or through only one broker on any single day; (b) no purchases would constitute the opening transaction in MBC Stock; (c) purchases would not occur within one-half hour before the scheduled close of trading on the NYSE; (d) the price would not be higher than the current independent bid quotation or the last independent sale price on the exchange, whichever is higher; and (e) if the purchases of MBC Stock are not block purchases as defined by SEC Rule 10b–18(b)(4), the total amount of purchases on any one day would not exceed the higher of one round lot or the number of round lots closest to 25 percent of the trading volume for MBC Stock on that day.

In addition, subsequent to the initial acquisitions necessary to bring an Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, Mellon states that all aggregate daily purchases of MBC Stock will not constitute more than the greater of either: (i) 15 percent of the stock's average daily trading volume for the previous five days, or (ii) 15 percent of the stock's trading volume on the date of the transaction.

All additional purchases or subsequent sales of MBC Stock by the Indexed Accounts that are made on a daily basis merely to track the S&P 500 Index or other appropriate index would be accomplished either through cross-trade transactions, subject to the conditions of Section I of the proposed exemption, or on the open market, subject to the conditions of Section II the proposed exemption. However, daily purchases of MBC Stock, which occur after all acquisitions of such stock have been made in order to bring the Indexed Account's holdings to the capitalization weighting of MBC Stock in the index, would not be subject to the restrictions of Rule 10b–18, but would be subject to the other conditions of Section II of this proposed exemption. In this regard, Mellon believes that the restrictions of Rule 10b–18 are not necessary for the volume of transactions which will be required by the Indexed Accounts for daily tracking of an index in order to respond to changes in the composition or weighting of MBC Stock in the index.

Mellon represents that no more than 5 percent of the total outstanding shares of MBC Stock will be held in the aggregate by the Indexed Accounts which hold plan assets. In addition, Mellon states that the MBC Stock will not constitute more than 2 percent of the value of any independent third-party index on which investments of an Indexed Account are based.

10. Mellon will appoint an independent fiduciary for the purposes of developing trading procedures for the initial acquisition of MBC Stock on the open market by the Indexed Accounts that track the S&P 500 Index. The independent fiduciary will allow the Indexed Accounts to acquire MBC Stock in the amounts necessary to track the S&P 500 Index while minimizing the impact of the acquisitions on the market for MBC Stock during the acquisition period. The independent fiduciary will also monitor Mellon's compliance with the trading procedures for accomplishing this goal.

The independent fiduciary and its principals will be completely independent from Mellon and its affiliates. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment funds that track third-party indexes, such as the S&P 500 Index. In addition, Mellon will require the independent fiduciary to represent that neither it nor its principals, employees, or affiliates holds or controls any shares of MBC Stock. During the exercise of the trading program by Mellon, no principal employee of the independent fiduciary nor the fiduciary itself will engage in any trading of any kind in MBC Stock. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of MBC Stock and will not receive any commissions as a result of the trading program.

11. The independent fiduciary will have as its primary goal the development of a trading program that minimizes the market impact of purchases made pursuant to the initial acquisition program by the Indexed Accounts. Thus, price increases that would be detrimental to the interests of any employee benefit plan investors will be minimized. The trading activities will be conducted in a low-profile, mechanical, non-discretionary manner. In this regard, the independent fiduciary will be required to utilize a computerized trading program that will engage in a number of small purchases over the course of each day, randomly timed. Such a program will allow Mellon to acquire the necessary shares of MBC Stock for the Indexed Accounts that track the S&P 500 Index with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that maintain or participate in such Accounts.

12. The independent fiduciary will also be required to monitor Mellon's compliance with the trading program and procedures developed for the initial acquisition of MBC Stock. The independent fiduciary will receive duplicate confirmation slips of all trades as well as the "time and tape" of all NYSE transactions in MBC Stock completed immediately before and after each transaction and a time/price/quantity record of all completed or attempted trades. The independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify Mellon and the Department should any non-compliance be detected. Should the trading strategy need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with Mellon and must approve in advance any alteration of the trading procedures. All purchases of MBC Stock by the Indexed Accounts pursuant to the independent fiduciary's trading program will comply with SEC Rule 10b–18 and the conditions of the proposed exemption.

13. If Mellon provides Portfolio Management in Funds (i.e. PMF) services to a plan, Mellon exercises some discretion in allocating and reallocating the plan's assets among various collective investment funds, including Mellon's S&P 500 Index Funds and other Index or Model-Driven Funds. These allocations are based on a plan's investment objectives, risk profile and market conditions. However, Mellon makes the following representations with respect to the purchase, directly or indirectly, of MBC Stock by plans utilizing PMF (PMF Plans):

(a) Mellon represents that any prohibited transactions (other than cross-trade transactions described herein) which might occur as a result of the discretionary allocation and reallocation of plan assets among collective investment funds will be

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exempt from the prohibitions of section 406 of the Act by reason of section 408(b)(8).[10]

(b) Before MBC Stock is purchased by an Index or Model-Driven Fund, the appropriate independent fiduciary for each PMF Plan which is currently invested or could be invested in such Funds will be furnished an explanation and a simple form to return on which approval or disapproval of investments in the Fund including MBC Stock could be indicated, together with a postage-paid return envelope. If the form is not received by Mellon within 30 days, Mellon may obtain a verbal response by telephone. If a verbal response is obtained by telephone, Mellon will confirm the fiduciary's decision in writing within five business days. In the event no response is obtained from a PMF Plan fiduciary, the assets of the plan will not be invested in any Index or Model-Driven Fund which invests in MBC Stock and any plan assets currently invested in such Funds at that time would be withdrawn.

(c) Each new management agreement with a PMF Plan will contain language specifically approving or disapproving the investment in any Index or Model-Driven Fund which might hold MBC Stock. The fiduciary for each current PMF Plan will be informed that the existing management agreement could be modified in the same way. However, if the PMF Plan fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which might hold MBC Stock, then no such investment will be made by Mellon.

(d) Each PMF Plan will be informed on a quarterly basis of any investment in or withdrawal from any Index or Model-Driven Fund holding MBC Stock. The PMF Plan would be granted the election to override Mellon's discretionary decision to invest in or withdraw from such Funds. If the PMF Plan overrides Mellon's decision to invest in or withdraw from the Funds, then Mellon will carry out the plan's election as soon as possible after being notified of such election.

14. In the event a third-party index utilized by Mellon for any Indexed Account (in addition to the S&P 500 Index) adds MBC Stock or if Mellon is otherwise unable to satisfy an Indexed Accounts' needs for MBC Stock through cross-trades with other Indexed Accounts, Mellon will acquire the necessary shares of MBC Stock on the open market. If Mellon is required to purchase MBC Stock in the open market on behalf of any Indexed Account in those circumstances, Mellon will determine whether the stock can be acquired within 10 business days. If the MBC Stock cannot be acquired within 10 business days, Mellon will appoint an independent fiduciary to establish the procedures to be used to acquire the MBC Stock and monitor Mellon's compliance with those procedures. The fiduciary will be unrelated to and independent of Mellon and will have expertise in the operation of index funds.

15. Mellon will appoint an independent fiduciary which will direct the voting of the MBC Stock held by the Mellon S&P 500 Index Funds or other Indexed Accounts. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The fiduciary will be required to develop, and supply to Mellon, a corporate ownership manual which will act as a guideline to the voting of proxies by institutional fiduciaries, and their current voting guidelines. Mellon will provide the independent fiduciary with all necessary information regarding the Indexed Accounts that hold MBC Stock, the amount of MBC Stock held by the Indexed Accounts on the record date for shareholder meetings of MBC, and all proxy and consent materials with respect to MBC Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Indexed Accounts, including the number of MBC Stock shares voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's corporate ownership manual and the current voting guidelines in effect at the time of the vote. The independent fiduciary will supply Mellon with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Mellon S&P 500 Index Funds or other Indexed Accounts which own MBC Stock, when voting such stock.

16. In summary, the applicant represents that the proposed cross-trading transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) An Indexed Account will buy or sell securities only in response to various "triggering events" which are not within Mellon's control or discretion; (b) a Large Account will engage in cross trades only in situations where the investment decisions relating to a particular portfolio restructuring program for the Large Account are made by a fiduciary or other appropriate decision-maker which is independent of Mellon; (c) all cross trade transactions, including cross-trades involving MBC Stock, will occur within three business days of the "triggering event" necessitating the purchase or sale; (d) no cross-trades will be engaged in by an Indexed Account that is model-driven for 10 business days subsequent to any change made by Mellon to the model underlying the Account; (e) the price for all securities will be the current market value for the securities on the date of the transaction, which for equity securities will be set at the closing (or opening, where appropriate) price for the securities on the day of trading as determined by independent pricing services, and for debt securities will be determined based on quotations received from independent broker-dealers or market-makers as of the close of the day pursuant to the procedures described in SEC Rule 17a–7(b); (f) the Indexed Accounts and the Large Accounts will save significant amounts of money on brokerage commissions; and (g) Mellon will receive no additional compensation as a result of the proposed cross trades nor with respect to the acquisition, holding and disposition of MBC Stock.

The applicant further represents that the proposed MBC Stock transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The acquisition, holding and disposition of MBC Stock by an Indexed Account will occur solely to maintain strict quantitative conformity with the underlying index; (b) all purchases of MBC Stock by the Mellon S&P 500 Index Funds or other Indexed Accounts which occur as a result of such stock being added to an index on which an Indexed Account is based or being added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, will be made on the open market and will comply with the restrictions of SEC Rule 10b–18; (c) subsequent to the initial acquisitions necessary to bring an Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, all aggregate daily purchases of MBC Stock will not constitute more than the greater of either (i) 15 percent of the stock's average daily trading volume for the previous five days, or (ii) 15 percent of the stock's trading volume on the date of the transaction; (d) no more than 5 percent of the total outstanding shares of MBC Stock will be held in the aggregate by the Indexed Accounts which hold plan assets; (e) the MBC Stock will not constitute more than 2 percent of the value of any independent third-party index on which investments of an Indexed Account are based, (f) the initial acquisitions of MBC Stock by the Mellon S&P 500 Index Funds will be monitored by a fiduciary independent of Mellon in an attempt to minimize market disturbances; and (g) a fiduciary independent of Mellon will direct the voting of any MBC Stock held by the Indexed Accounts.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brook Park, OH

[Application No. D–9786]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply retroactively to the past loan (the Past Loan) made by the Plan to Analex (the Employer) in accordance with the following conditions:

(1) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's-length transactions with unrelated parties;

(2) The amount of the Plan's assets involved in the Past Loan did not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Past Loan was at all times secured by collateral which was valued at not less than 200% of the value of the Past Loan;

(4) Prior to the disbursement under the Loan agreement, an independent, qualified fiduciary determined on behalf of the Plan that the Past Loan was in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary reviewed the terms and conditions of the exemption and the Past Loan, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving the disbursement under the Loan agreement;

(6) The fiduciary is monitoring the Past Loan to ensure compliance with the terms and conditions of the exemption and the Loan agreement;

(7) The Plan suffers no loss as a result of the Past Loan; and

(8) The Past Loan will be fully repaid by May 31, 1995.

Temporary Nature of Exemption

If granted, this proposed exemption would be effective for the period from July 12, 1994 through May 31, 1995, the date by which the Past Loan will be repaid.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a salary reduction feature. There were 394 Plan participants and total assets of $9,222,172 as of December 31, 1993. The Plan provides for participant direction with respect to employee contributions to the Plan, and provides that an Administrative Committee will direct the investment of Employer contributions. Donald M. Zucker of Sorin, Zucker & Warfield, Inc., the independent, qualified fiduciary (the Independent Fiduciary), acted on behalf of the Plan with respect to the Past Loan.

2. The Employer is a Nevada corporation maintaining its principle place of business in Brook Park, Ohio and operating in Florida, Colorado, Texas, California, Virginia and New Mexico. The Employer provides engineering services to commercial and government entities.

3. On July 20, 1993, the Department published a notice of proposed exemption for prospective exemptive relief for a series of loans to the Employer by the Plan (58 FR 38792). The final exemption (PTE 93–65) was published in the **Federal Register** on September 22, 1993 at 58 FR 49325. The exemption was expressly conditioned on compliance with the limitations set forth therein. Among other conditions, PTE 93–65 was subject to the condition that the Independent Fiduciary would monitor the Loans to ensure compliance with the terms and conditions of the exemption and the Loans. Under the terms of PTE 93–65, the Independent Fiduciary was also responsible for reviewing, among other things, the financial condition of the Employer prior to approving each disbursement under the Loan agreement.

Section 6 4 of the written Loan agreement between the Plan and the Employer provides that the Employer must maintain at all times certain net worth requirements. In addition, section 6.5 of the Loan agreement requires that the Employer maintain at all times a certain ratio of current assets to current liabilities. (The net worth test and the current ratio test are hereinafter referred to as the Covenants.)

The Employer represents that only one loan was made to the Employer pursuant to PTE 93–65. It is represented that a $1.3 million loan was made on September 29, 1993 and that the outstanding balance on that loan as of December 13, 1994 was $991,525.41. On July 12, 1994, the Employer entered into a settlement agreement regarding certain claims with respect to activities of Xanalex Corporation, a predecessor corporation to the Employer, which resulted in the Employer's failure to satisfy the Covenants.

4. The Employer now seeks a retroactive exemption for the Past Loan by the Plan to the Employer from the point in time when the Employer failed to satisfy the Covenants. In support of its request for retroactive relief, the Employer and the Independent Fiduciary maintain that the interests of the Plan and its participants and beneficiaries were fully protected throughout the duration of the Past Loan. In this regard, the Independent Fiduciary was engaged to act on behalf of the Plan with respect to the Past Loan. Any disbursement under the Loan agreement required prior approval by the Independent Fiduciary and could not be made unless the Independent Fiduciary found that such disbursement was appropriate and in the interests of the Plan and its participants and beneficiaries.

As further protection for the Plan and its participants and beneficiaries, the Past Loan was collateralized by recorded perfected security interests in accounts receivable (the Accounts Receivable) of the Employer. Upon entering into the Past Loan, the Independent Fiduciary received from the Employer any and all documentation needed to evidence the Plan's security interest in the collateral securing the Past Loan and the Independent Fiduciary ensured that appropriate documentation was recorded to perfect the Plan's security interest. The Independent Fiduciary was also responsible for ensuring that, at no time while the Past Loan was outstanding, was the fair market value of the Accounts Receivable securing such Loan less than 200% of the outstanding face amount of such Past Loan.

5. The Independent Fiduciary maintains that, once apprised of the pending breach of the Covenants, it took appropriate steps to protect the interests of the Plan and its participants and beneficiaries. In this regard, the Independent Fiduciary represents that.

[10] In the absence of regulations, the Department is not prepared at this time to indicate whether section 408(b)(8) applies to transactions described in section 406(b) of the Act. Accordingly, the Department expresses no opinion as to whether Mellon's discretionary allocation and reallocation services for any collective investment funds maintained by Mellon satisfy the requirements of section 408(b)(8) of the Act and is not proposing any exemptive relief beyond that offered by section 408(b)(8).

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pursuant to its request, the default interest rate was applied to calculate interest payments due after the Covenants were breached.[11] In addition, the Independent Fiduciary retained independent counsel in June, 1994 to represent the interests of the Plan in connection with the anticipated breach of the Covenants.

6. The Independent Fiduciary represents that the Plan suffered no loss as a result of the loan program and no term or condition of the Past Loan was inconsistent with the terms and conditions described in PTE 93–65, except for the failure to satisfy the Covenants. In addition, the Independent Fiduciary represents that payments under the Past Loan have remained current Finally, the Employer will pay off the remaining balance under the Past Loan no later than May 31, 1995

7 In summary, the applicant represents that the past transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's length transactions with unrelated third parties, (b) the Plan's independent fiduciary reviewed the terms and conditions of the proposed exemption and the Past Loan and determined that the Loan was in the best interest of the Plan's participants and beneficiaries; (c) the independent fiduciary reviewed and approved the Past Loan prior to making the disbursement; (d) the Past Loan was at all times secured by collateral which was valued at not less that 200% of the balance of the Loan; (e) the amount of the Past Loan did not exceed 15% of the fair market value of the Plan's assets; (f) the Employer will pay off the balance on the Past Loan by May 31, 1995; and (g) except for the failure to satisfy the Covenants, the Past Loan satisfied all other conditions of PTE 93–65.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Washington Mortgage Corporation, Inc. (WMC) Located in Seattle, Washington

[Application No. D–9814]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) as follows:

I. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: 1) the sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and 2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit therefrom, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation interest therein, no Plan will have more than 25% of its assets invested in construction and permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this proposed exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation interest therein sold to a Plan pursuant to this exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An "affiliate" of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Temporary Nature of Exemption: If the proposed exemption is granted, it will be effective only for those transactions entered into within eight years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. WMC has originated income property (commercial and multifamily) loans since 1949 for major institutional buyers, including pension funds, life insurance companies and thrift institutions. In 1988, WMC was acquired by Puget Sound Bancorp as a wholly owned subsidiary

2. Through the decade of the 1980's and until 1993, WMC and its affiliates engaged in permanent and construction loan origination and servicing activities involving Plans as lenders. These activities were conducted pursuant to the descriptions contained in proposed and final prohibited transaction exemptions granted by the Department. These exemptions were PTE 85–1 (50 FR 1004, January 8, 1985), and PTE 89–78 (54 FR 35951, August 30, 1989). These exemptions were obtained to allow WMC and its bank and non-bank affiliates to engage in loan origination, sale and service activity and other (unrelated) banking and non-banking commercial activity with Plans, which would otherwise be prohibited under section 406(a) of the Act and section 4975 of the Code.[12] PTE 85–1 does not provide for any expiration date, and PTE 89–78 expired on August 30, 1994.

3. In 1993, through a series of acquisitions involving national financial institutions, WMC became a subsidiary of KeyCorp, one of the largest bank holding companies in the U.S. KeyCorp owns 21 banks and trust companies and several related financial services companies, with more than 1,300 branch and affiliate offices in 23 states. As of December 31, 1994, KeyCorp had assets of $64.6 billion.

4. At present, WMC maintains offices in Seattle and Tacoma, Washington, but does not do any loan originations. Following the expiration of PTE 89–78 on August 30, 1994, WMC did not originate any new loans to Plans. Prior loans are now serviced elsewhere except for a loan made by the Carpenters Retirement Trust of Western Washington, which is being serviced by KeyCorp Mortgage, Inc., an affiliate of WMC. The applicant represents that seven other loans were placed with Plans by WMC or its affiliates pursuant to PTE 89–78. The applicant represents that no Plan has suffered any loss or default with respect to any of these loans. To allow WMC and its affiliates to resume loan origination and servicing activities with Plans, as a subsidiary of KeyCorp or on its own following possible acquisition by outsiders, KeyCorp has applied for renewal of PTE 89–78 to augment the relief afforded under PTE 85–1.

5. The proposed activities of WMC and its affiliates may be summarized as follows:

(1) WMC works on behalf of the borrower/developer in putting together construction and permanent financing for commercial and multifamily residential real estate projects. The role of WMC is to provide or arrange for all of the construction financing and to arrange a negotiated permanent commitment, so that construction financing is paid off when the building is completed. In some cases, WMC or its affiliates also participate in funding the construction or permanent loans. WMC works on behalf of the borrower/developer to secure permanent financing alternatively by: (a) Committing directly to the borrower for permanent financing, with the intention of later securing a permanent lender; (b) committing to the borrower based on a commitment for permanent financing provided by another lending institution to WMC; or (c) securing for the borrower, directly, a commitment from another lending institution for the permanent financing, with such a commitment going directly from the lender to the borrower, but assigned to WMC during the construction phase as additional collateral and security for the construction loan.

(2) Loan servicing might be done by WMC or an affiliate. Fees paid to the servicer would run 1/8% to 1% per annum on the outstanding principal balance of permanent loans. Servicing fees for construction loans are determined as a percentage of the outstanding balance of the loans. The applicant represents that all fees and charges are set in advance in accordance with prevailing market conditions.[13]

(3) In conducting these permanent and construction loan origination, sales and servicing activities, WMC and its affiliates would not act as a fiduciary to any lending Plan. Rather, all decisions to invest in a loan would be made by Plan fiduciaries independent of WMC and its affiliates. In the case of loans made to parties in interest, these fiduciaries will also be independent of the party receiving the loan proceeds.[14] If construction is to be performed by a contributing employer or other party in interest, WMC would require a written statement executed by the independent fiduciary that its decision to invest was not influenced or controlled by the borrower or any other party in interest.[15]

(4) WMC's responsibilities in the administration or servicing of loans sold to Plans will vary depending on the loan type. For example, construction loans will involve: (a) Releasing construction loan draws and hold backs as various conditions of the construction loan are satisfied; (b) adjustment of hard-line cost items in the construction loan budget to reflect actual costs; (c) making certain the borrower corrects any non-monetary defaults; (d) implementing borrower-requested change orders approved by WMC staff or independent inspectors; (e) clearing mechanics' liens placed on the property during the course of construction; and (f) insuring general compliance by all parties with a construction loan agreement and related agreements.

(5) Any loan in default will involve decisions by the independent Plan fiduciary, or by WMC in accordance with pre- approved guidelines set forth in the loan documents. The loan documents, including default guidelines, would be approved by the independent fiduciary. A Plan, acting through its independent fiduciary, would also retain the ability (with WMC's consent) to transfer, assign or otherwise dispose of its interest in any construction loan, without payment of any fee or penalty.

(6) As to purchase of either permanent or construction loans, or interests therein, Plans would not pay WMC an investment management, investment advisory, sales commission or similar fee. In addition, Plans would not pay more for any loan interest than would be paid by an unrelated party in an arm's-length transaction.

6. WMC represents that as a result of being a party in interest with respect to Plans by virtue of servicing by it or affiliates of the subject loans or participations purchased thereby, WMC and its affiliates would be prohibited from engaging in other commercial transactions with these Plans, such as the making of loans, which transactions have nothing to do with the mortgages or participation interests held by the Plans. The Department has considered WMC's request for relief for such transactions and has decided that

[11] The interest rate applicable upon breach of the Covenants is the greater of 9% or the Advance Rate plus 2%. The Advance Rate is defined as the greater of 7% or the prime rate as published in the Wall Street Journal

[12] PTE 85–1 exempted transactions involving permanent loans made to non-party in interest entities. PTE 89–78 provided relief for transactions involving construction loans made to non-party in interest entities, and construction and permanent loans made to parties in interest.

[13] The Department is not proposing any relief herein for the receipt of fees beyond that which is provided by the statutory exemption contained in section 408(b)(2) of the Act.

[14] The applicant represents that no loan acquired by a Plan which is made to a party in interest will be a loan to a fiduciary or an affiliate thereof. In this regard, the Department notes that any such loan would involve violations of section 406(b) of the Act for which no relief is being proposed herein.

The applicant represents that, with respect to the subject loans, construction and other services related to the project may, or may not, be performed by a party in interest. The Department notes, as it did in the proposal to both PTE 85–1 and 89–78, that where the construction on the property which secures the loan is by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the loan, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this proposed exemption. See also condition (d) of Part I of this proposed exemption which has the effect of precluding relief under section 408(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[15] The Department is not proposing exemptive relief herein for any violation of section 406(b) of the Act resulting from the provision of such construction services. See footnote above.

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because the servicing relationship is established as a necessary result of the purchase of a mortgage or participation interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined that it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because (a) The Plans will pay no more for the mortgages and participation interests therein than would be paid by an unrelated party in an arm's-length transaction, (b) all Plan decisions to invest in mortgages and participation interests will be made by a Plan fiduciary independent of WMC and its affiliates, (c) at the time of its acquisition of a loan or a participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages; (d) the terms of the construction or permanent loans will not be less favorable to the Plans than the terms generally available in arm's-length transactions with unrelated parties; and (e) no investment management, advisory, underwriting fee or sales commission will be paid to WMC or any of its affiliates with regard to such sale, exchange or transfer.

Notice to Interested Persons: The applicant represents that notice will be provided to all trustees of Plans currently holding loan investments originated and/or serviced by WMC and/or its affiliates. In addition, WMC agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom WMC may contract in the future to provide services as described herein. Such notification will be provided prior to WMC entering into a contract to provide such services.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–8395 Filed 4–6–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Meeting of the Advisory Committee on Presidential Libraries

Notice is hereby given that the National Archives and Records Administration (NARA) Advisory Committee on Presidential Libraries will meet on Sunday, April 23 1995 from 3 p.m. until 6 p.m. in Room 100 of the National Archives Building, 7th Street and Pennsylvania Avenue, NW., Washington, DC, and on Monday, April 24, 1995 from 9 a.m. until 2 p.m. in Room 105 of the National Archives Building.

The agenda for the meeting will address budget and resource issues, and NARA and Presidential library programs in light of Federal government reductions.

The meeting will be open to the public. For additional information, call Richard Jacobs, Acting Assistant Archivist, Office of Presidential Libraries at (202) 501–5700.

Dated: March 29, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–8598 Filed 4–6–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (International Fellowships and Residencies Prescreening Section) to the National Council on the Arts will be held on April 25–27, 1995 from 9:00 a.m. to 7:00 p.m. on April 25–26 and from 9:00 a.m. to 5:00 p.m. on April 27. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m to 9:30 a.m. on April 25 and from 3:30 p.m. to 5:00 p.m. on April 27, for a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 7:00 p.m. on April 25; from 9:00 a.m. to 7:00 p.m. on April 26; and from 9:00 a.m. to 3:30 p.m. on April 27 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: April 4, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–8631 Filed 4–6–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry and Molecular Structure and Function—#1134.

Date and Time: Monday, Tuesday, and Wednesday, April 24, 25, & 26, 1995, 8:30 a.m. to 6:00 p.m.

Place: The National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Kamal Shukla and Dr. Stewart Hendrickson, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1444).

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Molecular Biophysics Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8565 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Bioengineering and Environmental System (#1189).

Date and Time: April 27–28, 1995; 8:00 am–5:00 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biochemical Engineering and Biotechnology, Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biosystems Analysis and Control (BAC) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8555 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Times: April 27–28, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 320, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part open.

Contact Person: Dr. Karen Sigvardt, Program Director, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703b 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 28, 1995, 11:00 a.m. to 12:00 noon, to discuss goals and assessment procedures. Closed Session: April 27, 9:00 a.m. to 5:00 p.m.; April 28, 9:00 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m. to review and evaluate Biosystems Analysis and Control (BAC) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8558 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel For Cell Biology Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National science Foundation announces the following meeting.

Name and Committee Code: Advisory Panel for Cell Biology.

Date and Time: April 24–26, 1995, 8:30 am to 5:00 pm.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Zain, Dr. Larry Griffing and Dr. David Capco, Program Directors, for Cell Biology, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Room 655, Arlington, VA 22230. Telephone: (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cellular Organizaiton Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

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Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8566 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).
Date and Time: April 26–28, 1995; 9 a.m.–6 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.
Type of Meeting: Part-Open
Contact Person: Dr. Leslie A. Zebrowitz, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1728.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Open session: Friday, April 28, 1995; 9 a.m.–10 a.m.
Closed session: April 26–27, 1995; 9 a.m.–6 p.m. and April 28, 1995; 10 a.m.–6 p.m. To review and evaluate social psychology proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8561 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).
Dates and Times: April 26–28, 1995; 8:30 a.m. to 6 p.m.
Place: Purdue University, West Lafayette, IN 47907
Type of meeting: Closed
Contact person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1558.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8570 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).
Dates and Times: April 27–28, 1995
Place: Room 390 NSF, 4201 Wilson Boulevard, Arlington, VA.
Type of meeting: Closed
Contact person: Dr. Robin Cantor, Program Director for DRMS, Division of Social, Behavioral and Economic Research, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA. Telephone: (703) 307–1757.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8559 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids (#1149).
Dates and Times: Wednesday April 26, thru Friday April 28, 1995, at 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 310.
Type of Meeting: Closed.
Contact Person: Charles Liarakos, Program Director for Biochemical Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1439.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Biochemical Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8563 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids (#1149).
Dates and Times: Monday April 24, thru Wednesday April 26, 1995, at 8:30 am to 5 pm.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 320.
Type of Meeting: Closed.
Contact Person: Susan P.R. Snyder (Program Manager) or Philip Harriman (Program Director) for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1441.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Microbial Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8564 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development (HRD); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel In Human Resource Development (#1199).
Date and time: April 27–28, 1995; 8:30 a.m.–4:30 p.m.
Place: Room 1235; National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.
Type of meeting: Closed.
Contact person: Albert Bridgewater; Program Director, MIE; Human Resource Development (HRD); Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1605.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Model Institutions for Excellence (MIE) proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995
M. Rebecca Winkler;
Committee Management Officer.
[FR Doc. 95–8554 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information Robotics and Intelligent Systems (1200).
Date and Time: April 24–25, 1995, 8:30 a.m. to 5:00 p.m.
Place: Holiday Inn-Arlington Hotel, 4610 N. Fairfax Drive, Arlington, VA 22202.
Type of Meeting: Closed.
Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8562 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Mathematical and Physical Sciences Advisory Committee Subcommittee on Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences, Subcommittee on Astronomical Sciences (#66).
Dates and Time: April 26, 1995, 9 a.m.–6 p.m., April 27, 1995, 9 a.m.–12 Noon.
Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Open.
Contact Person: Hugh M. Van Horn, Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1820.
Purpose of Meeting: To provide advice and recommendations and discuss status of NSF-funded astronomy projects with the objective of achieving the highest quality forefront research for the funds allocated.
Agenda: Wednesday, April 26, 1995. Discussion of FY 1995 Budget Status; FY 1996 Budget Request to Congress; Status of GPRA, GEMINI, MMA, National Observatory Reports; Discussion of Long-Range Plan Formulation.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–8556 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).
Dates and Times: April 24–25, 1995; 8:30 a.m. til 5 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Alvin Thaler, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1880.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.
Agenda: To review and evaluate proposals concerning the Grants for Scientific Computing Research Environments for the Mathematical Sciences (SCREMS), as part of the selection process for awards.
Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 5523b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.
M. Rebecca Winkler,
Committee Management Officer
[FR Doc. 95–8557 Filed 4–6–95; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).
Dates and Times: April 24, 1995, 8:30 am–7 pm; April 25, 1995, 8:30 am–4 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.
Type of Meeting: Open.
Contact Person: Thomas A. Weber, Executive Officer, MPS, National Science

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Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone: (703) 306–1802.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise or methods of achieving overall program excellence in MPS.

Agenda:

April 24, 1995

AM—Introductory Remarks; Discussion on Benchmarking Science.

PM—Discussion on OMA; Prioritization Discussion with MPS Divisions.

April 25, 1995

AM—Reports on Programs and Plans/ Education Measures of Success.

PM—Discussion/Summary of Issues.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8567 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Dates and Times: April 24–25, 1995; 9 a.m. to 5 p.m.

Place: Room 310, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Platt, Program Director, Sensory Systems, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: April 24, 1995; 3 p.m. to 4 p.m., to discuss goals and assessment procedures. Closed Session: April 24, 1995; 9 a.m. to 3 p.m., 4 p.m. to 5 p.m.; April 25, 1995; 9 a.m. to 5 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8568 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Dates and Times: April 24–25, 1995; 9 a.m. to 5 p.m.

Place: Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Karen Sigvardt, Program Director, Neuronal and Glial Mechanisms, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: April 24, 1995; 2 p.m. to 3 p.m., to discuss goals and assessment procedures. Closed Session: April 24, 1995; 9 a.m. to 2 p.m., 3 p.m. to 5 p.m.; April 25, 1995; 9 a.m. to 5 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8569 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.

Dates and Times: April 24 and 25, 1995, 8 a.m.–6 p.m.

Place: Room 340, 4201 Wilson Boulevard Arlington, Virginia 22230.

Type of Meeting: Part-Open

Contact Person: Dr. Elvira Doman and Dr. Eldon Braun, Program Directors, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1421

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: Tuesday, April 25, 4 p.m. Discussion with Mary Clutter, Assistant Director, Directorate for Biological Sciences. Closed Session: Monday, April 24, 8 a.m.–6 p.m., Tuesday, April 25, 8 a.m.–4 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8560 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Office of Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Code: Special Emphasis Panel in Office of Systemic Reform (1765).

Dates and Times: April 24, 1995 and April 25, 1995 (8am-5pm).

Place: Holiday Inn-Arlington, 4610 N. Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Persons: Gerald Gipp or Jody Chase, Program Directors, Rural Systemic Initiatives, Room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1684.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Rural Systemic Initiatives Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8571 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Company, et al.; (Palo Verde Nuclear Generating Station, Unit No. 1), Exemption

I

The Arizona Public Service Company, et al. (APS or the licensee) is the holder of Facility Operating License No. NPF–41, which authorizes operation of the Palo Verde Nuclear Generating Station, Unit No. 1 (PVNGS–1). The license provides, among other things, that PVNGS–1 is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The PVNGS–1 facility is a pressurized water reactor located at the licensee's site in Maricopa County, Arizona.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection.

III

By letter dated December 28, 1994, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 20 months (from the 1995 refueling outage, which begins in May 1995, to the sixth refueling outage (1R6), currently scheduled for September 1996) and would permit the third Type A test of the 10-year inservice inspection period not to correspond with the end of the inservice inspection interval.

The licensee's request concluded that the proposed changes for PVNGS–1, a one-time extension of the interval between the second and third ILRTs and a decoupling of the third test from the outage corresponding to the end of the 10-year inservice inspection period, is justified for the following reasons:

The previous testing history at PVNGS–1 provides substantial justification for the proposed test interval extension. Type A testing is performed to determine that the total leakage from primary containment does not exceed the maximum allowable leakage rate (L_a) as specified in the PVNGS–1 technical specifications (TS). The primary containment maximum allowable leakage rate provides an input assumption to the calculation required to ensure that the maximum potential offsite dose during a design basis accident does not result in a dose in excess of that specified in 10 CFR 100. The allowable L_a for PVNGS–1 is 0.10 percent by weight of the containment air per 24 hours at P_a, where P_a is defined as the calculated peak internal containment pressure related to the design basis accident, specified in the PVNGS–1 TS as 49.5 psig. The acceptance criteria for the Type A test is 75 percent of L_a or 0.075 percent by weight of the containment air per 24 hours at P_a.

In each of the two previous periodic ILRTs at PVNGS–1 (the results were 0.066 percent and 0.067 percent by weight of the containment air per 24 hours at P_a, respectively), the results obtained were below the test acceptance criteria of 75 percent of L_a or 0.075 percent by weight of the containment air per 24 hours at P_a, thereby, demonstrating that PVNGS–1 is a low-leakage containment.

The licensee performed a plant-specific study concluding that the extension of the Type A test has a negligible impact on overall risk. This study relied heavily on the existing Type B and C testing program which is not affected by this exemption, and will continue to effectively detect containment leakage.

Additionally, the licensee stated that its exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(2)(ii) (the underlying purpose of the regulation is achieved), and (a)(2)(iii) (compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted), for the following reasons:

The licensee categorized mechanisms that could cause degradation of the containment into two types: (1) Degradation due to work which is performed as part of a modification or maintenance activity on a component or system (activity based); or (2) degradation resulting from a time based failure mechanism (i.e., deterioration of the containment structure due to pressure, temperature, radiation, chemical or other such effects). To address the potential degradation due to an activity based mechanism, the licensee reviewed containment system related modifications performed since the last Type A test. The licensee concluded that the modifications performed did not impact containment integrity, or the modifications have, or will be, tested adequately to ensure that there is no degradation from an activity based mechanism. In addition, the licensee maintains administrative controls which ensure that an appropriate retest, including local leak rate testing, if applicable, is specified for maintenance activities which affect primary containment integrity.

Regarding time based failure mechanisms, the licensee concluded that risk of a non-detectable increase in the primary containment leakage is considered negligible due to the 10 CFR Part 50, Appendix J, Type B and C testing program. The licensee stated that without actual accident conditions, structural deterioration is a gradual phenomenon which requires periods of time well in excess of the proposed 81-month test interval which would result by performing the third periodic Type A test during the sixth refueling outage in Unit 1. Other than accident conditions, the only external mechanism inducing stress of the containment structure is the test itself. The licensee maintains that the longer test interval would, therefore, lessen the frequency of stressing the containment.

Additionally, the licensee has performed the general inspections of the accessible interior and exterior surfaces of the containment structures and components prior to the previous Type A tests, as required by 10 CFR Part 50, Appendix J, Section V.A. These inspections are intended to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak tightness. At PVNGS–1, there has been no evidence of structural deterioration that would impact structural integrity or leak tightness. In a phone conversation with the licensee on March 23, 1995, the staff noted that these inspections, though limited in scope, provide an important added level of confidence. The licensee committed to perform the general containment civil inspection during the upcoming refueling outage (1R5).

The 10 CFR Part 50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage limiting-boundaries other than valves, such as containment penetrations incorporating

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resilient seals, gaskets, doors, batches, etc. The 10 CFR Part 50, Appendix J, Type C tests are intended to measure reactor system primary containment isolation valve leakage rates. The frequency and scope of Type B and C testing is not being altered by this proposed exemption request. The acceptance criterion for Type B and C testing is 0.6 L_a. This acceptance criterion is for the sum of all valves and penetrations subject to Type B and C testing and represents a considerable portion of the Type A test allowable leakage. The results of the as-left combined Type B and C leakage measured since the last Unit 1 Type A test are 0.054 L_a, 0.06 L_a, and 0.13 L_a (for the February 1991, May 1992, and November 1993 outages, respectively). The licensee maintains that these test results are substantially below the acceptance criterion of 0.60 L_a and demonstrate a good historic performance of containment integrity.

The proposed schedular exemption would allow the third Type A leakage rate test in Unit 1 to be performed during the Fall 1996 (1R6) refueling outage, which meets the 10 CFR Part 50, Appendix J, requirement of performing three tests in a 10-year time period. The performance of a fourth Type A test during the Unit 1 seventh refueling outage, in order to coincide with the outage at the completion of the extended 10-year ISI interval, is not deemed to be appropriate, as it would result in additional radiation exposure to personnel, increased length of the refueling outage and significant additional cost. Omitting the test will result in dose savings by eliminating contamination and by reducing radiation exposure from the venting and draining of piping penetrations necessary to establish the appropriate test conditions. There would also be dose savings from eliminating the need to install and remove the temporary instrumentation necessary to perform the Type A test. Performing a fourth Type A test would also increase the duration of the affected outage by approximately 3 days and result in additional costs associated with this increase.

A PVNGS–1 plant-specific analysis was performed to evaluate the potential for extending the Type A test frequency. The PVNGS–1 plant-specific analysis considered the extension of the interval to as much as 240 months. The conclusion of the analysis was that the extension of the Type A test interval has a negligible impact on overall risk. The licensee's exemption request does not alter the frequency for performance of Type A testing (i.e., it still maintains a frequency of 3 tests per 10 years). However, the licensee maintains that the data from this study support the requested exemption from the requirement of 10 CFR Part 50, Appendix J, regarding "approximately equal intervals." The interval between the second and third Type A tests would be 81 months with this exemption. The PVNGS–1 plant-specific analysis supports the use of a 240-month interval with a negligible impact on overall risk.

The licensee referenced 10 CFR 50.12(a)(2)(ii) as a basis for this exemption. This section defines such a circumstance where "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." The underlying purpose of 10 CFR Part 50, Appendix J, Section III.D.1.(a), is to establish and maintain a level of confidence that any primary containment leakage, during a hypothetical design basis accident, will remain less than or equal to the maximum allowable value, L_a, by performing periodic Type A testing. Compliance with the "approximately equal intervals" clause of Appendix J is not necessary to achieve the underlying purpose of the rule, as explained in the above technical justification.

The licensee also referenced 10 CFR 50.12(a)(2)(iii) in its submittal, which states the NRC may grant exemptions from requirements of 10 CFR Part 50 when "compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated * * *." The current PVNGS–1 Type A test schedule would require that four Type A tests be performed in an extended ISI interval. This current schedule would result in unnecessary additional radiation exposure in order to perform the test and unnecessary costs associated with the performance of the test and the costs associated with the increase in the length of the refueling outage. Regarding the impact of this exemption on overall risk, it is the staff's experience that risk is insensitive to the Type A test frequency at values of leakage close to L_a. Therefore, while the staff agrees with the licensee's conclusion that the risk increase resulting from granting this exemption is small, the time interval has no particular significance. Additionally, the staff has previously discussed with the licensee that its scheduling of containment ILRTs early in the ISI interval is largely responsible for the necessity of performing an additional test, and would not constitute a hardship that was not anticipated at the time the rule was written. Therefore, the staff has reviewed this exemption request against the criteria of 10 CFR 50.12(a)(2)(ii).

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 20 months. Additionally, for schedular reasons, the final Type A test of the 10-year inservice inspection period is proposed to be decoupled from the requirement to perform it during the same outage (the final Type A test would be performed the outage prior (1R6) to the end of the inservice inspection period).

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed below, that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests have passed with adequate margin. The licensee has also noted that the results of the Type A testing have been confirmatory of the Type B and C tests (which will continue to be performed). Additionally, the licensee has committed to perform the general containment civil inspection during the upcoming refueling outage (1R5), thereby providing an added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG-1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is three percent of all failures. This study agrees with previous NRC staff studies which show that Type B and G testing can detect a very large percentage of containment leaks. The PVNGS–1 experience has also been consistent with this.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded 1.0 L_a. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than 2 L_a; in one case the leakage was found to be approximately 2 L_a; in one case the as-found leakage was less then 3 L_a; one case approached 10 L_a; and in one case the leakage was found to be approximately 21 L_a. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding the L_a (approximately 200 L_a, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds the licensee's proposed one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test, and the decoupling of the third test to be performed coincident with the completion of the inservice inspection period, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the human environment (60 FR 16180).

This exemption is effective upon issuance and shall expire at the completion of the 1R7 refueling outage.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of March 1995.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8585 Filed 4–6–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35555; File No. SR–NYSE–95–10]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Over-the-Counter Options and Interest Rate Composites

March 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1995, the New York Stock Exchange, Inc. ("NYSE") or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Exchange Rule 431, "Margins" to establish margin requirements for over-the-counter ("OTC") options and interest rate composites. Specifically, the NYSE proposes to establish initial and/or maintenance margin requirements for short positions in OTC options overlying certain instruments which are equal to a specified percentage of the current value of the underlying component and the applicable multiplier, if any, plus any in-the-money amount. The required OTC option margin may be reduced by any out-of-the-money amount, but may not be less than the minimum amount specified for each option category. The percentages of the current value of the underlying components are as follows: (1) For stock and convertible corporate debt securities, 30%, with minimum margin of 10%; (2) for industry index stock groups, 30%, with minimum margin of 10%; (3) for broad index stock groups, 20%, with minimum margin of 10%; (4) for U.S. Government or U.S. government agency debt securities other than those exempted by Rule 3a12–7 under the Act,[1] 5%, with minimum margin of 3%; (5) for corporate debt securities registered on a national securities exchange and OTC margin bonds as defined in Section 220.2(t) (1), (4), and (5)[2] of Regulation T under the Act, 15% with minimum margin of 5%; and (6) for all other OTC options, 45%, with minimum margin of 20%.

The text of the proposed rule change is available at the office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Rule 3a12–7 under the Act provides that options that are not traded on a national securities exchange and which relate to securities that are direct obligations of the U.S. or are issued or guaranteed by a corporation in which the U.S. has a direct or indirect interest as shall be designated for exemption pursuant to Section 3(a)(12) of the Act are exempt from all provisions of the Act which by their terms do not apply to "exempted security" or "exempted securities," provided that the securities underlying the option represent an obligation equal to or exceeding $250,000 in principal amount.

[2] The NYSE clarified that category five of the proposal applies to OTC margin bonds as defined in Section 220.2(t) (1), (4), and (5) of Regulation T under the Act. Telephone conversation between Richard Nowicki, NYSE, and Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, on March 22, 1995 ("March 22 Conversation"). Section 220.2(t)(1) defines an OTC margin bond as certain debt securities not traded on a national securities exchange; Section 220.2(t)(4) defines an OTC margin bond as a debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states or cities, or a supranational entity, provided that certain credit rating requirements are satisfied; and Section 220.2(t)(5) defines an OTC margin bond as a foreign security that is a nonconvertible debt security that meets the requirements specified in Section 220.2(t)(5).

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(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NYSE proposes to amend Exchange Rule 431 to establish margin requirements for OTC options and interest rate composites.

OTC options are not issued by the Options Clearing Corporation ("OCC") or listed on any national securities exchange. They are individually tailored agreements between a customer and a broker-dealer designed to reflect the customer's individual needs as to strike price and expiration date. According to the Exchange, these contracts are generally entered into by credit worthy domestic and foreign institutions, mutual funds and insurance companies. The options are usually written for periods of less than one year.

In File No. SR–NYSE–90–25, the NYSE proposed to amend Exchange Rule 431 to establish margin requirements for OTC options developed in conjunction with industry representatives and the Securities Industry Associations's Credit Division on (1) U.S. government securities, and (2) convertible and non-convertible corporate debt securities, including mortgage related securities, and to reduce the existing margin requirements for stocks and for narrow- and broad-based index groups.[3] Since filing the proposal in 1990, the Exchange staff has permitted member organizations to enter into option agreements on a pilot basis utilizing the proposed margin requirements. According to the NYSE, 31 member organizations have been granted Exchange approval to participate in the pilot program.

On October 7, 1994, the Exchange withdrew File No. SR–NYSE–90–25 because pilot participants had not provided volatility data sufficient for Commission staff to consider the appropriateness of the proposed margin levels. The Commission indicated that the Exchange should refile its proposal when the NYSE obtained supporting documentation. The price volatility data has now been provided to the NYSE and is being provided to the Commission for review.

The proposed amendments to NYSE Rule 431 are the same as those filed previously with the Commission in File No. SR–NYSE–90–25, except with respect to the requirements for Treasury bonds, when margin levels were increased as a result of the Commission's review of volatility data. In addition, the Exchange is not proposing to establish margin requirements for mortgage related debt securities (qualified under Section 3(a)(41) under the Act) because volatility data sufficient to assess the adequacy of the requirements on an ongoing basis is not available.

Under the proposal, the NYSE proposes to establish initial and/or maintenance margin requirements for short positions in OTC options overlying certain instruments which are equal to a specified percentage of the current value of the underlying component and the applicable multiplier, if any, plus any in-the-money amount. The required margin may be reduced by any out-of-the-money amount, but may not be less than the minimum amounts specified for each option category. The percentages of the current value of the underlying components[4] are as follows: (1) For stock and convertible corporate debt securities, 30%, with minimum margin of 10%; (2) for industry index stock groups, 30%, with minimum margin of 10%; (3) for broad index stock groups, 20%, with minimum margin of 10% (4) for U.S. government or U.S. government agency debt securities other than those exempted by Rule 3a12–7 under the Act, 5%, with minimum margin of 3%;[5] (5) for corporate debt securities registered on a national securities exchange and OTC margin bonds as defined in Section 220.2(r) of Regulation T under the Act, 15%, with minimum margin of 5%;[6] and (8) for all other OTC options, 45%, with minimum margin of 20%.

OTC options on U.S. government and U.S. government agency debt securities that qualify for exemption pursuant to Rule 3a12–7 under the Act must be for a principal amount of not less than $500,000 and the margin for such securities for exempt accounts[7] will be 3% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 2% of the current value of the underlying principal amount on all other U.S. government and U.S. government agency debt securities, plus any in-the-money amount or minus any out-of-the-money amount. The amount of any deficiency between the equity in the account and the margin required shall be deducted in computing the net capital of the member organization under the NYSE's capital requirements on the following basis: (a) On any account or group of commonly controlled accounts to the extent the deficiency exceeds 5% of the member organization's tentative net capital (net capital before deductions on securities), 100% of such excess amount; and (b) on all accounts combined to the extent such deficiency exceeds 25% of a member organization's tentative net capital, 100% of such excess amount, reduced by any amount already deducted pursuant to paragraph (a).

For non-exempt accounts, the required margin will be 5% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 3% of the current value of the underlying principal amount on all other U.S. government and U.S. government agency debt securities, plus any in-the-money amount or minus any out-of-the-money amount, provided the minimum margin shall not be less than 1% of the current value of the underlying principal amount.

In addition, the NYSE proposes to incorporate into NYSE Rule 431 the margin requirements for interest rate composites which were proposed by the Chicago Board Options Exchange, Inc. ("CBOE") and approved by the Commission.[8] Specifically, for interest rate contracts, the initial and/or maintenance margin will be 10% of the underlying component value (*i.e.*, the product of the current interest rate measure and the applicable multiplier),

[3] See Securities Exchange Act Release No. 28219 (July 18, 1990), 55 FR 30348 (July 25, 1990).

[4] The proposal defines the "underlying component" as follows: for stocks, the equivalent number for shares; for industry and broad index stock groups, the current index group value and the applicable index multiplier; for U.S. Treasury bills, notes and bonds, the underlying principal amount; for foreign currencies, the units per foreign currency contract; and for interest rate contracts, the interest rate measure based on the yield of U.S. Treasury bills, notes, or bonds and the applicable multiplier. The "interest rate measure" for short-term U.S. Treasury bills represents the annualized discount yield of a specific issue multiplied by 10 or, for long-term U.S. Treasury notes and bonds, the average of the yield to maturity of the specific issues multiplied by 10.

[5] Option contracts in this category must be for a principal amount of not less than $500,000.

[6] Options transactions on private mortgage pass-through securities and mortgage-related debt securities qualified under Section 3(a)(41) under the Act are not eligible for the margin requirements contained in this provision. Margin requirements for such securities must be computed pursuant to the requirements in category six for all other OTC options.

[7] Under the proposal, an "exempt account" is a member organization, non-member broker/dealer, "designated account," as defined in NYSE Rule 431(a)(3), any person having net tangible assets of at least $16 million, or in the case of mortgage-related debt securities transactions, an independently audited mortgage banker with both more than $1.5 million of net current assets (which may include ¾ of 1% maximum allowance on loan servicing portfolios) and with more than $1.5 million of net worth.

[8] *See* Securities Exchange Act Release No. 26938 (June 15, 1989), 54 FR 26285 (June 22, 1989) (ordering approving File No. SR–CBOE–87–30).

and the minimum required margin will be 5% of the underlying component value.

The Exchange has agreed to a system for periodic review to ensure the adequacy of the proposed margin requirements and for increasing the requirements on an expedited basis if necessary. The NYSE's monitoring plan will consist of the following:

- Semi-annual reviews of the seven-day price[9] movements will be done. These volatility reviews will cover both the last six months and the last three years.
- The semi-annual review must indicate a 97.5% confidence level (*i.e.*, the required margin level is adequate for seven-day price movements 97.5% of the time).
- For each option category, reports must be done by two member organizations using their own pricing data or by one member organization using an independent pricing source acceptable to the Exchange. These reports must be submitted to the Exchange.
- If one semi-annual review indicates the margin level is inadequate for an option category, the Exchange will increase the margin requirements by filing a proposal pursuant to Section 19(b)(3)(A) under the Act for immediate effectiveness.
- In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the lower requirement meets the 97.5% confidence level. Amendments to lower the requirement will be made by filing a proposed rule change pursuant to Section 19(b)(2) under the Act.
- In addition, before lowering the margin requirements, the Exchange will take into consideration other relevant factors, such as current market conditions, member organization views, and margin levels implied from other options products (where similar OCC-issued options exist).

(b) Basis

The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of Section 6(b)(5), which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public. The NYSE believes that the proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8546 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[9] Because the Exchange will submit data covering seven-day price movements, the Exchange agreed to delete references to seven-day price/yield movements in order to clarify the proposal. March 22 conversation, *supra* note 2.

[10] 17 CFR 200.30–3(a)(12) (1994)

[Rel. No. IC–20981; File No. 812–9360]

American Skandia Life Assurance Corporation, et al.

March 31, 1995.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application of exemption under the Investment Company Act of 1940 (the "1940 Act" or "Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"); American Skandia Life Assurance Corporation Variable Account B (Class 3 Sub-Accounts) (the "Account"); and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account with respect to certain flexible premium deferred variable annuity contracts ("Contracts") and contracts offered in the future that are substantially similar in all material respects to the Contracts ("Future Contracts") that are issued through the Account or any other Accounts established in the future by Skandia Life ("Future Accounts"). Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life ("Skandia Life Broker-Dealers"), that may serve in the future as distributor and/or principal underwriter for the Contracts or Future Contracts.

FILING DATE: The application was filed on December 13, 1994 and amended on February 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

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issued unless the Commission orders a hearing. Interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 pm., on April 25, 1995 and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW , Washington, DC 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, P O. Box 883, Shelton, Connecticut 06484–9932, Attention: Jeffrey M. Ulness, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1 Skandia Life is a stock life insurance company incorporated under the laws of Connecticut. It is wholly owned by American Skandia Investment Holding Corporation ("AHIHC") which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish Corporation.

2. The Account was established by Skandia Life as a unitized separate account under the laws of Connecticut and is registered with the Commission under the Act as a unit investment trust.

3 SLESCO, a wholly owned subsidiary of AHIHC, will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Contracts are flexible premium deferred variable annuities. Contract owners may allocate premium payments or account value to one or more sub-accounts of the Account which will invest in shares of corresponding investment portfolios of American Skandia Trust or such other investment company as may be made available in the future.

5. During the accumulation phase, a death benefit is generally payable upon the death of the first Contract owner to die (if the Contract is held by one or more natural persons) or upon the death of the annuitant. If death occurs prior to the 70th birthday of the individual upon whose death the benefit is payable, the death benefit is the greater of a Contract's Account Value or the minimum death benefit (which is the sum of all Purchase Payments less the sum of all withdrawals). If death occurs on or after the 70th birthday of the individual on whose death the benefit is payable, the death benefit is the Account Value.

6. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of Account Value or $35 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion that each sub-account holding bears to the Account Value of such Contract. Skandia Life states that this fee for maintaining the Contracts will not be greater than the anticipated costs. Also, during the accumulation period, Skandia Life will deduct from the Account, on a daily basis, an administration fee at the rate of 0.15% per annum of the average daily total value of assets of the Account. Applicants assert [1] that a relationship does not necessarily exist between the administration charge and maintenance fee upon a particular Contract and the expenses attributable to that particular Contract, however, the total administrative charge assessed against the Account will not be greater than the total anticipated cost of services to be provided over the life of the Contract(s) in accordance with the applicable standards in Rule 26a–1 under the 1940 Act. The administration and maintenance fees can be increased only for contracts issued subsequent to the effective date of any such change. In addition, Skandia Life deducts an amount equal to any premium taxes due either prior to allocation to the sub-accounts of upon annuitization. A charge of $10 is assessable for each transfer in excess of four transfers in each annuity year. Finally, a $10 charge is assessed for each transfer after the fourth in each annuity year and for each withdrawal after the first in each annuity year except for transfers from the fixed account, a death benefit, surrender medically-related surrender or annuity payment.

7. No deduction or charge will be made from Purchase Payments for sales or distribution expenses. However, a contingent deferred sales charge ("CDSC") may be assessed on surrender or withdrawal. The Contract offers a free withdrawal privilege that, under certain circumstance, permits a Contract owner to withdraw funds without any CDSC being imposed. For purposes of the CDSC, amounts withdrawn as a free withdrawal are not considered a liquidation of purchase payments. For withdrawals of unliquidated new premiums that exceed the free withdrawal amount, the CDSC under the Contracts begins at 6% and declines to 0% in year eight in accordance with a schedule set forth in the application. However, Applicants represent that in no event will the total CDSC for a particular Contract or Future Contract exceed 9% of purchase payments under the Contract or Future Contract. CDSC's will be used to compensate Skandia Life for sales commissions and other promotional or distribution expenses incurred by Skandia Life which are associated with the marketing of the Contracts. Skandia Life does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses. To the extent the CDSC is not sufficient, Skandia Life will pay these expenses from its general assets which may include proceeds (if available) from the mortality and expense risk charges.

8. A mortality and expense risk charge will be deducted daily from the net asset value of the Account attributable to the Contracts at a rate of 0.85% per annum of the daily net assets in the Account. Of that amount, approximately 0.55% is allocable to Skandia Life's assumption of mortality risks and 0.30% is allocable to Skandia Life's assumption of administration and expense risks. The annuity rates incorporated in any issued Contracts cannot be changed. Skandia Life's assumption of mortality risks guarantees that the variable annuity payments made to Contract owners will not be affected by the mortality experience of persons receiving such payments or of the general population. Skandia Life assumes this risk by virtue of the annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in the value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed for current Contract owners, may be insufficient to cover the actual costs of maintaining the Contracts and the Account.

[1] An amendment will be filed during the notice period to confirm this representation.

9. If the charges for the mortality and expense risks prove insufficient to cover mortality, administration and maintenance costs, then the excess of the expenses over the charges made for these expenses will result in a loss, and such loss will be borne by Skandia Life. Conversely, if the charges prove more than sufficient to cover such costs, the excess will result in a profit to Skandia Life.

Applicants' Legal Analysis

1. Applicants request exemptive relief, pursuant to Section 6(c) of the 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Account or Future Accounts with respect to the Contracts and Future Contracts that are substantially similar in all material respects to the Contracts. Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life that may serve in the future as principal underwriter for the Contracts or Future Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2)(C) and 26(a)(3) of the 1940 Act. Applicants request exemption from those provisions to the extent necessary to permit the assessment of the charge for mortality and expense risks under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts, Future Accounts and Skandia Life Broker-Dealers is necessary and appropriate in the public interest. Applicants assert that the issuance of the requested order on a prospective basis would promote competitiveness in the variable annuity contract market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses, maximizing the efficient use of Skandia Life's resources, and enabling Skandia Life to take advantage of business opportunities as they arise. Further, if Skandia Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that Skandia Life is entitled to reasonable compensation for its assumptions of mortality and expense risks and that the charge provided for in the Contracts is a reasonable and proper insurance charge. Skandia Life further represents that the charge of 1.25% for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Similarly, prior to making available any Future Contracts through the Account, or through other Future Accounts, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Further, such mortality and expense risk charge would not exceed 1.25% of the daily net assets of the Account or Future Accounts.

6. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge all or a portion of such profit may be viewed as being offset by distribution expenses. Nevertheless, Skandia Life has concluded that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission. Skandia Life also will maintain and make available to the Commission memoranda setting forth the basis for the same representation with respect to Future Contracts offered by the Account or Future Accounts.

7. Skandia Life represents that the Account, and all Future Accounts, shall invest only in management investment companies which undertake to have a Board of Directors, the majority of whom are not "interested persons" of such company as that term is used under Section 2(a)(19) of the Act, formulate and approve any plan adopted under Rule 12b–1 of the 1940 Act.[2]

Conclusion

Applicants submit that the exemptive relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8544 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20980; File No. 812–9362]

American Skandia Life Assurance Corporation, et al.

March 31, 1995.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act" or "Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"); American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) (the "Account"); and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for

[2] An amendment will be filed during the notice period to confirm that the Board of Directors will formulate and approve any plan adopted under rule 12b–1.

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exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account with respect to certain flexible premium deferred variable annuity contracts ("Contracts") and contracts offered in the future that are substantially similar in all material respects to the Contracts ("Future Contracts") that are issued through the Account or any other Accounts established in the future by Skandia Life ("Future Accounts"). Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, order common control with Skandia Life ("Skandia Life Broker-Dealers"), that may serve in the future as distributor and/or principal underwriter for the Contracts or Future Contracts.

FILING DATES: The application was filed on December 12, 1994 and amended on February 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m., on April 25, 1995 and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, P.O. Box 883, Shelton, Connecticut 06484–9932, Attention: Jeffrey M. Ulness, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut. It is wholly owned by American Skandia Investment Holding Corporation ("AHIHC") which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish Corporation.

2. The Account was established by Skandia Life as a unitized separate account under the laws of Connecticut and is registered with the Commission under the Act as a unit investment trust.

3. SLESCO, a wholly owned subsidiary of AHIHC, will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Contracts are flexible premium deferred variable annuities. Contract owners may allocate premium payments or account value to one or more sub-accounts of the Account which will invest in shares of corresponding investment portfolios of American Skandia Trust or such other investment company as may be made available in the future.

5. During the accumulation phase, a death benefit is generally payable upon the death of the first Contract owner to die (if the Contract is held by one or more natural persons) or upon the death of the annuitant. If death occurs prior to the 90th birthday of the individual upon whose death the benefit is payable, the death benefit is the greater of a Contract's Account Value or the minimum death benefit (which is the sum of all Purchase Payments less the sum of all withdrawals). If death occurs on or after the 90th birthday of the individual on whose death the benefit is payable, the death benefit is the Account Value.

6. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of Account Value or $30 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion that each sub-account holding bears to the Account Value of such Contract. Skandia Life states that this fee for maintaining the Contracts will not be greater than the anticipated costs. Also, during the accumulation period, Skandia Life will deduct from the Account, on a daily basis, an administration fee at the rate of 0.15% per annum of the average daily total value of assets of the Account.

Applicants assert [1] that a relationship does not necessarily exist between the administration charge and maintenance fee upon a particular Contract and the expenses attributable to that particular Contract, however, the total administrative charge assessed against the Account will not be greater than the total anticipated cost of services to be provided over the life of the Contract(s) in accordance with the applicable standards in Rule 26a–1 under the 1940 Act. The administration and maintenance fees can be increased only for contracts issued subsequent to the effective date of any such change. In addition, Skandia Life deducts an amount equal to any premium taxes due either prior to allocation to the sub-accounts or upon annuitization. Finally, a charge of $10 is assessable for each transfer in excess of twelve transfers in each Annuity Year.

7. No deduction or charge will be made from Purchase Payments for sales or distribution expenses. However, a contingent deferred sales charge ("CDSC") may be assessed on surrender or withdrawal. The Contract offers a free withdrawal privilege that, under certain circumstances, permits a Contract owner to withdraw funds without any CDSC being imposed. For purposes of the CDSC, amounts withdrawn as a free withdrawal are not considered a liquidation of purchase payments. For withdrawals of unliquidated new premiums that exceed the free withdrawal amount, the CDSC under the Contracts begins at 7.5% and declines to 0% in year eight in accordance with a schedule set forth in the application. However, Applicants represent that in no event will the total CDSC for a particular Contract or Future Contract exceed 9% of purchase payments under the Contract or Future Contract. CDSC's will be used to compensate Skandia Life for sales commissions and other promotional or distribution expenses incurred by Skandia Life which are associated with the marketing of the Contracts. Skandia Life does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses. To the extent the CDSC is not sufficient, Skandia Life will pay these expenses from its general assets which may include proceeds (if available) from the mortality and expense risk charges.

8. A mortality and expense risk charge will be deducted daily from the net asset value of the Account attributable to the Contracts at a rate of 1.25% per annum of the daily net assets in the Account. Of that amount, approximately 0.90% is allocable to Skandia Life's assumption of mortality risks and 0.35% is allocable to Skandia Life's assumption of administration and expense risks. The annuity rates incorporated in any issued Contracts cannot be changed. Skandia Life's assumption of mortality risks guarantees that the variable annuity payments made to Contract owners will not be affected by the mortality experience of persons receiving such payments or of the general population. Skandia Life assumes this risk by virtue of the annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed for current Contract owners, may be insufficient to cover the actual costs of maintaining the Contracts and the Account.

9. If the charges for the mortality and expense risks prove insufficient to cover mortality, administration and maintenance costs, then the excess of the expenses over the charges made for these expenses will result in a loss, and such loss will be borne by Skandia Life. Conversely, if the charges prove more than sufficient to cover such costs, the excess will result in a profit to Skandia Life.

[1] An amendment will be filed during the notice period to confirm this representation.

Applicants' Legal Analysis

1. Applicants request exemptive relief, pursuant to Section 6(c) of the 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Account or Future Accounts with respect to the Contracts and Future Contracts that are substantially similar in all material respects to the Contracts. Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life that may serve in the future as principal underwriter for the Contracts or Future Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2)(C) and 26(a)(3) of the 1940 Act. Applicants request exemption from those provisions to the extent necessary to permit the assessment of the charge for mortality and expense risks under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts, Future Accounts and Skandia Life Broker-Dealers is necessary and appropriate in the public interest. Applicants assert that the issuance of the requested order on a prospective basis would promote competitiveness in the variable annuity contract market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses, maximizing the efficient use of Skandia Life's resources, and enabling Skandia Life to take advantage of business opportunities as they arise. Further, if Skandia Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that Skandia Life is entitled to reasonable compensation for its assumptions of mortality and expense risks and that the charge provided for in the Contracts is a reasonable and proper insurance charge. Skandia Life further represents that the charge of 1.25% for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey

5. Similarly, prior to making available any Future Contracts through the Account, or through other Future Accounts, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Further, such mortality and expense risk charge would not exceed 1.25% of the daily net assets of the Account or Future Accounts.

6. Applicants acknowledge the CDSC may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge all or a portion of such profit may be viewed as being offset by distribution expenses. Nevertheless, Skandia Life has concluded that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission. Skandia Life also will maintain and make available to the Commission memoranda setting forth the basis for the same representation with respect to Future Contracts offered by the Account or Future Accounts.

7. Skandia Life represents that the Account, and all Future Accounts, shall invest only in management investment companies which undertake to have a Board of Directors, the majority of whom are not "interested persons" of such company as that term is used under Section 2(a)(19) of the Act, formulate and approve any plan adopted under Rule 12b–1 of the 1940 Act.[2]

Conclusion

Applicants submit that the exemptive relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act

[2] An amendment will be filed during the notice period to confirm that the Board of Directors will formulate and approve any plan adopted under Rule 12b–1

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8545 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20982; 812–9166]

Pitcairn Group L.P., et al.; Notice of Application

March 31, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Pitcairn Group L.P. ("Pitcairn"), and Johnstone L.P. ("Johnstone").

RELEVANT ACT SECTIONS: Exemption requested under section 23(c)(3) from the provisions of section 23(c), and under section 57(c) from the provisions of section 57(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting Pitcairn to acquire 221,954 (approximately 39%) of its limited partnership units (the "Units") from Johnstone, a limited partnership formed by former Pitcairn unitholders to liquidate their ownership interests in Pitcairn, in exchange for a *pro rata* portion of the total assets of Pitcairn (the "Redemption"). The order also would permit Johnstone to acquire assets from Pitcairn in the Redemption and to acquire a *pro rata* portion of the total assets of Moreland L.P. ("Moreland"), a limited partnership controlled by Pitcairn, in exchange for the 222,553 Moreland limited partnership units owned by Johnstone (the "Related Transaction").

FILING DATES: The application was filed on August 15, 1994, and amended on December 9, 1994, and March 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Pitcairn, One Pitcairn Place, Suite 3000, 165 Township Line Road, Jenkintown, Pennsylvania 19046; Johnstone, 75 James Way, Southampton, Pennsylvania 18966.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Pitcairn, a Delaware limited partnership that has elected to be regulated as a business development company ("BDC") under section 54 of the Act, was organized in 1986 as a vehicle for private investments for the Pitcairn family. It was capitalized with assets derived from the liquidation of The Pitcairn Company, a Delaware corporation formed in 1923 by members of the Pitcairn family to hold and manage the estate of John Pitcairn, one of the founders of Pittsburgh Plate Glass Company. Units in Pitcairn were distributed to the former shareholders of The Pitcairn Company.[1]

2. Pitcairn is the sole shareholder of Pitcairn Company ("Pitco"), an investment adviser formed in 1986 and registered under the Investment Advisers Act of 1940. Pitco serves as the managing general partner of Pitcairn. Pitcairn also has four individual general partners, each of whom is a member of the Pitcairn family. In addition, Pitco serves as the general partner of Moreland, a Pennsylvania limited partnership that owns undeveloped land in and near the Borough of Bryn Athyn, Pennsylvania (where a large number of Pitcairn family members reside), and One Place L. P. ("One Place"), a Pennsylvania limited partnership that owns the land and building in which the offices of Pitcairn, Pitco, and Pitcairn Trust Company ("PTC") (a Pennsylvania chartered trust company formed as a subsidiary of Pitco in 1987 to provide trust and related services to the Pitcairn family and other high net worth individuals) are situated.[2]

3. As a result of general change in the Pitcairn family and divergence of points of view as to investment philosophy, among other things, it became apparent in the early 1990s that a separation of family members from the family partnerships would occur. Consequently, in February 1993, the board of directors of Pitco asked its management to recommend a plan for a buy-out of the interests of certain Pitcairn family members in certain family assets. This recommendation, through arms' length negotiations, resulted in the proposed Redemption and Related Transaction.

4. The series of transactions contemplated by the Redemption and the Related Transaction are as follows:

a. Four individuals formed Johnstone, a Pennsylvania limited partnership, for the purpose of receiving, with the intent to liquidate, their and other Pitcairn family members' (collectively, the "Separating Members") limited partnership interests in Pitcairn, Moreland, and One Place. The Separating Members, together with their spouses and related trusts, are no longer clients of PTC and have contributed their limited partnership interests in Pitcairn, Moreland, and One Place to Johnstone in exchange for limited partnership interests in Johnstone.[3] Accordingly, Johnstone has become a substitute limited partner in Pitcairn, Moreland, and One Place, owning approximately 39%, 38.6%, and 39%, respectively, of the limited partnership units. Assets received by Johnstone in the Redemption and the Related Transaction are intended to be held by Johnstone only until they can be liquidated and the proceeds distributed to the Separating Members.

b. In the Redemption, Johnstone will transfer to Pitcairn all of the Units owned by Johnstone, and Pitcairn will transfer to Johnstone approximately 39% of its total assets (consisting of certain limited partnership interests, a non-recourse note of Moreland and a related mortgage, and cash) in redemption of the Units.

c. In the Related Transaction, Johnstone will transfer to Moreland all the limited partnership interests in Moreland owned by Johnstone, and Moreland will transfer to Johnstone approximately 38.6% of its total assets (consisting of certain real estate, a mortgage, and cash) in redemption of these limited partnership interests.[4]

d. Johnstone will transfer to One Place all the limited partnership interests in One Place owned by Johnstone, and One Place will transfer cash in an amount equal to approximately 39% of the value of its total assets to Johnstone in redemption of these limited partnership interests.

e. Pitcairn has completed, in escrow, a private offering, in reliance on section 4(2) of the Securities Act of 1993 (the "Securities Act") and rules 502 and 506 of Regulation D under the Securities Act, and has received binding subscription agreements for $5,337,000 from a small group of qualified investors for additional Units. The proceeds of this offering will be used to replace capital used in the Redemption and to provide for additional working capital.

5. The redemptions of the Johnstone-owned limited partnership interests of Pitcairn, Moreland, and One Place will be effected at values that have been agreed upon by representatives of those Pitcairn family members who, with their spouses and related trusts, wish to continue to be clients of PTC and owners of Pitcairn (the "Remaindermen") and by representatives of the separating Members in arms' length negotiations conducted during 1993. A committee (the "Sellers' Committee") was formed to negotiate the value of the Separating Members' interests; the potential group of family members willing to buy the interests of the Separating Members also formed a committee (the "Buyers' Committee). All family members were informed about the committees and were urged to contact them about buying or selling their interests.

6. Various methods were used to determine the value of the underlying assets held by Pitcairn, Moreland, and One Place.[5]

a. The assets of Pitcairn were valued on the basis of the methodologies utilized by its general partners in arriving at fair values for purposes of periodically computing the net asset value of the partnership. These methodologies included (i) valuation of limited partnership interests by the general partners of such partnerships; (ii) valuation of the stock of Pitco by an independent appraiser, adjusted to reflect subsequent business changes; (iii) valuation of land based upon values in a joint development agreement and the best judgment of the Pitcairn general partners, taking all relevant factors into consideration; (iv) valuation of a limited partnership interest in a tree nursery based upon the catalogue price of the tree stock less harvest and distribution costs; and (v) valuation of a limited partnership interest in an office building based upon discontinued cash flows from the rental stream generated by the property.

b. The land owned by Moreland was valued by Pitco as the general partner of Moreland on the basis of values assigned in a 1993 market research study by an independent firm familiar with the land and transactions in the vicinity of the Moreland land. This study was commissioned by the Real Estate Advisory Committee of the Pitco board, a committee comprised of both Remaindermen and Separating Members. The recommended values assigned in the study, together with data from an appraisal conducted in 1989 and from comparable sales (where appropriate), formed the basis of the values assigned by the parties.

c. With respect to One Place, Pitco obtained an independent appraisal of the land and office building (the primary asset of One Place), and the Sellers' Committee obtained its own independent appraisal. The board of directors of Pitco subsequently engaged an outside real estate consultant who, in June, 1993, reviewed the independent appraisal obtained by Pitco and validated the assumptions used by the appraiser.

7. On the evening of December 13, 1993, representatives from the Buyers' Committee, the Sellers' Committee, and Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) met to allocate the assets between the Remaindermen and the Separating Members equitably. These negotiations, which were conducted by persons who were fully aware of the attributes, both positive and negative, of each of the assets of Pitcairn, Moreland, and One Place, culminated in the Agreement in Principle (the "Agreement"). The Agreement provides for the allocation of assets and further provides that the costs of forming Johnstone will be borne by Johnstone and that all other transaction costs will be shared by Pitcairn (including certain affiliated entities) and Johnstone on a *pro rata* basis. Since it is anticipated that Johnstone will sell Pitcairn approximately 39% of the Units and buy approximately 39% of Pitcairn's assets, it would bear that percentage of the transaction costs (exclusive of any income taxes that each party will bear separately and of any additional legal expenses incurred by Johnstone) through the reduction in cash to be paid by Pitcairn to Johnstone at the closing of the Redemption. The Agreement was approved by Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) and by individual representatives of the Remaindermen and Separating Members who, together, represented over 86% of the outstanding Units. The Remaindermen who did not sign the Agreement consisted of 94 "persons" who own approximately 13.9% of the Units.[6] These unitholders were informed, however, of the transactions contemplated by the Agreement (including the proposed allocation of assets), and have not objected.

8. There has been no vote of unitholders with respect to the Redemption and the Related Transaction inasmuch as such a vote is not required under the Pitcairn partnership agreement. However, a majority of the respective general partners of Pitcairn and Johnstone have approved the Redemption and the Related Transaction as being reasonable

[1] There are 576,124 units of general and limited partnership interests of Pitcairn issued and outstanding, approximately 70% of which are held in irrevocable trusts for members of the Pitcairn family, and approximately 30% of which are owned directly by family members and their churches. The units are registered under section 12 of the Securities Exchange Act of 1934, but there is no market for the units, and there are generally fewer than ten transfers per year. These transfers typically arise from terminating trusts or estates, interfamily gifts, or similar transactions involving one or more members of the Pitcairn family or trusts for their benefit.

[2] Pitcairn was the sole initial limited partner of Moreland and One Place; it spun off its interests in the partnerships to the owners of its Units in 1992. As a result, ownership of Pitcairn, Moreland, and One Place is nearly identical.

[3] The only connection of the Separating Members with the remaining unitholders after consummation of the transactions described herein will be that two of the Separating Members will serve as trustees of trusts holding Units. These two Separating Members will continue to serve as trustees at the request of the beneficiaries of those trusts, notwithstanding their status as Separating Members.

[4] Prior to the redemption of the Moreland units owned by Johnstone, Pitcairn will lend to Moreland a total of $3,450,000 in exchange for two non-recourse notes. The first note, in the amount of $2,250,000, will be secured by the portion of Moreland's real estate that ultimately will be transferred to Johnstone in the Related Transaction. The second note, in the amount of $1,200,000, will be secured by a different parcel of real estate, which will remain the property of Moreland. Using a portion of the proceeds of the first note, Moreland will buy newly issued limited partnership interests in One Place for cash, enabling One Place to redeem its units owned by Johnstone for cash. In redeeming its units from Johnstone, Moreland will transfer the mortgage liability on the first parcel of real estate to Johnstone along with the real estate itself. When Pitcairn redeems its Units from Johnstone, Pitcairn will transfer to Johnstone the note secured by the mortgage on the real estate Johnstone received from Moreland, and Johnstone will be able to extinguish the mortgage and cancel the note.

[5] Lists of all assets held by Pitcairn and Moreland and information as to their allocation are contained in the application.

[6] Of these "persons" 61 are individuals owning approximately 10% of the Units; 4 are revocable trusts owning approximately 4% of the Units; 20 are irrevocable trusts (out of a total of 295 trusts that are Remaindermen) owning approximately .2%; one is a guardian account owning approximately .05% of the Units; and 8 are charitable organizations owning approximately 3% of the Units.

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and fair to the unitholders, as not involving any overreaching of Pitcairn or its unitholders, and as serving the broader family purpose by permitting a complete separation of the Separating Members. Applicants state that, with one exception, no person who participated in the negotiations on behalf of Pitco or the Remaindermen have interests on both sides of the Redemption and the Related Transaction. One individual partner of Pitcairn, who has agreed to resign as such, has been aligned with the Separating Members and is a general and limited partner of Johnstone. Applicants represent that his alignment with the Separating Members was recognized, and he was not a member of the Sellers' Committee, nor did he participate in the negotiations except as a facilitator for the December 1993 meetings. He officially abstained from voting either on behalf of Pitcairn or Johnstone with respect to the Redemption and the Related Transaction, but has expressed his support for the transactions.

Applicants' Legal Conclusions

1. Section 23(c), made applicable to Pitcairn as a BDC by section 63 of the Act, generally prohibits BDCs from purchasing their securities except in the open market or pursuant to a tender offer. Absent such circumstances, section 23(c)(3) allows the SEC to issue an order for the protection of investors to ensure that such purchases are made in a way that does not unfairly discriminate against any holders of the class of securities to be purchased.

2. Applicants concede that the Redemption does not fall within the exceptions specified in section 23(c); consequently, Pitcairn must seek exemptive relief under section 23(c)(3). Applicants submit that the Redemption does not unfairly discriminate against either the Remaindermen or the Separating Members, and that the liquidity provided to Johnstone in the Redemption and the Related Transaction is not inappropriate under the circumstances, given the fairness of the values and the objectives of the Remaindermen to use the services of Pitco and PTC as a family office.

3. Section 57(a)(2), in conjunction with section 57(b), prohibits certain persons related to a BDC from purchasing any security or other property (with the exception of securities of which the seller is the issuer) from the BDC or a company controlled by the BDC. Section 57(b) provides, in part, that the persons affected by section 57(a) include any person that directly or indirectly controls the BDC. Section 2(a)(9) defines control as the power to exercise a controlling influence over the management or policies of a company, and establishes a rebuttable presumption that a person owning more than 25% of the voting securities of a company controls that company. Since Johnstone, which owns approximately 39% of the Units, could be deemed to control Pitcairn, section 57(a)(2) would prohibit the Redemption absent an exemption. As Moreland may be deemed to be controlled by Pitcairn by virtue of the fact that Pitco (a wholly-owned subsidiary of Pitcairn) is its sole general partner, section 57(a)(2) also would prohibit Johnstone from buying assets from Moreland in the Related Transaction.

4. Section 57(c) provides that a person may file an application for an exemption from the provisions of section 57(a) (1) through (3), and that the SEC shall exempt a proposed transaction from the prohibitions of section 57(a)(2) if: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of anyone involved; (b) the proposed transaction is consistent with the policy of the BDC as set forth in its filings with the SEC under the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act"), and its reports to shareholders or partners; and (c) the proposed transaction is consistent with the general purpose of the Act.

5. Applicants submit that the Redemption and the Related Transaction meet the standards set forth in section 57(c) of the Act because: (a) The terms of the proposed purchase of assets by Johnstone in the Redemption and Related Transaction, including the consideration to be paid, will be reasonable and fair, and no individual will derive any personal financial gain from the proposed transaction other than benefits that will be realized by all unitholders of Pitcairn on a *pro rata* basis; (b) the proposed Redemption is consistent with Pitcairn's policy as set forth in section 4.13 of the partnership agreement, which specifically contemplates the withdrawal of limited partners on terms approved by the general partners of Pitcairn (which approval has been obtained), and also is consistent with Pitcairn's policy as recited in its filings with the SEC under the Exchange Act and its reports to unitholders; (c) the Redemption and the Related Transaction are both consistent with the general purposes of the Act; and (d) given the objective of the Remaindermen to continue to use Pitco and PTC as a family office for the management of their financial affairs and the concomitant desire of the Separating Members to terminate that association, it would be impossible to effect the Redemption by exchanging a portion of each of Pitcairn's assets for the Units held by Johnstone on a *pro rata* basis or by selling the Units held by Johnstone to a third party because no such market exists.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8543 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26264]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 31, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 24, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6458)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American

Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 9(a), 10 and 12(d) of the Act and Rule 44(b) thereunder.

By order dated June 11, 1980 (HCAR No. 21618), I&M was authorized to dispose of and acquire certain pollution control systems ("Project") at its Rockport Generating Station ("Plant"), under construction near the City of Rockport in Spencer County, Indiana ("City") to comply with Indiana environmental control standards. I&M's disposition and acquisition was undertaken under an Agreement of Sale with the City, dated June 1, 1980, and in connection with the issuance by the City of pollution control revenue bonds in the amount of $40 million to finance the project (HCAR No. 21642, June 25, 1980). This represented a portion of I&M's then estimated cost of $150 million for its 50% obligation for the Project shared with AEP Generating Company.

By order dated December 4, 1984 (HCAR No. 23514), the Commission authorized I&M to enter another Agreement of Sale with the City providing for the disposition and acquisition of the Project in connection with the issuance by the City of $110 million principal amount of pollution control bonds ("Series 1984A Bonds") to finance the Project (HCAR No. 23528, December 12, 1984). By order dated August 2, 1985 (HCAR No. 23781), the Commission authorized I&M to enter into a First Amendment to Agreement of Sale with the City providing for the issuance and sale of three additional series of pollution control bonds ("Series 1985 Bonds"), each in the principal amount of $50 million with a maturity of August 1, 2014. The second series of the Series 1985 Bonds consists of adjustable rate bonds bearing interest at a rate which is adjusted every five years based upon an index and payable semiannually ("Adjustable Rate Bonds").

I&M now proposes to cause the City to issue and sell a series of refunding bonds ("Refunding Bonds") in the aggregate principal amount of $50 million with an interest rate adjustment, as determined by I&M. The proceeds of Refunding Bonds will be used to redeem the Adjustable Rate Bonds. I&M could convert the interest rate on the Refunding Bonds between the various modes from changing daily to fixed for a term up to maturity. The Refunding Bonds will be issued under and secured by the Indenture and a sixth supplemental indenture and will mature at a date or dates not more than forty years from the date of issuance.

In connection with the issuance of the Refunding Bonds, I&M may enter into one or more interest rate hedging arrangements, including an interest rate swap, cap, collar, or similar agreement (collectively "Hedging Facility") with a bank or other financial institution ("Counterparty"). The Hedging Facility will be an interest rate conversion agreement designed to allow I&M to actively manage and limit its exposure to variable interest rates or to lower its overall borrowing cost on any fixed rate Refunding Bond. The Hedging Facility will set forth the specific terms upon which I&M will agree to pay the Counterparty payments and/or fees for limiting its exposure to interest rates or lowering its fixed rate borrowing cost, and the other terms and conditions of any rights or obligations thereunder. I&M may provide credit enhancement for the Refunding Bonds in the form of a letter of credit, surety bond or bond insurance and pay any related fees.

West Penn Power Company (70–6505)

West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act.

By order dated May 3, 1985 (HCAR No. 23679), West Penn was authorized, among other things, to issue long-term promissory notes in connection with the issuance of pollution control revenue bonds series E ("Series E Bonds") by the Washington County Development Authority ("County") up to an aggregate principal amount of $18 million. The series E Bonds in the aggregate principal amount of $15.4 million were issued by the County, maturing April 1, 2014, along with West Penn's corresponding promissory note for $15.4 million. The proceeds of the Series E Bonds were applied by West Penn to the payment at maturity of the series D bonds and to the costs of issuance.

Due to changes in interest rates, the County proposes to refund the Series E Bonds by issuing a new series of pollution control revenue bonds ("Series G Bonds"). The County proposes to issue $15.4 million aggregate principal amount of Series G Bonds maturing on the corresponding day in the year 2014 that they are issued in 1995. The proceeds from the sale of the Series G Bonds will be used to refund Series E Bonds. The Series G Bonds will be issued under a supplemental trust indenture with a corporate trustee ("Trustee"), approved by West Penn, and will be sold at such time, interest rate, maturity and price as approved by West Penn pursuant to market conditions.

West Penn proposes to issue concurrently with the issuance of the Series G Bonds, its non-negotiable Pollution Control Note ("Note"), at any time on or before December 31, 1997, with terms and conditions corresponding to the Series G Bonds in respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Market conditions prevailing at the time of the offering may warrant the issuance of the Series G Bonds with floating interest rates during all or a portion of the stated life of the Series G Bonds. However, West Penn does not anticipate that to be the case. West Penn proposes that should it determine to use a floating interest rate, it will notify the Commission.

The Note will be secured by a second lien on the equipment and facilities at West Penn's Mitchell Power Station in Washington County ("Facilities") and certain other properties, pursuant to the Mortgage and Security Agreement delivered by West Penn to the Trustee creating a mortgage security interest in the Facilities and certain other property. Payment on the Note will be made to the Trustee under and indenture and applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series G Bonds as they become due. West Penn proposes to pay any Trustees' fees or other expenses incurred by the County.

American Electric Power Company, Inc., et al. (70–7022)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and AEP Generating Company ("Generating"), an electric public-utility subsidiary of AEP, both of 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration filed under sections 9(a), 10, 12(b) and 12(d) of the Act and rules 44 and 45 thereunder.

By order dated August 17, 1964 (HCAR No. 23399), Generating acquired a ½ undivided interest in the Rockport Generating Station ("Plant") with Indiana & Michigan Electric Company, now Indiana Michigan Power Company ("I&M"), also a subsidiary of AEP, including responsibility for 50% of the costs associated with acquiring certain

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air and water pollution control devices ("Project").

By order dated October 4, 1984 (HCAR No. 23445) ("October 1984 Order"), Generating was authorized to enter into an Agreement of Sale ("Agreement") with the City of Rockport, Indiana ("City") providing for the construction and installation of the Project by the City, and the issuance by the City of pollution control revenue bonds ("Series 1984 A Bonds") to finance Generating's share of the Project. The October 1984 Order authorized the issuance of the Series 1984 A Bonds in a principal amount of $150 million.

The October 1984 Order contemplated that the proceeds of the sale of the Series 1984 A Bonds would be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as trustee under an Indenture of Trust ("Indenture") dated as of October 1, 1984 between the City and Lincoln National Bank & Trust Company (now Norwest Bank Fort Wayne, N.A.), as trustee ("Trustee") between the City and such Trustee, pursuant to which the Series 1984 A Bonds are to be issued and secured. The October 1984 Order also contemplated that such proceeds would be applied to payment of the cost of construction of the project. The Agreement also provided for the sale of the Project to Generating, the payment by Generating of the purchase price of the Project, and the assignment and pledge to the Trustee of the City's interest in, and of the monies receivable by the City under the Agreement.

The Agreement also provided that each installment of the purchase price for the Project payable by Generating would be in such amount (together with other monies held by the Trustee under the Indenture for that purpose) as would enable the City to pay, when due and payable, (i) the interest of the Series 1984 A Bonds, any additional bonds and any refunding bonds, (ii) the principal amount of the Series 1984 A Bonds, any additional bonds and any refunding bonds payable at the time of their respective stated maturities and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series 1984 A Bonds, any additional Bonds or any refunding bonds. In addition, the October 1984 Order reserved jurisdiction "with respect to the fees and commissions to be incurred by [Generating] and AEP in connection with this transaction, and the terms of sale under the Agreement."

By order dated September 6, 1985 (HCAR No. 23821) ("1985 Order"), Generating was authorized to enter into a First Amendment to Agreement of Sale ("1985 Agreement") with the City providing for the issuance and sale of three additional series of pollution control bonds (collectively, "Series 1985 Bonds"), each in the principal amount of $55 million with a maturity of September 1, 2014. One series of the Series 1985 Bonds was issued with a variable interest rate ("Variable Rate Bonds") the rate of which was based upon an index and not to exceed 12% per annum, determined weekly and payable monthly. A second series of the Series 1985 Bonds was issued with the interest payable semi-annually at a rate which will be adjusted every five years based upon an index ("Adjustable Bonds"). A third series of the Series 1985 Bonds was issued with the interest rate fixed at 9⅜% per annum, payable semi-annually ("Fixed Rate Bonds"), and these Fixed Rate Bonds were issued subject to optional redemption following an initial period not to exceed ten years. The proceeds of the Series 1985 Bonds were used to cover a portion of the cost of construction of the Project and to refund the outstanding short-term Series 1984 A Bonds in the principal amount of $150 million. The 1985 Order included no reservation of jurisdiction.

AEP and Generating now propose that Generating enter into a Second Amendment to Agreement of Sale ("1995 Agreement") with the City whereby the City will issue and sell one or more additional series of Pollution Control Revenue Refunding Bonds ("Refunding Bonds") in the aggregate principal amount of up to $110 million with an interest rate adjustment (as determined by Generating). Generating could convert the interest rate on the Refunding Bonds between the various modes from changing daily to fixed for a term up to maturity. It is stated that the proceeds of such Refunding Bonds will be used to redeem the Fixed Rate Bonds and the Adjustable Bonds.

In connection with the issuance of the Refunding Bonds, Generating proposes to enter into one ore more interest rate hedging arrangements (including an interest rate swap, cap, collar or similar agreement) ("Hedging Facility") with a bank or other financial institution ("Counterparty"). The Hedging Facility will be an interest rate conversion agreement designed to allow Generating to actively manage and limit its exposure to variable interest rates or to lower its overall borrowing cost on any fixed rate Refunding Bond. The Hedging Facility will set forth the specific terms upon which Generating will agree to pay the Counterparty payments and fees for limiting its exposure to interest rates or lowering its fixed rate borrowing cost, and the other terms and conditions of any rights or obligations thereunder. The terms of each Hedging Facility would be negotiated by Generating with the respective Counterparty and would be the most favorable terms that can be negotiated by Generating.

The Refunding Bonds will be issued pursuant to the Indenture between the City and the Trustee (now Norwest Bank Fort Wayne, N.A.), as supplemented by a Fifth Supplemental Indenture of Trust between the City and the Trustee ("Supplemental Indenture") and the 1995 Agreement. Pursuant to the Indenture and the Fifth Supplemental Indenture, the proceeds of the sale of the Refunding Bonds will be deposited with the Trustee and applied by the Trustee, together with other funds supplied by Generating, to the redemption of: (i) The Fixed Rate Bonds at a price of 102% of the principal amount thereof; and (ii) the Adjustable Bonds at a price equal to their principal amount.

While Generating will not be a party to the underwriting arrangements for the Refunding Bonds, the 1995 Agreement provides that the Refunding Bonds shall have such terms as shall be specified by Generating. Generating understands that interest on the Refunding Bonds will be exempt from Federal income taxation under the provisions of section 103 of the Internal Revenue Code of 1986, as amended (except for interest on any Refunding Bond during a period in which it is held by a person who is a substantial user of the Project or a related person).

It is expected that the Refunding Bonds will mature at a date or dates not more than 40 years from the date of their issuance. The Refunding Bonds may be subject to mandatory or optional redemption under circumstances and terms specified at the time of pricing or change in interest rate. In addition, the Refunding Bonds may not, if it is deemed advisable, be redeemable at the option of the city in whole or in part at ant time for a period to be determined at the time of pricing or change in interest rate of the Refunding Bonds. It is stated that no Refunding Bond may bear interest at an initial interest rate higher than 9%.

It is stated that no series of Refunding Bonds will be issued at rates in excess of those generally obtained at the time of pricing for sales of substantially similar tax-exempt bonds (having the same maturity, issued by entities of comparable credit quality and having similar terms, conditions and features).

In connection with an adjustment in the interest rate, the Refunding Bonds may be tendered, or may be deemed to be tendered, to the Trustee, by the owners thereof. Generating intends to remarket any Refunding Bonds so tendered through a remarketing agent, and may have a Liquidity Provider back up Generating's obligations. The Refunding Bonds will be subject to redemption at the direction of Generating under certain circumstances.

AEP and Generating also propose that Generating provide some form of credit enhancement for the Refunding Bonds, a letter of credit, surety bond or bond insurance, and Generating may pay a fee in connection therewith. In addition, Generating may provide for a Liquidity Provider for interest payments, remarketing, redemption or maturity of the Refunding Bonds. Any letter of credit would not exceed $130 million.

The type of credit enhancement may change while the Refunding Bonds are outstanding. Unreimbursed drawings under the letter of credit would bear interest at not more than 2% above the bank's prime rate. Generating may pay an annual or up-front fee for the credit enhancement which would not exceed 1.25% annually of the face amount.

In addition, AEP and Generating propose that AEP guarantee payment of the principal of, premium, if any, and interest on the Refunding Bonds pursuant to a guaranty agreement ("Guaranty") to be executed and delivered to the Trustee and the City. Under a Guaranty, AEP would unconditionally guarantee the obligations of Generating under the 1995 Agreement.

The Refunding Bonds could be payable from funds drawn under an irrevocable letter of credit, bond insurance policy, Standby Bond Purchase Agreement or other comparable obligation of a third party.

Generating will not agree to the issuance of any Refunding Bond by the City if: (i) The stated maturity of any such Bond shall be more than 40 years; (ii) the discount from the initial public offering price of any such Bond shall exceed 5% of the principal amount thereof; or (iii) the initial public offering price shall be less than 95% of the principal amount thereof. Generating will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on a after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Refunding Bonds to be issued.

AEP and Generating state that the transactions described above will be consummated no later than December 31, 1996.

EUA Energy Investment Corporation (70–8585)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts, 02107, a wholly owned subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12 and 13(b) of the Act and rules 43, 45, 87, 90 and 91 thereunder.

EEIC proposes to incorporate a Massachusetts business corporation ("EEIC Subsidiary") to be the general partner of a proposed joint venture limited partnership to be formed under Massachusetts law ("Home & Family"). EEIC Subsidiary, through Home & Family, intends to develop and commercialize, a home environmental audit and environmental remediation business including, but not limited to, home environmental testing of soil, air, water and substances found in or about the home and the remediation of home environmental problems (the "Business Opportunity").

EEIC, together with Home & Family Limited Partnership, a Massachusetts limited partnership ("H&F LP"), is developing certain trademarks, packaging designs, marketing materials, copyrighted materials, business plans and other materials relating to the Business Opportunity ("Proprietary Materials"). EEIC owns all right, title and interest in and to the Proprietary Materials. EEIC proposes to contribute such Proprietary Materials to EEIC Subsidiary in exchange for capital stock in EEIC Subsidiary. No other person or entity will own stock in EEIC Subsidiary.

Upon (i) EEIC's receipt of Commission authorization, and (ii) EEIC's determination to proceed with the Business Opportunity following successful completion of a research, development and test marketing pilot program, H&F LP will contribute the name "Home & Family," its intellectual property and other proprietary materials to Home & Family in exchange for a limited partner interest therein. EEIC, proposes to then transfer the Proprietary Materials, with an agreed upon value of $2,100,000, to Home & Family and to provide certain financing (described below) to Home & Family in exchange for a general partner interest therein.

The initial authorized capitalization of EEIC Subsidiary shall be 200,000 shares of common stock, $.01 per value per share, and EEIC will be issued a portion of such common stock in exchange for its contribution to EEIC Subsidiary of the Proprietary Materials. References to EEIC hereinafter shall mean EEIC or EEIC Subsidiary, where the context so allows.

EEIC proposes to make additional capital contributions to Home & Family in an aggregate amount of up to $3,900,000 from time to time through December 31, 1997, in exchange for which EEIC's capital interest in Home & Family will increase correspondingly. In addition, from time to time through December 31, 1997, EEIC also proposes, at its discretion, to provide Home & Family with a working capital line of credit with a maximum availability of $3,000,000, at an annual interest rate equal to the base lending rate of The First National Bank of Boston, N.A., plus 2 percent, for a term of three years. All such loans and advances will be secured by all Home & Family assets, and will be used by Home & Family exclusively for its working capital needs.

EEIC also proposes that any activities that it needs to perform under certain agreements relating to the proposed transaction would be accomplished by employees of EUA Service Corporation ("EUASC"). EUASC may provide management services including but not limited to financial, accounting, environmental, data processing and records management services, as appropriate, to Home & Family. All such services would be rendered at cost pursuant to the standard service contract entered into between EUASC and the other EUA system companies. No employees of the EUA system's retail electric utilities will be assigned to any activities involving Home & Family.

The East Ohio Gas Company (70–8601)

The East Ohio Gas Company ("East Ohio"), 1717 East Ninth Street, Cleveland, Ohio 44101–0759, a gas public-utility subsidiary of Consolidated Natural Gas Company ("CNG"), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and CNG have filed a declaration under section 12(d) of the Act and rule 44 thereunder.

East Ohio and CNG propose that East Ohio sell certain utility assets ("Assets"), including 378 production wells, connecting lines, leases, access rights, contract rights and records associated with the wells, to Belden & Blake Corporation ("Belden & Blake") for $6.5 million. Belden & Blake is a

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nonassociated oil and gas drilling and exploration company.

East Ohio and CNG state that the sale of the Assets is part of East Ohio's contribution towards the current effort of the CNG system to cut costs and increase profits. East Ohio and CNG additionally state that, as utility assets, the Assets provide less than ½ of 1% of East Ohio's total gas supply. Furthermore, by selling the Assets, East Ohio will save about $900,000 a year in maintenance costs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8542 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8499]

Massachusetts (and Contiguous Counties in Connecticut); Declaration of Disaster Loan Area

Hampden County and the contiguous counties of Berkshire, Hampshire, and Worcester in the Commonwealth of Massachusetts and Hartford, Litchfield, and Tolland in the State of Connecticut constitute an economic injury disaster area as a result of damages caused by a fire which occurred on January 17, 1995 in the town of Palmer, Massachusetts. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 3, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Connecticut is 850000.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 3, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–8574 Filed 4–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on March 10, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Subpoena-Disability Hearing—0960–0428. The information on form SSA–1272 is used by the Social Security Administration to subpoena evidence or testimony needed in disability hearings. The respondents are comprised of Federal and State disability determinations services officers.
Number of Respondents: 36
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 18 hours

2. Agency/Employer Questionnaire—0960–0470. The information on form SSA–4163 is used by the Social Security Administration to determine the need for and the amount of any offset of benefits for certain individuals receiving government pensions and also receiving or applying for Social Security benefits. The respondents are State governments or political subdivisions thereof.
Number of Respondents: 1,000
Frequency of Response: 1
Average Burden Per Response: 3 minutes
Estimated Annual Burden: 50 hours

3. Response to Notice of Revised Determination—0960–0347. The information on form SSA–765 is used by claimants to request a disability hearing and/or to submit additional information before a revised reconsideration determination is issued. The respondents are claimants for disability insurance benefits.
Number of Respondents: 1,925
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 963 hours

4. Notification of Projected Completion Date—0960–NEW. The form SSA–891 is used by the Social Security Administration and the State disability determination services to notify disability hearings units (DHU) that a specific hearing case will not be completed and forwarded to the DHU as originally scheduled. The respondents are State disability determination services staffs.
Number of Respondents: 20
Frequency of Response: 1
Average Burden Per Response: 5 minutes
mated Annual Burden: 2 hours

5. Student's Statement Regarding Resumption of School Attendance—0960–0143. The information on form SSA–1386 is used by the Social Security Administration to verify full-time attendance at educational institutions and to determine eligibility for student benefits. The respondents are student beneficiaries currently receiving SSA benefits.
Number of Respondents: 133,000
Frequency of Response: 1
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 13,300 hours

6. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records—0960–0293. The information on form SSA–4641 is used by the Social Security Administration to determine whether an applicant meets the resources eligibility requirements for Supplemental Security Income and Aid to Families with Dependent Children (AFDC). In the AFDC program, this information is used only as part of the quality review of the program. The respondents are financial institutions.
Number of Respondents: 500,000
Frequency of Response: 1
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 50,000 hours

7. Statement of Household Expenses and Contributions—0960–0456. The information on form SSA–8011 is used by the Social Security Administration (SSA) to obtain or corroborate the household expenses and contributions the claimant/recipient makes toward the expenses. SSA needs the information to correctly determine the amount of unearned income received by the claimant/recipient in order to determine the individual's eligibility and payment amount under the SSI program. The respondents are household members of SSI claimants/recipients.
Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 100,000 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: April 3, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–8752 Filed 4–6–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–2–9 established the currently effective two-month SFFL applicable through March 31, 1995.

We will, however, no longer publish a SFFL for U.S.-Canada markets. Under the terms of the new Air Transport Agreement between the United States and Canada, effective February 24, 1995, transborder fares are no longer subject to unilateral disapproval by either government, and routine tariff-filing requirements are eliminated. Thus, there is no longer a need to compute a SFFL for the Canadian Entity.

In establishing the SFFL for the two-month period beginning April 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–4–2 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4249
Latin America	1.4360
Pacific	1.6602

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: April 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8549 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 95–2–8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning April 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–4–1 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.2505
Western Hemisphere	1.1483
Pacific	1.2965

For further information contact: Keith A. Shangraw (202) 366–2439.

Dated: April 3, 1995.

By the Department of Transportation.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8550 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Application of Western Pacific Airlines, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 95–4–4, Docket 49941).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Western Pacific Airlines, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 10, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket 49941 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: April 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8626 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Knox County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Knoxville, Knox County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Planning, Environment and Research Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Metro Center, Nashville, Tennessee 37228, telephone (615) 736–7106.

SUPPLEMENTAL INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) and section 4(f) Statement on a proposal to improve a section of Interstate 40 from Interstate 275 to East of the Broadway Interchange in Knoxville, Tennessee. The proposed project is considered necessary to improve the operation and safety of this section of the Interstate.

Alternatives to be considered include: (1) Taking no action; (2) five build alternatives consisting of different design concept; (3) other alternatives

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that may arise from public input; and (4) alternatives that avoid use of the historic properties located in the area will be studied. The impacts of the project on the Fourth and Gill Historic District will be evaluated.

Initial Coordination letters describing the proposed action and soliciting comments have been sent to appropriate federal, state and local agencies. A public hearing will be held. Public notice will be given of the time and place of this hearing. The draft environmental impact statement (EIS) will be available for public and agency review and comment. Comments from the initial coordination letters and a public meeting will be considered in determining the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and Local intergovernmental review of Federal and federally assisted programs and projects apply to this program).

Issued on: March 31, 1995.

Wright B. Aldridge, Jr.,

Planning, Environment and Research Engineer, Tennessee Division, Nashville, Tennessee.

[FR Doc. 95–8528 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–23; Notice 1]

Receipt of Petition for Decision That Nonconforming 1992 Kenworth T800 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Kenworth T800 trucks are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Kenworth T800 truck that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is May 8, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automative Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1992 Kenworth T800 trucks manufactured by Kenworth Mexicana, SA of Mexicali, Mexico, are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1992 Kenworth T800 that was manufactured for sale in the United States and that was certified by its manufacturer, PACCAR of Bellevue, Washington (the corporate parent of Kenworth Mexicana), as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Kenworth T800 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Kenworth T800, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Kenworth T800 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 121 *Air Brake Systems*, 124 *Accelerator Control Systems*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Inscription of the word "Brake" on the brake failure indicator lamp.

Standard No. 115 *Vehicle Identification Number*: Installation of the required certification label.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*: Installation of a tire information placard.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 3, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–8551 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–22; Notice 1]

Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 300E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision, that a 1992 Mercedes-Benz 300E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 8, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm.).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York ("Liphardt") (Registered Importer 93–016) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300E (Model ID 124.031) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1992 Mercedes-Benz 300E that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300E to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300E is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300E complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlight assemblies and mounting hardware; (b) installation of U.S.-model taillamp assemblies and rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 228 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of knee bolsters and mounting hardware to

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augment the vehicle's air bag based passive restraint system, which has the identical part number to that found on the U.S. certified 1992 Mercedes-Benz 300E.

Standard No. 214 *Side Impact Protect:* Installation of reinforcement tubes.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a) (1) (A) and (b) (1); 49 CFR 593.8; delegations of authority at 49 CFR 1.59 and 501.8.

Issued on: April 3, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–8552 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

North-South Center External Research Grant Program

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency's Bureau of Education and Cultural Affairs invites applications from eligible institutions under the auspices of the North-South Center's 1995 Research Grant Program. The North-South Center is located at the University of Miami and is funded largely through a Congressional appropriation managed by the United States Information Agency's Bureau of Educational and Cultural Affairs. The Center's Research Grant Programs support select research activities which are of importance to the people and governments of the Western Hemisphere. Through grant awards, the Center brings together human and technical resources to address major themes relevant to policy-making in the region.

Overall grant-making authority for this program is contained in the grant awarded to the North-South Center by the United States Information Agency. The mission of the North-South Center is to promote better relations and serve as a people of the hemisphere.

The purposes of the External Research Grant Program are to support scholarship in various fields of research among institutions throughout the hemisphere, stimulate discussion of policy-relevant issues, and promote scholarship from which policy solutions may derive. Since 1991, approximately 150 External Research Grants have been awarded involving over 300 institutions throughout the hemisphere.

Short-term Field Research Grant Program on Migration and Refugee Issues: In response to increasing migration pressures in the region, the North-South Center seeks to further the state of understanding of the social, political, and economic impulses for and consequences of migration. Research initiatives concerning this theme can be investigated from a variety of disciplinary perspectives from within the social sciences and other relevant fields. Research proposals will be accepted from various disciplines to conduct research projects or field research which investigates contemporary issues in relation to themes such as the following: The formation, functioning, and consequences of transnational communities; the processes of return migration resulting from political reconciliation and democratization; the consequences of neoliberal economic reforms on international migration and return migration; new migratory currents within the Americas; and demographic changes brought about by migration.

ANNOUNCEMENT NAME: All communications with the North-South Center concerning this announcement should refer to the title of Research Grant Program on Migration and Refugee Issues.

DEADLINE FOR PROPOSALS: The External Research Grant Program requires that one original and nineteen (19) copies of final proposal, written in English, be received at the Office of Grant Programs, North-South Center by 5 p.m. Miami time on Friday, May 12, 1995. Please conserve paper by making copies double-sided. Documents sent by facsimile will not be accepted, nor will documents postmarked on May 12, 1995 but received on a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadlines. Project activities should begin no earlier than July 1, 1995 and should run no longer than December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Grant Programs Office where an applicant can obtain the application package, which contains submission deadlines. Draft and final proposals will be accepted only in the format requested in the application package and only until May 12, 1995. Once the RFP deadline has passed, the North-South Center will not inform the applicant on the status of his/her application—except to acknowledge its receipt—until after the Center's proposal review process has been completed.

Organizations/institutions/individuals should contact the Office of Grant Programs at the address listed below or by telephone at (305) 284–8951, facsimile (305) 284–6370, or electronic mail escott@umiami.ir.miami.edu to request a detailed application packet. Application packets include award criteria not mentioned in this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

ADDRESSES: Twenty (20) complete proposals written in English should be received by the May 12, 1995 deadline addressed to: Mary Uebersax, Director of Grant Programs, North-South Center, 1500 Monza Avenue, Coral Gables, FL 33146–3027

To ensure timely delivery, a reliable courier should be used to envoy the project proposals. The Center will not reimburse the cost of such delivery.

SUPPLEMENTARY INFORMATION: Proposals from all parts of the world, except where prohibited by U.S. law that are consistent with the mission of the North-South Center and are of sound intellectual justification will be considered. Funding will not be authorized for any private for-profit institutions, profit-oriented individuals' initiatives, projects of a proprietary nature, or for projects of a partisan political nature. The applicant should be the project's principal investigator and should have completed advanced degrees and be affiliated with an institution. Pre-doctoral scholars are eligible to compete for the Program. However, pre-doctoral scholars must currently be affiliated with an institution of higher learning and have the support of their research advisor or department chair to conduct the proposed research project. The Center and its External Grant Review Panel will not use political tests or political qualifications and will not discriminate in any manner whatsoever in selecting grantees.

Pursuant to the authorizing legislation of the United States Information Agency's Bureau of Educational and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

The recipient organization will be responsible for arrangements associated with the program. These include organization a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

Funding Limitations

The maximum award for this program is $20,000. Support will include international travel expenses, domestic transportation, limited living expenses, and research and pre-publication expenses.

The grant awards should not be used in lieu of salary or to support projects which could be funded by private foundations or government. In addition, applicants are encouraged to seek supplemental funding for projects.

Successful projects will be funded by means of a cost reimbursement subcontract agreement between the North-South Center, the University of Miami, and the applicant's institution. All current policies and requirements that govern federal research grants will be applied to the grant award.

Guidelines

The Center gives priority to projects involving the collaboration of institutions in more than one country. The Program provides funding for projects that demonstrate a clear analytical focus, a solid method to achieve research goals in a timely manner, and relevance to contemporary policy. Research activities should generate a product of enduring value such as a publication or a series of publications.

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Proposed Budget

Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The Center does not pay for indirect costs or costs that are not directly related to the specific project being funded. No support will be given for the purchase or lease of capital equipment (e.g., facsimile machines, computers), or other related infrastructural costs. Some degree of institutional support should be reflected in the proposed project budget. It is not permissible to request support in lieu of responsibilities for university course instruction.

Review Process

Grants made through the North-South Center External Research Grant Program are awarded through a competitive review process. The Grant Programs Office will acknowledge receipt of all proposals, and the Center's Executive Staff will review every proposal for eligibility, completeness, and competitiveness. Outside reviewers with expertise in a particular subject area may be called upon to provide critique on proposals. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. All eligible and complete proposals will be submitted to the Center's Grant Review Panel, comprised of a multi-disciplinary group of distinguished experts from major university centers for Latin American and Caribbean Studies as well as Latin America specialists from the non-academic international community.

Review Criteria

Applications which meet the aforementioned technical requirements will be competitively reviewed according to the following criteria:

1. *Contribution to the field of study:* Proposals should demonstrate a distinct theoretical, political, or applied academic significance to the stated subject area. The outcome of the research endeavor should be useful and applicable to the academic, government, and policy making and/or governmental sectors.

2. *Research cohesiveness and quality* Clearly defined research hypotheses, including the specific questions which will be asked through this investigation, and an explanation of the means of testing and evaluating the research objectives should be provided. A detailed research agenda and relevant work plan should demonstrate substantive rigor and a logistical capacity to implement the work plan. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

3. *Clarity and focus:* Proposals should illustrate that the research has been sufficiently developed prior to the request for funding, to ensure that its aims are clear and specific. Proposals should clearly demonstrate the process by which the applicant will meet the program's objectives and research plan.

4. *Concrete and lasting impact of the investigation:* Proposed programs should strengthen enduring mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should provide a plan for continued follow-up activity which insures that the Center's supported programs are not isolated events. Effective dissemination of the project's results should be planned to reach the widest possible and most relevant audience.

5. *Potential:* Proposals should demonstrate the potential for fostering cooperation and understanding among peoples of the region. Research output should provide clear and sound analysis of or tools for policy making.

6. *Applicant's "track record":* Applicants should demonstrate a history of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past research grants, where applicable. The Center will consider the past performance of prior grantees and the demonstrated potential of new applicants.

7. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project

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component and a final report at the conclusion. Grantees must be willing to comply with evaluation requirements of the granting institution.

9. *Cost-effectiveness:* The administrative components of grants should be kept as low as possible. All other research costs should be necessary, appropriate, and justified in the budget narrative.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private support as well as direct funding contributions (such as full-time salaries) from the home institutions.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any North-South Center or United States Information Agency representative. Explanatory information provided by USIA or the North-South Center that contradicts published language will not be binding. This RFP combined with the application packet which is obtainable by calling the North-South Center, constitutes the entire terms and conditions for application to this grant program. Issuance of the RFP does not constitute an award commitment on the part of the Center. Programs and projects must conform with the Center's requirement and guidelines outlined in the Application Packet. The Center's project and programs are subject to the availability of funds. Final awards cannot be made until funds have been made available through the U.S. Government's appropriation and contracting process and allocated and committed through internal North-South Center and University of Miami procedures.

Notification

All applicants will be notified in writing of the results of the review process. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 13, 1995.

Dell Pendergrast,

Deputy Associate Director, Education and Cultural Affairs.

[FR Doc. 95–8520 Filed 4–6–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 67

Friday, April 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:30 p.m., Thursday, April 13, 1995

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following

1 *In Re Contests of Respirable Dust Sample Alteration Citations,* and *Keystone Coal Mining Corp*, Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. (Issues include whether the judge erred in his framing of the Secretary's burden of proof and in finding that the Secretary failed to carry his burden of proving that the weight of 75 cited filters from the Urling No. 1 Mine was intentionally altered by Keystone Coal Mining Corp.)

It was determined by a unanimous vote of the Commissioners that these matters be discussed in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free

Dated: April 3, 1995

Jean H. Ellen,

Chief Docket Clerk

[FR Doc 95–8685 Filed 4–4–95; 4:22 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 12, 1995

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95–8693 Filed 4–5–95; 9:57 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., April 17, 1995

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 20, 1995, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Recommended increase in interfund transfers.

4. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 3, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–8691 Filed 4–4–95; 4:44 pm]

BILLING CODE 6760–01–M

INTERSTATE COMMERCE COMMISSION

TIME AND DATES: 10:00 a.m., Tuesday, April 18, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC–220, *The Municipality of Anchorage, AK—Notices For Rate Increases For Alaska Intermodal Motor/Water Traffic—Petition For Rulemaking.*

Ex Parte No. 346 (Sub-No. 35), *Rail General Exemption Authority—Exemption of Ferrous Recyclables.*

Docket No. 40774, *American Rail Heritage, Ltd. D/B/A Crab Orchard & Egyptian Railroad, Transportation Concepts, Inc., And The Grafton & Upton Railroad Company v CSX Transportation, Inc.*

Finance Docket No. 32127, *Brotherhood of Locomotive Engineers v Union Pacific Railroad Company and Chicago Central And Pacific Railroad Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8710 Filed 4–5–95; 11:44 am]

BILLING CODE 7035–01–P

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; (This is not a toll-free number).

Dated: March 31, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 04/07/95

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only

Bldg. 8914, Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain's headquarters, off-site use only

Bldgs. TO3202–TO3203, TO3206–TO3208, TO3211, TO3213, TO3216
Cowboy & Crusader Street
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210008
Status: Unutilized
Comment: 5310 sq. ft. each, two story wood structure, most recent use—barracks, presence of asbestos, off-site use only

Bldg. TO3214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldg. TO3215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldgs. 3502, 3702–3704, 3707–3708, 3714, 3717, 3803
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Numbers: 219340181, 219340183–219340185, 219340188–219340192
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, needs rehab, presence of asbestos, most recent use—instruction bldgs., off-site use only

Bldgs. 3705–3706
Ft. Rucker Co: Dale AL 36392–5138
Landholding Agency: Army
Property Numbers: 219340186–219340187
Status: Unutilized

Comment: 2875 sq. ft. ea., 1 story wood frame, needs rehab, most recent use—general purpose, off-site use only

Bldg. T274, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440389
Status: Unutilized
Comment: 3967 sq. ft., 1-story, most recent use—clinic, needs rehab, off-site use only

Bldg. T407, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440390
Status: Unutilized
Comment: 2524 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only

Bldg. T408, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440391
Status: Unutilized
Comment: 1150 sq. ft., 1-story, most recent use—admin., needs rehab, off-site use only

Bldg. T417, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440392
Status: Unutilized
Comment: 432 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. T421, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440393
Status: Unutilized
Comment: 1602 sq. ft., 1-story, most recent use—support activity, needs rehab, off-site use only

Bldgs. T614, T692
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440394
Status: Unutilized
Comment: 2314 sq. ft. & 2685 sq. ft., 1-story bldgs., most recent use—admin., off-site use only

7 Bldgs.
Fort McClellan
#829–831, 833, 835–836, 844
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440395
Status: Unutilized
Comment: 4425 sq. ft. each, 2-story, most recent use—barracks, off-site use only

Bldg. T00893
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440396
Status: Unutilized
Comment: 3269 sq. ft., 1-story, most recent use—chapel, off-site use only

Bldgs. T903, T909
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440397
Status: Unutilized
Comment: 1677 sq. ft. and 1166 sq. ft. bldgs., most recent use—classroom, off-site use only

Bldgs. T916–T917, T925
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440398
Status: Unutilized
Comment: 3075–4500 sq. ft., 1-story, most recent use—barracks, off-site use only

Bldg. T1398
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440399
Status: Unutilized
Comment: 3108 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only

Alaska

Bldgs. 400, 402, 407
Fort Richardson, AK 99505–
Landholding Agency: Army
Property Numbers: 219440400–219440402
Status: Excess
Comment: 13056 sq. ft. ea., 2 story wood frame, presence of lead paint and asbestos, off-site use only

Arizona

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional

Bldg. 70225
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83006
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Cmment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83007
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83008
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83015
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2-story wood frame, possible asbestos, most recent use—administrative, off-site use only

Bldg. 81020
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2-story wood frame, possible asbestos, most recent use—administrative, off-site use only

Bldg. 67204
Fort Huachuca
Sierra Vista, CO: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2-story wood frame, possible asbestos, most recent use—administration, off-site use only

Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–

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Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736
Status: Unutilized
Comment: 4854 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized
Comment: 2675 sq. ft., 1-story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2-story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 70216, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287–
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70215, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70214, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70212, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–

Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70220, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70218, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 70217, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only

Bldg. 80010, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom

Bldg. 30012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage

Bldg. S–120
Yuma Proving Ground
Yuma Co: Yuma/LaPaz, AZ 85365–9104
Landholding Agency: Army
Property Number: 219320202
Status: Underutilized
Comment: 6845 sq. ft., 1-story wood frame, presence of asbestos, most recent use—bowling center

Bldg. 67221
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330235
Status: Unutilized
Comment: 1068 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 83102
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330236
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 84010
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330237
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz, AZ 85365–9104
Landholding Agency: Army
Property Number: 219340198
Status: Unutilized
Comment: 176 sq. ft., 1-story, cold storage bldgs., need repairs, off-site use only

Bldg. 67116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1784 sq. ft.; 1-story; wood; most recent use—admin.; off-site use only

Bldg. 67205
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410244
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67207
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410245
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2594 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 73913
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410247
Status: Unutilized
Comment: 910 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 80001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1958 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 83027
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1993 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 84007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2000 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 68320
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1531 sq. ft.; 1 story; wood; most recent use—recreation center; off-site use only

Bldg. 30126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9324 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. 84014
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2260 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. S–106
Yuma Proving Ground
Yuma, AZ, Yuma/La Paz, Zip: 85365–9104
Landholding Agency: Army
Property Number: 219420345
Status: Unutilized
Comment: 1101 sq. ft.; 1-story, cold storage bldg., needs repair

Bldgs. 67210, 67217
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219420347
Status: Unutilized
Comment: 1165 sq. ft.; 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 80005

Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430245
Status: Unutilized
Comment: 1716 sq. ft, 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 80006
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430246
Status: Unutilized
Comment: 1628 sq. ft, 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 83023
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430247
Status: Unutilized
Comment: 1648 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 81027
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430248
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repairs, off-site use only

Bldg. 81028
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430249
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only

Bldg. 80111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430250
Status: Unutilized
Comment: 2032 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Colorado

Bldg. P–1388
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219430134
Status: Unutilized
Comment: 240 sq. ft., 1 story steel structure, needs rehab, secured area w/alternate access, off-site use only

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151–219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.

Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor

Bldg. 3400
Fort Benning, GA Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment; 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency; Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905—
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 16385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 319053–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 2150
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storhouse.

Bldgs. 3086, 3089, 3092
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220688–219220690
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized

Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab. off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft., 1 story, most recent use—storehouse, needs major rehab. off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab. off-site removal only.

Bldg. 3083, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220699
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab. off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab. off-site removal only.

Bldg. 3085, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab. off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only

Bldgs. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Numbers: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldg. 5396, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only

Bldgs. 4977, 4978, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft. ea. 1 story, most recent use—offices, needs repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3617, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldgs. 4884, 4964, 4966, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs., needs repairs, off-site removal only

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., needs repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. fit., 1 story, most recent use—supply bldg., needs repairs, off-site removal only

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only

Bldg. 2528, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, needs repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779

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Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.
Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.
Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.
Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use-barracks, off-site use only
Bldgs. 4002, 4004, 4008–4010, 4012, 4015, 4020 4106, 4115–4116, 4127–4128, 4139, 4149–4150, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story needs rehab, most recent use—barracks, off-site use only
Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldgs. 4112, 4119, 4124, 4141, 4136, 4131, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4106, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft. 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft. 1-story, needs rehab, most recent use—day room, off-site use only
Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1684 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—day room, off-site use only
Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft. 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only
Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only
Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft. 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only
Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft. 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only
Bldg. 4109, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft. 1-story, needs rehab, most recent use—dining facility, off-site use only
Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq ft., 1-story, needs rehab, most recent use—dining facility, off-site use only
Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only
Bldgs. 4135, 4123, 4111, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only
Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only
Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only
Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only
Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only
Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only
Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin., off-site use only
Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storeage, off-site use only
Bldg. 10439, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474

Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10768, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 2683, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 2504, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only
Bldg. 4121, 4133, 4143, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—arms bldgs., off-site use only
Bldg. 4105, 4005, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310490–219310491
Status: Unutilized
Comn.ent: 1416 sq. ft. ea., 1-story, needs rehab, most recent use—arms bldgs., off-site use only
Bldgs. 13503, 14502, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320209–219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—residential.
Bldgs. 481, Fort Gordon
Fort Gordon, GA, Richmond Zip: 30905–
Landholding Agency: Army
Property Number 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-sit use only, most recent use—offices.
Bldgs. 14503, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320216
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.
Bldgs. 25304, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.
Bldgs. 26306, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.
Bldgs. 33436, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—office.
Bldgs. 33438, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320229
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—storage.
Bldgs. 39502, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—office.
Bldgs. 45308, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—community center.
Bldgs. 26301, 27301
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320234–219320235
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use—storage.
Bldgs. 354–356, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330259–219330262
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 377, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330263
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only
Bldg. 13501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only
Bldg. 18704, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330265
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 18717, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330266
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 19601, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330268
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only
Bldg. 19602, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330269
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 24501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330270
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 25103, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330271
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 25105, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330272
Status: Unutilized

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Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 25503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330273
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 33415, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330275
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 34502, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330276
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 35503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330277
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 37505, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330278
Status: Unutilized
Comment: 17370 sq ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only
Bldg. 38503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330279
Status: Unutilized
Comment: 1316 sq ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only
Bldg. 18707, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330280
Status: Unutilized
Comment: 2468 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18708, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330281
Status: Unutilized
Comment: 3772 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18718, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330282
Status: Unutilized
Comment: 2468 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18720, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330283
Status: Unutilized
Comment: 2632 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldgs. 18721–18724, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330284–219330287
Status: Unutilized
Comment: 4524 sq ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 12712, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330288
Status: Unutilized
Comment: 15500 sq ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only
Bldgs. 332–333, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330289–219330290
Status: Unutilized
Comment: 5340 sq ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 334, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330291
Status: Unutilized
Comment: 4279 sq ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only
Bldg. 335, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330292
Status: Unutilized
Comment: 4300 sq ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 353, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330293
Status: Unutilized
Comment: 5157 sq ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 352, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330294
Status: Unutilized
Comment: 560 sq ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only
Bldg. 18703, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330295
Status: Unutilized
Comment: 4524 sq ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only
Bldg. 18705, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330296
Status: Unutilized
Comment: 2632 sq ft., 1-story, presence of asbestos, off-site use only
Bldg. 10501
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only
Bldg. 10601
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized
Comment: 1334 sq. ft.; 1 story; wood; most recent use—office; off-site use only
Bldg. 20303
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2376 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only
Bldg. 41504
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410267
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—store; off-site use only
Bldg. 963
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410268
Status: Unutilized
Comment: 18,471 sq. ft.; 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only
Bldg. 11013
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only
Bldg. 21314
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only
Bldg. 951
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized

Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only
Bldg. 12809
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only
Bldg. 10306
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only
Bldg. P–8582
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420355
Status: Unutilized
Comment: 5892 sq. ft.; 2-story; steel; needs major repairs; most recent use—radar tower; off-site use only
Bldg. T–723
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219440403
Status: Unutilized
Comment: 9190 sq. ft.; 1-story wood frame; needs rehab; most recent use—storage; off-site use only
Bldg. T–121
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219440404
Status: Unutilized
Comment: 1842 sq. ft.; 1-story wood frame; needs rehab; most receent use—admin.; off-site use only
Bldg. T154
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440405
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most recent use—aces. facility; off-site use only
Bldg. T155
Fort Stewart
Hinesville, GA, Liberty, ZIP: 31314–
Landholding Agency: Army
Property Number: 219440406
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most reent use—aces. facility; off-site use only
Bldg. T284
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440407
Status: Unutilized
Comment: 960 sq. ft.; 1-story metal frame; needs rehab; most recent use—gen. storehouse; off-site use only
Bldg. TT0791
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440408
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most recent use—aces. facility; off-site use only
Bldg. TT0792
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440409
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only
Bldg. TT0793
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440410
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only
Bldg. T8041
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440411
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only
Bldg. T9591
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440412
Status: Unutilized
Comment: 11462 sq. ft., 1-story wood frame, needs rehab, most recent use—theater w/ dressing room, off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu, HI 96818
Location: Approx. 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations
Bldg. 302
Fort Shafer
Honolulu, HI 96818
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only
Facility T–119
Fort Shafter
Honolulu, HI 96818
Landholding Agency: Army
Property Number: 219430252
Status: Unutilized
Comment: 10205 sq. ft., wood structure, some termite damage, most recent use—above ground swimming pool, off-site use only

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Unutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use, exercise area.
Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Unutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office
Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Unutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.
Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility
Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage
Bldgs. 7215, 7216
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219330297
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way

Kansas

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage
Bldg. 166, Fort Riley

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Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District
Bldg. 184, Fort Riley
Ft. Riley, KS, Zip: 66442–
Landholding Agency: Army
Property Number: 219430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district
Bldg. T–1030
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440413
Status: Unutilized
Comment: 19377 sq. ft., 1-story wood frame, most recent use—storage off-site use only
Bldg. T–1035
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440414
Status: Unutilized
Comment: 496 sq. ft., 1-story wood frame, most recent use—storage, off-site use only
Bldg. 1362
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440415
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1457
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440416
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1458
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440417
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1462
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440418
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1464
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440419
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1358
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440420
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1359
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440421
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1454
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440422
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1455
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440423
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. 1461
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440424
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only
Bldg. T–2038, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440443
Status: Unutilized
Comment: 1324 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage
Bldg. T–2049, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440444
Status: Unutilized
Comment: 3255 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage
Bldg. T–2449, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440445
Status: Unutilized
Comment: 3057 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage

Kentucky

Bldg. 109
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430150
Status: Unutilized
Comment: 24164 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—transient family quarters
Bldg. 234
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430152
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only
Bldg. 236
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430153
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only
Bldg. 238
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430154
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—Educ. center, off-side use only
Bldg. 240
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430155
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only
Bldgs. 242, 244
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430156
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only
Bldg. 2104
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430158
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only
Bldg. 2107
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430160
Status: Unutilized
Comment: 7528 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only
Bldg. 2108
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430161
Status: Unutilized
Comment: 3823 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only
Bldg. 2739
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430163
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only
Bldg. 2737
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430164
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only
Bldg. 2951
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430165
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only
Bldg. 2230
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430166
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—storage, off-site use only
Bldg. 2788
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430167
Status: Unutilized
Comment: 1813 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only
Bldg. 3184
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430168
Status: Unutilized
Comment: 2625 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only
Bldg. 6412
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430169
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only
Bldg. 6126
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430170
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only
Bldg. 2756
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430171
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—housing, off-site use only
Bldg. 3170
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430172
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only
Bldg. 5343
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430173
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only
Bldg. 6408
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430174
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—admin., off-site use only
Bldg. 5345
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430175
Status: Unutilized
Comment: 2957 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only
Bldg. 6127
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430176
Status: Unutilized
Comment: 4020 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only
Bldg. 6351
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430177
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only
50 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420365
Status: Unutilized
Location: *2750, 2752, 2754, 2756, 2943, 2945, 2947, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 3111, 3113, 3115, 3119, 3121, 3123, 3125, 3127, 3129, 3138, 3140, 3150–3169, 3178, 3188
Comment: 5310 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks and training, off-site use only
13 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420367
Status: Unutilized
Location: *2776, 2946, 3130–3131, 3136–3137, 3139, 3144–3147, 3176, 3186
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldgs. 2778, 2786, 2939
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420368
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldg. 2941
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420369
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldg. 2944
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420370
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldg. 2957
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420371
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldg. 2959
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420372
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only
Bldg. 2965

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Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420373
Status: Unutilized
Comment: 2505 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2967
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420374
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldgs. 2774, 2940
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420375
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only

Bldgs. 3134, 3148
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420376
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only

Bldg. 2969
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420377
Status: Unutilized
Comment: 3340 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3132
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420378
Status: Unutilized
Comment: 2200 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3142
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420379
Status: Unutilized
Comment: 2310 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3143
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420380
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3149
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420381
Status: Unutilized
Comment: 2365 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 2782
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420382
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldgs. 2907–2908
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420383
Status: Unutilized
Comment: 4800 sq. ft., 2-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2938
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420384
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2942
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420385
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2953
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420386
Status: Unutilized
Comment: 1900 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 3182
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420387
Status: Unutilized
Comment: 2550 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2948
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420388
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2961
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420389
Status: Unutilized
Comment: 1800 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2955
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420390
Status: Unutilized
Comment: 1890 sq. ft., 1-story, presence of asbestos, most recent use—conf. room, off-site use only

Bldg. 6550
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410300
Status: Unutilized
Comment: 25,701 sq. ft., most recent use—storage, off-site use only

Bldg. 7162
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410301
Status: Unutilized
Comment: 1256 sq. ft., most recent use—storage, off-site use only

Bldg. 5417
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410309
Status: Unutilized
Comment: 8208 sq. ft., 1-story: needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop, off-site use only

Bldg. 05451
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410337
Status: Unutilized
Comment: 200 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—military vehicle gas station

Bldg. 05624
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410338
Status: Unutilized
Comment: 2732 sq. ft., 1-story, need rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05625
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410339
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05811
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223
Landholding Agency: Army
Property Number: 219410342
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.

Bldg. 05813, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410343
Status: Unutilized
Comment: 2700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop

Bldg. 05815, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410344
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05817, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410345
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05819, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410346
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05823, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410347
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05829, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410348
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 5712
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410354
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab.; presence of asbestos, most recent use—vehicle maintenance shop; off-site use only

Bldg. 5730
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410364
Status: Unutilized
Comment: 9000 sq. ft., 1-story, needs rehab.; presence of asbestos, most recent use—vehicle maintenance shop; off-site use only

Bldg. 01472, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440278
Status: Unutilized
Comment: 8029 sq. ft., 1-story, most recent use—scout bldg., needs rehab, presence of asbestos, off-site use only

Bldg. 02234, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440279
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02238, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440280
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02239, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440281
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02240, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440282
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02241, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440283
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02243, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440284
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02247, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440285
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02748, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440286
Status: Unutilized
Comment: 2950 sq. ft., 1-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02268, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440287
Status: Unutilized
Comment: 2250 sq. ft., 1-story, most recent use—classroom, needs rehab, presence of asbestos, off-site use only

Bldg. 02951, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440288
Status: Unutilized
Comment: 2500 sq. ft., 1-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only

Bldg. 05632, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440289
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05634, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440290
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05638, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440291
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05642, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440292
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05644, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440293
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Hardford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible asbestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Hardford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized

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Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only

Bldgs. 303–308, 323–328, 333–337
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized
Comment: 2324 sq. ft., 1 story wood frame, possible asbestos, fair to good condition, off-site use only.

Bldgs. 312, 319
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320295
Status: Unutilized
Comment: 2594 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only

Bldgs. 313–314, 317–318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only

Bldgs. 302, 329, 332, 339
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320297
Status: Unutilized
Comment: 2208 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only

Bldg. 2239
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320298
Status: Unutilized
Comment: 24528 sq. ft., 1 story concrete, poss. asbestos, most recent use—mess hall, needs rehab, off-site use only

Bldg. 3036
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219320302
Status: Unutilized
Comment: 11016 sq. ft., 1 story, needs rehab, most recent use—gym, presence of asbestos

Bldg. E4890
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1 story, needs rehab, presence of asbestos

Bldgs. 2251, 2252
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219430180
Status: Unutilized
Comment: 648 & 3594 sq. ft., 1 story, concrete/metal structure, needs rehab, presence of asbestos, most recent use—heating plant & admin.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access.

Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 306, 307, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219410326, 219410327
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style homes, secured area w/alternate access

Bldg. 308, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219410328
Status: Unutilized
Comment: 205 sq. ft., 1-story brick, secured area w/alternate access

Mississippi

Bldg. VB201
Vicksburg Reserve Center
Vicksburg, MS 39180–0055
Landholding Agency: Army
Property Number: 219330308
Status: Unutilized
Comment: 15444 sq. ft., 1 story metal frame, most recent use—army reserve center, off-site use only

Bldg. VB202
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330309
Status: Unutilized
Comment: 800 sq. ft., 1 story metal frame, most recent use—admin., off-site use only

Bldg. VB213
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330310
Status: Unutilized
Comment: 180 sq. ft., 1 story concrete block, most recent use—storehouse, off-site use only

Missouri

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose

Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story presence of asbestos, off-site use only, most recent use—general purpose

Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230237
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldgs. T1270, T1329
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Numbers: 219320307, 219330300
Status: Unutilized
Comment: 1296 sq. ft., 1 story, most recent use—admin., possible asbestos, off-site use only

Bldg. T427
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330299
Status: Underutilized
Comment: 10245 sq. ft., 1 story, presence of asbestos, most recent use—post office, off-site use only

Bldg. T2206
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330302
Status: Unutilized
Comment: 1440 sq. ft., 1 story, presence of asbestos and contamination, most recent use—storage, off-site use only

Bldg. T2368
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330306
Status: Underutilized
Comment: 3663 sq. ft., 1 story, presence of asbestos, off-site use only

Bldg. T3005
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330307
Status: Underutilized
Comment: 2220 sq. ft., 1 story, presence of asbestos, most recent use—motor repair shop, off-site use only

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340212
Status: Unutilized
Comment: 1296 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use

Bldg. T1258
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340213
Status: Underutilized
Comment: 2360 sq. ft. ea., 1 story wood frame, no handicap fixtures, possible asbestos, lead based paint, off-site use only, most recent use—warehouses

Bldg. T2312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340217
Status: Underutilized
Comment: 1403 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent—use—paint shop

Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340219
Status: Underutilized
Comment: 4000 sq. ft., 1 story wood frame, no handicap fixtures, off-site use only, most recent use—storage

Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420392
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T1364
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420393
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski MO, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420395
Status: Underutilized
Comment: 2646 sq. ft., 1-story, presence of lead base paint, most recent use—sotrage, off-site use only

Bldg. T2550
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski MO, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420396
Status: Underutilized
Comment: 224 sq. ft., l-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T281
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420397
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T282
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420398
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T283
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420431
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T407
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420432
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T408
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420433
Status: Underutilized
Comment: 0296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T409
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420434
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T410
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420435
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T411
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420436
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T412
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army

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Property Number: 219420437
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T415
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420438
Status: Underutilized
Comment: 1144 sq. ft. 1-story, presence of lead base paint, most recent use—admin/gen., purpose, off-site use only
Bldg. T429
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T1100
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420440
Status: Underutilized
Comment: 3236 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2056
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420442
Status: Underutilized
Comment: 3600 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2057
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420443
Status: Underutilized
Comment: 3200 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2066
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420444
Status: Underutilized
Comment: 3307 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2138
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420445
Status: Underutilized
Comment: 1676 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T–2143
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440324
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2144
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440325
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2158
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440326
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2159
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440327
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2161
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440328
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2162
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440329
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2173
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440330
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2188
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440331
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2189
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440332
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2190
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440333
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Montana

USARC Bozeman Reserve Center

Bozemand Co: Gallatin MT
Landholding Agency: Army
Property Number: 219420391
Status: Unutilized
Comment: 15236 sq. ft., 3 story reserve center on .54 acres, bldg. on Natl. Register of Historic Places, secured area w/alternate access

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011946
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—office
Bldg. 2529, Fort Monmouth
Charles Wood Area
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2 story, needs rehab, most recent use—administration
Bldg. 197
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703
Landholding Agency: Army
Property Number: 219440442
Status: Unutilized
Comment: 1240 sq. ft., 1 story, most recent use—motor repair shop

New Mexico

Bldgs. 108–109, 118–119
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330327–219330328, 219330330–219330331
Status: Unutilized
Comment: 3561 sq. ft. ea., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 117
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330329
Status: Unutilized
Comment: 1688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldgs. 148–150
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330332–219330334
Status: Unutilized
Comment: 3570 sq. ft. ea., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 357
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330335
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1758
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330336
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1768
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330337
Status: Unutilized
Comment: 15333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28281
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330338
Status: Unutilized
Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28282
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330339
Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 32980
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330340
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 34252
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330341
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 418
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330342
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 420
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330343
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330344
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1348
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330345
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1738
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330346
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1765
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330347
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 21542
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330348
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 22118
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330349
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 22253
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330350
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 28267
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330351
Status: Unutilized

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Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 29195
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330352
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldgs. 34219, 34221
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330353–219330354
Status: Unutilized
Comment: 720 sq. ft. ea., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 145
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330355
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only
Bldg. 1754
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330356
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 19242
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330357
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 34227
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330358
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 34244
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330359
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 21105
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330360
Status: Unutilized
Comment: 339 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only
Bldg. 21106
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330361
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbestos, most recent use—veterinarian facility, off-site use only
Bldg. 21310
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330362
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only
Bldg. 29890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330363
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only
Bldg. 1868
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330364
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off-site use only
Bldg. 528
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330365
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only
Bldg. 1834
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330366
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only
Bldg. 1300
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330367
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only
Bldg. 23100
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330368
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only
Bldg. 29196
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330369
Status: Unutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only
Bldg. 30774
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330370
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only
Bldg. 33136
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330371
Status: Unutilized
Comment: 18 sq. ft., off-site use only

New York

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30000 sq. ft., 3 floors, most recent use—barracks & mess facility, needs major rehab
Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq. ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected
Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq. ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected
Bldg. 332
Fort Totten
Theater Road
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq.. ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.
Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.
Bldg. 326

Fort Totten
326 Pratt Avenue
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq. ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.
23 Residential Apartment Bldgs
Stewart Gardens, Stewart Army Subpost
Army Sherry Family Housing
New Windsor Co.: Orange NY 12553
Location: Y and Garden Loop Streets
Landholding Agency: Army
Property Number: 219330315
Status: Unutilized
Comment: 2 story family housing, concrete block/wood, needs rehab, scheduled to be vacated in 1996
5 Detached Garages
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co.: Orange NY 12553
Property Number: 219330316
Status: Unutilized
Comment: 1 story garages, concrete block/wood, needs rehab, scheduled to be vacated in 1996
30 Storage Sheds
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co.: Orange NY 12553
Property Number: 219330317
Status: Unutilized
Comment: 1 story aluminum/wood storage sheds, good condition, scheduled to be vacated in 1996
Bldg. 100, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340254
Status: Unutilized
Comment: 155 sq.. ft., 1-story, most recent use—storage
Bldg. 200, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340255
Status: Unutilized
Comment: 12,000 sq.. ft., 1-story, most recent use—office
Bldg. 300, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340256
Status: Underutilized
Comment: 11,000 sq. ft., 1-story, most recent use—reserve center
Bldgs. S–2341, S–2342
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430183
Status: Unutilized
Comment: 266–484 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. S–2800
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430184
Status: Unutilized
Comment: 671 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. S–2801
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430185
Status: Unutilized
Comment: 3182 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldgs. T–196, T–197
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430186
Status: Unutilized
Comment: 3576–3809 sq. ft., 1-story, needs rehab, most recent use—maint. shop, off-site use only
Bldg. T–901
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430187
Status: Unutilized
Comment: 2305 sq. ft., 1-story, needs rehab, most recent use—admin./gen. purpose, off-site use only
Bldg. T–902
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430188
Status: Unutilized
Comment: 3350 sq. ft., 1-story, needs rehab, most recent use—training, off-site use only
Bldg. T–916
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430190
Status: Unutilized
Comment: 840 sq. ft., 1-story, needs rehab, most recent use—training facility, off-site use only
Bldg. T–2320
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430191
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—barracks/annual training, off-site use only
Bldg. T–2321
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430192
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent used—barracks/annual training, off-site use only
Bldg. T–2322
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430193
Status: Unutilized
Comment: 5310 sq ft., 2-story, needs rehab, most recent use—admin. & supply, off-site use only
Bldg. T–2406
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430194
Status: Unutilized
Comment: 4712 sq. ft., 1-story, needs rehab, most recent use—medical admin./training, off-site use only
Bldg. T–2410
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430195
Status: Unutilized
Comment: 5034 sq ft., 2-story, needs repair, 30% in runway clear zone, most recent use—housing/training, off-site use only
Bldg. T–2427
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430196
Status: Unutilized
Comment: 4345 sq. ft., 1-story, needs rehab, most recent use—storage/training, off-site use only
Bldg. T–2425
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430197
Status: Unutilized
Comment: 4340 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldgs. T–4854, T–4859
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430198
Status: Unutilized
Comment: 2592 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–224
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430199
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–234
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430200
Status: Unutilized
Comment: 1296 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–239
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430201
Status: Unutilized
Comment: 2588 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–2338
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430202
Status: Unutilized
Comment: 159 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–2405

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Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430203
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–231
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430204
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–232
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430205
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–237
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430206
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–238
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430207
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–220
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430208
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only

Bldg. T–225
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430209
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only

Bldg. T–229
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430210
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only

Bldg. T–240
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430211
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only

Bldg. T–249
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430212
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only

Bldg. T–2323
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430213
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–4834
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430214
Status: Unutilized
Comment: 2250 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

13 Bldgs.
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430215
Status: Unutilized
Location: T221–T223, T226–T228, T241–T244, T246–T248
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks/training, off-site use only

Bldg. T–1011
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430216
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only

Bldg. T–1012
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430217
Status: Unutilized
Comment: 3720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only

Bldg. T–2270
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430218
Status: Unutilized
Comment: 7670 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only

Bldg. T–2271
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430219
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only

Bldg. T–2276
Fort Drum
Ft. Drum, NY, Jefferson, Zip:13602–
Landholding Agency: Army
Property Number: 219430220
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2277
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430221
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters, off-site use only.

Bldg. T–2402
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430222
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2404
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430223
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only

Bldg. 900, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219430259
Status: Underutilized
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage

Bldg. T–12, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440425
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office, needs rehab, off-site use only

Bldg. T–467, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440426
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. T–468, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440427
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. T–683, Fort Drum
Ft. Drum, NY Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440428
Status: Unutilized
Comment: 4160 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. P–2012, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440429

Status: Unutilized
Comment: 450 sq. ft., most recent use—water distribution bldg., off-site use only

Bldg. T–2408, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440430
Status: Unutilized
Comment: 3202 sq. ft., 1-story, most recent use—dental clinic, needs rehab, off-site use only

Bldg. T–2420, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440431
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2421, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440432
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2422, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440433
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2423, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440434
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2426, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440435
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2430, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440436
Status: Unutilized
Comment: 4837 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only

Bldg. T–2441, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440437
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only

Bldg. T–4886, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only

North Carolina
Bldg. O–9710
Ft. Bragg, Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219330312
Status: Unutilized
Comment: 974 sq. ft., metal trailer, needs repairs, most recent use—living quarters, off-site use only

Bldg. 4–2402, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420447
Status: Unutilized
Comment: 1532 sq. ft., 1-story masonry block, needs rehab, possible asbestos, most recent use—auto rental facility, off-site use only

Bldg. 8–4139, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420448
Status: Unutilized
Comment: 3154 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center., off-site use only

Bldg. 8–4343, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420449
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only

Bldg. 8–4546, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420450
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, possible asbestos, most recent use—storage, off-site use only

Bldg. M–5351, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420452
Status: Unutilized
Comment: 4141 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—shopette, off-site use only

Bldg. O–9025, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420454
Status: Unutilized
Comment: 1964 sq. ft., metal, needs rehab, possible asbestos, most recent use—admin., off-site use only

Bldg. H–1838, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440318
Status: Excess
Comment: 3145 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing

Bldg. H–1839, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440319
Status: Excess
Comment: 4094 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing

Bldg. 2–3208, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440320
Status: Excess
Comment: 800 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—storage

Bldg. 2–3309, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440321
Status: Excess
Comment: 22636 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—vehicle maintenance shop

Bldg. 0–9045, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440322
Status: Excess
Comment: 7680 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—open end barn

Bldg. 6–9273, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440323
Status: Excess
Comment: 2264 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—fire station admin.

Ohio
15 Units
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage, OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Excess
Comment: 3 bedroom (7 units)—1824 sq. ft ea., 4 bedroom (8 units)—2430 sq. ft. ea., 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing
Ravenna Army Ammunition Plant
Landholding Agency: Army
Property Number: 219230355
Status: Excess
Comment: 1–4 staff garage and 6–3 stall garages, presence of asbestos, off-site use only

Bldg. P–3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Comment: 10752 sq. ft 1 story brick, most recent use—office, possible asbestos.

Bldg. P–4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1 story brick, most recent use—vehicle maintenance shop

Bldg. P–2
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320314

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Status: Unutilized
Comment: 3956 sq. ft., 1 story brick, most recent use—office, possible asbestos.
Bldg. P–3
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320315
Status: Unutilized
Comment: 1259 sq. ft., 1 story brick, most recent use—vehicle maintenance shop, possible asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft., asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.
Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft., possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.
Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel
Bldg. T–4919 Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft., 1 story mobile home trailer; possible asbestos; needs rehab.
Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.
Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).
Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton OK, Comanche Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.
Bldg. T–1050, T–1051, Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
Bldgs. T–2703, T–2704, Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.
Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2907, Fort Sill
2907 Marcy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2928, Fort Sill
2928 Custer Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–4050, Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. P–3032, Fort Sill
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—general storehouse.
Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—warehouse.
Bldg. T–260, Fort Sill
260 Corral Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2-story wood frame, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–3641, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320324
Status: Unutilized
Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, off-site use only, needs rehab, most recent use—day room.
Bldg. T–3644, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 2193320327
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.
Bldg. T–5122, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Status: Unutilized
Comment:

Bldg. P–6220, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1-story wood frame, possible asbestos, most recent use—construction bldg., off-site use only.
Bldg. S–6228, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only
Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330372
Status: Unutilized
Comment: 512 sq. ft., 1-story, possible asbestos, most recent use—classroom, off-site use only
Bldg. 4722, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330373
Status: Unutilized
Comment: 3375 sq. ft., 2-story, possible asbestos, most recent use—administration, off-site use only
Bldg. T–232, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330377
Status: Unutilized
Comment: 2868 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T–312, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330379
Status: Unutilized
Comment: 1970 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T–1652, Fort Sill
Lawton OK, Comanche ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T–1665, Fort Sill
Lawton OK, Comanche, ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330381
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2034, Fort Sill
Lawton OK, Comanche, ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330383
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2705, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330385
Status: Unutilized
Comment: 2156 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T2708, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330387
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T2709, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330388
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldgs. T2756, T2757 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330390–219330391
Status: Unutilized
Comment: 5172 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3026, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3651, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330393
Status: Unutilized
Comment: 2770 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330394
Status: Unutilized
Comment: 1947 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3710, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330396
Status: Unutilized
Comment: 1176 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3712, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330397
Status: Unutilized
Comment: 1021 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330398
Status: Unutilized
Comment: 1013 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T4035, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330401
Status: Unutilized
Comment: 867 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T4474, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330402
Status: Unutilized
Comment: 159 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T5011, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330403
Status: Unutilized
Comment: 1556 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T5120, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330405
Status: Unutilized
Comment: 1471 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T5123, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330406
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5124, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330407
Status: Unutilized
Comment: 1287 sq. ft, 1 story, possible asbestos, most recent use—storage, off-site use only
Bldgs. T5245 thru T5248, T5252 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330410–219330413 219330417
Status: Unutilized
Comment: 3081 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5249 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330414
Status: Unutilized

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Comment: 2920 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only
Bldgs. T5250 thru T5251 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330415–219330416
Status: Unutilized
Comment: 3257 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5628, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330418
Status: Unutilized
Comment: 2016 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5637, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only
Bldg. T–282, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219410236
Status: Unutilized
Comment: 2420 sq. ft., 2 story; wood frame; most recent use—admin., off-site use only
Bldg. T–268, Fort Sill
268 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440338
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–269, Fort Sill
268 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440339
Status: Excess
Comment: 7840 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–281, Fort Sill
281 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440340
Status: Excess
Comment: 48365 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3731, Fort Sill
3731 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440341
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3632, Fort Sill
3632 Scott Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440342
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3656, Fort Sill
3656 Swartz Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440343
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3657, Fort Sill
3657 Swartz Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440344
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. 3719, Fort Sill
3719 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440345
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. 3720, Fort Sill
3720 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440346
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3723, Fort Sill
3723 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440347
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3724, Fort Sill
3724 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440348
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3725, Fort Sill
3725 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440349
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3726, Fort Sill
3726 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440350
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3728, Fort Sill
3728 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440351
Status: Excess
Comment: 3162 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—storage
Bldg. T–3732, Fort Sill
3732 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440352
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3733, Fort Sill
3733 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440353
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3734, Fort Sill
3734 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440354
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3735, Fort Sill
37354 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440355
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3736, Fort Sill
3736 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440356
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3739, Fort Sill
3739 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440357
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3750, Fort Sill
3750 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440358
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3752, Fort Sill
3752 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440359
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3753, Fort Sill
3753 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440360
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3754, Fort Sill
3754 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440361
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3755, Fort Sill
3755 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440362
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3756, Fort Sill
3756 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440363
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5216, Fort Sill
5216 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440364
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5217, Fort Sill
5217 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440365
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5218, Fort Sill
5218 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440366
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3738, Fort Sill
3738 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440367
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–2441, Fort Sill
2441 Miner Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440368
Status: Excess
Comment: 1686 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3645, Fort Sill
3645 Tacy Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440369
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3715, Fort Sill
3715 Tacy Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440370
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3740
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440371
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin. off-site use only
Bldg. T–3744
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440372
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only
Bldg. T–3745
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440373
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only
Bldg. T–3748
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440374
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin. off-site use only
Bldg. T–3757
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440375
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only
Bldg. T–5215
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440376
Status: Unutilized
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only
Bldg. T–3721
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440377
Status: Unutilized
Comment: 3042 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only
Bldg. T–3737
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440378
Status: Unutilized
Comment: 2964 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only
Bldg. T–3758
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440379
Status: Unutilized
Comment: 3132 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only
Bldg. T–3751
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440380
Status: Unutilized
Comment: 3141 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only
Bldg. T–5219
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440381
Status: Unutilized
Comment: 2662 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only
Bldg. T–3631
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440382
Status: Unutilized
Comment: 4530 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—dayroom, off-site use only
Bldg. P–2938
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440383
Status: Unutilized

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Comment: 23 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only
Bldg. T–4226
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only
Bldg. T–5009
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440385
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only
Bldg. T–3749
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440386
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only
Bldg. T–280
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440387
Status: Unutilized
Comment: 7834 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only
Bldg. P–1015
Fort Sill
Lawton, OK, Comanche, Zip 73503–
Landholding Agency: Army
Property Number: 219440388
Status: Unutilized
Comment: 14392 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Pennsylvania

Bldg. T–1–10
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420010
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–1–15
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420011
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–1–18
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420012
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–14–402
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420013
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–14–406
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420014
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–14–408
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420015
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks
Bldg. T–14–410
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420016
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–14–412
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420017
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–14–414
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420018
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint off-site removal only, most recent use—barracks.
Bldg. 4–71
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420019
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. 4–72
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420020
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–4–94
Fort Indiantown Gap
Birch Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420021
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–100
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420022
Status: Excess
Comment: 3070 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–102
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420023
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–110
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420024
Status: Excess
Comment: 3700 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–112
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420025
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–114
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420026
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–117
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420027
Status: Excess
Comment: 3320 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–202
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420028
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–204
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420029
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–206
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420030
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–14–208
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420031
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–210
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420032
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–212
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420033
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–214
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420034
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–215
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420035
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–216
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420036
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–300
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420037
Status: Excess
Comment: 6445 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–302
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420038
Status: Excess
Comment: 1512 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–303
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420039
Status: Excess
Comment: 3340 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–305
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420040
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–14–307
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420041
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse)
Bldg. T–14–308
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420042
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–14–310
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420043
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–14–415
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420044
Status: Excess
Comment: 3650 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–14–416
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420045
Status: Excess
Comment: 4172 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration
Bldg. T–1–11
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

Property Number: 219420046
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining
Bldg. T–1–19
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420047
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining
Bldg. T–1–21
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420048
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining
Bldg. T–14–400
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420049
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining
Bldg. T–1–8
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420050
Status: Excess
Comment: 1075 sq. ft., 1 stery, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage
Bldg. T–1–12
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420051
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage
Bldg. T–14–124
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420052
Status: Excess
Comment: 214 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage
Bldg. T–14–122
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420053
Status: Excess
Comment: 2277 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (vehicle).
Bldg. T–14–200
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420054
Status: Excess
Comment: 3898 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–201
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420055
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–203
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420056
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–205
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420057
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–207
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420058
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–209
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420059
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–211
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420060
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–213
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420061
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–217
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420062
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–301
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420063
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).
Bldg. T–14–309
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420064
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–311
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420065
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–314
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420066
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–315
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420067
Status: Excess
Comment: 3624 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).
Bldg. T–14–401
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420068
Status: Excess
Comment: 782 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).
Bldg. T–14–403
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420069
Status: Excess
Comment: 2685 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.
Bldg. T–14–404
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420070
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–405
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420071
Status: Excess
Comment: 480 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.
Bldg. T–14–411
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420072
Status: Excess
Comment: 3045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–413
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420073
Status: Excess
Comment: 3000 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–417
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420074
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–419
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420075
Status: Excess
Comment: 3576 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–424
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420076
Status: Excess
Comment: 63 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).
Bldg. T–14–500
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420077
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).
Bldg. T–14–503
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420078
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–505
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420079
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–507
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420080
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–508
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420081
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).
Bldg. T–14–509
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420082
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–511
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420083
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).
Bldg. T–14–113
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420084
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.
Bldg. T–14–115
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420085
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.
Bldg. T–14–312
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420086
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.
Bldg. T–14–313
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

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Property Number: 219420087
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–316
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420088
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–317
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420089
Status: Excess
Comment: 3623 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–407
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420090
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–409
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420091
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–502
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420092
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–504
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420093
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–506
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420094
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–304
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420095
Status: Excess
Comment: 4212 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg

Bldg. T–14–306
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420096
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg

Bldg. T–1–16
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420097
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—arms bldg.

Bldg. T–1–20
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420098
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. 4–73
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420099
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. T–9–1
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420100
Status: Excess
Comment: 2170 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—credit union.

Bldg. T–13–64
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420101
Status: Excess
Comment: 5747 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–421
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420102
Status: Excess
Comment: 287 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint off-site removal only, most recent use—maintenance shop

Bldg. T–14–423
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420103
Status: Excess
Comment: 1681 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–16–149
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420104
Status: Excess
Comment: 18045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.

Bldg. T–14–561
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420105
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–562
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420106
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg

Bldg. T–14–563
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420107
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–564
Fort Indiantown Gap

Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420108
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–565
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420109
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–566
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420110
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–567
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420111
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–568
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420112
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–569
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420113
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–570
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420114
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–571
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420115
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–572
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420116
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–819
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420117
Status: Excess
Comment: 6122 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—covered walkway.

South Carolina

Bldg. 9608, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410200
Status: Unutilized
Comment: 4720 sq. ft., wood frame, 2 story, needs rehab, off-site use only, utilities upgrade, most recent use—enlisted quarters

Bldg. 5492, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2379 sq. ft., wood frame, 1 story, off-site use only, utilities upgrade, most recent use—information management office

Bldg. 10–436, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410217
Status: Unutilized
Comment: 100 sq. ft., wood frame, 1 story, off-site use only, limited utilities, needs rehab, most recent use—shed

Texas

Harlingen USARC
1920 East Washington
Harlingen, TX, Cameron, Zip: 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19,440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center

Bldg. P–3824, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. 4168, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use—vehicle wash platform needs rehab, off-site use only

Bldg. 440, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only

Bldg. 1164, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219330420
Status: Unutilized
Comment: 2054 net sq. ft., 1 story wood, most recent use—admin. bldg., needs rehab, off-site use only

Bldg. 512, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219330421
Status: Unutilized
Comment: 6733 sq. ft., 1 story wood, most recent use—commissary, off-site use only

Bldg. P–293
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized
Comment: 442 sq. ft., 1 story brick, needs rehab, within National Landmark Historic District, off-site use only

Bldg. P–298
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1 story hollow tile, needs rehab, within National Landmark Historic District, off-site use only

Bldg. P–371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2 story structural tile, off-site use only, most recent use—vehicle maintenance shop

Bldg. P–377
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1 story brick, needs rehab, location in National Historic District, off-site use only, most recent use—scale house

Bldg. S–1164

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Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T–374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T–1170, T–1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330481–219330482
Status: Unutilized
Comment: 1144 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1 story wood frame, off-site use only, most recent use—administration

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—t-shirts and frame shop

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1 story wood frame, needs rehab, off-site use only

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage shed

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1 story brick frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–2511 T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330494–219330495
Status: Unutilized
Comment: 18260 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—vehicle maintenance shop

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13603 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—repair shop

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3006 sq. ft., 1 story steel, lead contaminants present, off-site use only, most recent use—paint stripping plant

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31296 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—physical fitness

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—stable

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–6232, T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330501–219330502
Status: Unutilized
Comment: 401 sq. ft. ea., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use storage

Bldg. T–211
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340194
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, off-site use only, most recent use—instruction bldg.

Bldg. T–1031
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340195
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site use only, most recent use—photo lab

Bldg. T–1126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340196
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—blood donor center

Bldg. P–5902
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340197
Status: Unutilized
Comment: 1157 sq. ft., 1 story wood frame, off-site use only, most recent use—warehouse

Bldg. 240, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544
Landholding Agency: Army
Property Number: 219410314
Status: Unutilized
Comment: 2000 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 315, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2400 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 316, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1500 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 317, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2000 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 3436, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410320
Status: Unutilized
Comment: 1080 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 3437, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544-
Landholding Agency: Army
Property Number: 219410321
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 4480, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. 871, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420455
Status: Unutilized
Comment: 3540 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 1165, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420456
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 1675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420457
Status: Unutilized
Comment: 3674 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4717, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420458
Status: Unutilized
Comment: 1081 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4718, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420459
Status: Unutilized
Comment: 899 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4719, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420460
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4105, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219420463
Status: Unutilized
Comment: 2535 sq. ft., 1-story wood, needs rehab, most recent use—storage, off-site use only

Bldgs. 7050, 7058
Fort Bliss
Ft. Bliss, TX, Zip: 79916–
Landholding Agency: Army
Property Number: 219430181
Status: Unutilized
Comment: 1809–8584 sq. ft., 1-story wood frame, needs rehab, most recent use—office/club, off-site use only

Bldgs. 828–830
Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219430182
Status: Unutilized
Comment: 4780 sq. ft. 2-story, needs rehab, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 1, Fort Hood
Lubbock, TX, Lubbock, Zip: 79408–
Landholding Agency: Army
Property Number: 219440336
Status: Unutilized
Comment: 11440 sq. ft., 1-story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center

Bldg. 2, Fort Hood
Lubbock, TX, Lubbock, Zip: 79408–
Landholding Agency: Army
Property Number: 219440337
Status: Unutilized
Comment: 2818 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop

Bldg. P–452
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440449
Status: Excess
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house

Bldg. P–2009
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440450
Status: Excess
Comment: 144 sq. ft., 1 story brick frame, lead paint, off-site removal only, no utilities, most recent use—flammable material storage

Bldg. T–5016
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440451
Status: Excess
Comment: 3146 sq. ft., 1 story wood frame, asbestos & lead paint, limited utilities, off-site removal only, most recent use—fire station vehicle storage

Bldg. T–5017
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440452
Status: Excess
Comment: 3146 sq. ft., 1 story wood frame, asbestos & lead paint, off-site removal only, most recent use—admin/storage

Bldg. T–5018
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440453
Status: Excess
Comment: 1140 sq. ft., 1 story wood frame, asbestos & lead paint, off-site removal only, most recent use—fire station

Bldg. P–6615
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440454
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft., 2 story, most recent use—barracks; poor condition; needs major rehab

Bldg. T3003, Fort Picket
W 33rd Street
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440446

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Status: Underutilized
Comment: 1750 sq. ft., 1 story wood frame, most recent use—confinement facility, need repairs
Bldg. T2800, Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440447
Status: Underutilized
Comment: 2056 sq. ft., 1 story wood frame, most recent use—clinic, need repairs
Bldg. T2857, Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440448
Status: Underutilized
Comment: 2987 sq. ft., 1 story wood frame, most recent use—admin.
Washington
Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17304 sq. ft., 1 story training facility
Wisconsin
Bldg. 7174, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 7176, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 7261, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 556 Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft. ea., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel
Bldg. 455, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply
Bldg. 2321
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430225
Status: Unutilized
Comment: 682 sq. ft., 1-story, needs rehab, most recent use—heat plant
Bldg. 2673
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430226
Status: Unutilized
Comment: 13515 sq. ft., 1-story, needs rehab, most recent use—theater
Bldg. 2842
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430227
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs rehab, most recent use—range support bldg
Bldg. 10105
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430228
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse
Bldg. 10106
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430229
Status: Unutilized
Comment: 4105 sq. ft., 1-story, needs rehab, most recent use—warehouse
Bldg. 10107
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430230
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse
Bldg. 10108
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430231
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse
Bldg. 2110
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430232
Status: Unutilized
Comment: 18270 sq. ft., 1-story, needs rehab, most recent use—vehicle maint
Bldg. 2320
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430233
Status: Unutilized
Comment: 33345 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.
Bldg. 2327
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430234
Status: Unutilized
Comment: 3464 sq. ft., 1-story, needs rehab, most recent use—vehicle maint
Bldg. 2328
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430235
Status: Unutilized
Comment: 4000 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.
Bldg. 2763
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430236
Status: Unutilized
Comment: 3250 sq. ft., 1-story, needs rehab, most recent use—admin.
Bldg. 2173A
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430237
Status: Unutilized
Comment: 705 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.
Bldg. 2747
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430238
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.
Bldg. 2755
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430239
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.
Bldg. 2853
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430240
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.
Bldg. 651
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430242
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility
Bldg. 850
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430243
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility
13 Storage Facilities
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army

Property Number: 219430244
Status: Unutilized
Location: Bldgs. 1157, 1156, 1353, 1357, 1873, 1874, 2162, 2165, 2189, 2192, 2324, 2325, 2326
Comment: 224–5520 sq. ft., 1-story, needs rehab, most recent use—storage

Land (by State)

Georgia
Land (Railhed)
Fort Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential
Kansas
Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.
Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.
Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.
Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.
Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.
Minnesota
Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.
Montana
U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: Army
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land
Nevada
Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.
Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: At foot of eastern slope of Mount Grant in Wassuk Range & SW edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem
Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup
Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup
Ohio
5 acres
Doan U.S. Army Reserve Center
Portmouth Co: Scioto, OH 45662
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.
3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky, OH 43420
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.
Tennessee
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint
Holston Army Ammunition Plant
Kingsport Co: Hawkins, TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives
Land
Milan Army Ammunition Plant
NE. corner of plant & housing area
Milan Co: Carroll, TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres; secured area w/ alternate access; most recent use—buffer zone
Texas
Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain; possibility of unexploded ordnance
Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219420461
Status: Unutilized
Comment: 7 16 acres; rural gravel road
Camp Bullis, Tract 9
Fort Sam Houston
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219420462
Status: Unutilized
Comment: 1.07 acres of undeveloped land

Suitable/Unavailable Properties

Buildings (by State)

Arizona
Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219420346
Status: Unutilized
Comment: 4103 sq. ft., 2 story, needs major rehab.

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Colorado

Bldgs. T–3449, T–741
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Numbers: 219320205, 219410255
Status: Unutilized
Comment: 7528 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—storage & admin.

Bldg. T–740
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410254
Status: Unutilized
Comment: 2382 sq. ft., 1 story wood frame, needs rehab, Presence of asbestos, most recent use—admin., off-site use only

Bldg. T–1817
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410256
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–2740
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410257
Status: Unutilized
Comment: 1916 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–106
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410259
Status: Unutilized
Comment: 25749 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. S–6275
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410262
Status: Unutilized
Comment: 679 sq. ft., 1 story concrete block, needs rehab, most recent use—storage, off-site use only.

Georgia

Bldg. T–201, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420357
Status: Unutilized
Comment: 2929 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. T–902, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420360
Status: Unutilized
Comment: 2990 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. 704, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420364
Status: Unutilized
Comment: 2028 sq. ft., 1 story, need major repairs, most recent use—admin.

Kentucky

Bldg. 05711, Fort Campbell
Ft. Campbell, KY, Christian, ZIP: 42223–
Landholding Agency: Army
Property Number: 219410340
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05713, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized
Comment: 10,944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 5715
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410355
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5717
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410357
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5723
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410359
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5725
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410361
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use–vehicle maintenance shop; off-site use only

Bldg. 232
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430147
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—adminin., off-site use only

Bldg. 230
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430148
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 111
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430149
Status: Unutilized
Comment: 17,993 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—transient family quarters

Bldg. 30
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430151
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. 250, 252
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430157
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 2105
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430159
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 2905
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430162
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Louisiana

Bldg. 3322, Fort Polk
Texas Avenue
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 219440441
Status: Underutilized
Comment: 480 sq. ft., 1 story, needs repairs, most recent use—offices.

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft., steel plate, gravel base ammunition storage area, fair condition.

Nevada

U.S. Army Reserve Center
685 East Plumb Lane
Reno Co: Washoe NV 89502
Landholding Agency: Army
Property Number: 219340180
Status: Unutilized
Comment: 11457 sq. ft., Reserve Center & 2611 sq. ft. vehicle repair shop on 4.29 acres, presence of asbestos, 1 story each, perpetual easement for road right of way 50 ft. from property.

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49542 sq. ft., 3-story brick structure, within National Landmark Historic District.

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16539 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. P–2007, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13058 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. T–189, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination.

Bldg. P–8249
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440455
Status: Excess
Comment: 2775 sq. ft., 1-story wood frame, lead paint, off-site removal only, most recent use—family housing.

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.

Bldgs. T3022–T3024, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3026, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized

Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldgs. T3025, T3040–T3041, T3049–T3050, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft. each, 1-story wood frame, needs repair, most recent use—dining room.

Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Picket
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks

Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel

Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic

Bldg. 178, Fort Monroe
Ft. Monroe, VA 23651
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: 1470 sq. ft., 1 story, need repairs, most recent use—entomology facility, off-site use only.

Quarters 19201 & 19209
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410365
Status: Excess
Comment: 8370 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410366
Status: Excess
Comment: 8404 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19203, 19205, 19207
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410367
Status: Excess
Comment: 9416 sq. ft. ea., 2 story family quarters with 8 units each, off-site use only

Quarters 19210, 19214
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410368
Status: Excess
Comment: 7084 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19212
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410369
Status: Excess
Comment: 14098 sq. ft., 2 story family quarters with 12 units, off-site use only

Land (by State)

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex, NJ 08817
Landholding Agency: Army
Property Number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Suitable/To Be Excessed

Buildings (by State)

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012680
Status: Underutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized

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Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

LAND (by State)

Texas

Land-Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070
Landholding Agency: Army
Property Number: 21990014814
Status: Unutilized
Comment: 43.08 acres, includes buildings/structures/parking and air strip.

Unsuitable Properties

Buildings (by State)

Alabama

82 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014292, 219110109, 219120247,–219120250, 219230190, 219330001–219330002, 219430265–219430290, 219440078–219440087
Status Unutilized
Reason: Secured Area
Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration
45 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001, 219330003–219330010, 219340114, 219340116, 219340118, 219340120, 219340122–219340126, 219410016–219410019, 219410022–219410023, 219430260–219430264, 219440083–219440084, 219440087–219440097, 219510095–219510090
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 25203, 25205–25207, 25209, 25501, 25503, 25505, 25507, 25510, 29101, 29103–29109
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021, 219410024
Status: Unutilized
Reason: Secured area
27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration
17 Bldgs., Fort McClellan
Ft..McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130010,, 219410003, 219420125,219440098–219440111
Status: Unutilized
Reason: Extensive deterioration
Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332
Status: Unutilized
Reason: Extensive deterioration
3 Bldgs., Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505–
Landholding Agency: Army
Property Numbers: 219230183–219230184, 219410027
Status: Unutilized
Reason: Extensive deterioration (some are in a secured area)
Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703–
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured area within airport runway clear zone
Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703–
Landholding Agency: Army
Property Numbers: 219240274–219240275
Status: Unutilized
Reason: Secured area floodway
Bldg. 1501, Fort Greely
Ft. Greely AK 99505–
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured area
Sull. .an Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219014560–219014591
Status: Underutilized
Reason: Secured area
10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219014592–219014601
Status: Underutilized
Reason: Secured area
9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured area
Bldgs. 84001, 68054
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219210017, 219430315
Status: Excess
Reason: Extensive deterioration
Bldgs. S–2085, S–6078
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Numbers: 219330020–219330021
Status: Unutilized
Reason: Secured area
Bldg. T–231
Yuma Proving Ground
Yuma Co: LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219510093
Status: Unutilized
Reason: Extensive deterioration
Bldg. 3007
Yuma Proving Ground
Laguana Army Airfield
Yuma Co: LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219510094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration
97 Bldgs.
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Numbers: 219340023–219340090, 219420132–219420137, 219430292–219430314
Status: Unutilized
Reason: Secured area (most are extensively deteriorated)
6 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142, 219440077
Status: Unutilized

Reason: Secured Area Extensive deterioration

California

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600, 219240284–219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are in a secured area.)
Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.
11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area
9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)
Bldgs. S–108, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219014290, 219230179
Status: Underutilized
Reason: Secured Area
Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area
12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014713–219014717, 219014719–219014721, 219230181, 219320012
Status: Unutilized
Reason: Secured Area
Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank
Bldgs. 173, 177
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014941
Status: Unutilized
Reason: Secured Area
Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area
Bldg. S–521, Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219240155
Status: Unutilized
Reason: Secured Area
Bldgs. T–187, 403 Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321, 219440184
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldgs. 36, 257, Tracy Facility
Tracy Co: San Joaquin CA 95376
Landholding Agency: Army
Property Number: 219330023, 219330025
Status: Unutilized
Reason: Secured Area
10 Bldgs., Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property: Number: 219330026–219330035
Status: Unutilized
Reason: Secured Area Extensive Deterioration
23 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219430017–219430039, 219430317
Status: Unutilized
Reason: Secured Area
US Army Reserve Center
Rio Vista Co: Sonoma CA 94571
Landholding Agency: Army
Property Number: 219430316
Status: Unutilized
Reason: Floodway
6 Buildings
Oakland Army Base
Oakland Co: Alameda CA 94626
Location: Include: 90, 790, 792, 807, 829, 916
Landholding Agency: Army
Property Number: 219510097
Status: Unutilized
Reason: Secured Area Within 2000 ft of flammable or explosive material

Colorado

70 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012231, 219012233, 219012235–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area
26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area Extensive deterioration
Bldg. 230
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219330036
Status: Unutilized
Reason: Secured Area
Bldgs. T–2741, T–2742, T–2743, T–2744, T–2745
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410033–219410037
Status: Unutilized
Reason: Extensive deterioration
6 Buildings
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–50001
Location: Include: 115, 116, 136, 137, 150. 154
Landholding Agency: Army
Property Number: 219510085
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldgs. 152, 153, 246, 248
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–50001
Landholding Agency: Army
Property Number: 219510086
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment
Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack
117 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–

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Landholding Agency: Army
Property Number: 219220269, 219220279, 219220281, 219220289, 219320020, 219320026–219320029, 219330050–219330060, 219410038–219410131, 219420144–219420145, 219440199
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210138–219210139
Status: Unutilized
Reason: Secured Area

4 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220334–219220337
Status: Unutilized
Reason: Detached lavatory

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219310091, 219310093–219310094, 219310098–219310099, 219310105, 219310107, 219320030, 219320033
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420155, 219420158, 219420161–219420163, 219420166–219420169, 219440193–219440198
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs., Hunter Army Airfield
Savannah Co: Chetham GA 31409
Landholding Agency: Army
Property Number: 219420152–219420153, 219430318–219430325, 219440185–219440192
Status: Unutilized
Reason: Extensive deterioration

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekoe Pass Road
Wahiawa Co: Wahiawa HI 26786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384, T–2281
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361, 219510090
Status: Unutilized
Reason: Secured Area

Bldgs. T–1510, S–138, S–139, T–919, T–1081, T–1082, T–2283 Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219320035, 219510087
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 754–C, P–1519 A/B Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219320034, 219420154
Status: Unutilized
Reason: Extensive deterioration

Bldg. 572
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219510088
Status: Unutilized
Reason: Secured Area

Illinois

609 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465, 219330062–219330094
Status: Unutilized
Reason: Secured Area; many within 2,000 ft. of flammable or explosive materials; some within floodway.

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430307
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 103, 114, 417, 110
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219420182–219420184, 219510008
Status: Unutilized
Reason: Secured Area Extensive deterioration

Indiana

263 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010920, 219010924–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011448, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219210152–219210155, 219230034–219230037, 219320036–219320111, 219420170–219420181, 219440159–219440163
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Most are within a secured area.)

61 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured Area Extensive deterioration

Iowa

93 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219510089
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material.)

28 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219320017, 219330061, 219340001
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

222 Bldgs.
Sunflower Army Ammunition Plant

34425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040330–219040335, 219040349, 219040353, 219110073, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612, 219420185–219420187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway Secured Area

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

28 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240080, 219420188–219420191, 219430040, 219440164–219440183, 219510092
Status: Unutilized
Reason: Extensive deterioration

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine

75 Bldgs.,
Sunflower Army Ammunition Plant
DeSota Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219240333–219240394, 219240402, 219240410–219240416, 219240420, 219240434–219240437
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

6 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320113–219320115, 219320132–219320133, 219410146
Status: Unutilized
Reason: Extensive deterioration

42 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219340247, 219340249–219340250, 219340253, 219410144, 219420192, 219430043–219430058, 219440258–219440277
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

22 Buildings, Fort Knox
Ft. Knox Co: Hardin KY 40121
Location: Include: 9253, 9255, 9257, 9262, 9330, 9345, 9365, 9366, 9458, 9459, 9471, 9472, 9601, 9602, 9609, 9610, 9612, 9613, 9621–9642
Landholding Agency: Army
Property Number: 219510078
Status: Unutilized
Reason: Extensive deterioration (Some are detached latrines)

77 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121
Landholding Agency: Army
Property Number: 219510079–219410084
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 6115, 6120, 6121
Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219510091
Status: Unutilized
Reason: Extensive deterioration

Louisiana

42 Bldgs.
Louisana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290, 219240137–219240150, 219420330–219420332
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219170284–219120286
Status: Excess
Reason: Secured Area

5 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219320282, 219340107–219340108, 219430339–219430340
Status: Unutilized
Reason: Extensive deterioration

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) Some are in a floodway)

Bldg. 1958
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured area

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Sewage treatment plant

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station

37 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Numbers: 219130059, 219140458, 219140460–219140461, 219140465, 219140467, 219140510, 219210123, 219220142, 219220146–219220147 219220153, 219220171–219220173, 219220190–219220192, 219220195–219220197, 219240121, 219310022, 219310026–219310027, 219310031–219310033, 219320144, 219330114–219330118, 219340013, 219420333–219420334

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Status: Unutilized
Reason: Extensive deterioration

Bldgs. 132, 135 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Numbers: 219330109–219330110
Status: Underutilized
Reason: Secured Area

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; floodway secured area

Bldgs. T–102, T–110, T–111, Hudson Family Hsg
Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749–
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Co: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured area; extensive deterioration

Bldgs. 3506, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Michigan

Bldgs. 602, 604
U.S. Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone, –Floodway, Secured Area

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Unutilized
Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area

Bldg. #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area

19 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423, 219430065–219430081
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area

57 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665, 219340016–219340021
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area

Facility No. 00169, 00A38
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219240276, 219330119
Status: Unutilized
Reason: Extensive deterioration

New Jersey

217 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 North
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012466, 219012469–219012472, 219012474–219012475, 219012756–219012760, 219012763–219012767, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617, 219230118–219230125, 219240315–219240316, 219420001–21942008, 219510002–219510007
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)

35 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841–219012842, 219013786, 219230177, 219320157, 219330129–219330140, 219420335, 219440201–219440211
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated) (Some are in a floodway)

12 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001, 219440200
Status: Unutilized
Reason: Floodway, Secured Area

24 Bldgs., Fort Dix
Ft. Dix Co: Burlington NJ 08640
Landholding Agency: Army
Property Number: 219510009–219510014
Status: Underutilized
Reason: Extensive deterioration

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower

New Mexico

Bldgs. 21384, 28356, 32010, 32984, 28730, 28830
White Sands Missile Range
White Sands Co: Dona Ana NM 88002
Landholding Agency: Army
Property Number: 219330144–219330147, 219430126–219430127
Status: Unutilized
Reason: Extensive Deterioration

New York

7 Bldgs., Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131, 219430082–219430086
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number 219240439, 219240440–219240443
Status: unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 124
U.S. Military Academy
West Point Co: Orange NY 10996
Landholding Agency: Army
Property Number: 219330148
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3008, 3077, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219420285, 219440236
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4370, Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 219430004
Status: Unutilized
Reason: Sewage pumping station

10 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Numbers: 219430005–219430012, 219430014, 219510016
Status: Unutilized
Reason: (Some are within airport runway clear zone) (Some are extensively deteriorated)

5 Field Range Latrines
Fort Drum
Ft. Drum Co: Jefferson NY 13602
Location: Bldgs. S–2565, S–2703, S–2714, S–2802, S–2822
Landholding Agency: Army
Property Number: 219430013
Status: Unutilized
Reason: Detached latrines

North Carolina

24 Bldgs., Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Numbers: 219420286–219420290, 219420293, 219420294, 219420297, 219420303, 219440294–219440308
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219510015
Status: Unutilized
Reason: Secured Area

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Numbers: 219012476–219012507 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason: Secured Area

Bldgs. T–404, T–78, T–79, T–97, T–80, 309, 317, T–81 thru T–86
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Numbers: 219240331, 219310034–219310039, 219440257
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

12 Bldgs., Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Numbers: 219320399–219320410
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Numbers: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

13 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219130060, 219140525, 219140528–219140529, 219140545–219140548, 219140550–219140551, 219320337, 219440309, 219510023
Status: Unutilized
Reason: Extensive deterioration

22 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburgh OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

7 Bldgs., Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219440310–219440316
Status: Unutilized
Reason: Detached Latrines

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area

Pennsylvania

Hays Army Ammunition Plant
300 Mifflin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess

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Reason: Secured Area
74 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003-5011
Landholding Agency: Army
Property Number: 219140267-219140270, 219140272-219140274, 219140277-219140286, 219140292, 219140295, 219140299, 219140302, 219140306-219140311, 219140313, 219140316-219140320, 219140322-219140324, 219420118, 219420120-219420123, 219430106-219430121, 219440240-219440256
Status: Unutilized
Reason: Extensive deterioration (Some are detached latrines)
Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604-1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration
33 Bldgs.
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Numbers: 219420399-219420430, 219430096
Status: Unutilized
Reason: Secured Area, Extensive deterioration

South Carolina

22 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Numbers: 219410157-219410158, 219440237-219440239, 219510017-219510022
Status: Unutilized
Reason: Extensive deterioration

Tennessee

45 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422-
Landholding Agency: Army
Property Numbers: 219010475, 219010477, 219010479-219010500, 219240127-219240136, 219420304-219420307, 219430099-219430105
Status: Unutilized/Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)
32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299-6000
Landholding Agency: Army
Property Numbers: 219012304-219012309, 219012311-219012312, 219012314, 219012316-219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334-219012335, 219012337, 219013789-219013790, 219030266, 219140613, 219330178, 219440212-219440216, 219510025-219510028
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)
8 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Numbers: 219240447-219240449, 219320182-219320184, 219330176-219330177
Status: Unutilized
Reason: Secured Area
Bldg. Z-183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079-
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: easement to city of Saginaw for sewer pipeline ending 5/15/2023
18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505-9100
Landholding Agency: Army
Property Numbers: 219012524, 219012529, 219012533, 219012536, 219012539-219012540, 219012542, 219012544-219012545, 219030337-219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661-
Location: State highway 43 north
Landholding Agency: Army
Property Numbers: 219012546, 219012548
Status: Underutilized
Reason: Secured Area
33 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507-5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109-219230115, 219320193-219320194, 219330163, 219420314-219420327, 219430093-219430097, 219440217
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
Bldg. T-5000
Camp Bullis
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration
6 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219340022, 219340238, 219410149, 219410151, 219430131, 219510024
Status: Unutilized
Reason: Extensive deterioration
14 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330161-219330162, 219330473-219330474, 219340095-219340098, 219420309-219420313, 219440439
Status: Unutilized
Reason: Extensive Deterioration
Bldg. T-2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Pump house
Bldgs. T-2916, T-3180, T-3192, T-3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330476-219330479
Status: Unutilized
Reason: Detached latrines

Utah

3 Bldgs.
Tooele Army Depot-
Tooele Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366
Status: Unutilized
Reason: Secured Area
11 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219012143-219012144, 219012148-219012149, 219012152, 219012155, 219012156, 219012158, 219012742, 219012751, 219240267
Status: Underutilized
Reason: Secured Area
12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022-
Landholding Agency: Army
Property Number: 219013996-219013999, 219130008, 219130011-219130013, 219130015-219130018
Status: Underutilized
Reason: Secured Area
18 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022-
Landholding Agency: Army
Property Number: 219014693, 219130009-219130010, 219130014, 219220204-219220207, 219330179-219330185, 219420328-219420329, 219440218
Status: Unutilized
Reason: Secured Area
Bldg. 4520
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219240268
Status: Unutilized
Reason: Extensive deterioration

Virginia

173 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141-
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847-219010890, 219010892-219010912, 219011521-219011577, 219011581-219011583, 219011585, 219011588, 219011591, 219013559-219013570, 219110142-219110143, 219120071, 219140618-219140633, 219440219-219440225, 219510031-219510033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141-
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834-219010835, 219010837-219010838, 219010840-219010841, 219010843, 219010845-219010846, 219010901, 219011578-219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Comment: Latrine, detached structure
61 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801-
Landholding Agency: Army
Property Number: 219240084, 219240096, 219240103-219240105, 219240107-219240118, 219330191-219330228, 219340092-219340094, 219420340-219420342, 219510034
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)
13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210-219220218, 219230100-219230103
Status: Unutilized
Reason: Secured Area
2 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801-
Landholding Agency: Army
Property Number: 219220312, 219220314
Status: Underutilized
Reason: Extensive deterioration
2 Bldgs., Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240313-219240314
Status: Underutilized
Reason: Detached latrines
Bldg. B7103-01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration
8 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310136, 219310138-219310139, 219310141-219310145
Status: Unutilized
Reason: Extensive deterioration
Bldg. 160, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219510029
Status: Unutilized
Reason: Extensive deterioration
Bldg. 919, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430015
Status: Unutilized
Reason: Floodway
Bldgs. 1058, 1061, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430016
Status: Unutilized
Reason: Extensive deterioration
56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341-219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201
Landholding Agency: Army
Property Number: 219440317
Status: Underutilized
Reason: Secured Area
Bldg. SS1238
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030
Status: Underutilized
Reason: Secured Area, Extensive deterioration

Washington

24 Training Facilities
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219430128
Status: Unutilized
Reason: Secured Area, Extensive deterioration
68 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219430129, 219440226-219440229, 219440231-219440235
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldgs. 524, 538, 539
Ft. Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219430130
Status: Unutilized
Reason: Secured Area, Extensive deterioration
98 Bldgs. (Barracks)
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 219440230
Status: Unutilized
Reason: Secured Area, Extensive deterioration
152 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 219510035-219510056
Status: Unutilized
Reason: Secured Area

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913-
Landholding Agency: Army
Property Number: 219011094, 219011209-219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos
154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913-
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108-219011113, 219011115-219011117, 219011119-219011120, 219011122-219011139, 219011141-219011142, 219011144, 219011148-219011208, 219011213-219011216, 219011218-219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304-219011311, 219011317, 219011319-219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos
4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871-219013873, 219013875
Status: Underutilized
Reason: Secured Area
31 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876-219013878, 219220295-219220311, 219510058-219510068
Status: Unutilized
Reason: Secured Area
6 Bldgs. 6513-27, 6823-2, 6861-4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913-
Landholding Agency: Army
Property Number: 219210097-219210099

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Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
76 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210115, 219240206–219240262, 219310208–219310225
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 2845, 2860, Fort McCoy
Ft. McCoy Co: Monroe WI 54656
Landholding Agency: Army
Property Number: 219430002
Status: Unutilized
Reason: Detached latrines
Bldg. 6513–3
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510057
Status: Unutilized
Reason: Detached Latrine
124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area Extensive deterioration

Land (by State)

Alabama
23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega Al 35044–
Landholding Agency: Army
Property Number 219210095–219210096
Status: Excess
Reason: Secured Area

Alaska
Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Inaccessible

Illinois
Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River road.
Landholding Agency: Army
Property Number 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Floodway
Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway
Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway
Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area 38,000 sq. ft. & 4,000 sq. ft. of Land
Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway

Indiana
Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Land—Plant 2
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland
Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway, Secured Area

New Jersey
Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Oklahoma
McAlester Army Ammo. Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Pennsylvania
Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038–
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway

Tennessee
Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Texas
Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Virginia
Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Wisconsin
Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

[FR Doc. 95–8347 Filed 4–6–95; 8:45 am]
BILLING CODE 4210–29–M

federal register

Friday
April 7, 1995

Part III

Nuclear Regulatory Commission

10 CFR Part 52

Standard Design Certifications: System 80+ Design and U.S. Advanced Boiling Water Reactor Design; Proposed Rules

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 52

RIN 3150–AE87

Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) proposes to approve by rulemaking a standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy. The NRC is proposing to add a new appendix to 10 CFR part 52 for the design certification. This action is necessary so that applicants or licensees intending to construct and operate a U.S. ABWR design may do so by appropriately referencing the proposed appendix. The public is invited to submit comments on this proposed design certification rule (DCR) and the design control document (DCD) that is incorporated by reference into the DCR (refer to Sections IV and V). The Commission also invites the public to submit comments on the environmental assessment for the U.S. ABWR design (refer to Section VI).

DATES: The comment period expires on August 7, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration for comments received on or before this date. In addition, interested parties may request an informal hearing before the Atomic Safety and Licensing Board Panel, in accordance with 10 CFR 52.51, on matters pertaining to this design certification rulemaking (refer to Section V). Requests for an informal hearing must be submitted by August 7, 1995.

ADDRESSES: Mail written comments and requests for an informal hearing to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays. Copies of comments received will be available for examination and copying at the NRC Public Document Room (PDR) at 2120 L Street NW. (Lower Level), Washington, DC. A copy of the environmental assessment and the design control document is also available for examination and copying at the PDR.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, telephone (301) 415–6231, Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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I. Background

On September 29, 1987, General Electric Company applied for certification of the U.S. ABWR standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR part 50, appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987. The application was docketed on February 22, 1988 (Docket No. STN 50–605).

On May 18, 1989 (54 FR 15372), the NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52, established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On December 20, 1991, GE Nuclear Energy (GE), an operating component of General Electric Company's power systems business, requested that its application, originally submitted pursuant to 10 CFR part 50, appendix O, be considered as an application for design approval and subsequent design certification pursuant to 10 CFR 52.45. Notice of receipt of this request was published in the **Federal Register** on March 20, 1992 (57 FR 9749), and a new docket number (52–001) was assigned. GE's application, the ABWR Standard Safety Analysis Report (SSAR) up to and including amendment 35 (Revision 7) and the Certified Design Material, Revision 6, is available for inspection and copying at the PDR.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the U.S. ABWR design in July 1994 (NUREG–1503). The FSER documents the results of the NRC staff's safety review of the U.S. ABWR design against the requirements of 10 CFR part 52, subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. A copy of the FSER may be obtained from the Superintendent of Documents, Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161. The final design approval (FDA) for the U.S ABWR design was issued on July 13, 1994, and published in the **Federal Register** on July 20, 1994 (59 FR 37058). A revised version of the FDA was issued on November 23, 1994 and published in the **Federal Register** on December 1, 1994 (59 FR 61647)

Since the issuance of 10 CFR part 52, the NRC staff has been working to implement subpart B with issues such as the acceptability of using a two-tiered design certification rule and the level of design detail required for design certification. The NRC staff originally proposed a design certification rule for evolutionary standard plant designs in SECY–92–287 "Form and Content for a Design Certification Rule." On March 26 1993, the NRC staff issued SECY–92–287A in which it responded to issues on SECY–92–287, which were put forth by the Commission and to specific questions raised by Commissioner Curtiss in a letter dated September 9, 1992. Subsequently, the NRC staff modified the draft rule in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. On November 23, 1993, the NRC staff discussed this ANPR in a public workshop entitled "Topics Related to Certification of Evolutionary Light Water Reactor Designs." All holders of operating licenses or construction permits were informed of the issuance of the ANPR and the planned public workshop through the issuance of NRC Administrative Letter 93–05 on October 29 1993. Separate announcements of the workshop were also sent to the Union of Concerned Scientists, the Nuclear Information and Resource Service, the Natural Resources Defense Council, the Public Citizen Litigation Group, the Ohio Citizens for Responsible Energy (OCRE), and the State of Illinois Department of Nuclear Safety on October 18, 1993. An official transcript of the workshop proceedings is available in the PDR.

Rulemaking Procedures

10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (*e.g.*, design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board in a design certification rulemaking. While part 52 describes a general framework for conducting a design certification rulemaking, § 52.51(a) states that more detailed procedures for the conduct of each design certification will be specified by the Commission.

To assist the Commission in developing the detailed rulemaking procedures, the NRC's Office of General Counsel (OGC) prepared a paper, SECY–92–170 (May 8, 1992), which identified issues relevant to design certification rulemaking procedures, and provided OGC's preliminary analyses and recommendations with respect to those issues. SECY–92–170 was made public by the Commission, and a Commission meeting on this paper was held on June 1, 1992.

Thereafter, in SECY–92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY–92–170 and obtaining public comments on those issues. The Commission approved OGC's proposal (See the May 28, 1992, Memorandum from Samuel J. Chilk to William C. Parler). Notice of the workshop was published in the **Federal Register** on June 9, 1992 (57 FR 24394). The notice also provided for a 30-day period following the workshop for the public to submit written comments on SECY–92–170. A transcript was kept of the workshop proceedings and placed in the PDR. Nearly 50 non-NRC individuals attended the workshop; an additional eight persons requested copies of SECY–92–170 and workshop materials but did not attend. The workshop was organized in a panel format, with representatives from OCRE (Susan Hiatt), NUMARC (Robert Bishop), GE and Westinghouse—two design certification vendors (Marcus Rowden and Barton Cowan), the State of Illinois Department of Nuclear Safety (Stephen England), the State of New York Public Service Commission (James Brew), the Administrative Conference of the United States (William Olmstead), OGC, the NRC Staff, and a moderator. Eleven written comments were received after the workshop, three from OCRE (OCRE August 1992 Comments; OCRE September 1992 Letter; OCRE October 1992 Letter), NUMARC, Winston and Strawn, the State of Illinois Department of Nuclear Safety, Westinghouse Energy Systems, the U.S. Department of Energy, Asea Brown Boveri-Combustion Engineering (ABB–CE), and AECL Technologies[1]. Mr. Rowden submitted an additional comment on behalf of NUMARC which addresses proprietary information.

OGC's final analyses and recommendations for design certification rulemaking procedures were set forth in SECY–92–381 (November 10, 1992). This paper was prepared after consideration of the panel discussions at the public workshop and the written comments received after the workshop. On April 30, 1993, the Commission issued a Memorandum to the General Counsel which sets forth the Commission's determinations with respect to the procedural issues raised by the General Counsel's paper. Section V. below, "Comments and Hearings in the Design Certification Rulemaking," describes the procedures to be utilized in this design certification rulemaking.

II. Public Comment Summary and Resolution

The public comment period for the ANPR for rulemakings to grant standard design certification for evolutionary light water reactor designs expired on January 3, 1994. Six comment letters were received. Five comment letters were from the nuclear industry (i.e., vendors, utilities, and industry representatives) and one from a public interest organization. Most of the commenters addressed the nine topics upon which the NRC sought the public's views. The Commission has carefully considered all the comments and wishes to express its sincere appreciation of the often considerable efforts of the commenters.

In the following public comment summary and resolution and in the section-by-section discussion (Section III below), the discussion refers to "Commission approval" of NRC staff-proposed positions or recommendations. This should be understood as meaning the Commission's tentative approval of those positions or recommendations for purposes of: (i) The NRC staff's review of the ABWR design certification application, and (ii) preparation of this notice of proposed rulemaking. The public may submit comments and request an informal hearing with respect to any of the "Commission approved" positions or recommendations (comments and hearings are discussed in further detail in Section V).

All of the commenters supported the basic concept of the design certification rulemaking approach including the two-tiered structure for design information.

[1] AECL is the vendor for the CANDU 3 design

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The Nuclear Management and Resources Council, which has since been subsumed within the Nuclear Energy Institute (NEI), commented for the nuclear industry. GE Nuclear Energy, Westinghouse, and ABB–CE stated that they participated in the preparation of the NEI comments and fully supported them. One additional letter addressing the U.S. ABWR rulemaking was received from Marcus Rowden of the law firm of Fried, Frank, Harris, Shriver & Jacobson, dated September 20, 1994. This letter was written on behalf of GE Nuclear Energy and contained a proposed draft rule for the NRC staff's consideration in the U.S. ABWR rulemaking process. Mr. Rowden's proposed rule is different in some aspects from the rule proposed by the NRC staff in this Federal Register notice. The issues raised by the significant differences between Mr Rowden's proposed rule and the proposed rule in this Federal Register notice have been appropriately considered and discussed in the following public comment summary and resolution or in the section-by-section discussion:

Topic 1—Acceptability of a Two-Tiered Design Certification Rule Structure

Comment Summary. On behalf of the nuclear industry, NEI stated that a two-tiered structure to a design certification rule is practical and fully consistent with the intent and requirements of 10 CFR part 52. OCRE stated that it fully supports the concept set forth in the ANPR provided that the Tier 2 information is subject to public challenge in the standard design certification and any associated hearing.

Response. Although a two-tiered structure for design certification rules was not envisioned or subsequently deemed necessary to implement standard design certifications under 10 CFR part 52, the Commission approved the use of a two-tiered structure for a design certification rule in its SRM of February 15, 1991, on SECY–90–377, "Requirements for Design Certification Under 10 CFR part 52," in response to a request from NEI dated August 31, 1990. Since then, the NRC staff has worked to develop a two-tiered rule that achieves industry's goal of issue preclusion for a greater amount of information than was originally planned for design certification, while retaining flexibility for design implementation.

Tier 1 information is defined in section 2(b) of the proposed rule and is treated as the certified information that is controlled by the change standards of 10 CFR 52.63. Tier 2 information is defined in section 2(c) of the proposed rule and consists primarily of the information submitted in an application for design certification. The information in the two tiers is interdependent. Therefore, an applicant for a construction permit, operating license, or combined license (COL) that references this design certification must reference both tiers of information. The consolidation of both tiers of information into a Design Control Document (DCD) will provide an effective means of maintaining this information and facilitating its incorporation into the rule by reference. All matters covered in each tier, including the determination of what information should be placed in each tier, are subject to public challenge in the design certification rulemaking and any associated hearing.

Topic 2—Acceptability of the Process and Standards for Changing Tier 2 Information

Comment Summary. NEI concurs in the process and standards to be used by COL holders and applicants for evaluating and implementing changes to Tier 2 information via the so-called "§ 50.59-like" change process. However, NEI does not agree with the statement in the ANPR (Section A.13(d)(3)) that "changes properly implemented through this "§ 50.59-like" process cause a loss of finality relative to the affected portion of the design or are subject to subsequent legal challenge." NEI contends that these changes would be sanctioned through the design certification rule and that the only issue entertainable at the time of the COL licensing proceeding would be whether the licensee complied with the "§ 50.59-like" change process. Likewise, changes made subsequent to COL issuance could be challenged in the part 52 proceeding before fuel-load authorization only on the basis that the change resulted in noncompliance with applicable acceptance criteria. However, NEI recognizes that changes from Tier 2 that require NRC approval would be subject to a hearing opportunity as specified in 10 CFR part 52.

OCRE stated that it is important that applicant or licensee initiated changes to Tier 2 information made pursuant to the "§ 50.59-like" process will no longer be afforded the issue preclusion protection of 10 CFR 52.63. To do otherwise would turn the two-tiered system into a double standard in which utilities could deviate from the standard design but the public could not challenge these deviations. Permitting site-specific litigation of these changes would also serve to discourage changes.

Response. In order to implement the two-tiered structure for design certification rules, the Commission proposes a change process for Tier 2 information that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process has provisions for generic changes, plant-specific changes, and exemptions similar to those in 10 CFR 52.63. Although the NRC staff proposed that the backfitting standards for making generic changes to Tier 2 information should be less stringent than those for Tier 1 information, the Commission disapproved this proposal in its SRM on SECY–92–287A, dated June 13, 1993, and stated that "the backfitting standards of 10 CFR 52.63 should be applied for such changes to Tier 2." As a result, the NRC staff adopted the backfitting standards of 10 CFR 52.63 in the Tier 2 change process proposed in the ANPR, except that the additional factor regarding "any decrease in safety that may result from the reduction in standardization" was not adopted for plant-specific changes and exemptions in order to achieve additional flexibility for Tier 2 information.

The Tier 2 change process also has a provision similar to 10 CFR 50.59 that allows changes to Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions. The Commission approved this process in its SRM on SECY–90–377, dated February 15, 1991, provided "that such changes open the possibility for challenge in a hearing." The NRC staff followed the Commission's guidance in developing the process in ANPR Section A.13(d)(3) that allows certain changes to Tier 2 information, without prior NRC approval. This section of the ANPR states that "Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4)." The NRC staff included this provision to meet Commission guidance and to restrain Tier 2 changes in order to maintain the benefits of standardization, as discussed in SECY–92–287. Also, changes may be challenged in individual COL proceedings since the changes depart from the design information approved in the design certification rulemaking. Therefore, the Commission agrees with the OCRE position on issue preclusion and specifically invites comments on this provision (see Section IV).

Topic 3—The Acceptability of a Tier 2 Exemption

Comment Summary. NEI supports the inclusion of the provision that an applicant or licensee may request, and the NRC may grant, an exemption to Tier 2 information. OCRE indirectly supports the Tier 2 exemption provision but recommends that the sentence: "These Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4)" also be included in the section A.13(d)(2) of the ANPR on exemptions from Tier 2 information, for clarity, and because 10 CFR 52.63(b)(1) does not mention the two-tiered system.

Response. In SECY–92–287A, the NRC staff proposed the addition of an exemption provision to the Tier 2 change process so that the change process for both tiers would have the same elements and to provide additional flexibility to applicants or licensees that reference a design certification rule. The Commission deferred its decision on an exemption to the Tier 2 change process in its SRM dated June 23, 1993, and requested the NRC staff to solicit public comments on this issue.

Because no commenter objected to the addition of a Tier 2 exemption process and NEI supported the proposal, the provision was retained in the proposed rule. However, OCRE proposed that Tier 2 exemptions lose issue preclusion consistent with Tier 1 exemptions. Because that is consistent with the NRC staff's approach to Tier 2 changes and the Commission's guidance in its SRM on SECY–90–377 (see response to topic #2), OCRE's proposal has been incorporated into the proposed rule.

The additional standard in the Tier 1 exemption process, which requires that "any decrease in safety that may result from the reduction in standardization caused by the exemption" outweighs the special circumstances in 10 CFR 50.12, was not included in the Tier 2 exemption process because the Commission views Tier 2 information as more detailed descriptions of Tier 1 information that should have a less stringent change standard than Tier 1 and the industry requested additional flexibility for Tier 2 information. Therefore, the proposed Tier 2 change process uses the same standard that is used for Part 50 exemptions, namely 10 CFR 50.12. The Commission believes that the loss of issue preclusion for Tier 2 exemptions will help minimize the consequences of the loss of standardization caused by these exemptions.

Topic 4—Acceptability of Using a Change Process, Similar to the one in 10 CFR 50.59 Applicable to Operating Reactors, Prior to the Issuance of a Combined License that References a Certified Design.

Comment Summary. NEI concurs in the NRC's proposal to have the "§ 50.59-like" change process apply to both COL applicants and licensees.

Response. In its SRM on SECY–92–287A, dated June 23, 1993, the Commission approved the NRC staff's proposal to extend the use of the "§ 50.59-like" change process for Tier 2 information to applicants that reference a certified design. Because NEI and other commenters supported this proposal, this additional flexibility has been retained for the proposed rule.

Topic 5—The Acceptability of Identifying Selected Technical Positions From the FSER as "Unreviewed Safety Questions" That Cannot Be Changed Under a "Section 50.59-Like" Change Process

Comment Summary. NEI commented that the proposal to predesignate changes to certain design aspects as constituting "unreviewed safety questions" is unnecessary and is tantamount to the creation of a third tier of information, which runs counter to the two-tier structure. NEI proposed that the selected Tier 2 material be designated, not broadly in the rule, but specifically in the SSAR/FSER and the DCD as requiring NRC staff notification before implementing the changes. NEI argued that at the time of notification, the NRC staff could decide whether the proposed change constitutes an "unreviewed safety question," and the applicant or COL holder would be prohibited from making the change without either NRC staff concurrence or a successful appeal of the NRC staff's determination. NEI also envisioned a time, subsequent to completion of designs and the inspections, tests, analyses, and acceptance criteria (ITAAC), when the change restriction for selected Tier 2 material will no longer be necessary. NEI further stated that, whether or not the Commission adopts NEI's proposal, the NRC staff should be limited to design areas discussed with plant designers when designations of "unreviewed safety questions" are made. Also, these special designations should be as narrow and specific as practicable to avoid the inadvertent broadening of this special category of Tier 2 design information and the excessive restrictions against change that would result.

Response. The NRC's proposal to predesignate certain Tier 2 information that cannot be changed without prior NRC approval does not create a third tier of information or conflict with the two-tiered rule structure. In fact, this so called Tier 2* information was created as a consequence of industry's implementation of the two-tiered rule structure. Specifically, industry's desire to minimize the amount of information in Tier 1 and to use design acceptance criteria in lieu of design information in certain areas resulted in the need to identify significant Tier 2 information that could not be changed by an applicant or licensee without prior NRC approval. The previous reference to "identified unreviewed safety questions" in the ANPR was made to indicate that the process for changing the so-called Tier 2* information would be the same as for changing other Tier 2 information that an applicant or licensee determines to constitute an unreviewed safety question. Therefore there is no third tier of information. Rather, some Tier 2 information cannot be changed without prior NRC approval and the remainder can. This is no different than the information in a Final Safety Analysis Report relative to the process in 10 CFR 50.59.

The Commission agrees with NEI that it would be clearer to future users of the certified design if the specific information that has been designated as requiring prior NRC approval (Tier 2*) is identified in the DCD rather than summarized in the design certification rule (DCR). However, the requirement for prior NRC approval does need to be specified in the DCR for the Tier 2 change process. Therefore, the NRC instructed the applicants to identify the Tier 2* information in the DCD.

In response to NEI's request, the DCR will not identify the Tier 2* information as an unreviewed safety question because that designation is not required; only prior NRC approval is required. Therefore, the Tier 2 change process has been revised to state that Tier 2* information identified in the DCD cannot be changed without prior NRC approval. Although Tier 2* changes may not result in unreviewed safety questions, the public will be afforded an opportunity to challenge the changes (see response to topic #2). The Commission also that the predesignation of some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. This is because there is sufficient information in some of the related areas of Tier 1 to control

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changes after the plant is completed. The appropriate expiration point is designated in their DCDs.

The NEI proposal to require notification of the NRC rather than requiring NRC approval prior to changing the Tier 2* information would create an unnecessary burden on the NRC in the Tier 2 change process. The Commission has already determined that the predesignated Tier 2* information is significant and cannot be changed before NRC approval. Therefore, the Commission has not adopted the "notification" proposal. Also, the designation of Tier 2* information is not an excessive restriction on the change process. Rather, it compensates for industry's request to minimize the amount of information in Tier 1.

Topic 6—Need for Modifications to 10 CFR 52.63(b)(2) If the Two-Tiered Structure for the Design Certification Rule is Approved

Comment Summary. OCRE commented that modifications to § 52.63 are not necessary because the design certification rules would also become regulations. NEI commented that changes to 10 CFR part 52 are not needed at this time but that some changes to part 52 may be identified as appropriate for future consideration based on experience with the initial design certifications.

Response. When part 52 was written, § 52.63(b)(2) was intended to be the change process for information that was not referenced in the design certification rule (non-certified information). Now that the Commission has decided to implement a two-tiered rule structure as described in the response to Topic #1, the two-tiered change process applies to all information referenced by the design certification rule. Therefore, there does not appear to be a need for § 52.63(b)(2) in a two-tiered rule structure.

In the absence of any perceived need for changes to 10 CFR 52.63(b)(2) to accommodate the two-tiered concept in design certification, the Commission does not intend to modify 10 CFR part 52 at this time. However, as NEI suggests, the Commission is evaluating the need for changes to part 52 as it gains experience with the initial design certification reviews.

Topic 7—Whether the Commission Should Either Incorporate or Identify the Information in Tier 1 or Tier 2 or Both in the Combined License

Comment Summary. On the question of whether Tier 1 or Tier 2 information should be incorporated in the combined license (COL) or identified in the COL, NEI stated that this question need not be resolved for design certification purposes but provided two alternatives for future NRC consideration. Alternative one would be to incorporate Tier 1 information and identify Tier 2 information in the COL. The second alternative would be to incorporate both tiers of information in the rule, provided that the Tier 2 change provisions are incorporated in the rule as well.

OCRE stated that both Tier 1 and Tier 2 information should be incorporated in the COL because both tiers contain important design information.

Response. The NRC is deferring the decision on this issue because resolution of this issue is not needed to develop a design certification rule. However, because the commenters all supported incorporation of both tiers of information, the NRC staff will evaluate that option for a combined license under subpart C of 10 CFR part 52.

Topic 8—Acceptability of Using Design Specific Rulemakings Rather Than Generic Rulemaking for the Technical Issues Whose Resolution Exceeds Current Requirements

Comment Summary. NEI, GE Nuclear Energy, and Westinghouse Electric Corporation took exception with the NRC position on the issue of designating severe accident and technical requirements, beyond those in current regulations as "applicable regulations" in the design certification rule. NEI stated that "Commission approved NRC staff positions will be reflected in a design certification rule by means of design provisions contained in Tier 1 and Tier 2 of the DCD incorporated in the rule." NEI argued that the NRC staff's proposed approach would result in needless duplication, complexity, and delay because matters that have been agreed to in detail would then be formulated in broadly stated positions requiring another round of extensive discussions to reach agreement in a process equivalent to a series of complex, discrete rulemakings. In addition, NEI stated that these "broadly stated, free standing applicable regulations carry the potential for new and diverse interpretations by the NRC staff during the life of the design certification." These interpretations may be at odds with the understandings that translated into specific Tier 1 and Tier 2 requirements in the DCD. GE Nuclear Energy reiterated these comments but added that "The course proposed by the NRC staff would enormously complicate pre-rulemaking preparation, the conduct of the rulemakings themselves and COL licensing and post-licensing facility construction and operation. It would, moreover, impose schedule delays and generate needless duplication, if not outright conflicts." Also, NEI saw little difference between the proposal to incorporate applicable regulations in design certification rules and the similar effect of proceeding with generic severe accident rulemaking.

OCRE stated that the resolution of technical issues whose resolution exceeds current requirements will likely be design-specific and therefore, it may make little difference whether the rulemakings are design-specific or generic. OCRE further stated that, if the NRC wants all plants constructed after a certain date to incorporate certain design features or otherwise address certain technical issues, then a generic rulemaking may be the safest and most cost-effective way to accomplish this goal. OCRE also noted that a generic rule would cover an applicant that might decide not to use a standard certified design.

Response. The Commission has used design-specific rulemaking rather than generic rulemaking for the selected technical and severe accident issues that go beyond current requirements for light-water reactors (LWRs). The Commission adopted this approach, early in the review process, because it believed that the new requirements would be design-specific, as OCRE stated. Also, the NRC was concerned that generic rulemakings would cause significant delay in the design certification reviews. The Commission approved this approach in its SRM on SECY–91–262, dated January 28, 1992, and has continued to support this approach for evolutionary LWRs, as stated in its SRM on SECY–93–226, dated September 14, 1993. The Commission has deferred its decision on the need for generic rulemaking for advanced LWRs.

Both the industry and OCRE concluded that there would be little difference in the requirements for the certified designs, regardless if the approach was generic or design-specific. The Commission agrees that at the conclusion of the design certification rulemaking the effect of the new regulations is basically the same but that the specific wording of the regulations may have been different if generic rulemaking was used.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR designs in the area of severe accidents and in other selected areas. The NRC staff proposed new

requirements to implement these goals in various Commission papers, such as SECY–90–016 and SECY–93–087. The NRC staff then selected the applicable requirements for each evolutionary design and evaluated the design information that describes how those requirements were met in the FSERs for the U.S. ABWR and System 80+ designs. In the proposed rule for each design, the NRC has identified these requirements as applicable regulations in order to specify the requirements that were applicable and in effect at the time the certification was issued for the purposes of §§ 52.48, 52.54, 52.59, and 52.63.

These applicable regulations, which were identified in each FSER, are set forth in the design certification rule, with minor editing, to achieve codification through the design certification rulemaking. These codified regulations, which supplement the list of regulations in § 52.48, become part of the Commission's regulations that are "applicable and in effect at the time the certification was issued." Without this complete list of applicable regulations, the NRC staff could not perform reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends to make it clear that for the purpose of renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued. The NRC also intends to make it clear that the Commission may, pursuant to § 52.63(a)(1) and (3), impose modification of Tier 1 information or to issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these proposed requirements. Also, the Commission would not have a complete baseline of regulations for evaluating proposed changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

The codification of these proposed requirements, in reference to § 52.48, is also necessary for two other reasons. First, it serves as a basis for obtaining public comment on the proposed adoption of the requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the proposed requirements used during its review of the design. This is because the requirements are not "applicable standards and requirements of the * * * Commission's regulations" without further Commission action under § 52.54.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC staff told NEI in a meeting on April 25, 1994, and in a letter dated July 25, 1994, that the industry-proposed alternative to applicable regulations was unacceptable. The NRC staff stated that design information cannot function as a surrogate for design-specific (applicable) regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the design information. Therefore, consideration of the comments on Topic #8 has not altered the Commission's decision to proceed with design-specific rulemaking for the proposed requirements and to publish the appropriate applicable regulations in each design certification rule.

Topic 9—The Appropriate Form and Content of a Design Control Document

Comment Summary. Concerning the form and content of the DCD, NEI envisioned a document that consisted of three parts including an introductory section, Tier 1 information, and Tier 2 information. NEI also proposed an algorithm that described the industry's view of the contents of a DCD.

NEI stated that, based on its interactions with the NRC staff on the guidance for preparing a DCD, two main issues have emerged. The first issue is the nature and treatment for rulemaking purposes of secondary references contained in the DCD. At issue is the extent to which references to codes, standards, Regulatory Guides, etc. need to be explicitly "incorporated by reference" in specific design certification rules (DCRs). It is industry's position that the burden of incorporating these secondary references into the rule would outweigh the increase in regulatory certainty and predictability that such an effort would provide. The second issue relates to the regulatory significance of information contained in the DCD and, in particular, design Probabilistic Risk Assessment (PRA) information. Specifically, NEI is concerned with the inclusion of the design PRA in the DCD and a perceived requirement to use the PRA to support the "50.59-like" change process.

Response. As defined in SECY–92–287, the DCD is the master document that contains the Tier 1 and 2 information referenced by the design certification rule. The NRC staff has had several meetings with the design certification applicants on the preparation of a DCD and provided guidance to the applicants in letters dated August 26, 1993; August 3 and 5, 1994; and October 4, 1994. Although the Commission agrees with NEI on the basic form of the DCD, it does not agree with NEI's proposed algorithm on the contents of a DCD.

Because the DCD is the master reference document, it should, to the extent possible, retain as much of the applicant's standard safety analysis report (SSAR), as required in 10 CFR 52.47. Due to the requirement that all information incorporated in the rule be publicly available, proprietary and safeguards information cannot be included in the DCD. Also, the NRC concluded that the detailed methodology and quantitative portions of the design PRA do not need to be included in the DCD but the assumptions, insights, and discussions of PRA analyses must be retained in the DCD. The NRC also decided that COL applicants and licensees will be encouraged, but not required, to use the PRA to support the change process. This position was predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or holder to have a plant-specific PRA that updates and supersedes the design PRA to account for site-specific and detailed as-built aspects of the plant. The Commission approved the requirement for a plant-specific PRA in its SRM on SECY–94–182, "Probabilistic Risk Assessment (PRA) Beyond Design Certification," in approving the development of a generic "Operational Rule" that would apply to all COL applicants and holders. The remainder of the applicant's SSAR, including all of the assumptions, issue resolutions, and safety analyses, should be retained in the DCD.

With regard to NEI's concern with secondary references, the NRC staff met with NEI on January 6, 1994, and issued a letter to NEI on May 3, 1994, that

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documented an agreement with the industry on the resolution of this issue. The agreement states that combined license (COL) applicants and licensees who reference a DCR will treat these secondary references as requirements, in the context that they are described in the documents referenced in the DCD. However, these secondary references will not be incorporated by reference in the DCR, and thus there is no issue preclusion for secondary references. With the above stated guidance, the NRC believes that the appropriate form and content of a DCD has been defined.

III. Section-by-Section Discussion of Design Certification Rule

Pursuant to 10 CFR part 52, subpart B, the NRC has been working for some time to develop a rule that will achieve the Commission's goals for standard design certifications. Therefore, this proposed rule seeks to achieve the early resolution of safety issues and to enhance the safety and reliability of nuclear power plants. The Commission also expects to achieve a more predictable and stable licensing process through the certification of standard designs by rulemaking. An applicant for a combined license (COL) that references a design certification rule (DCR) must meet the requirements in the DCR and in the design control document that is incorporated by reference in the DCR.

The NRC staff's first proposal of a standard design certification rule was provided in Enclosure 1 to SECY–92–287, dated August 18, 1992. This proposal was modified based on Commission guidance, and an updated version was published in appendix 2 to the ANPR. The proposed rule in this **Federal Register** notice has the same basic form and content as the ANPR version, but there has been some reorganization of the contents. The following discusses the purpose and key aspects of each section of the rule and also discusses issues raised on those sections that are not covered in the public comment summary. Changes made to the ANPR version of the proposed rule for the sake of clarity, brevity, consistency, or organization are not discussed below.

All references to the proposed rule are to the provisions in proposed appendix A to 10 CFR part 52.

A. Scope

The purpose of Section 1 of the proposed rule entitled, "Scope," is to identify the standard plant design that is to be approved by this design certification rule. The applicant for certification of the design is also identified in this section. While the design certification applicant does not have special rights pursuant to this rule, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the certified design. If the COL applicant does not use the design certification applicant to provide the design, then it may have to meet the requirements in 10 CFR 52.63(c). Also, the proposed rule imposes a requirement on the design certification applicant in Section 9(a)(1). Therefore, identification of the design certification applicant is necessary to implement this rule.

Because the requirements of 10 CFR 52.63(c) apply to an applicant for a COL, the NRC proposes that this requirement be added to 10 CFR part 52 of subpart C, specifically to a new section 10 CFR 52.79(e). The NRC requests comments on the desirability of making this change to 10 CFR part 52 (refer to Section IV).

B. Definitions

The terms Tier 1, Tier 2, and Tier 2* are defined in Section 2, of the proposed rule entitled "Definitions," because these concepts were not envisioned at the time that 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of part 52 (refer to discussion on Topic #1). The design control document (DCD) contains both the Tier 1 and 2 information, along with an introduction. After the issuance of the ANPR, the phrase Tier 2* was added to the list of definitions. Some of the information in Tier 2 that requires special treatment in the change process was commonly referred to as Tier 2* during the design review. Therefore, the Commission believes that it would be useful to define and use this phrase in the proposed rule. Further information on changes to or departures from information in the DCD is provided below in the discussion on Section 8, "Change Process." The NRC requests suggestions on other words or phrases that may need to be defined in this rule (refer to Section IV).

C. [Reserved]

The purpose of Section 3, "Information collection requirements," in the proposed rule was originally intended to provide the citation for the control number which has been assigned by the Office of Management and Budget when it approved the information collection requirements in this rulemaking. Because this citation has been placed in § 52.8, section 3 to the rule is no longer necessary.

D. Contents of the Design Certification

Section 4 of the proposed rule entitled, "Contents of the design certification," identifies the design-related information that is incorporated by reference into this rule (4(a)) and includes some related provisions of the proposed rule (4(b) and (c)). Both tiers of design-related information have been combined into a single document, called the design control document (DCD), in order to effectively control this information and facilitate its incorporation into the rule by reference (refer to Topic #9 for discussion on the DCD). The DCD was prepared to meet the requirements of the Office of the **Federal Register** (OFR) for incorporation by reference (1 CFR part 51). Section 4(a) of this proposed rule would incorporate the DCD by reference upon approval of the Director, OFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law.

An applicant for a construction permit or COL that references this design certification rule must conform with the requirements in the proposed rule and the DCD. The master DCD for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be maintained at the NRC's Public Document Room and library. Questions concerning the accuracy of information in an application that references this design certification will be resolved by checking the master DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section 8 of the proposed rule, then at the completion of the rulemaking the NRC will change its copies of the DCD and notify the OFR and design certification applicant to change their copies.

The applicant for this design certification rule is responsible for preparing the DCD in accordance with NRC and OFR requirements and maintaining an up-to-date copy pursuant to Section 9(a)(1) of the proposed rule. Plant-specific changes to and departures from the DCD will be maintained by the applicant or licensee that references this design certification pursuant to Section 9(a)(2) of the proposed rule. In order to meet the requirements of OFR for incorporation by reference, the originator of the DCD (design certification applicant) must make the document available upon request after the final design certification rule is issued. Therefore, the proposed rule states that copies of the DCD can be obtained from the applicant or an organization designated by the applicant. The applicant for this design certification has stated that it plans to request distribution of its DCD by the National Technical Information Service (NTIS). If the applicant selects an organization, such as NTIS, to distribute the DCD, then the applicant must provide that organization with an up-to-date copy. A copy of the DCD must also be made available at the NRC and OFR.

The DCD contains an introduction that explains the purpose and uses of the DCD and two tiers of design-related information. The significance of designating design information as Tier 1 or Tier 2 is that different change processes and criteria apply to each tier, as explained in Section H "change process" below. The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

The Tier 1 portion of the design-related information contained in the DCD is certified by this rule. This information consists of an introduction to Tier 1, the certified design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC) for systems and structures of the design, design material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER.

The information in the Tier 1 portion of the DCD was extracted from the detailed information contained in the application for design certification. The Tier 1 information addresses the most safety-significant aspects of the design, and was organized primarily according to the structures and systems of the design. Additional design material and related ITAAC is also provided in Tier 1 for selected design and construction activities that are applicable to multiple systems of the design. The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification, and the ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for subsequent modifications. However, subsequent modifications to the facility must comply with the Tier 1 design descriptions, unless changes are made in accordance with the change process in Section 8 of this proposed rule.

The Tier 1 interface requirements are the most significant of the interface requirements for the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii), that must be met by the site-specific portions of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii), that must be addressed as part of the application for a construction permit or COL.

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this rule but is not certified. Changes to or departures from the certified design material (Tier 1) must comply with Section 8(a) of this proposed rule. Changes to or departures from the approved information (Tier 2) must comply with Section 8(b) of this proposed rule. Tier 2 includes the information required by 10 CFR 52.47 and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. Compliance with the more detailed Tier 2 information provides a sufficient method, but not the only acceptable method, for complying with the more general design requirements included in Tier 1. A supplementary description of Tier 2 information is provided in the DCD introduction. If an applicant or licensee used methods other than those described in Tier 2, then the alternative method would be open to staff review and a possible subject for a hearing.

When completing the design information for a plant, an applicant for a COL must conform with all of the requirements in the DCD, unless the information in the DCD is changed pursuant to the process in Section 8 of this proposed rule. The change process defines the procedural differences between Tier 1 and 2. Accordingly, an applicant for a construction permit or COL, or licensee that references this certified design must conform with all of the requirements from the DCD, including the codes, standards, and other guidance documents that are referenced from the DCD (so-called secondary references). The industry agreed to treat these secondary references as requirements even though they are not incorporated by reference, in the context as described in the DCD, as set forth in a letter from Dennis Crutchfield of the NRC to Joe Colvin of the Nuclear Energy Institute, dated May 3, 1994.

An applicant for a construction permit or COL that references this proposed rule must also describe those portions of the plant design which are site-specific, and demonstrate compliance with the interface requirements, as required by 10 CFR 52.79(b). The COL applicant does not need to conform with the conceptual design information in the DCD that was provided by the design certification applicant in response to 10 CFR 52.47(a)(1)(ix). The conceptual design information, which are examples of site-specific design features, was required to facilitate the design certification review, and it is neither Tier 1 nor 2. The introduction to the DCD identifies the location of the conceptual design information and explains that this information is not applicable to a COL application.

An applicant must address COL Action Items, which are identified in the DCD as COL License Information, in its COL application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant or licensee that references the design certification, as required by 10 CFR 52.77 and 52.79. A further explanation of the status of the COL License Information is provided in the DCD introduction. Also, the detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), was not included in the DCD. The NRC agreed with the design certification applicant's request to delete this information because conformance with the deleted portions of the PRA is not required. The NRC's position is also predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA

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and maintain it throughout the operational life of the plant.

The application for design certification contained proprietary and safeguards information. This information was part of the NRC staff's bases for its safety findings in the FSER. However, because of OFR requirements, this information could not be included in the DCD. Therefore, the proprietary and safeguards information, or its equivalent, that was provided in the design certification application but not included in the DCD, must be included as part of a COL application. The NRC considers this information to be requirements for plants that reference this rule. Since this information was not included in the DCD or otherwise approved by OFR for "incorporation by reference," it would not have issue preclusion in a construction permit or COL proceeding.

There is other information that is within the scope of the certified design (i.e. as-built, as-procured, and evolving technology design information) that must be developed by a COL applicant or holder. This detailed design information must be completed in accordance with the requirements in the DCD and the acceptance criteria in ITAAC, including DAC. Since the Tier 1 and 2 information is solely contained within the DCD, the remainder of the design-related information that is developed by a COL applicant or holder that references this proposed rule will not be either Tier 1 or 2 information, whether it is within the scope of the design certification or not. Therefore, the change process in Section 8 of this proposed rule will not control this COL information. Although the change process for this COL information does not need to be developed until a COL application is submitted, the NRC is interested in the public's view on how this information should be controlled (refer to Section IV).

The purpose of Section 4(b) of this proposed rule is to ensure that an applicant that references this design certification references both tiers of information in the DCD. The two tiers of information were developed together and both tiers of information are needed to complete the design of a plant that references the rule. For example, the ITAAC in Tier 1 contains not only the acceptance criteria for verifying that the as-built plant conforms with the approved design, but it also contains various design processes with acceptance criteria (DAC), for completing selected areas of the plant design. The DAC are described in Section 14.3 of the SSAR and FSER. The NRC staff relied on DAC for its evaluation of selected design areas where the applicant for design certification did not provide complete design information. Also, the Tier 2 information contains explanations and procedures on how to implement ITAAC. Therefore, the Commission proposes that an applicant could not reference this design certification rule without meeting ITAAC, even though it is not a requirement in 10 CFR part 50 (See Section J for further discussion).

The applicant for design certification initially prepared the DCD to be consistent with the SSAR and the NRC staff's FSER. The applicant for design certification made some corrections and clarifications to the DCD since the completion of the SSAR and issuance of the FSER. If there is an inconsistency between the SSAR and the FSER, or between either of these documents and the DCD, then the DCD is the controlling document. That is the purpose of Section 4(c) of this proposed rule.

E. Exemptions and Applicable Regulations

The purpose of Section 5 of the proposed rule entitled, "Exemptions and applicable regulations," of the proposed rule is to identify the complete set of regulations that were applicable and in effect at the time the design certification was issued for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63. In accordance with 10 CFR 52.48, the NRC staff used the technically relevant regulations (safety standards) in 10 CFR parts 20, 50, 73, and 100 in performing its review of the application for design certification. The effective date of the applicable regulations is the date of the FSER, as set forth in Section 5(b) of the proposed rule. During its review of the application for design certification, the NRC staff identified certain regulations for which application of the regulation to the standard design would not serve or was not necessary to achieve the underlying purpose of the regulation. These proposed exemptions to the NRC's current regulations are identified in Section 5(a) of this proposed rule. The basis for these exemptions is provided in the FSER.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement, the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR standard designs in the area of severe accidents and in other selected areas. As a result, the NRC staff proposed new requirements in various Commission papers, such as SECY–90–016 and SECY–93–087, to be used in the design certification review and treated as applicable regulations in the design certification rulemaking (refer to discussion on Topic #8). The bases for these requirements are set forth in SECY–90–016 and SECY–93–087. The Commission approved the use of these proposed regulations for purposes of the design certification review in the respective SRMs. These proposed regulations deviated from or were not embodied in current regulations applicable to the standard design. The NRC staff then selected proposed regulations that were applicable to the design under review and reviewed the design pursuant to these applicable regulations. The FSER identifies the applicable regulations that were used and describes how these regulations were met by the design-related information in the SSAR. The Commission approved the evaluation of the design pursuant to the applicable regulations in its approval to publish the FSER.

These proposed applicable regulations are identified in Section 5(c) of this proposed rule to achieve codification through the design certification rulemaking. The proposed applicable regulations in Section 5(c) are substantively the same as those in the FSER but have been edited for clarity. These codified requirements, which supplement the regulations in Section 5(b), will become part of the Commission's regulations that were "applicable and in effect at the time the certification was issued," if the Commission adopts them in the final design certification rule. The Commission requests comments on whether each specific applicable regulation is justified (refer to Section IV).

The codification of these additional requirements, in reference to 10 CFR 52.48, is necessary for two reasons. First, it serves as a basis for obtaining public comment on the adoption of the proposed requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the requirements used during its review of the design. This is because the proposed requirements, without further Commission action, could be argued as not being "applicable standards and requirements of the * * * Commission's regulations" under

§ 52.54. Also, without codification of the applicable regulations, the NRC could not perform its reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends that for renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued.

The Commission may, pursuant to § 53.63(a)(1) and (3), impose a modification of Tier 1 information or issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these requirements. Also, the Commission would not have a complete list of regulations for use in evaluating requested changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC rejected NEI's proposed alternative to applicable regulations in a meeting on April 25, 1994 and in a letter dated July 25, 1994 NEI's proposal to use design information as a surrogate for design-specific (applicable) regulations is not workable for proposed changes, because the design information only represents one way of implementing a regulation. The NRC would need the regulation for the design feature in order to evaluate a proposed change to the design information.

F. Issue Resolution for the Design Certification

The purpose of Section 6 of the proposed rule entitled, "Issue resolution for the design certification" is to identify the issues that are considered resolved, if the Commission adopts a final design certification rule, and therefore, these issues receive issue preclusion within the scope and intent of 10 CFR 52.63(a)(4). Specifically, all nuclear safety issues arising from the Atomic Energy Act that are associated with the information in the NRC staff's FSER or the applicant's DCD are resolved within the meaning of § 52.63(a)(4). All issues arising under the National Environmental Policy Act of 1969 associated with the information in the NRC staff's environmental assessment or the severe accident design alternatives in the applicant's Technical Support Document are also resolved within the scope and intent of § 52.63(a)(4). The issues that are associated with information that is not included in the DCD, such as proprietary information, do not have issue preclusion within the meaning of 10 CFR 52.63(a)(4).

G. Duration of the Design Certification

The purpose of Section 7 of the proposed rule entitled, "Duration of the design certification," is in part to specify the time period during which the standard design certification may be referenced by an applicant for a construction permit or COL, pursuant to 10 CFR 52.55. This section of the rule also states that the design certification remains valid for an applicant or licensee that references the design certification until their application is withdrawn or their license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification rule continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for the proposed rule to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that rulemaking changes to or plant-specific departures from information in the DCD must be made pursuant to the change process in Section 8 of this proposed rule for the life of the plant.

H. Change Process

The purpose of Section 8 of the proposed rule entitled, "Change Process" is to set forth the process for requesting rulemaking changes to or plant-specific departures from information in the DCD. The Commission has developed a more restrictive change process than for plants that were licensed pursuant to 10 CFR part 50, in order to achieve a more stable licensing process for applicants and licensees that reference a design certification rule. The change process in Section 8 is substantively the same as the process proposed in the ANPR.[2] As a result, Section 8(a) provides the process for changing Tier 1 information and Section 8(b) provides the process for changing Tier 2 information. The change process for Tier 1 information uses the change process developed by the Commission in the 10 CFR part 52 rulemaking for certified design-related information. Therefore, the provisions in Section 8(a) of the proposed rule simply refer to the appropriate sections in 10 CFR 52.63. A description of the Tier 1 information that is controlled by Section 8(a) is provided in the above discussion on contents of the design certification (III.D).

As discussed in Topic #2, the NRC developed a change process for Tier 2 that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process in Section 8(b) has provisions for generic changes, plant-specific orders, and exemptions similar to those in 10 CFR 52.63, but some of the standards for plant-specific orders and exemptions are different. The standards that must be met in order to justify a generic change to either Tier 1 or 2 information are the same. When NEI proposed a two-tiered structure for design certification rules in its letter of August 31, 1990, it also stated that "NRC backfits involving matters described in the first tier would be governed by the provisions of § 52.63, whereas § 50.109 would govern backfitting as respects the second tier." As a result, the NRC staff used the backfit standards in § 50.109 for generic changes to Tier 2 in its proposed design certification rule in SECY–92–287. Subsequently, in a letter dated October 5, 1992, NEI changed its position and agreed with the Commission that the standard for generic changes to Tier 2 should be the same as the Tier 1 standard. This issue is discussed further in SECY–92–287A, dated March 26, 1993. Therefore, Section 8 of this proposed rule uses the same standards for generic changes to both Tier 1 and 2 information.

Although the process in Section 8 for plant-specific orders and exemptions is the same for Tier 1 and 2 information, the standards are different. In order to preserve the benefits of standardization which is one of the important goals of design certification, the Commission

[2] This change process has been reorganized for clarity and conformance to the two-tiered rule structure, and to distinguish between generic changes to Tier 1 and 2 information, which are accomplished via rulemaking, and plant-specific departures from Tier 1 and 2 information, which may be accomplished by the process defined in Section 8 of this proposed rule. For brevity, this SOC refers to both aspects as constituting the "change process" for this design certification rule.

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proposes in Section 8(a)(3) that plant-specific orders or exemptions from Tier 1 information must consider whether the special circumstances which § 50.12(a)(2) required to be present outweigh any decrease in safety that may result from the reduction in standardization, as required in 10 CFR 52.63(a)(3). The Commission does not propose to adopt this additional consideration for plant-specific orders or exemptions from Tier 2 information, in order to achieve additional flexibility. The Commission believes this is acceptable because the Tier 2 information is not as safety significant as the Tier 1 information. Therefore, Sections 8(b) (3) and (4) of the proposed rule do not require the additional consideration of the reduction in standardization caused by proposed departures from Tier 2 information.

A generic change to either Tier 1 or 2 information in the DCD is accomplished by rulemaking. Any person seeking to make a generic change to the DCD, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.802. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(1) for justifying a generic change to the DCD. Any generic changes to the DCD resulting from the rulemaking will be noticed in the **Federal Register**. The NRC will update the master DCD in its central files and the copies in the NRC Library and public document room (refer to the discussion in III.D). Under Sections 8(a)(2) and (b)(2) generic changes to Tier 1 and 2, respectively, will be applicable to all plants referencing the design certification. However, if the NRC determines that a generic change is not technically relevant to a particular plant, based on plant-specific changes made pursuant to Section 8, then the generic rulemaking will indicate that the change will not be applicable to that plant. If the proposed change to the DCD also results in a violation of an underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

A plant-specific departure from either Tier 1 or 2 information in the DCD does not require rulemaking. Any person requesting a Commission order directing a plant-specific change, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.206. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(3) or Section 8(b)(3) for departures from Tier 1 or Tier 2 information, respectively. By contrast an applicant or licensee that references this design certification rule may request exemptions from Tier 1 or 2 information pursuant to 10 CFR 52.63(b)(1) or Section 8(b)(4) of this rule, respectively. The NRC recognized that there may be special circumstances pertaining to a particular applicant or licensee that would justify an exemption from the DCD. The request must describe how the exemption from Tier 1 or 2 meets the standards in 10 CFR 52.63(b)(1) or Section 8(b)(4) of this proposed rule, respectively. The exemption may be contested in a hearing if the exemption is granted in connection with issuance of a construction permit, operating license, or combined license; it may also be contested in a hearing if the exemption also requires the issuance of a license amendment. If a plant-specific change or exemption from the DCD also results in a violation of the underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

In addition to the plant-specific changes described above, an applicant or licensee that references this design certification rule may depart from Tier 2 information, without prior NRC approval pursuant to Section 8(b)(5) of this proposed rule. However, the Commission believes that these changes should open the possibility for challenge in a hearing (refer to discussion on Topic #2). The Commission approved the use of this "§ 50.59-like" change process in its SRMs on SECY–90–377 and SECY–92–287A. The NRC is interested in the public's view on how these changes could be challenged in a hearing (refer to Section IV).

As in 10 CFR 50.59, an applicant or licensee cannot make changes that involve an unreviewed safety question (USQ) or technical specifications, without prior NRC approval. Also, for changes pursuant to Section 8(b)(5), an applicant or licensee cannot make changes to Tier 1 or Tier 2* information without prior NRC approval. If the proposed change does not involve these factors, then the NRC will allow changes to previously approved information in Tier 2 without prior NRC approval. However, if the change involves an issue that the NRC staff has not previously approved, then NRC approval is required. The process for evaluating proposed tests or experiments not described in Tier 2 will be developed for an operating or combined license that references this design certification (refer to Section IV).

The restriction on changing Tier 1 information is included in the process in Section 8(b)(5) because this information can only be changed pursuant to Section 8(a) of the proposed rule. Whereas, the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the DCD. A description of the Tier 1 information is provided in the discussion in Section III.D on contents of the design certification. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for the applicant or licensee that references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain relatively significant information only exists in Tier 2 and the NRC staff did not want this significant information changed without prior NRC approval. The NRC specified this information in its FSER and the design certification applicant has identified this information in its DCD. This information has come to be known as Tier 2* information and it has compensated for industry's desire to minimize the amount of information in Tier 1.

In the ANPR, the NRC referred to the Tier 2* information as pre-identified unreviewed safety questions (USQs) because there was already an established procedure in 10 CFR 50.59 for FSAR changes that constitute USQs, which require NRC approval. NEI stated in its comments on the ANPR that it was not necessary to create an artificial set of USQs in order to accomplish the NRC's objective of requiring prior approval. Therefore, the proposed rule was changed from the ANPR to simply state that the Tier 2* information can not be changed without prior NRC approval. Also, NEI requested in its comments that the Tier 2* information not be identified in the design certification rule, as was proposed in the ANPR, and that an expiration date be considered for the restriction in the change process for Tier 2* information. NRC agrees that Tier 2* information can be identified in the DCD and Section 8(b)(5) of the proposed rule was changed accordingly. The NRC also reevaluated the duration of the change restriction for Tier 2* information and determined that some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. The DCD sets forth an expiration date for some of the Tier 2* information.

As part of this rulemaking, the NRC is seeking public comments on the appropriate regulatory process to use for review of proposed changes to Tier 2* information. Currently, pursuant to 10 CFR 50.59, the NRC approves changes to FSAR information that constitute a USQ or involve technical specifications through the issuance of license amendments. However, if an applicant or licensee requests NRC approval for a proposed change to Tier 2* information, should the NRC review process be similar to that for a USQ? While it is clear that these proposed changes would all involve significant design-related information and that prior review of proposed departures from Tier 2* information is necessary, the NRC has not determined if it is always appropriate to process the approved changes as either an amendment to the license application or an amendment to the license, with the requisite hearing rights. Therefore, the NRC requests the public's view on the preferred regulatory process for these changes (refer to Section IV).

An applicant or licensee that plans to depart from Tier 2 information, pursuant to Section 8(b)(5), must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, including the generic issues discussed in Chapter 20 of the FSER. The benefits of the early resolution of safety issues would be lost if changes were made to the DCD that violated these resolutions without NRC approval. The evaluation of the resolved issues needs to consider the proposed change over the full range of power operation from startup to shutdown, including issues resolved under the heading of shutdown risk, as it relates to anticipated operational occurrences, transients, and design basis accidents. The evaluation should consider the tables in Sections 14.3 and 19.8 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. GE provided more detailed cross-references to Tier 1 for these analyses in a letter dated March 31, 1994, and ABB–CE provided more detailed cross-references in a letter dated June 10, 1994. The NRC does not endorse NSAC–125, "Guidelines for 10 CFR 50.59 Safety Evaluations," for performing the safety evaluations required by Section 8(b)(5) of the proposed rule. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for implementing Section 8 after the final rule is issued.

During the review of its DCD, GE requested that the determination of whether a proposed departure from Tier 2 information that involves severe accident issues constitutes a USQ use criteria that are different from the criteria for USQ determinations proposed in the ANPR (10 CFR 50.59(a)(2)). GE argued that not all increases in the probability or consequences of severe accidents are significant from a safety standpoint. Minor increases in the probability of some accident scenarios will not affect the overall core damage frequency or the conclusions of the severe accident evaluations. Therefore, GE proposed that changes to Tier 2 information that result in insignificant increases in the probability or consequences of severe accidents not constitute a USQ.

The NRC believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the NRC has proposed, in Section 8(b)(5), separate criteria for determining whether a departure from information associated with severe accident issues constitutes a USQ. The new criteria in Section 8(b)(5)(iii) will only apply to Tier 2 information that is associated with the severe accident issues discussed in the section of the DCD identified in the rule. The criteria for USQ determinations in Section 8(b)(5)(ii), which are the same as those proposed in the ANPR, will apply to other Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination should be based upon the criteria in Section 8(b)(5)(ii). The NRC is interested in the public's view on whether the Tier 2 information involving resolutions of severe accident issues should be treated differently for USQ determinations than all other safety issues? If so, are the proposed criteria in Section 8(b)(5)(iii) sufficient to determine if a proposed departure from information associated with severe accident issues constitutes a USQ? (Refer to Section IV).

The NRC is also proposing two additional provisions to the change process that were not in the ANPR. The first is Section 8(b)(5)(iv), which provides that changes made pursuant to Section 8(b)(5) do not also require an exemption from the design certification rule. Because the Tier 2 information is incorporated by reference into the design certification, a departure from Tier 2 pursuant to Section 8(b)(5) would also require an exemption from the design certification rule absent this proposed provision. The second provision is Section 8(c), which makes it clear that proposed changes to requirements in this design certification rule that are neither Tier 1 nor Tier 2 must be done by exemption pursuant to 10 CFR 50.12. Such requirements include the recordkeeping and reporting requirements in Section 9 of this proposed rule.

I. Records and Reports

The purpose of Section 9 of this proposed rule entitled, "Records and Reports," is to set forth the requirements for maintaining records of DCD changes and submitting reports to the NRC. This section is similar to the requirements for records and reports in 10 CFR part 50 and § 52.63(b)(2), with the following differences. Section 9(a)(1) requires an applicant for design certification to maintain an up-to-date copy of the DCD that includes all generic changes to Tier 1 and 2 information that are made by rulemaking. This will ensure that the design certification applicant provides up-to-date versions of the DCD to prospective applicants that want to reference this design certification or to other interested parties who want copies of the DCD. Section 9(a)(2) requires an applicant or licensee that references this design certification to maintain an up-to-date plant-specific version of the DCD that includes both generic changes to the DCD, as well as plant-specific departures from the DCD. This ensures that the plant records which include an accurate DCD reflecting information specific to the plant as well as changes to the DCD.

The proposed rule also establishes reporting requirements in Section 9(b) for applicants or licensees that reference this design certification rule. The requirements in Section 9(b) are similar to the reporting requirements in 10 CFR part 50, except that they include reporting of changes to or departures from the plant-specific DCD. In addition, the reporting requirements in

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Section 9(b) vary according to whether the changes are made as part of an application, during plant construction, or during operation. Also, the reporting frequency of summary reports of departures from and periodic updates to the DCD increases during plant construction. If an applicant that references this design certification rule decides to adopt departures from the DCD that were developed, but not approved pursuant to Section 8 of this proposed rule, before its application (i.e., first of a kind engineering), then the proposed departures from the DCD must be submitted with the initial application for a construction permit or combined license.

For currently operating plants, a licensee is required to maintain records of the basis for any design change made to the plant pursuant to 10 CFR 50.59. Further, a licensee is required to provide a summary of these changes to the NRC annually or along with updates to the final safety analysis report pursuant to 10 CFR 50.71. The proposed rule allows departures from the DCD during the periods of application, construction, and operation of the plant. Therefore, the proposed rule requires timely submittal of summary reports of departures from, as well as updates to, the DCD during each of these intervals, consistent with the Commission's guidance on reporting frequency in its SRM on SECY–90–377.

NEI proposed reporting of design changes at a 6-month interval, in its comments on the ANPR, to "avoid unnecessarily diverting owner/operator resources to meet excessive reporting requirements." The NRC modified the provisions in the proposed rule to relax the reporting requirements before issuance of a construction permit or combined license. During this interval, summary reports of changes and updates to the DCD should be submitted to the NRC as part of the amendments to the construction permit or combined license application. However, the NRC does not agree with the NEI proposal for semi-annual reporting of design changes during plant construction because it does not provide for sufficiently timely notification of design changes. Therefore, the Commission retained the requirement for quarterly reporting of changes in the proposed rule during this interval. Also, the NRC relaxed the provisions in Section 9(b) so that during operation of a plant, the reporting requirements are the same as for currently operating plants.

The NRC Commission believes that quarterly reporting of design changes during the period of construction are necessary to closely monitor the status and progress of the construction of the plant. As required by 10 CFR 52.99, the NRC must find that the ITAAC have been successfully met. The ITAAC verify that the as-built facility conforms with the approved design and emphasize design reconciliation and design verification of the as-built plant. To make its finding, the NRC must tailor its inspection program to monitor the plant construction and adjust its program to accommodate changes. Quarterly reporting of design changes will facilitate these adjustments in a timely manner and aids in a common understanding of the plant as the changes are being made. This is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing.

Section 9(c) of the proposed rule requires that records are kept for the lifetime of a facility, as in 10 CFR part 50 and § 52.63(b)(2).

J. Applicability of a DCR in 10 CFR Part 50 Licensing Proceedings

Several provisions in 10 CFR part 52, subpart B, suggest that design certification rules (DCRs) may be referenced not only in combined license proceedings under 10 CFR part 52, subpart C, but also in licensing proceedings under 10 CFR part 50. Section 52.63(c) states:

> The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination, including the determination that the application is consistent with the certified design. (Emphasis supplied.)

See also §§ 52.41, 52.55(b), 52.55(c), 52.63(a)(4), 52.63(b)(1). However, these provisions in 10 CFR part 52, subpart B, are inconsistent in identifying the *type* of part 50 proceeding in which design certification rules may be referenced. For example, although § 52.63(c) (quoted above) and § 52.55(c) explicitly provide for referencing of design certification rules in 10 CFR part 50 *construction permit* proceedings, §§ 52.55(b), 52.63(a)(4) and 52.63(b)(1) refer only to *operating license* proceedings. Section 52.63(a)(4) is illustrative:

> Except as provided for in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification (Emphasis supplied.)

Therefore, some might question whether the Commission intended construction permits applicants under 10 CFR part 50 to have the option of referencing design certification rules. However, the Commission has not identified any regulatory or policy reasons for precluding a construction permit applicant from referencing a design certification rule while allowing an operating license applicant to do so. Thus, the Commission believes that 10 CFR part 52 provides the discretion to authorize a construction permit applicant under 10 CFR part 50 to reference a design certification rule.

Assuming that the Commission has such discretion, there are a number of issues that present themselves. Should the Commission exercise its discretion to allow construction permit applicants to reference this design certification rule? Should the Commission require that if a design certification rule is to be relied upon in part 50 licensing proceedings, it must be referenced in both the construction permit and operating license applications? Would it make sense to allow an operating license applicant to reference a design certification if the underlying construction permit did not reference the design certification? The Commission recognizes that consideration of these issues depends in part upon the legal significance of a design certification in the 10 CFR part 50 licensing proceeding, as well as its significance for the permittee or licensee once the construction permit or operating license is granted. In particular, 10 CFR part 52, subpart B, does not say what the legal effect is (if any) of ITAAC in a part 50 operating license proceeding in which the underlying construction permit references a design certification.

In view of the status of ITAAC as Tier 1 information, how would a construction permit applicant referencing a design certification rule avoid referencing the ITAAC? What would be the consequences for the construction permit applicant of referencing ITAAC? If the underlying construction permit referenced ITAAC, then what (if any) would be the scope and nature of "issue preclusion" at the operating license stage, in terms of Staff/Commission review and approval of the operating license application, as well as issues which are precluded from consideration under 10 CFR 2.758? The Commission seeks the public's views on the referencing of design certification rules in 10 CFR part 50 applications (refer to Section IV).

IV. Specific Requests for Comments

In addition to the general invitation to submit comments on the proposed rule, the DCD, and the environmental assessment, the NRC also invites specific comments on the following questions:

1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)? (Refer to discussion in III.A.)

2. Are there other words or phrases that should be defined in Section 2 of the proposed rule? (Refer to discussion in III.B.)

3. What change process should apply to design-related information developed by a COL applicant or holder that references this design certification rule? (Refer to discussion in III.D.)

4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified? (Refer to discussion in III.E.)

5. Section 8(b)(5)(i) authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements? (Refer to discussion in III.H.)

6. How should the determinations made by an applicant or licensee that changes may be made under Section 8(b)(5)(i) without prior NRC approval be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged? (Refer to discussion in III.H.)

7 What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process? (Refer to discussion in III.H.)

8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be? (Refer to discussion in III.H.)

9(a) (1) Should construction permit applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the "old" 10 CFR part 50 2-step process from the 10 CFR part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

9(b) (1) Should operating license applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR Part 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.*, without foreclosing alternatives for future resolution).

V. Comments and Hearings in the Design Certification Rulemaking

A. Opportunity to Submit Written and Electronic Comments

Any person may submit written comments on the proposed design certification rule to the Commission for its consideration.[3] Commenters have 120 days from the publication of this notice to file written comments on the proposed design certification rule. Commenters needing access to proprietary information in order to provide written comments must follow the procedures and filing deadlines (including the date for filing written comments) which are set forth in Section V.E. below.

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the comment letter in electronic format on a DOS-formatted (IBM compatible) 3.5 or 5.25-inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC rules subsystem can then be accessed by selecting the "Rules" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and

[3] An opportunity for public comment is required by Section 553 of the Administrative Procedures Act and 10 CFR 52.51(b).

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World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the "U.S. Nuclear Regulatory Commission" option from FedWorld's "Subsystems/Databases" menu or by entering the command "/go nrc" at a FedWorld command line. If NRC access is obtained through FedWorld's "Subsystems/Databases" menu, then return to FedWorld is accomplished by selecting the "Return to FedWorld" option from the "NRC Main Menu." However, if NRC access at FedWorld is accomplished by using NRC's toll-free number, access to all NRC systems is available, but there will be no access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Public Meeting

The NRC staff plans to conduct a public meeting on this proposed rule on May 11, 1995, at the NRC Auditorium in Two White Flint North. Further details on the meeting are provided in a document published in this issue of the **Federal Register**. The purpose of the public meeting will be to discuss this proposed rule and respond to questions on the meaning and intent of any provisions of this proposed rule. It is hoped that this meeting will be helpful to persons who intend to submit written comments on the proposed rule. An official transcript of the proceedings of the public meeting will be prepared.

B. Opportunity to Request Hearing

Any person may request an informal hearing on one or more specific matters with respect to the proposed design certification rule.[4] An informal hearing provides the admitted party with an opportunity to provide written and oral presentations on those matters to an Atomic Safety and Licensing Board and to request that the licensing board question the applicant on those matters. The conduct of an informal hearing is discussed in more detail in Section C below. Under certain circumstances, a party in an informal hearing may request that the Commission hold a formal hearing on specific and substantial factual disputes necessary to resolution of the matters for which the party was granted an informal hearing (see Section C.11 below).

A person may request an informal hearing even though that person has not submitted separate written comments on the design certification rule (*i.e.*, is not a commenter). Requests for an informal hearing must be received by the Commission no later than 120 days from the publication of this notice, and a copy of the request must be sent via overnight mail to the design certification applicant at the following address: Mr. Joseph F. Quirk, Mail Code 782, GE Nuclear Energy, 175 Curtner Avenue, San Jose, CA 95125. The information which a person requesting a hearing must provide in the hearing request, as well as the procedures and standards to be used by the Commission in its determination of the request, are discussed in Sections C.1 through C.4 below.

A person who needs to review proprietary information submitted by the design certification applicant in order to prepare a request for an informal hearing must follow the procedures and filing schedule set forth in Section V.E. below.

The Commission is also providing an opportunity for interested state, county, and city/municipal and other local governments, as well as Native American tribal governments to participate as "interested governments" in any informal hearings which the Commission authorizes, similar to their participation as "interested governments" in subpart G hearings under 10 CFR 2.715. State, county, city/municipal, local, and tribal governments wishing to participate as an "interested government" in any design certification rulemaking hearings which may be held must file their request to participate no later than 120 days from the publication of this notice.

C. Hearing Process

1. Filings and Computation of Times

All notices, papers, or other filings discussed in this section must be filed by express mail.[5] The time periods specified in this section have been established based upon such a filing. The express mail filing requirement shall be considered in establishing other filing deadlines.

In computing any period of time, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which case the period runs until the next day which is neither a Saturday, Sunday, nor holiday.

2. Content of Hearing Request

The Commission will grant a request for an informal hearing only if the hearing request satisfies each of the following two requirements. First, the hearing request must include the written presentations which the requestor wishes to be included in the record of the hearing. The written presentations must:

(i) Identify the specific portion of the proposed design certification rule or supporting bases which are challenged,

(ii) Describe the reasons why the proposed rule or supporting bases are incorrect or insufficient, and

(iii) Identify the references or sources upon which the person requesting the hearing relies.

If the requestor has submitted written comments in the public comment period addressing these three factors for the specific issue for which the requestor seeks a hearing, it will be sufficient for the requestor to identify the portions of the written comments which the requestor intends to submit as a written presentation. Also, the hearing request must demonstrate that the requestor (or other persons identified in the hearing request who will represent, assist, or speak on behalf of the requestor at the hearing) has appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the specific matters at issue. The Commission does not intend that the requestor meet a judicial "expert witness" standard in order to meet the second criterion. Nonetheless, given the substantial commitment of time and resources associated with any hearing, the Commission believes it to be a reasonable prerequisite that the hearing requestor demonstrate that he/she (or his/her assistant) has:

(i) Substantial familiarity with the publicly available docketed information relevant to the issue for which a hearing is requested;

(ii) The requisite technical capability to understand the factual matters and develop a record on the issue for which a hearing is requested; and

(iii) An understanding of the NRC's hearing procedures in 10 CFR part 2.[6]

3. Request to Hold Hearing Outside of Washington, DC

Any hearing(s) which the Commission may authorize ordinarily will be conducted in the Washington, DC metropolitan area. However, the Commission at its discretion may schedule hearings outside the Washington, DC metropolitan area in response to requests submitted by a person requesting a hearing that all or part of the hearing be held elsewhere. These requests must be submitted in conjunction with the request for hearing, and must specifically explain the special circumstances for holding a hearing outside the Washington, DC metropolitan area.

4. Responses to Hearing Request

The applicant may file a response to any hearing request within 15 days of the date of the hearing request. The NRC staff will not provide a response to the hearing request unless requested to do so by the Commission but may assist the Commission in its ruling on the request.

5. Commission Determination of Hearing Request

The Commission intends to rule on a hearing request within 20 days of the close of the period for requesting a hearing. The Commission's determination will be based upon the materials accompanying the hearing request and the applicant's response (and the NRC staff's response, if requested by the Commission). The hearing request shall be granted if:

(i) The request is accompanied by a written presentation containing the information required by Section C.2. above; and

(ii) The requestor has the appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the matters sought to be controverted.

The Commission may consult with the NRC staff before its determination of a hearing request. A written decision either granting or denying the hearing request will be published by the Commission.

If a hearing request is granted in whole or in part, the Commission's decision will delineate the controverted matter that will be the subject of the hearing and whether any issues and/or parties are to be consolidated (see Section C.7 below). The Commission's decision granting the hearing will direct the establishment of a licensing board to preside over the informal hearing. Finally, the Commission's decision will specify:

(i) The date by which any requests for discovery must be filed with the licensing board (normally 20 days after the date of the Commission's decision), and

(ii) The date by which any objections to discovery must be filed (see Section C.9. below).

The Commission's decision will be sent to each admitted party by overnight mail. Separate hearings may be granted for each controverted matter or set of consolidated matters. Thus, if there are three different controverted matters, the Commission may establish three separate hearings. In this fashion, closing of the hearing record on a controverted matter and its referral to the Commission for resolution need not await completion of the hearing on the other controverted matters. Finally, the Commission's decision will rule on any requests for hearings outside of the Washington, DC metropolitan area (see Section C.3 above).

6. Authority of the Licensing Board

If the Commission authorizes an informal hearing on a controverted matter, the licensing board will function as a "limited magistrate" in that hearing with the authority and responsibility for assuring that a sufficient record is developed on those controverted matters which the Commission has determined are appropriate for consideration in that hearing. The licensing board shall have the following specific responsibilities and authority:

(i) Schedule and expeditiously conduct the informal hearing for each admitted controverted matter, consistent with the rights of all the parties,

(ii) Review all discovery requests against the criteria established by the Commission, and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(iii) Preside over and resolve any issues regarding the scheduling and conduct of any discovery authorized by the Commission,

(iv) Order such further consolidation of parties and issues as the licensing board determines is necessary or desirable,

(v) Orally examine persons making oral presentations in the informal hearing, based in part upon the licensing board's review of the parties' proposed oral questions to be asked of persons making oral presentations,

(vi) Request that the NRC staff:

(A) Answer licensing board questions about the SER or the proposed rule,

(B) Provide additional information or documentation with respect to the design certification, and

(C) Provide other assistance as the licensing board may request. Licensing board requests for NRC staff assistance should be framed such that the NRC staff does not assume a role as an adversary party in the informal hearing (see Section C.8 below),

(vii) Review all requests for additional hearing procedures and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(viii) Certify the hearing record to the Commission, based upon the licensing board's determination that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter; and

(ix) Include with its certification any concerns identified by the *licensing board in the course of the hearing which, although neither raised by* the parties nor necessary to resolution of the controverted hearing matters, are significant enough in the licensing board's view to warrant attention by the Commission.

Licensing board determinations with respect to referral of requests to the Commission, as well as licensing board determinations of parties' motions, are not appealable to the Commission as an interlocutory matter. Instead, any disagreements with the licensing board's determinations, and a specific discussion of how the hearing record is deficient with respect to the contested issue must be set forth in the parties' proposed findings of fact which are submitted directly to the Commission (see Section C.13 below).

As suggested by Item (10) above, the licensing board shall not have any "sua sponte" authority analogous to 10 CFR 2.760a. The Commission believes that in the absence of a request for an informal hearing on a matter, the Commission should resolve issues with respect to the design certification rule in the same manner as other agency-identified rulemaking issues, *viz.*, through NRC staff consideration of the issue followed by the Commission's review and its final resolution of the matter. However, when it certifies the completed hearing record to the Commission (see Section C.12. below), the licensing board should identify to the Commission any concerns identified during the hearing that are significant enough to warrant Commission consideration but that are unnecessary or irrelevant to the

[4] An opportunity for a hearing is provided by 10 CFR 52.51(b).

[5] Filings discussed in this section may also be served upon the Commission in electronic form in lieu of express mail. However, parties must serve copies of their filings on other parties by express mail, unless the receiving party agrees to filing in electronic form. Filings must be transmitted no later than the last day of the time period specified for filing and must be in accordance with the requirements specified in the Summary.

[6] Requestors will satisfy this requirement by stating that they possess and have read a copy of 10 CFR part 2, subparts A, G, and L.

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resolution of the controverted hearing matter.

The licensing board shall close the hearing and certify the record to the Commission only after it determines that the record on the controverted matter is sufficiently complete for the Commission to make a reasoned determination with respect to that matter. However, the licensing board shall not have any responsibility or authority to resolve and decide controverted matters in either an informal or a formal hearing. Rather, the Commission retains its traditional authority in rulemaking proceedings to evaluate and resolve all rulemaking issues identified in public comments on a proposed rule. Therefore, the Commission will resolve any controverted matters that are the subject of a hearing in this design certification rulemaking.

7. Consolidation of Parties and Issues; Joint Hearings on Related Issues

If two or more persons seek an informal hearing on the same or similar matters, the Commission may, in its discretion, grant an informal hearing and consolidate the matters into a single issue (as defined by the Commission). The Commission may also, in its discretion, require that the parties be consolidated analogous to the consolidation permitted under 10 CFR 2.715a. If the Commission consolidates two or more issues into a single consolidated issue but does not consolidate parties, each admitted person will be deemed a separate party with an individual right to:

(i) Submit separate written presentations,

(ii) Submit separate sets of proposed oral questions to be asked by the licensing board (see Section C.10 below),

(iii) Make separate oral presentation, and

(iv) Submit and separately respond to motions.

If the Commission also requires that parties be consolidated, the consolidated parties must participate jointly, including deciding upon written and oral presentations, submitting a single set of written questions, submitting motions supported by each of the consolidated parties, and responding to motions filed by other parties.

During the informal hearing, the licensing board may decide that further consolidation of issues or parties would simplify the overall conduct of informal hearings or materially reduce the time or resources devoted to the hearings. In these instances, the licensing board may direct such consolidation. The licensing board shall set forth the issues and/or parties to be consolidated and the reasons for such consolidation in a written order.

8. Status of the Design Certification Applicant, the NRC staff, and Requesting Party

The design certification applicant shall be a party in the informal hearing, with the right to submit written and oral presentations, propose questions to be asked by the licensing board of oral presenters, and file and submit appropriate motions.

The NRC staff shall *not* be a party in the informal hearing but shall be available in the informal hearing to answer licensing board questions about the FSER or the proposed rule, provide additional information or documentation with respect to the design certification, and provide other assistance that the licensing board may request without the NRC staff assuming the role of a party in the informal hearing.

A party whose hearing requests have been granted with respect to a particular controverted matter shall not participate with respect to any controverted matter on which the party was not granted a hearing. For example, if Person 1 has been authorized as a party on Issue A and Person 2 has been authorized as a party on Issue B, then Person 1 may participate only in the informal hearing on Issue A, and may *not* participate in the informal hearing on Issue B. Conversely, Person 2 may participate only in the informal hearing on Issue B, and may *not* participate in the informal hearing on Issue A.

9. Requests for Discovery

Any party may request the opportunity to conduct discovery against another party before the oral phase of the informal hearing. The request for discovery must:

(i) Identify the type of discovery permitted under 10 CFR 2.740, 2.740a, 2.740a(b), 2.741, and 2.742 which the party seeks to use;

(ii) Identify the subject matter or nature of the information sought to be obtained by discovery; and

(iii) Explain *with particularity* the relevance of the information sought to the controverted matter which is the subject of the hearing and why this information is indispensable to the presentation of the party's position on the controverted matter.

The request shall be filed with the licensing board, with copies of the request to be filed with the party against which discovery is sought, and the NRC staff. The requests must be received no later than the deadline specified by the Commission in its decision granting a party's hearing request (*see* Section C.5. above). A party against whom discovery is sought may file a response objecting to part or all of the request. Such a response must explain *with particularity* why the discovery request should not be granted.

The licensing board shall review all discovery requests and refer to the Commission those requests that it believes should be granted within 7 days after the date for receiving a party's objections to a discovery request. The licensing board shall issue a written decision explaining its basis for either referring the request to the Commission or declining to refer it. The written decision shall accompany the discovery requests which are referred by the licensing board to the Commission.

The Commission will determine whether to grant any discovery requests forwarded to it based upon the licensing board's decision, together with the request and the design certification applicant's response (and any NRC staff response requested by the licensing board). Discovery will be at the discretion of the Commission. In this regard, the Commission notes that two docket files have been established by the NRC staff for the U.S. ABWR design certification review. The first docket file (STN 50–605) was established on February 22, 1988, and the second docket file (52–001) became effective on March 13, 1992. The NRC staff has placed information and documents received from the design certification applicant in these docket files. This information includes the Design Control Document, Revision 2, and the Technical Support Document for the U.S. ABWR, Revision 1. Furthermore, the docket files contain NRC staff communications and documents, such as written questions and comments provided to the design certification applicant, and summaries of meetings held between the NRC staff and the design certification applicant. The NRC Staff's bases for approving the U.S. ABWR design are set forth in the FSER (NUREG–1503), dated July 1994. The Commission also notes that each admitted party has already disclosed a substantial amount of information in its hearing request, relating both to bases for the party's position with respect to the controverted matter as well as information on the qualifications of the party (or its representatives and witnesses in the hearing).

As discussed above, much of the information documenting the NRC staff's review and approval of the design certification application has been routinely placed in the docket file. Furthermore, as discussed in Section C.8., the NRC staff is not a party in an informal hearing. Therefore, the Commission has decided that in an informal hearing, the parties should *not* be afforded discovery against the NRC staff.

10. Conduct of Informal Hearing

If the Commission authorizes discovery, the licensing board shall establish a schedule for the conduct and completion of discovery. Normally, the licensing board should not permit more than one round of discovery. The Commission will not entertain any interlocutory appeals from licensing board orders resolving any discovery disputes or otherwise complaining of the scheduling of discovery.

Following the completion of discovery, the licensing board should issue an order setting forth the date of commencement of the oral phase of each informal hearing, and the date (no less than thirty (30) days before the commencement of the oral phase of the hearing) by which parties must submit:

(i) The identities and curriculum vitae of those persons providing oral presentations;

(ii) The outlines of the oral presentations; and

(iii) Any questions which a party would like the licensing board to ask. The licensing board may schedule the oral phases of two or more informal hearings to be held during the same session.

The licensing board shall publish a notice in the Federal Register announcing the commencement of the oral phase of the informal hearing(s). The notice shall set forth the place and time of the oral hearing session, the subject matter(s) of the informal hearing(s), a brief description of the informal hearing procedures, and a statement indicating that the public may observe the informal hearing.

Based upon the parties' outlines of the oral presentation and proposed questions, the licensing board should determine whether it has specific questions of the NRC staff with respect to the staff's review of the design certification application. These questions should be submitted in writing to the NRC no less than 20 days before the commencement of the oral phase of the hearing and must specify the date by which the NRC staff shall provide its written answers to the licensing board. The licensing board shall send copies of the request by overnight mail to all parties. The NRC staff shall file its written answers with the licensing board and the parties.

During the oral phase of the hearing, the licensing board shall receive into evidence the written presentations of the parties and permit each party (or the representatives identified in their hearing request) to make oral presentations addressing the controverted matter. Normally, the party raising the controverted matter should make their presentations, followed by the presentations of the design certification applicant. The licensing board may question the persons making oral presentations, using its own questions as well as those submitted to the licensing board by the other parties. Based upon the parties' oral presentations and/or responses to licensing board questions, the licensing board may also orally question the NRC staff.

11. Additional Hearing Procedures and Formal Hearings

After the parties have made their oral presentations and the licensing board has concluded its questioning of the presenters (and, as applicable, the NRC staff), the licensing board should declare that the oral phase of an informal hearing on a controverted matter (or consolidated set of controverted matters) is complete.

No later than 10 days after the licensing board has declared that the oral phase of the informal hearing has been completed, parties may file with the licensing board (with copies to the applicant and the NRC staff) a request that some or all of the procedures described in 10 CFR part 2, subpart G (*e.g.*, direct and cross-examination by the parties) be utilized. The request shall:

(i) Identify the specific hearing procedures which the party seeks, or state that a formal hearing is requested;

(ii) Identify the specific *factual* issues for which the additional procedures would be utilized,

(iii) Explain why resolution of these factual disputes are necessary to the Commission's decision on the controverted issue;

(iv) Explain, with specific citations to the hearing record, why the record is insufficient on the controverted matter, and

(v) Identify the nature of the evidence that would be developed utilizing the additional procedures requested.

The design certification applicant may file a response to these requests no later than seven days after the applicant's receipt of a request for additional procedures. The NRC staff will not provide a response unless specifically requested to do so by the licensing board.

The licensing board will review all requests for additional hearing procedures or a formal hearing and refer those that it believes should be granted to the Commission for its determination. The licensing board shall issue a written decision explaining its determination whether to forward the request to the Commission no later than 7 days after receipt of any applicant response to the request. The decision will provide the basis for either forwarding the request to the Commission or declining to forward it. In the absence of any requests for hearing procedures or if the licensing board concludes that none of the requests should be referred to the Commission, the licensing board should declare that the hearing record is closed (see Section C.12 below).

The Commission will determine whether to grant any requests for additional procedures or a formal hearing that are forwarded by the licensing board. The Commission's determination shall be based upon the licensing board's decision along with the request and the design certification applicant's response. If the Commission directs that a formal hearing be held on a controverted factual matter, the NRC staff shall be a party in the formal hearing. After either the additional hearing procedures authorized by the Commission are completed or the formal hearing is concluded on the factual dispute, the licensing board should declare the hearing record closed (see Section C.12 below).

12. Licensing Board's Certification of Hearing Record to the Commission

After the oral phase of a hearing is completed and either:

(i) There are no requests for additional hearing procedures or a formal hearing, or

(ii) The licensing board concludes that none of the requests should be referred to the Commission, then the licensing board should declare that the hearing record is closed.

If the Commission directs that additional hearing procedures should be utilized or a formal hearing be held on specific factual disputes, the licensing board should declare the hearing record closed after completion of the additional hearing procedures or the formal hearing. Within 30 days of the closing of the hearing record the licensing board should certify the hearing record to the Commission on each controverted

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matter (or consolidated set of controverted matters).[7]

The licensing board's certification for each controverted matter (or consolidated set of controverted matters) shall contain:

(i) The hearing record, including a transcript of the oral phase of the hearing (and any pre-hearing conferences) and copies of all filings by the parties and the licensing board,

(ii) A list of all documentary evidence admitted by the licensing board, including the written presentations of the parties,

(iii) Copies of the documentary evidence admitted by the licensing board,

(iv) A list of all witnesses who provided oral testimony,

(v) The NRC staff's written answers to licensing board requests, and

(vi) A licensing board statement that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter.

Finally, as discussed in Section C.6 above, the licensing board should identify any issues not raised by the parties or otherwise are not relevant to the controverted matters in the hearing, that the licensing board nonetheless believes are significant enough to warrant attention by the Commission.

13. Parties' Proposed Findings of Fact and Conclusions

The applicant must file directly with the Commission proposed findings of fact and conclusions for each controverted hearing matter (or consolidated set of controverted matters) within 30 days following the close of the hearing record on that matter in the form of a proposed final rule and statement of considerations with respect to the controverted hearing issues.

Other parties are encouraged, but not required, to file with the Commission proposed findings of fact and conclusions limited to those issues which a party was afforded a hearing by the Commission (*i.e.*, a party may not file proposed findings of fact and conclusions on issues which it was not admitted). Any findings that a party wishes the Commission to consider must be received by the Commission no later than 30 days after the licensing board closes the hearing record on that issue. Although parties are not required to file proposed findings and conclusions, a party who does not file a finding may not, upon appeal, claim or otherwise argue that the Commission either misunderstood the party's position, or failed to address a specific piece of evidence or issue.

D. Resolution of Issues for the Final Rulemaking

1. Absence of Qualifying Hearing Request

If the Commission does not receive any request for hearing within the 120-day period for submitting a request, or does not grant any of the requests (see Section V.B. above), the Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the Atomic Energy Act of 1954; as amended (AEA), the National Environmental Policy Act of 1969; as amended (NEPA), and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record, which includes: The application for design certification, including the SSAR and DCD; the applicant's responses to the NRC staff's requests for additional information; the NRC staff's FSER and any supplements thereto; the report on the application by the ACRS; the applicant's Technical Support Document addressing consideration of severe accident mitigation design alternatives (SAMDAs) for purposes of NEPA; the NRC staff's EA and draft FONSI; the proposed rule, and the public comments received on the proposed rule. If the Commission makes an affirmative finding, it will issue a standard design certification in the form of a rule by adding a new appendix to 10 CFR part 52, and publish the design certification rule and a statement of considerations in the **Federal Register**.

2. Commission Resolution of Issues Where a Hearing is Granted

All matters related to the proposed design certification rule, including those matters for which the Commission authorizes a hearing (see Sections B. and C. above), will be resolved by the Commission after the licensing board has closed the hearing record and certified it to the Commission. The Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the AEA, NEPA, and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record as described in Section D.1 above, with the addition of the hearing record for controverted matters. If the Commission makes an affirmative finding, the Commission will issue a final design certification rule as described in Section D.1.

E. Access to Proprietary Information in Rulemaking

1. Access to Proprietary Information for the Preparation of Written Comments or Informal Hearing Requests

Persons who determine that they need to review proprietary information submitted by the design certification applicant to the NRC in order to submit written comments on the proposed certification or to prepare an informal hearing request, may request access to such information from the applicant.

The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient either to develop public comments or to prepare for the hearing,

(iii) The relevance of the requested information either to the issue which the commenter wishes to comment on, and

(iv) A showing that the person requesting the information has the capability to understand and utilize the requested information.

Requests must be filed with the applicant such that they are received by the applicant no later than 45 days after the date that this notice of proposed rulemaking is published in the **Federal Register**.

Within ten (10) days of receiving the request, the applicant must send a written response to the person seeking access. The response must either provide the documents requested (or state that the document will be provided no later than ten days after the date of the response), or state that access has been denied. If access is denied, the response shall state with particularity the reasons for its refusal. The applicant's response must be provided via express mail.

The person seeking access may then request a Commission hearing for the purpose of obtaining a Commission order directing the design certification applicant to disclose the requested information. The person must include copies of the original request (and any subsequent clarifying information provided by the person requesting access to the applicant) and the applicant's response. The Commission will base its decision solely on the person's original request (including any clarifying information provided to the applicant by the person requesting access), and the applicant's response. Accordingly, a person seeking access to proprietary information should ensure that the request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information.

If the Commission orders access in whole or part, the Commission will specify the date by which the requesting party must file with the Commission written comments and any request for an informal hearing before a licensing board as discussed in Section V.C., above. A request for an informal hearing must meet the requirements set forth above in Section V.C., in particular the requirements governing the content of the hearing request, and shall be governed by the procedures and standards governing such requests set forth in Section V.C.

2. Access to Proprietary Information in a Hearing

Parties who are granted a hearing may request access to proprietary information. Parties must first request access to proprietary information regarding the proposed design certification from the applicant. The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient to prepare for the hearing,

(iii) The relevance of the requested information to the hearing issue(s) for which the party has been admitted, and

(iv) A showing that the requesting party has the capability to understand and utilize the requested information.

The request must be filed with the applicant no later than the date established by the Commission for filing discovery requests with the licensing board.

If the applicant declines to provide the information sought, within ten (10) days of receiving the request the applicant must send a written response to the requesting party setting forth with particularity the reasons for its refusal. The party may then request the licensing board to order disclosure. The party must include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The licensing board shall base its decision solely on the party's original request (including any clarifying information provided by the requesting party to the applicant), and the applicant's response.

Accordingly, a party requesting proprietary information from the applicant should ensure that its request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information. The licensing board may order the applicant to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

F. Ex Parte and Separation of Functions Restrictions

Unless the formal procedures of 10 CFR Part 2, Subpart G are approved for a formal hearing in the design certification rulemaking proceeding, the NRC staff will not be a party in the hearing and separation of functions limitations will not apply. The NRC staff may assist in the hearing by answering questions about the FSER put to it by the licensing board, or to provide additional information, documentation, or other assistance as the licensing board may request. Furthermore, other than in a formal hearing, the NRC staff shall not be subject to discovery by any party, whether by way of interrogatory, deposition, or request for production of documents.

Second, the Commission has determined that once a request for an informal or formal hearing is received, certain elements of the ex parte restrictions in 10 CFR 2.780(a) will be applicable with respect to the subject matter of that hearing request. Under these restrictions, the Commission will communicate with interested persons/parties, the NRC staff, and the licensing board with respect to the issues covered by the hearing request only through docketed, publicly-available written communications and public meetings. Individual Commissioners may communicate privately with interested persons and the NRC staff; however, the substance of the communication shall be memorialized in a document which will be placed in the PDR and distributed to the licensing board and relevant parties.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the NEPA and the Commission's regulations in 10 CFR part 51, subpart A, that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment, is that the amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the U.S. ABWR design; it would only codify the U.S. ABWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the environmental assessment for the ABWR design, the NRC reviewed pursuant to NEPA, GE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in GE's "Technical Support Document for the ABWR". The Commission finds that GE's evaluation provides a sufficient basis to conclude that there is reasonable assurance that an amendment to 10 CFR part 52 certifying the U.S. ABWR design will not exclude a severe accident design alternative for a facility referencing the certified design that would have been cost beneficial had it been considered as part of the original design certification application. These issues are considered resolved for the U.S. ABWR design.

The environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the ABWR are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Harry Tovmassian, Mailstop T–9 F33, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6231.

VII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. The public reporting burden for this collection of information is zero hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

[7] An informal hearing is deemed to be completed when the period for requesting additional procedures or a formal hearing expires and no request is received.

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burden, to the Information and Records Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements. Design certifications are not generic rulemakings. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

IX. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rulemaking will not have a significant economic impact upon a substantial number of small entities. The proposed rule provides standard design certification for a light water nuclear power plant design. Neither the design certification applicant, nor nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

X. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined licenses, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following amendment to 10 CFR part 52.

PART 52—[AMENDED]

1. The authority citation for 10 CFR Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1248, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, and appendix A.

3. A new appendix A to 10 CFR part 52 is added to read as follows:

Appendix A To Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

1. Scope.

This appendix constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

2. Definitions.

As used in this part:

(a) *Design control document* (DCD) means the master document that contains the Tier 1 and Tier 2 information that is incorporated by reference into this design certification rule.

(b) *Tier 1* means the portion of the design related information contained in the DCD that is certified by this design certification rule (hereinafter Tier 1 information). Tier 1 information consists of:

(1) Definitions and general provisions;

(2) Certified design descriptions;

(3) Inspections, tests, analyses, and acceptance criteria (ITAAC);

(4) Significant site parameters; and

(5) Significant interface requirements.

The certified design descriptions, interface requirements, and site parameters are derived from Tier 2 information.

(c) *Tier 2* means the portion of the design-related information contained in the DCD that is approved by this design certification rule (hereinafter Tier 2 information). Tier 2 information includes:

(1) The information required by 10 CFR 52.47;

(2) The information required for a final safety analysis report under 10 CFR 50.34(b); and

(3) Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met.

(d) *Tier 2** means the portion of the Tier 2 information which cannot be changed without prior NRC approval. This information is identified in the DCD.

(e) All other terms in this rule have the meaning set out in 10 CFR 50.2, 10 CFR 52.3 or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

3. [Reserved].

4. Contents of the design certification.

(a) Both Tier 1 and Tier 2 of the ABWR Design Control Document, GE Nuclear Energy, Revision 2, January 1995 are incorporated by reference. This incorporation by reference was approved by the Director of the Office of the Federal Register on [Insert date of approval] in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies of the U.S. ABWR DCD may be obtained from [Insert name and address of applicant or organization designated by the applicant]. Copies are also available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, and for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582–2738.

(b) An applicant for a construction permit, operating license, or combined license that references this design certification shall reference both Tier 1 and Tier 2 of the U.S. ABWR DCD.

(c) If there is a conflict between the U.S. ABWR DCD and either the application for design certification for the U.S. ABWR design or NUREG–1503, "Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design, dated July 1994 (FSER), then the U.S. ABWR DCD is the controlling document.

5. Exemptions and applicable regulations.

(a) The U.S. ABWR design is exempt from portions of the following regulations, as described in the FSER (index provided in Section 1.6 of the FSER):

(1) Section VI(a)(2) of appendix A to 10 CFR part 100—Operating Basis Earthquake Design Consideration;

(2) Section (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment;

(3) Section (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

(4) Section (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride and Dissolved Gases; and

(5) Section (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

(b) Except as indicated in paragraph (c) of this section, the regulations that apply to the U.S. ABWR design are those regulations in 10 CFR Parts 20, 50, 73, and 100 (July 1994), that are applicable and technically relevant, as described in the FSER.

(c) In addition to the regulations specified in paragraph (b) of this section, the following regulations are applicable for purposes of 10 CFR 52.48, 52.54, 52.59 and 52.63:

(1) In the standard design, the effects of intersystem loss-of-coolant accidents must be minimized by designing low-pressure piping systems that interface with the reactor coolant pressure boundary to withstand full reactor coolant system pressure to the extent practical.

(2)(i) Piping systems associated with pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f) must be designed to allow for:

(A) Full flow testing of pumps and check valves at maximum design flow, and

(B) Testing of motor operated valves under maximum achievable differential pressure, up to design basis differential pressure, to demonstrate the capability of the valves to operate under design basis conditions.

(ii) For pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f), an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(A) A program for testing check valves that incorporates the use of advanced non-intrusive techniques to detect degradation and monitor performance characteristics, and

(B) A program to determine the frequency necessary for disassembly and inspection of each pump and valve to detect degradation that would prevent the component from performing its safety function and which cannot be detected through the use of advanced non-intrusive techniques. The licensee shall implement these programs throughout the service life of the plant.

(3) For digital instrumentation and control systems, the design must include:

(i) An assessment of the defense-in-depth and diversity of instrumentation and control systems;

(ii) A demonstration of adequate defense against common-mode failures; and

(iii) Provisions for independent backup manual controls and displays for critical safety functions in the control room.

(4) The electric power system of the standard design must include an alternate power source that has sufficient capacity and capability to power the necessary complement of non-safety equipment that would most facilitate the ability of the operator to bring the plant to safe shutdown, following a loss of the normal power supply and reactor trip.

(5) The electric power system of the standard design must include at least one offsite circuit supplied directly from one of the offsite power sources to each redundant safety division with no intervening non-safety buses in such a manner that the offsite source can power the safety buses upon a failure of any non-safety bus.

(6)(i) The requirements of 10 CFR 50.48(a)[1] and 10 CFR part 50, Appendix R, Section III G.1.a, apply to all structures, systems, and components important to safety.

(ii) Notwithstanding any provision in paragraph (i) of this section, all structures, systems, and components important to safety in the standard design must be designed to ensure that:

(A) Safe shutdown can be achieved assuming that all equipment in any one fire area will be rendered inoperable by fire and re-entry into that fire area for repairs and operator actions is not possible, except that this provision does not apply to (1) the main control room, provided that an alternative shutdown capability exists and is physically and electrically independent of the main control room, and (2) the reactor containment;

(B) Smoke, hot gases, or fire suppressant will not migrate from one fire area into another to an extent that could adversely affect safe-shutdown capabilities, including operator actions; and

(C) In the reactor containment, redundant shutdown systems are provided with fire protection capabilities and means to limit fire damage such that, to the extent practicable, one shutdown division remains free of fire damage.

(7) The standard design must include and an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(i) The description of the reliability assurance program used during the design that includes scope, purpose, and objectives;

(ii) The process used to evaluate and prioritize the structures, systems, and components in the design, based on their degree of risk-significance;

(iii) A list of structures, systems, and components designated as risk-significant; and

(iv) For those structures, systems, and components designated as risk-significant:

(A) A process to determine dominant failure modes that considered industry experience, analytical models, and applicable requirements; and

(B) Key assumptions and risk insights from probabilistic, deterministic, and other methods that considered operation, maintenance, and monitoring activities.

(8) The probabilistic risk assessment required by 10 CFR 52.47(a)(1)(v) must include an assessment of internal and external events. For external events, simplified probabilistic methods and margins methods may be used to assess the capacity of the standard design to withstand the effects of events such as fires and earthquakes. Traditional probabilistic techniques should be used to evaluate internal floods. For earthquakes, a seismic margin analysis must consider the effects of earthquakes with accelerations approximately one and two-thirds the acceleration of the safe-shutdown earthquake.

(9) The standard design must include an on-site alternate ac power source of diverse design capable of powering at least one complete set of equipment necessary to achieve and maintain safe-shutdown for the purposes of dealing with station blackout.

(10)(i) The standard design must include the features in paragraphs (A)–(C) below that reduce the potential for and effect of interactions of molten core debris with containment structures:

(A) Reactor cavity floor space to enhance debris spreading;

(B) A means to flood the reactor cavity to assist in the cooling process; and

(C) Concrete to protect portions of the lower drywell containment liner and other structural members.

(ii) The features required by paragraphs (i) of this section, in combination with other features, must ensure for the most significant severe accident sequences that the best-estimate environmental conditions (pressure and temperature) resulting from core-concrete interaction do not exceed ASME Code Service Level C for steel containments or Factored Load Category for concrete containments for approximately 24 hours.

(11) The standard design must include: (i) A reliable means to depressurize the reactor coolant system and (ii) cavity design features to reduce the amount of ejected core debris that may reach the upper containment.

(12) The standard design must include analyses based on best-available methods to demonstrate that:

(i) Equipment, both electrical and mechanical, needed to prevent and mitigate the consequences of severe accidents is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function; and

(ii) Instrumentation needed to monitor plant conditions during a severe accident is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the instrumentation is relied upon to function.

(13) The standard design must include features to limit the conditional containment failure probability for the more likely severe accident challenges.

(14)(i) The standard design must include a systematic examination of features in relation to shutdown risk assessing:

(A) Specific design features that minimize shutdown risk;

(B) The reliability of decay heat removal systems;

(C) Vulnerabilities introduced by new design features; and

(D) Fires and floods occurring with the plant in modes other than full power.

(ii) An applicant for a combined license which references this design certification rule shall submit as part of the application a description of the program for outage planning and control that ensures:

(A) The availability and functional capability during shutdown and low power operations of features important to safety during such operations; and

(B) The consideration of fire, flood, and other hazards during shutdown and low

[1] For the standard design, the footnote reference in 10 CFR 50.48(a) to Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," will be to the July 1981 version.

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power operations. The licensee shall implement this program throughout the service life of the plant.

6. Issue resolution for the design certification.

(a) All nuclear safety issues associated with the information in the FSER or DCD are resolved within the meaning of 10 CFR 52.63(a)(4).

(b) All environmental issues associated with the information in the NRC's environmental assessment for the ABWR design or the severe accident design alternatives in Revision 1 of the Technical Support Document for the ABWR, dated December 1994, are resolved within the meaning of 10 CFR 52.63(a)(4).

7. Duration of the design certification.

This design certification may be referenced for a period of 15 years from May 8, 1995, except as provided for in 10 CFR 52.55(b) and 52.57(b). This design certification remains valid for an applicant or licensee that references this certification until their application is withdrawn or their license expires, including any period of extended operation under a renewed license.

8. Change process.

(a) Tier 1 information.

(1) Generic (rulemaking) changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 1 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) Changes from Tier 1 information that are imposed by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

(4) Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1).

(b) Tier 2 information.

(1) Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 2 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) The Commission may not impose new requirements by plant-specific order on Tier 2 information of a specific plant referencing the design certification while the design certification is in effect under §§ 52.55 or 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 50.12(a) are present.

(4) An applicant or licensee who references the design certification may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(5)(i) An applicant or licensee who references the design certification may depart from Tier 2 information, without prior NRC approval, unless the proposed change involves a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section. When evaluating the proposed change, an applicant or licensee shall consider all matters described in the DCD, including generic issues and shutdown risk for all postulated accidents including severe accidents. These changes will no longer be considered "matters resolved in connection with the issuance or renewal of a design certification" within the meaning of 10 CFR 52.63(a)(4).

(ii) A proposed departure from Tier 2 information, other than severe accident issues identified in Section 19E of the DCD, including attachments EA through EE, must be deemed to involve an unreviewed safety question if:

(A) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the DCD may be increased;

(B) A possibility for an accident or malfunction of a different type than any evaluated previously in the DCD may be created; or

(C) The margin of safety as defined in the basis for any technical specification is reduced.

(iii) A proposed departure from information associated with severe accident issues identified in Section 19E of the DCD, including attachments EA through EE, must be deemed to involve an unreviewed safety question if:

(A) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(B) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

(iv) Departures from Tier 2 information made in accordance with Section 8(b)(5) above do not require an exemption from this design certification rule.

(c) Other requirements of this design certification rule.

An applicant or licensee who references the design certification may not depart from this rule's requirements, other than Tier 1 or 2 information, other than by an exemption in accordance with 10 CFR 50.12.

9. Records and reports.

(a) *Records.*

(1) The applicant for this design certification shall maintain a copy of the DCD that includes all generic changes to Tier 1 and Tier 2 information.

(2) An applicant or licensee that references this design certification shall maintain records of all changes to and departures from the DCD pursuant to Section 8 of this appendix. Records of changes made pursuant to Section 8(b)(5) must include a written safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications.

(b) *Reports.* An applicant or licensee that references this design certification shall submit a report to the NRC, as specified in 10 CFR 50.4, containing a brief description of any departures from the DCD, including a summary of the safety evaluation of each. An applicant or licensee shall also submit updates to the DCD to ensure that the DCD contains the latest material developed for both Tier 1 and 2 information. The requirements of 10 CFR 50.71 for safety analysis reports must apply to these updates. These reports and updates must be submitted at the frequency specified below:

(1) During the interval from the date of application to the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52, the report and any updates to the DCD may be submitted along with amendments to the application.

(2) During the interval from the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52 until the applicant or licensee receives either an operating license under 10 CFR part 50 or the Commission makes its findings under 10 CFR 52.103, the report must be submitted quarterly. Updates to the DCD must be submitted annually.

(3) Thereafter, reports and updates to the DCD may be submitted annually or along with updates to the safety analysis report for the facility as required by 10 CFR 50.71, or at such shorter intervals as may be specified in the license.

(c) *Retention period.* The DCD, and the records of changes to and departures from the DCD must be maintained until the date of termination of the construction permit or license.

Dated at Rockville, MD, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95-8379 Filed 4-6-95; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR PART 52

RIN 3150-AF15

Standard Design Certification for the System 80+ Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) proposes to approve by rulemaking a standard design certification for the System 80+ design. The applicant for certification of the System 80+ design was Asea Brown Boveri-Combustion Engineering (ABB-CE). The NRC is proposing to add a new appendix to 10 CFR part 52 for the design certification. This action is necessary so that applicants or licensees intending to construct and operate a System 80+ design may do so by appropriately referencing the proposed appendix. The public is invited to submit comments on this proposed design certification rule (DCR) and the design control document (DCD) that is incorporated by reference into the DCR (refer to Sections IV and V). The Commission also invites the public to submit comments on the environmental assessment for the System 80+ design (refer to Section VI).

DATES: The comment period expires on August 7, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration for comments received on or before this date. In addition, interested parties may request an informal hearing before the Atomic Safety and Licensing Board Panel, in accordance with 10 CFR 52.51, on matters pertaining to this design certification rulemaking (refer to Section V). Requests for an informal hearing must be submitted by August 7, 1995.

ADDRESSES: Mail written comments and requests for an informal hearing to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays. Copies of comments received will be available for examination and copying at the NRC Public Document Room (PDR) at 2120 L Street NW. (Lower Level), Washington, DC. A copy of the environmental assessment and the design control document is also available for examination and copying at the PDR.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, telephone (301) 415-6231, Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415-3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415-1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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I. Background

On March 30, 1989, Combustion Engineering, Inc. (ABB-CE) applied for certification of the System 80+ standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR part 50, Appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987.

On May 18, 1989 (54 FR 15372), the NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52, established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On August 21, 1989, ABB-CE requested that its application, originally submitted pursuant to 10 CFR part 50, appendix O, be considered as an application for design approval and subsequent design certification pursuant to 10 CFR 52.45. The application was docketed on May 1, 1991, and assigned Docket No. 52-002. Correspondence relating to the application prior to this date was also addressed to docket number STN 50-470 and Project No. 675. ABB-CE's application, the Combustion Engineering Standard Safety Analysis Report—Design Certification (CESSAR-DC) up to and including amendment W and the Certified Design Material, is available for inspection and copying at the NRC Public Document Room. By letter dated May 26, 1992, Combustion Engineering, Inc. notified the NRC that it is a wholly owned subsidiary of Asea Brown Boveri, Inc., and the appropriate abbreviation for the company is ABB-CE.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the System 80+ design in August 1994 (NUREG-1462). The FSER documents the results of the NRC staff's safety review of the System 80+ design against the requirements of 10 CFR part 52, Subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. A copy of the FSER may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328 or the National Technical Information Service, Springfield, VA 22161. The final design approval (FDA) for the System 80+ design was issued on July 26, 1994, and published in the Federal Register on August 2, 1994 (59 FR 39371).

Since the issuance of 10 CFR part 52, the NRC staff has been working to implement subpart B with issues such as the acceptability of using a two-tiered design certification rule and the level of design detail required for design certification. The NRC staff originally proposed a design certification rule for evolutionary standard plant designs in SECY-92-287, "Form and Content for a Design Certification Rule." On March 26, 1993, the NRC staff issued SECY-92-287A in which it responded to issues on SECY-92-287, which were

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put forth by the Commission, and to specific questions raised by Commissioner Curtiss in a letter dated September 9, 1992. Subsequently, the NRC staff modified the draft rule in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. On November 23, 1993, the NRC staff discussed this ANPR in a public workshop entitled "Topics Related to Certification of Evolutionary Light Water Reactor Designs." All holders of operating licenses or construction permits were informed of the issuance of the ANPR and the planned public workshop through the issuance of NRC Administrative Letter 93–05 on October 29, 1993. Separate announcements of the workshop were also sent to the Union of Concerned Scientists, the Nuclear Information and Resource Service, the Natural Resources Defense Council, the Public Citizen Litigation Group, the Ohio Citizens for Responsible Energy (OCRE), and the State of Illinois Department of Nuclear Safety on October 18, 1993. An official transcript of the workshop proceedings is available in the PDR.

Rulemaking Procedures

10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (*e.g.*, design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, Part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board Panel in a design certification rulemaking. While Part 52 describes a general framework for conducting a design certification rulemaking, § 52.51(a) states that more detailed procedures for the conduct of each design certification will be specified by the Commission.

To assist the Commission in developing the detailed rulemaking procedures, the NRC's Office of General Counsel (OGC) prepared a paper, SECY–92–170 (May 8, 1992), which identified issues relevant to design certification rulemaking procedures, and provided OGC's preliminary analyses and recommendations with respect to those issues. SECY–92–170 was made public by the Commission, and a Commission meeting on this paper was held on June 1, 1992.

Thereafter, in SECY–92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY–92–170 and obtaining public comments on those issues. The Commission approved OGC's proposal (See the May 28, 1992, Memorandum from Samuel J. Chilk to William C. Parler). Notice of the workshop was published in the **Federal Register** on June 9, 1992 (57 FR 24394). The notice also provided for a 30-day period following the workshop for the public to submit written comments on SECY–92–170. A transcript was kept of the workshop proceedings and placed in the PDR. Nearly 50 non-NRC individuals attended the workshop; an additional eight persons requested copies of SECY–92–170 and workshop materials but did not attend. The workshop was organized in a panel format, with representatives from OCRE (Susan Hiatt), NUMARC (Robert Bishop), GE and Westinghouse—two design certification vendors (Marcus Rowden and Barton Cowan), the State of Illinois Department of Nuclear Safety (Stephen England), the State of New York Public Service Commission (James Brew), the Administrative Conference of the United States (William Olmstead), OGC, the NRC staff, and a moderator. Eleven written comments were received after the workshop, three from OCRE (OCRE August 1992 Comments; OCRE September 1992 Letter; OCRE October 1992 Letter), NUMARC, Winston and Strawn, the State of Illinois Department of Nuclear Safety, Westinghouse Energy Systems, the U.S. Department of Energy, Asea Brown Boveri-Combustion Engineering (ABB–CE), and AECL Technologies.[1] Mr. Rowden submitted an additional comment on behalf of NUMARC which addresses proprietary information.

OGC's final analyses and recommendations for design certification rulemaking procedures were set forth in SECY–92–381 (November 10, 1992). This paper was prepared after consideration of the panel discussions at the public workshop and the written comments received after the workshop. On April 30, 1993, the Commission issued a Memorandum to the General Counsel which sets forth the Commission's determinations with respect to the procedural issues raised by the General Counsel's paper. Section V. below, "Comments and Hearings in the Design Certification Rulemaking," describes the procedures to be utilized in this design certification rulemaking.

[1] AECL is the vendor for the CANDU 3 design.

II. Public Comment Summary and Resolution

The public comment period for the ANPR for rulemakings to grant standard design certification for evolutionary light water reactor designs expired on January 3, 1994. Six comment letters were received. Five comment letters were from the nuclear industry (i.e., vendors, utilities, and industry representatives) and one from a public interest organization. Most of the commenters addressed the nine topics upon which the NRC sought the public's views. The Commission has carefully considered all the comments and wishes to express its sincere appreciation of the often considerable efforts of the commenters.

In the following public comment summary and resolution and in the section-by-section discussion (Section III below), the discussion refers to "Commission approval" of NRC staff-proposed positions or recommendations. This should be understood as meaning the Commission's tentative approval of those positions or recommendations for purposes of: (i) The NRC staff's review of the System 80+ design certification application, and (ii) preparation of this notice of proposed rulemaking. The public may submit comments and request an informal hearing with respect to any of the "Commission approved" positions or recommendations (comments and hearings are discussed in further detail in Section V).

All of the commenters supported the basic concept of the design certification rulemaking approach including the two-tiered structure for design information. The Nuclear Management and Resources Council, which has since been subsumed within the Nuclear Energy Institute (NEI), commented for the nuclear industry. GE Nuclear Energy, Westinghouse, and ABB–CE stated that they participated in the preparation of the NEI comments and fully supported them. The following is a summary and resolution of the public comments:

Topic 1—Acceptability of a Two-Tiered Design Certification Rule Structure

Comment Summary. On behalf of the nuclear industry, NEI stated that a two-tiered structure to a design certification rule is practical and fully consistent with the intent and requirements of 10 CFR part 52. OCRE stated that it fully supports the concept set forth in the ANPR provided that the Tier 2 information is subject to public challenge in the standard design certification and any associated hearing.

Response. Although a two-tiered structure for design certification rules was not envisioned or subsequently deemed necessary to implement standard design certifications under 10 CFR part 52, the Commission approved the use of a two-tiered structure for a design certification rule in its SRM of February 15, 1991, on SECY–90–377, "Requirements for Design Certification Under 10 CFR Part 52," in response to a request from NEI dated August 31, 1990. Since then, the NRC staff has worked to develop a two-tiered rule that achieves industry's goal of issue preclusion for a greater amount of information than was originally planned for design certification, while retaining flexibility for design implementation.

Tier 1 information is defined in Section 2(b) of the proposed rule and is treated as the certified information that is controlled by the change standards of 10 CFR 52.63. Tier 2 information is defined in Section 2(c) of the proposed rule and consists primarily of the information submitted in an application for design certification. The information in the two tiers is interdependent. Therefore, an applicant for a construction permit, operating license, or combined license (COL) that references this design certification must reference both tiers of information. The consolidation of both tiers of information into a Design Control Document (DCD) will provide an effective means of maintaining this information and facilitating its incorporation into the rule by reference. All matters covered in each tier, including the determination of what information should be placed in each tier, are subject to public challenge in the design certification rulemaking and any associated hearing.

Topic 2—Acceptability of the Process and Standards for Changing Tier 2 Information

Comment Summary. NEI concurs in the process and standards to be used by COL holders and applicants for evaluating and implementing changes to Tier 2 information via the so-called "§ 50.59-like" change process. However, NEI does not agree with the statement in the ANPR (A.13(d)(3)) that "changes properly implemented through this "§ 50.59-like" process cause a loss of finality relative to the affected portion of the design or are subject to subsequent legal challenge." NEI contends that these changes would be sanctioned through the design certification rule and that the only issue entertainable at the time of the COL licensing proceeding would be whether the licensee complied with the "§ 50.59-like" change process. Likewise, changes made subsequent to COL issuance could be challenged in the Part 52 proceeding before fuel-load authorization only on the basis that the change resulted in noncompliance with applicable acceptance criteria. However, NEI recognizes that changes from Tier 2 that require NRC approval would be subject to a hearing opportunity as specified in 10 CFR part 52.

OCRE stated that it is important that applicant or licensee initiated changes to Tier 2 information made pursuant to the "§ 50.59-like" process will no longer be afforded the issue preclusion protection of 10 CFR 52.63. To do otherwise would turn the two-tiered system into a double standard in which utilities could deviate from the standard design but the public could not challenge these deviations. Permitting site-specific litigation of these changes would also serve to discourage changes.

Response. In order to implement the two-tiered structure for design certification rules, the Commission proposes a change process for Tier 2 information that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process has provisions for generic changes, plant-specific changes, and exemptions similar to those in 10 CFR 52.63. Although the NRC staff proposed that the backfitting standards for making generic changes to Tier 2 information should be less stringent than those for Tier 1 information, the Commission disapproved this proposal in its SRM on SECY–92–287A, dated June 13, 1993, and stated that "the backfitting standards of 10 CFR 52.63 should be applied for such changes to Tier 2." As a result, the NRC staff adopted the backfitting standards of 10 CFR 52.63 in the Tier 2 change process proposed in the ANPR, except that the additional factor regarding "any decrease in safety that may result from the reduction in standardization" was not adopted for plant-specific changes and exemptions in order to achieve additional flexibility for Tier 2 information.

The Tier 2 change process also has a provision similar to 10 CFR 50.59 that allows changes to Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions. The Commission approved this process in its SRM on SECY–90–377, dated February 15, 1991, provided "that such changes open the possibility for challenge in a hearing." The NRC staff followed the Commission's guidance in developing the process in ANPR A.13(d)(3) that allows certain changes to Tier 2 information, without prior NRC approval. This section of the ANPR states that "Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4)." The NRC staff included this provision to meet Commission guidance and to restrain Tier 2 changes in order to maintain the benefits of standardization, as discussed in SECY–92–287. Also, changes may be challenged in individual COL proceedings since the changes depart from the design information approved in the design certification rulemaking. Therefore, the NRC Commission agrees with the OCRE position on issue preclusion and specifically invites comments on this provision (See Section IV).

Topic 3—The Acceptability of a Tier 2 Exemption

Comment Summary. NEI supports the inclusion of the provision that an applicant or licensee may request, and the NRC may grant, an exemption to Tier 2 information. OCRE indirectly supports the Tier 2 exemption provision but recommends that the sentence "These Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4)." Also be included in the Section A.13(d)(2) of the ANPR on exemptions from Tier 2 information, for clarity, and because 10 CFR 52.63(b)(1) does not mention the two-tiered system.

Response. In SECY–92–287A, the NRC staff proposed the addition of an exemption provision to the Tier 2 change process so that the change process for both tiers would have the same elements and to provide additional flexibility to applicants or licensees that reference a design certification rule. The Commission deferred its decision on an exemption to the Tier 2 change process in its SRM dated June 23, 1993, and requested the NRC staff to solicit public comments on this issue.

Because no commenter objected to the addition of a Tier 2 exemption process and NEI supported the proposal, the provision was retained in the proposed rule. However, OCRE proposed that Tier 2 exemptions lose issue preclusion consistent with Tier 1 exemptions. Because that is consistent with the NRC staff's approach to Tier 2 changes and the Commission's guidance in its SRM on SECY–90–377 (see response to topic #2), OCRE's proposal has been incorporated into the proposed rule.

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The additional standard in the Tier 1 exemption process, which requires that "any decrease in safety that may result from the reduction in standardization caused by the exemption" outweighs the special circumstances in 10 CFR 50.12, was not included in the Tier 2 exemption process because the Commission views Tier 2 information as more detailed descriptions of Tier 1 information that should have a less stringent change standard than Tier 1 and the industry requested additional flexibility for Tier 2 information. Therefore, the proposed Tier 2 change process uses the same standard that is used for Part 50 exemptions, namely 10 CFR 50.12. The Commission believes that the loss of issue preclusion for Tier 2 exemptions will help minimize the consequences of the loss of standardization caused by these exemptions.

Topic 4—Acceptability of Using a Change Process, Similar to the One in 10 CFR 50.59 Applicable to Operating Reactors, Prior to the Issuance of a Combined License that References a Certified Design

Comment Summary. NEI concurs in the NRC's proposal to have the "§ 50.59-like" change process apply to both COL applicants and licensees.

Response. In its SRM on SECY–92–287A, dated June 23, 1993, the Commission approved the NRC staff's proposal to extend the use of the "§ 50.59-like" change process for Tier 2 information to applicants that reference a certified design. Because NEI and other commenters supported this proposal, this additional flexibility has been retained for the proposed rule.

Topic 5—The Acceptability of Identifying Selected Technical Positions From the FSER as "Unreviewed Safety Questions" That Cannot Be Changed Under a "Section 50.59–Like" Change Process

Comment Summary. NEI commented that the proposal to predesignate changes to certain design aspects as constituting "unreviewed safety questions" is unnecessary and is tantamount to the creation of a third tier of information, which runs counter to the two-tier structure. NEI proposed that the selected Tier 2 material be designated, not broadly in the rule, but specifically in the SSAR/FSER and the DCD as requiring NRC staff notification before implementing the changes. NEI argued that at the time of notification, the NRC staff could decide whether the proposed change constitutes an "unreviewed safety question," and the applicant or COL holder would be prohibited from making the change without either NRC staff concurrence or a successful appeal of the NRC staff's determination. NEI also envisioned a time, subsequent to completion of designs and the inspections, tests, analyses, and acceptance criteria (ITACC), when the change restriction for selected Tier 2 material will no longer be necessary. NEI further stated that, whether or not the Commission adopts NEI's proposal, the NRC staff should be limited to design areas discussed with plant designers when designations of "unreviewed safety questions" are made. Also, these special designations should be as narrow and specific as practicable to avoid the inadvertent broadening of this special category of Tier 2 design information and the excessive restrictions against change that would result.

Response. The NRC's proposal to predesignate certain Tier 2 information that cannot be changed without prior NRC approval does not create a third tier of information or conflict with the two-tiered rule structure. In fact, this so-called Tier 2* information was created as a consequence of industry's implementation of the two-tiered rule structure. Specifically, industry's desire to minimize the amount of information in Tier 1 and to use design acceptance criteria in lieu of design information in certain areas resulted in the need to identify significant Tier 2 information that could not be changed by an applicant or licensee without prior NRC approval. The previous reference to "identified unreviewed safety questions" in the ANPR was made to indicate that the process for changing the so-called Tier 2* information would be the same as for changing other Tier 2 information that an applicant or licensee determines to constitute an unreviewed safety question. Therefore, there is no third tier of information. Rather, some Tier 2 information cannot be changed without prior NRC approval and the remainder can. This is no different than the information in a Final Safety Analysis Report relative to the process in 10 CFR 50.59.

The Commission agrees with NEI that it would be clearer to future users of the certified design if the specific information that has been designated as requiring prior NRC approval (Tier 2*) is identified in the DCD rather than summarized in the design certification rule (DCR). However, the requirement for prior NRC approval does need to be specified in the DCR for the Tier 2 change process. Therefore, the NRC instructed the applicants to identify the Tier 2* information in the DCD.

In response to NEI's request, the DCR will not identify the Tier 2* information as an unreviewed safety question because that designation is not required; only prior NRC approval is required. Therefore, the Tier 2 change process has been revised to state that Tier 2* information identified in the DCD cannot be changed without prior NRC approval. Although Tier 2* changes may not result in unreviewed safety questions, the public will be afforded an opportunity to challenge the changes (see response to topic #2). The Commission also agrees that the predesignation of some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. This is because there is sufficient information in some of the related areas of Tier 1 to control changes after the plant is completed. The appropriate expiration point is designated in the DCD.

The NEI proposal to require notification of the NRC rather than requiring NRC approval prior to changing the Tier 2* information would create an unnecessary burden on the NRC in the Tier 2 change process. The Commission has already determined that the predesignated Tier 2* information is significant and cannot be changed before NRC approval. Therefore, the Commission has not adopted the "notification" proposal Also, the designation of Tier 2* information is not an excessive restriction on the change process. Rather, it compensates for industry's request to minimize the amount of information in Tier 1.

Topic 6—Need for Modifications to 10 CFR 52.63(b)(2) If the Two-Tiered Structure for the Design Certification Rule is Approved

Comment Summary. OCRE commented that modifications to § 52.63 are not necessary because the design certification rules would also become regulations. NEI commented that changes to 10 CFR part 52 are not needed at this time but that some changes to part 52 may be identified as appropriate for future consideration based on experience with the initial design certifications.

Response. When part 52 was written, § 52.63(b)(2) was intended to be the change process for information that was not referenced in the design certification rule (non-certified information). Now that the Commission has decided to implement a two-tiered rule structure as described in the response to Topic #1, the two-tiered change process applies to all information referenced by the design certification rule. Therefore, there does not appear to be a need for § 52.63(b)(2) in a two-tiered rule structure.

In the absence of any perceived need for changes to 10 CFR 52.63(b)(2) to accommodate the two-tiered concept in design certification, the Commission does not intend to modify 10 CFR part 52 at this time. However, as NEI suggests, the Commission is evaluating the need for changes to part 52 as it gains experience with the initial design certification reviews.

Topic 7—Whether the Commission Should Either Incorporate or Identify the Information in Tier 1 or Tier 2 or Both in the Combined License

Comment Summary. On the question of whether Tier 1 or Tier 2 information should be incorporated in the combined license (COL) or identified in the COL. NEI stated that this question need not be resolved for design certification purposes but provides two alternatives for future NRC consideration. Alternative one would be to incorporate Tier 1 information and identify Tier 2 information in the COL. The second alternative would be to incorporate both tiers of information in the rule, provided that the Tier 2 change provisions are incorporated in the rule as well.

OCRE stated that both Tier 1 and Tier 2 information should be incorporated in the COL because both tiers contain important design information.

Response. The NRC is deferring the decision on this issue because resolution of this issue is not needed to develop a design certification rule. However, because the commenters all supported incorporation of both tiers of information, the NRC staff will evaluate that option for a combined license under subpart C of 10 CFR part 52

Topic 8—Acceptability of Using Design Specific Rulemakings Rather Than Generic Rulemaking for the Technical Issues Whose Resolution Exceeds Current Requirements

Comment Summary. NEI, GE Nuclear Energy, and Westinghouse Electric Corporation took exception with the NRC position on the issue of designating severe accident and technical requirements, beyond those in current regulations, as "applicable regulations" in the design certification rule. NEI stated that "Commission approved NRC staff positions will be reflected in a design certification rule by means of design provisions contained in Tier 1 and Tier 2 of the DCD incorporated in the rule." NEI argued that the NRC staff's proposed approach would result in needless duplication, complexity, and delay because matters that have been agreed to in detail would then be formulated in broadly stated positions requiring another round of extensive discussions to reach agreement in a process equivalent to a series of complex, discrete rulemakings. In addition, NEI stated that these "broadly stated, free standing applicable regulations carry the potential for new and diverse interpretations by the NRC staff during the life of the design certification." These interpretations may be at odds with the understandings that translated into specific Tier 1 and Tier 2 requirements in the DCD. GE Nuclear Energy reiterated these comments but added that "The course proposed by the NRC staff would enormously complicate pre-rulemaking preparation, the conduct of the rulemakings themselves and COL licensing and post-licensing facility construction and operation. It would, moreover, impose schedule delays and generate needless duplication, if not outright conflicts." Also, NEI saw little difference between the proposal to incorporate applicable regulations in design certification rules and the similar effect of proceeding with generic severe accident rulemaking.

OCRE stated that the resolution of technical issues whose resolution exceeds current requirements will likely be design-specific and therefore, it may make little difference whether the rulemakings are design-specific or generic. OCRE further stated that, if the NRC wants all plants constructed after a certain date to incorporate certain design features or otherwise address certain technical issues, then a generic rulemaking may be the safest and most cost-effective way to accomplish this goal. OCRE also noted that a generic rule would cover an applicant that might decide not to use a standard certified design.

Response. The Commission has used design-specific rulemaking rather than generic rulemaking for the selected technical and severe accident issues that go beyond current requirements for light-water reactors (LWRs). The Commission adopted this approach, early in the review process, because it believed that the new requirements would be design-specific, as OCRE stated. Also, the NRC was concerned that generic rulemakings would cause significant delay in the design certification reviews. The Commission approved this approach in its SRM on SECY–91–262, dated January 28, 1992, and has continued to support this approach for evolutionary LWRs, as stated in its SRM on SECY–93–226, dated September 14, 1993. The Commission has deferred its decision on the need for generic rulemaking for advanced LWRs.

Both the industry and OCRE concluded that there would be little difference in the requirements for the certified designs, regardless if the approach was generic or design-specific. The Commission agrees that at the conclusion of the design certification rulemaking the effect of the new regulations is basically the same but that the specific wording of the regulations may have been different if generic rulemaking was used.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR designs in the area of severe accidents and in other selected areas. The NRC staff proposed new requirements to implement these goals in various Commission papers, such as SECY–90–016 and SECY–93–087. The NRC staff then selected the applicable requirements for each evolutionary design and evaluated the design information that describes how these requirements were met in the FSERs for the U.S. ABWR and System 80+ designs. In the proposed rule for each design, the NRC has identified these requirements as applicable regulations in order to specify the requirements that were applicable and in effect at the time the certification was issued for the purposes of §§ 52.48, 52.54, 52.59, and 52.63.

These applicable regulations, which were identified in each FSER, are set forth in the design certification rule, with minor editing, to achieve codification through the design certification rulemaking. These codified regulations, which supplement the list of regulations in § 52.48, become part of the Commission's regulations that are "applicable and in effect at the time the certification was issued." Without this complete list of applicable regulations, the NRC staff could not perform reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends to make it clear that for the purpose of renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued. The NRC also intends to make it clear that the Commission may, pursuant to § 52.63(a)(1) and (3), impose modification of Tier 1 information or to issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without

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re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these proposed requirements. Also, the Commission would not have a complete baseline of regulations for evaluating proposed changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

The codification of these proposed requirements, in reference to § 52.48, is also necessary for two other reasons. First, it serves as a basis for obtaining public comment on the proposed adoption of the requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the proposed requirements used during its review of the design. This is because the requirements are not "applicable standards and requirements of the * * * Commission's regulations" without further Commission action under § 52.54.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC staff told NEI in a meeting on April 25, 1994, and in a letter dated July 25, 1994, that the industry-proposed alternative to applicable regulations was unacceptable. The NRC staff stated that design information cannot function as a surrogate for design-specific (applicable) regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the design information. Therefore, consideration of the comments on Topic #8 has not altered the Commission's decision to proceed with design-specific rulemaking for the proposed requirements and to publish the appropriate applicable regulations in each design certification rule.

Topic 9—The Appropriate Form and Content of a Design Control Document

Comment Summary. Concerning the form and content of the DCD, NEI envisioned a document that consisted of three parts including an introductory section, Tier 1 information, and Tier 2 information. NEI also proposed an algorithm that described the industry's view of the contents of a DCD.

NEI stated that, based on its interactions with the NRC staff on the guidance for preparing a DCD, two main issues have emerged. The first issue is the nature and treatment for rulemaking purposes of secondary references contained in the DCD. At issue is the extent to which references to codes, standards, Regulatory Guides, etc. need to be explicitly "incorporated by reference" in specific design certification rules (DCRs). It is industry's position that the burden of incorporating these secondary references into the rule would outweigh the increase in regulatory certainty and predictability that such an effort would provide. The second issue relates to the regulatory significance of information contained in the DCD and, in particular, design Probabilistic Risk Assessment (PRA) information. Specifically, NEI is concerned with the inclusion of the design PRA in the DCD and a perceived requirement to use the PRA to support the "50.59-like" change process.

Response. As defined in SECY–92–287, the DCD is the master document that contains the Tier 1 and 2 information referenced by the design certification rule. The NRC staff has had several meetings with the design certification applicants on the preparation of a DCD and provided guidance to the applicants in letters dated August 26, 1993; August 3 and 5, 1994; and October 4, 1994. Although the Commission agrees with NEI on the basic form of the DCD, it does not agree with NEI's proposed algorithm on the contents of a DCD.

Because the DCD is the master reference document, it should, to the extent possible, retain as much of the applicant's standard safety analysis report (SSAR), as required in 10 CFR 52.47. Due to the requirement that all information incorporated in the rule be publicly available, proprietary and safeguards information cannot be included in the DCD. Also, the NRC concluded that the detailed methodology and quantitative portions of the design PRA do not need to be included in the DCD but the assumptions, insights, and discussions of PRA analyses must be retained in the DCD. The NRC also decided that COL applicants and licensees will be encouraged, but not required, to use the PRA to support the change process. This position was predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or holder to have a plant-specific PRA that updates and supersedes the design PRA to account for site-specific and detailed as built aspects of the plant. The Commission approved the requirement for a plant-specific PRA in its SRM on SECY–94–182, "Probabilistic Risk Assessment (PRA) Beyond Design Certification," in approving the development of a generic "Operational Rule" that would apply to all COL applicants and holders. The remainder of the applicant's SSAR, including all of the assumptions, issue resolutions, and safety analyses, should be retained in the DCD.

With regard to NEI's concern with secondary references, the NRC staff met with NEI on January 6, 1994, and issued a letter to NEI on May 3, 1994, that documented an agreement with the industry on the resolution of this issue. The agreement states that combined license (COL) applicants and licensees who reference a DCR will treat these secondary references as requirements, in the context that they are described in the documents referenced in the DCD. However, these secondary references will not be incorporated by reference in the DCR, and thus there is no issue preclusion for secondary references. With the above stated guidance, the NRC believes that the appropriate form and content of a DCD has been defined.

III. Section-by-Section Discussion of Design Certification Rule

Pursuant to 10 CFR part 52, subpart B, the NRC has been working for some time to develop a rule that will achieve the Commission's goals for standard design certifications. Therefore, this proposed rule seeks to achieve the early resolution of safety issues and to enhance the safety and reliability of nuclear power plants. The Commission also expects to achieve a more predictable and stable licensing process through the certification of standard designs by rulemaking. An applicant for a combined license (COL) that references a design certification rule (DCR) must meet the requirements in the DCR and in the design control document that is incorporated by reference in the DCR.

The NRC staff's first proposal of a standard design certification rule was provided in Enclosure 1 to SECY–92–287, dated August 18, 1992. This proposal was modified based on

Commission guidance, and an updated version was published in appendix 2 to the ANPR. The proposed rule in this **Federal Register** notice has the same basic form and content as the ANPR version, but there has been some reorganization of the contents. The following discusses the purpose and key aspects of each section of the rule and also discusses issues raised on those sections that are not covered in the public comment summary. Changes made to the ANPR version of the proposed rule for the sake of clarity, brevity, consistency, or organization are not discussed below. All references to the proposed rule are to the provisions in proposed appendix B to 10 CFR part 52.

A. Scope

The purpose of Section 1 of the proposed rule entitled, "Scope," is to identify the standard plant design that is to be approved by this design certification rule. The applicant for certification of the design is also identified in this section. While the design certification applicant does not have special rights pursuant to this rule, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the certified design. If the COL applicant necessary to implement this rule.

Because the requirements of 10 CFR 52.63(c) apply to an applicant for a COL, the NRC proposes that this requirement be added to 10 CFR part 52, subpart C, specifically to a new Section 10 CFR 52.79(e). The NRC requests comments on the desirability of making this change to 10 CFR part 52 (refer to Section IV).

B. Definitions

The terms Tier 1, Tier 2, and Tier 2* are defined in Section 2 of the proposed rule entitled "Definitions" because these concepts were not envisioned at the time that 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of part 52 (refer to discussion on Topic #1). The design control document (DCD) contains both the Tier 1 and 2 information, along with an introduction. After the issuance of the ANPR, the phrase Tier 2* was added to the list of definitions. Some of the information in Tier 2 that requires special treatment in the change process and was commonly referred to as Tier 2* during the design review. Therefore, the Commission believes that it would be useful to define and use this phrase in the proposed rule. Further information on changes to or departures from information in the DCD is provided below in the discussion on Section 8, "Change Process." The NRC requests suggestions on other words or phrases that may need to be defined in this rule (refer to Section IV).

C. [Reserved]

The purpose of Section 3, "Information Collection Requirements," in the proposed rule was originally intended to provide the citation for the control number which has been assigned by the Office of Management and Budget when it approved the information collection requirements in this rulemaking. Because this citation has been placed in § 52.8, Section 3 to the rule is no longer necessary.

D. Contents of the Design Certification

Section 4 of the proposed rule entitled "Contents of the Design Certification" identifies the design-related information that is incorporated by reference into this rule (4(a)) and includes some related provisions of the proposed rule (4 (b) and (c)). Both tiers of design-related information have been combined into a single document, called the design control document (DCD), in order to effectively control this information and facilitate its incorporation into the rule by reference (refer to Topic #9 for discussion on the DCD). The DCD was prepared to meet the requirements of the Office of the Federal Register (OFR) for incorporation by reference (1 CFR part 51). Section 4(a) of this proposed rule would incorporate the DCD by reference upon approval of the Director, OFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law.

An applicant for a construction permit or COL that references this design certification rule must conform with the requirements in the proposed rule and the DCD. The master DCD for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be maintained at the NRC's Public Document Room and Library. Questions concerning the accuracy of information in an application that references this design certification will be resolved by checking the master DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section 8 of the proposed rule, then at the completion of the rulemaking the NRC will change its copies of the DCD and notify the OFR and design certification applicant to change their copies.

The applicant for this design certification rule is responsible for preparing the DCD in accordance with NRC and OFR requirements and maintaining an up-to-date copy pursuant to Section 9(a)(1) of the proposed rule. Plant-specific changes to and departures from the DCD will be maintained by the applicant or licensee that references this design certification pursuant to Section 9(a)(2) of the proposed rule. In order to meet the requirements of OFR for incorporation by reference, the originator of the DCD (design certification applicant) must make the document available upon request after the final design certification rule is issued. Therefore, the proposed rule states that copies of the DCD can be obtained from the applicant or an organization designated by the applicant. The applicant for this design certification has stated that it may request distribution of its DCD by the National Technical Information Service (NTIS). If the applicant selects an organization, such as NTIS, to distribute the DCD, then the applicant must provide that organization with an up-to-date copy. A copy of the DCD must also be made available at the NRC and OFR.

The DCD contains an introduction that explains the purpose and uses of the DCD and two tiers of design-related information. The significance of designating design information as Tier 1 or Tier 2 is that different change processes and criteria apply to each tier, as explained below in Section H, "Change Process." The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

The Tier 1 portion of the design-related information contained in the DCD is certified by this rule. This information consists of an introduction to Tier 1, the certified design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC) for systems and structures of the design, design

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material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER.

The information in the Tier 1 portion of the DCD was extracted from the detailed information contained in the application for design certification. The Tier 1 information addresses the most safety-significant aspects of the design, and was organized primarily according to the structures and systems of the design. Additional design material and related ITAAC is also provided in Tier 1 for selected design and construction activities that are applicable to multiple systems of the design. The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification, and the ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for subsequent modifications. However, subsequent modifications to the facility must comply with the Tier 1 design descriptions, unless changes are made in accordance with the change process in Section 8 of this proposed rule.

The Tier 1 interface requirements are the most significant of the interface requirements for the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii), that must be met by the site-specific portions of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii), that must be addressed as part of the application for a construction permit or COL.

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this rule but is not certified. The change process defines the procedural differences between Tier 1 and 2. Changes to or departures from the certified design material (Tier 1) must comply with Section 8(a) of this proposed rule. Changes to or departures from the approved information (Tier 2) must comply with Section 8(b) of this proposed rule. Tier 2 includes the information required by 10 CFR 52.47 and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. Compliance with the more detailed Tier 2 information provides a sufficient method, but not the only acceptable method, for complying with the more general design requirements included in Tier 1. A supplementary description of Tier 2 information is provided in the DCD introduction. If an applicant or licensee used methods other than those described in Tier 2, then the alternative method would be open to staff review and a possible subject for a hearing.

When completing the design information for a plant, an applicant for a COL must conform with all of the requirements in the DCD, unless the information in the DCD is changed pursuant to the process in Section 8 of this proposed rule. Accordingly, an applicant for a construction permit or COL, or licensee that references this certified design must conform with all of the requirements from the DCD, including the codes, standards, and other guidance documents that are referenced from the DCD (so-called secondary references). The industry agreed to treat these secondary references as requirements even though they are not incorporated by reference, in the context as described in the DCD, as set forth in a letter from Dennis Crutchfield of the NRC to Joe Colvin of the Nuclear Energy Institute, dated May 3, 1994.

An applicant for a construction permit or COL that references this proposed rule must also describe those portions of the plant design which are site-specific, and demonstrate compliance with the interface requirements, as required by 10 CFR 52.79(b). The COL applicant does not need to conform with the conceptual design information in the DCD that was provided by the design certification applicant in response to 10 CFR 52.47(a)(1)(ix). The conceptual design information, which are examples of site-specific design features, was required to facilitate the design certification review, and it is neither Tier 1 nor 2. The introduction to the DCD identifies the location of the conceptual design information and explains that this information is not applicable to a COL application.

An applicant must address COL Action Items, which are identified in the DCD as COL License Information, in its COL application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant or licensee that references the design certification, as required by 10 CFR 52.77 and 52.79. A further explanation of the status of the COL License Information is provided in the DCD introduction. Also, the detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), was not included in the DCD. The NRC agreed with the design certification applicant's request to delete this information because conformance with the deleted portions of the PRA is not required. The Commission's position is also predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA and maintain it throughout the operational life of the plant.

The application for design certification contained proprietary and safeguards information. This information was part of the NRC staff's bases for its safety findings in the FSER. The proprietary information, or its equivalent, that was provided in the design certification application by reference but not included in the DCD, must be included as part of a COL application. The Commission considers this information to be requirements for plants that reference this rule. Since the proprietary information was not included in the DCD, or otherwise approved by OFR for incorporation by reference, it would not have issue preclusion in a construction permit or COL proceeding.

There is other information that is within the scope of the certified design (i.e., as-built, as-procured, and evolving technology design information) that must be developed by a COL applicant or holder. This detailed design information must be completed in accordance with the requirements in the DCD and the acceptance criteria in ITAAC, including design acceptance criteria (DAC). Since the Tier 1 and 2 information is solely contained within the DCD, the remainder of the design-related information that is developed by a COL applicant or holder that references this proposed rule will not be either Tier 1 or 2 information, whether it is within the scope of the design certification or not. Therefore, the change process in Section 8 of this proposed rule will not control this COL information. Although the change process for this COL information does not need to be developed until a COL application is submitted, the Commission is interested in the public's view on how this information should be controlled (refer to Section IV).

The purpose of Section 4(b) of this proposed rule is to ensure that an applicant that references this design certification references both tiers of information in the DCD. The two tiers of information were developed together and both tiers of information are needed to complete the design of a plant that references the rule. For example, the ITAAC in Tier 1 contains not only the acceptance criteria for verifying that the as-built plant conforms with the approved design, but it also contains various design processes with acceptance criteria (DAC), for completing selected areas of the plant design. The DAC are described in Section 14.3 of the SSAR and FSER. The NRC staff relied on DAC for its evaluation of selected design areas where the applicant for design certification did not provide complete design information. Also, the Tier 2 information contains explanations and procedures on how to implement ITAAC. Therefore, the Commission proposes that an applicant could not reference this design certification rule without meeting ITAAC, even though it is not a requirement in 10 CFR part 50. (see Section J for further discussion)

The applicant for design certification initially prepared the DCD to be consistent with the SSAR and the NRC staff's FSER. The applicant for design certification made some corrections and clarifications to the DCD since the completion of the SSAR and issuance of the FSER. If there is an inconsistency between the SSAR and the FSER, or between either of these documents and the DCD, then the DCD is the controlling document. That is the purpose of Section 4(c) of this proposed rule.

E. Exemptions and Applicable Regulations

The purpose of Section 5 of the proposed rule entitled, "Exemptions and applicable regulations," is to identify the complete set of regulations that were applicable and in effect at the time the design certification was issued for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63. In accordance with 10 CFR 52.48, the NRC staff used the technically relevant regulations (safety standards) in 10 CFR parts 20, 50, 73, and 100 in performing its review of the application for design certification. The effective date of these applicable regulations is the date of the FSER, as set forth in Section 5(b) of the proposed rule. During its review of the application for design certification, the NRC staff identified certain regulations for which application of the regulation to the standard design would not serve or was not necessary to achieve the underlying purpose of the regulation. These proposed exemptions to the NRC's current regulations are identified in Section 5(a) of this proposed rule. The basis for these exemptions is provided in the FSER.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement, the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR standard designs in the area of severe accidents and in other selected areas. As a result, the NRC staff proposed new requirements in various Commission papers, such as SECY–90–016 and SECY–93–087, to be used in the design certification review and treated as applicable regulations in the design certification rulemaking (refer to discussion on Topic #8). The bases for these requirements are set forth in SECY–90–016 and SECY–93–087. The Commission approved the use of these proposed regulations for purposes of the design certification review in the respective SRMs. These proposed regulations deviated from or were not embodied in current regulations applicable to the standard design. The NRC staff then selected proposed regulations that were applicable to the design under review and reviewed the design pursuant to these applicable regulations. The FSER identifies the applicable regulations that were used and describes how these regulations were met by the design-related information in the SSAR. The Commission approved the evaluation of the design pursuant to the applicable regulations in its approval to publish the FSER.

These proposed applicable regulations are identified in Section 5(c) of this proposed rule to achieve codification through the design certification rulemaking. The proposed applicable regulations in Section 5(c) are substantively the same as those in the FSER but have been edited for clarity. These codified requirements, which supplement the regulations in Section 5(b), will become part of the Commission's regulations that were "applicable and in effect at the time the certification was issued," if the Commission adopts them in the final design certification rule. The Commission requests comments on whether each specific applicable regulation is justified (refer to Section IV).

The codification of these additional requirements, in reference to 10 CFR 52.48, is necessary for two reasons. First, it serves as a basis for obtaining public comment on the adoption of the proposed requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the requirements used during its review of the design. This is because the proposed requirements, without further Commission action, could be argued as not being "applicable standards and requirements of the * * * Commission's regulations" under § 52.54. Also, without codification of the applicable regulations, the NRC could not perform its reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends that for renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued.

The Commission may, pursuant to § 53.63(a) (1) and (3), impose a modification of Tier 1 information or issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these requirements. Also, the Commission would not have a complete list of regulations for use in evaluating requested changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC rejected NEI's proposed alternative to applicable regulations in a meeting on April 25, 1994, and in a letter dated July 25, 1994. NEI's proposal to use design information as a surrogate for design-specific (applicable) regulations is not workable for proposed changes because the design information only represents one way of implementing a regulation. The NRC would need the regulation for

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the design feature in order to evaluate a proposed change to the design information.

F. Issue Resolution for the Design Certification

The purpose of Section 6 of the proposed rule entitled, "Issue Resolution for the Design Certification," is to identify the issues that are considered resolved, if the Commission adopts a final design certification rule and therefore, these issues receive issue preclusion within the scope and intent of 10 CFR 52.63(a)(4). Specifically, all nuclear safety issues arising from the Atomic Energy Act that are associated with the information in the NRC staff's FSER or the applicant's DCD are resolved within the meaning of § 52.63(a)(4). All issues arising under the National Environmental Policy Act of 1969 associated with the information in the NRC staff's environmental assessment or the severe accident design alternatives in the applicant's Technical Support Document are also resolved within the scope and intent of § 52.63(a)(4). The issues that are associated with information that is not included in the DCD, such as proprietary information, do not have issue preclusion within the meaning of 10 CFR 52.63(a)(4).

G. Duration of the Design Certification

The purpose of Section 7 of the proposed rule entitled, "Duration of the Design Certification," is in part to specify the time period during which the standard design certification may be referenced by an applicant for a construction permit or COL, pursuant to 10 CFR 52.55. This section of the rule also states that the design certification remains valid for an applicant or licensee that references the design certification until their application is withdrawn or their license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification rule continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for the proposed rule to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that rulemaking changes to or plant-specific departures from information in the DCD must be made pursuant to the change process in Section 8 of this proposed rule for the life of the plant.

H. Change Process

The purpose of Section 8 of this proposed rule entitled, "Change Process," is to set forth the process for requesting rulemaking changes to or plant specific departures from information in the DCD. The Commission has developed a more restrictive change process than for plants that were licensed pursuant to 10 CFR part 50, in order to achieve a more stable licensing process for applicants and licensees that reference a design certification rule. The change process in Section 8 is substantively the same as the process proposed in the ANPR.[2] As a result, Section 8(a) provides the process for changing Tier 1 information and Section 8(b) provides the process for changing Tier 2 information. The change process for Tier 1 information uses the change process developed by the Commission in the part 52 rulemaking for certified design-related information. Therefore, the provisions in Section 8(a) of the proposed rule simply refer to the appropriate sections in 10 CFR 52.63. A description of the Tier 1 information that is controlled by Section 8(a) is provided in the above discussion on contents of the design certification (III.D).

As discussed in Topic #2, the NRC developed a change process for Tier 2 that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process in Section 8(b) has provisions for generic changes, plant-specific orders, and exemptions similar to those in 10 CFR 52.63, but some of the standards for plant-specific orders and exemptions are different. The standards that must be met in order to justify a generic change to either Tier 1 or 2 information are the same. When NEI proposed a two-tiered structure for design certification rules in its letter of August 31, 1990, it also stated that "NRC backfits involving matters described in the first tier would be governed by the provisions of § 52.63, whereas § 50.109 would govern backfitting as respects the second tier." As a result, the NRC staff used the backfit standards in § 50.109 for generic changes to Tier 2 in its proposed design certification rule in SECY–92–287. Subsequently, in a letter dated October 5, 1992, NEI changed its position and agreed with the Commission that the standard for generic changes to Tier 2 should be the same as the Tier 1 standard. This issue is discussed further in SECY–92–287A, dated March 26, 1993. Therefore, Section 8 of this proposed rule uses the same standards for generic changes to both Tier 1 and 2 information.

Although the process in Section 8 for plant-specific orders and exemptions is the same for Tier 1 and 2 information, the standards are different. In order to preserve the benefits of standardization, which is one of the important goals of design certification, the Commission proposes in Section 8(a)(3) that plant-specific orders or exemptions from Tier 1 information must consider whether the special circumstances which § 50.12(a)(2) required to be present outweigh any decrease in safety that may result from the reduction in standardization, as required in 10 CFR 52.63(a)(3). The Commission is not proposing to adopt this additional consideration for plant-specific orders or exemptions from Tier 2 information, in order to achieve additional flexibility. The Commission believes this is acceptable because the Tier 2 information is not as safety significant as the Tier 1 information. Therefore, Sections 8(b) (3) and (4) of the proposed rule do not require the additional consideration of the reduction in standardization caused by proposed departures from Tier 2 information.

A generic change to either Tier 1 or 2 information in the DCD is accomplished by rulemaking. Any person seeking to make a generic change to the DCD, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.802. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(1) for justifying a generic change to the DCD. Any generic changes to the DCD resulting from the rulemaking will be noticed in the **Federal Register**. The NRC will update the master DCD in its central files and the copies in the NRC Library and public document room (refer to the discussion in Section III.D). Under Sections 8 (a)(2) and (b)(2), generic changes to Tier 1 and Tier 2, respectively, will be applicable to all plants referencing the design certification. However, if the Commission determines that a generic change is not technically relevant to a particular plant, based on plant-specific changes made pursuant to Section 8, then the generic rulemaking will indicate that the change will not be applicable to that plant. If the proposed change to the DCD also results in a violation of an underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

A plant-specific departure from either Tier 1 or 2 information in the DCD does not require rulemaking. Any person requesting a Commission order directing a plant-specific change, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.206. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(3) or Section 8(b)(3) for departures from Tier 1 or 2 information, respectively. By contrast, an applicant or licensee that references this design certification rule may request exemptions from Tier 1 or 2 information pursuant to 10 CFR 52.63(b)(1) or Section 8(b)(4) of this rule, respectively. The NRC recognized that there may be special circumstances pertaining to a particular applicant or licensee that would justify an exemption from the DCD. The request must describe how the exemption from Tier 1 or 2 meets the standards in 10 CFR 52.63(b)(1) or Section 8(b)(4) of this proposed rule, respectively. The exemption may be contested in a hearing, if the exemption is granted in connection with issuance of a construction permit, operating license, or combined license; it may also be contested in a hearing, if the exemption also requires the issuance of a license amendment. If a plant-specific change or exemption from the DCD also results in a violation of the underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

In addition to the plant-specific changes described above, an applicant or licensee that references this design certification rule may depart from Tier 2 information, without prior NRC approval pursuant to Section 8(b)(5) of this proposed rule. However, the Commission believes that these changes should open the possibility for challenge in a hearing (refer to discussion on Topic #2). The Commission approved the use of this "§ 50.59-like" change process in its SRMs on SECY–90–377 and SECY–92–287A. The NRC is interested in the public's view on how these changes could be challenged in a hearing (refer to Section IV).

As in 10 CFR 50.59, an applicant or licensee cannot make changes that involve an unreviewed safety question (USQ) or technical specifications, without prior NRC approval. Also, for changes pursuant to Section 8(b)(5), an applicant or licensee cannot make changes to Tier 1 or Tier 2* information without prior NRC approval. If the proposed change does not involve these factors, then the NRC will allow changes to previously approved information in Tier 2 without prior NRC approval. However, if the change involves an issue that the Commission has not previously approved, then NRC approval is required. The process for evaluating proposed tests or experiments not described in Tier 2 will be developed for an operating or combined license that references this design certification (refer to Section IV).

The restriction on changing Tier 1 information is included in the process in Section 8(b)(5) because this information can only be changed pursuant to Section 8(a) of the proposed rule. Whereas, the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the DCD. A description of the Tier 1 information is provided in the discussion in Section III.D on contents of the design certification. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for the applicant or licensee that references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain relatively significant information only exists in Tier 2 and the Commission does not want this significant information changed without prior NRC approval. The NRC specified this information in its FSER and the design certification applicant has identified this information in its DCD. This information has come to be known as Tier 2* information and it has compensated for industry's desire to minimize the amount of information in Tier 1.

In the ANPR, the NRC referred to the Tier 2* information as pre-identified unreviewed safety questions (USQs) because there was already an established procedure in 10 CFR 50.59 for FSAR changes that constitute USQs, which require NRC approval. NEI stated in its comments on the ANPR that it was not necessary to create an artificial set of USQs in order to accomplish the NRC's objective of requiring prior approval. Therefore, the proposed rule was changed from the ANPR to simply state that the Tier 2* information cannot be changed without prior NRC approval. Also, NEI requested in its comments that the Tier 2* information not be identified in the design certification rule, as was proposed in the ANPR, and that an expiration date be considered for the restriction in the change process for Tier 2* information. NRC agrees that Tier 2* information can be identified in the DCD and Section 8(b)(5) of the proposed rule was changed accordingly. The NRC also reevaluated the duration of the change restriction for Tier 2* information and determined that some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. The DCD sets forth an expiration date for some of the Tier 2* information.

As part of this rulemaking, the NRC is seeking public comments on the appropriate regulatory process to use for review of proposed changes to Tier 2* information. Currently, pursuant to 10 CFR 50.59, the NRC approves changes to FSAR information that constitute a USQ or involve technical specifications through the issuance of license amendments. However, if an applicant or licensee requests NRC approval for a proposed change to Tier 2* information, should the NRC review process be similar to that for a USQ? While it is clear that these proposed changes would all involve significant design-related information and that prior review of proposed departures from Tier 2 information is necessary, the NRC has not determined if it is always appropriate to process the approved changes as either an amendment to the license application or an amendment to the license, with the requisite hearing rights. Therefore, the NRC requests the public's view on the preferred regulatory process for these changes (refer to Section IV).

An applicant or licensee that plans to depart from Tier 2 information, pursuant to Section 8(b)(5), must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, including the generic issues discussed in Chapter 20 of the FSER. The benefits of the early resolution of safety issues would be lost if changes were made to the DCD that violated these resolutions without NRC approval. The evaluation of the resolved issues needs to consider the proposed change over the full range of power operation from startup to shutdown, including issues resolved under the heading of shutdown risk, as it relates

[2] This change process has been reorganized for clarity and conformance to the two-tiered rule structure, and to distinguish between generic changes to Tier 1 and 2 information, which are accomplished via rulemaking, and plant-specific departures from Tier 1 and 2 information which may be accomplished by the process defined in Section 8 of this proposed rule. For brevity, this SOC refers to both aspects as constituting the "change process" for this design certification rule.

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to anticipated operational occurrences, transients, and design basis accidents. The evaluation should consider the tables in Sections 14.3 and 19.15 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. GE provided more detailed cross-references to Tier 1 for these analyses in a letter dated March 31, 1994, and ABB-CE provided more detailed cross-references in a letter dated June 10, 1994. The NRC does not endorse NSAC–125, "Guidelines for 10 CFR 50.59 Safety Evaluations," for performing the safety evaluations required by Section 8(b)(5) of the proposed rule. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for implementing Section 8 after the final rule is issued.

During the review of its DCD, GE requested that the determination of whether a proposed departure from Tier 2 information that involves severe accident issues constitutes a USQ use criteria that are different from the criteria for USQ determinations proposed in the ANPR (10 CFR 50.59(a)(2)). GE argued that not all increases in the probability or consequences of severe accidents are significant from a safety standpoint. Minor increases in the probability of some accident scenarios will not affect the overall core damage frequency or the conclusions of the severe accident evaluations. Therefore, GE proposed that changes to Tier 2 information that result in insignificant increases in the probability or consequences of severe accidents not constitute a USQ.

The NRC believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the NRC has proposed, in Section 8(b)(5), separate criteria for determining whether a departure from information associated with severe accident issues constitutes a USQ. The new criteria in Section 8(b)(5)(iii) will only apply to Tier 2 information that is associated with the severe accident issues discussed in the section of the DCD identified in the rule. The criteria for USQ determinations in Section 8(b)(5)(ii), which are the same as those proposed in the ANPR, will apply to other Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination should be based upon the criteria in Section 8(b)(5)(ii). The NRC is interested in the public's view on whether the Tier 2 information involving resolutions of severe accident issues should be treated differently for USQ determinations than all other safety issues? If so, are the proposed criteria in Section 8(b)(5)(iii) sufficient to determine if a proposed departure from information associated with severe accident issues constitutes a USQ? (Refer to Section IV.)

The NRC is also proposing two additional provisions to the change process that were not in the ANPR. The first is Section 8(b)(5)(iv), which provides that changes made pursuant to Section 8(b)(5) do not also require an exemption from the design certification rule. Because the Tier 2 information is incorporated by reference into the design certification, a departure from Tier 2 pursuant to Section 8(b)(5) would also require an exemption from the design certification rule absent this proposed provision. The second provision is Section 8(c), which makes it clear that proposed changes to requirements in this design certification rule that are neither Tier 1 nor Tier 2 must be done by exemption pursuant to 10 CFR 50.12. Such requirements include the recordkeeping and reporting requirements in Section 9 of this proposed rule.

I. Records and Reports

The purpose of Section 9 of this proposed rule entitled, "Records and Reports," is to set forth the requirements for maintaining records of DCD changes and submitting reports to the NRC. This section is similar to the requirements for records and reports in 10 CFR Part 50 and § 52.63(b)(2), with the following differences. Section 9(a)(1) requires an applicant for design certification to maintain an up-to-date copy of the DCD that includes all generic changes to Tier 1 and 2 information that are made by rulemaking. This will ensure that the design certification applicant provides up-to-date versions of the DCD to prospective applicants that want to reference this design certification or to other interested parties who want copies of the DCD. Section 9(a)(2) requires an applicant or licensee that references this design certification to maintain an up-to-date plant-specific version of the DCD that includes both generic changes to the DCD, as well as plant-specific departures from the DCD. This ensures that the plant records which include an accurate DCD reflecting information specific to the plant as well as changes to the DCD.

The proposed rule also establishes reporting requirements in Section 9(b) for applicants or licensees that reference this design certification rule. The requirements in Section 9(b) are similar to the reporting requirements in 10 CFR part 50, except that they include reporting of changes to or departures from the plant-specific DCD. In addition, the reporting requirements in Section 9(b) vary according to whether the changes are made as part of an application, during plant construction, or during operation. Also, the reporting frequency of summary reports of departures from and periodic updates to the DCD increases during plant construction. If an applicant that references this design certification rule decides to adopt departures from the DCD that were developed, but not approved pursuant to Section 8 of this proposed rule, before its application (i.e., first of a kind engineering), then the proposed departures from the DCD must be submitted with the initial application for a construction permit or combined license.

For currently operating plants, a licensee is required to maintain records of the basis for any design change made to the plant pursuant to 10 CFR 50.59. Further, a licensee is required to provide a summary of these changes to the NRC annually or along with updates to the final safety analysis report pursuant to 10 CFR 50.71. The proposed rule allows departures from the DCD during the periods of application, construction, and operation of the plant. Therefore, the proposed rule requires timely submittal of summary reports of departures from, as well as updates to, the DCD during each of these intervals, consistent with the Commission's guidance on reporting frequency in its SRM on SECY–90–377.

NEI proposed reporting of design changes at a 6-month interval, in its comments on the ANPR, to "avoid unnecessarily diverting owner/operator resources to meet excessive reporting requirements." The NRC modified the provisions in the proposed rule to relax the reporting requirements before issuance of a construction permit or combined license. During this interval, summary reports of changes and updates to the DCD should be submitted to the NRC as part of the amendments to the construction permit or combined license application. However, the NRC does not agree with the NEI proposal for semi-annual reporting of design changes during plant construction because it

does not provide for sufficiently timely notification of design changes. Therefore, the Commission retained the requirement for quarterly reporting of changes in the proposed rule during this interval. Also, the NRC relaxed the provisions in Section 9(b) so that during operation of a plant, the reporting requirements are the same as for currently operating plants.

The Commission believes that quarterly reporting of design changes during the period of construction are necessary to closely monitor the status and progress of the construction of the plant. As required by 10 CFR 52.99, the NRC must find that the ITAAC have been successfully met. The ITAAC verify that the as-built facility conforms with the approved design and emphasize design reconciliation and design verification of the as-built plant. To make its finding, the NRC must tailor its inspection program to monitor plant construction and adjust its program to accommodate changes. Quarterly reporting of design changes will facilitate these adjustments in a timely manner and aids in a common understanding of the plant as the changes are being made. This is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing.

Section 9(c) of the proposed rule requires that records are kept for the lifetime of a facility, as in 10 CFR part 50 and § 52.63(b)(2).

J. Applicability of a DCR in 10 CFR Part 50 Licensing Proceedings

Several provisions in 10 CFR part 52, subpart B suggest that design certification rules (DCRs) may be referenced not only in combined license proceedings under 10 CFR part 52, subpart C but also in licensing proceedings under 10 CFR part 50. Section 52.63(c) states:

> The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination, including the determination that the application is consistent with the certified design. (Emphasis supplied.)

See also §§ 52.41, 52.55(b), 52.55(c), 52.63(a)(4), 52.63(b)(1). However, these provisions of 10 CFR part 52, subpart B are inconsistent in identifying the type of part 50 proceeding in which design certification rules may be referenced. For example, although § 52.63(c) (quoted above) and § 52.55(c) explicitly provide for referencing of design certification rules in 10 CFR part 50 construction permit proceedings, §§ 52.55(b), 52.63(a)(4) and 52.63(b)(1) refer only to operating license proceedings. Section 52.63(a)(4) is illustrative:

> Except as provided for in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification. (Emphasis supplied.)

Therefore, some might question whether the Commission intended construction permits applicants under 10 CFR part 50 to have the option of referencing design certification rules. However, the Commission has not identified any regulatory or policy reasons for precluding a construction permit applicant from referencing a design certification rule while allowing an operating license applicant to do so. Thus, the Commission believes that 10 CFR part 52 provides the discretion to authorize a construction permit applicant under 10 CFR part 50 to reference a design certification rule.

Assuming that the Commission has such discretion, there are a number of issues that present themselves. Should the Commission exercise its discretion to allow construction permit applicants to reference this design certification rule? Should the Commission require that if a design certification rule is to be relied upon in 10 CFR part 50 licensing proceedings, it must be referenced in both the construction permit and operating license applications? Would it make sense to allow an operating license applicant to reference a design certification if the underlying construction permit did not reference the design certification? The Commission recognizes that consideration of these issues depends in part upon the legal significance of a design certification in the 10 CFR part 50 licensing proceeding, as well as its significance for the permittee or licensee once the construction permit or operating license is granted. In particular, 10 CFR part 52, subpart B does not say what the legal effect is (if any) of ITAAC in a part 50 operating license proceeding in which the underlying construction permit references a design certification.

In view of the status of ITAAC as Tier 1 information, how would a construction permit applicant referencing a design certification rule avoid referencing the ITAAC? What would be the consequences for the construction permit applicant of referencing ITAAC? If the underlying construction permit referenced ITAAC, then what (if any) would be the scope and nature of "issue preclusion" at the operating license stage, in terms of staff/Commission review and approval of the operating license application, as well as issues which are precluded from consideration under 10 CFR 2.758? The Commission seeks the public's views on the referencing of design certification rules in 10 CFR part 50 applications (refer to Section IV).

IV. Specific Requests for Comments

In addition to the general invitation to submit comments on the proposed rule, the DCD, and the environmental assessment, the NRC also invites specific comments on the following questions:

1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)? (Refer to discussion in III.A.)
2. Are there other words or phrases that should be defined in Section 2 of the proposed rule? (Refer to discussion in III.B.)
3. What change process should apply to design-related information developed by a COL applicant or holder that references this design certification rule? (Refer to discussion in III.D.)
4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified? (Refer to discussion in III.E.)
5. Section 8(b)(5)(i) authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements? (Refer to discussion in III.H.)
6. How should the determinations made by an applicant or licensee that

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changes may be made under Section 8(b)(5)(i) without prior NRC approval be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged? (Refer to discussion in III.H.)

7. What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process? (Refer to discussion in III.H.)

8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be? (Refer to discussion in III.H.)

9(a)(1) Should construction permit applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50? (Refer to discussion in III.J.)

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the "old" 10 CFR part 50 2-step process from the 10 CFR part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

9(b)(1) Should operating license applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement, and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR pPart 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.*, without foreclosing alternatives for future resolution).

V. Comments and Hearings in the Design Certification Rulemaking

A. Opportunity to Submit Written and Electronic Comments

Any person may submit written comments on the proposed design certification rule to the Commission for its consideration.[3] Commenters have 120 days from the publication of this notice to file written comments on the proposed design certification rule. Commenters needing access to proprietary information in order to provide written comments must follow the procedures and filing deadlines (including the date for filing written comments) which are set forth in Section V.E. below.

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the comment letter in electronic format on a DOS-formatted (IBM compatible) 3.5 or 5.25 inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label. Comments may also be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number (1–800–303–9672). Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC rules subsystem can then be accessed by selecting the "Rules" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the "U.S. Nuclear Regulatory Commission" option from FedWorld's "Subsystems/Databases" menu or by entering the command "/go nrc" at a FedWorld command line. If NRC access is obtained through FedWorld's "Subsystems/Databases" menu, then return to FedWorld is accomplished by selecting the "Return to FedWorld" option from the "NRC Main Menu." However, if NRC access at FedWorld is accomplished by using NRC's toll-free number, access to all NRC systems is available, but there will be no access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Public Meeting

The NRC staff plans to conduct a public meeting on this proposed rule on May 11, 1995, at the NRC Auditorium in Two White Flint North. Further details on the meeting are provided in a document published in this issue of the **Federal Register**. The purpose of the public meeting will be to discuss this proposed rule and respond to questions on the meaning and intent of any provisions of this proposed rule. It is hoped that this meeting will be helpful to persons who intend to submit written comments on the proposed rule. An official transcript of the proceedings of the public meeting will be prepared.

B. Opportunity to Request Hearing

Any person may request an informal hearing on one or more specific matters with respect to the proposed design certification rule.[4] An informal hearing provides the admitted party with an opportunity to provide written and oral presentations on those matters to an Atomic Safety and Licensing Board, and to request that the licensing board

[3] An opportunity for public comment is required by Section 553 of the Administrative Procedures Act and 10 CFR 52.51(b).

[4] An opportunity for a hearing is provided by 10 CFR 52.51(b).

question the applicant on those matters. The conduct of an informal hearing is discussed in more detail in Section C. below. Under certain circumstances, a party in an informal hearing may request that the Commission hold a formal hearing on specific and substantial factual disputes necessary to resolution of the matters for which the party was granted an informal hearing (see Section C.11 below).

A person may request an informal hearing even though that person has not submitted separate written comments on the design certification rule (i.e., is not a commenter). Requests for an informal hearing must be received by the Commission no later than 120 days from the publication of this notice, and a copy of the request must be sent via overnight mail to the design certification applicant at the following address: Mr. Charles B. Brinkman, Director, Nuclear Systems Licensing, ABB-Combustion Engineering, Inc., P.O. Box 500, 1000 Prospect Hill Road, Windsor, CT 06095–0500. The information which a person requesting a hearing must provide in the hearing request, as well as the procedures and standards to be used by the Commission in its determination of the request, are discussed in Sections C.1 through C.4 below.

A person who needs to review proprietary information submitted by the design certification applicant in order to prepare a request for an informal hearing must follow the procedures and filing schedule set forth in Section V.E. below.

The Commission is also providing an opportunity for interested State, county, and city/municipal and other local Governments, as well as Native American tribal governments to participate as "interested governments" in any informal hearings which the Commission authorizes, similar to their participation as "interested governments" in subpart G hearings under 10 CFR 2.715. State, county, city/municipal, local, and tribal Governments wishing to participate as an "interested government" in any design certification rulemaking hearings which may be held must file their request to participate no later than 120 days from the publication of this notice.

C. Hearing Process

1. Filings and Computation of Times

All notices, papers, or other filings discussed in this section must be filed by express mail.[5] The time periods specified in this section have been established based upon such a filing. The express mail filing requirement shall be considered in establishing other filing deadlines.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which case the period runs until the next day which is neither a Saturday, Sunday, nor holiday.

2. Content of Hearing Request

The Commission will grant a request for an informal hearing only if the hearing request satisfies each of the following two requirements. First, the hearing request must include the written presentations which the requestor wishes to be included in the record of the hearing. The written presentations must:

(i) Identify the specific portion of the proposed design certification rule or supporting bases which are challenged,

(ii) Describe the reasons why the proposed rule or supporting bases are incorrect or insufficient, and

(iii) Identify the references or sources upon which the person requesting the hearing relies.

If the requestor has submitted written comments in the public comment period addressing these three factors for the specific issue for which the requestor seeks a hearing, it will be sufficient for the requestor to identify the portions of the written comments which the requestor intends to submit as a written presentation. Also, the hearing request must demonstrate that the requestor (or other persons identified in the hearing request who will represent, assist, or speak on behalf of the requestor at the hearing) has appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the specific matters at issue. The Commission does not intend that the requestor meet a judicial "expert witness" standard in order to meet the second criterion. Nonetheless, given the substantial commitment of time and resources associated with any hearing, the Commission believes it to be a reasonable prerequisite that the hearing requestor demonstrate that he/she (or his/her assistant) has:

(i) Substantial familiarity with the publicly available docketed information relevant to the issue for which a hearing is requested;

(ii) The requisite technical capability to understand the factual matters and develop a record on the issue for which a hearing is requested, and

(iii) An understanding of the NRC's hearing procedures in 10 CFR part 2.[6]

3. Request to Hold Hearing Outside of Washington, DC

Any hearing(s) which the Commission may authorize ordinarily will be conducted in the Washington, DC. metropolitan area. However, the Commission at its discretion may schedule hearings outside the Washington, DC. metropolitan area in response to requests submitted by a person requesting a hearing that all or part of the hearing be held elsewhere. These requests must be submitted in conjunction with the request for hearing, and must specifically explain the special circumstances for holding a hearing outside the Washington, DC metropolitan area.

4. Responses to Hearing Request

The applicant may file a response to any hearing request within 15 days of the date of the hearing request. The NRC staff will not provide a response to the hearing request unless requested to do so by the Commission but may assist the Commission in its ruling on the request.

5. Commission Determination of Hearing Request

The Commission intends to rule on a hearing request within 20 days of the close of the period for requesting a hearing. The Commission's determination will be based upon the materials accompanying the hearing request and the applicant's response (and the NRC staff's response, if requested by the Commission). The hearing request shall be granted if:

(i) The request is accompanied by a written presentation containing the information required by Section C.2 above; and

(ii) the requestor has the appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the matters sought to be controverted.

The Commission may consult with the NRC staff before its determination of

[5] Filings discussed in this section may also be served upon the Commission in electronic form in lieu of express mail. However, parties must serve copies of their filings on other parties by express mail, unless the receiving party agrees to filing in electronic form. These filings must be transmitted no later than the last day of the time period specified for filing and must be in accordance with the requirements specified in the Summary.

[6] Requestors will satisfy this requirement by stating that they possess and have read a copy of 10 CFR part 2, subparts A, G, and L.

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a hearing request. A written decision either granting or denying the hearing request will be published by the Commission.

If a hearing request is granted in whole or in part, the Commission's decision will delineate the controverted matter that will be the subject of the hearing and whether any issues and/or parties are to be consolidated (*see* Section C.7. below). The Commission's decision granting the hearing will direct the establishment of a licensing board to preside over the informal hearing. Finally, the Commission's decision will specify:

(i) The date by which any requests for discovery must be filed with the licensing board (normally 20 days after the date of the Commission's decision), and

(ii) The date by which any objections to discovery must be filed (*see* Section C.9. below).

The Commission's decision will be sent to each admitted party by overnight mail. Separate hearings may be granted for each controverted matter or set of consolidated matters. Thus, if there are three different controverted matters, the Commission may establish three separate hearings. In this fashion, closing of the hearing record on a controverted matter and its referral to the Commission for resolution need not await completion of the hearing on the other controverted matters. Finally, the Commission's decision will rule on any requests for hearings outside of the Washington, DC. metropolitan area (*see* Section C.3 above).

6. Authority of the Licensing Board

If the Commission authorizes an informal hearing on a controverted matter, the licensing board will function as a "limited magistrate" in that hearing with the authority and responsibility for assuring that a sufficient record is developed on those controverted matters which the Commission has determined are appropriate for consideration in that hearing. The licensing board shall have the following specific responsibilities and authority:

(i) Schedule and expeditiously conduct the informal hearing for each admitted controverted matter, consistent with the rights of all the parties,

(ii) Review all discovery requests against the criteria established by the Commission, and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(iii) Preside over and resolve any issues regarding the scheduling and conduct of any discovery authorized by the Commission,

(iv) Order such further consolidation of parties and issues as the licensing board determines is necessary or desirable,

(v) Orally examine persons making oral presentations in the informal hearing, based in part upon the licensing board's review of the parties' proposed oral questions to be asked of persons making oral presentations,

(vi) Request that the NRC staff:

(A) Answer licensing board questions about the SER or the proposed rule,

(B) Provide additional information or documentation with respect to the design certification, and

(C) Provide other assistance as the licensing board may request. Licensing board requests for NRC staff assistance should be framed such that the NRC staff does not assume a role as an adversary party in the informal hearing (see Section C.8 below),

(vii) Review all requests for additional hearing procedures and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(viii) Certify the hearing record to the Commission, based upon the licensing board's determination that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter; and

(ix) Include with its certification any concerns identified by the licensing board in the course of the hearing which, although neither raised by the parties nor necessary to resolution of the controverted hearing matters, are significant enough in the licensing board's view to warrant attention by the Commission.

Licensing board determinations with respect to referral of requests to the Commission, as well as licensing board determinations of parties' motions, are not appealable to the Commission as an interlocutory matter. Instead, any disagreements with the licensing board's determinations and a specific discussion of how the hearing record is deficient with respect to the contested issue must be set forth in the parties' proposed findings of fact which are submitted directly to the Commission (see Section C.13 below).

As suggested by Item (10) above, the licensing board shall not have any "sua sponte" authority analogous to 10 CFR 2.760a. The Commission believes that in the absence of a request for an informal hearing on a matter, the Commission should resolve issues with respect to the design certification rule in the same manner as other agency-identified rulemaking issues, *viz.*, through NRC staff consideration of the issue followed by the Commission's review and its final resolution of the matter. However, when it certifies the completed hearing record to the Commission (see Section C.12. below), the licensing board should identify to the Commission any concerns identified during the hearing that are significant enough to warrant Commission consideration but that are unnecessary or irrelevant to the resolution of the controverted hearing matter.

The licensing board shall close the hearing and certify the record to the Commission only after it determines that the record on the controverted matter is sufficiently complete for the Commission to make a reasoned determination with respect to that matter. However, the licensing board shall not have any responsibility or authority to resolve and decide controverted matters in either an informal or a formal hearing. Rather, the Commission retains its traditional authority in rulemaking proceedings to evaluate and resolve all rulemaking issues identified in public comments on a proposed rule. Therefore, the Commission will resolve any controverted matters that are the subject of a hearing in this design certification rulemaking.

7. Consolidation of Parties and Issues; Joint Hearings on Related Issues

If two or more persons seek an informal hearing on the same or similar matters, the Commission may, in its discretion, grant an informal hearing and consolidate the matters into a single issue (as defined by the Commission). The Commission may also, in its discretion, require that the parties be consolidated analogous to the consolidation permitted under 10 CFR 2.715a. If the Commission consolidates two or more issues into a single consolidated issue but does not consolidate parties, each admitted person will be deemed a separate party with an individual right to:

(i) Submit separate written presentations,

(ii) Submit separate sets of proposed oral questions to be asked by the licensing board (see Section C.10 below),

(iii) Make separate oral presentation, and

(iv) Submit and separately respond to motions. If the Commission also requires that parties be consolidated, the consolidated parties must participate jointly, including deciding upon written and oral presentations, submitting a single set of written questions, submitting motions supported by each of the consolidated parties, and responding to motions filed by other parties.

During the informal hearing, the licensing board may decide that further consolidation of issues or parties would simplify the overall conduct of informal hearings or materially reduce the time or resources devoted to the hearings. In these instances, the licensing board may direct such consolidation. The licensing board shall set forth the issues and/or parties to be consolidated and the reasons for such consolidation in a written order.

8. Status of the Design Certification Applicant, the NRC staff, and Requesting Party

The design certification applicant shall be a party in the informal hearing, with the right to submit written and oral presentations, propose questions to be asked by the licensing board of oral presenters, and file and submit appropriate motions.

The NRC staff shall not be a party in the informal hearing but shall be available in the informal hearing to answer licensing board questions about the FSER or the proposed rule, provide additional information or documentation with respect to the design certification, and provide other assistance that the licensing board may request without the NRC staff assuming the role of a party in the informal hearing.

A party whose hearing requests have been granted with respect to a particular controverted matter shall not participate with respect to any controverted matter on which the party was not granted a hearing. For example, if Person 1 has been authorized as a party on Issue A and Person 2 has been authorized as a party on Issue B, then Person 1 may participate only in the informal hearing on Issue A, and may not participate in the informal hearing on Issue B. Conversely, Person 2 may participate only in the informal hearing on Issue B, and may not participate in the informal hearing on Issue A.

9. Requests for Discovery

Any party may request the opportunity to conduct discovery against another party before the oral phase of the informal hearing. The request for discovery must:

(i) Identify the type of discovery permitted under 10 CFR 2.740, 2.740a, 2.740a(b), 2.741, and 2.742 which the party seeks to use;

(ii) Identify the subject matter or nature of the information sought to be obtained by discovery; and

(iii) Explain with particularity the relevance of the information sought to the controverted matter which is the subject of the hearing and why this information is indispensable to the presentation of the party's position on the controverted matter.

The request shall be filed with the licensing board, with copies of the request to be filed with the party against which discovery is sought, and the NRC staff. The requests must be received no later than the deadline specified by the Commission in its decision granting a party's hearing request (*see* Section C.5. above). A party against whom discovery is sought may file a response objecting to part or all of the request. Such a response must explain with particularity why the discovery request should not be granted.

The licensing board shall review all discovery requests and refer to the Commission those requests that it believes should be granted within 7 days after the date for receiving a party's objections to a discovery request. The licensing board shall issue a written decision explaining its basis for either referring the request to the Commission or declining to refer it. The written decision shall accompany the discovery requests which are referred by the licensing board to the Commission.

The Commission will determine whether to grant any discovery requests forwarded to it based upon the licensing board's decision, together with the request and the design certification applicant's response (and any NRC staff response requested by the licensing board). Discovery will be at the discretion of the Commission. In this regard, the Commission notes that there are several docket files in which the NRC staff has placed information and documents received from the design certification applicant for the System 80+ design certification review. The application was docketed on May 1, 1991 and assigned Docket No. 52–002. Correspondence relating to the application prior to this date was also addressed to Docket No. STN 50–470 and Project No. 675. This information includes the Design Control Document and the Technical Support Document for Amendments to 10 CFR part 51 Considering Severe Accidents Under NEPA for Plants of the System 80+ Design, Revision 2. Furthermore, the docket files contain NRC staff communications and documents, such as written questions and comments provided to the design certification applicant, and summaries of meetings held between the NRC staff and the design certification applicant. The NRC staff's bases for approving the System 80+ design are set forth in the FSER (NUREG–1462), dated August 1994. The Commission also notes that each admitted party has already disclosed a substantial amount of information in its hearing request, relating both to bases for the party's position with respect to the controverted matter as well as information on the qualifications of the party (or its representatives and witnesses in the hearing).

As discussed above, much of the information documenting the NRC staff's review and approval of the design certification application has been routinely placed in the docket file. Furthermore, as discussed above in Section C.8., the NRC staff is not a party in an informal hearing. Therefore, the Commission has decided that in an informal hearing, the parties should not be afforded discovery against the NRC staff.

10. Conduct of Informal Hearing

If the Commission authorizes discovery, the licensing board shall establish a schedule for the conduct and completion of discovery. Normally, the licensing board should not permit more than one round of discovery. The Commission will not entertain any interlocutory appeals from licensing board orders resolving any discovery disputes or otherwise complaining of the scheduling of discovery.

Following the completion of discovery, the licensing board should issue an order setting forth the date of commencement of the oral phase of each informal hearing, and the date (no less than 30 days before the commencement of the oral phase of the hearing) by which parties must submit:

(i) The identities and curriculum vitae of those persons providing oral presentations;

(ii) The outlines of the oral presentations; and

(iii) Any questions which a party would like the licensing board to ask.

The licensing board may schedule the oral phases of two or more informal hearings to be held during the same session. The licensing board shall publish a notice in the Federal Register announcing the commencement of the oral phase of the informal hearing(s). The notice shall set forth the place and time of the oral hearing session, the subject matter(s) of the informal hearing(s), a brief description of the informal hearing procedures, and a statement indicating that the public may observe the informal hearing.

Based upon the parties' outlines of the oral presentations and proposed questions, the licensing board should determine whether it has specific questions of the NRC staff with respect to the staff's review of the design

the Commission.

staff consideration of the issue followed

of the consolidated parties, and

relevance of the information sought to

(NUREG–1462), dated August 1994. The

to the staff's review of the design

certification application. These questions should be submitted in writing to the NRC staff no less than 20 days before the commencement of the oral phase of the hearing and must specify the date by which the NRC staff shall provide its written answers to the licensing board. The licensing board shall send copies of the request by overnight mail to all parties. The NRC staff shall file its written answers with the licensing board and the parties.

During the oral phase of the hearing, the licensing board shall receive into evidence the written presentations of the parties and permit each party (or the representatives identified in their hearing request) to make oral presentations addressing the controverted matter. Normally, the party raising the controverted matter should make their presentations, followed by the presentations of the design certification applicant. The licensing board may question the persons making oral presentations, using its own questions as well as those submitted to the licensing board by the other parties. Based upon the parties' oral presentations and/or responses to licensing board questions, the licensing board may also orally question the NRC staff.

11. Additional Hearing Procedures and Formal Hearings

After the parties have made their oral presentations and the licensing board has concluded its questioning of the presenters (and, as applicable, the NRC staff), the licensing board should declare that the oral phase of an informal hearing on a controverted matter (or consolidated set of controverted matters) is complete.

No later than 10 days after the licensing board has declared that the oral phase of the informal hearing has been completed, parties may file with the licensing board (with copies to the applicant and the NRC staff) a request that some or all of the procedures described in 10 CFR part 2, subpart G (*e.g.*, direct and cross-examination by the parties) be utilized. The request shall:

(i) Identify the specific hearing procedures which the party seeks, or state that a formal hearing is requested;

(ii) Identify the specific factual issues for which the additional procedures would be utilized;

(iii) Explain why resolution of these factual disputes are necessary to the Commission's decision on the controverted issue;

(iv) Explain, with specific citations to the hearing record, why the record is insufficient on the controverted matter; and

(v) Identify the nature of the evidence that would be developed utilizing the additional procedures requested.

The design certification applicant may file a response to these requests no later than 7 days after the applicant's receipt of a request for additional procedures. The NRC staff will not provide a response unless specifically requested to do so by the licensing board.

The licensing board will review all requests for additional hearing procedures or a formal hearing and refer those that it believes should be granted to the Commission for its determination. The licensing board shall issue a written decision explaining its determination whether to forward the request to the Commission no later than 7 days after receipt of any applicant response to the request. The decision will provide the basis for either forwarding the request to the Commission or declining to forward it. In the absence of any requests for hearing procedures or if the licensing board concludes that none of the requests should be referred to the Commission, the licensing board should declare that the hearing record is closed (see Section C.12 below).

The Commission will determine whether to grant any requests for additional procedures or a formal hearing that are forwarded by the licensing board. The Commission's determination shall be based upon the licensing board's decision along with the request and the design certification applicant's response. If the Commission directs that a formal hearing be held on a controverted factual matter, the NRC staff shall be a party in the formal hearing. After either the additional hearing procedures authorized by the Commission are completed or the formal hearing is concluded on the factual dispute, the licensing board should declare the hearing record closed (see Section C.12 below).

12. Licensing Board's Certification of Hearing Record to the Commission

After the oral phase of a hearing is completed and either:

(i) There are no requests for additional hearing procedures or a formal hearing; or

(ii) The licensing board concludes that none of the requests should be referred to the Commission, then the licensing board should declare that the hearing record is closed.

If the Commission directs that additional hearing procedures should be utilized or a formal hearing be held on specific factual disputes, the licensing board should declare the hearing record closed after completion of the additional hearing procedures or the formal hearing. Within 30 days of the closing of the hearing record the licensing board should certify the hearing record to the Commission on each controverted matter (or consolidated set of controverted matters).[7]

The licensing board's certification for each controverted matter (or consolidated set of controverted matters) shall contain:

(i) The hearing record, including a transcript of the oral phase of the hearing (and any pre-hearing conferences) and copies of all filings by the parties and the licensing board,

(ii) A list of all documentary evidence admitted by the licensing board, including the written presentations of the parties,

(iii) Copies of the documentary evidence admitted by the licensing board,

(iv) A list of all witnesses who provided oral testimony,

(v) The NRC staff's written answers to licensing board requests, and

(vi) A licensing board statement that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter.

Finally, as discussed in Section C.6 above, the licensing board should identify any issues not raised by the parties or otherwise are not relevant to the controverted matters in the hearing, that the licensing board believes are significant enough to warrant attention by the Commission.

13. Parties' Proposed Findings of Fact and Conclusions

The applicant must file directly with the Commission proposed findings of fact and conclusions for each controverted hearing matter (or consolidated set of controverted matters) within 30 days following the close of the hearing record on that matter in the form of a proposed final rule and statement of considerations with respect to the controverted hearing issues.

Other parties are encouraged, but not required, to file with the Commission proposed findings of fact and conclusions limited to those issues which a party was afforded a hearing by the Commission (i.e., a party may not file proposed findings of fact and conclusions on issues which it was not admitted). Any findings that a party wishes the Commission to consider must be received by the Commission no later than 30 days after the licensing board closes the hearing record on that issue. Although parties are not required to file proposed findings and conclusions, a party who does not file a finding may not, upon appeal, claim or otherwise argue that the Commission either misunderstood the party's position, or failed to address a specific piece of evidence or issue.

[7] An informal hearing is deemed to be completed when the period for requesting additional procedures or a formal hearing expires and no request is received.

D Resolution of Issues for the Final Rulemaking

1 Absence of Qualifying Hearing Request

If the Commission does not receive any request for hearing within the 120-day period for submitting a request, or does not grant any of the requests (see Section B. above), the Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the Atomic Energy Act of 1954, as amended (AEA), the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record, which includes: The application for design certification, including the SSAR and DCD; the applicant's responses to the NRC staff's requests for additional information; the NRC staff's FSER and any supplements thereto; the report on the application by the ACRS; the applicant's Technical Support Document addressing consideration of severe accident mitigation design alternatives (SAMDAs) for purposes of NEPA; the NRC staff's EA and draft FONSI; the proposed rule, and the public comments received on the proposed rule. If the Commission makes an affirmative finding, it will issue a standard design certification in the form of a rule by adding a new appendix to 10 CFR part 52, and publish the design certification rule and a statement of considerations in the Federal Register.

2 Commission Resolution of Issues Where a Hearing is Granted

All matters related to the proposed design certification rule, including those matters for which the Commission authorizes a hearing (see Sections B. and C. above), will be resolved by the Commission after the licensing board has closed the hearing record and certified it to the Commission. The Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the AEA, NEPA, and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record as described in Section D.1 above, with the addition of the hearing record for controverted matters. If the Commission makes an affirmative finding, the Commission will issue a final design certification rule as described in Section D.1.

E. Access to Proprietary Information in Rulemaking

1. Access to Proprietary Information for the Preparation of Written Comments or Informal Hearing Requests

Persons who determine that they need to review proprietary information submitted by the design certification applicant to the NRC in order to submit written comments on the proposed certification or to prepare an informal hearing request, may request access to such information from the applicant.

The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient either to develop public comments or to prepare for the hearing,

(iii) The relevance of the requested information either to the issue which the commenter wishes to comment on, and

(iv) A showing that the person requesting the information has the capability to understand and utilize the requested information.

Requests must be filed with the applicant such that they are received by the applicant no later than 45 days after the date that this notice of proposed rulemaking is published in the Federal Register.

Within ten (10) days of receiving the request, the applicant must send a written response to the person seeking access. The response must either provide the documents requested (or state that the document will be provided no later than ten days after the date of the response), or state that access has been denied. If access is denied, the response shall state with particularity the reasons for its refusal. The applicant's response must be provided via express mail.

The person seeking access may then request a Commission hearing for the purpose of obtaining a Commission order directing the design certification applicant to disclose the requested information. The person must include copies of the original request (and any subsequent clarifying information provided by the person requesting access to the applicant) and the applicant's response. The Commission will base its decision solely on the person's original request (including any clarifying information provided to the applicant by the person requesting access), and the applicant's response. Accordingly, a person seeking access to proprietary information should ensure that the request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information.

If the Commission orders access in whole or part, the Commission will specify the date by which the requesting party must file with the Commission written comments and any request for an informal hearing before a licensing board as discussed in Section V.C. above. A request for an informal hearing must meet the requirements set forth above in Section V.C., in particular the requirements governing the content of the hearing request, and shall be governed by the procedures and standards governing such requests set forth in Section V.C.

2. Access to Proprietary Information in a Hearing

Parties who are granted a hearing may request access to proprietary information. Parties must first request access to proprietary information regarding the proposed design certification from the applicant. The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient to prepare for the hearing,

(iii) The relevance of the requested information to the hearing issue(s) for which the party has been admitted, and

(iv) A showing that the requesting party has the capability to understand and utilize the requested information. The request must be filed with the applicant no later than the date established by the Commission for filing discovery requests with the licensing board.

If the applicant declines to provide the information sought, within 10 days of receiving the request the applicant must send a written response to the requesting party setting forth with particularity the reasons for its refusal.

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The party may then request the licensing board to order disclosure. The party must include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The licensing board shall base its decision solely on the party's original request (including any clarifying information provided by the requesting party to the applicant), and the applicant's response.

Accordingly, a party requesting proprietary information from the applicant should ensure that its request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information. The licensing board may order the Applicant to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

F. Ex Parte and Separation of Functions Restrictions

Unless the formal procedures of 10 CFR part 2, subpart G are approved for a formal hearing in the design certification rulemaking proceeding, the NRC staff will not be a party in the hearing and separation of functions limitations will not apply. The NRC staff may assist in the hearing by answering questions about the FSER put to it by the licensing board, or to provide additional information, documentation, or other assistance as the licensing board may request. Furthermore, other than in a formal hearing, the NRC staff shall not be subject to discovery by any party, whether by way of interrogatory, deposition, or request for production of documents.

Second, the Commission has determined that once a request for an informal or formal hearing is received, certain elements of the ex parte restrictions in 10 CFR 2.780(a) will be applicable with respect to the subject matter of that hearing request. Under these restrictions, the Commission will communicate with interested persons/parties, the NRC staff, and the licensing board with respect to the issues covered by the hearing request only through docketed, publicly-available written communications and public meetings. Individual Commissioners may communicate privately with interested persons and the NRC staff; however, the substance of the communication shall be memorialized in a document which will be placed in the PDR and distributed to the licensing board and relevant parties.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA and the Commission's regulations in 10 CFR part 51, subpart A, that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment, is that the amendment to 10 CFR Part 52 would not authorize the siting, construction, or operation of a facility using the System 80+ design; it would only codify the System 80+ design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the environmental assessment for the System 80+ design, the NRC reviewed pursuant to NEPA, ABB–CE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in ABB–CE's "Technical Support Document for the System 80+." The Commission finds that ABB–CE's evaluation provides a sufficient basis to conclude that there is reasonable assurance that an amendment to 10 CFR part 52 certifying the System 80+ design will not exclude a severe accident design alternative for a facility referencing the certified design that would have been cost beneficial had it been considered as part of the original design certification application. These issues are considered resolved for the System 80+ design.

The environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the System 80+ are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Harry Tovmassian, Mailstop T–9 F33, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6231.

VII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. The public reporting burden for this collection of information is zero hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T 6–F33), U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements. Design certifications are not generic rulemakings. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

IX. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rulemaking will not have a significant economic impact upon a substantial number of small entities. The proposed rule provides standard design certification for a light water nuclear power plant design. Neither the design certification applicant, nor nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

X. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following amendment to 10 CFR part 52.

1 The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, appendix A, and appendix B.

3. A new appendix B to 10 CFR part 52 is added to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Standard Plant

1 Scope.

This Appendix constitutes the standard design certification for the System 80+[1] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB-CE).

2 Definitions.

As used in this part:

(a) *Design control document (DCD)* means the master document that contains the Tier 1 and Tier 2 information that is incorporated by reference into this design certification rule.

(b) *Tier 1* means the portion of the design-related information contained in the DCD that is certified by this design certification rule (hereinafter Tier 1 information). Tier 1 information consists of:

(1) Definitions and general provisions,

(2) Certified design descriptions,

(3) Inspections, tests, analyses, and acceptance criteria (ITAAC),

(4) Significant site parameters, and

(5) Significant interface requirements.

The certified design descriptions, interface requirements, and site parameters are derived from Tier 2 information.

(c) *Tier 2* means the portion of the design-related information contained in the DCD that is approved by this design certification rule (hereinafter Tier 2 information). Tier 2 information includes:

(1) The information required by 10 CFR 52.47,

(2) The information required for a final safety analysis report under 10 CFR 50.34(b), and

(3) Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met.

(d) *Tier 2** means the portion of the Tier 2 information which cannot be changed without prior NRC approval. This information is identified in the DCD.

(e) All other terms in this rule have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

3. [Reserved].

4. Contents of the design certification.

(a) Both Tier 1 and Tier 2 of the System 80+ Design Control Document, ABB-CE, Revision 1, February 1995 are incorporated by reference. This incorporation by reference was approved by the Director of the Office of the Federal Register on [Insert date of approval] in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the System 80+ DCD may be obtained from [Insert name and address of applicant or organization designated by the applicant]. Copies are also available for examination and copying at the NRC Public Document Room, 2120 L Street NW, Washington, DC 20555, and for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582–2738.

(b) An applicant for a construction permit, operating license, or combined license that references this design certification must reference both Tier 1 and Tier 2 of the System 80+ DCD.

(c) If there is a conflict between the System 80+ DCD and either the application for design certification for the System 80+ design or NUREG–1462 "Final Safety Evaluation Report related to the Certification of the System 80+ Design," dated August 1994 (FSER), then the System 80+ DCD is the controlling document.

5. Exemptions and applicable regulations.

(a) The System 80+ design is exempt from portions of the following regulations, as described in the FSER (index provided in Section 1.6 of the FSER):

(1) Section VI(a)(2) of appendix A to 10 CFR part 100—Operating Basis Earthquake Design Consideration;

(2) Section (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment;

(3) Section (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

(4) Section (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;

(5) Section (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration;

(6) Section III.A.1.(a) of appendix J to 10 CFR part 50—Containment Leakage Testing; and

(7) Sections (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms.

(b) Except as indicated in paragraph (c) of this section, the regulations that apply to the System 80+ design are those regulations in 10 CFR Parts 20, 50, 73, and 100 (August 1994), that are applicable and technically relevant, as described in the FSER.

(c) In addition to the regulations specified in paragraph (b) of this section, the following regulations are applicable for purposes of 10 CFR 52.48, 52.54, 52.59 and 52.63:

(1) In the standard design, the effects of intersystem loss-of-coolant accidents must be minimized by designing low-pressure piping systems that interface with the reactor coolant pressure boundary to withstand full reactor coolant system pressure to the extent practical.

(2)(i) Piping systems associated with pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f) must be designed to allow for:

(A) Full flow testing of pumps and check valves at maximum design flow, and

(B) Testing of motor operated valves under maximum achievable differential pressure, up to design basis differential pressure, to demonstrate the capability of the valves to operate under design basis conditions.

(ii) For pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f), an applicant for a combined license which references this standard design certification rule shall submit, as part of the application:

(A) A program for testing check valves that incorporates the use of advanced non-intrusive techniques to detect degradation and monitor performance characteristics, and

(B) A program to determine the frequency necessary for disassembly and inspection of each pump and valve to detect degradation that would prevent the component from performing its safety function and which cannot be detected through the use of advanced non-intrusive techniques. The licensee shall implement these programs throughout the service life of the plant.

(3) For digital instrumentation and control systems, the design must include:

(i) An assessment of the defense-in-depth and diversity of instrumentation and control systems;

(ii) A demonstration of adequate defense against common-mode failures; and

(iii) Provisions for independent backup manual controls and displays for critical safety functions in the control room.

(4) The electric power system of the standard design must include an alternate power source that has sufficient capacity and capability to power the necessary complement of non-safety equipment that would most facilitate the ability of the operator to bring the plant to safe shutdown, following a loss of the normal power supply and reactor trip.

[1] "System 80+" is a trademark of Combustion Engineering, Inc.

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(5) The electric power system of the standard design must include at least one offsite circuit supplied directly from one of the offsite power sources to each redundant safety division with no intervening non-safety buses in such a manner that the offsite source can power the safety buses upon a failure of any non-safety bus.

(6)(i) The requirements of 10 CFR 50.48(a)[2] and 10 CFR part 50, appendix R, Section III G.1.a, apply to all structures, systems, and components important to safety.

(ii) Notwithstanding any provision in paragraph (i) of this section, all structures, systems, and components important to safety in the standard design must be designed to ensure that:

(A) Safe shutdown can be achieved assuming that all equipment in any one fire area will be rendered inoperable by fire and re-entry into that fire area for repairs and operator actions is not possible, except that this provision does not apply to (1) the main control room, provided that an alternative shutdown capability exists and is physically and electrically independent of the main control room, and (2) the reactor containment;

(B) Smoke, hot gases, or fire suppressant will not migrate from one fire area into another to an extent that could adversely affect safe-shutdown capabilities, including operator actions; and

(C) In the reactor containment, redundant shutdown systems are provided with fire protection capabilities and means to limit fire damage such that, to the extent practicable, one shutdown division remains free of fire damage.

(7) The standard design must include and an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(i) The description of the reliability assurance program used during the design that includes scope, purpose, and objectives;

(ii) The process used to evaluate and prioritize the structures, systems, and components in the design, based on their degree of risk-significance;

(iii) A list of structures, systems, and components designated as risk-significant; and

(iv) For those structures, systems, and components designated as risk-significant

(A) A process to determine dominant failure modes that considered industry experience, analytical models, and applicable requirements; and

(B) Key assumptions and risk insights from probabilistic, deterministic, and other methods that considered operation, maintenance, and monitoring activities

(8) The probabilistic risk assessment required by 10 CFR 52.47(a)(1)(v) must include an assessment of internal and external events. For external events, simplified probabilistic methods and margins methods may be used to assess the capacity of the standard design to withstand the effects of events such as fires and earthquakes. Traditional probabilistic techniques should be used to evaluate internal floods. For earthquakes, a seismic margin analysis must consider the effects of earthquakes with accelerations approximately one and two-thirds the acceleration of the safe-shutdown earthquake.

(9) The standard design must include an on-site alternate ac power source of diverse design capable of powering at least one complete set of equipment necessary to achieve and maintain safe-shutdown for the purposes of dealing with station blackout.

(10)(i) The standard design must include the features in paragraphs (A)–(C) below that reduce the potential for and effect of interactions of molten core debris with containment structures:

(A) Reactor cavity floor space to enhance debris spreading;

(B) A means to flood the reactor cavity to assist in the cooling process; and

(C) Concrete to protect portions of the containment liner and other structural members.

(ii) The features required by paragraph (i) of this section, in combination with other features, must ensure for the most significant severe accident sequences that the best-estimate environmental conditions (pressure and temperature) resulting from core-concrete interaction do not exceed ASME Code Service Level C for steel containments or Factored Load Category for concrete containments for approximately 24 hours.

(11) The standard design must include: (i) A reliable means to depressurize the reactor coolant system and (ii) cavity design features to reduce the amount of ejected core debris that may reach the upper containment.

(12) The standard design must include analyses based on best-available methods to demonstrate that:

(i) Equipment, both electrical and mechanical, needed to prevent and mitigate the consequences of severe accidents is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function; and

(ii) Instrumentation needed to monitor plant conditions during a severe accident is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the instrumentation is relied upon to function.

(13) The standard design must include features to limit the conditional containment failure probability for the more likely severe accident challenges.

(14)(i) The standard design must include a systematic examination of features in relation to shutdown risk assessing:

(A) Specific design features that minimize shutdown risk;

(B) The reliability of decay heat removal systems;

(C) Vulnerabilities introduced by new design features; and

(D) Fires and floods occurring with the plant in modes other than full power.

(ii) An applicant for a combined license which references this design certification rule shall submit as part of the application a description of the program for outage planning and control that ensures:

(A) The availability and functional capability during shutdown and low power operations of features important to safety during such operations; and

(B) The consideration of fire, flood, and other hazards during shutdown and low power operations. The licensee shall implement this program throughout the service life of the plant.

(15) The standard design must include a best-estimate, systematic evaluation of the plant response to a steam generator tube rupture (SGTR) to:

(i) Identify potential design vulnerabilities, and

(ii) Assess potential design improvements to mitigate the amount of containment bypass leakage that could result from a SGTR.

6. Issue resolution for the design certification.

(a) All nuclear safety issues associated with the information in the FSER or DCD are resolved within the meaning of 10 CFR 52.63(a)(4).

(b) All environmental issues associated with the information in the NRC's Environmental Assessment for the System 80+ design or the severe accident design alternatives in Revision 2 of the Technical Support Document for the System 80+ dated January 1995 are resolved within the meaning of 10 CFR 52.63(a)(4).

7. Duration of the design certification.

This design certification may be referenced for a period of 15 years from [insert date 30 days after publication in the Federal Register], except as provided for in 10 CFR 52.55(b) and 52.57(b). This design certification remains valid for an applicant or licensee that references this certification until their application is withdrawn or their license expires, including any period of extended operation under a renewed license

8. Change process.

(a) Tier 1 information.

(1) Generic (rulemaking) changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 1 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) Changes from Tier 1 information that are imposed by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

(4) Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1).

(b) Tier 2 information.

(1) Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 2 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) The Commission may not impose new requirements by plant-specific order on Tier 2 information of a specific plant referencing the design certification while the design certification is in effect under §§ 52.55 or 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 50.12(a) are present.

(4) An applicant or licensee who references the design certification may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(5)(i) An applicant or licensee who references the design certification may depart from Tier 2 information, without prior NRC approval, unless the proposed change involves a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section. When evaluating the proposed change, an applicant or licensee shall consider all matters described in the DCD, including generic issues and shutdown risk for all postulated accidents including severe accidents. These changes will no longer be considered "matters resolved in connection with the issuance or renewal of a design certification" within the meaning of 10 CFR 52.63(a)(4).

(ii) A proposed departure from Tier 2 information, other than severe accident issues identified in Section 19.11 of the DCD, including appendices 19.11A through 19.11L, must be deemed to involve an unreviewed safety question if:

(A) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the DCD may be increased;

(B) A possibility for an accident or malfunction of a different type than any evaluated previously in the DCD may be created; or

(C) The margin of safety as defined in the basis for any technical specification is reduced.

(iii) A proposed departure from information associated with severe accident issues identified in Section 19.11 of the DCD, including appendices 19.11A through 19.11L, must be deemed to involve an unreviewed safety question if:

(A) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(B) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

(iv) Departures from Tier 2 information made in accordance with Section 8(b)(5) above do not require an exemption from this design certification rule.

(c) Other requirements of this design certification rule.

An applicant or licensee who references the design certification may not depart from this rule's requirements, other than Tier 1 or 2 information, other than by an exemption in accordance with 10 CFR 50.12.

9. Records and Reports.

(a) *Records.*

(1) The applicant for this design certification shall maintain a copy of the DCD that includes all generic changes to Tier 1 and Tier 2 information.

(2) An applicant or licensee that references this design certification shall maintain records of all changes to and departures from the DCD pursuant to Section 8 of this appendix. Records of changes made pursuant to Section 8(b)(5) must include a written safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications.

(b) *Reports.* An applicant or licensee that references this design certification shall submit a report to the NRC, as specified in 10 CFR 50.4, containing a brief description of any departures from the DCD, including a summary of the safety evaluation of each. An applicant or licensee shall also submit updates to the DCD to ensure that the DCD contains the latest material developed for both Tier 1 and 2 information. The requirements of 10 CFR 50.71 for safety analysis reports must apply to these updates. These reports and updates must be submitted at the frequency specified below:

(1) During the interval from the date of application to the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52, the report and any updates to the DCD may be submitted along with amendments to the application.

(2) During the interval from the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52 until the applicant or licensee receives either an operating license under 10 CFR part 50 or the Commission makes its findings under 10 CFR 52.103, the report must be submitted quarterly. Updates to the DCD must be submitted annually.

(3) Thereafter, reports and updates to the DCD may be submitted annually or along with updates to the safety analysis report for the facility as required by 10 CFR 50.71, or at such shorter intervals as may be specified in the license.

(c) *Retention period.* The DCD and the records of changes to and departures from the DCD must be maintained until the date of termination of the construction permit or license.

Dated at Rockville, MD, this 31st day of March, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–8380 Filed 4–6–95; 8:45 am]

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[2] For the standard design, the footnote reference in 10 CFR 50.48(a) to Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," will be to the July, 1981 version.

10 CFR Part 52

Standard Design Certification for the U.S. Advance Boiling Water Reactor and the System 80+ Standard Designs; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a meeting on May 11, 1995, to discuss proposed design certification rules (DCRs) for the U.S. Advanced Boiling Water Reactor (ABWR) and System 80+ Standard Designs. The applicant for certification of the U.S. ABWR design is GE Nuclear Energy and the applicant for certification of the System 80+ design is Combustion Engineering, Inc. The purpose of the public meeting is to discuss the meaning and intent of the proposed DCRs, in order to facilitate written comments.

DATES: The meeting will be held on Thursday, May 11, 1995.

ADDRESSES: The meeting will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland 20852. The NRC buildings are located across the street from the White Flint Metro Station. The entrance to the auditorium is located underneath the glass pyramid, near the Two White Flint North Building.

The proposed DCRs, the design control documents that are incorporated by reference into the DCRs, and the environmental assessments for each design are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson or Dino C. Scaletti, Office of Nuclear Reactor Regulation, Mail Stop O–11 H–3, U.S. NRC, Washington, DC 20555–0001, telephone (301) 415–3145 or (301) 415–1104, respectively.

SUPPLEMENTARY INFORMATION: The NRC's regulations in subpart B to 10 CFR part 52 provide the requirements applicable to issuing a design certification for a standard nuclear power plant design. The NRC has issued two proposed DCRs pursuant to Subpart B in this issue of the **Federal Register.** These rules will be added as separate appendices to 10 CFR part 52. The NRC is seeking public participation in the development of

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these DCRs and the supporting documents identified below. In order to explain the proposed approach and to facilitate written comments on the DCRs, the NRC is holding a public meeting on this topic. The NRC will also answer questions on the process for requesting an informal hearing on the DCRs. The meeting will begin at 9 a.m. and end after all questions and comments have been accommodated.

Agenda for May 11, 1995

8:30 a.m.—Registration.
9 a.m.—Introduction and Background.
9:30 a.m.—NRC panel responds to questions on proposed DCRs.

Dated at Rockville, MD, this 27th day of March, 1995.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8381 Filed 4–6–95; 8:45 am]

BILLING CODE 7590–01–M

federal register

Friday
April 7, 1995

Part IV

Environmental Protection Agency

40 CFR Parts 122 and 124
National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges; Amendment to Requirements; Final Rule and Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5182–8]

RIN 2040–AC60

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today, EPA is promulgating changes to its National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) to establish a sequential application process for all phase II storm water discharges. (Phase II storm water discharges include all discharges composed entirely of storm water, except those specifically classified as phase I discharges. Phase I discharges include discharges issued a permit before February 4, 1987; discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 100,000 or more; and discharges that EPA or an NPDES State/Indian Tribe determine to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.) Application deadlines are in two tiers. This action will provide the NPDES permitting authority (either a State/Indian Tribe or EPA) flexibility to target those phase II dischargers that are contributing to a water quality impairment or are a significant contributor of pollutants for permitting within the next six years. All other phase II dischargers are required to apply for a permit only after six years, and only if the phase II regulatory program in place at that time requires such applications.

EPA has also initiated a process by inviting its partners who are stakeholders in this matter to assist in the development of additional phase II rules, which will be finalized by March 1, 1999. These rules will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities. Both the changes to the rules issued today as well as the development of the comprehensive phase II program through an inclusionary process is a response by EPA to the direction of the President on February 21, 1995, regarding regulatory reform.

DATES: This final rule will be effective on August 2, 1995 unless significant adverse or critical comments that would cause the Agency to change its position are received by June 6, 1995. In accordance with 40 CFR 23.2, this rule shall be considered final for purposes of judicial review at 1 p.m. (Eastern time) on August 2, 1995.

ADDRESSES: Written comments on this rule may be submitted using one of two different methods. See **SUPPLEMENTARY INFORMATION** for information on submitting comments.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION:

Submission of Comments

First, comments may be sent to the Comment Clerk, Water Docket (Storm Water Phase II Direct Final Rule), MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. It is requested that an original and one copy of the comments be provided to this address. Comments will be considered to be timely if they are postmarked by June 6, 1995. Commenters who would like acknowledgment of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

In the alternative, EPA will accept comments electronically; EPA is experimenting with electronic commenting. Comments should be addressed to the following Internet address: SWPH2–DFR@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) June 6, 1995. Since this is still experimental, commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

I. Overview of Today's Action

Today, EPA is promulgating changes to its NPDES storm water permit application regulations under the CWA to establish a commonsense approach which will provide for a sequential application process for all phase II storm water discharges. Application deadlines are in two tiers. To obtain real environmental results earlier, the highest priority is being assigned to those phase II dischargers that the NPDES permitting authority (either a State/Indian Tribe or EPA) determines are contributing to a water quality impairment or are a significant contributor of pollutants. These dischargers will be required to apply for a permit to the permitting authority within 180 days of receipt of notice, unless permission for a later date is granted. This process will allow the permitting authority to focus their current efforts on those facilities that will produce the greatest environmental benefit earlier. All phase II facilities that are not designated shall apply to the permitting authority no later than six years from the effective date of this regulation, and only if the phase II regulatory program in place at that time requires such applications. EPA is also establishing application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations.

Today's action is the first step in EPA's approach to develop a comprehensive phase II program under Clean Water Act (CWA) section 402(p)(6) and is consistent with President Clinton's February 21, 1995, direction on regulatory reform as well as the Office of Water's "National Program Agenda for the Future." EPA cannot deal with all storm water issues in today's action. Some issues raised by stakeholders, such as funding for storm water best management practices and certain issues with regard to compliance with water quality standards, can only be resolved by legislative action. In fact, EPA supported certain statutory changes or clarifications to the storm water program last year in President Clinton's Clean Water Initiative. Some issues, such as the nature and extent of requirements, if any, that will apply to the various types of phase II sources, can be resolved through rulemaking. EPA has initiated a process of inviting its partners who are stakeholders to participate in development of

expectations and requirements for more comprehensive phase II rules, as well as revisions and refinements to phase I. EPA expects stakeholders will consider the lessons learned from the phase I storm water program in relooking at the phase I application process and requirements. EPA intends to propose those rules by September 1, 1997, and finalize those rules by March 1, 1999. If the CWA is amended in a manner to deal with these storm water issues, EPA will move to expeditiously implement the statutory changes. Today's rulemaking will promote the public interest by relieving dischargers of the requirement to apply for permits until (1) a phase II program is in place that can be defined by regulation or changes to the statute or (2) the permitting authority makes an affirmative finding of the need for a permit to protect water quality.

II. Background

A. Phase I of the Storm Water Program

The Clean Water Act

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act) prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. While water pollution control measures in the United States for industrial process wastewater and municipal sewage have had major success, urban and agricultural runoff continue to contribute to our Nation's remaining water quality problems. EPA's Report to Congress under section 305(b) entitled The National Water Quality Inventory, 1992 Report to Congress, provides a national assessment of surface water impacts associated with runoff from various land uses. The latest report concludes that storm water runoff from a number of diffuse sources, including municipal separate storm sewers and urban runoff is a leading cause of water quality impairment cited by States.

Section 402(p) was added to the CWA in 1987 to require implementation of a comprehensive two-phased approach for addressing storm water discharges under the NPDES program. Section 402(p)(1) currently prohibits EPA or NPDES States (including Indian Tribes authorized to operate the NPDES program) from requiring permits for discharges composed entirely of storm water (storm water discharges) until October 1, 1994, except for the following five classes of phase I storm water discharges specifically listed under section 402(p)(2):

(a) discharges issued a permit before February 4, 1987,

(b) discharges associated with industrial activity,

(c) discharges from a municipal separate storm sewer system serving a population of 250,000 or more,

(d) discharges from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000,

(e) discharges that EPA or an NPDES State [or Tribe authorized to be treated as a State for this purpose] determine to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States. (EPA issued guidance on August 8, 1990 that included a discussion of designation authority.)

Under CWA section 402(l)(2), permits are not required for certain dischargers, specifically, storm water runoff from mining operations or oil and gas facilities * * * if the storm water discharge is not contaminated by contact with * * * any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. CWA section 502(14) excludes agricultural storm water discharges from the definition of point source, thereby excluding these discharges from the NPDES permit requirement.

Section 402(p)(3) established requirements for permits issued under phase I of the storm water program while section 402(p)(4) established statutory deadlines for the initial steps in implementing the phase I program.

Phase I Regulatory Program

EPA promulgated regulations defining application requirements in 40 CFR 122.26 for phase I storm water discharges on November 16, 1990 (55 FR 47990). Permits are required for large (over 250,000 population served) and medium (100,000–250,000 population served) municipal separate storm sewer systems (MS4); storm water discharges issued a permit before February 4, 1987; storm water discharges "associated with industrial activity," which are identified in the regulations by 11 specific categories; and those dischargers designated by the NPDES State or EPA.

EPA amended the November 1990 application regulations in various respects in 1992 in response to a court ruling in *NRDC* v. *EPA*, 966 F.2d 1292 (9th Cir., 1992) in which EPA established generally applicable permit issuance deadlines. In addition, EPA noted that the Agency was not requiring permit applications from the two categories of storm water discharges associated with industrial activity (construction activities disturbing less than 5 acres and light industry without exposure to storm water) until application requirements were established by regulation. (57 FR 60444, December 18, 1992.)

Phase I Implementation Activities

The efforts of EPA and the authorized NPDES States to implement the phase I storm water program have focused on (1) issuing general permits for industrial storm water discharges, (2) reviewing group applications for industrial storm water dischargers, (3) publishing a proposed multi-sector general permits for storm water discharges from 29 industrial sectors, (4) reviewing applications and issuing permits for municipal separate storm sewer systems, and (5) conducting outreach activities.

B. Phase II of the Storm Water Program.

Water Quality Act of 1987 and Later Amendments

The 1987 amendments established a process for EPA to evaluate potential phase II sources and designate sources for regulation to protect water quality.

Section 402(p)(5) requires EPA, in consultation with the States, to conduct two studies of storm water discharges other than phase I sources (i.e., potential phase II sources). The first study, under section 402(p)(5) (A) and (B) (to be completed by October 1, 1988), was to identify storm water discharges not covered under phase I and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study, under section 402(p)(5)(C) (to be completed by October 1, 1989), was to establish procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality.

Section 402(p)(6) of the CWA requires EPA, in consultation with State and local officials and based on the findings of the reports required under section 402(p)(5), to issue regulations that designate additional storm water discharges to be controlled to protect water quality under phase II of the program and to establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, establish priorities, requirements for State storm water management programs, and expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate. These regulations were to be issued by October 1, 1993. EPA did

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not issue these regulations by the statutory deadline. Today's action is a common sense approach which defines and establishes application submittal requirements for phase II of the NPDES program for storm water. As noted below, EPA will be revising these requirements over the next several years in partnership with its numerous stakeholders.

September 9, 1992 Notice — Phase II Issues

On September 9, 1992, EPA published a notice requesting information and public comment on the phase II program (57 FR 41344). The notice identified three sets of issues associated with developing phase II regulations, including (1) how sources should be identified, (2) types of control strategies for these sources, and (3) deadlines for implementing the requirements. The notice presented a range of alternatives under each issue in an attempt to illustrate, and obtain input on, the full range of potential approaches for a phase II strategy. EPA received more than 130 comments on the notice from municipalities, trade groups or industries, State or Federal agencies, and other miscellaneous sources. No comments were received from environmental groups.

Rensselaerville Phase II Effort

In early 1993, the Rensselaerville Institute and EPA held public and expert meetings to assist in developing and analyzing options for identifying phase II sources and controls. One of the options most favored by the various groups participating included use of a tiered approach that would provide for EPA selection of high priority sources for control by NPDES permits and State selection of other sources for control under a State program other than the NPDES program.

Storm Water Reports to Congress

EPA is transmitting to Congress concurrently with this action, its first report required under sections 402(p)(5)(A) and (B). This report is contained in the record for this rule. This report was broadly circulated in November 1993 by the Agency to the States, trade groups, environmental groups, Congressional staff, other interested parties, and all people who requested a copy. EPA received comments from various States and other groups and made changes, as appropriate, to respond to those comments.

Section 402(p)(5)(C) requires a second study of storm water discharges for the purpose of establishing procedures and methods to control storm water discharges that were not addressed as part of the first phase of the NPDES storm water program to the extent necessary to mitigate impacts on water quality. President Clinton's Clean Water Initiative, which was released on February 1, 1994, contains the Agency's recommendations for phase II and is considered by EPA to be the second Report to Congress. EPA has included these materials in its report that is being submitted to Congress.

President Clinton's Clean Water Initiative

President Clinton's Clean Water Initiative addresses a number of issues associated with NPDES requirements for storm water discharges, including (1) establishing a phased approach for compliance of discharges from municipal separate storm sewer systems with water quality standards with a focus on controlling discharges from growth and development areas, (2) clarifying that the Maximum Extent Practical standard should be applied in a site specific, flexible manner taking into account cost considerations as well as water quality effects, (3) providing for an exemption from the storm water program for industrial facilities with no activities or no significant materials exposed to storm water, (4) providing for deadline extensions for phase II of the storm water program, (5) providing for a targeted approach for phase II storm water program requirements, including regulation of storm water from industrial facilities by municipalities, and (6) providing for control of discharges from inactive and abandoned mines located on Federal lands in a more targeted, flexible manner.

Several bills to reauthorize the CWA which include amendments to NPDES requirements for storm water were introduced in the House and Senate in the 103rd Congress; however, substantive changes to the CWA were not made. Provisions contained in the President's Initiative, as well as the other bills, will be considered by the Agency in its comprehensive rulemaking involving stakeholders, to the extent the Agency is authorized to make changes discussed there under existing law.

The Agency recognizes that there may be action in the 104th Congress to change storm water requirements. Stakeholders have raised some issues that go well beyond the scope of EPA's regulatory authority and can only be addressed by legislation. Certain parties have requested that the Agency delay issuance of this regulation until Congress acts. EPA is obligated to implement the current law and is taking this action to provide certainty to phase II dischargers as to when their permit applications are due if relief is not provided through regulatory or legislative action. EPA is willing to work with affected parties on statutory issues and, if the law is changed, will move to expeditiously implement the changes.

October 1, 1994, Deadline for Permits under Phase II

On October 18, 1994, EPA issued guidance interpreting the October 1, 1994, statutory deadline pertaining to phase II storm water dischargers. The memorandum recognized that EPA had not issued regulations implementing the requirements of section 402(p)(6) before October 1, 1994; and the Agency and approved NPDES States are unable to waive the statutory requirement that point source discharges of pollutants to waters of the United States need an NPDES permit. The memorandum also recognized that at the time of the guidance, EPA had completed a draft study identifying potential point source discharges of storm water for regulatory consideration under the requirements of section 402(p)(6) (as noted, EPA is transmitting the Reports to Congress); and the Agency had initiated a process to develop implementing regulations (of which today's action is a part). The guidance also referred to the general application requirements for the NPDES program and the Agency's January 12, 1994, storm water enforcement strategy.

EPA Instituting Federal Advisory Committee Effort

The Agency has established a Federal Advisory Committee Act advisory committee to provide advice on various wet weather issues. EPA will work with a subcommittee of this advisory committee to form a partnership to specifically address phase II storm water issues. This action will complement the specific regulatory action EPA is taking today. Both actions are part of the Agency's response to the President's direction on regulatory reform. EPA wants to develop a common sense approach to allow EPA and the States/Indian Tribes to manage for results in developing a phase II storm water program that will provide ecosystem protection. EPA believes there is considerable latitude and flexibility within the existing language contained in section 402(p)(6) in establishing the scope and extent of the phase II program and the nature of the controls used. Some questions EPA will advance build upon the input the Agency has received earlier on phase II, including questions addressing (1) the scope, mechanisms and timing of phase II, (2) how EPA can work more effectively with the varying interests to provide outreach and technical assistance for phase II, and (3) consideration of lessons learned from phase I. EPA would be receptive to including in the inclusionary process other issues that have developed broad-based support; these issues may include research, cost-effective solutions and expedited implementation. EPA is in the early stages of development of the specifics of the phase II program, which can and will include revisions and refinements to phase I, including relooking at the phase I application process and requirements. EPA recognizes that many of the municipalities and industrial facilities that are subject to the phase I requirements believe there is a need to make major changes to phase I.

EPA is committed to conducting this phase II process, including improvements to limited portions of phase I, in an inclusionary manner, inviting representatives of affected stakeholders "to the table" to discuss their respective interests.

Today's regulatory action is being taken as a common sense approach to provide a framework under existing law for these actions to be undertaken in an orderly fashion, as well as certainty regarding the status of phase II discharges. This approach will allow the permitting authority to manage for results by providing the flexibility to call certain phase II dischargers into the program based upon a finding of water quality impact.

III. Today's Action

Regulation Changes

Today, EPA is promulgating changes to its NPDES storm water permit application regulations to establish a sequential application process for all phase II storm water discharges. Application deadlines are in two tiers. To obtain real environmental results earlier, the highest priority is being assigned to those phase II dischargers that the NPDES permitting authority (either a State/Indian Tribe or EPA) determines are contributing to a water quality impairment or are a significant contributor of pollutants. These dischargers will be required to apply for a permit within 180 days of receipt of notice from the permitting authority, unless permission for a later date is granted. All other phase II facilities will be required to apply to the permitting authority no later than six years from the effective date of this regulation if the phase II regulatory program in place at that time requires such applications. EPA is also establishing application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations. The specifics of the changes follow.

First, to codify the already existing statutory requirement upon the expiration of the moratorium for phase II storm water discharges, EPA is adding 40 CFR 122.26(a)(9) to bring into the NPDES program, as of October 1, 1994, discharges composed entirely of storm water that are not otherwise already required by the phase I regulations to obtain a permit. EPA considers the portions of the two phase I categories that were remanded by the court in *NRDC* v. *EPA* to be covered by these phase II requirements, as are the facilities owned by municipalities that were otherwise excluded from phase I by the Intermodal Surface Transportation Efficiency Act of 1991 (Transportation Act). These phase II storm water dischargers will be required to apply for a permit according to the application requirements in new § 122.26(g). This provision continues to recognize the applicability of statutory NPDES exemptions provided by CWA sections 402(l) and 502(14).

Second, EPA is adding 40 CFR 122.26(g), which will contain the regulatory requirements for discharges composed entirely of storm water under section 402(p)(6). Any operator of a point source required to obtain a permit under § 122.26(a)(9) shall submit an application in accordance with the following requirements.

Section 122.26(g)(1) contains the application deadlines. If a phase II discharger complies with these application deadlines, the facility will not be subject to enforcement action for discharge without a permit or for failure to submit a permit application. First, if the permitting authority (the regulations use the term "Director" which means either the NPDES State/Indian Tribe Director or EPA Regional Administrator, or authorized representative) determines and notifies the discharger that a discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States, the operator shall apply for a permit to the permitting authority within 180 days of receipt of notice, unless permission for a later date is granted (see 40 CFR 124.52(c)). This provision will allow the NPDES permitting authority to manage for environmental results by providing the flexibility to bring certain phase II sources within the NPDES program at this time, as determined necessary by the State/Indian Tribe or EPA. This determination can be done on a watershed or class basis where the permitting authority determines there is a significant impact or contribution. In addition, the NPDES permitting authority may find the information contained in the Storm Water Reports to Congress useful in determining the location and nature of such impacts. The August 9, 1990, guidance EPA issued on designation authority may be useful in making this determination. The 180 day time period provided for submission of an application is consistent with the time period provided for other situations in the NPDES program where a facility is asked to submit an application (40 CFR 122.21(c)(1) and (2)) and the time period generally provided for applications for permit renewal (40 CFR 122.21(d)). EPA recognizes that this time period is longer than that provided by existing regulations for those phase I storm water dischargers designated into the program (40 CFR 122.26(e)(5)). EPA is establishing this longer time period to provide an opportunity for the phase II discharger to communicate with the permitting authority about necessary information, as well as to collect and submit the application information.

All other phase II facilities shall apply to the State/ Indian Tribe or EPA Region no later than six years from the effective date of this regulation. EPA may change this application deadline for at least certain categories of dischargers in the future as part of the rulemaking process involving its various partners dealing with the scope, nature and extent to the phase II program. However, if changes are not made, all phase II storm water dischargers will have to submit applications by August 2, 2001.

Section 122.26(g)(2) contains provisions for application requirements for phase II discharges. At this time, the existing phase I individual industrial application requirements in § 122.26(c)(1) or application requirements for municipal separate storm sewer discharges contained in § 122.26(d) will be the requirements for phase II discharges, unless otherwise modified by the permitting authority. As noted earlier, EPA will be relooking at the application requirements as part of the advisory committee on wet weather issues.

EPA is also specifically providing for and encouraging the use of general permits for phase II discharges and would require submission of a notice of intent to be covered by the general permit, consistent with the current requirements of 40 CFR 122.28(b)(2) for phase I storm water discharges. EPA and

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the authorized States have effectively and efficiently used general permits for phase I storm water discharges and EPA believes general permits also will be an effective mechanism to use in phase II, when NPDES permits are required. Group applications for phase II discharges are not provided for because the general permit process will be available to almost all phase II discharges.

In developing phase II permits, the permitting authority may apply the requirements contained in section 402(p)(3), which are the requirements for phase I permits, on a case-by-case basis at this time using best professional judgment.

EPA is also making several conforming changes to other portions of 40 CFR 122.26. First, EPA is changing the date for the permit moratorium contained in § 122.26(a)(1) to October 1, 1994, to reflect the change in this date provided by the Water Resources Development Act of 1992. Second, EPA is amending the title to § 122.26(e) to read "Application deadlines under paragraph (a)(1)" to make clear that these are phase I requirements and application deadlines, as interpreted by EPA. Third, EPA is amending § 122.26(e)(1)(ii) which are the permit application requirements for those municipally owned facilities for whom application deadlines were postponed by the Transportation Act to reflect the fact that these are now phase II facilities. (Section 1068(c) of the Transportation Act amended the CWA to provide that EPA shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any storm water discharge associated with industrial activity other than an airport, power plant, or uncontrolled sanitary landfill owned or operated by such municipalities before October 1, 1992.) Because EPA is not making available the group application process in phase II, similar changes are not being made to § 122.26(e)(2).

EPA is also making changes to other applicable NPDES regulatory provisions. EPA is modifying the requirements of 40 CFR 122.21(c)(1) to clarify that new phase II storm water discharges do not have to submit a permit application until six years after the effective date of this regulation, or earlier if designated by the permitting authority. EPA is making conforming changes to 40 CFR 124.52(c) to clarify the application of these provisions to both phase I and phase II storm water discharges.

Basis of Regulations

Today's action is the first step of EPA's approach to develop a comprehensive phase II program under section 402(p)(6), and is consistent with President Clinton's February 21, 1995, direction on regulatory reform and the Office of Water's December 30, 1994, "National Water Program Agenda for the Future." EPA has initiated an inclusionary process involving its partners to develop more comprehensive phase II rules; EPA intends to propose those rules by September 1, 1997, and finalize those rules by March 1, 1999. In the comprehensive phase II rulemaking, EPA will consider input from all stakeholders, as well as the input that has already been provided to the Agency on the phase II September 1992 notice and the 1993 Rensselaerville Institute phase II effort discussed earlier in this notice. EPA will also consider the information in the Storm Water Reports to Congress, and the recommendations in President Clinton's Clean Water Initiative. Finally, EPA will implement any statutory changes that are enacted during program development. Today's action is based on recommendations in those documents to the extent they envision an orderly, tiered process for regulation of storm water, allowing the NPDES permitting authority to manage for results at this time. EPA is considering making other changes to improve its operation of the phase I storm water program in the comprehensive phase II rulemaking action, including revising phase I municipal application requirements.

The regulation issued today fulfills, in part, the requirements contained in section 402(p)(6) of the CWA. It is being issued by EPA today after consultation with State, local officials, Indian Tribes, and parts of the regulated and environmental community. The regulation, which is the first of a sequential process, is consistent with the information contained in the Storm Water Reports to Congress and the President's Initiative as it is providing the framework of a tiered implementation of phase II requirements, allowing the NPDES permitting authority current flexibility to manage for results. The application requirements allow the NPDES permitting authority to bring within the phase II program at this time those phase II discharges impacting water quality or who are a significant contributor of pollutants and, if EPA does not take action to change its regulations, will require a permit application from all phase II storm water discharges in 6 years.

The regulations also establish a comprehensive program containing current permit application requirements. The permitting authority will be able to establish appropriate permit requirements on a case-by-case basis at this time. This first portion of the phase II program establishes priorities and deadlines for permit applications, which, as currently structured, will be a part of the NPDES program. These requirements and changes to 40 CFR 122.26 and conforming changes to other NPDES requirements in part 122 are required parts of State/Tribal NPDES programs (see 40 CFR 123.25). The initial portion of the phase II program which is being established today does not contain a comprehensive set of performance standards, guidelines, guidance, management practices, and treatment requirements. These conditions can be established by the permitting authority on a case-by-case basis upon permit issuance to designated phase II discharges. Finally, these conditions may be further defined by EPA when it revises the phase II program regulations as described above.

Today's action adopts a tiered approach for selection of high priority sources to be controlled by NPDES permits, which was the lead option presented for public comment in the September 1992 notice, and one of the options most favored by the various groups participating in the effort conducted in early 1993 by the Rensselaerville Institute and EPA, as well as the Storm Water Reports to Congress and the President's Clean Water Initiative. In its rulemaking effort, EPA believes there will be discussion with its partners of other approaches that will provide flexibility to the States to deal with sources that are not of as high a priority using other frameworks and approaches.

In the September 1992 phase II notice, EPA invited comment on various issues regarding phase II of the storm water program, including the appropriate deadlines for implementing phase II requirements. The comments EPA received on this issue generally recommended implementation of phase II in stages and reiterated the need for time to prepare regulations and to conduct outreach to implement the program, as well as the need to wait and study the results of implementation of phase I of the program. The actions EPA is taking today are consistent with these comments.

Supporting Documentation

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rulemaking significantly reduces the current regulatory burden imposed on phase II facilities. This rule was submitted to OMB for review.

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership", issued by the President on October 26, 1993, the Agency is required to develop an effective process to allow elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through public comment period on these actions.

Specifically, EPA has discussed this action with the representatives of the States, locals governments, the Agency's American Indian Environmental Office (AIEO), and parts of the regulated community.

The reaction of the States is positive. The States and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) support the approach that is being taken under existing law; the States and ASIWPCA also support concurrent changes to the law. ASIWPCA has submitted a letter to the Agency dated March 3, 1995, which is included in the record for this matter. EPA has responded to many of ASIWPCA's comments in this preamble.

The reaction of the municipalities is that they prefer a statutory change now to clarify the issue once and for all. Municipalities' representatives (National Association of Counties, National League of Cities, U.S. Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies) have raised many issues to the Agency and have submitted a letter dated February 16, 1995, to the Agency which is contained in the record for this matter. The municipalities believe that it is inappropriate for EPA to act now when Congress may act on this matter, that the action taken by EPA is not in conformance with the law, and that EPA did not consult with local officials on this matter. EPA has responded to many of the municipalities' concerns including the legal basis of its action and potential changes to the statute in this preamble. EPA did consult with various representatives of local governments early in the development of this regulation as well as more comprehensively in February.

The reaction of EPA's AIEO is positive; the Office of Water will work through the AIEO to provide for a Tribal representative to participate in the inclusionary process.

EPA believes that it has developed an effective process to obtain input from State, Tribal and local governments before issuance of this rule, as well as receiving comments on the direct final rule and accompanying proposed rulemaking, and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget.

EPA's existing information collection request (ICR) entitled "Application for NPDES Discharge Permit and Sewage Sludge Management Permit" (OMB Number 2040–0086) contains information that responds to this issue for all storm water discharges, including those facilities designated into the program. EPA will review and revise the estimates contained in this ICR, as appropriate, in its renewal process.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

EPA has determined that today's rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary. The basis for this determination is through today's action EPA is benefiting small entities as this action (1) adopts a common sense approach to deal with the issue of storm water phase II requirements, (2) provides the ability for the State/Tribe or EPA to manage for results by providing flexibility to the permitting authority to deal with storm water phase II permitting at this time based on water quality violations or significant contribution of pollutants, and (3) clarifies and reduces currently applicable burdens for those facilities current subject to phase II statutory requirements. Finally, the Agency is committed to issue its comprehensive storm water phase II program regulations by March 1, 1999; in that rulemaking EPA will reconsider its Regulatory Flexibility Act analysis.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany proposed rules where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a

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plan for informing and advising any small governments that may be significantly and uniquely affect by any rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million. This rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities. EPA has determined that an unfunded mandates statement therefore is unnecessary.

Although not required to make a finding under section 206, EPA concludes that this rule is cost-effective and a significant reduction in burden for State and local governments. In a September 9, 1992, **Federal Register** notice, EPA invited comment process for public consideration of reasonable alternative approaches for the phase II storm water program. Today's rule provides for the first step for any of those alternatives by providing for an orderly process for development of regulations. By establishing regulatory relief until development of those alternative approaches, today's rulemaking itself provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule at this stage, consistent with statutory requirements.

As discussed previously, EPA initiated consultation with representative organizations of small governments under Executive Order 12875. In doing so, EPA provided notice to potentially affected small governments to enable them to provide meaningful and timely input. EPA plans to inform, educate, and advise small governments on compliance with any requirements that may be develop in further development of storm water phase II rules in the course of the wet weather advisory committee convened for this purpose. That committee will also provide advice related to reconsideration of existing application requirements that already affect small governments.

F. Administrative Procedure Requirements

The Agency is publishing this action as a "direct final" rule. A direct final rule is not an "interim final" rule (*i.e.* a rule which provides for public comment *after* it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment before the rule goes into effect. A response to all comments received will be placed in the docket for this rulemaking prior to the effective date. This rulemaking thus fully complies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for this rule because the Agency does not expect to receive significant adverse or critical comment and to allow for the most expeditious implementation possible, consistent with the APA. Because in the absence of this rule, thousands of municipalities and other storm water discharges are currently operating in violation of the CWA, EPA believes that prompt implementation of this rule is very important.

However, consistent with APA requirements, if EPA does receive significant adverse or critical comment, EPA will withdraw this rule prior to its effective date and proceed with a normal rulemaking process. As a result, elsewhere in today's **Federal Register**, EPA is also *proposing* this rule. If EPA decides to withdraw the direct final rule based on public comment, EPA will proceed with rulemaking based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indian lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 29, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, parts 122 and 124 of title 40 of the Code of Federal Regulations are amended as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding a sentence to the end of paragraph (c)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.*

(1) * * * New discharges composed entirely of storm water, other than those dischargers identified by § 122.26(a)(1), shall apply for and obtain a permit according to the application requirements in § 122.26(g).

* * * * *

3. Section 122.26 is amended as follows:

a. In paragraph (a)(1) introductory text by revising "October 1, 1992" to read "October 1, 1994".

b. By adding paragraph (a)(9) as set forth below.

c. By revising the title of paragraph (e) introductory text as set forth below;

d. In paragraph (e)(1)(ii) by revising the phrase "permit applications requirements are reserved" to read "permit application requirements are contained in paragraph (g) of this section".

e. By adding paragraph (g) as set forth below.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9) On and after October 1, 1994, discharges composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§ 122.2 and 122.3.

* * * * *

(e) *Application deadlines under paragraph (a)(1).* * * *

* * * * *

(g) *Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.

(1) *Application deadlines.* The operator shall submit an application in accordance with the following deadlines:

(i) A discharge which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)); or

(ii) All other discharges shall apply to the Director no later than August 2, 2001.

(2) *Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (c)(1) of this section.

(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.

(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).

PART 124—[AMENDED]

4. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 3901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

5. Section 124.52 is amended by revising the parenthetical statement in paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)) * * *

6. Section 124.52 is amended by revising the next to the last sentence in paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. * * *

[FR Doc. 95–8209 Filed 4–6–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5182–9]

RIN 2040–AC60

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing changes to its National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) to establish a sequential application process for all phase II storm water discharges. EPA is also proposing to establish application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations. In the final rules section of this **Federal Register**, the Agency is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments and wants to provide prompt implementation of the rule as soon as possible to provide for certainty for phase II storm water dischargers; the Agency also believes it is contrary to the public interest to further delay the establishment of permit application requirements for phase II storm water discharges at this time. This proposal invites comment on the substance of the direct final rule in the "final rules" section of today's **Federal Register**.

DATES: Comments on this proposed rule must be received in writing by June 6, 1995.

ADDRESSES: Written comments on this proposed rule may be submitted using one of two different methods.

First, comments may be sent to the Comment Clerk, Water Docket (Storm Water Phase II Proposed Rule), MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. It is requested that an original and one copy of the comments be provided to this address. Comments will considered to be timely if they are postmarked by June 6, 1995. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

In the alternative, EPA will accept comments electronically; EPA is experimenting with electronic commenting. Comments should be addressed to the following Internet address: SWPH2–DFR@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) June 6, 1995. Since this is still experimental, commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: March 29, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–8210 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
April 7, 1995

Part V

Department of Housing and Urban Development

Joint Community Development Program; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–95–3907; FR–3870–N–01]

Office of the Assistant Secretary for Policy Development and Research; Joint Community Development Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1995.

SUMMARY: This notice announces the availability of up to $12 million of FY 1994 and FY 1995 special purpose grant funding for the Joint Community Development Program (referred to in this Notice as the Joint CD Program). The Joint CD Program, authorized by Title I of the Housing and Community Development Act of 1974, and as amended by the Housing and Community Development Act of 1992, provides special purpose grants to institutions of higher education or to States and units of general local government submitting applications with institutions of higher education to HUD to undertake Community Development Block Grant eligible activities.

For this funding round, HUD seeks to support approximately four to five Centers for Community Revitalization at institutions of higher education. These Centers, funded at up to $3 million, will undertake large-scale, multi-phased, multi-year local community revitalization and community building activities. Funded Centers can assist neighborhoods or entire localities. Institutions of higher education are required to apply on their own, rather than submitting jointly with a State or unit of general local government. However, institutions are encouraged to form partnerships with units of general local government by making part of this funding available to these governments. Institutions will be expected to show not only that they have demonstrated capacity to undertake community development activities, but also that they currently have, or can readily obtain, the capacity to implement a large-scale, multi-phased, multi-year community revitalization agenda.

Additional funding for development projects undertaken through the Joint CD program will be available from the Structured Employment Economic Development Corporation (Seedco), a national nonprofit community development support organization. In 1986, Seedco received major funding from the Ford Foundation for the National Urban Institutions Program, aimed at revitalizing low-income neighborhoods through partnerships embracing community-based groups, anchor public benefit institutions such as universities and hospitals, and other key organizations including local foundations. Seedco has begun additional neighborhood revitalization programs in a total of 38 cities with the financial support of several philanthropic foundations, socially responsible corporate investors, and HUD. Seedco will make available a total of up to $2 million in low-interest rate "gap" financing for eligible community revitalization projects undertaken in cooperation with the Centers funded under this NOFA. Only nonprofit tax-exempt community-based organizations can be the recipients of Seedco loans.

The NOFA contains information concerning:

(1) The purpose of the NOFA and information on the funding available, objectives, eligible applicants and activities, and selection criteria;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: Application kits may be requested on or after April 26, 1995 from the address set forth below under **ADDRESSES.**

Applications must be physically received by the Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 p.m. Eastern Standard Time on July 5, 1995. Applications faxed to this address will not be accepted. The above-stated application deadline is firm as to date, hour, and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: HUD USER, ATTN: Joint CD Program, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747. (This is not a toll free number.) Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to document "FR–3870."

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110, Washington, DC 20410. Telephone number (202) 708–1537; TDD Number (202) 708–1455. (These are not toll-free numbers.) Ms. Karadbil can also be contacted via Internet at Jane_R._Karadbil@HUD.GOV.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

Purpose

This program is designed to assist institutions of higher education, on their own or with States and units of general local government, to expand their role and effectiveness in addressing local community development problems.

Objectives

The objective of this funding round is to nurture and sustain the capacity of institutions of higher education to engage in local community revitalization and community building activities. HUD seeks to support entities that will have the capacity to undertake such activities over the long term. Thus, HUD has decided to use this funding round to support a small number of Centers for Community Revitalization, rather than a larger number of small development projects. These Centers can assist neighborhoods or entire localities. They can be new or existing entities. Institutions will be expected to show not only that they have demonstrated capacity to undertake community development activities, but also that they currently have, or can readily obtain, the capacity to implement a large-scale, multi-phased, multi-year community revitalization agenda in concert with their local communities. These agendas should both result in measurable benefits to their communities and enable the Centers to build the capacity they need to institutionalize their role in future local community revitalization activities.

In addition, Seedco, a national nonprofit community development support organization specializing in forging partnerships between urban institutions (such as colleges, universities, and medical centers), will make available a total of up to $2 million in low-interest rate "gap" financing for eligible community revitalization projects undertaken in cooperation with the Centers funded under this NOFA.

A. Authority

This program is authorized under section 801(c)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), which amended section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) to add a new category of special purpose grants. The program is governed by regulations contained in 24 CFR 570.411.

B. Allocation Amounts and Form of Award

This notice announces HUD's intention to award up to $12 million (from the FY 1994 and FY 1995 appropriations) to fund approximately four to five Centers. The maximum amount awarded to any applicant will be $3 million. Because of the multi-phase nature of the projects the Centers will undertake, grant funds will be available until expended. The loans made available through Seedco will be made after grant award at a point when they are needed for development activities. In response to this NOFA, an applicant should submit only a general description of the Seedco loan requirements associated with the Center's project(s).

C. Eligibility

1. Eligible Applicants.

Under this funding round, only institutions of higher education with demonstrated capacity to carry out eligible activities under Title I may apply. Consortia of institutions of higher education are not eligible to apply for this funding round. However, institutions are encouraged to engage units of general local government to undertake development activities. Institutions can use up to 20 percent of the grant funds to establish and maintain Centers and assist localities in planning projects. Institutions may also use the remaining part of the grant for other CDBG eligible activities. However, they are encouraged to involve their appropriate units of general local government by making available to these governments as much of the funding as is feasibly possible. Units of general local government can pass these funds through to others, including community-based organizations. The only entities eligible to receive the Seedco loans are nonprofit tax-exempt community-based organizations undertaking development projects in cooperation with the Centers.

Demonstrated capacity to carry out eligible activities means recent satisfactory performance by the institution of higher education's staff designated to work on the program, including subrecipients and consultants firmly committed to work on the proposed activities, in Title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

2. Eligible Activities.

Activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. Activities may be designed to assist residents of colonias, as defined in Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–525), to improve living conditions and standards within colonias.

Applicants are expected to propose a large-scale, multi-phased, multi-year strategy for addressing local community revitalization needs. The strategy can focus on one neighborhood, several neighborhoods, or the entire locality. The applicant may also choose to assist more than one locality. In this case, activities are limited to a central city and one contiguous jurisdiction. For example, an applicant could work with its unit of general local government on rebuilding a neighborhood, including housing rehabilitation, job training, and education. An applicant could work with its local school district on a multi-faceted approach involving all levels of the public schools in order to prevent youths from dropping out of school. An applicant could work with its central city and a contiguous suburb on developing affordable housing. Or an applicant could work with several localities to implement a strategic economic development plan for the region. If any applicant proposes to work in multiple jurisdictions, it must demonstrate the benefits to all jurisdictions involved. Because of the size of these grants, applicants are expected to propose programs which will have a measurable, substantive, and long-term impact on the communities they assist. Applicants will also be expected to use these programs as a vehicle for developing the capacity to sustain the Center in conducting similar work over the long term.

For the Seedco loans, eligible activities include affordable housing, business development or expansion, and economic development projects including social services, health, education, and other similar facilities.

While Seedco loans will be available for eligible activities, applicants should understand that they are not required to develop projects involving Seedco loans, nor will selection be based on the inclusion or exclusion of such activities in an application.

Applicants must ensure that all project activities meet one of the national objectives of the Community Development Block Grant program, as described in 24 CFR 570.200. Applicants are also bound by the statutory requirement that not more than 20 percent of the total grant be spent on planning and administration. The 15 percent public service limitation, applicable to units of general local government, is not applicable to institutions of higher education who may, thus, choose to spend any portion of the grant on public service activities.

The use of grant funds awarded under this NOFA to pay Seedco to provide technical assistance or any other needed services will be an ineligible activity. It should be noted that this restriction is imposed solely to prevent any appearance of a conflict of interest, since Seedco is a partner to HUD in this joint venture, and is not intended to single out Seedco for any other reason.

3. Environmental Review

(a) General information. Joint community development planning and institution building activities are not subject to environmental review procedures, but proposed physical development must be reviewed for environmental impact. Physical development includes acquisition, rehabilitation, conversion, lease, repair, demolition or construction of property. Since the application will identify general locations of joint community development activities rather than specific sites to be assisted, the environmental review procedures will not be conducted until specific sites for physical development (if any) are identified by the grant recipient. Any activities which require an environmental review cannot be undertaken, nor any grant funds expended on these activities, until such

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reviews are completed. Grants will be made conditional upon the performance of environmental review and no grant funds for physical development of specific sites can be drawn down until these reviews are completed. Applicants who anticipate the use of the grant for physical development of specific sites are encouraged to select hazard-free and problem-free properties for their joint community development activities.

(b) Environmental assurance. Applications shall contain an assurance that the applicant agrees to assist HUD to comply with the environmental laws and authorities at 24 CFR part 50, and that the applicant will (i) supply HUD with information necessary for HUD to perform any necessary environmental review of each property; (ii) carry out mitigating measures required by HUD or select alternate eligible property; and (iii) not acquire, rehabilitate, convert or demolish, lease, repair or construct or otherwise carry out any program activities with respect to any eligible site or property, until HUD environmental clearance for the site or property is received.

(c) Environmental procedures and standards. HUD shall determine whether a NEPA environmental assessment is required. Also HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed at 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and any property acquisition (including lease), Federal environmental laws and authorities may apply when the property is: (i) Located within designated coastal barriers; (ii) Contaminated by toxic chemicals or radioactive materials; (iii) Located within a floodplain; (iv) A building for which flood insurance protection is required; (v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; (vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to an historic district, or is a property whose area of potential effects includes a historic district or property;

(2) For major rehabilitation of a building and also for substantial improvement in floodplains, in addition to paragraphs (c) (i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property: (i) Has significant impact to the human environment; (ii) Is a project involving five or more dwelling units severely noise-impacted; (iii) Affects coastal zone management.

(3) For new construction, conversion or increase in dwelling unit density, in addition to paragraphs (c)(1) (i) through (vi) and paragraphs (c)(2) (i) through (iii) of this section, other Federal environmental laws and authorities may apply when the property: (i) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature; (ii) Affects a sole source aquifer; (iii) Affects endangered species; or (iv) Is located within a designated wetland.

(d) Minor rehabilitation means proposed fixing and repairs: (i) Whose estimated cost is less than 75 percent of the property value after completion; (ii) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; (iii) That does not involve the demolition of one or more buildings, or parts of a building, containing the primary use served by the property; and (iv) That does not increase unit density more than 20 percent.

(e) Responsibility for compliance. HUD shall conduct the environmental review in accordance with 24 CFR part 50. Another agency's environmental review—including a review prepared by a state, local, or tribal government authorized under 24 CFR part 58—may be adopted in cases where HUD has obtained such other review and confirmed that the previous review covers the issues that require environmental review under this 24 CFR 50.

II. Selection Process

A. General

Applications for funding under this NOFA will be evaluated competitively, and points will be awarded as specified in the Selection Factors section below. Seedco will serve as a technical advisor to HUD in the application review process, reviewing applications and providing advice to HUD on the feasibility of proposed development projects. However, authority to select Joint CD grantees will rest solely with HUD. After points have been assigned based on the factors, all applications will be put in rank order. Applications will then be funded in rank order until all funds have been exhausted. However, in order to be funded, an application must receive a minimum score of 70. HUD reserves the right to fund all or portions of the proposed activities identified in each application, based on eligibility of the proposed activities. If more than 50 percent of the amount requested in the application is for ineligible activities, the application will not be funded.

If two or more applications have the same number of points, the application with the most points for selection factor (3), "Institutionalization of the community building partnership," shall be selected. If there is still a tie, the application with the most points for selection factor (5) "Match," shall be selected.

If the amount of funds remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications with scores of at least 70 points or available funds have been exhausted.

If HUD receives an insufficient number of applications to award all funds, or if funds remain after HUD selects all approvable applications, HUD may negotiate increased amounts of grant awards. Increased grants will be offered in rank order to applicants with scores of at least 70 points.

B. Geographic Distribution

HUD reserves the right to make selections out of rank order to provide for a geographic distribution of funded projects. If HUD decides to implement this option, it will select at least one project in each Federal Census Region.

C. Negotiations

HUD requires that all successful applicants participate in negotiations to determine the specific terms of the Statement of Work and grant budget (see IV.A.4). In cases where HUD cannot successfully conclude negotiations, awards will not be made. In such instances, HUD may elect to offer an award (in an amount not to exceed the amount of remaining funds available for the competition) to the next highest ranking applicant and proceed with negotiations as described above.

D. Optional Match

Although applicants are not required to provide a match in order to qualify for funding, those that do will be at a competitive advantage (see section II.E.5).

E. Selection Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum points for each factor are provided below. The maximum number of points is 100.

Rating of the "applicant" or the "applicant's organization and staff," unless otherwise specified, will include any subrecipients and consultants which are firmly committed to the project.

1. Addressing the Objectives (Maximum Points: 25)

The extent to which the applicant addresses the objectives of this program as stated in paragraph I above. Applicants must address how the proposed activities will both revitalize some aspect of the locality(ies) being assisted (e.g., for a pressing urban problem such as housing, education, or crime prevention or for a neighborhood) while at the same time building long-term institutional capacity for the Center to undertake other community revitalization activities.

In rating this factor, the Department will consider:

a. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community revitalization/development needs in the locality(ies) being assisted. The applicant should explain its current role in community revitalization and how that role would change and be enhanced as a result of this grant. The applicant should also describe the process or rationale used to determine that the activities selected could best ensure this sustainability.

b. The extent to which the applicant demonstrates how the proposed activities will make a substantial contribution to achieving local community revitalization/development objectives. The applicant should identify measurable results expected to be achieved from undertaking the proposed activities.

c. The extent to which institutionalization of the proposed functions at the college or university will occur.

d. The extent to which there is non-Federal (e.g., State and local government, private sector, or foundation) interest in sustaining the Center, e.g., in the form of pledges for future funding or identification of future projects to be undertaken.

2. Impact of the Project (Maximum Points: 20)

The extent to which participation of the Center in these activities strengthens the community revitalization activities of the locality(ies) being assisted.

In rating this factor, the Department will consider the extent to which the Center is innovative or defines a role for itself which does not duplicate or substitute for the work of any other entity serving the community.

3. Institutionalization of the Community Building Partnership (Maximum Points: 10)

The extent to which the applicant demonstrates that the proposed project will result in the institutionalization of a community building partnership between the institution of higher education and the local community.

In rating this factor, HUD will consider:

a. The extent to which the Center results in a formalization of a long-term partnership with the unit of general local government, including the extent to which funds will be made available to the unit of general local government(s).

b. The extent to which the Center results in the creation or continuance of a structure within the institution of higher education to undertake community revitalization and community building activities.

4. Management Approach (Maximum Points: 20)

The extent to which the applicant demonstrates that the proposed management approach will enable the applicant to achieve the objectives in section I.

In rating this factor, the Department will consider:

a. The extent to which the applicant's proposed management plan:

i. Clearly delineates staff responsibilities and accountability for all work required;

ii. Clearly delineates a multi-phased agenda;

iii. Presents a work plan with a clear and feasible schedule for conducting all project tasks; and

iv. Presents a reasonable and adequate planned budget as reflected in the budget by task and supporting rationale and justification for the budget.

b. The extent to which the institution, rather than sub-recipients, is responsible for planning and administration.

5. Match (Maximum Points: 10)

The extent to which the applicant demonstrates the financial feasibility of achieving the objectives, including the long-term sustainability of the Center.

In rating this factor, the Department will consider the extent to which the applicant demonstrates the commitment of matching funds, staffing, services, and other in-kind resources to the project. Maximum points will be awarded to applications that provide a match at least equal to the grant request.

6. *Capacity* (Maximum Points: 15)

The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including successful performance in carrying out any prior HUD-assisted projects or activities.

In considering this factor, the Department will consider:

a. The extent to which the applicant demonstrates how recent and relevant the experiences of the staff proposed to undertake the project are.

b. The extent to which the applicant demonstrates that its past and current projects funded by HUD and/or other Federal or private sector sources are or have been completed on schedule and have met or are meeting the goals established for that funding.

c. The extent to which the capacity developed under this grant can sustain the Center over the long term.

d. The extent to which the applicant demonstrates a commitment to fair housing and equal opportunity, through activities such as support for Minority/Women Owned Businesses or innovative fair housing programs.

III. Application Process

A. Obtaining Applications

To obtain a copy of the application kit, contact: HUD USER, ATTN: Joint CD Program, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to document "FR–3870". HUD strongly recommends the use of the fax transmission option to promote accuracy and expedite HUD response time. Application kits may be requested on or after April 26, 1995.

B. Application Deadline

To be considered for funding, the application package must be physically received by the Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, Room 8230, 451 Seventh Street, SW., Washington, DC 20410 by 4:30 p.m. Eastern Standard Time on July 5, 1995. Applications faxed to this address will

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not be accepted. The application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

IV. Checklist of Application Submission Requirements

A. Application Content

The application kit contains instructions which must be followed in submitting an application. The following is a checklist of the application contents that will be specified in the Request for Grant Applications (the technical term for the application kit):

(1) Transmittal letter signed by the Chief Executive Officer of the institution;

(2) OMB Standard Forms 424 (Application for Federal Assistance), Form 424B (Non-Construction Assurances) and Budget Summary;

(3) Executive summary of the proposed project;

(4) Statement of Work (no more than 15 pages) which must describe the community(ies) and, if appropriate, neighborhood(s) to be assisted and the tasks or activities that will be undertaken with project funds.

(5) If the applicant proposes to work in more than one jurisdiction, an explanation of the benefits to all jurisdictions involved.

(6) Narrative summary of Project Management Work Plan, describing the tasks, schedule, and staff needed to accomplish the project.

(7) A general description of the kinds of activities for which Seedco assistance would be needed.

(8) Letters from the appropriate sources attesting to the provision of any matching funds.

(9) Narrative statement addressing each of the rating factors in Section II.E.

(10) Where there are any fair housing or civil rights issues, the applicant should address them. The applicant should also address any unresolved civil rights and/or equal opportunity issues that resulted from findings or attempted resolutions with respect to agencies or departments other than HUD, e.g., the Department of Education, the Department of Labor, the Department of Health and Human Services, or the Department of Agriculture, that are known or become known to the applicant.

B. Certifications and Exhibits

Applications must also include the following documents. In the absence of independent evidence which tends to challenge, in a substantial manner, the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(1) Drug-Free Workplace Certification.

(2) Form SF-LLL, Disclosure of Lobbying Activities, if applicable.

(3) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

(4) A copy of the institution's most recent audit specifying that the applicant's accounting system meets the requirements of OMB Circulars A–21 and A–110 or a letter from the Chief Financial Officer of the applicant's organization stipulating they are in compliance with the requirements of OMB Circulars A–21 and A–110.

(5) A letter from the chief executive officer or resolution of the governing body of the affected locality or localities in which the activities are to be undertaken that the activities are not inconsistent with the locality's Consolidated Plan (see 24 CFR part 91). If the activities will take place in more than one locality, a letter or resolution from each locality should be submitted.

(6) A certification that the citizens likely to be affected by the project, regardless of race, color, creed, sex, national origin, familial status, or handicap, have been provided an opportunity to comment on the proposal or application.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government and State or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The assistance to be provided by the funding under this NOFA is expected to help local residents to become self-sufficient by improving living conditions and standards. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her field Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). The final rule is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112. These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Section 107 of Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*; section 801(c)(2) of the Housing and Community Development Act of 1990 (Pub. L. 102–550, approved October 28, 1992).

Dated: March 30, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research

[FR Doc. 95–8548 Filed 4–6–95; 8:45 am]

BILLING CODE 4210–62–P

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Part VI

Department of Housing and Urban Development

24 CFR Part 29
Nonjudicial Foreclosure of Single Family Mortgages; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary; Nonjudicial Foreclosure of Single Family Mortgages

24 CFR Part 29

[Docket No. R–95–1776; FR–3799–P–01]

RIN 2501–AB86

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to implement recent legislation which authorizes the Secretary of Housing and Urban Development, as a matter of Federal law, to exercise a statutory nonjudicial power of sale with respect to any defaulted single family mortgage held by the Secretary under titles I or II of the National Housing Act or under section 312 of the Housing Act of 1964.

DATES: Comments due date: Comments on this proposed rule must be submitted on or before June 6, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of the General Counsel, Room 9258, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0303. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259.

SUPPLEMENTARY INFORMATION:

Authority

HUD's Fiscal Year 1995 Appropriations Act (Pub. L. 103–327, approved September 28, 1994) incorporated by reference, through conference amendment 54 of H.R. 4624, the Single Family Mortgage Foreclosure Act of 1994 (the Act), which appeared in title VIII of S. 2281, as reported on July 13, 1994. This statute, codified at 12 U.S.C. 3751–3768, establishes a nonjudicial procedure which HUD may follow to foreclose, as a matter of Federal law, any defaulted single family mortgage HUD holds under titles I or II of the National Housing Act, 12 U.S.C. 1701 *et seq.*, or section 312 of the Housing Act of 1964, 42 U.S.C. 1452b. The procedure is similar to that used in those States whose laws authorize nonjudicial foreclosures. The new authority is patterned after the Multifamily Mortgage Foreclosure Act of 1981 (Multifamily Act), 12 U.S.C. 3701–3717, which was implemented in 1984.

The Department intends to publish a delegation of authority to delegate to the General Counsel of HUD the authority under the Act to appoint a foreclosure commissioner or commissioners, to fix the compensation of commissioners, and to promulgate implementing regulations.

Need for Nonjudicial Foreclosure

Various factors precipitated the need for this statute and its implementation. First, the multiplicity of State laws under which HUD forecloses defaulted mortgages presents a burden to the programs involved which can be detrimental to the properties and to the communities in which they are located. Second, long periods of time to complete foreclosures under certain State laws lead to deterioration in the condition of the properties involved. This delay necessitates substantial Federal management and holding expenditures, increases the risk of vandalism, fire loss, depreciation, damage and waste, which adversely affects the neighborhoods in which the properties are located. Third, these conditions seriously impair HUD's ability to protect the Federal financial interest in the affected properties and frustrates attainment of the objectives of the underlying program authorities. Fourth, the availability and the use of a uniform and more expeditious nonjudicial foreclosure procedure will help to alleviate these conditions. Fifth, providing HUD with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing judicial foreclosures from court calendars. Sixth, use of this new nonjudicial procedure will further the objectives of the HUD Reform Act and the National Affordable Housing Act by ensuring that the Department administers its programs in a businesslike and financially sound manner.

The procedures proposed by this rule would streamline and expedite the foreclosure process. However, foreclosure itself is a last step taken only after extensive efforts to bring a delinquent mortgage current have been unsuccessful. Before a foreclosure is commenced, the Department has already provided the delinquent mortgagor with notice and the opportunity to enter into workout agreements in order to provide alternatives to, and avoid, foreclosure. The Secretary has a dual responsibility—a responsibility to the insurance funds and a responsibility to the home ownership needs of persons assisted by the Department. In drafting this rule, the Department has taken into consideration that foreclosure will be commenced only after extensive attempts to correct the default. The Department believes that the rule balances these two responsibilities, and public comment is invited on this point.

Scope

The proposed rule applies to any mortgage that:

—Is security for a one- to four-family dwelling, was previously insured under title I or title II of the National Housing Act, and is held by HUD by reason of assignment or otherwise, or that HUD holds following acquisition and subsequent sale of the property pursuant to a purchase money mortgage agreement; or

—Is security for a one- to four-family dwelling on which HUD made a rehabilitation loan pursuant to section 312 of the Housing Act of 1964, as it existed before the repeal of that section by section 289 of the National Affordable Housing Act (except that when a one-to four-family dwelling is combined with non-residential space in a "mixed use" project, the mortgage is not covered by this Act and this part).

The nonjudicial foreclosure procedures proposed under this rule will be available for use by HUD in connection with any such mortgage, irrespective of the date of execution. The procedure is similar to the deed of trust foreclosure procedure used in approximately one-half of the States. To the extent that a mortgagor has legal or equitable defenses, the mortgagor would be free to seek injunctive relief in the courts.

Outline of Foreclosure Procedures

The procedures authorized by this statute are as follows. Upon determining that a mortgage should be foreclosed, HUD or its designee names a foreclosure commissioner to conduct the foreclosure and sale in accordance with the requirements of the statute. The foreclosure commissioner will have previously been found eligible by the Department to serve as a foreclosure commissioner for HUD's cases. The commissioner commences the foreclosure by serving a Notice of Default and Foreclosure Sale. The contents of this notice and the manner in which it is to be served are set forth in the statute and the regulations.

If a substitute foreclosure commissioner is designated, foreclosure would continue unless the substitute commissioner finds that continuation would unfairly affect the interests of the mortgagor. If a sale is adjourned to another day, a new Notice of Default and Foreclosure Sale must be served.

After the service requirements are met, the commissioner or his designee conducts the foreclosure sale at the date and time specified in the Notice of Default and Foreclosure Sale and disposes of the sale proceeds as provided by the statute. No other proceeding to foreclose the mortgage can be continued or initiated during the pendency of a foreclosure under these regulations. The statute authorizes the commissioner to convey title to the purchaser and requires the commissioner to establish a record of the foreclosure and sale.

From the proceeds of the foreclosure sale, or from other available sources if funds are insufficient, the commissioner is reimbursed for reasonable costs of the foreclosure sale and is paid a fee for his or her services in an amount to be established by HUD.

Notice Requirements

The statute and regulations set forth extensive and thorough requirements for service of the Notice of Default and Foreclosure Sale on the current owner, all mortgagors of record and other interested parties. The Notice of Default and Foreclosure Sale must set forth information on the foreclosure commissioner, identification of the property covered by the mortgage, and specific information about the failure to pay or other default.

Mortgagor Protections

Since a foreclosure extinguishes property rights, the statute and the proposed rule contain numerous provisions to protect the interests of the mortgagor of the property subject to foreclosure sale, tenants and other interested parties. The foreclosure commissioner must be responsible, financially sound, and competent to conduct the foreclosure. The commissioner is specifically authorized to adjourn or cancel the sale if conditions are not conducive to a sale that is fair to the mortgagor. The mortgagor and other interested parties are notified in writing about the designation of the foreclosure commissioner and about the designation of any substitute commissioner. Even if not so provided in the mortgage instrument, under the Act and these regulations, the mortgagor has the right to have the mortgage reinstated one time by bringing the mortgage current or curing a nonmonetary default with respect only to foreclosures being carried out under this part. Subsequent reinstatements can be made only at the discretion of the Department.

Effect on State Law

The statute provides that its purpose is to create a uniform Federal foreclosure remedy for single family mortgages within its scope. The intent of the Secretary with respect to the enforcement of these regulations is that they will be governed by Federal law and will not be subject to conflicting or varying State laws unless otherwise expressly noted.

The statute and the regulations also provide that there will be no right of redemption, or right of possession based on a right of redemption, in the mortgagor or others subsequent to a foreclosure of a mortgage completed pursuant to this statute. If redemption periods provided under State law—up to 18 months or longer in some States—were applied to these mortgages, salability of the properties involved would be seriously impaired and their rehabilitation and improvement discouraged. Such a result would increase the Federal financial exposure and frustrate achievement of the program's objectives and the national housing goals. State redemption laws have previously been preempted in connection with the foreclosure of HUD-held title II mortgages under section 204(*l*) of the National Housing Act, 12 U.S.C. 1710(*l*), and with respect to section 312 mortgages under section 701 of the HUD Reform Act of 1989, 42 U.S.C. 1452c.

Scope of Final Rule

In conjunction with its efforts to streamline and reduce regulations, the Department is considering the option of issuing a much briefer final rule for Nonjudicial Foreclosure of Single Family Mortgages after considering comments on this proposed rule. The procedures that are in the statute would not be repeated in the final rule as they are in this proposed rule. The final rule would instead consist of provisions that address only those areas where the statute gives the Secretary discretion to act or for which clarification and additional detail are necessary. Nonjudicial foreclosures would be conducted with reference to the statute and the abbreviated final rule, or through the use of a guidebook with instructions for foreclosure commissioners which the Department would make available to the public. The Department specifically requests comment on this point.

Other Matters

Environmental impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to implementation of statutory authority for the nonjudicial foreclosure of HUD-held single family mortgages, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The proposed rule implements procedures for the nonjudicial foreclosure of HUD-held single family mortgages. These procedures would impact those families who would be required to vacate more quickly than under other procedures. However, this impact is expected to be small, and would be offset by the benefit to families to the extent that these procedures decrease the risk to single-family housing of vandalism, fire loss, depreciation, and damage and waste, and the attendant adverse effects on the neighborhoods in which the properties are located.

Executive Order 12512, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that although this proposed rule would have an effect on States or their political subdivisions, and the relationship between the Federal

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government and the States, the provisions of this proposed rule do not have "federalism implications" within the meaning of the Order because the authorizing statute provides for the preemption of State law.

Semiannual Agenda of Regulations

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 29

Mortgages, Foreclosures.

Accordingly, title 24 CFR is proposed to be amended by adding a new part 29, to read as follows:

PART 29—NONJUDICIAL FORECLOSURE OF SINGLE FAMILY MORTGAGES

Subpart A—General

Sec.

29.1 Purpose.
29.3 Scope and applicability.
29.5 Definitions.

Subpart B—Procedures

29.101 Designation of foreclosure commissioner.
29.103 Prerequisites to foreclosure.
29.105 Commencement of foreclosure.
29.107 Notice of default and foreclosure sale.
29.109 Service of Notice of Default and Foreclosure Sale.
29.111 Presale reinstatement.
29.113 Conduct of sale.
29.115 Adjournment or cancellation of sale.
29.117 Validity of sale.
29.119 Foreclosure costs.
29.121 Disposition of sales proceeds.
29.123 Transfer of title and possession.
29.125 Redemption rights.
29.127 Record of foreclosure and sale.
29.129 Effect of sale.
29.131 Computation of time.
29.133 Deficiency judgment.

Authority: 12 U.S.C. 1715b, 3751–3768; 42 U.S.C. 1452b, 3535(d).

Subpart A—General

§ 29.1 Purpose.

(a) The purpose of this part is to implement the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3751–3768. This Act creates a uniform Federal remedy for foreclosure of mortgages covering single family properties which are held by the Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before repeal). The Secretary's powers under the Act to appoint a foreclosure commissioner or commissioners and substitutes therefor, to fix the compensation of commissioners, and to promulgate implementing regulations, have been delegated to the HUD General Counsel.

(b) The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

§ 29.3 Scope and applicability.

(a) *Scope.* Under this part, the Secretary may foreclose on any defaulted single family mortgage (as defined in § 29.5) encumbering real estate in any State regardless of when the mortgage was executed.

(b) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This part applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 29.5 Definitions.

As used in this part—

Act means the Single Family Mortgage Foreclosure Act of 1994 (12 U.S.C. 3751 *et seq.*).

Bona fide purchaser means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of state law for the purpose of local self-government, and includes a parish or any other equivalent subdivision.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property (including leaseholds, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

Owner means any person who has an ownership interest in the property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record; recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without actual knowledge, and includes "register" and "registered" in the instance of registered land.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security property means the property (real or mixed real and personal) or an interest in property (including leaseholds, life estates, reversionary

interests, and any other estates under applicable law), together with fixtures and other interests subject to the lien of the mortgage under applicable law.

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4-family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 *et seq.*) ; or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839). A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this part.

State means:

(1) The several States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) The United States Virgin Islands;

(5) Guam;

(6) American Samoa;

(7) The Northern Mariana Islands; and

(8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Subpart B—Procedures

§ 29.101 Designation of foreclosure commissioner.

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages. A foreclosure commissioner designated pursuant to this part shall have a nonjudicial power of sale as provided in this part.

(b) The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary, and the execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name. The designation shall be effective upon execution.

(d) A copy of the designation of the foreclosure commissioner shall be mailed with each copy of the Notice of Default and Foreclosure Sale served by mail in accordance with § 29.109.

(e) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this section.

(1) Such substitution may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with the provisions of § 29.115.

(2) If a substitute commissioner is designated, a copy of the written notice of such designation referred to in paragraph (c) of this section shall be served:

(i) By mail, as provided by § 29.109 (except that the minimum time periods between mailing and the date of the foreclosure sale shall not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

§ 29.103 Prerequisites to foreclosure.

(a) The Secretary may commence foreclosure of a single family mortgage under this part upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under this part may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under this part has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary shall not institute any separate foreclosure proceeding during the pendency of foreclosure pursuant to this part.

(d) Nothing in this part shall preclude the Secretary from enforcing any right, other than foreclosure under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under this part if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

§ 29.105 Commencement of foreclosure.

If the Secretary determines that the prerequisites to foreclosure set forth in § 29.103 are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage in accordance with § 29.107.

§ 29.107 Notice of default and foreclosure sale.

The commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice shall set forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) The street address or a description of the location of the security property and the legal description of the security property as contained in the mortgage instrument.

(c) The date of the mortgage, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be

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paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Act and this part.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

(h) The bidding and payment requirements for the foreclosure sale, including the amount and method of deposit to be required at the foreclosure sale, and the time and method of payment of the balance of the foreclosure purchase price. The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice also shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(i) Any other appropriate terms of sale or information as the Secretary may determine.

§ 29.109 Service of Notice of Default and Foreclosure Sale.

The foreclosure commissioner shall serve the Notice of Default and Foreclosure Sale described in § 29.107 upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(a) *Filing the notice.* The Notice of Default and Foreclosure Sale shall be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) *Notice by mail.* (1) The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units):

(i) The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale as adjourned as provided in this part. Notice under this part shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the current owner or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part, except that the notice need not be mailed to any such mortgagors who have been released from all obligations under the mortgage. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail pursuant to this section shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the certified or registered mail serves as proof of the date of mailing.

(3) The Notice of Default and Foreclosure Sale made pursuant to paragraph (b) of this section shall include a copy of the instrument by which the Secretary has designated him or her to act as commissioner.

(c) *Publication.* (1) A copy of the notice of default and foreclosure sale shall be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of paragraph (c)(1) of this section.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale shall be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

§ 29.111 Presale reinstatement.

(a) Except as provided in § 29.101(b), paragraph (b) of this section, and § 29.115, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in § 29.119, and the foreclosure commissioner finds that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (a)(3) of this section if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this part or otherwise, to be canceled by curing a default.

(4) In the case of a foreclosure involving a nonmonetary default:

(i) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults are cured and that there are no monetary defaults; and

(ii) There is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding amounts due only as a result of acceleration), including all amounts of expenditures secured by the mortgage and all incurred costs of foreclosure for which payment is provided in § 29.119.

(b) Before withdrawing the security property from foreclosure under paragraphs (a)(2), (a)(3), or (a)(4) of this section, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale, if any, shall be served as described in § 29.109.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale under this part shall have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the Notice of Default and Foreclosure Sale as provided in § 29.109.

§ 29.113 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this section. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in § 29.107 or the earliest occurrence of a nonmonetary default. The sale will be held at public auction and must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner shall conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see § 29.117) and consistent with the provisions of this part.

(c) The foreclosure commissioner shall attend the foreclosure sale in person or, if the commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale.

(d) The foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure sale which are contained in § 29.107(h). The foreclosure commissioner will announce the name of each such bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale in § 29.107(h). Before the close of the sale the commissioner will announce the amount of the high bid and the name of the successful bidder.

(e) Notwithstanding the provisions of paragraph (d) of this section, neither the foreclosure commissioner nor any relative, related business entity, or employee shall be permitted to bid in any manner on the security property subject to the foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(f) The commissioner may serve as an auctioneer, or the commissioner may, at the commissioner's discretion, employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate any such auctioneer from the proceeds of the commission he or she collects under § 29.119(e).

(g) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale as set forth in § 29.107(h) before the bid is accepted.

(h) A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale a new notice will be sent and a new sale will be held consistent with the requirements of this part.

§ 29.115 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the foreclosure commissioner determines, in the foreclosure commissioner's discretion, that:

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

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(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in § 29.111.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9 a.m. and 4 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this section, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner shall serve a Notice of Default and Foreclosure Sale revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9 a.m. and 4 p.m. The revised Notice also shall include any other information the foreclosure commissioner deems appropriate. Such Notice shall be served by publication and mailing as provided in § 29.109, except that publication may be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the revised sale date, and mailing may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner shall also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

§ 29.117 Validity of sale.

Any foreclosure sale held in accordance with the Act and this part shall be conclusively presumed to have been conducted in a fair, legal, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

§ 29.119 Foreclosure costs.

The following foreclosure costs shall be paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to such sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice pursuant to § 29.109 and § 29.115.

(b) Mileage by the most reasonable road distance for posting Notices under § 29.109(a)(2)(iii) and (b), and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage shall be paid at a rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 29.121 Disposition of sales proceeds.

(a) The proceeds of the foreclosure sale shall be used in the following order:

(1) To cover the costs of foreclosure listed in § 29.119.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale shall be applied, after payment of the items described in paragraph (a) of this section, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds disagrees with the foreclosure commissioner's proposed disposition of the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed under § 29.119, and otherwise to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 29.123 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in § 29.121(a)(2) and (a)(3).

(b) If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property and constitute passage of good and marketable title to the mortgaged property. No judicial proceedings shall be required ancillary or supplementary to the procedures provided under the Act and under this part to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Act and this part shall be presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Act and this part shall be entitled to possession upon passage of title under paragraph (c) of this section, subject to any interest or interests not barred under § 29.129. Any person remaining in possession of the property after the passage of title shall be deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required in § 29.127(a) in an affidavit or an addendum to the deed as provided in § 29.127(b), the affidavit or addendum shall be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this section shall not be grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 29.125 Redemption rights.

(a) There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this Act and this part. For purposes of this section only, a foreclosure shall be considered completed upon the date of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(*l*), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, shall not apply to mortgages foreclosed under this Act and this part.

§ 29.127 Record of foreclosure and sale.

(a) The foreclosure commissioner shall include in the recitals of the deed to the purchaser the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale under § 29.109, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, names of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Act and this part and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this section in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Act and this part.

(c) The items set forth in paragraph (a) of this section shall be prima facie evidence of the truth of such facts in any Federal or State court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

§ 29.129 Effect of sale.

A sale made and conducted as prescribed in the Act and this part to a bona fide purchaser shall bar all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was mailed as provided under the Act and in this part, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by § 29.109(c), and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of paragraphs (a) through (d) of this section.

§ 29.131 Computation of time.

Periods of time provided for in this part shall be calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

§ 29.133 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after deducting the payments provided for in § 29.121, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

Dated: March 7, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–8547 Filed 4–6–95; 8:45 am]

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Part VII

The President

Proclamation 6781—National Child Abuse Prevention Month

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Presidential Documents

Title 3—

The President

Proclamation 6781 of April 4, 1995

National Child Abuse Prevention Month, 1995

By the President of the United States of America

A Proclamation

Childhood should be a special time. Every child should grow up in an atmosphere of love and respect. Children should have a chance to learn, to explore and develop, to look forward to becoming successful, happy, and loving adults. Yet tragically, for a growing number of children in the United States, childhood is an ordeal of violence, pain, and broken promises—a time to endure, not one to cherish.

Child abuse and neglect in America are on the rise. Nationwide, nearly 3 million children are reported abused and neglected each year, and more than 1,200 die from the effects. Although public concern about violence against our Nation's youth is extremely high, many Americans don't know what role they can play in protecting them. For that reason, each April, communities across the country join together to raise public awareness, to call for an end to child abuse, and to let everyone know what they can do to help.

This year, National Child Abuse Prevention Month focuses on the simple truth, "The more you help, the less they hurt." The goal is to teach all Americans how they can help end the cycle of abuse and neglect that tears at the very fabric of our families, our communities, and our country. Because the effects of child abuse are felt by whole communities, the search for solutions must be a community-wide effort—and every citizen must get involved.

Child abuse prevention efforts succeed because of partnerships among social service agencies, schools, religious organizations, law enforcement agencies, and the business community. I encourage you to get involved. Volunteer on a crisis hotline for parents who are under stress, or help start a parents' support group. Perhaps you could find space in your community to establish a "drop-in center" where parents can get information and support. You could urge your religious or neighborhood group to sponsor a home visitor program for new parents. Or you might help your local school and youth organizations arrange for speakers and events about preventing violence against children.

These are just some of the steps we can take to help protect our children and to strengthen our families. If we don't change things, our children—more of them each day—will lose their chance at life. And our Nation will lose the tremendous potential that every young life holds.

America's children are products of the world we have made for them. Their well-being is a reflection of our commitment, maturity, and wisdom. If we nurture our children and fill their lives with genuine caring and respect, we will see our love realized in a world of enduring hope and promise.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of April 1995 as "National Child Abuse Prevention Month." I call upon all Americans

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during this month and throughout the year to help keep our children safe from harm.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-8785
Filed 4-5-95; 4:18 pm]
Billing code 3195-01-P

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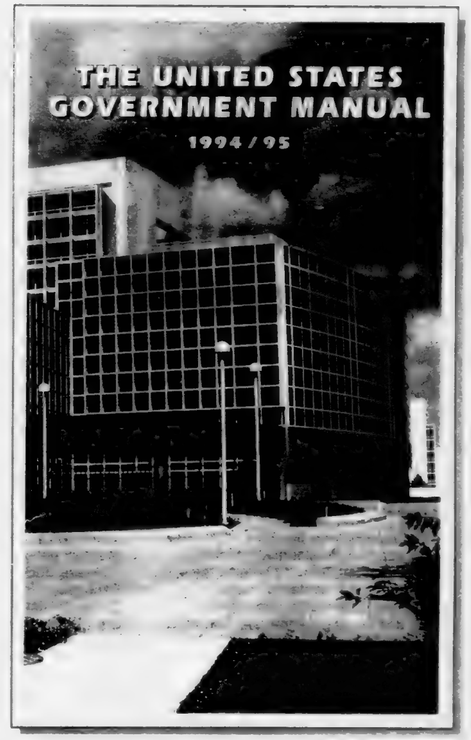
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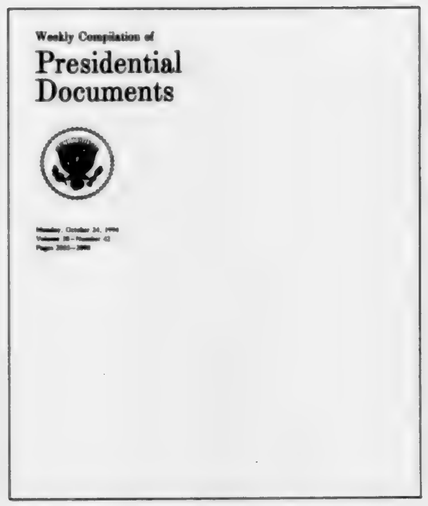
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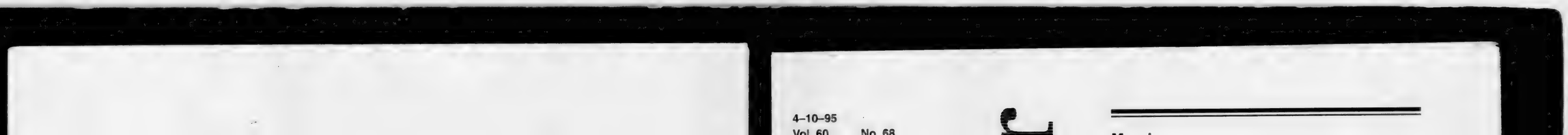


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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6782 of April 6, 1995

National Former Prisoner of War Recognition Day, 1995

By the President of the United States of America

A Proclamation

In the centuries since our Nation was founded, our citizens have been called on time and again to defend the blessings of American democracy. Although the enemies of freedom have often risen from distant shores, the valiant men and women who wear our Nation's uniform have made freedom's fight their own. From Europe to the Pacific, Korea to the Persian Gulf, these Americans and their families have suffered through the darkest hours of humanity so that the cause of human dignity might endure.

It is in gratitude that we pause each year to recall the courage and to honor the service of the sons and daughters of America who have been held as prisoners of war. Few words can express the depth of their sacrifice or the worthiness of their mission. Often subjected to extreme brutality in violation of international codes and customs governing their treatment, many of our people have come home with disabling wounds and injuries. Too many of our people have not come home at all.

Today, the lives of these extraordinary Americans and the stories of their indomitable spirits are at the core of our national character. The citizens of the United States will always remember the proud individuals who traded their liberty to preserve our own. We will build on the triumphs of democracy that they have helped to ensure. And in speaking of their bravery, we will tell our children and grandchildren that though bodies may be imprisoned, hearts can remain ever free.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 1995, as "National Former Prisoner of War Recognition Day." I urge State and local officials, private organizations, and U.S. citizens everywhere to join in honoring the members of the United States Armed Forces who have been held as prisoners of war. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-8922
Filed 4-6-95; 3:17 pm]
Billing code 3195-01-P

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV94–927–1FR; Amendment]

Increase in Expenses for the 1994–95 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: The Department of Agriculture (Department) is amending the final rule that authorized expenses and established an assessement rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1994–95 fiscal year. This final rule authorizes an increased level of expenses for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone:(202) 720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, room 369, Portland, Oregon, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate will be applicable to all assessable pears handled during the 1994–95 fiscal year, which began July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 3, 1994, and unanimously recommended total expenses of $6,835,926 for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expense amount was $6,933,615, which is $97,689 more than the amount recommended for the 1994–95 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.43 per standard box, or equivalent for winter pears. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year. In comparison, the 1993–94 winter

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pear assessment rate was $0.45 per standard box, or equivalent and $0.04 for the supplemental assessment rate on Anjou variety pears. This represents a $0.02 decrease in the assessment rate recommended for this fiscal year.

This rate, when applied to anticipated winter pear shipments of 13,817,000 boxes or equivalent, will yield a total of $5,941,310 in assessment income. Assessment income, along with $401,324 from other income sources, and $493,292 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The $493,292 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1994–95 fiscal period.

Major expense categories for the 1994–95 fiscal year include $5,572,500 for advertising, $276,340 for SOPP data research, $276,340 for winter pear improvement, $142,310 for salaries and benefits, and $612,442 for unshared contingency.

The expenses and assessment rate were authorized in the finalization of the interim final rule issued on November 1, 1994, and published in the **Federal Register** [59 FR 55333, November 7, 1994]. The interim final rule provided a 30-day comment period for interested persons. No comments were received.

The Committee conducted a mail vote during January 1995, and unanimously recommended to increase 1994–95 expenses from $6,835,926 to $7,460,160, an increase of $624,234 from the previously authorized amount. The increase is necessary because the winter pear crop, which was previously estimated at 13,817,000 boxes or equivalent, is now estimated at 15,500,000 boxes.

This under-estimation of over one million boxes, caused the Committee to calculate less assessment income. The Committee is increasing funds for promotion and advertisement for what has become the largest crop of winter pears in the industry's history.

With the approved assessment rate of $0.43, when applied to winter pear shipments of 15,500,000 boxes or equivalent, will yield a total of $6,665,000 in assessment income. Assessment income, along with $368,086 from other income sources, and $427,074 from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Major expense categories for the 1994–95 fiscal year are to be revised as follows; $5,812,500 for advertising, $538,322 for unshared contingency, $310,000 for SOPP data research, and $310,000 for winter pear improvement ($5,572,500, $612,442, $276,340, and $276,340, respectively, are the amounts from the previously approved budget).

This action will not impose additional costs on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect or to engage in further public procedure and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year for the Committee began July 1, 1994, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) handlers are aware of this action which was unanimously recommended by the Committee by mail vote; and (3) no increase in the assessment rate is being recommended so no additional funds will need to be collected from handlers.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.234 [Amended]

2. § 927.234 is amended by removing "$6,835,926" and adding in its place "$7,460,160".

Dated: March 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–8424 Filed 4–7–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560–AD42

1995 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On November 7, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule (58 FR 55378) with respect to the 1995 Production Adjustment Program for Extra Long Staple (ELS) Cotton, which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (1949 Act). The 1995 ELS Cotton Acreage Reduction Program (ARP) percentage has been determined to be 10 percent. This final rule amends the regulations to set forth the ARP percentage, the established (target) price, and the price support rate. No paid land diversion (PLD) program will be implemented for the 1995 crop of ELS cotton.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Consolidated Farm Service Agency, United States Department of Agriculture, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1995 ARP and the PLD Program and 7 CFR part 1427 to set forth the determinations on the 1995 price support level. General descriptions of the statutory basis for the 1995 ELS ARP percentage determination in this final rule were set forth in the proposed rule at 59 FR 55378 (November 7, 1994).

Three comments were received during the comment period. Two respondents recommended that an ARP level not higher than 10-percent would be sufficient to maintain a stable level of supplies. One respondent recommended a 15-percent ARP, but recognized that a 10-percent ARP would be acceptable.

In accordance with statutory requirements, the Secretary of Agriculture (Secretary) announced: a 10-percent ARP; a price support level of 79.65 cents per pound; and a target price of 95.6 cents per pound, for the 1995 ELS cotton program on December 1, 1994. The Secretary determined that a 10-percent ARP would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages. A 10-percent ARP reflects the current supply situation while signaling to domestic and foreign customers that the U.S. will be a reliable supplier.

Acreage Reduction

In accordance with section 103(h)(5) of the 1949 Act, an ARP has been established for the 1995 crop of ELS cotton at 10 percent. Accordingly, producers will be required to reduce their 1995 acreage of ELS cotton for harvest from the crop acreage base established for ELS cotton by at least this established percentage in order to be eligible for price support loans, purchase, and payments.

Paid Land Diversion

In accordance with section 103(h)(5)(B) of the 1949 Act, a PLD Program will not be implemented for the 1995 crop of ELS cotton.

Price Support Rate

In accordance with section 103(h)(2) of the 1949 Act, the price support rate has been established with respect to the 1995 crop of ELS cotton at 79.65 cents per pound.

Established (Target) Price

In accordance with section 103(h)(3)(B) of the 1949 Act, the established (target) price has been established with respect to the 1995 crop of ELS cotton at 95.6 cents per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended as follows by:

A. Revising paragraphs (a)(5)(iii) and (a)(5)(iv), and

B. Adding paragraphs (a)(5)(v),

C. Adding paragraph (d)(5):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(iii) 1993 ELS cotton, 20 percent;

(iv) 1994 ELS cotton, 15 percent; and

(v) 1995 ELS cotton, 10 percent.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i)–(iii) [Reserved]

(iv) Shall not be made available to producers of ELS cotton.

* * * * *

3. Section 1413.103 is amended by adding paragraph (a)(8)(v) and revising paragraph (b) to read as follows:

§ 1413.103 Established (target) prices.

(a) * * *

(8) * * *

(v) 1995 ELS cotton—$.95.6/lb.

(b) ELS cotton target price for the 1996 crop will be established as 120 percent of the loan rate for ELS cotton.

PART 1427—COTTON

4. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, and 1444–2; 15 U.S.C. 7114b and 714c.

5. Section 1427.8 is amended as follows by:

A. Revising paragraphs (a)(2)(iii) and (a)(2)(iv), and

B. Adding paragraph (a)(2)(v):

§ 1427.8 Amount of loan.

(a) * * *

(2) * * *

(iii) 1993 ELS cotton, 88.12 cents per pound;

(iv) 1994 ELS cotton, 85.03 cents per pound; and

(v) 1995 ELS cotton, 79.65 cents per pound.

* * * * *

Signed at Washington, DC on March 31, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–8743 Filed 4–7–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 600

Deviations for the Technology Reinvestment Project

AGENCY: Department of Energy.

ACTION: Rules; class deviations.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby

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announces two deviations from its Financial Assistance Rules for the Technology Reinvestment Project (TRP). The approval of these deviations ensures that the program goals and objectives are achieved and that public funds are conserved.

The TRP is a joint agency effort which implements the provisions of Defense Conversion, Reinvestment, and Transition Act of 1992. The Advanced Research Projects Agency, Department of Energy, National Aeronautics and Space Administration, Department of Commerce through the National Institutes of Standards and Technology, the Department of Transportation and the National Science Foundation are the six agencies collaborating in the TRP. The mission of TRP is to stimulate the transition to a growing, integrated, national industrial capability which provides the most advanced, affordable, military systems and the most competitive commercial production. The TRP seeks to harness the best talents available to focus on technology innovation, extension, infrastructure, and education and training for product and process technologies of critical importance to both national security and the national economy.

The two deviations have been approved because they are required to achieve program objectives. The first deviation will permit budget periods in excess of 12 months consistent with the solicitation and the second deviation permits DOE to withhold payments with 30 days verbal advance notification.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Yee, Office of Clearance and Support, [HR–522.2], U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1140.

SUPPLEMENTARY INFORMATION: In this notice, the DOE announces that, pursuant to 10 CFR Part 600, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for two deviations to the DOE Financial Assistance Rules. The determination document, dated March 13, 1995 provides for deviations for TRP recipients as explained below [i.e., a "class deviation"].

Deviation Number 1 deviates from the 12-month budget period limitation contained in 600.31(b). This deviation is necessary to permit projects with budget periods in excess of 12 months to be awarded. The solicitation allows for budgets with a base term of 12 to 24 months with options for additional 12 to 24 months. Therefore, deviation is required to execute those financial assistance agreements for projects with performance periods greater than 12 months.

Deviation Number 2 permits the withholding of payment for failure to meet established milestone schedules with 30 days verbal notice of failure to make progress, thereby providing adequate advance notice of non-compliance. This is a deviation to 600.122(h) and 600.28 and furthers the program objective of reducing the administrative burden.

Issued in Washington, DC, March 13, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 95–8630 Filed 4–7–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–07]

RIN 1557–AB14

Risk-Based Capital Requirements—Low Level Recourse

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994. This final rule modifies the risk-based capital treatment of recourse obligations to ensure that the amount of capital that a bank must hold against a recourse obligation does not exceed the bank's maximum contractual exposure. This corrects an anomaly in the existing risk-based capital standards under which the capital requirement could exceed a bank's maximum exposure.

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874–5210), Stephen Jackson, National Bank Examiner, (202) 874–5070, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (the "CDRI Act"). Under the OCC's current risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios. Where a bank holds a low level of recourse, the amount of capital required could exceed the bank's maximum contractual liability under the recourse agreement. This can occur in transactions in which a bank contractually limits its recourse exposure to less than the full effective risk-based capital requirement for the assets transferred—generally, 4 percent for mortgage assets and 8 percent for other assets.

The OCC and the other Federal banking agencies (the Office of Thrift Supervision, Federal Reserve Board, and Federal Deposit Insurance Corporation) have long recognized this anomaly in the risk-based capital standards. On May 25, 1994, the Federal banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), issued a notice of proposed rulemaking and advance notice of proposed rulemaking (59 FR 27116) covering the capital treatment of recourse obligations and direct credit substitutes. The notice proposed, among other things, to amend the agencies' risk-based capital guidelines to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. For these types of transactions the proposal would effectively result in a dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

Of the 38 commenters that sent comments to the OCC in response to the May 25 proposal, 13 commenters specifically addressed limiting the capital requirement for low level recourse transactions to a bank's maximum contractual exposure. All 13 supported the limit, although many advocated additional changes to the OCC's capital standards for recourse obligations.

On September 23, 1994, the CDRI Act was signed into law. The OCC is issuing this final rule now in order to implement section 350. Consequently, this final rule covers only the limitation of the capital requirement to a bank's maximum contractual exposure and does not address any of the other issues raised in the May 25, 1994, proposal. The OCC and the other Federal banking agencies will continue to consider those other issues.

The OCC, in consultation with the other banking agencies, will issue further guidance specifying how the modified capital standard will be implemented for reporting purposes. Following issuance of this additional guidance, the OCC intends to amend the rule to include a specific description of the reporting treatment.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will increase somewhat the measured risk-based capital ratios of banks of all sizes that sell assets with low levels of recourse and will have a beneficial, but not material, effect on those banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(c) *Recourse Obligations.* Where the amount of recourse liability retained by a bank is less than the capital requirement for credit-risk exposure, the bank shall maintain capital for the recourse liability equal to the amount of credit-risk exposure retained. Any recourse liability that is subject to this section 3(c) is not subject to any additional capital treatment under sections 3(a) or 3(b) of this appendix A.

* * * * *

Dated: March 17, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–8719 Filed 4–7–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–170–AD; Amendment 39–9191; AD 95–08–02]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires installation of new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar area of the engine/nacelle. This amendment is prompted by reports of fatigue failure of the case drain line in the hydraulics system. The actions specified by the proposed AD are intended to prevent the loss of main system hydraulics as a result of lack of support against vibration and subsequent fatigue failure of the case drain line for the hydraulics system.

DATES: Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes series airplanes was published in the **Federal Register** on December 16, 1994 (59 FR 64875). That action proposed to require installation of new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar area of the engine/nacelle.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,400, or $600 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–08–02 Jetstream Aircraft Limited: Amendment 39–9191. Docket 94–NM–170–AD.

Applicability: Model 4101 airplanes; constructors numbers 41005 through 41015 inclusive, 41019 through 41024 inclusive, 41028, and 41029; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the main system hydraulics, accomplish the following:

(a) Within 4 months after the effective date of this AD, install new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar area of the engine/nacelle in accordance with Jetstream Service Bulletin J41–29–005, Revision 1, dated August 12, 1994; or Revision 2, dated August 30, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with the following Jetstream service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
J41–29–005 Revision 2 August 30, 1994	1, 4	2	Aug. 30, 1994.
J41–29–005 Revision 1 August 12, 1994	2, 3, 5–12	1	Aug. 12, 1994.
	1–12	1	Aug. 12, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8445 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–169–AD; Amendment 39–9190; AD 95–08–01]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires modification of the spoiler system. This amendment is prompted by reports of fatigue failures of the tee fittings of the spoiler bleed nipples. The actions specified by this AD are intended to ensure that the tee fittings do not fail, and subsequently lead to loss of the main system hydraulics.

DATES: Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate; Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on December 16, 1994 (59 FR 64873). That action proposed to require modification of the spoiler system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,880, or $420 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–08–01 Jetstream Aircraft Limited: Amendment 39–9190. Docket 94–NM–169–AD.

Applicability: Model 4101 airplanes on which Jetstream Modification JM41290B (reference Jetstream Service Bulletin J41–29–001) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tee fittings and subsequent loss of the main system hydraulics, accomplish the following:

(a) Within 4 months after the effective date of this AD, modify the spoiler system in accordance with Jetstream Service Bulletin J41–29–001, dated August 12, 1994, or Revision 1, dated August 30, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the following Jetstream service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
J41–29–001 Original Issue, August 12, 1994	1–12	Original	Aug. 12, 1994.
J41–29–001 Revision 1, August 30, 1994	1, 3	1	Aug. 30, 1994.
	2, 4–12	Original	Aug. 12, 1994.

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This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8446 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–192–AD; Amendment 39–9187; AD 95–07–05]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This amendment is prompted by the discovery of fatigue cracks that emanated from the bolt holes inboard and outboard of rib 9 in the bottom booms of the front and rear wing spars. The actions specified by this AD are intended to prevent reduced structural integrity of a wing spar as a result of fatigue cracks in the bolt holes.

DATES: Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64626). That action proposed to require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,100, or $660 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–07–05 Airbus Industrie: Amendment 39–9187. Docket 94–NM–192–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 10161 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of a wing spar, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Modification 8842 (reference Airbus Service Bulletin A300–57–6039) has not been installed: Prior to the accumulation of 17,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(2) For airplanes on which Airbus Modification 8842 has been installed: Prior to the accumulation of 17,000 total landings after accomplishment of Airbus Modification 8842, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(b) If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and repair shall be done in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8173 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–165–AD; Amendment 39–9188; AD 95–07–06]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes, that requires inspections of the bearings of the aileron control system, and correction of discrepancies. This amendment is prompted by a report indicating that an operator experienced difficulties wherein considerable pressure was required to manually input roll control due to seized bearings in the aileron control system. The actions specified by this AD are intended to prevent such seizure of bearings, which could reduce the pilot's ability to initiate roll control during critical phases of flight.

DATES: Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64631). That action proposed to require repetitive detailed visual and physical inspections of the bearings of the aileron control system, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this

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AD, that it will take approximately 1 work hour per airplane, per inspection to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,860, or $60 per airplane, per inspection.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-07-06 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39-9188. Docket 94-NM-165-AD.

Applicability: All Model BAC 1-11-200 and -400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the pilot's ability to initiate roll control during critical phases of the flight, accomplish the following:

(a) Within 5 years from the date of installation of the aileron control bearings or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual and physical inspection to detect missing or damaged sealing rings, corrosion, or restricted movement of the bearings of the aileron control system, in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 27-A-PM6023, Issue No. 2, dated November 23, 1992.

(1) If no discrepancies are found, repeat the inspection requirements thereafter at intervals not to exceed 14 months.

(2) If any discrepancy is found, prior to further flight, replace the bearing with a new bearing in accordance with the service bulletin. Repeat the inspection required by this paragraph within 5 years after replacement of the bearings, and thereafter at intervals not to exceed 14 months.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 27-A-PM6023, Issue No. 2, dated November 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-8172 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-13-U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Requirements for Products Containing Lidocaine or Dibucaine

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission issues a rule requiring child-resistant packaging for products containing more than 5.0 milligrams (mg) of lidocaine in a single package or more than 0.5 mg of dibucaine in a single package. These requirements are issued because the Commission has determined that child-resistant packaging is required to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting such substances. Lidocaine and dibucaine are used in prescription drugs and over-the-counter drug products that are applied to the skin or mucous membranes to provide an anesthetic effect.

DATE: The rule shall be effective on April 10, 1996 and shall apply to subject products that are packaged on or after that date.[1]

[1] The Commission approved unanimously (3-0) the motion of Chairman Ann Brown to require special packaging for all products containing more than .5 mg of dibucaine in a single package. The Commission voted 2-1 to require special packaging for all products containing more than 5 mg of lidocaine in a single package (Chairman Brown and Commissioner Jacqueline Jones-Smith voting for and Commissioner Mary Sheila Gall voting against).

The Commission then voted unanimously (1) that the regulation on lidocaine and dibucaine not be considered a final regulation until it is published in the **Federal Register**; (2) that the final regulation be published in the **Federal Register** on April 8, 1995, or as soon thereafter as practicable; and (3) to approve the most recent draft **Federal Register** notice that had been forwarded to the Commission.

Each Commissioner filed a separate statement concerning this matter. Copies of the Commissioners' statements can be obtained from the Commission's Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0621 ext. 1368.

SUPPLEMENTARY INFORMATION:

A. Background

Relevant statutes and regulations. The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.

Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating its effectiveness (§ 1700.20). Regulations were issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section E of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that requires the product to be in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). Drugs that are applied topically (for example, ointments, creams, sprays, suppositories, mouthwash, etc.) are not covered by the oral prescription drug standard. Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package a single size of the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

Previous Commission activities. [9] [2] In 1985, the Commission's staff reviewed ingestion data for topical prescription drugs to assess the need for CR packaging. Lidocaine, a local anesthetic, was identified as a topical drug that presented a potential ingestion hazard to young children. Local anesthetics are used to produce temporary loss of feeling to a limited area of the body by decreasing the transmission of nerve impulses in that area.

In 1985, many manufacturers of 2-percent viscous prescription lidocaine drugs were voluntarily using CR packaging on products intended to be dispensed directly to the consumer. The Commission directed the staff to pursue voluntary action to address the ingestion hazard presented by lidocaine-containing drugs and to continue to monitor data on topical prescription drugs. In 1986, the staff sent letters to the known manufacturers of 2-percent viscous prescription lidocaine products requesting that the manufacturers (1) use CR packaging on all consumer-ready packages of 2-percent viscous lidocaine products, and (2) label 2-percent viscous lidocaine products intended to be repackaged by the pharmacist to advise the pharmacist to dispense the drug in CR packaging.

In 1990, the staff updated its review of the toxicity of lidocaine. The scope of the review was expanded to include other topical local anesthetics marketed for consumer use, and to include OTC products as well as prescription products. The review showed that two local anesthetics, lidocaine and dibucaine, have caused serious adverse effects, including death, following accidental ingestion by young children.

After considering the available information, the Commission, on August 4, 1992, proposed a CR packaging requirement for products containing (1) more than 5.0 milligrams (mg) of lidocaine in a single package or (2) more than 0.5 mg dibucaine in a single package. 57 Fed. Reg. 34274.

B. Lidocaine

Product forms, dosage and packaging. Lidocaine is an ingredient in a wide variety of preparations used as anesthetics, general antiseptics, and burn remedies, and for skin care. It is used also in preparations meeting the provisions of the Food and Drug Administration's (FDA's) OTC monograph for male genital desensitizing products (57 Fed. Reg. 27654; June 19, 1992; 21 CFR 348). Lidocaine preparations are available as creams, ointments, gels, jellies, viscous

[2] Numbers in brackets indicate the number of a relevant document as listed in Appendix 1 to this notice. When a reference document that is cited in a document listed in Appendix 1 is referred to, both the number of the Appendix 1 document and the designation of the reference document as given in the Appendix 1 document are given, e.g., [1, Ref. A].

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solutions, liquids, sprays, aerosols, and injectables. Tube packaging, used for creams, ointments, and some gels, protects its contents from contamination and moisture and enables the administration of a controlled volume of medication to smaller areas. Aerosol, spray, and squeeze bottles permit liquids to be applied to cover larger areas.

OTC liquid lidocaine preparations contain 1.5 to 2.5 percent lidocaine hydrochloride. The liquid preparations typically are packaged in squeeze or pump bottles or aerosol sprays and are labeled for external use only. Creams and ointments contain 0.5 to 2.5 percent lidocaine and typically are packaged in tubes. These products are recommended for children 2 years of age and older.

Approximately 12.1 million units of lidocaine-containing products were sold to consumer outlets in 1992. More than half (6.2 million) of these products were cream and ointment formulations available in tubes. In addition, the Commission's staff estimates that less than 0.4 million bottles of consumer-ready prescription viscous lidocaine were sold in 1992.

Prescription preparations intended for consumer use include a 2-percent viscous solution and at least two combination lidocaine creams. The prescription 2-percent lidocaine viscous liquids, in 100 ml bottles (3½ fluid oz), are available from 15 suppliers at estimated wholesale costs to pharmacies ranging from $2.28 to $4.40. One supplier also markets a 450 ml bottle of 2-percent viscous lidocaine that, according to a company spokesperson, is for pharmacy repackaging into smaller containers and dispensing as prescribed by physicians.

One combination cream, a lidocaine/hydrocortisone formulation, is marketed in a 1-oz tube; its estimated wholesale cost to pharmacies is $32.33. The other combination is a lidocaine/prilocaine-based cream, marketed in unit dose and 30-gm (slightly over 1 oz) tubes (cost unknown). The unit-dose, when used by the consumer, is intended to have its entire contents applied at home about 1 hour before a medical procedure that will be performed in a professional setting. The preparation is used also in professional settings.

The prescription 2-percent viscous solution of lidocaine is used for anesthesia of irritated or inflamed mucous membranes of the mouth and throat. Care must be taken following the oral use of viscous lidocaine because swallowing may be impaired. It is recommended that food not be ingested for 1 hour following oral use because of the potential for aspiration. For adults, it is recommended that for mouth pain that one 15 ml tablespoon be swished around the mouth and spit out; for throat pain, the same amount can be gargled and either spit out or swallowed. The maximum recommended single adult dose is 4.5 milligrams/kilogram (mg/kg), not to exceed 300 mg. (A kilogram equals approximately 2.2 lb.) Although this form of lidocaine is applied to the mouth, or even swallowed, it is not considered to be a "drug for human use that is in a dosage form intended for oral administration" that already is required to be in CR packaging by 16 CFR 1700.14(a)(10). This is because its action is caused by topical application to the affected area and not by systemic action following ingestion.

For children under 3 years of age, it is recommended that ¼ teaspoonful be applied to the affected area with a cotton-tipped applicator. For children 3 years old and older, the dose is prescribed based on the weight and age of the child. The dose interval for children should be at least 3 hours, so as not to exceed 4 doses in a 12-hour period.

Previously, the Commission was aware of 7 marketers of trade name OTC pharmaceuticals containing lidocaine; 16 marketers are now known. Some marketers represent recently introduced preparations. Also, some preparations have been recently withdrawn from the market. Creams, ointments and some gel preparations are available in small (½- and/or 1-oz) tubes at estimated wholesale costs of $2.02 to $5.74. One supplier markets a preparation in a 35-gm tube (1.25 oz) at an estimated wholesale cost of $10.19. Liquid (and some gel) lidocaine preparations are available in aerosol, spray pump, and spray and squeeze bottle containers. Estimated wholesale costs for ⅛–16 oz liquids and gels range from $1.74 to $5.46. One new marketer supplies a preparation for burn injuries in a foil packet containing ⅛ oz of gel. The preparation is currently promoted for use in the workplace rather than in the home; the company plans to introduce this product into the consumer market in the future.

Some lidocaine preparations, although dispensed through pharmacies, are intended for use in a professional setting such as a doctor's or dentist's office. According to pharmaceutical company spokespersons, these preparations include prescription lidocaine fluids such as 2 percent, 4 percent, and 5 percent liquid solutions; 2 percent jellies; 5 percent ointments; 4 percent viscous liquids; 10 percent oral sprays; 5 percent ophthalmologic solutions and drops; and prefilled syringes containing lidocaine solutions. Products that are not customarily consumed, used, or stored by individuals in or about the household are not required to comply with PPPA regulations.

Table 1 shows estimated 1992 total market sales of prescription and OTC consumer-use preparations containing lidocaine for each of five therapeutic categories in which lidocaine products are sold. Total sales of lidocaine preparations in 1992 are estimated at $36.6 million, about 12 percent of sales of all preparations in the five categories reviewed.

Based on IMS America data, the Commission's staff estimates 1992 unit sales of consumer-ready prescription 2-percent viscous lidocaine bottles at under 0.4 million bottles, a decrease of about 50 percent from the 1989 estimate of 0.8 million bottles. About 98 percent of prescription 2-percent viscous lidocaine preparations were marketed in consumer-ready 100 ml bottles in 1989 and in 1992. Many marketers and pharmacists are voluntarily providing CR packaging for these preparations.

Market shares of lidocaine-containing preparations (Table 2) show slight increases since 1989 in three categories: OTC Topical Anesthetics (up 1 percent); General Antiseptics (up 3 percent); and Burn Remedies (up 2 percent). The 9 percent increase in the market share of lidocaine preparations in the Topical Anti-infectives category is most likely due to new product introductions of combination antibiotic/anesthetic ointments and creams. The 1992 market share of prescription cortisone/lidocaine preparations remains unchanged from 1989.

TABLE 1.—ESTIMATED SALES: TOTAL MARKET[1] LIDOCAINE PREPARATIONS—TOPICAL DOSAGE FORMS

	1992	
	All preps Sales ($ millions)	Lidocaine preps Sales ($ millions)
Topical Anesthetics:		
(OTC)	97.7	2.0
(Prescription)[2]	3.3	3.3
General Antiseptics (OTC Only)	33.0	8.9
Burn Remedies (OTC Only)	25.1	9.2
Topical Anti-infectives (OTC Only)	135.4	13.1
Hydrocortisone Combinations (Prescription Only)	7.2	.1

TABLE 1.—ESTIMATED SALES: TOTAL MARKET[1] LIDOCAINE PREPARATIONS—TOPICAL DOSAGE FORMS—Continued

	1992	
	All preps Sales ($ millions)	Lidocaine preps Sales ($ millions)
Total	301.7	36.6

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis.

[1] Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets. Includes data provided by pharmaceutical company spokespersons.

[2] Includes only prescription 2-percent Viscous Lidocaine; all other prescription preparations in the category are for professional use.

TABLE 2.—ESTIMATED MARKET SHARES BY CATEGORY; LIDOCAINE PREPARATIONS 1992 AND 1989

	1992 (% Share)	1989 (% Share)
Topical Anesthetics (OTC)	2	1
General Antiseptics (OTC Only)	27	24
Burn Remedies (OTC Only)	37	35
Topical Anti-infectives (OTC Only)	10	1
Hydrocortisone Combinations (prescription Only)	2	2

Source: IMS America and CPSC Directorate for Economic Analysis.

Toxicity. [1] The toxicity of lidocaine has been demonstrated in animals and humans. Adverse effects have been observed in humans following both therapeutic usage and accidental overdosage. Lidocaine is readily absorbed through mucous membranes and abraded skin. The OTC preparations warn against using large quantities over raw or blistered areas or puncture wounds. The first-aid spray preparations warn against use near the mouth, eyes, ears, or other sensitive areas.

Absorption of lidocaine results in systemic side effects occurring most commonly in the cardiovascular and central nervous systems. Adverse effects range from minor effects, such as disorientation, dizziness, numbness, and drowsiness, to major effects, including convulsions, coma, and respiratory arrest. The blood level of lidocaine that is associated with toxic effects is a concentration of over 6 micrograms/milliliter (μg/ml). Major adverse effects occur with blood levels over 10 μg/ml.

Animal toxicity studies have been carried out with lidocaine using several different species and routes of exposure. Oral LD_{50} values for the rat and mouse are 317 mg/kg and 220 mg/kg, respectively. [1, Ref. Y] The median convulsive dose was calculated to be 75 percent of the lethal dose in one study. Id. The intravenous LD_{50} values were calculated to be 20–34 mg/kg in various mice studies and 25 mg/kg in the rat. Id. Although these animal data clearly demonstrate the high toxicity associated with lidocaine, the human experience data described below are more relevant for extrapolation to toxicity in children.

The staff is aware of nine deaths attributed to the accidental or intentional overdose of lidocaine:

The CPSC Death Certificate file contains a report of a three-year-old child who died in 1980 after the accidental ingestion of lidocaine. [4a] The causes of death were listed as cardiac arrhythmia and degenerative brain effects.

A second death certificate reports the 1981 death of a 2-year-old child after accidental overdose of a combination of two drugs, lidocaine and meperidine (a narcotic analgesic). Additional information is not available on this case. [4a]

The CPSC Reported Incident File contains the report of the death of an 11-month-old child, in 1984, from accidental ingestion of lidocaine. In this case, the child removed the CR closure from the product. [4b]

The FDA Adverse Reaction Reporting System reports an accidental death, in 1979, of a 13-month-old girl who ingested a Canadian viscous lidocaine product. The blood lidocaine concentration was 20 μg/ml. [4c]

A case reported in the literature describes the death, in 1986, of a 13-month-old boy. The boy had blood lidocaine levels of 19.5 μg/ml, remained unconscious, and was mechanically ventilated for 54 days. The child had suffered respiratory arrest at home prior to hospitalization. [1, Ref. Z]

A case investigated by CPSC staff involved the death in 1990 of a 14-month-old girl who ingested an unknown amount of 2-percent viscous lidocaine. Prior to the ingestion, the lidocaine had been applied to a diaper rash. The child's mother had placed the bottle in the crib while changing the child's diaper. The bottle had a CR closure, but it may not have been properly resecured. The mother did not believe the drug was hazardous, because she had been told by the pediatrician to rub lidocaine on the child's gums to ease teething pain. The toxicology report revealed high levels of lidocaine in the blood (12 μg/ml) and liver. [16, Ref. 1]

Another death in 1990 involved a 15-year-old girl who drank up to 480 ml of an OTC first-aid liquid containing 2.5 percent lidocaine. The cause of death was aspiration of gastric contents secondary to lidocaine intoxication. The serum lidocaine level was 18 μg/ml. [16, Ref. 2]

Two adult deaths due to intentional overdose of lidocaine are also reported in the literature. In these two cases, the blood lidocaine levels were 40 μg/ml and 53 μg/ml, respectively. [1, Ref. S]

The following cases reported in the literature describe non-fatal adverse effects observed in young children following therapeutic administration or accidental ingestion of lidocaine:

A 22-month-old child, weighing 10 kg, ingested 20 to 25 ml (approximately 50 mg/kg) of 2-percent viscous lidocaine. The child arrived at the hospital convulsing and not breathing. The child was successfully resuscitated, and the seizures were controlled. The child was discharged after 2 days with no long-term effects. [1, Ref. AA]

A 3½-year-old child was given one tablespoon of 2-percent viscous lidocaine (approximately 21 mg/kg) for a sore throat. The dose was repeated 4 hours later. The child developed seizures and had a lidocaine blood level of 10.6 μg/ml. The child was transferred to Pediatric Intensive Care in respiratory distress. The child was alert approximately 10 hours following the initial seizure and was discharged the following day. [1, Ref. BB]

A 15-month-old boy developed seizures following the prescribed use of lidocaine. The child's lidocaine blood level was 4.9 μg/ml. [1, Ref. BB]

A mother used a finger to apply 2-percent viscous lidocaine to an 11-month-old child's gums for teething pain, five or six times a day for a week. The child developed seizures and had a blood lidocaine level of 10 μg/ml. The child was treated in the intensive care unit and recovered after 4 days. [1, Ref. CC] Many articles in the medical literature warn physicians about the hazards of prescribing lidocaine for teething pain and related symptoms in young children.

A 5-month-old boy weighing 6.5 kg suffered seizures and required 48 hours of hospitalization after 1 day of treatment with oral viscous lidocaine. [24, p. 3 & n. 2] The 3.8 μg/ml serum lidocaine level, measured 4 hours after arrival at the emergency room, was in the high therapeutic range. The infant

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required intubation to maintain respiration.

In another case, a 2-year-old drank from a bottle of viscous lidocaine, choked, and began convulsing within 10 to 15 seconds. [24, p. 3 & n. 3] Aspiration of lidocaine resulted in its rapid absorption. Serum lidocaine levels were 0.5 μg/ml 4 hours after the ingestion. The child remained hospitalized for 14 days with intubation and respiratory support.

FDA's Adverse Reaction Reporting System contains reports of two children (5 months old and 1 year old) who developed seizures after being administered viscous lidocaine. [5]

For the period 1978 through April 1990, the CPSC's Children and Poisoning ("CAP") data base shows four ingestions of prescription viscous lidocaine and three ingestions of OTC lidocaine products by children under age 5. [6] All seven children were treated in National Electronic Injury Surveillance System ("NEISS") hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered by the children is not available.

Data collected by the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 [7] show 176 accidental ingestions of OTC lidocaine products, 18 of which exhibited toxic symptoms. These data also include 28 ingestions of prescription viscous lidocaine products, with 10 showing toxic symptoms. Details of the amount of product ingested or specific toxic symptoms are not available. This data base was discontinued after 1984.

For the years 1989 through 1991, the American Association of Poison Control Centers ("AAPCC") reported 2,422 ingestions of lidocaine-containing products, 341 of which are known to have produced symptoms related to the exposure. Children under age 6 were involved in 1,898 of these ingestions. [23]

In addition to the cases noted above, several cases of accidental lidocaine poisoning in adults are reported in the literature. The reported cases demonstrate extreme variability in the development of toxicity of lidocaine, with children appearing to be more sensitive to the central nervous system side effects of the drug.

Level for Regulation. The maximum level of lidocaine that does not produce serious side effects in children is not known. The recommended maximum single total dose of lidocaine for children is 5.0 mg/kg, which is approximately 50 mg in a 10 kilogram (kg) child. However, as noted above, toxic effects were reported at therapeutic dose levels. The staff lacks sufficient information to establish that the reported cases involving toxic effects at therapeutic doses involved oral exposures (the route of administration most relevant to accidental ingestion) or that the proper therapeutic dose was not exceeded. It is possible, however, that a child who accidentally ingests a lidocaine preparation will already have received an intentional therapeutic dose of the preparation. In addition, the systemic toxicity of the drug is not the only hazard it presents; there is the risk of serious injury or illness caused by aspiration of substances that are swallowed while the mouth and throat are anesthetized by the drug. These considerations make it difficult to establish a package size that would not cause serious toxic effects if the contents are ingested by a small child.

Therefore, the Commission—s staff recommended that the recommended maximum dose of lidocaine for a 10-kg child be reduced by a factor of 10 (referred to as an "uncertainty factor") in order to arrive at a level that would not cause serious injury or illness in young children. [1, 9, 24] After considering the comments on the proposal and other available information, the Commission accepted this recommendation. Therefore, products containing more than 5.0 mg of lidocaine in a single package will be subject to CR packaging standards.

C. Dibucaine

Product form, dosage and packaging. Dibucaine is used for temporary relief of painful sunburn, minor burns, scrapes, scratches, nonpoisonous insect bites, and external hemorrhoidal pain. OTC dibucaine preparations are marketed in 30-gm (slightly over 1 oz), 1-oz, 1.5-oz, and 2-oz tubes. It is used also in a few prescription preparations. It is also marketed in a 16-oz jar whose contents, according to the supplier, are used as the basis for a pharmacist-compounded and repackaged preparation. It is estimated that approximately 0.9 million tubes of dibucaine were sold to consumer outlets in 1992.

In 1994, the 13 suppliers of OTC dibucaine distributed 16 products, each in tubes of 25 grams (nearly 1 oz) or more. This reflects a decrease of over 50 percent in the estimated number of suppliers of generic OTC dibucaine since 1989, when there were 28 such suppliers. The 3 suppliers of prescription dibucaine preparations listed by Redbook in 1989 were not listed in 1992 or 1994.

Table 3 shows CPSC staff estimates of 1992 total market sales for OTC dibucaine preparations in the two categories in which dibucaine preparations are sold: OTC anti-hemorrhoidal and topical anesthetics. The market share of dibucaine-containing preparations reported in the topical anesthetics category remains at less than 1 percent, similar to the 1989 estimate. In the anti-hemorrhoidal category, dibucaine-containing preparations have an estimated 3 percent market share, down from 5 percent in 1989. Overall sales of dibucaine-containing preparations were an estimated $4.4 million.

TABLE 3.—ESTIMATED SALES: TOTAL MARKET;[1] DIBUCAINE PREPARATIONS—TOPICAL DOSAGE FORMS

	1992	
	All preps Sales ($ millions)	Dibucaine preps Sales ($ millions)
Topical Anesthetics (OTC)	97.7	.1
Anti-hemorrhoidal (OTC) ..	161.3	4.3

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis

[1] Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets. Includes data provided by a pharmaceutical company spokesperson.

The recommended dose for adults is to not exceed 1 ounce (equivalent to no more than 300 mg of dibucaine) in 24 hours. The recommended dose for a child, 2 years of age or older, is not to exceed ¼ ounce (equivalent to no more than 80 mg of dibucaine) in 24 hours.

Toxicity. Dibucaine is one of the most potent and toxic local anesthetics. Dibucaine produces serious systemic effects on both the central nervous system and the cardiovascular system. Adverse effects can include convulsions, depression of heart muscle contractility, and death. Dibucaine is readily absorbed through the mucous membranes and should not be used around the eyes or mouth. Systemic absorption may occur following the application of large amounts of dibucaine to large areas of abraded or damaged skin, or following rectal administration. The FDA disapproved the use of dibucaine in sore-throat and mouth medicines because of the possibility of systemic toxicity from dibucaine absorbed through the mucous membranes of the mouth and throat. [1, Ref. K]

The toxicity of dibucaine has been demonstrated in animals and humans. Animal studies indicate that dibucaine is lethal at three mg/kg in dogs, and one mg/kg in monkeys. [1, Ref. J] The toxic dose of dibucaine in humans is not known. However, the suggested maximum adult dose is 25 mg of dibucaine. [1, Refs. H, P]

The staff is aware of eight deaths of young children resulting from ingestion of dibucaine local anesthetics and of one death resulting from the rectal use of a dibucaine ointment:

During the 23-year period of 1951 through 1973, one manufacturer received reports of 11 cases of acute intoxications of young children from dibucaine topical preparations. [1, Refs. J, L] Ten of the cases involved accidental ingestion; one case involved the rectal use of dibucaine ointment in a 2-month-old infant. Four of the children who ingested the products died, as did the 2-month-old infant. Additional details of the incidents were not provided.

The CPSC Death Certificate File contains the report of a 2-year-old child who died in 1987 after accidentally ingesting a dibucaine cream used primarily for treating hemorrhoids. The child was found staggering by his mother, was lethargic, had seizures, and could not be resuscitated from respiratory arrest. The child had a dibucaine blood level of 1.3 μg/ml. [4d]

A second death certificate reports the death in 1988 of a 21-month-old child who accidentally ingested 22.5 grams of a dibucaine hemorrhoid ointment. Cardiorespiratory arrest and convulsions developed. The child could not be resuscitated after suffering cardiac arrest. [1, Ref. N; 4e]

CPSC has obtained a medical examiner's death report of an 18-month-old who died on July 10, 1994, after ingestion of a 1-percent dibucaine ointment. The victim may have ingested up to ½ oz of the product. The victim's father found the child suffering seizures in the family's kitchen. The victim was taken to a medical center and then transferred to a major children's hospital. The child was pronounced dead approximately 7 hours after the ingestion. [25]

Because of deaths reported from oral ingestion of dibucaine products, a warning was added to the labels of dibucaine products, stating:

"Should not be swallowed. Swallowing can be hazardous, particularly to children. In the event of accidental ingestion, consult a physician or poison control center immediately."

For the period of 1978 through February 1990, the CPSC CAP data base shows two ingestions of dibucaine products by children under age 5. [6] Both children were treated in NEISS hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered is not available.

Data from the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 show 113 ingestions of dibucaine products. Six of those individuals exhibited toxic symptoms. [7] This data base was discontinued after 1984.

The AAPCC National Data Collection System supplied to CPSC reports general data on the ingestion of topical local anesthetics, but does not contain specific information on the identity of the individual compounds involved. Lidocaine and dibucaine creams and ointments comprise only about 5 percent of the topical local anesthetics market. For the 5-year period 1984 through 1988, 10,330 cases of accidental ingestion of topical local anesthetics by children under age 5 were reported through that data system. [8] Of these cases, 883 exhibited minor-to-moderate symptoms and 10 were life-threatening or resulted in disability. The two cases that resulted in death were attributed to dibucaine, and are described above. Specific information on dibucaine ingestions was available for the years 1989 through 1991. The AAPCC received a total of 495 poison exposure cases involving dibucaine, 433 of which involved children under age 6. [23]

A review of the literature revealed one case in which a 12-month-old infant ingested a combination of three gm of boric acid and 300 mg of dibucaine. The child developed seizures, and also vomited due to the effects of the boric acid. The child was hospitalized and recovered fully after aggressive and intensive treatment. [1, Ref. M]

Level for Regulation. The high potency and toxicity of dibucaine are well known; however, an absolute level of safety for this drug is difficult to determine. Most cases of reported deaths contain little information about the concentration of the drug or the amount consumed. Ingestion of dibucaine, however, results in the same types of toxicity as does ingestion of lidocaine. The differences between the two compounds are in the potency and duration of action. Dibucaine is approximately 10 times more potent than lidocaine. Therefore, a correction factor of 10 was applied to the level for regulation derived for lidocaine to arrive at 0.5 mg as the level for regulation. [24]

This level of regulation for dibucaine is also supported by a case reported in the medical literature in which a 3-year-old child ingested 8 lozenges containing 1 mg of dibucaine each. The child died 8 hours later. The total dosage was approximately 0.5–0.8 mg/kg. [22] The author states that the child may have been sensitive to dibucaine.

D. Other Economic Considerations

[27] The total combined market for lidocaine and dibucaine (including OTC products and prescription viscous lidocaine) in 1992 totaled an estimated 13.4 million packages available to the consumer. This market declined 18 percent from the estimated 16.3 million packages reported in 1989. Decreases were reported in all formulations, most notably an estimated decline of 50 percent in the number of packages of consumer-ready viscous lidocaine.

Most lidocaine and dibucaine preparations are OTC products sold in packages that are not CR. The prescription creams/ointments in tubes are also in non-CR packaging.

Table 4 shows 1992 estimated total consumer-use units and market share by packaging type for the six categories in which IMS reports sales of lidocaine or dibucaine. Within the six categories, lidocaine or dibucaine preparations may not be marketed in specific package types. For example, there are no dibucaine preparations in spray packages. Additionally, there are no suppositories, pads, or wipes containing lidocaine or dibucaine. Units of prescription bottles used for 2-percent viscous lidocaine, discussed earlier, are excluded from this table. Lidocaine-containing preparations in all package forms amount to about 9 percent of topical anesthetic units. Nevertheless, lidocaine in spray packages dominates the market for spray topical anesthetic preparations (83 percent), and lidocaine in aerosol packages represents more than half (56 percent) of the topical anesthetics aerosol market. Lidocaine formulations packaged in tubes (creams, ointments, and gels) and bottles (liquids and gels) comprise 7 and 8 percent of units in their respective topical anesthetic package categories. Dibucaine-containing preparations, packaged only in tubes, represent about 1 percent of all tubes.

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TABLE 4.—ESTIMATED 1992 UNITS;[1] CONSUMER-USE TOPICAL ANESTHETICS CONTAINING LIDOCAINE, DIBUCAINE, OTHER BY PACKAGE TYPE

Package type	1992	
	Units (millions)	Market share (percent)
Spray/Lidocaine	2.5	83
Spray/Dibucaine	.....	.....
Spray/Other	.5	17
Aerosol/Lidocaine	1.9	56
Aerosol/Dibucaine	.....	.....
Aerosol/Other	1.5	44
Tube/Lidocaine	6.2	7
Tube/Dibucaine	.9	1
Tube/Other	82.9	92
Bottle/Lidocaine	1.5	8
Bottle/Dibucaine	.....	.....
Bottle/Other	16.9	92
Suppository/Lidocaine	.....	.....
Suppository/Dibucaine	.....	.....
Suppository/Other	18.4	100
Pad or Wipe/Lidocaine	.....	.....
Pad or Wipe/Dibucaine	.....	.....
Pad or Wipe/Other	.8	100
Unknown/Other	2.3	.....
Total Lidocaine	12.1	9
Total Dibucaine	.9	1
Total Other	123.3	90

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis

[1] Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets for the six IMS categories in which lidocaine and dibucaine preparations are reported. Includes data provided by pharmaceutical company spokespersons.

TABLE 5.—ESTIMATED UNITS BY PACKAGE TYPE;[1] LIDOCAINE/DIBUCAINE PREPARATIONS 1992 AND 1989

Package type	1992 Units (millions)	1989 Units (millions)
Tubes	7.1	7.6
Prescription bottles	.4	.8
Aerosols	1.9	3.2
Spray/Bottles	4.0	4.7
Total	13.4	16.3

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis.

[1] Extrapolated from IMS America, Ltd. data to estimate total unit sales to drug stores, food stores, and mass merchandise outlets.

The following discussion of the economic impact of this rule is organized by the type of packaging. As noted above, lidocaine creams, ointments, gels, viscous solutions, and liquids are packaged in tubes, bottles and various spray containers. Dibucaine formulations are available only in creams and ointments and are packaged only in tubes.

Prescription viscous lidocaine packaged in prescription bottles. Most, if not all, suppliers of prescription 2-percent viscous lidocaine formulations dispensed in bottles are voluntarily using CR packaging in response to the Commission's 1986 request. CR packages for prescription bottles are readily available at low incremental cost. Therefore, the rule is not expected to have an adverse economic impact on businesses of any size that market viscous lidocaine in prescription bottles.

Lidocaine or dibucaine creams, ointments, and gels packaged in tubes. In 1992, an estimated 51 percent of lidocaine preparations (6.2 million units) and 100 percent of dibucaine preparations (0.9 million units) were packaged in tubes containing 2 oz or less. There are currently no commercially available CR packages to substitute for the small pharmaceutical tubes used to package creams, ointments, and some gels. Therefore, the PPPA requirement for topical anesthetics containing lidocaine or dibucaine will affect all marketers of the preparations packaged in tubes.

The Commission's staff identified nine marketers of OTC lidocaine preparations packaged in tubes. Four marketers that are considered "small businesses" account for about 11 percent of the lidocaine/tube preparation market. Dibucaine, available only in tubes, is marketed by 16 suppliers. Fifteen of these suppliers market generic and/or private-label products as part of extensive product lines. Specific sales data for the individual small marketers were not reported. However, a pharmaceutical company spokesperson reports the aggregate market share of small marketers is quite small. [27]

Under this rule, each marketer of lidocaine/dibucaine preparations packaged in tubes will have to consider one of three possible marketing options: development of acceptable CR packaging; reformulation to eliminate lidocaine or dibucaine as an ingredient; or withdrawal from the tube segment of the topical anesthetic market. Each marketer will probably choose the least costly alternative. These options are discussed below.

Reformulation: Marketers can reformulate to non-lidocaine/ dibucaine preparations and supply them in tube sizes comparable to those they are now using. Since many marketers have tube filling operations, this would enable the use of existing filling equipment. However, reformulation may result in the loss of a market "niche" held by a specific preparation. There also are potential costs associated with reformulation. For example, there may be research and development costs, costs to obtain FDA approval (if required), and additional marketing costs to regain market share. With this option, consumers would forego the use of the original preparations.

Develop CR packaging: Marketers can work with package manufacturers to develop CR multi-dose tubes compatible with specific lidocaine or dibucaine formulations. The Commission concludes that the development of CR packaging for these tubes is technically feasible, practicable and appropriate based on existing technology. [26] A pharmaceutical trade association contacted several major developers and suppliers of CR closures and provided the Commission with cost and time estimates to develop a CR tube package. The information supplied by the trade association stated that the development cost estimates ranged from $145,000 to $585,000 and that development would take 27–36 months. Additional time would be needed for stability testing of the preparation in the new package. Increased costs of up to $4.40 per tube are estimated if development is done on an individual company basis. Since marketers sell most lidocaine and dibucaine creams and ointments to pharmacies at prices ranging from less than $1.00 to about $6.00, the potential incremental cost of the tube might outweigh the cost of certain preparations provided by small marketers. [24]

Discontinue marketing: Some marketers may be unable to absorb the costs associated with the development of CR packaging for tubes while maintaining a competitive price for their products. The alternative option, reformulation, may lead to the loss of a market "niche." As a result, some firms may decide to withdraw the lidocaine/ dibucaine tubes from the market. Based on 1992 estimated total sales of all lidocaine and dibucaine preparations ($41 million), with tubes accounting for about 53 percent of units sold, the potential loss of sales may be about $22 million if all such products were withdrawn. For small firms that have extensive product lines, abandoning lidocaine or dibucaine preparations may not be very disruptive, particularly if unit sales are low. For a few small companies with limited product lines or a niche preparation, withdrawal could result in disruption and financial loss. One small firm estimated lidocaine preparations represent 30 percent of sales, of which one-third is attributed to a preparation packaged in a tube. The other two small firms marketing

lidocaine in tubes would have less than 1 percent and less than 3 percent of their respective markets affected if these products are withdrawn. Thus lidocaine in tubes represents between less than 1 percent to 10 percent of these companies' total sales. As in the reformulation option, consumers would experience a loss of utility if manufacturers adopt this option. However, preparations with similar therapeutic qualities to any preparations withdrawn are available in the marketplace.

OTC Lidocaine liquids and gels packaged in bottles, pump sprays, metered sprays, and aerosol sprays. OTC lidocaine preparations in bottles and spray packages represented about 45 percent (5.9 million units) of lidocaine shipments in 1992. Ten marketers of these preparations have been identified. The preliminary economic assessment discussed the availability and incremental costs of CR packaging for these preparations. The lack of comments regarding the economic effects of the proposal for bottle and spray packages confirms the Commission's initial finding that costs to provide special packaging are comparatively low and likely not to have a substantial effect on marketers.

E. Comments on the Proposal

Ten comments were received on the proposal. The comments focused on several areas, including the level of drug for regulation, contentions that there is a lack of information to include all products with lidocaine and dibucaine, and the lack of a CR tube for creams and ointments. One commenter supported the rule. The Commission's responses to the comments are explained below.

Scope of the proposed regulation.

Comment: Several commenters indicated that the Commission had insufficient information to require CR packaging of all products containing lidocaine and dibucaine. The Nonprescription Drug Manufacturers Association (NDMA) stated that the Commission had not demonstrated that a significant number of children have been harmed by the accidental ingestion of OTC lidocaine and dibucaine. The NDMA contracted with Pegus Research to analyze poison exposures to OTC products containing topical anesthetics. The study examined poisoning incidents associated with OTC products containing lidocaine, dibucaine, and benzocaine.

Response: The staff's review of the toxicity of lidocaine and dibucaine was included in the February 27, 1992, briefing package for the proposed rule and updated in a supplemental package dated May 27, 1992. The documents described nine deaths attributed to the accidental or intentional overdose of lidocaine and several medical case reports of adverse effects following therapeutic administration or accidental ingestion of lidocaine. Six of these deaths were children under 5 years of age. The majority of the cases where the formulation is known involved 2-percent viscous lidocaine (a prescription drug). One death followed an intentional ingestion by a 15-year-old of an OTC product containing 2.5 percent lidocaine. The staff toxicity review described the deaths of six children (two known to be under 5 years of age) following the ingestion of dibucaine. An additional death of an 18-month-old girl following the ingestion of dibucaine ointment was reported recently.

While the data do not indicate whether any of the accidental deaths of children associated with lidocaine involved OTC formulations, these products contain amounts of lidocaine similar to the prescription viscous formulation. Young children are being exposed to OTC topical anesthetic products containing lidocaine or dibucaine. This is verified by the NDMA-sponsored study. The CPSC staff's analysis indicates that the proportion of children under 6 exposed to lidocaine or dibucaine is significantly larger than the proportion of children in this age group exposed to other substances.

The Commission concurs with the conclusion of the NDMA-sponsored analysis that the lidocaine and dibucaine poisonings generally do not have severe outcomes. However, four deaths from these compounds were documented from 1987 to the present, attesting to the toxicity of these substances.

Cream and ointment products are included in the rule because details from the three most recent deaths following ingestion of dibucaine (1987, 1988, 1994) specified that dibucaine was in a cream or ointment formulation. These deaths demonstrate the toxicity of dibucaine and the potential for toxicity from cream and ointment formulations in general.

Comment: A manufacturer of a male genital desensitizing agent containing lidocaine indicated that the Commission had not considered this product class and therefore it should not be covered in the rule.

Response: At the time of the proposal, the staff was unaware of the FDA's monograph for male genital desensitizing agents. Because the ingestion cases do not specify the formulation of the OTC lidocaine products, the staff cannot determine if any poisoning exposures are attributed to this class of products. However, the rule should not exempt these products, since the potential for injury and death from these lidocaine-containing products is equivalent to other OTC lidocaine spray products. The amount of lidocaine in one metered spray of this product exceeds the 5 mg regulated amount. Tests of a similar metered-spray package have shown that 48 of the 50 children in the test for child resistance actuated the spray and that, on average, each of the 48 actuated the spray over 90 times each during the 10-minute test. [30]

Inhalation and aspiration of aerosol and spray products can result in absorption from the lungs. The local anesthetic drugs are also readily absorbed through mucous membranes of the mouth and throat, therefore, an "ingestion" does not have to occur to result in toxicity. Aerosol and spray product formulations are included in the proposed rule because a child can access a potentially harmful dose. There is a documented case of a child spraying himself with another topical anesthetic (benzocaine 20 percent). The child experienced cardiac arrest resulting in death.

Comment: One commenter indicated that the rule should be clarified to exempt formulations of lidocaine intended for administration by injection. The commenter contended that lidocaine for injection purposes does not fit the definition of a household substance as described in the PPPA regulations.

Response: The Commission disagrees with the commenter's contention that the PPPA does not apply to injectable prescription pharmaceutical products. The definition of "household substance" in section 2(2) of the PPPA includes drugs and other hazardous substances that are "customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household." 15 U.S.C. 1471(2). However, the PPPA does not extend to products used exclusively in hospitals, in nursing homes, or by medical professionals, because such items are not customarily consumed, used, or stored by individuals in or about the household. If the injectable lidocaine preparations truly are for professional use only and are not available to the consumer for use or storage at home, it is not necessary to separately state an exemption of these products.

However, if lidocaine injectable formulations were customarily available

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for home consumer use (as is the case with insulin), the products would not be exempted. Injectable lidocaine is a liquid formulation that could be accessed by children if available in the home. The commenter provided no rationale for excluding these products in that case.

The staff is aware of other lidocaine-containing prescription products that may be used exclusively by physicians, dentists, and in hospital settings. A company supplied the staff with information about the usage of these products during a meeting on October 15, 1992. The products include creams, jellies, and liquids. The liquids are available in prefilled syringes, ampules, sprays, and bottles. As discussed above, if these products are for professional use only and are not obtained by consumers for use or storage at home, the requirements of the PPPA do not apply.

Regulated levels of lidocaine and dibucaine. Comment: Several comments were received regarding the proposed amount (level) of the two drug products that should be regulated. One commenter questioned the use of a 10-fold uncertainty factor for lidocaine. Another commenter questioned the use of an additional 10-fold factor for dibucaine.

Response: The level for regulation of lidocaine- and dibucaine-containing products is based on the maximum recommended single therapeutic dose of lidocaine (5 mg/kg or 50 mg for a 10 kg child). A 10-fold uncertainty factor was used to arrive at the 5 mg level of lidocaine.

It is true that a 10-fold uncertainty factor applied to a recommended therapeutic dose provides a more stringent level for regulation than that normally used by CPSC staff. Applying the uncertainty factor to the therapeutic dose is justified for lidocaine and dibucaine, however, for the following reasons: (1) Toxicity can occur at therapeutic doses of lidocaine and dibucaine; (2) children are particularly susceptible to the toxic effects of repeated therapeutic doses of these drugs; (3) since these drugs are used on children as well as adults, an accidental exposure could occur following a previous therapeutic dose of the drugs; (4) the metabolites of lidocaine and dibucaine are potentially toxic, especially to young children; and (5) risks of aspirating food or liquids are associated with oral exposure to these drugs, even at nonlethal and therapeutic doses. These reasons support the level chosen for regulating lidocaine.

The level for regulation of dibucaine was derived from the level for lidocaine, based on the relative difference in potency of the two drugs. Dibucaine is approximately 10 times more potent than lidocaine; therefore, the staff applied an additional 10-fold factor to the 5 mg level for lidocaine to arrive at a 0.5 mg level for dibucaine. While the commenter questioned the use of the additional 10-fold correction factor for dibucaine, the commenter agreed that dibucaine is approximately 10 times more potent than lidocaine.

The commenter suggested an alternative level derived from ingestion cases reported to the company. The commenter considers the cases to be confidential information, so they are not discussed here in detail. However, in addition to the cases discussed by the commenter, there was a death of a 3-year-old child following the ingestion of 8 lozenges, containing 1 mg of dibucaine each, that was reported in the medical literature in 1955. The child died 8 hours later from respiratory failure. The total dosage was approximately 0.5–0.8 mg/kg. The authors speculated that the child may have been sensitive to this drug product; however, dibucaine is very potent and readily absorbed from mucous membranes. The FDA later disapproved the use of dibucaine as an active ingredient in oral health-care products. The level of regulation being adopted for dibucaine (0.5 mg) is supported by this reported literature case. The Commission believes that these are appropriate levels for regulating lidocaine and dibucaine.

Comment: One commenter indicated that a 10-fold correction factor was not necessary for metered spray products because a child cannot spray enough to obtain a toxic blood level. The commenter indicated that the male genital desensitizing agent packages "already are child resistant in that the drug product is dispensed in a metered spray." The commenter estimates that only ⅓ of each spray would be absorbed by a child. The commenter states that any risk of aspiration is unsupported.

Response: Metered sprays are tested for child-resistance as described in 16 CFR 1700.20 for unit packaging. The commenter provided no test results describing how many sprays a child can access during the test period. It should be noted that each spray of the commenter's product contains 7.68 mg of lidocaine per spray, an amount greater than the recommended level for regulation. This product contains 150 sprays per container. The FDA monograph for these preparations restricts the dosage to 10 mg of lidocaine per spray. Thus each spray of a male genital desensitizing agent can contain two times the proposed level for regulation for lidocaine. The commenter did not supply data to support its estimate of the access and absorption of the product.

The commenter also contended that the 10-fold uncertainty factor for lidocaine was established because of the Commission's concern for the aspiration hazard for sprays. This is not the case. Aspiration following oral usage of local anesthetics is documented in the medical literature and in CPSC injury records and is not limited to aerosol products. [24, Refs. 3, 7]

Comment: Commenters stated that the 5-mg level for lidocaine and the 0.5 mg level for dibucaine were below the therapeutic concentrations recommended by the FDA for cream and ointment preparations.

Response: The level for regulation does not affect or restrict the concentration of the product. The Commission's rule simply requires that products containing more than the regulated level must have CR packaging. The comment about the regulated levels being below the therapeutic concentrations can be interpreted as a complaint that the level is too restrictive and that all lidocaine- and dibucaine-containing products would require CR packaging. However, this is not the case, since the PPPA allows a manufacturer or packager to package an OTC product in one size of non-CR packaging if the manufacturer also supplies the products in CR packages and the non-CR package is labeled properly. The amount of product in the noncomplying package is not restricted.

Effectiveness of Requiring CR Packaging. Comment: One commenter supported the rule but stated that CR packaging would have prevented only a few of the deaths. This commenter stressed the need for enhanced educational activity. In addition, several commenters indicated that the viscous lidocaine responsible for two of the deaths was already in CR packaging. Other commenters indicated that the rule would have a limited effect, since no deaths have occurred in the past several years.

Response: Several of the deaths described in the toxicity review were accidental or intentional overdose cases. The purpose of discussing these cases is to illustrate the toxicity of the products. The results of the study of ingestion cases indicate that children are accessing products containing lidocaine and dibucaine. There were 676 ingestions of lidocaine-containing products and 110 ingestions of dibucaine-containing products by children under 5 years of age reported to poison control centers in 1992. [29]

While most of these children did not experience major effects, each of the ingestions had the potential to result in serious injury or death. For example, with dibucaine, a company reported four deaths of children who accidently ingested dibucaine products from 1951 to 1973. Two more deaths were reported in 1987 and 1988, more than 10 years after the last reported death. The death reported in 1994 demonstrates that the risk of injury from dibucaine continues to exist. CR packaging requirements may prevent future deaths from products containing these ingredients.

No information is available as to whether the "CR" packaging, used voluntarily by several companies, actually meets the criteria of the PPPA regulations. A requirement for CR packaging of these products, instead of voluntary usage, would permit CPSC to enforce the PPPA requirements for these products.

CR packaging has saved many lives, but CR packaging is not child proof. The Commission agrees that education is an important part of poison prevention. The Commission acts as the secretariat for the Poison Prevention Week Council, which promotes the poison prevention message.

Development of CR Tubes. Closures that can be put on the small tubes that are in current production to make them child resistant are not currently commercially available. The following discussion addresses some general comments related to packaging for the cream and ointment products.

Comment: One manufacturer supplied limited test results of a 1-inch diameter plastic squeeze tube with a European 18-mm ASTM type IA closure. The company reported that the package was closed at 7 inch-torque-pounds (ITP). Twenty children were tested, and eleven children were able to open the package during the test period. None of the children used teeth to open the package. The commenter contended that these test data show that CR tubes are not technically feasible.

Response: The staff indicated in the proposed rule that special packaging for tubes could be achieved by using commercially available 22-mm closure bottle threads on a suitable laminated plastic tube. This would allow the use of a "senior friendly" ASTM type IA continuous threaded closure to be used to obtain child-resistance. The staff is unaware of any data from protocol tests conducted on a tube with the 22-mm ASTM type IA closure.

The child-resistance function of the European closure used by this commenter is unknown. This closure has never been tested by the Commission on any package. It is difficult to know whether the failures in the test were associated with the closure itself or a problem with the combination of the closure and tube. The package tested had a small diameter closure, and 7 ITP is a very low closing force. Both of these factors make the package more accessible to children. The larger closure size (22 mm) proposed by the CPSC's staff is harder for children to remove and easier to put on at higher forces. These data do not change the Commission's view that a plastic tube can be made CR using a 22-mm ASTM type IA closure and existing technology. See also Section E.2, below.

Comment: Commenters indicated that unit packaging is not appropriate for products containing lidocaine and dibucaine because the FDA does not define a dose for lidocaine- and dibucaine-containing creams and ointments. Commenters indicated that people use varying amounts of these products depending on the indication for use and the potential for partial use exists. In addition, the NDMA stated that one of their members attempted to package in a foil pouch and could not achieve stability of the product.

Response: The Commission is aware of the lack of a defined dose for lidocaine and dibucaine. The Commission agrees that nonreclosable packaging for many of the creams and ointments may not be possible due to this variation in the definition of single use and the potential for residual product in the package. It is difficult to package a unit amount for these products that will not result in potential harm to children if it is not completely used. A package cannot be marketed containing less than the regulated amount, because this level is below the therapeutic level required by the FDA.

The technical finding of appropriateness includes shelf life and stability. Neither the NDMA, its member companies, nor other commenters supplied data to document the lack of stability in pouches. The staff is aware of a lidocaine-containing product packaged in foil pouches. This product is currently used in industrial settings, although the company advertises the potential for home use. The Commission recognizes that not all formulations are equivalent; different ingredients have different stability properties. However, the Commission believes that suitable pouch materials can be found for any lidocaine- or dibucaine-containing product. Because of the problem of hazardous residual amounts, however, the amount packaged would have to be extremely small. Therefore, pouches or other unit-dose packages may not be a practical way to market these products to comply with the regulation.

Comment: Bottles and jars are unsuitable for cream and ointment formulations of hemorrhoidal relief use products, and anesthetic first aid products due to preservation and contamination issues.

Response: Other creams, such as cosmetic cold creams, are packaged in jars. However, the usage of these products differs substantially from the usages of lidocaine- or dibucaine-containing products. Since lidocaine- and dibucaine-containing products are used in the anal area (hemorrhoidal preparations) or on open wounds (first aid preparations), the Commission agrees that contamination is possible if individuals reenter the container for more product without washing their hands thoroughly. This limits the appropriateness of jars and bottles for these products.

Comment: Plastic or laminate tubes are not a viable alternative. One commenter reported that it cannot achieve stability of the lidocaine product in plastic or laminate tubes.

Response: Metal tubes currently are used for packaging many lidocaine-containing products and all the dibucaine-containing products. The proposed rule indicated that manufacturers may have to change from a metal tube to a plastic tube to achieve child-resistance. No commenter supplied data to support the claim that stability cannot be attained in plastic or laminate tubes. One manufacturer currently markets a lidocaine-based cream product in a plastic tube. Although the different vehicles in different formulations have different stability properties, development testing will determine which plastics or laminates are compatible with any particular formulation.

Comment: Tubes cannot be made CR because children will bite through the tube, thereby gaining access to the tube's contents. The NDMA cited the opinion of Dr. Alexander Perritt, president of Perritt Laboratories, a CR package testing laboratory.

Response: One NDMA member supplied limited child test data to the Commission staff. The company tested a plastic tube with a CR closure that allegedly meets the different European child-resistance standards on other types of packaging. While many of the 20 children tested in these tests opened the tube package, none did so with their teeth. There is no reason to conclude that tubes cannot be made sufficiently strong to withstand the teeth of children under age 5.

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Additional information on the technical feasibility of plastic tubes is in Section E.2 of this notice.

E. Statutory Considerations

1. Hazard to children. Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that because of the toxic nature of lidocaine and dibucaine preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting these substances.

2. Technical feasibility, practicability, and appropriateness. [26] In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

A. Technical feasibility. Lidocaine and dibucaine prescription and OTC products are presently packaged in tubes, spray containers, aerosols, and prescription containers. Most of the current packaging appears to be non-CR. The manufacturers of most viscous lidocaine-based non-oral prescription drugs have voluntarily packaged these drugs in consumer-ready CR prescription containers, even though they are not now required to do so under the PPPA regulations. [2, Ref. 3] For those manufacturers using non-CR packaging, various types and designs of non-tube CR packaging can be obtained.

CR packaging for OTC and prescription tubes can be accomplished by using commercially available bottle threads on plastic tubes. [2, Ref. 4] This would allow the use of readily available CR continuous-threaded closures on the tube. The Commission is aware of tubes now on the market that use bottle threads that could be outfitted with existing push-and-turn continuous-threaded CR closures. However, the Commission does not know that such CR tubes are available in all the sizes currently used or lidocaine and dibucaine products. Therefore, it may be necessary for the manufacturers of these products to develop and test such packaging and incorporate it into their production lines. For those manufacturers using metal tubes, a change to a plastic tube, with appropriate stability testing, may be necessary.[3]

The Commission's determination that plastic tubes for these products are technically feasible has been confirmed by additional information. One cap manufacturer has notified the Commission that it has two cap designs that should be suitable. [37] One of these is currently commercially available in stock sizes as small as 20 mm, including the 22 mm size relied on in the proposal. This cap is child-resistant under the Commission's current regulations and meets the proposed senior-friendly requirements that may be adopted in the future (see Section I of this notice). The other cap is a squeeze-and-turn model that currently is not available in sizes below 28 mm. However, the manufacturer indicated that a development program for smaller sizes would require 3 months to produce prototypes, with full commercial availability in an additional 6 months.

Another manufacturer submitted information showing steps leading to a child-resistant plastic tube with appropriate stability characteristics that could be distributed commercially within a 52-week period. [35]

Technical feasibility for lidocaine prescription drug products and OTC spray containers that are presently in non-CR packaging is demonstrated by: (1) Many manufacturers are voluntarily using CR packaging (ASTM type IA closures on bottles) for prescription 2-percent viscous lidocaine consumer-ready preparations. (2) CR packaging for OTC products that are dispensed by spraying is also commercially available. Similar CR packaging designs have passed the proposed protocols for "senior friendly" packaging. (See section I below.)

CR packaging for aerosol and mechanical pump packaging is technically feasible and commercially available. The staff has information that this type of packaging can be made senior friendly. Additional time to develop suitable packaging may be necessary for some products containing lidocaine, due to the small size of the package. For example, male genital desensitizing agents containing lidocaine are available in metered spray packaging containing less than ½ oz. An overcap can be made for this product that would require the use of a tool to remove. It is unknown whether this feature would be senior friendly on this small package. If not, it may be necessary to use an alternative type of package, such as a larger diameter aerosol with a CR and senior-friendly overcap. Manufacturers of these products and other products available in small mechanical pumps or aerosols may need more than 1 year to develop senior-friendly CR packaging for these small packages. However, as noted above, larger diameter packages can be used, and such packages could be available within 1 year.

There are numerous continuous-threaded special packaging designs that can replace the non-CR continuous-threaded closures presently being used with viscous lidocaine prescription medication and OTC spray packaging.

CR packaging for aerosols also can be obtained, and a number of commercially available designs could be used. Therefore, the Commission concludes that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the forms of these products.

b. Practicability. Companies that are presently using CR packaging for viscous prescription drug products containing 2-percent lidocaine have implemented assembly line and mass production techniques in their manufacturing processes. This shows that it is practicable to package 2-percent viscous lidocaine-containing products in special packaging. No major problems from the manufacturing standpoint are anticipated in the change from non-CR to CR packaging, except for the multiple-dose tube-type packaging, which may require the use of a contract packager.

The manufacturers of non-tube CR packaging do not anticipate any problems with supplying CR closures and containers. The major suppliers of CR packaging and materials indicate that they can supply more than the 6.2 million non-tube units estimated to be needed for lidocaine and dibucaine products.

In most cases, manufacturers can incorporate CR packaging into their existing packaging lines. If there were any problems in modifying or obtaining new equipment, i.e., capping, etc., a contract packager could be used in the interim to package lidocaine- and dibucaine-containing products. Many existing designs suitable for use with the products that are the subject of the regulation are currently being used in the packaging of other products, or can be readily developed. Special packaging for this product is therefore practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these products or the manufacturers of CR closure and capping equipment.

c. Appropriateness. Information available to the staff indicates that the CR packaging of lidocaine- and dibucaine-containing products is appropriate. Some companies are presently voluntarily using special packaging for their viscous prescription drug products containing 2-percent lidocaine. Other companies can utilize existing CR packaging designs and materials that are not detrimental to the integrity of the substance and do not interfere with its storage or use. Product shelf-life and integrity would not be expected to change, as it is anticipated that the same packaging materials could be used in contact with the product.

In the case of the multiple-dose CR tube packaging, however, it may be necessary, for example, to change from a metal tube to a plastic tube in order to provide a suitable mating surface for a CR cap. A major product manufacturer contacted by the Commission's staff indicated that it could find an appropriate multilayer plastic tube to replace the metal tube, but that the suitability of the new tube would have to be confirmed by protocol and product stability testing.

The Commission concludes, therefore, that special packaging is appropriate because it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission finds that special packaging is technically feasible, practicable, and appropriate.

3. Reasonableness. In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b). However, the Commission is not required to make a positive finding that the standard is reasonable. S. Rep. No. 91–845, 91st Cong., 2d Sess. 10 (1970).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the proposed rule is not reasonable.

4. Other considerations. Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

b. The manufacturing practices of industries affected by the PPPA; and

c. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these items in making the various determinations in this notice.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is final,[4] except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. The Commission concludes that production of CR packaging can be fully implemented within a year from the publication of this rule. Therefore, the final rule will become effective April 10, 1996, as to all products subject to the rule that are packaged on or after that date.

This 1-year effective date may not allow adequate time to modify or replace all multiple-dose tubes, aerosols, and mechanical pumps if unusual difficulties are encountered, if the initial design intended to be CR is found to be unsuitable, or if data on the stability of the package contents need to be approved by the FDA. Where necessary, affected parties using any type of package can apply to the Commission for a temporary exemption for the minimum period required to market their products in CR packaging. Applications for such exemptions should describe the efforts since the issuance of the final rule to implement complying package designs, explain why such efforts were diligent yet unsuccessful, and explain why additional efforts within a limited period should result in a complying package.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The initial certification indicated that the incremental costs for CR packaging for lidocaine preparations in aerosols and squeeze and spray bottles were comparatively low and likely to have a minimal effect on small businesses. Since the proposal, the staff has not received any additional information regarding adverse impacts on small business from comments on the proposed rule or from any other source. Therefore, the Commission concludes that the action to require CR packaging for topical anesthetics containing lidocaine packaged in aerosols, squeeze, and spray bottles will not have a significant economic effect on a substantial number of small entities.

The initial certification indicated also that packaging industry spokespersons were unaware of any appropriate types of CR packages for the small pharmaceutical tubes now used to package lidocaine and dibucaine creams and ointments (and some gels). The analysis concluded that if costs associated with the use of alternate packaging were prohibitive to small manufacturers, they may drop the product from their lines. Since the proposal, the staff has received additional information regarding

[3] There are other potential designs for making metal tubes CR. [26] Those designs are not being relied upon to make the technical feasibility finding in this proceeding, however, because they were not discussed in the proposal and, therefore, not made available for public comment.

One alternative CR package design that can be adapted to the existing metal tubes involves modifying a hinged snap cap. A continuous-threaded cap with a hinged snap cap can be permanently attached to the threads of the tube. The snap cap can be modified by providing a slot to allow opening of the package with a tool. This design, if developed, should be both CR and senior friendly. Moreover, it can be adapted to existing metal tubes and be mass produced without degrading the integrity of the product.

In addition, two prototype closures were made for metal tubes in the past. While these were never developed commercially, the prototypes illustrate different approaches that can be used to achieve CR tube packaging.

Furthermore, a company has indicated that metal tubes can be provided with threads that can accommodate existing continuous-threaded closures known to be child resistant on other package types. [31, 33]

[4] The Commission voted on September 28, 1994, to issue this rule, and, at that time, the Commission directed that the rule would become final on its date of publication in the **Federal Register**. The Commission also directed that the date of publication would be April 8, 1995, or as soon thereafter as practicable.

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adverse impacts of the proposed rule on small businesses.

Industry representatives have confirmed that there are no known CR closures commercially available for the small pharmaceutical tubes currently used to package creams, ointments, and some gels. Although CR unit-dose sachets are available, specific chemical formulations used in various preparations are reported to be incompatible with the materials used for the sachets. Since there is no alternative packaging currently commercially available, some small businesses advise that a PPPA requirement for creams and ointments containing lidocaine or dibucaine will result in the withdrawal of their products from the market. For a few small companies, particularly those with limited product lines or a niche preparation, withdrawal could result in disruption and financial loss, as discussed in Section D of this notice.

The Commission concludes that the action to require CR packaging for topical anesthetics containing lidocaine or dibucaine cream and ointment formulations may have an adverse effect on a few small businesses, but the number of businesses subject to such effects is not likely to be substantial.

For the reasons given above, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed PPPA packaging requirements for topical drug preparations containing lidocaine or dibucaine and presented its findings in the Preliminary Economic Assessment (Revised April 1992). Re-assessment of the possible environmental effects confirms the original determination that the rule will have no significant effects on the environment. There is little likelihood that CR unit dose tubes or sachets will replace the currently used multi-dose tubes. But even if unit dose packaging was available, the amount of additional packaging used would be relatively insignificant. Since there appears to be no alternative packaging for preparations packaged in tubes, the proposal will affect only preparations packaged in bottles and various forms of spray containers. Manufacturers of affected products will have time to use up existing closure inventories and will not need to dispose of them in bulk. The rule will not significantly increase the number of CR packages in use and, in any event, the manufacture, use, and potential disposal of the CR packages present the same potential environmental effects as do the currently used packages.

Therefore, because this rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Possible Changes to the PPPA Test Protocol

For the purpose of determining whether a package is CR, the current regulations provide that a package must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute test and by 80 percent of the panel after an additional 5-minute test. In order to determine that the package can be used by adults, the package must also be able to be opened and, if appropriate, properly closed within 5 minutes by 90 percent of a panel of 100 persons of ages from 18 to 45 years.

On October 5, 1990, the Commission proposed to amend its requirements under the PPPA. 55 FR 40856. In its proposal, the Commission concluded that, if CR packages were easier to use, more people would purchase and properly use CR packaging. Accordingly, the Commission proposed to substitute a panel of 100 older adults, of ages from 60 to 75 years for the panel of 18- to 45-year-olds. The Commission also solicited comment on allowing a 5-minute familiarization period in the adult test, during which the subject must open the package, before the 1-minute test. 56 FR 9181 (March 5, 1991). Other amendments, intended to simplify the current child test procedures, add a procedure for determining whether the package was adequately resecured by the adults, and to ensure that the tests produced more consistent results, were also proposed.

The Commission received a number of comments on the proposed rule, and contracted for additional testing to obtain information to address the comments on the proposed 5-minute/1-minute test. On March 21, 1994, the Commission published a **Federal Register** notice outlining the new information obtained, describing possible changes to the proposed test procedure, and requesting comment on these matters. 59 Fed. Reg. 13264. The possible changes to the test procedure included:

1. Dividing the 60–75-year-olds into 3 age groups and distributing the participants in the groups to reduce variability.

2. Modifying the sequential testing scheme for older adults to provide more certainty about passing or failing "borderline" packages. This involves testing sequential panels of 100 seniors, up to 400 subjects, until a statistically valid determination is made.

3. Adopting the 5-minute/1-minute older adult test on which comment was sought previously.

The additional data also resulted in other minor changes to the proposal and provided information that the Commission can use to address other comments that did not warrant any changes.

The Commission may vote later this year on whether to issue these revisions to the PPPA protocol. Manufacturers of lidocaine- and dibucaine-containing products are urged to consider changing to CR packaging that not only meets the current PPPA requirements but will meet the new procedures that may be adopted. This would eliminate any need to change packaging twice in a relatively short period of time.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

J. Conclusion

For the reasons given above, the Commission amends 16 CFR 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraphs (a)(23) and (a)(24) and the introductory text of paragraph (a) is republished to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(23) Lidocaine. Products containing more than 5.0 mg of lidocaine in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

(24) Dibucaine. Products containing more than 0.5 mg of dibucaine in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

Dated: April 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Memorandum from CPSC's Directorate for Health Sciences, dated June 21, 1990 (toxicity).

2. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989 (technical feasibility, practicability, and appropriateness).

3. Memorandum from CPSC's Directorate for Economic Analysis, dated December 10, 1991 (a. economic information; b. regulatory flexibility analysis; and c. environmental assessment).

4. Death and injury data:

a. CPSC Death Certificate File, 1981, lidocaine.

b. CPSC Injury or Potential Injury Incident File, 1984, lidocaine.

c. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base, 1979, lidocaine.

d. CPSC Death Certificate File, 1987, dibucaine.

e. CPSC Death Certificate File, 1988, dibucaine.

5. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base.

6. CPSC National Electronic Injury Surveillance System Data Base—1978 through April 1990.

7. National Clearinghouse for Poison Control Centers Data Base 1980–1984.

8. AAPCC National Data Collection System 1984–1988.

9. Briefing package, OS #3309, "Draft Proposed Rules—Special Packaging Standards For Topical Anesthetics," February 27, 1992.

10. Briefing package, "Supplemental Information—Special Packaging Standards For Topical Anesthetics," May 27, 1992.

11. Log of Meeting with Ciba Consumer Pharmaceuticals, April 8, 1992.

12. Memorandum from CPSC's Directorate for Economic Analysis, "Market Sketch: Topical Preparations Containing Lidocaine and Dibucaine," Oct. 2, 1990 (revised April 23, 1992).

13. Memorandum from CPSC's Directorate for Economic Analysis, "Supplemental Information on Lidocaine and Dibucaine," April 23, 1992.

14. Memorandum from CPSC's Directorate for Health Sciences, "The Amount of Lidocaine and Dibucaine in Marketsd Products," April 27, 1992.

15. Memorandum from CPSC's Directorate for Economic Analysis, "Amended Economic Data: Proposal to Require Child-Resistant Packaging for Topical Preparations Containing Lidocaine or Dibucaine," dated April 27, 1992 (with revised preliminary economic assessment).

16. Memorandum from CPSC's Directorate for Health Sciences, "Additional Human Experience Data for Lidocaine and Dibucaine," April 27, 1992.

17. Memorandum from CPSC's Directorate for Health Sciences, "Supplemental Information on Lidocaine and Dibucaine," May 28, 1992.

18. Log of Meeting with NDMA Lidocaine/Dibucaine Task Force, October 15, 1992.

19. Comments on proposed rule (10). On file in the Office of the Secretary.

20. Log of meeting with Ciba Consumer Pharmaceuticals, January 11, 1994.

21. Log of Meeting with NDMA Lidocaine/Dibucaine Task Force, May 25, 1994.

22. McClenahan, W., Fatal Poisoning with Dibucaine Hydrochloride (Nuporal) Lozenges, Journal of American Medical Association, 158(7), 565, 1955.

23. Memorandum from Terry L. Kissinger, EPHA, "Response to Comments and analysis of Available Data Regarding Child-resistant Packaging for Topical Anesthetics Containing Lidocaine or Dibucaine," April 29, 1994.

24. Memorandum from Susan C. Aitken, Ph.D., HSPS, "Health Sciences Staff Responses to Comments on Proposed Packaging Standards for Lidocaine and Dibucaine," July 19, 1994.

25. Memorandum from Terry L. Kissinger, EPHA, "Recent Death Involving Ingestion of a Dibucaine-Containing Product," July 27, 1994.

26. Memorandum from Charles J. Wilbur, HSPS, "PPPA Final Rule Lidocaine and Dibucaine Technical Feasibility, Practicability, and Appropriateness," July, 1994.

27. Memorandum from Marcia P. Robins, ECSS, "Final Economic Assessments: Proposal to Require Child-resistant Packaging for Topical Anesthetics Containing Lidocaine or Dibucaine," June 15, 1994, (and telephone conversation 10/1/93).

28. Letter from Vincent De Stefano (Ciba Consumer Pharmaceuticals) to Ann Brown, June 10, 1994.

29. Poison Control Centers Toxic Exposure Surveillance System, 1992.

30. Wilbur, Charles J., Laboratory Report, form 221, Non-CR Finger Mechanical Pump Spray with Overcap, 2 fl. oz., S–400–0802, CPSC, August 2, 1994 (Confidential).

31. Memorandum to file, Mike Gidding, CEAL, "Memorandum of visit to Teledyne Corporation," August 4, 1994.

32. Letter from Andrew S. Krulwich and Julie Jacobs, counsel to Combe, Inc., to Eric A. Rubel, General Counsel, in support of exemption for OTC topical lidocaine preparations, September 8, 1994.

33. Memorandum from Suzanne Barone, HS, to the Commission, "Supplemental Information on Lidocaine and Dibucaine," September 9, 1994.

34. Vote sheet from the Office of the General Counsel to the Commission, with revised **Federal Register** notice, September 9, 1994.

35. Log of meeting and attached material submitted by a manufacturer—FOR OFFICIAL USE ONLY.

36. Letter from John B. Dubeck, Keller and Heckman, on behalf of Pound International, Inc., September 12, 1994.

37. Letter from Jeffrey C. Minnette, Sunbeam Plastics, September 16, 1994.

38. Memorandum from Marcia Robins, ECSS, to Suzanne Barone, Ph.D., Project Manager, HS, "Lidocaine/Dibucaine" (about share of revenue for lidocaine in tubes for three small companies), September 19, 1994.

39. Letter from Andrew S. Krulwich and Julie Jacobs, Wiley, Rein & Fielding, on behalf of Combe, Inc., September 20, 1994.

40. Tape recordings of Commission briefing on September 21, 1994 (portion containing discussion of confidential data is for official use only).

41. Letter from John Dubeck, Keller and Heckman, representing Pound International, September 26, 1994 (non-confidential version).

42. Additional data from AAPCC, September 27, 1994.

43. Revised draft **Federal Register** notice, September 27, 1994.

44. Tape recording of Commission meeting on September 28, 1994.

45. Separate statements of the Commissioners.

[FR Doc. 95–8628 Filed 4–7–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This administrative amendment is published to inform potential FOIA requestors of the geographical coverage of Wyoming from the Western region to the Central region as part of its reorganization. This part also authorizes the "DCAA Label 4" (For official use only coversheet).

EFFECTIVE DATE: (April 10, 1950).

FOR FURTHER INFORMATION CONTACT:

Mr. Dave Henshall, Attn: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6168, telephone 703–274–4400.

List of Subjects in 32 CFR Part 290

Freedom of information.

Accordingly, 32 CFR Part 290 is amended as follows:

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PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation of part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Appendix B to part 290 is amended as follows:

a. Regional office CALIFORNIA is amended after "Oregon" by adding the word "and", and after "Washington" by removing the words, "and Wyoming."

b. Regional office TEXAS is amended after "Wisconsin" by adding the state "Wyoming".

3. Appendix C to part 290 is amended by adding new paragraph (c)(3) to read as follows:

Appendix C to Part 290—For Official Use Only

* * * * *

(c) * * *

(3) *DCAA Label 4, FOUO Cover Sheet.* This form may be used to further identify FOUO information.

* * * * *

Dated: April 3, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8652 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Parts 354, 355, 357, 359, 360, 361, and 374

Organizational Charters; Removal of Parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes obsolete parts concerning organizational charters within the Department of Defense from title 32 of the Code of Federal Regulations: These organizations are specifically identified as Under Secretary of Defense for Policy (DoD Directive 5111.1); Principal Deputy Under Secretary of Defense for Policy (DoD Directive 5111.3); Assistant Secretary of Defense for Nuclear Security and Counterproliferation (DoD Directive 5111.5); Assistant Secretary of Defense for International Security Affairs (DoD Directive 5111.7); Assistant Secretary of Defense for Strategy, Requirements, and Resources (DoD Directive 5111.8); Director of Net Assessment (DoD Directive 5111.9); and Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (DoD Directive 5138.3). These parts have served the purpose for which they were intended and are no longer valid.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 354, 355, 357, 359, 360, 361, and 374

Organization and functions (Government agencies).

PARTS—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR parts 354, 355, 357, 359, 360, 361, and 374 are removed.

Dated: April 3, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8653 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–004]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of revised temporary deviation.

SUMMARY: The Commander, Ninth Coast Guard District, has revised the bridge opening schedule for the authorized 90-day deviation from the operation regulations for the draws of City of Chicago-owned bridges over the Chicago River, Illinois. The deviation is being revised based on all available information, including information and comments presented at the public hearing held on Thursday, March 9, 1995. The revised deviation will provide for daylight weekend openings, and weekday daylight and evening openings on Tuesdays and Thursdays during the Spring breakout period.

DATES: The deviation will be effective from April 15, 1995, through July 13, 1995, unless sooner terminated by the District Commander. Comments on the impacts of the deviation must be received by June 9, 1995.

ADDRESSES: Comments on the deviation may be mailed to Mr. Robert Bloom, Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio. The public docket will be available for inspection or copying in room 2083D, at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Robert Bloom, Chief, Bridge Branch, and Commander James Collin, District Legal Officer, Ninth Coast Guard District.

Background and Purpose

Regulations governing the operation of drawbridges are promulgated under the authority of 33 U.S.C. 499. As amended in 1988, the statute provides that any rules and regulations made in pursuance of this section shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges.

Following notice and comment rulemaking, the Coast Guard promulgated a final rule on April 18, 1994, establishing a new rule for drawbridge operations on the Chicago River. On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff,* v. *Federico Peña, Secretary, United States Department of Transportation, Defendant,* (C.A. No. 94–1152 SSH), rescinding the Final Rule published on April 18, 1994, and reinstating the previous regulations found at 33 CFR 117.391. The regulations reinstated by the District Court provided for on-demand openings of drawbridges except during rush hour periods.

Further, those regulations contained no requirement for advance notice or the use of specified recreational vessel flotilla size. As a result of the Court decision and to gather data for future use, in the Fall of 1994, the District Commander issued a temporary deviation to regulations for the period October 11, 1994 through December 5, 1994, with a comment period through January 15, 1995. The deviation provided openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30

p.m. and 10 p.m. throughout the entire period. In addition, from October 11 through October 23 the draws were opened during the period from 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were opened for vessel passage during the period between 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified.

At the end of the comment period for the temporary deviation to regulations, the Coast Guard received twenty-one comments. One comment letter, from the City of Chicago, expressed opposition to any permanent regulation for the Spring breakout in 1995. In support of its position, the City provided data concerning the number of boat runs during the preceding Spring and Fall seasons, including the number of boats traversing through the drawbridges and the number of times the individual drawbridges were opened and delays that occurred. The City was unable to provide a vehicular traffic count for the Fall, but it stated that it would provide traffic count statistics for the Spring season. In the interim, the City urged a deviation schedule allowing one weekday daylight opening and weekend openings. Thirteen of the other twenty comment letters favored not affecting any change to the regulations that are in place now and expressed opposition to establishing minimums and maximums for recreational vessel flotilla sizes that would be allowed to pass through the bridges. Other commenters indicated that if a change is necessary, there should be daylight openings during the weekdays and openings should not be restricted to strictly nighttime hours from Monday through Friday. These commenters also expressed opposition to establishing a minimum and maximum number of boats that would be required for the bridges to be opened. Representatives from the Chicago River boat yards in their comments stated they did not favor a permanent regulation for the Spring breakout in 1995, but favor the existing regulatory structure.

On February 16, 1995, (60 FR 8941) the District Commander published a Notice of his intent to issue a deviation for the Spring breakout and announced a public hearing to discuss the proposed schedule in the deviation. The proposed deviation would have required the draws to open on demand, except during rush-hour periods for recreational vessels that had provided twenty-four hours notice of their intended passage through the draws.

Public Hearing

The Commander, Ninth Coast Guard District, held a public hearing to solicit comments relative to this deviation which will govern the operation of City of Chicago-owned drawbridges across the Chicago River System during the Spring breakout.

The hearing provided all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard for evaluation to determine if any revisions ought to be made to the proposed deviation.

A Coast Guard representative presided at the hearing, made a brief opening statement describing the proposed temporary deviation to regulations, and announced the procedures to be followed at the hearing. The meeting was well attended and there were multiple presentations, primarily by three interested groups: the City of Chicago, the boatyards, and some national level organizations. A transcript is being made of the hearing and may be purchased by the public through arrangements with Ms. Katherine Kerns, CSR, 79 West Monroe Street, Suite 627, Chicago, IL 60603. She may also be reached at (312) 357–1617.

Summary of Comments at Public Hearing

The City representatives stated they have determined weekday daylight openings are not necessary since all outgoing and incoming flotillas can be accommodated on weekends. Weekday openings are too disruptive to emergency services, commercial vehicular traffic during business hours, and pedestrian and mid-day vehicular traffic.

Businesses in Chicago were not in favor of weekday daylight openings due to disruption of deliveries, public transportation, and emergency services.

Representatives of the boatyards stated that the regulations presently in effect should not be modified until data is collected for an entire navigation season to depict seasonal changes of impact.

The boaters stated not all boatowners are available to join flotillas on weekends, but they can join flotillas during the weekday daylight hours. Nighttime navigation, in their opinion, during the week is not conducive to safety.

Based on the comments from the public hearing and all available data the District Commander is revising the authorized deviation for the Spring breakout period to better address the concerns which were expressed by those participating in the public meeting.

The concerns raised at the public meeting and the data submitted to the Coast Guard at this point are insufficient to provide a basis for a permanent regulatory change. They nonetheless provide a framework for making revisions to the Spring deviation, particularly in light of the 1988 statutory amendment. This deviation period will be preliminary to the permanent rulemaking project to be conducted as a formal Negotiated Rulemaking, announced by separate notice elsewhere in today's issue of the **Federal Register**. The Coast Guard intends to charter a Negotiated Rulemaking Committee to develop a proposed permanent rule based on information and comments gathered during this and previous deviation periods as well as new information to be developed by the Committee during the rulemaking. The Coast Guard is requesting participation by both the City of Chicago and the interested boatyards and is asking them to submit data and impact assessments relating to this and other deviations in order to assist the Committee members in formulating any proposed changes to the current regulations. In particular, the Coast Guard requests the City of Chicago to provide information on unreasonable impacts upon vehicular traffic resulting from bridge openings at inopportune time; inequities or adverse impacts on other modes of transportation resulting from bridge openings at particular times; vehicular traffic counts showing directional flow (in fifteen minute increments over a period of at least fourteen consecutive days); reports of delays experienced by emergency vehicles (fire, ambulance, police) due to bridge openings; bridgetender logs for the 1994 navigation season (1 April 1994 through 5 December 1994); and current costs for operation of the bridges to provide for the passage of recreational vessels both under the provisions of this deviation and under the current permanent regulations. The boatyards and boat operators are requested to provide information concerning the impacts of the deviation on their ability to prepare vessels for the Spring breakout, and the needs of boat operators, including the ability to traverse the Chicago River on weekends or at stated weekday hours, the ability to form flotillas, the practicality of advance notices scheduling drawbridge openings, problems presented by traversing the Chicago River at night, and any other information which will be helpful to the Negotiated Rulemaking

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Committee in balancing the operational needs of the boatyards with the needs of the City and other modes of transportation.

The District Commander has authorized the temporary deviation to commence on April 15, 1995, and remain in effect for a period of ninety (90) days. This deviation will require that the City open their bridges for the passage of recreational vessels on Saturdays and Sundays from 7 a.m. to 7 p.m., on Tuesdays and Thursdays from 10:30 a.m. to 1:30 p.m., and on Tuesday and Thursday evenings from 6:30 p.m. to 11:30 p.m. All openings require twenty-four hour advance notice of intended passage be given to the City.

The bridges subject to this deviation need not open for the passage of any vessels from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m., Mondays through Fridays. The Coast Guard anticipates that the boatyard owners and boaters will coordinate the movement of vessels from the boatyards to Lake Michigan and, to the extent practicable, arrange for the vessels to move in flotillas so as to minimize the number of bridge openings required. No requirement for minimum flotilla size will be imposed, however past experience indicates that an upper target of approximately 25 vessels is appropriate and will be enforced. This deviation will facilitate data gathering and scheduling and will support safety while addressing concerns of all parties during the Spring period when most recreational vessels traditionally return to Lake Michigan from winter storage at the Chicago River boat yards. The temporary deviation from the operating requirements at 33 CFR 117.391 governing bridges owned by the City of Chicago over the Chicago River will read as follows:

The bridges affected by this deviation are listed below:

Main branch	South branch	North branch
Lake Shore Drive.	Lake Street ..	Grand Avenue.
Columbus drive.	Randolph Street.	Ohio Street.
Michigan Avenue.	Washington Street.	Chicago Avenue.
Wabash Avenue.	Monroe Street.	N Halsted Street.
State Street ..	Madison Street.	
Dearborn Street.	Adams Street.	
Clark Street ..	Jackson Boulevard.	
LaSalle Street.	Van Buren Street.	
Wells Street .	Eisenhower Expressway.	
Franklin-Orleans Street.	Harrison Street.	
	Roosevelt Road.	
	18th Street.	
	Canal Street.	
	South Halsted Street.	
	South Loomis Street.	
	South Ashland Avenue.	

This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, and applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall operate as follows:

(a) The bridges covered by this deviation need not open for the passage of vessels Mondays through Fridays from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m.

(b) On Saturdays and Sundays the draws shall open on signal between the hours of 7 a.m. and 7 p.m.

(c) On Tuesdays and Thursdays the draws shall open on signal between the hours of 10:30 a.m. and 1:30 p.m.

(d) On Tuesdays and Thursdays the draws shall open on signal between the hours of 6:30 p.m. and 11:30 p.m.

(e) Except for emergencies, all openings require that 24 hours advance notice of intended passage be given to the City.

(f) Not more than 25 vessels shall pass through the bridges during one opening.

(g) This period of deviation is effective from April 15, 1995 through July 13, 1995.

Dated: April 5, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 95–8758 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–035]

RIN 2115–AA97

Safety Zone: Transatlantic Reinsurance Co. Fireworks, Upper New York Bay, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks program located in Federal Anchorage 20C in Upper New York Bay, New York. This safety zone will be in effect on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The safety zone will temporarily close all waters of the Upper New York Bay, within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is effective on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

Background and Purpose

On March 17, 1995, Fireworks by Grucci submitted an application to hold a fireworks program in the waters of Upper New York Bay, off of Liberty Island, New York. This regulation establishes a temporary safety zone in all waters of the Upper New York Bay within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 074°02′25″W longitude. The safety zone will be in effect on May 9, 1995 from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

This safety zone precludes all vessels from transiting this portion of the Upper New York Bay and is needed to protect

mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Upper New York Bay to all vessel traffic on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons. Due to the fact that this safety zone will not impact any navigable channel; that the duration of the event is limited; that the event is at a late hour; and that extensive, advance advisories will be made to the maritime community, the impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are no dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.13, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, § 165.T01–035, is added to read as follows:

§ 165.T01–035 Safety Zone; Transatlantic Reinsurance Co. Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Loction.* All waters of Federal Anchorage 20C, Upper New York Bay, within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 074°02′25″W longitude.

(b) *Effective period.* This safety zone is in effect on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR Section 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated March 31, 1995.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–8641–Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 20

Implementation of WORLDPOST Priority Letter; Correction

AGENCY: Postal Service.

ACTION: Interim rule; Correction.

SUMMARY: This document contains a correction to the interim rules published on March 17, 1995 (60 FR 14370–14371). Those rule relate to the implementation on March 16, 1995, of WORLDPOST Priority Letter, a new international postal service.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Janet M. Mitchell, (202) 268–6095

In the rules beginning on page 14370 in the issue of Friday, March 17, 1995, make the following correction:

On page 14371 in the second column, under section 226.32, Service Areas, the last line of the ZIP Code service area shown in the chart was "20910–20912, 222, 223". This line should read "20910–20912, 220–223".

Dated: April 5, 1995.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8778 Filed 4–7–95; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5187–7]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this document adds the Office of Management and Budget (OMB) control

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numbers issued under the Paperwork Reduction Act (PRA) for Control of Air Pollution; Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines At or Above 37 Kilowatts.

EFFECTIVE DATE: This final rule is effective May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313)668–4502.

SUPPLEMENTARY INFORMATION:

A. Legal Authority to Amend Part 9

EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the final rulemaking which appeared in the **Federal Register** on June 17, 1994 (59 FR 31306). This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

B. Burden Statement

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned control number 2060–0287.

This collection of information has an estimated reporting burden averaging 5,800 hours for a typical engine manufacturer. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St. SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503, marked "Attention: Desk Officer for EPA".

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: April 3, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901–6992k, 7401–76711, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
Control of Emissions From New and In-Use Nonroad Engines	
. . . . .	
89.114–96 through 89.120–96 .	2060–0287
89.122–96 through 89.127–96 .	2060–0287
89.129–96	2060–0287
89.203–96 through 89.207–96 .	2060–0287
89.209–96 through 89.211–96 .	2060–0287
89.304–96 through 89.331–96 .	2060–0287
89.404–96 through 89.424–96 .	2060–0287
. . . . .	

[FR Doc. 95–8741 Filed 4–7–95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[AZ31–1–6531; FRL–5173–6]

Approval and Promulgation of Implementation Plans; Arizona-Phoenix Nonattainment Area; PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on July 28, 1994. The revision was submitted to EPA by Arizona to fulfill the State's obligation to revise its SIP to meet the PM_{10} (particulate matter less than or equal to 10 microns in aerodynamic diameter) "moderate" area planning requirements of the Clean Air Act (CAA or Act). This approval action will incorporate this revision into the federally approved SIP. The intended effect of approving this revision is to regulate emissions of PM_{10} in the Phoenix Planning Area (PPA). The revised SIP controls PM_{10} emissions from sources including, but not limited to, paved roads, construction and demolition activities, unpaved parking areas and roads, nonmetallic mineral mining and processing facilities, open burning activities, uncovered haul trucks and farming operations. Thus, EPA is finalizing the approval of this revision into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on May 10, 1995.

ADDRESSES: Copies of the SIP revision are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revisions are available for inspection at the following locations:

Plans Development Section (A–2–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Robert Pallarino, (415) 744–1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements

On the date of enactment of the 1990 Clean Air Act Amendments, PM_{10} areas, including the PPA, meeting the conditions of section 107(d) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM_{10} nonattainment areas were initially classified as "moderate" by operation of law. See 40 CFR 81.303 (1993). A moderate area may subsequently be reclassified as "serious" if at any time EPA determines that the area cannot practicably attain the PM_{10} NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area is reclassified by operation of law if the area is not in attainment after the applicable attainment date, which is December 31, 1994 for the PPA. EPA is required to make a determination and provide public notice regarding whether the area has attained within six months following the attainment date. See Section 188(b), 42 U.S.C. 7513(a).

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued guidance in its General Preamble describing EPA's views on how the Agency will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM_{10} nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of the EPA's interpretation of the Title I requirements.

States with initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991: [1]

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; [2] and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area.

In today's rulemaking action, EPA is taking final action to approve Arizona's moderate PM_{10} SIP revision for the PPA, which includes the State's demonstration that attainment of the PM_{10} NAAQS by December 31, 1994, is impracticable for the PPA. EPA is also announcing its intention to reclassify the PPA as a serious nonattainment area pursuant to section 188(b)(2). However, EPA is not making a finding as to whether the PPA has attained the PM_{10} NAAQS in today's action, but, as discussed elsewhere in this Notice, will be doing so in a separate action in the coming months. See Section III. Once EPA determines the PPA has not attained the PM_{10} NAAQS, the area will be reclassified to serious by operation of law.

B. Proposed SIP Approval

EPA proposed approval of the moderate area PM_{10} SIP revision for the PPA on July 28, 1994 (59 FR 38402). EPA's proposed approval was based on a preliminary finding that the State's submittal meets the requirements of the Act, including: (1) an inventory of all sources of PM_{10} in the nonattainment area; (2) provisions to implement RACM by December 10, 1993; and (3) a demonstration that attainment of the PM_{10} NAAQS by the moderate area attainment date, December 31, 1994, is impracticable.

EPA proposed simultaneously to approve Maricopa County Rule 310—Open Fugitive Dust Sources, 311—Particulate Matter from Process Industries, 314—Open Outdoor Fires, and 316—Nonmetallic Mineral Mining and Processing, as new rules the State adopted as RACM for the PPA. EPA also proposed to reclassify the PPA as a serious area and invited public comment on whether final action should occur under section 188(b)(1) or 188(b)(2) of the CAA.

II. Today's Action

In today's document, EPA is taking final action to approve the moderate area PM_{10} state implementation plan revision for the PPA. The SIP revision for the PPA was submitted by the State of Arizona on August 11, 1993 and March 3, 1994. Maricopa County Rule 314 was adopted by the State and submitted to EPA on January 4, 1990. The State also submitted a revised version of Maricopa County Rule 310—Open Fugitive Dust Sources on December 19, 1994. The County revised this rule to delete provision 221.9 of the Rule as requested by EPA. See 59 FR 38407, July 28, 1994. Specifically, EPA is approving and incorporating by reference into the SIP the MAG 1991 Particulate Plan for PM_{10} for the Maricopa County Area and 1993 Revisions, the Revised Chapter 9 and Maricopa County Rule 311—Particulate Matter from Process Industries and Rule 316—Nonmetallic Mineral Mining and Processing, Maricopa County Rule 314—Open Outdoor Fires and Maricopa County Rule 310—Open Fugitive Dust Sources. EPA is also stating its intention, but is not taking final action at this time, to reclassify the PPA under section 188(b)(2) of the Act. EPA is not taking final action on its proposal to reclassify the PPA under section 188(b)(1) of the Act.

III. Reclassification

As stated above, EPA is not reclassifying the PPA in this document. However, EPA intends to propose reclassification of the PPA to a serious area pursuant to section 188(b)(2) of the Act.

The Act provides two mechanisms for reclassifying moderate PM_{10} nonattainment areas as serious PM_{10} nonattainment areas. Section 188(b)(1) gives EPA the discretion to reclassify any area which EPA determines cannot practicably attain the NAAQS by the applicable attainment date at any time before the attainment date. In the case

[1] There are additional submittals associated with moderate PM_{10} nonattainment plans, such as a permit program for the construction of new and modified major stationary sources and contingency measures. See sections 189(a) and 172(c)(9). These submittals were required to be submitted in 1992 and 1993, respectively, and are not the subject of today's action which addresses only those plan provisions required to be submitted on November 15, 1991.

[2] As discussed in the Federal Register notice proposing approval of this plan, the PM_{10} plan for the PPA does not demonstrate attainment by December 31, 1994, but rather includes the alternative demonstration that attainment by that date is impracticable. Therefore, section 189(c) does not apply. However, as discussed further in this notice, areas demonstrating that attainment is impracticable are required by section 172(c)(2) to demonstrate RFP. See Section IV. of this Notice, "Reasonable Further Progress".

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of the PPA, the CAA-mandated attainment date was December 31, 1994. The second mechanism for reclassification, provided by section 188(b)(2), is to make a finding after the attainment date has passed that the area has not attained the NAAQS.

The difference between these two mechanisms involves the timing of submittals of certain plan provisions. Under section 188(b)(1), if EPA were to take final action on its proposal to reclassify the PPA as serious (see 59 FR 38406, July 28, 1994) the State would be required to submit its serious area SIP revision in two parts. Within 18 months of the final action reclassifying the PPA, the State would be required to submit provisions to assure the implementation of best available control measures (BACM) no later than four years after the date of reclassification. The State's demonstration that the plan provides for attainment of the PM_{10} NAAQS by the serious area attainment date (December 31, 2001) would have to be submitted within four years of the date of reclassification.

Under section 188(b)(2) of the Act, if EPA makes a determination after the moderate area attainment date has passed that the PPA has not attained the NAAQS, then within 18 months after the date of reclassification, the State is required to submit provisions to assure the implementation of BACM no later than four years after the date of reclassification and a demonstration that the plan will provide for attainment of the PM_{10} NAAQS by December 31, 2001. The practical difference in these two approaches is the timing of the submittal of the attainment demonstration and how it affects the BACM determination.

Under section 188(b)(1), the State would initially develop its BACM determination in the absence of an attainment demonstration with the potential result that the chosen measures would not ultimately attain the PM_{10} standards by the applicable attainment date. Such a result, however, would not be revealed until several years later, when the air quality modeling analysis is conducted for the attainment demonstration. If, at that point, additional measures were found to be necessary for the area to attain the PM_{10} NAAQS, new measures would have to be developed, adopted and submitted to EPA. In contrast, under section 188(b)(2), all the required elements of the serious area plan including the attainment demonstration must be submitted to EPA within 18 months of reclassification. Thus, under section 188(b)(2), EPA believes the process of attaining the PM_{10} standards is expedited.

In its notice of proposed rulemaking, EPA expressed its intent to reclassify the PPA under section 188(b)(2) of the Act. EPA believed that since the State originally concluded that the PPA could not practicably attain the PM_{10} NAAQS by December 31, 1994 when it developed its November 1991 plan submission and that, despite procedural delays and plan updates culminating in the 1993 and 1994 SIP submittals, this conclusion has not changed, the State has been on notice for more than three years that reclassification was likely. Under these circumstances, a delay of four years for the submission of a serious area attainment demonstration is unwarranted. Rather, the Agency believed that it is more appropriate to accelerate, to the maximum extent possible, the State's submission of a complete serious area plan to attain the PM_{10} NAAQS.

Notwithstanding the reasons above, EPA stated in its proposed rulemaking that there could be valid reasons advanced for reclassifying the PPA under section 188(b)(1). Therefore, EPA proposed to reclassify the PPA using its discretionary authority under section 188(b)(1). EPA stated its intent to finalize the reclassification under section 188(b)(1) only if it received compelling arguments from commenters. EPA received comments on the issue of reclassification from the Arizona Department of Environmental Quality (ADEQ), Maricopa Association of Governments (MAG), Maricopa County Environmental Services Department (MCESD), Arizona Department of Transportation (ADOT), and Arizona Center for Law in the Public Interest (ACLPI). The comments from ADEQ, MAG, MCESD, and ADOT all encouraged EPA to reclassify the PPA immediately under section 188(b)(1). These commenters were concerned that the State's ability to complete the required technical elements of the serious area SIP revision, particularly an improved and updated emission inventory and an accurate air quality analysis including air quality modeling, would require the longer submittal time for a demonstration of attainment afforded under section 188(b)(1) of the Act. Many of the commenters also argued that taking final action to reclassify the PPA before the moderate area attainment date would expedite the air quality benefits which would be provided by the serious area plan since the BACM implementation date would occur sooner.

EPA has not been persuaded by these comments to reclassify the PPA under section 188(b)(1). EPA believes that the State has been aware for a number of years that, even taking into consideration the implementation efforts it has now undertaken in complying with the PM_{10} Moderate area planning requirements, that it was impracticable to demonstrate attainment of the PM_{10} NAAQS by December 31, 1994. Thus, EPA does not believe the State has provided any valid basis to delay submittal of an attainment demonstration by four years. Furthermore, the schedule for developing and submitting the technical elements of the serious area SIP revision is no different than the schedule for submitting a complete SIP revision for areas designated nonattainment after the passage of the 1990 CAA amendments. Under section 189(a)(2)(B) these areas are required to submit SIP revisions within 18 months after the date they are redesignated. The requirements for developing the technical elements of a serious area SIP are not substantially different from those for a moderate area.

Regarding the BACM implementation date, the Act simply states that BACM is to be implemented no later than four years after reclassification to serious. Under the overall scheme of the Act, the State is certainly permitted and, in fact, encouraged to implement BACM on as expeditious a schedule as practicable before the four-year deadline.

EPA also notes that ACLPI opposed reclassification of the PPA under 188(b)(1) because it would have the effect of rewarding the State's delay in preparing its PM_{10} SIP by giving the State four years instead of 18 months to submit its serious area plan revision. However, EPA is not taking final action to reclassify the PPA under section 188(b)(1). For the reasons stated above, EPA believes that reclassification under section 188(b)(2) is the appropriate action to take in this case. EPA will be reviewing the PM_{10} monitoring data for the PPA and will make an official determination of whether the PPA has attained the PM_{10} NAAQS by June 30, 1995 or sooner. To demonstrate attainment of the PM_{10} NAAQS by the applicable attainment date (December 31, 1994), the PPA would need to show that it has had no violations of the PM_{10} standards, 24 hour and annual, in the past three years (1992, 1993, and 1994). 40 CFR part 50, appendix K. The State recorded violations of both standards in 1992 and 1993.

IV. Reasonable Further Progress

Section 172(c)(2) of the Act states that nonattainment area plans shall require

reasonable further progress (RFP). RFP is defined by section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date." However, there is a gap in the statute in that the PM_{10} specific provisions of the Act do not clearly specify when and in what manner states containing PM_{10} nonattainment areas that ultimately demonstrate it is impracticable to attain the NAAQS by the Moderate area deadline, such as the PPA, which is the subject of this document, must demonstrate they have met the RFP requirement. While section 189(c)(1) of the Act requires PM_{10} SIP revisions to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which must also demonstrate reasonable further progress, that section, by its explicit terms, only applies to areas with "plan revisions demonstrating attainment." However, while it appears that the Act does not provide specifically for a quantitative milestone reporting requirement showing RFP is met for areas that demonstrate it is impracticable to attain the PM_{10} NAAQS by the applicable deadline, EPA nonetheless believes, based on the general nonattainment area provisions regarding RFP as well as the overall purpose and structure of Title I and Part D of the Act, that such areas are not thereby relieved of the obligation to periodically demonstrate that they are meeting the requirement for RFP. Consequently, for purposes of implementing the RFP requirement for such areas, EPA believes that where the language in section 171(1) indicates that the purpose of the RFP reductions is to ensure "attainment of the applicable [NAAQS] by the applicable [attainment] date," the applicable attainment date for areas demonstrating that it is impracticable to attain would be the date set by section 188(c) when the area is reclassified as serious. Similarly, since the Act does not explicitly provide for states with PM_{10} nonattainment areas which demonstrate it is impracticable to attain to submit periodic reports demonstrating that RFP is being met, such as is required under section 189(c)(1) for PM_{10} areas which demonstrate attainment, EPA believes it may invoke the discretionary authority provided the Agency under section 110(p) of the Act to require the submittal of such reports. That section states that "any State shall submit" such reports as EPA may require, and on such schedules as EPA may prescribe, providing information on specific data but also including "any other information [EPA] may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this Act." The initial RFP report for such areas is to be included in the SIP submittal containing the area's demonstration of impracticability, and should show that even though the emissions reductions achieved through the implementation of all RACM may not be enough to enable the area to demonstrate attainment by the Moderate area deadline of December 31, 1994, such implementation has resulted in "incremental reductions" in emissions of PM_{10} as the RFP definition in section 171(1) specifies. Once the area has been reclassified, subsequent RFP report submittals will be timed to reflect emissions reductions which will be achieved due to the implementation of BACM. In summary then, EPA's policy is that the requirement to submit periodic reports demonstrating that RFP (as defined in section 171(1)) is being met applies equally to PM_{10} nonattainment areas that demonstrate attainment by the applicable deadline and to such areas that demonstrate it is impracticable to attain by such date; for the former areas the requirement applies pursuant to sections 189(c)(1) and 172(c)(2), for the latter areas the requirement applies pursuant to sections 172(c)(2) and 110(p). As described in greater detail elsewhere in this document, the Phoenix Planning Area, has provided information along with its impracticability demonstration, which proves to EPA's satisfaction that it has met the requirement to demonstrate RFP. Finally, the discussion in this document regarding the demonstration of RFP in PM_{10} nonattainment areas which demonstrate that attainment by the applicable attainment date is impracticable represents EPA's preliminary guidance on this issue, and is intended to clarify the confusion created by omissions in the Act and in prior EPA guidance. EPA also intends, in the very near future, to issue more comprehensive guidance on this issue.

V. Response to Comments on Proposed SIP Approval

Only ACLPI commented on EPA's proposed approval of the SIP revision; other commenters addressed reclassification. EPA appreciates the comments submitted by ACLPI, which are detailed and thoughtful. Some of the comments raise difficult issues regarding the State's compliance with complex planning requirements, which often depend on coordination between a number of local governments. ACLPI's most detailed comments concern the State's implementation of RACM, particularly Transportation Control Measures (TCMs). In this document, EPA is providing its general response to ACLPI's comments on the implementation of RACM, and EPA is also providing very detailed responses concerning individual TCMs and other specific measures raised in ACLPI's comments in the Technical Support Document (TSD) accompanying this document.

A. Technical Issues

1. Monitoring

Comment: The PM_{10} SIP revision for the PPA does not provide for the establishment and operation of a PM_{10} monitoring network which meets the requirements of EPA guidelines and regulations. According to a 1992 EPA audit, the monitoring network for the Phoenix area "fails to meet many of the minimum CFR requirements".

Response: EPA disagrees with the comment. The PM_{10} SIP revision provides for establishing and operating a PM_{10} monitoring network in the PPA which meets the requirements of EPA guidelines and regulations. 40 CFR part 58; "Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58." The relevant provisions of the PPA's monitoring network are in Appendix B, Exhibit 14 of the SIP revision. Appendix B, Exhibit 14 also discusses proposed modifications to the network and the method by which the Maricopa County Environmental Services Department (MCESD) will address episode occurrences.

Since a 1992 Re-Evaluation of the Maricopa County Air Pollution Control Program that was conducted by EPA, the MCESD has made and documented progress to meet the requirements in 40 CFR parts 50 and 58. The MCESD was required by the Agency to develop a Corrective Action Plan (CAP) to address deficiencies documented in the 1992 Re-Evaluation. The progress on the CAP is being monitored by EPA, Region IX Air Quality Section and Compliance and Oversight Section, through review and verification of progress reports by MCESD and visits with the MCESD Air Monitoring Program personnel. EPA has also withheld federal grant money to encourage the MCESD to address CAP commitments and regulatory requirements in a timely manner. There have been improvements by MCESD,

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including revising the Quality Assurance Program Manual (conditionally approved by Region IX pending minor additions), revamping its entire PM_{10} network with new equipment including four continuous PM_{10} samplers, quality assurance training for air monitoring staff, and others.

Comment: A 1992 audit by Dames and Moore (DM) found that the monitoring network did not have adequate numbers of neighborhood scale and middle scale monitors, as directed by EPA guidance. Several homogenous subregions in the area have no monitoring station or one station. In addition, little or no monitoring is conducted within 500 meters from several major sources. DM also found that the total number of monitoring stations is far below that required by EPA guidance. Under EPA spatial siting guidelines, there should be approximately 94 monitoring stations in the nonattainment area. Yet the SIP shows only 9 permanent PM_{10} stations. DM also found that the monitoring program was inadequately staffed.

Response: EPA does not agree with the DM audit's comments on network adequacy, particularly concerning the necessary number of air monitoring sites recommended by DM. EPA criteria, in 40 CFR part 58, requires the Maricopa County network to consist of six (6) to ten (10) National Air Monitoring Stations (NAMS). The district is also required to operate State and Local Air Monitoring Stations (SLAMS). Part 58 does not contain a numerical requirement for SLAMS. Maricopa County's network consists of six (6) NAMS, two (2) SLAMS, and five (5) Special Purpose Monitoring Stations (SPMS), for a total of thirteen (13) SLAMS (NAMS are defined as a subset of SLAMS). The network's only deficiency is that it lacks a category (a) NAMS site with a high concentration monitoring objective. But this deficiency is being corrected and a special purpose monitor has been set up at the proposed location for a Category (a) site. An EPA protocol provides that this sampler will be run for at least one year. The data will then be evaluated to determine if the site meets the objectives and should be proposed as a NAMS. However, even without a category (a) site, the MCESD air monitoring network is measuring PM_{10} values above the 24 hour standard.

Part 58 requirements for ambient air monitoring networks intend the SLAMS networks to be representative of the four basic monitoring objectives stipulated in part 58 over the air basin. See 40 CFR part 58, appendix D. Annual network reviews are requested of the districts and evaluated by the EPA to insure it is representative of the monitoring stations and to insure optimum use of resources. EPA, therefore, disagrees that 94 monitoring stations should be required in the nonattainment area.

Comment: In a May 15, 1992 letter to the State EPA stated that the SIP must include provisions for follow-up monitoring and annual network reviews. The State was to insure that the monitoring network in place as of January 1, 1994, would be appropriate to evaluate attainment. EPA also stated that the SIP revision should include a plan for establishing PM_{10} episode monitoring stations. None of these requirements have been met in the form of enforceable, funded commitments by the State or local governments.

Response: The State has addressed these requirements in the PM_{10} SIP revision for the PPA which is enforceable now on the State level, and which will be enforceable federally once this final notice becomes effective. Appendix B, Exhibit 14 contains additional information on the County's air quality surveillance system. Appendix B, Exhibit 15 contains the County's Rule 5_{10}—Air Quality Standards—which provides for the establishment of pollutant monitoring in accordance with EPA guidance and Federal regulations. Appendix B, Exhibit 16 contains the County's Rule 600 which addresses emergency episodes. Appendix B, Exhibit 17 contains further information on the State's procedures for the prevention of emergency episodes.

Comment: The technical support document accompanying EPA's proposed rulemaking asserts that the SIP provides for correction of the monitoring deficiencies by January 1, 1994. We ask EPA to identify precisely where the SIP shows a legally enforceable commitment to this effect, and where the SIP shows a commitment of financial resources to complete the job. Moreover, because the January 1, 1994 date has long since passed, the correction of deficiencies should now be complete. We ask EPA to indicate where the State has documented actual correction of the deficiencies, if this has in fact occurred.

Response: As discussed in the preceding response, Maricopa County has made documented progress in meeting all of the Federal air quality monitoring requirements. The appendices to the PM_{10} plan, cited above, provide specific information on the County's progress in correcting deficiencies with the monitoring network.

2. Emission Inventory

Comment: The State's emission inventory is not accurate or current as required by the CAA.

Response: EPA disagrees with this comment and believes that the emissions inventory is accurate to within an acceptable degree of uncertainty. The State followed EPA-recommended emissions inventory procedures in use at the time of inventory preparation. A degree of uncertainty is particularly associated with PM_{10} inventories because PM_{10} emissions are especially time- and place-specific. Emission factors from a study in one area may differ for another area. PM_{10} emissions also vary with activity levels and there are many activities, such as residential wood burning, for which there has been little accurate quantification. EPA recognizes that there are some differences between the emissions inventory fractions estimated from usual inventory methods and the source proportions determined from Chemical Mass Balance (CMB) modeling. However, EPA does not consider these differences to invalidate the inventory. The monitored results used in the CMB analysis reflect differences in distance, dispersion, and deposition of the emissions from various PM_{10} sources. A source's contribution at a particular monitor is not expected to be in the same proportion as its contribution to the area's total emissions. This explains the inventory/CMB discrepancies.

Furthermore, accuracy of the emissions inventory is not critical to demonstrating impracticability of attainment. This is because a demonstration of impracticability may be based on the CMB apportionment results and not specifically on the emissions inventory. The inventory total is used only as a normalization scaling factor. EPA may have reached a different conclusion if, for example, the State sought to rely on a dispersion model, which requires a more accurate emissions inventory, instead of the CMB receptor model. However, based on the selected modeling, EPA believes that the inventory is sufficiently accurate to comply with the requirements of the Act and, more specifically, to serve as the basis for the demonstration of impracticability.

3. Modeling

Comment: The SIP does not meet the requirements of the Act and EPA guidance for an adequate modeling analysis.

Response: EPA disagrees with this comment. The State's modeling complies with EPA guidelines, which allow for a receptor model such as CMB even though a dispersion model is recommended when possible. See Memorandum from John Calcagni, "PM_{10} SIP Demonstrations Policy for Initial Moderate Areas" (March 4, 1991).

EPA recognizes that the State attempted to validate a dispersion model but was unsuccessful, in large part because of the degree of spatial and temporal accuracy required in the emissions inventory for use as input to a dispersion model. EPA believes that the State provided a reasonable level of effort to develop its dispersion model. Because it failed, however, the State is justified (and provided its justification in the SIP revision) in using a CMB receptor model. EPA has determined that the State's modeling complies with EPA guidelines.

EPA also anticipates the PPA will be reclassified as a serious area. Reclassification will provide additional time for the State to improve its modeling. When the State ultimately seeks to make an attainment demonstration, EPA will apply more stringent criteria for the spatial and temporal accuracy of the emissions inventory, corroborating models, and treatment of secondary particulates. Nevertheless, EPA believes that the modeling submitted by the State in this PM_{10} SIP revision complies with the requirements and guidance established by EPA for a moderate area SIP revision and demonstration of impracticability.

Comment: EPA's proposed finding that PM_{10} precursors do not contribute significantly to PM_{10} levels that exceed the NAAQS in the PPA was made without any objective standard against which to measure significance. EPA's proposed action on this issue is arbitrary and capricious.

Response: EPA disagrees with this comment. EPA recognizes that on individual sampling days there were detectable contributions of one PM_{10} precursor, secondary ammonium nitrate. Yet the average overall contribution of secondary ammonium nitrate was less than five percent of the total annual inventory. See 1989–1990 Phoenix PM_{10} Study, Volume II: Source Apportionment, DRI, April 12, 1991, p. S–2. This magnitude of contribution is not significant for purposes of this action, although EPA acknowledges that such a contribution might warrant further attention if the State were attempting to submit an attainment demonstration for the 24-hour NAAQS. EPA believes that a contribution of less than five percent secondary ammonium nitrate is within the degree of uncertainty and is near the "noise" level for CMB results.

In general, because of the complexity of the chemistry involved, there is no EPA-recommended method and no scientific consensus for dealing with secondary particulates. A number of PM_{10} areas have dealt with this problem by assuming that secondary particulates are roughly proportional (or scale) to emissions of primary particulates. EPA believes that in the absence of better scientific or technical information, including better EPA guidance, this approach is reasonable. Consistent with this approach, the PPA scaled down their total PM_{10} emissions inventory to exclude the contributions from PM_{10} precursors. Indeed, if the PPA had included the contributions from PM_{10} precursors, this would have resulted in the recording of proportionately higher concentrations of PM_{10} in excess of the NAAQS. Therefore, if the PPA had explicitly accounted for the contribution of PM_{10} precursors, the State's conclusion that attainment is impracticable would be strengthened, not weakened.

4. Mobile Source Budget

Comment: ACLPI states that in order to determine conformity of transportation plans, projects, and programs with this SIP, a mobile source emission budget must be identified.

Response: EPA does not agree that the State was required to identify a mobile source emission budget. The moderate area SIP revision for the PPA demonstrates that attainment of the PM_{10} NAAQS is impracticable by December 31, 1994. Mobile source emission budgets are only required to be identified in SIP revisions which demonstrate attainment. The preamble to EPA's transportation conformity rule states:

> Some moderate PM_{10} nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM_{10} standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity.

58 FR 62196, November 24, 1993.

Thus, EPA's transportation conformity rule explicitly contemplated and determined that PM_{10} areas demonstrating impracticability, like the PPA, would not have provided for and would not be required to identify a mobile source emission budget until an approvable attainment demonstration is submitted.

B. Demonstration of Impracticability

Comment: The State's demonstration of the impracticability of 1994 attainment is contrary to both the language and purpose of the Act. The plain thrust of sections 188 and 189, in combination with section 172, is that states should make every effort to attain by 1994. Rather than searching for combinations of control measures that would produce timely attainment, the state merely lists 13 control measures, asserts that they are insufficient to attain by 1994, and then "finds" that impracticability has been demonstrated.

Response: EPA disagrees. As discussed throughout this document, including in relevant responses to comments, EPA has determined that Arizona has implemented all RACM, and that the correct number of implemented measures is 67. EPA has also determined that the PPA has complied with the requirement of section 172(c)(2) that it demonstrate it is meeting RFP, by showing a measurable increment of PM_{10} reductions between the baseline and the emissions reductions achieved through implementation of all RACM. EPA believes, therefore, that Arizona's SIP submittal does not contain mere assertions, but appropriate and acceptable demonstrations that are consistent, not only with the criteria contained in EPA's guidance, but with the Act's language and purpose as well. Again, as discussed further elsewhere in this Notice, EPA also believes that Congress recognized that many areas initially designated Moderate for PM_{10} would not be capable of developing SIP revisions which demonstrated attainment by the applicable attainment date. This is evident by the fact that, for PM_{10}, the Act also allows States to demonstrate earlier than the applicable attainment deadline that implementation of RACM will not provide for attainment and, thus, that attainment by the Moderate area deadline is impracticable. Since this provision is unique to PM_{10} (the Act generally provides fixed attainment dates for other pollutants which, if the area fails to meet, subjects it to a mandatory "bump-up"), it seems clear that the language and intent of the Act are to first provide PM_{10} areas with an opportunity to attain the NAAQS through the implementation of reasonable, but not necessarily exhaustive, efforts (i.e. RACM), and then to provide those areas that cannot achieve the NAAQS by the applicable attainment date with an alternative—to demonstrate that attainment is impracticable. However, such areas

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must then go through a second planning effort which will require the implementation of more stringent measures, i.e. BACM.

Comment: ACLPI commented that the State's demonstration of impracticability is deficient because it fails to address the 24 hour standard.

Response: EPA disagrees that the impracticability of meeting both standards must be demonstrated. The PPA cannot be redesignated to attainment for PM_{10} until the State can demonstrate that the SIP provides for attainment of both the annual and the 24-hour NAAQS. Conversely, if the SIP demonstrates that even with the implementation of RACM it cannot attain any one of the standards (annual or 24-hour) by December 31, 1994, then it has demonstrated that PM_{10} attainment is impracticable. As an additional matter, it should be noted that the PPA is proportionately farther above the 24-hour NAAQS than it is above the annual NAAQS. Thus, given that the impracticability of attaining the annual NAAQS has been demonstrated, EPA agrees with the State's conclusion that attaining the more difficult 24-hour NAAQS would likely be shown to be similarly impracticable.

Comment: ACLPI commented that EPA should not evaluate practicability from the present point in time: i.e., whether attainment by December 31, 1994 is now practicable. The issue is whether timely attainment would have been practicable had the state implemented all RACM as expeditiously as practicable, and no later than December 10, 1993. ACLPI also states that, based on the decision in *Delaney* v. *EPA*, 898 F. 2d 687 (1990), the state would be obligated to provide for attainment as soon as possible if achievable via implementation of RACM as expeditiously as practicable.

Response: EPA is concluding in this action that Arizona has met the Act's requirement to implement all RACM by December 10, 1993. EPA is also concluding that the State has demonstrated that attainment of the PM_{10} NAAQS by December 31, 1994, is impracticable even with timely implementation of all RACM. EPA therefore believes that the detailed explanations in this notice, including those contained in other relevant responses to comments, and in the accompanying technical support document should adequately address the issue raised by this comment. EPA further believes that the requirements that are relevant to consider are those contained in the CAA, as amended in 1990, and not statements taken from the *Delaney* opinion, which was construing requirements under the CAA as amended in 1977. As stated previously in this document, sections 172(c) and 189(a)(1)(C) when read together require the implementation of all RACM as expeditiously as practicable but no later than December 10, 1993. Additionally, section 189(a)(1)(B) requires either a demonstration that the plan provides for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable. Since EPA believes both that the RACM implementation requirement has been met and that an acceptable demonstration of impracticability has been provided by the State, no further response is required.

C. RACM

Comment: ACLPI commented generally that the SIP, EPA Guidance and public comments identified 161 potential measures as RACM, but that the revised PM_{10} SIP rejected all but 13 of the measures without providing adequate justification. Similarly, the state adopted only one new transportation control measure, while failing to adopt, without explanation, every other potentially available TCM.

Response: The general and detailed comments by ACLPI concerning RACM raise difficult issues concerning the State planning requirements, and EPA appreciates the time and thought that ACLPI has contributed to this process. However, ACLPI has misunderstood the number of measures that the State implemented or rejected as RACM. The revised PM_{10} SIP did not reject all but 13 measures from the list of possible RACM. As discussed below and in substantial detail in the accompanying TSD, the State has implemented all possible RACM (in some cases, by demonstrating that partial implementation of a measure is all that was reasonable to implement by December 10, 1993) and has provided EPA with a reasoned justification for the rejection of the remaining measures as not constituting RACM.

EPA disagrees with ACLPI regarding its RACM interpretation as it relates to transportation control measures (TCMs). In its comments regarding whether the State should have considered various proposed TCMs to be reasonably available, ACLPI asserts that the Court of Appeals for the Ninth Circuit held in *Delaney* v. *EPA*, "that TCMs listed in section 108 of the Act are presumed to be reasonably available." ACLPI goes on to argue that "Congress adopted and endorsed this decision in the 1990 Clean Air Act amendments," and cites for this proposition 136 Cong. Rec. S16971 (daily ed. Oct. 27, 1990). In reliance on these claims, ACLPI concludes that Arizona "has failed to rebut the [presumption regarding the] availability of the section 108 measures in the instant SIP, and therefore the SIP must be rejected." EPA disagrees with both assertions and with the conclusion ACLPI derives from them as well. In the General Preamble (57 FR 13560–13561) EPA presents a detailed discussion of its interpretation of the RACM requirement, including implementation of TCMs. EPA continues to stand by that interpretation and the General Preamble discussion is explicitly referenced herein as forming part of the justification for the action being taken in this document.

The portion of that discussion that relates to TCMs acknowledges that in pre-amended Act guidance EPA created a presumption that all of the TCMs listed in section 108(f) were RACM for all areas, and required areas to specifically justify a determination that any measure was not RACM based on local circumstances. However, EPA then explicitly repudiated that earlier guidance, explaining that, based on its experience in implementing TCMs in subsequent years, local circumstances varied to such a degree that it was inappropriate to presume that all of the measures listed in section 108(f) were per se reasonably available for all nonattainment areas. See 44 FR 20372–20375 (April 4, 1979). Under EPA's revised guidance, all states are required, at a minimum, to address the section 108(f) measures, and where such a measure is determined to be reasonably available to implement it in accordance with section 172(c)(1).

With respect to *Delaney*, the General Preamble states EPA's belief that the court did not hold, as ACLPI claims, that the statute required the Agency to interpret the RACM requirement to create a presumption that all TCMs are reasonably available. Instead, the court held that EPA itself had created such a presumption and, therefore, was bound to apply its own then-applicable 1979 RACM guidance. An administrative agency is permitted to revise or alter prior guidance so long as that guidance continues to represent a reasonable interpretation of the statutory requirement. Nothing in the court's decision precluded EPA from revising its own guidance based on later experience in implementing TCMs. EPA also believes that the Senate managers' statement endorsing the Agency's 1979 RACM guidance as construed by the *Delaney* court reflected the view of several legislators who had wanted the Senate Committee bill to require that all section 108(f) measures be implemented

in severe nonattainment areas. However, the final version of the Senate bill did not adopt this position. Consequently, any subsequent statements by any legislators that appear to consider the interpretation relating to TCMs in EPA's 1979 RACM guidance as still being applicable post-1990 could not be said to reflect the views of the Congress as a whole, and thus should not be accorded weight.

Sections 172(c) and 189(a)(1)(C), along with relevant EPA guidance, require the State to implement all RACM provisions in its moderate area plan to reduce PM_{10} emissions. EPA's proposed approval of the revised PM_{10} SIP concluded that there was an initial list of 161 potential RACM. See 59 FR 38404. EPA has determined that the State implemented 67 of those measures as RACM. Of the remaining 94 potential RACM, 62 measures were duplicates of other measures. Finally, EPA believes that the State acted in accordance with Agency guidance in determining that the remaining 32 measures were not in fact, reasonably available because either; (1) The source made a de minimis contribution of PM_{10} or (2) the measure was rejected on the basis of economic or technological infeasibility. Thus, EPA has determined that the State has satisfied its moderate area RACM requirements under sections 172(c) and 189(a)(1)(C).

In some cases, RACM has been met through partial implementation of a measure, such as doubling rather than tripling bus service or implementing measures only in populous municipalities. The State provided more detailed justification explaining why partial implementation of many measures constitutes RACM in "Summary of Local Government Commitments to Implement Measures and Reasoned Justification for Non-Implementation for the MAG 1991 Particulate Plan for PM_{10} and Select Measures from the Clean Air Act Section 108(f)" ("MAG Supplementary Document"). The Mag Supplementary Document was submitted at EPA's request after EPA proposed to approve the revised PM_{10} SIP in an effort to respond to comments received by EPA claiming that the SIP submittal did not contain sufficient detail regarding the State's justification for rejecting potential RACM. The MAG Supplementary Document has been included in the Administrative Record for this rulemaking and, to the extent that it provides additional detail and elaborates on the State's reasoning regarding its RACM determination, forms, in part, a complementary basis for EPA's final approval of the State's revised PM_{10} SIP, including EPA's finding that the State complied with its obligation under Sections 172(c) and 189(a)(1)(C) to implement all RACM.

The list of 67 RACM the State has implemented includes 41 measures that were adopted in the State's 1993 Carbon Monoxide and Ozone Plans ("1993 CO Plan"). EPA believes that adoption and inclusion of the measures in the 1993 CO Plan is a sufficiently meaningful and legally binding action by the State which, moreover, constitutes compliance with the Act's requirement to submit a plan which includes provisions to assure that RACM is implemented no later than December 10, 1993. ACLPI's comments on individual measures addressed in the accompanying TSD state that certain measures have not been adopted "in committed form." For the measures in the 1993 CO Plan, EPA believes that the State has provided adequate evidence that the plan is being implemented and is enforceable. The State's 1993 CO plan builds upon the control strategy developed and adopted for the MAG 1987 CO plan. Many of the measures in the 1993 CO plan continue implementation of transportation control measures included in the 1987 CO plan. The 1993 CO plan also contains new control measures that were not in the 1987 CO plan. EPA is aware that, for the most part, the State is not claiming PM_{10} emission reduction credits for the measures developed for their CO and ozone plans. The PM_{10} SIP does take emission reduction credit for Maricopa County's Trip Reduction Ordinance and the operation of two alternative fueled buses. The State explained instead that reductions from RACM in the 1987 CO Plan were calculated in the 1989 baseline PM_{10} emission inventory. These CO measures may qualify as RACM regardless of whether emissions reduction credit can be assigned, as noted by EPA's proposed approval, stating: "These CO measures are included in the PM_{10} SIP revision because they could also reduce particulate matter emissions." 59 FR 38404. EPA has not received direct adverse comment on the proposal to include the CO measures in the State's revised PM_{10} SIP as RACM, and is therefore taking final action on that proposal. The 41 measures from the CO and Ozone Plans that are treated as RACM in the revised PM_{10} SIP are listed in the TSD, Attachment #2, for this NFRM.

In addition to RACM from the 1993 CO Plan, the State is implementing measures required by national rulemakings. These measures are also RACM for the moderate area PM_{10} SIP. For example, the State must ensure that cleaner commercial aircraft land in the PPA based on the federal Airport Noise Control Act, 49 U.S.C. App. 2151 (1990) (ANCA). Municipalities in the PPA are required to comply with ANCA. Thus, even though the clean aircraft requirement is established by ANCA, it also satisfies the State's obligation to assure implementation of RACM. EPA believes the State may satisfy the RACM obligation pursuant to compliance with ANCA rather than through adoption in the revised PM_{10} SIP of measure No. 45, "Replacement of High Emitting Aircraft," offered in the public comments. The accompanying TSD lists RACM which are based on national rulemakings or emissions standards.

For diesel fuel controls, EPA believes that the State has adequately demonstrated that partial implementation of this measure through compliance with national diesel fuel standards is RACM, and that the State has also justified rejecting implementing the California diesel fuel standards as RACM. Likewise, the State's partial implementation of a measure requiring conversion of its diesel fleet to clean fuels constitutes RACM. The State has also partially implemented measures regulating nonroad utility heavy duty engines and utility engines through compliance with national standards. EPA believes that partial implementation of this measure is all that was reasonable for the state to implement by December 10, 1993. The implementation of controls associated with diesel fuels and engines is discussed more fully in the accompanying TSD. The TSD also discusses the State's justification for rejecting as RACM an inspection and maintenance testing program for diesel vehicles.

Comprehensive rules are another source of RACM. The State submitted several comprehensive rules, such as Rules 310, 311, 314 and 316, that encompass RACM that are separate from the initial list of 161 possible measures. For example, Rule 310 addresses 13 of the 15 measures that EPA considered to be reasonably available for the control of fugitive dust. See 59 FR 38404. The accompanying TSD provides a more detailed discussion of RACM for fugitive dust based on implementation of Rule 310. To control residential wood combustion, Maricopa County has adopted a new rule, Residential Woodburning Restriction Ordinance (RWRO), and the State has included a provision in HB 2001 that provides a personal income tax deduction for people that purchase EPA-certified wood heaters. The County also has a

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public education and awareness program in place to inform residents of the impacts of residential wood combustion on air quality and public health and the requirements of the County's woodburning restriction ordinance. These measures cover all of the four RACM listed by EPA in its General Preamble to address particulate matter emissions from residential wood combustion. The State's adoption of the County's RWRO satisfies the obligation to adopt measures to reduce emissions from residential wood combustion. As with measures in the 1993 CO Plan, EPA believes that the State has adopted the RWRO in sufficiently meaningful legal form to ensure that RACM is being implemented in compliance with the Act. The TSD also discusses this measure.

From the initial list of 161 possible RACM, EPA determined that 62 measures are duplicates of others and consequently did not require any further consideration. These duplicate measures are also listed in the TSD, Attachment #1.

Finally, EPA has determined that the State was justified in rejecting 32 of the remaining measures from the list of 161 possible RACM. These measures, which are listed in the TSD, Attachment #3, were discussed in EPA's proposed approval, 59 FR 38404, and are not reasonably available because they are either de minimis or economically or technologically infeasible. Certain measures are not reasonably available because the contribution from the source is de minimis in the PPA, such as Public Comment No. 37 which provides for reducing emissions from ship berthing. There are no ship berthing facilities in the PPA. Alternatively, the State has provided reasoned justifications to reject certain measures as RACM based on economic or technological infeasiblity, such as railroad electrification. Those measures rejected from the initial list of 161 possible RACM, and the justifications for such rejections, are provided in the accompanying TSD.

For the reasons stated above, EPA has determined that the State has satisfied its obligation under the Act to submit a plan containing provisions to assure that RACM has been implemented by December 10, 1993, and, consistent with Agency guidance, has provided a reasoned justification for rejecting other potential measures on grounds that they are not RACM. The accompanying TSD provides a detailed response to each specific measure or type of measure that was raised in ACLPI's comments on the RACM portion of EPA's proposed approval of the State's revised PM_{10} SIP. Many other measures were duplicates of measures that were either adopted or rejected. For the remaining measures which the State rejected, EPA has given careful consideration to ACLPI's thorough comments. On balance, however, the State has complied with its obligation to provide EPA with a reasoned justification for the rejection of the remaining potential RACM.

D. RFP

Comment: The SIP fails to show RFP as required by section 172(c)(2) of the Act. According to the SIP, emissions of PM_{10} increase in 1994 compared to the baseyear.

Response: EPA disagrees with the commenter's assertion that the SIP does not demonstrate reasonable further progress in reducing PM_{10} emissions. While the State's demonstration showed a small reduction in PM_{10} emissions from the implementation of Maricopa County's Rule 310—Fugitive Dust, EPA believes that the emission reduction that the State associated with this rule was overly conservative. When the State calculated the emission reduction potential for Rule 310, they only applied the control effectiveness to the urban portions of the PPA. EPA believes the control effectiveness should have been applied to the entire nonattainment area since the rule applies throughout Maricopa County which includes the entire nonattainment area. When EPA recalculated the emission reduction benefits of the SIP's control strategy the reduction potential equals 8,677 tons per year. The 1989 base year inventory is 40,975 tons per year and was projected to grow to 45,981 tons per year in 1994. Therefore, the total 1994 projected inventory after application of RACM would equal 37,304 tons per year which shows, consistent with EPA's guidance on demonstrating RFP, which is described in greater detail earlier in this notice, that the area has indeed made progress in reducing emissions from the base year total, and thus has demonstrated it has met the requirements of section 172(c)(2) for the period 1990–1994.

E. Rules

Comment: Rule 310 is not approvable because the rule does not meet the Act's or EPA's criteria for enforceability. The rule must make clear to whom it applies and be sufficiently specific that a source is fairly on notice as to the standard it must meet. No threshold level of dust generation is specified, leaving sources to guess as to when the ordinance will be triggered.

Response: Rule 310 does specify the sources that are subject to control. Rule 310 applies to any activity, equipment, operation and/or man-made or man-caused condition or practice capable of generating fugitive dust. Section 300 of the Rule further specifies the types of activities and sources of fugitive dust that are subject to the rule's requirements (e.g., vehicle use in open areas and vacant parcels; unpaved parking areas/staging areas; unpaved haul/access roads; disturbed surface areas; vacant areas; material handling operations; material transport; haul trucks; roadways, streets and alleys; and cattle feedlots and livestock areas). Further, as discussed in more detail in response to the next comment, the requirements of Rule 310 are triggered if a source of fugitive dust violates either the 20% opacity standard in Section 301 or the requirement to implement RACM in Sections 301 through 314. Thus, any activity that causes visible emissions in excess of 20 percent opacity or any activity that is carried out contrary to the implementation of RACM is a violation of Rule 310. For new sources of fugitive dust, Rule 310 requires compliance with an approved dust control plan as implementation of RACM, subject to approval by the control officer; existing sources of fugitive dust are required to comply with the RACM defined in the Rule.

Comment: The standards of performance [in Rule 310] are equally vague. The rule merely states that reasonably available control measures must be applied. That term is in turn defined merely by listing examples of vaguely described control steps without requiring use of any specific measure or a specific level of effort in any specific context. Thus, any specific level of control that the County seeks to impose will be subject to challenge.

Response: ACLPI's comments tend to oversimplify the requirements of Rule 310. Because of the very many different circumstances under which fugitive dust can be generated, it would be nearly impossible for the County to predict every situation and prescribe a specific control measure for it. As noted above, Rule 310 contains two standards to enforce. One standard with which all sources are required to comply is the 20% opacity limit. The second standard is the RACM requirement. New sources of fugitive dust are required to comply with approved dust control plans, which become enforceable as permit conditions. For existing sources of fugitive dust, Rule 310 addresses the variability of sources and activities by either prescribing RACM (see, e.g., Section 311.2) or listing potential reasonably available fugitive dust control measures (see, e.g., Sections 306 & 221). Yet Rule 310 allows a source to tailor its own control strategy to fit its particular situation and EPA believes that such flexibility is necessary. When the activity or situation does not involve a high degree of variability, the measures that apply to that source are typically more prescriptive. For example, Section 311.2, which applies to all haul trucks operating in the PPA, sets forth specific requirements as RACM. If haul trucks fail to implement these measures, there is a violation of Rule 310. Even if the haul trucks comply with Section 311.2, but still violate the 20% opacity standard, there is a violation of Rule 310. Other sections of the rule are equally enforceable through permit conditions. Section 303 of Rule 310 requires that a permit application for any new source subject to Section 302 of Rule 310 shall include a Control Plan to prevent or minimize fugitive dust, and the Control Plan must be approved by the County Control Officer. If the County determines through a violation of the separate 20% opacity standard that a Control Plan is not sufficient to control fugitive dust, the responsible party is required to revise the control plan accordingly. Thus, the County will be able to enforce the provisions of this Rule 310 through two standards: the 20% opacity standard and the requirement to implement RACM through a Control Plan or as defined in the Rule.

The original version of Rule 310 that was submitted to EPA contained a provision that EPA believed threatened the enforceability of the rule. The original rule contained a provision (221.9) that allowed the Control Officer to approve the use of alternative control methods not listed in the rule. This provision has since been deleted from Rule 310.

Comment: The State and County have not committed the necessary resources and personnel to ensure enforcement of rules 310, 311, 314, and 316, as required under section 110(a)(2)(E) and EPA guidance. Nor does the SIP contain a program to provide for enforcement of any of the SIP control strategies, as required by section 110(a)(2)(C) of the Act.

Response: The County has committed the necessary resources and personnel to implement rules 310, 311, 314, and 316. Details on the level of personnel and funding, as required by section 110(a)(2)(E) of the Act, as well as enforcement strategies as required by section 110(a)(2)(C) of the Act are provided in the document "MAG 1991 Particulate Plan for PM_{10} for the Maricopa County Area and 1993 Revisions, Commitments for Implementation, Volume Three", section entitled "Maricopa County".

F. Other

1. Public Comment

Comment: In the process of developing and submitting the PM_{10} SIP revision for Phoenix, MAG and the State have on several occasions failed in their responsibility to seriously consider public comment prior to adopting plans.

Response: The State has provided a section in all of its PM_{10} SIP submittals which includes all public comments received and the State's responses to those comments.

2. State Assurances

Comment: The PM_{10} SIP does not contain, as required by section 110(a)(2)(E)(iii) of the CAA, the necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision." While the State contends that this requirement is met by A.R.S. § 49–406.J, the process laid out by this State statute does not meet the plain requirements of section 110(a)(2)(E)(iii) and is completely inconsistent with the Act's requirements for SIP enforceability, timely implementation of control measures, and expeditious attainment.

Response: EPA has historically adopted a rule of reasonableness in construing the language of section 110(a)(2)(E)(iii) of the Act with respect to the extent to which the State must show that its plan evinces a showing of responsibility sufficient to ensure adequate implementation of the plan's provisions by local or regional governments. EPA, for example, does not require the State to adopt into its own plan the local government's implementing provisions, but has considered it sufficient for the State to describe and reference those provisions and the accompanying descriptions of the local municipalities intended implementation actions. The State has included in its plan submission a copy of the Arizona Laws Relating to Environmental Quality, § 49–406. J. of which contains the assurances required by section 110(a)(2)(E). If any person fails to implement an emission limitation or control measure, the relevant State official is required to issue a written finding to that effect, which may also necessitate the holding of a conference regarding the failure with the offending person. If a determination is made that the failure has not been corrected, the attorney general, at the responsible official's request, must file an action, seeking either "a preliminary injunction, a permanent injunction, or any other relief provided by law." Section 49–407 of the Arizona Revised Statutes provides that citizens may sue the director to perform his or her duty. While some opportunity is provided to rectify problems short of taking legal action, EPA does not believe this is unreasonable, nor that the affected State officials ultimately have discretion to ignore the law's requirements. The comment engages in some speculation, describing several possible scenarios under which implementation by the local authorities may not occur. Despite these concerns—which are admittedly speculative—EPA believes, based on its experience in administering this provision of the Act, that the relevant sections of the State's law provides an adequate degree of assurance that the control measures in the plan are enforceable and will be fully implemented.

VI. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

VII. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 28, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c) (67)(i)(B), (73), (74), and (77) and by adding and reserving paragraphs (c) (72), (75), and (76) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(67) * * *

(i) * * *

(B) Amended Maricopa County Division of Air Pollution Control Rule 314, adopted July 13, 1988.

* * * * *

(72) [Reserved]

(73) Plan revisions were submitted on August 11, 1993 by the Governor's designee.

(i) Incorporation by reference.

(A) The Maricopa Association of Governments 1991 Particulate Plan for PM_{10} for the Maricopa County Area and 1993 Revisions, Chapters 1, 2, 3, 4, 5, 6, 7, 8, 10 and Appendices A through D, adopted August 11, 1993.

(74) Plan revisions were submitted by the Governor's designee on March 3, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control new Rule 316, adopted July 6, 1993, and revised Rule 311, adopted August 2, 1993.

(B) The Maricopa Association of Governments 1991 Particulate Plan for PM_{10} for the Maricopa County Area and 1993 Revisions, Revised Chapter 9 adopted on March 3, 1994.

(75) [Reserved]

(76) [Reserved]

(77) Amended regulations for the Maricopa County Division of Air Pollution Control submitted by the Governor's designee on December 19, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control Rule 310, adopted on September 20, 1994.

[FR Doc. 95–8215 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5183–3]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 24 and 28, 1994, EPA proposed amendments to certain aspects of the "National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks" 59 FR 19402 (April 22, 1994) and 59 FR 29196 (June 6, 1994) (collectively known as the "hazardous organic NESHAP" or the "HON"). This action announces the EPA's final decisions on those proposed amendments.

The rule is being revised to provide a deferral of HON requirements for source owners or operators who wish to make an area source certification and to establish minimum documentation requirements. This action is being taken because EPA believes that in view of current circumstances the requirements of the rule should not be imposed on sources that are likely to be designated as area sources in the near future. The rule is also being revised to extend the compliance date for certain compressors and for surge control vessels and bottoms receivers to allow the time necessary for installation of controls. The applicability of control requirements for surge control vessels and bottoms receivers is also being revised to reduce confusion over the rule.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Register Actions

On October 24, 1994 (59 FR 53359) EPA announced that, pursuant to Clean Air Act section 307(d)(7)(B), it was reconsidering certain portions of the HON rule and issuing a 3 month administrative stay. The October 24, 1994 administrative stay applied only to those source owners or operators who make a representation in writing that resolution of the area source definition issues could affect whether the facility is subject to the HON. As part of that action, EPA also proposed amendments to the HON to establish procedures for a source to obtain a deferral of HON requirements for such sources and to establish minimum documentation requirements.

In addition, on October 28, 1994 (59 FR 54131), EPA announced an administrative stay of the effectiveness of the provisions of the HON for compressors and for surge control vessels and bottoms receivers for sources subject to the October 24, 1994 compliance date. As part of that action, EPA also proposed amendments to the HON to revise compliance dates for compressors and for surge control vessels and bottoms receivers to provide sufficient time to make the equipment changes necessary for compliance with the rule. Provisions to document the use of the compliance extensions for compressors were also proposed. Changes were also proposed to the applicability of control requirements for surge control vessels and bottoms receivers.

Along with both notices of partial stay and reconsideration, EPA also proposed to extend the compliance dates beyond the 3 months provided, as necessary to complete reconsideration and revision of the rule in question. On January 27, 1995 (60 FR 5320), EPA amended the HON to extend the compliance dates until April 24, 1995 to allow time to complete the two sets of revisions to the rule.

B. Public Participation

Ten comment letters were received on each of the two notices of proposed amendments. All comment letters received were from industry representatives or trade associations. No comments objecting to the EPA's basic approach were received on either the October 24 or the October 28, 1994 proposed amendments. The significant

issues raised and changes to the proposed amendments to the rule are summarized in this preamble. The EPA's responses to all comments can be found in docket A–90–19, subcategory VII–B and A–90–20, subcategory VI–B. The response to comments may also be obtained from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed contact the systems operator at (919) 541–5384.

II. Summary of Amendments to Rule

A. Deferral of Requirements for Sources Making an Area Source Certification

New paragraphs § 63.100(b)(4), § 63.103(f), and § 63.190(b)(7) and (b)(8) are added to the rule to provide procedures to certify and document that a source is operating at emission levels below the thresholds for a major source. These provisions require the owner or operator: (1) To provide certification that the source is operating such that its total actual annual emissions are less than 10 tons of any one hazardous air pollutant (HAP) and less than 25 tons of multiple HAP and will continue to operate at or below this level pending the establishment of federally enforceable limits; (2) to maintain documentation of the emission calculations; and (3) to provide the documentation to EPA upon request. If, in the EPA's judgment, the source does not qualify as an area source, the source would be notified and would become subject to the HON requirements. The provisions specify that if the applicable subpart H compliance date has already passed, the source must comply with subpart H requirements no later than 90 days after the notification. The source would have the same compliance date for subparts F and G (i.e., April 22, 1997) as other sources.

B. Amendments to Compressor Provisions, § 63.164

Subparts F and I are amended to revise the compliance date for compressor provisions for certain sources and to establish a mechanism for owners or operators to request case-by-case compliance extensions under certain circumstances. Specifically, § 63.100(k)(4) is being added to subpart F and § 63.190(e)(3) is being added to subpart I to revise the compliance date for compressors at process units subject to the October 24, 1994 and January 23, 1995 compliance dates to May 10, 1995. Section 63.100(k)(5) is being added to subpart F and §§ 63.190(e)(4) is being added to subpart I to provide a mechanism for owners or operators to request case-by-case compliance extensions for delays due to unavailability of parts. Paragraph 63.100(k)(6) is being added to subpart F and § 63.190(e)(5) is being added to subpart I to provide a similar mechanism for cases where a process unit shutdown is necessary to permit modification of the compressor seal system, barrier fluid system, or connection of the compressor to a control device. Provisions have been added to the rule to provide a compliance date of April 22, 1997 for cases where replacement of the compressor or recasting of the distance piece is necessary for compliance with § 63.164. These provisions are provided in § 63.100(k)(6)(ii) and § 63.190(e)(5)(ii).

C. Amendments to Provisions for Surge Control Vessels and Bottoms Receivers, § 63.170

This section has been revised to specify the same control criteria and requirements as are established in subpart G for storage vessels. Compliance with these requirements is required by April 22, 1997 for all sources subject to the provisions of subparts F and I.

D. Compliance Extensions for Pollution Prevention Measures

Paragraph 63.100(k)(8) is added to subpart F to provide a compliance extension for processes that plan to eliminate the use or production of HAP.

III. Impacts

A. Area Source Deferral

The compliance date extensions for sources with actual emissions less than 10 tons of any single HAP or less than 25 tons of multiple HAP's will not affect the estimated emissions reduction and control cost for the rule. The EPA did not consider such sources in development of the rule.

B. Surge Control Vessels and Bottoms Receivers

The revisions to the compliance date and the control requirements for surge control vessels and bottoms receivers will not affect the estimated emissions reduction and control cost for the rule. As described in the October 28, 1994 **Federal Register** (59 FR 54157), EPA considered these items of process equipment to be either process vents or storage vessels. Thus, the estimated emission reductions and control costs always reflected application of the control criteria and requirements in tables 2 and 3 to subpart H to these vessels.

C. Compressors

The revisions to the compliance date for compressors provisions are estimated to have a negligible effect on the emissions reduction from the equipment leak control requirements. Emissions from compressors contribute only a small portion of the estimated emissions from equipment leaks because there are very few compressors located in synthetic organic chemical manufacturing industry (SOCMI) process units. It is expected that only a small number of those compressors would need to use these compliance extensions. Moreover, lower overall emissions are expected in cases where a process unit shutdown is necessary to install the replacement seal system or barrier fluid system or to permit connecting the compressor to a control device. These revisions to subpart H are not expected to affect the estimated cost of compliance with the rule.

IV. Summary of Major Comments, Responses, and Changes to the Proposal

A. Area Source Deferral

The major area of comment on the October 24, 1994 proposal concerned the proposed documentation requirements and the request for comment on whether more extensive monitoring and recordkeeping would be appropriate. Several commenters recommended that EPA not impose excessive documentation and recordkeeping requirements for sources with actual emissions below the major source threshold. The commenters reasoned that the nature of the operations that would qualify for this deferral and existing non-Federal rules should provide adequate assurance of maintenance of the emission levels. No comments were received that supported requiring recordkeeping and reporting beyond that specified in the proposed amendments to the rule. One commenter also questioned EPA's position that toxic release inventory (TRI) data would not sufficiently document the basis for the emission calculations. The commenter noted that the TRI estimates are subject to audit and every calculation and assumption used must be documented. This commenter also stated that many facilities are using the same data base

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for TRI reporting as they are using for the Title V permit program.

Since no comments were received indicating a need for additional monitoring and documentation of these sources, the EPA concluded that additional documentation of the emissions from these sources is not warranted considering the nature and length of this deferral. The EPA also reexamined the question of whether TRI data would be acceptable for documenting the basis for the emission estimates. The EPA concluded that TRI data would provide adequate documentation for this interim deferral since the TRI data would be of sufficient precision and accuracy in light of the nature and length of the deferral. In light of this conclusion, EPA also concluded that allowing use of the TRI documentation would avoid imposing an unproductive and unnecessary additional recordkeeping requirement since it is likely that companies will establish one system for emission estimates for TRI compliance as well as for other air programs. This would have the additional benefit of promoting use of one emissions recordkeeping system for a facility; thus, benefiting both the owner or operator of the facility as well as permitting authority. Therefore, § 63.100(b)(4)(i)(B) and § 63.190(b)(7)(i)(B) have been revised to specifically state that data reported under Superfund Amendments and Reauthorization Act (SARA) 313 may be used to satisfy the documentation requirements. These paragraphs have also been edited to clarify that use of "accepted engineering practices" to determine annual HAP emissions from each emission point at the plant site, is an acceptable alternative to the calculation procedures in § 63.150 of subpart G, or the early reduction demonstration procedures. The wording of the proposed amendment would only have allowed use of "accepted engineering practices" where the other procedures were unavailable. Because those other procedures also involve some use of engineering judgment there is no reason to limit use of accepted engineering practices to cases where the other procedures are unavailable.

B. Compressors

One commenter recommended that provisions for compliance extensions also include situations where modification of a compressor is necessary to allow connecting the compressor to a control device. The commenter noted that this kind of equipment modification requires the same degree of planning and evaluation as the situations described in the October 28, 1994 proposal. This commenter also requested that EPA allow up to April 22, 1997 for cases where replacement of a compressor is necessary. The commenter explained that this additional time is necessary since in some States construction permits must be obtained for these modifications. The EPA agrees that these additional situations are similar to the situations described in the October 28, 1994 **Federal Register** and, therefore, allowing additional time for these cases is appropriate. These cases were not included in the proposal due to uncertainty regarding the need to provide for these cases. The final provisions allow owners or operators to request case-by-case compliance extensions for these additional cases as well as for replacement of the seal system or the barrier fluid system where additional time is necessary due to the unavailability of parts or until the next process unit shutdown.

C. Surge Control Vessels and Bottoms Receivers

There were no adverse comments on the proposed revisions to the definition of surge control vessel or the revisions to include the same control criteria as applied to storage vessels in subpart G. Several commenters requested clarification of certain aspects of the proposed provisions. The more substantive of these comments was a request for clarification of whether the same controls that are acceptable for storage vessels would be acceptable for compliance with § 63.170. The commenter noted that it appeared that EPA intended this, but the rule seemed to not allow the use of floating roof controls for surge control vessels. The EPA agrees that it was intended that the same controls be allowed for this equipment as for storage vessels. Section 63.170 was revised to specifically provide that use of floating roof controls that meet the specifications of § 63.119 (b) or (c) are acceptable means of compliance.

D. Compliance Extensions for Pollution Prevention Measures

The only comments received on this proposed provision was support for correcting the original drafting oversight. Thus, there were no changes to the proposed provisions.

V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP would have a minor impact on the information collection burden estimates made previously. The added provisions provide a mechanism to request compliance extensions and are not required reports. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments proposed today would revise compliance dates to provide the time necessary for installation of controls and do not add any additional control requirements. The EPA believes that these proposed amendments would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis. For the reasons discussed in section III, the impacts on emissions reduction are also believed to be negligible.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. Section 63.100 is amended by revising paragraph (b) introductory text, by adding paragraph (b)(4), by revising paragraph (k) introductory text, by revising the first sentence of paragraph (k)(3), and by adding paragraphs (k)(4) through (k)(8) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(b) Except as provided in paragraphs (b)(4) and (c) of this section, the provisions of subparts F, G, and H of this part apply to chemical manufacturing process units that meet all the criteria specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section:

* * * * *

(4) The owner or operator of a chemical manufacturing processing unit is exempt from all requirements of subparts F, G, and H until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 10, 1995 that the plant site at which the chemical manufacturing processing unit is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual HAP, and less than 25 tons per year of any combination of HAP.

(i) If such a determination is based on limitations and conditions that are not federally enforceable (as defined in subpart A of this part), the owner or operator shall document the basis for the determination as specified in paragraphs (b)(4)(i)(A) through (b)(4)(i)(C) and comply with the recordkeeping requirement in 63.103(f).

(A) The owner or operator shall identify all HAP emission points at the plant site, including those emission points subject to and emission points not subject to subparts F, G, and H;

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum operating conditions at the plant site. Examples of estimating procedures that are considered acceptable include the calculation procedures in § 63.150 of subpart G, the early reduction demonstration procedures specified in §§ 63.74 (c)(2), (c)(3), (d)(2), (d)(3), and (g), or accepted engineering practices. If the total annual HAP emissions for the plant site are annually reported under Emergency Planning and Community Right-to-Know Act (EPCRA) section 313, then such reported annual emissions may be used to satisfy the requirements of § 63.100(b)(4)(i)(B).

(C) The owner or operator shall sum the amount of annual HAP emissions from all emission points on the plant site. If the total emissions of any one HAP are less than 10 tons per year and the total emissions of any combination of HAP are less than 25 tons per year, the plant site qualifies for the exemption described in paragraph (b)(4) of this section, provided that emissions are kept below these thresholds.

(ii) If such a determination is based on limitations and conditions that are federally enforceable (as defined in subpart A of this part), the owner or operator is not subject to the provisions of paragraph (b)(4) of this section.

* * * * *

(k) Except as provided in paragraphs (l) and (m) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

* * * * *

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided for in paragraphs (k)(4) through (k)(8) of this section. * * *

(4) Existing chemical manufacturing process units in Groups I and II as identified in table 1 of this subpart shall be in compliance with the requirements of § 63.164 of subpart H no later than May 10, 1995 for any compressor meeting one or more of the criteria in paragraphs (k)(4)(i) through (k)(4)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161 in subpart H.

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor must be modified to permit connecting the compressor to a closed vent system.

(5) Existing chemical manufacturing process units shall be in compliance with the requirements of § 63.164 in subpart H no later than 1 year after the applicable compliance date specified in paragraph (k)(3) of this section, for any compressor meeting the criteria in paragraphs (k)(5)(i) through (k)(5)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (k)(4) (i) through (iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161 of subpart H;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits a request to the appropriate EPA Regional Office at the addresses listed in § 63.13 of subpart A of this part no later than 45 days before the applicable compliance date in paragraph (k)(3) of this section, but in no event earlier than May 10, 1995. The request shall include the information specified in paragraphs (k)(5)(iv)(A) through (k)(5)(iv)(E) of this section. Unless the EPA Regional Office objects to the request within 30 days after receipt, the request shall be deemed approved.

(A) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(B) The name, address, and telephone number of a contact person for further information;

(C) An identification of the chemical manufacturing process unit, and of the specific equipment for which additional compliance time is required;

(D) The reason compliance can not reasonably be achieved by the applicable date specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section; and

(E) The date by which the owner or operator expects to achieve compliance.

(6)(i) If compliance with the compressor provisions of § 63.164 of subpart H of this part can not reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than April

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22, 1996, except as provided for in paragraph (k)(6)(ii) of this section. The owner or operator who elects to use this provision shall comply with the requirements of § 63.103(g) of this subpart.

(ii) If compliance with the compressor provisions of § 63.164 of subpart H of this part can not be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than April 22, 1997. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.103(g) of this subpart.

(7) Existing sources shall be in compliance with the provisions of § 63.170 of subpart H no later than April 22, 1997.

(8) If an owner or operator of a chemical manufacturing process unit subject to the provisions of subparts F, G, and H of part 63 plans to implement pollution prevention measures to eliminate the use or production of HAP listed in table 2 of this subpart by October 23, 1995, the provisions of subpart H do not apply regardless of the compliance dates specified in paragraph (k)(3) of this section. The owner or operator who elects to use this provision shall comply with the requirements of § 63.103(h) of this subpart.

* * * * *

3. Section 63.101 is amended by revising the definition of "surge control vessel" in paragraph (b) to read as follows:

§ 63.101 Definitions.

* * * * *

(b) * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

4. Section 63.103 is amended by adding paragraphs (f), (g), and (h) to read as follows:

§ 63.103 General compliance, reporting and recordkeeping requirements.

* * * * *

(f) To qualify for the exemption specified in § 63.100(b)(4) of this subpart, the owner or operator shall maintain the documentation of the information required pursuant to § 63.100(b)(4)(i), and documentation of any update of this information requested by the EPA Regional Office, and shall provide the documentation to the EPA Regional Office upon request. The EPA Regional Office will notify the owner or operator, after reviewing such documentation, if the source does not qualify for the exemption specified in § 63.100(b)(4) of this section. In such cases, compliance with subpart H shall be required no later than 90 days after expiration of the applicable compliance date in § 63.100(k)(3), but in no event earlier than 90 days after the date of such notification by the EPA Regional Office. Compliance with subparts F and G shall be no later than April 22, 1997, unless an extension has been granted by the EPA Regional Office or operating permit authority as provided in § 63.6(i) of subpart A of this part.

(g) An owner or operator who elects to use the compliance extension provisions of § 63.100(k)(6)(i) or (ii) shall submit a compliance extension request to the appropriate EPA Regional Office no later than 45 days before the applicable compliance date in § 63.100(k)(3), but in no event is submittal required earlier than May 10, 1995. The request shall contain the information specified in § 63.100(k)(5)(iv) and the reason compliance can not reasonably be achieved without a process unit shutdown, as defined in 40 CFR 63.161 or without replacement of the compressor or recasting of the distance piece.

(h) An owner or operator who elects to use the compliance extension provisions of § 63.100(k)(8) shall submit to the appropriate EPA Regional Office a brief description of the process change, identify the HAP eliminated, and the expected date of cessation of use or production of HAP. The description shall be submitted no later than May 10, 1995 or with the Notice of Compliance Status as required in § 63.182(c) of subpart H, whichever is later.

* * * * *

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

5. Section 63.111 is amended by adding the definition of "surge control vessel" to read as follows:

§ 63.111 Definitions.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

6. Section 63.161 is amended by revising the definition of "compliance date" and the definition of "surge control vessel" to read as follows:

§ 63.161 Definitions.

* * * * *

Compliance date means the dates specified in § 63.100(k) or § 63.100(l)(3) of subpart F of this part for process units subject to subpart F of this part; the dates specified in § 63.190(e) of subpart I of this part for process units subject to subpart I of this part. For sources subject to other subparts in 40 CFR part 63 that reference this subpart, compliance date will be defined in those subparts. However, the compliance date for § 63.170 shall be no later than 3 years after the effective date of those subparts unless otherwise specified in such other subparts.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this subpart) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

7. Section 63.170 is revised to read as follows:

§ 63.170 Standards: Surge control vessels and bottoms receivers.

Each surge control vessel or bottoms receiver that is not routed back to the process and that meets the conditions specified in table 2 or table 3 of this subpart shall be equipped with a closed-vent system that routes the organic vapors vented from the surge control vessel or bottoms receiver back to the process or to a control device that complies with the requirements in § 63.172 of this subpart, except as provided in § 63.162(b) of this subpart, or comply with the requirements of § 63.119(b) or (c) of subpart G of this part.

8. Subpart H is amended by adding tables 2 and 3 to read as follows:

* * * * *

TABLE 2 TO SUBPART H.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor pressure[1] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2[a]

[1] Maximum true vapor pressure of total organic HAP at operating temperature as defined in subpart G of this part.

TABLE 3 TO SUBPART H.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor pressure[1] (kilopascals)
38 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 0.7

[1] Maximum true vapor pressure of total organic HAP at operating temperature as defined in subpart G of this part.

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

9. Section 63.190 is amended by revising paragraph (b) introductory text, by adding paragraph (b)(7), by revising paragraph (e)(2), and by adding paragraphs (e)(3) through (e)(6) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(b) Except as provided in paragraph (b)(7) of this section, the provisions of subparts I and H of this part apply to emissions of the designated organic HAP from the processes specified in paragraphs (b)(1) through (b)(6) of this section that are located at a plant site that is a major source as defined in section 112(a) of the Act. The specified processes are further defined in § 63.191.

* * * * *

(7) The owner or operator of a plant site at which a process specified in paragraphs (b)(1) through (b)(6) of this section is located is exempt from all requirements of subpart I until not later than April 22, 1997, if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 10, 1995 that the plant site at which the process is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual HAP, and less than 25 tons per year of any combination of HAP.

(i) If such a determination is based on limitations and conditions that are not federally enforceable (as defined in subpart A of this part), the owner or operator shall document the basis for the determination as specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C).

(A) The owner or operator shall identify all HAP emission points at the plant site, including those emission points subject to and emission points not subject to subparts F, G, and H of this part;

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum operating conditions at the plant site. Examples of estimating procedures that are considered acceptable include the calculation procedures in § 63.150 of subpart G, the early reduction demonstration procedures specified in §§ 63.74(c)(2), (c)(3), (d)(2), (d)(3), and (g), or accepted engineering practices. If the total annual HAP emissions for the plant site are annually reported under EPCRA section 313, then such reported annual emissions may be used to satisfy the requirements of this paragraph.

(C) The owner or operator shall sum the amount of annual HAP emissions from all emission points on the plant site. If the total emissions of any one HAP are less than 10 tons per year and the total emissions of any combination of HAP are less than 25 tons per year, the plant site qualifies for the exemption described in paragraph (b)(7) of this section, provided that emissions are kept below these thresholds.

(ii) If such a determination is based on limitations and conditions that are federally enforceable, and the plant site is not a major source (as defined in subpart A of this part), the owner or operator is not subject to the provisions of paragraph (b)(7) of this section.

* * * * *

(e) * * *

(2) Existing sources shall comply no later than October 24, 1994, except as provided in paragraphs (e)(3) through (e)(6) of this section or unless an extension has been granted by the EPA Regional Office or operating permit authority, as provided in § 63.6(i) of subpart A of this part.

(3) Existing process units shall be in compliance with the requirements of § 63.164 of subpart H no later than May 10, 1995 for any compressor meeting one or more of the criteria in paragraphs (e)(3)(i) through (e)(3)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161.

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor must be modified to permit connecting the compressor to a closed vent system.

(4) Existing process units shall be in compliance with the requirements of § 63.164 of subpart H no later than January 23, 1996, for any compressor meeting the criteria in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (e)(3) (i) through (iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits a request to the appropriate EPA Regional Office at the addresses listed in § 63.13 of subpart A of this part no later than May 10, 1995. The request shall include the information specified in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(E) of this section. Unless the EPA Regional Office objects to the request within 30 days after receipt, the request shall be deemed approved.

(A) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(B) The name, address, and telephone number of a contact person for further information;

(C) An identification of the process unit, and of the specific equipment for which additional compliance time is required;

(D) The reason compliance cannot reasonably be achieved by May 10, 1995; and

(E) The date by which the owner or operator expects to achieve compliance.

(5)(i) If compliance with the compressor provisions of § 63.164 of subpart H of this part cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than April 22, 1996, except as provided in paragraph (e)(5)(ii) of this section. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(g) of this subpart.

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(ii) If compliance with the compressor provisions of § 63.164 of subpart H of this part cannot be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than April 22, 1997. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(g) of this subpart.

(6) Existing sources shall be in compliance with the provisions of § 63.170 of subpart H no later than April 22, 1997.

* * * * *

10. Section 63.191 is amended by revising the definition of "surge control vessel" in paragraph (b) to read as follows:

§ 63.191 Definitions.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

11. Section 63.192 is amended by adding paragraphs (l) and (m) to read as follows:

§ 63.192 Standard.

* * * * *

(l) To qualify for the exemption specified in § 63.190(b)(7) of this subpart, the owner or operator shall maintain the documentation of the information required pursuant to § 63.190(b)(7)(i), and documentation of any update of this information requested by the EPA Regional Office, and shall provide the documentation to the EPA Regional Office upon request. The EPA Regional Office will notify the owner or operator, after reviewing such documentation, whether, in the EPA Regional Office's judgement, the source does not qualify for the exemption specified in § 63.190(b)(7) of this subpart. In such cases, compliance with this subpart shall be required no later than 90 days after the date of such notification by the EPA Regional Office.

(m) An owner or operator who elects to use the compliance extension provisions of § 63.190(e)(5) (i) or (ii) shall submit a compliance extension request to the appropriate EPA Regional Office no later than May 10, 1995. The request shall contain the information specified in § 63.190(e)(4)(iv) and the reason compliance cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H or replacement of the compressor or recasting of the distance piece.

* * * * *

[FR Doc. 95–8199 Filed 4–7–95; 8:45 am]

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40 CFR Part 63

[AD-FRL–5182–7]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action corrects errors and clarifies regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON.

EFFECTIVE DATE: The direct final rule will be effective May 22, 1995, unless significant, adverse comments are received by May 10, 1995. If significant, adverse comments are timely received on any provision of the direct final rule, that provision of the direct final rule will be withdrawn and only those provisions on which no such adverse comments are received will become effective on May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: If significant adverse comments are timely received on any provision of this direct final rule, all such comments will be addressed in a subsequent final rule based on those provisions of the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. Such provisions will be withdrawn from the Direct Final Rule. Provisions of the Direct Final Rule that do not receive timely significant adverse comment will become final 40 days from today's **Federal Register** Notice. If no significant adverse comments are timely filed on any provision of this direct final rule then the entire direct final rule will become effective 40 days from today's **Federal Register** notice and no further action is contemplated on the parallel proposal published today.

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON.

This document corrects several oversights in the drafting of subparts F, H, and I of the final regulation. Also, several definitions are being added to subparts H and I to clarify the intent of certain provisions in these subparts. These changes do not significantly modify the requirements of the regulation.

I. Description of Changes

A. Compliance Dates for Emission Points at Existing Sources Affected by Operational Changes

Subparts F and G established administrative procedures to address operational changes that were believed likely to occur at SOCMI facilities. These procedures specify the notification and approval requirements for each type of change as well as the compliance date for equipment affected by the change. When these provisions (§ 63.100(l)) were drafted the need to include surge control vessels and bottoms receivers in the list of potential changes was not recognized. Because the nature of the equipment changes required for control of surge control vessels and bottoms receivers is similar to that required for compliance with subpart G, similar compliance times need to be provided for surge control vessels and bottoms receivers. Therefore, the provisions in paragraphs (l)(4) and (l)(4)(ii) in § 63.100 are being revised to include surge control vessels and bottoms receivers.

B. Startup/Shutdown/Malfunction Plan

The EPA has received numerous inquiries regarding the applicability of the startup/shutdown/malfunction plan required by § 63.6(e) of subpart A to equipment subject to the provisions of subpart H. Questions raised include whether the plan only applies to control devices used to comply with the requirements of subpart H or if the plan must also address equipment such as valves and pumps, and if so, how would such equipment be included in the plan.

The EPA intended the startup/shutdown/malfunction plan to apply only to control devices used to comply with subpart H. However, EPA also thought that some owners or operators might choose to use the startup/shutdown/malfunction plan to specify various conditions that would justify delay of repair for equipment such as pumps or valves. To clarify this point, table 3 of subpart F is being amended to include a comment on how the provisions concerning startup/shutdown/malfunction plans apply to equipment subject to subpart H. This same comment is being added to subpart I as a new paragraph § 63.192(b)(6)(ii).

C. Applicability of Subpart H Limited to Process Lines

A new paragraph is being added to the applicability section of subpart H (§ 63.160) to clarify that only lines and equipment containing process fluid are subject to this subpart. The new paragraph merely incorporates into the rule the intent expressed in the preamble to the proposed rule. This provision had not previously been included in subpart H because it had been considered unnecessary. This provision is being added now due to a number of concerns regarding clarity of applicability of section 112(g) case-by-case review requirements to this equipment.

D. Definitions

Two definitions are being added to subpart H and the definition for "duct work" in subparts G and H is being revised. A definition for "closed-purge system" is being added to clarify terminology in the rule and to better express the Regulatory Negotiation Committee's (Committee) intent regarding the requirements for sampling connection systems. In Committee discussions on the provisions for sampling connection systems, the Committee recognized the need to provide compliance options that would be appropriate for a wide range of operating conditions and processes. The Committee used the terminology "closed-purge system" to refer to systems where the liquid sample purge was captured in a container and then returned to the process. This kind of system was envisioned as being the compliance option for processes handling heavy liquids particularly polymer processes, for low pressure lines, and where closed-loop sampling presented safety concerns. The terminology "closed-loop sampling system" was used to refer to a system where the purged fluid is returned to the process at a point of lower pressure. A throttle valve or other device is commonly used to induce the pressure drop across the sample loop. These systems can be used in higher pressure lines and with light liquids and materials that do not polymerize upon exiting the process equipment.

The Committee included a definition for "closed-loop system" in the rule to distinguish it from "closed-purge system". A definition for "closed purge system" was not included because it was thought that the meaning would be understood from the terminology alone and the definition of "closed-loop system". Due to numerous questions regarding the meaning of this term and how it differs from "closed-loop system", EPA believes that it is necessary to add a definition to clarify intent.

A definition for "pressure relief device or valve" is being added because EPA has received inquiries from industry as well as from State agencies regarding the applicability of the provisions of § 63.165 to atmospheric storage vessels. Pressure/vacuum vents on atmospheric storage vessels are typically actuated when the vessel is filled or emptied and due to pressure changes resulting from diurnal temperature changes. The provisions of § 63.165 were never intended to apply to these cases and are not appropriate for these vessels. The provisions of § 63.165 were designed to ensure that pressure relief devices on process lines properly reseat after relieving a system overpressure. Pressure relief devices are safety devices commonly used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. These pressure relief devices do not open under vacuum. The added definition for "pressure relief device or valve" is based on the type of equipment that EPA intended to regulate and considered in the development of the equipment leak standards (e.g., subparts VV, GGG, and KKK of 40 CFR part 60) as well as industry practice. The definition also explicitly excludes vacuum actuated devices as well as low pressure actuated relief devices. The 2.5 pounds per square inch gauge (psig) set pressure specified in the definition is based on the American Petroleum Institute (API) pressure rating for atmospheric pressure tanks. Operation at higher pressures or vacuums may cause damage to the tank.

The EPA is revising the definition of "duct work" in order to more specifically designate the intended equipment. The term "duct work" is presently defined in the rule as "a conveyance system that does not meet the definition of hard piping." The EPA recognizes that this definition is too broad and can be misconstrued as applying to tank trucks, rail cars, or anything that conveys that is not hard piping. The term "duct work" was intended to designate systems for conveyance of gases like those commonly used for heating and ventilation systems. These systems are commonly constructed of sheet metal and have sections connected by screws or crimping. The revised definition uses this description to more specifically identify the types of systems EPA considers more likely to develop leaks and thus identify those systems where annual inspection with an instrument that meets the specifications of Method 21 is appropriate.

The definition for "Research and Development Facility" was inadvertently omitted from subpart I when the applicability provisions for the non-SOCMI processes was separated from those for the SOCMI processes. The definition for "Research and Development Facility" in § 63.101 of subpart F is being added to § 63.191 of subpart I to correct this oversight.

E. Miscellaneous Changes

Paragraph (b) of 63.160 is being revised to clarify that this override of existing equipment leak rules only applies after the source must comply with subpart H. The EPA has recently learned that some people have interpreted the rule to allow suspension of compliance with applicable part 60 or 61 equipment leak rules even though the subpart H compliance date had not occurred yet. The Committee's intent with this provision was to avoid duplication of effort. Owing to the confusion surrounding the present language, EPA is correcting the drafting of this paragraph.

Paragraph (a) of § 63.169 of subpart H is revised to clarify that there must be potential for discharge to the atmosphere before repair is required. It is necessary to clarify this point because there are processes where pressure relief

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devices discharge into a lower pressure section of the process and there are no emissions to the atmosphere. The EPA is clarifying the language in § 63.169(a) to avoid unnecessary repair actions and recordkeeping. This clarification does not alter the requirement for documentation of proper reseating of pressure relief devices or valves that vent to the atmosphere.

The EPA is also correcting paragraph (b) of § 63.169 by adding the leak definition for pumps in polymerizing monomer service. Section 63.169(b) presently defines a leak for pumps in heavy liquid service as 2,000 parts per million (ppm) regardless of the material handled. The EPA believes that use of the 2,000 ppm leak definition for all pumps in heavy liquid service was a drafting oversight since it was the Committee's judgment in establishing the standard for pumps in light liquid service that 5,000 ppm represented best performance (§ 63.163(b)(2)(iii)) for pumps handling polymerizing monomers.

The recordkeeping requirement for owners or operators who elect to adjust monitoring frequency by time in use was inadvertently included with the recordkeeping requirements for pressure testing of equipment (§ 63.181(e)(2)). This requirement is only relevant for those batch processes for which the owner or operator elects compliance using the leak detection and repair program in § 63.178(c). Most of the recordkeeping requirements for § 63.178(c) are presented in § 63.181(b)(9). Therefore, paragraph (e)(2) is being redesignated as paragraph (b)(9)(ii). Section 63.181(e)(2) is being reserved to avoid renumbering the rest of paragraph (e).

The EPA has recently received several inquiries regarding the time period to be covered in the first semiannual report. The concern is that § 63.182(d)(1) appears to require the periodic report to include a summary of the monitoring information for the period on the day that the report is due. Thus, the owners and operators of sources subject to subpart H would have no time to compile, analyze, and organize the raw data for the report. The EPA intended to provide owners and operators of sources subject to subpart H 90 days to compile, analyze, and organize data for the periodic reports. The present wording of § 63.182(d)(1) does not clearly communicate that intent. Therefore, § 63.182(d)(1) is being amended by adding two sentences to specify that the first periodic report shall cover the first 6-month period from the compliance date and that each subsequent report would cover the 6-month period from the last report.

The EPA has also recently determined that a reporting requirement that was intended for screwed connectors subject to § 63.174(c) was inadvertently retained in the final rule. During consideration of public comments on the proposed rule, EPA had decided to remove the requirements for separate recordkeeping and reporting for screwed connectors in order to reduce the burden of the rule. Due to an oversight §§ 63.182(d)(2) (x) and (xii) were not removed as intended. The EPA is, therefore, correcting this oversight by removing §§ 63.182(d)(2) (x) and (xii). These paragraphs are being reserved to avoid renumbering the paragraph.

II. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

III. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA believes that these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 subparts F, H, and I of the Code of Federal Regulations are corrected as follows:

1. The authority citation for part 63 continues to read as follows:

Authority: sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is corrected by revising the first sentence of paragraph (l)(4) introductory text and by revising paragraph (l)(4)(ii)(B) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(l) * * *

(4) If an additional chemical manufacturing process unit is added to a plant site, or if an emission point is added to an existing chemical manufacturing process unit, or if another deliberate operational process change creating an additional Group 1 emission point(s) is made to an existing chemical manufacturing process unit, or if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, and if the addition or change is not subject to the new source requirements as determined according to paragraphs (l)(1) or (l)(2) of this section, the requirements in paragraphs (l)(4)(i) through (l)(4)(iii) of this section shall apply. * * *

(ii) * * *

(B) If a deliberate operational process change to an existing chemical manufacturing process unit causes a Group 2 emission point to become a Group 1 emission point, if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, the owner or operator shall be in compliance upon initial start-up or by 3 years after April 22, 1994, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (m)(1) through (m)(3) of this section to establish a compliance date.

* * * * *

Table 3 of Subpart F—[Amended]

3. In Table 3 of subpart F, is the entry for "63.6(e)" is amended by adding two sentences in the "Comment" column to read as follows:

Table 3 to Subpart F—General Provisions Applicability to Subpart F, G and H

* * * * *

Reference	Applies to Subparts F, G, and H	Comment
63.6(e)	Yes	* * * For subpart H, the startup, shutdown, and malfunction plan requirement of § 63.6(e)(3) is limited to control devices subject to the provisions of subpart H and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

4. Section 63.111 is amended by revising the definition for "duct work" to read as follows:

§ 63.110 Definitions.

* * * * *

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

* * * * *

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

5. Section 63.160 is amended by removing paragraph (d), redesignating paragraph (c) as paragraph (d); by revising paragraph (b); by adding and reserving a new paragraph (c), and by adding a new paragraph (e) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(b) After the compliance date for a process unit, equipment to which this subpart applies that are also subject to the provisions of:

(1) 40 CFR part 60 will be required to comply only with the provisions of this subpart.

(2) 40 CFR part 61 will be required to comply only with the provisions of this subpart.

* * * * *

(e) Except as provided in any subpart that references this subpart, lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

* * * * *

6. Section 63.161 is amended by adding in alphabetical order definitions for "closed-purge system" and "pressure relief device" and by revising the definition for "duct work" to read as follows:

* * * * *

§ 63.161 Definitions.

* * * * *

Closed-purge system means a system or combination of system and portable containers, to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

* * * * *

Duct work means a conveyance system such as these commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

* * * * *

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices.

* * * * *

7. Section 63.169 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.180(b) of this subpart if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method. If such a potential leak is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.180(b) of this subpart.

(b) If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for

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pumps handling polymerizing monomers, 2,000 parts per million or greater for pumps in food/medical service or pumps subject to § 63.163(b)(iii)(C), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

* * * * *

8. Section 63.181 is amended by redesignating paragraph (b)(9) as paragraph (b)(9)(i), by redesignating paragraph (e)(2) as paragraph (b)(9)(ii), and by reserving paragraph (e)(2).

§ 63.181 Recordkeeping requirements.

9. Section 63.182 is amended by adding two sentences to paragraph (d)(1) and by removing and reserving paragraphs (d)(2)(x) and (xii) to read as follows:

§ 63.182 Reporting requirements.

* * * * *

(d) * * *

(1) * * * The first periodic report shall cover the first 6 months after the compliance date specified in § 63.100(k)(3) of subpart F. Each subsequent periodic report shall cover the 6 month period following the preceding period.

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

10. Section 63.191 is amended by adding in alphbertical order a definition for "research and development facility" to paragraph (b) to read as follows:

§ 63.191 Definitions.

(b) * * *

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products except in a deminimis manner.

* * * * *

11. Section 63.192 is amended by redesignating paragraph (b)(6) as paragraph (b)(6)(i) and adding paragraph (b)(6)(ii) to read as follows:

§ 63.192 Standard.

* * * * *

(b) * * *

(6)(i) * * *

(ii) The operational and maintenance requirements of § 63.6(e). The startup, shutdown, and malfunction plan requirement of § 63.6(e)(3) is limited to control devices subject to the provisions of subpart H of part 63 and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.

* * * * *

[FR Doc. 95–8198 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7131

[NV–930–1430–01; NV–57922]

Withdrawal of Public Land to the United States Air Force; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,972.04 acres of public land from surface entry, mining, and mineral leasing until November 6, 2001, for the United States Air Force to provide a safety and security buffer between public land administered by the Bureau of Land Management and withdrawn land under the jurisdiction of the Nellis Air Force Range.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, (702) 785–6507.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), and from leasing under the mineral leasing laws, to provide a safety and security buffer for the United States Air Force at Nellis Range:

Mount Diablo Meridian

T. 6 S., R. 56 E., unsurveyed
Sec. 25;
Sec. 36.
T. 7 S., R. 56 E., unsurveyed
Sec. 1;
Sec. 13, W½;
Sec. 24, NW¼.
T. 6 S., R. 57 E.,
Sec. 30, lots 1 to 4, inclusive, and E½W½;
Sec. 31, lots 1 to 4, inclusive, and E½W½, E½.
T. 7 S., R 57 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.

The area described contains 3,972.04 acres in Lincoln County.

2. This withdrawal will expire on November 6, 2001, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 95–8756 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF ENERGY

48 CFR Parts 915, 916 and 970

RIN 1991–AB19

Acquisition Regulation: Certified Cost or Pricing Data Threshold and Requirements for a Determination and Findings for Use of Cost-Reimbursement Contracts

AGENCY: Department of Energy.

ACTION: Interim rule and request for comment.

SUMMARY: The Department of Energy is issuing an interim rule increasing the threshold for certified cost or pricing data from $100,000 to $500,000 and deleting the requirement for determinations and findings for use of cost reimbursement contracts. These changes are required by the Federal Acquisition Streamlining Act of 1994 and subsequent changes to the Federal Acquisition Regulation (FAR).

DATES: *Effective Date:* April 10, 1995.

Comment Date: Written comments must be submitted no later than June 9, 1995.

ADDRESSES: Comments should be addressed to: Terrence D. Sheppard, Business and Financial Policy Division (HR–521.2), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard, (202) 586–8174.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612

I. Background

Pursuant to section 644 of the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the Secretary. In accordance with this authority, the Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984).

The Federal Acquisition Streamlining Act of 1994 (the Act) (Pub. L. 103–355) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. This notice announces an interim rule which amends the DEAR based on certain provisions in the Act. In particular, Section 1251 of the Act, which was implemented in the FAR under FAR Case 94–720 (59 FR 62498, December 5, 1994), increases the threshold for obtaining certified cost or pricing data from $100,000 to $500,000, and section 1071 of the Act, which was implemented in the FAR under FAR Case 94–700, (59 FR 64784, December 15, 1994), repealed the requirement for a determination and finding regarding use of a cost-type or incentive contract. This interim rule is intended solely to make the changes necessary to implement those limited portions of the Act. More extensive changes to implement other portions of the Act will be made subsequently.

A detailed list of changes follows:

1. The authority for Parts 915 and 916 is restated.

2. Subsection 915.804–70 is amended by deleting the parenthetical "(proposals of $100,000 or less)." There is no need to specify the new threshold ($500,000), because it is stated in the FAR and is the same for all federal agencies. In addition, the FAR provides that this threshold will be subject to adjustment effective October 1, 1995 and every five years thereafter.

3. Subsection 916.301–3 is deleted in its entirety as the statutory requirement to prepare a determination and finding has been repealed by Section 1071 of the Act.

4. The authority for Part 970 is amended by deleting the references to 41 U.S.C. 420 and 42 U.S.C. 7256a. The former was repealed by Section 2191 of the Act and the latter is unnecessary in light of the authority provided by 42 U.S.C. 2201 and 42 U.S.C. 7254.

5. Subsection 970.5204–24 is amended by deleting the specific references to the $100,000 threshold and replacing it with references to the FAR cost or pricing data threshold established in FAR 15.804–2(a)(1). Affected paragraphs are (a), (a)(2), (c), (d), (f), and NOTE (b).

6. Subsection 970.7104–11 is amended at paragraphs (a)(1)(i) and (ii) by deleting the specific dollar threshold and substituting a reference to the FAR threshold.

II. Public Comments

The regulatory changes described above are not discretionary with the Department. Accordingly, the Department has not published a general notice of proposed rulemaking. Nevertheless, the Department is providing an opportunity to comment on any relevant matter that may have been overlooked. Interested persons are invited to participate by submitting data, views, or arguments with respect to the interim final Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the "DATES" section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in Sections 2 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's interim final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment

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to be used in all decisions involved in promulgating and implementing a policy action. This interim final rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

List of Subjects in 48 CFR Parts 915, 916, and 970

Government procurement.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citations for Parts 915 and 916 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 915—CONTRACTING BY NEGOTIATION

2. Subsection 915.804–70 is revised to read as set forth below:

915.804–70 Uncertified cost or pricing data.

Anytime an offeror or contractor is not required to submit certified cost or pricing data, the contracting officer may require the offeror or contractor to submit uncertified cost or pricing data. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

PART 916—TYPES OF CONTRACTS

916.301–3 [Removed]

3. Subsection 916.301–3, Limitations, is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

5. Subsection 970.5204–24 is amended by revising paragraphs (a), (a)(2), (c), (d), (f), (g), and paragraph (b) following "NOTE" at the end of the clause to read as set forth below:

970.5204–24 Subcontractor cost or pricing data.

* * * * *

(a) The following clause shall be inserted in all subcontracts where such subcontracts, and any modifications thereto, exceed the cost or pricing data threshold at FAR 15.804–2(a)(1), even though the original amount of the subcontract was below the threshold.

* * * * *

(2) Except as provided in (a)(3) of this clause, certified cost or pricing data shall be submitted prior to (i) award of each sub-subcontract, the price of which is expected to exceed the cost or pricing data threshold at FAR 15.804–2(a)(1), and (ii) the negotiation of the price of each change or modification to the sub-subcontract under this subcontract for which the price adjustment is expected to exceed the cost or pricing data threshold at FAR 15.804–2(a)(1).

* * * * *

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of the cost or pricing data threshold at FAR 15.804–2(a)(1) were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds the cost or pricing data threshold at FAR 15.804–2(a)(1) or the price of any change or other modification to this subcontract is expected to exceed the cost or pricing data threshold at FAR 15.804–2(a)(1), the subcontractor agrees to furnish the contractor certified cost or pricing data, using the certificate set forth in paragraph (b) of this clause, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

* * * * *

(f) The subcontractor agrees to insert paragraph (c) of this clause, without change, and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of the cost or pricing data threshold at FAR 15.804–2(a)(1) and in each sub-subcontract that is less than the threshold when making a change or other modification thereto in excess of the cost or pricing data threshold at FAR 15.804–2(a)(1).

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sum because the subcontractor or any sub-subcontractor, pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

* * * * *

Note. * * *

(b) This clause may also be used for subcontracts in which the amount of the subcontract is less than the cost or pricing data threshold at FAR 15.804–2(a)(1), if a certificate of cost or pricing data is obtained; if so used, the amount stated in the clause should be modified appropriately.

* * * * *

6. Subsection 970.7104–11 is amended by revising paragraphs (a)(1)(i) and (ii) to read as set forth below:

970.7104–11 Cost or pricing data.

(a) * * *

(1) * * *

(i) Award of a negotiated subcontract when the price is expected to exceed the threshold for cost or pricing data at 48 CFR (FAR) 15.804–2(a)(1), or

(ii) Modifications of any subcontract when the price adjustment is expected to exceed the threshold for cost or pricing data at 48 CFR (FAR) 15.804–2(a)(1), unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

* * * * *

[FR Doc. 95–8748 Filed 4–7–95; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1802, 1850, and 1852

Indemnification under Public Law 85–804

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA policy and approval process on indemnifying contractors. This revision is part of NASA's efforts to simplify its regulations. The streamlined policy relies more on Federal-wide policies.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Harold Nelson, (202) 358–0436.

SUPPLEMENTARY INFORMATION:

Background

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This final rule 48 CFR parts 1802, 1850, and 1852 for the following reasons.

Section 1802.101 is revised in order to define the acronym "FAR."

Section 1850.202 is revised in order to add a reference to 14 CFR subpart 1209.3 on the Contract Adjustment Board.

Until now, requests for indemnification under Public Law 85–804 have been processed using a two-step approach. Under the first step, the Administrator signed a "Memorandum Decision Under Public Law 85–804" which recognized a class of contracts for which the statutory criteria for approving such requests could be met. Specifically, this document described the existence of the unusually hazardous risk, explained how approval of requests would facilitate the national defense, and set any other conditions for approval of requests to incorporate the indemnification clause in specific NASA prime contracts. Two Memorandum Decisions, one applicable to contracts under the Shuttle Program and the other applicable to contracts for launch services using expendable launch vehicles have been signed.

The second step of the process involved the submission of an approval package for specific contracts, citing the pertinent Memorandum Decision. The Administrator signed a second document, an "Approval Under Public Law 85–804", to grant approval to include the indemnification clause in designated contracts. 48 CFR 1850.402 also envisioned circumstances where a combined Memorandum Decision and Approval Under Public Law 85–804 could be signed by the Administrator in instances where requests were not covered by a current Memorandum Decision.

The above described two-step approach is not required by 48 CFR (FAR) part 50, which prescribes a single document approach. Since one of the above mentioned Decision Memorandums expired in September 1994 and the other is due to expire in July 1995, NASA Headquarters reviewed continuation of the two step approach. Based on this review, it has been decided to abandon the two step approach in favor of following the FAR procedure. Upon issuance of this notice, when NASA contractors request indemnification, the contracting officer will take the actions set forth in 48 CFR (FAR) 50.403. The contracting officer will also submit a "Memorandum of Decision Under Public Law 85–804" for each contract, or group of contracts, for which indemnification is being sought. This Memorandum of Decision will contain all the required information which has been previously distributed between the two documents, the Memorandum Decision Under Pub. L. 85–804 and the Approval Under Pub. L. 85–804.

The need for separate NASA clauses covering indemnification—48 CFR 1852.250–70, Indemnification Under Public Law 85–804, and 48 CFR 1852.250–72, Space Activity—Unusually Hazardous Risks, was also reviewed. 48 CFR 1852.250–70 was extremely similar to the existing FAR clause (48 CFR 52.250–1, Indemnification Under Public Law 85–804). However, the NASA clause differed in ways that were not consistent with Executive Order 10789, as amended, which implements the statutory authority (50 U.S.C. 1431–1435) authorizing indemnification. Therefore, it was determined that the clause should be deleted and the FAR clause used. Also, practically from the time that 48 CFR 1852.250–72, Space Activity—Unusually Hazardous Risks, was adopted; it was recognized that the contractors could not merely cite the clause to substantiate their requests for the indemnification clause. Contractors are required to describe the nature of the unusually hazardous risk associated with performance of the specific contract in detail. Therefore, it has been determined that the standard clause be deleted and the definition and description of the unusually hazardous risks be addressed on a case by case basis.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

Lists of Subjects in 48 CFR Parts 1802, 1850 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1802, 1850 and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1802, 1850 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

PART 1802—DEFINITIONS OF WORDS AND TERMS

2. Section 1802.101 is amended by adding the following definition in alphabetical order in paragraph (b):

1802.101 Definitions.

* * * * *

(b) * * *

FAR means the Federal Acquisition Regulation as codified at 48 CFR chapter 1.

* * * * *

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

3. Section 1850.202 is revised to read as follows:

1850.202 Contract adjustment boards.

NMI 1152.5, 14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

4. Section 1850.402 is removed.

5. Section 1850.403–1 is revised to read as follows:

1850.403–1 Indemnification requests.

In addition to the information required by 48 CFR (FAR) 50.403–1(a), the contractor shall provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

6. Section 1850.403–2 is revised to read as follows:

1850.403–2 Action on indemnification requests.

(a) The Administrator will execute a Memorandum of Decision to approve a request to use the indemnification clause in a contract or group of contracts.

(b) For contracts of five years duration or longer, in addition to information required to be submitted by the contracting officer under 48 CFR (FAR) part 50, the submission should include discussion and determination on whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(c) If a contracting officer recommends that a request for indemnification be approved, the required information specified in 48 CFR (FAR) 50.403–2(a) shall be forwarded to the Associate Administrator for Procurement (Code HS) for review and processing to the Administrator. The contracting officer shall also provide a recommended Memorandum of Decision. This document provides the specific approval to include an indemnification clause in a NASA contract, or group of

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contracts. In addition to the applicable requirements of 48 CFR (FAR) 50.306, the Memorandum of Decision shall contain the following:

(1) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s).

(2) A complete discussion of the contractor's financial protection program that the Administrator will review in order to approve the request for indemnification.

(3) As appropriate, the extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) Before presentation to the Administrator, Code HS will obtain concurrences from the General Counsel, Comptroller, Associate Administrator for Procurement, Associate Deputy Administrator and Deputy Administrator, as appropriate.

(e) Since indemnification coverage must flow through the prime contractor, subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees indemnity should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval. The prime contractor's request shall provide information responsive to 1850.403–1, and 48 CFR (FAR) 50.403–1 and 50.403–2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

(f) If the contracting officer approves indemnification of a subcontractor by the prime, the contracting officer shall document the file with a memorandum for record addressing the items set forth in 48 CFR (FAR) 50.403–2(a). This memorandum shall address the items set forth in 48 CFR (FAR) 50.403–2(a) and contain an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk. The contracting officer may rely on the analysis of the prime contractor's financial protection program in relation to the approval of indemnification of the prime contractor, to the extent this analysis is applicable.

(g) Code HS will maintain records of each Memorandum of decision executed by the Administrator.

7. Sections 1850.403–3, 1850.403–370, and 1850.403–70 are removed.

1850.403–3—[Removed]

1850.403–370—[Removed]

1850.403–70—[Removed]

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 1852.250–70 and 1852.250–72 are removed.

1852.250–72—[Removed]

1852.250–72—[Removed]

[FR Doc. 95–8511 Filed 4–7–95; 8:45 am]
BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 60, No. 68
Monday, April 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Public Meeting on Draft Proposed Revisions to Domestic Licensing of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Annoucement of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public meeting to review and solicit views from fuel cycle licensees on NRC's draft proposed revisions to its regulations on Domestic Licensing of Special Nuclear Material. This document is necessary to inform the public that the meeting is open to the public as observers.

DATES: The meeting will be held on May 2, 1995, from 9:00 am to 5:00 pm. Submit comments on the draft proposed rule by May 2, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The meeting will be held at the U.S. Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.)

Written comments may be provided at this meeting or submitted prior to the meeting to Joan Higdon (See **FOR FURTHER INFORMATION CONTACT**).

The draft proposed rule is available for review prior to this scheduled meeting. To provide a thorough understanding of the impact of the proposed rule changes, copies of the newly developed draft Standard Review Plan (SRP) and draft Standard Format and Content Guide (SF&CG) are available for review. These copies can be obtained from the NRC's Public Document Room, 2120 L Street NW, Washington, D.C. 20037; Phone: 202–634–3273; FAX: 301–634–3343. Affected parties are encouraged to review the draft rule and be prepared to provide their comments on revisions of Part 70 to the NRC at this public meeting. The NRC will accept and consider written comments from any interested parties if the comments are received no later than May 2, 1995. Written comments can be provided at this meeting or submitted prior to the meeting to Joan Higdon, Mail Stop T–8–A–33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; FAX: 301–415–5390; INTERNET: JXH1@NRC.GOV.

FOR FURTHER INFORMATION CONTACT: Joan Higdon, Mail Stop T–8–A–33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301–415–8082; FAX: 301–415–5390; INTERNET: JZH1@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC is currently reviewing its regulations on Domestic Licensing of Special Nuclear Material (10 CFR Part 70). This review is the result of the findings and recommendations of the agency's Materials Regulatory Review Task Force and the Regulatory Impact Survey for Fuel Cycle and Materials Licensees. The purpose of the task force and the survey team was to evaluate the agency's licensing and oversight programs for fuel cycle and major materials plants, identify weaknesses, and recommend improvements. The task force's review and findings are contained in NUREG–1324, "Proposed Method for Regulating Major Materials Licensees," dated February 1992.

In conjunction with the task force's findings and the Commission's directive to establish a firm regulatory base for fuel cycle facility licensing and inspection activities and for determining the adequacy of licensee performance, the Division of Fuel Cycle Safety and Safeguards has initiated major revisions to 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." In concert with this rule development activity, staff is also developing a Standard Review Plan (SRP) and a Standard Format and Content Guide (SF&CG). The SRP will provide a standardized approach for staff in reviewing license applications for authorization to possess and process special nuclear material, and it will also assist licensees in understanding staff's approach and bases for reviewing license applications. The SF&CG will provide guidance to applicants and licensees regarding the type and depth of information in license applications that are necessary for regulatory decisions.

In considering these Part 70 revisions, the Commission has directed the staff to reconsider the current plan to revise 10 CFR Part 70 in its entirety and, among other things, discuss these proposed changes with affected fuel cycle licensees to determine their views towards revisions of Part 70. In addition, the Commission has directed that the staff consider and evaluate alternative approaches from those already included in the draft rule.

Accordingly, this public meeting will focus on NRC's proposed changes to Part 70 and the views of the fuel cycle licensees on the proposed changes. The agenda for this meeting will begin with NRC staff presentation of the draft rule, which will include the basis for the proposed rule changes and the specific provisions in the draft rule that will affect the fuel cycle licensees. This presentation will be followed by an information exchange with affected licensees regarding their views towards the proposed rule changes and licensees' suggestions for alternative approaches to this major rulemaking activity. At the conclusion of this interchange, if time permits, other participants will have an opportunity to present their views on these agenda items. For efficient conduct of the meeting, participation will be limited to the following affected fuel cycle licensees and license applicant or from their official designated representatives:

ABB Combustion Engineering, Nuclear Operations
American Ecology Corporation
Babcock & Wilcox, Naval Nuclear Fuel Division and Commercial Nuclear Fuel Plant
Chem-Nuclear Systems, Inc.
Department of Army
Department of Commerce
Eastman Kodak
Florida Institute of Technology
General Atomics
General Electric Company (Vallecitos Nuclear Center)
General Electric Company (Wilmington, N.C.)
Idaho State University
IRT Corporation
Louisiana Energy Services (license applicant)

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Massachusetts Institute of Technology
Nuclear Fuel Services, Inc.
Pennsylvania State University
Purdue University
Seattle University
Siemens Power Corporation
University of Florida
University of Texas
Westinghouse Electric Corporation

Attendees are requested to notify Ms. Joan Higdon at 301–415–8082 of their planned attendance to ensure adequate meeting room space and if any special requirements are needed (e.g., for the hearing-impaired).

Dated at Rockville, Maryland, this 5th day of April, 1995.

For the Nuclear Regulatory Commission.

Robert F. Burnett,

Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 95–8703 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

Addition of Specific Exemptions Under the Privacy Act

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to amend its regulations pertaining to exemptions of the NCUA's Privacy Act Systems of Records. These amendments are necessary to reflect the addition of the (j)(2) and (k)(2) exemptions of the Privacy Act to the NCUA regulations that describe exempt systems of records, and to clearly link the "Office of Inspector General (OIG) Investigative Records—NCUA," system NCUA- 20, to these Privacy Act exemptions.

DATES: Comments must be postmarked or posted to the NCUA Electronic Bulletin Board by May 10, 1995. Comments postmarked or posted by Electronic Bulletin Board after this date will be considered if it is practical to do so, but the NCUA is able to assure consideration only for comments that are received on or before this date.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, or post comments to the NCUA Electronic Bulletin Board at 800 876–1684 or 703 518–6480. Comments received may be examined at the Office of Inspector General, 5th floor, NCUA Building, 1775 Duke Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 5th floor, 1775 Duke Street, Alexandria, VA, 22314, Telephone: 703–518–6352.

SUPPLEMENTARY INFORMATION: In 1989, in response to the Inspector General Act Amendments, P.L. 100–504, the National Credit Union Administration Board established a statutorily designated Inspector General (IG), to whom the functions of the former NCUA Office of Internal Auditor, were transferred. The functions of NCUA's Office of Inspector General (OIG) include: (1) The detection and prevention of waste, fraud, and abuse and (2) the promotion of economy and efficiency in NCUA programs and operations. As one of its principal functions, the OIG performs investigations into alleged violations of criminal law in connection with NCUA's programs and operations, pursuant to the IG Act of 1978, as amended. In conjunction with these functions, OIG reports suspected violations of criminal and civil law to the U.S. Attorney General.

Section (j)(2) of the Privacy Act (5 U.S.C. 552a (j)(2)) permits the head of an agency to promulgate rules to exempt a system of records from certain requirements if the system is maintained by an agency component or sub component whose principal function pertains to the enforcement of criminal laws and if the system of records is compiled for a criminal law enforcement purpose. Accordingly, to the extent it includes this kind of records, the OIG Investigative Records system of records is exempt from the following sections of 552a of Title 5 U.S.C.: (c)(3), (c)(4), (d), (e)(1),(e)(2),(e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g), as well as from the corresponding regulatory subsections.

Section (k)(2) (Title 5 USC 552a(k)(2)) permits exemption from certain requirements if the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2); Provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source should be held in confidence. Accordingly, to the extent that it includes this kind of records, this system of records is also exempt under Section (k)(2) from the following sections of 552a of Title 5 U.S.C.: (c)(3);(d); (e)(1); (e)(4)(G), (H), and (I); and (f), as well as from the corresponding regulatory subsections. This proposed rule, amending 12 CFR 792.34, would make NCUA's regulations consistent with those of the majority of agencies with statutory IG's.

Elsewhere in today's **Federal Register** there is a Notice describing this system of records.

Exemptions from the particular subsections are justified for the following reasons:

Section 552a(c)(3) of title 5 U.S.C. requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. This accounting must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, especially in a joint investigation situation. This could seriously impede or compromise an investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication or destruction or evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

Section 552a(c)(4) of title 5 U.S.C. requires an agency to inform outside parties of amendments to and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is exempted from the amendment provisions of subsection (d) of the Privacy Act by this rule, this section is not properly applicable.

Sections 552a(d) and (f) of title 5 U.S.C. require an agency to provide access to records, make corrections, and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with the access to records of an investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

Section 552a(e)(1) of title 5 U.S.C. requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (e.g., the fraudulent use of Social Security numbers) and that information may not be reasonably segregated. In the interests of effective law enforcement, OIG investigators should retain this information, because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

Section 552a(e)(2) of title 5 U.S.C. requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs.

The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with evidence or information. Moreover, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term, "to the greatest extent practicable," is a subjective standard, and it is impossible adequately to define the term so that individual OIG investigators can consistently apply it to the many fact patterns encountered in OIG investigations.

Section 552a(e)(3) of title 5 U.S.C. requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purpose for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on any person, if any, of not providing all or any part of the required information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

Sections 552a(e)(4)(G) and (H) of title 5 U.S.C. require an agency to publish in the **Federal Register** notice concerning its procedures for notifying an individual at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since this system of records is being exempted from subsection (f) of the Privacy Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that the system of records would be exempt from those subsections.

Section 552a(e)(4)(I) of title 5 U.S.C. requires an agency to publish notice of categories of sources of records in the system of records. To the extent that this provision is constructed to require more detailed disclosure than the broad generic information currently published in the system notice an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and information, and to avoid the disclosure of investigative techniques and procedures.

Section 552a(e)(5) of title 5 U.S.C. requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set forth previously in item (d) (duty to maintain in agency records only "relevant and necessary information" about an individual.) While the OIG makes every effort to maintain records that are accurate, relevant, timely and complete, it is not always possible in an investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination by OIG to refer a matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until a trial (if at all) to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

Section 552a(e)(8) of title 5 U.S.C. requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is

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made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal confidential investigative techniques, procedures, or evidence.

Section 552a(g) of title 5 U.S.C. provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act or any rule promulgated thereunder in such a way as to have an adverse effect on an individual. The system would be exempt from many of the Act's requirements; it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 12 CFR are procedural in nature and will aid an NCUA office to perform its criminal law enforcement function.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Executive Order 12612

This amendment to NCUA's systems of record notice does not affect state regulation of credit unions.

List of Subjects in 12 CFR Part 792

Criminal penalties, Freedom of Information, Privacy, Reporting and record keeping requirements, Sunshine Act.

By the National Credit Union Administration Board on March 30, 1995.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble and under the authority of the Federal Credit Union Act of 1934, as amended; and 5 U.S.C. 552, 552a, and 553, the NCUA is proposing to adopt the following amendments to 12 CFR part 792.

PART 792—[AMENDED]

Subpart B-The Privacy Act

1. The authority citation for Part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

2. In § 792.34, a new paragraph (b)(3) is added to read as follows:

§ 792.34 Exemptions.

* * * * *

(b) * * *

(3) System NCUA–20, entitled, "Office of Inspector General (OIG) Investigative Records," consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

[FR Doc. 95–0337 Filed 4–7–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–10]

Proposed Amendment to Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Memphis, TN. A VOR RWY 16 Standard Instrument Approach Procedure (SIAP) has been developed for General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before May 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–10, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Memphis, TN. A VOR RWY 16 SIAP has been developed for General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class E airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO TN E5 Memphis, TN [Revised]

Memphis International Airport, TN
(Lat. 35°02'45" N, long. 89°58'41" W)
Twinkle Town Airport
(Lat. 34°56'00" N, long. 90°10'00" W)
Olive Branch Airport
(Lat. 34°58'44" N, long. 89°47'13" W)
West Memphis Municipal Airport
(Lat. 35°08'11" N, long. 90°14'04" W)
General DeWitt Spain Airport
(Lat. 35°12'05" N, long. 90°03'05" W)
Elvis NDB
(Lat. 34°57'13" N, long. 89°58'26" W)
West Memphis NDB
(Lat. 35°08'22" N, long. 90°13'57" W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of memphis International Airport, and within 4 miles each side of the 179° bearing from the Elvis NDB extending from the 8-mile radius to 7 miles south of the NDB, and within a 6.5-mile radius of Twinkle Town Airport, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 2.5 miles each side of the 198° and 352° bearings from the West Memphis NDB extending from the 6.5-mile radius to 7.4 miles north and south of the NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN Class E airspace area.

* * * * *

Issued in College Park, Georgia, on March 29, 1995.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–8764 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[Notice No. 808]

Review of ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return (No. REI–259–95)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: General Notice; Notice of request for public comment.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is soliciting public comments on revising ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. ATF has prepared a draft revision of the return. A copy of the draft return, including its instructions, immediately follows this notice.

The objectives of revising the return are to ensure taxpayers calculate the correct amount of taxes, clarify instructions on how to complete the return, and decrease taxpayers' time spent preparing the return.

ATF would like to know if the revised return accomplishes these objectives. Also, ATF is interested in any other comments from the public which may improve this tax return.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Send written comments to: Chief, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Room 5190, Washington, DC 20026 (Notice No. 808).

FOR FURTHER INFORMATION CONTACT: Robert P. Ruhf, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226. (202–927–8220).

SUPPLEMENTARY INFORMATION:

Drafting Information

The author of this document Robert P. Ruhf, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority in 5 U.S.C. 301 and 26 U.S.C. 7805.

Signed: March 31, 1995.

Daniel R. Black,

Acting Director.

BILLING CODE 4810–31–M

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GENERAL INSTRUCTIONS

1. **GENERAL.** Liability for the manufacturers excise tax under 26 U.S.C. 4181 (pistols, revolvers, other firearms, and shells and cartridges) is reported using this form. Tax is imposed on the sale or use of firearms or ammunition by the manufacturer or importer.

2. **HOW TO PREPARE.** Follow all the instructions and complete this form in duplicate. Complete each part and schedule of this return. If not applicable, write "0" or "none." Be sure to sign your return. Keep a copy for your records. Use blank sheets if additional space is needed. Mark each sheet with your name, employer identification number, the tax return period and the item number.

3. **HOW OFTEN AND WHEN TO FILE.** If a filing date of a return falls on a Saturday, Sunday or legal holiday, the filing date becomes the next succeeding day which is not a Saturday, Sunday or legal holiday. Also, a taxpayer may apply to extend the filing date on ATF Form 5300.29 because of temporary conditions beyond the taxpayer's control.

   a. **Quarterly.** You are generally required to file a return for a calendar quarter in which a tax liability is incurred. Calendar quarters are 3-month periods ending March 31, June 30, September 30, and December 31. However, you are not required to file a return for a calendar quarter in which no tax liability has been incurred.

   A calendar quarter return is due no later than one month after the end of that quarter (April 30, July 31, October 31, and January 31). When you have made sufficient and timely deposits of tax (see instruction 6) for the return, an additional 10 days may be taken to file the return.

   b. **Annually.** If you have no tax liability for an entire calendar year and have not filed a final return (see instruction 9), then your annual return is due not later than January 31st of the following year.

   c. **Monthly or Semimonthly.** File monthly or semimonthly returns when ATF notifies you to do so in writing. A monthly return is due 15 days following the month. A semimonthly return is due 10 days following the semimonthly period.

4. **WHERE AND HOW TO FILE.** Send this return to the address listed below that is appropriate for your principal place of business or of residence. *Include* your payment of the amount owed on line 22. Please make checks or money orders payable to the Bureau of Alcohol, Tobacco and Firearms and write your employer identification number on all checks or money orders.

State of Your Principal Place of Business OR Residence:	Send To: Bureau of ATF Excise Tax
AL, DC, FL, GA, MS, NC, SC, TN, VA	P.O. Box 360328 Pittsburgh, PA 15251-6328
IL, IN, KY, MI, MN, ND, OH, SD, WI, WV	P.O. Box 360804 Pittsburgh, PA 15251-6804
AR, AZ, CO, IA, KS, LA, MO, NE, NM, OK, TX	P.O. Box 371091 Pittsburgh, PA 15251-7091
CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT	P.O. Box 371665 Pittsburgh, PA 15251-7665
AK, CA, HI, ID, MT, NV, OR, UT, WA, WY	P.O. Box 371909 Pittsburgh, PA 15251-7909
PR or VI	Federal Building, Room 659 Carlos Chardon Street Hato Rey, PR 00918

5. **TIMELY FILING.** A tax return and any accompanying payment will be considered timely filed if it is mailed by the due date. The official postmark of the U.S. Postal Service on the envelope or on the sender's receipt of certified mail is evidence of the date of mailing. Otherwise, the taxpayer has the burden of proving the date of filing.

6. **DEPOSITS OF TAX.** If you are required to file a quarterly return, you may have to make tax deposits before filing your return. Also, if the tax balance due on a quarterly return is more than $100, deposit the entire balance. Refer to ATF Form 5300.27.

7. **OVERPAYMENTS AND UNDERPAYMENTS.** Do not file amended returns for overpayments and underpayments or for any other reason. Tax overpayments may be claimed as credits in Schedule C or by filing a claim for refund on ATF Form 2635 (5620.8). Tax overdeposited for a quarterly return can be refunded on that quarter's return on line 23. ATF Announcement 94-9 contains additional information about credits and refunds. Underpayments can be paid through an entry in Schedule B or according to the instructions of the appropriate ATF office listed in instruction 10.

   The law provides for the payment of interest on underpayments and on some overpayments of tax. Compute interest, if applicable, at the rate prescribed by 26 U.S.C. 6621.

8. **RECORDS.** Every taxpayer must keep records to support all entries made on this return. Generally, records must be kept at least 3 years from the date the tax return is filed.

9. **FINAL RETURN.** If you permanently cease operations related to the return, check the box in line 4 and attach a statement of: (a) who (name) will keep the records; (b) the location (address) of the records; (c) whether the business was transferred to another person; and (d) to whom (name and address) the business was transferred. Also, if you are an individual making a one-time importation and are not engaged in any business related to the return, check the box in line 4.

10. **ADDITIONAL INFORMATION.** If you have questions about this tax return or need assistance, please contact the appropriate ATF office listed below.

State of Your Principal Place of Business OR Residence:	Office to contact: BATF Technical Services
AL, DC, FL, GA, MS, NC, SC, TN, VA	2600 Century Parkway, NE Atlanta, GA 30345 404-679-5080
IL, IN, KY, MI, MN, ND, OH, SD, WI, WV	6525 Federal Office Building 550 Main Street Cincinnati, OH 45202-3263 513-684-3334
AR, AZ, CO, IA, KS, LA, MO, NE, NM, OK, TX	1114 Commerce Street 7th Floor Dallas, TX 75242 214-767-2281
CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT	Curtis Center, Suite 875 Independence Square West Philadelphia, PA 19106 215-597-2246
AK, CA, HI, ID, MT, NV, OR, UT, WA, WY	221 Main Street, 11th Floor San Francisco, CA 94105 415-744-7011
Outside the United States	Washington, DC 20226 202-927-8220

SPECIFIC INSTRUCTIONS

LINE 5. Payment of tax by EFT (electronic funds transfer) requires that you notify ATF. Refer to ATF Publication 5000.11.

PART II. Entries on the lines in Part II are limited to the sales and uses occurring during the tax period specified in line 6. You can use Schedule C to show tax decreases for sales or uses reported as taxable in this or previous tax returns that are resold for certain tax-free purposes or determined later to qualify as tax-free. Use Schedule B for tax on sales or uses that occurred in a previous tax period but were NOT included in the return for that period.

LINE 7. Enter the dollar amount of your total sales of taxable articles, including tax-exempt or tax-free sales during the tax period stated in line 6. Do not include articles of which you are not considered to be the manufacturer or importer for purposes of this excise tax. Except for leases and certain installment sales, you must include all sales even if your customers have not paid.

For most sales and taxpayers, the sale prices are stated on the invoices to their customers. This line should also include the dollar value of things other than money to be given in consideration for the article, such as services, personal property, and articles traded in.

Do not include the sale price of a non-taxable article unless it was sold as a unit with the taxable article. When a taxable article is sold as a unit with a non-taxable article (for example, a pistol and holster) or with extra parts or accessories, then enter the sale price of the unit. If a taxable sale, adjust the unit's sale price on line 10 to exclude the non-taxable article, part or accessory.

LINE 8. Enter the sale prices of all articles included in line 7 that you sold tax-free or tax-exempt. Do not include the sale of articles sold taxpaid to customers who later resell or use the articles for a tax-free purpose; however, you may take a credit in Schedule C or file a claim for refund.

You and your customer may need a Certificate of Tax-Free Registry (ATF Form 5300.26). Refer to ATF Industry Circular 93-5 about selling articles tax-exempt or tax-free. Failure to follow requirements or to have a Certificate may result in additional taxes, penalties and interest.

LINE 10. Enter on line 10 the net amount of adjustments to the sale prices of taxable sales of line 9 during the tax return period.

Decreasing adjustments are allowed for certain items if included in the sales price to your customer. 27 CFR 53.61(b), and 53.91-.93 describe these exclusions from the sale price. These exclusions include the following items when included in the sales price of the article and not as a separate charge: this excise tax, certain expenses related to the transportation and delivery of articles to customers, carrying, finance or service charges for credit sales, extra and identical parts, accessories, and non-taxable articles sold in combination with a taxable article. Also, price readjustments in the same tax period in which the sale occurs may also be taken in this line, as an adjustment to the tax in Schedule C, or used in determining the sales price (line 7).

Do not use line 10 to subtract the sales price, including excise tax, you paid to another manufacturer or importer. If you further manufacture articles on which excise tax was paid by another person, then a credit can be taken in Schedule C or a claim for refund may be filed.

Increasing adjustments. You may have to increase the sale price of an article from the amount shown on your invoice. Include any charge which is required to be paid as a condition of your sale of a taxable article and is not specifically excluded. Such charges may include warranty, tool and die, packing or special handling charges and taxes other than this excise tax. Refer to 27 CFR 53.91 for further information.

Constructive Sale Price. A decreasing or increasing adjustment to a sale price may be necessary because of the type of sale. Articles sold at retail, on consignment, or in sales not at arm's length (for example, between affiliated companies) and at less than fair market value require constructive sale prices. Usually, the constructive sale price differs from the sales price at which you sold the article; therefore, an adjustment is necessary. Refer to 27 CFR 53.94 - .97.

LINE 12. Tax is imposed on your business use of taxable articles that you manufactured or imported. If you regularly sell the articles, compute the tax based on the lowest established wholesale price. Enter the sum of the prices for the articles used. Use, among other acts, includes loans of articles for display, demonstration or familiarization, or for further manufacture of an article not subject to any Federal manufacturers excise tax (26 U.S.C. Chapter 32). Refer to 27 CFR 53.111-.115 and ATF Announcement 93-23.

LINE 19. The amount shown on line 19 cannot exceed the amount on line 18. Any excess should be carried over as a credit to your next tax return in Schedule C or claimed as a refund.

LINE 21. Enter the total amount of deposits made on ATF Form 5300.27 for the tax return period.

LINE 22. If the balance due deposit is more than $100, deposit the entire balance with ATF Form 5300.27.

SCHEDULE A. Unless line 18 is $100 or less, complete this schedule if you report any tax liability on line 9 on a quarterly return. Use semimonthly periods if you are required to make semimonthly tax deposits. Otherwise, enter your tax liability by month.

Enter the net tax liability for each period. Determine this amount based on what line 20 of this return would show if the return was completed just for that period (semimonthly or monthly). Adjustments (Schedules B and C) may not be made earlier than the semimonthly or monthly period in which they arose.

SCHEDULES B AND C. Use these schedules to show underpayments of tax due on past returns or to claim credit for overpayments of tax paid or for authorized reductions of tax. The amount of credit claimed in Schedule C cannot exceed the amount on line 18. Carry over any excess credit to the next tax return or file ATF Form 2635 for a refund.

Fully explain all entries in Schedule B and C. Any claim for credit must be explained sufficiently to determine the legitimacy and circumstances of the credit and must be supported by the evidence prescribed in 27 CFR Part 53 and 27 CFR 70.123.

LINES 40 - 41. If the taxpayer is an individual, the individual must sign. If the taxpayer is a corporation, the president, vice-president or other principal officer must sign. If the taxpayer is a partnership or other unincorporated organization, a responsible and authorized member officer having knowledge of its affairs, must sign. If the taxpayer is a trust or estate, the fiduciary must sign. An agent of the taxpayer may sign if an acceptable power of attorney is filed with the appropriate ATF office.

PAPERWORK REDUCTION ACT NOTICE

This request is in accordance with The Paperwork Reduction Act of 1980. The information collection is mandatory pursuant to 26 U.S.C. 6302. The purpose of this information collection is to correctly identify the taxpayer and to correctly credit the taxpayer's liability.

The estimated average burden associated with this collection of information is 7 hours per respondent. Comments concerning the accuracy of this burden should be directed to the Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C., 20226, and the Office of Management and Budget, Paperwork Reduction Project 1512-( ), Washington, D.C. 20503.

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Form Approved: OMB No. 1512- ( )

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FEDERAL FIREARMS AND AMMUNITION EXCISE TAX RETURN

(Prepare in Duplicate - See Attached Instructions)

FOR ATF USE ONLY	
TAX	$
PENALTY	$
INTEREST	$
TOTAL	$
EXAMINED BY:	DATE:
OTHER	

PART I - GENERAL

1. NAME, TRADE OR BUSINESS NAME, AND ADDRESS *(mailing and location)* OF TAXPAYER *(number, street, city, State and ZIP Code)*

2. TELEPHONE NUMBER *(If new taxpayer, or if your phone number changed)*

3. EMPLOYER IDENTIFICATION NUMBER

4. IF FINAL RETURN *(see instruction 9)*, CHECK THIS BOX ☐

5. PAYMENT, IF ANY, FOR THIS RETURN MADE BY:
☐ CHECK OR MONEY ORDER ☐ EFT ☐ OTHER *(Specify)* _____

PART II - COMPUTATION OF TAX ON SALES OR USES DURING TAX PERIOD

6. TAX PERIOD *(see instruction 3)* STARTS ON ____/____/____ *(month, day, year)* AND ENDS ON ____/____/____ *(month, day, year)*

TOTALS DURING TAX PERIOD	PISTOLS AND REVOLVERS	OTHER FIREARMS	SHELLS AND CARTRIDGES
7. ALL ARTICLES SOLD *by sale price*	$	$	$
8. ARTICLES SOLD TAX-FREE OR TAX EXEMPT *by sale price*			
9. TAXABLE SALES *(line 7 minus line 8)*			
10. NET ADJUSTMENTS TO SALE PRICE OF TAXABLE SALES MADE DURING PERIOD *(show decreases in parentheses)*			
11. ADJUSTED TAXABLE SALES *(line 9 plus or minus line 10)*			
12. TAXABLE USE OF ARTICLES *by taxable sale price*			
13. TAXABLE AMOUNT OF SALES AND USES *(line 11 plus line 12)*			
14. TAX RATE	10%	11%	11%
15. AMOUNT OF TAX *(multiply line 13 by line 14)*	$	$	$

PART III - COMPUTATION OF TAX LIABILITY FOR TAX PERIOD

16. TOTAL OF AMOUNTS FROM LINE 15	$
17. ADJUSTMENTS INCREASING AMOUNT DUE *(line 33, Schedule B)*	$
18. GROSS TAX DUE *(line 16 plus line 17)*	$
19. ADJUSTMENTS DECREASING AMOUNT DUE *(line 38, Schedule C) (Cannot be more than the amount on line 18)*	$
20. NET TAX LIABILITY *(Line 18 minus line 19. Should agree with line 28, Schedule A. Cannot be less than zero.)*	$
21. TOTAL DEPOSITS FOR TAX PERIOD	$

▶ COMPARE LINE 20 TO LINE 21 AND COMPLETE LINE 22 OR 23 AS APPLICABLE ◀

22. BALANCE OF TAX DUE *(amount that line 20 exceeds line 21)*	$
23. CHECK WHAT YOU WANT DONE WITH THE AMOUNT THAT LINE 21 EXCEEDS LINE 20. ☐ REFUND TO ME OR ☐ APPLY TO MY NEXT TAX RETURN *(show in Schedule C of next tax return)*	$

ATF F 5300.26 ( ) PREVIOUS EDITIONS ARE OBSOLETE

SCHEDULE A - STATEMENT OF NET TAX LIABILITY DURING TAX PERIOD

SEMIMONTHLY DEPOSITORS		OTHER DEPOSITORS	
DEPOSIT PERIOD (a)	NET TAX LIABILITY (b)	DEPOSIT PERIOD (c)	NET TAX LIABILITY (d)
25. FIRST MONTH: Day 1 through day 15	$	25. FIRST MONTH: Day 1 through last day	$
Day 16 through last day	$		
26. SECOND MONTH: Day 1 through day 15	$	26. SECOND MONTH: Day 1 through last day	$
Day 16 through last day	$		
27. THIRD MONTH: Day 1 through day 15	$	27. THIRD MONTH: Day 1 through last day	$
Day 16 through last day	$		
28. TOTAL OF COLUMN (b)	$	28. TOTAL OF COLUMN (d)	$

SCHEDULE B - EXPLANATION OF INCREASING ADJUSTMENTS

EXPLANATION OF INDIVIDUAL ERRORS OR TRANSACTIONS (a)	AMOUNT OF ADJUSTMENTS (b) TAX	(c) INTEREST	(d) PENALTY
29.	$	$	$
30.			
31.			
32. TOTALS OF COLUMNS (b), (c) and (d)	$	$	$
33. TOTAL ADJUSTMENTS INCREASING AMOUNT DUE (line 32, col. (b) plus cols. (c) and (d)):			$

SCHEDULE C - EXPLANATION OF DECREASING ADJUSTMENTS

EXPLANATION OF INDIVIDUAL ERRORS OR TRANSACTIONS (a)	AMOUNT OF ADJUSTMENTS (b) TAX	(c) INTEREST
34.	$	$
35.		
36.		
37. TOTALS OF COLUMNS (b) and (c)	$	$
38. TOTAL ADJUSTMENTS DECREASING AMOUNT DUE (line 37, col. (b) plus col. (c)):		$

CERTIFICATION

The tax in schedule C for overpayments other than under 26 U.S.C. Sections 6416(b)(1), (2), (3) and (5), shown on this tax return: (1) has not been included in the price of the article with respect to which it was imposed nor collected from a vendee for which the taxpayer has identified the nature of evidence available to establish this factor or (2) has been repaid to the ultimate purchaser of the article by me.

The tax in schedule C for overpayments under 26 U.S.C. Section 6416 (b)(1) for certain price readjustments, section 6416 (b)(2) for certain uses, sales or resales of a taxable article or section 6416 (b)(3) on tax-paid articles used for further manufacture: (1) has not been included in the price of the article with respect to which it was imposed nor collected from a vendee for which the taxpayer has identified the nature of evidence available to establish this fact: (2) has been repaid to the ultimate vendor of the article by me, or (3) was included in the price of the article, and I will submit, upon request of the district director, the written consent of the ultimate vendor to the allowance of the credit.

The tax in schedule C for overpayments under 26 U.S.C. Section 6416(b)(5) for return of installment accounts has been repaid or credited to the purchaser upon return of the account to me pursuant to the original sales agreement of the account.

Under penalties of perjury I declare that I have examined this return (including any accompanying explanations, statements, schedules and forms) and to the best of my knowledge and belief it is true, correct, and includes all transactions and tax liabilities required by law or regulations to be reported.

39. DATE	40. SIGNATURE	41. TITLE

ATF F 5300.26 ( )

[FR Doc. 95–8664 Filed 4–7–95; 8:45 am]
BILLING CODE 4810–31–C

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Chapter I

Review of Existing Regulations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: MSHA is conducting a comprehensive review of its existing safety and health regulations. The Agency invites mine operators, miners, manufacturers, and other interested parties to identify regulations that are unnecessary or need to be updated. MSHA specifically requests help in identifying obsolete requirements and conflicting or duplicate provisions.

DATES: Submit written comments on or before May 1, 1995.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Commenters are encouraged to send comments on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703–235–1910.

SUPPLEMENTARY INFORMATION: MSHA is conducting a comprehensive review of all its existing regulations which are in chapter I of title 30 of the Code of Federal Regulations. The primary purpose of this review is to improve the effectiveness of the Agency's existing safety and health regulations, without reducing the protection provided to miners. This review is consistent with the goals of Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Federal Mine Safety and Health Act of 1977. It also is consistent with the President's government-wide regulatory reform efforts to reduce overly burdensome and paperwork intensive requirements where possible.

In reviewing its existing regulations, MSHA is evaluating each standard to determine if it is unnecessary, inaccurate, or outdated. For example, the Agency has identified equipment approval regulations under which no applications have been received in many years. MSHA also is evaluating whether there are standards which duplicate, are inconsistent with, or conflict with other MSHA or Federal requirements. For example, MSHA is considering combining the safety and health standards for surface and underground metal and nonmetal mines into a single part to eliminate unnecessary repetition.

MSHA considers timely public participation to be an integral part of any process to improve the effectiveness of its safety and health regulations. The Agency, therefore, urges the mining community and other interested parties to submit their suggestions for improving the Agency's existing regulations.

Dated: March 31, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–8656 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901 and 924

Alabama and Mississippi Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Alabama and Mississippi underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Alabama and Mississippi's regulatory programs (hereinafter referred to as the "Alabama program" and "Mississippi program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Alabama and Mississippi and consideration of public comments, OSM will decide whether initial enforcement in Alabama and Mississippi will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., C.S.T. on April 30, 1995. If requested, OSM will hold a public hearing on April 25, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Alabama and Mississippi. Requests to speak at the hearing must be received by 4:00 p.m., C.S.T. on April 15, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below. Office of Surface Mining, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209.

Copies of the applicable parts of the Alabama and Mississippi programs, SMCRA, the implementing Federal regulations, information provided by Alabama and Mississippi concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7282.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 29, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "noncommercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5

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for operations conducted after October 24, 1992.

C. Enforcement in Alabama

By letter to Alabama dated December 14, 1994, OSM requested information from Alabama that would help OSM decide which approach to take in Alabama to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. AL–520). By letter dated January 1, 1995, Alabama responded to this OSM request (Administrative Record No. AL–521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the requirements of section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a "to the extent required by State law" limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis will be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made due to the proposal to supersede State program provisions. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

D. Enforcement in Mississippi

By letter to Mississippi dated December 14 1994, OSM requested information from Mississippi that would help OSM decide which approach to take in Mississippi to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administration Record No. MS–328). Mississippi has not responded to the December 14, 1994, letter requesting information on underground coal mines.

Mississippi has had no surface nor underground coal mining operations since October 24, 1992. At the present time, Mississippi is in the process of completely revising its approved regulatory program.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Alabama and Mississippi to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 15, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Alabama and Mississippi should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8754 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938 and 920

Pennsylvania and Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Pennsylvania and Maryland, underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Pennsylvania and the Maryland regulatory programs (hereinafter referred to as the "Pennsylvania Program" and the "Maryland Program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Pennsylvania and Maryland and consideration of public comments, OSM will decide whether initial enforcement in Pennsylvania and Maryland will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. on May 10, 1995. If requested, OSM will hold a public hearing on May 5, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Pennsylvania and Maryland. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on April 25, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below.

Copies of the applicable parts of the Pennsylvania and Maryland State programs, SMCRA, the implementing Federal regulations, information provided by Pennsylvania and Maryland concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later

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than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Pennsylvania

By letter to Pennsylvania dated December 13, 1994, OSM requested information from Pennsylvania that would help OSM decide which approach to take in Pennsylvania to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. PA 835.00). By letter dated January 24, 1995, Pennsylvania responded to this OSM request (Administrative record No. PA 835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of those are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing Section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair or subsidence damage in the following situations.

Water Supply Replacement

* Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.
* Cases where affected water supplies are located in the anthracite coal fields.
* Cases where landowners entered voluntary agreements allowing their supplies to be impacted.
* Cases where impacts occurred more than three years after completion of coal extraction.
* Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.
* Cases where the property owner failed to report the water supply problem within two years of its occurrence.
* Cases where the mine operator was denied access to conduct a pre-mining of post-mining survey of the water supply and no pre-mining quality and quantity information is available.
* Cases where a mine operator purchased the property or compensated the property owner rather than replace the supply.

Repair or Compensate for Subsidence Damage

* Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.
* Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair/compensation requirements until the next permit renewal).
* Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.
* Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structure damage and water loss caused by underground mining operations conducted after October 24, 1994. Limitations, as discussed above, provide authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coal field residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coal field or for bituminous coal field for time period October 24, 1992 through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structure damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made final determination on 87 with 4 pending further study. PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under review with no determination as to impacts from underground mining.

D. Enforcement in Maryland

By letter to Maryland dated December 13, 1994, OSM requested information from Maryland that would help OSM decide which approach to take in Maryland to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. MD 570.0). By letter dated March 29, 1995, Maryland responded to this OSM request (Administrative Record No. MD 570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7–5A–05.1, § 7–5A–05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

II. Public Comment Procedures

OSM is requesting public comment to assist OHM in making its decision on which approach to use in Pennsylvania and Maryland to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on April 25, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting.

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Pennsylvania and Maryland should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8753 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 247

[RIN 0790–AG16]

Department of Defense Newspapers and Civilian Enterprise Publications

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This rule revises and provides DoD policy and updates procedures to meet changed circumstances for publishing DoD internal command information newspapers and civilian enterprise publications. It has minimal impact on some civilian printers who are contracted to print the publications.

DATES: Written comments on this proposed rule must be received by June 9, 1995.

ADDRESSES: Forward comments to American Forces Information Service, Attn: Print Media Policy, 601 N. Fairfax St., Alexandria, Virginia 22314–2007.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Frank Theising, USA, (703) 274–4868.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 247 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that 32 CFR part 247 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR part 247

Defense Communications, Government publications, Newspapers and Magazines.

Accordingly, 32 CFR part 247 is proposed to be revised to read as follows:

PART 247—DEPARTMENT OF DEFENSE NEWSPAPERS AND CIVILIAN ENTERPRISE PUBLICATIONS

Sec.

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Authority: 10 U.S.C. 121 and 133.

§ 247.1 Purpose.

This part implements 32 CFR part 372 and implements policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) and Civilian Enterprise (CE) newspapers, CE guides, and installation maps in support of the DoD Internal Information Program.

§ 247.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and includes the Coast Guard when operating as a Military Service in the Navy.

(b) Does not apply to the *Stars and Stripes (S&S)* newspapers and business operations. *S&S* guidance is provided in 32 CFR part 246.

(c) The term Commander, as used in this part, also means Heads of the DoD Components.

§ 247.3. Definitions.

Civilian Enterprise (CE) guides and installation maps. Authorized publications containing advertising that are prepared and published under contract with commercial publishers. The right to circulate the advertising in these publications to the DoD readership constitutes contractual consideration to pay for these DoD publications. The publications become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides.* Publications that provide DoD personnel with information about the mission of their command; the availability of command, installation, or community services; local geography; historical background; and other information. These publications may include installation telephone directories at the discretion of the commander; however, separate CE telephone directories are not authorized.

(2) *Installation Maps.* Publications designed for orientation of new arrivals or for visitors.

DoD newspapers. Authorized, unofficial publications, serving as part of the commander's internal information program, that support DoD command internal communication requirements. Usually, they are distributed weekly or monthly. DoD newspapers contain most, if not all, of the following elements to communicate with the intended DoD readership: command, military department, and DoD news and features; commanders' comments; letters to the editor; editorials; commentaries; features; sports; entertainment items; morale, welfare, and recreation news and announcements; photography; line art; and installation and local community news and announcements. DoD newspapers do not necessarily reflect the official views of, or endorsement of content by, the Department of Defense.

(1) *CE newspapers.* Newspapers published by commercial publishers under contract with the DoD Components or their subordinate commands. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the paper. Authorized news and information sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military Departments, their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the newspaper if approved by the commander or public affairs officer (PAO), as the commander's representative. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE guides and installation maps and may contain supplements or inserts. They become the property of the command, installation, or intended recipient upon deliver in accordance with terms of the contract.

(2) *Funded newspapers.* Newspapers published by the DoD Components or their subordinate commands using appropriated funds. The editorial content of these newspapers is prepared by the internal information section of the public affairs staff or other internal sources. Usually, these newspapers are printed by the Government Printing Office (GPO) or under GPO contract in accordance with Government printing regulations. 32 CFR part 397 specifies DPS as the sole DoD conduit to the GPO.

(3) *Overseas Unified Command (UC) newspapers.* Newspapers published for overseas audiences approved by the Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)) to provide world, U.S., and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, Department of Defense, Component, and subordinate command news and information.

(4) *News bulletin and summaries.* Publications of deployed or isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher level of command when no daily English language newspapers are readily available.

Inserts. A flier, circular, or freestanding advertisement placed within the folds of the newspaper. No disclaimer or other labeling is required.

Option. A unilateral right in a contract by which, for a specified time, the Government may elect to acquire additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Organizational Terms

(1) *Command.* A unit or units, an organization, or an area under the command of one individual. It includes

organizations headed by senior civilians that require command internal information-type media.

(2) *DoD Components.* See § 247.2(a).

(3) *Installation.* A DoD facility or ship that serves as the base for one or more commands. Media covered by this Instruction may serve the command communication needs of one or several commands located at one installation.

(4) *Major command.* A designated command such as the Air Mobility Command or the Army Forces Command that serves as the headquarters for subordinate commands or installations that have the same or related missions.

(5) *Subordinate levels.* Lower levels of command.

Supplements. Features, advertising sections, or morale, welfare and recreation sections printed with or inserted into publications for redistribution. Supplements must be labeled "Supplement to the (name of newspaper)." Editorial content in supplements is subject to approval by the commander or the PAO as his or her agent.

§ 247.4 Policy.

It is DoD policy that:

(a) A free flow of news and information shall be provided to all DoD personnel without censorship or news management. The calculated withholding of news unfavorable to the Department of Defense is prohibited.

(b) News coverage and other editorial content in DoD newspapers and publications shall be factual and objective. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(c) DoD newspapers shall distinguish between fact and opinion, both of which may be part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(d) DoD newspapers shall distinguish between editorials (command position) and commentaries (personal opinion) by clearly identifying them as such.

(e) News content in DoD newspapers shall be based on releases, reports, and materials provided by the DoD components and their subordinate levels, DoD newspaper staff members, and other government agencies. DoD newspapers shall credit sources of all material other than local, internal sources. This includes, but is not limited to, Military Department news sources, American Forces Information Service, and command news releases.

(f) DoD newspapers may contain articles of local interest to installation personnel produced outside official channels (e.g., stringers, local organizations), provided that the author's permission has been obtained, the source is credited, and they do not otherwise violate this part.

(g) DoD newspapers normally shall not be authorized the use of commercial news and opinion sources, such as Associated Press (AP), United Press International (UPI), New York Times, etc., except as stated in this paragraph and the following paragraph. The use of such sources is beyond the scope of the mission of command or installation newspapers and puts them in direct competition with commercial newspapers. The use of such sources may be authorized for a specific DoD newspaper by the cognizant DoD Component only when other sources of national and international news and opinion are not available.

(h) Overseas Unified Command (UC) newspapers published outside the United States may purchase or contract for and carry news stories, features, syndicated columns, and editorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the UC Commanders. Overseas UC newspapers, news bulletins, and news summaries authorized to carry national and world news may include coverage of U.S. political campaign news from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(i) The masthead of all DoD newspapers, guides, and installation maps shall contain the following disclaimer printed in type no smaller than 6-point: "This (DoD newspaper/guide or installation map) is an authorized publication for members of the Department of Defense. Contents of (name of the DoD newspaper/this guide/this installation map) are not necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or (the name of the publishing DoD component)."

(j) The masthead of DoD CE newspapers, guides, and installation maps shall contain the following statements in addition to that contained in paragraph (i) of this section:

(1) "Published by (name), a private firm in no way connected with the (Department of Defense/the U.S. Army/the U.S. Navy/the U.S. Air Force/the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate level)."

(2) "The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the (Department of Defense/the U.S. Army/ the U.S. Navy/ the U.S. Air Force/the U.S. Marine Corps), or (name of commercial publisher) of the products or services advertised."

(3) "Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user, or patron." If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(k) DoD newspapers, guides, and installation maps shall not contain campaign news, partisan discussions, cartoons, editorials, or commentaries dealing with political campaigns, candidates, or issues. DoD CE newspapers, guides, and installation maps shall not carry paid political advertisements for a candidate, party, or which advocate a particular position on a political issue. This includes those advertisements advocating a position on any proposed DoD policy or policy under review.

(l) DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. DoD newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program; the OSD; and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in 32 CFR part 46.

(m) DoD newspapers and CE guides shall comply with DoD Instruction 1100.13 [1] pertaining to polls, surveys, and straw votes.

(1) The DoD Components and subordinate levels may authorize polls

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Pat Royal Road, Springfield, VA 22161.

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on matters of local interest, such as soldier of the week, and favorite athlete.

(2) A DoD newspaper, guide, or installation map shall not conduct a poll, a survey, or a straw vote relating to a political campaign or issue.

(3) Opinion surveys must be in compliance with Military Service regulations.

(n) DoD newspapers will support officially authorized fund-raising campaigns (e.g., Combined Federal Campaign (CFC)) within the Department of Defense in accordance with DoD Directive 5035.1.[2] News coverage of the campaign will not discuss monetary goals, quotas, competition or tallies of solicitation between or among agencies. To avoid any appearance of endorsement, features and news coverage will discuss the campaign in general and not address specific agencies within the CFC.

(o) DoD newspapers, guides, or installation maps shall not:

(1) Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial product, commodity or service.

(2) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(3) Carry any advertisement that violates or rejects DoD equal opportunity policy. (See paragraph (j)(3) of this section).

(p) All commercial advertising, including advertising supplements, shall be clearly identifiable as such. Paid advertorials and advertising supplements may be included but must be clearly labeled as advertising and readily distinguishable from editorial content.

(q) Alteration of official photographic and video imagery will comply with the Deputy Secretary of Defense policy memorandum, subject: Alteration of Official Photographic and Video Imagery, December 9, 1994, (Appendix F of this part).

(r) Commercial sponsors of Armed Forces Professional Entertainment Program events and morale, welfare and recreation events may be mentioned routinely with other pertinent facts in news stories and announcements in DoD newspapers. (See DoD Instructions 1330.13[3] and 1015.2.[4]

(s) Book, radio, television, movie, travel, and other entertainment reviews may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any of its Components or their subordinate levels.

(t) All printing using appropriated funds will be obtained in accordance with 32 CFR part 397.

§ 247.5 Responsibilities.

(a) The *Assistant to the Secretary of Defense for Public Affairs*, consistent with 32 CFR part 375, shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, AFIS.

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The *Director, American Forces Information Service*, shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD newspapers, guides, and installation maps.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this Instruction.

(3) Serve as the DoD point of contact in the United States for UC newspaper matters.

(4) Provide guidance to the UCs, Military Departments, and other DoD Components pertaining to DoD newspapers and CE publications.

(5) Monitor effectiveness of business and financial operations of DoD newspapers and provide business counsel and assistance, as appropriate.

(6) Sponsor a DoD Interservice Newspaper Committee composed of representatives of the Military Departments to coordinate DoD command or installation newspaper matters.

(7) Provide a press service for joint-Service news and information for use by authorized DoD newspaper editors.

(c) *The Secretaries of the Military Departments* shall:

(1) Provide policy guidance and assistance to the Department's newspapers and CE publications.

(2) Encourage the use of CE newspapers when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized internal information products under this part.

(4) Designate a member of their public affairs staff to serve on the DoD Interservice Newspaper Committee.

(5) Ensure all printing obtained with appropriated funds complies with 32 CFR part 397.

(d) *The Commanders of Unified Combatant (UC) Commands* shall:

(1) Publish UC newspapers, if authorized. In discharging this responsibility, the UC Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) Ensure that the UC newspaper is prepared to support U.S. forces in the command area during contingencies and armed conflict.

§ 247.6 Procedures.

(a) *General.* (1) National security information shall be protected in accordance with 32 CFR parts 159 and 159a.

(2) Specific items of internal information of interest to DoD personnel and their family members prepared for publications in DoD newspapers, guides, or installation maps may be made available to requesters in the information can be released as provided in 32 CFR parts 285 and 286.

(3) Editorial policies of DoD newspapers, guides, and installation maps shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(4) DoD editors of publications covered under this part shall conform to applicable policies, regulations, and laws involving libel, photographic image alteration, copyright, classification of information, and U.S. Government printing and postal regulations.

(5) DoD newspapers, guides, and installation maps shall comply with 32 CFR part 310 regarding the DoD privacy program.

(b) *Establishment of DoD newspapers.* (1) Commanders are authorized to establish Funded newspapers (Appendix A to this part) or CE newspapers (Appendix B to this part) when:

(i) A valid internal information mission requirement exists.

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of DoD knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and increase knowledge.

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of DoD information, which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling rumors, and keeping members informed on DoD information that will affect their futures. It provides information and assistance to family members, which improve their spirits and thereby the effectiveness of their military service and/or civilian member. The newspaper encourages participation in various positive leisure-time activities to improve morale and deter alcohol abuse and other pursuits that impair their ability to perform.

(D) The newpaper provides information to make command members aware of the hazards of the abuse of drugs and other substances, and of the negative impact that substance abuse has on readiness.

(E) CE newspapers provide advertisements that guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact in increased installation-community communication, which enhances mutual support.

(F) The newspaper increases organizational cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practices are vital, but are not an end unto themselves. They are the primary means to enhance receptivity of command communication through the newspaper.

(H) The newspaper exists to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher level of command to be the most cost-effective means of fulfilling the command internal communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible. The process of establishing a newspaper must include an investigation of the feasibility of publishing under the CE concept. This investigation must include careful consideration of the potential for real or apparent conflict of interest. If publishing under the CE concept is determined to be feasible, commanders must ensure that they have obtained approval to establish the newspaper before authorizing their representatives to negotiate a contract with a CE publisher.

(3) DoD newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds shall not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper is authorized for each command or installation.

(i) If a newspaper is required at an installation where more than one command or headquarters is collocated, the host commander shall be responsible for publication of one funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters, shall assist the staff of the host newspaper with coverage. If required by unusual circumstance, a commander other than the host may publish the single authorized newspaper when the majority of affected organizations concur.

(ii) This provision is not intended to prohibit the headquarters of a geographically dispersed command that receives its local coverage in the host installation newspaper from publishing a command-wide newspaper; nor is it intended to prohibit a command that has information needs that are significantly different from the majority of the host installation audience from publishing a separate newspaper, when authorized by the designated approving authority. (See Appendix E to this part).

(iii) *Establishment of CE Guides and Installation Maps.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible. (See Appendix B to this part) Only one CE guide and installation map is authorized for each command or installation. The requirements of paragraph (b)(4) of this section, apply to CE guides and installation maps. These publications shall be approved by the next higher level. Approval authorities shall exercise care not to overburden community advertisers.

(iv) *Use of trademark.* The DoD Components and their subordinate levels shall trademark—State, Federal, or both—the names of their newspapers, guides, and installation maps, when possible.

(v) *Use of recycled products.* The public affairs office shall, whenever possible, based on contractual agreements, use recycled paper for publications covered under this part.

(vi) *Mailing requirements and sales and distribution of non-DoD publications.* See appendix C to this part.

(vii) *AFIS print media directorate.* See appendix D to this part.

(viii) *DoD command newspaper review system.* See appendix E to this part.

(6) When, in the opinion of the Assistant to the Secretary of Defense for Public Affairs, or the UC Commander, a UC newspaper is needed, establishment shall be directed by the Secretary of Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas UC newspapers.

§ 247.7 Information requirements.

The biennial reporting requirement contained in this part has been assigned Report Control Symbol DD–PA(BI) 1638.

Appendix A to Part 247—Funded Newspapers

A. *Purpose.* Funded newspapers support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with 32 CFR part 397. The editorial content of these newspapers and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the *S&S*. Where printing by *S&S* is not feasible because of distance or other factors, Funded newspapers may be printed by other means. These are evaluated on a case-by-case basis with the cognizant DPS office.

B. *Name.* The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may be included in the nameplate, also. When possible, the DoD Components and their subordinate levels shall trademark the names of their publications, as stated in § 247.5(d).

C. *Masthead.* The masthead shall include the names of the commanding officer and the PAO, the names and editorial titles of the staff of the newspaper, and the mailing address and telephone number of the editorial staff, in addition to that required in subsection § 247.4(i).

D. *News and editorial materials.* The commander and the public affairs staff shall generate and select news, information, photographs, editorial, and other materials to be used. Authorized news and information sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military

[2] See footnote 1 to section 247.4(m).
[3] See footnote 1 to section 247.4(m).
[4] See footnote 1 to section 247.4(m).

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Departments, their subordinate levels of command, and other Government Agencies. Civilian community service news and announcements of benefit to personnel assigned to the command or installation and their family members may also be used. Photographic images used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Military and DoD civilian personnel may not be assigned to duty at the premises of the contract printer to perform any job functions that are part of the business activities or contractual responsibilities of the contract printer. Members of the public affairs staff who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other production details provided for in the command contract with the contract printer. A member of the public affairs staff shall review proof copy to prevent mistakes.

F. *Funding.* The expense of publishing and distributing Funded newspapers is charged to appropriated funds of the publishing command.

G. *Printing.* Printing of a funded newspaper shall be handled in accordance with 32 CFR part 397 in conjunction with public affairs as the office of primary interest.

H. *Distribution.* Funded newspapers may be distributed through official channels.

Appropriated funds and manpower may be used for distribution of Funded newspapers, as required.

I. *Advertising.* Funded newspapers shall not carry commercial advertising. As a service, the Funded newspaper may carry nonpaid listings of personally owned items and services for sale by members of the command. Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in funded newspapers.

J. *Employment and gratuities.* DoD personnel shall not accept employment by or gratuities from GPO-contracted printers under contract to print funded newspapers. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract printer shall be in accordance with the 32 CFR part 84.

Appendix B to part 247—CE Publications

A. *Purpose.* CE publications consist of DoD newspapers, guides, and installation maps. They support command internal communications. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the publication. CE publishers sell advertising to cover costs and secure earnings, print the publications, and may make all or part of the distribution. Periodically, CE publishers compete for contracts to publish these publications. Neither appropriated nor nonappropriated funds shall be used to pay for any part of a CE publisher's costs incurred in publishing a CE publication.

B. *Name.* The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may also be included in the nameplate. When possible, the DoD components and their subordinates shall trademark the names of their publications, as stated in § 247.6(d).

C. *Masthead.* The masthead shall include the following in addition to that required in § 247.4(i) and (j). "The editorial content of this publication is the responsibility of the (name of command or installation) Public Affairs Office." The names of the commanding officer and PAO, the names and editorial titles of the staff assigned the duty of preparing the editorial content, and the office address and telephone number of the editorial staff shall be listed in the masthead of DoD newspapers, but is not required in CE guides and installation maps. The names of the publisher and employees of the publisher may be listed separately.

D. *News and editorial materials.* The commander or the public affairs office shall provide oversight and final approval authority for news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Authorized news and information sources include the OATSD(PA), AFIS, the Military Departments and their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the publication if approved by the commander or PAO, as the commander's representative. Commercial news and opinion sources, such as AP, UPI, New York Times, etc., are not normally authorized for use in DOD newspapers except as stated in § 247.4(q). The paper may publish community service news and announcements of the civilian community for the benefit of command or installation personnel and their families. Imagery used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Neither military nor DOD civilian personnel shall be assigned to duty at the premises of the CE publisher. Neither military nor DOD civilian personnel shall perform any job functions that are part of the business activities or contractual responsibilities of the CE publisher either at the contractor's facility or the Government facility. The PAO and staff who produce the non-advertising content of the CE publication may perform certain installation liaison functions on publisher premises including monitoring and coordinating layout and design and other publishing details set forth in the contract to ensure the effective presentation of information. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Newspaper text-editing-system pagination and copy terminals owned by the CE publisher may be placed in the command or installation public affairs office under contractual agreement for use by the public affairs staff to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the printing and publication functions performed by the CE publisher. All costs of these terminals shall be borne by the CE newspaper publishers who shall retain title to the equipment and full responsibility for any damage to or loss of such equipment. The relationship between the public affairs staff and employees of the CE contractor is that of Government employees working with employees of a private contractor. Supervision of CE employees; that is, the responsibility to rate performance, set rate of pay, grant vacation time, exercise discipline, assign day-to-day administrative tasks, etc., remains with the CE publisher. Any modification of the contract must be made by the responsible contracting officer. Public affairs staff members must be aware that employees of the contractor are not employees of the government and should be treated accordingly.

F. Distribution of CE publications

1. A funded newspaper shall not be distributed as an insert to a CE newspaper, unless provided for in the CE contract, nor shall a CE newspaper be distributed as an insert to a funded newspaper.

2. Supplements clearly labeled as such, and advertising inserts, may be inserted into and distributed with a CE newspaper.

3. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

4. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE newspapers shall not be distributed outside the intended DOD audience and retirees, which includes family members. The CE publisher may provide complete copies of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

5. The CE publisher of a CE newspaper will provide the appropriate number of news racks determined by the installation commander for publication distribution. CE publishers are responsible for maintenance of these racks.

6. CE guides and installation maps may be delivered in bulk quantities to the appropriate installation offices to distribute these publications through official channels as necessary.

G. Responsibilities Regarding Advertising

1. Only the CE publisher shall use the space agreed upon for advertising. While the editorial content of the publication is completely controlled by the installation, the advertising section, including its content, is the responsibility of the CE publisher. The public affairs staff, however, retains the responsibility to review advertisements before they are printed.

2. Any decision by a CE publisher to accept or reject an advertisement is final. The PAO may discuss with a publisher their decision not to run an advertisement, but cannot substitute his judgment for that of the publisher.

3. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DOD or Military Service regulations, including this part, or that may pose a danger or detriment to DOD personnel or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DOD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this part. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements. If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DOD Directive 1325.6[1].

4. DoD Directives 1325.6 gives the commander authority to prohibit distribution on the installation of a CE publication containing advertising he or she determines likely to promote a situation leading to potential riots or other disturbances, or when the circulation of such advertising may present a danger to loyalty, discipline or morale of personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the past performance of the advertiser. Prior to making a determination to prohibit distribution of a CE newspaper, the commander shall obtain a legal coordination.

5. CE publications may carry paid and nonpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulations. (See DoD Instruction 1015.2.)[2]

6. Bingo games and lotteries conducted by a commercial organization whose primary business is conducting lotteries may not be advertised in CE publications. Non-lottery activities (such as dining at a restaurant or attending a musical performance) of a commercial organization whose primary business in conducting lotteries may be advertised in CE publications. Exceptions are allowed for authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. See section D. of Appendix C to this part.

H. CE Guides and Maps

1. The name of the publication may include the name and emblem of the command or installation.

2. At the discretion of the commander, an installation telephone directory may be included as a section of a CE guide. The telephone section shall be integral to the guide, not separable, and part of the guide contract specifications. Separate CE telephone directories are not authorized. Required communication security information shall be printed on the first page of the telephone section and not on the cover of the guide. The cover of the guide may notify users that the publication contains the telephone directory.

3. CE contracts for guides and maps shall establish firm directory dates and shall contain provisions to ensure distribution is controlled by the command. Delivery dates may vary for guides and maps to make them more attractive to advertisers. The contract provisions shall specify delivery dates.

I. *Employment and gratuities.* DoD personnel involved with CE contracts shall not accept employment by or gratuities from a CE publisher. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract publisher shall be in accordance with 32 CFR part 84.

J. Contracting for a CE Publication

1. *General.* The DoD Components and their subordinate commands are authorized to contract in writing the CE publications. The underlying premise of the CE concept is that the DoD Components and their subordinate commands will save money by transferring certain publishing and distribution functions to a commercial publisher selected through a competitive process. The CE publication is printed and delivered to the command, installation, or its readership in accordance with the terms of a written contract. Oral contracts are not acceptable. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The command or installation guarantees first publication and distribution of locally-produced editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with terms of the contract.

2. *Contracting process.* Whether a first time initiative to establish CE publication or a recompetition of an existing CE contract, the process must start with advance planning as to the nature of the command's requirements, the contracting strategy, and the market of potential advertisers and competitors for the job. The CE contract solicitation and the contract itself must contain a statement of work that describes in legally sufficient detail the Government's requirements and the conditions and restrictions under which the contractor will perform. The cognizant contracting office of the CE contracting action shall be the contracting office which normally provides contracting support to the command for service contracts and other procurements of a general nature which are above the simplified shall purchase threshold. The contracting officer shall combine the statement of work with appropriate contractual terms and conditions, using 48 CFR chapter I and II as guides, although CE contracts are not subject to the FAR or DFARS, because they do not involve the expenditure of appropriated funds. The resulting solicitation and contract shall completely identify the rights and obligations of both parties. Proposals shall be solicited from all known commercial publishers who could potentially become the CE contractor. Upon evaluation of the competing proposals by the Source Selection Advisory Committee (SSAC) and selection of a winner by the selecting official, the CE contract shall be awarded by the contracting officer. The CE contract shall not require the contractor to pay money to the command or to provide goods, services, or other consideration not directly related to the CE publication. In the event that only one offer is received, the SSAC may recommend to the selecting official that no award be made or that the contracting officer enter into negotiations with the sole offeror to obtain the best possible service and product of the Government.

3. *Statement of Work (SOW).* The SOW should be written to have the CE contractor perform as many of the publishing and distribution functions as practical to generate maximum savings to the Department of Defense. In so doing, care must be taken to balance Government requirements with a realistic view of the advertising revenue potential so as to achieve a contract that is commercially viable. The command's internal information needs shall be paramount. Some of the key issues that shall be addressed in the SOW follow:

a. A general description of the scope of the proposed contract including the name and nature of the publication involved; for example, weekly newspaper, annual guide and installation map. Normally, guides and installation maps are included in the same contract.

b. A description of editorial content to be carried; e.g., news, features, supplements, and factual information, along with provisions addressing the possible inclusion of contractor-furnished advertising supplements for newspapers, provided any such supplement shall have the prior approval of the commander.

c. A description of the rules for the inclusion of advertising in the publication. This provision shall specify that the commander's representative shall have the authority to specify newspaper advertising layout when required to enhance communications' effectiveness of the publication and shall require the contractor to notify advertisers of the requirements in § 247.4(i) and (j). The Military Departments will coordinate a standard set of ratios of advertising-to-editorial copy for multiples of pages for run of the publication advertising in CE newspapers that will be included in all DoD Component regulations supplementing this part. The recommended annual average is a ratio of 60/40. Inserts and advertising supplements will not count in the total ad to copy ratio; however, the commander may prohibit the distribution of supplemental advertising deemed excessive. Contract provisions shall be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command internal communication mission of the newspaper.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Road, Springfield, VA 22161.

[2] See footnote 1 to section 4. of this Appendix.

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d. A provision substantially as follows: "The contractor agrees not to enter into any exclusive advertising agreement with any firm, broker, or individual for the purpose of selling advertising associated with this contract."

e. A description of the CE contractor's responsibilities for distribution of the newspaper. This provision should address such matters as contractor furnishing of news racks along with contractor responsibility for maintenance of these racks.

f. A description of contractor-owned and/or contractor-furnished equipment such as text editing, copy terminals, and modems determined to be required to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the publication process.

g. A description of contractor-furnished editorial support services determined to be required. Such description must be in terms of the end product required; e.g., photography service and/or writer services, and not as a requirement to make available certain contractor personnel. In day-to-day performance and administration of the CE contract, contractor personnel performing such support services shall not be treated in any way as though they are Government employees.

h. A provision that the use, where economically feasible, of recycled paper for internal products will be a consideration for awarding the contract, as stated in § 247.6(e).

i. SOW's and REP's for CE newspapers shall specify standard newsprint, recyclable, subject to requirements of applicable laws and regulations.

4. *Contract provisions.* The CE concept is based on an exception to the Government Printing and Binding Regulations[3] published by the Congressional Joint Committee on Printing. While CE contracts are not subject to the FAR (48 CFR chapter I) or the DFARS (48 CFR chapter II), the FAR contains many clauses that are useful in protecting the interests of the Government. The following clauses may be helpful in obtaining the best possible CE publication:

a. *Status of FAR clause.* To clarify the status of FAR clauses appearing in CE contracts, the following clause shall be included in all new CE contracts: "The (name of DoD installation/unit/organization) is an element of the United States Government. This agreement is a United States Government contract authorized under the provisions of Department of Defense Instruction 5120.4 as an exception to the Government Printing and Binding Regulations published by the Congressional Joint Committee on Printing. Although this contract is not subject to the Federal Acquisition Regulation (FAR) or the Defense FAR Supplement (DFARS), FAR clauses useful in protecting the interests of the Government and implementing those provisions required by law are included in this contract."

[3] Copies may be obtained, at cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

b. *Option clause.* Insert a clause substantially the same as the following to extend the term of the CE publisher contract:

(1) "The Government may extend the term of this contract by written notice to the contractor within [insert in the clause the period of time in which the contracting officer has to exercise the option]; provided that the Government shall give the contractor a preliminary written notice of its intent to exercise the option at least 60 days before the contract expires. The preliminary notice does not commit the government to exercise the option." In the case of base closure or realignment the publisher has the right to request a renegotiation of the contract.

(2) "If the Government exercises the option, the extended contract shall be considered to include this option provision."

(3) "The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years."

c. *Default clause.* Insert the following clause in solicitations and contracts:

(1) "The Government may, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

(a) Deliver the CE publications in the quantities required or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract;

(c) Perform any of the other provisions of this contract."

(2) "If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, supplies or services similar to those terminated. However, the contractor shall continue the work not terminated."

(2) "The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract."

d. *Termination for convenience of the Government.* Insert the following clause in solicitations and contracts:

"The contracting officer, by written notice, may terminate this contract, in whole or in part if the services contracted for are no longer required by the Government, or when it is in the Government's interest, such as with installation closures. Any such termination shall be at no cost to the Government." The Government will use its best efforts to mitigate financial hardship on the publisher.

5. *Term of contract.* CE contracts may be entered into for an initial period of up to 2 years, and may contain options to extend the contract for one or more additional periods of 1 or 2 years duration. The total period of the contract, including options, shall not exceed 6 years, after which the contract must be recompeted.

6. *Exercise of options.* Under normal circumstances, when the contractor is performing satisfactorily, options for additional periods of performance should be exercised. However, the exercise of the option is the exclusive right of the Government, and decisions not to exercise the option, or to test the market before option exercise, are within the contracting officer's discretion working in concert with the PAO and other command officials.

7. *Modification of the contract.* Any changes to the SOW or other terms and conditions of the contract shall be made by written contract modification signed by both parties.

8. *SSAC.* The commander shall appoint an SSAC. The committee shall participate in the development of the Source Selection Plan (SSP) before the solicitation of proposals, evaluate proposals, and recommend a source to the selecting official. Since cost is not a factor in the evaluation, award will be based on technical proposals, the offeror's experience and/or qualifications, and past performance.

a. The SSAC shall consist of a minimum of five voting members: a chairperson, who shall be a senior member of the command; senior representatives from public affairs and printing; and a minimum of two other functional specialists with skills relevant to the selection process. Each SSAC shall have non-voting legal and contracting advisors to assist in the selection process.

b. In arriving at is recommendations, the SSAC shall follow the SSP and avail itself of all relevant information, including the proposals submitted, independently derived data regarding offerors' performance records, the results of on-site surveys of offerors' facilities, where feasible, and in appropriate cases, personal presentations by offerors.

c. The work of the SSAC must be coordinated with the contracting officer to ensure that the process is objective and fair. All communications between the offerors and the Government shall be through the contracting officer. No member of the SSAC or the selecting official shall communicate directly with any offeror regarding the source selection.

d. In cases where a losing competitor requests a debriefing from the contracting officer, members of the SSAC may be called upon to participate so as to give the losing competitor the most thorough explanation practical as to why its proposal was not successful. No information regarding competitors' proposals shall be discussed with the unsuccessful offerors during debriefings, discussions, or negotiations.

9. *SSP.* A SSP (see sample SSP at attachment 1 to this Appendix) must be developed early in the planning process to serve as a guide for the personnel involved and ensure a fair and objective process and a successful outcome. The contracting officer is primarily responsible for development of the SSP, in coordination with the PAO and other members of the SSAC. Ideally, the SSP should be completed and approved prior to issuance of the solicitation; it must be completed and approved before the receipt of proposals.

10. *Evaluation criteria and proposal requirements.* The solicitation must specify, in relative order of importance, the factors the Government will consider in selecting the most advantageous proposal. In addition, the solicitation must specify the types of information the proposal must contain to be properly evaluated. These two aspects of the solicitation must closely parallel one another. The contracting officer is primarily responsible for development of these two solicitation provisions, in coordination with the PAO, legal counsel, and members of the SSAC.

a. *Evaluation criteria for award.* Drawing upon the SSP, this feature of the solicitation must advise offerors what factors the Government will consider in evaluating proposals and the relative importance of each factor. The attached SSP (attachment 1 to this enclosure) provides an example of criteria that might be used. Note that under the "Services and/or Items Offered" factor, paragraph E.2.b. of attachment 1 to this appendix, it is necessary to list and indicate the relative importance of services and/or items *above the minimum requirements of the SOW* that the command would consider desirable and that, if offered, will enhance the offeror's evaluation standing. The offer of services and/or items not listed in the evaluation criteria shall not be considered in the evaluation of proposals, but may be accepted in the contract award if deemed valuable to the Government, PROVIDED the service and/or item involved is directly related to producing the publication and not in violation of any other statue or regulation. Examples of items that cannot be considered during the evaluation process are; press kits, laminated maps, economic development reports, or other separate publications not an integral part of the CE newspaper, guide, or installation map.

b. *Proposal requirements.* This provision of the solicitation must describe the specific and general types of information necessary to be submitted as part of the proposal to be evaluated. Offerors shall be notified that unnecessarily elaborate proposals are not desired.

Attachment 1 to Appendix B to part 247–SSP

A. Introduction

1. The objectives of this plan are:

a. To ensure an impartial, equitable, and thorough evaluation of all offerors' proposals in accordance with the evaluation criteria presented in the request for proposals (RFP).

b. To ensure that the contracting officer is provided technical evaluation findings of the SSAC in such a manner that selection of the offer most advantageous to the Government is ensured.

c. To document clearly and thoroughly all aspects of the evaluation and decision process to provide effective debriefings to unsuccessful offerors, to respond to legal challenges to the selection, and to ensure adherence to evaluation criteria.

2. This plan will be used to select a CE contractor for publication of the _____ newspaper (CE guide or installation map) and will:

a. Give each SSAC member a clear understanding of his or her responsibilities as well as a complete overview of the evaluation process.

b. Establish a well-balanced evaluation structure, equitable and uniform scoring procedures, and a thorough and accurate appraisal of all considerations pertinent to the negotiated contracting process.

c. Provide the selecting official with meaningful findings that are clearly presented and founded on the collective, independent judgment of technical and managerial experts.

d. Ensure identification and selection of a contractor whose final proposal offers optimum satisfaction of the Government's technical and managerial requirements as expressed in the RFP.

e. Serve as part of the official record for the evaluation process.

B. Organization and Staffing

1. The SSAC will consist of the Chairperson and a minimum of four other voting committee members plus the non-voting advisors to the SSAC.

2. The SSAC committee members are:

Name	Position
	Chairperson.
	Member.
	Member.
	Member.
	Member.
	Legal Advisor.[1]
	Contract Advisor.[1]

[1] Non-voting members.

C. Responsibilities

1. Selecting Official:

a. Approves the SSP.

b. Reviews the evaluation and findings of the SSAC.

c. Considers the SSAC's recommendation of award.

d. Selects the successful offeror.

2. Chairperson of the Source Selection Advisory Committee (C/SSAC):

a. Reviews the SSP.

b. Approves membership of the SSAC.

c. Analyzes the evaluation and findings of the SSAC and applies weights to the evaluation results.

d. Approves the SSAC report for submission to the selecting official.

3. Contracting Officer:

a. Is responsible for the proper and efficient conduct of the entire source selection process encompassing solicitation, evaluation, selection, and contract award.

b. Provides SSAC and the selecting official with guidance and instructions to conduct the evaluation and selection process.

c. Receives proposals submitted and makes them available to the SSAC, taking necessary precautions to ensure against premature or unauthorized disclosure of source selection information.

4. SSAC members shall:

a. Familiarize themselves with the RFP and SSP.

b. Provide a fair and impartial review and evaluation of each proposal against the solicitation requirements and evaluation criteria.

c. Provide written documentation substantiating their evaluations to include strengths, weaknesses, and any deficiencies of each proposal.

5. Legal advisor:

a. Reviews RFP and SSP for form and legality.

b. Advises the SSAC members of their duties and responsibilities, regarding procurement integrity issues and confidentiality requirements.

c. Participate in SSAC meetings and provide legal advice as required.

d. Provides legal review of all documents supporting the selection decision to ensure legal sufficiency and consistency with the evaluation criteria in the RFP and SSP.

e. Advises the selecting official on the legality of the selection decision.

D. Administrative Instructions

1. *Evaluation overview.* The advisory committee will operate with maximum flexibility. Collective discussion by evaluators at committee meetings of their evaluation findings is permitted in the interchange of viewpoints regarding strengths, weaknesses, and deficiencies noted in the proposals relating to evaluation items. Evaluators will not suggest or disclose numerical scores or other information regarding the relative standing of offerors outside of committee meetings.

2. *Evaluation procedure.* The evaluation of offers is based on good judgment and a thorough knowledge of the guidelines and criteria applicable to each evaluation factor.

a. Numerical scoring is merely reflective of the composite findings of the SSAC. The evaluation scoring system is used as a tool to assist the Chairperson of the SSAC in determining the proposal most advantageous to the Government.

b. The most important documents supporting the contract award will be the findings, conclusions, and reports of the SSAC.

3. *Safeguarding data.* The sensitivity of the proceedings and documentation require stringent and special safeguards throughout the evaluation process:

a. Inadvertent release of information could be a source of considerable misunderstanding and embarrassment to the Government. It is imperative, therefore, for all members of the SSAC to avoid any unauthorized disclosures of information pertaining to this evaluation. Evaluation participants will observe the following rules:

(1) All offeror and evaluation materials will be secured when not in use (i.e., during breaks, lunch, and at the end of the day).

(2) All attempted communications by offeror's representatives shall be directed to the contracting officer. No communications between members of the SSAC or the selecting official and offerors regarding the contract award or evaluation is permitted except when called upon under the provisions of paragraph J.8.d, of Appendix B to this part.

(3) Neither SSAC members or the selecting official shall disclose anything pertaining to the source selection process to any offeror except as authorized by the contracting officer.

(4) Neither SSAC members or the selecting official shall discuss the substantive issues of the evaluation with any unauthorized individual, even after award of the contract.

E. Technical evaluation procedures

1. *Evaluation process.* Proposals will be evaluated based on the following criteria as indicated in section M of the solicitation: The

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evaluation worksheet (attachment 2 to this appendix) shall be used to score the technical factors. Using the technical evaluation worksheet, each member of the SSAC will independently review each proposal and assign an appropriate number of points to each factor being considered. Point scores for each factor will range from "0" to "5" based on the committee member's evaluation of the proposal. Upon completion of individual evaluations, the group will meet in committee with the Chairperson and arrive at a single numeric score for each factor in the proposal.

2. *Criteria.* An example of applicable evaluation criteria and their relative order of importance are listed below in paragraphs E.2.a. through d of this appendix. Criteria and weights are provided as an example only. The SSAC must determine its own weighting factors tailored to meet the needs of the particular CE publication and describe the relative weights assigned in the RFP; e.g., "Evaluation factors are listed in descending order of importance; criteria #1 is twice as important as criteria #2," etc.

a. *Technical and production capability.* Scores will range from "0" (unacceptable), to "5" (exhibits state-of-the-art, award winning, or clearly superior technical ability to produce the required newspaper, guide, or installation map). Factors to be considered for newspaper contracts include: level of automation; compatibility of automation with existing PAO automation (unless other automation is provided); printing capability; production equipment; physical plant (capabilities); and driving distance to the plant. Similar factors may be considered for guides and installation maps.

b. *Services and/or items offered.* Scores will range from "0" (unacceptable), to "5" (the offer of equipment, such as automation equipment; or services, such as editorial or photographic services as set forth in the contract solicitation that will greatly enhance the newspaper and/or its production). Factors to be considered for newspapers include: offer of automation equipment and the quality and amount of equipment offered; the quality and amount of services offered; the usefulness of the services and/or items to the public affairs office in enhancing the newspaper; the impact of the services and/or items on other parts of the contract. Similar factors may be considered for guides and installation maps. The offer of equipment or services not specifically related to producing the publication will not result in the assignment of a higher score.

c. *Past performance record.* Scores will range from "0" (no experience in newspaper, guide, or installation map publishing and/or unsatisfactory, previous performance), to "5" (long-term, highly successful experience publishing similar newspapers, guides, or installation maps). Factors to be considered include: demonstrated ability to unsuccessfully produce a CE or similar publication; demonstrated printing ability (types of printing, history of newspaper, guide, or installation map printing); demonstrated success in contract performance in a timely and responsive manner; demonstrated capability to sell advertising and successfully recoup publication costs.

d. *Management approach.* Scores will range from "0" (approach unacceptable), to "5" (proposal demonstrates a sound and innovative approach to interfacing with the PAO and managing the CE publication operation). Factors to be considered include: The offeror's proposed approach to:

(1) Interfacing with the PAO staff.

(2) Controlling the quality and timeliness of the finished product.

(3) Sale of ads of the type that enhance the publication's image in the community and with the readership at large.

(4) Ensuring that contractor's personnel are properly supervised and managed.

3. *Weighting factors.* Points will be assigned to the final score of each factor in a proposal as determined by multiplying the score assigned (e.g., "0," "1," "2," "3," "4," or "5") by the relative weight of the individual criterion as indicated:

Factor	Relative weight (percent)	Maximum points
Criterion 1	40	200
Criterion 2	30	150
Criterion 3	20	100
Criterion 4	10	50
		500
(Example Only):		
Criterion 1 Score 5 (5×40) Total Points		200
Criterion 1 Score 4 (4×30) Total Points		120
Criterion 1 Score 3 (3×20) Total Points		50
Criterion 1 Score 2 (2×10) Total Points		20
		400

4. *Report of findings and recommendations.* After the SSAC has completed final evaluation of proposals and all weighting has been completed, the committee will prepare a written report of its findings and recommendations, setting forth the consensus of the committee and its composites scores (Sample at attachment 3 to this Appendix). The Chairperson will sign the report to confirm its accuracy and his agreement with the recommendation. All copies of proposals and evaluation worksheets will be returned to the contracting officer.

Attachment 2 to Appendix B to Part 247—Sample Evaluation Worksheet

Contractor _____

Evaluator _____

Date _____

Evaluation Criteria and Scores (Range 0–5 Points for Each)

1. Technical and production capability:

_____

2. Services and items offered:

_____

3. Past performance record:

_____

4. Management approach:

_____

[1] Narrative Discussion:
Strengths
Weaknesses
Deficiencies

Attachment 3 to Appendix B to Part 247—Sample Memorandum for Selecting Official

Subject: Evaluation of Proposals RFP No.

1. All proposals received in response to subject RFP have been evaluated by the Source Selection Advisory Committee (SSAC). The results and comments are listed below.

a. Offeror's proposals were rated as follows:

Offeror Name
Numerical Score

b. Summary Narrative Comments. (This section of the report shall be a summary of the individual strengths and weaknesses in each proposal, along with any deficiencies that are susceptible to being cured through written or oral discussions with the offeror, as noted by the SSC evaluators. This summary should be supported by detailed narratives contained on the individual evaluator's worksheets.)

2. Recommendation.

Chairperson, SSAC

Appendix C to Part 247—Mailing of DoD Newspapers, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications

A. *Policy.* It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations. (See DoD Instruction 4525.7 [1] and DoD 4525.8–M [2] Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. *Definition.* DoD appropriated fund postage includes all means of paying postage using funds appropriated for the Department of Defense. These means include meter imprints and stamps, permits imprints, postage stamps, and other means authorized by the U.S. Postal Service.

C. *Use of appropriated fund postage.*

1. DoD appropriated fund postage shall be used only for:

a. Mailing copies to satisfy mandatory distribution requirements.

b. Mailing copies to other public affairs offices for administrative purposes.

c. Mailing copies to headquarters in the chain of command.

d. Bulk mailings of DoD newspapers to subordinate units for distribution to members of the units.

[1] Discussions of strengths, weaknesses, and deficiencies should reference the specific evaluation factor involved to ensure that proposals are evaluated only against the criterion set forth in the RFP, to facilitate debriefings, and to provide an effective defense to any challenges regarding the legality of the selection process.)

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this Appendix.

e. Mailing information copies to other U.S. Government Agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a DoD newspaper or CE publication in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Component or its subordinate levels of command.

g. Mailing copies of DoD newspapers, guides, or installation maps to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. DoD appropriated fund postage shall not be used for mailing:

a. To the general readership of DoD newspaper, guides, and installation maps, unless specifically excepted in this part.

b. By a CE publisher.

c. CE publications other than newspapers in bulk. (See paragraph C.1.d. of this section).

3. Generally, DoD newspapers and CE publications shall be mailed as second class Requester Publication Rate, third-class bulk, or third- or fourth-class mail.

D. *Legal prohibitions.* Compliance with 18 U.S.C., 1302 and 1307 is mandatory. 18 USC Section 1302 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. 18 USC 1307 authorizes exceptions pertaining to authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee to play).

E. Review of mailing and distribution effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers-per-copy ratios, and use of the U.S. Postal Service to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

F. *Non-DoD publications.* A commander shall afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he or she commands in accordance with DoD Directive 1325.6. Such publications shall not be distributed through official channels. These publications may be made available through subscription paid for by the recipient or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. They will be placed only in stands or racks provided by the responsible publisher. The responsible publisher will maintain the stand or rack to present a neat and orderly appearance. Subscriptions paid for by a recipient may be home-delivered by the commercial distributor in installation residential areas.

Appendix D to Part 247—AFIS Print Media Directorate

A. *General.* The Print Media Directorate (AFIS–PM), an element of AFIS, develops, publishes, procures, and distributes a variety of print media products that support DoD-wide programs and policies for targeted audiences throughout the DoD community. Products include the following:

1. *Press and Art Pack*, a weekly package of camera-ready artjcles, photographs, and art distributed principally to DoD newspaper editors containing articles addressing several of the DoD internal information plan subject areas.

2. *DEFENSE* magazine, a bimonthly periodical featuring articles authored by senior military and civilian officials on DoD programs and policies. An annual almanac edition highlights DoD's organization.

3. *Defense Billboard*, a monthly poster featuring topics of particular interest to junior Military Service members, but applicable to general DoD audiences.

4. Pamphlets, booklets, and other posters covering a variety of joint interest information topics.

5. AFIS–PM also posts the *Press and Art Pack* and selected feature stories on Army, Navy, Air Force, Coast Guard, and OATSD(PA) computer bulletin boards. PAOs and editors may download text and art in a form readily usable for word processing or desktop publishing.

B. *Use of materials published by print media directorate.* With the exception of copyrighted matter, all materials published by AFIS–PM may be reproduced or adapted for use by DoD newspaper editors as appropriate. When AFIS–PM material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy-oriented nature of *DEFENSE* magazine contents, particular care shall be taken to preserve the original context, tone, and meaning of any material adapted, revised, or edited from this publication.

C. *Eligible activities.* The following activities are eligible to receive the above listed AFIS–PM products:

1. All authorized DoD newspapers.

2. Headquarters of the DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by the DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

D. *Procedures.*

1. The *Press and Art Pack* is mailed directly to requesting eligible organizations. Requests should be forwarded directly to: American Forces Information Service, Director of Print Media, 601 North Fairfax Street, Room 230, Alexandria, VA 22314–2007.

2. Requests shall include name and address of newspaper or activity, frequency of publication, whether the requesting newspaper is funded or CE, and a sample copy of the publication.

3. Notification of changes of address, newspaper title, or other status shall be forwarded immediately to the address in paragraph D.1. of this Appendix.

4. All other AFIS–PM materials should be requisitioned through the Military Service's or organization's publications distribution system.

Appendix E to Part 247—DoD Command Newspaper Review System

A. *Purpose.* The purpose of the DoD command newspaper review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. *Policy.* DoD newspapers shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. *Approving authorities.*

1. The ASD(PA) shall be the approving authority for newspapers published by the DoD Components and designated Unified Combatant Commands, less the Military Departments.

2. Within the Military Departments, the Secretary or a designated representative shall be the approving authority. This authority shall be delegated no lower than the major command or equivalent level.

D. *Review criteria.*

1. Each newspaper shall be evaluated on the basis of mission essentiality, communication effectiveness, cost-effectiveness, and compliance with applicable regulations.

2. In implementing the requirement that only one newspaper is authorized at each installation, any competing needs of an installation and its tenant commands shall be considered in accordance with § 247.6(b)(5)(i) and (ii).

E. *OSD command and newspaper review board.*

The OSD Command Newspaper Review Board shall be chaired by the Director, AFIS. Members shall be senior personnel representing functional areas of the command communication process (public affairs, editorial, design and layout, production, etc.). Members shall be drawn from OSD and Defense Agencies, nominated by office and agency heads at the invitation of the chair. A technical advisory panel of relevant specialities (printing, postal, distribution, contracting, legal, etc.) may be established at the discretion of the chair. The primary purpose of this board is to review requests for the publication of new newspapers, but at the direction of the chairperson, could expand their purpose to review other areas of the program.

1. Recommendations may include the establishment, disestablishment, or continuance of a newspaper; changes in volume, frequency, format, or paper stock; and cost reduction measures.

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2. Recommendations shall have the concurrence of two-thirds of the voting board members.

F. *Military department command newspaper review.* Military Departments shall establish appropriate procedures to accomplish command newspaper review and reporting requirements.

G. *Appeals.* Appeals shall be made within 30 calendar days of the approving authority's decision if publishing activities have new information to present. Representatives of a publishing activity may make presentations to a board and respond to questions during open sessions of the board.

H. *Reporting requirements*

1. The DOD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated at attachment 1 to this Appendix for each newspaper published, and six recent copies of the newspaper to: Director, American Forces Information Service, Attn: Print Media Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314–2007.

Requests for approval of new newspapers may be submitted at any time, using the format at attachment 1 to this Appendix.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the OATSD(PA) (ATJN: Director, AFIS) a report of the Military Department's review of newspapers. A cover memorandum shall include summary data on total number of newspapers, number eliminated, and total cost for the year being reported, along with a listing of the information indicated at attachment 1 of this appendix.

3. One information copy of each issue of all DOD newspapers shall be forwarded on publication date to the address in paragraph H.1. of this Appendix.

4. Information copies of CE newspaper contracts shall be forwarded to the address in paragraph H.1. of this section, upon request.

5. Administrative instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers.

Attachment 1 to Appendix E to Part 247—Request for Continuation and/or Establishment of DOD Newspapers

As required by section H. of this appendix, the following information shall be provided biennially regarding newspaper published by the DOD Components (less Military Departments), and when requesting approval for a new newspaper:

A. Name of newspaper.

B. Publishing command and mailing address.

C. Printing arrangement:

1. Government equipment.

2. Government contract with commercial printer.

3. CE contract with commercial publisher (give name, mailing address, and phone number of commercial publisher).

D. Automation capabilities (desktop publishing, computer bulletin board, etc.)

E. Frequency and number of issues per year.

F. Number of copies printed and estimated readership.

G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.

H. Size of newspaper staff, listed as full time, part time, and contractor-provided.

I. Annual costs of:

1. Editorial and administrative.

2. Supply and equipment.

3. Printing (funded only).

4. Distribution and mailing.

5. Staff transportation.

J. Attach six recent copies of the newspaper.

K. For requests for approval of new newspapers: Provide a comprehensive statement of the necessity for the newspaper including, if a tenant command, why host installation newspaper does not serve the needs of the requestor's audience. Attach six recent copies of newspapers published by the host and any other tenants.

Attachment 2 to Appendix E to Part 247—Military Department Newspaper Data

As required by section H.2. of this appendix, the following information shall be provided biennially regarding each newspaper published by the Military Departments:

A. Name of newspaper.

B. Publishing command and mailing address.

C. Printing arrangement:

1. Government equipment.

2. Government contract with commercial printer.

3. CE contract (give name, mailing address, and phone number of commercial publisher).

D. Automation capabilities (desktop publishing, computer bulletin board, etc.)

E. Frequency and number of issues per year.

F. Number of copies per issue and estimated readership.

G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issues.

H. Size of newspaper staff, listed as full time, part time, and contractor-provided.

I. Annual costs:

1. Editorial and administrative.

2. Supply and equipment.

3. Printing (funded newspaper only).

4. Distribution and mailing.

5. Staff transportation.

Appendix F to Part 247—Deputy Secretary of Defense Policy Memorandum

The Deputy Secretary of Defense

Memorandum for Secretaries of the Military Departments: Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense, Director, Defense Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Inspector General of the Department of Defense, Director, Operational Test and Evaluation, Assistants to the Secretary of Defense, Director, Administration and Management, Directors of the Defense Agencies, Directors of DoD Field Activities

Subject: Alteration of Official Photographic and Video Imagery

Photographic and video imagery has become an essential tool of decision makers at every level of command and in every theater of military operations. Mission success and ultimately the lives of our men and women in uniform depend on this imagery being complete, timely, and, above all, highly accurate. Anything that weakens or casts doubt on the credibility of this imagery within or outside the Department of Defense will not be tolerated.

The emergence of digital technology has significantly increased the capability of altering photographic and video imagery. This capability represents a potential threat to the credibility of Defense imagery. Since current Federal Regulations and DoD Directives do not specifically address the deliberate alteration of official photographic records, I believe guidance is required. I am providing this guidance by establishing the following as Department of Defense policy on the alteration of official photographic and video imagery:

a. The alteration of official Defense imagery by persons acting for or on behalf of the Department of Defense is prohibited except as outlined below:

(1) Photographic techniques common to traditional darkrooms and digital imaging stations such as dodging, burning, color balancing, spotting, and contrast adjustment that are used to achieve the accurate recording of an event or object are not considered alterations.

(2) Photographic and video image enhancement, exploitation, and simulation techniques used in support of unique cartography, geodesy, intelligence, medical, RDT&E, scientific, and training requirements are authorized if they do not misrepresent the subject of the original image.

(3) The obvious masking of portions of a photographic image in support of specific security or criminal investigation requirements is authorized.

(4) The use of cropping, editing, or enlargement to selectively isolate, link, or display a portion of a photographic or video image is not considered alteration. However, cropping, editing or image enlargement which has the effect of misrepresenting the facts or circumstances of the event or object as originally recorded constitutes a prohibited alteration.

(5) The digital conversion and compression of photographic and video imagery are authorized.

(6) Photographic and video post-production enhancement, including animation, digital simulation, graphics, and special effects, used for dramatic or narrative effect in education, recruiting, safety and training illustrations, publications, or productions is authorized under either of the following conditions:

(a) the enhancement does not misrepresent the subject of the original image, or;

(b) it is clearly and readily apparent from the context or from the content of the image or accompanying text that the enhanced image is not intended to be an accurate representation of any actual event.

b. Official Defense imagery includes all photographic and video images, regardless of the medium in which they are acquired, stored, or displayed, that are recorded or produced by persons acting for or on behalf of Department of Defense activities, functions, or missions.

My intent with the above policy is to ensure the absolute credibility of official DoD photographic and video imagery within and outside the Department of Defense.

This memorandum is effective immediately. A DoD Directive incorporating the substance of this memorandum shall be issued within 90 days.

John Deutsch

Dated: March 30, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8239 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–008]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent to form a negotiated rulemaking committee; request for public comment and membership.

SUMMARY: The Coast Guard intends to form a negotiated rulemaking committee to develop regulations governing the operation of drawbridges over the Chicago River in Chicago, Illinois for the passage of recreational vessels. The Coast Guard will establish the committee under the provisions of the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act.

DATES: Comments and nominations for membership must be received on or before May 8, 1995.

ADDRESSES: Comments and nominations for membership should be sent to Mr. Robert Bloom, Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, or may be delivered to room 2083D at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993. Comments will become part of the docket and will be available for inspection or copying at room 2083D, at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document are Mr. Robert Bloom, Chief, Bridge Branch, and Commander James M. Collin, District Legal Officer, Ninth Coast Guard District, Cleveland, Ohio.

Background

On April 18, 1994 (59 FR 18298), the Coast Guard issued an amendment to its regulation for drawbridge operations on the Chicago River (33 CFR 117.391). The amendment replaced on-demand drawbridge openings for recreational vessels, except during rush hour periods, with significant restrictions on openings, flotilla specifications and advance notice requirements. Prior temporary deviations to the regulations, permitted under 33 CFR 117.43, also had restricted drawbridge openings.

On September 26, 1994, the Coast Guard's action was rescinded by the United States District Court for the District of Columbia in the Court's order in the case of *Crowley's Yacht Yard, Inc. Plaintiff* v. *Federico Peña, Secretary, United States Department of Transportation, Defendant* (C.A. No. 94–1152 SSH), which also reinstated the previous regulation.

In response to the Court's action and to obtain data for a new regulatory initiative, the District Commander issued a temporary deviation to the regulations for the period from October 11, 1994 to December 5, 1994 and received public comments through January 15, 1995. The deviation also permitted only limited weekday openings, required advance notice for openings, and included flotilla specifications.

On February 10, 1995, the District Commander authorized a 90 day deviation for the period for April 15, 1995 through July 14, 1995, request written comments, and scheduled a public hearing (60 FR 8941, February 16, 1995). That deviation, described in the **Federal Register** notice, would have required twenty-four hour notice for all openings, but did not restrict the timing of openings, except to exclude the rush hour periods recognized in the regulations currently in force. Based on all information available, including the written comments received to date and the presentations made at the public hearing held on March 9, 1995 in Chicago, the District Commander has revised the deviation and a notice of the revisions is published in this issue of the Federal Register. This revised deviation authorizes limited openings on specified weekdays with advance notice, as well as weekend openings.

The traditional notice and comment rulemaking process, augmented by the procedures for deviations, has not generated a permenant and acceptable resolution to the issue of drawbridge openings on the Chicago River. Therefore, the Coast Guard intends to form a negotiated rulemaking committee as an alternative process to produce an acceptable and enduring amendment to 33 CFR 117.391. Negotiated rulemaking does not guarantee success. If, for any reason, the Coast Guard is unable to convene a negotiated rulemaking committee, or if the committee is unable to reach a consensus on the content of a proposed rule, the Coast Guard will taken action to publish a Notice of Proposed Rulemaking (NPRM) to initiate a traditional notice and comment rulemaking. The Coast Guard's goal is to publish a NPRM in July and a final rule by September 14, 1995.

Regulatory Negotiation

In 1990, Congress passed the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) (Reg-Neg Act) to establish a framework under which federal agencies could conduct negotiated rulemaking. Negotiated rulemaking is an adjunct to, and not a substitute for, the traditional notice and comment procedure described in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) for developing regulations. The Reg-Neg Act encourages federal agencies to consider bringing together representatives of all affected interests to resolve issues through negotiation. Negotiated rulemaking allows participants to focus less on individual positions and enables them to cooperate to develop a regulation that best incorporates all interests.

The Coast Guard and other administrations in the Department of Transportation has used negotiated rulemaking successfully. These prior experiences demonstrate that interested parties working together indeed are able

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to identify major issues, gauge the importance of issues to interested parties, identify information and data important to resolving issues, and develop a proposal that is acceptable to all affected interests. Consequently, this approach results in practical regulations that accommodate the needs of all affected parties to the extent practicable.

One of the recommendations of The National Performance Review (REG 03) was that federal agencies should use negotiated rulemaking more frequently. In a March 4, 1995 memorandum, President Clinton directed the heads of executive agencies to use negotiated rulemaking as one of the important tools for streamlining and improving the regulatory process.

Procedures and Guidelines

Subject to appropriate changes which may be made either as a result of comments received in response to this notice or during the negotiation process, the following proposed procedures and guidelines will apply to the negotiated rulemaking discussed in this notice. The Coast Guard is taking the necessary preliminary steps to charter a negotiated rulemaking committee and secure the services of a facilitator, the neutral party who would chair the committee and assist the negotiating process.

1. Notice of Intent to Establish a Negotiated Rulemaking Committee and Request for Comment

When an agency of the federal government establishes or uses a group of people in the interest of obtaining advice or recommendations, it must charter the group as a federal advisory committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). Public notice of formation of an advisory committee is addressed as well by the Reg-Neg Act. This **Federal Register** notice indicates the Coast Guard's intent to charter the Chicago Drawbridge Negotiated Rulemaking Committee (committee) and—

a. Identifies the issues involved in the rulemaking;

b. Identifies the affected interests;

c. Solicits public comment on the use of regulatory negotiation for the rulemaking and on the identified issues, parties, and guidelines.

2. Issue for Negotiation

The committee would attempt to reach consensus on amendments to 33 CFR 117.391, the regulation governing the opening of City of Chicago-owned bridges over the Chicago River, as it applies to recreational vessels.

3. Participants

The number of participants in the committee would not exceed 12 to ensure effective communications and consensus building. The Coast Guard is making inquiries among identified interests to determine if it is possible to agree on representatives of those interests and on the scope of the issues to be addressed. The Coast Guard believes that negotiation has the best prospects for successful resolution of the issues.

One purpose of this notice is to assist the Coast Guard in determining whether there are other interests that may be affected substantially by the negotiations but would not be represented by the affected interests listed later in the notice. It is not necessary for each potentially affected individual or organization to have its own representative. Rather each interest should be represented adequately by the selected parties, and the committee should be balanced fairly. Individuals and organizations who are not members of the committee may attend the negotiating sessions and confer with committee members.

4. Requests for Representation

Persons or organizations who believe they would be impacted significantly by any proposed amendment to 33 CFR 117.391 and who believe their interests would not be represented adequately by any of the potential participants specified later in this notice may apply for, or nominate another person for, membership on the committee. The application or nomination must include: (1) the name of the applicant or nominee and a brief description of the interest the person represents; (2) evidence that the applicant or nominee is authorized to represent parties related to the interest the person proposes to represent; (3) a written commitment that the applicant or nominee would participate in good faith; and (4) the reason that the interests specified in this notice do not represent adequately the interests of the applicant or nominee. Such applications should be submitted to the contact person at the address provided at the beginning of the notice by the deadline indicated.

If other persons or interests request membership in the negotiations, the Coast Guard will determine whether those interest would be affected substantially and whether they would be represented adequately by an identified interest. After reviewing the comments, the Coast Guard will issue a notice announcing the establishment of the committee, unless it determines that regulatory negotiation is not practicable. Negotiations will begin soon after a committee is chartered and a notice is published in the **Federal Register**.

5. Good Faith

Participants must be willing to negotiate in good faith. In this regard, it is important that each interest group, including the Coast Guard, designate senior personnel to represent its members. The Coast Guard expects the representatives to inform their respective interest groups of the progress of the negotiations during the process. If the negotiations are to be successful, the interest groups should be willing to accept the product of the committee.

6. Facilitator

The Coast Guard will use a neutral facilitator to conduct the negotiations in an efficient manner. The facilitator is not involved with the substantive development of enforcement of the regulation. The facilitator serves as chair of the committee and may confer with and offer suggestions to the other members on reaching consensus. This person also may request the parties to present additional material or to reconsider their positions. As a neutral party, a facilitator is able to make objective decisions about negotiating particular issues and identifying particular interests.

7. Administrative Support and Meetings

The Ninth Coast Guard District would provide support services to the committee for conducting its meetings and drafting its proposal. The meetings of the committee would take place in Chicago. If regulatory negotiation is chosen, it is the Coast Guard's goal to convene the committee on or about June 5, 1995 for an information, orientation, and administrative procedure session. Negotiation would commence on or about June 12, 1995 after the majority of the Spring breakout season has passed. Negotiations would continue on a weekly basis, with the committee meeting perhaps daily at some times, in order to reach consensus by July 7, 1995. A short schedule for the committee is essential if the Coast Guard is to meet its goal of publishing a NPRM in July and a final rule by September 14, 1995 in order for new regulations to be effective for the Fall return of vessels to the boatyards. The date and location of the first meeting would be announced in the **Federal Register**. Because of the anticipated compressed schedule of meetings, the Coast Guard would develop a procedure, such as a call-in number or electronic bulletin board, to provide up-to-date information on scheduled meetings.

It is anticipated that following the close of the public comment period, the committee would meet briefly to consider the comments received and prepare its final report on any desired modifications in the final rule.

8. Consensus

The goal of the negotiating process is consensus. Generally, consensus means that each interest should concur in the result. The facilitator would mediate the negotiation process.

9. Record of Meetings

In accordance with the FACA requirements, the Coast Guard would keep a record of all committee meetings. The minutes would be placed in the public docket for the rulemaking (CGD09–95–004). Committee meetings would be open to the public, subject to space availability.

10. Committee Protocols

Under the general guidance of the facilitator, and subject to applicable legal requirements, the committee would establish protocols for its meetings.

11. Agency Action on Committee Proposal

The Commander, Ninth Coast Guard District would publish any proposal on which the committee reaches consensus as a NPRM, providing the proposal is consistent with the Coast Guard's statutory authority and Executive Order 12866. If the committee's proposal is modified in any manner, the NPRM would identify the modifications so that the public could distinguish the modifications from the committee's proposal. If the committee does not reach consensus, it shall report on those areas on which agreement was reached.

12. Final Committee Report

The committee will be furnished copies of any comments received on the NPRM and will have an opportunity to meet and consider modifications to its recommendations based on those comments. If consensus can be reached, the committee's final report would recommend a final rule. Commander, Ninth Coast Guard District would then issue the rule amending 33 CFR 117.391, providing it is consistent with Coast Guard authority and Executive Order 12866.

13. Termination

The committee would terminate on the date indicated in its charter (September 30, 1995) or when it submits its final report to the Coast Guard, whichever is earlier.

14. Failure of the Committee to Reach Consensus

In the event that the committee is unable to reach consensus, the Coast Guard will develop a NPRM or final rule, as appropriate, and publish it in the **Federal Register**. As stated previously, the Coast Guard's goal is to publish a NPRM in July and a final rule by September 14, 1995.

Potential Participants

The committee members should have expertise in the issues under negotiation and should be able to represent adequately their affected interests. The Coast Guard has identified the following as interests affected by the rulemaking: the City of Chicago; boatyards; boaters; and the U.S. Coast Guard. In addition, Chicago business groups and public interest organizations have expressed concern over the operation of the Chicago River bridges. The Coast Guard has initiated discussions with representatives of potential members of the committee, and will continue those overtures, to explain the Reg-Neg process and to determine the likelihood of being able to convene a successful Reg-Neg committee. The Coast Guard is pleased that officials of the City of Chicago have indicated their willingness to participate.

Formation of the committee will allow representatives of all affected interests to participate directly in the rulemaking process. The Coast Guard welcomes comment on the appropriateness of these interests for participation in the negotiation. Suggestions for other potential participants are encouraged, but it is not necessary for every concerned organization to be represented, providing that all affected interests are represented adequately. Further, negotiating sessions will be open to the public who may communicate with committee members. The Coast Guard will ensure that the committee is balanced with respect to the interests represented.

Dated: April 5, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–8759 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–008]

Safety Zone Regulations; Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Blast Over Bellingham Fireworks Display in Bellingham, Washington. This event is held each year on the Fourth of July on the waters of Bellingham Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recures annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217–6009).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelops.

The proposed regulations may be changed in light of comments received.

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All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Forth of July Blast Over Bellingham in Bellingham, Washington. This event is held on the waters of Bellingham Bay each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Blast Over Bellingham Fireworks Display is being held as part of the celebration of the Fourth of July Independence Day in Bellingham, Washington. This event is sponsored by the Whatcom County Chamber of Commerce. The fireworks display is conducted from a barge located on the waters of Bellingham Bay, Bellingham, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range during the event may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone around the fireworks barge and prohibit entry into the area that surrounds the fireworks barge during the event. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a half of one square nautical mile on Bellingham Bay adjacent to Squalicum Harbor. Entry into the safety zone would be restricted for less than three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Blast Over Bellingham Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new § 165.1304 is added to read as follows:

§ 165.1304 Bellingham Bay, Bellingham, WA.

(a) *Location.* The following area is a safety zone: All portions of Bellingham Bay bounded by the following coordinates: Latitude 48° 44′ 09″ N, Longitude 122° 30′ 07″ W; thence to Latitude 48° 44′ 09″ N, Longitude 122° 29′ 57″ W; thence to Latitude 48° 44′ 02″ N, Longitude 122° 29′ 57″ W; thence to Latitude 48° 44′ 02″ N, Longitude 122° 30′ 07″ W; thence returning to the origin. This safety zone resembles a square centered around the barge from which the fireworks demonstration will be launched. Floating markers will be placed by the sponsor of the fireworks demonstration to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated: March 29, 1995.

R. K. Softye,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 95–8642 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–010]

RIN 2115–AA97

Safety Zone Regulations; Lake Union, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Fireworks Display on Lake Union, Seattle, Washington. This event is held each year on the Fourth of July on the waters of Lake Union. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (206) 217–6009.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received. All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Fireworks Display on Lake Union, Seattle, Washington. This event is held on the waters of Lake Union each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year surrounding the fireworks barge to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Lake Union Fireworks Display is held annually as part of the celebration for the Fourth of July Independence Day in the Lake Union community. This event is sponsored by One Reel Incorporated. The fireworks display is conducted from a barge located on the waters of Lake Union, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone and prohibit entry into the area that surrounds the fireworks barge during the event. Under the proposed regulations, the Captain of the Port may establish transit lanes along the east and west shorelines of Lake Union. If established, boaters would be allowed to transit north and south through the safety zone in these lanes. These lanes would remain open until 10 p.m. and then be closed until the conclusion of the fireworks display. This safety zone will be enforced by representatives of the Captain of the Port, Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than eight hundred square yards in the center of Lake Union. Entry into the safety zone around the fireworks barge would be restricted for less than three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

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Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1964), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Lake Union Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1306 is added to read as follows:

§ 165.1306 Lake Union, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of the waters of Lake Union bounded by the following coordinates: Latitude 47°30′32″N, Longitude 122°20′34″W; thence to Latitude 47°38′32″N, Longitude 122°19′48″W; thence to Latitude 47°38′10″N, Longitude 122°19′45″W; thence to Latitude 47°38′10″N, Longitude 122°20′24″W; thence returning to the origin. This safety zone begins 1000 feet south of Gas Works Park and encompasses all waters from east to west for 2500 feet. Floating markers will be placed by the sponsor of the fireworks demonstration to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into the safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA. The Captain of the Port may establish transit lanes along the east and west shorelines of Lake Union and may allow boaters to transit north and south through the safety zone in these lanes. If established, these transit lanes will remain open until 10 p.m. and then be closed until the end of the fireworks display (approximately 30 minutes).

Dated: March 29, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 95–8643 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–009]

RIN 2115–AA97

Safety Zone Regulations; Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Forth of July Freedom Fair Airshow and Fireworks Display in Tacoma, Washington. This event is held each year on the Fourth of July on the waters of Commencement Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217–6009).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received.

all comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Freedom Fair Airshow and Fireworks Display in Tacoma, Washington. This event is held on the waters of Commencement Bay each year from 2 p.m. on July fourth to 12:30 a.m. on July fifth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Freedom Fair Airshow and Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Tacoma, Washington. This event is sponsored by the Tacoma Fourth of July Commission. The airshow is conducted over the waters of Commencement Bay just off shore from Ruston Way and the Old Town area. The Federal Aviation Administration (FAA) requires that the waters below the airshow aerobatics be closed to all spectators. This required closed area measures 1000 yards by 1800 yards on the waters of Commencement Bay, Tacoma, Washington, along the shoreline of Ruston Way. The fireworks display is conducted from a barge located inside the airshow closure area. The fireworks display will take place late in the evening after the airshow is complete. This one day event attracts a large number of spectators gathered on the waters near the airshow and fireworks display. Spectators who approach the fireworks barge at close range during the event may be struck by debris falling from the overhead fireworks display. To promote the safety of both the spectators and participants, and to keep spectators away from both the airshow aerobatics area and the fireworks barge during the events, the proposed regulations would establish a safety zone and prohibit entry into the area surrounding the events. This safety zone will be enforced by representatives of the Captain of the Port, Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a one square nautical mile on Commencement Bay adjacent to the Old Town area on Ruston Way. Entry into the safety zone would be restricted for less than nine hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdiction with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that the proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Fourth of July Freedom Fair Airshow and Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.1305 is added to read as follows:

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§ 165.1305 Commencement Bay, Tacoma, WA.

(a) *Location.* The following area is a safety zone: All portions of Commencement Bay bounded by the following coordinates: Latitude 47° 17′ 34″ Longitude 122° 28′ 36″ W; thence to Latitude 47° 17′ 06″ N, Longitude 122° 27′ 40″ W; thence to Latitude 47° 16′ 42″ N, Longitude 122° 28′ 06″ W; thence to Latitude 47° 17′ 10″ W, Longitude 122° 29′ 02″ W; thence returning to the origin. This safety zone resembles a rectangle lying adjacent to the shoreline along Ruston Way. Floating markers will be placed by the sponsor of the event to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July the fourth from 2 p.m. to 12:30 a.m. July the fifth unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated: March 29, 1995.

R. K. Softye,

Captain, U.S. Coast Guard, Captain of the Port of Puget Sound.

[FR Doc. 95–8644 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR PART 165

[CGD13–95–007]

RIN 2115–AA97

Safety Zone Regulations; Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Ivar's Fireworks Display in Seattle, Washington. This event is held each year on the Fourth of July on the waters of Elliott Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217–6009).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason concurrence with, or any recommended changes in, the proposal. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons desiring acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelops.

The proposed regulations may be changed in light of comments received. All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Ivar's Fireworks in Seattle, Washington. This event is held on the water of Elliott Bay each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Ivar's Fourth of July Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Seattle, Washington. This event is sponsored by Ivar's, Incorporated. The fireworks display is conducted from a barge located on the waters of Elliott Bay, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone and prohibit entry into the area that surrounds the fireworks barge during the event. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a half of one square nautical mile on Elliott Bay adjacent to Myrtle Edwards Park. Entry into the safety zone would be restricted for less than three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Ivar's Fourth of July Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.1307 is added to read as follows:

§ 165.1307 Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of Elliott Bay bounded by the following coordinates: Latitude 47°37′22″ N, Longitude 122°22′06″ W; thence to Latitude 47°37′06″ N, Longitude 122°21′55″ W; thence to Latitude 47°36′54″ N, Longitude 122°22′05″ W; thence to Latitude 47°36′09″ N, Longitude 122°22′25″ W; thence returning to the origin. This safety zone resembles a square centered around the barge from which the fireworks will be launched and begins 100 yards from the shoreline of Myrtle Edwards Park. Floating markers will be placed by the sponsor of the fireworks display to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated March 29, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 95–8645 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 211

Excessing of Lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers proposes to expand its policy regarding excess lands with Indian reservations. This action flows from Congressional intent expressed in Public Law 102–575, language in Public Law 103–211 encouraging the Corps to proceed with the Department of the Interior to identify excess lands and transfer them to the Tribes, the President's polices regarding Native Americans, and our desire to give to the Tribes as much interest in the project lands at Lakes Sakakawea and Oahe as possible under existing law. If approved, this policy will enable the Corps to retain sufficient real property interests in certain Corps administered lands to fulfill project purposes, yet declare certain other interests in the lands excess to project needs, thereby permitting eventual transfer to the Department of Interior to be held in trust for the Tribes.

DATES: Comments must be received on or before July 10, 1995; dates for public hearings will be announced to the public at a later date.

ADDRESSES: Comments should be mailed to U.S. Army Corps of Engineers District, Omaha, ATTN: CEMRO-OP-TN (Mike George), 215 North 17th Street, Omaha, NE 68102–4978. Addresses for public hearings will be announced to the public at a later date.

FOR FURTHER INFORMATION CONTACT: Mike George at (402) 221–3988.

SUPPLEMENTARY INFORMATION:

Background

As part of the Garrison Diversion Unit Commission, authorized by P.L. 98–360, the Joint Tribal Advisory Committee (JTAC) was formed for the purpose of assessing impacts to the Three Affiliated Tribes (TAT) of the Fort Berthold Reservation and the Standing Rock Sioux Tribe (SRST) resulting from the construction of the Garrison Dam/Lake Sakakawea Project and the Oahe Dam and Lake Project. In its recommendations, the JTAC stated that

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some former Indian lands should be returned to the tribes.

The criteria used by the JTAC in identifying lands for return to the tribes was based on a contour elevation which approximated the reservoir maximum operating pool. As recommended in the Final Report of the Joint Tribal Advisory Committee, the Omaha District conducted a "Special Assessment of Project Lands" with the intent of identifying project lands which would not have been acquired under current acquisition criteria. The ruling guide was the 1971 Joint Acquisition Policy adopted by the Secretary of Army and Secretary of Interior and recorded in 32 CFR 644.4 and 43 CFR part 8. As a result of the Special Assessment, 7,583 acres at lake Sakakawea and 3,218 acres at Lake Oahe were identified as lands which would not have been acquired under current acquisition criteria. Further analysis found that even though these lands would not have been acquired under current acquisition guidelines, some were nonetheless currently committed to project purposes such as recreation or fish and wildlife management. Corps policy, as expressed in Engineer Regulation (ER) 1130–2–400, provides that lands which otherwise would be excess (because they do not fall within current acquisition guidelines), but which are committed to valid project purposes, will not be declared excess. At Lakes Sakakawea and Oahe, 1,692 and 2,832 acres, respectively, were so identified. In addition, some lands were encumbered by outgrants of interests in the lands, such as leases and licenses.

In 1989, in accordance with the policy expressed in ER 1130–2–400, the Secretary of Army decided to exclude the lands devoted to recreation or wildlife purposes, but to otherwise transfer the balance (5,891 acres at Lake Sakakawea and 386 acres at Lake Oahe). A report of excess was completed and the property was transferred to the GSA which, in turn, transferred it to the Department of the Interior to be held in trust for the tribes in accordance with P.L. 93–599. P.L. 93–599 provides that excess federal lands within the reservation boundaries of a federally-recognized tribe be transferred to the Department of the Interior to be held in trust for that tribe. The TAT accepted the transfer of 5,878.25 acres at Lake Sakakawea (the 5,891 acre figure mentioned above was adjusted and refined when property descriptions were prepared), the SRST, however, rejected the transfer of 386 acres at Lake Oahe. The transfer to the TAT was completed in July, 1992.

On October 30, 1992, the President signed the "Reclamation Project Authorization and Adjustment Act" (P.L. 102–575) into law. Title XXXV of this Law, "The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act" (106 Stat. 4731), specified that administrative jurisdiction over all lands above a specific contour (more or less the reservoir maximum operating pool) would be transferred from the Army to the Department of the Interior. Interior was then required to offer the former owners or their heirs (including tribal members, individual allottees, and non-Indians) a right to repurchase these lands. Any lands not repurchased were to be offered to the Tribes for purchase. The Army attempted to transfer administrative jurisdiction over the property to the Department of Interior in October 1993, but the Department of Interior did not formally accept the transfer. The land transfer provisions of the Equitable Compensation Act were repealed on February 12, 1994 as part of the California Earthquake Emergency Appropriations Act (section 407 of Public Law 103–211). Legislative history cited excessive costs of the proposed transfer as the reason for the repeal.

The repeal of the land transfer provisions of the equitable Compensation Act included a proviso that "the U.S. Army Corps of Engineers should proceed with the Secretary of Interior to designate excess lands and transfer them pursuant to Public Law 93–599." Again, P.L. 93–599 envisions the transfer of excess Federal lands within Indian reservations to the Department of the Interior to hold in trust for the tribes.

As indicated, the Corps had determined previously that application of the existing excessing policy, as expressed in ER 1130–2–400, would not result in designation of additional excess lands. Because of the expression of congressional intent found in Public Laws 102–575 and 103–211, and the great public interest in this issue, the Assistant Secretary of the Army (ASA(CW)) decided to look again at this issue and to determine whether a new policy could be developed that would take into account the competing interests, and allow us to declare certain interests in real estate not necessary for project purposes to be excess.

Based on input from the North and South Dakota congressional delegations, state government, the Tribes, special interest groups, the public and others, the Office of the ASA(CW) developed proposed criteria for excessing certain interests in land for purposes of further public discussion. Under this concept, the Corps would retain only such interests in lands as are necessary for project purposes and transfer the remaining interests to GSA for ultimate disposition to the Department of the Interior for the benefit of the Tribes. In identifying the lands that could be transferred, the following criteria/factors would be considered: (1) Investments made by others in the property; (2) the need to maintain access to public and private land; (3) the need to maintain municipal and rural water supply systems; (4) precedential implications. Furthermore, the Office of the ASA(CW) proposed that only lands acquired from the SRST and TAT should be considered for excessing.

Public Input

The ASA(CW) held public meetings in North and South Dakota in June of 1994 to solicit public input on the proposed criteria. Written input was also solicited and received. A Summary of Public Input can be examined. A general discussion of the public input follows:

Most commentors, whether they favored or disfavored the proposed action, urged more public and state government participation in this effort, and encouraged an open process.

Many commentors expressed concerns regarding continued access to shoreline for recreation purposes and grazing. Many commentors also noted concerns regarding existing recreation areas. Some of these commentors expressed the view that recreation areas should remain in government hands to guarantee continued public use.

Some commentors stated that lands on which the government had expended tax dollars should remain open to the public. Others stated their desire that lands on which private investments have been made should be withheld from transfer, even though those lands were merely leased from the Corps.

Many commentors stated that the repeal of the Equitable Compensation Act was a broken promise to the Indians. Many also expressed the need for the government to redress the flooding of Indian communities when the projects were built. Some commentors noted that the interests or investments of lessees on Corps lands should not be protected in perpetuity, because those interests are, by nature, only temporary.

Many commentors stated that lands should be returned to non-Indian former owners also.

Some commentors were concerned that this action would increase existing jurisdictional confusion. Other commentors questioned the precedential implications of this action.

Test

As a result of the public input received, the ASA(CW) determined that the proposed criteria were appropriate, but that they should be tested by practical application. Corps headquarters directed the Omaha District to randomly sample 10 parcels of former tribal land at Lake Oahe and Lake Sakakawea an apply the four criteria/factors mentioned above to each parcel to illustrate, by example, the effect of implementing this policy.

The Omaha District selected 10 sections (one square mile) of land at each reservoir that contained former tribal lands. Once the sections were chosen, a map was prepared showing the relationship of the former tribal land to all other project lands within that section.

Applying a 2.5 acre blockout using close tangents above the contour of the maximum operating pool, parcels were identified which could be considered candidates for transfer. Each of these former tribal tracts were then inventoried, and the four mentioned criteria were applied to the candidate transfer parcels. A matrix was prepared for the purpose of summarizing the parcels and providing a basis for comparison.

The findings of this study indicate that along the 828 miles of shoreline at lake Sakakawea, using these criteria, there would be less than 800 acres available for excess. The findings at Lake Oahe indicate that along the 265 miles of shoreline less than 1,600 acres would be available for excess. Depending on the application of the above mentioned criteria, these numbers will likely be less.

The results of the study, as well as the maps prepared for the study, are on file at the Omaha District office, and may be examined.

Conclusion

After reviewing and considering the public input received and upon examining the results of this study, the Acting Assistant Secretary of the Army (Civil Works), in consultation with the Commander, U.S. Army Corps of Engineers, Missouri River Division and the Commander, U.S. Army Corps of Engineers, Omaha District, determined that the three of the four proposed criteria were valid criteria/factors that should be considered in determining which lands could be declared excess at Lakes Sakakawea and Oahe. The fourth criterion, "consider precedential implications," was deemed unnecessary since this rule is limited to Corps lands within the Standing Rock Sioux Reservation and the Fort Berthold Reservation of the Three Affiliated Tribes and does not apply to other Corps projects. Also, the ASA(CW) determined that it would be appropriate and desirable to consider all former trust lands, allotted as well as tribal, for excessing for the following reasons: Inclusion of all trust lands is consistent with the manner in which lands were acquired for the project, and it creates more manageable land units for both the tribe and the Corps of Engineers. Further, including all former trust lands would be consistent with congressional intent.

Public Participation

Dates and addresses for public meetings will be announced at a later date.

Although this document is a notice of proposed rulemaking that solicits public comment, the Corps of Engineers has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act. The requirements of Executive Order No. 12291 do not apply to these procedures. These regulations do not constitute a "major rule within the meaning of the Executive Order."

List of Subjects in 33 CFR Part 211

Claims, Flood control, Indian reservations, Public lands, Real property acquisition, Reservoirs, Rights-of-way, Waterworks.

For the reasons set forth in the preamble, the Corps of Engineers proposes to amend 33 CFR Part 211, as set forth below:

Part 211—Real Estate Activities of the Corps of Engineers in Connection with Civil Works Projects

1. The authority citation for § 211.148 is added to read as follows:

Authority: Section 211.148 issued under 40 U.S.C. 483, 486.

2. A new center heading and § 211.148 are added, to read as follows:

Excessing of Lands Within Indian Reservations

§ 211.148 Excessing of lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe.

For the projects at Lake Oahe and Lake Sakakawea, interests in real estate that are not required for project purposes may be considered excess to project purposes when:

(a) The lands lie within the external boundaries of the Standing Rock Sioux Tribe Reservation or the Fort Berthold Reservation of the Three Affiliated Tribes;

(b) The lands are former trust lands, either allotted or tribal, acquired for the project; and

(c) Appropriate interests in the lands may be retained, or conditions imposed, as are necessary to preserve the integrity of legislatively authorized project operations; provided:

(1) There has been no substantial capital investment in the property which cannot be recovered by the investor prior to excessing;

(2) There will be no unreasonable impact on access to public and private land; and

(3) There will be no unreasonable impact on municipal and rural water supply systems.

Dated: March 23, 1995.

Approved:

Elizabeth L. Fagot,

Deputy Director of Real Estate.

[FR Doc. 95–8236 Filed 4–7–95; 8:45 am]

BILLING CODE 3710–62–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5182–6]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: clarification.

SUMMARY: This action proposes clarifying changes and corrections to certain portions of the "National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks" (collectively known as the "hazardous organic NESHAP" or the "HON"). This action proposes to remove three compounds (glycerol tri-(polyoxypropylene)ether, polyethylene

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glycol, and polypropylene glycol) from the list of chemical production processes regulated by the HON. The production of these compounds is also included in the source category "Polyether Polyols Production" and will be regulated by that national emission standards for hazardous air pollutants (NESHAP). The EPA is also proposing several changes to the equipment leak requirements to clarify the intent of certain provisions, to correct oversights, and to simplify demonstration of compliance with the regulation.

DATES: *Comments.* Comments must be received on or before May 10, 1995, unless a hearing is requested by April 20, 1995. If a hearing is requested, written comments must be received by May 25, 1995.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than April 20, 1995. If a hearing is held, it will take place on April 25, 1995, beginning at 10 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5580.

Docket. Dockets No. A–90–20 and A–89–10, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA promulgated in the **Federal Register** NESHAP for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63. Since the rule was issued, the EPA has received inquiries regarding certain portions of the rule and EPA has concluded that it is necessary to clarify these provisions and to correct several oversights.

II. Removal of Polyols From Table 1 of Subpart F

The list of SOCMI chemicals currently includes three compounds—glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol—whose production emissions will be regulated by the NESHAP for "Polyether Polyols Production," a category of major sources for which a maximum achievable control technology (MACT) standard is scheduled to be promulgated by November 15, 1997. According to documentation for the list of source categories, the definition of "Polyether Polyols Production" encompasses all commercially important polyether polyols, and therefore would clearly include these three chemical productions currently subject to the HON.

The EPA believes that it would be more reasonable and efficient to regulate emissions from production of all polyether polyols under only one rule, rather than regulating some processes under one rule and other polyol processes under a different rule. Specifically, the production process for all polyether polyols is very similar, and typical polyol facilities may manufacture both SOCMI and non-SOCMI polyether polyols with the same equipment. Thus, EPA concluded that it would be inappropriate to regulate polyols under the HON. Also, because hazardous air pollutant (HAP) emissions from polyether polyol production are relatively low, postponing regulation of polyether polyols would not forestall large HAP emission reductions.

Accordingly, the EPA proposes to remove these three chemicals from the list of SOCMI chemicals, located in table 1 of subpart F of the final rule, and to address these production processes under the subsequent polyether polyols production rule.

II. Proposed Changes to Subpart H

A. Consolidation of Equipment Leak Programs

Since 1981, EPA and States have issued a number of different guidelines and regulations for controlling emissions from equipment leaks. Some companies have reported that they have to comply with anywhere from 5 to 11 different equipment leak programs at one plant site. These programs principally differ in applicability criteria and have minor differences in other details of the provisions. Because of concerns regarding the cost of maintaining separate programs, the Regulatory Negotiation Committee (Committee) that negotiated the proposed rule upon which subpart H is based agreed that compliance with the negotiated rule would also constitute compliance with any overlapping applicable new source performance standards (NSPS) or NESHAP (e.g., subpart VV of part 60 or subpart J of part 61). Unfortunately, this provision (40 CFR § 63.160(b)) does not allow enough consolidation of programs to adequately address the problem. Owners and operators of process units subject to the HON still must maintain multiple programs because process units may have non-HAP containing process equipment as well as HAP containing process equipment. Consequently, a number of industry representatives and a State agency have requested that EPA also allow owners and operators the option of consolidating all the volatile organic compounds (VOC) and HAP equipment leak programs into one program for each process unit. The EPA agrees that consolidation of programs will allow for more efficient management of programs, reduce cost of compliance, and improve compliance. As EPA believes that the HON contains more stringent requirements than any other Federal equipment leak regulations, EPA proposes to allow override of those requirements with the provisions of subpart H. It is proposed to add a new paragraph (c) to § 63.160 to allow an owner or operator to elect to comply with subpart H for all VOC containing process equipment in the process unit in lieu of compliance with 40 CFR part 60 subparts VV, GGG, or KKK or with 40 CFR part 61 subparts F or J. The EPA also encourages States to allow consolidation of State equipment leak programs under subpart H. The EPA believes that establishing one program for a plant site or process unit would reduce costs to States and local agencies for permitting and enforcing rules as well as reduce the cost of compliance for owners or operators of sources.

B. Sampling Connection Systems

Subpart H requires that each sampling connection system be equipped with either a closed-loop or closed-vent system or that a closed-purge system be used, and that the system either return the purge directly to the process, collect and recycle the purge, or send the purge to a control device. Following issuance of the final rule, several chemical companies inquired whether the purge material could be sent to a hazardous waste treatment, storage, and disposal facility (TSDF) or a controlled wastewater collection and treatment facility in lieu of sending the purge to a control device as specified in § 63.172. Typically, the purge material could not be returned to the process due to polymerization or other characteristics that severely limited the utility of the material. The EPA agrees that this control option would meet the intent of the sampling connection system provisions, which is to ensure that purged material is captured and either returned to a process or destroyed. Therefore, it is proposed to add provisions to § 63.166 to allow treatment of collected purge material at permitted TSDF or solid waste facilities. The proposed provisions also allow use of waste management units complying with §§ 63.133–63.138 of subpart G. The proposed § 63.166 also includes minor clarifying edits to paragraphs (a) and (b)(1) through (b)(3). Also, due to numerous questions, EPA is proposing to add a definition for the term sampling connection system.

C. Less Frequent Monitoring of Valves in Phase III

Since the final rule was issued, EPA has received inquiries about the feasibility of using data collected before April 22, 1994 and use of data that differs slightly from the requirements of § 63.180(b). Although the preamble to the final rule (59 FR 19446) did state that the rule was intended to allow owners or operators the flexibility to initiate phase III of the valve standard at anytime, the revisions to subpart H did not include an explicit statement that data collected before April 22, 1994 could be used or that less frequent monitoring within Phase III could begin. Some of the callers seemed to be concerned that the requirements for monitoring data specified in § 63.180(b) precluded use of data collected before the rule was final. Consequently, it is proposed to add paragraphs to § 63.168 and § 63.174 to specifically allow use of data collected before April 22, 1994. It is also proposed to clarify that data collected before April 22, 1994 may have minor deviations from the requirements in § 63.180(b)(1) through (b)(6). Examples of minor deviations from the requirements of § 63.180(b)(1) through (b)(6) are use of a slightly different monitoring frequency or monitoring at a different leak definition provided the data would still indicate the presence or absence of a leak.

D. Flow Indicators

In the HON, as well as in other section 111 and 112 standards, EPA has required the use of flow indicators or car-seal systems to ensure that emissions are continuously vented to an appropriate control device [see § 63.172(j)(1) for example]. The EPA has recently learned that, as these provisions are presently drafted, it appears that either flow must be measured or that specified equipment (i.e., car-seal systems or lock and key-type valve configurations) must be used. The intent of these provisions is to provide a means of indicating when emissions are bypassing a control device. There was no intention in drafting these provisions to limit the method used for detecting or monitoring for potential by-passes of control devices. The EPA has concluded that these provisions need to be clarified and the clearest way is to expand the definition of flow indicator to include reference to devices that do not measure flow and to remove the reference to presence of flow from the by-pass monitoring requirement. The EPA is proposing to amend subpart H to clarify this provision by adding a definition for "flow indicator" and by revising paragraph (j)(1) of § 63.172.

E. Safety Issues With § 63.163 and § 63.167

Since the final rule was promulgated, EPA has learned of a few situations where compliance with the provisions of the rule creates, or has the potential to create, serious safety hazards for plant or monitoring personnel. These concerns arise because no provisions presently exist in some sections of subpart H to exempt unsafe situations from specific equipment or monitoring requirements. The need for these provisions was not raised in the Committee discussions or in the public comments. The EPA believes that the concerns are being raised now as the rule is being implemented because these safety issues only arise in a few cases.

Consequently, EPA is proposing to add unsafe-to-monitor provisions for pumps and an exemption from the requirement to cap, or plug, open-ended lines or valves for materials that represented a safety or explosion hazard. The unsafe-to-monitor provision for pumps is patterned after the unsafe-to-monitor valve provisions. Pumps that are unsafe-to-monitor are pumps that are located in an area that presents an imminent danger to personnel due to the presence of toxic materials, explosive process conditions, or high pressure. This provision would exempt pumps in unsafe locations from routine monitoring requirements, but would require monitoring during safe-to-monitor periods.

The EPA is also proposing to exempt open-ended lines or valves containing materials that represented a safety or explosion hazard from the requirement to equip the line with a cap or plug. The EPA has recently learned that in a few processes the requirement to cap, or plug, the line could result in trapping highly-reactive monomer in the line. In these cases, the polymerization reaction will cause serious overpressure and catastrophic equipment failure presenting a safety hazard to plant personnel and creating the potential for greater emissions to the atmosphere than if the line were left uncapped.

F. Inaccessible and Difficult-to-Monitor Agitators

The Committee developed the requirements for agitators based on the assumption that agitators were technologically similar to pumps. In the Committee discussions, it was assumed that agitators would be just as accessible as pumps. The EPA has recently learned that there are a few facilities where agitators are inaccessible, and it simply is not feasible to monitor this equipment. Consequently, it is proposed to add an exemption for inaccessible agitators and to provide consideration for difficult-to-monitor agitators. The proposed provisions in §§ 63.173(h) and (i) are patterned after the difficult-to-monitor valve provisions and the inaccessible connector provision in § 63.174(h)(1)(iii). Because it is conceivable that there could also be processes where agitators are located in areas that pose an imminent danger to monitoring personnel, provisions to exempt unsafe-to-monitor agitators are also proposed. Recordkeeping requirements for difficult-to-monitor and unsafe-to-monitor equipment are included in the proposed revisions to § 63.181(b)(7).

G. Porcelain Connectors

In development of the connector provisions, the Committee exempted glass and glass-lined connectors from the monitoring requirements because of

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the limited potential for on-line repair. The Committee was concerned that tightening of bolts on glass and glass-lined connectors presented a high risk of breakage and potential for significant accidental releases. Since the rule was issued, EPA has learned that porcelain connectors are also used at some facilities. Since porcelain connectors, as well as other forms of ceramic materials, would also have a high risk of breakage during on-line repairs, EPA is proposing to revise § 63.174(h)(1) to use the more generic terminology "ceramic or ceramic-lined" connector.

H. Pressure Test for Batch Process Equipment

Two changes are being proposed to the pressure test provisions of § 63.180(f). The pressure test provisions for batch process equipment were derived from general industry practice and EPA's experience with testing of tank trucks and railcars for vapor tightness. In development of these provisions, the Committee assumed that this testing would be conducted on equipment operating at pressures greater than atmospheric but less than 10 pounds per square inch gauge (psig). The EPA has since learned that there are some batch operations operating at essentially atmospheric pressure for which the pressure/vacuum test provisions represent the only practical means of complying with the standard. Unfortunately, the Committee agreed to language on the test provisions that does not allow pressurization beyond the operating pressure of the equipment. The EPA believes that this is an unintentional limitation on the availability of the pressure test option. Therefore, EPA is proposing to revise § 63.180(f)(1) to allow pressurization to less than the set pressure of any pressure relief device or to within safety limits of the operating equipment. The EPA has also recently become aware that there are batch processes operating at greater than 10 psig for which the owner or operator also wishes to use the pressure/vacuum test provisions of the rule. In such cases, the precision requirements for the pressure gauge (±2.5 mm mercury in the range of the test pressure) could mean no pressure gauge would be available or no gauge would be available at a reasonable cost. To determine whether any revision to these provisions would be appropriate, the EPA reviewed the basis for the precision specification for the pressure gauge. It was found that the precision specified in the rule was the result of the assumed range of test pressures, an assumed test duration of 15 minutes, and a relative accuracy of ±10 percent. Based on these findings EPA thinks that it would be appropriate to allow an alternative procedure for cases where a pressure gauge with a precision of ±2.5 mm mercury in the range of the test pressure is not reasonably available. The EPA proposes to allow the owner or operator to use a pressure gauge with a precision of ±10 percent of the test pressure and to extend the duration of the test for the time necessary to detect a pressure loss (or rise) that equals a rate of 1 psig/hr.

IV. Proposed Changes to Subpart I

A. Notification and Compliance Dates for Process Changes

Presently, subpart I does not specify compliance dates for process units or equipment affected by operational changes as is done in §§ 63.100(k) through (m) of subpart F. These subpart F provisions specify the notification and approval requirements for each type of change as well as the compliance date for equipment affected by the change. These procedures were included in subpart F to allow HON sources to follow the administrative procedures in subpart F, subpart G, and, as appropriate, the administrative procedures of subpart A and the operating permits rule until final action on the section 112(g) rule resolves the question of whether individual MACT standard administrative procedures supersede the administrative procedures of the section 112(g) rule. These provisions were omitted from subpart I. To correct this omission paragraphs (g)(3), (g)(4), and (h) are proposed to be added to § 63.190 to specify compliance dates for operational changes that are expected to occur.

B. Definitions

Definitions for "process unit" and "source" are proposed to be added to § 63.191 to correct an oversight. These definitions were inadvertently omitted in drafting the final rule. The proposed definition for "process unit" is derived from the original definition agreed to by the Committee. The proposed definition for "source" is based on the definition for "source" in subpart F.

Due to several requests for clarification of the applicability of subpart I to operations at pharmaceutical facilities, the EPA is also proposing a revision to the definition of "pharmaceutical production process." The provisions of subpart I were intended to apply only to those pharmaceutical production processes that synthesize a pharmaceutical product. At facilities with solvent recovery capabilities, waste solvent from the synthesis process is generally recovered and purified in a step separate from the pharmaceutical synthesis process. The provisions of subpart I were not intended to cover such solvent recovery processes. Peripheral operations not necessary for the production of the drug, such as formulation (the physical mixing of one or more final products), tablet coating (physically coating the final product), and solvent recovery (repurifying the solvent after drug production and reintroducing the pure solvent into raw solvent storage), are not considered part of the pharmaceutical production process as defined in subpart I. Therefore, EPA is proposing to add a phrase to the last sentence in the definition to clarify that solvent recovery operations located at pharmaceutical facilities are not subject to the provisions of Subpart I. This definition for "pharmaceutical production process" in subpart I should be viewed as being unique to subpart I and should not be viewed as determining applicability in other standards.

C. Bench-Scale Batch Process Equipment

It has recently come to EPA's attention that there are a few pharmaceutical companies producing products in extremely small batches using laboratory or small bench-scale equipment. The equipment in these processes is very small (typically valves and connectors are less than 0.5 inches in diameter) and is closely-spaced. These small bench-scale processes typically produce a kilogram or less of product per batch and only a small number of batches are run each year. However, because the components in these processes are generally in HAP service more than 300 hours per year, the processes would be subject to the provisions of subparts I and H. The EPA is revising § 63.190(f) of subpart I to clarify that bench-scale batch processes are not subject to the provisions of subpart I and H. A definition for "bench-scale batch process" is also being added to § 63.191 of subpart I. The EPA thinks that this correction is necessary because the equipment cannot reasonably be monitored and repaired routinely for any rational benefit. The equipment in these processes is so tightly situated that access by the monitor probe is essentially precluded and it is difficult to determine the origin of a leak if one is detected. Furthermore, due to the size of these units, emissions would be insignificant due to the small number of components, the amount of time the components are in HAP service, and the small quantities of materials processed.

V. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's proposed changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions, alternative test procedures, and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA believes that these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 subparts F, H and I of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

Table 1 of Subpart F—[Amended]

2. Table 1 of subpart F is amended by removing the entries for glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol and their associated CAS number and group number.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

3. Section 63.160 is amended by adding a new paragraph (c) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(c) If a process unit subject to the provisions of this subpart has equipment to which this subpart does not apply, but which is subject to a standard identified in paragraph (c)(1) or (c)(2) of this section, the owner or operator may elect to apply this subpart to all such equipment in the process unit. If the owner or operator elects this method of compliance, all VOC in such equipment shall be considered, for purposes of applicability and compliance with this subpart, as if it were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph, shall be deemed to constitute compliance with the standard identified in paragraph (c)(1) or (c)(2) of this section.

(1) 40 CFR part 60 subpart VV, GGG, or KKK; or

(2) 40 CFR part 61 subpart F or J.

* * * * *

4. Section 63.161 is amended by adding in alphabetical order the definitions "flow indicator" and "sampling connection system" to read as follows:

§ 63.161 Definitions.

* * * * *

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be present, in a line.

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

5. Section 63.163 is amended by adding paragraph (j) to read as follows:

§ 63.166 Standards: Pumps in light liquid service.

* * * * *

(j) Any pump that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor pump is exempt from the requirements of paragraphs (b) through (e) of this section if:

(1) The owner or operator of the pump determines that the pump is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

6. Section 63.166 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.166 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § 63.162(b) of this subpart. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid to a process;

(3) Be designed and operated to capture and transport the purged process fluid to a control device that complies with the requirements of § 63.172 of this subpart; or

(4) Collect and transport the purged process fluid to a system or facility identified in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) A waste management unit as defined in § 63.111 of subpart G of this part, if the waste management unit is subject to, and operated in compliance with the provisions of subpart G of this part applicable to group 1 wastewater streams.

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(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

7. Section 63.167 is amended by adding paragraph (e) to read as follows:

§ 63.167 Standards: Open-ended valves or lines.

* * * * *

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would prevent an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraph (a) through (c) of this section.

8. Section 63.168 is amended by adding a new paragraph (a)(3) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

(a) * * *

(3) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6) of this subpart.

* * * * *

9. Section 63.172 is amended by revising the first sentence of paragraph (j)(1) to read as follows:

§ 63.172 Standards: Closed-vent systems and control devices.

* * * * *

(j) * * *

(1) Install, set or adjust, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

* * *

* * * * *

10. Section 63.173 is amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.

* * * * *

(h) Any agitator that is difficult-to-monitor is exempt from the requirements of paragraphs (a) through (d) of this section if:

(1) The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or it is not accessible at anytime in a safe manner;

(2) The process unit within which the agitator is located is an existing source or the owner or operator designates less than 3 percent of the total number of agitators in a new source as difficult-to-monitor; and

(3) The owner or operator follows a written plan that requires monitoring of the agitator at least once per calendar year.

(i) Any agitator that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraphs (a) through (d) of this section.

(j) Any agitator that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor agitator is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the agitator determines that the agitator is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (a) through (d) of this section; and

(2) The owner or operator of the agitator has a written plan that requires monitoring of the agitator as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

11. Section 63.174 is amended by adding a new paragraph (b)(4) and by revising the first sentence of paragraph (h)(1) introductory text to read as follows:

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

* * * * *

(b) * * *

(4) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6).

* * * * *

(h)(1) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (c) of this section and from the recordkeeping and reporting requirements of § 63.181 and § 63.182 of this subpart. * * *

* * * * *

12. Section 63.180 is amended by redesignating paragraph (b)(2) as (b)(2)(i) and revising the first sentence of newly designated paragraph (b)(2)(i), by adding a paragraph (b)(2)(ii), by revising paragraph (b)(4)(iii), by revising paragraph (b)(6) by revising paragraph (f)(1), and by adding a sentence to paragraph (f)(4) to read as follows:

§ 63.180 Test methods and procedures.

* * * * *

(b) * * *

(2)(i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. * * *

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) * * *

(4) * * *

(iii) The instrument may be calibrated at a higher methane concentration than the concentration specified for that piece of equipment. The concentration of the calibration gas may exceed the concentration specified as a leak by no more than 2,000 parts per million. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million.

* * * * *

(6) Monitoring data that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may be used to qualify for less frequent monitoring under the provisions in § 63.168 (d)(2) and (d)(3) or § 63.174 (b)(3)(ii) or (b)(3)(iii) of this subpart provided the data meet the conditions specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) The data were obtained before April 22, 1994.

(ii) The departures from the criteria specified in paragraphs (b)(1) through (b)(5) of this section or from the specified monitoring frequency of § 63.168(c) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring at a different leak definition

if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

* * * * *

(f) * * *

(1) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(2) * * *

(3) * * *

(4) * * * If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ±10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 psig per hour.

* * * * *

13. Section 63.181 is amended by revising the introductory text in paragraph (b)(7) and by revising paragraph (b)(7)(ii) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(b) * * *

(7) The following information pertaining to all pumps subject to the provisions of § 63.163(j), valves subject to the provisions of § 63.168(h) and (i) of this subpart, agitators subject to the provisions of § 63.173(h) through (j), and connectors subject to the provisions of § 63.174 (f) through (h) of this subpart shall be recorded:

(i) * * *

(ii) A list of identification numbers for the equipment that is designated as difficult to monitor, an explanation of why the equipment is difficult to monitor, and the planned schedule for monitoring this equipment.

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

14. Section 63.190 is amended by revising paragraph (f), paragraphs (g)(1) introductory text and (g)(2) introductory text, by adding paragraphs (g)(3) and (g)(4), and revising paragraph (i) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(f) The provisions of subparts I and H of this part do not apply to research and development facilities or to bench-scale batch processes, regardless of whether the facilities or processes are located at the same plant site as a process subject to the provisions of subpart I and H of this part.

(g)(1) If an additional process unit specified in paragraph (b) of this section is added to a plant site that is a major source as defined in section 112(a) of the Act, the addition shall be subject to the requirements for a new source in subparts H and I of this part if:

* * * * *

(2) If any change is made to a process subject to this subpart, the change shall be subject to the requirements for a new source in subparts H and I of this part if:

* * * * *

(3) If an additional process unit is added to a plant site or a change is made to a process unit and the addition or change is determined to be subject to the new source requirements according to paragraphs (g)(1) or (g)(2) of this section:

(i) The new or reconstructed source shall be in compliance with the new source requirements of subparts H and I of this part upon initial start-up of the new or reconstructed source or by April 22, 1994, whichever is later; and

(ii) The owner or operator of the new or reconstructed source shall comply with the reporting and recordkeeping requirements in subparts H and I of this part that are applicable to new sources. The applicable reports include, but are not limited to:

(A) Reports required by § 63.182(b), if not previously submitted, § 63.182(c) and (d) of subpart H of this part; and

(B) Reports and notifications required by subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

(4) If an additional process unit is added to a plant site, if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, and if the addition or change is not subject to the new source requirements as determined according to paragraphs (g)(1) or (g)(2) of this section, the requirements in paragraphs (g)(4)(i) through (g)(4)(iii) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status required by § 63.182(c) of subpart H of this part.

(i) The added emission point(s) and any emission point(s) within the added or changed process unit are subject to the requirements of subparts H and I of this part for an existing source;

(ii) The added emission point(s) and any emission point(s) within the added or changed process unit shall be in compliance with subparts H and I of this part by the dates specified in paragraphs (g)(4)(ii)(A) or (g)(4)(ii)(B) of this section, as applicable.

(A) If a process unit is added to a plant site or an emission point(s) is added to an existing process unit, the added process unit or emission point(s) shall be in compliance upon initial start-up of the added process unit or emission point(s) or by April 22, 1997, whichever is later.

(B) If a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, if a compressor becomes subject to § 63.164 of subpart H, or if a deliberate operational process change causes equipment to become subject to subpart H of this part, the owner or operator shall be in compliance upon initial start-up or by April 22, 1997, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule. The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(iii) The owner or operator of a process unit or emission point that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements of subparts H and I of this part that are applicable to existing sources, including, but not limited to, the reports listed in paragraphs (g)(4)(iii)(A) and (g)(4)(iii)(B) of this section.

(A) Reports required by § 63.182 of subpart H of this part; and

(B) Reports and notifications required by subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

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(i) If a change that does not meet the criteria in paragraph (g)(4) of this section is made to a process unit subject to subparts H and I of this part, and the change causes equipment to become subject to the provisions of subpart H of this part, then the owner or operator shall comply with the requirements of subpart H of this part for the equipment as expeditiously as practicable, but in no event later than 3 years after the equipment becomes subject.

(1) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(2) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

* * * * *

15. Section 63.191 is amended by adding in alphabetical order definitions for "bench-scale batch process," "process unit," and "source" to paragraph (b) and revising the definition of "pharmaceutical production process" in paragraph (b) to read as follows:

§ 63.191 Definitions.

(b) * * *

Bench-scale batch process means a batch process (other than a research and development facility) that is capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

* * * * *

Pharmaceutical production process means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent. Pharmaceutical production process does not mean process operations involving formulation activities, such as tablet coating or spray coating of drug particles, or solvent recovery.

* * * * *

Process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product. For the purposes of this subpart, process unit includes all unit operations and associated equipment (e.g., reactors and associated product separators and recovery devices), associated unit operations (e.g., extraction columns), any feed and product storage vessels, and any transfer racks for distribution of final product.

* * * * *

Source means the collection of equipment listed in § 63.190(d) to which this subpart applies as determined by the criteria in § 63.190. For purposes of subparts H and I of this part, the term *affected source* as used in subpart A of this part has the same meaning as the term source defined in this definition.

* * * * *

[FR Doc. 95–8201 Filed 4–7–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 63

[AD-FRL–5182–5]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to correct errors and clarify regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON. Because the revisions merely correct errors and clarify regulatory text the Agency does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before May 10, 1995, unless a hearing is requested by April 20, 1995. If a hearing is requested, written comments must be received by May 25, 1995.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than April 20, 1995. If a hearing is held, it will take place on April 25, 1995, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5580.

Docket. Dockets No. A–90–20 and A–89–10, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received on any provision, that provision of the direct final rule will be withdrawn and all public comment received on that provision will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. Today's proposed revisions clarify the rule and do not add any additional control requirements. The EPA believes that these revisions would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–8200 Filed 4–7–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 799

[OPPTS–42111E, FRL–4927–8]

RIN 2070–AB94

Test Rule; Office of Water Chemicals Proposed Withdrawal of Certain Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw certain testing requirements for two of the chemical substances listed in the Office of Water chemicals test rule published in the **Federal Register** of November 10, 1993 (58 FR 59667). EPA required specified health effects testing for the two chemical substances because the substances are produced in substantial quantities and there may be substantial exposure to these substances, there are insufficient data to determine or predict the health effects from exposure to these substances in drinking water, and the testing required is necessary to determine or predict these health effects. EPA believes that data recently made available to it are sufficient to determine or predict the health effects posed by short and long-term exposures to 1,1-dichloroethane in drinking water and are sufficient to determine or predict the health effects posed by long-term exposures to 1,1,2,2-tetrachloroethane in drinking water. Therefore, EPA is proposing the withdrawal of the 90–day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 90–day and 14–day testing requirements for 1,1-dichloroethane.

DATES: Written comments must be received by EPA on or before May 10, 1995.

ADDRESSES: Submit written comments, identified by the document control number (OPPTS–42111E) in triplicate to: TSCA Document Receipts Office (Mail stop 7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET G–99, 401 M St., SW., Washington, DC, 20460. A public version of the administrative record supporting this action, without confidential business information, is available for inspection at the above address from 12 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: James G. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is proposing to withdraw the 90–day subchronic testing requirement for 1,1,2,2-tetratchloroethane and the 90–day and 14–day testing requirements for 1,1-dichloroethane in the Office of Water chemicals test rule referenced above.

I. Proposed Modification

Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA proposed a test rule in the **Federal Register** of May 24, 1990 (55 FR 21393) and finalized the test rule in the **Federal Register** of November 10, 1993 (58 FR 59667), finding that four chemical substances; chloroethane (CAS No. 75–00–3); 1,1-dichloroethane (CAS No. 75–34–3); 1,1,2,2-tetrachloroethane (CAS No. 79–34–5); and 1,3,5-trimethylbenzene (CAS No. 108–67–8) are produced in substantial quantities and that there may be substantial exposure to these substances, that there are insufficient data to determine or predict the health effects from short and long-term exposures to the substances in drinking water, and that testing is required to determine or predict the health effects from short and long-term exposures. Thus, EPA required subacute toxicity (oral 14–day repeated dose) and subchronic (oral 90–day) toxicity tests. The data from these studies would be used to develop Health Advisories (HA's) for the four unregulated drinking water contaminants that are monitored under section 1445 of the Safe Drinking Water Act (SDWA).

EPA has recently received requests to withdraw all or part of the testing required for two substances, 1,1-dichloroethane and 1,1,2,2-tetrachloroethane. On June 28, 1994, the Halogenated Solvents Industry Alliance (HSIA) requested that EPA revoke the subchronic (oral 90–day) toxicity test requirements for 1,1,2,2-tetrachloroethane (Ref. 1). This request was based on the availability of a 90–day subchronic toxicity drinking water study of 1,1,2,2-tetrachloroethane conducted in rats and mice by the National Toxicology Program (Ref. 2). EPA reviewed this study and believes that the study is sufficient to meet the 90–day subchronic toxicity test required under the test rule and to establish long-term Health Advisories for the Office of Water (OW) (Ref. 3). Therefore, EPA believes it is appropriate to withdraw the 90–day subchronic testing requirements for 1,1,2,2-tetrachloroethane.

HSIA also requested that EPA withdraw the 14– and 90–day subchronic toxicity testing required under the test rule for 1,1-dichloroethane. This request was based on a study conducted by Muralidhara et al. (Ref. 6) that characterizes the acute (24 hour), subacute (5 and 10 days), and the subchronic (90 days) toxicity potential of 1,1-dichloroethane. EPA reviewed the study and believes the study is sufficient to determine or predict both the short and long-term effects of exposure to 1,1-dichloroethane (Ref. 7). Therefore, EPA believes it is appropriate to withdraw both the 14– and 90–day subchronic toxicity tests required for 1,1-dichloroethane under the test rule for the OW substances.

EPA is providing 30 days from publication of this proposed modification for submission of written comments on the elimination of the subchronic toxicity (oral 90–day) test requirement for 1,1,2,2-tetrachloroethane and of both the subacute (oral 14–day repeated dose) and subchronic (oral 90–day) toxicity test requirements for 1,1,2,2-tetrachloroethane. If the 30 day deadline passes and no public comments have

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been received that cause a change in the position set forth in this Notice, EPA will grant the proposed modification to delete these tests and publish a notice to the effect in the **Federal Register**.

II. Comments Containing Confidential Business Information

Any person who submits comments that certain information claimed as confidential business information must label the specific information claimed as confidential by circling, bracketing, or underlining it, and marking it "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file without further notice to the submitter. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting confidential comments must prepare and submit a public version of the comments for the EPA public file.

III. Rulemaking Record

EPA has established a docket for this rulemaking (docket number OPPTS–42111E). Currently, this docket contains the basic information considered by EPA in developing this proposal.

A public version of the record, from which all information claimed as CBI has been deleted, is available for inspection in the TSCA Nonconfidential Information Center, B–607, NE Mall, 401 M St., SW., Washington, DC. 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

The record includes the following information:

(1) Halogenated Solvents Industry Alliance (HSIA). Letter from Peter Voytek, Ph.D. to Connie Musgrove, USEPA entitled "Request for Modification of Study Requirements". (June 28, 1994).

(2) National Institute of Environmental Health Sciences (NIEHS). Letter from William Eastin, Ph.D. to Roger Nelson, USEPA (July 7, 1994) with two attachments:

(a) Pathco. "Chairperson's Report Structure Activity Relationship Studies of Halogenated Ethane-Induced Accumulation of Alpha-2U-Globulin in the Male Rat Kidney: Part A, B, C, -Studies Conducted in F344 Rats at Microbiological Associates".

(b) Microbiological Associates, Inc. Final Report Study Nos. 03554.11 – 03554.12, 1,1,2,2-Tetrachloroethane (TCE).

(3) USEPA. Memorandum from Bruce Mintz to Roger Nelson "Request for Office of Water Recommendation for Approval/ Disapproval of 28 Jun 1994 HSIA Request for Modification of Test Standards for 1,1-Dichloroethane and 1,1,2,2-Tetrachloroethane (Office of Water Test Rule)".

(4) Voytek, P. Note (Fax) to Roger Nelson entitled "Preliminary Testing of 1,1-Dichloroethane in Drinking Water". (Aug. 3, 1994).

(5) Unpublished. Original Draft of Report to EPA HERL, Cincinnati in 1986. James V. Bruckner, Ph.D. (Undated).

(6) Muralidhara, S., R. Ramanathan, C.E. Dallas and J.V. Bruckner. "Acute, Subacute and Subchronic Oral Toxicity Studies of 1,1-Dichloroethane (DCE) in Rats". *Society of Toxicology Abstract.* (1986).

(7) USEPA. Memorandum from Krishan Khanna to Roger Nelson "Review of 1,1-Dichloroethane (DCE) Data (TSCA Test Rule for Office of Water Chemicals)." Nov. 15, 1994.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because the proposed amendment would relieve a regulatory obligation to conduct certain chemical tests.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed test rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070–0033.

This proposed rule would reduce the public reporting burden associated with the testing requirement under the final test rule. A complete discussion of the reporting burden is contained at 58 FR 59680.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Health effects, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

Authority: 15 U.S.C. 2603

Dated: March 31, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, subchapter R, part 799 be amended as follows:

PART 799 — [AMENDED]

a. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2601, 2603, 2611, 2625.

b. In §799.5075 by revising paragraphs (a)(1), (c)(1)(i)(A), (c)(2)(i)(A), and (d)(1) to read as follows:

§799.5075 Drinking water contaminants subject to testing.

(a) * * *

(1) Chloroethane (CAS No. 75–00–3), 1,1,2,2-tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested as appropriate in accordance with this section.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) An oral 14–day repeated dose toxicity test shall be conducted with chloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with §798.2650 of this chapter except for the provisions in §§798.2650(a); (b)(1); (c); (e)(3), (4)(i), (5), (6), (7)(i), (iv), (v), (8)(vii), (9)(i)(A), (B), (11)(v); and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90–day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) * * *

(i) * * *

(A) An oral 90–day subchronic toxicity test shall be conducted with chloroethane and 1,3,5-trimethylbenzene in accordance with §798.2650 of this chapter except for the provisions in §798.2650(e)(3), (7)(i), and (11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(d) * * * (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A). Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

* * * * *

[FR Doc. 95–8734 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–610–00–4110–2411]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this proposed rule to amend the regulations relating to the waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment would establish the conditions under which the operators of properties that produce "heavy oil" (crude oil with a gravity of less than 20 degrees) can obtain a reduction in the royalty rate. This action is being taken to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production, provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field. The BLM believes that this amendment will result in substantial additional revenue for the States and Federal Government, increase the cumulative amount of domestic oil production from existing wells, increase the percentage of oil recovery from presently developed reservoirs, minimize the necessity of drilling new wells with their additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability in the jobs and services related to the domestic oil industry.

DATES: Comments should be submitted by June 9, 1995. Comments postmarked after this date may not be considered as part of the decisionmaking process in issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management, (202) 452–0340.

SUPPLEMENTARY INFORMATION: Existing section 3103.4–1 of Title 43, Code of Federal Regulations, provides two forms of Federal oil and gas royalty reduction: on a case-by-case basis upon application, and for stripper wells. In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development, or that a lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The provision concerning stripper well properties allows royalty reduction for properties that produce an average of less than 15 barrels of oil per eligible well per well-day.

The Bureau of Land Management (BLM) has reason to believe that additional royalty relief for producers of heavy crude oil may be necessary to maintain current levels of development, promote investment in enhanced recovery efforts, and encourage maximum recovery of the resource, thus warranting royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209).

Fluctuating oil prices, combined with high production costs, have resulted in an uncertain economic future for producers of low gravity crude oil. As recently as last January, California producers of heavy crude were spending between $9 and $10 to produce a barrel of crude oil that was typically selling for between $8.50 and $9 per barrel (from data provided by the Conservation Commission of California Oil and Gas Producers). When depreciation, depletion, and amortization costs were considered, nearly 69% of the state's production was uneconomic and more than 13,000 industry and industry-related jobs were at risk (California Independent Petroleum Association).

Heavy crude oil prices have recently risen to the point that the immediate crisis in California has passed. Many of the heavy oil properties remain only marginally economic, however, and are vulnerable to future down-turns in oil prices. As many as two-thirds of the marginal properties could be lost during a period of sustained low oil prices (National Petroleum Council Committee on Marginal Wells/Executive Summary—Draft). The danger in losing these wells is that, although production from individual wells may be small, their collective loss would be significant. The United States would lose the opportunity to take advantage of new technologies being developed by the Department of Energy (DOE) and industry, and the remaining recoverable reserves would be lost.

This proposed rule would preserve the contribution of marginal producers of heavy crude oil to the national reserve base. As a result of this relief, more wells should stay on line (even in periods of depressed oil prices), fewer recoverable reserves should be lost, and there will be less adverse economic impact on States and local communities.

The DOE has modeled the BLM's proposed royalty rate reduction for heavy crude oil. It is DOE's conclusion that the proposal will benefit all producers of heavy oil while remaining revenue neutral to all oil producing States except California (California contains the majority of the nation's heavy oil reserves). Assuming a West Texas Intermediate Crude oil price of $20 per barrel—a price consistent with recent oil markets—the proposal can be expected to increase recoverable reserves in California by around 72 percent, from 132.8 million barrels to 228.5 million barrels.

A provision of the proposed rule provides for the termination of individual royalty reductions should the average price of West Texas Intermediate Crude oil rise to a level greater than $24 per barrel for a period of at least 6 consecutive months. This provision is intended to ensure that

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royalty relief is only provided during periods of low market prices.

The proposed rule establishes a sliding scale royalty rate for qualifying heavy-oil-producing properties. The sliding scale is intended to somewhat offset the reduced prices paid for oil as oil gravity decreases. The reduced royalty rate applies to qualifying heavy oil properties rather than individual wells, because production is normally not measured for individual oil wells, and is based on the average gravity of the oil weighted by the production of heavy oil from each well within the property. A weighted average gravity is used to prevent gravity manipulation by selectively producing wells on a property with heavier gravity crude. Using a weighted average of oil gravity encourages maximum recovery from all wells within a property by removing the economic advantage of selective production.

The rule provides that either the operator (as defined at 43 CFR 3100.0–5) or the payor (as defined at 30 CFR 208.2) must calculate the weighted average gravity of the oil—measured on the American Petroleum Institute (API) scale—produced from a property every 12 months to determine the appropriate royalty rate. In no case, however, would the royalty rate exceed the rate established by the terms of the lease.

The section amended by this proposed rule also provides for royalty rate reductions for stripper oil wells. Many provisions of this proposed rule are essentially the same as the provisions of the existing regulations that pertain to stripper wells, except that references to "stripper well" have been replaced with "heavy oil well." The similarity between the existing provisions pertaining to stripper wells and the provisions of this proposed rule could allow for some restructuring of section 43 CFR 3103.4–1 to reduce the overall regulatory text and to increase clarity. The public is invited to comment on whether reorganizing 43 CFR 3103.4–1 should be considered in preparing the final heavy oil royalty reduction rule.

The principal author of this proposed rule is Dr. John W. Bebout, Senior Technical Specialist, Fluids Group, assisted by the Regulatory Management Team, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The BLM has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because the proposed royalty rate reduction is voluntary, requires no additional paperwork, and applies to all operators regardless of size. Additionally the BLM has determined, under Executive Order 12630, that the rulemaking will not cause a taking of private property.

The BLM has certified that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0090 and 1004–0145.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—mineral resources, Oil and gas production, Mineral royalties.

On March 30, 1995, an outdated version of this proposed rule was published in the **Federal Register** (60 FR 16424) by mistake. That proposed rule publication is hereby withdrawn, and this version is published in its place.

For the reasons stated in the preamble, and under the authorities cited below, Part 3100, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3103.4–1 is amended by revising paragraph (b)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty or minimum royalty.

* * * * *

(b)(1) An application for the benefits under paragraph (a) of this section on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM office. It must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(e)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(f) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures.

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (f)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1994, the operator must submit Purchaser's Statements for July, August, and September of 1994;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1994, the operator must submit Purchaser's Statements for the months of September 1993, and March and September 1994; and

(iii) If a property has multiple sales each month, the operator must submit Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/payor for calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V_1 \times G_1)+(V_2 \times G_2)+(V_n \times G_n)}{V_1+V_2+V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1 = Average Production (bbls) of Well #1 over the last 3 calendar months of sales

V_2 = Average Production (bbls) of Well #2 over the last 3 calendar months of sales

V_n = Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last 3 calendar months of sales

G_1 = Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales

G_2 = Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales

G_n = Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last 3 calendar months of sales

Example: Lease "A" has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above—

$$\frac{(4{,}000\times13)+(6{,}000\times21)+(2{,}000\times14)}{(4{,}000+6{,}000+2{,}000)} = 17.2 \text{ Weighted Average API gravity for property}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (f)(3) of this section and assigned to all property subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) Qualifying royalty rate determination.

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no further reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (f)(5)(iii) of this section).

(ii) *Calculating the qualifying royalty rate.* If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the nearest whole degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

ROYALTY RATE REDUCTION FOR HEAVY OIL

Weighted average API gravity (degrees)	Royalty rate (percent)
5	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

(iii) *New royalty rate effective date.* The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months. If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

(iv) *Royalty rate determinations in subsequent years.* (A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (f)(5)(ii) of this section.

(B) The operator/payor must compare the newly determined royalty rate to the initial qualifying royalty rate. The operator/payor must notify BLM of its determinations under this paragraph and paragraph (A) of this § 3103.1–4(f)(5)(iv). The new royalty rate will not become effective until the first day of the second month after BLM receives notification, and will remain effective for 12 calendar months. Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will return to the rate in the lease terms.

(v) *Prohibition.* Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (f).

(vi) *Certification.* The operator/payor must use the applicable royalty rate when submitting the required royalty

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reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (f), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (f).

(vii) *Agency action.* If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable immediately upon receipt of this notice. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (f) upon 6 month's notice in the **Federal Register** when BLM determines that—

(i) The average oil price remains above $24 per barrel over a period of 6 consecutive months (based on the West Texas Intermediate Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1997, the royalty rate reductions authorized by this paragraph (f) have not been effective in reducing the loss of otherwise recoverable reserves. This will be determined by evaluating the expected versus the actual abandonment rate, the number of enhanced recovery projects, and the amount of operator reinvestment that can be attributed to this rule.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) for oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3–2 will continue to apply.

* * * * *

Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–8702 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register

Vol. 60, No. 68

Monday, April 10, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95–012C]

National Advisory Committee on Microbiological Criteria for Foods; Meeting; Correction

This notice revises the information provided in the **Federal Register** notice (60 FR 17313) published on April 5, 1995, (FR Doc. 95–8237). The meeting of the National Advisory Committee on Microbiological Criteria for Foods will extend over three days, rather than the two previously announced. Therefore, the meeting will be held from 1:00 PM to 5:00 PM on April 17 and from 8:00 AM to 5:00 PM on April 18 and 19 at the Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203, (703) 528–6000.

Additionally, the meeting agenda will include a briefing and preliminary discussion of FSIS' "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" (60 FR 6774) proposed rulemaking. A meeting of the Advisory Committee will be held prior to the closing of the comment period for a full discussion of the proposed rulemaking. The correct meeting agenda for the April meeting is as follows:

I. Ethics Training
II. Raw Poultry Labeled Fresh
III. Discussion of the "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" proposed rulemaking
IV. Working group meetings for meat and poultry, and seafood
V. Future Topics
VI. Public Comments

Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street, NW., Washington, DC 20250–3700. Background materials and the meeting agenda are available for inspection by contacting Mr. Fedchock on (202) 254–2517.

Done at Washington, DC, on: April 6, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–8902 Filed 4–6–95; 3:43 pm]

BILLING CODE 3410–DM–P

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee will meet on April 27, 1995, in Newport, Oregon, at the Shilo Inn, 536 SW Elizabeth Street. The meeting will begin at 10 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Context of the Advisory Committee, including background on the President's Forest Plan; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on who they represent; and (7) open public forum. All Oregon Coast Province Advisory Committee meetings are open to the public. The "open forum" is scheduled near the conclusion of the meeting. Interested citizens are encouraged to attend. The Committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Harry Bonini, Public Affairs Officer, at (503) 750–7075, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: March 31, 1995.

James R. Furnish,

Forest Supervisor.

[FR Doc. 95–8686 Filed 4–7–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Kansas Advisory Committee will meet on Friday, April 28, 1995, from 1 p.m. until 4 p.m. at the Prairie Band Potawatomi Reservation, Senior Citizens Meal Site, 14880 K Road, Mayetta, Kansas 66509. The purpose of the meeting is to collect information on civil rights issues in order to plan future projects in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 5, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–8824 Filed 4–7–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene from 1:30 p.m. and adjourn 4:30 p.m. on Friday, April 28, 1995, at the Holiday Inn—Emerald Beach, 1102 South Shoreline Boulevard, Corpus Christi, Texas 78401. The purpose of the meeting is to discuss civil rights issues in Texas and plan a future project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214–653–6779, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired

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persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 29, 1995.

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 95–8687 Filed 4–7–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will be held on May 18, 1995 at California State University, Fresno, California.

The Committee advises the Director, Bureau of the Census, on the conduct of periodic censuses of agriculture and related surveys, and the kind of information that should be obtained from respondents about agriculture production and operations; prepares recommendations regarding the conduct of agriculture data programs and the contents of agriculture reports; and presents the views of major suppliers and users of agriculture statistics on agriculture data programs and products.

The Committee is composed of 21 members. Twenty members are appointed by the presidents of the nonprofit organizations having representatives on the Committee, and one member is a representative from the Department of Agriculture.

The May 18 meeting will begin at 9 a.m. and adjourn at 5 p.m., and the meeting agenda is: (1) call to order and introduction; (2) introductory remarks by the Deputy Director, Bureau of the Census; (3) reorganization and the role of the Agriculture and Financial Statistics Division; (4) data sharing initiative; (5) 1992 Census of Agriculture data and products; (6) plans for the 1997 Census of Agriculture; (7) status of 1994 Farm and Ranch Irrigation Survey; (8) rural data needs; (9) public questions and comments; (10) Committee recommendations; and (11) election of chairperson for 1996.

This meeting is open to the public and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below in advance of the meeting.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. Joseph Reilly, Agriculture and Financial Statistics Division, Bureau of the Census, Room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, D.C. 20233) Telephone (301) 763–8557—TDD (301) 457–2540, FAX (301) 763–8315.

Dated: March 30, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–8662 Filed 4–7–95; 8:45 am]

BILLING CODE 3510–07–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

April 4, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 362 is being increased for carryforward. As result, the limit for Category 362, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 4, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on April 11, 1995, you are directed to amend further the directive dated December 16, 1994 to increase the limit for Category 362 to 6,023,139 numbers [1] as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8708 Filed 4–7–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on April 19–20, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: April 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8654 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Role of Federally Funded Research and Development Centers (FFRDC's) in DoD Mission

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on April 8, 1995 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Arlington, Virginia.

This meeting is scheduled on short notice because of unforeseen circumstances that require this Task Force to assimilate large volumes of information into a proposed final report in order to meet a Congressionally mandated suspense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756–2096.

Dated: April 3, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8655 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26 April 1995.

Time of Meeting: 0900–1530.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's Ad Hoc Study on "Tank Modernization" will meet to review sponsor guidance from the Huntsville meeting, threat briefings, update briefings and tank briefings. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, the Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–8688 Filed 4–7–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 21, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: April 4, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.

Title: Applications for Grants Under the Comprehensive Regional Centers Program.

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Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 100
Burden Hours: 2,200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational agencies to apply for funding under the Comprehensive Regional Centers Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested by April 21, 1995. An expedited review is requested in order to give the various entities sufficient time to prepare plans/applications, and to publish the application by May 1.

[FR Doc. 95–8657 Filed 4–7–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 7, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: April 4, 1995.
Gloria Parker,
Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan for the Even Start Family Literacy Program—Part B of Title I of the ESEA
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 56
Burden Hours: 840
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Secretary is requiring each State to submit a State plan showing how it will operate the Even Start Family Literacy Program. The Department will use the information to facilitate oversight of the program with regard to the fiscal accountability of the States in their administration of a discretionary grants program, and States' compliance with the statute. It will also use the information to ensure that States are operating consistently with their plans, for research and evaluation.
Additional Information: Clearance for this information collection is requested by April 7, 1995. An expedited review is requested in order to give the States sufficient time to prepare plans/applications, and to allow for revisions/reproduction of the application.

[FR Doc. 95–8658 Filed 4–7–95; 8:45 am]
BILLING CODE 4000–01–M

Direct Grant Programs for Native Hawaiians

AGENCY: Department of Education.
ACTION: Notice inviting applications for new awards for fiscal year 1995.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1995 under the Department's direct grant programs for Native Hawaiians and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**.

DATES: The chart for each principal office (Charts 1 and 2) includes the following dates for each program or competition: (1) the date on which applications will be available; (2) the deadline for submission of applications; and (3) the deadline date for transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties under Executive Order 12372 (Intergovernmental Review of Federal Programs).

FOR APPLICATIONS OR FURTHER INFORMATION: The address and telephone number for obtaining applications for, or further information about, a program are in the application notice for that program.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Organization of Notice

Each principal program office is assigned a separate chart as follows:
Chart 1—Office of Elementary and Secondary Education.
Chart 2—Office of Special Education and Rehabilitative Services.

Note: The Office of Postsecondary Education will publish a separate notice inviting applications for the Native Hawaiian Higher Education Program.

Each of the charts that lists individual programs or competitions contains the following information:
- The CFDA number and the name of each affected program.
- The date of availability of applications.
- The deadline date for transmitting applications.
- The deadline date for transmitting comments under intergovernmental review (Executive Order 12372).
- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards.

Following the chart for each principal program office are additional details for each affected program with an application notice in this combined notice, including—
- A brief statement of the purpose of the program;
- A list of eligible applicants;
- Information regarding priorities, if any;
- Supplemental information, if necessary, regarding selection criteria, any fiscal matters peculiar to the program or competition, or other matters;
- The project period in months;
- Available funds;
- The name, address, and telephone number of the person or office at the Department to contact for applications or information; and
- A citation of the statutory or other legal authority for the program.

Note: The Department of Education is not bound by any of the estimates in this notice.

National Education Goals

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103–227). The Act enunciates eight National Education Goals for the year 2000:
- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs announced in this notice make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

CHART 1.—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.209 A Native Hawaiian Family-Based Education Centers Program.	04/14/95	06/02/95	08/02/95	$1,500,000 to $5,600,000	$1,900,000	1–3
84.210A Native Hawaiian Gifted and Talented Program.	04/14/95	06/02/95	08/02/95	$1,200,000	1,200,000	1
84.296A Native Hawaiian Community-Based Education Learning Centers Program.	04/14/95	06/02/95	08/02/95	$267,000 to $800,000	267,000	1–3
84.297A Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program.	04/14/95	06/02/95	08/02/95	$500,000 to $1,500,000	500,000	1–3

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CHART 2.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.221A Native Hawaiian Special Education Program .	04/14/95	06/02/95	06/02/95	$1,200,000	$1,200,000	1

84.209A Native Hawaiian Family-Based Education Centers Program

Purpose of Program: To support projects that expand the operation, throughout the Hawaiian Islands, of Family-Based Centers that include: (1) Parent-infant programs for prenatal through three-year-olds; (2) preschool programs for four- and five-year-olds; (3) continued research and development; and (4) a long-term follow-up and assessment program, which may include educational support services for Native Hawaiian language immersion programs or transition to English-speaking programs. This program is authorized by section 9205 under Part B of Title IX of the Elementary and Secondary Education Act.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Project Period: Up to 60 months.

Available Funds: $5,600,000

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources. (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, DC 20202–6140. Telephone (202) 260–2502, or FAX: (202) 205–0302.

Program Authority: 20 U.S.C. 7905.

84.210A Native Hawaiian Gifted and Talented Program

Purpose of Program: To support a program for gifted and talented education that is designed to: (1) Address the special needs of Native Hawaiian elementary and secondary school students who are gifted and talented students; and (2) provide those support services to the families of such students that are needed to enable such students to benefit from the program. This program is authorized by section 9207 under Part B of Title IX of the Elementary and Secondary Education Act.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Project Period: Up to 60 months.

Available Funds: $1,200,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79–82, 85 and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources: (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue SW., Room 4500, Portals Building, Washington, DC 20202–6140. Telephone (202) 260–2502, or FAX: (202) 205–0302.

Program Authority: 20 U.S.C. 7907.

84.296A Native Hawaiian Community-Based Education Learning Centers Program

Purpose of Program: To support collaborative efforts between community-based Native Hawaiian organizations and community colleges to develop, establish, and operate a minimum of three community-based education learning centers that meet the needs of families and communities through the coordination of such programs and services as preschool programs, after-school programs, and vocational and adult education programs. This program is authorized by section 9210 under Part B of Title IX of the Elementary and Secondary Education Act.

Eligible Applicants: Collaborative efforts between community-based Native Hawaiian organizations and community colleges.

Project Period: Up to 60 months.

Available Funds: $800,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79–82, 85 and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources. (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, DC 20202–6140. Telephone (202) 260–2502, or FAX: (202) 205–0302.

Program Authority: 20 U.S.C. 7910.

84.297A Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program

Purpose of Program: To support programs for the following purposes: (1) The development of curricula to address the needs of Native Hawaiian students, particularly elementary and secondary school students, which may include programs of instruction conducted in the Native Hawaiian language, and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions; (2) the development and implementation of preteacher training programs in order to ensure that student teachers within the State of Hawaii, particularly student teachers who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students, within the context of Native Hawaiian culture, language and traditions; and (3) the development and implementation of inservice teacher training programs, in order to ensure that teachers, particularly teachers employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students, within the context of Native Hawaiian culture, language and traditions. This program is authorized by section 9209 under Part B of Title IX of the Elementary and Secondary Education Act.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Project Period: Up to 60 months.

Available Funds: $1,500,000

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources: (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, DC 20202–6140. Telephone: (202) 260–2502, or FAX: (202) 205–0302.

Program Authority: 20 U.S.C. 7909.

84.221A Native Hawaiian Special Education Program

Purpose of Program: To support projects that address the special education needs of Native Hawaiian students consistent with the purposes of the program as authorized by section 9208 under Part B of Title IX of the Elementary and Secondary Education Act.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Project Period: Up to 60 months.

Available Funds: $1,200,000

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources: (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9099, or FAX: (202) 205–8105.

Program Authority: 20 U.S.C. 7908.

Dated: April 3, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–8661 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Educational Research Policy and Priorities Board's Committee on the Regional Educational Laboratories. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: April 20, 1995, 8:15 a.m. to 10:00 a.m.

ADDRESS: The San Miguel Room of the Grand Hyatt Hotel, 345 Stockton Street, San Francisco, CA 94108.

FOR FURTHER INFORMATION, CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; FAX: (202) 219–1466.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Committee on the Regional Educational Laboratories of the Board is open to the public. The agenda for the April 20 meeting provides for the

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review and comment by the Committee of the proposed statement of work for the Regional Educational Laboratories forthcoming contractual competition.

The public is being given less than 15 days notice because of the urgency required to meet the rigorous procurement schedule associated with the regional educational laboratories competition. The Office of Educational Research and Improvement anticipates announcing competition guidelines by May 15 in order to select the regional educational laboratories by November 30, 1995, the date contracts for the current labs expire.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, D.C. 20208–7564.

Dated: April 4, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–8649 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 95–16–NG]

Boston Gas Company; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Boston Gas Company blanket authorization to import up to 10 Bcf of natural gas from Canada and to export up to 10 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 27, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–8747 Filed 4–7–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–14–NG]

Midcon Gas Services Corp.; Order Granting Blanket Authorization to Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Midcon Gas Services Corp. blanket authorization to export up to a combined total of 300 Bcf of natural gas to Canada and Mexico over a period of two years beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 27, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–8746 Filed 4–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–218–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of May 1, 1995:

Nineteenth Revised Sheet No. 20A
Original Sheet No. 94F

Algonquin states that the purpose of this filing is to (i) flow through refunds of $127,082.81 received from O&R Energy Inc., including interest, related to Algonquin's purchased gas adjustment mechanism; and (ii) allocate an additional charge of $21,942.73 from Texas Eastern Transmission Corporation.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8668 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–224–000]

ANR Pipeline Co.; Notice of Request for Waiver

April 4, 1995.

Take notice that on March 31, 1995, ANR Pipeline Company (ANR) requested a waiver of Section 31(c) of its FERC Gas Tariff, Second Revised Volume No. 1, which requires it place into effect a "Deferred Transportation Cost Adjustment" to be effective May 1, 1995.

ANR states that as originally contemplated, the "Deferred Transportation Cost Adjustment" was intended to track ANR's Account No. 858 costs over the prior annual period. However, as a result of orders issued in Docket No. RP94–43–000, the tracker did not go into effect until January 9, 1995. Therefore, ANR states that pursuant to its tariff, an adjustment for this short period would reflect actual cost experience only for the partial month of January 1995. The remainder of the "Deferred Transportation Costs" for the months of February through April, 1995, would be based on estimates.

ANR states that if the "Deferred Transportation Cost Adjustment" were to go into effect on May 1, 1995, based on ANR's estimates, the charge would result in a rate adjustment to the Mainline Area Access rate of $.0018 when expressed at a 100% load factor. Other transportation related services reflect similar rate adjustments. Rather than implement an adjustment based primarily on estimates, and make further adjustments to reflect actual experience in subsequent Deferred Transportation Cost Adjustment filings, ANR has proposed to defer the reconciliation for this short period until ANR's next annual filing when actual costs during this period will be known.

ANR states that all of its FERC Gas Tariff, Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8669 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–228–000]

Carnegie Interstate Pipeline Co.; Notice of Proposed Change in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Carnegie Interstate Pipeline Company (CIPCO), the successor to Carnegie Natural Gas Company, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of May 1, 1995:

Eleventh Revised Sheet No. 7

CIPCO states that this is its quarterly filing pursuant to revised Section 32.2 of the General Times and Conditions of its FERC Gas tariff to reflect prospective changes in transportation costs associated with unassigned upstream capacity held by CIPCO on Texas Eastern Transmission Corporation (Texas Eastern) for the 3-month period commencing May 1, 1995 and ending July 31, 1995. The filing reflects an increase in the Transportation Cost Rate (TCR) from $1.0490 to $1.1519. The new TCR includes a TCR Adjustment of $1.0850 and a TCR Surcharge of $0.0669.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8670 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No RP95–222–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Eighth Revised Sheet No. 32
Eighth Revised Sheet No. 33
First Revised Sheet No. 360
FIrst Revised Sheet No. 361
Original Sheet No. 361A

CNG states that the purpose of this filing is to collect additional stranded upstream transportation costs, and to revise the General Terms and Conditions of CNG's tariff, to institute a quarterly filing for future Account No. 858 stranded cost recovery.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8671 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–227–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 99A
Original Sheet No. 99B

The proposed tariff sheets bear an issue date of March 31, 1995 and a proposed effective date of May 1, 1995.

Columbia states that this filing comprises Columbia's supplemental close out of its Account No. 191 pursuant to Section 39 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1, subject to: (i) Columbia's February 16, 1995, request for waiver of the close out period ending March 31, 1995, for nine months to December 31, 1995, for the sole purpose of making further adjustments with respect to resolution of imbalances with Tennessee Gas Pipeline Company; and (ii) GTC Section 39.3 which permits Columbia to recover costs beyond any close out period with respect to unpaid purchased gas costs attributable to the period before the filing of Columbia's July 31, 1991 bankruptcy petition.

In this filing, Columbia states that it is making a debit of $90,126.21 to its Account No. 191 as a result of additional T&E reconciliation conducted pursuant to a Commission approved methodology, a $431,318.03 debit as a result of implementing its exit fee settlement with Tennessee Gas Pipeline Company (concerning payment for pre-petition costs owed to Tennessee by Columbia with respect to Columbia's pre-Order No. 636 storage services on Tennessee), and a $150,802.09 debit for fuel credit adjustments. These and other items result in a net debit to the Account No. 191 of $627,457.55 in this filing.

Columbia states that copies of its filing have been mailed to all firm

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customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8672 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA 92–61–001]

Kentucky Power Co.; Electric Rates: Hearing, Accounting; Order Deferring Hearing Procedures

April 4, 1995.

On November 25, 1994, the Chief Accountant issued a contested audit report, under delegated authority, noting that Kentucky Power Company (Kentucky Power) disagreed with certain recommendations made by the Division of Audits related to Kentucky Power's accounting for amounts billed by an affiliated service company. The Chief Accountant requested that Kentucky Power notify the Commission whether it would agree to dispose of the contested issue under the shortened procedures provided for by Part 41 of the Commission's regulations. *Kentucky Power Co.*, 69 FERC ¶ 62,172; See 18 CFR part 41.

On December 6, 1994, American Electric Power Service Corporation (AEPSC), responding for Kentucky Power, requested that the Commission defer further action on the contested issue pending the completion of a proceeding before the Securities and Exchange Commission (SEC). AEPSE informed the Chief Accountant that the SEC is considering a similar issue in its proposed amendments to Form U–13–60. The American Electric Power Company (AEP) and other registered public utility holding companies have responded to the SEC's request for public comment on this subject in FR Doc. 94–23164. AEPSC indicates that Kentucky Power and the other jurisdictional AEP system companies may agree to adopt the recommendations of the Division of Audits related to the accounting classification of service company billings depending upon the final order of the SEC.

It is ordered:

(A) Further proceedings concerning the appropriateness of Kentucky Power's practices as discussed in the November 25, 1994, report issued by the Chief Accountant are hereby deferred pending completion of the proceeding before the SEC.

(B) Kentucky Power shall keep the Office of Chief Accountant advised of the status of the proceeding before the SEC. On or before June 30, 1995, and every six months thereafter, Kentucky Power shall provide the Commission a full status report on the proceeding and how it affects the issue raised by the Division of Audits.

(C) This order shall be published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8673 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–35–000]

Kootenai Electric Cooperative, Inc., Clearwater Power Co., Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. v. Public Utility District No. 2 of Grant County; Notice of Filing

April 4, 1995.

Take notice that on March 2, 1995, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. (collectively referred to as "the Idaho Cooperatives") tendered for filing a complaint against Public Utility District No. 2 of Grant County (the District). In their complaint, the Idaho Cooperatives request the Commission to determine and fix the applicable portion of capacity and output to be made available to the Idaho Cooperatives from the Priests Rapids Project upon relicensing and expiration of existing power sales contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests and the answer to the complaint should be filed on or before April 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8674 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–226–000]

Mississippi River Transmission Corp.; Notice of Proposed Change in FERC Tariff

April 4, 1995.

Take notice that on March 31, 1995 Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1995:

Tenth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Tenth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $801,943, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the "Price Differential" cost of continuing to perform under certain gas supply contracts during the months of October through December 1994.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8675 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–221–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, effective May 1, 1995:

Second Revised Sheet No. 267

Northern states that such tariff sheet is being submitted to modify the tariff provisions surrounding the Monthly Index Price, as follows: (1) To change the price discovery point from Custer County, Oklahoma to the MidContinent Pooling Point, and (2) To change the source of the daily quoted price from "Basic Watch" to a companion publication from the same publisher entitled, "BTU's Daily Gas Wire".

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8676 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–28–000]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets in May 1, 1995.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through Of Cash-Out Revenues In Excess Of Costs And Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that the revised tariff sheets listed on Appendix A to the filing reflect the removal of (1) the existing $.01 reduction to Panhandle's currently effective maximum Reservation Rates under Rate Schedules FT and EFT; (2) the existing .06¢ reduction to Panhandle's currently effective maximum Base Rate per Dt. under Rate Schedule SCT; and (3) the existing .03¢ reduction to Panhandle's currently effective maximum Base Rate per Dt. under Rate Schedules IT and EIT.

Panhandle states that the removal of the currently effective Section 25 adjustment from the Reservation and Commodity rates is supported by the workpapers contained in Panhandle's filing which show that, pursuant to Section 25(e) of the General Terms and Conditions, the level of cash-out revenues in excess of costs and scheduling charges assessed against affiliates for the twelve months ended January 31, 1995 were not of a sufficient magnitude to result in a reservation charge credit of at least one cent or a commodity charge credit of at least .01 cents.

Accordingly, Panhandle states that there will be no Section 25 adjustment in effect for the period May 1, 1995 through April 30, 1996. In accordance with Section 25(f) of the General Terms and Conditions the net revenues for the 12 months ended January 31, 1995 will be carried over to be added to and considered with the net revenues in Panhandle's next filing made pursuant to Section 25 of the General Terms and Conditions.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8677 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–225–000]

Questar Pipeline Co.; Notice of Tariff Filing

April 4, 1995.

Take notice that on March 31, 1995, Questar Pipeline Company, tendered for filing and acceptance to be effective May 1, 1995, revised tariff sheets as listed on Appendix A to this notice.

Questar states that these tariff sheets revise provisions in First Revised Volume No. 1 of its FERC Gas Tariff that are applicable to storage service by reflecting thermal (Dth) rather than volumetric (Mcf) tracking and billing.

Questar states further that it seeks Commission approval of revisions to the Statement of Rates, Rate Schedules, General Terms and Conditions and Forms of Service Agreements as required to reflect the Dth tracking and billing. Questar also seeks Commission approval of the correction of a minor technical oversight in transportation rate schedules wherein the word "volume" had not been previously replaced with the word "quantity."

Questar explains that the proposed tariff revisions, which conform nomination and billing practices as requested by several storage customers, are also in harmony with the Commission's preference as expressed in its December 16, 1994, rulemaking proceedings in Docket Nos. RM95–3–000 and RM95–4–000.

Questar states that this filing was served upon its customers and the Wyoming and Utah public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1995. Protests will be

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considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Appendix A—Listing of Proposed Tariff Sheets

Fourth Revised Sheet No. 6
Second Revised Sheet No. 6A
First Revised Sheet No. 14
First Revised Sheet No. 23
First Revised Sheet No. 32
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 54
First Revised Sheet No. 56
First Revised Sheet No. 57
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 65
Second Revised Sheet No. 66
Second Revised Sheet No. 68
First Revised Sheet No. 91
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 111
First Revised Sheet No. 112
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
Second Revised Sheet No. 117
Second Revised Sheet No. 118
First Revised Sheet No. 119
First Revised Sheet No. 120
First Revised Sheet No. 121
First Revised Sheet No. 140
First Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 150
First Revised Sheet No. 151
First Revised Sheet No. 161
First Revised Sheet No. 162
First Revised Sheet No. 165
Second Revised Sheet No. 166
Second Revised Sheet No. 167
Second Revised Sheet No. 168
Second Revised Sheet No. 169
First Revised Sheet No. 170
First Revised Sheet No. 171
Second Revised Sheet No. 172
Second Revised Sheet No. 173
Second Revised Sheet No. 186
Second Revised Sheet No. 188
Second Revised Sheet No. 190
First Revised Sheet No. 192
First Revised Sheet No. 193

[FR Doc. 95–8678 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–219–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of May 1, 1995:

Original Sheet No. 230
Sheet Nos. 231–234

Texas Eastern states that by this filing, it proposes to grant, effective May 1, 1995, customers under Rate Schedule SCT enhanced transportation rights with respect to doliveries and receipts in Texas Eastern's Market Zones 1, 2 and 3. Texas Eastern proposes to add a new Section 9 to Rate Schedule SCT. These enhanced transportation rights are identical to the enhanced transportation rights granted by Texas Eastern to customers under Rate Schedules CDS and FT–1 in Docket No. RP94–357–000.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8679 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

Texas Gas Transmission Corp.; Notice of Informal Settlement Conference

April 4, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding commencing at 10:00 am on April 11, 1995, and continuing at 9:00 am on April 12, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8680 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–217–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing Ninth Revised Tariff Sheet Nos. 6, 7, 8, 9 and 10 which are proposed to become effective May 1, 1995, consistent with Section 27.3(B)(1)(f)(i)(a) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1 (General Terms and Conditions).

Trunkline states that the purpose of this filing is to eliminate the Initial Stranded Transportation Cost Surcharges and to report that under the terms of its Tariff, there are no Remaining Excess recoveries to be repaid to shippers. Trunkline notes that upon the Commission's acceptance of Trunkline's Gas Supply Realignment (GSR) Costs recovery filing in Docket No. RP95–220–000, also filed on March 31, 1995, the revised tariff sheets included in this filing will be superseded.

Trunkline states that a copy of this filing has been served on all customers affected by this filing and the respective state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8681 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–220–000]

Truckline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 1995.

Take notice that on March 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing Tenth Revised Tariff Sheet Nos. 6, 7, 8, 9 and 10 which are proposed to become effective May 1, 1995, consistent with Sections 27.2 (D)(1) and 27.3(B)(1)(f)(i)(a) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1 (General Terms and Conditions).

Truckline states that the purpose of this filing is to dispose of certain Gas Supply Realignment (GSR) Costs incurred by Trunkline by offsetting those amounts against the excess recoveries of certain transition costs, using Commission-approved cross-crediting procedures contained in its Tariff. Trunkline further states that the principal amount proposed to be recovered via the Commission-approved cross-crediting method is $806,242 which is $87,382 less than the $893,624 amount of Trunkline's GSR costs incurred as of the date of this filing and carrying charges up to the anticipated May 1, 1995 effective date.

Trunkline states that a copy of this filing has been served on all customers affected by this filing and the respective state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8682 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–223–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Revisions

April 4, 1995.

Take Notice that on March 31, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed to make explicit in its tariff the ability to allow Williston Basin to accept nominations after the nomination deadline, to the extent operating conditions permit.

Williston Basin requests that the tariff sheets be made effective May 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20246, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8683 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–937–000, et al.]

Niagara Mohawk Power Corp., et al.; Electric Rate and Corporate Regulation Filings

April 3, 1995.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER93–937–000]

Take notice that on March 20, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Madison Gas & Electric Co.

[Docket No. ER94–1147–000]

Take notice that on March 23, 1995, Madison Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. West Penn Power Co.

[Docket No. ER95–591–000]

Take notice that on March 17, 1995, West Penn Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Electric Power Co.

[Docket No. ER95–660–000]

Take notice that on March 22, 1995, Southwestern Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corp.

[Docket No. ER95–766–000]

Take notice that on March 20, 1995, Florida Power Corporation (FPC), tendered for filing letters dated February 14, 1995 providing "Rate Limitation Refunds" for calendar year 1994 to four of the Company's customers in accordance with provisions in Exhibit B of their contracts limiting the total bills for service to them to the amount that would be produced by applying the applicable Florida Municipal Power Agency rate to that service. The rate-schedule under which each is served and the Rate Limitation Refund made to each are as follows:

Rate schedule	Customer	Refund
Rate Schedule 114.	City of Bartow.	$1,139,391.09
Rate Schedule 115.	City of Havana.	139,329.39
Rate Schedule 116.	City of Newberry.	126,992.20
Rate Schedule 117.	City of Mount Dora.	348,041.30

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Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER95–767–000]

Take notice that on March 20, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), filed a Service Agreement dated as of March 2, 1995 between NorAm Energy Services and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER95–768–000]

Take notice that on March 20, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a Service Agreement dated as of March 2, 1995 between InterCoast Power Marketing Company and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Co.

[Docket No. ER95–769–000]

Take notice that on March 20, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing, as an initial rate schedule, a Control Area and Transmission Service Agreement (Agreement) providing rates, terms and conditions for service to be rendered by PG&E to Power Exchange Corporation (PXC), a power marketer.

The Agreement: 1) identifies the types of bulk power suppliers from whom PXC can purchase, describes the types of loads it can serve, and provides for accounting for such loads and resources, particularly resources whose output is sold to two or more entities concurrently; 2) establishes control area reliability obligations for PXC, *e.g.*, resource load-following and spinning reserve requirements and energy deviation limits, and permits PXC to satisfy these obligations by using its own resources, purchasing services from third parties, or purchasing services from PG&E, and 3) provides flexible, firm network transmission service on both a short-term and an annual basis among various generation "Input" points and load "Output" points specified by PXC.

Copies of this filing were served upon PXC and the California Public Utilities Commission.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Co.

[Docket No. ER95–770–000]

Take notice that on March 20, 1995, PECO Energy Company (PECO), filed a power sales Tariff (Tariff). The Tariff describes the general terms and conditions under which PECO will make available for sale energy from various sources on either a reserved or as-delivered basis at negotiated rates that are no higher than PECO's cost of service.

PECO requests an effective date for the Tariff of May 21, 1995.

PECO has served copies of the filing on the Pennsylvania Public Utility Commission.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Co.

[Docket No. ER95–771–000]

Take notice that on March 20, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself an Electric Clearinghouse, Inc. (ECI). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on ECI, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Empire Limited

[Docket No. ER95–772–000]

Take notice that on March 20, 1995, Northeast Empire Limited Partnership #2 tendered for filing a waiver of a condition to an amendment to its rate schedule for sales of energy and capacity from its Ashland, Maine facility to Central Maine Power Company.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Co.

[Docket No. ER95–773–000]

Take notice that on March 21, 1995, Boston Edison Company (BECo), tendered for fling a Service Agreement and Appendix A for Electric Clearinghouse Inc. for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on March 1, 1995.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Boston Edison Co.

[Docket No. ER95–774–000]

Take notice that on March 20, 1995, Boston Edison Company (BECo), tendered for filing a Service Agreement and Appendix A for ENRON Power Marketing, Inc. for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on March 1, 1995.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Boston Edison Co.

[Docket No. ER95–775–000]

Take notice that on March 21, 1995, Boston Edison Company (BECo), tendered for filing a Service Agreement and Appendix A for Louis Dreyfus Electric Power Inc. for the sale and/or exchange of power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on March 1, 1995.

Comment date: April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are one file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8667 Filed 4–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5187–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before [Insert date 30 days after publication in the **Federal Register**].

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0370.13.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Underground Injection Control Program Information (EPA ICR No. 0370.13; OMB Control No. 2040–0042). This is a request for renewal of a currently approved information collection without any change in the substance or in the method of collection.

Abstract: The Underground Injection Control (UIC) program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water from contamination by injected materials. Owners or operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State primacy agency. States must report to EPA on permittee compliance and related information. The information is reported using standardized forms, and the regulations are codified at 40 CFR Parts 144 through 148. The data are used to ensure the safety of underground sources of drinking water.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 56 hours per respondent annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the forms included in this collection of information.

Respondents: Owners and operators of underground injection wells, and States.

Estimated No. of Respondents: 6,199.

Estimated Total Annual Burden on Respondents: 361,714 hours.

Frequency of Collection: On occasion, quarterly, annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0370.13 and OMB Control No. 2040–0042 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0370.13, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040–0042, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: April 4, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–8736 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5187–1]

Colloquium on Ecological Risk Assessment Guideline Development

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces a colloquium sponsored by the U.S. Environmental Protection Agency Risk Assessment Forum to discuss development of an Agency-wide guideline based on EPA's ecological risk assessment framework. The Agency is especially interested in exploring the experiences of individuals or organizations who have used the framework for evaluating ecological risk.

DATES: The colloquium will begin on Wednesday, May 3, 1995 at 8:00 a.m. and end at 5:00 p.m. Members of the public may attend.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn, 480 King Street, Alexandria, Virginia (Tel: 703/549–6080).

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the colloquium. To attend the colloquium, call Eastern Research Group at 617/674–7374. Space is limited.

FOR FURTHER INFORMATION CONTACT: Bill van der Schalie, U.S. Environmental Protection Agency, Risk Assessment Forum (8101), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743.

SUPPLEMENTARY INFORMATION: EPA is developing an Agency-wide guideline for ecological risk assessment based on the process described in the EPA report *Framework for Ecological Risk Assessment* (EPA/630R–92/001). This colloquium will provide an opportunity for members of the public to: (1) Be informed as to the purpose and proposed structure of the guideline; (2) discuss their own experiences with the Agency's framework for ecological risk assessment and (3) provide information for Agency consideration in guideline development.

The ecological risk assessment guideline is being prepared by EPA's Risk Assessment Forum, which includes senior scientists from the Agency's program offices, regional offices, and laboratories. Historically, the Forum is best known for developing Agency-wide human health risk assessment guidelines, but since 1989,the Forum has been working towards preparation of similar guidance for ecological risk assessment. Based in part on consultations with EPA's Science Advisory Board, the Forum approached ecological risk guidelines in a step-wise fashion, beginning with the source materials listed below. (Copies of these published documents may be obtained by calling EPA's Center for Environmental Research Information (CERI) in Cincinnati, Ohio at (513) 569–7562 and referencing the EPA document numbers provided.)

• Summary Report on Issues in Ecological Risk Assessment (EPA/625/3–91/018). This report summarizes discussions between EPA scientists and outside experts on issues relevant to guidelines development based on a

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series of colloquia that inaugurated the Forum guidelines development effort.

• Framework for Ecological Risk Assessment (EPA/630/R–92/001). The peer-reviewed Framework Report describes basic concepts and terminology for the ecological risk assessment process.

• A Review of Ecological Case Studies from a Risk Assessment Perspective (EPA/630/R–92/005) and A Review of Ecological Case Studies from a Risk Assessment Perspective Volume 2 (EPA/630/R–94/003). These reports contain 17 peer-reviewed case studies that explore the relationship between the ecological risk assessment process described in the Framework Report and several types of ecological assessment.

• Ecological Risk Assessment Issue Papers (EPA/630/R–94/009) and Peer Review Workshop Report on Ecological Risk Assessment Issue Papers (EPA/630/R–94/008). Some issue paper topics correspond directly to sections of EPA's ecological risk assessment framework (conceptual model development, characterization of exposure, effects characterization, and risk integration methods), while others focus on cross-cutting issues (ecological significance, biological stressors, ecological recovery, uncertainty, and ascertaining public values in ecological risk assessment). The issue papers were revised based on comments received at an August, 1994 peer review workshop. The scientific background information in the papers will help provide a bridge between the basic concepts described in the Framework Report and the more substantial ecological risk assessment guidelines.

Work on the first ecological risk guideline, based on an expansion of the ecological risk framework, was recently initiated. As with previously published human health risk guidelines, the new ecological risk assessment guideline is intended to improve the quality of EPA's risk assessments, promote Agency-wide consistency; and inform the scientific community and the public. Guidelines are not rules for those outside of the Agency; they are intended primarily for use by EPA and contractors doing work for the Agency. While guidelines address major issues of concern, they do not provide detailed "how tos" or contain extensive background material for novice readers. Finally, guidelines are not program-specific; it is left to individual programs within EPA (e.g., Superfund, pesticides) to adapt the Agency-wide guidelines to their own needs.

Dated: March 27, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–8740 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00406; FRL–4948–3]

Guidance on Issuance of Worker Protection Standard Enforcement Actions in Response to Personal Protective Equipment Violations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 13, 1995, the Agency distributed its "Summary Guidance on Issuance of WPS Enforcement Actions" which applied to any violations of the Worker Protection Standard (WPS). EPA was recently asked to distribute further guidance specific to enforcement of the personal protective equipment (PPE) provisions of the WPS. In response, the Agency developed guidance which applies to PPE violations the 10 factors which EPA recommends be considered in determining the appropriate recipients of WPS enforcement actions. This guidance was distributed to EPA Regional Offices on March 30, 1995, for transmittal to state pesticide enforcement personnel, the intended audience for the guidance. EPA is publishing the March 30th guidance at the request of a state organization.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sims, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance, 2245A, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 564–4048.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is providing this document in response to requests made for specific guidance concerning enforcement of the PPE provisions of the FIFRA WPS. This summary guidance is organized according to the 10 factors to be considered in determining the appropriate recipients of WPS enforcement actions, and employers/owners/operators' PPE responsibilities.

II. Ten Factors for Consideration

EPA recommends that accountability for compliance with the FIFRA WPS be decided on a common sense, case-by-case basis. "Summary Guidance on Issuance of WPS Enforcement Actions," provided February 1995, identifies the following 10 factors which EPA recommends States consider when they need to determine the appropriate recipient(s) of a WPS enforcement action:

1. Who has control over pesticide use;
2. Who directs pesticide use;
3. Who has control over the agricultural establishment for posting and other WPS-related responsibilities;
4. Who gives direction on the agricultural establishment for posting and other WPS-related responsibilities;
5. Who has control over the practices used by agricultural workers on the establishment;
6. Who directs the practices used by agricultural workers on the establishment;
7. Measures taken to comply with provisions of the WPS;
8. Actions taken in response to incidents of noncompliance;
9. History of prior violations; and
10. Ability to assure continuing compliance with the WPS.

Documentation by employers/owners/operators could assist them in demonstrating to State regulatory officials, their efforts to comply and responses to instances of noncompliance. The totality of the circumstances should be considered in each case. The 10 factors are not listed in any order of priority; each factor should be appropriately considered in every case.

III. Employers/Owners/Operators PPE Responsibilities

The 10 factors should be considered if an employee (including workers and handlers) does not use PPE required by the WPS. It is essential for employers/owners/operators to take an active role to assure that PPE is used.

The employer/owner/operator bears primary responsibility for WPS PPE compliance. Employers/owners/operators must provide, clean and maintain PPE, and instruct employees on its proper use. The employer/owner/operator has a responsibility to inform employees who do not use their PPE that such clothing or protective gear is required. In the case of pesticide handlers, the responsibility to follow label directions and use PPE properly is a shared one with the employer.

The employer/owner/operator also has a responsibility to take appropriate actions if an agricultural employee does not comply with instructions to use PPE. If an employee does not use WPS required PPE, appropriate supervisory actions that could be taken by the employer/owner/operator to achieve compliance include warnings and nondiscriminatory discipline. If an employer/owner/operator provides employees with appropriate PPE, training and supervision per the specifications of the WPS, there should not arise an occasion on which the employer/owner/operator would be subject to a WPS/PPE enforcement action due to the individual decision of an agricultural employee not to use the PPE.

Enforcement officials will consider the facts of a case before determining how to respond to any WPS violation, consistent with the 10 factors identified in the Agency's February 1995 summary WPS enforcement guidance. EPA recommends that accountability for compliance be decided on a common sense basis, and that the totality of the circumstances be considered in each case, including enforcement actions in response to PPE violations.

Dated: April 4, 1995.

Jesse Baskerville,

Director, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 95–8726 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5187–3]

The Use of the Benchmark Dose Approach in Health Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a report titled The Use of the Benchmark Dose Approach in Health Risk Assessment (EPA/630/R–94/007). This report was developed to serve as a background document for discussing benchmark dose applications to noncancer risk assessment.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, Fax: (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–94/007).

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260–6743.

SUPPLEMENTARY INFORMATION: For almost 10 years, scientists have been studying the benchmark dose (BMD) as a promising technique for the quantitative assessment of noncancer health effects. The information presented in this report is one step in developing the basis for an EPA consensus on the role of benchmark methods in the quantitative assessment of noncancer health risk. The report presents a basic overview of the benchmark method, which may provide an additional quantitative approach to current EPA practice.

The document focuses especially on critical decisions that must be made in deriving a BMD and applying the BMD in risk assessment. Major decisions in using the BMD are explained, and the sensitivity of the final result to each assumption is evaluated. The document also identifies many unresolved issues in benchmark dose application and identifies research that may help resolve some of these issues.

Dated: March 24, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–8738 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5187–4]

Report on the Technical Review Workshop on the Reference Dose for Aroclor 1016

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report titled Technical Review Workshop on the Reference Dose for Aroclor 1016 (EPA/630/R–94/006). This report compiles discussions from a technical review workshop on the reference dose for Aroclor 1016, which was held in Washington, DC, on May 24–25, 1994.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, Fax: (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–94/006).

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260–6743.

SUPPLEMENTARY INFORMATION: This report includes information and materials from a technical review workshop organized by the U.S. Environmental Protection Agency's Risk Assessment Forum for the Agency's Reference Dose/Reference Concentration (RfD/RfC) Work Group. The meeting was held in Washington, DC, at the Barcelo Washington Hotel on May 24–25, 1994 (59 FR 23202).

EPA convened a balanced panel of experts from the fields of qualitative and quantitative effects of PCBs in humans and animals, perinatal toxicity, neurobehavioral effects, and hazard and risk evaluation for data on health effects other than cancer. EPA sought comments from these experts on the IRIS entry and related scientific sources. Reviewers at the workshop were asked to evaluate whether the reference dose fully considered available data and if scientifically responsible data analyses were clearly articulated in the IRIS data base entry. Reviewers approved some features of the IRIS entry, and recommended additional review and analysis for others.

This report collects workshop papers, including summary statements prepared by the chairperson for each workshop topic. Workshop participants contributed useful recommendations for the Agency's Reference Dose/Reference Concentration Work Group to consider in re-evaluating the RfD entry on IRIS.

Dated: March 24, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–8737 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5187–2]

Report on the Workshop on Cancer Risk Assessment Guidelines Issues

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report titled *Report on the Workshop on Cancer Risk Assessment Guidelines Issues* (EPA/630/R–94/005a). This report compiles discussions from a technical review workshop on the draft document titled *Draft Revisions to the Guidelines for Carcinogen Risk Assessment* (External Review Draft; EPA/600/BP–92/003). Highlights of reviewers' pre-meeting comments on the draft document are included in the workshop report; copies of reviewers' comments in their entirety are available from the National Technical Information Service.

ADDRESSES: To obtain a single copy of the workshop report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental

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Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel (513) 569–7562, Fax: (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–94/005a).

To obtain a copy of reviewers' pre-meeting comments, interested parties should contact the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4650. The document number is PB95–148201.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Wiltse, U.S. Environmental Protection Agency (8601), 401 M Street SW., Washington, DC 20460, Telephone: (202) 260–7315.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency's Risk Assessment Forum and Office of Health and Environmental Assessment organized a workshop to technically review the Agency's draft revised cancer risk assessment guidelines (*Draft Revisions to the Guidelines for Carcinogen Risk Assessment*—External Review Draft; EPA/600/BP–92/003). The workshop was held on September 12–14, 1994, at the Hyatt Regency in Reston, Virginia (59 FR 43125).

EPA convened a panel of experts to evaluate and comment on technical issues in the draft document concerning mode of action, hazard identification, dose response, and default assumptions. This report, entitled Report on the Workshop on Cancer Risk Assessment Guidelines Issues (EPA/630/R–94/005a), compiles discussion and information from the technical review workshop. EPA will use the reviewers' comments and recommendations drawn from the workshop in considering revisions to the draft guidelines.

Dated: March 25, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–8739 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Forwarders International, Inc., 10926 LaCienega Blvd, Inglewood, CA 90304, Officers: Ghassan M. Choueiti, President; Fadia G. Choueiti, Vice President

FCH International Enterprises, Inc., 6819 NW 84 Ave., Miami, FL 33166, Officers: Fernando Chukuong, President; Maria J. Mullert, Manager

Guy Timothy Nishida, 7429 Ogelsby Ave., Los Angeles, CA 90045 Sole Proprietor.

Dated: April 5, 1995.

By the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 95–8697 Filed 4–7–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Duane R. Roberts, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Duane R. Roberts, Murrieta, California; Robert W. Klemme, Palos Verdes Estates, California; Randall C. Luce, Anaheim, California; Richard B. Thomas, Carona Del Mar, California; and Entrepreneurial Capital Corporation, Riverside, California; to acquire 19.55 percent, for a total of 23.85 percent, of the voting shares of FP Bancorp, Escondido, California, and thereby indirectly acquire First Pacific National Bank, Escondido, California.

Board of Governors of the Federal Reserve System, April 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8696 Filed 4–7–95; 8:45 am]

BILLING CODE 6210–01–F

MSB Holding Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. MSB Holding Company, Moorhead, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8695 Filed 4–7–95; 8:45 am]

BILLING CODE 6210–01–F

BayBanks, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 24, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. BayBanks, Inc., Boston, Massachusetts; to acquire NFS Financial Corp., Nashua, New Hampshire, and thereby engage in owning, controlling and operating a savings association that engages only in deposit-taking activities and lending and other activities, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutsche Bank AG, Frankfurt (Main), Federal Republic of Germany; to retain First Call Corporation, Boston, Massachusetts, and thereby engage indirectly in providing data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First American Corporation, Nashville, Tennessee; to acquire Heritage Federal Bancshares, Inc., Kingsport, Tennessee, and thereby indirectly acquire Heritage Federal Savings Bank, Kingsport, Tennessee, and thereby engage in operating and savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, April 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8694 Filed 4–7–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Home Visitor Services (Number: OPE–HVS–5)

AGENCY: Office of Policy and Evaluation (OPE), ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications to provide research assistance for the Home Visitor Services Demonstration.

SUMMARY: The Office of Policy and Evaluation of the Administration for Children and Families (ACF) announces the availability of Federal funding to provide research assistance for the Home Visitor Services Demonstration. Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647).

DATES: The closing date for submission of applications is June 9, 1995.

ADDRESSES: Application receipt point: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., MS 6C–62 OFM/DDG, Washington, DC 20447; Attn: Mrs. Shirley Parker; Reference: Announcement Number OPE-HVS–5. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Policy and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447; Attn: Nancye Campbell, telephone (202) 401–760.

SUPPLEMENTARY INFORMATION: The Office of Policy and Evaluation of the Administration for Children and Families announces that competing applications are being accepted for Federal financial assistance to provide research assistance for the Home Visitor Services (HVS) Demonstration. A single award will be made under this announcement. The recipient will receive an initial financial award for 12 months and be eligible to apply on a non-competitive basis for a continuation award of 12 months duration. The recipient will also be expected to enter into a cooperative agreement with ACF.

This program announcement consists of four parts. Part I provides background information about the HVS demonstration. Part II describes the activities supported by this announcement and application requirements. Part III describes the application review process. Part IV provides information and instructions for the submission of applications.

Part I—Introduction

ACF has entered into a partnership with the Henry J. Kaiser Family Foundation to develop and assess a demonstration of home visiting services for teenage parents on AFDC who are required to participate in the Job Opportunities and Basic Skills Training (JOBS) program. Through a separate

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competitive process, ACF provided funding support for five state welfare agencies to plan, implement and conduct the demonstrations. Such funding support was only available to the single state agency responsible for the administration of the AFDC program as required by section 1115 of the Social Security Act.

The Kaiser Foundation has awarded a grant to the University of Pennsylvania to provide background analysis, project design assistance, and research assistance for the HVS initiative. However, the research assistance which can be provided through the Kaiser grant is insufficient.

Background on the Demonstrations: The Assistant Secretary for Children and Families sent a letter to the all state welfare directors announcing the availability of funds for demonstration grants to conduct the HVS demonstration. In the September of 1994 ACF awarded planning and development grants and waivers to five states (Illinois, Maryland, Ohio, Oregon, and Texas) to enable them to begin the design and development of a demonstration to incorporate home visiting services into their JOBS program for teenage parents and to participate in the demonstration. Based on performance during the feasibility (planning and development) phase, up to three states will be selected to continue full demonstration operation for an additional 24-month period.

The central goals of the HVS initiative are to help young AFDC families achieve economic self-sufficiency and to add to current knowledge regarding the effectiveness of strategies designed to improve the social, personal, health, and economic outcomes among teenage parents and their children. To achieve these goals, home visits by paraprofessionals will be included as a part of the JOBS program in demonstration sites and the interventions effect on a range of outcomes will be measured.

It is expected that the home visitors will establish a close relationship with the teens and their children while they are also providing them with instruction and supportive guidance in four areas: parenting; family planning; obtaining appropriate health care; and accessing community resources and supports. In addition to the provision of direct services in the four areas mentioned, the home visitors will also be a link between the teen and the JOBS program and welfare agency. Through the relationships developed through regular, weekly visits to provide the instruction and guidance in the four key areas discussed above, it is also expected that the visitors will be able to identify potential problems early and bring appropriate attention to the problems or otherwise help the young mother resolve the problem as it relates to participation in JOBS or other areas.

The home visits will be targeted to teen parents who are applying for AFDC for the first time or who have their first child while on AFDC, and who are required, through waiver authority, to participate in education, training or employment activities under JOBS. The home visitors will be "housed" in two types of JOBS settings: the program staffed by the welfare agency and a program staffed by a service provider in the community (e.g., a community-based organization). While participation in the JOBS program and with the home visiting component is mandatory, considerable sensitivity to the concerns of the teens or other family members to having someone come into their home will be required. Therefore, the meetings between the teen and the visitor can occur at any suitable location. The curriculum to be used by the sites to address the key areas is being developed under the guidance of the University of Pennsylvania research team.

The welfare agencies which were considered for the demonstration grants were ones which proposed to operate the demonstration in sites which have an adequate caseload to identify approximately 425 new AFDC teen parent cases over a 12-month period and in which the JOBS program currently provides a comprehensive set of services targeted to teen parents. The community provider programs considered were ones in the same site which provide a comprehensive set of services in a single location and can enroll and serve at least 75 new teen parent cases. Specifically, in addition to the provision of appropriate education, training or employment activities, a comprehensive program is expected to provide: assistance with child care and transportation, specialized case management, and additional services targeted to teen parents such as parenting or life skills development. The selected sites were required to document their ability and willingness to randomly assign new teen parent cases to: (1) The current welfare-agency staffed JOBS program for teen parents, which will serve as the control group; (2) The welfare-agency staffed JOBS program with home visitors; and (3) The provider staffed JOBS program with home visitors.

In order to be considered as a site, the welfare agency was required to document their willingness and ability to collect and provide the data necessary to support research analyses related to process, impacts, and costs which will be conducted by the University of Pennsylvania researchers through the Kaiser grant as well as that which will be conducted through this expanded effort.

Part II—Project Design

Purpose: The purpose of the research assistance is, through technical support and impact, process, and cost analyses, to inform the public, including states, regarding the difference the addition of an intervention of regular home visits makes to teenage parents and, through them, to the lives of their children. This assistance is being sought because the extent of the research assistance to be provided through the grant from the Kaiser Foundation to the University of Pennsylvania for the initiative is not sufficient to address the complete scope of the planned effort. ACF is interested in (1) Expanding the knowledge base to include information about more sites and about the differential impacts of the two treatment groups: the intervention administered through the welfare agency, and the intervention administered through a provider agency (e.g., a community-based organization) and (2) Providing technical support to the sites regarding implementation and evaluation issues. The extent of the research assistance currently provided for through the Kaiser grant is limited to analyses of process, impacts, and costs in two sites with a single treatment group and a control group.

The primary measures to be used to assess program impact include, but are not limited to:

- Participation in education or employment-related activities under JOBS;
- High school/GED completion;
- Employment and earnings;
- Public assistance use;
- Repeat pregnancies and births;
- Immunizations for young children;
- Health status of mothers and children;
- Parent-child relationships.

The recipient will perform data collection and initial analyses that focus on the differential costs, processes, and impacts between the two treatment streams (i.e., welfare agency staffed setting and provider agency staffed setting) in all the sites. The analyses and technical support are expected to improve the available knowledge on how to help teenage parents who receive public assistance move toward economic self-sufficiency and provide safe and appropriate environments for their children. The results of the HVS initiative are intended to assist States, other government agencies, and community organizations in improving and enhancing their employment and social service delivery systems for teen parents and their children.

Eligible Applicants: Organizations eligible to apply for financial assistance under this announcement include States, for-profit organizations, and public or private nonprofit organizations. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *and* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. Applications from nonprofit organizations that do not include the documentation will be rejected and receive no further consideration.

ACF is interested in providing financial support for this effort to an organization with staff with (1) experience in executing multi-site social experiments, (2) an understanding of the demographics and experiences of welfare dependent teenaged parents who are required to participate in activities designed to increase economic self-sufficiency and improve family planning skills, (3) experience in doing research involving waivers of federal AFDC and JOBS policies, and (4) experience in working directly with and obtaining relevant data (e.g., welfare data, participation data, earnings) from multiple state welfare programs.

Minimum Requirements for Project Design: In order to compete successfully in response to this announcement, the applicant should develop and submit a plan which:

- Includes an outline of a research design which takes into account specific features of the funded demonstration, the research objectives, and the components and services that comprise the JOBS programs which will be a part of the study. The outline should include proposed hypotheses to be addressed.
- Describes how a differential impact analysis will determine the effects of the different demonstration service delivery systems on participants and their children. The information to be included in this analysis should include impacts on participation in education and training activities, welfare use, employment and earnings, repeat pregnancies and births, and parenting abilities, as well as others to be suggested by the applicant.
- Describes how a cost analysis will be conducted. The information to be included in the analysis should include program costs, support service costs, and welfare costs, as well as indirect costs, if appropriate, and other variables to be suggested by the applicant.
- Includes a description of the final report due at the end of this project period. This report is intended to inform State income maintenance and social service departments of the usefulness of different service delivery systems for the HVS intervention and to further general knowledge about serving teenage parents within the JOBS program.
- Includes the recipient's approach for working efficiently and effectively with the selected sites to provide technical support regarding implementation issues, random assignment implementation and monitoring, and evaluation data collection requirements. The technical support should focus on strengthening the sites' ability to deliver the services as prescribed by Federal guidelines in the context of their unique program models and their ability to meet the needs of the research effort (e.g., data collection and reporting, implementation and maintenance of random assignment) while also attempting to minimize the burden on the sites to meet those research needs.
- Includes financial support for HVS in addition to Federal funding to ensure uninterrupted research activities over the demonstration period. Applicants should provide evidence of funding commitments from organizations such as private foundations.

Also, the recipient must be prepared to enter into a cooperative agreement with ACF which will outline the terms of ACF's involvement in the HVS demonstration as well as the responsibilities of the recipient. The cooperative agreement: (a) Will provide that ACF retain authority for review of the ongoing policy design decisions in the demonstration; (b) Will provide that ACF approve the continuation of waivers and grant awards to any site in the demonstration; (c) will provide that ACF receive and review written guidelines or directives provided to the sites; (d) require ACF approval of the technical support and research design to be employed; and (e) will provide for ACF review of reports (other than quarterly progress reports) before publication.

Project Duration: This announcement is soliciting applications for project periods up to 2 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 2 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 2-year project period will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $250,000 for the first budget period or $300,000 for the total two-year project period, subject to the availability of funds.

Matching Requirement: Grantees must provide at least five percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $15,789 (5% total project cost).

Anticipated number of Projects to be Funded: One project will be funded under this announcement.

Part III—The Review Process

A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. After a determination has been made that the minimum requirements, as set forth in this announcement, have been met, reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications to other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working directly with multiple state welfare agencies which provide specialized services, including case management and employment-related services, to

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teen parents since such experience on the part of a recipient has the potential to substantially improve the theory and practice of designing service delivery systems for teenaged parents and their children on AFDC.

B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

Review Criteria

(1) *Organizational Experience* (10 points) The application should provide evidence of organizational experience in providing research assistance for social experiments.

(2) *Staff Skills and Responsibilities* (25 points) The application should provide evidence of staff experience (a) providing research assistance for social experiments involving multiple state AFDC and employment and training programs, particularly direct involvement with data collection through the State's public assistance, JOBS, and Unemployment Insurance data systems (include a list of published studies of these programs); (b) providing research assistance for multi-site experiments by state welfare agencies which provide case management and employment-related services for teen parents receiving AFDC; and (c) providing research assistance for demonstrations involving private foundations and Federal agencies. Applicants should list each consultant or other key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff. Applicants are encouraged to discuss staff experience in working with teenaged parents and programs which serve them.

(3) *Knowledge of Teenage Parents Who Are AFDC Recipients* (15 points) The application should provide evidence of the applicant's understanding of the demographics and experiences of teenaged parents on AFDC. Evidence of this understanding should include (a) familiarity with how teen parents interact with state welfare agency programs, including AFDC and JOBS; and (b) knowledge of teen parents' participation in programs designed to improve their educational attainment and employability and affect other life course decisions such as repeat pregnancy and living arrangements.

(4) *Approach and Project Design* (35 points) The application should include: (a) An outline of a research design which takes into account specific features of the planned demonstration, the research objectives, and the components and services that comprise the "program" being studied including proposed hypotheses to be addressed; (b) a description of how a differential impact analysis will determine the effects of the demonstration on participants and their children; (c) a description of how a cost analysis will be conducted; and (d) the applicant's approach for providing guidance and assistance to State/local JOBS/HVS staff on the research study and meeting the needs of the research objectives.

(5) *Public—Private Partnerships* (10 points) In order to maximize the potential of using a limited Federal investment to further knowledge about the policies and practico of working with disadvantaged teenage parents, the application should provide evidence of commitments of non-Federal resources to the HVS study, including resources provided from other entities beyond the applicant organization. This criterion will be evaluated based on the amount of the non-Federal resources and the firmness of the commitment of the resources.

(6) *Budget Appropriateness* (5 points) The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A.

Part IV—Instructions for the Submission of Applications

This part contains information and general instructions for submitting applications in response to this announcement. Application forms with instructions may be obtained by contacting: Nancye Campbell, Office of Policy and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC. 20447; telephone (202) 401–5760; fax (202) 205–3598.

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988 and with Part C—Environmental Tobacco Smoke, of Public Law 103–27. By signing and submitting the applications, applicants are providing the certifications and need not mail back the certifications with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

A. Required Notification of the State Single Point of Contact

This program announcement is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Virginia, Pennsylvania, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC. 20447; Attn: Mrs. Shirley Parker; Reference: OPE-HVS–5.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this announcement under the heading DATES. Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., MS 6C–62 OFM/DDG; Washington, DC 20447; ATTN: Mrs. Shirley Parker; Reference: OPE-HVS–5. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447; Reference: OPE-HVS–5. Applications shall be considered as meeting the announced deadline if they are received on or before the deadline date at the place specified above.

Late Applications: Applications which do not meet the criteria under *Deadline for Submittal of Applications* are considered late applications. ACF shall notify each late applicant that its application will not be considered in the competition under this announcement.

Extension of Deadlines: ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or if there is widespread disruption of the mail. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Submitting the Application

Each application package must include a signed original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Dated: April 3, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

[FR Doc. 95–8757 Filed 4–7–95; 8:45 am]

BILLING CODE 4184–01–P

Adoption Opportunities Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the Availability of Financial Assistance and Request for Applications to Carry Out Demonstration Projects Funded Under the Adoption Opportunities Branch in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Children's Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1995 funds for grants to public or private nonprofit child welfare and adoption agencies, organizations and adoptive parent groups to assist in supporting programs directed to: (A) Increasing the placements in adoptive families of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families; (B) providing post-legal adoption services for families who have adopted special needs children; and, (C) increasing the rate of placement of children in foster care who are legally free for adoption. Funding for these grants is authorized under Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (P.L. 95–266, as amended).

This announcement contains all necessary application materials.

DATES: The closing date for submission of applications is June 9, 1995.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC. 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC. 20447.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Program, Telephone: 1 (800) 351–2293.

SUPPLEMENTARY INFORMATION: The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence, with particular emphasis on children who have special needs. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children, including children with disabilities; abused and neglected children; runaway and homeless youth; and children from Native American families.

The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field. The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

This program announcement consists of three parts. Part I provides information on the goals of the Children's Bureau (CB), the ACYF office which is requesting applications, and the statutory authorities for awarding grants.

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Part II describes the review process and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

Part I—Introduction

A. Goals of the Children's Bureau

Within ACYF, Children's Bureau coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services Program, the Child Welfare Research, Demonstration and Training Program, the Adoption Opportunities Program, the Temporary Child Care and Crisis Nurseries Program, Independent Living Program and the Abandoned Infants Assistance Program.

The Bureau's programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children and the unnecessary separation of children from families.

B. The Statutory Authority Covering This Announcement is Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Pub. L. 95–266 as Amended)

The Adoption Opportunities Program provides financial support for demonstration projects to: Improve adoption practices; eliminate barriers to adoption; and find permanent homes for children, particularly children with special needs. Authorization: Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, Section 203, as amended, Public Law 95–266; Pub. L. 98–457, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended, Title II, Section 201, Pub. L. 100–294; Pub. L. 102–295; 42 U.S.C. 5111 *et seq.*

Part II—Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the "Eligible Applicants" section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applications from ineligible organizations will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code Section 501(c)(3). The ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: Overrepresented populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations that administer or deliver human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria.

(1). Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2). Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(3). Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

(4). Staff Background and Organization's Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project for the first budget year.

Matching Requirement: This section specifies the minimum non Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,00 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $20,000 (10 percent of the total Federal cost).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Please note that applications that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed. Applicants should also note that non-responsiveness to the section "Minimum Requirements for Project Design" will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1995, subject to the availability of funds. The size of the actual awards will vary.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, applicants should propose only that non-Federal share they can realistically provide since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $100,000 per budget period), must include a match of at least $20,000 (10 percent of the total Federal cost). If approved for funding, grantee will be held accountable for commitments of non-Federal resources and failure to provide the required

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amount will result in a disallowance of unmatched Federal funds.

G. Index of Priority Areas

To assist potential applicants in using this announcement, a priority area index in numerical order, is presented below.

1.01 Synthesis of Results of Minority Adoption Recruitment Projects for Special Needs Adoption
1.02 Field Initiated Applications to Improve Adoption Services to Children With Special Needs
1.03 Improved Permanency Outcomes of Adolescents
1.04 Service Improvements in Special Needs Adoption
1.05 Adoptive Placement of Foster Care Children
1.06 Respite Care as a Service for Families Who Adopt Children With Special Needs

H. Priority Areas

1.01 Synthesis of Results of Minority Adoption Recruitment Projects for Special Needs Children

Eligible Applicants: State or local governments, public or private non-profit agencies, organizations, or universities.

Purpose: To collect, analyze, synthesize, and develop a report on current knowledge and results of minority recruitment services projects funded since 1989 by the Adoption Opportunities Program.

Background Information: In 1989, the Adoption Opportunities statute authorized funds for increased minority adoption recruitment services for families to adopt special needs children. Approximately 81 grants have been awarded to public and private agencies to provide adoption services for minority children and families. These efforts resulted in some successful models and products that could be replicated. These include recruitment models for One Church-One Child, Homes for Black Children and Friends of Black Children; curricula addressing cultural competence; resource guides; directories; adaptable public service announcements; practice manuals; and handbooks to assist workers in the area of special needs adoption recruitment.

The ACYF is interested in supporting an effort to review the body of work in the field of minority adoption recruitment services to determine (1) The number of projects which are now an ongoing part of the agencies' programs; (2) the results of the evaluations of the projects; (3) the number of families recruited and children placed; and (4) the implications for public and private child welfare agencies and community based organizations. Information on funded projects can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, Maryland 20852; telephone (301) 231–6512.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Demonstrate an understanding of the literature and of the issues in minority recruitment services.
- Describe how the findings from these projects would be analyzed and synthesized into a report which would be useful to the field.
- Provide a plan for disseminating the report nationally.
- Provide assurances that at least one key person from the project will attend the annual child welfare conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Provide an executive summary and a final report on the project within 90 days after the project end date.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of the project is $85,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $85,000 in Federal funds must include a match of at least $8,500 (10 percent of the total Federal cost).

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

1.02 Field Initiated Applications to Improve Adoption Services to Children With Special Needs

Eligible Applicants: State, Regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations.

Purpose: To improve adoption services for children with special needs through activities which are not addressed elsewhere in this announcement and have not been previously funded by the Adoption Opportunities Program. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

Background Information: Public child welfare workers who provide adoption services are overburdened because of the shortage of staff and the increasing child welfare caseload. In many public agencies, adoption staff are expected to provide services not only to foster children with special needs and their potential adoptive families, but also to families requesting services for inter-country and other types of adoption. There is also a growing need to provide post-legal adoption services to preserve adoptive families as well as an increasing responsibility for search and reunion services. This places substantial burdens on limited adoption agency resources which are needed to serve the special needs population.

At any given time, approximately 69,000 foster children have a goal of adoption, 20,000 of which are legally free for adoption. Minority children continue to be over-represented among this group. Older children and sibling groups also continue to present unique challenges. Sub-populations, such as drug-exposed or medically-fragile infants and foster children with HIV and AIDS, will be or are currently testing the capacity of adoption programs. Other areas for innovation include the placement of large sibling groups, the preparation of children for adoption, open adoption and relative adoption. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes to all waiting children.

Because there are so many different issues that face the public and voluntary sectors, ACYF is requesting field-initiated applications that address the most problematic areas in serving foster children with special needs for whom adoption is the plan. These applications must be innovative and cannot be responsive to other priority areas identified in this announcement.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the agency's current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been funded before, based on a review of the literature and any other relevant sources.

- Provide specific written commitments from cooperating or collaborating agencies, if appropriate.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design. The evaluation should focus on child and family outcome measures (e.g., number of families recruited, number of children placed, disruption rates, etc.).
- Describe how the agency would incorporate successful strategies of the project into its ongoing program.
- Provide assurances that at least one key person from the project will attend the Child Welfare Conference in Washington, D.C. (The conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and to address current child welfare trends and issues.)
- Provide assurances that the project will be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000.

Matching or Cost Sharing Requirement: Grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $30,000 (10 percent of the total Federal cost).

Anticipated Number of Projects to be Funded: It is anticipated that seven projects will be funded.

1.03 Improved Permanency Outcomes for Adolescents

Eligible Applicants: State and local public agencies or private child welfare agencies in collaboration with a State or local public agency.

Purpose: To increase permanency for children over the age of thirteen through adoption or other options which can include kinship care and legal guardianship.

Background Information: Ideally, children in the foster care system should be reunited with their parents. In cases where reunification is not possible or in the best interest of children, adoption or other permanency arrangements must be expeditiously made. Some of the children awaiting adoptive families are listed on the National Adoption Exchange. The Exchange reports that 41 percent of the children registered on the Exchange are between the ages of 11 and 17. Fifty-five percent are African American, 30 percent are white, 8 percent are Hispanic and 5 percent are bi-racial. While adoption efforts are being made for these children, there are still many older children in the child welfare system who are not being prepared for adoption and who are perceived as being "unadoptable." In some cases not enough work has been done toward locating adoptive families; in other cases children have not been prepared for adoption; therefore, they do not understand what adoption means and tell workers they do not want to be adopted. Many of these teens are fearful of the rejection associated with having to wait for many years for a family to call their own.

Child welfare agencies need to review the case plans of the children served in this age group, to set new goals and actively provide the services that will assure permanency for these adolescents. There must also be a re-examination of staff's attitudes with respect to the adoption of adolescents. Conversations with the children about their goals and how they view their future could lead to more placements and ones that are suitable and lasting. This service requires skilled workers who view adoption as a positive option and who can work intensively and effectively in planning with these adolescents.

In 1993, a teenager named Charlotte who grew up in the foster care system was crowned Miss Teen USA at the age of 16. Charlotte had set the goal of adoption for herself and although she had lived with the same foster parents for 11 years, they did not adopt her. At her insistence, the State agency found a couple who adopted her when she was 17 years of age. Many more adolescents, like Charlotte, are waiting for a family and would like to have a support system or role model to help them make the transition from foster care to independence. If adoption is not possible, options such as kinship care, assisted guardianship, or transition to independent living should be explored.

The focus of this priority area is to ensure permanency for adolescents through adoption, legal guardianship, planned long term foster care, or preparation for independent living.

Information on previously funded projects dealing with the adoption of older children can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, MD 20852; telephone (301) 231–6512.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Describe existing barriers to permanency for older children in the area.
- Identify and verify by race, sex and age at least 25 adolescents to be served who are legally free for adoption.
- Describe the approach to be used to work with the adolescents which build on knowledge of adolescent development, separation and attachment issues and permanency planning.
- Describe a plan for using the resources of the National Resource Centers (Youth, Permanency Planning and Adoption) in implementing this project.
- Identify the expected outcomes in terms of the number of adolescents to benefit by permanency.
- Describe clearly the services to be provided, e.g. seminars, workshops, support services to adoptive families after placement or other services to meet the special needs of this age group.
- Include a description of how families will be recruited and prepared to parent this age group of children.
- Discuss efforts to work with foster parents to encourage them to adopt the adolescents in their care, i.e., availability of subsidy or other incentives to meet the needs of the child.
- Provide information on any proposed collaboration and agreements with other organizations that will work with the project.
- Provide assurance that the staff on the project are culturally diverse and competent to work with this population.
- Describe plans to contract with a third party to conduct an independent evaluation of the project.
- Provide assurance that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues).

Project Duration: The length of the project must not exceed 36 months.

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Federal Share of Project of Project Costs: The maximum Federal share of the project is $375,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $375,000 in Federal funds (based on an award of $125,000 per budget period) must include a match of at least $37,500 (10 percent of the total Federal cost).

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded.

1.04 Service Improvements in Special Needs Adoption

Eligible Applicants: State and local public or private non-profit child welfare agencies or agencies having access to the children in need of this service. Agencies or States which have not already demonstrated the models for replication described in this priority area will be given priority consideration.

Purpose: To replicate Federally funded adoption models in one of the following categories: (a) termination of parental rights (TPR); (b) minority recruitment; (c) staff training or (d) post-legal adoption services.

Background Information: There are currently over 500,000 children in the foster care system. A large number of these children will not be returning to their families and are in need of permanency in their lives. Adoption with a loving family is the plan for a number of these children. However, systemic barriers and inadequate service delivery prevent agencies from attaining permanency for these children. Service delivery models and training efforts have been developed through Federal adoption grants during the past 14 years to address some of the barriers. These models have: facilitated adoption placements; informed practice and policy; provided practical solutions to systemic problems in service delivery; increased public awareness of the waiting children; shortened the time children wait for adoption and provided needed services to maintain the family after the adoption has been legalized. However, dissemination of these models has been limited, which has reduced the opportunities for replication, or when models have been recognized as potentially useful, funding has not been available in public agencies to replicate the projects.

(a) Termination of Parental Rights (TPR)

The Children's Bureau has funded demonstration grants in the past on termination of parental rights and reducing delays for children who wait. As early as 1983, a grant was awarded to the American Bar Association to work with five States to eliminate or minimize the legal barriers which impede the timely movement of children with special needs into adoptive families. Some of the States in the project were very successful in significantly reducing the time a child had to wait for TPR. One project in New Jersey was able to reduce the average length of time a child remains in the court process, once the termination papers were filed, from 34 weeks to six weeks. In 1988, four projects were funded to address specific problems or issues concerning TPR which act as barriers to adoption. A book entitled "Children Can't Wait: Reducing Delays for Children in Foster Care" by Paul Johnson and Katherine Kahn is based on the experience of the four projects. This book provides information to assist professionals and agencies in addressing permanency for children in the child welfare system. The book may be purchased from the Child Welfare and agencies in addressing permanency for children in the child welfare system. The book may be purchased from the Child Welfare League of America, 440 First St. N.W., Suite 310, Washington, D.C. 20001–2085.

(b) Minority Recruitment

Minority children are overrepresented in the child welfare system and minority families often face insurmountable systemic barriers in their attempts to become adoptive parents. However, it has been demonstrated that minority families are available , and do adopt.

For some agencies recruiting and maintaining families that are of the culture and race of the children in their care has proven to be difficult. There are excellent models to recruit families for minority children which utilize a combination of media, word-of-mouth, and community-based resources. Models such as One Church-One Child, and Friends of Black Children were developed over 10 years ago and have been institutionalized in some agencies and organizations. The One Church-One Child model has been demonstrated throughout the country and has proven to be successful in the recruitment and placement of minority children. The Friends of Black Children model has been limited to specific geographical areas.

Another tool of recruiting families is through multi-media presentations such as: "Wednesday's child" segments; posters; radio and television public service announcements (PSA's); and billboards.

(c) Staff Training

ACYF recognizes that curricula are developed throughout the adoption field. Often these curricula are specialized to meet the needs of workers in providing particular services to their clients. The National Resource Center on Special Needs Adoption has developed two training curricula, one on Special Needs Adoption and the other on Cultural Competence. The special needs adoption curriculum has been disseminated to State agencies but has been under-utilized.

(d) Post-Legal Adoption Services

Post-legal adoption services are critical to the success of special needs adoptions. There is continuous need of these services to ensure that families have the support necessary to sustain themselves. Over 70 programs across the country have been funded to provide post-legal adoption services. These programs provided: Training for mental health professionals on adoption issues; training on how to work with sexually abused children; services for special groups such as HIV positive children and their parents; counselling and information on adoption search issues; development of training curricula; respite care services and training of respite care providers. In a project of the Illinois Department of Children and Family Services, a survey of adoptive parents was conducted which revealed that adoptive families could not find the right services for their adopted children and that families felt the need for support groups and the need for more information on the children being placed. In addition, the survey found that professionals needed adoption-sensitive training. A product of this grant was the publication entitled "The Role of the Public Agency Delivering Post Adoption Services," by Kenneth Watson.

Minimum Requirements for Project Design:

- Demonstrate an understanding of the literature and of the issues in the specific area of service improvement of this application (TPR, Staff Training, Post-Legal Services or Recruitment).
- Describe how the project will use program components to reduce the caseload of waiting children or improve

services for children who have been adopted and their families .
- Describe how the project will use other agencies and disciplines to implement its program.
- Describe the model to be replicated or type of training to be provided.
- Provide assurances that the project will be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Subject Duration: length of the project must not exceed 24 months.

Federal Share of Project Cost: The maximum Federal share of the project is $150,000 for the Termination of Parental Rights and Post-Legal Adoption Services and $100,000 for the minority recruitment and training.

Matching or Cost Sharing Requirements: Grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $75,000 per budget period) must include a match of at least $15,000 (10 percent of the total Federal cost).

Anticipated Number of Projects to be Funded: It is anticipated that five grants for each model will be funded.

1.05 Adoptive Placement of Foster Care Children

Eligible Applicants: Eligibility is limited to State social service agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from the receiving grants.

Purpose: To develop programs which will assist States in their efforts to increase the placement of foster care children legally free for adoption according to a pre-established plan and goals for improvement.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 100–294, authorizes the funding of grants to States to improve adoption services for the placement of special needs children who are legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received Federal grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Exchange's Network; to develop a consortium of States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs; and to form a national post-legal adoption consortium of States to focus on models of post-legal adoption services. More than half of the States have received grants in the above stated areas to improve adoption services.

Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placements in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient numbers of trained and experienced staff; and when there are available resources and administrative commitments to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placements.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application. (The rate of placement is the number of children placed divided by the number of children waiting for adoption.)
- Describe the methods to be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.
- Propose and describe an evaluation component which would focus on the innovations to be used to improve the placement of children who are legally free for adoption and which would address the successes and failures of the initiative.

The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Data should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures to be used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.

- Document how the program would be continued beyond Federal funding or as part of the agency's ongoing program, if successful, and describe the specific steps which would be taken to accomplish this.
- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share of the project is $100,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,00 in Federal funds

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must include a match of at least $10,000 (10 percent of the total Federal cost).

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.06 Respite Care as a Service for Families Who Adopt Children With Special Needs

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, university affiliated programs, licensed child care or respite care providers or incorporated adoptive parent groups with experience in working with adoptive populations.

Purpose: To develop or replicate a variety of affordable respite care models for adoptive parents of children with special needs, especially for adoptive parents of medically fragile or severely physically or emotionally disabled children.

Background Information: ACYF recognizes the need for respite services for adoptive families in order to maintain and support the family unit. Respite may be needed early in the adoptive placement or later in the child's development. Results of research studies indicate that the majority of care is requested to relieve the primary caregiver for vacations, emergencies and planned circumstances.

There are few specialized respite care programs for adoptive families that provide a period of temporary relief or rest from parental responsibilities despite the increasing availability of post-legal adoption services. Such programs can be especially helpful to families who adopt children with special needs by providing support during emergencies or respite from the daily demands of a special needs child. Generally, such respite care is provided by skilled caregivers or companions; however, with proper preparation it can also be provided by friends and relatives in the family's home or in another location.

In some respite programs training and reimbursement are offered to whomever the family designates as provider, an arrangement which is mutually satisfying because it allows the family to control the quality of care. Also, this approach may offer families living in rural areas the flexibility of locating their own provider since distance frequently limits respite resources.

Since 1990, ACYF has awarded grants to expand and develop respite care services for adoptive parents of children with special needs. These projects have developed services such as: payment to families to seek their own respite services in their own homes for short periods of time and weekends; recruiting and training individuals to provide short breaks for adoptive parents and to provide supportive services to parents such as tutorial and recreational activities outside the home and sponsoring camp programs and other specialized events for the children and their families. The programs funded in 1990 which ended in September 1993 are the University of Kansas, Bureau of Child Research; La Hacienda Foster Care, Tucson, Arizona; University of Alabama at Birmingham; Mercy Respite Care Corporation, Grand Rapids, Michigan; Northwest Adoption Exchange, Seattle, Washington; New Haven Foster Family Agency, Vista, California; Department of Human Services, Trenton, New Jersey; Adoptive Parent Group of South Wisconsin, Inc., Madison, Wisconsin; Kent State University, Research and Graduate Studies, Kent, Ohio; Resources for Adoptive Parents, Minneapolis, Minnesota; Department of Human Resources, Reno, Nevada; Department of Human Resources, Atlanta, Georgia; and Department of Mental Health and Mental Retardation, Waterbury, Vermont. Information about these programs can be secured from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, Maryland 20852, telephone: (301) 231–6512.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Describe plans to develop or replicate respite care models for the adoptive parents of special needs children that include, but are not limited to:
  - —Facility-based models such as those located in churches, day care centers, community-based group homes, rehabilitation centers, and "mother's day out" programs, weekend respite, evening respite, and overnight respite programs;
  - —In-home respite care services offered in the family's home and,
  - —Respite host family services offered in the provider's home.
- Describe respite care services that would be provided for parents of children who are medically fragile, or who have severe physical or emotional problems.
- Describe the preparation, referral, follow-up, and counselling services that would be provided to respite service users.
- Describe the collaboration that would be established with groups such as community recreational services, churches, day care centers, group homes, residential treatment centers, adoptive parent groups, and University Affiliated Programs in the provision of the respite services.
- Describe the training that would be provided to service providers and how specific models of respite care would be developed or replicated.
- Estimate the number of special needs children and families that would be served and document that a sufficient volume of special needs adoptive families exists to support a program of the size proposed.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, DC. The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Cost: The maximum Federal share of the project is $450,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $450,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $45,000 (10 percent of the total Federal cost).

Anticipated Number of Projects: It is anticipated that a minimum of five projects will be funded.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required Notification of the State Single Point of Contact

The Adoption Opportunities Program is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs. When comments are submitted directly to ACF, they should be addressed to:

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, S.W., Washington, DC 20447.

B. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at:

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

2. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. *SF 424 Page 1, Application Cover Sheet.* Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. Type of Submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information

Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. Box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum

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amount specified in the priority area description.

Items 15b-e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part II, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1995.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. *SF 424A—Budget Information—Non-Construction Programs.* This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period if the proposed project period is 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, Other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements of $25,000 for non-governmental and governmental entities and are requesting an award without competition should include a sole source justification in the application which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price. (*Note: Previous or past experience with a contractor is not sufficient justification for sole source.*)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b) from (a). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR 74.2, as the value of non-cash contributions provided by non-Federal third parties. Their party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. *Project Summary Description.* Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first

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part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. *Program Narrative Statement.* The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see Section C, Part II), using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Approach;*

(c) *Results and Benefits Expected;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part II, Evaluation Criteria.

The narrative should be typed double-spaced on a single side of an 8½" × 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. *Organizational Capability Statement.* The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. *Part IV—Assurances/Certifications.* Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary; and Certification Regarding Environmental Tobacco Smoke. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug-Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project summary description and listing of key words;

—Program Narrative Statement (See Part II, Section C);

—Organizational capability statement, including an organization chart;

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88); and

—Certification Regarding Lobbying.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690–8243 or 690–6297.

The catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.652.

Dated: March 30, 1995.

Olivia A. Golden

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (give city, county, state, and zip code) | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ▪ ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a Applicant; b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$			$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program required the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For New applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1–4, Columns (c) Through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Notes: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

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establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) with prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant Organization

Date Submitted

BILLING CODE 4154–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).,

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 6, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-F

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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BILLING CODE 4184-01-C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro–Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provisions of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–8760 Filed 4–7–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Toxic Substances and Disease Registry

[Announcement 516]

Public Health Conference Support Grant Program

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of funds in fiscal year (FY) 1995 funds for the Public Health Conference Support Grant Program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under Sections 104 (i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, [42 U.S.C. 9604 (i)(14) and (15)].

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $125,000 will be available in FY 1995 to fund approximately 6 awards. It is expected that the average award will be $20,000, ranging from $10,000 to $30,000.

Applications requesting more than $30,000 will be given a lesser priority and will be subject to the availability of funds. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economy class fare) for non-Federal employees.

2. Grant funds may *not* be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment/personal expenses, food or refreshments, cost of travel and payment of a full time Federal employee, for per diem or expenses other than local mileage for local participants, or reimbursement of indirect costs. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds *cannot* be used for this purpose.

Recipient Financial Participation

Because this program provides *partial* funding only, it is necessary that organizations seeking these grant funds be able to show additional support in the form of finances, services, etc. For each organization contributing funding, a letter must be included documenting that support.

Purpose

This program will provide *partial* support for non-Federal conferences on disease prevention, health promotion, and information/education projects related to hazardous substances in the environment. Applications are being solicited for conferences on: (1) Health effects of toxic substances in the environment; (2) Disease and toxic substance exposure registries; (3) Hazardous substance removal and remediation; (4) Emergency response to toxic and environmental disasters; (5) Risk communication; (6) Environmental disease surveillance; and (7) Investigation and research on hazardous substances in the environment. Because conference support by ATSDR creates the appearance of ATSDR co-sponsorship, there will be active participation by ATSDR in the development and approval of those portions of the agenda supported by ATSDR funds. In addition, ATSDR will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. ATSDR funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by ATSDR. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda.

ATSDR reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Program Requirements

Grantees must meet the following requirements:

A. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition and printing). Many of these items may be developed in conjunction with assigned ATSDR project personnel.

B. Provide draft copies of the agenda and proposed ancillary activities to ATSDR for approval. Submit copy of final agenda and proposed ancillary activities to ATSDR for approval.

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C. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press releases, etc.). ATSDR must review and approve all materials with reference to ATSDR involvement or support.

D. Manage all registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures, etc.).

E. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

F. Develop and conduct education and training programs on prevention of health effects of hazardous substances.

G. Participate in the analysis of data from conference activities.

H. Collaborate with ATSDR staff in reporting and disseminating results and relevant prevention education and training information to appropriate Federal, State, and local agencies, and the general public.

Evaluation Criteria

Applications for support of the types of conferences listed in the Purpose section above will be reviewed and evaluated according to the following criteria:

A. Proposed Program and Technical Approach—50%

The description of: (a) the public health significance of the proposed conference including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment; (b) the feasibility of the conference in terms of an operational plan; (c) clearly stated conference objectives and the potential for accomplishing those objectives; and (d) the method of evaluating the conference.

B. The Qualification of Program Personnel—30%

Evaluation will be based on the extent to which the proposal has described: (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish the proposed conference.

C. Applicant Capability—20%

Evaluation will be based on the description of (a) the adequacy and commitment of institutional resources to administer the program, and (b) the adequacy of the facilities to be used for the conference.

D. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. Applications requesting funds in excess of $30,000 may not be fully funded, depending upon availability of funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.161.

Application Submission and Deadline

The original and two copies of the Application Form PHS 5161–1 (OMB Number 0937–0189) shall be submitted to Henry S. Cassell, III, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Rd., NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before June 13, 1995. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the review committee. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 516. You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from Margaret A. Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Diana Cronin, Project Officer, Agency for Toxic Substances and Disease Registry, Division of Health Education, 1600 Clifton Road, NE., Mailstop E–33, Atlanta, GA 30333, telephone (404) 639–6206.

Please refer to Announcement 516 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 4, 1995.

David Satcher,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–8716 Filed 4–7–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry Policy on the Inclusion of Women and Minorities in Externally Awarded Research

AGENCY: Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice and request for comments.

SUMMARY: This notice is a request for comments on the CDC[1] policy on the inclusion of women and minorities in externally awarded research. This policy is intended to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC supported studies involving human subjects, whenever feasible and appropriate. Furthermore, it is CDC policy to proactively identify significant gaps in knowledge about health problems that affect women and racial and ethnic minority populations and to encourage studies which address these problems. (NOTE: This policy is consistent with requirements for CDC intraagency research.)

DATES: Written comments on the policy must be received on or before June 9, 1995. This policy, when finalized, will be applicable for all CDC externally awarded projects submitted on and after October 1, 1995.

ADDRESSES: Written comments can be sent to the Centers for Disease Control and Prevention, Attention: Office of the Associate Director for Science, Mailstop D–39, 1600 Clifton Road, NE., Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to Dixie E. Snider, Jr., M.D., M.P.H., telephone (404) 639–3701 or Barbara W. Kilbourne, R.N., M.P.H., telephone (404) 639–1242.

SUPPLEMENTARY INFORMATION: CDC Policy on the Inclusion of Women and Minorities in Externally Awarded Research.

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[1] References to CDC also apply to the Agency for Toxic Substances and Disease Registry (ATSDR).

I. Introduction

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) are committed to protecting the health of all people regardless of their sex, race, ethnicity, national origin, religion, sexual orientation, socioeconomic status, or other characteristics. To the extent that participation in research offers direct benefits to the participants, underrepresentation of certain population subgroups denies them the opportunity to benefit. Moreover, for purposes of generalizing study results, investigators must include the widest possible range of population groups.

A growing body of evidence indicates that the health conditions and needs of women are different from those of men. Some health conditions are unique to women and others are more prevalent in women. For some illnesses, there are marked distinctions, not only in onset and progression of disease, but also in the preventive, treatment and educational approaches necessary to combat them in women. Furthermore, initial entry into the health care system may be different for some subgroups of women, such as poor and uninsured women. Lesbians may also enter the health care system differently because they may be less likely to seek or receive prevention services, like cancer screening, because they may not seek or receive family planning services. The Public Health Service Task Force on Women's Health Issues published a report in 1987 stating that it is becoming more important to note the environmental, economic, social, and demographic characteristics that influence a woman's health status. The Task Force focused in on the direct and indirect effects these factors could have on the status of a woman's health and noted that when a woman is "outside the normal range of societal expectations," that is, she is of an ethnic or cultural minority or if she is physically or mentally disabled, her health status is at greater risk. These basic observations are not always recognized or reflected in study protocols and proposals.

The disparity in health outcomes between majority and some racial and ethnic minority groups is now well documented. Although some minority populations, e.g., some Asian groups, have better overall health status than non-Hispanic whites, many racial and ethnic minority populations have dramatically shorter life expectancy, higher morbidity rates and inadequate access to quality health care. The Secretary's Task Force on Black and Minority Health issued a report in 1985 noting the underrepresentation of racial and ethnic minorities in research. This underrepresentation has resulted in significant gaps in knowledge about the health of racial and ethnic minority populations and their responses to interventions.

II. Definitions

A. Human Subjects

Under this policy, the definition of human subjects in Title 45 CFR Part 46, the Department of Health and Human Services regulations for the protection of human subjects applies: "Human subject means a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual or (2) identifiable private information."

B. Research

Under this policy, the definition of research in Title 45 CFR Part 46, the Department of Health and Human Services regulations for the protection of human subjects applies: "Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." All proposed research involving human subjects conducted using CDC funding will be evaluated for compliance with this policy, including those projects that are exempt from Institutional Review Board (IRB) Review (as specified in Title 45 CFR Part 46). However, nothing in this policy is intended to require IRB review of protocols which otherwise would be exempt. This policy applies to all CDC externally awarded research regardless of the mechanism of financial support (e.g., grant, cooperative agreement, contract, purchase order, etc.). This policy does not apply to those projects in which the investigator has no control over the composition of the study population (e.g., cohort studies in which the population has been previously selected or research follow-up to outbreak investigations).

C. Racial and Ethnic Categories

1. Minority Groups

This policy shall comply with the Office of Management and Budget (OMB) Directive No. 15 and any changes that may occur as it is reviewed and revised. OMB Directive No. 15 defines the minimum standard of basic racial and ethnic categories, which are used below. Despite their limitations (as

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outlined in the Public Health Reports "Papers from the CDC/ATSDR Workshop on the Use of Race and Ethnicity in Public Health Surveillance"), these categories are useful because they allow comparisons to many national data bases, especially Bureau of the Census and national health data bases. Therefore, the racial and ethnic categories described below should be used as basic minimum guidance, cognizant of their limitations.

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander: A person having origins in any of the original peoples of Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Black, not of Hispanic Origin: A person having origins in any of the black racial groups of Africa.

Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

2. Majority Group

White, not of Hispanic Origin: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

While investigators should focus primary attention on the above categories, CDC recognizes the diversity of the population. For example, Blacks describe themselves in several different ways: African American and Caribbean (Haitian, Jamaican, West Indian, Trinidadian). Native Hawaiians have expressed the desire to be considered a separate racial/ethnic category exclusive of the current Asian/Pacific Islander designation. Therefore, investigators are encouraged to investigate national or geographic origin or other cultural factors (e.g., customs, beliefs, religious practices, etc.) in studies of race and ethnicity, and their relationship to health problems. Furthermore, since race, ethnicity, and cultural heritage may serve as markers for other important characteristics or conditions associated with a health problem or outcome, investigators should actively seek to identify these other characteristics or conditions.

III. Policy

Research Involving Human Subjects

Applicant institutions must ensure that women and racial and ethnic minority populations are appropriately represented in their proposals for research. Women and members of racial and ethnic minority groups should be adequately represented in all CDC-supported studies involving human subjects, unless a clear and compelling rationale and justification establishes to the satisfaction of the CDC that inclusion is inappropriate or clearly not feasible. This policy does not apply to studies when the investigator cannot control the race, ethnicity, and sex of subjects; however, women and racial and ethnic minority populations must not be routinely and/or arbitrarily excluded from such investigations. Women of childbearing potential should also not be routinely and/or arbitrarily excluded from participation; however, there are ethical/risk issues to consider for exclusion. Information on differences in outcome or risk profiles should be further reason for exclusion. Therefore, pregnancy status may need to be determined prior to enrollment for some studies and, if necessary, during an intervention to safeguard the participants' health.

IV. Guidance for Applicant Institution Investigators and Decision Makers in Complying With This Policy

A General

In determining whether special efforts should be made to set specific enrollment goals for women and members of racial and ethnic minority groups in research or whether to design special studies to specifically address health problems in such populations, principal investigators should consider the following points:

- Is the disease or condition under study unique to, or is it relatively rare in men, women or one or more racial and ethnic minority populations?
- What are the characteristics of the population to which the protocol results will be applied? Does it include both men and women? Does it include specific racial and ethnic minority populations?
- Are there scientific reasons to anticipate significant differences between men and women and among racial and ethnic minority populations with regard to the hypothesis under investigation?
- Are there study design or recruitment limitations in the protocol that could result, unnecessarily, in underrepresentation of one sex or certain racial and ethnic minority populations?
- Could such underrepresentation cause an adverse impact on the generalizability and application of results?
- Is the underrepresentation correctable?
- Does racial and ethnic characterization of study subjects serve a *bona fide* purpose or might it serve only to stigmatize a group?

Inclusion of women and/or racial and ethnic minority groups in research can be addressed either by including all appropriate groups in one single study or by conducting multiple studies. In general, protocols and proposals for support of studies involving human subjects should employ a design with sex and/or minority representation appropriate to the scientific objectives. It is not an automatic requirement that the study design provide sufficient statistical power to answer the questions posed for men and women and racial and ethnic groups separately; however, whenever there are scientific reasons to anticipate differences between men and women and/or racial and ethnic groups, with regard to the hypothesis under investigation, investigators should include an evaluation of these sex and minority group differences in the study proposal. If adequate inclusion of one sex and/or minority group is impossible or inappropriate with respect to the purpose of the proposed study, or if in the only study population available, there is a disproportionate representation of one sex or minority/majority group, the rationale for the study population must be well explained and justified. The cost of inclusion of women and/or racial and ethnic minority groups shall not be a permissible consideration for exclusion from a given study unless data regarding women and/or racial and ethnic minority groups have been or will be obtained through other means that provide data of comparable quality. Acceptable reasons for exclusion are as follows:

(1) Inclusion is inappropriate with respect to the health of the subjects;

(2) Inclusion is inappropriate with respect to the purpose of the study;

(3) There is substantial scientific evidence that there is no significant difference between the effects that the variables to be studied have on women and/or racial and ethnic minority groups;

(4) There are already substantial scientific data on the effects that variables have on the excluded population;

(5) Inclusion is inappropriate under other circumstances determined acceptable by the CDC.

In each protocol or proposal, the composition of the proposed study population must be described in terms of sex and racial and ethnic group together with a rationale for its choices. Sex and racial and ethnic issues should be addressed in developing a study design and sample size appropriate for the scientific objectives of the investigation. The proposal should contain a description of the proposed outreach programs, if necessary, for recruiting women and racial and ethnic minorities as participants. Investigators must safeguard the consent process by promoting open and free communication with the study participants. Investigators must seek to understand cultural differences and variety of languages inherent in the population to be enrolled. The possibility of non-proficiency of speaking and/or reading English by a potential study participant must be considered and assurances given that adequate provision has been made for appropriate translation of the consent document or the availability of translators to ensure an adequate understanding of the research.

B. Studies of Public Health Interventions

Investigators must consider the following when planning an intervention trial:

- If the data from prior studies strongly indicate the existence of significant differences of clinical or public health importance in intervention effect between the sexes or among racial and ethnic populations, the primary question(s) to be addressed by the scientific investigation and the design of that study must specifically accommodate this. For example, if men, women, and racial and ethnic minority groups are thought to respond differently to an intervention, then the study should be designed to answer separate primary questions that apply to men, women, and/or specific racial and ethnic groups with adequate sample size for each.
- If the data from prior studies strongly support no significant differences of clinical or public health importance in intervention effect between subgroups, then sex and race and ethnicity are not required as subject selection criteria. However, the inclusion of sex and racial and ethnic subgroups is still strongly encouraged.
- If the data from prior studies neither support nor negate the existence of significant differences of clinical or public health importance in intervention effect, then the study should include sufficient and appropriate entry of men and women and racial and ethnic minority populations so that valid analysis of the intervention effect in each subgroup can be performed.
- If women of childbearing potential are to be included and if there is a reason to suspect that there may be adverse events in pregnant women, pregnancy status may need to be determined prior to enrollment for some intervention trials.

V. Implementation

A. Date of Implementation

This policy applies to all CDC externally awarded projects submitted on and after October 1, 1995.

B. Roles and Responsibilities

Certain individuals and groups have special roles and responsibilities with regard to the implementation of these guidelines.

1. Applicant Institution Investigators

Applicant institution investigators should assess the theoretical and/or scientific linkages between sex and race and ethnicity and their topic of study. Following this assessment, the applicant institution investigator will address the policy in each protocol, application and proposal, providing the required information on inclusion of women and minorities in studies, and any required justifications for exceptions to the policy.

2. CDC Technical/Peer Review Groups

In conducting technical/peer review of contract, grant, or cooperative agreement applications for scientific and technical merit, CDC Center/Institute/Office (C/I/O) Directors will ensure that CDC technical/peer review groups, to the extent possible, should include women and racial and ethnic minorities and will do the following:*

- Evaluate the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation or evaluate the proposed justification when representation is limited or absent.
- Evaluate the proposed exclusion of a certain racial and ethnic minority population and males or females on the basis that a requirement for inclusion is inappropriate.

*C/I/O Directors may waive this requirement if it is clearly inappropriate or clearly not feasible.

- Determine whether the design of the study is adequate to measure differences when warranted.
- Evaluate the plans for recruitment and outreach for study participants including whether the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.
- Include these criteria as part of the technical assessment and assign a score.

3. CDC Center/Institute/Office Directors

CDC C/I/O Directors are responsible for ensuring that CDC externally awarded research involving human subjects meet the requirements of these guidelines. CDC C/I/O Directors will also inform externally awarded investigators concerning this policy and monitor its implementation during the development, review, award, and conduct of research.

4. CDC Institutional Review Boards (IRBs)

CDC IRBs are responsible for ensuring that CDC investigators have adequately addressed the inclusion of women and racial and ethnic minorities in research protocols that require CDC IRB approval.

C. External Award Consideration

CDC project officers shall design their Requests for Contracts and Requests for Assistance in compliance with this policy. CDC C/I/O Directors shall ensure this policy is fully considered and implemented prior to the release of the Request for Contract and Request for Assistance to the CDC Procurement and Grants Office. CDC funding components will not award any grant, cooperative agreement, or contract nor support any externally funded project to be conducted or funded in fiscal year 1996 and thereafter which does not comply with this policy.

D. Recruitment Outreach by Externally Awarded Investigators

Externally awarded investigators and their staff(s) are urged to develop appropriate and culturally sensitive outreach programs and activities commensurate with the goals of the research. The purpose should be to establish a relationship between the investigator(s), populations, and community(ies) of interest so that mutual benefit is achieved by all groups participating in the study. Investigators should document the process for establishing a partnership with the community(ies) and the mutual benefits of the study and ensure that any factors (e.g., educational level, nonproficiency in English, low socioeconomic status) are accounted for and handled appropriately. In addition, investigator(s) and staff(s) should take precautionary measures to ensure that ethical concerns are clearly noted, such that there is minimal possibility of coercion or undue influence in the incentives or rewards offered in

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that women and racial and ethnic

cause an adverse impact on the

composition of the proposed study

recruiting into or retaining participants in scientific studies.

E. Dissemination of Research Results

Externally awarded investigators are urged to make special efforts to disseminate relevant research results to the communities who participated in the studies and to the populations to which they pertain, especially racial and ethnic minority populations which may have cultural, language, and socioeconomic barriers to the easy receipt of such information.

VI. Evaluation

CDC Inclusion Review Committee Responsibility and Members

A CDC Inclusion Review Committee (IRC) with representatives from the CDC Office of the Associate Director for Science, the CDC Office of the Associate Director for Minority Health, and the CDC Office of the Associate Director for Women's Health will review any questions, issues, or comments pertaining to this policy and recommend necessary changes or modifications to the Director, CDC. This committee will meet regularly to review compliance with this policy and evaluate the impact of this policy on research activities at CDC. The CDC IRC may periodically conduct random audits of research protocols to assess compliance with this policy.

Dated: March 30, 1995.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 95–8718 Filed 4–7–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 525]

Continuation of the Development of Technology for the Measurement of Lead in Blood; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a grant program for the continuation of the development of new and innovative technology, or significant improvement of existing technology, for the measurement of lead in blood. CDC has supported such development efforts under a grant program since FY 1992 and under Cooperative Research and Development Agreements (CRADAs) since 1991. State, community and physician office-based childhood lead poisoning prevention programs have a need for reasonably priced, accurate, precise, portable, rugged, and easy-to-operate instruments or analytical techniques to measure the concentration of lead in blood. Such programs screen large numbers of infants and young children and identify those with lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section **Where To Obtain Additional Information.**)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317B(b) [42 U.S.C. 247b-3(b)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are limited to those organizations which are currently developing innovative technology for the measurement of lead in blood, funded under CDC grant Announcement 269 (included in the application package), or organizations which have a current CDC Cooperative Research and Development Agreement (CRADA) dealing with blood lead measurement technology. However, if funded, the CDC CRADA dealing with blood lead will be terminated.

Note: Eligible applicants are encouraged to enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

Approximately $800,000 is available in FY 1995 to fund up to three grants. It is expected that the average award will be $250,000, ranging from $100,000 to $500,000. It is expected that the awards will begin on or about June 30, 1995, and will be made for a 12-month budget period within a project period of up to one year. Funding estimates may vary and are subject to change.

Purpose

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. Universal screening of children is recommended in "Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control," (October 1991); however, the lack of analytical systems (methods plus instrumentation) which are easy-to-operate, rugged, and suitable for field use in screening programs have made it difficult and costly for agencies to develop programs for the elimination of this totally preventable disease. This program will provide financial support for the continuation and possible completion of the development and validation of new and innovative technology leading to better blood lead measurement systems.

Program Requirements

The following are essential requirements of the Grantee:

1. Provide a principal investigator with the authority, responsibility, and research experience to carry out the objectives of the grant.
2. Provide qualified staff, laboratory and/or production facilities, equipment, and other resources necessary to carry out the objectives of the grant.
3. Conduct a scientifically sound, goal-oriented research and development program which will yield all or portions of practical analytical systems which measure one or more chemicals in complex solutions. Understand and address the difficult analytical problem presented by a blood sample matrix.
4. Publish the results of the research effort in the peer-reviewed scientific literature, or otherwise make the research findings available for objective evaluation and use.
5. Provide evidence of significant progress under the previous grant or CRADA for blood lead measurement technology consistent with the goals and objectives of the original grant or CRADA, and clearly show that successful completion could be reasonably expected within the one year project period.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Understanding of the Problem (30%)

By progress under previous grant or CRADA agreement, the Applicant has demonstrated understanding of whole blood matrix effects, interferences, and contamination issues. Applicant's prototype instrument(s) and/or experimental data address CDC criteria of accuracy, precision, compactness, ruggedness and ease of use, as described in grant Announcement 269 and/or CRADA agreement.

2. Technical Progress and Approach to Remaining Problems (30%)

Sound technical approach, as demonstrated by analytical performance of applicant's prototype instruments or experimental data. Performance should meet CDC criteria, or show evidence of adequate performance attainable under this announcement.

3. Management Plan (20%)

Applicant should describe a plan to finalize the development of their instrument as a manufacturable, marketable, commercial product. Key points include appropriate business resources or collaborations, market research, field testing, regulatory compliance, distribution and support, or plans to sell the technology to a third party for final production and marketing.

4. Program Personnel (10%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering or other relevant scientific disciplines, (b) detailed allocations of time and effort of staff devoted to the project.

5. Collaboration (5%)

While collaboration is not required, it is encouraged if necessary to accomplish the research objectives in a timely manner. If applicable, the applicant should have demonstrated the ability to collaborate with other research centers, manufacturers, or commercial interests to conduct the described research and development plan. Evidence of collaborative relationships include jointly developed plans for developing separate components of the analytical system and written commitments of support from other program-related entities that describe the collaborative activities or serious negotiation or agreements with companies experienced in the development, marketing and support of clinical instruments.

6. Publication of the Research Effort (5%)

The purpose of this grant is to encourage the rapid development and deployment of measurement systems for blood lead which will be useful in lead poisoning prevention screening programs. Therefore, an explanation of how the grantee plans to encourage the publication of the research findings or otherwise make the information available to the public is required. *Research which results only in findings of academic interest with no practical application to the objectives of the grant is not acceptable.*

7. Budget Justification (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

8. Human Subjects Review (Not Scored)

The applicant must clearly indicate whether or not human subjects will be involved in their research.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and five copies of the application form PHS 398 (OMB Number 0925–0001) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before *May 31, 1995.*

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Dayton T. Miller, Ph.D. or Robert L. Jones, Ph.D., Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–18, Atlanta, GA 30341–3724, telephone (404) 488–4452.

Please refer to Announcement 525 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction"

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through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

A copy of "Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control," (October 1991) may be obtained from the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–28, Atlanta, GA 30333, telephone (404) 488–7330.

Dated: April 3, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8717 Filed 4–7–95; 8:45 am]

BILLING CODE 4163–18–P

CDC Advisory Committee on the Prevention of HIV Infection: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announced the following committee meeting.

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Times and Dates: 9 a.m.–4:30 p.m., May 8, 1995; 9 a.m.–12 noon, May 9, 1995.

Place: Sheraton Colony Square Hotel, 188 14th Street, NE, Atlanta, Georgia 30061.

Status: Open to the public, limited only by the space available.

Purpose: This committee charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of HIV infection and AIDS, the epidemiologic and laboratory study of HIV and AIDS, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to Be Discussed: The Committee will be updated on the ongoing reorganization of CDC's HIV/AIDS prevention programs. Other discussions will center around current HIV prevention activities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE, Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8715 Filed 4–7–95; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–5 p.m., May 17, 1995.

Place: Room 503A–529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will continue to work in developing managed care minimum data sets for enrollment and encounter data.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8714 Filed 4–7–95; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

[MB–84–N]

RIN 0938–AG77

Medicaid Program; Rescission of the Guidelines for Documenting Medicaid Recipient Access to Immunizations Under the Vaccines for Children (VFC) Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice rescinds the guidelines that we published in the **Federal Register** on October 3, 1994, that required States to document equal access to immunizations for Medicaid children if States elected to use lower vaccine administration fees than the maximum charges that were published and applicable under the Vaccines for Children program. These guidelines are rescinded in response to public comments on the October 3, 1994 notice. States indicated that there were numerous problems regarding the collection of useable data.

FOR FURTHER INFORMATION CONTACT: Marge Sciulli, (410) 966–0691.

SUPPLEMENTARY INFORMATION:

I. Background

On October 3, 1994, we published in the **Federal Register** a notice with comment period (59 FR 50235) that listed, by State, the interim regional maximum charges that providers may impose for the administration of pediatric vaccines to Federally vaccine-eligible children under the Vaccines for Children (VFC) Program. (The VFC Program, which became effective on October 1, 1994, required States to provide a program for the purchase and distribution of pediatric vaccines to registered providers.) State Medicaid agencies may establish lower Medicaid fees than the maximum charges. According to the guidelines, States were required to provide assurances of equal access to immunizations for Medicaid children to the same extent as for the general population, unless their Medicaid payment rates equaled the maximum charges.

The October 3, 1994, notice allowed States the option of using one or more of the following guidelines to document equal access to immunizations for Medicaid children:

(1) Comparison of Ratios. In order for a State to have used this guideline as an equal access assurance, the ratio of Medicaid children immunized to the number of Medicaid children would have to be equal to or greater than the ratio of children in the general population immunized to the number of children in the general population.

(2) Comparison to Private Insurance. In order for the State to have used this guideline as an equal access assurance, the Medicaid rates for the administration of pediatric vaccines would have to be set at a rate equal to or greater than the private insurance company's rates up to the established State maximum fee.

(3) Practitioner Participation. Under this guideline, the State would have compared the number of Medicaid pediatric practitioners who are Medicaid program-registered providers to the total number of pediatric practitioners providing immunizations to children. The program-registered providers must have at least one Medicaid pediatric immunization claim per month or an average of 12 such claims during the year. The State would have needed 50 percent participation to show equal access through use of this guideline.

(4) Other. States had the flexibility to devise alternative measures of equal access to immunizations. These measures were to have been evaluated by HCFA before being found acceptable.

The October 1994 notice required State Medicaid agencies to specify the reimbursement for the administration of the pediatric vaccines, and, if applicable, submit documentation of equal access, due by April 1 of each year, beginning April 1, 1995 (and which is effective July 1, 1995), as part of its obstetrical/pediatric payment rate State Medicaid plan amendment submittal. The notice also stated that if the State Medicaid agency elected to pay the maximum regional amount statewide, it need only specify this in its State plan amendment submittal (no additional documentation would have been needed). However, if the State Medicaid agency elected to vary the vaccine administration fee by geographic areas within the State, the State must list the administration fee, specify the methodology, and provide data for each geographic area where the maximum charges are not applied. Additionally, the notice stated that, because of the October 1, 1994 implementation date, the State plan amendment must have been submitted by December 31, 1994, and have been effective October 1, 1994. For the interim period of October 1, 1994, through March 31, 1995, the notice provided that States may claim Federal matching funds for the costs of administration of vaccines to Medicaid-eligible children using the maximum charges or lower fees established on the basis of the guidance provided in the notice. For this interim State plan amendment, the State would have been required to submit the methodology to document access to immunizations but would not have been required to supply supporting data by which Medicaid beneficiary access to immunizations was assured. Beginning April 1, 1995, documentation of equal access to immunizations would have been required to be included as part of the yearly obstetrical/pediatric State plan amendment submittal in accordance with section 1926 of the Social Security Act.

II. Rescission of Access Guidelines

As a result of our preliminary review of public comments on the October 1994 notice regarding the documentation of access requirements, we are rescinding the requirement that States use the access guidelines to provide assurances of equal access, pending further evaluation.

Following are some of the problems the commenters identified with the access requirements:

- Difficulties in obtaining current data on the number of children in the general population who have received immunizations, despite the fact that States have data on the number of Medicaid children who have been immunized.
- Difficulties in obtaining private insurance information only on administration fee reimbursement. It is unlikely that private insurance companies will have a reimbursement rate that only covers the provider's costs for administration of the immunization.
- Difficulties in obtaining useable data currently. These problems stem from the fact that some States have not yet implemented the VFC Program for private providers.
- Difficulties in obtaining VFC Program reimbursement data. Due to the October 1, 1994, implementation date, most of the claims data that would be used to document access in April 1995 would reflect provider participation based on the current reimbursement system rather than reimbursement through the VFC program.
- Difficulties in obtaining reliable and meaningful measures of access. Commenters urged HCFA to develop meaningful measures of access for vaccines and for all other obstetrical and pediatric services.

As a result of the rescission of the access guidelines, States will not be required to provide a methodology or data to document that payment levels are sufficient to enlist enough providers so that immunizations under the State plan are available to Medicaid recipients at least to the extent that those services are available to the general population.

HCFA is forming a workgroup that will examine alternative measures of access to vaccines. After this examination is completed, we will evaluate the various suggestions of the group and formulate specific guidelines for States. These guidelines, along with responses to all other timely public comments on the October 3, 1994, notice, will be published in a final **Federal Register** document.

In accordance with the provisions of Executive Order 12866, this notice has been reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: February 5, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: March 2, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–8646 Filed 4–4–95; 4:13 am]

BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Hearing Procedures for Certain Issues Related to the Substance Abuse Prevention and Treatment and the Community Mental Health Services Block Grant Programs

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice.

SUMMARY: SAMHSA administers two block grant programs: the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program and the Community Mental Health Services (CMHS) Block Grant Program, both of which are authorized by Title XIX of the Public Health Service (PHS) Act. Section 1945(e) of the PHS Act provides a State the opportunity for a hearing on certain noncompliance issues relating to the block grants prior to the Secretary taking final action against the State. To the extent that the hearing procedures contained in 45 CFR part 96, subpart E, 42 CFR part 50, subpart D, or 45 CFR part 16 do not apply to the noncompliance issue raised, the guidelines established below for hearings will apply to assist in providing a prompt and orderly hearing. When these procedures are applicable, the State will be provided a copy of the procedures with the notice of noncompliance.

These procedures are currently effective. However, we are inviting comments from the public on the procedures and such comments are to be sent to the information contact person identified immediately below within 60 days from the date of this publication. Comments received will be carefully considered and may cause the procedures to be revised.

FOR FURTHER INFORMATION CONTACT: Richard Kopanda, Acting Executive Officer, SAMHSA, 5600 Fishers Lane, Room 12–105, Rockville, MD 20857, Telephone No. (301) 443–3875.

Hearing Procedures

Sec. 1. Limitations on Issues Subject to Review During the Hearing

The scope of review shall be limited to (a) the facts relevant to the noncompliance at issue, and (b) the necessary interpretations of those facts, any applicable regulations, and other relevant law. The legal validity of any regulations or statutes shall not be subject to review under these procedures.

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Sec. 2. The Request for a Hearing and the Hearing Official's Response

(a) The State must submit a written notice to the Substance Abuse and Mental Health Services Administration (SAMHSA) requesting a hearing within 15 days of the date of the notice of noncompliance (which will set forth the reasons for the finding of noncompliance and be accompanied by a copy of these hearing procedures), unless some other time period is agreed to by the parties. The written notice must be sent to *(name and address of person identified in the letter to the State)*. The written notice requesting a hearing must include a copy of the notice of noncompliance and a brief statement of why the decision of noncompliance is wrong.

(b) Within ten days after receiving the request for review, SAMHSA will send an acknowledgment, identify the hearing official and advise the State of the next steps.

Sec. 3. The Procedures for Development of the Hearing File and Submission of Written Argument

The procedures for development and the submission of written argument are as follows:

(a) *State's documents and briefs.* Within 30 days after receiving the acknowledgment of the request for a hearing, the State shall submit to the hearing official the following (with a copy of SAMHSA at the address listed in sec. 2):

(1) A written statement, not to exceed 20 double-spaced pages, explaining why the Government's determination of noncompliance is wrong.

(2) A review file containing the documents supporting the State's argument, tabbed and reasonably organized, and accompanied by an index identifying each document. Only essential documents should be submitted to the hearing official.

(b) *SAMHSA's Documents and Brief.* Within 30 days after receiving the State's submission, SAMHSA shall submit to the hearing official the following (with a copy to the State):

(1) A written statement, not exceeding 20 double-spaced pages in length, responding to the State's brief.

(2) A review file containing documents supporting the Government's decision of noncompliance, tabbed and reasonably organized, and accompanied by an index identifying each document. Only essential documents should be submitted to the hearing official.

(c) *The State's Reply Brief.* Within 15 days after receiving SAMHSA's submission, the State may submit a short reply not to exceed 10 double-spaced pages (with a copy to SAMHSA at the address listed in sec. 2).

Sec. 4. Opportunity for Oral Presentation

(a) *Electing Oral Presentation.* Either the Federal Government or the State may request the opportunity for an oral presentation by submitting such a request in writing to the hearing official on or before the date the State is to submit its reply brief under section 3(c). The hearing official will grant the request if the official determines that a genuine and substantial issue of fact has been raised by the material submitted and that the consideration of the issue will benefit from an oral presentation. The hearing official may also upon his or her initiative request an oral presentation by the parties.

(b) *Preliminary Conference.* The hearing official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: Simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally. The hearing official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(c) *Time and Place of Oral Presentation.* The hearing official will attempt to schedule the oral presentation, if granted, within 30 days of the date of the last reply brief. The oral presentation will be held at a time and place determined by the hearing official following consultation with the parties.

(d) *Conduct of the Oral Presentation.*

(1) *General.* The hearing official is responsible for conducting the oral presentation. The hearing official may be assisted by one or more of his or her employees or consultants in conducting the oral presentation and hearing the evidence. While the oral presentation will be kept as informal as possible, the hearing official may take all necessary steps to ensure an orderly proceeding.

(2) *Admission of Evidence.* The formal rules of evidence do not apply and the hearing official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the hearing official. The hearing official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(3) *Transcripts.* The hearing official may have the oral presentation transcribed and, if so transcribed, the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(e) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505, 1001, or related statutes or regulations.

(f) *Post-hearing Procedures.* At his or her discretion, the hearing official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Sec. 5. Burden of Proof

In all cases, the Government bears the burden of proving by a preponderance of the evidence that the State has not complied with the relevant provisions of the law. However, if a State is required to expend or otherwise account for money in a particular manner, the State shall have the burden of producing audible records to show how the money was spent or otherwise accounted for or there will be a presumption created that the State did not expend or otherwise account for the funds correctly.

Sec. 6. Ex Parte Communications

Except for minor or routine administrative and procedural matters, a party shall not communicate with the hearing official or his or her staff on the matter without notice to the other party. All written communications to the hearing official shall simultaneously be submitted to the other party.

Sec. 7. Transmission of Written Communications and Calculation of Deadlines

(a) Because of the importance of a timely review, all written communications are to be transmitted by facsimile or overnight express mail. The date of transmission (for facsimile) or the day following mailing (for overnight mail) will be considered the date of receipt.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

Sec. 8. Appointment of and Authority and Responsibilities of Hearing Official

There shall only be one hearing official appointed to the case and that hearing official shall be appointed by the Administrator of SAMHSA. In addition to any other authority specified in these procedures, the hearing official shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Sec. 9. Administrative Record

The administrative record of review consists of the review file including the government's notice and the State's request for a hearing; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the hearing official.

Sec. 10. Written Recommendation

(a) *Issuance of Recommendation.* The hearing official shall issue a written recommendation on the case which will be transmitted to the Secretary for a final decision. The written recommendation will set forth the reasons for the recommendation and describe the basis therefore in the record. The hearing official will send a copy of the recommendation to the State and SAMHSA.

(b) *Date of Recommendation.* The hearing official will attempt to issue his or her recommendation within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the recommendation will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the hearing official will immediately communicate the recommendation to each party.

Dated: March 28, 1995.

Nelba Chavez,

Administrator.

[FR Doc. 95–8648 Filed 4–7–95; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–95–3910]

Office of Administration; Notice of Submissions of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 3, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Financial Statement.

Office: Housing.

Description Of The Need For The Information And Its Proposed Use: This form is used by HUD in determining factors involved when compromises are reached with borrowers to lighten the financial burdens in given cases of Title I Home Improvement and Mobile Home Loans.

Form Number: HUD–56142.

Respondents: Individuals or Households.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56142	1,258		1		1		1,258

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Total Estimated Burden Hours: 1,258.
Status: Extension, no changes.
Contact: Anne Baird-Bridges, HUD, (202) 755–7570; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 3, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Tenant Participation on Multifamily Housing Projects.
Office: Housing.
Description Of The Need For The Information And Its Proposed Use: This information collection provides tenants in certain types of subsidized multifamily housing projects an opportunity to comment on the project owners request for HUD approval of certain specified actions, including the continuation of the requirement for tenants participation in project rent increases. HUD must take their comments into consideration when making approval decisions.
Form Number: None.
Respondents: Individuals or Households, State, Local, or Tribal Governments, Businesses or Other For-Profit, and Not-For-Profit Institutions.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Increase in Rents	160		1		13		2,080
Utility Conversion	160		1		23		3,680
Conversion—Residential to Other	160		1		18		2,880
Partial Release of Security	160		1		17		2,720
Major Capital Addition	160		1		22		3,520
Recordkeeping	160		1		5		800

Total Estimated Burden Hours: 15,680.
Status: Extension, no changes.
Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 3, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Lease and Grievance Requirements 24 CFR Part 966.
Office: Public and Indian Housing.
Description Of The Need For The Information And Its Proposed Use: This collection covers the recordkeeping requirements incidental to the implementation of Federal regulations at 24 CFR Part 966 governing dwelling lease and grievance procedures in public housing. The information is retained by the public housing agencies that manage public housing and is used for operational purposes.
Form Number: None.
Respondents: Individuals or Households and State, Local, or Tribal Governments.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	Burden hours
Recordkeeping	3,330		1		60.5	201,454

Total Estimated Burden Hours: 201,454.
Status: Reinstatement, no changes.
Contact: Edward C. Whipple, HUD, (202) 708–0744; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: March 23, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Application for Insurance Benefits.
Office: Housing.
Description Of The Need For The Information And Its Proposed Use: These forms will be used to provide the Department with information needed to process and pay claims on defaulted FHA insured home mortgage loans.
Form Number: HUD–27011, Parts A, B, C, D, and E.
Respondents: Businesses or Other For-Profit.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–27011	8,000		11.25		1.33		119,700

Total Estimated Burden Hours: 119,700.
Status: Extension with changes.
Contact: Kitty M. Woodley, HUD, (202) 708–2163; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 23, 1995.

[FR Doc. 95–8720 Filed 4–7–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–95–3735; FR–3643–N–04]

Announcement of Funding Awards; Lead-Based Paint Hazard Control in Priority Housing

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Lead-Based Paint Hazard Control in Priority Housing Grants. The announcement contains the names and addresses of the award winners and the amounts of awards.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Office of Lead-Based Paint Abatement and Poisoning Prevention, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1822, ext. 112. The TDD number for the hearing impaired is (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and the Independent Agencies Appropriations Act of 1993 (Pub. L. 102–389, approved October 6, 1992).

The purpose of the competition was to award grant funding for approximately $142 million for a grant program for States and local governments to undertake lead-based paint hazard reduction in priority housing. The awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on April 21, 1994 (59 FR 19080). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $139,442,023 has been awarded, to thirty five (35) Category I grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

AWARDEES FOR LEAD-BASED PAINT HAZARD CONTROL IN PRIORITY HOUSING

City of Phoenix, AZ, 200 W. Washington, Phoenix, AZ 85003	$4,500,000
State of Arkansas, PO Box 1437/Slot 1330, Little Rock, AR 72203	3,000,000
State of California, 700 N. 10th St., Sacramento, CA 95814	6,000,000
Alameda County, CA, 2000 Embarcadero, Oakland, CA 94606	5,996,861
City of Long Beach, CA, 2525 Grand Avenue, Long Beach, CA 90815	5,999,986
State of Connecticut, 505 Hudson Street, Hartford, CT 06106–7106	6,000,000
Town of Manchester, 41 Center St., PO Box 191, Manchester, CT 06045–0191	2,000,000
City of Stamford, PO Box 10152, Stamford, CT 06904	2,171,353
City of Savannah, PO Box 1027, Savannah, GA 31402–1027	3,142,506
State of Georgia, 100 Peachtree St., Atlanta, GA 30303	5,732,461
City of Kankakee, IL, 165 N. Schuyler Avenue, Kankakee, IL 60901	1,250,000
State of Illinois, 535 W. Jefferson St., Third Floor, Springfield, IL 62761	5,999,943
City of Boston, MA, 15 Beacon Street, 9th Floor, Boston, MA 02108	5,997,015
City of Malden, MA, 200 Pleasant St., Govt. Ctr., #621, Malden, MA 02148	4,000,000
Commonwealth of Massachusetts, 100 Cambridge Street, Room 1803, Boston, MA 02202	4,642,330
City of Baltimore, MD, 303 E. Fayette Street, 8th Floor, Baltimore, MD 21202–3418	6,000,000
City of Portland, 389 Congress St., Portland, ME 04101	1,426,156
City of Detroit, 1151 Taylor, Room 20–C, Detroit, MI 48202	5,917,839
City of St. Paul, 555 Cedar St., St. Paul, MN 55101–2260	1,777,000
St. Louis County, 121 S. Meramec Ave., Clayton, MO 63105	1,239,870
State of New Jersey, 101 South Broad Street, CN 051, Trenton, NJ 08625–0051	6,000,000
State of New York, One Fordham Plaza, Bronx, NY 10458–5392	6,000,000
City of Buffalo, City Hall, Room 313, Buffalo, NY 14202	3,750,450
City of Syracuse, 201 E. Washington Street, Syracuse, NY 13202	2,696,483
City of Cleveland, 1925 St. Clair Avenue, Cleveland, OH 44114	5,549,133
City of Columbus, 50 West Gay St., Columbus, OH 43215–9040	4,687,684
Montgomery County, 451 W. Third Street, Dayton, OH 45422	4,903,030
City of Toledo, One Government Center, Suite 1800, Toledo, OH 43604	1,500,000
City of Harrisburg, 10 N. 2nd St., MLKing, Jr., City Govt. Center, Harrisburg, PA 17101–1677	1,200,000
State of Rhode Island, 3 Capitol Hill, 106 Cannon Bldg., Providence, RI 02908–5097	6,000,000
City of Memphis, 701 N. Main St., Room 100, Memphis, TN 38107–2311	3,500,000
City of Houston, 8000 North Stadium Drive, Houston, TX 77054	3,941,526
City of Norfolk, 1101 City Hall Building, Norfolk, VA 23501	1,653,118
City of Petersburg, 128 South Sycamore Street, Petersburg, VA 23803	2,000,000
City of Richmond, 600 East Broad Street, Room 629, Richmond, VA 23219	3,267,169
Total	139,442,023

Dated: March 28, 1995.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint, Abatement and Poisoning Prevention.

[FR Doc. 95–8684 Filed 4–7–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication, AA–6978–A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo, Incorporated, for approximately 613 acres. The lands involved are on Prince of Wales Island, Alaska.

Copper River Meridian, Alaska

T. 77 S., R. 88 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

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Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 10, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Margaret J. McDaniel,

Acting Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–8713 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–933–95–1320–01; COC 56447]

Notice of Coal Lease Offering by Sealed Bid; COC 56447

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Gunnison County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Monday, May 15, 1995. Sealed bids must be submitted no later than 10 a.m., Monday, May 15, 1995.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods in the B and D/E coal seams on the Box Canyon Tract in the following lands:

Sixth Principal Meridian

T. 13 S., R. 90 W., 6th P.M.
- Sec. 10, SE¼SE¼;
- Sec. 11, lots 9 to 12, inclusive, and SW¼SE¼;
- Sec. 14, lots 1 to 16, inclusive;
- Sec. 15, lots 1 to 4, inclusive, and E½W½SW¼;
- Sec. 22, lots 1 to 16, inclusive;
- Sec. 23, lots 1 to 16, inclusive;
- Sec. 26, lots 1 to 16, inclusive.

The land described contains 2,769.67 acres, more or less.

Total recoverable reserves are estimated to be 37 million tons. The B and D/E seams underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the B seam on an as-received basis is as follows:

Btu	12,975 Btu/lb
Moisture (percent)	5.66
Sulfur Content (percent)	0.57
Ash Content (percent)	7.66

The estimated coal quality for the D/E seam on an as-received basis is as follows:

Btu	12,162 Btu/lb
Moisture (percent)	6.45
Sulfur Content (percent)	0.57
Ash Content (percent)	9.31

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: March 30, 1995.

Karen A. Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–8689 Filed 4–7–95; 8:45 am]

BILLING CODE 4310–JB–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 152X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Caswell County, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.1-mile rail line extending between milepost FD–196.9 and milepost FD–200.00 at Blanch, in Caswell County, NC.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending either with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 10, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 20, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423–191.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 14, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 4, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8711 Filed 4–7–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–82]

Earl N. Caldwell, M.D.; Revocation of Registration

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl N. Caldwell, M.D. of Highland Park, Illinois (Respondent), proposing to revoke his DEA Certificate of Registration, BC0950104, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f), and that Respondent was no longer authorized to handle controlled substances in the State of Illinois. 21 U.S.C. 824 (a)(3) and (a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the Government filed a motion for summary disposition on October 11, 1994, alleging that Respondent no longer held state authorization to handle controlled substances on the ground that the Illinois Department of Professional Responsibility, Medical Disciplinary Board, had placed Respondent's medical license on probation for five years and suspended his authority to handle controlled substances for the duration of that probationary term. Respondent filed an opposition to the Government's motion for summary disposition on October 31, 1994, arguing that the Illinois Board's decision had been rendered in error and, therefore, was not final pending administrative review.

On November 2, 1994, the administrative law judge entered her opinion and recommended a decision granting the Government's motion for summary disposition and recommending that the Respondent's DEA Certificate of Registration be revoked. No exceptions were filed by either party.

On December 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

Effective May 13, 1992, the Illinois Department of Professional Responsibility, Medical Disciplinary Board, suspended Respondent's license to practice medicine for five years and suspended his authority to handle controlled substances for the duration of that period. Respondent does not deny that his state license has been placed on probation for five years. As a result, Respondent is no longer authorized to dispense controlled substances in the State of Illinois.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987).

In a case where a practitioner is no longer authorized to handle controlled substances in the state in which he proposes to practice, a motion for summary disposition is properly entertained. It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC0950104, previously issued to Earl N. Caldwell, M.D., be, and it hereby is, revoked, and any pending applications for such registration be, and hereby are, denied. This order is effective May 10, 1995.

Dated: April 3, 1995.

Stephen H. Greene,

Deputy Administrator.

FR. Doc. 95–8650 Filed 4–7–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–76]

Rosalind A. Cropper, Inc.; Denial of Application

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

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to Show Cause to Rosalind A. Cropper, M.D. and Rosalind A. Cropper, Inc., of New Orleans, Louisiana, proposing to revoke her DEA Certificate of Registration, BC0747381, as a practitioner, deny any pending application for registration as a practitioner and deny the application of Rosalind A. Cropper, Inc. (Respondent) for DEA registration as a Narcotic Treatment Program (NTP). The statutory basis for the Order to Show Cause was that Dr. Cropper's continued registration as a practitioner and Respondent's registration as an NTP would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On December 16, 1994, the Government filed a motion for summary disposition alleging that the State of Louisiana had denied Respondent's application to operate an NTP within that State, and, that Respondent lacked authority from the Food and Drug Administration (FDA) to operate an NTP. The Government's motion was supported by a letter from an FDA official informing Respondent that because the State of Louisiana had denied its application to establish an NTP, the FDA was unable to approve its application. Respondents did not file a response to the Government's motion and did not deny that FDA and the State of Louisiana has denied its applications.

On January 18, 1995, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge and Order Severing Proceedings recommending that Respondent's application for DEA Certificate of Registration as an NTP be denied. Judge Bittner also ordered that the proceeding involving the proposed revocation of Respondent's registration as a practitioner be severed from Docket 94–76, be redocketed, and that the parties continue with prehearing procedures regarding that matter. No exceptions to Judge Bittner's opinion were filed by either party.

On February 21, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

By letter dated December 16, 1994, Respondent was advised that the FDA was unable to approve her application to the FDA to operate an NTP because the State of Louisiana had denied her application to establish an NTP. Judge Bittner held that DEA does not have statutory authority under the Controlled Substances Act to register an NTP unless that entity is authorized by the FDA to dispense controlled substances. 21 U.S.C. 823(g). In a proceeding to obtain registration as an NTP, if the applicant does not possess the requisite FDA authorization to operate an NTP, a motion for summary disposition is properly entertained for it is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom, *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge in its entirety. Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Respondent's application for DEA Certificate of Registration as an NTP be, and it hereby is, denied. This order is effective May 10, 1995.

Dated: April 3, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–8651 Filed 4–7–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,352]

Hasbro, Inc. a/k/a Tonka Corporation El Paso Operations; El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Work Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on March 16, 1994 published in the **Federal Register** on March 30, 1994 (59 FR 14876).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that some of the workers had their unemployment insurance taxes paid under Tonka Corporation, a division of Hasbro, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,352 is hereby issued as follows:

"All workers of workers and former workers at Hasbro, Inc., also known as (a/k/a) Tonka Corporation, El Paso Operations, El Paso, Texas who became totally or partially separated from employment on or after December 14, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 30th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8723 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,505]

Cushman Industries, Inc.; Hartford, CT; Notice of Revised Determination on Reconsideration

On March 7, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 17, 1995 (60 FR 14452).

The findings show that the Hartford, Connecticut plant closed in December, 1994 when all production workers were laid off and production ceased.

New findings on reconsideration show that the company had increased imports of chucks in the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers at Cushman Industries, Hartford, Connecticut were adversely affected by increased imports of articles like or directly competitive with the chucks produced at Cushman Industries in Hartford, Connecticut. In accordance with the provisions of the Act, I make the following revised determination for workers of Cushman Industries, Hartford, Connecticut.

"All workers of Cushman Industries in Hartford, Connecticut who became totally or partially separated from employment on or after November 2, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 30th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8722 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 360 etc.]

BASF Corp., Lowland, TN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of: TA–W–30,360 Nylon Hosiery Department, TA–W–30,360A Polyester Filament Department, and TA–W–30,360B Nylon Staple Fibers Department.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 7, 1994, applicable to all workers of the Nylon Hosiery Department. The Notice was published in the **Federal Register** on January 3, 1995 (60 FR 148).

A **Federal Register** Correction was issued on February 10, 1995 revising the date of the petition to August 1, 1994. The correction was published in the **Federal Register** on February 17, 1995 (60 FR 9407). The certification was subsequently amended on February 10, 1995 to include the Polyester Filament Department. The amended notice was published in the **Federal Register** on February 17, 1995 (60 FR 9407).

At the request of the company, the Department again reviewed the certification for workers of the subject firm. New findings show that the Nylon Staple Fibers business was part of the Fiber Products Division and worker separations and declines in sales and production have occurred in the relevant periods. Accordingly, the Department is amending the certification to include all workers at the Lowland, Tennessee plant.

The amended notice applicable to TA–W–30,360 is hereby issued as follows:

All workers of BASF Corporation, Lowland, Tennessee who became totally or partially separated from employment on or after August 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC., this 29th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8725 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,864]

Bridgestone/Firestone, Incorporated, Decatur, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 6, 1995 in response to a worker petition which was filed on March 6, 1995 on behalf of workers at Bridgestone/Firestone, Incorporated, Decatur, Illinois.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–30,787). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 29th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8274 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,744; Gioia Macaroni/Borden, Inc., Buffalo, NY

TA–W–30,762; Hecla Mining Co., Inc., Republic Unit, Republic, WA

TA–W–30,814; Eagle Coach Corp., Brownsville, TX

TA–W–30,723; R. Neumann & Co., Hoboken, NJ

TA–W–30,754; UDT Sensors, Inc., El Paso, TX

TA–W–30,812; Anderson & Middleton, Grays Harbor Veneer Div. Hoquiam, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,708; U.S. Dept. of Agriculture, Food Safety Inspection Service, Import Inspection Div., New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,772; Anne Klein & Co., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,793; Phillips Petroleum Co., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,759; Touch of Elegance, Inc., Holland, MI

The subject firm experienced no sales during the 1994 including the earliest possible date of certification coverage under the Trade Act of 1974.

TA–W–30,724; Boise Cascade Corp., Timber & Wood Products Div. Plant No. 2, Council, ID

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,749; Bristol Myers Squibb, North Brunswick, NJ

The investigation revealed that criteria (2) has not been met. Sales or

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production did not decline during the relevant period as required for certification.

TA–W–30,808, TA–W–30,809, TA–W–30,810, TA–W–30,811; Pennzoil Sulphur Co., Pecos, TX, Galveston, TX, Houston, TX and Tampa, FL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,701; Allied Signal, Inc., Filter and Spark Plug Group, Greenville, OH

A certification was issued covering all workers separated on or after February 6, 1994.

TA–W–30,763, TA–W–30,764; Oxford of Hamlet, Hamlet, NC, Oxford of Royston, Royston, GA

A certification was issued covering all workers separated on or after February 17, 1994.

TA–W–30,826; Dresser Industries, Dresser Industrial Valve Operation, Alexandria, LA

A certification was issued covering all workers separated on or after March 3, 1994.

TA–W–30,783; Personal Products Co., A Div of Johnson & Johnson, Milltown, NJ

A certification was issued covering all workers separated on or after June 12, 1994.

TA–W–30,819; AMSCO Basil Mfg, Wilson, NY

A certification was issued covering all workers separated on or after March 6, 1994.

TA–W–30,719; Joseph Frank, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after February 2, 1995.

TA–W–30,775; Swiss Maid Emblems, Fairview, NJ

A certification was issued covering all workers separated on or after February 8, 1994.

TA–W–30,662; McDonnell Douglas Corp., Douglas Aircraft Co., Long Beach, CA

A certification was issued covering all workers separated on or after March 15, 1995.

TA–W–30,721; Sunbeam Oster Household Products, Holly Springs, MS

A certification was issued covering all workers separated on or after January 26, 1994.

TA–W–30,736; Exxon Corp., Exxon Upstream Technical Computing Co., Houston, TX

A certification was issued covering all workers separated on or after January 31, 1994.

TA–W–30,844; Pro Group, Inc., Golf Bag Div., Pocahontas, AR

A certification was issued covering all workers separated on or after March 7, 1994.

TA–W–30,746; Editorial America SA, Virginia Gardens, FL

A certification was issued covering all workers separated on or after February 11, 1994.

TA–W–30,700; EG & G Vactic, Inc., St. Louis, MO

A certification was issued covering all workers separated on or after March 4, 1994.

TA–W–30,685, TA–W–30,686; TA–W–30,687; Alfred Angelo, Inc., Horsham, PA, Willow Grove, PA and Hatboro, PA

A certification was issued covering all workers separated on or after January 20, 1994.

TA–W–30,696; Statler Tissue Co., Augusta, ME

A certification was issued covering all workers separated on or after January 13, 1994.

TA–W–30,669 & A, B; Anadrill, Inc., Div. of Schlumberger Technology Corp & Operating at Various Locations in the Following States: A; LA, B; MS

A certification was issued covering all workers separated on or after January 23, 1994.

TA–W–30,788; Meridian Oil Houston Region, Houston, TX & Operating at Various Locations in the Following States: A; TX, B; AL, C; LA, D; OH, E; OK

A certification was issued covering all workers separated on or after February 20, 1994.

TA–W–30,713; Cascade Woloen Mill, Inc., Oakland, ME

A certification was issued covering all workers separated on or after January 26, 1994.

TA–W–30,779; KAO Infosystems Co., Plymouth, MA

A certification was issued covering all workers separated on or after January 31, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely.

(B) that imports from Mexico or Canada or articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00376; W.E. Kautenberg Co., Freeport, IL

The investigation revealed that criteria (3) and (4) were not met. There was no shift of production from Kautenberg to Mexico or Canada during the period under investigation. A survey conducted with Kautenberg's customers revealed that there has been no increases of imports of brooms and brushes from Canada or Mexico.

NAFTA–TAA–00364; Gioia Macaroni/ Borden, Inc., Buffalo, NY

The investigation revealed that criteria (3) and (4) were not met. There was no shift of production from the subject facility to Mexico or Canada during the period under investigation. Company imports of pasta from Canada or Mexico are negligible.

NAFTA–TAA–00369; Kennametal, Inc., El Paso, TX

The investigation revealed that the workers of Kennametal, Inc., El Paso, TX do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–00363; UDT Sensors, Inc., El Paso, TX

The investigation revealed that criteria (3) and (4) were not met. The investigation findings show that customer imports of light emitting diodes from Canada or Mexico did not contribute importantly to worker separations at the subject firm.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00372; Thomas & Betts Co., Elizabeth, NJ

A certification was issued covering all workers of Thomas & Betts Co., Elizabeth, NJ separated on or after February 17, 1994.

NAFTA–TAA–00371; Fisher-Price/ Mattel, Inc., Medina, NY

A certification was issued covering all workers at Fisher-Price/Mattel, Inc., Medina, NY separated on or after February 10, 1994.

NAFTA–TAA–00368; Essilor of America, St. Petersburg, FL;

A certification was issued covering all workers at Essi¹or of America, St. Petersburg, FL separated on or after February 10, 1994.

NAFTA–TAA–00367; Escod Industries, Colorado Operations, Canon City, CO

A certification was issued covering all workers at Escod Industries, Colorado Operations, Canon City, CO separated on or after February 15, 1994.

NAFTA–TAA–00366; Crown Cork & Seal Co., Inc., Swedesboro, NJ

A certification was issued covering all workers of Crown Cork & Seal Co., Inc., Swedesboro, NJ separated on or after February 10, 1994.

NAFTA–TAA–00361; Maska US, Inc., Bradford, VT

A certification was issued covering all workers of Maska US, Inc., Bradford, VT separated on or after February 6, 1994.

I hereby certify that the aforementioned determinations were issued during the months of March, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 31, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8721 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. C&B Mining Company

[Docket No. M–95–39–C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Vein Slope (I.D. No. 36–07813) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. C&B Mining Company

[Docket No. M–95–40–C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Vein Slope (I.D. No. 36–07813) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. C&B Mining Company

[Docket No. M–95–41–C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 2 Vein Slope (I.D. No. 36–07813) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. C&B Mining Company

[Docket No. M–95–42–C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its No. 2 Vein Slope (I.D. No. 36–07813) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. C&B Mining Company

[Docket No. M–95–43–C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 2 Vein Slope (I.D. No. 36–07813) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Kerr-McGee Coal Corporation

[Docket Nos. M–95–44–C and M–95–45–C]

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed petitions to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia No. 56–1 Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petitioner proposes to use trailing cables to supply power to the Fletcher single boom roof bolter, Model No. CDR–13–EC–F, Approval No. 2G–2674A–4, and all updated approval extensions of this equipment as applicable. The petitioner requests that Item 1 of its petitions for modification and MSHA's Proposed Decisions and Orders for granted petitions, docket number M–91–12–C and M–94–53–C be amended. The petitioner asserts that

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this request would facilitate equipment replacement or additions while maintaining the protection intended in the Decision and Order.

7. Roberts Brothers Coal Company, Inc.

[Docket No. M–95–46–C]

Roberts Brothers Coal Company, P.O. Box 397, Mortons Gap, Kentucky 42440 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Cardinal No. 2 Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner proposes to operate its Diesel Powered Generator (DPG) without an earth referenced ground. As an alternative, the petitioner proposes to use resistors, ground fault relays and trips, and SHD–GC shielded cable. In addition, the skid base of the DPG will provide some earth ground protection. The petitioner states that this diesel powered generator provides power to different areas of the mine and to attach a grounding conductor to the earth referenced ground system would reduce mobility and effectiveness of the unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Jordan Coal Company

[Docket No. M–95–47–C]

Jordan Coal Company, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–07681) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Eastern Associated Coal Corporation

[Docket No. M–95–48–C]

Eastern Associated Coal Corporation, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.380(f)(1) (escapeways; bituminous and lignite mines) to its Lightfoot No. 1 Mine (I.D. No. 46–04332) located in Boone County, West Virginia. The petitioner proposes to ventilate on-board charging of batteries with a current of air coursed directly into the return air course; to use intake air to ventilate the scoop batteries that is of sufficient velocity to prevent smoke rollback or airflow reversal during a fire on the scoop and the accumulation of explosives gases; to install carbon monoxide sensors that are part of the AMS System over the battery charging unit; to install a mandoor in the permanent stopping behind the battery charger unit that would automatically open the mandoor in the event of a fire. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Cross Mountain Coal, Inc.

[Docket No. M–95–49–C]

Cross Mountain Coal, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.350 (aircourse and belt haulage entries) to its Mine No. 10 (I.D. No. 40–03082) located in Anderson County, Tennessee. The petitioner proposes to use the air in the belt entry to ventilate active working places; to examine the belt conveyor entry at least once during each coal producting shift at intervals that would be most effective while miners are working; to follow all other MSHA fire protection requirements, especially those pertaining to water lines, fire hoses, fire suppression systems, warning devices, and flame-resistant belting; and to install a low-level carbon monoxide detection system in all belt entries used as intake air courses as an early warning fire detection system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Cross Mountain Coal, Inc.

[Docket No. M–95–50–C]

Cross Mountain Coal, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Mine No. 10 (I.D. No. 40–03082) located in Anderson County, Tennessee. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system would identify a sensor location instead of each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Leeco, Inc.

[Docket No. M–95–51–C]

Leeco, Inc., 100 Coal Drive, London Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Mine No. 62 (I.D. No. 15–16412) located in Perry County, Kentucky. Due to flooding and other hazardous conditions in Seals Nos. 1 and 2, traveling the affected areas would be unsafe. As an alternative, the petitioner proposes to establish evaluations points and to perform weekly examinations. The petitioner states that application of the standard would result in a diminution of safety to the miners.

13. Peabody Coal Company

[Docket No. M–95–52–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests that MSHA's Proposed Decision and Order, docket number M–93–06–C be amended to eliminate coverage of the 1 South seals, 2 South seals, 3 South seals, 4 South seals, and 1 West seals off the 1 Submain North in the Decision because these areas have been sealed since the previous petition was granted.

14. Holnam, Inc.

[Docket No. M–95–04–M]

Holnam, Inc., 3500 Highway 120, P.O. Box 349, Florence, Colorado 81226 has filed a petition to modify the application of 30 CFR 56.6901 (black powder) to its Portland Quarry (I.D. No. 05–00037) located in Fremont County, Colorado. The petitioner proposes to destroy model rocket engines containing black powder and desensitized black powder sweepings in blast holes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Asbury Graphite Mills, Inc.

[Docket No. M–95–05–M]

Asbury Graphite Mills, Inc., R.D. #7, Box 1, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 56.14101 (brakes) to its Kittanning Plant (I.D. No. 36–07653) located in Armstrong County, Pennsylvania. The petitioner proposes to install hydraulic micro lever locks on three of its Yale Forklift Trucks instead of standard parking brakes due to specific situations and concerns outlined in their petition that reduce the effectiveness of standard pad and drum parking brakes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Tg Soda Ash, Inc.

[Docket No. M–95–06–M]

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22215 (separation of intake and return air (I–A, II–A, III, and V–4 mines)) to its Wyoming Soda Ash Operations (I.D. No. 48–00639) located in Sweetwater County, Wyoming. The petitioner proposes to use controlled district recirculation of mine air to improve mine ventilation and the quality of the miner's work environment by providing an excessive airflow to dilute and carry away dust, methane, and diesel fumes from the mining and abandoned areas of the mine. The petitioner states that this recirculation fan system would be inspected during each operating shift on a weekly basis and that weekly examination results would be included in the weekly ventilation report which would be kept on the surface; that the fan would be monitored and the monitors checked for proper operation on a weekly basis by a qualified person; that mine personnel would be familiarized and trained on the recirculation system, monitoring requirements, and emergency escape procedures; and that its emergency plan would be updated to include the controlled recirculation system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1995. Copies of these petitions are available for inspection at that address.

Dated: April 3, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–8690 Filed 4–7–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Revisions to Systems of Records

AGENCY: National Credit Union Administration.

ACTION: Notification of a revised system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the National Credit Union Administration (NCUA) is issuing public notice of its intent to modify the system of records maintained by the Office of Inspector General (OIG), NCUA–20, currently titled, "Investigation Files, NCUA", formerly located in the NCUA Office of Internal Auditor. The Office of Internal Auditor preceded the Office of Inspector General, which was created by action of the NCUA Board on March 23, 1989, in response to the Inspector General Act amendments of 1988. The proposed modifications will: (1) Rename the system, "Office of Inspector General (OIG) Investigative Records—NCUA;" (2) drop one routine use; (3) add two new routine uses, and (4) add certain Privacy Act exemptions. In addition, we are making other technical and editorial revisions to the system to make it more accurate.

EFFECTIVE DATE: The revised system of records will become effective without further notice on May 10, 1995, unless comments postmarked or posted on the NCUA Electronic Bulletin Board on or before that date cause a contrary decision. If, based on NCUA's review of comments received, changes are made, NCUA will publish a new final notice. NCUA will not withhold records under the (j)(2) or (k)(2) exemptions until adoption of the final rule amending 12 CFR 792.34 to add the Privacy Act (j)(2) and (k)(2) exemptions to this system of records.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314. Comments may also be posted on the NCUA Electronic Bulletin Board at 800 876–1684 or 703 518–6480. Copies of comments may be examined in the Office of Inspector General, 5th floor, at 1775 Duke Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, telephone (703) 518–6352.

SUPPLEMENTARY INFORMATION: The NCUA/OIG performs its duties in accordance with the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988 (Pub. L. 95–452, as amended, 5 U.S.C. App. 3)(IG Act). The OIG is an independent unit within the NCUA and was established to promote economy, efficiency, and effectiveness in the administration of NCUA programs and operations, and to detect and prevent fraud, waste and abuse in such programs and operations.

The NCUA is republishing system of records NCUA–20, currently titled, "Investigation Files—NCUA," to: (1) Rename the system; (2) drop one routine use; (3) add two new routine uses; (4) add the (j)(2) and (k)(2) exemptions; and (5) update other information in the previously published notice in this system of records.

NCUA is renaming NCUA–20, currently titled, "Investigation Files—NCUA", to "Office of Inspector General—Investigative Records." This is because the former publication referred to the investigative files of the NCUA Office of Internal Auditor, the predecessor office of the OIG. The system will consist of files and records compiled by the OIG on NCUA employees or other persons involved with the NCUA's programs or operations who have been or are under investigation for criminal or civil fraud, abuse, and other civil and criminal wrongdoing related to the NCUA's programs and operations. The NCUA/OIG has the authority to conduct such investigations under the IG Act.

NCUA is omitting one routine use, number (1) "Information gathered is used for intra-agency purposes," because this routine use duplicates an exception in the Privacy Act, at 5 USC 552a, Section (b)(1).

NCUA is adding two new routine uses to NCUA–20: (1) To authorize the use of OIG investigative records for obtaining information from other sources; and (2) to permit the disclosure of records to the Department of Justice to obtain legal advice. These new routine uses are identified as routine uses numbered 1 and 2 in the system notice. Routine use numbered 3 is a reference to Appendix A, the agency's standard routine uses. The new routine uses are compatible with the purpose for which the OIG's

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records were collected in that they provide for disclosure to assist the NCUA /OIG to collect information in the conduct of its investigations, and to obtain legal advice from the government's attorneys on the pursuit of such investigations.

Other information in the system is being updated to reflect changes in the way information is retrieved, stored, and safeguarded and to describe accurately the categories of individuals covered and the categories of records being maintained.

In a separate notice published in the proposed rule section of today's issue of the **Federal Register**, the NCUA is giving public notice of a proposed rule to amend 12 CFR 792.34 to exempt this system of records from certain provisions of 5 USC 552a under subsections (j)(2) and (k)(2).

The NCUA proposes to exempt certain files within the new system of records from disclosure to individuals who are the subject of a record in the system. The exemptions would cover investigative material compiled for law enforcement purposes. The information in this new system is proposed to be exempt pursuant to 5 USC 552a(j)(2) insofar as these records are maintained by a component of the OIG, the Office of the Assistant Inspector General for Investigations, which performs as its principal function any activity pertaining to the enforcement of criminal laws, and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

The NCUA is also proposing to exempt NCUA–20 from certain provisions of the Privacy Act under 5 USC 552a(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2): Provided however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section (9–27–75), under an implied promise that the identity of the source would be held in confidence.

Accordingly, the NCUA proposes to revise NCUA–20 as follows:

NCUA–20

SYSTEM NAME:

Office of Inspector General (OIG) Investigative Records—NCUA.

SYSTEM LOCATION:

Office of Inspector General, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigation, complainants, and witnesses referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of paper files of all OIG and some predecessor Office of Internal Auditor reports, correspondence, cases, matters, cross-indices, memorandums, materials, legal papers, evidence, exhibits, data, and workpapers pertaining to all closed and pending investigations and inspections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 USC App.3; 12 USC 1766.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The National Credit Union Administration Office of Inspector General (NCUA/OIG) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

1. NCUA/OIG may disclose information from this system of records as a routine use to any public or private source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

2. NCUA/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary to obtain its legal advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

3. NCUA/OIG may disclose information from this system of records for the purposes set forth in Appendix A of the agency's system of records notice, published at 53 FR No.186, page 37373 (September 26, 1988.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually in files.

RETRIEVABILITY:

Information is retrieved in files by case number, general subject matter, or name of the subject of investigation.

SAFEGUARDS:

Case reports and workpapers are maintained in approved security containers and locked filing cabinets in a locked room. Associated paper records are stored in locked metal filing cabinets, safes, or similar secure facilities.

RETENTION AND DISPOSAL:

Investigative Case Files

1. Case files are normally destroyed when they are 5 years old.

2. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

This System of Records is generally exempt from the notice, access, and amendment requirements of the Privacy Act. However, the NCUA will entertain written requests to the systems manager on a case by case basis for notification regarding whether this system of records contains information about an individual. Requests should be marked "Privacy Act request," state the name and address of the requester, and provide a notarized statement, or other documentation, e.g., copy of a driver's license, attesting to the individual's identity. Requests submitted on behalf of other persons must include their written, notarized authorizations. Such requests in the form prescribed may also be presented in person at the Office of Inspector General, Room 5041, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in the following section on "Record Access Procedures."

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources, including the subject individuals, employees of the NCUA, other government employees, and witnesses and informants, and non-governmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 USC 552a(j)(2), this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 USC 552(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), this system of records is exempt from 5 USC 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 12 CFR 792.34 of the NCUA regulations.

Dated at Alexandria, VA, this 30th day of March 1995.

By the National Credit Union Administration Board.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–8336 Filed 4–7–95; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 20, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs for projects beginning after August, 1995.

2. *Date:* April 25, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after August, 1995.

3. *Date:* April 27, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after August 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–8762 Filed 4–7–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

River Bend Station, Unit 1 Gulf States Utilities Company and Cajun Electric Power Cooperative, Inc. Finding of No Significant Antitrust Changes Time for Filing Requests for Reevaluation

In connection with the applications for amendments filed by Gulf States Utilities Company (licensee or GSU) dated January 13, 1993, as supplemented, the Director of the Office of Nuclear Reactor Regulation made a finding on October 15, 1993, that there have been no significant changes in the licensee's activities or proposed activities since the completion of the antitrust operating license review of the River Bend Station (River Bend). Subsequently, an NRC order and two licensing amendments dated December 16, 1993, were issued which transferred GSU's ownership in River Bend to Entergy Corporation and the operation of River Bend to Entergy Operations, Inc. On March 14, 1995, the United States Court of Appeals For the District of Columbia Circuit issued an Order vacating the NRC order and the two accompanying licensing amendments and remanding the case to the NRC.

In light of the foregoing, the Director of the Office of Nuclear Reactor Regulation has reviewed the Court of Appeals decision in *Cajun Electric Cooperative, Inc.* v. *FERC*, 28 F.3d 173 (D.C. Cir. 1994) and the earlier findings in this matter has made a new finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant changes in the licensee's activities have occurred subsequent to the previous antitrust review of River Bend. The finding is as follows:

Under Section 105 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135 (Act), 10 CFR 50.80 and 50.90, the Nuclear Regulatory Commission (NRC or Commission) conducts an antitrust review of changes in ownership or operator of a power production facility after initial licensing. In situations where requests for a change in ownership or operator have been received after issuance of an operating license for such a facility, the staff has conducted a significant change review to determine whether the

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licensee's activities create or tend to create a situation inconsistent with the antitrust laws. The Commission delegated the authority to make the significant change determination to the Director, Office of Nuclear Reactor Regulation (NRR).

Based upon an analysis of the extensive comments received in response to the initial decision published in the **Federal Register** on October 20, 1993 (58 FR 54175), information presented in other regulatory proceedings involving the proposed merger of Gulf States Utilities Company (GSU) and Entergy Corporation (Entergy), the staff concludes that the changes in GSU's activities which have been identified by the staff do not constitute significant changes as envisioned by the Commission in its *Summer* decision. The conclusion of the staff analysis is as follows:

> Where appropriate, the staff considered the testimony and information submitted to other regulatory agencies in developing a record necessary to satisfy its own regulatory mandate. From the information made available to the staff, the staff was able to determine that the concerns raised by the commenters are covered by and should be resolved before the NRC by existing license conditions. The staff does not believe that the outstanding issues raised before the NRC are germane to a licensing proceeding. Consequently, the staff is providing the commenters the opportunity to resolve their NRC concerns in a Section 2.206 enforcement proceeding.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the previous antitrust review of the River Bend Station that would warrant the initiation of a new antitrust review. Signed this 5th day of April, 1995.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation, not to exceed 10 pages in length including attachments, with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The requests must be received by the Commission within 10 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant changes determination should be limited to new information not previously submitted in connection with the Director's Reevaluation Finding published in the **Federal Register** on December 13, 1993 (58 FR 65200), such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland the 5th day of April 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8834 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Exemption

In the matter of Baltimore Gas and Electric Comp. (Calvert Cliffs Nuclear Power Plant Unit No. 2).

I

Baltimore Gas and Electric Company (BG&E or the licensee) is the holder of Facility Operating License No. DPR–69, which authorizes operation of Calvert Cliffs Nuclear Power Plant Unit No. 2 (the facility/CC–2), at a steady-state reactor power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

III

By letter dated February 24, 1995, BG&E requested temporary relief for CC–2 from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the second Type A test by approximately 24 months (from the 1995 refueling outage, currently scheduled to begin in March 1995, to the spring 1997 refueling outage) and would permit the third Type A test to be performed during the spring 1999 refueling outage, coincident with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval. This would extend the CC–2 second 10-year service period to 12 years.

The licensee's request cites the special circumstance of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. The licensee has analyzed the results of the previous Type A tests performed at CC–2. Four Type A tests have been conducted from 1979 to date. The initial Type A test failed; however, prompt corrective actions were taken and the subsequent tests were successful as detailed in Section IV of this Exemption. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. Therefore, application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Section III.D.1.(a) of appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the second Type A test by approximately 24 months. This would permit the test to be performed during the spring 1997 refueling outage, as noted above, and would extend the second 10-year service period to 12 years. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to

achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request.

As previously noted, the initial Type A test failed. This failure was due to three sources: (1) The containment recirculation sump isolation valve, MOV–4145; (2) the temporary level indicators on the steam generators; and (3) the packing gland of a main steam line inboard vent valve. The first leakage source was identified as a problem with the limit switch setting on MOV–4145 that prevented full closure. Resetting the switches and closing the valve electrically corrected the source of leakage. This valve is now tested periodically to ensure the limit switch settings allow full closure, and the value has not demonstrated excessive leakage in any subsequent Type A test. The temporary level indicators, are components which are only in place while the plant is shutdown. Upon identification of the leakage path, the temporary configuration was isolated and has not resulted in any further leakage. The third component condition which led to an excessive leakage rate during this test was attributed to a packing failure in the main steam inboard vent valves. This condition was corrected by backseating the vent valves to eliminate leakage. In a subsequent refueling outage, the vent valves were removed and the connection was sealed with blind flanges. Following the licensee's prompt identification and corrective actions, three additional Type A tests have been successful and have demonstrated a good containment performance. Thus, the Type A test results only confirm the results of the Type B and C test results. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. Since the first failure, all Type A tests have passed with significant margin and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate test (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3 percent of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The CC–2 experience has also been consistent with these results as previously noted.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowage leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the appendix J, Type A test at CC–2 would result in significant degradation of the overall containment integrity. As a result, the application of the regulation of these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension for CC–2 of one cycle (24 months) for the performance of the appendix J, Type A test, and to permit the third Type A test to be performed during the spring 1999 refueling which extends the second 10-year service period to 12 years to be acceptable. As a condition for granting this exemption, the licensee will perform visual containment inspections.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 14979).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 3rd day of April 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8707 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas & Electric Co., Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee) for operation of Diablo Canyon Nuclear Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant relief from the requirement in Section III.D.1.(a) of Appendix J to 10 CFR Part 50 that the third Type A test in a 10-year service period be conducted when the plant is shut down for the 10-year plant inservice inspections and allows the licensee to perform the three Type A tests at approximately equal intervals within each 10-year service period.

The proposed action is in accordance with the licensee's application for exemption dated February 16, 1994.

The Need for the Proposed Action

The proposed action is needed so that the licensee, given the 18-month fuel cycles at Diablo Canyon, is not required to perform a fourth Type A test in order to meet the Appendix J requirement and the Diablo Canyon Technical Specification requirement that Type A tests be conducted at 40 months plus or

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minus 10 months during each 10-year service period.

Environmental Impacts of the Proposed Action

The proposed exemption would not adversely affect primary containment integrity. The three required Type A tests would still be conducted within the 10-year service period while giving the licensee flexibility in scheduling consistent with Diablo Canyon's 18-month fuel cycles. The combination of the Appendix J requirement and the current Diablo Canyon Technical Specification requirement would necessitate that the licensee, because of Diablo Canyon's 18-month fuel cycles, perform Type A tests at the second and fourth refueling outages but then would not permit the third Type A test to be conducted on a schedule that meets both requirements. The Commission has completed its evaluation of the proposed action and concludes that the intent of Section III.D.1.(a) of appendix J that containment leak-tight integrity be verified periodically throughout service lifetime is met when licensees perform three sets of Type A tests at approximately equal intervals over the 10-year service period. Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would result in a larger expenditure of licensee resources to perform a fourth Type A test within a 10-year service period. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 16, 1995, the staff consulted with the California State official, Mr. Hank Kocol of the Department of Health Services, regarding the environmental impact of the proposed action. The State official had not comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8706 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of the Shoreham Nuclear Power Station, Nuclear Power Facility License No. NPF–82

The U.S. Nuclear Regulatory Commission is considering the issuance of an Order modifying the June 11, 1992, Order (the decommissioning Order) that authorized the Long Island Power Authority (LIPA or the licensee) to decommission the Shoreham Nuclear Power Station (SNPS), Unit 1, at Wading River, New York. The SNPS is located in the town of Brookhaven, Suffolk County, New York, about 50 miles east of New York City, on the north shore of Long Island. The modifying Order would terminate License No. NPF–82 and release the site for unrestricted use based on the successful completion of decommissioning.

Environmental Assessment

Identification of Proposed Action

By letter dated June 27, 1991, the former licensee, Long Island Lighting Company (LILCO), and supplemented by letter dated August 4, 1994, the current licensee, LIPA, requested termination of the SNPS, Nuclear Power Facility (NPF) License No. NPF–82 (Docket No. 50–322). NRC approved, by Order dated June 11, 1992, the decommissioning of the SNPS. The June 11, 1992, Order contained the staff's Environmental Assessment and Finding of No Significant Impact related to the decommissioning of SNPS.

The licensee has completed the decommissioning and Final Termination Surveys of the SNPS. Representatives of the Oak Ridge Institute for Science and Education (ORISE), under contract to NRC, conducted a series of independent confirmatory surveys, during four site visits from February 1993 through November 1994. The proposed action would be to terminate the SNPS License No. NPF–82 and release the facility and site for unrestricted use.

The Need for the Proposed Action

To release the SNPS for unrestricted access and use, License No. NPF–82 must be terminated.

Environmental Impact of License Termination

In June 1992, NRC approved, by Order, the decommissioning of the SNPS. The June 11, 1992, Order contained the staff's Environmental Assessment and Finding of No Significant Impact related to the decommissioning of SNPS.

Based on an agreement between the Philadelphia Electric Company (PECo) and LIPA, the slightly irradiated fuel stored in the SNPS spent fuel pool was transferred to the Limerick Generating Station for use. The dismantlement and decontamination of the SNPS began in June 1992 and was completed in accordance with an approved decommissioning plan (DP), as supplemented, in August 1994. All contaminated waste generated during the SNPS decommissioning has been removed from the site.

The approved DP, as supplemented, contained the SNPS Final Termination Survey Plan (Plan). The Plan described the methods used by the licensee to demonstrate compliance with existing NRC unrestricted release criteria. The guidelines used by the licensee for residual radioactivity at the SNPS are consistent with the values provided in Table 1, of Regulatory Guide 1.86, which establishes acceptable residual surface contamination levels. NRC authorized alternative contamination limits for iron-55 and tritium above those specified in Regulatory Guide 1.86. These alternative criteria were presented to the Commission in SECY 94–145 and increased the allowable residual average and maximum total residual beta activity levels for iron-55 and tritium from 5000 average total and 15,000 maximum total (fixed plus removable) disintegrations per minute (dpm)/100 square centimeters to 200,000 average total and 600,000 maximum total dpm/100 square centimeters, respectively. This permitted the licensee to safely retain on site major portions of the reactor bioshield wall that did not exceed the gamma dose rate criterion or the surface contamination limits for other isotopes, but which would have required offsite disposal under the original iron-55 and tritium surface contamination limits of Regulatory Guide 1.86. A concentration limit for cobalt-60 in soil and other bulk materials of 8 picocuries per gram was also established. An average gamma dose rate criterion of 5 uR per hour above background, at a distance of 1 meter from indoor accessible surfaces, was used. For outdoor surfaces, individual gamma exposure rates are not to exceed 10 uR per hour above background at 1 meter.

The licensee implemented a phased approach to its Final Termination Surveys and completed final radiological surveys in August 1994. These survey measurements were verified by the NRC contractor, ORISE. The ORISE confirmatory surveys confirmed that the licensee's measurements meet the existing criteria for unrestricted release. Since the existing unrestricted release criteria have been met, there is no significant radiological impact on the environment from the release of the site.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes no significant non-radiological impacts are associated with the proposed action.

In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order is procedural in nature and will have no significant impact on the quality of the human environment. The proposed Order terminates the SNPS, Unit 1, Facility License No. NPF–82.

Alternative to the Proposed Action

Since the NRC staff has concluded that there are no environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Agencies and Persons Consulted

The licensee initiated the request for termination of the SNPS License No. NPF–82. The NRC staff reviewed the request and representatives from ORISE performed confirmatory surveys. The staff consulted with the State of New York regarding environmental impacts of the proposed action, and the State did not provide any comments.

Finding of No Significant Impact

NRC has determined not to prepare an environmental impact statement for the proposed action. Based on the foregoing environmental assessment, NRC has concluded that the issuance of an Order will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The licensee's request to terminate the SNPC license presented in letters dated June 27, 1991 (SNRC–1818), and August 4, 1994 (LSNRC–2178); (2) the Commission's Order approving decommissioning dated June 11, 1992; (3) the licensee's Termination Survey Final Report, Phase 1 (LSNRC–2101), dated September 30, 1993; the licensee's Termination Survey Final Report, Phase 2 (LSNRC–2144), dated February 4, 1994; the licensee's Termination Survey Final Report, Phase 3 (LSNRC–2173), dated June 14, 1994; the licensee's Termination Survey Final Report, Phase 4 (LSNRC–2184), dated October 12, 1994; and (4) the ORISE Final Confirmatory Reports dated July 1993, September 1994, and February 1995. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Shoreham Wading River Public Library, Route 25A, Shoreham, NY 11786. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Waste Management.

Dated at Rockville, Maryland, this 3rd day of April, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–8705 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

Decommissioning of the Depleted Uranium Impact Area of the Jefferson Proving Ground, Madison, IN; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), conduct a scoping process for the EIS, and conduct a scoping meeting.

SUMMARY: The NRC intends to prepare an Environmental Impact Statement for the decommissioning of the depleted uranium (DU) impact area (the Delta Impact Area) of the Jefferson Proving Ground (JPG), Madison, Indiana. The DU impact area was used by the U.S. Army, during the period of 1983–1994, to perform testing of DU projectiles and munitions in accordance with NRC License No. SUB–1435. The U.S. Army has requested an exemption (under 10 CFR 40.14) from NRC requirements in 10 CFR 40.4 to allow termination of the license with land use restrictions on the Delta Impact Area. This notice is to inform the public and any concerned parties of NRC's intent to prepare an EIS in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

DATES: Written comments on matters covered by this notice received by June 9, 1995 will be considered in developing the scope of the EIS Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date. A public scoping meeting will be held at the Madison Junior High School cafetorium located on 701 Eighth Street, Madison, Indiana. The scoping meeting will be held on April 26, 1995, from 7 to 10 p.m.

ADDRESSES: Written comments on the matters covered by this notice or the scoping meeting should be sent to: Rules Review and Directives Branch,

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U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held on April 26, 1995, at 7 p.m., in the cafetorium of the Madison Junior High School, 701 Eighth Street, Madison, Indiana, 47250.

FOR FURTHER INFORMATION CONTACT:

Boby Eid, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: (301) 415–5811.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility under the Atomic Energy Act of 1954, as amended, for protection of public health and safety and the environment related to the use of source, byproduct, and special nuclear material. Part of this responsibility is to ensure safe and timely decommissioning of the nuclear facilities which NRC licenses. This responsibility includes providing guidance to licensees on how to plan for and prepare their sites for decommissioning.

Decommissioning, as defined in the NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated and the property can be released in accordance with NRC requirements. Radioactive materials in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation need to be reduced to acceptably low levels that allow the property to be released. Licensees must then demonstrate by a site radiological survey that residual radioactive material in all facilities and environmental media has been properly reduced or eliminated and that, except for any residual radioactive material found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

Need for Proposed Action

The Jefferson Proving Ground (JPG) is currently listed in the NRC's Site Decommissioning Management Plan (SDMP) because it contains a relatively extensive amount of soil contaminated with DU. In addition, the residual DU contamination could potentially cause contamination of groundwater and surface water onsite. The JPG site covers 55,264 acres that were used to evaluate and test ammunition and components from 1941 to 1994. An extensive portion of the site contains unexploded ordnance (UXO) from testing. A portion of the site was used, from 1983 to 1994, for testing of depleted uranium (DU) penetrators and DU munitions in accordance with the NRC license granted to the U.S. Department of the Army, Jefferson Proving Ground, on December 16, 1983. The Army received, stored, and fired DU munitions at the site. Approximately 100,000 kg of DU penetrators were fired from three positions designated J, 500 center, and K5. The majority of DU penetrators (89,000 kg) were fired from the 500 center position.

The DU impact area (Delta Impact Area) is the area where DU penetrators, or their fragments, eventually stopped after being fired from one of the three positions several miles down range. This area constitutes approximately 3,000 acres located in the south-central portion of JPG. In addition to the penetrators, the area also contains abundant UXOs from testing ordnance that did not contain uranium. The DU penetrators were fired at "soft" targets (e.g., cloth) and eventually came to rest on top of or in the soil. Some of the penetrators are embedded in trees or were deposited in streams on the site. Many of the penetrators remained intact and appear as straight or bent metal rods. Some fraction of the penetrators probably fragmented upon impact into rocks, soil, and trees. The Army was able to recover around 30,000 kg of the fired DU. DU penetrators (un-fired and recovered) were stored in buildings and facilities at the site located south of JPG firing line.

The Army is currently the owner of the JPG site. However, in accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100–526), the Army is required to close JPG no later than September 30, 1995.

As part of the mandatory closure of JPG, the Army informed the NRC, in a letter dated February 16, 1995, of its intent to terminate that portion of the license for all areas located south of JPG firing line in a manner consistent with the unrestricted reuse criteria in accordance with 10 CFR 40.42. The Army has performed remediation and decontamination activities in buildings and facilities south of the firing line and has recently submitted a final radiological survey report, which is currently under review by NRC staff. NRC intends to conduct a confirmatory survey of that portion of the site prior to removing it from the license and releasing it for unrestricted use.

The Army also requested an exemption (under 10 CFR 40.14) from the requirements to allow termination of the license and release of the DU impact area with restrictions on future land use. This request was based upon a potential high risk due to the presence of high concentrations of UXOs in the DU impact area, the risks associated with accidental detonation of the UXOs in any remediation activity to recover the DU penetrators, the high cost of remediation, and the potential for environmental damage. The Army and the U.S. Fish and Wildlife Service (USFWS) are currently discussing potential inclusion of approximately 47,000 acres of JPG site into the National Wildlife Refuge System, which would encompass the Delta Impact Area containing the DU penetrators. The Army has indicated its belief that the restricted termination of the Delta Impact Area would be compatible with the future use of the land as a wildlife refuge.

The Army has performed environmental monitoring of soil, surface water, and groundwater in and around the Delta Impact Area. Environmental samples were collected semi-annually or quarterly from such environmental media. More recently, the Army conducted a scoping survey of the Delta Impact Area. The Army removed DU penetrators that could be safely detected and collected during the scoping survey. Detailed characterization (e.g., sampling and radiological analysis) of subsurface soil of the DU Impact Area was not conducted due to a possible risk from the UXOs.

The NRC has determined that approval of the Army's request would constitute a major federal action and, therefore, warrants preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. The Army's request for an exemption without any further remediation or cleanup, may involve radiological and non-radiological risks to humans and the environment resulting from direct exposure to DU material on site or from subsequent migration of DU via groundwater or surface water. In addition, this action may constitute an irretrievable commitment of land resources dedicated for specific use due to the presence of DU contamination onsite.

An estimated 70,000 kg of DU is currently present in the impact area. The DU exists in and on the soil as uranium metal or as contaminated soil. The DU may also be leaching to some extent from the penetrators and migrating into soil around the penetrators. The concentration of DU in the soil is expected to exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's SDMP Action Plan (57 FR 13389; April 16, 1992). As described in the 1992 Action Plan, the criteria are applied on a site-specific basis with emphasis on attaining residual contamination levels that are as low as is reasonably achievable (ALARA). Further, potential contamination of surface water and groundwater cannot be excluded at this stage. In order for the NRC to approve termination of the license with land use restrictions or other institutional controls, the NRC must ensure that the public and environment will be suitably protected both now and in the future.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with the decommissioning of JPG that are regulated by other agencies (e.g., the Indiana State Department of Environmental Management, the U.S. Environmental Protection Agency (EPA)). EPA and the State of Indiana are involved, for example, in overseeing the investigation and potential remediation of hazardous and non-radiological contamination on site. The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of JPG, but should also be useful to other agencies and stakeholders involved or affected by NRC decommissioning decisions.

Description of Proposed Action

The proposed action would involve termination of the license and releasing the Delta Impact Area with land use restrictions, without performing any additional remediation of contaminated media. The impact area would be used, at least for the foreseeable future, as a wildlife refuge. Appropriate institutional controls would be imposed to ensure the durability of the land use restrictions. These may involve a variety of measures, such as environmental monitoring, fencing, patrolling, and posting the area.

Preparation of an Environmental Impact Statement

Under the NEPA, Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decisionmaking processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and the costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action will be analyzed. The planned scope of the EIS includes consideration of radiological and non-radiological (e.g., UXOs) impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences of the proposed action and alternatives. The document will inform the Agency's decisionmakers in reviewing the licensee's remediation proposal and request for an exemption for the restricted release of the DU impact area at JPG.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared in connection with a proposed action, NRC will publish a notice of intent in the **Fedeal Register** stating that an EIS will be prepared and will conduct an appropriate scoping process. In addition, this scoping process may include a public scoping meeting. NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice describes the proposed action and also, to the extent that sufficient information is available, the possible alternatives. The notice of intent should also describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with 10 CFR 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral or written comments on the proposed action and possible alternatives at the public scoping meeting at the Madison Junior High School cafetorium, 701 Eighth Street, Madison, IN, on April 26, 1995, from 7 p.m. to 10 p.m.; and

(2) The Commission will also accept written comments on the proposed action and alternatives. Written comments should be submitted by June 9, 1996, and should be sent to: Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) Define the Proposed Action To Be the Subject of the EIS

The proposed action and alternatives are: (1) Restricted release without remediation, (2) Partial DU remediation, (3) Complete DU remediation, and (4) No Action. NRC will consider the designated "No Action" alternative for comparison with the other alternatives.

(b) Determine the Scope of the EIS and the Significant Issues To Be Analyzed in Depth

The NRC is proposing to analyze the costs and impacts associated with the proposed action and the proposed alternative decommissioning approaches. The following outline of the EIS reflects the current NRC staff views on the scope and major topics to be dealt with in the EIS:

Proposed Outline: Environmental Impact Statement:

Abstract
Executive Summary
Table of Contents

1. Introduction

1.1 Background
1.2 Purpose and Need for Proposed Action
1.3 Description of Proposed Action
1.4 Approaches in Preparation of the Draft EIS

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1.5 Structure of the Draft EIS

2. Alternatives including the Proposed Action

2.1 Factors Considered in Evaluating Alternatives
2.2 Alternatives
2.3 Regulatory Compliance

3. Affected Environment

3.1 Introduction
3.2 Description of the JPG DU Impact Area
3.3 Land Use
3.4 Geology/Seismicity
3.5 Meteorology and Hydrology
3.6 Ecology
3.7 Socioeconomic Characteristics
3.8 Radiation
3.9 UXOs
3.10 Cultural Resources
3.11 Other Environmental Features

4. Decommissioning Alternatives Analyzed and Method of Approach for the Analysis

4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
4.2 Alternatives Considered—Each of the alternatives represents an alternative decommissioning approach.

(a) Alternative 1, Restricted Release without DU Remediation [Licensee's Proposed Action]. The Delta Impact Area would be released with land use restrictions compatible with the use of the area as a wildlife refuge. The depleted uranium contamination would be allowed to remain on site in the Delta Impact Area in excess of NRC's radiological criteria for decommissioning (e.g., 35 picoCuries DU per gram of soil). Additional remediation of the DU contamination would not be required. Appropriate institutional controls would be imposed to ensure the durability of the land use restrictions. These may involve a variety of measures, such as environmental monitoring, fencing, patrolling, and posting the area.

(b) Alternative 2, Partial DU Remediation. The top one foot of the soil in the Delta Impact Area would be remediated to remove DU contamination in excess of NRC's radiological criteria for decommissioning. Any radioactive waste generated in the remediation would be disposed of at a licensed disposal facility for low-level radioactive waste. Institutional controls would be imposed to restrict access to the Delta Impact Area; these controls would be compatible with the future intended use of the area as a wildlife refuge, as described in proposed action (i);

(c) Alternative 3, Complete DU Remediation: The soil and other environmental media (e.g., vegetation, surface water) in the Delta Impact Area would be remediated to remove DU contamination in excess of NRC's radiological criteria for decommissioning. Any radioactive waste generated in the remediation would be disposed of at a licensed disposal facility for low-level radioactive waste. Institutional controls would not be necessary to prevent unacceptable radiological risks to the public because the DU contamination would be suitably reduced in accordance with NRC requirements in the Delta Impact Area. However, some controls may still be necessary to protect against the hazards associated with the UXOs;

(d) Alternative 4, No Action. The DU contamination would be allowed to remain onsite in its present configuration without additional remediation or land use restrictions. This alternative is being included for the purpose of comparison between the benefits and impacts associated with the other alternatives.

4.3 Methods of Analysis of Alternatives
(a) Define a range of alternatives;
(b) Evaluate the alternatives with respect to:
(1) The incremental impact to workers, members of the public, and the environment, both radiological and non-radiological, resulting from each alternative, and
(2) The costs associated with each regulatory alternative.
(c) Perform a comparative evaluation of the alternatives based on the impacts and costs of each alternative from 4.3(b).

5. Environmental Consequences, Monitoring, and Mitigation

5.1 Remediation Consequences
5.2 Monitoring Programs
5.3 Mitigation Measures
5.4 Unavoidable Adverse Environmental Impacts
5.5 Relationship between Short-Term Uses of the Environment and Long-Term Productivity
5.6 Irreversible and Irretrievable Commitments of Resources

6. Costs and Benefits Associated with Decommissioning Alternatives

6.1 General
6.2 Quantifiable Socioeconomic Impacts
6.3 The Benefit-Cost Summary
6.4 Staff Assessment

7. List of Preparers

8. List of Agencies, Organizations, and Persons Receiving Copies of the Draft EIS

9. References

Appendix A—Reserved for Comments on DEIS
Appendix B—Results of Scoping Process

(c) Identify and Eliminate From Detailed Study Issues which Are Not Significant or Peripheral, or Those Which Have Been Covered by Prior Environmental Review

The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this EIS because they have previously analyzed in a Generic Environmental Impact Statement (GEIS) (NUREG–0586) and included in an earlier rulemaking (53 FR 24018; June 28, 1988):

(i) Planning necessary to conduct decommissioning operations in a safe manner;

(ii) Assurance that sufficient funds are available to pay for decommissioning;

(iii) The time period in which decommissioning should be completed; and

(iv) Whether facilities should not be left abandoned, but instead be remediated to appropriate levels.

In addition, requirements were recently established in a separate rulemaking regarding timeliness of decommissioning for licensed facilities regulated under 10 CFR Parts 30, 40, and 70 (59 FR 36026; July 15, 1994). NRC also recently proposed establishing radiological criteria for decommissioning, which are supported by a draft GEIS (NUREG–1496, 59 FR 43200, August 22, 1994).

(d) Identify any Environmental Assessments of EISs Which Are Being or Will Be Prepared That Are Related but Are Not Part of the Scope of This EIS

An Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (59 FR 36026; July 15, 1994). NRC is presently developing a GEIS (NUREG–1496) to support the rulemaking which will establish generic radiological criteria for decommissioning (59 FR 43200; August 22, 1994). In addition, NRC is presently developing EISs for decommissioning sites owned by the Shieldalloy Metallurigical Corporation in Cambridge, OH, and Newfield, NJ; and Babcock and Wilcox Shallow Land Disposal Area, Parks Township, PA.

The Army has prepared a Final Environmental Impact Statement on the transfer of JPG's mission to Yuma Proving Ground, near Yuma, AZ (Closure of Jefferson Proving Ground, Indiana and Realignment to Yuma Proving Ground, Arizona—Environment Impact Statement (September, 1991)). In addition, the Army also prepared a Draft EIS for Disposal and Reuse of JPG, which was recently announced in the **Federal Register** and is currently under public review (60 FR 15542; March 24, 1995).

(e) Identify Other Environmental Review or Consultation Requirements Related to the Proposed Action

NRC will consult with other Federal, state, and local agencies that have jurisdiction over the decommissioning of the JPG. For example, NRC has already been coordinating its reviews of decommissioning actions with EPA, the State of Indiana, the U.S. Fish and Wildlife Service, and other governmental agencies. NRC anticipates continued consultation with other agencies, as appropriate, during the development of the EIS.

(f) Indicate the Relationship Between the Timing of the Preparation of Environmental Analysis and the Commission's Tentative Planning and Decision Making Schedule

NRC intends to prepare and issue for public comment a draft EIS in early 1996. The comment period would be for 90 days. The final EIS is scheduled for publication in the late 1996. This schedule may be impacted by the availability and adequacy of information about the site. Subsequent to completion of the final EIS, the NRC would review and act on a license amendment from the licensee requesting authorization for decommissioning the site. This could include review of the decommissioning plan as required in 10 CFR 40.42(c)(2), depending upon the outcome of the EIS.

(g) Describe the Means by Which the EIS Will Be Prepared

NRC will prepare the draft EIS according to the requirements in 10 CFR Part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as any benefits of the proposed action, including the environmental, economic, technical, and other benefits.

The EIS will be prepared by the NRC staff. NRC may rely, to some extent, on the other NEPA documents prepared by the Army in support of the transfer of the JPG mission and the intended reuse of JPG after closure. NRC may also seek some technical assistance from one or more contractors (e.g., a national laboratory), if there is a need for such support. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS (e.g., available environmental monitoring data, risk assessment for the DU contamination, and UXO risks and costs for remediation). Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process as well as place this information in the NRC's Public Document Room.

Dated at Rockville, Maryland, this 3rd day of April 1995.

For the U.S. Nuclear Regulatory Commission,

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–8704 Filed 4–7–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35558; File No. SR–CBOE–94–40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Three Business Day Settlement of Securities Transactions

March 31, 1995.

On November 7, 1994, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will amend CBOE's rules to provide for three business day settlement of securities transactions. The Commission published notice of the proposed rule change in the **Federal Register** on December 29, 1994 to solicit comment from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

On June 7, 1995, the standard settlement time frame for most securities transactions will be shortened from five business days after the trade date ("T+5") to three business days after the trade date ("T+3").[3] The proposal amends certain provisions of CBOE's rules consistent with a T+3 settlement cycle. These amendments will become effective on the same date as Rule 15c6–1.[4]

The proposed rule change will amend Chapter XXX (Stocks, Warrants and Other Securities) and Chapter XXXI (Approval of Securities for Original Listing) to reflect a three business day settlement cycle. The settlement time frame for regular way transactions for stocks and warrants contained in Rules 30.12 (a)(3), 30.31(a), and 31.40 will be amended to refer to the three business day settlement standard. Rules 30.12(a)(4) and 30.31(a)(iii) will be amended to provide that seller's option trades may not settle in less than four business days. Rule 30.31(b), concerning bids and offers in rights to subscribe, will be amended to eliminate the reference to the fourth and fifth business day preceding the final day for subscription. Rule 30.34(b) and (c) will be amended to change references to the five final business days for trading in warrants and the fifth business day preceding the expiration of a class of warrants to the three final business days and the third business day. Rule 12.3(b)(1)(C)(1)(iv), concerning the margin requirements for a call option contract, also will be amended to refer to the third business day prior the date on which a right to exchange or convert expires.

Rules 30.32(a), 31.22(f), and 31.42 contain provisions setting forth ex-rights or ex-dividend dates (*i.e.*, the dates when stocks trade without rights or dividends). All references to transactions in stocks being ex-dividend or ex-rights on the fourth business day preceding the record date will be changed to the second business day preceding the record date. For transactions when the record date occurs on a day other than a business day, the stock will be traded ex-divided on ex-rights on the third preceding business day rather than on the fifth preceding business day.

Four rules dealing with customer margin requirements also will be amended. Consistent with Regulation T,[5] Rules 21.25(a), 23.13(a), 24.11(a),

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35137 (December 22, 1994), 59 FR 67355.

[3] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes T+3 instead of T+5 as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891. The rule becomes effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[4] The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[5] 12 CFR 200.1–200.19 (1994), *as amended*, 59 FR 53565 (October 25, 1994).

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and 30.51(a) currently require that initial margin deposits be made within seven full business days after the date on which a transaction giving rise to a margin requirement is effected. Rule 21.25(a) also requires that all long options must be paid in full within seven business days after the purchase date. Rule 21.25(e) provides that no margin is required in respect of government security options carried in a short position if the customer provides a custodial or Treasury security escrow receipt or letter of guarantee within seven business days. Regulation T was recently amended to revise the time limit within which a customer margin call must be satisfied to "the number of business days in the standard settlement cycle in the United States * * * plus two business days."[6] Accordingly, all the time frames discussed above will be shortened to five business days.

II. Discussion

The Commission believes the proposed rule change is consistent with Section 6 of the Act and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5)[7] of the Act which requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the rules of CBOE and other self-regulatory organizations control the time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6–1. As a result, CBOE's current rules establishing a T+5 settlement cycle will be inconsistent with Commission rules. This proposal will amend CBOE's rules to harmonize them with a T+3 settlement cycle.

The Commission believes that the benefits of a three day settlement cycle, as outlined in the release adopting Rule 15c6–1, apply equally to CBOE's proposed rule change.[8] With a T+3 settlement cycle, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[9] By reducing risk to the system, the proposed rule change furthers protection of investors and the public interest. CBOE's rules will assist the transition to a T+3 cycle by providing guidelines for related matters such as ex-dates. Thus, the proposed rule change is consistent with fostering cooperation and coordination with persons engaged in regulating, clearing, and settling transactions in securities and of perfecting the mechanism of a free and open market.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CBOE–94–40) be and hereby is approved, effective June 7, 1995.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8665 Filed 4–7–95; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Federal Reserve System Release, Docket No. R–0840 (October 18, 1994), 59 FR 53565.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] *See supra* note 7.

[9] The adopting release stated, "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures, resulting in risk to the national clearance and settlement system." *Id.*

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35551; File No. SR–PSE–95–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Its Rules on Short Interest Reporting

March 30, 1995.

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make a technical amendment to its rules on short interest reporting to allow members and member organizations for which the Exchange is the designated examining authority ("DEA") to report their "short" positions to self-regulatory organizations other than the Exchange. The text of the proposed rule change is as follows, wherein additions are *italicized*:

Rule 2.6(f)—No change.

Commentary

.01 No Change.

.02 *Members and member organizations for which the Exchange is the DEA need not report "short" positions to the Exchange as provided in Commentary .01 if such member or member organization has made arrangements, satisfactory to the Exchange, to report such positions to another self-regulatory organization.*

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 27, 1995, the Commission approved a rule change proposal of the Exchange that requires members and member organizations for which the Exchange is the DEA to report certain "short" positions to the Exchange.[3] The Exchange is proposing an amendment to that rule change to allow such members and member organizations to report their "short" positions to self-regulatory organizations other than the Exchange.

Specifically, the Exchange is proposing to add a new Commentary .02 to Rule 2.6(f) to provide that members and member organizations for which the Exchange is the DEA need not report short positions to the Exchange as provided in Rule 2.6(f), Commentary .01, if such member or member organization has made arrangements, satisfactory to the Exchange, to report such positions to another self-regulatory organization.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–08 and should be submitted by May 1, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to adopt an interpretation to its short interest position reporting rules permitting a member to report such positions to another self-regulatory organization, pursuant to an arrangement satisfactory to the Exchange, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.[4] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Further, the Commission notes that the Exchange has represented that, as the Designated Examining Authority ("DEA"), the Exchange will review compliance with its short interest rules during each oversight examination. Such examinations are conducted on a regular basis pursuant to the Exchange's status as DEA. Finally, the Exchange's financial compliance office will modify its examination module to ensure that the examiner checks for compliance with the short interest reporting rules.[5]

The Commission believes that the PSE proposal to adopt Commentary .02 as outlined above furthers the objectives of Section 6(b)(5) of the Act in that it should facilitate the efficient reporting of short interest positions without imposing an undue burden upon broker-dealers.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the PSE to ensure compliance with the short position reporting rules implemented as of March 1, 1995. Further, the new short position reporting procedure was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[6]

It is therefore ordered, pursuant to Section 19(b)(2)[7] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 95–8666 Filed 4–7–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995).

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] Conversation between David Semak & Michael Pierson, PSE, and Amy Bilbija, Commission, on March 24, 1995. The Exchange also indicated that, currently, there is only one member firm that will fall under the purview of the proposed amendment. The Exchange anticipates that only in rare occasions other members will need to make the arrangements provided for in the proposed rule change.

[6] *See* Securities Exchange Act Release No. 35146 (December 23, 1994), 60 FR 518 (January 4, 1995).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35553; File No. SR–Amex–94–57]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 31, 1995.

On December 23, 1994, the American Stock Exchange, Inc. ("Amex") filed a proposed rule change (File No. SR–Amex–94–57) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 12, 1995, to solicit comments from interested persons.[2] The Commission received one written comment.[3] As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[4] The rule establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. Several of the Amex's rules are interrelated with the T+5 settlement time frame. The purpose of the proposed rule change is to amend Amex's rules consistent with a T+3

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35197 (January 6, 1995), 60 FR 3007.

[3] Letter from F. Howard Edelstein, President Electronic Settlements Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

[4] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing the effective date from June 1, 1995, to June 7, 1995).

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settlement standard for securities transactions.

Rule 124(c) specifies the delivery date for regular way transactions which will be shortened to T+3. The references to a seller's option delivery to be made not less than six business days after the trade date contained in Rules 124(d) and 205C(2) will be changed to not less than four business days.

Rules 17(b) and 179(a) will require that all transactions and orders entered on a specialist's book in an issue of rights shall be made "next day" during the three business days preceding the final day for dealings in an issue of rights. Rules 17(c) and 179(b) will require all transactions and orders entered on a specialist's book in warrants shall be made for cash during the three final business days for trading in such issue. Rule 179(c) will require an order in an expiring equity securities entered on a specialist's book to be for "next day" delivery during the final three business days preceding the final day for trading.

The proposal will shorten by two days the time frames contained in Rule 423(4) for delivery of agent instructions with respect to receipt versus payment ("RVP") or delivery versus payment ("DVP") customer transactions. The proposal will shorten by two days the time frames contained in Rule 830 for the ex-divident period and the ex-rights period (if the terms of the subscription are known sufficiently in advance) for stock transactions not made in cash. In addition, the proposal eliminates the separate ex-dividend and ex-right periods for transfers outside of New York.

Rule 858 directs settlement in contracts in bonds dealt in "and interest." The proposal will amend Rule 858 to provide that with respect to seller's option contracts, there shall be added to the contract price interest on the principle amount at the rate specified in the bond, which shall be computed up to but not including the day when delivery would have been due if the contract had been made "regular way."

Rule 862 will require that the return of loans of securities must be made on the third business day following the day on which notice is given. Rule 866 will require a loan of securities to be deliverable on the third business day following the day of the loan unless otherwise agreed to by the parties. Rule 882 will require that a seller deliver to the buyer a due-bill for dividends or rights to subscribe within three days after the record date if a security is sold before it is ex-dividend or ex-rights and delivery is made after the record date. The references in Rule 882 to the equivalent New York record date will be eliminated.

Amex has requested that the proposed rule change become effective on the same date as Rule 15c6–1.[5] Rule 15c6–1 is scheduled to become effective on June 7, 1995. The transition from T+5 settlement to T+3 settlement will occur over a four day period.[6]

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.[7] Thomson believes that the Amex should amend Rule 423(5) which requires the use of the facilities of a securities depository for confirmation and acknowledgement of all depository-eligible transactions.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[8] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. Amex's rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6–1. As a result, the Amex's current rules providing for a T+5 settlement cycle will be inconsistent with Commission rules. This proposal will amend the Amex's rules to harmonize them with a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[9]

While the Thomson letter supports the Amex's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the Amex should amend Rule 423(5), which requires the use of the facilities of a securities depository for the confirmation and acknowledgement of all DVP and RVP depository-eligible transactions. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, DTC, and the Securities Industry Association. The Commission will continue to work with the industry to address Thomson's concerns. However, if the proposed rule change is not approved prior to the June 7, 1995, effective date of Rule 15c6–1, the Amex rules will conflict with the Commission Rule 15c6–1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rule 423 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that the anticompetitive effects pointed to by Thomson, if in fact there are any anticompetitive effects, are not caused by the proposed rule change approved by this order but rather by an existing Amex rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that Amex's proposal is consistent with Section 6 of the Act.[10]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR-Amex–94–57) be and hereby is approved, effective June 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8709 Filed 4–7–95; 8:45 am]

BILLING CODE 8010–01–M

[5] Letter from Ivonne Negy, Special Counsel, Amex, to Michele Bianco, Attorney, Office of Securities Processing, Division of Market Regulation, Commission (December 30, 1994).

[6] Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[7] Letter from P. Howard Edelstein, President, Electronic Settlement Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

[8] 15 U.S.C. 78f (1988).

[9] The adopting release stated, "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[10] 15 U.S.C. § 78f (1988).

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on May 17, 1995, from 9 am through 4 pm, at the U.S. Small Business Administration, 7th Floor, 633 17th Street, Denver, Colorado 80202.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street SW., Washington, DC 20416, telephone 202/205–7302.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–8700 Filed 4–7–95; 8:45 am]

BILLING CODE 8025–01–M

Houston District Advisory Council; Public Meeting

The U.S. Small Business Administration Houston District Advisory Council will hold a public meeting on Thursday, April 27, 1995 at 1:30 p.m. in the SBA Conference Room, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074–1591, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Melton Wilson, Jr., District Director, U.S. Small Business Administration, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074–1591, (713) 773–6500.

Dated: April 4, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–8699 Filed 4–7–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Eagle Canyon Airlines, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–4–8) Docket 50073.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Eagle Canyon Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 19, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket 50073 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: April 4, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8698 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–62–P

Office of Commercial Space Transportation

LEO Market Assessment

Notice is hereby given of an assessment of the low earth orbit (LEO) space market that will be undertaken by the Office of Commercial Space Transportation (OCST) of the Department of Transportation (DOT). This assessment will be an update to a prior study of the LEO market that OCST conducted in February 1994, which was completed on the basis of information collected at a public meeting on February 10, 1994, and through private submittals. As with the former study, DOT is undertaking the assessment in support of its participation in various interagency working groups on space transportation and the efforts by the Office of the United States Trade Representative (USTR) to negotiate and/or monitor compliance with commercial space launch trade agreements between the U.S. and various economies-in-transition (EITs) offering commercial space launch services.

In order to complete the current assessment, DOT is again seeking data from interested parties that would assist in defining LEO launch requirements and in projecting future space transportation needs to support market demands. Specifically, OCST is interested in obtaining projections of the number of LEO payloads that will be launched between the years 1995–2010, as well as assessments of the types of services that may result from LEO satellites and their applications (e.g., remote sensing, mobile communications). OCST is also interested in obtaining short and long-range projections of the potential revenues that may be generated by these space-based systems. For purposes of this study, LEO can be considered to include Medium Earth Orbit (MEO) requirements as well (e.g., proposed communications satellite constellations in MEO).

At the present time, DOT does not plan to hold a public meeting to discuss new developments in the LEO market. Rather, the process for collecting information shall rely on written submissions, which can be provided to DOT by any interested party. Submissions designated as proprietary will be treated confidentially. Due to the immediate need for this data to support the various DOT and interagency efforts, written submissions should be provided as quickly as possible, and no later than noon on April 24, 1995, to the Office of Commercial Space Transportation, Room 5415, 400 Seventh Street, SW., Washington, DC 20590 or by fax to (202) 366–72cc. Additional information may be obtained by contacting Ms. Patti Grace Smith at (202) 366–8960 or Richard W. Scott, Jr. at (202) 366–2936.

Dated: April 5, 1995.

Patti Grace Smith,

Associate Managing Director, Office of Commercial Space Transportation.

[FR Doc. 95–8837 Filed 4–6–95; 11:35 am]

BILLING CODE 4910–62–P

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Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee Infrastructure Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on April 27–28, 1995 at the headquarters of the Airport Council International located at 1775 K Street NW, Suite 500, Washington DC 20006. The meeting will begin at 9:00 a.m. on the 27th and conclude by 1:00 p.m. on the 28th.

The agenda for the Infrastructure Subcommittee meeting will include the following:

(1) Briefings on assumptions and results of the CTRDAC economic analysis.

(2) Review and discussion of the Subcommittee draft executive summary.

(3) Review the Infrastructure Subcommittee work plans, schedule and assumptions.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least three days prior to the meeting. Issued in Washington, D.C., April 3, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–8766 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee Economics Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Economics Subcommittee that will be held on April 17, 1995 in Cambridge, MA, at the Volpe National Transportation Systems Center (VNTSC), 55 Broadway, Kendall Square, in the Executive Conference Center, 12th Floor.

The meeting will begin at 9:30 a.m. and conclude by 3:00 p.m.

The Agenda for the third Economics Subcommittee meeting will include the following:

(1) Review and discussion on the draft executive summary of the economics report.

(2) Review of assumptions.

(3) Review of schedule and work plans.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451 by April 13. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least three days prior to the meeting. Issued in Washington, DC., April 4, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–8768 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on April 28, 1995, at 9:00 a.m. Arrange for oral presentations by April 20, 1995.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on April 28, 1995, at the General Aviation Manufactures Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Working Group Reports

Delegation System—A special presentation on Delegation Options
ELT
Parts
Production Certification
ICPTF

- Review of Action Items
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 20, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 3, 1995.

Daniel P. Salvano,

Assistant Executive Director for ARAC Aircraft Certification Procedures.

[FR Doc. 95–8769 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Protection Standard; Volkswagen of America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Volkswagen of America, Inc. (VW) for an exemption from the parts-marking requirements of the vehicle theft protection standard for a high-theft car line whose nameplate and effective model year is confidential. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard

equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On December 13, 1994, the National Highway Traffic Safety Administration (NHTSA) received a petition dated December 7, 1994, from Volkswagen of America, Inc. (VW) requesting an exemption from the theft protection standard for a car line for the (confidential) model year. The nameplate of the car line is confidential. The petition was submitted pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Protection Standard*, and requested an exemption from parts marking based on the installation of a theft deterrent device as standard equipment for the car line. The petition filed by VW is complete, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated January 12, 1995, NHTSA granted the petitioner's request for confidential treatment of certain information, including the identity of the nameplate of the car line.

In its petition, VW provided a detailed description of the identity, design and location of the components of the antitheft device for the car line, including diagrams of the components and their location in the vehicle. VW stated that the system incorporates an alarm system that is comparable to other alarm systems for which NHTSA has granted exemptions. The system protects the hood, the trunk lid and all doors of the vehicle, and the radio. In addition, it includes an engine starter interrupt feature. VW stated that its antitheft system is similar to the one used as standard equipment on Toyota, Lexus, Nissan and Mazda car lines.

The device is designed to facilitate or encourage its activation by motorists. The antitheft device control unit is activated by turning the key in either of the front door locks to the lock position and holding the key in the lock position for at least one-half second.

The activated condition is indicated by a short "beep" signal from the alarm system horn. The device will be armed 0.2 seconds after activation if the hood, the vehicle doors and the trunk are properly closed. If a door, hood, or the trunk is left open when the door key is turned to the lock position, the starter interrupt feature is activated, but the alarm system will only be armed, and the short "beep" on the alarm horn will only sound, when the door, hood or trunk that had been left open is closed. If an opened door, hood or trunk is not closed within one minute after the key is turned in either of the front door locks, the system will arm to protect all of the closed areas; and if the open area is subsequently closed, it will be protected as well.

This line is equipped with a power door locking system. All the doors and the trunk lock will be locked automatically when the key is turned to the lock position in either front door. Once the vehicle antitheft system has been activated, entry into the vehicle is accomplished by turning the key in either front door lock to the spring-loaded open position once and releasing it. This will deactivate the alarm system and will unlock only the door being operated. Turning the key in either front door lock to the open position a second time within four seconds of the first turn will deactivate the alarm system and will unlock all the doors and the trunk. When the trunk "unlocks" the lid does not open until the lock cylinder is pressed.

If any violation of protected areas occurs once the system has been activated, the alarm horn (mounted in the front hood area) will sound and the hazard warning flashers will actuate. Also, the starter interrupt feature will prevent the vehicle from starting.

The sounding of the horn and the actuation of the hazard warning flashers continues for a duration of 165 seconds. A subsequent attempt will reactivate the system for another 165 seconds. The antitheft device sensors are located in the trunk key cylinder. Once the key has been inserted the antitheft device is deactivated. However, closing the trunk lid reactivates the system.

The control module for the antitheft system is located in the instrument panel assembly and is accessible only from inside the vehicle after removal of the instrument panel components. The alarm system horn is located in the plenum area under the hood and is difficult to reach unless the plenum cover is removed. The vehicle hood latch may be released only from inside the vehicle. The door, trunk and engine hood contact switches are all inaccessible unless the door panels are removed or the hood or the trunk are opened.

The power circuit to the starter motor is interrupted when the alarm system is armed. If the antitheft device is activated from any of the protected areas or if the ignition switch is turned on in an unauthorized effort to start the vehicle, the system will prevent the engine from being started.

The doors are protected through the interior light door contact switch. Should an attempt be made to enter the vehicle through one of the doors, the antitheft device is activated. The engine hood and trunk lid are protected through sensors located in the contact switch. Should these components be violated, the alarm will be activated. For VW-installed radios, the alarm is activated if an attempt is made to separate the radio from the instrument panel while the alarm is activated.

The starter interrupt is also activated when one of the protected areas is breached. Should a thief attempt to start the vehicle by any means other than a key, the engine will be immobilized.

VW addressed the reliability and durability of the antitheft system by providing information on the tests that were conducted on the device. The system has been tested prior to production release for specifications which require compliance with VW standards for electrical and electronic assembly operating requirements, for durability, thermal and mechanical shock resistance and electromagnetic capability. The applicable test procedures are: VW 801 01—Electrical and Electronic Assemblies in Motor Vehicles, Standardized General Test Conditions; VW 820 66—Electromagnetic Compatibility of Electronic Components; and VW 821 66—Electromagnetic Compatibility of Electronic Components in Vehicles, Externally Radiated Interferences.

In discussing why it believes that the antitheft device will be effective in reducing and deterring motor vehicle theft, VW noted that its antitheft device is comparable to that used on the Mazda RX–7, Mitsubishi Galant, Nissan 300ZX, and Toyota Cressida and Supra. It stated that all of these lines have experienced reduced theft rates since installing the system, and provided an analysis of the theft rates for these vehicles based on theft data published by NHTSA. That analysis showed that the Mazda RX–7 experienced a 74 per cent decrease in its theft rate from 1984 to 1989 and the Mitsubishi Galant experienced a 50 per cent decrease for the same period. It also showed a 53 per cent decrease for the Nissan 300ZX from 1983 to 1989, and a 10 per cent decrease for the Toyota Cressida and a 74 per cent decrease for the Toyota Supra for that time period.

The agency's review of the theft data for these vehicle lines shows results consistent with VW's analysis. The car

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lines listed above have experienced an overall 63 per cent decline in theft rate from MY 1987 to MY 1992.

NHTSA believes that there is substantial evidence that the antitheft device that will be installed on the car line that is the subject of this notice will likely be as effective in reducing motor vehicle theft as compliance with the theft prevention standard (49 CFR part 541). The VW system will provide all of the five types of performance listed in Section 543.6(a)(3): promoting activation; attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. section 33106(c)(2) and 49 CFR 543.6(a)(4), the agency also finds that Volkswagen has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information VW provided about its device. This information included a description of reliability and functional tests conducted by VW for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the car line that is the subject of this notice in whole from the requirements of 49 CFR part 541.

If VW decides not to use the exemption for this car line, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements of 49 CFR 541.5 and 541.6 (marking of major components and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device upon which that lines exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "[t]o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: April 4, 1995.

Howard M. Smolkin,

Executive Director.

[FR Doc. 95–8703 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–59–P

Petition for Exemption From the Vehicle Theft Protection Standard; Mercedes-Benz of North America, Inc.

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (NHTSA) DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Mercedes-Benz of North America, Inc. ("Mercedes") for exemption of its MY 1996 202 ("C-Class") car line from the parts marking requirements of the vehicle theft protection standard. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirement.

DATES: The exemption granted by this notice is effective beginning with the 1996 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On November 29, 1994, Mercedes-Benz of North America, Inc. (Mercedes) submitted a petition for exemption from the theft prevention standard for its model year (MY) 1996 202 car line (C-Class) pursuant to 49 CFR Part 543, *Exemption From Vehicle Theft Prevention Standard*, (59 FR 10756). The petition submitted by Mercedes meets the general requirements for a petition contained in 49 CFR 543.5, and the specific content requirements of§ 543.6. Therefore, the petition is complete as required by § 543.7.

In its petition, Mercedes provided a detailed description of the identity, design and location of the components of the antitheft device for the car line, including diagrams of the components and their location in each vehicle. The system consists of a central locking system and an engine starter-interrupt function.

Mercedes states that a microprocessor antitheft system featuring an electronic engine immobilizer will be installed as standard equipment on all cars in the C-Class car line beginning in December 1994. The antitheft system will be phased in during MY 1995. The exemption is requested to begin with MY 1996 since the C-Class line will then have this antitheft system as standard equipment. The planned beginning of production for the MY 1996 C-Class line is mid-September 1995.

Mercedes states that the system is automatically activated either by using the infrared remote control unit or by locking the vehicle with the standard door/ignition key at either of the front door locks or at the trunk lock. The system is deactivated by the remote control or through the normal vehicle unlocking procedure, when the standard door/ignition key is turned in either of the front door locks or the trunk lock. An LED lamp on the radio flashes to call attention to the antitheft system and radio code functions.

The antitheft system of the C-Class line for which Mercedes seeks this exemption does not include a visual or an audible alarm feature as standard equipment. An enhanced antitheft system with an additional audible/visual alarm is available as an option. Mercedes stated that approximately 51 percent of MY 1994 C-Class car line customers ordered the enhanced version of the antitheft system. Mercedes also pointed out that NHTSA recently granted full exemptions to two General Motors car lines (based on theft rates) which had installed as standard equipment the "PASS-KEY" system which also does not have a visual or audible alarm function.

All the components of the new system (immobilizer, battery, wiring, wiring connections and switches) are located in areas inaccessible from underneath the engine compartment. Locking the vehicle with the remote control or mechanical key causes the infrared central locking control unit to lock the exterior locks. The infrared remote control unit or the key then provides a coded signal that actuates the immobilizer, which prevents the vehicle from being operated under its own power. The engine ignition and fuel systems are electronically shut down and the steering and shift lever are mechanically locked.

Unlocking the vehicle with the remote control or the mechanical key signals the infrared remote central locking unit to centrally unlock the exterior lock, and provide an enabling code which de-energizes the immobilizer. Deactivation of the immobilizer, without unlocking the vehicle by using the remote or key, is prevented since no electrical connection exists between the mechanical plungers and the key-operated door locks. This means that if a window is broken, lifting the door plunger will unlock the specific door but will not deactivate the immobilizer. The interior central locking/unlocking switch is not connected to the immobilizer, ensuring that the vehicle cannot be inadvertently immobilized, and, at the same time, preventing the immobilizer from being defeated by breaking a window and depressing the interior switch. Removing and then reapplying battery power will not disable the immobilizer.

In addition to the immobilizer the C-Class car line has other features. The large diameter of the car line's lock cylinder helps increase the resistance to screwdrivers or lock-pullers. Standard anti-slim-jim covers placed over the front and rear door locking mechanisms further increase the vehicle's resistance to break-in attempts. Rear door lock/unlock mechanisms are routed to make the rods inaccessible to slim-jim type devices. The hood locking mechanism is shielded and the hood cable is routed so as to make it inaccessible from underneath the vehicle. The battery is located in the trunk compartment, preventing access from the exterior of the vehicle.

The door/ignition key is of a unique, internal cut design which is extremely difficult to duplicate. A copy of the steel key must be ordered directly from an authorized Mercedes dealer by using the vehicle identification number. Mercedes also states that owner verification measures are also in place at dealerships. The C-Class vehicle includes a ratcheting steering wheel lock as standard equipment. Instead of the lock pin breaking completely when forced, such as when the wheel is turned with a breaker bar, the C-Class line's steering wheel lock will yield when the force exceeds a set level; then re-lock itself automatically when the force drops below the set level. The high force level at which the mechanism is designed to yield effectively prevents the vehicle from being steered.

Mercedes stated that the microprocessor control unit and all related system components have been subjected to a series of design and production tests. These tests include reversed polarity tests, over and under voltage tests, short circuit tests, electromagnetic interference tests, temperature and humidity tests, corrosion tests, vibration life cycle tests, and drop impact tests.

The entire system utilizes a microprocessor control unit with built-in self-test features which recognize and exclude sensor failures and allow the system to be easily maintained out in the field.

In discussing why it believes that this antitheft device will be as effective as parts marking in reducing and deterring motor vehicle theft, Mercedes states that the immobilizer for this theft deterrent system for the C-Class line is an improvement of the starter-interlock relay module which was incorporated into the 124 line (E-Class) and the 140 line (S-Class). The agency granted a petition for exemption for the 124 line and the 140 line was designated as a likely low-theft line.

Mercedes reiterated that even though the antitheft system on the C-Class line does not have any audible or visual alarm functions, theft data for exempted General Motors car lines without audible or visual alarm functions indicates that the lack of alarm functions has not prevented the systems from being effective. On January 19, 1995, Mercedes provided two charts indicating the reduction of theft rates of car lines that have installed as standard equipment an antitheft device without an audible or visual alarm function. One chart listed four lines, the Buick Riviera, Cadillac Eldorado, Cadillac DeVille, and Oldsmobile Toronado. Mercedes listed theft lines beginning with the MY 1986 through MY 1990. The antitheft systems were offered as standard equipment on these lines beginning with MY 1990.

Two of the lines, (Buick Riviera and Cadillac DeVille), decreased 33 percent and 54 percent respectively from the 1986 MY. The other two, (Cadillac Eldorado and Oldsmobile Toronado) increased 9 percent and 16 percent respectively. Coincidentally, the Eldorado and Toronado parts were interchangeable. The other chart provided by Mercedes depicted the theft experience of the Chevrolet Camaro and Pontiac Firebird for MYs 1989–1992. Both lines continue to decrease in theft rates, 28 percent decrease for the Camaro and 41 percent decrease for the Firebird.

NHTSA believes that there is substantial evidence that the antitheft device that will be installed on the 1996 Mercedes C-Class car line will likely be as effective in reducing motor vehicle theft as compliance with the theft prevention standard (49 CFR Part 541). The Mercedes system will provide four of the five types of performance listed in Section 543.6(a)(3): Promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. It does not provide a means for attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key. However, the agency believes that Mercedes has provided substantial evidence that a system that lacks a device for attracting attention to unauthorized entry nevertheless can be as effective as parts marking in deterring motor vehicle theft.

As required by 49 U.S.C. section 33106(c)(2) and 49 CFR 543.6(a)(4), the agency also finds that Mercedes has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mercedes provided on its device. This information included a description of reliability and functional tests conducted by Mercedes for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the MY 1996 Mercedes C-Class car line in whole from the requirements of 49 CFR Part 541.

If Mercedes decides not to use the exemption for this car line, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements of 49 CFR 541.5 and 541.6 (marking of major components and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more

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probative data upon which comparisons may be made.

NHTSA notes that if Mercedes wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device upon which that line exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "[t]o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: April 4, 1995.

Howard M. Smolkin,

Executive Director.

[FR Doc. 95–8770 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 68

Monday, April 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 am, Wednesday, April 12, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: A portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

- Introduction of new Officers.

Portion Closed to the Public

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: April 5, 1995.

William H. Timbers, Jr.

President and Chief Executive Officer.

[FR Doc. 95–8836 Filed 4–6–95; 8:45 am]

BILLING CODE 8720–01–M

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From Open Meeting, Wednesday, April 5, 1995

The following item has been deleted from the list of agenda items scheduled for consideration at the April 5, 1995, Open Meeting and previously listed in the Commission's Notice of March 29, 1995.

Item No., Bureau, and Subject

7—Wireless Telecommunications—Title: Amendment of Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553); Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253); and Implementation of Sections 3(n) and 322 of the Communications Act—(GN Docket No. 93–252). Summary: The Commission will consider service, licensing, and auction rules for the licensing of the 900 MHz Specialized Mobile Radio (SMR) service.

Dated: April 5, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8835 Filed 4–6–95; 10:36 am]

BILLING CODE 6712–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: April 12, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 628th Meeting—April 12, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2337–034, PacifiCorp
CAH–2.
Project No. 4797–036, Cogeneration, Inc.
CAH–3.
Project Nos. 6310–014 and 017, Gull Industries, Inc.
CAH–4.
Project Nos. 2570–018, 019 and 020, Ohio Power Company
CAH–5.
Project No. 10729–003, Murphy Hydro Company, Inc.
CAH–6.
Project No. 6879–016, Southeastern Hydro Power, Inc.
CAH–7.
Project No. 553–005 and Docket No. EL78–36–000, City of Seattle, Washington
CAH–8.
Project No. 2506–002, Mead Corporation, Publishing Paper Division

Consent Agenda—Electric

CAE–1.
Docket No. ER95–262–000, Pacific Gas and Electric Company
CAE–2.
Docket No. ER94–1062–001, Montaup Electric Company
Docket No. EL94–68–001, Montaup Electric Company and Newport Electric Corporation
CAE–3.
Docket Nos. ER95–267–001 and EL95–25–001, New England Power Company
CAE–4.
Docket No. ER93–393–001, CLP Hartford Sales, L.L.C.
CAE–5.
Docket Nos. ER95–371–002 and ER93–777–004, Commonwealth Edison Company
CAE–6.
Docket No. EL95–16–001, Southern California Edison Company
Docket No. EL95–19–001, San Diego Gas & Electric Company
CAE–7.
Docket No. EL87–53–004, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company
CAE–8.
Docket No. EL93–55–001, Connecticut Light & Power Company
CAE–9.
Docket No. EL87–51–005, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company
Docket No. ER88–477–005, Gulf States Utilities Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. PR95–2–000, Southeastern Natural Gas Company
CAG–2.
Docket No. PR95–3–000, Moss Bluff Gas Storage Systems
CAG–3.
Docket No. RP95–207–000, Equitrans, Inc.
CAG–4. Omitted
CAG–5.
Docket No. RP95–131–001, Northern Natural Gas Company
CAG–6.
Docket No. RP95–210–000, Transwestern Pipeline Company
CAG–7.
Docket No. ST95–1297–000, Channel Industries Gas Company
CAG–8.
Docket No. MT95–5–000, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket Nos. RP93–187–008, *et al.*, RP93–62–000, *et al.* and CP88–546–005, Equitrans, Inc.
CAG–10.
Docket No. RP94–229–002, Granite State Gas Transmission, Inc.
CAG–11.
Docket No. RP94–357–000, Texas Eastern Transmission Corporation
CAG–12.

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Docket No. RP94–367–000, National Fuel Gas Supply Corporation
CAG–13.
Docket No. RP95–66–000, ANR Pipeline Company
CAG–14. Omitted
CAG–15.
Docket No. RP94–372–000, Southern Union Gas Company v. Northern Natural Gas Company
CAG–16.
Omitted
CAG–17.
Docket No. RP95–157–000, K N Interstate Gas Transmission Company
CAG–18.
Omitted
CAG–19.
Docket Nos. RP93–5–024 and RP94–220–000, Northwest Pipeline Corporation
CAG–20.
Omitted
CAG–21.
Docket No. PR93–4–001, Transok, Inc.
CAG–22.
Docket No. RP89–161–031, ANR Pipeline Company
CAG–23.
Docket No. RP85–202–017, Trunkline Gas Company
Docket Nos. RP85–203–021 and RP88–203–017, Panhandle Eastern Pipe Line Company
CAG–24.
Docket Nos. RP95–93–002 and RP91–212–015, Stingray Pipeline Company
CAG–25.
Docket No. RP92–149–004, Transcontinental Gas Pipe Line Corporation
CAG–26.
Docket Nos. RP94–43–008, 010 and RP95–58–001, ANR Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket No. RP95–31–002, National Fuel Gas Supply Corporation
CAG–29.
Docket Nos. RP94–309–007, RP94–39–009, RP94–197–006 and RP93–151–019, Tennessee Gas Pipeline Company
CAG–30.
Omitted
CAG–31.
Docket No. AC95–52–000, Atmos Energy Corporation
CAG–32.
Docket No. GP91–5–000, Denovo Oil & Gas Inc.
CAG–33.
Omitted
CAG–34.
Omitted
CAG–35.
Docket No. RP95–2–001, Williams Natural Gas Company
CAG–36.
Docket No. MG92–3–001, Pacific Gas Transmission Company
CAG–37.
Docket No. MG95–5–000, Viking Gas Transmission Company
CAG–38.
Docket Nos. MG88–2–005, 006 and 007, Algonquin Gas Transmission Company
Docket Nos. MG95–1–000 and 001, Algonquin LNG, Inc.
Docket No. MG88–55–006, Panhandle Eastern Pipe Line Company
Docket No. MG88–26–006, Texas Eastern Transmission Corporation
Docket No. MG88–54–005, Trunkline Gas Company
Docket No. MG90–3–004, Trunkline LNG Company
Docket No. MG91–2–004, Southwest Gas Storage Company
CAG–39.
Docket No. RS92–1–011, ANR Pipeline Company
CAG–40.
Docket Nos. CP90–1050–003 and CP94–151–002, Panhandle Eastern Pipe Line Company
Docket No. CP94–152–001, Panhandle Field Services Company
CAG–41.
Docket Nos. CP93–613–000, 001, 002, CP93–673–000, 001 and 002, Northwest Pipeline Corporation
CAG–42.
Docket No. CP95–34–001, Columbia Gas Transmission Corporation
CAG–43.
Docket No. CP94–260–000, Algonquin Gas Transmission Company
CAG–44.
Docket No. CP94–342–000, Crossroads Pipeline Company
CAG–45.
Docket No. CP95–85–000, Aquila Energy Resources Corporation
Docket No. CP95–86–000, Tennessee Gas Pipeline Company
CAG–46.
Docket Nos. CP95–61–000 and CP95–62–000, Columbia Gas Transmission Corporation
CAG–47.
Omitted
CAG–48.
Docket No. CP94–181–000, Williams Natural Gas Company
CAG–49.
Docket No. CP94–329–000, El Paso Natural Gas Company
CAG–50.
Docket No. CP94–775–000, Tennessee Gas Pipeline Company
CAG–51.
Docket No. CP94–264–000, Canal Electric Company and Montaup Electric Company
CAG–52.
Docket No. CP95–39–000, Cavallo Pipeline Company
CAG–53.
Docket No. CP95–135–000, Associated Natural Gas, Inc.
CAG–54.
Docket No. RP94–43–011, ANR Pipeline Company
CAG–55.
Docket No. CP95–279–000, Questar Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. EL95–28–000, New York State Electric and Gas Corporation. Request for Declaratory Order and Enforcement.

Miscellaneous Agenda

M–1.
Docket No. RM91–12–000, Alternative Dispute Resolution. Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket Nos. IS94–10–005 and 006, Amerada Hess Pipeline Corporation
Docket Nos. IS94–11–005, 006, IS94–34–003 and 004, ARCO Transportation Alaska, Inc.
Docket Nos. IS94–12–005 and 006, BP Pipelines (Alaska) Inc.
Docket Nos. IS94–14–005 and 006, Exxon Pipeline Company
Docket Nos. IS94–13–005, IS94–15–005 and 006, Mobil Alaska Pipeline Company
Docket Nos. IS94–16–005, 006, IS94–38–006 and 004, Phillips Alaska Pipeline Corporation
Docket Nos. IS94–17–005, 006, IS94–31–005 and 006, Unocal Pipeline Company
Docket No. OR94–2–001 (Phase I), Trans Alaska Pipeline System. Opinion and Order on Initial Decision.

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: April 5, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8855 Filed 4–6–95; 11:25 am]

BILLING CODE 6717–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–08]

TIME AND DATES: April 21, 1995 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–726–729 (Preliminary) (Polyvinyl Alcohol from China, Japan, Korea, and Taiwan)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: April 5, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8816 Filed 4–6–95; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Thursday, April 13, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Request from State of Michigan for Exemption under Section 701.21(h), NCUA's Rules and Regulations, Member Business Loans.
3. Proposed Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
4. Proposed Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
5. Request from Midflorida Schools Federal Credit Union for a Field of Membership Expansion.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, April 13, 1995.

PLACE: Board Room, 7th Floor, Room 4047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Appeal under Part 709, NCUA's Rules and Regulations. Closed pursuant to exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–8923 Filed 4–6–95; 3:05 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Addition of Item to the Agenda of April 3, 1995

At a meeting on April 3, 1995, the Board of Governors of the United States Postal Service voted unanimously to add to the agenda consideration of filing a request with the Postal Rate Commission for a rulemaking proceeding on initiatives for improvement of postal ratemaking and classification procedures.

The Board determined, in accordance with 5 U.S.C. section 552b(c)(2), that Postal Service business required that consideration be given at this meeting even though the item had not been on the agenda of the meeting as originally noticed in the **Federal Register** (60 FR 15176, March 22, 1995) and that no earlier public notice was possible.

In accordance with 5 U.S.C. section 552b(f)(1) and 39 C.F.R. section 7.6(a), the General Counsel of the United States Postal Service has certified that in her opinion the meeting could properly be closed to public observation pursuant to 5 U.S.C. section 552b(c)(3) and (10); 39 U.S.C. section 410(c)(4); and 39 C.F.R. section 7.3 (c) and (j).

Requests for information concerning the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–8884 Filed 4–6–95; 3:06 am]

BILLING CODE 7710–12–M

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 950
Indian Housing Program: Amendments; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 950

[Docket No. R–95–1742; FR–3646–F–02]

RIN 2577–AB43

Indian Housing Program: Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule adds a new part 950 to HUD's regulations. New part 950 contains the Indian Housing consolidated regulations that were previously set forth in 24 CFR part 905. In addition to moving the Indian Housing consolidated regulations from part 905 to part 950, the final rule amends a number of the Indian Housing consolidated regulations to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Room 4140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 755–0032. Hearing- or speech-impaired persons may use the TDD number (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are not effective until such time that OMB grants its approval. The approval number will be published in the **Federal Register** through separate notice.

II. Background

On August 1, 1994 (59 FR 39072), HUD published a proposed rule that would add a new part 950 to title 24 of the Code of Federal Regulations to contain the Indian Housing consolidated regulations. The proposed rule would also make simplifying amendments to these regulations, in order to accomplish the primary goal of giving Indian Housing Authorities (IHAs) greater discretion and responsibility in administering their programs. The preamble to the proposed rule described HUD's consultation with its six Native American Program Area Offices, the National American Indian Housing Council, regional IHA associations, and other IHA representatives. The preamble also described HUD's four-year trend to provide IHAs with administrative flexibility through regulatory revisions (59 FR 39072).

Consistent with the principles of Executive Order 12866, HUD has reviewed the existing Indian Housing regulations and the public comments received on the proposed rule, and with this final rule modifies the regulations to make them more effective, consistent, understandable, and sensible.

III. Comments on the August 1, 1994 Proposed Rule

HUD solicited public comments on the proposed rule amending the Indian Housing program. By the expiration of the public comment period on September 30, 1994, HUD had received 15 comments, all from IHAs and tribal leaders. This final rule contains several changes to the proposed rule in response to these comments, as further described in the following section, which summarizes the comments according to their relevant subparts and provides HUD's responses to those comments.

A. Subpart A—General

1. Applicability and Scope (§ 950.101)

One commenter stated that § 950.101(a)(1) should expressly acknowledge that this rule applies to operations and funds arising from HUD programs. The current language states that HUD provides financial assistance (funds) to IHAs for the development and operation (operation) of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area. HUD was unclear what additional language was requested and believes that the current language adequately addresses the comment.

2. Definitions (§ 950.102)

One commenter requested that the definition of Allowable Utilities Consumption Level (AUCL) and Heating Degree Days (HDD) should be adjusted. The commenter requested that Cooling Degree Days be added, as HDD is irrelevant to Indian country.

Section 508 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) directed HUD to incorporate into the Performance Funding System (PFS) a methodology to adjust utility consumption to account for Cooling Degree Days that was the same as the methodology used to account for Heating Degree Days. The impetus for this legislation was that IHAs in the sunbelt that had to pay higher utility bills for air conditioning during hot summers wanted an adjustment in their PFS payments to account for the increased utility consumption. HUD published a proposed rule, and based on the comments received, HUD implemented an approach to greatly simplify the PFS by dropping all heating and cooling degree day adjustments. The final rule implementing this action was published in the **Federal Register** on October 13, 1994 (59 FR 51852). Additional information on this change can be found in the preamble of that rule.

There were a number of comments concerning the definitions of Adjusted Income and Annual Income. These suggestions included an increase in deductions, lowering the 30 percent rule, counting only the income from the head of household, counting only the income of head of household and spouse, and using net income rather than gross income. Also, a commenter requested that both child care and travel expenses be eligible deductions.

HUD appreciates the many comments received on the definition of Adjusted Income and Annual Income. In response to the comment to allow both travel and child care as deductions, section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) amended section 3(b)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) to allow for both deductions. HUD implemented this change by PIH Notice 93–23 dated May 19, 1993. The proposed rule included this revision, and the same language appears in this final rule. With regard to the other comments on Adjusted Income and Income, these terms are defined in the United States Housing Act of 1937. Section 3(b)(4) of that Act defines "income" as "income from all sources of each member of the household." Section 3(b)(5) contains the statutory definition of "adjusted income." The Office of Native American Programs is developing a legislation package for the program, and it will carefully review all comments as it prepares this proposal.

One commenter stated that the definition of disposition should exclude references to real estate, since the IHAs do not transfer any interest in the "real estate." The commenter stated that the most that IHAs transfer by a quit claim deed is the remaining portion of the leasehold interest in the underlying land, together with the improvements. HUD agrees with the comment as it relates to trust and allotted land. However, there are many cases in Indian areas in which interest in the real estate is transferred. Due to these situations, HUD has not changed the definition.

One commenter requested that the tribal government and not HUD define low-income family based on a determination of tribal median income and adjustments to income due to family size, construction costs, or other local variations. Another commenter stated that IHAs should be able to establish their own income limits based on the tribes' economies, not on the local communities.

The definitions of low- and very low-income are found in the United States Housing Act of 1937. By statute, the definition of very low-income is tied to "50 per centum of median family income" for an area, and the definition of low-income is tied to "80 per centum of the median family income" for the area (42 U.S.C. 1427a). As required by statute, the meaning of the term "area" is affected by whether the local median family income is less than the respective State's nonmetropolitan median family income. In addition, the statute provides for adjustments to income limits for areas with unusually high or low incomes in relation to housing costs. Income limits are published annually by HUD. If an IHA or tribe feels that the median income for its area is not appropriate, they should contact the local HUD Office to obtain information on how to proceed with a request for a change.

3. Applicability of Civil Rights Requirements (§ 950.115).

A commenter stated that the civil rights quotation in § 950.115(a) in the proposed rule is misleading and the definition should additionally explain that these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. HUD agrees with this comment and has adjusted the definition in the final rule to include this statement.

A commenter suggested that HUD should strike the reference to handbooks in § 950.115(a)(3) of the proposed rule. This commenter also requested that the reference to Title VI, the Fair Housing Act, and the Americans with Disabilities Act in § 950.115(b) of the proposed rule be removed if they are not applicable to IHAs established by exercise of a tribe's power of self-government. HUD agrees with both of these comments. HUD has removed the reference to handbooks and the language regarding the nonapplicability of those statutes in this section.

4. Displacement, Relocation, and Acquisition (§ 950.117)

One commenter stated that upon the request of a resident, an IHA should be allowed to relocate a resident temporarily to his or her traditional home even if it is not decent, safe, and sanitary, and the family should be eligible for relocation assistance. HUD agrees with this comment and has revised the language in § 950.117(b) for temporary relocation.

A commenter stated that in § 950.117(c)(2), the word "comparable" should be removed since it is subject to many interpretations, and that the IHA should be allowed to use any available Indian housing unit as a replacement. The commenter also requested that HUD add the following language: "Houses that do not meet Section 8 fair market rent would be allowed for comparable housing units." HUD is unable to eliminate the term "comparable" in this section of the rule. This term is defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4605), as amended. The use of "comparable" is also required by the Department of Transportation's government-wide rule implementing the URA (49 CFR part 24). The 1987 amendments to the URA specify that the Federal agencies covered by the URA no longer have independent statutory authority to promulgate their own separate URA regulations, and in implementing the URA they must follow the regulations published by the lead agency, which is the Department of Transportation.

5. Compliance With Other Federal Requirements (§ 950.120)

Multiple commenters suggested that the wage rate requirements of the Davis-Bacon Act (§ 950.120(c)) should be waived for Indian housing. However, the applicability of the Davis-Bacon Act to Indian housing is required under Section 12 of the United States Housing Act of 1937, as amended, and is not subject to waiver by HUD.

6. Establishment of IHAs by Tribal Ordinance (§ 950.126).

Several commenters agreed with § 950.126(b) of the proposed rule, which allows a tribe to determine the form of ordinance. However, one commenter objected to leaving ordinance terms and wording up to tribes. Another commenter felt that HUD was leaving the ordinance up to the tribe, and therefore approval by the Department of Interior (DOI) should not be necessary. As stated previously, the intent of the revised regulation is to provide greater flexibility and control to IHAs and tribes in the administration of housing programs. This is the reason for allowing tribes the ability to determine the form of ordinance that is applicable for its area. However, HUD agrees with the comment regarding DOI approval and has removed the language regarding the need for such approval.

A commenter stated that § 950.126(d) of the proposed rule should be revised to require only those documents that demonstrate that an authority has been properly established. HUD agrees with this comment and has revised this section accordingly.

7. IHA Commissioners Who Are Tenants or Homebuyers (§ 950.130)

One commenter stated that they agreed that the change in the rule that explains the role of a commissioner when he or she faces a decision that affects them personally is an excellent idea. HUD appreciates the comment regarding this section.

8. Administrative Capability (§ 950.135)

One commenter agreed that the Administrative Capability Assessment (ACA) should be used with other tools to evaluate the need for technical assistance. Two commenters stated that there should be another appeal level, and one commenter requested that all appeals should go to HUD Headquarters. One commenter stated that the reference to HUD handbooks and other program requirements should be deleted since these do not constitute statutory or regulatory authority that is binding on the IHAs. One commenter stated that sanctions should be clearly defined in § 950.135(f)(2), and limitation on appeals should be eliminated from § 950.135(g)(2).

HUD agrees with the comment suggesting the removal of the handbook references in this section and has revised this section in the final rule. In response to the comments on the appeal process, HUD finds that the current appeal process will provide IHAs with the ability to appeal any decision regarding funding. All other appeals will not affect any funding. Furthermore, without limits to the appeal process, HUD would not be able to initiate corrective action when it finds a serious deficiency.

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B. Subpart B—Procurement

1. General Comments.

Several commenters suggested minor changes in wording throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

2. Procurement Standards (§ 950.160)

One commenter wrote that the $25,000 limit on small purchases created additional costs for IHAs. Since the publication of the proposed rule on August 1, 1994, Federal procurement regulations have increased the small purchase limit to $100,000. HUD has adjusted this section accordingly.

Another commenter wrote that HUD should allow open market purchases from petty cash for commonly used supplies or purchases of less than $500. Such purchases are allowed within existing regulations that are not changed by this rule.

3. Methods of Procurement (§ 950.165)

One commenter suggested the addition of language in § 950.165(c) that specifically states that an IHA may reject all proposals for soundly documented reasons and has the right to waive certain irregularities. General procurement methods currently allow these practices, and therefore they have not been added to this rule.

4. Other Requirements Applicable to Development Contracts (§ 950.170)

One commenter suggested that the bonding alternative allowing a 25 percent letter of credit should be deleted. HUD disagrees with this suggestion. Each of the options for surety other than 100 percent performance and payment bonds are included in the rule to enable IHAs to assist small or disadvantaged contractors that have the ability to perform but do not have the resources to pay for a performance and payment bond. IHAs have the option but are not obligated to use this option in their procurement.

Another commenter suggested that the rule should clarify that performance and payment surety continue through a contract's warranty period. The term of the surety is contained in individual contract provisions, and therefore HUD does not believe it should be added to this rule.

5. Indian Preference Requirements (§ 950.175)

HUD received a general comment that the revised Indian preference requirements are not simplified from the previous rule. In these revised regulations, HUD has tried to accomplish two objectives. The first objective was to make the Indian Preference requirements less prescriptive, enabling IHAs and their tribes to determine the best methods for providing Indian preference in their programs. The second objective was to make HUD's Indian preference requirements identical across its programs to remove confusion for participating tribes. HUD is also revising the Indian Community Development Block Grant and Indian HOME program regulations to mirror the Indian Housing regulations. HUD believes it has met both these objectives but is receptive to any additional suggestions that would improve the Indian preference requirements.

6. Insurance (§ 950.190)

One commenter suggested that this section is unnecessarily complex and long. The contents of this section provide the basic requirements for insurance coverage, however, and therefore HUD has decided not to make any reductions at this time.

C. Subpart C—Development

1. General Comments

Several commenters suggested minor changes throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

2. Allocation (§ 950.205)

One commenter suggested the conversion of the allocation method from a competitive nature to a formula funding. This commenter wrote that this would enable IHAs to better anticipate funding, thereby allowing for better long-range planning. HUD is investigating the potential for formula funding for development allocations; however, a change to a formula funding basis may require statutory authority.

3. Eligibility (§ 950.207)

In response to general comments on clarity within the rule, HUD has added a new section that specifies the eligibility requirements to apply for new Indian Housing development. Included in this section are performance thresholds not previously specified in the regulation but relied upon by HUD in determining eligibility.

4. Authority for Proceeding Without HUD Approval (§ 950.210)

Several commenters suggested that the rule would provide HUD great latitude in requiring an IHA to obtain HUD approval of processing steps. In reviewing this section, HUD agrees that its wording is too broad and not fully consistent with administrative capability remedies contained in § 950.135. Accordingly, HUD has clarified this section to require HUD to follow the provisions of § 950.135 in its determination of performance deficiencies and remedies. Additionally, HUD has removed the examples of performance deficiencies.

This final rule consolidates time constraints on development in this section from throughout Subpart C. In response to several comments, the time constraints contained in the regulation are: (1) 24 months from program reservation to construction start, (2) 30 months from program reservation before HUD can recapture funds, and (3) six years from program reservation to closeout of development.

5. Production Methods (§ 950.215)

HUD received several comments that questioned the clarity of the production method descriptions. Upon review, HUD has determined that descriptions of production methods are more appropriately contained in program guides or handbooks. Accordingly, HUD has deleted the brief descriptions of production methods in this section.

Several comments were received concerning the definition of an IHA attachable asset required as security for force account construction approval and the need for IHAs to provide such security. Attachable assets are those assets that are unencumbered by restrictions on their use and that can be liquidated to pay for any overruns in the development of the project. HUD has reevaluated the risk associated with force account construction and has modified the surety requirements in this final rule. The final rule (§ 950.215(b)) allows Area Offices of Native American Programs (Area ONAPs) to approve the force account method without requiring the tribe or IHA to provide specific security to cover excess costs if the IHA agrees to construct the project in small stages with additional HUD oversight.

6. Total Development Cost (§ 950.220)

One commenter suggested that the $1,500 Mutual Help contribution and development funded counseling should be deleted from the program. However, the $1,500 Mutual Help contribution is required by the statute. HUD has modified the counseling provision to make it optional for IHAs.

One commenter suggested that the rule should include a detailed description of how total development cost (TDC) standards are computed. By statute, HUD is required to establish TDC standards using two national cost indices, which are multiplied by 1.6 for elevator type structures and 1.75 for nonelevator structures. Total development cost standard requirements are published periodically in a departmental notice. HUD believes that such a notice is the appropriate vehicle for conveying TDC requirements, and therefore HUD has not adopted this suggestion.

One commenter suggested that the rule should require all projects to be funded at the full TDC standard. The TDC standard establishes the maximum allowable cost for a development and is not intended to provide a prescribed amount required to develop a project. Accordingly, HUD has not adopted this comment.

One commenter suggested that the rule should require HUD Area ONAPs to obtain the input of tribes in the determination of the adequacy of TDC areas. The TDC notice provides for IHAs to request a HUD assessment of the adequacy of TDC areas within their jurisdiction. HUD believes that this provision of the notice serves to obtain tribal input. Therefore, HUD has not adopted this suggestion.

HUD has significantly reduced § 950.220 of the proposed rule by deleting process items that are included in periodic TDC Notices, the discussion of the program reservation, and HUD cost review requirements. Additionally, HUD has rewritten the resident training and insurance subsections, and has added a separate subsection that includes the exception of donations and off-site water and sanitation facility infrastructure costs from the TDC calculation. HUD has modified the 30 month for construction cost and moved it to § 950.207.

7. Application (§ 950.225)

To provide greater clarity in section titles, the Application section has been divided, with items involving program reservation and annual contributions contract (ACC) execution moved to a new section 950.227. HUD has deleted from the rule process activities that are included in the annual Notice of Funding Availability. HUD has also added a new paragraph (c), which clarifies the criteria under which HUD may approve new units for state-created IHAs.

8. Program Reservation and ACC Execution (§ 950.227)

HUD received several comments supporting the elimination of the 3 percent limitation on initial planning funds.

One commenter suggested that the limitation on planning funds was too vague. Upon review, HUD has determined that since such limitations are included in the ACC, they are unnecessary in this rule.

To further clarify the change to a grant program, HUD has changed the term "program reservation" to "development grant approval" throughout the rule.

To streamline the development process, HUD has modified subpart C to remove the two-step process for executing the ACC for development. This final rule provides for execution of the ACC (or amendment) in the full amount of the grant upon approval of the grant. Amendments to the ACC would only be required if the character of the development were changed by the IHA.

This final rule also adds a new section 950.229 to address the process for establishing limits on the IHA's ability to incur obligations under the ACC. This section consolidates requirements for submittal of development cost budgets and contains the existing provision for comprehensive housing plans.

9. Project Coordination (§ 950.230)

One commenter suggested that HUD should participate in project planning in order to provide technical assistance if requested by the IHA. The current wording does not prohibit HUD staff from participating in planning activities if the IHA requests, and HUD has sufficient staff resources available to provide such assistance. The decision to provide voluntary technical assistance is a joint decision of the IHA and HUD. HUD does not find that additional clarifying language is needed.

10. Site Selection Criteria (§ 950.235)

HUD received several comments supporting the removal of the one acre limitation on site size. One commenter objected to prohibiting the cost of access roads as a project expense. With the exception of off-site water and sanitary facility infrastructure that Congress includes in Indian Housing appropriations, infrastructure development outside the boundaries of the IHA site(s) are not eligible project expenses. In the case of off-site access roads, Congress provides funding through the Bureau of Indian Affairs (BIA) to construct off-site roads. Accordingly, HUD has retained the restrictions on off-site access roads in this rule.

11. Types of Interest in Land (§ 950.240)

Several commenters objected to the requirement for HUD approval of the form of lease. Because of the period of affordability requirements contained in the statute and in the ACC, HUD has a continuing interest in the availability of dwelling units for occupancy by eligible participants. It is in HUD's best interest to assure that the provisions contained in site leases provide sufficient protection for the government in this area. Therefore, HUD has retained the requirement for a HUD approved form of lease.

Another commenter objected to allowing leases of unrestricted fee simple land in lieu of outright purchase. In most instances, an IHA will prefer to purchase fee simple land instead of entering into a long-term lease. However, prohibiting leasing of unrestricted fee simple property would, according to HUD, unduly restrict IHA options in securing building sites.

Another commenter suggested that HUD allow tribes to build off tribal lands. There is no specific prohibition against an IHA using non-tribal sites. IHAs must operate within the jurisdiction of the tribe, which is generally within the tribe's reservation boundaries. If the IHA wishes to use sites not within the jurisdiction of the tribe that are subject to property taxes, they must obtain the cooperation of the taxing body.

12. Environment (§ 950.247)

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 11, 1994) provided for tribes or local governments to assume the responsibilities for environmental assessments of public and Indian housing sites. To implement this requirement, HUD is revising its environmental review regulations at 24 CFR part 58 to include the Indian Housing program. HUD is also adding a new section 950.247, Environment, in this rule to provide for local completion of the environmental assessment.

13. Site Approval (§ 950.250)

HUD has decided to remove § 950.250(b)(3) from the final rule. This section had required IHA cooperation to enable HUD to complete the environmental assessment. Under the final rule, the tribe or local governing body will complete the environmental assessment.

One commenter suggested that there may be unnecessary duplication in the review of sites, and that HUD and the BIA should adopt a single environmental assessment procedure.

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HUD and the BIA have made continuing efforts to coordinate environmental review procedures to minimize duplication of efforts. With the transfer of environmental review responsibility, the tribe or local government will work with the BIA in this regard.

One commenter suggested that sites should be inspected only when the IHA deems it appropriate. HUD finds that it is impossible to approve a site for inclusion in a development without first making an on-site visit to determine the suitability for development. Accordingly, HUD has not adopted this suggestion.

Another commenter suggested that environmental reviews should be limited to sites larger than 10 acres. The National Environmental Policy Act of 1969 (42 U.S.C. 4332) requires an environmental assessment for any development action regardless of the size of the site.

14. Design Criteria (§ 950.255)

HUD received a number of comments objecting to requiring newly constructed Indian housing units to comply with specific building codes. This requirement is not new. Due to the investment of public funds and the long-term association between HUD and the IHA during the operating period, HUD finds that it is necessary to require minimum building standards. National building codes, such as the Uniform Building Code or the Uniform Plumbing Code, provide minimum standards for such development. HUD encourages tribes to develop and adopt building codes that reflect the needs of their areas. In the absence of adopted tribal codes, IHAs must rely on local, state, or national codes.

HUD has added a new subsection to specify that the IHA must perform a life cycle cost analysis in the IHA's selection of utility combinations.

15. IHA Development Program (§ 950.260)

Several commenters stated that HUD's suggestion in the proposed rule (§ 950.260(a)(2)) that a development program should be submitted within 18 months of program reservation date was inappropriate since IHAs rely on schedules prepared at the project coordination meeting to reach development program submission. HUD agrees with these comments and has removed the subsection containing this suggestion.

In response to general comments for further streamlining of the process, and in order to recognize program evolution to a grant basis, HUD has removed the requirement for a development program from the rule. In its place, HUD has specified the documents that are actually required prior to the IHA proceeding with final planning, bid/proposal solicitation, and construction start. These documents include a development cost budget reflecting the anticipated cost of constructing the project, certifications of compliance with program requirements, and project characteristics that were previously gleaned from the development program documents (§ 950.260(a) of the final rule).

16. Construction and Inspections (§ 950.265)

One commenter suggested replacing the term "program requirements" with "all ACC, statutory, and regulatory requirements." HUD agrees and has made the modification.

Several commenters suggested that HUD should not monitor project construction if it was unwilling to perform project inspections. Congress has charged HUD with the oversight of appropriated funds. To properly perform this duty, HUD must monitor IHA compliance with all ACC, statutory, and regulatory requirements of the program, including the IHA's administration of its construction contracts.

Several commenters suggested that HUD should either do away with the 30 month requirement for reaching construction start or reduce the time to 24 months. The final rule has consolidated in § 950.210 all references to this 30 month period. HUD has changed the wording of the 30 month requirement to more closely follow the language of the statute, which limits HUD's ability to cancel a project before the end of the 30 month period. HUD has also adopted the suggestion that construction start should occur within 24 months after the program reservation date, and has added language that requires HUD, subject to the availability of resources, to provide technical assistance to an IHA that has not reached construction start within the 24 month time-frame.

In response to numerous suggestions for overall streamlining of the rule, HUD has rewritten this section to simplify the requirements.

17. Correcting Deficiencies (§ 950.280)

HUD received a number of comments suggesting that HUD should be required to fund the correction of any design or construction deficiencies. HUD does not agree that it is obligated to fund the correction of all design or construction deficiencies. Under program requirements, IHAs are required to have in place adequate systems to assure new developments are properly designed and constructed. As HUD attempts to remove its controls over IHA decisionmaking by conveying the authority to manage its developments, it would be inconsistent not to convey the responsibility to adequately manage those developments, as well. HUD does maintain the option of funding design or construction deficiency corrections when it believes it is appropriate to provide such funding.

One commenter suggested that the requirement for HUD approval to spend existing funds to correct design or construction deficiencies should be deleted. HUD agrees that, along with the responsibility to assure such corrections are made, the rule should provide the authority to spend existing funds appropriately, including remaining project development funds, operating receipts, or other funds available to the IHA. Therefore, HUD has removed the requirement for its prior approval.

18. Fiscal Closeout (§ 950.285)

HUD has added language to this section emphasizing the importance of completing development grants in a timely manner. Under the limited oversight procedures now in effect for Indian Housing development, it is critical that grants be completed and the accounts audited as soon as possible after the date of full availability (DOFA).

19. Reformulation

HUD received several comments suggesting that a new section be added authorizing IHAs to reformulate project funds at any time for any purpose without prior HUD approval. HUD provides funds to an IHA to develop a specified project. Consistent with other grant programs, if an IHA wishes to redirect project funds, a program modification must be proposed and approved before such reformulation can proceed. HUD has delegated the authority to approve reformulations to its Area ONAPs, which will expedite processing of requests by IHAs.

D. Subpart D—Operation

1. Admission Policies (§ 950.301)

One commenter stated that § 950.301(a)(2)(iii) of the proposed rule needs to be strengthened to read "participants or the physical, financial or environmental aspects of the project" to help deal with applicants with a history of nonpayment or unit damage. Each IHA has the ability to develop admission policies that address the needs in its area. HUD's goal is to provide greater discretion to the IHAs

administering the housing program. Therefore, HUD does not feel that these additional regulatory requirements should be added for all IHAs. However, each IHA is encouraged to develop admissions policies to address individual needs, such as the ability to deal with applicants with a history of nonpayment or unit damage.

A commenter stated that the proposed language "for not less than 70 percent of the units" in § 950.301(a)(2)(iv) is a marked change from the earlier draft figure of 30 percent of the units. The commenter stated that the 30 percent figure seems high enough considering that others have been on the waiting list for years. The language in the current Indian housing regulation states that only 10 percent of non-Federal preference holders are eligible for admission in a given year. Section 501 of the National Affordable Housing Act amended the percentage to allow for 30 percent of non-Federal preference holders to be eligible for admission. The language in the proposed rule stated that the IHA shall develop tenant and homebuyer selection criteria designed: "(iv) For not less than 70 percent of the units made available for occupancy in a given fiscal year, to give a preference in the selection of participants who at the time they are seeking housing assistance, are involuntary displaced, living in substandard housing, or paying more than 50 percent of family income for rent" (Federal preference).

In the final rule, HUD will handle differently the issue of counting Federal preferences. The final rule on Preferences for Admission to Assisted Housing, published in the **Federal Register** on July 18, 1994 (59 FR 36616) revised the tenant selection preference provisions. The rule implements a statutory change that decreases the number of families that must be admitted on the basis of qualifying for a Federal selection preference, and specifically authorizes the adoption of local selection preferences by IHAs to be used in admitting some applicants. Because of several comments regarding how to count admissions, the language in the final rule frames the "counting" of admissions in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 percent of annual admissions may be families selected on the basis of local preference. Under that rule, a family that qualifies for a "Federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the IHA's local preference limit, and the selection is made without regard to that Federal preference. A more detailed discussion of these preferences can be found in the preamble to that final rule. Changing the percentage would require Congress changing the statute.

Another commenter recommended that the language in § 950.301(a)(2)(iv) "at the time they are seeking housing assistance" be changed to "at the time an appropriate housing unit becomes available for their use," since these two events could occur at different times. It would be difficult to justify attaching a Federal preference to an applicant and then carrying that applicant for several months until a unit becomes available, if the applicant had found decent, safe, sanitary, and affordable housing in the interim.

The reference to which this commenter refers has been revised in the final rule regarding Preferences for Admission to Assisted Housing (59 FR 36616, July 18, 1994). That rule amended § 905.301, and included a section on verification of preference at § 905.304(c)(3). HUD believes that rule addresses the commenter's concern regarding the timing of applicant verification.

Another commenter stated that admission requirements continue to get too complex and difficult to administer. The commenter stated that the final rule regarding Preferences for Admission to Assisted Housing was clear, but that additional clarification is needed. HUD understands the concern of this commenter and has tried to simplify the regulation while implementing statutory provisions for admission.

One commenter stated that income limits should be abolished. Another commenter requested that HUD reduce the definitional age for an elderly person from 62 to 55. However, the provisions for admission of low-income families and the age definition for an elderly person are statutory, and therefore HUD cannot change them in this rule. HUD will consider both of these comments as HUD develops its legislative proposal for Indian housing.

2. Initial Determination, Verification, and Reexamination of Family Income and Composition (§ 950.315)

One commenter stated that recertifications should only be done once for elderly. Another commenter stated that recertification of participants should be every three years. However, the United States Housing Act of 1937 states that reviews of family income shall be made at least annually. Amending this provision would require a statutory change.

3. Total Tenant Payment—Rental and Turnkey III Programs (§ 950.325)

Many commenters objected to the 30 percent of monthly adjusted income provision in § 950.325(a)(i) of the proposed rule. Both tribes and IHAs submitted resolutions objecting to this provision. Commenters stated that this provision causes an unreasonable burden on tenants and does not provide an incentive to seek gainful employment. One commenter stated that the rule promotes dependency on the Federal Government for welfare assistance and destroys the initiative for self-sufficiency. Several commenters objected that automatically charging 30 percent, regardless of the quality of the unit, would have a discriminatory effect, in that it perpetuates poverty, is a disincentive for viable employment, and penalizes tribal members who are struggling to achieve economic sufficiency.

Many commenters requested a change in the total tenant payment from 30 percent to 20 percent. Some commenters requested that the percentage be lowered for the elderly only. Another commenter requested that a flat rent be charged or the IHA be allowed to charge minimum rents. Another commenter requested that no rent be charged for welfare families.

One commenter stated that § 950.325(a) should be changed to read as follows: "Total tenant payment shall be the highest of the following, up to the IHA's established ceiling rent (calculated using local income levels, rents, and economic conditions) rounded to the nearest dollar."

Many commenters recommended a change to the current ceiling rent policy. These commenters further stated that IHAs should be allowed to establish ceiling rates using local economic conditions to provide housing for the working poor at reasonable rates. Another commenter requested that ceiling rents be based on fair market rents for the particular reservation or a rent ceiling equal to the administrative fee for Mutual Help housing. The commenter stated that this would not conflict with the United States Housing Act of 1937, as the Mutual Help administrative fee generally represents the average monthly amount of debt service and operating expenses attributed to a dwelling unit.

HUD received many comments on the definitions of adjusted income and annual income. Several commenters stated that rent should be calculated based on net income; deductions should be changed to be comparable to IRS deductions because of the cost of living

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increases; medical deductions should apply to everyone and there should be a secondary wage earner deduction; child support payments should be deducted from the person paying; elderly families should have a deduction of $2,500; only one income should be used when calculating rent; more deductions should be given for child care; deductions should be allowed for child support; an inflation factor should be built into the deductions; no raises in payments if income increases; and deductions should be provided for investments.

HUD understands that the 30 percent rule and the definition of annual and adjusted income are of major concern in the Indian housing rental program. The United States Housing Act of 1937 establishes the amount of payment for rental housing and defines the term "income" and "adjusted income." Therefore, without a statutory change, HUD cannot address any of these requested changes. As indicated in other parts of this preamble, HUD is considering other regulatory changes for the public and Indian housing programs, and is preparing a legislative proposal for the Indian housing program. HUD will consider all of the comments above as it develops the proposal.

4. Rent and Homebuyer Payment Collection Policy (§ 950.335)

A commenter stated that payment and collection policies should comply with ACC, statutory, and regulatory requirements, and not HUD guidelines. HUD agrees with this comment and has revised the language in this section of the final rule.

5. Grievance Procedures and Leases (§ 950.340)

A commenter stated that (a)(iii) of the proposed rule should be struck, or HUD should at least explain that such a party may be an official or employee of the IHA. The reference from the commenter was incorrect, and therefore HUD is unable to determine the nature of the commenter's concerns. HUD would like to note that the language in § 950.340(a)(1) is statutory.

A commenter stated that § 950.340(a)(3)(ii) should be changed. The basic elements of due process should recognize Indian Civil Rights Act (ICRA) exceptions for tribal customs and practices. HUD finds it unnecessary to amend the rule to recognize exceptions from the Indian Civil Rights Act (ICRA) (25 U.S.C. 1301–1303), because the rule currently states in § 950.340(a)(1) that each JHA shall adopt grievance procedures that are appropriate to local circumstances and that comply with the ICRA, if applicable.

A commenter stated that the phrase "related to the termination" in § 950.340(a) and (b) should be changed to "used" in the termination or eviction. HUD could not locate this phrase in subsection (a). HUD is unable to change the wording in subsection (b)(6) because it is a statutory requirement.

One commenter stated that this section attempts to give HUD the authority to determine whether tribal and state termination or eviction procedures provide the basic elements of due process. The commenter continued that since HUD has no authority over tribal sovereignty rights to determine its own eviction and termination procedures, this section should be removed from the rule. However, HUD's ability to determine the basic elements of due process is statutory, and therefore this section remains unchanged.

A commenter found a typographical error in § 950.340(b)(6) in the proposed rule. The provision should read "Specify that with respect to any notice." HUD has corrected the typographical error in the final rule.

6. Fire Safety (§ 950.346)

A commenter recommended that this section be revised to change references to "hard-wire smoke detectors" to "hard-wire with battery back-up smoke detectors," and that this section should reflect the need for fire extinguishers in each unit. The commenter indicated that many Mutual Help homes have only battery operated smoke detectors, and that many of them are inoperable. The commenter stated that IHAs should be allowed to receive funding to bring such units up to code.

HUD received a second comment regarding the benefits of a residential range top suppression system that is capable of detecting a cooking grease fire originating on the range top, extinguishing the fire, and preventing reignition. The commenter provided sample specifications for the product for inclusion in the rule. The Fire Administration Authorization Act of 1992 (the Act) (Pub. L. 102–522, approved October 26, 1992) established applicable Federal standards for fire safety, and these standards are reflected in this rule. HUD considers it appropriate to reflect the minimum Federal requirements mandated by the Act and does not plan to establish more stringent requirements in this rule. To the extent that the State, tribal, or local jurisdiction in which the units are located has more stringent fire prevention and control standards, the more stringent State, tribal, or local standards will govern. Further, HUD wishes to point out that funding is available under both the CIAP and CGP programs for fire safety needs. Under the competitive CIAP application process, work items related to fire safety are prioritized for funding along with emergency work items.

E. Subpart E—Mutual Help Homeownership Opportunity Program

1. Scope and Applicability (§ 950.401)

One commenter asked what regulations exist for Mutual Help (MH) units placed under ACC before March 9, 1976. There are no regulations for the MH units placed under ACC prior to March 9, 1976. The document governing that program is the Mutual Help and Occupancy (MHO) Agreement.

2. Special Provisions for Development of an MH Project (§ 950.413)

One commenter stated that paragraph (d) in this section of the proposed rule should be revised since it allows HUD to decide not to proceed with the development of a MH project. The commenter stated that this provision is inconsistent with the goal of the rule—HUD is giving IHAs greater responsibility, yet it is still reserving control and discretion as to how IHAs carry out the housing program. In response to this comment, HUD has removed this entire section. The provisions of § 950.135, Administrative capability, will apply prior to an action that would result in cancellation of a development by HUD, and the IHA would be involved and given every opportunity to respond and appeal if necessary.

3. Selection of MH Homebuyers (§ 950.416)

One commenter requested that the Federal preference mentioned in § 950.416(d) be removed from this section because IHAs should select homebuyers with the ability to meet the obligations of the program, and Federal preference is in conflict with the ability to meet homebuyer obligations. However, as the commenter recognized, the Federal preference is a statutory requirement that HUD is unable to remove at this time. As mentioned previously in this preamble, the Office of Native American Programs is developing a legislative proposal and will consider this comment at that time.

One commenter requested that HUD revise § 950.416(e) on principal residency to emphasize that the determination of whether the home is necessary for the family's livelihood or

for cultural preservation be solely that of the IHA. In response to this comment, HUD has changed the wording on the principal residency as requested.

One commenter asked HUD to streamline this section and handle many of these requirements in a handbook or by Board policy. HUD has reviewed this section and streamlined where possible; however, many of the requirements in this section are statutorily based and therefore HUD cannot change them.

One commenter requested the inclusion of a discretionary preference that the local IHA would apply to handle unique situations in their area. On July 18, 1994 (59 FR 36616), HUD published a final rule in the **Federal Register** on Preferences for Admission to Assisted Housing. That rule specifically authorizes the adoption of local selection preferences by housing authorities in admitting some applicants. This rule permits IHAs to adopt preferences that respond to local housing needs and priorities after conducting public hearings. See §§ 950.301 and 950.303 of this final rule.

4. MH Contribution (§ 950.419)

One commenter suggested that the MH contribution requirement should be at the option of the IHA. Another commenter requested that land cost be determined individually by each tribe through an appraisal with a cap of $2500. The requirement for a MH contribution of at least $1500 is statutory, and therefore HUD cannot remove the requirement from the rule. In response to these comments, however, HUD has revised this section to reflect the statutory requirement that the MH contribution be at least $1500, rather than a maximum of $1500, to allow for additional MH contributions by the homebuyer.

One commenter requested that a subsequent homebuyer be given credit for land donated by the tribe. HUD has recently provided guidance to the Area ONAPs that clarifies this section of the rule. A subsequent homebuyer can be given credit for a land contribution by a tribe and not be required to provide an additional MH contribution.

5. Inspections, Responsibility for Items Covered by Warranty (§ 950.425)

One commenter recommended that §§ 950.425(a) (1) and (2) be revised to clarify that latent defects would be covered even after the warranty period. In response to this comment, HUD has streamlined this section, and this issue is now covered under the development section (§ 950.270(a)), in which HUD believes the language is clearer.

6. Homebuyer Payments—Post-1976 Projects (§ 950.426)

One commenter requested that the percentage of income used for determining homebuyer payments be changed from 15 percent to 12 percent. Another commenter requested that the percentage for elderly be changed to 10 percent. Another commenter stated that MH should have fixed payments, which would eliminate the need for recertification. The requirement to charge MH participants 15 to 25 percent of income is statutory, and HUD cannot change it through regulation. However, as mentioned above, HUD's Office of Native American Programs will consider these comments when it develops its legislative proposal for Native American Programs.

7. Maintenance, Utilities, and Use of Home (§ 950.428)

HUD received two comments regarding § 950.428(c) on inspections. One commenter requested that HUD eliminate the need for inspections. Another commenter stated that inspections should be based on the amount of equity in a homebuyer's account. In response to these comments, HUD has changed the requirement in the final rule for MH inspections. The language in the final rule states that the IHA shall conduct inspections of each home on a schedule developed by the IHA that ensures that the home is maintained in a decent, safe, and sanitary condition.

One commenter requested that the language in § 950.428(d) of the proposed rule be revised since the correction of warranty items is not the same as providing maintenance, and the two concepts should be distinct. HUD agrees, and in response to this comment HUD has revised this language.

HUD received two comments on § 950.428(g). One commenter stated that an IHA should be able to use Monthly Equity Payments Account (MEPA) funds for improvements without a waiver. Another commenter stated that the IHA, not HUD, should determine how MEPA funds can be used. This rule does not require an IHA to obtain approval or a waiver from HUD in order to allow a homebuyer to use MEPA funds for betterments and additions. The IHA also has the ability to determine whether the homebuyer needs to replenish the MEPA. Therefore, HUD has made no changes.

8. Operating Subsidy (§ 950.434)

One commenter requested a change in the operating subsidy for collection losses so that the IHA could have funds in advance to repair vacant units because of the lack of reserves. While HUD never intended to provide funds for needed repairs to a vacant unit after the repairs were completed, that was often the case due to the budget process and the need for the IHA to follow through on all collection efforts prior to receiving funds. HUD has modified the language in the final rule and will provide additional guidance on the process to the Area ONAPs so that funds can be provided to the IHA as soon as possible.

Two commenters requested additional subsidy in the MH program. One commenter requested operating subsidy for units converted for self-sufficiency or anti-drug programs. Another requested subsidy to pay for administrative costs involved with using the MEPA for low-income housing purposes. However, HUD finds that the administrative charge in the MH program should be used to cover the minimal costs associated with the programs mentioned above.

One commenter requested that operating subsidy be provided for counseling in the rental program and that all subsidy be provided at 100 percent. HUD provides operating subsidy for the rental program through the Performance Funding System, and the IHA can budget for staff to provide counseling in the rental program if the budget can support this service. HUD recognizes the difficulty that IHAs experience when subsidy is provided at less than 100 percent. However, the amount of subsidy is subject to annual congressional appropriations, and therefore HUD is unable to guarantee funding at 100 percent.

Several commenters requested that HUD take into account logistical concerns and IHA size when developing a formula for counseling and training funds. HUD agrees with the comments and will take these factors into account when developing the plan for providing operating subsidy funding for counseling and training. HUD will consult IHAs prior to implementation.

9. Homebuyer Reserves and Accounts (§ 950.437)

Several commenters stated their support for the change to use MEPA funds for low-income housing purposes. HUD received several other comments on this regulatory change. One commenter suggested that the use of MEPA in § 950.437(b)(2)(ii) should be limited based on home inspections. This commenter stated that if there are maintenance items that need to be addressed, the IHA should not be allowed to use the MEPA. Another

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commenter requested that the IHA be able to use MEPA funds for alternative types of housing aimed at middle-income Indian families. Another commenter requested more independence from HUD rules in § 950.437(b), but this commenter provided no additional information. HUD also received comments requesting clarification of the requirements for resident notification, eligible uses, and developing a formula for the percentage that can be used, as well as a request to change the definition of MEPA.

HUD appreciates the comments received on this major regulatory change. HUD developed this section of the proposed rule based on public comment during the Native American consultation process in order to give flexibility to IHAs that wish to use the MEPA. IHAs will be required to obtain approval for use of the MEPA and to maintain a sufficient reserve of equity for homebuyers in need of maintenance. Hopefully, this will address the concerns of the commenters regarding which IHAs will be eligible to use the MEPA for other low-income housing purposes.

With regard to the comment on expanding the use of the MEPA to middle-income families, HUD has determined that the use of MEPA funds must be limited to low-income housing purposes as long as the development is under the Annual Contributions Contract.

HUD plans to address many of the issues such as eligible uses in ONAP guidebooks. In streamlining the regulation, HUD found that it was best to handle policy questions in this way. It is also HUD's goal to give IHAs the ability to make decisions on the amount of MEPA available for use and the amount needed for homebuyer maintenance if they permit homebuyers to use the reserve.

One commenter stated that IHAs should not be required to pay interest on MEPA accounts if the funds are being used for other low-income housing purposes. The commenter requested clarification on how the IHA would earn or pay interest to homebuyers. The current Mutual Help and Occupancy Agreement between the IHA and the homebuyer states that interest on equity accounts will be provided annually. Due to this provision, HUD has not changed the regulation as requested.

One commenter requested that the first $5,000 of MH equity be used as a nonrefundable downpayment. HUD believes that a requirement for a downpayment other than the $1,500 MH contribution would violate the intent of the United States Housing Act of 1937.

One commenter requested that HUD retain the Voluntary Equity Payment Account (VEPA). However, HUD removed the requirement for the VEPA to streamline the MH program. IHAs had indicated that the account was seldom used. If an IHA wants to continue to use a voluntary account, they have the ability to do so. However, without a VEPA, a homebuyer could continue to make additional monthly payments that would be deposited in the Monthly Equity Payment Account and be used to pay off a home in a shorter period of time, similar to the current VEPA.

10. Purchase of Home (§ 950.440).

Several commenters indicated that they supported the change that allows the IHA to establish the purchase price schedule. One commenter requested national uniformity based on development cost. Another commenter requested clarification on whether the new regulations regarding purchase price would apply to existing homes. In response to the comments received, HUD will implement the provisions of § 950.440(b) of the proposed rule, which provides for the IHA to set the purchase price for initial and subsequent homebuyers, in the final rule. In response to whether the rule is retroactive, the IHA can implement the changes in the final rule for current homebuyers with their consent. The current MHO Agreement may differ on several topics. Since this is the contract between the homebuyer and the IHA, homebuyer consent would be required.

HUD received several other comments regarding § 950.440. One commenter requested that an IHA be allowed to convey a unit and still perform modernization after that unit is conveyed, if prior to conveyance that unit was on a comprehensive improvement assistance program (CIAP) or 5 year Comp Grant comprehensive plan. Another commenter requested that IHAs be allowed to perform only emergency work on a paid-off unit if there was a repayment plan for the delinquency. Another commenter stated that they agree with the changes, but they are concerned about the operating cost once the unit is paid off.

In response to these comments, HUD's Office of General Counsel (OGC) was asked to review the issue once more. OGC stated that they believe that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to conveyance. However, once conveyed, the unit is not eligible for future assistance. The language in the regulations at 950.440 and 950.602 will be revised accordingly. In response to the comment that IHAs be allowed to perform only emergency work on a paid-off unit if there is a repayment plan for a delinquency, HUD believes that modernization may be required, either by statute or regulation, for these units, and therefore HUD has not changed the language in the rule. However, the IHA does have the ability to determine its priorities with respect to modernization work for all units and could limit the work to emergency items. In response to the comment regarding operating costs, until a unit is conveyed, the homebuyer is responsible for monthly payments in accordance with the Mutual Help and Occupancy Agreement. Therefore, the administration charge should still be collected to cover operating costs until the unit is conveyed.

One commenter requested that zero interest be applied to rental, Turnkey III, and Old Mutual Help. HUD issued guidance in Notice PIH 91–29, dated June 18, 1991, which provides for zero interest in the Old Mutual Help Program. HUD has also modified the Turnkey III rule at § 950.525 to provide for zero interest. It is not necessary to change the interest in the rental program, since all debt relating to the rental program has been forgiven through the loan forgiveness legislation, and since tenants are not charged interest with their housing payments.

One commenter requested that § 940.440(e)(6) be changed to allow an IHA to use proceeds from the sale for middle-income families. Recently, HUD's Office of General Counsel stated that there are no statutory restrictions that would prohibit the amendment of an Administrative Use Agreement to allow proceeds from the sale of homeownership units to be used for other housing purposes, including purposes other than for lower income housing. However, any proceeds of sale must still be used in connection with low- and very low-income persons. Therefore, HUD has not changed the language in the rule.

11. Termination of MHO Agreement (§ 950.446)

One commenter stated that § 950.446(f)(3) suggests that the IHA is the entity that evicts. This commenter recommended that this section should instead indicate that the IHA initiates an eviction action. HUD agrees with this comment and has made the change.

12. Succession (§ 950.449)

One commenter stated that this is perhaps the most important and significant change to the Indian Housing regulations. Another commenter supported this change and stated it was in agreement with the IHA. Another commenter stated that "at the very least, there should be a provision that provides that the designation of a successor by the homebuyer must be approved by tribal government." Although HUD supports tribal involvement in the program, HUD believes that the homebuyer should determine the successor to their unit whenever possible, subject to any restrictions by the tribe on succession to the land.

13. Conversion (§§ 950.445 and 950.458)

HUD received several comments on the conversion process. One commenter requested that the requirement for an actual development cost certificate (ADCC) be eliminated, since this is a lengthy process and holds up conversions. Another commenter requested that HUD eliminate the requirement that a conversion application be in a form required by HUD. Another commenter requested that the MH contribution not be required in a conversion and that the lease process should not hold up a conversion. There was a general comment that HUD does not allow conversion.

In response to these comments, HUD has eliminated the need for an ADCC prior to conversion and the requirement that the conversion package be in a form required by HUD. HUD has not changed the requirement for a MH contribution, since it is a statutory requirement for every MH unit. However, the contribution can be in the form of land. HUD encourages the use of the conversion process whenever it is beneficial for an IHA. If an IHA is having difficulty with the conversion process, it should contact the Office of Native American Programs in Washington, D.C., at the address specified in the "For Further Information Contact" section, above.

F. Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

HUD received no comments on this subpart. However, HUD has made additional revisions in the final rule to streamline this program.

G. Subpart G—Turnkey III Program

HUD only received one comment on the Turnkey III subpart of the rule. This commenter requested that a zero interest rate apply to this program, as it does with Mutual Help Homeownership Opportunity Program. HUD had made this change in the proposed rule at § 950.525, and this change is included in this final rule.

Due to the fact that there are currently only 18 IHAs managing the Turnkey III Program, and in response to general public support for additional streamlining of the entire regulation, HUD has attempted to further reduce the regulatory requirements of this program.

H. Subpart H—Lead-Based Paint Poisoning Prevention

With this final rule, HUD makes no changes to the existing regulations for lead-based paint poisoning prevention, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

I. Subpart I—Modernization

1. Comprehensive Improvement Assistance Program and Comprehensive Grant Program

HUD received many comments regarding the changes proposed for the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP). The comments were overwhelmingly supportive of HUD's efforts to simplify the programs. Many of the changes requested on CGP were implemented in the Public and Indian Housing Amendments to the CGP final rule, which was published in the **Federal Register** on August 30, 1994 (59 FR 44810).

One commenter indicated that CIAP should be an entitlement based on age and number of units, and that the formula must take into account small IHAs. However, the United States Housing Act of 1937 specifically provides for two different modernization programs based on housing authority size: a formula funded program for those with 250 or more units, and a discretionary application program for those with fewer than 250 units. Therefore, HUD could not implement this recommendation without a legislative amendment.

Another commenter recommended that CIAP have a five-year plan, like CGP. However, as stated above, funding of a CIAP is made through a competitive application process that does not allow forecasting funding availability for future years, as does the CGP. Although HUD encourages IHAs to plan for modernization needs, a five-year plan would not serve the same purpose as in the CGP.

One commenter indicated that CIAP funds for IHAs should be a separate set-aside from Public Housing. Currently, there is only one appropriation for Public and Indian Housing. Therefore, implementing this recommendation would require a legislative change.

A commenter suggested that the process of moving CIAP/CGP funds to resident organizations should be in regulations. However, HUD finds that regulating a process for transferring funds to resident organizations would decrease local flexibility, and therefore HUD has not implemented this recommendation.

2. Special requirements for Turnkey III and Mutual Help developments (§ 950.602)

Many commenters made recommendations regarding this section of Subpart I and a cross reference in the Mutual Help Homeownership Opportunity Program, Subpart E, § 950.440. Both references discuss the use of modernization funds for paid-off and conveyed units. In the final CGP rule (published in the **Federal Register** on August 30, 1994 (59 FR 44810)), HUD removed the regulatory prohibition against modernizing Mutual Help units that are paid off but not conveyed. The preamble to that rule stated:

> The Department believes that the only regulatory restrictions on the modernization of paid-off Mutual Help units should be that: title has not been conveyed to the homebuyer; where the homebuyer has a delinquency at the end of the amortization period, non-emergency modernization work shall not be done until all delinquencies are repaid; and, the units shall be identified in the Comprehensive Plan (including the Physical Needs Assessments and Five-Year Action Plan). The prohibition against performing modernization work on conveyed units is based on a determination by the Department's Office of General Counsel that statutory authority for the expenditure of modernization funds is limited to existing public housing units. Once title is conveyed and the unit is no longer covered by the ACC, the unit is no longer a public housing unit and there is no legal authority for the expenditure of modernization funds provided under section 14 of the Act. IHAs that wish to modernize conveyed Mutual Help units must obtain funding from another source; e.g., proceeds from the sale of homeownership units or Bureau of Indian Affairs Housing Improvement Program funds. (59 FR 44811).

A group of IHAs consolidated their comments and offered two alternative recommendations for this rule's provisions on conveyed units at

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§§ 950.602 and 950.440. They recommended that IHAs be allowed to convey a unit and still perform modernization after the unit is conveyed, if prior to conveyance the work was in an approved CIAP application or CGP Five-Year Plan, and the work is done within five years. Alternatively, they recommended that IHAs have the option to delay conveyance for up to five years to conduct modernization, but only with the written consent of the homebuyer.

Another IHA commented that conveyed units should be eligible for modernization work. The IHA argued that first priority should go to homebuyers who have shown good faith by paying for their homes and now have the deeds to the homes, and not to those who, because of a delinquent status, have not received their conveyance documents. The IHA recommended that in the renovation of paid-off units, IHAs should have the discretion to decide which units to modernize, whether the unit has been conveyed or not.

Two IHAs recommended that HUD allow old Mutual Help and Turnkey III units that have been conveyed to be brought back into the programs for the purpose of comprehensive modernization. The IHAs considered the proposed change to be unfair to homebuyers in paid-off units that were not included in the Comprehensive Plans because paid-off units were ineligible under the original regulation. Many of those units were conveyed before the proposed rule was published, which provided that units that are paid off but not conveyed are eligible for modernization. The IHAs argued that the conveyed units deserve the same consideration and have the same physical improvement needs, such as handicapped accessibility, lead-based paint testing, and meeting current codes.

As discussed in the preamble language for Subpart E, the Office of General Counsel (OGC) has advised that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to conveyance. Therefore, HUD has revised the rule in response to the comments submitted on this issue. Although title can be conveyed once the unit has been approved for modernization funding, OGC recommends that IHAs delay conveyance until modernization work is completed on a Mutual Help unit.

In response to the comments requesting that modernization be eligible for a Mutual Help unit that has been conveyed but not approved for modernization funding prior to conveyance, the prohibition is based on the determination that statutory authority for the expenditure of funds is limited to existing public housing units. Once title is conveyed and the unit is no longer owned by an IHA and covered by the ACC, the unit is no longer a public housing unit, and there is no legal authority for the expenditure of modernization funds provided under section 14 of the United States Housing Act of 1937.

Two commenters recommended that when units become paid off, the operating costs should be charged to the Comprehensive Grant Program. Another commenter recommended that the rule be revised to specify clearly that during the period after a unit becomes paid off, until it is modernized and title is conveyed, the homebuyer is responsible for the administration charge. In response to the first two comments, the United States Housing Act of 1937 requires that the homebuyer make monthly payments of at least an administration charge to cover monthly operating expenses on the dwelling. The second commenter was correct in the statement that the administration charge shall be made by a homebuyer until conveyance. HUD has included language to clarify this requirement in § 950.440 of the rule.

3. Contracting Requirements (CIAP) (§ 950.642) and Conduct of Modernization Activities (CGP) (§ 950.681)

One commenter stated that in order to assist new contractors in getting established an IHA should be allowed to give preference to new contractors and pay their licensing and bonding fees. A change to the contracting requirements would conflict with 24 CFR part 85, which contains the government-wide administrative requirements for grants. Paying licensing and bonding fees would give an unfair advantage to new contractors and would not provide fair and open competition as required by Part 85.

4. Eligible Costs (§ 950.666)

One commenter agreed with the increase from 10 percent to 20 percent in the cost limitation on management improvements in § 950.666(m)(2), but indicated that the cost limitation on administrative costs should also be increased from 7 percent to 10 percent. HUD appreciates the comment in support of the change in the cost limitation for management improvement. The cost limitation on administrative costs was increased from 7 percent to 10 percent of the annual grant in the CGP final rule published in the **Federal Register** on August 30, 1994 (59 FR 44810), and effective September 29, 1994. That change is also reflected in this rule.

One commenter stated that the proposed rule is too restrictive with respect to room additions needed for handicapped accessibility. Three commenters recommended that the rule include additions to the living space in a dwelling unit as an eligible work item under CGP and CIAP. HUD implemented this recommendation for the CGP final rule cited above at § 905.666(c). That rule provides that "[a]dditional dwelling space may be added to existing units." A similar change has been made in this CIAP final rule at § 950.615(b).

5. Allocation of Assistance (§ 950.669)

A regional association of IHAs commended the proposed rule for allowing IHAs to hold public hearings earlier in the year using the prior year's formula amount for planning purposes. HUD appreciates the comment in support of this change.

6. Comprehensive Plan (Including Five-Year Action Plan) (§ 950.672).

One commenter anticipated a problem with unrealistically raising expectations by consulting with the residents on all five years of the Comprehensive Plan. The commenter recommended limiting resident participation to years when funds are available. However, section 14 of the United States Housing Act of 1937 requires that residents affected by the planned activities be given the opportunity to review and provide their input. This rule (§ 950.672(b)(5)) requires that at the annual Public Hearing the IHA present "information on the Comprehensive Plan/Annual Submission and the status of prior approved programs."

7. HUD Review and Approval of Comprehensive Plan (Including Five-Year Action Plan) (§ 950.675).

One commenter wanted to be able to maintain flexibility to move work items between years of the CGP Action Plan and have the ability to switch line items within the original scope of work. HUD has included the ability to undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current Annual Statement, or previously approved CIAP budgets in § 950.675(c) of the CGP final rule cited above.

J. Subpart J—Operating Subsidy

1. General Comments.

One commenter requested that the calculation for the PFS be changed because it is too complicated. Another commenter stated that the PFS should be designed specifically for IHAs. This commenter suggested that HUD should initiate a national study on PFS and how to redesign it. HUD recognizes the concerns regarding the PFS and how it relates to the Indian Housing program. However, any change in the PFS would require statutory and/or regulatory changes. At this time, HUD is studying the entire Indian Housing program. In this process, HUD will address any recommendation for change in this area.

Another commenter stated that IHAs should be provided with additional subsidy to cover the costs of implementing part 85. However, the PFS is designed to cover administrative costs of a well-managed IHA. In the Mutual Help program, the administration charge is used to cover an IHA's administrative expenses. There are no additional congressional appropriations to cover these costs, and therefore HUD cannot change the rule to accommodate this request.

2. Other Costs (§ 950.720).

A commenter stated that additional operating subsidy should be provided for user fees for the Mutual Help program. Section 122(c) of the Housing and Community Development Act of 1992 amended Section 203 of the Indian Housing Act of 1988 (Pub. L. 100–358, approved June 29, 1988) to provide user fees to municipalities specifically for each rental housing unit. The amendment did not include Mutual Help, and a legislative change would be necessary to provide this funding.

3. Operating Reserves (§ 950.740)

One commenter requested that HUD maintain the requirement for a maximum operating reserve in the rental program. However, HUD is making efforts to streamline regulations and give control of project operations to IHAs. This includes the determination by an IHA of the amount of reserves needed for efficient program operation. For that reason, HUD has eliminated the requirement for the maximum operating reserve in both the rental and Turnkey III programs.

4. Operating Budget Submission and Approval (§ 950.745)

A commenter recommended that HUD revise the Handbook early in Fiscal Year (FY) 1995 to implement the budget submission change. On October 4, 1994, HUD issued HUD Notice 94–72, which implemented the revised procedures regarding operating budget submission. HUD has also modified this rule slightly to reflect the budget submission changes.

K. Subpart K—Energy Audits, Energy Conservation Measures, and Utility Allowances General Changes

1. General Comment

HUD received a comment suggesting that this entire section should be simplified, and it should reflect less HUD reviews and approvals. In response to this comment, HUD has reviewed the section and streamlined when possible. HUD has also removed many of the reviews and approvals mentioned by the commenter.

2. Energy Performance Contracts (§ 950.825)

One commenter requested that the word "shall" in the following sentence of § 950.825(a) be removed: "Energy performance contracting shall be conducted using one of the following methods of procurement * * *." However, removal of the word "shall" would eliminate the need to conduct energy audits. HUD finds that its policies in this section support national energy conservation goals, and the elimination of the audits would not meet HUD's goals of reducing energy consumption or operating costs.

L. Subpart L—Operation of Projects After Expiration of Initial ACC Term

With this final rule, HUD makes no changes to the existing regulations for the operation of projects after the expiration of the initial ACC term, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

M. Subpart M—Disposition or Demolition of Projects

HUD received no comments on this subpart. HUD had taken steps to streamline this subpart in the proposed rule, and has made no additional changes in this final rule.

N. Subpart N—Miscellaneous

Subpart N was incorporated into subpart J (§ 950.772) of the final rule.

O. Subpart O—Resident Participation and Opportunities General Provisions

A final rule for the Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing was published in the **Federal Register** on August 24, 1994 (59 FR 43622). With today's final rule, HUD makes no changes to the Resident Participation and Opportunities regulations, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

P. Subpart P—Section 5(h) Homeownership Program

A final rule for the Section 5(h) Homeownership Program for Public and Indian Housing was published in the **Federal Register** on November 10, 1994 (59 FR 56354). With today's final rule, HUD makes no changes to the Section 5(h) Homeownership regulations for Indian housing, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

Q. Subpart R—Family Self-Sufficiency

HUD received no comments on this subpart. As stated in the proposed rule, HUD made very few changes to the regulation implementing the FSS program because the current regulation reflects the statutory provisions of section 23 of the United States Housing Act of 1937. HUD has revised the final rule to eliminate definitions that are included in § 950.102.

IV. Other Matters

Finding of No Significant Impact

At the time of the development of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10272, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes a number of amendments to the Indian Housing Consolidated Program regulations to simplify program

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processes, reduce the number of regulatory requirements, and to provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1894 in HUD's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57638) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Domestic Assistance

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Disability, Homeownership, Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended as follows:

PART 905—[REMOVED AND RESERVED]

1. Part 905 is removed and reserved.
2. Part 950 is added to read as follows:

PART 950—INDIAN HOUSING PROGRAMS

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950.117 Displacement, relocation, and acquisition.
950.120 Compliance with other Federal requirements.
950.125 Establishment of IHAs pursuant to State law.
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950.160 Procurement standards.
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950.170 Other requirements applicable to development contracts.
950.172 Wage rates.
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950.190 Insurance.
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Subpart C—Development

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950.207 Eligibility.
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950.220 Total development cost.
950.225 Application.
950.227 Initial development grant approval and ACC execution.
950.229 Expenditure of funds.
950.231 Project coordination.
950.235 Site selection criteria.
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950.245 Appraisals.
950.247 Environment.
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950.255 Design criteria.
950.260 Construction stage development cost budget and certifications.
950.265 Construction and inspections.
950.270 Construction completion and settlement.
950.275 Warranty inspections and enforcement.
950.280 Correcting deficiencies.
950.285 Fiscal closeout.

Subpart D—Operation

950.301 Admission policies.
950.303 Selection preferences.
950.304 Federal preferences: general.
950.305 Federal preferences: involuntary displacement.
950.306 Federal preference: substandard housing.
950.307 Federal preference: rent burden.
950.308 Exemption from eligibility requirements for police officers and other security personnel.
950.310 Restrictions on assistance to noncitizens.
950.315 Initial determination, verification, and reexamination of family income and composition.
950.320 Determination of rents and homebuyer payments.
950.325 Total tenant payment—Rental and Turnkey III programs.
950.335 Rent and homebuyer payment collection policy.
950.340 Grievance procedures and leases.
950.345 Maintenance and improvements.
950.346 Fire safety.
950.360 IHA employment practices.

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950.419 MH contribution.
950.422 Commencement of occupancy.
950.425 Inspections, responsibility for items covered by warranty.
950.426 Homebuyer payments before March 9, 1976.
950.427 Homebuyer payments for projects under ACC on or after March 9, 1976.
950.428 Maintenance, utilities, and use of home.
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950.432 Operating budget submission and approval.
950.434 Operating subsidy.
950.437 Homebuyer reserves and accounts.
950.440 Purchase of home.
950.443 IHA homeownership financing.
950.446 Termination of MHO Agreement.
950.449 Succession.
950.452 Miscellaneous.
950.453 Counseling of homebuyers.
950.455 Conversion of rental projects.
950.458 Conversion of Mutual Help projects to rental program.

Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

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950.475 Basic requirements.
950.480 Self-Help agreement.
950.485 Application.
950.490 Development program.
950.495 Default of Self-Help agreement.

Subpart G—Turnkey III Program

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950.503 Conversion of Turnkey III developments.

950.505 Eligibility and selection of Turnkey III homebuyers.
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950.509 Responsibilities of homebuyer.
950.511 Homebuyers' association (HBA).
950.512 Homeowners' association (HOA).
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950.635 Initiation of modernization activities.
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950.3030 Reporting.

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa-1437ee and 3535(d).

Subpart A—General

§ 950.101 Applicability and scope.

(a) *General.* (1) Under title II of the United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (42 U.S.C. 1437aa, et seq.), the Department of Housing and Urban Development (HUD) provides financial and technical assistance to Indian Housing Authorities (IHAs), for the development and operation of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area, as defined in § 950.102.

(2) If assistance under this part is not available to a low-income family because the family desires housing in an area within which no IHA is authorized to provide housing, or if for any other reason a family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs. (See 24 CFR part 203, chapter VIII of this title, as well as the remainder of chapter IX of this title.)

(b) *Other HUD regulations and requirements.* The provisions of this part are a complete statement of HUD regulations affecting the development and operation of low-income housing by IHAs except as supplemented by parts in other chapters of this title that are referenced in this part.

§ 950.102 Definitions.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437–1440).

Action plan. A plan of the actions to be funded by an IHA over a period of five years (including an IHA's proposed allocation of its modernization funds to a reserve established under § 950.666(a)(3)) to make the necessary physical and management improvements identified in the IHA's comprehensive plan under subpart I of this part. The plan shall be based upon HUD's and the IHA's best estimates of the funding reasonably expected to become available over the next five-year period. The action plan is updated annually to reflect a rolling five-year base.

Adjusted income. Annual income less the following allowances, determined in accordance with HUD instructions:

(1) $480 for each dependent;

(2) $400 for any elderly family;

(3) For any family that is not an elderly family but has a handicapped or disabled member other than the head of household or spouse, handicapped assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the handicapped or disabled person;

(4) For any elderly family—

(i) That has no handicapped assistance expenses (as defined in paragraph 3 of this definition), an allowance for medical expenses (as defined in this section) equal to the amount by which the medical expenses exceed three percent of annual income;

(ii) That has handicapped assistance expenses greater than or equal to three percent of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (3) of this definition, plus an allowance for medical expenses that is equal to the family's medical expenses; and

(iii) That has handicapped assistance expenses that are less than three percent of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent of annual income;

(5) Child care expenses, as defined in this section; and

(6) Excessive travel expenses, not to exceed $25 per family per week, for employment- or education-related travel.

Administration charge. In Mutual Help projects, the amount budgeted per-unit per-month for operating expense, exclusive of the cost of HUD-approved expenditures for which operating subsidy is being provided in accordance with § 950.434 (see § 950.427(b)).

Allowable expense level. In rental projects, the per-unit per-month dollar amount of expenses (excluding utilities and expenses allowed under § 950.720) computed in accordance with § 950.710, which is used to compute the amount of operating subsidy.

Allowable utilities consumption level (AUCL). In rental projects, the amount of utilities expected to be consumed per-unit per-month by the IHA during the requested budget year, which is equal to the average amount consumed per-unit per-month during the rolling base period.

Annual contributions contract (ACC). A contract under the Act between HUD and the IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC shall be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the Act, and the IHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

Annual income. Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of income as provided in paragraph (2) of this definition.

(1) Annual income includes, but is not limited to:

(i) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(ii) The net income from operation of a business or profession. Expenditures

for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(iii) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (1)(ii) of this definition. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability, or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (2)(xii) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (but see paragraph (2)(iii) of this definition);

(vi) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (1)(vi)(B) of this definition shall be the amount resulting from one application of the percentage;

(vii) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(viii) All regular pay, special pay, and allowances of a member of the Armed Forces (but see paragraph (2)(vii) of this definition).

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children;

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a live-in aide;

(vi) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran that is made available for subsistence is to be included in income;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii) (A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan for Achieving Self-Support (PASS);

(C) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program; or

(D) A resident stipend, but only if the resident stipend does not exceed $200 per month per officer to resident organization officers. Stipends are intended to cover costs related to officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment, and special clothing.

(ix) Temporary, nonrecurring, or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, tribal, or local law during the exclusion period. For purposes of paragraph (2)(xi) of this definition, the following definitions apply:

(A) Comparable Federal, State, tribal, or local law means a program providing employment training and supportive services that—

(*1*) Is authorized by Federal, State, tribal, or local law;

(*2*) Is funded by Federal, State, tribal, or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the United States Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xii) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (deferred periodic payments received in a lump sum from SSI and social security); or

(xiii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice is published from time to time in the **Federal Register** and distributed to IHAs identifying the benefits that

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qualify for this exclusion. Updates will be published and distributed when necessary.

(3) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

(4) Any family receiving the reparation payments referred to in paragraph (2)(x) of this definition that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

Annual Statement. A work statement covering the first year of the Five-Year Action Plan and setting forth the major work categories and costs by development or IHA-wide for the current Federal Fiscal Year (FFY) grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds.

Annual Submission. A collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Area Office of Native American Programs (ONAP). The HUD Offices in Chicago (Eastern/Woodlands), Oklahoma City (Southern Plains), Denver (Northern Plains), Phoenix (Southwest), Seattle (Northwest), and Anchorage (Alaska), which have been delegated authority to administer programs under the United States Housing Act of 1937 for the areas in which the IHAs are located.

Base year. The IHA's fiscal year immediately preceding its first fiscal year under the performance funding system (PFS).

Base year expense level. The expense level (excluding utilities, audits, and certain other items) for the year, computed as provided in § 950.710(a).

Benefit/cost analysis. For purposes of subpart K of this part, a direct comparison of the present worth of any savings generated by a given system during the expected useful life of the system or the estimated remaining life of the project, whichever is the shortest number of years, to the cost of the change.

BIA. The Bureau of Indian Affairs in the Department of the Interior.

Checkmeter. A device for measuring utility consumption of each individual dwelling unit where the utility service is supplied through a mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter readings and uses the checkmeters to determine whether and to what extent utility consumption of each dwelling unit is in excess of the allowance for IHA-furnished utilities, established in accordance with subpart K of this part.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, that are readily accessible to children under seven years of age, such as protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official who has the primary responsibility for the conduct of that entity's governmental affairs.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to be gainfully employed or to further his or her education only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Citizen. A citizen or national of the United States.

Common property. The nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, that are contained in the development. It also may include common property as defined in a cooperative form of ownership, as determined by the IHA.

Comprehensive grant number. A grant number that is unique to each work statement (under subpart I of this part) covering the improvements to one or more existing Indian housing projects.

Comprehensive Plan. A plan prepared by an IHA, and approved by HUD, under the Comprehensive Grant Program setting forth all of the physical and management improvement needs of the IHA and its Indian housing developments, indicating the relative urgency of needs, and including the IHA's action plan, cost estimates, and required local government and IHA certifications. The Comprehensive Plan may be revised, as necessary, but shall be revised at least every sixth year. (See subpart I of this part.)

Cooperation agreement. An agreement between an IHA and a local governing (taxing) body that assures exemption from real and personal property taxes and provides for payments in lieu of taxes by the IHA, and that provides for cooperation with respect to the development and operation of low-income housing owned by the IHA.

Current budget year. The IHA fiscal year in which the IHA is operating.

Defective lead-based paint surface. Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm2, that is cracking, scaling, chipping, peeling, or loose.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Demolition. The razing in whole, or in part, of one or more permanent buildings of an Indian housing project.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age, or is a disabled person or handicapped person, or is a full-time student.

Deprogramming. Removal from the IHA's inventory under the ACC, pursuant to the IHA's formal request and HUD's approval, of a dwelling unit no longer used for dwelling purposes or a nondwelling structure or a unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes.

Development. Any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project.

Development grant. The grant that provides IHAs, in response to an application for housing, funds to enable the IHA to plan and construct either rental or mutual help housing. The development grant is for a fixed amount of funding and ends when the housing development is through the warranty period (normally six years from initial development grant approval).

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities

Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Disposition. The conveyance or other transfer by the IHA, by sale or other transaction, of any interest in the real estate of an Indian housing project, excluding transfers of property described in § 950.921(b)(1)(i) through (vii).

Earned home payments account (EHPA). In the Turnkey III program (subpart G of this part), this account is established and maintained pursuant to § 950.517 by the IHA based on a portion of the homebuyer's required monthly payment. The EHPA should equal the IHA's estimate of the monthly cost for routine maintenance of the home.

Elderly family. A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person, as defined in this section. It may include two or more elderly, disabled, or handicapped persons living together, or one or more of these persons living with one or more live-in aides, as defined in this section.

Elderly person. A person who is at least 62 years of age.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Emergency modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, which shall be corrected within one year of CIAP funding approval.

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which shall be completed within one year of funding. Under the Comprehensive Grant program, management improvements are not eligible as emergency work, and therefore shall be covered by the Comprehensive Plan (including the action plan), before the IHA may carry them out. (See subpart I of this part.)

Energy audit. A process carried out in accordance with subpart K of this part, that identifies and specifies the energy and cost savings that are estimated to result from installing or accomplishing an energy conservation measure.

Energy conservation measures (ECMs). Physical improvements or modifications that, if undertaken for a building or facility, or its equipment, are likely to reduce the cost of energy in an amount sufficient to recover the installation costs in a period no longer than the useful life of the measure. (See subpart K of this part.)

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 950.310(e)).

Family. Family includes but is not limited to:

(1) An elderly family or single person as defined in this part;

(2) The remaining member of a tenant family; and

(3) A displaced person.

Family project. Any project assisted under section 9 of the Act (42 U.S.C. 1437g) that is not an elderly project. For this purpose, an elderly project is one that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project that meets these qualifications shall, for purposes of this definition, be excluded from any family project, as shall zero bedroom units.

Federally recognized tribe. Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation or village as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

FFY. Federal Fiscal Year (starting with October 1, and ending with September 30, and designated by the calendar year in which it ends).

Force account labor. Labor directly employed by the IHA on either a permanent or a temporary basis.

Formula. The formula prescribed by HUD to be used in the Performance Funding System to estimate the cost of operating an average unit in an IHA's inventory. (See subpart J of this part.)

Formula expense level. The per-unit per-month dollar amount of expenses (excluding utilities and audits) computed under the formula, in accordance with § 950.710.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Fungibility. Fungibility is a concept that permits an IHA to substitute any work item from the latest approved Five-Year Action Plan to any previously approved CIAP budget or CGP Annual Statement and to move work items among approved budgets without prior HUD approval.

Handicapped assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a handicapped or disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook, 7510.1, as revised, that include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

High risk. See 24 CFR 85.12 and § 950.135.

Homebuyer. The member or members of a low-income family who have executed a homebuyer agreement with the IHA and who have not yet achieved homeownership.

Homebuyer agreement. A Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

Homebuyer Association. In the Turnkey III program this means an incorporated organization (as defined in § 950.511) composed of all of the families who are entitled to occupancy pursuant to a Homebuyer Ownership Opportunity Agreement or who are homeowners.

Homeowner. A former homebuyer who has achieved ownership of his or her home and acquired title to the home.

HUD. The Department of Housing and Urban Development.

IHA homeownership financing. IHA financing for purchase of a home by an eligible homebuyer who gives the IHA

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a promissory note and mortgage for the balance of the purchase price.

IHS. The Indian Health Service in the Department of Health and Human Services.

Indian. Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian area. The area within which an Indian Housing Authority is authorized to provide low-income housing.

Indian Housing Authority (IHA). An entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians that is established either:

(1) By exercise of the power of self-government of an Indian tribe independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

INS. The U.S. Immigration and Naturalization Service.

Interdepartmental agreement. The agreement among HUD, the Department of Health and Human Services, the Department of Interior, and other appropriate agencies, concerning assistance to projects developed and operated under the Act.

Latent defect. A design or construction deficiency that could not reasonably have been foreseen by the IHA or the Office of Native American Programs.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm2, or .5 percent by weight.

Live-in aide. A person who resides with an elderly, disabled, or handicapped person or persons and who:

(1) Is determined by the IHA to be essential to the care and well-being of the person(s);

(2) Is not obligated for support of the person(s); and

(3) Would not be living in the unit except to provide necessary supportive services. (See definition of annual income for treatment of a live-in aide's income.)

Local inflation factor. The weighted average percentage increase in local government wages and salaries for the area in which the IHA is located and non-wage expenses based upon the implicit price deflator for State and local government purchases of goods and services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the local inflation factor each year.

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Management improvement plan. A document developed by the IHA in accordance with § 950.135 that specifies the actions to be taken, including timetables, to correct deficiencies identified as a result of a management assessment.

Mastermeter system. A utility distribution system in which an IHA is supplied utility service by a utility supplier through a meter or meters and the IHA then distributes the utility to its tenants.

Medical expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

MH Contribution. Land, labor, cash, materials, or equipment—or a combination of these—contributed toward the development cost of a project in accordance with a homebuyer's MHO Agreement, credit for which is to be used toward purchase of a home.

MH Program. The Mutual Help Homeownership Opportunity Program.

MHO Agreement. A Mutual Help and Occupancy Agreement between an IHA and a homebuyer.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Modernization capability. An IHA has modernization capability for CIAP if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, HUD will determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance. (See § 950.135.)

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization program. An IHA's program for carrying out modernization, as set forth in the approved CIAP budget for modernization funds. (See subpart I (CIAP) of this part.)

Modernization project. The improvement of one or more existing Indian housing developments under a new number designated for that modernization program (CIAP). For each modernization project, HUD and the IHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

Monthly adjusted income. One twelfth of adjusted income.

Monthly Equity Payments Account (MEPA). A homebuyer account in the Mutual Help Homeownership Opportunity program credited with the amount by which each required monthly payment exceeds the administration charge.

Monthly income. One twelfth of annual income.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Near elderly family. A family whose head or spouse (or sole member) is at least 50 years of age but below the age of 62 years.

Net family assets. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles are excluded, and, in the case of a family in which any member is actively engaged in a business or farming operation, the assets that are a part of the business or farming operation are excluded. In cases where a trust fund, such as individual Indian monies held by the BIA, has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. In determining net family assets, IHAs shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Noncitizen. A person who is neither a citizen nor national of the United States.

Nonroutine maintenance. (1) For purposes of the Turnkey III Program (Nonroutine Maintenance Reserve), nonroutine maintenance refers to infrequent and costly items of maintenance and replacement, including dwelling equipment such as a range or refrigerator, or major components such as heating or plumbing systems or a roof. Specifically excluded are maintenance expenses attributable to homebuyer negligence or to defective materials or workmanship.

(2) For purposes of the CIAP and Comprehensive Grant Modernization Programs under subpart I of this part and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

NRMR. The nonroutine maintenance reserve account in the Turnkey III program established and maintained in accordance with § 950.519.

Office of Native American Programs (ONAP). The Office of HUD that has been delegated authority to administer programs under this part.

Operating budget. The IHA's operating budget (HUD form 52564) and all related documents, required by HUD to be submitted pursuant to the ACC.

Operating subsidy. Annual contributions for IHA operations made by HUD under the authority of section 9 of the Act. (See subpart J of this part with respect to rental projects. See also § 950.434 (Mutual Help Operating Subsidy) and § 950.523 (Turnkey III Operating Subsidy).)

Other income. Income to the IHA other than dwelling rental income and income from investments, except that, for purposes of determining operating subsidy eligibility, the following items are excluded: Grants and gifts for operations, other than for utility expenses, received from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the IHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Other modernization (modernization other than emergency). A type of modernization program under the Comprehensive Improvement Assistance Program (CIAP) for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more management work items (including planning costs), and/or testing, professional risk assessments, interim containment, and abatement of lead-based paint.

Partnership process. A specific and ongoing process that is designed to ensure that residents, resident groups, and the IHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or Comprehensive Grant Program. At a minimum, an IHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

Pay-back period. The number of years required to accumulate net savings to equal the cost of an energy conservation measure.

Performance funding system (PFS). The standards, policies, and procedures established by HUD for determining the amount of operating subsidy an IHA is eligible to receive for its owned rental projects, based on the costs of operating a comparable well-managed project.

PILOT. Payment in lieu of taxes. Includes all payments made by an IHA to the local governing body (or other taxing jurisdiction) for the provision of certain municipal services, including that portion of payments in lieu of taxes that is to be applied as a reimbursement of payments of off-site utilities. The amount charged is determined by the cooperation agreement, which is generally defined as 10 percent of shelter rent. Shelter rent is defined as dwelling rentals less total utility expenses.

Program reservation. A written notification by HUD to an IHA, that is not a legal obligation, but that expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, that HUD will enter into a new or amended ACC covering the stated number of housing units, or such other number as is consistent with funding reserved by HUD for the project.

Project. Housing developed, acquired, or assisted by an IHA under the Act, and the improvement of this housing.

Project for elderly families. A rental project or portion of a rental project assisted under the United States Housing Act of 1937 that was designated for occupancy by the elderly at its inception (and that has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project, or for a portion of the units in the project, to elderly families.

Project units. All dwelling units of an IHA's projects. *Projected operating income level.* The per-unit per-month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 950.725.

Reasonable cost. Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed total development cost limit for a new development with the same structure type and number and size of units in the market area.

Requested budget year. The budget year (fiscal year) of an IHA following the current budget year.

Resident groups. Democratically elected resident groups such as IHA-wide resident groups, area-wide resident groups, single development resident groups, or resident management corporations (RMCs).

Retail service. Purchase of utility service by IHA tenants directly from the utility supplier.

Rolling base period. The 36-month period that ends 12 months before the beginning of the IHA requested budget year, which is used to determine the allowable utilities consumption level used to compute the utilities expense level.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial

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assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Single person. A person who lives alone or intends to live alone, and who does not qualify as:

(1) An elderly family;

(2) A displaced person (as defined in this section); or

(3) The remaining member of a tenant family.

Soft costs. The nonphysical improvement costs, that exclude any costs in development accounts 1450 through 1475.

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

Subsequent homebuyer. Any homebuyer other than the homebuyer who first occupies a home pursuant to a Mutual Help and Occupancy (MHO) agreement.

Substantial rehabilitation. A modernization program for a project that provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure long-term physical and social viability.

Successor homebuyer. A person eligible to become a homebuyer who has been designated by a current homebuyer to succeed to an interest under a homeownership agreement in the event of the current homebuyer's death or mental incapacity.

Surcharge. The amount charged by the IHA to a tenant, in addition to the Tenant Rent, for consumption of utilities in excess of the allowance for IHA-furnished utilities or for estimated consumption attributable to tenant-owned major appliances or to optional functions of IHA-furnished equipment. Surcharges calculated pursuant to subpart K of this part, based on estimated consumption where checkmeters have not been installed, are referred to as "scheduled surcharges."

Tenant-purchased utilities. Utilities purchased by the tenant directly from a utility supplier.

Tenant rent. The amount payable monthly by the family as rent to the IHA. Where all utilities (except telephone) and other essential housing services are supplied by the IHA, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the IHA and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total development cost. The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes off-site water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

Total tenant payment. The monthly amount calculated under subpart D of this part. Total tenant payment does not include any surcharge for excess utility consumption or other miscellaneous charges (see subpart K of this part).

Unit approved for deprogramming. (1) A dwelling unit for which HUD has approved the IHA's formal request to remove the dwelling unit from the IHA's inventory and the Annual Contributions Contract but for which removal, i.e. deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes and that HUD has approved for removal from the IHA's inventory and Annual Contributions Contract.

Unit months available. Project units multiplied by the number of months the project units are expected to be available for occupancy during a given IHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the end of the initial operating period for the project is established until the time it is approved by HUD for deprogramming and is vacated or approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities. For purposes of determining utility allowances, utilities include electricity, gas, heating fuel, water, sewerage service, septic tank pumping/maintenance, sewer system hookup charges (after development), and trash and garbage collection. Telephone service is not included as a utility. For purposes of IHA accounting, PFS and non-PFS, trash and garbage collection and maintenance and repair of any systems are considered maintenance expenses and not utility expenses.

Utilities expense level. The per-unit per-month dollar amount of utilities expense used in calculation of operating subsidy, as provided in § 950.715.

Utility allowance. An allowance for IHA-furnished utilities represents the maximum consumption units (e.g., kilowatt hours of electricity), that may be used by a dwelling unit without a surcharge against the tenant for excess consumption. An allowance for tenant-purchased utilities is a fixed dollar amount that is deducted from the total tenant payment otherwise chargeable to a tenant who has retail service, whether the charges are more or less than the amounts of the allowance. (See §§ 950.865 and 950.870.)

Utility reimbursement. The amount, if any, by which the utility allowance for tenant-purchased utilities for the unit, if applicable, exceeds the family's total tenant payment.

Very low-income family. A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State, or local governments.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

Work Statements. Work Statements cover the second through fifth years of the Five-Year Action Plan and set forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five.

§ 950.110 Assistance from Indian Health Service and Bureau of Indian Affairs.

Because HUD assistance under this part is not limited to IHAs of Federally recognized tribes, provisions in this part relating to assistance from BIA or IHS, or to required approvals, actions, or determinations by these agencies in connection with such assistance, are

applicable only to projects undertaken by IHAs of Federally recognized tribes or by regional housing authorities created by Alaska state law. These projects shall be developed promptly and operated in accordance with the provisions of this part and the Interdepartmental Agreement.

§ 950.115 Applicability of civil rights requirements.

(a) *Indian Civil Rights Act.* (1) The Indian Civil Rights Act (ICRA) (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. The ICRA also states these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. The ICRA applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases in which an IHA has been established by exercise of tribal powers of self-government.

(2) For IHAs established pursuant to State law, HUD will determine the applicability of the ICRA on a case-by-case basis. Factors considered may include the existence of recognized powers of self-government; the scope and jurisdiction of such powers; and the applicability of such powers to the area of operation of a particular IHA. Generally, determinations by HUD of the existence of recognized powers of self-government and the jurisdiction of such powers will be made in consultation with the Department of Interior-Bureau of Indian Affairs, and may be based on applicable legislation, treaties, and judicial decisions. The area of operation of an IHA may be determined by the jurisdiction of the governing body creating the IHA, any limitations within the enabling legislation, and judicial decisions.

(3) Projects of IHAs subject to the ICRA shall be developed and operated in compliance with its provisions and all HUD regulations thereunder.

(b) *Applicability of Title VI, the Fair Housing Act; and Title II of the Americans with Disabilities Act.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs; the Fair Housing Act (42 U.S.C. 3601–3619), which prohibits discrimination based on race, color, religion, sex, or national origin in the sale or rental of housing; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131) apply to those IHAs created by State law for which HUD has determined that the ICRA is inapplicable. Actions taken by an IHA to implement the statutory admission restriction in favor of Indian families in the MH program, as set forth in § 950.416, shall not be considered a violation of any provision of either Title VI, the Fair Housing Act, or Title II of the Americans with Disabilities Act.

(c) *Indian Housing Act of 1988—Mutual Help program admissions.* For provisions generally limiting admission to the Mutual Help Homeownership Opportunity program to Indians and requiring findings of need for admission of non-Indians, see § 950.416.

(d) *Disability.* (1) Under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, HUD is required to assure that no otherwise-qualified disabled person is excluded from participation, denied benefits, or discriminated against under any program or activity receiving Federal financial assistance, solely by reason of his or her disability. IHAs shall comply with implementing instructions in 24 CFR part 8.

(2) The IHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), and HUD implementing regulations (24 CFR part 40).

(e) *Minority Business Enterprise Development and Women's Business Enterprise Policy.* Executive Orders 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1979 Comp., p. 39), respectively, apply to Indian Housing Authorities.

§ 950.117 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, IHAs shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Residents who will not be required to move permanently, but who must relocate temporarily (e.g., to permit rehabilitation), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the housing, which may include a traditional home, to be made available for the temporary period;

(iii) The terms and conditions under which the resident may lease and occupy a suitable, decent, safe, and sanitary dwelling in the development following its completion; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) A displaced person (defined in paragraph (g) of this section) shall be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(2) A comparable Indian housing unit, project-based Section 8 housing, or a privately-owned dwelling made affordable by a Section 8 Rental Certificate or Rental Voucher, may qualify as a comparable replacement dwelling for a person displaced from an Indian housing unit.

(d) *Real property acquisition requirements.* The acquisition of real property for a development is subject to the URA and the requirements described in 49 CFR part 24, subpart B, whether the acquiring entity is organized under State law or tribal law.

(e) *Appeals.* A person who disagrees with the IHA's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the IHA. A lower-income person who is dissatisfied with the IHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(f) *Responsibility of IHA.* (1) The IHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the IHA to comply with the requirements in 49 CFR part 24.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent

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as other project costs. However, such assistance also may be paid from funds available from other sources.

(3) The IHA shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, demolition, or conversion of a unit to homeownership (Mutual Help Homeownership Opportunity (MH) Program) for a project assisted under this part or as a direct result of disposition in accordance with subpart M of this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the development that is made:

(i) After notice to the person by the IHA or property owner to move permanently from the property, if the move occurs on or after:

(A) For the comprehensive improvement assistance program (CIAP) and the comprehensive grant program (CGP) under subpart I of this part, 45 calendar days from before:

(*1*) The IHA issues the invitation for bids for the project, or

(*2*) The start of force account work, whichever is applicable; or

(B) For the disposition or demolition of Indian housing under subpart M of this part, the date of HUD approval of the IHA's proposal; or

(C) For other projects subject to this section, the date HUD approves the site for the project; or, if HUD site approval is not required, the date the IHA approves the site for the project;

(ii) Before the date described in paragraph (g)(1)(i) of this section, if the IHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, demolition, or conversion for the assisted project; or

(iii) By a resident of a dwelling unit, if any one of the following three situations occurs:

(A) The resident moves after the initiation of negotiations (as defined in paragraph (h) of this section) and the move occurs before the resident is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same development, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with § 950.325; or

(B) The resident is required to relocate temporarily, does not return to the development, and either:

(*1*) The resident is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The resident is required to move to another dwelling unit in the same development but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, tribal, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (g)(1)(i) of this section and, before commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she will not qualify as a displaced person (or for assistance under this section) as a result of the project:

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for the project.

(3) The IHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a resident, the term "initiation of negotiations" means the following action:

(1) For the comprehensive improvement assistance program (CIAP) or comprehensive grant program (CGP) under subpart I of this part, 45 calendar days before:

(i) The IHA's issuance of the invitation for bids for the project; or

(ii) The start of force account work, whichever is applicable;

(2) For an IHA purchase through an arm's-length transaction as described in 49 CFR 24.101(a)(1), the seller's acceptance of the IHA's written offer to purchase the property;

(3) For an IHA purchase that does not qualify as an arm's-length transaction, the delivery of the initial written purchase offer from the IHA to the Owner of the property. However, if the IHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the initiation of negotiations is the actual move of the person from the property;

(4) For disposition or demolition of Indian housing under subpart M of this part, HUD approval of the IHA's proposal; or

(5) For other programs under this part 950, the notice to the occupant that he or she shall move permanently, or, if there is no notice, the person's actual move from the property.

§ 950.120 Compliance with other Federal requirements.

(a) *Environmental clearance.* Before obligating or expending funds for any physical improvements under a development or modernization project, the IHA will comply with the requirements of 24 CFR part 58.

(b) *Flood insurance protection.* HUD will not approve financial assistance for acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the jurisdiction, such as an Indian tribe or authorized tribal organization, an Alaska native village, or authorized native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area.

(c) *Wage rates for laborers and mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102), the IHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276a-5), to all laborers and mechanics who are employed by an IHA or its contractors for work or contracts over $2,000.

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102) on a modernization project, the IHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (after a determination under State, tribal, or local law) by HUD pursuant to section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j), to all laborers and mechanics who are employed by an IHA or its contractors.

(3) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 950.172(b).

(d) *Professional and technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (after a determination under applicable State, tribal, or local law) by HUD.

(e) *Access to records: audits.* (1) HUD and the Comptroller General of the United States shall have access to all books, documents, papers, and other records that are pertinent to the activities carried out under this part, in order to make audit examinations, excerpts, and transcripts, in accordance with 24 CFR 85.42.

(2) IHAs that receive financial assistance under this part shall comply with the audit requirements of 24 CFR part 44. If an IHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the IHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the IHA's books and records into auditable condition. The costs to place the IHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

(f) *Uniform administrative requirements.* The Uniform Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments, as set forth in 24 CFR part 85, are applicable to grants under this part, except as specified in this part. However, the provisions of 24 CFR 85.36 have been incorporated in the procurement regulations (subpart B of this part).

(g) *Lead-based paint poisoning prevention.* See 24 CFR part 35 and subpart H of this part.

(h) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501), no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(i) *Economic opportunities for low- and very low-income persons.* IHAs shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations in 24 CFR part 135, as provided in part 135, to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). See also 24 CFR 950.170(c).

§ 950.125 Establishment of IHAs pursuant to State law.

An IHA may be established pursuant to a State law that provides for the establishment of IHAs with all necessary legal powers to carry out low-income housing projects for Indians.

§ 950.126 Establishment of IHAs by tribal ordinance.

(a) *Legal capacity of tribe to establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(b) *Form of ordinance.* The form of tribal ordinance shall be determined by the tribe and reviewed by the ONAP Administrator. The IHA shall also demonstrate that it has the legal authority to develop, own, and operate a public housing project under the Act. Unless an IHA is created as part of the tribal government, ordinances shall include language that allows the IHA to sue and be sued in its corporate name. A sample format will be provided by HUD.

(c) *Approval or review of ordinance.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD.

(d) *Submission to HUD of documents establishing IHA.* (1) The tribal ordinance shall be submitted to HUD prior to receiving financial assistance.

(2) An IHA must certify that it has enacted the ordinance pursuant to any constitutional law or practice and has the local cooperation required by law.

§ 950.130 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or homebuyer commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he or she is a tenant or homebuyer in a housing project of the IHA. A Commissioner who is a tenant or homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a tenant or homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations, or status as a tenant or homebuyer.

(b) *Commissioner as IHA employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA, except under extremely unusual circumstances in which it is documented that no one except the commissioner is qualified for the position and where the HUD Area ONAP approves in advance of the hiring.

§ 950.135 Administrative capability.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA, including remote reviews, on-site limited and full reviews, audits, surveys, and a formal annual review or risk analysis assessment, as may be necessary or appropriate to make the determinations required by this section, taking into consideration all available evidence. HUD will evaluate an IHA's compliance in the areas of development, modernization, and operations, including such functions as administration, financial management, occupancy, and maintenance.

(b) *Obligation to maintain.* (1) An IHA shall maintain administrative capability at all times throughout the term of the

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ACC. In order to be considered administratively capable, an IHA shall administer the Indian housing program in accordance with applicable statutory requirements, HUD regulations, and contracts with no serious deficiencies. If any of the following conditions exist, it shall be considered a serious deficiency:

(i) The IHA is not financially stable, based on the most recent annual audit, technical assistance visit, or other reliable information;

(ii) An audit, conducted in accordance with 24 CFR part 44 and § 950.120, or HUD reviews (including monitoring findings) reveal deficiencies that HUD reasonably believes require corrective action and/or that corrective actions are not taken in accordance with established timeframes;

(iii) The IHA has management systems that do not meet the standards as set forth in 24 CFR part 85, and the lack of such systems may result in mismanagement or misuse of Federal funds;

(iv) The IHA has not conformed to the terms and conditions of previous awards, including for new construction, the Comprehensive Improvement Assistance Program, the Comprehensive Grant Program, or the use of Operating Subsidies;

(v) The IHA lacks properly trained and competent personnel at key management positions of the IHA; or

(vi) The IHA is in violation of the terms of applicable statutes, regulations, or Annual Contributions Contracts.

(2) If an IHA has serious deficiencies, HUD shall take any or all of the following actions:

(i) Issue a notice of deficiency;

(ii) Issue a corrective action order; or

(iii) Classify the IHA as "high risk" (see 24 CFR part 85).

(c) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (b)(1) of this section, HUD may issue to the IHA a notice of deficiency, stating the specific program requirements that the IHA has violated and requesting the IHA to take appropriate action. The notification shall be in writing and contain the following:

(1) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(2) Recommended actions that may be taken by the IHA and a timeframe for completion;

(3) The documentation necessary for evidence that all actions have been completed.

(d) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies described in paragraph (b)(1) of this section, HUD may issue to the IHA a corrective action order. An order may be issued, whether or not a notice of deficiency previously has been issued with regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and by specifying the corrective actions that shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, and prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action unless HUD notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action.

(3) Any corrective action ordered by HUD shall become a condition of the ACC grant agreement.

(4) The order shall be in writing and shall contain the following:

(i) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(ii) The corrective action(s) that shall be taken by the IHA and the time allowed for completing the corrective action(s);

(iii) The method of requesting reconsideration of the HUD action and the documentation necessary to evidence that all corrective actions have been completed.

(e) *Management improvement plan (MIP).* (1) When an IHA receives a corrective action order, it shall respond to the determination, in writing. This response shall include a management improvement plan to correct existing deficiencies. The plan shall describe in detail the method to be used and the time schedule to be maintained, shall be approved by the IHA Board of Commissioners, and is subject to HUD approval.

(2) After receiving the response from the IHA, HUD may direct the IHA to take one or more of the following actions:

(i) Submit additional information:

(A) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for the IHA having deficiencies, as described in paragraph (b)(1) of this section;

(B) Explaining any steps the IHA is taking to correct the deficiencies;

(C) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable statutes, regulations, or program requirements;

(ii) Submit schedules for completing the work identified in the MIP;

(iii) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's MIP;

(iv) Not incur financial obligations, or to suspend payments for one or more activities;

(v) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended; or

(vi) Take such other corrective actions as HUD determines appropriate to correct the IHA deficiencies.

(3) HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the management improvement plan.

(4) If the IHA does not satisfy the terms of the plan or does not act in good faith to meet the timeframes included in its MIP, HUD may impose additional restrictions. In addition, existing projects may be terminated, or other action may be instituted, as appropriate.

(f) *High risk determination.* An IHA may be classified as "high risk" and determined ineligible for certain types of future funding related to the classification of risk, or may be determined eligible for future funding but subject to special conditions or restrictions corresponding to the high risk classification. A corrective action order listing the specific violation shall accompany the high risk designation.

(1) If an IHA is determined to be high risk, the conditions that form the basis for that determination shall be sufficiently serious to warrant a determination to exclude the IHA from future funding of a particular type. The determination of high risk shall state the cause for that finding.

(2) An IHA may continue to be eligible for funding despite a finding that it is high risk—subject to special conditions and/or restrictions corresponding to the deficiencies found—if it has submitted a management improvement plan that was approved by HUD, and it has exhibited substantial compliance with the plan or a good faith effort to comply with the plan. If HUD determines that it is necessary to impose special conditions or restrictions, it will notify the IHA in writing of the applicable conditions or restrictions. One or more of the following special conditions or restrictions may be imposed:

(i) Submission to HUD of additional documentation;

(ii) Submission to HUD of additional or more detailed financial reports;

(iii) Additional project monitoring from the HUD Area ONAP;

(iv) Additional requirements for technical assistance, from HUD or another entity approved by HUD;

(v) Establishing additional approvals by HUD;

(vi) Withholding some or all of the IHA's grant;

(vii) Declaring a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(viii) Any other sanction authorized by law or regulation.

(g) *Appeals.* (1) An IHA may appeal a corrective action order or a determination of high risk status to the local HUD Administrator, Office of Native American Programs (ONAP). All appeals shall be made in writing within 30 calendar days of notice to the IHA of the HUD action and shall state clearly any justification or evidence that the action is unwarranted or too severe. If an appeal is filed concerning one or more action(s), the action(s) shall not take effect until HUD makes a final determination on the appeal or notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action. The HUD Administrator shall respond to the appeal within 30 days of receipt of the appeal.

(2) An IHA may appeal a decision of the Administrator to the ONAP, Headquarters, only if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. An appeal of the Administrator's decision shall be made to ONAP, Headquarters in writing, stating the justification or evidence, and shall be received within 21 days of the date of the Administrator's decision. Decisions reviewed by Headquarters will be evaluated based on the facts as presented to the Administrator and on any aggravating or extenuating circumstances.

(3) The IHA's Board of Commissioners shall notify the tribal government of HUD's final determination to withhold or suspend funds or declare a breach of the ACC grant agreement, as well as the basis for, and consequences resulting from, such a determination.

Subpart B—Procurement

§ 950.160 Procurement standards.

(a) *HUD standards.* (1) *Applicability.* This subpart sets forth Federal requirements to be followed by IHAs in the procurement of services, supplies, and goods.

(2) *Contracting authorization.* An IHA may execute contracts without HUD approval for the procurement of work, materials, equipment, and/or professional services, in accordance with paragraph (a)(3)(ii) of this section. Before the execution of contracts, the IHA Board of Commissioners will ensure that procedures are in place to ensure all ACC, statutory, and regulatory requirements are satisfied before the execution of contracts. The IHA Board of Commissioners will periodically review compliance with these procedures.

(3) *Limitations.* (i) An IHA shall not award a contract until the prospective contractor has demonstrated, to the satisfaction of the IHA, the technical, administrative, and financial capability to perform contract work of the size and type involved and within the time provided under the contract. The IHA shall not award a contract to a person or firm on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs,* which is compiled, maintained, and distributed by the General Services Administration (GSA), or to a person or firm that is subject to a limited denial of participation issued by the HUD Office of Native American Programs. (See 24 CFR part 24.)

(ii) The IHA may execute or approve any agreement or contract for personnel, management, legal, or other services with any person or firm without the prior written approval of HUD, except under the following circumstances:

(A) When the term of the agreement or contract (including renewal) is in excess of two years; or

(B) When the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget, Comprehensive Grant program budget, or operating budget, or an amount specified from time to time by HUD, as the case may be; or

(C) When the agreement or contract is for legal or other services in connection with litigation; or

(D) For contracts in excess of $100,000 in the aggregate when the IHA proposes to award a contract based upon a single bid or proposal received except when the procurement meets the requirements of 24 CFR 950.165(d).

(4) *Records.* An IHA shall maintain records sufficient to detail the significant history of a procurement. The IHA shall maintain evidence in its files:

(i) That the solicitation and award procedures were conducted in compliance with State, tribal, or local laws and Federal requirements, including requirements for Indian preference and wage rates;

(ii) That the award does not exceed the approved budget amount and is not being made on the basis of a single bid or proposal; and

(iii) That the IHA reviewed the contractor's qualifications, checked to ensure that the contractor is not listed on the GSA *List of Parties Excluded from Federal Procurement and Nonprocurement Programs,* and determined that the contractor has the capacity to successfully complete the work or services under the terms and conditions of the contract. This determination shall consider the contractor's record of past performance, integrity, compliance with public policy, and financial and technical resources.

(5) *Contract administration.* An IHA is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement.

(6) *Competition.* All procurement transactions must be conducted in a manner providing full and open competition.

(7) *Contract cost and price.* An IHA must perform a cost or price analysis in connection with every procurement action, including contract modifications.

(b) *IHA standards.* (1) *IHA procedures.* Each IHA shall adopt, promulgate, and comply with rules or regulations for the procurement and administration of supplies, materials, services, and equipment in connection with the development and operation of projects. Upon adoption or modification, the IHA will promptly furnish a copy of these rules or regulations to HUD. These rules or regulations shall contain provisions on at least the following subjects:

(i) Procedures to ensure that all procurement transactions are conducted in a full and open competitive manner, consistent with the standards of 24 CFR 85.36;

(ii) Identification (by position title) of IHA officials authorized to enter into and approve contracts on a noncompetitive basis as authorized by 24 CFR 85.36(d)(4);

(iii) Procedures for inventory control;

(iv) Procedures for storage and protection of goods and supplies;

(v) Procedures for issuance of, or other disposition of, supplies and equipment;

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(vi) Procedures for implementing Indian preference requirements;
(vii) Procedures for handling complaints and protests regarding procurement;
(viii) Standards of conduct governing IHA directors, board members, officers, and employees; and
(ix) Conflict of interest provisions governing directors, officers, employees, contractors/developers, and others doing business with the IHA.
(2) *Contract administration system.* An IHA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.
(c) *Government-wide contract requirements.* A HUD regulation found at 24 CFR part 85 embodies government-wide administrative requirements for grants to State, local, and federally recognized Indian tribal governments (including grants received by IHAs). The contract provisions listed in 24 CFR 85.36(i) of that regulation are to be included in any IHA contracts.

§ 950.165 Methods of procurement.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $100,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.
(b) *Procurement by sealed bids (Invitations for Bid (IFB)).* Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 950.165(b)(1) apply.
(1) In order for sealed bidding to be feasible, the following conditions should be present:
(i) A complete, adequate, and realistic specification or purchase description is available;
(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
(2) If sealed bids are used, the following requirements apply:
(i) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
(ii) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder; and
(v) Any or all bids may be rejected if there is a sound documented reason.
(c) *Procurement by competitive proposals (Request for Proposals (RFP)).* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
(1) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
(2) Proposals will be solicited from an adequate number of qualified sources;
(3) IHAs will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(5) IHAs may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, when price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms, even though they are a potential source to perform the proposed effort.
(d) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or where after solicitation of a number of sources, competition is determined inadequate.
(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:
(i) The item is available only from a single source;
(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(iii) HUD authorizes noncompetitive proposals; or
(iv) After solicitation of a number of sources, competition is determined inadequate.
(2) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

§ 950.170 Other requirements applicable to development contracts.

(a) *Bonding requirements.* For construction contracts for more than $100,000, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). In the case of a Mutual Help project, the term "total contract price" as used with respect to each of the above assurance methods includes the value of all Mutual Help contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract work. The following methods may be used to provide performance and payment assurance:
(1) Performance and payment bonds for 100 percent of the total contract price;
(2) Deposit with the IHA of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;
(3) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the IHA, subject to reduction during the warranty period commensurate with potential risk;
(4) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the IHA subject to reduction during the warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.
(b) *Executive Order 11246 (equal employment opportunity).* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (3 CFR, 1964–65 Comp., p. 339), as amended by Executive Order 11375 (3 CFR, 1966–70 Comp., p. 684), and to applicable implementing regulations (24 CFR part 130; 41 CFR chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin. Compliance with E.O. 11246, and related regulations, Orders, and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.
(c) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135, IHAs and their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act) to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.3(1)) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

§ 950.172 Wage rates.

(a) *Determination of prevailing wage rates.* For the applicable method of determination of the prevailing wage rates to be paid laborers and mechanics, see § 950.120(c).
(b) *Preemption of prevailing wage rates.* (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the development, maintenance, or modernization of a project whenever:
(i) The contract or the work item is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and is for a project assisted with funds for low-income housing under the Act; and
(ii) The wage rate (the basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, or modernization of a project exceeds whichever of the following Federal wage rates is applicable:
(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;
(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;
(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or
(D) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.
(2) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate:
(i) When a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and
(ii) When a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.
(3) Whenever paragraph (b)(1)(i) of this section is applicable:
(i) Any solicitation issued by the IHA and any contract executed by the IHA for development, maintenance, or modernization of the project shall include a statement as prescribed in this paragraph, and failure to include this statement may constitute grounds for requiring re-solicitation. The statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract must be included whenever either of the following occurs:
(A) Such non-Federal prevailing wage rate exceeds:
(*1*) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;
(*2*) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or
(*3*) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or
(B) Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.
(ii) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section to any of its own employees who may be engaged in the development, maintenance, or modernization of the project; and
(iii) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for development, maintenance, or modernization of the project.
(4) Nothing in paragraph (b) of this section shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors when such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (b)(1)(ii) of this section, nor does paragraph (b) of this section impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.
(5) The provisions of paragraph (b) of this section shall apply to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

§ 950.175 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:
(1) Preference and opportunities for training and employment shall be given to Indians; and
(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

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(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include either of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452); that is, "any Indian-owned (as defined by the Secretary of Interior) commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any Tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(8)); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in employment and training.* To the greatest extent feasible, IHAs and their contractors and subcontractors shall give preference and opportunities for training and employment in connection with the administration of grants awarded under this part and in the award of contracts funded under this part to Indians and Alaskan natives. The Indian Self-Determination Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Preference in contracting.* To the greatest extent feasible, IHAs shall give preference in the award of contracts funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each IHA shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian organizations and Indian-owned enterprises;

(B) *Stage 2.* If responses to the solicitation of intent to bid under Stage 1, above, are received from more than one Indian organization or Indian-owned enterprise that is found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises (otherwise, bids may be solicited on an open, competitive basis); or

(iii) Develop and incorporate into their procurement policy, subject to HUD Area ONAP one-time approval, the IHA's method of providing preference. In no instance shall HUD approve a method that provides preference based upon affiliation or membership in a particular tribe or group of tribes.

(2) If the IHA-selected method of providing preference under paragraph (d)(1) of this section results in fewer than two responsible qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the IHA shall:

(i) Re-compete the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-compete the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If only one bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bid or proposal.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36(d)(1) need not follow the formal requirements for public announcement and advertising for bids or proposals as provided in paragraph (d)(1) of this section. However, an IHA small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the solicitation and the contract documents.

(5) An IHA, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. IHAs may require prospective contractors to submit information prior to submitting a bid or proposal, or at the time of submission. Information requested by the IHA may include but is not limited to the following:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the IHA that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The IHA shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* An IHA may, subject to applicable State, local, or tribal law, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the Section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of nonperformance or longer period of performance. The additional Indian preference requirements permitted by this part do not include the imposition of geographic preferences or restrictions to the procurement process.

(f) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this subpart, including alternate methods enacted and approved in the manner described in this subpart B.

(1) Each complaint shall be in writing, signed, and filed with the IHA.

(2) A complaint must be filed with the IHA no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the IHA shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. The IHA shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of submittal of the complaint to the IHA. The decision of the IHA shall constitute final administrative action on the complaint.

§ 950.190 Insurance.

(a) *Purpose.* This section implements policies concerning insurance coverage required under the Annual Contributions Contract (ACC) or Mutual Help Annual Contributions Contract (MHACC) between HUD and an IHA. These contracts require (in section 305 of the ACC and Article IX of the MHACC) that IHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the IHAs. The insurance coverage is required to be obtained under procedures that provide for open and competitive bidding. The HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102–368) provided that an IHA could purchase insurance coverage without regard to competitive selection procedures when it purchases it from a nonprofit insurance entity owned and controlled by IHAs approved by HUD in accordance with standards established by regulation. This section specifies the standards.

(b) *Method of selection of insurance coverage.* While 24 CFR part 85 requires that grantees solicit full and open competition for their procurements, the HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102–368) provides an exception to this requirement. IHAs are authorized to obtain any line of insurance from a nonprofit insurance entity that is owned and controlled by IHAs and approved by HUD in accordance with this section, without regard to competitive selection procedures. Procurement of insurance from other entities is subject to competitive selection procedures.

(c) *Approval of a nonprofit insurance entity.* Under the following conditions, HUD will approve a nonprofit self-funded insurance entity created by IHAs that limits participation to IHAs (and to nonprofit entities associated with IHAs that engage in activities or perform functions only for housing authorities or housing authority residents):

(1) An insurance company (including a risk retention group);

(i) The insurance company maintains a current license or is authorized to do business in the State or tribal area by the State Insurance Commissioner or Indian tribal governing body and has submitted documentation of this authority to HUD; and

(ii) The insurance company has not been suspended from providing insurance coverage in the State or tribal area or been suspended or debarred from doing business with the Federal Government. The insurance company is obligated to send to HUD a copy of any action taken by the authorizing official to withdraw the license or authorization;

(2) An entity not organized as an insurance company.

(i) The entity has competent underwriting staff (hired directly or engaged by contract with a third party), as evidenced by professionals with an average of at least five years of experience in large risk (exceeding $100,000 in annual premiums) commercial underwriting or at least five years of experience in the underwriting of risks for public entity risk pools. This standard may be satisfied by submission of evidence of competent underwriting staff, including copies of resumes of underwriting staff for the entity;

(ii) The entity has efficient and qualified management (hired directly or engaged by contract with a third party), as evidenced by the report submitted to HUD in accordance with paragraph (d)(3) of this section and by having at least one senior staff person who has a minimum of five years of experience:

(A) At the management level of Vice President of a property/casualty insurance entity;

(B) As a senior branch manager of a branch office with annual property/casualty premiums exceeding $5 million; or

(C) As a senior manager of a public entity risk pool. Documentation for this standard must include copies of resumes of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(iii) The entity maintains internal controls and cost containment measures, as evidenced by an annual budget;

(iv) The entity maintains sound investments consistent with:

(A) The State insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities in the State in which the entity is organized, investing only in assets that qualify as "admitted assets"; or

(B) Any applicable provisions of Indian tribal law concerning investments, in the case of an IHA that is not subject to such State law;

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal, State, or tribal law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. Selection of entities to perform such reviews shall comply with the competitive requirements of 24 CFR 85.36. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be

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submitted to HUD within 90 days after the end of the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required by GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

(i) Efficiency of any Third Party Administrator;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of the proposed revocation of its approval, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26.

§ 950.195 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the IHA undertakes, in accordance with the IHA's ACC or MHACC with HUD. The insurance coverage does not relieve the IHA of its responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall also be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be $500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed $5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than $250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is $1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the IHA or contractor and in force on the date this rule is effective, which provides coverage for the hazards involved in the testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

Subpart C—Development

§ 950.200 Roles and responsibilities of Federal agencies.

HUD, IHS, BIA, and other appropriate agencies shall coordinate their functions in accordance with the Interdepartmental Agreement. HUD shall take the lead role in the coordination of the construction of Indian housing under this part.

§ 950.205 Allocation.

HUD will allocate funds to Area ONAPs using a systematic process that considers the relative need for housing in each HUD area or other geographic area, based on the most recent and reliable data available. (See 24 CFR part 791, subpart D.)

§ 950.207 Eligibility.

(a) *Basic criteria.* An IHA is eligible to submit an application for new housing development and to be considered for funding if it meets the following criteria:

(1) Has been established in accordance with the provisions of § 950.125 or § 950.126; and

(2) Has not been determined to be administratively incapable, in accordance with § 950.135; and

(3) Meets all the performance thresholds contained in paragraph (b) of this section.

(b) *Performance thresholds.* An IHA shall be in compliance with the following requirements for all projects in development or operation to be considered for additional new housing development funding. The ONAP Administrator may waive performance thresholds for good cause.

(1) Environmental Review requirements of § 950.247;

(2) Fiscal closeout requirements of § 950.285;

(3) Final site approval and site control requirements of § 950.250(c);

(4) Firm commitments from utility suppliers in accordance with § 950.235(c) prior to the execution of a construction contract, contract of sale, or start of construction; and

(5) Pre-construction certification requirements of § 950.260.

§ 950.210 Authority for proceeding without HUD approval.

(a) *IHA authority to proceed.* An IHA shall proceed with development functions without obtaining HUD approval except as otherwise specified in this part. An IHA shall accomplish necessary planning and administration activities to assure the timely completion of the development grant (generally six years from the initial development grant approval to development grant closeout).

(b) *Rescinding authorization.* At any time during the development process, HUD may make a determination, subject to the procedures specified under § 950.135, that an IHA shall obtain HUD approval of additional processing steps. If such a determination is made, HUD shall explain in writing the reasons for the determination and specify any processing steps that are subject to additional technical assistance and prior approval by HUD.

(c) *Time constraints.* The IHA shall commence project planning so that construction begins within 24 months of the initial development grant approval date. HUD shall not recapture funds reserved for the project during the 30-month period following the initial development grant approval. Excluded from the computation of the 30-month period shall be any delay caused by the failure of HUD to process such project within a reasonable period of time, any environmental review requirement (other than the failure to initiate the environmental review process by the responsible entity), any legal action affecting the project, or any other factor beyond the control of the IHA. If an IHA fails to reach construction start for a project within 24 months of the date of initial development grant approval, HUD shall analyze the circumstances that have resulted in the failure to reach construction start and, subject to the availability of resources, shall provide assistance to the IHA to enable construction start within 30 months after the date of initial development grant approval.

§ 950.215 Production methods.

(a) *Choice and approval of production method.* The IHA may utilize any production method or combination of production methods as long as the production method(s) is not in conflict with the procurement requirements of 24 CFR 85.36 and subpart B of this part. The IHA shall advise HUD on its application of its choice of production methods. Prior HUD approval is required if the method selected is Force Account or if the IHA proposes to utilize a noncompetitive procurement method. If HUD disapproves the IHA's preferred development method, it shall provide a justification to the IHA. Production methods utilized in the Indian Housing program are Conventional, Turnkey, Modified Turnkey, Self-Help, Acquisition, and Force Account.

(b) *Special requirements for approval of Force Account method.* The Force Account method may be used only if approved by the Area ONAP. The IHA shall demonstrate that it has the technical and administrative capabilities to complete the project within the projected time and budget. The Area ONAP shall require that a tribe or IHA agree in writing:

(1) To cover any costs in excess of those included in the HUD-approved development cost budget;

(2) Demonstrate that it has the financial resources to meet the excess costs up to a specified amount; and

(3) Provide some form of security acceptable to HUD to cover excess costs. For this purpose, an IHA may use attachable assets including funds maintained in its reserve for replacements received from the sale of Mutual Help units. The Area ONAP may approve the Force Account method without requiring the IHA or tribe to provide security to cover excess costs if the IHA agrees to develop the project in small stages with additional HUD monitoring and oversight. Under such approval, the IHA continues to be obligated to cover costs in excess of those included in the HUD-approved development cost budget.

§ 950.220 Total development cost.

(a) *Total development cost standard.* Total development cost (TDC) standards, which establish the maximum allowable cost for developing Indian housing projects, are determined as a per unit cost for various unit sizes, structure types, and geographic areas, and are published annually by HUD.

(b) *Resident training and insurance.* The total development cost of a project may include costs associated with a HUD-approved tenant or homebuyer counseling program (in accordance with the provisions of § 950.453) and the insurance premiums for the first three years of project operation with no obligation for reimbursement from operating receipts. The anticipated cost of such insurance premiums may be charged to the development and placed in escrow by the IHA to enable closeout of the development grant.

(c) *Costs excluded from TDC.* The TDC standard for a project includes all costs associated with the project except for off-site water and sanitation facilities infrastructure and donations received from any public or private source. Costs for off-site water and sanitation facilities infrastructure and any donations received shall be included in the project development cost budget but will be excluded from the calculation of the project TDC limit.

§ 950.225 Application.

(a) *Submission to HUD.* (1) An eligible IHA may submit an application for a project after HUD issues a notice of funding availability (NOFA).

(2) The application shall be on the form prescribed by HUD and shall be accompanied by all the legal and administrative attachments required by the form.

(3) State-created IHAs for non-Federally recognized tribes shall certify that sites selected shall be within the IHA's area of operation. For purposes of this section "area of operation" is defined as a land area with defined geographical boundaries, which has a significant concentration of Indian families who are:

(i) Not served by a PHA or tribally-created IHA; and

(ii) Have a bona fide historic presence or connection with the land, as recognized by the Federal Government or a State.

(b) *Rating process.* (1) Applications shall be rated and points shall be awarded for at least the following categories:

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(i) Relative unmet need for housing;
(ii) Relative IHA occupancy rate compared to the occupancy rates of other eligible IHAs submitting applications;
(iii) Length of time since the last development grant approval date for each IHA compared to other eligible IHAs submitting applications;
(iv) Current IHA development pipeline activity; and
(v) Other factors identified in a NOFA.

(2) After the completion of the rating process, all applications shall be combined into one list to produce an ordered ranking to be used in determining applications to be funded.

§ 950.227 Initial development grant approval and ACC execution.

(a) *Grant approval.* (1) For those applications selected for funding, the Area ONAP shall issue a development grant approval that shall specify housing type, household type, development method, the amount of funds reserved, the minimum and maximum number of total units, and the number of units of each bedroom size to be developed. The total project development cost is limited to the funds designated in the development grant approval plus any donations to the project.

(2) As long as the total project development cost limit and the funds reserved in the development grant approval are not exceeded, the IHA may change any of the elements specified in the development grant approval it determines necessary to complete the project. If an IHA decides to change any of the elements specified in the development grant approval, it shall submit to HUD a request to amend the development grant approval, including documentation supporting the request. HUD shall either approve the request or notify the IHA of the reason the request is not approved. Amendment funds may not be used to increase the project size.

(b) *Execution of ACC.* (1) Upon issuance of the development grant approval by HUD, the IHA and HUD may execute an ACC to cover the eligible costs of the project with respect to the number of units covered by the development grant approval.

(2) The ACC must be amended, if required, upon completion of project planning to correctly identify the number of units in the development, program type, and production method.

§ 950.229 Expenditure of funds.

(a) *Development Cost Budgets.* The IHA shall submit for HUD review and acceptance a development cost budget showing anticipated expenditures and any needed supporting documentation before funds can be obligated or expended.

(1) The IHA may submit a development cost budget for planning for an amount that the IHA demonstrates is required for the planning of the project. A development cost budget for planning may include costs for comprehensive planning. (See paragraph (c) of this section.)

(2) The IHA shall submit a construction stage development cost budget, in accordance with the procedures specified under § 950.260.

(b) *Limitations.* (1) An IHA shall not incur any development cost in excess of the amount identified on the ACC for that project.

(2) Obligation or expenditure of development funds is limited to the amounts reviewed and accepted by HUD in the latest development cost budget.

(3) Use of development funds of projects under ACC to cover costs for another project is strictly prohibited except as provided for under paragraph (c) of this section.

(c) *Comprehensive housing plan.* At the request of an IHA, HUD may approve up to one percent of the development grant to establish and/or update a master housing plan for the IHA's area of operation. The plan shall contain such elements as proposed housing sites, existing and proposed off-site roads, and existing and proposed water and sewer facilities. In addition, the plan shall address geographical and topographical features, as well as socio-economic and cultural factors, such as employment opportunities, schools, and services, that have an impact on the placement of residential housing. The plan shall be approved by resolution of the tribal council. The one-percent cost for the comprehensive housing plan may be charged to the development and placed in an escrow or revolving fund account by the IHA to enable closeout of the development program and/or pooling of planning resources.

§ 950.231 Project coordination.

(a) *Project coordination meeting.* Upon notification of a development grant approval, the IHA shall schedule a project coordination meeting to plan and schedule the steps needed to develop the project. The IHA shall invite to the project coordination meeting the project designer (if known) and any tribal, State, or Federal officials who will participate in the development of the project. At the project coordination meeting, the IHA shall establish a schedule of planning activities with target dates for completion of key activities, including the submission to HUD of a construction stage development cost budget and other requirements contained in § 950.260. The schedule, and any amendments thereto, shall be provided to meeting participants and to HUD to be used in planning and monitoring activities.

(b) *Citizen participation.* The IHA shall hold at least one public meeting at which comments are solicited on the proposed sites and project design from potential occupants, as well as from other interested parties. The meeting may be held in conjunction with a regularly scheduled board meeting or may be held separately. In either case, adequate notice shall be provided to the public to enable full participation. The IHA shall give maximum consideration to all public comments in the design of the project. Failure to hold a public meeting or failure to consider public comments in the design of the project shall be grounds for HUD to rescind authorization, in accordance with the procedures specified in § 950.210(b).

§ 950.235 Site selection criteria.

(a) *Relation to tribal, local, and regional plans.* Selected sites shall comply with all applicable tribal, local, and/or regional plans.

(b) *Access roads.* Access roads up to the boundaries of multi-unit sites shall be provided by the BIA, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads up to the boundaries of individual homesites in a scattered site project shall be provided by the homebuyer, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads shall be maintained by a responsible local entity to provide safe and suitable vehicular access. No site shall be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity that roads shall be constructed before commencement of project construction.

(c) *Utilities.* Before final site approval, the IHA shall obtain firm commitments from utility suppliers that all utility services necessary for the operation of the project are available or will be available at the time of project occupancy.

(d) *Physical characteristics of site.* The physical characteristics of a site shall facilitate overall economy in site preparation, construction, and management. Only reasonable costs for surveys, planning, test borings, and test wells shall be included in the development cost of the project.

(e) *Size of sites.* An individual homesite, whether a scattered site or included in a multi-unit site, shall not exceed the size determined by the IHA or by tribal or local policy to be necessary for the use and occupancy of the dwelling unit.

(f) *Access to sites.* For a Mutual Help unit, each homesite shall be legally and practicably available for use by another homebuyer. If a site is part of other land owned by the prospective homebuyer, the lease or other conveyance to the IHA shall include the legal right of access to the site by any substitute homebuyer.

§ 950.240 Types of interest in land.

(a) *Trust or restricted land.* Sites on tribally or individually owned trust or restricted land (as defined in 25 CFR 151.2) shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years) on a HUD-approved form of lease, which shall provide that the lease cannot be terminated before its expiration without the consent of the IHA, and while the site remains under the ACC, by HUD.

(b) *Unrestricted land.* Sites on unrestricted land shall be either conveyed to the IHA in fee or leased to the IHA on a HUD-approved form of lease for a term of not less than 50 years.

(c) *Tax exempt status.* Notwithstanding the type of interest in land, all project property shall be exempt from local or State imposed real or personal property tax in accordance with section 6(d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(d)).

§ 950.245 Appraisals.

(a) When the cost of a site is to be charged to the IHA's development cost and the cost of the site exceeds $1,500 per dwelling unit, an appraisal shall be made in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601–4655). Government-wide implementing regulations are at 49 CFR part 24. The cost of donated land may be assumed to be $1,500 per unit and no appraisal is required. An appraisal of donated land shall be performed only if the IHA determines that the value to be attributed to the site exceeds $1,500.

(b) When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable land in the same or competing market areas.

§ 950.247 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law that further the purposes of that act are most effectively implemented in connection with the expenditure of Indian housing funds, the IHA shall comply with the Environmental Review Procedures specified under 24 CFR part 58. Upon completion of the environmental review, the IHA shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. Costs associated with completing the environmental review are eligible project expenses.

§ 950.250 Site approval.

(a) *IHA certification.* Included in the IHA's certifications pursuant to § 950.260 shall be a certification to HUD that all conditions that would prevent the site from being included in the project have been satisfactorily addressed, and that there are no legal or physical reasons that would interfere with the occupancy and use of the site during the term of the ACC. Such certification shall be conditioned only upon final acquisition or execution of a lease on the property.

(b) *Tentative site approval.* (1) When a site is proposed for use, the IHA shall inspect the property to ascertain its suitability for development. When appropriate, the IHA shall request an inspection of any proposed site by utility suppliers, the BIA, the IHS, and a representative of the local governing body and shall include each agency's comments in a list of potential site approval concerns. Tentative approval of the site by the IHA occurs when the IHA determines that:

(i) A site can be economically included in the project;

(ii) A site does not contain any legal or physical conditions that cannot be adequately addressed that would exclude it from consideration for acquisition; and

(iii) The environmental review of the site has been completed (see § 950.247) and a finding of no significant impact issued.

(2) Tentative site approval shall not be determined until the requirements for compliance with local governmental approval have been met. (See 24 CFR part 791.)

(c) *Final site approval.* (1) Final site approval occurs when all of the conditions stated in the tentative approval have been appropriately addressed and, with respect to trust land or restricted land over which the BIA has authority, the BIA has given either unconditional concurrence for final site approval or concurrence conditioned only on subsequent execution of site leases or right-of-way easements. If the BIA has given final site approval conditioned on subsequent execution of site leases of right-of-way easements, the IHA shall obtain from the BIA written assurance that a valid lease or easement, executed by all the necessary parties, can be obtained within a reasonable time and before start of construction.

(2) Final site approval on all sites for the project shall occur:

(i) Before any commitment is made to acquire or lease any site; and

(ii) Before construction is started, except for a project developed under the acquisition method for restricted land sites, in accordance with paragraph (c)(3) of this section. In addition, leases and necessary rights-of-way shall be obtained before solicitation of construction bids or before construction may begin on any units.

(3) With respect to trust or restricted land sites, construction may start before final site approval of all sites only when the following conditions have been met:

(i) All sites for the project have tentative site approval;

(ii) At least 50 percent of the sites have final site approval;

(iii) HUD is satisfied that the balance of the sites will meet the requirements for final site approval no later than one year from execution of the construction contract; and

(iv) The construction contract provides that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor/developer within one year from execution of the construction contract (or HUD-approved extension), the construction contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

§ 950.255 Design criteria.

(a) *Building standards.* (1) The IHA shall use tribal or, if appropriate, local government building codes that meet or exceed standards of national building codes. In the absence of tribal or local government adopted building codes that meet the requirements of this section, the IHA Board of Commissioners shall specify, by Resolution, the building codes to be followed in the development of its housing.

(2) Codes used shall provide sufficient flexibility to permit the use of different designs and materials; shall include

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standards for reasonable site designs; shall give proper consideration to the needs of physically handicapped persons for ready access to, and use of, housing assisted under this part (see 24 CFR part 8); and shall be sufficient to produce a decent, safe, and sanitary home.

(3) Modifications to model national building codes are authorized if a tribe or, in the absence of tribally adopted codes, an IHA determines to make special provisions in its codes for traditional and culturally oriented design features.

(b) *Fuel and energy consumption.* (1) Newly constructed housing shall meet or exceed the requirements of the latest Model Energy Code published by the Council of American Building Officials. In selecting from among design options for heating, cooking, and electrical systems, maximum attention shall be given to cost, adequacy, maintenance of the system, and the long-term reliability of fuel supplies. Where fuel is not locally available at low cost, alternate systems such as wind, solar, or coal may be used and included in the project cost.

(2) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to all new Indian housing developments under this part.

(c) *Moderate housing design.* The IHA shall select a moderate design standard taking into consideration anticipated long-term operating costs.

(d) *Water provisions for Alaska.* Alaska Native housing assisted under this part shall be designed and constructed to include water storage tanks when the housing is not served by or scheduled to be served by piped utilities. These tanks shall be no less than 100 gallons in capacity and constructed to be accessed from outside the house.

(e) *Design approval.* The IHA shall obtain the approval of project designs by all local or tribal regulatory agencies, by the BIA for on-site streets, and the IHS, where appropriate, for community water and/or sewer facilities. The IHA shall assure the design meets applicable building codes, that the project can be constructed within the amount of funds reserved for the development, and that the project is financially feasible including ongoing maintenance cost considerations.

§ 950.260 Construction stage development cost budget and certifications.

(a) *IHA submission.* Upon completion of project planning, an IHA shall submit to HUD a construction stage development cost budget, certifications attesting to the completion of all preconstruction requirements, and project characteristics information. Submission of this information shall be in accordance with the schedule established at the project coordination meeting. The IHA's timely submission of the information specified in this paragraph, in the form prescribed by HUD, shall be a factor in HUD's evaluation of an IHA's administrative capability in accordance with § 950.135. The information and documentation submitted by the IHA shall demonstrate the financial feasibility of the project, the legal sufficiency to proceed with construction, and compliance with all ACC, statutory, and regulatory requirements.

(b) *HUD actions.* HUD shall review the IHA submittals and shall determine whether they meet the requirements specified in paragraph (a) of this section. If the submittals meet the requirements of this section, HUD will notify the IHA. If the submission does not meet the requirements of this section, HUD shall notify the IHA of the reasons and allow the IHA to amend and resubmit the documents.

§ 950.265 Construction and inspections.

(a) *Construction start.* Following HUD review and acceptance of the IHA submittals, the IHA shall commence final preconstruction activities and begin construction of the development.

(b) *Notification.* Upon award of construction contract, execution of a contract of sale, or construction start, the IHA shall notify all participating agencies. The notification to HUD shall include a revised development cost budget, if appropriate, and a statement that the IHA has met all ACC, statutory, and regulatory requirements for the applicable development method. Upon request, the IHA shall submit to HUD copies of the construction plans and specifications, the construction contract or contract of sale, detailed plans for Force Account construction management, the notice to proceed, or other applicable contracting documents.

(c) *Inspections and Monitoring.* (1) Whatever the development method used, the IHA shall be responsible for obtaining inspections throughout the construction period including the frequency of inspections and the procedures to be used to assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an architect, engineer, or other qualified person selected by the IHA.

(2) The IHA shall coordinate inspections with tribal or local regulatory agencies and, where applicable, the BIA and/or IHS, to assure that all governing codes and other requirements are met.

(3) HUD representatives or agents may visit construction sites to evaluate the IHA's contract administration. These visits are not inspections of the quality of construction and shall not be construed by the IHA as construction inspections.

§ 950.270 Construction completion and settlement.

(a) *Final inspection.* The IHA shall assure that all work is satisfactorily completed, in accordance with the terms of the construction contract, prior to scheduling a final inspection. The final inspection shall be made jointly by the IHA and the contractor. Where appropriate, the IHA shall notify tribal or local regulatory agencies, the BIA, the IHS, and HUD before this inspection to provide them with the opportunity to participate in the final inspection of all or part of the work. In a MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA. Maximum consideration shall be given to all homebuyer concerns.

(b) *Contract settlement.* (1) If the final inspection discloses no deficiencies other than punch list items or seasonal completion items, the IHA shall, as soon as practical, develop an interim Certificate of Completion to enable partial settlement of the contract. The interim Certificate shall detail the items remaining and set forth a schedule for their completion, and shall allow the IHA to accept the units (or stage) for occupancy. Upon completion of the interim Certificate and receipt of the contractor's Certificate and Release, the IHA shall release the monies due the contractor/developer less withholdings in accordance with the construction contract.

(2) The contractor/developer shall complete the punch list items in accordance with the time schedule contained in the interim Certificate. The IHA may pay the contractor/developer for items that are completed to the satisfaction of the IHA. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall prepare a final Certificate of Completion and release the amounts withheld to the contractor/developer.

(c) *Notification to HUD.* (1) Upon acceptance of the project or any part thereof, the IHA shall notify HUD of such action. When all units within a project are accepted, the IHA shall provide a notification to HUD of the date the project was fully available for occupancy by residents.

(2) The IHA shall notify HUD when all units in the project are occupied.

§ 950.275 Warranty inspections and enforcement.

(a) The construction contract shall specify the warranty periods applicable to items completed as part of the contract. It shall also provide for assignment to the IHA of manufacturers' and suppliers' warranties covering equipment or supplies.

(b) The IHA shall conduct an inspection of each dwelling unit at least once not later than six months after the start of the contractor's warranty period. A separate or final warranty inspection shall be made in time to exercise the IHA's rights before expiration of the contractor's warranties. Each inspection shall cover all items under warranty at the time of the inspection, including items covered by manufacturers' and suppliers' warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties.

§ 950.280 Correcting deficiencies.

(a) *Responsibility.* The IHA shall pursue correction of any deficiencies against the responsible party (e.g., architect, contractor/developer or MH homebuyer) as soon as possible after discovering the deficiencies. Where the costs of correcting deficiencies cannot be recovered from the responsible party and/or the deficiency requires immediate correction to protect life or safety or to avoid further damage to the project unit(s), the IHA may apply to HUD for amendment of the development budget to provide the funds required. The IHA may also use operating receipts to cover such costs. The IHA shall be responsible for correction of any deficiencies that could have been detected and/or corrected during the warranty period if the IHA had inspected at the appropriate time or had pursued correction of deficiencies against the responsible parties.

(b) *Amendments.* (1) HUD may, but is not obligated to, provide additional funding to the IHA to correct deficiencies. The ACC may be amended to provide amounts needed to correct deficiencies (and any resulting damage) in design, construction, and equipment only where there is substantial evidence that it is not possible to obtain timely correction or payment by the responsible parties, including the source of the performance bond.

(2) In the case of a MH home, the additional cost for correcting deficiencies in design, construction, or equipment (and any damage resulting therefrom) shall not result in an increase in the homebuyer's purchase price. If a homebuyer is not in compliance with the MHO Agreement, the IHA shall reach agreement with the homebuyer to correct the noncompliance before approving or beginning the corrective work.

§ 950.285 Fiscal closeout.

The IHA shall submit to HUD a certificate of actual development cost within 24 months of the date of full availability (see § 950.270(c)(1)), or such later date as may be approved by HUD, in a form prescribed by HUD. Audit verification of the actual development costs shall be submitted to HUD within 36 months of the date of full availability. The audit shall follow the requirements of 24 CFR part 44 (Single Audit Act of 1984). If the audit of the actual development costs indicates that excess funds have been advanced to the IHA, the IHA shall dispose of the excess as HUD directs. If the audited development cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD directs. If the IHA fails to submit a certificate of actual development cost or audit within the prescribed times, the Area ONAP may make a determination that all development activities have been completed as of a specified date, and inform the IHA that such action has been taken and that no additional costs may be incurred for the development. The Area ONAP shall then proceed with the fiscal close-out of the development.

Subpart D—Operation

§ 950.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (i.e., Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants. (See § 950.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, residency that includes families with a broad range of incomes and that avoids concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a Federal preference, ranking preference, or local preference, in accordance with §§ 950.303 through 950.307; and

(iv) To establish objective and reasonable policies for selection by the IHA among otherwise eligible applicants.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists;

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the Federal preferences (described in § 950.303) will be used;

(B) How any ranking preferences (described in § 950.303) will be used;

(C) How any local preferences (described in § 950.303) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant;

(iv) Policies for resident transfer between units, projects, and programs. For example, an IHA could adopt a criterion for voluntary transfer that the resident had met all obligations under the current program, including payment of charges to the IHA and completion of maintenance requirements;

(v) Policies for compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Policies for compliance with 24 CFR part 760, which requires applicants and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) These selection policies shall:

(i) Be duly adopted; and

(ii) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or residents upon request, free or at their expense, at the discretion of the IHA.

(5) Such policies shall be submitted to the HUD Area ONAP upon request from that office.

(6) "Residency preference" means a preference for admission of families

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living in the jurisdiction of the IHA. Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(b) *Income limits.* (1) A family shall be a low-income family, as defined in § 950.102, to be eligible for admission. (With respect to eligibility for the Mutual Help program, see special provisions of § 950.416.)

(2) In extremely unusual circumstances, the IHA may request that HUD increase or decrease income limits for low-income families or for very low-income families in the Indian area because of unusually high or low family incomes. Such a request can be granted only by joint approval of HUD's Assistant Secretary for Housing and Assistant Secretary for Public and Indian Housing, after consultation with the Secretary of Agriculture (if the income limits are being established for a "rural area" as defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490)).

(c) *Standards for IHA tenant/homebuyer selection criteria.* (1) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant, and shall not be related to those that may be imputed to a particular group or category of persons of which an applicant may be a member. The IHA's tenant/homebuyer selection criteria shall be in accordance with HUD guidelines and submitted to the HUD Area ONAP. (With respect to the Mutual Help program, see special provisions of § 950.416.)

(2) In the event of any unfavorable information regarding an applicant, the IHA shall take into consideration the time, nature, and extent of the past occurrence and reasonable probability of future favorable performance.

(d) ***Admission of single persons—priority to elderly and displaced persons.*** An IHA shall extend preference to elderly families (including disabled persons and handicapped persons), displaced families, and displaced persons over single persons.

(e) *Selection preference with respect to projects for elderly families.* (1) In determining priority for admission to projects for elderly families, an IHA shall give a preference to elderly families. When selecting applicants for admission from among elderly families, an IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307.

(2) An IHA may give a preference to near elderly families in determining priority for admission to projects for elderly families when the IHA determines that there are not enough eligible elderly families to fill all the units that are currently vacant or expected to become vacant in the next 12 months. In no event may an IHA admit a near elderly family if there are eligible elderly families on the IHA's waiting list that would be willing to accept an offer for a suitable vacant unit in that project.

(3) Before electing the discretionary preference in paragraph (e)(2) of this section, an IHA shall conduct outreach to attract eligible elderly families, including, where appropriate, elderly families residing in projects not designated as being for elderly families.

(4) If an IHA elects the discretionary preference in paragraph (e)(2) of this section, the IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307 when selecting applicants for admission from among near elderly families. Near elderly families that do not qualify for a Federal preference and that are given preference for admission under this section over other nonelderly families that qualify for such a Federal preference are not subject to the 30 percent limitation on local preference admissions. If a near elderly applicant is a single person, the near elderly single person may be given a preference for admission over other single persons to projects for the elderly.

(f) *Verification of information and notification to applicants.*

(1) *Verification.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

(2) *Notification to applicants.* (i) If an IHA determines that an applicant is ineligible for admission to a project, the IHA shall promptly notify the applicant of the basis for such determination and shall provide the applicant, upon request and within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination; and

(ii) When a determination has been made that an applicant is eligible and satisfies all requirements for admission including the tenant selection criteria, the applicant shall be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

§ 950.303 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by Federal law and required to be used in the selection process. See § 950.304(a).

(2) "Ranking preferences" are preferences that may be established by the IHA to use in selecting among applicants that qualify for Federal preferences. See § 950.304(b).

(3) "Local preferences" are preferences that may be established by the IHA for use in selecting among applicants without regard to their Federal preference status.

(b) *Use of preference in selection process.* (1) *Factors other than preference.* (i) *Characteristics of the unit.* The IHA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the IHA shall give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27). Also, in selection of a family for a unit in a project for elderly families, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See § 950.102.

(2) *Local preference admissions.* (i) If the IHA wants to use preferences to select among applicants without regard to their Federal preference status, it may adopt a preference system for this purpose. These local preferences may only be adopted after the IHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The IHA may only use local preferences in selection for admission if the IHA has conducted the required public hearing.

(ii) "Local preference limit" means 30 percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a Federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The IHA may not give a preference to an applicant (Federal preference, local preference, or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the IHA may give an admission preference in any of the following cases:

(i) If the IHA determines that the evicted person has successfully completed a rehabilitation program approved by the IHA;

(ii) If the IHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the IHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.* (1) The IHA shall inform all applicants about available preferences and shall give applicants an opportunity to show that they qualify for available preferences (Federal preference, ranking preference, or local preference).

(2) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. However, the IHA shall have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(ii) It is unlikely that, on the basis of the IHA's framework for applying the preferences and the Federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Nondiscrimination.* (1) Any selection preference used by an IHA shall be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives.

(2) The Indian Civil Rights Act may apply to operations of the IHA.

(3) In addition, the following nondiscrimination requirements may apply:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(e) *Notice and opportunity for a meeting if preference is denied.* (1) If the IHA determines that an applicant does not qualify for a Federal preference, ranking preference, or local preference claimed by the applicant, the IHA shall promptly give the applicant written notice of the determination. The notice shall contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the IHA to review the determination. The meeting may be conducted by any person or persons designated by the IHA, who may be an officer or employee of the IHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against in violation of requirements stated in paragraph (d) of this section.

§ 950.304 Federal preferences: general.

(a) *Definition.* A Federal preference is a preference under Federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among Federal preference holders.* The IHA's admission policy may provide for the use of a ranking preference for selecting among applicants who qualify for a Federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An IHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. An IHA also could use its local preferences for the Section 8 Certificate and Voucher programs to rank Federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the Federal preferences, through such means as:

(i) Aggregating the Federal preferences (e.g., provide that two Federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular Federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a Federal preference holder who fits a particular category of a single Federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a Federal preference.* (1) *Basis of Federal preference.* The IHA shall use the following definitions of the Federal preferences (as elaborated upon in §§ 950.305, 950.306, and 950.307) unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for Federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing (as defined in § 950.305(a)(2)). or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(ii) *Substandard housing.* An applicant qualifies for a Federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a Federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a Federal preference by certifying to the

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IHA that the family qualifies for Federal preference. The IHA shall accept this certification, unless the IHA verifies that the applicant is not qualified for Federal preference.

(3) *Verification of preference.* (i) Before admitting an applicant on the basis of a Federal preference, the IHA shall require the applicant to provide information needed by the IHA to verify that the applicant qualifies for a Federal preference due to the applicant's current status. The applicant's current status shall be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the time of application and selection for admission, including a change from one Federal preference category to another.

(ii) Once the IHA has verified an applicant's qualification for a Federal preference, the IHA need not require the applicant to provide information needed by the IHA to verify such qualification again unless:

(A) The IHA determines reverification is desirable because a long time has passed since verification; or

(B) The IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a Federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit shall be considered, or the possibility of involuntary displacement resulting from domestic violence shall be evaluated.

§ 950.305 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.* (1) An applicant qualifies for a Federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(2) (i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to nonrental or nonresidential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant shall vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit shall be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of underoccupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The IHA shall determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant shall certify that the person who engaged in such violence will not reside with the applicant family unless the IHA has given advance written approval. If the family is admitted, the IHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The IHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The IHA shall determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

§ 950.306 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.* (1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect, lack of repair, or serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State or tribal law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for Federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 950.307 Federal preference: rent burden.

(a) "Rent burden preference" means the Federal preference for admission of applicants that are required to pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in § 950.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs; or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program shall be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been required to pay more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated due to the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

§ 950.308 Exemption from eligibility requirements for police officers and other security personnel.

(a) *Purpose and scope.* The purpose of this section is to permit the admission to Indian housing of police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures, under a plan submitted by an Indian housing authority (IHA) and approved by the Department, and to set forth standards and criteria for the approval of such plans. The Department's objective in granting the exemption allowed by this section is to permit long-term residence in Indian housing developments by police officers and security personnel, whose visible presence is expected to serve as a deterrent to criminal activity in and around Indian housing.

(b) *Definitions.* For the purposes of this section:

Department means the U.S. Department of Housing and Urban Development (HUD). For purposes of plan submission and approval, Department refers to the local HUD Office of Native American Programs.

Eligible Families means families that are eligible for residence in Indian housing assisted under the United States Housing Act of 1937.

Officer means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this section, "Officer" may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

Plan means the written plan submitted by an IHA to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in Indian housing developments and allow Officers who

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are otherwise not eligible to reside in Indian housing units. An IHA may have only one plan in effect at any one time, which will govern exemptions under this section for all housing developments managed by that IHA.

(c) *Exemption from eligibility requirements;* plan submission; plan approval or disapproval.

(1) *Conditions for exemption.* The Department may exempt Officers from the eligibility requirements for admission to Indian housing, provided that:

(i) The Officers would not be eligible, under any other admission requirements or procedures, for admission to the Indian housing development without such an exemption; and

(ii) The exemption is given under a properly submitted plan that satisfies the standards and criteria set forth in § 950.308(d), and accordingly has been approved by the Department.

(2) *Plan submission.* A plan is properly submitted when it is received by the local HUD Office of Native American Programs with jurisdiction over the IHA.

(3) *Notification of plan approval or disapproval.* The Department will notify an IHA of the approval or disapproval of its plan within thirty days of its submission. Plan approval by the Department constitutes granting of the exemption for the purposes of this section.

(d) *Plan standards and criteria.* (1) *Minimum requirements.* To be approved, a plan shall satisfy the following requirements:

(i) The plan shall identify the total number of units under management by the IHA; the specific housing developments, and the number of units they contain, where the IHA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. For each unit identified, the plan shall state the amount of rent that the Officer will pay and facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of that amount, as required under § 950.308(e)(i).

(ii) The plan shall identify specifically the benefits to the community and to the IHA that will result from the presence of Officers in each affected development.

(iii) The plan shall describe the existing physical and social conditions in and around each affected development, providing specific evidence of criminal activity (such as frequency of telephone calls to local police, number of arrests and types of offenses involved, and data on drug abuse in the community) in order to permit the Department to make an informed assessment of the level of need for increased security.

(iv) The plan shall afford the Department a reasonable basis, which necessarily includes the certifications required under § 950.308(d)(2), for determining that the use by Officers of the identified dwelling units will:

(A) Increase security for other Indian housing residents;

(B) Result in a limited loss of income to the IHA; and

(C) Not result in a significant reduction of units available for residence by Eligible Families.

(2) *Certifications by IHA.* Only upon making the determination described in § 950.308(d)(1)(iv) will the Department approve a plan. Further, the Department will not make this determination unless the plan contains a written statement, signed by an authorized officer or other agent of the IHA, certifying that:

(i) The dwelling units proposed to be allocated to Officers are situated so as to place the Officers in close physical proximity to other residents;

(ii) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to Officers;

(iii) The dwelling units proposed to be allocated to Officers will be rented under a lease that contains the terms described in § 950.308(e); and

(iv) The number of dwelling units proposed to be allocated to Officers under the plan does not exceed the limits set forth in § 950.308(d)(3), or, in the alternative, any units so allocated in excess of the applicable maximum number are vacant units for which there are no Eligible Families. This certification on the part of the IHA satisfies the requirements of §§ 950.308(d)(1)(iv)(B) and (C).

(3) *Unit allocation table.* For purposes of the certification required by § 950.308(d)(2), the following table sets forth the maximum number of units to be allocated to Officers as a function of the total number of units under management by the IHA:

UNIT ALLOCATION TABLE

Total units under management	Units to be allocated
500–999	5
1000–4999	10
5000–9999	15
10,000 +	20

The maximum number of units to be allocated by IHAs with less than 500 units under management will be determined by the Office of Native American Programs on a case by case basis.

(Approved by the Office of Management and Budget under OMB control number 2577–0185.)

(e) *Special rent requirements and other terms and conditions.* The IHA shall lease units to Officers under a lease agreement, which shall be submitted as a part of the plan, containing terms that provide as follows:

(1) *Reasonable rent.* The lease shall provide for a reasonable rent, which may be a flat amount not related to the Officer's income. The IHA should attempt to establish a rent that will provide an incentive to Officers to reside in the units but that is also consistent with the limited loss of income requirement of § 950.308(d)(1)(iv)(B). As required in § 950.308(d)(1)(i), the plan shall state facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of the rent amount.

(2) *Responsibility for damage and overall condition.* The Officer shall be responsible for physical damage to the interior of the leased unit, hallway, and entrance, if any, and exterior area bordering the unit. The lease also shall require the Officer to maintain the overall condition of the leased unit, including control of litter in the area of the development immediately around the unit.

(3) *Responsibility for normal facility management.* The lease shall impose on the IHA responsibility for routine facility management relating to the leased unit, including ongoing maintenance and repair of equipment, trash collection, and similar areas of responsibility.

(4) *Continued employment.* The lease shall provide that the Officer's right of occupancy is dependent on the continuation of employment as an Officer. The lease also shall provide that the Officer will move out of the leased unit within a reasonably prompt time, to be established by the lease, after termination of employment as an Officer.

(5) *Prohibition on subletting.* The lease shall prohibit the Officer from subletting the unit, and provide that the unit shall be the Officer's primary residence.

(f) *Applicability of the annual contributions contract; effect on the performance funding system.* (1) *Annual contributions contract.* Except to the extent that an exemption from eligibility requirements is provided under § 950.308(c), Indian housing units occupied by Officers in accordance with a plan submitted and approved under this section will be subject to the terms and conditions of the annual contributions contract (ACC) between the IHA and HUD. This section does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this section.

(2) *Performance Funding System.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in subpart J of this part, dwelling units allocated to Officers in accordance with this section are excluded from the total unit months available, as defined in § 950.102. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this section is included in other income, as defined in § 950.102. IHAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An IHA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office of Native American Programs.

§ 950.310 Restrictions on assistance to noncitizens.

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written

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declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.* (i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214.* (1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status.* (1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status.* (1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I–94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I–688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I–688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.* (1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.* (i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.* (i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(iii) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.* (1) *Restrictions on delay, denial, or termination of assistance.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph (s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

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(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph (s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS Office.)

(3) *Decision by INS.* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 950.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an IHA informal hearing; and

(9) The final hearing decision.

(r) *Preservation of mixed families and other families.* (1) *Assistance available for mixed families.* (i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

(A) Continued assistance (see paragraph (r)(2) of this section);

(B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or

(C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance.* (i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing *is* used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

(A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance.* (1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 950.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could

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qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students.* (1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials.* (1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

§ 950.315 Initial determination, verification, and reexamination of family income and composition.

(a) *Income, family composition, and eligibility.* The IHA is responsible for determination of annual income and adjusted income, for determination of eligibility for admission and total tenant payment or homebuyer required monthly payment; and for reexamination of family income and composition at least annually for all tenants and homebuyers. The "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant or homebuyer, the effective date of any change in tenant payment or required monthly payment resulting from the reexamination.

(3) If there is no change, the effective date is the date a change would have taken place if the reexamination had resulted in a change in payment.

(b) *Verification.* As a condition of admission to, or continued occupancy of, any assisted unit, the IHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form (including any release and consent as required under 24 CFR part 760) authorizing any depository or private source of income, or any Federal, State, or local agency, to furnish or release to the IHA and to HUD such information as the IHA or HUD determines to be necessary. The IHA also shall require the family to submit directly the documentation determined to be necessary, including any information required under 24 CFR part 750. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance; for determining the family's adjusted income, tenant rent, or required monthly payment; for verifying related information; or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this part or an application for assistance.

(c) *Rent and homebuyer payment adjustments.* After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or homebuyer payment amount. The tenant or homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income.

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 950.310 for determining citizenship or eligible immigration status before initial occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall

follow the requirements of § 950.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

(e) See 24 CFR part 908 for requirements for transmission of data to HUD.

§ 950.320 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III projects.* The amount of rent required of a tenant in a rental project or the Turnkey III homebuyer payment amount for a homebuyer in a Turnkey III project for Turnkey III contracts executed after August 1, 1982, shall be equal to the total tenant payment as determined in accordance with § 950.325. For Turnkey III contracts executed on or before August 1, 1982, the Turnkey III homebuyer payment is determined in accordance with the contract. If the utility allowance exceeds the rent or required monthly payment, the IHA will pay the utility reimbursement as provided in § 950.325(b). In the case of a Turnkey III homebuyer, payment of a utility reimbursement may affect the IHA's evaluation of the Turnkey III homebuyer's homeownership potential. (See § 950.529 regarding loss of homeownership potential and § 950.523 regarding funds to cover such reimbursements.)

(b) *MH projects.* The amount of the required monthly payment for a homebuyer in an MH project is determined in accordance with subpart E of this part.

§ 950.325 Total tenant payment—Rental and Turnkey III programs.

(a) *Total tenant payment.* Total tenant payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of monthly adjusted income;

(2) 10 percent of monthly income; or

(3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments that is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section shall be the amount resulting from one application of the percentage.

(b) *Utility reimbursement.* If the utility allowance exceeds the total tenant payment, the difference (the utility reimbursement) shall be due to the family. If the utility company consents, an IHA may, at its discretion, pay the utility reimbursement directly to the utility company.

§ 950.335 Rent and homebuyer payment collection policy.

Each IHA shall establish and adopt, and use its best efforts to obtain compliance with, written policies sufficient to assure the prompt payment and collection of rent and homebuyer payments. A copy of the written policies shall be posted prominently in the IHA office and shall be provided upon request. Such policies shall be in accordance with the ACC and HUD statutory and regulatory requirements.

§ 950.340 Grievance procedures and leases.

(a) *Grievance procedures.* (1) *General.* Each IHA shall adopt grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and section 6(k) of the Act, as applicable, and shall assure that tenants and homebuyers will:

(i) Be advised of the specific grounds of any proposed adverse action by the IHA;

(ii) Have an opportunity for a hearing before an impartial party upon timely request;

(iii) Have a reasonable opportunity to examine any documents, records, or regulations related to the proposed action before the hearing (or trial in court);

(iv) Be entitled to be represented by another person of their choice at any hearing;

(v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and

(vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) *Expedited grievance procedure.* An IHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Indian housing development by other residents or employees of the IHA; or

(ii) Any drug-related criminal activity on or near the premises.

(3) *Exclusion of certain grievances.* (i) *General.* An IHA may pursue termination of tenancy or eviction without offering a grievance procedure if the termination or eviction is based on one of the grounds stated in paragraph (a)(2) of this section, so long as applicable tribal or State law requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, and HUD has determined that the tribal or State procedures provide the basic elements of due process.

(ii) *Basic elements of due process.* The elements of due process against which the jurisdiction's procedures are measured by HUD are the following:

(A) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

(B) Right of the tenant to be represented by counsel;

(C) Opportunity for the tenant to refute the evidence presented by the IHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant might have; and

(D) A decision on the merits.

(4) *Notice to post office of certain evictions.* When an IHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the IHA shall notify the local post office serving that dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (so that the post office will terminate delivery of mail for such persons at the unit, and that such persons will not return to the unit to pick up mail).

(5) *Notice of procedures.* A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

(1) Do not contain unreasonable terms and conditions;

(2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;

(3) Require the IHA to give adequate written notice of termination of the lease that shall not be less than—

(i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;

(ii) Fourteen days in the case of nonpayment of rent; and

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(iii) Thirty days in any other case;

(4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(5) Provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or near the premises, engaged in by an Indian housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy. For purposes of this section, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

(6) Specify that with respect to any notice of termination of tenancy or eviction, notwithstanding any applicable tribal or State law, an Indian housing tenant shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, records, or regulations directly related to the termination or eviction.

§ 950.345 Maintenance and improvements.

(a) *General.* Each IHA shall adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and tenants. A copy of such policies shall be posted prominently in the IHA office, and shall be provided to an applicant or tenant upon entry into the program and upon request.

(b) *Provisions for rental projects.* For rental projects, the maintenance policies shall contain provisions on at least the following subjects:

(i) The responsibilities of tenants for normal care and maintenance of their dwelling units, and of the common property, if any;

(ii) Procedures for handling maintenance service requests from tenants;

(iii) Procedures for IHA inspections of dwelling units and common property;

(iv) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(v) Procedures for charging tenants for damages for which they are responsible.

§ 950.346 Fire safety.

(a) *Applicability.* This section applies to all IHA-owned or leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit shall be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable State, local, or tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors shall be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section shall be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit shall be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors shall be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents shall be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors shall be replaced with hard-wired electric smoke detectors in the normal course of an IHA's planned CIAP or CGP program to meet the HUD Modernization Standards of applicable State, local, or tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents shall be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detectors in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

§ 950.360 IHA employment practices.

(a) *Indian preference.* Each IHA shall adopt written policies with respect to the IHA's own employment practices, which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), and E.O. 11246 (3 CFR, 1964–65 comp., p. 339), as amended by E.O. 11375 (3 CFR, 1966–70 comp., p. 684), as applicable. A copy of these policies shall be posted in the IHA office. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII. See also § 950.175(c).)

(b) *Wage rates.* See § 950.120 (c) and (d) with respect to the wage rates applicable to IHA employees.

Subpart E—Mutual Help Homeownership Opportunity Program

§ 950.401 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements for the Mutual Help (MH) Homeownership Opportunity Program. For any matter not covered in this subpart, see other subparts contained in this part. Projects developed under the Self-Help development method shall comply with the requirements of subparts E and F of this part.

(b) *Applicability.* The provisions of this subpart are applicable to all MH projects placed under ACC on or after March 9, 1976, and to projects converted in accordance with §§ 950.455 or 950.503.

§ 950.416 Selection of MH homebuyers.

(a) *Admission policies.* (1) *Low-income families.* An IHA's written admission policies for the MH program, adopted in accordance with § 950.301, shall limit admission to low-income families.

(i) An IHA may provide for admission of applicants whose family income exceeds the levels established for low-income families if the IHA demonstrates to HUD's satisfaction that there is a need to house such families that cannot reasonably be met except under this program.

(ii) The number of dwelling units in any project assisted under the MH program that may be occupied by or reserved for families whose incomes exceed the levels established for low-income families (i.e., applicants admitted under paragraph (a)(1)(i) of this section) may not exceed whichever of the following is higher:

(A) Ten percent of the dwelling units in the project; or

(B) Five dwelling units.

(2) An IHA may establish criteria in its Admissions and Occupancy Policy for admission of a non-Indian applicant in circumstances where the IHA determines the presence of the family is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met except under this program.

(3) *Different standards for MH program.* The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(i) Ability to provide maintenance for the unit;

(ii) Potential for maintaining at least the current income level;

(iii) Successor to a unit at the time of an "event " ("event" should also be defined by the IHA in its policy; see § 950.449(a)); and

(iv) Initial purchase price and the purchase price for a subsequent homebuyer.

(b) *Ability to meet homebuyer obligations.* A family shall not be selected for MH housing unless, in addition to meeting the income limits and other requirements for admission (see § 950.301), the family is able and willing to meet all obligations of an Mutual Help and Occupancy (MHO) Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution, and to pay for utilities and the administration charge.

(c) *MH waiting list.* (1) Families who wish to be considered for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, shall also submit an application in order to be considered for an MH project; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and meet the admission requirements. The IHA shall maintain an MH waiting list in accordance with requirements prescribed by HUD and shall make selections in the order in which they appear on the list.

(d) *Making the selections.* Within 30 days after HUD approval of the application for a project, the IHA shall proceed with preliminary selection of as many homebuyers as there are homes in the project. Preliminary selection of homebuyers shall be made from the MH waiting list in accordance with the date of application; qualification for a Federal preferences, ranking preferences, and local preferences, in accordance with §§ 950.303 through 950.307; other pertinent factors under the IHA's admissions policies established in accordance with § 950.301; and 24 CFR part 750. Final selection of a homebuyer will be made only after the site for that homebuyer has received final site approval, and the form of MH contribution has been determined.

(e) *Principal residence.* A condition for selection as a homebuyer is that the family agrees to use the home as their principal residence during the term of the MHO Agreement. Ownership or use of an additional residence that is decent, safe, and sanitary at the time of occupancy or acquisition during occupancy would disqualify a family from the MH program. However, there are two situations that do not violate the principal residence requirement. First, ownership or use of a secondary home that is necessary for the family's livelihood or for cultural preservation, as solely determined by the IHA and described in the IHA's admission and occupancy policy, is acceptable. Second, a family's temporary absence from its MH home, and related subleasing of it, is acceptable if it is done for reasons and time periods prescribed in the IHA's admission and occupancy policy.

(f) *Notification of applicants.* The IHA shall give families prompt written notice of selection for a MH home.

§ 950.419 MH contribution.

(a) *Amount and form of contribution.* As a condition of occupancy, the MH homebuyer will be required to provide an MH contribution. Contributions other than labor may be made by an Indian tribe on behalf of a family.

(1) The value of the contribution shall not be less than $1500.

(2) The MH contribution may consist of land, labor, cash, materials, equipment, or any combination thereof. Land contributed to satisfy this requirement shall be owned in fee simple by the homebuyer or shall be assigned or allotted to the homebuyer for his or her use before application for an MH unit. Contributions of land donated by another person on behalf of the homebuyer will satisfy the requirement for an MH contribution. A homebuyer may provide cash to satisfy the MH contribution requirement where the cash is used for the purchase of land, labor, materials, or equipment for the homebuyer's home.

(3) The amount of credit for an MH contribution in the case of land, labor, materials, or equipment shall be based upon the market value at the time of the contribution. In the case of labor, materials, or equipment, market value shall be determined by the contractor and the IHA. In the case of land, market value shall be determined by the IHA. (See § 950.245). The use of labor, materials, or equipment as MH contributions shall be reflected by a reduction in the Total Contract Price stated in the Construction Contract.

(b) *Execution of Agreements.* For projects other than Self-Help development projects, MHO Agreements should be signed for all units before execution of the construction contract for the project. Land leases for trust land shall be signed and approved by BIA before construction start.

(c) *Total contribution to be furnished before occupancy.* The homebuyer cannot occupy the unit until the entire MH contribution is provided to the IHA. If the homebuyer is unable or unwilling to provide the MH contribution before occupancy of the project, the MHO Agreement for the homebuyer shall be terminated and the IHA shall select a substitute homebuyer from its waiting list.

(d) *MH contribution in event of substitution of homebuyer.* If an MHO Agreement is terminated and a substitute homebuyer is selected, the amount of MH contribution to be provided by the substitute homebuyer shall be in accordance with paragraph (a) of this section. The substitute homebuyer may not occupy the unit until the complete MH contribution has been made.

(e) *Disposition of contribution.* If an MHO Agreement is terminated by the IHA or the homebuyer before the date of occupancy, the homebuyer may receive reimbursement of the value of the MH contribution made plus other amounts contributed by the homebuyer, in accordance with § 950.446.

§ 950.422 Commencement of occupancy.

(a) *Notice.* (1) Upon acceptance of the home by the IHA from the contractor, the IHA shall determine whether the homebuyer has met all requirements for occupancy, including satisfaction in full of the MH contribution, and fulfillment of mandatory homebuyer counseling requirements. (See § 950.453.) The IHA shall notify the homebuyer in writing that the home is available for occupancy as of a date specified in the notice.

(2) If the IHA determines that the homebuyer has not met any of the other conditions for occupancy by the date of occupancy, the IHA shall send the homebuyer a notice in writing. This notice shall specify the date by which all requirements shall be satisfied and shall advise the homebuyer that the MHO Agreement will be terminated and a substitute homebuyer selected for the

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unit if the requirements are not satisfied.

(b) *Credits to MH accounts and reserves.* Promptly after the date of occupancy, the IHA shall credit the amount of the MH contribution to the homebuyer's accounts and reserves in accordance with § 950.437 and shall give the homebuyer a statement of the amounts so credited.

§ 950.425 Inspections, responsibility for items covered by warranty.

(a) *Inspection before move-in and identification of warranties.* (1) To establish a record of the condition of the home on the date of occupancy, the IHA shall include the homebuyer in all inspection activities (See § 950.270).

(2) Within 30 days of commencement of occupancy of each home, the IHA shall furnish the homebuyer with a list of applicable contractors', manufacturers', and suppliers' warranties, indicating the items covered and the periods of the warranties, and stating the homebuyer's responsibility for notifying the IHA of any deficiencies that would be covered under the warranties.

(b) *Inspections during contractors' warranty periods, responsibility for items covered by contractors', manufacturers', or suppliers' warranties.* It is the responsibility of the homebuyer during the period of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the homebuyer.

(c) *Inspection upon termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home after notifying the homebuyer of the time for inspection and shall give the homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 950.446).

(d) *Homebuyer permission for inspections; participation in inspections.* The homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the period of the MHO Agreement in accordance with rules established by the IHA. The homebuyer shall be notified of the opportunity to participate in the inspection made in accordance with this section.

§ 950.426 Homebuyer payments before March 9, 1976.

The amount of the required monthly payment for a homebuyer in an MH project placed under ACC before March 9, 1976 is determined in accordance with the MHO Agreement and provisions of §§ 950.315 and 950.102 concerning income. Utility reimbursements are not applicable to the Mutual Help program.

§ 950.427 Homebuyer payments for projects under ACC on or after March 9, 1976.

(a) *Establishment of payment.* (1) Each homebuyer shall be required to make a monthly payment (required monthly payment) as determined by the IHA. The minimum required monthly payment shall equal the administration charge.

(2) Subject to the requirement for payment of at least the administration charge, each homebuyer shall pay an amount of required monthly payment computed by:

(i) Multiplying adjusted income (determined in accordance with § 950.102) by a specified percentage. The specific percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA; and

(ii) Subtracting from that amount the utility allowance determined for the unit.

(3) The IHA shall provide that the required monthly payment may not be more than a maximum amount. The maximum shall not be less than the sum of:

(i) The administration charge; and

(ii) The monthly debt service amount shown on the homebuyer's purchase price schedule.

(4) If the required monthly payment exceeds the administration charge, the amount of the excess shall be credited to the homebuyer's monthly equity payments account (see § 950.437(b)).

(b) *Administration charge.* The administration charge may be based on differences in expenses attributable to different sizes or types of units.

(c) *Adjustments in the amount of the required monthly payment.* (1) After the initial determination of a homebuyer's required monthly payment, the IHA shall increase or decrease the amount of such payment in accordance with HUD regulations to reflect changes in adjusted income (pursuant to a reexamination by the IHA in accordance with § 950.315), adjustments in the administration charge, or in any of the other factors affecting computation of the homebuyer's required monthly payment.

(2) In order to accommodate wide fluctuations in required monthly payments due to seasonal conditions, an IHA may agree with the homebuyer for payments to be made in accordance with a seasonally adjusted schedule that assures full payment of the required amount for each year.

(d) *Homebuyer payment collection policy.* Each IHA shall establish and adopt written policies to obtain prompt payment and collection of required homebuyer payments. A copy of the policies shall be posted prominently in the IHA office, and shall be provided to a homebuyer upon request.

§ 950.428 Maintenance, utilities, and use of home.

(a) *General.* Each IHA shall establish and adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and homebuyers. A copy of such written policies shall be posted prominently in the IHA office, and shall be provided to an applicant or homebuyer upon entry into the program and upon request.

(b) *Provisions for MH projects.* The written maintenance policies shall contain provisions on at least the following subjects:

(1) The responsibilities of homebuyers for maintenance and care of their dwelling units and common property;

(2) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities;

(3) Procedures for IHA inspections of homes and common property;

(4) Procedures for IHA performance of homebuyer maintenance responsibilities (if homebuyers fail to satisfy such responsibilities), including procedures for charging the homebuyer's proper account for the cost thereof;

(5) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(6) Procedures for charging homebuyers for damage for which they are responsible.

(c) *IHA responsibility in MH projects.* The IHA shall enforce the provisions of a MHO Agreement for homebuyer maintenance of the home. Failure of a homebuyer to meet the obligations for maintenance shall not relieve the IHA of responsibility in this respect. The IHA shall conduct a complete interior and exterior examination of each home on a schedule developed by the IHA that ensures that the home is maintained in decent, safe, and sanitary condition and shall furnish a copy of the inspection report to the homebuyer. The IHA shall take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the homebuyer's obligations under the homebuyer's Agreement.

(d) *Homebuyer responsibility in MH program.* (1) The homebuyer shall be responsible for routine and nonroutine maintenance of the home, including all repairs and replacements (including those resulting from damage from any cause). The IHA shall not be obligated to pay for or provide any maintenance of the home, except as determined necessary in paragraph (d)(2) of this section.

(2) *Homebuyer's failure to perform maintenance.* (i) Failure of the homebuyer to perform maintenance obligations constitutes a breach of the MHO Agreement and grounds for its termination.

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health, or safety of the occupants, or if there is a risk of damage to the property if the condition is not corrected, the corrective work shall be done promptly by the IHA with such use of the homebuyer's accounts as the IHA may determine to be necessary, or by the homebuyer with a charge of the cost to the homebuyer's accounts in accordance with § 950.437.

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The IHA shall give the homebuyer copies of all work orders for the home.

(e) *Homebuyer's responsibility for utilities.* The homebuyer is responsible for the cost of furnishing utilities. The IHA shall have no obligation for the utilities. If the IHA determines that the homebuyer is unable to pay for the utilities for the home the IHA may pay for the utilities on behalf of the homebuyer and charge the homebuyer's accounts for the costs. When the homebuyer's accounts have been exhausted, the IHA shall pursue termination of the homebuyer Agreement and may offer the homebuyer a transfer into the rental program if a unit is available.

(f) *Obligations with respect to home and other persons and property.* (1) The homebuyer shall agree to abide by all provisions of the MHO Agreement concerning homebuyer responsibilities, occupancy, and use of the home.

(2) The homebuyer may request IHA permission to operate a small business in the unit. An IHA may determine when permission will be given.

(g) *Structural changes.* (1) A homebuyer shall not make any structural changes in or additions to the home unless the IHA has determined that such changes are acceptable.

(2) If the homebuyer is in compliance with the terms of the MHO Agreement, the IHA may agree to allow the homebuyer to use the funds in the MEPA for betterments and additions to the MH home. The IHA shall determine whether the homebuyer will be required to replenish the MEPA or if the funds are to be loaned to the homebuyer at an interest rate determined by the IHA. The homebuyer cannot use MEPA funds for luxury items, as determined by the IHA.

§ 950.431 Operating reserve.

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities and common property, payment of advance premiums for insurance, unanticipated project requirements, and other eligible uses as determined by the IHA. The amount of a contribution to this reserve shall be determined by the IHA and included in the administration charge. The amount of this contribution shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures, and it shall be included in the operating budget.

§ 950.432 Operating budget submission and approval.

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and any necessary supporting documentation for operating subsidy as prescribed by HUD.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) A detailed review will be performed on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

§ 950.434 Operating subsidy.

(a) *Scope.* This section authorizes the use of operating subsidy for Mutual Help projects and establishes eligible costs.

(b) *Eligible costs.* Operating subsidy may be paid to cover proposed expenditures approved by the Area ONAP for the following purposes:

(1) The reasonable cost of an annual independent audit;

(2) Administration charges for vacant units when the IHA submits evidence to the Area ONAP's satisfaction that it is making every reasonable effort to fill the vacancies;

(3) Collection losses due to payment delinquencies on the part of homebuyer families whose MHO Agreements have been terminated and who have vacated the home, and the cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a subsequent homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously used all available homebuyer credits;

(4) An amount for the cost of a HUD-approved counseling program;

(5) An amount for training and related travel of IHA staff and Commissioners;

(6) The costs of a HUD-approved professional management contract; and

(7) Operating costs resulting from other unusual circumstances justifying payment of operating subsidy, if approved by HUD.

(8) Subject to appropriations, and in accordance with the provisions of subpart O of this part and procedures determined by HUD, each IHA with a duly elected resident organization (RO) shall receive $25 per unit per year for resident participation activities. Of this amount, $15 per unit per year shall fund resident participation activities of the RO. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(c) *Ineligible costs.* No operating subsidy shall be paid for utilities, maintenance, or other items for which the homebuyer is responsible except, as necessary, to put a vacant home in condition for a subsequent family as

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provided in paragraph (b)(2) of this section.

§ 950.437 Homebuyer reserves and accounts.

(a) *Refundable and nonrefundable MH reserves.* The IHA shall establish separate refundable and nonrefundable reserves for each homebuyer effective on the date of occupancy.

(1) The refundable MH reserve represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's cash MH contribution or the value of the labor, materials, or equipment MH contribution.

(2) The nonrefundable MH reserve also represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's share of any credits for land contributed to the project and the homebuyer's share of any credit for non-land contributions by a terminated homebuyer.

(b) *Equity accounts.* (1) Monthly equity payments account (MEPA). The IHA shall maintain a separate MEPA for each homebuyer. The IHA shall credit this account with the amount by which each required monthly payment exceeds the administration charge. Should the homebuyer fail to pay the required monthly payment, the IHA may elect to reduce the MEPA by the amount owed each month towards the administration charge, until the MEPA has been fully expended. The MEPA balance shall be comprised of an amount backed by cash actually received in order for any such reduction to be made.

(2) *Investment of equity funds.* (i) Funds held by the IHA in the equity accounts of all the homebuyers in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each homebuyer's equity account in proportion to the amount in each such account on the date of proration. If HUD determines that accounts are not properly managed it may ultimately remove responsibility of the IHA for managing such accounts to a HUD-approved escrow agent.

(ii) Notwithstanding other provisions of this subpart and subject to Area ONAP approval, an IHA may use a portion of the homebuyer's equity account for low-income housing purposes provided that a reserve of homebuyer's MEPA is maintained. The reserve shall be at a percentage established by the IHA and approved by the Area ONAP. (Interest shall continue to be credited to the homebuyer's account based on the MEPA balance and the rate of interest that would have been earned if the funds were invested.)

(c) *Charges for maintenance.* (1) If the IHA has maintenance work done, the cost thereof shall be charged to the homebuyer's MEPA.

(d) *Use of reserves and accounts; nonassignability.* The homebuyer shall have no right to receive or use the funds in any reserve or account except as provided in the MHO Agreement, and the homebuyer shall not, without approval of the IHA and HUD, assign, mortgage, or pledge any rights in the MHO Agreement or to any reserve or account.

§ 950.440 Purchase of home.

(a) *General.* The IHA provides the family an opportunity to purchase the dwelling under the MHO Agreement (a lease with an option to purchase), under which the purchase price is amortized over the period of occupancy, in accordance with a purchase price schedule. If a homebuyer wants to acquire ownership in a shorter period than that shown on the purchase price schedule, the homebuyer may exercise his or her option to purchase the home on or after the date of occupancy, but only if the homebuyer has met all obligations under the MHO Agreement. The homebuyer may obtain financing, from the IHA or an outside source, at any time to cover the remaining purchase price.

(b) *Purchase price and purchase price schedule.* (1) Initial purchase price. The initial purchase price of a home for a homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Promptly after execution of the construction contract, the IHA shall furnish to the homebuyer a statement of the initial purchase price of the home, and a purchase price schedule that will apply, based on amortizing the balance (purchase price less the MH contribution) over a period, not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA. The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Purchase price schedule for subsequent homebuyer.* (1) *Initial purchase price.* When a subsequent homebuyer executes the MHO Agreement, the purchase price for the subsequent homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a purchase price schedule, showing the monthly declining purchase price over a period, not less than 15 years or more than 25 years as determined by the IHA, at an interest rate determined by the IHA.

(d) [Reserved].

(e) *Conveyance of home.* (1) *Purchase procedure.* In accordance with the MHO Agreement, the IHA shall convey title to the homebuyer when the balance of the purchase price can be covered from the amount in the equity account. The homebuyer may supplement the amount in the equity account with reserves or any other funds of the homebuyer. Notwithstanding the requirement for prompt conveyance, an IHA may delay conveyance long enough for modernization of a paid-off unit in accordance with its Comprehensive Plan or CIAP application. Until title is conveyed, the homebuyer is responsible to make monthly payments to cover the monthly operating expenses for the unit.

(2) *Amounts to be paid.* The purchase price shall be the amount shown on the purchase price schedule for the month in which the settlement date falls.

(3) *Settlement costs.* Settlement costs shall be paid by the homebuyer, who may use equity accounts or reserves available for the purchase in accordance with paragraph (e)(4) of this section.

(4) *Disposition of homebuyer accounts and reserves.* When the homebuyer purchases the home, the net credit balances in the homebuyer's equity account (as described in § 950.437), supplemented by the nonrefundable MH reserve and then the refundable MH reserve, shall be applied in the following order:

(i) For the initial payment for fire and extended coverage insurance on the home after conveyance, if the IHA finances purchase of the home in accordance with § 950.443;

(ii) For settlement costs, if the homebuyer so directs;

(iii) For the purchase price; and

(iv) The balance, if any, for refund to the homebuyer.

(5) *Settlement.* A home shall not be conveyed until the homebuyer has met all the obligations under the MHO Agreement, except as provided in § 950.440(e)(8). The settlement date shall be mutually agreed upon by the parties. On the settlement date, the homebuyer shall receive the documents necessary to convey to the homebuyer the IHA's right, title, and interest in the home, subject to any applicable restrictions or covenants as expressed in such documents. The required documents shall be approved by the attorneys representing the IHA, and by the homebuyer or the homebuyer's attorney.

(6) *IHA investment and use of purchase price payments.* After conveyance, all homebuyer funds held or received by the IHA from the sale of a unit in a project financed with grants shall be held separate from other project funds, and shall be used for purposes related to low-income housing use. Homebuyer funds held or received by the IHA from the sale to a homebuyer of a unit in a project financed by loans are subject to loan forgiveness.

(7) *Removal of home from MH program.* When a home has been conveyed to the homebuyer, whether or not with IHA financing, the unit is removed from the IHA's MH project under its ACC with HUD.

(8) *Homebuyers with delinquencies.* (i) If a homebuyer has a delinquency at the end of the amortization period, the unit is no longer available for assistance from HUD.

(ii) Notwithstanding the above requirements, an IHA may complete emergency work and modernization work required by statute or regulation on a unit that is paid off but not conveyed, during the term of the repayment schedule.

(iii) Upon repayment of the total delinquency, the IHA may, in accordance with § 950.602(b)(2), complete nonemergency modernization work on a unit prior to conveyance.

§ 950.443 IHA homeownership financing.

The IHA may offer a form of homeownership financing, similar to a purchase money mortgage. The IHA shall set standards for determining eligibility and developing promissory notes, mortgages, and other financial instruments necessary to carry out the transaction.

§ 950.446 Termination of MHO Agreement.

(a) *Termination upon breach.* (1) In the event the homebuyer fails to comply with any of the obligations under the MHO Agreement, the IHA may terminate the MHO Agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships.

(2) Misrepresentation or withholding of information when applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the homebuyer's obligations under the MHO Agreement. "Termination," as used in the MHO Agreement, does not include acquisition of ownership by the homebuyer.

(b) *Notice of termination of MHO Agreement by the IHA, right of homebuyer to respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written notice of termination. Such notice shall be in compliance with the terms of the MHO Agreement and, in all cases, shall afford a fair and reasonable opportunity to have the homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act, if applicable, and shall incorporate all the steps and provisions needed to comply with State, local, or tribal law, with the least possible delay. (See § 950.340.)

(c) *Termination of MHO Agreement by homebuyer.* The homebuyer may terminate the MHO Agreement by giving the IHA written notice in accordance with the Agreement. If the homebuyer vacates the home without notice to the IHA, the homebuyer shall remain subject to the obligations of the MHO Agreement, including the obligation to make monthly payments, until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of funds upon termination of the MHO Agreement.* If the MHO Agreement is terminated, the balances in the homebuyer accounts and reserves shall be disposed of as follows:

(1) The MEPA shall be charged with:

(i) Any maintenance and replacement cost incurred by the IHA to prepare the home for the next occupant;

(ii) Any amounts the homebuyer owes the IHA, including required monthly payments;

(iii) The required monthly payment for the period the home is vacant, not to exceed 60 days from the date of receipt of the notice of termination, or if the homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA; and

(iv) The cost of securing a vacant unit, the cost of notification and associated termination tasks, and the cost of storage and/or disposition of personal property.

(2) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a debit balance in the MEPA, the IHA shall charge that debit balance first to the refundable MH reserve, and second to the nonrefundable MH reserve, to the extent of the credit balances in these reserves and account. If the debit balance in the MEPA exceeds the sum of the credit balances in these reserves and account, the homebuyer shall be required to pay to the IHA the amount of the excess.

(3) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a credit balance in the MEPA, this amount shall be refunded.

(4) Any credit balance remaining in the refundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be refunded to the homebuyer.

(5) Any credit balance remaining in the nonrefundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be retained by the IHA for use by the subsequent homebuyer.

(e) *Settlement upon termination; time for settlement.* Settlement with the homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the homebuyer a statement of such charges. The homebuyer may obtain settlement before determination of the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant, if the homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such cases, the amounts to be charged for maintenance shall be based on the IHA's estimate of the cost thereof.

(f) *Responsibility of IHA to terminate.* (1) The IHA is responsible for taking appropriate action with respect to any noncompliance with the MHO Agreement by the homebuyer. In cases of noncompliance that are not corrected as provided further in this paragraph (f), it is the responsibility of the IHA to terminate the MHO Agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible after a noncompliance comes to the attention of the IHA, the IHA shall discuss the matter with the homebuyer and give the homebuyer an opportunity to identify any extenuating circumstances or complaints that may exist. A plan of action shall be agreed upon that will specify how the homebuyer will come into compliance, as well as any actions by the IHA that may be appropriate. This plan shall be in writing and signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the homebuyer to agree to such a plan or failure by the homebuyer to comply with the plan, the IHA shall issue a notice of termination of the MHO Agreement and institute eviction procedures against the homebuyer in

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accordance with the provisions of this section on the basis of the noncompliance with the MHO Agreement.

(4) A record of meetings with the homebuyer, written plans of action agreed upon, and all other related steps taken in accordance with paragraph (f) of this section shall be maintained by the IHA for inspection by HUD.

(g) *Subsequent use of unit.* After termination of a homebuyer's interest in the unit, it remains as part of the MH project under the ACC. The IHA shall follow its policies for selection of a subsequent homebuyer for the unit under the MH program. (See § 950.449(g) for use of unit if no qualified subsequent homebuyer is available.)

§ 950.449 Succession.

(a) *Definition of "event."* "Event" means the death, mental incapacity, or other conditions as determined by the IHA, of all of the persons who have executed the MHO Agreement as homebuyers.

(b) *Designation of successor by homebuyer.* A homebuyer may designate a successor who, at the time of the event, would assume the status of homebuyer, provided that at the time of the event, the successor meets the conditions established by the IHA.

(c) *Succession by persons designated by homebuyer.* Upon occurrence of an event, the person designated as the successor shall succeed to the former homebuyer's rights and responsibilities under the MHO Agreement if the designated successor meets the criteria established by the IHA.

(d) *Designation of successor by IHA.* If at the time of the event there is no successor designated by the homebuyer, the IHA may designate another family member, in accordance with its occupancy policy.

(e) *Occupancy by appointed guardian.* If at the time of the event there is no qualified successor designated by the homebuyer or by the IHA, and a minor child or children of the homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO Agreement in their interest and behalf.

(f) *Succession and occupancy on trust land.* In the case of a home on trust land, a person who is prohibited by law from succeeding to the IHA's interest on such land may, nevertheless, continue in occupancy with all the rights, obligations, and benefits of the MHO Agreement, modified to conform to restrictions on succession to the land.

(g) *Termination in absence of qualified successor.* If there is no qualified successor in accordance with the IHA's approved Admissions and Occupancy policy, the IHA shall terminate the MHO Agreement and select a subsequent homebuyer from the top of the waiting list to occupy the unit under a new MHO Agreement. If a new homebuyer is unavailable or if the home cannot continue to be used for low-income housing in accordance with the Mutual Help program, the IHA may submit an application to HUD to convert the unit to the rental program in accordance with § 950.458 or to approve a disposition of the home, in accordance with subpart M of this part.

§ 950.452 Miscellaneous.

(a) *Annual statement to homebuyer.* The IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer's equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance before transfer of ownership, repair, or rebuilding.* (1) *Insurance.* The IHA shall carry all insurance prescribed by HUD, including fire and extended coverage insurance upon the home.

(2) *Repair or rebuilding.* In the event the home is damaged or destroyed by fire or other casualty, the IHA shall consult with the homebuyers as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that the home should not be repaired or rebuilt and the homebuyer disagrees, the matter shall be submitted to the Area ONAP for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the homebuyer's obligation to make required monthly payments shall be deemed to have terminated as of the date of the damage or destruction.

(3) *Suspension of payments.* In the event of termination of a MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the homebuyer. If the home must be vacated during the repair period, required monthly payments shall be suspended during the vacancy period.

(c) *Notices.* Any notices by the IHA to the homebuyer required under the MHO Agreement or by law shall be delivered in writing to the homebuyer personally or to any adult member of the homebuyer's family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing and either delivered to an IHA employee at the office of the IHA, or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

§ 950.453 Counseling of homebuyers.

(a) *General.* (1) The IHA shall provide counseling to homebuyers in accordance with this section. The purpose of the counseling program shall be to develop:

(i) A full understanding by homebuyers of their responsibilities as participants in the MH Project;

(ii) Ability on their part to carry out these responsibilities; and

(iii) A cooperative relationship with the other homebuyers.

(2) All homebuyers shall be required to participate in and cooperate fully with all official preoccupancy and postoccupancy counseling activities. Failure without good cause to participate in the program shall constitute a breach of the MHO Agreement.

(b) The IHA shall submit to the HUD Area ONAP a copy of its counseling program with its request for funding for approval.

(c) *Progress reports.* An IHA shall submit an annual progress report to the Area ONAP within 45 days of the end of its fiscal year or such later date as may be approved by the Area ONAP.

§ 950.455 Conversion of rental projects.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all of the units in an existing rental project to the MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) Tenants or other applicants to be homebuyers of the proposed conversion units shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer shall be made before the rental unit occupied by a tenant can be converted to the MH program.

(3) In the case of conversion of apartments or row houses to condominium or cooperative ownership, all units in a structure shall be converted, with all occupants at the time of the application qualified, in accordance with paragraph (b)(2) of this section. Any occupants who do not qualify or desire to convert shall be satisfactorily relocated and replaced with qualified occupants before application for conversion of the structure.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency; tribal acceptance; demonstration of family interest; evidence that units are habitable, safe, and sanitary; family qualifications as discussed in paragraph (b)(2) of this section; and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining rental units shall not be adversely affected.

§ 950.458 Conversion of Mutual Help projects to rental program.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all Mutual Help project units to the rental program, whenever a homebuyer or homebuyers have lost the potential for ownership due to the inability to meet the cost of their homebuyer responsibilities.

(b) *Minimum requirements.* (1) The remaining balances in any reserve accounts shall be accounted for individually for each unit converted in a manner prescribed by HUD.

(2) The balance remaining in the MEPA, if any, is applied first to outstanding tenant accounts receivable, then to repair of homebuyer maintenance items, and finally returned to the homebuyer.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining units shall not be adversely affected.

Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

§ 950.470 Purpose and applicability.

(a) *Purpose.* The purpose of the Self-Help (SH) program is to provide an alternate method of developing units that will be less costly than other methods of development, will engender community pride and cooperation, and will provide training in construction skills that will have lasting value to participants. If an IHA is interested in pursuing SH development, it organizes a small group of families (six to ten) to build a substantial portion of the homes for all the families in the group, with technical assistance, supervision, and materials provided by the IHA, augmented by skilled labor obtained under contract. The participants are families who qualify for participation in the Mutual Help Homeownership Opportunity (MH) program, who have the ability to furnish their share of the required labor and who agree to participate in the cooperative effort to build homes for all members of the group.

(b) *Applicability.* Any IHA eligible for development funds may submit an application for a SH MH project.

§ 950.475 Basic requirements.

(a) *Contracts.* A SH MH project also involves three basic contracts in a form approved by HUD: an ACC for a MH project executed by HUD and the IHA after approval of the SH project application and after HUD approval of the development program, an SH agreement executed by the participating families and the IHA before construction begins, and a Mutual Help and Occupancy Agreement executed by the participating families and the IHA after construction completion.

(b) *Family participation.* Each family shall show the desire to work with other families in building their own homes and shall have the time to contribute the labor necessary to perform a substantial number of the tasks required in the construction of the homes. Each family shall sign an SH agreement with the IHA.

(c) *IHA capacity.* The IHA shall have the capacity to provide for the financial, legal, administrative, and technical responsibilities of the program. The IHA is required to provide assurance that the project will be completed, in the form of a letter of credit or its equivalent in an amount equal to 10 percent of the estimated Total Development Cost Standard.

(d) *Funding.* The funding for technical training and supervision of participating families will be provided through development funds, and the cost will be included in the Total Development Cost (TDC) of the project. The cost of construction supervision and technical assistance shall generally be no more than 15 percent, but may not exceed 20 percent of the TDC of these SH homes.

(e) *Applicability of Indian preference.* In the selection of contractors to perform construction supervision, skilled labor, or other work under this program, the provisions concerning preference for Indians (§ 950.175) apply. In the selection of participating families, the provisions of § 950.416 apply.

(f) *Building code.* The building code used by the IHA in accordance with § 950.255 will apply to the homes constructed under this program.

§ 950.480 Self-Help agreement.

(a) *Timing.* The obligations under the Self-Help agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help program, will be contingent upon HUD's approval of the development program. Each family will be obligated to be available to commence work at a time that fits the IHA's schedule for completion of prior tasks by skilled labor, but generally within 120 days of HUD's approval of the IHA's SH project development program, and to complete the work within a period not to exceed two years.

(b) *Pre-construction period.* The SH agreement will provide that, before construction begins, the participating families will be required to organize themselves, with the assistance of the IHA, and to participate in construction skills training.

(c) *Labor contribution.* (1) The SH agreement will specify the construction tasks to be performed by the participating families as their labor contribution, and the construction tasks to be performed under contract by skilled laborers. The number of tasks to be performed by the participating families shall constitute the vast majority of the tasks.

(2) The labor performed is not subject to the labor standards specified in section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j).

(3) The SH agreement will specify the circumstances under which it may be terminated.

(d) *Insurance requirements.* The SH agreement will provide that the families waive any liability claim against the IHA for any injury that might occur during the development of the project.

(e) *Standard provisions.* The SH agreement will include provisions

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prohibiting kickbacks and conflicts of interest.

(f) *Completion.* The SH agreement will provide that upon successful completion of the family's obligations under it, the family and the IHA will execute a Mutual Help and Occupancy Agreement.

§ 950.485 Application.

(a) *General.* The application for a SH development method of Mutual Help project shall comply with the general requirements of § 950.225.

(b) *Need for Self-Help housing.* Evidence of the need for SH housing shall be submitted, including the following:

(1) The names, addresses, and number of persons in the household, and annual incomes of the families selected to participate;

(2) The SH agreement;

(3) Certification by the IHA that the participating families are believed to have the time and ability to fulfill their obligations under the SH agreement; and

(4) Such information as the incomes and sizes of other interested families who appear to be eligible.

(c) *Ability of IHA to administer SH housing.* The IHA shall demonstrate its ability to administer the program by identifying the staff members who will supervise construction and provide technical assistance, and describing their experience. If the IHA plans to contract with an outside entity to perform these functions, it shall follow the requirements concerning Indian preference. Regardless of the identity of the firm selected to perform this function, the IHA should identify the firm and briefly describe its experience. The IHA also shall demonstrate its capacity to administer the program, in accordance with § 950.475.

§ 950.490 Development program.

(a) In addition to complying with the requirements of § 950.260, the IHA's development program for a SH project submitted to HUD shall include the following:

(1) *IHA coordination plan.* The plan for organizing and implementing the development, including elements comparable to those covered in the standard Mutual Help construction contract, and the method of coordinating work of participating families and skilled contractors.

(2) *Difference in cost.* A description of how the development cost differs from the cost for a project constructed under a construction contract. This difference should reflect the labor contribution, after considering the construction supervision cost.

(3) *Special provisions for acquisition with rehabilitation projects.* A description of the repair or rehabilitation work needed on each home to be acquired. The work needed on all the homes should be reasonably comparable in the amount of labor exchange that is required. The estimated number of hours of labor and a description of the work to be done shall be provided.

(4) *Certification of participation.* Certification by the IHA that the participating families have signed the SH agreement and remain able to fulfill their obligations under the SH agreement.

(5) *Changes since application stage.* Statement of any changes in the data submitted in the application.

(b) HUD will review the development program submitted by an IHA for a SH project with particular attention to the elements listed in paragraph (a) of this section.

§ 950.495 Default of Self-Help agreement.

(a) If the IHA determines that a participating family is failing to provide its labor contribution, as required in accordance with its SH agreement, it shall counsel the family about its obligations and encourage fulfillment of its responsibilities. If the failure of the family is jeopardizing the progress of the project, the IHA shall declare the family in default and terminate its participation in the project. Upon termination of the participation of one family, the IHA shall move expeditiously to select an alternate family to take over the responsibilities of the terminated family. If another qualified family cannot be found to assume the responsibilities of the terminated family, the unit may be converted to some other development method (e.g., force account, conventional bid, etc.) under the MH program.

(b) If the IHA determines that an entire group is unable to continue its work to completion of construction, the IHA shall first counsel the group about its obligations and encourage fulfillment of its responsibilities. If counseling is unsuccessful in bringing about satisfactory progress toward completion, the IHA shall declare the families in default and convert the project to a regular MH project. The IHA's plan for completing the project shall be submitted to HUD for review and counsel prior to terminating the Self-Help project. Availability of additional HUD funding for this purpose is not assured.

Subpart G—Turnkey III Program

§ 950.501 Introduction.

(a) *Purpose.* This subpart sets forth the requirements of the Turnkey III Homeownership Opportunities Program, which is administered by HUD as part of the Indian Housing Program under the United States Housing Act of 1937. This part covers the management, operation, conversion, and sale of existing Turnkey III homes that remain in Indian housing authority (IHA) ownership.

(b) *Program framework.* (1) All Turnkey III projects shall be operated in accordance with an executed Annual Contributions Contract (ACC), which includes the "Special Provisions for Turnkey III Homeownership Opportunity Project" and Homebuyer Ownership Opportunity Agreements (Homebuyer Agreement) between the IHA and the Homebuyer.

(2) A Turnkey III development may only include units that are to be operated for the purpose of providing homeownership opportunities for eligible low-income families pursuant to this part and the special Turnkey III provisions of the ACC, including units occupied temporarily by former homebuyers who, as a result of losing homeownership potential, have been transferred to rental status in place, pending the availability of a suitable rental unit. When a homebuyer is converted to rental status while remaining in the same unit, pending availability of a satisfactory rental unit or approval of a request to convert the unit in accordance with § 950.503, the unit remains under the Turnkey III project.

(3) An IHA may establish any policies, procedures, and requirements that are not contrary to the ACC, this part, other applicable Federal, State, and local statutes and regulations, and the rights of homebuyers under existing homebuyer agreements.

(c) *Program overview.* The Turnkey III Program provides homeownership opportunities for eligible low-income families. The program uses a lease-purchase arrangement, whereby the homebuyer family initially takes occupancy of a rental basis, under a homebuyer agreement which constitutes a lease with an option to purchase. The purchase price is set at the time of initial occupancy. During the period of rental tenancy, the homebuyer makes monthly rental payments based on a percentage of family income and is responsible for routine maintenance. A portion of the homebuyer monthly payment is used to establish an Earned Home Payments Account (EHPA) and a Nonroutine Maintenance Reserve (NRMR). To the extent that these funds are not used by the IHA to perform maintenance relating to the home, the funds will be available to apply to the purchase price at the time the homebuyer is in a position to exercise the option to purchase. At closing, the homebuyer pays the IHA the balance of the purchase price due (or may be permitted by the IHA to finance all or a portion of that amount through a purchase money mortgage) and the IHA deeds the home to the homebuyer.

(d) *Contracts, agreements, other documents.* All contracts, agreements, and other documents referred to in this subpart shall be in a form approved by HUD, and changes shall be made with the approval of the Area ONAP.

§ 950.503 Conversion of Turnkey III developments.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the Area ONAP for approval to convert any or all of the units in an existing Turnkey III development to the rental or MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) For conversion to MH, applicants shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer shall be made before the Turnkey III unit occupied by a tenant can be converted to the MH program. In determining the purchase price and term, the homebuyer may receive credit for the period of time they have been residing in a Turnkey III homeownership unit.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a development, the IHA's ability to operate the remaining Turnkey III units shall not be adversely affected.

§ 950.505 Eligibility and selection of Turnkey III homebuyers.

(a) *Applications.* Families who wish to be considered for Turnkey III shall apply specifically for that program, and a separate list of eligible applicants for Turnkey III shall be maintained. Applications shall be dated as received. The submission of an application for Turnkey III by a family that is also an applicant for conventional rental housing or that is an occupant of such housing shall in no way affect its status with regard to such rental housing. A family shall not lose its place on the waiting list until it is selected for Turnkey III and shall not receive any different treatment or consideration with respect to other rental housing programs due to having applied for Turnkey III. In order to be considered for selection, a family shall be determined to meet at least all of the following standards of potential for homeownership:

(1) Sufficient income to cover the EHPA, NRMR, and the estimated cost of utilities with its required monthly payment (see § 950.315); and

(2) Ability to meet all obligations under the Homebuyer Agreement.

(b) *Selection and notification of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list.

§ 950.507 Homebuyer Ownership Opportunity Agreements (HOOA).

(a) *General.* The HOOA shall be executed between the IHA and the homebuyer as a condition for occupancy of a Turnkey III unit.

(b) *Pre-Existing Agreements.* (1) Turnkey III Projects in operation on the effective date of this subpart shall be governed by this subpart, except to the extent that the terms of any pre-existing Homebuyer Agreements shall govern the relationship of an IHA and occupant until the termination or cancellation of such agreement(s). If the agreement establishes a maximum or a minimum monthly payment, the terms of the agreement shall govern. However, in no event will the monthly payment charged exceed the Total Tenant Payment determined in accordance with subpart D of this part.

(2) Pre-existing Homebuyer Agreements that determined the required monthly payment in accordance with a "Schedule" developed by the IHA and approved by HUD should continue to determine the monthly payment in accordance with the schedule. This schedule is determined as follows:

(i) The operating budget for the project is based on estimated expenses for a given period of time. The amount needed to operate a particular project is called the break-even amount (see § 950.513(a)). This is comprised of the Operating Expenses, the total amount needed for EHPA, and the total amount needed for NRMR.

(ii) The aggregate of all homebuyers' incomes is determined. (If no definition of income is stated in the homebuyer's contract, the definition in subpart A of this part is used.)

(iii) The percentage of aggregated income needed to cover 110 percent of the break-even amount is determined. This percentage is the one that appears in the schedule.

§ 950.509 Responsibilities of homebuyer.

(a) *Repair, maintenance, and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the homebuyers' association (HBA) and the IHA.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by the homebuyer, other occupants, or visitors

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the IHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the IHA and the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the IHA and the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the IHA and the HBA.

(e) *Use of home.* (1) A homebuyer shall not:

(i) Sublet the home without the prior written approval of the IHA;

(ii) Use or occupy the home for any unlawful purpose; or

(iii) Provide accommodations (unless approved by the HBA and the IHA) to boarders or lodgers.

(2) The homebuyer shall agree to use the home primarily as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the IHA).

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any other member of the family shall interfere with the rights of other occupants of the development, damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the IHA has determined that such change would not:

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(1) Impair the value of the unit, the surrounding units, or the development as a whole; or

(2) Affect the use of the home for residential purposes;

(h) *Statements of condition and repair.* When each homebuyer moves in, the IHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the IHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the IHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant. The homebuyer or the homebuyer's representative and a representative of the HBA may join in any inspections by the IHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of the home and in maintenance of common property.

(j) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, the following conditions apply:

(1) A homebuyer shall not assign any right or interest in the home or any interest under the Homebuyer Ownership Opportunity Agreement without the prior written approval of the IHA;

(2) In the event of death, mental incapacity, or other condition as determined by the IHA, the person designated as the successor in the Homebuyer Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the agreement if that person meets the conditions established by the IHA. Such person shall be designated by the homebuyer. If there is no such designation, or the designee does not meet the standards of potential for homeownership, the IHA may consider as the homebuyer any family member who meets the standards of potential for homeownership;

(3) If there is no qualified successor in accordance with paragraph (j)(2) of this section, and no minor child of the homebuyer's family is in occupancy, the IHA shall terminate the agreement and select another family. Where a minor child or children of the homebuyer's family is in occupancy, and an appropriate adult(s) who has been appointed legal guardian of the children is able and willing to perform the obligations of the Homebuyer Ownership Opportunity Agreement in their interest and on their behalf, then in order to protect continued occupancy and opportunity for acquisition of ownership of the home, the IHA may approve the guardian(s) as occupants of the unit with a duty to fulfill the homebuyer obligations under the agreement.

§ 950.511 Homebuyers' association (HBA).

(a) *General.* (1) The homebuyers' association (HBA) is an incorporated organization composed of all homebuyers and homeowners. Each Turnkey III development shall have an HBA, unless the homes are on scattered sites (noncontiguous lots throughout a multi-block area with no common property), or the number of homes in the development may be too few to support an HBA. For such cases, a modified form of homebuyers association or a less formal organization may be desirable. This decision shall be made jointly by the IHA and the homebuyers.

(2) The functions of the HBA shall be set forth in its articles of incorporation and by-laws. The IHA shall assist the HBA in its organization and operation to the extent possible.

(b) *Funding.* The IHA may provide noncash contributions to the HBA, such as office space, as well as cash contributions, which shall be provided for in the annual operating budgets of the IHA. The cash contributions shall be in an amount provided for in the IHA budget and shall be subject to any HUD restrictions on funding.

§ 950.512 Homeowner's association (HOA).

A "homeowners' association" means an association comprised of homeowners, to which the IHA conveys ownership of common property, and which thereafter has responsibilities with respect to the common property. Only residents who have acquired title to their homes are members of the HOA.

§ 950.513 Break-even amount and application of monthly payments.

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the amounts budgeted for operating expenses, the EHPA, and the NRMR. A separate break-even amount is established for each size and type of dwelling unit, as well as for the project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit. Similar variations may occur for operating expenses. The break-even amount does not include the monthly allowance for utilities that the homebuyer pays directly.

(b) *Application of monthly payments.* The IHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA;

(2) To the credit of the homebuyer's NRMR; and

(3) For payment of monthly operating expense, including contributions to the operating reserve.

(c) *Excess over break-even.* When the homebuyer's required monthly payment exceeds the applicable break-even amount, the excess shall constitute additional project income and shall be deposited and used in the same manner as other project income.

(d) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable break-even amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (i.e., as a reduction of project income). In all cases, the homebuyer payment shall be sufficient to cover the EHPA and the NRMR, which shall be credited with the amount included in the break-even amount for these accounts.

§ 950.515 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, etc.;

(2) *Homebuyer services.* IHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contracts, and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the IHA as part of operating expense;

(4) *Routine maintenance of common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the IHA's responsibility for maintenance;

(5) *Protective services.* The cost of supplemental protective services paid by the IHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.,

(7) *Nonroutine maintenance of common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds,

and unanticipated items for nondwelling structures.

(b) *Monthly operating expense rate.* (1) The monthly operating expense rate to be included in the break-even amount for each fiscal year shall be established on the basis of the IHA's operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD regulations, contracts, and handbooks.

(2) If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the differences.

(c) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating expense category shall be provided to the HBA, and copies shall be provided to homebuyers upon request.

§ 950.517 Earned Home Payments Account (EHPA).

(a) *Credits to the account.* The IHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of the required monthly payment equal to the IHA's estimate of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homeowner's home, shall be set aside in the EHPA. In addition, this account shall be credited with:

(1) Any voluntary payments made pursuant to paragraph (f) of this section; and

(2) Any amount earned through the performance of maintenance as provided in paragraph (c) of this section.

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance, the IHA shall arrange to have the work done in accordance with the procedures established by the IHA and the HBA, and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the IHA and HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the IHA (see § 950.519), the cost thereof shall be charged to the EHPA.

(c) *Additional equity through maintenance of common property.* Homebuyers may earn addition EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefore only pursuant to a prior written agreement between the homebuyer and the IHA (or the homeowners' association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(d) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the IHA shall notify the HBA and shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD, and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the IHA a list of HUD-approved securities, bonds, or obligations that the association recommends for investment by the IHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2)(i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all EHPA balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and

(C) The aggregate uninvested balance of all the homebuyers' EHPAs.

(ii) This statement shall be made available to any authorized representative of the HBA.

(e) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may make payments over and above the required monthly payments. Such voluntary payments shall be credited to the homebuyer's EHPA.

(f) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the IHA, a homebuyer's EHPA may be used to pay the delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the IHA or the HBA.

(g) *Annual statement to homebuyer.* The IHA shall provide an annual statement to each homebuyer specifying the amounts in the EHPA and the NRMR. Any maintenance or repair done on the dwelling by the IHA that is chargeable to the EHPA or to the NRMR shall be accounted for through a work order, a copy of which shall be sent to the homebuyer.

(h) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 950.525.

(i) *Application of EHPA upon vacating of dwelling.* (1) In the event a homebuyer agreement is terminated the IHA shall charge against the homebuyer's EHPA the amounts required to pay:

(i) The amount due the IHA, including the monthly payments the homebuyer is obligated to pay up to the date the homebuyer vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 60 days from the date of notice of intention to vacate, or if the homebuyer fails to give notice of intention to vacate, 60 days from the date the home is put in good condition for the next occupant; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant.

(2) If the EHPA balance is not sufficient to cover all of these charges, the IHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined, provided that the IHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates.

§ 950.519 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The IHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule

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for the home. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the IHA, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyer Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. The IHA shall prepare this schedule and reexamine it annually.

(c) *Charges to NRMR.* (1) The IHA shall provide the nonroutine maintenance necessary for the home, and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the IHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that:

(i) To the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees; and

(ii) To the extent such maintenance is attributable to defective materials or workmanship not covered by the warranty, or even though covered by the warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the homebuyer agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, a credit balance in the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the IHA shall pay such balance to the homeowner at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the IHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days, the IHA shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) (i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all NRMR balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and

(C) The aggregate uninvested balance of the NRMRs.

(ii) The IHA shall make a copy of this statement available to any authorized representative of the HBA.

§ 950.521 Operating reserve.

(a) *Purpose of the reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the project, the IHA shall establish an operating reserve in connection with its annual operating budgets for the project. The purpose of this reserve is to provide funds for:

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items that constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures;

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty;

(3) Working capital, including funds to cover a deficit in a homebuyer's NRMR until such deficit is offset by future monthly payments by the homeowner or a settlement in the event the homebuyer should purchase;

(4) A deficit in the operation of the project for a fiscal year, including any deficit resulting from monthly payments totaling less than the break-even amount for the project;

(5) Nonroutine maintenance of vacated homes with insufficient NRMR balances to put them in suitable condition for reoccupancy by subsequent homeowners; and

(6) The cost of utilities on a temporary basis for an individual unit by way of a utility reimbursement when a homebuyer has insufficient tenant income to cover even the utilities.

(b) *Nonroutine maintenance of common property (contribution to operating reserve.* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year shall be determined by the IHA, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This contribution to the operating reserve shall be made only during the period the IHA is responsible for the maintenance of any common property; during such period, the amount shall be determined on the basis of the requirements of all common property in the development.

(c) *Transfer to homeowners' association.* Where a Turnkey III development includes common property, the IHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners' association. When the homeowners acquire voting control, the homeowners' association shall then assume full responsibility for management and maintenance of common property under a plan, agreed upon by the IHA and the homeowners association, and the IHA shall transfer to the homeowners' association a portion of the operating reserve then held by the IHA. This provision shall not apply when there is no common property or when there is no duly organized and functioning homeowners association.

(d) *Disposition of reserve.* Following the end of the fiscal year in which the last home has been conveyed by the IHA, the balance of the operating reserve held by the IHA shall be retained by the IHA in a replacement reserve if an ACC amendment has been executed implementing loan forgiveness, provided that the aggregate amount of payments by the IHA under this paragraph (d) shall not exceed the aggregate amount of annual

contributions paid by HUD with respect to the development.

§ 950.523 Operating subsidy.

HUD may pay operating subsidy, subject to the availability of funds for this purpose and at HUD's sole discretion, to cover an operating deficit in an operating budget. However, operating subsidy or project funds may not be used to establish or maintain the homebuyer reserve accounts.

§ 950.525 Purchase price and methods of purchase.

(a) *Purchase price.* The purchase price for the initial and subsequent homebuyer shall be determined by the IHA.

(b) *Purchase price schedule.* On the date when the homebuyer agreement is signed, the IHA shall provide the homebuyer with a Purchase Price Schedule, showing the monthly declining purchase price over the term of the HOOA agreement (a period not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA). The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in the EHPA, plus such portion of the NRMR as the homebuyer wishes to use for the purchase, is equal to the unamortized balance purchase price as shown at that time on the homebuyer's purchase price schedule plus all incidental costs (the costs incidental to acquiring ownership, including but not limited to the costs for a credit report, field survey, title examination, title insurance, inspections, the fees for attorneys other than the IHA's attorney, mortgage application, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which the combined total in the EHPA and designated portion of the NRMR equals the purchase price, the balance of the purchase price shall be fixed as the amount specified for that month, and the homebuyer shall be refunded:

(i) The net additions, if any, credited to the EHPA after that month; and

(ii) Such part of the monthly payments made by the homebuyer after the balance of the purchase price has been fixed that exceeds the break-even amount attributable to the unit.

(2) Where the sum of the unamortized balance of the purchase price and incidental costs is greater than the amounts in the homebuyer's EHPA and NRMR, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The unamortized balance of the purchase price shall be the amount shown on the homebuyer's purchase price schedule for the month in which the settlement date for the purchase occurred.

(3) Period required to achieve ownership. The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyer's income and the amount of credit the homebuyer can accumulate in the EHPA and NRMR, the period may be shortened accordingly.

(4) Residual receipts. After payment in full of the IHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the IHA shall retain all residual receipts from the operation of the development in a replacement reserve.

(5) IHA financing. The IHA may, at its discretion, provide financing for purchases by homebuyers, or assist with financing, by such methods and on such terms and conditions as may agreeable to the IHA and the homebuyer

(6) Transfer of title to homebuyer. When the homebuyer is to obtain ownership, the parties shall mutually agree upon a closing date. On the closing date, the homebuyer shall pay the required amount of money to the IHA and receive a deed for the home.

§ 950.529 Termination of Homebuyer Ownership Opportunity Agreement.

(a) *Termination by IHA.* (1) In the event the homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment, by misrepresentation or withholding information in applying for admission or in connection with any subsequent reexamination of income and family composition, by failure to comply with any of the other homebuyer obligations under the agreement, by loss of homeownership potential (beyond a temporary, unforeseen change in circumstances), an income that requires outright purchase, the IHA may terminate the agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (a)(2) of this section.

(2) Notice of termination by the IHA shall be in writing. Such notice shall state:

(i) The reason for termination;

(ii) That the homebuyer may respond to the IHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination;

(iii) That in such response the homebuyer may be represented by the HBA;

(iv) That the IHA will consult the HBA concerning this termination;

(v) That unless the IHA rescinds or modifies the notices, the termination shall be effective at the end of the 30-day notice period; and

(vi) That, in the case of termination as a result of loss of homeownership potential when the homebuyer is otherwise in compliance with the agreement, the family will be offered a transfer to a rental unit (whether or not in concert with a conversion of that unit to the rental program). If a rental unit of appropriate size is available, the family will be notified of a transfer to that unit. If no other unit is then available and the homebuyer's current unit is not to be converted to rental, the family will be notified that it may remain in place until an appropriate rental unit becomes available (in which case the unit remains under the Turnkey III project). Otherwise, the notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice.

(b) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyer Ownership Opportunity Agreement by giving the IHA 30 days notice in writing of the intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the IHA, the agreement shall be terminated automatically, and the IHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(c) *Transfer to the rental program.* In the event of termination of the Homebuyer Ownership Opportunity Agreement by the IHA or by the homebuyer with adequate notice, the homebuyer may be transferred to a suitable unit in the rental program, in accordance with § 950.503 or terminated from occupancy. If the homebuyer is transferred to the rental program, the amount in the homeowner's EHPA shall be paid in accordance with § 950.517(i).

Subpart H—Lead-Based Paint Poisoning Prevention

§ 950.551 Purpose and applicability.

The purpose of this subpart is to implement the provisions of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, by establishing

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procedures to eliminate as far as practicable the immediate hazards from the presence of paint which may contain lead in IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to IHA-owned low-income housing projects, including Turnkey III, Mutual Help, and conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the section 23 Leased Housing Non-Bond-Financed Program, the section 10(c) Leased Housing Program, or the section 23 and section 8 Housing Assistance Payments programs. This subpart is promulgated in accordance with the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

§ 950.553 Testing and abatement applicable to development.

(a) *Pre-acquisition testing.* With respect to development, all existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (as defined in subpart A of this part).

(b) *Pre-occupancy abatement.* If units containing lead-based paint are acquired, compliance with parts 35 and this subpart is required, and abatement shall be completed before occupancy.

(c) *Compliance with guidelines.* It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (hereafter Lead-Based Paint Interim Guidelines), which were published at 55 FR 14555 and 55 FR 39874 (1990), as periodically amended or updated, and other future official departmental issuances related to lead-based paint, before any irrevocable commitment is made to acquire the property. Properties that have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 need not be tested again. If lead-based paint is found in a property to be acquired, the cost of testing and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

§ 950.556 Testing and abatement applicable to modernization.

(a) *Applicability of requirements*—(1) *General.* With respect to modernization, the IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR part 35 and this subpart H). The five-year funding request plan for CIAP (as described in § 950.610) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated before 1978 approved for (or applications for) comprehensive and homeownership modernization; other pre-1978 family projects not undergoing comprehensive and homeownership modernization; and special purpose modernization. Any previous testing or abatement work that was done in accordance with HUD's implementing regulations, effective June 6, 1988, or the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 shall not be redone to comply with the requirements of this section.

(2) *Special Purpose.* The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitation involves removal of walls, doors, and windows. The HUD Area ONAP may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for an IHA requesting special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already been randomly sampled before May 15, 1991, using the criteria found in the June 6, 1988 regulations (see paragraph (a)(1) of this section) or after May 15, 1991, using the criteria outlined in paragraph (b) of this section. If lead-based paint is found as a result of previous random testing or current testing, it must be abated.

(b) *Which standards apply*—(1) *Comprehensive, special purpose, and homeownership modernization in progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint for which funds were reserved by HUD by May 15, 1991, the following standards apply:

(i) IHAs that awarded any construction contract (including architectural and engineering (A&E) contracts) before April 1, 1990, are subject to the provisions regarding random testing and abatement in effect at the time of award.

(ii) IHAs that advertise for bid or award a construction contract (including A&E contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(2) *Applications for comprehensive, special purpose, and homeownership modernization projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint, no construction contracts awarded on or after April 1, 1990 (including A&E contracts and force account work), excluding those contracts solely for emergency work items, shall be executed until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(3) *Lead-based paint modernization; other family projects not undergoing comprehensive, special purpose, or homeownership modernization.* Any pre-1978 family project (assisted under section 14 of the Act) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraphs (b)(1) and (2) of this section) including a pre-1978 family project that previously has been modernized with comprehensive, special purpose, or homeownership modernization grants under previous regulations shall be randomly tested as described in this section, and abated as described in this section if lead-based paint is found, unless testing and abatement was previously done in accordance with paragraph (a) of this section.

(c) *Testing*—(1) *Random testing.* Random testing as described in this paragraph (c)(1) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 950.605(d). Interior common areas to be sampled include IHA-owned or operated child care facilities.

(i) *Initial random test.* IHAs shall use random testing on family projects (including homeownership units) constructed or substantially rehabilitated before 1978. It is strongly recommended, but not required, that IHAs use the random testing methodology set forth in the lead-based paint interim guidelines, as periodically amended or upgraded, and other future outstanding departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous elevated blood levels (EBLs).

(ii) *Followup.* If evidence of lead-based paint is found in units that were in the random sample, the IHA is required to:

(A) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested; or

(B) Abate all like surfaces in that universe without further testing.

(2) *Universal testing.* For scattered site family projects involving single-unit structures that are not contiguous or were built and/or rehabilitated at different times, the IHA shall cause each unit to be tested for lead-based paint.

(d) *Abatement.* Abatement shall be performed in accordance with § 950.570. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577–0090).

§ 950.560 Notification.

(a) *General LBP Hazard Notification for all Residents.* Tenants in IHA-owned low-income public housing projects constructed before 1978 shall be notified:

(1) That the property was constructed before 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning;

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and

(6) Of the advisability and availability of blood lead level screening for children under seven years of age. Tenants shall be advised to notify the IHA if a child is identified as having an elevated lead blood level (EBL) condition.

(b) *Lead-Based Paint Hazard Notification for Applicants and prospective purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the IHA.

(c) *Notification of Positive Lead-Based Paint Test Results.* In the event that an IHA-owned project constructed or substantially rehabilitated before 1978 is tested and the test results using an x-ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm2, or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the IHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The IHA shall retain written records of the notification.

§ 950.565 Maintenance obligation; defective paint surfaces.

In family projects constructed or substantially rehabilitated before 1978, the IHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2) shall be required. Treatment shall be completed within a reasonable period of time.

§ 950.570 Procedures involving EBLs.

(a) *Procedures where a current resident child has an EBL.* When a child residing in an IHA-owned low-income housing project has been identified as having an EBL, the IHA shall:

(1) Test all surfaces in the unit and applicable surfaces of any IHA-owned and operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling IHA facilities that are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the IHA and HUD; or

(2) Transfer the family with an EBL child to a post-1978 or to a previously tested unit that was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using an IHA-owned or operated child care facility has an EBL.* When a non-resident child using an IHA-owned or operated child care facility has been identified as having an EBL, the IHA shall test all applicable surfaces of the IHA-owned or operated child care facility and abate the surfaces found to contain lead-based paint.

(c) *Testing.* Testing shall be completed within five days after notification to the IHA of the identification of the EBL child. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local, or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm2 or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using the IHA-owned or operated child care facility Testing will be considered an eligible modernization cost under subpart I of this part only upon IHA certification that testing services are otherwise unavailable.

(d) *Hazard abatement requirements*—(1) *Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) *Unit housing a child with an EBL.* Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the IHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

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(ii) *IHA-owned or operated child care facility used by a child with an EBL.* Any applicable surface found to contain lead-based paint shall be treated.

(iii) *Interior common areas (including nondwelling IHA facilities that are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside.* Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* IHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint Interim Guidelines, and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in § 35.24(b)(2)(ii) of this title. Final inspection and certification after treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

(3) *Tenant protection.* The IHA shall take appropriate action to protect tenants including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint Interim Guidelines and other future official departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

(4) *Disposal of lead-based paint debris.* The IHA shall dispose of lead-based paint debris in accordance with applicable local, State, or Federal requirements. Additional information covering disposal practices is contained in the Lead-Based Paint Interim Guidelines and other future official departmental issuances relating to lead-based paint. In any event, the Environmental Protection Agency (EPA) has primary responsibility for waste disposal regulations and procedures. (see, e.g., 40 CFR parts 260 through 271.)

(e) *Records.* The IHA shall maintain records on which units, common areas, exteriors, and IHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface, or IHA child care facility. The IHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The IHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR part 35 and § 950.555, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, an IHA child care facility, an exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, that unit, child care facility, exterior or interior common area is not required to be re-tested or re-treated.

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2577–0090)

§ 950.575 Compliance with tribal, State and local laws.

(a) *IHA responsibilities.* Nothing in this subpart is intended to relieve an IHA of any responsibility for compliance with tribal, State, or local laws, ordinances, codes, or regulations governing lead-based paint testing or hazard abatement. The IHA shall maintain records evidencing compliance with applicable tribal, State, or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a tribal, State, or local law, ordinance, code, or regulation provides for lead-based paint testing or hazard abatement in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such a manner as may be appropriate to promote efficiency while ensuring such comparable level or protection.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under OMB Control Number 2577–0090).

§ 950.580 Monitoring and enforcement.

IHA compliance with the requirements of this subpart H will be included in the scope of HUD monitoring of IHA operations. Noncompliance with any requirement of this subpart may subject an IHA to sanctions provided under the Annual Contributions Contract or to enforcement by other means authorized by law.

§ 950.585 Insurance coverage.

For the requirements concerning an IHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 950.195.

Subpart I—Modernization Program

General Provisions

§ 950.600 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to set forth the policies and procedures for the Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs) to:

(1) Improve the physical condition and upgrade the management and operation of existing Indian housing developments;

(2) Assure that such developments continue to be available to serve low-income families;

(3) Assess the risks of lead-based paint poisoning through the use of professional risk assessments that include dust and soil sampling and laboratory analysis in all developments constructed before 1980 that are, or will be occupied by families; and

(4) Take effective interim measures to reduce and contain the risks of lead-based paint poisoning recommended in such professional risk assessments.

(b) *Applicability.* (1) The sections under the undesignated heading "General Provisions" applies to all modernization under this subpart. The sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) set forth the requirements and procedures for the CIAP for IHAs that own or operate fewer than 250 Indian housing units. An IHA that qualifies for participation in the Comprehensive Grant Program (CGP) is not eligible to participate in the CIAP. The sections under the undesignated heading "Comprehensive Grant program (CGP)" set forth the requirements and procedures for the CGP for IHAs that own or operate 250 or more Indian housing units. For purposes of the 250 or more unit threshold for participation in the CGP, and for the formula allocation under § 950.601, an existing rental, Mutual Help, or section 23 bond-financed unit under the ACC shall count as one unit; and a unit under the Turnkey III program shall count as one-fourth of a unit. An IHA that has already qualified to participate in the CGP because it owns or operates 250 or more units may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

(2) This subpart applies to IHA-owned low-income Indian housing developments (including developments managed by a Resident Management Corporation pursuant to a contract with the IHA), and to Section 23 Leased Housing Bond-Financed developments, for which IHAs request assistance under the CIAP or CGP. This subpart also applies to the implementation of modernization programs which were approved before FFY 1992. Rental developments that are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but that have not yet been sold by an IHA, continue to qualify for assistance under this part. This subpart does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to an IHA under CIAP shall be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the IHA under the CGP, as the IHA determines to be appropriate.

(d) *Other.* See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart I.

§ 950.601 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of IHAs and PHAs participating in the CIAP (i.e., agencies that own or operate fewer than 250 units), and to individual IHAs and PHAs participating in the CGP (i.e., agencies that own or operate 250 or more units). The program requirements governing PHA participation in the CIAP and CGP are contained in 24 CFR part 968.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds are set forth in § 950.667.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C.* (1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968, subpart C that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their prior designation as a mod troubled agency.

(2) *Nonapplicability to IHAs.* Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed mod troubled for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which are designed to measure the relative backlog and accrual needs of IHAs and PHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of IHAs and PHAs, as follows:

(1) *Determination of backlog need.* (i) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or the aggregate of IHAs and PHAs with fewer than 250 units not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual IHAs and PHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(*1*) The average number of bedrooms in the units in a development (Weighted at 2858.7);

(*2*) The proportion of units in a development available for occupancy by very large families (Weighted at 7295.7);

(*3*) The extent to which units for families are in high-rise elevator developments (Weighted at 5555.8);

(*4*) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the IHA provides HUD with the actual date of construction, in which case HUD will use the age of the development (or for scattered sites, the average age of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(*5*) In the case of a large agency, the number of units with 2 or more bedrooms (Weighted at .433);

(*6*) The cost of rehabilitating property in the area (Weighted at 27544.3);

(*7*) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses (Weighted at 759.5); and

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section, for the Indian housing stock as of 1991.

(3) *Deduction for prior modernization.* HUD shall deduct from the estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to an IHA or PHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on an IHA-wide or PHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on

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a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum 50 percent deduction of an IHA's or PHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by an IHA with major rehabilitation, with a DOFA date of October 1, 1991 or thereafter, will be considered to have a zero backlog.

(4) *Categories of backlog need.* The most recently available data to be used under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section shall pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments;

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.603, and State, local and tribal codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* If HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 250 or more units and for the aggregate of IHAs and PHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section; or

(2) *Statistically reliable data are unavailable.* If HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(A) The average number of bedrooms in the units in a development (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families (Weighted at 356.7);

(C) The age of the developments (Weighted at 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units (Weighted at 87.1.);

(E) The cost of rehabilitating property in the area (Weighted at 679.1);

(F) The total number of units of each IHA or PHA that owns or operates 250 or more units (Weighted at .0144); and

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (f)(2) of this section shall pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments; and

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.603, and State, local, and tribal codes.

(g) *Allocation for CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 250 units shall be allocated to IHAs in accordance with the requirements under the undesignated heading of this subpart "Comprehensive Improvement Assistance Program" (CIAP) and to PHAs in accordance with the requirements of 24 CFR part 968, subpart B.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 250 or more units shall be allocated in accordance with the requirements under the undesignated heading of this subpart "Comprehensive Grant Program," and for PHAs in accordance with the requirements of 24 CFR part 968, subpart C. An IHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 950.669(b). An IHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units, is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by an IHA or PHA, and the relative modernization needs of IHAs and PHAs, HUD shall count as one unit each existing rental, Mutual Help, and section 23 Bond-Financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program. New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition, and conversion of units.* (1) *General.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, HUD shall not adjust the amount the IHA or PHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the IHA or PHA over a 3-year period to reflect removal of the units from the ACC.

(2) *Determination of one percent cap.* In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for the current year under formula funding, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units that are lost as a result of demolition, disposition, or conversion shall not be offset against units subsequently added to an IHA's or PHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units.* (i) *Reduction less than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the IHA or PHA will be funded as though no change had occurred.

(ii) *Reduction greater than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two-thirds of the difference between the initial year and the current year in the first year, plus one-third of the difference in the second year, and at the level of the current year in the third year.

(iii) *Exception.* A unit that is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count.* (i) Once an IHA's or PHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis.

(ii) A reduction in formula funding, based upon additional reductions to the number of an IHA's or PHA's units, will also be phased in over a 3-year period, as described in paragraph (k)(2) of this section.

§ 950.602 Special requirements for Turnkey III and Mutual Help developments.

(a) *Modernization costs.* Modernization work on a Mutual Help or Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance.* (1) *Paid-off units.* A Mutual Help or Turnkey III unit, which is paid off but has not been conveyed at the time work is included for it in the CIAP application or CGP Annual Statement, is eligible for any physical improvements provided under § 950.615 or § 950.666. However, in accordance with the provisions of § 950.440(e)(8), an IHA may perform nonemergency work on a paid-off Mutual Help unit only after all delinquencies are repaid.

(2) *Conveyed units.* Where modernization work has been approved prior to conveyance, the IHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. An IHA shall not use funds provided under this subpart for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family shall be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for nonemergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for disabled persons, lead-based paint testing, interim containment, professional risk assessment, and abatement) and the correction of development deficiencies. Notwithstanding the above requirement, an IHA may, with prior HUD approval, complete nonemergency physical improvements on any homeownership unit if the IHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

§ 950.603 Modernization and energy conservation standards.

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements, or nonroutine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section; comply with lead-based paint testing and abatement requirements in subpart H of this part; and provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated housing. All improvements funded under this part shall meet the HUD energy conservation standards for cost-effective energy conservation measures in such developments, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The development-specific standards permit an IHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a development, which includes site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to developments modernized under this subpart. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations.

Comprehensive Improvement Assistance Program (For IHAs that Own or Operate Fewer than 250 Indian Housing Units)

§ 950.609 Purpose.

The purpose of these sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) is to set forth the policies and procedures for the CIAP under which IHAs that own or operate fewer than 250 units of Indian housing may receive financial assistance for the modernization of Indian housing developments, including Emergency and Other Modernization. Funding for this program is provided under section 5(c) of the Act (42 U.S.C. 1437c(c)), pursuant to section 14(k) of the Act (42 U.S.C. 1437l(k)) (see § 950.601 for the formula allocation process for the aggregate of CIAP agencies under this subpart I).

§ 950.615 Eligible costs.

(a) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has determined, and HUD agrees, that the completion of the improvements and replacements will reasonably ensure the long-term physical and social viability

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of the development at a reasonable cost, as defined in § 950.102.

(b) *Physical improvement costs for rental and Mutual Help developments.* Eligible costs include alterations, betterments, nondwelling additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. The modernization standards include mandatory and development specific work. The mandatory standards may be exceeded only when the IHA and HUD determine that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(c) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization that are not the responsibility of the homebuyer families, and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or lead-based paint testing, interim containment, professional risk assessment, and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (c)(1) of this section, an IHA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a nonhomebuyer family. An IHA that intends to use funds under this paragraph shall identify in its CIAP application the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an IHA shall certify that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of this part, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed for Other Modernization.

(ii) Before an IHA may be approved for Other Modernization of a unit under this paragraph, it shall first deplete any Earned Home Payments Account (EHPA), or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(d) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or nondwelling facilities, for which HUD has approved the demolition under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to nondwelling use.

(e) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or IHA-wide in nature are eligible costs if needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments, or correct management deficiencies. Management improvements and planning costs may be funded as a single modernization project.

(2) *Ineligible costs.* An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs. In addition, if an approved modernization program includes management improvements that involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. An IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(3) *Eligible costs.* Eligible costs include:

(i) *General management costs.* Eligible general management costs include, but are not limited to: management, financial, and accounting control systems of the IHA, rent collection, and maintenance.

(ii) *Economic development costs.* Economic development activities, such as job training and resident employment, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this subpart I.

(iii) *Resident management costs.* Technical assistance to a resident council or resident management corporation (RMC), as defined in subpart O of this part, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(iv) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(f) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(g) *Administrative costs.* Administrative costs necessary for the planning (planning costs can be funded as a single modernization project), design, implementation, and monitoring of the physical and management improvements are eligible costs, and include the following:

(1) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if the scope and volume of the work are beyond that which could reasonably be expected to be accomplished by such personnel in the performance of their nonmodernization duties. An IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP or operating budget);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP; and

(3) Other administrative costs, such as telephone and facsimile, as specified by HUD.

(h) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments, and other required documents, detailed design work, assistance in the preparation of construction and bid documents, lead-based paint professional risk assessments and testing are eligible costs.

(i) *Relocation and moving costs.* Relocation and other relocation assistance for permanent and temporary relocation are eligible costs, when this assistance is required by § 950.117.

(j) *Cost limitations.* (1) *Management improvements.* Management improvement costs shall not exceed 10 percent of the CIAP funds available to an Area ONAP in a particular FFY.

(2) *Planning costs.* Planning costs are costs incurred before HUD approval of the CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and lead-based paint professional risk assessment and testing. Planning costs may be funded as a single modernization project. If an IHA incurs planning costs without prior HUD approval, an IHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed five percent of the CIAP funds available to an Area ONAP in a particular FFY.

(3) *Program benefit.* If the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(k) *Ineligible costs.* An IHA shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 950.618 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the **Federal Register** a notice of funding availability (NOFA) and the time frame for submission of applications.

(b) *IHA consultation with local officials and residents/homebuyers.* An IHA shall develop the application in consultation with local officials, residents, and homebuyers, as set forth in § 950.624.

(c) *IHA application.* An IHA shall submit to HUD an application, in a form prescribed by HUD, which shall include:

(1) A general description of IHA development(s) (including the current physical condition, for each development for which the IHA is requesting funds, or for all the IHA's developments) and physical and management improvement needs (to meet the Secretary's standards in § 950.603), general description of major work categories (e.g., kitchens, bathrooms) required to correct identified deficiencies and estimated costs, including a statement concerning consultation with local officials and residents and viability of the development(s). The application will also identify a cost estimate for the equipment systems or structural elements that would normally be replaced over the remaining period of the annual contributions contract or during the 30-year period beginning on the date of submission of the application.

(2) For management improvements, the application shall identify the management improvement need, including a general description of the work required for correction and an estimated cost. Management areas for which needs should be identified include, but are not limited to, the following:

(i) The management, financial, and accounting control systems of the IHA;

(ii) The adequacy and qualifications of personnel employed by such IHA (in the management and operation of such developments) for each category of employment; and

(iii) The adequacy and efficacy of resident programs and services in such developments, the security of each such development and its residents, policies and procedures of the IHA for the selection and eviction of residents in such developments, and other policies and procedures of such IHA relating to such developments, as specified by the Secretary; and

(3) Any other documents, as may be required by HUD.

(d) *Completeness review.* To be eligible for selection, an application shall be received by the Area ONAP within the time period specified in the NOFA and shall be complete. In order to determine whether an application is complete, responsive to the NOFA, and acceptable for technical processing, the Area ONAP shall perform an initial completeness review upon receipt of the application. To make the above determination, the Area ONAP shall use the following criteria:

(1) The application was received by HUD at the appropriate address by the date and time specified in the NOFA and was complete and responsive (excluding exhibits that are certifications); or

(2) If an application is determined to be incomplete or to have missing certifications, the IHA shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are those such as inadvertently omitted documents, clarifications of previously submitted material, and other changes that are not of such a nature as to improve the competitive position of the application. The IHA shall acceptably correct deficiencies (including furnishing missing certifications) within the time specified in the NOFA.

(e) *Eligibility review.* (1) *Eligibility for processing.* To be eligible for processing, based on the general description of its developments' condition and general statement of physical and management improvement needs, and the Area ONAP's knowledge of the development's conditions, the work items, particularly emergency work items, shall appear to be eligible and needed.

(2) *Eligibility review on reduced scope.* When the following conditions exist, the IHA will be reviewed on a reduced scope:

(i) Where the IHA owes funds to HUD as a result of excess development, modernization, or operating funds previously provided, and the IHA has not repaid the funds or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement, the IHA is eligible for processing for Emergency Modernization only.

(ii) Where the IHA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as set forth in § 950.115, as evidenced by an action, finding, or determination as described in paragraphs (e)(2)(ii)(A) through (E) of this section, unless the IHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the IHA is eligible for processing only for Emergency Modernization or for work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the IHA based upon a charge of discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by HUD's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the IHA, referred by HUD's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under § 950.115, or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the IHA imposed by

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HUD under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and § 950.115, the Attorney General's Guidelines (28 CFR 50.3) and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 950.115 in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(3) *FHEO Division review.* The processing office shall request the appropriate FHEO Division of the Regional Office to identify any IHAs with equal opportunity-related problems. After consulting with Regional FHEO, as appropriate, and reviewing its own files, the FHEO Division shall identify each IHA by the following categories and provide any other relevant information within the requested time frame:

(i) There are no known equal opportunity-related problems;

(ii) There are known equal opportunity-related problems, as identified; or

(iii) There are circumstances as set forth in paragraph (e)(2) of this section.

(f) *Technical processing.* When an application is determined to be complete and responsive to the NOFA and eligible for processing, technical processing, consisting of the following, shall be accomplished:

(1) The Area ONAP shall categorize the eligible IHAs and their developments into two processing groups: Group 1 for Emergency Modernization, and Group 2 for Other Modernization. IHA developments may be included in both groups, and the same development may be in each group. The IHA only needs to submit one application that includes needs that the Area ONAP will process under Group 1 or Group 2. However, the IHA can submit Emergency Modernization applications whenever needed. Group 2 developments are subject to the long-term viability and reasonable cost analysis. Preference will be given to IHAs that request assistance for developments having conditions that threaten the health or safety of the residents or having a significant number of vacant, substandard units; and that have demonstrated a capability of carrying out the activities proposed. Within Group 2, the Secretary may give priority to compliance with statutory, regulatory, and court-ordered deadlines.

(2) The Area ONAP will evaluate the Group 2 IHAs and developments to determine eligibility and acceptability based on the technical review factors in paragraph (g) of this section. Based on these factors, the Area ONAP shall determine the applications that, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (h) of this section.

(g) *Technical review factors.* The technical review factors for assistance include:

(1) Extent and urgency of need, including need to comply with statutory, regulatory, or court-ordered deadlines;

(2) Extent of vacancies;

(3) IHA's modernization capability;

(4) IHA's management capability;

(5) Degree of resident involvement in IHA operations;

(6) Degree of IHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Rating and ranking.* The Area ONAP shall rate and rank each application in Group 2 on the basis of its assessment of the application using the technical review factors set forth in paragraph (g) of this section and in the NOFA. The Area ONAP shall identify for joint review selection the highest IHA ranking applications in Group 2 in descending order and other Group 2 IHAs with lower ranking applications but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are nonemergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory, or court-ordered deadlines. All Group 1 applications would be automatically selected for joint review.

(i) *Joint review.* HUD shall notify each IHA whose application has been selected for further processing as to whether the joint review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). The purpose of the joint review is to discuss the proposed modernization program, as set forth in the application, and determine the size of the grant, if any, to be awarded. If the IHA has not included all its developments in the CIAP application, HUD may not, as a result of joint review, consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. An IHA shall prepare for the joint review by preparing a draft CIAP budget, and reviewing the other items to be covered during the joint review, as prescribed by HUD. If conducted on-site, the joint review may include an inspection of the proposed physical work. IHAs not selected for joint review will be advised in writing of the reasons for nonselection.

(j) *HUD awards.* Upon completion of the joint review, HUD shall adjust the amounts to be awarded, as necessary, based on information obtained at Joint Review, including the information received as a result of the FHEO review and completion of the environmental review, and announce the IHAs selected for CIAP grants (subject to their submission of an approvable CIAP budget and any other required documents). HUD would request the funded IHA to submit a CIAP budget, including an implementation schedule, a resolution by the IHA Board of Commissioners (approving the CIAP budget and containing certifications required by HUD), and any other necessary documents.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the IHA shall enter into an ACC amendment in order for the IHA to requisition modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an IHA to hire a modernization coordinator or contract administrator to a administer its modernization program).

(l) *Declaration of trust.* An IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

§ 950.624 Resident and homebuyer participation.

(a) *Resident participation.* For a rental development only, the IHA shall establish a Partnership Process, as defined in § 950.102, to develop, implement, and monitor the CIAP. Before submission of the application, an IHA shall consult with the residents, the resident organization, or the RMC (see subpart O of this part) of the development being proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give residents a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to resident recommendations. An IHA shall respond in writing to the residents, the resident organization, or the RMC, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the residents, the resident organization, or the RMC of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the residents, the resident organization, or the RMC.

(b) *Homebuyer participation: Turnkey III and Mutual Help.* For a homeownership development only, before submission of the application, an IHA shall consult with the homebuyer families of the development proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give the homebuyer families a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to their recommendations. An IHA shall respond in writing to the homebuyer families, indicating its acceptance or rejection of their recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the homebuyer families of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the homebuyer families.

§ 950.635 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the IHA, an IHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget in a timely, efficient, and economical manner, subject to the following requirement. An IHA shall ensure that there is no duplication between the activities carried out with CIAP funds and the activities carried out with other funds.

§ 950.639 Fund requisitions.

An IHA shall requisition modernization funds against the approved CIAP budget in accordance with procedures prescribed by HUD.

§ 950.642 Contracting requirements.

An IHA shall comply with the prevailing wage rate requirements in §§ 950.120 and 950.172, as well as the Indian Preference requirements in § 950.175. In addition, an IHA shall comply with State, tribal, and local laws and Federal requirements, as set forth in 24 CFR part 85, except as follows:

(a) *Architect/engineer and other professional services contracts.* Notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) If the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) If the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with any agreements reached with HUD, and that the amount is appropriate and does not exceed the HUD-approved CIAP budget amount.

(b) *Assurance of completion.* For each construction contract over $25,000, the contractor shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price.

(c) *Construction solicitations.* Notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) If the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or,

(2) If the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* An IHA shall obtain HUD approval of the proposed award of a contract if the award exceeds the HUD-approved CIAP budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, an IHA shall make the award without HUD approval after the IHA has certified that:

(1) The solicitation and award procedures were conducted in compliance with State, tribal, and local laws and Federal requirements;

(2) The award does not exceed the approved CIAP budget amount and does not meet the criteria in 24 CFR 85.36(g)(2) (i) through (iv) for prior HUD approval; and

(3) The contractor is not on the Lists of Parties Excluded from the Federal Procurement or Nonprocurement Programs.

(e) *Contract modifications.* Notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, an IHA shall comply with HUD requirements to either:

(1) If the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) If the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the latest HUD-approved CIAP budget or otherwise approved by HUD.

(f) *Construction requirements.* An IHA may be required to submit to HUD periodic progress reports and construction completion documents for prior HUD approval above a HUD-specified amount.

(g) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

§ 950.645 On-site inspections.

It is the responsibility of the IHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor, and with or without the services of an architect/engineer, to assure work quality and progress.

§ 950.648 Budget revisions.

An IHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. An IHA shall submit a budget revision, in a form prescribed by HUD, if the IHA plans (within the total approved CIAP budget) to incur modernization costs in excess of the approved CIAP budget amount for any development. An IHA also shall comply with HUD requirements to either:

(a) Submit the proposed CIAP budget revision for prior HUD approval if the

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IHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the HUD-established threshold; or

(b) Certify that the revisions are necessary to carry out the approved work and do not result in the approved CIAP budget amount for any development being exceeded.

§ 950.651 Progress reports.

For each six-month period, beginning October 1, until completion of the modernization program or expenditure of all funds, an IHA shall submit a report, in a form prescribed by HUD, to the HUD Area ONAP. Where HUD determines that an IHA is having implementation problems, HUD may require more frequent reporting. The report shall include:

(a) Modernization fund obligations and expenditures and progress against the approved implementation schedule(s); and

(b) Management improvement progress, as applicable.

§ 950.654 HUD review of IHA performance.

HUD shall periodically review IHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the quality of an IHA's inspections as evidenced by the quality of work, and the timeliness of the work. Where deficiencies are noted, an IHA shall take corrective action, as directed by HUD.

§ 950.657 Fiscal closeout.

Upon completion or termination of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. An IHA shall immediately remit any excess funds provided by HUD. The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, an IHA shall immediately remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized or ineligible expenditures, an IHA shall take such corrective actions as HUD may direct.

Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)

§ 950.660 Purpose.

(a) The purpose of the Comprehensive Grant Program (CGP) under this subpart I is:

(1) To provide modernization assistance to IHAs that own or operate a total of 250 or more units of Indian Housing on a reliable and more predictable basis; to enable them to operate, upgrade, modernize, and rehabilitate Indian housing developments; to ensure their continued availability for low-income families as decent, safe, and sanitary housing;

(2) To provide considerable discretion to IHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(3) To simplify significantly the program of Federal assistance for capital improvements in Indian housing developments;

(4) To provide increased opportunities and incentives for more efficient management of Indian housing developments; and

(5) To give IHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of Indian housing developments to benefit low-income families.

(b) The purpose of the sections under the undesignated heading "Comprehensive Grant Program" (CGP) is to set forth the policies and procedures for the CGP under which IHAs that own and operate a total of 250 or more units of Indian housing receive financial assistance on a formula grant basis in accordance with § 950.601(e) and (f) for the modernization of Indian housing developments.

§ 950.666 Eligible costs.

(a) *General.* An IHA may use financial assistance received under the CGP for the following eligible costs:

(1) Undertaking activities described in its approved Five-Year Plan under § 950.672(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

(3) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(4) Preparing the Comprehensive Plan and Action Plan under § 950.672, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation, and monitoring process; and

(5) Carrying out an audit, in accordance with 24 CFR part 44 and § 950.120.

(b) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has demonstrated that completion of the improvements and replacements identified in the Comprehensive Plan will reasonably ensure the long-term physical and social viability of the development at a reasonable cost or for essential nonroutine maintenance needed to keep the property habitable until residents are relocated.

(c) *Physical improvement costs.* Eligible costs include alterations, betterments, additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. These mandatory standards may be exceeded only when the IHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(d) *Costs for Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and abatement. In addition, management improvements are eligible modernization costs for existing Turnkey III developments.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (d)(1) of this section, an IHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family. An IHA that intends to use funds under this paragraph shall identify in its needs assessment the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale. In addition, an IHA shall demonstrate in its needs assessment that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 950, Subpart G, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated;

(ii) Before an IHA may be approved for the substantial rehabilitation of a unit under this paragraph, it shall first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or nondwelling facilities approved by HUD under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes.

(f) *Replacement reserve costs.* (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the IHA in its needs assessments;

(ii) A physical improvement requires more funds than the IHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the IHA may use under its 20 percent limit for management improvements (except as provided in paragraph (m)(1) of this section), and the IHA needs to save a portion of its annual grant in order to combine it with a portion of subsequent year(s) grants, to fund the work item;

(2) The IHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate;

(3) Interest earned on funds in the replacement reserve will not be added to the IHA's income in the determination of an IHA's operating subsidy eligibility, but shall be used for eligible modernization costs;

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, an IHA shall first use its replacement reserve, if funded, to meet emergency needs, before requesting funds from the $75 million reserve. An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* Management improvements that are needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments, or correct management deficiencies identified by the IHA in its Comprehensive Plan are eligible costs. An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs.

(1) *Economic development activities costs.* Economic development activities such as job training, resident employment, and resident businesses, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees or employees to carry out the modernization program under this subpart, and to contract with resident-owned businesses for modernization work.

(2) *Resident management costs.* Technical assistance to a resident organization or resident management corporation (RMC), as defined in § 950.962, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(3) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(h) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(i) *Administrative costs.* Administrative costs necessary for the planning, design, implementation, and monitoring of the physical and management improvements are eligible costs and include the following:

(1) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their nonmodernization duties. The IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP, CGP, or operating budgets);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CGP; and

(3) Other administrative costs, such as telephone and facsimile, as specified by HUD.

(j) *Audit costs.*

(k) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments and required documents, detailed design work, preparation of construction and bid documents, lead-based paint testing, etc., are eligible costs.

(l) *Relocation costs.* Relocation costs as a direct result of rehabilitation, demolition, or acquisition for a CGP-funded activity are eligible costs, as required by § 950.117.

(m) *Cost limitation.* (1) Notwithstanding the full fungibility of work items in § 950.675(c), an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD.

(2) Notwithstanding the full fungibility of work items in § 950.675(c), an IHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State, tribal, or local law, unless specifically approved by HUD;

(3) When the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, etc., eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(n) *Ineligible costs.* An IHA (or an RMC acting on behalf of an IHA) shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 950.667 Reserve for emergencies and disasters.

(a) *Emergencies.* (1) *Eligibility for assistance.* An IHA (including an IHA that is determined to be high risk under § 950.135) may obtain funds at any time, for any eligible emergency work item as defined in § 950.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 950.102) (for IHAs participating in CIAP), from the reserve established under § 950.601(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 950.601(e) and (f), other unobligated modernization

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funds, and its replacement reserves under § 950.666. An IHA is not required to have an approved Comprehensive Plan under § 950.672 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to an IHA participating in CIAP unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, an IHA shall submit a request, in a form to be prescribed by HUD, that demonstrates that without the requested funds from the set-aside under this section, the IHA does not have adequate funds available to correct the conditions that present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance, and if it determines that the IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* A CGP IHA that receives assistance for its emergency needs from the reserve under § 950.601(b) shall repay such assistance from its future allocations of assistance, as available. For IHAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 950.601(e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters.* (1) *Eligibility for assistance.* An IHA (including an IHA that has been determined by HUD not to be administratively capable under § 950.135) may request assistance at any time from the reserve under § 950.601(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster shall pertain to an extraordinary event affecting only one or a few IHAs, such as an earthquake or hurricane. Any disaster declared by the President (or that HUD determines would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. An IHA is not required to have an approved Comprehensive Plan under § 950.672 before it can request assistance from the reserve under § 950.601(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 950.601(b), an IHA shall submit a request, in a form prescribed by HUD, that demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance, and if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to an IHA under paragraph (b)(1) of this section for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

§ 950.669 Allocation of assistance.

(a) *Submission of formula characteristics report.* In its first year of participation in the CGP, each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP in accordance with § 950.601(e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data that it has available concerning IHA and development characteristics for purposes of calculating the IHA's formula share. After its first year of participation in the CGP, an IHA is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or when requested by HUD. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 950.601(e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 950.672(a) and 950.678;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA shall indicate what is unique, specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA shall describe the nature of the error and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 950.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 950.135, HUD may designate the IHA as high risk. If HUD designates the IHA as high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions, so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of approval. However, due to the size of the grant, complexity of the work, and other factors, the IHA may propose, and HUD may approve, a longer time period.

§ 950.672 Comprehensive Plan (including Five-Year Action Plan).

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their formula amount. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan, or they may wait for the annual HUD notification of formula amount under § 950.669(b)(1).

(b)(1) *Resident participation.* An IHA is required to develop, implement, monitor, and annually amend portions of its Comprehensive Plan in consultation with residents of the developments covered by the Comprehensive Plan, and with democratically elected resident groups. In addition, the IHA shall also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the Comprehensive Plan. The IHA, in partnership with the residents, shall develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall include implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The IHA, in partnership with the residents of the developments covered by the plan, and with democratically elected resident groups, shall establish a Partnership Process to develop and implement the goals, needs, strategies, and priorities identified in the Comprehensive Plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on an IHA-wide or area-wide basis, in ongoing discussions of the Comprehensive Plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents and duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations;

(4) *Advance meeting for residents and duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Comprehensive Plan/Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents, duly elected resident organizations, local government officials, and other interested parties to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* An IHA shall consult with appropriate local government officials with respect to the development of the Comprehensive Plan. In the case of an IHA with developments in multiple jurisdictions, the IHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation shall include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide, a specific description of the IHA's process for maximizing the level of participation by residents, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, resident organizations, and other interested parties upon request.

(d) *Contents of Comprehensive Plan.* The Comprehensive Plan shall identify all of the physical and management improvements needed for an IHA and all of its developments, and that represent needs eligible for funding under § 950.666. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Each Comprehensive Plan shall contain the following elements:

(1) *Summaries.* An IHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs IHA-wide; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation, and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issue. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that an IHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act, to comply with lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The physical needs assessment is completed without regard to the availability of funds, and shall include the following information with respect to each of an IHA's developments:

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(A) A brief summary of the physical improvements necessary to bring each development to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards, as required in § 950.603, to comply with the Lead-Based Testing and Abatement requirements under § 950.120(g). The IHA should also indicate the relative urgency of need. If the IHA has no physical improvement needs at a particular development at the time it completes its Comprehensive Plan, it shall so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development), it shall so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) The projected FFY in which the IHA anticipates that the development will meet the modernization and energy conservation standards;

(E) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 950.666(d)(3).

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (d)(3), and shall retain such source documents in its files.

(3) *Management needs assessment.* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable development, so that decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved management improvement plan, the IHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the IHA;

(*2*) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its developments, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through audits and HUD monitoring reviews that are not addressed under paragraph (d)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved management improvement plan, the IHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the IHA wants to address at the IHA-wide or development level;

(D) An IHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds; and

(E) The projected FFY in which the IHA anticipates that all identified management deficiencies will be corrected.

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy of the development at a reasonable cost. For cost reasonableness, the IHA may choose to use the 90 percent of Total Development Cost (TDC) approach (the preliminary estimate of hard costs for work proposed at the development is 90 percent or less of TDC) or a cost reasonableness approach related to the cost of individual work items as indicated by National cost indices, adjusted by local conditions and the IHA's own recent procurement experience. The IHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (*e.g.*, kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. As necessary, HUD will review the IHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.* When an IHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential nonroutine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the nonviable development (*e.g.*, demolition or disposition under 24 CFR part 950, subpart M).

(5) *Five-Year Action Plan.* (i) *General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as State, local, and tribal governments. All activities specified in an IHA's Five-Year Action Plan are contingent upon the availability of funds.

(ii) *Requirements.* Under the action plan, an IHA shall indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's developments, an IHA shall indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This would include specifying the work to be undertaken by the IHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In addition, an IHA shall estimate the FFY in which it anticipates that the development will meet the modernization and energy conservation standards. In developing its action plan, an IHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory (or other legally mandated) requirements;

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframes; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements.

(B) *Management and operations.* An IHA shall address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the IHA, the IHA shall identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through audits, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need);

(*2*) A preliminary IHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) *Local government statement.* The Comprehensive Plan shall include a statement signed by the chief executive officer of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction), certifying as to the following:

(i) The IHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 950.672(b) and (c);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The IHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable.

(*7*) *IHA resolution.* The plan shall include a resolution adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the Comprehensive Plan or any amendments thereto and certifying that:

(i) The IHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) IHA has established controls to assure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;

(iii) The IHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

(iv) The proposed physical work will meet the modernization and energy conservation standards under § 950.603;

(v) The proposed activities in the Five-Year Action Plan/Annual Statement are consistent with the proposed or approved Comprehensive Plan of the IHA;

(vi) The IHA will comply with applicable civil rights requirements under § 950.115, and, when applicable, will carry out the Comprehensive Plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(vii) The IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under § 950.175;

(viii) The IHA has provided to HUD any documentation that HUD has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 950.120(a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the IHA receives written notification from HUD indicating that HUD has complied with its responsibilities under NEPA and other related authorities;

(ix) The IHA will comply with the wage rate requirements under § 950.120(c) and (d);

(x) The IHA will comply with the relocation assistance and real property acquisition requirements under § 950.117;

(xi) The IHA will comply with the requirements for physical accessibility under § 950.115(d);

(xii) The IHA will comply with the requirements for access to records and audits under § 950.120(e);

(xiii) The IHA will comply with the uniform administrative requirements under § 950.120(f);

(xiv) The IHA will comply with lead-based paint testing and abatement requirements under § 950.120(g);

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with §§ 950.672(b), 950.678(d), and 950.684, and has given full consideration to the priorities and concerns of tribal government and residents, including comments that were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

(xvi) The IHA will comply with the special requirements of § 950.666(d) with respect to a homeownership development; and

(xvii) The IHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) *Amendments to the Comprehensive Plan.* (1) *Extension of time for performance.* An IHA shall have the right to amend its Comprehensive Plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set

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forth in the Comprehensive Plan or has not provided the assistance in a timely manner.

(2) *Amendments to needs assessments.* The IHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Statement that are not reflected in its current needs assessments (except in the case of emergencies). The IHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 950.678(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 950.675;

(3) *Six-year revision of Comprehensive Plan.* Every sixth year following the initial year of participation, the IHA shall submit to HUD, with its Annual Submission, a complete update of its Comprehensive Plan. An IHA may elect to revise some or all parts of the Comprehensive Plan more frequently.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan, eliminating the previous year and adding an additional year. The IHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year Five-Year Action Plan when making this Annual Submission.

(5) *Required submissions.* Any amendments to the Comprehensive Plan under this section shall be submitted with the IHA resolution under § 950.672(d)(7).

(f) *Prerequisite for receiving assistance.* (1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 950.601(b) and 950.666(a)(2), and for modernization needs resulting from disasters under § 950.601(b), may be made available under this subpart unless HUD has approved a Comprehensive Plan submitted by the IHA that meets the requirements of § 950.672. An IHA that has failed to obtain approval of its Comprehensive Plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under § 950.601(e) and (f) in the subsequent FFY. An IHA that elects in any FFY not to participate in the CGP under this subpart may participate in the CGP in subsequent FFYs.

(2) *Requests for emergency assistance.* An IHA may receive funds from its formula allocation to address emergency modernization needs if HUD has not approved an IHA's Comprehensive Plan. To request such assistance, an IHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work," as set forth in § 950.102.

§ 950.675 HUD review and approval of Comprehensive Plan (including action plan).

(a) *Submission of Comprehensive Plan.* (1) Upon receipt of a Comprehensive Plan from an IHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 950.672(d); and

(ii) If applicable, the IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings.

(2) *Acceptance for review.* If the IHA has submitted a Comprehensive Plan (including the action plan) that meets the criteria specified in paragraph (a)(1) of this section, HUD shall accept the Comprehensive Plan for review, within 14 calendar days of its receipt in the Area ONAP. The IHA shall be notified in writing that the plan has been accepted by HUD, and that the 75-day review period is proceeding.

(3) *Time period for review.* A Comprehensive Plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan. HUD shall not disapprove a Comprehensive Plan on the basis that it cannot complete its review within the 75-day deadline.

(4) *Rejection of Comprehensive Plan.* If an IHA has submitted a Comprehensive Plan (including the action plan) that does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the IHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the Comprehensive Plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of Comprehensive Plan (including action plan).* (1) A Comprehensive Plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the Comprehensive Plan approvable. The IHA shall re-submit the Comprehensive Plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or the IHA fails to resubmit the plan by the deadline established by HUD, any funds that would have been allocated to the IHA shall be added to the subsequent year's appropriation of funds for grants under this subpart. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under 24 CFR 950.601 and 968.103. HUD shall not disapprove a Comprehensive Plan on the basis that HUD cannot complete its review under this section within the 75-day deadline.

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) The Comprehensive Plan is incomplete in significant matters. HUD determines that the IHA has failed to include all required information or documentation in its Comprehensive Plan, e.g. the physical needs assessment does not provide all of the information required by HUD concerning all of its developments; or the IHA has supplied incomplete data on the current condition and other characteristics of its developments;

(ii) Identified needs are plainly inconsistent with facts and data. On the basis of available significant facts and data pertaining to the physical and operational condition of the IHA's developments or the management and operations of the IHA, HUD determines that the IHA's identification of modernization needs (see § 950.672(d)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from recent HUD monitoring, audits, and resident comments and will disapprove a Comprehensive Plan based on such findings as:

(A) Identified physical improvements and replacement are inadequate. The completion of the identified physical improvements and replacements will not bring all of an IHA's developments to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 950.603 (except that a development shall meet the energy conservation standards under § 950.603 only when they are applicable to the work being performed);

(B) Identified management improvements are inadequate. The identified management and operations improvement needs do not address all of an IHA's areas of deficiency, or the completion of those improvements would not result in each area of deficiency under an IHA's management improvement plan under § 950.135 being brought up to an acceptable level of performance; and

(C) Proposed physical and management improvements fail to address identified needs. The proposed physical and management improvements in the action plan are not related to the identified needs in the needs assessments portion of the Comprehensive Plan, e.g., a heating plant renovation is in the action plan, but it was not included in the needs assessment for that development.

(iii) Action plan is plainly inappropriate to meeting identified needs. On the basis of the Comprehensive Plan, HUD determines that the action plan (see § 950.672(d)(5)) is plainly inappropriate to meet the needs identified in the Comprehensive Plan, e.g., the proposed work item will not correct the need identified in the needs assessment. HUD will take into account the availability of funds. In addition, HUD will take into account whether the action plan fails to address work items that are needed to correct known emergency conditions or that are otherwise needed to meet statutory or other legally mandated requirements, as identified by the IHA in its Comprehensive Plan.

(iv) Inadequate demonstration of long-term viability at reasonable cost. HUD determines that the IHA has failed to demonstrate that completion of improvements and replacements identified in the Comprehensive Plan, as required by § 950.672(d)(2) and (3), will reasonably ensure long-term viability of one or more Indian housing developments to which they relate at a reasonable cost, as required by § 950.672(d)(4).

(v) Contradiction of local government statement or IHA resolution. HUD has evidence that tends to challenge, in a substantial manner, the appropriate governing body's statement or IHA resolution contained in the Comprehensive Plan, as required in § 950.672(d)(6) and (7). Such evidence may include, but is not necessarily limited to:

(A) Evidence that the IHA failed to implement the Partnership Process and to meet the requirements for resident participation, as set forth in § 950.672(b). In such cases, HUD shall review the IHA's resident participation process and any supporting documentation to determine whether the standards for participation under § 950.672(b) were met;

(B) With respect to an IHA established under State law and determined to be subject to the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619), HUD shall also consider as such evidence the following:

(*1*) A pending proceeding against the IHA based upon a charge of discrimination pursuant to the Fair Housing Act. (For purposes of this provision, "a charge of discrimination" means a charge, pursuant to section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the HUD General Counsel, or his or her legally authorized designee.);

(*2*) A pending civil rights suit against the IHA instituted by the Department of Justice;

(*3*) Outstanding HUD findings, under § 950.120, of IHA noncompliance with civil rights statutes and executive orders or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(*4*) A deferral of the processing of applications from the IHA imposed by HUD under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Attorney General's Guidelines (28 CFR 50.3), and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's section 504 regulations (24 CFR 8.57); or

(*5*) An adjudication of a violation under any of the authorities under § 950.120(a) in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA is expected to undertake the work set forth in the Annual Statement. However, the IHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the IHA Annual Performance and Evaluation Report for each grant. See § 950.684. HUD encourages the IHA to inform the residents of significant changes (such as changes in scope of work or whenever it moves work items within the approved Five-Year Action Plan). The IHA shall retain documentation of that information in its files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.687. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

§ 950.678 Annual Submission of activities and expenditures.

(a) *General.* The Annual Submission is a collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. For planning purposes, an IHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 950.669(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set

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forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 950.672(d)(5)(i). An IHA may budget up to 8 percent of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance findings.

(2) If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications shall be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 950.672(e), in consultation with officials of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the IHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and that ensures notice to all duly elected resident organizations;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, between July 1 (i.e., after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it shall explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It shall also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year shall include, for each development or on an IHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to the size of the grant, the complexity of the work, and other factors;

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs that have been identified by the IHA in its needs assessments;

(6) Documentation supporting the IHA's actions in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 950.120(a) and (b);

(7) Other information, as specified by HUD and approved by OMB under the Paperwork Reduction Act; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 950.672(d)(7).

(f) *Additional submissions with Annual Submission.* An IHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 950.672(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 950.675(b).

(g) *HUD review and approval of Annual Submission.* (1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications shall be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that HUD cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except when:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence that tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 950.672(d)(7).

(h) *Amendments to Annual Statement.* The IHA shall advise HUD of all changes to the IHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 950.684. The IHA shall submit to HUD for prior approval any additional work categories (except for emergency work) that are not within the IHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funding and extension of time for performance.* (1) *Failure to obligate formula funds.* If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy, which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 950.687 and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(2) *Extension of time for performance.* An IHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the IHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 950.687(a)(2) as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements when the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* As HUD may require, the IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

§ 950.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment with the IHA, the IHA shall undertake in a timely, efficient, and economical manner the modernization activities and expenditures set forth in its approved Annual Statement or substitute work categories from within the approved Five-Year Action Plan, subject to the following requirements:

(1) The IHA may undertake the activities using force account or contract labor, including contracting with an RMC. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by an RMC, the IHA shall not retain for any administrative or other reason, any portion of the CGP funds provided, unless the IHA and the RMC provide otherwise by contract; and

(2) All activities shall be monitored by resident groups within the framework and intent of the Partnership Process.

(b) Fund requisitions. To request modernization funds against the approved Annual Statement for year one, the IHA shall comply with requirements prescribed by HUD.

(c) *Contracting requirements.* The IHA shall comply with the wage rate requirements in § 950.120. In addition, the IHA shall comply with the requirements set forth in subpart B of this part, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price, or, notwithstanding 24 CFR 85.36(h) and § 950.170, a 20 percent cash escrow, or a 25 percent letter of credit, or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price.

(2) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(d) *Assurance of nonduplication.* The IHA shall ensure that there is no duplication between the activities carried out pursuant to the CGP, and activities carried out with other funds.

(e) *Fiscal closeout of a comprehensive grant.* Upon expenditure by an IHA of all funds, or termination by HUD of the activities funded by each annual grant, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

§ 950.684 IHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The IHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) *Content.* The report shall include the following:

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(1) An explanation of how the IHA has used other funds, such as Community Development Block Grant program assistance, State or tribal assistance, and private funding, for the needs identified in the IHA's Comprehensive Plan and for the purposes of this subpart I;

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Statement under § 950.678(h);

(3) The results of the IHA's process for consulting with residents on the implementation of the plan;

(4) The current status of the IHA's obligations and expenditures, specifying how the IHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

(5) A summary of resident, tribal, or local government comments received on the report; and

(6) A resolution by the IHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office and to local government officials, or furnished upon their request.

§ 950.687 HUD review of IHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with Comprehensive Plan.* HUD will determine whether the IHA has carried out its activities under this subpart in a timely manner and in accordance with its Comprehensive Plan.

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review an IHA's progress against the implementation schedules for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

(ii) HUD will review an IHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 950.603, this part, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD will determine whether the IHA has a continuing capacity to carry out its Comprehensive Plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except when the IHA has not yet had comparable experience under the CGP.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (a)(3) of this section as they relate to carrying out the Comprehensive Plan. HUD generally will consider an IHA to have a continuing capacity if it determines that the IHA has:

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period as approved by HUD or as extended by the IHA for reasons outside of its control;

(B) Adequately inspected the funded modernization to assure that the physical work is being carried out in accordance with the plans and specifications and the modernization and energy conservation standards (or in the case of an IHA's performance under CIAP, whether the IHA has carried out the physical work in accordance with the HUD-approved budget and in conformance with the modernization and energy conservation standards) and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved);

(C) Established and maintained internal controls for its modernization program in accordance with HUD requirements for financial management and accounting, as determined by the fiscal audit;

(D) Administered its modernization contracts in accordance with a HUD-approved procurement policy, which meets the requirements of 24 CFR 85.36(a) and § 950.160;

(E) Carried out its activities in accordance with its Comprehensive Plan and HUD requirements; and

(F) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program;

(ii) HUD will give particular attention to IHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) With respect to the physical condition of each development, whether the work items being carried out by the IHA are in conformity with the modernization and energy conservation standards in § 950.603, and whether the IHA has brought, or is making reasonable progress toward bringing, all of its developments to these standards, in accordance with its physical needs assessment; and

(ii) With respect to the management condition of the IHA, whether the IHA has achieved, or is making reasonable progress in implementing, the work items (specified in its Annual Statement and Five-Year Action Plan) that are designed to address deficiencies identified in its management needs assessment or through audits or HUD reviews; and

(iii) In determining whether the IHA has made reasonable progress, HUD will take into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if approved by HUD or extended by the IHA for reasons outside of its control in an implementation schedule. The IHA shall demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD-approved implementation schedule) has resulted from factors beyond the IHA's control. If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such

action after a corrective action order had been issued under this section and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a correction action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(b) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a notice of deficiency stating the specific program requirements that the IHA has violated and requesting the IHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action.

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement.

(4) If HUD orders corrective action by an IHA in accordance with this section, the IHA's Board of Commissioners shall notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under this paragraph (c), and the consequences to the IHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order an IHA to take corrective action only if HUD determines:

(1) The IHA has not submitted a performance and evaluation report, in accordance with § 950.684;

(2) The IHA has not carried out its activities under the CGP program in a timely manner and in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(1) of this section;

(3) The IHA does not have a continuing capacity to carry out its Comprehensive Plan in a timely manner or in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(2) of this section;

(4) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44 and § 950.120, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action;

(6) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(7) The IHA has been determined to be high risk, in accordance with § 950.135.

(e) *Types of corrective action.* HUD may direct an IHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for an IHA not meeting the standards in paragraphs (a)(1), (2), or (3) of this section;

(ii) Explaining any steps the IHA is taking to correct the deficiencies;

(iii) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the IHA has a continuing capacity to carry out the Comprehensive Plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies;

(8) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 950.669(d)); and

(9) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(f) *Failure to take corrective action.* In cases in which HUD has ordered corrective action and the IHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold some or all of the IHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* If HUD has withheld for a prescribed period of time some or all of an IHA's annual grant, HUD may reallocate such amounts to other IHAs/PHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs that HUD has determined to be administratively capable under § 950.135, and to PHAs under the CGP program that are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 950.601.

(h) *Right to appeal.* Before withholding some or all of the IHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the IHA and give it an opportunity, within a prescribed period

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of time, to present to ONAP Headquarters, in writing, any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The IHA's Board of Commissioners shall notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the IHA and give it an opportunity to appeal in accordance with § 950.687(h). Any reallocation of recaptured amounts will be in accordance with § 950.687(g). The IHA's board of Commissioners shall notify affected residents of HUD's final determination to recapture any funds.

Subpart J—Operating Subsidy

§ 950.701 Purpose and applicability.

(a) *Implementation of section 9(a).* (1) The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)). Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of IHA-owned rental housing (operating subsidy).

(2) This subpart establishes standards for the cost of providing comparable services as determined in accordance with a formula representing the operations of a prototype well-managed project, taking into account the character and location of the project and the characteristics of the families served. These standards, policies, and procedures are called the Performance Funding System (PFS), as described in this subpart J. The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of federal funds to compensate for excessive costs attributable to poor or inefficient management. PFS is intended to provide the incentive and financial discipline for excessively high-cost IHAs to improve their management efficiency.

(b) *Applicability.* This subpart is applicable to all IHA-owned rental units under Annual Contributions Contracts. This subpart J is not applicable to the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III Homeownership Opportunity Program. Provisions regarding an operating subsidy for the homeownership programs are found in the applicable subpart of this rule (subpart E of this part for Mutual Help, and subpart G of this part for Turnkey III).

§ 950.705 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each IHA is eligible shall be determined as follows: The projected operating income level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per-unit per-month dollar amounts, and shall be multiplied by the Unit Months Available. Transition funding, if applicable, and other costs as specified in paragraphs (b) through (e) of § 950.720 are then added to this total in order to determine the total amount of operating subsidy for the requested budget year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, an IHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the independent audit to be prorated to operations of the IHA-owned rental housing (under § 950.720(a)). (See § 950.730 regarding adjustments.)

§ 950.710 Computation of Allowable Expense Level.

The IHA shall compute its Allowable Expense Level (AEL) using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes payments in lieu of taxes (PILOT) required by a Cooperation Agreement, even if PILOT is not included in the approved operating budget for the base year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the IHA's operating budget for the base year approved by HUD except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the base year;

(4) Expenditures supported by supplemental subsidy payments applicable to budget years before the base year;

(5) All other expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures that were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the six exclusions set forth in paragraph (a) of this section, the IHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level, if this has not already been accomplished. If such adjustment is made in the second or some later fiscal year of the PFS, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the IHA does not make these adjustments, the HUD Area ONAP shall compute the adjustments.

(c) Computation of "Formula Expense Level." The IHA shall compute its Formula Expense Level (FEL) in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as the number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights and a local inflation factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level is less than the top limit of the range shall compute its AEL for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 950.730);

(i) Any increase approved by HUD in accordance with § 950.730(a);

(ii) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level and any amounts described in paragraphs (d)(1)(i) and (ii) of this section multiplied by the local inflation factor.

(2) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level or the first budget year under PFS;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the local inflation factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided in paragraph (d) of this section, the IHA may be eligible for transition funding under § 950.735.)

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new IHA or a new project of an existing IHA that the IHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the base year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project." The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Area ONAP. The IHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1986 and before April 1, 1992.* For each budget year after the first budget year under PFS that begin on or after April 1, 1986 and before April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the current budget year also shall be increased (or decreased) by either:

(A) If the IHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(4)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the current budget year and the Formula Expense Level for the requested budget year. The IHA characteristics that shall be used to compute the Formula Expense Level for the current budget year shall be the same as those that were used for the requested budget year when the last adjustment to the AEL was made based on this paragraph (d)(4)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(4)(ii)(A) of this section shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(4)(i) and (ii) of this section shall be multiplied by the local inflation factor.

Example:

FY 1987. Assume that: (1) The IHA has experienced no change in the number of its units;

(2) The AEL for the IHA's FY 1986 is $64.00; and

(3) The applicable local inflation factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is $68.18, computed as follows:

1. Allowable Expense Level for FY 1986	$64.00
2. Delta: Increase (or Decrease) in Formula Expense Level ($64.00 × .5 percent)	.32
3. Sum (line 1 plus line 2)	64.32
4. Local Inflation Factor	1.06
5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4)	68.18

FY 1988. Assume that the IHA has deprogrammed (*e.g.*, demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (d)(4)(ii)(B) of this section was in its FY 1985, at which time the IHA had the following characteristics for its requested budget year: average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The Formula Expense Level for the current budget year is calculated using 12 years (10 years plus two years in which the standard .5 percent adjustment was used), 5 stories, and 4 bedrooms.

Also assume that Formula Expense Level calculated based on these characteristics is $70.00 and that the IHA average characteristics for the requested budget year are now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a Formula Expense Level for the requested budget year of $68.00. The Formula Expense Level for the requested budget year, therefore, decreases by $2.00. Assuming that the local inflation factor is 4.5 percent (expressed as 1.045), the AEL for FY 1988 is $69.16, computed as follows:

1. Allowable Expense Level for FY 1987	$68.18
2. Delta (or Decrease) in Formula Expense Level	(2.00)
3. Sum (line 1 plus line 2)	66.18
4. Local Inflation Factor	1.045
5. Allowable Expense Level for FY 1988 (line 3 multiplied by line 4)	69.16

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant, and local inflation factor for the requested budget year applied first to the IHA characteristics for the current budget year and then to the IHA characteristics for the requested budget year, to determine the respective Formula Expense Levels. The local inflation factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on this paragraph (d)(5)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) of this section shall be added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

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(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of §§ 950.710(b) or 950.720(c).

§ 950.715 Computation of Utilities Expense Level.

(a) *General.* In recognition of the rapid rises that occur in utilities costs, the wide diversity among IHAs as to types of utilities services used, the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's Allowable Expense Level, and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's Utilities Expense Level for the requested budget year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(2) If an IHA takes action, such as a well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the IHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the IHA may be permitted to retain one-half the annual cost savings for an additional period not to exceed six years, if the actions continue to be cost-effective. See also paragraph (f) of this section and § 950.730(c).

(c) *Computation of "Allowable Utilities Consumption Level."* The Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of an IHA for the requested budget year generally will be based upon the availability of consumption data. For project utilities for which consumption data are available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. If data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project for which the IHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the AUCL may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using all of the paragraphs in this paragraph (c), as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (i.e., the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) *IHA fiscal years affected.* The rolling base period shall be used to compute the AUCL submitted with the operating budgets. (ii) An example of a rolling base is as follows:

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–92 ...	12–31–92 (1st year).	1–1–88	12–31–90
1–1–93 ...	12–31–93 (2nd year).	1–1–89	12–31–91

(2) Alternative method if data is not available for the entire rolling base period:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Area ONAP for approval. If this is not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

(ii) In those cases when an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit per-month utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A new project, for the purpose of establishing the rolling base period and the Utilities Expense Level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year; or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another, interruptible service, deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities, or a switch from IHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level (AUCL).* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if an IHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the AUCL for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it shall be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the IHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities Expense Level when consumption data for the full rolling base period is unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Area ONAP approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD–52599 (Office of Management and Budget approval number 2577–0067), prepared for the IHA fiscal year that ended 12 months before the beginning of the IHA requested budget year (e.g., for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(e) *Adjustments.* IHAs shall request adjustments of utilities expense levels in accordance with § 950.730(c), which requires an adjustment based upon a comparison of actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If an IHA undertakes energy conservation measures (including measures to save water, fuel oil, electricity , and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the IHA may qualify for one of two possible incentives under this part. For an IHA to qualify for these incentives, it shall obtain HUD approval. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the IHA's payments to be dependent on the cost savings it realizes, the IHA shall use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the IHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 950.730(c)(2)(ii).

(2) If the contract does not allow the IHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the IHA will be able to retain part of the cost savings, in accordance with § 950.730(c)(2)(i); and the IHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 950.730(f).

§ 950.720 Other costs.

(a) *Costs of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has been funded by subsidy in a prior year. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, it should contact the HUD Area ONAP.

(2) An IHA that is required by the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and one or all of its operating budgets, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 950.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) *Costs attributable to units approved for deprogramming and vacant.* (1) Units approved for deprogramming are those for which the IHA's formal request has been approved by HUD but for which deprogramming has not been completed. Costs for these units may be eligible for inclusion, but shall be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for IHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by the IHA and supporting documentation regarding direct costs attributable to such units shall be included as part of the operating budget in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, it should contact the HUD Area ONAP.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to them are to be included in the operating budget. If a unit

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satisfies the conditions stated in paragraphs (b)(2) (i) through (v) of this section, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than three years. Renewal of the approval to allow payments after that period may be made only if the IHA can demonstrate that no other sources for paying the nonutility operating costs of the unit are available:

(i) The unit shall be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities shall be directed toward and for the benefit of residents of the development.

(ii) The IHA shall demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that resources are committed to make the space safe and suitable.

(iii) The IHA shall demonstrate satisfactorily that other funding is not available to pay for the nonutility operating costs. All rental income generated as a result of the activity shall be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per Indian housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters

(v) The IHA shall submit a certification with its Performance Funding System calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA shall maintain specific documentation of the units covered. Such documentation should include a listing of the units and project/management control numbers.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations have caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, and upon a determination that sufficient other funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the IHA may apply for or may receive an increase in operating subsidy.

(d) *Costs beyond the control of the IHA.* Costs attributable to unique circumstances that are beyond the control of the IHA and were not reflected in the IHA's Base Year Expense Level may be considered for supplemental operating subsidy funding. When costs were reflected in the IHA's Base Year Expense Level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The IHA shall submit to the HUD Area ONAP complete documentation relating to those cost items that it claims to be beyond its control. Such documentation shall not be submitted as part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The IHA also shall show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under §§ 950.705 and 950.720 of this chapter, HUD may, in HUD's sole discretion, solicit, evaluate, and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the IHA.

(e) *Costs resulting from combination of two or more units.* When an IHA redesigns or rehabilitates a project and combines two or more units into one larger unit, and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula [(2 × No. of bedrooms) minus 1], which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(f) *User fee.* Additional operating subsidy will be provided to IHAs for payment of an annual User Fee separate from the PFS. An IHA operating a rental program shall pay an annual User Fee to municipalities, which may include tribal, city, county governments or other political subdivisions that provide any roads, water supply, sewage facilities, electrical systems, or fuel distribution systems. The annual User Fee will be paid in an amount equal to 10 percent of the applicable shelter rent, minus the utility allowance; or $150, whichever is greater, for each rental housing unit covered by this section.

(g) *Funding for resident organization expenses.* In accordance with the provisions of 24 CFR Part 950, subpart O, and procedures determined by HUD, each IHA with a duly elected resident organization shall include in the operating subsidy eligibility calculation $25 per unit per year (subject to appropriations) for each unit represented by a duly-elected resident organization in support of the duly elected resident organization's activities.

§ 950.725 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular IHA based in part upon a projection of the actual dwelling rental income and other income for the particular IHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the IHA, and projecting this amount for the requested budget year by applying an upward trend factor (subject to updating) of three percent, and multiplying this amount by the projected occupancy percentage for the requested budget year. Nondwelling income is projected by the IHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the IHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all project units, as shown on the rent roll control and analysis of dwelling rent charges, which the IHA is required to maintain, for the first day of the month that is six months before the first day of the requested budget year, except that if a change in the total of the rent rolls has occurred in a subsequent month that is before the beginning of the requested budget year and before the submission of the requested budget year operating budget, the IHA shall use the latest changed rent roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by three percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the requested budget year.

(3) *Projected occupancy percentage.* The IHA shall determine its projected percentage of occupancy for all project units (projected occupancy percentage) as follows:

(i) *High occupancy IHAs.* If the IHA's actual occupancy percentage (see § 950.760) is equal to or greater than 97 percent, the IHA's projected occupancy percentage is 97 percent.

(ii) *High occupancy IHAs exclusive of scheduled modernization.* If the IHA's actual occupancy percentage (see § 950.760) is less than 97 percent solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, the IHA's projected occupancy percentage is its actual occupancy percentage. An IHA may also use its actual occupancy percentage as its projected occupancy percentage if the IHA has five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section.

(iii) *Low occupancy IHAs with an approved Comprehensive Occupancy Plan (COP).* If the IHA has an actual occupancy percentage (see § 950.760) less than 97 percent and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, and if the IHA has a HUD-approved COP, the IHA's projected occupancy percentage is determined under § 950.770(g).

(iv) *Low Occupancy IHAs without an approved COP.* (A) The IHA shall use 97 percent as its projected occupancy percentage, if the IHA:

(*1*) Has an actual occupancy percentage (see § 950.760) less than 97 percent and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; and the IHA:

(*2*)(*i*) Has completed the term of its approved COP but has not achieved a 97 percent actual occupancy percentage or has not had five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; or

(*ii*) Is authorized to submit a COP but elects not to submit one; or

(*iii*) Submits a COP that is disapproved by HUD.

(B) Notwithstanding the requirement in paragraph (b)(3)(iv)(A) of this section that 97 percent be the projected occupancy percentage, a low occupancy IHA that satisfies all the conditions described in paragraph (b)(3)(iv)(A)(*2*)(*i*) of this section, may adjust the 97 percent projected occupancy percentage to discount units that are vacant for reasons beyond its control, as provided in § 950.770(h).

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the Comprehensive Improvement Assistance Program (subpart I of this part) or other sources; and for which:

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The IHA has a schedule for carrying out the modernization that is acceptable to HUD; and

(C) The modernization work is on schedule.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new projects.* The projected average monthly dwelling rental charge for new projects that were not available for occupancy during the budget year before the requested budget year and that will reach the end of the initial operating period (EIOP) within the first nine months of the requested budget year, shall be calculated as follows:

(1) If the IHA has another project or projects under management that are comparable in terms of elderly and nonelderly tenant composition, the IHA shall use the projected average monthly dwelling rental charge for such project or projects.

(2) If the IHA has no other projects that are comparable in terms of elderly and nonelderly tenant composition, the HUD Area ONAP will provide the projected average monthly dwelling rental charge for such project or projects, based on comparable projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken after the effective date of these regulations, which affects rent paid by tenants of projects, each IHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income that it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect the IHA's estimate of change, or in the absence of this submission, to reflect HUD's estimate of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the IHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *IHA's estimate of income other than dwelling rental income.* (1) *Investment income.* IHAs with an estimated average cash balance of less than $20,000, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall make a reasonable estimate of investment income for the Requested Budget Year. IHAs with an estimated average cash balance of $20,000 or more, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's Requested Budget Year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of $10,000, plus $10 per unit for each unit over 1,000, subject to a total maximum deduction of $250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. (See § 950.730(b)).

(2) *Other income.* All IHAs shall estimate other income based on past experience and a reasonable projection for the requested budget year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and other income, as approved, shall be divided by the number of unit months available to obtain a per-unit per-month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the projected operating income level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

(f) *Required adjustments to estimates.* The IHA shall submit year-end adjustments of projected operating income levels in accordance with § 950.730(b), which covers investment income.

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§ 950.730 Adjustments.

Adjustment information submitted to HUD under this section shall be accompanied by an original or revised operating budget.

(a) *Adjustment of Base Year Expense Level.* (1) *Eligibility.* An IHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing IHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only when the IHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 950.710(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the per-unit per-month amount by which the top of the range exceeds the Base Year Expense Level or $10.31.

(2) *Procedure.* An IHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request shall be submitted to the HUD Area ONAP, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph shall include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and shall show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* An IHA that has an estimated average cash balance of at least $20,000 shall submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the IHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a target investment income amount based on the actual average yield on 91-day Treasury bills for the IHA's fiscal year being adjusted and the actual average cash balance available for investment during the IHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the IHA with the actual average yield on 91-day Treasury bills for the IHA's fiscal year. Failure of an IHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* An IHA receiving operating subsidy under § 950.705, excluding those IHAs that receive operating subsidy solely for IPA audit (§ 950.720(a)), shall submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the IHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Area ONAP by a deadline established by HUD, which will be during the IHA fiscal year following the IHA fiscal year for which an operating subsidy was received by the IHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the IHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* (i) A decrease in the utilities expense level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, when the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the IHA, such as well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in ratemaking proceedings, then the IHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year, and upon determination that the action was cost-effective in the first year, for up to an additional six years, as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(ii) An increase in the utilities expense level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of an IHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 950.715(f)(1), the IHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes. The savings realized shall be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of IHA employees, counseling of tenants, IHA management of the cost reduction program, and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) Fifty percent of the increase in the Utilities Expense Level attributable to increased consumption will be funded by increased operating subsidy payments, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, when an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, the IHA may submit to HUD an adjustment covering only the rate increase at any time during the IHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, the IHA shall submit this adjustment to the HUD Area ONAP by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* The IHA shall retain supporting documentation substantiating the requested adjustments pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* The IHA may make requests for adjustments to projected average monthly dwelling rental income as follows:

(1) *Criteria for granting request.* An IHA may request an adjustment to projected average monthly dwelling rental income under PFS if the IHA can establish to HUD's satisfaction that the projected amount computed under § 950.725 was not attained because of

circumstances beyond the control of the IHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the IHA's rent schedule that has been approved by HUD. The IHA shall also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part, or deny any requested adjustments to projected average monthly dwelling rental income.

(2) *Procedure.* The IHA shall submit a request for an adjustment under this subsection to the HUD Area ONAP by a deadline established by HUD, which will be within twelve months following the IHA's fiscal year being adjusted. In emergency cases, however, when an IHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, the IHA may submit a request for adjustments to HUD at an earlier time.

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 950.715(f)(2), then the IHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for the Heating Degree Days experience for the year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(ii) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the IHA's operating subsidy eligibility for the IHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or IHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(f) *Formal review process (1992).* (1) *Eligibility for consideration.* Any IHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If an IHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the IHA and its community, then the IHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the IHA's request. The revised formula expense level for the fiscal year ending during calendar year 1992 is the IHA's value of the following formula, after updating by the local inflation factors from FY 1989 to the requested budget year.

(ii) The revised formula is the sum of the following six numbers:

(A) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This Census-based statistic applies to the county of the IHA, except that, if the IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted IHA standard of 1.0. For multi-county IHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) The lesser of the current number of the IHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(D) The current ratio of the number of the IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the IHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy, averaging 35 or more units available for occupancy per building, and containing at least one building with units available for occupancy that is five or more stories high.

(E) The current ratio of the number of the IHA's three or more bedroom units available for occupancy to the number of all the IHA's units available for occupancy multiplied by a weight of 22.303.

(F) An equation calibration constant of −.2344.

(3) *Procedure.* If an IHA wants to request a revision to its AEL, it should determine whether its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the IHA's AEL and operating budget for the fiscal year ending in calendar year 1993, the IHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If an IHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the IHA shall submit a revision to its operating budget with calculations based on the new AEL. If an IHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If an IHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the IHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

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(g) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the IHA's operating subsidy as result of data subsequently available to HUD that alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the IHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the IHA, the HUD Area ONAP may establish a recovery schedule that represents the minimum number of years needed for repayment.

§ 950.735 Transition funding for excessive high-cost IHAs.

If an IHA's Base Year Expense Level exceeds its Allowable Expense Level, computed as provided in § 950.710, for any budget year under PFS, the IHA may be eligible for transition funding. Transition funding shall be an amount not to exceed the difference between the Base Year Expense Level and the Allowable Expense Level for the requested budget year, multiplied by the number of units months available. HUD shall have the right to discontinue payment of all or part of the transition funding in the event HUD at any time determines that the IHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 950.740 Operating reserves.

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities, common property and dwelling units, payment of advanced insurance premiums, unanticipated project requirements, and other eligible uses as determined by the IHA.

§ 950.745 Operating budget submission and approval.

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and the necessary HUD-required PFS calculation forms.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) The HUD Area ONAP will perform a detailed review on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

§ 950.750 Payment procedure for operating subsidy under PFS.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the IHA and approved by HUD, reflecting the IHA's projected cash needs. The schedule may provide for several payments per month. If an IHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of an IHA's budget year under these PFS regulations in this subpart, annual, monthly, or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the IHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to IHAs.

§ 950.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income and composition of each family shall be reexamined at least annually (see § 950.315). IHAs shall be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *IHAs in compliance with requirements.* Each submission of the original operating budget for a fiscal year shall be accompanied by a certification by the IHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with subpart D of this part.

(c) *IHAs not in compliance with requirements.* Any IHA not in compliance with the annual income reexamination requirement at the time of operating budget submission shall furnish to the HUD Area ONAP a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the operating budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Area ONAP Director determines that the IHA is not substantially in compliance with the annual income reexamination requirement, HUD shall withhold payments to which the IHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the IHA resulting from its failure to comply with those requirements.

§ 950.760 Determining actual occupancy percentage.

(a) For each requested budget year beginning on or after July 1, 1986, the IHA shall determine the percentage of occupancy for all project units included in the unit months available (actual occupancy percentage), at its option, either:

(1) For the last day of the month that ends six months before the beginning of the requested budget year; or

(2) Based on the average occupancy during the month ending six months before the beginning of the requested budget year.

(b) If the IHA elects to use an average, it shall maintain a record of its computation of its actual occupancy percentage. The actual occupancy percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition, or disposition not reflected in the adjustment, the IHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

§ 950.770 Comprehensive Occupancy Plan (COP) requirements.

(a) *IHAs that may submit a Comprehensive Occupancy Plan (COP).* An IHA may prepare and submit a COP to HUD in accordance with the provisions of this section:

(1) For its first requested budget year beginning on or after July 1, 1986, if the IHA has an actual occupancy percentage (§ 950.760) less than 97 percent, and has more than five vacant units, not solely because of vacant, on-schedule modernization units (as defined in § 950.725(b)(3)(v)); or

(2) For a requested budget year beginning on or after July 1, 1987, if:

(i) The IHA projects an actual occupancy percentage (§ 950.760) for the requested budget year of less than 97 percent and has more than five vacant units, other than vacant, on-schedule modernization units;

(ii) The IHA is not currently a low occupancy IHA, that is, the IHA had an actual occupancy percentage determined under § 950.760 for the current requested budget year that equalled or exceeded 97 percent or had five or fewer vacant units other than vacant, on-schedule modernization units; and

(iii) The IHA is not currently under a COP.

(b) *Comprehensive Occupancy Plan content.* A COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(1) The general IHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the IHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The project-specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97 percent.

(ii) State the project-specific actions the IHA is taking or intends to take to eliminate vacancies, such as:

(A) Modernization;

(B) Demolition;

(C) Disposition;

(D) Change in occupancy policy; or

(E) Physical or management improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The COP shall also include yearly IHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97 percent stated for each year until there is a projected IHA-wide occupancy rate of at least 97 percent or an estimate that the IHA will have five or fewer vacant units, excluding units that are vacant, on-schedule modernization units. These goals should reflect the average occupancy percentage for each year. The yearly occupancy goals (both IHA-wide and project specific) for the first year of a COP that is submitted with an IHA's budget for its first requested budget year beginning on or after July 1, 1986, shall take into account actions taken by the IHA from August 2, 1985, to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan.* An IHA that submits a COP to HUD for approval in accordance with paragraph (a) of this section shall submit the COP with its budget.

(d) *Maximum term of a Comprehensive Occupancy Plan.* (1) Except as provided in paragraph (d)(2) of this section, a COP:

(i) Submitted for an IHA's first requested budget year beginning on or after July 1, 1986, shall be for a period approved by HUD as reasonable, which shall not exceed five years; or

(ii) Submitted for a requested budget year beginning on or after July 1, 1987, shall be for a period of one or two years, as approved by HUD.

(2) A COP that exceeds the maximum period provided in paragraphs (d)(1)(i) or (ii) of this section may be approved only if the Assistant Secretary for Public and Indian Housing has given written authorization for such longer period before the approval of the COP.

(e) *Local governing body review.* The IHA shall have the COP reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the COP.

(f) *HUD review of Comprehensive Occupancy Plan.* If HUD fails to approve, disapprove, or otherwise substantively comment on a COP within 45 days of receipt of the plan, the IHA-wide yearly occupancy goal for the first year of the COP shall be considered approved for the purpose of determining the IHA's projected occupancy percentage under paragraph (g) of this section.

(g) *Projected Occupancy Percentage (Comprehensive Occupancy Plan).* An IHA that has a HUD-approved COP shall use as its projected occupancy percentage for computing its projected operating income level under § 950.725 the greater of its actual occupancy percentage, as determined under § 950.760, or its approved, yearly IHA-wide occupancy goal, adjusted as necessary to discount units that are vacant for reasons beyond the IHA's control, as provided in paragraph (h) of this section.

(h) *Units vacant for reasons beyond an IHA's control.* A vacant unit is considered vacant for reasons beyond an IHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The IHA has applied for modernization, HUD cannot fund the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on-schedule modernization units.

(3) The units are vacant because of natural disasters, or as a result of court-ordered, or HUD-approved, constraints relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

§ 950.772 Financial management systems, monitoring, and reporting.

The financial management systems, monitoring, and reporting on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40, and 85.41, except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937 (42 U.S.C 1437g(a)(1)).

§ 950.774 Operating subsidy eligibility for projects owned by IHAs in Alaska.

The provisions of this subpart are applicable to the development, modernization, and operation of the rental housing owned by the IHAs in the State of Alaska, excluding the formula calculation for the PFS.

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Subpart K—Energy Audits, Energy Conservation Measures and Utility Allowances

§ 950.801 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart K is to implement HUD policies in support of national energy conservation goals by reducing energy consumption through requiring that IHAs conduct energy audits and undertake certain cost-effective energy conservation measures. This subpart K also provides for the establishment of utility allowances for residents based on reasonable consumption of utilities by an energy-conscious household.

(b) *Applicability.* The provisions of this subpart K apply to all IHAs with IHA-owned housing, including Mutual Help and Turnkey III.

Energy Audits and Energy Conservation Measures

§ 950.805 Requirements for energy audits.

All IHAs shall complete an energy audit for each IHA-owned project under management. Standards for energy audits shall be equivalent to State or tribal standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the IHA.

§ 950.810 Order of funding.

Within the funds available to an IHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. However, HUD Area ONAPs should permit IHAs to make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM), or a situation in which an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. Area ONAPs may not authorize installation of individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

§ 950.812 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If an IHA finances energy conservation measures from sources other than modernization or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the IHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. (See § 950.730(e)).

§ 950.815 Energy conservation equipment and practices.

In purchasing original or, when needed, replacement equipment, IHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, IHAs shall follow operating practices directed to maximum energy conservation.

§ 950.822 Compliance schedule.

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

§ 950.825 Energy performance contracts.

Method of procurement. Energy performance contracting shall be conducted using one of the following methods of procurement:

(a) Competitive proposals (see § 950.165(c)). In identifying the evaluation factors and their relative importance, as required by § 950.165(c)(1), the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(b) If the services are available only from a single source, noncompetitive proposals (see § 950.165(d)).

Individual Metering of Utilities

§ 950.840 Individually metered utilities.

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the IHA shall be selected.

§ 950.842 Benefit/cost analysis.

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 950.846.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the IHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the IHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the IHA for IHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

§ 950.844 Funding.

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

§ 950.845 Order of conversion.

Conversions to individually metered utility service shall be accomplished in the following order when an IHA has projects of two or more of the designated categories, unless otherwise approved by the HUD Area ONAP:

(a) In projects for which retail service is provided by the utility supplier and the IHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the IHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

§ 950.846 Actions affecting residents.

(a) Before making any conversion to retail service, the IHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the requisite changes shall be made in resident dwelling leases in accordance with subpart D of this part.

(c) To the extent practicable, IHAs should work closely with resident organizations in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, IHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

§ 950.849 Waivers for similar projects.

IHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the HUD Area ONAP to waive the requirements of this subpart for benefit/cost analysis on the remaining similar projects.

§ 950.850 Reevaluations of mastermeter systems.

Because of changes in the cost of utility services and the periodic changes in utility regulations, IHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 36 months. HUD Area ONAPs may grant waivers of this requirement upon making a finding as provided in § 950.849.

Resident Utility Allowances

§ 950.860 Applicability.

(a) Sections 950.860 through 950.876 apply to all Indian housing dwelling units, including those operated under the Mutual Help Homeownership Opportunity Program.

(b) In rental units for which utilities are furnished by the IHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption of resident-owned major appliances, or for optional functions of IHA-furnished equipment, in accordance with § 950.865(e), but no utility allowance will be established.

§ 950.865 Establishment of utility allowances by IHAs.

(a) IHAs shall establish allowances for IHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The IHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The IHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the IHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the IHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of IHA operations.

(e) The IHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

§ 950.867 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the IHA to be reasonably comparable as to factors affecting utility usage. The IHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the IHA.

§ 950.869 Period for which allowances are established.

(a) *IHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer residents a uniform payment plan, the allowances established may provide for seasonal variations.

§ 950.870 Standards for allowances for utilities.

(a) The objective of an IHA in designing methods of establishing

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utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both IHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the IHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the IHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the IHA, in its discretion, to achieve the foregoing objective will depend upon the data available to the IHA and the extent of the administrative resources reasonably available to the IHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the IHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three.

(2) The climatic location of the housing projects.

(3) The size of the dwelling units and the number of occupants per dwelling unit.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of IHA-supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment.

(7) The physical condition, including insulation and weatherization, of the housing project.

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(9) Temperature of domestic hot water.

§ 950.872 Surcharges for excess consumption of IHA-furnished utilities.

(a) For dwelling units subject to allowances for IHA-furnished utilities where checkmeters have been installed, the IHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the IHA's average utility rate. The basis for calculating such surcharges shall be described in the IHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the IHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by IHA-furnished utilities where checkmeters have not been installed, the IHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of IHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of IHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the IHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

§ 950.874 Review and revision of allowances.

(a) *Annual review.* The IHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 950.870, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the IHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The IHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective.

§ 950.876 Individual relief.

Requests for relief from surcharges for excess consumption of IHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the IHA on reasonable grounds, such as special needs of elderly, ill or handicapped residents, or special factors affecting utility usage not within the control of the resident, as the IHA shall deem appropriate. The IHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the IHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the IHA representative with whom initial contact may be made by residents), and the IHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 950.865(c) and in the information given to new residents upon admission.

Subpart L—Operation of Projects After Expiration of Initial ACC Term

§ 950.901 Purpose and applicability.

(a) *Purpose.* This subpart L specifies methods for extending the effective period of provisions of the ACC relating to project operation beyond the original ACC term. Such an extension provides a contractual basis for continued eligibility for operating subsidy.

(b) *Applicability.* This subpart L applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However, it does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs and the Section 10(c) and Section 23 Leased Housing Programs.

§ 950.903 Continuing eligibility for operating subsidy; ACC extension.

(a) *Operating subsidy.* After the initial term of the ACC, HUD will pay operating subsidy with respect to a project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation for at least ten years after the last payment of HUD assistance. The ACC amendment shall be in the form prescribed by HUD, and shall specify the particular provisions of the ACC that relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the IHA execute and file, for public record, an appropriate document evidencing the IHA's covenant not to convey, encumber or make any other disposition of the project without HUD approval for a period of ten years after the receipt of the last payment of HUD assistance.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (consolidated ACC), each annual operating subsidy payable under that ACC is a lump-sum amount which is not divided into discrete amounts for the individual projects subject to the consolidated ACC (see subpart J of this part). Accordingly, if an IHA, before submitting a request for operating subsidy, determines that any project(s) under the consolidated ACC will not require operating subsidy and should not be subject to the provisions of paragraph (a) of this section, the IHA shall accompany its request with a resolution adopted by the Board of Commissioners certifying that no operating subsidy shall be used with respect to such project(s) thereafter and that all financial records and accounts shall be kept separately for such project(s). In such cases, the removal of the project(s) from the request for operating subsidy shall be reflected by the inclusion of that number of unit months available for the project(s) when making the calculations, under subpart J of this part, for determination of total amount of operating subsidy payable under the consolidated ACC. In any event no operating subsidy payable under a consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project that is ineligible or otherwise excluded from operating subsidy under paragraph (a) of this section. Even if no operating subsidy is received with respect to a project, the IHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

§ 950.905 ACC extension in absence of current operating subsidy.

Where no operating subsidy is being paid under an ACC, the IHA shall, at least one year before the anticipated ACC expiration date for the project, notify the Area ONAP as to whether or not the IHA desires to maintain a basis for receiving operating subsidy with respect to the project after the anticipated ACC expiration date. This notification shall be submitted to the appropriate Area ONAP in the form of a resolution by the IHA's Board of Commissioners. If the IHA does not desire to maintain a basis for operating subsidy payments with respect to the project after the anticipated ACC expiration date, the resolution shall certify that no operating subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the IHA does desire to maintain a basis for such operating subsidy payments, the resolution shall include the IHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon the Area ONAP's receipt of the request, HUD and the IHA shall enter into an ACC amendment effecting the extension for the period requested by the IHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in subpart M of this part.

§ 950.907 HUD approval of disposition or demolition.

During the post-assistance service period of continued operation as low-income housing, HUD may authorize an IHA to dispose of or demolish housing units at any time, in accordance with subpart M of this part.

Subpart M—Disposition or Demolition of Projects

§ 950.921 Purpose and applicability.

(a) *Purpose.* This subpart M sets forth requirements for HUD approval of an IHA's application to dispose of or demolish (in whole or in part) IHA-owned projects assisted under the Act. The rules and procedures contained in 24 CFR part 85 are inapplicable.

(b) *Applicability.* (1) *Type of projects.* This subpart M applies to any Indian housing project that is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c), including rental, Turnkey III, or Mutual Help housing. This subpart M does not apply to:

(i) IHA-owned Section 8 housing or housing leased under section 10(c) or section 23 of the Act (42 U.S.C. 1437h(c) or 1437u);

(ii) Demolition or disposition before the end of the initial operating period (EIOP), as determined under the ACC, of property acquired incident to the development of an Indian housing project (however, this exception does not apply to units occupied or available for occupancy by Indian housing tenants before EIOP);

(iii) Conveyance of Indian housing for the purpose of providing homeownership opportunities for low-income families under section 21 of the Act, the Turnkey III or Mutual Help Homeownership Opportunity programs, or any other homeownership programs established under sections 5(h) and 6(c)(4)(D) of the Act (42 U.S.C. 1437c(h), 1437d(c)(4)(3)) or titles II and III of the Act (42 U.S.C. 1437aa, 1437aaa).

(iv) Leasing of dwelling or nondwelling space incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(v) Easements, rights-of-way, and transfers of utility systems incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(vi) Reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without demolition; and

(vii) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain.

(2) [Reserved].

(c) *Type of actions.* Any action by an IHA to dispose of or demolish an Indian housing project or a portion of an Indian housing project is subject to the requirements of this subpart M. Until such time as HUD approval may be obtained, the IHA may not take any action to dispose of or demolish an Indian housing project or portion of an Indian housing project, and the IHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. This does not mean that HUD approval under this subpart M is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning, or comprehensive occupancy planning.

§ 950.923 General requirements for HUD approval of disposition or demolition.

(a) For purposes of this subpart M, the term "tenant" will also include "homebuyer" when the development involved is a homeownership project; and the term "unit of general government" will include the tribal government, when applicable.

(b) HUD will not approve an application for disposition or demolition unless:

(1) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any IHA-wide tenant organizations that will be affected by the disposition or demolition;

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(2) The IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations as required under § 950.925;

(3) The application contains a certification by the chief executive officer, or designee, that the unit of general government will comply with displacement, relocation, and real property acquisition policies described in § 950.117;

(4) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in HUD's regulations at 24 CFR part 50. When the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application shall contain a certification that the applicant agrees to assist HUD to comply with 24 CFR part 50, and that the applicant shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair, or construct property, or commit HUD funds or other funds to such program activities with respect to any eligible property, until HUD approval is received.

(5) The IHA has developed a replacement housing plan, in accordance with § 950.935, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (e.g., State, tribal, or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

§ 950.925 Resident organization opportunity to purchase.

(a) *Applicability.* (1) This section applies to applications for demolition or disposition of a development which involve dwelling units, nondwelling spaces (e.g., administration and community buildings, maintenance facilities), and excess land.

(2) The requirements of this section do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

(i) The IHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

(ii) The tribal or local government has condemned the property proposed for demolition;

(iii) A tribal or local government agency has determined and notified the IHA that units shall be demolished to allow access to fire and emergency equipment;

(iv) The IHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long-term viability of the development or the IHA (but in no case should this be used cumulatively to avoid Section 412 requirements); or

(v) A public body has requested to acquire vacant land that is less than two acres in order to build or expand its services (e.g., a tribal or local government wishes to use the land to build or establish a police substation).

(3) In the situations listed in paragraph (a)(2) of this section, the IHA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with § 950.923(b)(1). The IHA shall submit written documentation, on official stationery, with date and signatures to justify paragraphs (a)(2)(i) through (v) of this section. Examples of such documentation include:

(i) A certification from a tribal or local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or

(ii) A copy of the condemnation order from the local health department. If, however, at some future date, the IHA proposes to sell the remaining property described in paragraphs (a)(2)(i) through (iii) of this section, the IHA will be required to comply with this section.

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident organization, resident management corporation or resident cooperative at the time of the IHA proposal to demolish or dispose of the development or a portion of the development, the IHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of "reasonable effort" at a minimum include at least one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. HUD will not approve any application that cannot demonstrate that the IHA has allowed at least 45 days for the residents of the affected development to organize a resident organization. The IHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under § 950.923(b)(1).

(c) *Established organizations.* Where there are duly formed resident management corporations, resident organizations or resident cooperatives at the affected development, the IHA should follow the procedures beginning in paragraph (d) of this section. Where the affected development is fully or partially occupied, the residents shall be given the opportunity to form under the procedures in paragraph (b) of this section.

(d) *Offer of sale to resident organizations.* (1) The IHA shall make the formal offer for sale which shall include the information listed in this section. All contacted organizations shall have 30 days to express an interest in the offer. The IHA shall offer to sell the property proposed for demolition or disposition to the resident management corporation, the resident organization or resident cooperative of the affected development under at least as favorable terms and conditions as the IHA would offer it for sale to another purchaser. The offer shall include:

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead based paint test results), and occupancy status (e.g., percent occupancy);

(ii) In the case of disposition, a copy of the appraisal of the property and any terms of sale;

(iii) An IHA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition;

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation, resident organization or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use;

(v) Any and all terms of sale that the IHA requires for the Section 18 action; [If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer.]

(vi) A date by which the resident management corporation, resident organization or resident cooperative of the affected development shall respond to the IHA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the IHA which will be made sometime after the meeting. The response from the resident management corporation, resident organization or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the IHA's written offer.

(vii) A statement that the resident management corporation, resident organization and resident cooperative of the affected development will be given up to 60 days to develop and submit a proposal to the IHA to purchase the property and to obtain a firm financial commitment. It shall explain that the IHA shall approve the proposal from the resident management corporation, resident organization or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the IHA can consider accepting an offer from the resident management corporation, resident organization or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the IHA receives more than one proposal from a resident management corporation, resident organization or resident cooperative at the affected development, the IHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the terms of sale, the IHA shall choose the best proposal.

(2) After the 30 day time frame for the resident management corporation, resident organization or resident cooperative of the affected development to respond to the notification letter has expired, the IHA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has up to 60 days from the date of its affirmative response to prepare and submit a proposal to the IHA that provides all the information requested in paragraph (d)(1) of this section and meets the terms of sale.

(e) *IHA review of proposals.* The IHA has up to 60 days from the date of receipt of the proposals to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer. If the terms of sale are met, within 14 days of the IHA's final decision, the IHA shall notify the resident management corporation, resident organization or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident organization or resident cooperative of the affected development has the right to appeal the IHA's decision to the HUD Area ONAP. A written appeal shall be made within 30 days of the decision by the IHA. The appeal should include copies of the proposal and any related correspondence. The HUD Area ONAP will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the IHA and the resident management corporation, resident organization or resident cooperative of the affected development.

(g) *Contents of proposal.* (1) The proposal from the resident management corporation, resident organization or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for-profit, governmental or other entities), if any, the proposed division of responsibilities between the two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with § 950.931(h), if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the IHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of IHA approval of the proposal, or such period as the IHA may determine to be reasonable.

(2) If the proposal is to purchase the property for homeownership under section 5(h) or HOPE 1, then the requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart do not apply, and the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 24 CFR Subtitle A, App. A, or the section 5(h) regulation, as set forth in subpart P of this part. In order for the IHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the resident management corporation, organization or resident cooperative of the affected development shall meet the provisions of this subsection, including items in paragraph (g)(1) of this section.

(3) If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal shall meet all the disposition requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart.

(h) *IHA Obligations.* (1) Prepare and disperse the formal offer of sale to the resident management corporation, resident organization and resident cooperative of the affected development

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(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issue letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (j)(3) of this section. The IHA shall comply with its obligations under § 950.923(b)(1) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The IHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident organization or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

(i) *IHA application submission requirements for proposed demolition or disposition.* (1) If the proposal from the resident organization is rejected by the IHA, and either there is no appeal by the organization or the appeal has been denied, the IHA shall submit its demolition or disposition application to HUD in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart. The demolition or disposition application shall include complete documentation that the requirements of this section have been met. IHAs shall submit written documentation that the resident management corporation, resident organization and resident cooperative of the affected development have been apprised of their opportunity to purchase under this section. This documentation shall include a copy of the signed and dated IHA notification letter(s) to each organization informing them of the IHA's intention to submit an application for demolition or disposition and the responses from each organization.

(2) If the IHA accepts the proposal of the resident organization, the IHA shall submit a disposition application in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(3) HUD will not process an application for demolition or disposition unless the IHA provides HUD with one of the following:

(i) Where no resident management corporation, resident organization or resident cooperative exists in the affected development and the residents of the affected development have not formed a new organization, a certification from either the executive director or the board of commissioners stating that no such organization(s) exists and documentation that a reasonable effort to inform residents of their opportunity to organize has been made; or

(ii) Where a resident management corporation, resident organization or resident cooperative exists in the affected development one of the following, either paragraph (i)(3)(ii)(A) or (B) of this section:

(A) A board resolution or its equivalent from each resident management corporation, resident organization or resident cooperative stating that such organization has received the IHA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(B) A certification from the executive director or board of commissioners of the IHA that the thirty (30) day timeframe has expired and no response was received to its offer.

§ 950.927 Specific criteria for HUD approval of disposition requests.

In addition to other applicable requirements of this subpart, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the IHA, because at least one of the following criteria is met:

(a) Developmental changes in the area surrounding the project adversely affect the health or safety of the tenants or the feasible operation of the project by the IHA.

(b) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing projects, and that will preserve the total amount of low-income housing stock available to the community.

(c) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the IHA that are not inconsistent with other provisions of the Act.

(d) In the case of disposition of property other than dwelling units:

(1) The property is determined by HUD to be excess to the needs of the project (after the end of the initial operating period); or

(2) The disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

§ 950.928 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this subpart, HUD will not approve an application for demolition unless HUD determines that at least one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or a portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes; and

(b) No reasonable program of modifications, in keeping with the provisions of subpart I of this part, is feasible to return the project or portion of the project to useful life.

§ 950.931 IHA application for HUD approval.

Written approval by HUD shall be required before the IHA may undertake any transaction involving demolition or disposition. To request approval, the IHA shall submit an application to the HUD Area ONAP that includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed disposition or demolition under one or more of the applicable criteria of §§ 950.927 or 950.928;

(d) If applicable, a plan that meets the requirements of § 950.117 for the relocation of tenants who would be displaced by the proposed demolition or disposition;

(e) A description of the IHA's consultations with tenants and any tenant organizations (as required under § 950.923(b)(1)), with copies of any written comments which may have been submitted to the IHA and the IHA's evaluation of the comments;

(f) A replacement housing plan, as required under § 950.935, and a resolution by the governing body of the unit of tribal or general local government in which the project is located, indicating approval of the replacement plan;

(g) Evidence that the IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations, as required under § 950.925;

(h) The estimated balance of project debt, if any, under the ACC for development and modernization;

(i) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal, unless, as determined by HUD:

(1) More than one appraisal is warranted; or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(j) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 950.933;

(k) A copy of a resolution by the IHA's Board of Commissioners approving the application;

(l) If determined to be necessary by HUD, an opinion by the IHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, tribal, and local laws; and

(m) Any additional information necessary to support the application and assist HUD in making determinations under this subpart M.

§ 950.933 Use of proceeds.

(a) *Disposition.* (1) If HUD approves the disposition of real property of a project, in whole or in part, the IHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the IHA or the Federal Government, or for sale for less than fair market value (where permitted by State, tribal, or local law), based on commensurate public benefits to the community, the IHA, or the Federal Government justifying such an exception.

(2) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows: first for the retirement of outstanding obligations, if any, issued to finance development or modernization of the project, which in the case of scattered site housing of an IHA, shall be in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition; and thereafter for the provision of housing assistance for low-income families, through such measures as modernization of low-income housing or the acquisition, development, or rehabilitation of other properties to operate as low-income housing.

(b) *Demolition.* If HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under subpart I of this part, the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 950.935 Replacement housing plan.

(a) HUD may not approve an application or furnish assistance under this subpart unless the IHA submitting the application for disposition or demolition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each dwelling unit to be disposed of or demolished under the application. The plan shall include any one or a combination of the following:

(1) The acquisition or development of additional low-income housing dwelling units;

(2) The use of project-based assistance under section 8 (as provided for in 24 CFR part 882, subpart G);

(3) The use of project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local tribal government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract to assistance under section 8(b)(1) of the Act; or

(5) The use of tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o) of the Act (42 U.S.C. 1437f(o)), under the conditions described in paragraph (b) of this section.

(b) Tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance is not feasible; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full term of the assistance; and

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which shall include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for housing assistance under the Act; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances.

(c) The plan shall be approved by the unit of general local government (including tribal government) in which the project is located.

(d) The plan shall include a schedule for carrying out all its terms within a period consistent with the size of the proposed disposition or demolition, except that the schedule for completing the plan shall in no event exceed six years from the date specified to begin plan implementation.

(e) The plan shall include a method that ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs.

(f) The plan shall include an assessment of the suitability of the location of proposed replacement housing based upon application of the site selection criteria established in § 950.235.

(g) The plan shall contain assurances that any replacement units acquired, newly constructed, or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

Subpart N—[Reserved]

Subpart O—Resident Participation and Opportunities General Provisions

§ 950.960 Purpose.

The purpose of this subpart O is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

§ 950.961 Applicability and scope.

(a) This subpart O applies to any Indian housing authority (IHA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the United States Housing Act of 1937.

(b) This subpart O contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

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(c) This subpart O is designed to encourage increased resident participation in Indian housing.

(d) This subpart O is not intended to negate any pre-existing arrangements for resident management in Indian housing between an IHA and a resident management corporation.

(e) This subpart O includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the National Affordable Housing Act, which created a new Section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

§ 950.962 Definitions.

Family Investment Center. A facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

Management. All activities for which the IHA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and an IHA, as provided by § 950.969.

Project. For purposes of this subpart, any of the following could be the subject of a management contract:

(1) One or more contiguous buildings.

(2) An area of contiguous row houses.

(3) Scattered site buildings.

(4) Scattered site single-family units.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the IHA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation shall have each of the following characteristics:

(1) It shall be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors.

(4) Its by-laws shall require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It shall be approved by the resident organization. If there is no organization, a majority of the households of the project or projects shall approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it shall fairly represent residents from each development that it represents.

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis.

(4) It shall have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

Resident participation. A process of consultation between residents and the IHA concerning matters affecting the management of Indian housing.

§ 950.963 HUD's role in activities under this subpart.

(a) *General.* Subject to the requirements of this part and other requirements imposed on IHAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the IHAs.

(b) *Duty to bargain in good faith.* If an IHA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the IHA to respond with a report stating the IHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

§ 950.964 Resident participation requirements.

(a) *IHA responsibilities.* (1) An IHA shall provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) An IHA shall consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the IHA and the residents.

(3) When requested by residents, an IHA shall provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities.

(c) *Written understanding.* At a minimum, the IHA and the RO shall put in writing their understanding concerning the elements of their relationship.

(d) *Conflict of interest.* Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the IHA.

§ 950.965 Funding resident participation.

Funding will be provided under subpart J of this part, for the following:

(a) *Resident Organizations.* (1) Subject to appropriations, the IHA shall provide

funds to ROs for resident participation activities. Eligibility to receive operating subsidy for duly elected RO activities at $25 per unit per year is an additional category of subsidy eligibility for units represented by a duly elected resident organization under the Performance Funding System. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected ROs. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(2) The IHA and the duly elected resident organization at each development shall collaborate on how the funds will be distributed for resident participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the HUD Headquarters for intervention. HUD ONAP Headquarters may require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of renegotiation, Headquarters shall take appropriate actions to settle the dispute in a fair and equitable manner.

(b) *Stipends.* (1) IHAs may provide stipends to officers of the duly elected RO. The stipend, which may be up to $200 per month per officer, shall be decided locally by the ROs and the IHA. Subject to appropriations, the stipends will be funded from the portion of the operating subsidy funding for RO expenses ($15.00 per unit per year). (See definition of annual income in § 950.102 for exclusion for these stipends.)

(2) Funding provided by an IHA to a duly elected RO may be made only under a written agreement between the IHA and a RO, which includes a RO budget and assurance that all RO expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement shall require the local RO to account to the IHA for the use of the funds and permit the IHA to inspect and audit the resident council's financial records related to the agreement.

Tenant Opportunities Program

§ 950.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/RMCs to improve living conditions and resident satisfaction in Indian housing communities.

§ 950.967 Eligible TOP activities.

Activities to be funded and carried out by an eligible RO or resident management corporation, as defined in subpart B of this part, shall improve the living conditions and Indian housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of a RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of a RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.* (1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

(i) Feasibility and market studies;

(ii) Development of business plans;

(iii) Outreach activities; and

(iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing a resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).* (1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(6) Training programs on health, nutrition, and safety;

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations, and resident organizations on youth initiatives and program activities; and

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas.

(e) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(f) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort shall be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts. RO/RMCs shall ensure that this training is provided by a qualified housing management specialist, a community organizer, the IHA, or other sources knowledgeable about the program.

§ 950.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart O.

§ 950.969 Resident management requirements.

The following requirements apply when an IHA and its residents are

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interested in providing for resident performance of management functions in one or more projects under this subpart O.

(a) *Resident management corporation.* Residents interested in contracting with an IHA shall establish a RMC that meets the requirements for such a corporation, as specified in this subpart O.

(b) *Management Contract.* (1) A management contract between the IHA and a RMC is required for resident management. The IHA and the corporation may agree to the performance by the corporation of any or all management functions for which the IHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract shall be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation shall meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the IHA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and shall be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the IHA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of an IHA to contract with a RMC.

(c) *Prohibited activities.* An IHA may not contract for assumption by the RMC of the IHA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC shall provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the IHA) to protect HUD and the IHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

§ 950.970 Management specialist.

The RO shall select, in consultation with the IHA, a qualified Indian housing management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the IHA or a consultant.

§ 950.971 Operating subsidy, preparation of operating budget, operating reserves, and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the IHA in accordance with subpart J of this part, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart O. These expenditures will include the project's share of any expenses which are overhead or centralized IHA expenditures. The expenses shall represent a normal year's expenditures for the project, and shall exclude all expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level shall be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart O, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget. No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by an IHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the IHA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the IHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the IHA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host IHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the IHA operating reserve, exclusive of all inventories, prepaids, and receivables (at the end of the IHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's subaccount.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the IHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart O:

(i) Any reduction in the total income of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA; or

(ii) Any change in the total income of an IHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart O.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved shall be excluded in subsequent years in calculating:

(1) The operating subsidy provided to an IHA under subpart J of this part; and

(2) The funds provided by the IHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

§ 950.972 TOP Audit and administrative requirements.

(a) *Annual audit of financial statements.* The financial statements of a RMC managing a project under this subpart shall be audited annually by a licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit shall be forwarded to HUD and the IHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of financial statements of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs shall comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

Family Investment Centers (FIC) Program

§ 950.980 General.

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) developing facilities in or near Indian housing for training and support services;

(2) mobilizing public and private resources to expand and improve the delivery of such services;

(3) providing funding for such essential training and support services that cannot otherwise be funded; and

(4) improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. IHAs applying for funds to provide supportive services shall demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) Monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

§ 950.982 Eligibility.

An IHA may apply to establish one or more FICs for more than one Indian housing development. An IHA shall demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

§ 950.983 FIC activities.

Activities that may be funded and carried out by an eligible IHA may include:

(a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The acquisition, construction, or renovation of facilities located near the premises of one or more IHA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive

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services (which may be provided directly to eligible residents by the IHA or by contract or lease through other appropriate agencies or providers), but only if the IHA demonstrates that:

(1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(2) The IHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

§ 950.984 IHA role in activities under this part.

An IHA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The IHA shall give full and fair consideration to the comments and concerns of the residents.

§ 950.985 HUD Policy on training, employment, contracting, and subcontracting of Indian housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, IHAs, their contractors, and subcontractors shall use best efforts, consistent with existing Federal, State, tribal, and local laws and regulations (including Section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

§ 950.986 Grant set-aside assistance.

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to IHAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

§ 950.987 Resident compensation.

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

(b) The State, local, or tribal minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 950.988 Administrative requirements.

Each IHA receiving a grant shall submit to the Area ONAP annual progress report describing and evaluating the use of grant amounts received under this program.

Subpart P—Section 5(h) Homeownership Program

§ 950.1001 Purpose.

This part codifies the provisions of the Section 5(h) Homeownership Program for Indian housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (the Act) and administered by the Department of Housing and Urban Development (HUD).

§ 950.1002 Applicability.

(a) *General applicability.* This subpart P applies to low-income housing owned by Indian Housing Authorities (IHAs), subject to Annual Contributions Contracts (ACCs) under the Act. The terms "housing" or "low-income housing," as used in this subpart P, refer to the types of properties described in the preceding sentence, except as indicated by the particular context. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant," as the latter term is used in the Act, including Mutual Help and Turnkey III homebuyers, as well as rental tenants of low-income housing and Section 8 residents, and references to sale, purchase, conveyance, and ownership include the types of interests and transactions that are incident to cooperative ownership.

(b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD before October 21, 1991, no modifications or additional requirements will be imposed, except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved after October 20, 1991, but before December 12, 1994, no modifications or additional requirements will be imposed, except for such reasonable administrative procedures.

§ 950.1003 General authority for sale.

An IHA may sell all or a portion of a development to eligible residents, as defined under § 950.1008, for purposes of homeownership, according to a homeownership plan approved by HUD under this subpart P. Upon sale in accordance with the HUD-approved homeownership plan, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for further HUD funding for operating subsidies or modernization under the Act upon conveyance of title by the IHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, tribal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative homeownership, if authorized by the Section 8 regulations.)

§ 950.1004 Fundamental criteria for HUD approval.

HUD will approve an IHA's homeownership plan if it meets all three of the following criteria:

(a) *Workability.* The plan shall be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The plan shall be consistent with law, including the requirements of this part and any other applicable Federal, tribal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the plan, at the discretion of the IHA, whether or not expressly authorized in this subpart P.

(c) *Documentation.* The plan shall be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

§ 950.1005 Resident consultation and involvement.

(a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. If the plan contemplates sale of units in an entirely vacant development, the IHA shall consult with the IHA-wide resident organization, if any. While the Act gives the IHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the IHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a resident management corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the IHA shall negotiate with them in good faith. Joint development and submission of the plan by the IHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged. (Approved by the Office of Management and Budget under control number 2577–0201).

§ 950.1006 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 950.1004(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more housing developments. A plan may provide for conversion of existing housing to homeownership or for homeownership sale of newly-developed housing. (However, for low-income housing units developed as replacement housing for units demolished or disposed of pursuant to subpart M of this part, that subpart requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy (or Mutual Help occupancy, if applicable), without reference to any additional homeownership eligibility or selection requirements under this subpart P.) Mutual Help or Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Mutual Help or Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property shall meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective purchaser with disabilities requests accessible features, the features shall be added in accordance with 24 CFR parts 8 and 9. Further, the property shall be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. This standard shall be met as a condition for conveyance of a dwelling to an individual purchaser, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (e.g., as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

§ 950.1007 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* An IHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the IHA's low-income housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan.

(2) The respective rights and obligations of the IHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the IHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the IHA, and that the property will not be encumbered by the other entity without the written consent of the IHA;

(iii) Protection against fraud or misuse of funds or other property on the part of the other entity, its employees and agents;

(iv) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership plan;

(v) Limitation of the other entity's administrative and overhead costs, and of any compensation or profit that may be realized by the entity, to amounts that are reasonable in relation to its responsibilities and risks;

(vi) Accountability to the IHA and residents for the recordkeeping, reporting and audit requirements of § 950.1017;

(vii) Assurances that the other entity will administer its responsibilities under the plan in accordance with applicable civil rights statutes and implementing regulations, as described in § 950.115; and

(viii) Adequate legal remedies for the IHA and residents, in the event of the other entity's failure to perform in accordance with the agreement.

§ 950.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase shall submit applications for that specific purpose, and those applications shall be handled separately from applications for other IHA programs. For vacant units, applications shall be dated as received by the IHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt. Application for homeownership shall not affect an applicant's place on any other IHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of low-income housing owned or leased by the seller IHA (including Mutual Help and Turnkey III homebuyers, who may elect to terminate their existing homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be

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purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the Indian housing unit. If the family is to meet part or all of the minimum occupancy requirement in the Indian housing unit, the Section 8 assistance shall be terminated before the family moves into the Indian housing unit. Indian housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under the ACC as Indian housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.* (1) A homeownership plan, at IHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. A plan may thus allow satisfaction of the threshold requirements for eligibility by:

(i) Existing low-income housing or Section 8 residents with less than the minimum period of residency;

(ii) Families who are already on the IHA's waiting lists; and

(iii) Other low-income families who are neither low-income housing nor Section 8 residents at the time of application or selection.

(2) Applicants who are not already low-income housing residents, however, shall also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited, however, to residents who have been current in all of their lease obligations (in the case of Mutual Help or Turnkey III homebuyers, obligations under their homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of low-income housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges and reporting of all income that is pertinent to determination of rents (or homebuyer's monthly payments). At the IHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to low-income housing or for Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be further limited to residents who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of operating subsidies and modernization funds after conveyance of the property by the IHA. A homeownership plan may, however, take account of any available subsidy from other sources (e.g., in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant shall meet the following requirements:

(1) On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly-recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of 35 percent of the applicant's adjusted income, as defined in this part.

(2) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

(f) *Option to restrict eligibility.* A homeownership plan may, at the IHA's discretion, restrict eligibility to one or more residency-based categories (e.g., for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to low-income housing residents only, or to low-income housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories provided that the residency-based preferences mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other low-income housing units owned or leased by the seller IHA (over any other residency-based categories that may be established by a homeownership plan for Section 8 residents or for nonresident applicants).

(h) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards for eligibility or preference, or both, at the discretion of the IHA, that are not contrary to law. (Approved by the Office of Management and Budget under control number 2577–0201).

§ 950.1009 Counseling, training, and technical assistance.

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention shall be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

§ 950.1010 Nonpurchasing residents.

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move), in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conveyance of the property, the homeownership plan shall include provision for any rental subsidy required (e.g., Section 8 assistance, if available and authorized by the Section 8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, including timely information, counseling, and explanation of the resident's rights under applicable civil rights statutes and implementing regulations, as specified in § 950.115, and referrals to suitable, safe, sanitary, and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, in accordance with applicable civil rights statutes and implementing regulations, as specified in § 950.115. This requirement will be met if the applicant is offered the opportunity to relocate to another suitable unit in other low-income housing, under any of the housing assistance programs under Section 8 of the Act, or any other Federal, tribal, State, or local program that is comparable, as to standards of housing quality, admission, and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe, and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

§ 950.1011 Nonroutine maintenance reserve.

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the IHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

§ 950.1012 Purchase prices and financing.

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under § 906.8(e) of this chapter, a homeownership plan may provide for below-market purchase prices or below-market financing, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (e.g., uniform prices for a group of comparable dwellings, within a range of affordability by a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (e.g., conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a tribal, State, or local program). An IHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 950.1013 Protection against fraud and abuse.

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, or collusive sale that would circumvent the resale profit limitation of § 950.1014.

§ 950.1014 Limitation on resale profit.

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market value at date of purchase from the IHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(b) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the IHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

(A) The discounted purchase price;

(B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the IHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require an IHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the IHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the IHA, to be based solely on the IHA's determination that the resale price represents fair market value or a lesser amount that will result in

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payment to the IHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the IHA shall be obligated to approve the resale.

(4) The IHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the IHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (e.g., according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale, by an independent appraiser to be selected by the IHA.

§ 950.1015 Use of sale proceeds.

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the IHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (e.g., earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under § 950.1014, and interest earned on all such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the IHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the IHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under § 950.1011, a reserve for loans to homeowners to prevent or cure default or for other emergency housing needs; a reserve for any contingent liabilities of the IHA under the homeownership plan (such as IHA guaranty of mortgage loans); and a reserve for IHA repurchase, repair, and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a tribal, State, or local homeownership program for low-income families, as described in the homeownership plan, for assistance to purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the IHA's other low-income housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the IHA for its other low-income housing.

(5) In connection with any other type of Federal, tribal, State, or local housing program for low-income families, as described in the homeownership plan.

§ 950.1016 Replacement housing.

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the IHA shall obtain a funding commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the IHA of additional low-income housing under this part (by new construction or acquisition).

(2) Rehabilitation of vacant low-income housing owned by the IHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the IHA for sale to residents through an RMC, resident organization, or cooperative association that is otherwise eligible to participate under this subpart, acquisition of non-publicly-owned housing units, that the RMC, resident organization, or cooperative association will operate as rental housing, comparable to IHA-owned low-income housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, tribal, State, or local housing program that is comparable, as to housing standards, eligibility, and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a tribal, State, or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (e.g., rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the IHA–HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the homeownership plan, as to unit sizes or family or elderly occupancy, if the IHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

§ 950.1017 Records, reports, and audits.

The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. Until all planned sales of individual dwellings have been completed, the IHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the IHA's housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 950.1007(b), the IHA shall ensure that the entity's responsibilities include proper recordkeeping and accountability to the IHA, sufficient to enable the IHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO). (Approved by the Office of Management and Budget under control number 2577–0201).

§ 950.1018 Submission and review of homeownership plan.

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each IHA. An IHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the IHA shall consult informally with the appropriate HUD Area ONAP to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The IHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Area ONAP.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, when HUD determines that to be justified. For example, conditional HUD approval might be a necessary precondition for the IHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing. (Approved by the Office of Management and Budget under control number 2577–0201)

§ 950.1019 HUD approval and IHA-HUD implementing agreement.

Upon HUD notification to the IHA that the homeownership plan is approvable (in final form that satisfies all applicable requirements of this part), the IHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The plan itself, as approved by HUD, shall be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the IHA and HUD. The IHA shall be obligated to carry out the approved homeownership plan and other provisions of the implementing agreement without modification, except with written approval by HUD.

(Approved by the Office of Management and Budget under control number 2577–0201).

§ 950.1020 Content of homeownership plan.

The homeownership plan shall address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 950.1006, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 950.1008.

(d) *Sale and financing.* Terms and conditions of sale and financing (see particularly §§ 950.1011 through 950.1014).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 950.1005). If appropriate, this may be combined with the plan for counseling.

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 950.1009.

(g) *Sale via other entity.* If the plan contemplates sale to residents via an entity other than the IHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 950.1007 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 950.1010.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 950.1015.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 950.1016.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Recordkeeping, accounting and reporting.* A description of the recordkeeping, accounting, and reporting procedures to be used, including those required by § 950.1017.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

(n) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

(Approved by the Office of Management and Budget under control number 2577–0201).

§ 950.1021 Supporting documentation.

The following supporting documentation shall be submitted to HUD with the proposed homeownership plan, as appropriate for the particular plan:

(a) *Estimate of value.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this information is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse, pursuant to § 950.1013, and windfall profit on resale, pursuant to § 950.1014. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 950.1006.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs

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of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 950.1004(a).)

(d) *IHA commitment and capability.* Information to substantiate the commitment and capability of the IHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 950.1005 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been submitted to the IHA by individual residents and resident organizations, and any other individuals and organizations.

(f) *Nondiscrimination certification.* The IHA's certification that it will administer the plan on a nondiscriminatory basis, in accordance with applicable civil rights laws and implementing regulations, as described in § 950.115, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the plan.

(g) *Legal opinion.* An opinion by legal counsel to the IHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, tribal, State, and local law, including regulations as well as statutes. In addition, counsel shall identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

(h) *Board resolution.* A resolution by the IHA's Board of Commissioners, evidencing its approval of the plan.

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the IHA-HUD implementing agreement under § 950.1019, HUD approval is not required for documents to be prepared and used by the IHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation. (Approved by the Office of Management and Budget under control number 2577–0201).

Subpart Q—[Reserved]

Subpart R—Family Self-Sufficiency

§ 950.3001 Purpose, scope, and applicability.

(a) *Purpose.* The purpose of the Family Self-Sufficiency (FSS) program is to develop local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(b) *Applicability.* This subpart applies to Indian housing authorities (IHA) that elect to operate a local FSS program, and when such an election is made, to Indian housing assisted under the United States Housing Act of 1937, and developed or operated by an IHA in an Indian area, as defined in § 950.102. This subpart does not apply to the Mutual Help Homeownership Program or the Turnkey III Program. IHAs that elect to participate in the FSS program are not subject to minimum program size requirements. Additionally, IHAs that received Indian housing units under the FSS incentive award competitions are not subject to the minimum program size requirements.

§ 950.3002 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance, on section 8, public, or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. The FSS program provides low-income families opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as this term is defined in § 950.3003. HUD will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

§ 950.3003 Definitions.

As used in this subpart R:

Certification means a written assertion based on supporting evidence, provided by the FSS family or the IHA, as may be required under this subpart R, and that:

(1) Shall be maintained by the IHA in the case of the family's certification, or by HUD in the case of the IHA's certification;

(2) Shall be made available for inspection by HUD, the IHA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this subpart R, unless the Secretary or the IHA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and an IHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans, attached to the contract as exhibits, entered into between the IHA and all members of the family who will participate in the FSS program. For additional details, see § 950.3022.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See § 950.102.) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by an IHA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the IHA entered into the contract of participation.

Eligible families mean current residents of Indian housing.

Enrollment means the date that the FSS family entered into the contract of participation with the IHA.

Family Self-Sufficiency program or *FSS program* means the program established by an IHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u).

FSS account means the FSS escrow account authorized by section 23 of the Act, and as provided by § 950.3025.

FSS credit means the amount credited by the IHA to the participating family's FSS account.

FSS family or *participating family* means a family that resides in Indian housing, that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in this section.

FSS slots means the total number of Indian housing units that comprise the minimum size of an IHA's Indian housing FSS program.

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing, or homeownership, including rent, mortgage, or utility payments.

Individual training and services plan means:

(1) A written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the IHA in consultation with the family member, and that sets forth:

(i) The supportive services to be provided to the family member;

(ii) The activities to be completed by that family member; and

(iii) The agreed upon completion dates for the services and activities.

(2) Each individual training and services plan shall be signed by the IHA and the participating family member, and is attached to and incorporated as part of the contract of participation. An individual training and services plan shall be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F, title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Program Coordinating Committee or *PCC* means the committee described in § 950.3012.

Secretary means the Secretary of Housing and Urban Development.

Self-sufficiency means that an FSS family is no longer receiving section 8, public, or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 950.3025).

Supportive services means those appropriate services that an IHA will make available, or cause to be made available, to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable participating family members to receive available services, or to commute to their places of employment;

(3) Education—remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in the private housing market; and

(iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the IHA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

Unit size or *size of unit* refers to the number of bedrooms in a dwelling unit.

§ 950.3004 Basic requirements of the FSS program.

(a) *Compliance with program regulations.* An FSS program established under this subpart shall be operated in conformity with the regulations of this part.

(b) *Compliance with Action Plan.* An FSS program established under this subpart shall be operated in compliance with an Action Plan, as described in § 950.3011, and provide comprehensive supportive services as defined in § 950.3003.

(c) *Compliance with equal opportunity requirements.* An FSS program established under this subpart shall be operated in compliance with all applicable Indian housing regulations and all applicable civil rights authorities, including: the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–1303); title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Executive Order 11063 (3 CFR, 1959–1963 Comp., p. 652), as amended by Executive Order 12259 (3 CFR, 1980 Comp., p. 307); section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); and the regulations implementing these authorities. (The Indian Civil Rights Act applies to IHAs organized pursuant to tribal laws; and Title VI of the Civil Rights Act of 1964 and the Fair Housing Act applies to State authorized IHAs.)

§ 950.3011 Action Plan.

(a) *General.* To participate in the FSS program, an IHA shall have a HUD-approved Action Plan that complies with the requirements of this section.

(b) *Development of Action Plan.* The Action Plan shall be developed by the IHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Initial submission and revisions.* (1) *Initial submission.* Unless the dates set forth in this paragraph are extended by HUD for good cause, an IHA that is establishing its first FSS program shall submit an Action Plan to HUD for approval within 90 days of notification by HUD of approval of the IHA's first application for new housing units.

(2) *Revision.* Following initial approval of the Action Plan by HUD, no further approval of the Action Plan is required unless the IHA proposes to make policy changes to the Action Plan, or HUD requires changes. Any changes to the Action Plan shall be submitted to and approved by HUD.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the IHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics*—a description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the

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families expected to participate in the FSS program;

(2) *Estimate of participating families*—an estimate of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency programs*—if applicable, the number of eligible families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation;

(4) *FSS family selection procedures*—a statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 950.3013.

(5) *Incentives to encourage participation*—a description of the incentives that the IHA's intends to offer eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 950.3025, and other incentives, if any, designed by the IHA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts*—a description of:

(i) The IHA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The IHA's actions to be taken to assure that both minority and nonminority groups are informed about the FSS program, and how the IHA will make this information known (e.g., through door-to-door flyers, posters in any common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups).

(7) *FSS activities and supportive services*—a description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources that are expected to provide the supportive services.

(8) *Method for identification of family support needs*—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination, withholding of services, and grievance procedures*—a description of the IHA's policies concerning: termination of participation in the FSS program, withholding of supportive services on the basis of a family's failure to comply with the requirements of the contract of participation, and the grievance and hearing procedures available to FSS families.

(10) *Assurances of noninterference with rights of nonparticipating families*—an assurance that a family's election not to participate in the FSS program will not affect the family's admission to Indian housing or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation*—a timetable for implementation of the FSS program, as provided in § 950.3020(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 950.3013;

(12) *Certification of coordination*—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information*—such other information that would help HUD determine the soundness of the IHA's proposed FSS program.

(e) *Eligibility of a combined program.* An IHA that wishes to operate a joint FSS program with other IHAs may combine its resources with one or more IHAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this subpart.

(f) *Single action plan.* IHAs implementing both a section 8 FSS program and an Indian housing FSS program may submit one Action Plan.

§ 950.3012 Program Coordinating Committee (PCC).

(a) *General.* Each participating IHA shall establish a PCC whose functions will be to assist the IHA in securing commitments of public and private resources for the operation of the FSS program within the IHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(b) *Membership.* (1) The PCC may consist of representatives of the IHA and of residents of Indian housing.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the IHA, local agencies (if any) responsible for carrying out JOBS training programs or programs under the JTPA, and other organizations, such as other State, local, or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The IHA may, in consultation with the chief executive officer of the unit of general local government served by the IHA, utilize an existing entity as the PCC if the membership of the existing entity consists or will consist of the individuals identified in paragraph (b)(1) of this section, and also includes individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

§ 950.3013 FSS family selection procedures.

(a) *Preference in the FSS selection process.* An IHA has the option of giving a selection preference for up to 50 percent of its FSS slots to eligible families, as defined in § 950.3003, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The IHA may limit the selection preference given to participants in and applicants for FSS-related service programs to one or more eligible FSS-related service programs. An IHA that chooses to exercise the selection preference option shall include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

(b) *FSS selection without preference.* For those FSS slots for which the IHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots shall be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the IHA shall be described in the IHA's Action Plan.

(c) *Motivation as a selection factor.* (1) *General.* An IHA may screen families for interest and motivation to participate in the FSS program, provided that the factors utilized by the IHA are those which solely measure the family's interest and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks that indicate the family's willingness to undertake the obligations that may be imposed by the FSS contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those that may be readily accomplishable by the family, based on the family members' educational level and disabilities, if any. Reasonable accommodations shall be made for individuals with mobility, manual, sensory, speech impairments, mental, or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors that may result in discriminatory practices or treatment toward individuals with disabilities or minority or nonminority groups.

§ 950.3014 On-site facilities.

Each IHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied units in Indian housing projects to provide supportive services under an FSS program.

§ 950.3020 Program implementation.

(a) *Program implementation deadline.* (1) *Program start-up.* Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but shall occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of services.* Except as provided in paragraph (a)(3) of this section, the IHA shall have completed enrollment of the total number of families to be served under the FSS program and shall have begun delivery of the supportive services within two years from the date of notification of approval of the application for new Indian housing units.

(3) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the IHA requests an extension, and the HUD Area ONAP determines that, despite best efforts on the part of the IHA, the development of new Indian housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances that the HUD Area ONAP determines warrants an extension of the deadlines set forth in paragraph (a) of this section.

(b) *Program administration.* An IHA may employ appropriate staff, including a service coordinator or program coordinator, to administer its FSS program, and may contract with an appropriate organization to establish and administer the FSS program, including the FSS account, as provided by § 950.3025.

§ 950.3021 Administrative fees.

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and administrative costs incurred by IHAs in carrying out the local FSS programs. These costs are subject to appropriations by the Congress.

§ 950.3022 Contract of participation.

(a) *General.* Each family that is selected to participate in an FSS program shall enter into a contract of participation with the IHA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract.* (1) *General.* The contract of participation, which incorporates the individual training and services plan, shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the IHA, the services to be provided to, and the activities to be completed by, the head of the FSS family, and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the IHA and the family may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the IHA shall establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance for at least one year before expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the Indian housing lease.

(4) *Employment obligation.* (i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the IHA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the IHA.

(5) *Consequences of noncompliance with contract.* The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of participation, the IHA may:

(i) Withhold the supportive services; or

(ii) Terminate the family's participation in the FSS program.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

a description of the IHA's policies

program.

with an objective selection system, such

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(d) *Contract extension.* The IHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the IHA finds that good cause exists for granting the extension. The family's written request for an extension shall include a description of the need for the extension. As used in this paragraph (d) of this section, "good cause" means circumstances beyond the control of the FSS family, as determined by the IHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 950.3025.

(e) *Unavailability of supportive services.* (1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the IHA shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the IHA is unable to obtain the services from another agency, the IHA shall reassess the family members' needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the IHA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the IHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the IHA shall declare the contract of participation null and void.

(f) *Modification.* The IHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plan, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded, when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) Thirty (30) percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the IHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans, have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) By operation of law.

(i) *Transitional supportive service assistance.* An IHA may continue to offer to a former FSS family who has completed its contract of participation and whose head of the family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in Indian housing), or in remaining self-sufficient (if the family no longer resides in Indian or other assisted housing).

§ 950.3024 Total tenant payment and increases in family income.

(a) *Calculation of total tenant payment.* Total tenant payment for a family participating in the FSS program is determined in accordance with the regulations set forth in §§ 950.315 through 950.325.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 950.3025 FSS account.

(a) *Establishment of FSS account.* (1) *General.* The IHA shall deposit the FSS account funds of all families participating in the IHA's FSS program into a single depository account. The IHA shall deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds.* (i) *Accounting records.* The total of the FSS account funds will be supported in the IHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the IHA shall credit monthly, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the Indian housing lease, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each IHA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;

(iii) Any deductions made from the account for amounts due the IHA before interest is distributed;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit.* (1) *Computation of amount.* For purposes of determining the FSS credit, "family rent" means the total tenant payment as defined in this part 950. The FSS credit shall be computed as follows:

(i) For FSS families that are very low-income families, the FSS credit shall be the amount that is the lesser of:

(A) Thirty (30) percent of the family's current monthly adjusted income less the family rent, which is obtained by disregarding any increase in earned income (as defined in § 950.3003) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families that are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but that shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families that are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The IHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 950.3022(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds.* (1) *General.* The amount in an FSS account, in excess of any amount owed to the IHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 950.3022(g), and if at the time of contract completion, the head of FSS family submits to the IHA a certification, as defined in § 950.3003, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the IHA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the IHA by the FSS family as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the IHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the IHA may, at the IHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family to meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the IHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents that may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the FSS family ceases to reside with other family members in the Indian housing unit, the remaining members of the FSS family, after consultation with the IHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (d) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* An FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs, unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS account funds.* (1) *Conditions for forfeiture.* Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in §§ 950.3022(e) or 950.3022(h); or

(ii) The contract of participation is completed by the family, as provided in § 950.3022(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) *Treatment of forfeited FSS account funds.* FSS account funds forfeited by the FSS family will be credited to the IHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the next budget year.

§ 950.3030 Reporting.

Each IHA that carries out an FSS program under this subpart shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the IHA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

Dated: March 30, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–8346 Filed 4–7–95; 8:45 am]

BILLING CODE 4210–33–P

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Part III

Department of Education

National Diffusion Network—Private School Facilitator Project; Notice Inviting Applications for a New Award for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA NO.: 84.073F]

National Diffusion Network—Private School Facilitator Project; Notice Inviting Applications for a New Award for Fiscal Year 1995

Purpose of Program: To award a grant to support a National Diffusion Network (NDN) Private School Facilitator project. Using a network of facilitators who assist education service providers, the NDN supports nationwide dissemination of validated effective educational programs and promising practices. On a nationwide basis, the Private School Facilitator project assists interested private schools in gaining access to the dissemination system offered by the NDN.

Eligible Applicants: Any public or private nonprofit agency, organization, or institution with demonstrated expertise in the areas of applied education research and program dissemination.

Deadline for Transmittal of Applications: May 26, 1995.

Deadline for Intergovernmental Review: July 25, 1995.

Applications Available: April 10, 1995.

Estimated Available Funds: $186,400.

Estimated Range of Awards: $175,000 to $186,400.

Estimated Average Size of Awards: $186,400.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 9 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing) and 34 CFR part 99 (Family Educational Rights and Privacy); and (c) The regulations for this program in 34 CFR parts 785 and 789.

Priorities

Competitive Preference Priority

In accordance with 20 U.S.C. 8651(g)(2) and 34 CFR 75.105(c)(2)(ii), the Secretary gives preference to Private School Facilitator projects that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Private School Facilitator projects that propose to disseminate effective schoolwide projects, programs addressing the needs of high poverty schools (to the extent that such nonpublic schools exist), and programs with the capacity to offer high-quality, sustained technical assistance.

Invitational Priority

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary encourages projects that respond to the needs of private schools that serve disadvantaged students.

To Request an Application: *Voice Mail*: (202) 219–2133; *Facsimile machine*: (202) 219–1407; *Mail*: NDN/PSF Application, 555 New Jersey Avenue, NW., Room 506c, Washington, DC 20208–5643. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8651.

Dated: April 4, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–8659 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–P

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Part IV

Department of Education

National Diffusion Network (NDN)—Developer Demonstrators; New Awards; Notice Inviting Applications

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.073A–1]

National Diffusion Network (NDN)—Developer Demonstrators Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To award grants to support nationwide dissemination of exemplary educational programs that have been previously approved by the Department of Education's Program Effectiveness Panel (PEP).

Eligible Applicants: Public or private nonprofit agencies, organizations, or institutions (1) that have demonstrated expertise in the areas of applied education research and program dissemination and (2) that have developed programs, products, or practices (a) that the PEP has approved and (b) that are in use in sites that can be visited.

Deadline for Transmittal of Applications: May 26, 1995.

Deadline for Intergovernmental Review: July 25, 1995.

Applications Available: April 10, 1995.

Available Funds: $2,222,000.

Estimated Range of Awards: $75,000—$180,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Budget Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing) and 34 CFR part 99 (Family Educational Rights and Privacy); and (c) The regulations for this program in 34 CFR part 785 and 786.

Supplementary Information: This notice announces a competition for the FY 1995 new Developer Demonstrator competition under the National Diffusion Network (NDN) program. The NDN program is authorized by Title XIII, Part B of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 8651). The Secretary has established a competitive preference priority for this competition to respond to mandates contained in the new statute for the National Diffusion Network. These mandates require the Secretary to give priority to identifying, validating, and disseminating effective schoolwide projects, programs addressing the needs of high poverty schools, and programs with the capacity to offer high quality, sustained technical assistance.

The Secretary is concerned that American educators understand and learn from the effects of projects funded under this priority and suggests that such projects provide documentation of their impact on improving teaching and learning in one or more education sites. The Secretary also suggests that schoolwide projects aim to upgrade the entire educational program in a school.

Priorities

Competitive Preference Priority

Under 34 CFR 75.105(c)(2)(i) and 20 U.S.C. 8651(g)(2) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 25 points to an application that carries out in a particularly effective way all three activities cited in the priority, or up to 15 points to an application that executes in a particularly effective way two activities cited in the priority, or up to 5 points to an application that carries out in a particularly effective way one activity cited in the priority. These points are in addition to any points the application earns under the selection criteria for the program:

The Secretary gives priority to projects that propose nationwide dissemination of validated educational projects that incorporate one or more of the following activities: (1) Effective schoolwide approaches, (2) approaches that address the needs of high poverty schools, (3) approaches with the capacity to offer high-quality, sustained technical assistance.

Invitational Priority

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that provide documentation of the project's impact on improving teaching and learning in one or more education sites.

To Request an Application: *Voice Mail*: (202) 219–2133; *Facsimile machine*: (202) 219–1407; *Mail*: NDN/DD Application, 555 New Jersey Avenue, N.W., Room 506c, Washington, DC 20208–5643. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8651

Dated: April 4, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement

[FR Doc. 95–8660 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

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Part V

Department of Education

Eisenhower Regional Mathematics and Science Education Consortium; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.168R]

Eisenhower Regional Mathematics and Science Education Consortium; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To award grants to support the establishment and operation of regional mathematics and science consortia.

Eligible Applicants: Private nonprofit organizations, institutions of higher education, elementary or secondary schools, State or local education agencies, regional educational laboratories in consortium with federally-supported research and development centers established under section 931(c)(1)(B)(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 ("Act"), (20 U.S.C. 6031)(c)(1)(B)(i), or any combination of these entities.

Deadline for Transmittal of Applications: June 16, 1995.

Deadline for Intergovernmental Review: August 15, 1995.

Applications Available: April 17, 1995.

Available Funds: $15,000,000.

Estimated Range of Awards: $1,000,000–$1,500,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: *12 months*.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Supplementary Information: Congress first authorized the establishment of ten regional consortia in 1988 in order to support improvement of mathematics and science education throughout the nation. The purposes of these regional consortia are to coordinate mathematics and science resources within the region, disseminate exemplary mathematics and science educational instructional materials, and provide technical assistance for the implementation of teaching methods and assessment tools for use by elementary and secondary school students, teachers, and administrators. The regional consortia have been reauthorized under the *Improving America' Schools Act of 1994* (20 U.S.C. 8671–8677) to continue this work.

The new legislation stipulates that the regions are the same as those for the currently-funded regional educational laboratories supported by the Office of Educational Research and Improvement. The statutory list of eligible entities includes: (a) A private nonprofit organization of demonstrated effectiveness; (b) an institution of higher education; (c) an elementary or secondary school; (d) a state or local education agency; (e) a Regional Educational Laboratory in consortium with the Research and Development Center established under Section 931(c)(1)(B)(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994, or (f) any combination of these entities. All eligible entities shall have demonstrated expertise in mathematics and science education. The project periods for the current research and development centers will expire in early December, 1995. Awards for new research and development centers under Section 931(c)(1)(B)(i) of the Act will not be made when the applicants for the regional consortia submit their proposals for review. Therefore, each Regional Education Laboratory applicant must provide an assurance that it will form a consortium with a research and development center with demonstrated expertise in mathematics or science education if such centers are reestablished under section 931(c)(1)(B)(i).

The Secretary believes that the regional consortia supported through this grant competition should play an important role in coordinating mathematics and science education resources for the States and local education agencies in their regions. In particular, he believes the regional consortia should work cooperatively with other organizations committed to improving mathematics and science education in schools, including those funded by the Department of Education (ED) and the National Science Foundation (NSF). The Secretary believes that cooperative efforts with the Eisenhower National Clearinghouse for Science and Mathematics should be continued and enhanced.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Development and Operation of Regional Consortia to Support Systemic Reform in Mathematics and Science at the Elementary and Secondary Grades

The authorizing statute establishes many activities that the Regional Consortia may undertake. However, the Secretary believes that the consortia should focus their activities to achieve maximum impact. The Secretary therefore urges the applicants to focus on the following activities:

(A) Collaborate with others within the region involved in systemic reform of mathematics and science education.

(B) Develop a plan that establishes priorities for what services will be provided by the consortium to schools and teachers in each state in the region, including criteria the consortium will use to determine who receives direct services from the regional consortium.

(C) Provide training and assistance to classroom teachers, administrators, and other educators to enable them to instruct other teachers, administrators, and educators, particularly those working with at-risk students, in the use of instructional materials, teaching methods and assessment tools for mathematics and science education that will help students achieve challenging State content and student performance standards. This should include assistance in using new forms of technology, including on-line electronic systems, in schools and classrooms.

(D) Promote the increased use of informal education entities (such as science technology centers, museums, libraries, Saturday academies, and 4H programs) to expand student knowledge and understanding of mathematics and science.

(E) Collaborate with the Eisenhower National Clearinghouse for Mathematics and Science Education in identifying instructional resources for inclusion in the Clearinghouse data base and disseminating information about that data base, and by providing feedback to the Clearinghouse on the quality and effectiveness of its products and operations.

(F) Collect data on consortium activities, especially data on outcomes and impact, that will be useful in evaluating the effectiveness of these activities.

Selection Criteria: The Secretary evaluates an application on the basis of selection criteria under 34 CFR 75.210. Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Evaluation Plan. (34 CFR 75.210(b)(6)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

For Applications or Information Contact: Liz Barnes at (202) 219–2210 or Jim Clemmens at (202) 219–2068, or fax (202) 219–2106, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 500, Washington, DC 20208–5572. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8671–8677

Dated: April 5, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–8744 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–P

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Federal Register

Monday
April 10, 1995

Part VI

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 1995 Family Violence Prevention and Services Discretionary Funds Program; Availability of Funds and Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 94–11]

Fiscal Year 1995 Family Violence Prevention and Services Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications under the Office of Community Services Family Violence Prevention and Services Discretionary Funds Program.

SUMMARY: The Office of Community Services (OCS) announces its Family Violence Prevention and Services discretionary funds program for fiscal year (FY) 1995. Funding for grants under this announcement is authorized by the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992, Public Law 102–295, as amended, governing discretionary programs for family violence prevention and services. This announcement contains all forms and instructions for submitting an application.

DATES: The closing date for submission of applications is June 9, 1995.

ADDRESSES: Applications may be mailed to Department of Health and Human Services, Administration for Children and Families/Division of Discretionary Grants, (OCS–95–11) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D. Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone (202) 401–9233.

This Announcement, and future program announcements, will be accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, *A Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401–5309.

SUPPLEMENTARY INFORMATION: The Office of Community Services, Administration for Children and Families, announces that applications are being accepted for funding for FY 1995 projects on Public Information/Community Awareness for the Prevention of Domestic Violence; Historically Black Colleges and Universities (HBCUs) Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities (Outreach and Prevention); and Domestic Violence/Child Protective Services Collaboration.

This program announcement consists of four parts. Part I provides information on the family violence program and the statutory funding authority applicable to this announcement.

Part II describes the priority areas under which applications for FY 1995 family violence funding are being requested.

Part III describes the review process.

Part IV provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. *No additional application materials are available or needed to submit an application.*

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Part I. Instruction

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, et seq.) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was reauthorized and amended for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), and signed into law on September 13, 1994.

The purpose of this legislation is to assist States in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and provide immediate shelter and related assistance for victims of family violence and their dependents. Through the family violence prevention discretionary program, OCS has continued to support the National Resource Center for Domestic Violence (NRC) and three Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project; the Resource Center on Child Custody and Protection; and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other individuals in the field of family violence.

During FY 1994 OCS awarded several family violence prevention discretionary grants for public information/community awareness activities; discretionary grant awards were also made to Historically Black Colleges and Universities (Central State University, Wilberforce, Ohio; Delaware State University, Dover, Delaware; and Southern University, Baton Rouge, Louisiana) to assist in the development of family-focused interventions; and five awards were made for domestic violence and child protective services collaboration. Two of the five awards for the domestic violence-child protection collaborative projects were made by the National Center for Child Abuse and Neglect (NCCAN).

Grants for enhancing the collaboration between domestic violence advocates and child protective services were made to the Minnesota Program Development, Inc., Duluth, Minnesota; Colorado Department of Human Services, Denver, Colorado; Oregon Department of Human Resources, Salem, Oregon; Ohio Department of Human Services, Columbus, Ohio; and the Artemis Center for Alternatives to Domestic Violence, Dayton, Ohio.

Because of the responsiveness to and the interest displayed for the FY 1994 priority areas for family violence prevention, OCS will again make available discretionary grants awards in the areas of Public Information/Community Awareness; Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities; and Domestic Violence/Child Protective Services Collaboration.

To encourage increased collaboration and coordination among existing programs and related initiatives, OCS will give additional consideration to applications from organizations and/or agencies that are documented participants in Empowerment Zones and/or Enterprise Communities plans and applications. Applicants citing participation with Empowerment Zones and/or Enterprise Communities should document that they were involved in the preparation and planned implementation of the plan and how their proposed project supports the goal of the Empowerment or Enterprise plans (0–5 points).

Moreover, to encourage the continuation of the FY 1994 funded efforts of the Historically Black Colleges and Universities in the prevention of family violence, and to maintain the momentum of the collaboration projects between domestic violence and the Child Protective Services, OCS also will provide additional consideration to projects that were funded in these areas under the FY 1994 family violence discretionary program (0–5 points).

Part II. Fiscal Year 1995 Family Violence Projects

1. Priority Area Number FV01–95: Public Information/Community Awareness Campaign Projects for the Prevention of Family Violence

Purpose: To assist in the continual development of public information and community awareness campaign projects and activities that provide information for the prevention of family violence. These projects should provide information on resources, facilities, and service alternatives available to family violence victims and their dependents, community organizations, local school districts, and other individuals seeking assistance.

Eligible Applicants: State and local public agencies, Territories, and Native American Tribes and Tribal Organizations who are, or have been, recipients of Family Violence Prevention and Services Act grants; State and local private non-profit agencies experienced in the field of family violence prevention; and public and private non-profit educational institutions, community organizations and community-based coalitions, and other entities that have designed and implemented family violence prevention information activities or community awareness strategies.

Background: Based on the encouraging response to the announcement for public information and community awareness grants for family violence prevention in Federal fiscal years 1992, 1993, and 1994, ACF will again make these grants available in FY 1995.

The public information/community grant awards have spawned very effective informational activities at the local levels. These grants have assisted community organizations to focus on and emphasize prevention, helped to make available public service announcements and legal brochures in several different languages, including Russian and Vietnamese, and have assisted in the implementation of conflict resolution activities in elementary, middle and high school curricula.

The goal of this priority area is to continue to add credible and persuasive information to the arsenal of weapons necessary and available to community organizations to help break the so-called "cycle of family violence." The continuation of these efforts will help assure that individuals, particularly within minority communities, are aware of available resources and alternative responses for the resolution and the prevention of violence.

This priority area requires the development and implementation of an effective public information campaign that may be used, for example, by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. The continuation of OCS support for the increase of information on services and other alternatives for the prevention of family violence underscores the notion that violent behavior is unacceptable. We must continue to provide the victims, their dependents, and perpetrators, with knowledge of the remedial and service options for their particular situations.

Accurate information is critical to any community awareness strategy and activity. How information is communicated must be modified where communication barriers may exist because of perceived or real language differences and cultural insensitivities.

Minimum Requirements for Project Design: In order to successfully compete under the priority area, the applicant should:

- Present a plan for community awareness and public information activities that clearly reflects how the applicant will target the populations at risk, including pregnant women; coordinate its implementation efforts with public agencies and other community organizations; and communicate with institutions active in the field of family violence prevention.
- Describe the proposed approach to the development of a public information campaign and identify the specific audience(s), community(ies), and groups with the highest prevalence of domestic violence that will be educated in the prevention of family violence.
- Include, as critical elements in the plan:
- A set of achievable objectives and a description of the population groups, relevant geographic area, and the indicators to be used to measure progress and the overall effectiveness of the campaign;
- The intended strategies for test marketing their development plans and give assurances that effectiveness criteria will be implemented prior to finalizing the plan;
- The development and use of non-traditional sources as information providers (applicants should present specific plans for the use of local organizations, businesses and individuals in the distribution of information and materials);
- The identification of the media to be used in the campaign and the geographic limits of the campaign;
- How the applicant would be responsive to and demonstrate its sensitivity towards minority communities and their cultural perspectives; and
- Provide a description of the kind, volume, distribution, and timing of the proposed information with assurances that the public information campaign activities will not supplant or lower the current frequency of public service announcements.

Project Duration: The length of the project should not exceed 12 months.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $35,000 for the 1-year project period. Applications for lesser amounts also will be considered under this priority area.

Matching Requirement: GRANTEES MUST PROVIDE AT LEAST 25 PERCENT OF THE TOTAL COST OF THE PROJECT. THE TOTAL COST OF THE PROJECT IS THE SUM OF THE OCS SHARE AND THE NON-FEDERAL SHARE. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $35,000 in Federal funds must include a match of at least $11,666 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

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2. Priority Area Number FV02–95: Historically Black Colleges and Universities (HBCUs) Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities (Outreach and Prevention)

Purpose: To assist in the development of public information materials, educational strategies, and community activities for families as a part of a comprehensive approach to improve and enable family-focused interventions. It is expected that these interventions which are directed toward families will increase the awareness of violence and decrease its incidence and impact in minority communities. In these efforts the responding institutions should enlist the energy and cooperation of significant community institutions, community organizations, and individuals to serve as models and to provide information on resources, services, facilities, and alternatives to violence in the family.

Eligible Applicants: The Office of Community Services, Administration for Children and Families invites Historically Black Colleges and Universities to submit applications for projects that will provide for the development, implementation and operation of comprehensive family violence prevention strategies and for the dissemination of informational and resource materials for the prevention of family violence in our minority communities. Previous applicants for this priority area who have received grant awards are not precluded from applying for funding under this announcement.

Background: The goal of this priority area is to provide support for the inclusion of "family violence prevention" in a comprehensive approach which considers environmental and cultural factors in plans for intervention and violence prevention strategies in minority communities. Historically Black Colleges and Universities, because of their relationships with minority communities and its residents offer an opportunity for the exchange and development of innovative ideas and approaches to the prevention of violence in general. This effort will make it possible to capture, consider, and utilize the ideas for violence prevention that exist in the minority communities, particularly in response to problems of racism and poverty. The utilization of HBCUs in this effort will make available the considerable expertise, experience, and resources to be found in these institutions.

Family violence prevention activities encompass a wide range of activities that include the teaching of conflict resolution skills, the implementation of intervention strategies, and the development of informational materials on available resources and services. Family violence prevention may be viewed as the sum of activities which are guides to acceptable behavior. Activities that may be a part of the family violence prevention equation provide, for example, parenting skills and techniques, emphasize self-esteem for our youth, stress the importance of higher education as a conduit to a better lifestyle, and identify the means of avoiding negative health consequences such as AIDS and other sexually transmitted diseases.

Family violence prevention needs to be considered as a part of an overall violence prevention strategy. With this particular perspective OCS is interested in applications that address:

Overall strategies for violence prevention activities that focus on educational and training efforts, outreach activities and supportive services, and the role and impact of community institutions;

Cooperative networks collaborative approaches within the minority communities for the prevention of anti-social and violent behavior and that facilitate the implementation of family violence preventive efforts;

Intervention approaches concerned with the "minority family structure;"

Institutional intervention strategies utilizing resources such as alumni, fraternities and sororities, the African American religious community, and volunteers from the community in general; and

The identification of data gathering, and informational and research activities that are needed to identify, support, and implement the long-term strategic interventions to reduce "Black on Black" crime in general and family violence in the African American community in particular.

Minimum Requirements for Project Design

In order to successfully compete under this priority area, the applicant should:

- Prepare and submit an application that clearly reflects how the applicant will target the populations at risk, including pregnant women; coordinate with other community organizations, agencies, institutions, and individuals active in the field of family violence prevention;
- Describe, as a major element in the application, the significant prevention efforts that are a part of the educational and training, outreach, and supportive service strategies;
- Describe, as an element of the plan, the proposed approach to a public information/community awareness strategy and identify the specific audiences, groups with the highest prevalence of domestic violence, community(s), and target group(s) on which the efforts will be focused; and
- Include as critical elements in the plan:

—The development and use of non-traditional sources as information providers and in outreach efforts;
—The intended strategies for test marketing their development plans and give assurances that effectiveness criteria will be implemented prior to finalizing the plan;
—The specific interventions to be modeled and their responsiveness and sensitivity to the general violence in the African American community;
—A set of achievable objectives and the evaluation components that are to be used to measure the degree of success in achieving the objectives as well as the assessment of the program' impact.

Project Duration: The length of the project should not exceed 12 months.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $40,000 for the 12-month project period. Applications for lesser amounts also will be considered under this priority area.

Matching Requirement: GRANTEES MUST PROVIDE AT LEAST 25 PERCENT OF THE TOTAL COST OF THE PROJECT. THE TOTAL COST OF THE PROJECT IS THE SUM OF THE FEDERAL SHARE AND THE NON-FEDERAL SHARE. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $40,000 in Federal funds (based on an award of $40,000 per budget period) must include a match of at least $13,333 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated number of Projects to be Funded: It is anticipated that three projects may be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

3. Priority Area Number FV03–95: Domestic Violence/Child Protective Services Collaboration

Eligible Applicants: State and local public agencies, Territories, and Native American Tribes and Tribal Organizations who are recipients, or have been recipients, of Family Violence Prevention and Services Act grants; State and local child protection agencies; private nonprofit child welfare agencies; domestic violence advocacy organizations; and domestic violence State coalitions. Applicants must submit a signed Letter of Agreement between the public agency representing the child welfare/child protection responsibilities and the organization or coalition representing domestic violence advocacy organizations and their concerns. Either signatory to the Agreement may be the principal grantee. Previously successful applicants in this priority area for fiscal year 1994 are not precluded from participating in this announcement.

The Agreement to be submitted will specifically indicate the role each participant organization has in the implementation of the proposed project. Because the successful implementation of a proposed project would have implications for systemic/procedural change in the child welfare and/or the domestic violence community, the Letter of Agreement is mandatory.

Purpose: To develop effective strategies for domestic violence services integration into child protection systems and strategies. To offer the applicant organizations an opportunity to design, develop, and collaborate on one of several issues or areas of concern between the child protection system and the domestic violence community. Efforts are to be focused on the development of curricula and materials and the implementation of training to be available. The training of child protection representatives and domestic violence advocates will be to enable the most efficient and effective response when encountering partner abuse in the course of child abuse and neglect investigations. Protocols for effective strategies of intervention need to be designed, developed and put in place to allow the child protection system to assist and utilize the non-offending parent to protect his/her children.

Applicants may propose to do one or more of the following: Plan and implement the training of child protection service workers, supervisors and social services providers on the relationship of domestic violence and child abuse and neglect; develop and implement domestic violence responsive policies to be adopted by the Statewide child protection services system; develop and implement through the child protection system a domestic violence specific curriculum which will become part of a mandatory training program; develop and implement Memoranda of Understanding between the child protection system and the domestic violence statewide system; and gather and submit data correlating spouse abuse and child abuse and neglect.

Background: Based on a recent review of the literature, it has become evident that the correlation of spouse abuse and child abuse and neglect is no longer anecdotal but an established fact. Domestic violence is surfacing as one of the highest risks to children. Domestic violence represents physical endangerment to the child as well as the possibility for developmental delay.

In 1985, there were an estimated 795,000 abused children between the ages of 3 and 17 living in two-parent households (Gelles, Strauss, 1987). According to these studies, men are the main perpetrators of domestic violence and commit 95 percent of all assaults on spouses. In 70 percent of households in which women are abused, the men also commit child abuse (Schecter, 1982). Also, in 70 percent of child abuse cases treated at Boston Children's Hospital in 1991, the mother was abused as well.

In an attempt to establish the actual relationship between child abuse and battering in families, 116 mothers of children "darted" or flagged in a single year for abuse or neglect at a metropolitan hospital were studied by Stark and Flitcraft (1984). These examinations revealed that 45 percent of the abused children had mothers who themselves were being physically abused and another 5 percent had mothers whose relationships were "full of conflict," although abuse was not verified. Bowker, Arbitell and McFerron (1988) reported that children whose mothers had been battered were more likely to be physically abused and less likely to be "neglected" than children whose mothers had not been battered. In Hilberman and Munson's (1987) research, they found evidence of physical and/or sexual abuse of children in 20 of the 60 cases they studied. They concluded: "There seems to be two styles of abuse: the husband beats the wife who beats the children, and/or the husband beats both his wife and children."

Project Duration: The length of the project should not exceed 17 months.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $50,000 for the 17 month project period. Applications for lesser amounts also will be considered for this project.

Matching Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total cost of the project is the sum of the federal share and the non-federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $50,000 in Federal funds (based on an award of $50,000 per budget period) must include a match of at least $16,666 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be funded: It is anticipated that three project may be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

Part III—The Review Process

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Only agencies and organizations, *not individuals*, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one

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organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any nonprofit agency submitting an application must submit proof of non-profit status with its grant application. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. OCS cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Applications that are postmarked by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

OCS reserves the option of discussing applications with, or referring them to, other Federal or nonfederal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by OCS in making funding decisions.

In making decisions on awards, OCS may give preference to applications which focus on or feature: Minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and nonfederal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, OCS may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

Using the appropriate evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review each application. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Review Criteria for All Priority Areas

Applications under all priority areas will be evaluated against the following criteria:

1. Objectives and Need for the Project (20 Points)

State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance, its applicability to policy and practice. Provide a detailed discussion of the "state-of-the-art relative to the problem or area addressed by the application and indicate how the proposed effort will impact on it. State the goals or service objectives of the application. Provide supporting documentation or other testimonies from concerned interests other than the applicant. Summarize, evaluate and relate relevant data, based on planning or demonstration studies to the proposed project. The application must identify the specific topics or program areas to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 Points)

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, the extent to which the application indicates the anticipated contributions to policy, practice, and theory, and the extent to which the proposed project costs are reasonable in view of the expected results. Identify, in specific terms, the results and benefits, for target groups and human service providers, to be derived from implementing the proposed project. Describe how the expected results and benefits will relate to previous demonstration efforts. Describe in detail evaluation plans and procedures which are capable of measuring the degree to which the project objectives have been accomplished.

3. Approach (35 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; relates each task to the objectives and identifies the key staff member who will be the lead person; provides a chart indicating the timetable for completing each task, the lead person, and the time committed; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved.

The extent to which, when applicable, the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. Level of Effort: (25 Points)

Staffing pattern—Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff.

Competence of staff—Describe the qualifications of the project team including any experiences working on similar projects. Also, describe the variety of skills to be used, relevant educational background and the demonstrated ability to produce final results that are comprehensible and usable. One or two pertinent paragraphs

on each key member are preferred to resumes. However, resumes may be included in the ten pages allowed for attachments/appendices.

Adequacy of resources—Specify the adequacy of the available facilities, resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical and other resources to be provided by other profit and nonprofit organizations. Explain how these organizations will participate in the day to day operations of the project.

Budget—Relate the proposed budget to the level of effort required to obtain project objectives and provide a cost/benefit analysis. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative efforts—Discuss in detail and provide documentation for any collaborative or coordinated efforts with other agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations discussing the specifics of their commitment must be included in the application.

Authorship—The authors of the application must be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the project is funded.

Applicants should note that non-responsiveness to the section "*Minimum Requirements for Project Design*" will result in a low evaluation score by the panel of expert reviewers (Priority area FV03–95 is excepted from this requirement). Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

D. Available Funds

OCS intends to award grants resulting from this announcement during the fourth quarter of FY 1995. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 or 17 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

E. Grantee Share of Project Costs

Federal fund will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project with a total cost of $56,666 to implement would be:

Federal request	Non-Federal share	Total cost
$50,000 75%	$16,666 25%	$66,666 100%

Part IV—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, (E.O.) "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau, have elected to participate in the E.O. process and have established a Single Point of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from application deadline to comment on proposed new or competing continuation awards.

SPOC are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between more advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–11) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447.

A list of the Single Point of Contact for each State and Territory is included at the end of this announcement.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this program announcement under **DATES.** Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–11) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC. 20447, or

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focus on those most in need; and/or

derived, the extent to which they are

usable. One or two pertinent paragraphs

2. Sent on or before the deadline date and received by OCS in time for the independent review under DHHSCAM Chapter 1 62. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.

3. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D. Street, SW., Washington, DC 20447.

Late applications: Applications which do not meet the criteria stated above under "Deadlines" are considered late applications. The OCS shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; if OCS determines a deadline extension to be in the best interest of the Government. However, if OCS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A SF 424A, Page 2 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the Federal Register announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, instructions for these forms have been included at the end of Part IV of this announcement.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information" "Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Application"—Self-Explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Items 15. "Estimated Funding Levels"—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items *b–e* are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add to or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the

SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 30, 1995.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the total project period of 17 months or less. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including federally recognized Indian Tribes, "equipment" is nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d..

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and

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staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement if it was negotiated with a Federal agency other than DHHS. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, § 74.2, as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. Not applicable.

Total—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Objectives and Need for the Project;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Level of Effort.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" × 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

_____ One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

_____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

_____ Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

_____ A complete application consists of the following items in this order:

_____ Application for Federal Assistance (SF 424, REV 4–88);

_____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

_____ Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

_____ Budget justification for Section B—Budget Categories;

_____ Table of Contents;

_____ Letter from the Internal Revenue Service to prove non-profit status, if necessary;

_____ Copy of the applicant's approved indirect cost rate agreement, if appropriate;

_____ Project summary description and listing of key words;

_____ Program Narrative Statement (See Part III, Section C);

_____ Organizational capability statement, including an organization chart;

_____ Any appendices/ attachments;

_____ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

_____ Certification Regarding Lobbying; and

_____ Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles incorporation. Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgement of receipt of your application is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 401–5529.

F. Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total required financial grantee participation.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR part 74 or 92.

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental), 92 (governmental), OMB Circular A–133 and OMB Circular A–128. If an applicant does not request indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Pub. L. 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier

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contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purposes of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or *nonappropriated* funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

Dated: March 28, 1995.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (*give city, county, state and zip code*) | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT (*enter appropriate letter in box*) ☐
A State · H Independent School Dist
B County · I State Controlled Institution of Higher Learning
C Municipal · J Private University
D Township · K Indian Tribe
E Interstate · L Individual
F Intermunicipal · M Profit Organization
G Special District · N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award · B Decrease Award · C Increase Duration
D Decrease Duration · Other (*specify*) _____

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a Applicant | b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative | b Title | c Telephone number

d Signature of Authorized Representative | e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1		$	$	$	$	$
2						
3						
4						
5 TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for fund from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds need for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

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establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) related to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184-01-M

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

_____
Date

BILLING CODE 4184-01-M

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District**, *if known:*		5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known:*
6. **Federal Department/Agency:**		7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. **Federal Action Number**, *if known:*		9. **Award Amount**, *if known:* $
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*		b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply)*: $ _____ ☐ actual ☐ planned		13. **Type of Payment** *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:		**Authorized for Local Reproduction** **Standard Form - LLL**

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Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

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Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification to be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–8755 Filed 4–7–95; 8:45 am]

BILLING CODE 4184–01–M

federal register

Monday
April 10, 1995

Part VII

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 436

Federal Energy Management and Planning Programs, Energy Savings Performance Contract Procedures and Methods; Final Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 436

[Docket No. EE–RM–94–201]

RIN 1904–AA62

Federal Energy Management and Planning Programs; Energy Savings Performance Contract Procedures and Methods

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: The Department of Energy gives notice of final rules establishing a five-year pilot program of energy savings performance contracts designed to accelerate investment in cost effective energy conservation measures in existing Federal buildings and thereby save taxpayer dollars. Such contracts typically provide for installation of energy conservation measures financed with private sector funds which are repaid out of the resulting energy cost savings over time. This notice covers the following topics as required by section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287): qualified contractor lists; procedures and methods to select, monitor, and terminate contracts; and substitute regulations for certain provisions in the Federal Acquisition Regulation which are inconsistent with section 801 and which can be varied consistent with their authorizing legislation.

EFFECTIVE DATE: These rules become effective May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Joan G. Stone, EE–92, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5772 (regarding the regulations) and the FEMP Help Desk (for a copy of the revised model solicitations) (800) 566–2877.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (Department or DOE) today publishes a notice of final rulemaking which will inaugurate a Congressionally mandated experiment in procurement reform. This experiment involves a pilot program to test for five years the concept of accelerating installation of energy conservation measures in existing Federally owned buildings through energy saving performance contracts. This type of contracting calls for Federal agencies to contract for energy conservation services with performance guarantees and pay for them in the future from the resulting cost savings. If successful, this program will boost the level of energy efficiency investment significantly beyond what can be purchased with appropriated funds. It will also make a contribution to achieving ambitious national energy efficiency goals and to reducing greenhouse gas emissions.

Today DOE is also releasing revised versions of the model solicitations which were made available for public comment. These solicitations provide guidance to implementing Federal agencies on conducting procurement actions consistent with the rules in this notice. DOE will use these model solicitations in training workshops for agency procurement professionals.

On March 10, 1994, the President issued Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (59 FR 11463). Section 401 of the Executive Order requires agencies to utilize energy savings performance contracts to meet the goals and requirements of the Act. With the issuance of today's regulations and the model solicitations, Federal agencies have the regulatory flexibility to comply with the President's management directions. What is necessary now is action by senior agency officials, an appropriate agency priority on employing energy savings performance contracts, development and maintenance of a trained cadre of dedicated procurement personnel, and accountability for results.

Background

On April 11, 1994, (59 FR 17204) DOE published a notice of proposed rulemaking under section 155 of the Energy Policy Act of 1992 (Pub. L. 102–486). Section 155 revised the legislatively mandated policies with regard to energy saving performance contracts originally set forth in sections 801–804 of National Energy Conservation Policy Act (Act). Section 801 specifically authorizes Federal agencies to enter into such a contract for a term not to exceed 25 years. It also provides that such a contract contain provisions requiring the contractor to "incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract" (42 U.S.C. 8287(a)(1)). In addition, the Act specifically authorizes payment of amounts required by an energy savings performance contract "only from funds appropriated or otherwise made available to the agency . . . for the payment of energy expenses (and related operation and maintenance expenses)" (42 U.S.C. 8287a). Periodic reporting on progress by Federal agencies in modifying contract practices and in achieving energy savings under contracts is mandated by section 803 of the Act (42 U.S.C. 8287b). Definitions pertinent to sections 801–803 are set forth in section 804 of the Act (42 U.S.C. 8287c).

Section 155 of the Energy Policy Act inserted in section 801 a requirement for DOE to issue appropriate rules containing: (1) Methods and procedures for selecting, monitoring, and terminating energy savings performance contracts; and (2) "substitute regulations" for provisions of the Federal Acquisition Regulation (FAR) which are inconsistent with the intent of section 801 as amended and which may be revised consistent with generally applicable procurement statutes. Energy savings performance contracts are designed to reduce the cost of energy in Federal buildings without capital investment by the building owner. Typically, the terms of such a contract provide for contractor purchase, installation, and maintenance of energy conservation measures with a guarantee of annual energy cost savings in consideration for a share of such savings. "Under these contracts, the contractor is expected to bear the risk of performance, make a significant initial capital investment, guarantee significant energy savings to the government agency, and from these savings, the agency, in effect, makes payment to the contractor." H.R. Conf. Rep. No. 102–1018, 102d Cong., 2d Sess., 385, reprinted in 1992, U.S. Code Congressional and Administrative News 2476.

The Act requires that DOE obtain the concurrence of the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421) in the issuance of the final rule. The Federal Acquisition Regulatory Council has reviewed this notice and has no objection to the issuance of the final rule.

The model solicitations, referred to earlier in this Supplementary Information, provide uniform formats and standardized contract provisions recommended for Federal agency use in energy savings performance contracts. The model or generic solicitations include some provisions that have been

determined necessary to accommodate the unique nature of energy conservation services which often require third-party financing.

II. Discussion of Comments and Other Changes

DOE held a public hearing on June 1, 1994, and the closing date for receipt of written comments was June 10, 1994. Nineteen interested persons filed written comments of which 13 presented oral comments at the public hearing. DOE appreciated all comments and suggestions submitted in response to the proposed rule. DOE was especially appreciative of certain of those written comments that addressed the proposed guidance in the draft model solicitations in addition to the proposed regulations. DOE fully considered all of the suggestions and arguments made in the comments in revising the proposed regulations and the draft model solicitations. In this Supplementary Information section, DOE explains significant changes from the proposed regulations. Included in the explanation are responses to the major policy issues distilled from comments directed at the proposed regulations, as well as from comments directed at the draft model solicitations that had implications for the proposed regulations.

DOE has chosen not to respond to comments that request actions beyond its legal authority to issue regulations. For example, there is no need to respond to policy arguments in comments criticizing DOE's legal conclusions rejecting suggested substitute provisions for the Federal Acquisition Regulation. DOE hereby reaffirms its previously expressed views in this regard.

DOE has sent to each of the commenters a copy of the revised model solicitations and will be scheduling a public meeting at which time there can be a dialog on issues that relate solely to those solicitations. Interested persons who did not comment on the proposed regulations may obtain a copy of the revised model solicitations by calling the FEMP Help Desk at 1–800–566–2877. Any such person may attend the public meeting which will be noticed in the **Federal Register**.

A. Section 436.30 Purpose and Scope

As proposed, 10 CFR § 436.30(c) would encourage competition in utility incentive programs under section 546(c) of the Act. 42 U.S.C. 8256(c). A commenter recommended that language be added to proposed § 436.30(b) which would prohibit agencies from participating in utility incentive programs when the services could be provided by energy service contractors through energy savings performance contracts. Another commenter seeking to maximize competition suggested that the language in § 436.30(c) be revised to "require" instead of encourage utilities to select their contractors in a competitive manner. DOE did not accept either of these suggestions because it does not have the authority to regulate agency activities or contractual agreements with regard to utility incentive programs as authorized under section 546 of the Act.

DOE has added a paragraph (d) containing language to ensure that the rules published today are broadly construed when the regulatory language is not restrictive. Permissive language in the regulations ("may" rather than "shall") ordinarily should not be read to limit agency discretion. For example, the express authority to accept unsolicited proposals if certain conditions are satisfied does not preclude agencies from rejecting such a proposal because it prefers competitive solicitations or concludes that the proposal is too narrowly focused on one or two energy conservation measures.

B. Section 436.31 Definitions

Energy Audit

Regarding the definition of "energy audit," commenters generally agreed with the Department's position that specific energy audit requirements should not be prescribed in mandatory regulations. Apart from regulatory provisions requiring there to be energy audits at certain times, the specifics with regard to energy audits appear in the revised model solicitations.

Numerous comments on the model solicitations were received relating to the applicability, rigor, and timing of energy audits which may be conducted by a Federal agency or an energy service company, before or during a contract. Detailed responses to these comments appear later in this Supplementary Information section in the discussion of comments with regard to § 436.33. However, at this point, DOE notes that, in order to promote clarity, the definition of "energy audit" has been limited to "annual energy audits" that take place during the course of a contract to verify savings and to determine whether to adjust the energy baseline for changes in conditions beyond the contractor's control. This limitation is consistent with the statutory text which uses the term "energy audit" only in connection with post award, annual energy audits. DOE has also added definitions for two new terms: "preliminary energy survey" and "detailed energy survey." These two terms refer to audit-type procedures which may precede contractor selection and contract award, respectively.

Energy Conservation Measures

One commenter recommended that the definition of "energy conservation measures" include language which addresses "other environmental improvements" to encompass technological breakthroughs. DOE did not incorporate this comment into the rule because DOE has no authority under 42 U.S.C. 8287c to include the additional language.

Energy Cost Savings and Energy Savings

One commenter suggested that the statutory definition of "energy savings" in section 804 of the Act be included in the rule instead of the proposed "Energy Cost Savings" definition. Further, the commenter suggested that the proposed definition of the term "Energy Savings" be changed to "Energy Unit Savings."

DOE has accepted the latter suggestion because it implies in plain English that the measure of savings is in physical units. However, DOE has decided to retain "energy cost savings" as the defined term for savings measured in dollars. In general, DOE prefers to use defined terms which have definitions close to normal usage.

Some of the comments indicated uncertainty about the extent to which energy-related operation and maintenance cost savings are included in the definition of "energy cost savings." DOE recognizes that the law allows a contractor to be paid from savings in related operation and maintenance costs, if the contractor assumes responsibility for operations or maintenance of equipment it has retrofitted or replaced and which is currently covered in an operation and maintenance service contract.

One commenter recommended that DOE consider how "soft savings" should be defined and considered. Examples of soft savings are increased worker productivity and extended equipment life. DOE has decided not to address soft savings in the final rule because it is too subjective and difficult to measure accurately.

Energy Savings Performance Contracts

A commenter asked DOE to clarify whether the procedures in the rule for energy savings performance contracts apply to water conservation projects. DOE did not include water conservation in the definition for "energy savings performance contracts" in the rule because water conservation was not

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included in the definition in 42 U.S.C. 8287c.

C. Section 436.32 Qualified Contractor List

Paragraph (a) of 436.32 provides for annual notices in the Commerce Business Daily inviting submission of new statements of qualification and requiring submission by listed firms of updates to their statements as appropriate. This provision differs from the proposed rule only to the extent that the wording has been altered to make clear that submission of updated information is required.

One of the commenters on proposed § 436.32(a) argued that an annual update of the qualified list may unnecessarily restrict competition. Furthermore, the commenter argued that the usefulness of any such list may be limited by the age of the information provided by contractors. This commenter recommended that the list should be open continuously to add qualified contractors. Although an annual notice will be published, DOE will allow potential contractors that are not on a qualified list to submit a statement of qualifications at any time. DOE agrees that this will assist in increasing competition among firms.

The proposed rule provided for updating statements of qualifications, but did not make explicit that a firm could be delisted for failure to respond or because new information warranted disqualification. Paragraph (c) of § 436.32 remedies that omission.

The preamble to the proposed rule set forth two questionnaires which would be used to establish the qualified list of firms as provided under paragraph (a) of § 436.32. In response to DOE's request for public comments on the adequacy of the questionnaires, a number of firms submitted comments. The most significant of these are addressed below. These questionnaires have been revised based on public comments as discussed below. A copy of them is set forth after a discussion of public comments.

DOE agrees with commenters that it would be difficult for firms to identify all associates and subcontractors without the knowledge of specific projects and its location. The questionnaire was revised by deleting the requirement for the identification of subcontractors.

A commenter recommended that the table under "EXPERIENCE," seeking a five year summary of contract values for energy-related services, be clarified. It was noted that the total project cost had little bearing on technical ability or project management expertise. Based on this comment, the table was deleted, and a question was added to "Financial Status" requesting the largest capital investment for an energy savings performance contract for which the firm acquired financing.

Some of the commenters criticized the request for all legal or administrative proceedings pending or concluded adversely against firms within the last five years relating to procurement or performance of construction contracts. The commenter argued that: (1) Responding to the request would be too burdensome; (2) adverse judgments may not have an impact on a firm's financial status; and (3) the information would be sought and reviewed by a contracting officer in any event prior to award. DOE has accepted these comments and has deleted the request.

A commenter was concerned about the disclosure of proprietary information provided on their statements of qualifications. In the Department's view, information in a firm's statement of qualifications will be subject to the same restrictions on disclosure of proprietary and business sensitive information as other proposals and documents submitted to the Federal government by private firms. The Department does not believe any additional restrictions are necessary or advisable.

One of the comments suggested that the questionnaire should include questions about potential performance guarantors, and argued that the best interests of the government would be served if the qualified list did not include a firm that would rely on a legally separate guarantor in which the firm has an indirect financial interest. Contrary to this comment, DOE has concluded that the questionnaire should not include questions about potential performance guarantors because a firm's decision to seek insurance, regardless of source, is not relevant to determining whether a firm has the minimum qualifications to provide energy savings performance services.

Comments received on the experience criteria were divided. Some comments argued that new firms may have difficulty meeting the two year experience requirements, even if they have experienced personnel, and that reputable firms would have difficulty qualifying if they have no performance contracting experience. Another commenter stated that two successful contracts with two clients should be sufficient for qualification. To broaden the list of qualified firms and increase competition, paragraph (b)(1) of § 436.32 has been revised to allow contractors to qualify if they provide two contracts for installation of energy conservation measures, regardless of whether they are energy savings performance contracts, and if they otherwise have appropriate project experience showing success in using energy conservation technologies.

In response to comments that the draft experience criteria should remain unchanged because firms without a proven track record may not generate energy savings, DOE observes that the qualified list is an initial screening, and agencies will independently review a firm's qualifications through their source selection process and determine whether or not a firm has the ability to generate savings.

A question was asked by one commenter as to the effect a decision by DOE with respect to inclusion on the qualified contractors list would have on a contracting officer's obligation to refer nonresponsibility determinations to the Small Business Administration under FAR 19.602. Section 801(b)(2) of the Act authorizes the Department to establish a list of qualified contractors and requires agencies to use this list, or one developed in the same manner by the agency itself. Furthermore, agencies are authorized by the Act to select firms from the list to conduct discussions concerning a particular project. While this rule establishes certain criteria for inclusion of a firm on the list, the contracting officer is still required to make a responsibility determination on a procurement-specific basis. A decision that a particular small business is not "qualified" and, therefore, not eligible to be included on the qualified contractors list is not a determination of non-responsibility and has no effect on a contracting officer's obligation to make responsibility determinations.

Under paragraph (b)(2) of proposed § 436.32, a firm would have to be rated fair or better by its project clients to meet the minimum criteria. Commenters argued that the minimum criteria be raised to a rating above "fair." DOE decided not to accept this comment. Instead the client questionnaire was revised to add "recommend contractor" to the rating of "fair" to make it clear that even though there was room for improved quality and performance, the client would still give the firm a positive recommendation because the firm met the project objective. With this modification of the questionnaire, DOE believes that a client rating of fair or better is sufficient to consider a firm for the qualified list. During the actual source selection process, agencies will independently make the determination whether a firm meets the minimum requirements to accomplish a specific project.

Commenters recommended that paragraph (b)(4) of proposed § 436.32 be changed by adding a statement related to the financial strength of the firm to provide adequate bonding. This was not included in the qualification process because agencies will address a firm's bonding capabilities prior to the award of a specific contract.

A commenter recommended that paragraph (c) of proposed § 436.32 should be revised to allow any Federal agency to enter into sole source contracts with firms competitively selected by local utilities. This recommendation was not incorporated in the final rule because DOE has no authority under 42 U.S.C. § 8287 to implement it.

One commenter recommended that firms not selected for inclusion on the qualified contractors list be given an opportunity to comment on adverse information short of filing an appeal to the General Services Administration Board of Contract Appeals. Section 436.32(d) of the rule provides firms found not to be qualified the opportunity for a debriefing from a DOE official. In the Department's view, this should provide an efficient informal method for advising a disappointed firm of the basis for the Department's decision. Furthermore, since the list will be updated on a continual basis rather than annually, firms will be able to provide corrected or supplemented statements of qualifications for consideration by the Department at any time.

Following are questionnaires the Department plans to use for establishing the qualified list:

1. General Information

(a) Name and address of firm:
(b) Telephone No.:
Fax No.:
(c) Indicate type of firm:
_____ Partnership
_____ Corporation
_____ Sole proprietor
_____ Branch Office of
_____
_____ Joint Venture (List venture partners)

_____

_____

_____Other (Explain) _____

(d) This submittal applies to:
[ ] Parent Company
[ ] Subsidiary
[ ] Division
[ ] Branch Office
[ ] Other

List the names of any of the above marked entities which are to be considered in the prequalification process, and describe their functions, responsibilities, and interrelationships.

(e) Names and titles of two people authorized to represent the firm
(f) Federal Employer Identification Number
(g) Year firm was established
(h) Name and address of parent company (if applicable)
(i) Indicate previous names of firm:
_____
(j) Has your firm been competitively selected by a Utility Company under a Demand-Side Management Bidding program to provide conservation services for commercial and industrial customers? Yes _____ No _____ If yes, please designate the utility and provide pertinent information.
(k) Indicate the largest dollar value of investment your firm would consider for a Federal Government energy savings performance contract (ESPC)
(l) Indicate the regions of the country your firm would consider providing Federal ESPC services
[ ] Region 1 (CT, ME, NH, VT, MA, RI)
[ ] Region 2 (NY, NJ)
[ ] Region 3 (MD, DE, VA, WV, DC, PA)
[ ] Region 4 (FL, GA, KY, MS, NC, SC, TN, AL)
[ ] Region 5 (IL, IN, MI, MN, OH, WI)
[ ] Region 6 (AR, LA, NM, OK, TX)
[ ] Region 7 (IA, KS, MO, NE)
[ ] Region 8 (CO, MT, ND, SD, UT, WY)
[ ] Region 9 (CA, AZ, NV, HI)
[ ] Region 10 (WA, OR, AK, ID)
[ ] All Regions
[ ] Territories
[ ] Overseas Facilities
[ ] Exceptions (specify) _____

2. Experience

(a) List and briefly describe two projects completed by your firm that have been operating and saving energy or reducing utility costs and that best illustrate your range of experience relative to energy savings performance contracting or energy management expertise (e.g., type of technologies implemented). If your firm does not possess ESPC experience with the technologies for which you want to be qualified, provide the experience of your firm in implementing other technologies. One project should represent the largest project completed, and the other should represent a recently completed project. For each project, provide information on the following items:

1) Project title and location.
2) Client to contact regarding the project, his or her position, address, and telephone number.
3) Whether the project was for public or private sector.
4) Briefly describe the facility including function, number of buildings, and size in square feet.
5) Total contract amount.
6) Type of financing arranged by your firm.
7) Type and term of contract.
8) Starting and ending dates.
9) Whether the project was completed on schedule. If not, explain.
10) Projected annual energy savings and/or demand reduction.
11) Performance guarantees, if performance-based energy service contract.
12) Actual annual energy savings and/or demand reduction achieved for each project.
13) Notes, explanations, or any other information relating to the project. (Optional)

(b) Indicate the number of years in business as an Energy Management Contractor: _____ years. Indicate all other names for your firm and the length of time your firm had that name.

3. Technical Capability

List the technologies (e.g., lighting; HVAC systems) which your firm may propose to apply to a building or facility to implement energy conservation measures under an energy savings performance contract.

4. Available Staff

(a) Indicate the experience in energy management and energy conservation services of the personnel in your firm that you are intending to utilize on projects.

(b) List all professional and skilled trades which your firm customarily performs with your own employees.

5. Financial Status

(a) For each year in the last five years, identify the largest capital investment for an ESPC in which your firm acquired financing.

(b) State whether your firm (or predecessors, if any) or any principal of the firm has been insolvent or declared to be in bankruptcy within the past 5 years.

(c) Indicate whether your firm or any principal of the firm has been debarred by the Federal Government and provide explanation.

The following is the revised questionnaire that the firm will send to two of its clients:

1. Was the project completed on schedule?

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2. Did contract involve energy savings performance guarantees? If so, describe performance guarantees (e.g., annual energy or cost savings).
3. Did the installed project achieve energy savings and/or demand reduction projected or guaranteed by contractor?
4. Was the method(s) used by the contractor to determine annual energy savings and/or demand reduction acceptable for the type of energy conservation measures installed?
5. Did the contractor provide satisfactory operations, maintenance, and repair services, if any?
6. Were rebates from the utility in your area available to you? If yes, did the contractor arrange satisfactory utility supplier rebates or other financial incentives?
7. Did the contractor provide or arrange satisfactory project financing?
8. What was your total compensation under the contract?

9. Provide a rating, using the categories identified below, of your overall satisfaction with the services provided by the contractor. Please briefly explain your reasons for giving a rating of "Fair" or "Poor," as applicable.

[ ] *Excellent*—Exceeded expectations, highly recommend contractor.
[ ] *Good*—Met all requirements, recommend contractor.
[ ] *Fair*—Achieved project objective, room for improved quality and performance, recommend contractor.
[ ] *Poor*—Significant shortfall in meeting contractual requirements, would not recommend.

If an accreditation process by a professional association effectively covers some or all of the information requested through this survey, evidence of accreditation could be submitted in lieu of the relevant portion(s) of this questionnaire.

D. Section 436.33 Procedures and Methods for Contractor Selection

The proposed contractor selection methods and procedures in the proposed rule and in the model solicitations attracted substantial comment. Several commenters provided detailed critiques of the method for competitive selection of contractors. In their view, the Department's proposed method of contract award would be more expensive for prospective contractors and expose them to more risk than the usual method under which such contracts are awarded in the private sector. Under the draft model solicitations, all potential contractors would conduct "investment-grade" audits before submitting a proposal. This is an expensive undertaking which, the commenters argued, would discourage firms from competing and from offering a comprehensive package of energy conservation measures.

The foregoing comments led the Department to rethink the method for competitive selection of contractors. Both the proposed regulations and the draft model solicitations have been revised to provide Federal agencies the option to use a two stage proposal process instead of the more conventional selection process. In the first stage, the Federal agency would solicit initial proposals. In the solicitation, the Federal agency could release whatever data it had about a building, indicate what energy conservation measures should be included in a proposal, and allow potential proposers the opportunity to conduct a "preliminary energy survey." Upon receipt of proposals, the Federal agency would preliminarily select a proposer and announce an intent to make an award. However, prior to award, the Federal agency would have the option to require a selectee to conduct a "detailed energy survey" to confirm or modify its proposal, subject to the condition that the confirmed or modified proposal would include a performance guarantee that does not reduce the energy cost savings estimated in the initial proposal more than a fixed percentage set forth in the solicitation. If this condition is not met, the Federal agency may select another firm from among those submitting initial proposals. On the other hand, as the model solicitation provides, if the detailed energy survey revealed previously unsuspected potential savings, the contract award could include the additional energy conservation measures.

DOE decided to describe pre-award energy auditing procedures as energy surveys because section 801 of the Act only refers to "annual energy audits." The difference between a "preliminary energy survey" and a "detailed energy survey" is the degree of rigor in the survey. The former would be in the nature of what some of the comments described as a "scoping audit," and the latter could resemble what some of the comments described as "investment grade audits." There would be no obligation on a Federal agency to require a "preliminary energy survey," and if existing data were sufficient, then there would be no functional purpose to such survey. The degree of rigor in a "detailed energy survey" would be a function of how much information a proposer who has been selected for award needs to confirm or modify a proposed performance guarantee. The Department is of the view that selection for award should be enough of an inducement for a proposer to undertake the risk of conducting a "detailed energy survey" that might not lead to an award. The Department believes that this change in the method of selecting a contractor will reduce cost and risk for potential contractors and, thereby, increase competition in energy savings performance contracting for the Federal Government.

One commenter objected to the provision in proposed § 436.33(a)(1) that agencies "request the submission of 'intent to propose' statements from all firms on the list who may be interested in proposing" and that selection of the contractor be from those firms submitting "intent to propose" statements. The commenter considered this provision inconsistent with the statutorily-based requirement in 48 CFR subpart 5.2 that proposed contract actions be synopsized in the Commerce Business Daily. The Department agrees with this comment and has revised § 436.33(a) of the rule to provide for issuance of a CBD notice to inform interested firms of a planned energy savings performance contract. DOE has decided that the proposed rule requirement for submission of an "intent to propose" statement for firms on the qualified list is unnecessary in light of the decision to use a CBD notice to inform firms of a performance contract action.

Section 436.33(a)(4) of the proposed rule stated that a contractor may be competitively selected based on proposals for a representative sample of buildings at a large facility. The agency may then request further proposals from the contractor for all or some of the remaining buildings at the site. One commenter suggested the addition of language to this section clarifying that the agency is not obligated to award a contract or contracts to the selected contractor based on such further proposals. The agency is free to conduct additional competitions covering the other buildings. The Department agrees that agencies should be free to conduct such a competition, but does not agree that this clarification is necessary because the regulatory provision is worded permissively. It states what an agency "may" do and not what it must do.

Some commenters expressed concern about the protection of proprietary and confidential information that may be contained in unsolicited proposals.

Section 801(b)(2)(C)(iii) of the Act requires Federal agencies to publish a notice in the Commerce Business Daily regarding the receipt of an unsolicited proposal and inviting other qualified firms to submit competing proposals. In the Department's view, the content of such notices, as well as unsolicited proposals themselves, will be subject to the same restrictions on disclosure of proprietary and business sensitive information as other proposals and documents submitted to the Federal government by private firms. The Department does not believe any additional restrictions are necessary or advisable.

One commenter recommended that the proposed rule be revised to permit the submission of unsolicited proposals from any firm, not just those on the qualified contractors list. The commenter contended that this provision in the proposed rule is an unnecessary limitation which is inconsistent with section 801 of the Act. The Department does not agree with this comment. Section 801(b) of the Act permits receipt of unsolicited proposals from those companies that are "qualified." The word "qualified" is used in connection to the statutory provisions governing the qualified contractor's list. As used in context, "qualified" appears to apply only to companies on the qualified contractors list. Firms will be able, under the final rule, to submit statements of qualifications at any time and may be added to the list if found to be qualified. Thus the limitation in section 801 of the Act on unsolicited proposals should not act as an impediment to firms wishing to submit such a proposal.

One commenter suggested the deletion from § 436.33(b) of the reference to the statutory provisions (10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5)) which permit other than full and open competition when "authorized or required by law." The commenter argued that the procedures and methods established pursuant to section 801(b)(2) of the Act constitute "competitive" procedures for the selection of energy savings performance contractors. In considering this comment, the Department examined the applicability of the Competition in Contracting Act provisions to the "procedures and methods" which the Energy Policy Act requires the Secretary of Energy to establish for the selection, monitoring and termination of contracts with energy savings performance contractors. The Department has concluded that, under 41 U.S.C. 253(a)(1), the procedures and methods required by the Act are "procurement procedures otherwise expressly authorized by statute," and, as a consequence, are exempt from the Competition in Contracting Act's requirement for full and open competition. Accordingly, the reference to 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5) has been deleted in the final rule.

The Department has added language to § 436.33(b) to clarify that, with respect to the receipt of unsolicited proposals for energy savings performance contracts, the provisions contained in § 436.33 apply instead of the following Federal Acquisition Regulation provisions which relate to the treatment of unsolicited proposals: 48 CFR 15.503(a) and (c); 48 CFR 15.506–2(a)(1); 48 CFR 15.507(a), (b)(2), (b)(3), (b)(4) and (b)(5). These provisions have been made inapplicable because they relate to the requirement in the Federal Acquisition Regulation that unsolicited proposals must be unique and innovative. This requirement does not apply to the selection and award of energy savings performance contracts.

One commenter objected to the prohibition in proposed § 436.33(b)(2) against an award of an energy savings performance contract based on an unsolicited proposal "if there are other energy conservation measures which reasonably could be implemented in the existing Federally owned building or facility." This proposed prohibition, in the commenter's view, is overly broad and vague and could make the award of energy savings performance contracts on the basis of unsolicited proposals difficult if not impossible. The Department agrees that the proposed limitation is unnecessarily restrictive and is not required by the Act. Thus the Department has deleted it.

The proposed rule did not purport to restrict agency awards based on unsolicited proposals where no response is received to a Commerce Business Daily notice. However, there was concern expressed in the comments about acceptance of such an unsolicited proposal if it focused exclusively on a small number of energy conservation measures and ignored other significant opportunities to increase energy efficiency. Although refusal to accept an unsolicited proposal could be predicated on an excessively narrow focus, DOE is not prepared to require that agencies reject all unsolicited proposals with only one or two energy conservation measures. The facts and circumstances may warrant agency acceptance of such a proposal. Accordingly, DOE has restructured paragraph (b) of § 436.33 into three paragraphs to make the policies on unsolicited proposals easier to read, and paragraph (b)(2) makes explicit that an agency may reject an unsolicited proposal because it is too narrow in scope.

One of the commenters expressed an interest in clarification of paragraph (c) of proposed § 436.33 which purported to recognize the authority of the Department of Defense under other law, 10 U.S.C. 2865, to negotiate "energy savings performance contracts" with contractors selected competitively by utilities. Another commenter argued for deletion of paragraph (c) because it could be a source of potential confusion. DOE has opted to delete the paragraph because construction and application of 10 U.S.C. 2865 is the responsibility of the Department of Defense.

Almost all commenters agreed with the Department's preliminary determination that the requirement for submission of certified cost or pricing data should be waived. These commenters provided additional support for the conclusion that this requirement is inconsistent with the intent of section 801 of the Act. They pointed out that, under energy savings performance contracts: (1) The government makes no up-front payments to the contractor; (2) the risk of performance is entirely with the contractor; and (3) the government only pays the contractor out of verified savings that result from the services performed by the contractor. They emphasized the expense and administrative burden that submission of certified cost or pricing data and compliance with cost accounting standards represent to energy service companies. A number of commenters noted that, for smaller companies, compliance with these requirements might pose a significant impediment to competing for government contracts.

Two commenters questioned DOE's authority to waive the requirement for submission of certified cost or pricing data for other Federal agencies. They also pointed out that the Truth in Negotiations Act, which requires the certification, was designed to assist the government in negotiating fair and reasonable prices and that energy savings performance contracts must be awarded at fair and reasonable prices.

The Department agrees that in most cases the waiver authority provided by law appropriately resides with the head of the procuring activity awarding the contract (§ 304A(b)(1)(B) of the Federal Property and Administrative Services Act of 1949). In the case of energy savings performance contracts, however, the Energy Policy Act expressly directs the Secretary of Energy to establish

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methods and procedures for selecting, monitoring and terminating such contracts. Other agencies are required to follow these procedures if they wish to enter into an energy savings performance contract. Consequently, the Department has concluded that it has the necessary authority to find that energy savings performance contracts as a class are "an exceptional case" and to direct the heads of procuring activities to waive the requirement for the submission of certified cost or pricing data for such contracts.

It should be noted, however, that waiver of the requirement for certified cost or pricing data is not intended to preclude contracting officers from requesting information considered necessary to determine whether a contractor's prices are fair and reasonable. Language has been added to § 436.33(c) to provide that the waiver does not preclude agencies from requesting the submission of pricing and related financial information as part of contract proposals.

One commenter suggested that the rule itself, rather than merely the preamble, contain a provision stating that energy savings performance contracts are firm fixed-price contracts. The Department agrees with this comment and has added appropriate language which appears in § 436.33(c) of the final rule.

E. Section 436.34 Multi-year Contracts

In editing the proposed rules, DOE decided to reorganize some of the provisions by redesignating proposed § 436.35(e) as § 436.34. Paragraph (a)(2) has been reworded to make it clearer that the funding condition prerequisite for a multiyear contract only requires that appropriations for the costs of the first fiscal year (not the total contract term) must be available and adequate. DOE has also added a new paragraph (b) to § 436.34 designed to prevent misunderstanding of paragraph (a)(2). The new paragraph reinforces the plain meaning of paragraph (a)(2) because some agency officials, on the basis of an inappropriate excess of caution, may be inclined to construe paragraph (a)(2) or other provisions of the Act or the regulations to require that agencies have adequate and available appropriated funds to pay for contract costs of the entire multiyear term of the contract. Such a requirement would amount to a crippling interpretation of the Act and these regulations, and would be inconsistent with the literal meaning of relevant statutory and regulatory provisions and with the underlying Congressional intent.

DOE has redesignated proposed paragraph (b) as paragraph (a)(4) and has added language to clarify that the establishment of a cancellation ceiling is required in the case of a multiyear energy savings performance contract under this part.

F. Section 436.35 Standard Terms and Conditions

Proposed § 436.34 has been redesignated as § 436.35(a). It is not an exclusive list of contractual terms and conditions. The items covered involve subjects not specifically addressed by the Act (e.g., financing agreements and disposition of title) or statutory requirements that need some interpretation (e.g., provision for conduct of the annual energy audits). A phrase has been added to paragraph (a)(1) to make clear that a clause pertinent to the risk of default on financing would be unnecessary if there is no third party financing. Language has also been added to paragraph (a)(1) to require contracting officers to consider any expected change in the performance of equipment which the contractor is proposing to modify or replace.

Paragraph (c) of proposed § 436.34, which has been redesignated as paragraph (a)(3) of § 436.35, indicated that a contract should contain a clause on "final" disposition of title to systems and equipment. DOE deleted the word "final" to avoid any ambiguity with regard to whether an agency may negotiate a clause delaying the disposition decision until some future point in time during the contract term.

Comments were received concerning the need for a lender to acquire a security interest in installed energy conservation measures. DOE added language in a new paragraph (b) to clarify that energy savings performance contracts may permit a financing source to acquire a security interest in the installed systems and equipment. DOE also shifted proposed § 436.34(a) to § 436.35(b) so that the regulatory policy on third party financing is located in a single paragraph and stated permissively.

G. Section 436.36 Conditions of Payment

Section 436.36 was proposed as § 435.35. The section title has been changed from "Funding" to "Conditions of Payment" in order to make it easier to identify the subject matter covered by the text.

H. Section 436.37 Annual Energy Audits

Section 436.37 was proposed as § 436.36. In order to identify the subject matter more clearly, the section title was changed from "Procedures and methods to monitor contracts" to "Annual energy audits."

As discussed above, the term "energy audit" used in the proposed rule in § 436.36 will be changed in the final rule to "annual energy audit" to clarify that the procedures for monitoring contracts refer only to annual energy audits used to verify post-installation energy savings performance annually as required by section 801 of the Act. The "annual energy audit" refers to an energy savings measurement and verification procedure or method agreed to in the contract and occurs after energy conservation measures are installed and operational and annually thereafter throughout the contract term. The Department recognizes that it is common industry practice to monitor the energy savings performance of contractor installed measures on a monthly basis. However, the final rule incorporates an annual energy audit requirement, which at the Federal agency's discretion, may be an annual review and confirmation of cumulative monthly energy savings reports submitted by the contractor over a year.

A few commenters suggested that the hiring of an independent consultant by the contractor to conduct annual verification of savings guarantees created the appearance of a conflict of interest. Commenters recommended that the Federal agency verify the annual energy savings performance itself, or if it lacked the in-house expertise, pay for an independent consultant to perform the annual energy audits. One commenter suggested that if the agency could not perform annual savings verification and paying for consultant services for the same was not practicable, it could consider utilizing a consultant hired by the contractor and approved by the government. The Department recognizes that the Federal agency has an obligation to verify energy savings performance which is the basis of payment and to confirm that the government has received contracted annual energy savings. The Department therefore agrees with the suggestion that the federal agency is ultimately responsible for verifying annual energy savings. This may involve an in-house review of monthly energy savings reports generated by measurement and verification protocols incorporated in the contract, or may involve use of a consultant as needed. The Department has modified the proposed regulatory provisions applicable to annual energy audits, and § 436.37 reflects these modifications.

Extensive public comment was received on the issue of annual energy audits, energy baselines, and energy savings measurement and verification protocols generally. Many comments supported DOE's proposal to avoid the use of a prescriptive method for developing energy baselines or conducting post installation or annual energy audits. Other commenters suggested, however, the adoption of standardized measurement and verification protocols such as those used in utility Demand Side Management programs in New Jersey and California which were developed collaboratively by members of the energy services and utility industries. The Department recognizes the value that standardizing methods or protocols would have on streamlining or improving government evaluations of performance contract proposals, particularly for proposals with various energy conservation measures. However, the Department will not regulate the methods or procedures for establishing energy savings performance, as there are currently no recognized national standards or protocols available for energy savings measurement and verification. The Department, however, plans to use the existing measurement and verification protocols recommended by several commenters in Federal agency energy savings performance contracting training materials to expose federal personnel to various techniques, methods and procedures used in the energy services and utility industries to validate energy savings performance. The Department is actively participating in a collaborative process with the private sector to develop a national consensus protocol for monitoring and verification of energy service performance contracts. That protocol is expected to be available in early 1996. In the near term, the Department plans to provide direct technical assistance to agencies relating to negotiation of contracts which include mechanisms to verify energy savings performance.

One commenter suggested that two factors should be added to the list of factors contributing to energy baseline adjustments in § 436.36(b). The recommended additional factors were "Utility rates" and "Major change of use." The Department agrees with the suggestion of adding "(7) Utility rates," but "Major change of use" is considered too ambiguous to be included the final rule.

I. Section 436.38 Terminating Contracts

Section 436.38 was proposed as § 436.37. The section title has been shortened from "Procedures and methods to terminate contracts."

Comments were provided with respect to the appropriate provisions and methods for terminating an energy savings performance contract in the event of a termination for the convenience of the government or a termination for default. One commenter provided a very detailed discussion of this subject, asserting that, even when the Federal agency is receiving the guaranteed energy cost savings, a termination for convenience could result in the contractor incurring a loss on the contract. The commenter argues further that, because the termination for convenience provisions of the Federal Acquisition Regulation focus on costs incurred by the contractor in performing the work, many of the standard provisions are inappropriate for contracts based solely on the energy cost savings realized by the Federal agency.

Although DOE agrees that contractor compensation under an energy savings performance contract is not tied to costs incurred, the Department is not persuaded that the use of the standard termination for convenience clause would result in a financial loss for the contractor. In the Department's view, if an energy savings performance contract is terminated for the convenience of the government, the contractor could expect to recover its capital investment, any incurred maintenance and repair costs (services), financing costs (including any prepayment penalty) and a reasonable profit. As provided in § 436.35(a)(6) of the rule, "financial charges" are appropriate costs which are to be reflected in payment schedules under energy savings performance contracts.

In the example provided by the commenter in which the realized energy savings fall considerably short of the guaranteed savings amount, the commenter argued for special termination provisions on the theory that there is little incentive for the agency to terminate the contract, since the contractor is required to continue paying the agency the guaranteed amount whether or not that amount of savings is realized. DOE is not persuaded by this argument because it is based on the faulty premise that a contractor would have no right to a baseline adjustment. Section 436.37 provides for such an adjustment in appropriate circumstances and anticipates that the details will be negotiated as part of the contract.

The Department recognizes that, unlike contract termination under the Federal Acquisition Regulation, termination of an energy savings performance contract in the private sector is usually governed by a schedule of termination amounts for each year of the contract, which is negotiated and agreed to between the parties at the time of entering into the contract. While the Department is not persuaded that this termination method should be "substituted" for the standard termination provisions in the Federal Acquisition Regulation, agencies may consider such an approach on a contract-specific basis.

The provisions of the proposed rule on termination were consistent with the Federal Acquisition Regulation. To clarify this, a new paragraph (a) has been added to reference the applicable part of the Federal Acquisition Regulation, 48 CFR part 49. Proposed paragraph (a) has been retained as paragraph (b) to reinforce the requirement that the termination liability of the Federal agency may not exceed the cancellation ceiling set forth in the contract. Proposed paragraph (b) has been deleted as unnecessary.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, it was subject to review by the Office of Information and Regulatory Affairs (OIRA). OIRA completed its review without requesting any substantive changes.

B. Review Under the Regulatory Flexibility Act

The rules were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that these rules will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. Earlier in this notice, DOE described two

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questionnaires for use under the rule. The first involved a contractor's qualifications for inclusion on the qualified contractors list. The second would be directed at clients of a contractor applicant for inclusion on the list in order to obtain project specific information with regard to the client's experience with the contractor.

The information DOE proposes to collect on the above-described questionnaires is necessary to determine whether a contractor is adequately experienced and reliable to be placed on the qualified contractors list. DOE believes that in the typical case the frequency of response will be once every 12 months. After the initial application is filed, a successful contractor would only have to update information which might have changed during the interim. The public reporting burden is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the questionnaire.

On August 8, 1994, OMB approved the collection of information through August 1997 and assigned approval number 1910–0067.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that these rules are categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. These rules will revise certain policy and procedural requirements applicable only to Federal contracts. Therefore, the Department of Energy has determined that these rules will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that these rules meet the requirements of section 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 436

Energy conservation; Federal buildings and facilities; Reporting and recordkeeping requirements; Solar energy.

Issued in Washington, D.C. on this 31st day of March 1995.

Peter S. Fox-Penner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 436 of Title 10, Subchapter D of the Code of Federal Regulations is amended as set forth below:

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

1. The authority citation for Part 436 is revised to read as follows:

42 U.S.C. § 6361; 42 U.S.C. 8251–8263; 42 U.S.C. 8287–8287c.

2. Section 436.2 is amended by removing the word "and" after the semicolon at the end of paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) as follows:

§ 436.2 General objectives.

* * * * *

(c) To promote the use of energy savings performance contracts by Federal agencies for implementation of privately financed investment in building and facility energy conservation measures for existing Federally owned buildings; and

* * * * *

3. New Subpart B, consisting of sections 436.30 through 436.38, is added to read as follows:

Subpart B—Methods and Procedures for Energy Savings Performance Contracting

Sec.

436.30 Purpose and scope.
436.31 Definitions.
436.32 Qualified contractors lists.
436.33 Procedures and methods for contractor selection.
436.34 Multiyear contracts.
436.35 Standard terms and conditions.
436.36 Conditions of payment.
436.37 Annual energy audits.
436.38 Terminating contracts.

Subpart B—Methods and Procedures for Energy Savings Performance Contracting

§ 436.30 Purpose and scope.

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts awarded within five years of May 10, 1995. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

(b) *Utility incentive programs.* Nothing in this subpart shall preclude a Federal agency from—

(1) Participating in programs to increase energy efficiency, conserve water, or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities;

(2) Accepting financial incentives, goods, or services generally available from any such utility to increase energy efficiency or to conserve water or manage electricity demand; or

(3) Entering into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of each Federal agency.

(c) *Promoting competition.* To the extent allowed by law, Federal agencies should encourage utilities to select contractors for the conduct of utility incentive programs in a competitive manner to the maximum extent practicable.

(d) *Interpretations.* The permissive provisions of this subpart shall be liberally construed to effectuate the objectives of Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287–8287c.

§ 436.31 Definitions.

As used in this subpart—

Act means Title VIII of the National Energy Conservation Policy Act.

Annual energy audit means a procedure including, but not limited to, verification of the achievement of energy cost savings and energy unit savings guaranteed resulting from implementation of energy conservation measures and determination of whether an adjustment to the energy baseline is justified by conditions beyond the contractor's control.

Building means any closed structure primarily intended for human occupancy in which energy is consumed, produced, or distributed.

Detailed energy survey means a procedure which may include, but is not limited to, a detailed analysis of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy for the purpose of confirming or revising technical and price proposals based on the preliminary energy survey.

DOE means Department of Energy.

Energy baseline means the amount of energy that would be consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, submetering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or some combination of these methods.

Energy conservation measures means measures that are applied to an existing Federally owned building or facility that improves energy efficiency, are life-cycle cost-effective under subpart A of this part, and involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

Energy cost savings means a reduction in the cost of energy and related operation and maintenance expenses, from a base cost established through a methodology set forth in an energy savings performance contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

(1) The lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

(2) The increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

Energy savings performance contract means a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more locations.

Energy unit savings means the determination, in electrical or thermal units (e.g., kilowatt hour (kwh), kilowatt (kw), or British thermal units (Btu)), of the reduction in energy use or demand by comparing consumption or demand, after completion of contractor-installed energy conservation measures, to an energy baseline established in the contract.

Facility means any structure not primarily intended for human occupancy, or any contiguous group of structures and related systems, either of which produces, distributes, or consumes energy.

Federal agency has the meaning given such term in section 551(1) of Title 5, United States Code.

Preliminary energy survey means a procedure which may include, but is not limited to, an evaluation of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy, for the purpose of developing technical and price proposals prior to selection.

Secretary means the Secretary of Energy.

§ 436.32 Qualified contractors lists.

(a) DOE shall prepare a list, to be updated annually, or more often as necessary, of firms qualified to provide energy cost savings performance services and grouped by technology. The list shall be prepared from statements of qualifications by or about firms engaged in providing energy savings performance contract services on questionnaires obtained from DOE. Such statements shall, at a minimum, include prior experience and capabilities of firms to perform the proposed energy cost savings services by technology and financial and performance information. DOE shall issue a notice annually, for publication in the Commerce Business Daily, inviting submission of new statements of qualifications and requiring listed firms to update their statements of qualifications for changes in the information previously provided.

(b) On the basis of statements of qualifications received under paragraph (a) of this section and any other relevant information, DOE shall select a firm for inclusion on the qualified list if—

(1) It has provided energy savings performance contract services or services that save energy or reduce utility costs for not less than two clients, and the firm possesses the appropriate project experience to successfully implement the technologies which it proposes to provide;

(2) Previous project clients provide ratings which are "fair" or better;

(3) The firm or any principal of the firm has neither been insolvent nor declared bankruptcy within the last five years;

(4) The firm or any principal of the firm is not on the list of parties excluded from procurement programs under 48 CFR part 9, subpart 9.4; and

(5) There is no other adverse information which warrants the conclusion that the firm is not qualified to perform energy savings performance contracts.

(c) DOE may remove a firm from DOE's list of qualified contractors after notice and an opportunity for comment if—

(1) There is a failure to update its statement of qualifications;

(2) There is credible information warranting disqualification; or

(3) There is other good cause.

(d) A Federal agency shall use DOE's list unless it elects to develop its own list of qualified firms consistent with the procedures in paragraphs (a) and (b) of this section.

(e) A firm not designated by DOE or a Federal agency pursuant to the procedures in paragraphs (a) and (b) of this section as qualified to provide energy cost savings performance services shall receive a written decision and may request a debriefing.

(f) Any firm receiving an adverse final decision under this section shall apply to the Board of Contract Appeals of the General Services Administration in order to exhaust administrative remedies.

§ 436.33 Procedures and methods for contractor selection.

(a) *Competitive selection.* Competitive selections based on solicitation of firms are subject to the following procedures—

(1) With respect to a particular proposed energy cost savings

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performance project, Federal agencies shall publish a Commerce Business Daily notice which synopsizes the proposed contract action.

(2) Each competitive solicitation—

(i) Shall request technical and price proposals and the text of any third-party financing agreement from interested firms;

(ii) Shall consider DOE model solicitations and should use them to the maximum extent practicable;

(iii) May provide for a two-step selection process which allows Federal agencies to make an initial selection based, in part, on proposals containing estimated energy cost savings and energy unit savings, with contract award conditioned on confirmation through a detailed energy survey that the guaranteed energy cost savings are within a certain percentage (specified in the solicitation) of the estimated amount; and

(iv) May state that if the Federal agency requires a detailed energy survey which identifies life cycle cost effective energy conservation measures not in the initial proposal, the contract may include such measures.

(3) Based on its evaluation of the technical and price proposals submitted, any applicable financing agreement (including lease-acquisitions, if any), statements of qualifications submitted under § 436.32 of this subpart, and any other information determines to be relevant, the Federal agency may select a firm on a qualified list to conduct the project.

(4) If a proposed energy cost savings project involves a large facility with too many contiguously related buildings and other structures at one site for proposing firms to assume the costs of a preliminary energy survey of all such structures, the Federal agency—

(i) May request technical and price proposals for a representative sample of buildings and other structures and may select a firm to conduct the proposed project; and

(ii) After selection of a firm, but prior to award of an energy savings performance contract, may request the selected firm to submit technical and price proposals for all or some of the remaining buildings and other structures at the site and may include in the award for all or some of the remaining buildings and other structures.

(5) After selection under paragraph (a)(3) or (a)(4) of this section, but prior to award, a Federal agency may require the selectee to conduct a detailed energy survey to confirm that guaranteed energy cost savings are within a certain percentage (specified in the solicitation) of estimated energy cost savings in the selectee's proposal. If the detailed energy survey does not confirm that guaranteed energy savings are within the fixed percentage of estimated savings, the Federal agency may select another firm from those within the competitive range.

(b) *Unsolicited proposals.* Federal agencies may—

(1) Consider unsolicited energy savings performance contract proposals from firms on a qualified contractor list under this subpart which include technical and price proposals and the text of any financing agreement (including a lease-acquisition) without regard to the requirements of 48 CFR 15.503 (a) and (c); 48 CFR 15.506–2(a)(1); and 48 CFR 15.507(a), (b)(2), (b)(3), (b)(4) and (b)(5).

(2) Reject an unsolicited proposal that is too narrow because it does not address the potential for significant energy conservation measures from other than those measures in the proposal.

(3) After requiring a detailed energy survey, if appropriate, and determining that technical and price proposals are adequate, award a contract to a firm on a qualified contractor list under this subpart on the basis of an unsolicited proposal, provided that the Federal agency complies with the following procedures—

(i) An award may not be made to the firm submitting the unsolicited proposal unless the Federal agency first publishes a notice in the Commerce Business Daily acknowledging receipt of the proposal and inviting other firms on the qualified list to submit competing proposals.

(ii) Except for unsolicited proposals submitted in response to a published general statement of agency needs, no award based on such an unsolicited proposal may be made in instances in which the Federal agency is planning the acquisition of an energy conservation measure through an energy savings performance contract.

(c) *Certified cost or pricing data.*

(1) Energy savings performance contracts under this part are firm fixed-price contracts.

(2) Pursuant to the authority provided under section 304A(b)(1)(B) of the Federal Property and Administrative Services Act of 1049, the heads of procuring activities shall waive the requirement for submission of certified cost or pricing data. However, this does not exempt offerors from submitting information (including pricing information) required by the Federal agency to ensure the impartial and comprehensive evaluation of proposals.

§ 436.34 Multiyear contracts.

(a) Subject to paragraph (b) of this section, Federal agencies may enter into a multiyear energy savings performance contract for a period not to exceed 25 years, as authorized by 42 U.S.C. 8287, without funding of cancellation charges, if:

(1) The multiyear energy savings performance contract was awarded in a competitive manner using the procedures and methods established by this subpart;

(2) Funds are available and adequate for payment of the scheduled energy cost for the first fiscal year of the multiyear energy savings performance contract;

(3) Thirty days before the award of any multiyear energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of $750,000, the head of the awarding Federal agency gives written notification of the proposed contract and the proposed cancellation ceiling for the contract to the appropriate authorizing and appropriating committees of the Congress; and

(4) Except as otherwise provided in this section, the multiyear energy savings performance contract is subject to 48 CFR part 17, subpart 17.1, including the requirement that the contracting officer establish a cancellation ceiling.

(b) Neither this subpart nor any provision of the Act requires, prior to contract award or as a condition of a contract award, that a Federal agency have appropriated funds available and adequate to pay for the total costs of an energy savings performance contract for the term of such contract.

§ 436.35 Standard terms and conditions.

(a) *Mandatory requirements.* In addition to contractual provisions otherwise required by the Act or this subpart, any energy savings performance contract shall contain clauses—

(1) Authorizing modification, replacement, or changes of equipment, at no cost to the Federal agency, with the prior approval of the contracting officer who shall consider the expected level of performance after such modification, replacement or change;

(2) Providing for the disposition of title to systems and equipment;

(3) Requiring prior approval by the contracting officer of any financing agreements (including lease-acquisitions) and amendments to such an agreement entered into after contract award for the purpose of financing the acquisition of energy conservation measures;

(4) Providing for an annual energy audit and identifying who shall conduct such an audit, consistent with § 436.37 of this subpart; and

(5) Providing for a guarantee of energy cost savings to the Federal agency, and establishing payment schedules reflecting such guarantee.

(b) *Third party financing.* If there is third party financing, then an energy savings performance contract may contain a clause:

(1) Permitting the financing source to perfect a security interest in the installed energy conservation measures, subject to and subordinate to the rights of the Federal agency; and

(2) Protecting the interests of a Federal agency and a financing source, by authorizing a contracting officer in appropriate circumstances to require a contractor who defaults on an energy savings performance contract or who does not cure the failure to make timely payments, to assign to the financing source, if willing and able, the contractor's rights and responsibilities under an energy savings performance contract;

§ 436.36 Conditions of payment.

(a) Any amount paid by a Federal agency pursuant to any energy savings performance contract entered into under this subpart may be paid only from funds appropriated or otherwise made available to the agency for the payment of energy expenses and related operation and maintenance expenses which would have been incurred without an energy savings performance contract. The amount the agency would have paid is equal to:

(1) The energy baseline under the energy savings performance contract (adjusted if appropriate under § 436.37), multiplied by the unit energy cost; and

(2) Any related operations and maintenance cost prior to implementation of energy conservation measures, adjusted for increases in labor and material price indices.

(b) Federal agencies may incur obligations pursuant to energy savings performance contracts to finance energy conservation measures provided guaranteed energy cost savings exceed the contractor's debt service requirements.

§ 436.37 Annual energy audits.

(a) After contractor implementation of energy conservation measures and annually thereafter during the contract term, an annual energy audit shall be conducted by the Federal agency or the contractor as determined by the contract. The annual energy audit shall verify the achievement of annual energy cost savings performance guarantees provided by the contractor.

(b) The energy baseline is subject to adjustment due to changes beyond the contractor's control, such as—

(1) Physical changes to building;

(2) Hours of use or occupancy;

(3) Area of conditioned space;

(4) Addition or removal of energy consuming equipment or systems;

(5) Energy consuming equipment operating conditions;

(6) Weather (i.e., cooling and heating degree days); and

(7) Utility rates.

(c) In the solicitation or in the contract, Federal agencies shall specify requirements for annual energy audits, the energy baseline, and baseline adjustment procedures.

§ 436.38 Terminating contracts.

(a) Except as otherwise provided by this subpart, termination of energy savings performance contracts shall be subject to the termination procedures of the Federal Acquisition Regulation in 48 CFR part 49.

(b) In the event an energy savings performance contract is terminated for the convenience of a Federal agency, the termination liability of the Federal agency shall not exceed the cancellation ceiling set forth in the contract, for the year in which the contract is terminated.

[FR Doc. 95–8750 Filed 4–7–95; 8:45 am]
BILLING CODE 6450–01–P

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federal register

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Part VIII

Department of Education

Office of Educational Research and Improvement (OERI); Educational Research and Development Centers Program; Notice

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DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI); Educational Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for seven national educational research and development centers that would carry out sustained research and development to address nationally significant problems and issues in education.

DATES: Comments must be received on or before May 25, 1995.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Jacqueline Jenkins, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510G, Washington, DC 20208–5573. Comments can be faxed to Jacqueline Jenkins at (202) 219–2030. Comments can be sent electronically to Jackie _ Jenkins@ed.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Jenkins, telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Title IX of Public Law 103–227, which authorizes the Office of Educational Research and Improvement, establishes five new national research institutes to carry out coordinated and comprehensive programs of research, development, evaluation, and dissemination designed to provide research-based leadership for the improvement of education. The five institutes are—

(1) The National Institute on Student Achievement, Curriculum, and Assessment;

(2) The National Institute on the Education of At-Risk Students;

(3) The National Institute on Educational Governance, Finance, Policy-Making, and Management;

(4) The National Institute on Early Childhood Development and Education; and

(5) The National Institute on Postsecondary Education, Libraries, and Lifelong Learning.

The institutes support sustained research and development focused on significant national problems and issues in education conducted by national research and development centers. Institutions eligible to receive center awards include institutions of higher education, institutions of higher education in consort with public agencies or non-profit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary education research and development.

The Secretary invites comments on the seven priority topics included in this announcement. Comments may address individual center priorities or the priorities as a whole. In addition to centers addressing the proposed priorities, OERI will continue to support a Center for Research on the Education of Students Placed At-Risk, a National Reading Research Center, and a National Research Center on Gifted and Talented Children and Youth.

Through a series of meetings, regional hearings, and **Federal Register** Notices, OERI solicited advice from parents, teachers, administrators, policy-makers, business people, researchers, and others to identify the most needed research and development activities. After reviewing this advice, OERI identified the priorities proposed in this Notice. The final research and development center priorities will be published following review of the public comment and consideration of the priorities by OERI's National Educational Research Policy and Priorities Board.

Proposed Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the general priority and one of the individual priorities listed below. Funding of any individual priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received.

Proposed General Absolute Priority: Each national research and development center must—

(a) Conduct a coherent, sustained program of research and development to address problems and issues of national significance in its individual priority area, using a well-conceptualized and theoretically sound framework;

(b) Contribute to the development and advancement of theory in the area of its individual priority;

(c) Conduct scientifically rigorous studies capable of generating findings that contribute substantially to understanding in the field;

(d) Conduct work of sufficient size, scope, and duration to produce definitive guidance for improvement efforts and future research;

(e) Address issues of both equity and excellence in education in its individual priority area; and

(f) Document, report, and disseminate information about its research findings and other accomplishments in ways that will allow others to use that information.

Proposed Absolute Priority 1: Promoting the Cognitive and Social-Emotional Development of Young Children

Under this priority, a national research and development center must—

(a) Conduct research and development on promoting the cognitive and social-emotional development and achievement of young children, beginning at birth, especially children who are placed at risk of educational failure because of community, economic, linguistic, family, or disability factors, and the general well-being of their families; and

(b) Include in its work research or development related to the following topics:

(1) The skills, knowledge, and expectations that enable families, educators, and others in the community to help young children come to school prepared to learn.

(2) Effective models and strategies that families, educators, and others can use to foster young children's learning.

(3) How various early childhood supports and services within the community can be designed and implemented to maximize young children's cognitive and social-emotional development, success in preschool, and achievement in elementary grades.

Proposed Absolute Priority 2: Improving Student Learning and Achievement

Under this priority, a national research and development center must—

(a) Conduct research and development on improving student learning and achievement; and

(b) Include in its work research or development related to the following topics:

(1) How students acquire knowledge and develop cognitive skills.

(2) The social context of learning, including the social organization of classrooms and schools.

(3) The integration of curriculum changes with other efforts to improve student learning and achievement.

(4) Effective teaching in the core academic content areas.

(5) The role of student motivation and student responsibility in creating safe schools and environments conducive to learning.

(6) Effective professional development for educators.

Proposed Absolute Priority 3: Improving Student Assessment

Under this priority, a national research and development center must—

(a) Conduct research and development on improving student assessment; and

(b) Include in its work research or development related to the following topics:

(1) The development of assessments that are aligned with curriculum and instruction and can be used to improve teaching and learning.

(2) The use of assessments to improve instruction in the core content areas, particularly English language arts and mathematics, and to promote educational accountability.

(3) The technical quality (validity, reliability, fairness, and content coverage) of different types of assessments.

Proposed Absolute Priority 4: Meeting the Educational Needs of a Diverse Student Population

Under this priority, a national research and development center must—

(a) Conduct research and development on meeting the educational needs of an increasingly diverse student population, including students who are at risk of educational failure because of limited English proficiency, poverty, race, ethnicity, culture, or geographical location; and

(b) Include in its work research or development related to the following topics:

(1) Recognizing and building on the strengths of students from diverse backgrounds to help all students achieve to high academic standards.

(2) Professional development that enhances the abilities of teachers and other school personnel to help language minority students and other students at risk of educational failure achieve to high academic standards.

(3) Structuring out-of-school experiences to help students at risk of educational failure overcome obstacles and achieve school success.

(4) Working with families and community-based organizations to help students at risk of educational failure achieve to high academic standards.

(5) Ways that federal, state, and community reform efforts can be designed so that language minority students and other students at risk of educational failure learn to high standards.

Proposed Absolute Priority 5: Increasing the Effectiveness of State and Local Education Reform Efforts

Under this priority, a national research and development center must—

(a) Conduct research and development on improving the effectiveness of state and local efforts to reform elementary and secondary education; and

(b) Include in its work research or development related to the following topics:

(1) The role of challenging academic standards in efforts to reform elementary and secondary education.

(2) The role of education policy and financing in improving learning opportunities for all students.

(3) The coherence of state, district and school-level reforms and their effects on the learning of all students.

(4) The role of incentives in the reform of elementary and secondary education.

(5) School-level strategies for improving education within the context of state and district reforms.

(6) Reforms to improve children's learning by strengthening the connections between schools and communities.

(7) Factors that influence the success of state, district, and school-level reforms, from initiation through implementation to "scaling up."

Proposed Absolute Priority 6: Improving Postsecondary Education and the Preparation of Adults for Work

Under this priority, a national research and development center must—

(a) Conduct research and development on improving postsecondary education and the preparation of adults for work and lifelong learning; and

(b) Include in its work research or development related the following topics:

(1) Effective transitions from school to work for secondary and postsecondary students.

(2) The relationships among students' access to and participation and progress in postsecondary education, their academic achievement, and their later work force participation.

(3) The improvement of postsecondary student learning and assessment.

(4) Containing costs and improving the productivity and accountability of postsecondary institutions.

(5) Articulation between secondary and postsecondary education.

Proposed Absolute Priority 7: Improving Adult Learning and Literacy

Under this priority, a national research and development center must—

(a) Conduct research and development on improving adult learning and literacy, including the acquisition of skills needed for workforce participation and responsible citizenship; and

(b) Include in its work research or development related to the following topics:

(1) Adult acquisition of knowledge and development of cognitive skills.

(2) Effective methods and instructional strategies to improve adult learning, including effective use of educational technology.

(3) Effective methods for professional development of instructional staff in adult literacy.

(4) The assessment of adult learning.

Proposed Post-Award Requirements

The Secretary proposes the following post-award requirements consistent with the Educational Research, Development, Dissemination, and Improvement Act of 1994. A grantee receiving a center award must—

(a) Provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Conduct and evaluate research projects in conformity with the highest professional standards of research practice;

(c) Reserve five percent of each budget period's funds to support activities that fall within the center's priority area, are designed and mutually agreed to by the center and OERI, and enhance OERI's ability to carry out its mission. Such activities may include developing research agendas, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities; and

(d) At the end of the award period, synthesize the findings and advances in knowledge that resulted from the Center's program of work and describe the potential impact on the improvement of American education, including any observable impact to date.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register**

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concurrent with or following publication of the notice of final priorities.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 510G, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: P.L. 103–227, Title IX.

(Catalog of Federal Domestic Assistance Numbers 84.305, 84.306, 84.307, 84.308, and 84.309 Educational Research and Development Centers Program)

Dated: April 4, 1995.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–8749 Filed 4–7–95; 8:45 am]

BILLING CODE 4000–01–P

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

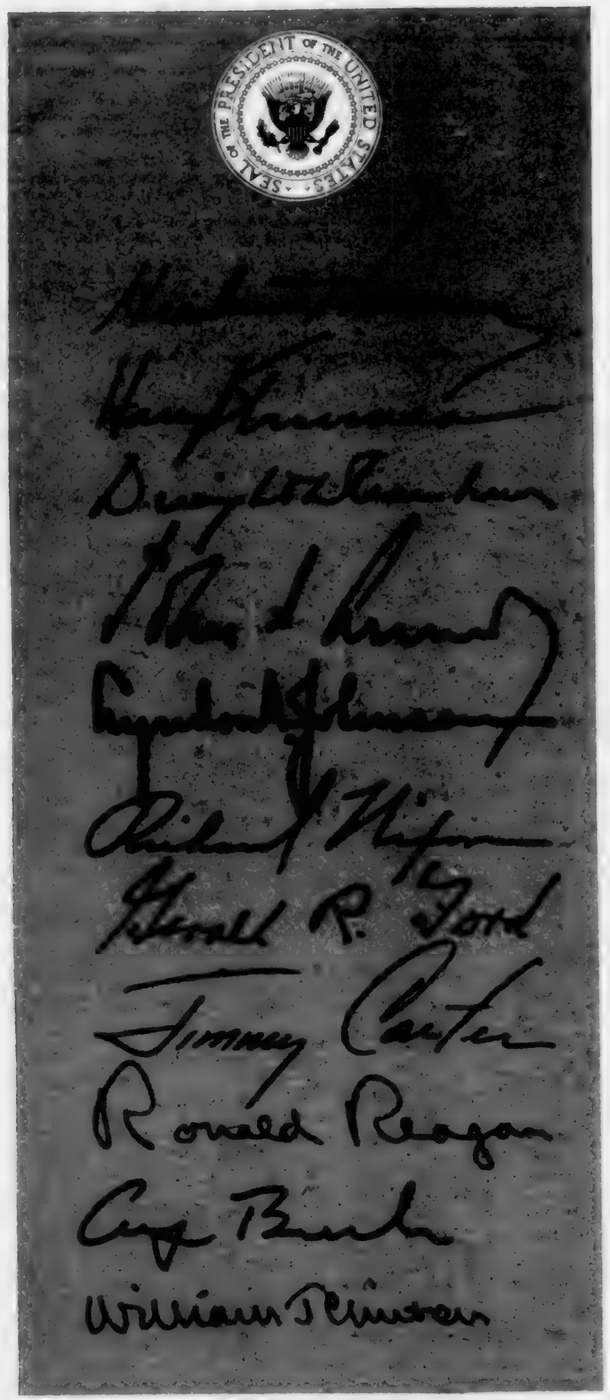
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1050

[DA–95–14]

Milk in the Central Illinois Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends a portion of the producer milk definition of the Central Illinois Federal milk marketing order (Order 50) for an indefinite period commencing with date of publication in the **Federal Register**. The suspension was requested by Prairie Farms Dairy, Inc., which contends the action is necessary to prevent uneconomic and inefficient movements of milk and to ensure that producer milk historically associated with Order 50 will continue to be pooled under the order.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 17, 1995; published March 23, 1995 (60 FR 15262).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 23, 1995 (60 FR 15262), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for an indefinite period commencing with the date of publication in the **Federal Register** the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(2), the words "not" and "it" where they first appear.

Statement of Consideration

This rule suspends a portion of the producer milk definition under the Central Illinois order for an indefinite period of time, effective upon publication in the **Federal Register**. The suspension relaxes the diversion limits applicable to individual producers for a pool distributing plant regulated under the order. The aggregate limit of 35 percent contained in the proviso of § 1050.13(d)(2) was suspended for an indefinite period on January 1, 1995.

The Central Illinois order currently allows an operator of a distributing plant to divert to a nonpool plant up to 50 percent of a producer's milk that is physically received at the pool plant during the months of August through April. The suspension will allow a distributing plant to divert an unlimited amount of a producer's milk to a nonpool plant during each of these months, provided that at least one day's production is physically received at a pool plant.

Prairie Farms, which operates the only distributing plant regulated under Order 50, states that it represents over 90 percent of the producer milk pooled under Order 50. According to Prairie Farms, approximately 60 percent of its producer milk pooled under Order 50 was supplied to Beatrice Cheese, Inc., before Beatrice closed its cheese plant located in Preston, Iowa, effective December 1, 1994. It contends the suspension is necessary to permit it to keep its producers pooled under the order without the necessity of costly and inefficient movements of milk. It maintains that its proposal would not jeopardize the integrity of the order because at least one day's production would have to be physically received at a pool plant during each of the months of August through April to qualify the milk for diversion to a nonpool plant. Prairie Farms requests that the action be handled on an emergency basis to allow the continuous pooling of producer milk historically associated with Order 50.

The suspension request should be granted. The suspension will continue to allow the market's Class I needs to be met by requiring at least one day's

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production of a producer's milk be physically received at a distributing plant each month. It will maintain orderly marketing conditions and prevent uneconomic and inefficient movements of milk.

Accordingly, it is appropriate to suspend the aforesaid provision for an indefinite period beginning with the date of **Federal Register** publication of this document.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1050

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1050, is amended as follows:

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1050.13 [Suspended in part]

2. In § 1050.13(d)(2), the words "not" and "it" where they first appear are suspended for an indefinite period effective upon publication in the **Federal Register**.

Dated: April 5, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–8852 Filed 4–10–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF24

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the NRC's size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. This action is necessary to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity, to adjust the receipts-based standard to account for the effects of inflation since 1985, and to eliminate the separate $1 million size standard for private practice physicians and apply the revised receipts-based size standard of $5 million to this class of licensees.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The NRC published its proposed size standard for notice and comment in the **Federal Register** of May 21, 1985 (50 FR 20913). After considering the comments received, the NRC adopted its final size standards as noted in the **Federal Register** of December 9, 1985 (50 FR 50241). In the **Federal Register** of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing of definitions of small entities in the Regulatory Flexibility Act.

The Proposed Rule

On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity and to adjust the receipts-based standard to account for the effects of inflation since 1985. In addition, the NRC proposed to eliminate the separate $1 million size standard for private practice physicians and apply the revised receipts-based size standard of $5 million to this class of licensees. By amending the size standards through rulemaking, the NRC indicated its intent to codify NRC's size standards in 10 CFR part 2.

As discussed in the preamble to the proposed rule, these amendments were developed after several factors indicated that some adjustments to the NRC's size standards were desirable.

The NRC received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers in response to the final rule implementing Public Law 101–508 (56 FR 31472; July 10, 1991, and subsequent years). These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a manufacturer. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC conducted a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's size standards and to obtain the information needed to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present in a final rule published in the **Federal Register** of April 7, 1994 (59 FR 16513).

Public Comment

The comment period on the proposed rule closed December 30, 1994. The NRC received two letters of public comment on this action.

One commenter objected to the inclusion of a size standard based on the number of employees for qualification of a manufacturing concern as a small entity in the NRC's regulatory programs and the assessment of reduced annual fees. The commenter stated that the total employee population of a manufacturer has little bearing on revenue potential and revenue has little bearing on the risk to public health and safety. The commenter believes that although employee population may be a consideration, it must be considered in conjunction with revenue produced and with the complexity of the operation in determining size standards. The commenter also asserts that because manufacturers are authorized to possess significant quantities of multiple isotopes, both as sealed sources and loose material for use in the manufacture and distribution of products, they present a much higher risk than entities that hold a license for possession and use of sealed sources. The commenter states that the loss of revenue from manufacturers categorized as small entities will have to be made up by small licensees who may have only one or two devices on site.

The NRC is retaining a separate standard based on the number of employees for manufacturers in the final rule because this standard is required by the Small Business Act (15 U.S.C. 632 (a)(2)). This provision prohibits a Federal department or agency from prescribing a size standard for categorizing a business concern as a small business concern unless the standard provides for determining the size of a manufacturing concern based upon employment.

One commenter was pleased to see that the NRC raised the size standard for private practice physicians from $1 million to $5 million. However, the commenter indicated that this action did not go far enough in addressing the assessment of user fees. The commenter suggested that the NRC consider evaluating the gross receipts of departments within a medical facility that utilize NRC services and not the overall receipts of the facility. The commenter contends that if the NRC focused on the smaller entity within the license, many licensees would qualify for the small business exemptions and would pay fees based on the actual revenue generated under the license.

The NRC notes that the Small Business Act establishes criteria for a small business concern. To qualify as a small business concern, the concern must be independently owned and operated and not dominant in its field of operation (15 U.S.C. 632 (a)(1)). A department of a medical facility does not meet this criterion. The NRC has included language in the final rule to address this type of situation.

In response to each of the comments, the NRC further emphasizes that the purpose of this rule is to amend the size standards used by the NRC to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. The application of these standards in the fee schedule rulemaking, or any other rulemaking proceeding, is beyond the scope of this rule.

The Final Rule

The NRC is adopting a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that would hold an NRC license. Under this standard, approximately 48 percent of the licensees who indicated that they were manufacturers would qualify as small entities.

The NRC is adjusting its receipts-based size standard to accommodate inflation and to conform to the SBA final rule. The NRC is raising its receipts-based small business size standard from $3.5 million to $5 million. The NRC also is eliminating the separate $1 million size standard for private practice physicians and applying the revised receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. For greater clarity, the NRC has included a definition of the term receipts in the final rule.

The survey of materials licensees indicated that 26 percent qualified as small entities under the NRC standards being replaced by this rule. Under the size standards adopted in this document, 35 percent of these licensees would qualify as small entities, an increase of 9 percent. When NRC adopted its size standards in 1985, the NRC staff estimated that approximately 35 percent of the materials licensees would qualify as small entities.

The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366) amended the Small Business Act concerning the establishment of agency-specific small business size standards. The NRC size standards were developed so as to meet the criteria specified in Pub. L. 102–366. As required by Pub. L. 102–366, the NRC size standards were approved by the Administrator, SBA.

This final rule also codifies NRC's size standards in part 2 of the Commission's regulations. Previously, NRC's size standards had been published in the notices section of the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that qualify as small entities.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that would qualify as small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear

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materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.810 is added to read as follows:

§ 2.810 NRC size standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Dated at Rockville, Maryland, this 31st day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–8843 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–4]

Alteration of Class D Airspace; Williams Air Force Base (AFB), AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: An error was discovered in a rule that was published in the **Federal Register** on March 15, 1995, Airspace Docket No. 95–AWP–4. The correct title description was inadvertently omitted from the rule. The alteration of this Class D airspace should only reflect the renaming of the airport from Williams AFB, AZ, to Williams Gateway Airport, AZ. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT:

Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–6380, Airspace Docket No. 95–AWP–4, published on March 15, 1995 (60 FR 13900), altered the Class D airspace at Williams AFB, AZ. The correct title description and geographic location of this Class D airspace is Chandler, AZ, which was inadvertently omitted from the rule. The only alteration of this Class D airspace area at Chandler, AZ, is the renaming of the airport to Williams Gateway Airport, AZ, due to the closure of Williams AFB, AZ. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description for the Class D airspace at Williams Air Force Base (AFB), AZ, as published in the **Federal Register** on March 15, 1995 (60 FR 13900) (**Federal Register** Document 95–6380; page 13901, column 1), and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.1 are corrected as follows:

§ 71.1 [Corrected]

On page 13901, in column 1, under Paragraph 5000, the first line of the airspace designation is corrected to read as follows:

* * * * *

AWP AZ D Chandler, AZ [Revised]

* * * * *

Issued in Los Angeles, California, on March 27, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–8767 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 95–29]

Technical Amendments to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States made by the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch (202) 482–6930.

SUPPLEMENTARY INFORMATION:

Background

At present, due to certain amendments to the Harmonized Tariff Schedule of the United States (HTSUS) that resulted in many of the General Notes of the HTSUS being renumbered, many authority citations in the Customs Regulations that reference certain General Note provisions are no longer accurate.

In 1994, when the HTSUS was amended to incorporate changes made by the North American Free Trade Agreement (NAFTA) (see Presidential Proclamation 6641 of December 15, 1993, published in the **Federal Register** on December 20, 1993 (58 FR 66867, 67032)), General Notes 4 through 9 were redesignated as General Notes 13 through 18, respectively, and new General Notes 4 through 12 were added. This addition of nine new General Notes caused the General Note numbering scheme to change. In 1995, when the HTSUS was again amended to incorporate changes necessitated by provisions of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) (see Presidential Proclamation 6763 of December 23, 1994, published in the **Federal Register** on January 4, 1995 (60 FR 1007, 1018)), the General Notes were modified by renumbering General Notes 13 through 18 as General Notes 16 through 21, respectively, and inserting new General Notes 13 through 15. The addition of three more General Notes again caused the General Note numbering scheme to change.

For example, one of the authorities for many Customs Regulations, as detailed below, is the General Note which provides that the Secretary of the Treasury is authorized to issue rules and regulations governing the admission of articles under the provisions of the tariff schedule. This General Note was initially designated as General Note 8 when the Harmonized Tariff Schedule was adopted in 1989, became General Note 17 in 1994, and, in 1995, is now designated as General Note 20.

Customs also cites as authority for many sections detailed below the General Note which provides that the Secretary of the Treasury is authorized to prescribe methods of ascertainment whenever he finds that such methods are necessary for purposes of any law administered by the Customs Service. This General Note was initially designated as General Note 9 when the Harmonized Tariff Schedule was adopted in 1989, became General Note 18 in 1994, and, in 1995, is now designated as General Note 21.

This document updates and corrects those references in the Customs Regulations to the HTSUS General Notes.

Discussion of Changes

Part 7

The authority citation for Part 7 references General Note 8 of the HTSUS. Since this General Note is now designated as General Note 20, as discussed above, the reference is revised accordingly.

Part 11

The authority citation for Part 11 references General Note 9 of the HTSUS. Since this General Note is now designated as General Note 21, as discussed above, the reference is revised accordingly.

Part 12

The general authority citation for Part 12 references General Note 17 of the HTSUS. Since this General Note is now designated as General Note 20, the reference is revised accordingly.

Parts 18, 19, and 24

The general authority citation for Parts 18 and 19 reference General Note 8 of the HTSUS, and the general authority citation for Part 24 references General Note 17 of the HTSUS, both provisions in different editions of the HTSUS providing for the regulations authority notes discussed above. For the reasons given above, these references are revised to read General Note 20. Also, § 24.23(c)(1)(v) references General Note 4 of the HTSUS, which deals with exemptions. Since this General Note is now designated as General Note 16, the reference is revised accordingly.

Parts 54, 101, 102, 111, 114, 123, 128, 132, and 134

The authority citations for Parts 54, 101, 102, 111, 114, 123, 128, 132, and 134 reference General Note 8 of the HTSUS. For the reason given above, these references are revised to reference General Note 20.

Part 141

Section 141.4(a) of Part 141 references General Note 4 of the HTSUS. For the reason given above, this reference is revised to reference General Note 16.

Parts 145, 146, 148, and 151

The authority citations for Parts 145, 146, 148, and 151 reference General Note 8 of the HTSUS. For the reason given above, these references are revised to reference General Note 20. Also in Part 151, the authority citation references General Note 9 of the HTSUS. For the reason given above, this reference is revised to reference General Note 21.

Part 152

The specific authority citation for subpart D of Part 152 and several provisions of § 152.13 reference General Note 5 of the HTSUS, which dealt with the commingling of goods. Since this General Note is now designated as General Note 17, the reference is revised accordingly.

Parts 177, 181, and 191

The general authority citations for Parts 177, 181, and 191 reference General Note 17 of the HTSUS. For the reason given above, these references are revised to reference General Note 20.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely correct certain referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. 553(a)(2) and (d)(3). Since this document is not subject to the notice and public procedure

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requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch.

Amendments to the Regulations

The authority citations to those parts of chapter 1 of the Customs Regulations (19 CFR chapter 1) listed below are amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for Part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624; 48 U.S.C. 1406i.

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for Part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1551, 1552, 1553, 1624;

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for Part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 261, 267, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

§ 24.23 [Amended]

2. In § 24.23, the reference in paragraph (c)(1)(v) to "General Note 4" is revised to read "General Note 16".

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Section XV, Note 5, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

PART 102—RULES OF ORIGIN

1. The authority citation for Part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, and the North American Free Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057.

PART 111—CUSTOMS BROKERS

1. The general authority citation for Part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 1641;

* * * * *

PART 114—CARNETS

1. The authority citation for Part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624;

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for Part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

1. The authority citation for Part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624;

* * * * *

§ 141.4 [Amended]

2. In § 141.4, the reference in paragraph (a) to "General Note 4" is revised to read "General Note 16".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624;

* * * * *

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for Part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for Part 152 is unchanged, but the specific authority for subpart D and for §§ 152.13 and 152.24 are revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

* * * * *

Subpart D also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

Sections 152.13 and 152.24 also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Amended]

2. In § 152.13, the reference in paragraphs (b)(1), (b)(2), (c) introductory text, (c)(1), (c)(2), (c)(3), and (d) to "General Note 5" is revised to read "General Note 17".

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for Part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, and the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057.

PART 191—DRAWBACK

1. The general authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1313, 1624;

* * * * *

Dated: April 4, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–8745 Filed 4–10–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 176 and 178

[Docket No. 93N–0420]

Indirect Food Additives: Paper and Paperboard Components; Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct an error in nomenclature for a food additive. The amendment adds alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16}) as a component of paper and paperboard in contact with food, as an antistatic agent, and as an emulsifier and/or surface active agent. Additionally, because certain sections contain multiple entries for the additive, FDA is amending its food additive regulations so that all uses of the additive will be combined under single entries in those sections of the regulations.

DATES: Effective April 11, 1995; written objections and requests for a hearing by May 11, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1994 (59 FR 3322), FDA published a proposed rule to correct an error in nomenclature for a food additive regulated in §§ 176.170, 176.180, 178.3130, and 178.3400 (21 CFR 176.170, 176.180, 178.3130, and 178.3400). The agency proposed to add alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16}) to those sections and to remove: (1) The listing "*n*-alkylsulfonate (alkyl group is in the range C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" from § 176.170; (2) the listing "petroleum sulfonates" from the list of substances in § 176.180; (3) the listings for "sodium *n*-alkylsulfonate (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and "sodium sec-alkyl mono- and disulfonates (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" from § 178.3130; and (4) the listings for "*n*-alkylsulfonate (alkyl group is in the range C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and "sodium sec-alkyl mono- and disulfonates (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" from § 178.3400.

FDA received no comments on its proposal. The agency is, therefore, adopting the proposal as a final rule without any changes.

The agency has previously considered the environmental effects of this rule, as announced in the proposed rule (59 FR 3322, January 21, 1994). No new information or comments have been received that would affect the agency's previous determination that this action will not have a significant impact upon the human environment and that neither an environmental assessment nor an environmental impact statement is required.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined

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by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because no current activity is prohibited by this final rule, the compliance costs to firms are zero. Likewise, because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Furthermore, in accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses, and has determined that no significant economic impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 176 and 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 176 and 178 are amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (b)(2) by removing the entry for "*n*-Alkylsulfonate (alkyl group is in the range C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
. . . . .	. . . . .
Alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})..	For use only: 1. As emulsifiers for vinylidene chloride copolymer coatings and limited to use at levels not to exceed 2 percent by weight of the coating solids. 2. As emulsifiers for vinylidene chloride copolymer or homopolymer coatings at levels not to exceed a total of 2.6 percent by weight of coating solids. The finished polymer contacts food only of types identified in paragraph (c) of this section, Table 1, under Types I, II, III, IV, V, VIA, VIB, VII, VIII, and IX and under conditions of use E, F, and G described in Table 2 of paragraph (c) of this section.
. . . . .	. . . . .

* * * * *

3. Section 176.180 is amended in the table in paragraph (b)(2) by removing the entry for "Petroleum sulfonates" and by alphabetically adding a new entry under the heading "List of substances" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
. . . . .	. . . . .
Alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})..	
. . . . .	. . . . .

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

4. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

5. Section 178.3130 is amended in the table in paragraph (b) by removing the entries for "Sodium *n*-alkylsulfonate (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and "Sodium sec-alkyl mono- and disulfonates (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3130 Antistatic and/or antifogging agents in food-packaging materials.

* * * * *

(b) * * *

List of substances	Limitations
Alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})..	For use only: 1. As antistatic agents at levels not to exceed 0.1 percent by weight of polyolefin films that comply with § 177.1520 of this chapter: *Provided*, that the finished olefin polymers contact foods of Types I, II, III, IV, V, VIA, VIB, VII, VIII, and IX described in Table 1 of § 176.170(c) of this chapter, and under conditions of use E, F, and G described in Table 2 of § 176.170(c) of this chapter. 2. As antistatic agents at levels not to exceed 3.0 percent by weight of polystyrene or rubber-modified polystyrene complying with § 177.1640(c) of this chapter under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.

6. Section 178.3400 is amended in the table in paragraph (c) by removing the entries for "*n*-Alkylsulfonate (alkyl group is in the range C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and "Sodium sec-alkyl mono- and disulfonates (alkyl group in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})" and by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3400 Emulsifiers and/or surface active agents.

* * * * *

(c) * * *

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List of substances	Limitations
Alkyl mono- and disulfonic acids, sodium salts (produced from *n*-alkanes in the range of C_{10}–C_{18} with not less than 50 percent C_{14}–C_{16})..	For use only: 1. As provided in § 176.170 of this chapter. 2. At levels not to exceed 2 percent by weight of polyvinyl chloride and/or vinyl chloride copolymers complying with § 177.1980 of this chapter. 3. As emulsifiers in vinylidene chloride copolymer or homopolymer coatings at levels not to exceed a total of 2.6 percent by weight of coating solids. The finished polymer contacts food only of the Types I, II, III, IV, V, VIA, VIB, VII, VIII, and IX as identified in Table 1 of § 176.170(c) of this chapter, and limited to conditions of use E, F, and G described in Table 2 of § 176.170 of this chapter. 4. As emulsifiers and/or surface-active agents at levels not to exceed 3.0 percent by weight of polystyrene or rubber-modified polystyrene complying with § 177.1640(c) of this chapter under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.

* * * * *

Dated: April 3, 1995.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Intitiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–8772 Filed 4–10–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 91F–0499]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective April 11, 1995; written objections and requests for a hearing by May 11, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 30, 1992 (57 FR 3633), FDA announced that a food additive petition (FAP 2B4295) had been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in § 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry "2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate" by adding a new entry "3." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
2,4-Di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxypheny-l)ethyl]phenyl acrylate (CAS Reg. No.123968–25–2)..	For use only: * * * 3. At levels not to exceed 0.5 percent by weight of polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter in contact with all food types under conditions of use D through G as described in Table 2 of § 176.170(c) of this chapter.

Dated: April 3, 1995.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–8773 Filed 4–10–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission 28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Original Jurisdiction Cases

AGENCY: Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the voting quorum required for initial parole decisions made under 28 CFR 2.17, which is the procedure for original jurisdiction cases (high profile and extremely serious offenders). The Commission has determined that the present four-vote requirement is no longer appropriate, in view of the fact that only six Commissioners are currently holding office. Accordingly, the quorum required to decide original jurisdiction cases will be three votes. Appeals from these decisions will continue to be presented to the full Commission under 28 CFR 2.27.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The above-described procedural change reduces the quorum of Commissioner votes required to decide an original jurisdiction case under 28 CFR 2.17, from four to three. This is a procedural change only, and it is expected to permit more expeditious decision-making in original jurisdiction cases, without materially affecting a prisoner's chances for parole. The guidelines at 28 CFR 2.20 will continue to govern the merits of the decision to grant, deny, or revoke parole, and appeals will be decided by a majority of the Commission.

Implementation

This procedural rule will apply to all original jurisdiction cases decided after the effective date shown above, pursuant to 28 CFR 2.17.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following amendment to 28 CFR part 2:

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.17 [Amended]

(2) 28 CFR Part 2, § 2.17(a) is amended by substituting the words "concurrence of three votes" for the words "concurrence of four votes".

Dated: March 31, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–8914 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–P

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Transfer Treaty Prisoners

AGENCY: Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the regulation that sets forth procedures for transfer treaty offenders under 18 U.S.C. 4106A, to require the concurrence of two U.S. Parole Commissioners for a decision. At present, transfer treaty cases are decided by Regional Commissioners, pursuant to the general delegation of authority at 28 CFR 2.24. The Commission considers that this voting quorum change is appropriate because appeals from the Commission's decisions in transfer treaty cases, unlike ordinary parole cases, are taken directly to a U.S. Court of Appeals.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION, CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission has the statutory function of setting release dates and periods of supervised release for citizens of the United States who are transferred from foreign countries, pursuant to treaty, to serve sentences imposed by foreign courts. Under 18 U.S.C. 4106A, these prisoners come before the U.S. Parole Commission for a hearing and a decision that is subject to

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appeal to a U.S. Court of Appeals in accordance with 18 U.S.C. 3742.

The Commission has found it necessary to make these decisions through a delegation of authority to individual Commissioners in order to permit timely processing of these cases. (Many of these treaty prisoners are returned to the United States after having already served sufficient time in foreign prisons to warrant an immediate release date within the applicable sentencing guideline range.) The Commission has decided, however, that a quorum of two Commissioners is more appropriate, given the fact that there is no administrative appeal from the Regional Commissioner's decision. This is in contrast to the ordinary parole case wherein the Regional Commissioner's decision is subject to an administrative appeal within the Commission, under 18 U.S.C. 4215, before the prisoner may seek judical review in a federal court. Accordingly, transfer treaty cases under 18 U.S.C. 4106A will be decided by the National Commissioners, with the concurrence of two Commissioners required to reach a decision.

Implementation

This procedural rule will be applied to all transfer treaty cases under 18 U.S.C. 4106A wherein the transfer treaty hearing is conducted on or after the effective date set forth above.

Executive Order 12866 and Regulatory Flexibility Statement:

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has therefore not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2:

Administrative practice and procedure, probation and parole , prisoners.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following amendment to 28 CFR part 2:

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.62(i)(1) is revised to read as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

* * * * * *

(i) *Final decision.* (1) The Commission shall render a decision as soon as practicable and without unnecessary delay. Decisions shall be made upon a concurrence of two votes of the National Commissioners. The decision shall set a release date and a period and conditions of supervised release. If the Commission determines that the appropriate release date under 18 U.S.C. 4106A is the full term date of the foreign sentence, the Commission will order the transferee to "continue to expiration"

* * * * * *

Dated: March 31, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95-8911 Filed 4-10-95; 8:45 am]

BILLING CODE 4410-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 3

RIN 2900-AH36

Veterans' Benefits Improvements Act of 1994: To Implement Provisions of Public Law 103-446

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to: Allow the election of death pension by surviving spouses in receipt of dependency and indemnity compensation (DIC); eliminate the requirement to pay certain benefits in Philippine pesos; revise the treatment of certain claims after a renouncement of benefits; and exclude from countable income in the pension and parents' DIC programs certain income of Alaska natives. These changes are needed to implement recently enacted legislation. The intended effect of these changes is to bring the regulations into conformance with the new statutory requirements.

EFFECTIVE DATE: These amendments are effective November 2, 1994, the date that Public Law 103-446 was signed into law, except for the provisions removing the requirement to pay certain benefits in Philippine pesos (38 CFR 2.67a, 3.8, 3.100(b), 3.251(a)(3), and 3.1600) which are effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: On November 2, 1994, the Veterans' Benefits Improvements Act of 1994 was signed into law. Formerly, no person in receipt of DIC could elect to receive any other benefit based on the same death. Section 111 of the Veterans' Benefits Improvements Act of 1994, Public Law 103-446, amended 38 U.S.C. 1317 to allow a surviving spouse in receipt of DIC to elect death pension instead of such compensation. VA is amending 38 CFR 3.5(c) and 3.702(d) to conform with this new statutory provision. We have also made a nonsubstantive change in § 3.702(d) to clarify when an election of DIC is final.

Under the provisions of 38 U.S.C. 5306 any person can renounce a benefit to which he or she is entitled. Until recently any new application filed thereafter was treated as an original application. Section 503 of Public Law 103-446 amended 38 U.S.C. 5306 by adding a new subsection which provides that a new application for pension or parents' DIC filed within one year after renouncement of that benefit shall not be treated as an original application but rather that any benefits due will be payable as if the renouncement has not occurred. VA is amending 38 CFR 3.106 and 3.400(s) to conform to this new statutory requirement.

All income is countable when VA determines entitlement to income-based benefits unless specifically excluded by law. Section 506 of Public Law 103-446 provides a new exception to countable income if cash, stock, land, or other interests are received by an individual from a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). VA is amending 38 CFR 3.261, 3.262 and 3.272 to conform to this new statutory requirement.

Section 507 of Public Law 103-446 amended 38 U.S.C. 107 to eliminate the requirement that compensation, DIC, or burial allowance based on certain Philippine service deemed not to be active service for other purposes be paid in Philippine pesos. VA is amending 38 CFR 3.8, 3.251(a)(3), and 3.1600 to conform to this statutory revision. VA is removing §§ 2.67a and 3.100(b) because, in light of the statutory amendment, calculation of the annual income limitation in Philippine pesos is not required and a delegation of authority to the Chief Benefits Director for that purpose is no longer necessary.

VA is issuing a final rule to make the above described amendments. These amendments are necessary to conform regulatory provisions with Public Law 103-446. Because these amendments merely restate statutory changes, publication as a proposal for public comment is unnecessary.

Administrative Procedure Act: This final rule merely restates statutory changes contained in Public Law 103-446. Accordingly, pursuant to 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment on this final rule and dispensing with a 30-day delay of its effective date.

Regulatory Flexibility Act: Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.104, 64.105, 64.109, and 64.110.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies), Veterans Affairs Department.

38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: March 31, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 3 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 38 U.S.C. 501, 512(a), unless otherwise noted.

§ 2.67a [Removed]

2. Section 2.67a is removed.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.5 [Amended]

2. In § 3.5(c) change the period after "Affairs" to a comma and add the following: "except that, effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation."

§ 3.8 [Amended]

3. In § 3.8(b) and § 3.8(c)(1) remove "in Philippine pesos equivalent to" and add "of", in its place.

4. In § 3.8(e) remove "a peso basis" and add, in its place, "a $0.50 for each dollar authorized basis". Remove "payable in pesos." and add, in its place, "payable at the rate of $0.50 for each dollar authorized."

§ 3.100 [Amended]

5. Section 3.100(b) is removed. Redesignate § 3.100(c) as § 3.100(b).

6. In § 3.106, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively. Add a new paragraph (c) to read as follows:

§ 3.106 Renouncement.

* * * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, if a new application for pension or parents' dependency and indemnity compensation is filed within one year after the date that the Department of Veterans Affairs receives a renouncement of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renouncement had not occurred.

(Authority: 38 U.S.C. 5306(c))

§ 3.251 [Amended]

7. In § 3.251(a)(3), remove "computed" and "in Philippine pesos equivalent".

8. In § 3.261, paragraph (a)(39) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * * *

(a) *Income*

* * * * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
(39) Cash, stock, land or other interests received from a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).	Excluded	Excluded	Excluded	Excluded	§ 3.262(x).

* * * * *

9. In § 3.262, paragraph (x) and its authority citation are added as follows:

§ 3.262 Evaluation of income.

* * * * *

(x) *Alaska Native Claims Settlement Act.* There shall be excluded from income computation any cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994)

(Authority: Sec. 506, Pub. L. 103-446)

10. In § 3.272, paragraph (t) and its authority citation are added as follows:

§ 3.272 Exclusions from income.

* * * * *

(t) *Alaska Native Claims Settlement Act.* Any receipt by an individual of cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land

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received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994)

(Authority: Sec. 506, Pub. L. 103–446)

§ 3.400 [Amended]

11. In § 3.400(s), remove "Date" and add, in its place, "Except as provided in § 3.106(c), date".

12. In § 3.702, paragraph (d) is revised as follows:

§ 3.702 Dependency and indemnity compensation.

* * * * *

(d) *Finality of election.*

(1) Except as noted in paragraph (d)(2), an election to receive dependency and indemnity compensation is final and the claimant may not thereafter reelect death pension or compensation in that case. An election is final when the payee (or the payee's fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

(2) Notwithstanding the provisions of paragraph (d)(1), effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

* * * * *

§ 3.1600 [Amended]

13. In § 3.1600, paragraphs (a), (b), and (f), remove the words "in Philippine pesos".

[FR Doc. 95–8887 Filed 4–10–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5189–2]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's application for program revision is available for public review and comment.

DATES: Final authorization for Arizona is effective June 12, 1995, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business May 11, 1995.

ADDRESSES: Copies of Arizona's program revision application are available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, Central Office, Office of Waste Programs, Waste Assessment Section, 3033 N. Central Avenue, Phoenix, Arizona 85012, Phone: 602/207–4211

Arizona Department of Environmental Quality, Northern Regional Office, 2501 North 4th Street, Suite #14, Flagstaff, Arizona 86004, Phone: 602/779–0313 or 1–800/234–5677

Arizona Department of Environmental Quality, Southern Regional Office, 4040 East 29th Street, Tucson, Arizona 85711, Phone: 602/628–5651 or 1–800/234–5677

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744–1510

Written comments should be sent to April Katsura, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744–2030.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744–2030.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Arizona

Arizona initially received final authorization for the base program on November 20, 1985. Arizona received final authorization for revisions to its program on August 6, 1991, July 13, 1992, November 23, 1992, and October 27, 1993. On February 10, 1995, Arizona submitted an application for additional revision approvals. Today, Arizona is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Arizona's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until May 11, 1995. Copies of Arizona's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Arizona's program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Arizona is applying for authorization for the following Federal hazardous waste requirements:

Federal requirement	State authority
Permit Modifications for Hazardous Waste Management Facilities (53 FR 37912, September 28, 1988, as amended October 24, 1988 at 53 FR 41649).	Arizona Revised Statutes (ARS) 49–922.A + B; Arizona Administrative Code (AAC) R18–8–264.A, 265.A, 270.A + C, and 271.A, D(c)(1) + D(c)(3).

Federal requirement	State authority
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting (54 FR 9596, March 7, 1989).	ARS 49–922.A + B; AAC R18–8–270.A and 271.A, B, N(a), N(b) + Q(a).
Changes to Part 124 Not Accounted for by Present Checklists (48 FR 14146, April 1, 1983; 48 FR 30113, June 30, 1983; 53 FR 28118, July 26, 1988; 53 FR 37396, September 26, 1988; 54 FR 246, January 4, 1989).	ARS 49–922.A + B; AAC R18–8–271.A, C(a)(1)–(3), D(a), D(c)(1), D(c)(3), D(d), E(d)(1)–(4), I(c)(1)(iii), I(c)(1)(ix) + K(a)(2).
Criteria for Listing Toxic Wastes; Technical Amendment (55 FR 18726, May 4, 1990).	ARS 49–922.A + B; AAC R18–8–261.A, B + K(a)(3).
Exceptions to the Burning and Blending of Hazardous Wastes (RCRA § 3004(q)(2)(A) and § 3004(r) (2) and (3)).	ARS 49–922.A + B; AAC R18–8–261.A, B + I(a)(3)(vii).
HSWA Codification Rule 2; Corrective Action for Injection Wells (52 FR 45788, December 1, 1987).	ARS 49–922.A + B; AAC R18–8–270.A + B(2)(b).
Wood Preserving Listing; Technical Correction (56 FR 30192, July 1, 1991) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–261.A + B, 262.A, B + E, 264.A, 266.A and 270.A.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (56 FR 32688, July 17, 1991) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–261.A, B, I(a)(2) + I(a)(2)(ii), 265.A, 266.A, B(b)(2) + B(b)(3) and 270.A.
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (56 FR 41164, August 19, 1991).	ARS 49–922.A + B; AAC R18–8–261.A + B and 268.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (56 FR 42504, August 27, 1991) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–261.A + B, 265.A and 266.A.
Exports of Hazardous Waste; Technical Correction (56 FR 43704, September 4, 1991).	ARS 49–922.A + B; AAC R18–8–262.A. + B.
Coke Administrative Stay (56 FR 43874, September 5, 1991)	ARS 49–922.A + B; AAC R18–8–266 A.
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities (56 FR 66365, December 23, 1991).	ARS 49–922.A + B; AAC R18–8–260.C + E 265.A.
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (57 FR 3462, January 29, 1992) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–260. C + E, 264. A + M, 265.A and 270.A.
Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable (57 FR 5859, February 18, 1992) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–264.A and 265.A
Second Correction to the Third Third Land Disposal Restrictions (57 FR 8086, March 6, 1992).	ARS 49–922.A + B; AAC R18–8–264.A and 268.
Hazardous Debris Case-by-Case Capacity Variance (57 FR 20766, May 15, 1992).	ARS 49–922. A + B; AAC R18–8–268.
Used Oil Filter Exclusion (57 FR 21524, May 20, 1992)	ARS 49–922.A + B; AAC R18–8–261.A + B.
Coke By-Product Exclusion (57 FR 27880, June 22, 1992)	ARS 49–922.A + B; AAC R18–8–261.A + B and 266.A.
Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance (57 FR 28628, June 26, 1992).	ARS 49–922.A + B; AAC R18–8–263.
Used Oil Filter Exclusion; Technical Correction (57 FR 29220, July 1, 1992)..	ARS 49–922.A + B; AAC R18–8–261.A + B.
Toxicity Characteristics Revision; Technical Corrections (57 FR 30657, July 10, 1992).	ARS 49–922.A + B; AAC R18–8–261.A + B and 265.A.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194, August 18, 1992).	ARS 49–922.A + B; AAC R18–8–260.C + E, 261.A + B, 262.A, B + E, 264.A, 265.A, 268 and 270.A + J.
Coke By-Product Listings (57 FR 37284, August 18, 1992)	ARS 49–922.A + B; AAC R18–8–261.A + B.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments III (57 FR 38558, August 25, 1992) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–260.C, E + G, 261.A + B, 264.A, 265.A and 266.A.
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage (53 FR 33938, September 1, 1988; as amended on July 1, 1991 at 56 FR 30200 and on September 16, 1992 at 57 FR 42832).	ARS 49–922.A + B; AAC R18–8–264.A, K + L and 265.A.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments IV (57 FR 44999, September 30, 1992).	ARS 49–922.A + B; AAC R18–8–266.A.
Chlorinated Toluene Production Waste Listing (57 FR 47376, October 15, 1992).	ARS 49–922.A + B; AAC R18–8–261.A + B.
Hazardous Soil Case-by-Case Capacity Variance (57 FR 47772, October 20, 1992).	ARS 49–922.A + B; AAC R18–8–268.
"Mixture" and "Derived-From" Rules; Response to Court Remand (57 FR 7628, March 3, 1992; as amended on June 1, 1992 at 57 FR 23062 and on October 30, 1992 at 57 FR 49278).	ARS 49–922.A + B; AAC R18–8–261.A + B.
Toxicity Characteristic Revision (57 FR 23062, June 1, 1992)	ARS 49–922.A + B; AAC R18–8–261.A + B.
Liquids in Landfills II (57 FR 54452, November 18, 1992)	ARS 49–922.A + B; AAC R18–8–260.C + E, 264.A and 265.A.
Toxicity Characteristic Revision; TCLP (57 FR 55114, November 24, 1992, as amended on February 2, 1993 at 58 FR 6854).	ARS 49–922.A + B; AAC R18–8–261.A + B.
Wood Preserving; Amendments to Listings and Technical Requirements (57 FR 61492, December 24, 1992) including HSWA and non-HSWA portions.	ARS 49–922.A + B; AAC R18–8–261.A + B, 254.A and 265.A.

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Federal requirement	State authority
Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C (58 FR 8658, February 16, 1993).	ARS 49–922.A + B; AAC R18–8–260.C + E, 264.A, 265.A, 268 and 270.A + C.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance (58 FR 28506, May 14, 1993).	ARS 49–922.A + B; AAC R18–8–268.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (58 FR 29860, May 24, 1993).	ARS 49–922.A + B; AAC R18–8–264.A, 265.A, 268 and 270.A.

Arizona has agreed to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona has agreed to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arizona is granted final authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) ("HSWA"). Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 3, 1995.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 95–8877 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5189–5]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Nevada has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Nevada's application and has made a decision, subject to public review and comment, that Nevada's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Nevada's hazardous waste program revisions. Nevada's application for program revision is available for public review and comment.

DATES: Final authorization for Nevada is effective June 12, 1995, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Nevada's program revision application must be received by the close of business May 11, 1995.

ADDRESSES: Copies of Nevada's program revision application is available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 123 W. Nye Lane, Carson City, NV 89710, Phone: 702/687–5872, Contact L.H. Dodgion, Administrator

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–1510

Written comments should be sent to April Katsura, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–2030.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–2030.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270 and 279.

B. Nevada

Nevada initially received final authorization for the base program on November 1, 1985. On May 27, 1994, Nevada received final authorization for revisions to its hazardous waste program, which included substantially all the Federal RCRA implementing

regulations published in the **Federal Register** through July 1, 1993. On March 13, 1995, Nevada submitted an application for additional revision approvals. Today, Nevada is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Nevada's application, and has made an immediate final decision that Nevada's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Nevada's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until May 11, 1995. Copies of Nevada's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Nevada's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Nevada is applying for authorization for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1993 and July 1, 1994, including the following Federal hazardous waste regulations:

Federal requirement	State analog
Requirements for Preparation, Adoption, and Submittal of Implementation Plans (58 FR 38816, July 20, 1993).	Nevada Revised Statutes (NRS) 459.485 and 459.490; Nevada Administrative Code (NAC) 444.8632–.8634.
Hazardous Waste Management System; Testing and Monitoring Activities (58 FR 46040, August 31, 1993).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Burning of Hazardous Waste in Boilers and Industrial Furnaces (58 FR 59598, November 9, 1993).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection (59 FR 458, January 4, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion (59 FR 8362, February 18, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Hazardous Waste Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (59 FR 10550, March 4, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634
Recordkeeping Instructions (59 FR 13891, March 24, 1994)	NRS 459.485, 459.490, + 459.550; NAC 444.8632–.8634.
Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction (59 FR 28484, June 2, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, Underground Injection Control Systems; Financial Assurance; Letter of Credit (59 FR 29958, June 10, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634.
Hazardous Waste Management System; Correction of Beryllium Powder (PO15) Listing (59 FR 31551, June 20, 1994).	NRS 459.485 and 459.490; NAC 444.8632–.8634.

Note: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987; NRS 459.550 effective 1981, amended 1985, 1987, and 1989; and NAC 444.8632, effective 1987, amended 1990, 1992, 1993, and 1994; NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; 124, subparts A and B; 260 through 270, inclusive; and 279, as modified by NAC 444.8633, NAC 444.8634,and NAC 444.86325.

Nevada agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Nevada agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Nevada is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Nevada's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted final authorization to operate its hazardous waste program as revised.

Nevada is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) ("HSWA"). Nevada also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

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Dated: April 3, 1995.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 95-8878 Filed 4-10-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 271

Louisiana; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule; administrative correction.

SUMMARY: This document corrects administrative errors published in a **Federal Register** (*FR*) document on January 23, 1995. That document contained EPA's response to public comments received during the public review and comment period of an immediate final rule EPA published in the *FR* on November 7, 1994, and affirmed the Agency's prior decision to grant final authorization to the Louisiana Department of Environmental Quality (LDEQ) effective January 23, 1995.

DATES: This correction of administrative errors in the *FR* document published by EPA to respond to public comments received regarding LDEQ's final authorization [60 *FR* 4380, January 23, 1995], affirms the Agency's immediate final rule previously published [59 *FR* 55368, November 7, 1994], and notifies the public that the final authorization was effective January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8528.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1994, EPA published a *FR* document granting final authorization to LDEQ for most rules referred to by EPA as Hazardous and Solid Waste Amendments of 1984 (HSWA) Cluster I. EPA received adverse written comments during the public review and comment period associated with that document. On January 23, 1995, EPA published a second *FR* document with its response to the comments, and affirmed its decision to grant authorization to LDEQ for the published rules. After publication, EPA realized it published a draft version of the *FR* document which contained language deleted or modified in the final version. To correct this administrative error, and for the convenience of the reader, EPA is hereby publishing corrections to the prior *FR* document that affirmed the Agency's immediate final rule implementing final authorization to LDEQ, effective January 23, 1995.

Correction of Publication

On page 4380, in the last column, in the first paragraph under **SUMMARY**, the last sentence is corrected to read "As such, EPA published an immediate final rule in the **Federal Register** (*FR*) on November 7, 1994, with a 45-day public review and comment period, to be effective on January 23, 1995."

On page 4381, in the first column, in the first paragraph under Response to Public Comments, the second sentence is corrected to read "One supplied LDEQ with an independent environmental audit report of conditions at Bayou Steel to support both commentors' claims, and the commentor believed LDEQ's lack of enforcement response to those and other complaints demonstrated the State's inability to take on additional program revisions, and unwillingness to appropriately address complaints."

The third sentence in the same paragraph is corrected to read "Also, the commentors questioned whether LDEQ had adequate resources to enforce the RCRA corrective action provisions in this program revision."

The second paragraph under Response to Public Comments is corrected to read "EPA reviewed the commentors' assertions and LDEQ's actions regarding complaints about Bayou Steel. EPA noted LDEQ's files contained numerous complaints regarding Bayou Steel's activities, including those from the commentors. The files showed LDEQ initiated investigations to address all but one complaint within seven days of receipt, and in that instance the investigation was initiated within seven days of a records review. State records further revealed that LDEQ investigated all Bayou Steel complaints in an appropriate and timely manner. LDEQ's inspection reports were in permanent files and available for public review. Copies of requested portions of the files were available to the public."

In the third paragraph under Response to Public Comments, the first sentence is corrected to read "State records also showed that the various Divisions of LDEQ had conducted 29 inspections at Bayou Steel since 1993."

In the third paragraph under Response to Public Comments, the second sentence is corrected to read "Some resulted in enforcement actions, including penalties, for the facility's violations of Louisiana's environmental regulations."

The fourth paragraph under Response to Public Comments is corrected to read "EPA determined that LDEQ has adequate resources to take on the additional portions of RCRA included in this program revision. As noted above, various LDEQ Divisions conducted numerous inspections at Bayou Steel since 1993, dedicating significant resources to the inspections. These inspections, covering all media, were in addition to inspections and investigations performed by LDEQ at other facilities in the State. Because of the number and variety of complaints LDEQ received regarding Bayou Steel, LDEQ requested that EPA, with its authority, resources, and experience, perform a complete multi-media facility inspection. EPA considered this an appropriate referral. EPA conducted the Bayou Steel multi-media inspection in June 1994. After EPA completed and analyzed the inspection and sampling reports, it recognized the need for additional information on Bayou Steel's waste management practices. This detailed and thorough investigation is almost complete, and EPA will issue a report of the results in the future. Until the report is complete, EPA will not be able to present any findings regarding the facility."

The fifth paragraph under Response to Public Comments is corrected to read "Additionally, some complaints to the State about Bayou Steel concerned LDEQ's lack of sufficient resources to enforce RCRA's prohibition of unlicensed burial of hazardous waste. The commentor wrote that LDEQ admitted it lacked sufficient resources to enforce RCRA corrective action requirements. At the time of LDEQ's inspections of the facility, EPA had not authorized the State to regulate or address waste subject to Federal corrective action authority under HSWA in lieu of EPA."

The ninth paragraph under Response to Public Comments is corrected to read "EPA considered Louisiana's 'de novo review' provision not to be the same as 'trial de novo' (new trial) recognized and defined in the Pardue Court, but that under the de novo review provisions the reviewing court can exercise only appellate jurisdiction (review of the record). The Louisiana legislature enacted laws that authorize only the Secretary of LDEQ to grant or deny permits, not the judiciary. Louisiana Revised Statutes, (R.S.) § 30:2011(D)(2). Additionally, R.S. § 30:2014(A) provides, in part, that the Secretary shall act as the primary public trustee of the environment, and shall consider and follow the will and intent of the Louisiana Constitution and Louisiana statutory law in making any determination relative to the granting or denying of permits. This matter is also clarified in LDEQ's revised Program Description, which refers to the review as a 'de novo review of the record."

In the tenth paragraph under Response to Public Comments, the third sentence is corrected to read "The commentor alleged LDEQ argued that the courts have jurisdiction to review its decisions only when the decision resulted from an LDEQ mandatory adjudicatory hearing."

In the tenth paragraph under Response to Public Comments, the fifth sentence is corrected to read "Thus, none of LDEQ's hazardous waste permitting decisions, with the possible exception of commercial treatment, storage, or disposal facility permits, would be subject to judicial review."

In the tenth paragraph under Response to Public Comments, the sixth sentence is corrected to read "However, EPA considered this issue resolved by the Louisiana Supreme Court in Matter of American Waste and Pollution Control Co., 642 So.2d 1258 (La 1994), where the Court ruled that LDEQ decisions are appealable whether or not they result from a mandatory adjudicatory hearing.

On page 4382, in the twelfth paragraph under Response to Public Comments, the third sentence is corrected to read "In addition, EPA retains Federal enforcement authority under RCRA §§ 3008(h) and 7003."

In the fourteenth paragraph under Response to Public Comments, the second sentence is corrected to read "Even then, EPA will retain the authority to enforce against violators, even in an authorized State, under RCRA §§ 3008(h) and 7003."

In the fifteenth paragraph under Response to Public Comments, the first sentence is corrected to read "EPA has reevaluated its decision to approve this final authorization for revision to the State's hazardous waste program, and revisited all pertinent documentation, including the authorization application with revised Program Description, and several EPA mid-year and end-of-year evaluation reports on LDEQ."

Finally, in the fifteenth paragraph under Response to Public Comments, the third sentence is corrected to read "EPA hereby affirms its decision to approve this final authorization, which was effective January 23, 1995."

Dated: March 29, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95-8876 Filed 4-10-95; 8:45 am]

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40 CFR Part 372

[OPPTS-400085A; FRL-4929-3]

RIN 2070-AC00

Copper Phthalocyanine Compounds; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the "copper compounds" category on the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This action is based on EPA's conclusion that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine meet the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine that occurred during the 1994 reporting year, and releases that will occur in the future.

EFFECTIVE DATE: This rule is effective April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202-260-9592, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA) 42 U.S.C. 13106. When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has, from time to time, added and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439; November 30, 1994).

II. Description of Petition and Proposed Action

On March 5, 1993, the Agency received a petition from the Color Pigments Manufacturers Association (CPMA) to delete Color Index (C.I.) Pigment Blue 15:1 from the chemical category "copper compounds" subject to EPCRA reporting requirements. C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. Because C.I. Pigment Blue 15 had already been deleted from the chemical category "copper compounds" (56 FR 23650; May 23, 1991), the Agency treated this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds."

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of June 6, 1994 (59 FR 29252), proposing to delete copper

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monochlorophthalocyanine from the category "copper compounds" on the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that copper monochlorophthalocyanine meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, EPCRA provides at section 313(d)(3) that "[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)]." Specifically, in the proposed rule EPA concluded preliminarily that there is not sufficient evidence to establish that copper monochlorophthalocyanine causes adverse acute human health effects, chronic human health effects, or environmental toxicity. This preliminary conclusion, which is detailed in the proposed rule, was based on the Agency's review of the petition, as well as other relevant materials included in the docket.

In the proposed rule, EPA requested comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. As stated in the preamble of the proposed rule, EPA has previously reviewed brominated/chlorinated copper phthalocyanine compounds as well as the parent compound, copper phthalocyanine, and believes that its conclusions regarding the toxicity of the intact compound and the availability of soluble copper from these substituted compounds apply to all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine.

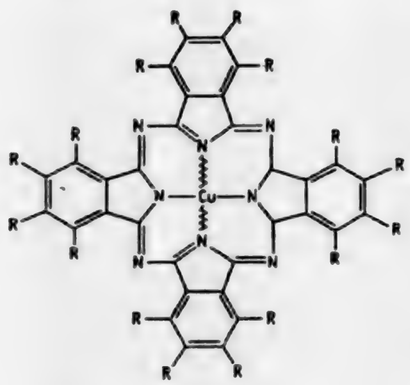
III. Final Rule and Rationale for Delisting

In response to the petition from CPMA, EPA has decided to delete copper monochlorophthalocyanine from the list of chemicals for which reporting is required under section 313 of EPCRA and section 6607 of PPA. Further, the Agency has decided to expand this delisting action to include all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine. EPA is delisting these chemicals because the Agency has determined that they satisfy the delisting criteria of EPCRA section 313(d)(3).

A. Response to Comments

EPA received two comments on the proposed rule, both in support of the deletion of copper monochlorophthalocyanine. In addition, one of the commenters, CPMA strongly supports EPA's alternative proposal exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. The commenter requests that EPA delete all of the possible compounds using the definition of substituted phthalocyanines provided in the proposed rule because these chemicals are abiotically and biotically stable chemicals that will not liberate soluble forms of copper and are not toxic in the intact form.

EPA agrees with the commenters. EPA believes that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine cannot reasonably be anticipated to cause adverse acute human health effects, chronic human health effects, or environmental toxicity. Thus, EPA is exempting these chemicals from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. Specifically, EPA is deleting all the chemicals that meet the following molecular structure definition:



where R= H and/or Br and/or Cl only.

A guidance document, entitled "Copper Phthalocyanine Compounds Excluded from the Reporting Requirements under the 'Copper Compounds' Category on the EPCRA Section 313 List," that lists all known chemicals that meet this definition and that have Chemical Abstract Service (CAS) numbers, is available from the Emergency Planning and Community Right-to-Know Hotline. See the unit of this preamble entitled FOR FURTHER INFORMATION CONTACT for the address and telephone number. This guidance document is not intended to be all inclusive and there may be compounds not included in the guidance document which meet the above formula. Such compounds are also delisted by today's action.

B. Rationale for Delisting and Conclusions

After reviewing comments received and other relevant information, EPA has concluded that the assessment set out in the proposed rule should be affirmed. A more detailed discussion of the rationale for delisting is given in the proposed rule (June 6, 1994; 59 FR 29252). Therefore, this final rule is based on EPA's conclusion that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine cannot reasonably be anticipated to cause adverse acute human health effects, chronic human health effects, or environmental toxicity, because (1) The intact species do not meet the EPCRA section 313(d) criteria and (2) the copper ion from these copper phthalocyanine compounds will not become available. Thus, these chemicals meet the EPCRA section 313(d)(3) criterion for delisting (i.e., they do not meet any of the EPCRA section 313(d)(2) listing criteria). In reaching this conclusion, EPA considered the toxicity of intact copper phthalocyanine compounds and the copper ion as a potential source of toxicity from copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine. Initially, EPA analyzed the availability of copper ion. If the ion is not available, these compounds cannot cause toxicity due to copper ion. EPA has concluded that copper ion cannot reasonably be anticipated to become available from copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine.

The intact copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine can reasonably be anticipated to be acutely toxic only at levels that greatly exceed estimated releases and resultant exposures. Therefore, these copper phthalocyanine compounds cannot reasonably be anticipated to cause ". . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases." Thus, EPA has concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria for listing under EPCRA section 313(d)(2)(A).

EPA has also concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because these copper phthalocyanine compounds cannot reasonably be anticipated to cause cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity. These intact copper phthalocyanine compounds cannot reasonably be anticipated to cause such effects, and copper ion will not be available to cause chronic human toxicity.

Finally, EPA has concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because these copper phthalocyanine compounds cannot reasonably be anticipated to cause adverse environmental effects. In addition, copper ion will not become available from these copper phthalocyanine compounds and, therefore, will not be available to cause adverse environmental effects.

IV. Effective Date

This action becomes effective April 11, 1995. Thus, the last year in which facilities had to file a Toxic Release Inventory (TRI) report for these copper phthalocyanine compounds was 1994, covering releases and other activities that occurred in 1993.

Section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with these copper phthalocyanine compounds, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205.

V. Rulemaking Record

The record supporting this final rule is contained in docket number OPPTS–400085A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this final rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because the final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

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Dated: March 30, 1995.

Lynn Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

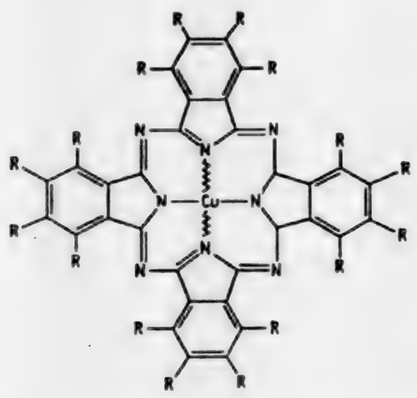
Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. In § 372.65(c) by adding the following language to the copper compounds listing "except copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine that meet the following molecular structure definition:



where R = H and/or Br and/or Cl only."

[FR Doc. 95–8874 Filed 4–10–95; 8:45 am]

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40 CFR Part 763

[OPPTS–62121A; FRL–4914–6]

Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; Notice of Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on requested waiver.

SUMMARY: EPA is issuing a final decision which approves the request of Louisiana for a waiver from the requirements of 40 CFR part 763, subpart E, Asbestos-Containing Materials in Schools.

ADDRESSES: A copy of the complete waiver application submitted by the State is available from the TSCA Public Docket Office. A copy is also on file and may be reviewed at the EPA Region 6 office in Dallas, Texas.

TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

EPA, Region 6 (6T–PT), 1445 Ross Avenue, Dallas, TX 75202–2733.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act 1986 (AHERA), Pub. L. 99519. AHERA is the abbreviation commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools and will be used in this document. EPA issued a final rule in the **Federal Register** of October 30, 1987 (52 FR 41846), the Asbestos-Containing Materials in Schools Rule (the Schools Rule, 40 CFR part 763, subpart E), which requires all Local Education Agencies (LEAs) to identify asbestos-containing building materials (ACBMs) in their school buildings and to take appropriate actions to control the release of asbestos fibers.

Under section 203 of AHERA, EPA may, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or part the requirements of the Schools Rule, if the State has established and is implementing or intends to implement an ongoing program of asbestos inspection and management which is at least as stringent as the requirements of the rule. Section 763.98 (40 CFR 763.98) sets forth the procedures to implement this statutory provision. The Schools Rule requires that specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States. The Agency encourages States to establish and manage their own school regulatory programs under the AHERA waiver provisions.

EPA issued a notice in the **Federal Register** of February 18, 1993 (58 FR 8926), which announced the receipt of a waiver request from the State of Louisiana, and solicited comments from the public. The notice also discussed the program elements of the State program, listed differences between the State program and the AHERA requirements, and provided EPA's preliminary response to the State on the differences identified.

No comments were received during the 60–day comment period. No request for a public hearing was received. Consequently, no hearing was held.

EPA is required to issue a notice in the **Federal Register** announcing its

decision to grant or deny a request for waiver within 30 days after the close of the comment period. The comment period for this docket closed April 19, 1993. The 30–day review period may be extended if mutually agreed upon by EPA and the State. EPA and Louisiana mutually agreed to extend the review period.

The remainder of this document is divided into two units. The first unit discusses the Louisiana program and sets forth the reasons and rationale for EPA's decision on the State's waiver request. This unit is subdivided into three sections. Section A discusses key elements of the State's program at the time the waiver request was submitted. Section B enumerates the differences EPA noted between the State's program and the AHERA requirements as discussed in the February 18, 1993 **Federal Register** notice, and sets out the State's response to those differences which EPA subsequently received. Section C gives EPA's final approval of the waiver request based on the State's response. The second unit of this notice discusses statutory requirements of the Paperwork Reduction Act.

I. The Louisiana Program

A. Program Elements

Louisiana Revised Statutes RS 30:2341-2345 and the Asbestos and Hazardous Material Detection Program RS 40:1749.1 give the Louisiana Department of Environmental Quality (LDEQ) the authority to regulate asbestos in schools and State buildings. Provisions in Louisiana's revised statutes, RS 30:2054, give the LDEQ the authority to regulate sources of air contaminants. The Louisiana Administrative Code (LAC), Title 33, Part III, Chapter 27 and Appendix A to Chapter 27 contain the State provisions for asbestos inspections and management in schools and State buildings. LAC 33:III.5151 contains the State provisions for training and accreditation of persons conducting asbestos activities in facilities.

The LDEQ conducts inspections to ensure compliance with the above statutes and regulations. LDEQ reviews the management plans submitted for schools and State buildings. The requirements of the Louisiana Program are at least as stringent as the Federal AHERA requirements. Most of the State requirements are, in fact, more stringent than the Federal requirements in that they are applied to all State buildings rather than just to schools as in the Federal rule.

B. Resolution of Differences Between State and AHERA

In the February 18, 1993, **Federal Register** notice, EPA gave its preliminary comments regarding the differences between the Louisiana and AHERA requirements. EPA's preliminary comments identified four differences that needed to be addressed before July 29, 1994. In a letter on July 28, 1994, LDEQ informed EPA of its correction of those portions of the State's program. Following are the four differences between the Federal requirements and the State's program which were listed in the February 18, 1994 **Federal Register** notice and the corresponding responses by the LDEQ:

1. The State's definition of school building does not specifically mention "any portico or covered exterior hallway or walkway" and "any exterior portion of a mechanical system used to condition interior space."

LDEQ response: To address this item the State has expanded its definition of school building to include, any portico or covered exterior hallway or walkway and any exterior portion of a mechanical system used to condition interior space.

2. The State's procedures to be followed for any operations and maintenance activities disturbing friable ACBMs do not include the statement "place the asbestos debris and cleaning materials in a sealed leak-tight container."

LDEQ response: The State has expanded its Operations and Maintenance Activities by adding LAC 33:III.2719.D.6: "Place the asbestos debris and other cleaning materials in sealed, clear, leak-tight containers."

3. Submission of a management plan for a building that an LEA begins to use as a school building is not required by the State's program prior to the building's use as a school.

LDEQ response: To address this concern, LAC 33:III.2723.A.3 has been modified as follows: "If a local education agency or the state government begins to use a building as a school building or state building more than 90 days after promulgation of this regulation, the local education agency or the state government shall submit a management plan for the school building or state building to the Department of Environmental Quality prior to its use as a school or state building. Each plan developed or modified after June 20, 1994 must include Form AAC-8, Required Elements for Management Plans."

4. Warning labels are required by the State rule to be attached immediately adjacent to any "accessible" friable and nonfriable ACBM and suspected ACBM assumed to be asbestos-containing material located in routine maintenance areas. The Federal rule does not limit the warning label requirements to ACBM which is accessible.

LDEQ response: The State has modified LAC 33:III.2727.A by removing the word "accessible" from the regulation.

Since the State application for waiver and the **Federal Register** notice of February 18, 1993, EPA published a revision to its Asbestos Model Accreditation Plan (MAP). The Asbestos Model Accreditation Plan; Interim Final Rule was published on February 3, 1994 (59 FR 5236). This MAP required that each State adopt an accreditation plan that is at least as stringent as this MAP within 180 days after the commencement of the first regular session of the legislature of the State that is convened on or after April 4, 1994. The Louisiana Legislature convened on April 25, 1994. Therefore the 180–day period expired on October 22, 1994. In a letter of December 1, 1994, LDEQ submitted copies of the State's accreditation regulations and stated its position that Louisiana's Accreditation Program meets or exceeds the U.S. EPA Model Accreditation Plan. Revised copies of LAC 33:III, Chapter 27 and LAC 33:III.5151 were submitted to support that position.

C. EPA's Decision on Louisiana's Request for Waiver

EPA grants the State of Louisiana a waiver from the requirements of 40 CFR part 763, subpart E, effective 30 days after publication of this Notice of Final Decision. Federal jurisdiction shall be in effect in the period between the date of publication of this document and the effective date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Louisiana. This waiver is applicable to all schools covered by AHERA in the State and is subject to rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

II. Other Statutory Requirements

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork

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Reduction Act and have been assigned OMB control number 2070–0091.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: March 30, 1995.

Jane Saginaw,

Regional Administrator, Region VI.

[FR Doc. 95–8873 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Coast Guard

46 CFR Parts 401, 403, and 404

[OST Docket No. 50248]
[CGD 92–072]

RIN 2105–AC21

Great Lakes Pilotage Rate Methodology

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Department of Transportation (the Department) is amending the regulations concerning Great Lakes pilotage by amending the procedures for determining Great Lakes pilotage rates, and revising the financial reporting requirements mandated for Great Lakes pilot associations. The purpose of these changes is to improve the ratemaking process. This final rule does not change the existing Great Lakes pilotage rates and charges.

DATES: This rule is effective on June 12, 1995. Comments must be received on or before May 11, 1995. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, OST Docket No. 50248, U.S. Department of Transportation, 400 7th St. SW., room PL–401, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back. Unless otherwise indicated, documents referred to in this preamble are also available for inspection or copying at this address. Comments should not be sent to the Coast Guard docket.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection (G-MVP/12) room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–6102, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St. SW., room 10424, Washington, DC 20590, (202) 366–9306.

Regulatory History

On December 7, 1988, the Department of Transportation published the Great Lakes Pilotage Study Final Report (1988 DOT Pilotage Study). The study revealed weaknesses in accounting for the expenses incurred by the pilot associations and the need to formally establish the factors used in establishing pilotage rates. On April 25, 1990, the Coast Guard published a final rule (55 FR 17580) establishing improved audit requirements and general guidelines and procedures to be followed in ratemaking (CGD 92–072).

In May 1990, the Inspector General (IG) for the Department of Transportation initiated an audit of Coast Guard oversight of Great Lakes pilotage. The final report of the audit (Audit of the U.S. Coast Guard's Oversight and Management of the Great Lakes Pilotage Program), detailing further issues affecting the basis for Great Lakes pilotage rates, was issued on December 14, 1990.

On August 2, 1991, a DOT Task Force was formed to: (1) Develop an interim rate adjustment; and (2) establish a new pilotage ratemaking methodology. On June 5, 1992, an interim rate increase was published (CGD 89–104). The DOT Task Force then developed a new pilotage ratemaking methodology, which the Coast Guard published in a notice of proposed rulemaking (NPRM) (59 FR 17303) dated April 12, 1994.

The NPRM proposed to amend the Great Lakes pilotage regulations by establishing new procedures for determining Great Lakes pilotage rates and revising the financial reporting requirements mandated for Great Lakes pilot associations (CGD 92–072). The NPRM also announced a public hearing that was held in Cleveland, OH on May 20, 1994. The comment period for the NPRM ended on July 11, 1994.

In response to the NPRM and the public hearing, the Coast Guard received 31 comments and two requests for additional public meetings to explain the proposals contained in the NPRM. In the **Federal Register** (59 FR 18774) on April 20, 1994, the Coast Guard announced that it would conduct two public meetings. The first public meeting was held in Chicago, IL on May 3, 1994. The second public meeting was held in Massena, NY on May 5, 1994.

The Coast Guard also received one request to extend the comment period for the NPRM. Because the comment period for the NPRM was 90 days, the Coast Guard determined that there was sufficient time to submit comments. Therefore, the comment period was not extended.

Background and Purpose

Under the Great Lakes Pilotage Act of 1960 (Pub. L. 86–555, 46 U.S.C. 9301 *et seq.*) (the Act), vessels of the United States operating on register and foreign vessels must engage a U.S. or Canadian registered pilot when traversing the waters of the Great Lakes. The Act vests the Secretary of Transportation with responsibility for setting pilotage rates. Section 9303 of the Act provides that the Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services. This authority, except for the authority to enter into, revise or amend arrangements with Canada, has been delegated to the Commandant of the Coast Guard by 49 CFR 1.46(a). This authority has been further delegated to the Director, Great Lakes Pilotage (the Director).

Currently, the navigable waters of the Great Lakes are divided into eight pilotage areas. United States registered pilots, along with their Canadian counterparts, provide pilotage services in areas 1, 2, 4, 5, 6, 7, and 8. Pilotage area 3 (the Welland Canal) is currently a wholly-Canadian area where only Canadian pilots provide services. Pilotage areas 2, 4, 6, and 8 are "undesignated waters." Pilotage areas 1, 5, and 7 are "designated waters." Pilots are required to direct navigation of vessels in designated waters. Pilots are required to be on board and available to direct navigation in undesignated waters. The seven U.S. pilotage areas are grouped together into three pilotage districts. District 1 consists of areas 1 and 2. District 2 consists of areas 4 and 5. District 3 consists of areas 6, 7, and 8. Each district has its own pilot association.

Section 9305 of the Pilotage Act provides that the Secretary of Transportation, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to prescribe joint or identical rates and

charges. The latest Memorandum of Arrangements between the United States and Canada, dated January 18, 1977, specifies that the Secretary of Transportation of the United States of America and the Minister of Transport of Canada will establish regulations imposing identical rates. A copy of this Memorandum of Arrangements is available in the docket and may also be obtained by writing to Mr. Scott Poyer at the address listed under **FOR FURTHER INFORMATION CONTACT**, above. In the past, consultations between the United States and Canada resulted in nominally identical U.S. and Canadian rates.

However, there are differences in the cost bases and in the operating organizations of the U.S. and Canadian pilots, particularly with regard to pilot compensation. These differences need to be taken into account in reaching identical U.S. and Canadian rates. As a result, the ratemaking methodology contained in this final rule would not translate directly into new rates, but rather would form the basis for proposals to be negotiated with Canada.

Discussion of Comments and Changes

Although the Coast Guard issued the NPRM under authority delegated to the Commandant by the Secretary, the Secretary is issuing the final rule. Under 49 CFR 1.43(a), the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

Because the Secretary is issuing this final rule, the Department is consolidating Coast Guard Docket No. 92–072 into OST Docket No. 50248. All further pleadings should be filed in the new docket at the docket address listed above.

The Coast Guard received 31 comments on the NPRM. Twenty comments were from Great Lakes Pilots, Great Lakes Pilot Associations, or employees of these associations. Six comments were from shippers, ports, and associations representing the Great Lakes maritime industry. Five comments were from unions or professional organizations that represent pilots. Some of the comments addressed issues that were not the subject of this rulemaking. The Department is responding only to those comments relating to this rulemaking.

All comments were carefully considered, and in response to the comments significant changes have been made to the proposals that were published in the NPRM. The NPRM proposed changes to 46 CFR part 403, which deals with accounting and financial reporting requirements, and 46 CFR part 404, which details ratemaking procedures.

Most of the comments criticized the NPRM for being overly complex and unwieldy. In response to this criticism, the regulations that were proposed in the NPRM have been cut by approximately two thirds, with no sacrifice of fairness or substance. Accounting requirements have been streamlined for easier use, financial reporting requirements have been reduced, and the proposed ratemaking methodology has been revised to make it less complex.

The NPRM elements that received the strongest objections from the public were proposals to change the way pilotage rates are charged on the Great Lakes. Almost everyone who commented on the proposed rule objected to the proposals to create a class of "ancillary services" and to recalculate point-to-point pilotage charges based on hourly fees. These proposals were found in Step 7 of appendix A to part 404. The majority of commenters felt that the proposals for hourly pilotage fees would degrade safety by creating an incentive for vessels to go faster in order to avoid or reduce pilotage costs. Commenters also objected to labeling some pilotage services such as docking and undocking as "ancillary services" and allowing fees for these services to be set purely at the discretion of the Director. There were concerns that purely discretionary rates would not be predictable for shippers or pilots.

In response to the comments from pilots, shippers, unions and most other commenters, the NPRM proposal to charge fees on an hourly basis has been modified. The Department agrees with the expressed concerns regarding undue complexity and possible disincentives for operational safety, and has therefore rewritten Step 7 of appendix A to part 404. This final rule retains the current method for charging pilotage rates to various users, which specifies charges for specific travel segments. If concerns are raised in the future regarding the equity of the way in which pilotage rates are charged, this issue may be reopened. However, no changes will be made without a proceeding that provides for public involvement.

There were many objections from pilots and shippers to the proposal that the timing of rate reviews be determined by the Director of Great Lakes Pilotage. Several alternatives were suggested, but most comments indicated that it would be more appropriate if a rate review were conducted at least every one, two, or three years in order to keep pilotage rates current. The Department agrees with these comments. The provision in 46 CFR 404.1(b), which gave the Director authority to determine the timing of rate reviews, has been revised in response to the public comments received. Section 404.1(b) now requires the Director to conduct a detailed audit of pilot association expenses and use the ratemaking procedures in appendix A of part 404 to set base pilotage rates at least once every five years. The Director of Great Lakes Pilotage will initiate the new methodology as soon as possible after the effective date of this rule using the most current audit reports available. If interested parties request reviews more often than once every five years, the Director can review the request, and conduct a special audit and ratemaking if the Director concludes that a reasonable basis for conducting a review has been established.

In the intervening years between the five-year or special audits, pilotage rates proposed for coordination with Canada will be reviewed annually using a simplified procedure detailed in appendix C to part 404. This annual review procedure addresses public comments that a less complicated ratemaking process would be faster and less burdensome on all parties.

During the regular five-year audit of the Great Lakes pilot associations and the corresponding rate review, the Director will calculate an "expense multiplier" for each pilot association using the most recent regular and/or special audit data. This expense multiplier is the ratio of all other expenses, including a return element, to pilot compensation expense in unit cost terms for the base period analyzed. When target pilot compensation is determined for a prospective annual rate period, total economic costs can be easily determined by increasing such pilot compensation by the multiplier. Use of this ratio avoids the need to recalculate other expenses and the return element each year in order to review the rates. Moreover, since this review procedure focuses on changes in unit costs, i.e., total economic costs per bridge hour, between the base period and the new rate period, the need to project revenues for the new period is also avoided. Finally, this calculation will not change the rate structure; it will merely change proposed rates uniformly by the percentage change in unit costs.

Most pilots, and organizations representing pilots, commented on the NPRM's proposal to continue the Department policy of maintaining income comparability between Great Lakes Registered Pilots, and masters/chief mates on Great Lakes vessels. This policy was established as a result of the

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1988 DOT Pilotage Study, which examined many alternatives and selected the master/chief mate target for pilot compensation. Commenters believed pilots should earn more than masters/chief mates. Among the many alternatives proposed by commenters were: Comparability with State pilots; comparability with Canadian pilots; automatic cost-of-living allowances; overtime bonuses; and work hour/travel time/rest time adjustments. No single alternative appeared to represent a consensus. After considering all the alternatives, the Department is keeping the pilot compensation methodology proposed in the NPRM. This is fully consistent with the recommendation in the 1988 DOT Pilotage Study, which states, "The study team believes that pilot compensation should be tied to the local economy. The use of local masters and mates pay scales has the important impact of tying pilot compensation to regional industry pay levels. Salaries of pilots, like those of teachers, physicians, lawyers, and other professionals, are tied to the fluctuations of supply and demand for their services in their particular locality. In this fashion, Great Lakes pilots share in the fortunes of the Great Lakes." Commenters offered no new information that alters this assessment.

There were several objections from Great Lakes Pilot Associations and their employees to the proposed new 46 CFR part 403, as published in the NPRM. Commenters objected that this part was unduly burdensome for small pilot associations and should be eliminated in order to streamline the regulations, and reduce costs to the pilot associations. After careful consideration, and in light of the lesser requirements of the procedures for the annual reviews of base pilotage rates, the Department agrees with the public comments and has greatly streamlined part 403. Specific account numbers and detailed account descriptions have been removed in favor of a requirement that financial records of the association be kept in accordance with generally accepted accounting principles. Associations are required to complete and retain annual financial statements and an audit by a certified public accountant. However, reporting requirements have been reduced to require that audits only be forwarded to the Director once every five years, or by special request. At the same time, associations must keep in mind that answers challenging proposed cost disallowances or other applications of the ratemaking methodology, as well as *ad hoc* requests for rate reviews, must be based on full and adequate financial records.

Two commenters from two of the three Great Lakes Pilot Associations objected to the proposed requirement that the financial records of the associations be retained for a period of ten years, and proposed an alternative three-year requirement that would conform to Internal Revenue Service (IRS) requirements. The Department does not agree. The Department does not use the financial records of the pilot association for the same purpose as the IRS. On several occasions the Director has accessed historical data to ensure that only reasonable expenses have been included in ratemaking calculations. For this reason, the Department is adopting the proposed requirement regarding the 10-year retention of financial records.

The Department anticipates implementing all the rate reviews under the methodologies adopted in this rulemaking proceeding through additional public procedures. Following a review, the Department will publish its tentative findings and any proposed rate changes, and it will request the comment of interested parties on the calculations. (Comments seeking reconsideration of our rate methodology will not be addressed through this process.) The Department will then seek to coordinate any proposed change in rates, as modified by any warranted corrections, with Canadian authorities. Following the coordination process, the Department will establish final rates to be effective for the designated future rate period. Both the proposed and final rate documents will be served on the pilot associations and other interested persons requesting in writing to be placed on the service list in this docket; both documents will also be published in the **Federal Register**.

Although the Coast Guard received no comments on the section pertaining to the uniform pilot's source form, the Department is making a slight modification to clarify that the format for source forms is approved by the Director of Great Lakes Pilotage and issued by the pilot associations. The "Pilot's Source Form—Great Lakes Pilotage," referred to in the NPRM, is not an official United States Government form.

The Department is also removing several subparts as part of our streamlining of the accounting regulations. Subparts B, C, D, and G, as contained in the NPRM, have been eliminated, and subparts E, F, and H have been redesignated subparts B, C, and D, respectively.

There were several objections from employees and representatives of the District 3 pilot association to the proposed revision to 46 CFR 404.05, which provided that profit sharing expenses not be recognized for ratemaking purposes. Commenters argued that profit sharing for employees of the District 3 pilot association is part of their recognized pension plan, and employees of this association would be unfairly penalized if this proposal were adopted. The Department agrees and has changed the wording of the proposed paragraph to allow reasonable profit sharing expenses for non-pilot employees only. Profit sharing that benefits pilots will be considered part of pilot compensation.

Several comments from both pilots and shippers, as part of the overall objection to the complexity of the proposal, argued that the market-equivalent Return-on-Investment (ROI) provisions of 46 CFR 404.5(a)(4), Step 5 of appendix A, and the formulas contained in appendix B should not be included. Some members of the public objected to allowing a return on the capital that pilots had invested in their pilot associations on the grounds that this would encourage pilots to make investments that were unrelated to pilotage, and thereby increase pilotage fees. Other commenters believed that the ROI provisions made the ratemaking formula in appendix A too complicated. The Department carefully considered these comments and believes that we have significantly reduced the proposal's complexity and burden. However, a return element is an important component of cost-based rate methodologies. Rates that have been set without a return element have been vulnerable to legal challenge and do not meet the goals of the investigations and audits that underlie this rulemaking. Also, in order to negotiate with the Canadians we must have rates that can withstand scrutiny as to their conformity to sound ratemaking principles. The Department believes it is only fair to allow pilots a return on the capital they invest. The Department also believes that sufficient safeguards against excessive investment are in place because 46 CFR 404.5(a)(4) specifically stipulates that capital that is not necessary and reasonable for the provision of pilotage services will not be allowed for ratemaking purposes.

Final Rule With Request for Comments

The Department is issuing this document as a final rule but is also providing an opportunity for comment. This rulemaking document is within the scope of the NPRM. The primary purposes of the final rule have not changed from the NPRM stage: to standardize the financial reporting of Great Lakes pilotage associations, and to clarify the methodology to be used in future ratemakings. We believe that we have responded to all the concerns expressed in the comments to the NPRM. Nevertheless, we want to give the public an additional opportunity to present its views to us, given the changes that we have made to the NPRM. Accordingly, even though the final rule will be effective on June 12, 1995, we will consider any new matters presented to us during the 30-day comment period. We will make revisions to this rule if we believe they are warranted.

Executive Order 12866

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979) because a rulemaking affecting the setting of pilotage rates is controversial and of significant interest to the public.

The Department expects the economic impact of this rule to be minimal. This rule does not represent a significant departure from the current ratemaking process, and there are no expected increases in costs. Therefore, a full regulatory evaluation is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This final rule should have little or no impact on small entities that pay pilotage rates or that receive income from pilotage rates. Because it expects the impact of this proposal to be minimal, the Department certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Department has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The part numbers are parts 401 and 403 and the corresponding OMB approval number is OMB Control Number 2115–0616.

Federalism

The Department has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under 49 CFR 1.46(a) the Secretary delegates to the Commandant of the authority to carry out the Great Lakes Pilotage Act of 1960, as amended, except the authority to enter into, revise, or amend arrangements with Canada.

State action addressing pilotage regulation is preempted by 46 U.S.C. 9306, which provides that a State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.

Environment

The Department considered the environmental impact of this final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule is procedural in nature because it deals exclusively with ratemaking and accounting procedures. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1,—Administrative actions or procedural regulations and policies that clearly do not have any environmental impact. A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Parts 401, 403, and 404

Administrative Practice and Procedure, Great Lakes, Navigation (water), Penalties, Reporting and Recordkeeping Requirements, Seamen.

For the reasons set out in the preamble, the Department proposes to amend parts 401, 403, and 404 of title 46 of the Code of Federal Regulations as follows:

PART 401—[AMENDED]

1. The authority citation for part 401 is revised to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46. 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.110 the introductory text of paragraph (a) and paragraph (a)(9) are revised, and paragraph (a)(16) is added to read as follows:

§ 401.110 Definitions.

(a) As used in this chapter:

* * * * *

(9) *Director* means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Director, Great Lakes Pilotage (G–MVP–7), 2100 2nd St., SW., Washington, DC 20593.

* * * * *

(16) *Association* means any organization that holds or held a Certificate of Authorization issued by the Director of Great Lakes Pilotage to operate a pilotage pool on the Great Lakes.

3.–4. Part 403 is revised to read as follows:

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

Subpart A—General

Sec.
403.100 Applicability of system of accounts and reports.
403.105 Records.
403.110 Accounting entities.
403.115 Accounting period.
403.120 Notes to financial statements.

Subpart B—Inter-Association Settlements

403.200 General.

Subpart C—Reporting Requirements

403.300 Financial reporting requirements.

Subpart D—Source Forms

403.400 Uniform pilot's source form.

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

Subpart A—General

§ 403.100 Applicability of system of accounts and reports.

Each Association shall keep its books of account, records and memoranda, and make reports to the Director in accordance with the guidelines of the Generally Accepted Accounting Principles (GAAP) issued by the Financial Accounting Standards Board. These guidelines are available by writing to the Director, Great Lakes Pilotage at the address listed in § 401.110(a)(9) of this chapter.

§ 403.105 Records.

(a) Each Association shall maintain the general books of account and all books, records, and supporting memoranda in such manner as to provide, at any time, full information relating to any account. Supporting memoranda must provide sufficient information to verify the nature and character of each entry and its proper classification.

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(b) Each Association shall maintain all books, records and memoranda in a manner that will readily permit audit and examination by the Director or the Director's representatives. All books, records and memoranda shall be protected from loss, theft, or damage by fire, flood or otherwise, and shall be retained for 10 years unless otherwise authorized by the Director.

§ 403.110 Accounting entities.

Each Association shall be a separate accounting entity. However, the records shall be maintained with sufficient particularity to allocate items to each pilotage pool operation or nonpool operation and to support the equitable proration of items that are common to two or more pilotage pools.

§ 403.115 Accounting period.

Each Association subject to this part shall maintain its accounts on a calendar year basis unless otherwise approved by the Director.

§ 403.120 Notes to financial statements.

(a) All matters that are not clearly identified in the body of the financial statements of the Association, but which may materially influence interpretations or conclusions that may reasonably be drawn in regard to financial condition or earnings of the Association, shall be clearly and completely stated as footnotes to the financial statements.

(b) Financial items that are not otherwise required to be reported in the Association financial statements, but which may affect ratemaking calculations, are required to be reported to the Director in the notes to the financial statements. Any financial items that are not reported to the Director will not be considered by the Director during ratemaking procedures contained in part 404 of this chapter.

Subpart B—Inter-Association Settlements

§ 403.200 General.

Each Association that shares revenues and expenses with the Canadian Great Lakes Pilotage Authority (GLPA) shall submit settlement statements regarding these activities. The settlement statements shall be completed in accordance with the terms of agreements between the United States and Canada and guidance from the Director of Great Lakes Pilotage.

Subpart C—Reporting Requirements

§ 403.300 Financial reporting requirements.

(a) General:

(1) The financial statements shall list each active account, including subsidiary accounts.

(2) The financial statements, together with any other required statistical data, shall be submitted to the Director within 30 days of the end of the reporting period, unless otherwise authorized by the Director.

(3) An officer of the Association shall certify the accuracy of the financial statements.

(b) Required Reports:

(1) Every five years, or when specially requested by the Director, each Association shall furnish the Director the Association's annual financial statements audited in accordance with generally accepted auditing standards by an independent certified public accountant.

(2) Each Association shall furnish the Director a copy of all settlement statements annually.

Subpart D—Source Forms

§ 403.400 Uniform pilot's source form.

(a) Each Association shall record pilotage transactions on a form approved by the Director. The approved form shall be issued to pilots by authorized United States pilotage pools.

(b) Pilots shall complete forms in detail as soon as possible after completion of assignment and return the entire set to the dispatching office, together with adequate support for reimbursable travel expenses.

(c) Upon receipt by the Association, the forms shall be completed by insertion of rates and charges as specified in part 401 of this chapter.

(d) Copies of the form shall be distributed as follows:

(1) Original to accompany invoice;

(2) First copy to Director;

(3) Second copy to billing office for accounting record;

(4) Third copy to pilot's own Association for pilot's personal record;

(5) Fourth copy to corresponding Canadian Association or agency for office use.

(e) Associations shall account by number for all pilot source forms issued.

5. Part 404 is revised to read as follows:

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.

404.1 General ratemaking provisions.
404.5 Guidelines for the recognition of expenses.
404.10 Ratemaking Procedures and Guidelines.
Appendix A to Part 404—Ratemaking analyses and methodology.
Appendix B to Part 404—Ratemaking definitions and formulas.
Appendix C to Part 404—Procedures for Annual Review of Base Pilotage Rates

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

§ 404.1 General ratemaking provisions.

(a) The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines followed in arriving at the pilotage rates contained in part 401 of this chapter.

(b) Great Lakes pilotage rates shall be reviewed and, if necessary, adjusted annually in accordance with the procedures detailed in appendix C to this part. At least once every five years the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10. An interested party or parties may also petition the Director for a review at any time. The petition must present a reasonable basis for concluding that a review may be warranted. If the Director determines, from the information contained in the petition, that the existing rates may no longer be reasonable, a full review of the pilotage rates will be conducted. If the full review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated.

§ 404.5 Guidelines for the recognition of expenses.

(a) The following is a listing of the principal guidelines followed by the Director when determining whether expenses will be recognized in the ratemaking process:

(1) Each expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for that expense item. Each Association is responsible for providing the Director with sufficient information to show the reasonableness of all expense items. The Director will give the Association the opportunity to defend any expenses that are questioned. However, subject to the terms and conditions contained in other provisions of this part, expense items that the Director determines are not reasonable and necessary for the provision of pilotage services will not be recognized for ratemaking purposes.

(2) In determining reasonableness, each expense item is measured against one or more of the following:

(i) Comparable or similar expenses paid by others in the maritime industry,

(ii) Comparable or similar expenses paid by other industries, or

(iii) U.S. Internal Revenue Service guidelines.

(3) Lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes.

(4) For each Association, a market-equivalent return-on-investment is allowed for the net capital invested in the Association by its members. Assets subject to return on investment provisions are subject to reasonableness provisions. If an asset or other investment is not necessary for the provision of pilotage services, the return element is not allowed for ratemaking purposes.

(5) For ratemaking purposes, the revenues and expenses generated from Association transactions that are not directly related to the provision of pilotage services are included in ratemaking calculations as long as the revenues exceed the expenses from these transactions. For non-pilotage transactions that result in a net financial loss for the Association, the amount of the loss is not recognized for ratemaking purposes. The Director reviews non-pilotage activities to determine if any adversely impact the provision of pilotage service, and may make ratemaking adjustments or take other steps to ensure the provision of pilotage service.

(6) Medical, pension, and other benefits paid to pilots, or for the benefit of pilots, by the Association are treated as pilot compensation. The amount recognized for each of these benefits is the cost of these benefits in the most recent union contract for first mates on Great Lakes vessels. Any expenses in excess of this amount are not recognized for ratemaking purposes.

(7) Expense items that are not reported to the Director by the Association are not considered by the Director in ratemaking calculations.

(8) Expenses are appropriate and allowable if they are reasonable, and directly related to pilotage. Each Association must substantiate its expenses, including legal expenses. In general, the following are not recognized as reasonable expenses for ratemaking purposes:

(i) Undocumented expenses;

(ii) Expenses for lobbying;

(iii) Expenses for personal matters;

(iv) Expenses that are not commensurate with the work performed; and

(v) Any other expenses not directly related to pilotage.

(9) In any Great Lakes pilotage district where revenues and expenses from Canadian pilots are commingled with revenues and expenses from U.S. pilots, Canadian revenues and expenses are not included in the U.S. calculations for setting pilotage rates.

(10) Reasonable profit sharing for non-pilot employees of pilot associations will be allowed as an expense for ratemaking purposes. Profit sharing that benefits pilots will be treated as part of pilot compensation.

§ 404.10 Ratemaking procedures and guidelines.

(a) Appendix A to this part is a description of the types of analyses performed and the methodology followed in the development of a base pilotage rate. Ratemaking calculations in appendix A of this part are made using the definitions and formulas contained in appendix B of this part. Appendix C of this part is a description of the methodology followed in the development of annual reviews to base pilotage rates. Pilotage rates actually implemented may vary from the results of the calculations in appendices A, B and C of this part, because of agreements with Canada requiring identical rates, or because of other circumstances to be determined by the Director. Additional analysis may also be performed as circumstances require. The guidelines contained in § 404.05 are applied in the steps identified in appendix A to this part.

(b) A separate ratemaking calculation is made for each of the following U.S. pilotage areas:

Area 1—the St. Lawrence River;
Area 2—Lake Ontario;
Area 4—Lake Erie;
Area 5—the navigable waters from South East Shoal to Port Huron, MI;
Area 6—Lakes Huron and Michigan;
Area 7—the St. Mary's River; and
Area 8—Lake Superior.

Appendix A to Part 404—Ratemaking Analyses and Methodology

Step 1: Projection of Operating Expenses

(1) The Director projects the amount of vessel traffic annually. Based upon that projection, the Director forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

(a) Submission of financial information from each Association;

(b) determination of recognizable expenses;

(c) adjustment for inflation or deflation; and

(d) final projection of operating expenses. Each of these phases is detailed below.

Step 1.A.—Submission of Financial Information

(1) Each Association is responsible for providing detailed financial information to the Director, in accordance with part 403 of this chapter.

Step 1.B.—Determination of Recognizable Expenses

(1) The Director determines which Association expenses will be recognized for ratemaking purposes, using the guidelines for the recognition of expenses contained in § 404.05. Each Association is responsible for providing sufficient data for the Director to make this determination.

Step 1.C.—Adjustment for Inflation or Deflation

(1) In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Costs not subject to inflation or deflation (e.g., depreciation, long-term leases, pilot compensation, etc.) are not adjusted. The inclusion of an inflation or deflation adjustment does not imply that pilotage rates will be automatically adjusted each shipping season. The inflation or deflation adjustment is only made during the expense projection phase of a full-scale pilotage rate review.

Annual cost inflation or deflation rates will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in cost throughout the year.

For ratemaking calculations begun after January 1, 1996, the actual annual experiencad change in operational costs per pilot assignment for each pilotage area will be used to project the inflation or deflation adjustment. For ratemaking calculations begun prior to January 1, 1996, the inflation or deflation adjustment will be based on the preceding year's change in the North Central Region's Consumer Price Index as calculated by the U.S. Bureau of Labor Statistics.

Step 1.D.—Projection of Operating Expenses

(1) Once all adjustments are made to the recognized operating expenses, the Director projects these expenses for each pilotage area. In doing so, the Director takes into account foreseeable circumstances that could affect the accuracy of the projection. The Director will determine, as accurately as reasonably practicable, the "projection of operating expenses."

Step 2: Projection of Target Pilot Compensation

(1) The second step in the Great Lakes pilotage ratemaking methodology is to project the amount of target pilot compensation that pilotage rates should provide in each area. This step consists of the following phases:

(a) Determination of target rate of compensation;

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(b) determination of number of pilots needed in each pilotage area; and

(c) multiplication of the target compensation by the number of pilots needed to project target pilot compensation needed in each area. Each of these phases is detailed below.

Step 2.A.—Determination of Target Rate of Compensation

(1) Target pilot compensation for pilots providing services in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. The average annual compensation for first mates is determined based on the most current union contracts, and includes wages and benefits received by first mates.

(2) Target pilot compensation for pilots providing services in designated waters approximates the average annual compensation for masters on U.S. Great Lakes vessels. It is calculated as 150% of the compensation earned by first mates on U.S. Great Lakes vessels.

Step 2.B.—Determination of Number of Pilots Needed

(1) The basis for the number of pilots needed in each area of designated waters is established by dividing the projected bridge hours for that area by 1,000. Bridge hours are the number of hours a pilot is aboard a vessel providing basic pilotage service.

(2) The basis for the number of pilots needed in each area of undesignated waters is established by dividing the projected bridge hours for that area by 1,800.

(3) In determining the number of pilots needed in each pilotage area, the Director is guided by the results of the calculations in steps 2.A. and 2.B. However, the Director may also find it necessary to make adjustments to these numbers in order to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances that the Director determines are appropriate.

Step 2.C.—Projection of Target Pilot Compensation

(1) The "projection of target pilot compensation" is determined separately for each pilotage area by multiplying the number of pilots needed in that area by the target pilot compensation for pilots working in that area.

Step 3: Projection of Revenue

(1) The third step in the Great Lakes pilotage ratemaking methodology is to project the revenue that would be received in each pilotage area if existing rates were left unchanged. This consists of a projection of future vessel traffic and pilotage revenue.

Step 3.A.—Projection of Revenue

(1) The Director generates the most accurate projections reasonably possible of the pilotage service that will be required by vessel traffic in each pilotage area. These projections are based on historical data and all other relevant data available. Projected demand for pilotage service is multiplied by the existing pilotage rates for that service, to arrive at the "projection of revenue."

Step 4: Calculation of Investment Base

(1) The fourth step in the Great Lakes pilotage ratemaking methodology is the calculation of the investment base of each Association. The investment base is the recognized capital investment in the assets employed by each Association required to support pilotage operations. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base will be established through the use of the balance sheet accounts, as amended by material supplied in the Notes to the Financial Statement. The formula used in calculating the investment base is detailed in Appendix B to this part.

Step 5: Determination of Target Rate of Return on Investment

(1) The fifth step in the Great Lakes pilotage ratemaking methodology is to determine the Target Rate of Return on Investment. For each Association, a market-equivalent return-on-investment (ROI) is allowed for the recognized net capital invested in the Association by its members.

(2) The allowed ROI is based on the rate of the most recent return on stockholder's equity for a representative cross section of transportation industry companies, including maritime companies, with a minimum rate equal to the interest rate incurred by the Associations for debt capital, and a maximum rate of 20 percent.

(3) Assets subject to return on investment provisions must be reasonable in both purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes.

Step 6: Adjustment Determination

(1) The next step in the Great Lakes pilotage ratemaking methodology is to insert the results from steps 1, 2, 3, and 4 into a formula that is based on a basic regulatory rate structure, and comparing the results to step 5. This basic regulatory rate structure takes into account revenues, expenses and return on investment, and is of the following form:

Line	Ratemaking projections for basic pilotage
1.	+ Revenue (from step 3)
2.	− Operating Expenses (from step 1)
3.	− Pilot Compensation (from step 2)
4.	= Operating Profit/(Loss)
5.	− Interest Expense (from Audit reports)
6.	= Earnings Before Tax
7.	− Federal Tax Allowance
8.	= Net Income
9.	Return Element (Net Income + Interest)
10.	+ Investment Base (from step 4)
11.	= Return on Investment

(2) The Director will compare the projected return on investment (as calculated using the formula above) to the target return on investment (from step 5), to determine whether an adjustment to the base pilotage rates is necessary. If the projected return on investment is significantly different from the target return on investment, the revenues that would be generated by the current pilotage rates are not equal to the revenues that would need to be recovered by the pilotage rates.

(3) The base pilotage revenues that are needed are calculated by determining what change in projected revenue will make the target return on investment equal to the projected return on investment. This "projection of revenue needed" is used in determining the basis for proposed adjustments to the base pilotage rates. The mechanism for adjusting the base pilotage rates is discussed in Step 7 below. The required return, tax, and interest elements may be considered additions to the operating expenses and pilot compensation components of the base pilotage rates.

STEP 7: Adjustment of Pilotage Rates

The final step in the Great Lakes pilotage ratemaking methodology is to adjust base pilotage rates if the calculations from Step 6 show that pilotage rates in a pilotage area should be adjusted, and if the Director determines that it is appropriate to go forward with a rate adjustment. Rate adjustments are calculated in accordance with the procedures found in this step. However, pilotage rates calculated in this step are subject to adjustment based on requirements of the Memorandum of Arrangements between the United States and Canada, and other supportable circumstances that may be appropriate.

(2) Pilotage rate adjustments are calculated for each area by multiplying the existing pilotage rates in each area by the rate multiplier. The rate multiplier is calculated by inserting the result from the steps detailed above into the following formula:

Line	Ratemaking projections
1.	+ Revenue Needed (from step 6)
2.	÷ Revenue (from step 3)
3.	= Rate multiplier

Appendix B to Part 404—Ratemaking Definitions and Formulas

The following definitions apply to the ratemaking formula contained in this appendix.

(1) Operating Revenue—means the sum of all operating revenues received by the Association for pilotage services, including revenues such as docking, moveage, delay, detention, cancellation, and lock transit.

(2) Operating Expense—means the sum of all operating expenses incurred by the Association for pilotage services, less the sum of disallowed expenses.

(3) Target Pilot Compensation—means the compensation that pilots are intended to receive for full time employment. For pilots providing services in undesignated waters, the target pilot compensation is the average annual compensation for first mates on U.S. Great Lakes vessels. For pilots providing services in designated waters, the target pilot compensation is 150% of the average annual compensation for first mates on U.S. Great Lakes vessels.

(4) Operating Profit/(Loss)—means Operating Revenue less Operating Expense and Target Pilot Compensation.

(5) Interest Expense—means the reported Association interest expense on operations, as adjusted to exclude any interest expense attributable to losses from non-pilotage operations.

(6) Earnings Before Tax—means Operating Profit/(Loss), less the Interest Expense.

(7) Federal Tax Allowance—means the Federal statutory tax on Earnings Before Tax, for those Associations subject to Federal tax.

(8) Net Income—means the Earnings Before Tax, less the Federal Tax Allowance.

(9) Return Element (Net Income plus Interest)—means the Net Income, plus Interest Expense. The return element can be considered the sum of the return to equity capital (the Net Income), and the return to debt (the Interest Expense).

(10) Investment Base (separately determined)—means the net recognized capital invested in the Association, including both equity and debt. Should capital be invested in other than pilotage operations, that capital is excluded from the rate base.

(11) Return on Investment—means the Return element, divided by the Investment Base, and expressed as a percent.

Investment Base Formula

(1) Regulatory Investment (Investment Base) is the recognized capital investment in the useful assets employed by the pilot groups. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base is established through the use of the balance sheet accounts, as amended by material supplied in the Notes to the Financial Statement.

(2) The Investment Base is calculated using financial data from the Great Lakes pilot associations, as audited and approved by the Director. The Investment Base would be calculated as follows:

Description
Recognized Assets:
+ Total Current Assets
− Total Current Liabilities
+ Current Notes Payable
+ Total Property and Equipment (Net)
− Land
+ Total Other Assets
= Total Recognized Assets
Non-Recognized Assets
+ Total Investments and Special Funds
= Total Non-Recognized Assets
Total Assets
+ Total Recognized Assets
+ Total Non-Recognized Assets
= Total Assets
Recognized Sources of Funds
+ Total Stockholders' Equity
+ Long-Term Debt
+ Current Notes Payable
+ Advances from Affiliated Companies
+ Long-Term Obligations-Capital Leases
= Total Recognized Sources
Non-Recognized Sources of Funds
+ Pension Liability
+ Other Non-Current Liabilities
+ Deferred Federal Income Taxes
+ Other Deferred Credits
= Total Non-Recognized Sources
Total Sources of Funds
+ Total Recognized Sources
+ Total Non-Recognized Sources
= Total Sources of Funds

(3) Using the figures developed above, the Investment Base is the Recognized Assets times the ratio of Recognized Sources of Funds to Total Sources of Funds.

Appendix C to Part 404—Procedures for Annual Review of Base Pilotage Rates

The ratemaking methodology detailed in appendix A is used by the Director to determine base pilotage rates at least once every five years, as required by § 404.1. In the intervening years the Director will review, if warranted by cost changes, recalculate base pilotage rates proposed for coordination with Canada using the following procedures:

Step 1: Calculate the total economic costs for the base period (i.e. pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the "expense multiplier," the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual "projection of target pilot compensation" using the same procedures found in Step 2 of appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1;

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. For example if the total economic costs per bridge hour is $30.00 for the base period and $33.00 for the prospective rate period, then the rates established for the base period would be increased by 10% to determine the proposed rates for the prospective rate period, which would then be subject to negotiation with Canada.

Issued in Washington, DC, this 31st day of March, 1995.

Frederico Pena,

Secretary of Transportation.

[FR Doc. 95–8572 Filed 4–10–95; 8:45 am]

BILLING CODE 4915–83–P

VOL 60 ISS 69 APR 11 1995 UMI

Proposed Rules

Federal Register
Vol. 60, No. 69
Tuesday, April 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 335

[Docket No. 93-026-3]

RIN 0579-AA51

Introduction of Nonindigenous Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction to extension of comment period and notice of public hearing.

SUMMARY: We are correcting a document that was published in the **Federal Register** on March 21, 1995 (60 FR 14928-14929, Docket No. 93-026-2). The document announced a public hearing and extended the comment period for a proposed rule that would establish regulations governing the introduction of certain nonindigenous organisms. In the heading of that document, we failed to include a citation indicating the CFR title and part affected by the document and the previous proposed rule. We are correcting the heading to include a citation of the CFR title and part affected.

FOR FURTHER INFORMATION CONTACT:

Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A01, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-8896.

PART 335—INTRODUCTION OF NONINDIGENOUS ORGANISMS

1. In FR Doc. 95-6907, page 14928, first column, the heading, "7 CFR Part 335" is added immediately below the heading "Animal and Plant Health Inspection Service".

Done in Washington, DC, this 5th day of April 1995.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-8801 Filed 4-10-95; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-11-AD]

Airworthiness Directives; Mooney Aircraft Corporation Model M20K Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Mooney Aircraft Corporation (Mooney) Model M20K airplanes. The proposed action would require inspecting to see if the airplane is equipped with a Gerdes fuel selector valve, part number (P/N) A-2580, and replacing any Gerdes fuel selector valve with an Airight fuel selector valve. Malfunction of a Gerdes fuel selector valve on an affected airplane, where the valve did not allow the operator to select the appropriate fuel tank, prompted the proposed action. The actions specified by the proposed AD are intended to prevent fuel selector valve malfunction, which, if not detected and corrected, would prevent the airplane operator from selecting the appropriate fuel tank, resulting in an unscheduled landing.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-11-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028; telephone (210) 896-6000. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sills, Mechanical Systems Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone (817) 222-5154; facsimile (817) 222-5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-11-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-11-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of a Gerdes fuel selector valve, P/N A-2580, malfunction on a Mooney Model M20K airplane. The airplane operator in the referenced incident was unable to select the appropriate fuel tank and was forced to make an unscheduled landing. No substantial airplane damage or injuries were reported. Fuel selector valve malfunction, if not detected and corrected, could result in passenger injury or airplane damage if the airplane operator was forced to make an unscheduled landing in adverse areas or conditions.

The FAA has determined that the P/N A-2580 Gerdes valve has a design incompatibility with Mooney Model M20K airplanes. The fuel tank selector valve is located on the floor in the cockpit of the Mooney Model M20K airplanes, and, if stepped on, the spool of the fuel selector valve may be forced down tight in the valve body and wedge-locked. The fuel valve selector handle may malfunction in this scenario and the pilot will not be able to utilize the fuel selector valve.

Mooney has issued Service Bulletin (SB) M20-256, dated January 24, 1995, which specifies procedures for replacing the Gerdes fuel selector valve with an Airight fuel selector valve. The Airight fuel selector valve is designed to prevent wedge-locking from occurring if the fuel selector valve is stepped on.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent fuel selector valve malfunction, which, if not detected and corrected, would prevent the airplane operator from selecting the appropriate fuel tank, resulting in an unscheduled landing.

Since an unsafe condition has been identified that is likely to exist or develop in other Mooney Model M20K airplanes of the same type design, the proposed AD would require inspecting to see if the airplane is equipped with a Gerdes fuel selector valve, part number (P/N) A-2580, and replacing any Gerdes fuel selector valve with an Airight fuel selector valve. The proposed replacement would be accomplished in accordance with Mooney SB M20-256, dated January 24, 1995.

The FAA estimates that 78 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $535 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55,770. This figure is based on the assumption that no airplane owner/operator has accomplished the proposed modification. Mooney has informed the FAA that parts have not been distributed to any owner/operator of the affected airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Mooney Aircraft Corporation: Docket No. 95-CE-11-AD.

Applicability: Model M20K airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of gny modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fuel selector valve malfunction, which, if not detected and corrected, would prevent the airplane operator from selecting the appropriate fuel tank, resulting in an unscheduled landing, accomplish the following:

(a) Inspect to see if the airplane is equipped with a Gerdes fuel selector valve, part number (P/N) A-2580. This inspection may be accomplished by examining the cross-sectional shape of the selector valve. The Gerdes selector valve has a rectangular cross section with square corners.

Note 2: The following airplane serial numbers (S/N) had a Gerdes fuel selector valve, part number (P/N) A-2580, installed at manufacture:

S/N 25-0001 through 25-0091, except for the following:

S/N's 25-0017, 25-0027, 25-0052, 25-0063, 25-0067, 25-0068, 25-0078, 25-0081, 25-0082, 25-0083, 25-0084, 25-0085, 25-0086, and 25-0089.

The excluded S/N 25-0001 through 25-0091 Model M20K airplanes and any S/N Model M20K airplanes outside that range may have had a Gerdes fuel selector valve, part number (P/N) A-2580, installed by field modification.

(b) Replace any Gerdes fuel selector valve, P/N A-2580, with an Airight fuel selector valve in accordance with the INSTRUCTIONS section in Mooney Service Bulletin M20-256, dated January 24, 1995.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished provided that the fuel selector valve is functioning properly.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 27, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8832 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–85–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Jetstream Aircraft Limited (JAL) Models 3101 and 3201 airplanes. The proposed action would require modifying the central annunciator panel test button circuit. A report of diode failure in this circuit and subsequent inadvertent engine shutdown on one of the affected airplanes prompted the proposed action. The actions specified in the proposed AD are intended to prevent failure of a diode in the central annunciator panel test button circuit, which, if not detected and corrected, could result in inadvertent engine shutdown while in flight if the central annunciator panel test button is pressed.

DATES: Comments must be received on or before June 9, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–85–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–85–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–85–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has notified the FAA that an unsafe condition may exist on JAL Jetstream Models 3101 and 3201 airplanes. The CAA reports that a diode failed in the central annunciator panel test button circuit on one of the affected airplanes. This led to inadvertent engine failure of one of the engines when the airplane operator pressed the central annunciator panel test button.

JAL has issued Jetstream Alert Service Bulletin (ASB) 80–A–JA 911045, Revision 1, dated November 1, 1991, which specifies procedures for modifying the central annunciator panel test button circuit on Jetstream Models 3101 and 3201 airplanes. The modification (Amendment JA 911045) consists of removing diodes from the engine stop circuit and configuring a minor wire change.

In order to assure the continued airworthiness of these airplanes in the United Kingdom, the CAA classified Jetstream ASB 80–A–JA 911045, Revision 1, dated November 1, 1991, as mandatory. The CAA classifying a service document as mandatory is the same for airplanes registered in the United Kingdom as the FAA issuing an AD for airplanes registered in the United States.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL Jetstream Models 3101 and 3201 airplanes of the same type design, the proposed AD would require modifying the central annunciator panel test button circuit by removing diodes from the engine stop circuit and configuring a minor wiring change. The proposed actions would be accomplished in accordance with Jetstream ASB 80–A–JA 911045, Revision 1, dated November 1, 1991.

The FAA estimates that 260 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. JAL will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $31,200. This figure is based on the assumption that no affected owner/operator has incorporated the proposed modification.

JAL has informed the FAA that 2 modification kits have been distributed to affected airplane owners/operators. Assuming that each of these modification kits has been incorporated on an affected airplane, then the proposed cost impact upon U.S. operators would be reduced $240 (2 workhours × $60 per hour × 2 airplanes) from $31,200 to $30,960. The FAA also believes that numerous owners/operators of the affected airplanes have accomplished the modification using 22AWA cable and terminal tags instead of obtaining parts from the manufacturer, as is provided for in the proposed AD. This would further reduce the cost impact of the proposed AD upon U.S. operators of the affected airplanes. The FAA has no way of determining how many airplanes have accomplished the proposed modification utilizing the 22AWA cable and terminal tags alternative.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 91–CE–85–AD.

Applicability: Jetstream Model 3101 airplanes, all serial numbers, and Jetstream Model 3201 airplanes, serial numbers 790 through 950, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of a diode in the central annunciator panel test button circuit, which, if not detected and corrected, could result in inadvertent engine shutdown while in flight if the central annunciator panel test button is pressed, accomplish the following:

(a) Modify the central annunciator panel test button circuit (Amendment JA 911045) by removing diodes from the engine stop circuit and configuring a minor wiring change in accordance with PART 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Alert Service Bulletin 80–A–JA 911045, Revision 1, dated November 1, 1991.

(b) As noted in Jetstream Alert Service Bulletin 80–A–JA 911045, Revision 1, dated November 1, 1991, terminals may be linked using 22 AWA cable and terminal tags, provided the following is accomplished:

(1) For airplanes without roof panel plug breaks, identify the cables as WQ69 and WQ70.

(2) For airplanes with roof panel plug breaks, identify the cables as WQ71 and WQ72.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 27, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8831 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–50–94]

RIN 1545–AS98

Allowances Received by Members of the Armed Forces in Connection With Moves to New Permanent Duty Stations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the exclusion from gross income of

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certain allowances received by members of the Armed Forces in connection with a change of permanent duty station.

DATES: The public hearing originally scheduled for April 21, 1995, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 61 and 217(g) of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** for Wednesday, December 21, 1994 (59 FR 65739), announced that a public hearing on the proposed regulations would be held on Friday, April 21, 1995, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

The public hearing scheduled for Friday, April 21, 1995, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 95–8891 Filed 4–10–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 1

[EE–45–94]

RIN 1545–AS94

Self-Employment Tax Treatment of Members of Certain Limited Liability Companies; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed regulations.

SUMMARY: This document changes the date of the public hearing on proposed regulations concerning the treatment of members of certain limited liability companies.

DATES: The public hearing is changed to Friday, June 23, 1995, beginning at 10:00 a.m.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Submit requests to speak and outlines or oral comments to the Internal Revenue Service, P.O. Box 7604, Ben Franklin, Attn: CC:DOM:CORP:T:R [EE–45–94], Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, December 29, 1994 (59 FR 67253), announced that the Service would hold a public hearing on proposed regulations concerning the treatment of members of certain limited liability companies on Thursday, June 15, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date of public hearing has changed. The hearing is scheduled for Friday, June 23, 1995, beginning at 10:00 am. The requests to speak and outlines or oral comments must be received by Thursday, May 25, 1995. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 95–8892 Filed 4–10–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Revision of the Salient Factor Score

AGENCY: Parole Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to revise the Salient Factor Score at 28 CFR 2.20. The Salient Factor Score which is an actuarial table that the Commission uses to measure the potential risk of parole violation. This revision is designed to improve the accuracy of the Salient Factor Score with respect to older offenders. The Commission is proposing to add one point to a prisoner's total score if the current offense (or parole violation) was committed at age 41 or older, provided the prisoner does not already have the highest possible total score (10). This revision will give to the Salient Factor Score improved risk prediction accuracy. The revision is made appropriate by the fact that the Parole Commission has jurisdiction over an aging population of prisoners and parolees whose crimes were committed prior to November 1, 1987.

DATES: Comments must be received by June 12, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. For further information contact: Pamela A. Posch, Office of General Counsel, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Salient Factor Score at 28 CFR 2.20 is an actuarial device, based upon statistical research, that permits the U.S. Parole Commission to make a prediction as to the probability of future parole violation. It is applied to every prisoner who appears for an initial parole hearing, and to every parolee who has been returned to prison as a parole violator. The current version of the Salient Factor Score (SFS–81) was adopted in 1981, and was recently re-validated through a study of the parole records of federal prisoners released in 1987. This and other validation studies have shown that the Salient Factor Score is able to separate prisoners into categories having significantly different probabilities of recidivism, and that it continues to have a high degree of predictive accuracy.

However, with the aging of the Parole Commission's "old law" offender population, it has become apparent that the accuracy of the Salient Factor Score could be improved by accounting for the factor of "age at current offense" in the case of older offenders and parole violators. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.)

The Commission has long recognized that many criminal offenders eventually "burn out" as the aging process catches up with them. In a 1984 study by the Commission's Research Office, entitled "Burnout—Age At Release From Prison and Recidivism", it was found that recidivism rates do decline with increased age, and that it would be justifiable to improve the scores of prisoners whose current offense was committed at age 41 or older. At the present time, the average age of the "old law" prison population is 43. Thus, it has now become appropriate to consider adding this factor to the score.

In order to test the accuracy of the proposed revision, the revised score was applied to a sample of over 1,000 federal prisoners released in 1987. Approximately 5% of those prisoners received an improved parole prognosis category placement as compared with the current version of the score (SFS–81). Moreover, the revised version of the score displayed a high degree of predictive accuracy. The Mean Cost Rating increased from .54 to .56, the highest recorded for a recidivism prediction device that has been subjected to validation.

Accordingly, the Commission has decided that the Salient Factor Score should be revised, in order to ensure that the Commission's decisions are based upon the most accurate available risk-prediction device. This decision accords with the intent of Congress that the Parole Commission should "* * * continue to refine both the criteria which are used (to judge the probability that an offender will commit a new offense) and the means for obtaining the information used therein." 2 U.S. Code Cong. and Admin. News at 359 (1976).

Implementation

The revised Salient Factor Score (SFS–95) would be applied at every initial parole hearing and revocation hearing held on or after the effective date of the final regulation, and retroactively to federal prisoners who have already been heard for parole or reparole, at the next scheduled statutory interim hearing under 28 CFR 2.14 and any hearing under § 2.28 or § 2.34.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 C.F.R. Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR part 2.

The Proposed Amendment

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2 § 2.20 is proposed to be amended by adding an instruction to the Salient Factor Scoring Manual under a new Item G as follows:

ITEM G. If CURRENT OFFENSE WAS COMMITTED AT AGE 41 OR OLDER, ADD 1 POINT IF THE TOTAL SCORE DETERMINED ABOVE IS 9 OR LESS.

This instruction would add a seventh item to the current six-item score, without changing its current structure as a prediction device with possible scores ranging from 0 to 10 points. (A point would not be added if the total score is already 10, placing the offender at the top of the "very good" parole prognosis category.) As in any case, the Commission will exercise authority to override the prediction made by the revised score if case-specific factors indicate undiminished risk despite advancing age, *eg*, the career criminal offender who has played a leadership role in organized crime.

Dated: March 31, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–8912 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–P

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars In Losses

AGENCY: Parole Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to establish a dollar amount range of $1 million to $5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over $5 million would be rated Category Seven. At the present time, the Category Six offense severity rating is reserved for all frauds exceeding $1 million. The proposed guideline revision is necessary because of the increased frequency of frauds involving losses in multiples of the $1 million threshold for Category Six, and the need for an appropriate benchmark to determine the point at which dollar amount losses are so excessive as to warrant a decision above the Category Six guidelines. The figure of $5 million will provide that benchmark.

DATES: Comments must be received by June 12, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. For further information contact: Pamela A. Posch, Office of General Counsel. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: As a result of the widespread criminal investigations into unlawful practices in the banking and savings and loan industries during the 1980's, the U.S. Parole Commission has seen a significant increase in prisoners serving sentences for frauds greatly exceeding the $1 million threshold established by the Commission in 1987 for Category Six offenses. (The guidelines at 28 CFR 2.20 do not currently provide a fraud guideline higher than Category Six.) The Commission has typically responded to such cases by determining that, if the dollar loss caused by the fraud exceeded the $1 million threshold by significant multiples (e.g., a $15 million fraud), a decision above the Category Six guidelines is warranted.

However, the guidelines have not provided a way for the Commission consistently to determine at what point a large-scale fraud is significant enough to warrant such a decision. Some frauds involving multiples of the $1 million threshold are deemed to be within the guidelines, and some are not. The situation has been complicated by the fact that plea agreements in large-scale fraud offenses often produce a sentence of five years (the maximum for one count of mail fraud), which requires release (with good time credits) at 39 months. Such sentences preclude the Commission from determining where a parole decision should be made in relation to the guideline range of 40–52 months that is applicable to the typical first offender who has committed a fraud offense involving more than $1 million in losses. This makes it difficult for the Commission to achieve a consistent practice that can inform its decision-making when the sentence is longer than five years.

Accordingly, the Commission has decided to establish a dollar range of $1 million to $5 million for Category Six offenses, that will be followed whenever the sentence is long enough to permit such a decision. For fraud offenses exceeding $5 million, the offense will be rated Category Seven. Under this rating system, for example, a prisoner serving an 8-year sentence for a fraudulent investment scheme that caused losses of $2.4 million may expect the Commission to establish a release date toward the middle of the 40–52 month guideline range for Category Six offenses, if he is a first offender and there are no other aggravating or mitigating circumstances.

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Finally, it is important to emphasize that relevant factors not reflected by the dollar amount alone, such as unusually vulnerable victims, are always taken into account in reaching a final parole decision.

Implementation

The proposed rule would be applied at any initial parole hearing, or revocation hearing, conducted on or after the effective date of the final rule adopted by the Commission, if the rule is applicable to the prisoner's case. The proposed rule would also be applied retroactively to prisoners who were given parole or reparole decisions prior to that effective date, at the next statutory interim hearing conducted pursuant 28 CFR 2.14. For example, at such a statutory interim hearing, a prisoner who was continued above the Category Six guidelines for a $5 million fraud offense, could argue for a release date within the guidelines if he can show that no other factor continues to justify a departure from the guideline range.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR part 2:

The Proposed Amendment

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.20 Chapter 3, Subchapter D, Paragraph 331, is proposed to be amended to require a Category Seven rating if the value of the property is more than $5,000,000, and to require a Category Six offense severity rating if the value of the property is more than $1,000,000 but not more than $5,000,000. All other dollar ranges and offense severity categories will remain as presently listed.

Dated: March 31, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–8913 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–235; Amendment Number 70]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations.

This document sets forth the times and locations that the Ohio program and proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., E.D.T. on May 11, 1995. If requested, a public hearing on the proposed amendment will be held at 1:00 p.m., E.D.T. on May 8, 1995. Requests to speak at the hearing must be received by 4:00 p.m. E.D.T., on April 26, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 70 by letter dated March 28, 1995 (Administrative Record No. OH–2104). In this amendment, Ohio proposes to revise one rule at Ohio Administrative Code (OAC) section 1501:13–14–01 to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations. The substantive rule revisions proposed by Ohio in this amendment are briefly described below:

1. *Definition of "Abandoned Coal Mining and Reclamation Operation":* Ohio is revising paragraph (A)(3) to define the term "abandoned coal mining and reclamation operation." Ohio is revising paragraph (A)(4) to exclude abandoned operations from the definition of "active coal mining and reclamation operation."

2. *Alternative Inspection Frequency at Abandoned Operations:* Ohio is adding a new paragraph (E) to authorize less frequent inspections of abandoned operations. Ohio is proposing to select a specific inspection frequency for each abandoned operation which shall be commensurate with the public health and safety and environmental considerations present at that specific site. In no case shall Ohio conduct less than one complete inspection per calendar year at each abandoned operation.

Before changing to an alternate inspection frequency for an abandoned operation, Ohio will first conduct a complete inspection of the operation, prepare a written finding justifying the inspection frequency selected for the operation, and publish a public notice of the State's intent to change to the less frequent inspection schedule for the operation. The notice shall provide the public with a 30-day period in which to submit written comments on the State's proposed change to less frequent inspections of the specified operation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on April 26, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 5034 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 5, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8888 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would considered in deciding how to implement in West Virginia, underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the

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implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the West Virginia regulatory program (hereinafter referred to as the "West Virginia program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulators. After consultation with West Virginia and consideration of public comments, OSM will decide whether initial enforcement in West Virginia will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. on May 11, 1995. If requested, OSM will hold a public hearing on May 8, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions should be implemented in West Virginia. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on April 26, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below.

Copies of the applicable parts of the West Virginia program, SMCRA, the implementing Federal regulations, information provided by West Virginia concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

James C. Blankenship, Jr. Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301–2816, Telephone: (304) 347–7158

In addition, copies of the applicable portions of the approved State program and information provided by West Virginia concerning its authority to implement the State counterparts to section 720 of SMCRA and its implementing regulations are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26506, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, Telephone: (304) 752–2851

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate the owner for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

The provisions requiring prompt repair or compensation for damage to structures and prompt replacement of water supplies went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for those operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable resumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 701.5, 817.41(j), and 817.121(c)(2) and (4) for operations conducted after October 24, 1992.

C. Enforcement in West Virginia

By letter to West Virginia dated December 16, 1994, OSM requested information from West Virginia that would help OSM decide which approach to take in West Virginia to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. WV 965). By letter dated January 11, 1995, West Virginia responded to this OSM request (Administrative Record No. WV 966).

On January 11, 1995, the West Virginia Division of Environmental Protection (WVDEP) notified OSM that there were approximately 650 active underground coal mines operating in West Virginia at the time. West Virginia stated that it believed the existing State program provisions are adequate to fully implement the letter and intent of section 720 of SMCRA. WVDEP further explained that its continued enforcement of its State program provisions at §§ 22A–3–14(b)(1) and 22A–3–24(b) of the West Virginia Code and/or West Virginia Code of State Regulations (CSR) §§ 38–2–14.5(h) and 38–2–16.2 would ensure compliance with section 720 of SMCRA.

West Virginia noted that § 22A–3–24(b) of the West Virginia Code allows for a waiver of water replacement rights by current landowners. According to WVDEP, this is part of a program amendment that is under review by OSM.

West Virginia also acknowledged that since WVDEP revised its rules on June 1, 1991, it has been requiring operators to either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owners of such structures or facilities in the full amount of the diminution in value resulting from subsidence. In addition, West Virginia issued a policy directive on March 23, 1993, which provides that permits issued before June 1, 1991, and which have a waiver to subside without liability are exempt from the new requirements. Permits issued prior to June 1, 1991, without waivers and all permits issued after that date are required to comply with the revised regulations.

OSM estimates that West Virginia has investigated approximately 190 citizen complaints between June 1, 1991, and October 24, 1992, and approximately 330 citizen complaints after October 24, 1992, that allege subsidence-caused structural damage and/or water supply loss or contamination as a result of underground mining operations. To date, West Virginia has investigated these complaints and determined that the problems: (1) Were not caused by mining, (2) were caused by mining with resultant enforcement and/or corrective measures taken, or (3) are problems under continuing investigation to determine whether caused by mining.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in West Virginia to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in

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support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearings

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on April 26, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and West Virginia should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 5, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8869 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls: Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. To improve the competitiveness of the Seaway, the Corporation and the Authority are proposing that the Tariff charges for the 1995 season under the Tariff Schedule be the same as for the 1994 season. In addition, the Corporation and the Authority are proposing, for competitive purposes, that the Incentive Tolls Program be continued and that the volume rebate be revised to broaden the base years and clarify the reporting requirements for the volume rebate.

DATES: Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before May 11, 1995.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: In an effort to improve the Seaway's competitiveness, it is proposed to continue the section 402.8, the Schedule of Tolls, charges for the 1995 at the 1994 season levels. Accordingly, no change would be required to the Schedule as it now appears.

The Corporation and the Authority also are proposing, for competitive purposes, that the Incentive Tolls Program be continued and be revised. In section 402.9, the discount for new business, subsection (a) would be amended to reflect its applicability to the 1995 navigation season and subsection (c) would be amended in part to change the base years for calculating the discount from 1991 through 1993 to 1992 through 1994. In section 402.11, volume rebates, subsection (a) would be amended to reflect its applicability to the 1995 navigation season and subsections (b) and (c) would be amended to change the base years for calculating the rebate from three years, 1991 through 1993, to four years, 1991 through 1994. The base years for the subsection (c) proviso on mergers or take-overs would also be changed from 1991 through 1994 to 1991 through 1995. Finally, subsection (d) would be amended to change the submission date for the traffic history description for the purposes of calculating the rebate to the end of the 1995 season and to clarify what specific information is required, *i.e.*, the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 402—Tariff of Tolls (33 CFR Part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. Section 402.9 would be amended by revising paragraph (a) and the first sentence of paragraph (c) introductory text to read as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new business shall be reduced by fifty percent for a Seaway transit beginning and ending during the 1995 navigation year.

* * * * *

(c) For the purposes of this section, "new business" means cargo that has not moved through a Seaway lock between an origin and a destination as defined in this paragraph (c) during the navigation seasons of 1992, 1993, and 1994 or cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic between an origin and a destination during the navigation seasons of 1992, 1993, and 1994. * * *

* * * * *

5. Section 402.11 would be amended by revising the first sentence of paragraph (a) and paragraph (b) through (d) to read as follows:

§ 402.11 Volume discount.

(a) A volume rebate shall be granted to a shipper of downbound cargo or to a receiver of upbound cargo at the end of the 1995 navigation season after payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if shipments of a particular commodity during 1995 exceed by a minimum of 25,000 tons the shipper's or receiver's highest tonnage for that particular commodity during 1991, 1992, 1993, or 1994 in the Seaway.

* * *

(b) Volume rebates shall be granted only with respect to commodities whose shipper and receiver have shipped or received the subject commodity in the years 1991, 1992, 1993, and 1994 and have not been subject of a merger or take-over during 1991, 1992, 1993, 1994, or 1995.

(c) The volume rebate shall be equal to a 50 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the shippers or receiver's highest tonnage for that commodity during 1991, 1992, 1993, or 1994. Payment of rebates will be made directly to the qualified receiver or shipper.

(d) A description of the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage shall be submitted by the shipper or receiver prior to the end of 1995 and shall be subject to audit by the Authority.

* * * * *

Issued at Washington, D.C. on April 4, 1995.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 95–8808 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 20–1–6517, PA 31–1–6009, PA 39–1–6518, AD–FRL–5187–6]

Proposed Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Approval of PM–10 Implementation Plan for the Liberty Borough Area of Allegheny County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve three State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of attaining and maintaining the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) in Allegheny County. These implementation plans were submitted by the State to: fulfill the County's Group III requirements; strengthen the Allegheny County SIP; and satisfy certain federal requirements for an approvable nonattainment area PM–10 SIP for the Liberty Borough area of Allegheny County, Pennsylvania. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before May 11, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Allegheny County Health Department of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Alan J. Cimorelli, (215) 597–6563.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987, EPA promulgated National Ambient Air Quality Standards (NAAQS) for PM–10 (52 FR 24634). These standards replaced those promulgated for total suspended particulate (TSP) in 1971. On that day, EPA also promulgated, in 40 CFR parts 51 and 52, policies and regulations by which it would implement the PM–10 NAAQS.

Although there was a lack of extensive PM–10 ambient monitoring data at the time, EPA evaluated existing particulate matter data and concluded that there were some areas where the PM–10 NAAQS were likely to be violated, other areas where it could be presumed that a state's existing total suspended particulate regulations were adequate to provide for attainment, and other areas in which the attainment status was uncertain. Recognizing that it would be unreasonable to require full attainment demonstrations in all areas, EPA classified areas of the country as groups based on the probability that each area would maintain the PM–10 standard. Group I areas had a greater than 95 percent probability of nonattainment, Group II areas had a 20–95 percent probability of nonattainment and Group III areas had a less than 20 percent probability of nonattainment. Through this process, EPA identified all

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of Allegheny County as a Group II area on August 7, 1987 (52 FR 29383). On January 20, 1988, EPA approved Allegheny County's request to limit the Group II area to an area near Allegheny County's Braddock monitor.[1]

State planning requirements were different for each Group classification. All states were required to fulfill the Group III requirements which included: the adoption of NAAQS for PM–10; the adoption of the definition for PM–10 emissions; the adoption of the reference method for the measurement of PM–10 in ambient air; the inclusion of PM–10 values in the episode plan; and the addition of PM–10 to the definitions of major source or facility, major modification, and significant air quality impact. States containing Group II areas were to submit committal SIPs that pledged to gather ambient air quality data and evaluate emissions inventories and control strategies in these areas. States containing Group I areas were required to submit full SIP revisions, including attainment demonstrations, within nine months.

The Clean Air Act Amendments of 1990 affected PM–10 classifications and requirements in a number of ways. The Act, as amended, eliminates the "Group" classifications. Former Group I areas, and Group II and Group III areas that had monitored violations of the PM–10 NAAQS before January 1, 1989, were designated as moderate nonattainment areas by operation of law. The Liberty Borough monitor recorded sixteen exceedances of the 24-hour PM–10 standard in 1988. As a result, the Liberty Borough area (consisting of the City of Clairton and the Boroughs of Liberty, Lincoln, Glassport, and Port Vue) was designated as a moderate nonattainment area.

States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). These states were also to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

The amended Act eliminated the requirement for states to seek approval of "committal" SIP revisions for Group II areas as prescribed in the July 1, 1987 **Federal Register**. The Group II areas are being addressed using the authorities established in section 107 of the Act concerning the designation of areas as attainment or nonattainment with regard to the NAAQS.[2]

The Act did not affect the requirements established for Group III areas. The July 1, 1987 regulations require states, among other things, to seek approval of SIP revisions as required under the preconstruction review program and to codify other regulatory changes as needed.

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I, Part D of the Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this notice.

Evaluation of State Submittal

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). EPA is granting approval of the PM–10-related plan revisions submitted to EPA on November 14, 1988, January 12, 1993, and January 13, 1994 because they meet all of the applicable requirements of the Act. The following sections provide an analysis of the State's submittals and a discussion of their approvability. More detail is provided in the technical support document (TSD) to this rulemaking (memo from Thomas A. Casey to the SIP Docket File dated June 6, 1994).

Analysis of November 14, 1988 "Group III" Submittal

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.[4]

Allegheny County held a public hearing on April 21, 1988 to solicit public comment on the implementation plan for the Liberty Borough area. Following the public hearing, the plan was adopted by the County on August 11, 1988. The package was signed by the Secretary of the Pennsylvania Department of Environmental Resources (PADER) on November 8, 1988, and submitted to EPA as a proposed revision to the SIP. Provisions for a minor-source, abrasive blasting permit program (Article XX § 533) and an asbestos-related provision (Article XX § 1001.02), originally included in that submittal, were withdrawn on March 14, 1994.

[1] Letter from Thomas J. Maslany, Director, Air Management Division, EPA Region III to Ronald J. Chleboski, Deputy Director, Allegheny County Health Department, Bureau of Air Pollution Control.

[2] EPA has determined that sufficient evidence does not exist to redesignate the Braddock area as nonattainment for PM–10 at this time. No PM–10 exceedances have been monitored at Braddock since the promulgation of the PM–10 NAAQS.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[4] This submittal pre-dates the 40 CFR part 51, Appendix V requirement for a completeness determination.

2. Technical Evaluation

Allegheny County's Group III SIP submittal consists of: a definition of PM–10 (Article XX § 101.90); ambient air quality standards for PM–10 (Article XX § 109); a definition of areas where certain additional control measures are required (Article XX § 527, superseded by the 1993 submittal); a reference ambient monitoring method for PM–10 (Article XX § 613); the inclusion of PM–10 in air quality episode criteria (Article XX § 704); and the revision of several definitions (such as "significant impact" and "major modification") to include PM–10 in new source review activities (Article XX § 801). The submittal also deletes Article XX Appendix 1, a listing of the attainment, nonattainment, and unclassifiable areas.

EPA has reviewed these provisions and determined that they are sufficient to satisfy all of the Group III requirements.

Analysis of January 12, 1993 "SIP Strengthening" Submittal

1. Procedural Background

Allegheny County held a public hearing on August 27, 1992 to solicit public comment on the implementation plan for the Liberty Borough area. Following the public hearing, the plan was adopted by the County on October 8, 1992. The package was signed by the Secretary for the PADER on December 31, 1992, and submitted to EPA as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated April 8, 1993 was forwarded to the State indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Technical Evaluation

This submittal strengthens the County's portion of the Pennsylvania SIP with respect to the non-point source RACM guidance issued by EPA as Appendices C1, C2 and C3 of the General Preamble (Article XX § 521, 523, and 524); expands the area in which certain area-source provisions apply; and adopts EPA test methods 201, 201A, and 202 (40 CFR part 60, appendix M). (The submittal also included new emission limits for industrial combustion units (Article XX § 402) which were replaced in their entirety by new provisions in the "Attainment SIP" submittal.) The submittal also contains several non-PM–10-related provisions that are the subject of separate rulemakings.

The section 521, 523, and 524 rules provide visible emission (VE) limits for fugitive dust from wind erosion, transport of materials, and land clearing, respectively. Compliance is determined by previously-approved procedures (Article XX § 606).

This submittal also provides for new enforceable emission limits, expands the geographic scope of some existing provisions, and establishes improved test methods that strengthen the SIP. For this reason, and because the rules were adopted and submitted in a manner consistent with 40 CFR part 51, EPA is fully approving Allegheny County's "SIP strengthening" submittal. A discussion of the County's RACM/RACT analysis is provided in section II.C.3 of this notice and in the TSD.

Analysis of "Attainment SIP" Submittal

1. Procedural Background

Allegheny County held a public hearing on December 3, 1993 to solicit public comment on the attainment plan for the Liberty Borough area. Following the public hearing, the plan was adopted by the County on December 16, 1993. The package was signed by the Secretary for PADER on January 6, 1994, and submitted to EPA as a proposed revision to the SIP.

The SIP submittal was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on January 10, 1994, and a letter dated January 19, 1994 was forwarded to the State indicating the completeness of the submittal and the next steps to be taken in the review process.

The submittal contains source-specific limits for ten industrial boilers, including some alternate limits (Article XXI § 2104.6.a); new source-specific limits for 21 other processes (Article XXI § 2104.6.d *et seq.* and 2105.49); a reduction of the leaking coke oven door limit from 10% (plus two) to 8% (plus two) on USX-Clairton Batteries #1, #2, #3, #7, #8, #9, and #19 (Article XXI § 2105.21.b); a reduction in the coke pushing limit from 0.02 to 0.01 grains per dry standard cubic foot from USX-Clairton Batteries #1, #2, #3, #7, #8, #9, and #19 (Article XXI § 2105.21.e); new limits for material storage and handling at the Glassport Transportation Center (Article XXI § 2105.29.e); new definitions related to coke oven gas emissions (Article XXI § 2101.20); and new test methods (Article XXI § 2107.1 and 2107.2).

Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Pursuant to EPA regulations, the emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

Pennsylvania submitted an inventory of actual emissions for base year 1992. The base year inventory is dominated by emissions from coke production activities at the USX-Clairton Coke Works, which accounts for 72% of the inventory. Additional sources included public roads (26%) and other industrial sources (1%).

EPA is proposing to approve the emissions inventory because it appears to be generally accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[5] For further details see section 2.3.2.1 of the Technical Support Document (TSD).

2. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

a. PM–10 RACT

USX-Clairton is the only point source complex in the Liberty Borough nonattainment area subject to the RACT requirement. The large emission points

[5] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act and EPA's guidelines.

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and their emission limits are listed in Tables 1 and 2.

TABLE 1.—RACT FOR USX CLAIRTON WORKS COKE OVEN BATTERY EMISSIONS

[Allowable Emission Limits]

Source	Batteries 1–3, 7–9 and 19	Batteries 13–15, 20 and "B"
Charging	VE (visible emissions) for 75 seconds during any four consecutive charges.	VE for 55 seconds during any five consecutive charges.
Door Leaks	VE from 8% of doors excluding the last two charged.	VE from 5% of doors excluding the last two charged.
Charging Ports	VE from 2% of charging ports or seals	VE from 1% of charging ports or seals.
Offtake Piping	VE from 5% of offtake pipe	VE from 4% of offtake pipes.
Pushing	0.01 gdscf 20% opacity of VE from PEC outlet or pushing fugitives.	At any time 0.04 lb/ton coke. At any time, 20% opacity of VE from PEC outlet or pushing fugitives.
Combustion Stacks	0.030 grains per dscf	0.015 grains per dscf.

TABLE 2.—RACT FOR USX CLAIRTON WORKS OTHER EMISSIONS

[Allowable Emission Limits]

Source	Post-revision
Traveling Hot Car	10% opacity in open atmosphere.
Quench Towers	Water quality ≥ Monongahela River (750 mg/liter total dissolved solids); baffles.
Cooling Towers	Water quality ≥ Monongahela.
Boilers	387 TPY.
Pulverizers	11.86 grain PM–10 per ton.
Continuous Unloaders	No VE.
Storage Piles	VE 20% opacity for 3 min/60 min.
Private Industrial Roads.	VE 20% opacity for 3 min/60 min.

On May 19, 1994, Allegheny County provided EPA with documentation substantiating its claim that the revised SIP would provide for RACT (Letter from Cari J. Weaver, Section Head of Planning, Division of Air Quality to Marcia L. Spink, Chief, Air & Radiation Programs Branch, EPA Region III). The County compared its emission limits to those found in the appropriate guidance[6] and found their emission limits to be at least as restrictive as those in the 1980 Steel RACT document or those in neighboring jurisdictions. The County also found its emission limits to be generally equivalent to the most restrictive applicable limits found in *Procedures for Identifying Reasonably Available Control Technology for Stationary Sources of PM–10* (EPA–452/R–93–001). In some cases, the County's emission limits may be more restrictive than RACT because further reductions were required to demonstrate attainment. The demonstration that Allegheny County's emission limits are comparable to the most stringent state or local limits in the nation obviates the County's need to also undertake a review of the technical, economic, and environmental considerations that are generally involved in RACT analyses.

b. Other RACM

As noted above, EPA issued non-point source RACM guidance in Appendices C1, C2, and C3 to the General Preamble. Appendix C1 lists fifteen available fugitive dust control measures. In its "RACM" submittal, Allegheny County satisfactorily described that sections 521 through 526 of Article XX include the applicable available control measures (57 FR 18070). Sections 521 and 522 regulate visible emissions from roadways, haul roads, parking lots, and source premises, generally; § 523 prohibits visible emissions from the transport of solids or liquids; and §§ 524, 525, and 526 regulate visible emissions from construction, mining, and demolition, respectively.

Appendices C2 and C3 provide guidance on the requirements for RACM for residential wood combustion (RWC) and prescribed burning. RWC is not a significant source of PM–10 in the Liberty Borough nonattainment area (comprising less than one-half of one percent of the emissions inventory); therefore the County determined, pursuant to EPA's guidance that to require control of this de minimis source would be unreasonable and not constitute RACM. Prescribed burning on a large scale is not a common practice in Allegheny County and such burning that does occur is adequately regulated by Article XX § 516.

The total of all the control measures contained in this submittal result in a reduction in federally-allowable emissions of 5700 tons per year of PM–10 and a reduction in actual emissions of at least 600 tons per year in the nonattainment area and environs from 1992 levels. A more detailed discussion of the individual source contributions and their associated control measures can be found in the TSD. EPA has reviewed the State's submittal and concluded that it provides for RACM (including RACT). The implementation of Allegheny County's PM–10 control strategy will promote attainment of the PM–10 NAAQS as of December 31, 1994. By this action EPA is approving the control strategy as RACM, including RACT.

3. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment of the PM–10 NAAQS as expeditiously as practicable, but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (*id.*).

Allegheny County produced an attainment demonstration for the Liberty Borough area using dispersion modeling. The demonstration indicated that the NAAQS for PM–10 would be attained by December 31, 1994 in the Liberty Borough area and maintained in future years. Allegheny County's analysis shows that, even if all sources emit at their newly adopted maximum allowable emission rates, the 24-hour PM–10 concentration will not exceed 150 $\mu g/m^3$ more than once per year. Similarly, the demonstration shows that, in the attainment year, the annual PM–10 concentration will not exceed the annual PM–10 NAAQS of 50 $\mu g/m^3$. The analysis was performed in a manner that is consistent with the Guideline on Air Quality Models (40 CFR part 51, appendix W). The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)". For a more detailed description of the attainment demonstration and the control strategy used, see the Technical Support Document.

4. PM–10 Precursors

The control requirements that are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The PM–10 precursors explicitly identified in the Act are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and volatile organic compounds (VOC).

An analysis of air quality and emissions data for the Liberty Borough nonattainment area indicates that while exceedances of the NAAQS are chiefly attributable to direct particulate matter emissions from industrial sources within the nonattainment area, locally-formed, secondary PM–10 makes a significant contribution. According to the County's analyses, emissions of sulfur dioxide (SO_2) from coke ovens, coke oven battery underfiring, and industrial boilers can contribute up to 45 $\mu g/m^3$ in sulfates to the total 24-hour PM–10 concentrations (though the contribution is usually substantially less). Similarly, the County found that organic carbon could contribute up to 28 $\mu g/m^3$, but this contribution is most likely dominated by condensed VOC, which are controlled as PM–10 as described in the RACM/RACT section of this notice. Nitrate loading was rarely in excess of 5 $\mu g/m^3$. Consequently, EPA finds, pursuant to section 189(e) of the Act, that SO_2 emissions do contribute significantly to PM–10 exceedances in the Liberty Borough nonattainment area, while VOC and NO_X emissions do not. Therefore, under sec. 189(e) the requirement to control SO_2 emissions applies to the area, while the requirement for VOC and NO_X controls do not apply. This finding does not affect any other control technology requirements of the Act. It should be noted that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

Pursuant to section 189(e) Allegheny County's current SIP provides for the control SO_2 emissions. In a May 19, 1994 letter, Allegheny County found that its SO_2 limits for battery combustion (40 grains per 100 dry standard cubic foot of COG) and boilers (lb SO_2/MMBTU=1.7E$^{-0.14}$, where E is the actual heat input in MMBTU/hr) were more stringent than those of neighboring jurisdictions. For more detail, see the TSD.

5. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or as may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In evaluating whether the requirement to implement RFP for this initial moderate area has been met, EPA has reviewed the attainment demonstration and control strategy for the area in order to determine whether annual incremental reductions in addition to those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1)). All of Allegheny County's new PM–10 requirements affecting the nonattainment area became effective during 1994, and the County's air quality analysis demonstrates that these controls would be sufficient to cause attainment of the NAAQS by December 31, 1994. Therefore, no additional incremental reductions are needed and quantitative milestones demonstrating RFP by 1994, as required by the Act, are being met in the area. The County's rules satisfy the requirements for quantitative milestones and RFP.

6. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion, including coke production, fuel combustion, and material handling and processing. Some of the provisions are County-wide, some apply only in the nonattainment area, and others are source-specific. The geographic applicability and compliance date of each provision are clearly stated. In addition, this SIP revision incorporates several federal test methods into the Allegheny County SIP. EPA believes that these procedures, along with previously-approved test methods, serve as acceptable methods for determining compliance with the rules provided in this SIP revision.

The TSD contains further information on enforceability requirements including: enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules, as appropriate; malfunction provisions; excess emission provisions; averaging times for compliance test methods; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements.

Allegheny County has adopted a program that will ensure that the measures contained in the SIP are adequately enforced. The effective date of each new or revised rule is provided for in each provision. The existing test methods and recordkeeping requirements, along with those included in this SIP revision, are sufficient to determine compliance with each emission limit.

7. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544.

These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not

[6] August 7, 1980 memorandum from Edward E. Reich, Director, Stationary Source Enforcement Division to the Regional air enforcement directors entitled "Steel Technical Support Options and Documents," (with the attached table entitled "Particulate Emission Limitations Generally Achievable on a Retrofit Basis").

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part of the area's control strategy. The SIP must provide that these measures take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

Allegheny County's SIP submittal does not contain contingency measures. On January 18, 1994, EPA formally found that the Commonwealth of Pennsylvania had not submitted contingency measures to EPA for the Liberty Borough area as required by the Act.[7] This finding started the eighteen-month and 24-month sanctions clocks pursuant to section 179(a) of the Act. Also, section 110(c) requires that EPA promulgate a federal implementation plan (FIP) no later than two years after making a finding under section 179(a). Today's rulemaking has no effect on the January 18 finding or the associated sanctions and FIP clocks. The sanction clock will continue to run until EPA receives a complete SIP submittal of the contingency measures, and the FIP clock will continue to run until EPA approves those contingency measures.

Proposed Action

EPA is proposing to approve the PM–10-related revisions to the Allegheny County portion of the Pennsylvania SIP submitted to EPA on November 14, 1988,[8] January 12, 1993, and January 13, 1994.

Federally-approved state implementation plan must be in conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that Pennsylvania's November 14, 1988 submittal conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. EPA*, 3427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2)).

This action to propose approval of the PM–10 SIP for Allegheny County, Pennsylvania has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 21, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–8883 Filed 4–10–95; 8:45 am]

BILLING CODE 3560-50-P

[7] January 18, 1994 letter from Stanley L. Laskowski, Acting Regional Administrator, EPA Region III to Governor Robert P. Casey.

[8] EPA has determined that this submittal conforms with the requirements of the Act, irrespective of the fact that the submittal preceded the date of enactment of the Clean Air Act Amendments of 1990.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[RSI–95–1]

Regulatory Review

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: The Federal Railroad Administration invites all individuals affected by the rail safety regulatory program to discuss the agency's regulations and enforcement policies during two open forums to be convened in April. In addition, FRA invites written comment on ways to improve the safety regulatory program to make it more flexible, performance-oriented and cost-effective.

DATES: Public meetings will be held in Chicago, IL on April 20, 1995 and in Newark, N.J. on April 25, 1995. Written comments must be submitted to the FRA by May 5, 1995.

ADDRESSES: Public meetings: The Chicago, IL meeting will be held in the Tower's West room of the Knickerbocker Hotel, 163 E. Walton Place, from 9:00 a.m. to 1:00 p.m. The Newark, NJ meeting will be held in the Crystal Room of the Robert Treat Hotel, 50 Park Place, (about 5 minutes from Pennsylvania Station) from 10:00 a.m. to 2:00 p.m.

Written Comments: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, 400 7th Street, S.W., Room 8201, Washington, D.C. 20590–0001. Persons desiring to be notified that their written comments have been received by FRA should submit a self-addressed, stamped postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Ed English, Office of Safety Enforcement, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 202–366–9252, or Lisa Levine, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 202–366–4781.

SUPPLEMENTARY INFORMATION: Building on the regulatory philosophy set forth in Executive Order No. 12866, President Clinton recently asked Executive Branch agencies to report to him by June 1, 1995 on ways to improve the regulatory process. Specifically, the President requested that agencies: [1] Cut obsolete regulations; [2] reward agency and regulator performance by rewarding results instead of red tape; [3] create grassroots partnerships by meeting, outside of Washington, D.C., with those affected by regulations; and [4] use consensual rulemaking, such as regulatory negotiation, more frequently. This notice solicits comments and announces public outreach responsive to the President's directives.

FRA is committed to a railroad regulatory program that achieves safety goals while being cost-effective, user-friendly and customer-focused. Consistent with the President's Initiative, our 1995 Safety Action Plan aspires to cut red-tape, improve communications, foster cooperation and emphasize performance-oriented decision making with:

- Annual safety plans from each major railroad developed consensually with management, labor and FRA;
- Uniform and consistent safety assurance methods;
- Continued efforts to improve the effectiveness of our communications and customer response; and
- Streamlining of our regulatory process with a focus on data-based decision making.

Through roundtables, innovative rulemaking procedures (including negotiated rulemaking), and direct contacts with industry groups, FRA seeks to ensure open lines of communication and active collaboration of all affected persons in the development of its safety programs.

In response to the President's initiative, FRA invites participation from the regulated community in the creation of grassroots partnerships. The meetings in Chicago and Newark will be informal, intended to produce a dialogue between agency regulators and those persons directly affected by the rail safety program and regulations. These public forums are intended to elicit information and views at a grassroots level—from working railroad employees, supervisors and managers in those major railroad terminal areas.

Because FRA believes the President's call for regulatory review provides rich opportunities for eliminating or improving regulations, FRA is seeking comments, either at the public meetings or in writing, discussing methods of improving the regulations to make the rail safety program more performance-oriented, flexible and cost-effective. Any comments should contain a current priority order for those areas in need of improvement. By focusing on matters of greatest concern to those who carry regulatory burdens, FRA can best balance its responsibilities for regulatory reinvention and completion of statutorily mandated rulemaking proceedings.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 95–8983 Filed 4–10–95; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[ID. 040595A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 1995–96 King and Spanish Mackerel Specifications; Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public hearing on the total allowable catch, quotas, and bag limits for king and Spanish mackerel for the 1995–96 fishing year.

DATES: The hearing will be held on Thursday, April 13, 1995 at 4 p.m.

ADDRESSES: The hearing will be held at the Holiday Inn Savannah- Midtown, 7100 Abercorn Expressway, Savannah, GA 31406; telephone: 1–800–255–8268 or 1–912–352–7100.

Requests for special accommodations may be sent to the South Atlantic Fishery Management Council; One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, South Atlantic Fishery Management Council, telephone: 1–803–571–4366 or fax: 1–803–769–4520.

SUPPLEMENTARY INFORMATION: This public hearing is being held in conjunction with public meetings held by the Council on April 10–14, 1995. The hearing will be held to receive comments on the total allowable catch, quotas, and bag limits for king and Spanish mackerel for the 1995–96 fishing year. These measures will be developed by the Council according to framework regulatory procedures established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. Under this procedure, the Council will submit proposed measures to NMFS for review, approval, and implementation. NMFS' review will involve a public comment period before final agency action.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8908 Filed 4–10–95; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 655

[I.D. 032895B]

Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan; Public Hearings; Supplement 1 to Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Supplement 1 to Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery. The Council will also accept comments prepared for Amendment 7 for inclusion in the Environmental Impact Statement on the matters contained in Supplement 1.

DATES: Written comments must be received by May 1, 1995. The hearings are scheduled as follows:

1. April 18, 1995, 7 p.m., Virginia Beach, VA;
2. April 24, 1995, 7 p.m., Galilee, RI;
3. April 25, 1995, 7 p.m., Cape May Courthouse, NJ.

ADDRESSES: Send written comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management

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Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904.

The hearings will be held at the following locations:

1. Virginia Beach—Holiday Inn, 39th and Oceanfront, Virginia Beach, VA 23451;

2. Galilee—Dutch Inn, 307 Great Island Rd., Galilee, RI 02882; and

3. Cape May Courthouse—Cape May County Extension Office, Dennisville Rd., Route 657, Cape May Courthouse, NJ 08210.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these supplementary hearings is to obtain public input on several changes to Amendment 5 that were not included in the original hearing draft. These changes involve the provisions of the moratorium on entry into the *Illex* fishery, the provisions of the moratorium on entry into the *Loligo* and butterfish fisheries, the provisions of the minimum net mesh in the *Loligo* fishery, a provision that vessel owners/operators and dealers could lose their permits, if they falsified data to qualify for a moratorium permit, and a provision that only vessels with moratorium permits could transfer squid and butterfish at sea.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**).

All hearings will be tape recorded and the tapes will be filed as the official transcript of the hearing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 1995.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8901 Filed 4–6–95; 4:13 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 69
Tuesday, April 11, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–018–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance or renewal of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance or renewal of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
94–326–05, renewal of permit 94–055–03, issued on 5–04–94.	Asgrow Seed Company	2–07–95	Watermelon plants genetically engineered to express resistance to watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Michigan.
94–332–01, renewal of permit 94–060–01, issued on 6–01–94.	Asgrow Seed Company	2–08–95	Lettuce plants genetically engineered to express resistance to tomato spotted wilt virus.	Georgia.
94–200–01	University of Georgia	2–09–95	Canola plants genetically engineered for insect resistance.	Georgia.
94–326–07, renewal of permit 94–090–05, issued on 6–17–94.	Upjohn Company	2–09–95	Cantaloupe plants genetically engineered for resistance to cucumber mosaic virus, watermelon mosaic virus 2, zucchini yellow mosaic virus, papaya ringspot virus, and squash mosaic virus.	California, Georgia, and Michigan.

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The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 5th day of April 1995.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8800 Filed 4–10–95; 8:45 am]

BILLING CODE 3410–34–P

Cooperative State Research, Education, and Extension Service

Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987, (Public Law 92–463, 86 Stat. 770–776) the U.S. Department of Agriculture announces the following meeting:

Name: Forestry Research Advisory Council.

Date: May 10–11, 1995.

Time: 8:30 a.m.–5:00 p.m.

Place: Governor's House Hotel, 17th Street and Rhode Island Avenue, NW, Washington, D.C. 20036.

Type of Meeting: Open to the public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The council agenda will include: the Forestry Research and Education Initiative; 1995 Farm Bill; National Science and Technology Council strategy; performance measures for research; review of the Cooperative Forestry Research Program (McIntire-Stennis); and other current research issues.

Contact Person for Agenda and More Information: Jerry A. Sesco, Forest Service, 14th & Independence SW, P.O. Box 96090, Washington, D.C., 20090–6090; telephone (202) 205–1665.

Dated: April 4, 1995.

William D. Carlson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–8799 Filed 4–10–95; 8:45 am]

BILLING CODE 3410–22–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's Scientific and Policy Advisory Committee; Notice of Closed Meeting

April 5, 1995.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee and meeting:

Name: Scientific and Policy Advisory Committee (SPAC).

Date: April 26, 1995.

Time: 9:00 a.m.

Place: State Department Building, 320 21st Street N.W., Room 4930, Washington, D.C.

Type of Meeting: Closed.

Contact: Robert Sherman, Executive Director, Scientific and Policy Advisory Committee, Room 4930, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meeting: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy regarding negotiations on extension of the Nuclear Nonproliferation Treaty, the Comprehensive Test Ban Treaty, and the Conventional Weapons Convention, and on issues regarding those negotiations. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. The entire meeting will be held in Executive Session.

Reason for Closing: The SPAC members will be reviewing and discussing matters specifically authorized Executive Order 12356 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated March 27, 1995, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination To Close Meeting of the Scientific and Policy Advisory Committee

The Scientific and Policy Advisory Committee (SPAC) will hold a meeting in Washington, D.C., on April 26, 1995. The Arms Control and Disarmament Act, as amended (22 U.S.C. sec. 2566) provides for the SPAC to advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

The entire agenda of this meeting will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussion during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b(c)(1). Materials to be discussed at the meeting have been properly classified and are specifically authorized under criteria established by Executive Order 12356 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, this meeting should be closed to the public.

John D. Holum,

Director.

[FR Doc. 95–8949 Filed 4–10–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 733]

Grant of Authority; Establishment of a Foreign-Trade Zone in the Richmond, VA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Capital Region Airport Commission (the Grantee) has made application to the Board (FTZ Doc. 5–94, 59 FR 5174, 2/3/94; amended, 5/19/94) requesting the establishment of a foreign-trade zone at the Richmond International Airport, Henrico County, Virginia, within the Richmond-Petersburg Customs port of entry; and

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 207, at the site described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 31st day of March 1995.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–8897 Filed 4–10–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 040495B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish Plan Team (Team) on April 27–28, 1995, from 8:00 a.m. to 5:00 p.m. each day. The meeting will be held in Room 306 of the Executive Centre, 1088 Bishop Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Team will discuss and may make recommendations to the Council on the following agenda items:

1. 1994 annual report preparation;
2. Management of overfished bottomfish in the Main Hawaiian Islands;
3. NMFS review of revised Northwestern Hawaiian Islands catch and effort reporting system;
4. Overfishing definitions; and
5. Other business.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8904 Filed 4–10–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 040495A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team (Team) on April 24–26, 1995. The Team will meet from 12:00 noon to 5:00 p.m. on April 24, and from 8:00 a.m. to 5:00 p.m. on April 25–26. The meeting will be held in Room 306 of the Executive Centre, 1088 Bishop Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Team will discuss and may make recommendations to the Council on the following agenda items:

1. Small Boat Pelagic Fisheries Working Group;
2. Status of Pelagic Fisheries Research Program;
3. Overfishing definitions;
4. Development of indicators for pelagic fisheries;
5. 1994 annual report preparation;
6. Development of region-wide recommendations for annual report;
7. Next generation graphics and charting software for annual reports;
8. Pacific pelagic fisheries data collection programs;
9. Hawaii longline fishery issues (including permit leasing, etc.); and
10. Other business.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8905 Filed 4–10–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 040395B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P771#71).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory has applied in due form for a permit to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before May 11, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to satellite tag 50 beluga whales (*Delphinapterus leucas*) and retain samples incidental to the tagging over a 5-year period. In addition, the applicant seeks authorization to take by harassment up to 900 beluga whales per

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year incidental to the tagging. Proposed taking will be by small boat. Surveys will be conducted from July 1995 through October 2000 in Cook Inlet, Norton Sound, Bristol Bay, Kotzebue Sound, and Beaufort Sea on the west coast of Alaska. The results of the research will provide information on the movement and diving behavior of the Alaska stocks of beluga whales.

Dated: April 5, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8907 Filed 4–10–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Panel Closed Meeting

AGENCY: Department of Defense, Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows.

DATE: April 25–26, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8775 Filed 4–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Panel Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATE: .April 18–19, 1995 (830–400).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8774 Filed 4–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Unique Surveillance Technologies

ACTION: Change in Date/Location of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Unique Surveillance Technologies scheduled for April 4–6, 1995 as published in the **Federal Register** (Vol. 60, No. 62, Page 16630, Friday, March 31, 1995, FR Doc. 95–7891) will be held on April 20–21, 1995 at the institute for Defense Analyses, 1801 North Beauregard Street, Alexandria, Virginia.

Dated: April 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8776 Filed 4–10–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given to the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Meeting focus will be:

- Government & Contractor Interaction Workgroup Report
- Funding Obligation Plan/Process
- ARMS Initiative & Funding Extension—FY 96.
- Loan Guarantee Program
- Contract Length
- USC 2692 Process

A tour of the Indiana Army Ammunition Plant will be included as part of this meeting. This session is open to the public.

Dates of Meeting: May 10–11, 1995.

Place of Meeting: Holiday Inn, 505 Marriott Drive, Clarksville, Indiana 47129.

Time of Meeting: 8:00 A–5:PM.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Auger, ARMS Task Force, HQ Army Material Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 274–9838.

SUPPLEMENTARY INFORMATION: Reservatons should be made directly with the Holiday Inn; telephone (812) 283–4411. Please be sure to mention that you will be attending the ARMS PPTF meeting to assure occupancy in the block of rooms set aside for this meeting. You should confirm your reservation prior to 25 April 1995. Request you contact Debra Yeager in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782–4040, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required for public review in September of 1995.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–8900 Filed 4–10–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 13, 1992, an arbitration panel rendered a decision in the matter of *Jimmy Little v. Arkansas Department of Human Services, Division for the Blind (Docket No. R–S/92–1).* This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by petitioner Jimmy Little.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Switzer Building, Washington, DC. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

Jimmy Little, complainant, is a blind vendor licensed by the Department of Human Services, Division of Services for the Blind, State of Arkansas. Mr. Little operated the vending facility at Newport Vo-Tech in Arkansas.

The Arkansas State licensing agency expressed concern and had evidence that Mr. Little was not following established Vending Facility Program (VFP) procedures for notifying program officials regarding his opening and closing hours during the summer.

In a telephone conversation on August 6, 1990, Mr. Little and the Administrator for the VFP discussed his procedural failures, and it was indicated then that the agency might revoke his vendor's license. On August 7, 1990, the Administrator and a specialist in the VFP visited Mr. Little's facility with questions concerning his summer opening and closing schedule. The VFP representatives reviewed Mr. Little's business records and counted his inventory. Complainant felt that the Administrator's conduct was inappropriate and cast doubts on his honesty and integrity. As the lunch hour approached, business increased and the two VFP officials waited outside before continuing their discussion with Mr. Little.

Mr. Little believed that the Administrator made him look like a thief in front of his customers, and, upon the officials' return to the facility, complainant informed them he would no longer manage the facility and turned in his keys. Subsequently, Mr. Little's license to operate the vending facility at Newport Vo-Tech was revoked for abandonment of his facility.

Mr. Little's position is that his abandonment was not by choice but that he was forced to leave by the behavior of the VFP officials. Mr. Little has sought the return of his license to operate the facility at Newport Vo-Tech as well as monetary damages for lost earnings. Mr. Little requested and was granted a State fair hearing on the matter on March 1, 1991. The hearing officer ruled that there was not sufficient evidence presented at the State fair hearing to warrant a finding that the actions of the VFP personnel were responsible for the complainant's abandonment of the Newport Vo-Tech facility.

Arbitration Panel Decision

The panel stated that there are sound business reasons to visit a vendor at his facility, especially if there are questions about his records, inventory, and hours of business during the summer. Based on both men's testimony at the hearing, the panel found there was no evidence that the Administrator ever called Mr. Little a thief and by Mr. Little's own admission he did not believe any of his patrons overheard any of the Administrator's inquiry. The complainant believed that his integrity was questioned because of the Administrator's request to count his inventory and examine his receipts, but the panel found that this was part of the Administrator's job. It also found Mr. Little had not been harassed and was not justified in abandoning his facility.

On November 13, 1992, the arbitration panel issued its opinion. The panel found that Mr. Little voluntarily abandoned the facility at Newport Vo-Tech, and the panel upheld the revocation of complainant's vending facility license by the Arkansas Department of Human Services, Division for the Blind.

Dated: April 5, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–8896 Filed 4–10–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1147–000, et al.]

Madison Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

April 4, 1995.

Take notice that the following filings have been made with the Commission:

1. Madison Gas & Electric Company

[Docket No. ER94–1147–000]

Take notice that on March 23, 1995, Madison Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket No. ER94–1367–000]

Take notice that on March 21, 1995, Public Service Company of New Mexico (PNM) submitted for filing a letter of clarification to supplement its June 16, 1994 filing of a Capacity and Energy Services Agreement between PNM and Enron Power Marketing, Inc. (EPMI).

Copies of the supplement have been served upon EPMI and the New Mexico Public Utility Commission.

Comment date: April 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company

[Docket No. ER94–1661–000]

Take notice that on March 28, 1995, Ohio Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Service Company

[Docket No. ER95–539–000]

Take notice that on March 17, 1995, New England Power Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

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Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8864 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–284–000, et al.]

National Fuel Gas Supply Corporation, et al. Natural Gas Certificate Filings

April 4, 1995.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP95–284–000]

Take notice that on March 24, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP95–284–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service, authorized in Docket No. CP76–492–031 and –032,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

National proposes to abandon a transportation service which it provides to UGI Utilities, Inc. (UGI), pursuant to a transportation agreement dated October 3, 1984. National states that the transportation agreement is on file as Rate Schedule X–30 of its FERC Gas Tariff, First Revised Volume No. 2. National further states that the proposed termination is requested due to a written termination notice by UPI dated March 24, 1994, which cites April 1, 1995, as the contractual date of termination.

National states that the service to be abandoned involves the transportation for injection of up to 19,019 Mcf per day on a firm basis and the withdrawal of up to 25,358 Mcf per day on an interruptible basis through National Fuel's Ellisburg-First Fork pipeline. It is indicated that the service involves gas stored with Penn-York Energy Corporation in the East Independence, West Independence and Beech Hill storage pools in Allegany County, New York.

Comment date: April 25, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP95–290–000]

Take notice that on March 30, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63214, filed in Docket No. CP95–290–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon certain lateral lines, sales taps and related facilities and equipment which have been used to serve Illinois Terminal Railroad Company (Terminal Railroad) and Missouri Portland Cement Company (Missouri Portland), pursuant to MRT's blanket authorization issued in Docket No. CP82–489–000, all as more fully described in the request which is on file with the Commission and open for public inspection. MRT also proposes to abandon service to these two customers.

MRT proposes to abandon approximately 60 feet of Line A–108 pipeline in Madison County, Illinois used to serve Terminal Railroad and approximately 2,337 feet of Line A–123 pipeline in St. Louis City, Missouri, used to serve Missouri Portland.

MRT proposes to blind off at the tap valve the metering and regulating stations of Terminal Railroad and Missouri Portland and remove all the above ground facilities. It is further stated that MRT proposes to abandon in place all the underground pipe.

Comment date: May 19, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP95–293–000]

Take notice that on March 31, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–293–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm gas transportation service for Coastal Chem, Inc. (Coastal Chem), which was authorized in Docket No. CP82–483 et. al., all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG states that it proposes to abandon a certificated agreement related to the transportation of natural gas by CIG for Coastal Chem. CIG states that the agreement, dated March 16, 1982, as amended, constitutes CIG's Rate Schedule X–44 of its FERC Gas Tariff, Original Volume No. 2.

CIG states that Coastal Chem has agreed for CIG to terminate the March 16, 1982 transportation agreement. CIG states that it will continue to provide transportation service for Coastal Chem pursuant to its open access certificate.

CIG further states that it does not propose to abandon any facilities as a result of the authorization requested herein and that CIG will continue to use these facilities for open access transportation service.

Comment date: April 25, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8865 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–19–000]

Oklahoma Corporation Commission Tight Formation Area Determination FERC No. JD94–01286T (Oklahoma-57); Notice of Informal Conference

April 5, 1995.

Take notice that an informal conference will be convened in the above-referenced proceeding on Thursday, April 20, 1995, at 10:00 a.m. The conference will be held in Room No. 3400–C, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

For further information, contact Marilyn Rand at (202) 208–0444.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8788 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–45–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

April 5, 1995.

Take notice that on March 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the tariff sheets which ANR proposes to be effective May 1, 1995:

Second Revised Volume No. 1

Seventh Revised Sheet No. 17

Original Volume No. 2

1st Revised Sheet Nos. 13 and 14

ANR states that the referenced tariff sheets are being submitted to update the "Eligible Throughput Actually Experienced" as required in Sections 26.4 and 27.3 of ANR's FERC Gas Tariff Second Revised Volume No. 1 to adjust the Volumetric Buyout Buydown Surcharge and Upstream Pipeline Surcharge, commencing May 1, 1995.

ANR states that each of its Volume Nos. 1 and 2 customers and interested State Commissions has been apprised of this filing via U.S. Mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8789 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–208–000]

Kansas and Oklahoma Cities; Notice of Informal Technical Conference

April 5, 1995.

On March 15, 1995, the Kansas and Oklahoma Cities filed an Emergency Complaint and Request for a Declaratory Order relating to Williams Natural Gas Company's proposed Third Right of First Refusal Procedure. Given the short time to act on that filing, an informal technical conference in this matter is scheduled for 1:00 p.m. Tuesday, April 11, 1995, at 810 First Street, NE., Washington, DC, in a room to be designated at that time. By notice dated March 22, 1995, comments and protests in this proceeding were to be filed April 12, 1995. In light of the technical conference, the comment period is shortened one day to April 11, 1995. Any interested parties attending the technical conference are requested to bring their comments with them.

Questions about the conference should be directed to John M. Robinson, (202) 208–0808, or Ken Niehaus, (202) 208–0398.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8787 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–678–000]

New England Power Co.; Notice of Filing

April 5, 1995.

Take notice that on March 30, 1995, New England Power Company (NEP) submitted a clarification to its filing letter tendered in this docket. NEP has reiterated its request for an effective date of May 1, 1995 for the Contract that is the subject of this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8790 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–31–000]

NorAm Gas Transmission Co.; Notice of Filing

April 5, 1995.

Take notice that on March 31, 1995, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, effective May 1, 1995:

First Revised Sheet No. 14

NGT states that this revised tariff sheet is filed in accordance with NGT's tariff to adjust NGT's fuel percentage tracker.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal

[1] See 29 FERC ¶ 61,034, 61,311 (1984).

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Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8791 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–285–000]

Paiute Pipeline Co.; Notice of Application

April 5, 1995.

Take notice that on March 27, 1995, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP95–285–000 an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157) for a certificate of public convenience and necessity authorizing Paiute to construct and operate two compressor stations on its Elko Lateral, in order to increase its capacity by 1,496 Dth/d to provide additional delivery point flexibility to Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada), all as more fully set forth in the application which is file with the Commission and open to public inspection.

Specifically, Paiute proposes to:

(1) Install a 1,339 H.P turbine driven compressor at milepost 61.45 on the Elko Lateral in Lander County, Nevada; and

(2) Relocate the existing 360 H.P. reciprocating compressor presently located at milepost 137.2 on the Elko Lateral to milepost 110.1 in Eureka County, Nevada.

Paiute states that the estimated cost of the proposed facilities is $4,119,500. Paiute intends to finance the cost of construction through ongoing regular financing programs and internally generated funds.

Paiute states that it has entered into a transportation service agreement with Southwest-Northern Nevada under which it would increase its billing determinants for such shipper by 1,496 Dth/d under Paiute's Rate Schedule FT–1. Paiute proposes that the rates for the additional service to be provided to Southwest-Northern Nevada by means of the proposed facilities be designed using an incremental facilities surcharge in Rate Schedule FT–1 applicable to Southwest-Northern Nevada, under which the cost and revenues related to the construction of the additional compression facilities on the Elko Lateral will be considered on an incremental cost basis.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 26, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157 10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, which requires a formal hearing, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Paiute to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8793 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–165–001]

Pacific Gas Transmission Co.; Notice of Compliance Filing

April 5, 1995

Take notice that on March 30, 1995, Pacific Gas Transmission Company (PGT) tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Fifth Revised Sheet No. 51, and requested that it be made effective March 20, 1995.

PGT states that the tariff sheet which it is submitting corrects a typographical error in the Transportation Terms and Conditions Table of Contents in compliance with a March 15, 1995 Letter Order by OPR.

PGT further states it has served a copy of this filing upon all parties on the official service list compiled by the Secretary in this proceeding, all interested State regulatory agencies and PGT's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 95–8792 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–296–000]

Paiute Pipeline Co.; Notice of Request Under Blanket Authorization

April 5, 1995.

Take notice that on April 3, 1995, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP95–296–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain miscellaneous tap and/or metering facilities and the service rendered by means thereof, under Paiute's blanket certificate issued in Docket No. CP84–739–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute proposes to abandon a number of tap and/or metering facilities formerly used to provide deliveries to Southwest Gas Corporation-Northern Nevada (Southwest). All the facilities are located in Nevada. Paiute states that it has been informed by Southwest that the subject facilities are no longer used or needed to provide service to Southwest.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8794 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–229–000]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

April 5, 1995.

Take notice that on March 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge and its Interruptible Transportation Rates due to a change in service levels and an increase in the FERC interest rate effective April 1, 1995:

First Sub. Sixteenth Revised Sheet No. 15
First Sub. Sixteenth Revised Sheet No. 17
Tenth Revised Sheet No. 18
First Sub. Thirteenth Revised Sheet No. 29
First Sub. Thirteenth Revised Sheet No. 30
First Sub. Thirteenth Revised Sheet No. 31

Southern submits tariff sheets 15 and 17 in compliance with the Commission's November 30, 1994 Order requiring Southern to recover its Account No. 858 costs and Southern Energy LNG costs through the same type of quarterly mechanism as the one currently in place for the recovery of Southern's gas supply realignment costs. Southern notes that the instant filing is made without prejudice to Southern's request for rehearing of November 30, 1994 Order.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8795 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–002]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 5, 1995.

Take notice that on March 30, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1, and Original Volume No. 2.

Texas Gas states that this motion rate-compliance filing is being made to place the tariff sheets listed below into effect on April 1, 1995, in compliance with the Commission's Order issued October 28, 1994, in Docket No. RP94–423 at 69 FERC 61,109 (1994).

First Revised Volume No. 1

Third Revised Sheet No. 1
First Revised Sheet No. 9
Substitute Eighth Revised Sheet No. 10
Substitute Fifth Revised Sheet No. 11
Substitute Original Sheet No. 11A
Substitute Tenth Revised Sheet No. 12
Second Revised Sheet No. 12A
Substitute Third Revised Sheet No. 13
Substitute Second Revised Sheet No. 15
Substitute Second Revised Sheet No. 16
Second Revised Sheet No. 17
Fifth Revised Sheet No. 18
Substitute First Revised Sheet No. 122
Substitute Second Revised Sheet No. 230
Substitute Second Revised Sheet No. 231

Original Volume No. 2

Nineteenth Revised Sheet No. 82
Twentieth Revised Sheet No. 547
Twenty-second Revised Sheet No. 982
Twentieth Revised Sheet No. 1005
Fourteenth Revised Sheet No. 1085

Texas Gas requests an effective date of April 1, 1995, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commissions, and all parties appearing on the official restricted service list in Docket No. RP94–423.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before April 12, 1995. Protests may be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8796 Filed 4–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–34–000, RP94–227–000, CP94–254–000, CP94–751–000, CP94–211–000, CP94–676–000, CP95–70–000, CP95–153–000, RS92–87–000, Docket No. CP95–112–000]

Transwestern Pipeline Co.; Transwestern Gathering Co.; Notice of Settlement Conference

April 5, 1995.

Take notice that a settlement conference will be convened in the above-docketed proceedings on Wednesday, April 12, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-captioned Transwestern Pipeline Company proceedings.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party to any of the above-docketed proceedings must move to intervene and receive intervenor status pursuant to the

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Commission's regulations (18 CFR 385.214).

For additional information, please contact Scott E. Koves at (202) 208–0492.

Lois D. Cashell,

Secretary

[FR Doc. 95–8797 Filed 4–10–95; 8:45 am]

BILLING CODE 8717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5188–5]

Acid Rain Program: Notice of the Filing of Petition for Administrative Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the filing of petition for administrative review.

SUMMARY: On January 27, 1995, Indianapolis Power and Light Company filed, with the EPA Environmental Appeals Board, a petition for review of the Phase I Acid Rain Permits for the Petersburg and H T Pritchard power plants. This appeal was filed under 40 CFR part 78 of the Acid Rain regulations. Motions for leave to intervene in the proceeding under 40 CFR 78.11 must be filed by May 11, 1995 with the Environmental Appeals Board.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-Advisor, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 233–9151.

Dated: March 30, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–8880 Filed 4–10–95; 8:45 am]

BILLING CODE 8560–50–P

[FRL–5188–6]

Acid Rain Program: Draft Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft modifications to the sulfur dioxide (SO_2) compliance plans of two previously issued final Phase I Acid Rain Permits in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the draft modifications must be received no later than 30 days after the date of this notice or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd, Chicago, IL. 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to David Kee, Division Director, Air and Radiation Division, EPA Region 5, (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting an SO_2 compliance plan.

FOR FURTHER INFORMATION: Call Genevieve Nearmyer, (312) 353–4761.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under the program, each affected unit at an electric utility generating plant must hold one allowance for each ton of SO_2 that is emitted during the year, and each plant must have a permit with a plan for complying. In today's action, EPA is issuing, for public comment, draft modifications to existing permits, allocating SO_2 emission allowances and approving SO_2 compliance plans, to the following utility plants:

Baldwin in Illinois: one substitution plan for 1995–1999, in which unit 3 designates Havana units 1, 2, 3, 4, 5, 6, 7, and 8 as substitution units.

Havana in Illinois: one substitution plan for 1995–1999, in which Baldwin unit 3 designates units 1, 2, 3, 4, 5, 6, 7, and 8 as substitution units; 34 substitution allowances are allocated for each year 1995–1999 to units 1, 3, 4, 5, 6, 7, and 8; 43 substitution allowances are allocated for each year 1995–1999 to unit 2.

The Designated Representative for Baldwin and Havana is Jene L. Robinson.

Dated: March 27, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–8881 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5188–4]

Waste Analysis Guidance Manual: The Resource Conservation and Recovery Act (RCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Waste Analysis Guidance For Facilities That Burn Hazardous Wastes—Draft.

SUMMARY: The Environmental Protection Agency announces a draft Waste Analysis Guidance For Facilities That Burn Hazardous Wastes for public comment. This guidance document was developed by the Office of Compliance for facilities that treat and dispose of hazardous wastes by using combustion technology as regulated under 40 CFR parts 264 and 265, subpart O and 40 CFR part 266, subpart H. RCRA was designed to ensure that the generation, transportation, treatment, storage and disposal of hazardous wastes are conducted in a manner that "protects human health and the environment." The cornerstone of the program is the ability of facility personnel to properly characterize and identify their wastes. This guidance manual is designed to assist the regulated community, permit writers and enforcement officials by establishing recommended criteria to properly develop and evaluate RCRA waste analysis plans at combustion facilities. The Agency is specifically soliciting comment on the use of process knowledge to determine feed rates of constituents in the absence of analytical data, and the use of statistical analysis in establishing feed rate limits.

DATES: EPA will accept public comments on this draft guidance document until May 11, 1995.

ADDRESSES: The public must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the Waste Analysis Guidance For Facilities That Burn Hazardous Wastes EPA/530/R–94/019 may be obtained by visiting the RCRA Information Center or by calling the RCRA Hotline. Place the docket number (#F–95–WAGA–FFFFF) on your comments. The RCRA Information Center is located in room M2616 at EPA Headquarters, 401 M Street SW., Washington, DC 20460. It is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost 0.15 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information and a copy of the document contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 412–9810 in the Washington, DC area. For information on specific aspects of the guidance manual, contact John Dombrowski at (202) 564–7036, Chemical, Commercial Services and Municipal Division (2224–A), Office of Compliance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: March 10, 1995.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 95–8879 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5188–9]

Notice of Public Meetings on Drinking Water Issues—Regulatory Reassessment and Determination of Maximum Contaminant Level Goals

Notice is hereby given that the U.S. Environmental Protection Agency (EPA) is holding additional meetings related to the reassessment of the priorities for regulating drinking water contaminants and to the determination of Maximum Contaminant Level Goals (MCLGs) used in setting National Primary Drinking Water Regulations. These public meetings are follow-up meetings to the initial meetings held by EPA on March 13 and 14, 1995. Additional information about the initial and upcoming meetings may be obtained from the EPA contact persons provided below.

The purpose of the meetings is to provide EPA with ideas, suggestions and options related to priorities for regulating drinking water contaminants and determination of MCLGs. Information received by EPA during these meetings can serve as the basis for strategic decisions on program directions and resource allocations.

Alternatively or in addition to attending any particular meeting, members of the public may submit written comments to the EPA contact person for up to fifteen days after the meeting. General questions about the meeting process should be directed to the designated EPA contact person.

Meetings on Determination of MCLGS

EPA is seeking stakeholder views on revisiting the methodology for determining MCLGs for drinking water, including the Agency's current policy of setting zero goals for carcinogens. In regulating drinking water contaminants that may cause adverse health effects, EPA sets non-enforceable MCLGs to protect against these effects, incorporating a margin of safety. EPA also sets a Maximum Contaminant Level (MCL), which is enforceable and may be less stringent than the MCLG depending on feasibility and cost.

Several activities planned or ongoing may improve the characterization of the variability and uncertainty associated with the risk assessment for a contaminant. These include noncancer risk assessment methodologies such as the benchmark approach and categorical regression models, revision of the Agency's Cancer Risk Assessment Guidelines, revision of the relative source contribution policy, evaluation of risk assessment methods for chemical mixtures and development of a risk characterization policy.

The first meeting of this subject area was held on March 14, 1995. The schedule of the additional four meetings are provided below, along with the topics for discussion for each meeting. To obtain additional information including background issue papers for each meeting, interested persons may reach the EPA contact person, Jennifer Orme-Zavaleta, at 202–260–7571. The meetings will be held at 2828 Pennsylvania Avenue NW, Suite 402, Washington, D.C.

(1) April 12–13, 1995, from 9:00 a.m. to 4:30 p.m. each day: Cancer and noncancer risk assessment discussion

—Some of the topics to be discussed include revision of the Cancer Risk Assessment Guidelines, setting the Reference Dose (RfD) as a range, quantitative risk assessment approaches for carcinogens and noncarcinogens.

(2) April 27–28, 1995, from 9:00 a.m. to 4:30 p.m. each day: Exposure discussion

—Some of the topics to be discussed include the Relative Source Contribution policy, consideration of sensitive subgroups, dermal and volatilization routes and chemical mixtures/interaction.

(3) May 9–10, 1995, from 9:00 a.m. to 4:30 p.m. each day: Zero MCLG Policy for carcinogens, benefits assessment for carcinogens and noncarcinogens, and risk characterization discussion.

(4) May 22–23, 1995, from 9:00 a.m. to 4:30 p.m. each day: Microbiological risk assessment and wrap up.

—Some topics to be discussed include occurrence, dose-response analysis, exposure and hazard assessment.

Meetings on Regulatory Reassessment

Meetings under this subject area will provide EPA with stakeholder input on priorities for regulating drinking water contaminants. The first meeting of the Regulatory Reassessment subject area was held on March 13, 1995. At that meeting, stakeholders agreed to prioritize contaminants scheduled for future drinking water regulation. Each member of the group will do individual rankings and share those rankings with other members of the group. Rankings will be high/medium/low. Stakeholders will identify which factors were most significant in their ranking and what additional information they believe is important to issue a regulation. EPA staff will assemble the information and provide it to EPA management in order to develop a priority listing of future drinking water regulations.

The first group of contaminants to be ranked are: (1) disinfectants/disinfection byproducts/surface water microbial contaminants, (2) ground water microbial contaminants, (3) arsenic, (4) radon, and (5) other radionuclides. Rankings for these contaminants will begin to be discussed at the next public meeting, scheduled for April 10–11. Other contaminants to be ranked and discussed at future meetings are: (1) sulfate, (2) aldicarb/aldicarb sulfoxide/aldicarb sulfone, (3) acifluorfen, (4) acrylonitrile, (5) boron, (6) bromomethane, (7) cyanazine, (8) dicamba, (9) 2,4/2,6-dinitrotoluene (2,4/2,6–DNT), (10) ethylene thiourea (ETU), (11) hexachlorobutadiene (HCBD), (12) manganese, (13) methomyl, (14) metolachlor, (15) metribuzin, (16) molybdenum, (17) 1,1,1,2-trichloroethylene (1,1,1,2–TCE), (18) 1,2,3-trichloropropane (1,2,3–TCP), (19) 1,3-dichloropropene (Telone II), (20) trifluralin, (21) zinc, and (22) nickel. Other contaminants may also be discussed.

In addition to the April 10–11, meeting, meetings are scheduled for April 25–26, May 11–12, and May 24–25, 1995 to discuss the contaminants listed above. The meetings will be held from 9:00 a.m. to 5:00 p.m. each day at 2828 Pennsylvania Avenue NW, Suite 402, Washington, D.C. For further information, including meeting materials, interested persons may contact Jan Auerbach at (202) 260–5274.

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Interested persons may provide their rankings of one or more of these contaminants up to May 15, 1995, even if the discussion of the contaminant has already been held. Please contact Jan Auerbach for information on how to submit individual rankings for the Agency's consideration.

Dated: April 5, 1995.

Tudor Davies,

Director, Office of Science and Technology

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water

[FR Doc. 95–8875 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Reed E. Hundt appointed executives to the Executive Resources and Performance Review Board.

Andrew S. Fishel*
Roy J. Stewart
William E. Kennard
Robert M. Pepper
Kathleen M. Wallman

Federal Communications Commission

William F. Caton,

Acting Secretary

[FR Doc. 95–8849 Filed 4–10–95; 8:45 am]

BILLING CODE 6712–01–M

Fifth WRC–95 Industry Advisory Committee Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–95 Industry Advisory Committee.

DATES: April 20, 1995; 9:00 a.m.–12:00 p.m.

ADDRESSES: Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300 South, Washington, D.C. 20004.

SUPPLEMENTARY: The WRC–95 Industry Advisory Committee was established by the Federal Communications Commission to provide to the agency advice, technical support and recommendations relating to preparation of U.S. proposals and positions for the 1995 World Radiocommunication Conference.

The proposed agenda for the fifth meeting is as follows:

Agenda

Fifth Meeting of the WRC–95 Industry Advisory Committee, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300 South, Washington, D.C. 20004, April 20, 1995; 9:00 a.m.–12:00 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Results of the Conference Preparatory Meeting
4. Draft WRC–95 Industry Advisory Committee Final Report on Recommended WRC–95 Proposals
5. Other Business

For further information, contact Audrey L. Allison, at (202) 739–0557, or Thomas M. Walsh, at (202) 418–0420, of the FCC's International Bureau.

Federal Communications Commission

William F. Caton,

Acting Secretary

[FR Doc. 95–8848 Filed 4–10–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of Houston Authority: Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should submit this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200930
Title: Port of Houston Authority/Coastal Cargo of Texas Inc. Terminal Agreement
Parties:
Port of Houston Authority ("Port")
Coastal Cargo of Texas, Inc. ("CCTI")
Filing Agent: Martha T. Williams, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–4327
Synopsis: The proposed Agreement authorizes CCTI to perform freight handling services at the Port's Care Terminal. The term of the Agreement expires March 28, 2000.

Dated: April 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary

[FR Doc. 95–8780 Filed 4–10–95; 8:45 am]

BILLING CODE 6730–01–M

Empresa Lineas Maritimas Argentinas; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006400–037
Title: Inter-American Freight Conference Pacific Coast Agreement
Parties:
Empresa Lineas Maritimas Argentinas
Maruba S.C.A.
Norsul Internacional S.A.
Synopsis: The proposed amendment deletes references to Canada from the geographic scope of the Agreement. It also revises the voting procedures under Articles 8.03—Conduct of Meetings of Principals and 8.04—Conduction of All Other Meetings. In addition, it modifies Article 8.02—Actions Without a Meeting.

Agreement No.: 203–011340–003
Title: APL/OOCL Reciprocal Slot Exchange & Coordinated Sailing Agreement

Parties:
American President Lines, Ltd.
Orient Overseas Container Line Inc.
Synopsis: The proposed amendment provides for the suspension and contingent reapplication of the Agreement in the event and for the period that Agreement No. 203–011468 (A–PAC Agreement) shall become fully implemented and remains in effect.

Agreement No.: 207–011496
Title: Sea-Land/CTE Agreement
Parties:
Sea-Lane Service, Inc.
Compania Trasatlantica Espanola S.A.
Synopsis: The proposed Agreement authorizes the parties to establish a joint service in the trade between ports in Puerto Rico and U.S. ports in the range from Florida through Texas, on the one hand, and Mediterranean ports in Spain, France and Italy, and ports in Morocco, on the other hand, including inland or coastal points via such ports.

Agreement No.: 224–200929
Title: Port of San Francisco/Marine Terminals Corporation Nonexclusive Management Agreement
Parties:
Port of San Francisco
Marine Terminals Corporation ("MTC")
Synopsis: The proposed Agreement authorizes MTC to operate as a marine terminal operator and manager at Piers 27 and 28. In consideration for services rendered MTC will be compensated by users of the facility. The term of the Agreement shall be for five years.

Dated: April 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–8781 Filed 4–10–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

James Barr Bulliard, Sr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 25, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. James Barr Bulliard, Sr., St. Martinville, Louisiana; to retain 10.41 percent of the voting shares of Teche Bancshares, Inc., St. Martinville, Louisiana, and thereby indirectly retain shares of Teche Bank & Trust Co., St. Martinville, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mary Kathleen Fennewald, Trustee, for Mary Kathleen Fennewald U/T/A, and Trustee for Alphonse H. Fennewald Trust, Martinsburg, Missouri; to acquire an additional .35 percent, for a total of 11.5 percent, of the voting shares of Martinsburg Bancorp, Inc., Martinsburg, Missouri, and thereby indirectly acquire Martinsburg Bank, Mexico, Missouri.

Board of Governors of the Federal Reserve System, April 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8850 Filed 4–10–95; 8:45 am]

BILLING CODE 6210–01–F

Mountain Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 5, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mountain Bancshares, Inc., Los Alamos, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Mountain Community Bank of Los Alamos, Los Alamos, New Mexico.

Board of Governors of the Federal Reserve System, April 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8851 Filed 4–10–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3563]

Abovo, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts company and its president from making false or unsubstantiated performance claims about any communication aid they offer in the future, and from making representations concerning the efficacy of their communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondents possess competent and reliable scientific evidence to substantiate the representation.

DATES: Complaint and Order issued March 22, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 4, 1995, there was

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580

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published in the **Federal Register** 60 FR 464, a proposed consent agreement with analysis in the Matter of Above, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–8856 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3560]

American Institute of Smoking Cessation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based company and its two officers from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation, and from representing, through any endorsement or testimonial, the achievements of participants who attend their smoking cessation or weight-loss seminars unless the representation reflects the typical or ordinary experience of participants of such programs. In addition, the consent order prohibits the respondents from misrepresenting the contents, results or validity of any study, test, survey or report.

DATES: Complaint and Order issued March 3, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, DC 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: On Friday, August 5, 1994, there was published in the **Federal Register**, 59 FR 40026, a proposed consent agreement with analysis in the Matter of American Institute of Smoking Cessation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 450)

Donald S. Clark,

Secretary

[FR Doc. 95–8857 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3321]

European Body Concepts, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a suburban Washington, DC Based salon and its president from making false and unsubstantiated claims that their body wrap would cause weight-loss; would eliminate cellulite; and is completely safe for all users. In addition, it would require the respondents to convey prominent safety warnings to their customers in certain circumstances.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Nancy S. Warder, FTC/S–4002, Washington, DC 20580. (202) 326–3048.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of European Body Concepts, Inc., Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, and James Marino, individually and as an officer of said corporations.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, and James Marino, individually and as an officer of said corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between European Body Concepts, Inc., a Maryland corporation, by its duly authorized officer, European Body Concepts, Inc., a Virginia corporation, by its duly authorized officer, European Body Concepts, Inc., a North Carolina corporation, by its duly authorized officer, and James Marino, individually and as an officer of said corporations, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent European Body Concepts, Inc., a Maryland corporation, is organized, exists and does business under and by virtue of the laws of the State of Maryland, with its former office and principal place of business located at 1 Central Plaza, Suite 907, 11300 Rockville Pike, Rockville, Maryland 20852.

Proposed respondent European Body Concepts, Inc., a Virginia corporation, is organized, exists and does business under and by virtue of the laws of the State of Virginia, with its former office and principal place of business located at 6564 Loisdale Court, Suite 420, Springfield, Virginia 22150.

Proposed respondent European Body Concepts, Inc., a North Carolina corporation, is organized, exists and does business under and by virtue of the laws of the State of North Carolina, with its former office and principal place of business located at 1515 Mockingbird Lane, Suite 410, Charlotte, North Carolina 28209.

Proposed respondent James Marino is or was at relevant times herein an officer of said corporations. He formulated, directed and controlled the policies, acts and practices of said corporations and his address is 11940 Alpharetta Highway, Suite 907, Alpharetta, Georgia 30201.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as circumstances may require) and decision in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provision of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Edward J. Carnot, counsel for proposed respondents, at 1370 Piccard Drive, Suite 290, Rockville, Maryland 20850, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order:

1. "Clearly and prominently" means as follows:

A. In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement the disclosure shall be in at least twelve (12) point type, in print that contrasts with the background against which it appears, and in a location that is sufficiently noticeable that the ordinary consumer will see and read it.

2. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "European Body Wrap treatment" means the treatment used at European Body Concepts centers during which clients are wrapped in medical bandages and placed in vinyl body suits.

I

It is ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers, James Marino, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the European Body Wrap treatment or any substantially similar treatment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such treatment causes weight loss;

B. Such treatment causes weight loss without diet or exercise;

C. Such treatment causes fast or easy weight loss;

D. Such treatment eliminates cellulite;

E. Such treatment causes weight loss at specific areas of the body;

F. Users of such treatment are successful in maintaining their weight loss;

G. Users of such treatment are successful in maintaining their inch loss; or

H. Such treatment is completely safe for all users.

II

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers, James Marino, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the European Body Wrap treatment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication that:

A. Such treatment causes users to lose inches from their body measurements;

B. Such treatment causes inch loss without diet or exercise;

C. Such treatment causes fast or easy inch loss; or

D. Such treatment causes reduction in the size of specific areas of the body;

unless, (1) such representation is true, and at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; and (2) respondents disclose, clearly and prominently, that: (a) Any inch loss or reduction in body size will be temporary; *provided, however*, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that any such inch loss or reduction in body size will not be temporary; and (b) such treatment does not cause weight loss; *provided, however*, that this disclosure shall not be required if respondent possess and rely upon competent and reliable scientific evidence demonstrating that such treatment causes weight loss.

III

It is Further Ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers, James Marino, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any body wrap treatment or any substantially similar treatment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any such treatment, unless respondents disclose, clearly and prominently, and in close proximity to such representation that the treatment may be dangerous to the health of people with heart disease, high or low blood pressure, or diabetes and that any such person should consult a doctor before using the treatment;

B. Failing to disclose prior to purchase the warning set forth below to each prospective user of any such treatment

(i) By including the warning in the program description brochure delivered to each such person, with the warning printed in bold on the front panel in ten (10) point type surrounded by a bold two (2) point rule, in print that contrasts with the background against which it appears; or

(ii) If respondents cease to provide prospective users with a program description brochure, by delivering to each such person a five (5) by eight (8) inch card on which the warning and nothing else is printed in twelve (12) point type:

"CAUTION: If you suffer from heart disease, high or low blood pressure, or diabetes, you should consult your physician before using this treatment to determine whether it poses a risk to your health;" and

C. Failing to post in a conspicuous place where it is likely to be noticed by, and is legible to, prospective users, in the reception area of any location where any such treatment is offered for sale, sold, or used, a sign containing the warning in subpart B and nothing else printed in letters one inch high.

IV

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers; James Marino, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any weight control or weight reduction treatment, program, product, or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such treatment, program, product, or service has any effect on weight or body size, unless they disclose, clearly and prominently, and in close proximity to such representation that diet and/or increasing exercise is required to lose weight; *provided however*, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the treatment, program, product, or service is effective without either dieting or increasing exercise.

V

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers; James Marino, individually and as the sole officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any weight control or weight reduction treatment, program, product, or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) represents the typical or ordinary experience of members of the public who use such treatment, program, product, or service.

VI

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, their successors and assigns, and their officers; James Marino, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any treatment, program, product, or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that:

A. Such treatment, program, product, or service has any weight control, weight loss or weight maintenance benefit;

B. Such treatment, program, product, or service has any effect on cellulite;

C. Such treatment, program, product, or service has any effect on users' body measurements; or

D. Using any such treatment, program, product, or service designed or used to prevent weight gain or produce weight loss, reduce or eliminate fat or cellulite, or reduce body measurements is safe or without risk;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VII

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VIII

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IX

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, and European Body Concepts, Inc., a North Carolina corporation, shall:

A. Within thirty (30) days after service of the Order, provide a copy of this Order to each of respondents' current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each of respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order, within three (3) days after the person assume his or her responsibilities.

X

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. Copies of all advertisements which contain any such representation, including tape recordings of all broadcast advertisements;

B. All materials that were relied upon in disseminating such representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including but not limited to, complaints from consumers and complaints or inquiries from government organizations.

XI

It is further ordered that respondents European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this Order.

XII

It is further ordered that respondent James Marino shall for a period of five (5) years from the date of issuance of the Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice affiliation with any new business or employment shall include respondent's new business address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XIII

It is further ordered that the respondents herein shall within sixty (60) days after service upon them of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from European Body Concepts, Inc., a Maryland corporation, European Body Concepts, Inc., a Virginia corporation, European Body Concepts, Inc., a North Carolina corporation, and James Marino (hereinafter sometimes referred to as "proposed respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review again the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges that the proposed respondents deceptively advertised a weight loss treatment that involved wrapping bandages soaked in mineral solution around the bodies of users who then put on vinyl body suits ("European Body Wrap Treatment"). According to the complaint, the proposed respondents falsely claimed that the European Body Wrap treatment (a) Caused users to lose significant numbers of inches and pounds quickly and easily and without diet or exercise; (b) eliminated cellulite; (c) reduced the size of specific areas of the body; (d) enabled users to maintain their weight and inch loss and (e) was completely safe for all users.

The compliant also alleges that the proposed respondents falsely represented that the results achieved by testimonialists, featured in their advertising were typical of those experienced by members of the public who use the European Body Wrap treatment. Finally, the proposed respondents are charged with representing that the European Body Wrap treatment was completely safe for all users, but deceptively failing to disclose that it may be dangerous to the health of people with certain medical conditions such as heart disease, high or low blood pressure, and diabetes.

The proposed order contains six substantive provisions, Parts I through VI.

Part I prohibits proposed respondents from making the deceptive weight loss, cellulite reduction, and safety claims alleged in the proposed complaint for the European Body Wrap treatment or any substantially similar treatment. In addition, Part I bans the claim that users of the European Body Wrap treatment or

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any substantially similar treatment are successful in maintaining their inch or weight loss.

Part II prohibits the proposed respondents from representing that any body wrapping treatment causes inch loss, does so quickly and easily or without diet or exercise, or causes inch loss at any specific part of the body, unless the claim is true and substantiated by competent and reliable scientific evidence. In addition, Part II requires the proposed respondents to disclose in conjunction with any such representation that the inch loss is temporary and that there is no weight loss, unless they can substantiate otherwise.

Part III.A requires proposed respondents to disclose, in conjunction with any representation about the safety of their body wrap treatment that body wrapping may be dangerous to the health of people with heart disease, high or low blood pressure, or diabetes. Under the proposed order, this disclosure must be clear and prominent, which is defined as being understandable in both the audio and visual portions of a television ad, as being in an understandable cadence in a radio ad, and as being in at least twelve point type in a sufficiently noticeable location in a print ad.

Part III.B requires that, prior to purchase, proposed respondents give each prospective purchaser of its body wrapping treatment the following warning:

> CAUTION: If you suffer from heart disease, high or low blood pressure, or diabetes, you should consult your physician before using this treatment to determine whether it is dangerous to your health.

The warning must be included in a brochure describing the treatment (in which case it must be printed in bold, ten point type within a two point rule), or, if the brochure is discontinued, on a five by eight inch card (in twelve point type). Under Part III.C the proposed respondents must also display in the reception area of its facilities a sign with the same warning printed in one-inch high letters.

Part IV requires proposed respondents to disclose that diet or exercise is required to lose weight in connection with any representation about the effect of a treatment, program, product, or service on weight or body size, unless they have competent and reliable evidence to the contrary. Like the safety disclosure, this disclosure must also be clear and prominent as defined in the order.

Part V addresses proposed respondents' deceptive use of consumer testimonials. It prohibits misrepresentations in advertising for weight control or reduction treatments, programs, products, and services to the effect that any endorsement constitutes the typical and ordinary experience of members of the public who use the advertised treatment, program, product, or service.

Part VI.A–C contains fencing-in provisions that require proposed respondents to have prior substantiation for claims that any treatment, program, product, or service provides any benefit in terms of weight loss or weight maintenance or has an effect on cellulite or body measurements. Under Part VI.D proposed respondents are required to have substantiation for claims about the safety of weight loss or body shaping treatments, programs, products, or services.

Parts VII and VIII contain safe harbors for claims that are permitted on the labeling of foods and drugs under the applicable regulations of the Food and Drug Administration. The remaining provisions of the order are standard compliance provisions. Part IX requires the corporate respondents to provide copies of the order to relevant personnel. Part X requires the proposed respondents to keep records about covered claims for five years. Under Part XI, the corporate respondents are required to notify the Commission of certain changes in structure, and Part XII requires the individual respondent to notify the Commission of changes in his employment for the next five years. Finally, Part XIII of the proposed order obligates the respondents to file appropriate compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–8858 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3561]

Gorayeb Seminars, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two New Jersey-based companies and their officers from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation.

DATES: Complaint and Order issued March 3, 1995[1].

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, DC. 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: On Firday, August 5, 1994, there was published in the **Federal Register**, 59 FR 40032, a proposed consent agreement with analysis In the Matter of Gorayeb Siminars, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721, 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–8859 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3565]

IVAX Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, IVAX, a Florida corporation, to acquire Zenith Laboratories, except for Zenith's rights to market or sell extended release generic verapamil under Zenith's exclusive distribution agreement with G.D. Searle & Co. Respondent is also required, for ten years, to obtain Commission approval before acquiring any stock in any entity that manufactures, or is an exclusive distributor for another manufacturer of, extended release generic verapamil in the United States.

DATES: Complaint and Order issued March 27, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Melissa Heydenreich, FTC/S–2224, Washington, DC 20580, (202) 326–2543.

SUPPLEMENTARY INFORMATION: On Thursday, January 5, 1995, there was published in the **Federal Register**, 60 FR 1782, a proposed consent agreement with analysis In the Matter of IVAX Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–8860 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 931–0134]

Korean Video Stores, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Maryland based video store association and its members from entering into any agreement to raise or fix prices in the retail video tape rental business; and would require its members to display an announcement of the settlement in their respective stores and to publish the text of the corrective posters in three Korean-language newspapers in the Washington, DC area.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joseph G. Krauss, FTC/H–324, Washington, DC 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, have been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Korean Video Stores Association of Maryland, an unincorporated association,

Chang Hyun Cho, individually and trading and doing business as Hana Video;

Bong Soo Ha, individually and trading and doing business as Video Town;

Yoo Kwan Jun, individually and trading and doing business as Harford Video;

Dae Yong Kang, individually and trading and doing business as Daenamoo Video;

Yong Hoon Kang, individually and trading and doing business as Lotte Gifts Store;

Mi La Kim, individually and trading and doing business as Koryo Video;

Ki Sik Kim, individually and trading and doing business as Video Center;

Suk C. Kim, individually and trading and doing business as Nalee Video;

Ju Young Lee, individually and trading and doing business as Young Video;

Kyeong Hae Lee, individually and trading and doing business as Korean Corner;

Chang Jin Park, individually and trading and doing business as Samsung Video;

Mi Hwa Park, individually and trading and doing business as Sarangbang Video;

Young Min Ro, individually and trading and doing business as Hanyang Video;

Chae Sul Song, individually and trading and doing business as Lucky Gifts;

Tae Eung Yu, individually and trading and doing business as Hyundai Video; and

Seung Man Yun, individually and trading and doing business as Gaymi Video; File No. 931–0134.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the Korean Video Stores Association of Maryland, Chang Hyun Cho, Bong Soo Ha, Yoo Kwan Jun, Dae Young Kang, Yong Hoon Kang, Mi La Kim, Ki Sik Kim, Suk C. Kim, Ju Young Lee, Kyeong Hae Lee, Chang Jin Park, Mi Hwa Park, Young Min Ro, Chae Sul Song, Tae Eung Yu, and Seung Man Yun, and it now appearing that the Korean Video Stores Association of Maryland, Chang Hyun Cho, Bong Soo Ha, Yu Kwan Jeon, Dae Yong Kang, Yong Hoon Kang, Mi La Kim, Ki Sik Kim, Suk C. Kim, Ju Young Lee, Kyeong Hae Lee, Chang Jin Park, Mi Hwa Park, Young Min Ro, Chae Sul Song, Tae Eung Yu, and Seung Man Yun, hereinafter sometimes referred to as "proposed Respondents," are willing to enter into an agreement containing an Order to cease and desist from certain acts and providing for other relief,

It is hereby agreed by and between the proposed Respondents and counsel for the Commission that:

1. Proposed Respondent Korean Video Stores Association of Maryland is an unincorporated trade association. Its mailing address is c/o Nalee Video, 13–G Aquahart Plaza, Glen Burnie, MD 21061.

Proposed Respondent Chang Hyun Cho is an individual trading and doing business as Hana Video, 220 N. Crain Highway, Glen Burnie, MD 21061.

Proposed Respondent Bong Soo Ha is an individual trading and doing business as Video Town, 2092 Veirs Mill Road, Rockville, MD 20581.

Proposed Respondent Yu Kwan Jeon is an individual trading and doing business as Harford Video, 8904 Harford Road, Baltimore, MD 21234.

Proposed Respondent Dae Yong Kang is an individual trading and doing as Daenamoo Video, 5722 York Road, Baltimore, MD 21212.

Proposed Respondent Yong Hoon Kang is an individual trading and doing business as Lotte Gifts Store, 2201 N. Charles Street, Baltimore, MD 21218.

Proposed Respondent Mi La Kim is an individual trading and doing business as Koryo Video, 10820–G Rhode Island Avenue, Beltsville, MD 20705.

Proposed Respondent Ki Sik Kim is an individual trading and doing business as Video Center, 29 W. North Avenue, Baltimore, MD 21201.

Proposed Respondent Suk C. Kim is an individual trading and doing business as Nalee Video, 13–G Aquahart Plaza, Glen Burnie, MD 21061.

Proposed Respondent Ju Young Lee is an individual trading and doing business ad Young Video, 11790 Parklawn Drive, Rockville, MD 20852.

Proposed Respondent Kyeong Hae Lee is an individual trading and doing business as Korean Corner, 12207 Veirs Mill Road, Wheaton, MD 20906.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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Proposed Respondent Chang Jin Park is an individual trading and doing business as Samsung Video, 3425 N. Chathom Road #108, Ellicott City, MD 21042.

Proposed Respondent Mi Hwa Park is an individual trading and doing business as Sarangbang Video, 2430 York Road, Timonium, MD 21093.

Proposed Respondent Young Min Ro is an individual trading and doing business as Hanyang Video, c/o Lucky World (Laurel), 14222 Cherry Lane Ct., Laurel, MD 20707.

Proposed Respondent Chae Sul Song is an individual trading and doing business as Lucky Gifts, 1690–D Annapolis Road, Odenton, MD 21113.

Proposed Respondent Tae Eung Yu is an individual trading and doing business as Hyundai Video, 10539 Greenbelt Road, Seabrook, MD 20706.

Proposed Respondent Seung Man Yun is an individual trading and doing business as Gaymi Video, 801 S. Crain Highway, Glen Burnie, MD 21061.

2. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed Respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed Respondents, (1) issue its complaint correspondent in form and substance with the draft of complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

It is ordered that, as used in this Order, the following definitions shall apply:

(A) "Respondent Korean Video Association" means the Korean Video Stores Association of Maryland, its predecessors, subsidiaries, divisions, members, committees, and groups and affiliates controlled by the Korean Video Stores Association of Maryland, their directors, officers, employees, agents, and representatives, and their successors and assigns.

(B) "Individual Respondents" means Chang Hyun Cho, individually and trading and doing business as Hana Video; Bong Soo Ha, individually and trading and doing business as Video Town; Yoo Kwan Jun, individually and trading and doing business as Harford Video; Dae Yong Kang, individually and trading and doing business as Daenamoo Video; Yong Hoon Kang, individually and trading and doing business as Lotte Gifts Store; Mi La Kim, individually and trading and doing business as Koryo Video, Ki Sik Kim, individually and trading and doing business as Video Center; Suk C. Kim, individually and trading and doing business as Nalee Video; Ju Young Lee, individually and trading and doing business as Young Video; Kyeong Hae Lee, individually and trading and doing business as Korean Corner; Chang Jin Park, individually and trading and doing business as Samsung Video; Mi Hwa Park, individually and trading and doing business as Sarangbang Video; Young Min Ro, individually and trading and doing business as Hanyang Video; Chae Sul Song, individually and trading and doing business as Lucky Gifts; Tae Eung Yu, individually and trading and doing business as Hyundai Video; Seung Man Yun, individually and trading and doing business as Gaymi Video; and their respective successors and assigns.

(C) "Respondents" means the Respondent Korean Video Association and the Individual Respondents.

(D) "Commission" means the Federal Trade Commission.

(E) "Video tapes" means pre-recorded video cassette tapes.

(F) "Retail video tape rental business" means the business of renting pre-recorded video cassette tapes for a fee to retail customers.

II

It is further ordered that Respondents, directly or indirectly, or through any corporation, association, or other device, in connection with the retail video tape rental business, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, forthwith cease and desist from:

(A) Entering into, attempting to enter into, organizing, continuing, adhering to, or maintaining any combination, conspiracy, contract, agreement, understanding, plan, or program with any person in the retail video tape rental business to construct, fix, stabilize, raise, maintain, or otherwise interfere or tamper with the prices charged or other terms or conditions for retail video tape rentals;

(B) Recommending or encouraging any person in the retail video tape rental business to charge certain prices or set other terms or conditions for retail video tape rentals;

(C) For a period of three (3) years after the date this Order becomes final, continuing any formal or informal

meeting of the Respondent Korean Video Association or of any Individual Respondents, after:

1. Any person makes a statement, addressed to or audible to the body of the meeting, concerning the prices of retail video tape rentals and Respondents fail to declare such statement to be out of order;

2. Any person makes two such statements concerning the prices of retail video tape rentals and Respondents fail to eject him or her from the meeting; or

3. Two people make such statements concerning the prices of retail video tape rentals.

Provided, however, that without regard to the obligations of Respondent Korean Video Association under Paragraph II. (C), if a person making a prohibited statement is not ejected, and such meeting continues, then the Individual Respondents shall instead leave such meeting and within thirty (30) days after such meeting shall report to the Commission the circumstances of such meeting, a description of the prohibited statements and Respondents' actions in response thereto.

III

It is further ordered that Respondent Korean Video Association, directly or indirectly, or through any corporation, association, or other device, in connection with the retail video tape rental business, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, forthwith cease and desist from:

(A) Prohibiting, regulating, or advising against any form of price competition between or among persons in the retail video tape rental business; and

(B) Inviting, coordinating or providing a forum for any discussion or agreement between or among persons in the retail video tape rental business concerning prices charged for retail video tape rentals.

IV

It is further ordered that:

(A) Each Individual Respondent shall, within thirty (30) days after the date this Order becomes final, prepare and for a period of sixty (60) days, clearly display a corrective poster at each Individual Respondent's place of business. Each poster shall be in both English and Korean, shall be no less than two feet by two feet in size, and shall have the text of Appendices A and B, attached to this Order enlarged and conspicuously displayed thereon; and

(B) Respondent Korean Video Association shall, within thirty (30) days after the date this Order becomes final, publish Appendix B to this Order in the Metropolitan Washington, DC editions of the Periodicals *Korea Times*, *Joong Ang Ilbo*, and *Chosun Ilbo*.

V

It is further ordered that:

(A) Respondent Korean Video Association and the Individual Respondents shall, within ninety (90) days after the date this Order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which Respondents have complied and are complying with this Order. Among such other information as may be required, the Individual Respondents' compliance reports shall contain a picture of the corrective poster as displayed and the dates such poster was displayed;

(B) Respondent Korean Video Association shall, annually for three (3) years on the anniversary of the date this Order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which Respondents have complied and are complying with this Order; and

(C) Respondent Korean Video Association and the Individual Respondents shall, for a period of three (3) years after the date this Order becomes final, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in any Respondent, such as dissolution, assignment, sale resulting in the emergency of a successor organization, or the creation or dissolution of subsidiaries, or any change in such Respondent that may affect compliance obligations arising out of this Order.

VI

It is further ordered that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of a Respondent relating to any matters contained in this Order; and

(B) Upon five days' notice to a Respondent and without restraint or interference from it, to interview officers, directors, or employees of such Respondent.

VII

It is further ordered that this order shall terminate twenty (20) years from the date of issuance.

Appendix A

Annoucement

The Korean Video Stores Association of Maryland (the "Korean Video Association") and its individual members (Chang Hyun Cho, Bong Soo Ha, Yoo Kwan Jun, Dae Young Kang, Young Hoon Kang, Mi La Kim, Ki Sik Kim, Suk C. Kim, Ju Young Lee, Kyenong Hae Lee, Chang Jin Park, Mi Hwa Park, Young Min Ro, Chae Sul Song, Tae Eung Yu, and Seung Man Yun) have entered into a consent agreement with the Federal Trade Commission ("Commission") to settle the Commission's charges that the Korean Video Association and its individual members named above violated section 5 of the Federal Trade Commission Act when they jointly decided to increase prices for retail video tape rentals in 1993. The U.S.antitrust laws, including the Sherman Act and the Federal Trade Commission Act, prohibit competitors in the same line of business from jointly setting prices they charge to their customers.

Pursuant to this consent agreement, the Commission has issued an Order that prohibits the Korean Video Association and its individual members from jointly deciding prices that they charge to their customers in the retail video tape rental business. The Order also prohibits the Korean Video Association and its individual members from taking any other actions that may harm price competition.

The Korean Video Association and its individual members also understand and agree to honor that each person in the retail video tape rental business must unilaterally and independently determine its own prices.

Korean Video Stores Association of Maryland

Chang Hyun Cho, Hana Video
Dae Yong Kang, Daenamoo Video
Ki Sik Kim, Video Center
Kyeong Hae Lee, Korean Corner
Young Min Ro, Hanyang Video
Seung Man Yun, Gaymi Video
Bong Soo Ha, Video Town
Yong Hoon Kang, Lotte Gifts Store
Suk C. Kim, Nalee Video
Chang Jin Park, Samsung Video
Chae Sul Song, Lucky Gifts
Yoo Kwan Jun, Harford Video
Mi La Kim, Koryo Video
Ju Young Lee, Young Video
Mi Hwa Park, Sarangbang Video
Tae Eung Yu, Hyundai Video

Appendix B

(Appendix B is the Korean version of Appendix A and is available from the Commission's Public Reference Branch, H–30, 6th and Pa. Ave., NW, Washington, DC 20580).

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Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("the Commission") has accepted an agreement to a proposed consent order from the Korean Video Stores Association of Maryland, Chang Hyun Cho, Bong Soo Ha, Yoo Kwan Jun, Dae Yong Kang, Yong Hoon Kang, Mi La Kim, Ki Sik Kim, Suk C. Kim, Ju Young Lee, Kyeong Hae Lee, Chang Jin Park, Mi Hwa Park, Young Min Ro, Chae Sul Song, Tae Eung Yu, and Seung Man Yun ("Respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the Respondents' joint retail video tape rental pricing activity in 1993. The Commission alleges in its proposed complaint that: the Respondents agreed to increase the retail price of Korean language video tape rentals in the Metropolitan Washington, D.C. area; and, in furtherance of the joint price increase agreement, the Respondents announced the price increase to the general public by displaying at each Respondent's place of business a poster setting forth the joint price increase agreement and signed in the name of the Korean Video Stores Association of Maryland ("Video Association"). The Commission alleges that the Respondents' acts and practices constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

The order, accepted for public comment, prohibits the Respondents from directly or indirectly entering into a price fixing agreement in the retail video tape rental business. The order also prohibits the Respondents from taking any other actions that may harm price competition in the retail video tape rental business. In addition, the order requires the individual Respondents to either discontinue or leave a meeting of the Respondents if a person or persons make impermissible statements concerning retail video tape rental fees.

The order would also prohibit the Video Association from interfering with its individual members' pricing decisions and from acting as a forum for discussion or agreement on retail video tape rental fees. The order further requires the Respondents to display a corrective poster at each Respondent's place of business, and requires the Video Association to publish the Korean text (translated to Korean by Commission staff from the English version approved by the Commission) of the corrective poster in three major local Korean language daily newspapers.

Under the order, the Respondents are required to file written compliance reports with the Commission. The order terminates automatically twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–8861 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3562]

Louis Bass, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Wisconsin corporation, doing business as Crestwood Company, from making false or unsubstantiated performance claims about any communication aid it offers in the future, and from making representations concerning the efficacy of the communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondent possesses competent and reliable scientific evidence to substantiate the representation.

DATES: Complaint and Order issued March 13, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 4, 1995, there was published in the **Federal Register**, 60 FR 467, a proposed consent agreement with analysis In the Matter of Louis Bass, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–8862 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3564]

Wright Medical Technology, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Tennessee-based research and development corporation to transfer to the Mayo Foundation, the licensor of the implant technology to Orthomet, Inc., a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in human hands, and also requires Wright Medical Technology to obtain Commission approval before acquiring any interest in any firm that has received, or has applied for, Food and Drug Administration approval to market orthopaedic hand implants in the United States.

DATES: Complaint and Order issued March 23, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Richard B. Dagen, FTC/S–2627, Washington, DC. 20580. (202) 326–2628.

SUPPLEMENTARY INFORMATION: On Wednesday, January 4, 1995, there was published in the **Federal Register**, 60 FR 460, a proposed consent agreement with analysis In the Matter of Wright Medical Technology, Inc., et al, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–8863 Filed 4–10–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20560.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of Meeting.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in the Stonehenge Room in the Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC, 20201, from 9 a.m., Tuesday, April 25, through 4 p.m., Thursday, April 27, 1995.

During this meeting, the Advisory Board will hold a press conference and release its report: *A Nation's Shame: Fatal Child Abuse and Neglect in the U.S.*, on Wednesday, April 26, in the Small Auditorium of the Humphrey Building. This meeting is open to the public. If a sign language interpreter is needed, you may contact Michael Kharfen at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Eileen H. Lohr, Program Analyst, U.S. Advisory Board on Child Abuse, and Neglect, Room 303–D, Humphrey Building, Washington, DC 20201, (202) 690–6053.

SUPPLEMENTARY INFORMATION: During this meeting, the Advisory Board will release the Board's Report: *A Nation's Shame: Fatal Child Abuse and Neglect in the U.S.*, on Wednesday, April 26; discuss a proposed Board report on cultural diversity; the reauthorization of the Child Abuse Prevention and Treatment Act; and future Board endeavors.

Dated: April 13, 1995.

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 95–8890 Filed 4–10–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following special emphasis panel meeting scheduled for the month of May 1995:

Name: Health Care Policy and Research, Special Emphasis Panel.

Date and Time: May 24, 1995, 10:00 a.m.

Place: Executive Office Center, 2101 East Jefferson Street, Suite 502 Conference Room, Rockville, Maryland 20852. This meeting will be closed to the public.

Purpose: The Panel's charge is to provide advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of Phase II contract proposals submitted in response to a specific Request for Proposals (PHS 94–2). The purpose of the Phase I contract, entitled Children's Severity of Illness Index, was to develop preliminary identification items within each proposed scale. The contractors were to define the methodology and actions to achieve critical steps in the development of the model for measures of severity for children in critical care; identify a multidisciplinary team of experts in severity measurement, childhood growth and development, pediatrics and computer technology to staff the projects. The purpose of the Phase II contract is to utilize the best available methodologies to refine and test the Index. The offerors are to describe key steps in the process and factors which will be utilized to determine satisfactory completion of each step or the need for revision and identify appropriate clinical facilities as test sites.

Agenda: This meeting of the Panel will be devoted entirely to the technical review and evaluation of Phase II contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Panel and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR section 11.5(a)(6), and procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Frantz Wilson, Center for General Health Services Extramural Research, Division of Primary Care, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 502, Rockville, Maryland 20852, (301) 594–1357 extension 140.

Dated: April 4, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–8898 Filed 4–10–95; 8:45 am]

BILLING CODE 4160–90–M

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following special emphasis panel meeting scheduled for the month of May 1995:

Name: Health Care Policy and Research, Special Emphasis Panel.

Date and Time: May 23, 1995, 9:00 a.m.

Place: Executive Office Center, 2101 East Jefferson Street, 6th Floor Conference Room 1, Rockville, Maryland 20852. This meeting will be closed to the public.

Purpose: The Panel's charge is to provide advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of Phase II contract proposals submitted in response to a specific Request for Proposals (PHS 94–2). The purpose of the Phase I contract, entitled Consumer Choices and Health Care Reform, was to determine factors important to consumers who make decisions about choosing health care plans, providers, and practitioners. The contractors were to develop a prototype decision support system, workbook, interactive video, or other tools for consumers to use when making these choices. The purpose of the Phase II contract is to develop an operational system with the capacity to be adapted to new categories of choices related to a reformed system of health care.

Agenda: This meeting of the Panel will be devoted entirely to the technical review and evaluation of Phase II contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Panel and Department operations, and safeguard confidential proprietary

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information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR section 11.5(a)(6), and procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Frantz Wilson, Center for General Health Services Extramural Research, Division of Primary Care, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 502, Rockville, Maryland 20852, (301) 594–1357 extension 140.

Dated: April 4, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–8899 Filed 4–10–95; 8:45 am]

BILLING CODE 4160–85–M

Food and Drug Administration

Public Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HE (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 59 FR 52552, October 18, 1994) is amended to reflect an organizational change in the Food and Drug Administration (FDA).

FDA has increasing demands for integration and coordination among Agency information systems both in pursuit of new initiatives and in the continued execution of existing responsibilities. The Commissioner of Food and Drugs has determined that this integration and coordination can best be accomplished by establishing a Strategic Systems Staff, an Administrative Systems Automation Staff, and a Division of Plans, Methods, and Resources within the Office of Information Resources Management (OIRM). In addition, the Division of Information Management, and the Parklawn Computer Center will be transferred from the Office of Management to OIRM under the Office of Management and Systems.

Under Chapter HF, Section HF–B, Organization

1. Under the Office of Management and Systems (HFA7), Office of Information Resources Management (HFA8), insert the following new subparagraphs, Strategic Systems Staff (HFA8A), Administrative Systems Automation Staff (HFA8B), Division of Plans, Methods, and Resources (HFA8C), Division of Information Management (HFA8D), and Parklawn Computer Center (HFA8E) reading as follows:

Strategic Systems Staff (HFA8A). Provides overall coordination of strategic systems initiatives to ensure that Agency strategic goals and priorities are met while being responsive to users. Coordinates strategic systems project development, prioritization, and funding estimates and provides oversight accountability to assure sound project management practices for strategic systems initiatives. Represents Agency in discussions with PHS, HHS other governmental components, and external groups regarding strategic systems initiatives.

Coordinates the development of tactical implementation plans for strategic systems initiatives, including objectives, deliverables, funding, and timeframes. Monitors performance related to project plans and surfaces critical issues needing to be addressed.

Provides expert technical guidance to senior Agency officials on strategic systems development to improve operating efficiencies and capabilities.

Provides Agency leadership in the development and implementation of an overall information systems architecture, including technical information standards.

Provides technical oversight for major contracts which support the planning for, development of, and implementation of strategic systems initiatives (which provide support for, or are critical to, multiple Agency components). Evaluates and documents contractor performance, including costs, technical specifications, and schedules.

Administrative Systems Automation Staff (HFA8B). Develops strategic goals and objectives for the automation of FDA administrative processes in conjunction with overall Agency strategic plans and represents the Agency in discussions with PHS, HHS, other governmental components, and external groups regarding administrative management systems automation initiatives.

Manages the design, development, implementation, and operation of the Agency's automated administrative management system, including the modification of business practices to maximize the efficiency and effectiveness of administrative processes.

Coordinates administrative systems automation initiatives to ensure that Agency management goals and priorities are consistent with statutory and regulatory requirements, Federal and HHS standards and policies, and internal operating needs.

Monitors performance related to project plans, contractor deliverables, and process improvements associated with automation of administrative management operations.

Provides support to FDA's administrative organizations for the enhancement modification, and maintenance of FDA's Integrated Administrative Management Systems.

Division of Plans, Methods, and Resources (HFA8C). Coordinates the development and integration of IRM planning processes. This includes development of the FDA Information Systems Strategic Plan in conjunction with the overall Agency Strategic Plan and the FDA 5-year Long Range IRM Strategic Plan developed to meet OMB requirements. Represents the Agency in discussions with PHS, HHS, other governmental components, and external groups regarding IRM planning issues. Provides support to other OIRM components in the development of tactical ADP plans. Serves as a central point for coordinating, consolidating, and developing IRM policy.

Develops and directs Agency management programs relating to reports, directives, correspondence, records, and forms. Conducts records and paperwork management studies for the Agency on either a periodic, self-initiated basis, or in response to requests for assistance.

Consolidates annual resource requests for all OIRM components, prepares annual budget requests, and administers OIRM's approved budgets from different funding sources. Provides administrative support services required by all OIRM components.

Serves as a focal point for certain Agencywide IRM activities such as support of FDA's IRM Council, coordination of FDA responses to IRM audit activities, and other external IRM initiatives. Carries out high-priority IRM projects and monitors major IRM projects managed by other FDA elements.

Division of Information Management (HFA8D). Supervises specific information resources management functions, including ADP security and the telecommunications program for FDA. Represents FDA on all Federal IRM issues (FIRMR) with HHS and other governmental and external organizations.

Provides FDA telecommunications services and initiates or reviews all requisitions involving telecommunications.

Manages and monitors FDA's ADP Procurement Requests, contract proposals, and interagency agreements to assure that FIRMR requirements are adhered to.

Provides operational support to the Office of the Commissioner and Deputy Commissioners by providing consultation, technical advice, programming, systems analysis and assistance in the selection and use of equipment and services to process information

Dorects the FDA ADP Security Program.

Parklawn Computer Center (HFA8E). Operates and manages the central computer facility in the Parklawn complex performing fee-for-service ADP functions for FDA and other PHS/HHS components.

Develops operational policy and procedures and provides technical support for scientific and administrative information systems operated within PCC.

Participates in the development of short-and long-range computer center plans to make the best possible use of resources and to consider new ADP systems methodologies.

Reviews and makes recommendations on hardware, software, and service procurements when requested by serviced agencies to assure compatibility with PCC equipment and conformance with established PCC policies and procedures.

Designs, develops, and operates the Departmental Information Management Exchange System (DIMES), the Departmental nationwide data communications network.

Develops and operates a Center Performance Management Program to evaluate hardware utilization and to measure workload processed to assure optimum operation.

2. Delete subparagraphs (h-5) Parklawn Computer Center (HFA79) and (h-8) Division of Information Management (HFA73), in their entirety.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: March 23, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–8853 Filed 4–10–95; 8.45 am]

BILLING CODE 4160–1–M

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 18–19, 1995, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public from 10:30 a.m. to 6 p.m. on May 18, and from 8:30 a.m. to 10:30 a.m. on May 19, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 18 from 8:30 a.m. to 10:15 a.m., and on May 19, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960.

Dated: April 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8802 Filed 4–10–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 24, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 235, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Admin., 5333 Westbard Ave., Room 235, Bethesda, MD 20892, (301) 594–7078.

Name of SEP: Multidisciplinary Sciences.
Date: April 24, 1995.
Time: 1 p.m.
Place: Holiday Inn, National Airport, VA.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594–7374.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 25, 1995.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 236A, Telephone Conference.
Contact Person: Dr. William Branche, Scientific Review Admin., 5333 Westbard Ave., Room 236A, Bethesda, MD 20892, (301) 594–7297.

Name of SEP: Biological and Physiological Sciences.
Date: April 26, 1995.
Time: 3 p.m.
Place: NIH, Westwood Building, Room 225A, Telephone Conference.
Contact Person: Dr. Sherry Dupere, Scientific Review Administrator, 5333 Westbard Ave., Room 225A, Bethesda, MD 20892, (301) 594–7097.

Name of SEP: Clinical Sciences.
Date: April 27, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 221, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Admin., 5333 Westbard Ave., Room 221, Bethesda, MD 20892, (301) 594–7324.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as

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patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of property privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8803 Filed 4–10–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: April 26, 1995.
Time: 3 p.m.
Place: NIH, Westwood Building, Room 225A, Telephone Conference.
Contact Person: Dr. Sherry Dupere, Scientific Review Administrator, 5333 Westbard Ave., Room 225A, Bethesda, MD 20892, (301) 594–7097

Name of SEP: Chemistry and Related Sciences.
Date: April 28, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 221, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Admin., 5333 Westbard Ave., Room 221, Bethesda, MD 20892, (301) 594–7324.

Name of SEP: Behavioral and Neurosciences.
Date: June 28–30, 1995.
Time: 8 a.m.
Place: Jefferson Hotel, Washington, DC.
Contact Person: Dr. David Simpson, Scientific Review Admin., 5333 Westbard Ave., Room 328, Bethesda, MD 20892, (301) 594–7170.

Name of SEP: Biological and Physiological Sciences.
Date: July 6–7, 1995.
Time: 8 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. Nicholas Mazarella, Scientific Review Admin., 5333 Westbard Ave., Room 222B, Bethesda, MD 20892, (301) 594–7098

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Clinical Sciences.
Date: July 10–11, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gertude McFarland, Scientific Review Admin., 5333 Westbard Ave., Room 352, Bethesda, MD 20892, (301) 594–7080.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–8804 Filed 4–10–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977), as amended most recently at 60 FR 8410, February 14, 1995 is amended to reflect functional changes in the Office of Minority Health (OMH), to more accurately reflect its responsibilities and activities.

Office of the Assistant Secretary for Health

Under *Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions,* following the statement of the *Office of Minority Health (HAM), delete the titles and statements* and substitute the following:

Division of Policy and Data (HAM2). The Division: (1) Develops DHHS-wide strategic plan for minority health programs and activities; (2) develops and coordinates the OMH strategic plan, (3) coordinates the development and implementation of PHS plans and special initiatives; (4) analyzes current and prospective Federal activities that affect minority health, and recommends program initiatives to improve the health of minorities; (5) reviews the budget requests of PHS agencies to ensure requirements are adequate and consistent with the Secretary's minority health goals and strategic plans; (6) plans, coordinates and/or conducts studies and evaluations relating to the occurrence of diseases and health problems in minority populations; (7) plans and conducts statistical and data analyses on disease conditions and issues that impact minority populations; (8) coordinate efforts to improve the availability and quality of data on the health status of minority populations; and (9) coordinates evaluations, legislative activities, and reports to the Congress.

Division of Information and Education (HAM3). The Division: (1) Manages minority health information, education and awareness activities, including operation of the Office Minority Health Resource Center and the electronic Minority Health Network Bulletin Board; (2) collaborates with Federal and non-Federal organizations to develop and implement mechanisms for sharing timely information with minority communities, as well as individuals and organizations conducting research and programs to improve minority health; (3) manages public information activities and media and press relations; (4) provides technical assistance to Federal and State agencies for the promotion, development, and conduct of minority health education and promotion programs; (5) manages exhibits and develops visual and other graphic materials for OMH; and (6) coordinates publication clearance of OMH reports and informational materials.

Division of Program Operations (HAM4). In managing demonstration grant programs and cooperative agreements, the Division (1) develops notices announcing the availability of funds; (2) develops program guidelines; (3) develops, coordinates and provides technical assistance to grantees and partners in cooperative agreements; (4) monitors performance of grantees and recipients of cooperative agreements; and (5) coordinates with appropriate PHS agencies/offices and other Federal organizations who are contributing partners to the demonstration grants and cooperative agreements.

Division of Management Operations (HAM5). The Division: (1) Plans and directs financial management activities, including budget formulation and execution; (2) works closely with the Division of Program Operations in providing grants management support for OMH grants, cooperative agreements, and interagency agreements, as well as interpreting grants administration policies and provisions; (3) provides technical assistance on grant matters and procedures to internal staff, applicants and grantees; (4) provides liaison on personnel management activities with the OASH personnel office; (5) provides administrative services in support of OMH; and (6) provides support in ADP, word processing and telecommunications equipment and systems for the OMH, including operation and maintenance of the Grants Tracking and Management Information System.

Under Chapter HA, Section HA–30, Delegations of Authority, add the following:

All delegations and redelegations of authority to officers and employees of the OMH which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

Dated: March 27, 1995.

Anthony L. Itteilag,

Deputy Assistant Secretary for Health Management Operations.

[FR Doc. 95–8854 Filed 4–10–95; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Friday, April 21, 1995, 9:00 a.m. to 5:00 p.m. and Saturday, April 22, 1995, 9:00 a.m. to 3:00 p.m.

ADDRESSES: The Carnegie Endowment for International Peace, 2400 N Street, N.W., Washington, D.C. 20037, (202) 862–7900.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7117; By telefax—(202) 482–7123.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091) and March 10–11 (60 FR 10090).

II. Agenda

The following topics will be presented and discussed:

- Options for ensuring the long-term financing of the Social Security program:
- Changes to Social Security benefits to ensure relative equity and adequacy; and
- Relative roles of the public and private sectors in providing retirement income.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: April 4, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–8777 Filed 4–10–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Notice of Public Information Collection Requirement Submitted to OMB for Review

The Department of the Interior (DOI) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission may be obtained by calling the Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Clearance Officer listed.

OMB Number: 1000–0002
Type of Review: New Collection/ Expedited Review
Title: Department of the Interior, Freedom of Information Reinvention Team Customer Survey
Description: This survey is being conducted to comply with National Performance Review initiatives. The information collected will be utilized to assess the effectiveness of, and public/customer satisfaction with, the DOI Freedom of Information Act (FOIA) process. It will allow the DOI to determine if, and where, changes to its FOIA process are needed to better meet the information needs of its FOIA requesters. The survey will be sent to a random sample of those members of the public who have submitted FOIA requests to the DOI. Response is voluntary.

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Respondents: Individual members of the public and individuals affiliated with business or other for-profit institutions, with non-profit or not-for-profit institutions, or with state, local, tribal or foreign governments.
Estimated Number of Respondents: 1,000
Estimated Burden Hours per Response: .25 hours
Frequency of Response: annual
Estimated Total Reporting Burden: 250 hours
Clearance Officer: Indur Goklany, Department of the Interior (PPA), Washington, D.C. 20240, (202) 208–4915
OMB Reviewer: Don Arbuckle, Office of Management and Budget (OIRA), Washington, D.C. 20503, (202) 395–7340

Dated: April 4, 1995.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 95–8807 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[OR–035–00–1430–01:G5P–097]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Oregon

AGENCY: Vale District, Baker Resource Area, Oregon, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Baker County, Oregon, have been examined and found suitable for classification for lease or conveyance to the City of Unity, Oregon, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. *869 et. seq.*). The City of Unity proposes to use the lands for a solid waste transfer site.

Willamette Meridian

T 13 S., R. 37 E.,
Sec. 15, SW¼ SW¼ SW¼ NE¼
Containing 2.5 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

(1) Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

(2) A right-of-way for ditches and canals constructed by the authority of the United States.

(3) A right-of-way for the Denny Flat Road for the U.S. government.

(4) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Baker Resource Area, 1550 Dewey Ave., P.O. Box 987, Baker City, Oregon, 97814.

Upon publication of the notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, 100 Oregon St., Vale, Oregon, 97918.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a solid waste transfer site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste transfer site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: March 31, 1995.

James E. May,

District Manager

[FR Doc. 95–8886 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt and notice of availability.

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of the Threatened Coastal California Gnatcatcher by Palos Verdes Land Holdings Company and Zuckerman Building Company on the Ocean Trails Property in Los Angeles County, California.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has received an application from the Palos Verdes Land Holding Company and Zuckerman Building Company (applicants) of Laguna Beach, California, for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) for 10 years on the Ocean Trails property in the City of Rancho Palos Verdes, California. The taking would be incidental to the lawful grading, construction, and operation of a proposed golf course/residential project. Pursuant to Section 10(a)(2)(A), the applicants have submitted a Habitat Conservation Plan (HCP) and Implementing Agreement (IA) with the permit application. Issuance of a section 10(a)(1)(B) permit constitutes a Federal action that must be analyzed pursuant to the National Environmental Policy Act of 1969. Accordingly, the Service has prepared an Environmental Assessment (EA) on the effects of the proposed issuance of the permit. This notice advises the public that the application, HCP, IA, and EA are available for review.

DATES: Written comments should be received on or before May 11, 1995.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to (619) 431–9618. Please refor to permit No. PRT–799348 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Dawes, Biologist, at the above address, or telephone (619) 431–9440. Individuals wishing copies of the application and documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours (8:00 a.m. to 4:30 p.m.) at the above address.

SUPPLEMENTARY INFORMATION: Under section 9 of the Act and its implementing regulations, "taking" of the coastal California gnatcatcher, a threatened species, is prohibited. Under limited circumstances, however, the Service may issue permits to take threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The applicants desire a permit to incidentally take 2 pairs of California gnatcatchers and approximately 17 acres of coastal sage scrub, disturbed coastal sage scrub, coastal bluff scrub, and disturbed coastal bluff scrub within a 261-acre project area. The applicants also desire unlisted species agreements for the coastal cactus wren (*Campylorhynchus brunneicapillus cousei*) and 6 sensitive plant species: aphanisma (*Aphanisma blitoides*), ocean locoweed (*Astragalus trichopodus* var. *trichopodus*), south coast saltscale (*Atriplex pacifica*), Catalina mariposa lily (*Calochortus catalinae*), seaside calandrinia (*Calandrinia maritima*), and bright green dudleya (*Dudleya virens*). Should these species be listed as threatened or endangered, the applicants will submit the HCP and IA in support of a permit amendment.

The proposed action includes 79 single family homes and an 18-hole public golf course. Measures to minimize and mitigate impacts include phased grading, revegetation, conservation easements, a coastal bluff/open-space preserve, removal of non-native plants, cowbird and predator trapping, and perpetual funding for habitat management.

The EA considers the environmental effects of the proposed action and 2 alternatives: a reduced project/reduced HCP alternative, and a no action/no take alternative. The no action and reduced project alternatives were not selected because neither provide the substantial long-term conservation benefits to the gnatcatcher and other candidate and sensitive species that would be provided under the proposed action.

The proposed action would result in a net gain of 61.4 acres of coastal sage scrub (29.7 acres on-site, 31.7 acres off-site) and 2.9 acres of coastal bluff (on-site) in dedicated preserves. Under the proposed action, the enhancement and permanent protection of coastal sage scrub habitat would provide substantial long-term conservation benefits to the gnatcatcher. The proposed action also would provide substantial permanent conservation benefits to the cactus wren and 6 sensitive plant species, 3 of which are Federal category 2 candidates for listing.

Dated: April 5, 1995.

David L. McMullen,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–8820 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–55–P

Fish and Wildlife Service

Endangered and Threatened Species Permits

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that Region 1 of the U.S. Fish and Wildlife Service has issued the following permits, between October 1, 1994 and March 31, 1995, for incidental take of threatened or endangered species from applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (Act). Each permit listed as issued was granted only after it was determined to be applied for in good faith, and that it was consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Nye County	776604	2/13/95
Weyerhaeuser Company	796822	2/14/95
Coast Range Conifers	791930	3/22/95
John Laing Properties, Inc.	788945	3/22/95

FOR FURTHER INFORMATION CONTACT: Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6241). Please refer to the permit number listed above when requesting information.

Dated: April 5, 1995.

David L. McMullen,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–8821 Filed 4–10–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 1, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 26, 1995.

Carol D. Shull,

Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Central National Bank
(Banks and Financial Institutions of Washington, DC, MPS),
633 Pennsylvania Ave., NW.,
Washington, 95000526
Holmead, Anthony, Archeological Site,
Address Restricted,
Washington, 95000527
Studio House
2306 Massachusetts Ave., NW.,
Washington, 95000528

FLORIDA

Lee County

Olga School
(Lee County MPS),
S. Olga Rd.,
Olga, 95000509

GEORGIA

Lumpkin County

Hawkins Street Historic District,
Roughly, Hawkins St. from Church St. to N Meaders St., including adjacent parts of Water, N. Chestatee and N. Park Sts.,
Dahlonega, 95000504

IDAHO

Gem County

Oregon Short Line Railway Depot,
119 N. Commercial Ave.,
Emmett, 95000506

Power County

Bethany Deaconess Hospital,
500 Pocatello Highway Ave.,
American Falls, 95000507

Teton County

Victor Railroad Depot,
70 Depot St.,
Victor, 95000508

KANSAS

Butler County

Douglas Township Community Building,
206 S. Forest,
Douglass, 95000512

Jewell County

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Jewell County Jail,
Jct. of Center and Madison, NE corner, Mankato, 95000511

NEW YORK

Monroe County

Tinker Cobblestone Farmstead (Cobblestone Architecture of New York State MPS),
1585 Calkins Rd., Henrietta, 95000502

PENNSYLVANIA

Blair County

Williamsburg Historic District,
Approximately 30 square blocks centered around Second and High Sts., Williamsburg, 95000518

Cambria County

Buck, A. W., House, 615 N. Center St., Edensburg, 95000521
Minersville Historic District, Roughly, along Connelly Ave., Honan Ave., Garvey Pl. and Iron St., Johnstown and West Taylor Townships, Johnstown, 95000522
Revloc Historic District (Bituminous Coal and Coke Resources of Pennsylvania MPS)
Roughly bounded by Highland Ave., Fourth St., Penn Ave. and Eighth St., Cambria Township, Revloc, 95000520

Centre County

College Heights Historic District, Roughly bounded by Holmes St., Park Ave., Ridge Ave., Sunset Rd., Hillcrest Ave., Woodland Dr. and Mitchell Ave., State College, 95000514
Holmes-Foster—Highlands Historic District, Roughly bounded by Buckhout St., Railroad and Highland Aves., High and Keller Sts., and Irvin and Prospect Aves., State College, 95000513

Chester County

Parkesburg School, 360 Strasburg Ave., Parkesburg, 95000524
Worth—Jeffens Rural Historic District, Roughly, along Lucky Hill, N. Wawaset, Allerton and Creek Rds., East and West Bradford Townships., Marshallton, 95000523

Schuylkill County

Patterson, Burd, House, 803 Mahantongo St., Pottsville, 95000515
St. Paul's Union Church and Cemetery, Jct. of T-798 and PA 4037, SW corner, about 1 mi. E of Ringtown, Union Township, Ringtown, 95000516

Westmoreland County

Vandergrift Historic District, Roughly bounded by Lincoln, Sherman, Franklin and Washington Aves., along the outer lot lines. Vandergrift, 95000525

York County

Eichelberger High School 195 Stock St., Hanover, 95000517

TEXAS

Jeff Davis County

Phantom Lake Spring Site, Address Ristricted, Toyahvale vicinity, 95000501

Washington County

Reue—Eickenhorst House, FM Hwy. 2621, 0.5 mi. E of jct. with TX 50, Brenham vicinity, 95000519

WISCONSIN

Ashland County

Memorial Hall, 1511 Ellis Ave., Ashland, 95000503

Columbia County

Portage Retail Historic District, Roughly, Cook from Wisconsin to Main, Wisconsin from Cook to Edgewater and DeWith from Conant to Edgewater, Portage, 95000510

Iowa County

Plum Grove Primitive Methodist Church, Co. Rd. BB, 0.7 mi. S of jct. with US 18/151, Ridgeway, 95000505

[FR Doc. 95-8893 Filed 4-10-95; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-730 (Preliminary)

Certain Light-Walled Rectangular Pipe and Tube From Mexico

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-730 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by Section 212(b) of the Uruguay Round Agreements Act (URAA), Pub. L. 103-465, 108 Stat. 4809 (1994) (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain light-walled rectangular pipe and tube,[1] provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 15, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by May 22, 1995.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 31, 1995, by Southwestern Pipe, Inc., Houston, TX.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses o. all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to §§ 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 21, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than April 18, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 6, 1995.

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 95-8941 Filed 4-10-95; 8:45 am]

BILLING CODE 7020-02-P

[1] The subject products are welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters, of rectangular (including square) cross section.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32632]

Everett Railroad Company—Trackage Rights Exemption—Hollidaysburg and Roaring Spring Railroad Company

Hollidaysburg and Roaring Spring Railroad Company (HRS) has agreed to grant overhead trackage rights to Everett Railroad Company (Everett) over approximately 10.2 miles of rail line from milepost 8.0 at Hollidaysburg, PA, to milepost 18.2 at Roaring Spring, PA.[1] The trackage rights were to become effective on March 31, 1995.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: April 4, 1995.

By the Commission, David M. Konschnik Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 95-8867 Filed 4-10-95; 8:45 am]

BILLING CODE 7035-01-P

[1] HRS has simultaneously filed a notice of exemption under 49 CFR 1150.31 to purchase and operate the line in question from Consolidated Rail Corporation (Conrail). *See Hollidaysburg and Roaring Spring Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation*, Finance Docket No. 32633. Alan W. Maples, the controlling stockholder of both HRS and Everett, has filed a related petition for exemption for the continuance in control of HRS upon its beginning operations as a carrier and has established a voting trust pending approval of the petition by the Commission. *See Alan W. Maples—Continuance in Control Exemption—Hollidaysburg and Roaring Spring Railroad Company*, Finance Docket No. 32631.

[2] The proposed consummation date is contingent on HRS acquiring the line from Conrail in Finance Docket No. 32633, which Everett states is "on or before March 31, 1995" (emphasis added). Under 49 CFR 1180.4(g)(1), consummation should not have occurred before March 28, 1995.

[Finance Docket No. 32633]

Hollidaysburg and Roaring Spring Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

Hollidaysburg and Roaring Spring Railroad Company (HRS), a noncarrier, has filed a notice of exemption to acquire and operate approximately 10.2 miles of rail line (a portion of the Cove Running Track) owned by Consolidated Rail Corporation, extending from milepost 8.0 at Hollidaysburg, PA, to milepost 18.2 at Roaring Spring, PA.

This proceeding is related to *Alan W. Maples—Continuance in Control Exemption—Hollidaysburg and Roaring Spring Railroad Company*, Finance Docket No. 32631, wherein Alan W. Maples has concurrently filed a petition for exemption to continue control of HRS when it becomes a rail carrier upon consummation of the transactions described in this notice.[1] Also, related to this proceeding is *Everett Railroad Company—Trackage Rights Exemption—Hollidaysburg and Roaring Spring Railroad Company*, Finance Docket No. 32632, wherein HRS has agreed to grant overhead trackage rights to Everett Railroad Company once it acquires the line in question.

Any comments must be filed with the Commission and served on Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 4, 1995.

By the Commission, David M. Konschnik Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 95-8866 Filed 4-10-95; 8:45 am]

BILLING CODE 7035-01-P

[1] Alan W. Maples, the controlling stockholder of HRS, does not qualify for a class exemption under 49 CFR 1180.2(d)(2) because of his controlling ownership of two connecting carriers (HRS and Everett Railroad Company). Mr. Maples has established a voting trust to insulate himself from unauthorized acquisition of control of HRS until the petition for exemption for control is acted upon

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[Docket No. AB–290 (Sub-No. 158X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Elberton, GA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.9 miles of its line of railroad, between milepost P–48.5 and milepost P–50.4, in Elberton, GA.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 11, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 21, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 14, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 5, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8868 Filed 4–10–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Judgment by Consent Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 24, 1995, a proposed consent decree in *United States* v. *Brentwood Industries, Inc.*, Civil Action No. 95–1731, was lodged on March 24, 1995 with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree will resolve the United States' claims for violations of Section 113(b) of the Clean Air Act as amended, 42 U.S.C. § 7413(b), due to Brentwood's failure to apply for new source review permits as required by the Pennsylvania State Implementation Plan ("SIP"). 25 Pa Code § 127.11 *et seq.* This action and settlement also arise from the failure of Brentwood to comply with the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c)(1) and regulations promulgated pursuant thereto.

The Department of Justice will receive comments relating to the proposed consent decree with Brentwood Industries, Inc., for a period of thirty (30) days from the date of this publication. Comments on the decree should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Brentwood Industries, Inc.*, Civil Action No. 95–1731, DOJ reference No 90–5–2–1–1918.

A copy of the proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut St., Philadelphia, Pa.; the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202–624–0892). A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed consent decree, please enclose a check in the amount of $4.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 95–8813 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice Policy, 28 C.F.R. § 50.7, notice is hereby given that the Department of Justice is receiving comments on a proposed prospective purchaser agreement between the United States and G.L. Bryan Investments, Inc., with respect to the Chemical Sales Property in Denver, Colorado. The Chemical Sales Property is part of the larger Chemical Sales Superfund Site. Bryan Investments is a Colorado corporation in good standing, with its principal place of business in Denver, Colorado. The State of Colorado is also a party to the Agreement.

Under the proposed prospective purchaser agreement, Bryan Investments has made the following commitments: (1) Pay $100,000 in cash upon obtaining title to the Chemical Sales Property; (2) perform a removal action with respect to all chemicals located above ground at the Chemical Sales Property; and (3) investigate the status of certain underground storage tanks at the Chemical Sales Property and remediate any contamination emanating from those tanks. In exchange, the United States and the State will provide a covenant not to sue to Bryan under the Comprehensive Environmental, Response, Compensation, and Liability Act for existing contamination at the Chemical Sales Property. The covenant not to sue is subject to Bryan's full compliance with the proposed Agreement.

The Department of Justice will receive written comments relating to the proposed Agreement for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chemical Sales Co., et al.*, D.J. Ref. No. 90–11–2–748B.

The proposed Agreement and exhibits may be examined at the following locations: the Region 8 Office of EPA, 999 18th Street, Suite 500, Denver, Colorado.

A copy of the proposed Agreement (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–8809 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on March 29, 1995, a proposed consent decree was lodged with the United States District Court for the District of Colorado in *United States* v. *Chemical Sales Company, et al.*, CA No. 94–M–2876. The proposed consent decree settles claims asserted by the United States, at the request of the United States Environmental Protection Agency (EPA) and the United States Department of the Army, and by the State of Idaho for releases and threatened releases of hazardous substances at the Chemical Sales Superfund Site near Denver, Colorado. The persons and entities named as defendants are Chemical Sales Company, Inc.; Bernard Katz, individually, as a general partner of M.K. Partners, as personal representative of the Estate of Eunice Katz, as an acting trustee of the Bernard P. Katz Children's Trust; Daniel Katz, individually, as a general partner of M.K. Partners, as personal representative of the Estate of Moses Katz, and as an acting trustee of the Daniel I. Katz Trust; Myrna Kesselman; M.K. Partners; the Bank of Cherry Creek, as trustee of the Moses and Eunice Katz Trusts; and Lois Alterman, as an acting trustee for the Bernard P. Katz Children's Trust.

In the complaint, the United States asserted claims pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9607(a), the Federal Priorities Act, 31 U.S.C. 3713, and the Federal Debt Collection Procedure Act, 28 U.S.C. 3301, for recovery of costs that have been and will be incurred in response of releases and threatened releases of hazardous substances at the Chemical Sales Superfund Site near Denver, Colorado. The State of Colorado asserted a claim for recovery of costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) and applicable State law theories.

Under the proposed Consent Decree, the Defendants have made the following commitments: (1) Pay $1.125 million in cash, representing the proceeds of an insurance settlement between Chemical Sales Company and certain of its insurers; (2) pay up to $1 million from various Katz family trusts and estates; (3) and transfer their interests in the Chemical Sales Property to G.L. Bryan Investments, Inc., pursuant to a prospective purchaser agreement between the United States and Bryan. In exchange, the United States and the State will provide a covenant not to sue to the Defendants (except defendant Bernard Katz) without the usual reopeners.

In exchange for the commitments made by the settling Defendants in the consent decree, the United States and the State of Colorado have agreed to provide the Defendants (except defendant Bernard Katz) with a complete covenant not to sue without normal reopener provisions for the Site.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chemical Sales Co., et al.*, D.J. Ref. No. 90–11–2–748A.

The proposed Consent Decree and exhibits may be examined at the following locations: the Region 8 Office of EPA, 999 18th Street, Suite 500, Denver, Colorado. The complete Administrative Record for the Chemical Sales Superfund Site may be reviewed at the same location.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–8810 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Kenneth L. Thomas et al.*, Civil Action No. 93–4098–JLF (S.D. Ill.) entered into by the United States and defendant Kenneth L. Thomas, was lodged on March 28, 1995, with the United States District Court for the Southern District of Illinois. The proposed Partial Consent Decree resolves certain claims of the United States under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, with respect to the M.T. Richards, Inc. Site ("Site") in Crossville, Illinois. Under terms of the Partial Consent Decree, Kenneth L. Thomas will pay the United States $25,000, plus interest, as specified in the Partial Consent Decree in return for the government's

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convenant not to sue Mr. Thomas for past costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Kenneth L. Thomas et al.*, D.J. Ref. No. 90–11–3–1112. The proposed Partial Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Illinois, IL–S USA, Suite 300, 9 Executive Drive, Fairview Heights, Illinois 62208; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Partial Consent Decree may be obtained in person or by person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–8811 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that on March 24, 1995, a proposed consent decree was lodged with the United States District Court for the District of Idaho in *United States* v. *Union Pacific Railroad Company, et al.*, Action No. CIV 95–0152–E–HLR. The proposed consent decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (EPA) and by the State of Idaho for releases of hazardous substances at the twenty-one square mile Bunker Hill Superfund Site in northern Idaho. The companies named as defendants are Union Pacific Railroad Company; and Stauffer Management Company and Rhone-Poulenc, Inc. (collectively, the "Stauffer Entities").

In the complaint, the United States asserted claims against each of the defendants pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conversation and Recovery Act, 42 U.S.C. § 6973 (RCRA), for injunctive relief to abate an imminent and substantial endangerment to public health or welfare or the environment due to the release or threatened release of hazardous substances at the Bunker Hill Superfund Site in Shoshone County, Idaho. The United States also sought recovery of costs that have been and will be incurred in response to releases and threatened releases of hazardous substances at and from the Bunker Hill Superfund Site. The State of Idaho asserted a claim for recovery of costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), against each of the defendants.

Under the proposed Consent Decree, the Stauffer Entities have made the following commitments: (1) The Stauffer Entities will remediate the A–4 gypsum pond, a gypsum waste pile within the Site. (2) the Stauffer Entities will pay $850,000 to the United States towards the demolition and remediation of the phosphate fertilizer plant with the Bunker Hill industrial complex. EPA will perform the work. (3) The Stauffer Entities will pay $150,000 towards the Institutional Control Program costs at the Site. (4) The Stauffer Entities will pay an additional $500,0000 to the United States and an additional $500,000 to the State of Idaho.

Union Pacific has made the following commitments under the Consent Decree: (1) Union Pacific will perform the remedial action for the entire seven mile right-of-way through the Site. (2) Union Pacific will pay the cost of disposal of principal threat waste materials removed from the right-of-way, and it will pay for the cost of disposal of any materials removed from the right-of-way subsequent to certification of remediation of the right-of-way. (3) Union Pacific will pay $150,0000 towards the Institutional Control Program costs at the Site. (4) Union Pacific will pay an additional $500,000 to the United States and an additional $500,000 to the State of Idaho as a premium for the covenant not to sue that UP is obtaining under the decree.

The Stauffer Entities and Union Pacific will also pay "future response costs" incurred by EPA and the State of Idaho as that term is defined in the decree.

In exchange for the commitments made by the settling defendants in the consent decree, the United States and the State will provide settling defendants with covenants not to sue as set forth in the consent decree.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Union Pacific Railroad Co., et al.*, D.J. Ref. No. 90–11–3–128I. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Consent Decree and exhibits may be examined at the following locations: The Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; the Kellogg Public Library, 16 West Market, Kellogg, ID 83837; the Kellogg City Hall, 323 Main Street, Kellogg, ID 83837; the Smelterville City Hall, Smelterville, ID 83868; and the Pinehurst/Kingston Library, Pinehurst, ID 83850. The complete Administrative Record for the Bunker Hill Superfund Site may be reviewed at the EPA Region 10 office in Seattle and at the Kellogg Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $26.50 (without exhibits) or $202.75 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–8812 Filed 4–10–95; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 94–4]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of filing period.

SUMMARY: The Copyright Office is extending the filing period in Docket RM 94–4 (Specialty Station List) to accommodate parties who were unable to file within the time period originally set for compiling a new speciality station list. *See* 60 FR 4639 (January 24, 1995). The former deadline was March 27, 1995. The new deadline is April 24, 1995.

DATES: Filings should be received by April 24, 1995.

ADDRESSES: By mail: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20023. By hand: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380, Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: Specialty station status is significant in the administration of the cable compulsory license, 17 USC 111. The Copyright Office announced in 1990 that it will create a new, up-to-date list of speciality stations at approximately three year intervals so that broadcasters and cable operators may plan their transmission arrangements. *See* 60 FR 4639 (January 24, 1995). We have discovered that many station owners either were not aware of the filing deadline in this proceeding or were not aware that the creation of a new list required filing an affidavit verifying specialty station status by each station that wants to be on the new list. Therefore, we are extending the deadline for filing such affidavits from March 27, 1995, until April 24, 1995. After that date the Office will publish a list of every station that submitted an affidavit seeking comment as to whether or not the listed stations meet the requirements for specialty station status set forth in former FCC regulations at 47 CFR 76.5 (kk)(1981). Finally, we will publish a new specialty station list for purposes of administering 17 USC 111.

Dated: April 7, 1995.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 95–9017 Filed 4–10–95; 8:45 am]

BILLING CODE 1410–03–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by April 18, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF Surveys to Measure Customer Service Satisfaction.

Affected Public: Individuals, state or local governments, non-profit institutions, small businesses or organizations.

Respondents/Reporting Burden: 1,000 respondents: average 30 minutes per response.

Abstract: Executive Order 12862 requires that agencies survey customers to determine the kind and quality of services. Questionnaires will be sent to university-based customer community (predominately) to get perceptions of the quality and kind of our grant-making services. Information received will help us identify growth areas for improvement.

Dated: April 6, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–8895 Filed 4–10–95; 8:45 am]

BILLING CODE 7555–01–M

Task Force on the Future of the NSF Supercomputer Centers Program, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Task Force on the Future of the NSF Supercomputer Centers Program (#1982)

Date and Time: April 27, 1995 1:00–8:00 pm, April 28, 1995 8:00 am–3:00 pm

Place: NSF, 4201 Wilson Blvd., Arlington, VA (tentatively scheduled for Rm. 375)

Type of Meeting: Open

Contact Person: Dr. Robert Borchers, Director, Division of Advanced Scientific Computing, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1970.

Minutes:: May be obtained from the contact person listed above.

Meeting Purpose: The objective of the Task Force is to advise the NSF on the future of its Supercomputing Centers Program considering the changing nature of computing and information science and technology. Its scope will be limited to NSF's support for advanced computational science. This meeting is to seek advice and testimony from representatives of the supercomputer industry, academic leaders in High Performance Computing, representative users of the NSF Supercomputing Centers and some principal investigators of Grand Challenge Projects. The Task force will continue its discussions on the principles to be used in evaluating the options of future programs, and hear reports on visits of members to the four existing Supercomputer Centers.

Agenda

April 27, 1995 (1:00 to 8:00 pm)

1:00–5:00 Advice and testimony from members of the High Performance Computing Community.
6:00–8:00 Working Dinner—Subcommittee Reports

April 28, 1995 (8:00 am to 3:00 pm)

8:00–9:00 Assemble, Continental Breakfast
9:00–11:00 Advice and testimony from members of the High Performance Computing Community.
11:00–12:00 Subcommittee meetings
12:00–1:00 Working Lunch
1:00–2:00 Subcommittee Meetings, Center Inspection reports
2:00–3:00 Recap, review assignments, set next meeting agenda

Dated: April 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8818 Filed 4–10–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: April 25–27, 1995: 8:30 a.m.–5:00 p.m

Place: St. James Hotel, 950 24th St., NW., Board Room, Washington, DC 20037

Type of Meeting: Closed

Contact Person: Carolyn Lyons Piper, Asst. Program Director, 4201 Wilson Blvd. Room

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907, Arlington, VA 22230, Telephone: 306–1696.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NATO Postdoctoral Fellowship Program (NATO).

Agenda: Review and Evaluate NATO proposals.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Reasons for Late Notice: Complications with meeting logistics.

Dated: April 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8817 Filed 4–10–95; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Two Public Forums for Alaskan Air Safety Study

As part of a special study of aviation safety in Alaska, the National Transportation Safety Board will convene two public forums. The forums will be held in Juneau, Alaska, on May 22, 1995, at the Westmark Baranof Hotel, 127 North Franklin St., and in Anchorage, Alaska, on May 24 and 25, at the Sheraton Anchorage Hotel, 401 East Sixth Avenue. For more information, contact Mike Benson, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: April 5, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–8771 Filed 4–10–95; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Announcement of the NRC's Intent To Reduce the Scope of Work to States Under Contract to the NRC To Perform Environmental Monitoring in the Environs of Selected NRC Licensed Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Opportunity for Public Comment.

SUMMARY: The Nuclear Regulation Commission (NRC) is issuing an announcement of its intent to reduce the scope of work for contracts with States which perform environmental monitoring in the environs of selected NRC licensed facilities. The NRC is seeking comment from interested parties regarding the proposed contract action discussed in the announcement presented in the appendix to this document. The NRC will consider comments received from interested parties in the final evaluation of the proposed contract action.

DATES: Comment period expires May 26, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Klementowicz, (301) 415–1084.

SUPPLEMENTARY INFORMATION:

Announcement of the NRC's intent to reduce the scope of work to States under contract to the NRC to perform environmental monitoring in the environs of selected NRC licensed facilities appears in the appendix to this document.

Dated at Rockville, Maryland, this 5th day of April 1995.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Chief, Emergency Preparedness and Radiation Protection Branch, Division of Technical Support, Office of Nuclear Reactor Regulation.

Appendix—Announcement of the NRC's Intent to Reduce the Scope of Work to States Under Contract to the NRC To Perform Environmental Monitoring in the Environs of Selected NRC Licensed Facilities

The Nuclear Regulatory Commission is soliciting comments on its plan to reduce the scope of work for the Cooperative Agreement program under which States are paid to conduct radiological environmental monitoring in the environs of selected nuclear facilities. The NRC plans to eliminate the scope of work in 1996 for the part of the program under which States obtain and analyze environmental samples. However, the NRC plans to continue the part of the program under which States participate in the NRC's direct radiation monitoring network. This reduction in the scope of work of the program directly affects 27 States. The elimination of the environmental monitoring portion of the program will not have an impact on public health and safety and does not represent a reduction in plant safety.

The State Cooperative Agreement Program was established in the 1970s to provide NRC assistance to State radiological health programs, through the use of NRC-funded contracts, to perform measurements of radioactive material released into the environment from NRC-licensed facilities. The States issue an annual report to the NRC of all analyses they perform with comparisons of similar analyses performed by the respective nuclear facility. The NRC uses this data as a supplemental tool in assessing the performance of environmental monitoring programs conducted by nuclear power plants. The contracts for environmental monitoring were intended as a means to assist States with nuclear facilities to develop their own environmental monitoring programs, but not to fully fund them.

NRC-licensed facilities are under strict NRC requirements to monitor and control the release of radioactive materials to the air, water and ground around their facilities. The NRC inspects and reviews licensee conformance with the requirements on a routine basis.

In addition to the environmental monitoring portion of the program, which will cost $1 million for 1995, the NRC has a provision in the contract, which will continue to remain, for the States to participate in the NRC's direct radiation monitoring network. The network provides continuous measurement of the ambient radiation levels around selected nuclear facilities by using small devices called thermoluminescent dosimeters (TLDs). The cost of this program for 1995 is $195,000.

The environmental monitoring portion of the program was specifically chosen for elimination because of the excellent record maintained by NRC-licensed facilities in controlling the release of radiological effluents into the environment within regulatory limits. In addition, the elimination of the data supplied by the States will not adversely affect NRC's ability to effectively monitor and regulate NRC licensees in this area.

The NRC recognizes the excellent service and cooperation the States have provided under this program. However, the need to constantly examine and adjust programs to ensure that public health and safety is protected in the most cost-effective manner has necessitated the reduction in this program.

[FR Doc. 95–8871 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–306]

Northern States Power Company; Prairie Island Nuclear Generating Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–60, issued to Northern States Power Company, (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Unit 2, located in Goodhue County, Minnesota

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of February 23 and March 3, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 24 months from the May 1995 refueling outage to the May 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the May 1995 refueling outage to the May 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at Prairie Island Nuclear Generating Plant, Unit No. 2, to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, would perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The NRC staff also notes that the Prairie Island Nuclear Generating Plant, Unit No. 2, containment penetration and weld channel pressurization system provides a means for continuously monitoring potential containment leakage paths during power operation. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action. The NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Minnesota State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated February 23 and March 3, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 5th day of April 1995.

For the Nuclear Regulatory Commission.

Cynthia Carpenter,

Acting Director, Project Directorate III–1, Division of Reactor Projects-III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–8844 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant schedular relief from the Section IV.F.3 of 10 CFR Part 50, Appendix E requirement for a biennial, full-scale emergency preparedness exercise. The action would allow the licensee to postpone its 1995 full-scale exercise until 1996 and subsequently conduct these exercises in even-numbered years.

The proposed action is in accordance with the licensee's application for exemption dated October 17, 1994.

The Need for the Proposed Action

The proposed action is needed to support the State of California's request to reschedule the Diablo Canyon Nuclear Power Plant (DCPP) offsite biennial exercise because currently both nuclear utilities (Pacific Gas and Electric Company and Southern California Edison) conduct their biennial, full-scale exercises in odd-numbered years, which creates a hardship for the State in terms of manpower and finances. The change would allow the State to participate in one exercise each year instead of two exercises every other year.

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Environmental Impacts of the Proposed Action

The proposed exemption would not adversely affect the response capabilities of the licensee and governmental agencies. The most recent DCPP offsite exercise was conducted in 1993, and there were no issues identified which required immediate corrective actions. The Federal Emergency Management Agency (FEMA), by letter dated March 2, 1995, informed the NRC that such a schedule change would have no adverse implications on public health and safety. The Commission has completed its evaluation of the proposed action and concludes that the intent of Appendix E, Section IV.F.3 to ensure site emergency preparedness is maintained is met. Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would result in a hardship to the State of California. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 27, 1995, the staff consulted with the California State official, Mr. Steve Hsu of the Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 18, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 4th day of April 1995.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8872 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Detroit Edison Company, (license) for an amendment to Facility Operating License No. NPF–43 issued to the licensee for operation of Fermi 2, located in Frenchtown Township, Monroe County, Michigan. Notice of Consideration of Issuance of this amendment was published in the Federal Register on August 18, 1993 (58 FR 43925).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow use of an updated laboratory testing standard for surveillance testing of representative charcoal samples from the control room emergency filtration system (CREFS) and the standby gas treatment system. Additionally, the CREFS ACTION STATEMENTS were to be revised to remove restrictions on CORE ALTERATIONS and handling of irradiated fuel in the secondary containment when the CREFS is inoperable under certain conditions.

The NRC staff has concluded that the licensee's request cannot be fully granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated March 31, 1995

By May 11, 1995, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit Michigan 48266, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 29, 1993, as supplemented October 8, 1993, and (2) the Commission's letter to the licensee dated March 31, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of item (2) may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8842 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Entergy Operations Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP–38, issued to Entergy Operations Inc. (the licensee), for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would remove a footnote tied to MODE 1 of Technical Specification (TS) Limiting Condition for Operation 3.1.1.3, moderator temperature coefficient (MTC). The deleted footnote was only valid for Cycle 2 and its removal is purely administrative. A new footnote is added to surveillance 4.1.1.3.2.c that proposes a one time deviation not to perform the specified two-thirds end-of-cycle (EOC) MTC test for Cycle 7. TS 3.1.1.3 requires that the most negative MTC value for this cycle to be less negative than the Core Operating Limits Report (COLR) specified a value of -3.3×10^{-4} delta k/k°F. Waterford 3 has determined that the most negative MTC value for the current cycle is -2.88×10^{-4} delta k/k°F The MTC for Waterford 3 Cycle 7 has been determined to be well within the TS limit including applicable uncertainties.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Waterford 3 is currently analyzed for a EOC limiting value of -3.3×10^{-4} delta k/k/°F. Under the proposed change, compliance with this TS Limit is assured by supporting data and analysis. The analysis demonstrates that the predicted EOC 7 best estimate MTC value is -2.88×10^{-4} delta k/k/°F. This is a conservative value because it includes a 26 EFPD extension beyond the actual end of full power reactivity. The margin to the TS limit is thus 0.42×10^{-4} delta k/k°F.

The probability and consequences of an accident previously evaluated will not be increased because this change does not modify any assumptions used in the input to the safety analyses. The current safety calculations will remain valid because the allowed range of MTC values will not change. Therefore, the proposed change will not involve any increase in the probability or consequences of any accident previously evaluated.

Plant operation and plant parameter TS limits will remain unchanged. There are no new changes in plant design nor are any new failure modes introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Margin of safety will not be reduced because the range of allowed temperature coefficients will not be changed. The surveillance program consisting of beginning-of-cycle measurements was not affected. Explicit End-of-Cycle 7 MTC predictions have ensured that the MTC is and will remain within the range of specified values. Therefore, the proposed change will not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11455 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 11, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

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following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to N. S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 4, 1995, as supplemented by letter dated April 5, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 6th day of April 1995.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8846 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Company (Callaway Plant, Unit 1)

Exemption

I.

Union Electric Company (UE or the licensee) is the holder of Facility Operating License No. NPF–30, which authorizes operation of Callaway Plant, Unit 1 (the facility), at a rated power level not in excess of 3565 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Callaway County, Missouri. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (CILRTs), at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

III.

By letters dated December 9, 1994, and January 27, 1995, UE requested relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period. The requested exemption would permit an interval extension for the third Type A test of approximately 18 months (from the currently scheduled outage, March 1995, until the next planned refueling outage, September 1996). The exemption request would also permit the third Type A test of the first 10-year service period not to correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) 10-year plant inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The underlying purpose of the requirement to perform three Type A CILRTs, at approximately equal intervals during each 10-year service period, is to assure that leakage through the primary reactor containment is detected and does not exceed allowable leakage rate values. The licensee has stated that the existing Type B and C local leak rate test (LLRT) programs are not being modified by this request, and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at Callaway during the three Type A tests conducted from 1984 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), application of the regulation in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide an interval extension for the Type A test by approximately 18 months. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests were within the acceptance limits. The first Type A test passed with significant margin. The second Type A test confirmed leakage previously identified by Type C testing. The licensee subsequently replaced all containment boundary Essential Service Water valves with an improved design stainless steel valve. This replacement improved LLRT results by 84% for the affected penetrations. The licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests, which are performed biennially, and will continue to be performed. The NRC staff considers that these inspections and system enhancements, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only about 3% of leakage that exceeds current requirements is detectable only by CILRTs, and those few failures were only marginally above prescribed limits. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The Callaway experience has also been consistent with this.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493).

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 15611).

This Exemption is effective upon issuance and shall expire at the completion of the 1996 refueling outage.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 4th day of April 1995.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation

[FR Doc. 95–8847 Filed 4–10–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35567; File No. SR–OCC–95–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Seeking to Make the Stock Loan/Hedge Program Available to Market-Maker and Specialist Accounts Established and Maintained by Clearing Members

April 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 13, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–95–02) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to make OCC's Stock Loan/Hedge Program available to accounts established and maintained with OCC by clearing members for market-makers and specialists.

[1] 15 U.S.C. 78s(b)(1) (1988).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of the proposed rule change is to make OCC's Stock Loan/Hedge Program [2] available to accounts established and maintained with OCC by clearing members for market-makers and specialists.[3] Pursuant to OCC's By-Laws and Rules regarding its Stock Loan/Hedge Program, clearing members are permitted to carry stock loan and borrow positions in market-maker accounts.[4] However, at the time OCC proposed its Stock Loan/Hedge Program, OCC was concerned that its Market-Maker Agreements [5] did not adequately accommodate stock loans. Accordingly, OCC appended an Interpretation to Article XXI, Section 5 of its By-Laws stating that OCC would not permit stock loan positions and stock borrow positions to be maintained in a market-maker's or specialist's account unless the market-maker or specialist had entered into an account agreement authorizing stock loan positions and stock borrow positions to be maintained in the account.[6] In addition, OCC stated in SR–OCC–92–34 that it intended to submit revised versions of the various forms of Market-Maker Agreements to the Commission in a separate proposed rule change in the near future.

OCC has reviewed its current Market-Maker Agreement forms and concluded that the current forms do adequately accommodate the Stock Loan/Hedge Program. Section 1 of each Market-Maker Agreement causes the market-maker and the clearing member to each agree that OCC has a lien "on all long positions, securities, margin and other funds and assets in the Account." OCC believes that stock loan and borrow positions are "securities, margin and other funds and assets," and accordingly has concluded that this language adequately establishes its rights with respect to stock loan and borrow positions carried in market-maker accounts.

In addition, OCC has concluded that Section 3 of its Market-Maker Agreement causes market-makers signing the agreement to adequately authorize the clearing member to lend assets (*i.e.*, stock) in the account and to adequately authorize OCC to rely on the terms on which the assets are loaned.[7] Therefore, OCC now believes that the Interpretation to Article XXI, Section 5 of its By-Laws is unnecessary and proposes to delete the Interpretation.

OCC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–02 and should be submitted by May 2, 1995.

For the Commission by the division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8870 Filed 4–10–95; 8:45 am]

BILLING CODE 8010–01–M

[2] For a description of OCC's Stock Loan/Hedge Program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (File No. SR–OCC–92–34) (order granting permanent approval of the Stock Loan/Hedge Program).

[3] Market-makers and specialists are collectively referred to in this Notice as "market-makers," and accounts established and maintained with OCC by clearing members for market-makers, including separate market-maker's or specialist's accounts, combined market-maker's or specialists' accounts, registered trader's accounts and stock market-maker's or stock specialist's accounts (as described in Article VI, Section 3 of OCC's By-Laws) are collectively referred to in this Notice as "market-maker accounts."

[4] For examples of permitted stock loan and borrow positions, refer to OCC By-Laws Article XXI, Section 5 stating that a stock loan position may not be maintained in a market-maker account unless the loaned stock to which the stock loan position relates is held for the account of the market-maker; OCC Rule 601(c) setting out margin requirements for market-maker accounts in which stock loan and borrow positions are carried; and OCC Rules 2209 and 2210 describing the treatment of stock loan and borrow positions of a suspended clearing member, including stock loan and borrow positions carried in market-maker accounts.

[5] The term "Market-Maker Agreements" is used in this Notice to refer collectively to the three forms of agreement for market-maker accounts (*i.e.*, separate market-maker's accounts, combined market-maker's accounts, and joint accounts).

[6] *Supra* note 2.

[7] A stock loan is not the result of an "exchange transaction" for purposes of OCC's rules because it does not arise from a transaction on an exchange. OCC therefore was concerned that the language of Section 1 of the Market-Maker Agreement did not adequately accommodate stock loans because the language is limited to exchange transactions of market-makers for whom an account is established However, a stock borrow or loan position is established by a lending clearing member or borrowing clearing member not by a market-maker As defined in Article I, Section 1(S)(8), the term "stock borrow position" means the position of a borrowing clearing member in respect of a stock loan. In addition, in Article I, Section 1(S)(11), the term "stock loan position" means the position of a lending clearing member in respect of a stock loan. A borrowing clearing member does not need any authorization from a market-maker in whose account it instructs OCC to carry a stock borrow position because the position is entirely the responsibility of the clearing member. Similarly, a stock loan position is entirely the responsibility of the lending clearing member However, because a stock loan position in a market-maker account may arise only from a clearing member's lending of stock held for the account of a market-maker for whom the account is carried (see Article XXI, Section 5(d) of OCC's By-Laws), a lending clearing member does need authority from a market-maker's stock and OCC needs authority from the market maker to permit the clearing member to lend a market-maker to rely upon the terms of the loan. As described in the text, OCC believes the current form of the Market-Maker Agreements cause market-makers to provide this authority to both the clearing member and OCC.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35566; File No. SR–OCC–95–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to OCC's Exercise-by-Exception Procedures Applicable to Expiring Index Options

April 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 16, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–95–03) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to reduce the threshold used to determine the in-the-money amount of index options (other than flexibly structured index options) carried in clearing members' customers' accounts in connection with OCC's exercise-by-exception processing procedures.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the exercise threshold for index option contracts, including Quarterly Index Expiration option contracts, carried in a clearing member's customer account in connection with OCC's exercise-by-exception ("ex-by-ex") processing procedures.[3] The exercise threshold used for flexibly structured index options is not effected by the proposed change.

Two thresholds are currently specified in OCC's Rules; the first threshold is for index options carried in clearing members' customers' accounts, and the second threshold is for index options carried in all other clearing member accounts. The current threshold for customer positions is $25.00 per index option contract and the threshold for all other positions is $1.00 per index option contract. OCC proposes to reduce the threshold for customer positions to $1.00 per index option contract. Any position in-the-money by that amount or more would be exercised unless the clearing member submitted a timely, contrary instruction to OCC. The proposed change to the threshold for ex-by-ex processing will not affect clearing members' obligations to their customers or correspondent brokers, which are determined by contract and by generally applicable principles of law.

The proposed change has been discussed with representatives from OCC's participant exchanges and clearing membership who have concurred in its implementation. Clearing member representatives have advised OCC that the change would reduce the risks associated with the expiration of index options as well as their operational costs. Accordingly, OCC believes that the proposed change would provide cost savings to its clearing membership without affecting the risk of processing expiring options.

OCC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of index options transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW ,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Conforming changes have been proposed to OCC Rules 1804(a) and (b).

[3] Ex-by-ex processing presumes that a clearing member would desire to exercise all options that are in-the-money by a specified threshold. Accordingly, all options subject to ex-by-ex processing are identified as being in-the-money, at-the-money, or out-of-the-money in a report provided to the clearing member through C/MACS or by hard copy. Such report reflects that the clearing member instructs OCC to exercise all options that are in-the-money by the threshold amount. However, the clearing member can issue contrary instructions to OCC.

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Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–03 and should be submitted by May 2, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8869 Filed 4–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26265]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 5, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 1, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8595)

Notice of Proposal to Issue Common Stock; Order Authorizing Solicitation of Proxies

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 54, 62 and 65 thereunder.

Southern proposes, from time to time through December 31, 2005, to issue up to one million shares of its common stock, par value $5.00 per share ("Common Stock"), pursuant to The Outside Directors Stock Plan for Subsidiaries of The Southern Company ("Plan"). The Commons Stock to be issued was authorized by order dated November 2, 1993 (HCAR No. 25917) ("1993 Order"). In addition, the 1993 Order authorizes Southern to acquire Common Stock on the open market to deliver to a director in accordance with the Plan.

The Plan provides that any member of the Board of Directors of a System Company, defined in the Plan as Alabama Power Company ("Alabama Power"), Georgia Power Company ("Georgia Power"), Gulf Power Company ("Gulf Power"), Mississippi Power Company ("Mississippi Power") and Savannah Electric and Power Company ("Savannah Electric"), who is not otherwise actively employed by Southern or any of its subsidiaries or affiliates shall receive a portion of his or her annual retainer fee ("Retainer Fee"), as set forth in the table below, in unrestricted Common Stock of Southern, with the remainder of the Retainer Fee to be payable, in increments elected by the director, in cash or in unrestricted Common Stock of Southern. Initially, annual Retainer Fees for directors of the System Companies are as follows:

Company	Annual retainer fee	Dollar amount of required stock distribution
Albama Power	$20,000	$3,000
Georgia Power	23,000	3,000
Gulf Power	12,000	2,000
Mississippi Power	12,000	2,000
Savannah Electric	12,000	2,000

The board of directors of Southern has adopted the Plan, subject to stockholder approval. The Plan will be administered by the Compensation Committee of the board of directors of Southern ("Committee"). The Committee will have the discretion to interpret the Plan, including any ambiguities contained therein and, subject to its provisions, to make all determinations necessary or desirable for the Plan's administration.

Outside directors shall have a one-time opportunity, pursuant to the Plan, to elect the remaining portion of his or her compensation in excess of the dollar amount of required stock distribution to be paid in Common Stock. Such election shall be made on the form provided to the director by the Committee, which form shall acknowledge that once made, such election is irrevocable. Notwithstanding the foregoing, if, when and as permitted by the Commission, the Plan Administrator may allow a Participant to elect to change the amount of his or her Retainer Fee paid in Common Stock; provided, that such election shall not affect the dollar amount of such Participant's required Common Stock distribution.

Any Common Stock due to a nonemployee director will be paid on a quarterly basis, with the first such quarterly distribution being made on April 1 of each year and succeeding quarterly distributions being made on July 1, October 1, and January 1 of each year. Notwithstanding the foregoing, for purposes of the 1995 calendar year, no stock distributions shall be made prior to July 1, 1995; provided, however, that for participants who are directors of Alabama Power and Georgia Power the stock distribution to be made on July 1, 1995 quarterly distributions.

The amount of Common Stock to be distributed to a nonemployee director pursuant to the Plan shall initially be determined by first dividing the director's required and elected dollar amount of Common Stock compensation under the Plan by four and then dividing such quarterly quotient by the market value of the Common Stock on the date one day prior to the date of distribution, with subsequent distributions based on such quarterly quotient divided by the market value of the Common Stock on the date one day prior to the date of such subsequent distributions. For purposes of valuing such Common Stock, the term "market value" shall mean the average of the high and low prices of the Common Stock, as published in the Wall Street Journal in its report of New York Stock Exchange composite transactions, on the date such market value is to be determined (or the average of the high and low sale prices on the trading day immediately preceding such date if the Common Stock is not traded on the applicable valuation date).

Southern further proposes to submit the Plan for consideration and action by its stockholders at the annual meeting of such stockholders to be held on May 24, 1995, and in connection therewith, to solicit proxies from its stockholders. Consequently, Southern requests that the effectiveness of its declaration with respect to such solicitation of proxies be permitted to become effective as soon as practicable as provided in rule 62(d).

Furthermore, Southern represents that, pursuant to rule 54, all of the criteria of rule 53 (a) and (b) are satisfied.

It appearing to the Commission that Southern's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to rule 62:

It Is Ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forth with, pursuant to rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8798 Filed 4–10–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1994)

SMALL BUSINESS ADMINISTRATION

[Application No. 99000162]

Kline Hawkes California SBIC, L.P.; Notice of Filing of An Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by Kline Hawkes California SBIC, L.P., 11726 San Vicente Blvd., Suite 300, Los Angeles, California 90049, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated, thereunder. Kline Hawkes California SBIC, L.P. is a California limited partnership.

The Applicant's ultimate corporate general partner will be Kline Hawkes Management SBIC, Inc., located at the same address as the Applicant. The officers, directors, and owner of the corporate general partner are:

Name	Title	Ownership
Frank R. Kline, Jr.	Chairman of Board, Managing Director	100%
Edwin A. Moss	Director, Secretary, Managing Director	.....
Jerome S. Engel	Director, Treasurer, Managing Director	.....
Michael L. Luther, 4314 Marina City Drive, Marina Del Ray, CA 90292.	Director	.....
Thomas S. Volpe, 410 Occidental Avenue, San Mateo, CA 94402.	Director	.....

Messrs. Kline, Moss, and Engel have offices at 17726 San Vicente Blvd., Suite 300, Los Angeles, California.

The officers and directors of the Applicant's manager, Kline Hawkes & Company, are:

Name	Title
Frank R. Kline, Jr.	Chairman of Board, Managing Director
Edwin A. Moss	Director, Secretary, Managing Director.
Jerome S. Engel	Director, Treasurer, Managing Director
Thomas S. Volpe	Director.
Michael L. Luther	Director.

The following entity beneficially owns or controls 10 percent or more of the proposed SBIC's Regulatory Capital:

Name: California Public Employees' Retirement System, Lincoln Plaza—400 P Street, Sacramento, California 95814

The applicant has total committed capital of $30.0 million. It will be a source of debt and equity financings for qualified small business concerns, and will invest primarily in the state of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Los Angeles, California

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: April 5, 1995.

Robert D. Stillman,

Associate Administrator for Investment

[FR Doc. 95–8779 Filed 4–10–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 1995.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28183, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the

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Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 28183.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.291.
Description of Relief Sought: To allow B777 full-scale ditching certification without the requirement to construct stands at each exit, and to allow the full-scale ditching demonstration to be completed by launching and inflating a single slideraft.

[FR Doc. 95–8942 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Contra Costa County, California

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed highway project in Contra Costa County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Schultz, Chief, District Operations-A, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5041.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare a draft environmental impact (EIS) for a proposal to improve State Route 4 between I–80 and the Cummings Skyway in Contra Costa County, a distance of about 8 kilometers. Improvements are considered necessary to improve operation and safety, and relieve congestion.

Alternatives under consideration include (1) taking no action, (2) constructing a new four-lane freeway, and (3) constructing a four-lane divided highway. Incorporated into and studied with various build alternatives will be design variations of grade and alignment. Transportation System Management strategies will be considered in conjunction with build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A scoping meeting will be held in Hercules, California. In addition, a public hearing will be held when the draft EIS is completed. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 4, 1995.

Mr. John Schultz,

Chief, District Operations-A, Sacramento, California.

[FR Doc. 95–8805 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Notice Number 95–6]

International Radioactive Material Transportation Standards; Preliminary Draft of 1996 Revision Available for Comment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of document availability and request for comments.

SUMMARY: A draft revision of the International Atomic Energy Agency's (IAEA) "Regulations for the Safe Transport of Radioactive Material" (Safety Series No. 6), which is scheduled for publication in 1996, is available for review and comment. Public and industry are invited to provide comments on the revised draft of Safety Series No. 6 to assist RSPA in submitting comments to the IAEA by July 1, 1995. Comments will also aid RSPA in preparing U.S. positions on issues that need to be resolved prior to the final Revision Panel meeting scheduled for September 25–29, 1995 at the IAEA in Vienna, Austria.

DATE: Commments must be received on or before June 1, 1995.

ADDRESSES: Copies can be obtained from, and comments should be submitted to, the Dockets Unit (DHM–30), Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590–0001; (202) 366–5046.

FOR FURTHER INFORMATION CONTACT: Richard Boyle, radioactive Materials Branch, Office of Hazardous Materials Technology, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; (202) 366–4545.

SUPPLEMENTARY INFORMATION: Many countries and international transport organizations throughout the world have adopted the standards of the IAEA's "Regulations for the Safe Transport of Radioactive Material" (Safety Series No. 6). The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) permit the import and export of radioactive materials, under certain conditions, if packages are prepared for shipment in accordance with the IAEA regulations. The HMR for domestic transportation are periodically amended to achieve consistency with most of the IAEA regulations. This most recent draft of the IAEA regulations was prepared in January 1995. It is the result of many meetings at the IAEA since 1987 in which representatives from member nations proposed and reviewed needed changes to improve effectiveness of regulation for radioactive materials transportation.

The IAEA transport regulations are considered by the UN Committee on the Transport of Dangerous Goods as the standards to be followed for the international transportation of Class 7 hazardous materials. For many years, the International Civil Aviation Organization (ICAO), "Technical Instructions for the Safe Transport of Dangerous Goods by Air" and the International Maritime Organization (IMO), "International Maritime Dangerous Goods Code" have incorporated essentially all minor and major changes in the IAEA standard with negligible variations. All nations with major nuclear programs involved with significant commercial transportation of nuclear materials incorporate the IAEA standards into their transportation regulations; in some cases the IAEA regulations are adopted by reference.

At the present time, both RSPA and the Nuclear Regulatory Commission are revising the domestic transportation regulations to incorporate most of the provisions of the 1985 IAEA regulations, as amended in 1990. It is expected that the U.S. regulations in the future will adopt provisions that will be in the 1996 IAEA regulations.

A few of the expected changes between the 1985 and 1996 IAEA regulations involve:

—A higher performance Type C package for large quantities of materials transported by air.
—Exclusive use of the International System of Units [SI Units] in the regulations and on labels and shipping documents.
—International Commission on Radiological Protection standards (ICRP 60/61) impacts on radiation protection programs and limitations on quantities and classification of radioactive materials.
—For fissile materials, calculational procedures for criticality and identification of Criticality Safety Index (CSI) on documents and packages.
—Revise shipping names and UN Identification Numbers.
—Specific requirements for uranium hexafluoride, both fissile and non-fissile.

It should be noted that during the time since January when the current draft was prepared, several technical meetings have been held resulting in changes in some of the provisions of the draft regulations. Some of these changes concern: content and performance criteria for Type C packages; grandfathering for package designs and special form; and requirements for uranium hexafluoride. Comments received on the January 1995 draft will be reviewed and considered by RSPA to the extent possible during meetings at the IAEA.

Issued in Washington, DC on April 5, 1995 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–8839 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on May 2 and May 3, 1995, of the following debt management advisory committee:

Public Securities Association, Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on May 2, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On May 3, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on May 2 and will be open to the public. The remaining sessions on May 2 and the committee's reporting session on May 3 will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: April 4, 1995.

Frank N. Newman,

Deputy Secretary of the Treasury.

[FR Doc. 95–8819 Filed 4–10–95; 8:45 am]

BILLING CODE 4810–25–M

[Treasury Order Number: 106–01]

Delegations of Authority to Act for the Secretary on Trust Fund Boards

Dated: March 22, 1995.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and delegated to the Deputy Secretary by Treasury Order (TO) 101–05, I hereby delegate to the Fiscal Assistant Secretary or, in the absence of that official, the person designated to act in that capacity, the authority to represent the Secretary of the Treasury as a member of the:

1. National Archives Trust Fund Board (*see* 44 U.S.C. 2301) and to perform any act which the Secretary is authorized to perform in that capacity; and

2. Library of Congress Trust Fund Board (*see* 2 U.S.C. 154) and to perform any act which the Secretary is authorized to perform in that capacity.

3. *CANCELLATIONS.*

a. Treasury Order (TO) 106–01, "Delegation of Authority to Act for the Secretary on the National Archives Trust Fund Board," dated November 30, 1987.

b. TO 106–10, "The Library of Congress Trust Fund Board," dated June 22, 1978.

Frank N. Newman,

Deputy Secretary of the Treasury.

[FR Doc. 95–8782 Filed 4–10–95; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 20]

Surety Companies Acceptable on Federal Bonds; Acadia Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular

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570, 1994 Revision, on page 34139 to reflect this addition:

Acadia Insurance Company. BUSINESS ADDRESS: P.O. Box 9010, Westbrook, ME 04098–5010. PHONE: (207) 772–4300. UNDERWRITING LIMITATION *b/*: $1,413,000. SURETY LICENSES *c/*: ME, NH, VT. INCORPORATED IN: Maine.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6765.

Dated: April 4, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8840 Filed 4–10–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; American Safety Casualty Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34144 to reflect this addition:

American Safety Casualty Insurance Company. BUSINESS ADDRESS: 1900 The Exchange, Suite 450, Atlanta, Ga 30339. PHONE: (404) 916–1908. UNDERWRITING LIMITATION *b/*: $584,000. *SURETY LICENSES c/*: AL, AK, CA, CO, DE, DC, FL, GA, IN, IA, KS, MN, MS, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: April 4, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–8841 Filed 4–10–95; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 69
Tuesday, April 11, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting.

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 13, 1995, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *New Business*
1. *Regulations*
a. Final Rule on the Association Annual Meeting Information Statement [12 CFR Part 620] (Final)
b. Draft Final Rule Deleting Regulations Identified Through Regulatory Burden Initiative [12 CFR Parts 614, 615, 618] (Final).
2. *Other*
a. Employee Health Insurance Liability.
b. Nondiscrimination in Agency Programs and Activities.

Dated: April 6, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–9008 Filed 4–7–95; 2:57 pm]

BILLING CODE 6705–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 13, 1995.

PLACE: 6th Floor, 1730 K Street N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Energy West Mining Co.*, Docket No. WEST 92–216–R (Issues include whether the judge erred in granting summary decision in resolving a disputed citation of violation of the ventilation plan.)
2. *U.S. Coal Inc.*, Docket No. SE 93–119. (Issues include whether the judge erred in concluding that the negligence of a non-supervisory employee, who is a certified electrician, is imputable to the operator for the purpose of assessing civil penalties.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTANCT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief, Docket Clerk.

[FR Doc. 95–9036 Filed 4–7–95; 3:06 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 17, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–9035 Filed 4–7–95; 2:57 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, April 18, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6545 Marine Accident Report: Collision Between the Netherlands Antilles Passenger Ship NOORDAM and the Maltese Bulk Carrier MOUNT YMITOS, Gulf of Mexico, November 6, 1993.
6536 Brief of Pipeline Accident and Recommendations: Excavation-Caused Pipeline Break and Explosion in Building at 679 East 3rd Street, Saint Paul, Minnesota, July 22, 1993.

News Media Contact: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–9011 Filed 4–7–95; 2:57 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 10, 17, 24, and May 1, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 10

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

Wednesday, April 19

10:00 a.m.
Briefing on IPE Program and Severe Accident Research Program (Public Meeting)
(Contact: Themis Speis, 301–415–6802)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

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Friday, April 21

10:00 a.m.
Briefing on Commission Decision Tracking System (CDTS) (Public Meeting)
(Contact: Samuel Chilk, 301–415–1875

Week of April 24—Tentative

Tuesday, April 25

2:00 p.m.
Briefing on NRC Status of High-Level Waste Management Program (Public Meeting)
(Contact: Joseph Holonich, 301–415–6643)

Wednesday, April 26

10:00 a.m.
Briefing on Proposed Rule on Safety Equipment Reliability Data (Public Meeting)
(Contact: Charles Rossi, 301–415–7499)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, April 27

10:00 a.m.
Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)
(Contact: John Hoyle, 301–415–1968)

Week of May 1—Tentative

Wednesday, May 3

2:00 p.m.
Briefing on NRR Licensing Actions Program (Public Meeting)
(Contact: Roy Zimmerman, 301–415–1284)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Additional information: By a vote of 3–0 on April 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing by Executive Branch" (Closed—Ex. 1) be held on April 4, and on less than one week's notice to the public.

Affirmation of Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" scheduled for April 5, *postponed.*

By a vote of 3–0 on April 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of final Amendment to the Nuclear Power Plant License Renewal Rule (10 CFR Part 54)" (Public Meeting) be held on April 6, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov

* * * * *

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary

[FR Doc. 95–9022 Filed 4–7–95; 2:57 pm]
BILLING CODE 7590–01–M

federal register

Tuesday
April 11, 1995

Part II

Department of Housing and Urban Development

NOFA for Fair Housing Initiatives Program; 1995 Competitive Solicitation; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–95–3901; FR–3878–N–01]

NOFA for Fair Housing Initiatives Program; FY 1995 Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $14,580,530 of 1995 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the Notice. The actual application due date will be specified in the application kit. However, applicants will be given at least 70 days from today's date, until June 20, 1995, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Circle Solutions, Inc., 8201 Greensboro Drive, Suite 600, McLean, VA 22102 or call the toll-free number 1–800–343–3442 (voice) or 1–800–290–1617 (TDD). Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Sharon Bower, Acting Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0800. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529–0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

More significantly, section 905 has established FHIP as a permanent program. As originally promulgated by section 561, FHIP was a demonstration program authorized to expire on September 30, 1992. Since this demonstration period has passed, and FHIP is now a permanent program, the Department has determined that the requirements specifically tied to the demonstration period, namely, the testing guidelines at § 125.405, are no longer applicable to FHIP. Accordingly, the use of these testing guidelines is not required under this NOFA. The Department has executed a waiver of § 125.405 for the purposes of this NOFA, pending the elimination of this provision in the revision of 24 CFR part 125. Because section 905 does not eliminate any FHIP provisions other than those related to its status as a demonstration program, the Initiatives and activities currently eligible under 24 CFR part 125 remain eligible under this NOFA.

This NOFA further incorporates the HCDA 1992 section 905 FHIP additions to the extent of including the new eligible applicants and activities, and the new Fair Housing Organizations Initiative. The Department solicited public comment on the amendment of 24 CFR part 125 to effect the changes made by section 905 in a proposed rule published in the **Federal Register** on August 29, 1994 (59 FR 44596). For the purpose of future funding rounds, the Department will soon publish a rule finalizing the policies and procedures contained in the August 29, 1994 proposed rule. However, applications for FY 1995 funds will be subject to the requirements and deadlines in this NOFA. Eligible applicants should not wait for the final rule's publication to prepare and submit their FY 1995 applications in response to this NOFA

Two of the new eligible applicants, fair housing enforcement organizations and qualified fair housing enforcement organizations, are given specific definitions, which apply to this NOFA, in section 905:

Fair housing enforcement organization means any organization that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Qualified fair housing enforcement organization means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

On October 5, 1994, HUD published a Notice (59 FR 50763) inviting comments from potential applicants for FY 1995 FHIP funds, prior grantees and applicants, and any other interested parties, on the administration of FHIP funding. HUD was especially interested in soliciting comments on the application procedures for funding in general and the content of FHIP NOFAs in particular. By the expiration of the comment period on November 11, 1994, thirty-six comments had been received. HUD is grateful for these comments and has considered them in the development of the FY 1995 FHIP NOFA and Application Kit.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

(b) Allocation Amounts

For FY 1995, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (approved September 28, 1994, Pub. L. 103–327) (95 App. Act) appropriated $26,000,000 for the FHIP program. Of this amount, $9,962,024 will be used to fund the second year of FY 1993/1994 multi-year awards. An additional $1,457,446 is being utilized for the FY 1995 funding of FY 1994 awards. The remaining $14,580,530 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information.

The full cost of FY 1995 multi-year awards, under the Private Enforcement Initiative and for the purpose of establishing new organizations under the Fair Housing Organizations Initiative, will be funded from FY 1995 funds. Recipients of FY 1993/1994 multi-year awards may not apply for FY 1995 multi-year funds in the initiative under which they are currently funded. Recipients of FY 1993/1994 and FY 1995 multi-year awards will again be able to apply for such funds in the last fiscal year of their multi-year award.

The Department retains the right to shift funds between the FHIP Initiatives listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total FY 1995 appropriation for the FHIP program is divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of 3 million in FY 1995 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative.* The amount of $6,750,000 in FY 1995 funds is being used for the Education and Outreach Initiative. Of this amount, $3,119,749 is made available under this NOFA for National Education and Outreach Initiative programs. An additional $3.5 million in FY 1995 funds is made available under this NOFA for regional, local, and community based programs. Furthermore, $130,251 will be utilized for the FY 1995 funding of FY 1994 awards.

(3) *Private Enforcement (PE) Initiative.* The amount of $9 million in FY 1995 funds is being used for the PE Initiative. Of this amount, $3,015,299 is made available under this NOFA for four-year projects, with an award cap of $600,000 and with incremental funding during the life of the award subject to periodic performance reviews. An additional $5,330,928 will be used to fund the second year of FY 1993/1994 multi-year awards and $653,773 will be utilized for the FY 1995 funding of FY 1994 awards.

Recipients of FY 1993/1994 multi-year PE Initiative awards may not apply for multi-year PE Initiative funds made available under this NOFA. Recipients of FY 1993/1994 and FY 1995 multi-year PE Initiative awards will again be able to apply for such funds in the last fiscal year of their multi-year award. Therefore, FY 1993/1994 multi-year PE Initiative grantees, whose current grant will not expire until August, 1996 or later, may not apply for multi-year PE Initiative funds until the FY 1996 FHIP solicitation. Recipients of FY 1995 four-year PE Initiative awards must wait until the FY 1999 FHIP solicitation to apply for further multi-year PE Initiative funds.

(4) *Fair Housing Organizations (FHO) Initiative.* The amount of $7,250,000 in FY 1995 funds is being used for the FHO Initiative. Of this amount, $1,945,482 is being made available under this NOFA. The amount of $945,482 is made available under this NOFA for the continued development of new organizations. The amount of $1 million in FY 1995 funds is available for three-year projects for the purpose of establishing new organizations, with an award cap of $500,000 and with incremental funding during the life of the award subject to periodic performance reviews.

An additional $673,422 will be utilized for the FY 1995 funding of FY 1994 FHO Initiative awards for the continued development of existing organizations. Furthermore, $4,631,096 in FY 1995 funds will be used to fund the second year of FY 1993/1994 FHO Initiative awards for the purpose of establishing new organizations.

Recipients of FY 1993/1994 multi-year awards for the purpose of establishing new organizations under the FHO Initiative may not apply for FY 1995 multi-year FHO Initiative funds. Recipients of FY 1993/1994 and FY 1995 multi-year FHO Initiative awards will again be able to apply for such funds in the last fiscal year of their multi-year award. Therefore, FY 1993/1994 multi-year FHO Initiative grantees, whose current grant will not expire until August, 1996 or later, may not apply for multi-year FHO Initiative funds until the FY 1996 FHIP solicitation. Recipients of FY 1995 four-year FHO Initiative awards must wait until the FY 1999 FHIP solicitation to apply for further multi-year FHO Initiative funds.

(c) Eligibility

Eligible activities, eligible applicants, and additional requirements under each Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

(1) *Administrative Enforcement Initiative*

(i) *Eligible applicants.* The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws certified by the Secretary as providing rights and remedies that are substantially equivalent to those provided in the Fair Housing Act. A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent under 24 CFR part 115, or have entered into an agreement with the Department for interim referrals, as provided in 24 CFR 115.11.

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(ii) *Eligible activities.* Funding will be available to support enforcement and compliance activities conducted by eligible State and local agencies. Eligible activities may include (but are not limited to) the following:

(A) Projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices;

(B) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(C) Implementing fair housing testing and other related enforcement activity programs;

(D) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice; and

(E) Developing new procedures to increase the efficiency of operations, such as the use of computers for case processing, tracking, and Home Mortgage Disclosure Act (HMDA) analysis.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with Administrative Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or have demonstrated experience in testing procedures and techniques.

(B) *Term of contract.* Administrative Enforcement Initiative funding is only available for one-year projects, which may be for up to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) No recipient of assistance under the Administrative Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) *Case tracking log requirement.* Recipients of funds under the Administrative Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(2) *Education and Outreach Initiative*

(i) *Eligible applicants.* The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(A) State or local governments;

(B) Qualified fair housing enforcement organizations (QFHO–Es);

(C) Fair housing enforcement organizations (FHO–Es);

(D) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(E) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and

(F) Community Housing Resource Boards (CHRBs).

(ii) *Eligible activities.* (A) *In general* Each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, regional or local, or community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(*1*) Projects that focus on informing persons with disabilities, and/or their support organizations and service providers, housing providers, and the general public on the rights of disabled persons under the Fair Housing Act and on the location or availability of accessible housing or the modification of non-accessible housing;

(*2*) Projects that provide guidance to housing providers on meeting their Fair Housing Act obligation to make reasonable accommodations for persons with disabilities are also encouraged;

(*3*) Projects that will provide housing, mortgage lending, appraisal, and insurance counseling services;

(*4*) Developing informative material on fair housing rights and responsibilities;

(*5*) Developing fair housing and affirmative marketing instructional material for educational programs for national, regional and local housing industry groups;

(*6*) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups;

(*7*) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights;

(*8*) Developing national, regional or local media campaigns regarding fair housing;

(*9*) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(*10*) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(*11*) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices;

(*12*) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm;

(*13*) Developing and implementing school curriculums for fair housing courses;

(*14*) Developing and implementing a response to community opposition to the location of residential facilities for persons with disabilities, as defined under the Fair Housing Act, where supportive health or human services are provided in connection with the housing; and

(*15*) Developing materials and providing technical assistance to support compliance with housing adaptability and accessibility guidelines contained in the 1988 Fair Housing Amendments Act.

(*16*) Fair Housing Month activities which may be components of national, regional, local, or community based programs.

(B) *National programs.* (*1*) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products that may appropriately be used on a nationwide basis, including:

(*i*) Public service announcements, both audio and video;

(*ii*) Television, radio and print advertisements;

(*iii*) Posters; and

(*iv*) Pamphlets and brochures.

(*2*) National program applications will receive a preference of up to ten additional points if they:

(*i*) Demonstrate cooperation with real estate industry organizations (up to five points); and/or

(*ii*) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (up to five points).

(C) *Regional and local programs.* (*1*) Activities eligible to be funded as regional or local programs include any of the activities, to be implemented on a regional or local level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(*1*), above, of this NOFA.

(2) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a State.

(*3*) Every regional or local program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(D) *Community-based programs.* (*1*) Activities eligible to be funded as community-based programs include any of the activities, to be implemented on a community-based level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(*1*), above, of this NOFA. Community-based programs include school, church and community presentations, conferences or other educational activities.

(*2*) Activities that are "community-based" in scope are those which are focused on a particular neighborhood within a unit of general local government.

(*3*) Every community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(*4*) Projects for community-based activities proposed by community-based organizations will receive a preference of five additional points. For the purposes of this NOFA, a community-based organization is an organization whose members primarily come from a particular neighborhood within a unit of general local government.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from six to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(3) *Private Enforcement (PE) Initiative*

(i) *Eligible applicants.* Organizations that are eligible to receive FY 1995 funding assistance under the PE Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(ii) *Eligible activities.* Applications are solicited for four year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 20% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(B) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(C) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(D) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(E) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(F) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(G) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints covering all protected classes, including persons with mental and physical disabilities;

(H) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(I) Providing funds for the costs and expenses of litigation, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with PE Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Four-year projects must be for forty-eight months in duration, with an award cap of $600,000 and with incremental funding during the life of the award subject to periodic performance reviews. Recipients of multi-year PE Initiative awards may not apply for additional multi-year PE Initiative funds until the last fiscal year of their multi-year award.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.404, no recipient of assistance under the PE Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

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(4) *Fair Housing Organizations (FHO) Initiative.*

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(*1*) Qualified fair housing enforcement organizations;

(*2*) Other private nonprofit fair housing enforcement organizations; and

(*3*) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA and carried out as one-year projects.

(C) *Additional requirements.* The following requirements apply to activities funded under the Continued Development of Existing Organizations purpose of the FHO Initiative:

(*1*) *Operating budget limitation.* Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year. For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(*2*) *Term of contract.* One-year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Organizations that are eligible to receive FY 1995 funding assistance for the purpose of establishing new organizations under the FHO Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are three-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in sections I.(c)(4)(ii)(C), or other underserved areas identified by the applicant in accordance with section I.(c)(4)(ii)(D), below, of this NOFA. The Department has considered a number of factors to identify the targeted areas eligible for funding under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas.*

(*1*) A preference of ten additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following unserved areas:

(*i*) New Hampshire;

(*ii*) Puerto Rico; and

(*iii*) Wyoming.

(*2*) A preference of five additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following underserved areas:

(*i*) Alabama;

(*ii*) Delaware;

(*iii*) Oregon; and

(*iv*) Utah.

(*3*) An applicant may seek funding to establish a new organization in a locality not included in the list of target areas, above, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations and as containing large concentrations of protected classes. An applicant may provide additional evidence of the need to establish a fair housing organization in a locality by citing data and studies that indicate the presence of housing discrimination and/or segregation in the locality. An example of evidence that may be used for this purpose is provided in (but is not limited to) the study, *American Apartheid: Segregation and the Making of the Underclass*, by Nancy A. Denton and Douglas S. Massey (Harvard University Press, 1993).

(D) *Additional requirements.* The following requirements apply to activities funded under the Establishing New Organizations purpose of the FHO Initiative:

(*1*) *Term of contract.* Three-year projects must be thirty-six months in duration, with an award cap of $500,000 and with incremental funding during the life of the award subject to periodic performance reviews. Recipients of multi-year awards for the purpose of establishing new organizations under the FHO Initiative may not apply for additional multi-year FHO Initiative funds until the last fiscal year of their multi-year award.

(iii) *Additional Requirements.* The following requirements apply to all activities funded under the Fair Housing Organizations Initiative:

(A) Testers in testing activities funded with FHO Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(C) No recipient of assistance under the FHO Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(D) Recipients of funds under the FHO Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(d) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

In addition to the preference points indicated in section I.(c) for particular activities, all projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (20 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(1) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (20 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III. (a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP or other civil rights project management, a certification from the cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (30 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Ranking Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for: each Initiative; each program component (national, regional/local, and community-based) of the Education and Outreach Initiative; or each purpose (continued development of existing organizations, and establishing new organizations) under the Fair Housing Organizations Initiative. Awards for each Initiative will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(4) Applicants Limited to a Single Award

Applicants may apply for funding for more than one project or activity, however applicants are limited to a single award under this NOFA. If more than one eligible application is submitted by an applicant and is within funding range, the Department will select the award that is most favorable to both the applicant and the Department. In such cases, the Department will select the application that proposes a project or activity for the greatest length of time. If all such applications from the applicant are for the same duration, the Department will select the application that represents the largest funding award.

(5) Independence of Awards

Each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an

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inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Circle Solutions, Inc. 8201 Greensboro Drive, Suite 600, McLean, VA 22102, or by calling the toll free number 1–800–343–3442 (voice) or 1–800–290–1617 (TDD). To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Sharon Bower, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, SW., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 70 days from today's date, until June 20, 1995, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be submitted for each of the following categories of funding:

(1) Administrative Enforcement Initiative activities;

(2) National programs under the Education and Outreach Initiative;

(3) Regional or local activities under the Education and Outreach Initiative;

(4) Community-based activities under the Education and Outreach Initiative;

(5) Four-year projects under the Private Enforcement Initiative;

(6) Continued Development of Existing Organizations activities under the Fair Housing Organizations Initiative; and

(7) Three-year projects under the Fair Housing Organizations Initiative for Establishing New Organizations.

Although a separate application is required for each funding category, an application may propose more than one type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include $5,000 per year—to be used for travel and associated costs for training sponsored or approved by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured;

(7) A description of the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed; and

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF–LLL).

(11) Prior to award execution, successful applicants must submit a certification that they will comply with the certification requirements contained in the application kit.

(b) *Additional Education and Outreach Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals under the Education and Outreach Initiative must include the following:

(1) A description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, documentation that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(3) Every regional/local or community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(c) *Additional Private Enforcement Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

(d) *Additional Fair Housing Organizations Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, the following application submission requirements apply to proposals under the Fair Housing Organizations Initiative:

(1) Each applicant under the continued development of existing organizations purpose of the Fair Housing Organizations Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

(2) All proposals for testing under the Fair Housing Organizations Initiative must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of

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Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: 42 U.S.C. 3601–3619; 42 U.S.C. 3616 note.

Dated: March 20, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 95–8784 Filed 4–10–95; 8:45 am]

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federal register

Tuesday
April 11, 1995

Part III

Department of Housing and Urban Development

Historically Black Colleges and Universities Program; Notice of Funding Availability for FY 1995

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3899; FR–3894–N–01]

Notice of Funding Availability for FY 1995 Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces up to $4.0 million of FY 1995 funding for the Historically Black Colleges and Universities (HBCU) Program plus any recaptured funds from prior appropriations. In the body of this document is information concerning the following:

a. The purpose of the NOFA and information regarding available amounts, objectives, eligibility and selection criteria;

b. Application processing, including how, where and when to apply and how selections will be made.

DATES: No applications will be accepted after 4:30 p.m. on August 9, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applications may not be submitted by facsimile (FAX).

ADDRESSES: *For an application kit contact:* Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7255, Washington, DC, 20410–3500. Attn: HBCU Program. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.) When requesting an application kit, please refer to document FR–3894, and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU application packages should be made immediately. HUD will distribute application packages as soon as they become available.

Application Submission: An original and three copies of the completed application should be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7255, Washington, DC, 20410–3500. Attn: HBCU Program.

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7253, Washington, DC 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The control number for information described in this document is 2506–0122.

I. Purpose and Substantive Description

Purpose. This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their localities. For the purposes of this program, the term "locality" includes any city, county, town, township, parish, village, or other general political subdivision of a State within which an HBCU is located. An HBCU located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may, therefore, differ depending on its location.

Objectives. The objectives of this program are:

1. To help HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of title I of the Housing and Community Development Act of 1974; and

2. To help HBCUs address the needs of their locality(ies) while furthering the following HUD values:

- A Commitment to Community;
- A Commitment to Support Families;
- A Commitment to Economic Lift;
- A Commitment to Reciprocity and to Balancing Individual Rights and Responsibilities.
- A Commitment to Reducing the Separations by Race and Income in American Life.

3. Consistent with section 3 of the Housing and Urban Development Act of 1968, it is HUD's policy to encourage and ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

Applicants must address objective 1 by successfully demonstrating how the proposed activities will expand the role of the HBCU in meeting local community economic development and/or housing needs while furthering HUD's values identified in objective 2.

A. Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act), which was added by section 105 of the HUD Reform Act of 1989. The program is governed by regulations contained in 24 CFR 570.201 through 570.207, 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O.

B. Allocation Amounts and Form

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995 (approved September 28, 1994, Pub. L. 103–327) (1995 App. Act) appropriated $44,000,000 for special purpose grants pursuant to section 107 of the Housing and Community Development Act of 1974. This notice announces HUD's intention to award up to $4.0 million from these FY 1995 funds (plus any additional recaptured funds from prior appropriations) to fund HBCU projects. The maximum amount awarded to any applicant will be $500,000. The awards will be made in the form of grants.

C. Eligibility

1. *Eligible Applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

2. *Eligible Activities.* Activities that may be funded under this NOFA are those activities eligible for Community Development Block Grant (CDBG) funding. They are listed in 24 CFR 570.201 through 570.206. Basic eligible activities include:

a. Identifying specific needs for affordable housing and increasing housing opportunities for low- and moderate-income persons throughout the locality;

b. Providing adequate infrastructure to support housing and economic development;

c. Meeting environmental review requirements to permit economic growth;

d. Supporting community design projects with amenities to improve living conditions and to create a climate which invites investment;

e. Forming partnerships with the State and local government to address the physical, social and economic needs of the community in a comprehensive manner;

f. Developing programs that provide a continuum of care for the homeless;

g. Working with local groups and organizations to combat discrimination in housing, mortgage credit and insurance, and to further fair housing;

h. Promoting opportunities for the creation and expansion of small businesses and minority enterprises;

i. Providing technical assistance and opportunities for homeownership;

j. Providing assistance to preserve the inventory of low-income housing in the locality through rehabilitation and preservation efforts; and

k. Promoting opportunities for training and employment of low-income residents in connection with HUD and other Federally-assisted projects and activities.

Those applicants planning to use funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities.

3. *Environmental Review.* If the applicant proposes activities involving rehabilitation of structures or construction of buildings, an environmental review by HUD is required and the proposed project must pass an environmental review in accordance with 24 CFR part 50, including the authorities at § 50.4. If the requirements of part 50 are not met, HUD reserves the right to terminate all or portions of the award. The grantee is not authorized to proceed with any activity requiring such approval until written approval is received from the HUD State environmental office in your area certifying that the project has been approved.

D. Selection Criteria/Rating Factors

An applicant must demonstrate that it meets the objectives of this HBCU program by scoring at least 12 of the possible 20 points on rating factor 1 (addressing the objectives) in order to qualify for funding. Applicants must also receive a minimum score of 70 out of the total of 100 points to be considered eligible for funding. Activities which are not eligible for funding under this program (see 24 CFR 570.207) will not be funded. If more than 50 percent of the amount requested in the application is for ineligible activities, the application will not be funded.

Applications for funding under this Notice will be evaluated competitively, and awarded points based on the factors identified below. The Department will rank the applications in descending order according to score. Applications meeting the minimum threshold requirements will be funded in rank order, until all available funds have been obligated, or until there are no acceptable applications.

Negotiations. After all applications have been rated and ranked and a determination of successful applicants has been made, HUD requires that all successful applicants participate in negotiations to determine the specific terms of the Statement of Work and grant budget. In cases where HUD cannot successfully conclude negotiations, awards will not be made. In such instances, HUD may elect to offer an award (in an amount not to exceed the amount of remaining funds available for the competition) to the next highest ranking applicant and proceed with negotiations as described above.

Optional Match. Although match is not required to qualify for funding, the Department wishes to stress that applicants that evidence a commitment of matching funds, in accordance with Rating Factor 4.b., below, are eligible for more rating points than those not having a match. The maximum number of rating points an applicant can receive for matching funds is 7 points out of the 100 point total. Applicants having a cash match will receive a higher number of points than those only providing in-kind services or not providing any match for program activities. Matching funds may be in the form of cash and/or in-kind goods or services.

Rating Factors. The factors set forth below will be used by the Department to evaluate applications. Each application must contain sufficient information to be reviewed for its merits. The score of each factor will be based on the qualitative and quantitative aspects demonstrated for each factor in an application. The factors, and the maximum number of points for each factor (out of a total of 100 points), are as follows:

1. *Addressing the Objectives.* (maximum points: 20)

The extent to which the applicant addresses the objectives of this program is examined by this factor. Applicants must address objective i. by successfully demonstrating how the proposed activities will expand the role of the HBCU in meeting local community economic development and/or housing needs while furthering HUD's values identified in objective ii.

a. The objectives of this program are:

i. To help HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of the 1974 Act; and

ii. To help HBCUs address the needs of their localities in meeting the following HUD values:

- A Commitment to Community;
- A Commitment to Support Families;
- A Commitment to Economic Lift;
- A Commitment to Reciprocity and to Balancing Individual Rights and Responsibilities.
- A Commitment to Reducing the Separations by Race and Income in American Life.

iii. Consistent with section 3 of the Housing and Urban Development Act of 1968, it is HUD's policy to encourage and ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

b. In rating this factor, the Department will consider:

i. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community development needs in its locality(ies), in accordance with the objective specified in section I.D.1.a.i. of this NOFA, above; and

ii. The extent to which the applicant demonstrates that the proposed activities will further one or more of the HUD values specified in section I.D.1.a.ii. of this NOFA, above.

iii. The extent to which the applicant demonstrates that it will provide to the greatest extent feasible, and consistent

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with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

2. *Substantial Impact in Achieving Objectives.* (maximum points: 25)

The extent to which the applicant demonstrates that the proposed activities would have a substantial impact in achieving the objectives in sections I.D.1.a.i. and ii of this NOFA, above, is examined by this factor. In rating this factor the Department will consider:

a. The extent to which the applicant demonstrates how the proposed activities will address high priority needs identified in each locality's community development plan or program, or HUD-approved Consolidated Plan in accordance with 24 CFR part 91.

b. The extent to which the applicant demonstrates how the proposed activities will substantially address the needs of the locality within the framework of HUD's values.

3. *Special Needs of Applicant or Locality.* (maximum points: 10)

The extent to which the applicant demonstrates that the locality has special needs which will be addressed or met by the proposed activities, particularly with respect to benefitting low- and moderate-income persons, including minorities, is examined by this factor. In rating this factor, HUD will consider the urgency of the special need in the locality, particularly with respect to low- and moderate-income persons, including minorities.

4. *Technical and Financial Feasibility and Match.* (maximum points: 25)

The extent to which the applicant demonstrates the technical and financial feasibility for achieving the objectives, including local support for the activities proposed to be carried out in the locality and any matching funds proposed to be provided from sources other than the applicant, is examined by this factor. In rating this factor, the Department will consider:

a. The extent to which the applicant demonstrates the technical feasibility for achieving the objectives within the program period proposed;

b. The extent to which the applicant demonstrates the financial feasibility and local support for the activities to be carried out in the locality, as evidenced by the commitment, from sources other than the applicant, of matching funds, staffing, services, or other in-kind resources. (Applicants that evidence such a commitment of matching funds are eligible to receive a higher score than those not having a match. See the discussion under the heading *Optional Match* in this section I.D., above.)

5. *Capacity.* (maximum points: 20)

The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any prior HUD-assisted projects or activities, is examined by this factor. In rating this factor, the Department will consider:

a. The extent to which the applicant's proposed management plan:

i. Clearly delineates staff responsibilities and accountability for all work required;

ii. Presents a work plan with a clear and feasible schedule for conducting all project tasks; and

iii. Presents a reasonable and adequate planned budget as reflected in the budget-by-task and supporting rationale and justification for the budget.

b. The extent to which the applicant demonstrates the recent and relevant work experience of the staff proposed to undertake the activities described in the Statement of Work.

c. The extent to which the applicant can demonstrate that its past and current projects funded by HUD and/or other Federal or private sector sources are or have been completed on schedule and have met or are meeting goals established for addressing local needs.

d. The extent to which the applicant demonstrates the proposed program manager's capacity, background and experience to carry out the proposed activities in a satisfactory and timely fashion, as evidenced by recent work experience in managing projects of the same or similar size, dollar amount, and types of activities as those proposed in the application.

II. Application Submission Requirements

Applicants must complete and submit applications for HBCU grants in accordance with instructions contained in the FY 1995 Historically Black Colleges and Universities Program application package. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations. The application package requires a Statement of Work which clearly identifies the proposed activities, a narrative response to the Rating Factors identified in section I.D. of this NOFA, a schedule for the program, budgets, and a description of any other public or private resources proposed to be used in the program. The application package also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, regulations in 24 CFR part 135 with regard to economic opportunities for low-income persons and business concerns, and other Federal requirements. Applicants should refer to the HBCU application package for further instructions.

III. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the Department shall notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14-day cure period pertains only to non-substantive technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/rating factors; and

2. Would not improve the substantive quality of the proposal.

IV. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

(b) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing

community development needs in their localities and does not impinge upon the relationships between the Federal government, and State and local governments.

(c) *Family, Executive Order 12606.* The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being. The notice only solicits HBCUs to apply for funding to address community development needs in their locality. Any impact on the family will be indirect and beneficial in that better planning of community development needs should result.

(d) *Prohibition Against Lobbying Activities.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

(e) *Section 102 HUD Reform Act; Documentation and Public Access Requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(f) *Section 103 HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) *Section 112 HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 24 CFR 570.404.

Dated: March 15, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–8786 Filed 4–10–95; 8:45 am]

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federal register

Tuesday
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Part IV

Environmental Protection Agency

Clean Air Act: Acid Rain Program Permits; Final Rule and Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 72

[FRL–5186–3]

RIN 2060–AE59

Acid Rain Program: Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On January 10, 1995, EPA and the parties signed a settlement agreement addressing reduced utilization issues.

Based on a review of the record, the Agency concludes that the January 11, 1993 regulations concerning reduced utilization should be revised. The overall effect of the revisions is to reduce the reporting and recordkeeping burden on utilities. The regulations require that, unless certain requirements are met, the designated representative of a unit in Phase I of the program whose annual utilization of fuel is less than its average annual utilization in 1985–1987 must submit a reduced utilization plan. The regulations also require designated representatives to submit end-of-year compliance reports that estimate the sulfur dioxide emissions resulting from any underutilization of Phase I units and to surrender allowances for the estimated emissions. The Agency is revising the regulations to simplify the criteria for determining if a reduced utilization plan must be submitted: Where the end-of-year reporting and allowance surrender requirements are met, such a plan is not required. Further, the Agency is revising the formulas for estimating emissions resulting from underutilization to correct errors, clarify certain provisions, and take account of and facilitate compliance by Phase I units with multiple owners or whose owners are required by law to purchase electricity from non-utility power production facilities.

The rule revision is being issued as a direct final rule because it is consistent with the January 10, 1995 settlement and no adverse comment is expected.

EFFECTIVE DATE: This direct final rule will be effective on May 22, 1995 unless significant, adverse comments are received by May 11, 1995. If significant, adverse comments are timely received on any portion of the direct final rule, that portion of the direct final rule will be withdrawn through a notice in the Federal Register.

ADDRESSES: All written comments must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE–131), Waterside Mall, Room 1500, 1st floor, 401 M St., S.W., Washington DC 20460.

Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st floor, 401 M St., S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION: All public comment received on any portion of this direct final rule on which significant, adverse comments are timely received will be addressed in a subsequent final rule. That final rule will be based on the relevant portion of the rule revision that is noticed as a proposed rule in the Proposed Rules Section of this Federal Register and that is identical to this direct final rule. The contents of the preamble to the direct final rule are as follows:

I. Background: Purposes of Reduced Utilization Plans and Allowance Surrender for Underutilization of Phase I Units
II. Reduced Utilization Plan
III. Dispatch System
  A. Utility System and Identification of Dispatch System
  B. Apportionment of Phase I Units
IV. Emissions Rate
  A. Non-Utility Generators
  B. Dispatch System Emissions Rate
  C. NERC Emissions Rate
V. Administrative Requirements
  A. Executive Order 12866
  B. Unfunded Mandates Act
  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act
  E. Miscellaneous

I. Background: Purposes of Reduced Utilization Plans and Allowance Surrender for Underutilization of Phase I Units

A Phase I unit is underutilized if, in any year in Phase I, the total annual utilization of fuel at the unit is less than its baseline, i.e., its annual average fuel utilization for 1985–1987. The provisions of the Act that relate to reduced utilization or underutilization of Phase I units are found in sections 403(d) and 408(c)(1)(B).

In dividing the Acid Rain Program into two phases, i.e., Phase I applicable only to larger, dirtier units and Phase II applicable to virtually all utility units, the Congress recognized the potential for circumvention of Phase I emission reduction requirements. A Phase I unit, which receives allowances for its baseline, could simply reduce its utilization below baseline by shifting generation of electricity to a unit that was not covered by Phase I and did not have to use allowances to authorize its SO_2 emissions. The Phase I unit would retain the unused allowances but the same amount of SO_2 could be emitted by the second unit, which would not use up any allowances. See 58 FR 60951 (Nov. 18, 1993). In section 408(c)(1)(B), Congress adopted the solution of requiring submission of a reduced utilization plan by owners and operators of any Phase I unit that plans to reduce the unit's utilization in order to comply with Phase I emissions limitations. The plan must designate the units (referred to as "compensating units") to which generation was shifted or account for the reduced utilization through energy conservation or improved unit efficiency. 59 FR 60219 (Nov. 22, 1994).

Section 403(d) provides that the Acid Rain regulations must permit utilities to continue to operate in an economic and reliable fashion (e.g., through central dispatching that may result in shifting generation from Phase I units to other units or generators). However, section 403(d) also provides that the Acid Rain regulations must require utilities to compensate at the end of the year for emissions resulting from such operations and must facilitate orderly and competitive functioning of the allowance system. 56 FR 63019 (Dec. 3, 1991).

In order to achieve the objectives of both section 403(d) and section 408(c)(1)(B), EPA adopted, in the January 11, 1993 regulations, requirements concerning the submission of reduced utilization plans and allowance surrender for underutilization. The regulations require that the designated representative of any Phase I unit with utilization below baseline apply formulas in §§ 72.91 and 72.92 estimating the emissions (if any) resulting from such underutilization and surrender allowances covering the estimated emissions. In this way, the emissions consequences of shifting generation from Phase I units are accounted for, and Phase I SO_2 emission reduction goals are preserved, without the designation of specific compensating units.

In addition, the January 11, 1993 regulations require the submission of a reduced utilization plan for any Phase I unit that is planned to be utilized below baseline as a method of complying with SO_2 emissions limitations. However, if the allowance surrender requirements are met and the unit meets criteria in § 72.43(e), a plan is not required. The criteria are broadly drawn. For example, under these criteria, a plan need not be submitted for underutilization caused by economic dispatching that reflected increases in generation costs (e.g., allowance costs) at the unit. The Agency adopted this approach of limiting the plan submission requirement because of concern that, *inter alia*, economic dispatch and operation of utility systems or power pools might be inhibited because utilities might be unable to designate compensating units. 56 FR 63021.

II. Reduced Utilization Plans

As noted above, § 72.43(e) of the January 11, 1993 regulations sets forth criteria for making retrospective determinations as to whether a Phase I unit was underutilized for the purpose of complying with SO_2 emissions limitations. If underutilization was for the purpose of compliance, then the unit must have a reduced utilization plan. If underutilization was incidental to utility operations, no plan is needed. In particular, a plan is not required if the allowance surrender requirements under §§ 72.91 and 72.92 are met and one of several demonstrations are made. The demonstrations involve showing that the unit's underutilization was caused by a dispatch-system-wide sales decline, a forced outage at the unit, or economic dispatching. If none of these demonstrations can be made, the Agency determines on a case-by-case basis, considering certain indicators set forth in § 72.43(e)(2), whether a plan should have been submitted.

The Agency has concluded that this approach is unnecessarily complicated and burdensome. Because of concerns that Phase I units would be unable to designate compensating units, the criteria in § 72.43(e) for avoiding submission of a reduced utilization plan were designed to apply broadly. In particular, a plan is not required to the extent underutilization is caused by economic dispatching. Consequently, under these criteria, plan submission is largely optional so long as the allowance surrender requirements are met.

However, despite their broad scope, the criteria still leave some uncertainty as to whether the Agency will agree that a reduced utilization plan is not required even if allowances are surrendered. Further, owners and operators of Phase I units carry the burden of showing that the criteria are met. In fact, the January 11, 1993 regulations require Phase I unit owners and operators to show in their annual compliance certification reports the amounts of underutilization caused by sales decline, forced outage, or economic dispatching. 40 CFR 72.92(a)(2) (1993). The annual reports must also include specified information on forced outages at Phase I units. 40 CFR 72.92(a)(3) (1993). Additional submissions are required during the year in the event of a forced outage that will permanently shut down a Phase I unit and result in shifting generation to other units. 40 CFR 72.92(b)(1) (1993). Yet, this uncertainty and burden serve no real purpose if the allowance surrender requirements of §§ 72.91 and 72.92 are met. The allowance surrender procedures account for the emissions consequences of underutilization and consequent shifting of generation and therefore obviate the need for a reduced utilization plan under section 408(c)(1)(B) of the Act. Once underutilization is accounted for under §§ 72.91 and 72.92, there is no basis for requiring any further accounting through the designation of compensating units or energy conservation or unit efficiency measures.

The Agency concludes that § 72.43(e) should be revised so that the requirement to submit a reduced utilization plan for an underutilized Phase I unit is eliminated if the allowance surrender and reporting requirements of §§ 72.91 and 72.92 are met. This is a reasonable way of harmonizing sections 408(c)(1)(B) and 403(d) of the Act. The other criteria in § 72.43(e) are therefore superfluous and are removed. Sections 72.92(a)(2) and (3) and (b)(1) of the January 11, 1993 regulations, requiring submission of information in annual and other reports related to the removed criteria in § 72.43(e), are also unnecessary and are removed.[1]

III. Dispatch System

The dispatch system of a unit plays an important role in the allowance surrender calculations under §§ 72.91 and 72.92. For example, if a Phase I unit has a reduced utilization plan, the amount of reduced utilization accounted for under the plan (by a compensating unit, conservation or improved unit efficiency measures, or sulfur-free generators) must be determined. See 40 CFR 72.91(a)(3) (1993) (requiring calculation of "plan reductions"). The percentage change in the total sales of the dispatch system is a factor in calculating reduced utilization accounted for by a sulfur-free generator. 40 CFR 72.91(a)(3)(iii) (1993). As a further example, the total generation produced by the units and generators in a dispatch system during a Phase I calendar year must be used to determine the percentage of total dispatch system sales for the year that was generated by units and generators in the dispatch system. That percentage is used in calculating the emissions rate that is in turn used to determine how many allowances must be surrendered for the year. 40 CFR 72.92(c)(2)(v)(A) (1993).

The Agency is revising § 72.33(a), (b), and (c) to clarify certain matters concerning the determination of a unit's dispatch system. In addition, while § 72.33(f) allowed owners and operators of Phase I units to request that a Phase I unit be apportioned among its owners and their dispatch systems, certain revisions of the provision are needed to make it more workable and to coordinate it with the allowance surrender procedures under §§ 72.91 and 72.92.

A. Utility System and Identification of Dispatch System

Under § 72.33, each Phase I unit must be treated as part of a dispatch system for purposes of the allowance surrender procedures,[2] and the unit's utility

[1] In addition, § 72.91(a) of the January 11, 1993 regulations is revised to make it clear that the reporting requirements in § 72.91 apply only to calendar years in Phase I. Since § 72.92(a) applies to calendar years covered by § 72.91, this limitation applies to reporting under both sections. This reflects the fact that reduced utilization is a problem only in Phase I, when a minority of utility units are subject to Acid Rain SO_2 emissions limitations. See 56 FR 63018 and 58 FR 3605.

[2] Because the allowance surrender procedures are found in both § 72.91 and § 72.92, § 72.33(a) is revised to refer to both sections. The same change is made, for the same reason, in § 72.33(c)(4) and (e)(2) and § 72.33(f)(2) (iv) and (v). This conforms

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system (as defined in § 72.2) is its dispatch system unless a complete identification of dispatch system including that unit is submitted under § 72.33.

In the January 11, 1993 regulations, utility system is defined as all interconnected units and generators controlled by the same utility operating company, as reported in the National Allowance Data Base (NADB). The difficulty with this definition is that the NADB was published in final form in March 1993 and necessarily reflects information on utility systems as of that time. The Agency recognizes that the owners and operators of some units have changed since 1993 and, particularly in light of increased competition in the electric utility industry, that more changes may occur during Phase I. In order to clarify that designated representatives may submit identifications of dispatch system to correct the utility system in which a unit or generator is listed in the NADB and that is used as its dispatch system, the Agency is revising the utility-system definition. Section 72.2 now defines utility system as all interconnected units and generators operated by the same utility company and does not refer to the NADB. Section 72.33(e)(1) is revised to state that unless otherwise provided in an identification of dispatch system, a unit or generator included in the NADB retains, as its dispatch system, the utility system reported in the NADB.

The NADB lists one utility operating company for each Phase I unit, Phase II unit, and non-affected unit in the database. Section 72.33(b)(2) of the January 11, 1993 regulations states that, except as provided under § 72.33(f), no Phase I unit may be listed in more than one identification of dispatch system. Although § 72.33(b) of the January 11, 1993 regulations does not state explicitly that other units or generators also must be confined to a single identification of dispatch system, other provisions of the regulations reflect such a limitation. For example, § 72.33(f) states that, except for the provisions for apportioning Phase I units under § 72.33(f), all provisions of the regulations "applicable to an affected source or affected unit * * * apply to the entire unit." 40 CFR 72.33(f)(6) (1993). By further example, the provisions requiring calculation of the "total" generation of the units and generators in a dispatch system are based on entire units and generators and do not provide for division of a unit's or generator's generation among more than one dispatch system, except for Phase I units apportioned under § 72.33(f). 40 CFR 72.92(c)(2)(v)(A) (1993). See also 40 CFR 72.91(a)(3)(iii)(A) (1993) ("actual annual" generation of the sulfur-free generator). In addition, dispatch system emissions rate, which is calculated using the actual annual emissions rate of all Phase II units in the dispatch system, is based on the utilization of entire units, and there is no provision allowing apportionment of Phase II units. 40 CFR 72.92(c)(2)(v)(C) (1993).

In order to remove any possible uncertainty concerning the treatment of Phase II units, non-affected units, and generators (including sulfur-free generators and, as discussed below, non-utility generators), the Agency is revising § 72.33(b)(2) to state that, with one exception, a unit or generator can be included in only one dispatch system.[3] The only exception is provided in § 72.33(f), under which a petition to apportion a Phase I unit among two or more dispatch systems may be submitted and approved. Section 72.33(f) provides that, if the petition is approved, the portions of the Phase I unit will be treated as separate units under §§ 72.91 and 72.92, the allowance surrender provisions.

Several other revisions are made here to the provisions concerning identification of dispatch system. While the January 11, 1993 regulations require a complete identification of dispatch system to include a list of all units and sulfur-free generators in the dispatch system, the revised rule expands that list to include all generators, including sulfur-free generators and non-utility generators. The January 11, 1993 regulations also require that if the submissions under §§ 72.91 and 72.92 by all designated representatives of the units in the identified dispatch system do not conform to the system-wide data provided for the dispatch system, the Administrator must reject the identification of dispatch system and all the submissions and require resubmission using the utility system of each unit as that unit's dispatch system. The revised regulations make such rejection optional so that the Agency may instead require corrections of the submissions and allow the identification of dispatch system to remain in effect. Sections 72.33(c)(4) and (e)(2) are revised to implement that change. Finally, § 72.33(b)(3) is revised so that the deadline for providing an identification of dispatch system is the same as for providing a petition to apportion a Phase I unit under § 72.33(f)(1), i.e., submission to EPA by January 30 of the year that the dispatch system is to take effect.

B. Apportionment of Phase I Units

The January 11, 1993 regulations only allow for the apportionment of Phase I units, and such apportionment is only for the purpose of applying the allowance surrender procedures of §§ 72.91 and 72.92. Under § 72.33(f) of the January 11, 1993 regulations, Phase I units with multiple owners may petition to divide up the unit, for allowance surrender, into portions, i.e., one or more individual owners' portions representing the owners' respective percentage ownership interests in the capacity of the unit and the remaining portion of the unit. The petition requests that each individual owner's portion be treated as part of a dispatch system different than the dispatch system of the remaining portion. If the petition is approved, the adjusted utilization (which, if greater than zero, is underutilization) is calculated for the entire unit for the Phase I year governed by the approved petition, and each portion of the unit takes its percentage of the adjusted utilization reflecting the ownership percentage that the portion of the unit represents. Each portion of the unit then uses its share of the entire unit's adjusted utilization in calculating how many allowances (if any) must be surrendered for underutilization of the Phase I units in its respective dispatch system.

The Agency received public comment expressing concern that requiring the portions of a Phase I unit to divide among them the adjusted utilization calculated for the entire unit fails to reflect differences among the Phase I unit owners' respective utilizations of their shares of the unit. While during the Phase I year one owner might take generation representing more than its percentage share of the baseline of the entire unit, another owner might take generation representing less than its percentage share.

Section 72.33(f) is revised to require the separate calculation of adjusted utilization under § 72.91 for each portion of the unit for which a petition to apportion is approved and for the remaining portion of the unit. This approach meets the commenters' concerns. The separate calculation of adjusted utilization is made a uniform requirement for all apportioned Phase I units in order to ensure that overall there is no net adverse environmental impact from apportionment and to avoid the potential confusion and administrative burden of having two entirely different approaches for calculating reduced utilization of apportioned units.

Public comment has also been directed at the requirement that apportionment be based exclusively on the owners' percentage ownership interest in the capacity of the Phase I unit. According to commenters, unit owners in some cases have entered into private agreements to divide up the allowances allocated to the unit based on percentage ownership of capacity during 1985–1987 while owners in other cases have agreed to divide up allocated allowances based on each owner's percentage share of utilization of the unit during 1985–1987. Commenters have requested that the regulations allow the basis for unit apportionment for purposes of allowance surrender to be consistent with the basis for dividing up the unit's allowance allocation.

The Agency is willing to meet these concerns and accommodate underlying private agreements among unit owners so long as the resulting regulatory provisions are not too complex and do not appear to cause overall any net adverse environmental impact. This is consistent with the Agency's general approach of avoiding interfering with existing relationships among owners and operators. See 58 FR 3598. Consequently, the revised § 72.33(f) allows the designated representative to elect in the apportionment petition one of two methods for apportioning the Phase I unit: the first method is based on the average of the owner's percentage ownership of the capacity of the unit for each year in 1985–1987; and the second method is based on the average of the unit's annual utilization that is attributed to the owner for 1985–1987. In order to avoid gaming by changing the apportionment method to minimize allowance surrender each year, the regulations make the selection of the apportionment method a one-time election for each Phase I unit. The same apportionment method must be used for all portions of the units for all years in Phase I for which any petition to apportion is approved and in effect.

Further, the Agency is concerned that, whichever apportionment method is elected, the baselines and actual utilizations for the portions of the unit must not double-count or undercount any of the baseline and actual utilization for the entire unit. Consequently, the revised regulations require that the sum of the baselines of the portions of the unit (including the individual owners' portions and the remaining portion of the unit) equal 100% of the baseline of the entire unit. Similarly, for each Phase I year, the sum of the actual utilizations of the portions must equal 100% of the entire unit's actual utilization. In order to ensure that the attribution of a unit's utilization (whether baseline or actual utilization) to specific owners is not arbitrary, the regulations require that the same accounting procedures used to attribute the unit's fuel costs among the owners be used for attributing utilization. This is reasonable because fuel costs at a unit are directly related to the unit's utilization (i.e., the mmBtu of fuel consumed).

The revised § 72.33(f) establishes the requirements for the contents of a complete petition to apportion and provides that the Administrator may prescribe a format. In addition to the requirements in the January 11, 1993 regulations, the petition must include the election of apportionment method and a list of the units and generators and apportioned units to be included in the dispatch system proposed for each portion of the unit covered by the petition. The designated representative is not required to submit with the petition the documentation supporting the baselines for the portions of the unit or the dispatch systems proposed for each portion of the unit. The Agency maintains that this is a sound approach in light of: the certifications by the designated representatives that the information in the petition is true, accurate, and complete; the Agency's ability to require submission of additional information before acting on the petition or at any other time; and the potential for after-the-fact spot audits.

The January 11, 1993 regulations require that, with regard to the dispatch system proposed for each owner's portion of the unit, the dispatch system must be a group of all units and generators that are interconnected and centrally dispatched and that are included in the same utility system, holding company, or power pool. The difficulty with this requirement is that a Phase I unit to be apportioned has multiple owners and only one owner may be the operator. A non-operating owner's portion of the unit cannot be in the "utility system" of the non-operating owner's other units and generators because, as defined in § 72.2, only units and generators with the same operator comprise a "utility system". In order to avoid this problem, the revised regulations require that the proposed dispatch system for each owner's portion of the unit include all units and generators that are interconnected and centrally dispatched by a single utility system, the service company of a single holding company, or a single power pool.

Upon approval of an apportionment petition and the proposed dispatch systems, the allowance surrender formulas are applied to each portion of the Phase I unit and its respective dispatch system. The designated representative of the apportioned unit must surrender all allowances required for surrender by each portion of the unit.

There is no provision in the January 11, 1993 regulations for termination of an approved apportionment of a Phase I unit. The Agency is concerned that after approval of an apportioned Phase I unit, circumstances may change so that the apportionment is no longer appropriate. For example, the owner of one portion of the apportioned unit could sell its entire interest in the unit and stop dispatching that portion of the unit. The dispatch system that, because of the approved apportionment, includes that portion of the unit would now include a portion of the unit that was no longer centrally dispatched along with the other units and generators in the dispatch system. That aspect of the approved apportionment (and the designated representative's certification concerning the continued central dispatching of the dispatch system) would no longer be accurate and the apportionment should be terminated. Of course, a new apportionment reflecting the new composition of ownership interests in the Phase I unit could be submitted for approval. Even without any change in ownership or dispatching, the owners of the Phase I unit might determine that an apportionment is no longer desirable. To accommodate changes in circumstance and to provide owners more flexibility, the revised regulations include a procedure for terminating apportionments. If a notice of termination is signed by the designated representatives of all units that could be affected by the termination (i.e., of all units included in all dispatch systems that include any portion of the unit) and submitted by January 30, the apportionment is terminated for that year and all remaining Phase I years.

IV. Emissions Rate

The January 11, 1993 regulations require that the emissions consequences

[3] The units and generators included in a given dispatch system under § 72.33(b) or (e) may be changed under § 72.33(d). A complete identification of dispatch system, reflecting the change, must be submitted for both the dispatch system from which the units or generators are removed and the dispatch system to which the units or generators are added. If the entire dispatch system from which the units or generators are removed is included in the dispatch system to which they are added, then an identification of dispatch system is necessary only for the latter dispatch system.

these provisions with other provisions in the January 11, 1993 regulations that cite both sections.

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of underutilization for a dispatch system be estimated for each Phase I year by multiplying that underutilization (referred to as "dispatch system adjusted utilization") by an emissions rate for generation used by the dispatch system to compensate for the underutilization. The emissions rate is composed of an emissions rate for compensating generation produced by non-Phase I units and generators within the dispatch system and another emissions rate for compensating generation produced outside the dispatch system by non-Phase I, non-foreign units and generators and acquired by the dispatch system. To calculate the composite emissions rate, the emissions rate for generation within the dispatch system is weighted by a fraction equal to total generation by the units and generators in the dispatch system divided by total dispatch system sales (i.e., total sales for direct use or resale) of the named utility system, holding company, or power pool that is the dispatch system) for the year. The actual annual emissions rates of the Phase II units in the dispatch system are used as a proxy for the actual emissions rates of all non-Phase I units and generators in the dispatch system. Similarly, the emissions rate for generation outside the dispatch system is weighted by the fraction of total dispatch system sales that is accounted for by generation outside the dispatch system. NERC region emissions rates for non-Phase I, non-foreign units for 1985 are used as a proxy for the current emissions rates of non-Phase I, non-foreign units and generators.

In light of public comment concerning compensating generation from non-utility generators, the calculation of the emissions rate of non-Phase I units in the dispatch system, and 1985 NERC emissions rates, the Agency is revising these aspects of the January 11, 1993 regulations.

A. Non-Utility Generators

The Agency received public comment that some utilities are required by Federal or State law or by order of their State public utility commission to purchase electricity from non-utility generators. This required purchase of electricity may result in reduced utilization of the utility's own Phase I units. Since non-utility generators may have a different—apparently often lower—emissions rate than that of the utility's Phase II units or the NERC region emissions rate, the commenters urged that the formulas in § 72.92 be revised to take account of this third possible source of compensating generation.

The allowance surrender procedures in §§ 72.91 and 72.92 are not intended to result in a precise calculation of the emissions consequences of underutilization of Phase I units. The procedures were adopted to provide an administratively feasible method of developing reasonable estimates of the emissions resulting from generation compensating for underutilization. In light of this goal, the January 11, 1993 regulations establish a composite emissions rate based on two general categories of compensating generation. Because some utilities are obligated by law to purchase non-utility generation that may force them to reduce generation at their own units and because non-utility generators tend to have relatively low SO_2 emissions, the Agency is revising the regulations to take account of non-utility generation. This change increases somewhat the complexity of the allowance surrender formulas but, as a practical matter, only utilities that must buy from non-utility generators are affected by the change. While the Agency maintains that, on balance, the change is reasonable, the Agency stresses that the allowance surrender formulas are only intended to estimate emissions and that any more refinements that would further complicate the formulas would seem to be counterproductive.

The provisions incorporating non-utility generators into the allowance surrender procedures are premised on the fact that utilities acquiring non-utility generation have very limited information about the non-utility generators. Utilities contract to purchase non-utility generation but, as a result of not owning or operating these generators, have little or no knowledge about the fuels used by, and the heat rates and emission rates of, the generators. The Agency similarly has limited information about non-utility generators because they are not affected units. Consequently, the revised regulations use the available information on these generators (i.e., their emissions limitations and Kwh sales to utilities) to estimate emissions from compensating generation acquired from them.

In order to be treated as a non-utility generator, a power production facility cannot be an affected unit or a sulfur-free generator. The facility must use its most stringent federally enforceable or State enforceable SO_2 emissions limitation for the Phase I year as the estimate of its actual emissions rate.[4] With one exception, if no unit-specific limitation that can be expressed in lbs/mmBtu is applicable to the facility for the year, then the facility cannot be treated as a non-utility generator for that year. The only exception is where a facility without an emissions limitation is authorized by law to use only natural gas as fuel; in that case the most stringent emissions limitation for the facility is deemed to be 0.0006 lbs/mmBtu.[5]

As discussed above, the January 11, 1993 regulations calculate a composite emissions rate for a dispatch system reflecting compensating generation from within or from outside the dispatch system. The revised regulations introduce a third category, non-utility generation from non-utility generators, which equals the total generation acquired from non-utility generators that the dispatch system is required to purchase by Federal or State law or order of a utility regulatory commission or under a contract awarded as the result of a power purchase solicitation required by Federal or State law or utility regulatory commission order. To prevent double-counting, such generation is excluded in calculating the fractions of dispatch system sales accounted for by generation within or outside the dispatch system. Total non-utility generation from non-utility generators is used to calculate the fraction of dispatch system sales accounted for by such generators.

The non-utility generator average emissions rate is calculated using the most stringent emissions limitation (or for natural-gas-only facilities, the default emissions rate) for each non-utility generator from which the dispatch system was required to purchase electricity, weighted by the amount (kwh) of required electricity purchases during the year. The fraction of generation from non-utility generators and the non-utility generator average emissions rate are used, along with the comparable data for generation within and outside the dispatch system, to derive the composite emissions rate multiplied by the underutilization for the dispatch system for the year.[6] This yields the total number of allowances

[4] If emissions limitations vary depending on the fuel used, the most stringent emissions limitation must be calculated for each fuel used. The resulting limitation with the highest lbs/mmBtu must be used as the estimate for the actual emissions rate of the non-utility generator.

[5] This default emissions rate is the average SO_2 emissions rate for natural gas and was used for purposes of allocating allowances to utility units under section 405 of the Act. See Compilation of Air Pollutant Emission Factors (AP–42), Vol. 1 at 1.4–1 through 1.4–3, US EPA (4th ed. 1985).

[6] The dispatch-system-wide data related to non-utility generators must be included in the dispatch system data report under § 72.92(b).

that must be surrendered by Phase I units in the dispatch system.

B. Dispatch System Emissions Rate

The January 11, 1993 regulations use the actual annual emissions rate for a dispatch system's Phase II units to estimate the emissions rate for the dispatch system's non-Phase I units. In the December 3, 1991 proposed regulations, the Agency proposed to weight the actual annual emissions rate for each Phase II unit by the amount of the Phase II unit's increase in utilization for the year over baseline. 56 FR 63147–48 (Dec. 3, 1991). The January 11, 1993 regulations adopted a simpler approach of weighting actual annual emissions rates by each Phase II unit's total utilization for the year. 58 FR 3685.

However, the Agency has received public comments suggesting that weighting by the increase over baseline provides a more realistic estimate. It seems reasonable to treat a utilization reduction since 1985–1987 of one unit in a dispatch system as being compensated for by a utilization increase since 1985–1987 of another unit in that dispatch system. Further, this approach is similar to that taken with regard to sulfur-free generators. Compensating generation claimed to be acquired from sulfur-free generators under a reduced utilization plan cannot exceed the amount of electricity produced by the sulfur-free generator in excess of the average annual amount produced by the generator in 1985–1987. See 58 FR 3682. For these reasons, the Agency is revising the provisions for calculating dispatch system emissions rate to weight Phase II units' actual emissions rates by each unit's increased utilization over baseline. However, the Agency recognizes that it is possible that no Phase II unit in a dispatch system has increased utilization over baseline. In that case, non-affected units are providing the compensating generation but, because of the lack of emissions data from such units, the Phase II unit emissions rate must still be used as a proxy for non-affected units' emissions rates. The revised regulations therefore provide that if no Phase II unit is used above baseline, an average rate must be calculated using the Phase II units' annual actual emissions rates weighted by each unit's total utilization. Moreover, if a dispatch system has no Phase II unit emissions rate for the year, the NERC region emissions data will be used instead.

C. NERC Region Emissions Rate

The January 11, 1993 regulations use 1985 NERC data to establish the non-Phase I, non-foreign emissions rate for each NERC region. The 1985 emissions rate for units in the NERC region is multiplied by the fraction of non-Phase I, nonforeign units in the NERC region in order to exclude generation and resulting emissions from Phase I units and all foreign units and generators.

The Agency has learned through public comment that the figures in the regulations for the fraction of non-Phase I, non-foreign generation contained inadvertent errors and failed to actually exclude foreign generation. The Agency has recalculated the fractions of non-Phase I, non-foreign generation for each NERC region. Table 1 of the revised regulations includes the corrected figures so that foreign generation is excluded as intended.[7]

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

[7] The definition of "sulfur-free generation" is revised to make it clear that only facilities in the 48 contiguous states in the United States or the District of Columbia may qualify as sulfur-free generators under reduced utilization plans. All foreign generation (including foreign generation that involves no SO_2 emissions) that offset underutilization is already excluded from allowance surrender in the revised Table 1. Allowing foreign facilities to be designated as sulfur-free generators and the generation acquired from them to be used to offset underutilization would double-count such generation.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this direct final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule has the net effect of reducing the burden of part 72 of the Acid Rain regulations on regulated entities, including both investor-owned and municipal utilities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been assigned control number 2060–0258.

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This collection of information reduces the estimated burden, as compared to the burden under the January 11, 1993 regulations, by an average of 35 hours per response for about 110 responses. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW. (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires each federal agency to consider potential impacts of its regulations on small business "entities." Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

In the preamble of the January 11, 1993 regulations, the Administrator certified that those regulations, including the provisions revised by today's final rule, would not have a significant impact. 58 FR 3649. The final rule revisions adopted today are not significant enough to change the economic impact addressed in the January 11, 1993 preamble. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 72

Environmental protection, Acid rain program, Air pollution control, Compliance plans, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 31, 1995.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by revising the definitions for "sulfur-free generation" and "utility system" to read as follows:

§ 72.2 Definitions.

* * * * *

Sulfur-free generation means the generation of electricity by a process that does not have any emissions of sulfur dioxide, including hydroelectric, nuclear, solar, or wind generation. A "sulfur-free generator" is a generator that is located in one of the 48 contiguous States or the District of Columbia and produces "sulfur-free generation."

* * * * *

Utility system means all interconnected units and generators operated by the same utility operating company.

* * * * *

3. Section 72.33 is amended by revising paragraphs (a), (b)(2), (b)(3), (c)(2), (c)(4), (e), and (f) to read as follows:

§ 72.33 Identification of dispatch system.

(a) Every Phase I unit shall be treated as part of a dispatch system for purposes of §§ 72.91 and 72.92 in accordance with this section.

(b) * * *

(2) Except as provided in paragraph (f) of this section, each unit or generator may be included in only one dispatch system.

(3) Any identification of dispatch system must be submitted by January 30 of the first year for which the identification is to be in effect.

(c) * * *

(2) The list of all units and generators (including sulfur-free generators) in the dispatch system.

* * * * *

(4) The following statement: "I certify that, except as otherwise required under a petition as approved under 40 CFR 72.33(f), the units and generators listed herein are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this identification of dispatch system is in effect. During such period, all information concerning these units and generators and contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform with the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(e)(2)."

* * * * *

(e) (1) Any unit or generator not listed in a complete identification of dispatch system that is in effect shall treat its utility system as its dispatch system and, if such unit or generator is listed in the NADB, shall treat the utility system reported under the data field "UTILNAME" of the NADB as its utility system.

(2) During the period that the identification of dispatch system is in effect all information that concerns the units and generators in a given dispatch system and that is contained in any submissions under §§ 72.91 and 72.92 by designated representative of these units shall be consistent and shall conform with the data in the dispatch system data reports under § 72.92(b). If this requirement is not met, the Administrator may reject all such submissions and require the designated representatives to make the submissions under §§ 72.91 and 72.92 (including the dispatch system data report) treating the utility system of each unit or generator as its respective dispatch system and treating the identification of dispatch system as no longer in effect.

(f)(1) Notwithstanding paragraph (e)(1) of this section or any submission of an identification of dispatch system under paragraphs (b) or (d) of this section, the designated representative of a Phase I unit with two or more owners may petition the Administrator to treat, as the dispatch system for an owner's portion of the unit, the dispatch system of another unit.

(i) The owner's portion of the unit shall be based on one of the following apportionment methods:

(A) *Owner's share of the unit's capacity in 1985–1987.* Under this method, the baseline of the owner's portion of the unit shall equal the

baseline of the unit multiplied by the average of the owner's percentage ownership of the capacity of the unit for each year during 1985–1987. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(B) *Owner's share of the unit's baseline.* Under this method, the baseline of the owner's portion of the unit shall equal the average of the unit's annual utilization in 1985–1987 that is attributed to the owner. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(ii) The annual or actual utilization of a unit shall be attributed, under paragraph (f)(1)(i) of this section, to an owner of the unit using accounting procedures consistent with those used to determine the owner's share of the fuel costs in the operation of the unit during the period for which the annual or actual utilization is being attributed.

(iii) Upon submission of the petition, the designated representative may not change the election of the apportionment method or the baseline of the owner's portion of the unit.

The same apportionment method must be used for all portions of the unit for all years in Phase I for which any petition under paragraph (f)(1) of this section is approved and in effect.

(2) The petition under paragraph (f)(1) of this section shall be submitted by January 30 of the first year for which the dispatch system proposed in the petition will take effect, if approved. A complete petition shall include the following elements in a format prescribed by the Administrator:

(i) The election of the apportionment method under paragraph (f)(1)(i) of this section.

(ii) The baseline of the owner's portion of the unit and the baseline of any other owner's portion of the unit for which a petition under paragraph (f)(1) of this section has been approved or has been submitted (and not disapproved) and a demonstration that the sum of such baselines and the baseline of any remaining portion of the unit equals 100 percent of the baseline of the unit. The designated representative shall also submit, upon request, either:

(A) Where the unit is to be apportioned under paragraph (f)(1)(i)(A) of this section, documentation of the average of the owner's percentage ownership of the capacity of the unit for each year during 1985–1987; or

(B) Where the unit is to be apportioned under paragraph (f)(1)(i)(B) of this section, documentation showing the attribution of the unit's utilization in 1985, 1986, and 1987 among the portions of the unit and the calculation of the annual average utilization for 1985–1987 for the portions of the unit.

(iii) The name of the proposed dispatch system and a list of all units (including portions of units) and generators in that proposed dispatch system and, upon request, documentation demonstrating that the owner's portion of the unit, along with the other units in the proposed dispatch system, are a group of all units and generators that are interconnected and centrally dispatched by a single utility company, the service company of a single holding company, or a single power pool.

(iv) The following statement, signed by the designated representatives of all units in the proposed dispatch system: "I certify that the units and generators in the dispatch system proposed in this petition are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this petition, as approved, is in effect."

(v) The following statement, signed by the designated representatives of all units in all dispatch systems that will include any portion of the unit if the petition is approved: "During the period that this petition, if approved, is in effect, all information that concerns the units and generators in any dispatch system including any portion of the unit apportioned under the petition and that is contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform to the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(f) (4) and (5)."

(3) (i) The Administrator will approve in whole, in part, or with changes or conditions, or deny the petition under paragraph (f)(1) of this section within 90 days of receipt of the petition. The Administrator will treat the petition, as changed or conditioned upon approval, as amending any identification of dispatch system that is submitted prior to the approval and includes any portion of the unit for which the petition is approved. Where any portion of a unit is not covered by an approved petition, that remaining portion of the unit shall continue to be part of the unit's dispatch system.

(ii) In approving the petition, the Administrator will determine, on a case-by-case basis, the proper calculation and treatment, for purposes of the reports required under §§ 72.91 and 72.92, of plan reductions and compensating generation provided to other units.

(4) The designated representative for the unit for which a petition is approved under paragraph (f)(3) of this section and the designated representatives of all other units included in all dispatch systems that include any portion of the unit shall submit all annual compliance certification reports, dispatch system data reports, and other reports required under §§ 72.91 and 72.92 treating, as a separate Phase I unit, each portion of the unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit. The reports shall include all required calculations and demonstrations, treating each such portion of the unit as a separate Phase I unit. Upon request, the designated representatives shall demonstrate that the data in all the reports under §§ 72.91 and 72.92 has been properly attributed or apportioned among the portions of the unit and the dispatch systems and that there is no undercounting or double-counting with regard to such data.

(i) The baseline of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(1) (i) and (ii) of this section. The baseline of the remaining portion of such unit shall equal the baseline of the unit less the sum of the baselines of any portions of the unit for which a petition is approved.

(ii) The actual utilization of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(1) (i) and (ii) of this section. The actual utilization of the remaining portion of such unit shall equal the actual utilization of the unit less the sum of the actual utilizations of any portions of the unit for which a petition is approved. Upon request, the designated representative of the unit shall demonstrate in the annual compliance certification report that the requirements concerning calculation of actual utilization under paragraph (f)(1)(ii) and any requirements established under paragraph (f)(3) of this section are met.

(iii) Except as provided in paragraph (f)(5) of this section, the designated representative shall surrender for deduction the number of allowances calculated using the formula in § 72.92(c) and treating, as a separate Phase I unit, each portion of unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit.

(5) In the event that the designated representatives fail to make all the proper attributions, apportionments,

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calculations, and demonstrations under paragraph (f)(4) of this section and §§ 72.91 and 72.92, the Administrator may require that:

(i) All portions of the unit be treated as part of the dispatch system of the unit in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section;

(ii) The designated representatives make all submissions under §§ 72.91 and 72.92 (including the dispatch system data report), treating the entire unit as a single Phase I unit, in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section; and

(iii) The designated representative surrender for deduction the number of allowances calculated, consistent with the reports under paragraph (f)(5)(ii) of this section and §§ 72.91 and 72.92, using the formula in § 72.92(c) and treating the entire unit as a single Phase I unit.

(6) The designated representative may submit a notification to terminate an approved petition by January 30 of the first year for which the termination is to take effect. The notification must be signed and certified by the designated representatives of all units included in all dispatch systems that include any portion of the unit apportioned under the petition. Upon receipt of the notification meeting the requirements of the prior two sentences by the Administrator, the approved petition is no longer in effect for that year and the remaining years in Phase I and the designated representatives shall make all submissions under §§ 72.91 and 72.92 treating the petition as no longer in effect for all such years.

(7) Except as expressly provided in paragraphs (f)(1) through (6) of this section or the Administrator's approval of the petition, all provisions of the Acid Rain Program applicable to an affected source or an affected unit shall apply to the entire unit regardless of whether a petition has been submitted or approved, or reports have been submitted, under such paragraphs. Approval of a petition under such paragraphs shall not constitute a determination of the percentage ownership in a unit under any other provision of the Acid Rain Program and shall not change the liability of the owners and operators of an affected unit that has excess emissions under § 72.9(e).

4. Section 72.43 is amended by revising paragraph (e) to read as follows:

§ 72.43 Phase I reduced utilization plans.

* * * * *

(e) *Failure to Submit a Plan.* The designated representative of a Phase I unit will be deemed not to violate, during a Phase I calendar year, the requirement to submit a reduced utilization plan under paragraph (b)(1) or (4) of this section if the designated representative complies with the allowance surrender and other requirements of §§ 72.33, 72.91, and 72.92 of this chapter.

* * * * *

5. Section 72.91 is amended by revising the introductory language of paragraph (a) (the formula is unchanged) to read as follows:

§ 72.91 Phase I unit adjusted utilization.

(a) *Annual Compliance Certification Report.* The designated representative for each Phase I unit shall include in the annual compliance certification report the unit's adjusted utilization for the calendar year in Phase I covered by the report, calculated as follows:

* * * * *

6. Section 72.92 is amended by revising paragraphs (a), (b)(2)(ii)(F), (b)(2)(ii)(G), (b)(2)(ii)(H), (c)(2)(v) and Table 1, removing and reserving paragraph (b)(1), and adding paragraphs (b)(2)(ii)(I) and (b)(2)(ii)(J) to read as follows:

§ 72.92 Phase I unit allowance surrender.

(a) *Annual Compliance Certification Report.* If a Phase I unit's adjusted utilization for the calendar year in Phase I under § 72.91(a) is greater than zero, then the designated representative shall include in the annual compliance certification report the number of allowances that shall be surrendered for adjusted utilization using the formula in paragraph (c) of this section and the calculations that were performed to obtain that number.

(b) *Other Submissions.*

(1) [Reserved]

(2) * * *

(ii) * * *

(F) The calculation of "dispatch system emissions rate" under paragraph (c)(2)(v)(B) of this section;

(G) The calculation of "fraction of generation from non-utility generators" under paragraph (c)(2)(v)(C) of this section;

(H) The calculation of "non-utility generator average emissions rate " under paragraph (c)(2)(v)(F) of this section;

(I) A certification that each designated representative will use these figures, as appropriate, in its annual compliance certification report and will submit upon request the data supporting these calculations; and

(J) The signatures of all the designated representatives.

(c) * * *

(2) * * *

(v) *Calculating Emissions Rate.* "Emissions rate" (in lbs/mmBtu) is the weighted average emissions rate for sulfur dioxide of all units and generators, within and outside the dispatch system, that contributed to the dispatch system's electrical output for the year, calculated as follows:

Emissions rate = [fraction of generation within dispatch system × dispatch system emissions rate] + [fraction of generation from non-utility generators × non-utility generator average emissions rate] + [fraction of generation outside dispatch system × fraction of non-Phase 1 and non-foreign generation in NERC region × NERC region emissions rate]

Where:

(A) "Fraction of generation within dispatch system" is the fraction of the dispatch system's total sales accounted for by generation from units and generators within the dispatch system, other than generation from non-utility generators. This term equals the total generation (in Kwh) by all units and generators within the dispatch system for the calendar year minus the total non-utility generation from non-utility generators within the dispatch system for the calendar year and divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(B) Dispatch system emissions rate" is the weighted average rate (in lbs/mmBtu) for the dispatch system calculated as follows:

Dispatch system emissions rate =

$$\sum_{i=1}^{k} g_i r_i \div \sum_{i=1}^{k} g_i$$

Where:

g_i = the difference between a Phase II unit's actual utilization for the calendar year and that Phase II unit's baseline. If that difference is less than or equal to zero, then the difference shall be treated as zero only for purposes of paragraph (c)(2)(v) of this section and that unit will be excluded from the calculation of dispatch system emissions rate. Notwithstanding the prior sentence, if the actual utilization of each Phase II unit for the year is equal to or less than the baseline, then g_i shall equal a Phase II unit's actual utilization for the year. Notwithstanding any provision in this paragraph (c)(2)(v)(B) to the contrary, if the actual utilization of each Phase II unit in the dispatch system is zero or there are no Phase II units in the dispatch system, then the dispatch system emissions rate shall equal the fraction of non-Phase I and non-foreign generation in the NERC region multiplied by the NERC region emissions rate.

r_i = a Phase II unit's emissions rate (in lbs/mmBtu), determined in accordance with part 75 of this chapter, for the calendar year.

k = number of Phase II units in the dispatch system.

(C) "Fraction of generation from non-utility generators" is the fraction of the dispatch system's total sales accounted for by generation acquired from non-utility generators within or outside the dispatch system. This term equals the total non-utility generation from non-utility generators (within or outside the dispatch system) for the calendar year divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(D) "Non-utility generator" is a power production facility (within or outside the dispatch system) that is not an affected unit or a sulfur-free generator and that has a "non-utility generator emissions rate" for the calendar year under paragraph (c)(2)(v)(F) of this section.

(E) "Non-utility generation" is the generation (in Kwh) that the dispatch system acquired from a non-utility generator during the calendar year as required by federal or State law or an order of a utility regulatory authority or under a contract awarded as the result of a power purchase solicitation required by federal or State law or an order of a utility regulatory authority.

(F) "Non-utility generator average emissions rate" is the weighted average rate (in lbs/mmBtu) for the non-utility generators calculated as follows:

Non-utility generator average emissions rate =

$$\sum_{i=1}^{n} N_i R_i \div \sum_{i=1}^{n} N_i$$

Where:

N_i = non-utility generation from a non-utility generator;

R_i = non-utility generator emissions rate for the calendar year for a non-utility generator, which shall equal the most stringent federally enforceable or State enforceable SO_2 emissions limitation applicable for the calendar year to such power production facility, as determined in accordance with paragraphs (c)(2)(v)(F) (*1*), (*2*), and (*3*) of this section; and

n = number of non-utility generators from which the dispatch system acquired non-utility generation. If n equals zero, then the non-utility generator average emissions rate shall be treated as zero only for purposes of paragraph (c)(2)(v) of this section.

(*1*) For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with Appendix B of this part. If an applicable emissions limitation cannot be converted to a unit-specific limitation in lbs/mmBtu under appendix B of this part, then the limitation shall not be used in determining the most stringent emissions limitation. Where the power production facility is subject to different emissions limitations depending on the type of fuel it uses during the calendar year, the most stringent emissions limitation shall be determined separately with regard to each type of fuel and the resulting limitation with the highest amount of lbs/mmBtu shall be treated as the facility's most stringent federally enforceable or State enforceable emissions limitation.

(*2*) If there is no applicable emissions limitation that can be used in determining the most stringent emissions limitation under paragraph (c)(2)(v)(F)(*1*) of this section, then the power production facility has no non-utility generator emissions rate for purposes of paragraphs (c)(2)(v) (D) and (F) of this section and the generation from the facility shall be treated, for purposes of this paragraph (c)(2)(v) as generation from units and generators within the dispatch system if the facility is within the dispatch system or as generation from units and generators outside the dispatch system if the facility is outside the dispatch system.

(*3*) Notwithstanding paragraphs (c)(2)(v)(F) (*1*) and (*2*) of this section, if the power production facility is authorized under federal or State law to use only natural gas as fuel, then the most stringent emissions limitation for the facility for the calendar year shall be deemed to be 0.0006 lbs/mmBtu.

(G) "Fraction of generation outside dispatch system" = 1 − fraction of generation within dispatch system − fraction of generation from non-utility generators.

(H) "Fraction of non-Phase I and non-foreign generation in NERC region" is the portion of the NERC region's total sales generated by units and generators other than Phase I units or foreign sources in the unit's NERC region in 1985, as set forth in Table 1 of this section.

(I) "NERC region emissions rate" is the weighted average emission rate (in lbs/mmBtu) for the unit's NERC region in 1985, as set forth in Table 1 of this section.

TABLE 1.—NERC REGION GENERATION AND EMISSIONS RATE IN 1985

NERC region	Fraction of non-phase I and non-foreign generation in NERC region	NERC weighted average emissions rate (lbs/mmBtu)
WSCC	0.847	0.466
SPP	0.948	0.647
SERC	0.749	1.315
NPCC	0.423	1.058
MAPP	0.725	1.171
MAIN	0.682	1.495
MAAC	0.750	1.599
ERCOT	1.000	0.491
ECAR	0.549	1.564

[FR Doc. 95–8601 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 72

[FRL–5188–4]

RIN 2060–AE59

Acid Rain Program: Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On January 10, 1995, EPA and the parties signed a settlement agreement addressing reduced utilization issues.

Based on a review of the record, the Agency concludes that the January 11, 1993, regulations concerning reduced utilization should be revised. The regulations require that, unless certain requirements are met, the designated representative of a unit in Phase I of the program whose annual utilization of fuel is less than the unit's average annual utilization in 1985–1987 submit reduced utilization plans. The regulations also require designated representatives to submit end-of-year compliance certification reports that, based on specified formulas, estimate the sulfur dioxide emissions resulting from underutilization of Phase I units and to surrender allowances for the estimated emissions. The Agency is revising the regulations to simplify the criteria for determining whether a reduced utilization plan must be submitted; where the end-of-year reporting and allowance surrender requirements are met, such plans are not required. Further, the Agency is revising the formulas for estimating the emissions resulting from underutilization to correct certain errors, clarify certain provisions, and take account of and facilitate compliance by Phase I units that have multiple owners or whose owners are required by law to purchase electricity from non-utility power production facilities.

Because the rule revision is consistent with the January 10, 1995, settlement and the Agency does not anticipate receiving adverse comments, the revision is also being issued as a direct final rule in the final rules section of this Federal Register.

DATES: Comments on the regulations proposed by this action must be received on or before May 11, 1995.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE–131), Waterside Mall, Room 1500, 1st floor, 401 M St. SW., Washington, DC 20460.

Docket. Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st floor, 401 M St. SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-Advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this Federal Register will automatically go into effect on the date specified in that rule. If significant, adverse comments are timely received on any provision, that provision of the direct final rule will be withdrawn and all public comment received on that provision will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this Federal Register.

List of Subjects in 40 CFR Part 72

Environmental protection, Acid rain program, Air pollution control, Compliance plans, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 31, 1995.

Carol M. Browner,

Administrator, Environmental Protection Agency.

[FR Doc. 95–8602 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
April 11, 1995

Part V

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5177–9]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Ninth Update of the Federal Agency Hazardous Waste Compliance Docket, Pursuant to CERCLA Section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the ninth update of the docket (that is, facilities not previously listed on the docket and reported to EPA since the last update of the docket, 58 Federal Register [F.R.] 59790, November 10, 1993, which was current as of July 16, 1993). EPA policy specifies that, for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of publication of the notice. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list and a list of the facilities on the docket that have been evaluated and determined to be not appropriate for listing on the NPL at this time (the no further remedial action planned [NFRAP] list). At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,070.

DATES: This list is current as of September 10, 1994.

FOR FURTHER INFORMATION CONTACT: Toll-Free Telephone Line for the Docket, Telephone: (800) 548–1016, or locally (703) 883–8577.

SUPPLEMENTARY INFORMATION:

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2. Revisions of the Previous Docket
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1. Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937 and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) to identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 Federal Register [F.R.] 4280). Updates of the docket have been published on November 16, 1988 (54 F.R. 46364); December 15, 1989 (54 F.R. 51472); August 22, 1990 (55 F.R. 34492); September 27, 1991 (56 F.R. 49328); December 12, 1991 (56 F.R. 64898); July 17, 1992 (57 F.R. 31758); February 5, 1993 (58 F.R. 7298); and November 10, 1993 (58 F.R. 59790). This notice constitutes the ninth update of the docket.

Today's notice is divided into four sections: (1) additions, (2) deletions, (3) corrections, and (4) a list of facilities classified as no further remedial action planned (NFRAP). The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket. The NFRAP list is the list of all docket facilities to which EPA has assigned a status of no further remedial action planned.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 F.R. 4280 [February 12, 1988] for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA's Federal Facilities Enforcement Office in Washington, D.C. and is available to the public. The index for each Region is available for public review at each Regional repository. Contact the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 883–8577, for information on locations of Regional repositories and on making arrangements to obtain specific documents.

2. Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 231 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added to the docket, it is EPA's policy that the responsible Federal agency must complete the required preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of the date of this publication.

Of the 231 facilities being added to the docket, 20 are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to another reporting mechanism will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but had not submitted a notification form under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket information submitted under section 103. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The reports under Federal agency environmental restoration programs mentioned above contain information similar to that provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for the docket. Thus, EPA believes that a facility that has provided information equivalent to a CERCLA section 103 notification, such as a report under a Federal agency environmental restoration program, should be included on the docket, regardless of the absence of formal notification under CERCLA section 103. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the reports described above.

EPA also includes privately owned, government-operated facilities (POGO) on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 106 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 Code of Federal Regulations [CFR] Part 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Federal

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Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

4. Facilities Not Included

As explained in the preamble to the original docket (53 F.R. 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQG that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or other hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5. Information Contained on Docket Listing

As discussed above, the update information below is divided into four separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. The fourth section is a list of facilities classified as NFRAP. Each facility listed for the update has been assigned a code that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this ninth docket update must submit a PA and, if warranted, an SI to EPA within 18 months of the date of this publication. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identify of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanisms." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103c.

The complete list of Federal facilities that now make up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 883–8577. As of today, the total number of Federal facilities that appear on the docket is 2,070.

6. Facility Status Reporting

In response to numerous requests from Federal agencies, EPA has expanded the docket database to include information on the NFRAP status of facilities listed. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status.

The status codes are:

U=Undetermined
N=No further remedial action planned (NFRAP)
P=Currently proposed for the NPL
F=Currently final on the NPL
R=Removed from the proposed NPL and no longer considered for the final NPL
D=Deleted from the final NPL

EPA changed the site assessment recommendation site evaluation accomplished (SEA) to NFRAP. NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL, and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, a list of all facilities having NFRAP status (those for which an "N" appears in the status field) was generated; the list is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of July 16, 1993. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed, and a new list of facilities classified as NFRAP will be published at each docket update.

Dated: March 14, 1995.

Barry N. Breen,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition (All Are Vessels)
(9) No Hazardous Waste (Responsible Federal Agency Changed)
(10) Small-Quantity Generator (Responsible Federal Agency Changed)
(11) No Hazardous Waste (Temporary Storage Only)
(12) Not Federally Owned (Small-Quantity Generator)
(13) Redundant Listing/Site on Facility (Federal Agencies Will Coordinate)
(14) Small-Quantity Generator (Never Actually Built)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agencies (New Responsible Federal Agency Has 18 Months to Submit PA)
(22) Changing Responsible Federal Agencies and Title (New Responsible Federal Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional files

Note: Further information on definitions of categories can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 883–8577.

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Canyon Creek Radio Relay Station.	T7S R6E Sec15 FM	Big Delta	AK	99737	Air Force	3010 103c 3016	17
Pillar Mountain White Alice Communications Site.	T27S R20W S36 SM	Kodiak	AK	99615	Air Force	103c	19A
BLM-Feather River Airstrip	T7S R37W S34&35 7 T8S R37W S2&3.	Nome	AK		Interior	103c	19A
BLM-O'brian Creek Dump	T7S R32E S9 NW¼, 50 MI South of City.	Eagle	AK		Interior	103c	19A
BLM-Walker Fork Dump	T26N R22E S4 N½ N½ 49 MI N of City.	Chicken	AK		Interior	103c	19A
FWS-Alaska Maritime NWR: Cape Thompson.	2355 Kachemak Drive, Suite 101.	Homer	AK	99603	Interior	103c	19A
NPS-Denali National Park: Banjo Mine.	Lat 63 33 10N, Long 150 51 47W.	Denali National Park.	AK	99755	Interior	103c	19A
NPS-Denali National Park: Red Top Mine.	Denali National Park	Denali Park	AK	99755	Interior	103c	19A
NPS-Denali National Park: Stampede Mine.	Lat 63 43.5N, Long 150 24.0E.	Denali National Park.	AK	99755	Interior	103c	19A
NPS-Katmai NP&P: Nanek Recreation Site #2.	Katmai National Park & Preserve.	King Salmon	AK	99613	Interior	103c	17
NPS-Wrangell St. Elias NP&P: Nabesna Mine.	Wrangell St. Elias Nat. Park & Preserve.	Glenallen	AK	99588	Interior	103c	17
Point Mcintyre Dew Station	12M NW of CY	Deadhorse	AK	99740	Navy	103c	19A
FAA-Chandalar Station	Chandalar Lake Nav Aids 112M NW of CY.	Ft Yukon	AK	99740	Transportation	103c	19A
FAA-Petersburg Facility	Unmanned site Mitkof Island	Petersburg	AK	99833	Transportation	103c	19A
FAA-Shuyak Station	Shuyak Island 60M N of Kodiak.	Kodiak	AK	99615	Transportation	103c 3010	19A
FAA-Slana Facility	Slana Arprt Copper RV Lowland.	Slana	AK	99586	Transportation	103c 3010	19A
Montgomery Air National Guard.	4600 S Richardson Rd, P.O. Box 250224.	Montgomery	AL	36108	Air Force	3016	19A
Hanceville Substation		Hanceville	AL		Tennessee Valley Authority.	103a	19A
Kwajalein Atoll	Kwajalein Atoll	APO	AP	96555	Army	3016	19A
Neal Smith Property	Rt #1	Ashdown	AR	71822		3016	19A
Arkadelphia Site-Degray Lake.	30 IP Circle	Arkadelphia	AR	71923	Corps of Engineers, Civil.	3010	19A
PRI South Pacific Inc	Utulei	Pago Pago	AS	96799		3010	19A
Golden Falcon Company	23rd St/1M West of Ave B	Yuma	AZ	85364		103c	19A
Phelps Dodge Historical Smelter.	Hwy 92	Bisbee	AZ	85603		103c	19A
Buckeye Range		Buckeye	AZ		Army	3016	19A
Casa Grande Range	320 E. Cottonwood Lane	Casa Grande	AZ	85222	Army	3016	19A
Douglas Range	1401 Eighth St	Douglas	AZ	85607	Army	3016	19A

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FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Florence Military Reservation.	1001 North Florence Blvd	Florence	AZ	85232	Army	3016 103c	19A
Safford Range	4001 First Ave	Safford	AZ	85546	Army	3016	19A
DEA-Apache Junction	1891 South Apache	Apache Junction	AZ		Justice	103a	19A
Yuma Border Patrol Sector	350 First St	Yuma	AZ	85364	Justice	3010	19A
Cottonwood Station	40 Silverwood	Summit Valley	CA	92387		3010	19A
Kaiser Eagle Mountain	N of Hwy 10 8M off Kaiser Rd.	Desert Center	CA	92239		103c	19A
Logistics Support Center	1310 Cucamonga Ave	Ontano	CA	91761		3010	19A
RCA Antenna Farm	451 Mesa Rd	Bolinas	CA	94924		103c	19A
Cleveland NF: Mt. Laguna Landfill.	10845 Rancho Bernardo, Suite 200.	San Diego	CA		Agriculture	103c	19A
Plumas NF: Ponderosa Reservoir.	159 Lawrence Street, Box 11500.	Quincy	CA	95971	Agriculture	103c 3016 3010	16
Shasta-Trinity NF: Lakeshore Landfill.	2400 Washington Avenue	Redding	CA	96001	Agriculture	3016	19A
Six River NF: Mad River Landfill.	1330 Bayshore Way	Eureka	CA		Agriculture	103c	19A
George Air Force Base-Superior Valley Range.	S13 14 24 T305 R46E	China Lake	CA	99999	Air Force	103c	19A
Bell Organizational Maintenance Shop #6.	5300 Bandini Avenue	Bell	CA	90201	Army	3016	19A
Fort Irwin Mates		Fort Irwin	CA	92310	Army	3016	19A
Fresno (Shields) Organizational Maintenance Shop.	5575 East Shields Avenue	Fresno	CA	93727	Army	3016	19A
Royce Del Metals	North Blosser & West Main St.	Santa Maria	CA		Corps of Engineers, Civil.	103a	19A
Texaco Section 8 Central Solid Waste Site.	T32S/R24E MBD&M	Taft	CA	93268	Energy	103c	19A
Texaco Section 8 Gas Plant	T32S/R24E MDB&M	Taft	CA	93268	Energy	103c	19A
BLM-Blythe Landfill	7 Miles N. of City of Blythe	Blythe	CA	92225	Interior	103c	19A
BLM-Morning Star Mine	15M NE of Cima	Cima	CA	92323	Interior	103c	19A
BLM-Nipton Unauthorized Landfill.	1 MI NW of Nipton	Nipton	CA	92624	Interior	103c	19A
BLM-San Bernardino County Landfill-Apple Valley.	Sec 29, T.5N, R.2W	Apple Valley	CA	92307	Interior	103c	19A
Shaver Lake Landfill	Dinkey Creek Road	Shaver Lake	CA	93664	Interior	103c	19A
Siskon Mine	T14N, R5E, Secs. 20–29	Somes Bar	CA	95568	Interior	103c	19A
Monterey Naval Postgraduate School Annex.	1 Grace Hopper Avenue	Monterey	CA	93940	Navy	3010	19A
Nise West (South Complex)	4297 Pacific Hwy	San Diego	CA	92186	Navy	3010	19A
Salton Sea Test Base	Hwy 86	Salton City	CA	92275	Navy	103c	19A
San Nicolas Island Outlying Landing Field.		San Nicolas Island.	CA	93042	Navy	3010	19A
Santa Cruz Naval Industrial Reserve Ordnance Plant.	16020 Empire Grade Rd	Santa Cruz	CA	95060	Navy	103c	19A
City of Industry Postal Service.	15421 E. Gale Ave	City of Industry	CA	91745	Postal Service	103c 3010	19A
Falconers Transformer Storage Area.	500 Star Street	Colorado Springs.	CO		Air Force	103a	19A
Aurora-Buckley	2 Miles SE	Aurora	CO	80011	Army	3016	19A
Fort Morgan Substation	Intersection of I–76 & CO Hwy 52.	Ft Morgan	CO	80701	Energy	103c	19A
Water & Power Resources	Denver Federal Center, Bldg 56.	Denver	CO	80225	General Services Administration.	103c	19A
BP-Littleton Federal Correction Institute.	9595 West Quincy Avenue	Littleton	CO	80123	Justice	103c	19A
Middletown Army Reserve Center.	Mile Lane	Middletown	CT		Army	103c	19A
Milford Army Reserve Center.	26 Seamans Lane	Milford	CT		Army	103c	19A
Windsor Locks Area Maint. Support Activity 72G.	536 Spring Street	Windsor Locks	CT		Army	103c	19A
IRS-Washington	1111 Constitution Avenue, N.W.	Washington	DC		Treasury	103a	19A
New Castle Air National Guard 1664 Tag Fac.	12 Pennsway, Greater Wilmington Airport.	New Castle	DE		Air Force	103c	19A
New Castle Training Site-Rifle Range.	Bldg 1A 1197 River Rd	New Castle	DE	19720	Army	3016	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Cross Florida Barge Canal (Buckman Lock), SAJ.	Near State Rt 40 at Canal	Palatka	FL	32177	Corps of Engineers, Civil.	3016	19A
CG–D7 OAN Lighthouse		St. Petersburg	FL	33131	Transportation	103a	19A
Tamiami International Flight Service Transmitter.	West of Chrome Avenue	Miami	FL		Transportation	103a	19A
Coastal Plains Experiment Station.	PO Box 748	Tifton	GA	31793	Agriculture	3016	19A
Russell Research Center	950 College Station Road	Athens	GA	30613	Agriculture	3016 3010	17
Savannah Air National Guard.	165 ALG, 1301 Robert B Miller Jr Dr.	Garden City	GA	31408	Air Force	3016	19A
Kipapa Fuel Storage Annex	Off Route 99 (Kamehameha Hwy).	Honolulu	HI	96789		103c	19A
Waikakalaua Fuel Storage Annex.	Off Rte 99, Kamehameha Highway.	Honolulu	HI	96854	Air Force	103c	19A
Cherokee Army Reserve Center.	1807 Industrial Road	Cherokee	IA	51012	Army	3010	19A
IAAP Middletown/Wets		Middletown	IA	52638	Army	3016	19A
Waverly Wets	2 Miles South	Waverly	IA	50677	Army	3016	19A
Caribou NF: Paris Work Center.	94 East 100 South	Paris	ID	83261	Agriculture	3010	19A
Targhee NF: Snake River Work Center.	Hwy 26 5 MI W of Cy	Swan Valley	ID	83449	Agriculture	3010	19A
Kimama	22 Miles North Rupert	Rupert	ID		Army	3016	19A
Orchard Range	16 Miles South	Boise	ID	83707	Army	3016	19A
Libertyville Training Site	Half Day Rd and Milwaukee Ave.	Vernon Hills	IL	60061		3010	19A
Specialty Sealant IEPA	7800 S Woodlawn Ave	Chicago	IL	60619		3010	19A
O'Hare Air Reserve Facilities.	Building 10, Mannheim Rd	Chicago	IL	60666	Air Force	103c	19A
Elwood 86th Reserve Command.	Hoff Rd	Elwood	IL	60421	Army	3010	19A
Homewood	Riegal & 187th Street	Homewood	IL	60430	Army	3016	19A
Joliet Training Area	Joliet Tng Area C/O Dmail	Joliet	IL		Army	3016	19A
North Riverside TS	8660 West Cermak Rd	North Riverside	IL	60546	Army	3016	19A
Chicago Site	Calumet Harbor	Chicago	IL	60506	Corps of Engineers, Civil.	3010	19A
Former Air Force Plant 39	7400 S Cicero Ave	Chicago	IL	60629	Corps of Engineers, Civil.	3010	19A
Talley Defense Systems JAAPGP64.	6 Miles S of Elwood off Rt 53.	Elwood	IL	60421	Defense	3010	19A
Aurora Post Office	N Broadway (Rt. 25) and Indiana Circle.	Aurora	IL	60505	Postal Service	103c	19A
Crystal Lake Postal Service	301 E Congress Pkwy	Crystal Lake	IL	60060	Postal Service	3010	19A
Forbes Field Air National Guard.	5920 E Street, 190th AREFG/DE Forbes Fie.	Topeka	KS	66619	Air Force	103c	17
Cave Run Lake	Bridge at Cave Run Lake	Morehead	KY	40351		3010	19A
Kentucky Air National Guard Staniford Field.	1019 Old Grade Ln, 123 AW/EM.	Louisville	KY	40213	Air Force	103c	19A
Louisville Air National Guard	1019 Old Grade Ln	Louisville	KY	40213	Air Force	3016	19A
Lexington Armed Forces Reserve Center.	151 Votech Drive	Lexington	KY	40510	Army	3010	19A
Shelbiana Site	Route 1, Box 501	Shelbiana	KY	41562	Corps of Engineers, Civil.	3010	19A
Boston Defense Support Activity—Barnes Building.	495 Summer Street	South Boston	MA		Army	103c	19A
Rehobeth Nike 19 TS	Fairview Ave	Rehoboth	MA	02769	Army	3016	19A
New England Regional Laboratory.	60 Westview St	Lexington	MA	02173	EPA	3010 103a	19A
CG-Gloucester Station	17 Harbor Loop Road	Gloucester	MA	01930	Transportation	103a	19A
Fort Ritchie	Attn: ANRT–ENE, Bldg 603	Fort Ritchie	MD	21719	Army	3016 3010	15
Fort Ritchie-Raven Rock Site (AJCC).	Harbaugh Valley Rd	Blue Ridge Smmt.	MD	17214	Army	3016	19A
Olney	5115 Riggs Road	Olney	MD	20879	Army	3016	19A
Woodstock	2845 Hernwood Road	Woodstock	MD	21163	Army	3016	19A
Greenspring-Launch	Ridge Rd	Greenspring	MD	21117	Defense	103c	19A
Auburn Training Site Organizational Maint. Shop #2.	Stevens Mill Road	Auburn	ME	04210	Army	3016	19A
Bangor Organizational Maintenance Shop #3.	28 Hayes St	Bangor	ME	04401	Army	3016	19A
Caswell Trainng Site	5 Miles	Caribou	ME	04750	Army	3016	19A

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FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Hiawatha NF: Byers Lake Resort.	1.22 MI West & 1.22 MI North of Steuben.	W Sec of Schoolcraft City.	MI	49829	Agriculture	103c	19A
Hiawatha NF: Grand Island Site.	1 MI off Lake Superior Shore 3 MI NW of.	Grand Island	MI	49829	Agriculture	103c	19A
Hiawatha NF: Moran Work Center & Landfill.	10 MI Northwest of Saint Ignace.	Brevoort Township.	MI	49829	Agriculture	103c	19A
Hiawatha NF: Nahma Landfill.	3 MI NW of Nahma	Nahma Township.	MI	49829	Agriculture	103c	19A
Fort Custer		Battle Creek	MI	49012	Army	3016	19A
Newport	800 E. Newport	Newport	MI	48166	Army	3016	19A
Bay City Cert Site	9th and 18th W Saginaw and Wat.	Bay City	MI	48708	EPA	3010	19A
Electro Voice	600 Cecil St	Buchanan	MI	49107	EPA	3010	19A
Detroit Postal Service	1365 W Fort St	Detroit	MI	48233	Postal Service	3010	19A
FAA-Croswell	2250 E Peck Rd	Croswell	MI	48422	Transportation	3010	19A
St. Joseph North Phd Light	18535 Lite List	St. Joseph	MI	49417	Transportation	3010	19A
Snelling Small Arms Range Annex.	5081 St Hwy 5	Minneapolis	MN	55450		3010	19A
BIA-Red Lake	Red Lake Agency	Red Lake	MN	56671	Interior	3010	19A
Camp Clark Training Site/ Utes.	4 Miles So Hwy 71, PO Box 265.	Nevada	MO	64772	Army	3016	19A
Truman Reservoir T.S.	P.O. Box 1247	Sedalia	MO	65302	Army	3016	19A
Wappapello Training Site	Highway T	Wappapello	MO	63966	Army	3016	19A
St. Louis Federal Courthouse Site	111 S 11th St	St. Louis	MO	63102	General Services Administration.	3010	19A
Grenada	Youngs Landing	Grenada	MS	38901	Corps of Engineers, Civil.	103a	19A
Waterways Experiment Station.	3909 Halls Ferry Rd	Vicksburg	MS	39180	Corps of Engineers, Civil.	3016	19A
Opheim Radar Station	2 Miles West of Opheim	Opheim	MT	59250		103c 103a	19A
Fort William Henry Harrison	Williams Street	Helena	MT	59604	Army	3016	19A
Fort Fisher Training Site	Natl Grd Trng Center	Kure Beach	NC	28449	Army	3016	19A
Tarheel Army Missile Plant	204 Graham-Hopedale Road.	Burlington	NC	27215	Army	103c	19A
Wilmington Organizational Maintenance Shop #17	1401 N Kerr Ave	Wilmington	NC	28405	Army	3016	19A
Garrison Dam & Lake Sakakawea.	T146N R84W Sec 6	Riverdale	ND	58565	Corps of Engineers, Civil.	103c	19A
Camp Ashland	Camp Ashland	Ashland	NE	68003	Army	3016	19A
Hastings Training Site	R.R. 2, P.O. Box 178	Hastings	NE	68901	Corps of Engineers, Civil.	3016	19A
Grenier Field Army Reserve Center.	Galaxy Drive	Manchester	NH		Army	103c	19A
Keene Army Reserve Center	682 Main Street	Keene	NH		Army	103c	19A
Ottati & Goss Superfund Site.	Route 125	Kingston	NH	03848	EPA	3010	19A
Dona Anna Range Camp Mates.	20 Miles East	Las Cruces	NM	88001	Army	3016	19A
Carlsbad	PO Box 207	Carlsbad	NM		Energy	103a	19A
Sandia National Laboratories-Tonopah.	Hwy 6	Tonopah	NV	89049	Energy	3016	19A
American Antimony Corporation.	T 26N R 34E Section 28	Lovelock	NV	89419	Interior	103c	19A
NPS-Lake Mead Nat. Rec. Area: Boulder Beach Landfil.	Lake Mead National Recreation Area.	Boulder City	NV		Interior	103c	17
Floyd Annex Site	Koening Road	Floyd	NY	13440	Air Force	103c	19A
Ogdensburg Customs House.	127 North Water	Ogdensburg	NY	13669	General Services Administration.	3010	19A
Saratoga Springs Navy Housing Management Office.	26 Quiet Harbor Dr—2000 FT E.	Saratoga Springs	NY	12866	Navy	3010	19A
CMHA Olde Cedar Estates	2617 Central Ave	Cleveland	OH	44115		3010	19A
Toledo Air National Guard	2660 South Eber Road	Swanton	OH	43558	Air Force	3016	19A
Newton Falls-Utes 1	8 Miles Rte 2	Newton Falls	OH	44444	Army	3016	19A
Rickenbacker-Columbus	7116 1st St	Columbus	OH	43217	Army	3016	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Bainbridge Site	504 Reservoir Rd	Bainbridge	OH	45612	Corps of Engineers, Civil.	3010	19A
Caesar Creek Lake Bridge	Bridge at Caeser Creek Lake.	Waynesville	OH	45068	Corps of Engineers, Civil.	3010	19A
Delaware Site	3920 US 23 North	Delaware	OH	43015	Corps of Engineers, Civil.	3010	19A
Marietta Site	Ohio and Post St	Marietta	OH	45740	Corps of Engineers, Civil.	3010	19A
Mount Sterling Site	21897 Deer Creek Lake	Mt Sterling	OH	43143	Corps of Engineers, Civil.	3010	19A
West Fork Lake Bridge	Bridge at West Fork Lake	Cincinnati	OH	45240	Corps of Engineers, Civil.	3010	19A
Zanesville Site	4969 Dillon Dam Rd	Zanesville	OH	43701	Corps of Engineers, Civil.	3010	19A
US Enrichment Corp	3930 US Rte 23 South Site C.	Piketon	OH	45661	Energy	3010	19A
Dayton Medical Center	4100 West 3rd Street, Building 330.	Dayton	OH	45428	Veterans Affairs	103a	19A
Tulsa Air National Guard	138FG/EMO 4200 N 93rd E Avenue.	Tulsa	OK		Air Force	103a	19A
Corvallis/Camp Adair	39434 Rifle Range Road	Corvallis	OR	97330	Army	3016	19A
Edgely Manor Industrial Park (Simon Site).	Silvi Avenue	Bristol Township	PA	19007		103c	19A
PSP Lancaster Barracks	Rt. 30 E	Lancaster	PA			103a	19A
Sun Oil Co-Chevron International Corp.	3001 Penrose Avenue	Philadelphia	PA	19145		103c	19A
San Juan Army Air Support Facility.	Box 3786	San Juan	PR	00904	Army	3016	19A
North Kingston Army Air Support Facility.	Quonset State Airport	North Kingstown	RI	02852	Army	3016	19A
Warwick Organizational Maintenance Shop #3.	Airport Road	Warwick	RI	02886	Army	3016	19A
Nashville Air National Guard	240 Knapp Blvd	Nashville	TN	37217	Air Force	3016	19A
Milan Utes	4 Miles South	Milan	TN	38350	Army	3016	19A
Smyrna-Grubbs Kyle Training Site.	1 Mile North, Smyrna	Smyrna	TN	37167	Army	3016	19A
Tullahoma Training Site	One Mile East	Tullahoma	TN	37388	Army	3016	19A
Spring City Substation	Highway 27	Spring City	TN		Tennessee Valley Authority	103a	19A
Wake Island Airfield	Det 1 15 LG/CC	Wake Island APO AP	TT	96518	Air Force	3010 3016	19A
Bul-Man Construction Company.	5214 Burleson Rd #308	Austin	TX	78744		3010	19A
McMullen Target Site	FM 624 10M W Hwy 16	Tilden	TX	78072		3010	19A
Angelina National Forest	Vicinity State Highway 103 and US 59.	Lufkin	TX	75901	Agriculture	103a	19a
Bergstrom Air Reserve Station.	2502 Hwy 71E Bldg 635	Austin	TX	78719	Air Force	3010	19A
Camp Swift (Utes #3)	Rt 2, Box 151X FM 973	Bastrop	TX	76802	Army	3016	19A
Galveston Federal Armory	5301 Avenue South	Galveston	TX	77550	Army	3016	19A
Gatesville (Mates)	N Fort Hood SH 36 & 28th St.	Gatesville	TX	76528	Army	3016	19A
Houston Organizational Maintenance Shop #36	15150 Westheimer Pky	Houston	TX	77082	Army	3016	19A
Saginaw (CSMS #1)	855 E. Industrial	Saginaw	TX	76131	Army	3016	19A
Spatz Airbase	902 Carter	Hondo	TX	78861	Corps of Engineers, Civil.	3010	19A
Houston Medical Center	2002 Holcombe Boulevard	Houston	TX	77030	Veterans Affairs	103a	19A
Fort Douglas (Fort Carson Subinstallation).	AFZC–D–DEH	Salt Lake City	UT	84113	Army	103c	19A
IRS-Ogden	183 West 30th Street	Ogden	UT	84401	Treasury	3010	19A
Comarco IBS Bus Maintenance Garage.	51 Post Office Rd	Gravelly Point	VA	22202		3010	19A
New England Log Homes, Inc.	Old Route 58 West	Lawrenceville	VA	23868		103c	19A
Sandston Army Air Support Facility.	700 Portugee Rd	Sandston	VA	23150	Army	3016	19A
Sandston Organizational Maint. Shops #1 & #2.	6041 Beulah Rd	Sandston	VA	23150	Army	3016	19A
Fine Petroleum	2801 St Julian Ave	Norfolk	VA	23510	EPA	3010	19A

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FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Parr Warehouses	GSA Bldg B	Springfield	VA	22150	General Services Administration.	3010	19A
Blair Hangar Army Air Support Facility.	Alex Hamilton Airport	St. Croix	VI	00850	Army	3016	19A
International Arrivals Building.	Alex Hamilton Airport	St. Croix	VI	00850	Army	3016	19A
St. Croix Property & Fiscal Office.	9 Estate Diamond—Fredriksted.	St. Croix	VI	00840	Army	3010	19A
Chester Army Reserve Center.	Route 11	Chester	VT		Army	103c	19A
T.S. Ethan Allen Air Force Base, RS.	Bldg. #5, Camp Johnson	Colchester	VT	05446	Army	3016	19A
Okanogan NF: Tonasket	T37N R27E WM S16 Okanogan Riv Vly.	Tonasket	WA	98855	Agriculture	103c	19A
Kent National Guard Bureau	24410 Military Road	Kent	WA	98032	Army	103c	19A
Kent Organizational Maintenance Shop #5.	24410 Military Road	Kent	WA	98032	Army	3016	19A
Redmond National Guard Bureau.	17230 NE 95th Street	Redmond	WA	98052	Army	103c	19A
Spokane Army Air Support Facility #2.	Spokane Intl Airport	Spokane	WA	99219	Army	3016	19A
Vancouver Barracks	HQ, Vancouver Barracks B–638.	Vancouver	WA	98661	Army	3016	19A
Watercraft Support Maintenance Center.	321 E. Alexander	Tacoma	WA	98421	Army	3016	19A
NOAA-Manchester Field Station.	7305 Beach Drive East	Port Orchard	WA	98366	Commerce	103c	17
FS-North Central Forest Experiments Station.	5985 County Highway K	Rhinelander	WI	54501	Agriculture	103a	19A
Nicolet NF: Alvin East Landfill.	SE¼ SW¼ Sec 25 T41N R13 3.	Alvin	WI	54542	Agriculture	103c	19A
Nicolet NF: Binder Lake Dump Site.	Section 29 T33 N R16E	Lakewood	WI	54138	Agriculture	103c	19A
Nicolet NF: Butternut Lake Site.	Section 33 T40N R12E	Hiles Township	WI	54501	Agriculture	103c	19A
Nicolet NF: County Trunk Highway "T" Site.	Section.3 T31N R15E	Doty Township	WI	54149	Agriculture	103c	19A
Nicolet NF: Former Crooked Lake Dump Site.	7 MI S of Lakewood 8 MI W of Stephenson.	Riverview	WI	54114	Agriculture	103c	19A
Nicolet NF: Island Lake Site	Section 19 T32N R16E	Lakewood	WI	54138	Agriculture	103c	19A
Nicolet NF: Laona Sanitary Landfill.	Section 11 T35N R15E	Blackwell	WI	54541	Agriculture	103c 103a	19A
Nicolet NF: Newald Landfill	SW¼ NW¼ SEC 26 T38N R14E.	Ross	WI	54511	Agriculture	103c	19A
Nicolet NF: Phelps Site	Section 35 T42N R11E	Phelps	WI	54554	Agriculture	103c	19A
Nicolet NF: Roberts Lake Dump Site.	Northern Part of Nicolet National Forest.	Freedom Township.	WI	54566	Agriculture	103c	19A
Nicolet NF: Silver Lake Dump Site.	.5 MI Southeast of Silver Lake.	Laona	WI	54541	Agriculture	103c	19A
Equipment Concentration Site.	3050 Ft McCoy Bldg	Sparta	WI	54656	Army	3010	19A
Lady Smith Reserve Center	819 W Summit Ave	Lady Smith	WI	54848	Army	3010	19A
TS Racine County Line Range.	6 MI Northwest Racine	Racine	WI	53403	Army	3016	19A
Cytec Industries Chemical Fire.	Route 2 South	Belmont	WV	26134		103c	19A
Point Pleasant Organizational Maintenance Shop #6.	Rte 62, N 6 MI (Old Ord Wks).	Point Pleasant	WV	25550	Army	3016	19A
Cheyenne Organizational Maintenance Shop #4.	P.O. Box 1709	Cheyenne	WY	82003	Army	3016	19A
Rock Springs Oil Shale Retort.	7 MI W of Rock Springs	Rock Springs	WY	82902	Energy	103c	19A
NPS-Grand Teton Nat. Park: Beaver Creek Boneyard.	Grand Teton National Park	Moose	WY	83012	Interior	103c	17

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Dera-Kodiak Tracking Station.	Cape Chiniak Rd, End of	Kodiak	AK	99615		103c	3
M–I Drilling Fluids Company-Anchorage.	721 W 1st Ave	Anchorage	AK	99501		3010	2
Fort Yukon White Alice Site.	E. of Town	Fort Yukon	AK	99740	Air Force	3016 103c	6
Kotzebue Army National Guard 3rd Sct BN HQ.	Kotzebue Air Force Site	Kotzebue	AK	99752	Army	3010 103c	2
PHS-Kanakanak Hospital	2.5 Mi SW of Village	Dillingham	AK	99576	Health and Human Services.	103a	4
FAA-Aniak Airport	61° 34N 159° 31'W	Aniak	AK	99557	Transportation	103c 3016	2
BLM-Phoenix Construction Services, Inc.	Natchez Trace Parkway Rte. 2.	Florence	AL	35633	Interior	3010	4
Huntsville Primary Substation.	Huntsville Primary Substation.	Huntsville	AL		Tennessee Valley Authority.	103a	4
Muscle Shoals Hazardous Storage Facility.	Hwy 133	Muscle Shoals	AL		Tennessee Valley Authority.	103a	6
American Samoa Power	American Samoa	American Samoa.	AS			103c	4
Casa Grande Valley Newspapers.	1104 N Pinal Ave	Casa Grande	AZ	85222		3010	2
Casa Grande Valley Newspapers.	200 W Second St	Casa Grande	AZ	85222		3010	2
Lockheed Aeromod Center Inc.	1555 E Aero Park Blvd	Tucson	AZ	85706		3010	2
BLM-Glendale Landfill	Glendale Ave & 115th Ave B.	Glendale	AZ	85307	Interior	103c	2
BLM-Phoenix	3707 N 7th Street	Phoenix	AZ	85014	Interior	3010	4
Laxfuel Corporation		Los Angeles	CA	90045		103c	2
Oakland City of Housing Authority.	1180 25th Avenue	Oakland	CA	94601	Housing and Urban Development.	3010	2
NPS-Pinnacles National Monument.	Pinnacles National Monument.	Paicines	CA	95023	Interior	3010	1
DEA-Los Angeles	350 S Figueroa St	Los Angeles	CA	90071	Justice	3010	11
Bayview Hills Housing Area.	1840 Saipan Drive	San Diego	CA	92139	Navy	3010	1
Crabillo Heights Housing Area.	8471 Jordan St	San Diego	CA	92139	Navy	3010	1
Camp Nimitz Area	Naval Training Ctr	San Diego	CA		Navy	103c	6
Chesterton Quarters Housing Area.	7468 Wellington St	San Diego	CA	92111	Navy	3010	1
De Steiguer Naval Station	Berth 5 10th Ave Terminal	San Diego	CA	92101	Navy	3010	8
Fallbrook Napalm Demilitarization Facility.	Naval Weapons Stat, Fallbrook.	Fallbrook	CA	92028	Navy	3016	6
Long Beach Naval Air Station Sima NRMF	Long Beach Naval Air Sta	Long Beach	CA	90822	Navy	3010	6
Port Hueneme Naval Exchange Cleaners.	NVL Const Bat Ctr Bld #75.	Port Hueneme	CA	93041	Navy	3010	6
Seal Beach Naval Weapons Station Pomona Annex.	1675 Mission Blvd	Pomona	CA	91769	Navy	103c 3010	6
Stanislaus Landfill		Patterson	CA		Navy	103a	2
Fresno Post Office	1900 E Street	Fresno	CA	93706	Postal Service	3010	1
San Francisco Postal Service.	151 Mendell Street	San Francisco	CA	94124	Postal Service	103a	6
San Francisco Postal Service Vehicle Maintenance.	1300 Evans Ave	San Francisco	CA	94188–9721	Postal Service	103c 3010	4
Rockwell International Flight Ops.	5885 W Imperial Highway	Los Angeles	CA	90245	Transportation	3010	3
Robert H. Freytag Property.	3102 North Overland Trail	La Porte	CO	80535		3016	2
BLM-Anvil Points Oil Shale Station.	8 Mi W of Rifle on I–70	Rifle	CO	81650	Interior	103c	5
BLM-Placerville Tram Site	T44NR11WSEC35 Hwy 62.	Placerville	CO	81430	Interior	103c	2
Colonel Frank M. Williams Army Reserve Center.	11700 NW 27th Ave	Miami	FL	33167	Army	3005 3010	1

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FEDERAL FACILITIES DOCKET, DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Lt. Clarence Lovejoy Army Reserve Center.	4823 N Hubert Ave	Tampa	FL	33614	Army	3005 3010	1
Orlando Army Air Support Facility 49.	8601 Ave B	Orlando	FL	32812	Army	3005 3010	1
Palatka Area Maintenance Support Activity–55M.	Star Route #1, Box 8	Palatka	FL	32177	Army	3010 3005	1
NPS–Gulf Islands National Seashore.	Fort Pickens Rd	Gulf Breeze	FL	32561	Interior	103c	1
Tallahassee Federal Correction Institution.	501 N.E. Capital Circle	Tallahassee	FL	32311	Justice	103a	1
Orlando Naval Training Center.	Bennett and Maguire	Orlando	FL	32813	Navy	3010	6
Augusta Area Maintenance Support Activity–54G.	3311 Wrightsboro Road	Augusta	GA	30904	Army	3010 3005	1
FAA–Regional Office	340 Norman Berry Drive	East Point	GA	30320	Transportation	103a	4
Agana River and Paseo Site.	Leary Jct	Agana	GU	96910	Navy	103c	2
Finegayan Housing Abandoned Dump.	Naval Communications Center.	S Finegayan	GU	96630	Navy	103c	2
OCA Navy Supply Dump Site.	S of Saupon Pt	OCA	GU	96911	Navy	103c	2
Pearl Harbor Navy Exchange Laundry Facility.	Moanalua Road and Kaimakani Street.	NAS, Pearl Harbor	HI	96860	Navy	103c 3010	6
BLM-Howe Dumpsite	T6NR29ESec31	Howe	ID	83244	Interior	103c	4
DEA-Chicago Field Division Office.	7401 S Pulaski	Chicago	IL	60629	Justice	3010	11
Marion Medical Center	2401 W Main St	Marion	IL	62959	Veterans Affairs	3010	1
Former Jeffersonville Quartermaster Depot.	Located on Segrams Property Clark County.	Jeffersonville	IN	47130	Army	3016 103c	3
Bourne National Cemetery	MA National Cemetery	Bourne	MA	02532	Veterans Affairs	3016	1
Brockton Medical Center	940 Belmont Street	Brockton	MA	02401	Veterans Affairs	3016	1
West Roxbury Medical Center.	1400 VFW Parkway	West Roxbury	MA	02132	Veterans Affairs	3016	1
NIH-Animal Center	Elmer School Road	Poolesville	MD	20837	Health and Human Services.	3010	1
NIH–NCI Biomakers and Prevention.	9610 Medical Center Drive (Keywest).	Rockville	MD	20850	Health and Human Services.	3010	1
Patuxent Wildlife Research Center.	Rt 197 and Powdermill Rd	Laurel	MD	20708	Interior	103c 3010	6
Perry Point Medical Center	Bldg 23H	Perry Point	MD	21902	Veterans Affairs	3010	1
Delta Defense Fuel Support Point.	RR Rt. 1 Gladstone	Delta	MI	49837	Defense	3016	6
Detroit District	3331 Radar Rd	Sault Ste Marie	MI	49783	Defense	3010	4
DEA-Detroit	231 W Lafayette	Detroit	MI	48226	Justice	3010	11
Ann Arbor Medical Center	2215 Fuller Rd	Ann Arbor	MI	48105	Veterans Affairs	3010	1
BATFA-Kansas City	811 Grand Ave Rm 106	Kansas City	MO	64106	Treasury	3010	11
National Marine Fisheries Service.	Pivers Island Off US Hwy 70 West.	Beaufort	NC	28512	Commerce	3010 3016	1
McIvor Alice Estate of	823 McIvor Rd	Oaks Corners	NY	14518		3010	2
Elmira Army Maintenance Support Activity-2.	Judson St	Elmira	NY	14901	Army	3010	2
Malone Army Reserve Center.	111 Finney Blvd	Malone	NY	12953	Army	3010	6
West Valley Demonstration Project.	10300 Rock Springs Road	West Valley	NY	14171	Energy	3005 3010 3016	2
IRS Brookhaven Service Center.	1040 Waverly Ave	Holtsville	NY	11742	General Services Administration.	3010	4
NPS-Federal Hall National Memorial.	26 Wall Street	New York	NY	10005	Interior	3010	1
NPS-Theodore Roosevelt Birthplace.	28 E 20th Street	New York	NY	10003	Interior	3010	1
FBP-Brooklyn	830 Third Ave Bldg 1	Brooklyn	NY	11232	Justice	3010	4
Far Rockaway General Mail Facility.	1836 Mott Ave	Far Rockaway	NY	11691	Postal Service	3010	4
Jamaica Vehicle Maintenance Facility	180–66 Liberty Avenue	Jamaica	NY	11433	Postal Service	3010	4

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	ZIP Code	Agency	Reporting mechanism	Correction code
Vacant Building	74 E Main St	Trumansburg	NY	14886	Small Business Administration.	3010	1
Erie Industrial Park	Erie Industrial Pk Bldg 2	Port Clinton	OH	43452	Corps of Engineers, Civil.	3010	3
Rossford Depot	851 Third St	Perrysburg	OH	43551	Corps of Engineers, Civil.	3010	3
Shenango Disposal Site, ORP			OH		Corps of Engineers, Civil.	3016	6
Madras Army Air Field	Cherry Road	Madras	OR	97741	Army	103c	3
Pittsburgh Postal Service	7th & Grant Streets	Pittsburgh	PA		General Services Administration.	103a	2
Aqueduct & Sewer Authority	Road 3 KM 14.3 Barrio Obrero Station.	Santurce	PR	00916		103a	2
McEntire Air National Guard Base.		Columbia	SC		Air Force	103c	5
New Albany Substation	299 Substation Road	New Albany	TN		Tennessee Valley Authority.	103a	4
Ripley Substation	Webb Road	Ripley	TN		Tennessee Valley Authority.	103a	4
Houston Army Reserve Center 02 (AMSA 4).	7077 Perimeter Park Drive.	Houston	TX	77041	Army	3010	5
Ashley NF: Only Chance Mine.	355 North Vernal Ave	Vernal	UT	84078	Agriculture	3016	2
BLM-IRECO Chemical	17SR1ESEC5, 6, 7 Pelican Pt Site A&B.	Lehi	UT	84043	Interior	3005 3010 3016 103c	2
Salt Lake City Post Office Garage.	1760 West 2100 South	Salt Lake City	UT	84199	Postal Service	3010	1
Arlington	File Repository 1232 SE	Arlington	VA	22202	Commerce	3010 103c	10
Herndon Office	925 Springvale Road	Herndon	VA	22070	Defense Mapping Agency.	103c	5
St. Thomas	St. Thomas Beach	St. Thomas	VI	00801		103c	2
Spokane Industrial Park		Spokane	WA	99216		103c	3
FHA–LMC Farms	Rt. #1 Box 363	Mubton	WA	98935	Agriculture	3016	12
Ephrata Army National Guard.	1st & East Street Corner	Ephrata	WA	98823	Army	3010	2
Spokane Army Reserve Center.	N 3800 Sullivan Rd	Spokane	WA	99216	Army	3010	4
Yakima Army National Guard.	1702 Pacific Highway	Yakima	WA	98901	Army	3010 3016	2
BPA-Cosmopolis	Arcadia Drive	Cosmopolis	WA	98537	Energy	103a	4
BPA-Lapine	US Forest Service Road 288.	Lapine	WA	99362	Energy	103a	1
BPA-Maple Valley Substation.	2500 Royal Hill Drive	Renton	WA		Energy	103a	1
BPA-Monroe	25414 Old Pipeline Road	Monroe	WA	98272	Energy	103a	4
BPA-Snow King Substation.	3602 Maltoy Road	Bothell	WA		Energy	103a	1
Seattle Navy Facility	Pier 90	Seattle	WA	96698	Navy	103a	1
FWS-Horicon National Wildlife Refuge.	Rural Route 2	Mayville	WI	53050	Interior	3010	1
Tomah Medical Center	Veterans Dr	Tomah	WI	54660	Veterans Affairs	3010	1

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Dera-Kodiak Tracking Station.	Cape Chiniak Rd, End of.	Kodiak	AK	99615		103c	20A
O Dera-Kodiak Tracking Station.	Cape Chiniak Rd, End of.	Kodiak	AK			103c	
C Cape Newenham Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 3016 103c	20A
O Cape Newenham Air Force Station.	11 TCW/CC Bay	Elmendorf AFB	AK	99506	Air Force	3010 3016 103c	
C Cape Romanzof Air Force Station.	11 ACW/CC	Elmendorf	AK	99506	Air Force	3010 103c 3016	20A
O Cape Romanzof Air Force Station.	11 TCW/CC	Elmendorf	AK	99506	Air Force	3010 103c 3016	

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FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Clear Air Force Station.	13 MWS/CC	Anderson	AK	99704	Air Force	3010 103c 3005	23
O Clear Air Force Station.	13 MWS/CC	Anderson	AK	99704	Air Force	3010 103c	
C Fort Yukon White Alice Site.	E. of Town	Fort Yukon	AK	99740	Air Force	3016 103c	22
O BLM-Fort Yukon White Alice Site.	E. of Town	Fort Yukon	AK	99740	Interior	3016 103c	
C Indian Mountain Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	20A
O Indian Mountain Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	
C Murphy Dome Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 3016 103c	23
O Murphy Dome Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 3016	
C Tatalina Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	20A
O Tatalina Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	
C Tin City Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	20A
O Tin City Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	
C Fort Richardson	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505	Army	3005 3010 3016 103c 103a	23
O Fort Richardson	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505	Army	3005 3010 3016 103c	
C Fort Wainwright	ASZR–FW–DC	Fort Wainwright	AK	99703–5500	Army	3005 3010 3016 103c	20A
O Fort Wainwright		Fort Wainwright	AK	99703–5500	Army	3005 3010 3016 103c	
C Noatak National Guard Bureau.	(Unspecified)	Noatak	AK	99761	Army	103c 3016	23
O Noatak National Guard Bureau.	(Unspecified)	Noatak	AK	99761	Army	103c	
C Fort Greely	Fort Greely Airport	Delta Junction	AK	99737	Corps of Engineers, Civil.	103c 3016 3005	23
O Fort Greely	Fort Greely Airport	Delta Junction	AK	99737	Corps of Engineers, Civil.	103c 3016	
C Anchorage Defense Fuel Support Point.	1217 Anchorage Port Road.	Anchorage	AK	99501	Defense	3016 3010	23
O Anchorage Defense Fuel Support Point.	1217 Anchorage Port Road.	Anchorage	AK	99501	Defense	3016	
C BLM-Icy Cape Dewline Site.	Wainwright, 50 Mi NE	Wainwright	AK	99782	Interior	103c	20A
O BLM-Icy Cape Dew Line Site.	Wainwright, 50 Mi NE	Wainwright	AK	99782	Interior	103c	
C BLM-Sagwon Airstrip Dump.	T5R4ESec10–11	Sagwon	AK	99513	Interior	3016 103c	20A
O BLM-Sagwon Airstrip	T5R4ESec10–11	Sagwon	AK	99513	Interior	3016 103c	
C BLM-Tanacross Airfield.	Lat 63 Degree 22' North Long 143 Degrees 20' West.	Tanacross	AK	99776	Interior	103c	20A
O BLM-Tanacross Airfield.	Tanacross Airfield	Tanacross	AK	99776	Interior	103c	
C FWS-Amchitka Island, Alaska Maritime NWR.	2355 Kachemak Dr Suite 101	Homer	AK	99502	Interior	3010 3016	20A
O FWS-Amchitka Island	51–32 N 179–00 E	Amchitka Island	AK	99502	Interior	3010 3016	
C FWS-Brownlow Point Dewline Site.	101 12th Ave., Box 20	Fairbanks	AK	99723	Interior	103c 3016	20A
O FWS-Brownlow Point Dewline Site.	Barrow, 265 Mi SE	Barrow	AK	99723	Interior	103c 3016	
C FWS-Demarcation Point Dewline Site.	101 12th Ave., Suite 20	Fairbanks	AK	99723	Interior	103c 3016	20A
O FWS-Demarcation Point Dewline.	Barrow, 380 Mi SE	Barrow	AK	99723	Interior	103c 3016	
C FWS-Kenai NWR Swan Lake Moose Research Station.	2139 Ski Hill Road	Soldotna	AK	99669	Interior	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O FWS-Kenai Wildlife Rfg Swan Lk Moose Research Sta.		Soldotna	AK	99619	Interior	103c	
C FWS-Nuvagapak Dewline Site.	101 12th Ave., Box 20	Fairbanks	AK	99723	Interior	103c	20A
O FWS-Nuvagapak Dewline Site.	170 Miles East of Prudhoe Bay	Barrow	AK	99723	Interior	103c	
C FWS-Skilak Guard Station	P.O. Box 2139	Soldotna	AK	99669	Interior	103c 3016	20A
O FWS-Skilak Guard Station.		Soldotna	AK	99669	Interior	103c 3016	
C FWS-Swanson River Oil Field	P.O. Box 2139	Soldotna	AK	99669–2139	Interior	3016 103c	20A
O FWS-Swanson River Oil.	Ski Hill Road	Soldotna	AK	99669–2139	Interior	3016 103c	
C NPS-Bering Land Bridge NP: Lava Lake.	P.O. Box 220	Nome	AK	99762	Interior	103c 3016 3010	20A, 23
O NPS-Bering Land Bridge National Preserve	P.O. Box 220	Nome	AK	99762	Interior	103c 3016	
C CG-Loran Station on Sitkinak.	Sitkinak Island	Sitkinak Island	AK	99615	Transportation	103c	22
O BLM-Loran Station on Sitkinak.	Sitkinak Island	Sitkinak Island	AK	99615	Interior	103c	
C FAA-Chandalar Station.	Chandalar Lake Nav Aids, 110 Mi N of City	Fort Yukon	AK	99740	Transportation	103c	22, 20A
O BLM-Chandalar Dump	T16S, R11E, Sec9 UM 155 Mi SE Cy.	Barrow	AK	99723	Interior	103c	
C FAA-Cold Bay Station	Cold Bay Airport	Cold Bay	AK	99571	Transportation	103c	20A
O FAA-Cold Bay			AK		Transportation	103c	
C FAA-Cordova Station	Copper River Highway 10 M S of Cy.	Cordova	AK	99574	Transportation	103c	20A
O FAA-Cordova			AK		Transportation	103c	
C FAA-Coughlan Island	T40S R65E S32&33 Copper River ME.	Auke Bay	AK	99821	Transportation	3016 103c	20A, 22
O FS-Coghlan Island		Auke Bay	AK	99821	Agriculture	3016 103c	
C FAA-Deadhorse Station	Deadhorse Airport Nav Aids	Deadhorse	AK	99740	Transportation	103c	20A
O FAA-Deadhorse			AK		Transportation	103c	
C FAA-Iliamna Site	Iliamna	Iliamna	AK	99606	Transportation	3016 103c	22
O BLM-Iliamna Site	Iliamna	Iliamna	AK	99606	Interior	3016 103c	
C FAA-Juneau Station	9341 Glacier Highway Nav Aids.	Juneau	AK	99801	Transportation	103c	20A
O FAA-Juneau			AK		Transportation	103c	
C FAA-Lake Minchumina Airport	Ramp at Lk Minchumina Arpt.	Lake Minchumina	AK	99757	Transportation	3010 3016 103c 3005	20A, 23
O FAA-Lake Minchumina Arpt.	Ramp at Lk Minchumina Arpt.	Lake Minchumina	AK	99757	Transportation	3010 3016 103c	
C FAA-Point Woronzof RTR Facility.	Anchorage International Airport Area.	Anchorage	AK	99502	Transportation	103c	20A
O FAA-Point Woronzof RTR Facility.	Anchorage International Airport Area.	Anchorage	AK	99502	Transportation	103c	
C FAA-Sand Point Station.	On Peninsula Towards Aleutian Island Chain	Sandpoint	AK	99661	Transportation	103c	20A
O FAA-Sand Point			AK		Transportation	103c	
C FAA-Sitka	Japonski Island Naval Air Station.	Sitka	AK	99835	Transportation	103c 3010	23
O FAA-Sitka	Japonski Island Naval Air Station.	Sitka	AK	99835	Transportation	103c	
C FAA-Skwentna Facility	Skwentna Arprt Area	Skwentna	AK	99667	Transportation	3010 3016 103c	23
O FAA-Skwentna Facility	Skwentna Arprt Area	Skwentna	AK	99667	Transportation	3010	
C FAA-Tanana Air Field Station.	Tanana Airport Nav Aids	Tanana	AK	99777	Transportation	103c	20A
O FAA-Tanana Air Field	Tanana Airport	Tanana	AK	99777	Transportation	103c	
C Ketchican Coast Guard Base.	S Tongass Hwy-S Cy Limits.	Ketchikan	AK	99901	Transportation	3010	20A
O Ketchikan Coast Guard Base.	S Tongass Hwy-S Cy Limits	Ketchikan	AK	99901	Transportation	3010	

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FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Kodiak Coast Guard Support Center.	Womans Bay Kodiak Isl	Kodiak	AK	99619	Transportation ...	3010 103c 3016 3005	23
O Kodiak Coast Guard Support Center.	Womans Bay Kodiak Isl	Kodiak	AK	99619	Transportation ...	3010 103c 3016	
C Point Spencer Coast Guard Dump Site.	Port Clarence-60 MI NW of Cy.	Nome	AK	99762	Transportation ...	103c 3010	23
O Point Spencer Coast Guard Dump Site.	Port Clarence-60 MI NW of Cy.	Nome	AK	99762	Transportation ...	103c	
C Summit Air Navigation Site.	Cantwell Pks Hwy 5 MI S Nav Aids.	Summit	AK	99729	Transportation ...	3016 3010 103c	23
O Summit Air Navigation Site.	Cantwell Pks Hwy 5 MI S Nav Aids.	Summit	AK	99729	Transportation ...	3016	
C FAA-Dewline Site Collinson.	290 Miles SE of Barrow	Barrow	AK	99723	Transportation ...	103c	22
O Dewline Site Collinson	290 Miles SE of Barrow	Barrow	AK	99723	Air Force	103c	
C Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB	AL	36112	Air Force	3010 103c 3016 103a	23
O Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB	AL	36112	Air Force	3010 103c 3016	
C Colbert Fossil Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	Tennessee Valley Authority.	3005 3010 103c 103a	23
O Colbert Fossil Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	Tennessee Valley Authority.	3005 3010 103c	
C Muscle Shoals Power Service Center.	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a	20A
O Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a	
C Mobile Coast Guard Base.	South Broad St	Mobile	AL	36615	Transportation ...	3010 103a	23
O Mobile Coast Guard Base.	South Broad St	Mobile	AL	36615	Transportation ...	3010	
C Pine Bluff Arsenal	Highway 65	Pine Bluff	AR	71602	Army	3005 3010 3016 103c 103a	23
O Pine Bluff Arsenal	Highway 65	Pine Bluff	AR	71602	Army	3005 3010 3016 103c	
C Prescott NF: Golden Belt Mine.		Prescott	AZ	86303	Agriculture	103c 3016 103a	23
O Prescott NF: Golden Belt Mine.		Prescott	AZ	86303	Agriculture	103c 3016	
C Prescott NF: Upper Hassayampa Creek Mines.		Prescott	AZ	86303	Agriculture	103c 3016 103a	23
O Prescott NF: Upper Hassayampa Creek Mines.		Prescott	AZ	86303	Agriculture	103c 3016	
C Prescott NF: Upper Lynx Creek Mines.	344 South Cortez	Prescott	AZ	86303	Agriculture	103c 3016 3010 103a	23
O Prescott NF: Upper Lynx Creek Mines.	344 South Cortez	Prescott	AZ	86303	Agriculture	103c 3016	
C WAPA-Parker Dam Switchyard.	Lat-340942/Long-1141636.	Parker	AZ	85344	Energy	103a 3010	20A
O WAPA-Parker Dam	Lat-340942/Long-1141636.	Parker	AZ	85344	Energy	103a 3010	
C Gila River Site #2	T3S R63 Sec 3	Gila River Indian Resv.	AZ	85247	Interior	103c 103a	23
O Gila River Site #2	T3S R63 Sec 3	Gila River Indian Resv.	AZ	85247	Intenor	103c	
C NPS-Orphan Mine	P.O. Box 129	Grand Canyon	AZ	86023	Interior	103c 103a	23, 20A
O NPS-Grand Canyon National Park.	P.O. Box 129	Grand Canyon	AZ	86023	Interior	103c	
C Stanford #1	NR Ave I & County Highway.	Yuma	AZ	85365	Interior	103c	20A
O Standford #1	NR Ave I & County Highway.	Yuma	AZ	85365	Intenor	103c	
C Stanford #2	Yavapai County	Yuma	AZ	86322	Interior	103c	20A
O Standford #2	Yavapai County	Yuma	AZ	86322	Interior	103c	
C Prescott Medical Center.	500 Hwy 89 North	Prescott	AZ	86313	Veterans Affairs	3010	21
O Prescott Medical Center	500 Hwy 89 North	Prescott	AZ	86313	Veterans Administration.	3010	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Shasta-Trinity NF: Golinsky Mine.	2400 Washington Avenue.	Redding	CA	96001	Agriculture	103c 3016	20A
O Shasta-Trinity National Forest.	2400 Washington Avenue.	Redding	CA	96001	Agriculture	103c 3016	
C Sierra NF: Bass Lake Landfill.	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016	20A
O Sierra National Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016	
C Los Angeles Air Force Base.	2400 El Segundo Blvd	Los Angeles	CA	90009	Air Force	3010 103c 3016	23
O Los Angeles Air Force Base.	2400 El Segundo Blvd	Los Angeles	CA	90009	Air Force	3010 103c	
C Aerospace Corporation.	2400 E El Segundo Blvd	El Segundo	CA	90245	Defense Logistics Agency.	3010	21
O Aerospace Corporation.	2400 E El Segundo Blvd	El Segundo	CA	90245		3010	
C Stockton	Rough & Ready Island Bldg 414.	Stockton	CA	95203	General Services Administration.	3010	21
O Stockton	Rough & Ready Island Bldg 414.	Stockton	CA	95203	General Services Admin.	3010	
C BLM–Adin Transfer Station.	1 Mi SE of Adin; T.39N,R9E, Sec 27	Adin	CA	96006	Interior	103c 3016	20A
O BLM–Adin Transfer Station.	1 Mi SE of Adin; T.39N,R9E, Sec 27	Adin	CA		Interior	103c 3016	
C BLM–Afton Canyon/ Union Pacific Railroad.	T10–11R4–6Sec4–22	Afton	CA	92365	Interior	3016 103c	20A
O BLM–Afton Canyon/ Union Pacific Railroad.	T10–11R4–6Sec4–22	Afton	CA		Interior	3016 103c	
C BLM–Blue Rock Millsite.	T8SR37ESec8SESE	Big Pine	CA	93513	Interior	103c	20A
O BLM–Blue Rock Millsite.	T8SR37ESec8SESE		CA		Interior	103c	
C BLM–Coachella Landfill.	End of 44th Ave, Off Dillon.	Indio	CA	92201	Interior	103c	20A
O BLM–Coachella Landfill.		Indio	CA		Interior	103c	
C BLM–Upper Middle Park Canyon Trespass Dump.	T22 S., R.45E., Sec 27	Ballarat	CA	93562	Interior	103c	20A
O BLM–Upper Middle Park Canyon Trespass Dump.		Inyo County	CA		Interior	103c	
C BLM–Victory Millsite	T11NR12WSec32, Silver Queen Road.	Mojave	CA	93501	Interior	103c	20A
O BLM–Victory Millsite	T11NR12WSec32		CA		Interior	103c	
C BR–Parker Dam		Parker	CA	92267	Interior	3010 103c	23
O BR–Parker Dam		Parker	CA	92267	Interior	3010	
C Merced Falls	Nearest City: Merced Falls.	Merced Falls	CA		Interior	103c	20A
O BLM–Merced Falls	Nearest City: Merced Falls.	Merced Falls	CA		Interior	103c	
C Narcotics Task Force Laboratory.	2461 Impala	Carlsbad	CA	92008	Justice	103a 103c	23
O Narcotics Task Force Laboratory.	2461 Impala	Carlsbad	CA	92008	Justice	103a	
C Ames Research Center.	Environmental Health & Safety.	Moffett Field	CA	94035	NASA	3010 3016 103a	23
O Ames Research Center.	Environmental Health & Safety.	Moffett Field	CA	94035	NASA	3010 3016	
C Bayview Hills Housing Area.	1840 Saipan Drive	San Diego	CA	92139	Navy	3010	20A
O Bayview Navy Housing.	1840 Saipan Drive	San Diego	CA	92139	Navy	3010	
C Cabrillo Heights Housing Area.	8471 Jordan St	San Diego	CA	92139	Navy	3010	20A
O Cabrillo Heights Navy Housing.	8471 Jordan St	San Diego	CA	92139	Navy	3010	
C Centerville Beach Naval Facility.	Centerville Beach Road	Ferndale	CA	95536	Navy	103c 3010 3016	23
O Centerville Beach Naval Facility.	Centerville Beach Road	Ferndale	CA	95536	Navy	103c 3010	

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Chesterton Quarters Housing Area.	7468 Wellington St	San Diego	CA	92111	Navy	3010	20A
O Chesterton Navy Housing.	7468 Wellington St	San Diego	CA	92111	Navy	3010	
C Civil Engineering Laboratory.	NCBC	Port Hueneme	CA	93043	Navy	3010 103a 103c	23
O Civil Engineering Laboratory.	NCBC	Port Hueneme	CA	93043	Navy	3010 103a	
C Coronado Naval Amphibious Base.	On Route 75 on the Strand.	San Diego	CA	91255	Navy	3010 103c 3016 103a	23
O Corondado Naval Amphibious Base.	On Route 75 on the Strand.	San Diego	CA	91255	Navy	3010 103c 3016	
C El Centro Naval Air Facility.	Route 80	El Centro	CA	92234	Navy	3005 3010 103c 3016 103a	23
O El Centro Naval Air Facility.	Route 80	El Centro	CA	92234	Navy	3005 3010 103c 3016	
C Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c 3016	23
O Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c	
C Imperial Beach Naval Communication Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a	20A
O Imperial Beach Naval Communications Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a	
C Naval Facilities Engineering Service Center.	560 Center Drive	Port Hueneme	CA	93043	Navy	103a	20A, 22
O Port Hueneme Civil Engineering Laboratory.	Building 560	Port Hueneme	CA	93043	Corps of Engineers, Civil.	103a	
C Oakland Naval Supply Center, Alameda Annex.		Alameda	CA	94501	Navy	103c	20A
O Alameda Annex Naval Supply Center.		Alameda	CA	94501	Navy	103c	
C Point Mugu Naval Air Warfare Center.	Pacific Coast Highway	Point Mugu	CA	93042	Navy	3016 103a	20A, 23
O Point Mugu Naval Air Station.	Naval Air Weapons Station.	Point Mugu	CA	93042	Navy	3016	
C Pomona Naval Industrial Reserve Ordnance Plant.	Pomona/Mission Boulevard.	Pomona	CA	91766	Navy	103c 3010	23, 20A
O Pomona Industrial Reserve Ordnance Plant.	Pomona/Mission Boulevard.	Pomona	CA	91766	Navy	103c	
C Port Hueneme Naval Construction Battalion Center.	Ventura Road and Channel Island Boulevard.	Port Hueneme	CA	93043	Navy	103a 3010	23
O Port Hueneme Naval Construction Battalion Center.	Ventura Road and Channel Island Boulevard.	Port Hueneme	CA	93043	Navy	103a	
C San Diego Naval Hospital.	Camp Pendleton Naval Station.	San Diego	CA	92055	Navy	3010 103c 103a	23
O San Diego Naval Hospital.	Camp Pendleton Naval Station.	San Diego	CA	92055	Navy	3010 103c	
C Treasure Island Naval Station.	Treasure Island	San Francisco	CA	94130	Navy	3005 3010 3016 103c 103a	23
O Treasure Island Naval Station.	Treasure Island	San Francisco	CA	94130	Navy	3005 3010 3016 103c	
C Western Division, Naval Facilities Engnrng Command.	900 Commodore Drive	San Bruno	CA		Navy	103c	20A
O San Bruno Naval Facilities Engineering Command WES.	900 Commodore Drive	San Bruno	CA		Navy	103c	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Los Angeles Medical Center.	11296 Wilshire & Sawtelle Blvd.	Los Angeles	CA		Veterans Affairs	103c	21
O Los Angeles Medical Center.	11296 Wilshire & Sawtelle Blvd.	Los Angeles	CA		Veterans Administration.	103c	
C Menlo Park Medical Center.	795 Willow Rd	Menlo Park	CA	94025	Veterans Affairs	3010	21
O Menlo Park Medical Center.	795 Willow Rd	Menlo Park	CA	94025	Veterans Administration.	3010	
C Bennett Army National Guard Facility.	15 Miles SW of Bennett	Bennett	CO	80102	Army	103c 3016	23
O Bennett Army National Guard Facility.	15 Miles SW of Bennett	Bennett	CO	80102	Army	103c	
C Connecticut Air National Guard Bradley Base.	Bradley ANG Base	East Granby	CT	06026	Air Force	3010 103c	23
O Connecticut Air National Guard Bradley Base.	Bradley ANG Base	East Granby	CT	06026	Air Force	3010	
C East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station.	East Lyme	CT	06357	Navy	3010 3016 103c	23
O East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station.	East Lyme	CT	06357	Navy	3010 3016	
C New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c 103a	23
O New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c	
C Long Island Sound Coast Guard Group.	120 Woodward Ave	New Haven	CT	06512	Transportation	3010 103c	23
O Long Island Sound Coast Guard Group.	120 Woodward Ave	New Haven	CT	06512	Transportation	3010	
C Fort McNair	350 P Street, S.W.	Washington	DC	20319	Army	3010 103c 103a	23
O Fort McNair	350 P Street, S.W.	Washington	DC	20319	Army	3010 103c	
C Customs Field Office	1200 Pennsylvania Avenue.	Washington	DC	20004	General Services Administration.	3010 103c	21
O Customs Field Office	1200 Pennsylvania Avenue.	Washington	DC	20004	General Services Administration.	3010 103c	
C Washington Office	2nd and M Street, SE	Washington	DC	20407	General Services Admin.	3010 103c	21
O Washington Office	2nd and M Street, SE	Washington	DC	20407	General Services Admin.	3010 103c	
C Dover Air Force Base	436 SUG/CC	Dover AFB	DE	19902	Air Force	3005 3010 3016 103c 103a	23, 20A
O Dover Air Force Base	436 ABG/CC	Dover AFB	DE	19902	Air Force	3005 3010 3016 103c	
C FWS-Bombay Hook National Wildlife Refuge.	Route 1, Box 147	Smyrna	DE	19977	Interior	103c	20A
O FWS-Bombay Hook National Wildlife Refuge.	Marshtown Rd	Little Creek	DE	19977	Interior	103c	
C Orlando Army Air Support Facility 49.	8601 Ave B	Orlando	FL	32812	Army	3005 3010	20A
O AFA 49–A Orlando	8601 Ave B McCoy NTC Annex.	Orlando	FL	32812	Army	3005 3010	
C Palatka Area Maintenance Support Activity-55M.	Star Route #1, Box 8	Palatka	FL	32177	Army	3010 3005	20A
C Palatka Army Maintenance Support Activity-55M.	4300 St Johns Ave	Palatka	FL	32077	Army	3010 3005	
C Cecil Field Naval Air Station.	103rd St. & Normandy Blvd.	Cecil Field	FL	32215	Navy	3005 3010 3016 103c 103a	23

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Cecil Field Naval Air Station.	103rd St. & Normandy Blvd.	Cecil Field	FL	32215	Navy	3005 3010 3016 103c	
C Jacksonville Naval Supply Center.	P.O. Box 26938	Jacksonville	FL	32226–6938	Navy	103c 3005 103a	23
O Jacksonville Naval Supply Center.	P.O. Box 26938	Jacksonville	FL	32226–6938	Navy	103c 3005	
C Naval Technical Training Center Corry Station.	Lillian Highway	Pensacola	FL		Navy	103c 103a	20A
O NTTC Corry Station		Pensacola	FL		Navy	103c 103a	
C Panama City Coastal Systems Station.	Hwy 98 Code 6310MC	Panama City	FL	32407	Navy	3005 3010 3016 103a	23
O Panama City Coastal Systems Station.	Hwy 98 Code 6310MC	Panama City	FL	32407	Navy	3005 3010 3016	
C Augusta Area Maintenance Support Activity-54G.	3311 Wrightsboro Road	Augusta	GA	30904	Army	3010 3005	20A
O Augusta Army Maintenance Support Activity-54G.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010 3005	
C Fort Benning	GA Hwy 1 & US 27	Fort Benning	GA	31905	Army	3005 3010 3016 103c 103a	23
O Fort Benning	GA Hwy 1 & US 27	Fort Benning	GA	31905	Army	3005 3010 3016 103c	
C Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30033	Veterans Affairs	3005 3010 3016	21
O Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30033	Veterans Administration.	3005 3010 3016	
C Guam Fleet and Industrial Supply Center.	Marine Drive	Piti	GU	96630	Navy	3010 3016 103a	23
O Guam Fleet and Industrial Supply Center.	Marine Drive	Piti	GU	96630	Navy	3010 3016	
C Palehua Solar Observatory.	South Tip of Wainae Mt. Range.	Ewa Beach	HI	96706	Air Force	3016 103c	20A, 23
O Palehua Solar Observatory.			HI		Air Force	3016	
C Honolulu Naval Communers & Telecommunications Area.	Eastern Pacific Area	Honolulu	HI		Navy	3016 103c	20A
O Honolulu Naval Communication Area Master Station.	Eastern Pacific Area	Honolulu	HI		Navy	3016 103c	
C Lauluafei National Response Team Facility.	Lualualei Valley Oahu Island	Lualualei	HI		Navy	103c	20A
O Lauluafei National Response Team Facility.	Lualualei Valley Oahu Island.	Lualualei	HI		Navy	103c	
C Pacific Missile Range Facility.	Pacific Missile Range Facility.	Kekaha	HI	96752	Navy	3005 3010 3016 103c	23
O Pacific Missile Range Facility.	Pacific Missile Range Facility.	Kekaha	HI	96752	Navy	3005 3010 3016	
C Wahiawa Nctams Eastpac.	Off Center St Oahu Island.	Wahiawa	HI	96786	Navy	103c 3010	20A, 23
O Wahiawa Navcams	Off Center St Oahu Island.	Wahiawa	HI		Navy	103c	
C CG-Honolulu Coast Guard Base.	Sand Island	Honolulu	HI	96819	Transportation	3010 103c	20A, 23
O Honolulu Coast Guard Base.	Sand Island	Honolulu	HI	96819	Transportation	3010	
C Fort Des Moines (Inactive).	225 E Army Post Rd	Des Moines	IA	50315	Army	103c 103a 3016	23
O Fort Des Moines (Inactive).	225 E Army Post Rd	Des Moines	IA	50315	Army	103c 103a	
C Clearwater NF: Clayton Creek Dump.	T 39N, R 11E, Sec 21	Headquarters	ID	83534	Agriculture	103c 3016	20A, 23
O Clearwater National Forest.	T 39N, R 11E, Sec 21	Headquarters	ID	83534	Agriculture	103c	
C Payette NF: Cinnabar Mine.	Krassel District	Yellowpine	ID		Agriculture	3016 103c	20A, 23
O Payette NF: Cinnabar Mine	Krassel District		ID		Agriculture	3016	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Salmon NF: Blackbird Mine.	P.O. Box 729	Salmon	ID	83467	Agriculture	103c 3016 3010	23
O Salmon NF: Blackbird Mine.	P.O. Box 729	Salmon	ID	83467	Agriculture	103c 3016	
C Boise Air National Guard-Gowen Field.	43 33 N. 116 13 W	Boise	ID	83705	Air Force	3005 3010 103c	22
O BLM-Idaho Air National Guard-Gowen Field.	43 33 N. 116 13 W	Boise	ID	83705	Interior	3005 3010 103c	
C Mountain Home Air Force Base	366 CSG/DE	Mountain Home AFB.	ID	83648	Air Force	3005 3010 3016 103c 103a	23
O Mountain Home Air Force Base.	366 CSG/DE	Mountain Home AFB.	ID	83648	Air Force	3005 3010 3016 103c	
C BLM-Blue Dome Unauthorized Dump.	T10NR30ESec30	Blue Dome	ID	83464	Interior	103c 3016	23
O BLM-Blue Dome Unauthorized Dump.	T10NR30ESec30	Blue Dome	ID	83464	Interior	103c	
C BLM-Hulet Dump	T.35.R.IW. Sec. 15	Murphy	ID	83650	Interior	103c 3016	23
O BLM-Hulet Dump	T.35.R.IW. Sec. 15	Murphy	ID	83650	Interior	103c	
C BLM-Liberty	T3S, R33E, Sec 19E, 20N, 21SWNW;NWNW 30N.	Liberty	ID	83221	Interior	103c	20A
O BLM-Liberty	T3S, R33E, Sec 19E, 20N, 21SWNW;NWNW 30N.	Liberty	ID		Interior	103c	
C BLM-National Guard Impact Area.	Sec (ALL) T2&3S, R2&3E.	Unincorporated	ID	83709	Interior	103c	22
O National Guard Impact Area.	Sec (ALL) T2&3S, R2&3E.	Unincorporated	ID	83709	Air Force	103c	
C BLM-Pine Creek	T47 48 49 N R2E Near Pinehurst.	Pinhurst	ID	83850	Interior	103c	20A
O BLM-Pine Creek	T47,48,49N R2E	Near Pinhurst	ID		Interior	103c	
C BLM-Reeder Flying Service Airstrip #3.	T8S, R13E. Sec 6	Glenns Ferry	ID	83623	Interior	103c 3010 3005	23
O BLM-Reeder Flying Service Airstrip #3.	T8S, R13E. Sec 6	Glenns Ferry	ID	83623	Interior	103c 3010	
C BR-Minidoka Landfill		Rupert	ID	83350	Interior	103c	20A
O BLM-Minidoka Landfill		Rupert	ID	83350	Interior	103c	
C Argonne National Laboratory	9700 S. Cass Ave Dupage County	Argonne	IL	60439	Energy	3005 3010 3016 103c 103a	23
O Argonne National Laboratory.	9700 S. Cass Ave Dupage County.	Argonne	IL	60439	Energy	3005 3010 3016 103c	
C FWS-Sangamo Electric Dump/Crab Orchard NWF	P.O. Box J	Carterville	IL	62518	Interior	3005 3010 3016 103c	20A
O FWS-Crab Orchard NWR Sangamo Dump.	Ordill Ind. Area Williamson County	Carterville	IL	62518	Interior	3005 3010 3016 103c	
C Danville Medical Center Hospital.	1900 E Main St	Danville	IL	61832	Veterans Affairs	103c	21, 20A
O Danville Medical Center Hospital.	1900 E Main St	Danville	IL		Veterans Administration.	103c	
C Edward Hines Medical Center Hospital.	5th & Roosevelt Rd	Hines	IL	60141	Veterans Affairs	3010	21
O Edward Hines Medical Center Hospital.	5th & Roosevelt Rd	Hines	IL	60141	Veterans Administration.	3010	
C Hines Supply Depot	1st Ave and 21st St	Hines	IL	60141	Veterans Affairs	3010	21
O Hines Supply Depot	1st Ave and 21st St	Hines	IL	60141	Veterans Administration.	3010	
C Marion Medical Center	2401 W Main St	Marion	IL	62959	Veterans Affairs	3010	21
O Marion Medical Center	2401 W Main St	Marion	IL	62959	Veterans Administration.	3010	
C Wayne-Hoosier NF: Branchville Site.	811 Constitution Avenue	Bedford	IN	47421	Agriculture	103c 3016	20A
O Wayne-Hoosier NF: Branchville Site.		Bedford	IN	47421	Agriculture	103c 3016	

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Greenup Lock and Dam.	5121 New Dam Road	Greenup	KY	41144	Corps of Engineers, Civil.	3010	20A
O Greenup	5121 New Dam Road	Greenup	KY	41144	Corps of Engineers, Civil.	3010	
C Lexington Federal Correctional Institution.	3301 Leestown Rd	Lexington	KY	40511	Justice	3005 3010 103c	23
O Lexington Federal Correctional Institution.	3301 Leestown Rd	Lexington	KY	40511	Justice	3005 3010	
C FWS-Lacassine National Wildlife Refuge.	HCR 63, Box 186	Lake Arthur	LA	70549	Interior	103c	20A
O FWS-Lacassine National Wildlife Refuge.	Route 1	Lake Arthur	LA	70549	Interior	103c	
C Alexandria Medical Center.	Shreveport Hwy 2.5M N	Alexandria	LA	71301	Veterans Affairs	3010	21, 20A
O Pineville Medical Center.	Shreveport Hwy 2.5M N	Pineville	LA	71301	Veterans Administration.	3010	
C New Orleans Medical Center.	1601 Perdido Street	New Orleans	LA	70112	Veterans Affairs	3010	21
O New Orleans Medical Center.	1601 Perdido Street	New Orleans	LA	70112	Veterans Administration.	3010	
C Shreveport Medical Center.	510 East Stoner Ave	Shreveport	LA	71130	Veterans Affairs	103a	21
O Shreveport Medical Center.	510 East Stoner Ave	Shreveport	LA	71130	Veterans Administration.	103a	
C Natick Research Development and Engineering Center.	Kansas St	Natick	MA	01760	Army	3010 3016 103c	23
O Natick Research Development and Engineering Center.	Kansas St	Natick	MA	01760	Army	3010 3016	
C FWS-Parker River National Wildlife Refuge.	Northern Boulevard Plum Island.	Newburyport	MA	01950	Interior	103c 3016	20A
O FWS-Parker River Refuge.	Plum Island Turnpike and Ocean Ave.	Newburyport	MA	01950	Interior	103c 3016	
C Bedford Naval Weapons Industrial Reserve Plant.	Hartwell Road	Bedford	MA	01730	Navy	3016 103c 103a	23
O Bedford Naval Weapons Industrial Reserve Plant.	Hartwell Road	Bedford	MA	01730	Navy	3016 103c	
C South Weymouth Coast Guard Bouy Depot.	Trotter Road	South Weymouth.	MA	02190	Transportation	3005 3010 103c	23
O South Weymouth Coast Guard Bouy Depot.	Trotter Road	South Weymouth.	MA	02190	Transportation	3005 3010	
C Woods Hole Coast Guard Base.	Little Harbor Road	Falmouth	MA	02543	Transportation	3010 103c	23
O Woods Hole Coast Guard Base.	Little Harbor Road	Falmouth	MA	02543	Transportation	3010	
C Bourne National Cemetery	MA National Cemetary	Bourne	MA	02532	Veterans Affairs	3016	21
O Bourne National Cemetery.	MA National Cemetary	Bourne	MA	02532	Veterans Administration.	3016	
C Brockton Medical Center	940 Belmont Street	Brockton	MA	02401	Veterans Affairs	3016	21
O Brockton Medical Center.	940 Belmont Street	Brockton	MA	02401	Veterans Administration.	3016	
C West Roxbury Medical Center.	1400 VFW Parkway	West Roxbury	MA	02132	Veterans Affairs	3016	21
O West Roxbury Medical Center.	1400 VFW Parkway	W Roxbury	MA	02132	Veterans Administration.	3016	
C Phoenix Control (Nike).	Sunnybrook Road	Jacksonville	MD	21131	Army	3016 103c 3010	23
O Phoenix Control (Nike).	Sunnybrook Road	Jacksonville	MD	21131	Army	3016 103c	
C Social Security Complex.	6401 Security Blvd	Baltimore	MD	21235	General Services Administration.	3010	21
O Social Security Complex.	6401 Security Blvd	Baltimore	MD	21235	General Services Admin.	3010	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C FWS-Patuxent Wildlife Research Center.	Rt 197 at Powdermill Road.	Laurel	MD	20708	Interior	3016 103c 3010	23
O FWS-Patuxent Wildlife Research Center.	Rt 197 at Powdermill Road.	Laurel	MD	20708	Interior	3016 103c	
C Annapolis Naval Station.	Naval Station Complex Annapolis.	Annapolis	MD	21402	Navy	3010 103c 103a	23
O Annapolis Naval Station.	Naval Station Complex Annapolis.	Annapolis	MD	21402	Navy	3010 103c	
C David Taylor Research Center.	Carderock Laboratory	Bethesda	MD	20084	Navy	3010 103c 103a	23
O David Taylor Research Center.	Carderock Laboratory	Bethesda	MD	20084	Navy	3010 103c	
C National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c 103a	23
O National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c	
C Patuxent River Naval Air Station.	NE of Route 235	Patuxent River	MD	20670	Navy	3005 3010 3016 103c 103a	23
O Patuxent River Naval Air Station.	NE of Route 235	Patuxent River	MD	20670	Navy	3005 3010 3016 103c	
C Perry Point Medical Center.	Bldg 23H	Perry Point	MD	21902	Veterans Affairs	3010	21
O Perry Point Medical Center.	Bldg 23H	Perry Point	MD	21902	Veterans Administration.	3010	
C FWS-Seal Island National Wildlife Refuge.	P.O. Box 1077	Calais	ME	04619	Interior	103c	20A, 22
O Seal Island	C/O Seal Island National Wildlife Refuge.	Milbridge	ME	04658	Defense	103c	
C South Portland Coast Guard Base.	High Street	South Portland	ME	04106	Transportation	3010 103c	23
O South Portland Coast Guard Base.	High Street	South Portland	ME	04106	Transportation	3010	
C Togus Medical Center	Route 17	Togus	ME	04330	Veterans Affairs	3016 3010	23, 21
O Togus Medical Center	Route 17	Togus	ME	04330	Veterans Administration.	3016	
C Hiawatha NF: Munising Landfill.	SW ¼ of Sec 19 T46N R18W.	Escanaba	MI	49829	Agriculture	103c 3016	20A
O Hiawatha National Forest.	2727 N Lincoln Road	Escanaba	MI	49829	Agriculture	103c 3016	
C Huron-Manistee NF: Ranger Station.	12 N Charles	White Cloud	MI	49348	Agriculture	103c 3010 3016	20A
O Huron-Manistee National Forest Chemical Waste.	12 N Charles	White Cloud	MI	49348	Agricutlure	103c 3010 3016	
C Phelps/Collins Airport	Airport Road	Alpena	MI	49707	Air Force	3010 3016 103a	23
O Phelps/Collins Airport	Airport Road	Alpena	MI	49707	Air Force	3010 3016	
C Tank Automotive Command.	6501 E 11 Mile Rd Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c 103a	23
O Tank Automotive Command.	6501 E 11 Mile Rd Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c	
C Ann Arbor Medical Center	2215 Fuller Rd	Ann Arbor	MI	48105	Veterans Affairs	3010	21
O Ann Arbor Medical Center	2215 Fuller Rd	Ann Arbor	MI	48105	Veterans Administration.	3010	
C Battle Creek Medical Center	5600 Armstrong Rd	Battle Creek	MI	49016	Veterans Affairs	3010	21
O Battle Creek Medical Center	5600 Armstrong Rd	Battle Creek	MI	49016	Veterans Administration.	3010	
C Fort Snelling National Cemetery, Minneapolis.	7601 34th Avenue South.	Minneapolis	MN	55450	Veterans Affairs	3016 103c	21
O Fort Snelling National Cemetery, Minneapolis.	7601 34th Avenue South.	Minneapolis	MN	55450	Veterans Administration.	3016 103c	
C Minneapolis Medical Center.	One Veterans Dr	Minneapolis	MN	55417	Veterans Affairs	3010 3016	21

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FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Minneapolis Medical Center.	One Veterans Dr	Minneapolis	MN	55417	Veterans Administration.	3010 3016	
C Minneapolis Medical Center	54th St & 48th Ave S	Minneapolis	MN	55417	Veterans Affairs	3010	21
O Minneapolis Medical Center.	54th St & 48th Ave S	Minneapolis	MN	55417	Veterans Administration.	3010	
C Federal Center	2306 East Bannister Road.	Kansas City	MO	64131–3088	General Services Administration.	3010 3016 103c	21
O Federal Center	2306 East Bannister Road.	Kansas City	MO	64131–3088	General Services Admin.	3010 3016 103c	
C Kansas City	1500 Bannister Road	Kansas City	MO	64131	General Services Admin.	3010 3016 103c 103a	21, 23
O Kansas City	1500 Bannister Road	Kansas City	MO	64131	General Services Admin.	3010 2016 103c	
C St Louis	1222 Spruce	St Louis	MO	63103	General Services Administration.	3005 3010 103a	21, 23
O St Louis	1222 Spruce	St Louis	MO	63103	General Services Admin.	3005 3010	
C BATFA-Kansas City	811 Grand Ave Rm 106	Kansas City	MO	64106	Treasury	3010	21
O BATFA-Kansas City	811 Grand Ave Rm 106	Kansas City	MO	64106	General Services Administration.	3010	
C John J. Pershing Medical Center	1500 N Westwood Blvd	Poplar Bluff	MO	63901	Veterans Affairs	3010	21
O John J. Pershing Medical Center.	1500 N Westwood Blvd	Poplar Bluff	MO	63901	Veterans Administration.	3010	
C Midway Island Naval Air Facility.	FPO	San Francisco	MO	96614–1200	Navy	3016 103a	23
O Midway Island Naval Air Facility.	FPO	San Francisco	MO	96614–1200	Navy	3016	
C Camp McCain National Guard.	P.O. Box 686	Elliott	MS	38926	Army	3010 3016	23
O Camp McCain National Guard.	P.O. Box 686	Elliott	MS	38926	Army	3010	
C Gulfport Naval Construction Battalion Center.	33rd Ave	Gulfport	MS	39501	Navy	3010 103c 103a	23
O Gulfport Naval Construction Battalion Center.	33rd Ave	Gulfport	MS	39501	Navy	3010 103c	
C FS-Regional Field Service Facility.	14th and Catlin	Missoula	MT	59807	Agriculture	103a 103c 3010	23
O FS-Regional Field Service Facility.	14th and Catlin	Missoula	MT	59807	Agriculture	103a	
C Kootenai NF: Libby Airport Wood Trea.	Libby Airport	Libby	MT	59923	Agriculture	3016 103c	23
O Kootenai NF: Libby Airport Wood Trea.	Libby Airport	Libby	MT	59923	Agriculture	3016	
C Fort Peck Project	Yellowstone Rd	Fort Peck	MT	59223	Corps of Engineers, Civil.	3010 103a	23
O Fort Peck Project	Yellowstone Rd	Fort Peck	MT	59223	Corps of Engineers, Civil.	3010	
C FWS-Charles M. Russell National Wildlife Refuge.	P.O. Box 110	Lewistown	MT	59457	Interior	3010 103c	20A
O FWS-Charles M. Russell Refuge.	T21N, R2E, Sec 15	Turkey Joe Landing.	MT	59457	Interior	3010 103c	
C NPS-Cape Hatteras National Seashore.	Dare County	Rodanthe	NC	27968	Interior	103c	22
O Cape Hatteras National Seashore.	Dare County	Rodanthe	NC	27968	Transportation	103c	
C Camp Lejeune Military Reservation.	NC Hwy 24 & US Hwy 16.	Camp Lejeune	NC	28542	Navy	3005 3010 3016 103c 103a	23
O Camp Lejeune Military Reservation.	NC Hwy 24 & US Hwy 16.	Camp Lejeune	NC	28542	Navy	3005 3010 3016 103c	
C FWS-Rainwater Basin Wetlands Management District.	P.O. Box 1686	Kearney	NE	68933	Interior	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O FWS-McMurtry Marsh	South Highway 6, 10 Miles East of Hastings.	Hastings	NE	68933	Interior	103c	
C Cold Regions Research and Engineering Laboratory.	Route 10	Hanover	NH	03755	Army	103c 3016	23
O Cold Regions Research and Engineering Laboratory.	Route 10	Hanover	NH	03755	Army	103c	
C Manchester Medical Center Ash Dump.	718 Smyth Road	Manchester	NH	03104	Veterans Affairs	103c	21
O Manchester Medical Center Ash Dump.	718 Smyth Road	Manchester	NH	03104	Veterans Administration.	103c	
C Belle Mead Supply Depot.	Belle Mead #1 Route 206.	Belle Mead	NJ	08502	General Services Administration.	3010 103c 103a	21
O Belle Mead Supply Depot.	Belle Mead #1 Route 206.	Belle Mead	NJ	08502	General Services Admin.	3010 103c 103a	
C Raritan Depot	4700 Woodbridge Avenue.	Edison	NJ	08817	General Services Administration.	3005 3010 3016 103c	21
O Raritan Depot	4700 Woodbridge Avenue.	Edison	NJ	08817	General Services Admin.	3005 3010 3016 103c	
C Somerville Depot	Route 206	Somerville	NJ	08876	General Services Administration.	103c	21
O Somerville Depot	Route 206	Somerville	NJ	08876	General Services Admin.	103c	
C FWS-Barnegat Division, Edwin B. Forsythe NWR.	PO Box 544	Barnegat	NJ	08005	Interior	3016 103c	20A
O FWS-Edwin B. Forsythe National Wildlife Refuge.	700 West Bay Avenue	Barnegat	NJ	08005	Interior	3016 103c	
C East Orange Medical Center.	Tremont Ave	East Orange	NJ	07019	Veterans Affairs	3010	21
O East Orange Medical Center.	Tremont Ave	East Orange	NJ	07019	Veterans Administration.	3010	
C Hillsborough Supply Depot.	Route 206	Hillsborough Twp.	NJ	08853	Veterans Affairs	103c 3010	21
O Hillsborough Supply Depot.	Route 206	Hillsborough Twp.	NJ	08853	Veterans Administration.	103c 3010	
C Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Affairs	3010 103c	21
O Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Administration.	3010 103c	
C BLM-Standard Transpipe Corp.	S. of Alamogordo, NM on Hwy 54.	Alamogordo	NM	88310	Interior	103c 3016	20A
O BLM-Standard Transpipe Corp.	T17S, R9E, Secs 18 and 19.	Alamogordo	NM	88310	Interior	103c 3016	
C Albuquerque Hospital	2100 Ridgecrest	Albuquerque	NM	87106	Veterans Affairs	3005 3010 3016 103c	21
O Albuquerque Hospital	2100 Ridgecrest	Albuquerque	NM	87106	Veterans Administration.	3005 3010 3016 103c	
C Utah Test & Training Range.		Wendover	NV	89835	Air Force	103c	20A
O Utah Test & Training Range.	Immediately SW of Wendover.	Wells	NV	89835	Air Force	103c	
C BLM-Argentum Mill	NE¼ Sec 17 T3N R36E	Esmerelda County.	NV	89010	Interior	103c	20A
O BLM-Argentum Mill	T3NR36ESec17	Esmerelda County.	NV	89010	Interior	103c	
C Indian Springs Landfill		Clark County	NV		Interior	103c	20A
O BLM-Indian Springs Landfill.		Clark County	NV		Interior	103c	
C Stewart Air National Guard Base.	Stewart International Airport.	Newburgh	NY	12550	Air Force	103c 3010 3016	23
O Stewart Air National Guard Base.	Stewart International Airport.	Newburgh	NY	12550	Air Force	103c	
C Youngstown Test Annex.	Balmer Rd	Porter Center	NY	14131	Air Force	103c 3016	23
O Youngstown Test Annex.	Balmer Rd	Porter Center	NY	14131	Air Force	103c	

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FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Bellmore Maintenance Facility.	2755 Maple Ave	Bellmore	NY	11710	Army	3010 3016	23
O Bellmore Maintenance Facility.	2755 Maple Ave	Bellmore	NY	11710	Army	3010	
C Farmingdale Organizational Maintenance Shop #43.	25 Barting Place Road	Farmingdale	NY	11735	Army	3010	21
O Farmingdale Organizational Maintenance Shop #43.	25 Barting Place Road	Farmingdale	NY	11735	Air Force	3010	
C Sage Complex	510 Stewart Dr W	North Syracuse	NY	13212	Army	3010	21
O Sage Complex	510 Stewart Dr W	North Syracuse	NY	13212		3010	
C Webster Army Maintenance Support Activity-7	517 Old Ridge Road	Webster	NY	14580	Army	3010 103c	23
O Webster Army Maintenance Support Activity-7	517 Old Ridge Road	Webster	NY	14580	Army	3010	
C West Point Military Academy.	Rt 9W—Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c 103a	23
O West Point Military Academy.	Rt 9W—Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c	
C Knolls Atomic Power Laboratory-Kesselring Site.	Atomic Project Road	West Milton	NY	12020	Energy	3005 3010 3016 103c 103a	23
O Knolls Atomic Power Laboratory-Kesselring Site.	Atomic Project Road	West Milton	NY	12020	Energy	3005 3010 3016 103c	
C Brooklyn Information Agency	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Administration.	3010	21
O Brooklyn Information Agency	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Admin.	3010	
C Emmanuel Cellard Federal Building.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Administration.	3010	21
O Emmanuel Cellard Federal Building.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin.	3010	
C Federal Building	252 7th Ave	New York	NY	10001	General Services Administration.	3010	21
O Federal Building	252 7th Ave	New York	NY	10001	General Services Admin.	3010	
C IRS Brookhaven Service Center.	1040 Waverly Ave	Holtsville	NY	11742	General Services Administration.	3010	20A
O IRS Center	1040 Waverly Ave	Holtsville	NY	11742	General Services Admin.	3010	
C Merchandise Control Sales Section.	6 World Trade Center	New York	NY	10048	General Services Administration.	3010	21
O Merchandise Control Sales Section.	6 World Trade Center	New York	NY	10048	General Services Admin.	3010	
C New York	201 Varick St	New York	NY	10014	General Services Administration.	3010	21
O New York	201 Varick St	New York	NY	10014	General Services Admin.	3010	
C FWS-Iroquois National Wildlife Refuge.	P.O. Box 517	Alabama	NY	14003	Interior	3016 103c	20A
O FWS-Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016 103c	
C NPS-Federal Hall National Memorial.	26 Wall Street	New York	NY	10005	Interior	3010	20A
O NPS-Federal Hall NM	26 Wall Street	New York	NY	10005	Interior	3010	
C NPS-Statue of Liberty Natl Monument: Ellis Island.	National Monument Liberty Island.	Liberty Island	NY	10004	Interior	3010	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O NPS-Statue of Liberty Natl Monument: Ellis Island.		Liberty Island	NY	10004	Interior	3010	
C NPS-Theodore Roosevelt Birthplace.	28 E 20th Street	New York	NY	10003	Interior	3010	20A
O NPS-Theodore	28 E 20th Street	New York	NY	10003	Interior	3010	
C Pennsylvania Ave/ Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy.	Brooklyn	NY	11207	Interior	3010	20A
O BLM-Pennsylvania Ave/Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy.	Brooklyn	NY	11207	Interior	3010	
C Calverton Naval Weapons Industrial Reserve Plant.	Wading River—Manor Rd.	Calverton	NY	11933	Navy	103c 3016	23
O Calverton Naval Weapons Industrial Reserve Plant.	Wading River—Manor Rd.	Calverton	NY	11933	Navy	103c	
C Binghamton Post Office.	111 Henry Street	Binghamton	NY	13902	Postal Service	3010 103c	20A, 23
O Binghamton Post Office.	115 Henry Street	Binghamton	NY	13902	Postal Service	3010	
C Far Rockaway General Mail Facility.	1836 Mott Ave	Far Rockaway	NY	11691	Postal Service	3010	22
O Far Rockaway Postal Service.	1836 Mott Ave	Far Rockaway	NY	11691		3010	
C Castle Point Hospital	Rte 9D	Castle Pt	NY	12511	Veterans Affairs	3010 103c	21
O Castle Point Hospital	Rte 9D	Castle Pt	NY	12511	Veterans Administration.	3010 103c	
C Lima Defense Plant Representative Office.	1155 Buckeye Rd, Allen County.	Lima	OH	45804–1898	Army	3010 3016 103c	20A
O Lima Defense Plant Representative Office.	Defense Logistics Agency, DPRO General Dynamics—Lima, 1155 Buckeye Rd.	Lima	OH	45804–1898	Army	3010 3016 103c	
C Shenango Disposal Site, ORP	Ohio Rt 88 County Road 225 Shenango Disposal Site.	Vernon Township.	OH	44428	Corps of Engineers, Civil.	3010 3016	20A
O Pittsburgh Army Engineering District.	Ohio Rt. 88 County Road 225 Shenango Disposal Site.	Vernon Township.	OH	44428	Corps of Engineers, Civil.	3010 3016	
C Portsmouth Gaseous Diffusion Plant.	US Rte 235	Piketon	OH	45661	Energy	3005 3010 3016 103c 103a	20A
O Portsmouth Gaseous Diffusion Plant.	US Rte 23S Pike County.	Piketon	OH	45661	Energy	3005 3010 3016 103c 103a	
C FWS-Wichita Mountains National Wildlife Refuge.	Route 1, Box 448	Indiahoma	OK		Interior	3016 103c	20A
O FWS-Wichita Mountains National Wildlife Refuge.	Comanche County		OK		Interior	3016 103c	
C Siuslaw NF: Mt. Hebo Air Force Station.	8 MI E of Hwy 22	Hebo	OR	97122	Agriculture	103c 3010 3016	23, 22
O Mt. Hebo Air Force Station.	8 MI E of Hwy 22	Hebo	OR	97122	Air Force	103c 3010	
C Madras Army Air Field	Cherry Road	Madras	OR	97741	Army	103c	22
O Madras Air Force Station.	Cherry Road	Madras	OR	97741	Air Force	103c	
C Charles E. Kelley Support Center.	US Army	Oakdale	PA	15071	Army	3010 103c	20A
O Chas Kelly Support Center.	US Army	Oakdale	PA	15071	Army	3010 103c	
C The Former Marietta Air Force Station.	Rt 441	Marietta	PA		General Services Administration.	103c	21
O The Former Marietta Air Force Station.	Rt 441	Marietta	PA		Air Force	103c	
C FWS-Erie National Wildlife Refuge.	Rd 1, Wood Duck Lane	Guy Mills	PA	16327	Interior	103c	20A

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O FWS-Erie National Wildlife Refuge.	One Wood Duck Lane ..	Guy Mills	PA	16327	Interior	103c	
C FWS-John Heinz Natl Wildlife Refuge at Tinicum.	Scott Plaza 2, Suite 104	Philadelphia	PA	19032	Interior	3016 103c	20A
O FWS-John Heinz National Wildlife Refuge.	Off Folcroft Ave	Folcroft	PA	19032	Interior	3016 103c	
C MSHA	PO Box 10940	Pittsburgh	PA	15236	Labor	3010 103c 3016	22
O PETC	PO Box 10940	Pittsburgh	PA	15236	Energy	3010 103c 3016	
C Philadelphia Naval Shipyard.	Broad St-North Div. Code 114.	Philadelphia	PA	19112	Navy	3005 3010 3016 103c 103a	23
O Philadelphia Naval Shipyard.	Broad St-North Div. Code 114.	Philadelphia	PA	19112	Navy	3005 3010 3016 103c	
C IRS Philadelphia Service Center.	11601 Roosevelt Blvd ...	Philadelphia	PA	19255	Treasury	3010	20A
O Internal Revenue Service Center.	11601 Roosevelt Blvd ...	Philadelphia	PA	19255	Treasury	3010	
C Butler Medical Center	325 New Castle	Butler	PA	16001	Veterans Affairs	103a 3010	21
O Butler Medical Center	325 New Castle	Butler	PA	16001	Veterans Administration.	103a 3010	
C Philadelphia Medical Center.	University and Woodland Ave.	Philadelphia	PA	19104	Veterans Affairs	3010 103a 3016	21
O Philadelphia Medical Center.	University and Woodland Ave.	Philadelphia	PA	19104	Veterans Administration.	3010 103a 3016	
C Camp Santiago	Route 1	Salinas	PR	00751	Army	103c 3010	23
O Camp Santiago	Route 1	Salinas	PR	00751	Army	103c	
C Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c 3010 3016	23
O Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c	
C Fort Buchanan	Route 28	San Juan	PR	00934	Army	3005 3010 103c 3016	23
O Fort Buchanan	Route 28	San Juan	PR	00934	Army	3005 3010 103c	
C Center For Energy and Environmental Research.	Road 108 KM 1.1	Mayaquez	PR	00708	Energy	3016 103c	23
O Center For Energy and Environmental Research.	Road 108 KM 1.1	Mayaquez	PR	00708	Energy	3016	
C Vieques East	Vieques	Vieques	PR	00765	Navy	103c 3005 3010 3016	20A
O Eastern Vieques	Vieques	Vieques	PR	00765	Navy	103c 3005 3010 3016	
C FWS-Ninigret National Wildlife Refuge.	P.O. Box 307	Charlestown	RI	02813	Interior	3016 103c	20A
O FWS-Ninigret Natl Wildlife Refuge Disposal Areas.	P.O. Box 307	Charlestown	RI	02813	Interior	3016 103c	
C FWS-Sachuest Point National Wildlife Refuge.	P.O. Box 307	Charlestown	RI	02813	Interior	103c	20A
O FWS-Sachuest Point Dump National Wildlife Refuge.	Sachuest Point Road	Middletown	RI	02840	Interior	103c	
C FWS-Trustom Pond National Wildlife Refuge.	P.O. Box 307	Charlestown	RI	02813	Interior	103c	20A
O FWS-Trustom Pond Natl Wildlife Refuge Disp Areas.	990 Schoolhouse Road .	South Kingstown	RI	02879	Interior	103c	
C Charleston Naval Weapons Station.	Redbank Road	Charleston	SC	29408	Navy	3005 3010 3016 103c 103a	23
O Charleston Naval Weapons Station.	Redbank Road	Charleston	SC	29408	Navy	3005 3010 3016 103c	
C Fort Randall Project ...	Box 19	Pickstown	SD	57367	Corps of Engineers, Civil.	3010 103a	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Fort Randall Project ..	Box 19	Pickstown	SD	57367	Corps of Engineers, Civil.	3010	
C Oahe Dam	Oahe Power Plant	Pierre	SD	57501	Corps of Engineers, Civil.	103a	20A
O Pierre Hydroelectric Plant.	I–90	Pierre	SD	57501	Corps of Engineers, Civil.	103a	
C Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c 103a	23
O Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c	
C Ensley Engineer Yard	1726 Mithchell Rd	Memphis	TN	38109	Corps of Engineers, Civil.	3010 3016	23
O Ensley Engineer Yard	1726 Mithchell Rd	Memphis	TN	38109	Corps of Engineers, Civil.	3010	
C Hartsville Site	TN Hwy 25	Hartsville	TN	37050	Tennessee Valley Authority.	3010 103a	23
O Hartsville Site	TN Hwy 25	Hartsville	TN	37050	Tennessee Valley Authority.	3010	
C Sequoyah Nuclear Plant.	Hixson Pike Rd	Daisys	TN	37319	Tennessee Valley Authority.	3005 3010 103c 103a	23
O Sequoyah Nuclear Plant.	Hixson Pike Rd	Daisys	TN	37319	Tennessee Valley Authority.	3005 3010 103c	
C DNA Johnston Atoll ...	Johnston Atoll Pacific Ocean.	Lat 16 44 N Lon 169 31 W.	TT	96305	Air Force	3005 3010 103a 3016	23
O DNA Johnston Atoll ...	Johnston Atoll Pacific Ocean.	Lat 16 44 N Lon 169 31 W.	TT	96305	Air Force	3005 3010 103a	
C Lackland Training Center.	Ray Ellison Dr & Hwy 90.	San Antonio	TX	78236	Air Force	3005 3010 3016	23
O Lackland Training Center.	Ray Ellison Dr & Hwy 90.	San Antonio	TX	78236	Air Force	3005 3010	
C Randolph Air Force Base.	12 ABG/DE	San Antonio	TX	78150	Air Force	3005 3010 3016 103c 103a	23
O Randolph Air Force Base.	12 ABG/DE	San Antonio	TX	78150	Air Force	3005 3010 3016 103c	
C Reese Air Force Base	64 ABG/DE	Lubbock	TX	79489	Air Force	3005 3010 3016 103c 103a	23
O Reese Air Force Base	64 ABG/DE	Lubbock	TX	79489	Air Force	3005 3010 3016 103c	
C Fort Worth Federal Center 7FS.	501 Felix Street	Fort Worth	TX	78753	General Services Administration.	3010	21
O Fort Worth Federal Center 7FS.	501 Felix Street	Fort Worth	TX	78753	General Services Admin.	3010	
C FWS-Laguna Atascosa National Wildlife Refuge.	P.O. Box 450	Rio Hondo	TX	.....	Interior	103c	20A
O FWS-Laguna Atascosa Wildlife Refuge.	5 MI E of City on Hwy 1847.	Rio Hondo	TX	.....	Interior	103c	
C Ashley NF: Only Chance Mine.	355 North Vernal Ave ..	Vernal	UT	84078	Agriculture	3016	20A
O Ashley National Forest.	355 North Vernal Ave ...	Vernal	UT	84078	Agriculture	3016	
C Ogden Defense Depot	500 West 12th Street	Ogden	UT	84407–5000	Defense Logistics Agency.	3016 103c 3010 103a	23
O Ogden Defense Depot	500 West 12th Street	Ogden	UT	84407–5000	Defense Logistics Agency.	3016 103c 3010	
C BLM-Chevron Red Wash Unit.	T7SR7ESec22	Vernal	UT	84078	Interior	3016 103c 103a	23
O BLM-Chevron Red Wash Unit.	T7SR7ESec22	Vernal	UT	84078	Interior	3016 103c	
C Cottonwood Canyon ..	T37SR21ESec3	Hite	UT	84511	Interior	3016 103c	20A
O BLM-Cottonwood Canyon.	T37SR21ESec3	Hite	UT	84511	Interior	3016 103c	
C Ore Buying Station-Moab.	T26SR22ESec6 PARCLABC.	Moab	UT	84532	Interior	3016 103c	20A
O BLM-Ore Buying Station-Moab.	T26SR22ESec6 PARCLABC.	Moab	UT	84532	Interior	3016 103c	

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FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Salt Lake City Medical Center.	500 Foothill Boulevard ..	Salt Lake City ...	UT	84148	Veterans Affairs	3016	21
O Salt Lake City Medical Center.	500 Foothill Boulevard ..	Salt Lake City ...	UT	84148	Veterans Administration.	3016	
C Fort A.P. Hill	US Rt 301 & State Rt 608.	Bowling Green ..	VA	22427–5000	Army	3005 3010 3016 103c 103a	20A
O Fort A.P. Hill	US Rte 301	Bowling Green ..	VA	22427–5000	Army	3005 3010 3016 103c 103a	
C Fort Belvoir	ATZA–DEH–EN Bldg 1442, Williams Hall.	Fort Belvoir	VA	22060–5113	Army	3005 3010 3016 103c	20A
O Fort Belvoir	ATZA–DEH–EN Bldg 1442.	Fort Belvoir	VA	22060–5113	Army	3005 3010 3016 103c	
C Fort Myer	US Army Ft Myer	Fort Myer	VA	22211	Army	3010 103c 3016	23
O Fort Myer	US Army Ft Myer	Fort Myer	VA	22211	Army	3010 103c	
C Fort Pickett	Bldg 134 Military Road ..	Fort Pickett	VA	23824	Army	3010 103c 103a 3016	20A, 23
O Fort Pickett	Fort Pickett	Blackstone	VA	23824	Army	3010 103c 103a	
C FWS-Eastern Shore Virginia Natl Wildlife Refuge.	RFD 1, Box 122B	Cape Charles	VA	23310	Interior	3016 103c 3010	20A
O FWS-Eastern Shore Virginia National Wildlife Refug.	RD 1 Box 122B	Cape Charles	VA	23310	Interior	3016 103c 3010	
C FWS-Plumtree Island National Wildlife Refuge.	P.O. Box 6286	Virginia Beach ..	VA	23662	Interior	103c	20A
O FWS-Plumtree Island National Wildlife Refuge.	East of Poquoson	Poquoson	VA	23662	Interior	103c	
C FHA–LMC Farms	Rt #1 Box 363	Mubton	WA	98935	Agriculture	3016	21,20A
O LMC Farms	Rt #1 Box 363	Mubton	WA	98935	.....	3016	
C Okanogan NF: Alder Creek.	.....	Twisp	WA	98856	Agriculture	103c	20A
O Okanogan NF: Alder Creek.	.....	Twisp	WA	98856	Agriculture	103c	
C Okanogan NF: Bonaparte.	.....	Chesaw	WA	98844	Agriculture	103c	20A
O Okanogan NF: Bonaparte.	.....	Chesaw	WA	98844	Agriculture	103c	
C Okanogan NF: Eight Mile Ranch.	.....	Winthrop	WA	98862	Agriculture	103c	20A
O Okanogan NF: Eight Mile Ranch.	.....	Winthrop	WA	98862	Agriculture	103c	
C Okanogan NF: Kerr ...	.....	Conconully	WA	98819	Agriculture	103c	20A
O Okanagan NF: Kerr ...	.....	Conconully	WA	98819	Agriculture	103c	
C Okanogan NF: Lost Lake.	.....	Chesaw	WA	98844	Agriculture	103c	20A
O Okanagan NF: Lost Lake.	.....	Chesaw	WA	98844	Agriculture	103c	
C Okanogan NF: Minnie Mine.	T32N, R22E, S–23 8 Mi S of Twisp.	Twisp	WA	98856	Agriculture	3016 103c	20A
O Okanagan NF: Minnie Mine.	T32N, R22E, S23	Twisp	WA	98858	Agriculture	3016 103c	
C Okanogan NF: Twisp .	T33N R22E WM S17 SW¼ NW½.	Twisp	WA	98856	Agriculture	103c	20A
O Okanagan NF: Twisp	.....	Twisp	WA	98856	Agriculture	103c	
C Wenatchee NF: Holden Mine.	T31N R17E WM Sec7 ..	Wenatchee	WA	98807	Agriculture	3016 103c	20A
O Wenatchee National Forest.	Box 811	Wenatchee	WA	98807	Agriculture	3016 103c	
C Yakima Army National Guard.	1702 Pacific Highway	Yakima	WA	98901	Army	3010 3016	23
O Yakima Army National Guard.	1702 Pacific Highway	Yakima	WA	98901	Army	3010	
C Yakima Firing Center .	Yakima Firing Center	Yakima	WA	98901	Army	3005 3010 3016 103c	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Yakima Firing Center	Yakima Firing Center	Yakima	WA	98901	Army	3005 3010 3016	
C Economic Development—Columbia Gardens.	Columbia Gardens	Pasco	WA	.....	Commerce	103c 3016	20A
O Columbia Gardens	.....	Pasco	WA	.....	Commerce	103c 3016	
C BPA-Ross Complex ...	5411 NE Hwy 99	Vancouver	WA	98663	Energy	3010 3016 103c 103a 3005	23
O BPA-Ross Complex ...	5411 NE Hwy 99	Vancouver	WA	98663	Energy	3010 3016 103c 103a	
C Old Navy Dump/Manchester (USEPA/NOAA).	7411 Beach Dr E	Manchester	WA	98353	EPA	3010 3016	20A
O Region 10, Environmental Services Division Lab.	7411 Beach Dr E	Manchester	WA	98353	EPA	3010 3016	
C Indian Island Naval Undersea Warfare Eng Station.	Indian Island	Hadlock	WA	98339–5000	Navy	3010 3016 103c 3005	23
O Indian Island Naval Undersea Warfare Eng Station.	Indian Island	Hadlock	WA	98339–5000	Navy	3010 3016 103c	
C Jackson Park Landfill	Austin Road at Shore Drive.	Bremerton	WA	98278	Navy	103c	20A
O Jackson Park Landfill	Unnamed Road East of Root Rd.	Bremerton	WA	98278	Navy	103c	
C Seattle Naval Station .	7500 Sand Point Way ...	Seattle	WA	98115	Navy	3010 103a	23
O Seattle Naval Station .	7500 Sand Point Way ...	Seattle	WA	98115	Navy	3010	
C Nicolet NF: Lakewood Sanitary Landfill.	15085 Hwy 32	Lakewood	WI	54501	Agriculture	3016 103c 103a	20A, 23
O Nicolet NF: Laona & Lakewood SLF.	68 South Stevens	Rhinelander	WI	54501	Agriculture	3016	
C Pewaukee Army Reserve Center.	619 W Wisconsin Ave ...	Pewaukee	WI	53072	Army	3010 103c	23
O Pewaukee Army Reserve Center.	619 W Wisconsin Ave ...	Pewaukee	WI	53072	Army	3010	
C FWS–St. Croix Wetland Management District.	146 West 2nd Street	New Richmond .	WI	54017	Interior	3010	20A
O FWS–New Richmond	1618 220th Ave Rural Area.	New Richmond .	WI	54017	Interior	3010	
C Tomah Medical Center.	Veterans Dr	Tomah	WI	54660	Veterans Affairs	3010	21
O Tomah Medical Center.	Veterans Dr	Tomah	WI	54660	Veterans Administration.	3010	
C Robert C. Byrd Locks and Dam.	Rt 2	Apple Grove	WV	25502	Corps of Engineers, Civil.	103a	22, 20A
O Gallapolis Lock and Dam.	Rt 2	Apple Grove	WV	.....	Navy	103a	
C Beckley Medical Center.	200 Veterans Ave	Beckley	WV	25801	Veterans Affairs	3010	21
O Beckley Medical Center.	200 Veterans Ave	Beckley	WV	25801	Veterans Administration.	3010	
C Martinsburg Hospital ..	Route 9	Martinsburg	WV	25401	Veterans Affairs	103c	21
O Martinsburg Hospital .	Route 9	Martinsburg	WV	25401	Veterans Administration.	103c	
C High Plains Grassland Research Station.	8408 Hildreth Road	Cheyenne	WY	82009	Agriculture	3016 103c	23, 21
O High Plains Grassland Research Station.	8408 Hildreth Road	Cheyenne	WY	82009	CIA	3016	

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Dera-Kodiak Tracking Station	Cape Chiniak Rd, End of	Kodiak	AK	99615	.....	103c
Chugach NF: Kenai Lake Work Center.	MI 23.5 Seward Highway	Seward	AK	99664	Agriculture	103c 3010 3016

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FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Anvil Mountain	Anvil MT 6.5 MI N of Nome	Nome	AK	99762	Air Force	103c 3016
Bear Creek Air Force Station Landfill.	Yukon River on N Shore	Tanana	AK	99777	Air Force	103c 3010 3016
Bethel Air Force Station	Airport-W End of Main Road	Bethel	AK	99559	Air Force	3010 3016 103c
Big Mountain Air Force Station.	S Shoure Iliamna/S Side Big Mtn.	Big Mountain AFS.	AK	99501	Air Force	3010 103c 3016
Campion Air Force Station	4 Miles NE of Galena	Galena	AK	99765	Air Force	3016 3010 103c
Cape Romanzof Air Force Station	11 ACW/CC	Elmendorf	AK	99506	Air Force	3010 103c 3016
Dewline Site Bar-Mam	Barter Isl., ½ MI E of NE Shr	Kaktovik	AK	99747	Air Force	103c 3016
Dewline Site Liz-3	Kuk River & Chukchi Sea	Wainwright	AK	99782	Air Force	3010 103c 3016
Driftwood Bay Air Force Station.	N Coast Unalaska Island	Driftwood Bay	AK	50563	Air Force	103c 3016
Fort Yukon Air Force Station	N of Yllota Slough	Fort Yukon	AK	99740	Air Force	3010 103c 3016
Gold King Creek RRS	T8S R2W Sec 22, 27	Valdez	AK	99686	Air Force	103c 3010 3016
Granite Mountain Air Force Station Landfill.	14 MI NW of CY	Haycock	AK	99762	Air Force	103c 3010 3016
Indian Mountain Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016
Kalakaket Creek	S Shore of Kala Creek	Galena	AK	99741	Air Force	3010 103c 3016
Murphy Dome Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 3016 103c
Nikolski Air Force Station Landfill.	W Coast of Umnak IS	Nikolski	AK	99638	Air Force	103c 3016
North Rives Radio Relay	North River	Unalakleet	AK	99684	Air Force	3016
Port Heiden Air Force Station	NW Shore of Heiden Bay	Port Heiden	AK	99549	Air Force	103c 3016 3010
Port Moller	55 59'22" N 160 34' 29.374" W Alaska Peninsula.	Port Moller	AK	99999	Air Force	3010 103c 3016
Sparrevohn Air Force Station	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016
Tatalina Air Force Station	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016
Tin City Air Force Station	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016
Gerstle River Test Site	T13S R14E Sec 9, 15, 16	Fort Greely	AK	98733	Army	3005 3010 3016 103c
NOAA-National Marine Fisheries Service.	Pribilof Island	St. Paul Islands	AK	99660	Commerce	103c
Anchorage Defense Fuel Support Point.	1217 Anchorage Port Road	Anchorage	AK	99501	Defense	3016 3010
Whittier Tank Farm	¾ MI N of Town	Whittier	AK	99693	Defense	103c 3016
BLM-Maclaren Glacier Mine	Fairbanks MER T19S R6E Sec 14 NE Sec 11.	Paxson	AK	99737	Interior	103c
BLM-Old Man Camp Site	T19N R14W, Sec 19 and T19N, R15W, Sec 24.	Fairbanks Meridian.	AK	99720	Interior	103c
BLM-Paxson Dump	T22S, R12E, Sec 31	Fairbanks Meridian.	AK	99737	Interior	103c
BLM-Peard Bay Dewline Site	Barrow, 50 MI SW	Barrow	AK	99723	Interior	103c
BLM-Pump Station 12 Dump Site NWSW.	T4S, R1E, Sec26	Copper Center	AK	99573	Interior	103c
BLM-Red Devil Mine Waste Ponds.	L61–10–12 L149–56–48	Bethel	AK	99556	Interior	3016 103c
BLM-Sag River Dump	T8S, R14E, Sec8	Umiat Meridian	AK	99740	Interior	103c
BLM-Skull Cliff Loran Station	23 Miles SW of Barrow on Coast.	Barrow	AK	99723	Interior	103c
BLM-Slana Dump Site	Mile 67 of Denali Hwy		AK	99729	Interior	103c
BLM-Tangle Lakes Dump Site	Mile 22 Denali Hwy	Paxson	AK	99737	Interior	103c
FWS-Brownlow Point Dewline Site.	101 12th Ave., Box 20	Fairbanks	AK	99723	Interior	103c 3016
FWS-Demarcation Point Dewline Site.	101 12th Ave., Suite 20	Fairbanks	AK	99723	Interior	103c 3016
FWS-Sikiak Guard Station	P.O. Box 2139	Soldotna	AK	99669	Interior	103c 3016
FWS-Swansen River Oil Field	P.O. Box 2139	Soldotna	AK	99669–2139	Interior	3016 103c
NPS-Denali National Park and Preserve.	P.O. Box 9	Denali Park	AK	99755	Interior	3016 103c
Northeast Cape St. Lawrence Island.	70 MI E of Savoonga St Lawrence.	Northeast Cape	AK	99769	Navy	3010 3016 103c
Fairbanks Vehicle Maintenance Facility.	5400 Mail Trail Way	Fairbanks	AK	99709	Postal Service	3010 103c
CG-Loran Station on Sitkinak	Sitkinak Island	Sitkinak Island	AK	99615	Transportation	103c
FAA-Air Route Traffic Center	5400 Davis Highway	Anchorage	AK	99506	Transportation	103c 3010
FAA-Aniak Airport	61' 34N 159' 31'W	Aniak	AK	99557	Transportation	103c 3016
FAA-Big Lake Vortac Site	Big Lake	Big Lake	AK	99687	Transportation	103c
FAA-Biorka Island	6 MI W of Sitka	Sitka	AK	99835	Transportation	3010 3016 103c

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
FAA-Cape Yakataga Facility	Cape Yakataga	Cape Yakataga	AK	99574	Transportation	3010 3016
FAA-Chandalar Station	Chandalar Lake Nav Aids, 110 MI N of City.	Fort Yukon	AK	99740	Transportation	103c
FAA-Cold Bay Station	Cold Bay Airport	Cold Bay	AK	99571	Transportation	103c
FAA-Cordova Station	Copper River Highway 10 M S of CY.	Cordova	AK	99574	Transportation	103c
FAA-Coughlan Island	T40S R65E S32&33 Copper River ME.	Auke Bay	AK	99821	Transportation	3016 103c
FAA-Deadhorse Station	Deadhorse Airport Nav Aids	Deadhorse	AK	99740	Transportation	103c
FAA-Dillingham Airport	Dillingham	Dillingham	AK	99576	Transportation	3016 103c
FAA-Duncan Canal			AK		Transportation	103c
FAA-Dutch Harbor		Dutch Harbor	AK		Transportation	103c
FAA-Fairbanks Station	5640 Airport Way	Fairbanks	AK		Transportation	103c
FAA-Fire Island Air Warning Station.	Cook Inlet Section 7 & 8 Range.	Anchorage	AK	99506	Transportation	3010 3016 103c
FAA-Gulkana Ans	Gulkana Airport	Gulkana	AK	99585	Transportation	103c
FAA-Gustavus	Gustavus Airport Nav Aids	Gustavus	AK	99826	Transportation	103c
FAA-Haines Air Navigation Site.	Haines-FAA Road	Haines	AK	99827	Transportation	103c
FAA-Homer Airport	Homer	Homer	AK	99603	Transportation	3016 103c
FAA-Iliamna Site	Iliamna	Iliamna	AK	99606	Transportation	3016 103c
FAA-Juneau Station	9341 Glacier Highway Nav Aids.	Juneau	AK	99801	Transportation	103c
FAA-King Salmon Station	Airport S of CY Nav Aids	King Salmon	AK	99613	Transportation	103c
FAA-Kotzebue Airport	Kotzebue Airport	Kotzebue	AK	99752	Transportation	3016 103c
FAA-Lake Hood Facility	T13N R4W S34 NE	Anchorage	AK	99518	Transportation	103c
FAA-Lake Minchumina Airport	Ramp at Lk Minchumina Arpt	Lake Minchumina.	AK	99757	Transportation	3010 3016 103c 3005
FAA-North Nenana Vortac Site.	Nenana	Nenana	AK	99760	Transportation	3016 103c
FAA-Northway Staging Field	Northway Village	Northway Village	AK	99764	Transportation	3016 103c 3010
FAA-Point Moronzof RTR Facility.	Anchorage International Airport Area.	Anchorage	AK	99502	Transportation	103c
FAA-Puntilla Air Navigation Site.	Puntilla Lake	Puntilla Lake	AK	99999	Transportation	3016 103c
FAA-Sisters Island	Sisters Island Nav Aids	Juneau	AK	99803	Transportation	103c
FAA-Sitka	Japonski Island Naval Air Station.	Sitka	AK	99835	Transportation	103c 3010
FAA-Skwentna Facility	Skwentna Arpt Area	Skwentna	AK	99667	Transportation	3010 3016 103c
FAA-St. Mary's Air Navigation	Yukon Delta National Wildlife Refuge.	St. Mary's	AK		Transportation	103c
FAA-Talkeetna Airport	Talkeetna Airport	Talkeetna	AK	99676	Transportation	3016 103c
FAA-Tanana Air Field Station	Tanana Airport Nav Aids	Tanana	AK	99777	Transportation	103c
FAA-Umiat Airstrip Staging Area.	N Bank Colville River	Umiat	AK	99723	Transportation	103c
FAA-Unalakeet Airport	Unalakeet	Unalakeet	AK	99684	Transportation	3016 103c
FAA-Woody Island Navigation Site.	Woody Island	Kodiak	AK	99615	Transportation	3016 103c
St. Paul Island Coast Guard Loran Station.	USDOT–CG St Paul Is Loran Stat.	St Paul Island	AK	99660	Transportation	3010
Maxwell Air Force Base	3800 Air Base Group Dee	Maxwell AFB	AL	36112	Air Force	3010 103c 3016 103a
Bellefonte Nuclear Plant	Off US Hwy 72	Hollywood	AL	36401	Tennessee Valley Authority.	3005 3010 103c
Browns Ferry Nuclear Plant	US Hwy 72	Athens	AL	35611	Tennessee Valley Authority.	3010
Colbert Fossil Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	Tennessee Valley Authority.	3005 3010 103c 103a
Guntersville Hydro Plant	Off US Hwy 431, 11 Mi NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010
Muscle Shoals Power Service Center.	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a
National Fertilizer and Environmental Research Ctr.	Wilson Dam Road	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103c
Widows Creek Fossil Plant	Off US Hwy 72 W	Stevenson	AL	35772	Tennessee Valley Authority.	3005 3010 103c
Wilson Hydro Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010
Guam Naval Magazine	Apra Hbr Hts Area by Fena Resv.	Apra Harbor	AQ	96910	Navy	103c

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FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
South Central Family Farm Research Center.	Rt. 2, Box 144A Hwy 23 South.	Booneville	AR		Agriculture	3016
Fort Chaffee	Building 239	Fort Chaffee	AR	72905	Army	3005 3010 3016 103c
Millwood Resident Engineers Office.	Route 1	Ashdown	AR		Corps of Engineers, Civil.	103c
Combustion Research Facility	Nctr Bldg. 45	Jefferson #72070.	AR	72079	EPA	3005 3010 3016
Sky Harbor International Airport.	2001 S. 32nd St	Phoenix	AZ	85034	Air Force	3010
Fort Huachuca	RCRA Units	Fort Huachuca	AZ	85613	Army	3010 3016 103c 103a
Sierra NF: Bass Lake Landfill	1130 O St. Room 3017	Fresco	CA	93721	Agriculture	103c 3016
Plant #19	4297 Pacific Coast Hwy	San Diego	CA	92101–5001	Air Force	103c 3016 3010
Norwalk Defense Fuel Supply Center.	15306 Norwalk Blvd	Norwalk	CA	90650	Defense Logistics Agency.	3010 3016 103c
Lawrence Berkeley Laboratory.	1 Cyclotron Rd	Berkeley	CA	94720	Energy	3005 3010 3016
Stanford Linear Accelerator Center.	2575 Sandhill Rd	Menlo Park	CA	94305	Energy	3010 3016 103c 103a
NPS–El Portal RR Flat	Hwy 140	El Portal	CA	95318	Interior	103c
NPS–Sequoia & Kings Canyon National Park.	Ash Mountain	Three Rivers	CA	93271	Interior	3005 3010 3016 103c
Civil Engineering Laboratory	NCBC	Port Hueneme	CA	93043	Navy	3010 103a 103c
Crows Landing Naval Air Logistics Force.	Naif Crows Landing	Crows Landing	CA	95313	Navy	3010 3016
Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c 3016
Imperial Beach Naval Communication Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a
Oakland Naval Regional Medical Center.	8750 Mountain Blvd	Oakland	CA	94627	Navy	3010 103c
Point Sur Naval Facility	Naval Facility Point Sur	Big Sur	CA	93920	Navy	3010
San Diego Naval Facilities Engineering Command.	Western Division	San Diego	CA	92136	Navy	103c
Skaggs Island Naval Security Group Activity.	Skaggs Island	Sonoma	CA	95476	Navy	3010 3016
Colorado Springs Academy	AFA/DE	Colorado Springs.	CO	80840	Air Force	3010 103c
Lowry Air Force Base	3415 CES/DE	Lowry AFB	CO	80230	Air Force	3005 3010 3016 103c 103a
Peterson Air Force Base	1003 SSG/CC	Peterson AFB	CO	80914	Air Force	3005 3010 103c
Grand Junction Projects Office.	3597 B–3/4 RD PO2567	Grand Junction	CO	81502–5504	Energy	3016 103c
Solar Energy Research Institute.	1617 Cole Blvd	Golden	CO	80401	Energy	3005 3010 3016 103c
Wapa-Power Operations	1800 S. Rio Grande Ave	Montrose	CO	81401	Energy	103c
National Enforcement Investigation Center.	DFC	Denver	CO	80225	EPA	3010
BLM-Bookcliff Landfill	T1NR101WSec6, UTEPM, 4 MI E. of Grand Junction.	Grand Junction	CO	81501	Interior	103c
BLM-Chaffee County Landfill	T.51.N.R.8.E.Sec.21, US Hwy 285 10M North of Salida.	Salida	CO		Interior	103c
BLM-Delta County Landfill	T14NR95WSec10, 6THPM	Eckert	CO	81418	Interior	3010 103c
BLM-Eagle County Landfill	T4NR83WSec10&11		CO		Interior	103c
BLM-Fremont	T48NR12ESec19	Cata Paxi	CO		Interior	103c
BLM-Montrose County Dump	T48NR19WSec22	Montrose	CO		Interior	103c
BLM-Orchard Mesa Landfill	T2SR1ESec4,5 Hwy 50–SW of 29 3/4 Rd.	Grand Junction	CO	81506	Interior	103c
BLM-Placerville Tram Site	T44NR11WSec35 Hwy 62	Placerville	CO	81430	Interior	103c
BLM-San Miguel Landfill #1	T44NR15WSec26	Nataurita	CO		Interior	103c
BLM-San Miguel Landfill #2	T44NR17WSec18	Slick Rock	CO		Interior	103c
BLM-Sawpit Tram Site (ORE Storage).	T43NR10WSec18	Saw Pit	CO	81435	Interior	103c
BLM-Town of Mesa Landfill	T10S, R96W, Sec22	Molina	CO		Interior	103c
BR-Loveland	910 Van Buren	Loveland	CO	80537	Interior	3010 103c
GS-Denver, NWQL	5293 Ward Rd	Denver	CO	80225	Interior	3010 3016
NPS-Denver Service Center	755 Parfet St., Box 25287	Denver	CO	80225	Interior	3016 103c
NPS-Rocky Mountain National Park.	Estes Park	Estes Park	CO		Interior	103c
Denver Bulk Mail Center	7755 E. 56th Ave	Denver	CO	80238	Postal Service	3016 103c

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Central Direct Fed. Division Materials-FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation	3005 3010 103c 3016
Transportation Test Center	21 Miles NE Pueblo Mem Airport.	DOT Test Track Rd.	CO	81001	Transportation	3005 3010 3016
Stratford Engine Plant	550 South Main Street	Stratford	CT	06497	Army	3005 3010 3016
Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c 103a
East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station	East Lyme	CT	06357	Navy	3010 3016 103c
New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c 103a
Fort McNair	350 P Street, S.W	Washington	DC	20319	Army	3010 103c 103a
U.S. Soldiers and Airmens Home.	Michigan Ave. N.E	Washington	DC	20317	Defense	3010 3016 103c
Customs Field Office	1200 Pennsylvania Avenue	Washington	DC	20004	General Services Administration.	3010 103c
Washington Naval Research Laboratory.	4555 Overlook Ave	Washington	DC	20375	Navy	3005 3010 3016 103c 103a
Bureau of Engraving & Printing.	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c 103a
Canal Site	Main St, North St Georges	Newcastle	DE	19733	Corps of Engineers, Civil.	3016 103c
Wildlife Research Field Station.	2820 E University Ave	Gainesville	FL	32601	Agriculture	103c
Avon Park Air Force Base	56 Combat Support Group/DE	MacDill AFB	FL	33608	Air Force	3005 3010 3016
Cape Canaveral Air Force Base.	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
MacDill Air Force Base	56 Combat Support Group/DE	MacDill AFB	FL	33608	Air Force	3005 3010 3016 103c
Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
Colonel Frank M. Williams Army Reserve Center.	11700 NW 27th Ave	Miami	FL	33167	Army	3005 3010
Lt. Clarence Lovejoy Army Reserve Center.	4823 N Hubert Ave	Tampa	FL	33614	Army	3005 3010
Orlando Army Air Support Facility 49.	8601 Ave B	Orlando	FL	32812	Army	3005 3010
Lynn Haven Defense Fuel Support Point.	W end of 10th Street	Lynn Haven	FL	32444	Defense Logistics Agency.	3010 3016 103c
Tampa Defense Fuel Support Point.	Box 13736	Tampa	FL	33611	Defense Logistics Agency.	3010 3016 103c
NPS-Gulf Islands National Seashore.	Fort Pickens Rd	Gulf Breeze	FL	32561	Interior	103c
Kennedy Space Center	NASA Mail Code DF-EMS	Kennedy Space Center.	FL	32899	NASA	3005 3010 3016 103c 103a
Key West Naval Air Station-Boca Chica.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c 103a
Mayport Naval Air Station	PO Box 265 Naval Station	Mayport	FL	32228	Navy	3005 3010 3016 103c 103a
Panama City Coastal Systems Station.	Hwy 98 Code 6310MC	Panama City	FL	32407	Navy	3005 3010 3016 103a
Key West Coast Guard Station.		Key West	FL	33040	Transportation	3010
Mayport Coast Guard Base	PO Box 385	Mayport	FL	32267	Transportation	3010 103c
Miami Beach Coast Guard Base.	100 MacArthur Cswy	Miami Beach	FL	33139	Transportation	3005 3010
St. Petersburg Coast Guard Station.	600 8th Ave SE	St Petersburg	FL	33701	Transportation	3010
Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069	Air Force	3016 103c
Moody Air Force Base	347 CSG/DE	Moody AFB	GA	31669	Air Force	3005 3010 3016 103c
Plant #6 (Lockheed)	86 S Cobb Drive Zone 54	Marietta	GA	30063	Air Force	3005 3010 3016
Fort Benning	GA Hwy 1 & US 27	Fort Benning	GA	31905	Army	3005 3010 3016 103c 103a
Fort Gillem	Attn AFZK–EH–C	Forest Park	GA	30330	Army	3005 3010 3016 103c
Fort Gordon and National Signal Center.	ATZHFE EC	Fort Gordon	GA	30905	Army	3005 3010 3016 103c 103a
Fort Stewart	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c

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FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Hunter Army Airfield	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c
Kings Bay Naval Submarine Base.	GA State Hwy Spur	Kings Bay	GA	31547	Navy	3005 3010 3016 103c 103a
Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30033	Veterans Affairs	3005 3010 3016
Guam Naval Hospital	Naval Hosp Guam	Naval Hosp Guam.	GU	96636	Navy	103c
WAPA-Hinton	PO Box 1012	Hinton	IA	51024	Energy	3005 3010 3016
Urbandale Bulk Mail Center	4000 NW 109th Street	Urbandale	IA	50395	Postal Service	3016
Clearwater NF: Clayton Creek Dump.	T 39N, R 11E, Sec 21	Headquarters	ID	83534	Agriculture	103c 3016
Idaho Panhandle National Forests.	1201 Ironwood Dr	Coeur D'Alene	ID	83814	Agriculture	3016 3010 103c
Sheep Experiment Station	HC 62, Box 2010	Dubois	ID	83423	Agriculture	3016 103c
Soil and Water Management Research Unit.	Route 1, Box 186, 3600 East	Kimberly	ID	83341	Agriculture	3016 103c
BLM-Black Mesa Dump	T6S, R10E, Sec 13	Glenns Ferry	ID	83623	Interior	103c
BLM-Blue Dome Unauthorized Dump.	T10NR30ESec30	Blue Dome	ID	83464	Interior	103c 3016
BLM-Browns Gulch	T6S, R7E, Sec 10, W½	Bruneau	ID	83604	Interior	103c
BLM-Bruneau Open Dump	T9S, R5E, Sec 4	Bruneau	ID	83604	Interior	3016 103c
BLM-Butte North Isolated Tract Hazardous Site.	T12S, R21E, Sec5	Burley	ID	83318	Interior	103c
BLM-Cassia County #1	T 13S, R 21E, Sec 13	Oakley	ID	83346	Interior	103c
BLM-Cassia County #2	T 12S, R 21E, Sec 32	Oakley	ID	83346	Interior	103c
BLM-Cassia County #3	T 12S, R 21E, Sec 31	Oakley	ID	83346	Interior	103c
BLM-Castleford Butte	T10S, R12E, Sec23	Castleford	ID	83321	Interior	103c
BLM-Cedar Butte S. End Dumpsite.	T22 SR32E Sec 15	Rockford	ID	83221	Interior	103c
BLM-Central Cove Landfill	T3N, R4W, Sec8 and 9	Caldwell	ID	83605	Interior	3016 103c
BLM-Clarks Air Service Airstrip-Jarbridge RA.	T6S, R9E, Sec27	Glenns Ferry	ID	83623	Interior	103c
BLM-Clover Hollow Illegal Airstrip.	T5S R7E Sec7 SESW 8 MI S of CY.	Mountain Home	ID	83647	Interior	103c
BLM-COW Hollow Hazardous Waste Dump.	T.14.S.R.31.E.Sec.34	Juniper	ID	83706	Interior	103c
BLM-Delamar Silver Mine	T15S, R35E	Owyhee	ID	83650	Interior	103c
BLM-Dry Lakes Air Service Airstrip-Cascade RA.	T1N, R3W, Sec26	Canyon	ID	83650	Interior	103c
BLM-Edmonds Unauthorized Dump.	T7NR38ESec24&25	Edmonds	ID	83445	Interior	103c
BLM-Elk City	T29NR8ESEC23	Elk City	ID	83525	Interior	3016 103c
BLM-Gem County Landfill	Dewey Lane, 10M East of Emmett.	Emmett	ID	83617	Interior	103c
BLM-German Lake	T7SR25ESec.10	Minidoka	ID	83343	Interior	103c 3016
BLM-Grace Illegal Dump	T10S, R39E, Sec24	Grace	ID	83241	Interior	103c
BLM-Hammett Dump	T5S, R9E, Sec28	Hammett	ID	83627	Interior	103c
BLM-Hell's Half Acre, E. Finger.	T1SR36E Sec 4	Firth	ID	83236	Interior	103c
BLM-Hell's Half Acre, W. Finger.	T1SR36E Sec 32	Firth	ID	83236	Interior	103c
BLM-Hoff Road Site	T2S R32E Sect 35 SW of SW	Blackfoot	ID	83221	Interior	3010
BLM-Howe Dumpsite	T6NR29ESec31	Howe	ID	83244	Interior	103c
BLM-Hulet Dump	T.35.R.IW. Sec. 15	Murphy	ID	83650	Interior	103c 3016
BLM-Jerome County Landfill		Jerome County	ID	83338	Interior	103c
BLM-Leslie Dump Site-1	T 7N, R25E, Sec34	Leslie	ID	83249	Interior	103c
BLM-Leslie Dump Site-4 SW	T 6N, R24E, Sec18	Leslie	ID	83249	Interior	103c
BLM-Menan Unauthorized Dump.	T6N, R38E, Sec26 and 27	Madison	ID	83440	Interior	103c
BLM-Montview	T8N, R34E, Sec22 NWNW E of City.	Montview	ID	83435	Interior	103c
BLM-Morgan's Pasture	T1N R35E Sec 33 & 34	Shelly	ID	83274	Interior	3010 103c
BLM-Mud Lake Airport	T6N R34E Sect 18 NE of NE	Mud Lake	ID	83450	Interior	3010
BLM-National Guard Impact Area.	Sec (all) T2&3S, R2&3E	Unincorporated	ID	83709	Interior	103c
BLM-North Creek Mill	T6NR29ESec6	Howe	ID	83244	Interior	103c
BLM-Owyhee Co. Grandview Landfill.	T6SR4ESec14	Bruneau	ID	83604	Interior	103c
BLM-Owyhee Co. Marsing/ Homedale Landfill.	Johnson Rd. T4N R5W S32 SW ¼.	Marsing-Homedale.	ID	83639	Interior	103c

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
BLM-Owyhee Co. Wilson Creek Landfill.	T1SR34ESec13	Marsing	ID	83639	Interior	103c
BLM-Pesticide Dump Site, Reynolds.	T2SR3W Sec31	Reynolds	ID	83650	Interior	103c
BLM-Pesticide Dumpsite Sec. 5.	Boise Dist Sec. 5	Murphy	ID	83650	Interior	103c
BLM-Pickles Butte (Davidson's Air Service).	T2NR3WSec28 Missouri Av 2.5MI W-Mora Canal.	Nampa	ID	83651	Interior	103c
BLM-Pullman Mine	T29N R4W S14	Cottonwood	ID	83522	Interior	103c
BLM-Reeder Flying Service Airstrip #1.	T6SR12ESec33	Glenns Ferry	ID	83623	Interior	103c
BLM-Reeder Flying Service Airstrip #2.	T9SR12ESec13	Buhl	ID	83316	Interior	103c
BLM-Reeder Flying Service Airstrip #3.	T8S, R13E, Sec6	Glenns Ferry	ID	83623	Interior	103c 3010 3005
BLM-Shoshone (Gwinn Cave)	T4S R17E S14	Shoshone	ID	83352	Interior	3016 103c
BLM-Springfield Dumpsite	T3SR32ESec12	Springfield	ID	83277	Interior	103c
BLM-Springfield Unauthorized Dumpsite.	T35NR32ESec15	Springfield	ID	83277	Interior	103c
BLM-Twin Falls Co #4	T12S, R 19E, Sec 12	Murtaugh	ID	83344	Interior	103c
BLM-Twin Falls Co #5	T12S, R 19E, Sec 11	Murtaugh	ID	83344	interior	103c
BLM-Twin Falls Co Murtaugh (East) Landfill.	T11S, R 19E, Sec 10	Twin Falls	ID	83301	Interior	103c 3016
BLM-Upper Little Lost Unauthorized Dump.	T11N R 26E Sec 10 12 MI NW of Cy/T11N, R26 E, Sec 10.	Clyde	ID	82349	Interior	103c
BLM-Warrior Road	T35N, R1W, Sec 11 Nearest City Kona.	Kona	ID	83634	Interior	103c
BLM-Wiregrass Reservoir Site	T11S R36E Sec 13 NW of NE	Downey	ID	83234	Interior	3010
BR-Minidoka Dam	Rt. 4, Box 292	Rupert	ID	83350	Interior	3010 3016
BR-Minidoka Landfill		Rupert	ID	83350	Interior	103c
Fermi National Accelerator Laboratory.	Routes 16 & 59 Kane County	Batavia	IL	60510	Energy	3005 3010 3016 103c
Danville Medical Center Hospital.	1900 E Main St	Danville	IL	61832	Veterans Affairs	103c
Former Jeffersonville Quartermaster Depot.	Located on Segrams Property Clark County.	Jeffersonville	IN	47130	Army	3016 103c
New Haven Defense Logistics Agency Depot.	State Rt. 14	New Haven	IN	46774	Defense Logistics Agency.	3010
Atchison Defense Industrial Plant Equipment Facil.	Old Rte 1	Atchison	KS	66002	Army	103c
Region 7, Environmental Services Division Lab.	25 Funston Road	Kansas City	KS	66115	EPA	3005 3010 3016 103c
Armor School and Center at Fort Knox.	Hwy 31 W	Fort Knox	KY	40121	Army	3005 3010 3016 103a
Fort Campbell	AFZB–FE–ECE	Fort Campbell	KY	42223	Army	3005 3010 3016 103c
Lexington Bluegrass Depot Activity.	US Hwy 421	Richmond	KY	40475	Army	3005 103c
Lexington-Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c 103a
Louisville Naval Ordnance Station.	Southside Dr. MDS 42	Louisville	KY	40214	Navy	3005 3010 3016
Southern Regional Research Center.	1100 Robert E. Lee Blvd	New Orleans	LA	70124	Agriculture	3010 3016 103c
England Air Force Base	23 CSG/DE	England AFB	LA	71311	Air Force	3005 3010 3016 103c
New Orleans Military Ocean Terminal.	4400 Dauphine St	New Orleans	LA	70145	Army	103c
SPR-Weeks Island	2 MI NW of Cypremont	Cypremont	LA	70560	Energy	103c
SPR-West Hackberry	3.8 MI W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c
FWS-Lacassine National Wildlife Refuge.	HCR 63, Box 186	Lake Arthur	LA	70549	Interior	103c
New Orleans Naval Support Activity.	2600 Gen Meyer Ave Bldg 101.	New Orleans	LA		Navy	103c
New Orleans Coast Guard Base.	4640 Urquhart Street	New Orleans	LA	70117	Transportation	3010
New Orleans Medical Center	1601 Perdido Street	New Orleans	LA	70112	Veterans Affairs	3010
Boston Postal Service	135 A Street	Boston	MA	02210	Postal Service	3010

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FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Woods Hole Coast Guard Base.	Little Harbor Road	Falmouth	MA	02543	Transportation	3010 103c
Adelphi Laboratory Center	2800 Powder Mill Rd	Adelphi	MD	20783	Army	3005 3010 3016 103c
National Institute of Standards and Technology.	Quince Orchard Rd	Garthersburg	MD	20760	Commerce	3005 3010 103c
National Marine Fisheries Service.	South Morris Street Ext.	Oxford	MD	21654	Commerce	103c 3010
Defense National Stockpile Center.	710 Ordnance Road	Baltimore	MD	21226	Defense Logistics Agency.	3005 3010 3016 103c
NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c 103a
Goddard Space Flight Center	Greenbelt Road	Greenbelt	MD	20771	NASA	3010 103c
Annapolis Naval Academy	Annapolis Naval Complex	Annapolis	MD	21402	Navy	3005 3010 3016 103c
National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c 103a
Casco Bay Defense Fuel Support Pownt.	Rt 123	South Harpswell Neck.	ME	04079	Defense Logistics Agency.	3010 3016 103c
Searsport Defense Fuel Support Pownt.	Trundy Road Box 112	Searsport	ME	04974	Defense Logistics Agency.	3010 3016 103c
FWS-Seal Island National Wildlife Refuge.	P.O. Box 1077	Calais	ME	04619	Interior	103c
Gouldsboro Naval Security Group Activity.	Bldg 41 (Operations Site)	Gouldsboro	ME	04624	Navy	103c
Winterharbor Naval Security Group Activity.	Route 186	Winterharbor	ME	04693	Navy	3010 103c
Huron-Manistee NF: Ranger Station.	12 N. Charles	White Cloud	MI	49348	Agriculture	103c 3010 3016
Tank Automotive Command	6501 E. 11 Mile Rd Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c 103a
Harrisville Defense Fuel Support Point.	US Hwy 23	Harrisville	MI	48740	Defense	103c
Ann Arbor Motor Vehicle Emission Laboratory.	2565 Plymouth Road	Ann Arbor	MI	48105	EPA	3010
Minneapolis St. Paul Bulk Mail Center.	3165 S. Lexington Ave	St. Paul	MN	55121	Postal Service	3010
Schuster Farm	Sec58 S17 T55N R33W	Gower	MO		Agriculture	103c
MO Aviation Classification & Repair Activity Depot.	2501 Lester Jones Ave	Springfield	MO	65803	Army	103c 3010
Defense Mapping Agency-Fee	3200 S. Second Street	St. Louis	MO	63118	Defense Mapping Agency.	3010
Defense Mapping Agency-Fee	8900 S. Broadway	St. Louis	MO	63118	Defense Mapping Agency.	3010
Mobile Incinerator	SE¼ NW¼ NW¼ Sec 20	McDowell	MO	65769	EPA	3010 103c
St. Louis	1222 Spruce	St. Louis	MO	63103	General Servcies Administration.	3005 3010 103a
BM-Rolla Research Center	1300 Bishop Ave	Rolla	MO	65401	Interior	103c
Columbus Air Force Base	14 ABG/DE	Columbus AFB	MS	39701	Air Force	3005 3010 3016 103c
Keesler Air Force Base	3380 CES/DE	Keesler AFB	MS	39534	Air Force	3005 3010 3016 103c
Engineering Environmental Waterway Laboratory.	PO Box 631	Vicksburg	MS	39180	Army	3005 3010 3016 103c
Gulfport Naval Construction Battalion Center.	33rd Ave	Gulfport	MS	39501	Navy	3010 103c 103a
Fort Keogh Livestock and Range Research Laboratory.	Route 1, Box 2021	Miles City	MT	59301	Agriculture	3016 103c
Malmstrom Air Force Base	Facility 1501 Perimeter Rd	Great Falls	MT	59402	Air Force	3005 3010 3016 103c 103a
BPA-Hot Springs Substation TLM Complex.	Hwy 28, S. of Hot Springs, Sec 14 T21N RW.	Hot Springs	MT	59845	Energy	103c
Component Development and Integration Facility.	Industrial Park	Butte	MT	59702	Energy	3016
BLM-Illegal Airstrip John Greytak.	Section 6 T11N R27E	Flatwillow	MT		Interior	103c
BLM-Jet Fuel Refinery Site	T14NR31E 4 MI E of Mosby	Mosby	MT		Interior	103c

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
BLM-Roundup Landfill	1.5 Miles Northwest of Roundup.	Roundup	MT		Interior	103c
BLM-Sluice Gulch Leaking Adit.	T6SR15WSec5		MT		Interior	103c
BLM-Steamboat Point	T25NR10Sec18PMM	Loma	MT		Interior	103c
BLM-Thorium City Waste Dump.	T105R15WSec21,22,27,28	Grant	MT	59734–3016	Interior	3016 103c
BLM-Tungsten Mill Tailings	T45W9WSec4,5,9	Glen	MT	59732	Interior	103c
FWS-Charles M. Russell National Wildlife Refuge.	P.O. Box 110	Lewistown	MT	59457	Interior	3010 103c
FWS-National Bison Range	Cnty Rd 212 in Moiese	Moiese	MT	59824	Interior	3010 103c
Lyons Station	45 Mi. So of Ennis on Hwy 287.	Ennis	MT	59749	Interior	3010
West Fork Ranger Station	15 Miles South of Darby Mt on.	West Fork RS	MT	59829	Interior	3010
Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28306	Air Force	3005 3010 103c 3016
Abemarle Army Reserve Center.	1816 E Main St	Albemarle	NC	28001	Army	3010 103c
Asheville Army Reserve Center.	224 Louisiana	Asheville	NC	28806	Army	3010 103c
Brevard Army Reserve Center	E French Broad St	Brevard	NC	28712	Army	3010 103c
Charlotte #1 Army Reserve Center.	1300 Westover Dr	Charlotte	NC	28205	Army	3010 103c
Durham #1 Army Reserve Center.	1228 Carrol St	Durham	NC	27701	Army	3010 103c
Durham #2 Army Reserve Center.	724 Foster St	Durham	NC	27701	Army	3010 103c
Garner Army Reserve Center	2017 Garner St	Garner	NC	27529	Army	3010 103c
Greensboro Army Reserve Center.	1120 Church St	Greensboro	NC	27405	Army	3010 103c
Greenville Army Reserve Center.	1391 N Mem Dr	Greenville	NC	27834	Army	3010 103c
Hickory Army Reserve Center	1500 12th Street NW	Hickory	NC	28601	Army	3010 103c
High Point Army Reserve Center.	156 Parris Ave	High Point	NC	28307	Army	3010 103c
Lumberton Army Reserve Center.	1400 Carthage Rd	Lumberton	NC	28358	Army	3010 103c
Morehead City Army Reserve Center.	405 Fisher St	Morehead City	NC	28557	Army	3010 103c
Raleigh Army Reserve Center	3115 Western Blvd	Raleigh	NC	27606	Army	3005 3010 103c
Rocky Mount Army Reserve Center.	804 Fairview Rd	Rocky Mount	NC	28701	Army	3010 103c
Salisbury Army Reserve Center.	1825 Woodleaf Rd, PO Box 1927.	Salisbury	NC	28114	Army	3010 103c
Wilmington Army Reserve Center.	2144 Lakeshore Dr	Wilmington	NC	28401	Army	3010 103c
National Marine Fisheries Service.	Pivers Island off US Hwy 70 West.	Beaufort	NC	28512	Commerce	3010 3016
National Institute of Environmental Health Science.	S on Alexander Dr	Research Triangle Park.	NC	27709	Health and Human Services.	3005 3010 103c
Bogue Burn Pit Marine Corps Auxiliary Landing Bogu.	Mcalf Bogue	Morehead City	NC	28557	Navy	3016 103c
Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Transportation	3010 103c
North Dakota Agricultural Experiment Station.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c
Northern Great Plains Research Laboratory.	PO Box 459, Hwy 6 S	Mandan	ND	58554	Agriculture	3016 103c
Minot Air Force Base	41 CSG/CC	Minot AFB	ND	58705	Air Force	3005 3010 3016 103c
Concrete Missile Early Warning Station.	DET 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010 3005
Grand Forks Defense Fuel Support Point.	Grand Forks AFB 42nd Street	Grand Forks	ND	58201	Defense Logistics Agency.	3010 3016 103c
Section 5 Impoundment	SW¼NW¼SE¼ of Sec 5	Glenvil Township.	NE		Agriculture	103c
Newington Defense Fuel Support Point.	Patterson Lane	Newington	NH	03801	Defense Logistics Agency.	3010 3016 103c

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Bayonne Military Ocean Terminal.	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c 103a
Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c 103a
Fort Monmouth Evans Area #1.	Marconi Road	Wall Township	NJ	07719	Army	3010 3016 103c
SFC NV Brittan Army Reserve Center.	39th and Federal Street	Camden	NJ	08105	Army	3010
Storck Army Reserve Center	Shore Road	Northfield	NJ	08225	Army	3010
Stryker Reserve Center	2150 Nottingham Way	Trenton	NJ	08619	Army	3010
NOAA/NMFS/NEFC	Sandy Hook Laboratory	Highlands	NJ	07732	Commerce	3005 3010
New Brunswick Laboratory-ERDA.	986 Jersey Avenue	New Brunswick	NJ	08903	Energy	3016 103c
Somerville Depot	Route 206	Somerville	NJ	08876	General Services Administration.	103c
FWS-Great Swamp National Wildlife Refuge.	Rd 1, Box 152	Basking Ridge	NJ	07920	Interior	3016 103c
NPS-Gateway National Recreational Area.	Fort Hancock	Sandy Hook-Brooklyn.	NJ	07732	Interior	3010 3016 103c
East Orange Medical Center	Tremont Ave	East Orange	NJ	07019	Veterans Affairs	3010
Hillsborough Supply Depot	Route 206	Hillsborough Twp.	NJ	08853	Veterans Affairs	103c 3010
Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Affairs	3010 103c
Cibola NF: Cobb Resources Corporation.	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c 3016
Jornada Experimental Range	1700 Jornada Road	Las Cruces	NM	88001	Agriculture	3016
Lincoln NF: High Rolls Mining District.	3.3 M S of Inter. of W US 82	High Rolls	NM	88325	Agriculture	103c 3016
Santa Fe NF: La Bajada Mine	1.25 Mi Upstream from La Bajada.	La Bajada	NM		Agriculture	103c
Melrose Range	25 Mi W of Cannon AFB	Melrose	NM	88124	Air Force	3005 3010 3016
Fort Wingate Depot Activity	10 Miles East of Gallup on I-10.	Gallup	NM	87310	Army	3005 3010 3016 103c
Gasbuggy	T29N, R4W S36; 55 M E. of Farmington.	Dulce (Near)	NM		Energy	103c
Lovelace Inhalation Toxicology Research Institute.	Bldg. 9200, Kirtland AFB East	Albuquerque	NM	87185	Energy	103c 3016
BLM-Amax Chemical Company.	Eddy County	Artesia	NM	88201	Interior	103c 3016
BLM-Anthony Landfill	T26S R4E Sec30 NW¼ + E½ of Lot 2.	Anthony	NM	88021	Interior	103c 3016
BLM-Artesia Landfill	T17SR25ESec10	Artesia	NM	88210	Interior	103c 3016
BLM-Blanco Landfill	T29NR10WSec13	Blanco	NM	87412	Interior	103c 3016
BLM-Bloomfield Landfill	T29N, R11W, Sec34	Bloomfield	NM	87413	Interior	3016 103c
BLM-Blue Canyon Allotment	T20SR5WSec8	Hatch	NM	87937	Interior	103c 3016
BLM-Carlsbad Landfill	T21SR27ESec27NMPH	Carlsbad	NM		Interior	103c 3016
BLM-Chaparral Landfill	T26SR5ESec14	Chaparral	NM		Interior	103c 3016
BLM-Eddy Potash Company	3071 Potash Mine Road	Carlsbad	NM	88220	Interior	103c 3016
BLM-Espanola Landfill	T20N R9E Sec 6N MPH	Espanola	NM	87532	Interior	103c 3016
BLM-Hatch Landfill	T19S, R3W, Sec4, Lot1	Hatch	NM	87937	Interior	103c 3016
BLM-Hill Landfill	T22SR1ESecS3&4NMPH	Hill	NM		Interior	103c 3016
BLM-Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c 3016
BLM-International Mineral and Chemical.	P.O. Box 71	Carlsbad	NM	88220	Interior	103c 3016
BLM-Kerr McGee Laguna Toston.	Lee County	Hobbs	NM	88240	Interior	103c 3016
BLM-Kerr McGee Potash Company.	Lee County	Hobbs	NM	88240	Interior	103c
BLM-Kirtland Landfill	T30NR14WSec31	Kirtland	NM	87412	Interior	3016 103c
BLM-La Union Landfill	T27SR3ESec18 Dona Ana Co	La Union	NM	88021	Interior	3016 103c
BLM-Las Cruces Landfill	T23SR2ESec11	Las Cruces	NM	88001	Interior	3016 103c
BLM-Lemitar Landfill	T2SR1WSecs13&24	Lemitar	NM		Interior	103c 3016
BLM-Mesquite Landfill	T24SR3ESec29NMPH	Mesquite	NM		Interior	103c 3016
BLM-National Potash Company.	Eddy & Lee Countys	Carlsbad	NM	88220	Interior	103c 3016
BLM-Orogrande Landfill	T22SR8ESec14SWSESW	Orogrande	NM		Interior	103c 3016
BLM-San Antonio Landfill	T5SR1ESec6NMPH	San Antonia	NM		Interior	103c 3016
BLM-Standard Transpipe Corp.	So. of Alamogordo, NM on Hwy 54.	Alamogordo	NM	88310	Interior	103c 3016
BLM-Thoreau Landfill	T14NR13WSec20NMPH	Thoreau	NM		Interior	103c 3016

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
BLM-UNM Hazardous Waste Storage Facility.	T23s, R2E, Sec23	Las Cruces	NM	88001	Interior	3005 3010 3016 103c
BLM-Velarde Landfill	T22NR9ESec20NMPH	Velarde	NM	87582	Interior	103c 3016
BLM-Waste Elec. Transformer Site No. 1.	T4SR1WSec17,20	Socorro	NM	87801	Interior	103c
BLM-Waterflow Landfill	T30 NR 16W Sec35	Waterflow	NM	87421	Interior	103c 3016
Albuquerque Hospital	2100 Ridgecrest	Albuquerque	NM	87106	Veterans Affairs	3005 3010 3016 103c
Tonopah Test Range (Sandia National Laboratory).	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a 3016
BLM-Henderson Landfill	T21S R63E Section 28, 29	Henderson	NV		Interior	103c
BLM-Rio Tinto Copper Mine	Sec 10 & 11 T45N R53E MDM.	Mountain City	NV	89831	Interior	103c
Plum Island Animal Disease Center.	Plum Island	Orient Point	NY	11957	Agriculture	3016 103c
Hancock Field	Taft and Thompson Roads	North Syracuse	NY	13212	Air Force	3010 3016 103c
Niagara Falls Air Force Reserve Facility.	914 Tag/DE PO Box F La-Salle Station.	Niagara Falls IAP.	NY	14304	Air Force	3005 3010 3016 103c
Plant #38	Porter & Balmer Rds	Porter TWP	NY	14131	Air Force	3005 3010 3016 103c
Stewart Air National Guard Base.	Stewart International Airport	Newburgh	NY	12550	Air Force	103c 3010 3016
Youngstown Test Annex	Balmer Rd	Porter Center	NY	14131	Air Force	103c 3016
Amherst Army Reserve Center.	100 N Forest Rd	Buffalo	NY	14221	Army	3010
Bellmore Maintenance Facility	2755 Maple Ave	Bellmore	NY	11710	Army	3010 3016
Elihu Root Army Reserve Center.	Burrstone Road	Utica	NY	13502	Army	3010
Fort Hamilton	Ft Hamilton	Brooklyn	NY	11252	Army	3010 103c
Fort Totten	Bayside	Queens	NY	11359	Army	3010 103c
Roosevelt Army Reserve Center.	101 Oak St	Hempstead	NY	11550	Army	3010
TSG H.C. Lockwood Army Reserve Center.	111 Finney Blvd	Malone	NY	12953	Army	3010
Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016 103a
Webster Army Maintenance Support Activity-7.	517 Old Ridge Road	Webster	NY	14580	Army	3010 103c
West Point Military Academy	Stewart Army Subpost	West Point	NY	10996	Army	3016
West Point Military Academy	RT 9W-Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c 103a
Verona Defense Fuel Support Point.	Main St	Verona	NY	13478	Defense Logistics Agency.	3010 3016 103c
Colonie Interim Storage Site	1130 Central Ave	Colonie	NY	12205	Energy	3005 3010 3016
Knolls Atomic Power Laboratory-Kesselring Site.	Atomic Project Road	West Milton	NY	12020	Energy	3005 3010 3016 103c 103a
Knolls Atomic Power Laboratory-Knolls Site.	River Rd	Niskayuna	NY	12301-1072	Energy	3005 3010 3016 103c
Niagara Falls Storage Site	East of Route 18, North of Pletcher.	Lewistown	NY	14092	Energy	3016 103c
Brooklyn Information Agency	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Administration.	3010
Emmauel Cellard Federal Building.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Administration.	3010
Federal Building	252 7th Ave	New York	NY	10001	General Services Administration.	3010
Merchandise Control Sales Section.	6 World Trade Center	New York	NY	10048	General Services Administration.	3010
New York	201 Varick St	New York	NY	10014	General Services Administration.	3010
FWS-Iroquois National Wildlife Refuge.	PO Box 517	Alabama	NY	14003	Interior	3016 103c
FWS-Montezuma National Wildlife Refuge.	3395 Route 5 & 20 East	Seneca Falls	NY	13148	Interior	3010 3016 103c
NPS-Fire Island National Seashore.	120 Laurel Street	Patchogue	NY	11772	Interior	3016 3010

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FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
NPS-Gateway National Recreational Area.	Floyd Bennett Field	Brooklyn	NY	11234	Interior	103c
NPS-United Nuclear	Old Rte. 55	Pawling	NY	12564	Interior	103c 3010
Pennsylvania Ave/Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy.	Brooklyn	NY	11207	Interior	3010
Brooklyn Naval and Marine Corps Reserve Center.	Floyd Bennett Field	Brooklyn	NY	11234	Navy	103c
Mitchel Field Housing Facility	Navsta New York Housing Office, Bldg. 19, West Road, Mitchel Field.	Garden City	NY	11530	Navy	103c
Mitchel Manor Housing Facility.	Navsta New York Housing Office, 85 A Mitchel Avenue.	East Meadow	NY	11554	Navy	103c
New York Naval Station	207 Flushing Ave	Brooklyn	NY	11251	Navy	3010 103c
Rochester Naval Industrial Reserve Ordinance Plant.	121 Lincoln Avenue	Rochester	NY	14653	Navy	103c
Stapleton Naval Station	Stapleton	Staten Island	NY	10304	Navy	3010
Binghamton Post Office	111 Henry Street	Binghamton	NY	13902	Postal Service	3010 103c
Manhattan General Mail Facility.	West 29th St and 9th Ave	New York	NY	10001	Postal Service	3010 103c
Aids to Navigation Team	7063 Lighthouse Drive	Saugerties	NY	12477	Transportation	3010
Moriches Coast Guard Group	100 Moriches Island Rd	East Moriches	NY	11940	Transportation	3010
Shinnecok Coast Guard Station.		Hampton Bays	NY	11946	Transportation	3010
Support Center Governor's Island.	C/O US Coast Guard Group	Governor's Island.	NY	10004	Transportation	3010 103c
Castle Point Hospital	Rte. 9D	Castle Pt	NY	12511	Veterans Affairs	3010 103c
Columbus Defense Construction Supply Center.	3990 E. Broad St. Franklin County.	Columbus	OH	43215	Army	3005 3010 3016 103c
Lima Defense Plant Representative Office.	1155 Buckeye Rd, Allen County.	Lima	OH	45804–1898	Army	3010 3016 103c
Electronic Supply Center	1507 Wilmington Pike Montgomery County.	Dayton	OH	45444	Defense	3010 3016 103c
Cincinnati Defense Fuel Support Plant.	4820 River Rd Hamilton County.	Cincinnati	OH	45233	Defense Logistics Agency.	3010 3016 103c
Andrew W. Breidenbach Environmental Research Ctr.	26 W. St. Clair Street	Cincinnati	OH	45268	EPA	3005 3010 3016
Center Hill Hazardous Waste Engrg Research Lab.	5595 Center Hill Road	Cincinnati	OH	45268	EPA	3005 3010 3016
Testing and Evaluation Facility.	1600 Gest Street	Cincinnati	OH	45203	EPA	3005 3010 3016
Plum Brook	Taylor & Columbus Rd Erie County.	Sandusky	OH	44870	NASA	3010 3016 103c 103a
Grazinglands Research	P.O. Box 1199	El Reno	OK	73036	Agriculture	3016 103c
Plant Sciences and Water Conservation Laboratory.	1301 N. Western Rd	Stillwater	OK	74076	Agriculture	3016 103c
Range and Pasture Research	2000 18th Street	Woodward	OK	73801	Agriculture	103c 3016
137th Tactical Airlift Wing	Will Rogers World Airport	Oklahoma City	OK		Air Force	103c
Vance Air Force Base	71 ABG/DE	Enid	OK	73702	Air Force	3005 3010 3016 103c
Fort Sill Field Artillery	Bldg 1950	Fort Sill	OK	73503	Army	3005 3010 3016 103c
Fort Gibson Lake		Pryor	OK	74361	Corps of Engineers, Civil.	3016
Robert S. Kerr Lock Dam & Reservoir.	Star Route 4	Sallisaw	OK	74063	Corps of Engineers, Civil.	3005 3010 3016
BIA-Caddo County Landfill #1	SE/4 Sec7 T5N R11W SW/4 Sec8.	Apache	OK		Interior	103c
FWS-Wichita Mountains National Wildlife Refuge.	Route 1, Box 448	Indiahoma	OK		Interior	3016 103c
FS-Lowell Ranger Station	Rd 1806—433 on Spur 447	Lowell	OR	97452	Argiculture	3010
Siuslaw NF: Mt. Hebo Air Force Station.	8 MI E. of Hwy 22	Hebo	OR	97122	Agriculture	103c 3010 3016
Willamette National Forest	Highway 126 35 MI E of CY	Eugene	OR	97440	Agriculture	3016 103c
Keno Air Force Station	Haymaker Mt Rd Peak end of Rd.	Keno	OR	97627	Air Force	3010
Kingsley Field	114 TFTS/CC	Klamath Falls	OR	97601	Air Force	3010 3016 103c
Astoria Field Office	Hwy 30 & Maritime Rd	Astoria	OR	97103	Corps of Engineers, Civil.	3010 3016
Bonneville Dam Air Enforcement Division.	N of CY on Riv	Bonneville	OR	97008	Corps of Engineers, Civil.	3010 103a 3016

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
North Pacific Division-Materials Laboratory.	1491 NW Graham Ave	Troutdale	OR	97050	Corps of Engineers, Civil.	3010
Portland 3 Mile Canyon Site	184 1.2 MI W of Exit 147	Arlington	OR	97812	Corps of Engineers, Civil.	3010
The Dalles Dam Air Enforcement Division.	Exit 88	The Dalles	OR	97058	Corps of Engineers, Civil.	3010
Willamette Falls Locks	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c 3016
BPA-Alvey Substation	86000 Franklin	Eugene	OR	97405	Energy	3010 103c
BPA-Oregon City	16885 Eaden Road	Oregon City	OR	97045	Energy	103a
BPA-Troutdale Substation	Sundial Rd	Troutdale	OR	97060	Energy	3010 103c
Corvallis Environmental Research Laboratory.	200 SW 35th St	Corvallis	OR	97333	EPA	3010
BLM-Lytle Boulevard Dump	T19SR46ESec31T20R46	Vale	OR	97918	Interior	3016 103c
BLM-Merlin Landfill	T35SR6WSec27	Merlin	OR	97532	Interior	3016 103c
BLM-Minexco Millsite	T9SR42ESec8	Baker	OR	97814	Interior	3016 103c
BLM-Slides Dump Site	T15SR46ESec35,LOTS1,2	Ontario	OR	97914	Interior	3016 103c
BLM-Vale City Dumpsite	T18SR45ESec32	Vale	OR	97918–0008	Interior	3016 103c
BM-Albany Laboratory	1450 SW Queen Ave	Albany	OR	97321	Interior	3010 3016
NPS-Crater Lake National Park.	Hwy 62	Crater Lake	OR	97604	Interior	3010 103c
Tongue Point Job Corps Center.	Betwn MP 95 & 96 Hwy 30	Astoria	OR	97103	Labor	3010 103c
Astoria Coast Guard Base	Hwy 30 at Tongue Point	Astoria	OR	97103	Transportation	3010
Coos Bay Ant	4333 Boat Basin Rd	Charleston	OR	97420	Transportation	3010
Portland Marine Safety Coast Guard Station.	6767 N Basin	Portland	OR	97217	Transportation	3010
Greater Pittsburgh International Airport.	911 TAG/DE	Pittsburgh	PA	15231	Air Force	3016 103c
Charles E. Kelly Support Center.	US Army	Oakdale	PA	15071	Army	3010 103c
Philadelphia Defense Personnel Support Center.	2800 S 20th St	Philadelphia	PA	19101	Army	3005 3010 3016
Bettis Atomic Power Laboratory.	PO Box 109 Bettis Rd	West Mifflin Borough.	PA	15122–0109	Energy	3005 3010 3016 103c
NPS-Gettysburg National Military Park.	Rd 1	Gettysburg	PA	17325	Interior	103c
NPS-Valley Forge National Historic Park.	Rte 23	Valley Forge	PA	19481	Interior	103c 3010
Camp Santiago	Route 1	Salinas	PR	00751	Army	103c 3010
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c 3010 3016
Fort Buchanan	Route 28	San Juan	PR	00934	Army	3005 3010 103c 3016
Center for Energy and Environmental Research.	Road 108 KM 1.1	Mayaquez	PR	00708	Energy	3016 103c
Ceiba Naval Station	Roosevelt Roads	Ceiba	PR	00635	Navy	3005 3010 3016 103c
Roosevelt Roads Naval Station.	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	Navy	3005 3010 3016
Vieques East	Vieques	Vieques	PR	00765	Navy	103c 3005 3010 3016
Borinquen Coast Guard Air Station.	Ramey Air Force Base	Aquadilla	PR	00604	Transportation	3010 103c
Beaufort Marine Corps Air Station.	LaFrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c 103a
Beaufort Naval Hospital	SC Highway 280	Beaufort	SC	29902	Navy	3010
Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016
Charleston Naval Weapons Station South Annex.	Remount Road	North Charleston	SC	29406	Navy	103c
Black Hills NF: Custer Ranger District.	647 North 3rd St	Custer	SD	57730	Agriculture	3010 3016
Black Hills NF: Spokane Munitions.	R6E, T25, SW¼, Sec 26	Spokane	SD		Agriculture	103c 3016
Silver King Mines Inc	US Hwy. 18	Edgemont	SD	57735	Tennessee Valley Authority.	3010 103c
Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c 103a
Memphis Naval Air Station	Millington-Arlington Road	Millington	TN	38054	Navy	3005 3010 3016 103c
Allen Fossil Plant	2574 Plant Rd	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Bull Run Fossil Plant	Edgemoor Rd., 6 Mi SE of Oak Ridge.	Oak Ridge	TN	37930	Tennessee Valley Authority.	3010
Cumberland Fossil Plant	TN Highway 149 South	Cumberland City	TN	37050	Tennessee Valley Authority.	3010
Hartsville Site	TN Hwy 25	Hartsville	TN	37050	Tennessee Valley Authority.	3010 103a
John Sevier Fossil Plant	TN Hwy 70E	Rogersville	TN	37134	Tennessee Valley Authority.	3005 3010 103c
Kingston Fossil Plant	Off I–40 East	Kingston	TN	37763	Tennessee Valley Authority.	3005 3010 103c
Sequoyah Nuclear Plant	Hixson Pike Rd	Daisy	TN	37319	Tennessee Valley Authority.	3005 3010 103c 103a
Watts Bar Nuclear Plant	TN Hwy 68	Spring City	TN	37381	Tennessee Valley Authority.	3005 3010 103c
Conservation and Production Research Laboratory.	½ Mile W., T–40 S	Bushland	TX	79012	Agriculture	3016 103c
Cotton Insects Research Laboratory.		Brownsville	TX	78520	Agriculture	103c
Honey Bee Research Laboratory.		Weslaco	TX	78520	Agriculture	103c
Knipling-Bushland Livestock Insects Laboratory.	Intersection SH 16 and IH 10	Kerrville	TX	78028	Agriculture	3016
Subtropical Agriculture Research Laboratory.	FM 1015, South Expressway 83.	Weslaco	TX	76115	Agriculture	3010 3016
147th Wing at Ellington Field	Clothier Avenue	Houston	TX	77209	Air Force	103c 3016
Bergstrom Air Force Base	67 CSG/DE	Bergstrom AFB	TX	78743	Air Force	3005 3010 3016 103c 103a
Dyess Air Force Base	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c 103a
Nederland Air National Guard	Highway 69	Nederland	TX	77627	Air Force	103c
Sheppard Air Force Base	3750 ABG/DE	Wichita Falls	TX	76311	Air Force	3005 3010 3016 103c
Canyon Lake Recreation Area	North Side of Canyon Lake (by dam).	San Antonio	TX	78234	Army	103c
Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c 103a
Fort Bliss Air Defense Center	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a
Fuels & Lubricant Research Laboratory.	6220 Cuevra	San Antonio	TX	78284	Army	103c
Saginaw Aircraft Plant	Blue Mound Road Highway 156.	Saginaw	TX	76131	Army	3010 103c
Terrell Nike Missile Site	½ MI E. of Hwy 205	Terrell	TX	75160	Army	103c
Lake Lavon-North Gully Site 1	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil.	3016
Lake Lavon-St Paul Site 2	S End Rolling Meadows St	Wyle	TX	75098	Corps of Engineers, Civil.	103c
Houston laboratory	6608 Hornwood Dr	Houston	TX	77074	EPA	3010 103c
FWS-Laguna Atascosa National Wildlife Refuge.	P.O. Box 450	Rio Hondo	TX		Interior	103c
NPS-Padre Island National Seashore Bone Yard.	Park Road 22	Corpus Christi	TX	78418	Interior	3010 3016 103c
Bastrop Federal Correctional Institution.	Hwy95 8MI NE of Bastrop	Bastrop	TX	78602	Justice	3010 3016
L.B. Johnson Space Center	2101 NASA Road	Houston	TX	77058	NASA	3005 3010 3016 103a
Chase Field Naval Air Station	SW 202 5 MI E. of Beeville	Beeville	TX	78103	Navy	3005 3010 103c
Kingsville Naval Air Station	Military Highway	Kingsville	TX	78363	Navy	3010 103c 103a
Plant #78	35 MI. NW of Brigham City, Mail Stop 250.	Brigham City	UT	84302	Air Force	3010 3016 103c

FEDERAL FACILITIES DOCKET, NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
BLM-Chevron Red Wash Unit	T7SR7ESec22	Vernal	UT	84078	Interior	3016 103c 103a
BLM-Desert Mound Mine	T34NR13WSec35	Cedar City	UT	84720	Interior	3016 103c
BLM-East Summit Mining Claims.	T31WR20WSec11,14		UT		Interior	3016 103c
BLM-Frye Canyon Tailing	T36SR16ESec34	Hite	UT	84511	Interior	3016 103c
BLM-Ireco Chemical	17SR1ESec5,6,7 Pelican Pt Site A&B.	Lehi	UT	84043	Interior	3005 3010 3016 103c
BLM-Mercur Canyon Outwash	Highway 73, East of Tooele Army Depot.	Tooele	UT	84074	Interior	3016 103c
BLM-Silver Maple Claims	T2SR4ESec3, 4 Utah Hwy 248.	Park City	UT	84060	Interior	3016 103c
BLM-Snowville Landfill	T14N, R9W, Sec32	Snowville	UT	84336	Interior	103c
BLM-Wendover Landfill	T1S, R19W, Sec3, Lots 1 And 2, 3 MI E of Wendover.	Wendover	UT-	84083	Interior	103c 3016
Cottonwood Canyon	T37SR21ESec3	Hite	UT	84511	Interior	3016 103c
Ore Buying Station-Moab	T26SR22ESec6PARCLABC	Moab	UT	84532	Interior	3016 103c
Oyster Point Development Corp.	610 Thimble Shoals Blvd	Newport Nes	VA	23601	Air Force	103c
Arlington Hall Station	US Army	Warrenton	VA	22186	Army	3010 103c
Arlington Marine Corps Battalion Headquarters ARL.	Henderson Hall	Arlington	VA	22214	Navy	103c
Roanoke Navy and Marine Corps Reserve.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010 103c
Okanogan NF: Alder Creek		Twisp	WA	98856	Agriculture	103c
Okanogan NF: Bonaparte		Chesaw	WA	98844	Agriculture	103c
Okanogan NF: Eight Mile Ranch.		Winthrop	WA	98862	Agriculture	103c
Okanogan NF: Kerr		Conconully	WA	98819	Agriculture	103c
Okanogan NF: Lost Lake		Chesaw	WA	98844	Agriculture	103c
Okanogan NF: Minnie Mine	T32N, R22E, S–23 8 MI S of TWISP.	Twisp	WA	98856	Agriculture	3016 103c
Okanogan NF: Twisp	T33N, R22E WM S17 SW¼ NW½.	Twisp	WA	98856	Agriculture	103c
Pacific N.W. Forest Range Experiment Station.	3625 93rd Ave S.	Turnwater	WA	98501	Agriculture	3016 103c
BPA-Bell Substation	E 2400 Hawthorne Rd	Mead	WA	98021	Energy	3010 3016 103c 103a
BPA-Columbia Substation	St Hwy 28 6 MI S of CY	Rock Island	WA	98850	Energy	3016 103c
BPA-Midway Substation	Priest Rapids off Hwy 24	Sunnyside	WA	98944	Energy	3010 3016 103c
BPA-Olympia Substaiton	5340 Trosper Road SW	Olympia	WA	98502	Energy	3010 3016 103c 103a
BPA-Port Angeles	1400 E Park Street	Port Angeles	WA	98362	Energy	103a
BPA-Snohomish Substation	10th & Avenue D	Snohomish	WA	98290	Energy	3010 3016 103c 103a
BLM-Enlo Powerhorse AKA Similkameen.	T40NR27ESec13	Oroville	WA	98844	Interior	103c
BLM-Oroville Landfill	T40NR27Sec18	Oroville	WA	98844	Interior	103c 3016
BR–Chandler Power & Pumping Plant.	Old Inland Empire Hwy	Benton City	WA	99320	Interior	103c
BR-Grand Coulee Dam Project.	PO Box 620	Grand Coulee	WA	99133	Interior	3010 3016
Br-Smith Wasteway	5 MI. E. of Pasco	Pasco	WA		Interior	3016 103c
Camp Wesley Harris Manne Facility.	Seabeck Hwy 3 MI W of CY	Bremerton	WA	98310	Navy	103c
Jim Creek Naval Radio Station T.	4 Miles East of State Highway 530 at Oso.	Oso	WA	98223	Navy	103c
Seattle Naval Station	7500 Sand Point Way	Seattle	WA	98115	Navy	3010 103a
FAA-Mica Peak	T24N, R45E, S14	Mica	WA	99023	Transportation	103c 3016

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Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Seattle Coast Guard Support Center.	1519 Alaskan Way S	Seattle	WA	98134	Transportation	3010
Seattle Coast Guard Support Center Annex.	2700 W Commodore Way	Seattle	WA	98119	Transportation	3010
Forest Products Laboratory	One Gifford Pinchot Drive	Madison	WI	53705	Agriculture	3005 3010 3016
Pewaukee Army Reserve Center.	619 W Wisconsin Ave	Pewaukee	WI	53072	Army	3010 103c
Milwaukee Coast Guard Group Base.	2420 Lincoln Memorial Dr	Milwaukee	WI	53207	Transportation	3010
High Plains Grassland Research Station.	8408 Hildreth Road	Cheyenne	WY	82009	Agriculture	3016 103c
Hoe Creek		Gillette	WY		Energy	103c
WAPA-Casper Field Br	W of Mt View on Spider Rd	Mills	WY	82644	Energy	103c
BLM-Baroil Landfill	T26NR90WSec26	Baroil	WY		Interior	103c
BLM-Boulder Landfill	T31NR108WSec3	Boulder	WY		Interior	103c
BLM-Cody Landfill	T52NR101WSec20	Cody	WY		Interior	103c
BLM-Old Lysite Landfill	T30NR91WSec1		WY		Interior	103c
BLM-Riverton Landfill	T34NR96WSec26, ½ MI E of Riverton.	Riverton	WY	82501	Interior	103c
BLM-South Bighorn County Landfill.	T52NR93WSec20		WY		Interior	103c

[FR Doc. 95-7355 Filed 4-10-95; 8:45 am]

BILLING CODE 6560-50-F

federal register

Tuesday
April 11, 1995

Part VI

Department of Transportation

Federal Highway Administration

23 CFR Part 655
National Standards for Traffic Control Devices: Revision of the Manual on Uniform Traffic Control Devices; Final Rule Correction

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89–1]

RIN 2125–AD50

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Corrections to final amendments to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document incorporates by reference into the Code of Federal Regulations errata corrections to the MUTCD, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations. The MUTCD is incorporated by reference in 23 CFR 655, subpart F, and recognized as the national standard for traffic control on all public roads. These corrections affect part VI of the MUTCD in its entirety, and are intended to improve the safety of workers, pedestrians, and motorists in temporary traffic control zones.

EFFECTIVE DATE: The final rule is effective April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Robinson, Office of Highway Safety, (202) 366–2193, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Room 3419, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. Part VI of the MUTCD may be purchased for $16.00 from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, Stock No. 050–001–00316–3.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received (e.g., Request VIII–9).

This amendment, which the FHWA is incorporating by reference into 23 CFR 655, contains errata corrections to Part VI of the MUTCD, Standards and Guides for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations. Part VI sets forth principles and prescribes standards for temporary traffic control zone operations on streets and highways in the United States. Also, part VI addresses the design, administration, and operation of street and highway temporary traffic control plans and projects. With the current emphasis on repairing the Nation's highways and improving safety in temporary traffic control zone areas, an updated and more accurate part VI will better serve the highway community. Previous **Federal Register** actions regarding changes to part VI are contained in FHWA docket number 89–1, Notice No. 7.

The text changes resulting from this amendment to the MUTCD have been titled "Errata No.1 to the 1988 Edition of MUTCD, Revision 3" dated November 1994. It will be available from the Government Printing Office (GPO), Superintendent of Documents, Washington, D.C. 20402, (202) 783–3238. Everyone currently appearing on the FHWA Office of Highway Safety's **Federal Register** mailing list will be sent a copy.

Discussion of Amendments

The FHWA discovered several errors in Part VI after the document was incorporated by reference into 23 CFR 655 on December 10, 1993 (FHWA docket number 89–1, Notice No. 7). The errors were not substantial in nature, and the FHWA has been able to correct most of them by way of "pen and ink" changes to provide text clarification and consistency and correct grammatical, typographical, and pictorial errors. Examples of errors that were corrected include: assigning numbers to several signs for which no numbers had been provided in the original Part VI; using correct terminology for certain signs and other traffic control devices (e.g., octagonal in shape in lieu of square); correcting distances (i.e., changing the term "2S" to "Buffer Space" in some Typical Application diagrams); and changing a "shall" to a "should" condition for Truck Mounted Attenuators (this was an inadvertent change made during the rulemaking process).

Another correction involved figure VI–9 on page 62 and figure TA–4 on page 115. As revised, the MUTCD part VI disallowed the use of four or more lights arranged horizontally, as the caution mode for Arrow Displays. The FHWA has since learned that making the electrical modifications needed to alter Arrow Displays which currently use the horizontal arrangement would cause an undue financial burden on many public agencies. After further review of this matter, the FHWA has found no research or operational experience showing the horizontal caution mode display creates an unsafe condition. Accordingly, the FHWA has decided to allow the use of such devices; figure VI–9 on page 62 and figure TA–4 on page 115 have been modified to allow the use of four or more lights in a horizontal direction as the caution mode for Arrow Displays. As modified, this section gives public agencies an option to use either method of operation.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq*, allows agencies engaged in rulemaking to dispense with prior notice to the public when the agency for the good cause finds that such procedure is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

The FHWA has determined that providing prior notice to the public on this action is unnecessary. This action merely incorporates by reference into 23 CFR part 655 a document containing errata changes to Part VI of the MUTCD. These changes are not substantive in nature; for the most part they involve the correction of grammatical, typographical, and pictorial errors. For these same reasons, the FHWA has determined that it has good cause to make the rule effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This action merely incorporates by reference into 23 CFR part 655 a document containing non-substantive errata changes to part VI of the MUTCD. The economic impact of these changes is expected to be minimal. For this reason, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub.L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely incorporates by reference into 23 CFR part 655 a document containing non-substantive errata changes to part VI of the MUTCD.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or Federal Agencies within two years of issuance. This amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the Highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655, as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

Subpart F—[Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, Revision No. 4 dated January 4, 1995, and "Errata No. 1 to the 1988 MUTCD, Revision 3," dated November 1994. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the **Federal Register**, 800 N. Capitol St., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 and has Stock No. 050–001–00308–2. The amendments to the MUTCD, titled "1988 MUTCD Revision 1," dated January 17, 1990, "1988 MUTCD Revision 2," dated March 17, 1992, "1988 MUTCD Revision No. 3" dated September 3, 1993, Revision No. 4 dated January 4, 1995, and "Errata No. 1 to the 1988 MUTCD, Revision 3" dated November 1994 are available from the Federal Highway Administration, Office of Highway Safety, HHS–20, 400 Seventh Street SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

* * * * *

Issued on April 4, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–8838 Filed 4–10–95; 8:45 am]

BILLING CODE 4910–22–P

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federal register

Tuesday
April 11, 1995

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3893; FR–3879–N–01]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of $1,568,000 in funds for emergency shelter grants to be allocated to Indian tribes and Alaskan Native villages by competition for Fiscal Year (FY) 1995. Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, to make available additional emergency shelters, to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and to help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities. This NOFA contains: (1) Information concerning eligible applicants, (2) Information on funding available within each HUD Indian program region, (3) Information on application requirements and procedures, and (4) A description of applicable statutory changes to the ESG program.

DATES: Applications must be received by the appropriate HUD Office of Native American Programs (ONAP) by no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on May 26, 1995. Application materials will be available from each appropriate area ONAP.

ADDRESSES: Application packages are available from the HUD area Offices of Native American Programs listed in Appendix 2 to this NOFA. The ONAP serving the area in which the applicant's project is located must receive an original application and one copy no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on the deadline date.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410–7000; telephone (202) 755–0068, TDD (202) 708–0850. (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice of Funding Availability (NOFA) have been submitted to the Office of Management and Budget (OMB) for review. The approval number will be published in the **Federal Register** through separate notice.

I. Purpose and Substantive Description

A. Authority and Purpose

The Emergency Shelter Grants (ESG) program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986), making appropriations for Fiscal Year (FY) 1987 as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11371–11378) (McKinney Act). Section 832(f) of the National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990), provided for the explicit eligibility of Indian tribes for ESG program assistance, and established a set-aside allocation for Indian tribes that is equal to 1 percent of the amounts appropriated for the ESG program. Regulations governing the ESG program are in 24 CFR part 576, except as superseded by statutory amendments under NAHA and the Housing and Community Development Act of 1992 (1992 Act) (Pub. L. 102–550, approved October 28, 1992), as discussed below.

As a result of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1995 (Pub. L. 103–327, approved September 28, 1994), $156,800,000 is available for the Emergency Shelter Grants (ESG) Program as authorized by Subtitle B, Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended. Of that amount, $1,568,000 (1 percent of the total) was set aside for Indian tribes and Alaskan Native villages. The proposed rule on the Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993 (58 FR 17764), describes the method for allocating these funds.

These grants will be governed by all provisions applicable to the ESG Program, including the provisions in the Housing and Community Development Act of 1992 that became effective upon that law's enactment, such as the authorization to make eligible the use of grant funds for staff costs relating to the operation of emergency shelters up to a maximum amount of 10 percent of the grant, and the requirement that the recipient establish a "formal process" in order to terminate assistance under the program.

Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities.

B. Statutory Amendments

This NOFA addresses section 832 of NAHA, which contains numerous amendments to the McKinney Act, and several amendments to the ESG Program in the 1992 Act. These statutory amendments supersede applicable provisions of the program regulations found in 24 CFR part 576. This NOFA describes these statutory changes to assist Indian tribes in complying with program requirements, including the NAHA and 1992 Act amendments (see appendix 1 of this NOFA for a listing of statutory amendments that apply to this program).

II. Application Process

A. Allocation Amounts

This NOFA announces the availability of a total of $1,568,000 in funding provided by HUD's appropriations act for FY 1995 to fund competitive grants to Indian tribes for emergency shelter grants. Set-aside allocations of the total amount to each area Office of Native American Programs (ONAP) are detailed in the following chart:

ALLOCATION OF ESG SET-ASIDE FOR INDIAN TRIBES BY HUD AREA ONAPS FOR FY 1995

Eastern/Woodlands	$261,307
Southern Plains	309,758
Northern Plains	296,666
Southwest	418,578
Northwest	135,436
Alaska	146,255
Total	1,568,000

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in section II.F, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it is awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

B. Eligibility and Threshold Requirements

(1) Eligible Applicants

Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with noneligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities. For instance, private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

(2) Thresholds

The selection process for the Indian tribe set-aside program consists of a preliminary threshold review. The applicant must clearly demonstrate and HUD will review each application to determine whether:

(a) The application is adequate in form, time, and completeness;

(b) The applicant is eligible; and

(c) The proposed activities and persons to be served are eligible for assistance under the program.

C. Obtaining Applications

Application packages are available from the HUD area Offices of Native American Programs listed in Appendix 2 to this NOFA.

D. Submitting Applications

The ONAP serving the area in which the applicant's project is located must receive an original application and one copy no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on the deadline date May 26, 1995. Applications transmitted by FAX will not be accepted. A determination that an application was received on time will be made solely on receipt of the original application at the appropriate Office of Native American Programs serving the applicant's project.

The deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this practice into account and make early submission of their materials to avoid any risk of ineligibility brought about by unanticipated delays or other delivery-related problems.

E. Rating Criteria

Applications that fulfill each of the threshold review requirements described in Section II.B, Eligibility and Threshold Requirements, of this NOFA will be rated up to 100 points based on the following criteria.

(1) *Applicant capacity (30 points).* HUD will award up to 30 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. Reviewers' knowledge of the applicant's previous experience will weigh heavily in the scoring. Documented evidence of poor or slow performance will enter strongly into that determination. The applicants that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

The applicant will receive the following points if it:

30 Shows *substantial* experience as an organization and/or staff in past endeavors that are *directly and comprehensively* related to the proposed projects; and demonstrates *assurance* of assisting the homeless within a reasonable time.

20 Shows *substantial* experience as an organization and/or staff in past endeavors that are *closely* (but not directly or comprehensively) related to the proposed project; and shows *promise* of assisting the homeless within a reasonable time.

10 Shows *limited* experience as an organization and/or staff in past endeavors that are *closely* (but not directly or comprehensively) related to the proposed project; and shows *promise* of assisting the homeless within a reasonable time.

5 Shows *limited* experience as an organization and/or staff in past endeavors that are only *remotely* related to the proposed project; or some evidence exists that brings into question the organization's capacity to implement the proposed project; and it is *unclear* whether the organization will be able to assist the homeless within a reasonable time.

0 Shows *no* evidence as an organization and/or staff in past endeavors that relate to the demands of the proposed project; *and* substantial evidence exists that the organization is *incapable* of implementing the proposed project; and documented evidence exists that the organization *will not be able* to assist the homeless within a reasonable time.

(2) *Need (20 points).* HUD will award up to 20 points to an applicant that demonstrates the existence of an unmet need for the proposed project in the area to be served. The applicants that rate highest on this criterion will: (a) clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project, (b) demonstrate in-depth knowledge of the population to be served and its needs, and (c) set forth an outreach strategy that assures that the intended population will be served.

The applicant will receive the following points if it:

20 *Clearly* defines the unmet housing and supportive services needs of the homeless population(s) to be served *in the area to be served* by the project. That unmet need (as described) is *great* relative to other applications reviewed. Presents evidence of use of *credible* surveys or other data gathering mechanisms to support claims made.

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Application reveals *in-depth* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *ensure* that the population(s) proposed to be served will *actually* be served by the project.

15 *Generally* defines the unmet housing and supportive services needs of a homeless population(s) to be served, but not as is comparable in magnitude to most other applications reviewed. Presents evidence of use of *acceptable* surveys or other data gathering mechanisms to support claims made. Application reveals *in-depth* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *ensure* that the population(s) proposed to be served will *actually* be served by the project.

10 *Generally* defines the unmet housing and supportive service needs of a homeless population(s) to be served, but not as clearly in the specific area to be served. That unmet need (as described) is comparable in magnitude to most other applications reviewed. Presents evidence of use of *acceptable* surveys or other data gathering mechanisms to support claims made. Application reveals *general* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *likely ensure* that the population(s) proposed to be served will *actually* be served.

5 Offers a *fragmentary description* of the unmet housing and supportive services needs of the homeless population(s) to be served by the project with *minimal evidence supporting the claim*. That unmet need (as described) is less in magnitude than most other applications reviewed. Supportive documentation is *very limited or tangential* to the unmet needs described. Application reveals only *limited* understanding of the population(s) proposed to be served or of its unmet needs. Entry and outreach policies relate *only indirectly* to the population(s) that the applicant proposes to serve.

0 *Fails to delineate* the unmet housing and supportive services needs of the homeless population(s) to be served by the project. Application reveals a *complete absence of understanding* of the population(s) to be served or of its unmet housing and supportive services needs.

(3) *Service to homeless population (20 points).* HUD will award up to 20 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living "on the street." To the extent that Indians living on reservations live in such situations (e.g., sleeping in cars, abandoned structures, out in the open), they meet the definition of living in conditions similar to living on the street.

HUD will focus upon proposed outreach and intake plans, and especially the degree to which such plans would maximize the likelihood that homeless persons would be served by the proposed project. The outreach strategy/intake procedures to seek out and evaluate the needs of the population to be served should be clearly described in the application.

The applicant will receive the following points if it:

20 *Clearly* specifies the reasons that individuals will be hard to reach in terms of their geographic location, specific problems, or their willingness to enter into the program; and states *clearly* how outreach to these individuals will be achieved by the applicant or with other organizations; and *specifically* reveals how intake process will be used to identify the needs of the population to be served.

10 *States only* that individuals will be hard to reach and does not contain any description of their geographic location, specific problems, or their willingness to enter into the program; and does not describe what outreach process will be used to seek out those individuals by the applicant or with other organizations; and states that an intake process will be used to identify the needs of the population to be served.

5 States only that individuals will be hard to reach and does not contain any description of their geographic location, specific problems, or their willingness to enter into the program; and does not describe what outreach process will be used to seek out those individuals by the applicant or with other organizations; and contains *little information* about what intake process will be used to identify the needs of the population to be served.

0 *Fails* to delineate that the population is hard to reach or what outreach measures will be used to contact the population to be served by the project.

(4) *Appropriateness of essential services (30 points).* HUD will award up to 30 points to an applicant that proposes essential services that: (a) are appropriate to the needs of the population proposed to be served; (b) are used or coordinated with existing sources of supportive services and networks of support in the community; and (c) to the degree possible, help to move residents to longer term housing situations. Applicants should describe what services are available and how they will make those services accessible to the people they serve. In addition, HUD will evaluate the means by which the people to be served will be assisted in moving to permanent housing that is appropriate and affordable. Applicants should describe what resources are available to assist the population they serve to find permanent housing.

The applicant will receive the following points if it:

30 Proposes a program of essential services that is *comprehensive* and that gives promise of being of very high quality; and that is *generally appropriate* to the needs of the population proposed to be served, responds to the changing needs of that population(s), *offers a personalized response* to the individual needs of the residents served; and *coordinates extensively* with other sources, public and private, of essential services and networks of support already existing within the community; and *can demonstrate with reasonable certainty* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, referrals to other organizations involved in these activities, or other assistance such as moving assistance, security deposits, or landlord/tenant negotiation directly related to entering transitional or permanent adequate and affordable housing.

20 Proposes a program of essential services that is *reasonably comprehensive* and that gives promise of being of good quality; that responds to a genuine need, as identified in Element (3); proposes use of other sources of essential services and existing networks of support; and offers *reasonable assurance* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, referrals to other organizations involved in these activities, or other assistance such as moving assistance, security deposits, or landlord/tenant negotiation directly related to entering transitional or permanent adequate and affordable housing.

10 Proposes a program of essential services that is *reasonably comprehensive* and that gives promise of being of good quality; that responds to a genuine need, as identified in Element (3); proposes use of other sources of essential services and existing networks of support; and offers *reasonable assurance* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, or be able to make referrals to other organizations involved in these activities.

5 Presents a proposed project with a *few* services that meet basic needs but are *not designed* to encourage residents to move to greater independence within an emergency shelter environment.

0 Presents a proposed project with *no essential services* or with *services that are clearly inappropriate* to the population to be served; success is *highly unlikely*. The application fails to indicate how or when residents will be able to leave emergency shelter for transitional or permanent housing.

F. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Native American Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in Section II.E of this NOFA. Only those applications receiving at least 50 total points will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each area ONAP, to the extent that funds are available within that area ONAP's jurisdiction.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in section II.E of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, HUD may fund qualified applications regardless of location. If an area ONAP has insufficient funds to make awards to all of its qualified applicants, HUD may reallocate funds to that office from any other area ONAP that has funds remaining after making awards to all of its qualified applications.

III. Checklist for Application Submission Requirements

A checklist of submission requirements is provided at Appendix 3 to this NOFA, to assist the applicant in preparing a complete application.

IV. Corrections to Deficient Applications

HUD will notify the applicant if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications and signatures) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The applicant must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in an applicant's application, or to request additional or missing information. The clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This Finding is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in the Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this NOFA is not subject to review under the Order. This NOFA announces the availability of funds set aside for Indian tribes for emergency shelter activities and invites applications from eligible applicants.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that this NOFA, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

D. Economic Opportunities for Low- and Very Low-Income Persons

All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting, and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

E. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for

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further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published in the **Federal Register** on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

G. Section 112 of the HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read that final rule, particularly the examples contained in Appendix A of that rule.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment), and the implementing regulations in 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

I. The Catalog of Federal Domestic Assistance Program Number is 14.231.

Authority: 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: April 5, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix 1—Statutory Amendments (Section I.B)

National Affordable Housing Act Amendments: Sections (1)–(6) below describe the relevant NAHA amendments.

(1) *Extension of eligibility to Indian tribes.* Section 832(f) of NAHA (42 U.S.C. 11371–11378) expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set aside for Indian tribes. The 1 percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA (42 U.S.C. 5306).

(2) *Administrative costs.* Section 832(b)(1) of NAHA (42 U.S.C 11378) permits recipients to use up to 5 percent of an ESG program grant for administrative purposes. This amount equals 5 percent of the total of amounts of ESG funds requested for all other eligible activities. Administrative costs include: costs of accounting for the use of grant funds, preparing reports for submission to HUD or to the State, obtaining program audits, conducting environmental reviews, coordinating program activities, and similar costs related to administering the grant. These costs do not include the costs of carrying out other activities eligible under the ESG program.

(3) *Use of funds for essential services.* Section 832(c) of NAHA (42 U.S.C. 11374(a)(2)(B)) increased the percentage of a grant that may be used to provide essential services from 20 percent to 30 percent. Consistent with this amendment, HUD will apply its waiver authority in section 414(b) of the McKinney Act to the new, higher 30 percent limitation. As with the previous 20 percent limit, the 30 percent limit is to be measured against the aggregate amount of each emergency shelter grant to an Indian tribe. Section 832(f)(6) of NAHA makes the limitations on the provision of essential services applicable to Indian tribes.

(4) *Use of funds for prevention of homelessness.* Homelessness prevention was added as a category of eligible activities by section 423 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–688, approved November 7, 1988), which also treated these activities as "essential services." However, section 832(d) of NAHA (42 U.S.C 11374(a)(4)) withdraws homelessness prevention activities from categorization as "essential services," and imposes a separate limit of 30 percent of the aggregate amount of assistance to any recipient, including an Indian tribe, that may be used for efforts to prevent homelessness.

Thus, under NAHA, essential services and homelessness prevention are now each subject to a 30 percent cap. However, unlike the category of essential services, there is no statutory authority to permit a waiver of the cap on the amount of assistance that may be used for homelessness prevention activities. By its express terms, the statutory waiver is available only in the category of essential services.

(5) *Confidentiality of records for family violence services.* Section 832(e) of NAHA (42 U.S.C. 11375(c)(5)) requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter. This new certification is included in the application kit, as provided in Section III of this NOFA.

(6) *Establishes habitability standards.* Section 832(g) of NAHA (42 U.S.C. 11376(c)) requires the Secretary to prescribe the minimum standards of habitability

appropriate to ensure that emergency shelters assisted by this program are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. A description of the Minimum Habitability Standards and the required certification is included in the application kit, as provided in Section III of this NOFA. The Habitability Standards that have been developed under section 832(g) of NAHA to apply to emergency shelters are as follows:

(a) *Structure and materials.* The shelter shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Access.* The shelter shall be accessible and capable of being utilized without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire.

(c) *Space and security.* Each occupant shall be afforded adequate space and security for the occupant's person and belongings. Each occupant shall be provided an acceptable place to sleep.

(d) *Interior air quality.* Every room or space shall be provided with natural or mechanical ventilation. The shelter shall be free of pollutants in the air at levels that threaten the health of the occupants.

(e) *Water supply.* The water supply shall be free from contamination at levels that threaten the health of the recipients.

(f) *Sanitary facilities.* Shelter occupants shall have access to sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(g) *Thermal environment.* The shelter shall have adequate heating and cooling facilities in proper operating condition.

(h) *Illumination and electricity.* The shelter shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(i) *Food preparation and refuse disposal.* All food preparation areas shall contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(j) *Sanitary condition.* The shelter and its equipment shall be maintained in sanitary condition.

Housing and Community Development Act of 1992 Amendments: Sections (7)–(9) below describe the relevant changes of the 1992 Act.

(7) *Certification of involvement of homeless individuals and families.* The recipient must certify that, to the maximum extent practicable, it will involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing services and in constructing, renovating, maintaining, and operating facilities, when assistance is provided for those activities under the program.

(8) *Termination of assistance.* The recipient may terminate assistance provided to an individual or a family only in accordance with a formal process established by the recipient that recognizes the rights of the individuals affected, which may include a hearing.

(9) *Eligibility of staff costs.* Staff costs relating to the operation of emergency shelters are specifically recognized as an eligible activity, but not more than 10 percent of the amount of any grant may be used for these costs. Staff costs for maintenance of and security for emergency shelters will *not* be counted against the 10 percent cap.

APPENDIX 2.—HUD OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes and IHAs located	ONAP address
East of the Mississippi River (including all of Minnesota and Iowa).	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239,TDD Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Isleta del Sur.	Southern Plains Office of Native American Programs, 6.IPI, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, Oklahoma 73102–3202 (405) 231–4101, TDD Numbers: 405–231–4181 or 405–231–4891.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TDD Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and Isleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPID, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: 602–379–4461.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633,TDD Number: (907) 271–4328.

Appendix 3—Checklist of Application Submission Requirements

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

_____(1) Applicant Information, including name, address, contact person, and telephone number.

_____(2) Standard Form 424;

_____(3) Certifications of compliance with the requirements of:

_____(a) 24 CFR 576.21(a)(4)(ii), concerning assistance provided for homelessness prevention activities; 567.51(b)(2)(v), concerning the funding of ESG activities in commercial facilities; 576.73, concerning the continued use of buildings as emergency shelters or the population to be served; 576.75, concerning buildin$_{g}$ standards; 576.77, concerning assistance to the homeless; and 576.80, concerning displacement and relocation;

_____(b) The Indian Civil Rights Act (25 U.S.C. 1301); and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

_____(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

_____(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

_____(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

_____(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

_____(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

_____(h) Section 832(g) of NAHA, concerning minimum habitability standards prescribed by the Department;

_____(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

_____(j) Section 576.71(b)(2)(vii), concerning compliance with tribal law in the submission of an application for an

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emergency shelter grant, and possession of legal authority to carry out emergency shelter grant activities.

_____(k) Prohibitions on the use of Federal funds for lobbying, and the completion of SF-LLL, Disclosure Form to Report Lobbying, if applicable.

_____(l) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities.

_____(m) Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135.

_____(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable.

_____(5) Project Summary and Proposed Budgets.

_____(6) Description of the homeless population to be served.

_____(7) Facility Description.

_____(8) Narrative addressing the rating criteria.

_____(9) Matching funds certification as required under § 576.51(b)(2)(ii), § 576.71, and section 415 of the McKinney Act (42 U.S.C. 11375(a)).

[FR Doc. 95–8909 Filed 4–10–95; 8:45 am]
BILLING CODE 4210–33–P

federal register

Tuesday
April 11, 1995

Part VIII

Department of the Interior

National Park Service

36 CFR Part 13
Alaska, Hunting Regulations; Final Rule

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC25

Alaska; Hunting Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prohibits hunting in National Park Service (NPS) areas in Alaska on the same day in which a hunter has flown in an aircraft. The rule as originally proposed (59 FR 58804) also included a clarification of the NPS restriction on use of firearms and other weapons by trappers. This final rule addresses only the Same-Day-Airborne Hunting portion of the proposed rule. The clarification of the language regarding trapping and the use of firearms under a trapping license will be addressed under a separate document with an extended comment period.

EFFECTIVE DATE: April 11, 1995.

ADDRESSES: Comments should be addressed to Robert D. Barbee, Regional Director, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892 (Fax 907–257–2533).

FOR FURTHER INFORMATION CONTACT: Paul Hunter, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, AK 99503–2892 (Telephone 907–257–2646; Fax 907–257–2410).

SUPPLEMENTARY INFORMATION:

Background

The National Park Service "Organic Act" (16 U.S.C. 1, *et seq.*) provides authority for the management of NPS areas in accordance with the fundamental purposes established for each area. The basic purpose established by the Organic Act is "* * * to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations". In addition, each area established may also have other legislatively designated purposes.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. 3101) which established new, and added to existing, NPS units in Alaska. Sections 201 and 202 of ANILCA established purposes for which each NPS unit will be managed. Section 203 of ANILCA directs that these new and additional areas are to be administered according to the NPS "Organic Act" and the other applicable provisions of ANILCA. Also, Section 1313 of ANILCA directs that National Preserves in Alaska will be administered and managed in the same way as a national park except as otherwise provided in ANILCA. Section 1110 provides for the use of airplanes in NPS areas subject to reasonable regulation to protect the natural and other values of the areas. The intent of Congress to allow hunting and trapping in specified NPS areas in Alaska is implemented through Title 36 part 13 of the Code of Federal Regulations (CFR).

Hunting and Trapping in NPS Areas in Alaska

Prior to 1975, same-day-airborne taking of wildlife was allowed in Alaska by State regulation. Starting in 1975, the State began prohibiting same-day-airborne hunting of many species of wildlife while continuing to allow for same-day-airborne land and shoot trapping. Because wolves may be taken under State law with either a hunting or trapping license, and State law provides for taking by firearm with a trapping license, wolves could still be taken by the land and shoot method on the same-day-airborne despite the prohibition for same-day-airborne hunting.

On June 17, 1981, Federal regulations (36 CFR Part 13) were adopted for NPS areas in Alaska, including a regulation (36 CFR 13.1(u)) which limited trapping in NPS areas to taking by snares, traps, mesh, or other implements designed to entrap animals. As a result, use of a firearm under the State authorization for land and shoot trapping was precluded in NPS areas.

From 1981 until 1986, NPS managers operated on the assumption that the State prohibition of same-day-airborne hunting and the NPS prohibition of use of a firearm for trapping eliminated the possibility of land-and-shoot taking of wolves and most other wildlife in NPS areas. However, at the January 1986 Board of Game meetings, the NPS learned that State wildlife managers were unaware of the NPS trapping restriction and that State tagging records indicated that as many as 20 wolves may have been taken in NPS preserves by the land-and-shoot trapping method during that season. Shortly thereafter, the NPS Regional Director met with the Commissioner of the State Department of Fish and Game to explain the NPS trapping regulation. This was followed with a letter dated February 14, 1986, to the Commissioner formally conveying the NPS prohibition of firearm use for trapping.

In 1987, the State Board of Game revised same-day-airborne provisions for wolves by eliminating the previous allowance for trapping and establishing such an allowance for hunting. This action had implications for national preserves in Alaska where same-day-airborne takings were previously prohibited by the NPS preclusion of use of firearms for trapping. This was the first time that wolves could legally be taken on the same-day-airborne in NPS areas in Alaska.

In response to the State change in same-day-airborne taking rules for wolves, the NPS adopted an emergency one-year regulation from November, 1988 to November, 1989, prohibiting same-day-airborne hunting of wolves in NPS preserves. At the same time, the NPS began drafting a proposed rule for permanent adoption. The proposed rule was published in the **Federal Register** on June 9, 1989 (54 FR 24852). Written comments were accepted and public hearings were held in sixteen communities during the Summer of 1989. After analyzing the public comments, the NPS in 1990 prepared, but did not publish, a final rule.

However, as a result of consultations between the State of Alaska and the NPS, the State agreed to exclude the NPS preserves from the State regulation allowing same-day-airborne hunting of wolves. State regulations were changed in August, 1990 to specifically exclude same-day-airborne hunting allowances in national preserves. On October 30, 1990, the NPS published a Notice in the **Federal Register** (55 FR 45663) announcing the exception for the preserves.

In 1992 the State Board of Game again prohibited same-day-airborne hunting of wolves statewide and did not reauthorize same-day-airborne land and shoot trapping. Consequently, for about one year, same-day-airborne taking of wolves in Alaska was not allowed under either a State hunting or trapping license. Then in 1993, the State Board of Game reauthorized same-day-airborne land and shoot trapping of wolves. This action essentially returned same-day-airborne taking of wildlife to the pre-1987 status when it was allowed for trapping but not hunting.

While the 1993 State action did not directly impact the NPS, it did result in a strong public reaction that, because of the perception that the State action did affect NPS areas, included many requests that the NPS move ahead with the rulemaking that was first proposed in 1989. Consequently, the 1989 proposed rule was revised and published in the **Federal Register** on November 15, 1994 (59 FR 58804), with the intent of accomplishing the following:

1. Prohibit same-day-airborne taking of fifteen designated wildlife species.
2. Satisfy statutory mandates to provide for hunting and trapping in specified NPS areas in Alaska.
3. Maintain compatibility between hunting and trapping activities and statutory purposes.
4. Provide more effective and consistent enforcement of State and Federal hunting and trapping laws and regulations.

In consideration of NPS law and policy, and Federal Airborne Hunting Act purposes and enforceability, the NPS has determined that this final rule will reduce the incidence of aircraft harassment of wildlife and the potential for aircraft assisted taking of wildlife in units of the NPS.

Summary of Comments Received in 1989

The original proposed rule (54 FR 24852) afforded the public a comment period of 60 days (extended to 70 days). During the comment period, public meetings were held in Alaska in Anchorage, King Salmon, Wasilla, Chignik, McGrath, Fairbanks, Glennallen, Eagle, Kenai, Bettles, Iliamna, Yakutat, Kotzebue, Juneau, and Nome, as well as in Washington, D.C. Ninety-three oral comments were recorded at the public meetings and 1,312 written comments were received prior to the end of the comment period.

Summary of 1994 Comments

The revised proposed rule (59 FR 58804) had a 30-day public comment period. During the comment period public hearings were held in Anchorage and Fairbanks at which sixteen persons presented oral comments. The NPS also received ninety letters, cards, and facsimile comments within the official comment period.

After considering all public comments from both comment periods, the NPS has decided to proceed with a final rule on the same-day-airborne portion of the revised proposed rule. The clarification of the trapping portion of the proposed rule will be covered under a separate document with an extended comment period.

Analysis of Comments

1. Widespread Support for the Proposed Regulations

Analysis of supporting views is consolidated in this paragraph because the various supporting comments generally repeat the reasons presented by the NPS in the published Proposed Rule documents (54 FR 24852 and 59 FR 58804). Overall, the comments supported the prohibition of same-day-airborne land-and-shoot hunting. The NPS received a total of 1,405 comments (1,312 written and ninety-three oral) during the 1989 comment period, and 106 (ninety written and sixteen oral) during the 1994 comment period. Ninety-three percent (1,406 comments) favored the proposed rule and seven percent (105 comments) opposed the rule.

2. Opinions of Alaska Residents Were Seriously Considered

Several commenters who oppose the proposed rule expressed their belief that the NPS ignores opinions of Alaska residents and relies on comments from outside Alaska. While most opposition to the proposed rule came from Alaska residents, more than two-thirds of the comments from Alaska support the proposed rule. Alaska residents submitted a total of 322 comments, with sixty-nine percent favoring the proposed rule and thirty-one percent opposed.

The NPS considered all public opinions and views on the proposed rule and did not disregard opinions of Alaskan residents. In fact, special attention was given to comments and concerns received from Alaskans. The decision to extend the comment period for the trapping clarification portion of the proposed rule was a direct result of requests from Alaska residents involved with trapping activities, local governmental bodies, members of local advisory groups, Native organizations, and individual Alaska residents. Even so, while the response from Alaska residents was mixed, a significant majority of commenting Alaskans, including many uniquely knowledgeable persons such as hunting guides, hunters, pilots, and representatives of local rural residents directly affected by same-day-airborne taking of wildlife, support the same-day-airborne rule.

3. The Proposed Rule Would Not Violate the Special Aircraft Access Provisions of ANILCA

Several commenters expressed concern that the proposed rule violates the procedure for implementing restrictions on aircraft access under Section 1110 of ANILCA. This section of ANILCA, among other things, limits the restrictions that may be placed on aircraft access for traditional activities. After carefully reviewing the potential applicability of Section 1110 to the proposed same-day-airborne rule, it was concluded early in the rulemaking process that the regulation does not restrict aircraft access for hunting, trapping, fishing or any other traditional activity permitted by ANILCA or other law. Furthermore, at the time ANILCA was passed, same-day-airborne taking of wildlife was a widely restricted hunting method under State law, as it is today. However, even if found to be an aircraft access restriction as certain commenters asserted, the NPS believes that the administrative process used for this rule would meet the requirements established for adoption of such restrictions.

4. The State of Alaska's Authority to Regulate the Taking of Fish and Wildlife Is Limited by Federal Law

Many of those opposing the rule commented that the State either has or should have sole authority to regulate the taking of fish and wildlife in Alaska. The proposed rule is seen as unauthorized and unwarranted Federal interference with the State's jurisdiction over fish and wildlife. While this argument is often raised as an objection to Federal actions regarding fish and wildlife management, the NPS is legally obligated to manage the NPS areas in Alaska in accordance with statutory mandates and purposes. While the NPS follows State law to the fullest extent possible in the management of fish and wildlife, there are situations in which there is a conflict between State law and Congressional mandates for Federal areas. Federal subsistence law under ANILCA is perhaps the most well-known example of such a conflict in Alaska, but there are other examples of which the same-day-airborne method of taking in NPS areas is one. The NPS has been able, over the years, to manage within the State framework for same-day-airborne taking of wildlife as described above. However, changes in the State approach to wildlife management and corresponding adjustments in the application of same-day-airborne rules threaten to violate the separate and distinct Federal mandates established for NPS areas. This rulemaking recognizes that State and Federal mandates differ in this case and adopts a separate Federal rule for NPS areas that complies with applicable Federal law and policy for park areas. The NPS remains committed to managing fish and wildlife in a way that avoids unnecessary interference with State management of resident wildlife resources.

5. The Proposed Rule Is Not Based on a Biological Problem

Many commenters stated that there is not a biological basis for the proposed regulation because wildlife populations are generally healthy and are managed by the State to maintain continued

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viability of populations. The NPS acknowledges that the proposed rule is not based on biological concerns for the health of wildlife populations and such reasons have not been used as a justification for the rulemaking. The reasons stated in the two **Federal Register** publications of the proposed rule, and above in this document, are the basis for this rule. Existing closure regulations under both State and Federal law appear to be sufficient to protect wildlife when biological data indicates this is necessary, and this rule should not be interpreted as suggesting that State wildlife management is in any way deficient in this regard.

Immediate Effective Date

The final rule establishes a prohibition on hunting on the same day in which the hunter has flown on an aircraft. The rule is based upon the determination that activities such as those allowed under State authorizations for same-day-airborne taking of wildlife conflict with NPS management mandates and policies, and invite enforcement problems with the Federal Airborne Hunting Act. The rule is intended to reduce the incidence of aircraft harassment of wildlife and to reduce the potential for aircraft assisted taking of wildlife. The rationale for the rule is more fully discussed at 59 FR 58804.

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(d)(3)), the NPS has determined that publishing this final rule 30 days prior to the rule becoming effective could result in public confusion resulting from reliance on the January 13, 1995, State of Alaska authorization of same-day-airborne caribou hunting in several NPS areas that will be closed to such hunting by this rule. Therefore, in accordance with 5 U.S.C. 553(d)(3), the NPS finds good cause to make this rule effective on the date published in the **Federal Register**.

Drafting Information

The primary authors of this regulation are Lou Waller, John Hiscock, Steve Shackleton and Paul Hunter of the NPS Alaska Regional Office.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses;

(d) Cause a nuisance to adjacent owners or occupants; or

(e) Affect the State hunting population generally.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

The rule has been evaluated in accordance with Section 810 of ANILCA and the NPS has determined there will be no significant restriction on subsistence uses. It is worthy of note that the Federal Subsistence Board has prohibited same-day-airborne taking of ungulates (except deer), bear, wolves, wolverines and furbearers for subsistence uses on all Federal public lands in Alaska (50 CFR Part 100).

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, Part 13 is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; Section 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Section 13.21 is amended by removing and reserving paragraph (a), and revising paragraphs (d) and (e), to read as follows:

§ 13.21 Taking of fish and wildlife.

(a) [Reserved]

* * * * *

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations.

(2) Violating a provision of either Federal or non-conflicting State law or regulation is prohibited.

(3) Engaging in trapping activities as the employee of another person is prohibited.

(4) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish or wildlife in accordance with the provisions of § 13.30 of this chapter. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

Dated: March 12, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–8692 Filed 4–10–95; 8:45 am]

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federal register

Tuesday
April 11, 1995

Part IX

The President

Proclamation 6783—Cancer Control Month

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Title 3—

The President

Proclamation 6783 of April 7, 1995

Cancer Control Month, 1995

By the President of the United States of America

A Proclamation

Almost all of us have been touched by the devastating effects of cancer. In its many forms, cancer has been one of the most persistent and deadly health problems of this century. With the coming of spring—a time of rebirth—it is especially appropriate for us to renew our commitment to fighting cancer, to take pride in the progress we have made in combatting this disease, and to recognize the work still to be done.

In the 24 years since the signing of the National Cancer Act, we have made significant strides against cancer. Through diligent research, we have identified major risk factors for the disease—including diet, lack of exercise, and smoking—and we have worked to educate Americans to minimize these risks in their lives. New approaches to treatment have been developed in recent years, and new medicines are continually being refined and tested.

Among women in the United States who develop cancer, lung cancer claims the most lives, followed closely by breast cancer. An estimated 1 in 8 women will be diagnosed with breast cancer at some point in their lives—up from 1 in 20 just two decades ago. In this decade, an estimated 2 million women will be diagnosed with breast cancer or cervical cancer, with more than 500,000 of these women dying as a result. Cancers of the uterus, ovaries, and colon are also on the rise among women in this country.

We are making progress, however. For example, from 1989 to 1992, the numbers of women dying from breast cancer actually declined—the largest short-term decrease since 1950. With the advances in treatment upon early detection, screening mammography has never been more important. My Administration is launching a nationwide campaign to increase awareness of Medicare coverage for screening mammography. Additionally, most States now have laws requiring private insurers to offer coverage for biannual screening mammography, and third-party reimbursement is increasing. Together, these measures are helping more women to benefit from this potentially life-saving procedure.

Remarkable progress has also been made against childhood cancers as a result of the unflagging persistence of researchers in laboratories and hospitals across the country. Although the number of children affected by cancer is increasing, the number of deaths from childhood cancer continues to drop dramatically. Improved diagnostic and prognostic techniques and important advances in treatment have given renewed hope to children with leukemia, Wilms' tumor, neuroblastoma, and brain tumors. We are seeing a steady increase in the number of adult survivors of these childhood cancers.

Every one of us has a part to play in the fight against this disease and much work remains to eradicate it. Continuing research is essential to reducing the incidence of cancer for all our citizens.

In 1938, the Congress of the United States passed a joint resolution requesting the President to issue an annual proclamation declaring April as "Cancer Control Month."

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of April 1995 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also ask health care professionals, private industry, community groups, insurance companies, and all other interested organizations and individual citizens to unite in support of our Nation's determined efforts to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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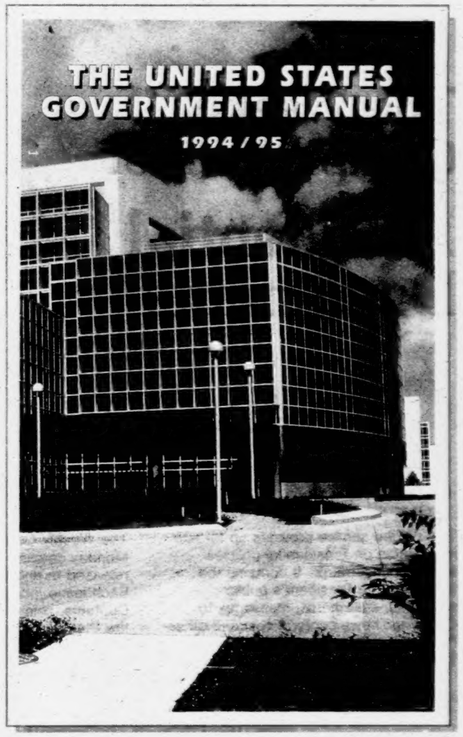
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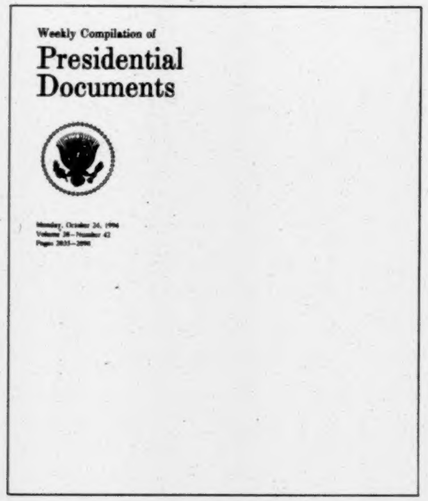
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